

No. 141, Original

**In the
SUPREME COURT OF THE UNITED STATES**

STATE OF TEXAS,

**Plaintiff,
v.**

**STATE OF NEW MEXICO and
STATE OF COLORADO,**

Defendants

OFFICE OF THE SPECIAL MASTER

UNITED STATES OF AMERICA'S AUGUST 2019 STATUS REPORT

NOEL J. FRANCISCO
Solicitor General
LAWRENCE VANDYKE
Deputy Assistant Attorney General
FREDERICK LIU
Assistant to the Solicitor General
JAMES J. DuBOIS
STEPHEN M. MACFARLANE
R. LEE LEININGER
JUDITH E. COLEMAN
JOHN P. TUSTIN
THOMAS K. SNODGRASS
Attorneys, Environment and Natural Resources Division
U.S. Department of Justice

Counsel for the United States

The United States respectfully submits its August 2019 status report to the Special Master pursuant to paragraph 5 of the Case Management Plan dated September 6, 2018 (“CMP”).

I. The United States’ Production of Documents

Pursuant to the CMP and Rule 26(a)(1) of the Federal Rules of Civil Procedure, the State of Texas, the State of New Mexico, the State of Colorado and the United States uploaded their respective initial document productions to the Veritext Vault document storage system through mutually agreed-upon means. As described in prior Status Reports, the United States uploads its documents to the Box.com file-sharing site, and Veritext transfers the documents to the Veritext Vaults. The United States has currently produced 59,403 documents, comprising 370,358 pages. The United States continues to review potentially discoverable documents and supplement its production of documents as responsive documents are identified and become available for production.

II. Production of Electronically Stored Information (“ESI”)

The United States participated in the negotiation of the Stipulation for the production of ESI entered into by the parties and filed with the Special Master on November 14, 2018. The parties then engaged in the negotiation of search protocol, terms, and custodians for their respective sweeps of computer, email and electronic systems for ESI. Following a discussion held on July 19, the parties agreed to begin their respective ESI searches. The United States has commenced its search for ESI information in numerous Department of Interior electronic databases. Preliminary results have revealed certain errors in the search term selections (misspellings, words with potentially overbroad results) that will be addressed in further discussions with the parties. Once these errors are corrected and search terms modified, the completion of the ESI search is expected to take a few weeks.

III. Index of Documents

The Parties continue to discuss the creation of an index system for documents produced in this case, as provided in Section 7.2.2 of the CMP. The United States anticipates that the system will also address the handling of ESI.

IV. Further Discovery

Fact discovery commenced in this case on September 1, 2018. Depositions of fact witnesses have commenced. Written discovery has been propounded on New Mexico by Texas, on Amici by New Mexico, on Texas by New Mexico, on El Paso County Water Improvement District No.1 by New Mexico, and on New Mexico by the United States. Since the June 2019 status report, the United States has received New Mexico's objections to the United States' written discovery; New Mexico's responses are due August 13. The United States participated in discovery calls among the parties on May 10, 2019, May 24, 2019, June 7, 2019, June 19, and June 26, July 8, 2019 and July 10, 2019.

Pursuant to Section 6.2.2 of the September 6, 2018 Case Management Plan, the United States served its initial expert witness reports and expert designations and disclosures on the parties on May 31, 2019. The expert reports, and supporting materials, were served on the other parties via Veritext.

V. Motions on Pleadings and Motions for Partial Judgment

Under the amended case management plan, the United States filed a motion for judgment on the pleadings against New Mexico's counterclaims 2, 3, 5, 6, 7, 8, and 9 on December 21, 2018. On December 26, Texas filed (1) a request for a judicial declaration to confirm the legal issues previously decided and motion in limine to exclude the introduction of evidence thereon, and (2) a motion to strike or for partial judgment regarding New Mexico's counterclaims and affirmative defenses, under Federal Rules of Civil Procedure 12(c) and 56. On December 26, New Mexico filed a motion for partial judgment on matters previously decided and brief in support. The Special Master held an in-person oral argument on these motions on April 2, 2019, in Denver.

VI. Motion to Intervene of the Pre-Federal Claimants

Finally, on June 17, 2019, the United States Supreme Court referred to the Special Master the Motion to Intervene filed by the Pre-Federal Claimants. The United States filed an opposition to the Pre-Federal Claimants' Motion to Intervene on May 20, 2019. The Special Master heard oral argument on the Pre-Federal Claimants' Motion to Intervene on July 1, 2019, in which the United

States participated.

Respectfully submitted this 2nd day of August, 2019.

FREDERICK LIU
Assistant to the Solicitor General
U.S. Department of Justice
950 Pennsylvania Avenue, NW
Washington, DC 20530-0001

JUDITH E. COLEMAN
JOHN P. TUSTIN
Trial Attorney
U.S. Department of Justice
Environment & Natural Resources Division
P.O. Box 7611
Washington, D.C. 20004

NOEL J. FRANCISCO
Solicitor General
LAWRENCE VANDYKE
Deputy Assistant Attorney General

/s/ Stephen M. Macfarlane _____

JAMES J. DuBOIS
R. LEE LEININGER
THOMAS K. SNODGRASS
Trial Attorneys
U.S. Department of Justice
Environment & Natural Resources Division
999 18th Street, South Terrace – Suite 370
Denver, CO 80202
STEPHEN M. MACFARLANE
Senior Attorney
U.S. Department of Justice
Environment & Natural Resources Division
501 I Street, Suite 9-700
Sacramento, CA 95814

No. 141, Original

**In the
SUPREME COURT OF THE UNITED STATES**

STATE OF TEXAS,

**Plaintiff,
v.**

**STATE OF NEW MEXICO and
STATE OF COLORADO,**

Defendants

OFFICE OF THE SPECIAL MASTER

CERTIFICATE OF SERVICE

This is to certify that on the 2nd day of August, 2019, the **UNITED STATES OF AMERICA'S AUGUST 2019 STATUS REPORT** was served via electronic mail and/or U.S. mail as indicated, upon the individuals listed on the Service List, attached hereto.

Respectfully submitted,

/s/ Seth Allison

Seth Allison
Paralegal Specialist

SPECIAL MASTER

SPECIAL MASTER MICHAEL J. MELLOY [Judge Michael Melloy@ca8.uscourts.gov](mailto:Judge_Michael_Melloy@ca8.uscourts.gov)
United States Court of Appeals TXvNM141@ca8.uscourts.gov
for the Eighth Circuit (319) 423-6080
111 Seventh Avenue, S.E., Box 22 **(service via email and U.S. Mail)**
Cedar Rapids, IA 52401-2101

MICHAEL GANS (314) 244-2400
Clerk of Court
United States Court of Appeals
for the Eighth Circuit
Thomas F. Eagleton
United States Courthouse
110 South 10th Street, Suite 24.329
St. Louis, MO 63102

UNITED STATES

NOEL J. FRANCISCO* supremectbriefs@usdoj.gov
Solicitor General (202) 514-2217

LAWRENCE VANDYKE
Deputy Assistant Attorney General

FREDERICK LIU
Assistant to the Solicitor General
US Department of Justice
950 Pennsylvania Avenue, NW
Washington, D.C. 20530-0001

JAMES J. DUBOIS* james.dubois@usdoj.gov
R. LEE LEININGER (303) 844-1375
THOMAS K. SNODGRASS lee.leininger@usdoj.gov
U.S. Department of Justice (303) 844-1364
Environment & Natural Resources Division thomas.snodgrass@usdoj.gov
999 18th Street (303) 844-7233
South Terrace – Suite 370
Denver, CO 80202
Seth Allison, Paralegal seth.allison@usdoj.gov
(303) 844-7917

STEPHEN M. MACFARLANE stephen.macfarlane@usdoj.gov
U.S. Department of Justice (916) 930-2204
Environment & Natural Resources Division
501 I Street, Suite 9-700
Sacramento, CA 95814

JUDITH E. COLEMAN judith.coleman@usdoj.gov
JOHN P. TUSTIN (202) 514-3553
U.S. Department of Justice john.tustin@usdoj.gov
Environment & Natural Resources Division (202) 305-3022
P.O. Box 7611
Washington, D.C. 20044-7611

STATE OF COLORADO

CHAD M. WALLACE*
Senior Assistant Attorney
Department of Law
1300 Broadway
Denver, CO 80203

chad.wallace@coag.gov
(720) 508-6281

Nan B. Edwards, Paralegal

nan.edwards@coag.gov

PHILIP J. WEISER
Attorney General of Colorado

pjweiser@coag.gov
karen.kwon@coag.gov

KAREN M. KWON
First Assistant Attorney General
Department of Law
1300 Broadway
Denver, CO 80203

(720) 508-6281

STATE OF NEW MEXICO

HECTOR BALDERAS
New Mexico Attorney General
TANIA MAESTAS
Deputy Attorney General

hbalderas@nmag.gov
(505) 490-4060
tmaestas@nmag.gov
(505) 490-4048

MARCUS J. RAEL, JR.*
DAVID A. ROMAN
Special Assistant Attorneys General
ROBLES, RAEL, AND ANAYA
500 Marquette Ave. NW, Ste. 700
Albuquerque, NM 87102
Chelsea Sandoval, Paralegal

marcus@roblesrael.com
droman@roblesrael.com
(505) 242-2228

BENNETT W. RALEY
LISA M. THOMPSON
MICHAEL A. KOPP
Special Assistant Attorneys General
TROUT RALEY
1120 Lincoln Street, Suite 1600
Denver, CO 80203

chelsea@roblesrael.com
braley@troutlaw.com
lthompason@troutlaw.com
mkopp@troutlaw.com
(303) 861-1963

STATE OF TEXAS

STUART SOMACH*
ANDREW M. HITCHINGS
ROBERT B. HOFFMAN
FRANCIS M. "MAC" GOLDSBERRY II
THERESA C. BARFIELD
SARAH A. KLAHN
BRITTANY K. JOHNSON
RICHARD S. DEITCHMAN
SOMACH SIMMONS & DUNN, PC
500 Capital Mall, Suite 1000
Sacramento, CA 95814

ssomach@somachlaw.com
(916) 446-7979
(916) 803-4561 (cell)
ahitchings@somachlaw.com
rhoffman@somachlaw.com
mgoldsberry@somachlaw.com
tbarfield@somachlaw.com
sklahn@somachlaw.com
bjohnson@somachlaw.com
rdeitchman@somachlaw.com

Rhonda Stephenson, Secretary
Christina Garro, Paralegal
Yolanda De La Cruz, Secretary

rstephenson@somachlaw.com
cgarro@somachlaw.com
ydelacruz@somachlaw.com

KEN PAXTON

Attorney General

JEFFREY C. MATEER

First Assistant Attorney General

BRANTLEY STARR

Deputy First Assistant Attorney General

JAMES E. DAVIS

Deputy Attorney General

PRISCILLA M. HUBENAK

Chief, Environmental Protection Division

P.O. Box 12584

Austin, TX 78711-2548

(512) 463-2012

AMICI / FOR INFORMATIONAL PURPOSES ONLY

ALBUQUERQUE BERNALILLO COUNTY WATER UTILITY AUTHORITY

JAMES C. BROCKMANN*
JAY F. STEIN
STEIN & BROCKMANN, P.A.
505 Don Gaspar Avenue
P.O. Box 2067
Santa Fe, NM 87505

jcbrockmann@newmexicowaterlaw.com
jfstein@newmexicowaterlaw.com
administrator@newmexicowaterlaw.com
(505) 983-3880

PETER AUH
ALBUQUERQUE BERNALILLO COUNTY
WATER UTILITY AUTHORITY
P.O. Box 568
Albuquerque, NM 87103-0568

pauh@abcwua.org
(505) 289-3092

CITY OF EL PASO

DOUGLAS G. CAROOM*
SUSAN M. MAXWELL
BICKERSTAFF HEATH
DELGADO ACOSTA, LLP
2711 S. MoPac Expressway
Building One, Suite 300
Austin, TX 78746

dcaroom@bickerstaff.com
smaxwell@bickerstaff.com
(512) 472-8021

CITY OF LAS CRUCES

JAY F. STEIN*
JAMES C. BROCKMANN
STEIN & BROCKMANN, P.A.
P.O. Box 2067
Santa Fe, NM 87504

jfstein@newmexicowaterlaw.com
jcbrockmann@newmexicowaterlaw.com
administrator@newmexicowaterlaw.com
(505) 983-3880

JENNIFER VEGA-BROWN
MARCIA B. DRIGGERS
LAW CRUCES CITY ATTORNEY'S OFFICE
P.O. Box 12428
Las Cruces, New Mexico 88004

cityattorney@las-cruces.org
jvega-brown@las-cruces.org
marcyd@las-cruces.org
(575) 541-2128

ELEPHANT BUTTE IRRIGATION DISTRICT

SAMANTHA R. BARNCastle
BARNCastle LAW FIRM, LLC
1100 South Main, Suite 20
P.O. Box 1556
Las Cruces, NM 88005
Janet Correll, Paralegal

samantha@h2o-legal.com
(575) 636-2377
(575) 636-2688 (fax)

janet@h2o-legal.com

EL PASO COUNTY WATER AND IMPROVEMENT DISTRICT

MARIA O'BRIEN*
SARAH M. STEVENSON
MODRALL, SPERLING, TOEHL,
HARRIS & SISK, PA
500 Fourth Street N.W.
Albuquerque, New Mexico 87103-2168

mobrien@modrall.com
sarah.stevenson@modrall.com
(505) 848-1800 (main)
(505) 848-1803 (direct)
(505) 848-9710 (fax)

HUDSPETH COUNTY CONSERVATION AND RECLAMATION DISTRICT

ANDREW S. "DREW" MILLER*
KEMP SMITH LLP
919 Congress Ave., Suite 1305
Austin, TX 78701

dmiller@kempsmith.com
(512) 320-5466

STATE OF KANSAS

TOBY CROUSE*
Solicitor General of Kansas
DEREK SCHMIDT
Attorney General, State of Kansas
JEFFREY A. CHANAY
Chief Deputy Attorney General
BRYAN C. CLARK
Assistant Solicitor General
DWIGHT R. CARSWELL
Assistant Attorney General
120 S. W. 10th Ave., 2nd Floor
Topeka, KS 66612

toby.crouse@ag.ks.gov
bryan.clark@ag.ks.gov
(785) 296-2215

NEW MEXICO PECAN GROWERS

TESSA T. DAVIDSON
DAVIDSON LAW FIRM, LLC
4206 Corrales Road
P.O. Box 2240
Corrales, NM 87048
Patricia McCan, Paralegal

ttd@tessadavidson.com
(505) 792-3636

patricia@tessadavidson.com

NEW MEXICO STATE UNIVERSITY

JOHN W. UTTON*
UTTUN & KERY
317 Commercial NE
Albuquerque, NM 87102

john@uttkonkery.com

LIZBETH ELLIS
General Counsel
CLAYTON BRADLEY
Counsel
New Mexico State University
Hadley Hall Room 132
2850 Weddell Road
Las Cruces, NM 88003

lellis@ad.nmsu.edu
bradley@ad.nmsu.edu