

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

STATE OF TEXAS'S NOVEMBER 2019 STATUS REPORT

STUART L. SOMACH, ESQ.*
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November 1, 2019

COMES NOW the State of Texas (Texas) and provides the following status report to the Special Master pursuant to paragraph 5 of the September 6, 2018 Case Management Plan (CMP), as amended.

Since the filing of Texas's October Status Report, Texas has continued its supplemental electronically stored information (ESI) collections by and through various custodians of records and custodial agencies pursuant to the parties' ESI search term and collection protocol, agreed-upon custodians of records lists, and related discussions. Texas's agencies conducted searches for potentially responsive ESI in accordance with the parties' ESI Stipulation, Texas's ESI Search Term and Collection Protocol (Search Term Protocol), New Mexico's Request for Production of Documents, and Texas's obligations under Federal Rule of Civil Procedure (Rule) 26. Texas's counsel have received ESI from various agencies and, consistent with the agreed-upon Search Term Protocol, Texas has executed ESI searches, reviewed resulting files, and evaluated ESI for responsiveness and/or privilege. Texas completed its initial ESI production (over 48,000 records) on October 18, 2019, but is still exporting the native and text files associated with that production. Once all production files are exported, Texas will provide its completed initial ESI production to Veritext for upload to the Veritext Vault.

Additionally, Texas has been actively engaged in completing depositions of current and former employees of New Mexico and has made significant progress. Texas intends to take approximately five (5) to eight (8) additional depositions of New Mexico non-expert witnesses prior to the close of discovery, previously scheduled for the September 2019 timeframe. Texas agreed to briefly continue these depositions (new dates to be determined) to permit New Mexico to first proceed with the depositions it desires to complete in advance of New Mexico's October 31, 2019 deadline to disclose its expert witnesses and produce its experts' reports and supporting data, documents, and reference files.

New Mexico has taken the depositions of the following Texas retained expert witnesses: Colin Kikuchi of Montgomery & Associates; Lydia Dorrance of Geosyntec Consultants; Robert J. Brandes, P.E., Ph.D.; William R. Hutchison, Ph.D., P.E., P.G.; Joel Kimmelshue of Land IQ; Scott Miltenberger of JRP Historical Consulting; David Sunding of The Brattle Group; and Staffan W. Schorr of Montgomery & Associates. The last of Texas's experts was deposed on October 15, 2019. Texas has produced supplemental documents representing the portions of the experts' respective case files that were not required to be produced in conjunction with the expert disclosures and reports as defined in Rule 26. Texas has uploaded these productions to the Veritext Vault in accordance with the parties' established agreements, and served all parties and *amici curiae*.

In accordance with Appendix B of the CMP, as amended on January 31, 2019, New Mexico served its expert disclosures and reports on October 31, 2019. Texas is currently downloading and distributing these materials. Texas is conferring with New Mexico's counsel regarding witness availability and intends to notice and conduct depositions of New Mexico's expert witnesses beginning the week of November 11, 2019. The deadline by which Texas and the United States must disclose rebuttal reports is December 30, 2019.

The parties and *amici curiae* attended the April 2, 2019 in-person hearing before the Special Master in Denver, Colorado, regarding the various pending motions for judgment on the pleadings and motions addressing previously decided legal issues. Further, on June 17, 2019, the United States Supreme Court referred to Special Master Melloy, the motion for leave to intervene filed by Pre-Federal Claimants, the Nathan Boyd Estate, et al. (Movants). In accordance with the Court's decision, the Special Master scheduled oral argument by order of June 17, 2019, and heard arguments from counsel for the Movants and the parties on July 1, 2019.

On September 5, 2019, New Mexico filed and served a Motion to Strike Texas's Expert Disclosures on Water Quality. Texas filed its opposition brief on September 23, 2019, and New Mexico filed its reply brief on September 30, 2019. Per the Special Master's September 9, 2019 Order, the Special Master, upon receipt and review of the responses and reply, will determine whether oral argument is necessary.

Dated: November 1, 2019

Respectfully submitted,

s/ Stuart L. Somach

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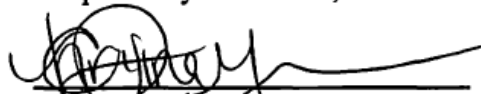
OFFICE OF THE SPECIAL MASTER

CERTIFICATE OF SERVICE

This is to certify that on this 1st day of November 2019, I caused a true and correct copy of **The State of Texas's November 2019 Status Report** to be served upon all parties and *amici curiae*, by and through the attorneys of record and/or designated representatives for each party and *amicus curiae* in this original action. As permitted by order of the Special Master, and agreement among the parties, service was effected by electronic mail to those individuals listed on the attached service list, which reflects all updates and revisions through the current date.

Dated: November 1, 2019

Respectfully submitted,


Christina Garro

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(Service via E-Mail and U.S. Mail)

Honorable Michael J. Melloy

Special Master
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