

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

**THE STATE OF TEXAS'S DISCLOSURE OF REBUTTAL
EXPERT WITNESSES**

STUART L. SOMACH, ESQ.*
ANDREW M. HITCHINGS, ESQ.
ROBERT B. HOFFMAN, ESQ.
FRANCIS M. GOLDSBERRY II, ESQ.
THERESA C. BARFIELD, ESQ.
SARAH A. KLAHN, ESQ.
BRITTANY K. JOHNSON, ESQ.
RICHARD S. DEITCHMAN, ESQ.
SOMACH SIMMONS & DUNN, PC
500 Capitol Mall, Suite 1000
Sacramento, CA 95814
Telephone: 916-446-7979
ssomach@somachlaw.com
**Counsel of Record*

December 30, 2019

TO ALL PARTIES AND THEIR ATTORNEYS OF RECORD:

Pursuant to Rule 26(a)(2) of the Federal Rules of Civil Procedure, and the Case Management Plan executed by the Honorable Michael J. Melloy, Special Master, on September 6, 2018, and amendments thereto, Plaintiff, State of Texas (Texas) hereby discloses the identities of the following retained rebuttal experts:

1. Travis Brooks
Land IQ, LLC
2020 L Street, Suite 110
Sacramento, CA 95811
(916) 265-6330
2. Shane Coors, P.E.
Precision Water Resources Engineering, LLC.
3401 E County Road 16
Loveland, CO 80537
(720) 261-7007
3. Jonathan D. George, P.E.
BBA Water Consultants, Inc.
33 W. Hampden Avenue, Suite 1050
Englewood, CO 80110
(303) 806-8952
4. Mica Heilmann, CPSS
Land IQ, LLC
2020 L Street, Suite 110
Sacramento, CA 95811
(916) 265-6330
5. George M. Hornberger, Ph.D.
264 Cherokee Station Road
Nashville, TN 37209
(615) 343-1144
6. William R. Hutchison, Ph.D., P.E., P.G.
9305 Jamaica Beach
Jamaica Beach, TX 77554
(512) 745-0599
7. Joel Kimmelshue, Ph.D., CPSS
Land IQ, LLC
2020 L Street, Suite 110
Sacramento, CA 95811
(916) 265-6330

8. Leonardo Lombardini, Ph.D.¹
215 Kenny Rd., Unit D-101
Athens, GA 36060
(979) 574-6296

9. Scott Miltenberger, Ph.D.
JRP Historical Consulting, LLC
2850 Spafford Street
Davis, CA 95618
(530) 757-252

10. Daniel O. Niemela, P.G.
BBA Water Consultants, Inc.
33 W. Hampden Avenue, Suite 1050
Englewood, CO 80110
(303) 806-8952

11. David Sunding, Ph.D.
The Brattle Group, Inc.
201 Mission Street, Suite 2800
San Francisco, CA 94105
(415) 217-1000

12. Stephanie Tillman, CPSS, CPAg, CCA
Land IQ, LLC
2020 L Street, Suite 110
Sacramento, CA 95811
(916) 265-6330

In accordance with Rule 26(a)(2)(B) of the Federal Rules of Civil Procedure, and the Case Management Plan executed by the Honorable Michael J. Melloy, Special Master, on September 6, 2018, as amended, and agreement between the parties, written

¹ Dr. Lombardini's supplemental expert report addresses field work that was conducted in July and August, 2019, that could not have been completed prior to the start of discovery, as set forth in the September 6, 2018 Case Management Plan, as amended. Discovery commenced in this matter on September 1, 2018. *See* App. B. to Case Management Plan. Dr. Lombardini's report analyzes whether soil salinity has an impact on agricultural productivity in the Rio Grande region, based on samples collected at 14 farms during the agricultural growing season. *See* Lombardini Report at 1. The summer/fall 2019 growing season is the only full agricultural growing season during the discovery period in this litigation. As a result, Texas could not have produced Dr. Lombardini's report by the May 31, 2019 initial expert disclosure deadline.

reports prepared and signed by the above-referenced retained rebuttal experts are served concurrently herewith. All written reports and supporting data, files, and references are available to download using the following link:

<https://somachlaw.sharefile.com/d-s6e8c29252e24965b>

The documents will remain available to download for 30 days, after which time, the link will expire. Thereafter, the documents will be available via the VeritextVault.

Pursuant to Rule 26(a)(2)(C) and (D) of the Federal Rules of Civil Procedure, and the Case Management Plan executed by the Honorable Michael J. Melloy, Special Master, on September 6, 2018, as amended, Texas discloses the following non-retained rebuttal experts:

1. Erech H. Fuchs, Ph.D.
Elephant Butte Irrigation District Groundwater Resources Director
530 S. Melendres Street
Las Cruces, NM 88005

Subject matter: New Mexico water rights administration, management and regulation.

Dr. Fuchs will offer specific facts and opinions from the perspective of his EBID Groundwater Resources Director position, which may include, but are not limited to the following: Testimony regarding New Mexico's management and regulation of groundwater pumping, including implementation and enforcement of statutes and regulations on groundwater pumping and offset requirements; (2) historical and current summary of water administration; and (3) impact of water rights administration upon hydrologic conditions and related surface groundwater interactions in the lower Rio Grande stream system.

The retained and non-retained rebuttal witnesses identified herein, and the opinions reflected in the written reports and supporting data, files, and references, are not intended to critique every error made by New Mexico experts and should not be

construed as acceptance of any of New Mexico experts' opinions that are not expressly addressed and/or otherwise challenged by the identified rebuttal witnesses. Texas reserves its right to further critique New Mexico experts' opinions and analyses at the time of trial.

Texas further continues to reserve its right to rely upon and use the testimony of any and all expert witnesses identified by all parties to this action and to present rebuttal testimony to any such witness through those listed here or other expert witnesses. Texas also reserves the right to amend or supplement this disclosure pursuant to Federal Rules of Civil Procedure 26(a)(2) and 26(e).

Dated: December 30, 2019

Respectfully submitted,

s/ Stuart L. Somach
STUART L. SOMACH, ESQ.*
ANDREW M. HITCHINGS, ESQ.
ROBERT B. HOFFMAN, ESQ.
FRANCIS M. GOLDSBERRY II, ESQ.
THERESA C. BARFIELD, ESQ.
SARAH A. KLAHN, ESQ.
BRITTANY K. JOHNSON, ESQ.
RICHARD S. DEITCHMAN, ESQ.
SOMACH SIMMONS & DUNN, PC
500 Capitol Mall, Suite 1000
Sacramento, CA 95814
Telephone: 916-446-7979
ssomach@somachlaw.com

**Counsel of Record*

No. 141, Original

IN THE
SUPREME COURT OF THE UNITED STATES

STATE OF TEXAS,

Plaintiff,

v.

STATE OF NEW MEXICO AND
STATE OF COLORADO,

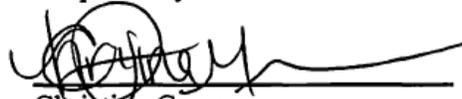
Defendants.

OFFICE OF THE SPECIAL MASTER

CERTIFICATE OF SERVICE

This is to certify that on this 30th day of December 2019, I caused a true and correct copy of **THE STATE OF TEXAS'S DISCLOSURE OF REBUTTAL EXPERT WITNESSES** 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.

Respectfully submitted,



Christina Garro

Dated: December 30, 2019

SERVICE LIST

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

Honorable Michael J. Melloy

Special Master
United States Circuit Judge
111 Seventh Avenue, S.E. Box 22
Cedar Rapids, IA 52401-2101
Tel. 319-432-6080
TXvNM141@ca8.uscourts.gov
Judge Michael Melloy@ca8.uscourts.gov

Michael E. Gans, Clerk of the Court
United States Court of Appeals – Eighth Circuit
Thomas F. Eagleton United States Courthouse
111 South 10th Street, Suite 24.329
St. Louis, MO 63102
Tel. 314-244-2400
TXNM141@ca8.uscourts.gov

SERVICE LIST FOR ALL PARTIES AND AMICI CURIAE



PARTIES
(Service via Electronic Mail)

STATE OF TEXAS

Stuart L. Somach*
Andrew M. Hitchings
Robert B. Hoffman
Francis M. Goldsberry II
Theresa C. Barfield
Sarah A. Klahn
Brittany K. Johnson
Richard S. Deitchman
Somach Simmons & Dunn, PC
500 Capitol Mall, Suite 1000
Sacramento, CA 95814-2403
Tel. (916) 446-7979
ssomach@somachlaw.com

ahitchings@somachlaw.com
rhoffman@somachlaw.com
mgoldsberry@somachlaw.com
tbarfield@somachlaw.com
sklahn@somachlaw.com
bjohnson@somachlaw.com
rdeitchman@somachlaw.com

Secretary: Corene Rodder
crodder@somachlaw.com
Secretary: Crystal Rivera
crivera@somachlaw.com
Paralegal: Christina M. Garro
cgarro@somachlaw.com
Paralegal: Yolanda De La Cruz
ydelacruz@Somachlaw.com

Ken Paxton
Attorney General of Texas
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
priscilla.hubenak@oag.texas.gov
Office of the Attorney General of
Texas
P.O. Box 12548
Austin, TX 78711-2548
Tel: (512) 463-2012
Fax: (512) 457-4644

STATE OF NEW MEXICO

Marcus J. Rael, Jr.
David A. Roman
Special Assistant Attorneys General
Robles, Rael & Anaya, P.C.
500 Marquette Ave. NW, Suite 700
Albuquerque, NM 87102
Tel. 505-242-2228
marcus@roblesrael.com
droman@roblesrael.com

Paralegal: Chelsea Sandoval
chelsea@roblesrael.com

Bennett W. Raley
Lisa M. Thompson
Michael A. Kopp
Special Assistant Attorney
General
Trout Raley
1120 Lincoln Street, Suite 1600
Denver, CO 80302
Tel. 303-861-1963
braley@troutlaw.com
lthompson@troutlaw.com
mkopp@troutlaw.com

Hector H. Balderas
New Mexico Attorney General
Tania Maestas (ext. 4048)
Deputy Attorney General
Marcus J. Rael, Jr.*
Special Assistant Attorney General
408 Galisteo Street (87501)
P.O. Drawer 1508
Santa Fe, NM 87501
Tel. 505-490-4060
hbaldaras@nmag.gov
tmaestas@nmag.gov
marcus@roblesrael.com

Tania's asst.: Patricia Salazar
psalazar@nmag.gov
Tel. (505) 490-4863 (P. Salazar)

STATE OF COLORADO

Chad M. Wallace*
Senior Assistant Attorney General
Phillip J. Weiser
Attorney General of Colorado
Eric R. Olson
Solicitor General
Colorado Department of Law
1300 Broadway
Denver, CO 80203
Tel. 720-508-6281
chad.wallace@coag.gov
eric.olson@coag.gov

Cynthia H. Coffman
Attorney General of Colorado
Karen M. Kwon
First Assistant Attorney General
Colorado Department of Law
1300 Broadway
Denver, CO 80203
Tel. 720-508-6281
cynthia.coffman@coag.gov
karen.kwon@coag.gov

Paralegal: Nan B. Edwards
nan.edwards@coag.gov

UNITED STATES OF AMERICA

Noel Francisco*
Acting Solicitor General
Jeffrey H. Wood
Acting Assistant Attorney General
Ann O'Connell
Assistant to Solicitor General
U.S. Department of Justice
950 Pennsylvania Avenue
Room 5614 NW
Washington, DC 20530
Tel. (202) 514-2217
supremectbriefs@usdoj.gov

James J. Dubois*
R. Lee Leininger
Thomas K. Snodgrass
U.S. Department of Justice
Environment & Natural Resources
Div.
999 18th Street
South Terrace, Ste. 370
Denver, CO 80202
lee.leininger@usdoj.gov
Tel. 303-844-1367
james.dubois@usdoj.gov
Tel. 303-844-1364
thomas.snodgrass@usdoj.gov
Tel. 303-844-7233
Paralegal: Seth C. Allison
Seth.allison@usdoj.gov
Tel. 303-844-7917

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

Judith E. Coleman
U.S. Department of Justice
Environment & Natural Resources
Div.
P. O. Box 7611
Washington, DC 20044-7611
Tel. (202) 514-3553
judith.coleman@usdoj.gov

AMICI CURIAE
(Service via Electronic Mail)

**ALBUQUERQUE BERNALILLO COUNTY WATER UTILITY
AUTHORITY**

Jay F. Stein
James C. Brockmann*
Stein & Brockmann, P.A.
P.O. Box 2067
Santa Fe, NM 87504
Tel. (505) 983-3880
jfstein@newmexicowaterlaw.com
jcbrockmann@newmexicowaterlaw.com
administrator@newmexicowaterlaw.com

Peter Auh
Albuquerque Bernalillo County
Water Utility Authority
P.O. Box 568
Albuquerque, NM 87103-0568
Tel. (505) 289-3092
pauh@abcwua.org

CITY OF EL PASO, TEXAS

Douglas G. Caroom*
Susan M. Maxwell
Bickerstaff Heath Delgado Acosta LLP
3711 S. MoPac Expressway
Building One, Suite 300
Austin, TX 78746
Tel. (512) 472-8021
dcaroom@bickerstaff.com
smaxwell@bickerstaff.com

EL PASO COUNTY WATER IMPROVEMENT DISTRICT NO. 1

Maria O'Brien*
Sarah M. Stevenson
Modrall, Sperling, Roehl, Harris
& Sisk, PA
500 Fourth Street N.W.
Suite 1000 (87102)
P.O. Box 2168
Albuquerque, NM 87103-2168

Main: (505) 848-1800
Direct: (505) 848-1803
Fax: (505) 848-9710
mobrien@modrall.com
sarah.stevenson@modrall.com

Shannon Gifford – Legal Assistant
shannong@modrall.com
Lamai Howard – Legal Assistant
lamaih@modrall.com

James M. Speer, Jr.
c/o El Paso County Water
Improvement District No. 1
13247 Alameda Ave
Clint, TX 79836-0749

**HUDSPETH COUNTY CONSERVATION
AND RECLAMATION DISTRICT NO. 1**

Andrew S. "Drew" Miller*
Kemp Smith LLP
919 Congress Avenue, Suite 1305
Austin, TX 78701
Tel. (512) 320-5466
drew.miller@kempsmith.com

ELEPHANT BUTTE IRRIGATION DISTRICT

Samantha R. Barncastle*
Barncastle Law Firm, LLC
1100 South Main, Suite 20 (88005)
P.O. Box 1556
Las Cruces, NM 88004
Tel. (575) 636-2377
Fax. (575) 636-2688
samantha@h2o-legal.com

Paralegal: Janet Correll
janet@h2o-legal.com

CITY OF LAS CRUCES, NM

Jay F. Stein*
James C. Brockmann
Stein & Brockmann, P.A.
P.O. Box 2067
Santa Fe, NM 87504
Tel. (505) 983-3880
Administrative Copy
jfstein@newmexicowaterlaw.com
jcbrockmann@newmexicowaterlaw.com
administrator@newmexicowaterlaw.com

Jennifer Vega-Brown
Marcia B Driggers
City of Las Cruces
City Attorney's Office
P.O. Box 2000
Las Cruces, NM 88004
Tel. (575) 541-2128
jvega-brown@las-cruces.org
marcyd@las-cruces.org

NEW MEXICO STATE UNIVERSITY

John W. Utton*
Utton & Kery, P.A.
P.O. Box 2386
Santa Fe, NM 87504
Tel. (505) 699-1445
john@uttonkery.com

General Counsel
Hadley Hall Room 132
2850 Weddell Road
Las Cruces, NM 88003
Tel. (575) 646-2446
gencounsel@nmsu.edu

NEW MEXICO PECAN GROWERS

Tessa Davidson*
Davidson Law Firm, LLC
4206 Corrales Road
P.O. Box 2240
Corrales, NM 87048
Tel. (505) 792-3636
ttd@tessadavidson.com

Paralegal: Joe Harden
jo@tessadavidson.com

STATE OF KANSAS

Derek Schmidt
Attorney General of Kansas
Jeffrey A. Chanay
Chief Deputy Attorney General
Toby Crouse*
Solicitor General of Kansas
Bryan C. Clark
Assistant Solicitor General
Dwight R. Carswell
Assistant Solicitor General
120 S.W. 10th Ave., 2nd Floor
Topeka, KS 66612
Tel. (785) 296-2215
toby.crouse@ag.ks.gov
bryan.clark@ag.ks.gov