

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 RESPONSE TO SPECIAL MASTER’S REQUEST
FOR COMMENT REGARDING TEXAS SUPPLEMENTAL COMPLAINT**

ELIZABETH B. PRELOGAR
Acting Solicitor General
EDWIN S. KNEEDLER
Deputy Solicitor General
JEAN E. WILLIAMS
Acting Assistant Attorney General
FREDERICK LIU
Assistant to the Solicitor General
JAMES J. DuBOIS
R. LEE LEININGER
JUDITH E. COLEMAN
JENNIFER A. NAJJAR
Attorneys, Environment and Natural Resources Division
U.S. Department of Justice

Counsel for the United States

The United States of America, pursuant to the Special Master's Order dated July 7, 2021, hereby provides comments related to Texas's Motion for Leave to File Supplemental Complaint S.M. Doc. 521. The United States limits its comments to the issues requested in the Special Master's Order, but reserves the right to respond to the merits of Texas's Motion at the appropriate time.

1. By Order of the Special Master dated July 7, 2021, the parties and any current amici were directed to file a response related to Texas's Motion for Leave to File a Supplemental Complaint in this matter. The response is to be "limited to the issue of how the proposed amendment would affect the current lawsuit. Whether new parties, new amici, new discovery etc., would be required." The Order also provides that "the response does not need to go to the merits of the motion, but rather the practical implications."

2. The United States is in the process of reviewing the allegations in Texas's proposed supplemental complaint. Based on a preliminary review, we believe that litigation on the supplemental complaint could affect this case in at least three important respects.

3. First, as noted by some participants in the July 1, 2021 conference, the supplemental complaint is likely to lead to additional requests for amicus participation, or possibly for intervention, from entities not currently involved in this case.

4. Second, the scope of the United States' participation in that suit may be different. It remains to be determined whether the United States would be a necessary party to litigation on the supplemental complaint, and how the United States would be aligned (if it is aligned at all) with respect to Texas's supplemental claims against New Mexico.

5. Third, the Supplemental Claims introduce new issues and facts to be assessed by the Court, thus suggesting additional discovery, including both document production and

depositions to assess any new expert analyses.

6. Based on the likelihood of additional *amici*, and the uncertainty about the United States' role in the case, it is our view—at this time—that litigation on the supplemental complaint would not be congruent with the existing litigation and could lead to collateral disputes about the extent to which the participants in one set of issues may be heard on other issues.

7. In light of the Special Master's limited request for comment, and the early stages of the United States' review, the United States respectfully defers comment on the merit of Texas's motion for leave to file a supplemental complaint.

Respectfully submitted this 15th day of July, 2021,

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

ELIZABETH B. PRELOGAR
Acting Solicitor General
EDWIN S. KNEEDLER
Deputy Solicitor General
JEAN E. WILLIAMS
Acting Assistant Attorney General

/s/ James J. DuBois
JAMES J. DuBOIS
R. LEE LEININGER
Trial Attorneys
U.S. Department of Justice
Environment & Natural Resources Division
999 18th Street, South Terrace – Suite 370
Denver, CO 80202
JUDITH E. COLEMAN
JENNIFER A. NAJJAR
Trial Attorneys
U.S. Department of Justice
Environment & Natural Resources Division
P.O. Box 7611
Washington, D.C. 20004

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CERTIFICATE OF SERVICE

This is to certify that on the 15th day of July, 2021, I caused a true and correct copy of the **UNITED STATES OF AMERICA’S RESPONSE TO SPECIAL MASTER’S REQUEST FOR COMMENT REGARDING TEXAS SUPPLEMENTAL COMPLAINT** to be served via electronic mail upon those individuals listed on the Service List, attached hereto.

Respectfully submitted,

/s/ Seth C. Allison
Seth C. Allison
Paralegal Specialist

SPECIAL MASTER

HONORABLE MICHAEL J. MELLOY

Special Master

United States Circuit Judge

111 Seventh Avenue, S.E., Box 22

Cedar Rapids, IA 52401-2101

TXvNM141@ca8.uscourts.gov

(319) 432-6080

(service via email and U.S. Mail)

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

TXvNM141@ca8.uscourts.gov

(314) 244-2400

UNITED STATES

ELIZABETH B. PRELOGAR

Acting Solicitor General

EDWIN S. KNEEDLER

Deputy Solicitor General

JEAN E. WILLIAMS

Acting Assistant Attorney General

FREDERICK LIU

Assistant to the Solicitor General

US Department of Justice

950 Pennsylvania Avenue,

NW Washington, DC 20530-0001

supremectbriefs@usdoj.gov

(202) 514-2217

JAMES J. DUBOIS*

R. LEE LEININGER

U.S. Department of Justice

Environment & Natural Resources Division

999 18th Street

South Terrace – Suite 370

Denver, Colorado 80202

james.dubois@usdoj.gov

(303) 844-1375

Lee.leininger@usdoj.gov

(303) 844-1364

Seth Allison, Paralegal

Seth.allison@usdoj.gov

JUDITH E. COLEMAN

JENNIFER A. NAJJAR

US DEPARTMENT OF JUSTICE

Environment & Natural Resources Division

P.O. Box 7611

Washington, D.C. 20044-7611

Judith.coleman@usdoj.gov

(202) 514-3553

jennifer.najjar@usdoj.gov

(202) 305-0476

STATE OF COLORADO

PHILIP J. WEISER
Attorney General of Colorado

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

ERIC R. OLSEN
Colorado Solicitor General

preston.hartman@coag.gov
(720) 508-6257

LAIN LEONIAK
Acting First Assistant Attorney
General

eric.olson@coag.gov

CHAD M. WALLACE*
Senior Assistant Attorney

nan.edwards@coag.gov

PRESTON V. HARTMAN
Assistant Attorney General

Paralegal II

Nan B. Edwards, Paralegal II

Colorado Department of Law
7th Floor, 1300 Broadway
Denver, CO 80203

STATE OF NEW MEXICO

HECTOR H. BALDERAS
New Mexico Attorney General

hbalderas@nmag.gov
tmaestas@nmag.gov
ckhoury@nmag.gov
zoagaz@nmag.gov
psalazar@nmag.gov
(505) 239-4672

TANIA MAESTAS
Chief Deputy Attorney General

CHOLLA KHOURY
Assistant Attorney General

ZACHARY E. OGAZ
Assistant Attorney General

STATE OF NEW MEXICO

P.O. Drawer 1508

Santa Fe, New Mexico 87501

PATRICIA SALAZAR - Assistant

marcus@roblesrael.com
luis@roblesrael.com
susan@roblesrael.com
chelsea@roblesrael.com
pauline@roblesrael.com
bonnie@roblesrael.com

MARCUS J. RAEL, JR.*

LUIS ROBLES

SUSAN BARELA

Special Assistant Attorneys General

ROBLES, RAEL & ANAYA, P.C.

500 Marquette Avenue NW, Suite 700

Albuquerque, New Mexico 87102

CHELSEA SANDOVAL – Firm Administrator

PAULINE WAYLAND – Paralegal

BONNIE DEWITT - Paralegal

(505) 242-2228

BENNETT W. RALEY

LISA M. THOMPSON

MICHAEL A. KOPP

Special Assistant Attorneys General

TROUT RALEY

1120 Lincoln Street, Suite 1600

Denver, Colorado 80203

braley@troutlaw.com
lthompson@troutlaw.com
mkopp@troutlaw.com
(303) 861-1963

JEFFREY WECHSLER*Special Assistant Attorney General*

MONTGOMERY & ANDREWS

325 PASEO DE PERALTA

SANTA FE, NM 87501

DIANA LUNA - Paralegaljwechsler@montand.com

(505) 986-2637

dluna@montand.com**JOHN DRAPER***Special Assistant Attorney General*

DRAPER & DRAPER LLC

325 PASEO DE PERALTA SANTA FE,

NM 87501

DONNA ORMEROD - Paralegaljohn.draper@draperllc.com

(505) 570-4591

donna.ormerod@draperllc.com**STATE OF TEXAS****STUART L. 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

CORENE RODDER - Secretary**CHRISTINA GARRO** - Paralegal**YOLANDA DE LA CRUZ** - Paralegalssomach@somachlaw.comahitchings@somachlaw.comrhoffman@somachlaw.commgoldsberry@somachlaw.comtbarfield@somachlaw.comsklahn@somachlaw.combjohnson@somachlaw.comrdeitchman@somachlaw.com

(916) 446-7979

(916) 803- 4561 (cell)

cgarro@somachlaw.comcrodder@somachlaw.comydelacruz@somachlaw.com

(512) 463-2012

KEN PAXTON*Attorney General***JEFFREY C. MATEER***First Assistant Attorney General***DARREN L. McCARTHY***Deputy Attorney General for Civil Litigation***PRISCILLA M. HUBENAK***Chief, Environmental Protection Division*

P.O. Box 12548

Austin, TX 78711-2548

Priscilla.Hubenak@oag.texas.gov

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
Santé Fe, New Mexico 87505

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

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

(505) 289-3092
pauh@abcwua.org

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

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

CITY OF LAS CRUCES

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

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

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

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

ELEPHANT BUTTE IRRIGATION DISTRICT

SAMANTHA R. BARNCASTLE*

BARNCASTLE LAW FIRM, LLC

1100 South Main, Ste. 20

P.O. Box 1556

Las Cruces, NM 88005

Janet Correll - Paralegal

(575) 636-2377

(575) 636-2688 (fax)

samantha@h2o-legal.com

janet@h2o-legal.com

EL PASO COUNTY WATER AND IMPROVEMENT DISTRICT

MARIA O'BRIEN*

(505) 848-1803 (direct)

SARAH M. STEVENSON

mobrien@modrall.com

MODRALL, SPERLING, ROEHL, HARRIS

sarah.stevenson@modrall.com

& SISK, PA

500 Fourth Street N.W.; Suite 1000 Albuquerque,

New Mexico 87103-2168

CHARLIE PADILLA – Legal Assistant

CharlieP@modrall.com

rhicks@renea-hicks.com

RENEA HICKS

LAW OFFICE OF MAX RENEA HICKS P.O.Box 303187

Austin, TX 78703

HUDSPETH COUNTY CONSERVATION AND RECLAMATION DISTRICT

ANDREW S. "DREW" MILLER*

(512) 320-5466

KEMP SMITH LLP

dmiller@kempsmith.com

816 Congress Avenue, Suite 1260

Austin, TX 78701

STATE OF KANSAS

TOBY CROUSE*

Solicitor General, State of Kansas

(785) 296-2215

DEREK SCHMIDT

toby.crouse@ag.ks.gov

Attorney General, State of Kansas

bryan.clark@ag.ks.gov

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

NEW MEXICO PECAN GROWERS

TESSA T. DAVIDSON*
DAVIDSON LAW FIRM, LLC
P.O. Box 2240 4206
Corrales Road
Corrales, NM 87048
JO HARDEN – Paralegal

ttd@tessadavidson.com
(505) 792-3636

jo@tessadavidson.com

NEW MEXICO STATE UNIVERSITY

JOHN W. UTTON*
UTTUN & KERY, P.A.
P.O. Box 2386
Santa Fe, New Mexico 87504

(505) 699-1445
john@uttonkery.com

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

gencounsel@nmsu.edu

SOUTHERN RIO GRANDE DIVERSIFIED CROP FARMERS ASSOCIATION

ARNOLD J. OLSEN*
HENNIGHAUSEN OLSEN & McCREA, L.L.P.
P.O. Box 1415
Roswell, NM 88202-1415
MALINA KAUAI - PARALEGAL
ROCHELLE BARTLETT- LEGAL ASSISTANT

ajolsen@h2olawyers.com

mkauai@h2olawyers.com
rbartlett@h2olawyers.com