

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

CASE MANAGEMENT PLAN

April 2018

CASE MANAGEMENT PLAN

1. Case Management Orders and Applications of Case Management Plan

The Special Master will issue Case Management Orders (CMOs) following conferences with counsel and at such other times as he deems appropriate. This Case Management Plan (CMP), together with all CMOs, will apply to and bind all Parties, will control the course of the proceedings, and may be modified only by order of the Special Master.

2. Filing of Papers with the Special Master, Service, and Computation of Time

2.1 All pleadings, motions, and other papers filed with the Special Master, except exhibits, shall bear the proper case number and caption, and contain on the first page a designation of the nature of the document and the name of the Party on whose behalf it is submitted. All such documents should be printed double-spaced on 8½ x 11 inch paper, with the pages numbered at the bottom.

2.2 The Parties shall make filings with the Special Master and service upon the other Parties by email with the document(s) in PDF format. Documents filed with the Special Master shall be emailed to the following address: TXvNM141@ca8.uscourts.gov. In the event filings are too voluminous, over-sized, or otherwise unsuitable for transmission by email, they shall be filed on disk, or, if of a size or nature that cannot be reviewed reasonably in PDF format, they may be filed by sending a hard copy through overnight delivery. In addition to the electronic filing, two hard copies of each document shall be filed with the Special Master. One copy to be sent to Clerk at: United States Court of Appeals - Eighth Circuit, Thomas F. Eagleton United States Courthouse, 111 South 10th Street, Suite 24.329, St. Louis, MO 63102; and one copy to Special Master at: United States Courthouse, 111 Seventh Avenue, S.E., Box 22, Cedar Rapids, IA 52401. A filing

shall be deemed made upon sending the email and mailing duplicate copies to the Clerk and Special Master, or, in the instance of voluminous or over-sized materials, upon mailing for overnight delivery to the Special Master.

2.3 All pleadings, papers, and documents submitted to the Special Master shall be served on counsel for the other Parties in time for receipt on the same day that the Special Master receives them. Distribution need be made only to counsel shown on the Distribution List attached hereto as Appendix A, as the Distribution List may be updated from time to time. All pleadings, papers, and documents submitted to the Special Master must indicate, in the certificate of service or elsewhere, the means by which service or transmittal has been accomplished. Service will be deemed to have occurred on the date sent.

2.4 Fed. R. Civ. P. 6(a)-(c), but not (d), will apply in proceedings before the Special Master.

2.5 The filing procedures in this CMP shall supersede the procedures established in CMO No. 1.

3. Amici Curiae

The Amici Curiae (“Amici”) in this case are currently the Albuquerque-Bernalillo County Water Utility Authority, the City of El Paso, the City of Las Cruces, Elephant Butte Irrigation District, El Paso County Water Improvement District No. 1, Hudspeth County Reclamation and Improvement District No. 1, the New Mexico Pecan Growers, New Mexico State University, and the State of Kansas. Any other person or entity may become an Amicus with the leave of the Special Master.

3.1 Status Conferences

An amicus shall receive notices of, and may attend, status conferences of the Parties that the Special Master conducts.

3.2 Pleadings

All pleadings, filings and papers served on the parties shall be served upon the Amici by electronic mail.

3.3 Briefs

With leave of the Special Master, Amici may file briefs pertaining to any factual or legal interests of the Amici in response to any motion or brief pending before the Special Master.

3.4 Hearings

An Amicus may attend any hearing or part thereof.

4. Filing of Discovery Materials

4.1 General

In order to keep the record free of discovery materials that have not become evidence, and except as otherwise ordered by the Special Master, all interrogatories, requests for production of documents, requests for admissions, responses, and replies shall not be filed with the Special Master unless a Party offers a particular sworn discovery response into evidence, uses such a response to support or oppose a dispositive motion, or requires a ruling on a discovery dispute that the Parties have been unable to resolve. In such event, only those portions pertinent to one of the foregoing articulated purposes shall be filed.

4.2 Depositions

Except as ordered by the Special Master, deposition transcripts shall not be filed with the Special Master until offered and admitted into evidence or used to support or oppose a dispositive motion or to resolve a discovery dispute that the Parties have been unable to resolve.

5. Status Reports and Conferences

Beginning on June 1, 2018 and continuing until otherwise ordered by the Special Master, each Party will file a progress report with the Special Master on the first Friday of every other month. The progress report shall update the status of each Party's discovery efforts since the last update and describe any then-unresolved disputes and list any further discovery anticipated during the coming month. The Special Master will schedule and hold additional status conferences as he deems necessary. Unless otherwise ordered by the Special Master, status conferences shall be held by telephone.

6. Discovery

6.1 General

Discovery will proceed on all issues pursuant to Fed. R. Civ. P. 26-37 and 45, except as otherwise modified herein or by further order of the Special Master. Discovery will commence and be completed in accordance with the schedule stated herein as modified by any CMOs. **A summary of the schedule stated herein is provided in Appendix B.** Further discovery will be allowed beyond the schedule set forth in Appendix B only upon order of the Special Master, and upon a showing of good cause.

6.2 Federal Rules of Civil Procedure 26-37, and 45

The Federal Rules of Civil Procedure applicable to discovery, Rules 26-37 and 45, as amended from time to time, shall govern the proceedings before the Special Master with the following exceptions or as otherwise modified in this CMP:

6.2.1 Rule 26(a)(1)

Rule 26(a)(1) applies as follows:

6.2.1.1 This case will be considered "At Issue" on June 1, 2018.

Ninety (90) days after the case is At Issue, the Parties must:

6.2.1.2 Provide the name, address and telephone number of each

individual, state, local, or federal government agency, organization, political subdivision, or other entity likely to have discoverable information relevant to disputed facts alleged with particularity in the pleadings, identifying separately the subjects of the information as to each person and entity listed.

6.2.1.3 Provide a description by category and location of all documents, data compilations, and tangible things in the Parties' possession, custody, or control that are relevant to disputed facts.

6.2.2 Rule 26(a)(2)

Rule 26(a)(2) will apply, except that all time schedules and deadlines will be determined by the schedule in Appendix B and the Special Master. In addition to the disclosures required by Rule 26(a)(2), expert disclosures shall include an executable electronic version of any computational model, if one is prepared by the Party, including all input and output files, relied upon by the expert in forming his or her opinions.

Additionally, each Party must provide engineering and other technical information in its native electronic file format whenever the native format contains formulae, macros, or other programming that is relevant to disputed issues in this case. By way of example and not limitation, this includes Microsoft Excel or other spreadsheet documents that include macros or formulas. Since expert disclosures and modeling files will be very large in size, the Parties will confer and agree in writing on further details defining the procedure, format and location for serving electronic expert disclosures.

6.2.3 Rule 26(b)(5)

Rule 26(b)(5) shall not apply because the substance and timing of privilege logs is covered by section 10 of this CMP.

6.2.4 Rule 26(c)

Rule 26(c) will apply, except to the extent modified by section 12 of this

CMP.

6.2.5 Rule 26(d)

Rule 26(d) will not apply. Instead, the timing and sequence of discovery will be determined by the schedule in Appendix B and the Special Master. Unless the Special Master, for the convenience of the Parties and witnesses and in the interest of justice, orders otherwise, methods of discovery may be used in any sequence, and the fact that a Party is conducting discovery, whether by deposition or otherwise, will not operate to delay any other Party's discovery. The Parties are urged to apply adequate resources to initiate and complete discovery in an efficient and expeditious manner.

6.2.6 Rule 26(f)

Rule 26(f) will not apply.

6.2.7 Rule 27

Rule 27 will not apply, except, as may be ordered by the Court.

6.2.8 Rules 30(a)(2), 31(a)(2), and 33(a)

The limitations in Rules 30(a)(2), 31(a)(2), and 33(a) on the number and length of depositions and number of interrogatories will not apply. Any limitations upon the number and length of depositions and interrogatories will be determined in accordance with the Case Management Order or by the Special Master upon request of a Party.

6.2.9 Rule 32(a)(4)(B)

The 100-mile rule contained in Rule 32(a)(4)(B) will not apply.

6.2.10 Rule 45

Rule 45 will apply with the exception that the subpoena power of the Special Master will not be limited geographically by the 100-mile rule. The Parties shall cooperate with each other in securing the attendance of witnesses for depositions and shall each give reasonable notice to the other Party if a witness is recalcitrant and will require a subpoena.

7. Discovery

This discovery plan provides that discovery shall proceed after the case is “At Issue,” and shall be concluded as provided in Appendix B. All discovery shall be initiated in sufficient time to allow responses to be served and the discovery completed with the deadlines specified in this plan. The Parties may serve written discovery (interrogatories, requests for production of documents, requests for admission), responses, and replies, upon each other electronically via email. Discovery requests, responses, and replies shall be deemed served when they are sent electronically.

7.1 Interrogatories

Each Party may serve not more than fifty (50) interrogatories, including discrete subparts, on each of the other Parties. Without prior written approval of the Special Master, no additional interrogatories may be served. Consistent with the schedule provided in Appendix B, a Party may serve interrogatories upon other Parties. Each Party served with interrogatories shall have (30) days from the date of service to serve objections and seventy five (75) days from the date of service to serve answers, unless otherwise agreed by the propounder and respondent.

7.2 Requests for Production of Documents/Inspections to Parties

Consistent with the schedule provided in Appendix B, each Party may serve requests for production of documents/requests for inspections on the other Parties. A Party upon which requests for production of documents/inspections are served shall have forty-five (45) days from the date of service to serve objections other than objections based on privilege, work product or confidentiality and ninety (90) days within which to complete full production subject to unresolved objections. If either Party anticipates that full production will unavoidably require more than ninety (90) days from service, the Parties shall attempt to agree on a mutually acceptable deadline. If the Parties cannot agree, they

shall notify the Special Master promptly, and a telephone conference will be convened to discuss the issue.

7.2.1 When providing copies of documents as part of any document production, the Parties must provide them in electronic form unless it is unduly burdensome or impossible to provide readable copies in electronic form. The Parties will further confer and agree in writing upon the proper disclosure format and location to make documents available, provided however, the Parties generally agree that a large number of documents may be served by serving notice that the documents are available to be downloaded from an agreed upon ftp site, or by similar agreed upon on-line access.

7.2.2. The parties shall confer and attempt to develop an index system for the documents produced in this case. The parties shall also attempt to develop a system of production that will make the documents searchable.

7.2.3 The prosecution and defense of this action will require each Party to review and to disclose large quantities of information and documents, including electronically stored information, through the discovery process. As a result, page-by-page preproduction privilege review would likely impose an undue burden on the Parties' resources.

a. Each Party is entitled to decide the appropriate degree of care to exercise in reviewing materials for privilege, taking into account the volume and sensitivity of the materials, the demands of the litigation, and the resources that the Party can make available. Irrespective of the care that is actually exercised in reviewing materials for privilege, the Parties request that the Special Master enter an order pursuant to Rule 502(d) of the Federal Rules of Evidence that disclosure of privileged or protected information or documents in discovery conducted in this litigation will not constitute or be deemed a waiver or forfeiture—in this or any other federal or state proceeding—of any claims of

attorney-client privilege or work product protection that the disclosing Party would otherwise be entitled to assert with respect to the information or documents and their subject matter.

b. The Parties further request that the Special Master further order that because expedited or truncated privilege review is likely necessary for the just, speedy, and inexpensive resolution of this matter, the disclosure of privileged or protected information or documents in discovery conducted in this litigation will be deemed unintentional, inadvertent, and compelled by order of the Special Master. Such disclosure will not constitute a waiver of the disclosing Party's right to claim any privilege or protection, including without limitation the deliberative process privilege that would have applied to the information or documents or their subject matter but for the disclosure, provided only that the Party disclaiming waiver employed procedures reasonably designed to screen out privileged materials.

c. Regardless of whether the procedures to screen out privileged materials were reasonable, the Parties shall not argue, in this forum or any other, that any privileges were waived as a result of disclosures in this litigation.

d. If a Party determines that it has produced a document upon which it wishes to make a claim of privilege, the producing Party shall, within fourteen (14) days of making such determination, give all counsel of record notice of the claim of privilege. The notice must identify each such document and the date it was produced. If the producing Party claims that only a portion of a document is privileged, the producing Party shall provide, along with the notice of the claim of privilege, a new copy of the document with the allegedly privileged portions redacted. Any Party that complies with this paragraph will be deemed to have taken reasonable steps to rectify disclosures of privileged or protected information or materials.

e. If a Party identifies a document that appears on its face or in light of facts known to the Party to be subject to another Party's claim of privilege, the Party identifying the potential claim of privilege is under a good-faith obligation to notify the Party holding the potential claim of privilege. Such notification will not waive the identifying Party's ability to subsequently challenge any assertion of privilege with respect to the identified document. If the Party holding the potential claim of privilege wishes to assert a claim of privilege, it shall provide notice in accordance with paragraph d above within five business days of receiving notice from the identifying Party.

f. Upon receiving notice of a claim of privilege on a produced document, the receiving Party shall, in accordance with Fed. R. Civ. P. 26(b)(5)(B), promptly sequester the specified information and any copies it has and shall not use or disclose the information, except as provided by Fed. R. Civ. P. 26(b)(5)(B), until the claim is resolved. Copies of privileged documents or information that have been stored on electronic media that is not reasonably accessible, such as disaster recovery backup media, are adequately sequestered as long as they are not restored; if such data is restored, the receiving Party shall take steps to re-sequester the restored information. If the receiving Party disclosed the information before being notified, it shall take reasonable steps to prevent further use of such information until the claim is resolved.

g. If a Party wishes to dispute a claim of privilege asserted under this Order, such Party shall, within fourteen (14) days, move the Court for an order compelling disclosure of the information. The Party shall follow the procedures described in Fed. R. Civ. P. 26(b)(5)(B) and shall not assert, as a ground for compelling disclosure, the fact or circumstances of the disclosure. Pending resolution of the motion, the Parties shall not use the challenged information for any other purpose and shall not disclose it to any person other than those required by law to be served with a copy of the sealed motion.

7.3 Requests for Documents/Inspections to Non-Parties

Consistent with the schedule provided in Appendix B, each Party may serve on non-Parties requests for production of documents/requests for inspection as provided in Fed. R. Civ. P. Rules 34(c) and 45. Non-Parties shall have thirty (30) days from the date of service to serve objections, and sixty (60) days for production subject to unresolved objections. If either the Party or the non-Party anticipates that full production will require more than sixty (60) days from service, the Party and the non-party shall attempt to agree on mutually acceptable deadline. If they cannot agree, they shall notify the Special Master promptly, and a telephone conference will be convened to discuss the issue. Any subpoena shall so inform the non-Party of these deadlines.

7.4 Requests to Admit

Consistent with the schedule provided in Appendix B, a Party may serve requests for admission on the other Parties, as provided in Fed. R. Civ. P. 36, except that each Party served with requests for admission shall have sixty (60) days from the date of service to respond. If served the Party anticipates that requests for admission will require more than sixty (60) days from service, the Parties shall attempt to agree on a mutually acceptable deadline. If they cannot agree, they shall notify the Special Master promptly, and a telephone conference will be convened to discuss the issue.

7.5 Deposition Discovery

Unless they agree to proceed sooner, the Parties may schedule depositions, other than those taken of expert witnesses in their capacity as such, as provided in Appendix B. Depositions will be conducted in accordance with the guidelines attached hereto as Appendix C.

8. Expert Witnesses

Fed. R. Civ. P. 26(a)(2) shall control the disclosure of expert testimony in this

action, except as modified in this CMP. The timing of Rule 26(a)(2) disclosures are provided for in Appendix B. Depositions of any disclosed expert witnesses may begin as provided in Appendix B.

9. Bates Numbering System

All documents produced in this case shall bear a distinctive Bates number. Each Party shall begin each Bates number with the two-letter abbreviation for the State as designated by the United States Postal Service or, in the case of the United States, the letters "US." The Parties will also ensure that all documents produced by non-Parties shall bear a distinctive Bates number. All documents produced by a non-Party shall state the identity of the non-Party by proper name or recognized abbreviation before the Bates number. No Party shall use any document that has not been Bates-numbered and produced, except a document used for the purpose of impeachment or for other good cause shown.

10. Privilege Logs

If a Party withholds on the ground of privilege any written information (in hard copy or electronic form), it shall provide a privilege log to opposing counsel. Absent agreement of counsel otherwise, and unless the information itself is the subject of a claimed privilege, these privilege logs shall set forth the following information: (a) author's name, place of employment, and job title; (b) addressee's name, place of employment, and job title; (c) recipient's name, place of employment, and job title, if different than that of addressee; (d) general subject matter of document; (e) site of document; and (f) nature of privilege claimed. Thereafter, any privilege log shall be supplemented to include any documents that are subsequently designated privileged by counsel.

11. Confidentiality

11.1 Treatment of Confidential Documents

The provisions of any confidentiality agreement that has been or may be entered into

by the Parties shall remain in full force and effect.

11.2 Procedure for Filing Confidential Documents Under Seal

A document may be filed under seal only upon order of the Special Master, in accordance with the following procedures:

11.2.1 Motion

To obtain an order allowing documents to be filed under seal, a Party shall file a motion to seal together with an unredacted version of the document(s) sought to be sealed and a redacted version of the document(s) sought to be sealed. The motion shall propose specific findings as to the need for sealing and the necessary duration of sealing. The motion shall include a statement whether there is agreement of the Parties as to the sealing.

11.2.2 Objection

Any objection to a motion to seal shall be filed with the Special Master within fourteen (14) days of filing of the motion to seal.

11.2.3 Order

In issuing an order to seal all or a portion of a document or documents as confidential, the Special Master may incorporate by reference the proposed findings in the motion. If the motion is denied, the unredacted version of the document(s) shall be made publicly available.

12. Resolution of Discovery Disputes and Motions to Quash and Seek Protective Orders

Before bringing a discovery dispute to the attention of the Special Master through the motion procedure outlined in section 12.1, the Parties shall confer in an attempt to resolve the dispute. It shall be the responsibility of the Party raising the matter in dispute to initiate the conferral immediately following the identification of the dispute. Failure to

promptly initiate the conferral, failure to respond promptly to the initiation, or failure to cooperate in dispute resolution may result in an adverse ruling on any subsequent motion regardless of the merits. If the conferrals do not resolve the discovery dispute, the procedure for resolving the discovery dispute shall be as follows:

12.1 Disputes Pertaining to Written Discovery

12.1.1 Failure to Timely Respond to Written Discovery Requests

In the event that timely responses to written interrogatories or document requests are not forthcoming, the proponent of the discovery should, after exhausting the conferral provisions provided for above, promptly file a motion to compel, which shall set forth the date the discovery was served and the due date for the responses, together with an averment of the default. No brief or copy of the interrogatories or document requests should accompany the motion. Upon receipt of such a motion, the Special Master, without waiting for a response, may enter an order directing the discovery to be provided by a certain date and including such sanctions as he deems appropriate.

12.1.2 Disputes Regarding Discovery Objections or Adequacy of Responses

In the event of a written discovery dispute – in contrast to a default – arising by reason of the respondent's objections or concerning the adequacy of responses to interrogatories, document requests, requests to inspect, or requests to admit, the Parties to the dispute shall promptly and in good faith exert every reasonable effort to resolve their differences. Where objections are made, the objecting Party shall provide all other discovery that such Party does not consider to be objectionable. As a last resort, any unresolved dispute shall be submitted to the Special Master as follows:

12.1.2.1 The Party seeking resolution of a dispute will send an email to the Special Master at:

Judge_Michael_Melloy@ca8.uscourts.gov

attaching a copy of the pertinent discovery request and response or objection. The email may also contain a short summary statement of each Party's position, drafted or approved by that Party, and not to exceed 100 words each. The Special Master will then schedule a telephone call with counsel.

12.1.2.2 If the dispute is not resolved telephonically, the Parties shall make a written submission as instructed by the Special Master.

12.2 Deposition Disputes

12.2.1 General Procedures

Except as is expressly provided in section 12.2.2 below, discovery disputes that arise during a deposition shall be resolved by submission to the Special Master, according to the same procedure set forth in section 12.1 governing disputes in regards to the adequacy of responses to written discovery.

12.2.2 Disputes that Require Immediate Resolution

Where a dispute arises at a deposition and a Party believes an immediate resolution is necessary to avoid the re-scheduling of the deposition or a significant disruption of the discovery schedule, the Special Master shall be telephoned.

12.2.2.1 If the Special Master is available and a telephone conference is held, the ruling of the Special Master shall be recorded in the deposition. The deposition shall proceed according to such ruling or direction. If the ruling or direction is that a witness must answer a question or questions despite an objection based upon claim of privilege or work product, the objecting party shall not be deemed to have withdrawn or waived its objection.

12.2.2.2 If the Special Master is not available by telephone during the deposition, the dispute shall be noted for the record and the deposition shall proceed with respect to all other issues. Thereafter, the dispute shall be presented to the Special Master as provided in section 12.1.

12.2.3 Disputes Not to End Deposition

Under no circumstances shall any Party refuse to continue participating in a deposition with respect to other subjects because of the unavailability of the Special Master to resolve a dispute telephonically.

12.3 Motions to Quash or for Protective Orders Regarding Subpoenas

The following procedures are to be employed in situations where noticed or subpoenaed persons or entities desire to move to quash a deposition notice or subpoena or seek a protective order from the demand of a subpoena.

12.3.1 Subpoenaed Parties

If the subpoenaed entity or person is a Party or the employee of a Party, then the entity or person must seek appropriate relief from the Special Master pursuant to the procedures for resolving written discovery disputes in section 12.1.

12.3.2 Subpoenaed Entities or Persons Who Are Not Parties

When a Party subpoenas a person or entity that is not a Party, the Party issuing the subpoena shall serve upon the subpoenaed person or entity, along with the subpoena, a copy of this CMP. The subpoenaed person or entity may seek relief under this CMP by submitting the dispute to the Special Master pursuant to the procedures for resolving written discovery disputes in section 12.1.

12.4 Case Management Conference Among the Parties

The Parties agree to have regularly scheduled case management conferences after the case is "At Issue" to facilitate timely discovery disclosures, coordination on schedules

for deposition, additional time needed by any Party, and any other case management issues that promote the efficient progress of this case and avoids taking discovery disputes to the Special Master.

13. Dispositive Motions

Unless otherwise ordered by the Special Master or specified in this CMP, all dispositive motions may be filed as provided in the attached Appendix B. Hearing dates for dispositive motions shall be scheduled by the Special Master.

14. Final Pretrial Conference

[TO BE DEVELOPED BY THE PARTIES AND SUBMITTED TO SPECIAL MASTER FOR CONSIDERATION X DAYS BEFORE TRIAL]

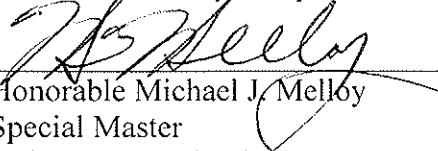
15. Trial

[TO BE DEVELOPED BY THE PARTIES AND SUBMITTED TO SPECIAL MASTER FOR CONSIDERATION X DAYS BEFORE TRIAL]

16. Public Access to Filings

Fed. R. Civ. P. 5.2 shall apply to these proceedings before the Special Master. All materials filed with the Special Master will be available for public inspection and copying, except as provided by Rule 5.2 and by section 11 of this CMP or by order of the Special Master. All publicly available materials filed or issued in PDF form will be available through a link maintained on the home page of the website.

Dated this 24th day of April, 2018.



Honorable Michael J. Melloy
Special Master
United States Circuit Judge
111 Seventh Avenue, S.E., Box 22
Cedar Rapids, IA 52401
Telephone: 319-423-6080
Facsimile: 319-423-6085

APPENDIX A
Texas v. State of New Mexico and State of Colorado, No. 141, Original
 Distribution List for Service of Documents and Email Filed with the Special Master
 April 24, 2018

SERVICE LIST FOR ALL PARTIES

In The Supreme Court of the United States, Original No. 141
STATE OF TEXAS v. STATE OF NEW MEXICO and STATE OF COLORADO

PARTIES¹

STATE	ATTORNEY & ADDRESS	PHONE & EMAIL
Texas	<p>STUART L. SOMACH* ANDREW M. HITCHINGS ROBERT B. HOFFMAN FRANCIS M. "MAC" GOLDSBERRY II THERESA C. BARFIELD BRITTANY K. JOHNSON SOMACH SIMMONS & DUNN, PC 500 Capitol Mall, Suite 1000 Sacramento, CA 95814 Rhonda Stephenson - Secretary Christina Garro - Paralegal Yolanda De La Cruz - Secretary</p> <p>KEN PAXTON <i>Attorney General</i> JEFFREY C. MATEER <i>First Assistant Attorney General</i> BRANTLEY STARR <i>Deputy First Asst. Attorney General</i> JAMES E. DAVIS <i>Deputy Attorney General</i> PRISCILLA M. HUBENAK* <i>Chief, Environmental Protection Div.</i> OFFICE OF THE ATTORNEY GENERAL OF TEXAS P.O. Box 12548 Austin, TX 78711-2548</p>	<p>(916) 446-7979 (916) 803-4561 (cell) ssomach@somachlaw.com ahitchings@somachlaw.com rhoffman@somachlaw.com mgoldsberry@somachlaw.com tbarfield@somachlaw.com bjohnson@somachlaw.com</p> <p>rstephenson@somachlaw.com cgarro@somachlaw.com ydelacruz@somachlaw.com (512) 463-2012</p> <p>Priscilla.Hubenak@oag.texas.gov</p>

¹ (*) = Counsel of Record

<p>New Mexico</p>	<p>HECTOR 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 Patricia Salazar – Tania’s asst.</p> <p>MARCUS J. RAEL, JR. DAVID A. ROMAN Special Assistant Attorney General ROBLES, RAEL, AND ANAYA 500 Marquette Ave. NW, Suite 700 Albuquerque, NM 87102 Chelsea Sandoval (Paralegal)</p> <p>BENNET W. RALEY LISA M. THOMPSON MICHAEL A. KOPP Special Assistant Attorneys General TROUT RALEY 1120 Lincoln St., Suite 1600 Denver, CO 80203</p>	<p>(505) 490-4060/490-4863-Salazar hbalderas@nmag.gov tmaestas@nmag.gov</p> <p>marcus@roblesrael.com</p> <p>psalazar@nmag.gov</p> <p>(505) 242-2228 – Theresa/Clara marcus@roblesrael.com droman@roblesrael.com</p> <p>Chelsea@roblesrael.com</p> <p>(303) 861-1963 braley@troutlaw.com lthompson@troutlaw.com mkopp@troutlaw.com</p>
<p>Colorado</p>	<p>CYNTHIA H. COFFMAN <i>Attorney General of Colorado</i> KAREN M. KWON <i>First Assistant Attorney General</i> CHAD M. WALLACE* <i>Senior Assistant Attorney General</i> Colorado Department of Law 1300 Broadway Denver, CO 80203 Nan Edwards - Paralegal</p>	<p>720-508-6281 cynthia.coffman@coag.gov karen.kwon@coag.gov chad.wallace@coag.gov</p> <p>nan.edwards@coag.gov</p>

<p>United States</p>	<p>JAMES J. DUBOIS* R. LEE LEININGER THOMAS K. SNODGRASS U.S. DEPT. OF JUSTICE Environment & Natural Resources Div 999 18th Street South Terrace – Suite 370 Denver, CO 80202 Seth C. Allison, Paralegal</p> <p>NOEL J. 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 Ave, NW Washington, DC 20530-0001</p> <p>STEPHEN M. MACFARLANE U.S. DEPARTMENT OF JUSTICE Environment & Natural Resources Div 501 I Street, Suite 9-700 Sacramento, CA 95814</p> <p>JUDITH E. COLEMAN U.S. DEPARTMENT OF JUSTICE Environment & Natural Resources Div P. O. Box 7611 Washington, DC 20044-7611</p>	<p>(303) 844-1375 james.dubois@usdoj.gov (303) 844-1364 lee.leininger@usdoj.gov (303) 844-7233 Thomas.snodgrass@usdoj.gov</p> <p>(303) 844-7917 Seth.allison@usdoj.gov</p> <p>(202) 514-2217 supremectbriefs@usdoj.gov</p> <p>(916) 930-2204 stephen.macfarlane@usdoj.gov</p> <p>(202) 514-3553 judith.coleman@usdoj.gov</p>

AMICI

AMICI	ATTORNEY AND ADDRESS	PHONE & EMAIL
<p>Albuquerque Bernalillo County Water Utility Authority</p>	<p>JAY F. STEIN JAMES C. BROCKMANN* STEIN & BROCKMANN, P.A. P.O. Box 2067 Santa Fe, NM 87504 Administrative Copy</p> <p>PETER AUH Albuquerque Bernalillo County Water Utility Authority P.O. Box 568 Albuquerque, NM 87103-0568</p>	<p>(505) 983-3880 jfstein@newmexicowaterlaw.com jcbrockmann@newmexicowaterlaw.com administrator@newmexicowaterlaw.com (505) 289-3092 pauh@abcwua.org</p>
<p>City of El Paso</p>	<p>DOUGLAS G. CAROOM* SUSAN M. MAXWELL BICKERSTAFF HEATH DELGADO ACOSTA LLP 3711 S. MoPac Expressway Building One, Suite 300 Austin, TX 78746</p>	<p>(512) 472-8021 dcaroom@bickerstaff.com smaxwell@bickerstaff.com</p>
<p>City of Las Cruces</p>	<p>JAY F. STEIN* JAMES C. BROCKMANN STEIN & BROCKMANN, P.A. P.O. Box 2067 Santa Fe, NM 87504 Administrative Copy</p> <p>JENNIFER VEGA-BROWN MARCIA B. DRIGGERS LAS CRUCES CITY ATTORNEY'S OFFICE P.O. Box 20000 Las Cruces, NM 88004</p>	<p>(505) 983-3880 jfstein@newmexicowaterlaw.com jcbrockmann@newmexicowaterlaw.com administrator@newmexicowaterlaw.com (575) 541-2128 jvega-brown@las-cruces.org marcyd@las-cruces.org</p>

El Paso County Water Improvement District No. 1	MARIA O'BRIEN* SARAH M. STEVENSON MODRALL, SPERLING, ROEHL, HARRIS & SISK, P.A. Suite 1000 500 Fourth Street N.W. (87102) P.O. Box 2168 Albuquerque, NM 87103-2168	(505) 848-1800 (main) (505) 848-1803 (direct) (505) 848-9710 (fax) mobrien@modrall.com sarah.stevenson@modrall.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 Janet Correll - Paralegal	(575)636-2377 Fax: (575) 636-2688 samantha@h2o-legal.com janet@h2o-legal.com
Hudspeth County Conservation and Reclamation District No. 1	ANDREW S. "DREW" MILLER* KEMP SMITH LLP 919 Congress Ave., Suite 1305 Austin, TX 78701	(512) 320-5466 dmiller@kempsmith.com
New Mexico Pecan Growers	TESSA DAVIDSON* DAVIDSON LAW FIRM, LLC 4206 Corrales Rd. P.O. Box 2240 Corrales, NM 87048 Patricia McCan - Paralegal	(505) 792-3636 ttd@tessadavidson.com patricia@tessadavidson.com

<p>New Mexico State University</p>	<p>JOHN W. UTTON* UTTON & KERY, P.A. P.O. Box 2386 Santa Fe, NM 87504</p> <p>LIZBETH ELLIS General Counsel CLAYTON BRADLEY Counsel Hadley Hall Room 132 2850 Weddell Road Las Cruces, NM 88003</p>	<p>(505) 699-1445 john@uttonkery.com</p> <p>(575) 646-2446 lellis@ad.nmsu.edu bradleyc@ad.nmsu.edu</p>
<p>State of Kansas</p>	<p>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</p>	<p>(785) 296-2215</p> <p>toby.crouse@ag.ks.gov</p>

SPECIAL MASTER

Special Master	<p>Honorable Michael J. Melloy <i>Special Master</i> United States Circuit Judge 111 Seventh Avenue, S.E., Box 22 Cedar Rapids, IA 52401</p> <p>Michael E. Gans, Clerk of 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</p>	<p>(319) 432-6080 TXvNM141@ca8.uscourts.gov</p> <p>(314) 244-2400 TXvNM141@ca8.uscourts.gov</p>
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APPENDIX B
Texas v. State of New Mexico and State of Colorado, No. 141, Original
Summary of Deadlines
April 24, 2018

Deadline	Events
September 1, 2018	Factual disclosures, written discovery and fact witness depositions begin
All other dates to set after in-person status conference	

APPENDIX C
Texas v. State of New Mexico and State of Colorado, No. 141, Original
Deposition Guidelines
April 24, 2018

1. Cooperation

Counsel will cooperate with each other and exercise civility in all aspects of this litigation.

2. Waiver Stipulations

Unless contrary to an order of the Special Master, the Parties (and when appropriate, a non-Party witness) may stipulate, in a suitable writing, to alter, amend, or modify any practice relating to noticing, conducting, or filing a deposition. Stipulations for any discovery beyond discovery cutoffs or deadlines set by the Special Master are not valid without approval of the Special Master.

3. Scheduling

Except in extraordinary circumstances, noticing counsel shall consult in advance with counsel for the deponent, if any, and with opposing counsel, so as to schedule depositions at mutually convenient times and places.

4. Attendance

4.1 Who May Be Present

Unless otherwise ordered under Fed. R. Civ. P. 26(c), depositions may be attended by counsel of record, members and employees of their firms, attorneys specially engaged by a Party for purposes of the deposition, the Parties or the representative of a Party, including counsel from the offices of the respective attorneys general, counsel for the

deponent, and the Parties' consultants, expert consultants, or witnesses. During examination of a deponent about any document stamped "Confidential – S. Ct. 141" or its confidential contents, persons to whom disclosure is not authorized under section 11 of this CMP shall be excluded.

4.2 Cross-Noticing

A Party may cross-notice a deposition. The cross-notice shall be served at least fourteen (14) days prior to the date noticed for the deposition, unless otherwise provided for by an applicable rule or CMO.

5. Conduct

5.1 Examination

Ordinarily, each Party should designate one attorney to conduct the principal examination of the deponent. Examination by other attorneys should be limited to situations where designated counsel must leave before the deposition is completed or is otherwise incapacitated. Counsel for a Party are not limited in the scope of their questions at a deposition by the scope of the questions propounded by the counsel for the Party that requested the deposition.

5.2 Objections and Directions Not to Answer

Counsel shall comply with Fed. R. Civ. P. 30(c)(2). When a claim of privilege is made, the witness should nevertheless answer questions relevant to the existence, extent, or waiver of the privilege, including the date of a communication, who made the statement, to whom and in whose presence the statement was made, other persons to whom the contents of the statement have been disclosed, and the general subject matter of the statement, unless such information is itself privileged.

5.3 Time Limitations

Depositions must be concluded within a reasonable time limit. At the time of notification, the noticing Party will estimate the reasonable amount of time needed for the deposition. In the event any other Party or counsel for the deponent considers the proposed amount of time to be unreasonable, the dispute, if unresolved, may be referred to the Special Master pursuant to section 12.1 of this CMP. Except with prior agreement of counsel or written approval of the Special Master, no deposition may last longer than three (3) eight (8) hour days, provided that no such agreement of counsel may extend any discovery deadline unless approved by the Special Master.

5.4 Continuation of Deposition

If a deposition is not finished by the end of the business day, it will continue on the following business day and each business day thereafter, subject to the availability of the witness and time limitations otherwise set by agreement or order of the Special Master. The Parties may agree to continue or suspend a deposition until a mutually agreed upon later date, provided that the later date is within any discovery deadline set by the Special Master.

6. Documents

6.1 Production of Documents

All documents shall be requested and produced pursuant to section 7 of this CMP. If a non-Party witness or expert witness is believed to have documents not previously produced, a subpoena to produce documents should be served at least forty-five (45) days before the scheduled deposition.

For all Depositions, arrangements should be made to permit inspection of the

documents by all Parties before the deposition begins. Any documents produced in such a manner should be Bates-numbered pursuant to section 9 of the CMP.

6.2 Copies

Extra copies of documents about which counsel expects to question the deponent shall be provided to opposing counsel and the deponent at the time of the deposition. Deponents should be shown a document before being examined about it except when counsel are attempting to impeach the deponent or test the deponent's recollection.

7. Recorded Depositions

By request in its notice of a deposition, a Party may record the deposition by audiovisual means as permitted under Fed. R. Civ. P. 30(b)(3) through (5).

7.1 Recording Equipment Operator

The operator(s) of the audiovisual recording equipment shall be subject to the provisions of Fed. R. Civ. P. 28(c). At the commencement of the deposition, the operator(s) shall swear or affirm to record the proceedings fairly and accurately.

7.2 Attendance

Each witness and each examining attorney shall be identified on camera at the commencement of the deposition. All others present at the deposition shall be identified off-camera. Thereafter, generally speaking, only the deponent (and demonstrative materials used during the deposition) shall be recorded.

7.3 Standards

The deposition will be conducted in a manner to replicate, to the extent feasible, the presentation of evidence at a trial. Unless physically incapacitated, the deponent shall be seated at a table or in a witness box other than when reviewing or presenting demonstrative

materials for which a change in position is needed. The deposition should be conducted in a neutral setting, against a solid background, with only such lighting as is required for accurate video recording. Lighting, camera angles, lens setting, and field of view should be changed only as necessary to record accurately the natural body movements of the deponent or to portray exhibit and materials used during the deposition. Sound levels should be altered only as necessary to record satisfactorily the voices of counsel and the deponent. No eating or smoking by deponents or counsel should occur during the deposition.

7.4 Interruptions

The recording shall run continuously throughout the active conduct of the deposition. The recording shall be suspended during agreed “off the record” discussions.

7.5 Index

The video or audio operator shall use a counter on the recording equipment and, after completion of the deposition shall prepare a log, cross-referenced to counter numbers. The log shall identify on the tape or recording where: examination by different counsel begins and ends; objections are made and examination resumes; record certifications are requested; exhibits are identified; any interruption of continuous tape recording occurs; and the reason for the interruption, whether for recesses, “off the record” discussion, mechanical failure, or otherwise.

7.6 Filing

The video operator shall send the original video recording in its original format to the deposing state Party on a physical medium such as a DVD and in a sealed envelope, or if agreed upon by the Parties in other electronic format. No part of a recorded deposition

shall be released or made available to any member of the public or to any unauthorized person, whether marked "Confidential" or not.

7.7 Objections

Requests for ruling on the admissibility of evidence obtained during a recorded deposition shall be accompanied by appropriate pages of the written transcript. Each issue shall be separately submitted. If needed for a ruling, a copy of the video recording and equipment for viewing the recording (if necessary) shall also be made available to the Special Master.

8. Telephonic Depositions

By stating in the deposition notice that it wants to conduct the deposition by telephone, a Party shall be deemed to have moved for an order under Fed. R. Civ. P. 30(b)(4). Notice of a telephonic deposition shall be served at least thirty (30) days before the deposition. Unless an objection is filed and served at least twenty (20) days before the deposition, the motion shall be deemed to have been granted. Other Parties may examine the deponent telephonically or in person. All persons present with the deponent shall be identified in the deposition and shall not by word, or otherwise, coach or suggest answers to the deponent.

9. Use

Under the conditions prescribed in Fed. R. Civ. P. 32(a)(1) to (4), as otherwise permitted by the Federal Rules of Evidence, or as agreed by the Parties with approval of the Special Master, depositions may be used for impeachment purposes against any Party.

10. Supplemental Depositions

To the extent a deponent acquires new information, or forms new opinions, or finds

new grounds to support previous opinions, any Party may move for a supplemental deposition. Such motion shall be made for good cause shown within thirty (30) days of a Party's learning of the new information, opinion or grounds from supplemental discovery responses provided under section 12.4 of this CMP, or any other source. If permitted, the supplemental deposition shall be treated as the resumption of the deposition previously taken, but shall not exceed one (1) eight (8) hour day in length. Supplemental depositions shall not be repetitive of prior examination and repetition of substantially the same examination as previously conducted may result in imposition of monetary and other sanctions. Supplemental depositions may be in addition to the (3) three day deposition limit provided previously.

11. Rulings

Rulings on objections made during a deposition will be resolved according to the procedure set forth in section 12.2 of the CMP.

12. Deposition Deadline

All depositions shall be completed as provided in Appendix B.