

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 NEW MEXICO'S MOTION FOR DECLARATION CONCERNING THE  
ADMISSIBILITY OF EXPERT REPORTS INTO EVIDENCE AT TRIAL

HECTOR H. BALDERAS  
New Mexico Attorney General  
TANIA MAESTAS  
Deputy Attorney General  
CHOLLA KHOURY  
ZACHARY E. OGAZ  
Assistant Attorneys General  
P.O. Drawer 1508  
Santa Fe, New Mexico 87501  
505-239-4672

MARCUS J. RAEL, JR.\*  
LUIS ROBLES  
SUSAN BARELA  
Special Assistant Attorneys General  
Robles Rael & Anaya  
500 Marquette Ave NW #700  
Albuquerque, NM 87102  
[marcus@roblesrael.com](mailto:marcus@roblesrael.com)  
505-242-2228

*\*Counsel of Record*

June 1, 2021

Pursuant to United States Supreme Court Rule 17.2 and Federal Rule of Evidence 807, New Mexico respectfully moves the Special Master to declare that the parties' expert reports shall not be excluded from evidence pursuant to the rule against hearsay and, conditional upon the resolution of any other objections at trial, may be admitted into evidence.

### **INTRODUCTION**

The United States and Texas have indicated that they will object to the admission of expert reports into evidence as hearsay. This Motion's objective is to raise and resolve this important issue in advance of the submittal of exhibit lists (June 30, 2021) and to facilitate the parties' preparation for trial.

The Special Master should declare that expert reports will not be excluded from evidence as hearsay for two primary reasons. First, under U.S. Supreme Court Rule 17.2, it is the regular and usual practice, in original jurisdiction cases such as this one, for expert reports to be admissible at trial. This practice recognizes that admitting expert reports into evidence facilitates the Special Master's charge to efficiently create a complete and accurate record for the Court's consideration. Second, the residual exception to the rule against hearsay permits the Special Master wide discretion to admit the reports. This exception applies because the statements and opinions contained within New Mexico's expert reports are corroborated by sufficient guarantees of trustworthiness and are more probative on the points for which they are offered than any other evidence.

Texas and the United States oppose this motion; Colorado does not consent to this motion.

## **ARGUMENT**

### **I. THE SPECIAL MASTER HAS DISCRETION TO ADMIT EXPERT REPORTS INTO EVIDENCE IN ORDER TO ENSURE A COMPLETE AND ACCURATE RECORD**

United States Supreme Court Rule 17.2 provides the Special Master with significant discretion to mold these original jurisdiction proceedings towards an efficient presentation of the issues irrespective of the constraints of the Federal Rules of Evidence. The Rule provides that “the Federal Rules of Evidence may be taken as guides.” S. Ct. R. 17.2. Indeed, the Court has advised that “Federal Rules are a guide to the conduct of original actions in this Court *only where* their application is appropriate.” *Utah v. United States*, 394 U.S. 89, 95 (1969) (internal quotations omitted) (emphasis added).

Here, The Special Master should exercise his discretion to declare that expert reports will not be excluded from evidence as hearsay at trial for a number of reasons: (1) it is customary in original actions to admit expert reports into evidence, (2) admitting the expert reports into evidence ensures a complete and accurate record; and (3) there is no plausible prejudice.

#### **A. It Is the Regular and Usual Practice in Original Jurisdiction Proceedings to Admit Expert Reports into Evidence at Trial**

First, the Special Master should exercise his discretion to declare that expert reports will not be excluded as hearsay in order to follow the well-established practice in other original actions.

Recognizing the unique nature of original actions, Special Masters in a number of original actions have admitted expert reports into evidence at trial. *See* Exhibit A, Transcript of Record at 117:21-118:7, vol. 267, *Kansas v. Colorado*, 543 U.S. 86 (2004) (No. 105 Orig.) (admission of Exhibit No. 1182, Expert Report of Rick G. Allen, into evidence); Exhibit B, Transcript of Record at 90:23-91:8, vol. 243, *id.*, (admission of Exhibit Nos. 1093 and 1096, expert reports, into evidence); Exhibit C, Transcript of Record at 267:19-23, vol. 2 of 25, part 1 of 2, *Montana v. Wyoming*, 563 U.S. 368 (2011) (No. 137 Orig.) (admission of Exhibit Nos. M5 and M6, expert

reports, upon Special Master’s recommendation to counsel to introduce two expert reports into evidence); Exhibit D, Transcript of Record at 1775:15-1776:20, *Kansas v. Nebraska*, 574 U.S. 445 (2015) (No. 126 Orig.) (admission of Exhibit Nos. K5 and K12, Expert Reports of Dale E. Book, P.E., into evidence); *see also* Exhibit E, Section 1.5, Case Management Order No. 20, Docket No. 454, *Florida v. Georgia*, 138 S. Ct. 2502 (2018) (No. 142 Orig.) (ordering parties to file pre-filed direct testimony). Counsel for New Mexico is unaware of any instance in which such admission has been refused on hearsay grounds. In a number of these cases, the United States has been either a full party presenting its own experts, as in *Kansas v. Colorado & The United States*, No. 105, Orig., or has attended trial as *amicus curiae*. Counsel for New Mexico is unaware that the United States has ever objected to the admission of expert reports on hearsay grounds in previous interstate original jurisdiction cases.

There is no reason to depart from the regular and usual practice in this case, and, for the reasons discussed below, there is every reason to adhere to this practice of the Court and its Special Masters.

**B. The Admission of Expert Reports into Evidence Would Further the Special Master’s Principal Goal to Efficiently Create a Complete Record for the Court’s Consideration**

Next, the Special Master should exercise his discretion because these materials would further the ultimate goal of trial in an original action: to create a clear, accurate, and complete record for the Court’s consideration.

In this action, the Court, rather than the Special Master, ultimately makes the factual findings and legal conclusions. *See Florida v. Georgia*, 138 S. Ct. 2502, 2517 (2018); *Kansas v. Nebraska*, 574 U.S. 445, 453 (2015) (“[The Court] conduct[s] an independent review of the record, and assume[s] the ultimate responsibility for deciding all matters.”); *see also* Stephen M. Shapiro et al., *Supreme Court Practice* § 10.12, 653 (10<sup>th</sup> ed. 2013) (“[T]he Master’s reports and

recommendations are advisory only. . . . The Court itself determines all critical motions and grants or denies the ultimate relief sought. . . .”). A Master’s primary function is to create a record so that the Court can “benefit from detailed factual findings.” *Florida v. Georgia*, 138 S. Ct. at 2515; *see also Guide for Special Masters in Original Cases Before the Supreme Court of the United States* at 3 (Oct. Term 2004) (“*Guide for Special Masters*”) (“The Special Master in an Original case acts as the Supreme Court’s surrogate in making the record and then as the Court’s adviser in submitting recommendations for deciding the case.”). This function is critical, because “[w]ithout the full range of factual findings . . . the Court may lack an adequate basis on which to make ‘the delicate adjustment of interests’ that the law requires” in original jurisdiction water disputes. *Id.* (quoting *Nebraska v. Wyoming*, 325 U.S. 589, 618 (1945)). Review by the Court is *de novo*, e.g., *Maryland v. Louisiana*, 451 U.S. 725, 762-63 (1981) (Rehnquist, J., dissenting), and the Court bears “ultimate responsibility” for all findings in the case, *Colorado v. New Mexico*, 467 310, 317 (1983).

It is, therefore, imperative at trial that the Special Master adopts procedures that permit the parties to efficiently create a comprehensive and complete record for the Court. *Ohio v. Kentucky*, 410 U.S. 641, 644 (1973) (“Our object in original cases is to have the parties, as promptly as possible, reach and argue the merits of the controversy presented.”); *Washington v. N. Sec. Co.*, 185 U.S. 254, 256 (1902) (“In the exercise of original jurisdiction the court has always necessarily proceeded with the utmost care and deliberation, and, in respect of all contested questions, on the fullest argument . . . .”). The Court’s guidance directs the Special Master to “ensure that a record is developed that will provide the Court with all the information it needs” to render a decision. Cynthia J. Rapp, *Guide for Special Masters in Original Cases Before the Supreme Court of the United States* 6 (October 2004). The Court further instructs the special masters in original actions

that, because they “are neither ultimate factfinders nor ultimate decision-makers, they should err on the side of over-inclusiveness in the record.” *Id.* at 9. Indeed, the Special Master in this case has already taken notice of this guidance. Trial Mgt. Order, Part VIII, at 7 (Apr. 9, 2021) (“[C]ounsel are reminded that the Supreme Court encourages development of as full a record as possible for Supreme Court review.”).

Following this guidance, the Special Master should err on the side of over-inclusiveness and admit the expert reports into evidence at trial in order to preserve a complete and accurate record for the Court to make its ultimate decision. The expert reports contain the most complete account of all of the materials that the various experts relied upon and meticulous detail concerning the methodologies that each used to arrive at his or her conclusions. Presenting this level of detail through direct examination, while possible, would be tedious, unnecessarily time consuming, and prone to depriving the Court of a complete record in order to make its decision. On this basis, the most efficient manner to proceed, while fulfilling the Special Master’s fundamental charge to make a complete record, is to admit the detailed expert reports in order to permit streamlined direct examinations subject to full and rigorous cross examination.

### **C. The Admission of Expert Reports into Evidence Would Not Prejudice any Party**

Finally, no party can credibly claim prejudice from the admission of expert reports into evidence because there is no threat that the Court, sitting as a fact finder, will give such materials undue weight.

When the Court sits as the finder of fact, it does not need to fulfill its traditional gate-keeper function to restrict the admissibility of expert materials because “there is no possibility of prejudice, and no need to protect the factfinder from being overawed by expert analysis.” *Assured Guar. Mun. Corp. v. Flagstar Bank, FSB*, 920 F. Supp. 2d 475, 502 (S.D.N.Y. 2013) (internal quotations and citations omitted). The Court “can discern testimony that seeks to make legal

conclusions from testimony that provides the Court with background, context and industry knowledge that are traditionally supplied by experts.” *Id.* at 1346. Thus, “there is no need for the Court to deny the admissibility of an expert report where the Court is acting as fact-finder.” *Jones Superyacht Miami, Inc. v. M/Y Waku*, 451 F. Supp. 3d 1335, 1345 (S.D. Fla. 2020) (internal quotations and citations omitted). Stated differently, “[t]here is less need for the gatekeeper to keep the gate when the gatekeeper is keeping the gate only for himself.” *United States v. Brown*, 415 F.3d 1257, 1269 (11th Cir. 2005). The evidentiary rules that may restrict the admission of expert materials into evidence recognize that a jury is poorly equipped “to make reliability and relevance determinations and more likely than the judge to be awestruck by the expert’s mystique,” *Allison v. McGhan Med. Corp.*, 184 F.3d 1300, 1310 (11th Cir. 1999), but those concerns are simply not applicable to the present case.

In this case, the Special Master should permit the Court to make its own decisions with respect to the weight and reliability of the evidence contained within the expert reports. There is no threat that a jury will give undue weight to these materials. Accordingly, no party can demonstrate any undue prejudice, and the Special Master should exercise his discretion to declare that rule against hearsay is no bar to the admission of expert reports into evidence.

## **II. EXPERT REPORTS MEET THE RESIDUAL HEARSAY EXCEPTION UNDER FED. R. EVID. 807**

Presuming, *arguendo*, that the Special Master wishes to apply the rule against hearsay in this action, the Special Master should nonetheless admit New Mexico’s expert reports into evidence pursuant to Federal Rule of Evidence 807.

Courts are split on whether expert reports are admissible. Some courts have held that an expert report “is hearsay to which no hearsay exception applies.” *See, e.g., Hunt v. City of Portland*, 599 Fed. Appx. 620, 621 (9th Cir. 2013). Other courts, however, have held that expert reports

meet the residual hearsay exception under Federal Rule of Evidence 807. *Televisa, S.A. de C.V. v. Univision Communications, Inc.*, 635 F. Supp. 2d 1106, 1110 (C.D. Cal. 2009); *see also Bianco v. Globus Med., Inc.*, 30 F. Supp. 3d 565, 570 (E.D. Tex. 2014). (admitting expert reports on the basis that expert incorporated by reference his expert reports in his declaration at summary judgment).

Federal Rule of Evidence 801(c) defines hearsay as a “statement that: (1) the declarant does not make while testifying at the current trial or hearing; and (2) a party offers in evidence to prove the truth of the matter asserted in the statement.” Hearsay is inadmissible unless “a federal statute; these rules; or other rules prescribed by the Supreme Court” provide otherwise. Fed. R. Evid. 802.

Fed. R. Evid. 807 provides that “a hearsay statement is not excluded by the rule against hearsay even if the statement is not admissible under a hearsay exception in Rule 803 or 804” as long as two prongs are met. First, “the statement is supported by sufficient guarantees of trustworthiness—after considering the totality of circumstances under which it was made and evidence, if any, corroborating the statement.” Fed. R. Evid. 807(a)(1). Second, “[the statement] is more probative on the point for which it is offered than any other evidence that the proponent can obtain through reasonable efforts.” Fed. R. Evid. 807(a)(2). In addition, the proponent of the statement must “give[] an adverse party reasonable notice of the intent to offer the statement—including its substance and the declarant’s name—so that the party has a fair opportunity to meet it.” Fed. R. Evid 807(b). “The notice must be provided in writing before the trial or hearing—or in any form during the trial or hearing if the court, for good cause, excuses a lack of earlier notice.” *Id.*



Here, New Mexico's expert reports satisfy the residual exception, and the Special Master has ample discretion to overrule Texas's and the United States' hearsay objections.

**A. The Expert Reports Contain Sufficient Guarantees of Trustworthiness**

The first prong in application of Federal Rule of Evidence 807 is whether the statement is supported by sufficient guarantees of trustworthiness. This factor is fact-specific. *Brookover v. Mary Hitchcock Mem. Hosp.*, 839 F.2d 411, 420 (1st Cir. 1990). The Seventh Circuit posits a non-exclusive list of factors to determine whether a statement meets the “sufficient guarantees of trustworthiness” standard in Fed. R. Evid. 807(a)(1). Those factors include: “(1) the probable motivation of the declarant in making the statement; (2) the circumstances under which it was made; and (3) the knowledge and qualifications of the declarant.” *United States v. Hall*, 165 F.3d 1095, 1110 (7th Cir. 1999); *accord Bratt v. Genovese*, 782 Fed. Appx. 959, 965 (11th Cir. 2019); *see also United States v. Valdez-Soto*, 31 F.3d 1467, 1471 (9th Cir. 1994) (holding that corroborating evidence is a valid consideration in determining the trustworthiness of out-of-court statements for purposes of the residual hearsay exception). The relevant question is whether the statement “demonstrate[s] a level of trustworthiness at least equivalent to that of evidence admitted under traditional hearsay exceptions.” *Robinson v. Shapiro*, 646 F.2d 734, 743 (2d Cir. 1981). This standard is met in this case.

First, the authors of the expert reports in this matter are specialists that the parties each retained to analyze and draw inferences and conclusions from dense subject material and complex data. Their motivations in drafting their respective reports are the same that their motivations will be in live testimony at trial: to explain these complex issues and data to the Court in a comprehensible manner.

Second, there is substantial foundational evidence that the expert reports were drafted in a careful and trustworthy manner. The Federal Rules of Civil Procedure require a retained expert

witness to sign a written report. The experts signed their respective reports pursuant to Federal Rule of Civil Procedure 26(a)(2)(B) and many executed declarations under penalty of perjury that incorporate or reference their expert reports. *See, e.g.*, NM-EX 001,<sup>1</sup> Barroll Decl. at ¶ 2; NM-EX 003, Lopez Decl. at ¶ 2; NM-EX 005, Stevens Decl. at ¶ 7; NM-EX 006, Barroll 2d Decl. at ¶ 2; NM-EX 008, Lopez 2d Decl. at ¶ 2; NM-EX 011, Stevens 2d Decl. at ¶ 2; NM-EX 012, Sullivan Decl. ¶ 2; NM-EX 014, Barroll 3d Decl. at ¶¶ 2-3; NM-EX 015, Lopez 3d Decl. at ¶ 2; NM-EX 016, Stevens 3d Decl. at ¶ 2; NM-EX 017, Sullivan 2d Decl. at ¶ 2. The experts will also be available at trial to authenticate their respective reports. These affirmations assure that the reports are trustworthy representations of the experts' respective opinions. *See Bianco*, 30 F. Supp. 3d at 570.

Third, prior to the admission of any expert reports into evidence at trial, the parties will have an opportunity to object to the qualifications of each to provide expert testimony. The same standards under *Daubert v. Merrell Dow Pharmaceuticals, Inc.*, 509 U.S. 579 (1993), that the Master will apply to determine whether an expert is qualified to give testimony at trial suffice to gauge whether the expert is sufficiently qualified to give a reasonably trustworthy opinion in the form of a written report.

Fourth, to the extent that New Mexico's experts have, over the course of this litigation, recognized any errors or other issues with their respective reports, they have provided supplemental or revised reports. *See, e.g.*, NM-EX 102, Supp. Reb. Expert Report of Margaret Barroll. This iterative process ensures that the final set of expert reports is the most accurate and thoroughly considered expression of each expert's opinions and analysis.

---

<sup>1</sup> These exhibit numbers refer to the State of New Mexico's Notice of Filing of New Mexico Supplemental Exhibit Compendium: Index.

Fifth, the experts will be available for live examination irrespective of the admission of their reports into evidence. As such, the parties will each have an opportunity to cross examine one another's experts concerning any matters contained within the reports. This process ensures that any potential defects in the trustworthiness or reliability of the reports are brought to the Court's attention.

**B. The Expert Reports Are More Probative on the Points for Which They Are Offered Than Any Other Evidence that New Mexico May Reasonably Present at Trial**

The second prong of Fed. R. Evid. 807 requires that the hearsay statement “is more probative on the point for which it is offered than any other evidence that the proponent can obtain through reasonable efforts.”

Applied here, the standard requires the Special Master to consider what is reasonable under the circumstances. There is no doubt that the expert reports at issue are highly probative of the complex issues before the court at trial. Likewise, there is no doubt that the parties could offer all of the substantive material in the expert reports into evidence through direct testimony by the experts. The question is whether this effort at trial would be reasonable. New Mexico submits that taking the additional time at trial to set out all of the foundational, methodological, and bibliographic matters that are central to the experts' various analyses—and recreate the contents of the expert reports through direct examination—is unnecessary when the same effect may be achieved by simply admitting the reports into evidence. On this basis, it is simply unreasonable to use the rule against hearsay as a cudgel to prevent the admission of these materials when there is no serious doubt concerning their admissibility through other means. *Cf. Ark-Mo Farms, Inc. v. United States*, 530 F. 2d 1384, 1386 (Ct. Cl. 1976). The admission of the reports will streamline—not confuse—the issues to be litigated at trial and will expedite trial.

Because the expert reports meet the residual hearsay exception in Fed. R. Evid. 807, they should be admitted.

**C. Admitting Expert Reports in an Original Action Proceeding Does Not Violate the Policy Justifications of Fed. R. Evid. 807**

Those courts that have held that expert reports may not qualify for the residual exception tend to raise two principal justifications: evading cross-examination and disturbing precedent. *See, e.g., Matthews v. Sec'y of the Dept. of Health & Human Servs.*, 18 Cl. Ct. 514, 534 (1989) (holding that without the opportunity to probe the declarant's expertise or the logic on which the expert's opinion is based, the expert report lacks the equivalent circumstantial guarantees of trustworthiness); *Diamond Resorts Int'l, Inc. v. Aaronson*, 378 F. Supp. 3d 1143, 1144–45 (M.D. Fla. 2019) (reasoning that admission of the expert report would mean that in virtually every case with a retained expert, a party could avoid the crucible of cross examination in the courtroom, before the jury in person, by seeking admission of the Rule 26 report under the residual hearsay exception).

Neither of these concerns are present in this original action. First, the experts have been examined on their reports during depositions, and the admission of their reports into evidence would not limit cross examination at trial. Second, admitting the expert reports in the unique context<sup>2</sup> of an original action would not have any disturbing effect on the ordinary application of

---

<sup>2</sup> The Court has recognized that the sovereign identity of the parties and interstate nature of the conflict require special procedures in original actions. *See Rhode Island v. Massachusetts*, 39 U.S. 210, 257 (1840) (“And in a case like the present, the most liberal principles of practice and pleading ought unquestionably to be adopted, in order to enable both parties to present their respective claims in their full strength.”); *Florida v. Georgia*, 138 S. Ct. at 2513 (“[T]he court may regulate and mould the process it uses in such a manner as in its judgment will best promote the purposes of justice.”). Original action proceedings “are basically equitable in nature.” *Ohio v. Kentucky*, 410 U.S. 641, 648 (1973). On this basis, the Court recognizes the “untechnical spirit” of managing and presiding over interstate disputes. *See Florida*, 138 S. Ct. at 2513 (internal quotations and citations omitted); *see also N. Dakota v. Minnesota*, 263 U.S. 365, 372 (1923) (“The jurisdiction and procedure of this court in controversies between states of the Union differ from those which it pursues in suits between private parties.”).

the rules in the district courts. Original actions have much greater flexibility in application of the court rules and put a great emphasis on a complete record. In fact, the Special Master here has already relied upon and cited several expert reports in his recent Order. *See, e.g.,* Order, *Texas v. New Mexico*, No. 141, Original, at 25-31 (May 21, 2021) (referencing and relying upon the reports of historians Miltenberger and Stevens). On this basis, there is no reason to deviate from a straightforward application of Rule 807 to overrule any categorical hearsay objection to the admission of expert reports into evidence.

### **III. NEW MEXICO REQUESTS AN EXPEDITED BRIEFING SCHEDULE**

The Special Master should order expedited briefing on the present motion in order to provide clarity concerning the admissibility of expert reports in advance of the exhibit designation deadline on June 30 (Trial Mgt. Order, Part V, at 4 (Apr. 9, 2021)). The question affects the exhibits that each party will need to present at trial because exclusion of the expert reports from evidence will necessitate substitute exhibits to explain the experts' respective analysis on direct examination (*e.g.*, data summaries prepared pursuant to Federal Rule of Evidence 1006; demonstrative graphs or charts). To allow the parties to avoid designating such materials that are duplicative or cumulative of the reports, New Mexico requests a briefing schedule that would permit the Special Master to render a decision in advance of the applicable exhibit list deadlines.

## CONCLUSION

For the reasons identified above, New Mexico respectfully moves the Special Master to declare that the Expert Reports listed on Exhibit A shall not be excluded from evidence at trial on the basis of hearsay and, pending the resolution of any other objections, may be admitted into evidence at trial.

Respectfully submitted,

/s/ Jeffrey J. Wechsler

HECTOR H. BALDERAS  
New Mexico Attorney General  
TANIA MAESTAS  
Deputy Attorney General  
CHOLLA KHOURY  
Assistant Attorney General  
P.O. Drawer 1508  
Santa Fe, New Mexico 87501  
505-239-4672

MARCUS J. RAEL, JR.\*  
LUIS ROBLES  
SUSAN BARELA  
Special Assistant Attorneys General  
Robles Rael & Anaya  
500 Marquette Ave NW #700  
Albuquerque, NM 87102  
[marcus@roblesrael.com](mailto:marcus@roblesrael.com)  
505-242-2228

*\*Counsel of Record*

JEFFREY J. WECHSLER  
Special Assistant Attorney General  
MONTGOMERY & ANDREWS, P.A.  
325 Paseo de Peralta  
Santa Fe, NM 87501  
[jwechsler@montand.com](mailto:jwechsler@montand.com)

BENNETT W. RALEY  
LISA M. THOMPSON  
MICHAEL A. KOPP  
Special Assistant Attorneys General  
TROUT RALEY  
1120 Lincoln Street, Suite 1600  
Denver, Colorado 80203  
303-861-1963

JOHN B. DRAPER  
Special Assistant Attorney General  
CORINNE E. ATTON  
DRAPER & DRAPER LLC  
325 Paseo de Peralta  
Santa Fe, NM 87501  
[john.draper@draperllc.com](mailto:john.draper@draperllc.com)  
505-570-4591

INTERVENÖR.

NO. ORIGINAL NO. 105

*Krause Court Reporters*  
(909) 686-1411

1 ability to transfer monthly adjustment factors  
2 to below the reservoir. Along with that  
3 conclusion, my opinion is that the use of a  
4 logarithmic procedure to extrapolate adjustment  
5 factors from above John Martin Reservoir to  
6 below John Martin Reservoir, as used by  
7 Mr. Book, is appropriate.

8 MR. DRAPER: Your Honor, that  
9 concludes my questions for Dr. Allen.

10 SPECIAL MASTER: All right.

11 MR. DRAPER: I would like to take up  
12 the issue of exhibits. There's one exhibit, the  
13 Plaintiff's Exhibit 1177, which was the  
14 combination of satellite images where there was  
15 a correction that was necessary. I would  
16 propose that we simply make that on the  
17 original. I've shown Mr. Robbins what that  
18 would look like, and I believe we're in  
19 agreement on that.

20 SPECIAL MASTER: All right.

21 MR. DRAPER: With that I would move  
22 the admission of the following exhibits:  
23 Plaintiff's Exhibit 1176, the series of color  
24 photos; 1177, the satellite images; 1181,  
25 Dr. Allen's curriculum vitae; 1182, Dr. Allen's  
26 expert report; and 1183, that's FAO-56; and  
27 1184, which is the black and white photograph of  
28 the Kimberly site.



1 MR. ROBBINS: No objection.

2 SPECIAL MASTER: All right. Those  
3 will be admitted.

4 (Whereupon Plaintiff's Exhibit  
5 Nos. 1176, 1177, 1181, 1182, 1183,  
6 and 1184 were admitted into  
7 evidence.)

8 SPECIAL MASTER: Mr. Robbins, you're  
9 up to bat.

10 MR. ROBBINS: Thank you, sir.

11 SPECIAL MASTER: Let me know as we  
12 go along if you think we should go longer today.

13 MR. ROBBINS: Okay. I'll see how we  
14 do. I'm sort of operating on the assumption --  
15 and I hope Mr. Draper will tell me if I'm  
16 wrong -- that if I get finished with cross by  
17 the break tomorrow morning or shortly thereafter  
18 that we can do some depositions and then maybe  
19 get a witness on tomorrow afternoon sometime and  
20 maybe go a little longer tomorrow afternoon to  
21 accomplish that.

22 SPECIAL MASTER: All right.

23 MR. ROBBINS: And I think if we do  
24 that we can be finished, then, on Friday, but  
25 I'll keep track of where I think I am. If we  
26 need to do a little bit more today, that would  
27 be fine.

28 SPECIAL MASTER: All right.

INTERVENOR.

NO. ORIGINAL NO. 105

*Krause Court Reporters*  
(909) 686-1411

## Exhibit B

1 And as you can see, as the level of  
2 funding increases, that frequency decreases, and  
3 by the time we get to about 15 percent or so, I  
4 think that frequency is down to about as low as  
5 we're going to be able to get it. So that would  
6 be my recommendation, that we try to get the  
7 level of funding to that offset account up at  
8 those levels to, again, reduce the probability  
9 that the State of Kansas would suffer depletive  
10 effects.

11 Q. At the 15 percent level, does that remove all  
12 instances of years where there are yet  
13 unreplaced depletions to usable flow even with  
14 the 15 percent additional funding?

15 A. It doesn't remove them all, but it reduces them  
16 down to a point where we can't seem to get rid  
17 of the remainder in looking at the analysis from  
18 the model. So it's kind of a point of  
19 diminished return with respect to the funding.

20 MR. DRAPER: Your Honor, I have no  
21 further questions of Mr. Larson.

22 SPECIAL MASTER: All right.

23 MR. DRAPER: I would like to move  
24 the admission of two exhibits. Those are Kansas  
25 Exhibit 1093, which is the expert report, and  
26 1096, which is the second expert report having  
27 to do particularly with the PCC method. I am  
28 not including the depositions at the moment.

1 SPECIAL MASTER: I understand we're  
2 holding on the depositions.

3 MR. ROBBINS: I have no objection.

4 SPECIAL MASTER: Those would be  
5 admitted, then.

6 (Whereupon Plaintiff's Exhibit  
7 Nos. 1093 and 1096 were admitted  
8 into evidence.)

9 MR. ROBBINS: I have a proposal with  
10 regard to the four deposition exhibits. It  
11 seems to me that an expert can rely upon hearsay  
12 evidence and that sort of thing, and because  
13 Mr. Larson has now read the portions of those  
14 exhibits that he relies upon and has indicated  
15 his reliance, which it seems to me he can  
16 probably do, maybe we should not allow the  
17 exhibits in their entirety to go into evidence  
18 but simply to permit the testimony and the  
19 opinions based thereon and the portions thereof  
20 that he has recited into the record to stand in  
21 the record and not worry further about it so  
22 that we don't even have to consider what the  
23 U.S.'s position is. That would preserve his  
24 opinions and the basis for them, and we wouldn't  
25 have to have the exhibits in evidence or deal  
26 with that issue.

27 SPECIAL MASTER: Well, let's wait  
28 until we see what type of answer we get from the

IN THE SUPREME COURT OF THE UNITED STATES

Volume 2 of 25

Part 1 of 2

---

STATE OF MONTANA

Plaintiff.

v.

STATE OF WYOMING

and

STATE OF NORTH DAKOTA

Defendants.

---

BEFORE THE HONORABLE BARTON H. THOMPSON, JR.  
Special Master  
Stanford, California

James F. Battin United States Courthouse  
2601 2nd Avenue North  
Billings, Montana 59101  
October 17, 2013

RICHARD L. MATTSON, LTD.,  
CERTIFIED COURT REPORTER  
816 Avenue F  
Billings, MT 59102  
(406) 698-3163  
rlmattson@gmail.com

1 where I'm ready to move for the admission of all  
2 of the exhibits, and I can withhold the motion  
3 with respect to the sources until after the next  
4 break.

5 SPECIAL MASTER: So what I would  
6 suggest, and then would that be the end at the  
7 moment for the substantive questions you were  
8 going to ask as part of your direct?

9 MR. DRAPER: I think so, after a short  
10 conference with my co-counsel, yes.

11 SPECIAL MASTER: I'm actually going to  
12 have some questions before you actually can  
13 complete your direct examination.

14 MR. DRAPER: Very good.

15 SPECIAL MASTER: What I would actually  
16 suggest at this particular point in time is why  
17 don't you move to introduce the two expert  
18 reports.

19 MR. DRAPER: I so move, Your Honor.

20 MR. KASTE: No objection.

21 SPECIAL MASTER: Okay. Then admitted  
22 in evidence is M-5 and M-6.

23 (Received.)

24 MR. DRAPER: Thank you, Your Honor.

25 SPECIAL MASTER: Okay. So as I said, I

## SUPREME COURT OF THE UNITED STATES

No. 126 Original

**Exhibit D**

STATE OF KANSAS,	)	
	)	
Plaintiff,	)	
	)	
V.	)	<u>VOLUME IX</u>
	)	
STATE OF NEBRASKA	)	
and	)	
STATE OF COLORADO,	)	
	)	
Defendants.	)	

TRANSCRIPT OF PROCEEDINGS

The above-entitled matter came on for HEARING before SPECIAL MASTER WILLIAM J. KAYATTA, JR., ESQ., held in the U. S. District Court, at 156 Federal Street, Portland, Maine, on August 23, 2012, commencing at 9:00 a.m., before Claudette G. Mason, RMR, CRR, a Notary Public in and for the State of Maine.

## APPEARANCES:

For the State of Kansas:	JOHN B. DRAPER, ESQ.
	JEFFREY J. WECHSLER, ESQ.
	BURKE W. GRIGGS, ESQ.
	CHRISTOPHER M. GRUNEWALD, ESQ.
For the State of Nebraska:	JUSTIN D. LAVENE, ESQ.
	THOMAS R. WILMOTH, ESQ.
	DONALD G. BLANKENAU, ESQ.
For the State of Colorado:	AUTUMN L. BERNHARDT, ESQ.
	SCOTT STEINBRECHER, ESQ.
Also Present:	JOSHUA D. DUNLAP, ESQ.

1 don't believe I excluded anything on Daubert  
2 grounds other than an occasional line of  
3 testimony about a legal opinion or the like.

4 MR. LAVENE: I believe that's correct,  
5 your Honor. I believe some of these  
6 objections with relation to the Daubert  
7 motion were to the actual reports themselves.  
8 So I think that you have already dealt with  
9 those matters.

0 I mean, we would not be waiving any  
1 Daubert objections.

2 SPECIAL MASTER KAYATTA: I overruled  
3 your Daubert objections.

4 MR. LAVENE: Yes.

5 MR. DRAPER: So does that mean, your  
6 Honor, that all of the expert reports that  
7 were subject to Daubert motions are now  
8 admitted --

9 SPECIAL MASTER KAYATTA: Yes.

10 MR. DRAPER: -- unless there's a  
11 specific ruling by you?

12 SPECIAL MASTER KAYATTA: Yes.

13 MR. DRAPER: Very good.

14 SPECIAL MASTER KAYATTA: But you should  
15 double-check and make sure that that's



1 reflected.

2 THE CLERK: We talked about those this  
3 morning. I have the numbers though in  
4 question.

5 SPECIAL MASTER KAYATTA: Does -- have  
6 you given Ms. Whitten the numbers for all of  
7 your expert reports?

8 MR. DRAPER: Yes, your Honor.

9 SPECIAL MASTER KAYATTA: Do you have  
10 those?

11 THE CLERK: Yes. They're all marked.

12 SPECIAL MASTER KAYATTA: Those are all  
13 admitted, so that's taken care of.

14 MR. DRAPER: I think that might do it,  
15 your Honor.

16 MR. LAVENE: That's it.

17 SPECIAL MASTER KAYATTA: Ms. Bernhardt

18 MS. BERNHARDT: Yes, your Honor.

19 SPECIAL MASTER KAYATTA: So we're all  
20 set. All right.

21 So that leaves us with discussing  
22 schedule and argument. I also inquired  
23 yesterday if anyone thought that a view was  
24 going to be -- in other words, I wanted to  
25 know if anyone was of the view -- any of the

Exhibit E

No. 142, Original

---

In the  
SUPREME COURT OF THE UNITED STATES

---

STATE OF FLORIDA,

Plaintiff

v.

STATE OF GEORGIA,

Defendant

---

OFFICE OF THE SPECIAL MASTER

---

CASE MANAGEMENT ORDER NO. 20

July 13, 2016

Exhibit E

**CASE MANAGEMENT ORDER NO. 20**

For purposes of the proceedings before the Special Master, IT IS HEREBY ORDERED THAT:

**1. Final Pre-Trial Proceedings**

Final pre-trial proceedings will commence and be completed in accordance with the schedule stated herein (as summarized in Appendix A).

**1.1. Exchange of Witness and Exhibit Information**

The parties shall exchange exhibit lists, witness lists and deposition designations by September 9, 2016. Deposition cross-designations shall be exchanged by September 23, 2016.

**1.2. Pre-Trial Motions**

All motions *in limine* or other pre-trial motions, if any, shall be filed by September 16, 2016. Oppositions to motions *in limine* or other pre-trial motions shall be filed by September 30, 2016. Any replies shall be filed by October 7, 2016.

**1.3. Pre-Trial Briefs**

Pre-trial briefs, if any, shall be filed by October 12, 2016. Pre-trial briefs shall not exceed forty (40) pages.

**1.4. Amicus Briefs**

The United States may file an *amicus* brief by October 21, 2016 without further leave of the Special Master. The brief of the United States, if any, shall not exceed 35 pages.

Any persons or entities other than the United States seeking to submit a brief as an *amicus curiae* must file, by September 16, 2016, a short motion summarizing the contents of the proposed brief and requesting leave to file the brief. If leave is granted, the *amicus* brief shall be filed by October 21, 2016. *Amicus* briefs, if any, shall not exceed 25 pages.

**1.5. Pre-Filed Direct Testimony and Exhibits**

Florida shall file four copies of written direct testimony by October 14, 2016. Georgia shall file four copies of written direct testimony by October 26, 2016. Further direct testimony, either in writing or orally, will be allowed upon a showing that the need for such further direct testimony could not have been anticipated by the party offering it, provided that notice of such further testimony is promptly given as soon as the need for it can be ascertained. The parties should seek economy and efficiency in presenting direct testimony. Objections to pre-filed direct testimony shall be made in writing before the witness takes the stand.

The parties shall file four copies of all exhibits by October 26, 2016 and all exhibits shall be pre-marked. Florida exhibits shall be numbered with an “F” sequence, and Georgia exhibits shall be numbered with a “G” sequence. Any joint exhibits shall be numbered with a “J” sequence.

On October 26, 2016, the parties shall file a joint exhibit list in spreadsheet form, in either Excel or Word format. The exhibit list shall contain columns for “Offered,” “Objection,” and “Admitted.” On the exhibit list, the parties shall mark exhibits to which objection has been made, and the basis for the objection. All other exhibits will be admitted *de bene*, subject to being struck for lack of relevance at the conclusion of trial upon notice to the parties.

**1.6 Hostile Witnesses**

If a party seeks to present testimony by a witness who is of a type described in Rule 611(c)(2) of the Federal Rules of Evidence or by a witness who will not otherwise reasonably cooperate in the preparation of pre-filed testimony, then the party presenting such testimony by such a witness may call the witness in ordinary course at trial. No written summary of expected

testimony need be filed. The parties may also agree to use deposition designations in lieu of live witness testimony.

## **2. Trial Proceedings**

### **2.1 Trial Schedule**

Trial shall commence on Monday, October 31, 2016, at 8:00 a.m. at the United States District Court for the District of Columbia, E. Barrett Prettyman Courthouse, 333 Constitution Ave. NW, Washington, D.C., 20001, in Courtroom 9, 4<sup>th</sup> Floor. Unless otherwise specified by the Special Master, the proceeding shall be in session from 8:00 a.m. to 5:00 p.m. each day, with breaks for lunch and as necessary.

Counsel should contact the Clerk of Court of the District Court for the District of Columbia, Angela D. Caesar, with any questions regarding courtroom layout, logistics, and similar issues. The Clerk of Court can be reached at 202-354-3181.

As a general matter, the trial will proceed as follows:

- A. Introduction of Florida's pre-filed testimony and exhibits
- B. Cross-examination of Florida's witnesses
- C. Redirect examination of Florida's witnesses
- D. Introduction of Georgia's pre-filed testimony and exhibits
- E. Cross-examination of Georgia's witnesses
- F. Redirect examination of Georgia's witnesses
- G. Florida's rebuttal testimony and exhibits, cross-examination and redirect.

Rebuttal testimony will be strictly limited to situations where the need for testimony could not have been anticipated at the time direct testimony was prepared.

The parties will be permitted to make opening and closing statements of no more than seventy-five (75) minutes each.

### **2.2 Sequestration of Witnesses**

A witness will only be sequestered if good cause is shown.

## **2.3 Use of Confidential Documents or Information at Trial**

The parties are encouraged to resolve by agreement issues regarding the use at trial of documents designated “Confidential” pursuant to Case Management Plan ¶ 10, or information derived therefrom, whether by redaction, agreed release of the “Confidential” designation, or by other means so as to eliminate or reduce the need to rely on confidential information at trial.

Should a party conclude that there is confidential information that need be presented as evidence while preserving its confidentiality, the party will take the following steps:

**2.3.1** By September 9, provide notice to the other parties of the information in question and the intent to offer it confidentially at trial.

**2.3.2** Redact from the pre-filed testimony or the exhibits only so much of the information as is asserted to be confidential.

**2.3.3** By September 16, file under seal for *in camera* review a non-redacted copy of the testimony or exhibit, together with a motion explaining why the information should be kept out of the public record and is nevertheless relevant. Any opposition to such a motion shall be filed by September 30.

The information asserted to be confidential will continue to be treated as such until ruling on the motion.

The Special Master may thereafter make such orders as are necessary to govern the use of such documents or information at trial. The Special Master may determine whether or not the proffered evidence should continue to be treated as confidential information and, if so, what protection, if any, may be afforded to such information at the trial.

#### **2.4 Trial Subpoenas**

The parties shall bring to the attention of the Special Master any need for subpoenas for attendance at trial as soon as reasonably practicable.

#### **2.5 Demonstrative Exhibits**

Demonstrative exhibits need not be pre-filed and will not be admitted into evidence. Demonstrative exhibits need not be disclosed prior to use, though the parties may agree to their exchange. Demonstrative exhibits will be subject to critique by opposing counsel to the extent that any argument might be subject to critique.

#### **2.6 Audio/Visual Equipment**

Counsel should contact Mr. John Cramer, the District Court for the District of Columbia's technology manager, with any issues relating to audio/visual equipment. Mr. Cramer can be reached at 202-354-3019. Counsel should also inform the Special Master of their planned use of audio/visual equipment no later than October 21, 2016.

### **3. Objections**

Any objections to this Order will be waived unless filed in writing within ten (10) days of the date of this Order. This Order may be amended. A subsequent Order will issue at or after trial to control post-trial submissions, which will include an opportunity for post-trial briefs.

Dated: July 13, 2016

/s/ Ralph I. Lancaster

Ralph I. Lancaster  
Special Master

Pierce Atwood LLP  
Merrill's Wharf  
254 Commercial Street  
Portland, ME 04101  
Tel: (207) 791-1100  
Fax: (207) 791-1350  
Email: rlancaster@pierceanwood.com

Exhibit E

**APPENDIX A**  
***Florida v. Georgia*, No. 142, Original**  
**Summary of Deadlines**  
**July 13, 2016**

July 23, 2016	Objections to CMO No. 20
September 9, 2016	Exchange of exhibit lists, witness lists, and deposition designations  Provide notice regarding use of “Confidential” documents or information
September 16, 2016	Pre-trial motions and motions <i>in limine</i>  Motions to file under seal  Requests to participate as <i>amicus curiae</i>
September 23, 2016	Exchange of deposition cross-designations
September 30, 2016	Oppositions to pre-trial motions and motions <i>in limine</i>  Oppositions to motions to file under seal
October 7, 2016	Reply to oppositions to pre-trial motions and motions <i>in limine</i>
October 12, 2016	Pre-trial briefs
October 14, 2016	Filing of Florida’s direct testimony
October 21, 2016	Filing of <i>amicus</i> briefs  Advise Special Master regarding planned use of audio/visual equipment
October 26, 2016	Filing of Georgia’s direct testimony  Filing of stickered exhibits and exhibit list
October 31, 2016	Trial commences



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 NEW MEXICO'S CERTIFICATE OF SERVICE

◆  
\_\_\_\_\_  
This is to certify that on June 1, 2021, I caused true and correct copies of **State of New Mexico's Motion for Declaration Concerning the Admissibility of Expert Reports Into Evidence at Trial** to be served by e-mail and/or U.S. Mail, as indicated, upon the Special Master, counsel of record, and all interested parties on the Service List, attached hereto.

Respectfully submitted,

/s/ Jeffrey J. Wechsler

JEFFREY J. WECHSLER  
Special Assistant Attorney General  
MONTGOMERY & ANDREWS, P.A.  
325 Paseo de Peralta  
Santa Fe, NM 87501  
[jwechsler@montand.com](mailto:jwechsler@montand.com)

## **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](mailto: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](mailto:TXvNM141@ca8.uscourts.gov)  
(314) 244-2400

## **MEDIATOR**

### **HON. OLIVER W. WANGER (USDJ RET.)**

WANGER JONES HELSLEY PC  
265 E. River Park Circle, Suite 310  
Fresno, California 93720

[owanger@wjhattorneys.com](mailto:owanger@wjhattorneys.com)  
(559) 233-4800 Ext. 203

### **DEBORAH L. PELL (Paralegal)**

[dpell@wjhattorneys.com](mailto:dpell@wjhattorneys.com)

## **UNITED STATES**

### **ELIZABETH B. PRELOGAR\***

*Acting Solicitor General*

### **EDWIN S KNEEDLER**

*Deputy Solicitor General*

### **JEAN E. WILLIAMS**

*Deputy Assistant Attorney General*

### **FREDERICK LIU**

*Assistant to the Solicitor General*

U.S. DEPARTMENT OF JUSTICE  
950 Pennsylvania Avenue, NW  
Washington, DC 20530-0001

[supremectbriefs@usdoj.gov](mailto: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

### **SETH C. ALLISON, Paralegal**

[james.dubois@usdoj.gov](mailto:james.dubois@usdoj.gov)  
(303) 844-1375  
[lee.leininger@usdoj.gov](mailto:lee.leininger@usdoj.gov)  
(303) 844-1364

[Seth.allison@usdoj.gov](mailto:Seth.allison@usdoj.gov)  
(303)844-7917

**JUDITH E. COLEMAN**  
**JENNIFER A. NAJJAR**  
U.S. DEPARTMENT OF JUSTICE  
Environment & Natural Resources Division  
P.O. Box 7611  
Washington, D.C. 20044-7611

[Judith.coleman@usdoj.gov](mailto:Judith.coleman@usdoj.gov)  
(202) 514-3553  
[jennifer.najjar@usdoj.gov](mailto:jennifer.najjar@usdoj.gov)  
(202) 305-0476

## STATE OF NEW MEXICO

**HECTOR H. BALDERAS**  
*New Mexico Attorney General*  
**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

[hbalderas@nmag.gov](mailto:hbalderas@nmag.gov)  
[tmaestas@nmag.gov](mailto:tmaestas@nmag.gov)  
[ckhoury@nmag.gov](mailto:ckhoury@nmag.gov)  
[zogaz@nmag.gov](mailto:zogaz@nmag.gov)  
[psalazar@nmag.gov](mailto:psalazar@nmag.gov)  
(505) 239-4672

**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** - Paralegal  
**PAULINE WAYLAND** – Paralegal  
**BONNIE DEWITT** – Paralegal

[marcus@roblesrael.com](mailto:marcus@roblesrael.com)  
[luis@roblesrael.com](mailto:luis@roblesrael.com)  
[susan@roblesrael.com](mailto:susan@roblesrael.com)  
[chelsea@roblesrael.com](mailto:chelsea@roblesrael.com)  
[pauline@roblesrael.com](mailto:pauline@roblesrael.com)  
[bonnie@roblesrael.com](mailto:bonnie@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, Colorado 80203

[braley@troutlaw.com](mailto:braley@troutlaw.com)  
[lthompson@troutlaw.com](mailto:lthompson@troutlaw.com)  
[mkopp@troutlaw.com](mailto:mkopp@troutlaw.com)  
(303) 861-1963

**JEFFREY WECHSLER**  
*Special Assistant Attorney General*  
MONTGOMERY & ANDREWS

[jwechsler@montand.com](mailto:jwechsler@montand.com)  
(505) 986-2637

325 Paseo De Peralta  
Santa Fe, NM 87501  
**DIANA LUNA** – Paralegal

[dluna@montand.com](mailto:dluna@montand.com)

**JOHN DRAPER**  
*Special Assistant Attorney General*  
DRAPER & DRAPER LLC  
325 Paseo De Peralta  
Santa Fe, NM 87501  
**DONNA ORMEROD** – Paralegal

[john.draper@draperllc.com](mailto:john.draper@draperllc.com)  
(505) 570-4591

[donna.ormerod@draperllc.com](mailto:donna.ormerod@draperllc.com)

## STATE OF COLORADO

**PHILIP J. WEISER**  
*Attorney General of Colorado*  
**ERIC R. OLSON**  
*Solicitor General*  
**LAIN LEONIAK**  
*Acting First Assistant Attorney General*

[eric.olson@coag.gov](mailto:eric.olson@coag.gov)

**CHAD M. WALLACE\***  
*Senior Assistant Attorney General*  
**PRESTON V. HARTMAN**  
*Assistant Attorney General*  
COLORADO DEPARTMENT OF LAW  
Ralph Carr Judicial Center  
7<sup>th</sup> Floor  
1300 Broadway  
Denver, CO 80203  
**NAN EDWARDS**, Paralegal II

[chad.wallace@coag.gov](mailto:chad.wallace@coag.gov)  
(720) 508-6281 (direct)

[preston.hartman@coag.gov](mailto:preston.hartman@coag.gov)  
(720) 508-6257 (direct)

[nan.edwards@coag.gov](mailto:nan.edwards@coag.gov)

## STATE OF TEXAS

**STUART 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 Capital Mall, Suite 1000  
Sacramento, CA 95814-2403  
**CORENE RODDER - Secretary**  
**CRYSTAL RIVERA - Secretary**  
**CHRISTINA GARRO** – Paralegal

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

[crodder@somachlaw.com](mailto:crodder@somachlaw.com)  
[crivera@somachlaw.com](mailto:crivera@somachlaw.com)  
[cgarro@somachlaw.com](mailto:cgarro@somachlaw.com)

**YOLANDA DE LA CRUZ - Paralegal**

[ydelacruz@somachlaw.com](mailto:ydelacruz@somachlaw.com)

**KEN PAXTON**

*Attorney General*

**JEFFREY C. MATEER**

*First Assistant Attorney General*

**DARREN L. McCARTY**

*Deputy Attorney General for Civil Litigation*

**PRISCILLA M. HUBENAK**

*Chief, Environmental Protection Division*

OFFICE OF ATTORNEY GENERAL  
OF TEXAS

P.O. Box 12548

Austin, TX 78711-2548

(512) 463-2012

(512) 457-4644 Fax

[Priscilla.Hubenak@oag.texas.gov](mailto: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.

P.O. Box 2067

Santé Fe, New Mexico 87504

**Administrative Copy**

(505) 983-3880

[jcbrockmann@newmexicowaterlaw.com](mailto:jcbrockmann@newmexicowaterlaw.com)

[jfstein@newmexicowaterlaw.com](mailto:jfstein@newmexicowaterlaw.com)

[administrator@newmexicowaterlaw.com](mailto: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](mailto: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](mailto:dcaroom@bickerstaff.com)

[smaxwell@bickerstaff.com](mailto:smaxwell@bickerstaff.com)

## **CITY OF LAS CRUCES**

**JAY F. STEIN \***

(505) 983-3880

**JAMES C. BROCKMANN**

[jcbrockmann@newmexicowaterlaw.com](mailto:jcbrockmann@newmexicowaterlaw.com)

STEIN & BROCKMANN, P.A.

[jfstein@newmexicowaterlaw.com](mailto:jfstein@newmexicowaterlaw.com)

P.O. Box 2067

[administrator@newmexicowaterlaw.com](mailto:administrator@newmexicowaterlaw.com)

Santé Fe, New Mexico 87504

**Administrative Copy**

**JENNIFER VEGA-BROWN**

(575) 541-2128

**ROBERT CABELLO**

LAW CRUCES CITY ATTORNEY'S OFFICE

[jvega-brown@las-cruces.org](mailto:jvega-brown@las-cruces.org)

P.O. Box 20000

[rcabello@las-cruces.org](mailto:rcabello@las-cruces.org)

Las Cruces, New Mexico 88004

## **ELEPHANT BUTTE IRRIGATION DISTRICT**

**SAMANTHA R. BARNCastle\***

(575) 636-2377

BARNCastle LAW FIRM, LLC

(575) 636-2688 (fax)

1100 South Main, Suite 20 (88005)

[samantha@h2o-legal.com](mailto:samantha@h2o-legal.com)

P.O. Box 1556

Las Cruces, NM 88004

**JANET CORRELL – Paralegal**

[janet@h2o-legal.com](mailto:janet@h2o-legal.com)

## **EL PASO COUNTY WATER IMPROVEMENT DISTRICT NO. 1**

**MARIA O'BRIEN\***

(505) 848-1803 (direct)

**SARAH M. STEVENSON**

[mobrien@modrall.com](mailto:mobrien@modrall.com)

MODRALL, SPERLING, ROEHL, HARRIS  
& SISK, PA

[sarah.stevenson@modrall.com](mailto:sarah.stevenson@modrall.com)

500 Fourth Street N.W., Suite 1000

Albuquerque, New Mexico 87103-2168

**SHANNON GIFFORD – Legal Assistant**

[shannong@modrall.com](mailto:shannong@modrall.com)

**RENEA HICKS**

[rhicks@renea-hicks.com](mailto:rhicks@renea-hicks.com)

LAW OFFICE OF MAX RENEA HICKS

(512)480-8231

P.O.Box 303187

Austin, TX 78703-0504

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

**ANDREW S. "DREW" MILLER\***

(512) 320-5466

KEMP SMITH LLP

[dmiller@kempsmith.com](mailto:dmiller@kempsmith.com)

919 Congress Avenue, Suite 1305

Austin, TX 78701

## 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 Attorney General*

120 S. W. 10th Ave., 2nd Floor

Topeka, KS 66612

(785) 296-2215

[toby.crouse@ag.ks.gov](mailto:toby.crouse@ag.ks.gov)

[bryan.clark@ag.ks.gov](mailto:bryan.clark@ag.ks.gov)

## NEW MEXICO PECAN GROWERS

**TESSA T. DAVIDSON\***

DAVIDSON LAW FIRM, LLC

4206 Corrales Road

P.O. Box 2240

Corrales, NM 87048

**JO HARDEN – Paralegal**

[ttd@tessadavidson.com](mailto:ttd@tessadavidson.com)

(505) 792-3636

[jo@tessadavidson.com](mailto: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](mailto:john@uttonkery.com)

*General Counsel*

New Mexico State University

Hadley Hall Room 132

2850 Weddell Road

Las Cruces, NM 88003

[gencounsel@nmsu.edu](mailto:gencounsel@nmsu.edu)

(575) 646-2446

## 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**

(575) 624-2463

[ajolsen@h2olawyers.com](mailto:ajolsen@h2olawyers.com)

[mkauai@h2olawyers.com](mailto:mkauai@h2olawyers.com)

[rbartlett@h2olawyers.com](mailto:rbartlett@h2olawyers.com)