

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**

---

**NEW MEXICO'S REPLY IN SUPPORT OF MOTION TO STRIKE  
TEXAS'S EXPERT DISCLOSURES ON WATER QUALITY**

---

HECTOR H. BALDERAS  
Attorney General of New Mexico  
TANIA MAESTAS  
Chief Deputy Attorney General  
STATE OF NEW MEXICO  
P.O. Drawer 1508  
Santa Fe, New Mexico 87501  
505-239-4672

MARCUS J. RAEL, JR.\*  
DAVID A. ROMAN  
Special Assistant Attorneys General  
ROBLES, RAEL & ANAYA, P.C.  
500 Marquette Avenue NW,  
Suite 700  
Albuquerque, New Mexico 87102  
505-242-2228  
[marcus@roblesrael.com](mailto:marcus@roblesrael.com)  
*\*Counsel of Record*

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

September 30, 2019

**TABLE OF CONTENTS**

ARGUMENT..... 1

    I.    New Mexico’s motion is procedurally proper. .... 1

    II.   Texas’s attempt to introduce water quality claims via its expert disclosures  
          violates Federal Rule of Civil Procedure 8. .... 2

    III.  Texas’s water quality disclosures are not relevant to the claims in its Complaint  
          and fall outside the scope of discovery. .... 5

    IV.  New Mexico’s conferral with Texas prior to filing the Motion to Strike satisfied  
          the requirements of Section 12 of the CMP. .... 6

    V.   New Mexico did not have notice that Texas was raising water quality claims. .... 8

    VI.  New Mexico has made it clear that it is not seeking to delay the progress of this  
          case. .... 9

CONCLUSION..... 10

**TABLE OF AUTHORITIES**

**Cases**

*Bell Atlantic Corp. v. Twombly*, 550 U.S. (2007)..... 5  
*Carter v. Ford Motor Co.*, 561 F.3d (6<sup>th</sup> Cir. 2009) ..... 1, 2  
*Deluxe Fin. Servs.. LLC v. Shaw*, WL 7369890 (D. Minn. Feb. 13, 2017)..... 5  
*Harris v. Bornhorst*, 513 F.3d (6<sup>th</sup> Cir. 2008)..... 1, 2  
*Oliver v. Ralph’s Grocery Co*, 654 F.3d (9<sup>th</sup> Cir. 2011)..... 3  
*Oppenheimer Fund v. Sanders*, 437 U.S. (1978)..... 5  
*TL of Florida, Inc. v. Terex Corp.*, 706 Fed. App’x. (11<sup>th</sup> Cir. 2017) ..... 4  
*Vallejo v. Amgen*, 903 F.3d (8<sup>th</sup> Cir. 2018)..... 6

**Other Authorities**

*Montana v. Wyoming*, Memorandum Opinion of the Special Master on Montana’s Claims Under Article V(B) (Dec. 20, 2011) ..... 2, 3

**Rules**

FED. R. CIV. P. 8..... 2, 3, 5  
FED. R. CIV. P. 12(b)(6) ..... 2  
FED. R. CIV. P. 26..... 2, 5  
FED. R. CIV. P. 26(a)(2)(C) ..... 7  
FED. R. CIV. P. 26(b)(1) ..... 5, 6  
SUP. CT. R. 17 ..... 3

The State of New Mexico (“New Mexico”) respectfully submits this Reply in Support of its Motion to Strike Texas’s Expert Disclosures on Water Quality (“Motion to Strike”).

## **ARGUMENT**

New Mexico’s Motion to Strike is a proper procedural vehicle to remedy an improper attempt by the State of Texas (“Texas”) to circumvent the pleading requirements in original actions and introduce new claims and theories outside the scope of its Complaint without first seeking to amend that complaint. Texas’s improper expert disclosures should be struck unless and until Texas amends its Complaint to explicitly add a water quality claim.

### **I. New Mexico’s motion is procedurally proper.**

Throughout its Response, Texas seeks to characterize the Motion to Strike as “bizarre,” Tex. Resp. at 2, or “extraordinary,” *id.* at 1. It is not clear why Texas attempts to paint the Motion to Strike as some kind of aberration. In fact, it is a necessary response to Texas’s unusual step of raising new claims in the middle of discovery via its expert disclosures.

Had New Mexico failed to object to Texas’s newly raised quality claims, these claims might have proceeded to trial without ever being properly vetted. Two cases Texas cites, *Carter v. Ford Motor Co.*, 561 F.3d 562 (6<sup>th</sup> Cir. 2009) and *Harris v. Bornhorst*, 513 F.3d 503 (6<sup>th</sup> Cir. 2008), underscore this risk. Although it is not clear that these cases actually apply in this context, both hold it is proper to consider the course of proceedings to determine the scope of an ambiguous complaint. *Harris*, 513 F.3d at 516; *Carter*, 561 F.3d at 568. If acquiescence to a claim “not explicitly set forth in the complaint,” *Harris*, 513 F.3d at 516-17, can permit that claim to proceed to trial, then there is all the more reason for New Mexico to seek for Texas either to clarify the nature of its quality claim by amending its Complaint, or to stop pursuing that claim.

As stated, however, it is unlikely the rule from these cases applies here. They hold it is proper to consider the course of the proceedings to determine the scope of a complaint only where that complaint is “ambiguous.” *Id.* at 516; *Carter*, 561 F.3d at 566. Texas’s complaint is decidedly not ambiguous, and clearly states that Texas is claiming injury based on the quantity of water lost to New Mexico. Compl. Para. 27.

Texas further argues New Mexico should have cast its Motion to Strike as a motion to dismiss pursuant to Federal Rule of Civil Procedure 12(b)(6). Tex. Resp. 13. There are several problems with this argument, not the least of which is that New Mexico could not move to dismiss allegations that were not contained within Texas’s Complaint. The proper procedural vehicle for curtailing claims not raised in a complaint is unclear, which is why a Rule 12(b)(6) motion was not filed in *Montana v. Wyoming* when a similar situation arose. *See Montana v. Wyoming*, Memorandum Opinion of the Special Master on Montana’s Claims Under Article V(B) (Dec. 20, 2011) (“Montana Order”). Texas also did not make its disclosures regarding quality until well after the time for filing a Rule 12(b)(6) motion had passed. In these circumstances, a Rule 12(b)(6) motion would have been procedurally improper and would not have enabled New Mexico to obtain the relief it seeks.

**II. Texas’s attempt to introduce water quality claims via its expert disclosures violates Federal Rule of Civil Procedure 8.**

Texas next suggests New Mexico is conflating Rules 8 and 26 of the Federal Rules of Civil Procedure to attack Texas’s expert disclosures, even though Texas argues these comply with both Rules. Tex. Resp. 10-12. With regard to Rule 8, Texas specifically argues its Complaint meets the notice pleading requirements of that rule, and that it cannot be applied to limit discovery in the manner New Mexico requests. *Id.* at 13-16.

Contrary to Texas's arguments, courts have applied Rule 8 in exactly the manner New Mexico advocates. *Oliver v. Ralph's Grocery Co.*, 654 F.3d 903 (9<sup>th</sup> Cir. 2011) is a perfect example. While it is true the case involved an alleged violation of the Americans with Disabilities Act in the Ninth Circuit, Texas provides no persuasive reason to limit its holding to that context. Instead, *Oliver* clearly demonstrates that when a plaintiff adds new claims by means of an expert disclosure, this runs afoul of Rule 8.

*Montana v. Wyoming* provides another example of Rule 8 precluding the pursuit of claims *and discovery* outside the scope of a complaint. Texas argues *Montana v. Wyoming* is not on point, but it fails to explain why. In that case, the special master applied Rule 8's fair notice requirement, along with the requirement in Supreme Court Rule 17 that a plaintiff seek leave of the Court before filing a complaint, to prohibit Montana from pursuing claims not pleaded in its complaint. Again, the special master ruled in that case that Montana couldn't pursue claims arising under Art. V(B) of the Yellowstone River Compact because, even though its complaint, broadly construed, encompassed Art. V(B), its specific factual allegations focused only on matters relevant to Art. V(A). Montana Order at 1. To paraphrase Special Master Thompson: "In interpreting [Texas's] Complaint, the question therefore is not what unspecified factual claims might conceivably be covered by the Complaint's broad, general allegations of injury, but instead what allegations have been pled with sufficient transparency to have given [New Mexico] 'fair notice' of the claims against it and the 'grounds' on which the claim rests." *Id.* at 10. The specific factual allegations in Texas's Complaint relate only to the quantity of water it received, not the quality. Tex. Compl. ¶ 27.

Further, Texas mischaracterizes the special master's ruling in the Montana Order regarding discovery. While it is true Special Master Thompson cautioned that his order should

not be construed to “unduly” limit discovery, he said this because information relevant to other portions of the Yellowstone River Compact “will often be relevant to a resolution of Montana’s allegations regarding pre-1950 uses,” which were covered by Article V(A) of that compact. Montana Order at 18. He then held that Montana “must limit its discovery to *information relevant to the allegations that it has currently pled.*” *Id.* (emphasis added). In short, the Montana Order is directly relevant to this dispute and demonstrates why Texas’s quality disclosures should be struck unless it amends its complaint.

Texas further argues New Mexico is conflating a claim for damages with a theory of damages, which Texas had no obligation to plead in its Complaint.<sup>1</sup> Tex. Resp. 13-14. To begin with, this supposed rule is far from widely accepted, as numerous examples of courts granting or denying a plaintiff leave to amend a complaint to add a new theory of damages can be found in federal cases. *E.g., TL of Florida, Inc. v. Terex Corp.*, 706 Fed. App’x. (11<sup>th</sup> Cir. 2017) (upholding district court’s denial of leave to amend a complaint to add a new theory of damages after discovery closed). But further, Texas’s arguments only reinforce why it should be required to amend its Complaint to pursue quality claims. It is difficult if not impossible for New Mexico to evaluate, solely on the basis of expert disclosures and the fact that Texas has sought discovery on topics related to water quality, what the nature of Texas’s water quality claims or issues are. Unlike the plaintiff in *Terex Corp.*, Texas has plenty of time remaining in this case in which to seek leave to amend its Complaint. The Special Master should order it to do so if it wishes to pursue any claims related to water quality.

---

<sup>1</sup> Texas’s argument also implies that it has known about its quality claims for some time, but had no need to disclose them prior to making its expert disclosures. However, Texas expert Dr. Joel Kimmelshue has acknowledged that he was asked to evaluate salinity impacts only within the last year. Rough Tr. of Deposition of Joel Kimmelshue p. 76 (Sept. 12, 2019), attached as Exhibit A to the Declaration of David A. Roman in Support of New Mexico’s Motion to Strike Texas’s Expert Disclosures on Water Quality.

**III. Texas’s water quality disclosures are not relevant to the claims in its Complaint and fall outside the scope of discovery.**

Texas’s characterization of the scope of discovery and the relevance of quality information to its claims, Tex. Resp. 17-19, also fails to grapple with the fair notice requirement imposed by Rule 8 and *Bell Atlantic Corp. v. Twombly*, 550 U.S. 544 (2007). Texas appears to believe Rule 8 allows it to broadly allege harm stemming from New Mexico’s purported excessive water use and then seek discovery through Rule 26 into any issue that might pertain to that subject matter.<sup>2</sup> However, *Twombly* requires Texas to give New Mexico fair notice not only that it is claiming a Compact violation, but also of the nature of that claim “and the grounds upon which it rests.” *Id.* at 555. If New Mexico does not receive fair notice of a claim, it lies beyond the scope of the Complaint, and discovery related to that claim, whether sought by Texas or disclosed by Texas, is irrelevant to this case and outside the scope of discovery under Rule 26(b)(1).

Texas’s Complaint gave New Mexico fair notice only that Texas was claiming New Mexico was depleting flows of Rio Grande surface water meant for delivery to water users in Texas, Compl. ¶ 27, not that Texas claimed New Mexico was forcing its water users to use relatively poor-quality groundwater. Because New Mexico did not have fair notice of this claim, Texas cannot seek discovery to support it, and Texas cannot seek to insert it into this case by means of its expert disclosures.

---

<sup>2</sup> Texas cites *Oppenheimer Fund v. Sanders*, 437 U.S. 340, 351 (1978) for the proposition that discovery is “not limited to issues raised by the pleadings.” Tex. Resp. 11. However, *Oppenheimer* discusses an outdated version of Rule 26 and has been abrogated by subsequent amendments to the Rule. *Compare Oppenheimer*, 437 U.S. at 341 (“The general scope of discovery is defined by Fed. Rule Civ. Proc. 26(b)(1) as follows: ‘Parties may obtain discovery regarding any matter, not privileged, which is relevant to the *subject matter* involved in the pending action....’” (quoting Fed. R. Civ. P. 26(b)(1) (1970) (emphasis added)) with Fed. R. Civ. P. 26(b)(1) (2015) (“Parties may obtain discovery regarding any nonprivileged matter that is relevant to any party’s *claim or defense* . . . .”) (emphasis added). Following adoption of the 2015 revisions to Rule 26, courts have admonished litigants for continuing to cite *Oppenheimer* to support overbroad discovery requests. *E.g., Deluxe Fin. Servs., LLC v. Shaw*, No. 16-CV-3065 (JRT/HB), 2017 WL 7369890, at \*4 & n.3 (D. Minn. Feb. 13, 2017).



Texas further argues not only that its quality disclosures are relevant, but also that New Mexico's requested relief is not proportional. However, New Mexico is not objecting to Texas's disclosures on proportionality grounds, but on the basis of relevance. If the Special Master finds Texas's disclosures are not relevant to the allegations in this case, then they are outside the scope of discovery, as provided in Rule 26(b)(1), and are inappropriate unless Texas seeks to amend its Complaint. New Mexico is not also required to establish that Texas's disclosures are somehow disproportionate to the needs of this case before it can obtain relief.

*Vallejo v. Amgen*, 903 F.3d 733 (8<sup>th</sup> Cir. 2018), which Texas cites for the proposition that New Mexico must "provide requisite evidentiary support" to obtain the relief it seeks, Tex. Resp. 25, actually demonstrates why Texas is wrong.<sup>3</sup> *Vallejo* recognized that district courts can rule on discovery disputes "based on common sense" and the greater context of the case. *Id.* Here, there is no need for affidavits or other documentary evidence for the Special Master to use common sense to conclude Texas's quality disclosures are not relevant to the allegations in Texas's Complaint. If Texas wants to pursue quality claims, it should amend its Complaint.

#### **IV. New Mexico's conferral with Texas prior to filing the Motion to Strike satisfied the requirements of Section 12 of the CMP.**

Citing an affidavit by Texas's counsel of record, Stuart Somach, Texas asserts New Mexico did not properly notify Texas of its concerns regarding Texas's water quality disclosures or inform Texas of its intent to file the Motion to Strike; therefore, Texas urges that the Motion to Strike be denied. *Id.* at 30-32. New Mexico is mystified by this argument. As New Mexico's

---

<sup>3</sup> *Vallejo* also is not on point because it addressed whether a court had abused its discretion by declining to order discovery, not whether proffered discovery was outside the scope of Rule 26(b)(1). 903 F.3d at 733. Even if *Vallejo* were on point, Texas is simply wrong that *Vallejo* requires the introduction of documentary evidence to support a motion for a protective order. *Vallejo* actually upheld the district court's ruling that the plaintiffs' discovery requests were overbroad and unreasonable "despite the lack of affidavits or other sworn statements" provided by the defendant. *Id.* at 744.

counsel, David Roman, explains in his Declaration in Support of New Mexico's Motion to Strike Texas's Expert Disclosures on Water Quality, submitted concurrently herewith, he discussed New Mexico's concerns regarding Texas's quality disclosures with Mr. Somach in a July 2019 call. Roman Aff. ¶ 12. Mr. Roman conferred with both Mr. Somach and Stephen MacFarlane, counsel for the United States, that day regarding three separate potential motions. *Id.* On the issue of quality disclosures, Mr. Somach informed Mr. Roman that Texas disagreed these disclosures were outside the scope of Texas's Complaint and would not withdraw them. *Id.* ¶ 14. Mr. Roman then informed Mr. Somach New Mexico would likely file a motion to strike these disclosures. *Id.*

Mr. Roman also raised an issue with Mr. Somach regarding deficiencies in Texas's disclosure of several non-retained expert witnesses, and Mr. Somach suggested Texas would supplement these disclosures with additional information if New Mexico would send a letter detailing the concerns with these disclosures. *Id.* ¶ 13. Mr. Roman agreed to send and did send such a letter, but Mr. Roman did not agree to send a letter describing its concerns with Texas's water quality disclosures, nor did Mr. Somach request that New Mexico do so. *Id.* ¶ 14.

Because it appeared Texas's non-retained expert witnesses might also offer opinions related to water quality, and to simplify the briefing schedule for any motions it did file, New Mexico elected to evaluate Texas's supplemental disclosure of these non-retained experts prior to filing its Motion to Strike. *Id.* ¶ 16. Unfortunately, Texas did not make its supplemental disclosures until August 12, 2019. *Id.* ¶ 17. After evaluating these disclosures, New Mexico believes they still do not satisfy the requirements of Rule 26(a)(2)(C) and continues to work with Texas to remedy these issues. *Id.* However, New Mexico determined it could no longer delay filing its Motion to Strike.

In light of the foregoing, New Mexico does not believe additional consultation was needed. Mr. Somach made it very clear that Texas firmly believed its quality disclosures were proper, and Mr. Roman made it equally clear that New Mexico disagreed. *Id.* ¶ 14. Based on the nature of the relief New Mexico is seeking and Texas’s adamant position that its quality disclosures were properly made, New Mexico did not believe further conferral was required or had the potential to be fruitful. *Id.* ¶ 15. For Texas to claim now that New Mexico’s conferral was inadequate is baffling.

**V. New Mexico did not have notice that Texas was raising water quality claims.**

Texas also argues New Mexico has known water quality was an issue in this case for “almost a year” because Texas served discovery requesting the disclosure of documents relating to water quality, and also asked questions about water quality in several depositions. *Tex. Resp.* 28-29. In Texas’s view, New Mexico’s failure to confer with Texas shortly after receiving Texas’s November 8, 2018 Request for Production violated the CMP and essentially waived New Mexico’s right to object to Texas’s late attempt to inject quality issues into this case. *Id.*

Texas’s theory falls apart in context. Regarding Texas’s Request for Production, on November 8, 2018, Texas submitted 90 requests for production to New Mexico. *Roman Aff.* ¶ 2. Of these, only two requested documents related to water quality, and these only sought information on water quality in New Mexico. *Id.* As Texas admits, New Mexico submitted timely objections to these requests, protesting that these requests did not seek evidence relevant to any party’s claim or defense. *Id.* ¶ 3. New Mexico subsequently declined to produce any documents responsive to these quality requests. *Id.* ¶¶ 4-5. Thereafter, Texas did not confer with New Mexico regarding its objections to Texas’s quality requests, make any attempt to explain their relevance to the claims or defenses in this case, seek to compel discovery, or

otherwise protest New Mexico's refusal to produce documents responsive to these requests. *Id.* ¶ 6. New Mexico took this to mean Texas was abandoning this line of inquiry. *Id.*

As for the depositions Texas references, New Mexico acknowledges that Texas's attorneys asked some deponents questions pertaining to water quality. It was not clear to New Mexico why Texas was asking these questions, but New Mexico assumed Texas's attorneys were fishing for possible new claims or defenses. *Id.* ¶ 8. To guard against this possibility, New Mexico's attorneys also asked some follow-up questions related to water quality. *Id.* Again, against the wider background of discovery, it did not appear to New Mexico that these questions related to any broader shift in Texas's claims or strategy.<sup>4</sup> *Id.* ¶ 9. In addition, almost all of the depositions Texas cites were taken before New Mexico objected to Texas's quality requests on December 24, 2018 and Texas's subsequent failure to respond to that objection. *Id.* ¶¶ 7, 9. Under these circumstances, it did not appear that any significant discovery abuse was occurring, and it certainly did not appear Texas was about to introduce a set of entirely new claims via its expert disclosures.

**VI. New Mexico has made it clear that it is not seeking to delay the progress of this case.**

Texas further argues, as it has throughout this case, that the duration of this case is somehow New Mexico's fault, and that New Mexico's Motion to Strike represents another attempt to delay trial. Tex. Resp. 32-34. Nothing could be further from the truth. New Mexico made it perfectly clear in the Motion to Strike that it is seeking new disclosure and rebuttal deadlines only for quality disclosures, and that it remains prepared to make all other expert disclosures on October 31, 2019, in accordance with the schedule established by the CMP, as

---

<sup>4</sup> As for New Mexico's depositions of Texas's expert witnesses and the City of El Paso's Water Utility, these depositions were taken after Texas made its extensive expert disclosures pertaining to water quality. Roman Aff. ¶ 18. New Mexico had to inquire into water quality issues to guard against the possibility this Motion will be denied.

amended. Mot. to Strike 11 & n.3. New Mexico did not request an extension to any other deadlines, and remains prepared to comply with the schedule established in the CMP, including a proposed trial beginning in March or April of 2021. On the contrary, since the Special Master approved the CMP and established the schedule for this case in September 2018, New Mexico has not sought any substantial changes to the deadlines therein. Those deadlines have changed substantially on only two occasions: in response to the government shutdown in early 2019, and at the request of Texas, which sought a two-month extension to its expert disclosure deadline. *See* Joint Letter of Texas and the United States to the Special Master (Nov. 6, 2018). If any party is responsible for delay in this case, it is Texas, not New Mexico.

### **CONCLUSION**

Wherefore, New Mexico respectfully requests that the Special Master GRANT the Motion to Strike and enter and order (1) striking Texas's expert disclosures related to water quality, (2) limiting the scope of discovery to matters pled in Texas's Complaint, and (3) requiring Texas to amend its Complaint if it wishes to pursue water quality claims in this case.

Respectfully submitted: September 30, 2019.

HECTOR H. BALDERAS  
Attorney General of New Mexico  
TANIA MAESTAS  
Chief Deputy Attorney General  
STATE OF NEW MEXICO  
P.O. Drawer 1508  
Santa Fe, New Mexico 87501  
505-239-4672

MARCUS J. RAEL, JR.\*  
DAVID A. ROMAN  
Special Assistant Attorneys General  
ROBLES, RAEL & ANAYA, P.C.  
500 Marquette Avenue NW,  
Suite 700  
Albuquerque, New Mexico 87102  
505-242-2228  
[marcus@roblesrael.com](mailto:marcus@roblesrael.com)

*\*Counsel of Record*

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

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 the 30th of September, 2019, I caused true and correct copies of **New Mexico's Reply in Support of Motion to Strike Texas's Expert Disclosures on Water Quality** to be served by e-mail and U.S. Mail on the Special Master and by e-mail to all counsel of record and interested parties on the Service List, attached hereto.

Respectfully submitted this 30<sup>th</sup> day of September, 2019.

*/s/ Michael A. Kopp*

\_\_\_\_\_  
Michael A. Kopp  
Special Assistant Attorney General  
TROUT RALEY  
1120 Lincoln Street, Suite 1600  
Denver, Colorado 80203  
(303) 861-1963

**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

**UNITED STATES**

**JAMES J. DUBOIS\***

**R. LEE LEININGER**

**THOMAS K. SNODGRASS**

U.S. DEPARTMENT OF JUSTICE  
Environment & Natural Resources Division  
999 18th Street  
South Terrace – Suite 370  
Denver, Colorado 80202

**SETH C. ALLISON, Paralegal**

**NOEL J. FRANCISCO\***

*Solicitor General*

**JEFFREY H. WOOD**

*Acting Assistant Attorney General*

**ANN O'CONNELL**

*Assistant to the Solicitor General*

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

**STEPHEN M. MACFARLANE**

U.S. DEPARTMENT OF JUSTICE  
Environment & Natural Resources Division  
501 I Street, Suite 9-700  
Sacramento, CA 95814

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

[Lee.leininger@usdoj.gov](mailto:Lee.leininger@usdoj.gov)  
(303)844-1364

[Thomas.snodgrass@usdoj.gov](mailto:Thomas.snodgrass@usdoj.gov)  
(303)844-7233

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

[supremectbriefs@usdoj.gov](mailto:supremectbriefs@usdoj.gov)  
(202)514-2217

[stephen.macfarlane@usdoj.gov](mailto:stephen.macfarlane@usdoj.gov)  
(916) 930-2204



**JUDITH E. COLEMAN**  
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

**STATE OF NEW MEXICO**

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

[hbalderas@nmag.gov](mailto:hbalderas@nmag.gov)  
[tmnaestas@nmag.gov](mailto:tmnaestas@nmag.gov)

**TANIA MAESTAS**  
*Chief Deputy Attorney General*  
STATE OF NEW MEXICO

[psalazar@nmag.gov](mailto:psalazar@nmag.gov)  
(505) 239-4672

P.O. Drawer 1508  
Santa Fe, New Mexico 87501  
**PATRICIA SALAZAR** - Assistant

**MARCUS J. RAEL, JR.\***  
**DAVID A. ROMAN**  
*Special Assistant Attorneys General*  
ROBLES, RAEL & ANAYA, P.C.  
500 Marquette Avenue NW, Suite 700  
Albuquerque, New Mexico 87102  
**CHELSEA SANDOVAL** - Paralegal

[marcus@roblesrael.com](mailto:marcus@roblesrael.com)  
[droman@roblesrael.com](mailto:droman@roblesrael.com)  
[chelsea@roblesrael.com](mailto:chelsea@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

**STATE OF COLORADO**

**PHILIP J. WEISER**  
*Attorney General of Colorado*  
**ERIC R. OLSON**  
*Solicitor General*  
**KAREN M. KWON**  
*First Assistant Attorney General*  
**CHAD M. WALLACE\***  
*Senior Assistant Attorney General*  
COLORADO DEPARTMENT OF LAW  
1300 Broadway  
Denver, CO 80203

[eric.olson@coag.gov](mailto:eric.olson@coag.gov)  
[karen.kwon@coag.gov](mailto:karen.kwon@coag.gov)  
[chad.wallace@coag.gov](mailto:chad.wallace@coag.gov)  
[nan.edwards@coag.gov](mailto:nan.edwards@coag.gov)  
(720) 508-6281

NAN EDWARDS, Paralegal

STATE OF TEXAS

**STUART SOMACH\***  
**ANDREW M. HITCHINGS**  
**ROBERT B. HOFFMAN**  
**FRANCIS M. "MAC" GOLDSBERRY II**  
**THERESA C. BARFIELD**  
**SARAH A. KLAHN**  
**BRITTANY K. JOHNSON**  
**RICHARD S. DEITCHMAN**  
SOMACH SIMMONS & DUNN, PC  
500 Capital Mall, Suite 1000  
Sacramento, CA 95814  
**CORENE RODDER - Secretary**  
**CHRISTINA GARRO – Paralegal**  
**YOLANDA DE LA CRUZ - Paralegal**  
**RENA WADE - Secretary**

[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)  
[cgarro@somachlaw.com](mailto:cgarro@somachlaw.com)  
[crodder@somachlaw.com](mailto:crodder@somachlaw.com)  
[ydelacruz@somachlaw.com](mailto:ydelacruz@somachlaw.com)  
[rwade@somachlaw.com](mailto:rwade@somachlaw.com)  
(512) 463-2012

**KEN PAXTON**

*Attorney General*

**JEFFREY C. MATEER**

*First Assistant Attorney General*

**BRANTLEY STARR**

*Deputy First Assistant Attorney General*

**JAMES E. DAVIS, Deputy**

*Attorney General*

**PRISCILLA M. HUBENAK**

*Chief, Environmental Protection Division*

P.O. Box 12548

Austin, TX 78711-2548

[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\***

(505) 983-3880

**JAY F. STEIN**

[jbrockmann@newmexicowaterlaw.com](mailto:jbrockmann@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

**PETER AUH**

(505) 289-3092

ALBUQUERQUE BERNALILLO COUNTY

[pauh@abcwua.org](mailto:pauh@abcwua.org)

WATER UTILITY AUTHORITY

P.O. Box 568

Albuquerque, NM 87103-0568

**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 \***  
**JAMES C. BROCKMANN**  
STEIN & BROCKMANN, P.A.  
P.O. Box 2067  
Santé Fe, New Mexico 87504

(505) 983-3880  
[jcbrockmann@newmexicowaterlaw.com](mailto:jcbrockmann@newmexicowaterlaw.com)  
[jfstein@newmexicowaterlaw.com](mailto:jfstein@newmexicowaterlaw.com)  
[administrator@newmexicowaterlaw.com](mailto:administrator@newmexicowaterlaw.com)

**JENNIFER VEGA-BROWN**  
**MARCIA B. DRIGGERS**  
LAW CRUCES CITY ATTORNEY'S OFFICE  
P.O. Box 20000  
Las Cruces, New Mexico 88004

(575) 541-2128  
[jvega-brown@las-cruces.org](mailto:jvega-brown@las-cruces.org)  
[marcyd@las-cruces.org](mailto:marcyd@las-cruces.org)

**ELEPHANT BUTTE IRRIGATION DISTRICT**

**SAMANTHA R. BARNCastle\***  
BARNCastle LAW FIRM, LLC  
1100 South Main, Ste. 20  
P.O. Box 1556  
Las Cruces, NM 88004  
**JANET CORRELL – Paralegal**

(575) 636-2377  
(575) 636-2688 (fax)  
[samantha@h2o-legal.com](mailto:samantha@h2o-legal.com)  
[janet@h2o-legal.com](mailto:janet@h2o-legal.com)

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

**MARIA O'BRIEN\***  
**SARAH M. STEVENSON**  
MODRALL, SPERLING, ROEHL, HARRIS  
& SISK, PA  
Suite 1000  
500 Fourth Street N.W.  
P.O. Box 2168  
Albuquerque, New Mexico 87103-2168  
**SHANNON GIFFORD – Legal Assistant**

(505) 848-1803 (direct)  
[mobrien@modrall.com](mailto:mobrien@modrall.com)  
[sarah.stevenson@modrall.com](mailto:sarah.stevenson@modrall.com)  
[shannong@modrall.com](mailto:shannong@modrall.com)

**LEANNE MARTONY – Legal Assistant**

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

**JAMES M. SPEER, JR.**

c/o El Paso County Water Improvement District No. 1  
13247 Alameda Ave.  
Clint, Texas 79836-0749

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

**ANDREW S. “DREW” MILLER\***

KEMP SMITH LLP  
919 Congress Avenue, Suite 1305  
Austin, TX 78701

(512) 320-5466

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

**STATE OF KANSAS**

**DEREK SCHMIDT**

*Attorney General of Kansas*

**JEFFREY A. CHANAY**

*Chief Deputy Attorney General*

**TOBY CROUSE\***

*Solicitor General of Kansas*

**BRYAN C. CLARK**

*Assistant Solicitor General*

**DWIGHT R. CARSWELL**

*Assistant 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

**PATRICIA MCCAN – Paralegal**

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

(505) 792-3636

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

**NEW MEXICO STATE UNIVERSITY**

**JOHN W. UTTON\***

UTTON & KERY, P.A.

P.O. Box 2386

Santa Fe, New Mexico 87504

(505) 699-1445

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

**GENERAL COUNSEL**

(575) 646-2446

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

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