

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  
OCTOBER 4, 2019 STATUS REPORT**

HECTOR H. BALDERAS  
New Mexico Attorney General  
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*

BENNET 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

October 4, 2019

COMES NOW the State of New Mexico and respectfully submits this status report to the Special Master pursuant to Paragraph 5 of the Case Management Plan.

Since New Mexico filed its previous Status Report on September 6, 2019, the following developments have occurred in *Texas v. New Mexico and Colorado*, No. 141, Original: First, New Mexico scheduled and took the depositions of several of Texas's expert witnesses. On September 10 and 11, 2019, New Mexico filed notices of depositions and subpoenas duces tecum for six expert witnesses. Five of these depositions have been taken as of the date of this status report, and one deposition will be taken October 10 and 11, 2019. On October 4, 2019, New Mexico also filed an additional notice of deposition and subpoena duces tecum for an additional expert witness, which will be taken October 15 and 16, 2019. During or just before several of these depositions, Texas made additional productions of documents considered by each witness, on September 13, 18, and 24 and October 2, 2019. In addition, Texas initially declined to disclose certain information considered by its expert Joel Kimmelshue, claiming trade secret protections, but during Dr. Kimmelshue's deposition on September 19 and 20, 2019, Texas changed its position and agreed to disclose this information subject to a confidentiality agreement. The parties have negotiated such an agreement and intend to present it to the Special Master soon. Pending execution and adoption of the agreement by the Special Master, this information still has not been disclosed.

Second, New Mexico took the deposition of the City of El Paso's Water Utility on September 12 and 13, 2019. Third, on September 16, 2019, the United States of America made a supplemental disclosure of expert information regarding its non-retained expert witness, Dr. Ian Ferguson. In light of this supplemental disclosure, New Mexico withdrew its motion to exclude Dr. Ferguson's expert testimony on September 20, 2019. Fourth, on September 23, 2019, Texas

filed a response brief opposing New Mexico's motion to strike Texas's water quality expert disclosures in accordance with the briefing schedule established by the Special Master on September 9, 2019. New Mexico filed a reply in support of that motion on September 30, 2019, also in accordance with the briefing schedule.

Fifth, the parties have made additional disclosures and productions. On September 17, 2019, the United States made a supplemental expert disclosure of its expert witness Jean Moran. On September 19, 2019, Elephant Butte Irrigation District made a second supplemental production of documents in response to New Mexico's Request for Production of Documents. On September 26, 2019, El Paso County Water Improvement District No. 1 also made a supplemental production of documents in response to New Mexico's Request for Production of Documents.

New Mexico continues to process the results of the search of its computer systems for relevant electronically stored information (ESI) and will soon begin disclosing relevant documents identified in that search on a rolling basis. New Mexico also continues to review the expert disclosures of Texas and the United States and prepare its own disclosures for October 31, 2019, pursuant to the Case Management Plan. Finally, New Mexico continues to gather responsive documents and will disclose any additional relevant documents it uncovers as expeditiously as possible. New Mexico also participates in regular discovery management calls with the other parties.

Respectfully submitted this 4<sup>th</sup> day of October, 2019,

HECTOR H. BALDERAS  
New Mexico Attorney General  
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*

BENNET 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

### **CERTIFICATE OF SERVICE**

This is to certify that on the 4<sup>th</sup> of October, 2019, I caused true and correct copies of the **State of New Mexico's October 4, 2019 Status Report** 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 4<sup>th</sup> day of October, 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\***  
**JAY F. STEIN**  
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)

**PETER AUH**  
ALBUQUERQUE BERNALILLO COUNTY  
WATER UTILITY AUTHORITY

(505) 289-3092  
[pauh@abcwua.org](mailto:pauh@abcwua.org)

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

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

**JANET CORRELL – Paralegal**

[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

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

**SHANNON GIFFORD – Legal Assistant**  
**LEANNE MARTONY – Legal Assistant**

[shannong@modrall.com](mailto:shannong@modrall.com)  
[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**  
New Mexico State University  
Hadley Hall Room 132  
2850 Weddell Road  
Las Cruces, NM 88003

(575) 646-2446  
[gencounsel@nmsu.edu](mailto:gencounsel@nmsu.edu)