



U.S. Department of Justice

Environment and Natural Resources Division

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May 28, 2020

Special Master Michael J. Melloy
United States Courthouse
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P.O. Box 22
Cedar Rapids, IA 52401-2101
Email: TXvNM141@ca8.uscourts.gov

*Re: State of Texas v. State of New Mexico and State of Colorado
United States Supreme Court No. 141 Original*

Dear Special Master Melloy:

The United States respectfully submits this Status Report ahead of the May 29, 2020 hearing in order to address the agenda items set forth in the Order of May 26, 2020.

A. Continued discussion concerning appointment of a mediator.

The United States has begun exploring possible mediators, but is not yet in position to recommend a mediator, or provide a CV for the parties' consideration.

B. Discovery Issues.

1. Whether the parties should be required to file either expert designations with the Court.

The United States understands that the Court is proposing that the parties file their expert witness reports or designations with the Court, exclusive of the supporting documents that accompanied the reports or designations. The United States does not oppose the filing of the expert reports or designations with the Court, reserving any potential hearsay objections for trial, but requests that the Special Master clarify extent of the backup figures and illustrations that the Court expects to receive.

2. Ongoing Discovery and Depositions.

Discovery is ongoing, and the parties continue to make supplemental production of documents as additional documents are found. The parties have also continued to consult and schedule depositions, and have held or scheduled thirty-nine depositions since May 15th. In addition, several more depositions are also under continuing discussions. The total number of depositions to be completed before the end of October is still uncertain.

- C. Begin discussion concerning key issues that will need to be resolved at trial.
1. What amount of water is apportioned to Texas by the Rio Grande Compact.
 2. What baseline conditions should the Court use in assessing any impacts to Texas.
 3. What baseline conditions should the Court use in assessing any impacts to the Rio Grande Project, Texas, or New Mexico from pumping.
 4. How the Rio Grande Project was fully integrated into the Rio Grande Compact.
 5. Whether New Mexico, through its agents or agencies, may divert or intercept water delivered to Elephant Butte Reservoir pursuant to its 1938 Compact obligations after the water is released from Elephant Butte Reservoir, thus depriving the Rio Grande Project of its water supply.
 6. Whether New Mexico is entitled to unilaterally change the apportionment of the Rio Grande by pumping hydrologically connected groundwater and reducing the available river flow of the Rio Grande between Caballo Reservoir and the American Dam.
 7. Whether Texas is entitled to unilaterally change the apportionment of the Rio Grande by pumping hydrologically connected groundwater and reducing the available river flow of the Rio Grande through the Texas portion of the Mesilla basin or between the El Paso Narrows and the America Dam.
 8. What role does New Mexico State law play in relation to Compact apportionment, or compliance with Compact obligations.
 9. The extent to which pumping of hydrologically connected groundwater in New Mexico (and Texas) below Caballo Reservoir is depleting the flows of the Rio Grande.
 10. The extent to which pumping of hydrologically connected groundwater in New Mexico (and Texas) is depleting the water supply of the Rio Grande Project.
 11. Is pumping of groundwater that reduces streamflows available to the Rio Grande Project a violation of the Rio Grande Compact?
 12. The United States believes that discussion of issues that may need to be resolved as part of any remedies phase is premature at this time.

We look forward to discussing the matter further with the Court and Parties on May 29th.

Very truly yours,

James J. DuBois, Trial Attorney
United States Department of Justice

cc: Service List

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