

No. 141 Original

In The
SUPREME COURT OF THE UNITED STATES

STATE OF TEXAS

v.

STATE OF NEW MEXICO and
STATE OF COLORADO

TRANSCRIPT OF AUGUST 11, 2016
STATUS CONFERENCE BEFORE
A. GREGORY GRIMSAL, ESQ.
SPECIAL MASTER

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computer-aided transcription software.

PROCEEDINGS

(August 11, 2016)

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3 **THE SPECIAL MASTER:** Good afternoon, Counsel. Is
4 everybody on the line? I apologize. I think I'm three minutes
5 late. We had a little trouble with the equipment here in
6 New Orleans, but we are good to go now.

7 Let's begin by taking roll for the benefit of
8 the court reporter who is with us today. We are on the record.

9 Is counsel for Texas on the line, please?

10 **MR. SOMACH:** Yes. Stuart Somach, counsel of record
11 for the State of Texas. I believe also on the line at another
12 location is Mac Goldsberry and another location is Robert
13 Hoffman. I do have Pat Gordon, the Texas Rio Grande
14 commissioner, sitting here with me.

15 **THE SPECIAL MASTER:** Thank you, Mr. Somach.

16 Is counsel for New Mexico on the line?

17 **MR. FARRIS:** Yes, Your Honor. This is Stephen
18 Farris, counsel of record for the State of New Mexico. I have
19 several other people with me, but I will be the only one
20 speaking for the State of New Mexico on the record.

21 **THE SPECIAL MASTER:** I apologize for interrupting
22 you. Would you identify them for the record, please.

23 **MR. FARRIS:** I'll have them all do it so I don't mess
24 this up.

25 **THE SPECIAL MASTER:** That's great.

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1 **MS. MAESTAS:** Good afternoon, Counsel. This is
2 Deputy Attorney General Tania Maestas.

3 **THE SPECIAL MASTER:** Could you spell your last name,
4 please.

5 **MS. MAESTAS:** M-A-E-S-T-A-S.

6 **THE SPECIAL MASTER:** Thank you.

7 **MR. BLAINE:** Good afternoon. This is Tom Blaine, the
8 Rio Grande compact commissioner and state engineer.

9 **THE SPECIAL MASTER:** Thank you, Mr. Blaine.

10 Anyone else for New Mexico?

11 **MR. ROMAN:** David Roman from the law firm of
12 Robles Rael & Anaya.

13 **THE SPECIAL MASTER:** Thank you, Mr. Roman.

14 Anybody else for New Mexico?

15 **MS. DRENNAN:** Yes, Your Honor. This is Lindsay
16 Drennan also from the law firm of Robles Rael & Anaya.

17 **THE SPECIAL MASTER:** Thank you, Ms. Drennan.

18 Anyone else for New Mexico?

19 **MR. RIDGLEY:** Thank you, Special Master. This is
20 Greg Ridgley, general counsel to the New Mexico state engineer.

21 **THE SPECIAL MASTER:** Anyone else for New Mexico?

22 **MR. LINDEEN:** Good afternoon, Special Master. This
23 is Chris Lindeen, deputy general counsel for the Office of the
24 State Engineer.

25 **THE SPECIAL MASTER:** Thank you, Mr. Lindeen.

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1 Anyone else for New Mexico?

2 **MR. SCHMIDT-PETERSEN:** Good afternoon,
3 Special Master. This is Rolf Schmidt-Petersen, New Mexico
4 Rio Grande compact engineer adviser.

5 **THE SPECIAL MASTER:** Thank you, Mr. Petersen.

6 Is that everyone for New Mexico, please?

7 **MS. HAAS:** No, Special Master. Good afternoon. This
8 is Amy Haas. I am legal adviser to New Mexico's Rio Grande
9 compact commissioner.

10 **THE SPECIAL MASTER:** Yes, Ms. Haas. We have you.
11 Thank you.

12 Anyone else?

13 **MR. FARRIS:** No, Special Master. That's all of us.

14 **THE SPECIAL MASTER:** Thank you, Mr. Farris.

15 Is counsel for Colorado on the line, please?

16 **MR. WALLACE:** Yes, Your Honor. This is Chad Wallace,
17 and with me is Preston Hartman.

18 **THE SPECIAL MASTER:** Thank you, Mr. Wallace.

19 Anyone else on the line for the State of
20 Colorado?

21 **MR. WALLACE:** No.

22 **THE SPECIAL MASTER:** Thank you, Mr. Wallace.

23 Is the United States on the phone, please?

24 **MR. DUBOIS:** Good afternoon, Your Honor. This is
25 Jim Dubois. Also on the phone are Steven Mcfarlane,

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1 Judy Coleman, and I believe Shelly Randel from the solicitor's
2 office is also listening in.

3 **THE SPECIAL MASTER:** Thank you, Mr. DuBois. Is that
4 everyone for the United States?

5 **MR. DUBOIS:** Yes, sir.

6 **THE SPECIAL MASTER:** Thank you.

7 Next are the folks who have, I believe, notified
8 us in advance. Is counsel for El Paso Water Improvement
9 District No. 1 on the line, please?

10 **MR. SPEER:** Yes, Mr. Grimsal. I'm James Speer here.
11 I'm here with Maria O'Brien.

12 **THE SPECIAL MASTER:** Thank you, Mr. Speer.

13 **MR. SPEER:** We also have our board of directors
14 chairman, Mr. Johnny Stubbs, spelled S-T-U-B-B-S.

15 **THE SPECIAL MASTER:** Thanks, Mr. Speer.

16 Elephant Butte Irrigation District?

17 **MR. SPEER:** Excuse me. I'm so sorry, Mr. Grimsal. I
18 left out one of our directors is also here, Mr. Art Ivey,
19 spelled I-V-E-Y.

20 **THE SPECIAL MASTER:** Thanks, Mr. Speer.

21 Is that it? Is that everyone?

22 **MR. SPEER:** That's it for the El Paso district.

23 **THE SPECIAL MASTER:** Thank you.

24 Is Elephant Butte Irrigation District counsel on
25 the line, please?

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1 **MR. HERNANDEZ:** Yes, Special Master. Steven
2 Hernandez. With me is Lee Peters. On the phone in Santa Fe is
3 Dr. Lisa Henne. I also have my board chairman, Willie Koenig,
4 here. It's K-O-E-N-I-G.

5 **THE SPECIAL MASTER:** Thanks, Mr. Hernandez.
6 Is counsel for the City of Las Cruces on the
7 line?

8 **MR. STEIN:** Yes, Special Master. This is Jay Stein,
9 counsel of record for the City of Las Cruces. With me is
10 Jim Brockmann of our law firm and Dr. Jorge Garcia, who is the
11 utilities director for the City of Las Cruces.

12 **THE SPECIAL MASTER:** Thanks, Mr. Stein. Is that
13 everyone for you?

14 **MR. STEIN:** Yes, sir.

15 **THE SPECIAL MASTER:** Is counsel for New Mexico Pecan
16 Growers on the line, please?

17 **MS. DAVIDSON:** Yes, Special Master Grimsal. This is
18 Tessa Davidson, with the Davidson Law Firm, for New Mexico
19 Pecan Growers.

20 **THE SPECIAL MASTER:** Thank you, Ms. Davidson. Anyone
21 else with you?

22 **MS. DAVIDSON:** No, sir.

23 **THE SPECIAL MASTER:** Is there anyone else on the line
24 other than the parties who have identified themselves?

25 **MR. JONES:** Yes, sir, Special Master. This is

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1 Alvin Jones on behalf of the Southern Rio Grande Diversified
2 Crop Farmers Association.

3 **THE SPECIAL MASTER:** Would you repeat the name of
4 your entity, please, slowly.

5 **MR. JONES:** Yes, sir. Yes, sir. Southern Rio Grande
6 Diversified Crop Farmers Association.

7 **THE SPECIAL MASTER:** Thanks, Mr. Jones. Anyone else
8 there with you on their behalf?

9 **MR. JONES:** No, sir.

10 **THE SPECIAL MASTER:** Any other parties on the line,
11 please?

12 **MS. THOMPSON:** Good afternoon, Your Honor. It's
13 Lisa Thompson listening in also for the State of New Mexico,
14 along with Dr. Ken Knox.

15 **THE SPECIAL MASTER:** Thank you, Ms. Thompson.

16 Anyone else on the line?

17 Thank you, Counsel, for getting with us today.
18 I've got a couple things I want to work through.

19 First, I want to make sure that our service list
20 is correct and complete. There may have been a couple of
21 people who've dropped off the case or gotten on the case since
22 the case got started. I would ask everyone to have a look at
23 the service list that was filed in connection with
24 Case Management Order No. 2 that lists everyone's address and
25 contact information. If any of that needs to be updated, I

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1 would appreciate it if you would let us know via e-mail at your
2 earliest convenience. That's the first thing I wanted to
3 mention.

4 Second, I wanted to remind everyone about our
5 general rules regarding participation in telephone conferences.
6 In that regard, I would again call your attention to
7 Case Management Order No. 2. Nonparties are welcome and
8 permitted to participate and listen in on these conferences,
9 but we request the courtesy of letting us know at least
10 24 hours before the conference by calling Anne Provosty, our
11 paralegal, who I think most of you know by now, who has handled
12 the administrative matters for this case.

13 Finally, before I move on to the substantive
14 stuff, I wanted to remind particularly the parties if you need
15 a conference call, if you think that we need to confer about
16 anything, please let us know, and we will try to accommodate
17 you in that regard.

18 Now, let me move on. The purpose of the
19 conference today is to set a couple of deadlines. The context
20 for that, as I think you all know, is we have provided a draft
21 report and recommendation to the parties. I've solicited
22 letter briefs on those. We have received all those. We are
23 working through that material.

24 We, in due course, will prepare what we will
25 regard as a final version of the report and recommendation and

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1 file that with the Supreme Court. At that point, as we have
2 discussed at the last conference, my understanding is the Court
3 will probably set that for conference and make a determination
4 whether to handle the matter with or without oral argument.
5 You will be afforded the opportunity to file objections. The
6 Court will accept or reject what we have recommended, and then
7 the matter will proceed according to what the Court ultimately
8 rules.

9 In the meantime, I wanted to move this along as
10 much as I can under the circumstances. I think I am within the
11 bounds of fair play by asking that issue be joined and then
12 further asking the parties to confer and prepare a draft case
13 management plan so that if and when the matter does come back,
14 we are prepared to hit the ground running.

15 That's my general approach here. In that
16 regard, I have taken my guidance from the example in the record
17 of other special masters in other original jurisdiction
18 matters.

19 The first thing I would like to do is to ask
20 Texas and the United States to please file with me the
21 complaint that you attached as exhibits to your motions for
22 leave with the Supreme Court of United States. That will be
23 merely a filing with me. That won't be a filing with the
24 Court. Once that's done, that pleading will be treated as a
25 complaint under Supreme Court Rule 17.2 and Federal Rules 8

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1 through 11.

2 So I would ask, Mr. Somach and Mr. DuBois, how
3 long do you think you would need to do that, to file your
4 complaints with me so that they will appear on my record as
5 your complaint?

6 **MR. SOMACH:** This is Stuart Somach. We can do
7 that -- I'm out of the office now, but certainly by Monday,
8 Tuesday at the very latest.

9 **THE SPECIAL MASTER:** Mr. DuBois, does Tuesday work
10 for you?

11 **MR. DUBOIS:** Monday or Tuesday will be fine,
12 Your Honor. Your choice.

13 **THE SPECIAL MASTER:** It will be Tuesday, the 16th,
14 Texas and the United States will file with me their complaints.
15 Then at that point I would turn to New Mexico first.

16 Mr. Wallace, I'm going to come back to you, as
17 Colorado, but let me ask New Mexico first.

18 Mr. Farris, is there any reason why New Mexico
19 could not file an answer with me within 21 days after the 16th?

20 **MR. FARRIS:** Yes, Your Honor. This is Steve Farris
21 for the State of New Mexico. Our suggestion is that we believe
22 that filing an answer, until we have heard from the
23 Supreme Court, would be a waste of judicial resources.
24 Depending on what the Supreme Court does, it could change the
25 whole complexion of the case. We could end up answering claims

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1 that are no longer there or are there and things like that.

2 We would suggest instead that we would commit
3 that within 45 days after the Supreme Court remands the case to
4 the special master we would not only file our answer, but we
5 would file any counterclaims that we have on that same date.

6 **THE SPECIAL MASTER:** Mr. Wallace --

7 **MR. WALLACE:** Yes, Your Honor.

8 **THE SPECIAL MASTER:** -- I assume Colorado wanted to
9 file an answer since you're actually named as a defendant.

10 **MR. WALLACE:** Well, Your Honor, I think the
11 complaints raise an interesting question as to whether an
12 answer is, in fact, required of the State of Colorado. There
13 are no claims asserted against it.

14 **THE SPECIAL MASTER:** Okay.

15 **MR. WALLACE:** I'm a bit at a loss. I'm not really
16 taking a position one way or another on it other than I think
17 the question is still out there what it is we need to do about
18 the various complaints.

19 **THE SPECIAL MASTER:** That's fair, Mr. Wallace. I
20 respect your thinking in that regard. I simply wanted to give
21 you an opportunity to weigh in as to how much time might be
22 required if, in fact, you did want to file an answer. That's
23 the purpose.

24 The purpose of this is not to force you to do an
25 answer if you think that, because of what the complaints say,

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1 Colorado doesn't need to file one. If you did want to file
2 one, I wanted to give you an opportunity to say how long you
3 needed to do it.

4 **MR. WALLACE:** I appreciate that clarification. I
5 think that we would tend to agree with New Mexico's position
6 that it might benefit everybody and the special master's time
7 to know exactly what form the complaints will take before an
8 answer is filed.

9 **THE SPECIAL MASTER:** Well, we are talking about the
10 complaints that have been filed as exhibits to the motions for
11 leave.

12 **MR. WALLACE:** How is the special master treating
13 New Mexico's motion to dismiss in that regard?

14 **THE SPECIAL MASTER:** In other words, all I'm doing at
15 this juncture is completing my record. I don't believe that
16 this prejudices any party in any way from objecting to my
17 report and recommendation when I file it with the
18 Supreme Court. All I'm doing is completing my record here. I
19 want to be diligent. I want to be expeditious. I want to move
20 the matter along. I want my record to be in shape that if the
21 matter does come back, we are ready to move it forward. That's
22 my philosophy here.

23 **MR. WALLACE:** Perhaps you could instruct us and help
24 us out. Just as an example, with the U.S. complaint, my
25 recollection is that it sounded primarily as a compact

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1 violation, but that may or may not be the case after the first
2 report. So would we respond to a compact violation claim or a
3 contractual violation claim? I don't mean to put anybody on
4 the spot, Your Honor. I'm just trying to figure out how we
5 would end up filing an answer.

6 **THE SPECIAL MASTER:** Well, Mr. Wallace, I'm going to
7 leave that up to you. The complaints say what they say, and my
8 report says what it says. I think you can decide for yourself
9 what you want to do in the face of those texts. Is that clear?

10 **MR. WALLACE:** I think, in answering your question, we
11 would certainly prefer to have an order from the Supreme Court
12 so that we could best give you an answer. If we are required
13 to file one before that happens, we could probably do so within
14 about 45 days.

15 **THE SPECIAL MASTER:** Okay.

16 **MR. FARRIS:** Your Honor, this is Stephen Farris for
17 the State of New Mexico again. A while back you expressed a
18 concern of not prejudicing any of the parties. New Mexico
19 believes that if we have to file an answer before we have heard
20 from the Supreme Court that we are, in fact, prejudiced. For
21 example, the Supreme Court could grant one or more of our
22 motions to dismiss. So we just think that it's better that we
23 wait until we hear from the Supreme Court.

24 **THE SPECIAL MASTER:** How in that instance would you
25 be prejudiced? The case would be over. It would be time to

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1 open the champagne.

2 **MR. FARRIS:** Well, I suppose I took the example of
3 New Mexico totally winning. If it's anything in between there,
4 we need to know what it is that we have to answer. Certainly
5 we are going to have to answer what the Supreme Court leaves
6 standing, and we won't know that until the Supreme Court tells
7 us.

8 **THE SPECIAL MASTER:** Well, it seems to me that if the
9 Supreme Court modifies what's left, we can revisit that at the
10 time. Perhaps it will be necessary for the plaintiff and the
11 plaintiff in intervention to file an amended complaint.
12 Perhaps you could be given leave to file an amended answer. I
13 don't see any of this as particularly problematic.

14 **MR. FARRIS:** Well, Your Honor, the other thing that I
15 think you have to consider, respectfully, is that as we may be
16 having counterclaims against both Texas and the U.S., we won't
17 know for sure what they will be until we have a final decision
18 from the Supreme Court.

19 **THE SPECIAL MASTER:** Why not? Why not? Why wouldn't
20 you know what the counterclaims are now?

21 **MR. FARRIS:** Because again, Your Honor, it's going to
22 depend on what claims the United States Supreme Court leaves
23 standing, and we don't know that now.

24 **THE SPECIAL MASTER:** Mr. Somach, do you have any
25 thoughts about this matter?

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1 **MR. SOMACH:** I think that what you are proposing is
2 very clear. I think it's appropriate. I don't think there's
3 any prejudice to any of the parties. Certainly if the
4 Supreme Court rejects in its entirety your report and
5 recommendations, it will be over. If there's a modification --
6 this answer, as I understand it, and any cross complaints will
7 be filed solely with you. The Court won't see those. If it's
8 appropriate either to modify our complaint or their answers,
9 that certainly could be done without prejudice.

10 I think the benefit of moving forward -- and I
11 would state this with respect to the case management plan -- is
12 getting this case moved along. So when the Supreme Court
13 finally decides what it wants to do, you can pull this stuff
14 off the shelf, we can pull it off the shelf, and move
15 expeditiously. It's important. I think what's what you are
16 proposing, and certainly the State of Texas supports that.

17 **MR. FARRIS:** Your Honor, this is Stephen Farris
18 again. I just point out that having an answer that may not fit
19 anything that the Supreme Court leaves standing is certainly
20 not going to move things along. Instead, it's going to tie up
21 judicial resources and the resources of the parties. In the
22 short term, I can see your concern of it looks like we have
23 accomplished something. If we have to go back and redo it all,
24 we have actually lost time.

25 **THE SPECIAL MASTER:** Well . . .

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1 **MR. FARRIS:** Your Honor, this is Stephen Farris
2 again. I was reminded -- and I apologize -- that the precedent
3 in other original actions similar to this, what you are
4 proposing is unprecedented. In the other cases, the special
5 masters have waited until they hear from the Supreme Court.

6 I realize that in your case management order you
7 spoke of *Montana v. Wyoming*, but it was significantly different
8 in that Wyoming agreed and, in fact, I understand even
9 suggested the procedure used there. So it's not actually
10 precedent.

11 **THE SPECIAL MASTER:** What about *Kansas v. Nebraska*?
12 I thought they had a similar situation there.

13 **MR. FARRIS:** Well, I don't believe so, Your Honor.
14 The general precedent is to wait to hear from the
15 Supreme Court.

16 **THE SPECIAL MASTER:** Counsel, for the time, I'm going
17 to take this under advisement. I will confer with counsel
18 again shortly about this. I was not expecting opposition to
19 the filing of the answers. I'm going to take this under
20 advisement and get back with you all shortly. That's all I
21 have for the moment. Once we resolve this issue, we will be
22 able to talk about conferring about a case management plan in
23 the meantime.

24 **MR. SOMACH:** This is Stuart Somach again. I
25 apologize for interrupting.

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1 **THE SPECIAL MASTER:** No, not at all. Go ahead,
2 Mr. Somach.

3 **MR. SOMACH:** I would urge you to move forward with
4 the case management plan, notwithstanding whatever happens with
5 the answer.

6 **THE SPECIAL MASTER:** Right.

7 **MR. SOMACH:** The only situation where the case
8 management plan wouldn't be appropriate was, of course, if the
9 whole case got thrown out. Every other scenario requires a
10 case management plan to be developed.

11 I have, as I indicated in a letter to you,
12 submitted to all the parties for our meet-and-confer a draft of
13 a case management plan. I will just simply say it's formatted
14 so that all of the times within it typically run from a
15 starting point which won't be determined -- it will be
16 determined ultimately by you once the case gets back from the
17 Court.

18 Getting what is going to be a complex piece of
19 work done and out of the way and, as I said before, on the
20 shelf so that we can get going when this comes back from the
21 Court I think is important. I think it is a way that allows
22 the case to move forward in an appropriate manner.

23 This is a little bit of a broken record for me,
24 I realize, but I think at every case management conference I
25 have urged moving forward. We believe we are suffering harm

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1 and that delay doesn't work to our benefit. This is one little
2 thing -- a big little thing -- that could be done now that
3 absolutely will not prejudice any party whatsoever.

4 I would propose that you schedule a date 60 or
5 90 days out by which the parties submit to you a draft for your
6 consideration and final determination on what you want to do.
7 That's one thing that can be done easily. There can't be any
8 argument that, well, we don't know what the Supreme Court is
9 going to say.

10 **THE SPECIAL MASTER:** Thank you. Mr. Somach, I
11 haven't taken that off the table, the case management plan.

12 Let me point out two things. It seemed to me,
13 cart-and-horse-wise, it made more sense for the parties to have
14 joined issue, to have a complaint and an answer before you
15 start looking at the case management plan and figuring out what
16 kind of discovery you needed. It seemed to me that would be an
17 important thing you would need to be able to draft the case
18 management plan. It's not impossible, but it seemed to me that
19 made a lot more sense to do it that way, cart-and-horse-wise.

20 Second, just to make sure -- you and I may be
21 actually looking at the same thing. Mr. Somach, the case
22 management plan I saw was the one in *Kansas v. Nebraska*. That
23 seemed to me to be -- I would mention this for everyone's
24 attention -- a useful model for this matter.

25 Obviously, it may need to be tailored for the

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1 particularities of this case, but that's the one that I would
2 just recommend you have a look at. I don't know if that's the
3 one you circulated to the parties or not. As long as you were
4 having those discussions, that's the one I wanted to do.

5 Before we get to that, I think I need to resolve
6 this issue about whether I'm going to require people to file an
7 answer over objection. I'm not saying I'm not going to do a
8 required case management plan as well, but I have to look at
9 that question first, as to the requirement of an answer.

10 Any other discussion? Any other items for the
11 good of the order?

12 **MR. SOMACH:** First, implied in your opening is you
13 don't need any further discussion/briefing on the letters that
14 were submitted to you. We were concerned a bit because we
15 thought that Colorado's, New Mexico's, and a bit Las Cruces'
16 went beyond technical issues. We did have significant
17 disagreements with the substantive arguments that were made.

18 I'm not suggesting -- I don't really want to,
19 but I don't want things to be considered unanswered when they
20 went beyond the scope certainly of what we had understood was
21 supposed to be submitted. That's the first issue.

22 The second is embedded in Las Cruces' comments
23 is kind of a motion to appear as amici. I would like us
24 collectively to have more discussion before that simply becomes
25 a fait accompli.

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1 **THE SPECIAL MASTER:** Well, let me take your issues
2 one at a time.

3 Is there anyone else who feels they need an
4 opportunity to file a response to another party's letter?

5 I think we are good to go, Mr. Somach, on that.
6 I think we can figure out what goes to the substance and what
7 goes to the technical issues. I appreciate your concern, but I
8 think we are okay with respect to the letters.

9 With respect to the involvement of amici, are
10 you interested in discussing the scope of participation of
11 amici? Is that the issue, Mr. Somach?

12 **MR. SOMACH:** It is the fact that I think that
13 Elephant Butte Irrigation District and EP No. 1 are in a
14 different situation than Las Cruces. I do think one of the
15 things the case management plan should do is discuss how active
16 participation by amici is, but I do want to draw that
17 distinction. I think we are talking about two different kinds
18 of participation as we move forward. I don't want it just
19 simply to be not discussed before something occurs in that
20 regard.

21 **THE SPECIAL MASTER:** No, sir. I have actually --
22 Sorry. Go ahead.

23 **MR. SPEER:** This is James Speer again. We strongly
24 support the State of Texas as an amicus, El Paso County Water
25 Improvement District No. 1. We really appreciate what we took

0 2 : 3 5
1 your suggestion to include that we be an active amicus. We
2 would like to be able to respond to anything that's filed by
3 anybody acting as an amicus. We would respond to anybody else.

4 **THE SPECIAL MASTER:** Well, let me cut through this.
5 It seems to me the case management plan is the appropriate
6 place to set out what everyone regards as the appropriate
7 involvement of amici. My understanding -- again, from looking
8 at other case management plans in other matters -- is that
9 amici have no direct participation in discovery or in the
10 presentation of an affirmative case of fact issues at trial.
11 Amici monitor the case and obviously, when I would file a
12 report, can file amicus briefs concerning my recommendations.
13 You may need to flesh out a little more detail from those
14 generalities, but that's my understanding.

15 Again, I would suggest that the parties confer
16 and attempt to come to some sort of agreed ground rule for
17 participation by amici. Does that work?

18 **MR. STEIN:** Your Honor, this is Jay Stein. May I be
19 heard very briefly on the Las Cruces issue?

20 **THE SPECIAL MASTER:** Yes, Mr. Stein. Go ahead.

21 **MR. SPEER:** May I finish my remarks?

22 **THE SPECIAL MASTER:** Go ahead, Mr. Speer.

23 **MR. SPEER:** The facts on the ground are that the
24 two -- and only two -- true beneficiaries of this federally
25 created reclamation project are the two districts, the

0 2 : 3 7
1 Elephant Butte Irrigation District and the El Paso district, so
2 we are sort of super amici. I just want to state that for the
3 record. We are the real people who have an interest here.
4 Nobody else does, but we do.

5 **THE SPECIAL MASTER:** Thank you, Mr. Speer.

6 Mr. Stein, did you have something to say?

7 **MR. STEIN:** Yes, Your Honor, just very briefly. Our
8 position was set forth in our letter of comments. Las Cruces'
9 request, in effect, to be treated as an amicus in the same
10 manner as EBID or EP No. 1 was based on two points. The first
11 is that municipalities are granted amicus status by the
12 Supreme Court rules, specifically Supreme Court Rule 37.4.
13 Secondly, on the subject of an actual interest, we noted that
14 in Your Honor's draft report, you stated EBID actually has less
15 of an interest in this case, if any interest at all, than any
16 other affected Rio Grande water user or claimant in New Mexico.

17 The City of Las Cruces is an actual beneficial
18 user of water and supplies water to a municipality of over
19 100,000 people, the second largest municipality in New Mexico,
20 and therefore has a direct and immediate interest as a
21 beneficial user of water in this area.

22 Those were the two full bases for our request to
23 be treated as an amicus on the same basis as EBID or EP No. 1.

24 **THE SPECIAL MASTER:** Thank you, Mr. Stein.

25 Anybody else?

0 2 : 3 8

1 **MR. HERNANDEZ:** Yes, Special Master. This is Steven
2 Hernandez. I'm not going to get into an argument over our
3 positions, just to point out to you to pay particular attention
4 to our technical corrections on that issue.

5 **THE SPECIAL MASTER:** Yes, sir. We are reading
6 everyone's letters very carefully.

7 Counsel, thank you for your remarks today. What
8 I propose to do --

9 **MR. FARRIS:** Your Honor, excuse me. This is Stephen
10 Farris again.

11 **THE SPECIAL MASTER:** Yes, Mr. Farris.

12 **MR. FARRIS:** Going back to Mr. Somach's comment and
13 discussion with you about his letter and the case management
14 plan, today is the very first time that we have heard that
15 Mr. Somach wrote a letter to you. He did distribute his case
16 management plan to the other parties but not the letter to the
17 special master. With that case management plan, we have
18 significant problems.

19 We have, in our own heads, been taking what you
20 said to heart in the transcript of our last meeting on page 11
21 at line 20. You state your intention that the parties confer.
22 We haven't done that. Instead, apparently Mr. Somach has
23 started out with his letter to you. That in no way represents
24 the position of any of the other parties, certainly not
25 New Mexico.

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1 **MR. SOMACH:** Let me respond, if I could. First of
2 all, you were on the service list. I don't know why you didn't
3 get a copy. I have a copy of the e-mail service list here and
4 you're there, so I don't know why.

5 All the letter did was inform the special master
6 in advance of this case management conference, the subject of
7 which was case management planning, that I had distributed
8 something and that we would follow up based upon whatever the
9 special master's determination was today. I think it was one
10 sentence, maybe two, and it certainly did not contain the case
11 management plan.

12 **THE SPECIAL MASTER:** That's correct. My impression
13 was it was an oversight. I don't believe he intended not to
14 copy you. That's why at the beginning I asked everyone to make
15 sure we have everyone's correct contact information included on
16 the service list so everything gets copied appropriately going
17 forward.

18 Counsel, if there's nothing else for the good of
19 the order, I'm going to take under advisement the question of
20 whether I can require the defendants to file an answer over
21 objection at this point. The issue of the case management plan
22 is logically anterior to that, in my view, so we will cross
23 that bridge once I have dealt with the issue of the answer.

24 I expect to be back in contact with you in
25 fairly short order, and we will set up another call at

0 2 : 4 2
1 everyone's mutual convenience to discuss this and get it
2 resolved. I can assure you in the meantime we are working on
3 your letters. We are working on revising the report and
4 recommendation to get it on file as soon as we can.

5 Is there anything else for the good of the
6 order?

7 Thanks for calling in, Counsel. Have a good
8 afternoon. We will be back in touch with you before long.
9 Thank you.

10 (Proceedings adjourned.)

11 * * *

12 **CERTIFICATE**

13 I, Toni Doyle Tusa, CCR, FCRR, Official Court
14 Reporter for the United States District Court, Eastern District
15 of Louisiana, certify that the foregoing is a true and correct
16 transcript, to the best of my ability and understanding, from
17 the record of proceedings in the above-entitled matter.

18
19
20 s/ Toni Doyle Tusa
21 Toni Doyle Tusa, CCR, FCRR
22 Official Court Reporter
23
24
25

MR. BLAINE: [1] 6/6 MR. DUBOIS: [3] 7/23 8/4 13/10 MR. FARRIS: [13] 5/16 5/22 7/12 13/19 16/15 17/1 17/13 17/20 18/16 18/25 19/12 26/8 26/11 MR. HERNANDEZ: [2] 8/25 25/25 MR. JONES: [3] 9/24 10/4 10/8 MR. LINDEEN: [1] 6/21 MR. RIDGLEY: [1] 6/18 MR. ROMAN: [1] 6/10 MR. SCHMIDT-PETERSEN: [1] 7/1 MR. SOMACH: [9] 5/9 13/5 17/25 19/23 20/2 20/6 22/11 23/11 26/25 MR. SPEER: [7] 8/9 8/12 8/16 8/21 23/22 24/20 24/22 MR. STEIN: [4] 9/7 9/13 24/17 25/6 MR. WALLACE: [9] 7/15 7/20 14/6 14/9 14/14 15/3 15/11 15/22 16/9 MS. DAVIDSON: [2] 9/16 9/21 MS. DRENNAN: [1] 6/14 MS. HAAS: [1] 7/6 MS. MAESTAS: [2] 5/25 6/4 MS. THOMPSON: [1] 10/11 THE SPECIAL MASTER: [61]	6 60 [1] 21/4 601 [1] 2/17	allows [1] 20/21 along [5] 10/14 12/9 15/20 18/12 18/20 also [9] 4/1 5/11 6/16 7/25 8/2 8/13 8/18 9/3 10/13 ALVIN [2] 3/19 10/1 Alvin Jones [1] 10/1 am [2] 7/8 12/10 amended [2] 17/11 17/12 amici [9] 22/23 23/9 23/11 23/16 24/7 24/9 24/11 24/17 25/2 amicus [7] 23/24 24/1 24/3 24/12 25/9 25/11 25/23 AMY [2] 1/22 7/8 Anaya [2] 6/12 6/16 Anne [1] 11/10 another [5] 5/11 5/12 14/16 23/4 27/25 answer [22] 13/19 13/22 14/4 14/9 14/12 14/22 14/25 15/8 16/5 16/12 16/19 17/4 17/5 17/12 18/6 18/18 20/5 21/14 22/7 22/9 27/20 27/23 answering [2] 13/25 16/10 answers [2] 18/8 19/19 anterior [1] 27/22 any [20] 10/10 10/25 13/18 14/5 15/16 15/16 16/18 17/13 17/24 18/3 18/3 18/6 21/3 21/7 22/10 22/10 22/13 25/15 25/15 26/24 anybody [5] 6/14 16/3 24/3 24/3 25/25 anyone [11] 6/10 6/18 6/21 7/1 7/12 7/19 9/20 9/23 10/7 10/16 23/3 anything [5] 11/16 17/3 18/19 24/2 28/5 apologize [4] 5/4 5/21 19/2 19/25 apparently [1] 26/22 appear [2] 13/4 22/23 Appearances [3] 1/15 2/1 3/1 appreciate [4] 11/1 15/4 23/7 23/25 approach [1] 12/15 appropriate [6] 18/2 18/8 20/8 20/22 24/5 24/6 appropriately [1] 27/16 are [33] area [1] 25/21 argument [3] 12/4 21/8 26/2 arguments [1] 22/17 Art [2] 4/5 8/18 as [36] ask [4] 10/22 12/19 13/2 13/17 asked [1] 27/14 asking [2] 12/11 12/12 asserted [1] 14/13 Association [3] 3/20 10/2 10/6 assume [1] 14/8 assure [1] 28/2 at [25] 5/11 10/22 11/1 11/9 12/1 12/2 13/8 13/15 14/15 15/14 17/9 20/1 20/24 21/15 21/21 22/2 22/8 23/2 24/8 24/10 25/15 26/21 27/14 27/21 27/25 attached [1] 12/21 attempt [1] 24/16 attention [3] 11/6 21/24 26/3 Attorney [2] 1/21 6/2 AUGUST [2] 1/11 5/2
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