

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 FRIDAY, OCTOBER 16, 2015
STATUS CONFERENCE BEFORE
A. GREGORY GRIMSAL, ESQ.
SPECIAL MASTER

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23 Proceedings recorded by mechanical stenography, transcript
24 produced by computer.
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P R O C E E D I N G S

(FRIDAY, OCTOBER 16, 2015)

(STATUS CONFERENCE)

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4
5 (OPEN COURT.)

6 THE COURT: Good afternoon, counsel. How is everybody
7 doing?

8 MR. SPEER: Well, it's getting cold finally in El Paso,
9 which we welcome.

10 MS. BOND: It's not even cold, Jim.

11 MR. SPEER: Well, less than 100 degrees but not yet
12 32 degrees.

13 MS. BOND: Okay.

14 THE COURT: Counsel, let me get going. We're on the
15 record, this is Greg Grimsal in New Orleans.

16 Let me begin by taking roll to make sure I've got
17 everybody on the line.

18 Counsel for Texas, please identify yourself.

19 MR. SOMACH: This is Stuart Somach on behalf of the State
20 of Texas.

21 THE COURT: Good afternoon, Mr. Somach. Anybody with you?

22 MR. SOMACH: No, it's just me, your Honor.

23 THE COURT: Okay. State of New Mexico, please.

24 MS. BOND: Your Honor, Sarah Bond for the State of New
25 Mexico, and no one else is on the line with me for New Mexico today.

13:01:28 1 THE COURT: Hi, Ms. Bond, how are you?

13:01:31 2 MS. BOND: Great. How are you?

13:01:32 3 THE COURT: Good. Thank you.

13:01:33 4 State of Colorado, please.

13:01:35 5 MR. WALLACE: Yes, your Honor, this is Chad Wallace.

13:01:37 6 THE COURT: Hi, Mr. Wallace. Is anyone else with you on

13:01:40 7 the line?

13:01:42 8 MR. WALLACE: Yes, Mr. Hartman is with me as well.

13:01:46 9 THE COURT: Would you give us Mr. Hartman's full name for

13:01:52 10 the benefit of the court reporter, please.

13:01:54 11 MR. WALLACE: Yes, I'm sorry, your Honor. It's Preston

13:01:58 12 Hartman.

13:01:58 13 THE COURT: H-A-R-T-M-A-N?

13:02:00 14 MR. WALLACE: Yes.

13:02:01 15 THE COURT: Thanks. United States, please.

13:02:06 16 MR. DUBOIS: Jim Dubois for the United States, your Honor.

13:02:10 17 And on the line are Lee Leininger, Stephen MacFarlane, and I believe

13:02:17 18 Bella Wolitz is on for Interior in sort of listening mode.

13:02:21 19 THE COURT: Thank you, Mr. Dubois.

13:02:23 20 El Paso County Water Improvement District No. 1.

13:02:30 21 MR. SPEER: James Speer, your Honor.

13:02:34 22 MS. O'BRIEN: And, your Honor, Maria O'Brien is also on

13:02:37 23 the line and Sarah Stevenson is with me, also on behalf of El Paso

13:02:41 24 County Water Improvement District No. 1.

13:02:41 25 THE COURT: Ms. Stevenson, how do you spell your last

13:02:43 1 name, please?

13:02:44 2 MS. STEVENSON: S-T-E-V-E-N-S-O-N.

13:02:47 3 THE COURT: Thanks very much. Good afternoon, counsel.

13:02:50 4 Counsel, as you all are no doubt aware, on October the
13:02:58 5 5th, the Supreme Court referred to me a motion to intervene, which
13:03:11 6 El Paso County Water Improvement District No. 1 had filed with the
13:03:12 7 Court.

13:03:13 8 That motion, as I appreciate it, is fully briefed. We've
13:03:19 9 reviewed that motion and all of the responses to it. I wanted to
13:03:27 10 get you all on the line to inform you that at this time I have
13:03:31 11 decided not to entertain oral argument on that motion. I will make
13:03:37 12 my report and recommendations to the Supreme Court based upon the
13:03:42 13 pleadings. I feel I am familiar with the law governing such
13:03:47 14 interventions, having reviewed all of the cases cited in the
13:03:52 15 pleadings on Elephant Butte Irrigation District's similar motion to
13:03:58 16 intervene, and I entertained oral argument on that motion.

13:04:02 17 If it turns out that in our deliberations on El Paso
13:04:10 18 County Water Improvement District No. 1's motion the need, if we
13:04:14 19 feel the need arises for oral argument, I will certainly contact all
13:04:17 20 of you to arrange for that. But at this time, I don't really find
13:04:22 21 it necessary to resolve the motion.

13:04:27 22 And indeed, I would anticipate including our report on
13:04:35 23 that motion with the report on the Elephant Butte Irrigation
13:04:42 24 District's motion, which we would wrap together with the motion to
13:04:47 25 dismiss report. So I anticipate wrapping all of that up together.

13:04:50 1 So I wanted to let you all know, if you were wondering
13:04:57 2 whether I was going to conduct oral argument on that and whether you
13:05:01 3 have to make travel arrangements and calendar arrangements and so
13:05:04 4 forth, I am not planning to entertain oral argument on that motion.

13:05:09 5 Any other questions or discussions before I move on?
13:05:16 6 I've got one or two other things I want to talk about.

13:05:19 7 MR. SPEER: Your Honor, this is James Speer for the El
13:05:26 8 Paso District.

13:05:26 9 I would make this comment: Being lawyers, you understand
13:05:29 10 we instinctively would like to have the opportunity to present oral
13:05:34 11 argument. On the other hand, we realize you gave the extensive
13:05:39 12 attention to the motion of the Elephant Butte District when you had
13:05:47 13 the hearing in New Orleans, that we attended.

13:05:51 14 And we also recognize, without blowing smoke, Mr. Grimsal,
13:05:57 15 you're highly competent, experienced person, and there is no one we
13:06:01 16 would rather be resolving the case, if simply on briefs, doing so.
13:06:07 17 We have great confidence in you. On the other hand, if you gave us
13:06:10 18 our choice, we would like to present oral argument.

13:06:14 19 THE COURT: Mr. Speer, thank you for your kind words. Any
13:06:18 20 other observations or remarks?

13:06:23 21 MS. BOND: Your Honor, Sarah Bond for the state of New
13:06:25 22 Mexico.

13:06:25 23 The only comment we had or request would be that we would
13:06:31 24 reiterate our request that the Special Master make a decision on our
13:06:36 25 motion to dismiss first because it was the first matter before him

13:06:40 1 before attending to the matters on the motions to intervene.

13:06:43 2 THE COURT: Thank you, Ms. Bond. Any other comments?

13:06:50 3 Thank you, Counsel. Let me make it clear, I appreciate
13:06:57 4 the observations made by counsel. As things stand now, we plan to
13:07:03 5 go ahead and deal with Mr. Speer's motion on the papers without
13:07:08 6 entertaining oral argument.

13:07:10 7 Let me move on, Counsel. I've got another matter I want
13:07:14 8 to discuss.

13:07:17 9 It has recently come to my attention that other lawyers
13:07:21 10 in my firm are handling a few cases where our clients are adverse to
13:07:28 11 the United States or one of its agencies. None of these cases
13:07:34 12 involve the Bureau of Reclamation, none of these cases involve water
13:07:39 13 law. I am not personally involved in any of these cases. However,
13:07:45 14 I wanted to err on the side of disclosure about these cases and
13:07:51 15 avoid any problem about whether my impartiality might reasonably be
13:07:56 16 questioned.

13:07:58 17 The situation came to my attention when a client recently
13:08:02 18 contacted one of our oil and gas lawyers to represent it in a
13:08:07 19 proceeding where the Department of Justice seeks to enforce a tax
13:08:12 20 lien against the individual who granted a mineral lease to our
13:08:17 21 client. The Department of Justice has added our client as a
13:08:22 22 defendant and is asking the court how to rank liens and
13:08:29 23 encumbrances. We have not yet accepted that representation, and
13:08:33 24 that lawyer kindly alerted me to the existence of the other matters
13:08:37 25 being handled by our firm at the moment.

13:08:40 1 Let me walk through them with you. One matter involved
13:08:47 2 the expropriation of a salt dome in Louisiana by the United States
13:08:53 3 where our client engaged us to prepare an expert report on the title
13:09:01 4 to the salt dome for the purpose of ascertaining which entities were
13:09:06 5 entitled to how much compensation. There was no challenge to our
13:09:11 6 report.

13:09:11 7 In another matter, some of our lawyers negotiated a plea
13:09:17 8 deal with the United States Attorney and have also dealt with the
13:09:21 9 Bureau of Ocean Energy Management and the Bureau of Safety and
13:09:27 10 Environmental Enforcement on behalf of the operator of an outer
13:09:31 11 continental shelf oil well that blew out.

13:09:35 12 In another matter, the court appointed one of our lawyers
13:09:39 13 counsel to represent a federal criminal defendant in a post
13:09:44 14 conviction garnishment proceeding. That is a pro bono matter.

13:09:49 15 In another matter, our corporate oil and gas client faces
13:09:54 16 financial difficulties and engaged some of our lawyers for advice.
13:10:01 17 Perhaps, but not yet including, advice about the decommissioning of
13:10:06 18 oil and gas properties on the outer continental shelf; which if it
13:10:10 19 comes to that, would involve negotiations with the Bureau of Ocean
13:10:16 20 Energy Management and the Bureau of Safety and Environmental
13:10:19 21 Enforcement. It hasn't come to that point in that matter at this
13:10:23 22 juncture.

13:10:24 23 Moreover, several of our oil and gas attorneys regularly
13:10:28 24 represent clients with offshore regulatory matters before the Bureau
13:10:35 25 of Ocean Energy Management, the Bureau of Safety and Environmental

13:10:39 1 Enforcement, the Federal Energy Regulatory Commission, and other
13:10:43 2 federal agencies. Not the Bureau of Reclamation.

13:10:48 3 In another matter, our client acquired a chemical plant;
13:10:52 4 we were engaged to negotiate a consent agreement and final order
13:10:56 5 with the Environmental Protection Agency for alleged violations of
13:11:02 6 the Resource Conservation and Recovery Act, RCRA, and to pursue an
13:11:07 7 indemnification claim from the corporate entity that sold the plant
13:11:11 8 to the client.

13:11:12 9 Some of our bankruptcy lawyers represent various
13:11:16 10 bankruptcy debtors and trustees in various bankruptcy proceedings
13:11:22 11 where the Internal Revenue Service is a creditor in those
13:11:26 12 proceedings.

13:11:29 13 Additionally, our firm represents the Recovery School
13:11:35 14 District, which we refer to here in New Orleans as the RSD. It's an
13:11:41 15 entity that was created by the State of Louisiana after Hurricane
13:11:46 16 Katrina to run public schools in Orleans Parish. We call "parish"
13:11:51 17 what everybody else in the country calls "counties." So this entity
13:11:56 18 was created to run the schools in Orleans.

13:11:59 19 FEMA provides funding for the RSD's construction
13:12:06 20 projects, and our lawyers sometimes negotiate with FEMA on behalf of
13:12:13 21 the RSD to obtain reimbursement for specific construction related
13:12:19 22 expenditures.

13:12:21 23 This is another matter: One of our transaction lawyers
13:12:28 24 represents multi-family housing facilities for low-income seniors
13:12:35 25 run by the Archdiocese of New Orleans. HUD provides the financing

13:12:41 1 for those facilities.

13:12:44 2 Finally, for the sake of thoroughness, I wanted to
13:12:49 3 disclose that Fannie Mae, the Federal National Mortgage Association,
13:12:56 4 which I believe is an independent entity and not an agency of the
13:13:00 5 government, but I wanted to be as thorough and complete as I could
13:13:04 6 in these disclosures, Fannie Mae has engaged our firm to review its
13:13:12 7 standard loan documents as to sufficiency under Louisiana law.

13:13:17 8 Counsel, what I just reported to you is all I know of
13:13:22 9 these matters. I don't work on any of them. I obtained this
13:13:26 10 information solely for the purpose of this disclosure.

13:13:32 11 And so what I would like to do is put the question to
13:13:37 12 counsel: In view of these matters, does anybody have any objection
13:13:42 13 to my continuing to serve herein as Special Master?

13:13:55 14 MR. DUBOIS: This is Jim Dubois. We listened to the list
13:13:58 15 and taking notes, I don't see that it's going to be a problem, but I
13:14:04 16 probably need to verify that with people over my pay grade.

13:14:10 17 THE COURT: Okay.

13:14:12 18 MR. DUBOIS: But I don't see a problem.

13:14:14 19 THE COURT: I appreciate that.

13:14:18 20 MS. BOND: Your Honor, for the state of New Mexico, that's
13:14:20 21 pretty much about what I was going to say. I had a little trouble
13:14:25 22 hearing some of your names, but based on what I heard, I don't see
13:14:31 23 that there's any problem. But I do also need to check with the
13:14:36 24 Attorney General and verify that and get back with you on that,
13:14:38 25 which I should be able to do within a week.

13:14:41 1 THE COURT: My thought is if people do need to run this up
13:14:45 2 line, may I give you a deadline of let's say a week from today? I
13:14:52 3 believe I can also provide the transcript for these proceedings if
13:14:57 4 that would assist you in that task. I believe I should be able to
13:15:03 5 get the transcript to you if not later today then certainly by
13:15:07 6 Monday.

13:15:10 7 MS. BOND: Your Honor, for New Mexico, if you could give
13:15:13 8 us a week from the date on which you provide the transcript just to
13:15:17 9 be squeaky clean. I would be very surprised if there will be any
13:15:20 10 problem, but I do have an obligation to run it by the Attorney
13:15:25 11 General first.

13:15:26 12 THE COURT: Ms. Bond, you have yourself a deal.

13:15:30 13 MS. BOND: Great.

13:15:31 14 THE COURT: That's fine.

13:15:32 15 So is that agreeable to all counsel, that you'll let me
13:15:36 16 know within a week of your obtaining a transcript of these
13:15:40 17 proceedings? Let me put it this way, is there any problem with
13:15:49 18 handling the matter in that manner? Great. Okay.

13:15:56 19 MR. SPEER: No.

13:15:57 20 MR. DUBOIS: This is Jim Dubois, no.

13:15:57 21 THE COURT: Thank you, Mr. Dubois.

13:15:59 22 Counsel, that's all I've got for right now. We are
13:16:03 23 working -- in fact, Ms. Grabill is not here with me because she is
13:16:07 24 back at the office working hard. So we're working hard on these
13:16:13 25 matters, and I don't have anything else to report to you at this

13:16:18 1 time.

13:16:19 2 Is there anything else for the good of the order anybody
13:16:22 3 would like to bring up before we sign off?

13:16:26 4 MR. SOMACH: This is Stuart Somach, your Honor. Yes, I
13:16:30 5 have one kind of off-agenda item.

13:16:32 6 And that is this: The Texas fiscal year ended the end of
13:16:40 7 August, and I was wondering whether it would be at all possible to
13:16:46 8 get a preliminary invoice or bill through that period so that I can
13:16:53 9 ensure that I have sufficient dollars set aside for the purposes of
13:17:00 10 dealing with the invoice when it is again filed with the Court. I
13:17:08 11 don't know if that creates a problem, but it would certainly be
13:17:11 12 beneficial just as a business matter from our perspective.

13:17:14 13 THE COURT: Mr. Somach, let me tell you what I was
13:17:17 14 planning to do anyway. In the ordinary course of events, I believe
13:17:22 15 the Court wants me to submit a motion for fees and expenses every
13:17:28 16 six months. And so the last one I submitted, which the Court just
13:17:34 17 granted on October the 5th, that motion was filed the beginning of
13:17:41 18 May. So in the ordinary course of events, I would plan on filing
13:17:46 19 another one either at the end of this month or the very beginning of
13:17:52 20 November.

13:17:53 21 And that motion would include a narrative, plus my firm's
13:18:01 22 time records for the period you're talking about. In other words,
13:18:10 23 it would cover fees incurred and expenses from the beginning of May,
13:18:19 24 from the last motion, to the November motion. So that would include
13:18:24 25 all of that time period, and then some.

13:18:28 1 First of all, I take it that would cover the material
13:18:32 2 you're interested in. Would that be getting it soon enough for your
13:18:36 3 purpose?

13:18:37 4 MR. SOMACH: Yes, that is actually perfect. I had not
13:18:41 5 counted the months right, so that would work really well and that
13:18:46 6 would take care of the issue.

13:18:47 7 THE COURT: Okay. Great, Mr. Somach. That's kind of what
13:18:50 8 we're planning to do anyway.

13:18:53 9 Any other questions or comments before we sign off?

13:19:00 10 MS. BOND: Not for New Mexico, your Honor.

13:19:02 11 MR. DUBOIS: No, your Honor.

13:19:03 12 THE COURT: Counsel, thanks very much. I hope everybody
13:19:08 13 has a nice weekend. Talk to you soon. Thanks.

13:19:15 14 (WHEREUPON, THE PROCEEDINGS WERE CONCLUDED.)

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REPORTER'S CERTIFICATE

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20 I, Karen A. Ibos, CCR, Official Court Reporter, United
21 States District Court, Eastern District of Louisiana, do hereby
22 certify that the foregoing is a true and correct transcript, to the
23 best of my ability and understanding, from the record of the
24 proceedings in the above-entitled and numbered matter.

25

26

/s/ Karen A. Ibos
Karen A. Ibos, CCR, RPR, CRR, RMR
Official Court Reporter

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