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February 24, 2021

Via Electronic Mail Only

Special Master Michael J. Melloy
United States Courthouse
111 Seventh Avenue, S.E.
P.O. Box 22
Cedar Rapids, IA 52401
Email: TXvNM141@ca8.uscourts.gov

Re: *State of Texas v. State of New Mexico and State of Colorado*
United States Supreme Court, Original Jurisdiction No. 141
Joint Letter by the Parties re: Briefing Schedule for Pending Motions;
Procedure for March 9, 2021 Hearing; Status Conference

Dear Judge Melloy:

The Parties to this Original Action, the State of Texas, the State of New Mexico, the State of Colorado, and the United States, respectfully submit this joint letter to request your direction on the issues outlined below.

1. Briefing Schedule for Pending Motions/Requests for Relief

There are currently outstanding motions/requests for relief arising from the Parties' summary judgment motions that have not yet been fully briefed, and do not have an assigned briefing deadline:

Outstanding responses:

- (1) Texas's Response to New Mexico's Motion to Strike filed by New Mexico on February 12, 2021 (Relating to Docket No. 476); and
- (2) New Mexico's Response to Texas's February 16, 2021 Letter to the Special Master (Relating to Docket No. 477).

Outstanding replies:

- (1) Texas's Reply to New Mexico's Response to Texas's Second Evidentiary Objections filed by New Mexico on February 22, 2021 (Relating to Docket Nos. 460 and 479);
- (2) United States' Reply in Support of the United States' Motion to Strike (Replying to New Mexico's response to the United States' Motion to Strike filed by New Mexico on February 22, 2021 and relating to Docket Nos. 475 and 478);

Outstanding replies (cont.):

- (3) New Mexico's Reply in Support of New Mexico's Motion to Strike (Replying to outstanding response number one, above); and
- (4) Texas's Reply in Support of Texas's February 16, 2021 Letter to the Special Master, including *sur-reply* briefs by Texas and the United States in response to the evidence filed by New Mexico on February 5, 2021 (Replying to outstanding response number two, above).

The Parties met and conferred regarding a briefing schedule that would permit the March 9, 2021 hearing on the motions for summary judgment to proceed as currently scheduled, but allow the Parties to brief the pending motions/requests for relief subsequent to the hearing as follows:

- Responses due: March 23, 2021
- Replies due: April 6, 2021

2. Procedure for March 9, 2021 Hearing on Partial Motions for Summary Judgment and Associated Pleadings

The Special Master's January 25, 2021 Order sets forth the oral argument time allotments for the Parties and amici. Pursuant to the order, Texas, New Mexico and the United States each have one hour for its primary argument, and an additional fifteen minutes for rebuttal. The Parties would like the option of reserving a portion of their primary argument time for rebuttal unless the Special Master objects to that procedure.

The Parties jointly discussed a sequence for oral argument, without modification to the overall time allotments ordered by the Special Master, and agree upon the following, subject to approval:

- Primary:
 - Texas (1 hour, with option to reserve a portion for rebuttal)
 - United States (1 hour, with option to reserve a portion for rebuttal)
 - New Mexico (1 hour, with option to reserve a portion for rebuttal)
 - Colorado (1/2 hour total, to split with rebuttal)
 - Amici (15 minutes for each that wish to be heard)
- Rebuttal:
 - Colorado (minutes reserved)
 - New Mexico (15 minutes)
 - United States (15 minutes)
 - Texas (15 minutes)

Additionally, although the Parties will be prepared to address all summary judgment issues at the time of the March 9, 2021 hearing, the Parties welcome guidance on particular questions or issues in advance of the hearing as deemed appropriate.

3. Status Conference

The Special Master's January 25, 2021 Order indicates that trial management issues will be addressed at the March 9, 2021 hearing. The Parties anticipate that the trial management discussion could potentially take several hours to fully address the issues. Given the length of the oral arguments on March 9, 2021, and the different time zones of the participants, the Parties propose that the trial management issues be set for discussion on a separate date as a Status Conference. To that end, and to the extent that the Special Master agrees with this proposal, the Parties are available the following morning, on March 10, 2021, for a Status Conference. The Parties will likewise make themselves available on an alternate date that accommodates the Special Master's schedule.

Additionally, the Parties have agreed to submit a joint status conference statement in advance of the current March 9, 2021 hearing.

Respectfully submitted,

s/ Stuart L. Somach
Stuart L. Somach
Somach Simmons & Dunn
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State of Texas

s/ Jeffrey J. Wechsler
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s/ Chad M. Wallace
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s/ James J. DuBois
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cc: All counsel for parties and amici
(see attached service list)
Texas v New Mexico & Colorado docket:
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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

CERTIFICATE OF SERVICE

This is to certify that on this 24th day of February, 2021, I caused a true and correct copy of **Joint Letter by the Parties re: Briefing Schedule for Pending Motions; Procedure for March 9, 2021 Hearing; Status Conference** to be served upon all parties and *amici curiae*, by and through the attorneys of record and/or designated representatives for each party and *amicus curiae* in this original action. As permitted by order of the Special Master, and agreement among the parties, service was effected by electronic mail to those individuals listed on the attached service list, which reflects all updates and revisions through the current date.

Respectfully submitted,

Dated: 2/24/2021


Christina M. Garro

SERVICE LIST FOR ALL PARTIES AND AMICI CURIAE

PARTIES
 (Service via Electronic Mail)

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