

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

JOINT STATUS CONFERENCE STATEMENT

Pursuant to the Order of March 2, 2021 [Dkt. 484], the Parties to this Original Action, the State of Texas, the United States of America, the State of New Mexico, and the State of Colorado (collectively the “Parties”) respectfully submit this Joint Status Conference Statement relating to proposed pre-trial, trial scheduling and trial management issues.

I. PROPOSED ORDER ON PRE-TRIAL PROCEEDINGS

The Parties jointly propose the following plan for pre-trial proceedings. Issues on which the Parties were unable to reach agreement are noted in Section II – Exceptions.

1. Final Pre-Trial Proceedings

Final pre-trial proceedings will commence and be completed in accordance with the schedule stated herein, as summarized in Appendix A.

1.1. Exchange of Witness and Exhibit Information

The Parties shall exchange trial witness and exhibit lists by _____. The witness lists shall contain the names and professional addresses of the witnesses whom the Parties intend to call to testify at trial with a short general summary statement of the testimony intended to be elicited from each witness. The Parties shall identify “will call” witnesses, which are witnesses that will definitely be present at trial, and “may call” witnesses, which are witnesses that may be called.

1.2. Deposition Designations

Any Party proposing to offer all or any portion of a deposition transcript and/or video, except for impeachment purposes, shall notify the Parties by exchange of deposition transcript and video designation by _____. Cross-designations to deposition transcript and video designations shall be exchanged by _____. Completed deposition designations shall be submitted to the Special Master by _____.

1.3. Demonstrative Exhibits

The Parties shall exchange demonstrative exhibits by _____. Objections to demonstrative exhibits shall be filed by _____. Parties need not identify demonstrative exhibits that will be used on cross examination or in rebuttal (if allowed), but shall provide those demonstrative exhibits to the other Parties as soon as practicable prior to the use of the demonstrative exhibit.

1.4. Pre-Trial Motions

Motions in limine shall be filed by _____. Each motion in limine shall be no longer than 20 pages, excluding exhibits. Responses to motions in limine shall be filed by _____. Each response

to a motion in limine motion shall be no longer than 20 pages, excluding exhibits. Replies thereto shall be filed by _____. Each reply shall be no longer than 10 pages, excluding exhibits.

If the Special Master will entertain *Daubert* motions, those *Daubert* motions shall be filed by _____. Each *Daubert* motion shall be no longer than 20 pages, excluding exhibits. Responses to *Daubert* motions shall be filed by _____. Each response to a *Daubert* motion shall be no longer than 20 pages, excluding exhibits. Replies thereto shall be filed by _____. Each reply shall be no longer than 10 pages, excluding exhibits.

Other pre-trial motions, if any, shall be filed no later than 60 days before trial. Responses thereto shall be filed in 20 days. Replies thereto shall be filed in 15 days.

1.5. Pre-Trial Conference Statements

Final pre-trial conference statements shall be filed by _____. Pre-trial conference statements shall include the Parties' witness lists and exhibit lists, which shall be amended only by leave of the Special Master.

1.6. Joint Submissions

Joint trial exhibits and stipulations of fact shall be submitted by _____. Joint trial exhibits shall be pre-marked and numbered starting with "JT 0001." The Parties shall file ____ copies of joint trial exhibits as follows: one in electronic format and ____ in hard copy.

1.7. Trial Exhibits

The Parties shall file ____ copies of all exhibits by _____ as follows: one in electronic format and ____ in hard copy, and all exhibits shall be pre-marked. Texas's exhibits shall be numbered with a "TX" sequence (starting with TX-0001); the United States' exhibits shall be numbered with a "US" sequence (starting with US-0001); New Mexico's exhibits shall be numbered with a "NM" sequence (starting with NM-0001); Colorado's exhibits shall be numbered

with a “CO” sequence (starting with CO-0001). A document that will not be offered as evidence, but that will instead be used solely for impeachment purposes, does not need to be identified as an exhibit.

The Parties shall file a Consolidated Trial Exhibit List as directed by the Special Master.

1.8. Trial Briefs

Trial briefs may be submitted by _____. Trial briefs shall not exceed 40 pages and shall not include evidence as exhibits.

2. Trial Proceedings

2.1. Trial Schedule

2.1.1. Trial on Liability

Trial on the issue of liability shall commence on _____ at [LOCATION].¹ Unless otherwise specified by the Special Master, the proceeding shall be in session from 9:00 a.m to 5:00 p.m each day, with breaks for lunch and as necessary.

As a general matter, the trial will proceed as follows:

2.1.1.1. Opening statements

- 2.1.1.1.1. Texas’s opening statement
- 2.1.1.1.2. The United States’ opening statement
- 2.1.1.1.3. New Mexico’s opening statement
- 2.1.1.1.4. Colorado’s opening statement

2.1.1.2. Presentation of Texas’s case

- 2.1.1.2.1. For each witness,² examination shall proceed as follows:

¹ The Parties prefer in-person trial, if possible, to remote/video trial. The Parties jointly request that the Special Master consider trial in Denver, Colorado. Counsel and witnesses representing all four Parties are located in Denver, and Denver offers easy access for the remaining participants.

² The Parties have agreed to meet and confer on additional procedures to ensure an efficient presentation of evidence. For example, the Parties intend to discuss procedures for witnesses who are identified by more than one Party. The question of time limits may also need to be addressed.

- 2.1.1.2.1.1. Direct examination³
- 2.1.1.2.1.2. Cross examination as follows:
 - 2.1.1.2.1.2.1. Cross examination by the United States
 - 2.1.1.2.1.2.2. Cross examination by New Mexico
 - 2.1.1.2.1.2.3. Cross examination by Colorado
- 2.1.1.2.1.3. Redirect examination (if any)

- 2.1.1.3. Presentation of the United States' case
 - 2.1.1.3.1. For each witness, examination shall proceed as follows:
 - 2.1.1.3.1.1. Direct examination
 - 2.1.1.3.1.2. Cross examination as follows:
 - 2.1.1.3.1.2.1. Cross examination by Texas
 - 2.1.1.3.1.2.2. Cross examination by New Mexico
 - 2.1.1.3.1.2.3. Cross examination by Colorado
 - 2.1.1.3.1.3. Redirect examination (if any)

- 2.1.1.4. Presentation of New Mexico's case
 - 2.1.1.4.1. For each witness, examination shall proceed as follows:
 - 2.1.1.4.1.1. Direct examination
 - 2.1.1.4.1.2. Cross examination as follows:
 - 2.1.1.4.1.2.1. Cross examination by Texas
 - 2.1.1.4.1.2.2. Cross examination by the United States
 - 2.1.1.4.1.2.3. Cross examination by Colorado
 - 2.1.1.4.1.3. Redirect examination (if any)

- (The following proposed Paragraph 2.1.1.5 is in dispute and is discussed in Section II, below.)*

- 2.1.1.5. *Presentation of Colorado's case*
 - 2.1.1.5.1. *For each witness, examination shall proceed as follows:*
 - 2.1.1.5.1.1. *Direct examination*
 - 2.1.1.5.1.2. *Cross examination as follows:*
 - 2.1.1.5.1.2.1. *Cross examination by Texas*
 - 2.1.1.5.1.2.2. *Cross examination by the United States*
 - 2.1.1.5.1.2.3. *Cross examination by New Mexico*
 - 2.1.1.6. *Redirect examination (if any)*

- 2.1.1.7. Rebuttal (by leave of Special Master)

³ The Parties understand that direct testimony will be provided on the stand as opposed to pre-filed. No Party favors pre-filed testimony.
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2.1.1.8. Closing arguments

2.1.2. Trial on Remedies

Trial on the issue of remedies (including the dollar amount of any damages) shall be held at a later date.

2.2. Notification of Order of Witnesses

The Parties shall notify the Special Master and the Parties of the order in which they intend to present witnesses at least five (5) days in advance of a witness' testimony.

2.3. Sequestration of Witnesses

A witness will only be sequestered if good cause is shown.

2.4. Use of Confidential Documents or Information at Trial

The Parties are encouraged to resolve by agreement issues regarding the use at trial of documents designated "Confidential" pursuant to Case Management Plan § 11, or information derived therefrom, whether by redaction, agreed release of the "Confidential" designation, or by other means so as to eliminate or reduce the need to rely on Confidential information at trial. If the Parties cannot agree on the appropriate protocol for maintaining the confidentiality of any proposed exhibit, they shall include that issue in their Final Pretrial Conference Statement.

2.5. Trial Subpoenas

The Parties shall bring to the attention of the Special Master any need for subpoenas for attendance at trial as soon as reasonably practicable.

2.6. Audio/Visual Equipment⁴

Counsel should inform the Special Master of the planned use of audio/visual equipment by _____. Counsel should contact [APPROPRIATE TECHNICAL LIASON] with plans for use and issues related to audio/visual equipment.

3. Further Orders

A subsequent order will issue at or after trial to control post-trial submissions, which will include an opportunity for post-trial briefs.

II. EXCEPTIONS

Paragraph 2.1.1.5, Presentation of Colorado's Case:

Texas's Position:

There are no claims against Colorado, and it has made no claims.

Colorado's Position:

Plaintiffs Texas and the United States have named Colorado as a party defendant to this case. Colorado has participated in the pre-trial process in this case including disclosures, discovery, and motions. It has been subject to the decisions of the Special Masters and taken exceptions to the Supreme Court. It is incongruous to require Colorado to be a party to the case, potentially subject to decisions interpreting the Rio Grande Compact, and yet deny it the ability to present its interests at trial, including through the presentation of argument and witnesses. None of the other parties can represent Colorado's interests or position regarding the Rio Grande Compact. Colorado's position on how the Rio Grande Compact makes an apportionment differs from that taken by the other parties. Therefore, Colorado should be permitted to present a case at trial.

⁴ If the Special Master determines that part or all of the trial will be conducted remotely, the Parties request the opportunity to meet and confer and propose appropriate procedures.

Respectfully and jointly submitted March 5, 2021:

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APPENDIX A

Texas v. New Mexico and Colorado, No. 141, Original Summary of Deadlines, March ___, 2021

Description	Deadline
Witness and Exhibit Lists	
Trial Witness Lists for case in chief (included in Pretrial Conference Statements)	75 days before trial
Trial Exhibit Lists for case in chief (included in Pretrial Conference Statements)	75 days before trial
Agreed Joint Trial Exhibits submitted	10 days before trial
Trial Exhibits submitted	7 days before trial
Deposition Designations	
Deposition Designations exchanged	45 days before trial
Cross-Designations and objections exchanged	30 days before trial
Completed Deposition Designations submitted to the Special Master	15 days before trial
Demonstrative Exhibits	
Trial Demonstrative Exhibits exchanged	15 days before trial
Objections to Trial Demonstrative Exhibits	7 days before trial
Motions	
<i>Daubert</i> Motions deadline (if allowed)	90 days before trial
Responses to <i>Daubert</i> Motions (if allowed)	60 days before trial
Replies in support of <i>Daubert</i> Motions (if allowed)	45 days before trial
Motions in limine deadline	45 days before trial
Other Pretrial Motions	45 days before trial
Responses to Motions in limine	30 days before trial
Responses to Other Pretrial Motions	30 days before trial
Replies in support of Motions in limine	15 days before trial
Replies in support of Other Pretrial Motions	15 days before trial
Miscellaneous Deadlines	
Final Pretrial Conference Statements deadline	75 days before trial
Joint Stipulations of Fact submitted	75 days before trial
Notification of audio/visual equipment	10 days before trial
Trial Briefs submitted	10 days before trial
Hearings	
Final Pretrial Conference	60 days before trial
Final Pretrial Order	45 days before trial
Trial commences	

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OFFICE OF THE SPECIAL MASTER

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STATE OF NEW MEXICO'S CERTIFICATE OF SERVICE

◆

This is to certify that on March 5, 2021, I caused a true and correct copy of the Joint Status Conference Statement of Texas, the United States, New Mexico and Colorado to be served by e-mail and/or U.S. Mail, as indicated, upon the Special Master, counsel of record, and all interested parties on the Service List, attached hereto.

Respectfully submitted this 5th day of March, 2021.

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