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March 13, 2020

**Via Electronic and U.S. Mail**

Special Master Michael J. Melloy  
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P.O. Box 22  
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Email: [TXvNM141@ca8.uscourts.gov](mailto: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

Dear Special Master Melloy:

The State of Texas (Texas) respectfully submits this letter response to the State of New Mexico's (New Mexico) Request for Emergency Hearing, filed and served in this matter this morning (New Mexico Request).

1. Texas does not object to New Mexico's request for an emergency teleconference with the Special Master.
2. Texas recognizes that the travel advisories in place due to COVID-19 present logistical challenges to the timely completion of the deposition schedule in advance of the current May 2, 2020 discovery deadline. Consequently, Texas does not object to a reasonable extension of discovery, and proposes a two-month extension to the discovery deadline. Texas suggests an approximate one-month interim telephonic status conference (on or about April 30, 2020) for the parties to check in with the Special Master.
3. Texas requests that the March 27, 2020 deadline for New Mexico to circulate its written expert rebuttal reports remains intact, with no extension.
4. Texas requests that written discovery required by the Federal Rules of Civil Procedure, as well as the Case Management Plan and its addendums (CMP), continue without interruption or delay. This request specifically includes all document responses, exchanges, and/or duties to supplement productions.

5. Texas opposes any stay of the case.
  - a. The New Mexico Request proposes a six-month stay of the case to secure new trial counsel, and an additional three-month discovery period thereafter, for a total extension of nine months. This requested extension is unreasonable and unwarranted.
  - b. New Mexico is represented by two law firms (Robles, Rael & Anaya; Trout Raley), as well as the New Mexico Attorney General's Office. Marcus Rael, with Robles, Rael & Anaya, has been the designated lead counsel for this matter since well before the inception of all discovery. Lisa Thompson, with the firm of Trout Raley, has taken the lead in the majority of the expert depositions involving the scientific modeling efforts by both New Mexico and Texas. Texas should not be subjected to further delay of these proceedings under the guise of New Mexico seeking new counsel when New Mexico has consistently had the same primary attorneys working on the case since at least 2016, well before discovery commenced, separate and aside from the issue of Mr. Roman's departure. Adding another lawyer to the team does not justify a stay of the case to the detriment of Texas.
  - c. Texas should not be adversely prejudiced by New Mexico's failure to timely complete discovery. Discovery opened on September 1, 2018. Although New Mexico pursued some written discovery when discovery opened, it did not take any depositions until over a year later, when it took its first deposition of one of Texas's disclosed experts in mid-September 2019. In fact, New Mexico waited for over three months to start taking Texas's experts' depositions (after Texas's initial expert disclosure on May 31, 2019). In this same period, Texas noticed and took the depositions of 25 fact witnesses. New Mexico still has not noticed a single deposition of a fact/percipient witness for any party, or even met-and-conferred regarding a desire to do so. Now, seven weeks prior to the close of discovery, and after the parties engaged in protracted meet and confer efforts to finalize the deposition schedule, New Mexico claims that it has a number of unidentified expert and fact depositions that it still needs to schedule. New Mexico's dilatory conduct should not be rewarded by the imposition of a nine-month stay/continuance.

6. Texas opposes any rescheduling of the pre-trial conference and trial timeframes in the current case timeline. The two-month discovery extension proposed by Texas will address concerns about the current discovery schedule and the effects arising from the COVID-19 situation on the schedule. That schedule does not necessitate a continuance of the pre-trial conference and trial schedule.

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7. In conjunction with a two-month discovery extension, Texas proposes an equivalent two-month extension to the deadlines for the briefing and hearing on dispositive motions. This extension recognizes that discovery must be complete prior to filing evidence-based dispositive motions. The extension does not necessitate any change to the pre-trial conference and trial timeframes currently contemplated by the CMP.

We appreciate your Honor's consideration of Texas's position in response to the New Mexico Request and will remain available for an emergency teleconference.

Very truly yours,

*s/ Stuart L. Somach*

Stuart L. Somach  
Counsel of Record  
State of Texas

TCB:cer  
cc: All counsel for parties and amici  
(see attached service list)

**SERVICE LIST FOR ALL PARTIES**

**In The Supreme Court of the United States, Original No. 141  
STATE OF TEXAS v. STATE OF NEW MEXICO and STATE OF COLORADO**

**PARTIES<sup>1</sup>**

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