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April 29, 2020

Via Electronic and U.S. Mail

Special Master Michael J. Melloy
United States Courthouse
111 Seventh Avenue, S.E.
P.O. Box 22
Cedar Rapids, IA 52401
Email: Judge.Michael.Melloy@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 April 23, 2020 Notice by the Special Master regarding the May 1, 2020 telephonic status conference. During a meet and confer session with counsel for the parties on April 28, 2020, Texas and New Mexico agreed to file status conference statements with the Special Master on Wednesday April 29, 2020. Below is a status report discussing Texas's position on case management, discovery, and case timeline issues.

1. Chronology of Completed Discovery

In response to the Special Master's request for counsel to address with specificity the discovery that has taken place to date, attached hereto as Exhibit A is a detailed chronology of discovery events. The chronology identifies all depositions taken to date, as well as historical highlights of document production, written discovery and inspection issues. Specific document productions and supplements to expert disclosures are too voluminous to reference and are not included. The chronology focuses on the parties to the case, and not document subpoenas to amici and/or third parties. Texas includes references to several meet and confer communications between the parties that are pertinent to the remaining discovery issues to discuss at the status conference. Texas also includes orders and notices by the Special Master pertinent to discovery and case timeline issues.

2. Revised Scheduling Order

Attached hereto as Exhibit B is Texas's proposed revised summary of deadlines, which would amend Appendix B to the Case Management Plan (CMP). Appendix B to the CMP was last revised on January 31, 2019 (1/31/19 Appendix B).

Texas's proposed revisions track the same deadlines itemized in the 1/31/19 Appendix B, adding only one new line item to address lifting the current stay on deposition discovery. Texas's proposed revisions contemplate an approximate three-month extension to the overall case timeline, targeting a May/June 2021 trial date. The proposed revisions contemplate lifting the stay of deposition discovery on May 15, 2020, service of the New Mexico rebuttal reports on June 1, 2020, and a July 31, 2020 close of discovery. This represents a three-month discovery extension from the prior May 1, 2020 deadline, consistent with the three-month discovery extension proposed by New Mexico in its March 13, 2020 request for an emergency hearing.

Regarding the deadline for the New Mexico rebuttal reports, Texas understands that New Mexico intends to propose July 15, 2020, as the new deadline. Texas objects to New Mexico's proposal. As of the May 1, 2020 status conference, New Mexico will have already had seven additional weeks to complete their rebuttal reports. During this seven-week period, New Mexico's experts should have been continuing their work on these reports. A request for a further extension through July 15, 2020, equates to more than seven months after service of the Texas and United States rebuttal disclosures. The proposal is excessive and inequitably disproportionate to the two-months that Texas and the United States utilized for rebuttal reports. Texas's proposed deadline of June 1, 2020 (over five months after Texas produced its rebuttal reports) is more than equitable. It is prejudicial to Texas and the United States to delay production of the New Mexico rebuttal reports any further.

3. Depositions

a. Virtual Depositions

Texas recognizes that travel advisories and shelter-in-place orders remain operative in many states due to the COVID-19 crisis. It is currently unknown how long the restrictions will be in place, or when it will be safe to resume normal travel and in-person meetings including depositions. Given the uncertainties of future restrictions related to the COVID-19 crisis, it is necessary and practical to utilize virtual discovery options to ensure that the case advances towards a trial date in early summer 2021. Even the Supreme Court announced that it will conduct remote oral argument sessions beginning in May 2020. As such, Texas has explored options for virtual depositions, and recommends that the Special Master lift the deposition stay effective May 15, 2020, allowing the parties to resume deposition discovery in the virtual platform. Assuming that the deposition discovery stay is lifted as of May 15, 2020,

the parties have several weeks to independently explore the platform and get comfortable with the process.

b. Texas’s Position on the Remaining Depositions to Complete

At the time of the Texas’s March 6, 2020 formal status report to the Special Master, prior to the realization of the COVID-19 crisis, depositions of party, percipient and expert witnesses were approaching conclusion. The parties had conferred and substantially agreed upon the deposition schedule through the May 1, 2020 close of the discovery.¹ There were thirteen (13) depositions confirmed, with formally served notices and subpoenas. There were two additional depositions in the meet and confer process.

As such, the fifteen (15) depositions that remain outstanding, established through the meet and confer process as of the time the Special Master stayed deposition discovery, are as follows:

<u>Party Requesting Deposition</u>	<u>Witness Name</u>	<u>Description</u>	<u>Date Prior to Deposition Stay</u>
Texas	Sheldon Dorman	New Mexico OSE, former Lower Rio Grande Water Master	3/10/20
New Mexico	George Hornberger	Texas expert.	3/17/20
New Mexico	Al Blair	EP1 District Engineer; non-retained expert for Texas and the United States.	Previously in the meet and confer process to confirm a date.
New Mexico	Shane Coors	Texas expert. Day 2.	Agreement to produce him for deposition upon completion of his supplemental expert report.
Texas	Ryan Serrano	New Mexico OSE, Lower Rio Grande Water Master, Day 3.	3/18/20
United States	Peggy Barroll	New Mexico expert, Days 2-3, also to encompass rebuttal testimony, if any.	4/7/20 – 4/8/20
Texas	David Jordan	New Mexico expert. Day 2, also to encompass rebuttal testimony, if any.	4/10/20
Texas	Rolf Schmidt-Peterson	New Mexico party witness; Former Compact Engineer Adviser, New Mexico Interstate Stream Commission.	4/13/20 – 4/14/20
Texas	Charles Spalding	New Mexico expert, also to encompass rebuttal testimony, if any.	4/16/20 – 4/17/20

¹ Deposition scheduling is managed pursuant to the parties’ stipulation regarding discovery scheduling, approved by the Special Master on November 21, 2018. The stipulated protocol mandates that the parties engage in a meet and confer process via email to facilitate the scheduling of depositions for all party and non-party witnesses. The fifteen (15) depositions in the table above had all been scheduled (or were in the process of being scheduled) via this protocol. As of March 19, 2020, the date the Special Master stayed depositions due to the COVID-19 crisis, these were the only remaining depositions to be taken prior to the close of discovery.

<u>Party Requesting Deposition</u>	<u>Witness Name</u>	<u>Description</u>	<u>Date Prior to Deposition Stay</u>
Texas	Greg Sullivan	New Mexico expert, Days 2-3, also to encompass rebuttal testimony, if any.	4/20/20 – 4/21/20
Texas	Gilbert Barth	New Mexico expert, also to encompass rebuttal testimony, if any.	4/21/20 – 4/22/20
Texas	John D’Antonio	New Mexico state engineer.	4/21/20
Texas	Bryan Thoreson	New Mexico expert, Days 2-3, also to encompass rebuttal testimony, if any.	4/27/20 – 4/28/20
Texas	Rick Allen	New Mexico expert, Days 2-3, also to encompass rebuttal testimony, if any.	4/29/20 – 4/30/20
United States	Estevan Lopez	New Mexico expert, Day 2, also to encompass rebuttal testimony, if any.	Previously in the meet and confer process to confirm a date.

Most of the Texas depositions were continued from prior days and were scheduled to resume, by mutual agreement of the Parties, after the New Mexico rebuttal reports were disclosed. This was intended to save time and expense associated with otherwise repetitive depositions of the same witnesses. Texas understands from discussions with New Mexico that eight (8) of the above-listed New Mexico expert witnesses will likely be included in the New Mexico rebuttal disclosure, thus accounting for most of the necessary depositions arising from the rebuttal disclosure. From Texas’s perspective, completion of the fifteen (15) above-listed depositions, in addition to any other experts disclosed in the New Mexico rebuttal reports, will conclude deposition discovery for all parties.

c. Depositions Raised by New Mexico

The parties discussed scheduling and case management issues in advance of the May 1, 2020 hearing. Based on that discussion, Texas understands that New Mexico desires to take at least twenty-two (22) depositions prior to the close of discovery. In addition, within this list of twenty-two (22) depositions, New Mexico seeks to prioritize ten Texas and United States witnesses for purposes of obtaining information New Mexico purports to need prior to the deadline for New Mexico’s rebuttal expert reports.

At the time that the Special Master stayed deposition discovery on March 19, 2020, and one week prior to the March 27, 2020 deadline for New Mexico to produce its expert rebuttal reports, New Mexico had requested only three of the twenty-two (22) depositions it now seeks to take (George Hornberger, Al Blair, and the continued deposition of Shane Coors). Further, New Mexico did not notify Texas of its intent to take any of the nineteen (19) additional depositions, and never told the parties that it needed the majority of the ten (10) “priority” depositions before the deadline for its rebuttal reports, until April 23, 2020 – over a month after the stay of deposition discovery.

As stated at the March hearing on New Mexico's emergency motion to stay the case, Texas should not be prejudiced by New Mexico's failure to timely complete discovery. Discovery opened on September 1, 2018. New Mexico served one set of Requests for the Production of Documents to Texas in November 2018, and otherwise did not pursue any written or deposition discovery from any party until September of 2019, almost a year later. New Mexico did not take its first deposition until a year after discovery opened, when it took the deposition of one of Texas's disclosed experts in mid-September 2019. (*See* Exhibit A discovery timeline.) Even in that respect, New Mexico waited for over three months to start taking the Texas expert depositions after Texas's initial expert disclosure on May 31, 2019. (*Id.*) In this same period, Texas noticed and took the depositions of 26 fact witnesses (party and non-party). (*Id.*) As of March 19, 2020, when deposition discovery was stayed, and only seven weeks prior to the close of discovery, New Mexico had still not noticed a single deposition of a fact/percipient witness for any party, or attempted to meet-and-confer regarding a desire to do so.

Texas objects to any further extension of the overall case timeline to accommodate New Mexico's untimely request to complete these additional depositions. To the extent that some of these depositions can be prioritized, and reasonably included in the three-month discovery extension contemplated by New Mexico when it filed its emergency motion, Texas will work with the parties to coordinate an appropriate schedule. However, the schedule should not be further enlarged to accommodate New Mexico's last minute efforts to remediate its discovery failures and to delay this case.

4. Other Case Management Issues Raised by New Mexico

New Mexico proposes a case management timeline that culminates in a June 7, 2021 trial date. This trial date is in line with the timeline proposed by Texas. However, many of the interim deadlines proposed by New Mexico are objectionable.

a. Trial Witness Lists

New Mexico proposes that the parties exchange trial witness lists on July 15, 2020, on the same date it proposes to disclose its expert rebuttal reports. The exchange of trial witness lists almost a year before trial is unjustified, prejudicial and inefficient. Texas proposes that the exchange of trial witness lists be addressed in conjunction with the pretrial statements.

b. Basin Tour

Texas understands that New Mexico requests a ground basin tour with the Special Master and parties. Texas objects to the proposal. Texas is amenable to a fly-over tour of the Compact area. If the Special Master determines that a basin tour is appropriate, ground or fly-over, Texas insists on the presence of a certified Court reporter at all times. Texas believes that a tour, if one takes place, be deferred until after the start of trial in order that the Special Master have an appropriate context for the tour agenda.

c. Close of Discovery

New Mexico seeks a close of discovery of October 16, 2020, followed only one week later by a deadline to file dispositive motions and *Daubert* motions. The request for an October 15, 2020 close of discovery equates to New Mexico asking for relief that was already denied by the Special Master when New Mexico's request for a six-month stay was denied. (*See* April 1, 2020 Order of the Special Master).

Texas proposes a three-month extension to the close of discovery (July 31, 2020). This is consistent with the three-month discovery extension New Mexico supported in its March 2020 request for an emergency hearing. Moreover, only two-weeks prior to filing the request for an emergency hearing, New Mexico sent a meet and confer email to the parties stating that it "intends to file a motion seeking to extend the discovery deadline until June 30, 2020 (to coincide with the dispositive motions deadline) in order to accommodate the numerous depositions all parties are seeking to set in the coming weeks." New Mexico further stated: "To be clear, this motion would not seek to modify ANY other case management deadlines, including the tentative trial date."

Based on New Mexico's own proposals in its meet and confer email prior to filing the emergency motion, as well as what it sent forth in the emergency motion itself, the July 31, 2020 deadline proposed by Texas is appropriate and consistent with New Mexico's position stated to the Special Master and parties in March.

d. Trial Phasing and/or Bifurcation

Texas is opposed to any proposal to phase or bifurcate the case. The nature of the trial testimony is such that phasing and/or bifurcation would likely result in the presentation of duplicative evidence due to the intertwined nature of the issues in the case. Ultimately, it would result in an inefficient use of judicial resources, and would likely lengthen the overall trial time, without adding any measurable benefit.

Alternatively, the trial could proceed in two-week blocks of time, with breaks of one to two weeks between sessions. This would permit a more natural flow to the testimony, avoid repetitive testimony, and allow the Court and parties breaks at appropriate junctures.

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We appreciate Your Honor's consideration of Texas's positions in advance of the May 1, 2020 status conference and look forward to the upcoming hearing.

Very truly yours,

s/Stuart L. Somach

Stuart L. Somach
Counsel of Record
State of Texas

TCB:yd

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

Texas v New Mexico & Colorado docket:

TxvNM141@ca8.uscourts.gov

DISCOVERY CHRONOLOGY

Texas v. New Mexico and Colorado, Original No. 141

Note: The chronology includes all depositions. The depositions are complete unless otherwise noted. Rolling document productions and specific document productions and supplements to expert disclosures are too voluminous to reference and are not included. The chronology focuses on the parties to the case, and not document subpoenas to amici and/or third parties.		Discovery Timeline Color Codes:	Cell Color	Responsible Party/Special Master	
			Tan	Special Master	
			Blue	Texas	
			Green	United States	
			Red	New Mexico	
			Gray	Colorado	
			White/No highlight	Not specific to one party	
<u>Date</u>	<u>Party/Special Master</u>	<u>Action</u>	<u>Witness Name</u>	<u>Description</u>	<u>Category</u>
4/24/18	Special Master	Case Management Plan (CMP) with Appendix B discovery deadlines approved		Set preliminary deadlines for initial disclosures and the opening of discovery	Order
8/30/18	All parties	Initial Disclosures served		All parties served their Rule 26 Initial Disclosures	Written Discovery
9/1/18	Special Master	Discovery opened		Per the 4/24/18 CMP	Order
9/6/18	Special Master	Case Management Plan (CMP) with Appendix B discovery deadlines approved/entered		CMP revised, approved, and entered by Special Master (Docket # 124)	Order
9/28/18	All parties	Initial Disclosure document productions		All parties served their Initial Disclosure document productions, and continued with rolling productions thereafter, not itemized in this matrix	Documents
10/19/18	Texas	Interrogatories to New Mexico		Texas served Interrogatories to New Mexico	Written Discovery
11/6/18	New Mexico	Request for Production of Documents to Texas		New Mexico served its Request for Production of Documents, Set One, to Texas	Written Discovery
11/8/18	Texas [All TX depositions were cross-noticed by the United States]	Request for Production of Documents to New Mexico		Texas served its Request for Production of Documents, Set One, to New Mexico	Written Discovery
11/15/18	Texas	Deposition /percipient witness	Johnny Stubbs	El Paso County Water Improvement District No 1 (EP1) farmer and President of EP1 Board of Directors	Deposition
11/16/18	Texas	Deposition /percipient witness	Jesus Reyes	EP1 farmer and EP1 General Manager	Deposition

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<u>Date</u>	<u>Party/Special Master</u>	<u>Action</u>	<u>Witness Name</u>	<u>Description</u>	<u>Category</u>
11/21/18	Special Master	Amendment to Case Management Plan (Docket # 145)		Stipulation regarding discovery scheduling protocol is approved (Docket #136) Stipulation regarding procedure for production of documents and electronically stored information (ESI) is approved (Docket #142)	Order
11/26/18	Texas	Deposition /percipient witness	Art Ivey	EP1 farmer and Vice-President of EP1 Board of Directors	Deposition
11/27/18	Texas	Deposition /percipient witness	George Brooks	EP1 farmer and member of the EP1 Board of Directors	Deposition
11/28/18	Texas	Deposition /percipient witness	Larry Ceballos	EP1 farmer and member of the EP1 Board of Directors	Deposition
12/12/18	Texas	Deposition /percipient witness	Bobby Kuykendall	Elephant Butte Irrigation District (EBID) farmer and member of the EBID Board of Directors	Deposition
12/13/18	Texas	Deposition /percipient witness	Greg Daviet	EBID farmer and member of the EBID Board of Directors	Deposition
12/13/18	Texas	Deposition /percipient witness	Jerry Franzoy	EBID farmer and member of the EBID Board of Directors	Deposition
12/17/18	Texas	Deposition /percipient witness	Mike McNamee	EBID farmer and member of the EBID Board of Directors	Deposition
12/17/18	Texas	Deposition /percipient witness	Samuel Salopek	EBID farmer and member of the EBID Board of Directors	Deposition
12/17/18	Texas	Deposition /percipient witness	Joe Lack	EBID farmer and member of the EBID Board of Directors	Deposition
12/18/18	Texas	Deposition /percipient witness	Robert Sloan	EBID farmer and member of the EBID Board of Directors	Deposition
12/18/18	Texas	Deposition /percipient witness	James Salopek	EBID farmer and member of the EBID Board of Directors	Deposition
1/31/19	Special Master	Amendment to Case Management Plan (Docket # 179)		Appendix B discovery deadlines amended New Appendix B attached THIS WAS THE OPERATIVE VERSION OF THE APPENDIX B DISCOVERY DEADLINES UNTIL AMENDED TELEPHONICALLY ON 3/19/20, CONFIRMED BY THE SPECIAL MASTER'S ORDER ON 4/1/20	Order
2/5/19	Texas	Deposition/percipient witness	Adrienne Widmer	Las Cruces Water Administrator	Deposition
2/6/19	Texas	Deposition/percipient witness	Rhonda Diaz	Las Cruces Water Conservation Coordinator	Deposition

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<u>Date</u>	<u>Party/Special Master</u>	<u>Action</u>	<u>Witness Name</u>	<u>Description</u>	<u>Category</u>
2/6/19	Texas	Deposition/percipient witness	Jorge Garcia	Las Cruces Director of Utilities	Deposition
2/21/19	Texas	Meet and Confer on Depositions pursuant to the stipulated discovery protocol		Texas initiated the meet and confer for 21 New Mexico current and/or former employee/agent witnesses. Many of these depositions are complete. Texas also determined to remove several others from the list. However, Texas still intends to depose John D'Antonio, who was scheduled for 4/21/20, and Rolf Schmidt-Peterson, scheduled for 4/13/20 - 4/14/20. Both depositions were continued due to the COVID-19 deposition stay. Also on this list, Estevan Lopez has completed one day of deposition and the deposition is not complete.	
2/26/19	Texas	Deposition/party witness	Ryan Serrano	New Mexico Office of the State Engineer (New Mexico OSE), Lower Rio Grande Water Master, Day 1 (Not complete)	Deposition
3/19/19	Texas	Deposition/percipient witness	John Stomp	Albuquerque Bernalillo County Water Utility Authority (ABCWUA) Chief Operating Officer	Deposition
4/17/19	Texas	Deposition/party witness	Ryan Serrano	New Mexico OSE, Lower Rio Grande Water Master, Day 2 (Not complete)	Deposition
4/18/19	Texas	Deposition/party witness	James Hangen	New Mexico OSE, Lower Rio Grande Hydrographic Survey Manager	Deposition
4/18/19	Texas	Deposition/party witness	Andrea Mendoza	New Mexico OSE, District IV Manager Water Resource Allocation Program Water Rights Division	Deposition
4/18/19	Texas	Deposition/party witness	Cheryl Thacker	New Mexico OSE, Lower Rio Grande Basin Supervisor, Water Resource Allocation Program Water Rights Division	Deposition
4/18/19	Texas	Deposition/party witness	John Romero Jr.	New Mexico OSE, Director Water Resource Allocation Program Water Rights Division	Deposition
5/1/19	Texas	Deposition/party witness	Eluid Martinez	Former New Mexico State Engineer	Deposition
5/1/19	Texas	Deposition/party witness	Ghassan Musharrafieh	New Mexico OSE, Hydrology Bureau Chief, Water Resources Allocation Program Technical Division	Deposition
5/7/19	Texas	Deposition/party witness	Estevan Lopez	New Mexico former Executive Director of the New Mexico Interstate Stream Commission	Deposition
5/24/19	United States	Request for Production of Documents, Requests for Admissions and Interrogatories to New Mexico		The United States served its Request for Production of Documents, Requests for Admissions, and Interrogatories, Set One, to New Mexico	Written Discovery

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<u>Date</u>	<u>Party/Special Master</u>	<u>Action</u>	<u>Witness Name</u>	<u>Description</u>	<u>Category</u>
5/31/19	Texas	Disclosure of Plaintiffs' expert witnesses and expert reports	Texas disclosed 8 retained expert witnesses and 5 non-retained expert witnesses (John Balliew, Al Blair, Gary Esslinger, Art Ivey and Phil King)	Pursuant to Appendix B of the CMP, as amended on 1/31/19. Expert witness depositions of Texas's experts commence.	Expert Disclosure
5/31/19	United States	Disclosure of Plaintiffs' expert witnesses and expert reports	The United States disclosed 2 retained expert witnesses and 1 non-retained expert witness (Ian Ferguson)	Pursuant to Appendix B of the CMP, as amended on 1/31/19. Expert witness depositions of the United States' experts commence	Expert Disclosure
7/22/19 - 8/2/19	Texas	Site Inspections		Texas performed site inspections/sampling at 14 farm locations in New Mexico and Texas, pursuant to 14 subpoenas	Site Inspections
9/5/19	New Mexico	Requests for Production of Documents, Requests for Admissions and Interrogatories to the United States; Interrogatories to Texas		New Mexico served Requests for Production of Documents, Requests for Admissions, and Interrogatories to the United States; New Mexico served Interrogatories to Texas	Written Discovery
9/12/19 - 9/13/19	New Mexico	Deposition/expert	Colin Kikuchi	Texas's retained expert witness Colin Kikuchi	Expert Deposition
9/12/19 - 9/13/19	New Mexico	Deposition/PMQ/percipient	John Balliew	El Paso Water Utilities Public Service Board (EPWU) Person Most Qualified (PMQ); President/CEO	Deposition
9/13/19	New Mexico	Deposition/PMQ/percipient	Scott Reinert	EPWU PMQ	Deposition
9/13/19	New Mexico	Deposition/PMQ/percipient	Alma DeAnda	EPWU PMQ	Deposition
9/17/19	New Mexico	Deposition/expert	Lydia Dorrance	Texas's retained expert witness Lydia Dorrance.	Expert Deposition
9/19/19 - 9/20/19	New Mexico	Deposition/expert	Joel Kimmelshue	Texas's retained expert witness Joel Kimmelshue (Not complete)	Expert Deposition
9/24/19 - 9/25/19	New Mexico	Deposition/expert	Robert Brandes	Texas's retained expert witness Robert Brandes	Expert Deposition
9/30/19 - 10/1/19	New Mexico	Deposition/expert	William Hutchison	Texas's retained expert witness William Hutchison	Expert Deposition
10/2/19	New Mexico	Deposition/expert	Scott Miltenberger	Texas's retained expert witness Scott Miltenberger	Expert Deposition
10/9/19	Special Master	Stipulation Approved (Docket # 289)		The Special Master executed the parties' Stipulated Protective Order Regarding Land IQ LLC's (Joel Kimmelshue) Expert Witness Report and Testimony	Order

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<u>Date</u>	<u>Party/Special Master</u>	<u>Action</u>	<u>Witness Name</u>	<u>Description</u>	<u>Category</u>
10/9/19	Texas	Meet and Confer on completion of the Joel Kimmelshue deposition		Texas sends email to all parties, transmitting the executed Stipulated Protective Order Regarding Land IQ LLC's (Joel Kimmelshue) Expert Witness Report and Testimony and asks New Mexico for dates to complete the Joel Kimmelshue deposition	
10/10/19 - 10/11/19	New Mexico	Deposition/expert	David Sunding	Texas's retained expert witness David Sunding	Expert Deposition
10/15/19	New Mexico	Deposition/expert	Staffan Schorr	Texas's retained expert witness Staffan Schorr	Expert Deposition
10/18/19	United States	Initial production of ESI documents		ESI productions rolling thereafter	Documents
10/31/19	New Mexico	Disclosure of Defendants' responsive expert witnesses and expert reports	New Mexico disclosed 15 retained experts.	Pursuant to Appendix B of the CMP, as amended on 1/31/19 Expert witness depositions of the New Mexico experts commence	Expert Disclosure
10/31/19	Texas	Meet and Confer on Depositions pursuant to the stipulated discovery protocol		Texas sends meet and confer email regarding deposition dates for the depositions of the New Mexico experts disclosed today	
11/6/19	New Mexico	Initial production of ESI documents		ESI productions rolling thereafter	Documents
11/16/19	Texas	Initial production of ESI documents		ESI productions rolling thereafter	Documents
11/25/19	Texas	Deposition/expert	Bryan Thoreson	New Mexico's retained expert witness Bryan Thoreson (Not complete)	Expert Deposition
11/26/19	Texas	Deposition/expert	Richard Allen	New Mexico's retained expert witness Richard Allen (Not complete)	Expert Deposition
12/9/19 - 12/10/19	Texas	Deposition/expert	Daniel Morrissey	New Mexico's retained expert witness Daniel Morrissey	Expert Deposition
12/11/19	Texas	Meet and confer regarding expert depositions		Texas sends meet and confer email regarding deposition dates for the depositions of the New Mexico experts that will proceed in early 2020. Texas states that it understands New Mexico will likely want to schedule depositions of experts disclosed in the 12/30/19 rebuttal reports and advised that Texas will work those depositions into the schedule the first few months of 2020.	
12/16/19	Colorado	Initial production of ESI documents		ESI productions rolling thereafter	Documents
12/16/19	Texas	Completion of production of ESI documents		Texas's completion of production of all ESI documents	Documents
12/18/19	Texas	Deposition/expert	Dana Hoag	New Mexico's retained expert witness Dana Hoag	Expert Deposition

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<u>Date</u>	<u>Party/Special Master</u>	<u>Action</u>	<u>Witness Name</u>	<u>Description</u>	<u>Category</u>
12/30/19	Texas	Disclosure of Plaintiffs' rebuttal reports	Texas disclosed 12 retained expert witnesses and 1 non-retained expert witness (Erek Fuchs).	Pursuant to Appendix B of the CMP, as amended on 1/31/19	Expert Disclosure
12/30/19	United States	Disclosure of Plaintiffs' rebuttal reports	The United States disclosed 4 non-retained expert witnesses (Ian Ferguson, Al Blair, Phil King, and Michelle Estrada-Lopez).	Pursuant to Appendix B of the CMP, as amended on 1/31/19	Expert Disclosure
1/16/20	Texas	Deposition/expert	David Jordan	New Mexico's retained expert witness David Jordan (Not complete)	Expert Deposition
1/22/20 - 1/23/20	United States [Also noticed by Texas]	Deposition/expert	Steven Setzer	New Mexico's retained expert witness Steven Setzer	Expert Deposition
1/23/20 - 1/24/20	United States [Also noticed by Texas]	Deposition/expert	John Carron	New Mexico's retained expert witness John Carron	Expert Deposition
1/30/20	New Mexico	Meet and confer regarding expert depositions		New Mexico sends meet and confer email requesting deposition dates for Texas retained rebuttal experts George Hornberger and Shane Coors. New Mexico did not request dates for any other expert or non-expert witness. Texas advised that a medical restriction on travel for Dr. Hornberger would be preventative of him traveling to Denver. Texas offered to produce Dr. Hornberger in Nashville.	
2/5/20 - 2/6/20	United States [Also noticed by Texas]	Barroll, Peggy	Peggy Barroll	New Mexico's retained expert witness Peggy Barroll (Not complete)	Expert Deposition
2/10/20 - 2/11/20	Texas	Deposition /expert	Gregory Sullivan	New Mexico's retained expert witness Gregory Sullivan (Not Complete)	Expert Deposition
2/11/20	Texas	Deposition/expert	Heidi Welsh	New Mexico's retained expert witness Heidi Welsh	Expert Deposition
2/12/20	New Mexico	Deposition/expert	Michelle Estrada-Lopez	The United States' non-retained expert Michelle Estrada-Lopez	Expert Deposition
2/19/20 - 2/20/19	New Mexico	Deposition/expert	Ian Ferguson	The United States' non-retained expert Michelle Estrada-Lopez	Expert Deposition
2/20/20	New Mexico	Request for Production of Documents, Set Two, to Texas		New Mexico served Request for Production of Documents, Set Two, to Texas	Written Discovery
2/20/20	United States	Most recent production of ESI documents		Rolling production of ESI is continuing	Documents
2/25/20	Texas	Deposition/expert	Lewis Munk	New Mexico's expert witness Lewis Munk	Expert Deposition

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2/27/20	New Mexico	Deposition/expert	Shane Coors	Texas's retained expert Shane Coors	Expert Deposition
2/27/20	New Mexico	Meet and confer regarding expert depositions		New Mexico sent meet and confer email regarding the deposition of Texas expert Jonathan George New Mexico did not request dates for any other expert or non-expert witness	
2/27/20	New Mexico	Meet and confer regarding discovery deadline extension		New Mexico sent meet and confer email stating that it "intends to file a motion seeking to extend the discovery deadline until June 30, 2020 (to coincide with the dispositive motions deadline) in order to accommodate the numerous depositions all parties are seeking to set in the coming weeks." New Mexico stated: "To be clear, this motion would not seek to modify ANY other case management deadlines, including the tentative trial date."	
3/9/20	New Mexico	Deposition/expert	Jonathan George	Texas's retained expert Jonathan George	Expert Deposition
3/13/20	New Mexico	Request for an Emergency Hearing		New Mexico served its Request for Emergency Hearing requesting a 6-month stay of the case to address retention of new trial counsel, and an additional 3-months thereafter for completion of discovery. New Mexico did not request an extension of its deadline to serve expert rebuttal reports.	Motion
3/13/20	Texas	Response to New Mexico's Request for an Emergency Hearing		Texas served a letter Response to New Mexico's Request for an Emergency Hearing. Texas agreed to a 2-month stay of deposition discovery due to the COVID-19 emergency and proposed a 2-month extension to the discovery deadline, as well as dispositive motion deadlines. Texas opposed the requested 6-month stay of the case for New Mexico to seek trial counsel. Texas requested that written and document discovery continue during the deposition stay. Texas requested that any request by New Mexico for an extension to the deadline to serve expert rebuttal reports be denied.	Motion
3/16/20	United States	Response to New Mexico's Request for an Emergency Hearing		The United States served a letter Response to New Mexico's Request for an Emergency Hearing. The United States agreed to a limited 2-month stay of the proceedings due to the COVID-19 emergency and to allow New Mexico time to seek new trial counsel. The United States proposed the discovery deadline be extended to 65-days after termination of the stay, or July 24, 2020. The United States requested that written and document discovery continue during the stay.	Motion
3/19/20	Colorado	Completion of production of ESI documents		Colorado's completion of production of all ESI documents	Documents

DISCOVERY CHRONOLOGY

Texas v. New Mexico and Colorado, Original No. 141

<u>Date</u>	<u>Party/Special Master</u>	<u>Action</u>	<u>Witness Name</u>	<u>Description</u>	<u>Category</u>
3/19/20	Special Master	Hearing on New Mexico's Emergency Motion to Stay Proceedings		New Mexico presented arguments in support of its 3/13/20 request for an emergency hearing. New Mexico added an oral argument, not included in its 3/13/20 request, in support of extending its deadline to serve expert rebuttal reports. The Special Master issues a verbal order during the telephonic hearing: Due to the COVID-19 emergency, deposition discovery is stayed. New Mexico's deadline to submit rebuttal expert reports is extended. New Mexico's emergency motion to stay all proceedings pending the retention of new trial counsel is denied. A Status Conference will be set to discuss setting new deadlines.	Hearing & Order
3/27/20	Special Master	Disclosure of Defendant's rebuttal reports (suspended)		The date for New Mexico to disclose rebuttal reports pursuant to Appendix B of the CMP, as amended on 1/31/19. Date extended by the Special Master on 3/19/20.	Order (Suspended)
4/1/20	Special Master	Order on New Mexico's Emergency Motion to Stay Proceedings (Docket # 339)		Formal written order: Due to the COVID-19 emergency, deposition discovery is stayed. New Mexico's deadline to submit rebuttal expert reports is extended. New Mexico's emergency motion to stay all proceedings pending the retention of new trial counsel is denied. A telephonic Status Conference will be held on 5/1/20 to discuss setting new deadlines.	Order
4/7/20	New Mexico	Most recent production of ESI documents		Rolling production of ESI is continuing. New Mexico anticipates completion by the end of May 2020.	Documents
4/8/20	New Mexico	Fourth Supplemental Disclosure of Expert Witness Information		New Mexico served its Fourth Supplemental Disclosure of Expert Witness Information	Expert Disclosure
4/23/20	Special Master	Notice (Docket # 341)		Notice by the Special Master regarding the May 1, 2020 status conference. A revised scheduling order and reasonable re-commencement of in-person discovery will be discussed. Counsel should be prepared to discuss with some specificity the discovery that has taken place to date, the issues that require additional discovery, and the discovery required to complete the discovery phase.	Notice
5/1/20	Special Master	Close of Discovery (suspended)		Deadline for completion of discovery pursuant to Appendix B of the CMP, as amended on 1/31/19. Suspended on 3/19/20.	Order (Suspended)
5/1/20	Special Master	Status Conference with Special Master and all parties/amici		Pursuant to the 4/1/20 order, a telephonic Status Conference will be held on 5/1/20 to discuss setting new deadlines.	Order (Suspended)
6/30/20	Special Master	Deadline for filing dispositive motions (suspended)		Deadline for filing dispositive motions pursuant to Appendix B of the CMP, as amended on 1/31/19. Suspended on 3/19/20.	Order (Suspended)
8/14/20	Special Master	Oppositions to dispositive motions (suspended)		Oppositions to dispositive motions pursuant to Appendix B of the CMP, as amended on 1/31/19. Suspended on 3/19/20.	Order (Suspended)

DISCOVERY CHRONOLOGY

Texas v. New Mexico and Colorado, Original No. 141

<u>Date</u>	<u>Party/Special Master</u>	<u>Action</u>	<u>Witness Name</u>	<u>Description</u>	<u>Category</u>
8/31/20	Special Master	Replies in support of dispositive motions (suspended)		Replies in support of dispositive motions pursuant to Appendix B of the CMP, as amended on 1/31/19. Suspended on 3/19/20.	Order (Suspended)
Sep-20	Special Master	Hearing on Dispositive Motions (suspended)		Hearing on Dispositive Motions pursuant to Appendix B of the CMP, as amended on 1/31/19. Suspended on 3/19/20.	Order (Suspended)
Dec-20	Special Master	Final pretrial conference statements (suspended)		Final pretrial conference statements pursuant to Appendix B of the CMP, as amended on 1/31/19. Suspended on 3/19/20.	Order (Suspended)
Dec-20	Special Master	Final pretrial conference (suspended)		Final pretrial conference pursuant to Appendix B of the CMP, as amended on 1/31/19. Suspended on 3/19/20.	Order (Suspended)
March/April 2021	Special Master	Trial Commences (suspended)		Trial Commences pursuant to Appendix B of the CMP, as amended on 1/31/19. Suspended on 3/19/20.	Order (Suspended)

APPENDIX B
Texas v. State of New Mexico and State of Colorado, No. 141, Original
Proposed Revised Summary of Deadlines
May 1, 2020 [Amends the 1/31/2019 Appendix B]

<u>DEADLINE</u>	<u>EVENTS</u>
May 31, 2019	Disclosure of Plaintiffs' expert witnesses and expert reports; Expert witness depositions commence upon disclosure of the expert by the Parties (Fed. R. Civ. P. 26(b)(4)(A)) [COMPLETE]
October 31, 2019	Disclosure of Defendants' responsive expert witnesses and expert reports (including Defendant expert witnesses and expert reports supporting Counterclaims); Expert witness depositions commence upon disclosure of the expert by the Parties (Fed. R. Civ. P. 26(b)(4)(A)) [COMPLETE]
December 30, 2019	Disclosure of Plaintiffs' rebuttal reports [COMPLETE]
May 15, 2020	Lift stay on deposition discovery
June 1, 2020	Disclosure of Defendant's rebuttal reports [Continued from March 27, 2020]
July 31, 2020	Deadline for completion of discovery [Continued from May 1, 2020]
September 1, 2020	Deadline for filing dispositive motions [Continued from June 30, 2020]
October 15, 2020	Oppositions to dispositive motions [Continued from August 14, 2020]
October 29, 2020	Replies in support of dispositive motions [Continued from August 31, 2020]
December/January, 2020 (date and time to be set)	Hearing on Dispositive Motions [Continued from September 2020]
March, 2021	Final pretrial conference statements [Continued from December 2020]
March, 2021	Final pretrial conference [Continued from December 2020]
May/June 2021	Trial Commences [Continued from March/April 2021]

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.

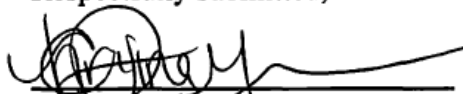
OFFICE OF THE SPECIAL MASTER

CERTIFICATE OF SERVICE

This is to certify that on this 29th day of April 2020, I caused a true and correct copy of **STATE OF TEXAS'S STATUS REPORT FOR May 1, 2020 HEARING WITH SPECIAL MASTER** 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: April 29, 2020


Christina Garro

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(Service via E-Mail and U.S. Mail)

Honorable Michael J. Melloy

Special Master
United States Circuit Judge
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