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May 14, 2020

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

Special Master Michael J. Melloy  
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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 status report for the May 15, 2020 hearing, addressing the agenda items set forth in the Special Master's May 5, 2020 Order and Amendment to the Trial Management Schedule (Order).

1. The current status of discovery, use of video depositions and persons to be deposed
  - A. Agreement regarding the video deposition platform

As directed by the Special Master in the Order, Somach Simmons & Dunn submitted a report on May 8, 2020 regarding the status of the Parties' investigation and discussions concerning a video deposition service. The Parties mutually agree to utilize Worldwide Court Reporters (Worldwide) for virtual depositions. Worldwide is hosting the May 15, 2020 status hearing via the virtual platform that the Parties' will utilize for depositions. Invitations with log-in instructions were circulated to all Parties, amici and the Special Master via email on May 11, 2020. The Parties' court reporter, Heather Garza, will attend and transcribe the hearing. At the hearing, Worldwide will do a short presentation to demonstrate how depositions will proceed in the virtual platform.

B. Current deposition schedule

The Parties continue to participate in meet and confer efforts regarding the virtual deposition schedule. The following fourteen (14) depositions are confirmed:

<b>Party Requesting Deposition</b>	<b>Witness Name</b>	<b>Description</b>	<b>Date</b>
New Mexico	Phil King	EBID District Engineer; Non-Retained expert of the U.S. and Texas	5/18/20 – 5/19/20
New Mexico	Erek Fuchs	EBID Groundwater Resources Director; Non-Retained expert of Texas	5/20/20 – 5/21/20
New Mexico	George Hornberger	Texas expert	5/22/20
New Mexico	Bill Hutchison	Texas expert	5/28/20
New Mexico	Joel Kimmelshue	Texas expert	6/5//20
New Mexico	Mica Heilmann	Texas expert	6/6/20
New Mexico	Stephanie Tillman	Texas expert	6/6/20
New Mexico	Travis Brooks	Texas expert	6/6/20
New Mexico	Scott Miltenberger	Texas expert	6/8/20
Texas	Sheldon Dorman	New Mexico OSE, former Lower Rio Grande Water Master	6/9/20
New Mexico	Leonardo Lombardini	Texas expert	6/10/20
Texas	Ryan Serrano	New Mexico OSE, Lower Rio Grande Water Master, Day 3	6/11/20
New Mexico	David Sunding	Texas expert	6/12/20
New Mexico	Al Blair	EPI District Engineer; non-retained expert for Texas and the United States.	6/16/20 – 6/18/20

In New Mexico’s April 29, 2020 letter to the Special Master, it identified twenty-two witnesses to depose. Since that time, New Mexico added an additional four witnesses. Texas accommodated New Mexico’s request, and the additional four witnesses are included in the confirmed schedule above. Texas requested that New Mexico produce only four witnesses prior to the June 15, 2020 deadline for New Mexico’s rebuttal reports. Two of those witnesses are included in the schedule above. There is a dispute regarding the timing of the remaining two depositions.

C. Dispute regarding D’Antonio and Schmidt-Peterson depositions

Texas first initiated the meet and confer protocol as to New Mexico witnesses John D’Antonio (the New Mexico State Engineer) and Rolf Schmidt-Peterson (the Former Compact Engineer Adviser and current Director of the New Mexico Interstate Stream Commission) in February of 2019. After a protracted series of delays in confirming the availability of these witnesses, primarily citing to the witnesses’ busy schedules, New Mexico finally confirmed the depositions for April 2020. The depositions did not go forward due the order staying depositions.

Judge Michael J. Melloy

Re: *State of Texas v. State of New Mexico*, et al.

May 14, 2020

Page 3

After the May 5, 2020 Order, Texas requested to depose these two witnesses in May or June 2020. New Mexico has refused to produce these witnesses until July 27-28, 2020 for Mr. Schmidt-Peterson, and August 4-5, 2020 for Mr. D'Antonio. New Mexico again cited to the witnesses' busy schedules, delaying as they had in 2019. Texas requested their first available dates that, according to New Mexico, are not until the last month of discovery, a year and a half after Texas first requested these depositions. Scheduling these depositions so close to the end of discovery will create conflicts with Texas's ability to take rebuttal expert depositions.

Texas requests that the Special Master order these witnesses to appear for deposition in June 2020, thereby avoiding conflicts with Texas's need to depose New Mexico's expert witnesses after the submission of their reports on June 15, 2020.

D. The post-June 15, 2020 deposition schedule

On May 14, 2020, Texas initiated the meet and confer protocol regarding the remaining thirteen (13) witnesses to depose prior to the close of discovery. These witnesses are all retained and non-retained New Mexico experts that Texas understands will be authoring rebuttal reports, due on June 15, 2020.

E. The status of ESI document productions

Texas completed its ESI document productions in December of 2019. Colorado completed its ESI document productions in March of 2020. New Mexico advised that its ESI document productions would be complete by the end of May 2020.

Texas requests an order by the Special Master that all ESI document productions by all Parties shall be complete by May 31, 2020, subject only to the ongoing duty of all Parties to supplement discovery pursuant to the Federal Rules of Civil Procedure.

2. Whether it would be appropriate to establish a deadline for submission of expert report supplementation

A. Dispute regarding New Mexico's June 15, 2020 rebuttal disclosure deadline

On May 4, 2020, the United States produced a supplemental rebuttal expert report by Jean Moran with Stetson Engineering (Moran Supplemental Report). On May 6, 2020, Texas produced a supplemental rebuttal expert report by Shane Coors with Precision Water Resources Engineers (Coors Supplemental Report). Both of these experts were disclosed on December 30, 2019, and produced their initial reports on that date. The May 2020 Moran and Coors reports supplement the December 30, 2019 rebuttal reports. Both supplemental rebuttal reports respond to New Mexico's extensive RiverWare modeling efforts. The New Mexico

Judge Michael J. Melloy

Re: *State of Texas v. State of New Mexico*, et al.

May 14, 2020

Page 4

RiverWare modeling was disclosed only two months prior to the date when Texas's and the United States' rebuttal reports were due, thus causing the additional work that resulted in the Moran and Coors Supplemental Reports.

New Mexico requests additional time to review and respond to the Moran and Coors Supplemental Reports. To that end, New Mexico requested that the June 15, 2020 rebuttal report deadline for *all of* its modelers be extended until July 15, 2020. New Mexico advised that it would have four to five rebuttal reports on modeling issues. Importantly, the New Mexico request seeks to extend the time for *all* rebuttal reports on all modeling issues. This request exceeds the limited scope of modeling issues raised by the Moran and Coors Supplemental Reports, which it cites as the only reason for the extension.

Texas and the United States advised New Mexico on May 13, 2020 that the New Mexico modelers could serve supplemental rebuttal reports by July 15, 2020, to address only the scope of the Moran and Coors Supplemental Reports. However, Texas and the United States objected to an extension to the June 15, 2020 deadline for the New Mexico rebuttal reports. New Mexico should produce *all of* its rebuttal reports on June 15, 2020 as ordered by the Special Master. To the extent that the New Mexico modeling experts need to supplement those rebuttal reports to address issues raised in the Moran and Coors Supplemental Reports, Texas and the United States agree that they may do so on or before July 15, 2020. However, Texas and the United States should not have to wait an additional month to receive the modeling rebuttal reports, particularly since New Mexico will have had over six months to finalize the reports. That would mean that Texas and the United States cannot take any of the modelers' depositions until after July 15th, leaving a very limited time to review the reports and take those depositions.

B. Texas's position regarding a supplemental expert report deadline

At this time, Texas does not anticipate filing any further supplemental expert reports. However, to the extent that Texas determines an additional supplemental report is appropriate after it receives the June 15, 2020 New Mexico rebuttal reports, Texas agrees to do so by July 15, 2020.

Texas also proposes a July 15, 2020 deadline for the filing of all supplemental expert reports by all Parties. To the extent that any Party desires to file a supplemental expert report after July 15, 2020, the Party should be required to seek leave from the Special Master to do so.

3. Continued discussion concerning mediation and appointment of a mediator

Texas is prepared to discuss this topic at the hearing.

4. Continued discussion on trial phasing and management

Texas remains opposed to any proposal to phase or bifurcate the case, except perhaps with respect to remedies. 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 areas of testimony. This would permit a more natural flow to the testimony, avoid repetitive testimony, and allow the Court and parties breaks at appropriate junctures.

We appreciate Your Honor's consideration of Texas's positions in advance of the May 15, 2020 status conference and look forward to the upcoming hearing.

Very truly yours,

s/Stuart L. Somach

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