

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**

◆  
**STATE OF NEW MEXICO'S REQUEST FOR LEAVE TO FILE  
ADDITIONAL DEPOSITION DESIGNATIONS**

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August 25, 2021

Comes now the State of New Mexico, pursuant to Paragraph IV of the April 19, 2021 Trial Management Order, and requests leave of the Special Master to file additional deposition designations as specified herein. New Mexico further requests that deadlines be set for counter-designations, objections and submission to the Special Master of unresolved issues. As grounds therefore, New Mexico states as follows:

### **BACKGROUND**

1. On June 30, 2021, Texas filed the State of Texas's Witness List Pursuant to Section III of the April 9, 2021 Trial Management Order ("Texas 1st Trial Witness List"). The Texas 1<sup>st</sup> Trial Witness List identified Mica Heilmann and Hermann Settemeyer as "will call" witnesses. The Texas 1<sup>st</sup> Trial Witness List identified Leonardo Lombardini and Robert Rios as "may call" witnesses.
2. New Mexico did not submit designations of these witnesses' testimony to the other parties on June 30, 2021 because New Mexico anticipated Texas would call these witnesses at trial.
3. On August 18, 2021, Texas provided New Mexico a joint draft Witness Order and Time Estimates document it prepared in conjunction with the United States ("TX/US Trial Witness Schedule"). None of the witnesses listed in paragraph 1, herein, appear on the TX/US Trial Witness Schedule.

### **ARGUMENT**

Because it now appears Texas will not call these witnesses, and in the interests of trial efficiency, New Mexico requests permission to designate portions of these witnesses' testimony

by deposition. Allowing testimony from these witnesses to be designated by deposition will promote the efficient and speedy resolution of trial in this matter while also allowing the Special Master to develop a full record to present to the Court.

New Mexico also asserts specific grounds for each witness as follows:

1. Mica Heilmann: Ms. Heilmann is a Texas retained expert whom New Mexico expected to be called by Texas at trial; she is listed on the Texas 1<sup>st</sup> Trial Witness List as “will call.” Texas did not list Ms. Heilmann on the TX/US Trial Witness Schedule. Ms. Heilmann leads Land IQ’s remote sensing section and is the Texas expert who oversaw implementation of Land IQ’s formerly proprietary crop mapping methodology in this case. Because Texas apparently no longer plans to call Ms. Heilmann as a witness at trial, it is critical to designate portions of Ms. Heilmann’s deposition testimony regarding this methodology to present a complete trial record to the Special Master and the Court. Ms. Heilmann’s proposed deposition designations are attached hereto as Appendix A.
2. Leonardo Lombardini: Dr. Lombardini is a Texas retained expert whom New Mexico expected would be called by Texas at trial. He is listed on the Texas 1<sup>st</sup> Trial Witness List as “may call.” Texas did not list Dr. Lombardini on its TX/US Trial Witness Schedule. New Mexico seeks to designate various passages from Dr. Lombardini’s deposition transcript so that the Court has a complete record of the expert analysis developed by the parties for this case. Dr. Lombardini’s proposed deposition designations are attached hereto as Appendix B.

Dr. Lombardini is an expert on the effect of soil salinity on plants, including pecans. Dr. Lombardini testified at deposition that: (i) while the quality of surface water degrades as one goes downstream, the quality of surface water in Texas remains good—good enough for pecans; (ii) he observed no salinity damage (visually or in lab tests) to any pecan trees or pecan tree leaves in Texas; (iii) the sudden worsening of river water quality in Texas is probably caused by municipal effluent flows and local drain flows in the El Paso Ciudad/Juarez metropolitan area downstream from the Courchesne bridge gage; and (iv) he has no strong disagreement with Dr. Lewis Munk’s opinion (New Mexico’s salinity expert) that a reasonable salinity threshold for pecans (the threshold below which salinity would not impact yield) in the geographic area relevant to this case is 3.5 dS/m.

3. Robert Rios: Mr. Rios is the Watermaster for EPCWID and New Mexico expected him to be called by Texas at trial; he is listed on the Texas Trial Witness List as “may call” and also as a “may call” witness by New Mexico. Texas did not list Mr. Rios on its TX/US Trial Witness Schedule. As opposed to calling Mr. Rios as a hostile witness, New Mexico believes trial efficiencies will be served by presenting Mr. Rios through deposition

designations. Mr. Rios's proposed deposition designations are attached hereto as Appendix C.

4. Herman Settemeyer: Mr. Settemeyer was the Engineer Advisor/Manager to the Texas Rio Grande Compact Commissioner from 1987 to 2015 and during key events at issue in this litigation; he is listed on the Texas 1<sup>st</sup> Trial Witness List as "will call" and on New Mexico's list as "may call." Texas did not list Mr. Settemeyer on the TX/US Trial Witness Schedule. As opposed to calling Mr. Settemeyer as a hostile witness, New Mexico believes trial efficiencies will be served by presenting Mr. Settemeyer through deposition designations. Mr. Settemeyer testified at deposition that, among other items, i) Texas was historically entitled to 43% of Project Supply based on the D2 curve; ii) that according to the Texas adjudication the total water right adjudicated to EPCWID was 376,000 AF/year; and iii) that 1979 through 2003 were all full supply years. Mr. Settemeyer's proposed deposition designations are attached hereto as Appendix D.

For the foregoing reasons, New Mexico requests leave to submit the attached deposition designations through the deposition designation process set forth in ¶ IV of the Trial Management Order, and further requests that deadlines be set for counter-designations and objections and submission to the Special Master of unresolved issues.

Respectfully submitted,

/s/ Jeffrey J. Wechsler

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**OFFICE OF THE SPECIAL MASTER**  
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**STATE OF NEW MEXICO’S CERTIFICATE OF SERVICE**  
◆  
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This is to certify that on August 25, 2021, I caused a true and correct copy of the **State of New Mexico’s Request for Leave to File Additional Deposition Designations** and all appendices thereto to be served by e-mail and U.S. Mail upon the Special Master and by e-mail upon all counsel of record and interested parties on the Service List, attached hereto.

Respectfully submitted this 25th day of August, 2021.

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