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August 26, 2020

**Via Electronic Mail Only**

Special Master Michael J. Melloy  
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Email: [TXvNM141@ca8.uscourts.gov](mailto:TXvNM141@ca8.uscourts.gov)

Re: Joint Response by the Parties re: Briefing Schedule for Compact Apportionment Issue  
*State of Texas v. State of New Mexico and State of Colorado*  
United States Supreme Court, Original Jurisdiction No. 141

Dear Judge Melloy:

The Parties to this Original Action, the State of Texas, the State of New Mexico, the State of Colorado, and the United States, jointly submit this letter to respond to the questions raised in paragraph D, Apportionment Issue, of your August 18, 2020 Order. Paragraph D discusses the issue of the prudence of an early dispositive motion schedule to address the apportionment of water as between New Mexico and Texas. In your Order, you raise the question of whether there should be an accelerated briefing schedule after October 15, 2020, for the apportionment issue. The Parties understand that this would mean an accelerated schedule for response and reply briefing on apportionment, while maintaining the current schedule on the remainder. Our collective view is that imposing a disjointed briefing schedule over a compressed period would be inefficient and disruptive.

You first ask if the apportionment issue is truly a severable issue. In our view, with respect to responsive and reply briefing, it is not. The Parties anticipate dispositive issues to be briefed beyond apportionment. Separating one Compact issue from other Compact issues for staggered responses will cause duplication, inefficiency, and increased resource expenditures.

The second question you ask is whether it is realistic to accelerate the briefing schedule to allow early determination on this issue. In our view, it is not, and there appears that little or nothing would be gained other than increasing the workload on the Parties. The Parties will all be very involved in briefing all of the dispositive motion issues that we collectively will be addressing within what is already a fairly aggressive schedule. Pulling

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RE: *Texas v. New Mexico, et al.*: Joint Response re: Briefing Schedule for Apportionment Issue

August 26, 2020

Page 2

one issue out for accelerated briefing would exacerbate the briefing burdens that already exist. At most, this additional burden would gain only two to three weeks, and would presumably necessitate two sets of oral arguments to resolve all of the dispositive matters that will be pending before you. Resolution of *all or some* of the issues that are involved in dispositive motion briefing will have an impact on the trial in a similar manner as will resolution of the apportionment issue.

As you are aware, the Parties to this litigation differ on substantive issues in this case, including with respect to how apportionment of water between New Mexico and Texas should ultimately be decided. We nonetheless are unanimous with respect to the procedural issues you posed. We all agree that the apportionment issue, as important as it is, does not necessitate an accelerated responsive briefing schedule.

We will, of course, be available to respond to any questions you may have during the August 28, 2020 hearing.

Respectfully submitted,

s/ Stuart L. Somach

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