

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 MOTION TO ADOPT REMOTE PROTOCOLS

The State of New Mexico moves the Special Master for an order adopting remote trial protocols for the upcoming trial setting to begin on October 4, 2021. In support of this Motion, New Mexico states as follows:

1. The State of Texas, the United States, the State of New Mexico, and the State of Colorado (collectively the "Parties") have been working diligently on a set of remote protocols to apply to the October 4th remote trial setting. That work resulted in agreement on nearly all of the remote protocols.
2. The discussions of the Parties are reflected in a [Proposed] Order Regarding Remote Trial Protocols, which is attached hereto as Exhibit A ("Proposed Order"). Based on communications with counsel, New Mexico understands that the Proposed Order represents the collective agreement of all Parties, except where the Proposed Order notes disputes.

3. At the same time, the Parties were working jointly to prepare a Joint Motion to Adopt Remote Protocols (“Draft Joint Motion”). That Draft Joint Motion was intended to move for entry of the Proposed Order and provide an opportunity for each Party to explain its position on the three disputed issues. Accordingly, the Draft Joint Motion identified each of the three issues in dispute in a non-argumentative fashion, before stating the relative positions of the Parties on each issue. The idea was to include all of the Parties’ positions in the same pleading for convenience so that the Special Master could decide each issue.
4. The Parties worked cooperatively for a week to develop the Draft Joint Motion, exchanging the Draft no less than 10 times. Texas and the United States inserted their positions on the disputed issues, and New Mexico did the same. A copy of the Draft Joint Motion in the form in which it existed at 1:14 p.m. Mountain on Tuesday, September 14, 2021 is attached hereto as Exhibit B.<sup>1</sup>
5. On Monday evening, the Parties resolved the last negotiable issue on the Proposed Order. On Tuesday morning, New Mexico circulated the joint submittals for final approval. When New Mexico did not receive a response, it followed up with the Parties at 1:14 p.m. Mountain time.
6. Unfortunately, at 2:00 p.m. Mountain, as the Parties were preparing to file the joint submittals, the United States responded by withdrawing its support for the Draft Joint Motion. A copy of the relevant email exchange is attached hereto as Exhibit C. Shortly thereafter, Texas also indicated it was withdrawing its support for the Joint Motion. *See id.* Texas and the United States stated they instead planned to file letters with the Special Master further explaining their positions on the disputed issues.

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<sup>1</sup> The only changes to Exhibit B were to add the word “Draft” to the title, and to remove the electronic signatures to avoid confusion.

7. Prior to the 2:00 email, neither the United States nor Texas had ever expressed concern about the Draft Joint Motion or the approach.
8. New Mexico believes it will still be helpful to the Special Master to review the Draft Joint Motion, in part because the Proposed Order and Draft Joint Motion contain cross-references.
9. New Mexico is unaware of any changes to any Party's positions as reflected in the Draft Joint Motion, but understands that the positions of Texas and the United States may have changed or evolved. The Draft Joint Motion still reflects the position of New Mexico on each of the disputed issues, and New Mexico refers the Special Master to Exhibit B for New Mexico's position on those issues.
10. Except as expressed in the Draft Joint Motion, and perhaps the letters Texas and the United States plan to file, the Proposed Order contained in Exhibit A reflects the agreement of the Parties and their work over the last two weeks.

For the foregoing reasons, New Mexico respectfully requests that the Special Master enter an order adopting the Proposed Order (Exhibit A). New Mexico further requests that the Special Master resolve the disputed issues identified in the attached Draft Joint Motion in New Mexico's favor.

Respectfully submitted,

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\_\_\_\_\_  
♦  
OFFICE OF THE SPECIAL MASTER  
\_\_\_\_\_  
♦

STATE OF NEW MEXICO'S CERTIFICATE OF SERVICE  
\_\_\_\_\_  
♦

This is to certify that on September 14, 2021, I caused a true and correct copy of the **State of New Mexico's Motion to Adopt Remote Protocols** to be served by e-mail upon all counsel of record and interested parties on the Service List, attached hereto.

Respectfully submitted this 14th day of September, 2021.

/s/ Michael A. Kopp

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**STATE OF NEW MEXICO and**  
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**Defendants.**

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**OFFICE OF THE SPECIAL MASTER**

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**[PROPOSED] ORDER REGARDING REMOTE TRIAL PROTOCOLS**

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September 14, 2021

Trial in this matter has been set in two settings. The first trial setting will begin October 4, 2021, and will be held virtually. The second trial setting will be in person, and will begin in March of 2021 in Cedar Rapids, Iowa. This [Proposed] Order Regarding Remote Trial Protocols (“Order on Remote Protocols”), which was developed in part by the agreement of the United States, Texas, New Mexico and Colorado (“Parties”) addresses the protocol for procedures during the remote trial setting scheduled in this matter during the fall of 2021. This Order on Remote Protocols may only be modified upon order of the Court.

## **I. MAINTAINING THE DECORUM OF THE COURT.**

### **A. Counsel for the Parties.**

Counsel for the United States, Texas, New Mexico and Colorado are required to observe the typical rules and procedures related to court appearances, including, without limitation, rules related to attire during the proceedings. Attorneys questioning a witness must have their video feeds on at all times that court is in session and use best efforts to eliminate all visual and auditory distractions.

### **B. Amicus, witness, client participation (“observers”).**

Absent an order of the Special Master, all observers will be limited to observation status via a video feed as provided for in section VI below.

## **II. PRE-TRIAL ARRANGEMENTS.**

**A. Remote Platform.** The Court’s designated remote platform is Zoom. The Parties and the Court will continue to rely on WorldWide Court Reporters as the third-party service provider (“WorldWide” or “Remote Video Support Provider”) to arrange, monitor, support, and troubleshoot the Zoom connection during the trial.

**B. Court Management of Platform.** The Court will manage and control the

proceedings with the assistance of WorldWide, and will exercise control over the various technological settings.

**C. Preparing to Meet Technological Requirements.** The Parties shall use best efforts to ensure that there will be clear video and audio transmission during the trial, including adequate familiarity with Zoom and related software and hardware, e.g., microphones, webcams, headphones, multiple monitors, etc.

- 1. Adequate Equipment.** Each Party is responsible for ensuring that each witness it sponsors is familiar with Zoom and that every participant has the following equipment to participate in the proceeding without undue delays: microphone, video camera, laptop or monitor. Counsel may wish to ensure that each witness it sponsors is able to participate in the videoconference with one device (or screen) and review exhibits on another.
- 2. Test Sessions.** At least one test session must be conducted by counsel with each witness in advance of the proceeding in which the witness practices using Zoom, becomes familiar with the process for viewing electronic exhibits, and tests all audio and video equipment (including settings) that will be used at trial. This provision does not apply to adverse witnesses.
- 3. Adverse Witnesses:** For adverse witnesses, the Parties shall coordinate, and counsel defending the witness must perform the test session with the witness and ensure the witness has the adequate equipment required above.

**D. Court Reporter.** The court reporter will be unmuted for the duration of the proceeding to allow for timely and effective requests for clarification. The Court Reporter will provide “Real Time” transcription, and make rough drafts available at the end of every trial day. The Real Time access code and password will be provided in writing from the Court Reporter to all counsel for the Parties.

**E. Camera/Remote Venue Set Up.** No masks shall be worn by anyone in the trial appearing remotely. The faces of each trial participant must be clearly visible while speaking. To the extent possible, each webcam should be positioned at face level relatively close to questioning lawyer, opposing counsel, and witness. The use of virtual backgrounds is not permitted unless otherwise agreed upon by the Parties and the Court.

**F. Multiple Participants in the Same Room.** If counsel for a Party and a witness are in the same room, cameras shall clearly show each individual in the room, including any counsel for *amici* or other Observers. These individuals are responsible for avoiding audio feedback from the use of multiple devices.

**G. Party Identification.** All Parties' counsel, witnesses and Observers shall be clearly identified when signing on to Zoom.

**H. Scheduling.** Parties' counsel, witnesses and the Court are all located in time zones located across the United States. The trial shall be scheduled to start at 11 am central time and will conclude by approximately 5 pm central time.

**I. Confidentiality.** The Parties shall meet and confer in advance of the start of trial regarding whether a protocol for the use of confidential information, including sealed exhibits, is necessary for the remote trial setting. If it is determined to be necessary, the Parties shall provide a joint recommendation on such procedures to the Court before trial commences. Currently, there are no exhibits listed by any Party that are confidential.

**J. Procedure for Sidebars.** Sidebars shall be conducted through a Zoom breakout room, if available, and facilitated by WorldWide.

**K. Timing.** The Court clerk will account for the time used by each Party. On a regular basis, the Court clerk shall provide an accounting of how much time was used by the Parties.

### **III. PROHIBITION ON RECORDING.**

Any recording of a court proceeding held by video or teleconference, including

“screenshots” or other visual or audio copying of a hearing, is prohibited. Violation of these prohibitions may result in sanctions, including restricted entry to future hearings, denial of entry to future hearings, removal of Court-issued media access, or any other sanctions deemed appropriate by the Court.

#### **IV. WITNESSES AND PRESENTATION OF TESTIMONY.**

**A. Witness List.** The parties have already disclosed their witness lists. However, because the trial is being convened in two settings, the Parties shall separately disclose the witnesses to be presented during the October 4, 2021 remote trial setting. An initial list of witnesses anticipated for the October 4, 2021 trial setting is attached as Exhibit A to this Order. [***Disputed Issue:** Attached to this Proposed Order are two versions of Exhibit A, designated Exhibit A-1 and Exhibit A-2. The Parties request that the Special Master select one of these two versions. Please see Section II of the Joint Motion to Adopt Remote Protocols for a description of the Parties’ positions on this issue.*] The Parties shall file their final witness lists for the October 4, 2021 trial setting, including the anticipated order of witnesses and an estimate of the amount of time anticipated for direct examination, no later than September 23, 2021.

***Disputed language:** The Parties dispute whether the following language should be included in this Order, or not:*

*“No witness who testifies during the first trial setting may be recalled later in trial, absent leave of the Court. Rather each witness may normally only be called once, except for the limited purpose of rebuttal testimony, if allowed by the Court. Witnesses listed on the Parties will-call and may-call lists for the Fall 2021 will not be permitted to testify during the second trial setting.”*

*Please see Section II.A of the Joint Motion to Adopt Remote Protocols and the letter of the United States dated September 10 asking for expedited resolution*

*for a description of the Parties' positions on this language.*

**B. Joining the Hearing.** Witnesses must access Zoom using the credentials provided by the Court at least 10 minutes before the scheduled start time for their examination. Attorneys should not attempt to “share” a connection with a witness.

**C. Witness Admonition.** Before or after a witness takes the oath, affirmation, or declaration required by F.R.E. 603, and before the witness starts to testify, the Court will ask the witness to affirm that all communications with the witness during his or her examination will be on the record, other than communications with the witness during breaks, and that the witness will not engage in any direct or indirect communications with anyone during his or examination on the witness stand, other than those communications made on the record. The Court reserves the right to ask any witness to back up from their webcam so the Court and counsel can see the witness' hands for the duration or portions of the witness' testimony.

**D. Witness Notes.** If a witness will have or use any notes or other documents (other than exhibits identified on the record) in front of him or her during testimony, counsel must, at least 24 hours before such witness is called to testify, provide to all other counsel any documents, including notes, that the witness will have before him or her when testifying. Opposing counsel may examine the witness about such documents.

**E. Exhibits.**

**1. Electronic Form.** All exhibits including demonstrative exhibits to be used in an examination shall be submitted electronically to the Court, all counsel, and the court reporter pursuant to prior stipulation as provided for below:

“Five calendar days in advance of the date a witness is scheduled to testify at trial, the Party offering the witness shall email a list of exhibits the Party intends to offer during that specific witness's examination no later than 6:00 pm Central Time Zone. Opposing counsel shall email lists of cross-

examination exhibits the following day no later than 6:00 pm Central Time Zone. Within 48 hours thereafter, each Party shall advise opposing counsel as to any objections to the direct and cross-examination exhibits, indicating the basis for the objections, and the Parties shall meet and confer in good faith and attempt to resolve any objections in advance of offering the exhibit into evidence. A Party is not precluded from adding additional exhibits that are needed for the examination of a particular witness within the five-day window, but must disclose additional exhibits for use during the direct examination no later than 24 hours before the anticipated witness testimony. A Party may supplement its exhibit list for cross-examination as soon as practicable prior to the start of the cross-examination. All Parties will attempt in good faith to minimize any additions during that time frame. The Parties shall also meet and confer to resolve any objections for later added exhibits in advance of the exhibit being offered into evidence. The Party sponsoring a witness shall inform the Special Master 24 hours before the anticipated witness testimony of (1) the exhibits that each Party intends to offer through the witness, and (2) the exhibits that have unresolved objections, including the basis for the objection. This process also applies to demonstrative exhibits. This procedure does not apply to exhibits that are used for impeachment purposes.”

Each exhibit shall be accessible as an individual document, named electronically according to its exhibit number (e.g., Ex. 1). It is the responsibility of the attorney offering the witness to ensure that the witness has the link to the proceedings and to electronic copies of all exhibits that will be used with that witness, including those of the opposing Parties. The Parties have agreed to upload all electronic exhibits to box.com a secure cloud document repository.

2. **Paper Form.** All exhibits to be used on direct and cross examination, except for impeachment, shall be submitted in tabbed binders to the Court. Paper copies of offered exhibits shall also be submitted to the court reporter if requested. Exhibits shall be printed in black and white, provided that the exhibit shall be printed in color where reasonably necessary to ascertain its meaning in the context of the proceedings. It is the responsibility of the attorney offering the witness to ensure that the witness has copies in paper form of all exhibits to be used with the

witness, including those of the opposing parties, and that those exhibits are available to the witness in the same form that has been provided to counsel and the Court.

**3. Impeachment Exhibits.**

- a) **Electronic Form.** If counsel wishes to use a document for impeachment purposes that was not previously disclosed as an exhibit, counsel must provide an electronic copy of the document to the Court, trial counsel, and the witness at the time counsel seeks to use the document with the witness. Subject to the provisions of Section VI.C.3, below, counsel may use the chat function in Zoom to send the document to the Court, counsel, and the witness.

**4. Admitted exhibits.**

At the end of each trial day, the Court will provide the parties with a list of the exhibits entered into evidence during that trial day; to the extent counsel identifies discrepancies in that list, the discrepancy or discrepancies will be taken up first thing the next morning and resolved. All admitted exhibits will be placed in a separate folder on the secure cloud repository, box.com.

- F. Objections.** The witness must stop speaking when either counsel objects. After the objection is made, the Court will be the first to speak and will instruct counsel how the Court wishes to proceed.

**VI. TECHNOLOGICAL CONSIDERATIONS DURING THE TRIAL.**

- A. How to Join.** Attorneys for the Parties and witnesses scheduled to testify will receive login credentials from the Court via WorldWide. This login information is not public and must not be shared with anyone other than other counsel for the parties.

- B. Attendance by Amicus, Clients, Interested Individuals.** Everyone who is not

an attorney for one of the Parties, or a witness scheduled to testify are classified as “observers” and will receive separate login credentials for a video feed only. Observer credentials are not public, and will be made available via an Order of the Special Master approving an individual or entity for “observer” status. To the extent members of the press want to observe the trial, they must send a letter to the Court requesting this access.

**C. Chat Features.**

1. Use of the chat function should be reserved for communications directly related to the trial proceedings. All communications sent through the chat function should be copied to all trial participants.
2. However, the chat feature may be used to make documents or other materials to be used for impeachment purposes available to the Parties. A document or other materials shared via the chat will be made part of the Court record but the text of the message transmitting them will not unless ordered by the Court.
3. If counsel transmits a document through the chat feature, counsel must so state on the record and must identify the document for the record and ensure that the court reporter and other Parties have a copy of it. At the end of a trial day, Counsel must also make the document available on box.com.

**D. Break-out Rooms.** The Court may permit the use of virtual break-out rooms by any Party if requested and available. Discussions that take place in the break-out rooms will not become part of the Court record.

**E. Addressing Technological Difficulties.** If a participant is disconnected from the videoconference or experiences some other technical failure, the participant shall use best efforts to promptly re-establish the connection and shall take no action which threatens the integrity of the proceeding (e.g., communications with a third party related to anything other than resolving the technical issue, unless on an

official break from trial). If the connection cannot be re-established within approximately five minutes, the Court may take steps to “pause” the trial, which may include moving Parties’ counsel and/or witnesses into the virtual waiting room or one or more separate break-out rooms (if available) at which time counsel shall meet and confer in good faith to develop a joint proposal regarding how to proceed. If the Court deems it unfair to any Party to continue the remote hearing because of a technical failure, the Court may postpone or terminate the videoconference at any time and take such other steps as may be necessary to ensure the fairness and integrity of the proceedings.

Dated: \_\_\_\_\_

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Honorable Michael J. Melloy  
Special Master  
United States Circuit Judge  
111 Seventh Avenue, S.E., Box 22  
Cedar Rapids, IA 52401  
Telephone: 319-423-6080  
Facsimile: 319-423-6085

**EXHIBIT A-1**

<b>EXHIBIT A-1: Texas and U.S. Proposed Witness Lists for 2021 Fall Setting</b>				
<b>Notes:</b> (1) The TX/US witnesses are listed by anticipated order of appearance, subject to revisions on or before September 23, 2021; (2) An Asterik* indicates a dispute between the parties to address with the Special Master; (3) The Segment 1 (fact witnesses) and Segment 2 (retained expert historians) split is proposed by Texas; (4) New Mexico's witness list (Segment 1 and may-call) reflects the list received from New Mexico on 9/8/21.				
<u>Texas/US</u>		<u>New Mexico</u>		<u>Colorado</u>
<b>Segment 1:</b>		<b>Segment 1:</b>		<b>Segment 1:</b>
1. Michelle Estrada-Lopez		1.*Jennifer Stevens (expert historian)		No will-call witnesses
2. Sally Spener		2. Rolf Schmidt-Petersen		
3. *Phil King [factual operational testimony only; remainder of testimony in 2022]		3. Shayne Franzoy		
4. Bobby Sloan		4. David Salopek		
5. *Al Blair [factual operational testimony only; remainder of testimony in 2022]		5. Randy Garay		
6. Art Ivey		6. Sally Stahman-Solis		
7. John Balliew		7. Greg Carrasco		
8. Bert Cortez		8. Jorge Garcia		
9. *Pat Gordon		9. Lee Wilson		
10. *Scott Miltenberger (expert historian)		10. Scott Eschenbrenner		
		11. Mike Greene		
		12. Brent Westmoreland		
		13. John Stomp		
		14. Ed Drusina		
		15. Kelly Mills		
		16. Larry French		
		17. Danny Chavez		
		18. John Longworth		
		19. Ryan Serrano		
		20. *John D'Antonio		
<b>Segment 2:</b>		<b>Segment 2:</b>		<b>Segment 2:</b>
1. *Scott Miltenberger (expert historian)		1.*Jennifer Stevens (expert historian)		No will-call witnesses
<b>TX/US May-Call</b>		<b>NM May-Call</b>		<b>CO May-Call</b>

EXHIBIT A-1

1. John D'Antonio		1. Kathy Alexander		1. Craig Cotten
2. Gary Esslinger		2. Gilbert Anaya		2. Hal Simpson
3. William Finn		3. John Balliew		3. Mike Sullivan
4. Danny Landry		4. Al Blair		
5. Rosalba Montes		5. Bert Cortez		
6. Chuy Reyes		6. Alma De Anda		
7. Johnny Stubbs		7. Dale Doremus		
8. Cheryl Thacker		8. Gary Esslinger		
9. Suzy Valentine		9. Michelle Estrada-Lopez		
10. *Robert Rios		10. William Finn		
		11. Art Ivey		
		12. Phil King		
		13. Scott Reinert		
		14. Chuy Reyes		
		15. Robert Rios		
		16. Carlos Rubenstein		
		17. Herman Settemeyer		
		18. "Former NM State Engineers"		
		19. Sally Spener		

**EXHIBIT A-2**

<b>EXHIBIT A-2: New Mexico Proposed Witness Lists for 2021 Fall Setting</b>				
<b><u>Texas/US</u></b>		<b><u>New Mexico</u></b>		<b><u>Colorado</u></b>
1. Michelle Estrada-Lopez		1. *Jennifer Stevens (expert historian)		No will-call witnesses
2. Sally Spener		2. Rolf Schmidt-Petersen		
3. *Phil King [all testimony, both fact and expert]		3. Shayne Franzoy		
4. Bobby Sloan		4. David Salopek		
5. *Al Blair [all testimony, both fact and expert]		5. Randy Garay		
6. Art Ivey		6. Sally Stahman-Solis		
7. John Balliew		7. Greg Carrasco		
8. Bert Cortez		8. Jorge Garcia		
9. *Pat Gordon		9. Lee Wilson		
10. *Scott Miltenberger (expert historian)		10. Scott Eschenbrenner		
		11. Mike Greene		
		12. Brent Westmoreland		
		13. John Stomp		
		14. Ed Drusina		
		15. Kelly Mills		
		16. Larry French		
		17. Danny Chavez		
		18. John Longworth		
		19. Ryan Serrano		
<b>TX/US May-Call</b>		<b>NM May-Call</b>		<b>CO May-Call</b>
1. John D'Antonio		1. Kathy Alexander		1. Craig Cotten
2. Gary Esslinger		2. Gilbert Anaya		2. Hal Simpson
3. William Finn		3. John Balliew		3. Mike Sullivan
4. Danny Landry		4. Al Blair		
5. Rosalba Montes		5. Bert Cortez		
6. Chuy Reyes		6. Alma De Anda		
7. Johnny Stubbs		7. Dale Doremus		
8. Cheryl Thacker		8. Gary Esslinger		
9. Suzy Valentine		9. Michelle Estrada-Lopez		
10. *Robert Rios		10. William Finn		
		11. Art Ivey		

EXHIBIT A-2

		12. Phil King		
		13. Scott Reinert		
		14. Chuy Reyes		
		15. Robert Rios		
		16. Carlos Rubenstein		
		17. Herman Settemeyer		
		18. "Former NM State Engineers"		
		19. Sally Spener		

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

**[DRAFT] JOINT MOTION TO ADOPT REMOTE PROTOCOLS**

The State of Texas, the United States, the State of New Mexico, and the State of Colorado (collectively the “Parties” or “Movants”) jointly move the Special Master for an order adopting remote protocols for the upcoming trial setting to begin on October 4, 2021. In support of this Joint Motion, the Parties state as follows:

**I. THE PARTIES HAVE AGREED ON REMOTE PROTOCOLS**

The Parties have been working diligently on a set of remote protocols to apply to the October 4th remote trial setting. That work has resulted in agreement on nearly all of the remote protocols. The agreement of the Parties is reflected in a [Proposed] Order Regarding Remote Trial Protocols, which is attached hereto as Exhibit 1 (“Proposed Order”). The Parties will also provide an electronic version of the Proposed Order in Microsoft Word format. The remaining issues in dispute are identified in Section II of this Joint Motion.

## II. ISSUES IN DISPUTE

The Parties have identified three disputed issues that require a decision from the Special Master. The issues concern the witnesses that will be allowed to testify during the October 4, 2021 trial setting, as reflected in Exhibits A-1 and A-2 to the Proposed Order, as well as the order of appearances of the retained expert historians. The disputed issues are explained below, along with a statement of each Parties' position on the issue:

### **A. Disputed Issue No. 1: Whether Al Blair and Phil King may testify during both the Fall 2021 and March 2022 trial settings.**

Al Blair and Phil King are the district engineers for EPCWID and EBID, respectively. Each intends to provide both fact and expert testimony. Texas and the United States propose that Dr. Blair and Dr. King provide their fact testimony during the October 4, 2021 trial setting, and reserve their expert testimony for the March 2022 trial setting. New Mexico opposes this proposal and states that both witnesses should be required to provide all of their testimony at one time (either in October, 2021, or in March, 2022). New Mexico has proposed the language reflected in italics in Section IV.A of the Proposed Order. Texas and the United States oppose this language, as it applies to Dr. Blair and Dr. King. Texas and the United States agree that all other witnesses scheduled for the fall trial setting shall not be recalled in the spring trial setting, absent leave of the Court, or for rebuttal testimony if permitted by the Court.

The positions of the Parties are reflected below:

#### **1. Position of Texas:**

Drs. Blair and King are disclosed as non-retained experts and fact witnesses for both the United States and Texas. These individuals are the most knowledgeable witnesses about the interface between Bureau and District Project operations, as well as intra-district details of water ordering, sources of water available to constituents and changes in operations over time; both have

decades worth of experience with their respective irrigation districts. However, it is true that both witnesses also have technical expert opinion testimony responsive to Dr. Barroll's opinions. That opinion testimony will be more effectively delivered nearer in time to Dr. Barroll's testimony, and Texas and the United States propose to reserve that for the spring trial setting. Further, Texas and the United States are committed to limiting Drs. Blair and King's testimony in the spring to their opinions, and not retreading the ground related to factual aspects of Project and District operations.

## **2. Position of the United States:**

The United States joins in Texas's statement above and incorporates by reference its letter to the Special Master, filed September 10, 2021, which addresses this issue in greater detail. The United States notes that Dr. Blair and Dr. King have been involved in Project operations for their respective districts for over thirty years. They have extensive personal knowledge of the Project system that will provide valuable context for the other testimony the Special Master will hear in the fall setting. Hearing their testimony about Project operations in the fall and their technical expert analysis in the spring is consistent with the Special Master's guidance on the division of trial. It would also facilitate judicial review of the record by consolidating most (or all) of the factual/operational testimony together in one phase and all of the technical expert analysis together in the other. Any speculative prejudice to New Mexico can be sufficiently addressed through objections and appropriate instructions at trial.

## **3. Position of New Mexico:**

Texas and the United States should not be allowed to present any witness twice. The decision whether to put Dr. Blair and Dr. King on during the October 4, 2021 trial setting or the March 2022 trial setting rests with Texas and the United States. But whenever they choose to call

## EXHIBIT B

them, Dr. Blair and Dr. King should be required to follow the standard procedure and present all of their testimony, both fact and expert, without being recalled.

First, allowing Texas and the United States to call Dr. Blair and Dr. King twice (in October and March) would prejudice New Mexico. The expert testimony and opinions of Dr. Blair and Dr. King are directly related to the same issues as their fact testimony. As a result, the factual and expert testimony is interwoven and interconnected, and the cross examination of these witnesses cannot be separated into fact and expert questions.<sup>1</sup> For example, Dr. Blair attempts to contradict New Mexico expert Dr. Barroll on the issue of El Paso municipal effluent. Rather than substantively contradicting Dr. Barroll's opinions on the accounting and impact to New Mexico of EPCWID's use of effluent, Dr. Blair relies on the fact that this effluent is discharged into Project facilities (Riverside Canal) instead of directly into the Rio Grande for his opinion that Project accounting is appropriate. *See* United States of America's Disclosure of Rebuttal Expert Dr. Al Blair at 9 (Dec. 30, 2019) [Dkt. 370]. That expert testimony is inherently bound up with factual testimony, covering points of diversion, effluent discharge, historical operations, and more. Most of Dr. Blair and Dr. King's opinions follow this same pattern. *See id.* at 5, 6, 9, 11, 13 (arguing that Dr. Barroll's conclusions are "factually incorrect"). Separating out the expert issues from the factual issues for the purposes of cross examination for these witnesses would be nearly impossible. *See generally U.S. v. Jensen*, 608 F.2d 1349, 1356 (10<sup>th</sup> Cir. 1979) (court may deny a request to recall a witness when the proffered testimony is redundant).

Even more problematic, because the factual and expert testimony of Dr. Blair and Dr. King are inextricably intertwined, the cross examination during the October 4th trial setting (if they are

<sup>1</sup> During discovery, numerous witnesses with both fact and expert testimony were deposed, including Drs. Blair and King. In all cases, the depositions of these witnesses covered the mixed fact and expert testimony in the same deposition due to the intertwined nature of the testimony.

allowed to testify twice) would give a preview to Texas and the United States of the weaknesses in their testimony. Texas and the United States could then attempt to bolster or modify those weaknesses during Dr. Blair and Dr. King's second testimony in the March 2022 trial setting. Texas requested a delay in the trial schedule to meet its specific needs. Texas and the United States should not be allowed to gain a tactical advantage from the revised schedule they supported.

Second, allowing Dr. King and Dr. Blair to testify twice would waste time and be inefficient. *See* Fed. R. Evid. 611 (court should control order of witnesses "so as to . . . avoid wasting time"). New Mexico understands that the primary reason for the two trial settings is to increase efficiency by hearing some of the more straightforward witnesses remotely this fall. That way, the in-person trial can focus on the more complex witnesses when the Parties convene in Cedar Rapids in March. This design was intended to maximize the efficiency of the in-person trial presentation. Allowing Dr. King and Dr. Blair to testify both in the fall and the spring defeats that purpose, adds unnecessary complexity, and would result in redundant direct and cross examination.<sup>2</sup>

Nor does calling Dr. Blair and Dr. King in both trial settings allow for a more coherent presentation. Because both rely primarily on their interpretation of facts, as opposed to independent analysis, for their expert opinions, it is necessary to hear all of their testimony together to comprehend its meaning. For that reason, adopting the procedure requested by Texas and the United States would be like hearing the first part of a knock-knock joke in October, but waiting

<sup>2</sup> If Texas and the United States are allowed to call Dr. King and Dr. Blair two different times, New Mexico may do the same for Dr. Barroll, Mr. Lopez, and Mr. Sullivan. Both have portions of testimony that New Mexico would prefer to cover in separate parts of its case. Up until this point, New Mexico had assumed that the normal rule limiting a witness to a single trip to the witness stand would apply. If that is not the case, New Mexico will reevaluate its witness order and strategy.

## EXHIBIT B

until March for the punchline. There simply would be no way to understand or contextualize their testimony until March.

Third, if Texas and the United States believe it is important for Dr. Blair and Dr. King to testify in the October 4, 2021 trial setting for the purposes of their case, New Mexico has no objection. But as explained, those witnesses should be required to provide all of their testimony at one time, and should not be allowed to be recalled in the spring. *See generally U.S. v. Masat*, 948 F.2d 923, 933 (5<sup>th</sup> Cir. 1991) (court may preclude a witness from being recalled where the party seeking to recall the witness has already conducted an examination); *U.S. v. Somers*, 496 F.2d 723, 734 (3<sup>rd</sup> Cir. 1974) (court may deny request to recall a witness when the information needed for the examination was available at the time of the original testimony). On the other hand, if Texas and the United States prefer to reserve Dr. Blair and Dr. King for the March 2022 trial setting, there are other witnesses who can cover the same factual issues in the fall. For example, Gary Esslinger and Jesus Reyes are the managers for EBID and EPCWID respectively, and are more than capable of explaining district operations, as they did in their depositions. Indeed, contrary to the Texas and United States' argument that Dr. Blair and Dr. King are the most knowledgeable, these witnesses referred multiple operational questions to Mr. Reyes, Mr. Rios, and Mr. Esslinger during their depositions. Mr. Esslinger and Mr. Reyes have been moved to Texas's "may-call" list for the October 4, 2021 setting, but they were listed as "will-call" witnesses on Texas's June 30, 2021 Trial Witness List.

In sum, to prevent prejudice to New Mexico, maximize efficiency, and avoid wasteful and redundant testimony, the request of Texas and the United States to call Dr. Blair and Dr. King in both the October 4, 2021 trial setting and the March 2022 trial setting should be denied, and those

two witnesses should be required to provide all of their testimony (expert and fact) in a single sitting.

**4. Position of Colorado:**

Colorado takes no position on this issue.

**B. Disputed Issue No. 2: Whether John D'Antonio should be allowed to testify during the March 2022 setting even though he is not an expert witness.**

John D'Antonio is the New Mexico State Engineer and New Mexico Rio Grande Compact Commissioner. He intends to provide fact testimony and has not been designated as an expert. New Mexico proposes that he provide his fact testimony during the March 2022 trial setting. Texas and the United States oppose this proposal and state that State Engineer D'Antonio is a fact witness and should be required to testify during the October 4, 2021 trial setting. The positions of the Parties are reflected below:

**1. Position of Texas:**

Mr. D'Antonio is a fact witness, plain and simple and likely plays the same role in New Mexico's case as Mr. Pat Gordon plays in Texas's case. Mr. D'Antonio has not been disclosed as an expert. Mr. Gordon is expected to testify in the fall, and Mr. D'Antonio should testify in the fall as well. The risk of Mr. D'Antonio testifying in the spring is the possibility of his testimony being erroneously elevated in importance and of him relying on expert testimony to express heretofore undisclosed opinions. To the extent the Court permits Mr. D'Antonio's testimony to be presented in the Spring, Texas respectfully requests that Mr. Gordon's testimony be presented in the Spring as well.

**2. Position of the United States:**

The Special Master has suggested that the courtroom trial in this case be used for the presentation of technical expert testimony that may be difficult to convey effectively in a remote

setting. As State Engineer, Mr. D'Antonio is expected to testify in a fact-witness capacity as to matters relating to administration of water rights. He has not been disclosed as an expert. Nothing about the scope of his testimony suggests that a courtroom setting is necessary for this testimony. In fact, New Mexico is presenting its other witnesses from the Office of the State Engineer in the fall, including witnesses testifying about water rights administration (Ryan Serrano, John Longworth, Rolf Schmidt-Petersen, e.g.). All of the parties have had to make adjustments to their witness order and presentation to accommodate the hybrid remote/live trial format; New Mexico should not be exempt.

### **3. Position of New Mexico:**

New Mexico developed its case plan and witness order many weeks ago. For a number of reasons, New Mexico prefers to put State Engineer D'Antonio on the witness stand as its final witness. As the Defendant / Counterclaim Plaintiff, New Mexico would normally go last, and have the benefit of presenting its witnesses in its preferred order.

Granting Texas's motion and bifurcating the trial affords benefits to Texas and the United States, and disadvantages New Mexico. One of the downsides of granting Texas's motion, is that New Mexico loses the benefit of hearing the Texas and United States affirmative case before being required to present its own witnesses. New Mexico has accepted the Special Master's order on this issue, and has cooperated by offering to present two of its expert witnesses and all but one of its fact witnesses during the October 4, 2021 setting. As a single exception, New Mexico requests that it be allowed to follow the customary trial procedure and present State Engineer D'Antonio last, when his testimony will be most logical and understandable.

Texas and the United States' position rests on the incorrect presumption that *all* fact witnesses *must* be presented during the October 4, 2021 trial setting. But the Special Master has

never given that categorical instruction. *See* Rough Transcript of September 2, 2021 Status Conference at 10 (Special Master explaining that with regard to remote testimony in the fall, “I guess I wasn’t necessarily intending to establish bright lines” for the division of fact and expert testimony or subject matter). Instead, the Special Master indicated that, while the Parties will have some discretion, his preference is to reserve the more complex witnesses to the March 2022 setting when we will have the advantage of live testimony. *See id.* and Rough Transcript of August 27, 2021 Pretrial Conference at 22-24 (indicating that “some” but not all of the percipient witnesses could be expected to testify remotely in the fall). State Engineer D’Antonio fits this description as he will testify to a number of complex issues that he oversaw or was responsible for as the State Engineer and Compact Commissioner for New Mexico.

Finally, there would be no prejudice to Texas or the United States from allowing State Engineer D’Antonio to testify last since, but for Texas’s request to delay the trial, New Mexico would have presented all of its testimony at the end of trial.<sup>3</sup>

#### **4. Position of Colorado:**

Colorado takes no position on this issue.

#### **C. Disputed Issue No. 3: Whether the expert historian testimony should be heard at the conclusion of the fact witnesses in the Fall 2021 trial setting**

The Parties exchanged draft proposed witness lists for the Fall 2021 trial setting, including the proposed order of the witnesses. The Parties agree to finalize the order of the witnesses for the Fall 2021 trial setting on or before September 23, 2021. Texas proposes that the Fall 2021 trial setting be conducted in two segments, divided between fact witnesses and the retained expert historians. New Mexico opposes this position.

The positions of the Parties are reflected below:

<sup>3</sup> New Mexico has no objection to Mr. Gordon testifying during the March 2022 trial setting.

**1. Position of Texas:**

Texas submits its proposed witness list concurrently herewith, which also includes the New Mexico witness list (shared by New Mexico with the Parties on 9/8/21), and the Colorado witness list (from its pre-trial conference statement). Texas's proposed list separates the witnesses into two segments: the fact witnesses, and the expert historians. There are two retained expert witnesses, both historians, that are slated to testify in the Fall 2021 trial setting, while all other retained expert witnesses will testify in the March 2022 trial setting. It is Texas's position that the separation of fact versus expert witness testimony should apply to all retained experts, regardless of the fact that the historians will testify in the fall. The same rule should apply equally such that the Parties should complete all fact witness testimony prior to putting on retained expert testimony. Accordingly, Texas proposes that segment 1 of the Fall 2021 trial setting should be the fact witnesses for all parties, and segment 2 of the Fall 2021 trial setting should be the two retained expert historians.

**2. Position of the United States:**

The United States takes no position on this issue.

**3. Position of New Mexico:**

As explained above, granting Texas's motion to delay the trial and bifurcating the proceedings between the fall and spring has added complexity and resulted in procedural disadvantages for New Mexico. Rather than seeking to address those procedural issues fairly, Texas presses for even greater complexity in an attempt to gain an additional tactical advantage. With its latest request, Texas seeks to add yet another stage to the proceedings, and thereby control the timing of New Mexico's presentation of its case.

## EXHIBIT B

The sole rationale articulated by Texas for controlling the order and timing of New Mexico's expert historian testimony is that a rule exists requiring expert and fact testimony to be separated. A fatal flaw with this position, however, is that there is no such rule, and Texas offers no citation to support its position. As discussed above, the Special Master has never adopted a rule requiring that all fact testimony precede all expert testimony. *See* Rough Transcript of August 27, 2021 Pretrial Conference at 22-24; Rough Transcript of September 2, 2021 Status Conference at 10. To the contrary, the Special Master has explained that he is attempting to create an efficient process that facilitates the remote presentation of appropriate witnesses (whether fact or expert) in the fall, and reserves more complex witnesses (whether fact or expert) for the spring when they will appear in person. Indeed, a categorical division between fact and expert witnesses was rebuffed when the Special Master explained that he was not "intending to establish bright lines" for the presentation of fact and expert testimony in the fall and spring. Tr. of September 2, 2021 Status Conference at 10. Thus, the foundation for Texas's argument is incorrect.

After manufacturing its new rule, Texas then seeks to apply that rule "equally" to the Parties to control the order of New Mexico's presentation. But here again, Texas's reasoning is faulty. The new rule that Texas seeks to impose, has not been followed even in the procedures on which the Parties have agreed for the October 4, 2021 presentation. For example, as reflected Exhibits A-1 and A-2, Texas and the United States intend to present Michelle Estrada-Lopez and Art Ivey during the October 4, 2021 trial setting. But both Ms. Estrada-Lopez and Mr. Ivey were designated as experts by Texas or the United States, thereby defying Texas's self-proclaimed rule. Similarly, all Parties have agreed that Lee Wilson, a Rule 26 expert and fact witness for New Mexico, should be permitted to testify in the fall. Understood in that light, it is hard to understand Texas's logic.

Moreover, by requesting to “segment” the historians in a separate stage, Texas is effectively seeking to further divide the trial into three phases: (1) a remote phase with all fact witnesses (and Texas’s preferred expert witnesses), (2) a remote phase with the expert historians, and (3) an in-person phase with the remaining expert testimony. This level of complexity is unnecessary, and Texas offers no explanation for why it would be helpful or fair.

In fact, it would be counterproductive to divide up the case as Texas proposes. New Mexico intends to present Dr. Stevens as its first witness during the October 4, 2021 trial setting. That way she can provide historic context to help understand the subsequent fact and expert witnesses. In contrast, dividing up the case as Texas proposes would create a disjointed and fragmented presentation. New Mexico respects Texas’s right (within the rules) to present its witnesses in whatever order it deems most logical and comprehensible. Texas should afford New Mexico that same courtesy.

In the end, there is no reason why the Parties should not be allowed the normal discretion in determining how and when to present their cases. Texas’s request to depart from this well-established procedure should be rejected.

#### **4. Position of Colorado:**

Colorado takes no position on this issue.

### **III. CONCLUSION**

The Parties jointly request that the Special Master adopt the agreed upon remote protocols reflected in the Proposed Order, and further request that the Special Master decide the three remaining disputed issues.

Respectfully submitted,

EXHIBIT B

## EXHIBIT C

**From:** [Theresa Barfield](#)  
**To:** [Lisa Thompson](#); "[Dubois, James \(ENRD\)](#)"; "[Chad Wallace](#)"; [Sarah Klahn](#); "[Jeffrey Wechsler](#)"; "[Preston Hartman](#)"; [Leininger, Lee \(ENRD\)](#); [Coleman, Judith \(ENRD\)](#); [Najjar, Jennifer \(ENRD\)](#); [Michael Kopp](#); "[sdalrymple@montand.com](#)"  
**Cc:** [Mac Goldsberry](#); [Richard Deitchman](#); [Stuart Somach](#)  
**Subject:** RE: Proposed stipulation for remote trial proceedings and Fall 2021 witness lists  
**Date:** Tuesday, September 14, 2021 2:25:09 PM  
**Attachments:** [image001.png](#)

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Texas will proceed with a letter to the Special Master in conjunction with the U.S., as Jim outlined in his email. We are unable to proceed with the draft "joint motion" for the reasons set forth by Jim.

### Theresa Barfield

*Attorney*

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**From:** Lisa Thompson <[ltompson@troutlaw.com](mailto:ltompson@troutlaw.com)>  
**Sent:** Tuesday, September 14, 2021 1:14 PM  
**To:** 'Dubois, James (ENRD)' <[James.Dubois@usdoj.gov](mailto:James.Dubois@usdoj.gov)>; Theresa Barfield <[tbarfield@somachlaw.com](mailto:tbarfield@somachlaw.com)>; 'Chad Wallace' <[Chad.Wallace@coag.gov](mailto:Chad.Wallace@coag.gov)>; Sarah Klahn <[sklahn@somachlaw.com](mailto:sklahn@somachlaw.com)>; 'Jeffrey Wechsler' <[jwechsler@montand.com](mailto:jwechsler@montand.com)>; 'Preston Hartman' <[Preston.Hartman@coag.gov](mailto:Preston.Hartman@coag.gov)>; Leininger, Lee (ENRD) <[Lee.Leininger@usdoj.gov](mailto:Lee.Leininger@usdoj.gov)>; Coleman, Judith (ENRD) <[Judith.Coleman@usdoj.gov](mailto:Judith.Coleman@usdoj.gov)>; Najjar, Jennifer (ENRD) <[Jennifer.Najjar@usdoj.gov](mailto:Jennifer.Najjar@usdoj.gov)>; Michael Kopp <[Mkopp@troutlaw.com](mailto:Mkopp@troutlaw.com)>; 'sdalrymple@montand.com' <[sdalrymple@montand.com](mailto:sdalrymple@montand.com)>  
**Cc:** Mac Goldsberry <[mgoldsberry@somachlaw.com](mailto:mgoldsberry@somachlaw.com)>; Richard Deitchman <[rdeitchman@somachlaw.com](mailto:rdeitchman@somachlaw.com)>; Stuart Somach <[ssomach@somachlaw.com](mailto:ssomach@somachlaw.com)>  
**Subject:** RE: Proposed stipulation for remote trial proceedings and Fall 2021 witness lists

Theresa-

We are comfortable filing jointly with Texas/Colorado and having the US file their own separate letter. What is Texas's position?

Thanks,

Lisa

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**From:** Dubois, James (ENRD) <[James.Dubois@usdoj.gov](mailto:James.Dubois@usdoj.gov)>  
**Sent:** Tuesday, September 14, 2021 2:00 PM  
**To:** Lisa Thompson <[ltompson@troutlaw.com](mailto:ltompson@troutlaw.com)>; 'Theresa Barfield' <[tbarfield@somachlaw.com](mailto:tbarfield@somachlaw.com)>;

**EXHIBIT C**

'Chad Wallace' <[Chad.Wallace@coag.gov](mailto:Chad.Wallace@coag.gov)>; 'Sarah Klahn' <[sklahn@somachlaw.com](mailto:sklahn@somachlaw.com)>; 'Jeffrey Wechsler' <[jwechsler@montand.com](mailto:jwechsler@montand.com)>; 'Preston Hartman' <[Preston.Hartman@coag.gov](mailto:Preston.Hartman@coag.gov)>; Leininger, Lee (ENRD) <[Lee.Leininger@usdoj.gov](mailto:Lee.Leininger@usdoj.gov)>; Coleman, Judith (ENRD) <[Judith.Coleman@usdoj.gov](mailto:Judith.Coleman@usdoj.gov)>; Najjar, Jennifer (ENRD) <[Jennifer.Najjar@usdoj.gov](mailto:Jennifer.Najjar@usdoj.gov)>; Michael Kopp <[Mkopp@troutlaw.com](mailto:Mkopp@troutlaw.com)>; 'sdalrymple@montand.com' <[sdalrymple@montand.com](mailto:sdalrymple@montand.com)>

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**Subject:** RE: Proposed stipulation for remote trial proceedings and Fall 2021 witness lists

Lisa:

We do not have agreement on the Joint Motion. The United States is not willing to join in something in which a simple statement of positions has become a brief of New Mexico. That is not a "Joint" motion at this point, and we are not in agreement as to it being filed as joint. It seems to us that the "Joint Motion" is creating unnecessary problems, and suggest that the parties submit the Proposed Protocol, together with witness lists, to the Special Master by letters in which the parties can lay out their general positions on the three remaining issues, and ask the Special Master to address them quickly.

Jim DuBois

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---

**From:** Lisa Thompson <[lthompson@troutlaw.com](mailto:lthompson@troutlaw.com)>

**Sent:** Tuesday, September 14, 2021 1:29 PM

**To:** 'Theresa Barfield' <[tbarfield@somachlaw.com](mailto:tbarfield@somachlaw.com)>; 'Chad Wallace' <[Chad.Wallace@coag.gov](mailto:Chad.Wallace@coag.gov)>; 'Sarah Klahn' <[sklahn@somachlaw.com](mailto:sklahn@somachlaw.com)>; 'Jeffrey Wechsler' <[jwechsler@montand.com](mailto:jwechsler@montand.com)>; 'Preston Hartman' <[Preston.Hartman@coag.gov](mailto:Preston.Hartman@coag.gov)>; Dubois, James (ENRD) <[James.Dubois@usdoj.gov](mailto:James.Dubois@usdoj.gov)>; Leininger, Lee (ENRD) <[Lee.Leininger@usdoj.gov](mailto:Lee.Leininger@usdoj.gov)>; Coleman, Judith (ENRD) <[Judith.Coleman@usdoj.gov](mailto:Judith.Coleman@usdoj.gov)>; Najjar, Jennifer (ENRD) <[Jennifer.Najjar@usdoj.gov](mailto:Jennifer.Najjar@usdoj.gov)>; Michael Kopp <[Mkopp@troutlaw.com](mailto:Mkopp@troutlaw.com)>; 'sdalrymple@montand.com' <[sdalrymple@montand.com](mailto:sdalrymple@montand.com)>

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**Subject:** RE: Proposed stipulation for remote trial proceedings and Fall 2021 witness lists

Theresa, Jim and Chad:

EXHIBIT C

We believe the attached motion and proposed order are ready to be filed, and we will plan to file this afternoon. Please let us know if you have any further comments.

Best,

Lisa

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**From:** Lisa Thompson

**Sent:** Tuesday, September 14, 2021 8:15 AM

**To:** 'Theresa Barfield' <[tbarfield@somachlaw.com](mailto:tbarfield@somachlaw.com)>; 'Chad Wallace' <[Chad.Wallace@coag.gov](mailto:Chad.Wallace@coag.gov)>; Sarah Klahn <[sklahn@somachlaw.com](mailto:sklahn@somachlaw.com)>; Jeffrey Wechsler <[jwechsler@montand.com](mailto:jwechsler@montand.com)>; Preston Hartman <[Preston.Hartman@coag.gov](mailto:Preston.Hartman@coag.gov)>; Dubois, James (ENRD) <[James.Dubois@usdoj.gov](mailto:James.Dubois@usdoj.gov)>; Leininger, Lee (ENRD) <[Lee.Leininger@usdoj.gov](mailto:Lee.Leininger@usdoj.gov)>; Coleman, Judith (ENRD) <[Judith.Coleman@usdoj.gov](mailto:Judith.Coleman@usdoj.gov)>; Najjar, Jennifer (ENRD) <[Jennifer.Najjar@usdoj.gov](mailto:Jennifer.Najjar@usdoj.gov)>; Michael Kopp <[Mkopp@troutlaw.com](mailto:Mkopp@troutlaw.com)>; [sdalrymple@montand.com](mailto:sdalrymple@montand.com)

**Cc:** Mac Goldsberry <[mgoldsberry@somachlaw.com](mailto:mgoldsberry@somachlaw.com)>; Richard Deitchman <[rdeitchman@somachlaw.com](mailto:rdeitchman@somachlaw.com)>; Stuart Somach <[ssomach@somachlaw.com](mailto:ssomach@somachlaw.com)>

**Subject:** RE: Proposed stipulation for remote trial proceedings and Fall 2021 witness lists

Theresa,

Sounds good, I think we have resolved this issue.

Attached, is the final version of the Joint Motion (disputed issue 4 removed), Proposed Order (removed disputed "flexibility" issue and sentence on time allocation) and Exhibits A-1 and A-2. Look good?

Thanks- Lisa