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September 21, 2021

Via Electronic Mail

Special Master Michael J. Melloy
United States Courthouse
111 Seventh Avenue, S.E.
P.O. Box 22
Cedar Rapids, IA 52401
Email: TXvNM141@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:

Pursuant to Section VI of the April 9, 2021 Trial Management Order, the State of Texas (Texas) respectfully requests leave to file an Amended Final Exhibit List. Texas's current operative Final Exhibit List is attached to Texas's Pretrial Conference Statement as Exhibit B, served on August 25, 2021.

Texas's proposed Amended Final Exhibit List addresses the following issues:

1. Drone Flights:

a. Drone footage: Texas requests to add the drone video and photograph footage completed after the August 25, 2021 exchange of the exhibit lists. This includes all raw footage for flights that were incomplete as of August 25, 2021. Please recall that Texas previously advised the Court and the parties during the August 27, 2021 Pretrial Conference that the flights in the lower part of the river were still in progress, and that Texas would produce the additional footage upon completion.

b. Drone compilation video: Texas also requests to add a compilation video showing, in one video, footage from the drone flights starting at Elephant Butte Reservoir going down to Ft. Quitman, that Texas will offer into evidence at trial. Texas will also produce a summary that identifies the sources of the video clips in the compilation to allow the Court and parties to easily identify the source files.

2. Expert Documents:

Texas requests to add approximately ten documents to its final exhibit list that are not currently identified on Texas's final exhibit list, and not included in the csv file produced to the

Parties in support of the final exhibit list. Of those, only four documents are related to testimony for the Fall 2021 segment of the trial, for use with Texas's expert historian. All of the documents were previously disclosed in discovery in conjunction with retained expert reports.

Additionally, there are several documents identified in Texas's csv file supporting its exhibit list that represent expert materials extracted from the back-up files of retained experts that need to have a unique trial exhibit number assigned prior to trial. Please note that the Parties reached an agreement in June 2021 speaking to the process to deal with back-up materials for the expert reports of this nature. Also, this group of materials identified in Texas's csv file are all related to expert testimony that will not be heard until the March 2022 trial segment.

Although Texas could assign the unique trial exhibit number to these expert back-up materials when it circulates its witness specific exhibit lists 5-days in advance of testimony, Texas believes it would be more efficient to assign numbers now in conjunction with producing the amended list to include the drone footage discussed above.

Texas agrees that these materials remain subject to evidentiary challenges by the Parties, including authenticity objections.

Very truly yours,

s/Theresa C. Barfield
Theresa C. Barfield
Attorneys for the State of Texas

TCB:cer

cc: All counsel for parties and amici
(see attached service list)
Texas v. New Mexico & Colorado docket:
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