

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

THE PARTIES' JOINT STATUS REPORT

September 21, 2022

Pursuant to the August 26, 2022 Order of the Special Master [Dkt. 706], the State of Texas, the United States, the State of New Mexico, and the State of Colorado (collectively the “Parties”) submit this Joint Status Report. The Parties understand that the purpose of this Status Report is to inform the Special Master of the likelihood of settlement so that he knows whether the September 27, 2022 Status Conference should focus on implementation of a settlement agreement or trial preparation. Unfortunately, the Parties are not yet in a position to make that determination. For that reason, this Joint Status Report is divided into settlement and trial issues. The Parties will be prepared to discuss both implementation of a settlement agreement and trial preparation during the Status Conference.

A. Status of Settlement Discussions

The Parties have determined that settlement is uncertain before the September 27th Status Conference and that a trial date should be set. While there are remaining negotiation challenges, the Parties continue to work together toward reaching an agreement. Among the issues outstanding, are issues that could prevent a complete agreement. The Parties will be prepared to inform the Special Master at the start of the September 27th Status Conference whether they are committed to completing the settlement.

New Mexico Statement: If the Parties resolve the remaining issues and commit to a settlement track, New Mexico requests that the Special Master and Parties discuss the following proposed deadlines:

DESCRIPTION	DEADLINE
Deadline to file a Joint Motion for Entry of a Stipulated Decree	November 11, 2022
Deadline for Proposed Procedures for Hearing on of Joint Motion	November 18, 2022
Deadline for Parties to Provide Notice of Executed Settlement Documents	December 15, 2022
Evidentiary Hearing on Joint Motion	January 9-12, 2022

B. Pre-Trial Statement

If the Parties are unable to resolve the remaining issues and commit to a settlement track, the Parties offer the following statements on trial procedure:

The April 9, 2021 Trial Management Order (“TMO”) controlled the exchange of pre-trial information for the trial as a whole and the deadlines set forth in the TMO are complete. Subsequent to the issuance of the TMO, the Special Master split the trial into two segments. Segment 1 is complete and the Parties anticipate that Segment 2 will proceed the third week of January 2023 in Cedar Rapids, Iowa.

Below, the Parties address the status of the TMO components as applied to the second segment of the trial and include a summary of proposed pre-trial deadlines.

I. Trial Date: The August 26, 2022 Order included the following: “[T]he parties shall anticipate that if a settlement agreement is not finalized by September 23, the case will be reset for trial the first week of January, 2023, in Cedar Rapids, Iowa.” To that end, the Parties request to discuss the following:

a. The Parties request that the trial commence on Monday, January 17, 2023. This will allow the Parties to use the week of January 9-13, 2023 to logistically prepare for the trial start date, including

traveling to Cedar Rapids with trial teams and witnesses, as well as setting up trial support technology.

- b. In furtherance of witness scheduling, the Parties would like to discuss the trial schedule, including the number of trial days per week, whether there are any anticipated dark dates, and the start/end times each day.

II. Final Pre-Trial Conference: The proposed January 17, 2023 trial date would accommodate an in-person Pre-Trial Conference for Segment 2 of trial during the second week of January 2023. The Parties propose in-person or remote options for a January 9, 2023 Final Pre-Trial Conference.

III. Witness Lists: The Parties previously exchanged witness lists for the full trial on June 30, 2021 pursuant to the TMO, including identification of “will call” and “may call” witnesses, with short summary statements of anticipated testimony. For Segment 2, the Parties propose to exchange lists identifying the name of each witness from the June 30, 2021 disclosure that the Parties anticipate calling in Segment 2. The Parties propose this exchange on November 22, 2022. Thereafter, on December 28, 2022, the Parties propose exchanging the final witness list, including the anticipated witness order with time estimates.

IV. Deposition Designations:

Statement of Texas, the United States and Colorado: This is complete in terms of the Parties’ compliance with the section. However,

there is an outstanding ruling as it pertains to Texas's designation of witness Cheryl Thacker's 30(b)(6) deposition testimony.

Statement of New Mexico: Deposition designations are complete in terms of the Parties' compliance with the section. However, there are outstanding objections that will require a ruling from the Special Master. If new designations are necessary in light of the final witness lists, those designations must be submitted by January 9, 2023.

- V. **Exhibits**: The Parties previously completed the exchange of final exhibit lists for the full trial on August 25, 2021 (with some amendments approved by the Special Master thereafter). Additionally, the Parties stipulated to modifications to the TMO (Section V) procedure, particularly related to objections. The modified procedure for category A, B and C objections, and resolution of the objections, was approved by the Special Master in Section IV.E. of the September 16, 2021 Order Regarding Remote Trial Protocols. Dkt. 591.

Statement of Texas and the United States: Texas and the United States propose to follow the prior stipulated and approved protocol for the exchange of witness specific documents for each testifying witness as set forth in Section IV.E. of the September 16, 2021 Order for trial Segment 2. The protocol includes witness-specific demonstrative exhibits and requires identification of both direct and cross-examination exhibits for each witness in advance of testifying (except as otherwise ordered by the Special Master). Impeachment/Rebuttal exhibits are excluded from

this process. To the extent that exhibits that any party intends to use have already been admitted, the Parties should use the exhibit number for the version that has already been admitted.

Statement of New Mexico and Colorado: The Parties should confer on the procedures for objections to trial exhibits to determine if changes to the protocol should be offered.

VI. Pre-Trial Conference Statements: The Parties previously submitted pre-trial statements for the full trial on August 25, 2021. The Parties do not currently intend to submit a supplemental statement for Segment 2, unless directed by the Special Master.

VII. Copies: The Parties previously complied with submission of TMO documents to the Special Master.

VIII. Motions in Limine: The Parties previously exchanged motions in limine for the full trial on July 20, 2021. The Parties agree that the Special Master should preclude the Parties from supplementing expert reports absent a Party bringing a motion upon good cause shown.

Statement of Texas and the United States: Additional motions in limine absent a Party bringing a motion upon good cause shown would be inappropriate, and should therefore be precluded.

Statement of New Mexico: Additional motions in limine are not contemplated. Other procedural motions should be submitted by December 23, 2022.

- IX. Trial Proceedings:** There are no affirmative tasks or deadlines associated with this section. However, given the number of interested Parties and the ongoing challenges with COVID-19, the Parties request a remote option be made available for viewing the trial. Colorado requests a discussion regarding remote observation as a Party participant. The Parties otherwise agree that remote participation will not be permitted.
- X. Trial Briefs:** The Parties previously exchanged trial briefs on September 27, 2021. The Parties request that any trial briefs related to Segment 2 of trial are submitted on or before December 15, 2022.
- XI. Order of Presentation:** The Parties agree that this procedural section remains applicable to Segment 2 without modification. The Parties request the Special Master's direction as to whether there will be opening statements for trial Segment 2.
- XII. Trial Length:** The Special Master previously imposed the following time limitations for each party: 150 hours for the coordinated case of Texas and the United State; 150 for New Mexico; 15 hours for Colorado. During the first segment, the following times were expended: Texas and United States – 38:45 hours; New Mexico – 38:38 hours; Colorado – 4:00 hours. Thus, the following time remains: Texas and United States 111:15 hours; New Mexico – 111:22 hours; Colorado - 11 hours.

XIII. Summary of Proposed Pre-Trial Deadlines for Segment 2:

November 14, 2022 (proposed by TX, US and CO)	Completion of supplemental deposition sessions of Texas retained experts: Bob Brandes; Bill Hutchison; Joel Kimmelshue [Subject of New Mexico MIL]
December 1, 2022 (proposed by NM)	
November 22, 2022	Exchange of Segment 2 witness lists
December 15, 2022	Exchange of trial briefs
December 28, 2022	Exchange of final witness lists (including anticipated order and time estimates)
January 9, 2023 [5 days prior to trial]	Final Pre-Trial Conference
January 17, 2023	Trial commences

Respectfully submitted,

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CERTIFICATE OF SERVICE

This is to certify that on this 21st day of September 2022, I caused a true and correct copy of **The Parties' Joint Status Report** to be served upon all parties and *amici curiae*, by and through the attorneys of record and/or designated representatives for each party and *amicus curiae* in this original action. As permitted by order of the Special Master, and agreement among the parties, service was effected by electronic mail to those individuals listed on the attached service list, which reflects all updates and revisions through the current date.

Dated: September 21, 2022

Respectfully submitted,


Yolanda De La Cruz

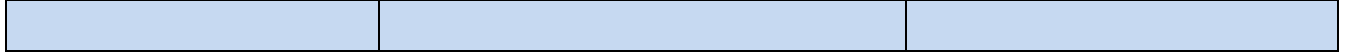
SERVICE LIST FOR ALL PARTIES AND AMICI CURIAE

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In the Supreme Court of the United States, Original No. 141
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