

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 OBJECTION TO PROPOSED TESTIMONY

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October 11, 2021

The State of New Mexico (“New Mexico”) hereby objects to the following two exhibits the State of Texas has listed for Texas’s witness John Balliew (President, El Paso Water Utility Public Service Board):

- **Balliew, John_Demo_01**: this demonstrative exhibit is the May 31, 2019 expert report of Texas’s economist expert Dr. David Sunding;
- **TX-009**: titled “EPWater Expenditures Due to Decreased Surface Water Allocation: Years 2000 Thru 2016.”

On October 8, 2021, Texas disclosed proposed exhibits for its witness John Balliew. Among these exhibits are two documents that are directly relevant to the quantification of alleged damages to Texas. These two documents are not relevant to liability.

Balliew, John_Demo_01 is the complete May 31, 2019 expert report of Texas’s economist expert Dr. David Sunding. Mr. Balliew works for the City of El Paso Water Utility, he is not an economist, and he is not qualified to testify as to an economist’s opinions or calculations. Moreover, Texas did not previously disclose Mr. Balliew as having any expert qualifications rendering him competent to testify in support of any opinions stated in Dr. Sunding’s report.

TX-0091 is titled “EPWater Expenditures Due to Decreased Surface Water Allocation: Years 2000 Thru 2016.” This document does not relate to liability. Instead it relates solely to the quantification of alleged damages incurred by El Paso Water Utilities as the result of a purported violation of the Compact by New Mexico.

Neither of these exhibits are admissible during this liability phase of the trial. Further, Texas’s attempt to introduce these exhibits on the quantification of damages is contrary to the Special Master’s orders establishing the scope of trial. On June, 4, 2021, the Special Master entered an order in response to a request from the Parties to clarify the meaning of Section IX of

the Trial Management Order (Apr. 9, 2021), Dkt. 501, which bifurcated the trial in this case. This order provided:

For purposes of the trial scheduled to commence on September 13, 2021, the issues will be limited to liability and whether Texas, as plaintiff, and New Mexico, as counterclaimant, have sustained more than de minimis damages. *The quantification of the amount of damages and remedies, if any, will be bifurcated for a subsequent trial after Supreme Court review of the report resulting from the September 13, 2021, trial.*

Order of June 4, 2021 at 2, Dkt. 508 (emphasis added).

Based on this order, New Mexico objects to the admission of Balliew, John_Demo_01 and TX-0091. As the above Order clearly indicates, the “quantification of the amount of damages and remedies, if any . . . will be bifurcated for a subsequent trial.” Order of June 4, 2021 at 2, Dkt. 508. The Court has yet to establish a Compact baseline, let alone determine whether any parties to this proceeding have violated the Compact. Therefore, evidence as to the alleged amount of any damages incurred is not relevant at this stage of the proceedings.

Additionally, the Balliew, John_Demo_01 exhibit is inadmissible even for demonstrative purposes through Mr. Balliew because Mr. Balliew is not the author of this report is not an economist. Mr. Balliew cannot testify as to how Dr. Sunding performed his analysis and is not qualified to offer any opinions regarding this analysis. The Special Master should order that Balliew, John_Demo_01 is inadmissible as a demonstrative exhibit in aid of Mr. Balliew’s testimony.

Considering these exhibits at this phase of trial, before liability has been determined, will waste the time of the parties and the Special Master. It will also prejudice New Mexico, as New Mexico is not planning to put on evidence of damages until the remedies phase of trial per the Special Master’s orders. To avoid prejudice and needless delay, the Master’s should preclude Texas from introducing Balliew, John_Demo_01 and TX-0091 at this time.

Dated: October 11, 2021

Respectfully submitted,

By: /s/ Jeffrey J. Wechsler
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STATE OF NEW MEXICO'S CERTIFICATE OF SERVICE

◆

This is to certify that on October 11, 2021, I caused a true and correct copy of the **State of New Mexico's Objection to Proposed Testimony** 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 11th day of October, 2021.

/s/ Michael A. Kopp

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