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11 IN THE SUPREME COURT OF THE UNITED STATES
12 BEFORE THE OFFICE OF THE SPECIAL MASTER
13 HON. MICHAEL J. MELLOY

14 STATE OF TEXAS
15
16 Plaintiff,
17 vs.
18 STATE OF NEW MEXICO; and STATE OF
COLORADO,
19 Defendants.

Original Action Case No. 220141
(Original 141)

STIPULATION REGARDING
DISCOVERY SCHEDULING
PROTOCOL

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1 This Stipulation is entered into by the State of Texas (Texas), the United States of
2 America (United States), the State of New Mexico (New Mexico), and the State of Colorado
3 (Colorado) (individually a "Party" and collectively, "the Parties"):

4 WHEREAS, the Special Master, Honorable Judge Michael J. Melloy (Special Master) has
5 requested, pursuant to Appendix C, paragraph three of the September 6, 2018 (revised) Case
6 Management Plan (CMP) that, "except in extraordinary circumstances, noticing counsel shall
7 consult in advance with counsel for the deponent, if any, and with opposing counsel, so as to
8 schedule depositions at mutually convenient times and places";

9 WHEREAS, the Parties to the aforementioned original action mutually seek to maximize
10 efficiency and reduce the time and expense associated with determining witness availability,
11 scheduling depositions, and facilitating completion of discovery in this matter; and

12 THEREFORE, the Parties hereby stipulate to the following terms and procedures for the
13 scheduling of depositions:

14 **I. DEFINITIONS**

15 The terms used in this stipulation and order that are also used in the Federal Rules of Civil
16 Procedure (Federal Rules) have the same meaning therein, unless otherwise provided in this
17 stipulation and order. The following definitions apply:

18 a) "Parties," as used herein, shall collectively refer to Texas, New Mexico,
19 Colorado, and the United States;

20 b) "CMP," as used herein, shall refer to the September 6, 2018 Case
21 Management Plan (CMP), approved by the Special Master;

22 c) "Non-Party witness" shall mean a deponent, either a person or an entity,
23 who is not a Party or an employee or agent of a Party;

24 4. "Teleconference" shall mean a conference among all Parties using a single
25 telephone conference line, which has been the practice of the Parties thus far;

26 5. "Bi-weekly" shall mean once every two weeks; and

27 6. "Email group" shall mean a method of grouping multiple email addresses into an
28 accessible group to facilitate communication with multiple Parties' counsel and/or counsel's

1 representatives.

2 **II. STIPULATION**

3 1. The Parties have conferred, and have agreed upon a plan to facilitate the
4 scheduling of depositions for all Party and Non-Party witnesses.

5 2. The deposition process shall be conducted on an ongoing basis, without the need
6 for any Party to conduct all of its depositions in sequence. The Parties will coordinate in
7 scheduling a deposition including the continuation of a deposition in order to complete the
8 deposition within three (3) eight (8) hour days. A deponent will not be re-deposed without a
9 Party first seeking and the Special Master approving an additional deposition. The continuation
10 of an incomplete deposition at a later date does not constitute the re-deposition of a deponent, and
11 does not require the approval of the Special Master, as long as it is re-convened within the
12 relevant discovery deadlines set by the Special Master. The fact that a Party has asked a question
13 of a witness at a deposition does not preclude that Party from later asking questions of the
14 deponent in the event that the deposition is continued.

15 3. The Parties agree to hold bi-weekly teleconferences to confer regarding the
16 deposition schedule and related matters, including but not limited to: witness availability, counsel
17 availability, and the location, date, and time for any proposed deposition.

18 4. As the deposition schedule progresses and increased communication is necessary,
19 the Parties may agree to modify the bi-weekly teleconference schedule to a more frequent
20 interval.

21 5. Counsel for Texas will circulate an agenda for each teleconference the business
22 day prior to the teleconference, incorporating all discussion topics proposed by the Parties. All
23 counsel may supplement the agenda at any time. The agenda may include any topic of interest
24 and is not intended to be restricted to depositions. Each Party agrees to use these teleconferences
25 to streamline the discovery process, informally resolve any disputes that may arise, and reduce
26 the time, burden, and expense associated with the completion of discovery on all Parties and the
27 Special Master.

28 6. The Parties agree to set up a designated email group to ensure that the Parties

1 receive all emails related to these teleconferences.

2 7. Each Party shall provide electronic (email) notification of the following
3 information to the email group for all Parties' counsel, one (1) week in advance of a scheduled
4 teleconference, or as soon as otherwise practicable:

- 5 a. The Party or Non-Party witness(es) whom each Party desires to depose;
- 6 b. A proposed time for the desired deposition(s) if known;
- 7 c. A proposed location for the desired deposition(s) if known;
- 8 d. Other particulars, as necessary, for the desired deposition(s); and
- 9 e. Additional discovery related topics, as necessary, to include on
10 teleconference agenda.

11 8. Once there is an agreed date, time, and location for any deposition, any prior email
12 notification does not replace a formal deposition notice served pursuant to the CMP and/or the
13 Federal Rules, and that such emails and teleconference communications do not replace other
14 requirements of the CMP and/or the Federal Rules.

15 9. Upon receipt of an email notification as described in Paragraph 7 herein, the
16 attorney representing the desired Party witnesses will, in good faith and with best effort, confirm
17 availability of any desired Party witnesses identified, determine alternate availability as
18 appropriate, circulate this information to the Parties via email as soon as practicable and be
19 prepared to discuss and confirm a deposition date during the next teleconference. Upon the
20 Parties agreement of a date, time, and location for a Party witness deposition, the Party seeking
21 the deposition may proceed with service of the formal deposition notice pursuant to the CMP
22 and/or the Federal Rules.

23 10. In the event that the Parties cannot reach an agreement on a date, time, and
24 location for a Party witness deposition, the Party seeking the deposition may proceed with service
25 of the formal deposition notice pursuant to the CMP and/or the Federal Rules when two (2) weeks
26 have elapsed since circulation of the email notification described in Paragraph 7 herein, provided
27 such notice is not for a date or time known to the Party seeking the deposition as being
28 unavailable.

- 1 11. The meet-and-confer process for Non-Party witnesses is as follows:
- 2 a. The Party seeking the Non-Party witness deposition shall confer with
- 3 counsel for the Non-Party witness, if known, and identify a time, date and location for the Non-
- 4 Party witness that is available and agreed upon by the Non-Party witness and his/her counsel.
- 5 Upon confirming the same, the Party shall proceed with the email notification to the Parties as
- 6 described in Paragraph 7 herein.
- 7 b. In the event that the Party seeking the Non-Party witness deposition is
- 8 unable to confirm a time, date and/or location for the Non-Party witness deposition after
- 9 attempting to do so in good faith, the Party seeking the Non-Party witness deposition may
- 10 nonetheless proceed with the email notification described in Paragraph 7 herein.
- 11 c. The Party will advise counsel for all Parties whether the proposed date,
- 12 time and/or location for the Non-Party witness deposition was agreed upon or not by the Non-
- 13 Party witness and his/her counsel.
- 14 d. All counsel will confirm their availability, or in good faith propose
- 15 alternative times, dates, or locations, within five (5) business days of receipt of the email
- 16 notification.
- 17 e. Counsel for all Parties will use their best efforts to accommodate the
- 18 availability of the Non-Party Witnesses and their counsel and will only propose an alternative
- 19 time, date, or location for a Non-Party Witness deposition when there is no reasonable alternative.
- 20 f. If all counsel do not confirm their availability, or in good faith propose
- 21 alternative times, dates, or locations, within five (5) business days of receipt of the email
- 22 notification, the Party seeking the Non-Party witness deposition may proceed with service of the
- 23 formal deposition notice pursuant to the CMP and/or the Federal Rules for the deposition to
- 24 proceed in accordance with the email notification described in Paragraph 7 herein.

25 This agreement may be signed in counterparts and is fully executed on the date of the last

26 signature. The below signatories affirm that they have the right to bind their respective Parties to

27 this agreement:

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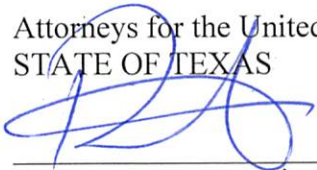
THE UNITED STATES OF AMERICA

Dated: October 25, 2018

/s/ James J. DuBois

James J. DuBois
Stephen M. Macfarlane
U.S. Department of Justice

Attorneys for the United States of America
STATE OF TEXAS



Dated: October 25, 2018

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Dated: October 25, 2018

/s/ Marcus J. Rael, Jr.

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STATE OF COLORADO

Dated: _____

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THE UNITED STATES OF AMERICA

Dated: October 25, 2018

/s/ James J. DuBois
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STATE OF COLORADO

Dated: 10-25-18

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