



500 CAPITOL MALL, SUITE 1000, SACRAMENTO, CA 95814
OFFICE: 916-446-7979 FAX: 916-446-8199
SOMACHLAW.COM

November 6, 2018

Via Electronic and U.S. Mail

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

The State of Texas and the United States respectfully submit this joint letter regarding the discovery schedule approved in the September 6, 2018 Case Management Plan (CMP) and as a follow-up to the October 25 telephonic status conference in this case.

During the status conference, the parties discussed with Your Honor the status of document production – which is ongoing – and how document production may relate to the February 1, 2019 deadline for disclosure of expert witnesses and reports, as ordered in the CMP. We also addressed the impact of motion practice on threshold legal issues (specifically, the question posed by Your Honor in agenda item no. 4), the potential need to hire expert witnesses on the meaning of the Rio Grande Compact, and the near impossibility of meeting a February 1, 2019 expert disclosure deadline were Your Honor to conclude that the meaning of the Compact had not already been decided by the Supreme Court. Finally, we addressed the difficulties posed by internal deadlines in the CMP when applied to production of Electronically Stored Information (ESI). Your Honor said you would take another look at the discovery deadlines in the CMP, particularly the February 1, 2019 expert witness disclosure deadline.

To assist Your Honor in that review, Texas and the United States respectfully propose modifications to the schedule in the current CMP. These are attached hereto as a proposed revision to Appendix B to the CMP. The attached proposed timeline incorporates the time necessary to complete the motion practice on threshold legal issues, contemplating the

disclosure of experts and expert reports after disposition of these issues. Since the status conference, Texas and the United States have conferred and agreed upon the following briefing schedule for motion or motions regarding threshold legal issues:

December 24, 2018	Deadline for filing Motion on Pleadings and Motions for Partial Judgment regarding “law of the case” or matters previously decided.
January 23, 2019	Deadline for Responses to Motions on Pleadings or for Partial Judgment on legal issues.
February 7, 2019	Deadline for Reply Brief on Motions.
February 28, 2019	Hearing on Motions

Also, with regard to the internal deadlines imposed by section 7.2 and 7.3 of the CMP, we propose the following modifications:

1. Section 7.2 of the CMP is revised to require Parties to make full production of documents or allow requested inspections not requiring ESI searches, subject to unresolved objections, within 60 days from the date of service of the subpoena and/or discovery request. For document requests requiring ESI searches, the Parties shall make full production of documents as set forth in the Stipulation Regarding Procedure for Production of Documents and ESI, once approved by the Special Master.
2. Section 7.3 of the CMP is revised to require non-parties to make full productions of documents or allow requested inspections, subject to unresolved objections, within 60 days from the date of service of the subpoena and/or discovery request.

Counsel for Texas and the United States have consulted with counsel for New Mexico and Colorado regarding this proposal and have been advised that New Mexico and Colorado agree with the proposed revised schedule attached hereto. The proposed schedule would advance the trial date by approximately three months.

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We suggest that the schedule presented in the attached will lead to a more orderly discovery process and fewer requests for extensions. We should note that the parties are currently working cooperatively to streamline discovery where possible.

Very truly yours,

s/Stuart L. Somach
Stuart L. Somach
Counsel of Record
State of Texas

s/ Stephen M. Macfarlane
Stephen M. Macfarlane
Senior Attorney
United States Department of Justice

SLS:cmg
Enclosure: Proposed Revised Schedule

cc: All counsel for parties and amici
(see attached service list)
Texas v New Mexico & Colorado docket:
TxvNM141@ca8.uscourts.gov

APPENDIX B
Texas v. State of New Mexico and State of Colorado, No. 141, Original
Proposed Revised Summary of Deadlines

<u>DEADLINE</u>	<u>EVENTS</u>
May 2, 2019	Disclosure of Plaintiffs' expert witnesses and expert reports; Expert witness depositions commence upon disclosure of the expert by the Parties (Fed. R. Civ. P. 26(b)(4)(A))
September 29, 2019	Disclosure of Defendants' responsive expert witnesses and expert reports (including Defendant expert witnesses and expert reports supporting Counterclaims); Expert witness depositions commence upon disclosure of the expert by the Parties (Fed. R. Civ. P. 26(b)(4)(A))
November 30, 2019	Disclosure of Plaintiffs' rebuttal reports
February 28, 2020	Disclosure of Defendant's rebuttal reports
April 1, 2020	Deadline for completion of discovery
May 30, 2020	Deadline for filing dispositive motions
July 14, 2020	Oppositions to dispositive motions
July 30, 2020	Replies in support of dispositive motions
August 30, 2020 (date and time to be set)	Hearing on Dispositive Motions
November 2020	Final pretrial conference statements
November 2020	Final pretrial conference
January/February 2021	Trial Commences

SERVICE LIST

SPECIAL MASTER
(Service via E-Mail and U.S. Mail)

Honorable Michael J. Melloy

Special Master
United States Circuit Judge
111 Seventh Avenue, S.E. Box 22
Cedar Rapids, IA 52401-2101
Tel. 319-432-6080
TXvNM141@ca8.uscourts.gov
Judge Michael Melloy@ca8.uscourts.gov

PARTIES
(Service via E-Mail Only)

State of New Mexico

Marcus J. Rael, Jr.
David A. Roman
Special Assistant Attorneys General
Robles, Rael & Anaya, P.C.
500 Marquette Ave. NW, Suite 700
Albuquerque, NM 87102
Tel. 505-242-2228
marcus@roblesrael.com
droman@roblesrael.com

Paralegal: Chelsea Sandoval
Chelsea@roblesrael.com

Bennett W. Raley
Lisa M. Thompson
Michael A. Kopp
Special Assistant Attorney General
Trout Raley
1120 Lincoln Street, Suite 1600
Denver, Colorado 80302
Tel. 303-861-1963
braley@troutlaw.com
lthompson@troutlaw.com
mkopp@troutlaw.com

Hector H. Balderas
New Mexico Attorney General
Tania Maestas (ext. 4048)
Deputy Attorney General
Marcus J. Rael, Jr.*
Special Assistant Attorney General
408 Galisteo Street (87501)
P.O. Drawer 1508
Santa Fe, New Mexico 87501
Tel. 505-490-4060
hbalderas@nmag.gov
tmaestas@nmag.gov
marcus@roblesrael.com

Tania's asst.: Patricia Salazar
psalazar@nmag.gov
Tel. (505) 490-4863 (P. Salazar)

State of Colorado

Chad M. Wallace*
Senior Assistant Attorney General
Colorado Department of Law
1300 Broadway
Denver, CO 80203
Tel. 720-508-6281
chad.wallace@coag.gov

Paralegal: Nan B. Edwards
nan.edwards@coag.gov

Cynthia H. Coffman
Attorney General of Colorado
Karen M. Kwon
First Assistant Attorney General
Colorado Department of Law
1300 Broadway
Denver, CO 80203
Tel. 720-508-6281
cynthia.coffman@coag.gov
karen.kwon@coag.gov

United States of America

Noel Francisco*

Acting Solicitor General

Jeffrey H. Wood

Acting Assistant Attorney General

Ann O'Connell

Assistant to Solicitor General

US Department of Justice

950 Pennsylvania Avenue,

Room 5614 NW

Washington, DC 20530

Tel. (202) 514-2217

supremectbriefs@usdoj.gov

James J. Dubois*

R. Lee Leininger

Thomas K. Snodgrass

U.S. Department of Justice

Environment & Natural Resources Div.

999 18th Street

South Terrace, Ste. 370

Denver, CO 80202

lee.leininger@usdoj.gov

Tel. 303-844-1367

james.dubois@usdoj.gov

Tel. 303-844-1364

thomas.snodgrass@usdoj.gov

Tel. 303-844-7233

Paralegal: Seth C. Allison

Seth.allison@usdoj.gov

Tel. 303-844-7917

Stephen M. Macfarlane

U.S. Department of Justice

Environment & Natural Resources Div.

501 I Street, Suite 9-700

Sacramento, CA 95814

Tel. (916) 930-2204

stephen.macfarlane@usdoj.gov

Judith E. Coleman

U.S. Department of Justice

Environment & Natural Resources Div.

P. O. Box 7611

Washington, DC 20044-7611

Tel. (202) 514-3553

judith.coleman@usdoj.gov

AMICI

(Service via E-Mail Only)

Albuquerque Bernalillo County Water Utility Authority

Jay F. Stein

James C. Brockmann*

Stein & Brockmann, P.A.

P.O. Box 2067

Santa Fe, NM 87504

Tel. (505) 983-3880

Administrative Copy

jfstein@newmexicowaterlaw.com

jcbrockmann@newmexicowaterlaw.com

administrator@newmexicowaterlaw.com

Peter Auh

Albuquerque Bernalillo County Water

Utility Authority

P.O. Box 568

Albuquerque, NM 87103-0568

Tel. (505) 289-3092

pauh@abcwua.org

City of El Paso, Texas

Douglas G. Caroom*
Susan M. Maxwell
Bickerstaff Heath Delgado Acosta LLP
3711 S. MoPac Expressway
Building One, Suite 300
Austin, TX 78746
Tel. (512) 472-8021
dcaroom@bickerstaff.com
smaxwell@bickerstaff.com

City of Las Cruces, New Mexico

Jay F. Stein*
James C. Brockmann
Stein & Brockmann, P.A.
P.O. Box 2067
Santa Fe, NM 87504
Tel. (505) 983-3880
Administrative Copy
jfstein@newmexicowaterlaw.com
jcbrockmann@newmexicowaterlaw.com
administrator@newmexicowaterlaw.com

Jennifer Vega-Brown
Marcia B Driggers
City of Las Cruces
City Attorney's Office
P.O. Box 20000
Las Cruces, NM 88004
Tel. (575) 541-2128
jvega-brown@las-cruces.org
marcyd@las-cruces.org

Elephant Butte Irrigation District

Samantha R. Barncastle*
Barncastle Law Firm, LLC
1100 South Main, Suite 20 (88005)
P.O. Box 1556
Las Cruces, NM 88004
Tel. (575) 636-2377
Fax. (575) 636-2688
samantha@h2o-legal.com

Paralegal: Janet Correll
janet@h2o-legal.com

El Paso County Water Improvement District No. 1

Maria O'Brien*
Sarah M Stevenson
Modrall, Sperling, Roehl, Harris
& Sisk, PA
500 Fourth Street N.W.,
Suite 1000 (87102)
P.O. Box 2168
Albuquerque, NM 87103-2168
Main: (505) 848-1800
Direct: (505) 848-1803
Fax: (505) 848-9710
mobrien@modrall.com
sarah.stevenson@modrall.com

Hudspeth County Conservation and Reclamation District No. 1

Andrew S. “Drew” Miller*
Kemp Smith LLP
919 Congress Avenue, Suite 1305
Austin, TX 78701
Tel. (512) 320-5466
dmiller@kempsmith.com

New Mexico State University

John W. Utton*
Utton & Kery, P.A.
P.O. Box 2386
Santa Fe, NM 87504
Tel. (505) 699-1445
john@uttonkery.com

Lizbeth Ellis
General Counsel
Clayton Bradley
Counsel
Hadley Hall Room 132
2850 Weddell Road
Las Cruces, NM 88003
Tel. (575) 646-2446
lellis@ad.nmsu.edu
bradleyc@ad.nmsu.edu

New Mexico Pecan Growers

Tessa Davidson*
Davidson Law Firm, LLC
4206 Corrales Road
P.O. Box 2240
Corrales, New Mexico 87048
Tel. (505) 792-3636
ttd@tessadavidson.com

Paralegal: Patricia McCan
patricia@tessadavidson.com

State of Kansas

Derek Schmidt
Attorney General of Kansas
Jeffrey A. Chanay
Chief Deputy Attorney General
Toby Crouse*
Solicitor General of Kansas
Bryan C. Clark
Assistant Solicitor General
Dwight R. Carswell
Assistant Solicitor General
120 S.W. 10th Ave., 2nd Floor
Topeka, KS 66612
Tel. (785) 296-2215
toby.crouse@ag.ks.gov