

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.

UNITED STATES OF AMERICA,

Intervenor.

OFFICE OF THE SPECIAL MASTER

ORDER

November 9, 2022

ORDER

For the purposes of the proceedings before the Special Master, IT IS HEREBY ORDERED:

The United States has filed a motion to amend the briefing schedule in this case. The undersigned will amend the briefing schedule as follows.

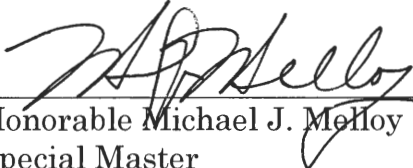
In reviewing the motion of the United States, it is the belief of the undersigned that any issues dealing with confidentiality and violations of the February 2016 confidentiality agreement (Exhibit 1 to the motion), the various confidentiality Orders entered by the undersigned Special Master, or Rule of Evidence 408 will be difficult, if not impossible, to resolve without some context. I fail to see any harm that would result in the filing of the motion to approve the settlement agreement between Texas, New Mexico, and Colorado, accompanying briefs, proposed decree, and appendices, provided all the documents except the motion are filed under seal. The United States can then have an opportunity to respond to the filings and file any motion it deems appropriate indicating what portions of the brief, decree, or appendices may violate Federal Rule of Evidence 408, the parties' confidentiality agreement, or the Orders of the Special Master.

I will note that the Order entered on October 26, 2022, indicated that the proposed settlement decree and appendices be filed under seal. The Order did not specifically provide that any brief filed in support of the motion also be filed under seal. To avoid any concerns in that regard, I will amend the Order of October 26 to provide specifically that all documents except the motion itself be filed under seal, including any brief in support of the motion. I will then give the government 9 days within which to file a motion addressing the issue of whether it feels there are any violations of settlement discussion confidentiality. If a motion is filed, a hearing will be set by separate notice.

It is therefore ordered that the Order of October 26, 2022, is amended to specifically provide that all supporting documents, including briefs, the settlement decree, and supporting appendices will be filed under seal. The only document not filed under seal will be the actual motion requesting approval of the decree.

It is further ordered that to the extent the United States feels that provisions of Federal Rule of Evidence 408, the confidentiality agreement entered into between the parties, or settlement confidentiality Orders of the undersigned have been violated, it shall file a motion indicating what violations it believes have occurred and the relief it seeks by no later than **Wednesday, November 23, 2022**.

Dated: November 9, 2022



Honorable Michael J. Molloy
Special Master
United States Circuit Judge