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No. 141 Original

In the
SUPREME COURT OF THE UNITED STATES

STATE OF TEXAS

v.

STATE OF NEW MEXICO and
STATE OF COLORADO

TRANSCRIPT OF APRIL 23, 2015
STATUS CONFERENCE BEFORE
A. GREGORY GRIMSAL, ESQ.
SPECIAL MASTER

Appearances:

For the State of Texas: Somach Simmons & Dunn, PC
BY: STUART L. SOMACH, ESQ.
ANDREW M. HITCHINGS, ESQ.
ROBERT B. HOFFMAN, ESQ.
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Sacramento, California 95814

For the State of New Mexico: State of New Mexico
Attorney General's Office
BY: SARAH A. BOND, ESQ.
STEPHEN R. FARRIS, ESQ.
AMY I. HAAS, ESQ.
Post Office Drawer 1508
Sante Fe, New Mexico 87501

1 Appearances:

2
3 For the State of Montgomery & Andrews, P.A.
4 New Mexico: BY: JEFFREY J. WECHSLER, ESQ.
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6 For the State of Draper & Draper, LLC
7 New Mexico: BY: JOHN B. DRAPER, ESQ.
325 Paseo de Peralta
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9 For the State of Trout Raley Montano Witwer
10 New Mexico: & Freeman, PC
11 BY: LISA M. THOMPSON, ESQ.
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12 For the State of Colorado Department of Law
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Also Participating: Liz Spence
Patricia McCan

Official Court Reporter: Toni Doyle Tusa, CCR, FCRR
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Proceedings recorded by mechanical stenography using
computer-aided transcription software.

10:01 1 THE SPECIAL MASTER: Ms. Thompson, can you hear us?

10:01 2 MS. THOMPSON: I can hear you.

10:01 3 MS. BOND: So I guess it's just myself and Amy Haas,
10:01 4 John Draper, Jeff Wechsler, and Stephen Farris.

10:01 5 MR. WALSTON: Rod Walston just joined from Best Best
10:01 6 & Krieger in Walnut Creek, California.

10:01 7 THE SPECIAL MASTER: Okay. I'm going down the roll
10:01 8 call, so hang on a minute, please.

10:01 9 Is counsel for Colorado on the line?

10:01 10 MR. WALLACE: Yes, Your Honor. This is Chad Wallace.
10:01 11 With me on the call are Preston Hartman and Karen Kwon.

10:02 12 THE SPECIAL MASTER: Thank you, Mr. Wallace.

10:02 13 Has counsel for Texas got on the line yet?

10:02 14 MR. SOMACH: Yes, Your Honor. This is Stuart Somach
10:02 15 for the State of Texas. With me on the call are Robert
10:02 16 Hoffman, Francis Goldsberry, Andrew Hitchings, and I also have
10:02 17 our paralegal, Liz Spence, on the phone.

10:02 18 THE SPECIAL MASTER: Thank you, Mr. Somach.

10:02 19 Is counsel for the United States on the line,
10:02 20 please?

10:02 21 MR. DUBOIS: Good morning, Your Honor. This is
10:02 22 Jim Dubois. Also on the line are Lee Leininger, Steve
10:02 23 Macfarlane, and Shelly Randel from the solicitor's office.

10:02 24 THE SPECIAL MASTER: Thank you, Mr. Dubois.

10:02 25 Let me go down the roll of the *amici*. Counsel

1 for Hudspeth County Conservation and Reclamation District
2 No. 1, please? Is anyone for Hudspeth on the line?

3 Let's keep going. El Paso County Water
4 Improvement District No. 1?

5 **MR. SPEER:** I'm here, Your Honor. James Speer.

6 **MS. O'BRIEN:** Yes, Your Honor. This is Maria O'Brien
7 also for El Paso County Water Improvement District No. 1.

8 **THE SPECIAL MASTER:** Thank you, Counsel.

9 Anyone else on behalf of your client on the
10 line?

11 **MR. SPEER:** No, I don't believe so, Your Honor.

12 **THE SPECIAL MASTER:** Thank you. How about the City
13 of Las Cruces?

14 **MR. STEIN:** Good morning, Your Honor. This is Jay
15 Stein representing the City of Las Cruces.

16 **THE SPECIAL MASTER:** Mr. Stein, anybody else on the
17 line with you on behalf of your client?

18 **MR. STEIN:** Your Honor, with me on behalf of the City
19 of Las Cruces --

20 **THE SPECIAL MASTER:** I'm sorry, Mr. Stein. You broke
21 up for some reason. Could you repeat that, please.

22 **MR. STEIN:** Your Honor, with me on the call is
23 Jim Brockmann of our office also representing the City of
24 Las Cruces.

25 **THE SPECIAL MASTER:** Thank you, Mr. Stein.

10:04 1 How about the City of El Paso, please?

10:04 2 **MR. CAROOM:** Good morning, Your Honor. Doug Caroom
10:04 3 for the City of El Paso. I have no one else on the line.

10:04 4 **THE SPECIAL MASTER:** Thank you, Mr. Caroom.
10:04 5 Elephant Butte Irrigation District?

10:04 6 **MR. HERNANDEZ:** Good morning, Your Honor. This is
10:04 7 Steven Hernandez in Las Cruces. With me on the line is
10:04 8 Lisa Henne in our Santa Fe office, Lee Peters in Seattle, and
10:04 9 Rod Walston in Walnut Creek.

10:04 10 **THE SPECIAL MASTER:** Thank you, Mr. Hernandez.

10:04 11 Southern Rio Grande Diversified Crop Farmers
10:04 12 Association?

10:04 13 How about New Mexico Pecan Growers?

10:04 14 **MS. MCCAN:** Good morning, Your Honor. This is
10:05 15 Patricia McCan. I'm a paralegal with the Davidson Law Firm.

10:05 16 **THE SPECIAL MASTER:** Thank you, Ms. McCan.

10:05 17 Has anyone got on for Hudspeth County
10:05 18 Conservation and Reclamation District No. 1, please? No.
10:05 19 Okay.

10:05 20 One more try for Southern Rio Grande Diversified
10:05 21 Crop Farmers Association? Okay.

10:05 22 Counsel, is there anyone else on the line
10:05 23 besides counsel for the parties I have identified? Is there
10:05 24 anybody else on the line?

10:05 25 **MS. BOND:** Your Honor, this is Sarah Bond. I just

10:05 1 wanted to report two of our people, Lisa Thompson and Stephen
10:05 2 Farris, are having trouble calling in. I'm not sure what the
10:05 3 problem is, but we are prepared to move forward. I'm the
10:05 4 counsel of record and we are here. I just wanted to report
10:05 5 that. I don't know what their problem is.

10:06 6 **THE SPECIAL MASTER:** Thank you, Ms. Bond. It's a new
10:06 7 system, and I apologize if there are any problems with it.

10:06 8 Counsel, let me ask you if you do speak up,
10:06 9 identify yourself. We are on the record. I have a court
10:06 10 reporter here, Ms. Tusa, who handled the last phone conference
10:06 11 we had. So I ask if you do speak up, please identify yourself
10:06 12 so she knows who you are.

10:06 13 Let me begin. With respect to Case Management
10:06 14 Order No. 3, I received a request from El Paso County Water
10:06 15 Improvement District No. 1. They requested a modification or a
10:06 16 supplementation to allow their participation in all proceedings
10:06 17 before me. At this time that request is denied.

10:06 18 I express no opinion on the merits of their
10:06 19 motion to intervene. As long as they are a nonparty, I ask
10:07 20 that they and all other nonparties comply with paragraph 7 of
10:07 21 Case Management Order No. 2, which requires nonparties to
10:07 22 advise me 24 hours in advance by e-mail if you would like to
10:07 23 participate in a telephone conference. I wanted to take care
10:07 24 of that little bit of housekeeping.

10:07 25 Counsel, this phone call shouldn't take too

1 long, but I do have some housekeeping matters I want to work
2 through with you.

3 Based upon a review of the parties' papers and
4 all the sources cited therein, we would like to go ahead and
5 entertain oral argument on New Mexico's motions to dismiss.
6 Let me walk through a couple of the housekeeping matters we
7 have with respect to that oral argument.

8 On account of our schedules, we are looking,
9 generally speaking, at the month of August. We've got a bunch
10 of dates that are available for us and also for the courts we
11 might be using. So let me begin by asking the parties if they
12 have any general problems with a setting in the month of
13 August? Aside from the fact that it's so hot down here, but
14 that's another matter.

15 **MR. DUBOIS:** This is Jim Dubois. Both Mr. Leininger
16 and I have a trial that will be going at least -- I believe
17 it's the 3rd and 4th. We actually were kind of looking at
18 calendars earlier, so we are a little short on this, but we
19 have a trial on the 3rd, 4th, and the week of the 24th, I
20 believe, isn't it, Lee?

21 **MR. LEININGER:** Yes, that's correct.

22 **THE SPECIAL MASTER:** I'm sorry, Mr. Dubois. You said
23 your trial begins the 3rd?

24 **MR. DUBOIS:** Well, it's just the 3rd and the 4th and
25 then the week of the 24th. So the weeks of the 10th and the

1 17th and the 31st should all work, I believe. I don't have
2 Mr. Mcfarlane's calendar for that because we were assuming we
3 were looking at May, June, July.

4 **THE SPECIAL MASTER:** We were hoping to do it sooner,
5 but that's just not going to work out. Does anyone else have
6 any problems with an August setting?

7 **MR. SOMACH:** This is Stuart Somach, Your Honor. No,
8 those dates -- and, in fact, the weeks that Jim suggested, the
9 10th and the 17th of August, both work for us. Those will
10 work.

11 **MS. BOND:** Your Honor, this is Sarah Bond for
12 New Mexico. My phone cut out there for a couple of minutes,
13 but I came in while Jim was talking about the weeks of
14 August 10th and 17th. Those two weeks work for us except for
15 the 20th and 21st of August. Then I'm unavailable the 24th
16 through the end of the month, but I think I heard Mr. Dubois
17 say he was also unavailable on that week. We are available all
18 days except the 20th and 21st and after the 24th.

19 **THE SPECIAL MASTER:** Thank you, Ms. Bond.

20 **MR. DUBOIS:** This is Jim Dubois again. The 10th and
21 11th are problematic for Mr. Leininger. We can make that work
22 if we need to, but if we can do either -- the 12th through the
23 14th or the 17th through the 19th sounds like might be most
24 workable.

25 **THE SPECIAL MASTER:** So far the 17th through the 19th

1 seems to work for everybody. Is that correct?

2 **MR. DUBOIS:** As far as I know, Your Honor, yes.

3 **MR. WALLACE:** Your Honor, this is Chad Wallace for
4 Colorado. We are available to participate both the weeks of
5 the 10th and the 17th.

6 **THE SPECIAL MASTER:** Thank you, Mr. Wallace.

7 We have cleared some dates with the courts. I'm
8 going to nail this down and get another case management order
9 out setting the specific date, but let me ask some additional
10 questions.

11 Counsel, do you have any idea how many people
12 each party would bring to the hearing? That may have some
13 bearing on which courtroom we wind up using.

14 Texas, let me start with you.

15 **MR. SOMACH:** Yes, Your Honor. I would assume that we
16 would bring who I have on the phone right now. So with myself,
17 that's five people. Plus, I'm fairly certain that the folks
18 from the attorney general's office as well as the Rio Grande
19 commissioner and the others from the state would want to be
20 there for the argument. I don't have an exact number, but it
21 could be as many as like 10 people.

22 **THE SPECIAL MASTER:** I just need a ballpark for
23 present purposes.

24 **MR. SOMACH:** For that purpose, I think 10 is probably
25 a reasonable estimate.

10:12 1 THE SPECIAL MASTER: Thank you, Mr. Somach.

10:12 2 Ms. Bond.

10:12 3 MS. BOND: Yes, Your Honor. Sarah Bond for
10:12 4 New Mexico. I would expect we would have maybe four people at
10:12 5 counsel table, and then we have a number of *amici* who have
10:12 6 already expressed interest in being there. I think most of
10:12 7 them are on the phone, but it could be as many as 20.

10:12 8 THE SPECIAL MASTER: I'm going to go down the roll
10:12 9 with *amici* just to get an idea of what size courtroom we ought
10:13 10 to use.

10:13 11 MS. BOND: All right. Thank you.

10:13 12 THE SPECIAL MASTER: Sorry, Ms. Bond. Were you
10:13 13 trying to say something?

10:13 14 MS. BOND: I'm sorry. Anyway, it would be four or
10:13 15 five at counsel table and then maybe five or six more from the
10:13 16 state, maybe up to 10, and then several *amici*.

10:13 17 THE SPECIAL MASTER: Not counting *amici*, you
10:13 18 anticipate roughly 10 folks for your client?

10:13 19 MS. BOND: But I would say 10 to 20 to be on the safe
10:13 20 side.

10:13 21 THE SPECIAL MASTER: Okay. That's fine. I would
10:13 22 rather air on the cautious side.

10:13 23 Mr. Wallace.

10:13 24 MR. WALLACE: Yes, Your Honor. Colorado anticipates
10:13 25 maybe, at the most, five persons.

10:13 1 THE SPECIAL MASTER: Okay.

10:13 2 Mr. Dubois.

10:13 3 MR. DUBOIS: I'm guessing about six, Your Honor,
10:13 4 maybe seven. Round numbers, six.

10:13 5 THE SPECIAL MASTER: That's fine.

10:13 6 Has Mr. Miller got on the line for Hudspeth
10:13 7 County Conservation and Reclamation District No. 1? No.

10:14 8 Mr. Speer, how many people do you anticipate
10:14 9 being in attendance at that --

10:14 10 MR. SPEER: Mr. Grimsal, I would say that we would
10:14 11 have at least five people present --

10:14 12 THE SPECIAL MASTER: Okay.

10:14 13 MR. SPEER: -- possibly 10. We are sort of an
10:14 14 anomalous party as you probably saw yesterday. We are filing a
10:14 15 motion to intervene in the original action case.

10:14 16 THE SPECIAL MASTER: Yes, sir, I saw that.

10:14 17 MR. SPEER: Of course, I'm working with attorneys for
10:14 18 all these other parties constantly. I know and respect all of
10:14 19 them. I think highly of everybody. We have sort of a
10:14 20 fraternity of the Rio Grande, so we will be very, very
10:14 21 interested. We are the real parties of interest, the two
10:14 22 districts, despite what Stuart Somach might think or anybody
10:14 23 else. The two districts are real parties of interest in this
10:15 24 litigation.

10:15 25 THE SPECIAL MASTER: Mr. Speer --

10:15 1 MR. SPEER: We will lean over backwards to
10:15 2 accommodate anything you ask of us, Mr. Grimsal.

10:15 3 THE SPECIAL MASTER: Thank you, Mr. Speer. So if I
10:15 4 understand you correctly, your ballpark estimate is about 10
10:15 5 people; is that correct?

10:15 6 MR. SPEER: Five to 10.

10:15 7 THE SPECIAL MASTER: That's fine. Thank you.
10:15 8 Mr. Stein.

10:15 9 MR. STEIN: Your Honor, there would be two for the
10:15 10 City of Las Cruces. That would be myself and Mr. Brockmann.
10:15 11 But, Your Honor, I have one question.

10:15 12 THE SPECIAL MASTER: Yes, sir.

10:15 13 MR. STEIN: Is it your intention to allow argument by
10:15 14 the *amici*?

10:15 15 THE SPECIAL MASTER: Not at this time.

10:15 16 MR. STEIN: I'm sorry?

10:15 17 THE SPECIAL MASTER: I'm sorry, sir. Go ahead.
10:15 18 Finish your question.

10:15 19 MR. STEIN: Yes. My question was: Is it your
10:15 20 intention to allow argument by the *amici* who have filed a brief
10:15 21 on the issue? I ask this question because the practice in a
10:16 22 previous original action that we were involved in, *Nebraska v.*
10:16 23 *Wyoming*, the special master in that case, Mr. Owen Olpin, did
10:16 24 allow *amici* who had filed a brief on an issue to participate in
10:16 25 oral argument, and the City of Las Cruces would like it.

1 **THE SPECIAL MASTER:** Your request is noted,
2 Mr. Stein, and I will address that in the case management order
3 that I issue.

4 **MR. STEIN:** Thank you, Your Honor.

5 **THE SPECIAL MASTER:** Sure.

6 Mr. Caroom.

7 **MR. CAROOM:** I would anticipate no more than three
8 from El Paso.

9 **THE SPECIAL MASTER:** Thank you, Mr. Caroom.

10 Mr. Hernandez.

11 **MR. HERNANDEZ:** I anticipate eight, Your Honor.

12 **THE SPECIAL MASTER:** Has Mr. Jones got on the line
13 for the Southern Rio Grande Diversified Crop Farmers
14 Association?

15 Ms. Davidson?

16 **MS. MCCAN:** Your Honor, this is Patricia McCan.

17 **THE SPECIAL MASTER:** Oh, sorry.

18 **MS. MCCAN:** Your Honor, I think just one.

19 **THE SPECIAL MASTER:** Okay. Thank you.

20 That's helpful, Counsel. Let me ask you about
21 time allotted for oral argument. Is there any reason why
22 30 minutes per side per motion would not work? Is that
23 acceptable?

24 **MR. SOMACH:** Can I ask --

25 **THE SPECIAL MASTER:** Can you identify yourself,

10:17 1 please.

10:17 2 **MR. SOMACH:** Yes. This is Stuart Somach. Can I ask
10:17 3 a question or two in advance of responding to your question, if
10:17 4 that's appropriate?

10:17 5 **THE SPECIAL MASTER:** Sure. Yes, sir.

10:17 6 **MR. SOMACH:** Among the questions I have is whether or
10:17 7 not you intend to provide us with any particular concerns or
10:18 8 issues that you might want us to address in the oral argument
10:18 9 or whether or not you intend to put out your recommended or
10:18 10 tentative recommendations prior to the oral argument. That
10:18 11 will help kind of address how much time. Then the other
10:18 12 question I have is whether or not you know the order you would
10:18 13 like things presented in. Relevant to that is whether *amici*
10:18 14 will be allowed to do oral argument.

10:18 15 I know that's a lot of stuff, but it all is
10:18 16 relevant to how much time will be necessary to address whatever
10:18 17 the issues associated with the oral argument are.

10:18 18 **THE SPECIAL MASTER:** Hold on just a second.

10:19 19 I haven't at all got any idea as to the proper
10:19 20 order. It seemed to us, as a preliminary matter, that
10:19 21 New Mexico's arguments with respect to Texas and the
10:19 22 United States overlap or intertwine. So it might make a
10:19 23 certain amount of sense to allow New Mexico to give its oral
10:19 24 argument with respect to its motions to both parties at one
10:19 25 time and then allow each of the plaintiffs to respond in turn.

10:19 1 That seems to make sense to me at this time. It's not set in
10:19 2 stone by any means.

10:19 3 Let me answer your other questions. I don't
10:20 4 anticipate issuing a draft report for you before we entertain
10:20 5 oral argument. Part of the purpose of the oral argument is for
10:20 6 us to get your thoughts on your motions and for us to have an
10:20 7 opportunity to ask you any questions we may have.

10:20 8 It is possible that before the time comes we
10:20 9 will issue a list of specific issues we are interested in, but
10:20 10 we don't have that at this point. At this point we thought it
10:20 11 would be extremely helpful to have your input on these motions.
10:20 12 That's probably not helping you decide whether 30 minutes is
10:20 13 enough or not, but it seems to me that that is fairly standard.

10:20 14 The real issue here is how much time do I need a
10:21 15 courtroom for. I'm open to your suggestions on the amount of
10:21 16 time necessary for oral argument and even as to the proper
10:21 17 order of oral argument. For present purposes I'm trying to
10:21 18 figure out if I need a courtroom for a morning or afternoon or
10:21 19 a whole day. I don't think I need it for the whole day.

10:21 20 **MR. SOMACH:** My recommendation is that you hold it
10:21 21 for either a morning or an afternoon. I will tell you kind of
10:21 22 my thinking and that is that particularly given what you just
10:21 23 said, that you may have questions, I would hate to have this
10:21 24 oral argument time set aside and then not have sufficient time,
10:21 25 because we have got artificial time constraints, to be able to

1 respond to all the questions that you may have.

2 So certainly either a morning or an afternoon
3 ought to allow you to be able to have plenty of time to ask
4 questions and allow us to respond. I'm not saying that you
5 ought not to set a target time limit, but I would hate to have
6 an artificial constraint so that we end up with you still
7 having questions that, because of the time limits, we haven't
8 been able to respond to. So in light of what you just said,
9 that would be my thinking.

10 The other question I have is when you talk about
11 sides, I agree with you that the motions overlap and so it
12 makes sense to have New Mexico at least open with its reserve
13 rebuttal time, but were you intending to allow Texas and the
14 United States to have sufficient time to respond to their
15 respective motions? So it's a question of is it New Mexico,
16 the United States, and Texas or are you combining the
17 United States and Texas in terms of the time allotted?

18 **THE SPECIAL MASTER:** No, absolutely not, Mr. Somach.
19 The United States and Texas would each have its own time
20 allotment as I was thinking about it. I agree with you
21 generally as to the shape of the hearing and the amount of time
22 it's likely to take. I'm not hearing any dissent that we
23 should be able to get this accomplished in a morning or an
24 afternoon.

25 **MR. SPEER:** Your Honor, I'm James Speer. I don't

1 think that's enough time, Your Honor.

2 **THE SPECIAL MASTER:** One at a time. One at a time.

3 Mr. Speer, you have the floor.

4 **MR. SPEER:** It's Jim Speer. Yes, thank you. You
5 will discover that the *amici* are much more actively and deeply
6 involved than you could anticipate at this juncture. I know
7 all these people. I've been in multiple hearings with all the
8 attorneys over the years. A half a day is not going to be
9 sufficient in my judgment.

10 **THE SPECIAL MASTER:** Thank you, Mr. Speer.

11 **MS. BOND:** Your Honor --

12 **THE SPECIAL MASTER:** Yes.

13 **MS. BOND:** -- I'm sorry, but I've been trying to
14 break in. This is Sarah Bond for New Mexico. It is our
15 motion. We agree that it makes sense for us to go first. We
16 would absolutely need the same amount of time for each
17 plaintiff.

18 **THE SPECIAL MASTER:** Right.

19 **MS. BOND:** So if it's going to be limited to
20 30 minutes, we would request 30 minutes to address our Texas
21 issues, 30 minutes to address our U.S. issues.

22 I agree with Stuart. Actually, I think based on
23 our *Montana* experience, the whole day should be reserved, both
24 because of the number of parties -- and this case is much more
25 complex than the *Montana* case was. As Stuart said, we are all

1 going to great expense to be there to hopefully provide answers
2 to you and your staff about our motions and the case in
3 general. People have been fighting over this river for about
4 400 years and there's a lot of information to be imparted.

5 I would request that you get the courthouse for
6 the whole day so that while we are there, we can answer any
7 question you have. As I indicated, although every case is
8 different, we had quite a long period of colloquy with our
9 other special master because as, of course, we raised oral
10 argument, he would have questions, and that went on for quite
11 some time. You are the one we want to help understand this and
12 also persuade, of course. So if you can give us that much
13 time, I would really appreciate it, and I think it would
14 benefit the Court to have that big a record.

15 **THE SPECIAL MASTER:** Thank you, Ms. Bond. That makes
16 a lot of sense to me. Let me put your mind at rest that it
17 was, indeed, my intention that you would get a 30-minute
18 allotment as to each of the parties you are seeking to dismiss,
19 so we are singing off the same page. I think your remarks
20 about reserving the whole day make a lot of sense and I
21 appreciate that.

22 Was anybody else trying to chime in on this
23 issue? Okay.

24 **MR. WALLACE:** Your Honor --

25 **THE SPECIAL MASTER:** Yes.

1 **MR. WALLACE:** -- this is Chad Wallace for Colorado
2 again.

3 **THE SPECIAL MASTER:** Yes, sir.

4 **MR. WALLACE:** As a named party to this case, even
5 though we had not filed a substantive response brief, we would
6 like to reserve the right to present rebuttal argument, if
7 necessary, addressing issues relevant to Colorado's compact
8 interest and interstate compact jurisprudence should that come
9 up during the argument. I certainly don't want to waste your
10 time any more than necessary, so would want much less time than
11 you are anticipating for the other parties.

12 **THE SPECIAL MASTER:** That's fine, Mr. Wallace.

13 Any other thoughts or comments?

14 **MR. DUBOIS:** Your Honor --

15 **THE SPECIAL MASTER:** Yes.

16 **MR. DUBOIS:** -- this is Jim Dubois for the
17 United States. My concern here is that if we reserve an entire
18 day that somehow the arguments will fill an entire day whether
19 they should or should not. I actually think this could be done
20 in a morning. If the parties prefer to have the whole day, so
21 be it.

22 **THE SPECIAL MASTER:** Well, there's a difference
23 between actually having the courtroom reserved the whole day if
24 we actually need it and my exercising some kind of control over
25 the argument so that it's long enough to cover the subjects we

1 want to talk about but doesn't go longer than it really needs
2 to. That will be my job, to sort of control the proceedings.

3 **MR. DUBOIS:** Very good, Your Honor.

4 **THE SPECIAL MASTER:** Any other thoughts or
5 suggestions?

6 **MR. SPEER:** Your Honor, it's Jim Speer again. By
7 habit I'm used to addressing the judge as "Your Honor." I
8 realize you are not serving exactly in the position of judge,
9 but if I slip up and call you "Your Honor," I don't mean any
10 disrespect, needless to say.

11 **THE SPECIAL MASTER:** Mr. Speer, none taken.

12 **MR. SPEER:** Thank you. The thing that strikes me is
13 everybody is ignoring the *amici*, but the two districts have
14 moved to intervene, the Elephant Butte district and the El Paso
15 district, and it's conceivable we will become parties in the
16 case. Therefore, we should have the same procedural attention
17 as the other parties, including the United States, New Mexico,
18 and Texas.

19 **THE SPECIAL MASTER:** Mr. Speer, without --

20 **MR. SPEER:** All I'm saying is more time may be
21 necessary.

22 **THE SPECIAL MASTER:** Your point is well-taken.
23 Neither of the two intervention motions are currently pending
24 before me, although I believe the Elephant Butte Irrigation
25 District motion is on the Supreme Court calendar for their

1 conference tomorrow. So there may be some indication of how
2 that will be dealt with after tomorrow, but those motions are
3 not before me at this time. So my job at the moment is to go
4 forward with what I have before me.

5 If those two intervenors do become parties, then
6 they will have all the rights that an ordinary party would
7 have. I pretermite the question of what opportunities the *amici*
8 will have to participate in oral argument on this matter. I
9 haven't quite resolved that in my mind yet. So I hope that
10 addresses your concerns, Mr. Speer.

11 **MR. SPEER:** Yes, right on point. Thank you.

12 **MR. HERNANDEZ:** Your Honor, this is Mr. Hernandez. I
13 think that Elephant Butte sits in a little bit different
14 position. I guess it's conceivable that our motion could be
15 decided by the Supreme Court and a mandate issued to allow us
16 to intervene.

17 **THE SPECIAL MASTER:** Sure. I agree. I agree with
18 that.

19 **MR. HERNANDEZ:** That could occur before the August
20 argument date.

21 **THE SPECIAL MASTER:** And we will cross that bridge
22 when we get to it.

23 **MR. HERNANDEZ:** That was my only point, is if
24 necessary possibly another conference if something should
25 happen in the meantime.

10:30 1 THE SPECIAL MASTER: Correct. Absolutely.

10:30 2 MR. HERNANDEZ: Thank you, Your Honor.

10:30 3 THE SPECIAL MASTER: Sure, sure. We have an eye on
10:31 4 the Supreme Court docket every day to see what's going on as a
10:31 5 general matter and particularly with respect to the two motions
10:31 6 to intervene. We understand that they, depending on the
10:31 7 disposition, could have an impact on the proceedings here. We
10:31 8 are monitoring those proceedings constantly.

10:31 9 Any other thoughts or suggestions regarding the
10 10 hearing?

10:31 11 MR. SOMACH: Your Honor, this is Stuart Somach. I
10:31 12 just wanted to indicate that on the *amici* question, I have some
10:31 13 concerns that if *amici* are allowed to argue that extraneous
10:31 14 issues will be added or injected into the hearing, and I think
10:31 15 that that will cause some additional problems and issues. So I
10:31 16 will just lodge, on behalf of the State of Texas, a preference
10:32 17 on *amici* not being allowed to participate in oral argument.
10:32 18 And, if so, I'm not certain how to anticipate because, among
10:32 19 other things, one of the *amici*, EBID, never filed any papers
10:32 20 with respect to the motion to dismiss. It does present some
10:32 21 problems, so I will just simply voice that reservation to you.

10:32 22 THE SPECIAL MASTER: Mr. Somach, that is a point that
10:32 23 is extremely well-taken. Let me expand upon it that, as I read
10:32 24 the record, no *amici*, not one, has filed any papers addressing
10:32 25 New Mexico's motions. I don't believe even one has. I may be

1 mistaken, but I don't think a single *amici* has filed a brief
2 addressed to that motion.

3 **MS. BOND:** Your Honor, this is Sarah Bond for
4 New Mexico. I believe Las Cruces did, but Jay you are on.

5 **MR. STEIN:** Yes, Your Honor, the City of Las Cruces
6 filed a brief in support of the State of New Mexico's motion to
7 dismiss as setting forth our position, and it is on that basis
8 that we have requested the opportunity to participate in oral
9 argument.

10 **THE SPECIAL MASTER:** Okay. Point well-taken.

11 **MS. BOND:** Your Honor, on behalf of New Mexico, I do
12 share Stuart's concerns, but I defer to the special master's
13 discretion to limit time and would suggest that the *amici* have
14 a very limited time and that they be kept to issues related to
15 the motion to dismiss as opposed to --

16 **THE SPECIAL MASTER:** Right. My instinct, which I
17 hope I express clearly, is if you haven't filed a paper, what
18 are you bringing to the discussion? That's my sort of
19 threshold concern with *amici*. I'll deal with that when I
20 issue --

21 **MS. BOND:** Thank you, Your Honor. I agree with that
22 completely.

23 **THE SPECIAL MASTER:** I'm sorry --

24 **MR. SPEER:** Mr. Grimsal, this is Jim Speer again for
25 El Paso County Water Improvement District No. 1. I would like

10:34 1 to make a brief comment.

10:34 2 **THE SPECIAL MASTER:** Yes, sir. Please do.

10:34 3 **MR. SPEER:** At this point in time, the El Paso
10:34 4 district is straddling the fence on the motion to dismiss. We
10:34 5 are totally not connected to the State of Texas. Stuart
10:34 6 doesn't speak for us. Texas has seen to want to muzzle us the
10:34 7 last month or so. We intend to stand up for ourselves and be a
10:34 8 totally independent party. Our government of the district is
10:34 9 very similar to county government. In Texas law we are similar
10:35 10 to the government of a county. So we hope to be treated as an
10:35 11 independent, freestanding party.

10:35 12 **THE SPECIAL MASTER:** Thank you, Mr. Speer.

10:35 13 Any other observations or suggestions about the
10:35 14 hearing?

10:35 15 **MR. WALSTON:** Yes, Your Honor. This is Rod Walston
10:35 16 for Elephant Butte. We did not file papers addressing the
10:35 17 motion to dismiss by New Mexico, but in our papers we clearly
10:35 18 laid out our views concerning that. So when you said that none
10:35 19 of the *amici* have really filed any papers regarding the
10:35 20 New Mexico motion to dismiss, I'm not sure that is quite
10:35 21 accurate as it applies to Elephant Butte because we did express
10:35 22 our views on New Mexico's motion as part of our motion to
10:35 23 intervene.

10:35 24 **THE SPECIAL MASTER:** Thank you. We will have a look
10:35 25 at that and take that into consideration when I issue the case

10:36 1 management order dealing with oral argument by *amici*.

10:36 2 **MR. SOMACH:** Your Honor, this is Stuart Somach again.
10:36 3 I actually hate the fact this sounds like oral argument in and
10:36 4 of itself, but I will state that we did respond to
10:36 5 Elephant Butte's articulation of issues associated with the
10:36 6 motion to dismiss, noting among other things that to the extent
10:36 7 they were addressing that issue at all, as tangentially as they
10:36 8 may have addressed it, it was untimely by months and
10:36 9 inappropriate. I think it's appropriate for me to at least
10:36 10 remind the Court of that as the Court looks at the papers that
10:36 11 were filed.

10:36 12 **THE SPECIAL MASTER:** Mr. Somach, that point is not
10:36 13 lost on us.

10:36 14 **MR. SOMACH:** Thank you.

10:36 15 **THE SPECIAL MASTER:** Sure. Anything else with
10:36 16 respect to the motions before I move on to another topic?

10:37 17 **MR. DUBOIS:** So, Your Honor -- this is Jim Dubois --
10:37 18 you are looking at the week of August 17; is that right?

10:37 19 **THE SPECIAL MASTER:** Right, and particularly the
10:37 20 17th. As I appreciate it, the 17th, 18th, and 19th are the
10:37 21 dates that work for everybody.

10:37 22 **MR. DUBOIS:** Very good. I was just wanting to check
10:37 23 that box.

10:37 24 **THE SPECIAL MASTER:** That's correct. I would
10:37 25 appreciate it if everybody would sort of put a hold on those

10:37 1 three dates. We will try to get the case management order out
10:37 2 within a couple of days. So thanks for your attention to that
10:37 3 point.

10:37 4 In compliance with the instructions I received
10:37 5 from the Supreme Court, I plan to file a motion for fees and
10:37 6 costs the week of May 4. As you all know, since you are so
10:37 7 familiar with these sorts of proceedings, the Court instructs
10:37 8 the special masters to submit such motions not sooner than
10:37 9 every six months. The first week of May will be six months
10:38 10 since the appointment. I plan to file that motion with the
10:38 11 clerk. I will copy the parties electronically on the date I
10:38 12 file so that you may review it and file any objections you deem
10:38 13 appropriate.

10:38 14 When we last spoke, the parties were optimistic
10:38 15 that they could agree as to the percentage of fees and expenses
10:38 16 to be paid by each party. Has there been any progress on that
10:38 17 allocation?

10:38 18 **MR. DUBOIS:** Your Honor, this is Jim Dubois. Yes,
10:38 19 the parties, the states and the United States, have come to an
10:38 20 agreement. Obviously this will be subject to depending on
10:38 21 whether or not the interventions are granted because that would
10:38 22 shift things. Until this point, with the parties we have, we
10:38 23 have come to the agreement of each of the states taking
10:39 24 37.5 percent, the United States taking 20 percent, and Colorado
10:39 25 taking 5 percent.

10:39 1 **THE SPECIAL MASTER:** Thank you, Mr. Dubois.

10:39 2 Obviously, I guess, as you say, that agreement is subject to
10:39 3 modification depending on what happens with the interventions.

10:39 4 **MR. DUBOIS:** Exactly.

10:39 5 **THE SPECIAL MASTER:** That's fine. That's fine.

10:39 6 Counsel, that's all I have for this conference.
10:39 7 Is there anything else for the good of the order?

10:39 8 **MS. BOND:** No, Your Honor, not from New Mexico.

10:39 9 Oh, the venue. I am presuming we are still
10:39 10 looking at New Orleans?

10:39 11 **THE SPECIAL MASTER:** Yes. I apologize. Good point.
10:39 12 Yes, we are looking at New Orleans. The issue is whether the
10:39 13 hearing will be in the district court, where we are actually
10:39 14 sitting right now, or at the Fifth Circuit, which is -- I'm
10:40 15 looking out the window. It's just across a courtyard from
10:40 16 here. So for purposes of a hotel or anything like that, it's
10:40 17 basically the same place. The district court is next door to
10:40 18 the Fifth Circuit.

10:40 19 I will work with the court to figure out which
10:40 20 is the best and most appropriate available courtroom for this
10:40 21 proceeding. The Fifth Circuit is sort of a marble temple, and
10:40 22 the Eastern District is a little bit more modern and better
10:40 23 wired for the court reporter. It's a little bit easier for the
10:40 24 court reporters to work with. We will see which one works out
10:40 25 better for this proceeding.

1 Yes, it will be here. There are a lot of hotels
2 within easy walking distance of both of these courthouses, so
3 that shouldn't be a problem. August is a very slow month here,
4 so you shouldn't have any problems getting hotels.

5 Anything else, Counsel?

6 Before we get off, let me make one last try
7 here. Has anyone appeared for Hudspeth County Conservation and
8 Reclamation District No. 1?

9 How about the Southern Rio Grande Diversified
10 Crop Farmers Association?

11 Okay, Counsel, that's all I have. Thanks for
12 calling in. I look forward to following up shortly. Thanks a
13 lot. We are off the record.

14 (Proceedings adjourned.)

15 * * *

16 **CERTIFICATE**

17 I, Toni Doyle Tusa, CCR, FCRR, Official Court
18 Reporter for the United States District Court, Eastern District
19 of Louisiana, certify that the foregoing is a true and correct
20 transcript, to the best of my ability and understanding, from
21 the record of proceedings in the above-entitled matter.

22 s/ Toni Doyle Tusa
23 Toni Doyle Tusa, CCR, FCRR
24 Official Court Reporter
25

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