

No. 141 Original

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In The  
SUPREME COURT OF THE UNITED STATES

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STATE OF TEXAS

v.

STATE OF NEW MEXICO and  
STATE OF COLORADO

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TRANSCRIPT OF MARCH 23, 2018  
STATUS CONFERENCE BEFORE  
A. GREGORY GRIMSAL, ESQ.  
SPECIAL MASTER

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computer-aided transcription software.

PROCEEDINGS

(March 23, 2018)

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3           **THE SPECIAL MASTER:** Good afternoon, Counsel. This  
4 is Greg Grimsal in New Orleans. I am here with Alex Rothenberg  
5 and we are on the record. Let me start by taking roll.

6           Mr. Somach, are you on the line?

7           **MR. SOMACH:** I am, Your Honor. With me is Mac  
8 Goldsberry, Theresa Barfield, Brittany Johnson, and I believe  
9 on a separate line Robert Hoffman.

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

11           Anybody else for the State of Texas?

12           Mr. Rael, are you on the line?

13          **MR. RAEL:** I am, Your Honor. With me is Deputy  
14 Attorney General Tania Maestas.

15          **THE SPECIAL MASTER:** Thank you.

16           Anybody else for the State of New Mexico?

17           Mr. Wallace, are you on the line?

18          **MR. WALLACE:** Yes, I am. Good afternoon, Your Honor.

19          **THE SPECIAL MASTER:** Good afternoon, Mr. Wallace.

20           Anybody else for the State of Colorado?

21          **MR. WALLACE:** Yes. Karen Kwon from our office is  
22 also here.

23          **THE SPECIAL MASTER:** Thank you.

24           Mr. DuBois, are you on the line?

25          **MR. DUBOIS:** I am, Your Honor. Good afternoon.

03:02

1           **THE SPECIAL MASTER:** Good afternoon.

2           **MR. DUBOIS:** Lee Leininger is also on. I believe  
3 Judy Coleman is on and Steve Macfarlane.

4           **THE SPECIAL MASTER:** Thank you.

5           **MR. MACFARLANE:** Your Honor, this is Stephen  
6 Macfarlane. I have Shelly Randel from the Interior solicitor's  
7 office on the line with me.

8           **THE SPECIAL MASTER:** Thanks very much,  
9 Mr. Macfarlane.

10                   Ms. Randel, nice to have you with us.

11                   Anyone else for the United States?

12                   Okay. Let me go through the amici who have  
13 requested to listen in on this.

14                   Mr. Brockmann, are you on the line?

15           **MR. BROCKMANN:** Yes, sir.

16           **THE SPECIAL MASTER:** Anyone else for your client?

17           **MR. BROCKMANN:** No, sir.

18           **THE SPECIAL MASTER:** Mr. Caroom, are you on the line?

19           **MR. CAROOM:** Yes, I am. Susan Maxwell is with me.

20           **THE SPECIAL MASTER:** Thank you very much.

21           **MS. MAXWELL:** Good afternoon, Your Honor.

22           **THE SPECIAL MASTER:** Good afternoon, Ms. Maxwell.

23                   Mr. Stein, are you on the line?

24           **MR. STEIN:** Yes, Special Master. I'm on the line for  
25 the City of Las Cruces.

03:03

1           **THE SPECIAL MASTER:** Anyone else with you?

2           **MR. STEIN:** No, sir.

3           **THE SPECIAL MASTER:** Thank you.

4                     Ms. Barncastle, you are on the line?

5           **MS. BARNCASTLE:** Yes. Good afternoon, Your Honor.

6           **THE SPECIAL MASTER:** Anyone else for Elephant Butte  
7 Irrigation District?

8           **MS. BARNCASTLE:** No, sir, not today.

9           **THE SPECIAL MASTER:** Thank you.

10                    Ms. O'Brien?

11           **MS. O'BRIEN:** Yes, Your Honor. Ms. O'Brien here for  
12 El Paso County Water Improvement District No. 1. No one else  
13 is on the line for the district today.

14           **THE SPECIAL MASTER:** Thank you.

15                    Mr. Miller? Mr. Miller? We will pass him.

16                    Ms. Davidson?

17           **MS. DAVIDSON:** Yes, Your Honor. I'm here and I'm  
18 alone.

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

20                    Mr. Utton for New Mexico State University?

21           **MR. UTTON:** Yes, Special Master. John Utton  
22 representing New Mexico State University. I am on the line as  
23 well.

24           **THE SPECIAL MASTER:** Thank you.

25                    Is there anyone else on the line?

03:04

1           **MR. KOPP:** Yes, Your Honor. This is Michael Kopp for  
2 the State of New Mexico.

3           **THE SPECIAL MASTER:** Would you spell your last name.

4           **MR. KOPP:** K-O-P-P.

5           **THE SPECIAL MASTER:** Thank you.

6                     Anyone else? Last call. Thank you, Counsel.

7                     I believe Grace Triche from our office  
8 circulated a service list for your review, comment, and  
9 correction. If you haven't had a look at it yet, please do so.  
10 Forward any corrections you might have to her.

11                    The business at hand today is to get a couple of  
12 dates going forward for some stuff we have to do. First on the  
13 list, I would like a date by which Texas' complaint and the  
14 United States' complaint in intervention could be filed of  
15 record herein. Once that happens, they will be treated as  
16 complaints within Supreme Court Rule 17.2 and Federal Rules 8  
17 through 11.

18                    Mr. Somach and Mr. DuBois, can you let me know  
19 how quickly you could have those pleadings filed.

20           **MR. SOMACH:** Yes. Your Honor, this is Stuart Somach.  
21 I just note that I had filed a stand-alone complaint with a  
22 cover letter I sent. It's actually on the website. It's at  
23 Docket 55.

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

25           **MR. SOMACH:** I could this afternoon just file a



03:06

1 stand-alone -- with no cover letter -- copy of that complaint,  
2 if you would like me to do so.

3 **THE SPECIAL MASTER:** Yes, that would be fine. I  
4 think it would be good to have a formal starting point. I  
5 think it's a good formality to go through. I appreciate that.

6 Mr. DuBois.

7 **MR. DUBOIS:** I think we can file this afternoon, if  
8 you like, Your Honor.

9 **THE SPECIAL MASTER:** That's great.

10 Mr. Rael, how long would New Mexico need to file  
11 an answer and any counterclaim it might have to the complaint  
12 and the complaint in intervention?

13 **MR. RAEL:** Your Honor, the parties met and conferred  
14 a little bit about this. Texas, the United States, Colorado,  
15 and New Mexico have agreed that the State of New Mexico will  
16 have 60 days from today's date upon which to file our answers  
17 and any counterclaims. Moving forward, any responses to any  
18 counterclaims would be due 60 days from then, if that's okay  
19 with Your Honor.

20 **THE SPECIAL MASTER:** I'm glad to hear that.

21 Mr. Wallace, I'm not, obviously, requiring you  
22 to file any responsive pleading, but I take it you were a party  
23 to those conversations and, if Colorado decided it wanted to  
24 file an answer, that those deadlines are acceptable to you?

25 **MR. WALLACE:** Your Honor, yes, I had conversations

03:07

1 with the other attorneys just earlier today, actually, on that  
2 topic. One, I will start out by saying I don't have any  
3 objection to those 60-day timelines. Something that we are  
4 looking at is what the impact to Colorado might be for filing  
5 or not filing with regard to an unintentional waiver of any  
6 rights it might have.

7 **THE SPECIAL MASTER:** Right.

8 **MR. WALLACE:** The parties are going to continue to  
9 try to work out and document how to avoid an unintentional  
10 waiver. Then we could submit that to the Court.

11 **THE SPECIAL MASTER:** That sounds great.

12 Well, thank you, Counsel. That's all very  
13 helpful and good to hear.

14 Moving on to the next agenda item, how long  
15 would the parties require to meet and confer and prepare for my  
16 review a draft case management plan? I believe Mr. Somach had  
17 previously indicated that he had a model he was going to share  
18 with people. The floor is open. Let me know what your  
19 thoughts are on that.

20 **MR. SOMACH:** Yes. Your Honor, this is Stuart Somach  
21 again. In fact, I did circulate a draft case management plan.  
22 We have, again, conferred among us. We are meeting on April 4  
23 to go over that case management plan and hopefully within -- I  
24 think the 4th is -- I can't remember what day of the week.  
25 It's like a Tuesday or Wednesday. My thought would be if you

03:09

1 can give us a week after that -- I actually think we will be  
2 able to reach a resolution that day. If we have an additional  
3 week, if there are any outstanding issues that we want to  
4 discuss, that will give us time to hop on a telephone  
5 conference and do that.

6 **THE SPECIAL MASTER:** Mr. Somach, the 4th is a  
7 Wednesday. I will be happy to give you to the end of the next  
8 week if that would lower everybody's blood pressure.

9 **MR. SOMACH:** I think that's fine. I'm not  
10 anticipating that we will have any particular issues, but that  
11 would work just fine.

12 **THE SPECIAL MASTER:** Okay. So if I'm understanding  
13 everybody correctly, by April 13 it's everyone's hope and plan  
14 to be able to submit to me a draft plan for my review; is that  
15 correct?

16 **MR. SOMACH:** Correct.

17 **THE SPECIAL MASTER:** What I think would make sense  
18 would be to go ahead and schedule a phone conference in the  
19 event there are matters as to which, heaven forbid, you are not  
20 able to agree. I'm thinking perhaps a week after that we can  
21 set one. If we don't need it, I can take it off the calendar.  
22 I'm thinking on the 20th I will set another phone conference so  
23 that it's on everyone's calendar if we need it. Is that fair?

24 **MR. SOMACH:** Yes, that's fair for Texas.

25 **MR. RAEL:** New Mexico as well.

03:11

1           **THE SPECIAL MASTER:** Any objections to that?

2           **MR. WALLACE:** Your Honor, this is Chad Wallace. I  
3 have no objection, but I have a jury summons myself at that  
4 time. I'm hoping I would be available the following week.

5           **THE SPECIAL MASTER:** The 27th, you mean?

6           **MR. WALLACE:** Any time that week, yes. The week of  
7 the 23rd to the 27th I would be available.

8           **THE SPECIAL MASTER:** How about we do it on the 23rd,  
9 then? My intention would be to set it at the same time as  
10 this.

11                           By the way, I chose this time because I figured  
12 it would make life a little bit easier for the folks out west.  
13 If there's a time that you prefer, please let me know. I'm  
14 prepared to accommodate you.

15                           Otherwise, let's plan on doing this at  
16 3:00 Central on the 23rd. You will be submitting your  
17 hopefully stipulated draft case management plan for my  
18 consideration on the 13th.

19                           If there are any issues as to which the parties  
20 are not able to agree, may I ask that you submit the pieces you  
21 have agreed on and then maybe a letter brief, not more than two  
22 pages, addressing the issues as to which there is no agreement.  
23 I would ask that those be submitted on the 13th as well. After  
24 the 4th you will probably know. I imagine that would give you  
25 enough time to put together a letter brief for my

03:13

1 consideration. Does that work?

2 **MR. SOMACH:** It works for Texas, Your Honor.

3 **THE SPECIAL MASTER:** Any objections?

4 Great. This has been very helpful. I don't  
5 think I have anything else. Does anybody else have anything we  
6 need to discuss right now?

7 **MR. DUBOIS:** Your Honor, this is Jim DuBois. Should  
8 we expect the same conference number as this time?

9 **THE SPECIAL MASTER:** Yes. I apologize for failing to  
10 put that in the first case management order. It will be pretty  
11 much this number going forward for all future conferences. I  
12 will try to remember to put it in case management orders. Just  
13 rattle my cage if I fail to. It's important that you get  
14 correct notification of the numbers we are using.

15 Anything else for the good of the order?

16 Counsel, thanks very much. I appreciate the  
17 work you did on this. I hope everybody has a good weekend.

18 **MR. SOMACH:** Thank you, Your Honor. You too.

19 **THE SPECIAL MASTER:** Thanks, Counsel. We are off the  
20 record.

21 (Proceedings adjourned.)

22 \* \* \*

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**CERTIFICATE**

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

s/ Toni Doyle Tusa  
Toni Doyle Tusa, CCR, FCRR  
Official Court Reporter