

UNITED STATES COURT OF APPEALS
FOR THE EIGHTH CIRCUIT
United States Courthouse
111 Seventh Avenue, S.E., Box 22
Cedar Rapids, IA 52401-2101

MICHAEL J. MELLOY
United States Circuit Judge

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April 3, 2018

Counsel of Record
(See Attached Service List)

Re: *Texas v. New Mexico and Colorado*,
Supreme Court Original No. 141

Dear Counsel:

As you know, the Supreme Court has entered an order assigning the undersigned as Special Master in this case. I am writing to introduce myself as well as discuss a few logistical issues concerning this case.

First, as to myself. You have probably already Googled me. But let me introduce myself. I have been a federal judge for thirty-two years. I started as a bankruptcy judge and served in that position for six and a half years. I then was a U.S. District Court judge for approximately nine and a half years. I was appointed to the United States Court of Appeals for the Eighth Circuit in February 2002. I have served in that position since that appointment. I became a Senior Circuit Judge in 2013. Since becoming a circuit judge my trial experience has been somewhat limited. However, since becoming a senior judge, I have done two full trials. One a bench trial in Nebraska involving a major breach of contract dispute over ranchland and cattle in western Nebraska. The second was a criminal jury trial here in Iowa.

I am starting to get up to speed on the case. Obviously, there is a voluminous amount of material to read and review. I have read the thorough report of the prior Special Master which has given me a good grounding as to the background of the case and the issues involved. I've also reviewed the Case Management Orders entered by the Special Master.

I note that Mr. Grimsal had entered Case Management Order No. 16. That order requires the parties to draft a case management plan and submit that plan to the Special Master by no later than April 13, 2018. In order to keep the case moving, I would like to keep that date and would request that the parties submit the case management plan to the undersigned by the date set forth in Mr. Grimsal's Order, April 13, 2018.

It does not appear from my review of the docket that Mr. Grimsal directed that any particular form of case management plan be prepared. I would request the case management plan include, at a minimum, the following.

1. A deadline for any amendment to the pleadings. That deadline should be no more than two months after the date set for filing New Mexico's answer and affirmative defenses.
2. A date for each party to designate and disclose the identity of any expert witnesses who may be used at trial. The plan should also include a deadline for exchanging of expert witness reports. Those dates should be sufficiently in advance of the close of discovery to allow expert depositions to be taken without extending the discovery deadline.
3. The date by which all discovery will be completed, not propounded. Please note that Federal Rule of Civil Procedure 26(e) imposes a continuing duty to supplement discovery responses as soon as practicable. All discovery responses must be supplemented at least 30 days before the close of discovery.
4. Deadline for filing dispositive motions.
5. The date on which the parties anticipate the case will be ready for trial.
6. The parties' best estimate as to the number of days required for trial.

I would also request that the named parties, that is, the states of Texas, New Mexico and Colorado, as well as the United States, each file a short statement, which can be in letter form, not to exceed two to three pages, which sets out the main issues each party believes needs to be resolved as well as a

broad outline of the discovery which may be required to address those issues. I would request that that statement be submitted with the case management plan.

Mr. Grimsal had also scheduled a telephonic conference for April 23, 2018, at 3 p.m., Central Daylight Time. I would like to go forward with that conference call. Hopefully it will be an opportunity for me to introduce myself to you and to get to know the parties a little better and the issues that need to be resolved. We will advise by a separate e-mail the call-in number to be used on the April 23 conference call.

As you know, the Supreme Court does not maintain the case docket for Special Master proceedings. I will be working with Michael Gans, Clerk of Court for the Eighth Circuit, to set up a docket on the Eighth Circuit website. Hopefully, we can incorporate into that docket all the filings that were made with Mr. Grimsal. We will be communicating with you separately when that docket is established and give you information as to how to file pleadings with the Eighth Circuit Clerk of Court.

The official docket for the case will be the electronic docket maintained by the Eighth Circuit Clerk. However, I would request that when you file pleadings or other matters that you e-mail a courtesy copy directly to me at the e-mail address above.

Finally, I would ask that each of the parties to this proceeding acknowledge receipt of this letter and communication and confirm that we have the correct contact information, including, names of the attorneys for each party, mailing addresses, e-mails and telephone numbers. I anticipate that most communication will be made by e-mail. I have attached a Service List to whom this letter is being sent by e-mail. I would note that on the Service List maintained by Mr. Grimsal that certain parties and law firms have multiple attorneys and paralegals listed as receiving copies of pleadings. Please let us know if you believe it is necessary to continue to serve all of those individuals with pleadings. Finally, if you note any party that you think should be included, that is not on the Service List, please don't hesitate to let us know.

I look forward to working with each of you on this very interesting case.

Sincerely yours,



Michael J. Melloy

MJM/lb

CC: Michael Gans, Clerk

SERVICE LIST FOR ALL PARTIES

**In The Supreme Court of the United States, Original No. 141
 STATE OF TEXAS v. STATE OF NEW MEXICO and STATE OF COLORADO**

PARTIES¹

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Texas	<p>STUART L. SOMACH* ANDREW M. HITCHINGS ROBERT B. HOFFMAN FRANCIS M. "MAC" GOLDSBERRY II THERESA C. BARFIELD BRITTANY K. JOHNSON SOMACH SIMMONS & DUNN, PC 500 Capitol Mall, Suite 1000 Sacramento, CA 95814 Rhonda Stephenson - Secretary Christina Garro - Paralegal Yolanda De La Cruz - Secretary</p> <p>KEN PAXTON <i>Attorney General</i> JEFFREY C. MATEER <i>First Assistant Attorney General</i> BRANTLEY STARR <i>Deputy First Asst. Attorney General</i> JAMES E. DAVIS <i>Deputy Attorney General</i> PRICILLA M. HUBENAK <i>Chief, Environmental Protection Div.</i> OFFICE OF THE ATTORNEY GENERAL OF TEXAS P.O. Box 12548 Austin, TX 78711-2548</p>	<p>(916) 446-7979</p> <p>ssomach@somachlaw.com ahitchings@somachlaw.com rhoffman@somachlaw.com mgoldsberry@somachlaw.com tbarfield@somachlaw.com bjohnson@somachlaw.com</p> <p>rstephenson@somaclaw.com cgarro@somachlaw.com ydelacruz@somachlaw.com (512) 463-2012</p>

¹ (*) = *Counsel of Record*

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SPECIAL MASTER

Special Master	Honorable Michael J. Melloy <i>Special Master</i> United States Circuit Judge 111 Seventh Avenue, S.E., Box 22 Cedar Rapids, IA 52401	(319) 432-6080 Michael.Melloy@ca8.uscourts.gov
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