

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 JULY 26, 2022, REMOTE
HEARING BEFORE HONORABLE MICHAEL A. MELLOY, SPECIAL
MASTER, UNITED STATES CIRCUIT JUDGE, 111 SEVENTH
AVENUE, SE, CEDAR RAPIDS, IOWA 52401, beginning at
11:00 a.m.

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P R O C E E D I N G S

1
2 **JUDGE MELLOY:** Good morning, everyone.
3 This is in the matter of Original No. 141, State of
4 Texas versus State of New Mexico and State of Colorado
5 with United States as intervenor. Let me start by
6 asking the parties to enter their appearance in
7 connection with this status conference.

8 Mr. Somach, who do you have on for
9 Texas?

10 **MR. SOMACH:** Yes, Your Honor. This is
11 Stuart Somach, counsel of record for the State of
12 Texas. With me from my law office are Theresa
13 Barfield, Sarah Klahn, and Francis Goldsberry. Also,
14 Grant Dorfman and Priscilla Hubenak from the Texas
15 Attorney General's Office.

16 **MR. HOFFMAN:** Robert Hoffman is also on
17 the line.

18 **JUDGE MELLOY:** All right. Who do we
19 have on for New Mexico, Mr. Wechsler?

20 **MR. WECHSLER:** Good morning, Your Honor.
21 Jeff Wechsler for the State of New Mexico. We have
22 Cholla Khoury, the chief deputy attorney general; Zach
23 Ogaz from the New Mexico Attorney General's Office;
24 Marcus Rael from Robles Rael and Anaya; Lisa Thompson
25 and Michael Kopp from Trout Raley; John Draper and

1 Corinne Atton from Draper & Draper; Shelly Dalrymple
2 also from our office. And then we have or are
3 expecting Mike Hamman, the state engineer and Rio
4 Grande Compact Commission; Rolf Schmidt-Petersen, the
5 director of the New Mexico Interstate Stream
6 Commission; and Nat Chakeres, the general counsel for
7 the Office of the State Engineer.

8 **JUDGE MELLOY:** All right. And then,
9 Mr. Wallace, who do we have on for the State of
10 Colorado?

11 **MR. WALLACE:** Yes, good morning, Your
12 Honor. This is Chad Wallace, along with Preston
13 Hartman, from the Colorado Attorney General's Office.

14 **JUDGE MELLOY:** Okay. And Mr. Leininger,
15 who do we have for the United States?

16 **MR. LEININGER:** Yes, good morning, Your
17 Honor. For the Department of Justice, we have Judith
18 Coleman and Jennifer Najjar; the Interior Solicitor's
19 Office, Chris Rich, Shelly Randel; Bureau of
20 Reclamation, Ian Ferguson, and I believe Michelle
21 Estrada-Lopez is either on or will be joining.

22 **JUDGE MELLOY:** Okay. Then for the
23 Albuquerque Bernalillo County Water Utility Authority,
24 who do we have?

25 **MR. BROCKMANN:** Good morning, Your

1 Honor. It's Jim Brockmann on behalf of the Water
2 Authority.

3 **JUDGE MELLOY:** City of El Paso?

4 **MS. MAXWELL:** Good morning, Your Honor,
5 Susan Maxwell for the City of El Paso.

6 **JUDGE MELLOY:** City of Las Cruces?

7 **MR. STEIN:** Good morning, Your Honor.
8 This is Jay Stein for the City of Las Cruces. I'm
9 joined by Delila Walsh, the executive director of Las
10 Cruces Joint Utilities; Adrienne Widmer, the deputy
11 director; Jennifer Vega-Brown of the city attorney's
12 office; and Lee Wilson, a consulting hydrologist for
13 the City.

14 **JUDGE MELLOY:** Okay. El Paso County
15 Water Improvement District No. 1?

16 **MS. O'BRIEN:** Good morning, Your Honor.
17 Maria O'Brien for El Paso County Water Improvement
18 District No. 1; and also on is counsel Renea Hicks;
19 and Dr. Al Blair, the district engineer is also on.

20 **JUDGE MELLOY:** And the Elephant Butte
21 Irrigation District?

22 **MS. BARNCASTLE:** Good morning, Your
23 Honor. Samantha Barncastle for EBID. Also joining
24 today is Gary Esslinger, the special advisor to the
25 board of directors.

1 **JUDGE MELLOY:** Hudspeth County
2 Conservation Reclamation District No. 1? Anyone?

3 (No response.)

4 **JUDGE MELLOY:** Mr. Miller is not here I
5 take it.

6 All right. New Mexico Pecan Growers?

7 **MS. DAVIDSON:** Good morning, Your Honor.
8 Tessa Davidson on behalf of Pecan Growers.

9 **JUDGE MELLOY:** Okay. New Mexico State
10 University?

11 **MR. UTTON:** Good morning, Your Honor.
12 This is John Utton on behalf of New Mexico State
13 University.

14 **JUDGE MELLOY:** And Southern Rio Grande
15 Diversified Crop Farmers Association?

16 **MR. OLSEN:** Good morning, Your Honor.
17 A.J. Olsen on behalf of the Diverse Crop Farmers.

18 **JUDGE MELLOY:** I see we have our
19 mediator, Judge Boylan, on, as well. Is there anyone
20 I missed?

21 (No response.)

22 **JUDGE MELLOY:** All right. Well,
23 basically the status conference this morning is to get
24 an update as to where the parties are in terms of
25 drafting a settlement agreement, and since you seem to

1 be kind of taking the lead the last time,
2 Mr. Leininger, maybe I'll let you speak first as to
3 where you think we are in this process and what
4 progress or lack thereof has been made in the last
5 month or so.

6 **MR. LEININGER:** Sure, Your Honor. After
7 the last status conference, you issued an order, and
8 in that order summarized what we had planned over the
9 course of the summer, which is the drafting in the
10 settlement agreement. We are proceeding along those
11 lines meeting almost daily in one form or another,
12 either as all parties meeting, and we've also
13 commenced some bilateral negotiations between the
14 United States and New Mexico for purposes of Project
15 operations and terms of settlement which would address
16 Project interference within New Mexico. Those are
17 proceeding quite well. Your -- your order stated that
18 you would note there weren't any significant obstacles
19 to drafting final settlement agreement. We haven't
20 encountered any thus far so we're progressing. We're
21 still planning on having the completed settlement
22 agreement by September 23rd. That was our target date
23 that we had mentioned to you last settlement status
24 conference, and then we would commence the respective
25 approval processes for -- for our superiors so we

1 would attempt to -- we would then seek approval of the
2 settlement agreement, which had been agreed to in
3 negotiations and the target date for that was the end
4 of the year so we're still proceeding along those
5 lines.

6 **JUDGE MELLOY:** I guess one of the issues
7 that I identified in the order was -- was that if
8 there was a significant problem or, worst case
9 scenario, breakdown, which apparently there has not
10 been, we would consider setting a new trial date at
11 this point. But let me ask: Does anybody feel that
12 we need to set a trial date at this point or that the
13 process of drafting the agreement is such that -- that
14 there's some less optimistic than Mr. Leininger?

15 **MR. SOMACH:** Yes, Your Honor.

16 **JUDGE MELLOY:** Go ahead.

17 **MR. SOMACH:** This is Stuart Somach for
18 the State of Texas. I would agree that the parties
19 are talking and working in good faith toward
20 resolution of the issues. You know, from our
21 perspective, I just want to make certain that you
22 understand that the Attorney General's Office has --
23 from the State of Texas has participated in all of the
24 discussions that we've had from the beginning in
25 December, and we've also kept the decision makers in

1 the governor's office in Austin informed of the
2 progress that we've made in these discussions, again,
3 which went back to December of 2021. Based upon
4 direction that we're receiving from Austin, I think
5 that our views may be a bit at odds with
6 Mr. Leininger's views. I probably should lay our
7 views out on the table. And I will say that I have
8 informed, both in writing and verbally, this to all of
9 the parties and -- and to Judge Boylan, and we have
10 discussed it a bit. But we -- we believe that the
11 issues in the Original Action, which were framed by
12 the Texas complaint and the New Mexico answer and
13 counterclaim can be resolved much earlier than
14 September 23rd. We believe that they can be resolved
15 by August 8th, and we've indicated to the other
16 parties and to the mediator that if that doesn't
17 occur, we're going to turn toward trial preparation,
18 and we'll modify our active participation in the
19 further -- in further settlement discussions.

20 As I noted to you and others in St.
21 Louis, much of what is still left to resolve doesn't
22 involve the State of Texas. It focuses on what we
23 believe are internal New Mexico water right issues,
24 which are -- are up to New Mexico to address and --
25 and deal with in their sovereign capacity, and that to

1 the extent that they want to continue to talk to the
2 United States about those issues, they certainly are
3 free to do so. We're -- we're not opposed to their
4 doing so. We just don't believe that those issues
5 should -- should cause any delay in moving forward
6 with the -- with resolution of the issues that are
7 really fundamental to the Original Objection and the
8 -- and the Compact.

9 The -- you know, I don't know whether I
10 agree with Mr. Leininger's optimism about September
11 23rd and whether or not they're going to be able to
12 resolve all those New Mexico issues by -- by September
13 23rd, but we consider any reasonable proposal -- we
14 will consider any reasonable proposal that comes from
15 United States or from New Mexico between August 8th
16 and September 23rd, but our view is that we ought to
17 be able to wrap up what I would call the decree issues
18 by August 8th, and -- and we're working toward that
19 end. As I've said, we've talked to the mediator and
20 the parties about this, but there's one issue that --
21 that this is not an issue that we can spend a lot of
22 time in terms of discussion in terms of settlement.
23 You know, as we indicated and as was indicated last
24 time, the current settlement discussions appear to be a
25 contingency, and that contingency is legislation in

1 New Mexico. We spent a lot of time on that last time.
2 I don't want to talk about the legislation, but what I
3 need to let you know is that there is no ability on
4 the State of Texas, no willingness to proceed with a
5 settlement that links a settlement with New Mexico
6 state legislative approval. I've been told our
7 position is that we will not agree to any settlement
8 that's contingent upon those actions. We don't think
9 they are necessary for the settlement. We think,
10 again, those are bilateral issues, and if the United
11 States and New Mexico want to explore them, they're
12 free to do so, but that the State of Texas will not
13 agree to a settlement that has that contingency in it.
14 And finally, notwithstanding the discussion we had on
15 trial dates last status conference, we maintain that
16 -- that it's necessary to have an early trial date,
17 that without that, all we're doing is -- is kicking
18 the can way down the road much further than it should.

19 We're concerned about the change in
20 attorney general administrations in New Mexico, which
21 because the current attorney general is term limit out
22 will change under any circumstances come January. We
23 don't want another continuance based upon change of
24 attorney generals so that they can get up to speed.
25 We would like to either settle this case this year or

1 go to trial this year, and we're suggesting a date as
2 early as November 8th, which would be three months
3 from the August 8th date. I recognize that that's,
4 you know, inconsistent with, I assume the order that
5 you issued vacating the October 3rd trial date, but,
6 again, we maintain that a early trial date is
7 necessary, and we -- we suggest one as early as
8 November 8th so that we can be deep into the last
9 phase of trial prior to the time that -- that the end
10 of the year comes around and we have a new attorney
11 general.

12 **JUDGE MELLOY:** Okay. What's your
13 position on all of this, Mr. Wechsler?

14 **MR. WECHSLER:** Your Honor, we agree with
15 most of what the United States said. We -- he --
16 Mr. Leininger outlined the steps that we've taken. I
17 would add that we've had several meetings with Judge
18 Boylan. We have draft settlement provisions that the
19 parties have exchanged and worked through line by
20 line. That's not to say that they're by any means
21 final, but significant progress has been made. We've
22 also -- I would -- I would add there has been a
23 two-day mediation involving the New Mexico amici and
24 the United States trying to work through those issues.
25 We believe a lot of progress has been made on those

1 and -- and, again, we're hopeful. There's also been a
2 list -- a helpful list developed by the United States
3 of the technical issues that the technical committee
4 needs to be -- to work on, and those have been worked
5 through. So I would say, all in all, New Mexico is
6 pleased with the progress and remains committed to
7 working hard to completing the settlement provisions
8 by September 23rd, as we discussed with you last
9 month. We recognize that as you're working through
10 settlements, there's obstacles. I think that can be
11 expected, and Texas is mentioning one of the ones that
12 -- that has come up. And I -- I want to be clear that
13 we don't think it's appropriate to discuss provisions
14 of our proposed settlement with you, but suffice it to
15 say that every party in this negotiation has both
16 benefits and has made concessions. So without
17 quibbling over the details, you know, Texas has
18 described its concerns. It's now asking for some
19 procedural and organizational changes in the way
20 things have been approached. It's not clear to New
21 Mexico the rationale or the -- the logic behind Texas'
22 request, but nonetheless, New Mexico and the United
23 States are attempting, in good faith, to accommodate
24 Texas' new requests and -- and I think certainly New
25 Mexico is willing to do so as long as it doesn't

1 negatively impact New Mexico's rights or -- or
2 benefits under a potential settlement.

3 I do want to point out that those
4 remaining issues that Texas is talking about tend to
5 have to do with the Project operations and things
6 within New Mexico, in part because we agreed as a
7 matter of the order of settlement discussions to
8 address the index issues first, and it has always been
9 known that there would be these other issues that we
10 ultimately had to address because, of course, a
11 settlement doesn't work unless everybody's concerns
12 are addressed. We -- we continue to think that
13 there's a -- a very clear path forward, and we remain
14 hopeful. We haven't identified anything so far that
15 we don't think we can overcome.

16 As to the trial date, I mean, throughout
17 this process, we've supported setting a trial date.
18 That remains our position, but we think it has to be a
19 trial date that's achievable and that allows the
20 parties to complete the work and -- and we don't think
21 that a November trial date is possible for several
22 reasons. I think, first, as -- as, I think, all the
23 parties have acknowledged, a settlement wouldn't be
24 finalized until December. That's part of what we
25 explained to you, I think, last month, and it's not

1 clear to me how Texas' proposed trial date would work
2 with -- with that December finalization of the
3 settlement agreement. Second, we now have commitments
4 in November. I personally have a trial scheduled for
5 the last week of October and the first week of
6 November and another two-day evidentiary hearing in
7 mid November. We've released all of our witnesses,
8 and several of them now have commitments in November.
9 So it's just not possible. And even if we didn't have
10 those commitments, there wouldn't be enough time to
11 both continue and complete our work on the settlement,
12 as well as prepare for -- for trial.

13 As to the point that there will be a
14 change in the attorney general at the end of the year,
15 that's not uncommon in these original jurisdiction
16 cases. You have the case span several
17 administrations, and we have no reason to think there
18 would be any disruption either in settlement
19 discussions or potential settlement, the approach from
20 New Mexico or -- or any of the trial personnel or --
21 or negotiating personnel. At any rate, we're
22 scheduled to sign the agreement this year during the
23 current attorney general's administration.

24 What we would recommend as an
25 alternative trial date is that you set a trial in

1 April of 2023, and that you make clear that that is a
2 firm trial date that simply wouldn't be changed, and
3 so then that date would be used for one of two
4 purposes, either the parties use that date to present
5 the provisions of a settlement, as we explained to you
6 was contemplated for your consideration and -- and
7 ultimate recommendation to the Court; or if the
8 settlement for some unforeseen reason is unsuccessful,
9 then that time would be used for trial. We would
10 simply start and -- and conduct trial during that
11 time.

12 Unless you have any other questions,
13 thank you.

14 **JUDGE MELLOY:** Well, I guess not so much
15 question as comment. I -- I'm not inclined to go that
16 far out on a trial date if the settlement falls apart,
17 and I'm also not certain that we have to wait that
18 long for a hearing to approve the settlement. If --
19 if a settlement is achieved by September 23rd, as I
20 understand it, that means it's final, it's in written
21 form ready to be signed by the attorney general of New
22 Mexico and ready to be signed by the attorney general
23 of Texas and subject -- and ready to be presented to
24 the appropriate personnel within the Department of
25 Justice and Solicitor General's Office for approval by

1 the United States. It seems to me that at that point,
2 we can start the approval process. It may not be --
3 there's going to have to be a fair amount of notice
4 given to all parties. I assume there will be some
5 type of a fairness hearing to take place somewhere in
6 the -- in the Rio Grande Valley, whether that's El
7 Paso, Las Cruces, Albuquerque, somewhere in New
8 Mexico, or Texas. I think we can do things
9 concurrently, and even if there are some unfulfilled
10 contingencies, I don't know that that would be an
11 obstacle to saying that the settlement in and of
12 itself is or is not subject to approval subject to
13 completing those contingencies. So I guess what
14 you're suggesting strikes me as being somewhat more
15 time than we need, Mr. Wechsler, and -- but anyway.

16 What do you say to the argument by Texas
17 that Mr. Somach made that there's not -- no reason why
18 Texas and New Mexico can't settle their differences
19 separate and apart from whatever negotiations you have
20 to complete with both the United States and the amici
21 over Project operations and issues internal to New
22 Mexico?

23 **MR. WECHSLER:** I would say that the
24 settlement discussions have -- have included all of
25 the various provisions, and New Mexico hasn't

1 evaluated whether there'd be -- it would be willing to
2 sever out part of it as part of the package rather
3 than the entire whole unit, which is where New Mexico
4 gets all of its benefits and -- and concessions. So
5 taking out one piece might not work for New Mexico is
6 the concern.

7 As to whether or not we can work
8 concurrently, I don't disagree with that, Your Honor.
9 I would remind you that the United States has
10 indicated that the earliest it would be able to
11 complete its signing process would be some time in
12 December, and to the extent that there are some
13 contingencies that might involve the legislature, that
14 legislative session takes place in January and
15 February of this year, which was the rationale for us
16 for -- for suggesting an April trial.

17 **JUDGE MELLOY:** Well, of course,
18 Mr. Somach at this point has indicated that's --
19 that's a deal breaker for Texas. What's your --
20 what's your thoughts on this, Judge Boylan?

21 **JUDGE BOYLAN:** Judge, it seems to me
22 that all the parties are in agreement that we're
23 working pretty solidly towards the September 23rd
24 deadline that we talked about the last time that we
25 saw you, and I don't hear any disagreement from either

1 Colorado, the U.S., New Mexico, or Texas on that
2 point, and assuming that that was a reasonable date
3 for that document to be finalized, it appears to me
4 that that would be the north star, so to speak, of
5 whether or not a deal is going to get done. Texas has
6 been, as Mr. Somach indicated, pretty straightforward
7 in reference to its thoughts concerning the need to
8 have a conditional approval by the New Mexico
9 legislature. The parties have heard that, and
10 nonetheless continue to express optimism that a deal
11 indeed will be one that can be reached by the
12 September 23rd deadline. Knowing that and knowing
13 that I still hear that optimism from all parties, not
14 one party has expressed serious doubt about that, it
15 appears to me that if that date is a reasonable one,
16 and it seems to be, and if indeed the parties have
17 delivered on that date, I agree with your point that
18 at that point, given the fact that the U.S. contingent
19 needs to have the appropriate authorities review it
20 and sign off on it should not delay the Court's
21 consideration of the settlement and the ability of
22 this Court to consider whether or not it is willing to
23 recommend to the Supreme Court its provisions, if
24 indeed signed off on by the appropriate U.S.
25 contingents -- contingencies by December 31st. So I

1 have great optimism. I spent, since talking to you
2 personally in St. Louis, two days in Albuquerque. I
3 spent several hours on the telephone in Zoom meetings
4 with all the parties, and in addition to that, the
5 parties have really been working their tail off, all
6 of them, in reference to meeting for hours every day
7 towards a resolution on September 23rd. I recognize
8 the fact that Texas believes that an earlier trial
9 date in November would be appropriate and that if you
10 had a trial date in November 8th, that three months
11 prior to that would be August 8th, which is the
12 deadline that they're suggesting they would need to
13 have some clarity on the Compact, but I'm not quite
14 sure if the -- if -- if that date should be in
15 opposition to the date as previously indicated of
16 September 23rd of wrapping all of this up, and I think
17 it is doable. I don't think anybody on the -- on this
18 phone call, at least the parties -- I'm not sure about
19 the amici -- would disagree with that.

20 **JUDGE MELLOY:** Okay. Mr. Wallace, do
21 you have anything you want to add on this?

22 **MR. WALLACE:** Thank you, Your Honor.

23 You know, Colorado remains optimistic
24 about our abilities to reach a settlement. We think
25 on the core issues, the parties have made a good deal

1 of progress towards settlement. On the ancillary
2 issues, as is often the case, the devil is in the
3 details, so I think it remains very ambitious for the
4 parties on the non-core issues to put those down in
5 writing. That's not to say that it can't happen, but
6 there's certainly a lot of work to be done to wrap all
7 that up by near the end of September.

8 **JUDGE MELLOY:** When you -- when you talk
9 about non-core issues, are you talking mainly about
10 the Project operation discussions between United
11 States and New Mexico?

12 **MR. WALLACE:** Yeah. I'm trying to
13 tiptoe around the details of the discussions, but I'm
14 talking about the non-Compact apportionment questions,
15 the items that don't necessarily concern the three
16 Compacting states. That might be different issues,
17 that although related to the larger Rio Grande scheme,
18 may -- may not -- well, Texas is -- I'll put it this
19 way: Texas has already expressed that those are
20 issues it is not concerned about resolving by the
21 deadline.

22 **JUDGE MELLOY:** Let me ask Mr. Leininger.
23 I assume that all the relevant parties within the
24 Department of Justice and the Solicitor General's
25 Office are being kept informed pretty much every step

1 of the way on this process, and -- and any final
2 agreement is not going to come as a surprise to
3 anybody. I mean, if an agreement is reached and put
4 in final form, do you believe there's any realistic
5 chance that somebody at DOJ would say no at that point
6 when they have pretty much decided that this is --
7 that this is something that -- that they can agree to?

8 **MR. LEININGER:** Right. And your
9 observation that we have maintained close
10 communication with the Solicitor's Office and our
11 superiors in the Environment and Natural Resource
12 Division, that's correct. Our communications are at
13 least a couple times a week with regard to our
14 immediate superiors and then Solicitor General's
15 Office has taken a keen interest in this so we have
16 communications there. So we're trying -- we're
17 proceeding on a path that we are trying to assure that
18 by September 23rd, we have a settlement that will not
19 have any of these issues arise in which the settlement
20 could be -- could be defeated by any of the approval
21 process within DOJ. The timing on this is -- I mean,
22 it's -- we're asking for three months after we enter
23 -- after we agree to a final settlement for the
24 approval process, and that's actually -- that
25 direction is coming from both the SG's office and the

1 NRD. It has to be approved by the Assistant Attorney
2 General at NRD. It has to be approved by Solicitor
3 General, and there's a -- there's a process --
4 actually a statutory process for that, and it takes
5 time. Three months may sound excessive, especially in
6 light of the fact that we don't think there's going to
7 be any problems. We're not anticipating any. But
8 it's just, you know, that -- that is the nature of the
9 beast, just takes months to get through the process of
10 approval.

11 **JUDGE MELLOY:** What is your -- what
12 thoughts, if any, do you have about Mr. Somach's
13 argument that there's no reason you can't carve out
14 the New Mexico, Texas, and, I guess, as intervenor,
15 United States settlement over the Compact issues that
16 were part of the original complaint and leave for a
17 later date some of the Project operations and other
18 issues between United States and New Mexico?

19 **MR. LEININGER:** We're proceeding in
20 accord with your summary judgment order, in which you
21 stated that the Compact protects the Project, and
22 potential Compact violation if there's material
23 interference with long-term operation of the Project.
24 So we do see this issue of any Project interference
25 and a remedy to the Project interference being a

1 fundamental component to this overall settlement. So
2 Texas certainly has -- has their interest focused and
3 not on that part of the settlement agreement, but we
4 do see that as being something that is necessary for
5 purposes of a final decree. Now, what form that takes
6 is still being discussed, but we don't think there's a
7 separate carve out. We don't view it as an ancillary
8 issue, as Colorado stated. It is fundamental to the
9 overall settlement.

10 **JUDGE MELLOY:** I think I asked this
11 question the last time, but would this necessitate
12 either aggregating or modifying the operating
13 agreement?

14 **MR. LEININGER:** Well, there are ongoing
15 negotiations right now, which we're taking a good look
16 at virtually everything within Project operations for
17 purposes of ensuring that the Compact compliance and
18 deliveries to Texas can be met. It is not -- it is
19 not contemplated right now that the Project -- that
20 the Operating Agreement -- 2008 Operating Agreement
21 would be modified.

22 **JUDGE MELLOY:** Do any of the amici want
23 to be heard or have any thoughts about any of these
24 issues? Ms. Barncastle?

25 **MS. BARNCASTLE:** Thank you, Your Honor.

1 I'll be brief. I just wanted to follow up on what
2 Mr. Leininger said that in disagreement with Colorado,
3 we don't view these intrastate New Mexico Project
4 operations issues as ancillary whatsoever. They are
5 far too tied to the Compact issues, and we don't see a
6 way to separate out what will ultimately be EBID's
7 responsibility to deliver to EP No. 1 from New
8 Mexico's responsibility to deliver to Texas. There
9 really is no difference. So putting the puzzle
10 together is going to take some time. I reported to
11 you on that, you know, last time. We don't see this
12 as ancillary, and we don't see a way to just let Texas
13 escape while everybody else continues on, and I don't
14 see a need to allow Texas to do that anyway. It seems
15 to me that their interests are directly implicated in
16 what we're doing related to my client's operations and
17 how we will implement a settlement agreement to
18 protect EP No. 1. So there's no possible way to say,
19 Texas, sure, you can leave on or about August 8th, and
20 the rest of us will continue without the risk that
21 Texas will come back later and say, Oh, wait, you guys
22 negotiated a ton of stuff when we weren't in the room,
23 and now we don't agree. Everybody has to get on board
24 and agree that this is going to take some time, and
25 not any of these issues are going to be considered

1 ancillary if they affect the actual settlement and
2 implementation of the settlement that will get EP No.
3 1 and the State of Texas their water.

4 So with due respect to Mr. Wallace,
5 completely disagree that Texas can escape and that we
6 can get these ancillary issues separated from core
7 issues. They really are core Compact issues. The
8 United States has its own complaint in this matter.
9 Just because the State of Texas' complaint is
10 basically done and dealt with does not mean there are
11 not other issues that will play a major role in
12 implementing whatever we continue to do.

13 **JUDGE MELLOY:** Anyone else want to be
14 heard?

15 **MS. O'BRIEN:** Your Honor, if I may just
16 briefly. So just two overarching points, El Paso
17 County Water Improvement District No. 1, I think as
18 all the parties continue to support settlement over
19 returning to litigation, certainly not at any cost,
20 but we certainly believe, as we've articulated
21 previously, that settlement can achieve in this case
22 what litigation could not in terms of protecting the
23 Project supply for not only EP1 but for EBID and --
24 and Reclamation and, thereby, for Texas and New
25 Mexico. We also support structuring a process that

1 moves things more quickly -- forward more quickly and
2 keeps the pressure on the parties and all entities to
3 get it done. We believe that what came out of the St.
4 Louis status conference did that, the September 23rd
5 date, with no firm trial setting but discussion that
6 trial would be set at some point for early in 2023.
7 Specifically, I would -- on the issues that are being
8 called the remaining issues, I would echo what
9 Mr. Leininger and Ms. Barncastle just articulated. We
10 don't believe those are ancillary issues. The
11 remaining issues, as I believe Mr. Wechsler well
12 articulated, address Project operations, and as
13 Mr. Leininger indicated, also interference with
14 Project supply. So much of what remains to be
15 wrestled to the ground in settlement does involve the
16 only recipient of Texas Rio Grande water, which is El
17 Paso County Water Improvement District No. 1.

18 So with -- with that, I -- I don't have
19 anything further unless you have any questions, Your
20 Honor.

21 **JUDGE MELLOY:** All right. Anybody else
22 want to be heard as to where we stand at this point?

23 (No response.)

24 **JUDGE MELLOY:** Well, let me just say
25 this: As I said a few minutes ago, I -- I am not

1 prepared to put this case out as far as Mr. Wechsler
2 has indicated, the April 2023. I do think that
3 realistically, November is probably overly aggressive.
4 Whether we can get started in December if things fall
5 apart, I -- I'm not sure. Probably, as Ms. O'Brien
6 indicated, right after the start of the new year is
7 probably a more realistic date, and what I -- what I
8 plan to do at this point is, I guess, is nothing
9 further than to set a further status conference for
10 mid-to-late August just to see where we are with this
11 process.

12 I guess I'd just say to Texas, I
13 understand your concerns, and you want to get this
14 done sooner rather than later. I hope you will not
15 withdraw from the negotiations if -- if -- if there
16 isn't a complete agreement by August 8th, but that's,
17 of course, ultimately your decision to make. But I
18 know that working with Judge Boylan that hopefully we
19 can keep the process moving, and I think everybody
20 agrees that either something is in writing and in
21 final form by September 23 or -- or all -- or all bets
22 are off at that point. But I don't know that
23 arbitrary deadlines at this point beyond that are --
24 are helpful, but that's something, I guess, that every
25 party has to decide for themselves. But at this

1 point, I'm going to do nothing further than to
2 indicate that we're going to maintain the status quo
3 concerning the progress towards hopefully finalizing
4 the settlement agreement but to set a further status
5 conference in about four weeks just to see where we
6 are and if anything has changed and if anything
7 further needs to be done at that point.

8 Any questions or comments?

9 (No response.)

10 **JUDGE MELLOY:** All right. If not, then
11 we'll be adjourned. Thank you, everyone.

12 (The proceedings adjourned at 11:39 a.m.)
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