

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.

OFFICE OF THE SPECIAL MASTER

ORDER

July 27, 2021

ORDER

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

A status conference in this case was held on July 27, 2021. As a result, it is ordered as follows.

A. Courtroom technology.

A demonstration of the courtroom technology which would allow for remote viewing of the trial in this case was demonstrated on July 27. The parties were advised during the demonstration that the camera view would normally be fixed on the witness and exhibits (a split screen). Although other courtroom views are possible, the moving back and forth between cameras is technically difficult and would not be feasible.

An issue was raised about the quality of the exhibits on the video feed. The local Northern District of Iowa IT staff will work with Worldwide Court Reporters to see if the feed quality can be enhanced. In addition, the parties have indicated that the exhibits that will be used at trial will be placed on a shared drive available to the amici. Accordingly, the amici should have the exhibits available either on a separate screen or by printing copies.

The undersigned also indicated that the video feed will be monitored by Worldwide. Worldwide will have a list of those parties who are allowed access to the video feed. If an unauthorized person or entity logs on to the Zoom call, they will be dropped from the video feed.

An issue was raised as to whether expert witnesses will have access to the video feed. The undersigned indicated that they will have access but any expert will have to be registered for access. It is anticipated that the party calling the expert will file a pleading with the Court indicating the name, address, email and telephone number of the expert to be given access to the video feed.

B. Site visit.

The undersigned was advised that the logistics of the site visit have been finalized. A copy of the itinerary will be sent to the undersigned within the next couple days. The undersigned also indicated that a further status conference will be held on **Tuesday, August 17, 2021, at 1:00 p.m. Central Daylight Time**. It is requested that Worldwide Court Reporters set up the Zoom call.

At that status conference any last-minute issues with the site visit can be discussed as well as COVID protocols.

C. COVID protocols.

Discussion was held concerning the issue of COVID procedures. The undersigned made the following points.

1. As far as entry into courthouses are concerned, the Federal Judiciary is attempting to follow CDC guidelines. Essentially, those guidelines require that anyone who has been vaccinated does not have to wear a mask. Anyone who is not vaccinated must wear a mask. At the present time we are not requiring proof of vaccination.
2. I would request that the number of people participating in the final pretrial conference in El Paso be kept to a minimum. I will work with the district court for the Western District of Texas to attempt to make certain we have a telephonic/audio link to the final pretrial conference so people can listen to the proceedings.
3. The number of people participating in the basin tour be kept to a minimum. It is anticipated that interaction with attorneys who do not represent parties and other individuals who may be involved in the basin tour will mainly be held outside.

D. Order of witnesses and exhibit lists.

New Mexico indicated some concerns about the order of witnesses and Texas' exhibit list in an email dated July 27, 2021. It is the understanding of the undersigned that the parties believe those issues can be resolved without further intervention of the Special Master. To the extent that any issues do remain, they will be taken up at the final pretrial conference.

New Mexico requested that the deadline for identifying authenticity objections to exhibits on Texas' exhibit list be extended to August 9, 2021. There was no objection to that extension, and it is so ordered.

E. Final pretrial conference.

The final pretrial conference will be held on **August 25, 2021, at 9:00 a.m.** in the United States Courthouse for the Western District of Texas, El Paso Division.

F. Motion to seal.

New Mexico has filed a motion to file under seal a motion in limine and supporting documents (Docket filing number 544). This motion and supporting documents relate to Texas experts Joel Kimmelshue and Mica Heilmann of Land IQ. The testimony and supporting documents of those individuals is the subject of a protective order. Texas, through counsel, indicated in the status conference that it was waiving the benefits of the protective order and that the documents could be filed on the public docket.

Accordingly, the motion to file under seal is denied as moot. New Mexico is authorized to file its motion in limine and supporting documents on the public docket.

Dated: July 27, 2021



Honorable Michael J. Melloy
Special Master
United States Circuit Judge
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