

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.

UNITED STATES OF AMERICA,

Intervenor.

OFFICE OF THE SPECIAL MASTER

ORDER

August 26, 2022

ORDER

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

A status conference in this case was held on August 24, 2022. As a result of the discussions at that status conference, the following Order is entered.

1. Disclosure of settlement documents.

The parties desire to disclose to amici various drafts of settlement agreements for comment and review by amici attorneys. An Order dated March 8, 2022, indicated that all statements and communications by and among the parties and amici in connection with the mediation shall remain confidential. That obligation of confidentiality remains in full force and effect, subject to the following.

First, any amici granted access to settlement documents shall first sign a confidentiality agreement to be drafted and circulated by the attorneys for the United States. It is anticipated that once the confidentiality agreement is signed, the parties (Texas, New Mexico, Colorado and the United States) will begin to make settlement documents available to the amici. The first disclosure is anticipated to be a draft of an agreement between Texas and the other parties to this dispute. That agreement will be disclosed by no later than the close of business on Tuesday, August 30, 2022. It is anticipated that subsequent settlement drafts addressing what have been referred to as “intra-New Mexico issues” shall be disclosed by no later than the close of business on Friday, September 2, 2022.

In connection with the disclosure of those documents, the attorneys for the amici shall not make the documents available to any other person or entity, including their clients and technical advisors. However, the attorneys for amici will be free to discuss the contents of the agreements with their clients and technical advisors. I wish to emphasize, however, that all parties, amici, and any of their clients, technical advisors and other people associated with those entities remain bound by the confidentiality order and shall not discuss the status of the settlement negotiations with any other person.

2. Status conference.

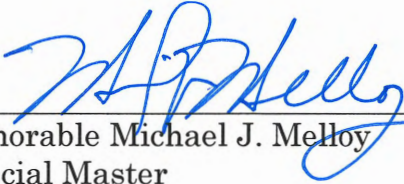
An in-person status conference in connection with this case will be held on September 27, 2022, at the federal courthouse in El Paso, Texas. It is anticipated that the status conference will address either the issue of steps necessary to effectuate a settlement and prepare a report to the Supreme Court for its consideration, or if a settlement agreement is not reached, the establishment of deadlines and discussion of other mechanics to resume the trial in this case. It should be noted that at the Zoom status conference on August 24, it was indicated that the in-person status conference would be in Denver. However, upon further reflection, I believe it would be more appropriate to have the status conference at one of the major cities in the Rio Grande Valley. I am cognizant of the extreme public interest in this case and believe that the status conference should be as accessible as possible to interested parties, municipalities, interested citizens and news media.

In order that I will be prepared for the status conference, I would ask that the parties file a status report by no later than Wednesday, September 21, 2022, as to the likelihood of settlement. I assume that by that date the parties will have a pretty good idea as to whether they will meet the September 23 deadline and we will be talking about implementation of the settlement agreement or whether the settlement discussions have fallen apart and we need to gear up for trial.

3. Trial date.

There was some discussion about setting a backup trial date for this case. To that end, I believe that a date in early December might be overly aggressive. However, I believe that this case should be ready for trial shortly after the first of the year. Accordingly, the parties shall anticipate that if a settlement agreement is not finalized by September 23, the case will be reset for trial the first week of January, 2023, in Cedar Rapids, Iowa.

Dated: August 26, 2022


Hcnorable Michael J. Melloy
Special Master
United States Circuit Judge