

No. 141, Original

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In the  
SUPREME COURT OF THE UNITED STATES

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STATE OF TEXAS,

Plaintiff,

v.

STATE OF NEW MEXICO and  
STATE OF COLORADO,

Defendants,

UNITED STATES OF AMERICA,

Intervenor.

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OFFICE OF THE SPECIAL MASTER

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ORDER

September 16, 2021

## ORDER

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

Several status conferences have been held over the past several weeks. Set out below is a memorialization of the orders and rulings made during those status conferences.

1. Motion to continue and trial date.

The motion to continue filed by the State of Texas was granted. It was determined that the trial would be conducted in two phases. The first phase would commence on October 4, 2021. The first phase will be remote testimony proceedings. The second phase of the trial will commence in March, 2022, with the exact date to be set by separate order.

The undersigned is also signing today an order establishing remote trial protocols. These protocols represent the agreement of parties with the undersigned setting forth my decisions on the disputed issues. I should indicate that at the end of the day I essentially decided to allow the parties to present the case in the order and fashion that each desires. The parties should also take note of the changes to paragraphs II.D., IV.E.3.(b) and V.B.

2. Trial schedule.

It is anticipated that the typical trial day will run from 11:00 a.m. Central Time to 5:00 p.m. Central Time. There will be two 15- to 20-minute breaks during the trial day. Subject to further discussion with counsel, the undersigned anticipates running a four-day trial week, Monday through Thursday.

The undersigned also still plans to not hold court during the week of October 25.

It should also be noted that there are two federal holidays during the weeks scheduled for trial. At the present time the undersigned anticipates holding court on those holidays, however, that matter is subject to further discussion.

3. Status conference.

It was ordered that there would be a further status conference to discuss trial mechanics and any unresolved issues on **September 22, 2021, at 11:00 a.m.**

That hearing will be by Zoom, with Worldwide Reporting setting up the hearing.

4. Motions in limine.

The undersigned conducted a hearing on the motions in limine filed by the parties. Oral rulings were made on the record. The denial of a motion in limine is without prejudice to the proponent of the motion reasserting the motion at the time of any specific testimony and/or objecting to the testimony as it comes in at trial.

A. State of Texas's motions in limine.

All of Texas's motions in limine are denied.

Motion in limine number 5 filed by the State of Texas asked the Special Master to exclude the introduction of evidence at trial of improper legal opinion. As a general matter, the undersigned agrees that improper legal testimony should not be allowed. The same can be said for the subject matter of motion in limine number 6, evidence outside the scope of an expert's area of expertise. However, without knowing exactly what evidence and testimony is the subject of these motions, it is impossible to rule in advance as to what testimony will or will not be allowed. As I indicated at the hearing, for instance, it would appear improper for an expert witness to opine as to the legal meaning of the Compact which is at issue in this case. On the other hand, an expert may be allowed to testify concerning specific terms and phrases, including, their scientific meaning, common usage at the time the compact was negotiated and terms of art. In short, while the undersigned agrees that improper legal opinion and testimony outside an expert's area of expertise should be excluded, it is not possible to rule on any specific testimony at this time.

B. New Mexico's motions in limine.

The undersigned indicated that all the motions in limine filed by the State of New Mexico will be denied, with the exception of the motion in limine related to Dr. George Hornberger. Texas has indicated that it does not intend to call Dr. Hornberger as a witness. If Dr. Hornberger is not called the motion in limine will be moot. If he is called as a witness the undersigned will then take up the motion prior to Dr. Hornberger's testimony.

C. United States' motions in limine.

The undersigned indicated that I would like to study the motions in limine filed by the United States further. A separate order will be issued in connection with those motions.

5. Opening statements.

Each party (Texas, New Mexico, Colorado and the United States) will be allowed to make an opening statement not to exceed one hour in length. The time used for the opening statement will not be counted against that party's trial time.


6. Modification of expert opinions.

New Mexico requested that the Court enter an order providing that the time between the remote proceedings this fall and the in-person trial in March, 2022, not be used to modify or supplement expert disclosures. That request will be granted, subject, to any party in interest modifying an expert disclosure to respond to unanticipated or surprise testimony that may arise during the remote proceedings. Any such modification or supplementation of an expert disclosure will only be allowed upon a showing of good cause and a court order.

7. Trial brief.

Trial briefs are due 7 days before trial, that is by **September 27, 2021**.

Dated: September 16, 2021

  
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Honorable Michael J. Melloy  
Special Master  
United States Circuit Judge  
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