

NO. 141 Original

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In The

SUPREME COURT OF THE UNITED STATES

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STATE OF TEXAS

v.

STATE OF NEW MEXICO and

STATE OF COLORADO

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TRANSCRIPT OF SEPTEMBER 27, 2022,  
HEARING BEFORE HONORABLE MICHAEL A. MELLOY, SPECIAL  
MASTER, UNITED STATES CIRCUIT JUDGE, taken at UNITED  
STATES DISTRICT COURT WESTERN DISTRICT OF TEXAS, 525  
Magoffin Avenue, El Paso, Texas, beginning at 9:00  
a.m.

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## P R O C E E D I N G S

1  
2           **JUDGE MELLOY:** Please be seated. Good  
3 morning, everyone. As indicated, this is in the  
4 matter of United States Supreme Court Original No.  
5 141, State of Texas versus State of New Mexico and  
6 State of Colorado with United States as intervenor.  
7 We'll start with taking the appearances. For the  
8 State of Texas, Mr. Somach?

9           **MR. SOMACH:** Yeah. Do you -- I'm not  
10 sure if you prefer -- I don't know how --

11           **JUDGE MELLOY:** Well, for appearances,  
12 you can just stay at the table.

13           **MR. SOMACH:** Okay. Well, I'm here so --

14           **JUDGE MELLOY:** Well -- and let me just  
15 mention, we do have the dial-in service available, and  
16 as I understand it, all the mics should be live unless  
17 you turn them off so please don't turn them off.

18           All right. Go ahead.

19           **MR. SOMACH:** For State of Texas, I'm  
20 Stuart Somach, counsel of record for the State of  
21 Texas. With me at counsel table are Theresa Barfield  
22 from my office and Priscilla Hubenak from the Texas  
23 Attorney General's Office. On the phone, I believe,  
24 are Grant Dorfman, also from the Texas Attorney  
25 General's Office; Francis Goldsberry, Sarah Klahn, and

1 Robert Hoffman from my office. With me behind counsel  
2 table is Mr. Bobby Skov. He's the Texas Rio Grande  
3 Commissioner. In the audience, Mr. Pat Gordon, who's  
4 the former Texas Rio Grande Commissioner, as well as  
5 Suzy Valentine, the engineer advisor for the Rio  
6 Grande Commission of Texas.

7 **JUDGE MELLOY:** Thank you. For New  
8 Mexico?

9 **MR. WECHSLER:** Good morning, Your Honor.  
10 Jeff Wechsler from Montgomery & Andrews for New  
11 Mexico. We have Cholla Khoury, the chief deputy for  
12 the State of New Mexico and for the attorney general's  
13 office; Mike Hamman, the state engineer and the Rio  
14 Grande Compact commissioner; Nat Chakares, who's our  
15 general counsel for the state engineer; Zach Ogaz from  
16 the attorney general's office; Lisa Thompson from  
17 Trout Raley. We have Chris Shaw, who's the lawyer for  
18 the Rio Grande Compact commission; and we also have  
19 Page Pegram who's the engineer advisor for the state  
20 of New Mexico; and on the phone we have Marcus Rael.

21 **JUDGE MELLOY:** Thank you. Mr. Wallace?

22 **MR. WALLACE:** Good morning. Chad  
23 Wallace for the State of Colorado. In attendance is  
24 Mike Sullivan, the deputy state engineer for Colorado.

25 **JUDGE MELLOY:** And Mr. Leininger for the



1 United States?

2 **MR. LEININGER:** Good morning, Your  
3 Honor. Lee Leininger for the United States, and  
4 joining me at the counsel table is Judy Coleman from  
5 the Department of Justice. In the galley, we have,  
6 from the Bureau of Reclamation, Jennifer Faler, Ian  
7 Ferguson, and Michelle Estrada-Lopez; and then by  
8 telephone from the Solicitor's Office, we have Chris  
9 Rich and Shelly Randel -- and I apologize, I think  
10 Jennifer Najjar from the Department of Justice is also  
11 listening in by phone.

12 **JUDGE MELLOY:** Thank you. Then on the  
13 amici, Albuquerque Bernalillo County Water Authority?

14 **MR. BROCKMANN:** Good morning, Your  
15 Honor. Jim Brockmann for the Water Authority.

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

17 **MR. CAROOM:** Good morning, Your Honor.  
18 Doug Caroom for the City of El Paso. With me is Susan  
19 Maxwell and counsel for El Paso Water.

20 **JUDGE MELLOY:** City of Las Cruces.

21 **MR. STEIN:** Good morning, Your Honor.  
22 Jay Stein for the City of Las Cruces. Joining on the  
23 phone is Adrienne Widmer, the acting director of Las  
24 Cruces joint utilities.

25 **JUDGE MELLOY:** El Paso County Water

1 Improvement District No. 1.

2 **MS. O'BRIEN:** Yes. Good morning, Your  
3 Honor. Maria O'Brien for El Paso County Water  
4 Improvement District No. 1. Also here is Renea Hicks  
5 and the general manager for the district, Jesus Reyes.

6 **JUDGE MELLOY:** Thank you. Elephant  
7 Butte Irrigation District.

8 **MS. BARNCASTLE:** Good morning, Your  
9 Honor. Samantha Barncastle for EBID, and with me  
10 today is quite a group. We have Mr. Robert Sloan,  
11 vice president of the board, Greg Daviet, Keith  
12 Deputy, James Salopek, Duane Gillis, Joe Paul Lack,  
13 all board members, and Dr. Patrick Sullivan, our  
14 manager.

15 **JUDGE MELLOY:** Hudspeth County  
16 Conservation Reclamation District No. 1, anyone?

17 (No response.)

18 **JUDGE MELLOY:** All right. New Mexico  
19 Pecan Growers?

20 **MS. DAVIDSON:** Good morning, Your Honor.  
21 Tessa Davidson for New Mexico pecan growers, and my  
22 clients are listening by phone today.

23 **JUDGE MELLOY:** New Mexico State  
24 University?

25 **MR. UTTON:** Good morning, Your Honor.

1 John Utton for New Mexico State University.

2 **JUDGE MELLOY:** Southern Rio Grande  
3 Diversified Crop Farmers Association?

4 **MR. OLSEN:** Good morning, Your Honor.  
5 A.J. Olsen on behalf of the diversified crop farmers.

6 **JUDGE MELLOY:** I would note for the  
7 record our mediator, Judge Arthur Boylan is present,  
8 as well.

9 **JUDGE BOYLAN:** Good morning, Judge.

10 **JUDGE MELLOY:** Anyone else? Did I miss  
11 anyone?

12 (No response.)

13 **JUDGE MELLOY:** All right. Thank you.

14 Well, we're here on a status conference  
15 to talk about where we are on both settlement and  
16 trial and so let me start with the -- with the  
17 settlement issues. Mr. Leininger, you sort of have  
18 been taking the lead on that up to this point. Why  
19 don't you tell me where you think we are.

20 **MR. LEININGER:** Certainly, Your Honor.  
21 Settlement was not successful. We had devoted a lot  
22 of time and effort to the attempt to settle this case,  
23 and in meetings yesterday, we jointly decided that at  
24 this point, we do not have a settlement that we can  
25 move forward on. So that is -- that is the status of

1 the case.

2           **JUDGE MELLOY:** All right. Well, let me  
3 ask you this: At one point -- and maybe I'll turn to  
4 Mr. Somach and Mr. Wechsler more on this issue, but  
5 there was some talk that essentially the issues  
6 between Texas and New Mexico had been resolved, and  
7 there was -- there's discussion about basically  
8 carving that out of a larger settlement agreement. Is  
9 that still a possibility?

10           **MR. LEININGER:** We don't think so, Your  
11 Honor. What we view as a decree for purposes of  
12 resolving this is a decree, which also includes the  
13 reason the United States is in this lawsuit, and the  
14 United States is in this lawsuit because it has to  
15 address the interference with the project operations,  
16 both in Texas and New Mexico. So although there may  
17 be -- although everyone worked diligently and very  
18 hard to resolve this case, we don't feel that there is  
19 a comprehensive settlement that we can promote as far  
20 as a decree before the Supreme Court.

21           **JUDGE MELLOY:** Are you continuing  
22 discussions or have you terminated negotiations at  
23 this point?

24           **MR. LEININGER:** We are certainly  
25 available to continue discussions. So I -- I think

1 Judge Boylan will inform the Court that we have  
2 scheduled some additional calls and will be taking  
3 stock of the status of the negotiations on Friday.

4 **JUDGE MELLOY:** Well, I mean, without  
5 getting too much into the particulars, but, you know,  
6 it had been represented a few months ago that you had  
7 an agreement in principle. What happened?

8 **MR. LEININGER:** Well, we had continued  
9 to work on numerous issues that we, in my view, were  
10 quite successful in our progress. There were some  
11 larger issues, which I guess we could characterize as  
12 -- as deal breakers that were just insurmountable. We  
13 thought -- at least I thought at that time that we  
14 would be able to resolve all the outstanding issues  
15 and have a comprehensive settlement.

16 **JUDGE MELLOY:** Okay. All right. Thank  
17 you. Anything else, Mr. Leininger?

18 **MR. LEININGER:** No, Your Honor. Thank  
19 you.

20 **JUDGE MELLOY:** Well, maybe before I talk  
21 -- turn to Mr. Somach, Judge Boylan, do you want to  
22 have any kind of report or anything you'd like to say?

23 **JUDGE BOYLAN:** Good morning, Your Honor.  
24 Well, the Court is likely getting very tired of  
25 hearing that we're very close, but we are very close,

1 at least in my view. There are remaining issues that  
2 need to be addressed between United States and New  
3 Mexico and the United States and Colorado, but I don't  
4 view those remaining issues, although very important  
5 and deal breakers, as insurmountable. I do believe  
6 that the parties have been working diligently to  
7 address those issues, and I continue to believe that  
8 those discussions will result in resolution of that.  
9 I have not mentioned Texas for a reason, and that is  
10 because Texas has been clear that if the agreement  
11 were not in writing and being in a position to present  
12 to the Court today, they had no interest in continuing  
13 discussions, and, frankly, that's understandable  
14 because I believe that the Court's understanding  
15 concerning the discussions between Texas and New  
16 Mexico is accurate. The issues that remain to be  
17 addressed are as of I've described between New Mexico  
18 and the United States and Colorado and the United  
19 States. We do have plans to continue discussing the  
20 settlement issues. Texas' request that they not be  
21 ordered to attend those and to engage in those  
22 conversations. I have scheduled those with New Mexico  
23 and with Colorado and with the United States  
24 delegation, and it's my understanding that they're  
25 going to be talking this week with a status conference

1 scheduled with me at 1:00 p.m. Central Time on Friday,  
2 and it's my intention to talk with both parties  
3 between now and Friday with some suggestions as to how  
4 they might approach those remaining issues. They are  
5 few, but they're important. The parties have really  
6 been diligently working towards resolution of those,  
7 and I think we're a long way towards getting it  
8 resolved, but it's going to take a little bit more  
9 time.

10 **JUDGE MELLOY:** All right. Thank you.

11 **JUDGE BOYLAN:** You're welcome. Thanks,  
12 Judge.

13 **JUDGE MELLOY:** Mr. Somach, what's your  
14 position on all this?

15 **MR. SOMACH:** Well, as Judge Boylan  
16 noted, in -- in a very true sense, we're -- we're done  
17 with the negotiations. We've -- we've spent a great  
18 deal of resources on it. We've tried as hard as we  
19 can. As has been indicated, I think for the most  
20 part, we've resolved issues, and we couldn't move  
21 forward, but the problems that we have are -- they're  
22 not -- there's nothing we can do about them. They're  
23 simply out of our -- our control. We've offered  
24 workarounds. We've offered solutions. We've offered  
25 everything we can so that we could be successful

1 today. We have -- I have no further authorization to  
2 continue negotiating. My direction is to move forward  
3 to trial as diligently as possible. I think, as  
4 you'll certainly recall, I -- I was opposed to moving  
5 the trial date from October 3rd. We looked for a  
6 trial date in November. You indicated it would  
7 probably be at the beginning of January, and so our  
8 view is -- is that we need to prepare for a trial in  
9 -- in January. Certainly if -- if something happens  
10 and the parties come up with a solution and -- and  
11 propose something to me, I'm bound to take it up to  
12 the folks in Austin and -- and see what they want to  
13 do, but as of now, we're -- we're absolutely done with  
14 the negotiations, and we'd really like to move forward  
15 toward trial and trial preparation.

16 **JUDGE MELLOY:** What about -- I think you  
17 were the one who had indicated at one of the prior  
18 status conferences that you saw no reason why you  
19 couldn't do a carveout of the agreement between New  
20 Mexico and Texas. Do you still feel that way or is  
21 that a possibility?

22 **MR. SOMACH:** I still -- I still feel  
23 that way. That hasn't been formally proposed by  
24 anyone, other than the fact that we've had some  
25 discussions about it. We have not had any formal



1 discussions with the folks in Austin about it because  
2 that's not really been on the table. That might be a  
3 different and new thing, but at this point, we don't  
4 -- we -- we don't have that. And I will say, we don't  
5 have much time. I mean, we're -- we're -- we're going  
6 to turn toward trial preparation and so if -- you  
7 know, we just can't keep this kicking the -- the ball  
8 down the road, but certainly if someone came to us and  
9 suggested something, you know, we'll -- we'll run that  
10 up like it would be appropriate with a proposed  
11 settlement. But our position is we're formally done  
12 with negotiations at this point in time, and we'd like  
13 to move forward toward trial.

14 **JUDGE MELLOY:** What is your position  
15 vis-à-vis the El Paso Water District? Because Ms.  
16 O'Brien has said in a filing indicating that she wants  
17 you to continue to work towards a settlement, and  
18 they're your main constituents -- one of your main  
19 constituencies. Does Texas feel they represent the  
20 water district at all in this?

21 **MR. SOMACH:** Remember that the Compact  
22 apportionment is to the State of Texas, the quasi  
23 sovereign, not to the water district, and it's the  
24 State of Texas that will decide how best to address  
25 and proceed with -- with the apportionment. That was

1 part in parcel of the ruling that denied them formal  
2 intervention. That is the law with respect to  
3 apportionments. The apportioned water is that of the  
4 state of Texas, not the district, and certainly it can  
5 have its opinion, but it will be the State of Texas  
6 that decides how we proceed with this Compact case.

7 **JUDGE MELLOY:** All right. Thank you.

8 Mr. Wechsler?

9 **MR. WECHSLER:** Good morning, Your Honor.  
10 On the issue of settlement, we agree. The parties  
11 tried very hard. We agree that there are a number of  
12 benefits to settlement. Unfortunately, we weren't  
13 able to get there so we're comfortable proceeding to  
14 trial and will be prepared to try the case in January.  
15 We've expressed to the other parties we continue to be  
16 willing to -- to listen and to talk and -- but  
17 otherwise, we're preparing for trial.

18 **JUDGE MELLOY:** Okay. All right. Thank  
19 you. Mr. Wallace, this is the first time I've heard  
20 you've gotten involved in this problem.

21 **MR. WALLACE:** Yes, Your Honor. I'm not  
22 quite sure if that's a good thing or not. We do  
23 agree, in response to your earlier question, that a  
24 settlement in principle as to the Compact issue  
25 between Texas and New Mexico is very close to

1 resolution. Unfortunately, the parties as a whole  
2 have not been able to bring that together. Also in  
3 response to your question about a potential carveout,  
4 Colorado does believe that that is possible. To the  
5 extent to the Compact claims those raised by Texas, to  
6 the extent they were raised by the United States, the  
7 Supreme Court has said those claims mirror those  
8 already brought by the State of Texas so resolution of  
9 those Texas Compact claims, as with New Mexico, should  
10 resolve the Compact issues that are in play. That --  
11 that said, we don't have a resolution today. We  
12 understand that Texas needs to prepare for trial so we  
13 defer to the parties on their request for trial date.

14 **JUDGE MELLOY:** Okay. Thank you. I  
15 didn't ask you, Mr. Wechsler. What's your -- what's  
16 your thought on the -- on the carveout question?

17 **MR. WECHSLER:** Well, Your Honor, we  
18 negotiated the -- the possible settlement as a  
19 package. That's certainly the way we have evaluated  
20 it. Nonetheless, we do think that a carveout is  
21 possible. It's something that will take some further  
22 evaluation and possible discussion, but I -- we have  
23 never ruled it out.

24 **JUDGE MELLOY:** If there were a carveout,  
25 what would that do to the case?

1                   **MR. WECHSLER:** My view is it would  
2 resolve the case. I mean, as Mr. Wallace just  
3 indicated, the Court has said that the claims of the  
4 United States mirror those of the State of Texas. My  
5 -- you know, again, I'm thinking in the future, but if  
6 that were to happen, I assume that the -- the states  
7 would present a settlement to you for consideration.  
8 The United States would have an opportunity to object.

9                   **JUDGE MELLOY:** All right. Thank you.  
10 I'll let the amici speak if they care to. I know you  
11 filed something, Ms. O'Brien. Do you want to speak at  
12 all?

13                   **MS. O'BRIEN:** Thank you, Your Honor.  
14 Maria O'Brien on behalf of El Paso County Water  
15 Improvement District No. 1. We stand by our filing  
16 where we, as you noted, we articulated and encouraged  
17 the parties to try to achieve a settlement, in large  
18 part based on, well, the efforts expended to date  
19 certainly, but also as Your Honor has noted on more  
20 than one occasion, that it's really only a settlement  
21 as opposed to a litigation that can resolve all the  
22 issues that have been brought before the Court in this  
23 matter, and those, you know, include significant  
24 issues affecting contractual rights and obligations of  
25 the two irrigation districts and rights and

1 obligations of the United States in and to the Rio  
2 Grande Project. And so, you know, based on that, I  
3 would also disagree to the extent we have been privy  
4 to the details of settlement -- and we've not been  
5 privy to all of them -- we disagree that a carveout  
6 is, in fact, possible. What the parties are  
7 suggesting are that the claims of the United States  
8 into the Project can be resolved over their objection,  
9 and we respectfully disagree with Texas' view of this  
10 matter, that somehow the Project is at the service of  
11 the Compact and protects the -- the Compact. That's  
12 reverse. The Compact was put in place to protect the  
13 Project. And so while, yes, Texas is apportioned  
14 water under the Compact, what is issued here is the  
15 water supply in and to the Project. So, again, we  
16 would just reiterate and encourage the parties to try  
17 to achieve a settlement. Certainly, District stands  
18 ready to proceed to trial with United States. We have  
19 some significant witnesses that will testify in the  
20 second part of the trial, as we did in the first part.  
21 But I think it's just foolhardy to think that this  
22 case can be resolved with a carveout that doesn't  
23 involve the United States' assent regarding their  
24 claims as a plaintiff in this matter. Thank you.

25 **JUDGE MELLOY:** Thank you.

1                   Anybody else wish to speak? Ms.  
2 Barncastle?

3                   **MS. BARNCASTLE:** Good morning, Your  
4 Honor. You won't often hear a lot of daylight between  
5 EP No. 1 and I, and you won't again today. We  
6 completely agree. There's no possibility of a  
7 carveout. None. The -- the idea that the claims of  
8 the United States mirror exactly those of Texas is  
9 false. They have alleged the same thing. They have  
10 both alleged allegations that would seek to curb  
11 groundwater pumping in New Mexico but for different  
12 reasons. The Texas complaint seeks to get that water  
13 to the state line. The United States seeks to protect  
14 the Project that it has a duty to protect and not just  
15 part of it, the whole project. Everybody in New  
16 Mexico who is part of the Rio Grande Project deserves  
17 the same protection that everybody in Texas is going  
18 to get. It is true that they have been taken care of  
19 in this process. We are still working on my side of  
20 the state line. Nobody in this courtroom will tell  
21 you that we aren't close, that we aren't pulling the  
22 plug because of the deadlines that we've been given.  
23 You're the only one with control over the State of  
24 Texas right now, and with all due respect to my  
25 friends in Texas, their position is incredibly

1 detrimental to EBID. They have sought for a long time  
2 to protect us. In fact, through over a hundred years,  
3 it was their Compact commissioner that protected us,  
4 not our own. A recent court order has changed that  
5 somewhat, but we still rely on Texas to get that water  
6 to the reservoir for us. We still have to rely on  
7 Texas for a number of things under the Compact. EBID  
8 remains in no man's land until we have adequate  
9 protection under the Compact. All we need is a little  
10 bit more time. We recognize there's a rush to get to  
11 trial, but I don't understand that because we're going  
12 to rush to get to a six- to eight-week-long trial,  
13 spend millions of dollars, wait for a judgment that  
14 someone is going to take all the way up. We know  
15 that. It's not done the first time. Then we get to  
16 have another trial on remedies. Even at a fast pace,  
17 we're looking at three to five years and millions of  
18 dollars instead of a few more weeks of time. If you  
19 set this trial and -- and we're not here to ask for  
20 you to not set trial. EBID supports setting a trial  
21 date at this point. But if you set this for trial in  
22 January, we have no chance. None. EBID members have  
23 zero chance of getting what we need out of this  
24 process. And yet we are 99 percent of the way there,  
25 and nobody will tell you that we're not. We're almost

1 done. But if we have to switch, the resources in this  
2 room can't afford to do both. Maybe a few of us could  
3 for a little while, but then you start getting into is  
4 it worth it to do that to our families? Is it worth  
5 it to do that to our clients who are spending millions  
6 of dollars when we could taste settlement? Let me set  
7 the table for you. In December of last year, every  
8 amici and party in here showed up with ingredients to  
9 the big table. We all had different ingredients. By  
10 about February, we knew what we were cooking. By  
11 about March, we could see the shape it was taking.  
12 We're sitting at the dinner table ready to eat.  
13 Plates are served. Beautiful dishes in front of us.  
14 Everybody has given their heart and soul to this meal,  
15 but we can't find the silverware because we forgot to  
16 get it out of the dishwasher.

17 We're almost there. We are almost  
18 there. But if you set trial in January, we won't get  
19 there. The resources that has been devoted throughout  
20 this process, you have legislatures. You have  
21 top-elected officials, all the way down to the ground  
22 level where you are farmers showing up in courtrooms  
23 telling you how important this is. The right way to  
24 do this is not the litigated solution. It's never  
25 going to be in the Lower Rio Grande. The only right



1 way to do this is to allocate enough time to let us do  
2 this the right way. I agree. Texas is frustrated and  
3 should be. Their process is done. EBID -- not only  
4 has EBID been taking care of the EP No. 1 district for  
5 years under the operating agreement, we're the ones  
6 giving up the water to make sure they stay whole.  
7 That is not going to change in these next few months.  
8 It won't even change during trial or after trial or  
9 for years after trial. They're not going to get the  
10 immediate relief that they think they're going to get  
11 by just getting to trial. We're going to get better  
12 relief that's longer lasting if we just get a little  
13 more time. My request is, Your Honor, that you set  
14 this for trial in March or April to give us some time  
15 to see if our legislature can do what it needs to do,  
16 to see if our elected officials can do what they need  
17 to do. We have water users from all over the state  
18 that are interested in this. We have agencies from  
19 the ground level up who need to coordinate to actually  
20 implement what needs to be implemented in the right  
21 way to actually resolve these issues and put them to  
22 bed. We're so close. Don't pull the plug on us. I  
23 recognize what Texas wants. It's not the right thing  
24 to do.

25 **JUDGE MELLOY:** Well, without getting

1 into the particulars of the settlement too much, is  
2 one of the issues that's holding this up is  
3 legislation by New Mexico?

4 **MS. BARNCASTLE:** Everybody is concerned  
5 that politicians get involved and things get out of  
6 hand. Right? Not an unreasonable concern. I would  
7 say yes without getting into details, that's always  
8 been a concern for everybody. There's even concern  
9 that my board might change, and we might go a  
10 different direction. They're elected officials, too.  
11 Everybody is concerned about what the politics will do  
12 to the situation. But everybody also feels strongly  
13 enough, at least what I know of the situation, that  
14 the real problem here was the deadline we were working  
15 with, not controlling the personalities.

16 **JUDGE MELLOY:** Well, I -- I've always  
17 thought that at the end of the day, assuming, without  
18 obviously deciding, New Mexico ends up having to do  
19 something under a decree, New Mexico legislature is  
20 going to have to act. I mean, there's -- you know,  
21 Mr. Wechsler doesn't have money in his trust account  
22 to pay a judgment. I mean, they're going to have to  
23 appropriate the money if it's a money judgment, if  
24 it's a -- if it's some type of equitable relief,  
25 they're probably going to have to do something by way

1 of legislative action to implement whatever --  
2 whatever --

3 **MS. BARNCASTLE:** No matter what.

4 **JUDGE MELLOY:** -- whether it's  
5 settlement or decree.

6 **MS. BARNCASTLE:** That's right.

7 **JUDGE MELLOY:** The New Mexico sledge  
8 layture -- same thing with Texas. I shouldn't limit  
9 it to New Mexico because there's a counterclaim.  
10 Maybe the Texas legislature is going to have to do  
11 something.

12 **MS. BARNCASTLE:** Western water cases  
13 don't get resolved outside of AG offices, governor's  
14 offices, and your top state officials. It just  
15 doesn't happen.

16 **JUDGE MELLOY:** All right. Okay. Thank  
17 you. Any of the other amici want to be heard?

18 (No response.)

19 **JUDGE MELLOY:** Anybody want to respond  
20 to what Ms. Barncastle had to say?

21 **MR. SOMACH:** Yes.

22 **JUDGE MELLOY:** Go ahead.

23 **MR. SOMACH:** This is the same -- what --  
24 what Ms. Barncastle just said is the exact same mantra  
25 we have heard since the beginning, what we've warned

1 against. It's this rolling type of -- of "we just  
2 need more time." We've been clear from the beginning  
3 that there has to be a limit to the amount of time one  
4 expends. We filed this lawsuit in 2013. It'll be ten  
5 years since we filed that lawsuit, and we haven't been  
6 able to finish the trial. A lot of that has to do  
7 with procedural issues before the Court, the motion to  
8 dismiss, all kinds of issues out there, but -- but --  
9 but -- but we have had this thing out there now for  
10 ten years without the ability to get it to trial.  
11 Everything that I heard about the fact that even after  
12 trial, there's a lot to do. Well, if -- and I know I  
13 said this in St. Louis. If, in fact, we aren't  
14 successful in settlement, and we wait to March, April,  
15 whatever, it just pushes it off even more before we  
16 get resolution. Those four years then don't start  
17 until April or May as opposed to starting in January  
18 or February, as they -- they ought to or like I -- I  
19 said back in St. Louis, in October like we would have  
20 preferred. I have heard exactly what Ms. Barncastle  
21 has said in terms of we need more time at every status  
22 conference we've had since this mediation started, and  
23 remember, we started the mediation in December. We  
24 won't get to trial until a full year after we started  
25 this mediation.

1                   **JUDGE MELLOY:** But you supported the  
2 mediation. You -- you supported the continuance.

3                   **MR. SOMACH:** We -- we did. We supported  
4 it, but we never supported moving the trial date from  
5 October 3rd. We moved it from March to October 3rd,  
6 and we had a very hard, firm date, and we made it  
7 clear that that was the time that we were willing to  
8 devote to this. So then the -- it comes along that we  
9 need more time, we need to get to September, and I  
10 can't tell you how many times the representation was  
11 made September 23rd, September 23rd, September 23rd.  
12 What I said at the last status conference is, Well, I  
13 guess that's the date, that's the default date. We'll  
14 live with it. We'll work with it. And we did. We  
15 spent a lot of time.

16                   **JUDGE MELLOY:** Well, assuming Texas --  
17 excuse me -- United States, New Mexico, and to the  
18 extent Colorado is still an issue, can work out their  
19 disagreements, since you believe you already have a  
20 settlement of your problem, would that -- would there  
21 be any reason why you couldn't settle the case then?

22                   **MR. SOMACH:** If they presented us with a  
23 settlement, I'd be obligated to take it up and take a  
24 look. And I'm not -- if they want to continue to  
25 talk, more power to them. I'm -- I'm not opposed to

1 their talking. What I am opposed to is slipping trial  
2 dates to April, March, whatever the dates that -- that  
3 are being proposed here. We -- we -- we urgently  
4 request that a trial date be set for the January 17th  
5 date that's in the joint pretrial and that we move  
6 forward with pretrial planning. If they're successful  
7 -- and I don't think there's a lot of time for them to  
8 -- to do what they're going to do. It's not like --  
9 you know, I think we're talking weeks here as opposed  
10 to months. But, again, if they're successful and they  
11 bring something to us, I will take it up to Austin and  
12 have a discussion and see what -- what the folks there  
13 want to do. I want to make sure that I'm clear on --  
14 on that. But we don't think that's mutually exclusive  
15 of moving forward with a trial date, January 17th, and  
16 begin pretrial planning.

17 **JUDGE MELLOY:** All right. Thank you.

18 I think you wanted to say something,  
19 Mr. Leininger?

20 **MR. LEININGER:** Yes, Your Honor. Thank  
21 you. The Project is at the center of this case. It  
22 is the center of the Compact. We've heard Ms.  
23 Barncastle very articulately explain why it's  
24 important to both districts in New Mexico and in Texas  
25 so we are close so what we have is a very complex

1 draft settlement agreement with a lot of parts to it,  
2 a lot of very technical parts, which took time to work  
3 through our technical committees and continues to take  
4 time to work through our technical committees. Are we  
5 close? Yes, we are very close. The concern now is  
6 that we're hearing from Texas that the other parties  
7 have to bring a deal to Texas, but, you know, some of  
8 these questions with regard to the Project, for  
9 example, I think, is going to have to be examined  
10 closely by Texas. So we're going to need some of  
11 their involvement. We think we're close, and the  
12 problem as we see it is right now we've got this  
13 timetable of a January trial start, and -- and as  
14 Mr. Somach said, it's -- it's nearly impossible to be  
15 able to do both, prepare for trial and try to resolve  
16 these final issues.

17 **JUDGE MELLOY:** But in Mr. Somach's  
18 defense, you've said that for a year, and you -- you  
19 were the one who told me September 23, and you  
20 wouldn't ask for any more time.

21 **MR. LEININGER:** That was always our  
22 target. Yes, it was. I -- I absolutely thought,  
23 given the amount of work that everyone has put into  
24 this case since January, and particularly accelerated  
25 through the summer, that we would be able to get to a

1 position where we could recommend a comprehensive  
2 settlement. Did not reach that milestone. Did not  
3 reach that goal. In fact, we were talking as of  
4 yesterday with regard to some of these settlement  
5 principles. So we continued to work toward that goal,  
6 and, you know, United States stands prepared to  
7 continue to work toward that goal. We just don't have  
8 the luxury of time to be able to commit to trial and  
9 resolution.

10 **JUDGE MELLODY:** Well, I don't want to be  
11 simplistic about this, but -- and I don't know what  
12 the issues are and their complexity, but if using Ms.  
13 Barncastle's analogy, you're down to getting the  
14 silverware out of the dishwasher, what stops you from  
15 sitting down and just working through these issues and  
16 say, Okay, within a few days we're either going to  
17 resolve it or we're not going to resolve it?

18 **MR. LEININGER:** Well, that -- that -- in  
19 our view, that is where we are. I mean, there --  
20 there is some fundamental -- you heard -- you heard  
21 Colorado's counsel talk about how there could be a  
22 carveout, I guess we've heard this from other counsel,  
23 but fundamentally, that's not the full meal, and it's  
24 certainly not the full meal to resolve this dispute.  
25 So all -- all of the dishes are there. I think we



1 have to put them together. Is it a matter of -- of,  
2 you know, a few utensils? I might -- I might expand  
3 that slightly, but I think that's not a bad analogy.

4 **JUDGE MELLOY:** Again, what prevents you  
5 from just sitting down and either getting it resolved  
6 or not getting it resolved?

7 **MR. LEININGER:** Time.

8 **JUDGE MELLOY:** Why? I guess I don't  
9 understand. What -- what is the -- what will time do?  
10 What will an extra -- what will an extra two weeks, an  
11 extra month, an extra two months, do that you can't do  
12 this -- you're all here today -- sit down with Judge  
13 Boylan over the next few days and either hammer it out  
14 or not? What -- I don't understand. What are a few  
15 more weeks and a few more months going to do?

16 **MR. LEININGER:** So what -- from the  
17 United States' perspective, we have a vision of this  
18 decree, which is a comprehensive decree, and you've  
19 heard Ms. O'Brien and Ms. Barncastle talk about how  
20 important it is to address the Compact portion of  
21 this, as it relates to the Project. So that part of  
22 the decree is -- is, quite frankly, what we need to --  
23 in our view, need to concentrate on. So can we get  
24 there with -- with focused concentration on that for  
25 purpose of a complete comprehensive decree? We think

1 so. Probably, you know, three -- I don't want to be  
2 too optimistic, but three to four weeks.

3 **JUDGE MELLOY:** All right. Thank you.  
4 Mr. Wechsler, I'll give you the last  
5 word.

6 **MR. WECHSLER:** Thank you, Your Honor.  
7 Just two points in response to Ms. Barncastle. The  
8 first is I wanted to explain our position on the  
9 trial, and I appreciate Ms. Barncastle's dinner  
10 analogy. We nonetheless support trial in January, and  
11 the reason is as the allocation currently stands, New  
12 Mexico is getting mashed potatoes and collared greens  
13 but no turkey, and so we need faster resolution so  
14 that we can get our equitable apportionment.

15 The second is I didn't want to -- I  
16 would be remiss if we left out the idea that somehow  
17 New Mexico was being the roadblock, and we don't see  
18 it that way at all. In fact, the remaining issues  
19 are, I would describe as structural, and ones on which  
20 New Mexico is quite flexible on.

21 Thank you.

22 **JUDGE MELLOY:** All right. Thank you.  
23 Well, is there anything else about the settlement? I  
24 think we've probably exhausted this subject. Other  
25 than, you know, as we've said multiple times, I think

1 a negotiation that you can work out a resolution to  
2 all these issues is certainly preferable to the  
3 decree, and certainly Ms. Barncastle is correct, and I  
4 understand Mr. Somach's position that, you know, we're  
5 probably -- three to five years from final resolution  
6 may be optimistic. We're probably five years away  
7 from this case being resolved to its conclusion so  
8 another -- another few weeks of negotiation, I don't  
9 think it would be -- would certainly be well worth  
10 investing that amount of time, but I also understand  
11 the concern about getting this case ready for trial so  
12 -- so we will go ahead with that -- setting that trial  
13 date in January, has been requested.

14 As far as the trial is concerned, I  
15 don't know there's a lot we need to talk about. We'll  
16 go through a few things today. The parties agreed on  
17 a January 17th trial date. That's actually a Tuesday,  
18 not a Monday, but that's -- but the Monday is a  
19 federal holiday so that would be the day we'd want to  
20 start. As far as the trial schedule is concerned, my  
21 anticipation would be that we would do five days a  
22 week, 9:00 to 5:00. Even with that schedule, we'd  
23 probably be looking at a minimum of six weeks trial,  
24 which may be optimistic, probably -- assuming  
25 everybody used their full allotted hours -- hopefully

1 they won't, but assuming everybody does, we'd be  
2 looking at at least six weeks of trial. I haven't  
3 made any final decision about a blackout week or  
4 weeks, but my current thinking is, and we can talk  
5 about this more as we move along, to maybe do about  
6 three to four weeks of trial and then take a week off.  
7 I think if we do -- if we do that for four weeks, I  
8 think everybody is going to be ready for a break, and  
9 we'll take a week off then. We'll also be then  
10 getting into a second federal holiday, which while I  
11 don't mind working on the federal holidays, it does  
12 make it difficult to open up the courthouse and bring  
13 people in on overtime and so on so I -- I'd like to  
14 honor those -- those holidays.

15 As far as witness lists are concerned,  
16 as I understand it, the parties have exchanged witness  
17 lists. What has been filed, if I'm not mistaken, and  
18 we -- I went back through this. I think this is the  
19 case. I think Texas and United States have filed a  
20 witness list with all their prospective witnesses. Is  
21 that right, Mr. Somach?

22 **MR. SOMACH:** Yes.

23 **JUDGE MELLOY:** New Mexico just filed a  
24 witness list with the witnesses you were going to use  
25 at the first phase of the trial. I don't think you

1 included your second phase witnesses. Now, you may  
2 have exchanged them, but I don't think you filed it.

3 **MR. WECHSLER:** That may be, Your Honor.

4 **JUDGE MELLOY:** I may be wrong about  
5 that, but I looked through. I couldn't find it. What  
6 I saw were your first phase witnesses.

7 **MR. WECHSLER:** I think, Your Honor, we  
8 only have -- if recollection serves, we have our  
9 expert witnesses, we have the former state engineer,  
10 Mr. D'Antonio, who still needs to testify, is the only  
11 fact witness is my memory.

12 **JUDGE MELLOY:** How many witnesses do you  
13 think you'll have?

14 **MR. WECHSLER:** I believe -- again, I'm  
15 going by memory -- it's somewhere between 17 and 20.

16 **JUDGE MELLOY:** For the second phase?

17 **MR. WECHSLER:** That's correct.

18 **JUDGE MELLOY:** What do you think,  
19 Mr. Somach? How many do you think you'll have?

20 **MR. SOMACH:** We're looking it up. We  
21 know what the number is.

22 **JUDGE MELLOY:** Roughly. I don't -- I  
23 don't --

24 **MR. SOMACH:** About the same as what New  
25 Mexico has. We were able, Your Honor, to meet and

1 confer a little bit with all the parties yesterday on  
2 some of the issues that were kind of pulled out of  
3 that pretrial where there seemed to be disagreement,  
4 and I will say, I don't think we have any disagreement  
5 on any of these issues on how to proceed. I don't  
6 know if you'd like me to go through these.

7 **JUDGE MELLOY:** Sure. Go ahead.

8 **MR. SOMACH:** On the -- and then  
9 Mr. Wechsler, Mr. Leininger, and Mr. Wallace can add  
10 whatever they do, but at least let me read from my  
11 notes. The -- the first area where there was some  
12 indication of maybe some -- some disagreement was  
13 under deposition designations, and there was an issue  
14 of whether or not New Mexico would designate a couple  
15 of Texas witnesses. What we've represented, that  
16 would be Mr. Gordon and Mr. Settemeyer. What we've  
17 represented is that we will present them in trial and  
18 so as a consequence, there's no need to -- to deal  
19 with -- with the deposition -- deposition  
20 designations.

21 **JUDGE MELLOY:** And I -- I would just  
22 note, I do understand that I do need to rule on the  
23 objections on Cheryl Thacker before trial.

24 **MR. SOMACH:** Right. Otherwise, she'll  
25 have to be -- she'll be called. The procedures with

1 trial exhibits, we had somewhat of a discussion. We  
2 agree with New Mexico and Colorado that we should sit  
3 down and talk a little bit about it. One of the  
4 problems we had and one of the issues, of course we  
5 did that first phase remotely and so it was difficult  
6 for us to sit down and quickly go over stuff and so it  
7 became a after 5:00 on Zoom with people at various  
8 parts of the country. We think that we can sit down  
9 and work through those types of issues pretty well if  
10 we're all sitting in the same courtroom or in the same  
11 location, but we do agree that we'll sit down and talk  
12 about -- about how best to -- to move through those --  
13 those things.

14 **JUDGE MELLOY:** Can I interrupt you for  
15 one moment there? My judicial assistant asked me to  
16 ask you a question. You know, we went over and  
17 reconciled the exhibit list and -- but have all of the  
18 exhibits that have been admitted been uploaded to  
19 box.com?

20 **MR. WECHSLER:** Yes, Your Honor, I  
21 believe so.

22 **JUDGE MELLOY:** We're having some trouble  
23 -- but they were uploaded by parties so there's not,  
24 like, a running chronology of exhibits; is that right?

25 **MR. WECHSLER:** That's correct.

1                   **MR. SOMACH:** That's right.

2                   **JUDGE MELLOY:** Okay. So everybody party  
3 who's had exhibited submitted has -- has uploaded  
4 them?

5                   **MR. WECHSLER:** That's correct, Your  
6 Honor. But if -- if it would be helpful, the parties  
7 can certainly confer, and we can ensure that you have  
8 a full master list and --

9                   **JUDGE MELLOY:** We'll talk about that and  
10 -- and I know that Lisa has been working with your  
11 paralegals on that, and I think we should be able to  
12 get that resolved if there's a problem.

13                   **MR. SOMACH:** Under the motions in  
14 limine, I think we -- there are no further motions in  
15 limine. I think we -- we've agreed to that. New  
16 Mexico was referring to procedural motions that might  
17 come up, and that would be separate and apart from  
18 motions in limine. Obviously if a procedural motion  
19 came up, it would -- it would have to be dealt with.

20                                 And then with respect to we -- we have  
21 three sets of depositions that are still outstanding,  
22 and there was a little bit of a disagreement about  
23 when they had to be concluded by, but we agreed  
24 yesterday -- and this is on the last page, Page 8. We  
25 have proposed November 14th. New Mexico had proposed



1 December 1st. And we agreed to end those depositions  
2 by November 18th. I think we'll do those remotely so  
3 it should be a little easier to -- to be able to get  
4 them in without having to -- to move around. One  
5 other issue that came up was in response to the  
6 rebuttal or the response to our joint pretrial report,  
7 and that was -- and I'll let the other parties confirm  
8 this, but I believe all the parties are opposed to a  
9 trial brief being submitted by anybody but the  
10 parties. Doing that just creates one more burden that  
11 we have to address, and that is responding or  
12 addressing trial briefs of people that aren't even  
13 going to appear at the time of trial. But I'll let --

14 **JUDGE MELLOY:** You said you don't want  
15 trial briefs by anybody but the --

16 **MR. SOMACH:** By the -- except the  
17 parties.

18 **JUDGE MELLOY:** All right. Well, and  
19 just to be clear, my understanding that the prior  
20 decisions we had made in the prior trial management  
21 order is that no one other than the parties would be  
22 allowed to present or examine the witnesses except by  
23 leave of the Court. If they -- if somebody wanted to  
24 present something, they could file a motion to that  
25 effect, but without leave of the Court, only the

1 parties would be able to present or examine witnesses.

2 **MR. SOMACH:** That's our understanding.

3 **JUDGE MELLOY:** On the -- let me ask you  
4 one question about the remote option. It's my -- I  
5 don't anticipate that'll be a problem, that we will  
6 have a remote option. We had planned to do that  
7 originally. But it would be with the understanding  
8 that it would be only view and listen only, just as we  
9 did for the Zoom trial. Does anybody disagree with  
10 that? I'm not -- again, I suppose if there was an  
11 exceptional circumstance and you -- someone asked for  
12 leave to present a witness remotely, we could take  
13 that up on a case-by-case basis, but as -- as a sort  
14 of general principle, remote will be view only.

15 **MR. SOMACH:** Yeah. That's fine for  
16 Texas. We -- we plan on being there. We may have  
17 some folks observing remotely, but we will be live in  
18 person, you know, questioning witnesses in Cedar  
19 Rapids.

20 **JUDGE MELLOY:** Mr. Wechsler, anything  
21 you want to add or --

22 **MR. WECHSLER:** I have nothing to add,  
23 Your Honor. Happy to stand for questions.

24 **JUDGE MELLOY:** No. I -- I don't think  
25 so. I mean, the schedule -- so the schedule that you

1 have in Roman Numeral 13 would basically be the one  
2 that we'd follow, and it's fine with me subject only  
3 to the first block, which will be completion of a  
4 supplemental depositions, which have been agreed on  
5 November 18th.

6 **MR. WECHSLER:** That's correct.

7 **JUDGE MELLOY:** All right. Mr. Wallace,  
8 Mr. Leininger, do you have anything you want to add?

9 **MR. LEININGER:** Your Honor, one -- one  
10 request. We're moving forward on five-day-a-week  
11 trial schedule, and the request is we -- we have a  
12 number of counsel, young counsel and participants with  
13 our agencies that have families, young families, and  
14 we're wondering if it is possible that we could do a  
15 four-day-a-week trial so that -- to accommodate more  
16 their family structure and ability to spend weekends  
17 at home.

18 **JUDGE MELLOY:** So you're -- you're  
19 anticipating they would go home on the weekends?

20 **MR. LEININGER:** We haven't discussed  
21 that, but I think that the possibility to do that with  
22 a five-day period of trial is -- is very limited.

23 **JUDGE MELLOY:** Well, I mean, we're going  
24 to be hard pressed to complete this case in six to  
25 seven weeks at five days a week. I mean, now you

1 probably would be talking about a nine-week trial. Is  
2 that less burdensome?

3 **MR. LEININGER:** I think it would be  
4 preferable if -- if there was four days for the trial.

5 **JUDGE MELLOY:** Well, let me think about  
6 that, but I'm not currently inclined to do that quite  
7 frankly. I -- I just think we -- we got to get the  
8 case done, and I'm just -- I'm just afraid that it's  
9 going to really drag out if we limit it to four days.  
10 Is it possible to rotate some of your attorneys in and  
11 out so they don't have to be there every week or for  
12 the whole week?

13 **MR. LEININGER:** Well, we'll look at all  
14 options.

15 **JUDGE MELLOY:** Okay. All right. Well,  
16 we'll talk about that some more if you want to, but  
17 that's -- my current inclination is to stick with the  
18 five days.

19 **MR. LEININGER:** Thank you.

20 **JUDGE MELLOY:** Does anybody else want to  
21 be heard on that issue?

22 **MR. SOMACH:** Only we would prefer five  
23 days a week. I hate to -- I mean, I understand the  
24 problem, but Cedar Rapids is not an easy place to get  
25 to and from and so I'm not thinking we have enough

1 time to even go home over the weekends and so I'd just  
2 as soon get home at some point in time.

3 **JUDGE MELLOY:** All right. Well, the  
4 only other thing I guess I would say about the trial  
5 is at this point, I'd like to set a -- a Zoom or  
6 telephonic -- probably Zoom status conference in about  
7 four weeks and -- to see where we are both if there  
8 has been any progress made towards settlement or  
9 whether we are set for trial, and if there are issues  
10 that have come up in the interim that we need to talk  
11 about, we can do it. It may not be a very long status  
12 conference, but I would like to get back together in  
13 about four weeks with the parties just to check in and  
14 see where we are on these issues. I assume that's  
15 agreeable with everybody. And I'll -- I'll -- I'll  
16 get an order out on that.

17 Anything else? Mr. Wallace?

18 **MR. WALLACE:** Yeah, Your Honor, just to  
19 clarify, were you lacking at something the week of  
20 October 24th?

21 **JUDGE MELLOY:** Yes. I think that's the  
22 week. I don't -- let me look here. Now, why don't we  
23 just set it for the 25th. Does that work for  
24 everybody? We'll do it again at -- let me see. We'll  
25 do it at 11:00 Iowa time, which will be 10:00

1 Mountain, 9:00 Pacific.

2 Anything else we need to talk about?

3 **JUDGE BOYLAN:** Judge, I have two  
4 housekeeping matters. Wanted to make sure that I  
5 understood your direction to me in reference to the  
6 conversations I'll be having over the next several  
7 weeks. Anticipating directing the parties to meet in  
8 person as opposed to remotely and perhaps given the  
9 dynamics of the conversations that the U.S. has  
10 engaged in, perhaps even directing the parties in  
11 Washington DC, and I wanted to at least alert the  
12 Court that that's what I'm thinking and see if you had  
13 any contrary to that direction.

14 And the second question I really have is  
15 knowing Texas' position on this, whether or not you  
16 have granted to me the authority to direct them to  
17 attend in any event and to engage in the  
18 conversations, whether just as being a listener or an  
19 active participant, and whether the direction that the  
20 Court has given the parties to share in the quest of  
21 my services remains in effect given Texas' position.  
22 So I'm just -- I would at least ask the Court's  
23 guidance in those respects.

24 **JUDGE MELLOY:** Well, my -- my position  
25 would be yes as to all of those. Yes, you continue to

1 have the right as the mediator to direct the parties  
2 to appear, including Texas, you know, that they --  
3 that they appear and sit on their hands, that's always  
4 an option, but as -- as the mediator and as -- you  
5 know, as in any court proceeding, the Court has the  
6 option and the authority to order the parties to  
7 participate in the mediation. You know, you can bring  
8 a horse to water but --

9 **JUDGE BOYLAN:** Sure.

10 **JUDGE MELLOY:** -- but that's --

11 **JUDGE BOYLAN:** Believe me, all the  
12 parties have been working diligently. I don't mean to  
13 single out one party or the other. All of them have  
14 been very professional in their relationship with me  
15 and with their work. I would not comment or complain  
16 a bit. But I just thought given the parameters of  
17 where we're -- the discussing settlement over the next  
18 few weeks, I just wanted the direction you would  
19 provide. So thank you.

20 **JUDGE MELLOY:** Well, I just say this,  
21 speaking for myself, and I think I can speak for the  
22 parties, we certainly appreciate all your work that  
23 you've done in getting them as close as they have and  
24 hopefully maybe successfully getting them over the  
25 finish line.

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**JUDGE BOYLAN:** Thank you, Judge.

**JUDGE MELLOY:** Keep up the good work.

**JUDGE BOYLAN:** Thank you.

**JUDGE MELLOY:** Anything else? Anybody else want to be heard on any of these issues before I -- I adjourn?

(No response.)

**JUDGE MELLOY:** All right then. We will be in adjournment. Thank you.

(The proceedings adjourned at 9:56 a.m.)



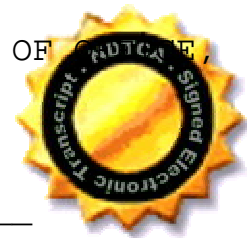
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CERTIFICATE

I, HEATHER L. GARZA, a Certified Shorthand Reporter in and for the State of Texas, do hereby certify that the facts as stated by me in the caption hereto are true; that the foregoing pages comprise a true, complete and correct transcript of the proceedings had at the time of the status hearing.

I further certify that I am not, in any capacity, a regular employee of any of the parties in whose behalf this status hearing is taken, nor in the regular employ of any of the attorneys; and I certify that I am not interested in the cause, nor of kin or counsel to any of the parties.

GIVEN UNDER MY HAND AND SEAL OF OFFICE  
on this, the 7th day of November, 2022.



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