

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

**JOINT STATUS REPORT OF THE STATE OF COLORADO, THE STATE OF NEW
MEXICO, AND THE STATE OF TEXAS CONCERNING THE JANUARY 12, 2023,
STATUS CONFERENCE**

January 11, 2023

The State of Colorado, State of New Mexico, and State of Texas (collectively, “Compacting States”), through undersigned counsel, provide the Special Master with the following status report addressing the items listed for discussion at the January 12, 2023, Status Conference in the Order on Motion to Unseal and the Motion to Strike (Dec. 30, 2022) and identifying additional issues for discussion.

- 1. Nature of the February Hearing.** As the Compacting States indicated in the Expedited Motion of the Compacting States to Clarify Procedures for the Hearing on the Consent Decree (Nov. 18, 2022), due process requires that the parties have the opportunity to present evidence at the February hearing on the Joint Motion of the State of Texas, State of New Mexico, and State of Colorado to Enter Consent Decree Supporting the Rio Grande Compact (Nov. 14, 2022) (“Joint Motion”). However, the Compacting States are willing to stand upon the written briefing and evidence presented in written form, including supplemental declarations, if any, filed with the Compacting States reply brief. The Compacting States anticipate presenting live witness testimony only if the Special Master would find it helpful to question the Compacting States Witnesses. The Compacting States request that the Special Master determine at the January 12, 2023, Status Conference, whether the February hearing will be limited to oral argument on the papers. The Compacting States conferred with the United States regarding this Joint Status Report and the United States indicated that it agrees all parties can stand on their written briefing and declarations and that they support the February Hearing being limited to oral argument.
- 2. Anticipated Time Requirements for February Hearing.** The Compacting States anticipate that the hearing on the Joint Motion will take one day, and possibly up to

two days depending on format, for oral argument. If the Special Master requires live witness testimony, then the Compacting States estimate that an evidentiary hearing will require additional time to complete.

- 3. Scheduling the February Hearing.** The Compacting States support scheduling the hearing to begin on February 6, 2023, as contemplated in the Order (Dec. 1, 2022) resulting from the November 29, 2022, status conference. The United States requests rescheduling the hearing to begin on or about February 13, 2023. The Compacting States oppose this change.
- 4. Clarification Regarding Burdens of Proof for February Hearing.** In the Expedited Motion of the Compacting States to Clarify Procedures for the Hearing on the Consent Decree (Nov. 18, 2022), the Compacting States set out their understanding of the relevant burdens of proof at the hearing on the Joint Motion. The United States did not respond to the Compacting States' November 18 motion. The Compacting States request that the Special Master clarify, at the January 12, 2023, Status Conference, the burdens of proof that will apply at the February hearing.
- 5. Supplemental Briefing on the Joint Motion.** The Special Master identified four questions in the Order on Motion to Unseal and the Motion to Strike (Dec. 30, 2022) for the parties to address "in anticipation of the February hearing on the Motion to Enter Consent Decree." The Compacting States addressed each of these questions, to some extent, in the Joint Motion, and the Compacting States plan to address these issues explicitly in their reply brief on the Joint Motion. Nonetheless, the Compacting States request that the Special Master clarify whether he expects the Compacting States to file a supplemental brief addressing these questions.

6. Consistent with the procedures followed during the December 15, 2022 hearing, the Compacting States believe that only the Compacting States and United States should present oral argument at the February 6, 2023 Hearing.

Respectfully submitted,

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STATE OF NEW MEXICO'S CERTIFICATE OF SERVICE

This is to certify that on this 11th day of January, 2023, I caused a true and correct copy of **Joint Status Report of the State of Colorado, the State of New Mexico, and the State of Texas Concerning the January 12, 2023 Status Conference** to be served upon all parties and *amici curiae*, by and through the attorneys of record and/or designated representatives for each party and *amicus curiae* in this original action. As permitted by order of the Special Master, and agreement among the parties, service was made by electronic mail to those individuals listed on the attached service list, which reflects all updates and revisions through the current date.

Respectfully submitted,

Dated: January 11, 2023

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