

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

---

DRAFT AGENDA

August 13, 2018

## DRAFT AGENDA

For purposes of the status conference to be held on August 28, 2018, the Court sets forth some of the items which I believe need to be discussed and hopefully resolved at that hearing. The parties are encouraged to contact the Special Master and other interested parties with any additional items any party believes should be added to the agenda. The parties should be prepared to discuss the issues outlined below.

### 1. Scheduling Issues

- Discovery. In particular, the Special Master anticipates discussing the timing and/or sequencing of expert discovery.
- Frequency of scheduling conferences and whether they should be telephonic or in-person.
- Tentative trial date.

### 2. Role of Amici

- Amici participation in discovery.
- Can different Amici be grouped for purposes of participation?
- Should some Amici have enhanced roles in the litigation?

### 3. Issues That Can Be Decided Pre-Trial

- The Special Master anticipates and hopes that a number of legal issues can be resolved pre-trial in order to more efficiently address the issues that need an evidentiary hearing at the trial itself. Two such issues were identified at the telephonic status conference in this case, that is, what legal issues were decided by the Supreme Court in its opinion in this case, and, what is the res judicata/issue preclusion effect of any rulings involving the United States in the New Mexico district court litigation.
- The parties should be prepared to discuss the state of the art and potential areas of cooperation in their technical and hydrological analyses. For example, if the parties agree to use the same hydrologic model (or substantially similar models), factual disputes may efficiently focus on model inputs, application, and interpretation. The Special Master anticipates that cooperation in this regard may help minimize protracted Daubert-style arguments concerning the merits of different models' basic structure.

4. Colorado's Motion to Approve the Non-Waiver Agreement

- I want to discuss with the parties the role of Colorado going forward. Specifically, I have concerns about whether Colorado will participate in discovery. My concern is whether Colorado might seek to conduct significant additional discovery in the event that it later determines its interests are more significant than it now appears.

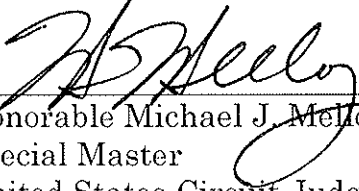
5. Bifurcation

- I note that in some prior water rights cases special masters have bifurcated liability and damages/remedies. It may be too early to make a final determination on this issue but I want to alert the parties to the possibility that this may be a more efficient way to proceed with the resolution of the case. In particular, if bifurcation is ordered, would it significantly affect the discovery schedule?

6. Mediation/Settlement

- Are the parties interested in appointing a mediator in attempt to settle the dispute? If so, what would be the appropriate time?

Dated: August 13, 2018.

  
Honorable Michael J. Melloy  
Special Master  
United States Circuit Judge  
111 Seventh Avenue, S.E., Box 22  
Cedar Rapids, IA 52401  
Telephone: 319-423-6080  
Facsimile: 319-423-6085