

NO. 141 Original

In The

SUPREME COURT OF THE UNITED STATES

STATE OF TEXAS

v.

STATE OF NEW MEXICO and
STATE OF COLORADO

TRANSCRIPT OF JULY 27, 2021, REMOTE
HEARING BEFORE HONORABLE MICHAEL A. MELLOY, SPECIAL
MASTER, UNITED STATES CIRCUIT JUDGE, 111 SEVENTH
AVENUE, SE, CEDAR RAPIDS, IOWA 52401, beginning at
2:01 p.m.

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1 **JUDGE MELLOY:** This is Judge Melloy.
2 Should we get started? Let me start by indicating
3 this is the matter of United States Supreme Court
4 Original No. 141, State of Texas versus State of New
5 Mexico, the State of Colorado, United States of
6 America as intervenor. Let's start with appearances.
7 For Texas, Mr. Somach, are you on?

8 **MR. SOMACH:** Yes, I'm on. This is
9 Stuart Somach for the State of Texas, and with me are
10 Theresa Barfield, Sarah Klahn, Rich Deitchman, and I
11 believe Robert Hoffman.

12 **JUDGE MELLOY:** Okay. And then for New
13 Mexico?

14 **MR. WECHSLER:** Good afternoon, Your
15 Honor. Jeff Wechsler from Montgomery & Andrews. We
16 also have Cholla Khoury and Zach Ogaz from New Mexico
17 attorney general's office; Lisa Thompson and Michael
18 Kopp from Trout Raley; Luis Robles and Susan Barela
19 from Robles Rael & Anaya; Corrine Atton from Draper &
20 Draper; Shelly Dalrymple from the Interstate Stream
21 Commission; and April Ferguson from our office.

22 **JUDGE MELLOY:** Colorado? Mr. Wallace?

23 **MR. WALLACE:** Good afternoon, Your
24 Honor. This is Chad Wallace with the State of
25 Colorado. With us this afternoon are Preston Hartman,

1 Danny Rheiner, and Scott Steinbrecher, also from the
2 AG's office.

3 **JUDGE MELLOY:** Before I turn to the
4 United States, if you're not speaking, I'd ask if
5 you'd put your microphone on mute. We seem to be
6 getting some feedback, and -- so thank you.

7 For the United States, Mr. Dubois, are
8 you there?

9 **MR. DUBOIS:** Yes, I am. This is Jim
10 Dubois for the United States, Your Honor. Good
11 afternoon. Also on the line are Jennifer Najjar and
12 Judy Coleman from Justice, and Amber Engelke and Seth
13 Allison and a couple of our paralegals who are going
14 to be involved in the case.

15 **JUDGE MELLOY:** Albuquerque Bernalillo
16 County Water Utility Authority?

17 **MR. BROCKMANN:** Yes, Your Honor. This
18 is Jim Brockmann for the Water Authority.

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

20 **MR. CAROOM:** Doug Caroom, Your Honor,
21 for the City of El Paso.

22 **JUDGE MELLOY:** City of Las Cruces?

23 **MR. STEIN:** Good afternoon, Your Honor,
24 this is Jay Stein for the City of Las Cruces, expected
25 to be joined by Adrienne Widmer, the assistant

1 director to Las Cruces.

2 **JUDGE MELLOY:** El Paso Water Improvement
3 District No. 1?

4 **MS. O'BRIEN:** Good afternoon, Your
5 Honor. This is Maria O'Brien for El Paso County Water
6 Improvement District No. 1, and Renea Hicks is also on
7 today.

8 **JUDGE MELLOY:** Okay. Elephant Butte
9 Irrigation District?

10 **MS. BARNCASTLE:** Good afternoon, Your
11 Honor. Samantha Barncastle for the Elephant Butte
12 Irrigation District, and with me today is Gary
13 Esslinger, the treasurer/manager of the district.

14 **JUDGE MELLOY:** Hudspeth County
15 Conservation Reclamation District No. 1? No one on?
16 Mr. Miller?

17 (No response.)

18 **JUDGE MELLOY:** Okay. New Mexico pecan
19 growers?

20 **MS. DAVIDSON:** Good day, Your Honor.
21 Tessa Davidson on behalf of New Mexico pecan growers.

22 **JUDGE MELLOY:** And Mr. Utton on for New
23 Mexico State University?

24 **MR. UTTON:** Yes, Your Honor. Good
25 afternoon. Thank you.

1 **JUDGE MELLOY:** Southern Rio Grande
2 Diversified Crop Farmers Association, anyone on?

3 **MR. OLSEN:** Yes. Good afternoon, Your
4 Honor. A.J. Olsen on behalf of the Diversified Crop
5 Farmers.

6 **JUDGE MELLOY:** Anyone I've missed?

7 (No response.)

8 **JUDGE MELLOY:** All right. Thank you,
9 everyone. Well, we had the demonstration this
10 afternoon. Both Ms. Ferguson and Mr. Tiedemann --
11 Ms. Ferguson from New Mexico and Mr. Tiedemann from
12 Texas were here. They -- from their perspective, I
13 think everything went as well as they could expect it
14 to. Their systems worked, tied into our system
15 district court. They actually both mentioned that it
16 was excellent technology, better than most
17 courthouses. I guess I'd ask what the response --
18 what the feeling is among the people who were on the
19 receiving end. You know, I do recognize that there is
20 a problem with the exhibits, and the exhibits were
21 very clear in courtroom, on the courtroom monitors and
22 on the big overhead we had that's available for people
23 in the courtroom to see. So we're assuming that the
24 fault lies somewhere between the link between the
25 courtroom and the Zoom technology. Hopefully we can

1 figure out a way to increase the quality of the
2 exhibits through the -- the Zoom connection, and
3 they're going to be working on that after we are done
4 here today to see what can be done about that. But it
5 may be at the end of the day that's as good as it's
6 going to get and the people who are watching remotely
7 are going to have to refer to their exhibits that have
8 been put on some type of shared drive. But having
9 said that, any other reactions or comments?

10 (No response.)

11 **JUDGE MELLOY:** Hearing none, I guess
12 everybody --

13 **MR. WALLACE:** Your Honor, this is Chad
14 Wallace, and I just had a question regarding the Chat
15 feature. I was uncertain how it was supposed to be
16 operated. I did not see any of the other chats. I
17 didn't know if that is the way that you had designed
18 it so it was just going through the Worldwide
19 technician or not. I just wanted to clear that up.

20 **JUDGE MELLOY:** As I understand it, the
21 way the Chat function works is -- is that the people
22 who are participants, which would be basically anyone
23 in the courtroom, will see the Chat, but the -- the
24 people who are viewing remotely who do not have the
25 interactive capability do not see the chats. I don't

1 know if that's a function that can be turned on and
2 off for the -- for the remote participants or not, but
3 -- but anybody who is -- who is a participant in the
4 courtroom who would be expected to be able to
5 participate through the microphones in the courtroom
6 will see the -- will see the chats. Any other
7 questions or comments? I was -- was hoping to show
8 both Ms. Ferguson and Mr. Tiedemann the spaces that we
9 had tentatively talked about internally for -- for
10 breakout rooms for the various parties.
11 Unfortunately, we still don't have any kind of -- we
12 still don't have any clear directive from the United
13 States Attorney's Office as to what the COVID
14 protocols are going to be. I'm still assuming that,
15 at a minimum, United States will work out of the U.S.
16 Attorney's Office, and maybe Texas, as well, if you
17 want to co-locate. But I -- I haven't been able to
18 confirm that yet so until we know the status of -- of
19 those accommodations, I can't make any kind of final
20 decision about where we're going to put everybody.
21 But if it would come to pass that we don't have room
22 in the U.S. Attorney's Office, we do have other spaces
23 so we will be able to accommodate everyone.
24 Mr. Tiedemann was -- started to take a diagram of the
25 -- of the courtroom, and I think he -- he probably

1 finished that, but one of the court employees
2 mentioned that if you want to see a layout of the
3 courtroom, it's on the -- the Website for the Northern
4 District of Iowa, and if you go to the Website,
5 there's a link under the Website for courtroom
6 technology. If you click on that courtroom technology
7 link, it'll take you to both a picture of each of the
8 courtrooms and then a -- a link there where you can
9 actually then link to the -- a diagram of what the
10 courtroom looks like. So anything else about that?
11 Okay. If not, then we'll move on to other topics.

12 Maybe I'll turn to Mr. Wechsler. Have
13 the details of the site visit been finalized?

14 **MR. WECHSLER:** Yes, I believe so, Your
15 Honor. To my knowledge, there's no lingering details,
16 but I think Ms. Barfield might have some more
17 up-to-date information.

18 **MS. BARFIELD:** Your Honor, I agree -- I
19 think we have an echoing situation. There we go.
20 Give us one minute. Okay. Is it corrected? It's
21 corrected. Sorry about that, Your Honor. I agree
22 with Mr. Wechsler. There are no remaining issues of
23 contention or otherwise that need to be resolved for
24 the site inspection of the basin tour.

25 **JUDGE MELLOY:** All right. That echo may

1 have been me. For some reason, when I muted my
2 microphone --

3 **MR. SOMACH:** I do have an issue I'd like
4 to raise.

5 **MS. BARFIELD:** He's speaking. We can't
6 hear Judge Melloy now.

7 **JUDGE MELLOY:** Can you hear me now?

8 **MR. WECHSLER:** Yes, Your Honor, I can
9 hear you.

10 **JUDGE MELLOY:** All right. All right. I
11 may have to go on mute when other people are speaking.
12 I think that echo for some reason was coming through
13 mine. But anyway --

14 **MR. SOMACH:** I -- Your Honor, I did have
15 a site visit-related question.

16 **JUDGE MELLOY:** Yes.

17 **MR. SOMACH:** And it may be broader in
18 scope than just a site visit, but I am concerned about
19 what COVID protocols you are contemplating. The site
20 visit will have a lot of people in a small space in
21 terms of transportation, both on the airplane, as well
22 as the -- the vehicles, and, of course, I am -- I must
23 admit, I'm personally concerned, but I'm concerned for
24 the folks that I've got working for me and that -- the
25 experts and others that will be testifying, generally,

1 about how the court is going to handle masks,
2 vaccination, how we know whether or not people are
3 unvaccinated, whether there will be any COVID testing
4 required. I mean, I read -- I see the news every day,
5 and I see that things aren't going exactly the way we
6 had anticipated a couple of months ago, but I -- I
7 wasn't sure what you were planning. We do have this
8 -- the -- the site visit coming up at the end of this
9 -- this very next month and then, of course, the trial
10 starting on September 13th.

11 **JUDGE MELLOY:** Well, that is -- that is
12 a topic that I had on my list, and I'll -- I'll jump
13 to it so -- since you brought it up, Mr. Somach. From
14 a -- from the standpoint of our administrative office
15 and the directions that we have received, they
16 basically say follow the CDC guidelines, which mean as
17 a practical matter, as I understand it, anyone who is
18 vaccinated is not required to wear a mask in a
19 courthouse. Anyone who is not vaccinated must wear a
20 mask. We have -- we have been encouraged not to
21 require proof of vaccination. I know that's been
22 somewhat controversial, and a couple courts have tried
23 to do it. Most courts are not requiring proof of
24 vaccination, and they're relying upon an honor system.
25 I do know in -- in e-mail conversation with -- with

1 the judges in Texas that they're very concerned about
2 the COVID situation. Texas is one of the hot spots.
3 Missouri, Texas, and Florida, I think, are the two
4 states -- three states with the -- with the most cases
5 right now, and I -- and I am concerned about the site
6 visit. As a matter of fact, when I -- I may not go on
7 the bus with everybody else, and I think we should
8 have only people who are vaccinated on the bus, and I
9 think I would hope that it would be big enough that
10 there could be some people spread out, but I would
11 only want people who are vaccinated on the bus. How
12 many people did -- like, from your -- from your
13 organization or from your perspective, Mr. Somach, how
14 many people are you planning to have on the site
15 visit.

16 **MR. SOMACH:** Just two people, and both
17 of them are vaccinated.

18 **JUDGE MELLOY:** Okay. What about New
19 Mexico?

20 **MR. WECHSLER:** The same, Your Honor. My
21 understanding about the vehicle is it's a 15-passenger
22 van.

23 **JUDGE MELLOY:** And United States?

24 **MR. DUBOIS:** Sorry about that. I think
25 it'll probably just be me that's going on the tour,

1 and I am vaccinated. We -- I mean, obviously, we will
2 have -- at points, there will be a BOR person sort of
3 doing a commentary like everyone else, but as far as
4 on the tour, I believe it'll just be me.

5 **JUDGE MELLOY:** And then, Mr. Wallace,
6 are you planning to come?

7 **MR. WALLACE:** Yeah, it'd just be me,
8 Your Honor.

9 **JUDGE MELLOY:** Okay. Well, that -- so
10 then we're talking six people in the van if I don't
11 go, and I'll have my law clerk with me. So we either
12 have eight in the van or six in the van, and I'll
13 travel in a car. I haven't decided which way yet. I
14 think that should be doable as long as all six -- all
15 -- and I can speak for myself and my law clerk, we're
16 both vaccinated. I think that should cover the tour.
17 At different locations, we will have attorneys who are
18 going to be there with their clients when we go to
19 sites within EBID. I assume Ms. Barncastle will be
20 there, and she'll have her employees there.
21 Similarly, when we're in Reclamation properties and so
22 on. I'm assuming all that should be outside for the
23 most part, and if anybody is not vaccinated, they will
24 have to be masked.

25 As far as the trial itself is concerned

1 -- well, let me -- let me just take it one next step.
2 I'm still planning to do the final pretrial conference
3 in El Paso on that Wednesday, although I have to say
4 I'm getting a little more nervous about doing that as
5 I read about the numbers in Texas rising, and I'm
6 going to strongly encourage that we have as few people
7 as possible at that final pretrial conference. I
8 really would like to limit it mainly to the parties
9 and would encourage the parties to only bring one or
10 two attorneys. One of the questions that Mr. Wechsler
11 had put on his -- put in his e-mail this morning, and
12 I was going to talk about anyway, is access to the
13 pretrial conference. I don't think realistically I
14 can offer video access. The number of hours that have
15 been put in by the IT staff here in the Northern
16 District of Iowa and Worldwide Reporting is pretty
17 remarkable. They've spent a lot of time over the last
18 month. This has not turned out to be as easy, you
19 know, as those of us who are non-techy, who think you
20 just throw a couple switches and everything magically
21 appears and so it's turned out -- I don't think I can
22 ask the Western District of Texas to go dedicate those
23 kind of resources to set up some kind of Zoom
24 connection, which might not work anyway. But I -- but
25 I don't see any reason why we couldn't have a -- a

1 audio hookup, basically it would be a call-in
2 conference call like we used to do with some of our
3 hearings, and I believe we had that ability when we
4 were in Denver. I can't recall now. But I would -- I
5 would anticipate that we should be able to have that
6 capability. I'm a little worried about the trial, but
7 at this point, I don't know that there's much we can
8 say about it other than if you are vaccinated, you
9 don't have to be masked. If you aren't vaccinated,
10 you have to be masked. At least as of right now, I'm
11 not inclined to require proof of vaccination. Does
12 that address your concerns, Mr. Somach?

13 **MR. SOMACH:** Well, it -- it addresses
14 them, yes. And I think I agree with you that we have
15 to wait to see what's happening closer to -- to the
16 time of trial, but -- and I'm not sure what else there
17 is that you could say, so I appreciate what you've
18 said, and as long as we can perhaps have another
19 conversation about this, either at the final pretrial
20 or somewhere between the time of trial and just take a
21 look around and see what's happening in the world.

22 **JUDGE MELLOY:** Well, and I may set up
23 something the week before the site visit. I want to
24 see what the situation is in Texas before I bring
25 everybody down there, and I certainly don't want to

1 cancel it, but if -- if -- if there's a serious COVID
2 concern, I don't want to put anybody in -- in risk.
3 I'm 73 years old. I don't want to be -- I don't want
4 to be on a ventilator either, so it's -- so I -- I
5 think we want to -- I think I'll probably get
6 everybody together the week before just to see for --
7 for a go/no-go, and we'll probably have other topics
8 to discuss by then, as well.

9 **MR. SOMACH:** It's one of the downsides
10 of our -- or at least my being an old man. You worry
11 about these things.

12 **JUDGE MELLODY:** All right. Final
13 pretrial conference. Couple of things about it. I've
14 already talked about, I don't think there's
15 realistically a chance of having a video link, but I'm
16 hoping to have an audio link, and I'd like to limit it
17 to as few people as possible. I anticipate taking up
18 the motions in limine at the pretrial conference.
19 Whether we'll be able to conclude all the hearing on
20 motion in limine at that time, I'm not certain. Some
21 of the motions in limine, and I -- I have to confess,
22 I have not studied them in -- in depth yet, but I
23 certainly will before the pretrial conference and any
24 responses to the motions. Some are much more the
25 nature of a Daubert motion, and -- and as to those,

1 depending upon how the motion ultimately reads and --
2 and the arguments of counsel, we may or may not need
3 to actually take some -- some evidence on that. We
4 may need to have a separate Daubert hearing where if
5 -- if -- if an expert has been challenged, they may
6 have to give at least some testimony to establish
7 their -- either establish their ability to testify or
8 to show that the Daubert motion has merit. I expect
9 to discuss both the exhibit and witness list at the
10 final pretrial conference, as well as any
11 stipulations. I don't know if -- if you've talked
12 about stipulations, how many things can be stipulated
13 to, but certainly, I would hope that there would be
14 some facts that can be stipulated to without having to
15 call witnesses. My current anticipation is to be --
16 is to be done by 2:00. If it -- if it goes beyond
17 2:00, I'll probably suggest that -- that further
18 pretrial conference be held by Zoom conference. There
19 is a -- there is a flight out around 4:30, which I'm
20 planning to take, and I'm not -- I'd like to be on so
21 I'm planning to be done by 2:00 so I can get out to
22 the airport by 2:30. So people can make their travel
23 plans if they haven't already accordingly. Any
24 questions about that or any comments?

25 Going back to the remote trial

1 proceedings, a couple issues about that. I think it
2 was in your e-mail, Mr. Wechsler, you asked about
3 video feeds to experts. I would not have a problem
4 with that. I assume other parties would probably want
5 the same ability. What we will do, however, is --
6 when we went through our sort of run through yesterday
7 in anticipation with the days of the Worldwide folks,
8 they are going to monitor the video feed, and they
9 will have a list of approved attendees and if somebody
10 comes on that is not on the list of approved
11 attendees, they will be kicked off basically. Now, if
12 it's somebody who for some reason we make a mistake or
13 it's somebody who should be added, we can let them
14 back in, but at least the initial -- there will be an
15 initial screen by Worldwide of who gets on and if they
16 -- and if there aren't -- if there are people not on
17 the attendee list, they'll be kicked off. But I would
18 anticipate we would allow experts to participate.
19 Let's see. What else here?

20 Then let's talk about -- oh, the other
21 thing I want the talk about before I get into what
22 Mr. Wechsler had in his e-mail, has there been any
23 further discussion or agreement about making exhibits
24 available to the amici who may be participating
25 remotely on a share drive so that if the quality isn't

1 great, they'll at least have it either available to
2 pull up on a screen, a second screen, or even print
3 off a copy of the exhibit if they care to? Anybody
4 want to speak to that?

5 **MR. WECHSLER:** Well, Your Honor, we --
6 we haven't discussed it amongst the parties further.
7 I don't -- I think that my understanding is that all
8 the parties are comfortable putting the exhibits on a
9 share file folder and sharing that with all of the
10 amici.

11 **MR. SOMACH:** We have no problem doing
12 that either. That sounds appropriate to me.

13 **JUDGE MELLOY:** And that should hopefully
14 obviate some of the issues with if the exhibits aren't
15 as clear as we would like them to be, but -- all
16 right. Then let me turn to what Mr. Wechsler raises
17 in his e-mail this morning. Well, let me just ask you
18 about your Point No. 2, anticipated order of
19 witnesses, Mr. Wechsler. As I understand it, you'd
20 like some preview of -- of the order in which Texas
21 will be calling its witnesses, and I presume you would
22 then reciprocate and give an order of how you're going
23 to call your witnesses; is that basically what you're
24 asking for?

25 **MR. WECHSLER:** Yeah, that's right, Your

1 Honor. And I don't know that we need an order from
2 you either. We raised this with the parties. They
3 haven't had a fair chance to really evaluate it, but I
4 thought it would just be helpful to talk today about
5 it because I didn't know when we would have a next
6 chance to talk. And the idea is basically, you know,
7 we're in the process right now of -- of scheduling,
8 trying to figure out when people have to be in Iowa,
9 trying to figure out hotel rooms and things like that,
10 and for scheduling purposes, it would just be helpful
11 to have an overall sense of when witnesses were coming
12 up so we knew, you know, sort of a general sense of
13 the order. And you're correct, we're -- we have
14 volunteered to share that information with the other
15 parties, along with we've offered to share, at least a
16 high-level estimate of how much time we anticipate for
17 -- for direct and cross-examination. I don't -- I'm
18 not thinking about this as something that would be
19 locked in for the parties. I understand that
20 flexibility is necessary and that things change as
21 trial progresses. It's just purely for planning
22 purposes.

23 **JUDGE MELLOY:** How much -- how much lead
24 time are you looking to get?

25 **MR. WECHSLER:** My proposal to the other

1 parties was really just to share that high-level list
2 in the middle of August, August 18th, when we -- I
3 think there's another deadline that occurs that day.

4 **MR. SOMACH:** Your Honor, this is Stuart
5 Somach. We don't have any objection to that with the
6 understanding that these are subject to change. We've
7 been spending a lot of time talking about the very
8 issue of ordering our witnesses as well as how long
9 each witness will take, and I suspect we'll be --
10 we'll be doing that more or less right up until the
11 end, but by the 18th, we'll have certainly some idea.
12 I don't mind sharing it at all. I -- you know, given
13 what we talked about in terms of COVID, given what
14 we've talked about in terms of the different logistics
15 that are involved here, I think that that -- anything
16 we can do to help limit the number of people that have
17 to be moving back and forth at any one time is a good
18 idea. So we'll be more than happy to do that with the
19 understanding that we have the ability to modify that
20 as we get closer to trial.

21 **JUDGE MELLOY:** All right. Well, I'll
22 leave that to the parties' discussion, and if you need
23 intervention, I'll assume somebody will bring it to my
24 attention. I guess the -- the bigger issue is the one
25 that you raise in your Point No. 5, Mr. Wechsler, and

1 since I've just received this, this morning, I haven't
2 had a chance to study it completely, but I understand
3 there seems to be two major objections to the way
4 Texas has disclosed its exhibits. The one I
5 understand, which is that Texas has indicated on a
6 proposed exhibit list any and all exhibits marked
7 during the course of a deposition of Witness X, and I
8 -- and I did a quick tally. I think that's about 185
9 depositions, which I certainly understand what you're
10 saying is that doesn't tell you anything about what
11 exhibits are actually going to be used at trial. But
12 what is the -- what is the other -- what is the other
13 exhibit -- other exhibit issue that you have.

14 **MR. WECHSLER:** That was the only issue,
15 Your Honor. That's No. 5. We have been working with
16 Texas over the previous weeks. No. 4 was we had asked
17 for an additional week to complete any authenticity
18 objections on Texas' exhibit, and my understanding is
19 they have agreed to that. I'm not sure I saw a
20 position from the United States or -- or Colorado. I
21 probably should have done a better job of reflecting
22 that in my e-mail to you.

23 **JUDGE MELLOY:** Does United States and
24 Colorado have any objection?

25 **MR. DUBOIS:** We don't care, Your Honor.

1 **JUDGE MELLOY:** I assume you've got the
2 same position, Mr. Wallace?

3 **MR. WALLACE:** Yeah, no objection.

4 **JUDGE MELLOY:** And the -- the other
5 references to the -- to the difficulty you -- you and
6 your staff are having identifying the exact exhibits,
7 that's been resolved, I take it?

8 **MR. WECHSLER:** Yes, Your Honor. So the
9 -- so when we did receive the most recent CSV file
10 from Texas, which I believe was July 21st, that
11 contains 111 -- 811 exhibits that we have identified.
12 We appreciate Texas' help in -- in finding all of
13 those, and so we're -- we're prepared and are working
14 on now, you know, reviewing, determining whether
15 there's objection preparing for trial on those
16 exhibits. And as you indicate, our concern is the
17 large, catch-all categories, which doesn't allow us to
18 understand what the documents are, doesn't allow us to
19 help prepare our witnesses, doesn't allow us to
20 conduct authenticity objections because there's
21 multiple copies of various things and so those are the
22 concerns that I think you correctly articulated.

23 **JUDGE MELLOY:** So what's your position
24 on this, Mr. Somach?

25 **MR. SOMACH:** Well, you know, the first

1 thing is I only got this when you got it, and it's
2 lengthy. But in terms of -- and so that's the first
3 thing I want to say is, you know, I -- this is the
4 first time I've seen this so I'm kind of plowing
5 through it to try to understand what Mr. Wechsler's
6 issues and problems are. There's a lot in the -- the
7 recitation of procedural or facts or whatever you want
8 to call it that we simply disagree with, but I don't
9 want to get into -- to that certainly here, although I
10 may, just to make sure the record is reflected
11 accurately, pen a response to so you have the total
12 picture. But with respect to the -- this fundamental
13 issue, which -- and I was trying to figure out exactly
14 what the real question or issue was, but we will
15 produce a final list, which doesn't have that general
16 category of all exhibits in support of specific depo
17 language. We'll -- we'll take that off. We'll --
18 we'll do that. You know, our final production isn't
19 due until August 18th, and -- and we will refine all
20 of this, but I -- I don't want to argue about that.
21 We will take it off, and we will -- we will provide
22 them with a refined list so that they can -- I don't
23 want to prejudice them in any way, so they can do what
24 needs to be done.

25 **JUDGE MELLOY:** That sounds like that

1 will resolve that issue then.

2 One other item I have on my agenda for
3 today is New Mexico has filed a motion to file one of
4 its motions in limine and supporting documents under
5 seal. Let me see if I can find that one. But anyway
6 -- I should have had that in front of me. But anyway,
7 is there any objection to filing that under seal?

8 **MR. SOMACH:** I could clarify something
9 at this point. This was on my list of things to
10 mention here because I didn't -- it is -- it is not,
11 from our perspective, necessary for anything to be
12 filed under seal. There is a protective order
13 covering this universe of documents, but -- but we're
14 willing to -- to do whatever needs to be done to have
15 that protective order lifted, and that way nothing
16 needs to be filed under seal. It can be just simply
17 filed and distributed to the service list. So I'm not
18 sure what procedure -- I'd like to make it as painless
19 as possible, but whatever procedure the Court would
20 like us to follow, we'll follow it to do that.

21 **JUDGE MELLOY:** Well, I don't think we
22 need to do much more than, as I understand the
23 protective order as to these documents is basically
24 for the protection of Texas, and so if you're waiving
25 the protective order as to these documents, I'll just

1 include that in the order that comes out of this
2 hearing.

3 **MR. SOMACH:** Yes. We are -- we are
4 doing that. We are waiving our right to the
5 protective order and -- and all of this stuff can be
6 filed.

7 **JUDGE MELLOY:** Do you have anything you
8 want to say about that, Mr. Wechsler? I assume you
9 don't object.

10 **MR. WECHSLER:** No objection, Your Honor.
11 As soon as we get that clarification or order from
12 you, we'll go ahead and file the motion in the normal
13 course.

14 **JUDGE MELLOY:** Anybody else want to be
15 heard on that issue?

16 (No response.)

17 **JUDGE MELLOY:** All right. If not, that
18 pretty well covers the things that I wanted to talk
19 about. One thing, Mr. Wechsler -- or Ms. Barncastle,
20 I'm not sure who's in charge, but I would like to see
21 the final itinerary for the tour.

22 **MR. WECHSLER:** Yes, Your Honor. I --
23 it's been Ms. Barfield and Ms. Dalrymple from our team
24 between Texas and New Mexico have been working on all
25 of those details, and we'll prepare a final itinerary

1 for you and get that filed as soon as we can.

2 **JUDGE MELLOY:** Okay. And as far as the
3 logistics are concerned, I am planning to fly in and
4 out of El Paso and probably just stay in El Paso. I
5 -- I don't want to move hotel rooms for one night
6 particularly so -- and as I understand it, at the end
7 of each day will be no more than 45 or 50 minutes from
8 -- from El Paso so -- and one day, we'll be a lot
9 closer. So any other questions about that? And like
10 I say, I'll -- I think I will plan to set something up
11 for the Wednesday or Thursday before the site visit
12 just to see if there's any last-minute glitches or
13 anything we need to talk about, including COVID issues
14 that might have arisen in the meantime.

15 If there's nothing else, that -- that
16 completes my agenda. Anybody else have anything they
17 want to talk about?

18 (No response.)

19 **JUDGE MELLOY:** All right. Then if not,
20 we'll be adjourned. Thank you, everyone.

21 (The proceedings adjourned at 2:39 p.m.)
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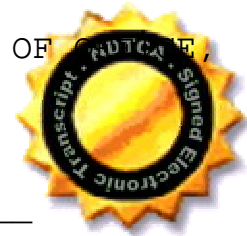
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I, HEATHER L. GARZA, a Certified Shorthand Reporter in and for the State of Texas, do hereby certify that the facts as stated by me in the caption hereto are true; that the foregoing pages comprise a true, complete and correct transcript of the proceedings 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.

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on this, the 7th day of September, 2021.



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