

No. 141, Original

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In the  
SUPREME COURT OF THE UNITED STATES

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STATE OF TEXAS,

Plaintiff,

v.

STATE OF NEW MEXICO and  
STATE OF COLORADO,

Defendants.

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OFFICE OF THE SPECIAL MASTER

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TRIAL MANAGEMENT ORDER

April 9, 2021

## I. TRIAL DATE

Trial in this case will commence on **September 13, 2021**, in the United States Courthouse, Courtroom 1, Second Floor, in Cedar Rapids, Iowa. At the scheduling conference in this case it was discussed that I anticipated trying the case in two-week blocks with a one-week break between each two-week block. We also left open the issue of whether to do a four- or five-day trial week. I am re-thinking the concept of a two-week trial block and have made no decision about the length of each trial week. That is an issue that I anticipate discussing with counsel after issuance of the order on the pending motions for summary judgment.

## II. FINAL PRETRIAL CONFERENCE

A Final Pretrial Conference will be scheduled during the week of **August 23, 2021**, with the exact date and time to be set by separate notice. The undersigned anticipates being in telephonic contact with the Parties well in advance of that date to discuss evidentiary and other issues over the weeks and months leading up to the trial. In addition to determining an exact date for the Final Pretrial Conference, a determination as to whether the Final Pretrial Conference will be in person or by Zoom will be made at a later date.

## III. WITNESS LISTS

The Parties shall exchange witness lists by no later than **June 30, 2021**. The witness lists shall contain the names and professional addresses of the witnesses whom the Parties intend to call to testify at trial with a short general summary statement of the testimony intended to be elicited from each witness. The Parties

shall identify “will call” witnesses, which are witnesses that will definitely be present at trial, and “may call” witnesses, which are witnesses that may be called. By listing a witness as a “will call” witness, counsel guarantees that witness’s presence at trial and any witness not listed will not be allowed to testify at trial, unless, the Court modifies this Order prior to trial to prevent manifest injustice. Parties are not, however, required to list rebuttal witnesses. The final witness lists shall be filed with the Special Master no later than 7 days before the Final Pretrial Conference.

#### IV. DEPOSITION DESIGNATIONS

In addition to exchanging a list of witnesses by **June 30, 2021**, the Parties shall also indicate as to each such witness whether the witness will testify live or by deposition. As to any witness designated to testify by deposition, the Party so designating shall serve together with the witness designation a written designation, by page and line number, of those portions of the deposition the offering Party intends to offer into evidence. By no later than **July 20, 2021**, an opposing Party who objects to the intended testimony must serve on the offering Party any objection to the designated testimony and provide any counter-designations, by page and line number, of any additional portions of the deposition which the opposing Party intends to offer into evidence. By no later than **July 30, 2021**, the Party offering the deposition testimony must serve upon opposing Party any objections to the counter-designated testimony and a written designation, by page and line number, of any additional portions of the deposition the offering Party intends to have read into evidence. Within 10 days thereafter, the Parties must consult, either personally or

by telephone, in attempt to resolve any objections to the proposed deposition testimony. By no later than 7 days prior to the Final Pretrial Conference, the Party intending to offer the deposition testimony must provide the Special Master with the following: (a) a deposition transcript containing only the lines of the deposition to be admitted into evidence, and (b) a statement listing all unresolved objections to the deposition testimony, together with copies of the deposition transcript showing the sections objected to.

**V. EXHIBITS**

**1. Exhibit Lists**

The Parties shall exchange proposed exhibit lists by no later than **June 30, 2021**.

**2. Objections to Exhibits**

By no later than **July 20, 2021**, each Party shall advise opposing counsel as to any objections the Party may have to any of the exhibits contained on the proposed exhibit list. As to each exhibit objected to, the Parties shall indicate the basis for the objection, including, a citation to the applicable Federal Rule of Evidence.

**3. Meet and Confer**

Following receipt of objections to exhibits, the Parties shall meet and confer in an attempt to resolve any objections to exhibits. In particular, the Parties shall attempt to resolve foundational objections prior to offering the exhibit into evidence.

#### 4. Marking of Exhibits

Texas's exhibits shall be numbered with a "TX" sequence (starting with TX-0001); the United States' exhibits shall be numbered with a "US" sequence (starting with US-0001); New Mexico's exhibits shall be numbered with a "NM" sequence (starting with NM-0001); Colorado's exhibits shall be numbered with a "CO" sequence (starting with CO-0001). A document that will not be offered as evidence, but that will instead be used solely for impeachment purposes, does not need to be identified as an exhibit.

#### 5. Elimination of Duplicates and Joint Exhibits

The Parties must compare their exhibits and eliminate any duplicates. If more than one Party wants to offer the same exhibit, then they should be pre-marked and numbered starting with "JT-0001."

#### 6. Final Exhibit Lists

Each Party shall prepare an exhibit list to be used by the Special Master, which shall be filed by no later than 7 days prior to the Final Pretrial Conference. The exhibit lists shall appear in the following format:

<b>(Plaintiff's)(Defendant's) Exhibits</b>	Category A, B, C	Objections [Cite Fed. R. Evid.]	Offered	Admit/Not Admit (A) - (NA)
[1.][A.] [describe exhibit]			*	*
[2.][B.] [describe exhibit]				
[3.][C.] [describe exhibit]				

*[\*These columns are for court use only.]*

Parties are to use the following categories in the second column for objections to exhibits:

**Category A.** These are exhibits to which neither party objects. They will be deemed admitted in evidence at the commencement of the trial, and will be available for use by any party at any stage of the proceedings without further offer, proof, or objection.

**Category B.** These are exhibits to which a party objects on grounds **other than** foundation, identification, or authenticity. Parties are to use this category for objections such as hearsay or relevance. Parties are to identify in the third column the Federal Rule(s) of Evidence upon which the party relies in objecting to these exhibits.

**Category C.** These are exhibits to which a party objects on grounds of foundation, identification, or authenticity. Parties are not to use this category for other objections, such as hearsay. Parties are to identify in the third column the Federal Rule(s) of Evidence upon which the party relies in objecting to these exhibits.

#### **7. Rebuttal Exhibits**

The Parties are not required to list or pre-mark exhibits that may be used in rebuttal or for impeachment purposes.

#### **8. Demonstrative Exhibits**

The Parties shall exchange demonstrative exhibits by no later than the date of the Final Pretrial Conference. Objections to demonstrative exhibits shall be filed within 10 days thereafter. The term “demonstrative exhibits” includes charts, diagrams, models, samples and animations. Parties need not identify demonstrative exhibits that will be used on cross-examination or in rebuttal, but shall provide those demonstrative exhibits to the other Parties as soon as practicable prior to use of the demonstrative exhibit.

## **VI. PRETRIAL CONFERENCE STATEMENTS**

Final Pretrial Conference Statements shall be filed by no later than 7 days prior to the Final Pretrial Conference. Pretrial Conference Statements shall include the Parties' witness lists, deposition designations, exhibit lists, and a statement of any stipulated facts. The Final Pretrial Conference Statement can be modified only by leave of the Special Master.

## **VII. COPIES**

All documents required to be filed by this Trial Management Order with the Special Master, including witness lists, exhibit lists, deposition designations and any other document, shall be filed in one hard copy and one electronic copy.

## **VIII. MOTIONS IN LIMINE**

Motions in limine shall be filed by no later than **July 20, 2021**. Each motion in limine shall be no longer than 20 pages, excluding the exhibits. Responses to motions in limine shall be filed by **August 5, 2021**. Each response to a motion in limine shall be no longer than 20 pages, excluding exhibits. Replies thereto shall be filed by **August 12, 2021**. It is anticipated that motions in limine will be taken up at the Final Pretrial Conference.

In filing motions in limine, counsel are reminded that the Supreme Court encourages development of as full a record as possible for Supreme Court review. It can be anticipated that much of the testimony or exhibits which may be objected to will be admitted subject to the objection for later determination as to its admissibility by the Special Master and review by the Supreme Court.

## **IX. TRIAL PROCEEDINGS**

Trial in this case, which will commence on **September 13, 2021**, will be on the issues of liability and whether Plaintiff, Texas, or Counterclaimant, New Mexico, have sustained damages. It is the understanding of the Special Master that the United States, as Intervenor, is not seeking damages, but rather, only declaratory and prospective equitable relief. It is the further understanding of the Special Master that Colorado is seeking no relief at this time. Trial on the amount of damages and remedies, if any, shall be held at a later date.

## **X. TRIAL BRIEFS**

Trial briefs, if any, shall be filed by no later than 7 days before trial. Any trial briefs shall not exceed 30 pages. The Parties are encouraged to address only those issues which had not been previously briefed in this case. Given the extensive briefing that has already taken place in connection with the motions in this case, the Parties are also free to waive filing of a trial brief. It is anticipated that that issue will be discussed in more detail at the Final Pretrial Conference.

## **XI. ORDER OF PRESENTATION**

Texas, as Plaintiff, will first present its case, followed by the United States, New Mexico and Colorado. The Special Master anticipates working with the Parties to determine an appropriate order of cross-examination as to each witness presented for examination. As discussed at the scheduling conference in this case, the undersigned anticipates that there will be a fair amount of flexibility as to both how a witness testifies and the order of presentation. The undersigned anticipates that

the testimony may very well include a mix of deposition, live in-court testimony as well as live videoconference testimony. In addition, the undersigned expects the Parties to be flexible in terms of scheduling witnesses who may have to be taken out of order due to scheduling conflicts, as well as having a witness called by multiple Parties testify only once.

**1. Opening Statement**

The Special Master anticipates discussing with counsel at the Final Pretrial Conference the necessity and length of any opening statement. It is anticipated that any opening statement, if any, will be brief.

**2. Notification of Order of Witnesses**

The Parties shall notify the Special Master and the Parties of the order in which they intend to present witnesses at least five (5) days in advance of a witness's testimony.

**3. Sequestration of Witnesses**

A witness will only be sequestered if good cause is shown.

**4. Use of Confidential Documents or Information at Trial**

The Parties are encouraged to resolve by agreement issues regarding the use at trial of documents designated "Confidential" pursuant to Case Management Plan § 11, or information derived therefrom, whether by redaction, agreed release of the "Confidential" designation, or by other means so as to eliminate or reduce the need to rely on Confidential information at trial. If the Parties cannot agree on the

appropriate protocol for maintaining the confidentiality of any proposed exhibit, they shall include that issue in their Final Pretrial Conference Statement.

**5. Trial Subpoenas**

The Parties shall bring to the attention of the Special Master any need for subpoenas for attendance at trial as soon as reasonably practicable.

**XII. TRIAL LENGTH**

The Special Master anticipates setting a limitation on the length of trial. However, the exact number of hours to be allotted to each party will not be determined until after issuance of an order on the pending motions for summary judgment and an opportunity to confer with counsel after issuance of that order.

Dated: April 9, 2021



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Honorable Michael J. Melloy  
Special Master  
United States Circuit Judge  
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