

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



**UNOPPOSED MOTION FOR EXPEDITED AMENDMENT TO THE
ORDER ON DISCLOSURE OF SETTLEMENT DOCUMENTS**



The State of New Mexico moves the Special Master for an expedited order amending the Order on Disclosure of Settlement Documents adopted on August 26, 2022 (“Disclosure Order”). The Parties and *Amici* have reviewed this Motion and do not oppose entry of the attached order. In support of this Motion, New Mexico states as follows:

1. Since December 2021 the Parties have been actively engaged in settlement discussions with the assistance of Judge Arthur J. Boylan as the mediator. As those discussions have matured, the Parties have developed several draft settlement documents.
2. During the Status Conference held on August 24, 2022, the Parties and *Amici* expressed the need to disclose draft settlement documents to the *Amici*.
3. On August 26, 2022, the Special Master entered the Disclosure Order in which he permitted the draft settlement documents to be disclosed to the *Amici* attorneys subject to the

conditions that the *Amici* sign a confidentiality agreement, the *Amici* be bound by the confidentiality order and confidentiality agreement, and that only the *Amici* attorneys be allowed to view the draft settlement documents.

4. Following the Disclosure Order, the Parties circulated two draft settlement documents to the *Amici* attorneys. However, the draft settlement documents are technically complex and involve a number of issues that will impact water use and management in the Rio Grande Basin below Elephant Butte Reservoir. For these reasons, the *Amici* attorneys have informed the Parties that to understand the draft settlement documents and accurately advise their clients of the impact of a settlement, it is necessary that client representatives and technical advisors be allowed to view the draft settlement documents.

5. On Friday, September 9, 2022, Judge Boylan held a mediation status conference with the Parties and *Amici*. The need to share draft settlement documents with one client representative and one technical advisor was discussed, and all Parties and *Amici* agreed with this additional limited disclosure.

6. In addition, it would be constructive to allow limited disclosure of the draft settlement documents to two other major water users in the Lower Rio Grande, the Public Service Company of New Mexico (“PNM”) and Camino Real Regional Utility Authority (“CRRUA”). Neither PNM nor CRRUA are *Amici*. Nonetheless, both PNM and CRRUA have been the subject of discussion during the mediation, and both are represented by the same attorney who represents *Amici* New Mexico State University.

7. During the mediation status conference, all Parties and *Amici* also agreed to limited disclosure of the draft settlement documents to PNM and CRRUA, subject to the same restrictions and confidentiality provisions that apply to the Parties and *Amici*.

8. In order to promote strict confidentiality, New Mexico proposes that each designated client representative or technical advisor be required to sign a Confidentiality Agreement in which he or she agrees to be bound by the terms of the March 8, 2022 Order, the August 26, 2022 Order, the Confidentiality and Exclusion of Evidence Agreement, and the Addendum to Agreement Concerning Compromise Discussions, Exclusion of Evidence and Confidentiality. A form of a Confidentiality Agreement that has been approved by all of the Parties and *Amici* is attached hereto as Exhibit A. Specific confidentiality agreements for PNM and CRRUA are also attached as Exhibits A-1 and A-2.

9. This Motion is unopposed.

10. This matter is highly time sensitive because the Parties must complete their agreement no later than the September 23, 2022 deadline established by the Special Master. For convenience, a proposed order in a form agreed to by the Parties and *Amici* is attached hereto as Exhibit B. An electronic copy will also be provided. Accordingly, New Mexico requests that the Special Master enter the attached order as soon as possible.

WHEREFORE, New Mexico respectfully requests that the Special Master enter the attached order as soon as possible.

Respectfully submitted,

By: /s/ Jeffrey J. Wechsler
Jeffrey J. Wechsler

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OFFICE OF THE SPECIAL MASTER

STATE OF NEW MEXICO'S CERTIFICATE OF SERVICE

◆

This is to certify that on this 14th day of September, 2022, I caused a true and correct copy of **THE STATE OF NEW MEXICO'S UNOPPOSED MOTION FOR EXPEDITED AMENDMENT TO THE ORDER ON DISCLOSURE OF SETTLEMENT DOCUMENTS** to be served by e-mail and/or U.S. Mail, as indicated, upon the Special Master, 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 indicated on the attached service list, which reflects all updates and revisions through the current date.

Respectfully submitted,

Dated: September 14, 2022

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Special Master

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EXHIBIT A

No. 141, Original

IN THE
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STATE OF TEXAS,

Plaintiff,

v.

STATE OF NEW MEXICO and
STATE OF COLORADO,

Defendants.



CONFIDENTIALITY AGREEMENT



I hereby certify that I am familiar with the terms and conditions of the March 8, 2022 Order, the August 26, 2022 Order, the Confidentiality and Exclusion of Evidence Agreement, and the Addendum to Agreement Concerning Compromise Discussions, Exclusion of Evidence and Confidentiality in the above-captioned case and agree to be bound by the terms and conditions thereof. I also consent to the jurisdiction of the United States Supreme Court and the Special Master for the resolution of disputes regarding alleged violations of confidentiality.

Name (print or type)

Title

Representing

Business Address

Date

Signature

EXHIBIT A

No. 141, Original

IN THE
SUPREME COURT OF THE UNITED STATES



STATE OF TEXAS,

Plaintiff,

v.

STATE OF NEW MEXICO and
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Defendants.



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Name (print or type)

Title

Representing

Business Address

Date

Signature

Exhibit A-1

Public Service Company of New Mexico does hereby agree to become an Amici for purposes of participating in settlement of this action and does consent to jurisdiction of the United States Supreme Court and the Special Master for the resolution of disputes regarding alleged violations of confidentiality.

John W. Utton
Counsel for Public Service Company of New Mexico

No. 141, Original

IN THE
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STATE OF TEXAS,

Plaintiff,

v.

STATE OF NEW MEXICO and
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Defendants.

CONFIDENTIALITY AGREEMENT

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Name (print or type)

Title

Representing

Business Address

Date

Signature

The Camino Real Regional Utility Authority does hereby agree to become an Amici for purposes of participating in settlement of this action and does consent to jurisdiction of the United States Supreme Court and the Special Master for the resolution of disputes regarding alleged violations of confidentiality.

John W. Utton
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No. 141, Original

In the
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STATE OF TEXAS,

Plaintiff,

v.

STATE OF NEW MEXICO and
STATE OF COLORADO,

Defendants.

UNITED STATES OF AMERICA,

Intervenor.

OFFICE OF THE SPECIAL MASTER

PROPOSED ORDER AMENDING PROVISIONS FOR
DISCLOSURE OF SETTLEMENT DOCUMENTS

ORDER

For the purposes of the proceedings before the Special Master, IT IS HEREBY ORDERED:

The Order of August 26, 2022 on Disclosure of Settlement Documents is hereby amended as follows:

1. *Amici* granted access to settlement documents may designate one client representative and one technical advisor to review settlement documents.
2. Before a designated client representative or designated technical advisor may review the settlement documents, he or she must sign a Confidentiality Agreement in which he or she agrees to be bound by the terms of the March 8, 2022 Order, the August 26, 2022 Order, the Confidentiality and Exclusion of Evidence Agreement, and the Addendum to Agreement Concerning Compromise Discussions, Exclusion of Evidence and Confidentiality.
3. Non-*Amici* Public Service Company of New Mexico (“PNM”) and Camino Real Regional Utility Authority (“CRRUA”) are permitted to review settlement documents subject to the same terms and conditions of this Order and the Order of August 26, 2022.

Dated: _____

Honorable Michael J. Melloy
Special Master
United States Circuit Judge

*All Parties and *Amici* have approved of the form of this Proposed Order