

No. 141, Original

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,

UNITED STATES OF AMERICA,

Intervenor.

◆

OFFICE OF THE SPECIAL MASTER

◆

**JOINT MOTION OF TEXAS, NEW MEXICO, COLORADO, AND THE
UNITED STATES TO VACATE THE JUNE 9, 2025 TRIAL DATE AND
SET A HEARING ON MOTIONS RELATED TO SETTLEMENT**

◆

May 15, 2025

The States of Texas, New Mexico and Colorado, and the United States (collectively, the “Parties”) respectfully move the Special Master to enter an order (1) vacating the June 9, 2025 trial date; (2) scheduling a hearing on motions related to the settlement of this case (“Settlements”) for September 18 and 19, 2025, or as soon thereafter in September as the Special Master is available; (3) ordering that motions related to the Settlements be filed no later than August 29, 2025; (4) scheduling a site visit for the Special Master on June 17 and 18, 2025; and (5) ordering the Parties to submit an itinerary for the site visit no later than June 13, 2025. In support of this Motion, the Parties state as follows:

I. PROCEDURAL BACKGROUND

1. At the conclusion of discovery, Special Master Melloy ordered a bifurcated trial as between liability and remedies. *See* Third Interim Report at 35; *see also* Trial Management Order at ¶ IX (April 9, 2021) [8th Cir. Dkt. 501]; June 4, 2021 Order at ¶ 3 [8th Cir. Dkt. 508].

2. In the fall of 2021, the Parties commenced the liability trial. Third Interim Report at 34. During this first part of trial, and partly due to COVID restrictions, Special Master Melloy further split the liability trial to allow for remote testimony from percipient fact witnesses and expert witness historians (“Phase I”), with the intent to reserve the technical expert witnesses for a later planned in-person second phase of the liability part of trial (“Phase II”).

3. Phase I of the liability trial began on October 4, 2021, and proceeded for nineteen trial days through November 10, 2021. Phase II of the liability trial was then continued, pending review of the Compacting States' motion to enter a proposed consent decree, which motion the Supreme Court denied. *See Texas v. New Mexico*, 602 U.S. 943 (2024).

4. On July 17, 2024, the Court appointed the Honorable D. Brooks Smith to serve as Special Master. Special Master Smith set Phase II of the liability trial for June 9, 2025.

II. AGREEMENT IN PRINCIPLE

5. Beginning in December 2024, the Parties reinitiated settlement discussions with the assistance of the Honorable Arthur Boylan as mediator.

6. Following extensive mediation, the Parties are pleased to report that they have reached an agreement in principle. The terms of the agreement are set forth in a confidential Term Sheet that was signed by counsel on May 12, 2025. In addition to the Parties, the agreement also includes two of the amici in this case, Elephant Butte Irrigation District ("EBID") and El Paso County Water Improvement District No. 1 ("EPCWID") (together, EBID and EPCWID are referred to as the "Settling Amici").

7. The agreement is complex and involves multiple settlement agreements with different subsets of the Parties and Settling Amici. Drafting the multiple

settlement documents will take time to complete. In addition, the Parties and Settling Amici will need time to obtain final approval from their respective government officials and authorized client representatives.

8. Following completion of the settlement documents, the Parties anticipate filing two separate motions. One motion will be filed jointly by the United States and New Mexico to dismiss the United States' claims against New Mexico. The second motion will be filed jointly by the States of Texas, New Mexico and Colorado for entry of a proposed consent decree. Together, the two motions will dispose of all causes of action and claims of the Parties. Therefore, there is no need for Phase II of the liability trial, and the Parties jointly request that the Special Master vacate the June 9, 2025, trial setting.

9. The Parties and Settling Amici anticipate that they will be able to complete the settlement documents, obtain necessary approvals, and file the anticipated motions by August 29, 2025.

10. The Parties request that the Special Master schedule a hearing on the motions related to the Settlements for September 18 and 19, 2025, or as soon thereafter in September as the Special Master is available. At that hearing the Parties intend to present the Settlements to the Special Master through both oral presentations by counsel for the Parties and, as appropriate, testimony and evidence

to support the proposed Settlements. The Parties request that the hearing be scheduled for two days, although it is possible that only one day will be needed.

III. BASIN TOUR

11. Finally, the Parties request that the Special Master conduct a basin tour that will include features of the Rio Grande Basin important to the Settlements. Special Masters in other interstate water disputes have found site visits to be valuable. *See, e.g., Kansas v. Colorado*, No. 108, Orig., Special Master Report, vol. 1 at 22-23 (July 29, 1994).

12. The irrigation season provides the best opportunity for a site visit. Therefore, the Parties propose that the site visit for the Special Master be scheduled for June 17 and 18, 2025. The site visit will begin at Elephant Butte Reservoir¹ and end at the City of El Paso.

13. The Parties will plan the site visit and provide the Special Master with an itinerary not later than June 13, 2025.

WHEREFORE, the Parties respectfully request that the Special Master enter an order (1) vacating the June 9, 2025 trial date; (2) scheduling a hearing on the Settlements for September 18 and 19, 2025, or as soon thereafter in September as the Special Master is available; (3) ordering that motions related to the Settlements

¹ Travel time from Albuquerque to Elephant Butte Reservoir is approximately 2 hours and 20 minutes by car.

be filed no later than August 29, 2025; (4) scheduling a site visit for the Special Master on June 17 and 18, 2025; and (5) ordering the Parties to submit an itinerary for the site visit no later than June 13, 2025.

Respectfully submitted,

By: /s/ Stuart L. Somach

Counsel for the State of Texas

STUART L. SOMACH*
THERESA C. BARFIELD
SARAH A. KLAHN
SOMACH SIMMONS & DUNN, PC
*Counsel of Record

KEN PAXTON
Attorney General of Texas
BRENT WEBSTER
First Assistant Attorney General
RALPH MOLINA
Deputy First Assistant Attorney
General
AUSTIN KINGHORN
Deputy Attorney General for Civil
Litigation
KELLIE E. BILLINGS-RAY
Chief, Environmental Protection
Division
H. CARL MYERS
Deputy Chief, Environmental
Protection Division
WESLEY S. WILLIAMS
Assistant Attorney General
OFFICE OF THE ATTORNEY
GENERAL OF TEXAS
ENVIRONMENTAL PROTECTION
DIVISION

By: /s/ Thomas K. Snodgrass

D. JOHN SAUER
Solicitor General
ADAM R.F. GUSTAFSON
Acting Assistant Attorney General
EDWIN S. KNEEDLER
Deputy Solicitor General
FREDERICK LIU
Assistant to the Solicitor General

THOMAS K. SNODGRASS
JUDITH E. COLEMAN
JENNIFER A. NAJJAR
JEFFREY N. CANDRIAN
Attorneys
U.S. DEPARTMENT OF JUSTICE
ENVIRONMENT & NATURAL
RESOURCES DIVISION

Counsel for the United States

By: /s/ Jeffrey J. Wechsler

RAÚL TORREZ
New Mexico Attorney General
JAMES GRAYSON
Chief Deputy Attorney General
JULIE ANN MEADE
Assistant Attorney General
NEW MEXICO OFFICE OF THE
ATTORNEY GENERAL

JEFFREY J. WECHSLER*
SHELLY DALRYMPLE
KALEB W. BROOKS
Special Assistant Attorneys General
SPENCER FANE LLP
*Counsel of Record

BENNETT W. RALEY
LISA M. THOMPSON
MICHAEL A. KOPP
Special Assistant Attorneys General
TROUT RALEY

JOHN B. DRAPER
CORINNE E. ATTON
Special Assistant Attorneys General
DRAPER & DRAPER LLC

Counsel for the State of New Mexico

By: /s/ Chad M. Wallace

PHILIP J. WEISER
Attorney General of Colorado
ANDREA WANG
Deputy Solicitor General
LAIN LEONIAK
First Assistant Attorney General
CHAD M. WALLACE*
Second Assistant Attorney General
PRESTON V. HARTMAN
Senior Assistant Attorney General
COLORADO DEPARTMENT OF
LAW
*Counsel of Record

Counsel for the State of Colorado

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CERTIFICATE OF SERVICE

This is to certify that on May 15, 2025, I caused a true and correct copy of the **Joint Motion of Texas, New Mexico, Colorado, and the United States to Vacate the June 9, 2025 Trial Date and Set a Hearing Date on Motions Related to Settlement** 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 and the Special Master through the Third Circuit Case Management and Electronic Case Filing (CM/ECF) System.

Respectfully submitted this 15th day of May, 2025.

/s/ Jeffrey J. Wechsler

Jeffrey J. Wechsler
Spencer Fane LLP