

**IN THE UNITED STATES DISTRICT COURT  
FOR THE WESTERN DISTRICT OF TEXAS  
AUSTIN DIVISION**

UNITED STATES OF AMERICA,

*Plaintiff,*

v.

GREG ABBOTT, in his capacity as  
GOVERNOR OF THE STATE OF TEXAS,  
and THE STATE OF TEXAS,

*Defendants.*

Case No. 1:23-cv-00853-DAE

**PLAINTIFF UNITED STATES' UNOPPOSED MOTION FOR SIXTY-DAY STAY OF  
PROCEEDINGS AND CONTINUANCE OF TRIAL**

JAIME ESPARZA  
UNITED STATES ATTORNEY

LANDON A. WADE  
Assistant United States Attorney  
Texas Bar No. 24098560  
United States Attorney's Office  
Western District of Texas  
903 San Jacinto Blvd., Suite 334  
Austin, TX 78701  
(512) 370-1255 (tel)  
(512) 916-5854 (fax)  
[Landon.wade@usdoj.gov](mailto:Landon.wade@usdoj.gov)

TODD KIM  
ASSISTANT ATTORNEY GENERAL  
Environment & Natural Resources Division

BRIAN H. LYNK  
Senior Trial Counsel  
DC Bar No. 459525  
BRYAN J. HARRISON  
Trial Attorney  
FL Bar No. 106379  
KIMERE J. KIMBALL  
Trial Attorney  
CA Bar No. 260660  
ANDREW D. KNUDSEN  
Trial Attorney  
DC Bar No. 1019697  
U.S. Department of Justice  
Environmental Defense Section  
P.O. Box 7611  
Washington, DC 20044  
(202) 514-6187 (Lynk)  
(202) 514-8865 (fax)  
[Brian.lynk@usdoj.gov](mailto:Brian.lynk@usdoj.gov)

Dated: August 1, 2024

*Counsel for the United States of America*

Plaintiff the United States of America hereby moves, without opposition, for a sixty-day stay of all district court proceedings and continuance of the trial in this matter, which currently is scheduled to commence at 9AM CT on Tuesday, August 6. ECF 97 at 2. This continuance is necessary due to an en banc opinion announced on Tuesday night, July 30, 2024, by the Fifth Circuit Court of Appeals, ruling on the merits of Defendants' interlocutory appeal from this Court's September 6, 2023 preliminary injunction order (ECF 50). Attachment 1.

The en banc opinion reversed the Court's preliminary injunction order, and remanded with instructions to vacate the preliminary injunction and for further proceedings consistent with the en banc opinion. Attachment 1 at 29. More specifically, the en banc opinion reversed the preliminary injunction order with respect to significant issues relating to determining navigability based on historic use and on susceptibility to use with reasonable improvements. *Id.* at 19, 23. The United States thus seeks a 60-day and continuance in order to evaluate the en banc opinion, consider appropriate next steps in the district court proceedings in light of the opinion (including necessary consultation with client agencies), and thereafter advise Defendants and the Court on how the United States proposes to proceed.

The United States respectfully emphasizes the importance of a ruling as soon as possible on this motion, which would serve the convenience of the Court, both parties, and the many witnesses that shortly will have to travel to Austin to be available for the current trial date. The United States intends to provide an as-filed courtesy copy of this motion to the Courtroom Deputy (along with Defendants' counsel), who already has been in touch with the parties this week concerning trial logistical matters.

For the above reasons, the United States requests that the Court grant this motion and issue an order: (1) staying all proceedings in this Court for sixty days; (2) continuing the start date and

time of trial until Monday, October 7, 2024, or the next available date and time thereafter; and (3) requiring that the parties file by Monday, September 23, 2024, following meet and confer, a Joint Advisory communicating to the Court their respective positions (whether or not agreed) on how to proceed in this matter. A proposed order granting such relief is attached.

Respectfully submitted,

Dated: August 1, 2024

JAIME ESPARZA  
UNITED STATES ATTORNEY

TODD KIM  
ASSISTANT ATTORNEY GENERAL  
Environment & Natural Resources Division

/s/ Landon A. Wade  
LANDON A. WADE  
Assistant United States Attorney  
Texas Bar No. 24098560  
United States Attorney's Office  
Western District of Texas  
903 San Jacinto Blvd., Suite 334  
Austin, TX 78701  
(512) 370-1255 (tel)  
(512) 916-5854 (fax)  
Landon.wade@usdoj.gov

/s/ Brian H. Lynk  
BRIAN H. LYNK  
Senior Trial Counsel  
DC Bar No. 459525  
ANDREW D. KNUDSEN  
Trial Attorney  
DC Bar No. 1019697  
KIMERE J. KIMBALL  
Trial Attorney  
CA Bar No. 260660  
BRYAN J. HARRISON  
Trial Attorney  
FL Bar No. 106379  
U.S. Department of Justice  
Environmental Defense Section  
P.O. Box 7611  
Washington, DC 20044  
(202) 514-6187 (Lynk)  
(202) 514-8865 (fax)  
Brian.lynk@usdoj.gov  
Kimere.kimball@usdoj.gov  
Andrew.knudsen@usdoj.gov  
Bryan.harrison@usdoj.gov

*Counsel for the United States of America*

**CERTIFICATE OF CONFERENCE**

Pursuant to W.D. Tex. Rule CV-7(G), I certify that on July 31, 2024, counsel for the United States advised counsel for Defendants of its intent to file this motion and summarized its reasons for moving. Defendants responded as follows: “Defendants will not oppose the Plaintiff’s motion for a 60-day continuance and stay of all district court proceedings. Defendants will proceed during that time with their pending petition for writ of mandamus and continue to believe a stay of trial is appropriate until the Fifth Circuit rules on that petition.”

**CERTIFICATE OF SERVICE**

I certify that on August 1, 2024, a copy of this filing was served on counsel of record through the Court’s electronic filing system.

/s/ Brian H. Lynk  
Brian H. Lynk