STATE OF MICHIGAN

COURT OF CLAIMS

DAVID KRIEGER, et al.,

Plaintiffs,

v

Case Nos. 20-000094-MM; 20-000102-MM; 20-000103-MM; 20-000111-MM; 20-000112-MZ; 20-000116-MM; 20-000118-MM; 20-000121-MM; 20-000140-MM; 20-000151-MM; 20-000156-MM; 20-000230-MM; 20-000232-MZ; 20-000233-MM; 20-000235-MM; 20-000236-MM; 20-000237-MM; 20-000239-MM; 20-000240-MZ; 20-000241-MM; 20-000245-MM; 20-000246-MM; 20-000257-MM; 20-000260-MM; 20-000262-MM; 23-000073-MM; 23-000074-MZ; 23-000076-MM

MICHIGAN DEPARTMENT OF ENVIRONMENT, GREAT LAKES, AND ENERGY, et al.,

Hon. James Robert Redford

Defendants.

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ORDER REGARDING TRIAL FOLLOWING 11/6/2025 STATUS CONFERENCE

On November 6, 2025, counsel for both parties appeared for a status conference. The discussion included agenda items submitted by plaintiffs' and defendants' respective counsel prior to the conference, related to procedures and requirements set forth in this Court's August 11, 2025 Amended Notice of Trial and Pretrial Order (August 11 Order). Having heard counsels' arguments, the Court hereby amends and supplements the August 11 Order as follows:

IT IS HEREBY ORDERED:

1. **Exchange of Trial Witness Lists and Intended Trial Exhibits**

Counsel must work collaboratively and prepare the joint Exhibit Book and joint Exhibit Chart described in ¶ 4 of the August 11 Order. To facilitate collaboration, the Court directs as follows:

a. On or before November 14, 2025, to the extent they are able, plaintiffs shall provide defendants with a preliminary list of all individuals they intend to call as trial witnesses as well as

any intended trial exhibits. Defendants shall, to the extent they are able, provide the same to plaintiffs on or before November 21, 2025.

b. On or before November 19, 2025, plaintiffs shall provide defendants with a list of all intended trial witnesses, along with a copy of each trial exhibit that plaintiffs intend to seek admission. Plaintiffs shall begin preparing the Exhibit Chart in the format described in ¶ 4(c) of the August 11 Order by listing their intended exhibits. The Exhibit Chart shall be provided to defendants on or before November 19, 2025, as well.

On or before November 26, 2025, defendants shall edit the Exhibit Chart began by plaintiffs to include defendants' intended exhibits on the Exhibit Chart and provide plaintiffs with a copy of this. Defendants shall also provide plaintiffs with a list of all intended trial witnesses and a copy of each trial exhibit on or before November 26, 2025.

Exhibits exchanged by the parties pursuant to this ¶ 1(b) shall be appropriately marked and identified, and provided in an electronic format that all parties can easily access.

c. The parties shall meet and confer, in good faith, to identify those exhibits for which they can stipulate as to admissibility and those which are contested. The Exhibit Chart described in ¶ 4(c) of the August 11 Order shall be finalized to include this information, and the exhibits in the Exhibit Book shall be separated by sections described in ¶ 4(d) of the August 11 Order.

d. The Court expects that the parties will work, in good faith, to identify all witnesses and exhibits by the dates set forth in ¶ ¶ 1(a) and 1(b) above. If any witness or exhibit is identified after these dates, plaintiffs must provide defendants with a supplement to their previously-provided witness lists and Exhibit Book no later than December 5, 2025. Defendants must do the same no later than December 12, 2025.

e. Absent conditions of a truly exceptional nature and not able to have been anticipated before trial, if a party offers an exhibit at trial that is not in the Exhibit Book or calls a witness that has not been identified in accordance with the paragraphs above, neither the undisclosed exhibit nor witness shall be admitted or allowed to provide testimony or be used in any manner at trial, including cross-examination and impeachment. A party seeking to offer a witness or exhibit not disclosed in accordance with ¶ ¶ 1(a)-(d) above must file a written motion with the Court describing the exceptional conditions and reasons why this could not have been anticipated before trial. The Court will consider oral motions made after trial begins on a showing that the party was not able to bring the condition to the Court's attention at any time prior to trial; however, this is strongly discouraged.

f. The Exhibit Book shall be prepared in both a physical book as well as a digital version (thumb drive, etc.). The parties shall provide the Court with four copies of the Exhibit Book; three for the judge and the judge's staff, and one for the Court of Claims Clerk's Office; as well as four digital versions.

g. The **Exhibit Books** must be provided to the Court thirty days before trial, or on or before **December 12, 2025,** along with each parties' **Final Pretrial Statement** described in ¶ 3 of the August 11 Order.

2. Trial Testimony

The Court strongly prefers in-person testimony from all individuals called as a witness at trial.

a. Expert witnesses must appear in-person for the totality of their testimony, whether on direct, cross-examination or rebuttal.

b. Non-expert witnesses may appear remotely by Zoom or other online videoconferencing platform **only** if the Court is without authority to secure the individual's presence via subpoena **and/or** a significant health condition prevents the individual from appearing in-person. Any party intending to call a non-expert witness to testify remotely must file a written motion with the Court in writing no later than one week before trial, or on or before January 5, 2026. Counsel must include a signed letter from the intended witness explaining why s/he is unable or unwilling to appear and testify in-person. If the Court finds that the circumstances warrant remote testimony, an order will issue approving the request, and the counsel who made the request must contact the Court's information technology staff to facilitate the remote testimony.

Except as otherwise expressly modified herein, the Court's August 11, 2025 Amended Notice of Trial and Pretrial Order remains in full force and effect.

Date: November 7th, 2025

James Robert Redford,
Judge, Court of Claims