

**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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**UNITED STATES OF AMERICA'S OCTOBER 2018 STATUS REPORT**

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The United States respectfully submits its October 2018 status report to the Special Master pursuant to paragraph 5 of the Case Management Plan dated September 6, 2018 (“CMP”).

**I. The United States’ Production of Documents**

Section 6.2.1.3 of the CMP approved by the Special Master on April 24, 2018, required the Parties to “[p]rovide a description by category and location of all documents, data compilations, and tangible things in the Parties’ possession, custody, or control that are relevant to disputed facts.” Acting in accordance with this provision, the United States served, on August 30, 2018, a set of initial disclosures on the other Parties and amici that included this information. At the August 28, 2018, status conference, the Special Master instructed the Parties to produce documents by September 30, 2018, that are relevant to disputed facts based on the Parties’ initial disclosures. Trans. Status Conf. Aug. 28, 2018, at [22].

Accordingly, on September 28, 2018 (the last business day of September), the United States uploaded to the Box.com file-sharing site an initial production of 16,021 documents, comprising 58,919 pages.<sup>1</sup> These documents are Bates-stamped, and were produced from the files of federal agencies including the Bureau of Reclamation (“Reclamation”), the United States Section of the International Boundary and Water Commission (“IBWC”), the State Department, the Bureau of Prisons, the United States Army, and the Department of Justice. Prior to the production deadline, counsel for the Parties were provided with accounts through which they can access the Box.com site, at no charge to them, and download the documents produced by the United States. In addition,

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<sup>1</sup> As discussed during the August 28 status conference, the United States is precluded from uploading documents from federal agencies to cloud-based file-sharing services that have not been certified by the Department of Justice. Only one such file-sharing service has received certification: the Justice Enterprise File Sharing (JEFS) system (utilized through Box.com). Accordingly, the United States has uploaded its document production to the Box.com site, where holders of accounts can download the documents within a 60-day window. For documents produced by other Parties, the United States intends to use the Veritext Vault.

Veritext has copied the documents produced by the United States from the Box.com site into the Veritext Vault, where the documents can be maintained for the duration of the litigation.

In addition, the United States gave notice to the Parties that the United States Geological Survey (“USGS”) has published online and made publicly available a model that simulates, among other things, groundwater-surface water interactions in the Rio Grande Project area. This model is called the Rio Grande Transboundary Integrated Hydrologic Model (“RGTIHM”). As of September 28, 2018, the USGS had posted on its website, at <https://pubs.er.usgs.gov/publication/ofr20181091>, an Open File Report and Errata, with instructions for obtaining the corrected model archive, including model executable, directly from USGS. USGS has also posted hydrologic and geospatial data used in developing RGTIHM at: <https://www.sciencebase.gov/catalog/item/5aff0a45e4b0da30c1bfcf5b>. Additional flow data compiled for the development of RGTIHM is posted at: <https://www.sciencebase.gov/catalog/item/5b326aa5e4b040769c1596bd>. Because the RGTIHM, including the data files noted above, is now publicly available, the United States has not uploaded it to the Box.com site, but nevertheless considers the model and its associated documentation to be part of the United States’ September 30, 2018, production of documents.

The United States will be supplementing its September 30 document production in the coming weeks. It was not possible to scan, upload, review, and produce all documents from federal agencies, which are relevant to disputed facts, by the September 30 deadline set by the Special Master. Thus, scanning, uploading, and review of documents from federal agencies continues. The United States has notified the other Parties that it intends to supplement its September 30 production, and anticipates that it will make an initial supplemental production on or about October 12 with further supplemental productions to follow.

## **II. Interim Stipulation Regarding the Veritext Vault**

The United States has also participated in discussions with the Parties over the protocols for use of the Veritext Vault, including cost sharing. The Parties submitted an Interim Stipulation to the Special Master on September 28, and are continuing to discuss the allocation of costs for the use of the Vault.

## **III. Index of Documents**

The Parties are also discussing the creation of an index system for documents produced in this case, as provided in Section 7.2.2 of the CMP. The United States anticipates that the system will also address the handling of Electronically Stored Information.

## **IV. Further Discovery**

Fact discovery commenced in this case on September 1, 2018. The United States is preparing written discovery and deposition notices that will be propounded in the coming weeks. In addition, the Parties have agreed to hold conference calls every two weeks to discuss discovery matters.

Respectfully submitted this 5th day of October, 2018,

/s/ Stephen M. Macfarlane  
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United States Department of Justice

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**OFFICE OF THE SPECIAL MASTER**

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**CERTIFICATE OF SERVICE**

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This is to certify that on the 5th day of October, 2018, I caused a true and correct copy of **UNITED STATES OF AMERICA'S OCTOBER 2018 STATUS REPORT** to be served upon the Special Master via electronic and U.S. Mail, as indicated below:

**Special Master**

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On the 7th day of September, 2018, **UNITED STATES OF AMERICA’S SEPTEMBER 7, 2018 STATUS REPORT** was served via electronic mail and/or U.S. Mail as indicated, upon those individuals listed on the Service List, attached hereto.

Respectfully submitted,

/s/ Seth C. Allison

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