

**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 UNOPPOSED MOTION TO VACATE AND EXTEND  
DEADLINES FOR THE FILING OF RESPONSES TO MOTIONS ON PLEADINGS AND  
MOTIONS FOR PARTIAL SUMMARY JUDGMENT**

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The United States, by and through its undersigned attorneys, hereby moves the Special Master to extend the deadlines for the filing of all briefs responsive to the Motions on Pleadings and Motions for Partial Summary Judgment filed by the parties on December 21 and December 26, 2018, and all reply briefs. Those deadlines are currently January 23, 2019 for responses to the motions, and February 7, 2019 for replies. Due to the partial lapse in appropriations and ongoing partial shutdown of the federal government, the United States respectfully requests that these deadlines be vacated and new deadlines be set based on the number of days of the government shutdown beginning on and including December 26, 2018, or 28 days from the restoration of funding, whichever is shorter. As grounds for this motion, the United States states as follows:

1. The November 21, 2018 Amendment to the Case Management Plan adopted modified deadlines for future proceedings, including a December 24, 2018 deadline for the filing of Motions for Judgment on the Pleadings and Motions for Partial Judgment regarding “law of the case” or matters previously decided. The Special Master subsequently extended the December 24 deadline to December 26, per Notice to Counsel dated December 19, 2018. On December 21, 2018, ahead of the government shutdown, the United States filed its motion for judgment on the pleadings against New Mexico’s counterclaims 2, 3, 5, 6, 7, 8, and 9. On December 26, Texas filed (1) a request for a judicial declaration to confirm the legal issues previously decided and motion in limine to exclude the introduction of evidence thereon, and (2) a motion to strike or for partial judgment regarding New Mexico’s counterclaims and affirmative defenses, under Federal Rules of Civil Procedure 12(c) and 56. On December 26, New Mexico filed a motion for partial judgment on matters previously decided and brief in support. Under the amended Case Management Plan issued by the Special Master on November 21, 2018, responses to these motions are due January 23, 2019, and replies are due February 7, 2019. The Special Master has scheduled an in-person oral argument on these motions for February 19, 2019, in Denver.

2. At the end of the day on December 21, 2018, the appropriations act that had been funding the Department of Justice (“Department”) expired and appropriations to the Department lapsed. The same is true for several other Executive agencies, including the Departments of the Interior, State, and the U.S. Section of the International Boundary and Water Commission. The Department does not know when funding will be restored by Congress. Absent an appropriation, Department of Justice attorneys and employees of the federal agencies referenced above are prohibited from working, even on a voluntary basis, except in very limited circumstances, including “emergencies involving the safety of human life or the protection of property.” 31 U.S.C. § 1342.

3. The government shutdown has impaired the ability of Department of Justice attorneys to review the motions filed on December 26 by Texas and New Mexico, to confer internally and with client agency contacts about those motions, and to prepare responses to the motions presently due on January 23.

4. The ongoing government shutdown is prejudicing the United States’ ability to fully and adequately respond to the motions filed by Texas and New Mexico, and demonstrates good cause for extending the deadlines for the filing of responsive briefs to the pending motions and reply briefs. Because the date of the end of the shutdown is unknown, the United States requests that the deadlines be extended for a period of time equal to either the number of days between December 26 and the restoration of government funding, or 28 days from the restoration of funding, whichever is shorter.

5. The United States has contacted the other parties to this matter. The State of Texas does not oppose the requested extension. The States of Colorado and New Mexico do not object to the continuance provided it applies to all parties.

6. The United States does not seek to continue the February 19, 2019 date for the hearing on these motions at this time, but will do so when the government shutdown is resolved. If this

motion for a stay is granted, undersigned counsel will notify the Court as soon as Congress has appropriated funds for the Department.

WHEREFORE, the United States respectfully requests that the Special Master issue an order vacating the January 23, 2019 deadline for the filing of all responsive briefs and the February 7, 2019 deadline for all reply briefs, and set new dates for the filing of responses and replies for a period of time equal to the number of days between December 26 and the restoration of government funding, or 28 days from the restoration of funding, whichever is shorter.

Respectfully submitted this 8th day of January, 2019,

/s/ James J. DuBois  
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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 8th day of January, 2019, I caused a true and correct copy of **UNITED STATES OF AMERICA’S UNOPPOSED MOTION TO VACATE AND EXTEND DEADLINES FOR THE FILING OF RESPONSES TO MOTIONS ON PLEADINGS AND MOTIONS FOR PARTIAL SUMMARY JUDGMENT** to be served upon the Special Master via electronic and U.S. mail, as indicated below:

**Special Master**

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On the 8th day of January, 2019, **UNITED STATES OF AMERICA’S UNOPPOSED MOTION TO VACATE AND EXTEND DEADLINES FOR THE FILING OF RESPONSES TO MOTIONS ON PLEADINGS AND MOTIONS FOR PARTIAL SUMMARY JUDGMENT** 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/ D. Zachary Wall

D. Zachary Wall, Contract Law Clerk  
PAE | United States Department of Justice

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