

**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 MARCH 2019 STATUS REPORT**

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The United States respectfully submits its March 2019 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**

The status of the United States’ production of documents is summarized in the United States’ December 2018 status report, filed with the Special Master on December 7, 2018. The United States continues to review potentially discoverable documents and supplement its production of documents as responsive documents are identified and become available for production.

**II. Production of Electronically Stored Information (“ESI”)**

The United States has participated in negotiation of the Stipulation for the production of ESI entered into by the parties and filed with the Special Master on November 14, 2018. The parties are currently negotiating agreed upon search terms for their initial sweep of computer, email and electronic systems for ESI. The parties are currently attempting to test and refine the search terms in order to limit the use of terms that result in over-broad collection of tens of thousands of documents irrelevant to the facts and issues of this case. The United States participated in a conference call of counsel on March 1, 2019, to discuss these and other discovery matters.

**III. Index of Documents**

The Parties continue to discuss 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 ESI.

#### **IV. Further Discovery**

Fact discovery commenced in this case on September 1, 2018. Depositions of fact witnesses have commenced. The United States participated in depositions of fact witnesses in Las Cruces, N.M. on February 5-6, and 26, 2019. Written discovery has been propounded on New Mexico by Texas, and on Amici by New Mexico. The United States anticipates that additional written discovery will be propounded in the near future. The United States participated in a conference call of counsel on March 1, 2019, to discuss the scheduling for the depositions of an additional 21 witnesses.

#### **V. Motions on Pleadings and Motions for Partial Judgment**

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. Pursuant to the amended case management plan issued by the Special Master on January 31, 2019, the parties filed their responses to these motions on February 28, 2019, and replies are due March 15, 2019. The Special Master has scheduled an in-person oral argument on these motions for April 2, 2019, in Denver.

Respectfully submitted this 1st day of March, 2019,

*/s/ James J. DuBois*

James J. DuBois, Attorney

United States Department of Justice

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CERTIFICATE OF SERVICE

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This is to certify that on the 1st day of March, 2019, the **UNITED STATES OF AMERICA'S MARCH 2019 STATUS REPORT** was served via electronic mail and/or U.S. mail as indicated, upon the Special Master and those individuals listed on the Service List, attached hereto.

Respectfully submitted,

*/s/ Seth C. Allison* \_\_\_\_\_

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