

**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 FEBRUARY 2020  
STATUS REPORT**

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The United States respectfully submits its February 2020 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**

Pursuant to the CMP and Rule 26(a)(1) of the Federal Rules of Civil Procedure, the State of Texas, the State of New Mexico, the State of Colorado and the United States uploaded their respective initial document productions to the Veritext Vault document storage system through mutually agreed-upon means. As described in prior Status Reports, the United States uploads its documents to the Box.com file-sharing site, and Veritext transfers the documents to the Veritext Vaults. The United States has currently produced 78,846 documents, comprising of 478,178 pages. These documents 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, and the United States Army. The United States continues to review potentially discoverable documents and will 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 participated in the 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 then engaged in the negotiation of search protocol, terms and custodians for their sweep of computer, email and electronic systems for ESI. An agreement on search criteria was reached on July 19, allowing the parties to begin the ESI search. The United States subsequently commenced its search for ESI information in numerous Department of Interior electronic databases. As previously reported, certain errors in the search terms (misspellings, words with overbroad results) were addressed in further discussions with the parties. The United States ran the modified search term selection and search of ESI

databases.

The United States is in the process of gathering and reviewing documents from all relevant agencies. Over 300,000 files were collected from Reclamation as a result of Reclamation's ESI search, and are being reviewed. The United States made its initial ESI production on October 18, 2019 and produced 12,221 documents, comprising of 44,065 pages. On January 13, 2020, the United States made its first Supplemental ESI Production and produced 5,265 documents, consisted of 46,470 pages. The United States is also reviewing ESI production received from the United States Section of the IBWC. The United States will continue rolling production of its ESI through February, and beyond as needed.

### **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. Written discovery has been propounded on New Mexico by Texas, on Amici by New Mexico, on Texas by New Mexico, on El Paso County Water Improvement District No.1 by New Mexico, and on New Mexico by the United States. The United States has received New Mexico's responses to the United States' written discovery, and on September 5, 2019 received New Mexico's discovery requests on the United States. The United States participated in discovery calls among the parties on July 8, July 10, July 12, August 9, September 5, September 18, and November 22, December 5, and January 16. The United States served objections to New Mexico's interrogatories and requests for production of documents on October 19, 2019. The United States served responses to New Mexico's Requests for Admission on November 4, 2019, responses to New Mexico's Interrogatories on November 19, 2019, and responses to New Mexico's Requests for Production of Documents on December 4, 2019. The United States is preparing a supplement to its

responses to New Mexico's Interrogatories. The United States is also reviewing expert reports served by New Mexico, and has commenced depositions of New Mexico experts.

Pursuant to Section 6.2.2 of the September 6, 2018 Case Management Plan, the United States served its initial expert witness reports and expert designations and disclosures on the parties on May 31, 2019. On September 16, the United States served supplemental expert witness reports and disclosures. The expert reports, and supporting materials, were served on the other parties via Veritext. The United States served rebuttal expert designations on the parties on December 30, 2019. On February 6, 2020, the United States served supplemental disclosures of expert witness information for rebuttal experts Ferguson and Estrada-Lopez.

Depositions of expert witnesses have commenced. The parties are scheduling depositions of expert witnesses in February 2020.

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

Under the amended case management plan, the United States filed a motion for judgment on the pleadings against New Mexico's counterclaims 2, 3, 5, 6, 7, 8, and 9 on December 21, 2018. On December 26, 2018, 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, 2018, New Mexico filed a motion for partial judgment on matters previously decided and brief in support. The Special Master held an in-person oral argument on these motions on April 2, 2019, in Denver.

#### **VI. Motion to Intervene of the Pre-Federal Claimants**

Finally, on June 17, 2019, the United States Supreme Court referred to the Special Master the Motion to Intervene filed by the Pre-Federal Claimants. The United States filed an opposition to the Pre-Federal Claimants' Motion to Intervene on May 20, 2019. The Special Master heard oral argument on the Pre-Federal Claimants' Motion to Intervene on July 1, 2019, in which the United

States participated. On December 2, 2019, the Special Master issued a Second Interim Report recommending that the Court deny this Motion to Intervene. The Supreme Court issued an order denying the Pre-Federal Claimants' Motion to Intervene on January 13, 2020.

Respectfully submitted this 7th day of February, 2020.

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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 7th day of February 2020, the **UNITED STATES OF AMERICA'S FEBRUARY 2020 STATUS REPORT** was served via electronic mail and/or U.S. mail as indicated, upon the individuals listed on the Service List, attached hereto.

Respectfully submitted,

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