

No. 141, Original

**In the
SUPREME COURT OF THE UNITED STATES**

STATE OF TEXAS,

Plaintiff,

v.

**STATE OF NEW MEXICO and
STATE OF COLORADO,**

Defendants

OFFICE OF THE SPECIAL MASTER

UNITED STATES' STATUS REPORT

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UNITED STATES' STATUS REPORT

The United States provides the following status report addressing the items listed for discussion and identifying other topics for consideration at the status conference on November 29, 2022.

1. **Access to Status Conference.** The States' Motion for entry of their proposed consent decree ("Motion for Decree") and the United States' Motion to Strike were filed under seal in order to protect confidential settlement information. Portions of the status conference may also need to be closed to the extent that confidential settlement information may be discussed.

2. **Status of the United States' Motion to Strike.** On November 23, 2022, the United States filed its Motion to Strike and requested expedited consideration so that the Motion could be decided sufficiently in advance of the United States' deadline to respond to the States' Motion for Decree. El Paso County Water Improvement District No. 1 filed a memorandum ("EPCWID Mem.") in support of the United States' Motion to Strike on November 26. The States have indicated that they will respond to the Motion to Strike "if directed to do so by the Special Master." States' Motion to Unseal, Sp. M. Docket No. 728, at 3 n.2. The United States respectfully requests that it be given an opportunity to file a written reply to any response the States or their *amici* may submit, including any response made prior to or during the status conference.

3. **Amici access to sealed filings.** The United States opposes the distribution of sealed documents to the amici in this case for the reasons stated in its Motion for Leave to File Under Seal, filed November 18, 2022. Further, in August, when the United States gave its consent to sharing settlement documents with the amici, that consent was expressly limited to

documents “*provided during the period August 26, 2022 to September 23, 2022.*” See EPCWID Mem. Ex. 2 (emphasis added). If amici are granted access to any additional sealed filings over the United States’ objection, the United States agrees with the New Mexico amici that a clear procedure should be established under which the Court would supervise distribution of the documents and maintain a record of which individuals have obtained access to them. At this time the United States does not know which of the amici client representatives have signed the addendum in addition to the amici counsel.

4. **Motion to Clarify Hearing Procedures.** On November 18, 2022, the States filed a Motion to Clarify Procedures for the Hearing on their Proposed Decree (“Motion to Clarify”), in which they requested a five-day evidentiary hearing on their Motion for Decree and made various contentions about the applicable legal standards. The United States opposes the Motion to Clarify because it is premature. If the United States’ Motion to Strike is granted, the States cannot present their Proposed Decree for approval, and the Motion for Decree will be moot. If the Motion to Strike is denied, the United States would address the applicable legal standards in its response to the States’ Motion for Decree, in connection with the United States’ argument that the Motion for Decree fails as a matter of law. Therefore, if the Motion to Strike is denied, the United States respectfully submits that the Special Master should first hold a hearing on the legal issues raised in the briefing, which may be dispositive, and then address the procedures for the evidentiary hearing, if any.

5. **Motion to Unseal.** The States’ Motion to Unseal, filed November 23, will not be ripe for decision at the status conference on November 29. The United States respectfully submits that the Motion to Unseal is premature because an order striking the challenged documents from the record could make a decision as to the sealing or unsealing of those

documents unnecessary. The United States reserves the right to file a written response to the Motion to Unseal and respectfully requests that the deadline for its response be set after a determination on the Motion to Strike.

6. **Briefing and Hearing Schedule.** As noted, the United States has requested a determination on the Motion to Strike sufficiently in advance of its deadline to respond to the States' Motion for Decree, and the United States opposes the States' Motion to Clarify and Motion to Unseal as premature until the Motion to Strike is decided. The United States therefore respectfully submits that all response and reply deadlines other than those pertaining to its Motion to Strike should be continued until the Motion to Strike has been decided. At a minimum, the United States would like to discuss a continuance of its deadline to respond to the States' Motion for Decree, to allow sufficient time for briefing and decision on the Motion to Strike. The United States' response to the Motion for Decree is currently due January 6, 2023.

Respectfully submitted this 28th day of November, 2022,

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CERTIFICATE OF SERVICE

This is to certify that on the 28th day of November, 2022, I caused a true and correct copy of the **UNITED STATES' STATUS REPORT** to be served via electronic mail upon those individuals listed on the Service List, attached hereto.

Respectfully submitted,

/s/ Judith E. Coleman
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Special Master

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