

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

**STATE OF NEW MEXICO'S RESPONSE TO STATE OF TEXAS'S
SECOND EVIDENTIARY OBJECTIONS**

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February 22, 2021

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This brief is in response to the *State of Texas’s Objections and Reply to the State of New Mexico’s Consolidated Statement of Facts and Appendix 1 Filed by New Mexico in Response to Texas’s Motion for Partial Summary Judgment* (“Tex. 2d Objections”) filed February 5, 2021.

INTRODUCTION

For the reasons set forth below, all of Texas’s evidentiary objections in the Texas 2nd Objections are unjustified and serve only to divert the attention of New Mexico—and the Special Master—from the substantive issues in this case. Texas’s evidentiary objections should be overruled and its requests for relief denied.¹

Many of Texas’s current objections were previously raised in Texas’s Evidentiary Objections and Responses to the State of New Mexico’s Facts (Dec. 22, 2020) [Dkt. 431]. New Mexico fully rebuked those prior objections, including Texas’s mischaracterization of the admissibility of expert declarations and expert reports, in New Mexico’s Response to the State of Texas’s Evidentiary Objections (Feb. 5, 2021) [Dkt. 468], and those prior responses are fully incorporated herein.

ARGUMENT

I. TEXAS’S OBJECTION TO THE “CONSOLIDATED STATEMENT OF FACTS” IS BASELESS

A. New Mexico’s Consolidated Statement of Material Facts Is Legally Proper and Practical

Texas’s request for the Court to strike New Mexico’s Consolidated Statement of Material Facts (“CSMF”) based on alleged procedural and substantive impropriety is without merit and should be ignored in its entirety. *See* Tex. 2d Objections at 1-2. Texas fails to cite any case law

¹ Concurrent with this response to Texas 2nd Objections, New Mexico has filed a Response to the United States of America’s Motion to Strike Declarations. To the extent that the Texas 2nd Objections raises any of the same issues as the United States Motion to Strike, New Mexico incorporates its responses to those United States objections, by reference, herein.

or Supreme Court rule that prohibits a consolidated, separate statement of material facts, and New Mexico is not aware of any such rule. A consolidated statement in no way hinders the Court's ability to evaluate the parties' pending motions, responses, and replies. In fact, it streamlines the Court's ability to sift through and evaluate the evidence by providing a centralized document for ease of reference.

Texas claims that the CSMF creates confusion,² but any confusion in the evidentiary record originates from Texas's disregard of standard summary judgment practice. Texas did not discretely enumerate its alleged material facts in its Motion for Partial Summary Judgment, causing New Mexico to expend significant time and resources compiling the evidence sprinkled throughout that motion. *Compare generally* State of Texas's Motion for Partial Summary Judgment (Nov. 5, 2020) at 1-106 *with* State of New Mexico's Response to the State of Texas's Motion for Partial Summary Judgment, Appendix 1 (Dec. 22, 2020) ("Appendix 1") (identifying and enumerating Texas's facts to allow for a proper response).

Federal Rule of Civil Procedure 83 allows federal district courts to promulgate local practice rules, and in many jurisdictions a separate statement of material facts is standard practice. *See Ayala-Gerena v. Bristol Myers-Squibb Co.*, 95 F.3d 86, 95 (1st Cir. 1996) (upholding summary judgment for appellees based on failure of appellant to provide a separate statement of disputed facts); *State Auto Prop. & Cas. Ins. Co. v. LaGrotta*, 529 Fed. Appx. 271, 273 (3d Cir. 2013) (addressing defendant's failure to comply with local rule requiring separate statement of material facts to accompany motion); *Eason v. Nolan*, 416 Fed. Appx. 569, 569 (7th Cir. 2011) (affirming

² Texas also asserts that the CSMF does not differentiate as to what facts and evidence the individual CSMFs are proffered to support. This is incorrect. The individual CSMFs accurately identify the summary judgment brief and material facts which they support in the brackets at the end of the CSMF.

summary judgment for defendants based on failure of plaintiff to submit a separate statement of additional facts).

Because there is no controlling Supreme Court rule or precedent that disallows a consolidated statement of facts—and because New Mexico’s CSMF was submitted out of practical consideration for the Court—Texas’s request should be outright denied as baseless and legally unsupported.

B. Response to Texas’s “Exhibit A”

Texas’s “Exhibit A” is a copy of New Mexico’s CSMF with additional columns annotating Texas’s evidentiary and substantive objections. *See* Tex. 2d Objections at 2-4. Texas also raises numerous evidentiary objections (see response below to Objections #1-#9), including requests to strike materials and declarations, to which New Mexico must respond to assure the Court that New Mexico’s evidence is appropriately submitted for consideration on summary judgment. *See* Tex. 2d Objections at 5-37. These specific Texas’s Objections (Objections #1- #9) are addressed below.

Attachment A hereto is a copy of Texas’s “Exhibit A” modified to remove irrelevant columns and to provide a column for New Mexico’s “Response to Texas Evidentiary Objections” (far right column on table), in which New Mexico responds to Texas’s individual evidentiary objections. Texas’s current objections are almost entirely redundant of its prior objections, which New Mexico has already addressed. Out of an abundance of caution, however, New Mexico includes Texas’s duplicated objections in Exhibit A, notes where New Mexico previously addressed them, and notes where the specific responses to Objections # 1 through #9 below apply.

II. RESPONSE TO TEXAS’S OBJECTIONS TO NEW MEXICO’S APPENDIX 1

Because Texas did not provide enumerated facts in its Motion for Partial Summary Judgment, New Mexico created its Appendix 1 table identifying and responding to all the facts it could identify throughout the Texas brief. *See* § I(A), *supra*. Texas has copied that table and

added its substantive and evidentiary objections as its “Exhibit B.” *See* Tex. 2d Objections at 4-5. It is not appropriate for New Mexico to address Texas’s substantive objections from Texas’s reply filings at this point in the summary judgment process. However, it would be “unfair” to fail to consider evidence that Texas argues is inadmissible in its summary judgment reply brief because New Mexico has had no “meaningful opportunity to be heard on the evidentiary issue.” *Smith v. Bray*, 681 F.3d 888, 903 (7th Cir. 2012) (*overruled on other grounds by Ortiz v. Werner Enterprises, Inc.*, 834 F.3d 760 (7th Cir. 2016)).³

III. RESPONSE TO TEXAS’S GENERAL OBJECTIONS

Texas proffers twenty-eight pages of objections, most of which Texas previously raised, to New Mexico’s summary judgment evidence. *Compare* Tex. 2d Objections at 5-32 with Evidentiary Objections and Responses to the State of New Mexico’s Facts (Dec. 22, 2020). New Mexico already fully rebuked many of these objections, including Texas’s mischaracterization of the admissibility of expert declarations and expert reports. *See* New Mexico’s Response to the State of Texas’s Evidentiary Objections (Feb. 5, 2021).

Texas’s latest evidentiary objections include these same arguments and extend similar arguments upon additional New Mexico declarations and expert reports. Specifically, Texas now also seeks to strike all or portions of the first *and* second Barroll Declaration (NM-EX 001 and NM-EX 006), the first *and* second Lopez Declaration (NM-EX 003 and NM-EX 008), Mr. Lopez’s expert reports (NM-EX 107-110), the second Declaration of John D’Antonio, Jr. (NM-EX 007), the first Declaration of Ryan J. Serrano (NM-EX 010), the second Declaration of Rolf I. Schmidt-Petersen (NM-EX 009), and the Declaration of Lee Wilson, PhD (NM-EX 013). These objections

³ Rather than submit another lengthy table to the Special Master, New Mexico has simply identified Texas’s “Exhibit B” objections and New Mexico’s responses thereto in the applicable sections, as a footnote, below.

are labeled Objections #1 through #6 in Section III of Texas’s brief. Responses to each of the objections are addressed below in the order Texas submitted them.

A. Response to Objection #1: Declarations of Margaret Barroll, Ph.D. [NM Exhibits 001 and 006]

Texas objects to two declarations from Dr. Margaret Barroll, Ph.D. (NM-EX 001 and NM-EX 006). As in its previous December 22, 2020 objections, Texas argues certain paragraphs in the Barroll Declarations are inadmissible evidence to the extent they include statements to which she “has no personal knowledge” and to the extent she opines on “subject matters outside her area of expertise.”⁴ Tex. 2d Objections at 5-8. Texas specifically claims **paragraphs 15, 16, and 17** of the first Barroll Declaration (NM-EX 001) and **paragraph 8 and the second sentence of paragraph 9** of the second Barroll Declaration (NM-EX 006) should be stricken as evidence supporting New Mexico’s Motions for Partial Summary Judgment (Nov. 5, 2020) (“Motions”) and the New Mexico Response to the State of Texas’s Motion for Partial Summary Judgment (Dec. 22, 2020).

New Mexico addressed Texas’s arguments for paragraphs 15, 16, and 17 of the first Barroll Declaration (NM-EX 001) in New Mexico’s previous response. *See* New Mexico’s Response to the State of Texas’s Evidentiary Objections at 6-12 (Feb. 5, 2021). As explained therein, Texas’s arguments to exclude expert declarations due to lack of “personal knowledge” fail because Texas mischaracterizes the admissibility of expert declarations as dependent upon personal knowledge and does not acknowledge the extensive qualifications of the witnesses at issue.

⁴ Further, to the extent Texas claims in its Second Evidentiary Objections or its Exhibits A or B that Dr. Barroll asserts impermissible legal conclusions in her Declarations, Texas’s arguments fail for the reasons explained in the discussion of Texas’s legal conclusion objections to Mr. Lopez’s Declarations at pages 13-14, *infra*.

To begin, Federal Rule of Evidence 702 permits qualified persons to testify as an expert in support of a party and to offer reliable opinions on relevant matters within their expertise. Fed. R. Evid. 702. The qualifications of a proffered expert may be challenged at an appropriate stage in the litigation proceedings. However, the threshold for qualification at summary judgment is low: “Where an expert is not obviously unqualified, questions at the summary judgment stage as to the expert’s qualifications should rarely be resolved by exclusion of the evidence.” *Cal. Steel & Tube v. Kaiser Steel Corp.*, 650 F.2d 1001, 1003 (9th Cir. 1981). Dr. Barroll is extremely well qualified as demonstrated in her declaration and associated expert reports and easily meets the “not obviously unqualified” standard. Dr. Barroll is qualified by training, knowledge, and experience to offer her challenged expert opinion testimony, and Texas’s objections to her materials should be overruled.

Texas ignores additional Federal Rules of Evidence, particularly Rules 703 and 602, that negate their arguments on personal knowledge requirements for experts. Rule 703, entitled *Bases of An Expert’s Opinion Testimony*, states that “[a]n expert may base an opinion on facts or data in the case that the *expert has been made aware of or personally observed*. If experts in the particular field would reasonably rely on those kinds of facts or data in forming an opinion on the subject, they need not be admissible for the opinion to be admitted.” (emphasis added). Moreover, Rule 602, entitled *Need for Personal Knowledge*, states “[a] witness may testify to a matter only if evidence is introduced sufficient to support a finding that the witness has personal knowledge of the matter. Evidence to prove personal knowledge may consist of the witness’s own testimony. This rule *does not apply to a witness’s expert testimony under Rule 703.*” (emphasis added). As illuminated in *Daubert v. Merrell Dow Pharmaceutical, Inc.*, “[u]nlike an ordinary witness, see Rule 701, an expert is permitted wide latitude to offer opinions, including those that are not based

on firsthand knowledge or observation. See Rules 702 and 703. Presumably, this relaxation of the usual requirement of firsthand knowledge . . . is premised on an assumption that the expert’s opinion will have a reliable basis in the knowledge and experience of his discipline.” 509 U.S. 579, 592 (1993); see also e.g., *Estate of Castleberry v. United States*, 2019 WL 7596275, at *3 (D.N.M. 2019) (“An affidavit that an expert submits need not be based upon personal knowledge, provided that the affidavit complies with rules 702-705 of the Federal Rules of Evidence.” (citing *City of Chanute, Kan. v. Williams Natural Gas Co.*, 743 F.Supp. 1437, 1444 (D. Kan. 1990))).

Hence, Texas misapplies Federal Rule of Civil Procedure 56(c)(4) and wrongly claims that expert declarations supporting a motion for partial summary judgment must be made on personal knowledge or otherwise must be stricken. As explained in the Federal Rules of Evidence and applicable case law, the personal knowledge requirement is not applicable to expert declarations, including declarations submitted at the summary judgment stage. An expert “witness need not have observed or participated in the gathering of the data underlying his opinion. Rather, the personal knowledge requirement hinges on whether the expert personally analyzed the data that was ‘made known’ to him and formed an expert opinion based on his own assessment of the data within his area of expertise.” *Huber v. Howard County, Md.*, 1995 WL 325644, at *5 (4th Cir. 1995) (citing *Doe v. Cutter Biological, Inc.*, 971 F.2d 375, 385–86 & n.10 (9th Cir. 1992); *Colgan v. Fisher Scientific Co.*, 935 F.2d 1407, 1423 & n.15 (3d Cir. 1991)); see also *Marine Polymer Technologies, Inc. v. HemCon, Inc.*, 2009 WL 801826 (D.N.H. 2009) (“An expert who provides an affidavit with an opinion formed within his area of expertise and based on his own assessment or analysis of the underlying facts or data satisfies the personal knowledge requirement of Rule 56(e).”). Therefore, all challenges to any statement in the Barroll Declarations on the ground that

Dr. Barroll does not have personal knowledge of the facts and matters underlying such statement must fail.⁵

Texas further contends Dr. Barroll is not qualified to give the testimony contained in paragraphs 15-17 of the first Barroll Declaration (NM-EX 001) and paragraph 8 and the second sentence of paragraph 9 of the second Barroll Declaration (NM-EX 006) because it concerns “subject matters outside her area of expertise.” Tex. 2d Objections at 7-8. New Mexico fully addressed this argument as to the first Barroll Declaration in its earlier response. For convenience, New Mexico summarizes that response here.

Paragraphs 15-17 of the first Barroll Declaration (NM-EX 001) concern the Rio Grande Compact (“Compact”) definitions of the terms “Project Supply,” “normal release,” and “Project Storage.” Texas claims Dr. Barroll is not qualified to give testimony on the Compact because she stated in deposition that she is not an expert on the Compact. Tex. 2d Objections at 6-7. This argument mischaracterizes Dr. Barroll’s Declaration testimony and the scope of her expertise. Dr. Barroll’s Declaration recites her extensive prior experience with the processes and procedures applicable to water accounting in the Rio Grande Basin, including those used by the Rio Grande Project (“Project”). *See* NM-EX 001, Barroll Decl., ¶¶ 6-10.

From 1991 to 2017, Dr. Barroll worked for the New Mexico Office of the State Engineer (“OSE”). During her career at the OSE, Dr. Barroll was a staff member of the Hydrology Bureau where she developed groundwater models, including models that simulated the operations of surface-water irrigation systems. As a staff member of the Hydrology Bureau, Dr. Barroll also evaluated water right applications and provided support to the adjudication branch of the OSE and

⁵ This authority relating to qualifications and personal knowledge applies equally to Texas’s meritless objections to Gregory Sullivan, which Texas has not briefed but has buried within its “Exhibit A,” and New Mexico notes those instances in Attachment A hereto.

to the New Mexico Interstate Steam Commission (“ISC”). *Id.* at ¶ 6. Dr. Barroll’s professional involvement with Lower Rio Grande (“LRG”) issues within New Mexico and Texas started around 2000. Over the last 20 years, her work with LRG issues has involved, among other things, an in-depth review of Project records relating to Project allocation, accounting, operations and history; quantitative analysis of Project allocation and accounting; numerous field visits to the Project to identify and inspect infrastructure, and to observe farm management practices; numerous meetings and discussions with the personnel who manage the allocation, accounting and distribution of Project water; review and analysis of data and studies related to LRG surface water hydrology; groundwater modeling of the LRG aquifer system in New Mexico, including the hydrologic effects of the operations of the Project; analysis of groundwater level data both spatially and temporally; and conducting trend analyses of groundwater pumping meter data. *Id.* at ¶ 9.

This experience, knowledge, and training qualifies her to give testimony concerning the meaning of terms used in water accounting within the Project, including “Project Supply,” “normal release,” and “Project Storage.” Texas has not challenged Dr. Barroll’s expertise as to the Project or Project operations, nor could they since she is the foremost expert in the field. Additionally, the text of the Compact is the kind of fact an expert in Dr. Barroll’s field of expertise “would reasonably rely on . . . in forming an opinion.” Fed. R. Evid. 703. Texas’s objection to paragraphs 15-17 in the first Barroll Declaration should be overruled.

Dr. Barroll describes in paragraph 8 of her second Declaration (NM-EX 006) the definition of Project Storage and Usable Water. This is the same definition previously stated in paragraph 17 of her first Declaration, and therefore the same arguments from above apply. Moreover, Dr. Barroll simply recites Compact definitions as foundation for other declaration statements, and such Compact definitions are not in dispute. In the second sentence of paragraph 9, Dr. Barroll mentions

that the Compact has limits and constraints on upstream storage. This is a well-known and general statement about storage upstream from Elephant Butte Reservoir in New Mexico. Dr. Barroll worked for the State Engineer's office for 26 years and developed an understanding of storage operations within the state. This statement is well within Dr. Barroll's knowledge and expertise based on her experience.⁶

B. Response to Objection #2: Declarations and Expert Reports of Estevan R. Lopez, P.E. [NM Exhibit 003, NM Exhibit 008, and NM Exhibits 107-110]

Texas objects to two declarations of Estevan R. Lopez, P.E. (NM-EX 003 and NM-EX 008) and Mr. Lopez's expert reports (NM-EX 107 through NM-EX 110). Texas contends Mr. Lopez is not qualified to give the testimony contained in his declaration and similar opinions contained in his expert reports because they contain "legal conclusions, historical information, and statements regarding the operation of the Rio Grande Project" to which Texas claims Mr. Lopez has no personal knowledge and which fall outside his "area of expertise." Tex. 2d Objections at 8-12. Based on these claims, Texas requests that the following specific paragraphs from the Lopez Declarations be stricken: **paragraphs 4, 7, 12-15, 17, and 19-28** of the first Lopez Declaration (NM-EX 003) and **paragraphs 5-6, 8-12, 15, 17-26, 28, 30-31, 33-36, 38, and 40-41** of the second Lopez Declaration (NM-EX 008). Texas further requests that all references to "objectionable subject matter" contained within the Lopez expert reports also be stricken. Texas, however, does not identify the specific sections of Mr. Lopez's expert reports that contain "objectionable subject matter."

Texas already raised these arguments, and New Mexico explained in its earlier response that each of them were unsupported. Because Texas expands these arguments to include the

⁶ New Mexico's response herein applies to Texas's "Exhibit B" numbers 15, 88, 89, 93, 109, 121, 131, 133, 161, 164, 173, 174, and 194.

second Lopez Declaration, New Mexico summarizes its prior responses herein and addresses the new requests to strike portions of Mr. Lopez's second Declaration. As before, Texas's arguments fail because Texas misconstrues Mr. Lopez's deposition testimony and ignores Mr. Lopez's extensive experience and qualifications.

Mr. Lopez has extensive experience working for the New Mexico State Engineer's office, as well as working for the Bureau of Reclamation. *See* NM-EX 003, Lopez Decl., ¶¶ 3-10; *see also* NM-EX 107, Lopez Rep. at § 2.2 (describing Mr. Lopez's background in detail). Mr. Lopez served as the Commissioner for the Bureau of Reclamation from 2014 to 2017 where he directed all aspects of Reclamation business, managing water throughout seventeen (17) western states and almost 200 water projects. NM-EX 003, Lopez Decl. ¶¶ 4-5. Mr. Lopez also served for over ten years as the Director of the ISC, with the responsibility of directing New Mexico's rights and obligations for eight interstate stream compacts Compact. *Id.* at ¶ 7. Mr. Lopez also served as the Engineer Advisor to the New Mexico Rio Grande Compact Commissioner during this time. *Id.* at ¶ 8. By virtue of this extensive experience and knowledge, Mr. Lopez is uniquely qualified to testify concerning the administration of interstate stream compacts, the administration of the Compact, and his experience related to the Project. In light of this experience, Texas's objections are unavailing.

Additionally, for all of the reasons set out above for Dr. Barroll, the objection to any statement in the Lopez Declaration on the basis that Mr. Lopez does not have personal knowledge of the facts underlying such statement are entirely without merit. Under Federal Rule of Evidence 703, Mr. Lopez is entitled to "base an opinion on facts or data ... [he] has been made aware of or personally observed." "Unlike an ordinary witness ... an expert is permitted wide latitude to offer opinions, including those that are not based on firsthand knowledge or observation." *Daubert*, 509

U.S. at 592 (citing Fed. R. Evid. 702, 703). Therefore, all challenges to any statement in the Lopez Declaration on the ground that Mr. Lopez does not have personal knowledge of the facts and matters underlying such statement fails.

The quotes Texas cherry picks from Mr. Lopez's deposition specify that his experience related to the Compact is based primarily on his time at the ISC, that Mr. Lopez has not physically operated a Reclamation project, and that while he was the Commissioner of Reclamation he did not work specifically on Project issues (because he recused himself due to his prior extensive experience with the Project while the Director of the ISC; *see* NM-EX 107, Lopez Rep., at 3). Texas also includes a quote where Mr. Lopez confirms to Texas's counsel that he is not an attorney and is not an expert historian. Presumably Texas believes these selected quotes should limit Mr. Lopez's extensive knowledge and experience related to the Compact.

Yet, Mr. Lopez does not need to be a lawyer, or an historian, or to have physically diverted water at a canal heading to have an understanding of Compact administration. Mr. Lopez's understanding is based on his expertise in this area and his familiarity with the documents and materials relating to Compact administration he bases his opinions on. *See Monks v. Gen. Elec. Co.*, 919 F.2d 1189, 1192 (6th Cir. 1990) (explaining that an expert, in contrast to a lay witness, gains "personal knowledge" for purposes of Rule 56(c)(4) by familiarizing himself with the record and other relevant materials). It is also based on his personal knowledge of the activities and concerns of the agencies he has led. *See In re Kaypro*, 218 F.3d 1070, 1075 (9th Cir. 2000) ("Personal knowledge may be inferred from a declarant's position.") (citation omitted); *see also Barthelemy v. Air Lines Pilots Ass'n*, 897 F.2d 999, 1018 (9th Cir. 1990) (concluding a CEO's personal knowledge of various corporate activities could be presumed); *Stonefire Grill, Inc. v. FGF Brands, Inc.*, 987 F. Supp. 2d 1023, 1035 (C.D. Cal. 2013) (stating that witnesses' position

in corporation afforded presumption of personal knowledge of corporation's present and past activities); *Los Angeles Times Commc'ns, LLC v. Dep't of Army*, 442 F.Supp.2d 880, 886 (C.D. Cal. 2006) (“[D]eclarant can testify about practices or procedures in place before the witness was employed with the organization about which he is relating information.”).

Texas is also incorrect that Mr. Lopez's Declaration statements include impermissible legal conclusions. Under Federal Rule of Evidence 702, an expert witness “may testify in the form of an opinion or otherwise if [] the expert's ... knowledge will help the trier of fact to understand the evidence or determine a fact in issue.” An expert is even permitted to offer an opinion on an “ultimate issue,” “as long as the expert's testimony assists, rather than supplants, the jury's judgment.” *United States v. Dazey*, 403 F.3d 1147, 1172 (10th Cir. 2005); *see also United States v. Bedford*, 536 F.3d 1148, 1158 (10th Cir. 2008) (citation omitted) (an expert can “testify in the form of an opinion or inference even if that opinion or inference embraces an ultimate issue to be determined by the trier of fact.”); Fed. R. Evid. 704(a) (an opinion rendered by an expert “is not objectionable just because it embraces an ultimate issue.”).

Additionally, an expert may assist the factfinder in understanding factual issues “even though reference to those facts is couched in legal terms.” *Smith v. Ingersoll-Rand Co.*, 214 F.3d 1235, 1246 (10th Cir. 2000). Indeed, courts acknowledge that “it is sometimes impossible for an expert to render his or her opinion on a subject without resorting to language that recurs in the applicable legal standard,” *see United States v. Diaz*, 876 F.3d 1194, 1198-1199 (9th Cir. 2017), and if terms used by the expert “do not have a specialized meaning in law and do not represent an attempt to instruct the jury on the law or how to apply the law to the facts of the case, the testimony is not an impermissible legal conclusion,” *id.*; *see also Nieves-Villanueva v. Soto-Rivera*, 133 F.3d 92, 100–101 (1st Cir. 1997) (“[T]he definition of what is law and what is application or practice

may be difficult to ascertain.”); Mueller & Kirkpatrick, 3 Federal Evidence § 7:12 (4th ed. 2020) (“In some suits, complicated legal standards overlap with complicated technical standards in such ways that expert testimony seems almost indispensable, and inevitably such testimony tends to suggest both legal and factual conclusions.”); *United States v. Richter*, 796 F.3d 1173, 1197 (10th Cir. 2015) (“Witnesses are permitted to testify about how the law applies to a certain set of facts, so long as they provide adequate explanations for their conclusions.”) (citation omitted).

To the extent Texas claims Mr. Lopez’s opinions are impermissible legal conclusions and must be struck, Texas fails to recognize that Mr. Lopez’s opinions capture Mr. Lopez’s extensive personal knowledge of practices relating to Compact administration. Although these practices are inherently associated with certain legal issues posed in this litigation, they are far from bald and generalized legal conclusions unhelpful to the Court as factfinder. Rather, the specific paragraphs Texas challenges are related, instead, to matters derived from Mr. Lopez’s professional water administration experience and his time as New Mexico’s Engineer Adviser to the Rio Grande Compact Commission (Lopez 1st Decl. ¶¶ 4, 7, 12-15, 17; Lopez 2d Decl. ¶¶ 5-6, 8-12, 15, 30-31); historical or technical issues relating to the Compact that Mr. Lopez extensively researched as an expert in this case (Lopez 2d Decl. ¶¶ 33-36, 38, 40-41; or both (Lopez 1st Decl. ¶¶ 19-28, Lopez 2d Decl. ¶¶ 17-26, 28). Mr. Lopez offers these statements based on his understanding and perspective as a former water administrator, who required knowledge of New Mexico’s rights and obligations under the Compact to fulfill his duties.

Notably, Texas fails to make specific objections to each of the above paragraphs. Instead, Texas makes general complaints about legal opinions and assertions that the paragraphs are opinions beyond Mr. Lopez’s areas of expertise. It is not sufficient to provide vague arguments as to the basis of exclusion for nearly every paragraph of a declaration. Even more ambiguous,

Texas asserts that any “objectionable subject matter” contained within the Lopez reports should also be stricken.

It appears Texas simply wants to eliminate Mr. Lopez as one of New Mexico’s witnesses. This likely is because Texas has not designated any expert witnesses with Compact administration expertise. Unfortunately for Texas, Mr. Lopez is highly qualified and has valuable testimony for the Court. None of Mr. Lopez’s Declaration paragraphs or his expert reports should be stricken.⁷

C. Response to Objection #3: Second Declaration of John D’Antonio, Jr. [NM Exhibit 007]

Texas argues the second D’Antonio Declaration is inadmissible evidence to the extent Mr. D’Antonio opines on subject matter “outside his personal knowledge and/or expertise” including “legal conclusions and historical circumstances surrounding the negotiation of the 1938 Rio Grande Compact.”⁸ Tex. 2d Objections at 10-12. Texas requests **paragraphs 8-21, 49, 52, and 58** (NM-EX 007) in the second D’Antonio Declaration be stricken. This request should be denied.

As one example of Texas’s challenges to Mr. D’Antonio, Texas asserts Mr. D’Antonio testified at his deposition that statements on the Compact are outside his personal knowledge and area of expertise. Mr. D’Antonio made no such statement at his deposition, and Texas’s own quoted deposition text confirms this. In Texas’s objections, Texas points to one line of questioning at Mr. D’Antonio’s deposition where he was asked who he would say is the person in New Mexico with the “most knowledge” about New Mexico’s obligations under the Compact. Mr. D’Antonio provided two names in response. Texas turns this line of questioning on its head and claims that

⁷ New Mexico’s response herein applies to Texas’s “Exhibit B” numbers 16, 17, 18, 19, 21, 23, 25, 30, 31, 32, 33, 38, 39, 40, 44, 45, 47, 48, 50, 67, 68, 69, 71, 75, 76, 77, 78, 79, 80, 81, 82, 83, 93, 94, 132, 167, 169, 170, 173, and 174.

⁸ Further, to the extent Texas claims in its Second Evidentiary Objections or its Exhibit B that Mr. D’Antonio asserts impermissible legal conclusions in his second Declaration, Texas’s arguments fail for the reasons explained in the discussion of Texas’s legal conclusion objections to Mr. Lopez’s Declarations at pages 13-14, *supra*.

because Mr. D’Antonio named two people other than himself as the “most” knowledgeable then by default he has “no personal knowledge” on the Compact, and his opinions on the Compact are “outside of Mr. D’Antonio’s expertise.” Texas’s arguments are absurd. Based on this faulty assertion, Texas requests that **paragraphs 8-21, 49, 52, and 58** (NM-EX 007) in the second D’Antonio Declaration be stricken.

Contrary to Texas’s argument, Mr. D’Antonio is a highly qualified witness with extensive experience in water administration. First, Mr. D’Antonio is a professional registered engineer and the current New Mexico State Engineer. See NM-EX 002, D’Antonio 1st Decl., ¶¶ 2-8. Mr. D’Antonio has been in his current position since March 2019 and was previously the New Mexico State Engineer from January 2003 through November 2011. *Id.* Between 2011 and 2019, Mr. D’Antonio worked as the Deputy District Engineer for Programs for the United States Army Corps of Engineers (“USACE”). *Id.* From April 1998 to August 2002, Mr. D’Antonio was Supervisor and then a Director in the Water Resource Allocation Program of the OSE. *Id.* In those positions, he managed and directed the Water Rights Division and District offices, the Hydrology Bureau, the Dam Safety Bureau, and the Water Use and Conservation Bureau. *Id.* He was further responsible for all technical and administrative activities concerning water rights administration. *Id.*

As Mr. D’Antonio states in his first Declaration, “[a]s the State Engineer, I am statutorily charged with supervising the state’s water resources through the measurement, appropriation, and distribution of all ground and surface water in New Mexico, including streams and rivers that cross state boundaries.” *Id.*, ¶ 2. The OSE is the executive agency charged with the management and administration of all waters in the state, with a current staff of over 300 authorized personnel. NM-EX 002, ¶ 2. As State Engineer, Mr. D’Antonio holds personal knowledge of the activities and

concerns of his office. See *In re Kaypro*, 218 F.3d 1070, 1075 (9th Cir. 2000) (“Personal knowledge may be inferred from a declarant's position.”) (citation omitted); see also *Barthelemy v. Air Lines Pilots Ass'n*, 897 F.2d 999, 1018 (9th Cir. 1990) (concluding that a CEO's personal knowledge of various corporate activities could be presumed); *Los Angeles Times Commc'ns, LLC v. Dep't of Army*, 442 F.Supp.2d 880, 886 (C.D. Cal. 2006) (“[D]eclarant can testify about practices or procedures in place before the witness was employed with the organization about which he is relating information.”).

Texas’s objections to paragraphs 8-21, 49, 52, and 58 in Mr. D’Antonio’s second Declaration, which all describe New Mexico’s rigorous water administration and specific administrative background for the Project area, fail because Texas has not and cannot refute the extensive evidence of State Engineer D’Antonio’s experience in and knowledge of these issues. As the State Engineer, Mr. D’Antonio is the single person most responsible for water administration in New Mexico. Further, Mr. D’Antonio’s water administration duties in New Mexico include compact compliance, as he describes in detail in his Declaration. NM-EX 002, D’Antonio Decl. ¶ 3. Texas’s claim that these declaration paragraphs are outside his “personal knowledge and/or expertise” is without any credible support.⁹

D. Response to Objection #4: First Declaration of Ryan J. Serrano [NM Exhibit 010]

Texas objects to the first Declaration of Ryan J. Serrano (NM-EX 010). Texas claims the declaration at **paragraph 8** is inadmissible evidence to the extent Mr. Serrano opines on subject

⁹ New Mexico’s response herein applies to Texas’s “Exhibit B” numbers 53, 166, 171, 176, 177, 178, 173, 174, 179, and 193.

matter outside his personal knowledge and expertise.¹⁰ The paragraph Texas finds offensive is as follows:

The LRG's agricultural importance to New Mexico is significant. Pecan production in New Mexico is the second highest in the nation and is the State's number one cash crop with a value of \$162.3 million in 2018. New Mexico is also ranked 2nd in the nation for chile production, most of that coming from the LRG. New Mexico is ranked 5th in the nation for onion production, and the LRG accounts for the majority of the onion cash crop.

NM-EX 540, 2018 WM Report at 1. Texas claims Mr. Serrano has no personal knowledge as to pecan, chile, and onion production or its value in New Mexico. This assertion is patently false.

Mr. Serrano works for the OSE and is the current Water Master for the Lower Rio Grande Water Master District (LRG Water Master). NM-EX 010, Serrano Decl. ¶ 2. Prior to becoming the LRG Water Master, Mr. Serrano was the Assistant LRG Water Master from 2009 to 2012. *Id.* Mr. Serrano's LRG Water Master District include the entire New Mexico Project area. *See id.* The LRG Water Master ensures compliance on the local level—with the farmers in the LRG. *Id.* ¶ 4. Part of Mr. Serrano's duties includes working directly with water right owners, driving farm roads, monitoring meters, and attending the local irrigation district meetings. *Id.* ¶¶ 5-7. Mr. Serrano also prepares an annual LRG Water Master Report where he reports on the counties and crops within his district, the local water usage, and a summary of enforcement actions. As set out above, a declaration or "affidavit can adequately support a motion for summary judgment when the affiant's personal knowledge is based on a review of h[is] employer's business records and the affiant's position with the employer renders h[im] competent to testify on the particular issue which the affidavit concerns." *Carson v. Perry*, 1996 U.S. App. LEXIS 44382 at *2 (5th Cir. 1996); *In*

¹⁰ Further, to the extent Texas claims in its Second Evidentiary Objections or its Exhibit B that Mr. Serrano asserts impermissible legal conclusions in his second Declaration, Texas's arguments fail for the reasons explained in the discussion of Texas's legal conclusion objections to Mr. Lopez's Declarations at pages 13-14, *supra*.

re Kaypro, 218 F.3d 1070, 1075 (9th Cir.2000) (“Personal knowledge may be inferred from a declarant's position.”).

In his 2018 Water Master Report, Mr. Serrano reported local statistics from the New Mexico Department of Agriculture’s Agricultural Statistics Bulletin for the counties within his district and stated as follows:

The counties within the district consistently maintain top three state rankings for yield and cash value of crops sold. Examples include: Pecans (State Rank #1 with 67,630,000 lbs produced valued at over \$162.3 million). Dona Ana County in particular accounted for 22.7% of the nation's total pecan production in 2017 and the state of New Mexico was the number 2 ranked state in the nation for production of pecans behind only Georgia. Chile is also a major cash crop within the district (State Rank #2 with 14,900 tons produced in 2017 valued at \$27 million). New Mexico is ranked number 2 in the nation for Chile production behind only California. A third crop worth mentioning is Onion. New Mexico ranks fifth in the nation for onion production with a 2017 crop value of \$220 million, Sierra & Dona Ana County account for a large portion of this production. All of the above referenced statistics according to the New Mexico Department of Agriculture's 2017 Agricultural Statistics Bulletin.

NM-EX 540, Lower Rio Grande Water Master Annual Report 2018 Accounting Year at 1 (2018). Texas’s claim that Mr. Serrano’s paragraph 8 in his declaration should be stricken because Mr. Serrano is without personal knowledge and/or expertise is unsupported. Clearly, paragraph 8 was derived directly from Mr. Serrano’s Water Master Report, which is prepared annually as part of Mr. Serrano’s normal job duties. Mr. Serrano has direct personal knowledge of the local crops and relies upon the agricultural statistics as part of his professional work. For all of these reasons, Mr. Serrano has personal knowledge of all of the facts and matters stated in paragraph 8.

E. Response to Objection #5: Second Declaration of Rolf I. Schmidt-Petersen [NM Exhibit 009]

Texas objects to the second Declaration of Rolf I. Schmidt-Petersen (NM-EX 009). Texas argues the Schmidt-Petersen Declaration should be stricken in its entirety because “Mr. Schmidt-Petersen does not respond to facts raised by the Texas Motion and provides narrative regarding

subject matter of New Mexico’s dismissed counterclaims” and therefore the subject matter is not relevant.¹¹ Tex. 2d Objections at 13-15. As Texas acknowledges, “[e]vidence is relevant if it ‘has any tendency to make a fact more or less probable than it would be without the evidence,’ and if ‘the fact is of consequence in determining the action.’” Fed. R. Evid. 401.

The relevancy requirement in Rule 401 is frequently referred to as a “low bar.” *E.g.*, *Novick v. Shopcom Wireless, Inc.*, 946 F.3d 735, 741 (5th Cir. 2020) (evidence of job-description information relevant to employment dispute); *accord United States v. Acevedo-Hernandez*, 898 F.3d 150, 168 (1st Cir. 2018). Evidence clears this low bar not only when it is directly relevant to the main issue in a case, but also when it is relevant to issues bearing on the main dispute. In *United States v. Oldrock*, for example, the court affirmed the district court’s admission of evidence about a forensic interview process over the defendant’s objection that this evidence was not relevant to “the main issue at trial—his guilt” because it helped the jury “understand the process of the forensic interview and explain[ed] how the investigation proceeded.” 867 F.3d 934, 940 (8th Cir. 2017).

Texas argues Mr. Schmidt-Petersen’s Second Declaration is not relevant because it “provides no additional specificity regarding which of Texas’s stated material facts that it is in response to and the declaration is merely Mr. Schmidt-Petersen’s summary of the scope of the New Mexico Interstate Stream Commission’s (“ISC”) responsibilities.” Tex. 2d Objections at 15. Texas further argues Mr. Schmidt-Petersen’s Second Declaration is irrelevant because it “seeks to

¹¹ The Special Master has specifically noted that evidence pertaining to New Mexico’s dismissed counterclaims may well be relevant to New Mexico’s remaining counterclaims and defenses. *See* Special Master Order at 41 (Mar. 31, 2020). Further, to the extent Texas claims in its Second Evidentiary Objections or its Exhibit B that Mr. Schmidt-Petersen asserts impermissible legal conclusions in his second Declaration, Texas’s arguments fail for the reasons explained in the discussion of Texas’s legal conclusion objections to Mr. Lopez’s Declarations at pages 13-14, *supra*.

address subjects pertaining to New Mexico’s [dismissed] counterclaims,” specifically New Mexico’s counterclaim relating to the United States’ unlawful, unilateral reduction in New Mexico’s Accrued Credits in 2011. *Id.*

Texas and the United States made numerous factually incorrect claims and arguments regarding New Mexico’s administration of water rights and compacts in their motions for partial summary judgment. *E.g.*, Tex. Mot. at 21 (“New Mexico has taken no action to establish a system for administration as required to meet downstream interstate delivery entitlements.”), 94-106 (asserting arguments regarding how New Mexico must administer water rights to comply with the Compact and identifying alleged deficiencies in said administration); U.S. Mot. at 15-20 (asserting numerous facts regarding New Mexico administration of water in the LRG, many of which are incorrect or incomplete).

New Mexico provided Mr. Schmidt-Petersen’s Second Declaration to rebut these misstatements and inform the Court and Special Master how New Mexico administers the compacts to which it is a party, including the Compact. Evidence of New Mexico’s system for administering compacts and water rights is clearly relevant to this dispute, particularly in light of Texas’s and the United States’ challenges to the adequacy of New Mexico’s administration. *Cf. Oldrock*, 867 F.3d at 940. In any event, New Mexico provided numerous citations to Mr. Schmidt-Petersen’s Second Declaration in its responsive briefs and its Consolidated Statement of Material Facts (CSMF), providing Texas ample specificity. *E.g.*, NM-CSMF ¶¶ 290-92, 312-20 (citing NM-EX 009, Schmidt-Petersen 2d Decl.); NM Resp. U.S. Mot. 2, 54 (citing NM-EX 009, Schmidt-Petersen 2d Decl.); NM Resp. Tex. Mot. 33 (citing NM-EX 009, Schmidt-Petersen 2d Decl. & NM-CSMF ¶¶ 303-320), 34-35 (citing NM-CSMF ¶ 290).

Texas's challenge to Mr. Schmidt-Petersen's statements concerning credit water as relevant only to New Mexico's dismissed counterclaim completely misrepresents Mr. Schmidt-Petersen's Second Declaration. Mr. Schmidt-Petersen states:

The ISC's work described in ¶¶ 13, 14, and 15, above, contributed to New Mexico being able to build a large volume of Accrued Credit (Compact Article VI) in Elephant Butte Reservoir over the last few decades. That then allowed New Mexico to relinquish approximately 380,000 AF of its Accrued Credit for use by the Project, increasing the Project's Usable Water in storage available for release by that amount.

NM-EX 009, Schmidt-Petersen 2d Decl., ¶ 16. Nowhere in this statement does Mr. Schmidt-Petersen mention the illegal release of credit water in 2011 or any other facts that formed the basis for New Mexico's Third Counterclaim against the United States. Instead, Mr. Schmidt-Petersen discusses how the New Mexico ISC's administration of water rights and the Compact has resulted in large volumes of Accrued Credits in Project storage, which New Mexico has relinquished to provide additional Usable Water for the Project. This statement illustrates one way New Mexico administration works to benefit the Project, and therefore Texas and the United States, and tends to rebut the presumption in their arguments that New Mexico either ignores its Compact responsibilities or willfully disregards them. *See* Tex. Mot. 94-106; U.S. PSJ 34-40. It is, thus, clearly relevant to the issues that remain in this case. For the foregoing reasons, Texas's motion to strike Mr. Schmidt-Petersen's Second Declaration in whole, and Paragraph 16 in particular, should be denied.

F. Response to Objection #6: Declaration of Lee Wilson, Ph.D. [NM Exhibit 013]

Texas objects to the declaration of Lee Wilson, Ph.D. (NM-EX 013). Specifically, Texas claims **paragraphs 8 and 9** of the Wilson Declaration are inadmissible evidence to the extent Dr. Wilson asserts improper legal opinions and that his declaration statements are speculative, lack foundation, and make irrelevant statements that do not address Texas's stated material facts.

As described in Dr. Wilson's Declaration, Dr. Wilson is a Certified Professional Hydrogeologist, with 50 years of experience of the Rio Grande. He is familiar with surface and groundwater hydrology, water rights, and water use in the LRG and with the Project in both New Mexico and Texas. NM-EX 013, Wilson Decl., ¶ 2. Dr. Wilson has also been a water consultant to the City of Las Cruces for over 40 years. *Id.*

Paragraph 8 of Dr. Wilson's Declaration states as follows:

Referring to the City of Las Cruces, at p. 22-23 the Texas Motion for Summary Judgment acknowledges a fact set forth in my June 15, 2020 disclosure, that the City of Las Cruces owns EBID acres. I understand this to be a recognition that the City has a right to use water released from Elephant Butte Reservoir.

Paragraph 9 of Dr. Wilson's Declaration states as follows:

The Texas claim that non-Project water uses were frozen by adoption of the 1938 Rio Grande Compact is not consistent with the U.S. rebuttal report by their expert J. Phillip King who stated as fact that adoption of the D-2 curve established 1951-1978 as the baseline for allocation of water to Texas. To this day D-2 remains the basis for calculating the amount of water delivered to Texas, whereas deliveries in New Mexico are governed by the new D-3 curve. I consider Dr. King's report to correctly dispute the Texas claim.

NM-EX 013, Wilson Decl., ¶¶ 8-9. Texas's arguments concerning Dr. Wilson's Declaration are unfounded and should be denied.

Texas objects to paragraphs 8 and 9 in the Lee Wilson Declaration on the grounds that statements in these paragraphs allegedly "constitute[] improper legal opinion[s]." Tex. 2d Objections at 16. First, to the extent Texas intends to levy this same objection to any other statement in Dr. Wilson's Declaration, Texas has failed to identify and particularize such objection; therefore, any additional such objections should be dismissed.

These paragraphs contain no legal conclusions. In paragraph 8, Dr. Wilson explicitly states he is expressing his understanding regarding a Texas statement of fact. This is not a legal

conclusion, and New Mexico trusts the Special Master and Court are able to afford this statement the proper weight when considering the evidence submitted on these dispositive motions.

In paragraph 9, Dr. Wilson notes Texas's claim that non-Project water uses were frozen at 1938 levels by adoption of the Compact "is not consistent with the U.S. rebuttal report by their expert J. Phillip King who stated as fact that adoption of the D-2 curve established 1951-1978 as the baseline for allocation of water to Texas." Dr. Wilson further points out the fact that "[t]o this day D-2 remains the basis for calculating the amount of water delivered to Texas, whereas deliveries in New Mexico are governed by the new D-3 curve." *Id.* Dr. Wilson then expresses his expert opinion that he "consider[s] Dr. King's report to correctly dispute the Texas claim." *Id.* For these reasons, and the reasons explained in the discussion of Texas's challenge to Mr. Lopez at pages 13-14, *supra*, Dr. Wilson offers no improper legal opinions in paragraph 9. Texas's objection to this paragraph, on that ground, should therefore be dismissed.

Texas further argues Paragraphs 8 and 9 in the Wilson Declaration should be struck as "not relevant" to "Texas stated material facts" or "the issues presented." Tex. 2d Objections at 17. This is clearly incorrect. Dr. Wilson's statements in both of the challenged paragraphs are relevant to the contested issue of the amount of water use the Compact allows in the LRG. These statements easily clear the "low bar" for relevancy set by Federal Rule 401. *See Novick*, 946 F.3d at 741.

Texas's citation to Federal Rule of Evidence 402, which provides that "[r]elevant evidence is admissible unless any of the following provides otherwise: the United States Constitution; a federal statute; these rules; or other rules prescribed by the Supreme Court," provides no support for its argument. Texas fails to identify any statute, rule, or constitutional provision that mandates exclusion of this otherwise relevant evidence. Texas's arguments on the relevancy of this material fail.

Texas asserts several other arguments in a conclusory fashion, namely that paragraph 8 of Dr. Wilson’s Declaration lacks foundation and is speculative and that paragraph 9 “does not materially dispute Texas’s stated material facts relating to the 1938 Condition.” Texas also cites to Rule 704 to support its arguments without explaining the relevance of this rule or the particular nature of its objections.

Texas’s foundation argument fails because Texas does not give any basis for its objection. *Jerden v. Amstutz*, 430 F.3d 1231, 1237 (9th Cir. 2005) (“[A]n objection to admission of evidence on foundational grounds must give the basis for objection in a timely way to permit the possibility of cure.”). Texas also ignores the extensive foundation Dr. Wilson laid for his expert opinions, including his extensive professional experience and knowledge. NM-EX 013, Wilson Decl. ¶¶ 2-3; *see also* NM-EX 604, Resume of Lee Wilson; NM-EX 605, Expert Testimony of Lee Wilson.

Texas similarly fails to explain how Dr. Wilson’s statements in paragraph 8 are speculative. Dr. Wilson is not “speculating” when he acknowledges Texas’s statement and, in effect, agrees with it.

Finally, Texas’s citation to Federal Rule of Evidence 704 is also unavailing. Rule 704 provides in subsection (a) that “an opinion is not objectionable just because it embraces an ultimate issue” and provides a limited, irrelevant exception to this rule. Texas provides no explanation for why it believes Rule 704 mandates exclusion of paragraphs 8 and 9 of Dr. Wilson’s Declaration. The simple explanation is that Rule 704 does not require exclusion of these opinions, but instead supports their admission. For the foregoing reasons, the Court should deny Texas’s motion to strike paragraphs 8 and 9 of Dr. Wilson’s Declaration.¹²

¹² New Mexico’s response herein applies to Texas’s “Exhibit B” numbers 91 and 92.

G. New Mexico’s Expert Reports are Permissible as Summary Judgment Evidence.

Texas’s Objection #7 (§ III(G)) is a global objection to the authenticity of the expert reports and portions of reports submitted by New Mexico in support of its summary judgment briefing. This objection is redundant of Texas’s earlier objection on the topic and New Mexico fully addressed this objection in its previous response. *See* New Mexico’s Response to the State of Texas’s Evidentiary Objections at §§ I, II, II(A) & II(B) (Feb. 5, 2021) [Dkt. 468]. New Mexico incorporates those responses herein and no further response is necessary.¹³

H. Texas Applied an Incorrect Standard as to the Authentication of Documents Submitted in Support of New Mexico’s Summary Judgment Briefing.

Texas’s Objection #8 (§ III(H)) is a global objection to the authenticity of deposition transcripts, hearing transcripts, pleadings, and other documents submitted by New Mexico in support of its summary judgment briefing. This objection is redundant of Texas’s earlier objection on the topic, and New Mexico fully addressed these objections in its earlier response. *See* New Mexico’s Response to the State of Texas’s Evidentiary Objections at §§ I, II, II(C), II(D) & II(E) (Feb. 5, 2021) [Dkt. 468]. New Mexico incorporates those responses herein and no further response is necessary.

IV. RESPONSE TO TEXAS “SHAM DECLARATION” ARGUMENTS

Texas further objects to certain New Mexico declarations, falsely claiming they are “sham affidavits.” Tex. 2d Objections at 22. Texas greatly overstates the breadth of the “sham affidavit” rule as well as its application. Generally, “the inconsistency between a party’s testimony and subsequent affidavit must be *clear and unambiguous* to justify striking the affidavit.” *Van Asdale v. Int’l Game Tech.*, 577 F.3d 989, 998-99 (9th Cir, 2009) (emphasis added); *accord* *Castro v.*

¹³ New Mexico’s response herein applies to Texas’s “Exhibit B” numbers 93, 98, 99, 106, 109, 121, 125, 128, 130, 134, 135, 136, 163, 168, and 172.

DeVry Univ., Inc., 786 F.3d 572 (7th Cir. 2015) (affidavit should be excluded as a sham “only where the witness has given clear answers to unambiguous questions which negate the existence of any genuine issue of material fact.” (internal quotations omitted)).

Courts generally are cautioned to apply the sham affidavit rule “sparingly because of the harsh effect it may have on a party’s case.” *Furcron v. Mail Centers Plus, LLC*, 843 F.3d 1295, 1307 (11th Cir. 2016) (internal quotation omitted). *Castro* ably explains why:

[The sham affidavit rule] must be applied with great care, though, because summary judgment is not a tool for deciding questions of credibility. Few honest witnesses testify at any length without at least occasional lapses of memory or needs for correction or clarification. Disregarding as a sham every correction of a memory failure or variation in a witness's testimony requires far too much from lay witnesses and would usurp the trier of fact's role in determining which portion of the testimony was most accurate and reliable.

786 F.3d at 571-72 (internal quotations and citations omitted). Therefore, the sham affidavit rule should be invoked to exclude an affidavit only where “the only reasonable inference” is that the declaration is a sham. *Id.* at 571. Or as *Furcron* reasoned:

[T]he rule only operates in a limited manner to exclude unexplained discrepancies and inconsistencies, as opposed to those which create an issue of credibility or go to the weight of the evidence. Put differently, an opposing party's affidavit should be considered although it differs from or varies from his evidence as given by deposition or another affidavit and the two in conjunction may disclose as issue of credibility.

843 F.3d at 1305-07 (internal quotations and citations omitted).

In addition, courts recognize a number of exceptions to the sham affidavit rule. For example, a party “is not precluded from elaborating upon, explaining or clarifying prior testimony elicited by opposing counsel on deposition and minor inconsistencies that result from an honest discrepancy, a mistake, or newly discovered evidence afford no basis for excluding an opposition affidavit.” *Van Asdale*, 577 F.3d at 999 (quotation omitted); *accord Button v. Dakota, Minnesota & Eastern Ry. Corp.*, 963 F.3d 824, 830 (8th Cir. 2020). Similarly, “[w]here there is independent

evidence in the record to bolster an otherwise questionable affidavit, courts generally have refused to disregard the affidavit.” *Jiminez v. All American Rathskeller, Inc.*, 503 F.3d 247, 254 (3d Cir. 2007). Finally, the sham affidavit rule allows a court to disregard an affidavit submitted in opposition to a motion for summary judgment only “when the affidavit contradicts the *affiant's* prior deposition testimony, not another witness's prior deposition testimony. *Quest Integrity USA, LLC v. Cokebusters USA, Inc.*, 924 F.3d 1220, 1232-33 (Fed. Cir. 2019) (emphasis added) (internal quotation omitted).

Texas requests that the Court apply the sham affidavit rule far more broadly than is warranted, seeking to exclude large swaths of evidence submitted by New Mexico on the basis of alleged discrepancies between New Mexico’s declarants and their prior deposition testimony that crumble under even casual scrutiny. As demonstrated in the **attached table, Attachment B**, none of the alleged inconsistencies Texas identifies amount to an actual conflict between the challenged declarations and the deposition testimony of the affiants, let alone “clear and unambiguous” inconsistencies, that justifies striking any of the challenged declaration statements as sham affidavits. *Van Asdale*, 577 F.3d at 998.

In general, Texas seeks to exclude a number of statements in State Engineer John D’Antonio’s second Declaration, NM-EX 007, largely on the grounds that Mr. D’Antonio’s discussion of administrative actions New Mexico has taken in the LRG conflicts with Texas’s simplistic and false narrative that New Mexico has not conducted any administration in that area. However, Texas does not identify any actual dispute between Mr. D’Antonio’s deposition testimony and the facts in his declaration.

Similarly, Texas misrepresents Dr. Barroll’s deposition testimony in an attempt to exclude portions of her second Declaration, NM-EX 006. In addition to attempting to exclude information

Dr. Barroll presents about New Mexico's efforts to reduce groundwater withdrawals in the LRG, Texas seeks to exclude statements Dr. Barroll makes about the impacts of groundwater withdrawals on the flimsy basis that they "imply" conclusions Texas believes are unfavorable to its case. Again, Texas cannot identify any actual disputes between Dr. Barroll's testimony and her declarations, and its arguments should be disregarded.

Finally, Texas seeks to exclude one paragraph from Dr. Jennifer Stevens' second Declaration, NM-EX 011, on the basis that it conflicts with her deposition testimony. Again, Texas does not identify an actual conflict. Dr. Stevens's testimony concerning the number of wells in the LRG at the time the Compact was executed was limited to wells within EBID, whereas her second Declaration includes wells outside of EBID, including municipal wells. As with Mr. D'Antonio and Dr. Barroll, Texas's attempt to demonstrate that part of Dr. Stevens' second Declaration is a "sham" fails and Texas's request to strike these portions of the referenced declarations should be denied.¹⁴

CONCLUSION

Texas objected to virtually all the evidence submitted with the New Mexico motions for partial summary judgment and New Mexico's response to Texas's motion for partial summary judgment. The entirety of *State of Texas's Objections and Reply to the State of New Mexico's Consolidated Statement of Facts and Appendix 1 Filed by New Mexico in Response to Texas's Motion for Partial Summary Judgment* filed February 5, 2021 [Dkt. 460] should be denied because each of the objections lack support.

¹⁴ New Mexico's response herein applies to Texas's "Exhibit B" numbers 124, 162, 165, 166, 172, 178, 179, 188, 189, 192, and 193.

Respectfully submitted,

/s/ Jeffrey J. Wechsler

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ATTACHMENT A

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NEW MEXICO'S RESPONSE TO TEXAS'S "EXHIBIT A"

<u>NM- CS MF #</u>	<u>NM's Prior Numbering System</u>	<u>New Mexico's Stated Fact</u>	<u>New Mexico's Supporting Evidence</u>	<u>TEXAS'S EVIDENTIARY OBJECTIONS</u>	<u>TEXAS'S RESPONSE</u>	<u>NEW MEXICO'S RESPONSE TO TEXAS EVIDENTIARY OBJECTIONS</u>
1	App. ¹ No. 1	Following an investigation, the Reclamation Service (precursor to the Bureau of Reclamation) (both the Reclamation Service and Bureau of Reclamation are referred to herein as "Reclamation") recommended that Congress authorize a storage reservoir near Elephant Butte, New Mexico, rather than an alternative site at El Paso, Texas, to capture, store, and regulate torrential and storm water flows in the Upper Rio Grande.	See NM-EX 300, F.H. Newell, Second Annual Report of the Reclamation Service, H.R. Doc. No. 58-44, at 375-80 (1904); NM-EX 301, B.M. Hall, A Discussion of the Past and Present Plans for Irrigation of the Rio Grande Valley, 52 (Nov. 1904); NM-EX 106, Kryloff Rep. at 6; see also Texas v. New Mexico, 138 S. Ct. 954, 957(2018) ("The federal government responded by proposing, among other things, to build a reservoir and guarantee Mexico a regular and regulated release of water. Eventually, the government identified a potential dam site near Elephant Butte, New Mexico, about 105 miles north of the Texas state line.")	From TX's 12/22/20 Filings: NM-EX-106: See General Objection #7; Fed. R. Evid. 801(c), hearsay. Texas v. New Mexico, 138 S. Ct. 954, 957 (2018): Case law/legal opinions do not constitute factual "evidence" as contemplated by Fed. R. Civ. P. 56(c).	From TX's 12/22/20 Filings: Subject to the stated objections, disputed in part. This paragraph is misleading in that the source documents provide additional factual context that New Mexico excluded. The United States Reclamation Service (Reclamation) did recommend construction of a storage reservoir near Elephant Butte over another site at El Paso, Texas, and that the reservoir was to capture and store flood waters. However, review of the provided primary-source documents – F.H. Newell's Second Annual Report of the Reclamation Service (1904), NM-EX-300, and B.M. Hall's A Discussion of Past and Present Plans for Irrigation of the Rio Grande Valley (Nov. 1904), NM-EX 301 – indicates that these were not the only waters contemplated to be captured and stored for later use. Newell's report observed that the "proposed [Elephant Butte] reservoir" was "the only . . . with a capacity large enough to utilize the entire flow of the drainage basin. It is situated sufficiently low in the basin to intercept, practically, all of the waters" – an inclusive statement of the waters to be stored. Similarly, Hall's report – which considered dams at both the Elephant Butte and El Paso sites before endorsing the former over the latter – noted that with regard to "these projects, or any other plan of water storage on the Rio Grande, it is well to keep in mind the following facts," of which the second was: "All of the water that comes down the river is needed for irrigation. We cannot afford to waste any of it." Declaration of Scott A. Miltenberger, Ph.D. in Support of the State of Texas's Oppositions to the State of New Mexico's Motions for Partial Summary Judgment and Briefs in Support	New Mexico previously responded to these objections. See [Dkt. 468] State of New Mexico's Response to State of Texas's Evidentiary Objections, and [Dkt. 469] State of New Mexico's Response to Statements of Fact.

¹ "Apportionment" in this column, indicating New Mexico's Apportionment Brief, is abbreviated "App."

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					(Miltenberger Dec. in Opp. to NM) at TX_MSJ_007371, paragraphs 1 – 8.	
App. No. 2		At the Twelfth National Irrigation Congress in 1904, Reclamation engineer Benjamin Hall reported that the proposed reservoir at Elephant Butte was preferable to the project proposed near El Paso because it would have a greater storage capacity, would minimize flooding that would render unusable irrigable land in New Mexico, and would impound sufficient water to irrigate 110,000 acres in New Mexico in addition to making deliveries to Mexico and irrigable land in Texas.	NM-EX 303, Guy Elliott Mitchell, The Official Proceedings of the Twelfth National Irrigation Congress Held at El Paso, Texas, Nov. 15-16- 17-18, 1904, 213-15 (1905); see also NM- EX 111, Miltenberger Rep. at 8; NM-EX 112, Stevens Rep. at 17.	From TX's 12/22/20 Filings: NM-EX- 111: See General Objection #7; Fed. R. Evid. 801(c), hearsay. NM-EX-112: See General Objection #7; Fed. R. Evid. 801(c), hearsay.	From TX's 12/22/20 Filings: Subject to the stated objection, undisputed.	New Mexico previously responded to these objections. <i>See</i> [Dkt. 468] State of New Mexico's Response to State of Texas's Evidentiary Objections, <i>and</i> [Dkt. 469] State of New Mexico's Response to Statements of Fact.

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3	App. No. 3	The Reclamation proposal recommended delivery of water as between the lands in southern New Mexico and Texas based on the ratio of project lands within each state.	NM-EX 220, Miltenberger Dep. (June 8, 2020) at 39:7-20.	From TX's 12/22/20 Filings: NM-EX- 220: See General Objection #8. The cited evidence does not support the stated "facts" in whole and/or in part. Fed. R. Civ. P. 56(c).	From TX's 12/22/20 Filings: Subject to the stated objection, disputed in part. This paragraph is misleading in that the cited deposition testimony is incomplete, and taken out of context. At the subject deposition, counsel for New Mexico read a portion of paragraph 6 of the Texas Complaint to Texas's expert Scott Miltenberger, Ph.D. to which Dr. Miltenberger responded that he agreed with the statement. The full statement that Dr. Miltenberger agreed with was the following: "The 1904 irrigation Congress also recommended delivery of water from the proposed project as between the lands in southern New Mexico and in Texas based on the ratio of project lands within each state. The recommendations of the 1904 irrigation Congress were adopted by the secretary of the interior and the Rio Grande Reclamation project was authorized pursuant to the Rio Grande Reclamation Act." NM-EX 220, Miltenberger Dep. (June 8, 2020) 39:7-20 (emphasis added). The New Mexico proposed "fact" number 3 excludes the phrase "from the proposed project," as well as the language regarding authorization of the Project. The testimony immediately before the quoted testimony is also relevant for context: Dr. Miltenberger agreed with paragraph 4 of the Texas Complaint as follows: "Once delivered to Elephant Butte Reservoir, the water is allocated and belongs to the Rio Grande project beneficiaries in southern New Mexico and in Texas based upon allocations derived from the Rio Grande project authorization and relevant contractual arrangements." NM-EX 220, Miltenberger Dep. (June 8, 2020) 38:22-39:6.	New Mexico previously responded to these objections. See [Dkt. 468] State of New Mexico's Response to State of Texas's Evidentiary Objections, and [Dkt. 469] State of New Mexico's Response to Statements of Fact.

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4	App. No. 4	Delegates from Mexico, New Mexico, and Texas at the Irrigation Congress each approved the Reclamation proposal and unanimously passed a resolution declaring that the proposed project would affect "an equitable distribution of the waters of the Rio Grande with due regard to the rights of New Mexico, Texas and Mexico."	NM-EX 303, Guy Elliott Mitchell, The Official Proceedings of the Twelfth National Irrigation Congress Held at El Paso, Texas, Nov. 15-16- 17-18, 1904, 107 (1905); NM-EX 111, Miltenberger Rep. at 9; NM-EX 106, Kryloff Rep. at 6.	From TX's 12/22/20 Filings: M-EX- 111: See General Objection #7; Fed. R. Evid. 801(c), hearsay. NM-EX-106: See General Objection #7; Fed. R. Evid. 801(c), hearsay.	From TX's 12/22/20 Filings: Subject to the stated objections, undisputed.	New Mexico previously responded to these objections. See [Dkt. 468] State of New Mexico's Response to State of Texas's Evidentiary Objections, and [Dkt. 469] State of New Mexico's Response to Statements of Fact.
5	App. No. 5	In support of Congressional authorization to begin work on the reservoir, the Reclamation Service Director testified to Congress that the project would be engineered to supply enough water to irrigate 20,000- 25,000 acres in Mexico, 110,000 in New Mexico, with the "balance" to Texas. Mr. Newell further testified that "New Mexico, Texas, and old Mexico will divide the water in about the proportion stated."	See NM-EX 305, The Reclamation Work of the Government Under the National Irrigation Act: Hearing Before the H. Comm. on Irrigation of Arid Lands, 59 Cong. 222 (1906) (statement of Frederick Newell, Reclamation Service Director); NM-EX 112, Stevens Rep. at 18.	From TX's 12/22/20 Filings: NM-EX- 112: See General Objection #7; Fed. R. Evid. 801(c), hearsay. The cited evidence does not support the stated "facts" in whole and/or in part. Fed. R. Civ. P. 56(c).	From TX's 12/22/20 Filings: Subject to the stated objection, disputed. This paragraph is factually incorrect. Neither cited source (NM-EX 305 and NM-EX 112) indicates that Newell made the quoted remarks in relation to congressional authorization for work on the reservoir. Congress authorized the Rio Grande Project, with Elephant Butte Dam as its centerpiece, the previous year, in 1905. Additionally, the provided quote is incomplete and misleading. According to both cited sources, Newell identified the "balance" of the acreage distribution as "the balance below El Paso on the Texan side of the river." Miltenberger Dec. in Opp. to NM at TX_MSJ_007371, paragraphs 1 - 7, 9.	New Mexico previously responded to these objections. See [Dkt. 468] State of New Mexico's Response to State of Texas's Evidentiary Objections, and [Dkt. 469] State of New Mexico's Response to Statements of Fact.
6	App. No. 6	In 1906, the United States entered into a treaty with the Republic of Mexico for annual delivery of 60,000 acre- feet of water to the Acequia Madre, above Juarez, in years of full supply, with proportionate reductions in times of shortage.	NM-EX 307, Distribution of the Waters of the Rio Grande, Mex.-U.S., May 21, 1906, 34 Stat. 2953; NM-EX 111, Miltenberger Rep. at 9; See also Texas v. New Mexico, 138 S. Ct. 954, 957 (2018) ("in 1906, the United States agreed	From TX's 12/22/20 Filings: NM-EX- 111: See General Objection #7; Fed. R. Evid. 801(c), hearsay. Texas v. New Mexico ,	From TX's 12/22/20 Filings: Subject to the stated objection, undisputed.	New Mexico previously responded to these objections. See [Dkt. 468] State of New Mexico's Response to State of Texas's Evidentiary Objections, and [Dkt. 469] State of New Mexico's Response to Statements of Fact.

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			by treaty to deliver 60,000 acre-feet of water annually to Mexico upon completion of the new reservoir.”)	138 S. Ct. 954, 957 (2018): Case law/legal opinions do not constitute factual “evidence” as contemplated by Fed. R. Civ. P. 56(c).		
7	App. No. 7	In 1907, Congress authorized construction to begin on the Elephant Butte Reservoir. An Act Making Appropriations for Sundry Civil Expenses of the Government for the Fiscal Year Ending June Thirtieth, Nineteen Hundred and Eight, and for Other Purposes, Pub. Law No. 59- 253, 34 Stat. 1295 (1907);	NM-EX 112, Stevens Rep. at 19.	From TX's 12/22/20 Filings: Pub. Law No. 59-253, 34 Stat. 1295 (1907): The cited statute does not constitute factual “evidence” as contemplated by Fed. R. Civ. P. 56(c). NM-EX-112: <i>See</i> General Objection #7; Fed. R. Evid. 801(c), hearsay. The cited evidence does not support the stated “facts” in whole and/or in part. Fed. R. Civ. P. 56(c).	From TX's 12/22/20 Filings: Subject to the stated objections, disputed. This paragraph is factually incorrect. The 1907 Appropriations Act authorized, for the Department of State, \$1 million “Toward the construction of a dam for storing and delivering sixty thousand acre-feet of water annually . . . as provided by a convention between the United States and Mexico”; it did not authorize construction of the dam itself. Congress authorized construction of Elephant Butte Dam along with the Rio Grande Project in 1905. Miltenberger Dec. in Opp. to NM at TX_MSJ_007371, paragraphs 1 – 7, 9-10.	New Mexico previously responded to these objections. <i>See</i> [Dkt. 468] State of New Mexico’s Response to State of Texas’s Evidentiary Objections, <i>and</i> [Dkt. 469] State of New Mexico’s Response to Statements of Fact.
8	App. No. 8	In its initial conception, Reclamation engineered the Project to deliver an annual release between 750,000 acre-feet and 800,000 acre-feet, enough to provide 60,000 acre-feet of water to Mexico and to irrigate	<i>See</i> NM-EX 310, Fund for Reclamation of Arid Lands, H.R. Doc. 61-1262, at 106 (1911); NM-EX 112, Stevens Rep. at 21.	From TX's 12/22/20 Filings: NM-EX-112: <i>See</i> General Objection #7; Fed. R. Evid. 801(c), hearsay. The cited evidence does not	From TX's 12/22/20 Filings: Subject to the stated objection, disputed. This paragraph is factually incomplete and mischaracterizes the cited primary-source document, Fund for Reclamation of Arid Lands, H.R. Doc 61- 1262 (1911). NM-EX-310. References to 750,000 acre-feet and 800,000 acre-feet in the document are projections and estimates of “annual supply” from the reservoir – not as expected release figures.	New Mexico previously responded to these objections. <i>See</i> [Dkt. 468] State of New Mexico’s Response to State of Texas’s Evidentiary Objections, <i>and</i> [Dkt. 469] State of New Mexico’s Response to

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		155,000 acres in the United States (assuming delivery of three acre-feet per acre, plus twenty percent loss in the distribution system), of which 110,000 acres would be situated in New Mexico and 45,000 in Texas.		support the stated "facts" in whole and/or in part. Fed. R. Civ. P. 56(c).	These estimates were based not only on reservoir capacity, but also flow, evaporation, and (as acknowledged by the paragraph), a three acre-feet per acre water duty and losses. Forty percent and not "20 per cent" was the total allowance to be made for those losses: 1) "loss in the distribution system" ("20 per cent"), and 2) "losses in transit" ("20 per cent"). Miltenberger Dec. in Opp. to NM at TX_MSJ_007371, paragraphs 1 – 7, 11.	Statements of Fact.
9	App. No. 9; similar language in Notice No. 8	Reclamation appropriated water for the Project under New Mexico territorial law, consistent with Section 8 of the Reclamation Act. Specifically, Reclamation provided notice to the Territorial Engineer for the Territory of New Mexico to appropriate and store 730,000 acre-feet per year at Elephant Butte Reservoir in 1906 and to appropriate all "unappropriated waters of the Rio Grande" at Elephant Butte in 1908.	<i>See</i> NM-EX 306, Letter from B.M. Hall, Supervising Engineer, United States Reclamation Service, to David L. White, Territorial Irrigation Engineer, Territory of New Mexico (Jan. 23, 1906); NM-EX 309, Letter from Louis C. Hill, Supervising Engineer, United States Reclamation Service, to Vernon L. Sullivan, Territorial Engineer, Territory of New Mexico (Apr. 1908); NM-EX 111, Miltenberger Rep. at 9-10; <i>See</i> also Texas v. New Mexico, 138 S. Ct. 954, 957 (2018) ("After obtaining the necessary water rights, the United States began construction of the dam in 1910 and completed it in 1916 as part of a broader infrastructure development known as the Rio Grande Project.").	From TX's 12/22/20 Filings: NM-EX 111: <i>See</i> General Objection #7; Fed. R. Evid. 801(c), hearsay. Texas v. New Mexico , 138 S. Ct. 954, 957(2018): Case law/legal opinions do not constitute factual "evidence" as contemplated by Fed. R. Civ. P. 56(c). The stated "facts" constitute improper legal conclusions in whole and/or in part.	From TX's 12/22/20 Filings: Subject to the stated objection, disputed. This paragraph is misleading. Reclamation made these filings – Letter from B.M. Hall, Supervising Engineer, United States Reclamation Service, to David L. White, Territorial Irrigation Engineer, Territory of New Mexico (Jan. 23, 1906) (NM-EX 306), and NM-EX 309, a Letter from Louis C. Hill, Supervising Engineer, United States Reclamation Service, to Vernon L. Sullivan, Territorial Irrigation Engineer, Territory of New Mexico (Apr. 1908). However, neither filing cited Section 8 of the 1902 National Reclamation Act. Both filings instead referenced the United States "authority" under the 1902 Reclamation Act to pursue construction of "certain irrigation works in connection with the so-called Rio Grande Project," and observed that "operation of the works in question contemplates the diversion of water from the Rio Grande River." Both filings also cited New Mexico territorial law – Sec. 22, Chap. 102 of the 1905 laws, in the case of the 1906 filing, NM-EX-306; and Sec. 40, Chap. 49 of the 1907 laws, in the case of the 1908 filing, NM-EX-309. Miltenberger Dec. in Opp. to NM at TX_MSJ_007371, paragraphs 1 – 7, 12.	New Mexico previously responded to these objections. <i>See</i> [Dkt. 468] State of New Mexico's Response to State of Texas's Evidentiary Objections, and [Dkt. 469] State of New Mexico's Response to Statements of Fact.

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9	App. No. 9; similar language in Notice No. 8	Ultimately, the Rio Grande water appropriated by the United States was limited by the size of the Project.			New Mexico failed to cite to any evidence in support of the last sentence in the paragraph. Fed. R. Civ. P. 56(c). The cited evidence does not support the stated "facts" in whole and/or in part. Fed. R. Civ. P. 56(c).	New Mexico previously responded to these objections. <i>See</i> [Dkt. 468] State of New Mexico's Response to State of Texas's Evidentiary Objections, and [Dkt. 469] State of New Mexico's Response to Statements of Fact.
10	Notice No. 8	From that point forward, the New Mexico State Engineer considered the surface waters of the Rio Grande below Elephant Butte Reservoir to be fully appropriated.	<i>See</i> NM-EX 002, D'Antonio Decl. at ¶ 9; NM- EX 200, Barroll Dep. (Aug. 10, 2020) at 424:15-425:4, 426:13-18; NM-EX 106, Kryloff Rep. at 26-27; NM-EX 205, D'Antonio Dep. (June 26, 2020) at 274:1-5.	From TX's 12/22/20 Filings: NM-EX 200, 205: <i>See</i> General Objection #8. NM-EX 106: <i>See</i> General Objection #7; Fed. R. Evid. 801(c), hearsay.	From TX's 12/22/20 Filings: Subject to the stated objections, undisputed.	New Mexico previously responded to these objections. <i>See</i> [Dkt. 468] State of New Mexico's Response to State of Texas's Evidentiary Objections, and [Dkt. 469] State of New Mexico's Response to Statements of Fact.
11	N/A	Notably, the water that Reclamation appropriated in its 1906 and 1908 filings with the New Mexico Territorial Engineer did not include groundwater.	NM-EX 112, Stevens Rep. at 11; <i>See</i> also NM- EX 113, Stevens Reb. Rep. at 8. Cf. NM-EX 310, Fund for Reclamation of Arid Lands, H.R. Doc. No. 61-1262, at 106-07 (1911) (discussing return <i>Seepage</i> as a source of project supply without mention of groundwater resources).	NM-EX-112, 113: <i>See</i> General Objection #7; Fed. R. Evid. 801(c), hearsay.	New Mexico's stated fact, and supporting evidence, are not cited in New Mexico's Response to Texas's Motion for Partial Summary Judgment and are therefore non-responsive and irrelevant. As such, Texas's stated material facts remain undisputed. Fed. R. Civ. P. 56(a), 56(c)(1).	New Mexico previously responded to these authenticity and hearsay objections. <i>See</i> [Dkt. 468] State of New Mexico's Response to State of Texas's Evidentiary Objections, and [Dkt. 469] State of New Mexico's Response to Statements of Fact.

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12	App. No. 10; similar language in Notice No. 11	In 1915, while Project construction was ongoing, Reclamation began water deliveries through the Project.	<i>See</i> NM-EX 404, Robert Autabee, United States Bureau of Reclamation, Rio Grande Project, at 12 (1994); NM-EX 311, United States Reclamation Service, Project History Rio Grande Project Year 1915, at 137-141 (1915).	From TX's 12/22/20 Filings: NM-EX-404: <i>See</i> General Objection #8; Fed. R. Evid. 801(c), hearsay.	From TX's 12/22/20 Filings: Subject to the stated objection, undisputed.	New Mexico previously responded to these objections. <i>See</i> [Dkt. 468] State of New Mexico's Response to State of Texas's Evidentiary Objections, <i>and</i> [Dkt. 469] State of New Mexico's Response to Statements of Fact.
13	App. No. 11	By 1919, construction of the Elephant Butte Dam and the major diversion works of the Project was complete.	NM-EX 312, United States Reclamation Service, Project History Rio Grande Project Year 1919, at 4-5 (1919) (reporting "practical completion of the main canal system, including diversion dams, for the lands of the New Mexico and El Paso County Irrigation Districts"); <i>See</i> also NM-EX 111, Miltenberger Rep. at 10.	From TX's 12/22/20 Filings: NM-EX-111: <i>See</i> General Objection #7; Fed. R. Evid. 801(c), hearsay.	From TX's 12/22/20 Filings: Subject to the stated objection, undisputed.	New Mexico previously responded to these objections. <i>See</i> [Dkt. 468] State of New Mexico's Response to State of Texas's Evidentiary Objections, <i>and</i> [Dkt. 469] State of New Mexico's Response to Statements of Fact.
14	App. No. 12	By 1921, Reclamation reported that the final "determined irrigable area of the project" in the United States was 155,000 acres.	<i>See</i> NM-EX 313, United States Reclamation Service, Project History Rio Grande Project Year 1921, at 6-7 (1921); NM-EX 106, Kryloff Rep. at 23.	From TX's 12/22/20 Filings: NM-EX-106: <i>See</i> General Objection #7; Fed. R. Evid. 801(c), hearsay.	From TX's 12/22/20 Filings: Subject to the stated objection, undisputed.	New Mexico previously responded to these objections. <i>See</i> [Dkt. 468] State of New Mexico's Response to State of Texas's Evidentiary Objections, <i>and</i> [Dkt. 469] State of New Mexico's Response to Statements of Fact.

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15	App. No. 13	Upon completion of the major storage and diversion works for the Project, Colorado proposed to New Mexico legislation authorizing a joint commission between the two states, and New Mexico and Colorado each appointed commissioners in 1923 to negotiate an interstate compact regarding development upstream of Elephant Butte Reservoir.	See NM-EX 111, Miltenberger Rep. at 11; NM- EX 112, Stevens Rep. at 29.	From TX's 12/22/20 Filings: NM-EX-111: See General objection #7; Fed. R. Evid. 801(c), hearsay. NM-EX-112: See General Objection #7; Fed. R. Evid. 801(c), hearsay.	From TX's 12/22/20 Filings: Subject to the stated objections, undisputed.	New Mexico previously responded to these objections. See [Dkt. 468] State of New Mexico's Response to State of Texas's Evidentiary Objections, and [Dkt. 469] State of New Mexico's Response to Statements of Fact.
16	App. No. 14	After the first meeting of the Colorado and New Mexico commissioners in 1924, Texas petitioned the Secretary of Commerce, who served as the federal representative, to "accord[] [to the Texas] the same representation upon that Commission which is accorded to the States of New Mexico and Colorado."	See NM-EX 314, Letter from Pat M. Neff, Governor, State of Texas, to Herbert Hoover, Secretary of Commerce (Sept. 20, 1924); NM- EX 111, Miltenberger Rep. at 12.	From TX's 12/22/20 Filings: NM-EX-111: See General Objection #7; Fed. R. Evid. 801(c), hearsay.	From TX's 12/22/20 Filings: Subject to the stated objection, undisputed.	New Mexico previously responded to these objections. See [Dkt. 468] State of New Mexico's Response to State of Texas's Evidentiary Objections, and [Dkt. 469] State of New Mexico's Response to Statements of Fact.
17	App. No. 15	The New Mexico Compact Commissioner supported the inclusion of Texas in further compact negotiations. He wrote the New Mexico Governor that the exclusion Texas "assumed" that Reclamation would "protect[]" the rights of the Project in negotiations, but this assumption proved false	See NM-EX 315, Letter from J.O. Seth, Commissioner, State of New Mexico, to A.T. Hannett, Governor, State of New Mexico, at 3 (Feb. 20, 1925).	From TX's 12/22/20 Filings: The cited evidence does not support the stated "facts" in whole and/or in part. Fed. R. Civ. P. 56(c).	From TX's 12/22/20 Filings: Subject to the stated objection, disputed. This paragraph is factually incorrect. The assumption expressed was not Texas's. In his February 20, 1925 letter to Governor A.T. Hannett in February 1925, New Mexico Compact Commissioner J.O. Seth noted that "Chapter 112 of the Session Laws of 1923 makes no provision whatever for according Texas the right of representation on the Commission." This law was New Mexico's own, authorizing compact negotiations with Colorado. The New Mexico	New Mexico previously responded to these objections. See [Dkt. 468] State of New Mexico's Response to State of Texas's Evidentiary Objections, and [Dkt. 469] State of New Mexico's Response to Statements of Fact.

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		because "the Reclamation Service apparently decided to take no action whatever looking to the presentation of the rights of the Rio Grande Project either as to lands in New Mexico or Texas, although it was expected that this would be done."			Commissioner wrote to Hannett: The omission of the State of Texas from Chapter 112 of the Session laws of 1923 can be accounted for only on the theory that the Legislature assumed that the only lands in Texas that would be affected by any Compact or Agreement are those lying above Fort Quitman and within the Rio Grande Project of the United States Reclamation Service and that all rights to the waters of the Rio Grande held by these lands would be protected by the Reclamation Service. The full quotation, read in context, indicates that Commissioner Seth presumed the New Mexico State Legislature believed that Reclamation would safeguard Texas's Project water supply. Miltenberger Dec. in Opp. to NM at TX_MSJ_007371, paragraphs 1 – 7, 17.	
18	App. No. 16	Compact negotiations resumed in 1928 following the appointment of a Texas commissioner. Those initial negotiations resulted in a temporary compact in February 1929.	<i>See</i> NM-EX 111, Miltenberger Rep. at 13; NM- EX 112, Stevens Rep. at 29, 35, 40; NM-EX 316, Rio Grande Compact Commission, First Annual Report of the Rio Grande Compact Commission, 1- 10 (1931).	From TX's 12/22/20 Filings: NM-EX-111: <i>See</i> General Objection #7; Fed. R. Evid. 801(c), hearsay. NM-EX-112: <i>See</i> General Objection #7; Fed. R. Evid. 801(c), hearsay.	From TX's 12/22/20 Filings: Subject to the stated objections, undisputed.	New Mexico previously responded to these objections. <i>See</i> [Dkt. 468] State of New Mexico's Response to State of Texas's Evidentiary Objections, <i>and</i> [Dkt. 469] State of New Mexico's Response to Statements of Fact.
19	N/A	During the negotiations leading to the 1929 temporary compact, New Mexico represented the potentially opposing interests of water users in the State below Elephant Butte Reservoir and those of upstream users in the Middle Rio Grande Conservancy District ("MRGCD").	<i>See</i> NM-EX 011, Stevens 2d Decl. at ¶¶ 6-8; NM-EX 112, Stevens Rep. at 34-35; <i>See</i> also, e.g., NM-EX 340, E.P. Osgood, Report on Water Supply Irrigation and Drainage in the San Luis Basin of the Rio Grande, Appx. D at ¶ 1 (1928).	NM-EX-112: <i>See</i> General Objection #7; Fed. R. Evid. 801(c), hearsay.	Subject to the stated objection, the fact is cited in New Mexico's Response to Texas's Motion for Partial Summary Judgment but does not materially respond to facts stated therein. There is nothing in the cited evidence that the production of these reports necessarily constituted "accept[ance] and agree[ment]" by "downstream water users in both New Mexico and Texas . . . that MRGCD development would better regulate flows into the Elephant Butte Reservoir	New Mexico previously responded to the authenticity and hearsay objections. <i>See</i> [Dkt. 468] State of New Mexico's Response to State of Texas's Evidentiary Objections, <i>and</i> [Dkt. 469] State of New Mexico's Response to

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		New Mexico took the position that fostering development in the MRGCD helped both sets of users, since it permitted development of acreage in the Middle Valley through the drainage of lands; downstream water users in both New Mexico and Texas accepted and agreed with engineering studies showing that MRGCD development would better regulate flows into the Elephant Butte Reservoir as well as augment volumes.			as well as augment volumes.” New Mexico’s stated fact is non-responsive and otherwise not supported by definite, competent, or significantly probative evidence that genuinely and materially responds to a fact stated in Texas’s Motion for Partial Summary Judgment. As such, Texas's stated material facts remain undisputed. Fed. R. Civ. P. 56(a), 56(c)(1), (2), (4).	Statements of Fact.
20	N/A	During these negotiations in the 1920s, Texas’ apparent goal was to permit future additional developments throughout the basin.	<i>See</i> NM-EX 011, Stevens 2d Decl. at ¶ 12; NM- EX 340, E.P. Osgood, Report on Water Supply Irrigation and Drainage in the San Luis Basin of the Rio Grande, Appx. D at ¶ 12 (1928).		New Mexico’s stated fact, and supporting evidence, are not cited in New Mexico’s Response to Texas’s Motion for Partial Summary Judgment and are therefore non-responsive and irrelevant. As such, Texas's stated material facts remain undisputed. Fed. R. Civ. P. 56(a), 56(c)(1).	N/A
21	N/A	The 1929 temporary compact contained explicit language to freeze depletions by preventing any development that would “impair” flows.	NM-EX 316, Rio Grande Compact Commission, First Annual Report of the Rio Grande Compact Commission, 1-10 (1931) (containing the temporary compact); NM-EX 011, Stevens 2d Decl. at ¶ 22.		Undisputed.	N/A

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22	App. No. 17	In December 1935, the Rio Grande Compact Committee met to continue negotiations. At that meeting, officials from the National Resources Committee presented a proposal for a comprehensive study of the Rio Grande in order to facilitate an agreement.	<i>See</i> NM-EX 317, Proceedings of the Rio Grande Compact Commission held in Santa Fe, New Mexico December 2- 3, 1935, at 5-7 (1935); NM-EX 112, Stevens Rep. at 55.	From TX's 12/22/20 Filings: NM-EX-112: <i>See</i> General Objection #7; Fed. R. Evid. 801(c), hearsay.	From TX's 12/22/20 Filings: Subject to the stated objections, disputed in part. This paragraph excludes context essential to understanding how the resulting "comprehensive study" – the Rio Grande Joint Investigation (as referenced in paragraph 18 of New Mexico's Motion for Partial Summary Judgment on Compact Apportionment) – was framed. The proposal by the National Resources Committee (NRC) resulted from an NRC Board of Review's assessment that the "water resources of the Rio Grande were fully appropriated," and that New Mexico's Middle Rio Grande Conservancy District's project and other proposed projects in New Mexico and Colorado above Elephant Butte threatened the Rio Grande Project. Miltenberger Declaration paragraphs 12-16 addresses this context. TX_MSJ_001585. Miltenberger Dec. in Opp. to NM at TX_MSJ_007371, paragraphs 1 – 7, 14.	New Mexico previously responded to these objections. <i>See</i> [Dkt. 468] State of New Mexico's Response to State of Texas's Evidentiary Objections, <i>and</i> [Dkt. 469] State of New Mexico's Response to Statements of Fact.
23	App. No. 18	This proposed comprehensive study became the Rio Grande Joint Investigation [{"RGJI"}]. According to the authors, the "prime purpose" of the investigation was "to determine the basic facts needed in arriving at an accord" among the states "on an allocation and use of Rio Grande waters in the future development of the upper basin."	NM-EX 318, Harlow M. Stafford et al., Rio Grande Joint Investigation Part I: General Report of the Rio Grande Joint Investigation, 10-11 (1937); NM-EX 112, Stevens Rep. at 62.	From TX's 12/22/20 Filings: NM-EX-112: <i>See</i> General Objection #7; Fed. R. Evid. 801(c), hearsay.	From TX's 12/22/20 Filings: Subject to the stated objection, undisputed.	New Mexico previously responded to these objections. <i>See</i> [Dkt. 468] State of New Mexico's Response to State of Texas's Evidentiary Objections, <i>and</i> [Dkt. 469] State of New Mexico's Response to Statements of Fact.
24	App. No. 19	One category of required information was accurate data concerning existing diversions, including those of the Project. The Joint Investigation Report collected	<i>See</i> NM-EX 318, Harlow M. Stafford et al., Rio Grande Joint Investigation Part I: General Report of the Rio Grande Joint Investigation, 11, at 14-16	From TX's 12/22/20 Filings: NM-EX-112: <i>See</i> General Objection #7; Fed. R. Evid. 801(c),	From TX's 12/22/20 Filings: Subject to the stated objections, disputed in part. This paragraph is misleading. Diversions were a category of information in the Joint Investigation Report (or "JIR," NM-EX 318), but those diversions were not limited to the waters	New Mexico previously responded to these objections. <i>See</i> [Dkt. 468] State of New Mexico's Response to State of Texas's Evidentiary Objections, <i>and</i> [Dkt. 469] State of New

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		available data to prepare and present a comprehensive analysis of actual diversions, including diversions between Elephant Butte Reservoir and Fort Quitman, Texas, for the period 1930-36. The Joint Investigation Report also catalogued Project Acreage, including lands for "Cities, Towns, and Villages."	(1937); NM-EX 112, Stevens Rep. at 64.	hearsay. The cited evidence does not support the stated "facts" in whole and/or in part. Fed. R. Civ. P. 56(c).	that might be considered as derived solely from reservoir releases. The JIR noted that "return flow" from drains constituted 50 percent of the diversions within the Rio Grande Project, which New Mexico's citation omits. Miltenberger Declaration paragraph 35 likewise notes the importance the JIR placed on return flows. TX_MSJ_001585. Miltenberger Dec. in Opp. to NM at TX_MSJ_007371, paragraphs 1 – 7, 15.	Mexico's Response to Statements of Fact.
25	N/A	Texas objected to any rigorous groundwater investigation below Elephant Butte Reservoir as part of the RGJI.	<i>See</i> NM-EX 011, Stevens 2d Decl. at 31; NM- EX 113, Stevens Reb. Rep. at 6-7.	NM-EX-113: <i>See</i> General Objection #7; Fed. R. Evid. 801(c), hearsay.	New Mexico's stated fact, and supporting evidence, are not cited in New Mexico's Response to Texas's Motion for Partial Summary Judgment and are therefore non-responsive and irrelevant. As such, Texas's stated material facts remain undisputed. Fed. R. Civ. P. 56(a), 56(c)(1).	New Mexico previously responded to these authenticity and hearsay objections. <i>See</i> [Dkt. 468] State of New Mexico's Response to State of Texas's Evidentiary Objections. In addition, this fact was not asserted against Texas and Texas proffers no fact to which New Mexico's fact is alleged to dispute. Thus, Texas's objection is nonsensical.
25	N/A	Texas took the position that significant groundwater investigation was unnecessary because "groundwater supplies along the Rio Grande are of little importance in relation to the total supply."	NM-EX 345, Letter from Raymond A. Hill, Engineer Advisor, State of Texas, to Frank B. Clayton, Rio Grande Compact Commissioner, State of Texas (Jan. 27, 1936); <i>See</i> also NM-EX 346, Letter from Frank B. Clayton, Rio Grande Compact Commissioner, State		New Mexico's stated fact, and supporting evidence, are not cited in New Mexico's Response to Texas's Motion for Partial Summary Judgment and are therefore non-responsive and irrelevant. As such, Texas's stated material facts remain undisputed. Fed. R. Civ. P. 56(a), 56(c)(1).	New Mexico previously responded to these authenticity and hearsay objections. <i>See</i> [Dkt. 468] State of New Mexico's Response to State of Texas's Evidentiary Objections. In addition, this fact was not asserted against Texas and Texas proffers no fact to which

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			of Texas, to National Resources Committee (Feb. 1, 1936).			New Mexico's fact is alleged to dispute. Thus, Texas's objection is nonsensical.
25	N/A	As such, the Rio Grande Joint Investigation involved little study of groundwater resources below Elephant Butte Reservoir and drew no conclusions regarding groundwater below Elephant Butte.	NM-EX 112, Stevens Rep. at 56-57; NM-EX 318, Stevens Reb. Rep. at 12-13; NM-EX 011, Stevens 2d Decl. at ¶ 31; NM-EX, 318, Harlow M. Stafford et al., Rio Grande Joint Investigation Part I: General Report of the Rio Grande Joint Investigation, at 62 (1937).	NM-EX-112: <i>See</i> General Objection #7; Fed. R. Evid. 801(c), hearsay.	New Mexico's stated fact, and supporting evidence, are not cited in New Mexico's Response to Texas's Motion for Partial Summary Judgment and are therefore non-responsive and irrelevant. As such, Texas's stated material facts remain undisputed. Fed. R. Civ. P. 56(a), 56(c)(1).	New Mexico previously responded to these authenticity and hearsay objections. <i>See</i> [Dkt. 468] State of New Mexico's Response to State of Texas's Evidentiary Objections. In addition, this fact was not asserted against Texas and Texas proffers no fact to which New Mexico's fact is alleged to dispute. Thus, Texas's objection is nonsensical.
25	N/A	What little treatment the RGJI report does devote to groundwater below Elephant Butte is concerned with whether the drains were sufficient to lower the water table and prevent Seeped lands.	NM-EX 112, Stevens Rep. 64; e.g., <i>See</i> NM-EX 318, Harlow M. Stafford et al., Rio Grande Joint Investigation Part I: General Report of the Rio Grande Joint Investigation, at 62 (1937).	NM-EX-112: <i>See</i> General Objection #7; Fed. R. Evid. 801(c), hearsay.	New Mexico's stated fact, and supporting evidence, are not cited in New Mexico's Response to Texas's Motion for Partial Summary Judgment and are therefore non-responsive and irrelevant. As such, Texas's stated material facts remain undisputed. Fed. R. Civ. P. 56(a), 56(c)(1).	New Mexico previously responded to these authenticity and hearsay objections. <i>See</i> [Dkt. 468] State of New Mexico's Response to State of Texas's Evidentiary Objections. In addition, this fact was not asserted against Texas and Texas proffers no fact to which New Mexico's fact is alleged to dispute. Thus, Texas's objection is nonsensical.

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26	N/A	The RGJI found that return flows were an important part of Project Supply. The report states that total measured return flows was 50 percent of the average of total net diversions in the same period.”	NM-EX 38, Harlow M. Stafford et al., Rio Grande Joint Investigation Part I: General Report of the Rio Grande Joint Investigation, at 13 (1937). T	n/a	The fact is cited in New Mexico's Response to Texas's Motion for Partial Summary Judgment but does not materially respond to facts stated therein. The cited supporting evidence is merely a quote from the Rio Grande Joint Investigation and does not materially address a specific fact alleged in Texas's Motion for Partial Summary Judgment. New Mexico’s stated fact is non-responsive and otherwise not supported by definite, competent, or significantly probative evidence that genuinely and materially responds to a fact stated in Texas’s Motion for Partial Summary Judgment. As such, Texas's stated material facts remain undisputed. Fed. R. Civ. P. 56(a), 56(c)(1).	N/A
26	N/A	his means that the amount of total annual drain flow, throughout the Project and throughout the calendar year, is equal to approximately 50% of the amount of water diverted at Project headings.	NM-EX 100, Barroll Rep. at 14-15, Appx. C, C 4-8; <i>See also</i> NM-EX 006, Barroll 2d Decl. at ¶ 48.	NM-EX-100: <i>See</i> General Objection #7; Fed. R. Evid. 801(c), hearsay.	The fact is cited in New Mexico's Response to Texas's Motion for Partial Summary Judgment but does not materially respond to facts stated therein. The cited supporting evidence regarding Project drain flow does not address specific facts alleged in Texas's Motion for Partial Summary Judgment. New Mexico’s stated fact is non-responsive and otherwise not supported by definite, competent, or significantly probative evidence that genuinely and materially responds to a fact stated in Texas’s Motion for Partial Summary Judgment. As such, Texas's stated material facts remain undisputed. Fed. R. Civ. P. 56(a), 56(c)(1).	New Mexico previously responded to these authenticity and hearsay objections. <i>See</i> [Dkt. 468] State of New Mexico’s Response to State of Texas’s Evidentiary Objections.
27	App. No. 20	In entering negotiations, New Mexico stressed that for it to agree, the final compact needed to provide that “[a]ll existing rights to the use of water in the Rio Grande Basin in New Mexico shall be recognized as having the right to an adequate supply of water from said river system.” This position was important to New Mexico, in part, because the	<i>See</i> NM-EX 319, Rio Grande Compact Commission, Proceedings of the Meeting of the Rio Grande Compact Commission Held in Santa Fe, New Mexico, September 27, to October 1, 1937, at 12-13 (1937); NM-EX 111, Miltenberger Rep. at 25; NM-EX 112, Stevens Rep. at 65;	From TX's 12/22/20 Filings: NM-EX-111: <i>See</i> General Objection #7; Fed. R. Evid. 801(c), hearsay. NM-EX-112: <i>See</i> General Objection #7; Fed. R. Evid. 801(c), hearsay. The cited evidence does	From TX's 12/22/20 Filings: Subject to the stated objections, disputed. This paragraph is misleading. According to the cited pages of the primary-source document – the September 27 to October 1, 1937 Rio Grande Compact Commission proceedings, NM-EX 319 – New Mexico expressed it “was willing to negotiate” for a compact on the basis of several “minimum requirements” (the fourth of which is the quoted statement), and not that the final compact had to possess all these elements for the state to consummate a Compact with Colorado and Texas, as this paragraph implies.	New Mexico previously responded to these objections. <i>See</i> [Dkt. 468] State of New Mexico’s Response to State of Texas’s Evidentiary Objections, <i>and</i> [Dkt. 469] State of New Mexico’s Response to Statements of Fact.

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		surface water in the Lower Rio Grande in New Mexico was fully appropriated and New Mexico expected the final compact to protect those existing rights.	NM-EX 005, Stevens Decl. at ¶ 8; NM-EX 002, D'Antonio Decl. at ¶ 9.	not support the stated "facts" in whole and/or in part. Fed. R. Civ. P. 56(c).	The historical record further indicates that the Compact ultimately privileged uses over rights in the Upper Rio Grande Basin, and that New Mexico bargained for water uses above San Marcial and below the Colorado-New Mexico state line, while Texas bargained for water use below San Marcial. Miltenberger Declaration paragraphs 20-26 discuss the privileging of uses over rights, TX_MSJ_001585; and Miltenberger Declaration paragraphs 8, 24, 26, and 37 specifically address what New Mexico and Texas bargained for. TX_MSJ_001585. Miltenberger Dec. in Opp. to NM at TX_MSJ_007371, paragraphs 1 – 7, 16, 49.	
28	N/A	With regard to water use below Elephant Butte, New Mexico's negotiation position sought to protect the Project as a unit, ensuring that it received a stable supply necessary to water all of the lands within the New Mexico portion of the Project, while simultaneously ensuring that the reservoir's agreed-upon "normal release" figure was not higher than was fair for the State's upstream users.	See NM-EX 011, Stevens 2d Decl. at ¶¶ 9-10, 15-20, 26-28; NM-EX 112, Stevens Rep. at 34-35, 66-69; See, e.g., Letter from Thomas M. McClure, State Engineer, State of New Mexico, to S.O. Harper, Chairman, Rio Grande Compact Commission (Jan 25, 1938) (produced at TX_MSJ_005303); E.B. Debler et al., Committee of Engineering Advisers, Rio Grande Compact Commission, Report to the Rio Grande Compact Commission by the Engineer Advisers on New Mexico Objections to Their	NM-EX-112: See General Objection #7; Fed. R. Evid. 801(c), hearsay.	Subject to the stated objections, the fact is cited in New Mexico's Response to Texas's Motion for Partial Summary Judgment but does not materially respond to facts stated therein. The cited supporting evidence does not support the fact asserted in the paragraph. None of the primary-source documents cited indicate that New Mexico sought to balance interested or water needs within the state by restricting the "normal release" figure or that New Mexico worked to protect the Project. New Mexico's stated fact is non-responsive and otherwise not supported by definite, competent, or significantly probative evidence that genuinely and materially responds to a fact stated in Texas's Motion for Partial Summary Judgment. As such, Texas's stated material facts remain undisputed. Fed. R. Civ. P. 56(a), 56(c)(1).	New Mexico previously responded to these authenticity and hearsay objections. See [Dkt. 468] State of New Mexico's Response to State of Texas's Evidentiary Objections.

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			Report of Dec. 27, 1937 (Mar. 4, 1938 (produced at TX_MSJ_005311)).			
29	App. No. 21	The Engineer Advisors for the three states used the [RGJI] to prepare a Report of Committee of Engineers to the Rio Grande Compact Commissions, dated December 27, 1937. The express "general purpose" of this report was to recommend apportionment among three divisions of the Rio Grande—the San Luis Valley, the "Middle Rio Grande from Lobatos to Elephant Butte Reservoir," and the Project from Elephant Butte Reservoir to Fort Quitman, Texas—according to a "general policy" that "present uses of water in each of the three States must be protected in formulation of the Compact."	<i>See</i> NM-EX 322, Letter from E.B. Debler, et al., Committee of Engineer Advisors, Rio Grande Compact Commission, to Rio Grande Compact Commission (Dec. 27, 1937); NM-EX 111, Miltenberger Rep. at 29; NM-EX 112, Stevens Rep. at 67-68.	From TX's 12/22/20 Filings: NM-EX-111: <i>See</i> General Objection #7; Fed. R. Evid. 801(c), hearsay. NM-EX-112: <i>See</i> General Objection #7; Fed. R. Evid. 801(c), hearsay. The cited evidence does not support the stated "facts" in whole and/or in part. Fed. R. Civ. P. 56(c).	From TX's 12/22/20 Filings: Subject to the stated objections, disputed in part. This paragraph is misleading in that the source documents provide additional factual context that New Mexico excluded. The facts presented in this paragraph are incomplete and assert an incomplete understanding of the Committee of Engineers' December 27, 1937 Report. NM-EX-322. As stated on the first page of the report (after the title page), the "general policy" was expressed by the Compact Commissioners themselves, and the engineers "avoided discussion of the relative rights of the water users in the three states." Miltenberger Declaration paragraphs 20-26 discuss the privileging of uses over rights in the development of the Compact and the Committee of Engineers' December 27, 1937 Report. TX_MSJ_001585. Miltenberger Dec. in Opp. to NM at TX_MSJ_007371, paragraphs 1 – 7, 17.	New Mexico previously responded to these objections. <i>See</i> [Dkt. 468] State of New Mexico's Response to State of Texas's Evidentiary Objections, <i>and</i> [Dkt. 469] State of New Mexico's Response to Statements of Fact.
30	App. No. 22	The Committee of Engineers initially recommended a "normal release" from Elephant Butte Reservoir of 800,000 acre-feet per annum.	<i>See</i> NM-EX 322, Letter from E.B. Debler, et al., Committee of Engineer Advisors, Rio Grande Compact Commission, to Rio Grande Compact Commission (Dec. 27, 1937); NM-EX 112, Stevens. Rep. at 67-68.	From TX's 12/22/20 Filings: NM-EX-112: <i>See</i> General Objection #7; Fed. R. Evid. 801(c), hearsay.	From TX's 12/22/20 Filings: Subject to the stated objection, undisputed.	New Mexico previously responded to these objections. <i>See</i> [Dkt. 468] State of New Mexico's Response to State of Texas's Evidentiary Objections, <i>and</i> [Dkt. 469] State of New Mexico's Response to Statements of Fact.

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31	App. No. 23	Following negotiations, the Committee of Engineers revised its recommendation to provide for a normal release from the Reservoir of 790,000 acre-feet per year to meet the irrigation demands of Project lands in New Mexico and Texas and to make the 1906 treaty delivery to Mexico.	<i>See</i> NM-EX 325, Letter from Thomas M. McClure, State Engineer, State of New Mexico, to S.O. Harper, Chairman, Rio Grande Compact Commission (Jan. 25, 1938), in Rio Grande Compact Commission, Proceedings of the Meeting of the Rio Grande Compact Commission Held at Santa Fe, New Mexico, March 3rd to March 18th, inc. 1938, at CO-006216 (1938); NM-EX 325, Letter from E.B. Debler, et al., Committee of Engineer Advisors, Rio Grande Compact Commission, to Rio Grande Compact Commission (Mar. 9, 1938), in Rio Grande Compact Commission, Proceedings of the Meeting of the Rio Grande Compact Commission Held at Santa Fe, New Mexico, March 3rd to March 18th, inc. 1938, at CO-006226-33 (1938); NM-EX 112, Stevens Rep. at 68-70; NM-EX 111, Miltenberger Rep. at 33, 37-39.	From TX's 12/22/20 Filings: NM-EX-112: <i>See</i> General Objection #7; Fed. R. Evid. 801(c), hearsay. NM-EX-111: <i>See</i> General Objection #7; Fed. R. Evid. 801(c), hearsay.	From TX's 12/22/20 Filings: Subject to the stated objections, disputed in part. This paragraph is misleading in that the source documents provide additional factual context that New Mexico excluded. The facts presented in this paragraph are incomplete and assert an incomplete understanding of the reasons for the revision. The Committee of Engineers (or Engineering Advisors) revised the normal release figure downward from 800,000 acre-feet to 790,000 acre- feet only after protests made by the Middle Rio Grande Conservancy District's consulting engineer H.C. Neuffer. New Mexico State Engineer and Compact Commissioner Thomas McClure supported Neuffer, even though McClure's engineering advisor John Bliss had accepted the 800,000 acre-feet figure for which Texas had advocated and which the Committee of Engineers had recommended in December 1937. Miltenberger Declaration paragraphs 35-38 discuss this change. TX_MSJ_001585. Miltenberger Dec. in Opp. to NM at TX_MSJ_007371, paragraphs 1 – 7, 18.	New Mexico previously responded to these objections. <i>See</i> [Dkt. 468] State of New Mexico's Response to State of Texas's Evidentiary Objections, <i>and</i> [Dkt. 469] State of New Mexico's Response to Statements of Fact.

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32	App. No. 24	On March 18, 1938, the members of the Rio Grande Compact Commission ("RGCC") each executed the final Rio Grande Compact. Congress gave its approval to the Rio Grande Compact on May 31, 1939.	<i>See</i> NM-EX 325, Rio Grande Compact Commission, Proceedings of the Meeting of the Rio Grande Compact Commission Held at Santa Fe, New Mexico, March 3rd to March 18th, inc. 1938, 34-35 (1938); An Act Giving Consent and Approval of Congress to the Rio Grande Compact Signed at Santa Fe, New Mexico, on March 18, 1938, Pub. Law No. 76-95, 53 Stat. 785 (1939).	From TX's 12/22/20 Filings: Pub. Law No. 76-95, 53 Stat. 785 (1939): The cited statute does not constitute factual "evidence" as contemplated by Fed. R. Civ. P. 56(c).	From TX's 12/22/20 Filings: Subject to the stated objection, undisputed.	New Mexico previously responded to these objections. <i>See</i> [Dkt. 468] State of New Mexico's Response to State of Texas's Evidentiary Objections, <i>and</i> [Dkt. 469] State of New Mexico's Response to Statements of Fact.
33	N/A	The historical record contains no evidence that the negotiators expressly addressed groundwater development.	<i>See</i> NM-EX 112, Stevens Rep. 11-12, ¶ 6; NM-EX 240, Kryloff Dep. (Aug. 6, 2020) 57:1-10, 118:10-119:13; NM-EX 241, Miltenberger Dep. (June 8, 2020) 99:8- 101:22, 103:13-24, 105:9-106:23.	NM-EX-112: <i>See</i> General Objection #7; Fed. R. Evid. 801(c), hearsay. NM-EX-240, 241: <i>See</i> General Objection #8.	New Mexico's stated fact, and supporting evidence, are not cited in New Mexico's Response to Texas's Motion for Partial Summary Judgment and are therefore non-responsive and irrelevant. As such, Texas's stated material facts remain undisputed. Fed. R. Civ. P. 56(a), 56(c)(1).	New Mexico previously responded to these authenticity and hearsay objections. <i>See</i> [Dkt. 468] State of New Mexico's Response to State of Texas's Evidentiary Objections.
34	App. No. 25	The preamble of the Rio Grande Compact of 1983 [{"Rio Grande Compact" or "Compact"}] states: "The State of Colorado, the State of New Mexico, and the State of Texas, desiring to remove all causes of present and future controversy among these States and between citizens of one of these States and	NM-EX 330, Compact.	From TX's 12/22/20 Filings: N/A	From TX's 12/22/20 Filings: Disputed only as follows: "1983," as set forth in the first sentence, is understood by Texas to be "1938."	New Mexico previously responded to these objections. <i>See</i> [Dkt. 468] State of New Mexico's Response to State of Texas's Evidentiary Objections, <i>and</i> [Dkt. 469] State of New Mexico's Response to Statements of Fact.

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		citizens of another State with respect to the use of the waters of the Rio Grande above Fort Quitman, Texas, and being moved by considerations of interstate comity, and for the purpose of effecting an equitable apportionment of such waters, have resolved to conclude a Compact for the attainment of these purposes"				
35	N/A	Article I(c) of the Compact defines the term "Rio Grande Basin" to mean "all of the territory drained by the Rio Grande and its tributaries in Colorado, in New Mexico, and in Texas above Fort Quitman, including the Closed Basin in Colorado."	NM-EX 330, Compact at Art. I(c). <i>See</i> NM-EX 008, Lopez 2d Decl. at ¶ 5.	NM-EX-008: <i>See</i> General Objection #2; Fed. R. Evid. 801(c), hearsay.	New Mexico's stated fact, and supporting evidence, are not cited in New Mexico's Response to Texas's Motion for Partial Summary Judgment and are therefore non-responsive and irrelevant. As such, Texas's stated material facts remain undisputed. Fed. R. Civ. P. 56(a), 56(c)(1).	New Mexico previously responded to these authenticity and hearsay objections. <i>See</i> [Dkt. 468] State of New Mexico's Response to State of Texas's Evidentiary Objections. As to Texas's objection to Mr. Lopez, see New Mexico's Response to State of Texas's Second Evidentiary Objections, § III (B).
36	App. No. 26; similar language in Full	Article I, Paragraph (k) of the Compact defines "Project Storage" as "the combined capacity of Elephant Butte Reservoir and all other reservoirs actually available for the storage of usable water below	NM-EX 330, Compact at Art. I(k).	From TX's 12/22/20 Filings: N/A	From TX's 12/22/20 Filings: Undisputed.	New Mexico previously responded to these objections. <i>See</i> [Dkt. 468] State of New Mexico's Response to State of Texas's Evidentiary Objections, <i>and</i> [Dkt. 469] State of New Mexico's Response to

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	Supply No. 6	Elephant Butte and above the first diversion to lands of the Rio Grande project, but not more than a total of 2,638,860 acre- feet."				Statements of Fact.
37	App. No. 27	The limit on Project Storage within the Compact accords with what was considered the maximum capacity of Elephant Butte Reservoir.	See NM-EX 107, Lopez Rep. at 15.	From TX's 12/22/20 Filings: NM-EX-107: See General Objection #7; General Objection #2; Fed. R. Evid. 801(c), hearsay. The cited evidence does not support the stated "facts" in whole and/or in part. Fed. R. Civ. P. 56(c).	From TX's 12/22/20 Filings: Subject to the stated objections, disputed. The Expert Report of Estevan R. Lopez, P.E. at the page cited in this paragraph, page 15, provides no evidence that the figure given for "Project Storage within the Compact" was considered the "maximum capacity of Elephant Butte Reservoir." NM-EX 107. Miltenberger Dec. in Opp. to NM at TX_MSJ_007371, paragraphs 1 – 7, 19.	New Mexico previously responded to these objections. See [Dkt. 468] State of New Mexico's Response to State of Texas's Evidentiary Objections, and [Dkt. 469] State of New Mexico's Response to Statements of Fact.
38	App. No. 28; similar language in Full Supply No. 6	The Compact contemplates that usable water will be released from storage to meet irrigation demands. Article I, Paragraph (1) of the Compact defines "Usable Water" as "all water, exclusive of credit water, which is in project storage and which is available for release in accordance with irrigation demands, including deliveries to Mexico."	NM-EX 330, Compact at Art. I(1); NM-EX 107, Lopez Rep. at 16.	From TX's 12/22/20 Filings: NM-EX-107: See General Objection #7; General Objection #2; Fed. R. Evid. 801(c), hearsay.	From TX's 12/22/20 Filings: Subject to the stated objections, undisputed.	New Mexico previously responded to these objections. See [Dkt. 468] State of New Mexico's Response to State of Texas's Evidentiary Objections, and [Dkt. 469] State of New Mexico's Response to Statements of Fact.

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39	App. No. 29	Article I, Paragraph (o) of the Compact defines "Actual Release" as "the amount of usable water released in any calendar year from the lowest reservoir comprising project storage."	NM- EX 330, Compact at Art. I(o).	From TX's 12/22/20 Filings: N/A	From TX's 12/22/20 Filings: Undisputed.	New Mexico previously responded to these objections. <i>See</i> [Dkt. 468] State of New Mexico's Response to State of Texas's Evidentiary Objections, <i>and</i> [Dkt. 469] State of New Mexico's Response to Statements of Fact.
40	App. No. 30	Article I, Paragraph (p) of the Compact defines "Actual Spill" as "all water which is actually spilled from Elephant Butte Reservoir, or is released therefrom for flood control, in excess of the current demand on project storage and which does not become usable water by storage in another reservoir; provided, that actual spill of usable water cannot occur until all credit water shall have been spilled."	NM-EX 330, Compact at Art. I(p).	From TX's 12/22/20 Filings: N/A	From TX's 12/22/20 Filings: Undisputed.	N/A
41	App. No. 31	Article I, Paragraph (q) of the Compact defines "Hypothetical Spill" as "the time in any year at which usable water would have spilled from project storage if 790,000 acre-feet has been released therefrom at rates proportion to the actual release in every year from the starting date to the end of the year in which hypothetical spill occurs."	NM-EX 330, Compact at Art. I(q).	From TX's 12/22/20 Filings: N/A	From TX's 12/22/20 Filings: Undisputed.	N/A

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42	App. No. 32	Article II of the Compact specifies that stream gaging stations be established at specific locations in the Rio Grande Basin for the purposes of Compact accounting. The lowest required stream gage under Article II is just below Caballo Reservoir.	<i>See</i> NM-EX 330, Compact at Art. II; NM-EX 107, Lopez Rep. at 18. <i>See also</i> NM-EX 008, Lopez 2d Decl. at ¶ 6.	From TX's 12/22/20 Filings: NM-EX-107: <i>See</i> General Objection #7; General Objection #2; Fed. R. Evid. 801(c), hearsay. Fed. R. Evid. 704: The statement includes impermissible legal conclusions. The cited evidence does not support the stated "facts" in whole and/or in part. Fed. R. Civ. P. 56(c).	From TX's 12/22/20 Filings: Subject to the stated objections, disputed. The statement mischaracterizes Article II of the Compact. Article II does not include the following language: 1. "for the purposes of Compact accounting;" 2. "The lowest required stream gage under Article II is just below Caballo Reservoir." Miltenberger Dec. in Opp. to NM at TX_MSJ_007371, paragraphs 1 – 7, 19.	New Mexico previously responded to these objections. <i>See</i> [Dkt. 468] State of New Mexico's Response to State of Texas's Evidentiary Objections, and [Dkt. 469] State of New Mexico's Response to Statements of Fact.
43	N/A	Article III of the Compact specifies two delivery schedules for Colorado: one for the Conejos River and one for the Rio Grande exclusive of the Conejos River.	NM-EX 330, Compact at Art. III; <i>See also</i> NM- EX 008, Lopez 2d Decl. at ¶ 7.	NM-EX-330: The Compact provision does not constitute factual evidence as contemplated by Fed. R. Civ. P. 56(c).	Subject to the stated objection, undisputed.	N/A
44	App. No. 33	Article IV of the Compact defines New Mexico's obligation to deliver water from the Rio Grande to San Marcial based upon nine (9) non-summer months of river flows. The delivery obligation at San Marcial is defined by a mathematical relationship corresponding to recorded flow at the Otowi gage during those months. The Otowi	<i>See</i> NM-EX 330, Compact at Art. IV; NM-EX 107, Lopez Rep. at 20.	From TX's 12/22/20 Filings: NM-EX-107: <i>See</i> General Objection #7; General Objection #2; Fed. R. Evid. 801(c), hearsay. Fed. R. Evid. 704: The statement includes impermissible legal conclusions.	From TX's 12/22/20 Filings: Subject to the stated objections, disputed in part. Although the content of Article IV of the Compact and the relationship between the Otowi and San Marcial gages is correctly stated in this paragraph, the paragraph's presented facts are incomplete. NM-EX-330. The paragraph does not recognize the temporal basis for the delivery schedule, which is important context for understanding what those flows truly are and how the Compact works. Miltenberger Declaration paragraphs 22-24 discuss the temporal basis for the delivery schedule. TX MSJ 001585.	New Mexico previously responded to these objections. <i>See</i> [Dkt. 468] State of New Mexico's Response to State of Texas's Evidentiary Objections, and [Dkt. 469] State of New Mexico's Response to Statements of Fact.

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		gage [is] located in New Mexico about 100 miles south of the Colorado border. The San Marcial gage was located just upstream of Elephant Butte Reservoir.			Miltenberger Dec. in Opp. to NM at TX_MSJ_007371, paragraphs 1 – 7, 20.	
45	App. No. 34	In 1948, the RGCC changed New Mexico's delivery schedule under Article IV of the Compact to require deliveries at Elephant Butte Reservoir, rather than San Marcial, and removed the Article II gaging stations at San Marcial and San Acacia.	<i>See</i> NM-EX 331, Rio Grande Compact Commission, Tenth Annual Report of the Rio Grande Compact Commission, at 17-18 (1948); NM-EX 107, Lopez Rep. at 18-22.	From TX's 12/22/20 Filings: NM-EX-107: <i>See</i> General Objection #7; General Objection #2; Fed. R. Evid. 801(c), hearsay.	From TX's 12/22/20 Filings: Subject to the stated objections, undisputed.	New Mexico previously responded to these objections. <i>See</i> [Dkt. 468] State of New Mexico's Response to State of Texas's Evidentiary Objections, <i>and</i> [Dkt. 469] State of New Mexico's Response to Statements of Fact.
46	N/A	The 1948 amendment also removed a requirement from Article IV to adjust the scheduled delivery amounts based on depletion of tributary runoff between Otowi Bridge and San Marcial during July, August, and September by works constructed after 1937.	<i>See</i> NM-EX 008, Lopez 2d Decl. at ¶ 34; <i>See also</i> NM-EX 331, Rio Grande Compact Commission, Tenth Annual Report of the Rio Grande Compact Commission, at 17-18 (1948); NM-EX 107, Lopez Rep. at 17-18.	NM-EX-008: <i>See</i> General Objection #2; Fed. R. Evid. 801(c), hearsay; NM-EX-107: <i>See</i> General Objection #7 and #2; Fed. R. Evid. 801(c), hearsay. The cited evidence does not support the stated "facts" in whole and/or in part. Fed. R. Civ. P. 56(c). Fed. R. Evid. 704: The statement includes impermissible legal conclusions.	Subject to the stated objections, undisputed.	New Mexico previously responded to these authenticity and hearsay objections. <i>See</i> [Dkt. 468] State of New Mexico's Response to State of Texas's Evidentiary Objections.

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47	App. No. 35	Article VI of the Compact defines procedures to determine the annual credits and debits for Colorado and New Mexico. Of note, Article VI permits Colorado and New Mexico to authorize releases of Credit Water to avoid spill in excess of downstream demand and permits such releases to be included in the accounting of an Actual Spill.	<i>See</i> NM-EX 330, Compact at Art. VI; NM- EX 107, Lopez Rep. at 22-23.	From TX's 12/22/20 Filings: NM-EX-107: <i>See</i> General Objection #7; General Objection #2; Fed. R. Evid. 801(c), hearsay.	From TX's 12/22/20 Filings: Subject to the stated objection, undisputed.	New Mexico previously responded to these objections. <i>See</i> [Dkt. 468] State of New Mexico's Response to State of Texas's Evidentiary Objections, and [Dkt. 469] State of New Mexico's Response to Statements of Fact.
48	N/A	The Compact separately defines "Annual Debits," "Annual Credits," "Accrued Debits," and "Accrued Credits." These distinctions indicate that each state's credit or debit balance is subject to annual accounting.	<i>See</i> NM-EX 330, Compact at Art. I(g)-(j), VI; NM-EX 008, Lopez 2d Decl. at ¶ 12; NM-EX 107, Lopez Rep. at 16-17.	NM-EX-107: <i>See</i> General Objection #7; General Objection #2; Fed. R. Evid. 801(c), hearsay. The cited evidence does not support the stated "facts" in whole and/or in part. Fed. R. Civ. P. 56(c). Fed. R. Evid. 704: The statement includes impermissible legal conclusions.	Subject to the stated objection, the fact is cited in New Mexico's Response to Texas's Motion for Partial Summary Judgment but does not materially respond to facts stated therein. The stated fact and supporting evidence merely include New Mexico and Mr. Lopez's opinion on the meaning of Compact terms. New Mexico's stated fact is non-responsive and otherwise not supported by definite, competent, or significantly probative evidence that genuinely and materially responds to a fact stated in Texas's Motion for Partial Summary Judgment. As such, Texas's stated material facts remain undisputed. Fed. R. Civ. P. 56(a), 56(c)(1), (2), (4).	New Mexico previously responded to these authenticity and hearsay objections. <i>See</i> [Dkt. 468] State of New Mexico's Response to State of Texas's Evidentiary Objections. As to Texas's objection to Mr. Lopez, see New Mexico's Response to State of Texas's Second Evidentiary Objections, § III (B).
49	App. No. 36	Article VII of the Compact prohibits any increase in storage by either New Mexico or Colorado in reservoirs constructed after 1929 if the volume of Usable Water in Project Storage is less than 400,000 acre-feet. This threshold value	<i>See</i> NM-EX 330, Compact at Art. VII; NM-EX 107, Lopez Rep. at 23.	From TX's 12/22/20 Filings: NM-EX-107: <i>See</i> General Objection #7; General Objection #2; Fed. R. Evid. 801(c), hearsay. The cited evidence does	From TX's 12/22/20 Filings: Miltenberger Dec. in Opp. to NM at TX_MSJ_007371, paragraphs 1 – 7, 21.	New Mexico previously responded to these objections. <i>See</i> [Dkt. 468] State of New Mexico's Response to State of Texas's Evidentiary Objections, and [Dkt. 469] State of New Mexico's Response to Statements of Fact.

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		decreases if the aggregate releases from Project [S] storage have averaged more than 790,000 acre-feet from the beginning of the calendar year following the effective date of the Compact, or from the beginning of the calendar year following an Actual Spill, before the storage limitation takes effect. Further, the article permits that either Colorado or New Mexico may offer to relinquish accrued Credit Water to Texas, and Texas may accept such an offer at its discretion. If New Mexico and Texas agree on a relinquishment, the relinquished Credit Water becomes Usable Water and is available for use on lands in both New Mexico and Texas.		not support the stated "facts" in whole and/or in part. Fed. R. Civ. P. 56(c). Fed. R. Evid. 704: The statement includes impermissible legal conclusions.		
50	N/A	If Texas agrees to New Mexico's or Colorado's offer to relinquish Credit Water, the state that has so relinquished has a right to store a like amount of water in the upstream post-1929 reservoirs. Texas has sole authority to accept relinquishment of Accrued Credits. However, neither Colorado nor New Mexico is obligated to offer such relinquishment. In other words, Texas cannot compel such	<i>See</i> NM-EX 330, Compact at Art. VII; NM-EX 008, Lopez 2d Decl. at ¶¶ 14, 15; NM-EX 107, Lopez Rep. at 23.	NM-EX-008, NM-EX-107: <i>See</i> General Objection #7; General Objection #2; Fed. R. Evid. 801(c), hearsay. The cited evidence does not support the stated "facts" in whole and/or in part. Fed. R. Civ. P. 56(c). Fed. R. Evid. 704: The statement includes impermissible legal	Subject to the stated objection, the fact is cited in New Mexico's Response to Texas's Motion for Partial Summary Judgment but does not materially respond to facts stated therein. The stated fact and supporting evidence merely include New Mexico and Mr. Lopez's opinion on the meaning of Compact terms. New Mexico's stated fact is non-responsive and otherwise not supported by definite, competent, or significantly probative evidence that genuinely and materially responds to a fact stated in Texas's Motion for Partial Summary Judgment. As such, Texas's stated material facts remain undisputed. Fed. R. Civ. P. 56(a), 56(c)(1), (2), (4).	New Mexico previously responded to these authenticity and hearsay objections. <i>See</i> [Dkt. 468] State of New Mexico's Response to State of Texas's Evidentiary Objections. As to Texas's objection to Mr. Lopez, see New Mexico's Response to State of Texas's Second Evidentiary Objections, § III (B).

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		relinquishment.		conclusions.		
51	Full Supply No. 6	The Compact provides that "a normal release ... from Project Storage" is 790,000 acre- feet.	NM-EX 001, Barroll Decl. at ¶ 16; NM-EX 330, Compact at Art. VIII; <i>See</i> also NM-EX 529, Bureau of Reclamation, Continued Implementation of the 2008 Operating Agreement for the Rio Grande Project, New Mexico and Texas: Final Environmental Impact Statement, at 17 (Sept. 30, 2016) (describing a full allocation release to be 790,000 acre-feet per year as provided in the Compact).	From TX's 12/22/20 Filings: NM-EX 529: <i>See</i> General Objection #8. Texas's Reply to Exceptions to First Interim Report of Special Master, 40 (July 28, 2017); <i>See</i> also First Interim Report of the Special Master, 194-95 (Feb. 9, 2017); Texas's Reply to Exceptions to First Interim Report of Special Master, 40 (July 28, 2017); Reply Brief for the United States on Exceptions by the States of New Mexico and Colorado to the First Interim Report of the Special Master, 18 (July 2017): Language in a legal brief prepared by the party's attorneys supporting a motion that is not based on evidence, do not constitute factual "evidence" as	From TX's 12/22/20 Filings: Subject to the stated objections, undisputed.	New Mexico previously responded to these objections. <i>See</i> [Dkt. 468] State of New Mexico's Response to State of Texas's Evidentiary Objections, <i>and</i> [Dkt. 469] State of New Mexico's Response to Statements of Fact.

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				<p>contemplated by Fed. R. Civ. P. 56(c). The pleadings discussed by New Mexico here are not supported by evidence and, as such, are inadmissible and irrelevant for purposes of summary judgment. Fed. R. Civ. P. 56(c); Fed. R. Evid. 401. The cited evidence does not support the stated "facts" in whole and/or in part. Fed. R. Civ. P. 56(c).</p>		
52	App. No. 37	<p>Article VIII of the Compact permits New Mexico to demand of Colorado, and Texas to demand that Colorado and New Mexico, in January, release of water then held in storage from post-1929 reservoirs upstream of Elephant Butte to the amount of any accrued debits of Colorado and New Mexico, respectively, as necessary to help bring the amount of water in Project Storage up to 600,000 acre feet by March first. The purpose of this provision is to bring the quantity of Usable Water in Project Storage to</p>	<p><i>See</i> NM-EX 330, Compact at Art. VIII.</p>	<p>From TX's 12/22/20 Filings:</p>	<p>From TX's 12/22/20 Filings: Subject to the stated objections, disputed in part. Although the content of Article VIII as presented is correct, this paragraph does not acknowledge the second-order purpose of Article VIII: to protect the Project, and thus the water supply to Texas. Miltenberger Declaration paragraph 24 and paragraph 40 address this. TX_MSJ_001585. Miltenberger Dec. in Opp. to NM at TX_MSJ_007371, paragraphs 1 – 7, 22.</p>	<p>New Mexico previously responded to these objections. <i>See</i> [Dkt. 468] State of New Mexico's Response to State of Texas's Evidentiary Objections, <i>and</i> [Dkt. 469] State of New Mexico's Response to Statements of Fact.</p>

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<u>NM- CS MF #</u>	<u>NM's Prior Numbering System</u>	<u>New Mexico's Stated Fact</u>	<u>New Mexico's Supporting Evidence</u>	<u>TEXAS'S EVIDENTIARY OBJECTIONS</u>	<u>TEXAS'S RESPONSE</u>	<u>NEW MEXICO'S RESPONSE TO TEXAS EVIDENTIARY OBJECTIONS</u>
		600,000 acre-feet by March first and to maintain this quantity until April thirtieth to allow for a normal release of 790,000 acre feet in that year.				
53	N/A	The text and structure of the Compact indicate that the Project, Compact, and Downstream Contracts are inextricably intertwined. The Compact incorporates the definition of Project Storage into a number of provisions.	<i>See</i> NM-EX 330, Compact, Articles I(1)-(q), VI, VII, and VIII; NM- EX 008, Lopez 2d Decl. at ¶ 4; NM-EX 107, Lopez Rep. at 15-25.	NM-EX-107: <i>See</i> General Objection #7; General Objection #2; Fed. R. Evid. 801(c), hearsay. The cited evidence does not support the stated "facts" in whole and/or in part. Fed. R. Civ. P. 56(c). Fed. R. Evid. 704: The statement includes impermissible legal conclusions.	Subject to the stated objections, the fact is cited in New Mexico's Response to Texas's Motion for Partial Summary Judgment but does not materially respond to facts stated therein. The text and structure of the Compact recognizes the Project's existence, and "Project Storage" is referenced in the Compact. However, there is no reference to the "Downstream Contracts" in the Compact. New Mexico's stated fact is non-responsive and otherwise not supported by definite, competent, or significantly probative evidence that genuinely and materially responds to a fact stated in Texas's Motion for Partial Summary Judgment. As such, Texas's stated material facts remain undisputed. Fed. R. Civ. P. 56(a), 56(c)(1).	New Mexico previously responded to these authenticity and hearsay objections. <i>See</i> [Dkt. 468] State of New Mexico's Response to State of Texas's Evidentiary Objections. As to Texas's objection to Mr. Lopez, see New Mexico's Response to State of Texas's Second Evidentiary Objections, § III (B).
54	N/A	An intent to protect the Project is evident in the delivery obligations in Articles III and IV. These constraints primarily benefit the Project. The schedules in Articles III and IV of the Compact were derived from streamflow data that was available in 1938. This assured that existing uses	<i>See</i> NM-EX 008, Lopez 2d Decl. at ¶¶ 8, 11, 18; <i>See</i> also NM-EX 330, Compact, at Arts. III- IV; NM-EX 107, Lopez Rep. at 22-26.	NM-EX-008, NM-EX-107: <i>See</i> General Objection #7; General Objection #2; Fed. R. Evid. 801(c), hearsay. The cited evidence does not support the stated "facts" in whole and/or	Subject to the stated objections, the fact is cited in New Mexico's Response to Texas's Motion for Partial Summary Judgment but does not materially respond to facts stated therein. The stated fact and evidence cited in support are used to support New Mexico's argument that pumping in Texas impacts "New Mexico's apportionment." Such an argument may address New Mexico's counterclaims against Texas, but does not address Texas's Motion for Partial Summary Judgment. New Mexico's stated fact is non-responsive and otherwise not supported by	New Mexico previously responded to these authenticity and hearsay objections. <i>See</i> [Dkt. 468] State of New Mexico's Response to State of Texas's Evidentiary Objections.

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		as of 1938 in Colorado, in New Mexico above Elephant Butte Reservoir and in the Rio Grande Project area below Elephant Butte were all protected while allowing Compact operation in variable hydrology. Further, both Colorado and New Mexico were allowed to develop additional water resources after 1938 subject to certain constraints that are specified in Articles VI, VII and VIII. Notably, those constraints do not preclude additional depletions but do constrain operations of post-1929 upstream reservoirs depending on the conditions at Elephant Butte Reservoir. To the extent that those Articles protect Project Supply during relatively dry periods, those protections benefit New Mexico below Elephant Butte, Texas, and Mexico.		in part. Fed. R. Civ. P. 56(c). Fed. R. Evid. 704: The statement includes impermissible legal conclusions.	definite, competent, or significantly probative evidence that genuinely and materially responds to a fact stated in Texas's Motion for Partial Summary Judgment. As such, Texas's stated material facts remain undisputed. Fed. R. Civ. P. 56(a), 56(c)(1).	As to Texas's objection to Mr. Lopez, see New Mexico's Response to State of Texas's Second Evidentiary Objections, § III (B).
55	N/A	In its protection of preexisting uses as of 1938, the Compact protects certain pre-Compact rights in New Mexico that are not part of the Project.	<i>See</i> NM-EX 008, Lopez 2d Decl. at ¶ 30; NM- EX 237, Rule 30(b)(6) Dep. of the State of New Mexico by and through Lopez (Sept. 18, 2020) at 83:3-85:16.	NM-EX-008: <i>See</i> General Objection #2; Fed. R. Evid. 801(c), hearsay. The cited evidence does not support the stated "facts" in whole and/or in part. Fed. R. Civ. P.	Subject to the stated objections, the fact is cited in New Mexico's Response to Texas's Motion for Partial Summary Judgment but does not materially respond to facts stated therein. The stated fact and evidence cited in support are used to support New Mexico's argument that pumping in Texas impacts "New Mexico's apportionment" (<i>See</i> NM Response at 56). Such an argument may address New Mexico's counterclaims against Texas, but does not address Texas's Motion for Partial Summary Judgment. New Mexico's stated fact and supporting	New Mexico previously responded to these authenticity and hearsay objections. <i>See</i> [Dkt. 468] State of New Mexico's Response to State of Texas's Evidentiary Objections.

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				56(c). Fed. R. Evid. 704: The statement includes impermissible legal conclusions. NM-EX-237: <i>See</i> General Objection #8.	evidence are non-responsive and otherwise not supported by definite, competent, or significantly probative evidence that genuinely and materially responds to a fact stated in Texas's Motion for Partial Summary Judgment. As such, Texas's stated material facts remain undisputed. Fed. R. Civ. P. 56(a), 56(c)(1), (2), (4).	As to Texas's objection to Mr. Lopez, see New Mexico's Response to State of Texas's Second Evidentiary Objections, § III (B).
56	N/A	There is not any indication in the Compact that the states intended to adopt a 1938 Condition. First, the plain text of the Compact does not refer to any 1938 Condition, in contrast to other interstate water compacts of the era, such as the Pecos River Compact, NMSA 1978 § 72- 15- 19 (1947). Second, the Downstream Contracts similarly do not refer to any 1938 condition. Third, the Downstream Contracts do not define a total volume of water to which the Districts are entitled.	<i>See</i> NM-EX 008, Lopez 2d Decl. at ¶¶ 24-25; <i>See</i> also NM-EX 330, Compact; NM-EX 107, Lopez Rep. at 8, 26-27, 41-43; NM-EX 108, Lopez Reb. Rep. at 6-9.	NM-EX-008, 107: <i>See</i> General Objection #2; Fed. R. Evid. 801(c), hearsay. The cited evidence does not support the stated "facts" in whole and/or in part. Fed. R. Civ. P. 56(c). Fed. R. Evid. 704: The statement includes impermissible legal conclusions.	Subject to the stated objections, the fact is cited in New Mexico's Response to Texas's Motion for Partial Summary Judgment but does not materially respond to facts stated therein. Texas's Motion for Partial Summary Judgment does not argue that the plain text of the Rio Grande Compact states that there is a 1938 condition. New Mexico's stated fact is non-responsive and otherwise not supported by definite, competent, or significantly probative evidence that genuinely and materially responds to a fact stated in Texas's Motion for Partial Summary Judgment. As such, Texas's stated material facts remain undisputed. Fed. R. Civ. P. 56(a), 56(c)(1), (2), (4).	New Mexico previously responded to these authenticity and hearsay objections. <i>See</i> [Dkt. 468] State of New Mexico's Response to State of Texas's Evidentiary Objections. As to Texas's objection to Mr. Lopez, see New Mexico's Response to State of Texas's Second Evidentiary Objections, § III (B).
57	N/A	In effect, Article IV deliveries are deliveries into the Project as a whole and benefit New Mexico, Texas, and Mexico. Nothing in Article IV indicates that the Compact vests in Texas control, dominion, or ownership in the water delivered to Elephant Butte Reservoir. Rather, the Compact provides that New Mexico and Texas may each	<i>See</i> NM-EX 008, Lopez 2d Decl. at ¶¶ 12, 17, 40; NM-EX 107, Lopez Rep. at 8, 20-22, 26-27; <i>See</i> also NM-EX 012, Sullivan Decl. at ¶ 23 (describing a number of reasons why portions of the water delivered into Elephant Butte Reservoir cannot be delivered to Texas).	NM-EX-008, 107: <i>See</i> General Objection #2; Fed. R. Evid. 801(c), hearsay. The cited evidence does not support the stated "facts" in whole and/or in part. Fed. R. Civ. P. 56(c). Fed. R. Evid. 704: The statement includes	Subject to the stated objections, the fact is cited in New Mexico's Response to Texas's Motion for Partial Summary Judgment but does not materially respond to facts stated therein. Texas's Motion for Partial Summary Judgment references Article IV of the Rio Grande Compact, but New Mexico's stated fact amounts to New Mexico and Mr. Lopez's legal opinion regarding the meaning of Compact terms. New Mexico's stated fact is non-responsive and otherwise not supported by definite, competent, or significantly probative evidence that genuinely and materially responds to a fact stated in Texas's Motion for Partial Summary Judgment. As such,	New Mexico previously responded to these authenticity and hearsay objections. <i>See</i> [Dkt. 468] State of New Mexico's Response to State of Texas's Evidentiary Objections. As to Texas's objection to Mr. Lopez, see New Mexico's

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		share in releases of "Usable Water," after satisfying the delivery to Mexico pursuant to the 1906 Treaty, to meet irrigation demands in accord with the ordinary operation of the Project and the Downstream Contracts.		impermissible legal conclusions.	Texas's stated material facts remain undisputed. Fed. R. Civ. P. 56(a), 56(c)(1), (2), (4).	Response to State of Texas's Second Evidentiary Objections, § III (B).
58	N/A	Although the drafters certainly could have done so, the Compact does not define a specific delivery to the New Mexico-Texas state line. Rather, deliveries to Texas and its apportionment are effectuated through the operation of the Rio Grande Project as a single unit that makes Project Supply available equally (i.e., on an acre-foot per annum/acre basis) to all authorized Project lands, whether in New Mexico or in Texas.	<i>See</i> NM-EX 008, Lopez 2d Decl. at ¶¶ 7, 24; <i>See also</i> NM-EX 330, Compact; NM-EX 107, Lopez Rep. at 19-22, 26-27; NM-EX 108, Lopez Reb. Rep. at 6- 9, Appx. 1.	NM-EX-008, 107, 108 <i>See</i> General Objection #2; Fed. R. Evid. 801(c), hearsay. The cited evidence does not support the stated "facts" in whole and/or in part. Fed. R. Civ. P. 56(c). Fed. R. Evid. 704: The statement includes impermissible legal conclusions.	Subject to the stated objections, the fact is cited in New Mexico's Response to Texas's Motion for Partial Summary Judgment but does not materially respond to facts stated therein. Texas's Motion for Partial Summary Judgment discusses the Compact terms relating to New Mexico's required delivery of water to Texas. New Mexico's stated fact however amounts to New Mexico and Mr. Lopez's legal opinion regarding the meaning of Compact terms. New Mexico's stated fact is non-responsive and otherwise not supported by definite, competent, or significantly probative evidence that genuinely and materially responds to a fact stated in Texas's Motion for Partial Summary Judgment. As such, Texas's stated material facts remain undisputed. Fed. R. Civ. P. 56(a), 56(c)(1), (2), (4).	New Mexico previously responded to these authenticity and hearsay objections. <i>See</i> [Dkt. 468] State of New Mexico's Response to State of Texas's Evidentiary Objections. As to Texas's objection to Mr. Lopez, see New Mexico's Response to State of Texas's Second Evidentiary Objections, § III (B).
59	N/A	The absence of gages downstream of the Caballo Reservoir gage in Article II of the Compact also indicates that the compacting States had no intention to guarantee a specific state- line delivery to Texas. Texas has not requested any gages "necessary . . . for the carrying out of the [C]ompact" near the state line.	<i>See</i> NM-EX 008, Lopez 2d Decl. at ¶ 36.	NM-EX-008: <i>See</i> General Objection #2; Fed. R. Evid. 801(c), hearsay. The cited evidence does not support the stated "facts" in whole and/or in part. Fed. R. Civ. P. 56(c). Fed. R. Evid. 704:	Subject to the stated objections, the fact is cited in New Mexico's Response to Texas's Motion for Partial Summary Judgment but does not materially respond to facts stated therein. Texas's Motion for Partial Summary Judgment discusses the Compact terms relating to New Mexico's required delivery of water to Texas. New Mexico's stated fact however amounts to New Mexico and Mr. Lopez's legal opinion regarding the meaning of Compact terms. New Mexico's stated fact is non-responsive and otherwise not supported by definite, competent, or significantly probative evidence that genuinely and	New Mexico previously responded to these authenticity and hearsay objections. <i>See</i> [Dkt. 468] State of New Mexico's Response to State of Texas's Evidentiary Objections. As to Texas's objection to Mr. Lopez, see New Mexico's

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				The statement includes impermissible legal conclusions.	materially responds to a fact stated in Texas's Motion for Partial Summary Judgment. As such, Texas's stated material facts remain undisputed. Fed. R. Civ. P. 56(a), 56(c)(1), (2), (4).	Response to State of Texas's Second Evidentiary Objections, § III (B).
60	N/A	The division of rights under Article VII of the Compact, whereby only New Mexico and Colorado may offer relinquishment of credit water and only Texas may accept, reflects three practical concerns: (1) Texas's sole apportionment under the Compact is entirely below Elephant Butte; (2) Texas is the only Compact party that cannot accrue Credits under the Compact that it could relinquish; and (3) Texas has no post-1929 reservoirs upstream of Elephant Butte within which it could store water.	<i>See</i> NM-EX 008, Lopez 2d Decl. at ¶ 15; NM- EX 107, Lopez Rep. at 23.	NM-EX-008, 107: <i>See</i> General Objection #2; Fed. R. Evid. 801(c), hearsay. The cited evidence does not support the stated "facts" in whole and/or in part. Fed. R. Civ. P. 56(c). Fed. R. Evid. 704: The statement includes impermissible legal conclusions.	Subject to the stated objections, the fact is cited in New Mexico's Response to Texas's Motion for Partial Summary Judgment but does not materially respond to facts stated therein. Texas's Motion for Partial Summary Judgment discusses the Compact terms relating to New Mexico's required delivery of water to Texas. New Mexico's stated fact however amounts to New Mexico and Mr. Lopez's legal opinion regarding the meaning of Compact terms. In addition, the Compact does not use the phrase "division of rights" and thus the phrase is irrelevant. New Mexico's stated fact is non-responsive and otherwise not supported by definite, competent, or significantly probative evidence that genuinely and materially responds to a fact stated in Texas's Motion for Partial Summary Judgment. As such, Texas's stated material facts remain undisputed. Fed. R. Civ. P. 56(a), 56(c)(1), (2), (4).	New Mexico previously responded to these authenticity and hearsay objections. <i>See</i> [Dkt. 468] State of New Mexico's Response to State of Texas's Evidentiary Objections. As to Texas's objection to Mr. Lopez, see New Mexico's Response to State of Texas's Second Evidentiary Objections, § III (B).
61	N/A	Article VIII of the Compact reflects New Mexico's apportionment interest below Elephant Butte Reservoir because it permits New Mexico, independent of Texas, to demand of Colorado a release of water intended to increase Usable Water in Project Storage.	<i>See</i> NM-EX 008, Lopez Decl. at ¶ 16; <i>See</i> also NM-EX 330, Compact at Art. VIII; NM-EX 107, Lopez Rep. at 24-27.	NM-EX-008, 107: <i>See</i> General Objection #2; Fed. R. Evid. 801(c), hearsay. The cited evidence does not support the stated "facts" in whole and/or in part. Fed. R. Civ. P. 56(c). Fed. R. Evid. 704: The statement includes	Subject to the stated objections, the fact is cited in New Mexico's Response to Texas's Motion for Partial Summary Judgment but does not materially respond to facts stated therein. New Mexico's stated fact amounts to New Mexico and Mr. Lopez's legal opinion regarding the meaning of Compact terms (in this case, Article VIII). New Mexico's stated fact is non-responsive and otherwise not supported by definite, competent, or significantly probative evidence that genuinely and materially responds to a fact stated in Texas's Motion for Partial Summary Judgment. As such, Texas's stated material facts remain undisputed. Fed. R. Civ. P. 56(a), 56(c)(1), (2),	New Mexico previously responded to these authenticity and hearsay objections. <i>See</i> [Dkt. 468] State of New Mexico's Response to State of Texas's Evidentiary Objections. As to Texas's objection to Mr. Lopez, see New Mexico's

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				impermissible legal conclusions.	(4).	Response to State of Texas's Second Evidentiary Objections, § III (B).
62	N/A	The definition of "normal release" in Article VIII was a negotiated amount reflecting the amount of water thought to be needed for Project irrigation purposes in a given year, including deliveries to Mexico under the 1906 Treaty and an unspecified allowance for flushing salts. There is no indication, in the structure of the Compact, that the normal release assumes any specific amount of return flow. Project return flows occur entirely below the Rio Grande below the Caballo Reservoir gage where releases from Project Storage are measured. Moreover, the Compact does not require the Actual Release in a given year to be 790,000 acre- feet/year, permitting variability to address annual changes in conditions.	<i>See</i> NM-EX 008, Lopez 2d Decl. at ¶¶ 19-20; NM-EX 107, Lopez Rep. at 8, 17-18, 26-27.	NM-EX-008, 107: <i>See</i> General Objection #2; Fed. R. Evid. 801(c), hearsay. The cited evidence does not support the stated "facts" in whole and/or in part. Fed. R. Civ. P. 56(c). Fed. R. Evid. 704: The statement includes impermissible legal conclusions.	Subject to the stated objections, the fact is cited in New Mexico's Response to Texas's Motion for Partial Summary Judgment but does not materially respond to facts stated therein. New Mexico's stated fact amounts to New Mexico and Mr. Lopez's legal opinion regarding the meaning of Compact terms (in this case, Article VIII). New Mexico's stated fact is non-responsive and otherwise not supported by definite, competent, or significantly probative evidence that genuinely and materially responds to a fact stated in Texas's Motion for Partial Summary Judgment. As such, Texas's stated material facts remain undisputed. Fed. R. Civ. P. 56(a), 56(c)(1), (2), (4).	New Mexico previously responded to these authenticity and hearsay objections. <i>See</i> [Dkt. 468] State of New Mexico's Response to State of Texas's Evidentiary Objections. As to Texas's objection to Mr. Lopez, see New Mexico's Response to State of Texas's Second Evidentiary Objections, § III (B).
62	N/A	The provisions of Articles VII and VIII do not guarantee that 790,000 acre-feet of Usable Water will be available for a normal release in any given year.	<i>See</i> NM-EX 008, Lopez 2d Decl. at ¶ 21; NM- EX 107, Lopez Rep. at 22-25.	NM-EX-008, 107: <i>See</i> General Objection #2; Fed. R. Evid. 801(c), hearsay. The cited evidence does not support the stated	Subject to the stated objections, the fact is cited in New Mexico's Response to Texas's Motion for Partial Summary Judgment but does not materially respond to facts stated therein. New Mexico's stated fact amounts to New Mexico and Mr. Lopez's legal opinion regarding the meaning of Compact terms (in this case, Articles VII & VIII). New Mexico's stated	New Mexico previously responded to these authenticity and hearsay objections. <i>See</i> [Dkt. 468] State of New Mexico's Response to State of Texas's Evidentiary Objections.

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				"facts" in whole and/or in part. Fed. R. Civ. P. 56(c). Fed. R. Evid. 704: The statement includes impermissible legal conclusions.	fact is non-responsive and otherwise not supported by definite, competent, or significantly probative evidence that genuinely and materially responds to a fact stated in Texas's Motion for Partial Summary Judgment. As such, Texas's stated material facts remain undisputed. Fed. R. Civ. P. 56(a), 56(c)(1), (2), (4).	As to Texas's objection to Mr. Lopez, see New Mexico's Response to State of Texas's Second Evidentiary Objections, § III (B).
63	N/A	To the extent that the Compact negotiators had a nascent understanding of the interactions between groundwater extraction and surface flow, there is no indication in the text that they intended to apportion groundwater below Elephant Butte Reservoir. Initially, the Compact does not make any mention of groundwater. Next, the Compact defines two inflow-outflow schedules above Elephant Butte (Articles III and IV) that effectively require the administration of groundwater use in order to meet delivery obligations at the Colorado state line (Article III) and into Elephant Butte Reservoir (Article IV), but there is no similar mechanism in effect below Elephant Butte Reservoir.	<i>See</i> NM-EX 008, Lopez 2d Decl. at ¶¶ 22-23, 41.	NM-EX-008: <i>See</i> General Objection #2. The cited evidence does not support the stated "facts" in whole and/or in part. Fed. R. Civ. P. 56(c). Fed. R. Evid. 704: The statement includes impermissible legal conclusions.	Subject to the stated objections, the fact is cited in New Mexico's Response to Texas's Motion for Partial Summary Judgment but does not materially respond to facts stated therein. New Mexico's stated fact amounts to New Mexico and Mr. Lopez's legal opinion regarding the meaning of Compact terms. New Mexico's stated fact is non-responsive and otherwise not supported by definite, competent, or significantly probative evidence that genuinely and materially responds to a fact stated in Texas's Motion for Partial Summary Judgment. As such, Texas's stated material facts remain undisputed. Fed. R. Civ. P. 56(a), 56(c)(1), (2), (4).	As to Texas's objection to Mr. Lopez, see New Mexico's Response to State of Texas's Second Evidentiary Objections, § III (B).

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64	N/A	<p>The Compact indicates that New Mexico's apportionment comprises two parts:</p> <p>a. Colorado's required deliveries under Compact Article III plus inflows between the Colorado-New Mexico state line and Elephant Butte Reservoir less New Mexico's delivery obligation to Elephant Butte under Article IV based on the flow at Otowi gage; and 57% of the Project Supply that remains after first having provided for Mexico's allocation under the 1906 Treaty.</p>	<p>NM-EX 008, Lopez 2d Decl. at ¶ 26; <i>See</i> also NM-EX 330, Compact; NM-EX 107, Lopez Rep. at 8, 19-22 and 26-27.</p>	<p>NM-EX-008, 107: <i>See</i> General Objection #2; Fed. R. Evid. 801(c), hearsay. The cited evidence does not support the stated "facts" in whole and/or in part. Fed. R. Civ. P. 56(c). Fed. R. Evid. 704: The statement includes impermissible legal conclusions.</p>	<p>Subject to the stated objections, the fact is cited in New Mexico's Response to Texas's Motion for Partial Summary Judgment but does not materially respond to facts stated therein. New Mexico's stated fact amounts to New Mexico and Mr. Lopez's legal opinion regarding the meaning of Compact terms. New Mexico's stated fact is non-responsive and otherwise not supported by definite, competent, or significantly probative evidence that genuinely and materially responds to a fact stated in Texas's Motion for Partial Summary Judgment. As such, Texas's stated material facts remain undisputed. Fed. R. Civ. P. 56(a), 56(c)(1), (2), (4).</p>	<p>New Mexico previously responded to these authenticity and hearsay objections. <i>See</i> [Dkt. 468] State of New Mexico's Response to State of Texas's Evidentiary Objections.</p> <p>As to Texas's objection to Mr. Lopez, see New Mexico's Response to State of Texas's Second Evidentiary Objections, § III (B).</p>
65	N/A	<p>The Compact indicates that the apportionment to lands in New Mexico below Elephant Butte is to New Mexico. New Mexico would continue to be entitled to its apportionment below Elephant Butte regardless of whether EBID ceased to exist.</p>	<p><i>See</i> NM-EX 008, Lopez 2d Decl. at ¶ 30; NM- EX 237, Rule 30(b)(6) Dep. of the State of New Mexico by and through Lopez (Sept. 18, 2020) at 83:3-85:16.</p>	<p>NM-EX-008: <i>See</i> General Objection #2. The cited evidence does not support the stated "facts" in whole and/or in part. Fed. R. Civ. P. 56(c). Fed. R. Evid. 704: The statement includes impermissible legal conclusions. NM-EX-237: <i>See</i> General Objection #8.</p>	<p>Subject to the stated objections, the fact is cited in New Mexico's Response to Texas's Motion for Partial Summary Judgment but does not materially respond to facts stated therein. New Mexico's stated fact amounts to New Mexico and Mr. Lopez's legal opinion regarding the meaning of Compact terms. New Mexico's stated fact is non-responsive and otherwise not supported by definite, competent, or significantly probative evidence that genuinely and materially responds to a fact stated in Texas's Motion for Partial Summary Judgment. As such, Texas's stated material facts remain undisputed. Fed. R. Civ. P. 56(a), 56(c)(1), (2), (4).</p>	<p>New Mexico previously responded to these authenticity and hearsay objections. <i>See</i> [Dkt. 468] State of New Mexico's Response to State of Texas's Evidentiary Objections.</p> <p>As to Texas's objection to Mr. Lopez, see New Mexico's Response to State of Texas's Second Evidentiary Objections, § III (B).</p>

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66	App. No. 38; similar language in Notice No. 1	The historical record indicates that one purpose of the Compact was to protect the operation of the Project.	NM-EX 111, Miltenberger Dep. (June 8, 2020) at 38:8-17, 137:9-138:21; NM-EX 112, Stevens Rep. at 72; NM-EX 005, Stevens Decl. at ¶ 10. <i>See</i> , e.g., NM-EX 319, Rio Grande Compact Commission, Proceedings of the Meeting of the Rio Grande Compact Commission Held in Santa Fe, New Mexico, September 27, to October 1, 1937, at 12-13 (1937).	From TX's 12/22/20 Filings: NM-EX-111: Exhibit is incorrectly identified. NM-EX-112: <i>See</i> General Objection #7; Fed. R. Evid. 801(c), hearsay. NM-EX-005: Fed. R. Civ. P. 56(c)(4), Fed. R. Evid. 702 – the statement in the Stevens Decl. constitutes improper opinion testimony because it is not based on sufficient facts and is a mere conclusion. NM-EX-220 [Miltenberger deposition transcript, not properly cited]: <i>See</i> General Objection #8.	From TX's 12/22/20 Filings: Subject to the stated objections, undisputed.	New Mexico previously responded to these objections. <i>See</i> [Dkt. 468] State of New Mexico's Response to State of Texas's Evidentiary Objections, <i>and</i> [Dkt. 469] State of New Mexico's Response to Statements of Fact.
67	App. No. 39	The historical record indicates that another purpose of the Compact was to protect existing rights.	NM-EX 106, Kryloff Dep. (Aug. 6, 2020) at 108:9-109:18; NM-EX 005, Stevens Decl. at ¶ 11. <i>See</i> , e.g., NM-EX 319, Rio Grande Compact Commission, Proceedings of the Meeting of	From TX's 12/22/20 Filings: NM-EX-215: <i>See</i> General Objection #8. NM-EX-005:	From TX's 12/22/20 Filings: Subject to the stated objections, disputed. This paragraph mischaracterizes the historical record. The historical record makes clear that existing uses, circa 1938, not rights were to be protected by the Compact. Miltenberger Declaration paragraphs 20-27 address the privileging of uses over rights in the Compact. TX_MSJ_001585.	New Mexico previously responded to these objections. <i>See</i> [Dkt. 468] State of New Mexico's Response to State of Texas's Evidentiary Objections, <i>and</i> [Dkt. 469] State of New Mexico's Response to

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			the Rio Grande Compact Commission Held in Santa Fe, New Mexico, September 27, to October 1, 1937, 1at 2-13 (1937); NM-EX 322, Letter from E.B. Debler, et al., Committee of Engineer Advisors, Rio Grande Compact Commission, to Rio Grande Compact Commission (Dec. 27, 1937).	Fed. R. Civ. P. 56(c)(4), Fed. R. Evid. 702: the statement in the Stevens Decl. constitutes improper opinion testimony because it is not based on sufficient facts and is a mere conclusion. The cited evidence does not support the stated "facts" in whole and/or in part. Fed. R. Civ. P. 56(c).	Miltenberger Dec. in Opp. to NM at TX_MSJ_007371, paragraphs 1 – 7, 23.	Statements of Fact.
68	N/A	However, there is no historical evidence indicating that the compacting States intended to freeze conditions in the Rio Grande Basin, as they did in the 1929 temporary compact. Rather, the available historical evidence indicates that each state intended to continue developing their supplies within the limits imposed by the protection of existing uses under the Compact.	NM-EX 011, Stevens 2d Decl. at ¶¶ 21, 23-25; NM-EX 008, Lopez 2d Decl. at ¶ 6; NM-EX 112, Stevens Rep. at 56, 68, 81; See, e.g., Letter from S.O. Harper, Chairman, Rio Grande Compact Commission, to Secretary of the Interior (Mar. 26, 1938) (describing the RGJI as a study of all "past, present, and prospective uses of water" in the basin) (produced as TX_MSJ_005338-40); NM-EX 352, Rio Grande Compact Commission, First and Second Annual Reports of the Rio Grande Compact Commission	NM-EX-008: See General Objection #2. NM- EX-112: See General Objection #7; Fed. R. Evid. 801(c), hearsay.	Subject to the stated objections, the fact is cited in New Mexico's Response to Texas's Motion for Partial Summary Judgment but does not materially respond to facts stated therein. New Mexico's stated fact amounts to a conclusory argument that there is no "1938 Condition" associated with the Compact apportionment. New Mexico's stated fact does not materially address Texas's argument on the "1938 Condition." New Mexico's stated fact is non-responsive and otherwise not supported by definite, competent, or significantly probative evidence that genuinely and materially responds to a fact stated in Texas's Motion for Partial Summary Judgment. As such, Texas's stated material facts remain undisputed. Fed. R. Civ. P. 56(a), 56(c)(1), (2), (4).	New Mexico previously responded to these authenticity and hearsay objections. See [Dkt. 468] State of New Mexico's Response to State of Texas's Evidentiary Objections. As to Texas's objection to Mr. Lopez, see New Mexico's Response to State of Texas's Second Evidentiary Objections, § III (B).

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			1939 and 1940, at 15-19 (Feb. 25, 1941) (adopting rules that “permit[] each State to develop its water resources at will, subject only to its obligations to deliver water in accordance with the schedules set forth”); <i>See also</i> , e.g., NM-EX 112, Stevens Rep. at 81 (quoting Letter from Frank B. Clayton, Rio Grande Compact Commissioner, State of Texas, to E.H. Thornton, Jr. (Mar. 23, 1939)).			
69	App. No. 40	Prior to negotiation of the Compact, Reclamation administered the Project as a single unit.	NM-EX 111, Miltenberger Dep. (June 8, 2020) at 41:22-42:12; NM-EX 202, Cortez Dep. (July 30, 2020) at 58:6-18; NM-EX 107, Lopez Rep. at 25.	From TX's 12/22/20 Filings: NM-EX-111: Exhibit is incorrectly identified; Fed. R. Evid. 801(c), hearsay. NM-EX-202: <i>See</i> General Objection #8. [NOTE RICH, I CHANGED THIS FROM #6 TO OBJ #8 NM-EX-107: <i>See</i> General Objection #7; Fed. R. Evid. 801(c), hearsay. NM-EX-220 [Miltenberger deposition transcript, not properly	From TX's 12/22/20 Filings: Subject to the stated objections, undisputed.	New Mexico previously responded to these objections. <i>See</i> [Dkt. 468] State of New Mexico's Response to State of Texas's Evidentiary Objections, <i>and</i> [Dkt. 469] State of New Mexico's Response to Statements of Fact.

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				cited]: See General Objection #8.		
70	App. No. 42	In negotiating the Compact, the States understood that all lands within the Project had equal rights to water.	NM-EX 111, Miltenberger Dep. (June 8, 2020) at 44:4-23; NM-EX 328, Letter from Frank B. Clayton, Rio Grande Compact Commissioner, State of Texas, to Sawnie B. Smith (Oct. 4, 1938); NM-EX 107, Lopez Rep. at 26-27, 35, 67-68; NM-EX 005, Stevens Decl. at ¶ 11.	From TX's 12/22/20 Filings: NM-EX-111: Exhibit is incorrectly identified. NM-EX-220 [Miltenberger deposition transcript, not properly cited]: See General Objection #8. NM-EX-107: See General Objection #7; General Objection #2; Fed. R. Evid. 801(c), hearsay. NM-EX-005: Fed. R. Civ. P. 56(c)(4); Fed. R. Evid. 702: the statement in the Stevens Decl. constitutes improper opinion testimony because it is not based on sufficient facts and is a mere conclusion. The cited evidence does	From TX's 12/22/20 Filings: Subject to the stated objections, disputed. This paragraph is misleading. In the cited Letter from Frank B. Clayton, Rio Grande Compact Commissioner, State of Texas, to Sawnie B. Smith (Oct. 4, 1938), Clayton was referencing contract rights – not appropriative rights. NM-EX 328. Miltenberger Declaration paragraphs 30 and 42-45 discuss the contracts for water delivery for the two Rio Grande Project districts – Elephant Butte Irrigation District (EBID) in New Mexico, and El Paso County Water Improvement District No. 1 (EP #1) in Texas. TX MSJ 001585. The meaning and intent of the Clayton-Smith letter is addressed more fully in paragraphs 28-37. Miltenberger Dec. in Opp. to NM at TX_MSJ_007371, paragraphs 1 – 7, 24, 28 - 37.	New Mexico previously responded to these objections. See [Dkt. 468] State of New Mexico's Response to State of Texas's Evidentiary Objections, and [Dkt. 469] State of New Mexico's Response to Statements of Fact.

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				not support the stated "facts" in whole and/or in part. Fed. R. Civ. P. 56(c). Fed. R. Evid. 704: The statement includes		
71	App. No. 43	The historical record reflects that the States agreed on 790,000 acre-feet per year as a normal release in the Compact because it was sufficient to satisfy irrigation demands in both New Mexico and Texas, as well as address water quality concerns.	NM-EX 220, Miltenberger Dep. (June 8, 2020) at 146:21-148:1; NM-EX 215, Kryloff Dep. (Aug. 6, 2020) at 55:17-56:25, 89:20- 90:1; NM-EX 106, Kryloff Rep. at 25-26.	From TX's 12/22/20 Filings: NM-EX-220: <i>See</i> General Objection #8. NM-EX-215: <i>See</i> General Objection #8. NM-EX-106: <i>See</i> General Objection #7; Fed. R. Evid. 801(c), hearsay. The cited evidence does not support the stated "facts" in whole and/or in part. Fed. R. Civ. P. 56(c).	From TX's 12/22/20 Filings: Subject to the stated objections, disputed. This paragraph is misleading. The 790,000 acre-feet release was to serve Project lands in New Mexico and Texas, the 1906 Mexican treaty obligation, and non-Project lands in Texas down to Ft. Quitman, ca. 1938. Miltenberger Declaration paragraphs 29-38 discuss this. TX MSJ 001585. Miltenberger Dec. in Opp. to NM at TX_MSJ_007371, paragraphs 1 – 7, 25, 49 - 51. Additionally, the cited evidence does not support the asserted statement regarding water quality concerns. NM- EX-106, the Kryloff Report, references that the JIR "incorporated certain modifications to account for salinity control" at page 25. Otherwise, none of the cited evidence mentions "water quality."	New Mexico previously responded to these objections. <i>See</i> [Dkt. 468] State of New Mexico's Response to State of Texas's Evidentiary Objections, <i>and</i> [Dkt. 469] State of New Mexico's Response to Statements of Fact.
72	App. No. 44	The historical record indicates that the Compact relied upon the Project and its allocation and delivery of water in relation to the proportion of Project irrigable lands to provide the	NM-EX 220, Miltenberger Dep. (June 8, 2020) at 40:7-22; NM-EX 107, Lopez Rep. at 67-68.	From TX's 12/22/20 Filings: NM-EX-220: <i>See</i> General Objection	From TX's 12/22/20 Filings: Subject to the stated objections, disputed. This paragraph is misleading because the Compact does not rely upon the Project to effectuate any apportionment between New Mexico and Texas below Elephant Butte, as the paragraph implies. Instead,	New Mexico previously responded to these objections. <i>See</i> [Dkt. 468] State of New Mexico's Response to State of Texas's Evidentiary Objections, <i>and</i> [Dkt. 469] State of New

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		basis for the apportionment of Rio Grande waters to users in New Mexico and Texas.		#8. NM-EX-107: <i>See</i> General Objection #7; General Objection #2; Fed. R. Evid. 801(c), hearsay. The cited evidence does not support the stated "facts" in whole and/or in part. Fed. R. Civ. P. 56(c).	it depends on the Project to <i>See</i> that Project beneficiaries in New Mexico receive water – in other words, protecting the Project as an existing use. Miltenberger Declaration paragraphs 26-46 discuss this. TX_MSJ_1585. Miltenberger Dec. in Opp. to NM at TX_MSJ_007371, paragraphs 1 – 7, 26, 49 - 51. Additionally, the deposition testimony attributed to Scott Miltenberger is misrepresented by New Mexico. Dr. Miltenberger testified that he agreed with Paragraph 10 of the Texas Complaint when it was read to him, and into the record, by counsel for New Mexico at his deposition. The statement he agreed to was the following: "The Rio Grande Compact did not specifically identify quantitative allocations of water below Elephant Butte Dam as between southern New Mexico and Texas, nor did it articulate a specific state line delivery allocation. Instead, it relied upon the Rio Grande project and its allocation and delivery of water in relation to the proportion of Rio Grande project irrigable lands in southern New Mexico and in Texas to provide the basis of the allocation of Rio Grande waters between Rio Grande project beneficiaries in southern New Mexico and the State of Texas." NM-EX-220, Miltenberger Dep. (June 8, 2020) 40:7-22 (emphasis added). New Mexico improperly changed the highlighted testimony above, which was a clear statement regarding the Project allocations to Project beneficiaries, to be a "basis for the apportionment of Rio Grande waters to users in New Mexico and Texas." UMF 44.	Mexico's Response to Statements of Fact.

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73	N/A	There is no evidence in the historical record that Texas believed it controlled all of the water being delivered into Elephant Butte; instead, Texas relied on Reclamation to administer the Project Supply, including return flows, according to the Downstream Contracts.	NM-EX 011, Stevens 2d Decl. at ¶ 28; NM-EX 112, Stevens Rep. at 74-77.	NM-EX 112: <i>See</i> General Objection #7; Fed. R. Evid. 801(c), hearsay.	Subject to the stated objections, disputed. This paragraph is overstated and misleading. The historical record indicates that the water delivered to Elephant Butte was for the benefit of Texas and the quantity of water provided for release in the Compact was the quantity of water for which Texas bargained, subject to other pre- existing uses, namely water for Mexico pursuant to the 1906 Treaty and EBID pursuant to federal contract. <i>See</i> Miltenberger 2d. Decl., paragraphs 32-34 at TX_MSJ_007384-TX_MSJ_007385. The historical record suggested that the recommended "normal release" figure of 800,000 af/y from Elephant Butte in the Committee of Engineers' report to be for the benefit of Texas. In addition, not only did New Mexico recognize that the water delivered to Elephant Butte was for Texas, Texas's own representatives understood that the division of water between New Mexico and Texas was made at Elephant Butte, even though the water released served the Mexican treaty obligation and EBID. <i>See</i> Id. at paragraph 31, 49-51, TX_MSJ_007384 and TX_MSJ_007391- TX_MSJ_007392).	New Mexico previously responded to these authenticity and hearsay objections. <i>See</i> [Dkt. 468] State of New Mexico's Response to State of Texas's Evidentiary Objections.
74	App. No. 45	The historical record confirms that historically Project deliveries were made based upon the ratio between Project acreage in New Mexico and Project acreage in Texas. In other words, under the Compact, the delivery of water through the Project was based on the irrigable acres in each state. Historically that ratio is 57% to New Mexico and 43% to Texas.	NM-EX 220, Miltenberger Dep. (June 8, 2020) at 39:2-40:6, 47:17-48:18.	From TX's 12/22/20 Filings: NM-EX-220: <i>See</i> General Objection #8. The cited evidence does not support the stated "facts" in whole and/or in part. Fed. R. Civ. P. 56(c).	From TX's 12/22/20 Filings: Subject to the stated objections, disputed. This paragraph mischaracterizes the historical record and Scott Miltenberger's deposition testimony. The historical record indicates that Project deliveries were generally based on irrigable acreage in the two states in a ratio of 57 percent for Project lands in New Mexico and 43 percent for Project lands in Texas. However, this paragraph does not offer any supporting evidence that deliveries were made in this fashion in every year and that deliveries were always made in accordance with the 57-43 percent ratio. Dr. Miltenberger did not testify that either was the case. Dr. Miltenberger merely replied in the affirmative when asked if he agreed with a portion of Texas's Complaint that noted this general, historical distribution of Project water	New Mexico previously responded to these objections. <i>See</i> [Dkt. 468] State of New Mexico's Response to State of Texas's Evidentiary Objections, and [Dkt. 469] State of New Mexico's Response to Statements of Fact.

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					<p>deliveries. At least one primary-source document produced by New Mexico in support of its motions in fact suggests that allotments of Project water were not always equal (<i>See</i> paragraph 53 to the Miltenberger Declaration). NM-EX-323. Moreover, there is no language in the Compact requiring deliveries of Project water in this manner, and Dr. Miltenberger did not testify that the Compact directed Project deliveries in any way, which the phrase "under the Compact" in this paragraph implies. NM-EX-330. Miltenberger Dec. in Opp. to NM at TX_MSJ_007371, paragraphs 1 – 7, 27, 53.</p>	
75	Notice No. 13	The understanding of the compacting States was that Reclamation would continue to operate the Project [as a unit].	NM-EX 328, Letter from Frank B. Clayton, Rio Grande Compact Commissioner, State of Texas, to Sawnie B. Smith (Oct. 4, 1938) ("Obviously, neither Colorado nor New Mexico could be expected to guarantee any fixed deliveries at the Texas line when the operation of the dam is not within their control but is in the control of an independent agency."); NM-EX 327, J.H. Bliss, Provisions of the Rio Grande Compact, 1 (Apr. 2, 1938) ("The measurement of the water at San Marcial rather than the New Mexico-Texas line is necessary because the Elephant Butte Project must be	From TX's 12/22/20 Filings: NM-EX 112: <i>See</i> General Objection #7; Fed. R. Evid. 801(c), hearsay.	From TX's 12/22/20 Filings: Subject to the stated objections, disputed regarding the ambiguity of the phrase "in that manner." To the extent that "in that manner" is referable to #12, the item is disputed.	New Mexico previously responded to these objections. <i>See</i> [Dkt. 468] State of New Mexico's Response to State of Texas's Evidentiary Objections, and [Dkt. 469] State of New Mexico's Response to Statements of Fact.

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			operated at as a unit.”); NM-EX 112, Stevens Rep.at 72.			
76	App. No. 46	<p>Shortly after the Compact was finalized, Texas Commissioner Frank Clayton explained the way that the Compact divided water below Elephant Butte:</p> <p>[T]he question of the division of the water released from Elephant Butte reservoir is taken care of by contracts between the districts under the Rio Grande Project and the Bureau of Reclamation. These contracts provide that the lands within the Project have equal water rights, and the water is allocated according the areas involved in the two States. By virtue of the contract recently executed, the total areas is ‘frozen’ at the figure representing the acreage now actually in cultivation: approximately 88,000 acres for Elephant Butte Irrigation District, and 67,000 for the El Paso County Water Improvement District No. 1, with a ‘cushion’ of three per cent for each figure.</p>	NM-EX 328, Frank B. Clayton, Rio Grande Compact Commissioner, State of Texas, to Sawnie B. Smith (Oct. 4, 1938).	From TX's 12/22/20 Filings:	<p>From TX's 12/22/20 Filings:</p> <p>Subject to the stated objections, disputed. This paragraph mischaracterizes Frank B. Clayton’s October 4, 1938 letter to Sawnie Smith. NM-EX 328. Although the paragraph accurately quotes Frank Clayton, it pays insufficient attention to the details of the letter and fails to acknowledge the context in which the letter was drafted – both of which are essential to understanding the ideas Mr. Clayton was expressing to Mr. Smith.</p> <p>Miltenberger Declaration paragraphs 31 and 42 discuss the Clayton-Smith letter and additional discussion is provided in the Scott Miltenberger Declaration submitted herewith to clarify further the letter’s meaning.</p> <p>TX MSJ 001585.</p> <p>The discussion is lengthy, and is incorporated herein by reference. <i>See</i> Miltenberger Dec. in Opp. to NM at TX_MSJ_007371, paragraphs 1 – 7, 28 - 37.</p>	New Mexico previously responded to these objections. <i>See</i> [Dkt. 468] State of New Mexico’s Response to State of Texas’s Evidentiary Objections, <i>and</i> [Dkt. 469] State of New Mexico’s Response to Statements of Fact.

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76	App. No. 46	The expert historian for the United States agreed that this letter was "an important document" for understanding the way that the Compact divides the water below Elephant Butte.	<i>See</i> Ex 215, Kryloff Dep. (Aug. 6, 2020) at 41:15-20, 41:21-42:9; NM-EX 106, Kryloff Rep. 12; <i>See</i> also NM-EX 220, Miltenberger Dep. (June 8, 2020) at 43:17-44:23.	NM-EX-215, 220: <i>See</i> General Objection #8. The cited evidence does not support the stated "facts" in whole and/or in part. Fed. R. Civ. P. 56(c). NM-EX-106: <i>See</i> General Objection #7; Fed. R. Evid. 801(c), hearsay.	Additionally, the deposition testimony attributed to Mr. Kryloff is misrepresented by New Mexico. Mr. Kryloff testified that he agreed that the Clayton letter is "an important document" "for understanding the intent of the parties with regard to allocating water below Elephant Butte." <i>See</i> Ex 215, Kryloff Dep. (Aug. 6, 2020) 41:15- 20 (emphasis added). He did not state, as represented by New Mexico in #46, that the Clayton letter is important "for understanding the way that the Compact divides the water below Elephant Butte." Further, the Miltenberger testimony cited by New Mexico does not support the stated "fact."	New Mexico previously responded to these objections. <i>See</i> [Dkt. 468] State of New Mexico's Response to State of Texas's Evidentiary Objections, and [Dkt. 469] State of New Mexico's Response to Statements of Fact.
77	App. No. 47	Similarly, shortly after the Compact was finalized, Texas Commissioner Frank Clayton described the operation of the Compact to the Chairman of the Texas Board of Water Engineers. Commissioner Clayton explained: Moreover, since the source of supply for all lands above Fort Quitman and below Elephant Butte reservoir, whether in Texas or New Mexico, is the reservoir itself, it could hardly be expected of Colorado and New Mexico that they should guarantee a certain amount of water to pass the Texas state line, since this amount is wholly dependent upon the releases from the reservoir and the reservoir is under the control of an entirely independent agency – the Bureau of Reclamation.	NM-EX 329, Letter from Frank B. Clayton, Rio Grande Compact Commissioner, State of Texas to C.S. Clark, Chairman, Board of Water Engineers, State of Texas (October 16, 1938).	From TX's 12/22/20 Filings: The cited evidence does not support the stated "facts" in whole and/or in part. Fed. R. Civ. P. 56(c).	From TX's 12/22/20 Filings: Subject to the stated objection, disputed. This paragraph mischaracterizes the document, Letter from Frank B. Clayton, Rio Grande Compact Commissioner, State of Texas to C.S. Clark, Chairman, Board of Water Engineers, State of Texas (October 16, 1938). NM-EX 329. As with the Clayton-Smith letter, the quotation offered from the Clayton-Clark letter is correct. NM-EX 328. However, attention to the details of the letter and the essential context for the letter reveals a different purpose and meaning for the communication and the provided quotation. The discussion is lengthy, and is incorporated herein by reference. <i>See</i> Miltenberger Dec. in Opp. to NM at TX_MSJ_007371, paragraphs 1 – 7, 38 - 45.	New Mexico previously responded to these objections. <i>See</i> [Dkt. 468] State of New Mexico's Response to State of Texas's Evidentiary Objections, and [Dkt. 469] State of New Mexico's Response to Statements of Fact.

ATTACHMENT A
NEW MEXICO'S RESPONSE TO TEXAS'S "EXHIBIT A"

<u>NM- CS MF #</u>	<u>NM's Prior Numbering System</u>	<u>New Mexico's Stated Fact</u>	<u>New Mexico's Supporting Evidence</u>	<u>TEXAS'S EVIDENTIARY OBJECTIONS</u>	<u>TEXAS'S RESPONSE</u>	<u>NEW MEXICO'S RESPONSE TO TEXAS EVIDENTIARY OBJECTIONS</u>
		<p>Also, by contract between the New Mexico interests and the Texas interests in the Rio Grande Project, all the lands in the Project have equal water rights, and the acreage to be irrigated is practically "frozen" at its present figures, with a three per cent "cushion."</p> <p>It is therefore not necessary, even if it were practicable, to make any definite provision in the Compact for the amount of water to pass the Texas-New Mexico state line.</p>				
78	App. No. 48	<p>In 1968, Raymond Hill, the Engineer Advisor for the State of Texas during Compact negotiations, explained "that the Rio Grande Compact Commissioners, at the time of executing the Rio Grande Compact of 1938, anticipated that compliance" with Articles III and IV "would result in enough water entering Elephant Butte Reservoir to sustain an average normal release of 790,000 AF per year from Project storage for use on lands in New Mexico downstream of Elephant Butte Reservoir and on lands in Texas and also to comply with the obligations of the Treaty of 1906 for deliveries of water to Mexico."</p>	<p>NM-EX 401, Raymond A. Hill, Development of the Rio Grande Compact of 1938, at 38 (Oct. 8, 1968) (emphasis added).</p>	<p>From TX's 12/22/20 Filings: NM-EX-401: <i>See</i> General Objection #8; Fed. R. Evid. 801(c), hearsay.</p>	<p>From TX's 12/22/20 Filings: Subject to the stated objection, disputed. This paragraph does not provide sufficient context to understand fully the meaning of the quotation provided from Raymond Hill's Development of the Rio Grande Compact of 1938. NM-EX-401. The paragraph correctly quotes from Hill's narrative, but in the absence of context – much of which is also discussed in Miltenberger Declaration paragraphs</p>	<p>New Mexico previously responded to these objections. <i>See</i> [Dkt. 468] State of New Mexico's Response to State of Texas's Evidentiary Objections, <i>and</i> [Dkt. 469] State of New Mexico's Response to Statements of Fact.</p>

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79	App. No. 83	Consistent with the Reclamation Act, Texas adjudicated the Project Right in Texas. Specifically, it determined that EPCWID had the right to divert up to 376,000 from the Rio Grande.	NM-EX 505, Texas Comm'n on Env't Quality, Certificate of Adjudication No. 23-5940, ¶ 1.b. (Mar. 7, 2007); <i>See</i> also Final Judgment and Decree, In re: The Adjudication of Water Rights in the Upper Rio Grande Segment of Rio Grande Basin, No. 2006-3219 (El Paso Cty. Dist. Ct., Oct. 30, 2006).	From TX's 12/22/20 Filings: NM-EX-505: <i>See</i> General Objection #8; Fed. R. Evid. 801(c), hearsay. The stated "facts" constitute improper legal conclusions in whole or in part.	From TX's 12/22/20 Filings: Subject to the stated objections, disputed as follows: Regarding the "facts" asserted based on NM-EX-505, this paragraph is misleading in that the source documents provide additional factual context that New Mexico excluded and/or otherwise states "facts" out of context.	New Mexico previously responded to these objections. <i>See</i> [Dkt. 468] State of New Mexico's Response to State of Texas's Evidentiary Objections, <i>and</i> [Dkt. 469] State of New Mexico's Response to Statements of Fact.
79	App. No. 83	Using the D1/D2 method, 376,000 AF represents approximately 43% of Project water when there is a full supply.	NM-EX 001, Barroll Decl. at ¶ 23.	The cited evidence does not support the stated "facts" in whole and/or in part. Fed. R. Civ. P. 56(c). Final Judgment and Decree, In re: The Adjudication of Water Rights in the Upper Rio Grande Segment of Rio Grande Basin, No. 2006-3219 (El Paso Cty. Dist. Ct., Oct. 30, 2006).	Regarding the asserted "fact" that "[u]sing the D1/D2 method, 376,000 AF represents approximately 43% of Project water when there is a full supply:" The use of the D1/D2 method produces 376,000 acre-feet for EP1. However, as the D1/D2 method does not reflect 1938 conditions and does not represent Texas's Compact apportionment. <i>See</i> Brandes Dec. in Opp. to NM at TX_MSJ_007312, paragraphs 1 – 9, 29-32.	New Mexico previously responded to these objections. <i>See</i> [Dkt. 468] State of New Mexico's Response to State of Texas's Evidentiary Objections, <i>and</i> [Dkt. 469] State of New Mexico's Response to Statements of Fact.
79	App. No. 83	376,000 AF also represents approximately 43% of Project supply under a normal release of 790,000 AF, once return flows are taken into account.	<i>See</i> , e.g., NM-EX 212, Gordon Dep. (July 15, 2020) at 20:11-21:11.	NM-EX-001: Fed. R. Evid. 401, 402. The cited portion of the document is irrelevant because it does not stand for the "fact(s)" stated. NM-EX-212: <i>See</i> General Objection #8.	Regarding the last paragraph, the cited evidence does not represent the asserted "fact." <i>See</i> NM-EX 212, Gordon Dep. (Vol. II) (July 15, 2020) 20:11-21:11.	New Mexico previously responded to these objections. <i>See</i> [Dkt. 468] State of New Mexico's Response to State of Texas's Evidentiary Objections, <i>and</i> [Dkt. 469] State of New Mexico's Response to Statements of Fact.

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80	App. No. 84	The Texas Compact Commissioner recognizes that a full supply release from the Project is 790,000 AF, and that Texas water users are entitled to 43% of Project supply and New Mexico water users are entitled to 57% of Project supply.	NM-EX 211, Gordon Dep (July 14, 2020) at 71:18-73:13; NM-EX 212, Gordon Dep. (July 15, 2020) at 11:20-13:21, 20:11-21:11, 121:9-11.	From TX's 12/22/20 Filings: NM-EX-211: <i>See</i> General Objection #8. NM-EX-212: <i>See</i> General Objection #8. The cited evidence does not support the stated "facts" in whole and/or in part. Fed. R. Civ. P. 56(c).	From TX's 12/22/20 Filings: Subject to the stated objections, disputed in part. The stated "fact" mischaracterizes the deposition testimony cited as evidence. The Texas Rio Grande Compact Commissioner testified that the water below the Reservoir is divided according to downstream contracts, and that EP#1 is entitled to receive 43 percent of the "790 times 120 percent on a full release." NM-EX 212, Gordon Dep. (Vol. II) (July 15, 2020) 11:13-24; 20:11-21:11; NM-EX 211, Gordon Dep (Vol. I) (July 14, 2020) 71:18-72:10.	New Mexico previously responded to these objections. <i>See</i> [Dkt. 468] State of New Mexico's Response to State of Texas's Evidentiary Objections, <i>and</i> [Dkt. 469] State of New Mexico's Response to Statements of Fact.
81	App. No. 85	The Texas Compact Commissioner concedes that Rio Grande water is divided below Elephant Butte by the Downstream Contracts and that the Downstream Contracts "are incorporated into the Compact."	NM-EX 212, Gordon Dep (July 15, 2020) at 10:25-12:19, 15:6-16:18.	From TX's 12/22/20 Filings: NM-EX-212: <i>See</i> General Objection #8. The cited evidence does not support the stated "facts" in whole and/or in part. Fed. R. Civ. P. 56(c).	From TX's 12/22/20 Filings: Subject to the stated objections, disputed in part. The stated "facts" mischaracterize the deposition testimony cited as evidence. The Texas Rio Grande Compact Commissioner testified that the water below the Reservoir is "allocated...to Mexico under the 1906 treaty, and then to EBID and EP1 under the 1938 contracts." NM-EX 212, Gordon Dep (Vol. II) (July 15, 2020) 11:13-19. The Texas Rio Grande Compact Commissioner further testified that he thinks the Project is "incorporated into the Compact," but not "under the Compact." The "Compact was the mechanism for New Mexico to deliver its apportioned water to Texas. When the water is released from Elephant Butte reservoir, it's delivered to the downstream contracts – contractors as well as Mexico." NM-EX 212, Gordon Dep (Vol. II) (July 15, 2020) 15:6-17.	New Mexico previously responded to these objections. <i>See</i> [Dkt. 468] State of New Mexico's Response to State of Texas's Evidentiary Objections, <i>and</i> [Dkt. 469] State of New Mexico's Response to Statements of Fact.

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					The testimony of the Texas Rio Grande Compact Commissioner was not a "concession" as asserted by New Mexico, and the cited evidence does not support that assertion.	
82	App. No. 86	The Texas Compact Commissioner concedes that the Project acts as the mechanism by which water users in New Mexico receive 57% of Project supply and water users in Texas are allocated 43% of Project supply. He further concedes that the mechanism for delivering Project water was incorporated into the Compact.	NM-EX 212, Gordon Dep. (July 15, 2020) at 10:25-16:24.	From TX's 12/22/20 Filings: NM-EX-212: <i>See</i> General Objection #8. The cited evidence does not support the stated "facts" in whole and/or in part. Fed. R. Civ. P. 56(c).	From TX's 12/22/20 Filings: Subject to the stated objections, disputed in part. The stated "facts" mischaracterize the deposition testimony cited as evidence. The Texas Rio Grande Compact Commissioner further testified that he thinks the Project is "incorporated into the Compact," but not "under the Compact." The "Compact was the mechanism for New Mexico to deliver its apportioned water to Texas. When the water is released from Elephant Butte reservoir, it's delivered to the downstream contracts – contractors as well as Mexico." NM-EX 212, Gordon Dep (Vol. II) (July 15, 2020) 15:6-17. The Texas Rio Grande Compact Commissioner testified that the water below the Reservoir is "allocated . . . to Mexico under the 1906 treaty, and then to EBID and EP1 under the 1938 contracts." NM-EX 212, Gordon Dep (Vol. II) (July 15, 2020) 11:13-19. The Texas Rio Grande Compact Commissioner testified that the water below the Reservoir is divided according to downstream contracts, and that EP#1 is entitled to receive 43 percent of the "790 times 120 percent on a full release." NM-EX 212, Gordon Dep. (Vol. II) (July 15, 2020) 11:13-24; 20:11-21:11; NM-EX 211, Gordon Dep (Vol. I) (From TX's 12/20/20 Filings - Continued) The testimony of the Texas Rio Grande Compact Commissioner is consistent with the Texas's position on apportionment, as stated by the Commissioner: "As the Rio Grande Compact	New Mexico previously responded to these objections. <i>See</i> [Dkt. 468] State of New Mexico's Response to State of Texas's Evidentiary Objections, <i>and</i> [Dkt. 469] State of New Mexico's Response to Statements of Fact.

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					<p>Commissioner, I am authorized to state, under oath, the position of Texas on the issue of Compact apportionment. The position of Texas is as follows: The Compact equitably apportions the waters of the Rio Grande from its headwaters to Fort Quitman, Texas, among the State of Colorado (Colorado), the State of Mexico (New Mexico), and Texas. Article III of the Compact provides water for use in Colorado, subject to the obligation to deliver indexed flows of water to New Mexico just below the Colorado-New Mexico state line. Articles III and IV of the Compact together provide water for use in New Mexico, subject to the obligation to deliver an indexed flow of water to Texas in Elephant Butte Reservoir. The water delivered by New Mexico in Elephant Butte Reservoir is apportioned to Texas, subject to the United States' Treaty obligation to Mexico and the United States' contractual obligations to Elephant Butte Irrigation District (EBID). The Compact does not apportion water to New Mexico below Elephant Butte Reservoir. The water released from Elephant Butte Reservoir and delivered to EBID pursuant to the United States' downstream contracts with EBID, is not a Compact apportionment to New Mexico. This water is a Project allocation, defined by the United States' downstream contracts with EBID. Article VII of the Compact provides that Texas may accept relinquished water (relinquished by Colorado and New Mexico) thereby allowing additional storage in upstream reservoirs. New Mexico has no ability to accept water under the Compact, even from itself, for the benefit of interests downstream of Elephant Butte Reservoir. Article VIII of the Compact provides that the Texas Rio Grande Commissioner can demand of Colorado</p>	

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					and New Mexico the release of water from the upstream storage reservoirs under specified circumstances.”	
83	App. No. 87	In official remarks at the 2011 RGCC meeting, Texas Compact Commissioner Gordon acknowledged that the Compact apportioned water between New Mexico and Texas based on the 57%-43% split. Specifically, Commissioner Gordon responded to comments of the New Mexico Commissioner by stating “I agree that the purpose of the Compact was to allocate the water between the Districts and the 53[-]47 [sic] as provided in the Compact. I do agree with that.”	NM- EX 518, Rio Grande Compact Commission, Transcript of the 72nd Annual Meeting (94th Meeting), 59:2-4 (Mar. 30, 2011).	From TX's 12/22/20 Filings: NM-EX-518: <i>See</i> General Objection #8; Fed. R. Evid. 801(c), hearsay. The cited evidence does not support the stated “facts” in whole and/or in part. Fed. R. Civ. P. 56(c).	<i>See</i> Gordon Dec. in Opp. to NM at TX_MSJ_007269, paragraphs 1 – 8; <i>See</i> also, Deposition of Patrick R. Gordon, (Vol. 1) (July 14, 2020) (Gordon Depo. 7/14/20), at 67:4-20; 144:7-16; 157:2-12; 157:23-159:14; 161:17-162:6; 162:12-163:2; 164:7-165:7; 165:23-167:11; 169:10-17, at TX_MSJ_006892-006940.	New Mexico previously responded to these objections. <i>See</i> [Dkt. 468] State of New Mexico’s Response to State of Texas’s Evidentiary Objections, <i>and</i> [Dkt. 469] State of New Mexico’s Response to Statements of Fact.
84	App. No. 88	In 2004, the Texas Compact Engineer Advisor from 1987 to 2015 wrote that “[t]he Compact specifies a normal release of 790,000 acre–feet annually from Project Storage for use in Texas and New Mexico and for delivery of water to Mexico.”	NM-EX 412, Herman R. Settemeyer, “Rio Grande Project/Rio Grande Compact Operation,” in CLE International, Rio Grande Superconference G-1, G-2 (2004).	From TX's 12/22/20 Filings: NM-EX-412: <i>See</i> General Objection #8; Fed. R. Evid. 801(c), hearsay. The cited evidence does not support the stated “facts” in whole and/or in part. Fed. R. Civ. P. 56(c).	From TX's 12/22/20 Filings: Subject to the stated objections, disputed. The cited evidence does not support the asserted facts. The document is unauthenticated, and there is no evidence of who the author was, or the authority of the author to make any statement on behalf of Texas as to the meaning and/or purpose of the Compact. Even if the documents contents were taken as true, the quoted sentence is taken out of context. The sentence, in context, concerns an explanation of Project operations.	New Mexico previously responded to these objections. <i>See</i> [Dkt. 468] State of New Mexico’s Response to State of Texas’s Evidentiary Objections, <i>and</i> [Dkt. 469] State of New Mexico’s Response to Statements of Fact.

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85	App. No. 89	The Texas Compact Engineer Advisor from 1987 to 2015 testified that "the Rio Grande Compact incorporated the Rio Grande Project."	NM-EX 225, Settemeyer Dep. (July 30, 2020) at 41:24-42:10.	From TX's 12/22/20 Filings: NM-EX-225: .See General Objection #8; Fed. R. Evid. 602.	From TX's 12/22/20 Filings: Subject to the stated objection, disputed in part. The cited deposition testimony does not establish that the deponent was the Engineer Advisor from 1987 to 2015.	New Mexico previously responded to these objections. See [Dkt. 468] State of New Mexico's Response to State of Texas's Evidentiary Objections, and [Dkt. 469] State of New Mexico's Response to Statements of Fact.
86	App. No. 90	The Texas Compact Engineer Advisor from 1987 to 2015 further testified that "the Rio Grande Project [water] is apportioned 57 – 57 percent to New Mexico and 43 percent to Texas."	NM-EX 225, Settemeyer Dep. (July 30, 2020) at 41:24-42:10.	From TX's 12/22/20 Filings: NM-EX-225: .See General Objection #8; Fed. R. Evid. 602.	From TX's 12/22/20 Filings: Subject to the stated objections, disputed. The evidence cited does not support the asserted "fact."	New Mexico previously responded to these objections. See [Dkt. 468] State of New Mexico's Response to State of Texas's Evidentiary Objections, and [Dkt. 469] State of New Mexico's Response to Statements of Fact.
87	App. No. 91	In May of 2011, Texas and New Mexico met to discuss the implications of the 2008 Operating Agreement on the Compact. Prior to the meeting, Texas had developed a set of talking points that represented Texas's positions on the Rio Grande Compact. A photograph of those talking points is NM-EX 519 (Schmidt-Petersen, Photographs of Handwritten Notes on Easel).	NM-EX 003, Lopez Decl. at ¶ 18; NM-EX 004, Schmidt-Petersen Decl. at ¶ 11.	From TX's 12/22/20 Filings: NM-EX-519: .See General Objection #8; Fed. R. Evid. 801(c), hearsay. NM-EX-003: See General Objection #2; Fed. R. Evid. 602; Fed. R. Evid. 801(c), hearsay. NM-EX-004: Fed. R. Civ. P. 56(c)(4); Fed. R. Evid. 602; Fed. R. Evid. 801(c), hearsay.	From TX's 12/22/20 Filings: Subject to the stated objections, disputed. Texas Compact Commissioner Patrick Gordon reviewed the representation of Rolf Schmidt-Petersen in paragraph 11 of his declaration submitted in support of the New Mexico motions for partial summary judgment (NM-EX 004) and referenced in paragraph 91, page 18, of the New Mexico motion on Compact apportionment. He also reviewed the representation of Estevan Lopez in paragraph 18 of his declaration submitted in support of the New Mexico motions for partial summary judgment (NM-EX-003) and referenced in paragraph 91, page 18, of the New Mexico motion on Compact apportionment. Both deponents use the same language, verbatim, for this testimony. Both deponents refer to NM-EX-519. Commissioner Gordon reviewed NM-EX 519 in conjunction with making his declaration. Commissioner Gordon attended a	New Mexico previously responded to these objections. See [Dkt. 468] State of New Mexico's Response to State of Texas's Evidentiary Objections, and [Dkt. 469] State of New Mexico's Response to Statements of Fact.

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					<p>meeting in approximately May of 2011 with representatives of New Mexico. The purpose of the meeting was to discuss the Operating Agreement. Compact apportionment was not a subject of the meeting. The handwriting depicted in NM-EX-519 is not Commissioner Gordon's. He does not know whose handwriting is depicted in NM-EX-519. The notes depicted in NM-EX-519 were not "talking points that represented Texas's position on the Rio Grande Compact" as stated by declarants Lopez and Schmidt-Petersen. Further, the declarants' representations of Commissioner Gordon's statements, and Texas's "positions" are incorrect. Commissioner Gordon did not make any statement, or represent that it was the position of Texas, that the Compact apportions water below Elephant Butte Reservoir between New Mexico and Texas. Commissioner Gordon did not make any statement, or represent that it was the position of Texas, that there is a 57/43 apportionment pursuant to the Compact. <i>See</i> Gordon Dec. in Opp. to NM at TX_MSJ_007269, paragraphs 1 – 8, 12.</p>	
87	App. No. 91	<p>Using those talking points, Texas expressed its position that the Compact apportions the water below Elephant Butte between New Mexico and Texas "based on acreage" existing in each State. Texas further explained its position that under the Compact, the State of Texas is entitled to 43% of Project supply and the State of New Mexico is entitled to 57% of Project supply.</p>	<p>NM-EX 519, Schmidt-Petersen, Photographs of Handwritten Notes on Easel; NM-EX 003, Lopez Decl. at ¶ 18; NM-EX 004, Schmidt-Petersen Decl. at ¶ 11.</p>	<p>NM-EX-519: <i>See</i> General Objection #8; Fed. R. Evid. 801(c), hearsay. NM-EX-003: <i>See</i> General Objection #2; Fed. R. Evid. 602; Fed. R. Evid. 801(c), hearsay. NM-EX-004: Fed. R. Civ. P. 56(c)(4); Fed. R. Evid. 602; Fed. R. Evid. 801(c), hearsay.</p>	<p>Subject to the stated objections, disputed. Texas Compact Commissioner Patrick Gordon reviewed the representation of Rolf Schmidt-Petersen in paragraph 11 of his declaration submitted in support of the New Mexico motions for partial summary judgment (NM-EX 004) and referenced in paragraph 91, page 18, of the New Mexico motion on Compact apportionment. He also reviewed the representation of Estevan Lopez in paragraph 18 of his declaration submitted in support of the New Mexico motions for partial summary judgment (NM-EX-003) and referenced in paragraph 91, page 18, of the New Mexico motion on Compact apportionment. Both deponents use the same language, verbatim, for this testimony.</p>	<p>New Mexico previously responded to these objections. <i>See</i> [Dkt. 468] State of New Mexico's Response to State of Texas's Evidentiary Objections, and [Dkt. 469] State of New Mexico's Response to Statements of Fact.</p>

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					<p>Both deponents refer to NM-EX-519. Commissioner Gordon reviewed NM-EX 519 in conjunction with making his declaration. Commissioner Gordon attended a meeting in approximately May of 2011 with representatives of New Mexico. The purpose of the meeting was to discuss the Operating Agreement. Compact apportionment was not a subject of the meeting. The handwriting depicted in NM-EX-519 is not Commissioner Gordon's. He does not know whose handwriting is depicted in NM-EX-519. The notes depicted in NM-EX-519 were not "talking points that represented Texas's position on the Rio Grande Compact" as stated by declarants Lopez and Schmidt-Petersen. Further, the declarants' representations of Commissioner Gordon's statements, and Texas's "positions" are incorrect. Commissioner Gordon did not make any statement, or represent that it was the position of Texas, that the Compact apportions water below Elephant Butte Reservoir between New Mexico and Texas. Commissioner Gordon did not make any statement, or represent that it was the position of Texas, that there is a 57/43 apportionment pursuant to the Compact. <i>See</i> Gordon Dec. in Opp. to NM at TX_MSJ_007269, paragraphs 1 – 8, 12.</p>	
88	App. No. 92	<p>Even in this litigation, Texas has admitted on numerous occasions that New Mexico has a Compact apportionment below Elephant Butte Reservoir.</p> <p>a. In its Complaint in this case, Texas made the following relevant factual allegations: i.) "[T]he Rio Grande Compact, among other</p>	a. (i) Compl. ¶ 4 (Jan. 8, 2013).	From TX's 12/22/20 Filings: Allegations in a Complaint (unverified), or language in a brief supporting a motion that is not based on evidence, do not constitute factual "evidence" as contemplated by Fed. R. Civ. P. 56(c). The	From TX's 12/22/20 Filings: Subject to the stated objections, disputed in part. a. Regarding the Texas Complaint, New Mexico takes allegations out of context, and excludes other allegations relevant to Texas's position on apportionment, that support Texas's consistent position on apportionment. Paragraph 4 articulates Texas's position that in delivering water to Elephant Butte, New Mexico in fact relinquishes that water to the Project: "[t]he Rio Grande Compact requires that New Mexico deliver specified amounts of Rio Grande water into Elephant	New Mexico previously responded to these objections. <i>See</i> [Dkt. 468] State of New Mexico's Response to State of Texas's Evidentiary Objections, <i>and</i> [Dkt. 469] State of New Mexico's Response to Statements of Fact.

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		purposes, was entered into to protect the operation of the Rio Grande Reclamation Project.”		pleadings discussed by New Mexico here are not supported by evidence and, as such, are inadmissible and irrelevant for purposes of summary judgment. Fed. R. Civ. P. 56(c); Fed. R. Evid. 401.	Butte Reservoir [and that once] delivered to Elephant Butte Reservoir, that water is allocated and belongs to Rio Grande Project beneficiaries in southern New Mexico and in Texas, based upon allocations derived from the Rio Grande Project authorization and relevant contractual arrangements.”	
88	App. No. 92	ii.) “Project water deliveries are made based upon the ratio between the irrigable acreage of the Rio Grande Project situated in New Mexico, and the irrigable acreage of the Rio Grande Project situated in Texas. Historically, this ratio has been 57% in New Mexico and 43% in Texas.”	a. (ii) Id. at ¶ 8.	From TX's 12/22/20 Filings: Allegations in a Complaint (unverified), or language in a brief supporting a motion that is not based on evidence, do not constitute factual “evidence” as contemplated by Fed. R. Civ. P. 56(c). The pleadings discussed by New Mexico here are not supported by evidence and, as such, are inadmissible and irrelevant for purposes of summary judgment. Fed. R. Civ. P. 56(c); Fed. R. Evid. 401.	From TX's 12/22/20 Filings: Paragraph 11 alleges: The State of Texas entered into the Rio Grande Compact under the following fundamental premises: (a) the operation of the Rio Grande Project by the United States, and the Rio Grande Project’s allocations to Texas, were recognized and protected by the Rio Grande Compact; (b) New Mexico was required to make deliveries into Elephant Butte Reservoir to ensure that the United States could continue to operate the Rio Grande Project, and thereby provide for deliveries of water from the Rio Grande Project as had been previously authorized; and (c) New Mexico would not allow Rio Grande Project water allocated by the United States to Texas to be intercepted above the Texas state line for use in New Mexico.	New Mexico previously responded to these objections. <i>See</i> [Dkt. 468] State of New Mexico’s Response to State of Texas’s Evidentiary Objections, <i>and</i> [Dkt. 469] State of New Mexico’s Response to Statements of Fact.
88	App.	iii.) The Compact “relied upon the Rio Grande Project and its allocation and delivery of water in relation to the proportion of Rio Grande Project irrigable lands in southern New	a. (iii) Id. at ¶ 10.	Allegations in a Complaint (unverified), or language in a brief supporting a motion that is not based on	In full context, Paragraph 10 of Texas’s Complaint is simply stating that in lieu of a specific quantitative or state-line delivery measure, the Compact relied on the Project as it existed in 1938 to deliver Texas’s apportioned water from Elephant Butte to the state line. In other words, “the Compact utilized the Rio Grande Project to ensure that Texas receives	New Mexico previously responded to these objections. <i>See</i> [Dkt. 468] State of New Mexico’s Response to State of Texas’s Evidentiary Objections, <i>and</i> [Dkt. 469] State of New

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		Mexico and in Texas, to provide the basis of the allocation of Rio Grande waters between Rio Grande Project beneficiaries in southern New Mexico and the State of Texas.”		evidence, do not constitute factual “evidence” as contemplated by Fed. R. Civ. P. 56(c). The pleadings discussed by New Mexico here are not supported by evidence and, as such, are inadmissible and irrelevant for purposes of summary judgment. Fed. R. Civ. P. 56(c); Fed. R. Evid. 401.	the water that was apportioned to it. Usable Water is available for release to meet irrigation demands on Rio Grande Project lands in New Mexico and in Texas, as well as for delivery to Mexico to satisfy treaty obligations. It is not available for use and appropriation in New Mexico pursuant to New Mexico state law.” Texas Brief in Opposition to New Mexico’s Motion to Dismiss Texas’s Complaint and the United States’ Complaint in Intervention, 28 (June 16, 2014). Page 22 of Texas’s 2014 Brief in Opposition to New Mexico’s Motion to Dismiss encapsulates the Complaint: “Texas asserts that the Compact requires New Mexico to deliver a scheduled amount of Rio Grande water into Elephant Butte Reservoir, to relinquish control of that water for storage and distribution by the Rio Grande Project, and not to intercept, deplete or otherwise interfere with water released by the Rio Grande Project for the benefit of Rio Grande Project lands in Texas. Compl. at paragraphs 10-11, 13, 18-19. New Mexico violates the Compact, including its delivery obligation in Article IV, when it allows water users to intercept, deplete or otherwise divert flows of the Rio Grande below Elephant Butte, which adversely affects Rio Grande Project operations including the amount of water that flows to irrigable lands in Texas. Compl. at paragraphs 18-19.” Texas Brief in Opposition to New Mexico’s Motion to Dismiss Texas’s Complaint and the United States’ Complaint in Intervention, 22 (June 16, 2014). “The water apportioned to New Mexico by the Compact is the water in the Basin above Elephant Butte in excess of its delivery obligation, less the waters apportioned to Colorado. ... No water below Elephant Butte is apportioned to New Mexico.” Texas’s Brief in Response to New Mexico’s Motion to Dismiss Texas’s Complaint and the United States’ Complaint in Intervention, 10 (June 16, 2014).	Mexico’s Response to Statements of Fact.

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88	App. No. 92	b. Texas's brief in support of its motion to file its complaint referred to Elephant Butte Irrigation District as the entity formed within New Mexico to contract with the United States "for the water allocated and apportioned for use within New Mexico."	b. Texas's Brief in Support of Motion to File Complaint 7 (Jan. 2013) (emphasis added).	Allegations in a Complaint (unverified), or language in a brief supporting a motion that is not based on evidence, do not constitute factual "evidence" as contemplated by Fed. R. Civ. P. 56(c). The pleadings discussed by New Mexico here are not supported by evidence and, as such, are inadmissible and irrelevant for purposes of summary judgment. Fed. R. Civ. P. 56(c); Fed. R. Evid. 401.	b. Regarding Texas's brief in support of its motion to file its complaint, the entity that this sentence actually concerns is the Elephant Butte Water Users Association, the predecessor entity to EBID, and in context the sentence is not referring to the Compact at all, but specifically to a 1906 contract between that entity and the United States for the use of not-yet-developed Rio Grande Project water. Texas's Brief in Support of Motion to File Complaint at 7.	New Mexico previously responded to these objections. <i>See</i> [Dkt. 468] State of New Mexico's Response to State of Texas's Evidentiary Objections, <i>and</i> [Dkt. 469] State of New Mexico's Response to Statements of Fact.
88	App. No. 92	c. In the course of its briefing on New Mexico's Motion to Dismiss, Texas defined its apportionment as "the water New Mexico delivers to Elephant Butte, less the water provided to Rio Grande Project lands in New Mexico by the Rio Grande Project."	c. Texas' Brief in Response to New Mexico's Motion to Dismiss Texas' complaint and the United States' Complaint in Intervention, 11 (June 16, 2014).	Allegations in a Complaint (unverified), or language in a brief supporting a motion that is not based on evidence, do not constitute factual "evidence" as contemplated by Fed. R. Civ. P. 56(c). The pleadings discussed by New Mexico here are	c. Regarding briefing on New Mexico's Motion to Dismiss, New Mexico cites to an excerpt that it views as favorable to its position, and omits that on the very preceding page of that brief, Texas expressly defined New Mexico's apportionment: "The water apportioned to New Mexico by the Compact is the water in the Basin above Elephant Butte in excess of its delivery obligation, less the waters apportioned to Colorado. ... No water below Elephant Butte is apportioned to New Mexico." Texas's Brief in Response to New Mexico's Motion to Dismiss Texas's Complaint and the United States' Complaint in Intervention, 10 (June 16, 2014). In that same brief: "The Compact requires New Mexico to deliver water into Elephant Butte Reservoir and to thereby	New Mexico previously responded to these objections. <i>See</i> [Dkt. 468] State of New Mexico's Response to State of Texas's Evidentiary Objections, <i>and</i> [Dkt. 469] State of New Mexico's Response to Statements of Fact.

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				not supported by evidence and, as such, are inadmissible and irrelevant for purposes of summary judgment. Fed. R. Civ. P. 56(c); Fed. R. Evid. 401.	relinquish control of the water for storage and distribution by the Rio Grande Project. New Mexico's jurisdiction over the waters in the Lower Rio Grande is limited by both the express requirements of the Compact and the operation of the Rio Grande Project. New Mexico has ceded regulatory authority over this portion of the Rio Grande. The Commissioner negotiating the Compact for New Mexico recognized this cession of control when he stated: '[f]or purposes of the Compact, Elephant Butte Dam should be deemed to be the dividing line between New Mexico and Texas.'" Brief in Response to New Mexico's Motion to Dismiss Texas's Complaint and the United States' Complaint in Intervention, 19 (June 16, 2014). "[Las Cruces argues] it would have been 'absurd' for New Mexico to enter a compact 'which limited water rights below Elephant Butte Reservoir to the irrigation interests of the Rio Grande Project' In making this argument, Las Cruces ignores that in the negotiations leading to the Compact, New Mexico users below the Dam were aligned with Texas. Moreover, Las Cruces ignores the fact that New Mexico traded off additional benefits to lands below Elephant Butte in New Mexico in return for the substantial benefits it obtained for lands in the Middle Rio Grande in New Mexico." Brief in Response to New Mexico's Motion to Dismiss Texas's Complaint and the United States' Complaint in Intervention, 20, FN12 (June 16, 2014) (citations omitted).	
88	App. No. 92	d. Further, in briefing on exceptions to the First Interim Report of the Special Master, Texas averred: "[T]he compact utilizes the Rio Grande Project, operated by the United States, as the single vehicle by which to apportion Rio Grande water to Texas and New Mexico."	d. See Texas's Reply to Exceptions to First Interim Report of Special Master, 40 (July 28, 2017) (quotation marks omitted).	Allegations in a Complaint (unverified), or language in a brief supporting a motion that is not based on evidence, do not constitute factual "evidence" as contemplated by Fed. R.	d. In Texas's briefing on exceptions to the First Interim Report of the Special Master, Texas stated: "' . . . the plain text of Article IV of the 1938 Compact requires New Mexico to relinquish control and dominion over the water it deposits in Elephant Butte Reservoir.' First Report at 197. New Mexico's duties to relinquish control of the water at Elephant Butte and refrain from post-Compact depletions of water below Elephant Butte Reservoir do not arise from any implied covenant or	New Mexico previously responded to these objections. See [Dkt. 468] State of New Mexico's Response to State of Texas's Evidentiary Objections, and [Dkt. 469] State of New Mexico's Response to Statements of Fact.

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				<p>Civ. P. 56(c). The pleadings discussed by New Mexico here are not supported by evidence and, as such, are inadmissible and irrelevant for purposes of summary judgment. Fed. R. Civ. P. 56(c); Fed. R. Evid. 401.</p>	<p>implied term, but from the very meaning of the text of the Compact.” Texas’s Reply to Exceptions to First Interim Report of Special Master, 17 (July 28, 2017) “The terms of the Compact provide that three sovereign states agreed to an equitable apportionment of an interstate stream, which Congress approved. Thus, the Compact is not silent on what occurs below Elephant Butte Reservoir. The law of equitable apportionment applies because the Compact expressly apportions Rio Grande water and then used the Project as the “sole method” for distributing that equitable apportionment to New Mexico, Texas, and Mexico. First Report at 201. Likewise, the Compact is not silent on what occurs below Elephant Butte Reservoir when it expressly provides for New Mexico’s obligation to “deliver” water at Elephant Butte. Neither New Mexico nor its citizens can take back or attempt to reassert control under state processes over water apportioned to Texas.” Texas’s Reply to Exceptions to First Interim Report of Special Master, 31 (July 28, 2017) “New Mexico does not have the legal authority to administer or adjudicate rights under state law to water that has been equitably apportioned to Texas under the Rio Grande Compact. Once New Mexico has delivered that apportioned water to Elephant Butte Reservoir, it has relinquished jurisdiction over the distribution of that water, as the Special Master properly held.” Texas’s Reply to Exceptions to First Interim Report of Special Master, 33 (July 28, 2017)</p>	

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89	App. No. 93	In connection with filing the Complaint in this case, Texas issued a News Release. In that News Release, Texas admitted "[h]istorically, water apportioned under the Rio Grande Compact has resulted in approximately 57 percent of the water supply below the Elephant Butte Reservoir being delivered to New Mexico, and 43 percent being delivered across the New Mexico-Texas state line for Texas."	NM-EX 524, Tex. Comm'n on Env't Quality, News Release, 2 (Jan. 8, 2013) (emphasis added).	From TX's 12/22/20 Filings: NM-EX-524: <i>See</i> General Objection #8; Fed. R. Civ. P. 56(c); Fed. R. Evid. 801(c), hearsay.	From TX's 12/22/20 Filings: Subject to the stated objections, disputed. The cited evidence does not support the asserted facts. The document is unauthenticated, and there is no evidence of who the author was, or the authority of the author to make any statement on behalf of Texas as to the meaning and/or purpose of the Compact.	New Mexico previously responded to these objections. <i>See</i> [Dkt. 468] State of New Mexico's Response to State of Texas's Evidentiary Objections, <i>and</i> [Dkt. 469] State of New Mexico's Response to Statements of Fact.
90	App. No. 94	Every alternate year the Texas Commission on Environmental Quality ("TCEQ") reports to the Texas Legislature about environmental issues, including interstate river compacts. In describing the Rio Grande Compact in 2014, the TCEQ explained "[t]he compact did not contain specific wording regarding the apportionment of water in and below Elephant Butte Reservoir. However, the compact was drafted and signed against the backdrop of the 1915 Rio Grande Project and a 1938 U.S. Bureau of Reclamation contract that referred to a division of 57 percent to New Mexico and 43 percent to	NM-EX 526, Texas Comm'n on Env't. Quality, Biennial Report to the 84th Legislature (2014) (emphasis added).	From TX's 12/22/20 Filings: NM-EX-526: <i>See</i> General Objection #8; Fed. R. Civ. P. 56(c); Fed. R. Evid. 801(c), hearsay.	From TX's 12/22/20 Filings: Subject to the stated objections, disputed. The cited evidence does not support the asserted facts. The document is unauthenticated, and there is no evidence of who the author was, or the authority of the author to make any statement on behalf of Texas as to the meaning and/or purpose of the Compact.	New Mexico previously responded to these objections. <i>See</i> [Dkt. 468] State of New Mexico's Response to State of Texas's Evidentiary Objections, <i>and</i> [Dkt. 469] State of New Mexico's Response to Statements of Fact.

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		Texas.”				
91	App. No. 95	In New Mexico’s adjudication of Lower Rio Grande water rights, the United States requested that the New Mexico Adjudication Court “recognize an amount of up to 376,000 acre- feet per year for delivery to Texas.”	See NM-EX 527, Order (1) Granting Summary Judgment Regarding the Amounts of Water; (2) Denying Summary Judgment Regarding Priority Date; (3) Denying Summary Judgment to the Pre-1906 Claimants; and (4) Setting a Scheduling Conference, New Mexico ex rel. Office of the State Engineer v. Elephant Butte Irr. Dist., no. CV-96-888, ¶ 4 (N.M. 3d Judicial Dist., Feb. 17, 2014). ¹ In response to the United States request that New Mexico recognize 376,000 AFA for delivery to Texas, the New Mexico Adjudication Court explained that the United States’ request was beyond the jurisdiction of the court, but that the “State of New Mexico’s offer of judgment appropriately recognizes Project deliveries to Texas as an essential element of the Project.” Id.	From TX's 12/22/20 Filings: NM-EX-527: See General Objection #8; Fed. R. Evid. 801(c), hearsay. The cited evidence does not support the stated “facts” in whole and/or in part. Fed. R. Civ. P. 56(c).	From TX's 12/22/20 Filings: Subject to the stated objections, disputed. This paragraph is misleading. Although the quoted language is contained within NM-EX-527, New Mexico does not include the full context of the Court’s statement, and there is no foundation to infer the intent of the United States in making that statement, or others, to the Court. The full text of the Court’s discussion in NM-EX 527 clearly denotes that the subject is “Project deliveries to Texas as an essential element of the Project.” Nothing in NM-EX-527 supports the implication that the statement attributed to the United States was predicated on a position about Compact apportionment as opposed to simply an effort to preserve its contract delivery obligations to Texas, or some other reason.	New Mexico previously responded to these objections. See [Dkt. 468] State of New Mexico’s Response to State of Texas’s Evidentiary Objections, and [Dkt. 469] State of New Mexico’s Response to Statements of Fact.

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91	App. No. 95	As discussed, under the D1/D2 method, 376,000 acre- feet was a full supply for EPCWID, and represents approximately 43% of Project water when there is a full supply.	N/A			New Mexico previously responded to these objections. <i>See</i> [Dkt. 468] State of New Mexico's Response to State of Texas's Evidentiary Objections, <i>and</i> [Dkt. 469] State of New Mexico's Response to Statements of Fact.
92	App. No. 96	Reclamation has recognized that "[b]ecause one district is located in New Mexico (EBID) and the other is located in Texas (EP#1), the operation of the Rio Grande Project has a bearing on each state's claim to the waters of the Rio Grande."	NM-EX 503, Briefing Paper by Filiberto Cortez, Manager, El Paso Field Division, Bureau of Reclamation, to Robert W. Johnson, Commissioner, Bureau of Reclamation (Nov. 2, 2006).	From TX's 12/22/20 Filings: NM-EX-503: <i>See</i> General Objection #8; Fed. R. Evid. 801(c), hearsay. The cited evidence does not support the stated "facts" in whole and/or in part. Fed. R. Civ. P. 56(c).	"From TX's 12/22/20 Filings:" Subject to the stated objections, disputed. This paragraph is misleading. Although the quote from NM-EX503 is recited correctly, Texas disputes that Reclamation "recognized" anything pertaining to Compact apportionment below the Reservoir. New Mexico does not include the full context of the document. The stated purpose of the document is to "update the status of the . . . Project . . . operating agreement negotiations" between EBID, EP#1 and the United States. There is no foundation to support New Mexico's implication that the quoted statement was Reclamation recognizing a Compact apportionment to New Mexico below Elephant Butte.	New Mexico previously responded to these objections. <i>See</i> [Dkt. 468] State of New Mexico's Response to State of Texas's Evidentiary Objections, <i>and</i> [Dkt. 469] State of New Mexico's Response to Statements of Fact.
93	App. No. 97	Reclamation has acknowledged the intent of the Compact "to recognize a yearly average of 790,000 AF release from Project storage to satisfy water users" in both States and Mexico.	NM- EX 411, Letter from Filiberto Cortez, Manager, El Paso Field Division, Bureau of Reclamation, to William A. Paddock, 2 (Sept. 11, 2002).	From TX's 12/22/20 Filings: NM-EX-411: <i>See</i> General Objection #8; Fed. R. Evid. 801(c), hearsay. The cited evidence does not support the stated "facts" in whole and/or in part. Fed. R. Civ. P. 56(c).	From TX's 12/22/20 Filings: Subject to the stated objections, disputed. New Mexico misrepresents the author's statement in NM-EX-411, and takes the excerpt out of context. The full sentence quoted by New Mexico is as follows: "Reclamation interprets this accrued departure from normal release as a measure of how the Rio Grande Project is complying with its obligation to meet yearly demand from the water users of the Rio Grande Project and at the same time comply with the Rio Grande Compact intent to recognize a yearly average of 790,000 AF release from Project storage to satisfy water users within the 'Texas portion' of the Compact." NM-EX-411, 2 (emphasis added). Thus, NM-EX-411 actually supports Texas's position: that the	New Mexico previously responded to these objections. <i>See</i> [Dkt. 468] State of New Mexico's Response to State of Texas's Evidentiary Objections, <i>and</i> [Dkt. 469] State of New Mexico's Response to Statements of Fact.

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					790,000 AF release from Project storage is Texas's apportionment, subject to the 1906 Treaty and downstream contract (constituting "water users within the 'Texas portion' of the Compact").	
94	App. No. 98	Reclamation has recognized that "[t]he 1938 Rio Grande Compact intended to use the Reclamation Rio Grande Project as the vehicle to guarantee delivery of Texas's, New Mexico's and Mexico's equitable apportionment of the Rio Grande waters below Elephant Butte Dam."	NM-EX 530, Filiberto Cortez, Bureau of Reclamation, EBID Depletion Reduction and Offset Program WaterSMART Grant Proposal, at 1 (emphasis added).	From TX's 12/22/20 Filings: NM-EX-530: <i>See</i> General Objection #8; Fed. R. Evid. 801(c), hearsay.	From TX's 12/22/20 Filings: Subject to the stated objections, disputed. This paragraph is misleading. Although the quote from NM-EX-530 is recited correctly, Texas disputes that Reclamation "recognized" anything pertaining to Compact apportionment below the Reservoir. New Mexico does not include the full context of the document. The language quoted is within a paragraph that describes the background of the parties' positions in this case. There is no foundation to support New Mexico's implication that the quoted statement was Reclamation recognizing a Compact apportionment to New Mexico below Elephant Butte. It is pure speculation as to the intent of the author in including the quoted language, and whether or not that language is intended to capture one of the parties' positions in this case, or otherwise.	New Mexico previously responded to these objections. <i>See</i> [Dkt. 468] State of New Mexico's Response to State of Texas's Evidentiary Objections, <i>and</i> [Dkt. 469] State of New Mexico's Response to Statements of Fact.
95	App. No. 99	At the hearing on New Mexico's Motion to Dismiss in this proceeding, counsel for the United States conceded that the "[P]roject is central to the [C]ompact," that "New Mexico would also, by the same token, have an apportionment" delivered through the Project, and that the Downstream contracts "effectuate the intended apportionment that is made in the [C]ompact."	Hrg. Tr. 88:17, 91:6-14, 100:7-18 (Aug. 19, 2015).	From TX's 12/22/20 Filings: Hrg. Tr. 88:17, 91:6-14, 100:7-18 (Aug. 19, 2015): Fed. R. Evid. 901; Fed. R. Evid. 801(c), hearsay. Statements by lawyers during a hearing are not sworn testimony and do not constitute factual "evidence" as contemplated by Fed. R. Civ. P. 56(c). The	From TX's 12/22/20 Filings: Subject to the stated objections, disputed. Statements by lawyers during a hearing are not sworn testimony and do not constitute factual "evidence" for purposes of summary judgment. Additionally, the language New Mexico quotes omits the statement immediately following the quoted portion: "So all flows at Elephant Butte are delivered not merely to the river, but they are delivered to project storage. Again, the project is central here. So, in delivering it to the project storage, the Special Master has to interpret it that New Mexico simply doesn't have the authority to claw it back. The delivery means something. It's transferring. It's putting it in the possession and control of the project for effectuating the apportionment. If this	New Mexico previously responded to these objections. <i>See</i> [Dkt. 468] State of New Mexico's Response to State of Texas's Evidentiary Objections, <i>and</i> [Dkt. 469] State of New Mexico's Response to Statements of Fact.

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				transcript excerpt is not supported by evidence and, as such, is inadmissible and irrelevant for purposes of summary judgment. Fed. R. Civ. P. 56(c); Fed. R. Evid. 401.	was a commercial good, it would be a transfer in a manner that can't be recalled by the grantor. But here New Mexico is arguing exactly the opposite, that having relinquished control, having transferred, having delivered that water, they can immediately start clawing it back before the usable water, which is usable for the project, for irrigation -- before it can even get to the first headgate, they can start clawing it back because, they assert, there's no ground rules below Elephant Butte." See Docket No. 37, Transcript of August 19, 2015 Oral Argument Before A. Gregory Grimsal, Esq. Special Master, 91:15 – 92:6.	
96	App. No. 100	The United States has taken the following relevant positions in this case: a. "New Mexico receives an additional apportionment of water under the Compact below Elephant Butte Reservoir, and Texas receives its entire equitable apportionment of water, through the Project, in the form of water released by the Project 'in accordance with irrigation demands.' Those deliveries are divided according to the 57% to 43% split reflecting the historical proportion of irrigation acreage in EBID and EPCWID, respectively."	a. Brief for the United States in Opposition to New Mexico's Motion to Dismiss Texas's Complaint and the United States' Complaint in Intervention, 28 (June 2014) (quoting NM-EX 330, Compact at Art. I(1)).	From TX's 12/22/20 Filings: Language/arguments in a brief supporting a motion do not constitute factual "evidence" as contemplated by Fed. R. Civ. P. 56(c). The pleadings discussed by New Mexico	From TX's 12/22/20 Filings: Subject to the stated objections, disputed. New Mexico purports to rely on certain statements attributed to the United States that support its own positions on the apportionment issue while ignoring other adverse statements the United States expresses in the same pleadings.100a Following the quoted statement, the United States adds: "[t]he Compact necessarily limits the extraction of hydrologically connected groundwater, to the extent that the groundwater is necessary for the Project to make deliveries in response to irrigation demands," (30); and that "[t]his Court has previously recognized that groundwater pumping that interferes with the equitable apportionment of water under an interstate compact must be counted toward a state's use of its equitable apportionment." (31). Elsewhere, the United States repeats its claim, according with Texas's, that "New Mexico is in breach of its obligation under Article IV of the Compact to 'deliver' the water—and thus to relinquish control of it—at Elephant Butte Reservoir."	New Mexico previously responded to these objections. See [Dkt. 468] State of New Mexico's Response to State of Texas's Evidentiary Objections, and [Dkt. 469] State of New Mexico's Response to Statements of Fact.

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96	App. No. 100	b. "Usable Water" is "available for release in accordance with irrigation demands in lower New Mexico, in Texas, and in Mexico."	b. Reply Brief for the United States on Exceptions by the States of New Mexico and Colorado to the First Interim Report of the Special Master, 6 (July 2017).	Language/arguments in a brief supporting a motion do not constitute factual "evidence" as contemplated by Fed. R. Civ. P. 56(c). The pleadings discussed by New Mexico	100b This recitation offers nothing to further New Mexico's claim, and is in fact entirely consistent with Texas's fundamental position that Texas is apportioned all the water New Mexico delivers to Elephant Butte, less Mexico's treaty water and water allocated (not apportioned) to EBID under its Reclamation contract.	New Mexico previously responded to these objections. <i>See</i> [Dkt. 468] State of New Mexico's Response to State of Texas's Evidentiary Objections, <i>and</i> [Dkt. 469] State of New Mexico's Response to Statements of Fact.
96	App. No. 100	c. "To effectuate an equitable apportionment of the waters of the Rio Grande, the compacting States incorporated and relied upon an existing reclamation project 'as the vehicle to guarantee delivery of Texas's and part of New Mexico's equitable apportionment of the stream.' The United States agreed to that arrangement through congressional approval of the Compact."	c. Id. at 18 (emphasis added) (quoting First Interim Report of the Special Master, 204 (Feb. 9, 2017)).	Language/arguments in a brief supporting a motion do not constitute factual "evidence" as contemplated by Fed. R. Civ. P. 56(c). The pleadings discussed by New Mexico	100c On the same page, the United States expresses a position that undermines the one New Mexico attributes to it: "By compact, New Mexico agreed that it would deliver water to the Project at Elephant Butte Reservoir, Compact Art. IV, 53 Stat. 788, at which point it becomes "[u]sable [w]ater" that must be available for release in accordance with irrigation demands in lower New Mexico, in Texas, and in Mexico, Compact Art. I(1), 53 Stat. 786. New Mexico cannot administer water rights in the area of New Mexico below Elephant Butte Reservoir in a way that interferes with the Project's ability to make deliveries to satisfy those demands."	New Mexico previously responded to these objections. <i>See</i> [Dkt. 468] State of New Mexico's Response to State of Texas's Evidentiary Objections, <i>and</i> [Dkt. 469] State of New Mexico's Response to Statements of Fact.
96	App. No. 100	d. "In the Compact, the States (i) incorporated and relied upon an existing Reclamation project to deliver Texas's and part of New Mexico's equitable apportionment."	d. Sur-Reply Brief for the United States on Exceptions by the States of New Mexico and Colorado to the First Interim Report of the Special Master, 12-13 (September 2017).	Language/arguments in a brief supporting a motion do not constitute factual "evidence" as contemplated by Fed. R. Civ. P. 56(c). The pleadings discussed by New Mexico		New Mexico previously responded to these objections. <i>See</i> [Dkt. 468] State of New Mexico's Response to State of Texas's Evidentiary Objections, <i>and</i> [Dkt. 469] State of New Mexico's Response to Statements of Fact.

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96	App. No. 100	e. "[T]he Compact identifies what is to be done with water that is delivered by New Mexico to Elephant Butte Reservoir, and the Compact 'protects the water that is released from Elephant Butte in order for it to reach its intended destination.'	e. Id. at 13 (quoting First Interim Report of the Special Master, 200 (Feb. 9, 2017)).	Language/arguments in a brief supporting a motion do not constitute factual "evidence" as contemplated by Fed. R. Civ. P. 56(c). The pleadings discussed by New Mexico	100e New Mexico omits that Texas is the "intended destination" the United States refers to. The next sentence states: "Indeed, if the Compact did not prohibit New Mexico water users from interfering with Project deliveries, 'then the question of Texas's equitable apportionment' under the Compact would be 'an open, major source of controversy,' contrary to the basic purpose of the Compact to 'effect[] an equitable apportionment of' the waters of the Rio Grande above Fort Quitman, Texas." (quoting First Interim Report of the Special Master, 200 (Feb. 9, 2017))	New Mexico previously responded to these objections. <i>See</i> [Dkt. 468] State of New Mexico's Response to State of Texas's Evidentiary Objections, <i>and</i> [Dkt. 469] State of New Mexico's Response to Statements of Fact.
97	App. No. 101	In response to a Request for Admission, the United States admitted for all purposes in this case that "under the Compact, the states relied upon an existing Reclamation project to deliver Texas's and part of New Mexico's equitable apportionment."	NM-EX 602, United States of America's Responses to New Mexico's First Set of Requests for Admission, 13 (November 4, 2019) (response to Request for Admission 30).	From TX's 12/22/20 Filings: NM-EX-602: <i>See</i> General Objection #8; Fed. R. Evid. 801(c), hearsay. The stated "facts" constitute improper legal conclusions in whole or in part.	From TX's 12/22/20 Filings: Subject to the stated objections, disputed. The quoted language is taken out of context, mischaracterizes the Request for Admission response, and ignores the objection expressed by the United States in responding to the Request for Admission. In its quoted response to New Mexico's Request for Admission No. 30, the full response of the United States is that it "avers that in its Reply and Sur-Reply briefs in the Supreme Court, the United States stated its position that under the Compact....." Thus, the United States only "admitted" stating that position in a brief. Any factual or legal interpretation beyond that is speculation. The United States further objected to the compound nature of New Mexico's request, and that the request sought admission of the truth of a conclusion of law.	New Mexico previously responded to these objections. <i>See</i> [Dkt. 468] State of New Mexico's Response to State of Texas's Evidentiary Objections, <i>and</i> [Dkt. 469] State of New Mexico's Response to Statements of Fact.
98	App. No. 102.	The expert historian sponsored by the United States in this case has opined that that the States intended for the Compact to apportion surface water below Elephant Butte Reservoir to New Mexico for the	NM-EX 215, Kryloff Dep. (Aug. 6, 2020) at 52:23-53:8, 73:23-74:9.	From TX's 12/22/20 Filings: NM-EX-215: <i>See</i> General Objection #8. Fed. R. Evid. 704: The statement includes	From TX's 12/22/20 Filings: Subject to the stated objections, disputed. Texas disputes that the States intended for the Compact to apportion any Rio Grande surface water below the Reservoir New Mexico. <i>See</i> Miltenberger Declaration, TX_MSJ_001585 and Miltenberger Dec. in Opp. to NM at TX_MSJ_007371; <i>See</i>	New Mexico previously responded to these objections. <i>See</i> [Dkt. 468] State of New Mexico's Response to State of Texas's Evidentiary Objections, <i>and</i> [Dkt. 469] State of New Mexico's Response to

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		lands in New Mexico under the Rio Grande Project.		impermissible legal conclusions.	Gordon Dec. in Opp. to NM at TX_MSJ_007269.	Statements of Fact.
99	App. No. 103	Consistent with the Reclamation Act (and the adjudication in Texas), New Mexico adjudicated the Project Right in New Mexico. In accordance with the Compact, the New Mexico Adjudication Court established that the Project is entitled to an annual release of up to 790,000 acre-feet.	<i>See</i> NM-EX 527, Order (1) Granting Summary Judgment Regarding the Amounts of Water; (2) Denying Summary Judgment Regarding Priority Date; (3) Denying Summary Judgment to the Pre-1906 Claimants; and (4) Setting a Scheduling Conference, New Mexico ex rel. Office of the State Engineer v. Elephant Butte Irr. Dist., no. CV-96-888 (N.M. 3d Judicial Dist., Feb. 17, 2014).	From TX's 12/22/20 Filings: NM-EX-527: <i>See</i> General Objection #8; Fed. R. Evid. 801(c), hearsay. The cited evidence does not support the stated "facts" in whole and/or in part. Fed. R. Civ. P. 56(c).	From TX's 12/22/20 Filings: Subject to the stated objections, disputed. The evidence (NM-EX-527) does not support the asserted fact. New Mexico states "[i]n accordance with the Compact, the New Mexico Adjudication Court established that the Project is entitled to an annual release of up to 790,000 acre-feet." Exhibit NM-EX-527 does not state "[i]n accordance with the Compact" but states "or as otherwise provided for by the Rio Grande Compact." <i>See</i> NM- EX-527 at 2.	New Mexico previously responded to these objections. <i>See</i> [Dkt. 468] State of New Mexico's Response to State of Texas's Evidentiary Objections, and [Dkt. 469] State of New Mexico's Response to Statements of Fact.
100	App. No. 104	Unlike Texas, the New Mexico Adjudication Court set limits on the amount of surface water and groundwater that could be diverted or consumed on an acre of Project land in New Mexico.	<i>See</i> NM-EX 527, Final Judgment, New Mexico ex rel. Office of the State Engineer v. Elephant Butte Irr. Dist., no. CV-96-888 (N.M. 3d Judicial Dist., Aug. 22, 2011).	From TX's 12/22/20 Filings: NM-EX-527: <i>See</i> General Objection #8; Fed. R. Evid. 801(c), hearsay. The cited evidence does not support the stated "facts" in whole and/or in part. Fed. R. Civ. P. 56(c). The stated "facts"	From TX's 12/22/20 Filings: Subject to the stated objections, disputed. The evidence (NM-EX-527) does not support the asserted fact. Exhibit NM-EX-527 provides no support for the "[u]nlike Texas" portion of the asserted fact. Further, the stated "fact" is a conclusory, overbroad, statement, without foundation in the cited evidence.	New Mexico previously responded to these objections. <i>See</i> [Dkt. 468] State of New Mexico's Response to State of Texas's Evidentiary Objections, and [Dkt. 469] State of New Mexico's Response to Statements of Fact.

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				constitute improper legal conclusions in whole or in part.		
100	App. No. 104	Consistent with Reclamation operations and analysis, New Mexico recognized the right for each Project acre to receive 3.024 acre-feet per annum of surface water.	Id. at ¶ I.A.	NM-EX-527: General Objection #8; Fed. R. Evid. 801(c), hearsay. The cited evidence does not support the stated "facts" in whole and/or in part. Fed. R. Civ. P. 56(c). The stated "facts" constitute improper legal conclusions in whole or in part.	Subject to the stated objections, disputed. The evidence (NM-EX-527) does not support the asserted fact. Exhibit NM-EX-527 provides no support for the "[u]nlike Texas" portion of the asserted fact. Further, the stated "fact" is a conclusory, overbroad, statement, without foundation in the cited evidence.	New Mexico previously responded to these objections. See [Dkt. 468] State of New Mexico's Response to State of Texas's Evidentiary Objections, and [Dkt. 469] State of New Mexico's Response to Statements of Fact.
101	App. No. 105	Prior to this litigation, New Mexico has consistently taken the position that the Compact divides the waters below Elephant Butte according to the acreage in each State so that New Mexico is entitled to 57% and Texas is entitled to 43% of Project supply. For example, in negotiations that occurred during the 1990s and 2000s, New Mexico was steadfast in its position that a potential operating agreement for the Project could not alter the 57-43 division of water below Elephant Butte that was required by the Compact.	NM-EX 004, Schmidt-Petersen Decl. at ¶ 12; NM-EX 003, Lopez Decl. at ¶ 17; NM-EX 002, D'Antonio Decl. at ¶ 13.	From TX's 12/22/20 Filings: NM-EX-003: See General Objection #2; Fed. R. Civ. P. 56(c)(4). NM-EX-004, 002: Fed. R. Civ. P. 56(c)(4); Fed. R. Evid. 602, 701: Mr. Schmidt-Petersen, and Mr. D'Antonio lack personal knowledge regarding all circumstances considering New Mexico's positions	From TX's 12/22/20 Filings: Subject to the stated objections, disputed. New Mexico admits that whatever interest New Mexico may have below Elephant Butte Reservoir, it is limited to the rights that exist pursuant to the EBID contracts. Lopez 30(b)(6) Depo., 9/18/2020, at TX_MSJ_001142-001145, 20:4-23:16, 25:17-26:10. New Mexico admits that New Mexico's interests below Elephant Butte Reservoir are strictly limited to the four corners of the 1937 contract between EBID and the United States and the 1938 contract between EBID, the United States, and EP#1. Lopez 30(b)(6) Depo., 9/18/2020, at TX_MSJ_001147-001148, 25:17-26:10. New Mexico concedes that it cannot, in any way, control or affect that contract.	New Mexico previously responded to these objections. See [Dkt. 468] State of New Mexico's Response to State of Texas's Evidentiary Objections, and [Dkt. 469] State of New Mexico's Response to Statements of Fact.

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				<p>“[p]rior to this litigation” and the statement regarding the requirements of the Compact is an improper legal conclusion and improper opinion testimony of a lay witness with respect to Mr. Schmidt-Petersen and Mr. D’Antonio who were not disclosed as experts in this litigation.</p>	<p>D’Antonio Depo., 8/14/2020, at TX_MSJ_000867, 93:1-11, 24-25 (“The contracts are in place, the project is under Reclamation law and it runs”; “New Mexico’s not involved to administer the contract water, no.”), 94:2- 13 (“New Mexico does not administer the surface water that’s under contract . . . we don’t administer on a day- to-day basis any of the water that’s meant for the project.”), 95:21-96:7. New Mexico admits that the use, place of use, timing of delivery, and total amount of water is absolutely limited by these contracts. D’Antonio Depo., 8/14/2020, at TX_MSJ_000875, 000879-000880, 145:13-18, 149:6-150:2. Until this litigation, New Mexico never argued that it had an apportionment of Rio Grande water below Elephant Butte Reservoir. In fact, in 1951, in prior Supreme Court litigation between New Mexico and Texas, John H. Bliss, the New Mexico State Engineer, on behalf of the state of New Mexico, stated unequivocally under oath: “The Rio Grande Compact does not attempt to make any apportionment between the New Mexico area and the Texas area below Elephant Butte Reservoir.”</p>	
102	App. No. 106	The RGCC and its Engineer Advisers regularly request information and receive briefings from Reclamation on Project operations, including operations below Elephant Butte.	NM-EX 202, Cortez Dep. (July 30, 2020) at 45:9-46:12; NM-EX 004, Schmidt-Petersen Decl. at ¶ 13; NM-EX 003, Lopez Decl. at ¶ 13; NM-EX 525, Email from Filiberto Cortez, Manager, El Paso Field Division, Bureau of Reclamation, to Kenneth Rice, Bureau of Reclamation (May 2, 2013); NM- EX 405, Facsimile from David Allen, El Paso	From TX's 12/22/20 Filings: NM-EX-202: <i>See</i> General Objection #8. NM-EX-003: General Objection #2; Fed. R. Civ. P. 56(c)(4). NM-EX-525: <i>See</i> General Objection	From TX's 12/22/20 Filings: Subject to the stated objections, undisputed.	New Mexico previously responded to these objections. <i>See</i> [Dkt. 468] State of New Mexico’s Response to State of Texas’s Evidentiary Objections, <i>and</i> [Dkt. 469] State of New Mexico’s Response to Statements of Fact.

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			Field Office, Bureau of Reclamation, to Darren Powell, Herman Settemeyer, et al. (June 25, 1996).	#8; Fed. R. Evid. 801(c), hearsay. NM-EX-405: .See General Objection #8; Fed. R. Evid. 801(c), hearsay. NM-EX-004: Fed. R. Civ. P. 56(c)(4); Fed. R. Evid. 602, 701.		
103	App. No. 107	Reclamation reports to the RGCC every year about operations that are relevant to the Compact. As part of that report, Reclamation provides information about the operations of the Rio Grande Project.	See, e.g., NM-EX 512, Bureau of Reclamation, Calendar Year 2009 Report to the Rio Grande Compact Commission, at 59-67 (Mar. 2010); NM-EX 003, Lopez Decl. at ¶ 13; NM-EX 004, Schmidt-Petersen Decl. at ¶ 13; NM-EX 405, Facsimile from David Allen, El Paso Field Office, Bureau of Reclamation, to Darren Powell, Herman Settemeyer, et al. (June 25, 1996); NM-EX 410, Fascimile from Steve Vandiver, Engineer Adviser, State of Colorado, to Ken Maxey, Albuquerque Area Manager, Bureau of Reclamation, and Filiberto Cortez, Manager, El Paso Field Division, Bureau of Reclamation (Aug. 2, 2002).	From TX's 12/22/20 Filings: NM-EX-512: .See General Objection #8; Fed. R. Evid. 801(c), hearsay. NM-EX-003: General Objection #2; Fed. R. Civ. P. 56(c)(4). NM-EX-405: .See General Objection #8; Fed. R. Evid. 801(c), hearsay. NM-EX-410: .See General Objection #8; Fed. R. Evid. 801(c), hearsay. NM-EX-004: Fed. R. Civ. P. 56(c)(4); Fed. R. Evid. 602, 701.	From TX's 12/22/20 Filings: Subject to the stated objections, undisputed.	New Mexico previously responded to these objections. See [Dkt. 468] State of New Mexico's Response to State of Texas's Evidentiary Objections, and [Dkt. 469] State of New Mexico's Response to Statements of Fact.

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104	App. No. 108	The RGCC conducts Compact accounting on an annual basis. Part of the Compact accounting includes a report on the Project Storage and Releases. That accounting tracks both the releases of Usable Water to water users in both States to satisfy irrigation demands, and the accrued departure of the releases from the Compact's normal release of 790,000 acre-feet per year.	<i>See, e.g.,</i> NM-EX 501, Rio Grande Compact Commission, Report of the Rio Grande Compact Commission 2005, at 20 (Mar. 23, 2006). <i>See also</i> NM-EX 004, Schmidt-Petersen Decl. at ¶ 14; NM-EX 003, Lopez Decl. at ¶ 14.	From TX's 12/22/20 Filings: NM-EX-501: <i>See</i> General Objection #8; Fed. R. Evid. 801(c), hearsay. NM-EX-003: <i>See</i> General Objection #2; Fed. R. Civ. P. 56(c)(4). NM-EX-004: Fed. R. Civ. P. 56(c)(4); Fed. R. Evid. 602, 701.	From TX's 12/22/20 Filings: Subject to the stated objections, disputed. There is no evidence cited in support of this "fact." New Mexico's reference to " <i>See, e.g.</i> " does not constitute supporting evidence.	New Mexico previously responded to these objections. <i>See</i> [Dkt. 468] State of New Mexico's Response to State of Texas's Evidentiary Objections, and [Dkt. 469] State of New Mexico's Response to Statements of Fact.
105	App. No. 109	"Reclamation interprets this accrued departure from normal release [Compact accounting provision] as a measure of how the Rio Grande Project is complying with its obligation to meet yearly demand from the water users of the Rio Grande Project and at the same time comply with the Rio Grande Compact intent to recognize a yearly average of 790,000 AF release from project storage to satisfy water users" below Elephant Butte.	NM-EX 411, Letter from Filiberto Cortez, Manager, El Paso Field Division, Bureau of Reclamation, to William A. Paddock, 2 (Sept. 11, 2002).	From TX's 12/22/20 Filings: NM-EX-411: General Objection #8; Fed. R. Evid. 801(c), hearsay. The cited evidence does not support the stated "facts" in whole and/or in part. Fed. R. Civ. P. 56(c).	From TX's 12/22/20 Filings: Subject to the stated objections, disputed. The evidence (NM-EX-411) does not support the asserted fact. New Mexico quotes the document correctly but adds "below Elephant Butte" after the quote in the asserted fact. Immediately following the quoted text, however, Exhibit NM-EX-411 states "within the 'Texas portion' of the Compact." <i>See</i> NM-EX-411 at 2.	New Mexico previously responded to these objections. <i>See</i> [Dkt. 468] State of New Mexico's Response to State of Texas's Evidentiary Objections, and [Dkt. 469] State of New Mexico's Response to Statements of Fact.
106	App. No. 110	The releases from Project Storage are tracked so that the Compact Commissioner from each respective State is able to understand the amount of Project water that users in his or her State are entitled to.	NM-EX 004, Schmidt-Petersen Decl. at ¶ 14; NM-EX 003, Lopez Decl. at ¶ 13.	From TX's 12/22/20 Filings: NM-EX-003: General Objection #2; Fed. R. Civ. P. 56(c)(4). NM-EX-004: Fed. R. Civ. P.	From TX's 12/22/20 Filings: Subject to the stated objections, disputed. New Mexico misstates and mischaracterizes the cited evidence. The Schmidt-Petersen declaration states that project releases are accounted and reported "so that the Compact Commissioner from each respective State is able to understand the amount of	New Mexico previously responded to these objections. <i>See</i> [Dkt. 468] State of New Mexico's Response to State of Texas's Evidentiary Objections, and [Dkt. 469] State of New Mexico's Response to

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				56(c)(4); Fed. R. Evid. 602, 701. The stated "facts" constitute improper legal conclusions in whole or in part.	Project water that users in his or her State received in the previous year." (NM-EX 004) (emphasis added). Schmidt-Petersen did not state anything about "entitlement to water." NM-EX 004, Schmidt-Petersen Decl. paragraph 14. The Lopez declaration states that the RGCC and Engineer Advisers request information and receive briefings from Reclamation on Project operations. NM-EX 003, Lopez Decl. paragraph 13.	Statements of Fact.
107	App. No. 111	The RGCC acts or speaks in a number of forms, including through resolutions, all of which must have unanimous agreement.	NM-EX 002, D'Antonio Decl. at ¶ 14, NM-EX 003, Lopez Decl. at ¶ 15.	From TX's 12/22/20 Filings: NM-EX-406: <i>See</i> General Objection #8; Fed. R. Evid. 801(c), hearsay. NM-EX-002: Fed. R. Civ. P. 56(c)(4); Fed. R. Evid. 401, 602, 701. NM-EX-408: <i>See</i> General Objection #8; Fed. R. Evid. 801(c), hearsay. NM-EX-528: <i>See</i> General Objection #8; Fed. R. Evid. 801(c), hearsay. NM-EX-003: General Objection #2; Fed. R. Civ. P. 56(c)(4). The cited evidence does not support the stated "facts" in whole and/or in	From TX's 12/22/20 Filings: Subject to the stated objections, disputed. The cited evidence does not support the stated legal conclusions summarized by New Mexico (as facts) in "a." and "b." The evidence (NM-EX-528) does not support the asserted fact. New Mexico, partially quoting Exhibit NM-EX-528, states "The Project is 'required to be operated in compliance with the Rio Grande Compact.'" But, Exhibit NM-EX-528 states only that ". . . El Vado Reservoir is a post-1929 reservoir and is required to be operated in compliance with the Rio Grande Compact.'"	New Mexico previously responded to these objections. <i>See</i> [Dkt. 468] State of New Mexico's Response to State of Texas's Evidentiary Objections, and [Dkt. 469] State of New Mexico's Response to Statements of Fact.

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<u>NM- CS MF #</u>	<u>NM's Prior Numbering System</u>	<u>New Mexico's Stated Fact</u>	<u>New Mexico's Supporting Evidence</u>	<u>TEXAS'S EVIDENTIARY OBJECTIONS</u>	<u>TEXAS'S RESPONSE</u>	<u>NEW MEXICO'S RESPONSE TO TEXAS EVIDENTIARY OBJECTIONS</u>
				part. Fed. R. Civ. P. 56(c). The stated "facts" constitute improper legal conclusions in whole or in part.		
107	App. No. 111	Through unanimous resolutions, the RGCC has taken the following relevant positions: a. The State of New Mexico has a Compact apportionment in southern New Mexico below Elephant Butte, as recognized in the citations below: i. "[O]ver half of New Mexico's population is located within the Rio Grande basin and depends on New Mexico's allocation of Rio Grande water under the Rio Grande compact."	a. (i) NM-EX 406, Rio Grande Compact Commission, Resolution of the Rio Grande Compact Commission Regarding the Need for Careful Evaluation of the Water Supply and Socioeconomic Impacts of Any Designation of Critical Habitat for the Rio Grande Silvery Minnow (Mar. 25, 1999).	NM-EX-406: <i>See</i> General Objection #8; Fed. R. Evid. 801(c), hearsay.	Subject to the stated objections, disputed. The cited evidence does not support the stated legal conclusions summarized by New Mexico (as facts) in "a." and "b." The evidence (NM-EX-528) does not support the asserted fact. New Mexico, partially quoting Exhibit NM-EX-528, states "The Project is 'required to be operated in compliance with the Rio Grande Compact.'" But, Exhibit NM-EX-528 states only that ". . . El Vado Reservoir is a post-1929 reservoir and is required to be operated in compliance with the Rio Grande Compact."	New Mexico previously responded to these objections. <i>See</i> [Dkt. 468] State of New Mexico's Response to State of Texas's Evidentiary Objections, and [Dkt. 469] State of New Mexico's Response to Statements of Fact.
107	App. No. 111	ii. "[A]ll Rio Grande water allocated to New Mexico both upstream and downstream from Elephant Butte Reservoir is fully appropriated under New Mexico state law."	a. (ii) Id. (emphasis added).	NM-EX-406: <i>See</i> General Objection #8; Fed. R. Evid. 801(c), hearsay.	Subject to the stated objections, disputed. The cited evidence does not support the stated legal conclusions summarized by New Mexico (as facts) in "a." and "b." The evidence (NM-EX-528) does not support the asserted fact. New Mexico, partially quoting Exhibit NM-EX-528, states "The Project is 'required to be operated in compliance with the Rio Grande Compact.'" But, Exhibit NM-EX-528 states only that ". . . El Vado Reservoir is a post-1929 reservoir and is required to be operated in compliance with the Rio Grande Compact."	New Mexico previously responded to these objections. <i>See</i> [Dkt. 468] State of New Mexico's Response to State of Texas's Evidentiary Objections, and [Dkt. 469] State of New Mexico's Response to Statements of Fact.

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107	App. No. 111	iii. "[T]he waters of the Rio Grande Project are used to . . . provide a water supply for Southern New Mexico and Texas downstream of Elephant Butte Reservoir."	a. (iii) NM-EX 408, Rio Grande Compact Commission, Resolution of the Rio Grande Compact Commission Regarding the Development of an Appropriate Methodology for Determining the Annual Allocation of Usable Water in Rio Grande Project Storage (Mar. 21, 2002) (emphasis added).	NM-EX-408: <i>See</i> General Objection #8; Fed. R. Evid. 801(c), hearsay.	Subject to the stated objections, disputed. The cited evidence does not support the stated legal conclusions summarized by New Mexico (as facts) in "a." and "b." The evidence (NM-EX-528) does not support the asserted fact. New Mexico, partially quoting Exhibit NM-EX-528, states "The Project is 'required to be operated in compliance with the Rio Grande Compact.'" But, Exhibit NM-EX-528 states only that ". . . El Vado Reservoir is a post-1929 reservoir and is required to be operated in compliance with the Rio Grande Compact."	New Mexico previously responded to these objections. <i>See</i> [Dkt. 468] State of New Mexico's Response to State of Texas's Evidentiary Objections, and [Dkt. 469] State of New Mexico's Response to Statements of Fact.
107	App. No. 111	b. The operations and accounting of the Project have the potential to impact New Mexico's Compact apportionment.	b. Id. ("[T]he dissemination of inaccurate allotments [by Reclamation] causes unnecessary hardship to the water users of Southern New Mexico and Texas along the Rio Grande downstream of Elephant Butte Reservoir") (emphasis added); NM-EX 002, D'Antonio Decl. at ¶ 14; NM-EX 003, Lopez Decl. at ¶ 15.	NM-EX-003: General Objection #2; Fed. R. Civ. P. 56(c)(4). The cited evidence does not support the stated "facts" in whole and/or in part. Fed. R. Civ. P. 56(c). The stated "facts" constitute improper legal conclusions in whole or in part.	Subject to the stated objections, disputed. The cited evidence does not support the stated legal conclusions summarized by New Mexico (as facts) in "a." and "b." The evidence (NM-EX-528) does not support the asserted fact. New Mexico, partially quoting Exhibit NM-EX-528, states "The Project is 'required to be operated in compliance with the Rio Grande Compact.'" But, Exhibit NM-EX-528 states only that ". . . El Vado Reservoir is a post-1929 reservoir and is required to be operated in compliance with the Rio Grande Compact."	New Mexico previously responded to these objections. <i>See</i> [Dkt. 468] State of New Mexico's Response to State of Texas's Evidentiary Objections, and [Dkt. 469] State of New Mexico's Response to Statements of Fact.
107	App. No. 111	c. The Project is "required to be operated in compliance with the Rio Grande Compact."	c. NM-EX 528, Rio Grande Compact Commission, Resolution of the Rio Grande Compact Commission Regarding Temporary Modification of Operations at El Vado Reservoir in New Mexico during April, May, and	NM-EX-528: <i>See</i> General Objection #8; Fed. R. Evid. 801(c), hearsay.	Subject to the stated objections, disputed. The cited evidence does not support the stated legal conclusions summarized by New Mexico (as facts) in "a." and "b." The evidence (NM-EX-528) does not support the asserted fact. New Mexico, partially quoting Exhibit NM-EX-528, states "The Project is 'required to be operated in compliance with the Rio Grande Compact.'" But, Exhibit NM-EX-528 states only that ". . . El Vado Reservoir is a post-1929 reservoir and is required to be operated in compliance with the Rio Grande Compact."	New Mexico previously responded to these objections. <i>See</i> [Dkt. 468] State of New Mexico's Response to State of Texas's Evidentiary Objections, and [Dkt. 469] State of New Mexico's Response to Statements of Fact.

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			June 2015 (Mar. 24, 2015); <i>See</i> also NM- EX 002, D'Antonio Decl. at ¶ 14; NM-EX 003, Lopez Decl. at ¶ 15.			
108	App. No. 112	To address the potential for Project operations to impact New Mexico's (and Texas's) Compact apportionment, the RGCC has taken at least these three actions by resolution: a. First, the RGCC unanimously "request[ed] that the Bureau of Reclamation work cooperatively with the Engineer Advisers to develop procedures for determining the annual allotments of water supply in accordance with the Rio Grande Compact."	a. NM-EX 408, Rio Grande Compact Commission, Resolution of the Rio Grande Compact Commission Regarding the Development of an Appropriate Methodology for Determining the annual Allocation of Usable Water in Rio Grande Project Storage (Mar. 21, 2002); <i>See</i> also NM-EX 002, D'Antonio Decl. at ¶ 15, NM-EX 003, Lopez Decl. at ¶ 16.	From TX's 12/22/20 Filings: NM-EX-408: <i>See</i> General Objection 8; Fed. R. Evid. 801(c), hearsay. NM-EX-002: Fed. R. Civ. P. 56(c)(4), Fed. R. Evid. 401, 602, 802. The statement is irrelevant, not within Mr. D'Antonio's personal knowledge, and constitutes impermissible hearsay. NM-EX-003: <i>See</i> General Objection #2; Fed. R. Civ. P. 56(c)(4), Fed. R. Evid. 401, 602, 802. The statement is irrelevant, not within Mr. Lopez's personal knowledge, and constitutes impermissible hearsay. NM-EX-408 speaks for	From TX's 12/22/20 Filings: Subject to the stated objections, disputed. The cited evidence does not support the stated legal conclusion summarized by New Mexico (as fact) in its opening paragraph.	New Mexico previously responded to these objections. <i>See</i> [Dkt. 468] State of New Mexico's Response to State of Texas's Evidentiary Objections, <i>and</i> [Dkt. 469] State of New Mexico's Response to Statements of Fact.

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108	App. No. 112	b. Second, the RGCC entered into a memorandum of understanding ("MOU") with Reclamation to "conduct a Compact water accounting documentation project." The purpose of the MOU was "to clarify and formally articulate the details of the duties, roles and responsibilities of each party for the water accounting, reporting, and documentation of the waters of the Rio Grande Basin above Fort Quitman, Texas, in accordance with the Compact."	b. NM-EX 407, Memorandum of Understanding between the Rio Grande Compact Commission and the United States Bureau of Reclamation, 2 (Mar. 21, 2002); <i>See also</i> NM-EX 002, D'Antonio Decl. at ¶ 15, NM- EX 003, Lopez Decl. at ¶ 16.	NM-EX-002: Fed. R. Civ. P. 56(c)(4), Fed. R. Evid. 401, 602, 802. The statement is irrelevant, not within Mr. D'Antonio's personal knowledge, and constitutes impermissible hearsay. NM-EX-003: <i>See</i> General Objection #2; Fed. R. Civ. P. 56(c)(4), Fed. R. Evid. 401, 602, 802. The statement is irrelevant, not within Mr. Lopez's personal knowledge, and constitutes impermissible hearsay. NM-EX-408 speaks for itself. NM-EX-407: <i>See</i> General Objection #8; Fed. R. Evid. 801(c), hearsay.	Subject to the stated objections, disputed. The cited evidence does not support the stated legal conclusion summarized by New Mexico (as fact) in its opening paragraph.	New Mexico previously responded to these objections. <i>See</i> [Dkt. 468] State of New Mexico's Response to State of Texas's Evidentiary Objections, <i>and</i> [Dkt. 469] State of New Mexico's Response to Statements of Fact.
108	App. No. 112	c. Third, the RGCC unanimously "request[ed] those federal agencies that operate water-related facilities within the Rio Grande basin to advise the Rio Grande Compact Commission prior to changing the operation of any of those facilities and when deemed necessary by the Rio Grande Compact Commission,	c. NM-EX 413, Rio Grande Compact Commission, Resolution of the Rio Grande Compact Commission Concerning Federal Agency Operations of Their Water-Related Facilities on the Rio Grande Compact Accounting (Mar. 25, 2004); NM-EX 002,	NM-EX-002: Fed. R. Civ. P. 56(c)(4), Fed. R. Evid. 401, 602, 802. The statement is irrelevant, not within Mr. D'Antonio's personal knowledge, and constitutes impermissible hearsay. NM-EX-413:	Subject to the stated objections, disputed. The cited evidence does not support the stated legal conclusion summarized by New Mexico (as fact) in its opening paragraph.	New Mexico previously responded to these objections. <i>See</i> [Dkt. 468] State of New Mexico's Response to State of Texas's Evidentiary Objections, <i>and</i> [Dkt. 469] State of New Mexico's Response to Statements of Fact.

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		<i>Seek its unanimous consent for changes prior to implementation.</i>	D'Antonio Decl. at ¶ 15, NM-EX 003, Lopez Decl. at ¶ 16.	<i>See General Objection #8; Fed. R. Evid. 801(c), hearsay.</i>		
109	App. No. 113; similar language in Full Supply No. 1	The Court held in this case that "the Compact . . . implicitly . . . incorporates the Downstream Contracts by reference."	Texas v. New Mexico, 138 S. Ct. at 959.	From TX's 12/22/20 Filings: Texas v. New Mexico, 138 S. Ct. 954, 957(2018): Case law/legal opinions do not constitute factual "evidence" as contemplated by Fed. R. Civ. P. 56(c).	From TX's 12/22/20 Filings: Texas disputes the application of the Supreme Court opinion, or portion thereof, as a "fact" for purposes of summary judgment. Notably, the Supreme Court ruling in question did not arise from an evidentiary hearing. The Court's opinion should only be considered in the context of the parties' legal arguments	New Mexico previously responded to these objections. <i>See</i> [Dkt. 468] State of New Mexico's Response to State of Texas's Evidentiary Objections, <i>and</i> [Dkt. 469] State of New Mexico's Response to Statements of Fact.
109	App. No. 113; similar language in Full Supply No. 1	It noted that the "Compact is inextricably intertwined with the Rio Grande Project and the Downstream Contracts."	Texas v. New Mexico, 138 S. Ct. at 959.	Texas v. New Mexico, 138 S. Ct. 954, 957(2018): Case law/legal opinions do not constitute factual "evidence" as contemplated by Fed. R. Civ. P. 56(c).	Texas disputes the application of the Supreme Court opinion, or portion thereof, as a "fact" for purposes of summary judgment. Notably, the Supreme Court ruling in question did not arise from an evidentiary hearing. The Court's opinion should only be considered in the context of the parties' legal arguments	New Mexico previously responded to these objections. <i>See</i> [Dkt. 468] State of New Mexico's Response to State of Texas's Evidentiary Objections, <i>and</i> [Dkt. 469] State of New Mexico's Response to Statements of Fact.
110	App. No. 114; similar language in Full Supply No. 1	The Court further held that "the United States might be said to serve, through the Downstream Contracts as a sort of agent of the Compact, charged with assuring that the Compact's equitable apportionment to Texas and part of New Mexico is, in fact, made."	Texas v. New Mexico, 138 S. Ct. at 959 (emphasis added; internal quotation marks omitted).	From TX's 12/22/20 Filings: Texas v. New Mexico, 138 S. Ct. 954, 957(2018): Case law/legal opinions do not constitute factual "evidence" as contemplated by Fed. R. Civ. P. 56(c).	From TX's 12/22/20 Filings: Texas disputes the application of the Supreme Court opinion, or portion thereof, as a "fact" for purposes of summary judgment. Notably, the Supreme Court ruling in question did not arise from an evidentiary hearing. The Court's opinion should only be considered in the context of the parties' legal arguments.	New Mexico previously responded to these objections. <i>See</i> [Dkt. 468] State of New Mexico's Response to State of Texas's Evidentiary Objections, <i>and</i> [Dkt. 469] State of New Mexico's Response to Statements of Fact.

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111	Full Supply No. 2	In the Downstream Contracts, and in particular in the 1938 Downstream Contract, "the federal government promised to supply" Project water to the New Mexico water district Elephant Butte Irrigation District ("EBID") and to the Texas water district EPCWID (collectively, the "Districts") in accordance with their irrigable acres within the Project—"roughly 57% for New Mexico and 43% for Texas."	Texas v. New Mexico, 138 S. Ct. at 957.	From TX's 12/22/20 Filings: Texas v. New Mexico, 138 S. Ct. 954, 957(2018): Case law/legal opinions do not constitute factual "evidence" as contemplated by Fed. R. Civ. P. 56(c).	From TX's 12/22/20 Filings: Texas disputes the application of the Supreme Court opinion, or portion thereof, as a "fact" for purposes of summary judgment. Notably, the Supreme Court ruling in question did not arise from an evidentiary hearing. The Court's opinion should only be considered in the context of the parties' legal arguments. New Mexico's statement also mischaracterizes the Court's opinion.	New Mexico previously responded to these objections. <i>See</i> [Dkt. 468] State of New Mexico's Response to State of Texas's Evidentiary Objections, <i>and</i> [Dkt. 469] State of New Mexico's Response to Statements of Fact.
112	N/A	Water rights associated with the Project comprise the largest surface water rights in the Lower Rio Grande ("LRG"). In addition to Project water rights, there are a few pre-Project surface water rights in the New Mexico part of the LRG. New Mexico water laws and regulation protect the senior water rights of the Rio Grande Project.	<i>See</i> NM-EX 006, Barroll 2d Decl. at ¶ 76; <i>See</i> also NM-EX 007, D'Antonio 2d Decl. at ¶ 37.	NM-EX-006, 007: Fed. R. Civ. P. 56(c)(4). The cited evidence does not support the stated "facts" in whole or in part. Fed. R. Civ. P. 56(c). The stated "facts" constitute improper legal conclusions in whole or in part. Fed. R. Evid. 704.	Subject to the stated objections, the fact is cited in New Mexico's Response to Texas's Motion for Partial Summary Judgment but does not materially respond to facts stated therein. Texas's Motion for Summary Judgment does not materially address state water rights in the Lower Rio Grande or New Mexico's water rights law. New Mexico's stated fact is non-responsive and otherwise not supported by definite, competent, or significantly probative evidence that genuinely and materially responds to a fact stated in Texas's Motion for Partial Summary Judgment. As such, Texas's stated material facts remain undisputed. Fed. R. Civ. P. 56(a), 56(c)(1).	As to Texas's objection to Dr. Barroll, <i>see</i> New Mexico's Response to State of Texas's Second Evidentiary Objections, § III (A).
113	N/A	The actual irrigated acreage within the Project in 1938 was approximately 140,000 acres, about 20,000 acres less than the full irrigated acreage authorized in the 1938 Downstream Contract. The irrigated area within the Project increased gradually through the	<i>See</i> NM-EX 012, Sullivan Decl. at ¶ 44; <i>See</i> also NM-EX 112, Spronk Rep. at 43 & Fig. 5- 4.	NM-EX-112: <i>See</i> General Objection #7; Fed. R. Evid. 801(c), hearsay.	Subject to the stated objections, the fact is cited in New Mexico's Response to Texas's Motion for Partial Summary Judgment but does not materially respond to facts stated therein. New Mexico cites CSMF #113 and its supporting evidence in its opposing to Texas's Motion for Partial Summary Judgment relating to its counterclaims against Texas (<i>See</i> page 56) and not in response to facts stated in Texas's Motion for Partial Summary Judgment. New Mexico's stated fact is non-responsive and otherwise not supported by definite, competent,	New Mexico previously responded to these authenticity and hearsay objections. <i>See</i> [Dkt. 468] State of New Mexico's Response to State of Texas's Evidentiary Objections.

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		1940s, reaching its maximum extent of about 160,000 acres in the early 1950s. It has gradually declined in both New Mexico and Texas ever since. However, the actual irrigated acreage within the Project fluctuates from year to year based on a number of factors, including water supply, planting and fallowing decisions by individual farmers, and urbanization.			or significantly probative evidence that genuinely and materially responds to a fact stated in Texas's Motion for Partial Summary Judgment. As such, Texas's stated material facts remain undisputed. Fed. R. Civ. P. 56(a), 56(c)(1).	
114	N/A	The total amount of irrigated acreage in New Mexico today is approximately 75,000 acres. Taking this change into account, the total volume of irrigation water applied in the New Mexico portion of the Project is consistent with the irrigation demand in New Mexico during the 1940s and 1950s.	<i>See</i> NM-EX 006, Barroll 2d Decl. at ¶¶ 24-25; cf. NM-EX 432, Narenda N. Gunaji, Engineering Experiment Station, New Mexico State University, Groundwater Conditions in the Elephant Butte Irrigation District, at 3, 19 (1961) (reporting per-acre demand figures during the 1950s); NM-EX 343, C.S. Conover, Preliminary Memorandum on Groundwater Supplies for Elephant Butte Irrigation District, New Mexico, at 6 (Sept. 1947) (reporting demand figures for the 1940s).	NM-EX-006: Fed. R. Civ. P. 56(c)(4), Fed. R. Evid. 602, 702(a); Dr. Barroll cites historical records in support of her conclusion but has insufficient personal knowledge to assert this opinion for purposes of Rule 56 summary judgment, and at trial she would lack qualification to offer this opinion as an expert under Fed. R. Evid. 702(a). NM-EX-432: <i>See</i> General Objection #8; Fed. R. Evid. 801(c), hearsay.	Subject to the stated objections, the fact is cited in New Mexico's response to Texas's Motion for Partial Summary Judgment but does not materially respond to facts stated therein. New Mexico cites CSMF #114 and its supporting evidence in its opposition to Texas's Motion for Partial Summary Judgment relating to its counterclaims against Texas (<i>See</i> NM Response at 56) and not in response to facts stated in Texas's Motion for Partial Summary Judgment. New Mexico's stated fact is non-responsive and otherwise not supported by definite, competent, or significantly probative evidence that genuinely and materially responds to a fact stated in Texas's Motion for Partial Summary Judgment. As such, Texas's stated material facts remain undisputed. Fed. R. Civ. P. 56(a), 56(c)(1).	New Mexico previously responded to these authenticity and hearsay objections. <i>See</i> [Dkt. 468] State of New Mexico's Response to State of Texas's Evidentiary Objections. As to Texas's objection to Dr. Barroll, <i>see</i> New Mexico's Response to State of Texas's Second Evidentiary Objections, § III (A).

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115	Full Supply No. 3	The Project is operated by the [Reclamation]. The operations of the Project include the allocation and delivery of Project water stored in Elephant Butte and Caballo reservoirs to the Districts and to Mexico.	NM-EX 001, Barroll Decl. at ¶ 14; NM-EX 003, Lopez Decl. at ¶ 19; <i>See</i> also e.g., NM-EX 529, Bureau of Reclamation, Continued Implementation of the 2008 Operating Agreement for the Rio Grande Project, New Mexico and Texas: Final Environmental Impact Statement, at 3–4 (Sep. 30, 2016).	From TX's 12/22/20 Filings: NM-EX 529: <i>See</i> General Objection #8; Fed. R. Evid. 801(c), hearsay. NM-EX 003: <i>See</i> General Objection #2.	From TX's 12/22/20 Filings: Subject to the stated objections, undisputed.	New Mexico previously responded to these objections. <i>See</i> [Dkt. 468] State of New Mexico's Response to State of Texas's Evidentiary Objections, <i>and</i> [Dkt. 469] State of New Mexico's Response to Statements of Fact.
116	Notice No. 9	The Rio Grande Project is a federal Reclamation Project, therefore neither Texas nor New Mexico have a direct role in the operation of the Project.	<i>See</i> NM-EX 202, Cortez Dep. (July 30, 2020) at 63:18-69:2; NM-EX 211, Gordon Dep. (July 14, 2020) at 89:4-11, 172:13-22.	From TX's 12/22/20 Filings: NM-EX 202, 211: <i>See</i> General Objection #8.	From TX's 12/22/20 Filings: Subject to the stated objections, undisputed.	New Mexico previously responded to these objections. <i>See</i> [Dkt. 468] State of New Mexico's Response to State of Texas's Evidentiary Objections, <i>and</i> [Dkt. 469] State of New Mexico's Response to Statements of Fact.
117	Notice No. 10	Specifically, although New Mexico retains administrative jurisdiction over the surface water of the Rio Grande Project, the New Mexico State Engineer has no involvement in day-to-day Project operations, including orders and deliveries.	NM-EX 206, D'Antonio Dep. (Aug. 14, 2020) at 93:12-96:7.	From TX's 12/22/20 Filings: NM-EX 206: <i>See</i> General Objection #8.	From TX's 12/22/20 Filings: Subject to the stated objections, undisputed.	New Mexico previously responded to these objections. <i>See</i> [Dkt. 468] State of New Mexico's Response to State of Texas's Evidentiary Objections, <i>and</i> [Dkt. 469] State of New Mexico's Response to Statements of Fact.
118	Notice No. 2	Reclamation operates Elephant Butte Reservoir as part of the principal storage infrastructure for the Rio Grande Project.	<i>See</i> NM-EX 202, Cortez Dep. (July 30, 2020) at 56:20- 58:3.	From TX's 12/22/20 Filings: NM-EX 202: <i>See</i> General Objection #8. The cited evidence does not support the stated "facts" in whole	From TX's 12/22/20 Filings: Subject to the stated objections, disputed in part. The cited testimony does not support the statement in the Motion.	New Mexico previously responded to these objections. <i>See</i> [Dkt. 468] State of New Mexico's Response to State of Texas's Evidentiary Objections, <i>and</i> [Dkt. 469] State of New

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				and/or in part. Fed. R. Civ. P. 56(c).		Mexico's Response to Statements of Fact.
119	App. No. 53	At the time the Compact was executed, 88,000 authorized Project acres were situated within EBID in New Mexico, and 67,000 authorized Project acres were situated in EPCWID in Texas.	NM-EX 328, Frank B. Clayton, Rio Grande Compact Commissioner, State of Texas, to Sawnie B. Smith (Oct. 4, 1938).	From TX's 12/22/20 Filings:	From TX's 12/22/20 Filings: Subject to the stated objection, undisputed.	New Mexico previously responded to these objections. <i>See</i> [Dkt. 468] State of New Mexico's Response to State of Texas's Evidentiary Objections, <i>and</i> [Dkt. 469] State of New Mexico's Response to Statements of Fact.
119	App. No. 53	Thus, approximately 57% of Project acreage was located in New Mexico, and 43% of Project acreage was located in Texas.	NM-EX 529, Bureau of Reclamation, Continued Implementation of the 2008 Operating Agreement for the Rio Grande Project, Final Environmental Impact Statement, at 4 (Sept. 30, 2016).	NM-EX-529: <i>See</i> General Objection #8; Fed. R. Evid. 801(c), hearsay.	Subject to the stated objection, undisputed.	New Mexico previously responded to these objections. <i>See</i> [Dkt. 468] State of New Mexico's Response to State of Texas's Evidentiary Objections, <i>and</i> [Dkt. 469] State of New Mexico's Response to Statements of Fact.
120	Notice No. 21	In operation of the Rio Grande Project, Reclamation is responsible to control releases of Project supply from Elephant Butte and Caballo reservoirs to assure delivery of all ordered water to the canal diversions. This function includes monitoring the river to determine gains and losses throughout the river reaches between stream gages.	<i>See</i> NM-EX 202, Cortez Dep. (July 30, 2020) at 34:12-35:5.	From TX's 12/22/20 Filings: NM-EX 202: <i>See</i> General Objection #8.	From TX's 12/22/20 Filings: Subject to the stated objections, disputed. The cited "evidence" does not stand for the stated proposition.	New Mexico previously responded to these objections. <i>See</i> [Dkt. 468] State of New Mexico's Response to State of Texas's Evidentiary Objections, <i>and</i> [Dkt. 469] State of New Mexico's Response to Statements of Fact.

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<u>NM- CS MF #</u>	<u>NM's Prior Numbering System</u>	<u>New Mexico's Stated Fact</u>	<u>New Mexico's Supporting Evidence</u>	<u>TEXAS'S EVIDENTIARY OBJECTIONS</u>	<u>TEXAS'S RESPONSE</u>	<u>NEW MEXICO'S RESPONSE TO TEXAS EVIDENTIARY OBJECTIONS</u>
121	App. No. 50	The Project beneficiary in New Mexico is [EBID]. EBID is a New Mexico entity created by New Mexico statute and subject to New Mexico law.	<i>See</i> Motion of Elephant Butte Irrigation District for Leave to Intervene, and Memorandum and Points of Authority, 2 (Dec. 3, 2014); <i>See</i> also NM-EX 302, Elephant Butte Water Users Association, Articles of Incorporation (Dec. 22, 1904); NM-EX 112, Stevens Rep. at 18; NM-EX 111, Miltenberger Rep. at 9.	From TX's 12/22/20 Filings: Motion of Elephant Butte Irrigation District for Leave to Intervene, and Memorandum and Points of Authority, 2 (Dec. 3, 2014): The cited EBID motion is not supported by evidence. As such, it does not constitute factual "evidence" as contemplated by Fed. R. Civ. P. 56(c); the material cited to support the "fact" cannot be presented in a form that would be admissible in evidence pursuant to Fed. R. Civ. P. 56(c). NM-EX-112: <i>See</i> General Objection #7; Fed. R. Evid. 801(c), hearsay. NM-EX-111: <i>See</i> General Objection #7; Fed. R. Evid. 801(c), hearsay.	From TX's 12/22/20 Filings: Subject to the stated objections, disputed in that is mischaracterizes the cited "evidence;" the "evidence" does not stand for the stated proposition; and contains an improper legal conclusions by stating that EBID is a "New Mexico entity," "subject to New Mexico law." The lack of definitions and scopes for the terms used render the statements objectionable.	New Mexico previously responded to these objections. <i>See</i> [Dkt. 468] State of New Mexico's Response to State of Texas's Evidentiary Objections, <i>and</i> [Dkt. 469] State of New Mexico's Response to Statements of Fact.

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122	App. No. 51	The Project beneficiary in Texas is [EPCWID]. EPCWID is a Texas entity created by Texas statute and subject to Texas law.	<i>See</i> Motion of El Paso County Water Improvement District No. 1 for Leave to Intervene as Plaintiff, Complaint in Intervention, and Memorandum in Support of Motion to Intervene as Plaintiff, 1-3 (Apr. 22, 2015); <i>See</i> also NM-EX 304, El Paso Valley Water Users' Association, Articles of Incorporation (Mar. 31, 1905); NM-EX 112, Stevens Rep. at 18; NM-EX 111, Miltenberger Rep. at 9.	From TX's 12/22/20 Filings: Motion of El Paso County Water Improvement District No. 1 for Leave to Intervene as Plaintiff, Complaint in Intervention, and Memorandum in Support of Motion to Intervene as Plaintiff, 1-3 (Apr. 22, 2015); The cited EP #1 motion is not supported by evidence. As such, it does not constitute factual "evidence" as contemplated by Fed. R. Civ. P. 56(c); the material cited to support the "fact" cannot be presented in a form that would be admissible in evidence pursuant to Fed. R. Civ. P. 56(c). NM-EX-112: <i>See</i> General Objection #7; Fed. R. Evid. 801(c), hearsay. NM-EX-111: <i>See</i> General Objection #7; Fed. R. Evid. 801(c), hearsay.	From TX's 12/22/20 Filings: Subject to the stated objections, disputed in that is mischaracterizes the cited "evidence"; the "evidence" does not stand for the stated proposition; and contains an improper legal conclusions by stating that EP#1 is a "Texas entity," "subject to Texas law." The lack of definitions and scopes for the terms used render the statements objectionable.	New Mexico previously responded to these objections. <i>See</i> [Dkt. 468] State of New Mexico's Response to State of Texas's Evidentiary Objections, <i>and</i> [Dkt. 469] State of New Mexico's Response to Statements of Fact.

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123	Notice No. 3	Once delivered to the Elephant Butte Reservoir, Project water is allocated to the Rio Grande Project beneficiaries in southern New Mexico and in Texas.	<i>See</i> NM-EX 220, Miltenberger Dep. (June 8, 2020) at 38:22-39:6. The Project water users are located in [EBID] and [EPCWID] (referred to jointly as "Districts"). <i>See</i> Motion of Elephant Butte Irrigation District for Leave to Intervene, and Memorandum and Points of Authority, 2 (Dec. 3, 2014); Motion of El Paso County Water Improvement District No. 1 for Leave to Intervene as Plaintiff, Complaint in Intervention, and Memorandum in Support of Motion to Intervene as Plaintiff, 1-3 (Apr. 22, 2015); NM-EX 112, Stevens Rep. at 18; NM-EX 111, Miltenberger Rep. at 9.	From TX's 12/22/20 Filings: NM-EX 220: <i>See</i> General Objection #8. NM-EX 112, 111: <i>See</i> General Objection #7; Fed. R. Evid. 801(c), hearsay	From TX's 12/22/20 Filings: Subject to the stated objections, disputed in part. Paragraph two mischaracterizes the cited "evidence"; the "evidence" does not stand for the stated proposition; and contains an improper legal conclusions.	New Mexico previously responded to these objections. <i>See</i> [Dkt. 468] State of New Mexico's Response to State of Texas's Evidentiary Objections, and [Dkt. 469] State of New Mexico's Response to Statements of Fact.
123	Notice No. 3	The Project water users are located in [EBID] and [EPCWID] (referred to jointly as "Districts").	<i>See</i> Motion of Elephant Butte Irrigation District for Leave to Intervene, and Memorandum and Points of Authority, 2 (Dec. 3, 2014); Motion of El Paso County Water Improvement District No. 1 for Leave to Intervene as Plaintiff, Complaint in Intervention, and Memorandum in Support of Motion to Intervene as	Motion of Elephant Butte Irrigation District for Leave to Intervene, and Memorandum and Points of Authority, 2 (Dec. 3, 2014): The cited EBID motion is not supported by evidence. As such, it does not constitute factual "evidence" as contemplated by Fed. R.	Subject to the stated objections, disputed in part. Paragraph two mischaracterizes the cited "evidence"; the "evidence" does not stand for the stated proposition; and contains an improper legal conclusions.	New Mexico previously responded to these objections. <i>See</i> [Dkt. 468] State of New Mexico's Response to State of Texas's Evidentiary Objections, and [Dkt. 469] State of New Mexico's Response to Statements of Fact.

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			Plaintiff, 1-3 (Apr. 22, 2015); NM-EX 112, Stevens Rep. at 18; NM-EX 111, Miltenberger Rep. at 9.	Civ. P. 56(c); the material cited to support the "fact" cannot be presented in a form that would be admissible in evidence pursuant to Fed. R. Civ. P. 56(c). Motion of El Paso County Water Improvement District No. 1 for Leave to Intervene as Plaintiff, Complaint in Intervention, and Memorandum in Support of Motion to Intervene as Plaintiff, 1-3 (Apr. 22, 2015): The cited EP#1 motion is not supported by evidence. As such, it does not constitute factual "evidence" as contemplated by Fed. R. Civ. P. 56(c); the material cited to support the "fact" cannot be presented in a form that would be admissible in evidence pursuant to Fed. R. Civ. P. 56(c).		

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124	N/A	Although the Compact defines a "normal release" from Project Storage of 790,000 acre- feet, the release has been less than 790,000 acre-feet/year in all but 13 years since 1938. Further, many of those years in which the release exceeded 790,000 acre-feet/year were years in which a spill occurred.	<i>See</i> NM-EX 008, Lopez 2d Decl. at ¶ 19; <i>See</i> also NM-EX 122, Sullivan & Welsh 2d Rep. ("Spronk Rep.") at 41, 180.	NM-EX-008: <i>See</i> General Objection #2. NM- EX-122: <i>See</i> General Objection #1; Fed. R. Evid. 801(c), hearsay.	Subject to the stated objections, the fact is cited in New Mexico's Response to Texas's Motion for Partial Summary Judgment but does not materially respond to facts stated therein. New Mexico's stated fact and the evidence cited in support regarding "normal release" does not materially respond to an argument made in Texas's Motion for Partial Summary Judgment and, in part, amounts merely to New Mexico and Mr. Lopez's legal opinion regarding the meaning of "normal release." New Mexico's stated fact is non-responsive and otherwise not supported by definite, competent, or significantly probative evidence that genuinely and materially responds to a fact stated in Texas's Motion for Partial Summary Judgment. As such, Texas's stated material facts remain undisputed. Fed. R. Civ. P. 56(a), 56(c)(1), (2), (4).	New Mexico previously responded to these authenticity and hearsay objections. <i>See</i> [Dkt. 468] State of New Mexico's Response to State of Texas's Evidentiary Objections. As to Texas's objection to Mr. Lopez, see New Mexico's Response to State of Texas's Second Evidentiary Objections, § III (B). As to Texas's objection to Dr. Barroll, see New Mexico's Response to State of Texas's Second Evidentiary Objections, § III (A).
125	Similar language in Full Supply no. 4	The term "Project Supply" means the Usable Water released from Caballo Dam, plus Project return flows and inflows occurring below Caballo Dam, that can be allocated and delivered to the beneficiaries of the Project—namely EBID and EPCWID—and to Mexico. Not all water delivered into Elephant Butte Reservoir constitutes "Project	<i>See</i> NM-EX 006, Barroll 2d Decl. at ¶ 10; <i>See</i> also NM-EX 529, Bureau of Reclamation, Continued Implementation of the 2008 Operating Agreement for the Rio Grande Project, New Mexico and Texas: Final Environmental Impact Statement, at 3–5 (Sept. 30, 2016).	From TX's 12/22/20 Filings: NM-EX 001: <i>See</i> General Objection #1 and the definition of "Project supply" for purposes of the Compact is a legal conclusion, not an undisputed fact. The definition of "Project supply" is a Compact related question that is	From TX's 12/22/20 Filings: Subject to the stated objections, disputed. The definition of "Project supply" for purposes of the Compact is a legal conclusion, not an undisputed fact. The definition of "Project supply" is a Compactrelated question that is outside Dr. Barroll's area of expertise. NM-EX529 does not support declarant's definition.	New Mexico previously responded to these objections. <i>See</i> [Dkt. 468] State of New Mexico's Response to State of Texas's Evidentiary Objections, <i>and</i> [Dkt. 469] State of New Mexico's Response to Statements of Fact.

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		Supply” because some water evaporates in storage, constitutes water in storage other than Useable Water (e.g., Credit Water), or may be used to satisfy pre-Compact water rights.		outside Dr. Barroll’s area of expertise. NM-EX 529: <i>See</i> General Objection #3; Fed. R. Evid. 801(c), hearsay. The cited evidence does not support the stated “facts” in whole and/or in part. Fed. R. Civ. P. 56(c).		
126	N/A	Project return flows form part of Project Supply. Project return flows available for use within the Project were historically generated within the Rincon Valley in New Mexico, the Mesilla Valley in New Mexico and Texas, and the El Paso Valley above the Tornillo heading in Texas. Project return flows that are associated with irrigation, by and large, return through Project drains and wasteways.	<i>See</i> NM-EX 006, Barroll 2d Decl. at ¶¶ 46-47, 49; <i>See</i> also NM-EX 100, Barroll Rep. at 26-30; Harlow M. Stafford et al., Rio Grande Joint Investigation Part I: General Report of the Rio Grande Joint Investigation 100 (1937) (produced at TX_MSJ_000132); NM-EX 122, Spronk Rep. at 24-32; NM-EX 424, C.S. Conover, Ground-Water Conditions in the Rincon and Mesilla Valleys and Adjacent Areas in New Mexico, at 45-50 (1954).	NM-EX-100, 122: <i>See</i> General Objection #7; Fed. R. Evid. 801(c), hearsay.	Subject to the stated objections, the fact is cited in New Mexico's Response to Texas's Motion for Partial Summary Judgment but does not materially respond to facts stated therein. New Mexico's stated fact and the evidence cited in support regarding Project return flows do not materially respond to an argument made in Texas's Motion for Partial Summary Judgment. New Mexico's counterclaims and its apportionment motion address New Mexico's legal position on the interrelationship of the Project, Downstream Contracts and the Compact. CSMF #126 may relate to New Mexico's motion(s), but does not materially respond to Texas's Motion for Partial Summary Judgment. New Mexico’s stated fact is non-responsive and otherwise not supported by definite, competent, or significantly probative evidence that genuinely and materially responds to a fact stated in Texas’s Motion for Partial Summary Judgment. As such, Texas's stated material facts remain undisputed. Fed. R. Civ. P. 56(a), 56(c)(1).	New Mexico previously responded to these authenticity and hearsay objections. <i>See</i> [Dkt. 468] State of New Mexico’s Response to State of Texas’s Evidentiary Objections.
127	N/A	Return flows vary spatially and temporally depending on many factors, including hydrologic conditions and Project operations.	<i>See</i> NM-EX 012, Sullivan Decl. at ¶¶ 26, 35.	n/a	The fact is cited in New Mexico's Response to Texas's Motion for Partial Summary Judgment but does not materially respond to facts stated therein. New Mexico's stated fact and the evidence cited in support regarding Project return flows do not materially respond to an argument made in Texas's Motion for Partial Summary Judgment. New Mexico's counterclaims and	N/A

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					its apportionment motion address New Mexico's legal position on the interrelationship of the Project, Downstream Contracts and the Compact. CSMF #127 may relate to New Mexico's motion(s), but does not materially respond to Texas's Motion for Partial Summary Judgment. Further, New Mexico cites CSMF#127 in its opposition to Texas's Motion for Partial Summary Judgment only for its argument that pumping in Texas impacts New Mexico's apportionment (<i>See</i> NM Response at 56). New Mexico's stated fact is non-responsive and otherwise not supported by definite, competent, or significantly probative evidence that genuinely and materially responds to a fact stated in Texas's Motion for Partial Summary Judgment. As such, Texas's stated material facts remain undisputed. Fed. R. Civ. P. 56(a), 56(c)(1).	
128	N/A	The flow in Project drains is a component of total Project return flows. Drain flows comprise a number of sources of water, including groundwater Seepage, wastewater, tailwater, and on-farm runoff. Drain flows vary throughout the year depending on many factors, including the timing and volume of surface water deliveries and irrigation applications, weather conditions, and other factors.	<i>See</i> NM-EX 012, Sullivan Decl. at ¶¶ 30, 31, 34; <i>See</i> also NM-EX 122, Spronk Rep. at 225; NM-EX 123, Spronk Reb. Rep. at 170-71.	NM-EX-122, 123: <i>See</i> General Objection #7; Fed. R. Evid. 801(c), hearsay.	Subject to the stated objections, the fact is cited in New Mexico's Response to Texas's Motion for Partial Summary Judgment but does not materially respond to facts stated therein. New Mexico's stated fact and the evidence cited in support regarding Project return flows do not materially respond to an argument made in Texas's Motion for Partial Summary Judgment. New Mexico's counterclaims and its apportionment motion address New Mexico's legal position on the interrelationship of the Project, Downstream Contracts and the Compact. CSMF #128 may relate to New Mexico's motion(s), but does not materially respond to Texas's Motion for Partial Summary Judgment. Further, New Mexico cites CSMF#128 in its opposition to Texas's Motion for Partial Summary Judgment only for its argument that pumping in Texas impacts New Mexico's apportionment (<i>See</i> NM Response at 56). New Mexico's stated fact is non-responsive and otherwise not supported by definite, competent, or significantly probative evidence that genuinely and materially responds to a fact stated in Texas's Motion for Partial Summary Judgment. As such, Texas's stated material facts remain	New Mexico previously responded to these authenticity and hearsay objections. <i>See</i> [Dkt. 468] State of New Mexico's Response to State of Texas's Evidentiary Objections.

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					undisputed. Fed. R. Civ. P. 56(a), 56(c)(1).	
129	Notice No. 4	Project Allocations are the amounts of Project Supply that each District is entitled to order each year from Project supply and the amount Mexico is entitled to receive by treaty.	NM-EX 001, Barroll Decl. at ¶ 18; NM-EX 307, Distribution of the Waters of the Rio Grande, Mex.-U.S., May 21, 1906, 34 Stat. 2953; NM-EX 529, Bureau of Reclamation, Continued Implementation of the 2008 Operating Agreement for the Rio Grande Project, Final Environmental Impact Statement, 4 (Sept. 30, 2016).	From TX's 12/22/20 Filings: NM-EX 001: Texas objects to Barroll paragraph 18's definition of "Project Allocations" to the extent it incorporates paragraph 15's definition of "Project Supply," which is a legal conclusion and not a basis for "undisputed facts." NM-EX 529: See General Objection #8; Fed. R. Evid. 801(c), hearsay. The cited evidence does not support the stated "facts" in whole and/or in part. Fed. R. Civ. P. 56(c). Fed. R. Evid. 704: The statement includes impermissible legal conclusions.	From TX's 12/22/20 Filings: Subject to the stated objections, disputed in part. The cited evidence does not support the stated "facts" in whole and/or in part. Fed. R. Civ. P. 56(c).	New Mexico previously responded to these objections. See [Dkt. 468] State of New Mexico's Response to State of Texas's Evidentiary Objections, and [Dkt. 469] State of New Mexico's Response to Statements of Fact.

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130	N/A	Reclamation determines Project Allocations before the beginning of the irrigation season and updates the Project Allocations as necessary throughout the season.	<i>See</i> NM-EX 006, Barroll 2d Decl. at ¶ 11.	NM-EX-006: Fed. R. Evid. 401, 402; the cited portion of the document is irrelevant because it does not stand for the "fact(s)" stated. The cited portion of the document does not mention "Reclamation."	Subject to the stated objections, the fact is cited in New Mexico's Response to Texas's Motion for Partial Summary Judgment but does not materially respond to facts stated therein. New Mexico's stated fact and the evidence cited in support regarding Project return flows do not materially respond to an argument made in Texas's Motion for Partial Summary Judgment. New Mexico's counterclaims and its apportionment motion address New Mexico's legal position on the interrelationship of the Project, Downstream Contracts and the Compact. CSMF #130 may relate to New Mexico's motion(s), but does not materially respond to Texas's Motion for Partial Summary Judgment. Further, New Mexico cites CSMF#130 in its opposition to Texas's Motion for Partial Summary Judgment only for its argument that pumping in Texas impacts New Mexico's apportionment (<i>See</i> NM Response at 56). New Mexico's stated fact is non-responsive and otherwise not supported by definite, competent, or significantly probative evidence that genuinely and materially responds to a fact stated in Texas's Motion for Partial Summary Judgment. As such, Texas's stated material facts remain undisputed. Fed. R. Civ. P. 56(a), 56(c)(1).	N/A
131	App. No. 67	Historically, Reclamation calculated and declared the allocation of Project supply available to lands in New Mexico, lands in Texas, and Mexico on the basis of water in storage available for release and on historical return flows to the Rio Grande.	NM-EX 506, Cortez Aff. at ¶ 7 (Apr. 20, 2007); NM-EX 200, Barroll Dep. (Aug. 10, 2020) at 393:3-5; NM-EX 219, Lopez Dep. (Aug. 21, 2020) at 40:13-20; NM-EX 107, Lopez Rep. at 5-6.	From TX's 12/22/20 Filings: NM-EX-506: <i>See</i> General Objection #8; Fed. R. Evid. 801(c), hearsay; Fed. R. Evid. 401, 402. The cited portion of the document is irrelevant because it does not stand for the "fact(s)" stated. NM-EX-200: <i>See</i>	From TX's 12/22/20 Filings: Subject to the stated objections, undisputed.	New Mexico previously responded to these objections. <i>See</i> [Dkt. 468] State of New Mexico's Response to State of Texas's Evidentiary Objections, <i>and</i> [Dkt. 469] State of New Mexico's Response to Statements of Fact.

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				<p>General Objection #8. NM-EX-219: <i>See</i> General Objection #8. NM-EX-107: <i>See</i> General Objection #7; General Objection #2; Fed. R. Evid. 801(c), hearsay.</p>		
132	App. No. 60	<p>The allocation of Project supply available for lands in the two States was historically equally divided to all Project lands on an acre foot per acre basis.</p>	<p>NM-EX 506, Cortez Aff. at ¶ 8 (Apr. 20, 2007); NM-EX 108, Lopez Reb. Rep. at 7-9; NM-EX 210, Ferguson Dep. (Feb. 20, 2020) at 240:25-241:5; NM-EX 214, King Dep. (May 18, 2020) at 115:13-25.</p>	<p>From TX's 12/22/20 Filings: NM-EX-506: <i>See</i> General Objection #8; Fed. R. Evid. 801(c), hearsay. NM-EX-108: <i>See</i> General Objection #7; General Objection #2; Fed. R. Evid. 801(c), hearsay. NM-EX-210: <i>See</i> General Objection #8. NM-EX-214: <i>See</i> General Objection</p>	<p>From TX's 12/22/20 Filings: Subject to the stated objections, disputed in part. New Mexico's reference in paragraphs 60, 63 and 64 of the NM MSJ on Apportionment regarding how Project supply was historically allocated based on an equal acre foot per acre basis is not relevant to apportionment of Rio Grande water under the Compact. This allocation applies solely to Project water already stored in Elephant Butte Reservoir and inflows to the Rio Grande downstream of the reservoir, whereas the Compact applies to Rio Grande deliveries to Elephant Butte Reservoir. Project allocations made to respond to orders by the District water users do not form the basis of Texas's Compact apportionment. The Compact requires New Mexico to deliver prescribed and indexed quantities of Rio Grande water to Texas in Elephant Butte Reservoir. The 1906 treaty with Mexico and the contracts between the federal government and the Districts then allocate the stored water in Elephant Butte</p>	<p>New Mexico previously responded to these objections. <i>See</i> [Dkt. 468] State of New Mexico's Response to State of Texas's Evidentiary Objections, and [Dkt. 469] State of New Mexico's Response to Statements of Fact.</p>

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				#8.	Reservoir, along with downstream inflows to the Rio Grande, to Mexico, EBID, and EP#1. Declaration of Robert J. Brandes, P.E., Ph.D. in Support of the State of Texas's Oppositions to the State of New Mexico's Motions for Partial Summary Judgment and Briefs in Support (Brandes Dec. in Opp. to NM) at TX_MSJ_007312, paragraphs 1 – 9, 25-27.	
133	N/A	Reclamation releases Usable Water from Project Storage for delivery to Project beneficiaries and to Mexico as part of the operations of the Rio Grande Project. Releases are made in response to orders by the Districts, and in accordance with each year's schedule of deliveries to Mexico.	<i>See</i> NM-EX 006, Barroll 2d Decl. at ¶ 9; <i>See</i> also NM-EX 529, Bureau of Reclamation, Continued Implementation of the 2008 Operating Agreement for the Rio Grande Project, New Mexico and Texas: Final Environmental Impact Statement, at 3-5 (Sept. 30, 2016).	NM-EX-529: <i>See</i> General Objection #8; Fed. R. Evid. 801(c), hearsay.	Subject to the stated objections, the fact is cited in New Mexico's Response to Texas's Motion for Partial Summary Judgment but does not materially respond to facts stated therein. New Mexico's stated fact and the evidence cited in support regarding Project return flows do not materially respond to an argument made in Texas's Motion for Partial Summary Judgment. New Mexico's counterclaims and its apportionment motion address New Mexico's legal position on the interrelationship of the Project, Downstream Contracts and the Compact. CSMF #133 may relate to New Mexico's motion(s), but does not materially respond to Texas's Motion for Partial Summary Judgment. Further, New Mexico cites CSMF#133 in its opposition to Texas's Motion for Partial Summary Judgment only for its argument that pumping in Texas impacts New Mexico's apportionment (<i>See</i> NM Response at 56). New Mexico's stated fact is non-responsive and otherwise not supported by definite, competent, or significantly probative evidence that genuinely and materially responds to a fact stated in Texas's Motion for Partial Summary Judgment. As such, Texas's stated material facts remain undisputed. Fed. R. Civ. P. 56(a), 56(c)(1).	New Mexico previously responded to these authenticity and hearsay objections. <i>See</i> [Dkt. 468] State of New Mexico's Response to State of Texas's Evidentiary Objections.
134	Notice No. 6	The Rio Grande Compact incorporates the Rio Grande Project as the mechanism by which water users in Texas (EPCWID) receive the State's equitable apportionment	<i>See</i> NM-EX 212, Gordon Dep. (July 15, 2020) at 14:22-16:10; Texas's Reply to Exceptions to First Interim Report of Special Master, 40 (July 28, 2017); <i>See</i>	From TX's 12/22/20 Filings: NM-EX 212: <i>See</i> General Objection #8. Texas's Reply to Exceptions to First Interim Report of Special	From TX's 12/22/20 Filings: Subject to the stated objections, undisputed.	New Mexico previously responded to these objections. <i>See</i> [Dkt. 468] State of New Mexico's Response to State of Texas's Evidentiary Objections, <i>and</i> [Dkt. 469] State of New

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		of the waters of the Rio Grande.	also First Interim Report of the Special Master, 194-95 (Feb. 9, 2017); Texas's Reply to Exceptions to First Interim Report of Special Master, 40 (July 28, 2017); Reply Brief for the United States on Exceptions by the States of New Mexico and Colorado to the First Interim Report of the Special Master, 18 (July 2017).	Master, 40 (July 28, 2017); See also First Interim Report of the Special Master, 194-95 (Feb. 9, 2017); Texas's Reply to Exceptions to First Interim Report of Special Master, 40 (July 28, 2017); Reply Brief for the United States on Exceptions by the States of New Mexico and Colorado to the First Interim Report of the Special Master, 18 (July 2017): Language in a legal brief prepared by the party's attorneys supporting a motion that is not based on evidence, do not constitute factual "evidence" as contemplated by Fed. R. Civ. P. 56(c). The pleadings discussed by New Mexico here are not supported by evidence and, as such, are inadmissible and irrelevant for purposes of summary judgment. Fed. R. Civ. P. 56(c); Fed. R. Evid. 401. The cited evidence does		Mexico's Response to Statements of Fact.

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				not support the stated "facts" in whole and/or in part. Fed. R. Civ. P. 56(c).		
135	N/A	[Duplicate (please refer to NM-CSMF ¶ 125)].				N/A
136	[Full Supply No. 7].	Project Allocations are the amount of Project supply each District (EBID and EPCWID) is entitled to order (take) from the Project, each year, and the amount Mexico is entitled to receive by Treaty.	NM-EX 001, Barroll Decl., ¶ 18; NM-EX 003, Lopez Decl., ¶ 23; NM-EX 307, Convention between the United States and Mexico: Equitable Distribution of the Waters of the Rio Grande (May 21, 1906); NM-EX 529, Bureau of Reclamation, Continued Implementation of the 2008 Operating Agreement for the Rio Grande Project, New Mexico and Texas: Final Environmental Impact Statement, at 4 (Sep. 30, 2016).	From TX's 12/22/20 Filings: NM-EX 001: Texas objects to Barroll paragraph 18's definition of "Project Allocations" to the extent it incorporates paragraph 15's definition of "Project Supply," which is a legal conclusion and not a basis for "undisputed facts." NM-EX 003: <i>See</i> General Objection #2. NM-EX 529: <i>See</i> General Objection #8; Fed. R. Evid. 801(c),	From TX's 12/22/20 Filings: Subject to the stated objections, disputed in part. The cited evidence does not support the stated "facts" in whole and/or in part. Fed. R. Civ. P. 56(c).	New Mexico previously responded to these objections. <i>See</i> [Dkt. 468] State of New Mexico's Response to State of Texas's Evidentiary Objections, <i>and</i> [Dkt. 469] State of New Mexico's Response to Statements of Fact.

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				<p>hearsay. The cited evidence does not support the stated "facts" in whole and/or in part. Fed. R. Civ. P. 56(c). Fed. R. Evid. 704: The statement includes impermissible legal conclusions.</p>		
137	N/A	<p>The Project has changed significantly since 1938. Major changes to the Project include but are not limited to: completion of the Rectification and Canalization projects, proliferation of groundwater wells in both states and in Mexico, Project acreage buildout then reduction in irrigated acreage, changes in on-farm irrigation efficiencies, changes in crop mix, urbanization of Project area, growth of municipal water demands with significant amounts of that demand being supplied by the Project, significant Project accounting changes, infrastructure changes (e.g., construction of the American Canal and its Extension), designation of wastewater treatment plant treated effluent as non- Project water,</p>	<p>NM-EX 008, Lopez 2d Decl. at ¶ 33; <i>See</i> also NM-EX 107, Lopez Rep. at 12-13, 33, 35, 43-48, 62-65; NM-EX 100, Barroll Rep. at 53-60, Appx. C.</p>	<p>NM-EX-008: <i>See</i> General Objection #2; Fed. R. Evid. 602. NM-EX-107, 100: <i>See</i> General Objection #7; Fed. R. Evid. 801(c), hearsay.</p>	<p>Subject to the stated objections, the fact is cited in New Mexico's Response to Texas's Motion for Partial Summary Judgment but does not materially respond to facts stated therein. New Mexico's stated fact and the evidence cited in support regarding modifications to the Project and impacts on the Compact do not respond to facts stated in Texas's Motion for Partial Summary Judgment. The Compact, on its face, further does not address modifications to the Project. New Mexico's stated fact is non-responsive and otherwise not supported by definite, competent, or significantly probative evidence that genuinely and materially responds to a fact stated in Texas's Motion for Partial Summary Judgment. As such, Texas's stated material facts remain undisputed. Fed. R. Civ. P. 56(a), 56(c)(1), (2), (4).</p>	<p>New Mexico previously responded to these authenticity and hearsay objections. <i>See</i> [Dkt. 468] State of New Mexico's Response to State of Texas's Evidentiary Objections.</p> <p>As to Texas's objection to Mr. Lopez, see New Mexico's Response to State of Texas's Second Evidentiary Objections, § III (B).</p>

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		transfer of ownership and operation of Project infrastructure from Reclamation to the Districts, and significantly modified Project operations under the 2008 Operating Agreement.				
138	N/A	The cropping pattern in the Project has changed throughout the history of the Project.	NM- EX 006, Barroll 2d Decl. at ¶ 23; <i>See</i> also NM-EX 101, Barroll Reb. Rep. at 5.	NM-EX-006: Fed. R. Evid. 602. NM-EX-101: <i>See</i> General Objection #7; Fed. R. Evid. 801(c), hearsay.	Subject to the stated objections, the fact is cited in New Mexico's Response to Texas's Motion for Partial Summary Judgment but does not materially respond to facts stated therein. New Mexico's stated fact and the evidence cited in support regarding Project return flows do not materially respond to an argument made in Texas's Motion for Partial Summary Judgment. New Mexico's counterclaims and its apportionment motion address New Mexico's legal position on the interrelationship of the Project, Downstream Contracts and the Compact. CSMF #138 may relate to New Mexico's motion(s), but does not materially respond to Texas's Motion for Partial Summary Judgment. Further, New Mexico cites CSMF#138 in its opposition to Texas's Motion for Partial Summary Judgment only for its argument that pumping in Texas impacts New Mexico's apportionment (<i>See</i> NM Response 56). New Mexico's stated fact is non-responsive and otherwise not supported by definite, competent, or significantly probative evidence that genuinely and materially responds to a fact stated in Texas's Motion for Partial Summary Judgment. As such, Texas's stated material facts remain undisputed. Fed. R. Civ. P. 56(a), 56(c)(1).	New Mexico previously responded to these authenticity and hearsay objections. <i>See</i> [Dkt. 468] State of New Mexico's Response to State of Texas's Evidentiary Objections. As to Texas's objection to Dr. Barroll, see New Mexico's Response to State of Texas's Second Evidentiary Objections, § III (A).
139	App. No. 49	Under the Reclamation Act, Congress intended that water projects would be self- supporting, and each would generate sufficient revenue to cover the approximate costs of construction and operation	NM-EX 529, Bureau of Reclamation, Continued Implementation of the 2008 Operating Agreement for the Rio Grande Project, Final Environmental Impact	From TX's 12/22/20 Filings: NM-EX-529: <i>See</i> General Objection #8; Fed. R. Evid. 801(c), hearsay.	From TX's 12/22/20 Filings: Subject to the stated objection, undisputed.	New Mexico previously responded to these objections. <i>See</i> [Dkt. 468] State of New Mexico's Response to State of Texas's Evidentiary Objections, <i>and</i> [Dkt. 469] State of New

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		and maintenance. Thus, Reclamation intended for the total estimated costs of the Rio Grande Project to be equitably borne by its beneficiaries.	Statement, at 3 (Sept. 30, 2016); NM-EX 005, Stevens Decl. at ¶ 13.			Mexico's Response to Statements of Fact.
140	App. No. 52	To comply with the principle that the beneficiaries equitably bear the costs of the Project, Reclamation entered into contracts with EBID and EPCWID to establish the repayment obligations between the two districts based on the irrigable acreage within each district.	NM-EX 529, Bureau of Reclamation, Continued Implementation of the 2008 Operating Agreement for the Rio Grande Project, Final Environmental Impact Statement, at 4 (Sept. 30, 2016); e.g., NM-EX 308, Articles of Agreement between the United States of America, Elephant Butte Water Users Association, and El Paso Valley Water Users' Association (June 27, 1906) ("1906 Contract"); NM-EX 321, Contract between the United States and the El Paso County Water Improvement District No. 1 adjusting construction charges and for other purposes (Nov. 10, 1937) (reciting amendments to 1906 Contract); NM-EX 320, Contract between the United States and the Elephant Butte Irrigation District adjusting	From TX's 12/22/20 Filings: NM-EX-529: <i>See</i> General Objection #8; Fed. R. Evid. 801(c), hearsay; Fed. R. Evid. 401, 402. The cited portion of the document is irrelevant because it does not stand for the "fact(s)" stated.	From TX's 12/22/20 Filings: Subject to the stated objections, undisputed.	New Mexico previously responded to these objections. <i>See</i> [Dkt. 468] State of New Mexico's Response to State of Texas's Evidentiary Objections, <i>and</i> [Dkt. 469] State of New Mexico's Response to Statements of Fact.

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			construction charges and for other purposes (Nov. 9, 1937) (same); NM-EX 326, Contract Between Elephant Butte Irrigation District and El Paso County Water Improvement District No. 1 (Feb. 16, 1938) ("1938 Downstream Contract").			
141	App. No. 57	In 1937 and 1938, Congress authorized the execution of amended repayment contracts with EBID and EPCWID. These contracts addressed the repayment obligations of the Districts and established a corresponding right of use to a proportion of the annual Project water supply during times of shortage based on an established irrigation acreage in each District: 57% to EBID in New Mexico, and 43% to EPCWID in Texas.	NM-EX 107, Lopez Rep. at 26-27; NM-EX 109, Lopez Suppl. Reb. Rep. at 6-7; <i>See, e.g.</i> , NM-EX 308, Articles of Agreement between the United States of America, Elephant Butte Water Users Association, and El Paso Valley Water Users' Association (June 27, 1906); NM-EX 321, Contract between the United States and the El Paso County Water Improvement District No. 1 adjusting construction charges and for other purposes (Nov. 10, 1937); NM-EX 320, Contract between the United States and the Elephant Butte Irrigation District adjusting construction charges and for other purposes (Nov. 9, 1937); NM-EX 324, Contract Between Elephant Butte Irrigation District and El Paso	From TX's 12/22/20 Filings: NM-EX-107: <i>See</i> General Objection #7; General Objection #2; Fed. R. Evid. 801(c), hearsay. NM-EX-109: <i>See</i> General Objection #7; General Objection #2; Fed. R. Evid. 801(c), hearsay. The cited evidence does not support the stated "facts" in whole and/or in part. Fed. R. Civ. P. 56(c).	From TX's 12/22/20 Filings: Subject to the stated objections, disputed in part. This paragraph is factually misleading. Congress authorized the execution of amended repayment contracts with EBID and EPCWID (or EP #1) in 1937, but it did not authorize the 1938 contract as such. The 1938 Downstream Contract was instead part of an effort by Reclamation, extending back to 1929, to fix the basis for repayments between the two districts. The districts themselves ultimately instigated this particular agreement to settle the issue. Miltenberger Declaration paragraphs 43-45 discuss the 1937 and 1938 Downstream Contracts. TX_MSJ_001585. The discussion is lengthy, and is incorporated herein by reference. <i>See</i> Miltenberger Dec. in Opp. to NM at TX_MSJ_007371, paragraphs 1 – 7, 54 - 59.	New Mexico previously responded to these objections. <i>See</i> [Dkt. 468] State of New Mexico's Response to State of Texas's Evidentiary Objections, <i>and</i> [Dkt. 469] State of New Mexico's Response to Statements of Fact.

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			County Water Improvement District No. 1 (Feb. 16, 1938) ("1938 Downstream Contract").			
141	App. No. 57	Collectively, these contracts are known as the "Downstream Contracts."	N/A			N/A
142	App. No. 58; similar language in Notice No. 5; Full Supply No. 8	For example, the 1938 Downstream Contract quantified the authorized irrigable acreage within each district as 88,000 acres in EBID, and 67,000 acres in EPCWID (for a total of 155,000 Project acres). It goes on to state that in the event of a shortage of water, "the distribution of the available supply in such a year, shall so far as practicable, be made in the proportion of 67/155 [43%] thereof to the lands within [EPCWID], and 88/155 [57%] to the lands within [EBID]."	NM- EX 324, Contract Between Elephant Butte Irrigation District and El Paso County Water Improvement District No. 1 (Feb. 16, 1938); NM-EX 107, Lopez Rep. at 26-27; NM-EX 001, Barroll Decl. at ¶19.	From TX's 12/22/20 Filings: NM-EX-107: <i>See</i> General Objection #7; General Objection #2; Fed. R. Evid. 801(c), hearsay. NM-EX-001: <i>See</i> General Objection #1.	From TX's 12/22/20 Filings: Subject to the stated objections, disputed in part. This paragraph correctly quotes from the cited document but mischaracterizes the context and purpose of the 1938 Downstream Contract as discussed in paragraphs 54-59 of the Miltenberger Declaration. NM-EX 324. The discussion is lengthy, and is incorporated herein by reference. <i>See</i> Miltenberger Dec. in Opp. to NM at TX_MSJ_007371, paragraphs 1 – 7, 54 - 60.	New Mexico previously responded to these objections. <i>See</i> [Dkt. 468] State of New Mexico's Response to State of Texas's Evidentiary Objections, and [Dkt. 469] State of New Mexico's Response to Statements of Fact.
143	N/A	The 1938 Downstream Contract is not itself a repayment contract between a district and Reclamation. Rather, it is a contract between the Districts and approved by Reclamation that reflects the	<i>See</i> NM-EX 008, Lopez 2d Decl. at ¶ 29; <i>See</i> also NM-EX 321, Contract between the United States and the El Paso County Water Improvement District No. 1 adjusting	NM-EX-008: The cited evidence does not support the stated "facts" in whole and/or in part. Fed. R. Civ. P. 56(c). The stated "facts"	Subject to the stated objections, the fact is cited in New Mexico's Response to Texas's Motion for Partial Summary Judgment but does not materially respond to facts stated therein. New Mexico's stated fact and the evidence cited in support regarding Project return flows do not materially respond to an argument made in Texas's Motion for Partial Summary Judgment. New Mexico's counterclaims and its	As to Texas's objection to Mr. Lopez, see New Mexico's Response to State of Texas's Second Evidentiary Objections, § III (B).

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		Districts' agreement concerning the revised 1937 repayment contracts.	construction charges and for other purposes (Nov. 10, 1937); NM-EX 320, Contract between the United States and the Elephant Butte Irrigation District adjusting construction charges and for other purposes (Nov. 9, 1937); NM-EX 324, Contract Between Elephant Butte Irrigation District and El Paso County Water Improvement District No. 1 (Feb. 16, 1938).	constitute improper legal conclusions in whole or in part.	apportionment motion address New Mexico's legal position on the interrelationship of the Project, Downstream Contracts and the Compact. CSMF #143 may relate to New Mexico's motion(s), but does not materially respond to Texas's Motion for Partial Summary Judgment. Further, New Mexico cites CSMF#143 in its opposition to Texas's Motion for Partial Summary Judgment only for its argument that pumping in Texas impacts New Mexico's apportionment (<i>See</i> NM Response 56). New Mexico's stated fact is non-responsive and otherwise not supported by definite, competent, or significantly probative evidence that genuinely and materially responds to a fact stated in Texas's Motion for Partial Summary Judgment. As such, Texas's stated material facts remain undisputed. Fed. R. Civ. P. 56(a), 56(c)(1).	
144	N/A	The Downstream Contracts generally restrict use of available Project Supply to irrigation purposes on authorized Project lands. However, both the purpose of use and the place of use are subject to modification through execution of Miscellaneous Purposes contracts under the Sale of Water for Miscellaneous Purposes Act of 1920.	<i>See</i> NM-EX 008, Lopez 2d Decl. at ¶ 27; <i>See</i> also NM-EX 308, Articles of Agreement between the United States of America, Elephant Butte Water Users Association, and El Paso Valley Water Users' Association (June 27, 1906); NM-EX 321, Contract between the United States and the El Paso County Water Improvement District No. 1 adjusting construction charges and for other purposes (Nov. 10, 1937); NM-EX 320, Contract between the United States and the Elephant Butte Irrigation District adjusting	NM-EX-008: The cited evidence does not support the stated "facts" in whole and/or in part. Fed. R. Civ. P. 56(c). The stated "facts" constitute improper legal conclusions in whole or in part.	Subject to the stated objections, the fact is cited in New Mexico's Response to Texas's Motion for Partial Summary Judgment but does not materially respond to facts stated therein. New Mexico's stated fact and the evidence cited in support regarding Project return flows do not materially respond to an argument made in Texas's Motion for Partial Summary Judgment. New Mexico's counterclaims and its apportionment motion address New Mexico's legal position on the interrelationship of the Project, Downstream Contracts and the Compact. CSMF #144 may relate to New Mexico's motion(s), but does not materially respond to Texas's Motion for Partial Summary Judgment. Further, New Mexico cites CSMF#144 in its opposition to Texas's Motion for Partial Summary Judgment only for its argument that pumping in Texas impacts New Mexico's apportionment (<i>See</i> NM Response at 56). New Mexico's stated fact is non-responsive and otherwise not supported by definite, competent, or significantly probative evidence that genuinely and materially responds to a fact stated in Texas's Motion for Partial Summary Judgment. As such, Texas's stated material facts remain	As to Texas's objection to Mr. Lopez, see New Mexico's Response to State of Texas's Second Evidentiary Objections, § III (B).

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			construction charges and for other purposes (Nov. 9, 1937); NM-EX 324, Contract Between Elephant Butte Irrigation District and El Paso County Water Improvement District No. 1 (Feb. 16, 1938).		undisputed. Fed. R. Civ. P. 56(a), 56(c)(1).	
145	N/A	The Downstream Contracts do not address depletions, whether in New Mexico, Texas, or Mexico, that may affect available Project Supply.	<i>See</i> NM-EX 008, Lopez 2d Decl. at ¶ 28; <i>See</i> also NM-EX 308, Articles of Agreement between the United States of America, Elephant Butte Water Users Association, and El Paso Valley Water Users' Association (June 27, 1906); NM-EX 321, Contract between the United States and the El Paso County Water Improvement District No. 1 adjusting construction charges and for other purposes (Nov. 10, 1937); NM-EX 320, Contract between the United States and the Elephant Butte Irrigation District adjusting construction charges and for other purposes (Nov. 9, 1937); NM-EX 324, Contract Between Elephant Butte Irrigation District and El Paso County Water Improvement District	NM-EX-008: The cited evidence does not support the stated "facts" in whole and/or in part. Fed. R. Civ. P. 56(c). The stated "facts" constitute improper legal conclusions in whole or in part.	Subject to the stated objections, the fact is cited in New Mexico's Response to Texas's Motion for Partial Summary Judgment but does not materially respond to facts stated therein. New Mexico's stated fact and the evidence cited in support regarding Project return flows do not materially respond to an argument made in Texas's Motion for Partial Summary Judgment. New Mexico's counterclaims and its apportionment motion address New Mexico's legal position on the interrelationship of the Project, Downstream Contracts and the Compact. CSMF #145 may relate to New Mexico's motion(s), but does not materially respond to Texas's Motion for Partial Summary Judgment. Further, New Mexico cites CSMF#145 in its opposition to Texas's Motion for Partial Summary Judgment only for its argument that pumping in Texas impacts New Mexico's apportionment (<i>See</i> NM Response at 56). New Mexico's stated fact is non-responsive and otherwise not supported by definite, competent, or significantly probative evidence that genuinely and materially responds to a fact stated in Texas's Motion for Partial Summary Judgment. As such, Texas's stated material facts remain undisputed. Fed. R. Civ. P. 56(a), 56(c)(1).	As to Texas's objection to Mr. Lopez, see New Mexico's Response to State of Texas's Second Evidentiary Objections, § III (B).

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			No. 1 (Feb. 16, 1938).			
146	App. No. 54	At the time the Compact was signed, Reclamation had been operating the Project, in its entirety, as a single unit for over twenty years. During that time, the Project operated under Reclamation law.	<i>See</i> , e.g., NM-EX 318, Harlow M. Stafford et al., Rio Grande Joint Investigation Part I: General Report of the Rio Grande Joint Investigation, 8 (1937); NM-EX 005, Stevens Decl. at ¶ 9.	From TX's 12/22/20 Filings: NM-EX-005: Fed. R. Civ. P. 56(c)(4); Fed. R. Evid. 702: the statement in the Stevens Decl. constitutes improper opinion testimony because it is not based on sufficient facts and is a mere conclusion. The cited evidence does not support the stated "facts" in whole and/or in part. Fed. R. Civ. P. 56(c). The stated "facts" constitute improper legal conclusions in whole or in part.	From TX's 12/22/20 Filings: Subject to the stated objections, disputed in part. While this paragraph is correct that "[a]t the time the Compact was signed" the Project had been in operation for "over twenty years," the cited sources in this paragraph do not provide support for the claim that the Project had been operated "as a single unit" nor do they explain what is meant by "under Reclamation law." NM-EX-318 and NM-EX-005. NM-EX-005 paragraph 9 states that the Project was operated "as a single unit and pursuant to Reclamation law" but does not cite to documentary evidence. <i>See</i> Miltenberger Dec. in Opp. to NM at TX_MSJ_007371, paragraphs 1 – 7, 52.	New Mexico previously responded to these objections. <i>See</i> [Dkt. 468] State of New Mexico's Response to State of Texas's Evidentiary Objections, <i>and</i> [Dkt. 469] State of New Mexico's Response to Statements of Fact.
147	App. No. 55	In the years prior to the Compact being signed (1928- 37), the average release from the Project was 780,640 acre-feet to satisfy irrigation demands on Project lands in both New Mexico and Texas.	NM-EX 323, United States Reclamation Service, Project History Rio Grande Project Year 1937, (1938).	From TX's 12/22/20 Filings: [Blank]	From TX's 12/22/20 Filings: Undisputed.	New Mexico previously responded to these objections. <i>See</i> [Dkt. 468] State of New Mexico's Response to State of Texas's Evidentiary Objections, <i>and</i> [Dkt. 469] State of New Mexico's Response to Statements of Fact.

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148	App. No. 56	In the years prior to the Compact being signed, the Project would set an equal allotment for each Project acre to satisfy irrigation demands.	NM-EX 323, United States Reclamation Service, Project History Rio Grande Project Year 1937 (1938).	From TX's 12/22/20 Filings: NM-EX-202: <i>See</i> General Objection #2. NM-EX-100: <i>See</i> General Objection #1; Fed. R. Evid. 801(c), hearsay.	From TX's 12/22/20 Filings: Subject to the stated objections, disputed. This paragraph is misleading. The cited primary document, United States Reclamation Service, Project History Rio Grande Project Year 1937 (1938) suggests that an equal allocation was set in 1937. NM-EX 323. However, it is unclear from that document if this was the practice in all years prior to the Compact. Even for 1937, the allotment basis was abandoned because individual water users had exceeded that amount in July. <i>See</i> Miltenberger Dec. in Opp. to NM at TX_MSJ_007371, paragraphs 1 – 7, 53.	New Mexico previously responded to these objections. <i>See</i> [Dkt. 468] State of New Mexico's Response to State of Texas's Evidentiary Objections, and [Dkt. 469] State of New Mexico's Response to Statements of Fact.
148	App. No. 56	The amount of water that was actually used on each acre depended on the amount called for by the individual farmers.	<i>See</i> NM- EX 202, Cortez Dep. (Vol. I) (July 30, 2020), 18:10-22; NM-EX 100, Barroll Rep. at 32.	NM-EX-202: <i>See</i> General Objection #8. NM-EX-100: <i>See</i> General Objection #7; Fed. R. Evid. 801(c), hearsay.	Subject to the stated objections, disputed. This paragraph is misleading. The cited primary document, United States Reclamation Service, Project History Rio Grande Project Year 1937 (1938) suggests that an equal allocation was set in 1937. NM-EX-323. However, it is unclear from that document if this was the practice in all years prior to the Compact. Even for 1937, the allotment basis was abandoned because individual water users had exceeded that amount in July. <i>See</i> Miltenberger Dec. in Opp. to NM at TX_MSJ_007371, paragraphs 1 – 7, 53.	New Mexico previously responded to these objections. <i>See</i> [Dkt. 468] State of New Mexico's Response to State of Texas's Evidentiary Objections, and [Dkt. 469] State of New Mexico's Response to Statements of Fact.
149	N/A	Prior to the Compact, return flow, generated both in New Mexico and Texas, was a substantial part of Project deliveries to EPCWID. EPCWID headings diverted return flows generated in the upper part of the El Paso Valley as well as municipal effluent generated by the City of El Paso. The percentages of return flows	<i>See</i> NM-EX 006, Barroll 2d Decl. at ¶ 50; <i>See</i> also NM-EX-100, Barroll Rep. at 14, Appx. C, C8; NM-EX-101, Barroll Reb. Rep. at 25.	NM-EX-006: Fed. R. Evid. 602, Dr. Barroll lacks personal knowledge regarding the stated facts to the extent the stated facts purport to address the history of irrigation district activities in the Rio Grande Basin. NM-EX-	Subject to the stated objections, the fact is cited in New Mexico's Response to Texas's Motion for Partial Summary Judgment but does not materially respond to facts stated therein. New Mexico's stated fact and the evidence cited in support regarding Project return flows do not materially respond to an argument made in Texas's Motion for Partial Summary Judgment. New Mexico's counterclaims and its apportionment motion address New Mexico's legal position on the interrelationship of the Project, Downstream Contracts and the Compact. CSMF #149 may relate to New Mexico's motion(s), but does not materially respond to Texas's Motion	New Mexico previously responded to these authenticity and hearsay objections. <i>See</i> [Dkt. 468] State of New Mexico's Response to State of Texas's Evidentiary Objections. As to Texas's objection to Dr. Barroll, see New Mexico's Response to State of Texas's

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		shown throughout Table 90 of the RGJI reflect the return flows occurring during the 1930-1936 period. At the time of the negotiation of the Compact, the return flows generated within the El Paso Valley were an integral part of Project Supply.		100, 101: <i>See</i> General Objection #7; Fed. R. Evid. 801(c), hearsay.	for Partial Summary Judgment. Further, New Mexico cites CSMF #149 in its opposition to Texas's Motion for Partial Summary Judgment only for its argument that pumping in Texas impacts New Mexico's apportionment (<i>See, e.g.</i> , NM Response at 56). New Mexico's stated fact is non-responsive and otherwise not supported by definite, competent, or significantly probative evidence that genuinely and materially responds to a fact stated in Texas's Motion for Partial Summary Judgment. As such, Texas's stated material facts remain undisputed. Fed. R. Civ. P. 56(a), 56(c)(1).	Second Evidentiary Objections, § III (A).
149	N/A	The data in Table 90 of the RGJI reflects the diversion of return flows arising in the El Paso Valley.	<i>See</i> Rio Grande Joint Investigation Part I: General Report of the Rio Grande Joint Investigation, at 13 (1937) (produced at TX_MSJ_000132); <i>See</i> also Figure 6, Texas's Motion for Partial Summary Judgment; Memorandum of Points and Authorities in Support Thereof (produced at TX_MSJ_000131 and 1579). <i>See</i> Rio Grande Joint Investigation Part I: General Report of the Rio Grande Joint Investigation, at 100 (1937) (produced at TX_MSJ_000132); NM-EX 100, Barroll Rep. at Appx. C.; NM-EX 101, Barroll Reb. Rep. at 24-36; NM-EX 103 Barroll 2d Suppl. Reb. Rep. at 21-30.	Rio Grande Joint Investigation: The cited evidence does not support the stated "facts" in whole and/or in part. Fed. R. Civ. P. 56(c). NM- EX-100, 101, 103: <i>See</i> General Objection #7; Fed. R. Evid. 801(c), hearsay.	Subject to the stated objections, the fact is cited in New Mexico's Response to Texas's Motion for Partial Summary Judgment but does not materially respond to facts stated therein. New Mexico's stated fact and the evidence cited in support regarding return flows do not materially respond to an argument made in Texas's Motion for Partial Summary Judgment. New Mexico's counterclaims and its apportionment motion address New Mexico's legal position on the interrelationship of the Project, Downstream Contracts and the Compact. CSMF #149 may relate to New Mexico's motion(s), but does not materially respond to Texas's Motion for Partial Summary Judgment. Further, New Mexico cites CSMF#149 in its opposition to Texas's Motion for Partial Summary Judgment only for its argument that pumping in Texas impacts New Mexico's apportionment (<i>See, e.g.</i> , NM Response at 56). New Mexico's stated fact is non-responsive and otherwise not supported by definite, competent, or significantly probative evidence that genuinely and materially responds to a fact stated in Texas's Motion for Partial Summary Judgment. As such, Texas's stated material facts remain undisputed. Fed. R. Civ. P. 56(a), 56(c)(1).	New Mexico previously responded to these authenticity and hearsay objections. <i>See</i> [Dkt. 468] State of New Mexico's Response to State of Texas's Evidentiary Objections.

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150	N/A	The rectification of the Rio Grande in the El Paso Valley in 1938 separated the Rio Grande from the Tornillo, Hanson, and Guadalupe canal headings. From 1938- 1980, water was diverted from EPCWID drains in the El Paso Valley into the Tornillo canal for use by EPCWID farmers.	<i>See</i> NM-EX 006, Baroll 2d Decl. at ¶ 51; <i>See</i> also NM-EX 100, Barroll Rep. Appx. C, C-21- 28.	NM-EX-006: Fed. R. Evid. 602, Dr. Barroll lacks personal knowledge regarding the stated facts to the extent the stated facts purport to address the hisotry of irrigation district activities in the Rio Grande Basin. NM-EX-100: <i>See</i> General Objection #7; Fed. R. Evid. 801(c), hearsay	Subject to the stated objections, the fact is cited in New Mexico's Response to Texas's Motion for Partial Summary Judgment but does not materially respond to facts stated therein. New Mexico's stated fact and the evidence cited in support regarding water diversion from EPCWID drains do not materially respond to an argument made in Texas's Motion for Partial Summary Judgment. New Mexico's counterclaims and its apportionment motion address New Mexico's legal position on the interrelationship of the Project, Downstream Contracts and the Compact. CSMF #150 may relate to New Mexico's motion(s), but does not materially respond to Texas's Motion for Partial Summary Judgment. Further, New Mexico cites CSMF #150 in its opposition to Texas's Motion for Partial Summary Judgment only for its argument that pumping in Texas impacts New Mexico's apportionment (<i>See, e.g.</i> , NM Response at 56). New Mexico's stated fact is non- responsive and otherwise not supported by definite, competent, or significantly probative evidence that genuinely and materially responds to a fact stated in Texas's Motion for Partial Summary Judgment. As such, Texas's stated material facts remain undisputed. Fed. R. Civ. P. 56(a), 56(c)(1).	New Mexico previously responded to these authenticity and hearsay objections. <i>See</i> [Dkt. 468] State of New Mexico's Response to State of Texas's Evidentiary Objections. As to Texas's objection to Dr. Barroll, see New Mexico's Response to State of Texas's Second Evidentiary Objections, § III (A).
151	App. No. 59; Full Supply Nos. 9; similar language in Notice Nos. 12 (period from	Until about 1979, Reclamation operated the entire Project, including delivering Project water to individual New Mexico and Texas farm headgates in response to farm orders, and Project farmers ordered water directly from Reclamation. Reclamation then determined what releases and diversions were needed to fulfill those orders, released water from Caballo reservoir, and diverted water at appropriate canal headings.	<i>See</i> NM-EX 202, Cortez Dep. (July 30, 2020) at 20:1-15, 58:6-59:11; NM-EX 001, Barroll Decl. at ¶ 20; NM-EX 529, Bureau of Reclamation, Continued Implementation of the 2008 Operating Agreement for the Rio Grande Project, Final Environmental Impact Statement, at 5 (Sept. 30, 2016).	From TX's 12/22/20 Filings: NM-EX-202: <i>See</i> General Objection #8. NM-EX-529: <i>See</i> General Objection #8; Fed. R. Evid. 801(c), hearsay. The cited evidence does not support the stated	From TX's 12/22/20 Filings: Subject to the stated objections, undisputed.	New Mexico previously responded to these objections. <i>See</i> [Dkt. 468] State of New Mexico's Response to State of Texas's Evidentiary Objections, <i>and</i> [Dkt. 469] State of New Mexico's Response to Statements of Fact.

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	inception to 1951) and 15 (period from 1951 to 1979)	Reclamation ditch riders then delivered the ordered water to individual farms.		"facts" in whole and/or in part. Fed. R. Civ. P. 56(c).		
152	App. No. 61	Prior to 1951, the Project enjoyed plentiful water supplies, and Reclamation allowed Project farmers to order water as they needed to irrigate their crops.	NM-EX 202, Cortez Dep. (July 30, 2020) at 18:16-19:15, 58:6-18.	From TX's 12/22/20 Filings: NM-EX-202: <i>See</i> General Objection #8. The cited evidence does not support the stated "facts" in whole and/or in part. Fed. R. Civ. P. 56(c).	From TX's 12/22/20 Filings: Subject to the stated objections, disputed in part. The testimony cited by New Mexico does not support that "Prior to 1951, the Project enjoyed plentiful water supplies." NM-EX 202, Cortez Dep. (Vol. I) (July 30, 2020) 18:16-19:15, 58:6-18.	New Mexico previously responded to these objections. <i>See</i> [Dkt. 468] State of New Mexico's Response to State of Texas's Evidentiary Objections, <i>and</i> [Dkt. 469] State of New Mexico's Response to Statements of Fact.
153	App. No. 62	In 1951, drought forced Reclamation to limit per-acre allocations to Project lands, which it did by evaluating deliveries to lands from 1946 through 1950.	NM-EX 202, Cortez Dep. (July 30, 2020) at 19:1-20:4, 58:19-59:7; NM-EX 100, Barroll Rep. at 32.	From TX's 12/22/20 Filings: NM-EX-100: <i>See</i> General Objection #7; Fed. R. Evid. 801(c), hearsay. NM-EX-202: <i>See</i> General Objection #8.	From TX's 12/22/20 Filings: Subject to the stated objections, undisputed.	New Mexico previously responded to these objections. <i>See</i> [Dkt. 468] State of New Mexico's Response to State of Texas's Evidentiary Objections, <i>and</i> [Dkt. 469] State of New Mexico's Response to Statements of Fact.
153	App. No. 62	Reclamation in 1951 determined that 3.0241 acre-feet per acre constituted a full allocation to Project lands.	NM-EX 202, Cortez Dep. (July 30, 2020) at 19:8-20:4.	NM-EX-202: <i>See</i> General Objection #8.	Subject to the stated objections, undisputed.	New Mexico previously responded to these objections. <i>See</i> [Dkt. 468] State of New Mexico's Response to State of Texas's Evidentiary Objections, <i>and</i> [Dkt. 469] State of New Mexico's Response to Statements of Fact.

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154	App. No. 63; similar language in Notice No. 14	From 1951 through 1979, Reclamation allocated Project deliveries on an equal basis to all Project lands and delivered allocated water directly to Project lands.	NM-EX 202, Cortez Dep. (July 30, 2020) 58:19-59:7; NM-EX 511, Filiberto Cortez, Lower Rio Grande Project Operating Agreement: Settlement of Litigation, at 4 (Oct. 2008); NM-EX 100, Barroll Rep. at 31-32.	From TX's 12/22/20 Filings: NM-EX-202: <i>See</i> General Objection #8. NM-EX-511: <i>See</i> General Objection #8; Fed. R. Evid. 801(c), hearsay. NM-EX-100: <i>See</i> General Objection #7; Fed. R. Evid. 801(c), hearsay.	From TX's 12/22/20 Filings: Subject to the stated objections, disputed in part. New Mexico's reference in paragraphs 60, 63 and 64 of the NM MSJ on Apportionment regarding how Project supply was historically allocated based on an equal acre foot per acre basis is not relevant to apportionment of Rio Grande water under the Compact. This allocation applies solely to Project water already stored in Elephant Butte Reservoir and inflows to the Rio Grande downstream of the reservoir, whereas the Compact applies to Rio Grande deliveries to Elephant Butte Reservoir. Project allocations made to respond to orders by the District water users do not form the basis of Texas's Compact apportionment. The Compact requires New Mexico to deliver prescribed and indexed quantities of Rio Grande water to Texas in Elephant Butte Reservoir. The 1906 treaty with Mexico and the contracts between the federal government and the Districts then allocate the stored water in Elephant Butte Reservoir, along with downstream inflows to the Rio Grande, to Mexico, EBID, and EP#1. <i>See</i> Brandes Dec. in Opp. to NM at TX_MSJ_007312, paragraphs 1 – 9, 25-27.	New Mexico previously responded to these objections. <i>See</i> [Dkt. 468] State of New Mexico's Response to State of Texas's Evidentiary Objections, <i>and</i> [Dkt. 469] State of New Mexico's Response to Statements of Fact.
155	Notice No. 16	Reclamation also maintained the Districts' annual allocation accounting. Reclamation tracked the amount of surface water delivered to individual farm turnouts and assessed these amounts against the farmers' respective allocations.	<i>See</i> NM-EX 202, Cortez Dep. (July 30, 2020) at 20:1-15, 42:15-43:4, 58:6-59:11; NM-EX 100, Barroll Rep. at 32-33; NM-EX 001, Barroll Decl. at ¶ 20; NM-EX 529, Bureau of Reclamation, Continued Implementation of the 2008 Operating Agreement for the Rio Grande Project, Final	From TX's 12/22/20 Filings: NM-EX 202: <i>See</i> General Objection #8. NM-EX 100: <i>See</i> General Objection #7; Fed. R. Evid. 801(c),	From TX's 12/22/20 Filings: Subject to the stated objections, generally disputed regarding the ambiguity of the time period referred to. NM-EX 202: The cited "evidence" does not stand for the stated proposition that Reclamation assessed "amounts against the farmers' respective allocations." NM-EX 100: The cited "evidence" does not stand for the stated	New Mexico previously responded to these objections. <i>See</i> [Dkt. 468] State of New Mexico's Response to State of Texas's Evidentiary Objections, <i>and</i> [Dkt. 469] State of New Mexico's Response to Statements of Fact.

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			Environmental Impact Statement, at 5 (Sept. 30, 2016).	hearsay. NM-EX 529: <i>See</i> General Objection #8; Fed. R. Evid. 801(c), hearsay.	proposition. NM-EX 001: The cited "evidence" does not stand for the stated proposition. NM-EX 529: The cited "evidence" does not stand for the stated proposition.	
156	App. No. 64	Before 1980, Reclamation operated the Project in its entirety, combining storage and return flows so that each acre of Project land was entitled to receive an equal amount of water regardless of the source of the water or in what State the land was located. Thus, based on each District's share of authorized acreage, "EBID is allocated 88/155 of the available Project water supply and EPCWID is allocated 67/155 of the available Project water supply."	NM-EX 506, Cortez Aff. at ¶ 11 (Apr. 20, 2007); NM-EX 100, Barroll Rep. at 31.	From TX's 12/22/20 Filings: NM-EX-506: <i>See</i> General Objection #8; Fed. R. Evid. 801(c), hearsay. NM-EX-100: <i>See</i> General Objection #7; Fed. R. Evid. 801(c), hearsay.	From TX's 12/22/20 Filings: Subject to the stated objections, disputed in part. New Mexico's reference in paragraphs 60, 63 and 64 of the NM MSJ on Apportionment regarding how Project supply was historically allocated based on an equal acre foot per acre basis is not relevant to apportionment of Rio Grande water under the Compact. This allocation applies solely to Project water already stored in Elephant Butte Reservoir and inflows to the Rio Grande downstream of the reservoir, whereas the Compact applies to Rio Grande deliveries to Elephant Butte Reservoir. Project allocations made to respond to orders by the District water users do not form the basis of Texas's Compact apportionment. The Compact requires New Mexico to deliver prescribed and indexed quantities of Rio Grande water to Texas in Elephant Butte Reservoir. The 1906 treaty with Mexico and the contracts between the federal government and the Districts then allocate the stored water in Elephant Butte Reservoir, along with downstream inflows to the Rio Grande, to Mexico, EBID, and EP#1. <i>See</i> Brandes Dec. in Opp. to NM at TX_MSJ_007312, paragraphs 1 – 9, 25-27.	New Mexico previously responded to these objections. <i>See</i> [Dkt. 468] State of New Mexico's Response to State of Texas's Evidentiary Objections, <i>and</i> [Dkt. 469] State of New Mexico's Response to Statements of Fact.

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156	App. No. 64	During this period, there is no record that any party lodged an objection, whether through the RGCC or Reclamation, to challenge Reclamation's principle of allocation on an equal per-acre basis.	NM-EX 005, Stevens Decl. at ¶ 12; NM-EX 003, Lopez Decl. at 25; EX-NM 2, D'Antonio Decl. at ¶ 16.	NM-EX-005: Fed. R. Civ. P. 56(c)(4); Fed. R. Evid. 702: the statement in the Stevens Decl. constitutes improper opinion testimony because it is not based on sufficient facts and is a mere conclusion. NM-EX-003: General Objection #2; Fed. R. Civ. P. 56(c)(4). NM-EX-002: Fed. R. Civ. P. 56(c)(4); Fed. R. Evid. 602, 702: Mr. D'Antonio lacks personal knowledge regarding the pre-1980 period and the statement constitutes improper opinion testimony because it is not based on sufficient facts and is a mere conclusion.	Subject to the stated objections, disputed in part. New Mexico's reference in paragraphs 60, 63 and 64 of the NM MSJ on Apportionment regarding how Project supply was historically allocated based on an equal acre foot per acre basis is not relevant to apportionment of Rio Grande water under the Compact. This allocation applies solely to Project water already stored in Elephant Butte Reservoir and inflows to the Rio Grande downstream of the reservoir, whereas the Compact applies to Rio Grande deliveries to Elephant Butte Reservoir. Project allocations made to respond to orders by the District water users do not form the basis of Texas's Compact apportionment. The Compact requires New Mexico to deliver prescribed and indexed quantities of Rio Grande water to Texas in Elephant Butte Reservoir. The 1906 treaty with Mexico and the contracts between the federal government and the Districts then allocate the stored water in Elephant Butte Reservoir, along with downstream inflows to the Rio Grande, to Mexico, EBID, and EP#1. <i>See Brandes Dec. in Opp. to NM at TX_MSJ_007312, paragraphs 1 – 9, 25-27.</i>	New Mexico previously responded to these objections. <i>See</i> [Dkt. 468] State of New Mexico's Response to State of Texas's Evidentiary Objections, <i>and</i> [Dkt. 469] State of New Mexico's Response to Statements of Fact.
157	App. No. 65	From 1931 to 1979, Reclamation operated the Project such that the diversions for EBID in New Mexico totaled 54.5% and diversions for EPCWID in Texas totaled 45.5% of	NM-EX 100, Barroll Rep. at Appx. A, A-8. This is shown graphically in Figure A-3 of Dr. Barroll's Expert Report: [FIGURE A.3.DISTRICT	From TX's 12/22/20 Filings: NM-EX-100: <i>See</i> General Objection #7; Fed. R. Evid. 801(c), hearsay. NM-EX-101: <i>See</i>	From TX's 12/22/20 Filings: Subject to the stated objections, disputed. New Mexico's own data as reported in the underlying files of the Spronk Report are inconsistent with the diversion percentages reported in paragraph 65 of NM MSJ on Apportionment and attributed in	New Mexico previously responded to these objections. <i>See</i> [Dkt. 468] State of New Mexico's Response to State of Texas's Evidentiary Objections, <i>and</i> [Dkt. 469] State of New

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		total diversions. From 1951, when Reclamation began enforcing allocations to each acre, until 1979, the diversions for EBID in New Mexico totaled 56.2% and diversions for EPCWID in Texas totaled 43.8% of total diversions.	DIVERSIONS 1931-1978] <i>See</i> also <i>id.</i> at A-9; NM-EX 101, Barroll Reb. Rep. at 41, Appx. A, 39.	General Objection #7; Fed. R. Evid. 801(c), hearsay. The cited evidence does not support the stated "facts" in whole and/or in part. Fed. R. Civ. P. 56(c).	paragraph 65 to the work of New Mexico's other expert, Peggy Barroll. In paragraph 65, New Mexico states that from 1931 to 1979, diversions by EP#1 totaled 45.5 percent of total diversions, but the Spronk data show only 41.7 percent, slightly less than the 43 percent allocation. Similarly, for 1951 to 1979, in paragraph 65 New Mexico reports that EP#1 diverted 43.8 percent of the total diversions, whereas the Spronk data show that EP#1 diverted only 38.5 percent. Methods used by Peggy Barroll and those described in the underlying data of the Spronk Report also differ in how the distributions of diversions by EP#1 in Mesilla Valley were made, with Barroll assuming 20 percent and Spronk an average of 14 percent. <i>See</i> Brandes Dec. in Opp. to NM at TX_MSJ_007312, paragraphs 1 – 9, 25-26, 28.	Mexico's Response to Statements of Fact.
158	App. No. 66; similar language in Notice No. 17 and Full Supply 10	In approximately 1979, Project operations changed with the transfer of some Project facilities to the Districts. Reclamation started to allocate water to each District for delivery at the District's canal headings (i.e., Arrey, Leasburg, Mesilla, Franklin and Riverside) rather than directly to farm headgates. Since those transfers, Reclamation determines the Districts' Project allocations, takes water orders from the Districts, releases water from Caballo reservoir, and then makes deliveries to canal headings for water users in each District. The Districts in turn	NM- EX 001, Barroll Decl. at ¶ 21; <i>See</i> NM- EX 202, Cortez Dep. (July 30, 2020) at 59:12-60:4, 64:3- 15; NM-EX 210, Ferguson Dep. (Feb. 20, 2020) at 233:3-6; NM-EX 208, Esslinger Dep. (Aug. 18, 2020) at 57:4-58:8, 59:3-18; NM-EX 222, Reyes Dep. (Aug. 31, 2020) at 20:3-14; NM-EX 223, Rios Dep. (Aug. 26, 2020) at 48:12-18, 49:10-20.	From TX's 12/22/20 Filings: NM-EX-202: <i>See</i> General Objection #8. NM-EX-210: <i>See</i> General Objection #8. NM-EX-208: <i>See</i> General Objection #8. NM-	From TX's 12/22/20 Filings: Subject to the stated objections, undisputed.	New Mexico previously responded to these objections. <i>See</i> [Dkt. 468] State of New Mexico's Response to State of Texas's Evidentiary Objections, and [Dkt. 469] State of New Mexico's Response to Statements of Fact.

ATTACHMENT A
NEW MEXICO'S RESPONSE TO TEXAS'S "EXHIBIT A"

<u>NM- CS MF #</u>	<u>NM's Prior Numbe ring Syste m</u>	<u>New Mexico's Stated Fact</u>	<u>New Mexico's Supporting Evidence</u>	<u>TEXAS'S EVIDENTIARY OBJECTIONS</u>	<u>TEXAS'S RESPONSE</u>	<u>NEW MEXICO'S RESPONSE TO TEXAS EVIDENTIARY OBJECTIONS</u>
		take farm orders from their members, place orders with Reclamation for water to be delivered at canal headings, and then take delivery of that water and deliver it to farm headgates in each State.		EX-222: .See General Objection #8. NM- EX-223: .See General Objection #8.		
159	Notice No. 18	Reclamation retained, in the period after 1979, the responsibility to account for the total deliveries to each District (EBID and EPCWID) and to Mexico at their respective diversion headings in a given year.	.See NM-EX 202, Cortez Dep. (July 30, 2020) at 31:13-23, 49:3-11.	From TX's 12/22/20 Filings: NM-EX 202: .See General Objection #8.	From TX's 12/22/20 Filings: Subject to the stated objections, undisputed with regard to the first sentence. Subject to the stated objections, disputed with regard to the second sentence. The cited "evidence" does not stand for the stated proposition.	New Mexico previously responded to these objections. .See [Dkt. 468] State of New Mexico's Response to State of Texas's Evidentiary Objections, and [Dkt. 469] State of New Mexico's Response to Statements of Fact.
159	Notice No. 18	From 1979 through 2005, Reclamation continued to operate the Project as a single unit on an equal amount of water per acre basis.	N/A			New Mexico previously responded to these objections. .See [Dkt. 468] State of New Mexico's Response to State of Texas's Evidentiary Objections, and [Dkt. 469] State of New Mexico's Response to Statements of Fact.
160	Notice No. 19	Reclamation relies on the Districts to monitor and report the actual diversions that each takes at its diversion points from the Rio Grande.	.See NM-EX 202, Cortez Dep. (July 30, 2020) at 49:20-50:12.	From TX's 12/22/20 Filings: NM-EX 202: .See General Objection #8.	From TX's 12/22/20 Filings: Subject to the stated objections, undisputed.	New Mexico previously responded to these objections. .See [Dkt. 468] State of New Mexico's Response to State of Texas's Evidentiary Objections, and [Dkt. 469] State of New Mexico's Response to Statements of Fact.

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161	Notice No. 20	Reclamation compiles its accounting of the Districts' respective Project allocation and delivery charges on a monthly basis.	<i>See</i> NM-EX 203, Cortez Dep. (July 31, 2020) at 215:23-216:16; NM-EX 221, Reyes Dep. (Nov. 16, 2018) at 65:8-66:8	From TX's 12/22/20 Filings: NM-EX 203, 221: <i>See</i> General Objection #8.	From TX's 12/22/20 Filings: Subject to the stated objections, undisputed.	New Mexico previously responded to these objections. <i>See</i> [Dkt. 468] State of New Mexico's Response to State of Texas's Evidentiary Objections, and [Dkt. 469] State of New Mexico's Response to Statements of Fact.
162	App. No. 68	After 1979, Reclamation developed a method known as the D1/D2 method for allocating water to the Districts.	<i>See</i> NM-EX 403, Operating Agreement between Elephant Butte Irrigation District, El Paso County Water Improvement District No.1, and United States Bureau of Reclamation, at 3-4 (1985) (unexecuted draft); NM-EX 511, Filiberto Cortez, Lower Rio Grande Project Operating Agreement: Settlement of Litigation, at 4 (Oct. 2008); NM-EX 100, Barroll Rep. at 33.	From TX's 12/22/20 Filings: NM-EX-403: <i>See</i> General Objection #8; Fed. R. Evid. 801(c), hearsay. NM-EX-511: <i>See</i> General Objection #8; Fed. R. Evid. 801(c), hearsay. NM-EX-100: <i>See</i> General Objection #7; Fed. R. Evid. 801(c), hearsay.	From TX's 12/22/20 Filings: Subject to the stated objections, disputed in part. This paragraph is misleading. The D1/D2 method referenced in paragraphs 68 through 70 and paragraphs 72 through 76 of NM MSJ Motion on Apportionment has nothing to do with Compact apportionment; rather, it relates to how the Project was operated during 1951 through 1978. The Compact requires Rio Grande water deliveries from New Mexico to Elephant Butte Reservoir for Texas, and the 1906 treaty with Mexico and the contracts between the federal government and the Districts allocate the stored water in Elephant Butte Reservoir, along with downstream inflows to the Rio Grande, to Mexico, EBID, and EP#1. Furthermore, the D1/D2 method does not reflect Project water supply conditions as they existed at the time of Compact adoption in 1938. The D1/D2 method understates the supply of Project water available under the Compact because it is based on Project delivery conditions that occurred during 1951 and 1978 when substantial groundwater pumping had already developed in the Rincon and Mesilla basins of New Mexico (<i>See</i> Figure 5) causing flows in the drains and in the Rio Grande at El Paso relative to releases from Caballo Reservoir and the deliveries to EP#1 to be reduced. (<i>See</i> Figures 9 and 10 to Brandes Dec). <i>See</i> Brandes Dec. in Opp. to NM at TX MSJ 007312,	New Mexico previously responded to these objections. <i>See</i> [Dkt. 468] State of New Mexico's Response to State of Texas's Evidentiary Objections, and [Dkt. 469] State of New Mexico's Response to Statements of Fact.

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<u>NM- CS MF #</u>	<u>NM's Prior Numbering System</u>	<u>New Mexico's Stated Fact</u>	<u>New Mexico's Supporting Evidence</u>	<u>TEXAS'S EVIDENTIARY OBJECTIONS</u>	<u>TEXAS'S RESPONSE</u>	<u>NEW MEXICO'S RESPONSE TO TEXAS EVIDENTIARY OBJECTIONS</u>
					paragraphs 1 – 9, 25-26, 29.	
163	App. No. 70	The D1/D2 method was based on the distribution of Project supply during the period from 1951 to 1978 and continued allocating 57% of Project supply to New Mexico lands and 43% of Project supply to Texas lands.	NM-EX 202, Cortez Dep. (July 30, 2020) at 170:25-172:10 (examining NM-EX 403, Operating Agreement between Elephant Butte Irrigation District, El Paso County Water Improvement District No.1, and United States Bureau of Reclamation, at 3-4 (1985) (unexecuted draft)); NM-EX 100, Barroll Rep. at 33-34.	From TX's 12/22/20 Filings: NM-EX-202: .See General Objection #8. NM-EX-100: .See General Objection #7; Fed. R. Evid. 801(c), hearsay.	From TX's 12/22/20 Filings: Subject to the stated objections, disputed in part. This paragraph is misleading. The D1/D2 method referenced in paragraphs 68 through 70 and paragraphs 72 through 76 of NM MSJ Motion on Apportionment has nothing to do with Compact apportionment; rather, it relates to how the Project was operated during 1951 through 1978. The Compact requires Rio Grande water deliveries from New Mexico to Elephant Butte Reservoir for Texas, and the 1906 treaty with Mexico and the contracts between the federal government and the Districts allocate the stored water in Elephant Butte Reservoir, along with downstream inflows to the Rio Grande, to Mexico, EBID, and EP#1. Furthermore, the D1/D2 method does not reflect Project water supply conditions as they existed at the time of Compact adoption in 1938. The D1/D2 method understates the supply of Project water available under the Compact because it is based on Project delivery conditions that occurred during 1951 and 1978 when substantial groundwater pumping had already developed in the Rincon and Mesilla basins of New Mexico (See Figure 5) causing flows in the drains and in the Rio Grande at El Paso relative to releases from Caballo Reservoir and the deliveries to EP#1 to be reduced. (See Figures 9 and 10 to Brandes Dec). See Brandes Dec. in Opp. to NM at TX_MSJ_007312, paragraphs 1 – 9, 25-26, 29.	New Mexico previously responded to these objections. See [Dkt. 468] State of New Mexico's Response to State of Texas's Evidentiary Objections, and [Dkt. 469] State of New Mexico's Response to Statements of Fact.

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164	N/A	Under the D1/D2 Allocation Method, the D1 Curve is the observed relationship between total Project release from storage and farm delivery plus the delivery to Mexico, and the D2 Curve is the observed relationship between Project release from storage and total project diversions, including Mexico. Using the method, Mexico's share of Project Supply was calculated using the D1 Curve. The total Project Supply was calculated using the D2 Curve, and Project Supply remaining beyond Mexico's share was split 57% to EBID and 43% to EPCWID.	<i>See</i> NM-EX 006, Barroll 2d Decl. at ¶ 57; <i>See</i> also NM-EX 100, Barroll Rep. at 33-37, Appx. A, A-13-17.	From TX's 12/22/20 Filings: NM-EX-100: <i>See</i> General Objection #7; Fed. R. Evid. 801(c), hearsay.	From TX's 12/22/20 Filings: Subject to the stated objections, the fact is cited in New Mexico's Response to Texas's Motion for Partial Summary Judgment but does not materially respond to facts stated therein. New Mexico's stated fact and the evidence cited in support regarding the D1/D2 allocation method do not materially respond to an argument made in Texas's Motion for Partial Summary Judgment. New Mexico's counterclaims and its apportionment motion address New Mexico's legal position on the interrelationship of the Project, Downstream Contracts and the Compact. CSMF #164 may relate to New Mexico's motion(s), but does not materially respond to Texas's Motion for Partial Summary Judgment. New Mexico's stated fact is non-responsive and otherwise not supported by definite, competent, or significantly probative evidence that genuinely and materially responds to a fact stated in Texas's Motion for Partial Summary Judgment. As such, Texas's stated material facts remain undisputed. Fed. R. Civ. P. 56(a), 56(c)(1).	New Mexico previously responded to the authenticity and hearsay objections. <i>See</i> [Dkt. 468] State of New Mexico's Response to State of Texas's Evidentiary Objections and [Dkt. 469] State of New Mexico's Response to Statements of Fact.
165	App. No. 72	Reclamation began making Project allocations using the D1/D2 allocation procedure from at least 1985.	NM-EX 202, Cortez Dep. (July 30, 2020) at 168:20-24; NM-EX 100, Barroll Rep. at 33-34.	From TX's 12/22/20 Filings: NM-EX-202: <i>See</i> General Objection #8. NM-EX-100: <i>See</i> General Objection #7; Fed. R. Evid. 801(c), hearsay.	From TX's 12/22/20 Filings: Subject to the stated objections, disputed in part. This paragraph is misleading. The D1/D2 method referenced in paragraphs 68 through 70 and paragraphs 72 through 76 of NM MSJ Motion on Apportionment has nothing to do with Compact apportionment; rather, it relates to how the Project was operated during 1951 through 1978. The Compact requires Rio Grande water deliveries from New Mexico to Elephant Butte Reservoir for Texas, and the 1906 treaty with Mexico and the contracts between the federal government and the Districts allocate the stored water in Elephant Butte Reservoir, along with downstream inflows to the Rio Grande, to Mexico, EBID, and EP#1. Furthermore, the D1/D2 method does not reflect Project water supply conditions as they existed at the time of Compact adoption in 1938. The	New Mexico previously responded to these objections. <i>See</i> [Dkt. 468] State of New Mexico's Response to State of Texas's Evidentiary Objections, and [Dkt. 469] State of New Mexico's Response to Statements of Fact.

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					D1/D2 method understates the supply of Project water available under the Compact because it is based on Project delivery conditions that occurred during 1951 and 1978 when substantial groundwater pumping had already developed in the Rincon and Mesilla basins of New Mexico (<i>See</i> Figure 5) causing flows in the drains and in the Rio Grande at El Paso relative to releases from Caballo Reservoir and the deliveries to EP#1 to be reduced. (<i>See</i> Figures 9 and 10 to Brandes Dec). <i>See</i> Brandes Dec. in Opp. to NM at TX_MSJ_007312, paragraphs 1 – 9, 25-26, 29.	
166	App. No. 69	According to Reclamation, "D2 was developed to calculate the amount of water that was needed at the main canal headings to make the 3.0241 ac-ft/acre deliveries to the lands."	NM-EX 409, Email from Filiberto Cortez, Manager, El Paso Field Division, Bureau of Reclamation, to Chris Rich et al. (Apr. 12, 2002).	From TX's 12/22/20 Filings: NM-EX-409: <i>See</i> General Objection #8; Fed. R. Evid. 801(c), hearsay.	From TX's 12/22/20 Filings: Subject to the stated objections, disputed in part. This paragraph is misleading. The D1/D2 method referenced in paragraphs 68 through 70 and paragraphs 72 through 76 of NM MSJ Motion on Apportionment has nothing to do with Compact apportionment; rather, it relates to how the Project was operated during 1951 through 1978. The Compact requires Rio Grande water deliveries from New Mexico to Elephant Butte Reservoir for Texas, and the 1906 treaty with Mexico and the contracts between the federal government and the Districts allocate the stored water in Elephant Butte Reservoir, along with downstream inflows to the Rio Grande, to Mexico, EBID, and EP#1. Furthermore, the D1/D2 method does not reflect Project water supply conditions as they existed at the time of Compact adoption in 1938. The D1/D2 method understates the supply of Project water available under the Compact because it is based on Project delivery conditions that occurred during 1951 and 1978 when substantial groundwater pumping had already developed in the Rincon and Mesilla basins of New Mexico (<i>See</i> Figure 5) causing flows in the drains and in the Rio Grande at El Paso	New Mexico previously responded to these objections. <i>See</i> [Dkt. 468] State of New Mexico's Response to State of Texas's Evidentiary Objections, <i>and</i> [Dkt. 469] State of New Mexico's Response to Statements of Fact.

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					relative to releases from Caballo Reservoir and the deliveries to EP#1 to be reduced. (See Figures 9 and 10 to Brandes Dec). See Brandes Dec. in Opp. to NM at TX_MSJ_007312, paragraphs 1 – 9, 25-26, 29.	
167	Notice No. 22	In order to calibrate releases of Project supply from Caballo and Elephant Butte reservoirs into the Rio Grande, Reclamation takes delivery orders from each District and makes appropriate reservoir release adjustments on a daily basis.	See NM-EX 202, Cortez Dep. (July 30, 2020) at 64:3-15.	From TX's 12/22/20 Filings: NM-EX 202: See General Objection #8.	From TX's 12/22/20 Filings: Subject to the stated objections, undisputed.	New Mexico previously responded to these objections. See [Dkt. 468] State of New Mexico's Response to State of Texas's Evidentiary Objections, and [Dkt. 469] State of New Mexico's Response to Statements of Fact.
168	Notice No. 23	To facilitate this process, the Districts take water orders from their respective constituents and transmit total orders to Reclamation.	See NM-EX 208, Esslinger Dep. (Aug. 18, 2020) at 57:4-58:8, 59:3-18; NM-EX 222, Reyes Dep. (Aug. 31, 2020) at 20:3-14; NM-EX 223, Rios Dep. (Aug. 26, 2020) at 48:12-18, 49:10-20; NM-EX 001, Barroll Decl. at ¶ 21.	From TX's 12/22/20 Filings: NM-EX 208, 222, 223: See General Objection #8.	From TX's 12/22/20 Filings: Subject to the stated objections, undisputed.	New Mexico previously responded to these objections. See [Dkt. 468] State of New Mexico's Response to State of Texas's Evidentiary Objections, and [Dkt. 469] State of New Mexico's Response to Statements of Fact.
169	Notice No. 24	Once Reclamation delivers water to a District's diversion point, the District administers the conveyance of that water to individual farm turnouts and accounts for delivery of the water in satisfaction of the farmers' respective orders.	See NM-EX 208, Esslinger Dep. (Aug. 18, 2020) at 56:19-58:23, 60:22-62:7; NM-EX 223, Rios Dep. (Aug. 26, 2020) at 31:4-6, 33:10-14.	From TX's 12/22/20 Filings: NM-EX 208, 223: See General Objection #8.	From TX's 12/22/20 Filings: Subject to the stated objections, undisputed.	New Mexico previously responded to these objections. See [Dkt. 468] State of New Mexico's Response to State of Texas's Evidentiary Objections, and [Dkt. 469] State of New Mexico's Response to Statements of Fact.

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170	N/A	Beginning in about 1980, changes to Project infrastructure within EPCWID eliminated river diversions that previously supplied the Riverside and Tornillo Canals and ceased the conveyance between the EPCWID drains in the El Paso Valley and the Tornillo Canal. Following these changes, there is no evidence that EPCWID makes any use of drain flow or other irrigation return flow arising within the El Paso Valley.	<i>See</i> NM-EX 006, Baroll 2d Decl. at ¶ 51; <i>See</i> also NM-EX 100, Barroll Rep. Appx. C, C-21- 28.	NM-EX-006: Fed. R. Evid. 602, Dr. Barroll lacks personal knowledge regarding the stated facts to the extent the stated facts purport to address the hisotry of irrigation district activities in the Rio Grande Basin. NM-EX-100, 101: <i>See</i> General Objection #7; Fed. R. Evid. 801(c), hearsay.	Subject to the stated objections, the fact is cited in New Mexico's Response to Texas's Motion for Partial Summary Judgment but does not materially respond to facts stated therein. New Mexico's stated fact and the evidence cited in support regarding EPCWID drains do not materially respond to an argument made in Texas's Motion for Partial Summary Judgment. New Mexico's counterclaims and its apportionment motion address New Mexico's legal position on the interrelationship of the Project, Downstream Contracts and the Compact. CSMF #170 may relate to New Mexico's motion(s), but does not materially respond to Texas's Motion for Partial Summary Judgment. New Mexico's stated fact is non-responsive and otherwise not supported by definite, competent, or significantly probative evidence that genuinely and materially responds to a fact stated in Texas's Motion for Partial Summary Judgment. As such, Texas's stated material facts remain undisputed. Fed. R. Civ. P. 56(a), 56(c)(1).	New Mexico previously responded to the authenticity and hearsay objections. <i>See</i> [Dkt. 468] State of New Mexico's Response to State of Texas's Evidentiary Objections. As to Texas's objection to Dr. Barroll, see New Mexico's Response to State of Texas's Second Evidentiary Objections, § III (A).
170	N/A	If EPCWID resumed use of the irrigation return flows that arise within its boundaries, this would reduce the reservoir releases needed to meet EPCWID demands and would make additional water available for allocation and delivery to EBID.	<i>See</i> NM-EX 012, Sullivan Decl. at ¶¶ 26, 35; <i>See</i> also NM-EX 122, Spronk Rep. at 19-20.	NM-EX-122: <i>See</i> General Objection #7; Fed. R. Evid. 801(c), hearsay.	Subject to the stated objections, the fact is cited in New Mexico's Response to Texas's Motion for Partial Summary Judgment but does not materially respond to facts stated therein. New Mexico's stated fact and the evidence cited in support regarding EPCWID's use of return flows do not materially respond to an argument made in Texas's Motion for Partial Summary Judgment. New Mexico's counterclaims and its apportionment motion address New Mexico's legal position on the interrelationship of the Project, Downstream Contracts and the Compact. CSMF #170 may relate to New Mexico's motion(s), but does not materially respond to Texas's Motion for Partial Summary Judgment. Further, New Mexico cites CSMF #170 in a section regarding Texas's administration of water (<i>See</i> Sec. IV.C) which does not respond to facts stated in Texas's Motion for Partial Summary Judgment. New Mexico's stated fact is non-responsive and otherwise not supported by definite, competent, or significantly probative evidence that	New Mexico previously responded to the authenticity and hearsay objections. <i>See</i> [Dkt. 468] State of New Mexico's Response to State of Texas's Evidentiary Objections.

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					genuinely and materially responds to a fact stated in Texas's Motion for Partial Summary Judgment. As such, Texas's stated material facts remain undisputed. Fed. R. Civ. P. 56(a), 56(c)(1).	
171	Full Supply No. 11	Starting in about 1990, Reclamation determined that a release of 763,842 AFY from Project Storage was a full- supply condition.	<i>See</i> , e.g., NM-EX 105, Excerpts, United States' Disclosure of Expert Rebuttal Witness Dr. Ian M. Ferguson (Dec. 30, 2019) [hereinafter "Ferguson Discl.,"] at 8 ("Prior to the [2008 Operating Agreement], full supply was defined by Usable Water available for the current-year allocation equal to or greater than 763,800 acre- feet "); NM-EX 104, Excerpts, United States' Disclosure of Rebuttal Expert Dr. Al Blair (Dec. 30, 2019) [hereinafter "Blair Discl.,"] at 8 (stating that prior to 2008 Operating Agreement a maximum annual release for a full-supply year was 763,840 AF).	From TX's 12/22/20 Filings: NM-EX 105, 104: <i>See</i> General Objection #7; Fed. R. Evid. 801(c), hearsay.	From TX's 12/22/20 Filings: Subject to the stated objections, disputed in part. In NM-EX 001, the statement that "Reclamation will ensure" the allocation is available for diversion is not supported by citations NM-EX-400 or NM-EX-529.	New Mexico previously responded to these objections. <i>See</i> [Dkt. 468] State of New Mexico's Response to State of Texas's Evidentiary Objections, <i>and</i> [Dkt. 469] State of New Mexico's Response to Statements of Fact.

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171	Full Supply No. 11	Reclamation determined that this release from Project Storage would provide 931,841 AFY of divertible water at U.S. and Mexico canal headings.	NM-EX 001, Barroll Decl., ¶ 22; NM-EX 400, Bureau of Rec., Rio Grande Project Water Supply Allocation Procedures [hereinafter "WSAP"] at 4.	NM-EX 400: <i>See</i> General Objection #8; Fed. R. Evid. 801(c), hearsay.	Subject to the stated objections, disputed in part. In NM-EX 001, the statement that "Reclamation will ensure" the allocation is available for diversion is not supported by citations NM-EX-400 or NM-EX-529.	New Mexico previously responded to these objections. <i>See</i> [Dkt. 468] State of New Mexico's Response to State of Texas's Evidentiary Objections, and [Dkt. 469] State of New Mexico's Response to Statements of Fact.
171	Full Supply No. 11	According to Project allocation procedures at that time, from this 931,841 AFY, 60,000 AFY was deducted for delivery to Mexico. Reclamation then divided the remaining 871,841 AFY, 43% (376,862 AFY) to EPCWID and 57% (494,979 AFY) to EBID in accordance with the percentages set out in the 1938 Downstream Contract.	NM-EX 001, Barroll Decl. at ¶ 22; NM-EX 400, WSAP at 4-5; NM-EX 324, 1938 Downstream Contract.	NM-EX 400: <i>See</i> General Objection #8; Fed. R. Evid. 801(c), hearsay.	Subject to the stated objections, disputed in part. In NM-EX 001, the statement that "Reclamation will ensure" the allocation is available for diversion is not supported by citations NM-EX-400 or NM-EX-529.	New Mexico previously responded to these objections. <i>See</i> [Dkt. 468] State of New Mexico's Response to State of Texas's Evidentiary Objections, and [Dkt. 469] State of New Mexico's Response to Statements of Fact.
171	Full Supply No. 11	The 376,842 AFY quantity represents a full-supply Project allocation to EPCWID that Reclamation will ensure is available for diversions at EPCWID's headgates if EPCWID orders (takes) this volume of water.	NM-EX 001, Barroll Decl. at ¶ 23; NM-EX 400, WSAP at 4-5; <i>See</i> also NM-EX 529, Bureau of Reclamation, Continued Implementation of the 2008 Operating Agreement for the Rio Grande Project, New Mexico and Texas: FEIS, at 86 (Sep. 30, 2016) (referring to "[t]he historical full [EPCWID] allocation of 376,842 acre-feet").	NM-EX 400: <i>See</i> General Objection #8; Fed. R. Evid. 801(c), hearsay. NM-EX 529: <i>See</i> General Objection #8; Fed. R. Evid. 801(c), hearsay.	Subject to the stated objections, disputed in part. In NM-EX 001, the statement that "Reclamation will ensure" the allocation is available for diversion is not supported by citations NM-EX-400 or NM-EX-529.	New Mexico previously responded to these objections. <i>See</i> [Dkt. 468] State of New Mexico's Response to State of Texas's Evidentiary Objections, and [Dkt. 469] State of New Mexico's Response to Statements of Fact.

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172	Full Supply No. 12	Between 1985 and 1990, before Reclamation had finalized the analysis described [in the preceding paragraph] above, Reclamation's full-supply year determinations for EPCWID varied slightly from 376,842 AFY. For example, from 1985 through 1988, Reclamation determined a full-supply year Project allocation to EPCWID to be 363,963 AFY; and in 1989 and 1990, Reclamation determined a full-supply year Project allocation to EPCWID to be 359,165 AFY. These were hydrologically wet years with plenty of water in Project Storage and full-supply allocations were available to both Districts (EBID and EPCWID).	NM-EX 001, Barroll Decl. at ¶ 24; NM-EX 509, Bureau of Reclamation Table, Rio Grande Project Allocation of Project Water Supply (Apr. 3, 2008) ("Reclamation Data Table") at col. 2.	From TX's 12/22/20 Filings: NM-EX 509: <i>See</i> General Objection #8; Fed. R. Evid. 801(c), hearsay. NM-EX-001: <i>See</i> General Objection #1.	From TX's 12/22/20 Filings: Subject to the stated objections, disputed. In NM-EX-001, the quantifications about EP#1 allocations are not supported and the citation to NM-EX-509 does not show allocations to each district. Additionally, <i>See</i> Brandes Dec. in Opp. to NM at TX_MSJ_007312, paragraphs 1 – 24. The discussion is lengthy, and is incorporated herein by reference.	New Mexico previously responded to these objections. <i>See</i> [Dkt. 468] State of New Mexico's Response to State of Texas's Evidentiary Objections, and [Dkt. 469] State of New Mexico's Response to Statements of Fact.
173	App. No. 74	In 2003, the Project began to suffer the effects of the severe drought that has plagued the Rio Grande basin for the last two decades.	NM-EX 412, Herman Settemeyer, Rio Grande Project/Rio Grande Compact Operation, at 4 (2004); NM-EX 213, Ivey Dep. (Aug. 28, 2020) at 69:25-71:1, 75:19-24.	From TX's 12/22/20 Filings: NM-EX-412: <i>See</i> General Objection #8; Fed. R. Evid. 801(c), hearsay. NM-EX-213: <i>See</i> General Objection #8.	From TX's 12/22/20 Filings: Subject to the stated objections, disputed in part. This paragraph is misleading. The D1/D2 method referenced in paragraphs 68 through 70 and paragraphs 72 through 76 of NM MSJ Motion on Apportionment has nothing to do with Compact apportionment; rather, it relates to how the Project was operated during 1951 through 1978. The Compact requires Rio Grande water deliveries from New Mexico to Elephant Butte Reservoir for Texas, and the 1906 treaty with Mexico and the contracts between the federal government and the Districts allocate the stored water in Elephant Butte Reservoir, along with downstream inflows to	New Mexico previously responded to these objections. <i>See</i> [Dkt. 468] State of New Mexico's Response to State of Texas's Evidentiary Objections, and [Dkt. 469] State of New Mexico's Response to Statements of Fact.

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					<p>the Rio Grande, to Mexico, EBID, and EP#1. Furthermore, the D1/D2 method does not reflect Project water supply conditions as they existed at the time of Compact adoption in 1938. The D1/D2 method understates the supply of Project water available under the Compact because it is based on Project delivery conditions that occurred during 1951 and 1978 when substantial groundwater pumping had already developed in the Rincon and Mesilla basins of New Mexico (<i>See</i> Figure 5) causing flows in the drains and in the Rio Grande at El Paso relative to releases from Caballo Reservoir and the deliveries to EP#1 to be reduced. (<i>See</i> Figures 9 and 10 to Brandes Dec). <i>See</i> Brandes Dec. in Opp. to NM at TX_MSJ_007312, paragraphs 1 – 9, 25-26, 29.</p>	
173	App. No. 74	Nonetheless, in 2003 and 2004, Reclamation allocated 57% of Project water to New Mexico Project lands and 43% to Texas Project lands using the D1/D2 method.	NM-EX 201, Rule 30(b)(6) Dep. of the U.S. Bureau of Reclamation by and through Cortez (Aug. 20, 2020) at 50:6-51:15.	NM-EX-201: <i>See</i> General Objection #8.	<p>Subject to the stated objections, disputed in part. This paragraph is misleading. The D1/D2 method referenced in paragraphs 68 through 70 and paragraphs 72 through 76 of NM MSJ Motion on Apportionment has nothing to do with Compact apportionment; rather, it relates to how the Project was operated during 1951 through 1978.</p> <p>The Compact requires Rio Grande water deliveries from New Mexico to Elephant Butte Reservoir for Texas, and the 1906 treaty with Mexico and the contracts between the federal government and the Districts allocate the stored water in Elephant Butte Reservoir, along with downstream inflows to the Rio Grande, to Mexico, EBID, and EP#1. Furthermore, the D1/D2 method does not reflect Project water supply conditions as they existed at the time of Compact adoption in 1938. The D1/D2 method understates the supply of Project water available under the Compact because it is based on Project delivery conditions that occurred during 1951 and 1978 when substantial groundwater pumping had already developed in the</p>	New Mexico previously responded to these objections. <i>See</i> [Dkt. 468] State of New Mexico's Response to State of Texas's Evidentiary Objections, <i>and</i> [Dkt. 469] State of New Mexico's Response to Statements of Fact.

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					Rincon and Mesilla basins of New Mexico (<i>See</i> Figure 5) causing flows in the drains and in the Rio Grande at El Paso relative to releases from Caballo Reservoir and the deliveries to EP#1 to be reduced. (<i>See</i> Figures 9 and 10 to Brandes Dec). <i>See</i> Brandes Dec. in Opp. to NM at TX_MSJ_007312, paragraphs 1 – 9, 25-26, 29.	
174	App. No. 73	Reclamation continued making allocations to the Districts in the proportion of 57% of Project water to New Mexico lands and 43% of Project water to Texas lands using the D1/D2 method through 2005.	NM-EX 202, Cortez Dep. (July 30, 2020) at 59:12-60:9; NM-EX 511, Filiberto Cortez, Lower Rio Grande Project Operating Agreement: Settlement of Litigation, at 4 (Oct. 2008); NM-EX 100, Barroll Rep. at 34, n.66.	From TX's 12/22/20 Filings: NM-EX-202: See General Objection #8. NM-EX-511: See General Objection #8; Fed. R. Evid. 801(c), hearsay. NM-EX-100: See General Objection #7; Fed. R. Evid. 801(c), hearsay.	From TX's 12/22/20 Filings: Subject to the stated objections, disputed in part. This paragraph is misleading. The D1/D2 method referenced in paragraphs 68 through 70 and paragraphs 72 through 76 of NM MSJ Motion on Apportionment has nothing to do with Compact apportionment; rather, it relates to how the Project was operated during 1951 through 1978. The Compact requires Rio Grande water deliveries from New Mexico to Elephant Butte Reservoir for Texas, and the 1906 treaty with Mexico and the contracts between the federal government and the Districts allocate the stored water in Elephant Butte Reservoir, along with downstream inflows to the Rio Grande, to Mexico, EBID, and EP#1. Furthermore, the D1/D2 method does not reflect Project water supply conditions as they existed at the time of Compact adoption in 1938. The D1/D2 method understates the supply of Project water available under the Compact because it is based on Project delivery conditions that occurred during 1951 and 1978 when substantial groundwater pumping had already developed in the Rincon and Mesilla basins of New Mexico (<i>See</i> Figure 5) causing flows in the drains and in the Rio Grande at El Paso relative to releases from Caballo Reservoir and the deliveries to EP#1 to be reduced. (<i>See</i> Figures 9 and 10 to Brandes Dec). <i>See</i> Brandes Dec. in Opp. to NM at TX_MSJ_007312, paragraphs 1 – 9, 25-26, 29.	New Mexico previously responded to these objections. <i>See</i> [Dkt. 468] State of New Mexico's Response to State of Texas's Evidentiary Objections, <i>and</i> [Dkt. 469] State of New Mexico's Response to Statements of Fact.

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175	App. No. 75	In 2005, Reclamation was able to make a full D1/D2 allocation in the percentage of 57% to New Mexico lands and 43% to Texas lands.	NM-EX 202, Cortez Dep. (July 30, 2020) at 89:21- 90:5 (examining NM-EX 328, Bureau of Reclamation, Environmental Assessment and Finding of No Significant Impact for the Bureau of Reclamation Federal Rio Grande Project New Mexico-Texas Operating Procedures, Dona Ana, Sierra, and Socorro Counties, New Mexico and El Paso County, Texas, at 4 (June 11, 2007)); NM-EX 100, Barroll Rep. at 34, n.66.	From TX's 12/22/20 Filings: NM-EX-202: <i>See</i> General Objection #8. NM-EX-100: <i>See</i> General Objection #7; Fed. R. Evid. 801(c), hearsay.	From TX's 12/22/20 Filings: Subject to the stated objections, disputed in part. This paragraph is misleading. The D1/D2 method referenced in paragraphs 68 through 70 and paragraphs 72 through 76 of NM MSJ Motion on Apportionment has nothing to do with Compact apportionment; rather, it relates to how the Project was operated during 1951 through 1978. The Compact requires Rio Grande water deliveries from New Mexico to Elephant Butte Reservoir for Texas, and the 1906 treaty with Mexico and the contracts between the federal government and the Districts allocate the stored water in Elephant Butte Reservoir, along with downstream inflows to the Rio Grande, to Mexico, EBID, and EP#1. Furthermore, the D1/D2 method does not reflect Project water supply conditions as they existed at the time of Compact adoption in 1938. The D1/D2 method understates the supply of Project water available under the Compact because it is based on Project delivery conditions that occurred during 1951 and 1978 when substantial groundwater pumping had already developed in the Rincon and Mesilla basins of New Mexico (<i>See</i> Figure 5) causing flows in the drains and in the Rio Grande at El Paso relative to releases from Caballo Reservoir and the deliveries to EP#1 to be reduced. (<i>See</i> Figures 9 and 10 to Brandes Dec). <i>See</i> Brandes Dec. in Opp. to NM at TX_MSJ_007312, paragraphs 1 – 9, 25-26, 29.	New Mexico previously responded to these objections. <i>See</i> [Dkt. 468] State of New Mexico's Response to State of Texas's Evidentiary Objections, <i>and</i> [Dkt. 469] State of New Mexico's Response to Statements of Fact.
176	App. No. 76	From 1979 to 2005, Reclamation allocated Project water such that 57% of Project supply was available for EBID lands in New Mexico and 43% of Project supply was available for EPCWID lands in Texas.	NM-EX 100, Barroll Rep. at Appx. A, A-13-15.	From TX's 12/22/20 Filings: NM-EX-100: <i>See</i> General Objection #7; Fed. R. Evid. 801(c), hearsay. NM-EX-101:	From TX's 12/22/20 Filings: Subject to the stated objections, disputed in part. This paragraph is misleading. The D1/D2 method referenced in paragraphs 68 through 70 and paragraphs 72 through 76 of NM MSJ Motion on Apportionment has nothing to do with Compact apportionment; rather, it relates to how the Project was operated	New Mexico previously responded to these objections. <i>See</i> [Dkt. 468] State of New Mexico's Response to State of Texas's Evidentiary Objections, <i>and</i> [Dkt. 469] State of New Mexico's Response to

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		From 1979 to 2005, the charged diversions by EBID in New Mexico (which accounts for water available and ordered by the Districts) totaled 58% and charged diversions for EPCWID in Texas totaled 42% of total diversions.		<i>See</i> General Objection #7; Fed. R. Evid. 801(c), hearsay.	during 1951 through 1978. The Compact requires Rio Grande water deliveries from New Mexico to Elephant Butte Reservoir for Texas, and the 1906 treaty with Mexico and the contracts between the federal government and the Districts allocate the stored water in Elephant Butte Reservoir, along with downstream inflows to the Rio Grande, to Mexico, EBID, and EP#1. Furthermore, the D1/D2 method does not reflect Project water supply conditions as they existed at the time of Compact adoption in 1938. The D1/D2 method understates the supply of Project water available under the Compact because it is based on Project delivery conditions that occurred during 1951 and 1978 when substantial groundwater pumping had already developed in the Rincon and Mesilla basins of New Mexico (<i>See</i> Figure 5) causing flows in the drains and in the Rio Grande at El Paso relative to releases from Caballo Reservoir and the deliveries to EP#1 to be reduced. (<i>See</i> Figures 9 and 10 to Brandes Dec). <i>See</i> Brandes Dec. in Opp. to NM at TX_MSJ_007312, paragraphs 1 – 9, 25-26, 29.	Statements of Fact.
176	App. No. 76	This is illustrated in Figure A.5 of Dr. Barroll's expert report:	[FIGURE A.5. TOTAL ALLOCATION TO DISTRICTS AND MEXICO: D1/D2 ALLOCATION (1979-2005)]			New Mexico previously responded to these objections. <i>See</i> [Dkt. 468] State of New Mexico's Response to State of Texas's Evidentiary Objections, <i>and</i> [Dkt. 469] State of New Mexico's Response to Statements of Fact.
177	Full Supply No. 16	Reclamation recognizes the years 1985 through 2002 and 2005 as full supply years for the Project, and also recognizes those years as full-supply years for EPCWID, meaning that in	NM-EX 001, Barroll Decl., ¶¶ 28–30, 32–33, 37 & Table 1; <i>See</i> also NM-EX 402, EPCWID Accounting Records [EOY_Acct_EP_1985- 2016];	From TX's 12/22/20 Filings: NM-EX 001: <i>See</i> General Objection #1. NM-EX 402: <i>See</i> General Objection	From TX's 12/22/20 Filings: Subject to the stated objections, disputed. <i>See</i> Brandes Dec. in Opp. to NM at TX_MSJ_007312, paragraphs 1 – 24. The discussion is lengthy, and is incorporated herein by reference.	New Mexico previously responded to these objections. <i>See</i> [Dkt. 468] State of New Mexico's Response to State of Texas's Evidentiary Objections,

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		each of those years Reclamation determined that a full allocation of Project water was available for diversions at EPCWID's headgates if ordered.	NM-EX 509, Reclamation Data Table; NM-EX 202, Cortez Dep (Jul. 30, 2020) at 82:16-83:2, 91:1-8, 92:19-93:7 (stating that 1979 through 2002 were "full supply" years, that a full Project supply allocation is the maximum amount that Reclamation will allocate, and that "[a] full supply is the allocation made to the district based on historical data" about irrigation demands); NM- EX 210, Ferguson Dep. (Feb. 20, 2020) at 229:15-18 ("[F]rom about 1985 or '6, through about 2002 . . . I know to be years of full project supply."), 233:1-3 (agreeing that "there's full supply from 1979 to 2002"); and 259:12-16 (agreeing that "[t]he project enjoyed full supply conditions from 1979 through 2002, and EPCWID was allocated a full supply in each Rio Grande Project/Rio Grande Compact Operation, at 4 (2004) (presenting that "Rio Grande Project water users enjoyed full allocations of	#8; Fed. R. Evid. 801(c), hearsay. NM-EX 509: See General Objection #8; Fed. R. Evid. 801(c), hearsay. NM-EX 202: See General Objection #8. NM-EX 210: See General Objection #8. NM-EX 412: See General Objection #8; Fed. R. Evid. 801(c), hearsay. NM-EX 214: See General Objection #8. NM-EX 225: See General Objection #8.		and [Dkt. 469] State of New Mexico's Response to Statements of Fact.

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			water from 1979 until 2003"); <i>See</i> also NM-EX 214, Excerpts, King Dep. (May 18, 2020) at 102:19-23 (confirming that a full supply "is the amount of water that Reclamation allocated to each district from 1979 to 2002, when each year was a full- supply" and that in each of those years "[t]here was a full supply available for release from storage").			
178	App. No. 71	According to Reclamation, prior to 2005, the Districts did not sign an "operating agreement, plan, or criteria," but "acquiesced and cooperated with Reclamation's procedures on a year to year basis."	NM-EX 508, Bureau of Reclamation, Environmental Assessment and Finding of No Significant Impact for the Bureau of Reclamation Federal Rio Grande Project New Mexico- Texas Operating Procedures, Dona Ana, Sierra, and Socorro Counties, New Mexico and El Paso County, Texas, at 3 (June 11, 2007); NM-EX 202, Cortez Dep. (July 30, 2020) at 87:8-88:10.	From TX's 12/22/20 Filings: NM-EX-508: <i>See</i> General Objection #8; Fed. R. Evid. 801(c), hearsay. NM-EX-202: <i>See</i> General Objection #8; Fed. R. Evid. 401: The testimony was not taken under Fed. R. Civ. P. 30(b)(6), so it is improper to represent as Reclamation's position.	From TX's 12/22/20 Filings: Subject to the stated objections, undisputed.	New Mexico previously responded to these objections. <i>See</i> [Dkt. 468] State of New Mexico's Response to State of Texas's Evidentiary Objections, <i>and</i> [Dkt. 469] State of New Mexico's Response to Statements of Fact.

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179	App. No. 77	In 2006 Reclamation began using a new method for allocating Project water between the two Districts. Neither the RGCC nor New Mexico were given input into the new method before it was implemented.	NM-EX 100, Barroll Rep. at 40; NM-EX 004, Schmidt-Petersen Decl. at ¶ 10; NM-EX 003, Lopez Decl. At ¶ 29; NM-EX 002, D'Antonio Decl. at ¶ 10; <i>See, e.g.,</i> NM-EX 504, Letter from Filiberto Cortez, Manager, El Paso Field Division, Bureau of Reclamation, to Gary Esslinger, Manager-Treasurer, Elephant Butte Irrigation District (Nov. 21, 2006).	From TX's 12/22/20 Filings: NM-EX-100: <i>See</i> General Objection #7; Fed. R. Evid. 801(c), hearsay. NM-EX-004: Fed. R. Civ. P. 56(c)(4); Fed. R. Evid. 602: Mr. Schmidt-Petersen does not have personal knowledge regarding all potential communications to the "RGCC or New Mexico" regarding the 2006 method for water allocation. NM-EX-003: General Objection #2; Fed. R. Civ. P. 56(c)(4); Fed. R. Evid. 602 : Mr. Lopez does not have personal knowledge regarding all potential communications to the "RGCC or New Mexico" regarding the 2006 method for water allocation. NM-EX-504: <i>See</i> General Objection #8; Fed. R. Evid. 801(c), hearsay. The cited evidence does not support the stated	From TX's 12/22/20 Filings: Subject to the stated objections, disputed in part. The cited evidence does not support the assertion that "Neither the RGCC nor New Mexico were given input into the new method before it was implemented."	New Mexico previously responded to these objections. <i>See</i> [Dkt. 468] State of New Mexico's Response to State of Texas's Evidentiary Objections, <i>and</i> [Dkt. 469] State of New Mexico's Response to Statements of Fact.

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				"facts" in whole and/or in part. Fed. R. Civ. P. 56(c).		
180	Full Supply No. 13	From 2006 onwards, Reclamation has determined annual Project allocations to the Districts under the 2008 Operating Agreement, and the antecedent D3-Allocation- Plus-Carryover method from which the 2008 Operating Agreement was developed.	NM-EX 001, Barroll Decl. at ¶ 25; NM-EX 510, Operating Agreement for the Rio Grande Project [hereinafter "2008 Operating Agreement"] (Mar. 10, 2008); NM-EX 502, D3 Allocation of Project Water to the Districts and Mexico; NM-EX 507, 2007 Operating Procedures.	From TX's 12/22/20 Filings: NM-EX 001: <i>See</i> General Objection #1. NM-EX 502, 510, 507: <i>See</i> General Objection #8; Fed. R. Evid. 801(c), hearsay.	From TX's 12/22/20 Filings: Subject to the stated objections, disputed. <i>See</i> Brandes Dec. in Opp. to NM at TX_MSJ_007312, paragraphs 1 – 24. The discussion is lengthy, and is incorporated herein by reference.	New Mexico previously responded to these objections. <i>See</i> [Dkt. 468] State of New Mexico's Response to State of Texas's Evidentiary Objections, and [Dkt. 469] State of New Mexico's Response to Statements of Fact.
180	Full Supply No. 13	Under the 2008 Operating Agreement, Reclamation determines a full-supply year Project allocation to EPCWID to be 388,192 AFY.	NM-EX 001, Barroll Decl., ¶ 25; NM-EX 510, 2008 Operating Agreement at 3; <i>See, e.g.</i> , NM- EX 105, Ferguson Discl. at 8 ("[U]nder the [2008 Operating Agreement], full supply conditions are defined by Usable Water available for the current-year allocation equal to or greater than 790,000 acre-feet."); NM-EX 104, Blair Discl. at 8 (stating that prior to the 2008 Operating Agreement, a maximum annual release for a full-supply year was 763,840 AF).	NM-EX 001: <i>See</i> General Objection #1. NM-EX 502, 510, 507: <i>See</i> General Objection #8; Fed. R. Evid. 801(c), hearsay. NM-EX 105, 104: <i>See</i> General Objection #7; Fed. R. Evid. 801(c), hearsay. NM-EX 100: <i>See</i> General Objection #7; Fed. R. Evid. 801(c), hearsay.	Subject to the stated objections, disputed. <i>See</i> Brandes Dec. in Opp. to NM at TX_MSJ_007312, paragraphs 1 – 24. The discussion is lengthy, and is incorporated herein by reference.	New Mexico previously responded to these objections. <i>See</i> [Dkt. 468] State of New Mexico's Response to State of Texas's Evidentiary Objections, and [Dkt. 469] State of New Mexico's Response to Statements of Fact.

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181	N/A	Under the D3-Allocation-Plus-Carryover method, Reclamation generally allocates to Mexico and EPCWID the same amounts that they would receive for a given level of Project supply under the D1/D2 methodology. EBID's allocation, however, relies on the "Diversion Ratio." This term is calculated as the ratio of annual charged diversions from the Project, including Mexico, divided by the annual Project release. The D3 method calculates Project supply as a function of the Diversion Ratio and calculates EBID's allocation as the difference between Project supply minus the allocation to EPCWID and Mexico. Holding the effects of carryover and accounting credits constant, a higher Diversion Ratio generally increases the allocation to EBID while a lower one decreases it.	<i>See</i> Ex. 100, Barroll Rep. at 40-41, Appx. D, D- 14-15.	NM-EX-100: <i>See</i> General Objection #7; Fed. R. Evid. 801(c), hearsay.	Subject to the stated objections, the fact is cited in New Mexico's Response to Texas's Motion for Partial Summary Judgment but does not materially respond to facts stated therein. New Mexico's stated fact and the evidence cited in support regarding the D3 allocation method do not materially respond to an argument made in Texas's Motion for Partial Summary Judgment. New Mexico's counterclaims and its apportionment motion address New Mexico's legal position on the interrelationship of the Project, Downstream Contracts and the Compact. CSMF #181 may relate to New Mexico's motion(s), but does not materially respond to Texas's Motion for Partial Summary Judgment. New Mexico's stated fact is non-responsive and otherwise not supported by definite, competent, or significantly probative evidence that genuinely and materially responds to a fact stated in Texas's Motion for Partial Summary Judgment. As such, Texas's stated material facts remain undisputed. Fed. R. Civ. P. 56(a), 56(c)(1).	New Mexico previously responded to the authenticity and hearsay objections. <i>See</i> [Dkt. 468] State of New Mexico's Response to State of Texas's Evidentiary Objections.
182	N/A	The D3-Allocation-Plus-Carryover method reduces EBID's allocation by the total of all real or apparent discrepancies in Project performance relative to the 1951-1978 period. As a result, all increases in system losses that have occurred since the 1951-1978 period result in	NM-EX 100, Barroll Rep. at 40-44.	NM-EX-100: <i>See</i> General Objection #7; Fed. R. Evid. 801(c), hearsay.	Subject to the stated objections, the fact is cited in New Mexico's Response to Texas's Motion for Partial Summary Judgment but does not materially respond to facts stated therein. New Mexico's stated fact and the evidence cited in support regarding the D3 allocation method do not materially respond to an argument made in Texas's Motion for Partial Summary Judgment. New Mexico's counterclaims and its apportionment motion address New Mexico's legal position on the interrelationship of the Project, Downstream Contracts and	New Mexico previously responded to the authenticity and hearsay objections. <i>See</i> [Dkt. 468] State of New Mexico's Response to State of Texas's Evidentiary Objections.

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<u>NM- CS MF #</u>	<u>NM's Prior Numbe ring Syste m</u>	<u>New Mexico's Stated Fact</u>	<u>New Mexico's Supporting Evidence</u>	<u>TEXAS'S EVIDENTIARY OBJECTIONS</u>	<u>TEXAS'S RESPONSE</u>	<u>NEW MEXICO'S RESPONSE TO TEXAS EVIDENTIARY OBJECTIONS</u>
		reductions to EBID's allocation.			the Compact. CSMF #182 may relate to New Mexico's motion(s), but does not materially respond to Texas's Motion for Partial Summary Judgment. New Mexico's stated fact is non-responsive and otherwise not supported by definite, competent, or significantly probative evidence that genuinely and materially responds to a fact stated in Texas's Motion for Partial Summary Judgment. As such, Texas's stated material facts remain undisputed. Fed. R. Civ. P. 56(a), 56(c)(1).	
182	N/A	Similarly, all reductions in accounted deliveries that have occurred as a result of changes in Project accounting cause reductions to EBID's allocation.	<i>See</i> NM-EX 006, Barroll 2d Decl. at ¶¶ 41, 58; <i>See</i> also NM-EX 428, Letter from Filiberto Cortez, Manager, Bureau of Reclamation, to Edd Fifer (July 8, 1999); NM-EX 100, Barroll Rep. at 30, 49- 50, Appx. D, D- 25-28; NM-EX 101, Barroll Reb. Rep. at 24-36.	NM-EX-006: Fed. R. Civ. P. 56(c)(4); Fed. R. Evid. 702: the statement in the Barroll 2d Decl. constitutes improper opinion testimony because it is not based on sufficient facts and is a mere conclusion. NM-EX-428: <i>See</i> General Objection #8; Fed. R. Evid. 801(c), hearsay. NM-EX-100, 101: <i>See</i> General Objection #7; Fed. R. Evid. 801(c), hearsay.	SAME AS ABOVE (182)	New Mexico previously responded to the authenticity and hearsay objections. <i>See</i> [Dkt. 468] State of New Mexico's Response to State of Texas's Evidentiary Objections. As to Texas's objection to Dr. Barroll, see New Mexico's Response to State of Texas's Second Evidentiary Objections, § III (A).
182	N/A	For example, the fact that municipal effluent from the City of El Paso in the El Paso Valley is no longer accounted as Project Supply reduces EBID's allocation.	<i>See</i> NM-EX 006, Barroll 2d Decl. at ¶ 59; <i>See</i> also NM-EX 100, Barroll Rep. at 60.	NM-EX-006: Fed. R. Evid. 401, 402; the cited portion of the document is irrelevant because it does not stand for the "fact(s)" stated. The cited portion of the document does not address municipal effluent from	SAME AS ABOVE (182)	New Mexico inadvertently cited to Barroll 2d Decl. ¶ 59. The correct citation is: NM-EX 006, Barroll 2 nd Decl. ¶ 58. New Mexico previously responded to the authenticity and hearsay objections. <i>See</i> [Dkt. 468] State of New Mexico's Response to State of

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				the City of El Paso. NM-EX-100: <i>See</i> General Objection #7; Fed. R. Evid. 801(c), hearsay.		Texas's Evidentiary Objections.
183	N/A	Much of the apparent discrepancies in Project performance during the period from 2006 forward relative to the 1951-1978 period may be explained by changes to the accounting methods at use in the Project. New Mexico's analysis shows that changes in Project accounting are responsible for up to 74,000 AF of the apparent reduction in Project deliveries or Project performance since the 1951-1978 period; D3 Allocation reduces EBID's allocation for all these reductions in Project performance. Thus, up to 74,000 AF of reduction in EBID's allocation are not a result of groundwater pumping in New Mexico.	<i>See</i> NM-EX 006, Barroll 2d Decl. at ¶ 59; <i>See</i> also NM-EX 100, Barroll Rep. at 60.	NM-EX-100: <i>See</i> General Objection #7; Fed. R. Evid. 801(c), hearsay.	Subject to the stated objections, the fact is cited in New Mexico's Response to Texas's Motion for Partial Summary Judgment but does not materially respond to facts stated therein. New Mexico's stated fact and the evidence cited in support regarding Rio Grande Project accounting do not materially respond to an argument made in Texas's Motion for Partial Summary Judgment. New Mexico's counterclaims and its apportionment motion address New Mexico's legal position on the interrelationship of the Project, Downstream Contracts and the Compact. CSMF #183 may relate to New Mexico's motion(s), but does not materially respond to Texas's Motion for Partial Summary Judgment. New Mexico's stated fact is non-responsive and otherwise not supported by definite, competent, or significantly probative evidence that genuinely and materially responds to a fact stated in Texas's Motion for Partial Summary Judgment. As such, Texas's stated material facts remain undisputed. Fed. R. Civ. P. 56(a), 56(c)(1).	New Mexico previously responded to the authenticity and hearsay objections. <i>See</i> [Dkt. 468] State of New Mexico's Response to State of Texas's Evidentiary Objections.
184	N/A	Also starting in approximately 2006, Reclamation initiated individual "carryover accounts" for the Districts. Thereafter and during the allocation process, the amounts in the Carryover account, plus extra water needed to ensure delivery of	<i>See</i> NM-EX 006, Barroll 2d Decl. at ¶ 60; NM- EX 100, Barroll Rep. at 48-49, Appx. D, D-21- 23; NM-EX 101, Barroll Reb. Rep. at 21-24.	NM-EX-100, 101: <i>See</i> General Objection #7; Fed. R. Evid. 801(c), hearsay.	Subject to the stated objections, the fact is cited in New Mexico's Response to Texas's Motion for Partial Summary Judgment but does not materially respond to facts stated therein. New Mexico's stated fact and the evidence cited in support regarding Rio Grande Project accounting do not materially respond to an argument made in Texas's Motion for Partial Summary Judgment. New Mexico's counterclaims and	New Mexico previously responded to the authenticity and hearsay objections. <i>See</i> [Dkt. 468] State of New Mexico's Response to State of Texas's Evidentiary Objections.

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		those accounts, has been deducted from Project Storage before the D3 Allocation for the next year is calculated. Because of the contemporaneous reduction in its allocation, EBID has not been able to take much advantage of Carryover. In contrast, EPCWID has carried over large amounts of allocation in many years. The mechanics of how these Carryover accounts are implemented means that large amounts of EPCWID Carryover have reduced the water available for allocation to EBID.			its apportionment motion address New Mexico's legal position on the interrelationship of the Project, Downstream Contracts and the Compact. CSMF #184 may relate to New Mexico's motion(s), but does not materially respond to Texas's Motion for Partial Summary Judgment. New Mexico's stated fact is non-responsive and otherwise not supported by definite, competent, or significantly probative evidence that genuinely and materially responds to a fact stated in Texas's Motion for Partial Summary Judgment. As such, Texas's stated material facts remain undisputed. Fed. R. Civ. P. 56(a), 56(c)(1).	
185	App. No. 78	In January and February 2008, Reclamation, EPCWID, and EBID negotiated a new operating agreement for the Project as settlement for the two lawsuits among the parties ("2008 Operating Agreement").	<i>See</i> generally NM-EX 511, Filiberto Cortez, Lower Rio Grande Project Operating Agreement: Settlement of Litigation (Oct. 2008).	From TX's 12/22/20 Filings: NM-EX-511: <i>See</i> General Objection #8; Fed. R. Evid. 801(c), hearsay.	From TX's 12/22/20 Filings: Subject to the stated objections, undisputed.	New Mexico previously responded to these objections. <i>See</i> [Dkt. 468] State of New Mexico's Response to State of Texas's Evidentiary Objections, <i>and</i> [Dkt. 469] State of New Mexico's Response to Statements of Fact.
185	App. No. 78	The negotiations were mediated by Pat Gordon, Texas's Compact Commissioner.	NM-EX 212, Gordon Dep. (July 15, 2020) at 42:8- 43:24; NM-EX 107, Lopez Rep. at 43.	NM-EX-212: <i>See</i> General Objection #8. NM-EX-107: <i>See</i> General Objection #7; General Objection #2; Fed. R. Evid. 801(c), hearsay.	Subject to the stated objections, undisputed.	New Mexico previously responded to these objections. <i>See</i> [Dkt. 468] State of New Mexico's Response to State of Texas's Evidentiary Objections, <i>and</i> [Dkt. 469] State of New Mexico's Response to Statements of Fact.

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186	App. No. 79	The 2008 Operating Agreement [adopted the D3- Allocation-Plus-Carryover allocation system], and therefore[, it changed] the amount of water that was available for lands in New Mexico and Texas.	NM-EX 202, Cortez Dep. (July 30, 2020) at 94:23-96:9 (examining NM-EX 506, Cortez Affidavit ¶¶ 11, 25 (Apr. 20, 2007)); NM-EX 100, Barroll Rep. at 40-46; NM-EX 107, Lopez Rep. at 44-46.	From TX's 12/22/20 Filings: NM-EX-202: See General Objection #8. NM-EX-100: See General Objection #7; Fed. R. Evid. 801(c), hearsay. NM-EX-107: See General Objection #7; General Objection #2; Fed. R. Evid. 801(c), hearsay.	From TX's 12/22/20 Filings: Subject to the stated objections, disputed in part. In paragraph 79 of NM MSJ on Apportionment, New Mexico asserts that the 2008 Operating Agreement "changed the way that water was allocated between the two Districts, and therefore the amount of water that was available for lands in New Mexico and Texas." In paragraph 80, New Mexico asserts its "primary concern" with the 2008 Operating Agreement is that it is not consistent with the Compact and does not allocate 57 percent of Project supply to New Mexico lands. In fact, under the Operating Agreement New Mexico has received more water than it otherwise should have based solely on the D2 Curve prior to implementation of the Operating Agreement. This is demonstrated by the graph in Figure 11. The blue x's show total Project surface water diversions between 2008 and 2016; the black x's show the total amount of diversions, including groundwater pumping by New Mexico, for the same period. See Brandes Dec. in Opp. to NM at TX_MSJ_007312, paragraphs 1 – 9, 25-26, 30-31.	New Mexico previously responded to these objections. See [Dkt. 468] State of New Mexico's Response to State of Texas's Evidentiary Objections, and [Dkt. 469] State of New Mexico's Response to Statements of Fact.
187	N/A	United States witnesses have testified that the purpose of the change in allocation associated with the 2008 Operating Agreement was to both offset depletions caused by New Mexico groundwater pumping and depletions, and to protect the delivery of EPCWID's allocation from the effects of New Mexico pumping. The United States did not perform any quantitative analysis of the	See, e.g., NM-EX 105, Ferguson Reb. Rep. at 5- 6. See NM-EX 006, Barroll 2d Decl. at ¶ 65.	NM-EX-105: See General Objection #7; Fed. R. Evid. 801(c), hearsay. NM-EX-006: Fed. R. Evid. 602, the declarant lacks personal knowledge regarding the statement that "[t]he US did not perform any quantitative analysis of the impacts of New Mexico pumping at the	Subject to the stated objections, the fact is cited in New Mexico's Response to Texas's Motion for Partial Summary Judgment but does not materially respond to facts stated therein. New Mexico's stated fact and the evidence cited in support regarding the 2008 Operating Agreement do not materially respond to an argument made in Texas's Motion for Partial Summary Judgment. New Mexico's counterclaims and its apportionment motion address New Mexico's legal position on the interrelationship of the Project, Downstream Contracts and the Compact. CSMF #187 may relate to New Mexico's motion(s), but does not materially respond to Texas's Motion for Partial Summary Judgment. New Mexico's stated fact is non-responsive and otherwise not supported by definite, competent, or significantly probative evidence that genuinely	New Mexico previously responded to the authenticity and hearsay objections. See [Dkt. 468] State of New Mexico's Response to State of Texas's Evidentiary Objections. As to Texas's objection to Dr. Barroll, see New Mexico's Response to State of Texas's Second Evidentiary Objections, § III (A).

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		impacts of New Mexico pumping at the time the 2008 Operating Agreement was adopted.		time the 2008 Operating Agreement was adopted."	and materially responds to a fact stated in Texas's Motion for Partial Summary Judgment. As such, Texas's stated material facts remain undisputed. Fed. R. Civ. P. 56(a), 56(c)(1).	
188	N/A	Under the D3-Allocation-Plus-Carryover allocation system, EPCWID has been allocated and received far more than its 43% share of Project Water. Conversely, EBID has been allocated and received less than its 57% share of Project Water.	Dr. Barroll's figure 8.3 depicts this change: [TOTAL ANNUAL ALLOCATION TO DISTRICTS 1996-2018] NM-EX 100, Barroll Rep. at 68; <i>See</i> also NM- EX 001, Barroll Decl., ¶ 36; NM-EX 100, Barroll Rep. at x-xi, 31, 33, 69.	NM-EX-100: <i>See</i> General Objection #7; Fed. R. Evid. 801(c), hearsay.	Subject to the stated objections, the fact is cited in New Mexico's Response to Texas's Motion for Partial Summary Judgment but does not materially respond to facts stated therein. New Mexico's stated fact and the evidence cited in support regarding the D3 allocation method do not materially respond to an argument made in Texas's Motion for Partial Summary Judgment. New Mexico's counterclaims and its apportionment motion address New Mexico's legal position on the interrelationship of the Project, Downstream Contracts and the Compact. CSMF #188 may relate to New Mexico's motion(s), but does not materially respond to Texas's Motion for Partial Summary Judgment. New Mexico's stated fact is non-responsive and otherwise not supported by definite, competent, or significantly probative evidence that genuinely and materially responds to a fact stated in Texas's Motion for Partial Summary Judgment. As such, Texas's stated material facts remain undisputed. Fed. R. Civ. P. 56(a), 56(c)(1).	New Mexico previously responded to the authenticity and hearsay objections. <i>See</i> [Dkt. 468] State of New Mexico's Response to State of Texas's Evidentiary Objections.
189	N/A	From 2006-2019, EPCWID's percentage share of Project allocation, excluding Carryover, has averaged 56% of the total Districts' allocation, compared with 43% prior to 2006. If Project Supply had been divided 57:43—as it had been done historically—EPCWID would have been allocated a total 693,408 AF less during 2006-19. EBID would have been allocated 693,408 AF	NM-EX 101, Barroll Reb. Rep. at 44 & Table 9.	NM-EX-101: <i>See</i> General Objection #7; Fed. R. Evid. 801(c), hearsay.	Subject to the stated objections, the fact is cited in New Mexico's Response to Texas's Motion for Partial Summary Judgment but does not materially respond to facts stated therein. New Mexico's stated fact and the evidence cited in support regarding Rio Grande Project allocation and the 2008 Operating Agreement do not materially respond to an argument made in Texas's Motion for Partial Summary Judgment. New Mexico's counterclaims and its apportionment motion address New Mexico's legal position on the interrelationship of the Project, Downstream Contracts and the Compact. CSMF #189 may relate to New Mexico's motion(s), but does not materially respond to Texas's Motion for Partial Summary Judgment. New	New Mexico previously responded to the authenticity and hearsay objections. <i>See</i> [Dkt. 468] State of New Mexico's Response to State of Texas's Evidentiary Objections.

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		more of Project Supply.			Mexico's stated fact is non- responsive and otherwise not supported by definite, competent, or significantly probative evidence that genuinely and materially responds to a fact stated in Texas's Motion for Partial Summary Judgment. As such, Texas's stated material facts remain undisputed. Fed. R. Civ. P. 56(a), 56(c)(1).	
189	N/A	By reducing EBID's surface water allocation, the 2008 Operating Agreement forces EBID members to pump additional groundwater to order to supply their crops.	<i>See</i> NM-EX 006, Barroll 2d Decl. at ¶ 62.	n/a	<i>See</i> above (189)	New Mexico previously responded to these objections. <i>See</i> [Dkt. 468] State of New Mexico's Response to State of Texas's Evidentiary Objections, <i>and</i> [Dkt. 469] State of New Mexico's Response to Statements of Fact.
190	Notice No. 25	Following the 2008 Operating Agreement, among other changes, the Districts assumed from Reclamation the responsibility to calculate the actual Project release as a function of their total daily orders.	<i>See</i> NM-EX 207, Esslinger Dep. (Aug. 17, 2020) at 122:4-9; NM-EX 221, Reyes Dep. (Nov. 16, 2008) at 23:20-24:18; NM-EX 001, Barroll Decl. at ¶ 21.	From TX's 12/22/20 Filings: NM-EX 207, 221: <i>See</i> General Objection #8.	From TX's 12/22/20 Filings: Subject to the stated objections, disputed. NM-EX 001: Cited "evidence" does not support the proposition. NM-EX 207: Cited "evidence" does not support the proposition. NM-EX 221: Cited "evidence" does not support the proposition.	New Mexico previously responded to these objections. <i>See</i> [Dkt. 468] State of New Mexico's Response to State of Texas's Evidentiary Objections, <i>and</i> [Dkt. 469] State of New Mexico's Response to Statements of Fact.
191	Full Supply No. 14	During each irrigation season (approximately March through October), each District is entitled to order delivery of Project Water up to its annual Project allocation. Deliveries to the Districts are measured by gages and are converted into what are known as "Charged Diversions" (or "Allocation Charges"), which are then subtracted from each District's	NM-EX 001, Barroll Decl. at ¶¶ 21, 26; NM-EX 510, 2008 Operating Agreement at 9–11; NM-EX 529, Bureau of Reclamation, Continued Implementation of the 2008 Operating Agreement for the Rio Grande Project, New Mexico and Texas: Final Environmental Impact Statement, at 18, 24, appx. B (Sep. 30, 2016).	From TX's 12/22/20 Filings: NM-EX 001: <i>See</i> General Objection #1. NM-EX 510, 529: <i>See</i> General Objection #8; Fed. R. Evid. 801(c), hearsay.	From TX's 12/22/20 Filings: Subject to the stated objections, undisputed.	New Mexico previously responded to these objections. <i>See</i> [Dkt. 468] State of New Mexico's Response to State of Texas's Evidentiary Objections, <i>and</i> [Dkt. 469] State of New Mexico's Response to Statements of Fact.

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		allocation account as the irrigation season progresses.				
192	Full Supply No. 15	During the course of the irrigation season, Reclamation receives orders from the Districts and adjusts the gates of Caballo Dam so that these orders are delivered to the Districts' canal headings.	<i>See</i> NM-EX 531, Rio Grande Project Operations Manual at 4-5 (2018) [hereinafter "Operations Manual"].	From TX's 12/22/20 Filings: NM-EX 531: <i>See</i> General Objection #8; Fed. R. Evid. 801(c), hearsay.	From TX's 12/22/20 Filings: Subject to the stated objections, disputed in part. Dr. Barroll cites Dr. Ferguson as her only source for her statement that "Historically, Reclamation has always been able to fulfill the orders made by the Districts." She has insufficient personal knowledge to assert this opinion for purposes of Rule 56 summary judgment, and at trial she would lack qualification to offer this opinion as an expert under Fed. R. Evid. 702(a), and it would additionally be based on insufficient facts and data under Fed. R. Evid. 702(a).	New Mexico previously responded to these objections. <i>See</i> [Dkt. 468] State of New Mexico's Response to State of Texas's Evidentiary Objections, <i>and</i> [Dkt. 469] State of New Mexico's Response to Statements of Fact. As to Texas's objection to Dr. Barroll, see New Mexico's Response to State of Texas's Second Evidentiary Objections, § III (A).
192	Full Supply No. 15	Reclamation sets the Caballo release amount taking into account the losses and gains between Caballo Dam and the canal headings to which it is delivering water, so that regardless of what losses or gains are occurring, the amount ordered will reach the canal heading for which the order is being made.	NM-EX 531, Operations Manual at 4-8.	NM-EX 531: <i>See</i> General Objection #8; Fed. R. Evid. 801(c), hearsay.	Subject to the stated objections, disputed in part. Dr. Barroll cites Dr. Ferguson as her only source for her statement that "Historically, Reclamation has always been able to fulfill the orders made by the Districts." She has insufficient personal knowledge to assert this opinion for purposes of Rule 56 summary judgment, and at trial she would lack qualification to offer this opinion as an expert under Fed. R. Evid. 702(a), and it would additionally be based on insufficient facts and data under Fed. R. Evid. 702(a).	New Mexico previously responded to these objections. <i>See</i> [Dkt. 468] State of New Mexico's Response to State of Texas's Evidentiary Objections, <i>and</i> [Dkt. 469] State of New Mexico's Response to Statements of Fact. As to Texas's objection to Dr. Barroll, see New Mexico's Response to State of Texas's Second Evidentiary Objections, § III (A).

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192	Full Supply No. 15	If the delivery to EPCWID falls short of the order, there is a procedure by which EPCWID, EBID and Reclamation coordinate and water is released from EBID's works to temporarily mitigate the shortfall until adjustment of Caballo releases resolves the problem.	NM-EX 001, Barroll Decl., ¶ 27; NM-EX 531, Operations Manual, at 8.	NM-EX 531: See General Objection #8; Fed. R. Evid. 801(c), hearsay. NM-EX 001: Fed. R. Civ. P. 56(c)(4), Fed. R. Evid. 702(a) – Dr. Barroll cites Dr. Ferguson as her only source for her statement that "Historically, Reclamation has always been able to fulfill the orders made by the Districts." She has insufficient personal knowledge to assert this opinion for purposes of Rule 56 summary judgment, and at trial she would lack qualification to offer this opinion as an expert under Fed. R. Evid. 702(a), and it would additionally be based on insufficient facts and data under Fed. R. Evid. 702(a).	Subject to the stated objections, disputed in part. Dr. Barroll cites Dr. Ferguson as her only source for her statement that "Historically, Reclamation has always been able to fulfill the orders made by the Districts." She has insufficient personal knowledge to assert this opinion for purposes of Rule 56 summary judgment, and at trial she would lack qualification to offer this opinion as an expert under Fed. R. Evid. 702(a), and it would additionally be based on insufficient facts and data under Fed. R. Evid. 702(a).	New Mexico previously responded to these objections. See [Dkt. 468] State of New Mexico's Response to State of Texas's Evidentiary Objections, and [Dkt. 469] State of New Mexico's Response to Statements of Fact. As to Texas's objection to Dr. Barroll, see New Mexico's Response to State of Texas's Second Evidentiary Objections, § III (A).

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192	Full Supply No. 15	Historically, Reclamation has always been able to fulfill the orders made by the Districts.	NM-EX 001, Barroll Decl. at ¶ 27; <i>See also</i> NM- EX 105, Ferguson Discl. at 12–13 (“EPCWID received all water that the district ordered during the period 1979- 2002”); NM-EX 210, Ferguson Dep. (Feb. 20, 2020) at 260:6-7 (“I’m not aware of any records that suggest EP1 [EPCWID] ordered water that it did not receive.”).	NM-EX 001: Fed. R. Civ. P. 56(c)(4), Fed. R. Evid. 702(a) – Dr. Barroll cites Dr. Ferguson as her only source for her statement that “Historically, Reclamation has always been able to fulfill the orders made by the Districts.” She has insufficient personal knowledge to assert this opinion for purposes of Rule 56 summary judgment, and at trial she would lack qualification to offer this opinion as an expert under Fed. R. Evid. 702(a), and it would additionally be based on insufficient facts and data under Fed. R. Evid. 702(a). NM-EX 105: See General Objection #7; Fed. R. Evid. 801(c), hearsay. NM-EX 210: See General Objection #8.	Subject to the stated objections, disputed in part. Dr. Barroll cites Dr. Ferguson as her only source for her statement that “Historically, Reclamation has always been able to fulfill the orders made by the Districts.” She has insufficient personal knowledge to assert this opinion for purposes of Rule 56 summary judgment, and at trial she would lack qualification to offer this opinion as an expert under Fed. R. Evid. 702(a), and it would additionally be based on insufficient facts and data under Fed. R. Evid. 702(a).	New Mexico previously responded to these objections. <i>See</i> [Dkt. 468] State of New Mexico’s Response to State of Texas’s Evidentiary Objections, <i>and</i> [Dkt. 469] State of New Mexico’s Response to Statements of Fact. As to Texas’s objection to Dr. Barroll, see New Mexico’s Response to State of Texas’s Second Evidentiary Objections, § III (A).

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193	Full Supply No. 17	The years 2007 through 2010 were full-supply years for EPCWID because in each of those years EPCWID's annual allocation available for diversions at EPCWID's headgates (if ordered) exceeded 376,862 AFY—the full-supply allocation amount determined by Reclamation in 1990— and also exceeded the higher full-supply allocation to EPCWID (388,192 AFY) under the 2008 Operating Agreement.	NM-EX 001, Barroll Decl. at ¶¶ 28, 31, 34-37 & Table 2; NM-EX 402, EPCWID Accounting Records; NM-EX 500, EPCWID Water Allocation Records (2006-2016); NM-EX 510, 2008 Operating Agreement, Tables 2 & 4.	From TX's 12/22/20 Filings: NM-EX 001: See General Objection #1. NM-EX 402: See General Objection #8; Fed. R. Evid. 801(c), hearsay. NM-EX 500: See General Objection #8; Fed. R. Evid. 801(c), hearsay.	From TX's 12/22/20 Filings: Subject to the stated objections, disputed. See Brandes Dec. in Opp. to NM at TX_MSJ_007312, paragraphs 1 – 24. The discussion is lengthy, and is incorporated herein by reference.	New Mexico previously responded to these objections. See [Dkt. 468] State of New Mexico's Response to State of Texas's Evidentiary Objections, and [Dkt. 469] State of New Mexico's Response to Statements of Fact.
194	App. No. 80	In 2010, after it had an opportunity to study the new operations and method for allocating water, New Mexico raised several concerns about the 2008 Operating Agreement. One of New Mexico's primary concerns was that the 2008 Operating Agreement was inconsistent with the Compact because it did not allocate 57% of Project supply to New Mexico lands.	NM-EX 517, Letter from John D'Antonio, State Engineer, State of New Mexico to Michael Connor, Commissioner, United States Bureau of Reclamation (Mar. 4, 2010); NM-EX 002, D'Antonio Decl. at ¶ 11.	From TX's 12/22/20 Filings: NM-EX-517: See General Objection #8; Fed. R. Evid. 801(c), hearsay.	From TX's 12/22/20 Filings: Subject to the stated objections, disputed in part. In paragraph 79 of NM MSJ on Apportionment, New Mexico asserts that the 2008 Operating Agreement "changed the way that water was allocated between the two Districts, and therefore the amount of water that was available for lands in New Mexico and Texas." In paragraph 80, New Mexico asserts its "primary concern" with the 2008 Operating Agreement is that it is not consistent with the Compact and does not allocate 57 percent of Project supply to New Mexico lands. In fact, under the Operating Agreement New Mexico has received more water than it otherwise should have based solely on the D2 Curve prior to implementation of the Operating Agreement. This is demonstrated by the graph in Figure 11. The blue x's show total Project surface water diversions between 2008 and 2016; the black x's show the total amount of diversions, including groundwater pumping by New Mexico, for the same period. See Brandes Dec. in Opp. to NM at TX_MSJ_007312,	New Mexico previously responded to these objections. See [Dkt. 468] State of New Mexico's Response to State of Texas's Evidentiary Objections, and [Dkt. 469] State of New Mexico's Response to Statements of Fact.

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					paragraphs 1 – 9, 25-26, 30-31.	
195	N/A	Under the 2008 Operating Agreement, Reclamation delivers New Mexico's surface water to Texas without a required export permit required by New Mexico law.	<i>See</i> NM-EX 007, D'Antonio 2d Decl. at ¶¶ 37(a), 50-51.	NM-EX-007: Fed. R. Civ. P. 56(c)(4). The cited evidence does not support the stated "facts" in whole and/or in part. Fed. R. Civ. P. 56(c). The stated "facts" constitute improper legal conclusions in whole or in part.	Subject to the stated objections, the fact is cited in New Mexico's Response to Texas's Motion for Partial Summary Judgment but does not materially respond to facts stated therein. New Mexico's stated fact and the evidence cited in support regarding the 2008 Operating Agreement do not materially respond to an argument made in Texas's Motion for Partial Summary Judgment. New Mexico's counterclaims and its apportionment motion address New Mexico's legal position on the interrelationship of the Project, Downstream Contracts and the Compact. CSMF #195 may relate to New Mexico's motion(s), but does not materially respond to Texas's Motion for Partial Summary Judgment. New Mexico's stated fact is non-responsive and otherwise not supported by definite, competent, or significantly probative evidence that genuinely and materially responds to a fact stated in Texas's Motion for Partial Summary Judgment. As such, Texas's stated material facts remain undisputed. Fed. R. Civ. P. 56(a), 56(c)(1).	As to Texas's objection to Mr. D'Antonio, see New Mexico's Response to State of Texas's Second Evidentiary Objections, § III (C).
196	N/A	Reclamation's implementation of the D3 Allocation method and the 2008 Operating Agreement have reduced the delivery efficiency and performance of the Rio Grande Project as a whole.	NM-EX 100, Barroll Rep. at 77-78; NM-EX 103, Barroll 2d Suppl. Reb. Rep. at 18-19.	NM-EX-100, 103: <i>See</i> General Objection #7; Fed. R. Evid. 801(c), hearsay.	Subject to the stated objections, the fact is cited in New Mexico's Response to Texas's Motion for Partial Summary Judgment but does not materially respond to facts stated therein. New Mexico's stated fact and the evidence cited in support regarding the D3 allocation and 2008 Operating Agreement do not materially respond to an argument made in Texas's Motion for Partial Summary Judgment. New Mexico's counterclaims and its apportionment motion address New Mexico's legal position on the interrelationship of the Project, Downstream Contracts and the Compact. CSMF #196 may relate to New Mexico's motion(s), but does not materially respond to Texas's Motion for Partial Summary Judgment. New Mexico's stated fact is non-responsive and otherwise not supported by definite, competent, or significantly probative	New Mexico previously responded to the authenticity and hearsay objections. <i>See</i> [Dkt. 468] State of New Mexico's Response to State of Texas's Evidentiary Objections.

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					evidence that genuinely and materially responds to a fact stated in Texas's Motion for Partial Summary Judgment. As such, Texas's stated material facts remain undisputed. Fed. R. Civ. P. 56(a), 56(c)(1).	
196	N/A	Reclamation's implementation of the D3 Allocation method and the 2008 Operating Agreement have harmed New Mexico by substantially reducing its surface water supply in the LRG, and negatively impacting the water balance of groundwater systems of the Rincon and Mesilla basins.	NM-EX 100, Barroll Rep. at 71-77.	NM-EX-100: <i>See</i> General Objection #7; Fed. R. Evid. 801(c), hearsay.	<i>See</i> above (196)	New Mexico previously responded to the authenticity and hearsay objections. <i>See</i> [Dkt. 468] State of New Mexico's Response to State of Texas's Evidentiary Objections.
196	N/A	EPCWID and Texas have benefitted by gaining a disproportionate share of surface water.	<i>See</i> NM-EX 006, Barroll 2d Decl. at ¶¶ 71-72.	NM-EX-006: Fed. R. Civ. P. 56(c)(4). The cited evidence does not support the stated "facts" in whole and/or in part. Fed. R. Civ. P. 56(c). To the extent the stated "facts" address Compact delivery obligations, they constitute improper legal conclusions in whole or in part.	<i>See</i> above (196)	New Mexico previously responded to the authenticity and hearsay objections. <i>See</i> [Dkt. 468] State of New Mexico's Response to State of Texas's Evidentiary Objections. As to Texas's objection to Dr. Barroll, see New Mexico's Response to State of Texas's Second Evidentiary Objections, § III (A).

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197	App. No. 81	After attempts to resolve the issues related to the 2008 Operating Agreement failed, in 2011, New Mexico filed suit in federal district court <i>Seeking</i> to have the 2008 Operating Agreement set aside.	NM-EX 520, Complaint for Declaratory and Injunctive Relief, New Mexico v. United States, No. 1:11-cv-00691 (D.N.M. Aug. 8, 2011).	From TX's 12/22/20 Filings: NM-EX-520: <i>See</i> General Objection #8; Fed. R. Evid. 801(c), hearsay.	From TX's 12/22/20 Filings: Subject to the stated objections, undisputed.	New Mexico previously responded to these objections. <i>See</i> [Dkt. 468] State of New Mexico's Response to State of Texas's Evidentiary Objections, <i>and</i> [Dkt. 469] State of New Mexico's Response to Statements of Fact.
198	N/A	Texas filed the present original action in reaction to New Mexico's 2011 federal district lawsuit.	NM-EX 212, Gordon Dep. (July 15, 2020) at 109:2-13; NM-EX 224, Schmidt-Petersen Dep. (June 29, 2020) at 40:19-41:12. [Apportionment No. 82].	NM-EX-212, 224: <i>See</i> General Objection #8.	Subject to the stated objections, the fact is cited in New Mexico's Response to Texas's Motion for Partial Summary Judgment but does not materially respond to facts stated therein. New Mexico's stated fact and the evidence cited in support regarding the New Mexico's position on Texas's "intent" in filing this original action is not relevant to the issues raised in Texas's Motion for Summary Judgment. New Mexico's stated fact is non-responsive and otherwise not supported by definite, competent, or significantly probative evidence that genuinely and materially responds to a fact stated in Texas's Motion for Partial Summary Judgment. As such, Texas's stated material facts remain undisputed. Fed. R. Civ. P. 56(a), 56(c)(1).	New Mexico previously responded to these authentication and hearsay objections. <i>See</i> [Dkt. 468] State of New Mexico's Response to State of Texas's Evidentiary Objections, <i>and</i> [Dkt. 469] State of New Mexico's Response to Statements of Fact.
199	N/A	Prior to the creation of the Project, farmers in the Rio Grande Valley below what is now Elephant Butte Reservoir recognized that groundwater was a potential source of irrigation supply.	NM-EX 011, Stevens 2d Decl. at ¶ 4; NM-EX 006, Barroll 2d Decl. at ¶ 14.	NM-EX-006: Fed. R. Civ. P. 56(c)(4), Fed. R. Evid. 602, 702(a); Dr. Barroll cites historical records in support of her conclusion but has insufficient personal knowledge to assert this opinion for purposes of Rule 56 summary judgment, and at trial she would lack qualification to offer this opinion as an	New Mexico's stated fact, and supporting evidence, are not cited in New Mexico's Response to Texas's Motion for Partial Summary Judgment and are therefore non-responsive and irrelevant. As such, Texas's stated material facts remain undisputed. Fed. R. Civ. P. 56(a), 56(c)(1).	New Mexico previously responded to the authenticity and hearsay objections. <i>See</i> [Dkt. 468] State of New Mexico's Response to State of Texas's Evidentiary Objections. As to Texas's objection to Dr. Barroll, see New Mexico's Response to State of Texas's Second Evidentiary Objections, § III (A).

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				expert under Fed. R. Evid. 702(a).		
200	N/A	In 1903, the New Mexico Agricultural Experiment Station reported that irrigators in Texas around El Paso had "been compelled to turn their attention to other water supplies or else abandon all agricultural work. ... they have demonstrated the fact that crops can be profitably grown by irrigation from wells tapping the underflow in the Rio Grande Valley." The report noted that observation wells at the station demonstrated "an ample quantity" of groundwater for irrigation described as "reliable and secure," "subject to no fluctuations," and "sufficient to meet all reasonable needs."	NM-EX 332, John J. Vernon and Francis E. Lester, Agricultural Experiment Station, N.M. College of Agriculture and Mechanical Arts, Bulletin No. 45, Pumping for Irrigation from Wells, at 12-14, 56 (1903); NM-EX 011, Stevens 2d Decl. at ¶ 4.	n/a	New Mexico's stated fact, and supporting evidence, are not cited in New Mexico's Response to Texas's Motion for Partial Summary Judgment and are therefore non-responsive and irrelevant. As such, Texas's stated material facts remain undisputed. Fed. R. Civ. P. 56(a), 56(c)(1).	N/A
201	N/A	Prior to construction of the Rio Grande Project, irrigators in the Mesilla Valley in New Mexico developed a number of groundwater wells to supply irrigation water during period of low and variable surface supply.	See NM-EX 011, Stevens 2d Decl. at ¶¶ 4, 30; NM-EX 006, Barroll 2d Decl. at 14; NM-EX 332, John J. Vernon and Francis E. Lester, Agricultural Experiment Station, N.M. College of Agriculture and Mechanical Arts, Bulletin No. 45, Pumping for Irrigation from Wells, at 55 (1903); NM-EX	NM-EX-006: Fed. R. Civ. P. 56(c)(4), Fed. R. Evid. 602, 702(a); Dr. Barroll cites historical records in support of her conclusion but has insufficient personal knowledge to assert this opinion for purposes of Rule 56 summary judgment, and at trial she	New Mexico's stated fact, and supporting evidence, are not cited in New Mexico's Response to Texas's Motion for Partial Summary Judgment and are therefore non-responsive and irrelevant. As such, Texas's stated material facts remain undisputed. Fed. R. Civ. P. 56(a), 56(c)(1).	As to Texas's objection to Dr. Barroll, see New Mexico's Response to State of Texas's Second Evidentiary Objections, § III (A).

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			342, Charles S. Slichter, United States Geological Survey, Water Supply and Irrigation Paper No. 141, Observations on the Ground Waters of the Rio Grande Valley, at 22 (1905).	would lack qualification to offer this opinion as an expert under Fed. R. Evid. 702(a).		
202	N/A	By 1940, after decades of Project operations, very few of these pre-Project wells remained in operation. However, documentation with the New Mexico Office of the State Engineer suggests that at least some irrigation wells were drilled in the 1920s and 1930s.	<i>See</i> NM-EX 006, Barroll 2d Decl. at ¶ 14; <i>See</i> also NM-EX 427, C.S. Conover, United States Geological Survey, Geological Survey Water Supply Paper 1230, Ground-Water Conditions in the Rincon and Mesilla Valleys and Adjacent Areas in New Mexico, at 9, 103-105, 107 (1954).	NM-EX-006: Fed. R. Civ. P. 56(c)(4), Fed. R. Evid. 602, 702(a); Dr. Barroll cites historical records in support of her conclusion but has insufficient personal knowledge to assert this opinion for purposes of Rule 56 summary judgment, and at trial she would lack qualification to offer this opinion as an expert under Fed. R. Evid. 702(a). NM-EX-427: <i>See</i> General Objection #8; Fed. R. Evid. 801(c), hearsay.	New Mexico's stated fact, and supporting evidence, are not cited in New Mexico's Response to Texas's Motion for Partial Summary Judgment and are therefore non-responsive and irrelevant. As such, Texas's stated material facts remain undisputed. Fed. R. Civ. P. 56(a), 56(c)(1).	New Mexico previously responded to the authenticity and hearsay objections. <i>See</i> [Dkt. 468] State of New Mexico's Response to State of Texas's Evidentiary Objections. As to Texas's objection to Dr. Barroll, see New Mexico's Response to State of Texas's Second Evidentiary Objections, § III (A).
203	N/A	Following construction of the Rio Grande Project storage and diversion works there was continuing interest, in both New Mexico and Texas, in developing groundwater resources to supplement existing irrigation supplies.	<i>See</i> , e.g., NM-EX 348, D.C. Henny, Board of Engineers, Rio Grande Project, Report on Water Supply and Project Area High Line Canal Construction Power Development and City Water Supplies, at 35 (Nov. 1919); NM-EX 349, Harold Conkling, United States	NM-EX-113: <i>See</i> General Objection #7; Fed. R. Evid. 801(c), hearsay.	New Mexico's stated fact, and supporting evidence, are not cited in New Mexico's Response to Texas's Motion for Partial Summary Judgment and are therefore non-responsive and irrelevant. As such, Texas's stated material facts remain undisputed. Fed. R. Civ. P. 56(a), 56(c)(1).	New Mexico previously responded to the authenticity and hearsay objections. <i>See</i> [Dkt. 468] State of New Mexico's Response to State of Texas's Evidentiary Objections.

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			Reclamation Service, Water Supply of the Rio Grande River, at TX_00182134 (June 18, 1919); <i>See</i> also NM-EX 113, Stevens Reb. Rep. at 11 (discussing Conkling's conclusion that groundwater pumping to expand the irrigable acreage of the project would only have affected surface supply in the two lowest supply years in the 58 years of data examined); NM-EX 337, D.C. Henny, Board of Engineers, Rio Grande Project, Report on Water Supply and Project Area High Line Canal Construction Power Development and City Water Supplies, at 35-36 (Nov. 1919).			
204	N/A	Ultimately, as of 1938, scientific understanding of the relationship between groundwater and surface water in the Rio Grande Basin was limited and conflicting. The RGJI did not include an investigation of groundwater resources below Elephant Butte.	NM-EX 113, Stevens Reb. Rep. at 4, 6, 8; NM- EX 011, Stevens 2d Decl. at ¶ 31. <i>See, e.g.,</i> NM-EX 342, Charles S. Slichter, United States Geological Survey, Water Supply and Irrigation Paper No. 141, Observations on the Ground Waters of the Rio Grande Valley, at 27-29 (1905); NM-EX 347, E.L. Barrows, Report	NM-EX-113: <i>See</i> General Objection #7; Fed. R. Evid. 801(c), hearsay.	New Mexico's stated fact, and supporting evidence, are not cited in New Mexico's Response to Texas's Motion for Partial Summary Judgment and are therefore non-responsive and irrelevant. As such, Texas's stated material facts remain undisputed. Fed. R. Civ. P. 56(a), 56(c)(1).	New Mexico previously responded to these authenticity and hearsay objections. <i>See</i> [Dkt. 468] State of New Mexico's Response to State of Texas's Evidentiary Objections. In addition, this fact was not asserted against Texas and Texas proffers no fact to which New Mexico's fact is alleged to dispute. Thus, Texas's

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			of <i>Seepage Study on Rio Grande Between Elephant Butte Dam and Leasburg Dam</i> , at 1 (Nov. 26-28, 1928).			objection is nonsensical.
205	N/A	Reclamation's and other parties' conduct in the post- Compact drought during the 1940s and 1950s indicates that no contemporary actor believed that the Compact prohibited groundwater pumping.	<i>See</i> NM-EX 113, Stevens Reb. Rep. at 15; NM- EX 112, Stevens Rep. at 92-94.	NM-EX-113, 112: <i>See</i> General Objection #7; Fed. R. Evid. 801(c), hearsay.	New Mexico's stated fact, and supporting evidence, are not cited in New Mexico's Response to Texas's Motion for Partial Summary Judgment and are therefore non-responsive and irrelevant. As such, Texas's stated material facts remain undisputed. Fed. R. Civ. P. 56(a), 56(c)(1).	New Mexico previously responded to these authenticity and hearsay objections. <i>See</i> [Dkt. 468] State of New Mexico's Response to State of Texas's Evidentiary Objections. In addition, this fact was not asserted against Texas and Texas proffers no fact to which New Mexico's fact is alleged to dispute. Thus, Texas's objection is nonsensical.
206	N/A	In the middle 1940s, the Project faced its first significant period of drought following execution of the Compact. As a result, Project Storage levels fell below average, causing Reclamation to warn of potential water rationing.	<i>See</i> NM-EX 006, Barroll 2d Decl at ¶ 15; NM- EX 100, Barroll Rep. at 19; NM-EX 112, Stevens Rep. at 94. <i>See</i> , e.g., NM-EX 334, Barroll Excerpts of Rio Grande Project Histories 1946-50, at NM_00027487, NM_00027860, NM_00027861, NM_00028290, NM_00029140.	NM-EX-006: Fed. R. Civ. P. 56(c)(4), Fed. R. Evid. 602, 702(a); Dr. Barroll cites historical records in support of her conclusion but has insufficient personal knowledge to assert this opinion for purposes of Rule 56 summary judgment, and at trial she would lack qualification to offer this opinion as an expert under Fed. R.	New Mexico's stated fact, and supporting evidence, are not cited in New Mexico's Response to Texas's Motion for Partial Summary Judgment and are therefore non-responsive and irrelevant. As such, Texas's stated material facts remain undisputed. Fed. R. Civ. P. 56(a), 56(c)(1).	New Mexico previously responded to these authenticity and hearsay objections. <i>See</i> [Dkt. 468] State of New Mexico's Response to State of Texas's Evidentiary Objections. In addition, this fact was not asserted against Texas and Texas proffers no fact to which New Mexico's fact is alleged to dispute. Thus, Texas's objection is nonsensical.

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				Evid. 702(a). NM-EX-112: <i>See</i> General Objection #7; Fed. R. Evid. 801(c), hearsay.		As to Texas's objection to Dr. Barroll, see New Mexico's Response to State of Texas's Second Evidentiary Objections, § III (A).
207	N/A	Drought conditions worsened in the 1950s.	<i>See</i> NM-EX 006, Barroll 2d Decl. at ¶ 17.	n/a	New Mexico's stated fact, and supporting evidence, are not cited in New Mexico's Response to Texas's Motion for Partial Summary Judgment and are therefore non-responsive and irrelevant. As such, Texas's stated material facts remain undisputed. Fed. R. Civ. P. 56(a), 56(c)(1).	This fact was not asserted against Texas and Texas proffers no fact to which New Mexico's fact is alleged to dispute. Thus, Texas's objection is nonsensical.
207	N/A	Beginning in 1951, Reclamation announced limits to per- acre allocations to Project lands.	<i>See</i> id.; NM-EX 419, Barroll Excerpts of Rio Grande Project Histories 1951-1957, at NM_00029503-07 (indicating, in a series of "Water Announcements," that "strict rationing" would be mandatory and setting allotments).	NM-EX-419: <i>See</i> General Objection #8; Fed R. Evid. 801(c), hearsay.	New Mexico's stated fact, and supporting evidence, are not cited in New Mexico's Response to Texas's Motion for Partial Summary Judgment and are therefore non-responsive and irrelevant. As such, Texas's stated material facts remain undisputed. Fed. R. Civ. P. 56(a), 56(c)(1).	New Mexico previously responded to these authenticity and hearsay objections. <i>See</i> [Dkt. 468] State of New Mexico's Response to State of Texas's Evidentiary Objections. In addition, this fact was not asserted against Texas and Texas proffers no fact to which New Mexico's fact is alleged to dispute. Thus, Texas's objection is nonsensical.
208	N/A	Facing limited surface supply allocations, farmers within EBID and EPCWID both developed groundwater pumping capacity in order to supplement their irrigation supplies.	<i>See</i> NM-EX 006, Barroll 2d Decl. at ¶ 15; NM- EX 100, Barroll Rep. at 19-20 (citing NM-EX 424, C.S. Conover, United States Geological Survey, Geological Survey	NM-EX-100: <i>See</i> General Objection #7; Fed. R. Evid. 801(c), hearsay. NM-EX-424, 432, 437: <i>See</i> General Objection	New Mexico's stated fact, and supporting evidence, are not cited in New Mexico's Response to Texas's Motion for Partial Summary Judgment and are therefore non-responsive and irrelevant. As such, Texas's stated material facts remain undisputed. Fed. R. Civ. P. 56(a), 56(c)(1).	New Mexico previously responded to these authenticity and hearsay objections. <i>See</i> [Dkt. 468] State of New Mexico's Response to State of Texas's Evidentiary Objections.

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			Water Supply Paper 1230, Ground-Water Conditions in the Rincon and Mesilla Valleys and Adjacent Areas in New Mexico (1954); NM-EX 432, Narenda N. Gunaji, Engineering Experiment Station, New Mexico State University, Groundwater Conditions in Elephant Butte Irrigation District (Nov. 1961)); NM-EX, 437, Ralph E. Smith, United States Geological Survey, Bulletin 5603, Ground-Water Resources of the El Paso District, Texas, at 10 (Feb. 1956).	#8; Fed. R. Evid. 801(c), hearsay.		
209	N/A	Reclamation recognized that groundwater pumping would be necessary to sustain the Project and actively encouraged the development of groundwater pumping capacity to supplement irrigation supply in the Project throughout the 1950s.	<i>See</i> NM-EX 006, Barroll 2d Decl. at ¶¶ 15, 17- 18; NM-EX 113, Stevens Reb. Rep. at 19-20; NM-EX 100, Barroll Rep. at 21; <i>See</i> also, e.g., NM-EX 419, Barroll Excerpts of Rio Grande Project Histories 1951, at NM_00029507 (Aug. 1951 “Water Announcement” that encourages “[w]ater users who have pumps of good capacity that will supply their needs” to “arrange for transfer of part of their unused allotment water to	NM-EX-006: Fed. R. Civ. P. 56(c)(4), Fed. R. Evid. 602, 702(a); Dr. Barroll cites historical records in support of her conclusion but has insufficient personal knowledge to assert this opinion for purposes of Rule 56 summary judgment, and at trial she would lack qualification to offer this opinion as an expert under Fed. R. Evid. 702(a). NM-EX-	Subject to the stated objections, the fact is cited in New Mexico's Response to Texas's Motion for Partial Summary Judgment but does not materially respond to facts stated therein. New Mexico's stated fact and the evidence cited in support regarding the Project operations do not materially respond to an argument made in Texas's Motion for Partial Summary Judgment. New Mexico's counterclaims and its apportionment motion address New Mexico's legal position on the interrelationship of the Project, Downstream Contracts and the Compact. CSMF #209 may relate to New Mexico's motion(s), but does not materially respond to Texas's Motion for Partial Summary Judgment. New Mexico's stated fact is non-responsive and otherwise not supported by definite, competent, or significantly probative evidence that genuinely and materially responds to a fact stated in Texas's Motion for	New Mexico previously responded to these authenticity and hearsay objections. <i>See</i> [Dkt. 468] State of New Mexico's Response to State of Texas's Evidentiary Objections. As to Texas's objection to Dr. Barroll, see New Mexico's Response to State of Texas's Second Evidentiary Objections, § III (A).

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<u>NM- CS MF #</u>	<u>NM's Prior Numbering System</u>	<u>New Mexico's Stated Fact</u>	<u>New Mexico's Supporting Evidence</u>	<u>TEXAS'S EVIDENTIARY OBJECTIONS</u>	<u>TEXAS'S RESPONSE</u>	<u>NEW MEXICO'S RESPONSE TO TEXAS EVIDENTIARY OBJECTIONS</u>
			those who are in need of additional water"); NM-EX 417, Barroll Excerpts of Rio Grande Project Histories 1951-1957, at NM_00029819, NM_00029823, NM_00030599, NM_00030890 (similar); NM-EX 420, Barroll Excerpts of Rio Grande Project Histories 1951-1957, at NM_00029465, NM_0029793 (permitting Project farmers to distribute pumped groundwater through Project conveyances).	113, 100: <i>See</i> General Objection #7; Fed. R. Evid. 801(c), hearsay. NM-EX-419, 417, 420: <i>See</i> General Objection #8; Fed. R. Evid. 801(c), hearsay.	Partial Summary Judgment. As such, Texas's stated material facts remain undisputed. Fed. R. Civ. P. 56(a), 56(c)(1).	
210	N/A	The use of groundwater to supplement surface supplies allowed the Project to remain economically viable during the drought.	<i>See</i> NM-EX 006, Barroll 2d Decl. at ¶¶ 19-20; <i>See</i> also, e.g., NM-EX 420, Barroll Excerpts of Rio Grande Project Histories 1951-1957, at NM_00029783; NM_00030086, NM_00030570, NM_00030862, NM_00030870, NM_00030873, NM_00031107 (discussing the importance of well water irrigation to the economic production of the Project during the drought).	NM-EX-006: Fed. R. Civ. P. 56(c)(4), Fed. R. Evid. 602, 702(a); Dr. Barroll cites historical records in support of her conclusion but has insufficient personal knowledge to assert this opinion for purposes of Rule 56 summary judgment, and at trial she would lack qualification to offer this opinion as an expert under Fed. R. Evid. 702(a). NM-EX-420: <i>See</i> General Objection #8; Fed. R. Evid. 801(c), hearsay.	New Mexico's stated fact, and supporting evidence, are not cited in New Mexico's Response to Texas's Motion for Partial Summary Judgment and are therefore non-responsive and irrelevant. As such, Texas's stated material facts remain undisputed. Fed. R. Civ. P. 56(a), 56(c)(1).	New Mexico previously responded to these authenticity and hearsay objections. <i>See</i> [Dkt. 468] State of New Mexico's Response to State of Texas's Evidentiary Objections. In addition, this fact was not asserted against Texas and Texas proffers no fact to which New Mexico's fact is alleged to dispute. Thus, Texas's objection is nonsensical. As to Texas's objection to Dr. Barroll, see New Mexico's Response to State of Texas's Second Evidentiary Objections, § III (A).

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211	N/A	In the course of the drought, Reclamation and the irrigation districts developed a greater understanding of the effects of groundwater pumping on surface supply in the region.	<i>See</i> NM- EX 011, Stevens 2d Decl. at ¶ 32; NM- EX 006, Barroll 2d Decl. at ¶ 16.	NM-EX-006: Fed. R. Civ. P. 56(c)(4), Fed. R. Evid. 602, 702(a); Dr. Barroll cites historical records in support of her conclusion but has insufficient personal knowledge to assert this opinion for purposes of Rule 56 summary judgment, and at trial she would lack qualification to offer this opinion as an expert under Fed. R. Evid. 702(a).	New Mexico's stated fact, and supporting evidence, are not cited in New Mexico's Response to Texas's Motion for Partial Summary Judgment and are therefore non-responsive and irrelevant. As such, Texas's stated material facts remain undisputed. Fed. R. Civ. P. 56(a), 56(c)(1).	As to Texas's objection to Dr. Barroll, see New Mexico's Response to State of Texas's Second Evidentiary Objections, § III (A).
211	N/A	Hydrologist Clyde S. Conover conducted an investigation at the request of EBID and published a report in 1954; he concluded that "[g]round water obtained by pumping in the Rincon and Mesilla Valleys does not represent an additional supply or new source of water to the project, but rather a change in method, time, and place of diversion of the supplies already available" and that pumping in successive dry years would draw from groundwater storage and require a period of recharge in later years in order for return flows to recover."	NM-EX 113, Stevens Reb. Rep. 18; NM-EX 424, C.S. Conover, United States Geological Survey, Geological Survey Water Supply Paper 1230, Ground-Water Conditions in the Rincon and Mesilla Valleys and Adjacent Areas in New Mexico, at 2-3, 128 (1954).	NM-EX-113: <i>See</i> General Objection #7; Fed. R. Evid. 801(c), hearsay.	New Mexico's stated fact, and supporting evidence, are not cited in New Mexico's Response to Texas's Motion for Partial Summary Judgment and are therefore non-responsive and irrelevant. As such, Texas's stated material facts remain undisputed. Fed. R. Civ. P. 56(a), 56(c)(1).	New Mexico previously responded to these authenticity and hearsay objections. <i>See</i> [Dkt. 468] State of New Mexico's Response to State of Texas's Evidentiary Objections.

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211	N/A	Other follow-up studies built upon this analysis and refined Conover's conclusions regarding groundwater recharge.	<i>See</i> NM-EX 113, Stevens Reb. Rep. 20 (summarizing the work of Narendra N. Gunaji, who concluded that Conover overestimated the length of time necessary to recharge the groundwater after surface supplies return to normal).	NM-EX-113: <i>See</i> General Objection #7; Fed. R. Evid. 801(c), hearsay.	New Mexico's stated fact, and supporting evidence, are not cited in New Mexico's Response to Texas's Motion for Partial Summary Judgment and are therefore non-responsive and irrelevant. As such, Texas's stated material facts remain undisputed. Fed. R. Civ. P. 56(a), 56(c)(1).	New Mexico previously responded to these authenticity and hearsay objections. <i>See</i> [Dkt. 468] State of New Mexico's Response to State of Texas's Evidentiary Objections.
212	N/A	Despite a coalescing understanding of the interrelationship between groundwater pumping and surface supplies, the historical record contains no evidence that any party objected to the increase in groundwater extraction during 1940s and 1950s.	NM-EX 113, Stevens Reb. Rep. at 15-18; <i>See</i> also NM-EX 241, Miltenberger Dep. (June 8, 2020) at 93:10-19, 114:9-115:23; NM- EX 240, Kryloff Dep. (Aug. 6, 2020) at 111:1-112:14.	NM-EX-113: <i>See</i> General Objection #7; Fed. R. Evid. 801(c), hearsay. NM-EX-241, 240: <i>See</i> General Objection #8.	New Mexico's stated fact, and supporting evidence, are not cited in New Mexico's Response to Texas's Motion for Partial Summary Judgment and are therefore non-responsive and irrelevant. As such, Texas's stated material facts remain undisputed. Fed. R. Civ. P. 56(a), 56(c)(1).	New Mexico previously responded to these authenticity and hearsay objections. <i>See</i> [Dkt. 468] State of New Mexico's Response to State of Texas's Evidentiary Objections.
213	N/A	Instead, the improving scientific understanding about the groundwater supply in this period led Reclamation to develop and support a system conjunctive (joint) management of the overall supply.	<i>See</i> NM-EX 113, Stevens Reb. Rep. at 15.	NM-EX-113: <i>See</i> General Objection #7; Fed. R. Evid. 801(c), hearsay.	New Mexico's stated fact, and supporting evidence, are not cited in New Mexico's Response to Texas's Motion for Partial Summary Judgment and are therefore non-responsive and irrelevant. As such, Texas's stated material facts remain undisputed. Fed. R. Civ. P. 56(a), 56(c)(1).	New Mexico previously responded to these authenticity and hearsay objections. <i>See</i> [Dkt. 468] State of New Mexico's Response to State of Texas's Evidentiary Objections.
213	N/A	Indicative of this development, overall agricultural demand for water in EBID was effectively stable over the period from 1950 forward, with the amount of groundwater pumping increasing or decreasing year over year to meet the deficit of between demand and available surface supply.	<i>See</i> NM-EX 101, Barroll Reb. Rep. at 9- 10, Figs. 9-10. Cf. NM-EX 243, Esslinger Dep. (Aug. 17, 2020) 112:4-113.	NM-EX-101: <i>See</i> General Objection #7; Fed. R. Evid. 801(c), hearsay. NM-EX-243: <i>See</i> General Objection #8.	New Mexico's stated fact, and supporting evidence, are not cited in New Mexico's Response to Texas's Motion for Partial Summary Judgment and are therefore non-responsive and irrelevant. As such, Texas's stated material facts remain undisputed. Fed. R. Civ. P. 56(a), 56(c)(1).	New Mexico previously responded to these authenticity and hearsay objections. <i>See</i> [Dkt. 468] State of New Mexico's Response to State of Texas's Evidentiary Objections.

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214	N/A	In the 1960s and 1970s, Reclamation continued to encourage the Districts to develop groundwater pumping capacity to satisfy irrigation demands during periods of low supply.	NM- EX 006, Barroll 2d Decl. at ¶ 21; <i>See</i> also, e.g., NM-EX 242, Esslinger Dep. (Aug. 18, 2020) at 22:8-24:18 (concerning Reclamation support for EBID's well drilling program); NM- EX 441, Salopek Aff. at ¶¶ 8-9 (Mar. 3, 2004) (describing development of EBID's well-drilling program); NM-EX 422, License Agreement with El Paso County Water Improvement District No. 1 for Installation of 4 Water Wells (Feb. 1, 1978).	NM-EX-006: Fed. R. Civ. P. 56(c)(4), Fed. R. Evid. 602, 702(a); Dr. Barroll cites historical records in support of her conclusion but has insufficient personal knowledge to assert this opinion for purposes of Rule 56 summary judgment, and at trial she would lack qualification to offer this opinion as an expert under Fed. R. Evid. 702(a). NM-EX-242: <i>See</i> General Objection #8. NM-EX-441, 422: <i>See</i> General Objection #8; Fed. R. Evid. 801(c), hearsay.	New Mexico's stated fact, and supporting evidence, are not cited in New Mexico's Response to Texas's Motion for Partial Summary Judgment and are therefore non-responsive and irrelevant. As such, Texas's stated material facts remain undisputed. Fed. R. Civ. P. 56(a), 56(c)(1).	New Mexico previously responded to these authenticity and hearsay objections. <i>See</i> [Dkt. 468] State of New Mexico's Response to State of Texas's Evidentiary Objections. As to Texas's objection to Dr. Barroll, see New Mexico's Response to State of Texas's Second Evidentiary Objections, § III (A).
215	N/A	Reclamation's adoption of the D1/D2 allocation method formalized its recognition of conjunctive use within the Project. Because the method is premised upon diversion data from a period after the significant development of groundwater in the 1940s and 1950s, it presumes the hydrologic conditions that existed during and following the development of significant conjunctive use within the Project, and acceptance of the	<i>See</i> NM-EX 006, Barroll 2d Decl. at ¶ 57; NM- EX 107, Lopez Rep. at 35-36; NM-EX 108, Lopez Reb. Rep. at 14; <i>See</i> also NM-EX 101, Barroll Reb. Rep. at 1; NM-EX 007, D'Antonio 2d Decl. at ¶ 20; NM-EX 012, Sullivan Decl. at ¶¶ 17, 112.	NM-EX-006: Fed. R. Civ. P. 56(c)(4), Fed. R. Evid. 602, 702(a); Dr. Barroll cites historical records in support of her conclusion but has insufficient personal knowledge to assert this opinion for purposes of Rule 56 summary judgment, and at trial she would lack qualification to offer this opinion as an expert under Fed. R.	Subject to the stated objections, the fact is cited in New Mexico's Response to Texas's Motion for Partial Summary Judgment but does not materially respond to facts stated therein. New Mexico's stated fact and the evidence cited in support regarding the Project operations and the D1/D2 allocation procedure do not materially respond to an argument made in Texas's Motion for Partial Summary Judgment. New Mexico's counterclaims and its apportionment motion address New Mexico's legal position on the interrelationship of the Project, Downstream Contracts and the Compact. CSMF #215 may relate to New Mexico's motion(s), but does not materially respond to Texas's Motion for Partial Summary Judgment. New Mexico's stated fact is non- responsive and otherwise not supported by definite, competent, or significantly probative	New Mexico previously responded to these authenticity and hearsay objections. <i>See</i> [Dkt. 468] State of New Mexico's Response to State of Texas's Evidentiary Objections. As to Texas's objection to Dr. Barroll, see New Mexico's Response to State of Texas's Second Evidentiary Objections, § III (A).

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		methodology is consistent with a common understanding that groundwater pumping for supplemental irrigation purposes is permitted under the Compact. Stated differently, the D1/D2 allocation effectively "grandfathered" in any effects that groundwater pumping during 1951-78 had on Project operations.		Evid. 702(a). NM-EX-107, 108, 101: <i>See</i> General Objection #7; Fed. R. Evid. 801(c), hearsay. NM-EX-007: <i>See</i> General Objection #3.	evidence that genuinely and materially responds to a fact stated in Texas's Motion for Partial Summary Judgment. As such, Texas's stated material facts remain undisputed. Fed. R. Civ. P. 56(a), 56(c)(1).	As to Texas's objection to Mr. D'Antonio, see New Mexico's Response to State of Texas's Second Evidentiary Objections, § III (C).
216	N/A	During the D1/D2 period, Texas continued to support conjunctive use within the Project. For instance, when New Mexico declared a groundwater basin in the Lower Rio Grande, limiting further depletions and increasing administrative oversight, Texas urged New Mexico to reconsider, citing the importance of conjunctive use within the Project.	<i>See</i> NM-EX 107, Lopez Rep. at 33; NM-EX 418, Transcript of Proceedings from 43rd Annual Meeting of the Rio Grande Compact Commission, at 66-67 (Mar. 25, 1982).	NM-EX-107: <i>See</i> General Objection #7; General Objection #2; Fed. R. Evid. 801(c), hearsay. NM- EX-418: <i>See</i> General Objection #8; Fed. R. Evid. 801(c), hearsay.	Subject to the stated objections, the fact is cited in New Mexico's Response to Texas's Motion for Partial Summary Judgment but does not materially respond to facts stated therein. New Mexico's stated fact and the evidence cited in support regarding the Project operations and the D1/D2 allocation procedure do not materially respond to an argument made in Texas's Motion for Partial Summary Judgment. New Mexico's counterclaims and its apportionment motion address New Mexico's legal position on the interrelationship of the Project, Downstream Contracts and the Compact. CSMF #216 may relate to New Mexico's motion(s), but does not materially respond to Texas's Motion for Partial Summary Judgment. New Mexico's stated fact is non- responsive and otherwise not supported by definite, competent, or significantly probative evidence that genuinely and materially responds to a fact stated in Texas's Motion for Partial Summary Judgment. As such, Texas's stated material facts remain undisputed. Fed. R. Civ. P. 56(a), 56(c)(1).	New Mexico previously responded to these authenticity and hearsay objections. <i>See</i> [Dkt. 468] State of New Mexico's Response to State of Texas's Evidentiary Objections. As to Texas's objection to Mr. Lopez, see New Mexico's Response to State of Texas's Second Evidentiary Objections, § III (B).

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217	N/A	Prior to 1980, the conjunctive use of surface and groundwater in the Project was hydrologically stable. In drought years, farmers in both Texas and New Mexico, with the encouragement of Reclamation, pumped groundwater to supplement the surface supply delivered by the Project. In wetter years, the groundwater table throughout the Project rebounded quickly from the effects of that pumping. The state line was irrelevant.	<i>See</i> NM-EX 007, D'Antonio 2d Decl. at ¶ 12; <i>See</i> also NM-EX 506, Cortez Aff. at ¶ 8; NM-EX 100, Barroll Rep. at §§2.1, 2.2.	NM-EX-007: <i>See</i> General Objection #3. NM- EX-506: <i>See</i> General Objection #8; Fed. R. Evid. 801(c), hearsay. NM-EX-100: <i>See</i> General Objection #7; Fed. R. Evid. 801(c), hearsay.	Subject to the stated objections, the fact is cited in New Mexico's Response to Texas's Motion for Partial Summary Judgment but does not materially respond to facts stated therein. New Mexico's stated fact and the evidence cited in support regarding groundwater pumping and the Project, including actions taken by the Office of the State Engineer, do not materially respond to an argument made in Texas's Motion for Partial Summary Judgment. New Mexico's counterclaims and its apportionment motion address New Mexico's legal position on the interrelationship of the Project, Downstream Contracts and the Compact. CSMF #217 may relate to New Mexico's motion(s), but does not materially respond to Texas's Motion for Partial Summary Judgment. New Mexico's stated fact is non-responsive and otherwise not supported by definite, competent, or significantly probative evidence that genuinely and materially responds to a fact stated in Texas's Motion for Partial Summary Judgment. As such, Texas's stated material facts remain undisputed. Fed. R. Civ. P. 56(a), 56(c)(1), (2), (4).	New Mexico previously responded to these authenticity and hearsay objections. <i>See</i> [Dkt. 468] State of New Mexico's Response to State of Texas's Evidentiary Objections. As to Texas's objection to Mr. D'Antonio, see New Mexico's Response to State of Texas's Second Evidentiary Objections, § III (C).
218	N/A	Groundwater rights for irrigation in the LRG were fully developed prior to 1980, during the drought periods of the 1950s, 1960s and 1970s, in cooperation with Reclamation. During that time, it is likely that almost every acre of land in EBID was irrigated by groundwater.	<i>See</i> Barroll 2d Decl. at ¶ 79.	NM-EX-006: Fed. R. Civ. P. 56(c)(4), Fed. R. Evid. 602, 702(a); Dr. Barroll cites historical records in support of her conclusion but has insufficient personal knowledge to assert this opinion for purposes of Rule 56 summary judgment, and at trial she would lack qualification to offer this opinion as an expert under Fed. R. Evid. 702(a).	Subject to the stated objections, the fact is cited in New Mexico's Response to Texas's Motion for Partial Summary Judgment but does not materially respond to facts stated therein. New Mexico's stated fact and the evidence cited in support regarding groundwater pumping and the Project, including actions taken by the Office of the State Engineer, do not materially respond to an argument made in Texas's Motion for Partial Summary Judgment. New Mexico's counterclaims and its apportionment motion address New Mexico's legal position on the interrelationship of the Project, Downstream Contracts and the Compact. CSMF #218 may relate to New Mexico's motion(s), but does not materially respond to Texas's Motion for Partial Summary Judgment. New Mexico's stated fact is non-responsive and otherwise not supported by definite, competent, or significantly probative evidence that genuinely	As to Texas's objection to Dr. Barroll, see New Mexico's Response to State of Texas's Second Evidentiary Objections, § III (A).

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					and materially responds to a fact stated in Texas's Motion for Partial Summary Judgment. As such, Texas's stated material facts remain undisputed. Fed. R. Civ. P. 56(a), 56(c)(1).	
219	N/A	In about 1980, the City of El Paso expressed its intent to appropriate a one hundred-year supply of groundwater in New Mexico. In response to this development and to the recent changes in Project operations following transfer of title to the diversion structures from Reclamation to the Districts, the New Mexico State Engineer declared New Mexico's LRG Underground Water Basin in 1980 and extended it in 1982.	<i>See</i> NM-EX 007, D'Antonio 2d Decl. at ¶¶ 5(b), 8-9, 14-15; <i>See</i> also NM-EX 427, Office of the State Engineer, State Engineer Order No. 126 (Sept. 1980); NM- EX 428, Office of the State Engineer, State Engineer Order No. 135 (Sept. 1982).	NM-EX-007: <i>See</i> General Objection #3. NM- EX-427: <i>See</i> General Objection #8; Fed. R. Evid. 801(c), hearsay.	New Mexico's stated fact, and supporting evidence, are not cited in New Mexico's Response to Texas's Motion for Partial Summary Judgment and are therefore non-responsive and irrelevant. As such, Texas's stated material facts remain undisputed. Fed. R. Civ. P. 56(a), 56(c)(1).	New Mexico previously responded to these authenticity and hearsay objections. <i>See</i> [Dkt. 468] State of New Mexico's Response to State of Texas's Evidentiary Objections. As to Texas's objection to Mr. D'Antonio, see New Mexico's Response to State of Texas's Second Evidentiary Objections, § III (C).
220	N/A	Since 1980, the New Mexico State Engineer has not permitted any new appropriations of groundwater in the groundwater basins supporting the Rio Grande. A review of all permits since 1980 revealed only three exceptions totaling 13.865 AF per year, as compared to approximately 350,000 to 375,000 AF of total annual use in the Lower Rio Grande Basin in New Mexico.	<i>See</i> NM-EX 010, Serrano Decl. at ¶ 21; NM- EX 007, D'Antonio 2d Decl. at ¶¶ 18-19.	NM-EX-007: <i>See</i> General Objection #3.	Subject to the stated objections, the fact is cited in New Mexico's Response to Texas's Motion for Partial Summary Judgment but does not materially respond to facts stated therein. New Mexico's stated fact and the evidence cited in support regarding permits in the Lower Rio Grande, including actions taken by the Office of the State Engineer, do not materially respond to an argument made in Texas's Motion for Partial Summary Judgment. New Mexico's counterclaims and its apportionment motion address New Mexico's legal position on the interrelationship of the Project, Downstream Contracts and the Compact. CSMF #220 may relate to New Mexico's motion(s), but does not materially respond to Texas's Motion for Partial Summary Judgment. New Mexico's stated fact is non-responsive and otherwise not supported by definite, competent, or significantly probative evidence that genuinely	As to Texas's objection to Mr. D'Antonio, see New Mexico's Response to State of Texas's Second Evidentiary Objections, § III (C).

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					and materially responds to a fact stated in Texas's Motion for Partial Summary Judgment. As such, Texas's stated material facts remain undisputed. Fed. R. Civ. P. 56(a), 56(c)(1), (2), (4).	
221	N/A	Under NMSA 1978 §72-12-5 (1931), water rights users who claim a priority date earlier than the September 1980 LRG Groundwater Basin declaration could file with the State Engineer individual "declarations" describing their claimed existing rights and were encouraged to do so by the State Engineer. The vast majority of these declarations reflect that the subject wells were drilled during the droughts of the 1950s and 1970s.	<i>See</i> NM-EX 007, D'Antonio 2d Decl. at ¶ 19.	NM-EX-007: <i>See</i> General Objection #3.	Subject to the stated objections, undisputed.	As to Texas's objection to Mr. D'Antonio, see New Mexico's Response to State of Texas's Second Evidentiary Objections, § III (C).
222	N/A	In total, since the New Mexico State Engineer declared the Lower Rio Grande Basin in 1980, the New Mexico State Engineer has permitted approximately 2,678 changes to existing irrigation well water rights. Each one went through the rigorous and comprehensive analysis required by the permitting process to assure that the change would not cause new depletions to the river or to other water rights owners.	<i>See</i> NM-EX 010, Serrano Decl. at ¶ 18; NM- EX 007, D'Antonio 2d Decl. at ¶ 21.	NM-EX-010: Fed. R. Civ. P. 56(c)(4); Fed. R. Evid. 702: the statement in the Serrano Decl. constitutes improper opinion testimony because it is not based on sufficient facts and is a mere conclusion. NM-EX-007: <i>See</i> General Objection #3.	Subject to the stated objections, the fact is cited in New Mexico's Response to Texas's Motion for Partial Summary Judgment but does not materially respond to facts stated therein. New Mexico's stated fact and the evidence cited in support regarding water management activities undertaken by the State of New Mexico do not materially respond to an argument made in Texas's Motion for Partial Summary Judgment. New Mexico's counterclaims and its apportionment motion address New Mexico's legal position on the interrelationship of the Project, Downstream Contracts and the Compact. CSMF #222 may relate to New Mexico's motion(s), but does not materially respond to Texas's Motion for Partial Summary Judgment. New Mexico's stated fact is non-responsive and otherwise not supported by definite, competent, or significantly probative evidence that genuinely and	As to Texas's objection to Mr. Serrano, see New Mexico's Response to State of Texas's Second Evidentiary Objections, § III (D). As to Texas's objection to Mr. D'Antonio, see New Mexico's Response to State of Texas's Second Evidentiary Objections, § III (C).

ATTACHMENT A
NEW MEXICO'S RESPONSE TO TEXAS'S "EXHIBIT A"

<u>NM- CS MF #</u>	<u>NM's Prior Numbering System</u>	<u>New Mexico's Stated Fact</u>	<u>New Mexico's Supporting Evidence</u>	<u>TEXAS'S EVIDENTIARY OBJECTIONS</u>	<u>TEXAS'S RESPONSE</u>	<u>NEW MEXICO'S RESPONSE TO TEXAS EVIDENTIARY OBJECTIONS</u>
					materially responds to a fact stated in Texas's Motion for Partial Summary Judgment. As such, Texas's stated material facts remain undisputed. Fed. R. Civ. P. 56(a), 56(c)(1).	
223	N/A	The average annual volume of LRG groundwater pumped in New Mexico during the period 1979-2005 (109,600 AF) was much less than during the period 1951-78 (179,100 AF).	NM-EX 012, Sullivan Decl. at ¶ 20; See also NM-EX 123 Spronk Reb. Rep. at 27.	NM-EX-123: See General Objection #7; Fed. R. Evid. 801(c), hearsay.	New Mexico's stated fact, and supporting evidence, are not cited in New Mexico's Response to Texas's Motion for Partial Summary Judgment and are therefore non-responsive and irrelevant. As such, Texas's stated material facts remain undisputed. Fed. R. Civ. P. 56(a), 56(c)(1).	New Mexico previously responded to these authenticity and hearsay objections. See [Dkt. 468] State of New Mexico's Response to State of Texas's Evidentiary Objections.
224	N/A	Farmers in both districts continue to rely, as they have throughout the history of the Project, upon conjunctive management of groundwater and surface supply.	See NM-EX 006, Barroll 2d Decl. at ¶ 28; See also NM-EX 242, Esslinger Dep. (Aug. 18, 2020) at 30:12-46:4; NM-EX 245, King Dep. (May 18, 2020) at 91-92, 101.	NM-EX-006: Fed. R. Civ. P. 56(c)(4), Fed. R. Evid. 602, 702(a); Dr. Barroll cites historical records in support of her conclusion but has insufficient personal knowledge to assert this opinion for purposes of Rule 56 summary judgment, and at trial she would lack qualification to offer this opinion as an expert under Fed. R. Evid. 702(a). NM-EX-242, 245: See General Objection #8.	New Mexico's stated fact, and supporting evidence, are not cited in New Mexico's Response to Texas's Motion for Partial Summary Judgment and are therefore non-responsive and irrelevant. As such, Texas's stated material facts remain undisputed. Fed. R. Civ. P. 56(a), 56(c)(1).	New Mexico previously responded to these authenticity and hearsay objections. See [Dkt. 468] State of New Mexico's Response to State of Texas's Evidentiary Objections. As to Texas's objection to Dr. Barroll, see New Mexico's Response to State of Texas's Second Evidentiary Objections, § III (A).

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224	N/A	For instance, EPCWID maintains 62 high capacity wells, and its constituents have an unknown additional number of private wells for supplemental irrigation use.	NM_EX 100, Barroll Rep. 25; <i>See</i> also NM-EX , Reyes Dep. (Aug. 31, 2002) 36:22-50:2 (discussing the wells and their use during the 2003-04 drought).	NM-EX-100: <i>See</i> General Objection #7; Fed. R. Evid. 801(c), hearsay. NM-EX, Reyes Dep: <i>See</i> General Objection #8.	New Mexico's stated fact, and supporting evidence, are not cited in New Mexico's Response to Texas's Motion for Partial Summary Judgment and are therefore non-responsive and irrelevant. As such, Texas's stated material facts remain undisputed. Fed. R. Civ. P. 56(a), 56(c)(1).	New Mexico previously responded to these authenticity and hearsay objections. <i>See</i> [Dkt. 468] State of New Mexico's Response to State of Texas's Evidentiary Objections.
225	N/A	Reflecting EBID's reliance on conjunctive use, when EBID and EPCWID negotiated the 2008 Operating Agreement, EBID's principals understood that a primary effect of the agreement would be to "grandfather" levels of groundwater pumping in New Mexico commensurate with the D2 period.	<i>See</i> NM-EX 108, Lopez Reb. Rep. at 17; NM-EX 101, Barroll Reb. Rep. at 43; <i>See</i> , e.g., NM- EX 208, Esslinger Dep. (Aug. 18, 2020) at 157:11-24.	NM-EX-108: <i>See</i> General Objection #7; Fed. R. Evid. 801(c), hearsay. NM-EX-208: <i>See</i> General Objection #8.	New Mexico's stated fact, and supporting evidence, are not cited in New Mexico's Response to Texas's Motion for Partial Summary Judgment and are therefore non-responsive and irrelevant. As such, Texas's stated material facts remain undisputed. Fed. R. Civ. P. 56(a), 56(c)(1).	New Mexico previously responded to these authenticity and hearsay objections. <i>See</i> [Dkt. 468] State of New Mexico's Response to State of Texas's Evidentiary Objections.
226	N/A	Following the 2008 Operating Agreement, New Mexico farmers were forced to increase their groundwater use steeply in order to maintain their crops and balance reduced surface water allocations. In years in which the Project has a full supply available, the 2008 Operating Agreement has reduced EBID's allocation by more than one-third, leading to increased groundwater pumping in full supply and decreased opportunity for recharge. As a result, drawdowns to the aquifer in the New Mexico portion of the Project accelerated, and the	<i>See</i> NM-EX 007, D'Antonio 2d Decl. at ¶ 47; NM-EX 006, Barroll 2d Decl. at ¶¶ 26, 65, 81; <i>See</i> also, e.g., NM-EX 100, Barroll Rep. at §§6.3, 6.4, 9.3, 9.4, 9.5.	NM-EX-007: Fed. R. Civ. P. 56(c)(4), Fed. R. Evid. 602, 702(a); Mr. D'Antonio has not been offered as an expert in New Mexico's groundwater use and has insufficient personal knowledge to assert this opinion for purposes of Rule 56 summary judgment, and at trial she would lack qualification to offer this opinion as an expert under Fed. R. Evid. 702(a). NM-EX-100: <i>See</i> General	Subject to the stated objections, the fact is cited in New Mexico's Response to Texas's Motion for Partial Summary Judgment but does not materially respond to facts stated therein. New Mexico's stated fact and the evidence cited in support regarding the 2008 Operating Agreement do not materially respond to an argument made in Texas's Motion for Partial Summary Judgment. New Mexico's counterclaims and its apportionment motion address New Mexico's legal position on the interrelationship of the Project, Downstream Contracts and the Compact. CSMF #226 may relate to New Mexico's motion(s), but does not materially respond to Texas's Motion for Partial Summary Judgment. New Mexico's stated fact is non-responsive and otherwise not supported by definite, competent, or significantly probative evidence that genuinely and materially responds to a fact stated in Texas's Motion for Partial Summary Judgment. As such, Texas's stated material facts remain undisputed. Fed. R. Civ. P. 56(a), 56(c)(1).	New Mexico previously responded to these authenticity and hearsay objections. <i>See</i> [Dkt. 468] State of New Mexico's Response to State of Texas's Evidentiary Objections. As to Texas's objection to Mr. D'Antonio, see New Mexico's Response to State of Texas's Second Evidentiary Objections, § III (C).

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		aquifer fell to unprecedentedly low levels.		Objection #7; Fed. R. Evid. 801(c), hearsay.		
227	N/A	Nevertheless, current irrigation well pumping levels in in low supply years in New Mexico are comparable to irrigation well pumping during the 1950s drought. The comparison may be visualized in the following figure:	[FIGURE 3. ANNUAL IRRIGATION PUMPING (AF/YR)] NM-EX 006, Barroll 2d Decl. at ¶ 26.	n/a	New Mexico's stated fact, and supporting evidence, are not cited in New Mexico's Response to Texas's Motion for Partial Summary Judgment and are therefore non-responsive and irrelevant. As such, Texas's stated material facts remain undisputed. Fed. R. Civ. P. 56(a), 56(c)(1).	N/A
228	N/A	Many water rights owners in the Lower Rio Grande Basin in New Mexico have informed the Water Master that the reduction in surface water effected by the 2008 Operating Agreement has had significant negative impacts on them, including increased pumping costs and loss of their crops and property improvements.	See NM-EX 010, Serrano Decl. at ¶¶ 35, 36.	NM-EX-010: Fed. R. Civ. P. 56(c)(4); Fed. R. Evid. 702; Fed. R. Evid. 801(c), hearsay.: the statement in the Serrano Decl. it is not based on sufficient facts and is a mere conclusion. Mr. Serrano merely provides vague anecdotes regarding "conservations with water right owners."	Subject to the stated objections, the fact is cited in New Mexico's Response to Texas's Motion for Partial Summary Judgment but does not materially respond to facts stated therein. New Mexico's stated fact and the evidence cited in support regarding the 2008 Operating Agreement do not materially respond to an argument made in Texas's Motion for Partial Summary Judgment. New Mexico's counterclaims and its apportionment motion address New Mexico's legal position on the interrelationship of the Project, Downstream Contracts and the Compact. CSMF #228 may relate to New Mexico's motion(s), but does not materially respond to Texas's Motion for Partial Summary Judgment. New Mexico's stated fact is non-responsive and otherwise not supported by definite, competent, or significantly probative evidence that genuinely and materially responds to a fact stated in Texas's Motion for Partial Summary Judgment. As such, Texas's stated material facts remain undisputed. Fed. R. Civ. P. 56(a), 56(c)(1).	New Mexico previously responded to these authenticity and hearsay objections. See [Dkt. 468] State of New Mexico's Response to State of Texas's Evidentiary Objections. As to Texas's objection to Mr. Serrano, see New Mexico's Response to State of Texas's Second Evidentiary Objections, § III (D).
229	N/A	Excepting only irrigation and single family wells, the New Mexico State Engineer issued permits for 252 wells in the Mesilla and Rincon Basins from 2016 to December 14,	See NM-EX 010, Serrano Decl. at ¶ 18.	NM-EX-010: Fed. R. Civ. P. 56(c)(4), Fed. R. Evid. 602. The declarant lacks sufficient personal knowledge to opine that all permits includes	New Mexico's stated fact, and supporting evidence, are not cited in New Mexico's Response to Texas's Motion for Partial Summary Judgment and are therefore non-responsive and irrelevant. As such, Texas's stated material facts remain undisputed. Fed. R. Civ. P. 56(a), 56(c)(1).	As to Texas's objection to Mr. Serrano, see New Mexico's Response to State of Texas's Second Evidentiary Objections, § III (D).

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		2020. Each such application is subject to comprehensive analysis and, if permitted, are permitted with conditions such that the well causes no new depletions of the Rio Grande or to other water rights owners.		conditions "such that the well causes no new depletions of the Rio Grande."		
230	N/A	As of 2020, there are approximately 3,000 total irrigation, commercial, mutual domestic, and industrial wells in the Lower Rio Grande in New Mexico. The New Mexico State Engineer meters every well within this group and enforces compliance with water rights limits.	<i>See</i> NM-EX 010, Serrano Decl. at ¶¶ 14, 20.	n/a	New Mexico's stated fact, and supporting evidence, are not cited in New Mexico's Response to Texas's Motion for Partial Summary Judgment and are therefore non-responsive and irrelevant. As such, Texas's stated material facts remain undisputed. Fed. R. Civ. P. 56(a), 56(c)(1).	N/A
231	N/A	There is no indication, from the historical record, that any party, prior to this litigation, ever formally requested that New Mexico curtail groundwater pumping below Elephant Butte.	<i>See</i> NM-EX 008, Lopez 2d Decl. at ¶ 39; <i>See</i> also NM-EX 002, D'Antonio Decl. at ¶ 18; NM- EX 004, Schmidt-Petersen Decl. at ¶ 16; NM- EX 218, Lopez Dep. (July 7, 2020) at 140:13-141:13; NM- EX 204, D'Antonio Dep. (June 25, 2020) at 169:1-7.	NM-EX-008, 002, 004: These declarants lack sufficient personal knowledge to assert that "any party . . . ever formally requested that New Mexico curtail groundwater pumping below Elephant Butte." NM-EX-218, 204: <i>See</i> General Objection #8.	New Mexico's stated fact, and supporting evidence, are not cited in New Mexico's Response to Texas's Motion for Partial Summary Judgment and are therefore non-responsive and irrelevant. As such, Texas's stated material facts remain undisputed. Fed. R. Civ. P. 56(a), 56(c)(1).	New Mexico previously responded to these authenticity and hearsay objections. <i>See</i> [Dkt. 468] State of New Mexico's Response to State of Texas's Evidentiary Objections. As to Texas's objection to Mr. Lopez, see New Mexico's Response to State of Texas's Second Evidentiary Objections, § III (B). As to Texas's objection to Mr. D'Antonio, see New Mexico's Response to State of Texas's Second Evidentiary Objections, § III (C).

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						As to Texas's objection to Mr. Schmidt-Petersen, see New Mexico's Response to State of Texas's Second Evidentiary Objections, § III (E).
232	N/A	Irrigation well pumping in the LRG portions of New Mexico has been fully metered since 2008. Metering data, combined with surface water delivery data, indicates that New Mexico farmers are applying an average of 4.0 AF of combined surface and groundwater to each irrigated acre. By comparison, EPCWID allots 4.0 AF per acre of surface water to its farmers in full- supply years, plus unknown amounts of groundwater.	NM-EX 006, Barroll 2d Decl. at ¶ 22; <i>See</i> also NM-EX 423, 2001 Rio Grande Project Third Party Implementing Contract Among the U.S., EPCWID, and the City of El Paso at 49, 59 (Apr. 10, 2001)	NM-EX-423: <i>See</i> General Objection #8; Fed. R. Evid. 801(c), hearsay.	Subject to the stated objections, the fact is cited in New Mexico's Response to Texas's Motion for Partial Summary Judgment but does not materially respond to facts stated therein. New Mexico's stated fact and the evidence cited in support regarding the groundwater pumping and impacts on Rio Grande Project supply do not materially respond to an argument made in Texas's Motion for Partial Summary Judgment. New Mexico's counterclaims and its apportionment motion address New Mexico's legal position on the interrelationship of the Project, Downstream Contracts and the Compact. CSMF #232 may relate to New Mexico's motion(s), but does not materially respond to Texas's Motion for Partial Summary Judgment. New Mexico's stated fact is non-responsive and otherwise not supported by definite, competent, or significantly probative evidence that genuinely and materially responds to a fact stated in Texas's Motion for Partial Summary Judgment. As such, Texas's stated material facts remain undisputed. Fed. R. Civ. P. 56(a), 56(c)(1).	New Mexico previously responded to these authenticity and hearsay objections. <i>See</i> [Dkt. 468] State of New Mexico's Response to State of Texas's Evidentiary Objections.
233	N/A	Prior to 1938, municipalities in New Mexico below Elephant Butte Reservoir relied on groundwater for municipal and industrial use.	<i>See</i> NM-EX 011, Stevens 2d Decl. at ¶ 30; NM- EX 112, Stevens Rep. at 83-84; NM-EX 318, Harlow M. Stafford et al., Rio Grande Joint Investigation Part I: General Report of the Rio Grande Joint Investigation, at 11, 14-16 (1937) (cataloguing	NM-EX-112: <i>See</i> General Objection #7; Fed. R. Evid. 801(c), hearsay.	New Mexico's stated fact, and supporting evidence, are not cited in New Mexico's Response to Texas's Motion for Partial Summary Judgment and are therefore non-responsive and irrelevant. As such, Texas's stated material facts remain undisputed. Fed. R. Civ. P. 56(a), 56(c)(1).	New Mexico previously responded to these authenticity and hearsay objections. <i>See</i> [Dkt. 468] State of New Mexico's Response to State of Texas's Evidentiary Objections.

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			use by "Cities, Towns, and Villages"); NM-EX 350, R.A. Scalapino, Ground-Water Resources of the El Paso Area, Texas, at 1 (1949) (discussing "[a]n intensive study of ground-water resources of the El Paso area" for municipal use in 1935).			
234	N/A	Following the Compact, cities and towns in the LRG have grown in their reliance on groundwater supplies. Without groundwater supplies, cities and towns would be left without water for their citizens. Outside of established public utilities, domestic wells also continue to supply waters to individual homes.	See NM-EX 006, Barroll 2d Decl. at ¶ 28.	NM-EX-006: Fed. R. Civ. P. 56(c)(4), Fed. R. Evid. 602, 702(a); Dr. Barroll has insufficient personal knowledge to assert this opinion for purposes of Rule 56 summary judgment, and at trial she would lack qualification to offer this opinion as an expert under Fed. R. Evid. 702(a).	New Mexico's stated fact, and supporting evidence, are not cited in New Mexico's Response to Texas's Motion for Partial Summary Judgment and are therefore non-responsive and irrelevant. As such, Texas's stated material facts remain undisputed. Fed. R. Civ. P. 56(a), 56(c)(1).	As to Texas's objection to Dr. Barroll, see New Mexico's Response to State of Texas's Second Evidentiary Objections, § III (A).
235	N/A	For instance, Las Cruces has pumped groundwater since the late nineteenth century, gradually increasing their diversions as the population of the city increased.	NM-EX 013, Wilson Decl. at ¶ 4.	n/a	New Mexico's stated fact, and supporting evidence, are not cited in New Mexico's Response to Texas's Motion for Partial Summary Judgment and are therefore non-responsive and irrelevant. As such, Texas's stated material facts remain undisputed. Fed. R. Civ. P. 56(a), 56(c)(1).	N/A

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235	N/A	Within New Mexico, the City of Las Cruces currently pumps approximately 15,000 AF/yr from wells in the Mesilla basin and 4,000 AF/yr from wells in the Jornada del Muerto, an adjoining but hydrologically disconnected basin.	See NM-EX 006, Barroll 2d Decl. at ¶ 29; NM- EX 013, Wilson Decl. at ¶ 6.	n/a	New Mexico's stated fact, and supporting evidence, are not cited in New Mexico's Response to Texas's Motion for Partial Summary Judgment and are therefore non-responsive and irrelevant. As such, Texas's stated material facts remain undisputed. Fed. R. Civ. P. 56(a), 56(c)(1).	N/A
235	N/A	However, given the amount of water the City of Las Cruces returns to the Rio Grande it supplies a net gain to the river system.	NM-EX 013, Wilson Decl. at ¶ 6.	NM-EX-013: Fed. R. Civ. P. 56(c)(4), Fed. R. Evid. 602, 702(a); Dr. Wilson has insufficient personal knowledge to assert this opinion for purposes of Rule 56 summary judgment, and at trial she would lack qualification to offer this opinion as an expert under Fed. R. Evid. 702(a).	New Mexico's stated fact, and supporting evidence, are not cited in New Mexico's Response to Texas's Motion for Partial Summary Judgment and are therefore non-responsive and irrelevant. As such, Texas's stated material facts remain undisputed. Fed. R. Civ. P. 56(a), 56(c)(1).	As to Texas's objection to Mr. Wilson, see New Mexico's Response to State of Texas's Second Evidentiary Objections, § III (F).
236	N/A	Treated effluent from Las Cruces, regardless of source, returns to the Rio Grande below Las Cruces and is available for diversion as part of Project Supply.	See NM-EX 006, Barroll 2d Decl. at ¶ 29; NM- EX 013, Wilson Decl. at ¶ 6.	n/a	New Mexico's stated fact, and supporting evidence, are not cited in New Mexico's Response to Texas's Motion for Partial Summary Judgment and are therefore non-responsive and irrelevant. As such, Texas's stated material facts remain undisputed. Fed. R. Civ. P. 56(a), 56(c)(1).	N/A
237	N/A	In New Mexico, groundwater pumping for municipal and industrial use comprises only 10 to 20% of total groundwater pumping, with the remainder being irrigation use. In contrast, Texas groundwater	See NM-EX 006, Barroll 2d Decl. at ¶ 30.	NM-EX-006: Fed. R. Civ. P. 56(c)(4), Fed. R. Evid. 602, 702(a); Dr. Barroll has insufficient personal knowledge to assert this opinion	Subject to the stated objections, the fact is cited in New Mexico's Response to Texas's Motion for Partial Summary Judgment but does not materially respond to facts stated therein. New Mexico's stated fact and the evidence cited in support regarding the groundwater pumping in the State of Texas do not materially respond to an argument made in	As to Texas's objection to Dr. Barroll, see New Mexico's Response to State of Texas's Second Evidentiary Objections, § III (A).

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		pumping for municipal and industrial use comprises far more than half of all groundwater pumping in the state within the Compact area (although a lack of metering data makes it difficult to ascertain the exact percentage).		regarding Texas groundwater pumping for purposes of Rule 56 summary judgment, and at trial she would lack qualification to offer this opinion as an expert under Fed. R. Evid. 702(a).	Texas's Motion for Partial Summary Judgment. New Mexico's counterclaims and its apportionment motion address New Mexico's legal position on the interrelationship of the Project, Downstream Contracts and the Compact. CSMF #237 may relate to New Mexico's motion(s), but does not materially respond to Texas's Motion for Partial Summary Judgment. New Mexico's stated fact is non-responsive and otherwise not supported by definite, competent, or significantly probative evidence that genuinely and materially responds to a fact stated in Texas's Motion for Partial Summary Judgment. As such, Texas's stated material facts remain undisputed. Fed. R. Civ. P. 56(a), 56(c)(1).	
238	N/A	Texas pumps groundwater for municipal and industrial uses from its part of the Mesilla basin. Texas does not provide comprehensive metering data, but the Canutillo well field is known to pump approximately 24,000 AF/yr, based on data by the El Paso Water Utility, for El Paso municipal use. A portion of this water returns to the Rio Grande as return flow below the Courchesne gage and is accounted for as Project Supply.	.See NM-EX 006, Barroll 2d Decl. at ¶¶ 31-32; NM-EX 100, Barroll Rep. at 30.	NM-EX-100: <i>See</i> General Objection #7; Fed. R. Evid. 801(c), hearsay.	Subject to the stated objections, the fact is cited in New Mexico's Response to Texas's Motion for Partial Summary Judgment but does not materially respond to facts stated therein. New Mexico's stated fact and the evidence cited in support regarding the groundwater pumping in the State of Texas do not materially respond to an argument made in Texas's Motion for Partial Summary Judgment. New Mexico's counterclaims and its apportionment motion address New Mexico's legal position on the interrelationship of the Project, Downstream Contracts and the Compact. CSMF #238 may relate to New Mexico's motion(s), but does not materially respond to Texas's Motion for Partial Summary Judgment. New Mexico's stated fact is non-responsive and otherwise not supported by definite, competent, or significantly probative evidence that genuinely and materially responds to a fact stated in Texas's Motion for Partial Summary Judgment. As such, Texas's stated material facts remain undisputed. Fed. R. Civ. P. 56(a), 56(c)(1).	New Mexico previously responded to these authenticity and hearsay objections. <i>See</i> [Dkt. 468] State of New Mexico's Response to State of Texas's Evidentiary Objections.

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239	N/A	The City of El Paso and Ciudad Juarez also pump large amounts of water from the Hueco bolson. The extent of this pumping has resulted in a cone of depression more than 100 feet deep and has been identified as a significant problem since the 1980s. The rate of pumping increased substantially since 1938. There has been no recovery in these groundwater levels.	<i>See</i> NM-EX 006, Barroll 2d Decl. at ¶¶ 32, 45; NM-EX 012, Sullivan Decl. at ¶ 36; <i>See</i> also NM-EX 117, Greg Sullivan, LRG Wells and Groundwater Level Drawdowns (Sept. 15, 2020); NM-EX 121, Spalding & Morrissey Rep. at fig. 5.4.	NM-EX-006: Fed. R. Civ. P. 56(c)(4), Fed. R. Evid. 602, 702(a); Dr. Barroll has insufficient personal knowledge to assert this opinion regarding Texas groundwater pumping for purposes of Rule 56 summary judgment, and at trial she would lack qualification to offer this opinion as an expert under Fed. R. Evid. 702(a). Her statement relies entirely on opinions of other New Mexico experts in this litigation. NM-EX- 117, 121: <i>See</i> General Objection #7; Fed. R. Evid. 801(c), hearsay.	Subject to the stated objections, the fact is cited in New Mexico's Response to Texas's Motion for Partial Summary Judgment but does not materially respond to facts stated therein. New Mexico's stated fact and the evidence cited in support regarding the groundwater pumping in the Hueco Bolson in the State of Texas do not materially respond to an argument made in Texas's Motion for Partial Summary Judgment. New Mexico's counterclaims and its apportionment motion address New Mexico's legal position on the interrelationship of the Project, Downstream Contracts and the Compact. CSMF #239 may relate to New Mexico's motion(s), but does not materially respond to Texas's Motion for Partial Summary Judgment. New Mexico's stated fact is non-responsive and otherwise not supported by definite, competent, or significantly probative evidence that genuinely and materially responds to a fact stated in Texas's Motion for Partial Summary Judgment. As such, Texas's stated material facts remain undisputed. Fed. R. Civ. P. 56(a), 56(c)(1).	New Mexico previously responded to these authenticity and hearsay objections. <i>See</i> [Dkt. 468] State of New Mexico's Response to State of Texas's Evidentiary Objections. As to Texas's objection to Dr. Barroll, see New Mexico's Response to State of Texas's Second Evidentiary Objections, § III (A).
240	N/A	The decline in groundwater levels in the El Paso Valley due to municipal pumping by El Paso and Ciudad Juarez has caused the groundwater to become disconnected from the surface water in northern portions of the valley. This means that Project water conveyance losses in the disconnected area are at a maximum and are not affected by variations in pumping.	<i>See</i> NM-EX 012, Sullivan Decl. at ¶ 47.	NM-EX-012: Fed. R. Civ. P. 56(c)(4), Fed. R. Evid. 401, 602. The statement is irrelevant for purposes of a motion for summary judgment and/or response and/or not within Mr. Sullivan's personal knowledge.	Subject to the stated objections, the fact is cited in New Mexico's Response to Texas's Motion for Partial Summary Judgment but does not materially respond to facts stated therein. New Mexico's stated fact and the evidence cited in support regarding the groundwater levels in the El Paso Valley do not materially respond to an argument made in Texas's Motion for Partial Summary Judgment. New Mexico's counterclaims and its apportionment motion address New Mexico's legal position on the interrelationship of the Project, Downstream Contracts and the Compact. CSMF #240 may relate to New Mexico's motion(s), but does not materially respond to Texas's Motion for Partial Summary Judgment. New	As to Texas's objection to Mr. Sullivan, see New Mexico's Response to State of Texas's Second Evidentiary Objections, § III (A).

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					Mexico's stated fact is non-responsive and otherwise not supported by definite, competent, or significantly probative evidence that genuinely and materially responds to a fact stated in Texas's Motion for Partial Summary Judgment. As such, Texas's stated material facts remain undisputed. Fed. R. Civ. P. 56(a), 56(c)(1).	
241	N/A	Non-irrigation groundwater pumping in Texas and Mexico in basins connected to the Rio Grande has averaged 86,700 AF/y and 150,900 AF/y, respectively during the period 2013-17. In comparison, non-irrigation groundwater in New Mexico is only about 37,000 AF/y, of which 17,000 AF/y returns to the Rio Grande as return flow.	<i>See</i> NM-EX 012, Sullivan Decl. at ¶ 16; <i>See</i> also NM-EX 122, Spronk Rep. at 51, 205-07.	NM-EX-012: Fed. R. Civ. P. 56(c)(4), Fed. R. Evid. 401, 602. The statement is irrelevant for purposes of a motion for summary judgment and/or response and/or not within Mr. Sullivan's personal knowledge. NM-EX-122: <i>See</i> General Objection #7; Fed. R. Evid. 801(c), hearsay.	Subject to the stated objections, the fact is cited in New Mexico's Response to Texas's Motion for Partial Summary Judgment but does not materially respond to facts stated therein. New Mexico's stated fact and the evidence cited in support regarding non-irrigation groundwater pumping in Texas and Mexico do not materially respond to an argument made in Texas's Motion for Partial Summary Judgment. New Mexico's counterclaims and its apportionment motion address New Mexico's legal position on the interrelationship of the Project, Downstream Contracts and the Compact. CSMF #241 may relate to New Mexico's motion(s), but does not materially respond to Texas's Motion for Partial Summary Judgment. New Mexico's stated fact is non-responsive and otherwise not supported by definite, competent, or significantly probative evidence that genuinely and materially responds to a fact stated in Texas's Motion for Partial Summary Judgment. As such, Texas's stated material facts remain undisputed. Fed. R. Civ. P. 56(a), 56(c)(1).	New Mexico previously responded to these authenticity and hearsay objections. <i>See</i> [Dkt. 468] State of New Mexico's Response to State of Texas's Evidentiary Objections. As to Texas's objection to Mr. Sullivan, see New Mexico's Response to State of Texas's Second Evidentiary Objections, § III (A).
242	N/A	When water is pumped from a stream-connected aquifer, that pumping eventually depletes water from the stream system, but the timing of the depletion, the location where that depletion occurs, and the amount of depletion depends on a variety of hydrologic conditions as well as the location and construction	NM-EX 006, Barroll 2d Decl. at ¶ 34.		Subject to the stated objections, the fact is cited in New Mexico's Response to Texas's Motion for Partial Summary Judgment but does not materially respond to facts stated therein. New Mexico's stated fact and the evidence cited in support generally describing stream depletion do not materially respond to an argument made in Texas's Motion for Partial Summary Judgment. Additionally, the fact is cited in New Mexico's opposition to Texas's Motion for Partial Summary Judgment for the proposition that any "depletion limit" may apply to both New Mexico and Texas. CSMF #242 may relate	N/A

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		of the pumping wells. Stream depletions generally consist of reduction of gains to streams and to irrigation drains, and increases in the Seepage loss from natural streams and irrigation conveyances.			to New Mexico's motions for partial summary judgment and/or its counterclaims, but alleged depletions due to pumping in Texas is not the subject of Texas's Motion for Partial Summary Judgment. New Mexico's stated fact is non-responsive and otherwise not supported by definite, competent, or significantly probative evidence that genuinely and materially responds to a fact stated in Texas's Motion for Partial Summary Judgment. As such, Texas's stated material facts remain undisputed. Fed. R. Civ. P. 56(a), 56(c)(1).	
243	N/A	The Rio Grande within the LRG and El Paso Valley has historically had both gaining and losing reaches. During times of low Project Supply and high groundwater pumping, the losses from the Rio Grande are higher than in high-Project-supply years with low groundwater pumping. Groundwater pumping in both New Mexico and in the Texas Mesilla impact the gains and losses from the Rio Grande in the Mesilla Valley. Groundwater pumping in both Texas and Mexico impact the gains and losses from the Rio Grande in the El Paso Valley.	NM-EX 006, Barroll 2d Decl. at ¶ 35; See also NM-EX 122, Spronk Rep. at 92-98; NM-EX 121, Spalding & Morrissey Rep. at fig. 9.3.	NM-EX-122, 121: See General Objection #7; Fed. R. Evid. 801(c), hearsay.	Subject to the stated objections, the fact is cited in New Mexico's Response to Texas's Motion for Partial Summary Judgment but does not materially respond to facts stated therein. New Mexico's stated fact and the evidence cited in support generally describing stream depletion do not materially respond to an argument made in Texas's Motion for Partial Summary Judgment. Additionally, the fact is cited in New Mexico's opposition to Texas's Motion for Partial Summary Judgment for the proposition that any "depletion limit" may apply to both New Mexico and Texas. CSMF #243 may relate to New Mexico's motions for partial summary judgment and/or its counterclaims, but alleged depletions due to pumping in Texas is not the subject of Texas's Motion for Partial Summary Judgment. New Mexico's stated fact is non-responsive and otherwise not supported by definite, competent, or significantly probative evidence that genuinely and materially responds to a fact stated in Texas's Motion for Partial Summary Judgment. As such, Texas's stated material facts remain undisputed. Fed. R. Civ. P. 56(a), 56(c)(1).	New Mexico previously responded to these authenticity and hearsay objections. See [Dkt. 468] State of New Mexico's Response to State of Texas's Evidentiary Objections.
244	N/A	Stream depletion by groundwater pumping does not necessarily equate to impairment of other water rights, even in a fully appropriated stream system. The impact of stream	NM-EX 006, Barroll 2d Decl. at ¶ 36; See also NM- EX 100, Barroll Rep. at § 2.2, Appx. B.	NM-EX-100: See General Objection #7; Fed. R. Evid. 801(c), hearsay.	Subject to the stated objections, the fact is cited in New Mexico's Response to Texas's Motion for Partial Summary Judgment but does not materially respond to facts stated therein. New Mexico's stated fact and the evidence cited in support generally describing stream depletion do not materially respond to an argument made in Texas's Motion for Partial	New Mexico previously responded to these authenticity and hearsay objections. See [Dkt. 468] State of New Mexico's Response to State of Texas's Evidentiary Objections.

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		depletion upon other water users depends on a number of factors, including hydrologic conditions and river operations. In the case of the Project, stream depletions that occur during years of adequate supply do not impact downstream deliveries. Instead, as a function of normal operations of the Project, Reclamation adjusts releases from Caballo as necessary, taking into account the gains and losses occurring between Caballo dam and the points of delivery, to ensure that all the water that has been ordered is in fact delivered.			Summary Judgment. Additionally, the fact is cited in New Mexico's opposition to Texas's Motion for Partial Summary Judgment for the proposition that any "depletion limit" may apply to both New Mexico and Texas. CSMF #244 may relate to New Mexico's motions for partial summary judgment and/or its counterclaims, but alleged depletions due to pumping in Texas is not the subject of Texas's Motion for Partial Summary Judgment. New Mexico's stated fact is non-responsive and otherwise not supported by definite, competent, or significantly probative evidence that genuinely and materially responds to a fact stated in Texas's Motion for Partial Summary Judgment. As such, Texas's stated material facts remain undisputed. Fed. R. Civ. P. 56(a), 56(c)(1).	
245	N/A	Groundwater pumping in both New Mexico and Texas (and Mexico as well) may cause stream depletions. These stream depletions may cause Reclamation to release more water from Project Storage in order to deliver water to Project beneficiaries than otherwise.	NM-EX 006, Barroll 2d Decl. at ¶¶ 37, 52-53; <i>See</i> also NM-EX 103, Barroll 2d Suppl. Reb. Rep. at 4; NM-EX 122, Spronk Rep. at 92-93.	NM-EX-006: Fed. R. Civ. P. 56(c)(4), Fed. R. Evid. 602, 702(a); Dr. Barroll has insufficient personal knowledge to assert this opinion regarding Texas groundwater pumping for purposes of Rule 56 summary judgment, and at trial she would lack qualification to offer this opinion as an expert under Fed. R. Evid. 702(a). Her statement that pumping "may" cause depletions is vague	Subject to the stated objections, the fact is cited in New Mexico's Response to Texas's Motion for Partial Summary Judgment but does not materially respond to facts stated therein. New Mexico's stated fact and the evidence cited in support generally describing stream depletion do not materially respond to an argument made in Texas's Motion for Partial Summary Judgment. Additionally, the fact is cited in New Mexico's opposition to Texas's Motion for Partial Summary Judgment for the proposition that any "depletion limit" may apply to both New Mexico and Texas. CSMF #245 may relate to New Mexico's motions for partial summary judgment and/or its counterclaims, but alleged depletions due to pumping in Texas is not the subject of Texas's Motion for Partial Summary Judgment. New Mexico's stated fact is non-responsive and otherwise not supported by definite, competent, or significantly probative evidence that genuinely and materially responds to a fact stated in Texas's Motion for Partial Summary Judgment.	New Mexico previously responded to these authenticity and hearsay objections. <i>See</i> [Dkt. 468] State of New Mexico's Response to State of Texas's Evidentiary Objections. As to Texas's objection to Dr. Barroll, see New Mexico's Response to State of Texas's Second Evidentiary Objections, § III (A).

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				and hypothetical.. NM-EX- 103, 122: <i>See</i> General Objection #7; Fed. R. Evid. 801(c), hearsay.	As such, Texas's stated material facts remain undisputed. Fed. R. Civ. P. 56(a), 56(c)(1).	
246	N/A	Groundwater pumping by in Texas and New Mexico intercepts return flows that are associated with Project irrigation and reduces the flow in Project drains. But, these effects do not necessarily translate to effects upon Project deliveries. Prior to 2006, stream depletions occurring in Project full-supply years would have no effect on either the water allocated to the Districts or the water delivered to the Districts in those full-supply years. Furthermore, if Project Supplies remained adequate until the next spill of the Project reservoirs, then the Project beneficiaries would not experience any later reduction in deliveries resulting from those stream depletions. However, stream depletions that occurred in the years leading up to a shortage could reduce the Project allocations in the subsequent water-short years, but this depends on many factors, including increased reservoir	NM-EX 006, Barroll 2d Decl. at ¶¶ 38-39, 52- 53; <i>See</i> also NM-EX 103, Barroll 2d Suppl. Reb. Rep. at 3-9; NM-EX 122, Spronk Rep. at 71-72; NM-EX 012, Sullivan Decl. at ¶¶ 13, 17-18, 25.	NM-EX-122: <i>See</i> General Objection #7; Fed. R. Evid. 801(c), hearsay.	Subject to the stated objections, the fact is cited in New Mexico's Response to Texas's Motion for Partial Summary Judgment but does not materially respond to facts stated therein. New Mexico's stated fact and the evidence cited in support generally describing stream depletion do not materially respond to an argument made in Texas's Motion for Partial Summary Judgment. Additionally, the fact is cited in New Mexico's opposition to Texas's Motion for Partial Summary Judgment for the proposition that any "depletion limit" may apply to both New Mexico and Texas. CSMF #246 may relate to New Mexico's motions for partial summary judgment and/or its counterclaims, but alleged depletions due to pumping in Texas is not the subject of Texas's Motion for Partial Summary Judgment. New Mexico's stated fact is non-responsive and otherwise not supported by definite, competent, or significantly probative evidence that genuinely and materially responds to a fact stated in Texas's Motion for Partial Summary Judgment. As such, Texas's stated material facts remain undisputed. Fed. R. Civ. P. 56(a), 56(c)(1).	New Mexico previously responded to these authenticity and hearsay objections. <i>See</i> [Dkt. 468] State of New Mexico's Response to State of Texas's Evidentiary Objections.

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		evaporation and spills that may occur in the interim.				
247	N/A	The effects of groundwater pumping in New Mexico on Project deliveries are intermittent and variable for a number of reasons. First, pumping in New Mexico has varied substantially since it developed in the early 1950s, with higher amounts of pumping in low Project supply years and lower amounts of pumping in full supply years. Second, in full supply years, the Districts received all water they ordered, up to their total allocations, so pumping does not impact deliveries in those years. Third, some of the river depletions from pumping occur during the winter when the Project is not making deliveries. Fourth, the amount and timing of Rio Grande depletions from pumping depends on many factors, including the locations and depth of the wells, the timing and amount of pumping, aquifer characteristics, the interaction of ground water and surface water, Project and reservoir operations,	<i>See</i> NM-EX 012, Sullivan Decl. at ¶¶ 13-14, 102; <i>See</i> also NM-EX 122, Spronk Rep. at 194, 318; NM-EX 123, Spronk Reb. Rep. at 58-59.	NM-EX-102, 122, 123: <i>See</i> General Objection #7; Fed. R. Evid. 801(c), hearsay.	Subject to the stated objections, the fact is cited in New Mexico's Response to Texas's Motion for Partial Summary Judgment but does not materially respond to facts stated therein. New Mexico's stated fact and the evidence cited in support regarding the impact of New Mexico groundwater pumping on Rio Grande Project deliveries do not materially respond to an argument made in Texas's Motion for Partial Summary Judgment. CSMF #247 may relate to New Mexico's motions for partial summary judgment and/or its counterclaims, but alleged depletions due to pumping in Texas is not the subject of Texas's Motion for Partial Summary Judgment. New Mexico's stated fact is non-responsive and otherwise not supported by definite, competent, or significantly probative evidence that genuinely and materially responds to a fact stated in Texas's Motion for Partial Summary Judgment. As such, Texas's stated material facts remain undisputed. Fed. R. Civ. P. 56(a), 56(c)(1).	New Mexico previously responded to these authenticity and hearsay objections. <i>See</i> [Dkt. 468] State of New Mexico's Response to State of Texas's Evidentiary Objections.

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		including spills, and many other factors.				
248	N/A	Groundwater pumping in Texas has lowered groundwater levels, intercepted irrigation return flows, dried up drains, and increased Seepage losses from the Rio Grande, impacting the entire Project. These effects have increased depletions to surface water flows and increased conveyance losses in delivering Project water. In fact, these drawdowns may have disconnected the stream system from the aquifer in the El Paso area, maximizing the Seepage losses in this area.	<i>See</i> NM-EX 006, Barroll 2d Decl. at ¶ 42, 44; NM-EX 012, Sullivan Rep. at ¶ 36; <i>See</i> also NM EX 101, Barroll Reb. Rep. at 18; NM-EX 122, Spronk Rep. at 65.	NM-EX-006: Fed. R. Civ. P. 56(c)(4), Fed. R. Evid. 602, 702(a); Dr. Barroll has insufficient personal knowledge to assert this opinion regarding Texas groundwater pumping for purposes of Rule 56 summary judgment, and at trial she would lack qualification to offer this opinion as an expert under Fed. R. Evid. 702(a). NM-EX-012: Fed. R. Civ. P. 56(c)(4), Fed. R. Evid. 401, 602. The statement is irrelevant for purposes of a motion for summary judgment and/or response and/or not within Mr. Sullivan's personal knowledge. NM-EX-101, 122: <i>See</i> General Objection #7; Fed. R.	Subject to the stated objections, the fact is cited in New Mexico's Response to Texas's Motion for Partial Summary Judgment but does not materially respond to facts stated therein. New Mexico's stated fact and the evidence cited in support regarding groundwater pumping in the State of Texas do not materially respond to an argument made in Texas's Motion for Partial Summary Judgment. CSMF #248 may relate to New Mexico's motions for partial summary judgment and/or its counterclaims, but alleged depletions due to pumping in Texas is not the subject of Texas's Motion for Partial Summary Judgment. New Mexico's stated fact is non-responsive and otherwise not supported by definite, competent, or significantly probative evidence that genuinely and materially responds to a fact stated in Texas's Motion for Partial Summary Judgment. As such, Texas's stated material facts remain undisputed. Fed. R. Civ. P. 56(a), 56(c)(1).	New Mexico previously responded to these authenticity and hearsay objections. <i>See</i> [Dkt. 468] State of New Mexico's Response to State of Texas's Evidentiary Objections. As to Texas's objection to Dr. Barroll, see New Mexico's Response to State of Texas's Second Evidentiary Objections, § III (A). As to Texas's objection to Mr. Sullivan, see New Mexico's Response to State of Texas's Second Evidentiary Objections, § III (A).

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				Evid. 801(c), hearsay.		
249	N/A	The effects of groundwater pumping in Texas impact the Project in New Mexico. The Rincon-Mesilla Basin and El Paso Valley are hydraulically connected by the surface flow of the Rio Grande. Additionally, the Project is operated as a single unit. As such, the effects of pumping on surface flows in Texas can propagate throughout the Project area and impact deliveries of Project water to New Mexico.	<i>See</i> NM-EX 012, Sullivan Decl. at ¶¶ 72-73.	NM-EX-012: Fed. R. Civ. P. 56(c)(4), Fed. R. Evid. 401, 602. The statement is irrelevant for purposes of a motion for summary judgment and/or response and/or not within Mr. Sullivan's personal knowledge.	Subject to the stated objections, the fact is cited in New Mexico's Response to Texas's Motion for Partial Summary Judgment but does not materially respond to facts stated therein. New Mexico's stated fact and the evidence cited in support regarding groundwater pumping in the State of Texas do not materially respond to an argument made in Texas's Motion for Partial Summary Judgment. CSMF #249 may relate to New Mexico's motions for partial summary judgment and/or its counterclaims, but alleged depletions due to pumping in Texas is not the subject of Texas's Motion for Partial Summary Judgment. New Mexico's stated fact is non-responsive and otherwise not supported by definite, competent, or significantly probative evidence that genuinely and materially responds to a fact stated in Texas's Motion for Partial Summary Judgment. As such, Texas's stated material facts remain undisputed. Fed. R. Civ. P. 56(a), 56(c)(1).	As to Texas's objection to Mr. Sullivan, see New Mexico's Response to State of Texas's Second Evidentiary Objections, § III (A).
250	N/A	Prior to 2006, groundwater levels in the Rincon and Mesilla valleys were relatively high and fluctuated from season to season due to the application of irrigation water from the Rio Grande on Project lands resulting recharge to the groundwater system. Groundwater levels also fluctuated from year to year based on Project Supply levels: in low supply years groundwater levels declined, and in subsequent full-supply years groundwater levels recovered. Following the adoption of	NM-EX 006, Barroll 2d Decl. at ¶¶ 44, 66; <i>See</i> also NM-EX 100, Barroll Rep. at 73-77; NM- EX 012, Sullivan Decl. at ¶¶ 13, 45.	NM-EX-100: <i>See</i> General Objection #7; Fed. R. Evid. 801(c), hearsay.	Subject to the stated objections, the fact is cited in New Mexico's Response to Texas's Motion for Partial Summary Judgment but does not materially respond to facts stated therein. New Mexico's stated fact and the evidence cited in support regarding groundwater pumping and the D3 allocation procedure do not materially respond to an argument made in Texas's Motion for Partial Summary Judgment. CSMF #250 may relate to New Mexico's motions for partial summary judgment and/or its counterclaims, but alleged depletions due to pumping in Texas is not the subject of Texas's Motion for Partial Summary Judgment. New Mexico's stated fact is non-responsive and otherwise not supported by definite, competent, or significantly probative evidence that genuinely and materially responds to a fact stated in Texas's Motion for Partial Summary Judgment. As such, Texas's stated material facts remain undisputed. Fed. R. Civ. P. 56(a), 56(c)(1).	New Mexico previously responded to these authenticity and hearsay objections. <i>See</i> [Dkt. 468] State of New Mexico's Response to State of Texas's Evidentiary Objections.

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		D3 Allocation in 2006 and the 2008 Operating Agreement, groundwater levels in the Rincon and Mesilla valleys have declined in years of low Project supply but have not recovered in any substantive way in subsequent full-supply years.				
251	N/A	D3 Allocation and the 2008 Operating Agreement starve the upper part of the Project of water, causing reductions in total Project return flows and depleting the groundwater supply in the upper part of the Project. The net result is a reduction in Project delivery efficiency and a reduction in total Project Supply. NM-EX 103, Barroll 2d Suppl. Reb. Rep. at 14-20. To use the analogy proposed by Texas, the 2008 Operating Agreement itself "reduces the size of the pizza" that represents Project Supply upon which the two District rely.	<i>See</i> NM-EX 006, Barroll 2d Decl. at ¶ 64.	NM-EX-006: Fed. R. Civ. P. 56(c)(4), Fed. R. Evid. 602, 702(a); Dr. Barroll has insufficient personal knowledge to assert this opinion for purposes of Rule 56 summary judgment to the extent the statement addresses Compact apportionment to Texas, and at trial she would lack qualification to offer this opinion as an expert under Fed. R. Evid. 702(a).	Subject to the stated objections, the fact is cited in New Mexico's Response to Texas's Motion for Partial Summary Judgment but does not materially respond to facts stated therein. New Mexico's stated fact and the evidence cited in support regarding the 2008 Operating Agreement and the D3 allocation procedure do not materially respond to an argument made in Texas's Motion for Partial Summary Judgment. CSMF #251 may relate to New Mexico's motions for partial summary judgment and/or its counterclaims, but alleged depletions due to pumping in Texas is not the subject of Texas's Motion for Partial Summary Judgment. New Mexico's stated fact is non-responsive and otherwise not supported by definite, competent, or significantly probative evidence that genuinely and materially responds to a fact stated in Texas's Motion for Partial Summary Judgment. As such, Texas's stated material facts remain undisputed. Fed. R. Civ. P. 56(a), 56(c)(1).	As to Texas's objection to Dr. Barroll, see New Mexico's Response to State of Texas's Second Evidentiary Objections, § III (A).
252	N/A	Because the D3 Allocation method reduces EBID's allocation to account for any real or apparent discrepancies in Project performance relative to the 1951-1978 period, groundwater pumping in Texas reduces EBID's allocation. Analyses using the ILRG Model indicate that	NM-EX 012, Sullivan Decl. at ¶¶ 15, 18; <i>See</i> also NM-EX 006, Barroll 2d Decl. at ¶ 41; NM- EX 123, Spronk Reb. Rep. at 379, 533, 577, 709.	NM-EX-012: Fed. R. Civ. P. 56(c)(4), Fed. R. Evid. 401, 602. The statement is irrelevant for purposes of a motion for summary judgment and/or response and/or not within Mr. Sullivan's personal knowledge.	Subject to the stated objections, the fact is cited in New Mexico's Response to Texas's Motion for Partial Summary Judgment but does not materially respond to facts stated therein. New Mexico's stated fact and the evidence cited in support regarding the 2008 Operating Agreement and the D3 allocation procedure do not materially respond to an argument made in Texas's Motion for Partial Summary Judgment. CSMF #252 may relate to New Mexico's motions for partial summary judgment and/or its counterclaims, but alleged depletions due	New Mexico previously responded to these authenticity and hearsay objections. <i>See</i> [Dkt. 468] State of New Mexico's Response to State of Texas's Evidentiary Objections. As to Texas's objection to Mr. Sullivan, see New Mexico's

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		Project water diversions by New Mexico during 2006 - 2017 were reduced by an average of 15,500 AF/y by Texas pumping, an average of 94,200 AF/y by imposition of the 2008 OA, an average of 86,300 AF/y by increases in Project operational waste (mostly in Texas), and by an average of 72,400 AF/y by changes in EPCWID operations. Due to nonlinearities in the ILRG Model, the foregoing impacts are not fully independent and additive.		NM-EX-123: <i>See</i> General Objection #7; Fed. R. Evid. 801(c), hearsay.	to pumping in Texas is not the subject of Texas's Motion for Partial Summary Judgment. New Mexico's stated fact is non-responsive and otherwise not supported by definite, competent, or significantly probative evidence that genuinely and materially responds to a fact stated in Texas's Motion for Partial Summary Judgment. As such, Texas's stated material facts remain undisputed. Fed. R. Civ. P. 56(a), 56(c)(1).	Response to State of Texas's Second Evidentiary Objections, § III (A).
253	N/A	Using the New Mexico Integrated Lower Rio Grande Model ("ILRGM") to calculate the impact of New Mexico pumping on Texas, New Mexico experts have shown that the impact is much smaller than the reallocation of Project water away from New Mexico the 2008 Operating Agreement.	<i>See</i> NM-EX 006, Barroll 2d Decl. at ¶¶ 68, 80; <i>See</i> also NM-EX 103, Barroll 2d Suppl. Reb. Rep. at vi- vii, 9, 20.	NM-EX-006: Fed. R. Civ. P. 56(c)(4), Fed. R. Evid. 602, 702(a); Dr. Barroll has insufficient personal knowledge to assert this opinion for purposes of Rule 56 summary judgment to the extent the statement addresses modeling work by other New Mexico experts, and at trial she would lack qualification to offer this opinion as an expert under Fed. R. Evid. 702(a). NM-EX-103: <i>See</i> General Objection #7; Fed. R. Evid. 801(c), hearsay.	Subject to the stated objections, the fact is cited in New Mexico's Response to Texas's Motion for Partial Summary Judgment but does not materially respond to facts stated therein. New Mexico's stated fact and the evidence cited in support regarding the Integrated Lower Rio Grande Model and the 2008 Operating Agreement do not materially respond to an argument made in Texas's Motion for Partial Summary Judgment. CSMF #253 may relate to New Mexico's motions for partial summary judgment and/or its counterclaims, but alleged depletions due to pumping in Texas is not the subject of Texas's Motion for Partial Summary Judgment. New Mexico's stated fact is non-responsive and otherwise not supported by definite, competent, or significantly probative evidence that genuinely and materially responds to a fact stated in Texas's Motion for Partial Summary Judgment. As such, Texas's stated material facts remain undisputed. Fed. R. Civ. P. 56(a), 56(c)(1).	New Mexico previously responded to these authenticity and hearsay objections. <i>See</i> [Dkt. 468] State of New Mexico's Response to State of Texas's Evidentiary Objections. As to Texas's objection to Dr. Barroll, <i>see</i> New Mexico's Response to State of Texas's Second Evidentiary Objections, § III (A).

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254	N/A	Results from the ILRGM show that had New Mexico had been allocated 57% percent of Project Supply from 2006 through 2017, the combined effects of that allocation increase. The effects of the improved groundwater conditions and Project performance would have resulted in New Mexico being allocated a total of 1,053,393 AF more than under D3 Allocation, or, on average, 94,000 AF more per year from 2006 through 2017. In effect, the D3 Allocation and the 2008 Operating Agreement have reduced New Mexico surface water allocation by 88,000 AF/yr on average since 2006.	<i>See</i> NM-EX 006, Barroll 2d Decl. at ¶ 69; <i>See</i> also NM-EX 103, Barroll 2d Suppl. Reb. Rep. at 15-16.	NM-EX-006: Fed. R. Civ. P. 56(c)(4), Fed. R. Evid. 602, 702(a); Dr. Barroll has insufficient personal knowledge to assert this opinion for purposes of Rule 56 summary judgment to the extent the statement addresses modeling work by other New Mexico experts, and at trial she would lack qualification to offer this opinion as an expert under Fed. R. Evid. 702(a). NM-EX-103: <i>See</i> General Objection #7; Fed. R. Evid. 801(c), hearsay.	Subject to the stated objections, the fact is cited in New Mexico's Response to Texas's Motion for Partial Summary Judgment but does not materially respond to facts stated therein. New Mexico's stated fact and the evidence cited in support regarding the Integrated Lower Rio Grande Model and Rio Grande Project supply do not materially respond to an argument made in Texas's Motion for Partial Summary Judgment. CSMF #254 may relate to New Mexico's motions for partial summary judgment and/or its counterclaims, but alleged depletions due to pumping in Texas is not the subject of Texas's Motion for Partial Summary Judgment. New Mexico's stated fact is non-responsive and otherwise not supported by definite, competent, or significantly probative evidence that genuinely and materially responds to a fact stated in Texas's Motion for Partial Summary Judgment. As such, Texas's stated material facts remain undisputed. Fed. R. Civ. P. 56(a), 56(c)(1).	New Mexico previously responded to these authenticity and hearsay objections. <i>See</i> [Dkt. 468] State of New Mexico's Response to State of Texas's Evidentiary Objections. As to Texas's objection to Dr. Barroll, see New Mexico's Response to State of Texas's Second Evidentiary Objections, § III (A).
255	N/A	The ILRGM also calculates that if New Mexico had been allocated 57% of Project Supply, the resulting improved groundwater conditions and associated reduction in river Seepage—and increased drain flow—would have resulted in a total increase in Project Supply deliveries of 863,730 AF during 2006 through 2017, or an average of 72,000 AF/year.	<i>See</i> NM-EX 006, Barroll 2d Decl. at ¶ 70; NM- EX 103, Barroll 2d Suppl. Reb. Rep. at 18.	NM-EX-006: Fed. R. Civ. P. 56(c)(4), Fed. R. Evid. 602, 702(a); Dr. Barroll has insufficient personal knowledge to assert this opinion for purposes of Rule 56 summary judgment to the extent the statement addresses modeling work by other New Mexico experts, and at trial she would lack qualification to offer this opinion as an expert under Fed. R.	Subject to the stated objections, the fact is cited in New Mexico's Response to Texas's Motion for Partial Summary Judgment but does not materially respond to facts stated therein. New Mexico's stated fact and the evidence cited in support regarding the Integrated Lower Rio Grande Model and Rio Grande Project supply do not materially respond to an argument made in Texas's Motion for Partial Summary Judgment. CSMF #255 may relate to New Mexico's motions for partial summary judgment and/or its counterclaims, but alleged depletions due to pumping in Texas is not the subject of Texas's Motion for Partial Summary Judgment. New Mexico's stated fact is non-responsive and otherwise not supported by definite, competent, or significantly probative evidence that genuinely and materially responds to a fact stated in Texas's Motion for Partial Summary Judgment. As such, Texas's stated	New Mexico previously responded to these authenticity and hearsay objections. <i>See</i> [Dkt. 468] State of New Mexico's Response to State of Texas's Evidentiary Objections. As to Texas's objection to Dr. Barroll, see New Mexico's Response to State of Texas's Second Evidentiary Objections, § III (A).

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<u>NM- CS MF #</u>	<u>NM's Prior Numbering System</u>	<u>New Mexico's Stated Fact</u>	<u>New Mexico's Supporting Evidence</u>	<u>TEXAS'S EVIDENTIARY OBJECTIONS</u>	<u>TEXAS'S RESPONSE</u>	<u>NEW MEXICO'S RESPONSE TO TEXAS EVIDENTIARY OBJECTIONS</u>
				Evid. 702(a). NM-EX-103: <i>See</i> General Objection #7; Fed. R. Evid. 801(c), hearsay.	material facts remain undisputed. Fed. R. Civ. P. 56(a), 56(c)(1).	
256	N/A	Had EBID been allocated and delivered its 57% share of Project Supply since 2006, the Project as a whole would have benefitted from an improvement in groundwater conditions in New Mexico. This improvement in groundwater conditions would have increased Project delivery efficiency and thereby further increased EBID's allocation and delivery at little cost to EPCWID.	<i>See</i> NM-EX 006, Barroll 2d Decl. at ¶ 62; <i>See</i> also NM-EX 103, Barroll 2d Suppl. Reb. Rep. at 18-19.	NM-EX-006: Fed. R. Civ. P. 56(c)(4), Fed. R. Evid. 602, 702(a); Dr. Barroll has insufficient personal knowledge to assert this opinion for purposes of Rule 56 summary judgment to the extent the statement addresses modeling work by other New Mexico experts, and at trial she would lack qualification to offer this opinion as an expert under Fed. R. Evid. 702(a). NM-EX-103: <i>See</i> General Objection #7; Fed. R. Evid. 801(c), hearsay.	Subject to the stated objections, the fact is cited in New Mexico's Response to Texas's Motion for Partial Summary Judgment but does not materially respond to facts stated therein. New Mexico's stated fact and the evidence cited in support regarding EBID water delivery and Rio Grande Project supply do not materially respond to an argument made in Texas's Motion for Partial Summary Judgment. CSMF #256 may relate to New Mexico's motions for partial summary judgment and/or its counterclaims, but alleged depletions due to pumping in Texas is not the subject of Texas's Motion for Partial Summary Judgment. New Mexico's stated fact is non-responsive and otherwise not supported by definite, competent, or significantly probative evidence that genuinely and materially responds to a fact stated in Texas's Motion for Partial Summary Judgment. As such, Texas's stated material facts remain undisputed. Fed. R. Civ. P. 56(a), 56(c)(1).	New Mexico previously responded to these authenticity and hearsay objections. <i>See</i> [Dkt. 468] State of New Mexico's Response to State of Texas's Evidentiary Objections. As to Texas's objection to Dr. Barroll, see New Mexico's Response to State of Texas's Second Evidentiary Objections, § III (A).
257	N/A	The ILRGM model simulates the impact of pumping on surface water flows and the effects on Project operations and all simulated processes that result as the changed conditions ripple spatially and temporally through the model just as they would in the real world. This is	<i>See</i> NM-EX 012, Sullivan Decl. at ¶ 61.	NM-EX-012: Fed. R. Civ. P. 56(c)(4), Fed. R. Evid. 401. The statement is irrelevant for purposes of a motion for summary judgment.	Subject to the stated objections, the fact is cited in New Mexico's Response to Texas's Motion for Partial Summary Judgment but does not materially respond to facts stated therein. New Mexico's stated fact and the evidence cited in support regarding the Integrated Lower Rio Grande Model and Rio Grande Project supply do not materially respond to an argument made in Texas's Motion for Partial Summary Judgment. CSMF #257 may relate to New Mexico's motions for partial summary judgment and/or its counterclaims, but	N/A

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		referred to as "re-operation" and is an essential element of the ILRG Model that is not present in the ground water model of the Rincon and Mesilla basins developed by the Texas experts ("Texas Model").			alleged depletions due to pumping in Texas is not the subject of Texas's Motion for Partial Summary Judgment. New Mexico's stated fact is non-responsive and otherwise not supported by definite, competent, or significantly probative evidence that genuinely and materially responds to a fact stated in Texas's Motion for Partial Summary Judgment. As such, Texas's stated material facts remain undisputed. Fed. R. Civ. P. 56(a), 56(c)(1).	
258	N/A	New Mexico's ILRGM is the best available tool for evaluating the claims and counterclaims in this case because it is the only hydrologic model available to evaluate the effects of groundwater pumping and changes in historical Project operations on Project deliveries to Texas and New Mexico. The ILRGM is superior to the Texas Model because (a) it simulates the entire Lower Rio Grande area from Elephant Butte Reservoir to Fort Quitman, (b) it employs monthly stress periods that allow it to simulate the important seasonal variations in groundwater and surface water flows, and (c) it is capable of simulating the dynamic response of Project operations to changes in flow throughout the entire Project area. Conversely, the Texas Model fails to accurately evaluate pumping effects	NM-EX 012, Sullivan Decl. at ¶ 118; <i>See also</i> NM-EX 122, Spronk Rep. at 9, 113.	NM-EX-012: Fed. R. Civ. P. 56(c)(4), Fed. R. Evid. 401. The statement is irrelevant for purposes of a motion for summary judgment. NM-EX-122: <i>See</i> General Objection #7; Fed. R. Evid. 801(c), hearsay.	Subject to the stated objections, the fact is cited in New Mexico's Response to Texas's Motion for Partial Summary Judgment but does not materially respond to facts stated therein. New Mexico's stated fact and the evidence cited in support regarding the Integrated Lower Rio Grande Model and Rio Grande Project deliveries do not materially respond to an argument made in Texas's Motion for Partial Summary Judgment. CSMF #258 may relate to New Mexico's motions for partial summary judgment and/or its counterclaims, but alleged depletions due to pumping in Texas is not the subject of Texas's Motion for Partial Summary Judgment. New Mexico's stated fact is non-responsive and otherwise not supported by definite, competent, or significantly probative evidence that genuinely and materially responds to a fact stated in Texas's Motion for Partial Summary Judgment. As such, Texas's stated material facts remain undisputed. Fed. R. Civ. P. 56(a), 56(c)(1).	New Mexico previously responded to these authenticity and hearsay objections. <i>See</i> [Dkt. 468] State of New Mexico's Response to State of Texas's Evidentiary Objections.

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		<p>to Project deliveries because it does not simulate the dynamic response of Project reservoir releases to changes in flows that occur without pumping, provides no simulations for the area downstream of the El Paso gage and thus cannot simulate the feedback response from a large part of the Project area, and uses annual stress periods that prevent distinguishing impacts that occur during the Project release period (irrigation season) from impacts that occur during the non-irrigation season. In short, the absence of dynamic simulation of Project operations renders the Texas Model of no utility in analyzing the key issue presented in this case: impacts to Project deliveries from groundwater pumping and changes in historical Project operations.</p>				
259	N/A	<p>The ILRG Model has been used to run several model scenarios that evaluate New Mexico's pumping, Texas's pumping, the impacts of implementing the 2008 OA, the impacts of changes to historical Project operations and accounting in EPCWID on overall Project</p>	<p>NM-EX 012, Sullivan Decl. at ¶ 119; <i>See also</i> NM-EX 122, Spronk Rep. at 47.</p>	<p>NM-EX-012: Fed. R. Civ. P. 56(c)(4), Fed. R. Evid. 401. The statement is irrelevant for purposes of a motion for summary judgment. NM-EX-122: <i>See</i> General Objection #7; Fed. R. Evid. 801(c), hearsay.</p>	<p>Subject to the stated objections, the fact is cited in New Mexico's Response to Texas's Motion for Partial Summary Judgment but does not materially respond to facts stated therein. New Mexico's stated fact and the evidence cited in support regarding the Integrated Lower Rio Grande Model, 2008 Operating Agreement and Rio Grande Project deliveries do not materially respond to an argument made in Texas's Motion for Partial Summary Judgment. CSMF #259 may relate to New Mexico's motions for partial summary judgment and/or</p>	<p>New Mexico previously responded to these authenticity and hearsay objections. <i>See</i> [Dkt. 468] State of New Mexico's Response to State of Texas's Evidentiary Objections.</p>

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		allocations, and various potential conjunctive use scenarios. The ILRG Model is the only model in this case that is capable of analyzing and quantifying the effects of these scenarios. The Texas Model is incapable of such analyses.			its counterclaims, but alleged depletions due to pumping in Texas is not the subject of Texas's Motion for Partial Summary Judgment. New Mexico's stated fact is non-responsive and otherwise not supported by definite, competent, or significantly probative evidence that genuinely and materially responds to a fact stated in Texas's Motion for Partial Summary Judgment. As such, Texas's stated material facts remain undisputed. Fed. R. Civ. P. 56(a), 56(c)(1).	
260	N/A	The City of El Paso diverts a considerable amount of Project Water for municipal purposes in the El Paso Valley. Much of this municipal use has replaced Project irrigation in Texas.	<i>See</i> NM-EX 423, Rio Grande Project Implementing Third-Party Contract among the U.S., EPCWID, and the City of El Paso at 48, 74 (Apr. 10, 2001).	NM-EX-423: <i>See</i> General Objection #8; Fed. R. Evid. 801(c), hearsay.	New Mexico's stated fact, and supporting evidence, are not cited in New Mexico's Response to Texas's Motion for Partial Summary Judgment and are therefore non-responsive and irrelevant. As such, Texas's stated material facts remain undisputed. Fed. R. Civ. P. 56(a), 56(c)(1).	New Mexico previously responded to these authenticity and hearsay objections. <i>See</i> [Dkt. 468] State of New Mexico's Response to State of Texas's Evidentiary Objections. In addition, this fact was not asserted against Texas and Texas proffers no fact to which New Mexico's fact is alleged to dispute. Thus, Texas's objection is nonsensical.
260	N/A	Some of these municipal diversions are a result of contractual agreements allowing for the exchange of Project Supply for municipal effluent, which is then considered to be "District Supply" for EPCWID, and not "Project Supply."	<i>See</i> NM- EX 006, Barroll 2d Decl. at ¶ 54.	n/a	New Mexico's stated fact, and supporting evidence, are not cited in New Mexico's Response to Texas's Motion for Partial Summary Judgment and are therefore non-responsive and irrelevant. As such, Texas's stated material facts remain undisputed. Fed. R. Civ. P. 56(a), 56(c)(1).	New Mexico previously responded to these authenticity and hearsay objections. <i>See</i> [Dkt. 468] State of New Mexico's Response to State of Texas's Evidentiary Objections. In addition, this fact was not asserted against Texas and Texas proffers no fact to which New Mexico's fact is alleged to dispute. Thus, Texas's

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						objection is nonsensical.
261	N/A	Municipal effluent and return flows associated with the municipal use of Project Water in the El Paso Valley were originally accounted as part of Project Supply.	NM-EX 100, Barroll Rep. at 30; NM-EX 428, Letter from Filiberto Cortez, Manager, Bureau of Reclamation, to Edd Fifer (July 8, 1999).	NM-EX-100: <i>See</i> General Objection #7; Fed. R. Evid. 801(c), hearsay. NM-EX-428: <i>See</i> General Objection #8; Fed. R. Evid. 801(c), hearsay.	Subject to the stated objections, the fact is cited in New Mexico's Response to Texas's Motion for Partial Summary Judgment but does not materially respond to facts stated therein. New Mexico's stated fact and the evidence cited in support regarding Project supply, return flows in the State of Texas, and municipal use in the El Paso Valley do not materially respond to an argument made in Texas's Motion for Partial Summary Judgment. CSMF #261 may relate to New Mexico's motions for partial summary judgment and/or its counterclaims, but alleged depletions due to pumping in Texas is not the subject of Texas's Motion for Partial Summary Judgment. New Mexico's stated fact is non-responsive and otherwise not supported by definite, competent, or significantly probative evidence that genuinely and materially responds to a fact stated in Texas's Motion for Partial Summary Judgment. As such, Texas's stated material facts remain undisputed. Fed. R. Civ. P. 56(a), 56(c)(1).	New Mexico previously responded to these authenticity and hearsay objections. <i>See</i> [Dkt. 468] State of New Mexico's Response to State of Texas's Evidentiary Objections.
261	N/A	However, Texas now intercepts these municipal Project return flows by diverting them directly into EPCWID conveyances and this water is no longer accounted for as Project Supply.	NM-EX 100, Barroll Rep. at 30, 49-50; NM-EX 102, Barroll Reb. Rep. at 24-36.	NM-EX-100, 102: <i>See</i> General Objection #7; Fed. R. Evid. 801(c), hearsay; Fed. R. Evid. 401, 402, the statements in the Barroll Rep. are irrelevant to the motion for summary judgment.	Same (261 above)	New Mexico previously responded to these authenticity and hearsay objections. <i>See</i> [Dkt. 468] State of New Mexico's Response to State of Texas's Evidentiary Objections.

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261	N/A	The reduction in irrigation return flows in Texas, as well as the fact that Reclamation no longer charges EPCWID for the use of any such return flows, means that a greater portion of EPCWID's charged diversions consist of reservoir releases than occurred previously. This change may increase EPCWID's draw on the reservoir, reducing the amount of water available for allocation to both New Mexico and Texas.	<i>See</i> NM-EX 006, Barroll 2d Decl. at ¶ 55.	NM-EX-006: Fed. R. Civ. P. 56(c)(4), Fed. R. Evid. 602, 702(a); Dr. Barroll has insufficient personal knowledge to assert this opinion for purposes of Rule 56 summary judgment to the extent the statement addresses modeling work by other New Mexico experts, and at trial she would lack qualification to offer this opinion as an expert under Fed. R. Evid. 702(a). The statement that there "may" be drawdown is vague and hypothetical.	Same (261 above)	New Mexico previously responded to these authenticity and hearsay objections. <i>See</i> [Dkt. 468] State of New Mexico's Response to State of Texas's Evidentiary Objections. As to Texas's objection to Dr. Barroll, see New Mexico's Response to State of Texas's Second Evidentiary Objections, § III (A).
262	N/A	The treatment of municipal effluent in the El Paso Valley stands in stark contrast to the treatment of municipal effluent in New Mexico. Municipal effluent from the City of Las Cruces is available for diversion at Mesilla Dam and at the Project diversion heading farther downstream, and the diversion of that effluent is accounted as Project Supply.	<i>See</i> NM-EX 006, Barroll 2d Decl. at ¶ 55.	n/a	Subject to the stated objections, the fact is cited in New Mexico's Response to Texas's Motion for Partial Summary Judgment but does not materially respond to facts stated therein. New Mexico's stated fact and the evidence cited in support regarding municipal effluent in the State of Texas do not materially respond to an argument made in Texas's Motion for Partial Summary Judgment. CSMF #262 may relate to New Mexico's motions for partial summary judgment and/or its counterclaims, but alleged depletions due to pumping in Texas is not the subject of Texas's Motion for Partial Summary Judgment. New Mexico's stated fact is non-responsive and otherwise not supported by definite, competent, or significantly probative evidence that genuinely and materially responds to a fact stated in Texas's Motion for Partial Summary Judgment. As such, Texas's stated material facts remain undisputed. Fed.	N/A

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					R. Civ. P. 56(a), 56(c)(1).	
263	Notice No. 26	Reclamation compiles an annual written report to the Rio Grande Compact Commission and gives an annual oral report at the Rio Grande Compact Commission meeting regarding operation of the Rio Grande Project. These reports contain general, annualized data concerning the operation of the Project, such as the total amount of release from Project Storage, the amount of water in Project Storage, and the annual allocations to each district.	<i>See</i> NM-EX 202, Cortez Dep. (July 30, 2020) at 44:6-45:4, 102:21-103:6; NM-EX 203, Cortez Dep. (July 31, 2020) at 209:20-210:14. E.g., NM-EX 516, Bureau of Reclamation, Calendar Year 2009 Report to the Rio Grande Compact Commission, 59-67 (Mar. 2010); NM-EX 003, Lopez Decl. at ¶¶ 14-15.	From TX's 12/22/20 Filings: NM-EX 202, 203: <i>See</i> General Objection #8. NM-EX 516: <i>See</i> General Objection #8; Fed. R. Evid. 801(c), hearsay. NM-EX 003: <i>See</i> General Objection #2.	From TX's 12/22/20 Filings: Subject to the stated objections, undisputed.	New Mexico previously responded to these authenticity and hearsay objections. <i>See</i> [Dkt. 468] State of New Mexico's Response to State of Texas's Evidentiary Objections.
264	Notice No. 27	Reclamation also provides to the State of New Mexico courtesy copies of periodic reports concerning Rio Grande Project operations, including reservoir elevations, flow readings, and storage transfers between reservoirs.	<i>See</i> NM-EX 203, Cortez Dep. (July 31, 2020) at 220:2-222:4. E.g., NM-EX 513, Letter from Filiberto Cortez, Manager El Paso Field Division, Bureau of Reclamation, to Water Accounting Division, U.S. Section, International Boundary Water Commission (Sept. 29, 2009); NM-EX 514, Letter from Filiberto Cortez, Manager El Paso Field Div., U.S. Bureau of Reclamation, to Lieutenant Col. Kimberly Colloton, District Engineer, Army Corps of Engineers (Sept. 29, 2009).	From TX's 12/22/20 Filings: NM-EX-203: <i>See</i> General Objection #8. NM-EX 513, 514: <i>See</i> General Objection #8; Fed. R. Evid. 801(c), hearsay.	From TX's 12/22/20 Filings: Subject to the stated objections, undisputed.	New Mexico previously responded to these authenticity and hearsay objections. <i>See</i> [Dkt. 468] State of New Mexico's Response to State of Texas's Evidentiary Objections.

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265	N/A	Reclamation also provides to the Engineer Advisers to the Rio Grande Compact Commission a report of Project accounting. Prior to 2006, that Project accounting amounted to Compact accounting below Elephant Butte Reservoir for New Mexico (EBID) and Texas (EPCWID). After the changes in Project operations in 2006, Project accounting provides a record of the deviation from the apportionment in the Compact.	<i>See</i> NM-EX 008, Lopez 2d Decl. at ¶ 31; <i>See</i> also NM-EX 107, Lopez Rep. at 24, 30, 32, 44-48.	NM-EX-008: Fed. R. Civ. P. 56(c)(4). The cited evidence does not support the stated "facts" in whole and/or in part. Fed. R. Civ. P. 56(c). The stated "facts" constitute improper legal conclusions in whole or in part. NM-EX-107: <i>See</i> General Objection #7; Fed. R. Evid. 801(c), hearsay.	Subject to the stated objections, the fact is cited in New Mexico's Response to Texas's Motion for Partial Summary Judgment but does not materially respond to facts stated therein. New Mexico's stated fact and the evidence cited in support regarding Project accounting do not materially respond to an argument made in Texas's Motion for Partial Summary Judgment. CSMF #265 may relate to New Mexico's motions for partial summary judgment and/or its counterclaims, but Project accounting is not the subject of Texas's Motion for Partial Summary Judgment. New Mexico's stated fact is non-responsive and otherwise not supported by definite, competent, or significantly probative evidence that genuinely and materially responds to a fact stated in Texas's Motion for Partial Summary Judgment. As such, Texas's stated material facts remain undisputed. Fed. R. Civ. P. 56(a), 56(c)(1).	New Mexico previously responded to these authenticity and hearsay objections. <i>See</i> [Dkt. 468] State of New Mexico's Response to State of Texas's Evidentiary Objections. As to Texas's objection to Mr. Lopez, see New Mexico's Response to State of Texas's Second Evidentiary Objections, § III (B).
266	Notice No. 28	New Mexico does not, however, receive daily operation information such as the daily release amount, the order amounts, or the timing of releases to satisfy orders.	<i>See</i> NM-EX 202, Cortez Dep. (July 30, 2020) at 114:6-22; NM-EX 002, D'Antonio Decl. at ¶ 17; NM-EX 004, Schmidt-Petersen Decl. at ¶ 15; NM-EX 100, Barroll Rep. at 47; NM-EX 107, Lopez Rep. at 73 ("Historically, Reclamation information and data about Project operations has not routinely been shared with the States.").	From TX's 12/22/20 Filings: NM-EX 002, 004, 100: Fed. R. Civ. P. 56(c)(4), Fed. R. Evid. 602—These individuals lack sufficient personal knowledge to assert that no agent or representative of the State of New Mexico has ever received information. NM-EX 107: <i>See</i> General Objection #7; General Objection #2; Fed. R. Evid. 801(c), hearsay. All: Fed. R. Evid. 401 – Even if true, New	From TX's 12/22/20 Filings: Subject to the stated objections, disputed. This paragraph is misleading insofar as it suggests that the only way that New Mexico had notice of the depletion its ground water pumping was causing to Texas's apportionment was by means of daily Project operational information. New Mexico's depletions have been ongoing since the early 1950s, and New Mexico's actual notice of the impact from its ground water pumping on Texas's apportionment is reflected in the following documents, with the earliest dated 1947: <i>See</i> Miltenberger Dec. in Opp. to NM at TX_MSJ_007371, paragraphs 1-7, 63-77. TX_MSJ_6492-6891.	New Mexico previously responded to these objections. <i>See</i> [Dkt. 468] State of New Mexico's Response to State of Texas's Evidentiary Objections, and [Dkt. 469] State of New Mexico's Response to Statements of Fact.

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				Mexico not receiving daily operation information is irrelevant. The "fact" has no tendency to make it any less probable that New Mexico was on notice as a general matter that its groundwater pumping would be depleting surface flows destined for Texas.		
267	Notice No. 29	Likewise, New Mexico does not receive any routine notice that any specific water order, whether at the district or individual farmer level, has or has not been filled.	NM-EX 002, D'Antonio Decl. at ¶ 17; NM-EX 004, Schmidt-Petersen Decl. at ¶ 15.	From TX's 12/22/20 Filings: NM-EX 002, 004: Fed. R. Civ. P. 56(c)(4), Fed. R. Evid. 602 – These declarants lack sufficient personal knowledge to assert that no agent or representative of the State of New Mexico has ever received such information. Fed. R. Evid. 401 – Even if true, lack of routine notice about specific water orders is irrelevant. That has no tendency to make it any less probable that New Mexico was on notice as	From TX's 12/22/20 Filings: Subject to the stated objections, disputed. This paragraph is misleading insofar as it suggests that the only way that New Mexico had notice of the depletion its ground water pumping was causing to Texas's apportionment was by means of daily Project operational information. New Mexico's depletions have been ongoing since the early 1950s, and New Mexico's actual notice of the impact from its ground water pumping on Texas's apportionment is reflected in the following documents, with the earliest dated 1947: <i>See</i> Miltenberger Dec. in Opp. to NM at TX_MSJ_007371, paragraphs 1-7, 63 - 77. TX_MSJ_6492-6891.	New Mexico previously responded to these objections. <i>See</i> [Dkt. 468] State of New Mexico's Response to State of Texas's Evidentiary Objections, <i>and</i> [Dkt. 469] State of New Mexico's Response to Statements of Fact.

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<u>NM- CS MF #</u>	<u>NM's Prior Numbering System</u>	<u>New Mexico's Stated Fact</u>	<u>New Mexico's Supporting Evidence</u>	<u>TEXAS'S EVIDENTIARY OBJECTIONS</u>	<u>TEXAS'S RESPONSE</u>	<u>NEW MEXICO'S RESPONSE TO TEXAS EVIDENTIARY OBJECTIONS</u>
				a general matter that its groundwater pumping would be depleting surface flows destined for Texas.		
268	Notice No. 30	Accordingly, New Mexico has no means to know, at any given time, what proportion of the water in the Rio Grande below Elephant Butte Reservoir is destined for delivery to EBID, EPCWID, or Mexico.	NM-EX 002, D'Antonio Decl. at ¶ 17; NM-EX 004, Schmidt-Petersen Decl. at ¶ 15.	From TX's 12/22/20 Filings: NM-EX 002, 004: Fed. R. Civ. P. 56(c)(4), Fed. R. Evid. 602 – These declarants lack sufficient personal knowledge to assert that no agent or representative of the State of New Mexico is capable of knowing such information. Fed. R. Evid. 401 – Even if true, the proportionate quantities of water in the river at any given time has no tendency to make it any less probable that New Mexico was on notice as a general matter that groundwater pumping would be depleting surface flows destined for Texas.	From TX's 12/22/20 Filings: Subject to the stated objections, disputed. This paragraph is misleading insofar as it suggests that the only way that New Mexico had notice of the depletion its ground water pumping was causing to Texas's apportionment was by means of daily Project operational information. New Mexico's depletions have been ongoing since the early 1950s, and New Mexico's actual notice of the impact from its ground water pumping on Texas's apportionment is reflected in the following documents, with the earliest dated 1947: <i>See</i> Miltenberger Dec. in Opp. to NM at TX_MSJ_007371, paragraphs 1-7, 63-77. TX_MSJ_6492-6891.	New Mexico previously responded to these objections. <i>See</i> [Dkt. 468] State of New Mexico's Response to State of Texas's Evidentiary Objections, <i>and</i> [Dkt. 469] State of New Mexico's Response to Statements of Fact.

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269	Notice No. 31	Further, New Mexico has no means to know, at any given time, whether the Rio Grande Project releases are in fact delivered to Texas in satisfaction of EPCWID orders.	NM-EX 002, D'Antonio Decl. at ¶ 17; NM-EX 004, Schmidt-Petersen Decl. at ¶ 15; <i>See</i> also NM-EX 211, Gordon Dep. (July 14, 2020), 180:14-181:7.	From TX's 12/22/20 Filings: NM-EX 002, 004: Fed. R. Civ. P. 56(c)(4); Fed. R. Evid. 602 – These declarants lack sufficient personal knowledge to assert that no agent or representative of the State of New Mexico is or ever has been capable of knowing such information. NM-EX 211: <i>See</i> General Objection #8. All: Fed. R. Evid. 401 – Even if true, lack of knowledge about specific releases at any given point in time is irrelevant. That has no tendency to make it any less probable that New Mexico was on notice as a general matter that groundwater pumping would be depleting surface	From TX's 12/22/20 Filings: Subject to the stated objections, disputed. EX-211: Cited "evidence" does not support the proposition. Further, this paragraph is misleading insofar as it suggests that the only way that New Mexico had notice of the depletion its ground water pumping was causing to Texas's apportionment was by means of daily Project operational information. New Mexico's depletions have been ongoing since the early 1950s, and New Mexico's actual notice of the impact from its ground water pumping on Texas's apportionment is reflected in the following documents, with the earliest dated 1947: <i>See</i> Miltenberger Dec. in Opp. to NM at TX_MSJ_007371, paragraphs 1-7, 63-77. TX_MSJ_6492-6891.	New Mexico previously responded to these objections. <i>See</i> [Dkt. 468] State of New Mexico's Response to State of Texas's Evidentiary Objections, <i>and</i> [Dkt. 469] State of New Mexico's Response to Statements of Fact.

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270	Notice No. 32	Conversely, to the extent that any amount of water released from Project supply pursuant to a specific order is intercepted prior to delivery, New Mexico would have no basis to know of a shortage to either District without explicit notice.	NM-EX 002, D'Antonio Decl. at ¶ 17; NM-EX 004, Schmidt-Petersen Decl. at ¶ 15.	From TX's 12/22/20 Filings: NM-EX-002, 004: Fed. R. Civ. P. 56(c)(4), Fed. R. Evid. 602 – These declarants lack sufficient personal knowledge to assert that no agent or representative of the State of New Mexico is or ever has been capable of knowing this information.	From TX's 12/22/20 Filings: Subject to the stated objections, disputed. New Mexico's depletions have been ongoing since the early 1950s, and New Mexico's actual notice of the impact from its ground water pumping on Texas's apportionment is reflected in the following documents, with the earliest dated 1947: <i>See</i> Miltenberger Dec. in Opp. to NM at TX_MSJ_007371, paragraphs 1-7, 63-77. TX_MSJ_6492-6891.	New Mexico previously responded to these objections. <i>See</i> [Dkt. 468] State of New Mexico's Response to State of Texas's Evidentiary Objections, <i>and</i> [Dkt. 469] State of New Mexico's Response to Statements of Fact.
271	Notice No. 33	From 1938 through the inception of this litigation, New Mexico did not receive any notice, with the potential exception of one complaint concerning surface water diversions (discussed below), whether from Reclamation, Texas, EBID, or EPCWID, that the conduct of water users in New Mexico prevented the United States from making delivery of Project water called for by Texas (EPCWID).	NM-EX 002, D'Antonio Decl. at ¶ 18; NM-EX 004, Schmidt-Petersen Decl. at ¶ 16; <i>See</i> NM-EX 218, Lopez Dep. (July 7, 2020) at 140:13-141:13; NM-EX 204, D'Antonio Dep. (June 25, 2020) at 169:1-7.	From TX's 12/22/20 Filings: NM-EX 002, 004: Fed. R. Civ. P. 56(c)(4), Fed. R. Evid. 602 – These declarants lack sufficient personal knowledge to assert that no agent or representative of the State of New Mexico has ever received such information. NM-EX 204: <i>See</i> General Objection #8.	From TX's 12/22/20 Filings: Subject to the stated objections, disputed. EX-204: Cited "evidence" does not support the proposition; Gordon Dec. in Opp. To NM at TX_MSJ_007269-007274. New Mexico has been on notice about the effect of its pumping on Texas's apportionment since at least 1947 as shown in the following documents: <i>See</i> Miltenberger Dec. in Opp. to NM at TX_MSJ_007371, paragraphs 1-7, 63-77. TX_MSJ_6492-6891.	New Mexico previously responded to these objections. <i>See</i> [Dkt. 468] State of New Mexico's Response to State of Texas's Evidentiary Objections, <i>and</i> [Dkt. 469] State of New Mexico's Response to Statements of Fact.
272	Notice No. 34	Filiberto Cortez, El Paso Field Division Manager for Reclamation, testified that Reclamation has only made one communication to New Mexico that notified New Mexico of	<i>See</i> NM- EX 202, Cortez Dep. (July 30, 2020) at 111:13-112:10.	From TX's 12/22/20 Filings: NM-EX 202: <i>See</i> General Objection #8.	From TX's 12/22/20 Filings: Subject to the stated objections, disputed. EX-202: Cited "evidence" does not support the proposition; New Mexico has been on notice about the effect of its pumping on Texas's apportionment since at least 1947 as shown in the	New Mexico previously responded to these objections. <i>See</i> [Dkt. 468] State of New Mexico's Response to State of Texas's Evidentiary Objections, <i>and</i> [Dkt. 469] State of New

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		concerns regarding water use in New Mexico potentially impacting Project deliveries.			following documents: <i>See</i> Miltenberger Dec. in Opp. to NM at TX_MSJ_007371, paragraphs 1-7, 63-77. TX_MSJ_6492-6891.	Mexico's Response to Statements of Fact.
273	Notice No. 35	Specifically, in April 2012, Reclamation informed the New Mexico Office of the State Engineer that the Districts and Reclamation had identified a number of river pumps that were "impacting the deliveries" from the Rio Grande Project to EPCWID and Mexico.	<i>See</i> NM-EX 521, Email from Filiberto Cortez, Manager El Paso Field Div., U.S. Bureau of Reclamation, to Rolf Schmidt-Peterson, Rio Grande Bureau Basin Manager, N.M. Interstate Stream Comm'n (Apr. 11, 2012).	From TX's 12/22/20 Filings: NM-EX 521: <i>See</i> General Objection #8; Fed. R. Evid. 801(c), hearsay.	From TX's 12/22/20 Filings: Subject to the stated objections, disputed. New Mexico has been on notice about the effect of its pumping on Texas's apportionment since at least 1947 as shown in the following documents: <i>See</i> Miltenberger Dec. in Opp. to NM at TX_MSJ_007371, paragraphs 1-7, 63-77. TX_MSJ_6492-6891. Also, one example of formal notice of illegal river pumping is irrelevant to the notice New Mexico has had for decades of its ground water pumping impact on Texas's apportionment.	New Mexico previously responded to these objections. <i>See</i> [Dkt. 468] State of New Mexico's Response to State of Texas's Evidentiary Objections, and [Dkt. 469] State of New Mexico's Response to Statements of Fact.
274	Notice No. 36	The New Mexico State Engineer performed an investigation of the water pumps at issue and responded on September 21, 2012. The investigation concluded that all but two of the sites were operating in compliance with adjudicated water rights that are senior to the Project's or approved groundwater withdrawal permits. With regard to the remaining two sites, the investigation concluded that the pumps in question were no longer operable, and it was not possible to determine if any diversion occurred at either site.	<i>See</i> NM-EX 523, Letter from Scott A. Verhines, State Engineer, State of N.M., to Ed Drusina, Comm'r, Int'l Boundary and Water Comm'n, and Mike Hamman, Albuquerque Area Manager, U.S. Bureau of Reclamation (Sept. 21, 2012).	From TX's 12/22/20 Filings: NM-EX 523: <i>See</i> General Objection #8; Fed. R. Evid. 801(c), hearsay.	From TX's 12/22/20 Filings: Subject to the stated objections, disputed. New Mexico has been on notice about the effect of its pumping on Texas's apportionment since at least 1947 as shown in the following documents: <i>See</i> Miltenberger Dec. in Opp. to NM at TX_MSJ_007371, paragraphs 1-7, 63-77. TX_MSJ_6492-6891. Also, one example of formal notice of illegal river pumping is irrelevant to the notice New Mexico has had for decades of its ground water pumping impact on Texas's apportionment.	New Mexico previously responded to these objections. <i>See</i> [Dkt. 468] State of New Mexico's Response to State of Texas's Evidentiary Objections, and [Dkt. 469] State of New Mexico's Response to Statements of Fact.

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275	Notice No. 37	The New Mexico State Engineer further invited Reclamation to "continue to notify" the State of any "potential unlawful diversions" so that the State Engineer could "initiate appropriate water administration actions, if necessary, to prevent the unlawful diversion of water."	See NM- EX 523, Letter from Scott A. Verhines, State Engineer, State of N.M., to Ed Drusina, Comm'r, Int'l Boundary and Water Comm'n, and Mike Hamman, Albuquerque Area Manager, U.S. Bureau of Reclamation (Sept. 21, 2012).	From TX's 12/22/20 Filings: NM-EX 523: See General Objection #8; Fed. R. Evid. 801(c), hearsay.	From TX's 12/22/20 Filings: Subject to the stated objections, disputed. New Mexico has been on notice about the effect of its pumping on Texas's apportionment since at least 1947 as shown in the following documents: See Miltenberger Dec. in Opp. to NM at TX_MSJ_007371, paragraphs 1-7, 63-77. TX_MSJ_6492-6891. Also, one example of formal notice of illegal river pumping is irrelevant to the notice New Mexico has had for decades of its ground water pumping impact on Texas's apportionment.	New Mexico previously responded to these objections. See [Dkt. 468] State of New Mexico's Response to State of Texas's Evidentiary Objections, and [Dkt. 469] State of New Mexico's Response to Statements of Fact.
276	Notice No. 38	Following this invitation, Reclamation made no further reports to the New Mexico State Engineer concerning improper surface water diversions.	See NM-EX 202, Cortez Dep. (July 30, 2020) at 119:7-120:9.	From TX's 12/22/20 Filings: NM-EX-202: See General Objection #8.	From TX's 12/22/20 Filings: Subject to the stated objections, disputed. New Mexico has been on notice about the effect of its pumping on Texas's apportionment since at least 1947 as shown in the following documents: See Miltenberger Dec. in Opp. to NM at TX_MSJ_007371, paragraphs 1-7, 63-77. TX_MSJ_6492-6891. Also, one example of formal notice of illegal river pumping is irrelevant to the notice New Mexico has had for decades of its ground water pumping impact on Texas's apportionment. NM-EX 202: cited evidence does not support the proposition.	New Mexico previously responded to these objections. See [Dkt. 468] State of New Mexico's Response to State of Texas's Evidentiary Objections, and [Dkt. 469] State of New Mexico's Response to Statements of Fact.
277	Notice No. 39	Other than this surface pump investigation, Reclamation has not requested that New Mexico investigate or curtail any illegal water use, whether surface or groundwater.	See NM-EX 202, Cortez Dep. (July 30, 2020), at 113:11-18.	From TX's 12/22/20 Filings: NM-EX-202: See General Objection #8.	From TX's 12/22/20 Filings: Subject to the stated objections, disputed. New Mexico has been on notice about the effect of its pumping on Texas's apportionment since at least 1947 as shown in the following documents: See Miltenberger Dec. in Opp. to NM at TX_MSJ_007371, paragraphs 1-7, 63-77. TX_MSJ_6492-6891. Also, one example of formal notice of illegal river pumping is	New Mexico previously responded to these objections. See [Dkt. 468] State of New Mexico's Response to State of Texas's Evidentiary Objections, and [Dkt. 469] State of New Mexico's Response to Statements of Fact.

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					irrelevant to the notice New Mexico has had for decades of its ground water pumping impact on Texas's apportionment. NM-EX 202: cited evidence does not support the proposition.	
278	Notice No. 40	Further, Reclamation has not informed New Mexico that it was unable in any year to deliver Project water that Texas (EPCWID) ordered due to the actions of New Mexico water users.	<i>See</i> NM-EX 202, Cortez Dep. (July 30, 2020) at 114:23-115:7. NM-EX 002, D'Antonio Decl. at ¶ 19.	From TX's 12/22/20 Filings: NM-EX 202: <i>See</i> General Objection #8. NM-EX 002: Fed. R. Civ. P. 56(c)(4), Fed. R. Evid. 602 – The declarant lacks sufficient personal knowledge to assert that no agent or representative of the State of New Mexico ever received such information.	From TX's 12/22/20 Filings: Subject to the stated objections, disputed. New Mexico has been on notice about the effect of its pumping on Texas's apportionment since at least 1947 as shown in the following documents: <i>See</i> Miltenberger Dec. in Opp. to NM at TX_MSJ_007371, paragraphs 1-7, 63-77. TX_MSJ_6492-6891. Also, one example of formal notice of illegal river pumping is irrelevant to the notice New Mexico has had for decades of its ground water pumping impact on Texas's apportionment. NM-EX 202: cited evidence does not support the proposition.	New Mexico previously responded to these objections. <i>See</i> [Dkt. 468] State of New Mexico's Response to State of Texas's Evidentiary Objections, <i>and</i> [Dkt. 469] State of New Mexico's Response to Statements of Fact.
279	Notice No. 41	Likewise, Texas has not, through the Rio Grande Compact Commission, provided any notification that Texas's Project deliveries were shorted in any year.	<i>See</i> NM-EX 211, Gordon Dep. (July 14, 2020) at 192:10-193:2. NM-EX 002, D'Antonio Decl. at ¶ 18; NM-EX 004, Schmidt-Petersen Decl. at ¶ 17.	From TX's 12/22/20 Filings: NM-EX 002, 004: Fed. R. Civ. P. 56(c)(4), Fed. R. Evid. 602 – The declarants lack sufficient personal knowledge about "any year" since the inception of the Rio	From TX's 12/22/20 Filings: Subject to the stated objections, disputed. New Mexico has been on notice about the effect of its pumping on Texas's apportionment since at least 1947 as shown in the following documents: <i>See</i> Miltenberger Dec. in Opp. to NM at TX_MSJ_007371, paragraphs 1-7, 63-77. TX_MSJ_6492-6891. Also, one example of formal notice of illegal river pumping is	New Mexico previously responded to these objections. <i>See</i> [Dkt. 468] State of New Mexico's Response to State of Texas's Evidentiary Objections, <i>and</i> [Dkt. 469] State of New Mexico's Response to Statements of Fact.

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				Grande Compact Commission. NM-EX 211: <i>See</i> General Objection #8.	irrelevant to the notice New Mexico has had for decades of its ground water pumping impact on Texas's apportionment. Schmidt-Peterson Depo. 6/29/2020, 41:20-25 ("I mean, the first day I showed up on the job, which was in December of 1999, Joe G. Hanson, the then Compact commissioner, stood up and said, you know, deliver or we'll sue. And that's just kind of a constant refrain in the entire time that I've been there no matter what the supply is.")	
280	N/A	The TX Rio Grande Compact Commissioner is a governor appointee.	NM-EX 247, Gordon Dep. (July 14, 2020) at 25:5-9.	NM-EX-247: <i>See</i> General Objection #8.	New Mexico's stated fact, and supporting evidence, are not cited in New Mexico's Response to Texas's Motion for Partial Summary Judgment and are therefore non-responsive and irrelevant. As such, Texas's stated material facts remain undisputed. Fed. R. Civ. P. 56(a), 56(c)(1).	New Mexico previously responded to these authenticity and hearsay objections. <i>See</i> [Dkt. 468] State of New Mexico's Response to State of Texas's Evidentiary Objections.
280	N/A	The current Commissioner has no water background and is a tax attorney.	Id.. at 17:19-25; 18:1-10 (no education in water administration, hydrology, or interstate water compacts).	NM-EX-247: <i>See</i> General Objection #8.	New Mexico's stated fact, and supporting evidence, are not cited in New Mexico's Response to Texas's Motion for Partial Summary Judgment and are therefore non-responsive and irrelevant. As such, Texas's stated material facts remain undisputed. Fed. R. Civ. P. 56(a), 56(c)(1).	New Mexico previously responded to these authentication and hearsay objections. <i>See</i> [Dkt. 468] State of New Mexico's Response to State of Texas's Evidentiary Objections.
281	N/A	Groundwater use in Texas is subject to little direct regulation.	Cf. Edwards Aquifer Auth. v. Day, 369 S.W.3d 814, 823-33 (Tex. 2012) (discussing the law of capture)	Edwards Aquifer Auth. v. Day: Case law/legal opinions do not constitute factual "evidence" as contemplated by Fed. R. Civ. P. 56(c).	New Mexico's stated fact, and supporting evidence, are not cited in New Mexico's Response to Texas's Motion for Partial Summary Judgment and are therefore non-responsive and irrelevant. As such, Texas's stated material facts remain undisputed. Fed. R. Civ. P. 56(a), 56(c)(1).	N/A

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281	N/A	The Texas Water Development Board ("TWDB") is the state agency statutorily charged with groundwater oversight, but it has no management, compliance, or enforcement authority.	NM-EX 249, French Dep. (Aug. 31, 2020) at 16:5-25; 17:1-16 , 43:1-44:25.	NM-EX-249: <i>See</i> General Objection #8.	New Mexico's stated fact, and supporting evidence, are not cited in New Mexico's Response to Texas's Motion for Partial Summary Judgment and are therefore non-responsive and irrelevant. As such, Texas's stated material facts remain undisputed. Fed. R. Civ. P. 56(a), 56(c)(1).	New Mexico previously responded to these authentication and hearsay objections. <i>See</i> [Dkt. 468] State of New Mexico's Response to State of Texas's Evidentiary Objections.
281	N/A	Likewise, the Texas Commission on Environmental Quality ("TCEQ"), which administers surface water rights, maintains a Groundwater Division, but it lacks any compliance or enforcement authority.	NM-EX 250 Mills Dep. (Aug. 27, 2020) at 46:21-23, 52:4-5.	NM-EX-250: <i>See</i> General Objection #8.	New Mexico's stated fact, and supporting evidence, are not cited in New Mexico's Response to Texas's Motion for Partial Summary Judgment and are therefore non-responsive and irrelevant. As such, Texas's stated material facts remain undisputed. Fed. R. Civ. P. 56(a), 56(c)(1).	New Mexico previously responded to these authentication and hearsay objections. <i>See</i> [Dkt. 468] State of New Mexico's Response to State of Texas's Evidentiary Objections.
282	N/A	TCEQ, with inputs by the TWDB, has the authority to establish Priority Groundwater Management Areas ("pageMA") based on a determination that there are critical groundwater problems, including water shortage issues.	NM-EX 250, Mills Dep. (Aug. 27, 2020) at 21:6-18, 54-21-25; 55:1-17.	NM-EX-250: <i>See</i> General Objection #8.	New Mexico's stated fact, and supporting evidence, are not cited in New Mexico's Response to Texas's Motion for Partial Summary Judgment and are therefore non-responsive and irrelevant. As such, Texas's stated material facts remain undisputed. Fed. R. Civ. P. 56(a), 56(c)(1).	New Mexico previously responded to these authentication and hearsay objections. <i>See</i> [Dkt. 468] State of New Mexico's Response to State of Texas's Evidentiary Objections.
283	N/A	Groundwater Conservation Districts ("GCD") are political entities charged with management of groundwater resources, including permitting of groundwater wells, creating management plans, implementing policies and procedures to conserve groundwater resources and protecting property	NM-EX 249, French Dep. (Aug. 31, 2020) 49:12-14; NM-EX 250, Mills Dep. (Aug. 27, 2020) 37:1-17; 22-25.	NM-EX-249, 250: <i>See</i> General Objection #8.	New Mexico's stated fact, and supporting evidence, are not cited in New Mexico's Response to Texas's Motion for Partial Summary Judgment and are therefore non-responsive and irrelevant. As such, Texas's stated material facts remain undisputed. Fed. R. Civ. P. 56(a), 56(c)(1).	New Mexico previously responded to these authentication and hearsay objections. <i>See</i> [Dkt. 468] State of New Mexico's Response to State of Texas's Evidentiary Objections.

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		rights related to groundwater.				
283	N/A	PGMA stakeholders have the authority to create GCDs. Additionally, the Texas legislature may create a GCD on the recommendation of the TCEQ.	NM-EX 250, Mills Dep. (Aug. 27, 2020) 25:9-12	NM-EX-250: <i>See</i> General Objection #8.	New Mexico's stated fact, and supporting evidence, are not cited in New Mexico's Response to Texas's Motion for Partial Summary Judgment and are therefore non-responsive and irrelevant. As such, Texas's stated material facts remain undisputed. Fed. R. Civ. P. 56(a), 56(c)(1).	New Mexico previously responded to these authentication and hearsay objections. <i>See</i> [Dkt. 468] State of New Mexico's Response to State of Texas's Evidentiary Objections.
284	N/A	All groundwater management, including well permitting, requires a local GCD.	NM-EX 249, French Dep. (Aug. 31, 2020) 49:12-14; NM-EX 250, Mills Dep. (Aug. 27, 2020) 37:1-17; 22-25.	NM-EX-249, 250: <i>See</i> General Objection #8.	New Mexico's stated fact, and supporting evidence, are not cited in New Mexico's Response to Texas's Motion for Partial Summary Judgment and are therefore non-responsive and irrelevant. As such, Texas's stated material facts remain undisputed. Fed. R. Civ. P. 56(a), 56(c)(1).	New Mexico previously responded to these authentication and hearsay objections. <i>See</i> [Dkt. 468] State of New Mexico's Response to State of Texas's Evidentiary Objections.
284	N/A	TWDB has no management, compliance, or enforcement authority over a GCD once created or its groundwater management plan.	NM-EX 249, French Dep. (Aug. 31, 2020) 36:3-4; 43:1-6; 43:7-12; 43:13-18; 43:19-25; 44:1-8; 44:15-25.	NM-EX-249: <i>See</i> General Objection #8.	New Mexico's stated fact, and supporting evidence, are not cited in New Mexico's Response to Texas's Motion for Partial Summary Judgment and are therefore non-responsive and irrelevant. As such, Texas's stated material facts remain undisputed. Fed. R. Civ. P. 56(a), 56(c)(1).	New Mexico previously responded to these authentication and hearsay objections. <i>See</i> [Dkt. 468] State of New Mexico's Response to State of Texas's Evidentiary Objections.
285	N/A	In 1998 TCEQ designated El Paso County as PGMA 5.	NM-EX 250, Mills Dep. (Aug. 27, 2020) 27:11-24.	NM-EX-250: <i>See</i> General Objection #8.	New Mexico's stated fact, and supporting evidence, are not cited in New Mexico's Response to Texas's Motion for Partial Summary Judgment and are therefore non-responsive and irrelevant. As such, Texas's stated material facts remain undisputed. Fed. R. Civ. P. 56(a), 56(c)(1).	New Mexico previously responded to these authentication and hearsay objections. <i>See</i> [Dkt. 468] State of New Mexico's Response to State of Texas's Evidentiary Objections.

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<u>NM- CS MF #</u>	<u>NM's Prior Numbe ring Syste m</u>	<u>New Mexico's Stated Fact</u>	<u>New Mexico's Supporting Evidence</u>	<u>TEXAS'S EVIDENTIARY OBJECTIONS</u>	<u>TEXAS'S RESPONSE</u>	<u>NEW MEXICO'S RESPONSE TO TEXAS EVIDENTIARY OBJECTIONS</u>
285	N/A	pageMA 5 does not contain any GCDs.	NM-EX 249, French Dep. (Aug. 31, 2020) 34:12-17; 35:2; 49:1-6.	NM-EX-249: <i>See</i> General Objection #8.	New Mexico's stated fact, and supporting evidence, are not cited in New Mexico's Response to Texas's Motion for Partial Summary Judgment and are therefore non-responsive and irrelevant. As such, Texas's stated material facts remain undisputed. Fed. R. Civ. P. 56(a), 56(c)(1).	New Mexico previously responded to these authentication and hearsay objections. <i>See</i> [Dkt. 468] State of New Mexico's Response to State of Texas's Evidentiary Objections.
285	N/A	Accordingly, there is not a groundwater management plan in place for pageMA 5.	NM-EX 249, French Dep. (Aug. 31, 2020) 46:1-6.	NM-EX-249: <i>See</i> General Objection #8.	New Mexico's stated fact, and supporting evidence, are not cited in New Mexico's Response to Texas's Motion for Partial Summary Judgment and are therefore non-responsive and irrelevant. As such, Texas's stated material facts remain undisputed. Fed. R. Civ. P. 56(a), 56(c)(1).	New Mexico previously responded to these authentication and hearsay objections. <i>See</i> [Dkt. 468] State of New Mexico's Response to State of Texas's Evidentiary Objections.
286	N/A	Texas's water administration, or lack thereof, within the Texas portion of the Project has not been consistent with a 1938 Condition. Changes that may affect Project conditions and impact Project depletions in Texas include the following: a. Texas water users have made extensive use of groundwater for both Project and non-Project uses (with United States knowledge); b. Texas and EPCWID have availed themselves of the benefits of the United States' Rectification and Canalization projects; c. Texas farmers have	<i>See</i> NM-EX 008, Lopez 2d Decl. at ¶ 35; <i>See</i> also NM-EX 100, Barroll Rep. at 20, 22, 31-52, Appxs. C-D; NM-EX 107, Lopez Rep. at 26, 43-66.	NM-EX-008: Fed. R. Evid. 602, Fed. R. Civ. P. 56(c)(4). The cited evidence does not support the stated "facts" in whole and/or in part. Fed. R. Civ. P. 56(c). The stated "facts" constitute improper legal conclusions in whole or in part. The declarant lacks personal knowledge regarding Texas water administration. NM-EX-	New Mexico's stated fact, and supporting evidence, are not cited in New Mexico's Response to Texas's Motion for Partial Summary Judgment and are therefore non-responsive and irrelevant. As such, Texas's stated material facts remain undisputed. Fed. R. Civ. P. 56(a), 56(c)(1).	New Mexico previously responded to these authentication and hearsay objections. <i>See</i> [Dkt. 468] State of New Mexico's Response to State of Texas's Evidentiary Objections. As to Texas's objection to Mr. Lopez, see New Mexico's Response to State of Texas's Second Evidentiary Objections, § III (B).

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		<p>improved irrigation efficiencies and changed their crop mix to higher water- use crops;</p> <p>d. EPCWID has transferred the purpose of use of a significant portion of its Project Supply from irrigation to municipal supply through Miscellaneous Purposes contracts with Reclamation but without properly accounting for return flows;</p> <p>e. EPCWID, working with Reclamation but without review by other Compact parties, has negotiated the American Canal Extension credit for its benefit and to the detriment of EBID;</p> <p>f. Similarly, EPCWID, working with Reclamation but without review by other Compact parties, has deemed treated wastewater effluent as “non-Project” water— retaining its use but without being charged under its Project allocation;</p> <p>g. EPCWID has opted to forego use of available drain flows, instead calling for additional water out of Project Storage;</p> <p>h. EPCWID has sold Project water to Hudspeth County</p>		<p>100, 107: <i>See</i> General Objection #7; Fed. R. Evid. 801(c), hearsay.</p>		

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		Conservation and Reclamation District No. 1 ; and i. EPCWID, working with EBID, Reclamation and Texas but without the other Compact parties, negotiated the 2008 Operating Agreement which effectively changed Project operation and allocation contrary to the Compact to New Mexico's detriment.				
287	N/A	In contrast to New Mexico's comprehensive administrative scheme with regard to groundwater, Texas water authorities have not made efforts to control groundwater use in Texas, despite the detrimental effects of Texas' extensive groundwater use on historical Project Supply.	<i>See</i> NM-EX 007, D'Antonio 2d Decl. at ¶ 56, NM-EX; <i>See</i> also NM-EX 606, Comparison of Select New Mexico and Texas Water Administration Facts.	NM-EX-007: Fed. R. Evid. 602, Fed. R. Civ. P. 56(c)(4). The cited evidence does not support the stated "facts" in whole and/or in part. Fed. R. Civ. P. 56(c). The stated "facts" constitute improper legal conclusions in whole or in part. The declarant lacks personal knowledge regarding Texas water administration. NM-EX-606: <i>See</i> General Objection #9; Fed. R. Evid. 801(c), hearsay.	Subject to the stated objections, the fact is cited in New Mexico's Response to Texas's Motion for Partial Summary Judgment but does not materially respond to facts stated therein. New Mexico's stated fact and the evidence cited in support regarding groundwater use in the State of Texas do not materially respond to an argument made in Texas's Motion for Partial Summary Judgment. CSMF #287 may relate to New Mexico's motions for partial summary judgment and/or its counterclaims, but alleged depletions due to pumping in Texas is not the subject of Texas's Motion for Partial Summary Judgment. New Mexico's stated fact is non-responsive and otherwise not supported by definite, competent, or significantly probative evidence that genuinely and materially responds to a fact stated in Texas's Motion for Partial Summary Judgment. As such, Texas's stated material facts remain undisputed. Fed. R. Civ. P. 56(a), 56(c)(1).	New Mexico previously responded to these authentication and hearsay objections. <i>See</i> [Dkt. 468] State of New Mexico's Response to State of Texas's Evidentiary Objections. As to Texas's objection to Mr. D'Antonio, see New Mexico's Response to State of Texas's Second Evidentiary Objections, § III (C).

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<u>NM- CS MF #</u>	<u>NM's Prior Numbering System</u>	<u>New Mexico's Stated Fact</u>	<u>New Mexico's Supporting Evidence</u>	<u>TEXAS'S EVIDENTIARY OBJECTIONS</u>	<u>TEXAS'S RESPONSE</u>	<u>NEW MEXICO'S RESPONSE TO TEXAS EVIDENTIARY OBJECTIONS</u>
288	N/A	Under the New Mexico Constitution and law, water in New Mexico belongs to the public. Private rights to the use of New Mexico's unappropriated waters may be established by appropriation of water for beneficial use. Beneficial use is the basis, measure, and limit of a right to use water, and priority of appropriation gives the better right.	<i>See</i> NM-EX 007, D'Antonio 2d Decl. at ¶ 1; <i>See</i> also N.M. Const. art. XVI, §§ 2, 3; NMSA 1978 §§ 72-12-1 and -2 (1931).	NM-EX-007: Fed. R. Civ. P. 56(c)(4). The cited evidence does not support the stated "facts" in whole and/or in part. Fed. R. Civ. P. 56(c). The stated "facts" constitute improper legal conclusions in whole or in part. N.M. Const. and NMSA: The cited constitutional provision and statute does not constitute factual "evidence" as contemplated by Fed. R. Civ. P. 56(c).	Subject to the stated objections, the fact is cited in New Mexico's Response to Texas's Motion for Partial Summary Judgment but does not materially respond to facts stated therein. New Mexico's stated fact and the evidence cited in support regarding general principles of New Mexico water law do not materially respond to an argument made in Texas's Motion for Partial Summary Judgment. CSMF #288 may relate to New Mexico's motions for partial summary judgment and/or its counterclaims, but alleged depletions due to pumping in Texas is not the subject of Texas's Motion for Partial Summary Judgment. New Mexico's stated fact is non-responsive and otherwise not supported by definite, competent, or significantly probative evidence that genuinely and materially responds to a fact stated in Texas's Motion for Partial Summary Judgment. As such, Texas's stated material facts remain undisputed. Fed. R. Civ. P. 56(a), 56(c)(1).	New Mexico previously responded to these authentication and hearsay objections. <i>See</i> [Dkt. 468] State of New Mexico's Response to State of Texas's Evidentiary Objections. As to Texas's objection to Mr. D'Antonio, see New Mexico's Response to State of Texas's Second Evidentiary Objections, § III (C).
288	N/A	The provisions of beneficial use and priority of appropriation were first formally adopted into New Mexico law in the 1907 Water Code, NMSA 1978, Title 72 (1907 Water Code). Based on a Model Water Code, the 1907 Water Code was enacted in anticipation of the Project in the LRG; it also places centralized authority in a State Engineer, a cabinet-level position and gives him broad and exclusive powers.	<i>See</i> NM-EX 007, D'Antonio 2d Decl. at ¶¶ 2-3; <i>See</i> also NM-EX 434, Ira Clark, Water in New Mexico: A History of its Management and Use 118-119 (1987).	NM-EX-007: Fed. R. Civ. P. 56(c)(4). The cited evidence does not support the stated "facts" in whole and/or in part. Fed. R. Civ. P. 56(c). The stated "facts" constitute improper legal conclusions in whole or in part. NM-EX-434: See General Objection #8; Fed. R. Evid. 801(c), hearsay.	Same (288 above)	New Mexico previously responded to these authentication and hearsay objections. <i>See</i> [Dkt. 468] State of New Mexico's Response to State of Texas's Evidentiary Objections. As to Texas's objection to Mr. D'Antonio, see New Mexico's Response to State of Texas's Second Evidentiary Objections, § III (C).

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<u>NM- CS MF #</u>	<u>NM's Prior Numbe ring Syste m</u>	<u>New Mexico's Stated Fact</u>	<u>New Mexico's Supporting Evidence</u>	<u>TEXAS'S EVIDENTIARY OBJECTIONS</u>	<u>TEXAS'S RESPONSE</u>	<u>NEW MEXICO'S RESPONSE TO TEXAS EVIDENTIARY OBJECTIONS</u>
289	N/A	Since 1907, a permit from the State Engineer is required to develop a water right for surface water use.	<i>See</i> NM-EX 007, D'Antonio 2d Decl. at ¶ 5(a); <i>See</i> also NMSA 1978 §§72-5-1 through -7.	NM-EX-007: Fed. R. Civ. P. 56(c)(4). The cited evidence does not support the stated "facts" in whole and/or in part. Fed. R. Civ. P. 56(c). The stated "facts" constitute improper legal conclusions in whole or in part. NMSA: The cited statute does not constitute factual "evidence" as contemplated by Fed. R. Civ. P. 56(c).	Subject to the stated objections, the fact is cited in New Mexico's Response to Texas's Motion for Partial Summary Judgment but does not materially respond to facts stated therein. New Mexico's stated fact and the evidence cited in support regarding general principles of New Mexico water law do not materially respond to an argument made in Texas's Motion for Partial Summary Judgment. CSMF #289 may relate to New Mexico's motions for partial summary judgment and/or its counterclaims, but alleged depletions due to pumping in Texas is not the subject of Texas's Motion for Partial Summary Judgment. New Mexico's stated fact is non-responsive and otherwise not supported by definite, competent, or significantly probative evidence that genuinely and materially responds to a fact stated in Texas's Motion for Partial Summary Judgment. As such, Texas's stated material facts remain undisputed. Fed. R. Civ. P. 56(a), 56(c)(1).	As to Texas's objection to Mr. D'Antonio, see New Mexico's Response to State of Texas's Second Evidentiary Objections, § III (C).
289	N/A	Since 1931, a similar permit requirement applies to all groundwater use within a "declared" groundwater basin.	<i>See</i> NM-EX 007, D'Antonio 2d Decl. at ¶ 5(b); NMSA 1978 §72-12-1, et seq ; <i>See</i> also State ex rel. Bliss v. Dority, 1950-NMSC-066, 55 N.M. 12, 225 P.2d 1007; Office of the State Engineer, Article 7: Declared Underground Water Basins (2006).	NM-EX-007: Fed. R. Civ. P. 56(c)(4). The cited evidence does not support the stated "facts" in whole and/or in part. Fed. R. Civ. P. 56(c). The stated "facts" constitute improper legal conclusions in whole or in part. NMSA and State ex. rel. Bliss v. Dority : The cited statute and case law do not constitute factual	Same (289 above)	As to Texas's objection to Mr. D'Antonio, see New Mexico's Response to State of Texas's Second Evidentiary Objections, § III (C).

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				"evidence" as contemplated by Fed. R. Civ. P. 56(c).		
290	N/A	The State Engineer serves as the Secretary to New Mexico's Interstate Stream Commission (ISC), which oversees New Mexico's compact obligations and expends significant resources to ensure compliance with the Rio Grande Compact and seven (7) other interstate compacts.	<i>See</i> NM- EX 007, D'Antonio 2d Decl. at ¶ 5(g); <i>See</i> also NM-EX 009, Schmidt-Petersen 2d Decl., ¶¶ 4-5, 13-17.	NM-EX-007: To the extent the cited evidence states Mr. D'Antonio's opinion regarding compliance with the Rio Grande Compact, the cited evidence does not support the stated "facts" in whole and/or in part. Fed. R. Civ. P. 56(c). The stated "facts" constitute improper legal conclusions in whole or in part. NM-EX-009: <i>See</i> General Objection #5.	Subject to the stated objections, the fact is cited in New Mexico's Response to Texas's Motion for Partial Summary Judgment but does not materially respond to facts stated therein. New Mexico's stated fact and the evidence cited in support regarding the powers and duties of the New Mexico State Engineer do not materially respond to an argument made in Texas's Motion for Partial Summary Judgment. CSMF #290 may relate to New Mexico's motions for partial summary judgment and/or its counterclaims, but alleged depletions due to pumping in Texas is not the subject of Texas's Motion for Partial Summary Judgment. New Mexico's stated fact is non-responsive and otherwise not supported by definite, competent, or significantly probative evidence that genuinely and materially responds to a fact stated in Texas's Motion for Partial Summary Judgment. As such, Texas's stated material facts remain undisputed. Fed. R. Civ. P. 56(a), 56(c)(1).	As to Texas's objection to Mr. D'Antonio, see New Mexico's Response to State of Texas's Second Evidentiary Objections, § III (C). As to Texas's objection to Mr. Schmidt-Petersen, see New Mexico's Response to State of Texas's Second Evidentiary Objections, § III (E).
291	N/A	The State Engineer also serves as New Mexico's Rio Grande Compact Commissioner and has broad authority to address Compact compliance and administrative issues together.	<i>See</i> NM- EX 007, D'Antonio 2d Decl. at ¶¶ 5(i), 8, 9. <i>See</i> also NM-EX 009, Schmidt-Petersen 2nd Decl., <i>passim</i> .	NM-EX-007: To the extent the cited evidence states Mr. D'Antonio's opinion regarding compliance with the Rio Grande Compact, the cited evidence does not support the stated "facts" in whole and/or in part. Fed. R. Civ. P. 56(c). The stated "facts"	Subject to the stated objections, the fact is cited in New Mexico's Response to Texas's Motion for Partial Summary Judgment but does not materially respond to facts stated therein. New Mexico's stated fact and the evidence cited in support regarding the powers and duties of the New Mexico State Engineer do not materially respond to an argument made in Texas's Motion for Partial Summary Judgment. CSMF #291 may relate to New Mexico's motions for partial summary judgment and/or its counterclaims, but alleged depletions due to pumping in Texas is not the subject of Texas's Motion for Partial Summary Judgment. New Mexico's stated fact is non-responsive and otherwise not supported by definite, competent,	As to Texas's objection to Mr. D'Antonio, see New Mexico's Response to State of Texas's Second Evidentiary Objections, § III (C). As to Texas's objection to Mr. Schmidt-Petersen, see New Mexico's Response to State of Texas's Second Evidentiary Objections, § III (E).

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				constitute improper legal conclusions in whole or in part. NM-EX-009: <i>See</i> General Objection #5.	or significantly probative evidence that genuinely and materially responds to a fact stated in Texas's Motion for Partial Summary Judgment. As such, Texas's stated material facts remain undisputed. Fed. R. Civ. P. 56(a), 56(c)(1).	
292	N/A	Since 1907, the State Engineer has actively exercised broad powers to administer waters throughout the State of New Mexico in an exclusive and comprehensive administrative system.	<i>See</i> NM-EX 007, D'Antonio 2d Decl. at ¶¶ 4-5, 11; <i>See</i> also Tri-State Generation and Transmission v. D'Antonio, 2012-NMSC-039, ¶ 24, 289 P.3d 1232; NMSA 1978 § 72-2-1 (1907).	NM-EX-007: Fed. R. Civ. P. 56(c)(4). The cited evidence does not support the stated "facts" in whole and/or in part. Fed. R. Civ. P. 56(c). The stated "facts" constitute improper legal conclusions in whole or in part. Transmission v. D'Antonio & NMSA: The cited case and statute do not constitute factual "evidence" as contemplated by Fed. R. Civ. P. 56(c).	Subject to the stated objections, the fact is cited in New Mexico's Response to Texas's Motion for Partial Summary Judgment but does not materially respond to facts stated therein. New Mexico's stated fact and the evidence cited in support regarding the powers and duties of the New Mexico State Engineer do not materially respond to an argument made in Texas's Motion for Partial Summary Judgment. CSMF #292 may relate to New Mexico's motions for partial summary judgment and/or its counterclaims, but alleged depletions due to pumping in Texas is not the subject of Texas's Motion for Partial Summary Judgment. New Mexico's stated fact is non-responsive and otherwise not supported by definite, competent, or significantly probative evidence that genuinely and materially responds to a fact stated in Texas's Motion for Partial Summary Judgment. As such, Texas's stated material facts remain undisputed. Fed. R. Civ. P. 56(a), 56(c)(1).	As to Texas's objection to Mr. D'Antonio, see New Mexico's Response to State of Texas's Second Evidentiary Objections, § III (C).
292	N/A	In exercise of this authority, the State of New Mexico has a robust and comprehensive system for water administration and enforcement in the LRG. New Mexico has successfully employed this system to ensure compliance with the Compact and stands ready to utilize that system to enforce the orders of the	<i>See</i> NM-EX 007, D'Antonio 2d Decl. at ¶¶ 5, 57-58; <i>See</i> also NM-EX 009, Schmidt-Petersen 2d Decl.; NM-EX 010; Serrano Decl.; NM-EX 006, Barroll 2d Decl. at ¶¶ 43, 78.	NM-EX-007, 010, 006: To the extent the cited evidence states Mr. D'Antonio, Mr. Serrano or Dr. Barroll's opinions regarding compliance with the Rio Grande Compact, the cited evidence does not	<i>See</i> above (292)	As to Texas's objection to Dr. Barroll, see New Mexico's Response to State of Texas's Second Evidentiary Objections, § III (A). As to Texas's objection to Mr. D'Antonio, see New Mexico's Response to State of Texas's

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		Court in this case, whatever those orders may be.		support the stated "facts" in whole and/or in part. Fed. R. Civ. P. 56(c). The stated "facts" constitute improper legal conclusions in whole or in part. NM-EX-009: <i>See</i> General Objection #5.		Second Evidentiary Objections, § III (C). As to Texas's objection to Mr. Serrano, see New Mexico's Response to State of Texas's Second Evidentiary Objections, § III (D).
293	N/A	The State Engineer established seven local district offices across New Mexico. District IV in Las Cruces, New Mexico, administers water in the Lower Rio Grande, including the New Mexico portion of the Project.	<i>See</i> NM-EX 007, D'Antonio 2d Decl. at ¶¶ 6-7, 25.	n/a	Subject to the stated objections, the fact is cited in New Mexico's Response to Texas's Motion for Partial Summary Judgment but does not materially respond to facts stated therein. New Mexico's stated fact and the evidence cited in support regarding actions of the New Mexico State Engineer do not materially respond to an argument made in Texas's Motion for Partial Summary Judgment. CSMF #293 may relate to New Mexico's motions for partial summary judgment and/or its counterclaims, but alleged depletions due to pumping in Texas is not the subject of Texas's Motion for Partial Summary Judgment. New Mexico's stated fact is non-responsive and otherwise not supported by definite, competent, or significantly probative evidence that genuinely and materially responds to a fact stated in Texas's Motion for Partial Summary Judgment. As such, Texas's stated material facts remain undisputed. Fed. R. Civ. P. 56(a), 56(c)(1).	N/A
294	N/A	Following the United States' appropriation of water rights in 1906 and 1908, the State Engineer has considered the Lower Rio Grande ("LRG") to be fully appropriated and has not permitted any new appropriation of surface waters.	<i>See</i> NM-EX 007, D'Antonio 2d Decl. at ¶¶ 16- 17; NM-EX 006, Barroll 2d Decl. at ¶ 75.	NM-EX-007: <i>See</i> General Objection #3.	Subject to the stated objections, the fact is cited in New Mexico's response to Texas's Motion for Partial Summary Judgment but does not materially respond to facts stated therein. New Mexico's stated fact and the evidence cited in support regarding actions of the New Mexico State Engineer do not materially respond to an argument made in Texas's Motion for Partial Summary Judgment. CSMF #294 may relate to New Mexico's motions for partial summary judgment and/or its	As to Texas's objection to Mr. D'Antonio, see New Mexico's Response to State of Texas's Second Evidentiary Objections, § III (C).

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					counterclaims, but alleged depletions due to pumping in Texas is not the subject of Texas's Motion for Partial Summary Judgment. New Mexico's stated fact is non-responsive and otherwise not supported by definite, competent, or significantly probative evidence that genuinely and materially responds to a fact stated in Texas's Motion for Partial Summary Judgment. As such, Texas's stated material facts remain undisputed. Fed. R. Civ. P. 56(a), 56(c)(1).	
295	N/A	Further, after declaring the LRG groundwater basin in 1980, the State Engineer has not allowed any new rights or changes to existing rights to use groundwater without first finding, through the permitting process, that surface water was protected from any new depletions.	<i>See</i> NM-EX 007, D'Antonio 2d Decl. at ¶¶ 16- 17, 21-23; NM-EX 235, Rule 30(b)(6) Dep. Of the State of New Mexico by and through Thacker (Apr. 18, 2019) at 22:9-23:4.	NM-EX-007: <i>See</i> General Objection #3. NM- EX-235: <i>See</i> General Objection #8.	Subject to the stated objections, the fact is cited in New Mexico's Response to Texas's Motion for Partial Summary Judgment but does not materially respond to facts stated therein. New Mexico's stated fact and the evidence cited in support regarding the powers and duties and the actions of the New Mexico State Engineer do not materially respond to an argument made in Texas's Motion for Partial Summary Judgment. CSMF #295 may relate to New Mexico's motions for partial summary judgment and/or its counterclaims, but alleged depletions due to pumping in Texas is not the subject of Texas's Motion for Partial Summary Judgment. New Mexico's stated fact is non-responsive and otherwise not supported by definite, competent, or significantly probative evidence that genuinely and materially responds to a fact stated in Texas's Motion for Partial Summary Judgment. As such, Texas's stated material facts remain undisputed. Fed. R. Civ. P. 56(a), 56(c)(1).	New Mexico previously responded to these authentication and hearsay objections. <i>See</i> [Dkt. 468] State of New Mexico's Response to State of Texas's Evidentiary Objections. As to Texas's objection to Mr. D'Antonio, see New Mexico's Response to State of Texas's Second Evidentiary Objections, § III (C).
295	N/A	Through the permitting process, the Office of the State Engineer ("OSE") rigorously evaluates an application to either appropriate water or to change an existing water right to determine whether it will impair existing rights, in addition to	<i>See</i> NM-EX 007, D'Antonio 2d Decl. at ¶ 21; <i>See</i> also NMSA 1978 §72-12-3 (1931, as amended through 2019).	NM-EX-007: <i>See</i> General Objection #3. NMSA: The cited statute does not constitute factual "evidence" as contemplated by Fed. R. Civ. P. 56(c).	<i>See</i> above (295)	As to Texas's objection to Mr. D'Antonio, see New Mexico's Response to State of Texas's Second Evidentiary Objections, § III (C).

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<u>NM- CS MF #</u>	<u>NM's Prior Numbering System</u>	<u>New Mexico's Stated Fact</u>	<u>New Mexico's Supporting Evidence</u>	<u>TEXAS'S EVIDENTIARY OBJECTIONS</u>	<u>TEXAS'S RESPONSE</u>	<u>NEW MEXICO'S RESPONSE TO TEXAS EVIDENTIARY OBJECTIONS</u>
		considering whether the proposed change is contrary to conservation within New Mexico or detrimental to the public welfare. If the application is found to impair other water rights, the permit may be denied, or the amount of water requested reduced, or the permit may be issued with conditions to address the impairment or depletion, which may include a requirement that any resulting depletions of surface water be offset. The permitting process ensures that no new depletions to the fully appropriated Rio Grande steam system are allowed.				
296	N/A	In 2003, the New Mexico Legislature enacted the Active Water Resource Management statute, NMSA 1978 § 72- 2-9.1 (2003). Thereafter, the State Engineer created and promulgated Active Water Resources Management regulations (AWRM Framework Rules). The AWRM Framework Rules provide rules of statewide applicability and allow for the adoption of specific rules that could be promulgated separately for individual Water Master Districts.	<i>See</i> NM-EX 007, D'Antonio 2d Decl. at ¶¶ 38- 41; <i>See</i> also 19.25.13.7(C) 1-4 NMAC.	NM-EX-007: Fed. R. Civ. P. 56(c)(4). The cited evidence does not support the stated "facts" in whole and/or in part. Fed. R. Civ. P. 56(c). The stated "facts" constitute improper legal conclusions in whole or in part. NMAC: The cited statute do not constitute factual "evidence" as contemplated by Fed. R. Civ. P. 56(c).	Subject to the stated objections, the fact is cited in New Mexico's Response to Texas's Motion for Partial Summary Judgment but does not materially respond to facts stated therein. New Mexico's stated fact and the evidence cited in support regarding New Mexico's initiation of Active Water Resource Management in the Lower Rio Grande do not materially respond to an argument made in Texas's Motion for Partial Summary Judgment. CSMF #296 may relate to New Mexico's motions for partial summary judgment and/or its counterclaims, but alleged depletions due to pumping in Texas is not the subject of Texas's Motion for Partial Summary Judgment. New Mexico's stated fact is non-responsive and otherwise not supported by definite, competent, or significantly probative evidence that genuinely and materially responds to a fact stated in Texas's Motion for Partial Summary Judgment. As such, Texas's stated material facts remain undisputed. Fed. R. Civ. P. 56(a), 56(c)(1).	As to Texas's objection to Mr. D'Antonio, see New Mexico's Response to State of Texas's Second Evidentiary Objections, § III (C).

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297	N/A	The AWRM Framework Rules allows the State Engineer to support water right owners' creation of agreements that share shortages among themselves rather than strictly adhering to the priority administration system.	<i>See</i> NM-EX 007, D'Antonio 2d Decl. at ¶ 40.	NM-EX-007: Fed. R. Civ. P. 56(c)(4). The cited evidence does not support the stated "facts" in whole and/or in part. Fed. R. Civ. P. 56(c). The stated "facts" constitute improper legal conclusions in whole or in part.	Subject to the stated objections, the fact is cited in New Mexico's response to Texas's Motion for Partial Summary Judgment but does not materially respond to facts stated therein. New Mexico's stated fact and the evidence cited in support regarding New Mexico's Active Water Resource Management rules in the Lower Rio Grande do not materially respond to an argument made in Texas's Motion for Partial Summary Judgment. CSMF #297 may relate to New Mexico's motions for partial summary judgment and/or its counterclaims, but alleged depletions due to pumping in Texas is not the subject of Texas's Motion for Partial Summary Judgment. New Mexico's stated fact is non-responsive and otherwise not supported by definite, competent, or significantly probative evidence that genuinely and materially responds to a fact stated in Texas's Motion for Partial Summary Judgment. As such, Texas's stated material facts remain undisputed. Fed. R. Civ. P. 56(a), 56(c)(1).	As to Texas's objection to Mr. D'Antonio, see New Mexico's Response to State of Texas's Second Evidentiary Objections, § III (C).
298	N/A	In 2004, the State Engineer issued a metering order in the LRG, requiring that all groundwater wells in the LRG be metered by March 1, 2006.	NM-EX-430, State Engineer Order No. 168 (Dec. 3, 2004). <i>See</i> NMSA §72-12-27 (1967).	NM-EX-430: <i>See</i> General Objection #8; Fed. R. Evid. 801(c), hearsay. NMSA: The cited statute does not constitute factual "evidence" as contemplated by Fed. R. Civ. P. 56(c).	Subject to the stated objections, the fact is cited in New Mexico's Response to Texas's Motion for Partial Summary Judgment but does not materially respond to facts stated therein. New Mexico's stated fact and the evidence cited in support regarding the origin of New Mexico's well metering requirements in the Lower Rio Grande do not materially respond to an argument made in Texas's Motion for Partial Summary Judgment. CSMF #298 may relate to New Mexico's motions for partial summary judgment and/or its counterclaims, but alleged depletions due to pumping in Texas is not the subject of Texas's Motion for Partial Summary Judgment. New Mexico's stated fact is non-responsive and otherwise not supported by definite, competent, or significantly probative evidence that genuinely and materially responds to a fact stated in Texas's Motion for Partial Summary Judgment. As such, Texas's stated material	New Mexico previously responded to these authentication and hearsay objections. <i>See</i> [Dkt. 468] State of New Mexico's Response to State of Texas's Evidentiary Objections.

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					facts remain undisputed. Fed. R. Civ. P. 56(a), 56(c)(1).	
298	N/A	Following litigation with EBID among others, all irrigation, commercial, multi-family domestic, and municipal wells in the LRG were metered by 2008.	<i>See</i> NM-EX 007, D'Antonio 2d Decl. at ¶ 44.	n/a	<i>See</i> above (298)	New Mexico previously responded to these authentication and hearsay objections. <i>See</i> [Dkt. 468] State of New Mexico's Response to State of Texas's Evidentiary Objections.
299	N/A	Should any water rights owner in the LRG request of the State Engineer a priority call due to water shortage, the State Engineer would promptly take the following actions: a) Investigate the validity and cause of the claimed shortage, and b) Determine appropriate short- term and long-term actions. Any response to a priority call is necessarily dependent upon the cause of the shortage and must take into consideration such things as the public health issues of essential drinking water and sanitation uses. Potential responses include, but are not limited to, release of storage water, curtailment of junior surface water diversions, curtailment of junior groundwater rights, and the possibility of a range of agreed-upon alternatives to strict priority	<i>See</i> NM-EX 007, D'Antonio 2d Decl. at ¶ 53; <i>See</i> also NM-EX 226, Rule 30(b)(6) Dep. of the State of New Mexico by and through Barroll (Oct. 21, 2020) at 37:5-22 (errata).	NM-EX-007: Fed. R. Civ. P. 56(c)(4). The cited evidence does not support the stated "facts" in whole and/or in part. Fed. R. Civ. P. 56(c). The stated "facts" constitute improper legal conclusions in whole or in part. NM-EX-226: <i>See</i> General Objection 8.	Subject to the stated objections, the fact is cited in New Mexico's Response to Texas's Motion for Partial Summary Judgment but does not materially respond to facts stated therein. New Mexico's stated fact and the evidence cited in support regarding state administration of priority calls in the State of New Mexico do not materially respond to an argument made in Texas's Motion for Partial Summary Judgment. CSMF #299 may relate to New Mexico's motions for partial summary judgment and/or its counterclaims, but alleged depletions due to pumping in Texas is not the subject of Texas's Motion for Partial Summary Judgment. New Mexico's stated fact is non-responsive and otherwise not supported by definite, competent, or significantly probative evidence that genuinely and materially responds to a fact stated in Texas's Motion for Partial Summary Judgment. As such, Texas's stated material facts remain undisputed. Fed. R. Civ. P. 56(a), 56(c)(1).	New Mexico previously responded to these authentication and hearsay objections. <i>See</i> [Dkt. 468] State of New Mexico's Response to State of Texas's Evidentiary Objections. As to Texas's objection to Mr. D'Antonio, see New Mexico's Response to State of Texas's Second Evidentiary Objections, § III (C).

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		administration. The required analysis, decision on response, and implementation of response could take place in a matter of days for a short-term response to a matter of weeks or months to address long-term or systemic response.				
300	N/A	While Reclamation and EBID control delivery of Project water, the State Engineer retains authority over and ensures compliance with all water rights and river diversions of water in the LRG, including the use of New Mexico water outside the state.	<i>See</i> NM-EX 007, D'Antonio 2d Decl. at ¶¶ 6-7.	NM-EX-007: Fed. R. Civ. P. 56(c)(4). The cited evidence does not support the stated "facts" in whole and/or in part. Fed. R. Civ. P. 56(c). The stated "facts" constitute improper legal conclusions in whole or in part.	Subject to the stated objections, the fact is cited in New Mexico's Response to Texas's Motion for Partial Summary Judgment but does not materially respond to facts stated therein. New Mexico's stated fact and the evidence cited in support regarding the powers and duties and the actions of the New Mexico State Engineer do not materially respond to an argument made in Texas's Motion for Partial Summary Judgment. CSMF #300 may relate to New Mexico's motions for partial summary judgment and/or its counterclaims, but alleged depletions due to pumping in Texas is not the subject of Texas's Motion for Partial Summary Judgment. New Mexico's stated fact is non-responsive and otherwise not supported by definite, competent, or significantly probative evidence that genuinely and materially responds to a fact stated in Texas's Motion for Partial Summary Judgment. As such, Texas's stated material facts remain undisputed. Fed. R. Civ. P. 56(a), 56(c)(1).	As to Texas's objection to Mr. D'Antonio, see New Mexico's Response to State of Texas's Second Evidentiary Objections, § III (C).
301	N/A	A lawsuit for the adjudication of water rights was commenced in the LRG by EBID, and the State intervened in 1996.	State of New Mexico ex rel. State Engineer v. Elephant Butte Irrigation District et al., No. D- 307-CV-96-888 (the "LRG Adjudication").	State of New Mexico ex rel. State Engineer v. EBID : the cited case does not constitute factual "evidence" as contemplated by Fed. R. Civ. P. 56(c).	Subject to the stated objections, the fact is cited in New Mexico's Response to Texas's Motion for Partial Summary Judgment but does not materially respond to facts stated therein. New Mexico's stated fact and the evidence cited in support regarding the details of New Mexico's adjudication process do not materially respond to an argument made in Texas's Motion for Partial Summary Judgment. CSMF #301 may relate to New Mexico's motions for partial summary judgment and/or its counterclaims, but alleged depletions due to	N/A.

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					pumping in Texas is not the subject of Texas's Motion for Partial Summary Judgment. New Mexico's stated fact is non-responsive and otherwise not supported by definite, competent, or significantly probative evidence that genuinely and materially responds to a fact stated in Texas's Motion for Partial Summary Judgment. As such, Texas's stated material facts remain undisputed. Fed. R. Civ. P. 56(a), 56(c)(1).	
301	N/A	As part of the adjudication process, the State Engineer performed a hydrographic survey, including a review of all historic State Engineer and county records relating to claimed water rights, in-person surveys, and aerial photography. Based on all known data, the State Engineer evaluates the information for each claimed water right and makes separate offers of judgment to each claimant within a unique "subfile" to the adjudication. The State Engineer and the claimant may either agree on the Offer of Judgment, mediate a different result, or try the case to the court. The result of those processes then becomes a "Subfile Order" entered by the court.	See NM-EX 007, D'Antonio 2d Decl. at ¶¶ 32- 34.	NM-EX-007: Fed. R. Civ. P. 56(c)(4). The cited evidence does not support the stated "facts" in whole and/or in part. Fed. R. Civ. P. 56(c). The stated "facts" constitute improper legal conclusions in whole or in part.	See above (301)	As to Texas's objection to Mr. D'Antonio, see New Mexico's Response to State of Texas's Second Evidentiary Objections, § III (C).

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301	N/A	The State Engineer's most recent status report in the LRG Adjudication reflects that there are presently approximately 14,050 subfiles in the adjudication, which encompass 18,546 water right claimants. Approximately 66% of these subfiles have been sent Offers of Judgment and 50% have been adjudicated.	<i>See</i> NM-EX 007, D'Antonio 2d Decl. at ¶ 35.	NM-EX-007: Fed. R. Civ. P. 56(c)(4). The cited evidence does not support the stated "facts" in whole and/or in part. Fed. R. Civ. P. 56(c). The stated "facts" constitute improper legal conclusions in whole or in part.	<i>See</i> above (301)	As to Texas's objection to Mr. D'Antonio, see New Mexico's Response to State of Texas's Second Evidentiary Objections, § III (C).
302	N/A	Apart from its orders on these individual subfiles, the LRG Adjudication Court has issued a number of orders governing the LRG Adjudication globally. These include the following: a. Stream System 101 (SS 101): In August 2011, the LRG Adjudication court entered a Final Judgment in Stream System 101 that sets the limits on groundwater and surface water use affecting all LRG claimants. In relevant part, the SS 101 Order does the following: i. The Order sets the annual FDR for the LRG at 4.5 AF/acre unless a claimant is able to prove beneficial use of up to 5.5 AF/acre. Surface water and groundwater use combined cannot exceed this total,	a. NM-EX 541, Final Judgment in SS-97-101 (SS101 LRG Adjudication Order) (Aug. 22, 2011) (SS101 LRG Adjudication Order). <i>See</i> NM-EX 007, D'Antonio 2d Decl. at ¶ 37(a). a.(i) <i>See</i> NM- EX 541, SS101 LRG Adjudication Order, §§ II(D), V(B).	NM-EX-541.; <i>See</i> General Objection #9; Fed. R. Evid. 801(c), hearsay. NM-EX-007: Fed. R. Civ. P. 56(c)(4). The cited evidence does not support the stated "facts" in whole and/or in part. Fed. R. Civ. P. 56(c). The stated "facts" constitute improper legal conclusions in whole or in part.	New Mexico's stated fact, and supporting evidence, are not cited in New Mexico's Response to Texas's Motion for Partial Summary Judgment and are therefore non-responsive and irrelevant. As such, Texas's stated material facts remain undisputed. Fed. R. Civ. P. 56(a), 56(c)(1).	New Mexico previously responded to these authentication and hearsay objections. <i>See</i> [Dkt. 468] State of New Mexico's Response to State of Texas's Evidentiary Objections. NM-EX 541 is not a declaration and Texas' Objection #9 as to "Sham Declaration" thereby is nonsensical. To the extent Texas intended to lodge this objection against the D'Antonio Declaration, see New Mexico's Response to State of Texas's Second Evidentiary Objections, § III (C).

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		and surface water available must be exhausted before groundwater may be used.				
302	N/A	ii. Consistent with historic Project operations, the maximum FDR for surface water was set at 3.024 AF/acre per year.	a.(ii) <i>See</i> NM-EX 007, D'Antonio 2d Decl. at ¶ 37(a).	NM-EX-007: Fed. R. Civ. P. 56(c)(4). The cited evidence does not support the stated "facts" in whole or in part. Fed. R. Civ. P. 56(c). The stated "facts" constitute improper legal conclusions in whole or in part.	New Mexico's stated fact, and supporting evidence, are not cited in New Mexico's Response to Texas's Motion for Partial Summary Judgment and are therefore non-responsive and irrelevant. As such, Texas's stated material facts remain undisputed. Fed. R. Civ. P. 56(a), 56(c)(1).	As to Texas's objection to Mr. D'Antonio, see New Mexico's Response to State of Texas's Second Evidentiary Objections, § III (C).
302	N/A	b. Stream System 103 (SS 103): The SS 103 Order addresses domestic wells and is currently on hold. Domestic and stock well use represents approximately 2,000 to 3,000 AF/yr. This less than one percent of total surface water and groundwater use in the Mesilla and Rincon basins. Domestic well and stock water use has a negligible effect on the issues in this case.	b. <i>See</i> NM-EX 007, D'Antonio 2d Decl. at ¶ 37(b).	NM-EX-007: Fed. R. Civ. P. 56(c)(4). The cited evidence does not support the stated "facts" in whole or in part. Fed. R. Civ. P. 56(c). The stated "facts" constitute improper legal conclusions in whole or in part.	New Mexico's stated fact, and supporting evidence, are not cited in New Mexico's Response to Texas's Motion for Partial Summary Judgment and are therefore non-responsive and irrelevant. As such, Texas's stated material facts remain undisputed. Fed. R. Civ. P. 56(a), 56(c)(1).	As to Texas's objection to Mr. D'Antonio, see New Mexico's Response to State of Texas's Second Evidentiary Objections, § III (C).
302	N/A	c. Stream System 104 (SS 104): The SS 104 Order addressed "the interests of the United States deriving from the establishment of the Rio Grande Project" for determination in the LRG	c. NM-EX 534, Order Designating Stream System Issue/Expedited Inter Se Proceeding No. 104 (Jan. 8, 2010).	NM-EX-534: <i>See</i> General Objection #8; Fed. R. Evid. 801(c), hearsay.	New Mexico's stated fact, and supporting evidence, are not cited in New Mexico's Response to Texas's Motion for Partial Summary Judgment and are therefore non-responsive and irrelevant. As such, Texas's stated material facts remain undisputed. Fed. R. Civ. P. 56(a), 56(c)(1).	New Mexico previously responded to these authentication and hearsay objections. <i>See</i> [Dkt. 468] State of New Mexico's Response to State of Texas's Evidentiary Objections.

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		Adjudication.				
303	N/A	The LRG Adjudication court found that the Project has a surface water priority date of March 1, 1903. No final order has been issued on these Findings.	NM-EX 536, Findings of Facts and Conclusions of Law, State of New Mexico v. EBID (Apr. 17, 2017) (CV-96-888).	NM-EX-536: <i>See</i> General Objection #8; Fed. R. Evid. 801(c), hearsay.	Subject to the stated objections, the fact is cited in New Mexico's Response to Texas's Motion for Partial Summary Judgment but does not materially respond to facts stated therein. New Mexico's stated fact and the evidence cited in support regarding the New Mexico state court adjudication do not materially respond to an argument made in Texas's Motion for Partial Summary Judgment. CSMF #303 may relate to New Mexico's motions for partial summary judgment and/or its counterclaims, but alleged depletions due to pumping in Texas is not the subject of Texas's Motion for Partial Summary Judgment. New Mexico's stated fact is non-responsive and otherwise not supported by definite, competent, or significantly probative evidence that genuinely and materially responds to a fact stated in Texas's Motion for Partial Summary Judgment. As such, Texas's stated material facts remain undisputed. Fed. R. Civ. P. 56(a), 56(c)(1).	New Mexico previously responded to these authentication and hearsay objections. <i>See</i> [Dkt. 468] State of New Mexico's Response to State of Texas's Evidentiary Objections.
304	N/A	With a (non-final) priority date of March 1, 1903, the United States' Project water rights are senior to most of the groundwater rights in the LRG.	<i>See</i> NM-EX 007, D'Antonio 2d Decl. at ¶ 37(c).	NM-EX-007: Fed. R. Civ. P. 56(c)(4). The cited evidence does not support the stated "facts" in whole or in part. Fed. R. Civ. P. 56(c). The stated "facts" constitute improper legal conclusions in whole or in part.	Subject to the stated objections, the fact is cited in New Mexico's Response to Texas's Motion for Partial Summary Judgment but does not materially respond to facts stated therein. New Mexico's stated fact and the evidence cited in support regarding the New Mexico state court adjudication do not materially respond to an argument made in Texas's Motion for Partial Summary Judgment. CSMF #304 may relate to New Mexico's motions for partial summary judgment and/or its counterclaims, but alleged depletions due to pumping in Texas is not the subject of Texas's Motion for Partial Summary Judgment. New Mexico's stated fact is non-responsive and otherwise not supported by definite, competent, or significantly probative evidence that genuinely and materially responds to a fact stated in Texas's Motion for Partial Summary Judgment. As such, Texas's stated material facts remain undisputed. Fed. R. Civ. P. 56(a), 56(c)(1).	As to Texas's objection to Mr. D'Antonio, see New Mexico's Response to State of Texas's Second Evidentiary Objections, § III (C).

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305	N/A	Water users in the LRG must comply with applicable state statutory requirements, State Engineer permits, licenses and orders, OSE policy and guidelines, and applicable court orders. The LRG Water Master has specific statutory authority under NMSA 1978, § 72-2- 18 (2007) to enforce compliance with these requirements.	<i>See</i> NM-EX 010, Serrano Decl., ¶¶ 11-13, 17; NM- EX 007, D'Antonio 2d Decl. at ¶ 25; NM- EX 232, Serrano Dep. (Feb. 26, 2019) at 94:7-96:24.	NM-EX- 010, 007: To the extent the cited evidence states Mr. Serrano or Mr. D'Antonio's opinions regarding compliance with the law, the cited evidence does not support the stated "facts" in whole and/or in part. Fed. R. Civ. P. 56(c). The stated "facts" constitute improper legal conclusions in whole or in part. NM-EX-232: <i>See</i> General Objection #8.	Subject to the stated objections, the fact is cited in New Mexico's Response to Texas's Motion for Partial Summary Judgment but does not materially respond to facts stated therein. New Mexico's stated fact and the evidence cited in support regarding powers and duties of the Lower Rio Grande Watermaster in New Mexico, and related intrastate water administration issues do not materially respond to an argument made in Texas's Motion for Partial Summary Judgment. CSMF #305 may relate to New Mexico's motions for partial summary judgment and/or its counterclaims, but the alleged fact and evidence is not the subject of Texas's Motion for Partial Summary Judgment. New Mexico's stated fact is non-responsive and otherwise not supported by definite, competent, or significantly probative evidence that genuinely and materially responds to a fact stated in Texas's Motion for Partial Summary Judgment. As such, Texas's stated material facts remain undisputed. Fed. R. Civ. P. 56(a), 56(c)(1).	New Mexico previously responded to these authentication and hearsay objections. <i>See</i> [Dkt. 468] State of New Mexico's Response to State of Texas's Evidentiary Objections. As to Texas's objection to Mr. D'Antonio, see New Mexico's Response to State of Texas's Second Evidentiary Objections, § III (C). As to Texas's objection to Mr. Serrano, see New Mexico's Response to State of Texas's Second Evidentiary Objections, § III (D).
306	N/A	In enforcing these requirements, the LRG Water Master has a number of metrics and mechanisms to monitor water diversions. Among these, all wells (except single- family domestic and livestock wells), and non-EBID surface water diversions are subject to metering requirements, and water users must report meter readings regularly.	<i>See</i> NM-EX 010, Serrano Decl., ¶¶ 13-14; <i>See</i> also NM- EX 236, Serrano Dep. (Apr. 17, 2019) at 54:22-55:13, 94:7-96:24, 183:19-2; NM- EX 235, Rule 30(b)(6) Dep. of the State of New Mexico by and through Thacker (Sept. 18, 2020) at 33:12-35:17; NM-EX 227, Barroll Dep. (Feb. 5, 2020) at 57:4-58:22.	NM-EX-010: Fed. R. Civ. P. 56(c)(4). The cited evidence does not support the stated "facts" in whole or in part. Fed. R. Civ. P. 56(c). The stated "facts" constitute improper legal conclusions in whole or in part. NM-EX-235, 227: <i>See</i> General	Subject to the stated objections, the fact is cited in New Mexico's Response to Texas's Motion for Partial Summary Judgment but does not materially respond to facts stated therein. New Mexico's stated fact and the evidence cited in support regarding powers and duties of the Lower Rio Grande Watermaster in New Mexico, and related intrastate water administration issues do not materially respond to an argument made in Texas's Motion for Partial Summary Judgment. CSMF #306 may relate to New Mexico's motions for partial summary judgment and/or its counterclaims, but the alleged fact and evidence is not the subject of Texas's Motion for Partial Summary Judgment. New Mexico's stated fact is non-	New Mexico previously responded to these authentication and hearsay objections. <i>See</i> [Dkt. 468] State of New Mexico's Response to State of Texas's Evidentiary Objections. As to Texas's objection to Mr. Serrano, see New Mexico's Response to State of Texas's Second Evidentiary Objections,

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				Objection #8.	responsive and otherwise not supported by definite, competent, or significantly probative evidence that genuinely and materially responds to a fact stated in Texas's Motion for Partial Summary Judgment. As such, Texas's stated material facts remain undisputed. Fed. R. Civ. P. 56(a), 56(c)(1).	§ III (D).
307	N/A	The Water Master is not responsible for assuring or monitoring delivery of Project supply to EBID members; rather, that is the responsibility of EBID. To assure compliance with the SS101 LRG Adjudication Order, during each irrigation season, the Water Master for the Lower Rio Grande Water District receives Project allotment information for each EBID member from the district. Using this data, the Water Master calculates how much of each EBID member's 4.5 AF/acre (or 5.5 AF/acre) combined water right may be satisfied by the diversion of groundwater. This calculation assumes that EBID members use their full allotments as to surface water diversions and that they use their surface water allotments before using groundwater.	See NM-EX 010, Serrano Decl., ¶¶ 13-14.	NM-EX-010: Fed. R. Civ. P. 56(c)(4). The cited evidence does not support the stated "facts" in whole or in part. Fed. R. Civ. P. 56(c). The stated "facts" constitute improper legal conclusions in whole or in part.	Subject to the stated objections, the fact is cited in New Mexico's Response to Texas's Motion for Partial Summary Judgment but does not materially respond to facts stated therein. New Mexico's stated fact and the evidence cited in support regarding powers and duties of the Lower Rio Grande Watermaster in New Mexico, and related intrastate water administration issues do not materially respond to an argument made in Texas's Motion for Partial Summary Judgment. CSMF #307 may relate to New Mexico's motions for partial summary judgment and/or its counterclaims, but the alleged fact and evidence are not related to the subject matter of Texas's Motion for Partial Summary Judgment. New Mexico's stated fact is non-responsive and otherwise not supported by definite, competent, or significantly probative evidence that genuinely and materially responds to a fact stated in Texas's Motion for Partial Summary Judgment. As such, Texas's stated material facts remain undisputed. Fed. R. Civ. P. 56(a), 56(c)(1).	As to Texas's objection to Mr. Serrano, see New Mexico's Response to State of Texas's Second Evidentiary Objections, § III (D).

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308	N/A	The Water Master regularly monitors groundwater wells to ensure compliance.	<i>See</i> NM- EX 010, Serrano Decl., ¶¶ 10, 11, 14-16; NM-EX 010, Rule 30(b)(6) Dep. of the State of New Mexico by and through Thacker (Sept. 18, 2020) at 35:18-38:7; NMSA 1978, §72-2-18 (2007).	NM-EX-010: Fed. R. Civ. P. 56(c)(4). The cited evidence does not support the stated "facts" in whole or in part. Fed. R. Civ. P. 56(c). The stated "facts" constitute improper legal conclusions in whole or in part. Thacker Depo: <i>See</i> General Objection #8. NMSA: The cited statute does not constitute factual "evidence" as contemplated by Fed. R. Civ. P. 56(c).	Subject to the stated objections, the fact is cited in New Mexico's Response to Texas's Motion for Partial Summary Judgment but does not materially respond to facts stated therein. New Mexico's stated fact and the evidence cited in support regarding powers and duties of the Lower Rio Grande Watermaster in New Mexico, and related intrastate water administration issues do not materially respond to an argument made in Texas's Motion for Partial Summary Judgment. CSMF #308 may relate to New Mexico's motions for partial summary judgment and/or its counterclaims, but the alleged fact and evidence are not related to the subject matter of Texas's Motion for Partial Summary Judgment. New Mexico's stated fact is non-responsive and otherwise not supported by definite, competent, or significantly probative evidence that genuinely and materially responds to a fact stated in Texas's Motion for Partial Summary Judgment. As such, Texas's stated material facts remain undisputed. Fed. R. Civ. P. 56(a), 56(c)(1).	New Mexico previously responded to these authentication and hearsay objections. <i>See</i> [Dkt. 468] State of New Mexico's Response to State of Texas's Evidentiary Objections. As to Texas's objection to Mr. Serrano, see New Mexico's Response to State of Texas's Second Evidentiary Objections, § III (D).
309	N/A	When the Water mater determines that a well is out of compliance, the Water Master actively works with the water user to effect compliance. If local attempts are unavailing, the Water Master refers the issue to the OSE Administrative Litigation Unit for legal action.	<i>See</i> NM-EX 010, Serrano Decl., ¶¶ 10, 11, 14; NM-EX 010, Rule 30(b)(6) Dep. of the State of New Mexico by and through Thacker (Sept. 18, 2020) at 35:18-38:7; NMSA 1978, § 72-2-18 (2007).	NM-EX-010: Fed. R. Civ. P. 56(c)(4). The cited evidence does not support the stated "facts" in whole or in part. Fed. R. Civ. P. 56(c). The stated "facts" constitute improper legal conclusions in whole or in part. Thacker Depo: <i>See</i> General Objection #8. NMSA: The cited statute does not constitute factual	Subject to the stated objections, the fact is cited in New Mexico's Response to Texas's Motion for Partial Summary Judgment but does not materially respond to facts stated therein. New Mexico's stated fact and the evidence cited in support regarding powers and duties of the Lower Rio Grande Watermaster in New Mexico, and related intrastate water administration issues do not materially respond to an argument made in Texas's Motion for Partial Summary Judgment. CSMF #309 may relate to New Mexico's motions for partial summary judgment and/or its counterclaims, but the alleged fact and evidence are not related to the subject matter of Texas's Motion for Partial Summary Judgment. New Mexico's stated fact is non-responsive and otherwise not supported by definite, competent, or significantly probative evidence that genuinely and materially responds to a fact stated in Texas's Motion for	New Mexico previously responded to these authentication and hearsay objections. <i>See</i> [Dkt. 468] State of New Mexico's Response to State of Texas's Evidentiary Objections. As to Texas's objection to Mr. Serrano, see New Mexico's Response to State of Texas's Second Evidentiary Objections, § III (D).

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				"evidence" as contemplated by Fed. R. Civ. P. 56(c).	Partial Summary Judgment. As such, Texas's stated material facts remain undisputed. Fed. R. Civ. P. 56(a), 56(c)(1).	
310	N/A	The Water Master for the LRG investigates every over- diversion, including unauthorized surface diversions, in the district. If an over-diversion or potential for over-diversion is discovered during the irrigation season, the Water Master <i>Seeks</i> an accommodation for voluntary compliance. If no agreement can be reached, the Water Master refers the matter to the Administrative Litigation Unit for enforcement proceedings. If an over-diversion is discovered after the end of the irrigation season during the process of reconciling the final meter readings of the year, the Water Master effectuates compliance through a written repayment plan.	<i>See</i> NM-EX 010, Serrano Decl. at ¶¶ 22-30; <i>See</i> also NM-EX 235, Rule 30(b)(6) Dep. of the State of New Mexico by and through Thacker (Sept. 18, 2020) at 36:5-38:7; NM-EX 226, Rule 30(b)(6) Dep. of the State of New Mexico by and through Barroll (Oct. 21, 2020) at 22:14-25, 23:1-2; NM-EX 234, D'Antonio Dep. (June 26, 2020) at 317:4-318:7; NM-EX 540, Ryan J. Serrano, Office of the State Engineer, Lower Rio Grande Water Master Annual Report 2018 Accounting Year, at 10 (2019).	NM-EX-010: Fed. R. Civ. P. 56(c)(4). The cited evidence does not support the stated "facts" in whole or in part. Fed. R. Civ. P. 56(c). The stated "facts" constitute improper legal conclusions in whole or in part. NM-EX-235, 226: <i>See</i> General Objection #8. NM-EX-540: <i>See</i> General Objection #8; Fed. R. Evid. 801(c), hearsay.	Subject to the stated objections, the fact is cited in New Mexico's Response to Texas's Motion for Partial Summary Judgment but does not materially respond to facts stated therein. New Mexico's stated fact and the evidence cited in support regarding powers and duties of the Lower Rio Grande Watermaster in New Mexico, and related intrastate water administration issues do not materially respond to an argument made in Texas's Motion for Partial Summary Judgment. CSMF #310 may relate to New Mexico's motions for partial summary judgment and/or its counterclaims, but the alleged fact and evidence are not related to the subject matter of Texas's Motion for Partial Summary Judgment. New Mexico's stated fact is non-responsive and otherwise not supported by definite, competent, or significantly probative evidence that genuinely and materially responds to a fact stated in Texas's Motion for Partial Summary Judgment. As such, Texas's stated material facts remain undisputed. Fed. R. Civ. P. 56(a), 56(c)(1).	New Mexico previously responded to these authentication and hearsay objections. <i>See</i> [Dkt. 468] State of New Mexico's Response to State of Texas's Evidentiary Objections. As to Texas's objection to Mr. Serrano, see New Mexico's Response to State of Texas's Second Evidentiary Objections, § III (D).
311	N/A	Pursuant to the SS101 LRG Adjudication Order, certain water users within the LRG are subject to an Ownership Management Program. The program permits farmers who own or manage lands under more than one water right to	<i>See</i> NM-EX 010, Serrano Decl. at ¶¶ 31-34; <i>See</i> also NM-EX 235, Rule 30(b)(6) Dep. of the State of New Mexico by and through Thacker (Sept. 18, 2020) at 42:9-43:9, 44:8-14; NM-EX	NM-EX-010: Fed. R. Civ. P. 56(c)(4). The cited evidence does not support the stated "facts" in whole or in part. Fed. R. Civ. P. 56(c). The stated "facts" constitute	Subject to the stated objections, the fact is cited in New Mexico's response to Texas's Motion for Partial Summary Judgment but does not materially respond to facts stated therein. New Mexico's stated fact and the evidence cited in support regarding intrastate water administration issues in the State of New Mexico do not materially respond to an argument made in Texas's Motion for Partial Summary Judgment. CSMF	New Mexico previously responded to these authentication and hearsay objections. <i>See</i> [Dkt. 468] State of New Mexico's Response to State of Texas's Evidentiary Objections.

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		manage the rights associated with the lands conjointly, but the combination of water rights used may not exceed the total amount allowed under the permitted water rights.	540, Ryan J. Serrano, Office of the State Engineer, Lower Rio Grande Water Master Annual Report 2018 Accounting Year, at 6 (2019).	improper legal conclusions in whole or in part. NM-EX-235: <i>See</i> General Objection #8. NM-EX-540: <i>See</i> General Objection #8; Fed. R. Evid. 801(c), hearsay.	#311 may relate to New Mexico's motions for partial summary judgment and/or its counterclaims, but the alleged fact and evidence are not related to the subject matter of Texas's Motion for Partial Summary Judgment. New Mexico's stated fact is non-responsive and otherwise not supported by definite, competent, or significantly probative evidence that genuinely and materially responds to a fact stated in Texas's Motion for Partial Summary Judgment. As such, Texas's stated material facts remain undisputed. Fed. R. Civ. P. 56(a), 56(c)(1).	As to Texas's objection to Mr. Serrano, see New Mexico's Response to State of Texas's Second Evidentiary Objections, § III (D).
312	N/A	The New Mexico Legislature statutorily created the New Mexico Interstate Stream Commission ("the ISC") in 1935. NMSA 1978, Section 72-14-3 (1935). The ISC is a permanent body that negotiates interstate stream compacts and has broad powers to investigate, protect, conserve, and develop New Mexico's waters, including both interstate and intrastate stream systems. New Mexico is a party to eight interstate stream compacts, which are comprised of both state and federal law.	<i>See</i> NM-EX 009, Schmidt-Petersen 2d Decl. at ¶¶ 4-5.	NM-EX-009: <i>See</i> General Objection #5. Fed. R. Civ. P. 56(c)(4). The cited evidence does not support the stated "facts" in whole or in part. Fed. R. Civ. P. 56(c). The stated "facts" constitute improper legal conclusions in whole or in part.	Subject to the stated objections, the fact is cited in New Mexico's Response to Texas's Motion for Partial Summary Judgment but does not materially respond to facts stated therein. New Mexico's stated fact and the evidence cited in support regarding the New Mexico Interstate Stream Commission do not materially respond to an argument made in Texas's Motion for Partial Summary Judgment. CSMF #312 may relate to New Mexico's motions for partial summary judgment and/or its counterclaims, but the alleged fact and evidence are not related to the subject matter of Texas's Motion for Partial Summary Judgment. Further, New Mexico's response to Texas's Motion for Partial Summary Judgment does not mention "Interstate Stream Commission" or "ISC." New Mexico's stated fact is non-responsive and otherwise not supported by definite, competent, or significantly probative evidence that genuinely and materially responds to a fact stated in Texas's Motion for Partial Summary Judgment. As such, Texas's stated material facts remain undisputed. Fed. R. Civ. P. 56(a), 56(c)(1).	As to Texas's objection to Mr. Schmidt-Petersen, see New Mexico's Response to State of Texas's Second Evidentiary Objections, § III (E). As to Texas's objection to Mr. Schmidt-Petersen, see New Mexico's Response to State of Texas's Second Evidentiary Objections, § III (E).
313	N/A	In addition, the ISC is also responsible for ensuring compliance with provisions of United States Supreme Court Decrees governing water allocations and negotiating	<i>See</i> NM-EX 009, Schmidt-Petersen 2d Decl. at ¶ 6. <i>See</i> NM-EX 009, Schmidt-Petersen 2d Decl. at ¶ 7. <i>See</i> NM-EX 009, Schmidt-Petersen 2d Decl. at ¶ 8.	NM-EX-009: <i>See</i> General Objection #5. Fed. R. Civ. P. 56(c)(4). The cited evidence does not support the stated	Subject to the stated objections, the fact is cited in New Mexico's Response to Texas's Motion for Partial Summary Judgment but does not materially respond to facts stated therein. New Mexico's stated fact and the evidence cited in support regarding the New Mexico Interstate Stream Commission do not materially respond to an argument made in	As to Texas's objection to Mr. Schmidt-Petersen, see New Mexico's Response to State of Texas's Second Evidentiary Objections, § III (E).

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		<p>controversies that arise related to interstate compacts and court decrees.</p> <p>The ISC is also authorized to investigate and develop New Mexico's water supplies and institute legal proceedings on behalf of New Mexico for planning, conservation, protection, and development of public waters; it is responsible for statewide water planning. It also administers the strategic water reserve pursuant to NMSA 1978, Section 72-14-3.3 (2005, as amended through 2007) to assist complying with interstate stream compacts and court decrees, or endangered species water management in New Mexico.</p>		<p>"facts" in whole or in part.</p> <p>Fed. R. Civ. P. 56(c).</p> <p>The stated "facts" constitute improper legal conclusions in whole or in part.</p>	<p>Texas's Motion for Partial Summary Judgment. CSMF #313 may relate to New Mexico's motions for partial summary judgment and/or its counterclaims, but the alleged fact and evidence are not related to the subject matter of Texas's Motion for Partial Summary Judgment. Further, New Mexico's response to Texas's Motion for Partial Summary Judgment does not mention "Interstate Stream Commission" or "ISC." New Mexico's stated fact is non-responsive and otherwise not supported by definite, competent, or significantly probative evidence that genuinely and materially responds to a fact stated in Texas's Motion for Partial Summary Judgment. As such, Texas's stated material facts remain undisputed. Fed. R. Civ. P. 56(a), 56(c)(1).</p>	<p>As to Texas's objection to Mr. Schmidt-Petersen, see New Mexico's Response to State of Texas's Second Evidentiary Objections, § III (E).</p>
314	N/A	<p>The ISC's hydrologists, engineers, water management professionals, and attorneys analyze data related to New Mexico's interstate streams to assure compliance with all applicable obligations.</p>	<p>See NM-EX 009, Schmidt-Petersen 2d Decl. at ¶ 9.</p>	<p>NM-EX-009: See General Objection #5. Fed. R. Civ. P. 56(c)(4). The cited evidence does not support the stated "facts" in whole or in part.</p> <p>Fed. R. Civ. P. 56(c).</p> <p>The stated "facts" constitute improper legal conclusions in whole or in part.</p>	<p>Subject to the stated objections, the fact is cited in New Mexico's Response to Texas's Motion for Partial Summary Judgment but does not materially respond to facts stated therein. New Mexico's stated fact and the evidence cited in support regarding the New Mexico Interstate Stream Commission do not materially respond to an argument made in Texas's Motion for Partial Summary Judgment. CSMF #314 may relate to New Mexico's motions for partial summary judgment and/or its counterclaims, but the alleged fact and evidence are not related to the subject matter of Texas's Motion for Partial Summary Judgment. Further, New Mexico's response to Texas's Motion for Partial Summary Judgment does not mention "Interstate Stream Commission" or "ISC." New</p>	<p>As to Texas's objection to Mr. Schmidt-Petersen, see New Mexico's Response to State of Texas's Second Evidentiary Objections, § III (E).</p> <p>As to Texas's objection to Mr. Schmidt-Petersen, see New Mexico's Response to State of Texas's Second Evidentiary Objections, § III (E).</p>

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					Mexico's stated fact is non-responsive and otherwise not supported by definite, competent, or significantly probative evidence that genuinely and materially responds to a fact stated in Texas's Motion for Partial Summary Judgment. As such, Texas's stated material facts remain undisputed. Fed. R. Civ. P. 56(a), 56(c)(1).	
315	N/A	Significantly, ISC staff reviews water right applications filed with the OSE and will file protests, when necessary, to protect New Mexico's interests and obligations under the New Mexico interstate compacts. ISC staff also provides support in water rights adjudications to protect New Mexico's allocations and obligations under its interstate compacts.	<i>See</i> NM-EX 009, Schmidt-Petersen 2d Decl. at ¶¶ 10-11.	NM-EX-009: <i>See</i> General Objection #5. Fed. R. Civ. P. 56(c)(4). The cited evidence does not support the stated "facts" in whole or in part. Fed. R. Civ. P. 56(c). The stated "facts" constitute improper legal conclusions in whole or in part.	Subject to the stated objections, the fact is cited in New Mexico's Response to Texas's Motion for Partial Summary Judgment but does not materially respond to facts stated therein. New Mexico's stated fact and the evidence cited in support regarding the New Mexico Interstate Stream Commission do not materially respond to an argument made in Texas's Motion for Partial Summary Judgment. CSMF #315 may relate to New Mexico's motions for partial summary judgment and/or its counterclaims, but the alleged fact and evidence are not related to the subject matter of Texas's Motion for Partial Summary Judgment. Further, New Mexico's response to Texas's Motion for Partial Summary Judgment does not mention "Interstate Stream Commission" or "ISC." New Mexico's stated fact is non-responsive and otherwise not supported by definite, competent, or significantly probative evidence that genuinely and materially responds to a fact stated in Texas's Motion for Partial Summary Judgment. As such, Texas's stated material facts remain undisputed. Fed. R. Civ. P. 56(a), 56(c)(1).	As to Texas's objection to Mr. Schmidt-Petersen, see New Mexico's Response to State of Texas's Second Evidentiary Objections, § III (E). As to Texas's objection to Mr. Schmidt-Petersen, see New Mexico's Response to State of Texas's Second Evidentiary Objections, § III (E).
316	N/A	The ISC is a lead agency and a member of the executive committee of the Upper Rio Grande Water Operations Model (URGWOM). The purpose of the executive committee is to develop a unified water operations model for the Rio Grande Basin from its headwaters in	<i>See</i> NM-EX 009, Schmidt-Petersen 2d Decl. at ¶ 12.	NM-EX-009: <i>See</i> General Objection #5. Fed. R. Civ. P. 56(c)(4). The cited evidence does not support the stated "facts" in whole or in part. Fed. R. Civ. P. 56(c).	Subject to the stated objections, the fact is cited in New Mexico's Response to Texas's Motion for Partial Summary Judgment but does not materially respond to facts stated therein. New Mexico's stated fact and the evidence cited in support regarding the New Mexico Interstate Stream Commission do not materially respond to an argument made in Texas's Motion for Partial Summary Judgment. CSMF #316 may relate to New Mexico's motions for partial summary judgment and/or its counterclaims, but the alleged fact and	As to Texas's objection to Mr. Schmidt-Petersen, see New Mexico's Response to State of Texas's Second Evidentiary Objections, § III (E). As to Texas's objection to Mr. Schmidt-Petersen, see New

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		Colorado to Hudspeth County, Texas. The URGWOM is used for reservoir and river planning, operations, and accounting upstream of Elephant Butte Reservoir.		The stated "facts" constitute improper legal conclusions in whole or in part.	evidence are not related to the subject matter of Texas's Motion for Partial Summary Judgment. Further, New Mexico's response to Texas's Motion for Partial Summary Judgment does not mention "Interstate Stream Commission" or "ISC." New Mexico's stated fact is non-responsive and otherwise not supported by definite, competent, or significantly probative evidence that genuinely and materially responds to a fact stated in Texas's Motion for Partial Summary Judgment. As such, Texas's stated material facts remain undisputed. Fed. R. Civ. P. 56(a), 56(c)(1).	Mexico's Response to State of Texas's Second Evidentiary Objections, § III (E).
317	N/A	The ISC has undertaken significant river and drain maintenance works to aid in Rio Grande Compact compliance. These efforts include removing sediment, removing phreatophytes, maintaining river system infrastructure, operation of the Delta Channel Project, operating the Low Flow Conveyance Channel project (in collaboration with Reclamation and the MRGCD), operating the New Mexico Strategic Water Reserve to ensure compliance with the Compact and other legal requirements (e.g., endangered species protections), and improving river gaging, data management, and reporting capabilities in New Mexico.	See NM-EX 009, Schmidt-Petersen 2d Decl. at ¶ 13. See id at ¶¶ 14-15, 19-21.	NM-EX-009: See General Objection #5. Fed. R. Civ. P. 56(c)(4). The cited evidence does not support the stated "facts" in whole or in part. Fed. R. Civ. P. 56(c). The stated "facts" constitute improper legal conclusions in whole or in part.	Subject to the stated objections, the fact is cited in New Mexico's response to Texas's Motion for Partial Summary Judgment but does not materially respond to facts stated therein. New Mexico's stated fact and the evidence cited in support regarding the New Mexico Interstate Stream Commission do not materially respond to an argument made in Texas's Motion for Partial Summary Judgment. CSMF #317 may relate to New Mexico's motions for partial summary judgment and/or its counterclaims, but the alleged fact and evidence are not related to the subject matter of Texas's Motion for Partial Summary Judgment. Further, New Mexico's response to Texas's Motion for Partial Summary Judgment does not mention "Interstate Stream Commission" or "ISC." New Mexico's stated fact is non-responsive and otherwise not supported by definite, competent, or significantly probative evidence that genuinely and materially responds to a fact stated in Texas's Motion for Partial Summary Judgment. As such, Texas's stated material facts remain undisputed. Fed. R. Civ. P. 56(a), 56(c)(1).	As to Texas's objection to Mr. Schmidt-Petersen, see New Mexico's Response to State of Texas's Second Evidentiary Objections, § III (E). As to Texas's objection to Mr. Schmidt-Petersen, see New Mexico's Response to State of Texas's Second Evidentiary Objections, § III (E).

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<u>NM- CS MF #</u>	<u>NM's Prior Numbering System</u>	<u>New Mexico's Stated Fact</u>	<u>New Mexico's Supporting Evidence</u>	<u>TEXAS'S EVIDENTIARY OBJECTIONS</u>	<u>TEXAS'S RESPONSE</u>	<u>NEW MEXICO'S RESPONSE TO TEXAS EVIDENTIARY OBJECTIONS</u>
318	N/A	<p>The ISC's river and drain maintenance efforts have contributed to the State of New Mexico's ability to accrue a large volume of Accrued Credit (Compact Article VI) in Elephant Butte Reservoir over the last few decades. This Accrued Credit has allowed New Mexico to relinquish approximately 380,000 AF of its Accrued Credit for use by the Project.</p> <p>In response to issues raised by EBID and others related to Project operations and groundwater use, the ISC has provided infrastructural support to New Mexico water users.</p>	<p><i>See</i> NM-EX 009, Schmidt-Petersen 2d Decl. at ¶ 16. <i>See</i> NM-EX 009, Schmidt-Petersen 2d Decl. at ¶ 17.</p>	<p>NM-EX-009: <i>See</i> General Objection #5. Fed. R. Civ. P. 56(c)(4). The cited evidence does not support the stated "facts" in whole or in part. Fed. R. Civ. P. 56(c). The stated "facts" constitute improper legal conclusions in whole or in part.</p>	<p>Subject to the stated objections, the fact is cited in New Mexico's Response to Texas's Motion for Partial Summary Judgment but does not materially respond to facts stated therein. New Mexico's stated fact and the evidence cited in support regarding the New Mexico Interstate Stream Commission do not materially respond to an argument made in Texas's Motion for Partial Summary Judgment. CSMF #318 may relate to New Mexico's motions for partial summary judgment and/or its counterclaims, but the alleged fact and evidence are not related to the subject matter of Texas's Motion for Partial Summary Judgment. Further, New Mexico's response to Texas's Motion for Partial Summary Judgment does not mention "Interstate Stream Commission" or "ISC." New Mexico's stated fact is non-responsive and otherwise not supported by definite, competent, or significantly probative evidence that genuinely and materially responds to a fact stated in Texas's Motion for Partial Summary Judgment. As such, Texas's stated material facts remain undisputed. Fed. R. Civ. P. 56(a), 56(c)(1).</p>	<p>As to Texas's objection to Mr. Schmidt-Petersen, see New Mexico's Response to State of Texas's Second Evidentiary Objections, § III (E).</p> <p>As to Texas's objection to Mr. Schmidt-Petersen, see New Mexico's Response to State of Texas's Second Evidentiary Objections, § III (E).</p>
319	N/A	<p>In the mid-to-late 2000's, the ISC collaborated with the States of Colorado and Texas, and numerous stakeholders, in the Rio Grande Compact Commission's Rio Grande Salinity Management Coalition ("Coalition") to address salinity concerns largely raised by Texas. The ISC and the stakeholders evaluated changes in water quality (mostly salinity) from San Acacia, New Mexico to Fort Quitman, Texas. The Texas complaints were addressed and resolved. No further</p>	<p><i>See</i> NM-EX 009, Schmidt-Petersen 2d Decl. at ¶ 18.</p>	<p>NM-EX-009: <i>See</i> General Objection #5. Fed. R. Civ. P. 56(c)(4), Fed. R. Evid. 602. The cited evidence does not support the stated "facts" in whole or in part. Fed. R. Civ. P. 56(c). The stated "facts" constitute improper legal conclusions in whole or in part. The declarant lacks personal knowledge regarding all</p>	<p>Subject to the stated objections, the fact is cited in New Mexico's Response to Texas's Motion for Partial Summary Judgment but does not materially respond to facts stated therein. New Mexico's stated fact and the evidence cited in support regarding the New Mexico Interstate Stream Commission do not materially respond to an argument made in Texas's Motion for Partial Summary Judgment. CSMF #319 may relate to New Mexico's motions for partial summary judgment and/or its counterclaims, but the alleged fact and evidence are not related to the subject matter of Texas's Motion for Partial Summary Judgment. Further, New Mexico's response to Texas's Motion for Partial Summary Judgment does not mention "Interstate Stream Commission" or "ISC." New Mexico's stated fact is non-responsive and otherwise not supported by definite, competent, or significantly probative</p>	<p>As to Texas's objection to Mr. Schmidt-Petersen, see New Mexico's Response to State of Texas's Second Evidentiary Objections, § III (E).</p> <p>As to Texas's objection to Mr. Schmidt-Petersen, see New Mexico's Response to State of Texas's Second Evidentiary Objections, § III (E).</p>

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		complaints from Texas about water quality were expressed until the Original No. 141 was filed.		possible "Texas complaints" about water quality.	evidence that genuinely and materially responds to a fact stated in Texas's Motion for Partial Summary Judgment. As such, Texas's stated material facts remain undisputed. Fed. R. Civ. P. 56(a), 56(c)(1).	
320	N/A	The ISC Rio Grande Basin staff periodically communicates with Reclamation's Rio Grande Project water operations staff throughout the year to understand Reclamation's planned and actual Project operations. The purpose is to understand how those operations may both directly impact New Mexico water users at and downstream of Elephant Butte Reservoir and indirectly impact upstream reservoir operations (if Compact Articles VI, VII, or VIII are triggered).	See NM-EX 009, Schmidt-Petersen 2d Decl. at ¶ 22.	NM-EX-009: See General Objection #5. Fed. R. Civ. P. 56(c)(4). The cited evidence does not support the stated "facts" in whole or in part. Fed. R. Civ. P. 56(c). The stated "facts" constitute improper legal conclusions in whole or in part.	Subject to the stated objections, the fact is cited in New Mexico's Response to Texas's Motion for Partial Summary Judgment but does not materially respond to facts stated therein. New Mexico's stated fact and the evidence cited in support regarding the New Mexico Interstate Stream Commission do not materially respond to an argument made in Texas's Motion for Partial Summary Judgment. CSMF #320 may relate to New Mexico's motions for partial summary judgment and/or its counterclaims, but the alleged fact and evidence are not related to the subject matter of Texas's Motion for Partial Summary Judgment. Further, New Mexico's response to Texas's Motion for Partial Summary Judgment does not mention "Interstate Stream Commission" or "ISC." New Mexico's stated fact is non-responsive and otherwise not supported by definite, competent, or significantly probative evidence that genuinely and materially responds to a fact stated in Texas's Motion for Partial Summary Judgment. As such, Texas's stated material facts remain undisputed. Fed. R. Civ. P. 56(a), 56(c)(1).	As to Texas's objection to Mr. Schmidt-Petersen, see New Mexico's Response to State of Texas's Second Evidentiary Objections, § III (E). As to Texas's objection to Mr. Schmidt-Petersen, see New Mexico's Response to State of Texas's Second Evidentiary Objections, § III (E).
NONE	N/A	As a factual matter, this has never occurred. Reclamation has always been able to deliver water that was allocated and ordered.	NM-EX 006, Barroll 2nd Decl. ¶ 13; See also NM-CSMF ¶ 177.		The fact statement included in the brief and the evidence that is cited in New Mexico's Response to Texas's Motion for Partial Summary Judgment does not materially respond to facts stated therein. New Mexico's statement and the evidence cited in support regarding Reclamation water deliveries do not materially respond to an argument made in Texas's Motion for Partial Summary Judgment. New Mexico's statement in its brief is non-responsive and otherwise not supported by definite, competent, or significantly probative evidence that genuinely and materially responds to a fact stated in Texas's Motion for	N/A

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					Partial Summary Judgment. As such, Texas's stated material facts remain undisputed. Fed. R. Civ. P. 56(a), 56(c)(1).	
NONE	N/A	And in 1999, the OSE issued the Mesilla Valley Administrative Area Guidelines to aid administration of both surface and groundwater in a critical portion of the Lower Rio Grande	NM-EX_007, D'Antonio 2d Decl. ¶¶ 22.		The fact statement included in the brief and the evidence that is cited in New Mexico's Response to Texas's Motion for Partial Summary Judgment does not materially respond to facts stated therein. New Mexico's statement and the evidence cited in support regarding New Mexico's Mesilla Valley Administrative Guidelines do not materially respond to an argument made in Texas's Motion for Partial Summary Judgment. New Mexico's statement in its brief is non-responsive and otherwise not supported by definite, competent, or significantly probative evidence that genuinely and materially responds to a fact stated in Texas's Motion for Partial Summary Judgment. As such, Texas's stated material facts remain undisputed. Fed. R. Civ. P. 56(a), 56(c)(1).	N/A
NONE	N/A	In 2004, the State Engineer created the Lower Rio Grande Water Master District in OSE District IV and required metering of all non-domestic wells	NM-EX-007 D'Antonio 2d Decl. ¶¶ 5, 44; NM- EX 006, Barroll 2d Decl. ¶ 22; NM-EX 533, State Engineer Order No. 180 (Mar. 28, 2007).	NM-EX-007: <i>See</i> General Objection #3; NM-EX-533: <i>See</i> General Objection #3; Fed. R. Evid. 801(c), hearsay.	Subject to the stated objections, the fact statement included in the brief and the evidence that is cited in New Mexico's Response to Texas's Motion for Partial Summary Judgment does not materially respond to facts stated therein. New Mexico's statement and the evidence cited in support regarding New Mexico's Lower Rio Grande Watermaster District do not materially respond to an argument made in Texas's Motion for Partial Summary Judgment. New Mexico's statement in its brief is non-responsive and otherwise not supported by definite, competent, or significantly probative evidence that genuinely and materially responds to a fact stated in Texas's Motion for Partial Summary Judgment. As such, Texas's stated material facts remain undisputed. Fed. R. Civ. P. 56(a), 56(c)(1), (2), (4).	New Mexico previously responded to these authentication and hearsay objections. <i>See</i> [Dkt. 468] State of New Mexico's Response to State of Texas's Evidentiary Objections. As to Texas's objection to Mr. D'Antonio, see New Mexico's Response to State of Texas's Second Evidentiary Objections, § III (C).

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NONE	N/A	The draft DSRs received a negative response from some water users in the Lower Rio Grande, in particular EBID. N	NM-EX 007, D'Antonio 2d Decl. ¶ 46.		The fact statement included in the brief and the evidence that is cited in New Mexico's Response to Texas's Motion for Partial Summary Judgment does not materially respond to facts stated therein. New Mexico's statement and the evidence cited in support regarding New Mexico's "DSRs" do not materially respond to an argument made in Texas's Motion for Partial Summary Judgment. New Mexico's statement in its brief is non-responsive and otherwise not supported by definite, competent, or significantly probative evidence that genuinely and materially responds to a fact stated in Texas's Motion for Partial Summary Judgment. As such, Texas's stated material facts remain undisputed. Fed. R. Civ. P. 56(a), 56(c)(1).	N/A
NONE	N/A	The draft DSRs contained additional provisions designed to protect Texas and Mexico deliveries, if necessary.	, D'Antonio 2d Decl. ¶ 52.	NM-EX-007: <i>See</i> General Objection #3.	Subject to the stated objection, the fact statement included in the brief and the evidence that is cited in New Mexico's Response to Texas's Motion for Partial Summary Judgment does not materially respond to facts stated therein. New Mexico's statement and the evidence cited in support regarding New Mexico's "DSRs" do not materially respond to an argument made in Texas's Motion for Partial Summary Judgment. New Mexico's statement in its brief is non-responsive and otherwise not supported by definite, competent, or significantly probative evidence that genuinely and materially responds to a fact stated in Texas's Motion for Partial Summary Judgment. As such, Texas's stated material facts remain undisputed. Fed. R. Civ. P. 56(a), 56(c)(1), (2), (4).	As to Texas's objection to Mr. D'Antonio, see New Mexico's Response to State of Texas's Second Evidentiary Objections, § III (C).
NONE	N/A	The primary reason the State Engineer never finalized the draft DSRs was the adoption of the 2008 Operating Agreement.	NM-EX 007, D'Antonio 2d Decl. ¶¶ 47- 48, 52	NM-EX-007: <i>See</i> General Objection #3.	Subject to the stated objection, the fact statement included in the brief and the evidence that is cited in New Mexico's Response to Texas's Motion for Partial Summary Judgment does not materially respond to facts stated therein. New Mexico's statement and the evidence cited in support regarding New Mexico's "DSRs" do not materially respond to an argument made in Texas's Motion for Partial Summary	As to Texas's objection to Mr. D'Antonio, see New Mexico's Response to State of Texas's Second Evidentiary Objections, § III (C).

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					Judgment. New Mexico's statement in its brief is non-responsive and otherwise not supported by definite, competent, or significantly probative evidence that genuinely and materially responds to a fact stated in Texas's Motion for Partial Summary Judgment. As such, Texas's stated material facts remain undisputed. Fed. R. Civ. P. 56(a), 56(c)(1), (2), (4).	
NONE	N/A	Without a quantitative analysis, the 2008 Operating Agreement reduced surface water allocations to New Mexico lands based on the United States' rationale that the reduced surface water was in exchange for allowing farmers to pump groundwater in New Mexico.	NM-EX 119, United States' Suppl. Disclosure of Ian M. Ferguson at 4 (Sept. 16, 2019); NM-EX 238, Ferguson Dep. (Feb. 19, 2020) 129:20-24.	NM-EX-119: <i>See</i> General Objection #7; Fed. R. Evid. 801(c), hearsay. NM-EX-238: <i>See</i> General Objection #8.	Subject to the stated objections, the fact statement included in the brief and the evidence that is cited in New Mexico's Response to Texas's Motion for Partial Summary Judgment does not materially respond to facts stated therein. New Mexico's statement and the evidence cited in support regarding the 2008 Operating Agreement do not materially respond to an argument made in Texas's Motion for Partial Summary Judgment. New Mexico's statement in its brief is non-responsive and otherwise not supported by definite, competent, or significantly probative evidence that genuinely and materially responds to a fact stated in Texas's Motion for Partial Summary Judgment. As such, Texas's stated material facts remain undisputed. Fed. R. Civ. P. 56(a), 56(c)(1).	New Mexico previously responded to these authentication and hearsay objections. <i>See</i> [Dkt. 468] State of New Mexico's Response to State of Texas's Evidentiary Objections.
NONE	N/A	This out-of-state transport of New Mexico waters violates New Mexico law	NM-EX 007, D'Antonio 2d Decl. ¶ 50		The fact statement included in the brief and the evidence that is cited in New Mexico's response to Texas's Motion for Partial Summary Judgment does not materially respond to facts stated therein. New Mexico's statement and the evidence cited in support regarding New Mexico water law do not materially respond to an argument made in Texas's Motion for Partial Summary Judgment. New Mexico's statement in its brief is non-responsive and otherwise not supported by definite, competent, or significantly probative evidence that genuinely and materially responds to a fact stated in Texas's Motion for Partial Summary Judgment. As such, Texas's stated material facts remain undisputed. Fed. R. Civ. P. 56(a), 56(c)(1).	N/A

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NONE	N/A	As anticipated by the United States, the reduced surface water allocations have forced New Mexico farmers to engage in more pumping in the Lower Rio Grande, not less. N	Barroll 2d Decl. ¶¶ 62, 67; NM-EX 010, Serrano Decl. ¶ 36.		The fact statement included in the brief and the evidence that is cited in New Mexico's Response to Texas's Motion for Partial Summary Judgment does not materially respond to facts stated therein. New Mexico's statement and the evidence cited in support regarding the anticipation by the United States relating to additional pumping in New Mexico do not materially respond to an argument made in Texas's Motion for Partial Summary Judgment. New Mexico's statement in its brief is non-responsive and otherwise not supported by definite, competent, or significantly probative evidence that genuinely and materially responds to a fact stated in Texas's Motion for Partial Summary Judgment. As such, Texas's stated material facts remain undisputed. Fed. R. Civ. P. 56(a), 56(c)(1).	N/A
NONE	N/A	From a Compact perspective, since adoption of the 2008 Operating Agreement, New Mexico—not Texas—is the injured party	NM-EX 006, Barroll 2nd Decl. ¶¶ 80-81; NM- EX 007, D'Antonio 2nd Decl. ¶ 49	NM-EX-007: <i>See</i> General Objection #3.	Subject to the stated objection, the fact statement included in the brief and the evidence that is cited in New Mexico's Response to Texas's Motion for Partial Summary Judgment does not materially respond to facts stated therein. New Mexico's statement and the evidence cited in support regarding the 2008 Operating Agreement do not materially respond to an argument made in Texas's Motion for Partial Summary Judgment. New Mexico's statement in its brief is non-responsive and otherwise not supported by definite, competent, or significantly probative evidence that genuinely and materially responds to a fact stated in Texas's Motion for Partial Summary Judgment. As such, Texas's stated material facts remain undisputed. Fed. R. Civ. P. 56(a), 56(c)(1), (2), (4).	As to Texas's objection to Mr. D'Antonio, see New Mexico's Response to State of Texas's Second Evidentiary Objections, § III (C).
NONE	N/A	Under the 2008 Operating Agreement, Texas receives far more than its 43% share of Project water.	NM-EX 006, Barroll 2d Decl. ¶ 62		The fact statement included in the brief and the evidence that is cited in New Mexico's Response to Texas's Motion for Partial Summary Judgment does not materially respond to facts stated therein. New Mexico's statement and the evidence cited in support regarding the 2008 Operating Agreement do not materially respond to an argument made in Texas's Motion for Partial Summary Judgment. New Mexico's statement in its	N/A

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					brief is non-responsive and otherwise not supported by definite, competent, or significantly probative evidence that genuinely and materially responds to a fact stated in Texas's Motion for Partial Summary Judgment. As such, Texas's stated material facts remain undisputed. Fed. R. Civ. P. 56(a), 56(c)(1).	
NONE	N/A	It has declined to use even the few administrative tools at its disposal, failing to form a groundwater management district anywhere within the Compact area in Texas despite recognizing that groundwater withdrawals in the El Paso area exceed recharge and that there are "pretty sizeable" cones of depression in the area.	NM EX 239, Mills Dep. (Aug. 27, 2020) 28:1-13, 17-25; 29:3-23; 38:1-25; 39:1.	NM-EX-239: <i>See</i> General Objection #8.	Subject to the stated objection, the fact statement included in the brief and the evidence that is cited in New Mexico's Response to Texas's Motion for Partial Summary Judgment does not materially respond to facts stated therein. New Mexico's statement and the evidence cited in support regarding impacts of groundwater pumping in the El Paso area do not materially respond to an argument made in Texas's Motion for Partial Summary Judgment. New Mexico's statement in its brief is non-responsive and otherwise not supported by definite, competent, or significantly probative evidence that genuinely and materially responds to a fact stated in Texas's Motion for Partial Summary Judgment. As such, Texas's stated material facts remain undisputed. Fed. R. Civ. P. 56(a), 56(c)(1).	New Mexico previously responded to these authentication and hearsay objections. <i>See</i> [Dkt. 468] State of New Mexico's Response to State of Texas's Evidentiary Objections.
NONE	N/A	The Compact makes no mention of a "1938 Condition" below Elephant Butte, nor does it make any reference to the specific number of acre-feet that Texas now claims is the limit of consumption in New Mexico under the supposed "1938 Condition," which it quantifies at 149,005 acre-feet per year in one of the Texas expert reports. ⁵	NM-EX 126, Hutchison Rep. 41, ¶ 135.	NM-EX-126: <i>See</i> General Objection #7; Fed. R. Evid. 801(c), hearsay.	Subject to the stated objection, the fact statement included in the brief and the evidence that is cited in New Mexico's Response to Texas's Motion for Partial Summary Judgment does not materially respond to facts stated therein. New Mexico's statement and the evidence cited in support do not materially respond to an argument made in Texas's Motion for Partial Summary Judgment. The statement merely cites to Texas's evidence and says it's incorrect, with no evidence cited in support. New Mexico's statement in its brief is non-responsive and otherwise not supported by definite, competent, or significantly probative evidence that genuinely and materially responds to a fact stated in Texas's Motion for Partial Summary Judgment. As such, Texas's stated material facts remain undisputed. Fed. R. Civ. P. 56(a), 56(c)(1).	New Mexico previously responded to these authentication and hearsay objections. <i>See</i> [Dkt. 468] State of New Mexico's Response to State of Texas's Evidentiary Objections.

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NONE	N/A	As Texas acknowledges, in the early 1980s, Reclamation proposed the D1/D2 Allocation method. Tex. Br. 34; <i>See</i> NM-CSMF ¶ 174. During this time, Project operations were changing from allocations to individual farms, to allocations to Districts	NM-EX 001, Barroll Decl. ¶¶ 20-21		The fact statement included in the brief and the evidence that is cited in New Mexico's Response to Texas's Motion for Partial Summary Judgment does not materially respond to facts stated therein. New Mexico's statement and the evidence cited in support regarding the D1/D2 allocation method do not materially respond to an argument made in Texas's Motion for Partial Summary Judgment. New Mexico's statement in its brief is non-responsive and otherwise not supported by definite, competent, or significantly probative evidence that genuinely and materially responds to a fact stated in Texas's Motion for Partial Summary Judgment. As such, Texas's stated material facts remain undisputed. Fed. R. Civ. P. 56(a), 56(c)(1).	N/A
NONE	N/A	In developing this method, Reclamation made "[s]tatistical evaluations of operational records for the period 1951 through 1978," which "provided graphs, equations, and data" which were to be "used to ensure that future allocations to Mexico and the allocations to the U.S. maintain the historical relationship between the delivery of water to U.S. farms and Mexico."	NM-EX 400, WSAP 9; NM-EX 006, Barroll 2d Decl. ¶ 57.	NM-EX-400: <i>See</i> General Objection #9; Fed. R. Evid. 801(c), hearsay.	Subject to the stated objections, the fact statement included in the brief and the evidence that is cited in New Mexico's Response to Texas's Motion for Partial Summary Judgment does not materially respond to facts stated therein. New Mexico's statement and the evidence cited in support regarding the development of Reclamation's allocation methodology do not materially respond to an argument made in Texas's Motion for Partial Summary Judgment. New Mexico's statement in its brief is non-responsive and otherwise not supported by definite, competent, or significantly probative evidence that genuinely and materially responds to a fact stated in Texas's Motion for Partial Summary Judgment. As such, Texas's stated material facts remain undisputed. Fed. R. Civ. P. 56(a), 56(c)(1).	New Mexico previously responded to these authentication and hearsay objections. <i>See</i> [Dkt. 468] State of New Mexico's Response to State of Texas's Evidentiary Objections. To the extent Texas intended to lodge this objection against the Barroll Declaration, see New Mexico's Response to State of Texas's Second Evidentiary Objections, § III (A).
NONE	N/A	The D2 Curve is based on the historical relationship between Project releases from storage and total Project diversions (including to Mexico) throughout the period 1951-	NM-EX 006, Barroll 2d Decl. at ¶ 57		The fact statement included in the brief and the evidence that is cited in New Mexico's Response to Texas's Motion for Partial Summary Judgment does not materially respond to facts stated therein. New Mexico's statement and the evidence cited in support regarding the D2 curve do not materially respond to an argument made in Texas's Motion for Partial Summary	N/A

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		1978 and is, therefore, a measure of Project delivery performance over this 29-year period.			Judgment. New Mexico's statement in its brief is non-responsive and otherwise not supported by definite, competent, or significantly probative evidence that genuinely and materially responds to a fact stated in Texas's Motion for Partial Summary Judgment. As such, Texas's stated material facts remain undisputed. Fed. R. Civ. P. 56(a), 56(c)(1).	
NONE	N/A	Reclamation played an active role in this development, advising Project farmers in the late 1940s that Project reservoir levels were getting low and that Project supply may be inadequate	NM-EX 006, Barroll 2d Decl. ¶ 15.		The fact statement included in the brief and the evidence that is cited in New Mexico's Response to Texas's Motion for Partial Summary Judgment does not materially respond to facts stated therein. New Mexico's statement and the evidence cited in support regarding activities by the U.S. Bureau of Reclamation do not materially respond to an argument made in Texas's Motion for Partial Summary Judgment. New Mexico's statement in its brief is non-responsive and otherwise not supported by definite, competent, or significantly probative evidence that genuinely and materially responds to a fact stated in Texas's Motion for Partial Summary Judgment. As such, Texas's stated material facts remain undisputed. Fed. R. Civ. P. 56(a), 56(c)(1).	N/A.
NONE	N/A	Reclamation recorded the number of irrigation wells, at least throughout the 1950s, and encouraged Project farmers to pump groundwater, specifically requesting that farmers with wells use them "to the greatest extent possible."	NM-EX 006, Barroll 2d Decl. ¶ 17; NM-EX 419, RGPH (Water Announcement 1951); NM-EX 417; NM-EX 438, BOR (Water Announcement 1952); EX 433, BOR (Water Announcement 1954); NM-EX 420, RGPH (O&M 1951-57).	NM-EX-419, 417, 438, 433, 420: <i>See</i> General Objection #9; Fed. R. Evid. 801(c), hearsay.	Subject to the stated objections, the fact statement included in the brief and the evidence that is cited in New Mexico's Response to Texas's Motion for Partial Summary Judgment does not materially respond to facts stated therein. New Mexico's statement and the evidence cited in support regarding activities by the U.S. Bureau of Reclamation do not materially respond to an argument made in Texas's Motion for Partial Summary Judgment. New Mexico's statement in its brief is non-responsive and otherwise not supported by definite, competent, or significantly probative evidence that genuinely and materially responds to a fact stated in Texas's Motion for Partial Summary Judgment. As such, Texas's stated material facts remain undisputed. Fed. R. Civ. P. 56(a), 56(c)(1).	New Mexico previously responded to these authentication and hearsay objections. <i>See</i> [Dkt. 468] State of New Mexico's Response to State of Texas's Evidentiary Objections. NM-EX 419, 417, 438, 433, and 420 are not declarations and Texas's objection thereby is nonsensical. To the extent Texas intended to lodge this objection against the Barroll Declaration, see New Mexico's

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						Response to State of Texas's Second Evidentiary Objections, § III (A).
NONE	N/A	Later, in the 1970s, Reclamation worked with the Districts to develop District-owned irrigation supply wells.	NM-CSMF ¶ 21; NM-EX 006, Barroll 2d Decl. ¶ 21; NM-EX 444, RGHP License.	NM-EX-444 <i>See</i> General Objection #9; Fed. R. Evid. 801(c), hearsay.	Subject to the stated objections, the fact statement included in the brief and the evidence that is cited in New Mexico's Response to Texas's Motion for Partial Summary Judgment does not materially respond to facts stated therein. New Mexico's statement and the evidence cited in support regarding activities by the U.S. Bureau of Reclamation do not materially respond to an argument made in Texas's Motion for Partial Summary Judgment. New Mexico's statement in its brief is non-responsive and otherwise not supported by definite, competent, or significantly probative evidence that genuinely and materially responds to a fact stated in Texas's Motion for Partial Summary Judgment. As such, Texas's stated material facts remain undisputed. Fed. R. Civ. P. 56(a), 56(c)(1).	New Mexico previously responded to these authentication and hearsay objections. <i>See</i> [Dkt. 468] State of New Mexico's Response to State of Texas's Evidentiary Objections. NM-EX 444 is not a declaration and Texas's objection thereby is nonsensical. To the extent Texas intended to lodge this objection against the Barroll Declaration, see New Mexico's Response to State of Texas's Second Evidentiary Objections, § III (A).
NONE	N/A	And as explained below, New Mexico's water use and consumption has not increased since the 1951-1978 period.	NM-EX 012, Sullivan Decl. ¶ 62.		The fact statement included in the brief and the evidence that is cited in New Mexico's Response to Texas's Motion for Partial Summary Judgment does not materially respond to facts stated therein. New Mexico's statement and the evidence cited in support regarding New Mexico's water use between 1951 and present do not materially respond to an argument made in Texas's Motion for Partial Summary Judgment. New Mexico's statement in its brief is non-responsive and otherwise not supported by definite, competent, or significantly probative evidence that genuinely and materially responds to a fact stated in Texas's Motion for Partial Summary Judgment. As such,	N/A

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<u>NM- CS MF #</u>	<u>NM's Prior Numbering System</u>	<u>New Mexico's Stated Fact</u>	<u>New Mexico's Supporting Evidence</u>	<u>TEXAS'S EVIDENTIARY OBJECTIONS</u>	<u>TEXAS'S RESPONSE</u>	<u>NEW MEXICO'S RESPONSE TO TEXAS EVIDENTIARY OBJECTIONS</u>
					Texas's stated material facts remain undisputed. Fed. R. Civ. P. 56(a), 56(c)(1).	
NONE	N/A	Texas argues that the Compact "protects the Project and its operations under the conditions that existed in 1938." Tex. Br. 77. Texas's expert Dr. William Hutchison then opines that these "conditions" are the depletions that occurred in New Mexico in that single year, 1938. NM- EX 012, Sullivan Decl. ¶ 96; NM-EX 126, Hutchison Rep. (May 31, 2019) 41 ¶ 135. There is no basis for this in the record.	NM-EX 012, Sullivan Decl. ¶ 96; NM-EX 126, Hutchison Rep. (May 31, 2019) 41 ¶ 135.		The fact statement included in the brief and the evidence that is cited in New Mexico's Response to Texas's Motion for Partial Summary Judgment does not materially respond to facts stated therein. New Mexico's statement and the evidence cited in support do not materially respond to an argument made in Texas's Motion for Partial Summary Judgment. The statement and evidence cited merely state that there is no evidence in support of Texas's statement, but do not provide any basis for that conclusion. New Mexico's statement in its brief is non-responsive and otherwise not supported by definite, competent, or significantly probative evidence that genuinely and materially responds to a fact stated in Texas's Motion for Partial Summary Judgment. As such, Texas's stated material facts remain undisputed. Fed. R. Civ. P. 56(a), 56(c)(1).	N/A
NONE	N/A	The reason for this is simple: depletions within a large area of irrigated agriculture vary widely from year-to- year due to many different factors, but primarily due to differences in yearly temperature and precipitation.	NM-EX 012, Sullivan Decl. ¶ 96.		The fact statement included in the brief and the evidence that is cited in New Mexico's Response to Texas's Motion for Partial Summary Judgment does not materially respond to facts stated therein. New Mexico's statement and the evidence cited in support regarding general issues relating to depletions do not materially respond to an argument made in Texas's Motion for Partial Summary Judgment. New Mexico's statement in its brief is non-responsive and otherwise not supported by definite, competent, or significantly probative evidence that genuinely and materially responds to a fact stated in Texas's Motion for Partial Summary Judgment. As such, Texas's stated material facts remain undisputed. Fed. R. Civ. P. 56(a), 56(c)(1).	N/A

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NONE	N/A	Since 1938, Texas has drilled hundreds of agricultural wells to supplement its surface supply.	NMCSMF ¶ 239; NM-EX 006 Barroll 2d Decl. ¶¶ 17, 27		The fact statement included in the brief and the evidence that is cited in New Mexico's Response to Texas's Motion for Partial Summary Judgment does not materially respond to facts stated therein. New Mexico's statement and the evidence cited in support regarding wells in the State of Texas do not materially respond to an argument made in Texas's Motion for Partial Summary Judgment. New Mexico's statement in its brief is non-responsive and otherwise not supported by definite, competent, or significantly probative evidence that genuinely and materially responds to a fact stated in Texas's Motion for Partial Summary Judgment. As such, Texas's stated material facts remain undisputed. Fed. R. Civ. P. 56(a), 56(c)(1).	N/A
NONE	N/A	It is estimated that Texas's total pumping averaged 127,500 AF/y during 1951-2017, with irrigation pumping averaging 41,600 AF/y (155,000 AF/y maximum) and non-irrigation pumping averaging 85,900 AF/y (124,000 AF/y maximum).	NM-EX 012, Sullivan Decl. ¶ 14.		The fact statement included in the brief and the evidence that is cited in New Mexico's Response to Texas's Motion for Partial Summary Judgment does not materially respond to facts stated therein. New Mexico's statement and the evidence cited in support regarding groundwater pumping in the State of Texas do not materially respond to an argument made in Texas's Motion for Partial Summary Judgment. New Mexico's statement in its brief is non-responsive and otherwise not supported by definite, competent, or significantly probative evidence that genuinely and materially responds to a fact stated in Texas's Motion for Partial Summary Judgment. As such, Texas's stated material facts remain undisputed. Fed. R. Civ. P. 56(a), 56(c)(1).	N/A
NONE	N/A	With regard to the return flows, all the parties agree that return flows form part of the Project supply.	NM-EX 006, Barroll 2d Decl. ¶ 46.		The fact statement included in the brief and the evidence that is cited in New Mexico's Response to Texas's Motion for Partial Summary Judgment does not materially respond to facts stated therein. New Mexico's statement and the evidence cited in support regarding New Mexico's view on the other parties' position on return flows do not materially respond to an argument made in Texas's Motion for Partial Summary Judgment. New Mexico's statement in its brief is non-	N/A

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					responsive and otherwise not supported by definite, competent, or significantly probative evidence that genuinely and materially responds to a fact stated in Texas's Motion for Partial Summary Judgment. As such, Texas's stated material facts remain undisputed. Fed. R. Civ. P. 56(a), 56(c)(1).	
NONE	N/A	Reclamation, EPCWID and EBID negotiated the 2008 Operating Agreement, with the notable absence of the States as negotiating parties.	NM-EX 008, Lopez 2d Decl. ¶ 35(i).	NM-EX-008: <i>See</i> General Objection #2.	Subject to the stated objection, the fact statement included in the brief and the evidence that is cited in New Mexico's Response to Texas's Motion for Partial Summary Judgment does not materially respond to facts stated therein. New Mexico's statement and the evidence cited in support regarding the 2008 Operating Agreement do not materially respond to an argument made in Texas's Motion for Partial Summary Judgment. New Mexico's statement in its brief is non-responsive and otherwise not supported by definite, competent, or significantly probative evidence that genuinely and materially responds to a fact stated in Texas's Motion for Partial Summary Judgment. As such, Texas's stated material facts remain undisputed. Fed. R. Civ. P. 56(a), 56(c)(1), (2), (4).	As to Texas's objection to Mr. Lopez, see New Mexico's Response to State of Texas's Second Evidentiary Objections, § III (B).
NONE	N/A	Water supply shortages, the Great Depression, and flooding events that caused the river to move all caused great variations in irrigated acreage in the 1920s and 1930s in both Districts	NMEX 011, Stevens 2d Decl. ¶ 30.		The fact statement included in the brief and the evidence that is cited in New Mexico's Response to Texas's Motion for Partial Summary Judgment does not materially respond to facts stated therein. New Mexico's statement and the evidence cited in support regarding the cause for changes in Project acreage with time do not materially respond to an argument made in Texas's Motion for Partial Summary Judgment. New Mexico's statement in its brief is non-responsive and otherwise not supported by definite, competent, or significantly probative evidence that genuinely and materially responds to a fact stated in Texas's Motion for Partial Summary Judgment. As such, Texas's stated material facts remain undisputed. Fed. R. Civ. P.	N/A.

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					56(a), 56(c)(1).	
NONE	N/A	A difference now is that due to the reduced supply of surface water in New Mexico resulting from the 2008 Operating Agreement, the aquifer in New Mexico has not recovered as it historically has, and there may be long-term damage.	NM-EX 100, Barroll Rep. 72-76.	NM-EX-100: <i>See</i> General Objection #7; Fed. R. Evid. 801(c), hearsay.	Subject to the stated objection, the fact statement included in the brief and the evidence that is cited in New Mexico's Response to Texas's Motion for Partial Summary Judgment does not materially respond to facts stated therein. New Mexico's statement and the evidence cited in support regarding the 2008 Operating Agreement do not materially respond to an argument made in Texas's Motion for Partial Summary Judgment. New Mexico's statement in its brief is non-responsive and otherwise not supported by definite, competent, or significantly probative evidence that genuinely and materially responds to a fact stated in Texas's Motion for Partial Summary Judgment. As such, Texas's stated material facts remain undisputed. Fed. R. Civ. P. 56(a), 56(c)(1).	New Mexico previously responded to these authentication and hearsay objections. <i>See</i> [Dkt. 468] State of New Mexico's Response to State of Texas's Evidentiary Objections.
NONE	N/A	The total farm delivery to New Mexico Project lands from both surface and groundwater has averaged approximately 4.0 AF per acre since 2008.	NM-EX 101, Barroll Reb. Rep. 7-8.	NM-EX-101: <i>See</i> General Objection #7; Fed. R. Evid. 801(c), hearsay.	Subject to the stated objection, the fact statement included in the brief and the evidence that is cited in New Mexico's Response to Texas's Motion for Partial Summary Judgment does not materially respond to facts stated therein. New Mexico's statement and the evidence cited in support regarding the specifics of New Mexico's Farm Delivery Requirement do not materially respond to an argument made in Texas's Motion for Partial Summary Judgment. New Mexico's statement in its brief is non-responsive and otherwise not supported by definite, competent, or significantly probative evidence that genuinely and materially responds to a fact stated in Texas's Motion for Partial Summary Judgment. As such, Texas's stated material facts remain undisputed. Fed. R. Civ. P. 56(a), 56(c)(1).	New Mexico previously responded to these authentication and hearsay objections. <i>See</i> [Dkt. 468] State of New Mexico's Response to State of Texas's Evidentiary Objections.

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NONE	N/A	Since 2006, under the D3 Allocation plus Carryover method, Texas has been allocated more than its Compact Apportionment, at the expense of New Mexico	NM-CSMF ¶ 196; NMEX 006, Barroll 2d Decl. ¶¶ 46, 63, 66-68, 72-73, 75		The fact statement included in the brief and the evidence that is cited in New Mexico's Response to Texas's Motion for Partial Summary Judgment does not materially respond to facts stated therein. New Mexico's statement and the evidence cited in support regarding the D3 allocation do not materially respond to an argument made in Texas's Motion for Partial Summary Judgment. New Mexico's statement in its brief is non-responsive and otherwise not supported by definite, competent, or significantly probative evidence that genuinely and materially responds to a fact stated in Texas's Motion for Partial Summary Judgment. As such, Texas's stated material facts remain undisputed. Fed. R. Civ. P. 56(a), 56(c)(1).	N/A
NONE	N/A	This improvement in groundwater conditions would, in turn, have increased Project delivery efficiency and thereby further increased EBID's allocation and delivery at little cost to EPCWID	NM-EX 006, Barroll 2d Decl. ¶ 63.		The fact statement included in the brief and the evidence that is cited in New Mexico's Response to Texas's Motion for Partial Summary Judgment does not materially respond to facts stated therein. New Mexico's statement and the evidence cited in support regarding Project "efficiency" do not materially respond to an argument made in Texas's Motion for Partial Summary Judgment. New Mexico's statement in its brief is non-responsive and otherwise not supported by definite, competent, or significantly probative evidence that genuinely and materially responds to a fact stated in Texas's Motion for Partial Summary Judgment. As such, Texas's stated material facts remain undisputed. Fed. R. Civ. P. 56(a), 56(c)(1).	N/A
NONE	N/A	Under the 2008 Operating Agreement, Texas receives far more than its 43% share of Project water.	NM-EX 006, Barroll 2d Decl. ¶ 62		The fact statement included in the brief and the evidence that is cited in New Mexico's Response to Texas's Motion for Partial Summary Judgment does not materially respond to facts stated therein. New Mexico's statement and the evidence cited in support regarding the 2008 Operating Agreement do not materially respond to an argument made in Texas's Motion for Partial Summary Judgment. New Mexico's statement in its brief is non-responsive and otherwise not supported by definite, competent, or significantly probative evidence that genuinely and materially responds to a fact stated in Texas's Motion for	N/A

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					Partial Summary Judgment. As such, Texas's stated material facts remain undisputed. Fed. R. Civ. P. 56(a), 56(c)(1).	
NONE	N/A	It has declined to use even the few administrative tools at its disposal, failing to form a groundwater management district anywhere within the Compact area in Texas despite recognizing that groundwater withdrawals in the El Paso area exceed recharge and that there are "pretty sizeable" cones of depression in the area.	NM EX 239, Mills Dep. (Aug. 27, 2020) 28:1-13, 17-25; 29:3-23; 38:1-25; 39:1.	NM-EX-239: <i>See</i> General Objection #8.	Subject to the stated objection, the fact statement included in the brief and the evidence that is cited in New Mexico's Response to Texas's Motion for Partial Summary Judgment does not materially respond to facts stated therein. New Mexico's statement and the evidence cited in support regarding impacts of groundwater pumping in the El Paso area do not materially respond to an argument made in Texas's Motion for Partial Summary Judgment. New Mexico's statement in its brief is non-responsive and otherwise not supported by definite, competent, or significantly probative evidence that genuinely and materially responds to a fact stated in Texas's Motion for Partial Summary Judgment. As such, Texas's stated material facts remain undisputed. Fed. R. Civ. P. 56(a), 56(c)(1).	New Mexico previously responded to these authentication and hearsay objections. <i>See</i> [Dkt. 468] State of New Mexico's Response to State of Texas's Evidentiary Objections.
NONE	N/A	The Compact makes no mention of a "1938 Condition" below Elephant Butte, nor does it make any reference to the specific number of acre-feet that Texas now claims is the limit of consumption in New Mexico under the supposed "1938 Condition," which it quantifies at 149,005 acre-feet per year in one of the Texas expert reports. ⁵	NM-EX 126, Hutchison Rep. 41, ¶ 135.	NM-EX-126: <i>See</i> General Objection #7; Fed. R. Evid. 801(c), hearsay.	Subject to the stated objection, the fact statement included in the brief and the evidence that is cited in New Mexico's Response to Texas's Motion for Partial Summary Judgment does not materially respond to facts stated therein. New Mexico's statement and the evidence cited in support do not materially respond to an argument made in Texas's Motion for Partial Summary Judgment. The statement merely cites to Texas's evidence and says it's incorrect, with no evidence cited in support. New Mexico's statement in its brief is non-responsive and otherwise not supported by definite, competent, or significantly probative evidence that genuinely and materially responds to a fact stated in Texas's Motion for Partial Summary Judgment. As such, Texas's stated material facts remain undisputed. Fed. R. Civ. P. 56(a), 56(c)(1).	New Mexico previously responded to these authentication and hearsay objections. <i>See</i> [Dkt. 468] State of New Mexico's Response to State of Texas's Evidentiary Objections.

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NONE	N/A	As Texas acknowledges, in the early 1980s, Reclamation proposed the D1/D2 Allocation method. Tex. Br. 34; <i>See</i> NM-CSMF ¶ 174. During this time, Project operations were changing from allocations to individual farms, to allocations to Districts	NM-EX 001, Barroll Decl. ¶¶ 20-21		The fact statement included in the brief and the evidence that is cited in New Mexico's Response to Texas's Motion for Partial Summary Judgment does not materially respond to facts stated therein. New Mexico's statement and the evidence cited in support regarding the D1/D2 allocation method do not materially respond to an argument made in Texas's Motion for Partial Summary Judgment. New Mexico's statement in its brief is non-responsive and otherwise not supported by definite, competent, or significantly probative evidence that genuinely and materially responds to a fact stated in Texas's Motion for Partial Summary Judgment. As such, Texas's stated material facts remain undisputed. Fed. R. Civ. P. 56(a), 56(c)(1).	N/A
NONE	N/A	In developing this method, Reclamation made "[s]tatistical evaluations of operational records for the period 1951 through 1978," which "provided graphs, equations, and data" which were to be "used to ensure that future allocations to Mexico and the allocations to the U.S. maintain the historical relationship between the delivery of water to U.S. farms and Mexico."	NM-EX 400, WSAP 9; NM-EX 006, Barroll 2d Decl. ¶ 57.	NM-EX-400: <i>See</i> General Objection #9; Fed. R. Evid. 801(c), hearsay.	Subject to the stated objections, the fact statement included in the brief and the evidence that is cited in New Mexico's Response to Texas's Motion for Partial Summary Judgment does not materially respond to facts stated therein. New Mexico's statement and the evidence cited in support regarding the development of Reclamation's allocation methodology do not materially respond to an argument made in Texas's Motion for Partial Summary Judgment. New Mexico's statement in its brief is non-responsive and otherwise not supported by definite, competent, or significantly probative evidence that genuinely and materially responds to a fact stated in Texas's Motion for Partial Summary Judgment. As such, Texas's stated material facts remain undisputed. Fed. R. Civ. P. 56(a), 56(c)(1).	New Mexico previously responded to these authentication and hearsay objections. <i>See</i> [Dkt. 468] State of New Mexico's Response to State of Texas's Evidentiary Objections. NM-EX 400 is not a declaration and Texas's objection thereby is nonsensical. To the extent Texas intended to lodge this objection against the Barroll Declaration, see New Mexico's Response to State of Texas's Second Evidentiary Objections, § III (A).

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NONE	N/A	The D2 Curve is based on the historical relationship between Project releases from storage and total Project diversions (including to Mexico) throughout the period 1951-1978 and is, therefore, a measure of Project delivery performance over this 29-year period.	NM-EX 006, Barroll 2d Decl. at ¶ 57		The fact statement included in the brief and the evidence that is cited in New Mexico's Response to Texas's Motion for Partial Summary Judgment does not materially respond to facts stated therein. New Mexico's statement and the evidence cited in support regarding the D2 curve do not materially respond to an argument made in Texas's Motion for Partial Summary Judgment. New Mexico's statement in its brief is non-responsive and otherwise not supported by definite, competent, or significantly probative evidence that genuinely and materially responds to a fact stated in Texas's Motion for Partial Summary Judgment. As such, Texas's stated material facts remain undisputed. Fed. R. Civ. P. 56(a), 56(c)(1).	N/A
NONE	N/A	Reclamation played an active role in this development, advising Project farmers in the late 1940s that Project reservoir levels were getting low and that Project supply may be inadequate	NM-EX 006, Barroll 2d Decl. ¶ 15.		The fact statement included in the brief and the evidence that is cited in New Mexico's Response to Texas's Motion for Partial Summary Judgment does not materially respond to facts stated therein. New Mexico's statement and the evidence cited in support regarding activities by the U.S. Bureau of Reclamation do not materially respond to an argument made in Texas's Motion for Partial Summary Judgment. New Mexico's statement in its brief is non-responsive and otherwise not supported by definite, competent, or significantly probative evidence that genuinely and materially responds to a fact stated in Texas's Motion for Partial Summary Judgment. As such, Texas's stated material facts remain undisputed. Fed. R. Civ. P. 56(a), 56(c)(1).	N/A.
NONE	N/A	Reclamation recorded the number of irrigation wells, at least throughout the 1950s, and encouraged Project farmers to pump groundwater, specifically requesting that farmers with wells use them "to the greatest extent possible."	NM-EX 006, Barroll 2d Decl. ¶ 17; NM-EX 419, RGPH (Water Announcement 1951); NM-EX 417; NM-EX 438, BOR (Water Announcement 1952); EX 433, BOR (Water Announcement 1954); NM-EX 420, RGPH (O&M 1951-57).	NM-EX-419, 417, 438, 433, 420: <i>See</i> General Objection #9; Fed. R. Evid. 801(c), hearsay.	Subject to the stated objections, the fact statement included in the brief and the evidence that is cited in New Mexico's Response to Texas's Motion for Partial Summary Judgment does not materially respond to facts stated therein. New Mexico's statement and the evidence cited in support regarding activities by the U.S. Bureau of Reclamation do not materially respond to an argument made in Texas's Motion for Partial Summary Judgment. New Mexico's statement in its brief is	New Mexico previously responded to these authentication and hearsay objections. <i>See</i> [Dkt. 468] State of New Mexico's Response to State of Texas's Evidentiary Objections. NM-EX 419, 417, 438, 433,

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					non-responsive and otherwise not supported by definite, competent, or significantly probative evidence that genuinely and materially responds to a fact stated in Texas's Motion for Partial Summary Judgment. As such, Texas's stated material facts remain undisputed. Fed. R. Civ. P. 56(a), 56(c)(1).	and 420 are not declarations and Texas's objection thereby is nonsensical. To the extent Texas intended to lodge this objection against the Barroll Declaration, see New Mexico's Response to State of Texas's Second Evidentiary Objections, § III (A).
NONE	N/A	Later, in the 1970s, Reclamation worked with the Districts to develop District-owned irrigation supply wells.	NM-CSMF ¶ 21; NM-EX 006, Barroll 2d Decl. ¶ 21; NM-EX 444, RGHP License.	NM-EX-444 <i>See</i> General Objection #9; Fed. R. Evid. 801(c), hearsay.	Subject to the stated objections, the fact statement included in the brief and the evidence that is cited in New Mexico's Response to Texas's Motion for Partial Summary Judgment does not materially respond to facts stated therein. New Mexico's statement and the evidence cited in support regarding activities by the U.S. Bureau of Reclamation do not materially respond to an argument made in Texas's Motion for Partial Summary Judgment. New Mexico's statement in its brief is non-responsive and otherwise not supported by definite, competent, or significantly probative evidence that genuinely and materially responds to a fact stated in Texas's Motion for Partial Summary Judgment. As such, Texas's stated material facts remain undisputed. Fed. R. Civ. P. 56(a), 56(c)(1).	New Mexico previously responded to these authentication and hearsay objections. <i>See</i> [Dkt. 468] State of New Mexico's Response to State of Texas's Evidentiary Objections. NM-EX 400 is not a declaration and Texas's objection thereby is nonsensical. To the extent Texas intended to lodge this objection against the Barroll Declaration, see New Mexico's Response to State of Texas's Second Evidentiary Objections, § III (A).
NONE	N/A	And as explained below, New Mexico's water use and consumption has not increased since the 1951-1978 period.	NM-EX 012, Sullivan Decl. ¶ 62.		The fact statement included in the brief and the evidence that is cited in New Mexico's Response to Texas's Motion for Partial Summary Judgment does not materially respond to facts stated therein. New Mexico's statement and the evidence cited in support regarding New Mexico's water use between 1951 and present do not materially respond to an argument made in	N/A

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					Texas's Motion for Partial Summary Judgment. New Mexico's statement in its brief is non-responsive and otherwise not supported by definite, competent, or significantly probative evidence that genuinely and materially responds to a fact stated in Texas's Motion for Partial Summary Judgment. As such, Texas's stated material facts remain undisputed. Fed. R. Civ. P. 56(a), 56(c)(1).	
NONE	N/A	Texas argues that the Compact "protects the Project and its operations under the conditions that existed in 1938." Tex. Br. 77. Texas's expert Dr. William Hutchison then opines that these "conditions" are the depletions that occurred in New Mexico in that single year, 1938. NM- EX 012, Sullivan Decl. ¶ 96; NM-EX 126, Hutchison Rep. (May 31, 2019) 41 ¶ 135. There is no basis for this in the record.	NM-EX 012, Sullivan Decl. ¶ 96; NM-EX 126, Hutchison Rep. (May 31, 2019) 41 ¶ 135.		The fact statement included in the brief and the evidence that is cited in New Mexico's Response to Texas's Motion for Partial Summary Judgment does not materially respond to facts stated therein. New Mexico's statement and the evidence cited in support do not materially respond to an argument made in Texas's Motion for Partial Summary Judgment. The statement and evidence cited merely state that there is no evidence in support of Texas's statement, but do not provide any basis for that conclusion. New Mexico's statement in its brief is non-responsive and otherwise not supported by definite, competent, or significantly probative evidence that genuinely and materially responds to a fact stated in Texas's Motion for Partial Summary Judgment. As such, Texas's stated material facts remain undisputed. Fed. R. Civ. P. 56(a), 56(c)(1).	N/A

ATTACHMENT B

ATTACHMENT B
NEW MEXICO’S RESPONSE TO TEXAS “SHAM DECLARATION” ARGUMENTS

Declaration	Challenged Statements	Texas Objection	Deposition Testimony	New Mexico Response
<p>NM-EX 007, Declaration of John D’Antonio</p>	<p>¶¶ 1-11¹: Generally describe the regulation of water in New Mexico, the authority and duties of the State Engineer, and some steps the State Engineer has taken to comply with the Compact.</p> <p>¶ 21: Describes the process to apply for a groundwater permit in the Lower Rio Grande (“LRG”) following closure of the LRG Groundwater Basin.</p> <p>¶¶ 23-28: Generally describe enforcement of the State Engineer order closing the LRG Groundwater Basin and the organization and duties of OSE’s District IV office.</p> <p>¶¶ 43-49: Describe the creation of water master districts in New Mexico, the implementation of the State Engineer’s metering order in the LRG, the development of district-specific regulations (DSRs) for the LRG, and how the 2008 Operating Agreement derailed adoption of those regulations.</p> <p>¶ 55: Generally describes how the State Engineer’s approach to water</p>	<p><u>Texas UMF No. 178</u>: “Notwithstanding the closing of the basin, groundwater pumping in New Mexico continued unabated. In 2010, New Mexico determined the groundwater basin was being mined. Mining of a groundwater basin means that more water is being pumped from the groundwater basin than can be replaced, causing groundwater levels to decline and causing the further depletion of the volume of water available to Texas. Groundwater pumping in New Mexico continues unabated today. The net result is that, notwithstanding the ongoing and recognized depletion of surface water flow through New Mexico’s groundwater pumping in New Mexico below Elephant Butte Reservoir, pumping continues unabated, to the detriment of Texas.” Tex. 2d Evid. Objs. 23-24.</p>	<p>06/25/2020, 165:13-25: The “[2008] operating agreement exacerbated groundwater pumping within the State of New Mexico and that groundwater level has not recovered since that operating agreement has been put in place.”</p> <p>06/25/20, 188:17-189:4: As of 2005, “groundwater use has increased in the Lower Rio Grande.”</p> <p>06/25/20, 189:21-190:12: The 2008 Operating Agreement “is forcing New Mexico to pump much greater amounts of groundwater.”</p> <p>06/25/20, 199:3-200:6: The DSRs were intended to “keep [groundwater pumping] in control” and make “corrections within New Mexico,” and that “we definitely would have been able to do that,” but the 2008 Operating Agreement “flipped that strategy on its head because it so exacerbated the need for New Mexico to pump additional groundwater before we could put this active water resource management initiative in place.”</p>	<p>Texas fails to establish any conflict between State Engineer D’Antonio’s declaration describing water administration in New Mexico and in the LRG and his deposition testimony. Mr. D’Antonio’s testimony concerning the impacts of the 2008 Operating Agreement on the State Engineer’s administrative efforts in the LRG, including the State Engineer’s attempt to promulgate District-Specific Regulations (“DSRs”) for the LRG, do not contradict Mr. D’Antonio’s overview of the State Engineer’s administration of water in the Lower Rio Grande in the challenged paragraphs. Mr. D’Antonio acknowledges in paragraphs 47-49 of his Second Declaration that the 2008 Operating Agreement has created problems in New Mexico and interfered with efforts to more tightly regulate groundwater pumping in the LRG. However, the deposition testimony Texas identifies in no way establishes that New Mexico pumping in the LRG is “unabated” or that Mr. D’Antonio’s discussion of water administration in New Mexico and the LRG is somehow a “sham.”</p>

¹ Due to the number of paragraphs Texas challenges here, New Mexico has summarized the challenged paragraphs instead of quoting them. The full paragraphs can be found in NM-EX 007, D’Antonio 2nd Declaration.

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	<p>administration in the LRG has changed over time.</p> <p>¶¶ 57-59: Generally describe the State Engineer’s water administration as it relates to the Compact.</p>	<p>“Declarant D’Antonio previously testified in this case in a manner that is directly contradictory to the statements in the D’Antonio Declaration” <i>Id.</i> at 24.</p>		
<p>NM-EX 007, Declaration of John D’Antonio</p>	<p>¶ 57: “Under the comprehensive compliance and enforcement processes diligently pursued by the OSE as described in this declaration, it is incorrect and disingenuous to claim that “groundwater pumping in New Mexico continued unabated” or that New Mexico does not regulate its groundwater pumping and use. Groundwater pumping is closely monitored by the OSE and water rights strictly enforced. This is in stark contrast to the complete lack of Texas groundwater administration.”</p> <p>¶ 58: “Under the comprehensive compliance, enforcement, and cooperation processes diligently pursued by the OSE as described in this declaration, and of the ISC as described in the declaration of ISC Director Rolf Schmidt-Petersen (NM-EX 009, Schmidt-Petersen 2nd Decl.), it is incorrect and disingenuous to assert that New Mexico in any sense fails in its</p>	<p>Texas UMF No. 179: “All wells continued unregulated groundwater pumping until December 3, 2004, when the OSE ordered the creation of a Water Master District on the Lower Rio Grande, appointed a water master, and ordered measurement and reporting of groundwater pumping. While New Mexico now measures how much groundwater is pumped, New Mexico has taken no action to establish a system for administration as required to meet downstream interstate delivery entitlements.” Tex. 2d Evid. Objs. 25.</p> <p>“Mr. D’Antonio, as well as one of New Mexico’s designated Rule 30(b)(6) witnesses, previously testified in this case in a matter that is</p>	<p><u>D’Antonio Depo., 6/25/2020:</u></p> <p>201:5-8: “[Y]ou really can’t manage what you don’t measure, so it was necessary to put . . . the meters in place and require the meters to be there.”</p> <p>156:10-157:7: Disclaiming knowledge of how return flows factor into the apportionment by stating, “I leave those details to the folks that are my water master down there on how they’re doing that.” But stating with further prompting, “New Mexico farmers can use [Project surface water] to total consumption. So they can use some of their return flows on -- on their project lands within New Mexico until that surface water allocation is used --is totally used.”</p> <p>157:10-158:17: Denying the Compact contains express terms imposing a duty on New Mexico as regards releases from Elephant Butte Reservoir but stating, “Well, let me be clear. The Compact is</p>	<p>The excerpts of Mr. D’Antonio’s and Ms. Thacker’s deposition testimony that Texas identifies do not conflict with the statements Mr. D’Antonio makes in paragraphs 57-59 of his Second Declaration. The passages Texas identifies do not establish or even imply that New Mexico has taken “no action” to administer water rights in the LRG or does not consider the Compact in its administrative efforts. Nor do these passages establish New Mexico is unable or unwilling to enforce any orders the Court might enter in this case.</p>

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	<p>water administration responsibilities or Compact obligations.”</p> <p>¶ 59: “As described in this declaration, the Second Declaration of Mr. Schmidt-Peterson (NM-EX 009) and the Declaration of Mr. Serrano (NM-EX 010), the State of New Mexico has a robust and comprehensive system for water administration and enforcement in the LRG. New Mexico has successfully employed this system to ensure compliance the Compact and stands ready to utilize that system to vigorously enforce the orders of the Court in this case, whatever those orders may be.”</p>	<p>directly contradictory to the statements in the D’Antonio Declaration. . . .” <i>Id.</i></p>	<p>silent in that regard downstream of Elephant Butte. As state engineer, I’m very involved, my office is very involved in -- in making sure that -- that there’s no new depletions to the system on how we managed water all the way to the state line.”</p> <p><u>D’Antonio Depo. 6/24/2020:</u></p> <p>37:10-38:1: “Q. I think you said earlier that -- do you consider in an interstate stream a downstream state to be part of what you're protecting from these depletions?</p> <p>A. Well, I think ancillary, they obviously derive benefits from that. I’m focused on the New Mexico water users and -- and the protection of impairment with respect to the bigger picture. Obviously, you know, the -- the -- the Compact on the Rio Grande is -- is really the overarching -- is the overarching piece in which there’s other pieces the Rio Grande project underneath that, <i>but that gets into -- that gets into the -- the aspect of the Compact. What I’m talking about right now is water rights administration and control and depletions throughout the State of New Mexico, which included the lower Rio Grande.</i>” (emphasis added)</p>	

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			<p><u>Thacker 30(b)(6) Depo., 9/18/2020</u></p> <p>69:5-10: Ms. Thacker was “not aware of specific activities New Mexico has done to enforce compliance with the Rio Grande Compact”.</p> <p>79:21-80:7: Ms. Thacker has not received “instructions or guidance about the role of the Compact in [her] professional duties”.</p>	
<p>NM-EX 007, Declaration of John D’Antonio</p>	<p>¶ 8: Using the broad authority over water matters in New Mexico delegated to the State Engineer, the State Engineer has administered water from a centralized perspective that has allowed the State Engineer to address Compact compliance and administrative issues together. The most famous example of this convergence of State Engineer duties specifically involved the interconnections between surface and groundwater on the Rio Grande. In <i>City of Albuquerque v. Reynolds</i>, 1962-NMSC-173, 71 N.M. 428, 379 P.2d 73, the New Mexico Supreme Court upheld State Engineer Steve Reynolds’ 1956 decision to publish guidelines for the Middle Rio Grande groundwater basin that required those seeking to appropriate groundwater to offset the new impacts on surface water caused by their diversions of groundwater. By this</p>	<p><u>Texas UMF No. 193</u>: “On numerous occasions, New Mexico witnesses have referred to “conjunctive use” of groundwater and surface water supplies as if allowing groundwater use to replace unavailable surface water is an acceptable means of controlling depletions. Plainly stated, it is not – conjunctive use simply means that surface water shortages will be made up for with groundwater pumping.” Tex. 2d Evid. Objs. 27.</p> <p>“Declarant D’Antonio conspicuously cited only to Ms. Thacker’s layperson deposition testimony, not the deposition testimony given by</p>	<p><u>D’Antonio Depo. 8/14/2020, 24:16-24</u>: “Q. If a farmer uses an FDR of 4.5 acre-foot from a combination of groundwater and surface water, how is that a conjunctive use, and is that different from supplemental use of the groundwater to meet that conjunctive use? Do you understand that question?” A. I think they're the same, as you have phrased that question, conjunctive use or supplemental use of the groundwater.”</p> <p><u>Thacker 30(b)(6) Depo., 9/18/2020</u>:</p> <p>34:20-39:24: “Q. As long as the groundwater pumper was within this permitted amount, and I think you've defined this permitted amount as 4.5 acre-foot for most irrigation uses, subtracting off their surface water allocation, then they had a permitted amount of water to pump from</p>	<p>Texas fails to demonstrate any conflict between Mr. D’Antonio’s Declaration and the deposition testimony it cites. Neither Mr. D’Antonio nor Ms. Thacker stated in their depositions that New Mexico does not conjunctively manage groundwater and surface water, nor did they state that the method for conjunctive management of surface water and groundwater in New Mexico is an acceptable or unacceptable means of controlling depletions. This highlights a problem with Texas’s “fact” No. 193, which is that it contains a legal conclusion that the definition of conjunctive use Texas has set out is inappropriate or conflicts with the Compact. The Court has not made any such ruling. Texas’s own expert, William Hutchison, has also defined conjunctive use as “the use of groundwater to make up deficits in surface water flows to meet agricultural demands.” Hutchison Report ¶ 143.</p>

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	<p>administrative action, State Engineer Reynolds pioneered the principle of conjunctive management of surface and groundwater. Following State Engineer Reynolds’ lead, many other prior appropriation states have adopted conjunctive management principles in water administration. The New Mexico State Engineer’s responsible, science-based approach to compliance with the Rio Grande Compact has had national effects. Any suggestion that the New Mexico State Engineer ignored or failed to understand the science of conjunctive management cannot be supported in the light of New Mexico’s general history of comprehensive water administration, as well as New Mexico’s specific history of taking strong action to ensure compliance with the Rio Grande Compact.</p> <p>¶ 23: Since the LRG Groundwater Basin was declared in 1980, no State Engineer groundwater permits have been granted without conditions to ensure that no new depletions would be caused to the surface waters of the Rio Grande. All applications are subject to a rigorous and thorough investigation. <i>See</i> NM-EX 233, Thacker Dep. (4-18-19) at 15:17-26:2, 37:15-21, 37:15-48:25, 58:7-</p>	<p>Ms. Thacker as a Rule 30(b)(6) witness on behalf of New Mexico. . . . Declarant D’Antonio himself testified in a manner that unambiguously admits Texas’s undisputed material fact number 193 and directly contradicts his declaration. . . . Additionally, Cheryl Thacker testified as a New Mexico Rule 30(b)(6) agent in a manner that unambiguously admits Texas’s undisputed material fact number 193, and directly contradicts statements by D’Antonio, particularly regarding New Mexico’s actions to ensure Compact compliance.” <i>Id.</i> at 27-28.</p>	<p>the ground for that year; is that correct? A. Yes.</p> <p>69:5-10: Ms. Thacker was “not aware of specific activities New Mexico has done to enforce compliance with the Rio Grande Compact.”).</p> <p>79:21-80:7 Ms. Thacker has not received “instructions or guidance about the role of the Compact in [her] professional duties”</p>	<p>Moreover, Mr. D’Antonio clearly stated in his depositions that the OSE does not allow new groundwater depletions in the LRG, which is consistent with Paragraph 23 of his Second Declaration:</p> <p><u>D’Antonio Depo. (June 25, 2020)</u>, 158:13-17: “As state engineer, I’m very involved, my office is very involved in – in making sure that – that there’s no new depletions to the system on how we managed water all the way to the state line.”</p> <p><u>D’Antonio Depo. (June 26, 2020)</u>, 278:23 – 279:16: Describing, when asked to elaborate what he mean by “no new depletions to the system” how the OSE administers applications in the LRG.</p>

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	59:10, 74:1-12, 77:13-78:6-22, 98:3-99:4.			
NM-EX 007, Declaration of John D’Antonio	<p>¶ 38²: This paragraph describes the New Mexico Legislature’s adoption of the Active Water Resource Management (“AWRM”) statute in 2003, which directed the State Engineer to develop regulations to conduct priority administration in water basins where final adjudications of water rights were not yet complete.</p> <p>¶ 39: This paragraph describes the State Engineer’s adoption of AWRM Framework Regulations in 2004.</p> <p>¶ 40: This paragraph describes the Alternative Administration provisions of the AWRM Framework Regulations.</p> <p>¶ 41: This paragraph lists other key provisions of the AWRM Framework Regulations.</p> <p>¶ 42: This paragraph describes legal challenges to the AWRM Framework Regulations.</p>	<p><u>Texas UMF No. 188</u>: “In 2005 and 2006, the OSE began an effort to promulgate district specific regulations under the AWRM statute for the Lower Rio Grande at least in part to avoid a lawsuit from Texas.” Tex. 2d Evid. Objs. 28-29.</p> <p>“Declarant D’Antonio previously testified in this case in a manner that is directly contradictory to the statements in the D’Antonio Declaration.” <i>Id.</i></p>	<p><u>D’Antonio Depo., 6/25/2020</u></p> <p>197:16-198:12: agreeing that in 2005, he was concerned that if New Mexico “[doesn’t] address groundwater pumping and its impact on surface water, Texas in a sense may go to the Supreme Court to complain about it,” and further that “the Supreme Court could require offsets for all post-Compact groundwater pumping.”</p>	<p>Texas fails to demonstrate any conflict between Mr. D’Antonio’s deposition testimony and his declaration. Mr. D’Antonio testified that in 2005 he was concerned about a potential lawsuit from Texas, but he did not testify that OSE proposed the LRG DSRs in whole or in part based on this concern or make any other statements contradicting his declaration. Texas may not agree Mr. D’Antonio’s declaration contradicts its UMF No. 188, but this does not establish Mr. D’Antonio’s declaration contradicts his deposition testimony or is a sham.</p>

² Due to the number of paragraphs Texas challenges here, New Mexico has summarized the challenged paragraphs instead of quoting them. The full paragraphs can be found in NM-EX 007, D’Antonio 2nd Declaration.

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	<p>¶ 43: This paragraph describes the State Engineer’s creation of water master districts pursuant to the AWRM Framework Regulations.</p> <p>¶ 44: This paragraph describes the adoption and implementation of the State Engineer’s metering order in the LRG.</p> <p>¶¶ 45-48: These paragraphs describe the State Engineer’s effort to adopt district-specific water use regulations (“DSRs”) for the LRG, and how the LRG DSRs were derailed by the adoption of the 2008 Operating Agreement.</p>			
<p>NM-EX 007, Declaration of John D’Antonio</p>	<p>¶ 40: Alternative Administration is a part of the AWRM Framework Rules of which I am particularly proud. It provides an opportunity for water rights owners to agree upon an alternative to strict adherence to priority administration, which cuts off junior water rights completely until senior water rights get all of the water to which they are entitled. The AWRM Framework Rules’ identification of the possibility of Alternative Administration allows the State Engineer to support water right owners’ creation of agreements that share shortages among themselves. Although New Mexico is a</p>	<p><u>Texas UMF No. 192</u>: “New Mexico could actively curtail groundwater pumping to ensure delivery of Texas’s apportionment without interference. The [New Mexico] Legislature has directed the State Engineer to engage in this type of “active” administration. See, supra, section G.4 (discussion of AWRM); however, New Mexico has admitted it considered but ultimately rejected regulations which would have required</p>	<p><u>Thacker 30(b)(6) Depo., 9/18/2020</u>: 77:3-78:7: “Q. So what do you mean by shortage sharing? A. I think that’s where our same ownership management comes in to where two farmers can essentially put two farms under one ownership management and where one farmer cannot necessarily irrigate their field, and instead, the other farmer used that water on his lands. So that gives us the tools to do that. Q. So in that example, one farmer is not irrigating, and the other farmer is using more water than he’s entitled to, correct?</p>	<p>Texas identifies no conflict between Mr. D’Antonio’s declaration and the cited deposition testimony. Paragraph 40 in Mr. D’Antonio’s Second Declaration mostly describes the Alternative Administration provisions in the AWRM Framework Regulations in general terms. Mr. D’Antonio also identifies the LRG Groundwater Conservation Pilot Program (“Pilot Program”) as such a measure. Although Mr. D’Antonio stated during his June deposition that there were no shortage sharing programs created for the LRG yet, Mr. D’Antonio misspoke. Funding for the Pilot Program was approved by the New Mexico Legislature in 2020, and the program</p>

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	<p>prior appropriation state, water sharing is a part of New Mexico’s unique cultural history. New Mexico’s Native American Pueblos and Spanish-settled communities have a 400-year old history of water sharing in times of shortage, which is statutorily specified, for instance, in those portions of the 1907 Water Code governing acequia associations. NMSA 1978 § 73-2-1 <i>et seq.</i> Throughout New Mexico I have frequently observed a cultural preference for working out water shortage situations rather than for enforcement of a strict priority call completely cutting off certain water rights. The LRG Groundwater Conservation Pilot Program, funded by the New Mexico legislature and currently being implemented by the OSE and ISC, was strongly supported by the major groundwater users in the LRG as a means to develop data and information that could support future proposals for Alternative Administration.</p>	<p>curtailment of wells in the Lower Rio Grande.” Tex. 2d Evid. Objs. 29.</p> <p>“New Mexico attempts to create a material dispute with these statements which imply that New Mexico has in fact implemented such shortage-sharing schemes. This violates the “sham” declaration rule articulated above.</p> <p>Specifically, Declarant D’Antonio and New Mexico’s designated Rule 30(b)(6) witness Cheryl Thacker unambiguously admitted in prior depositions that no such arrangements exist in the Lower Rio Grande.” <i>Id.</i></p>	<p>A. No, that's not right.</p> <p>Q. Well, I don't understand where the shortage comes in then?</p> <p>A. Well, the farmer isn't using more than he's entitled to. It's all within the same water rights as in the two water rights, the mass balance is maintained.</p> <p>Q. Using more -- the farmer that's using additional water is using more water than he would be able to if his neighbor hadn't agreed to loan him his water, correct?</p> <p>A. That's true.</p> <p>Q. And this is the only water district in New Mexico that has an owner management program; isn't that right?</p> <p>A. I'm not sure about other districts. I can't speak to that.”</p> <p>Later, when questioned whether the owner management program Ms. Thacker described was really a shortage-sharing program and pressed for other examples, Ms. Thacker replied: “Let me think about this a bit. I'm sure I can think of something later, but I can't think of anything right at the moment. I apologize.” <i>Id.</i> 79:5-7.</p> <p><u>D’Antonio Depo., 6/25/2020:</u></p> <p>202:8-11: “Q. So have the cooperative agreements that are talked about in the</p>	<p>was still being created at the time of Mr. D’Antonio’s June 2020 deposition. Mr. D’Antonio later mentioned the program in his August 2020 deposition. D’Antonio Deposition 35:7-21 (Aug. 14, 2020). As Mr. D’Antonio states in his declaration, the Pilot Program is still being implemented and is intended to lead to additional future alternative administration programs in the LRG.</p>

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			<p>diamond bullet for shortage sharing, have they been developed? A. No, they have not been developed yet.</p> <p>Q. Okay. What about the second diamond bullet, "Strengthen water leasing mechanisms, implement special water users associations," has that occurred?</p> <p>A. Not yet.”</p>	
<p>NM-EX 007, Declaration of John D’Antonio</p>	<p>¶ 38³: This paragraph describes the New Mexico Legislature’s adoption of the Active Water Resource Management (“AWRM”) statute in 2003, which directed the State Engineer to develop regulations to conduct priority administration in water basins where final adjudications of water rights were not yet complete.</p> <p>¶ 39: This paragraph describes the State Engineer’s adoption of AWRM Framework Regulations in 2004.</p> <p>¶ 40: This paragraph describes the Alternative Administration provisions of the AWRM Framework Regulations.</p>	<p><u>Texas UMF No. 189</u>: “However, according to Dr. Barroll: ‘. . . so far in the Lower Rio Grande, we have not done active curtailment of any water rights.’ Footnote 42: Barroll Depo., 2/5/2020, at TX_MSJ_000901, 56:19-20; see also D’Antonio Depo., 6/26/2020, at TX_MSJ_000847, 325:21-23 (‘[The district-specific regulations] aren’t in place yet, so any active curtailment with respect to water administration, that piece is not in place yet.’).” Tex. 2d Evid. Objs. 30.</p>	<p><u>D’Antonio Depo., 6/26/2020</u>:</p> <p>325:21-23: “[The district-specific regulations] aren’t in place yet, so any active curtailment with respect to water administration, that piece is not in place yet.”</p> <p><u>D’Antonio Depo., 6/25/2020</u>:</p> <p>200:7-204:8: Identifying steps New Mexico has taken “to improve the regulation of groundwater pumping.” including the 1999 Mesilla Valley Administrative Guidelines; the 2004 well metering order; and establishment of the LRG Water Master District. Also stating in response to the question “[w]hat alternative methods have been developed since 2005,”</p>	<p>Texas identifies no dispute between Mr. D’Antonio’s declaration and the deposition testimony cited. Mr. D’Antonio’s testimony concerning DSRs and other actions New Mexico has taken to improve regulation of groundwater pumping do not contradict his discussion of the AWRM statute, AWRM Framework Regulations, and the OSE’s attempt to adopt DSRs for the LRG in his Second Declaration. Texas has not established that the paragraphs it identifies in Mr. D’Antonio’s Declaration are false or a “sham.”</p>

³ Due to the number of paragraphs Texas challenges here, New Mexico has summarized the challenged paragraphs instead of quoting them. The full paragraphs can be found in NM-EX 007, D’Antonio 2nd Declaration.

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	<p>¶ 41: This paragraph lists other key provisions of the AWRM Framework Regulations.</p> <p>¶ 42: This paragraph describes legal challenges to the AWRM Framework Regulations.</p>	<p>“Mr. D’Antonio unambiguously confirmed Texas’s undisputed material fact in two prior deposition sessions in this matter, part of which is directly cited in Texas’s undisputed material fact, which Declarant D’Antonio now contradicts.” <i>Id.</i> 31.</p>	<p>that New Mexico has “teed those issues up.”</p>	
<p>NM-EX 007, Declaration of John D’Antonio</p>	<p>¶ 14 n.5: In ¶61 of his declaration (TX_MSJ_001618-001619), Dr. Miltenberger states that a document purporting to summarize the results of a streamflow study that was retrieved from the files of former IBWC Commissioner Joseph F. Friedkin was created and circulated by the OSE. <i>See id.</i>, fn 106. I am not aware of this document and after diligent investigation the document is not within OSE files and no OSE personnel are familiar with the document. As stated in New Mexico’s Responses to Texas’s First Requests for Admission (RFA No. 57) New Mexico does not believe the document was authored by New Mexico. NMEX 603, New Mexico Responses to Texas RFAs (9-2-20). It is not and has never been OSE practice to circulate or adopt the position of unsigned, unattributed documents. I</p>	<p>Texas UMF No. 31: “Finally, in the early 1980s, an internal study of streamflow depletion below Elephant Butte Reservoir conducted by State Engineer Reynolds’ office concluded that groundwater development since the 1950s in New Mexico had altered flows to such an extent that greater releases were required from the Reservoir for the same quantity of water to reach the city of El Paso under the accepted 1938 Condition.” Tex. 2d Evid. Objs. 31-32.</p> <p>“In footnote 5 to paragraph 14, Declarant D’Antonio unequivocally disavows knowledge of a historical document relied upon by</p>	<p>Instead of deposition testimony, Texas relies on New Mexico’s response to Texas’s Request for Admission No. 57, which requested New Mexico “Admit that attached hereto as Exhibit G is a true and correct copy of “Rio Grande, Elephant Butte Dam to El Paso, TX,” authored by the State of New Mexico Office of the State Engineer.”</p> <p>New Mexico responded as follows: “RESPONSE: The document at Exhibit G is not a document produced by New Mexico. New Mexico has made a reasonable inquiry, and based on the information known or presently available to New Mexico, New Mexico is unable to admit or deny this request.</p> <p>SUPPLEMENTAL RESPONSE: Subject to its objections, New Mexico further asserts that the information New Mexico</p>	<p>Mr. D’Antonio does not state with certainty who created the document in question or that it was not created by OSE. He states that no one at OSE is familiar with the document and he has no reason to believe it was created at OSE. In response to Texas’s request for admission, New Mexico conducted an extensive search for this document in its records, including discussing the document with multiple OSE personnel with extensive experience working on LRG issues, and could not locate any copies of this document or anyone familiar with the document. The document itself also does not contain any statements as to its authorship or provenance. So while New Mexico cannot state with certainty who authored the document, and therefore could neither admit nor deny Texas’s request for admission, there also is no basis to conclude Texas UMF No. 172 is “undisputed” as Texas claims. Mr. D’Antonio’s statement is</p>

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	<p>have no reason to believe this document or the conclusions therein were created or endorsed by the OSE.</p>	<p>Texas's expert Scott Miltenberger, and referred to in paragraph 61 of Scott Miltenberger's Declaration in support of the Texas Motion (TX_MSJ_001618-001619). Declarant D'Antonio further states that "no OSE personnel are familiar with the document" and that he has "no reason to believe this document or the conclusions therein were created or endorsed by the OSE." See NMEX 007, D'Antonio 2nd Decl., para. 14, n.5. Declarant D'Antonio also expressly references "New Mexico's Response to Texas's Request for Admission (RFA) No. 57. Id. Texas's RFA No. 57 asked New Mexico to admit the authenticity of the document discussed in Declarant D'Antonio's paragraph 14, footnote 5. See Barfield Decl. at TX_MSJ_000704-000705, State of New Mexico's Objections and Supplemental Responses to the State of Texas's First Set of Requests for Admission to the State of</p>	<p>knows or can readily obtain is insufficient to enable it to admit or deny Texas's request."</p>	<p>consistent with New Mexico's response to Texas's Request for Admission No. 57 and is in no sense a "sham."</p>

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		<p>New Mexico (Oct. 30, 2020) at TX_MSJ_000729-000756, RFA No. 57, at TX_MSJ_000748. In New Mexico’s response to RFA No. 57, New Mexico stated: “information New Mexico knows or can readily obtain is insufficient to enable it to admit or deny Texas’s request.” Id. Yet, Declarant D’Antonio, as the New Mexico State Engineer (with the broad powers and authority described in his Declaration), stated the exact opposite.” <i>Id.</i> 32.</p>		
<p>NM-EX 006, Barroll 2nd Declaration</p>	<p>¶ 81: “As I have proved throughout my expert reports and declarations, groundwater levels in the Rincon and Mesilla basins have been negatively impacted since 2006 by the effects of drought and of New Mexico’s reduced share of Project Supply caused by D3 Allocation and the 2008 Operating Agreement. New Mexico is developing mechanisms to address these groundwater issues, and is currently implementing a Pilot Project to reduce groundwater depletions in the LRG.”</p>	<p>Texas UMF No. 179: “All wells continued unregulated groundwater pumping until December 3, 2004, when the OSE ordered the creation of a Water Master District on the Lower Rio Grande, appointed a water master, and ordered measurement and reporting of groundwater pumping. While New Mexico now measures how much groundwater is pumped, New Mexico has taken no action to establish a system for administration as</p>	<p><u>Barroll Depo., 7/9/20:</u> 110:9-111:19: “Q. Who is it that decides to allow or not to allow a groundwater basin in New Mexico to be mined? A. The state has regulatory authority, and in some basins, the state engineer promulgates rules and regulations to control the mining of an aquifer, and I don't know that the state engineers ever tried to make a decision about whether a basin should be mined or not. It's the water right owners who have the rights to use the water. The state engineer has some regulatory authority, but the state engineer</p>	<p>Texas identifies no dispute between Dr. Barroll’s deposition testimony and her declaration. Texas also mischaracterizes Dr. Barroll’s deposition testimony, set out here in full, in its “summaries.” Dr. Barroll’s description of New Mexico’s Pilot Program in her Second Declaration is consistent with her deposition testimony and shows Texas is incorrect when it states in UMF No. 179 that New Mexico “has taken no action” other than metering groundwater withdrawals to administer groundwater use in the LRG.</p>

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		<p>required to meet downstream interstate delivery entitlements." Tex. 2d Evid. Objs. 33.</p> <p>"Declarant Barroll previously testified in this case in a manner that is directly contradictory to the statement in her Declaration, including testimony wherein she was testifying as an agent of New Mexico as a Rule 30(b)(6) designated witness." <i>Id.</i></p>	<p>is not the water god making decisions of -- decisions that aren't necessary or aren't, you know, part of his powers.</p> <p>Q. So if the -- the water right holders -- the groundwater right holders in the lower Rio Grande and New Mexico decided that they were going to -- to mine the groundwater basin, absent some affirmative action by the state engineer, they could do that?</p> <p>A. State -- water right owners can use the water that they have a right to. There's also opportunity for water right owners to take action against each other if they're interfering with their -- each other's water rights. The -- what you're talking about seems more like a -- a public policy, and as time goes on, it seems like the state starts regulating resources more with an eye for public policy. It started with the Roswell Basin where the water right owners decided they were using up -- endangering their water resource, and the state engineer declared the basin and the management started taking place to prevent damage to the resource. That happens in other parts of the state, often through settlement agreements involving the adjudication court. Managing to protect the resource is a difficult matter involving lots of stakeholders. The State doesn't have unitary authority."</p>	

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			<p>111:20-112:18: “Q. Do you know of any actions that the Office of State Engineer or, quite frankly, anyone else in the State of New Mexico has taken to manage the mining of the groundwater basin in the lower Rio Grande and New Mexico?”</p> <p>A. Well, the management steps New Mexico has taken in the way of declaring a groundwater basin and then declaring a water master district and then metering groundwater pumping, adjudicating irrigation water rights, those are all steps in water management. I'd say that in addition, the state is undertaking a pilot program involving reducing depletions in the lower Rio Grande, which would be aimed at addressing the mining issue.</p> <p>Q. So those are the steps that -- excuse me -- the State of New Mexico has taken to address groundwater mining in the lower Rio Grande and New Mexico, the ones you articulated?”</p> <p>A. Those -- those are the ones I can come up with at the moment and the --</p> <p>Q. Do you know -- go ahead. I keep interrupting you.</p> <p>A. No, it's -- that's what I've got so far on that -- on that question.”</p> <p>113:4-114:2: “Q. Well, let's exclude illegal diversions or diversions in excess</p>	

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			<p>of permit quantities. Do you know whether or not, aside from those actions, the state engineer's office has taken any action to curtail the groundwater pumping to address the mining situation we've described in the lower Rio Grande in New Mexico?</p> <p>A. The pilot program I described is an effort to curtail some groundwater use in the interests of attacking the mining problem; otherwise, there has not been curtailment. Curtailment outside -- curtailment of lawful legitimate use of a permitted groundwater right is not something the state engineer has the power to do outside of priority -- some sort of priority call.</p> <p>Q. In your opinion, is the mining of the groundwater basin caused by illegal diversions or diversions in excess of permit amounts? Is that what's causing that?</p> <p>A. No.</p> <p>Q. It's -- it's the legal pumping of groundwater that's causing the problem; is that correct?</p> <p>A. Legal groundwater pumping combined with a reduction in New Mexico's share of the Rio Grande project supply."</p> <p><u>Barroll 30(b)(6) Depo., 10/21/2020:</u></p>	

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			58:3-66:2: In these pages, Dr. Barroll describes New Mexico’s Pilot Program.	
NM-EX 006, Barroll 2 nd Declaration	<p>¶ 35: “The Rio Grande within the LRG and El Paso valley has historically had both gaining and losing reaches. During times of low Project Supply and high groundwater pumping, the losses from the Rio Grande are higher than in high-Project-supply years with low groundwater pumping. Groundwater pumping in both New Mexico and in the Texas Mesilla impact the gains and losses from the Rio Grande in the Mesilla Valley. Groundwater pumping in both Texas and Mexico impact the gains and losses from the Rio Grande in the El Paso Valley. NM-EX 122, Sullivan and Welsh, 2nd Ed. Original Rep. (7-15-2020) at 92-98; Spaulding and Morrissey, 2nd Ed. Original Rep. (7-15-2020) at Figure 9.3.”</p> <p>¶ 37: “Groundwater pumping in both New Mexico and Texas (and Mexico as well) may cause stream depletions. These stream depletions may cause Reclamation to release more water from Project Storage in order to deliver water to Project beneficiaries than otherwise. NM-EX 103, Barroll Suppl. Reb. Rep. (2nd Ed.) at 4; NM-EX 122, Sullivan</p>	<p><u>Texas UMF No. 162</u>: “In this matter, it is undisputed that groundwater pumping in New Mexico below Elephant Butte Reservoir depletes surface water flow of the Rio Grande, and that groundwater pumping has increased substantially since 1938.” Tex. 2d Evid. Objs. 34.</p> <p>“Declarant Barroll states that the Rio Grande within the LRG and El Paso valley has historically had both gaining and losing reaches, implying no overall depletion increase (Barroll 2nd Decl., para. 35); and that pumping in both New Mexico and Texas ‘may cause stream depletions’ and affects surface flows, implying a parity (Barroll 2nd Decl., paras. 37, 52). . . . Declarant Barroll previously testified in this case in a manner that is directly contradictory to the statements in her Declaration.” <i>Id.</i> 34-35.</p>	<p><u>Barroll Depo. 2/6/2020</u>:</p> <p>242:17-247:5: “The deviations from the D2 curve have a number of causes. Part of that cause would be increases in depletions in New Mexico since the D2 period. . . . I would say that the deviation from D2 is caused by increased depletions, . . . the amount of increased depletions since the D2 period, I would say the majority of those would have occurred in New Mexico.”</p>	<p>The statements Texas objects to in Dr. Barroll’s Second Declaration are not factually incorrect, nor do they contradict the statements Texas cherry picks from her deposition testimony. Texas asserts Dr. Barroll “implies” no increase in depletions and that Texas pumping is just as impactful to the issues in this case as New Mexico pumping, but that is not what Dr. Barroll said, and Texas cannot establish that her declaration is a “sham” absent an actual conflict with her deposition testimony. Texas wants the Court to accept a simplistic narrative that New Mexico pumping since 1938 has been continuous and unrelenting and all depletes water apportioned to Texas, but that is not what the facts and evidence in this case will show.</p>

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	<p>and Welsh, 2nd Ed. Original Rep. (7-15-2020) at 92-93.”</p> <p>¶ 52: “Groundwater pumping by both Texas and New Mexico intercepts return flows associated with Project irrigation and reduces the flow in Project drains.”</p>			
<p>NM-EX 006, Barroll 2nd Declaration</p>	<p>¶ 13⁴: This paragraph describes Reclamation’s procedure for receiving Project water orders from the Districts and determining the volume of water to release to meet those orders.</p> <p>¶ 36: This paragraph discusses the factors that can influence whether stream depletions from pumping impair other water rights, including, in the case of the Project, the volume of releases from Project storage.</p> <p>¶ 37: This paragraph discusses the fact that Reclamation may release more water from Project storage when stream depletions are impacting deliveries than it might otherwise.</p> <p>¶ 38: This paragraph discusses the impacts of stream depletions on Project</p>	<p><u>Texas UMF No. 124</u>: “The phenomenon of reduced river flows caused by groundwater withdrawals is an underlying component of what is referred to as streamflow depletions, and these streamflow depletions have increased along the Rio Grande within the Rincon and Mesilla basins since significant groundwater development began in the early 1950s.” Tex. 2d Evid. Objs. 35.</p> <p>“Several of those paragraphs are irrelevant to Texas’s material fact. In paragraph 37, however, Declarant Barroll states that pumping in both New Mexico and Texas “may</p>	<p><u>Barroll Depo. 2/6/2020</u>:</p> <p>242:17-247:5: “The deviations from the D2 curve have a number of causes. Part of that cause would be increases in depletions in New Mexico since the D2 period. . . . I would say that the deviation from D2 is caused by increased depletions, . . . the amount of increased depletions since the D2 period, I would say the majority of those would have occurred in New Mexico.”</p>	<p>The statements Texas objects to in Dr. Barroll’s Second Declaration are not factually incorrect, nor do they contradict the statements Texas cherry picks from her deposition testimony. Texas asserts Dr. Barroll “implies” Texas pumping is just as impactful to the issues in this case as New Mexico pumping, but that is not what Dr. Barroll said, and Texas cannot establish that her declaration is a “sham” absent an actual conflict with her deposition testimony. Texas wants the Court to accept a simplistic narrative that New Mexico pumping since 1938 has been continuous and unrelenting and all depletes water apportioned to Texas, but that is not what the facts and evidence in this case will show.</p>

⁴ Due to the number of paragraphs Texas challenges here, New Mexico has summarized the challenged paragraphs instead of quoting them. The full paragraphs can be found in NM-EX 006, Barroll 2nd Declaration.

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	<p>deliveries during full-supply years, as well as the impact of spills from Project storage on future-year deliveries.</p>	<p>cause stream depletions” implying a parity. Barroll 2nd Decl., paras. 37, 52. New Mexico’s attempt to create a material dispute with these statements violates the “sham” declaration rule as articulated above. Specifically, Declarant Barroll previously testified in this case in a manner that is directly contradictory to the statements in her Declaration . . .” <i>Id.</i></p>		
<p>NM-EX 011, Stevens 2nd Declaration</p>	<p>¶ 30: Municipalities downstream of Elephant Butte Dam had long relied on ground water for their supplies, and farmers used wells, too. According to U.S. Geological Survey’s Charles S. Slichter writing about groundwater supplies in the Mesilla Valley in 1905, a ‘number of pumping wells have been installed for the purpose of obtaining ground water for irrigation.’”</p>	<p><u>Texas UMF No. 167</u>: “Few groundwater wells were in use at the time of Compact adoption in 1938.” Tex. 2d Evid. Objs. 36.</p> <p>“Declarant Stevens previously testified in this case in a manner that unambiguously contradicts the implication that paragraph 30 describes the state of affairs in 1938.”</p>	<p><u>Stevens Depo., 7/27/20</u>):</p> <p>44:14-45:9: admission that there were few wells within EBID as of 1938 because “they were displaced when surface water became readily available when the project went in”; as of 1947, there were only 37 wells in EBID.</p>	<p>Texas identifies no conflict between Dr. Stevens’s declaration and her deposition testimony. The deposition testimony Texas cites refers only to wells within EBID and does not address municipal wells. Texas’s UMF No. 167, however, encompasses all wells within the LRG, including municipal wells and wells outside EBID. Texas’s UMF No. 167 also implies wells had never been used for irrigation up to the time of the Compact’s adoption, which is incorrect. Dr. Stevens’s deposition testimony also acknowledges that more wells had existed previously and had been “displaced” by surface water from the Project, which is entirely consistent with Paragraph 30 in her Second Declaration.</p>