

No. 141, Original

IN THE  
SUPREME COURT OF THE UNITED STATES

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STATE OF TEXAS,

*Plaintiff,*

v.

STATE OF NEW MEXICO and  
STATE OF COLORADO,

*Defendants.*

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**OFFICE OF THE SPECIAL MASTER**

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

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This brief is in response to the evidentiary objections in the State of Texas’s Evidentiary Objections and Responses to the State of New Mexico’s Facts (“Tex. Objections”), filed December 22, 2020.

## **INTRODUCTION**

The Texas Objections have two components: (a) technical evidentiary objections, and (b) substantive challenges to the Statements of Undisputed Material Facts submitted by New Mexico in support of its three motions for partial summary judgment on filed on November 5, 2020 (“New Mexico Motions”). As to the technical evidentiary objections, Texas objects to ninety (90) of the one hundred and twenty-four (124) documentary exhibits submitted by New Mexico “on the grounds that the material cited to support ‘facts’ is provided in a form that would not be admissible at trial.” Tex. Objections at 2. Texas has applied the wrong legal standard. Consequently its evidentiary objections are baseless and serve only to divert the attention of New Mexico—and the Special Master—from the important substantive issues in this case. For the reasons set forth below, all of Texas’s evidentiary objections should be overruled, its requests for relief denied, and New Mexico awarded its costs in responding to its unfounded objections.

As to the second component of the Texas Objections, Texas includes a table listing all the New Mexico Undisputed Material Facts from the New Mexico Motions in which it identifies its substantive challenges. Tex. Objections at 14-127. New Mexico has taken the Texas table and added to it the substantive challenges submitted by the United States in The United States of America’s Response to the New Mexico’s Statements of Undisputed Material Facts. New Mexico responds to these combined assertions of substantive dispute of fact in State of New Mexico’s Reply to Statement of Fact, filed contemporaneously.

## ARGUMENT

### I. TEXAS APPLIES THE INCORRECT STANDARD FOR THE COURT'S CONSIDERATION OF EVIDENCE AT THE SUMMARY JUDGMENT STAGE

Texas's general and evidentiary objections suffer from a fundamental flaw: Texas contends, contrary to the Federal Rules of Civil Procedure ("F.R.C.P." or "Fed. R. Civ. P."), that New Mexico must present its evidence in a *form* that would be admissible at trial:

Texas objects to multiple categories of evidence proffered by New Mexico in support of the Motions on the grounds that the material cited to support "facts" is provided in a form *that would not be admissible at trial*.

Tex. Objections at 2 (emphasis added). There is no such requirement.

Although it is not strictly applicable, Fed. R. Civ. P. 56 is a "useful guide[]" for the procedure at summary judgment in this original jurisdiction proceeding. *See Nebraska v. Wyoming*, 507 U.S. 584, 590 (1993); *accord Alabama v. North Carolina*, 560 U.S. 330, 344 (2010). In pertinent part, Rule 56(c) sets out the evidentiary objection procedures applicable at this stage in the proceedings: "A party may object that the material cited to support or dispute a fact cannot be presented in a form that would be admissible in evidence." Fed. R. Civ. P. 56(c)(2). Notably, this standard does not, as Texas suggests, provide that "[t]he moving party has the burden to prove that the evidence relied upon is admissible as presented." Tex. Objections at 2. Rather, the Advisory Committee Notes make clear that, following an objection, "[t]he burden is on the proponent to show that the material is admissible as presented *or* to explain the admissible form that is *anticipated*." Fed. R. Civ. P. 56(c)(2), Notes of Advisory Committee on 2010 Amendments (emphasis added). Thus, "[t]he court may consider materials that would themselves be admissible at trial, and the content or substance of otherwise inadmissible materials where the party submitting the evidence shows that it will be possible to put the information into an admissible form." 27A



Tracey Bateman et al., Fed. Proc., L. Ed. § 62:648; *see also* 11 James Wm. Moore et al., Moore's Federal Practice § 56.91[2] (3d ed.2015).

Applying this standard, the pertinent question at summary judgment is whether the evidence presented is admissible *in content*, not whether the offering party has presented it a manner that is admissible *in form*. *See, e.g., Sandoval v. Cnty. of San Diego*, \_\_\_ F.3d \_\_\_, 2021 WL 116539, \*5 (9th Cir., Jan. 13, 2021) (“But ‘[a]t the summary judgment stage, we do not focus on the admissibility of the evidence's form. We instead focus on the admissibility of its contents.’” (quoting *Fraser v. Goodale*, 342 F.3d 1032, 1036 (9th Cir. 2003).); *Brown v. Perez*, 835 F.3d 1223, 1232 (10th Cir. 2016) (same); *Wheatley v. Factory Card & Party Outlet*, 826 F.3d 412, 420 (7th Cir. 2016) (same); *Gannon Int’l, Ltd. v. Blocker*, 684 F.3d 785, 793 (8th Cir. 2012) (“[T]he standard is not whether the evidence at the summary judgment stage would be admissible at trial—it is whether it *could* be presented at trial in an admissible form.” (emphasis in original)). Accordingly, in order to remove evidence from consideration, an objecting party must generally “show that it could not be reduced to an admissible form at trial.” *See In re Ala. & Dunlavy, Ltd.*, 983 F.3d 766, 774 (5th Cir. 2020); *Humphreys & Partners Architects, L.P. v. Lessard Design, Inc.*, 790 F.3d 532, 538–39 (4th Cir. 2015), as amended (June 24, 2015); *accord, e.g., Oglesby v. Lesan*, 929 F.3d 526, 534-35 (8th Cir. 2019) (affirming admission of unauthenticated documents because the appellant “ma[de] no showing that these documents *could not be* presented at trial in an admissible form” (emphasis original)). For this reason, Rule 56(c) contemplates sparing use of objections, which allows the Court to focus on evidentiary issues that may actually arise at trial. *See Cehovic-Dixneuf v. Wong*, 895 F.3d 927, 932 (7th Cir. 2018) (“Lawyers should know their cases. Courts are entitled to rely on lawyers to decide which potential objections are worth raising and which are not.”); 10B Mary Kay Kane, Fed. Prac. & Proc. Civ. § 2738 (4th ed.) (“[O]verly

strict adherence to the demands of Rule 56(c)(4) could lead to an undue amount of energy being devoted to ‘qualifying’ affidavits . . .”).

Here, by elevating form over content, Texas does not sparingly state objections “worth raising” but, rather, objected to almost every document proffered by New Mexico. For instance, Texas’s General Objection (“Gen. Obj.”) No. 3 states that exhibits NM-EX 400-531<sup>1</sup> should all be disregarded and stricken because New Mexico has not laid a foundation for authentication. Tex. Objections at 6. This argument is facially deficient because Texas makes no attempt whatsoever to meet its burden of showing that the referenced exhibits “cannot be presented in a form that would be admissible.” Fed. R. Civ. P. 56(c)(2). Rather, Texas simply boldly states that the unauthenticated documents would not be admissible in their current form. Similarly in General Objection No. 2, Texas complains about deposition transcripts which did not include signature pages without any argument that the *content* of the testimony presented therein could not be presented by live witnesses at trial.<sup>2</sup> See Tex. Objections at 4-5. These objections simply do not meet the requirements of Rule 56(c)(2) and should be summarily overruled.

Notably, Texas’s position is premised upon case law applying an older version of Rule 56, prior to the introduction of the current Rule 56(c)(2) standard in the 2010 amendments to the Federal Rules of Civil Procedure. For instance, Texas relies heavily upon *Orr v. Bank of Am. NT & SA*, 285 F.3d 764, 733 (9th Cir. 2002). See Tex. Objections at 5-7. Prior to 2010, a number of circuits held, as in *Orr*, that a trial court may only consider “admissible” evidence. See *id.* Other circuits espoused a rule more similar to “admissible in content” standard applicable today. See,

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<sup>1</sup> New Mexico will refer to its exhibits as they are identified in its Exhibit Compendium Index, as did Texas in its Tex. Objection.

<sup>2</sup> This is true even though Texas itself cited many of the deposition transcripts that it challenges. For instance, NM-EX 204, D’Antonio Dep. (6-25-2020), relied upon by Texas as TX\_MSJ\_000757-TX\_MSJ\_000788; NM-EX 208, Esslinger Dep. (8-18-2020), relied upon by Texas as TX\_MSJ\_000989-TX\_MSJ\_001022; NM-EX 217, Lopez Dep. (7-6-2020), relied upon by Texas as TX\_MSJ\_001075-TX\_MSJ\_001097.

*e.g., Securities & Exchange Comm'n v. Am. Commodity Exchange, Inc.*, 546 F.2d 1361, 1369 (10th Cir. 1976) (indicating that evidence in support of a motion for summary judgment “ought to be evidence that *would be admissible* if offered at trial in the proper form” (emphasis added)). The amendments in 2010 clarified the standard and resolved the split in authority, abrogating the older standard on which Texas relies. *See D’Onofrio v. Vacation Publications, Inc.*, 888 F.3d 197, 208 (5th Cir. 2018) (expressing the contemporary standard that “[a]t the summary judgment stage, evidence relied upon need not be presented in admissible form.”). Accordingly, the authority on which Texas relies is simply inapplicable to the case at bar. *See Akers v. Beal Bank*, 845 F. Supp. 2d 238, 243 (D.D.C. 2012) (“[T]he 2010 amendments to Federal Rule of Civil Procedure 56 eliminated the unequivocal requirement that documents submitted in support of a summary judgment motion must be authenticated.” (quotation marks and citation omitted.)).

Finally, the Court should summarily overrule Texas’s improper evidentiary objections because responding to them is significantly and unnecessarily burdensome, both for New Mexico and the Court. Texas demands New Mexico indicate how it anticipates authenticating and admitting at trial dozens of exhibits when there is no indication that Texas has *any good faith basis* to dispute those exhibits. Texas’s gamesmanship distracts the Parties’ and the Court’s attention from the important merits of the case.

On these bases alone, the Special Master should overrule the general evidentiary objections and proceed to consideration of the merits. However, out of abundance of caution, New Mexico addresses Texas’s individual evidentiary objections, and shows that each objection is baseless, or demonstrates the manner by which it anticipates that the documentary evidence submitted in support of the New Mexico Motions may be authenticated and admitted at trial. *See 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.”).

## **II. APPLYING THE CORRECT STANDARD AT SUMMARY JUDGMENT, TEXAS’S “GENERAL OBJECTIONS” FAIL**

Texas presents six “General Objections” that seek to strike from the Court’s consideration the following documents: (1) Expert Reports; (2) Non-Authenticated Transcripts; (3) Non-Authenticated Documents; (4) Non-Authenticated Hearing Transcripts and Pleadings; (5) portions of the Declaration of Margaret Barroll, Ph.D.; and (6) portions of the Declaration of Estevan R. Lopez. Tex. Objections at 2-14. Each one fails and should be overruled.

### **A. The Court May Consider Expert Reports at Summary Judgment [Gen. Obj. 1]**

Texas’s requests that the Court strike the fifteen expert reports or portions of expert reports that New Mexico included in its Exhibit Compendium as NM-EX 100 to NM-EX 115. Texas contends that this relief is appropriate because New Mexico did not include “a supporting affidavit to verify [the] authenticity or truth and accuracy of the information contained in each report.” *See* Tex. Objection at 4. This objection is untenable and should be overruled.

Initially, Texas’s objection should be overruled for the reasons stated in Section I of this brief: Texas relies upon the incorrect standard for consideration of evidence at summary judgment. The question is not whether the expert reports that New Mexico submitted at NM-EX 100 to NM-EX 115 are authentic and admissible in their present form. Rather, the question is whether New Mexico could present this information at trial in an admissible form. *See* Fed. R. Civ. P. 56(c)(2); *Patel v. Tex. Tech. Univ.*, 941 F.3d 743, 746-47 (5th Cir. 2019) (finding that district court abused discretion by failure to consider at summary judgment two unsworn expert reports without considering whether those opinions were capable of being presented in a form that *would be* admissible) (emphasis added).

Here, each of the experts whose reports New Mexico submitted are expected to testify at trial,<sup>3</sup> and New Mexico reasonably expects that each will offer testimony at trial expressing the opinions contained within their reports. *Cf.* Fed. R. Civ. P. 26(a)(2)(B)(i) (requiring an expert report, “prepared and signed by the witness” that contains “a complete statement of all opinions the witness will express and the basis and reasons for them”). Rule 56(c) does not require New Mexico make any greater showing. *See* Fed. R. Civ. P. 56(c)(2), Notes of Advisory Committee on 2010 Amendments. Once again, the authorities that Texas relies upon to the contrary are no longer applicable. *See, e.g.*, Tex. Objections at 3 (citing *Scott v. Edinburg*, 346 F.3d 752, 759 (7th Cir. 2003)).

Next, even if there is an authentication requirement for consideration of expert reports at summary judgment, an offering party should be permitted to cure its failure to provide an accompanying affidavit. *See, e.g., Humphreys & Partners Architects, LP v. Lessard Design, Inc.*, 790 F.3d 532, 538 (4th Cir. 2015) (“Subsequent verification or reaffirmation of an unsworn expert’s report, either by affidavit or deposition, allows the court to consider the unsworn expert’s report on a motion for summary judgment.”) (Citations omitted.) *Cf. Am. Fed. of Musicians of U.S. and Can. v. Paramount Pictures Corp.*, 903 F.3d 968, 976 (9th Cir. 2018). This approach accords with the general treatment of foundation-type objections at trial. *See Jerden*, 430 F.3d at 1237.

Further, all evidentiary materials that Texas itself submitted in its dispositive motions (while simultaneously objecting to New Mexico’s use of the same materials) functions as an admission of authenticity. *See* 31 Victor G. Gold, Fed. Prac. & Proc. Evid. § 7105(b) (1st ed.)

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<sup>3</sup> One possible exception to that expectation is Nicolai Kryloff, the expert historian engaged by the United States. The United States has given notice that while Mr. Kryloff has been retained, he “has not been identified by the United States as a witness as of this filing.” *See* U.S.Resp. UMF at ¶46[b].

(“Authentication can also be accomplished through judicial admissions such as stipulations, pleadings, and production of items in response to subpoena or other discovery requests.”) (*citing In re McLain*, 516 F.3d 301, 308-309 (5th Cir. 2008) (where bankruptcy debtor objected to financial ledger on the ground it had not been properly authenticated, by attaching ledger to his motion for summary judgment, ledger was authenticated through admission)).

Although New Mexico maintains it is not necessary, but New Mexico has nonetheless cured, or can cure, the purported defects for all of the subject reports, including the expert reports it submitted on December 22, 2020 (NM-EX 116 to NM-EX 127)). In fact, New Mexico submits contemporaneously with this brief a set of declarations authenticating all of the expert reports from its own witnesses.<sup>4</sup> In short, the objections should be denied because the reports include information that will be offered at trial and it is reasonably anticipated that the expert reports submitted by all Parties will be sponsored at trial. Texas makes no attempt to show otherwise.

#### **B. Texas Mischaracterizes Admissible Expert Opinion**

Texas’s General Objection Nos. 5-6 concern the admissibility of portions of the declarations of Margaret Barroll, Ph.D. (NM-EX 001) and the declaration and expert reports of Estevan Lopez, P.E. (NM-EX 003, NM-EX 107-10). The bases of these objections are similar. Texas complains that “Dr. Barroll asserts the truth of facts to which she has no personal knowledge,” and she “opines on subject matter outside of her area of expertise.” Tex. Objection at 8. Likewise, Texas contends that Mr. Lopez’s materials contain opinions “on subject matter

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<sup>4</sup> See NM-EX 018, Barroll Authentication Decl.; NM-EX 019, Barth Authentication Decl., NM-EX 020, Carron Authentication Decl.; NM-EX 022, Larson Authentication Decl., NM-EX 023, Lopez Authentication Decl.; NM-EX 024, Morrissey Authentication Decl.; NM-EX 025, Setzer Authentication Decl., NM-EX 026, Spalding Authentication Decl.; NM-EX 027, Stevens Authentication Decl.; NM-028, Sullivan Authentication Decl.; NM-028, Welsh Authentication Decl.

outside of his area of expertise.” Tex. Objections 11. These arguments fail because Texas mischaracterizes the nature of the expert opinions and the qualifications of the witnesses at issue.

Federal Rule of Evidence (“Fed. R. Evid.”) 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 and Mr. Lopez are “not obviously unqualified” (see below).

Texas’s objections as to the qualifications of Dr. Barroll and Mr. Lopez to submit opinions at the summary judgment stage should be reviewed under Fed. R. Evid. 702, permitting opinion testimony by any person qualified by “knowledge, skill, experience, training, or education.” There is no specific process by which a court must assess an expert’s qualifications. *See Kumho Tire Co. v. Carmichael*, 526 U.S. 137, 152 (1999). Accordingly, courts generally apply the standard liberally: “Rule 702 does not mandate that an expert be highly qualified in order to testify about a given issue. Differences in expertise bear chiefly on the weight to be assigned to the testimony by the trier of fact, not its admissibility.” *Huss v. Gayden*, 571 F.3d 442, 452 (5th Cir. 2009); *see also In re Paoli R.R. Yard PCB Litig.*, 35 F.3d 717, 741 (3d Cir. 1994) (“We have held that a broad range of knowledge, skills, and training qualify an expert as such.”). *Accord, Iroquois Master Fund, Ltd. v. Quantum Fuel Sys. Techs. Worldwide, Inc.*, 641 Fed. Appx. 24, 27 (2d Cir. 2016); *SR Intern. Business Ins. Co., Ltd. v. World Trade Ctr. Props., LLC*, 467 F.3d 107, 132-33 (2d Cir.

2006); *First Tenn. Bank Nat. Ass'n v. Barreto*, 268 F.3d 319, 331-32 (6th Cir. 2001); *Manhattan Re-Insurance Co. v. Safety Nat. Cas. Co.*, 83 Fed. Appx. 861, 863 (9th Cir. 2003).

Here, both Dr. Barroll and Mr. Lopez are sufficiently qualified by training, knowledge, and experience to offer the challenged expert opinion testimony and Texas's objections to their materials should be overruled.

### **1. The Declaration of Dr. Margaret Barroll is Admissible Expert Opinion**

Texas contends that Dr. Barroll is not qualified to give the testimony contained in paragraphs 15-17 of her declaration (NM-EX 001). Tex. Objections at 10. These paragraphs concern the definitions of the terms "Project Supply," "normal release," and "Project Storage." Texas avers that Dr. Barroll is not qualified to give testimony on these topics because she stated in deposition that she is not qualified to testify concerning legal Compact "interpretation." Tex. Objections at 9. This argument fails because it mischaracterizes Dr. Barroll's testimony and 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. *See* NM-EX 001, Barroll Decl., at ¶¶ 6-10. This experience, knowledge, and training qualifies her to give testimony concerning the meaning of terms used in water accounting within the Rio Grande Project, including "Project Supply," "normal release," and "Project Storage." However, as Dr. Barroll states: "[M]y understanding is based on a plain reading of the Compact and associated documents integral to Rio Grande Project operations, and my expert opinions relating to the Project. The concepts addressed in those paragraphs are fundamental to any discussion or analysis of Rio Grande Project operations." NM-EX 018, Barroll Authentication Decl., ¶ 8. Texas has not challenged Dr. Barroll's expertise as to the Rio Grande Project or Project



operations, nor could they since she is the foremost expert in the field. Texas's objection should be overruled.

**2. The Declaration of Estevan R. Lopez is Admissible Expert Opinion at Summary Judgment [Gen. Obj. 6]**

Texas contends that Mr. Lopez is not qualified to give the testimony contained in paragraphs 4, 7, 12-15, 17, and 19-28, of his November 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," that fall beyond his "area of expertise." Tex. Objections at 11-13. These arguments fail again because Texas misstates the nature of the testimony at issue and Mr. Lopez's qualifications.

Mr. Lopez's declaration recites his qualifications and experience. *See* NM-EX 003, Lopez Decl., ¶¶ 3-10. Specifically, he served as a Commissioner for the United States Bureau of Reclamation from 2014 to 2017, during which time he "directed all aspects of Reclamation business managing water throughout seventeen (17) western states." *Id.* at ¶¶ 4-5. He also served for over ten years as the Director of the Interstate Stream Commission, with responsibility to "understand[] New Mexico's rights and obligations relative to other compacting states," with respect to eight interstate stream compacts, including the Rio Grande Compact. *Id.* at ¶ 7. Mr. Lopez also served as an Engineer Advisor to the New Mexico Commissioner on the Rio Grande Compact Commission. *Id.* at ¶ 8. By virtue of this extensive experience and knowledge, Mr. Lopez is uniquely qualified to testify concerning the administration of the Rio Grande Compact and the operations of the Rio Grande Project through the United States Bureau of Reclamation. In light of this experience, Texas's objections are unavailing.

- a. Texas objects to paragraphs 4 and 7 of his declaration in which Mr. Lopez recites his background and experience. *See* NM-EX 023, Lopez Authentication Decl., ¶ 7(a). Texas has no legitimate basis to exclude Mr. Lopez's personal work history and experience.

- b. Paragraphs 12-15 of the declaration either merely cite provisions of the Compact or describe aspects and understandings of Rio Grande Compact administration based on the experience and knowledge Mr. Lopez gained through his roles as Reclamation Commissioner, as Director of the Interstate Stream Commission, and as Engineer Advisor to the New Mexico Rio Grande Compact Commissioner. NM-EX 023, Lopez Authentication Decl., ¶ 7(b-c). As such, this testimony is not a matter of “legal conclusion.” Rather, Mr. Lopez is qualified to testify to these points as aspects of the ordinary processes and procedures of Compact administration.

Texas implies that the fact that Mr. Lopez has not personally “operated” a Reclamation project renders him unqualified to provide expert opinions. Tex. Objections at 12. Texas’s position seems to be that if Mr. Lopez had spent his career manipulating a dam floodgate he would be more qualified to have opinions on the complex water management issues in this case than having “directed all aspects of Reclamation business managing water throughout seventeen (17) western states, which included almost 200 Reclamation water projects and units of various types.” NM-EX 003, Lopez Decl., at ¶ 4. That position should be rejected.

- c. Paragraph 17 concerns New Mexico’s “position that a potential operating agreement for the Project” may not alter the historical division of water in the Rio Grande Project. Mr. Lopez has direct and personal experience on this issue and has been deposed by Texas six (6) times since May 2019 on these issues and other issues relating to the substance of his expert opinions. NM-EX 023, Lopez Authentication Decl., ¶¶ 6, 7(d).
- d. Finally, paragraphs 19-28 concern the relationship between the Rio Grande Compact, Rio Grande Compact Commission, Bureau of Reclamation, and Rio Grande Project. NM-EX 003, ¶¶ 19-28. Mr. Lopez is qualified and competent to give this testimony because he has worked in both New Mexico’s state administration of the Rio Grande Compact, through the Rio Grande Compact Commission and the Interstate Stream Commission, and in the federal administration of Reclamation Projects, including the Rio Grande Compact, as Commissioner of the Bureau of Reclamation. *See above; see also* NM-EX 023, Lopez Authentication Decl. §7(e). This extensive experience qualifies Mr. Lopez to testify concerning historical documents used in his field, as a matter of Compact administration and the norms and customs of the Bureau of Reclamation or Rio Grande Compact Commission. NM-EX 023, Lopez Authentication Decl., ¶ 6.

In its summary treatment of the topic, Texas ignores the extensive foundation that Mr. Lopez laid for his expert opinions, including his extensive professional experience and knowledge. *See* NM-EX 023, Lopez Authentication Decl., ¶¶ 4-7. Any quibble that Texas may have with Mr. Lopez’s qualification to give the opinions within his reports and declarations does not rise to the level of striking these materials from the summary judgment record.

### **C. There Is No Requirement to Authenticate Deposition Transcripts [Gen. Obj. 2]**

Texas moves the Court to strike New Mexico's 25 deposition transcripts included in its Exhibit Compendium as NM-EX 200 to NM-EX 225. Texas maintains that, because New Mexico did not include the witness certifications and sworn oaths of the deponents, the depositions have not been authenticated and are, therefore, inappropriate at summary judgment. Tex. Objections at 9. Texas's position is without merit because, again, it stems from misplaced reliance on inapplicable case law.

The proper inquiry under Rule 56(c)(2) is whether the content of the referenced deposition excerpts "cannot be presented in a form that would be admissible in evidence." *See supra*, Section I. Texas's brief is devoid of any general or particular showing that New Mexico will be unable to authenticate the relevant portions of its cited deposition transcripts pursuant to Fed. R. Evid. 901 and 902. Simply put, the anticipated live trial testimony of the declarants identified in NM-EX 200 to NM-EX 225 cures any alleged defect raised by Texas in its General Objection 2. *See* 2 Steven S. Gensler & Lumen N. Mulligan, *Federal Rules of Civil Procedure, Rules and Commentary, Rule 56. Summary Judgment, Deposition Transcripts* ("If the declarant is available to testify at trial and the testimony would be admissible if presented live, then the content can be furnished at the summary-judgment stage in deposition form.").

Nevertheless, out of an abundance of caution, New Mexico has provided the certification pages for each of the declarants identified in NM-EX 200 to NM-EX 225.<sup>5</sup> New Mexico has also collated the appropriate authentication pages from the additional deposition transcripts it submitted with its Compendium of Evidence on December 22, 2020, NM-EX 226 to NM-EX 252. These certifications are filed contemporaneously as NM-EX 264, Authentication Pages of Deposition

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<sup>5</sup> Excepting NM-EXs 209 and 210, Ian Ferguson, expert witness for the U.S. No certification pages to his deposition transcripts have yet been located.

Transcripts. The Court may consider the deposition transcripts submitted by New Mexico to determine whether a genuine dispute of material fact exists and whether New Mexico is entitled to judgment as a matter of law. See *Christmon v. B&B Airparts, Inc.*, 735 Fed. Appx. 510, 513 (10th Cir. 2018) (holding that trial court properly considered deposition testimony at summary judgment following submission of transcript certifications).

**D. New Mexico’s Documentary Evidence May Be Authenticated at Trial or in Advance Through Stipulation [Gen. Obj. 3]**

Texas requests the Court to strike NM-EX 400 to NM-EX 531 on the grounds that New Mexico has not authenticated its referenced documentary evidence. Tex. Objection at 6. This argument also fails because it relies on pre-2010 federal case law on Rule 56(c). See *supra*, Section I. In fact, a number of these documents have already been authenticated in discovery under Fed. R. Evid. 901, or they are self-authenticating pursuant to Fed. R. Evid. 902.<sup>6</sup> Assuming, arguendo, that Texas has raised a valid Fed. R. Civ. P. 56(c)(2) objection, New Mexico’s burden at this phase of the litigation is “to show that the material is admissible as presented or to explain the admissible form that is anticipated.” *Id.*, Notes of Advisory Committee on 2010 Amendments.

Discussed below are the methods of authentication and self-authentication at New Mexico’s disposal under the Federal Rules of Evidence. To the extent that evidence, if any, has not already been authenticated pursuant to Rules 901 and 902, New Mexico anticipates that such evidence may be proffered in an admissible form at trial or in advance through stipulation. Although it does not consider it necessary, New Mexico has addressed authenticity as to all the

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<sup>6</sup> In addition to the authentication methods described herein, New Mexico has requested that the parties work together to stipulate to the authenticity of various documents referenced in the parties’ dispositive motions briefing and those anticipated to be entered as exhibits at trial. Texas and the United States have agreed, and the parties have initiated that process.

exhibits challenged by Texas, as well as exhibits submitted on December 22, 2020 and to be submitted on February 5, 2021, in Attachment A, Authentication Designation.

### **1. Documents That May Be Authenticated by a Witness with Knowledge**

Fed. R. Evid. 901(a) requires that “the proponent must produce evidence sufficient to support a finding that the item is what the proponent claims it is” in order to meet the requirement for “authenticating or identifying an item of evidence.” Rule 901(b) provides a non-exclusive list of examples that satisfy the Rule 901(a) requirement. One of those methods includes Rule 901(b)(1), Testimony of a Witness with Knowledge, which requires the person with knowledge to provide “[t]estimony that an item is what it is claimed to be.” Deposition testimony is one manner in which the proponent of the evidence satisfies Rule 901(b)(1). *See Meals v. City of Memphis, Tenn.*, 493 F.3d 720, 728 (6th Cir. 2007).

For example, New Mexico has already authenticated NM-EX 406, Resolution of the Rio Grande Compact Commission (“RGCC”). At the deposition of Filiberto Cortez, the Bureau of Reclamation manager at the El Paso Field Office, New Mexico established that the document is what it claims to be—a Resolution of the RGCC. *See* NM-EX 203, Cortez Dep. (July 31, 2020) 273:18-25. New Mexico’s Attachment A reveals several of the exhibits to which Texas objects have been authenticated through deposition testimony. To the extent that New Mexico has not yet authenticated documents that may be identified by a person with knowledge, it anticipates doing so at the time of trial if not in advance through stipulation.

### **2. Evidence About Public Records**

To authenticate an item of evidence under Fed. R. Evid. 901(b)(7)(A)-(B), the proponent must provide “[e]vidence that [either]: (A) a document was recorded or filed in a public office as authorized by law; or (B) a purported public record or statement is from the office where items of this kind are kept.” As an example, NM-EX 422, a Contract License, may be authenticated at trial

under this rule. On the one hand, as the contract binds two public entities and contains a contract identification number, New Mexico may provide evidence that this contract was filed in a public office as authorized by law. On the other hand, New Mexico may establish that this agreement was obtained “from the office where items of this kind are kept.” Fed. R. Evid. 901(b)(7)(B). To the extent that there are unauthenticated public records in the summary judgment record, New Mexico anticipates using this method of authentication at trial if not in advance through stipulation.

### **3. Ancient Documents**

To authenticate an ancient document or data compilation under Rule 901(b)(8), the proponent must satisfy three criteria: “[the document or data compilation] (A) is in a condition that creates no suspicion about its authenticity; (B) was in a place, where, if authentic, it would likely be; and (C) is at least 20 years old when offered.” As an example, although other methods of authentication are available to New Mexico to identify NM-EX 440, it may authenticate this exhibit as an ancient document. This document is an excerpt from a Rio Grande Project History.<sup>7</sup> It meets the elements of an ancient document because nothing on the face of the document creates suspicion about its authenticity, it was obtained from a place where it would likely be archived, and it was written in 1954. To the extent that there are unauthenticated documents in the summary judgment record that predate 2001, New Mexico anticipates authenticating them (among other ways) as ancient documents at trial pursuant to Rule 901(b)(8), or through stipulation.

### **4. Self-Authenticating Public Records**

Unlike the methods of authentication described in Sections D1-D3 above, Fed. R. Evid. 902 provides a list of fourteen items of evidence that “are self-authenticating; they require no

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<sup>7</sup> The “Project Histories of the Rio Grande Project” were compiled and published annually by the Bureau of Reclamation from 1912 to 1989 and have been used extensively by the parties in their briefing and in their experts’ reports. They are one group of historic documents that New Mexico is seeking stipulations of authenticity from all Parties.

extrinsic evidence of authenticity in order to be admitted.” As this case is between sovereigns, Texas has failed to realize—or perhaps blithely ignored—that a large portion of New Mexico’s summary judgment record contains sealed and signed public documents attested to or executed by the respective sovereigns.

For example, NM-EX 403 is the Certificate of Adjudication for the United States and El Paso County Water Improvement District No. 1 before the Texas Commission on Environmental Quality (“TCEQ”). While it is odd that Texas has raised an authentication issue regarding one of its own agencies, this exhibit meets the requirements of Rule 902(1)(B): it bears the seal of the State of Texas, and it was executed by the Commission Chairman on March 7, 2007 and attested to by the Chief Clerk. To the extent that there are unauthenticated sealed and signed public documents, New Mexico maintains they are self-authenticating and do not require additional, extrinsic evidence to substantiate their authenticity.<sup>8</sup>

## **5. Certified Copies of Public Records**

Fed. R. Evid. 902(4) provides for self-authentication of “[a] copy of an official record--or a copy of a document that was recorded or filed in a public office as authorized by law.” The copy must be certified by either “the custodian or another person authorized to make the certification” or “a certificate that complies with Rule 902(1), (2), or (3), a federal statute, or a rule prescribed by the Supreme Court.” Fed. R. Evid. 902(4)(A)-(B). To revisit an exhibit that was discussed earlier, NM-EX 422, Contract License Agreement, this official record is self-authenticating provided that a certificate is provided from the records custodian. In the event that Rule 902(1) is unavailable to New Mexico, it anticipates self-authenticating any remaining documents through the appropriate records custodian if not in advance of trial through stipulation.

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<sup>8</sup> But if additional testimony is necessary, New Mexico will provide an appropriate witness.

## **6. Self-Authenticating Official Publications**

Fed. R. Evid. 902(5) states that “[a] book, pamphlet, or other publication purporting to be issued by a public authority” is self-authenticating. Here, Texas has again questioned the authenticity of a document created and disseminated by one of its public agencies, the Texas Water Development Board (“TWDB”). NM-EX 447 is a report published by the TWDB entitled “Evaluation of Ground-Water Resources in El-Paso County, Texas.” This document is clear on its face that it was, indeed, intended as a publication: “Authorization for use or reproduction of any original material contained in *this publication*...is freely granted.” NM-EX 447 at iii (emphasis added). In New Mexico’s Attachment A, Authentication Designations, New Mexico has identified several official publications by the State of Texas, the State of New Mexico, and various executive agencies of the United States in its summary judgment record. These exhibits are self-authenticating pursuant to Rule 902(5) and require no additional evidence.

## **7. Self-Authenticating Newspapers or Periodicals**

Fed. R. Evid. 902(6) provides that “[p]rinted material purporting to be a newspaper or a periodical” is self-authenticating. “Periodicals typically comprise magazines, trade publications, and scientific and academic journals with weekly, monthly, or quarterly circulation.” *Goguen ex rel. Estate of Goguen v. Textron, Inc.*, 234 F.R.D. 13, 17 (D. Mass. 2006). Here, Texas has objected to, among others, NM-EX 416, S.E. Reynolds & Phillip B. Mutz, Water Deliveries Under the Rio Grande Compact, 14 Nat. Resources J. 201 (1974), which qualifies as printed material in an academic journal. To the extent that there are other newspapers or periodicals in the summary judgment record, New Mexico maintains that they are self-authenticating and require no further evidence to identify them as such.



## **8. Self-Authenticating Acknowledged Documents**

Fed. R. Evid. 902(8) permits self-authentication of “[a] document accompanied by a certificate of acknowledgment that is lawfully executed by a notary public or another officer who is authorized to take acknowledgments.” A handful of documents objected to by Texas contain lawfully executed certificates of acknowledgment. To the extent there are exhibits in the summary judgment record that contain certificates of acknowledgment, New Mexico responds that they are self-authenticating and are properly before the Court.

## **9. Self-Authenticating Certified Business Records**

Finally as to Texas’ global objections on the authenticity of New Mexico’s documentary evidence, “[a]n inscription, sign, tag, or label purporting to have been affixed in the course of business and indicating origin, ownership, or control” is self-authenticating. Fed. R. Evid. 902(7). While New Mexico has not identified documents in the summary judgment record that trigger this method of self-authentication—as the case primarily concerns the relationship between sovereigns—New Mexico anticipates employing this rule in the event that a document in the record also bears a business inscription “indicating origin, ownership, or control.” *Id.*

## **E. The Court May Consider Hearing Transcripts, Pleadings, Filings, and Other Litigation Documents at Summary Judgment [Gen. Obj. 4]**

Texas moves to strike NM-EX 600 to NM-EX 602 on the grounds that non-authenticated hearing transcripts and pleadings may not be considered on a motion for summary judgment. Again, this position is unfounded because it ignores the current state of the law. *See supra*, Section 1.

On a motion for summary judgment, “[a] party asserting that a fact cannot be or is genuinely disputed must support the assertion by: citing to particular parts of materials in the record, including...*admissions, interrogatory answers, or other materials[.]*” Fed. R. Civ. P.

56(c)(1)(A) (emphasis added). To the extent New Mexico has submitted pleadings or transcripts filed of record in this case, Texas's objections are unfounded.

Texas's objections to discovery responses offered as evidence by New Mexico are similarly unjustifiable under Rule 56(c)(1)(A). Interrogatory answers are "given in writing under oath and signed by the person giving the answers...*to permit their use as evidence in the case, including use at summary judgment.*" Gensler & Mulligan, Fed. R. Civ. P., Rules and Commentary, Rule 56. Summary Judgment, Interrogatory Answers (emphasis added). "[A] person answering an interrogatory can testify competently at trial to the information contained in her answers so long as she has personal knowledge of such information." *Johnson v. Holder*, 700 F.3d 979, 982 (7th Cir. 2012). "Rule 56(c)(1)(A) also permits the court to consider any 'admissions.'" Kane, Fed. Prac. & Proc. Civ. § 2722. The United States Supreme Court makes clear in *Celotex Corp. v. Catrett* that "a summary judgment motion may properly be made in reliance [on]... admissions on file." 477 U.S. 317, 324, 106 S. Ct. 2548, 2553, 91 L. Ed. 2d 265 (1986). Therefore, the Court may consider the discovery responses submitted by New Mexico at summary judgment.

### **III. TEXAS'S REMAINING "EVIDENTIARY OBJECTIONS" LIKEWISE FAIL DUE TO TEXAS'S INSISTENCE ON THE INCORRECT STANDARD**

In addition to Texas's "General Objections," it also raises specific "evidentiary objections" based on Fed. R. Evid. 801(c) and that "[t]he cited evidence does not support the stated 'facts' in whole and/or in part. Fed. R. Civ. P. 56(c)." *See generally* Tex. Objections 14-127. These objections are without merit, for they are predicated on Texas's outdated misapplication of the Federal Rules of Civil Procedure. *See supra*, Section 1.

As the summary judgment burden has now shifted to Texas, it must produce evidence admissible at trial that demonstrates the existence of a genuine dispute of material fact to rebut

New Mexico's facts. Texas cannot satisfy its burden to overcome New Mexico's factual assertions by simply stating that the evidence does not support the facts.

Because Texas has failed to provide sound legal foundations for its specific evidentiary objections, the Court should summarily overrule them.

**A. New Mexico May Present any Purported Hearsay in Admissible Form at Trial**

New Mexico may present purported hearsay at summary judgment as long as its contents may be reduced to an admissible form at trial. In general, "inadmissible hearsay cannot be considered on a motion for summary judgment." *Jones v. UPS Ground Freight*, 683 F.3d 1283, 1293 (11th Cir. 2012). The Court, however, "may consider a hearsay statement in passing on a motion for summary judgment if the statement could be reduced to admissible evidence at trial or reduced to admissible form." *Id.*; see, e.g., *Lee v. Offshore Logistical & Transp., L.L.C.*, 859 F.3d 353, 355 (5th Cir. 2017), as revised (July 5, 2017) (accord); *Brown v. Perez*, 835 F.3d 1223, 1232 (10th Cir. 2016), as amended on reh'g (Nov. 8, 2016) (same).

New Mexico illustrates below a non-exclusive list of the hearsay exemptions and exclusions available at trial, assuming the Parties do not reach stipulated agreements in advance of trial as to the significant collection of such documents relied upon by *all* the Parties. In the event any particular hearsay exemption is inapplicable or the Parties cannot stipulate to a particular document, New Mexico anticipates calling the hearsay declarant at trial to testify directly, which simultaneously allows the Court to consider the hearsay statement at summary judgment. For these reasons, Texas's hearsay objections fail. Because Texas has failed to meet its burden that any alleged hearsay cannot be made admissible at the time of trial, Texas's hearsay objections should be overruled in total.

## **1. Documents that Contain Non-Hearsay**

Under Fed. R. Evid. 801(d)(1)(A), when a “declarant testifies and is subject to cross-examination about a prior statement, and the statement...is inconsistent with the declarant's testimony and was given under penalty of perjury at a trial, hearing, or other proceeding or in a deposition[,]” the Court considers the statement as non-hearsay. In this case, witnesses on both sides of the litigation have signed declarations and have provided deposition testimony. In the event that one of those witnesses testifies differently at trial, those previous sworn statements are deemed non-hearsay and are allowed for purposes of impeachment.

For example, Texas has disputed New Mexico’s UMF No. 64, partly on the contention that NM-EX 506, Cortez Decl. ¶ 11 (Apr. 20, 2007), is hearsay. Mr. Cortez signed the declaration subject to the penalty of perjury. Setting aside that affidavits are commonly allowed at summary judgment, if his trial testimony departs from his representations in his declaration, New Mexico may introduce the relevant portions of that document pursuant to Rule 801(d)(1)(A) or for impeachment. Because the declaration would thus be permissible at trial, the Court may consider Mr. Cortez’s declaration and the other various declarations, affidavits, and deposition excerpts that have been submitted in the summary judgment record. Such testimony foreshadows their anticipated testimony at trial.

Rule 801(d)(2) allows a party to introduce the opposing party’s statement under four conditions:

[The statement] (A) was made by the party in an individual or representative capacity; (B) is one the party manifested that it adopted or believed to be true; (C) was made by a person whom the party authorized to make a statement on the subject; [or] (D) was made by the party's agent or employee on a matter within the scope of that relationship and while it existed.

Fed. R. Evid. 801(d)(2)(A)-(D). In fact, a handful of out-of-court statements that Texas has challenged were made by its representatives or by persons authorized to speak about the subject at hand. To illustrate, Texas objected to NM-EX 412, Herman R. Settemeyer, Rio Grande Project/Rio Grande Compact Operation, (2004), on hearsay grounds. At the time of the statements in his presentation, Mr. Settemeyer was the Texas Compact Engineer Advisor. He made the assertions in his capacity as a representative of the State of Texas on the RGCC, and there is no evidence he was not authorized to speak about the subject. As a result, this statement—and other statements made by representatives of the State of Texas and the United States—are admissible at summary judgment under Fed. R. Evid. 801(d)(2).

**2. Out-of-Court Assertions to Which an Exception to the Rule Against Hearsay Applies**

New Mexico may also employ the multiple hearsay exceptions under Rules 803, 804, 805, and 807 at trial. The references below are some the responses that New Mexico anticipates using at trial to overcome hearsay objections assuming the Parties do not reach agreement in advance.

Fed. R. Evid. 803(6)(A)-(E) provides an exception for records of a regularly conducted activity as long as four criteria are met:

(A) the record was made at or near the time by—or from information transmitted by—someone with knowledge; (B) the record was kept in the course of a regularly conducted activity of a business, organization, occupation, or calling, whether or not for profit; (C) making the record was a regular practice of that activity; (D) all these conditions are shown by the testimony of the custodian or another qualified witness, or by a certification that complies with Rule 902(11) or (12) or with a statute permitting certification; and (E) the opponent does not show that the source of information or the method or circumstances of preparation indicate a lack of trustworthiness.

Here, for example, Texas has objected to NM-EX 501, Report of the RGCC 2005. New Mexico may overcome this hearsay objection by way of Rule 803(6): the record was created during the regular annual meeting of the RGCC. Furthermore, the record was kept in the course of the

Commission’s regular annual meetings, and annual reports are a regular practice of that activity.<sup>9</sup> A custodian or qualified witness may testify that these conditions are met, and Texas has not shown that the preparation or sources contained in the report are untrustworthy. Thus, this exhibit, and other documentary evidence similarly situated, may be considered at summary judgment.

The vast majority of exhibits in New Mexico’s summary judgment record, as well as those relied upon by Texas and the United States, are public records and ancient documents. A “record or statement of a public office” meets the Rule 803(8) hearsay exception if “(A) it sets out: (i) the office’s activities; (ii) a matter observed while under a legal duty to report..., or (iii) in a civil case..., factual findings from a legally authorized investigation[.]” The public record is admissible if “the opponent does not show that the source of information or other circumstances indicate a lack of trustworthiness.” Fed. R. Evid. 803(8)(B).

Texas objects to NM-EX-526, Texas Comm’n on Env’t Quality, Biennial Report to the 84<sup>th</sup> Legislature (2014), on hearsay grounds while not disputing its trustworthiness. The document is a record of a state agency that “summarizes the agency’s activities regarding drought, water rights, groundwater management, evaluations of river basins without a water master, and Texas interstate river compacts.” *See* NM-EX 526 at 1. For this reason, Texas’s objection to this exhibit—and other exhibits that meet the criteria of a public record—is untenable.

Similar to the myriad public documents referenced in New Mexico’s Motions, a substantial number of documents in the summary judgment record predate 1998. *See* Fed. R. Evid. 803(16) (“A statement in a document that was prepared before January 1, 1998, and whose authenticity is established” is admissible.). For instance, Texas challenges New Mexico’s UMF No. 10 on the

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<sup>9</sup> The Rio Grande Compact Commission Annual Reports, Annual Meeting Minutes, and Annual Meeting Transcripts are published annually after draft reviews by RGCC representatives. They have been variously used by the Parties in their briefing and in their experts’ reports. They are one group of historic documents that New Mexico is seeking stipulations of authenticity from all Parties.

grounds that NM-EX-111 is hearsay. However, the document was published in 1994 and is self-authenticating pursuant to Rule 902(5) by virtue of it being a Bureau of Reclamation publication. Because this exhibit and substantially similar documents comprise a sizeable portion of New Mexico's summary judgment record, the Court may properly consider such evidence at summary judgment.

**3. Information That New Mexico Anticipates It Will Elicit from a Knowledgeable Witness at Trial**

Texas has failed to raise the proper objection that New Mexico will be unable to cure any alleged hearsay deficiencies. While the proper summary judgment standard does not require New Mexico to present evidence in admissible form at summary judgment, it has presented for the Court a number of methods that show the evidence is admissible as already presented. Furthermore, if stipulations are not reached in advance, New Mexico anticipates employing Fed. R. Evid. 801, 803, 804, 805, and 807 to present admissible evidence at trial, or establish that the evidence can be reduced to an admissible form. In the unlikely event that New Mexico is unable to meet a hearsay exemption or exclusion under Article VIII of the Rules, it anticipates following the elegant solution presented in *Jones* by calling a knowledgeable witness *qua* hearsay declarant to testify at trial. *See* 683 F.3d at 1294 (11th Cir. 2012) (“The most obvious way that hearsay testimony can be reduced to admissible form is to have the hearsay declarant testify directly to the matter at trial.”); *Lee*, 859 F.3d at 355 (accord); *Brown*, 835 F.3d at 1232 (same).

As set forth above, the Court should overrule Texas's hearsay objections as baseless and not in accordance with law.

**B. Texas' Objection that the Evidence Does Not Support a Given Statement of Fact Does Not Satisfy Texas' Burden to Demonstrate a Genuine Dispute**

A party must support its factual position in either of two ways: “(A) citing to particular parts of materials in the record...; or (B) showing that the materials cited do not establish the

absence or presence of a genuine dispute, or that an adverse party cannot produce admissible evidence to support the fact.” Fed. R. Civ. P. 56(c)(1)(A)-(B).

The movant “shoulders the initial burden of demonstrating to the court that there is no genuine issue of material fact.” *Wai Man Tom v. Hosp. Ventures LLC*, 980 F.3d 1027, 1037 (4th Cir. 2020) (citing *Celotex Corp. v. Catrett*, 477 U.S. 317, 323, 106 S.Ct. 2548, 91 L.Ed.2d 265 (1986)). As Justice Brennan stated in his dissent in *Celotex Corp.*, “[t]his burden has two distinct components: [including] an initial burden of production, which shifts to the nonmoving party if satisfied by the moving party.” *Celotex Corp.*, 477 U.S. at 330–31 (Brennan, J., dissenting). In this case, New Mexico has satisfied its initial burden of production by “citing to particular parts of materials in the record” to support its assertion that there is no genuine dispute of material fact. *See* Fed. R. Civ. P. 56(c)(1)(A).

As New Mexico has “made [its] threshold demonstration, the nonmoving party...must demonstrate specific, material facts exist that give rise to a genuine issue.” *Wai Man Tom*, 980 F.3d at 1037; *see also Justiniano v. Walker*, 2021 WL 164975, at \*10 (1st Cir. Jan. 19, 2021) (“to avoid ‘the swing of the summary judgment scythe,’ the nonmoving party must adduce specific facts showing that a trier of fact could reasonably find in his favor[.]”) (quoting *Mulvihill v. Top-Flite Golf Co.*, 335 F.3d 15, 19 (1st Cir. 2003)). “The non-movant cannot merely ‘rely on an absence of competent evidence, but must affirmatively point to specific facts that demonstrate the existence of an authentic dispute.’” *Feliciano-Munoz v. Rebarber-Ocasio*, 970 F.3d 53, 62 (1st Cir. 2020) (citation omitted).

As the burden has shifted to Texas following New Mexico’s *prima facie* showing of a lack of a genuine dispute between the parties, Texas must “point to specific facts that demonstrate the existence of an authentic dispute.” *See Feliciano-Munoz*, 970 F.3d at 62. Instead, it has opted to



assert merely in many instances that “[t]he cited evidence does not support the stated ‘facts’ in whole and/or in part. Fed. R. Civ. P. 56(c).” *See generally* Tex. Objection 14-127. This objection mischaracterizes Rule 56(c) and Texas’s burden of production. Texas must cite to specific, material facts to support its assertions, and it has in most cases failed to do so. These instances are addressed in New Mexico’s Reply to Statement of Facts, filed simultaneously. Accordingly, the Court should overrule this type of objection lodged by Texas against New Mexico for Texas’s failure to meet its burden of production under Rule 56(c).

### **C. The Court May Rely on its Prior Opinions in this Case**

Finally, Texas argues, in response to a number of New Mexico’s UMFs, that New Mexico’s citation to the Court’s decision in *Texas v. New Mexico*, 138 S. Ct. 954 (2018) is improper because “[c]ase law/legal opinions do not constitute factual ‘evidence’ as contemplated by Fed. R. Civ. P. 56(c).” *E.g.*, Tex. Objections 14. This argument fails because the Court may rely on its own prior holdings.

## **CONCLUSION**

Texas objected to virtually all the evidence submitted with the New Mexico Motions. The entirety of State of Texas’s Evidentiary Objections and Responses to the State of New Mexico’s Facts should be overruled because: (a) Texas did not exercise its good faith obligation to review the evidence and make only legitimate objections, and (b) Texas’s objections are based on inapplicable law. In addition, due to the baseless nature of Texas’s objections, its failure to exercise good faith in its submission to the Court, its failure to apply the proper standard and the effort expended by New Mexico in responding to the Texas objection, the Court should award New Mexico its costs in responding to Texas.

Respectfully submitted,

/s/ Jeffrey J. Wechsler

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**Attachment A: State of New Mexico’s Response to State of Texas’s Evidentiary Objections**

**TEXAS v. NEW MEXICO and COLORADO, No. 141 Original  
In the Supreme Court of the United States**

The following Exhibits have been submitted in support of New Mexico’s dispositive motions on November 5, 2020, December 22, 2020, and February 4, 2021. This table addresses Texas’s objections and anticipated objections as to authenticity of documents submitted by New Mexico.

NM-EX #	EXHIBIT DESCRIPTION	DOC. DATE	BATES RANGE OR PAGES CITED	AUTHENTICITY
<b>Expert Reports</b>				
100	Expert Report: Barroll, Margaret, Ph.D.	10/31/2019	US0598474 - US0598834	Authenticated by Barroll Declaration for Authentication of Materials
101	Expert Report/Rebuttal: Barroll, Margaret, Ph.D.	06/15/2020	No Bates	Authenticated by Barroll Declaration for Authentication of Materials
102	Expert Report/Supplemental Rebuttal: Barroll, Margaret, Ph.D.	07/15/2020	NM_00467085 - NM_00467127	Authenticated by Barroll Declaration for Authentication of Materials
103	Expert Report/(2nd Edition) Supplemental Rebuttal: Barroll, Margaret, Ph.D.	09/15/2020	No Bates	Authenticated by Barroll Declaration for Authentication of Materials
104	Expert Report/Rebuttal: Blair, Allie William	12/30/2019	Page 8	To the extent Texas has cited this report in its brief and has thereby acted upon it as authentic. <i>See In re McLain</i> , 516 F.3d 301, 308-309 (5th Cir. 2008); 31 Victor G. Gold, Fed. Prac. & Proc. Evid. § 7105(b) (1st ed.).  NM-EX 104 will be authenticated at trial and an admissible form is anticipated.

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NM-EX #	EXHIBIT DESCRIPTION	DOC. DATE	BATES RANGE OR PAGES CITED	AUTHENTICITY
105	Expert Report/Rebuttal: Ferguson, Ian	12/30/2019	Pages 8, 12, and 13	<p>To the extent Texas has cited this report in its brief and has thereby acted upon it as authentic. <i>See In re McLain</i>, 516 F.3d 301, 308-309 (5th Cir. 2008); 31 Victor G. Gold, Fed. Prac. &amp; Proc. Evid. § 7105(b) (1st ed.).</p> <p>NM-EX 105 will be authenticated at trial and an admissible form is anticipated.</p>
106	Expert Report: Kryloff, Nicolai	05/31/2019	Pages: 6, 12, 23, 25-27	<p>To the extent Texas has cited this report in its brief and has thereby acted upon it as authentic. <i>See In re McLain</i>, 516 F.3d 301, 308-309 (5th Cir. 2008); 31 Victor G. Gold, Fed. Prac. &amp; Proc. Evid. § 7105(b) (1st ed.).</p> <p>NM-EX 106 will be authenticated at trial and an admissible form is anticipated. However, should the U.S. determine not to call Mr. Kryloff at trial, NM 106 will be authenticated in advance of trial.</p>
107	Expert Report: Lopez, Estevan, P.E.	10/31/2019	No Bates	Authenticated by Lopez Declaration for Authentication of Materials
107A	Expert Report: Lopez, Estevan, P.E. APPENDICES ONLY	10/31/2019		Authenticated by Lopez Declaration for Authentication of Materials
108	Expert Report/Rebuttal: Lopez, Estevan, P.E.	06/15/2020	No Bates	Authenticated by Lopez Declaration for Authentication of Materials
109	Expert Report/Supplemental Rebuttal: Estevan Lopez, P.E.	07/15/2020	NM_00467170 - NM_00467185	Authenticated by Lopez Declaration for Authentication of Materials
110	Expert Report/(2nd Edition) Supplemental Rebuttal: Estevan Lopez, P.E.	09/15/2020	No Bates	Authenticated by Lopez Declaration for Authentication of Materials

**Attachment A: State of New Mexico’s Response to State of Texas’s Evidentiary Objections**

NM-EX #	EXHIBIT DESCRIPTION	DOC. DATE	BATES RANGE OR PAGES CITED	AUTHENTICITY
111	Expert Report: Miltenberger, Scott	05/31/2019	Pages: 8-13, 25, 29, 33, 37-39	<p>To the extent Texas has cited this report in its brief and has thereby acted upon it as authentic. <i>See In re McLain</i>, 516 F.3d 301, 308-309 (5th Cir. 2008); 31 Victor G. Gold, Fed. Prac. &amp; Proc. Evid. § 7105(b) (1st ed.).</p> <p>NM-EX 111 will be authenticated at trial and an admissible form is anticipated.</p>
112	Expert Report: Stevens, Jennifer, Ph.D.	10/28/2019	No Bates	Authenticated by Stevens Declaration for Authentication of Materials
113	Expert Report/Rebuttal: Stevens, Jennifer, Ph.D.	06/15/2020	No Bates	Authenticated by Stevens Declaration for Authentication of Materials
114	Expert Report: Sunding, David	05/31/2019	Page 2	<p>To the extent Texas has cited this report in its brief and has thereby acted upon it as authentic. <i>See In re McLain</i>, 516 F.3d 301, 308-309 (5th Cir. 2008); 31 Victor G. Gold, Fed. Prac. &amp; Proc. Evid. § 7105(b) (1st ed.).</p> <p>NM-EX 114 will be authenticated at trial and an admissible form is anticipated.</p>
115	Expert Report/Reply and Supplement: Sunding, David	12/30/2019	Page 1	<p>To the extent Texas has cited this report in its brief and has thereby acted upon it as authentic. <i>See In re McLain</i>, 516 F.3d 301, 308-309 (5th Cir. 2008); 31 Victor G. Gold, Fed. Prac. &amp; Proc. Evid. § 7105(b) (1st ed.).</p> <p>NM-EX 115 will be authenticated at trial and an admissible form is anticipated.</p>
116	Expert Report (3rd Edition): Barth, Gilbert, Ph.D. [select pages only]	09/15/2020	App. H p. 4-1, 5-12, 5-19	Authenticated by Barth Declaration for Authentication of Materials

**Attachment A: State of New Mexico’s Response to State of Texas’s Evidentiary Objections**

NM-EX #	EXHIBIT DESCRIPTION	DOC. DATE	BATES RANGE OR PAGES CITED	AUTHENTICITY
117	LRG Wells and Groundwater Level Declines (graphic sourced from Expert Report/Rebuttal (Second Edition): Barth, Gilbert & Larson, Steven)	09/15/2020	No Bates	Authenticated by Barth and Spaldiing Declarations for Authentication of Materials
118	Effect of 2008 OA on New Mexico: A Vicious Cycle (graphic sourced from Barroll, Margaret Expert Report (10/31/2019) and Barroll, Margaret Rebuttal Report (06/15/2020))	2020	No Bates	Authenticated by Barroll Declaration for Authentication of Materials
119	Expert Report/Rebuttal: Ferguson, Ian [select pages only]	12/30/2019	Page 4-7	<p>To the extent Texas has cited this report in its brief and has thereby acted upon it as authentic. <i>See In re McLain</i>, 516 F.3d 301, 308-309 (5th Cir. 2008); 31 Victor G. Gold, Fed. Prac. &amp; Proc. Evid. § 7105(b) (1st ed.).</p> <p>NM-EX 119 will be authenticated at trial and an admissible form is anticipated.</p>
120	Expert Report: Schorr, Staffan, and Kikuchi, Colin	05/31/2019	Page 3	<p>To the extent Texas has cited this report in its brief and has thereby acted upon it as authentic. <i>See In re McLain</i>, 516 F.3d 301, 308-309 (5th Cir. 2008); 31 Victor G. Gold, Fed. Prac. &amp; Proc. Evid. § 7105(b) (1st ed.).</p> <p>NM-EX 120 will be authenticated at trial and an admissible form is anticipated.</p>
121	Expert Report/Rebuttal: Spalding, Charles and Morrissey, Dan [select pages only]	07/15/2020	Figure 5.4, 5.6, 6.1, 6.4, 8.21, 8.22 and App. Q	Authenticated by Spalding and Morrissey Declarations for Authentication of Materials

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NM-EX #	EXHIBIT DESCRIPTION	DOC. DATE	BATES RANGE OR PAGES CITED	AUTHENTICITY
121A	Expert Report, Third Edition: Spalding, Charles and Morrissey, Dan [Correct Figure 5.4 Substituted]	9/14/2020	Figure 5.4	Authenticated by Spalding and Morrissey Declarations for Authentication of Materials
122	Expert Report (2nd Edition Original): Sullivan, Greg and Welsh, Heidi	07/15/2020	No Bates	Authenticated by Sullivan and Welsh Declarations for Authentication of Materials
123	Expert Rebuttal Report (2nd Edition): Sullivan, Greg and Welsh, Heidi	09/15/2020	No Bates	Authenticated by Sullivan and Welsh Declarations for Authentication of Materials
124	Expert Report: Brandes, Robert	05/31/2019	Page 16-17	<p>To the extent Texas has cited this report in its brief and has thereby acted upon it as authentic. <i>See In re McLain</i>, 516 F.3d 301, 308-309 (5th Cir. 2008); 31 Victor G. Gold, Fed. Prac. &amp; Proc. Evid. § 7105(b) (1st ed.).</p> <p>NM-EX 124 will be authenticated at trial and an admissible form is anticipated.</p>
125	Expert Report: Carron, John and Setzer, Steven	09/15/2020	App. A, pages 6-7	Authenticated by Carron and Setzer Declarations for Authentication of Materials
126	Expert Report: Hutchinson, William R.	12/31/2019	Page 41	<p>To the extent Texas has cited this report in its brief and has thereby acted upon it as authentic. <i>See In re McLain</i>, 516 F.3d 301, 308-309 (5th Cir. 2008); 31 Victor G. Gold, Fed. Prac. &amp; Proc. Evid. § 7105(b) (1st ed.).</p> <p>NM-EX 126 will be authenticated at trial and an admissible form is anticipated.</p>
127	Expert Report/Rebuttal (2nd Edition): Barth, Gilbert, and Larson, Steven	09/15/2020	Fig. 3-1	Authenticated by Barth and Larson Declarations for Authentication of Materials

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NM-EX #	EXHIBIT DESCRIPTION	DOC. DATE	BATES RANGE OR PAGES CITED	AUTHENTICITY
128	Expert Report: Miltenberger, Scott	5/31/2019	Entire Report	<p>To the extent Texas has cited this report in its brief and has thereby acted upon it as authentic. <i>See In re McLain</i>, 516 F.3d 301, 308-309 (5th Cir. 2008); 31 Victor G. Gold, Fed. Prac. &amp; Proc. Evid. § 7105(b) (1st ed.).</p> <p>NM-EX 128 will be authenticated at trial and an admissible form is anticipated.</p>
129	Expert Rebuttal/Supplemental Report Miltenberger, Scott	12/30/2019	Entire Report	<p>To the extent Texas has cited this report in its brief and has thereby acted upon it as authentic. <i>See In re McLain</i>, 516 F.3d 301, 308-309 (5th Cir. 2008); 31 Victor G. Gold, Fed. Prac. &amp; Proc. Evid. § 7105(b) (1st ed.).</p> <p>NM-EX 129 will be authenticated at trial and an admissible form is anticipated.</p>
130	Expert Report: Kryloff, Nicolai	05/31/2019	Entire Report	<p>To the extent Texas has cited this report in its brief and has thereby acted upon it as authentic. <i>See In re McLain</i>, 516 F.3d 301, 308-309 (5th Cir. 2008); 31 Victor G. Gold, Fed. Prac. &amp; Proc. Evid. § 7105(b) (1st ed.).</p> <p>NM-EX 130 will be authenticated at trial and an admissible form is anticipated. However, should the U.S. determine not to call Mr. Kryloff at trial, NM 130 will be authenticated in advance of trial.</p>
131	Expert Report: Brandes, Robert	05/31/2019	18, 21, and 28	<p>To the extent Texas has cited this report in its brief and has thereby acted upon it as authentic. <i>See In re McLain</i>, 516 F.3d 301, 308-309 (5th Cir. 2008); 31 Victor G. Gold, Fed. Prac. &amp; Proc. Evid. § 7105(b) (1st ed.).</p> <p>NM-EX 129 will be authenticated at trial and an admissible form is anticipated.</p>



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NM-EX #	EXHIBIT DESCRIPTION	DOC. DATE	BATES RANGE OR PAGES CITED	AUTHENTICITY
<b>Deposition Transcripts</b>				
200	Deposition: Barroll, Margaret, Ph.D.	Volume III 08/10/2020	393, 424-426	<i>See</i> NM-EX 264, Authentication Pages of Deposition Transcripts
201	Deposition: Cortez, Filiberto (BOR (30(b)(6) testimony)	08/20/2020	50-51	<i>See</i> NM-EX 264, Authentication Pages of Deposition Transcripts
202	Deposition: Cortez, Filiberto	07/30/2020 (Volume I)	10-11, 18-20, 24, 31, 34-35, 42-45, 49-50, 56-60, 63-69, 82-83, 87-96, 102-103, 111-115, 119-120, 168, 170-172	<i>See</i> NM-EX 264, Authentication Pages of Deposition Transcripts
203	Deposition: Cortez, Filiberto	07/31/2020 (Volume II)	209-210, 215-216, 220-222	<i>See</i> NM-EX 264, Authentication Pages of Deposition Transcripts
204	Deposition: D'Antonio, John R., Jr., P.E.	06/25/2020 (Volume II)	163, 169	<i>See</i> NM-EX 264, Authentication Pages of Deposition Transcripts
205	Deposition: D'Antonio, John R., Jr., P.E.	06/26/2020 (Volume III)	274	<i>See</i> NM-EX 264, Authentication Pages of Deposition Transcripts
206	Deposition: D'Antonio, John R., Jr., P.E.	08/14/2020 (Volume IV)	93-96	<i>See</i> NM-EX 264, Authentication Pages of Deposition Transcripts
207	Deposition: Esslinger, Gary	08/17/2020 (Volume I)	122	<i>See</i> NM-EX 264, Authentication Pages of Deposition Transcripts

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<b>NM-EX #</b>	<b>EXHIBIT DESCRIPTION</b>	<b>DOC. DATE</b>	<b>BATES RANGE OR PAGES CITED</b>	<b>AUTHENTICITY</b>
208	Deposition: Esslinger, Gary	08/18/2020 (Volume II)	56-62, 157	<i>See</i> NM-EX 264, Authentication Pages of Deposition Transcripts
209	Deposition: Ferguson, Ian	02/19/2020 (Volume I)	13, 44	<i>See</i> NM-EX 264, Authentication Pages of Deposition Transcripts
210	Deposition: Ferguson, Ian	02/20/2020 (Volume II)	229, 233, 240-241, 259-260	<i>See</i> NM-EX 264, Authentication Pages of Deposition Transcripts
211	Deposition: Gordon, Patrick	07/14/2020 (Volume I)	66, 71-73, 89, 172, 180-181, 192-193	<i>See</i> NM-EX 264, Authentication Pages of Deposition Transcripts
212	Deposition: Gordon, Patrick	07/15/2020 (Volume II)	10-16, 20-21, 42-44, 109, 121	<i>See</i> NM-EX 264, Authentication Pages of Deposition Transcripts
213	Deposition: Ivey, Art	08/28/2020	69-71, 75	<i>See</i> NM-EX 264, Authentication Pages of Deposition Transcripts
214	Deposition: King, J. Phillip	05/18/2020 (Volume I)	21, 44, 102, 109, 115	<i>See</i> NM-EX 264, Authentication Pages of Deposition Transcripts
215	Deposition: Kryloff, Nicolai	08/06/2020	41, 52-53, 55-56, 73-74, 89-90, 108-109	<i>See</i> NM-EX 264, Authentication Pages of Deposition Transcripts
216	Deposition: Lopez, Estevan, P.E.	02/26/2020	29	<i>See</i> NM-EX 264, Authentication Pages of Deposition Transcripts
217	Deposition, Lopez, Estevan, P.E.	07/06/2020 (Volume I)	95-96, 138	<i>See</i> NM-EX 264, Authentication Pages of Deposition Transcripts
218	Deposition, Lopez, Estevan, P.E.	07/07/2020 (Volume II)	140-141	<i>See</i> NM-EX 264, Authentication Pages of Deposition Transcripts

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<b>NM-EX #</b>	<b>EXHIBIT DESCRIPTION</b>	<b>DOC. DATE</b>	<b>BATES RANGE OR PAGES CITED</b>	<b>AUTHENTICITY</b>
219	Deposition: Lopez, Estevan, P.E.	08/21/2020 (Volume III)	40	<i>See</i> NM-EX 264, Authentication Pages of Deposition Transcripts
220	Deposition: Miltenberger, Scott	06/08/2020	38-44, 47-48, 137-138, 146-148	<i>See</i> NM-EX 264, Authentication Pages of Deposition Transcripts
221	Deposition: Reyes, Jesus	11/16/18	20, 23-24	<i>See</i> NM-EX 264, Authentication Pages of Deposition Transcripts
222	Deposition: Reyes, Jesus	08/31/2020	20, 65-66	<i>See</i> NM-EX 264, Authentication Pages of Deposition Transcripts
223	Deposition: Rios, Robert	08/26/20	31, 33, 48-49	<i>See</i> NM-EX 264, Authentication Pages of Deposition Transcripts
224	Deposition: Schmidt-Petersen, Rolf	06/29/2020 (Volume I)	40-41	<i>See</i> NM-EX 264, Authentication Pages of Deposition Transcripts
225	Deposition: Settemeyer, Herman	07/30/2020 (Volume I)	29-31, 41-42	<i>See</i> NM-EX 264, Authentication Pages of Deposition Transcripts
226	Deposition: Barroll, Margaret, Ph.D. 30(b)(6)	10/21/2020	22-23, 47, errata	<i>See</i> NM-EX 264, Authentication Pages of Deposition Transcripts
227	Deposition: Barroll, Margaret, Ph.D.	02/05/2020	39-40	<i>See</i> NM-EX 264, Authentication Pages of Deposition Transcripts
228	Deposition: Cortez, Filiberto (United States 30(b)(6))	08/20/2020	20-22	<i>See</i> NM-EX 264, Authentication Pages of Deposition Transcripts
229	Deposition: Dorman, Sheldon	06/09/2020	29, 71-72	<i>See</i> NM-EX 264, Authentication Pages of Deposition Transcripts
230	Deposition: Esslinger, Gary	08/17/2020 (Volume I)	121-122	<i>See</i> NM-EX 264, Authentication Pages of Deposition Transcripts

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NM-EX #	EXHIBIT DESCRIPTION	DOC. DATE	BATES RANGE OR PAGES CITED	AUTHENTICITY
231	Deposition: Rios, Robert	08/26/2020	56	<i>See</i> NM-EX 264, Authentication Pages of Deposition Transcripts
232	Deposition: Serrano, Ryan	02/26/2019	54-55, 72-74, 85-91, 94-96, 232	<i>See</i> NM-EX 264, Authentication Pages of Deposition Transcripts
233	Deposition: Thacker, Cheryl	04/18/2019	15-26, 33-48, 58-59, 74, 76-78, 98-99	<i>See</i> NM-EX 264, Authentication Pages of Deposition Transcripts
234	Deposition: D’Antonio, John	6/26/2020	317-319, 329-331	<i>See</i> NM-EX 264, Authentication Pages of Deposition Transcripts
235	Deposition: Thacker, Cheryl 30(b)(6)	09/18/2020	33-38, 42-44, 76	<i>See</i> NM-EX 264, Authentication Pages of Deposition Transcripts
236	Deposition: Serrano, Ryan	04/17/2019	183	<i>See</i> NM-EX 264, Authentication Pages of Deposition Transcripts
237	Deposition: Lopez, Estevan, P.E 30(b)(6)	09/18/2020	23, 33-34, 49, 67, 83-85	<i>See</i> NM-EX 264, Authentication Pages of Deposition Transcripts
238	Deposition: Ferguson, Ian	02/19/2020 (Volume I)	129	Not currently available
239	Deposition: Mills, Kelly	08/27/2020	28-29; 38-39	<i>See</i> NM-EX 264, Authentication Pages of Deposition Transcripts
240	Deposition: Kryloff, Nicolai	08/06/2020	27, 57, 111-112, 118-119 [Entire transcript at NM-EX 253]	<i>See</i> NM-EX 264, Authentication Pages of Deposition Transcripts
241	Deposition: Miltenberger, Scott	06/08/2020	93, 99-101, 103, 105-106, 114-115	<i>See</i> NM-EX 264, Authentication Pages of Deposition Transcripts

**Attachment A: State of New Mexico's Response to State of Texas's Evidentiary Objections**

NM-EX #	EXHIBIT DESCRIPTION	DOC. DATE	BATES RANGE OR PAGES CITED	AUTHENTICITY
242	Deposition: Esslinger, Gary	08/18/2020	22-24, 30-46, 157	<i>See</i> NM-EX 264, Authentication Pages of Deposition Transcripts
243	Deposition: Esslinger, Gary	08/17/2020	112-113	<i>See</i> NM-EX 264, Authentication Pages of Deposition Transcripts
244	Deposition: Reyes, Jesus	08/31/2020	10, 42, 36-50, 58-59	<i>See</i> NM-EX 264, Authentication Pages of Deposition Transcripts
245	Deposition: King, Phillip	05/18/2020	91-92, 101	<i>See</i> NM-EX 264, Authentication Pages of Deposition Transcripts
246	Deposition: Gordon, Patrick	07/15/2020 (Volume II)	70	<i>See</i> NM-EX 264, Authentication Pages of Deposition Transcripts
247	Deposition: Gordon, Patrick	07/14/2020 (Volume I)	17-29	<i>See</i> NM-EX 264, Authentication Pages of Deposition Transcripts
248	Deposition: Chavez, Danny	07/22/2020	69	<i>See</i> NM-EX 264, Authentication Pages of Deposition Transcripts
249	Deposition: French, Larry	08/31/2020	All pages	<i>See</i> NM-EX 264, Authentication Pages of Deposition Transcripts
250	Deposition: Mills, Kelly Wade	08/27/2020	All pages	<i>See</i> NM-EX 264, Authentication Pages of Deposition Transcripts
251	Deposition: Alexander, Kathy	08/28/2020	10-11	<i>See</i> NM-EX 264, Authentication Pages of Deposition Transcripts
252	Deposition: McKinnon, Temple	08/31/2020	36-37	<i>See</i> NM-EX 264, Authentication Pages of Deposition Transcripts
253	Deposition: Kryloff, Nicolai	08/06/2020	Entire transcript	<i>See</i> NM-EX 264, Authentication Pages of Deposition Transcripts
<b>Pre-Compact and Early Compact Documents (Up to 1950)</b>				

**Attachment A: State of New Mexico's Response to State of Texas's Evidentiary Objections**

NM-EX #	EXHIBIT DESCRIPTION	DOC. DATE	BATES RANGE OR PAGES CITED	AUTHENTICITY
332	John J. Vernon and Francis E. Lester, <i>Pumping for Irrigation from Wells</i> , Bulletin No. 45, State College, N.M.: New Mexico College of Agriculture and Mechanic Arts, Agricultural Experiment Station, April 1903	1903	NM_00151688 - NM_00151754	Authenticated by Declaration of Jennifer Stevens, Ph.D. for Authentication of Materials
333	E.P. Osgood, <i>Comments on Compact Negotiations</i> (undated, c. 1929)	1929	NM_00101878 - NM_00101886	Authenticated by Declaration of Jennifer Stevens, Ph.D. for Authentication of Materials
334	Rio Grande Project Histories (Water Announcements), Bureau of Reclamation	1946-1950	Various NM bates numbers.	Authenticated by Declaration of Jennifer Stevens, Ph.D. for Authentication of Materials
335	Rio Grande Project Histories (Future Work), Bureau of Reclamation	1950	NM_00029079 – NM_00029080	Authenticated by Declaration of Jennifer Stevens, Ph.D. for Authentication of Materials
337	Exhibit Omitted			N/A
336	Willis T. Lee, <i>Water Resources of the Rio Grande Valley in New Mexico</i>	1907	NM_00180395 – NM_00180467	Authenticated by Declaration of Jennifer Stevens, Ph.D. for Authentication of Materials
338	<i>Rio Grande Compact</i> by Francis W. Wilson, Compact Commissioner	1929	NM_00118535 – NM_00118546	Authenticated by Declaration of Jennifer Stevens, Ph.D. for Authentication of Materials
339	Letter from J.W. Taylor, President and Manager, to Mr. D.C. Henny, February 7, 1927	02/07/1927	NM_00117911-7912	Authenticated by Declaration of Jennifer Stevens, Ph.D. for Authentication of Materials

**Attachment A: State of New Mexico's Response to State of Texas's Evidentiary Objections**

NM-EX #	EXHIBIT DESCRIPTION	DOC. DATE	BATES RANGE OR PAGES CITED	AUTHENTICITY
340	E.P. Osgood, <i>Preliminary Report Upon the Use, Control &amp; Disposition of the Rio Grande and Its Tributaries Above Fort Quitman, Texas</i> , March 31, 1928.	03/31/1928	NM_00118318 - NM_00118334	Authenticated by Declaration of Jennifer Stevens, Ph.D. for Authentication of Materials
341	Raymond A. Hill to Mr. Clayton, Memorandum In re Meeting of Committee of Engineers, at Santa Fe, November 22 to 24, 1937, November 26, 1937	11/22-24/1937	TX_00002921-2924	Authenticated by Declaration of Jennifer Stevens, Ph.D. for Authentication of Materials
342	Charles S. Slichter, <i>Observations on the Ground Waters of Rio Grande Valley</i> , U.S. Geological Survey Water-Supply and Irrigation Paper No. 141 (Washington, D.C.: Government Printing Office, 1905)	1905	NM_00166701 - NM_00166788	Authenticated by Declaration of Jennifer Stevens, Ph.D. for Authentication of Materials
343	C.S. Conover, <i>Preliminary Memorandum on Groundwater Supplies for Elephant Butte Irrigation District, New Mexico</i> , September 1947	1947	NM_00154110 - NM_00154137	Authenticated by Declaration of Jennifer Stevens, Ph.D. for Authentication of Materials
344	1929 (Temporary) Rio Grande Compact	02/12/1929	NM_00464042 – NM_00464057	Authenticated by Declaration of Jennifer Stevens, Ph.D. for Authentication of Materials
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)	01/27/1936	US0186530-35	Authenticated by Declaration of Jennifer Stevens, Ph.D. for Authentication of Materials

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NM-EX #	EXHIBIT DESCRIPTION	DOC. DATE	BATES RANGE OR PAGES CITED	AUTHENTICITY
346	Letter from Frank B. Clayton, Rio Grande Compact Commissioner, State of Texas, to National Resources Committee	02/01/1936	NM_00056304-11	Authenticated by Declaration of Jennifer Stevens, Ph.D. for Authentication of Materials
347	E.L. Barrows, <i>Report of Seepage Study on Rio Grande Between Elephant Butte Dam and Leasburg Dam</i>	11/26-28/1928	NM_00112806-13	Authenticated by Declaration of Jennifer Stevens, Ph.D. for Authentication of Materials
348	D.C. Henny, Board of Engineers, report to Bureau of Reclamation: <i>Rio Grande Project, Report on Water Supply and Project Area High Line Canal Construction Power Development and City Water Supplies</i>	11/1919	NM_00103166-305	Authenticated by Declaration of Jennifer Stevens, Ph.D. for Authentication of Materials
349	Harold Conkling, Extract of report to Bureau of Reclamation: <i>Water Supply of the Rio Grande River (extract)</i>	06/18/1919	TX_00182093-135	Authenticated by Declaration of Jennifer Stevens, Ph.D. for Authentication of Materials
350	R.A. Scalapino, <i>Ground-Water Resources of the El Paso Area, Texas, Progress Report No. 6</i>	1949	TX_00203252-90	Self-authenticating under Fed. R. Evid. 902(5).
351	W.F. Resch, Bureau of Reclamation, <i>Statement of Water Supply</i>	06/20/1950	US0183515	Authenticated by Declaration of Jennifer Stevens, Ph.D. for Authentication of Materials
352	1939-1940 - First and Second Annual Report of the Rio Grande Compact Commission (Compact Rules)	1939-1940	NM_00003841; NM_00003849 - NM_00003851	Authenticated by Declaration of Jennifer Stevens, Ph.D. for Authentication of Materials



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NM-EX #	EXHIBIT DESCRIPTION	DOC. DATE	BATES RANGE OR PAGES CITED	AUTHENTICITY
353	Letter from Sawnie B. Smith to Frank B. Clayton	9/29/38	No bates	Authenticated by Declaration of Jennifer Stevens, Ph.D. for Authentication of Materials
<b>D2 Period Documents (1951-2005)</b>				
400	Bureau of Reclamation, Rio Grande Project: Water Supply Allocation Procedures (WSAP)	(Undated)	US0167011 - US0167024	Self-authenticating under Fed. R. Evid. 902(5). Authenticated by Filiberto Cortez under Fed. R. Evid. 901(b)(1). <i>See</i> NM-EX 202, Cortez Dep. (July 30, 2020) 175:19-24. NM-EX 400 will be authenticated at trial and an admissible form is anticipated.
401	Raymond A. Hill, Development of the Rio Grande Compact of 1938	10/08/1968	CO-002431-513	Self-authenticating under Fed. R. Evid. 902(1) and (8).
402	EPCWID Accounting Records (1985-2016)	1985-2016	Various	NM-EX 402 will be authenticated at trial and an admissible form is anticipated.
403	Operating Agreement between Elephant Butte Irrigation District, El Paso County Water Improvement District No.1, and United States Bureau of Reclamation (unexecuted draft)	1985	NM_00237424-87	Self-authenticating under Fed R. Evid. 902(1). Al Blair has also acted upon the document as to its authenticity. <i>See</i> Blair Dep. (June 18, 2020) 455:3-13.
404	Robert Autobee, United States Bureau of Reclamation, Rio Grande Project	06/13/1994	TX_00175492-525	Self-authenticating under Fed. R. Evid. 902(5). Authenticated by Filiberto Cortez under Fed. R. Evid. 901(b)(1). <i>See</i> NM-EX 202, Cortez Dep. (July 30, 2020) 175:19-24.

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NM-EX #	EXHIBIT DESCRIPTION	DOC. DATE	BATES RANGE OR PAGES CITED	AUTHENTICITY
405	Facsimile from David Allen, El Paso Field Office, Bureau of Reclamation, to Darren Powell, Herman Settemeyer, et al.	06/25/1996	US0344779-89	Self-authenticating under Fed R. Evid. 902(1). It may also be authenticated at trial by Herman Settemeyer under Fed. R. Evid. 901(b)(1) because he was a recipient of the fax.
406	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	03/25/1999	CO-015027-29	Authenticated by Filiberto Cortez under Fed. R. Evid. 901(b)(1). See NM-EX 203, Cortez Dep. (July 31, 2020) 248:10-251:23. NM-EX 406 will be authenticated at trial and an admissible form is anticipated.
407	Memorandum of Understanding between the Rio Grande Compact Commission and the United States Bureau of Reclamation	03/21/2002	TX_00294718-23	Authenticated by Filiberto Cortez under Fed. R. Evid. 901(b)(1). See NM-EX 203, Cortez Dep. (July 31, 2020) 273:18-25. NM-EX 407 will be authenticated at trial and an admissible form is anticipated.
408	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	03/21/2002	CO-014987	Authenticated by Herman Settemeyer under Fed. R. Evid. 901(b)(1). See Settemeyer Dep. (July 31, 2020) 215:11-218:17. NM-EX 408 will be authenticated at trial and an admissible form is anticipated.
409	Email from Filiberto Cortez, Manager, El Paso Field Division, Bureau of Reclamation, to Chris Rich et al.	04/12/2002	US0252067-69	Authenticated by Filiberto Cortez under Fed. R. Evid. 901(b)(1). See NM-EX 202, Cortez Dep. (July 30, 2020) 177:16-179:19. NM-EX 409 will be authenticated at trial and an admissible form is anticipated.

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NM-EX #	EXHIBIT DESCRIPTION	DOC. DATE	BATES RANGE OR PAGES CITED	AUTHENTICITY
410	Facsimile 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	08/02/2002	US0212528-29	Authenticated by Filiberto Cortez under Fed. R. Evid. 901(b)(1). See NM-EX 203, Cortez Dep. (July 31, 2020) 264:2-266:18. NM-EX 410 will be authenticated at trial and an admissible form is anticipated.
411	Letter from Filiberto Cortez, Manager, El Paso Field Division, Bureau of Reclamation, to William A. Paddock	09/11/2002	CO-001429-32	Authenticated by Filiberto Cortez under Fed. R. Evid. 901(b)(1). See NM-EX 203, Cortez Dep. (July 31, 2020) 266:22-273:9. NM-EX 411 will be authenticated at trial and an admissible form is anticipated.
412	“Rio Grande Project/Rio Grande Compact Operations” presentation by Herman Settemeyer, P.E.	2004	NM_00293816-23	Authenticated by Herman Settemeyer under Fed. R. Evid. 901(b)(1). See Settemeyer Dep. (July 31, 2020) 326:11-331:4. NM-EX 412 will be authenticated at trial and an admissible form is anticipated.
413	Resolution of the Rio Grande Compact Commission Concerning Federal Agency Operations of Their Water-Related Facilities on the Rio Grande Compact Accounting	03/25/2004	TX_00292976-77	Authenticated by Filiberto Cortez under Fed. R. Evid. 901(b)(1). See NM-EX 203, Cortez Dep. (July 31, 2020) 287:14-290:13. Authenticated by Declaration of John D’Antonio, P.E. for Authentication of Materials (2-2-2021).
414	Report of the Engineer Advisers to the Rio Grande Compact Commission	03/04/2005	NM_00016912-930	Authenticated by Declaration of John D’Antonio, P.E. for Authentication of Materials (2-2-2021).
415	Memorandum Opinion – <i>Mestas, et al. vs. Elephant Butte Irrigation District, et al.</i> , CIV NO. 78-138-B, D.N.M. (05-11-1979)	05/11/1979	NM_0096395 – NM_0096446	Self-authenticating under Fed. R. Evid. 902(1).

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NM-EX #	EXHIBIT DESCRIPTION	DOC. DATE	BATES RANGE OR PAGES CITED	AUTHENTICITY
416	S. E. Reynolds & Philip B. Mutz, <i>Water Deliveries under the Rio Grande Compact</i> , 14 Nat. Resources J. 201 (1974)	1974	NM_00335427 - NM_00335433	Self-authenticating under Fed. R. Evid. 902(6).
417	Rio Grande Project Histories (Water Announcements), Bureau of Reclamation	1951-1957	Various NM_bates numbers	Self-authenticating under Fed. R. Evid. 902(5).
418	Transcript of Proceedings of the 43 <sup>rd</sup> Annual Meeting of the Rio Grande Compact Commission (Mar. 25, 1982)	03/25/1982	NM_00011802 - NM_00011915	Self-authenticating under Fed. R. Evid. 902(8).
419	Rio Grande Project Histories (Water Announcements), Bureau of Reclamation	1951	NM_00029501 - NM_00029508	Authenticated by Texas and the U.S. Texas's Supplemental Responses to the State of New Mexico's First Set of Requests for Admission (10-29-2020), RFA 9. U.S.'s Responses to New Mexico's Second Set of Requests for Admission (8-28-2020), RFA #94.
420	Rio Grande Project Histories (Operations and Maintenance), Bureau of Reclamation	1951-1957	Various NM_bates numbers	Self-authenticating under Fed. R. Evid. 902(5).
421	Supplemental Contracts Providing for the Deferment of Construction Charges Payable in Calendar Year	1956-1958 and 1964	NM_00031084 - NM_0031085; NM_00031321 - NM_00031322; NM_00031559 - NM_00031560; NM_00032904 - NM_00032907	Self-authenticating under Fed. R. Evid. 902(1) or 902(4) through the appropriate records custodian. New Mexico may also authenticate at trial pursuant to Fed. R. Evid. 901(b)(7). NM-EX 421 will be authenticated at trial and an admissible form is anticipated.

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NM-EX #	EXHIBIT DESCRIPTION	DOC. DATE	BATES RANGE OR PAGES CITED	AUTHENTICITY
422	Bureau of Reclamation License Agreement with El Paso County Water Improvement District 1 for Installation of 4 Water Wells	1978	NM_00034666 - NM_00034669	NM-EX 422 will be authenticated and an admissible form is anticipated.
423	Rio Grande Project Implementing Third-Party Contract among the Bureau of Reclamation, El Paso County Water Improvement District 1, and the City of El Paso	04/10/2001	US0550115 - US0550192	Authenticated by John Balliew under Fed. R. Evid. 901(b)(1). See Balliew Dep. (Sep. 12, 2019) 110:19-127:17. NM-EX 423 will be authenticated at trial and an admissible form is anticipated.
424	C.S. Conover, <i>Ground-Water Conditions in the Rincon and Mesilla Valleys and Adjacent Areas in New Mexico</i> . Geological Survey Water-Supply Paper 1230, prepared in cooperation with the Elephant Butte Irrigation District	1954	NM_00124489 - NM_00124696	Self-authenticating under Fed. R. Evid. 902(5).
425	Filiberto, Cortez to Fifer, Ed Summary of June 25, 1999 Meeting to Discuss Water Accounting Procedures at Riverside Canal and Haskell Street Waste Water Treatment Plant's Discharge	07/08/1999	US0168520 - US0168522	Authenticated by Filiberto Cortez under Fed. R. Evid. 901(b)(1). See NM-EX 202, Cortez Dep. (July 30, 2020) 358:6-363:24. NM-EX 425 is also self-authenticating under Fed R. Evid. 902(1).
426	Rio Grande Compact Commission Resolution	1974	CO - 016957 - CO - 016960	Authenticated by Declaration of John D'Antonio, P.E. for Authentication of Materials

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NM-EX #	EXHIBIT DESCRIPTION	DOC. DATE	BATES RANGE OR PAGES CITED	AUTHENTICITY
427	State Engineer Order #126: In the Matter of State Engineer Special Order No. 126 Declaring the Lower Rio Grande Underground Water Basin in Dona Ana County (LRG Basin Declaration)	09/11/1980	TX_00175935 - TX_00175942	Self-authenticating under Fed. R. Evid. 902(1). Authenticated by Declaration of John D’Antonio, P.E. for Authentication of Materials
428	State Engineer Order #135: In the Matter of State Engineer Special Order No. 135 Declaring an Extension of the Lower Rio Grande Underground Water Basin in Dona Ana, Grant and Sierra Counties	09/17/1982	NM_00283188 - NM_00283190	Self-authenticating under Fed. R. Evid. 902(1). Authenticated by Declaration of John D’Antonio, P.E. for Authentication of Materials
429	State Engineer Order #169: In the Matter of the Creation of the Lower Rio Grande Water Master District for the Administration of Rights to the Use of Ground Water From the Lower Rio Grande Groundwater Basin of New Mexico (“Water Master Order”)	12/03/2004	NM_00018298 - NM_00018301	Self-authenticating under Fed. R. Evid. 902(1). Authenticated by Declaration of John D’Antonio, P.E. for Authentication of Materials
430	State Engineer Order #168: In the Matter of the Requirements for Metering Groundwater Withdrawals in the Lower Rio Grande Watermaster District, New Mexico (1 <sup>st</sup> Metering Order)	12/03/2004	NM_00075344 - NM_00075347	Self-authenticating under Fed. R. Evid. 902(1). Authenticated by Declaration of John D’Antonio, P.E. for Authentication of Materials

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NM-EX #	EXHIBIT DESCRIPTION	DOC. DATE	BATES RANGE OR PAGES CITED	AUTHENTICITY
431	Supplemental Contract Providing for the Deferment of Construction Charges Payable in Calendar Year 1965	1965	NM_00032904 - NM_00032907	Self-authenticating under Fed. R. Evid. 902(1).
432	Narendra Gunaji, <i>Groundwater Conditions in the Elephant Butte Irrigation District</i>	11/1961	Stevens-DepoEx-0016	Self-authenticating under Fed. R. Evid. 902(5).
433	Reclamation Water Announcement, Bureau of Reclamation	03/01/1954	NM_00068549	Self-authenticating under Fed. R. Evid. 902(5).
434	Ira Clark, <i>Water in New Mexico: A History of its Management and Use</i> (University of New Mexico Press)	1987	No Bates	NM-EX 434 will be authenticated at trial.
435	Exhibit Omitted			N/A
436	State Engineer Order #172: In the Matter of the Requirements for Metering Groundwater Withdrawals in the Lower Rio Grande Water Master District, New Mexico (2 <sup>nd</sup> Metering Order)	12/20/2005	NM_00018302 - NM_00018306	Self-authenticating under Fed. R. Evid. 902(1). Authenticated by Declaration of John D'Antonio, P.E. for Authentication of Materials
437	Ralph E. Smith, United States Geological Survey, Bulletin 5603, <i>Ground-Water Resources of the El Paso District, Texas</i>	02/1956	NM_00124794-832	Self-authenticating under Fed. R. Evid. 902(5).
438	W.F. Resch, Bureau of Reclamation, <i>Water Announcement</i>	01/05/1952	US0184183	Self-authenticating under Fed. R. Evid. 902(5).

**Attachment A: State of New Mexico's Response to State of Texas's Evidentiary Objections**

NM-EX #	EXHIBIT DESCRIPTION	DOC. DATE	BATES RANGE OR PAGES CITED	AUTHENTICITY
439	W.F. Resch, Bureau of Reclamation, <i>Water Announcement</i>	08/25/1954	US_0167149 – US_0167154	Self-authenticating under Fed. R. Evid. 902(5).
440	Bureau of Reclamation, Rio Grande Project History Calendar Year 1954	1955	US0019910	Self-authenticating under Fed. R. Evid. 902(5).
441	James Salopek, President of Elephant Butte Irrigation District, Affidavit in the matter of Elephant Butte Irrigation District's Emergency Application for Permit to Use Supplemental Wells to Supplement Ground or Surface Water	03/03/2004	EBID141921 – EBID141928	Self-authenticating under Fed. R. Evid. 902(8).
442	Transcript of Proceedings from 43rd Annual Meeting of the Rio Grande Compact Commission	03/25/1982	NM_00011802-915	Self-authenticating under Fed. R. Evid. 902(8). Authenticated by Declaration of John D'Antonio, P.E. for Authentication of Materials
443	Letter from L.E. Archer, President, EBID Board of Directors to EBID Constituents	08/1978	EBID141955-57	Self-authenticating under Fed. R. Evid. 902(1).
444	1978 RGP Histories, "License Agreement with El Paso County Water Improvement District No. 1 for Installation of 4 Water Wells" (Bureau of Reclamation)	02/01/1978	NM_00034666 - NM_00034669	Self-authenticating under Fed. R. Evid. 902(5).
445	Amended Rules and Regulations Governing the Diversion and Use of Tributary Groundwater in the Arkansas River Basin, Colorado	04/01/1996	No Bates	NM-EX 445 will be authenticated at trial under Fed. R. Evid. 901(b)(7) or 902(4).
446	Exhibit Omitted			N/A



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NM-EX #	EXHIBIT DESCRIPTION	DOC. DATE	BATES RANGE OR PAGES CITED	AUTHENTICITY
447	Ashworth, J.B., <i>Evaluation of Ground-Water Resources in El Paso County, Texas, Texas Water Development Board, Report 324</i>	03/1990		Self-authenticating under Fed. R. Evid. 902(5).
448	Email from Chris Rich, Solicitor to the United States Department of the Interior to Patrick Gordon, Texas Rio Grande Compact Commissioner and Lee Leininger, United States Department of Justice	05/17/2011	TX00186417 - TX00186418	Authenticated by Pat Gordon under Fed. R. Evid. 901(b)(1). See Gordon Dep. (July 14, 2020) 147:3-155:10. NM-EX 448 will be authenticated at trial.
449	Legal and Institutional Framework for Rio Grande Project Water Supply and Use: A Legal Hydrograph	10/1995	TX_00102854 - TX_00102978	Self-authenticating under Fed. R. Evid. 902(5).
450	Letter from Filiberto Cortez to Gary Esslinger, John Bernal and Edd Fifer	12/03/1998	US0210711 - US0210715	Self-authenticating under Fed. R. Evid. 902(1).
451	Raymond A. Hill Dep., State of Texas and State of New Mexico v State of Colorado, Original Action No. 29 n the Supreme Court of the United States			Self-authenticating under Fed. R. Evid. 902(8).
452	Friedkin, J.F., Memorandum re: 1906 Treaty Deliveries to Mexico	06/29/1956	US00033604 – US00033608	NM-EX 452 will be authenticated at trial and an admissible form is anticipated.
<b>D3 Period and Post-Operating Agreement Documents (2006 - present)</b>				

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NM-EX #	EXHIBIT DESCRIPTION	DOC. DATE	BATES RANGE OR PAGES CITED	AUTHENTICITY
500	EPCWID Water Allocation Records (2006-2016)	2006-2016	NM_00133172, NM_00133187, US0535717, and US0480510 - US0480518	NM-EX 500 will be authenticated at trial and an admissible form is anticipated.
501	Report of the Rio Grande Compact Commission 2005	03/23/2006	NM_00005643-82	Self-authenticating under Fed. R. Evid. 902(5). Authenticated by Declaration of John D'Antonio, P.E. for Authentication of Materials
502	D3 Allocation of Project Water to the Districts and Mexico	04/24/2006	TX_00299715-716	NM-EX 502 will be authenticated at trial and an admissible form is anticipated.
503	Briefing Paper by Filiberto Cortez, Manager, El Paso Field Division, Bureau of Reclamation, to Robert W. Johnson, Commissioner, Bureau of Reclamation	11/02/2006	US0461692	Authenticated by Filiberto Cortez under Fed. R. Evid. 901(b)(1). See NM-EX 203, Cortez Dep. (July 31, 2020) 223:8-226:25. NM-EX 503 will be authenticated at trial and an admissible form is anticipated.
504	Letter from Filiberto Cortez, Manager, El Paso Field Division, Bureau of Reclamation, to Gary Esslinger, Manager-Treasurer, Elephant Butte Irrigation District	11/21/2006	US0169483-91	Self-authenticating under Fed. R. Evid. 902(1).
505	Texas Commission on Environmental Quality, Certificate of Adjudication No. 23-5940	03/07/2007	TX_00252218-225	Self-authenticating under Fed. R. Evid. 902(1).

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NM-EX #	EXHIBIT DESCRIPTION	DOC. DATE	BATES RANGE OR PAGES CITED	AUTHENTICITY
506	Affidavit of Filiberto Cortez	04/20/2007	NM_00425603-607	Authenticated by Filiberto Cortez under Fed. R. Evid. 901(b)(1). See NM-EX 202, Cortez Dep. (July 31, 2020) 22:6-27:19. NM-EX 506 will be authenticated at trial and an admissible form is anticipated.
507	2007 Operating Procedures	05/15/2007	US_0200578-605	NM-EX 507 will be authenticated at trial and an admissible form is anticipated.
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	06/11/2007	TX_00299572-616	Self-authenticating under Fed. R. Evid. 902(5).
509	Bureau of Reclamation, Rio Grande Project Allocation of Project Water Supply (“Reclamation Data Table”)	03/05/2008	NM_00133860	Self-authenticating under Fed. R. Evid. 902(5).
510	2008 Operating Agreement	03/10/2008	US0108795-818	Authenticated by Declaration of John D’Antonio, P.E. for Authentication of Materials
511	Filiberto Cortez, Lower Rio Grande Project Operating Agreement: Settlement of Litigation - Presentation	10/2008	NM_00252702-07	Self-authenticating under Fed. R. Evid. 902(5).
512	United States Bureau of Reclamation, Calendar Year 2009 Report to the Rio Grande Compact Commission	2009	EBID 154459, 154526-34	Self-authenticating under Fed. R. Evid. 902(5). Authenticated by Declaration of John D’Antonio, P.E. for Authentication of Materials

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NM-EX #	EXHIBIT DESCRIPTION	DOC. DATE	BATES RANGE OR PAGES CITED	AUTHENTICITY
513	Letter from Filiberto Cortez, Manager El Paso Field Division, United States Bureau of Reclamation, to Water Accounting Division, United States Section, International Boundary Water Commission	09/22/2009	US0138419-25	Self-authenticating under Fed. R. Evid. 902(1). Also authenticated by Filiberto Cortez under Fed. R. Evid. 901(b)(1). See NM-EX 202, Cortez Dep. (July 31, 2020) 218:3-221:7.
514	Letter from Filiberto Cortez, Manager El Paso Field Division, United States Bureau of Reclamation, to Lieutenant Colonel Kimberly Colloton, District Engineer, United States Army Corps of Engineers	09/29/2009	US0138426-35	Self-authenticating under Fed. R. Evid. 902(1). Also authenticated by Filiberto Cortez under Fed. R. Evid. 901(b)(1). See NM-EX 202, Cortez Dep. (July 31, 2020) 221:8-223:6.
515	Final Judgment and Decree, <i>In re: The Adjudication of Water Rights in the Upper Rio Grande Segment of Rio Grande Basin</i> , No. 2006-3219 (El Paso Cnty. Dist. Ct.)	10/30/2009	US0398891-916	Self-authenticating under Fed. R. Evid. 902(1).
516	Bureau of Reclamation, Calendar Year 2009 Report to the Rio Grande Compact Commission	03/2010	EBID 154459 - EBID 154548	Self-authenticating under Fed. R. Evid. 902(5). Authenticated by Declaration of John D'Antonio, P.E. for Authentication of Materials
517	Letter from John D'Antonio, State Engineer, State of New Mexico to Michael Connor, Commissioner, United States Bureau of Reclamation	03/04/2010	NM_00253700-11	Self-authenticating under Fed. R. Evid. 902(1). Authenticated by Declaration of John D'Antonio, P.E. for Authentication of Materials
518	Rio Grande Compact Commission, Transcript of the 72nd Annual Meeting (94th Meeting)	03/30/2011	NM_00016508-669	Authenticated by Declaration of John D'Antonio, P.E. for Authentication of Materials

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NM-EX #	EXHIBIT DESCRIPTION	DOC. DATE	BATES RANGE OR PAGES CITED	AUTHENTICITY
519	Handwritten notes prepared by Texas and presented in a meeting between Texas and New Mexico on or about 5/9/11 - photographed by Rolf Schmidt-Petersen [Corrected]	5/9/2011	NM_00467081-82	Authenticated by Declaration of Estevan Lopez, P.E. for Authentication of Materials
520	Complaint for Declaratory and Injunctive Relief, <i>New Mexico v. United States</i> , No. 1:11-cv-00691 (D.N.M. Aug. 8, 2011)	08/08/2011	NM_00425629-662	NM-EX 520 will be authenticated at trial and an admissible form is anticipated.
521	Email from Filiberto Cortez, Manager El Paso Field Division, United States Bureau of Reclamation, to Rolf Schmidt-Peterson, Rio Grande Bureau Basin Manager, New Mexico Interstate Stream Commission	04/11/2012	NM_00255358 - NM_00255360	NM-EX 521 will be authenticated at trial and an admissible form is anticipated.
522	Affidavit of Rolf I. Schmidt-Petersen, Rio Grande Basin Manager, New Mexico Interstate Stream Commission and New Mexico Engineer Adviser to the Rio Grande Compact Commission	06/13/2012	NM_00397272-277	Self-authenticating under Fed. R. Evid. 902(8).

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NM-EX #	EXHIBIT DESCRIPTION	DOC. DATE	BATES RANGE OR PAGES CITED	AUTHENTICITY
523	Letter from Scott A. Verhines, State Engineer, State of New Mexico, to Ed Drusina, Commissioner, International Boundary and Water Commission, and Mike Hamman, Albuquerque Area Manager, United States Bureau of Reclamation	09/21/2012	US0119242-43	Self-authenticating under Fed. R. Evid. 902(1).
524	Texas Commission on Environmental Quality, News Release	01/08/2013	TX_00284614-15	Self-authenticating under Fed. R. Evid. 902(5).
525	Email from Filiberto Cortez, Manager, El Paso Field Division, Bureau of Reclamation, to Kenneth Rice, Bureau of Reclamation (May 2, 2013)	05/02/2013	US0548076-78	Authenticated by Filiberto Cortez under Fed. R. Evid. 901(b)(1). See NM-EX 203, Cortez Dep. (July 31, 2020) 206:16-209:19. NM-EX 525 will be authenticated at trial and an admissible form is anticipated.
526	Texas Commission on Environmental Quality, Biennial Report to the 84th Legislature	2014	TX_00644663-67	Self-authenticating under Fed. R. Evid. 902(5).
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, <i>New Mexico ex rel. Office of the State Engineer v. Elephant Butte Irr. Dist.</i> , no. CV-96-888, ¶ 4 (N.M. 3d Judicial Dist., Feb. 17, 2014)	2/17/2014	NM_00467458-66	Self-authenticating under Fed. R. Evid. 902(1).

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NM-EX #	EXHIBIT DESCRIPTION	DOC. DATE	BATES RANGE OR PAGES CITED	AUTHENTICITY
528	Resolution of the Rio Grande Compact Commission Regarding Temporary Modification of Operations at El Vado Reservoir in New Mexico during April, May, and June 2015	03/24/2015	NM_00433778-79	Authenticated by Declaration of John D’Antonio, P.E. for Authentication of Materials
529	Bureau of Reclamation, Continued Implementation of the 2008 Operating Agreement for the Rio Grande Project, New Mexico and Texas: Final Environmental Impact Statement (“FEIS”)	09/30/2016	EPCWID_20669 6 - EPCWID_20727 7	Self-authenticating under Fed. R. Evid. 902(5).
530	Filiberto Cortez, Bureau of Reclamation, EBID Depletion Reduction and Offset Program WaterSMART Grant Proposal	06/01/2017	US0464227-28	Authenticated by Filiberto Cortez under Fed. R. Evid. 901(b)(1). See NM-EX 203, Cortez Dep. (July 31, 2020) 227:4-231:25. NM-EX 530 will be authenticated at trial and an admissible form is anticipated.
531	Rio Grande Project Operations Manual	03/13/2018	US0599457-74	Authenticated by Al Blair under Fed. R. Evid. 901(b)(1). See Blair Dep. (June 17, 2020)214:21-25.
532	Reyes, Jesus, <i>Water Conservation and Management Projects in El Paso County Water Improvement District</i> . Presented at Symposium: Far West Texas Climate Change, June 17, 2008	06/17/2008	NM_00136471 - NM_00136508	Self-authenticating under Fed. R. Evid. 902(5). Authenticated by Jesus Reyes under Fed. R. Evid. 901(b)(1). See NM-EX 221, Reyes Dep. (Nov. 16, 2018) 68:10-71:13.

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NM-EX #	EXHIBIT DESCRIPTION	DOC. DATE	BATES RANGE OR PAGES CITED	AUTHENTICITY
533	State Engineer Supplemental Order #180: In the Matter of the Requirements for Metering Groundwater Withdrawals in the Lower Rio Grande Watermaster District, New Mexico (Final Metering Order)	03/28/2007	NM_00077646 - NM_00077648	Self-authenticating under Fed. R. Evid. 902(1). Authenticated by Declaration of John D'Antonio, P.E. for Authentication of Materials
534	Order Designating Stream System Issue/Expedited <i>Inter Se</i> Proceeding No. 104: The United States Interests in the Stream System, <i>State of New Mexico ex rel. Office of the State Engineer v. Elephant Butte Irrigation District</i> , CV-96-888 In the Third Judicial District, Dona Ana County, State of New Mexico (SS104 Expedited <i>Inter Se</i> Order)	01/08/2010	US0416472 - US0416473	Self-authenticating under Fed. R. Evid. 902(1).
535	Order Granting the State's Motion to Dismiss the United States' Claims to Groundwater and Denying the United States' Motion for Summary Judgment, <i>State of New Mexico ex rel. Office of the State Engineer v. Elephant Butte Irrigation District</i> , CV-96-888 In the Third Judicial District, Dona Ana County, State of New Mexico (SS104 Summary Judgment Order)	08/16/2012	TX_00175943 - TX_00175952	Self-authenticating under Fed. R. Evid. 902(1).



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NM-EX #	EXHIBIT DESCRIPTION	DOC. DATE	BATES RANGE OR PAGES CITED	AUTHENTICITY
536	Findings of Fact and Conclusions of Law, <i>State of New Mexico ex rel. Office of the State Engineer v. Elephant Butte Irrigation District</i> , CV-96-888 In the Third Judicial District, Dona Ana County, State of New Mexico (SS104 Findings)	04/17/2017	NM_00096525 - NM_00096580	Self-authenticating under Fed. R. Evid. 902(1).
537	Exhibit Omitted			N/A
538	Proposed Rules and Regulations Providing for Active Water Resources Administration of the Waters of the Lower Rio Grande Water Master District - First Public Draft	06/28/2006	NM_00075441 - NM_00075500	Authenticated by Peggy Barroll under Fed. R. Evid. 901(b)(1). See NM-EX 227, Barroll Dep. (Feb. 5, 2020) 181:11-21. Authenticated by Declaration of John D’Antonio, P.E. for Authentication of Materials
539	Proposed Rules and Regulations Providing for Active Water Resources Administration of the Waters of the Lower Rio Grande Water Master District - Second Public Draft released by the Office of the State Engineer	11/14/2006	NM_00075708 - NM_00075783	Authenticated by Peggy Barroll under Fed. R. Evid. 901(b)(1). See NM-EX 227, Barroll Dep. (Feb. 5, 2020) 188:8-189:6. Authenticated by Declaration of John D’Antonio, P.E. for Authentication of Materials
540	Office of the State Engineer, Lower Rio Grande Water Master Annual Report 2018 Accounting Year	09/04/2019	NM_00467431 - NM_00467457	Self-authenticating under Fed. R. Evid. 902(5). Authenticated by Declaration of John D’Antonio, P.E. for Authentication of Materials

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NM-EX #	EXHIBIT DESCRIPTION	DOC. DATE	BATES RANGE OR PAGES CITED	AUTHENTICITY
541	Final Judgment, <i>State of New Mexico ex rel. Office of the State Engineer v. Elephant Butte Irrigation District</i> , CV-96-888 In the Third Judicial District, Dona Ana County, State of New Mexico (SS101 LRG Adjudication Order)	08/22/2011	NM_00082198 - NM_00082223	Self-authenticating under Fed. R. Evid. 902(1).
542	Memorandum from Ryan J. Serrano to John Romero, WRAP Director: Field Investigation of river pumps/diversions along the Rio Grande between Elephant Butte Reservoir and the New Mexico/Texas State Line	06/26/2013	NM_00443276 - NM_00443381	Authenticated by John Romero under Fed. R. Evid. 901(b)(1). <i>See</i> Romero Dep. (April 18, 2019) 116:15-122:8. NM-EX 542 will be authenticated at trial and an admissible form is anticipated.
543	Memorandum Opinion, <i>State of New Mexico ex rel. State Engineer v Faykus</i> , No. A-1-CA-36848 In the Court of Appeals of the State of New Mexico	04/13/2020	NM_00396851 - NM_00396871	Self-authenticating under Fed. R. Evid. 902(1).
544	Letter from Gary Esslinger, Elephant Butte Irrigation District Manager, to Ed Drusina, International Boundary and Water Commission Commissioner	01/25/2012	US0387213 - US0387216	Self-authenticating under Fed. R. Evid. 902(1).

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NM-EX #	EXHIBIT DESCRIPTION	DOC. DATE	BATES RANGE OR PAGES CITED	AUTHENTICITY
545	<i>In the Matter of the Permit of the City of Eunice, NM to Transport Water for Use Outside the State of New Mexico-LEA County Underground Water Basin</i> ; Permit No. L-4920, Amended Authorization to Transport Water for Use Outside New Mexico	08/30/2011	No Bates	Self-authenticating under Fed. R. Evid. 902(1). Authenticated by Declaration of John D’Antonio, P.E. for Authentication of Materials
546	Final Judgment, <i>State of New Mexico ex rel. Office of the State Engineer v. Elephant Butte Irrigation District</i> , CV-96-888 In the Third Judicial District, Dona Ana County, State of New Mexico (SS101 LRG Adjudication Order)	08/22/2011	NM_00082198 - NM_00082223	Self-authenticating under Fed. R. Evid. 902(1).
547	Exhibit Omitted			N/A
548	Memorandum from Ryan J. Serrano, LRG Water Master to John Romero, WRAP Director: New Mexico Groundwater Irrigations Wells Pumping Groundwater for Use in Texas	09/11/2018	NM_00289688 - NM_00289691	NM-EX 548 will be authenticated at trial and an admissible form is anticipated.
549	2018 Annual Report of the Rio Grande Compact Commission [Compact Rules]	2018	NM_00216032; NM_00216119 - NM_00216123	Self-authenticating under Fed. R. Evid. 902(5).

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NM-EX #	EXHIBIT DESCRIPTION	DOC. DATE	BATES RANGE OR PAGES CITED	AUTHENTICITY
550	Historical Abstract Regarding Elephant Butte Irrigation District's Conjunctive Management of Groundwater and Surface Water in the New Mexico Portion of the Rio Grande Project, submitted by the Elephant Butte Irrigation District and its Board of Directors	07/11/2008	NM_00300464 - NM_00300665	Self-authenticating under Fed. R. Evid. 902(5).
551	Rio Grande Compact Commission, 72nd Annual Meeting Minutes	03/30/2011	NM_00427017 - NM_00427032	NM-EX 551 will be authenticated at trial and an admissible form is anticipated.
552	Estevan Lopez notes from May 9th, 2011 meeting with Texas re: Rio Grande Project Operating Agreement	05/09/2011	No Bates	Authenticated by Declaration of Estevan Lopez, P.E. for Authentication of Materials
<b>Hearing Transcripts &amp; Pleadings</b>				
600	<i>Texas v. New Mexico, et al.</i> , Original Action #141, In the Supreme Court of the United States; Transcript of August 19, 2015 Oral Argument before Special Master Grimsal	08/19/2015	91, 100	Self-authenticating under Fed. R. Evid. 902(8).
601	State of Texas's Responses to the State of New Mexico's First Set of Interrogatories to the State of Texas	08/28/2020	No Bates	Expressly permitted under Fed. R. Civ. P. 56(c)(1)(A).  NM-EX 601 will be authenticated at trial and an admissible form is anticipated.

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NM-EX #	EXHIBIT DESCRIPTION	DOC. DATE	BATES RANGE OR PAGES CITED	AUTHENTICITY
602	United States Responses to New Mexico's First Set of Requests for Admission	11/04/2019	No Bates	Expressly permitted under Fed. R. Civ. P. 56(c)(1)(A).  NM-EX 602 will be authenticated at trial and an admissible form is anticipated.
603	State of New Mexico's Objections and Responses to the State of Texas's First Set of Requests for Admission to the State of New Mexico	09/02/2020	No Bates	Expressly permitted under Fed. R. Civ. P. 56(c)(1)(A).  NM-EX 603 will be authenticated at trial and an admissible form is anticipated.
604	Resume of Dr. Lee Wilson		No Bates	NM-EX 604 will be authenticated at trial and an admissible form is anticipated.
605	Listing of Expert Testimony of Dr. Lee Wilson		No Bates	NM-EX 605 will be authenticated at trial and an admissible form is anticipated.
606	Comparison of Select New Mexico and Texas Water Administration Facts (information from deposition testimony, sworn declarations, Texas Commission on Environmental Quality website, Texas Water Development Board website)		No Bates	NM-EX 606 will be authenticated at trial and an admissible form is anticipated.
607	United States of America's Responses to New Mexico's Second Set of Requests for Admission	8/28/2020	No Bates	Expressly permitted under Fed. R. Civ. P. 56(c)(1)(A).  NM-EX 607 will be authenticated at trial and an admissible form is anticipated.

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NM-EX #	EXHIBIT DESCRIPTION	DOC. DATE	BATES RANGE OR PAGES CITED	AUTHENTICITY
608	United States of America's Responses to New Mexico's First Set of Discovery Requests	03/18/2020	No Bates	Expressly permitted under Fed. R. Civ. P. 56(c)(1)(A).  NM-EX 608 will be authenticated at trial and an admissible form is anticipated.
609	Resume of Herman Settemeyer		Settemeyer Deposition Exhibit 2	NM-EX 609 will be authenticated at trial and an admissible form is anticipated.
610	State of Texas's Supplemental Responses to the State of New Mexico's First Set of Requests for Admissions [RFAs 45 and 46]	10/29/2020	No Bates	Expressly permitted under Fed. R. Civ. P. 56(c)(1)(A).  NM-EX 610 will be authenticated at trial and an admissible form is anticipated.
611	United States' Memorandum in Support of Motion for Summary Judgment 28; <i>State of New Mexico ex rel., New Mexico State Engineer vs. Elephant Butte Irrigation District, et al.</i> , Case No: CV-96-8888/Stream System Issue SS-97-104, Third Judicial District Court, State of New Mexico, County of Dona Ana	04/24/2013	No Bates	Self-authenticating under Fed. R. Evid. 902(8).
612	United States of America's Responses to New Mexico's Discovery Requests [Interrogatories 13 and 14]	11/19/2019	No Bates	Expressly permitted under Fed. R. Civ. P. 56(c)(1)(A).  NM-EX 612 will be authenticated at trial and an admissible form is anticipated.