No. 1

Following an investigation, the Reclamation Service (precursor to the Bureau of Reclamation) (both the Reclamation Service and Bureau of Reclamation are referred to herein as “Reclamation”) recommended that Congress authorize a storage reservoir near Elephant Butte, New Mexico, rather than an alternative site at El Paso, Texas, to capture, store, and regulate torrential and storm water flows in the Upper Rio Grande.

The testimony immediately before the quoted testimony is also relevant for context: Dr. Miltenberger agreed with was the following: “The 1904 irrigation Congress also recommended delivery of water from the Rio Grande, it is well to keep in mind the following facts,” of which the second was: “All of the water that comes down the river is needed for irrigation. We cannot afford to waste any of it.”

Furthermore, the statement, “All of the water that comes down the river is needed for irrigation. We cannot afford to waste any of it.” is incomplete when isolated. It is important to consider the context of the statement.

NO From TX’s 12/22/20 Filings: Subject to the stated objections, undisputed.

Texas’s Response: Subject to the stated objections, undisputed.

Apportionment page 1

1

Apportionment
No. 1

The Reclamation Service (precursor to the Bureau of Reclamation) (both the Reclamation Service and Bureau of Reclamation are referred to herein as “Reclamation”) recommended that Congress authorize a storage reservoir near Elephant Butte, New Mexico, rather than an alternative site at El Paso, Texas, to capture, store, and regulate torrential and storm water flows in the Upper Rio Grande.

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NO From TX’s 12/22/20 Filings: Subject to the stated objections, undisputed.

Texas’s Response: Subject to the stated objections, undisputed.

Apportionment page 1

2

Apportionment
No. 2

At the Twelfth National Irrigation Congress in 1904, Reclamation engineer Benjamin Hall reported that the proposed reservoir at Elephant Butte was preferable to the project proposed near El Paso because it would have a greater storage capacity, would minimize flooding that would render unusable irrigable land in New Mexico, and would impound sufficient water to irrigate 110,000 acres in New Mexico in addition to making deliveries to Mexican and irrigable land in Texas.

The testimony immediately before the quoted testimony is also relevant for context: Dr. Miltenberger agreed with was the following: “The 1904 irrigation Congress also recommended delivery of water from the Rio Grande, it is well to keep in mind the following facts,” of which the second was: “All of the water that comes down the river is needed for irrigation. We cannot afford to waste any of it.”

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NO From TX’s 12/22/20 Filings: Subject to the stated objections, undisputed.

Texas’s Response: Subject to the stated objections, undisputed.

Apportionment page 1

3

Apportionment
No. 3

The Reclamation proposal recommended delivery of water as basinwide water, the Rio Grande, and the Rio Grande Reclamation project was authorized pursuant to the Rio Grande Reclamation Act.

The testimony immediately before the quoted testimony is also relevant for context: Dr. Miltenberger agreed with was the following: “The 1904 irrigation Congress also recommended delivery of water from the proposed project as between the lands in southern New Mexico and in Texas based on the ratio of project lands within each state. The recommendations of the 1904 irrigation Congress were adopted by the secretary of the interior and the Rio Grande Reclamation project was authorized pursuant to the Rio Grande Reclamation Act.”

Furthermore, the statement, “The 1904 irrigation Congress also recommended delivery of water from the proposed project as between the lands in southern New Mexico and in Texas based on the ratio of project lands within each state. The recommendations of the 1904 irrigation Congress were adopted by the secretary of the interior and the Rio Grande Reclamation project was authorized pursuant to the Rio Grande Reclamation Act.” is incomplete when isolated. It is important to consider the context of the statement.

NO From TX’s 12/22/20 Filings: Subject to the stated objections, undisputed.

Texas’s Response: Subject to the stated objections, undisputed.

Apportionment page 1

4

Apportionment
No. 4

The Reclamation proposal recommended delivery of water as basinwide water, the Rio Grande, and the Rio Grande Reclamation project was authorized pursuant to the Rio Grande Reclamation Act.

The testimony immediately before the quoted testimony is also relevant for context: Dr. Miltenberger agreed with was the following: “The 1904 irrigation Congress also recommended delivery of water from the proposed project as between the lands in southern New Mexico and in Texas based on the ratio of project lands within each state. The recommendations of the 1904 irrigation Congress were adopted by the secretary of the interior and the Rio Grande Reclamation project was authorized pursuant to the Rio Grande Reclamation Act.”

Furthermore, the statement, “The 1904 irrigation Congress also recommended delivery of water from the proposed project as between the lands in southern New Mexico and in Texas based on the ratio of project lands within each state. The recommendations of the 1904 irrigation Congress were adopted by the secretary of the interior and the Rio Grande Reclamation project was authorized pursuant to the Rio Grande Reclamation Act.” is incomplete when isolated. It is important to consider the context of the statement.

NO From TX’s 12/22/20 Filings: Subject to the stated objections, undisputed.

Texas’s Response: Subject to the stated objections, undisputed.

Apportionment page 1; Apportionment page 40
## TEXAS'S RESPONSE - Motion for Partial Summary Judgment

### TEXAS'S EVIDENCYARY OBJECTIONS

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The full quotation, read in context, indicates that Commissioner Seth presumed the New Mexico State law was New Mexico's own, authorizing compact negotiations with Colorado. The New Mexico Commissioner wrote to Hannett: The omission of the State of Texas from Chapter 112 of the Session Laws of 1923 makes no provision whatever for according Texas the right of representation on the Commission.” This law was New Mexico’s own, authorizing compact negotiations with Colorado. The New Mexico Commissioner wrote to Hannett: “the omission of the State of Texas from Chapter 112 of the Session laws of 1923 can be accounted for only on the theory that the Legislature assumed that the only lands in Texas that would be affected by any compact or agreement are those lying above Fort Quitman and within the Rio Grande Project of the United States Reclamation Service and that all rights to the waters of the Rio Grande held by those lands would be protected by the Reclamation Service. The full quotation, read in context, indicates that Commissioner Seth presumed the New Mexico State Legislature believed that Reclamation would safeguard Texas’s Project water supply. Miltenberger Decl. in Opp. to NM at TX_MSJ_007717, paragraphs 1 – 7, 17.

New Mexico's Stated "Fact"

Subject to the stated objection, the fact is cited in New Mexico's Response to Texas's Motion for Partial Summary Judgment but does not materially respond to facts stated therein. There is nothing in the cited evidence that the production of these reports necessarily constituted “accept[ance] and agree[ment]” by the “downstream water users in both New Mexico and Texas . . . that MRGCD development would better regulate flows into the Elephant Butte Reservoir as well as augment volumes.” New Mexico’s stated fact is non-responsive and otherwise not supported by definite, competent, or significantly probative evidence that genuinely and materially responds to a fact stated in Texas’s Motion for Partial Summary Judgment. As such, Texas’s stated material facts remain undisputed. Fed. R. Civ. P. 56(e), 56(f)(3), (4).

The assumption expressed was not Texas’s. In his February 20, 1925 letter to Governor A.T. Hannett in February 1925, New Mexico Compact Commissioner J.O. Seth noted that “Chapter 112 of the Session Laws of 1923 makes no provision whatever for according Texas the right of representation on the Commission.” This law was New Mexico’s own, authorizing compact negotiations with Colorado. The New Mexico Commissioner wrote to Hannett: “the omission of the State of Texas from Chapter 112 of the Session laws of 1923 can be accounted for only on the theory that the Legislature assumed that the only lands in Texas that would be affected by any compact or agreement are those lying above Fort Quitman and within the Rio Grande Project of the United States Reclamation Service and that all rights to the waters of the Rio Grande held by those lands would be protected by the Reclamation Service. The full quotation, read in context, indicates that Commissioner Seth presumed the New Mexico State Legislature believed that Reclamation would safeguard Texas’s Project water supply. Miltenberger Decl. in Opp. to NM at TX_MSJ_007717, paragraphs 1 – 7, 17.

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23

Apportionment No. 18

The proposed comprehensive study became the Rio Grande Joint Investigation Report ("RGJI"). According to the authors, the "prime purpose of the investigation was "to determine the basic facts needed in arriving at an accord among the states 'on an allocation and use of Rio Grande waters in the future development of the upper basin.'"


Yes. See NM Response to TX at: page 7

From TX's 12/22/20 Filings: Subject to the stated objection, undisputed.

Apportionment page 4

24

Apportionment No. 19

The category of required information was accurate data concerning existing diversions, including those of the Project. The Joint Investigation Report collected available data to prepare and present a project-apportionative analysis of actual diversions, including diversions between Elephant Butte Reservoir and Fort Quitman, Texas, for the period 1930-36. The Joint Investigation Report also catalogued Project Acreage, including lands for "Cities, Towns, and Villages."


Yes. See NM Response to TX at: page 6, 7

From TX's 12/22/20 Filings: Subject to the stated objections, undisputed. The cited evidence does not support the stated fact in whole and/or in part. Fed. R. Civ. P. 56(c).

From TX's 12/22/20 Filings: Subject to the stated objections, undisputed. As such.

Apportionment page 4

N/A

25

N/A

Texas objected to any rigorous groundwater investigation below Elephant Butte Reservoir as part of the RGJI.


NO

NM-EX-113: See General Objection ¶7, Fed. R. Evid. 801(c), hearsay.

New Mexico's stated fact, and supporting evidence, are not cited in New Mexico's Response to Texas's Motion for Partial Summary Judgment and are therefore non-responsive and irrelevant. As such, Texas's stated material facts remain undisputed. Fed. R. Civ. P. 56(a), 56(c)(1).

N/A

25

N/A

Texas took the position that significant groundwater investigation was unnecessary because "groundwater supplies along the Rio Grande are of little importance in relation to the total supply."


NO

NM-EX-113: See General Objection ¶7, Fed. R. Evid. 801(c), hearsay.

New Mexico's stated fact, and supporting evidence, are not cited in New Mexico's Response to Texas's Motion for Partial Summary Judgment and are therefore non-responsive and irrelevant. As such, Texas's stated material facts remain undisputed. Fed. R. Civ. P. 56(a), 56(c)(1).

N/A

25

N/A

As such, the Rio Grande Joint Investigation involved little study of groundwater resources below Elephant Butte Reservoir and drew no conclusions regarding groundwater below Elephant Butte.


NO

NM-EX-112: See General Objection ¶7, Fed. R. Evid. 801(c), hearsay.

New Mexico's stated fact, and supporting evidence, are not cited in New Mexico's Response to Texas's Motion for Partial Summary Judgment and are therefore non-responsive and irrelevant. As such, Texas's stated material facts remain undisputed. Fed. R. Civ. P. 56(a), 56(c)(1).

N/A

25

N/A

What little treatment the RGJI report does devote to groundwater below Elephant Butte is concerned with whether the drains were sufficient to lower the water table and prevent seeped lands.


NO

NM-EX-112: See General Objection ¶7, Fed. R. Evid. 801(c), hearsay.

New Mexico's stated fact, and supporting evidence, are not cited in New Mexico's Response to Texas's Motion for Partial Summary Judgment and are therefore non-responsive and irrelevant. As such, Texas's stated material facts remain undisputed. Fed. R. Civ. P. 56(a), 56(c)(1).

N/A

25

N/A

The RGJI found that return flows were an important part of the water supply. The report states that total measured return flows was 30 percent of the average of total net diversions in the same period.


N/A

N/A

N/A

26

No means that the amount of total annual drain flow, throughout the Project and throughout the calendar year, is equal to approximately 50% of the amount of water diverted at Project headings.

NM-EX-100, Barrett Rep. at ¶ 45; App. C, ¶ 40; see also NM-EX-006, Barrett 2d Decl. at ¶ 48.

Yes. See NM Response to TX at: page 16, 58

NM-EX-100: See General Objection ¶7, Fed. R. Evid. 801(c), hearsay.

The fact is cited in New Mexico's Response to Texas's Motion for Partial Summary Judgment but does not materially respond to facts stated therein. The cited supporting evidence regarding Project drain flow does not address specific facts alleged in Texas's Motion for Partial Summary Judgment. New Mexico's stated fact is non-responsive and otherwise not supported by definite, competent, or significantly probative evidence that genuinely and materially responds to a fact stated in Texas's Motion for Partial Summary Judgment. As such, Texas's stated material facts remain undisputed. Fed. R. Civ. P. 56(a), 56(c)(1).

N/A

N/A

N/A
27 Apportionment No. 20
In entering negotiations, New Mexico stressed that in the event of a dispute, the final compact needed to provide that “[e]xisting rights to the use of water in the Rio Grande Basin in New Mexico shall be recognized as having the right to an adequate supply of water from said river system.” This position was important to New Mexico, in part, because the surface water in the Lower Rio Grande in New Mexico was fully appropriated and New Mexico expected the final compact to protect those existing rights.

Yes. See NM Response to TX at: page 6, 7
- From TX's 12/22/20 Filings:
  - NM-EX-111: See General Objection ¶7, Fed. R. Evid. 801(c) hearsay.
  - NM-EX-112: See General Objection ¶7, Fed. R. Evid. 801(c) hearsay.
  - NM-EX-111: See General Objections ¶7, Fed. R. Evid. 801(c) hearsay.
- From TX's 12/22/20 Filings:
  - Subject to the stated objections, undisputed.

28 N.A
With regard to water use before Elephant Butte, New Mexico's negotiation position sought to protect the Project as a unit, ensuring that it received a stable supply necessary to water all of the lands within the New Mexico portion of the Project, while simultaneously ensuring that the reservoir's opening-“normal release” figure was not higher than was fair for the State's upstream users.


Yes. See NM Response to TX at: page 6
- From TX's 12/22/20 Filings:
  - NM-EX-111: See General Objection ¶7, Fed. R. Evid. 801(c) hearsay.
- From TX's 12/22/20 Filings:
  - Subject to the stated objections, undisputed.

29 Apportionment No. 21
The Engineer Advisors for the three states used the [RGDC] to prepare a Report of Committee of Engineers to the Rio Grande Compact Commissions, dated December 27, 1937. The express “general purpose” of this report was to recommend apportionment among three divisions of the Rio Grande—the Middle Rio Grande from Lobato to Elephant Butte Reservoir, and the Project from Elephant Butte Reservoir to Fort Quitman, Texas—according to a “general policy” that “present uses of water of each of the three States must be protected in formulation of the Compact.”


Yes. See NM Response to TX at: page 6
- From TX's 12/22/20 Filings:
  - NM-EX-111: See General Objection ¶7, Fed. R. Evid. 801(c) hearsay.
  - NM-EX-112: See General Objection ¶7, Fed. R. Evid. 801(c) hearsay.
  - NM-EX-111: See General Objections ¶7, Fed. R. Evid. 801(c) hearsay.
- From TX's 12/22/20 Filings:
  - Subject to the stated objections, undisputed.

30 Apportionment No. 22
The Committee of Engineers initially recommended a “normal release” from Elephant Butte Reservoir of 800,000 acre-feet per annum.


No
- From TX's 12/22/20 Filings:
  - NM-EX-112: See General Objection ¶7, Fed. R. Evid. 801(c) hearsay.
- From TX's 12/22/20 Filings:
  - Subject to the stated objection, unduplicated.

Identification of where NM cited the fact/evidence in its Opposition to US
- N/A
- From TX's 12/22/20 Filings:
  - Subject to the stated objections, unduplicated.
TEXAS'S RESPONSE

31 Apportionment No. 23

Following negotiations, the Committee of Engineers revised its recommendation to provide for a normal release from the Reservoir of 790,000 acre-feet per year to meet the irrigation demands of Project lands in New Mexico and Texas and to make the 1906 treaty delivery to Mexico.


From EX-12/22/20 Filings: Yes.  See NM Response to TX at: page 14-19

From TX's 12/22/20 Filings: Subject to the stated objections, undisputed. This paragraph is misleading in that the source documents provide additional factual context that New Mexico excluded. The facts presented in this paragraph are incomplete and assert an incomplete understanding of the reasons for the revision. The Committee of Engineers (or Engineering Advisors) revised the normal release figure downward from 800,000 acre-feet to 790,000 acre-feet only after protests made by the Middle Rio Grande Conservancy District’s consulting engineer H.C. Neuffer. New Mexico State Engineer and Compact Commissioner Thomas McClure supported Neuffer, even though McClure’s engineering advisor John Bliss had accepted the 800,000 acre-feet figure for which Texas had advocated and which the Committee of Engineers had recommended in December 1937. Miltenberger Declaration paragraphs 35-38 discuss this change.

From TX's 12/22/20 Filings: Subject to the stated objection, undisputed.

32 Apportionment No. 24

On March 18, 1938, the members of the Rio Grande Compact (“RGC”) enacted the final Rio Grande Compact. Congreso gave its approval to the Rio Grande Compact on May 31, 1939.


From EX-12/22/20 Filings: NO The RGC’s stated fact, and supporting evidence, are not cited in New Mexico’s Response to Texas’s Motion for Partial Summary Judgment and are therefore non-responsive and irrelevant. As such, New Mexico’s stated fact, and supporting evidence, are not cited in New Mexico’s Response to Texas’s Motion for Partial Summary Judgment and are therefore non-responsive and irrelevant. As such, Texas’s stated material facts remain undisputed. Fed. R. Civ. P. 56(f)(2).

From TX’s 12/22/20 Filings: YES The Committee of Engineers advocated and which the Committee of Engineers had recommended in December 1937. Miltenberger Declaration paragraphs 35-38 discuss this change. TX_MSJ_003565.

From TX’s 12/22/20 Filings: Undisputed.

33 N/A

The historical record contains no evidence that the negotiations expressly addressed groundwater development.


From EX-12/22/20 Filings: NO New Mexico’s stated fact, and supporting evidence, are not cited in New Mexico’s Response to Texas’s Motion for Partial Summary Judgment and are therefore non-responsive and irrelevant. As such, Texas’s stated material facts remain undisputed. Fed. R. Civ. P. 56(f)(2).

From TX’s 12/22/20 Filings: Yes.  See NM Response to TX at: page 11

34 Apportionment No. 25

The preamble of the Rio Grande Compact of 1933 (“Rio Grande Compact” or “Compact”) states: “The State of Colorado, the State of New Mexico, and the State of Texas, desiring to remove all causes of present and future controversy among these States and between citizens of one of these States and citizens of another State with respect to the use of the waters of the Rio Grande above Fort Quitman, Texas, and being moved by considerations of interstate harmony, and for the purpose of effectuating an equitable apportionment of such waters, have resolved to conclude a Compact for the attainment of these purposes...”

NM-EX 130, Compact.

From EX-12/22/20 Filings: Disputed only as follows: “1933,” as set forth in the first sentence, is understood by Texas to be “1938.”

From TX’s 12/22/20 Filings: YES The Committee of Engineers advocated and which the Committee of Engineers had recommended in December 1937. Miltenberger Declaration paragraphs 35-38 discuss this change. TX_MSJ_003565.

From TX’s 12/22/20 Filings: Undisputed.

From EX-12/22/20 Filings: YES The Committee of Engineers advocated and which the Committee of Engineers had recommended in December 1937. Miltenberger Declaration paragraphs 35-38 discuss this change. TX_MSJ_003565.

35 N/A

Article I(c) of the Compact defines the term “Rio Grande Basin” to mean “all of the territory drained by the Rio Grande and its tributaries in Colorado, in New Mexico, and in Texas above Fort Quitman, including the Cloudless Basin in Colorado.”

NM-EX 130, Compact at Art. I(c). See NM-EX 009, Lopez 2nd Dcl. at ¶ 5.

From EX-12/22/20 Filings: NO New Mexico’s stated fact, and supporting evidence, are not cited in New Mexico’s Response to Texas’s Motion for Partial Summary Judgment and are therefore non-responsive and irrelevant. As such, Texas’s stated material facts remain undisputed. Fed. R. Civ. P. 56(f)(2).

From TX’s 12/22/20 Filings: Undisputed.

36 Apportionment No. 26; similar language in Full Supply No. 6

Article I, Paragraph 4(b) of the Compact defines: “Project Indicated” as “the combined capacity of Elephant Butte Reservoir and all other reservoirs actually available for the storage of usable water below Elephant Butte and above the first diversion to lands of the Rio Grande project, but not more than a total of 2,658,880 acre-feet.”

NM-EX 130, Compact at Art. I(c).

From EX-12/22/20 Filings: NO Texas’s stated fact, and supporting evidence, are not cited in New Mexico’s Response to Texas’s Motion for Partial Summary Judgment and are therefore non-responsive and irrelevant. As such, Texas’s stated material facts remain undisputed. Fed. R. Civ. P. 56(f)(2).

From TX’s 12/22/20 Filings: Undisputed.

From EX-12/22/20 Filings: NO Texas’s stated fact, and supporting evidence, are not cited in New Mexico’s Response to Texas’s Motion for Partial Summary Judgment and are therefore non-responsive and irrelevant. As such, Texas’s stated material facts remain undisputed. Fed. R. Civ. P. 56(f)(2).

From TX’s 12/22/20 Filings: Undisputed.
<table>
<thead>
<tr>
<th>Article</th>
<th>Paragraph</th>
<th>NM's Stated &quot;Fact&quot;</th>
<th>New Mexico's Supporting Evidence</th>
<th>Did NM Cite to the FACT/EVIDENCE IN TEX 12/22/20 RESPONSE TO THE TEXAS MOTION FOR PARTIAL SUMMARY JUDGMENT?</th>
<th>TEXAS'S EVIDENTIARY OBJECTIONS</th>
<th>TEXAS'S RESPONSE</th>
<th>Identification of where NM cited the fact/evidence in its 11/5/20 Motions</th>
<th>Identification of where NM cited to the fact/evidence in its Response to the TX Motion for Partial Summary Judgment</th>
</tr>
</thead>
<tbody>
<tr>
<td>37 Apportionment No. 27</td>
<td>The limit on Project Storage within the Compact accords with what was considered the maximum capacity of Elephant Butte Reservoir.</td>
<td>See NM-EX 107, Lopez Rep. at 15.</td>
<td>Yes. See NM Response to TX at: - page 56, 57</td>
<td>Yes. See NM Response to TX at: - page 56, 57</td>
<td>From TX’s 12/22/20 Filings: NM-EX 107; See General Objections ¶7; General Objection 62, Fed. R. Evid. 801(c), hearsay. The cited evidence does not support the stated “fact” in whole and/or in part. Fed. R. Civ. P. 56(c).</td>
<td>From TX’s 12/22/20 Filings: Subject to the stated objections, disputed. The Expert Report of Estevan R. Lopez, P.E. at the page cited in this paragraph, page 15, provides no evidence that the figure given for “Project Storage within the Compact” was considered the “maximum capacity of Elephant Butte Reservoir.” NM-EX 107. Miltenberger Decl. in Opp. to NM at TX_MSJ_007371, paragraphs 1 – 7, 19.</td>
<td>Apportionment page 5</td>
<td>N/A</td>
</tr>
<tr>
<td>38 Apportionment No. 28; similar language in Full Supply No. 6</td>
<td>The Compact contemplate that usable water will be released from storage to meet irrigation demands. Article I, Paragraph (f) of the Compact defines “Usable Water” as “all water, exclusive of credit water, which is in project storage and which is available for release in accordance with irrigation demands, including deliveries to Mexico.”</td>
<td>NM-EX 330, Compact at Art. II; NM-EX 107, Lopez Rep. at 16.</td>
<td>Yes. See NM Response to TX at: - page 13, 56</td>
<td>Yes. See NM Response to TX at: - page 13, 56</td>
<td>From TX’s 12/22/20 Filings: Subject to the stated objections, undisputed.</td>
<td>From TX’s 12/22/20 Filings: Subject to the stated objections, undisputed.</td>
<td>Apportionment page 5; Full Supply page 3</td>
<td>N/A</td>
</tr>
<tr>
<td>39 Apportionment No. 29</td>
<td>Article I, Paragraph (g) of the Compact defines “Actual Release” as “the amount of usable water released in any calendar year from the lowest reservoir comprising project storage.”</td>
<td>NM-EX 330, Compact at Art. I(g).</td>
<td>Yes. See NM Response to TX at: - page 56</td>
<td>Yes. See NM Response to TX at: - page 56</td>
<td>From TX’s 12/22/20 Filings: Undisputed.</td>
<td>From TX’s 12/22/20 Filings: Undisputed.</td>
<td>Apportionment page 6</td>
<td>N/A</td>
</tr>
<tr>
<td>40 Apportionment No. 30</td>
<td>Article I, Paragraph (i) of the Compact defines “Actual Spill” as “all water which is actually spilled from Elephant Butte Reservoir, or is released thereafter for flood control, in excess of the current demand on project storage and which does not become usable water by storage in another reservoir; provided, that actual spill of usable water cannot occur until all credit water shall have been spilled.”</td>
<td>NM-EX 330, Compact at Art. I(p).</td>
<td>Yes. See NM Response to TX at: - page 56</td>
<td>Yes. See NM Response to TX at: - page 56</td>
<td>From TX’s 12/22/20 Filings: Undisputed.</td>
<td>From TX’s 12/22/20 Filings: Undisputed.</td>
<td>Apportionment page 6</td>
<td>N/A</td>
</tr>
<tr>
<td>41 Apportionment No. 31</td>
<td>Article I, Paragraph (j) of the Compact defines: “Hypothetical Spill” as “the time in any year at which usable water would have spilled from project storage if 790,000 acre-feet has been released thereafter at rates proportion to the actual release in every year from the starting date to the end of the year in which hypothetical spill occurs.”</td>
<td>NM-EX 330, Compact at Art. I(j).</td>
<td>Yes. See NM Response to TX at: - page 56</td>
<td>Yes. See NM Response to TX at: - page 56</td>
<td>From TX’s 12/22/20 Filings: Undisputed.</td>
<td>From TX’s 12/22/20 Filings: Undisputed.</td>
<td>Apportionment page 6</td>
<td>N/A</td>
</tr>
<tr>
<td>42 Apportionment No. 32</td>
<td>Article II of the Compact specifies that stream gauging stations be established at specific locations in the Rio Grande Basin for the purposes of Compact accounting. The lowest required stream gauge under Article II is just below Caballo Reservoir.</td>
<td>See NM-EX 330, Compact at Art. II; NM-EX 107, Lopez Rep. at 18. See also NM-EX 008, Lopez 2d Decl. at ¶ 5.</td>
<td>Yes. See NM Response to TX at: - page 56</td>
<td>Yes. See NM Response to TX at: - page 56</td>
<td>From TX’s 12/22/20 Filings: NM-EX 107; See General Objections ¶7; General Objection 62, Fed. R. Evid. 801(c), hearsay. The statement includes impermissible legal conclusions. The cited evidence does not support the stated “fact” in whole and/or in part. Fed. R. Civ. P. 56(c).</td>
<td>From TX’s 12/22/20 Filings: Subject to the stated objections, disputed. The statement mischaracterizes Article II of the Compact. Article II does not include the following language: 1. “For the purposes of Compact accounting.”2. “The lowest required stream gauge under Article II is just below Caballo Reservoir.” Miltenberger Decl. in Opp. to NM at TX_MSJ_007371, paragraphs 1 – 7, 19.</td>
<td>Apportionment page 6; Apportionment page 32</td>
<td>N/A</td>
</tr>
<tr>
<td>43 N/A</td>
<td>Article III of the Compact specifies two delivery schedules for Colorado: one for the Conejos River and one for the Rio Grande exclusive of the Conejos River.</td>
<td>NM-EX 330, Compact at Art. III; see also NM-EX 008, Lopez 2d Decl. at ¶ 5.</td>
<td>Yes. See NM Response to TX at: - page 56</td>
<td>Yes. See NM Response to TX at: - page 56</td>
<td>NM-EX 330: The Compact provision does not constitute factual evidence as contemplated by Fed. R. Civ. P. 56(c).</td>
<td>Subject to the stated objection, undisputed.</td>
<td>N/A</td>
<td>N/A</td>
</tr>
</tbody>
</table>
Texas's Response

Apportionment

The Compact separately defines "Annual Debits," "Annual Credits," "Accrued Debits," and "Accrued Credits." Article VI of the Compact defines procedures to determine the annual credits and debits for Colorado and New Mexico. Of note, Article VI permits Colorado and New Mexico to authorize releases of Credit Water and New Mexico to authorize releases of Credit Water becomes Usable Water and is available for use on lands in both New Mexico and Texas.

In 1948, the RGCC changed New Mexico's delivery schedule under Article IV of the Compact to require deliveries at Elephant Butte Reservoir, rather than San Marcial, and removed the Article II gaging stations at San Marcial and San Acacia.

The cited evidence does not support the stated "facts" in whole and/or in part. Fed. R. Evid. 801(c), hearsay. The cited evidence does not support the stated "facts" in whole and/or in part. Fed. R. Evid. 801(c), hearsay. The cited evidence does not support the stated "facts" in whole and/or in part. Fed. R. Evid. 801(c), hearsay.

Subject to the stated objections, undisputed.

Subject to the stated objections, undisputed.

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Subject to the stated objections, undisputed.

Subject to the stated objections, undisputed.

Subject to the stated objections, undisputed.
Texas's Response to the State of New Mexico's Consolidated Statement

Apportionment

If Texas agrees to New Mexico's or Colorado's offer to relinquish Credit Water, the state that has so relinquished has a right to store a like amount of water in the upstream post-1929 reservoirs. Texas has sole authority to accept relinquishment of Acreage Credit. However, neither Colorado nor New Mexico is obligated to offer such relinquishment. In other words, Texas cannot compel such relinquishment.

See NM-EX-330, Compact at Art. VII; NM-EX-008, Lopez 2d Decl. at ¶¶ 14, 15; NM-EX-107, Lopez Rep. at 23.

Yes. See NM Response to TX Motion for Partial Summary Judgment at page 56.

From TX's 12/22/20 Filing: NM-EX-329; See General Objection #5; Texas's Reply to Exceptions to First Interim Report of Special Master, 40 (July 28, 2017); see also: First Interim Report of the Special Master, 146-05 (Feb. 9, 2017); Texas's Reply to Exceptions to First Interim Report of Special Master, 40 (July 28, 2017); Reply Brief for the United States on Exceptions by the States of New Mexico and Colorado to the First Interim Report of the Special Master, 14 (July 2017); Language in a legal brief prepared by the party's attorneys supporting a motion that is not based on evidence, does not constitute factual "evidence" as contemplated by Fed. R. Civ. P. 56(c).

The pleadings discussed by New Mexico here are not supported by evidence and, as such, are inadmissible and irrelevant for purposes of summary judgment. Fed. R. Civ. P. 56(c); Fed. R. Evid. 401. The cited evidence does not support the stated "facts" in whole and in part. Fed. R. Civ. P. 56(c).

Subject to the stated objections, the fact is cited in New Mexico's Response to Texas's Motion for Partial Summary Judgment but does not materially respond to facts stated therein. The stated fact and supporting evidence merely include New Mexico and Mr. Lopez's opinion on the meaning of Compact terms. New Mexico's stated fact is non-responsive and otherwise not supported by definite, competent, or significantly probative evidence that genuinely and materially responds to a fact stated in Texas's Motion for Partial Summary Judgment. As such, Texas's stated material facts remain undisputed. Fed. R. Civ. P. 56(a), 56(f)(1), (2), (4).

No. See NM Response to TX Motion for Partial Summary Judgment at page 56.

Identification of where NM cited the fact/evidence in its Motion for Partial Summary Judgment

By page

Texas's Evidence/Objections

See NM-EX-330, Compact at Art. VIII; see also NM-EX-529, Bureau of Reclamation, Continued Implementation of the 2008 Operating Agreement for the Rio Grande Project, New Mexico and Texas: Final Environmental Impact Statement, at 17 (Sept. 30, 2016) (describing a full allocation release to be 790,000 acre-feet per year as provided in the Compact).

Yes. See NM Response to TX Motion for Partial Summary Judgment at page 56.

From TX's 12/22/20 Filing: NM-EX-008, NM-EX-107; See General Objection #7; General Objection #2; Fed. R. Evid. 801(c), hearsay. The cited evidence does not support the stated "facts" in whole and in part. Fed. R. Civ. P. 56(c); Fed. R. Evid. 704; The statement includes impermissible legal conclusions.

Subject to the stated objections, the fact is cited in New Mexico's Response to Texas's Motion for Partial Summary Judgment but does not materially respond to facts stated therein. The stated fact and supporting evidence merely include New Mexico and Mr. Lopez's opinion on the meaning of Compact terms. New Mexico's stated fact is non-responsive and otherwise not supported by definite, competent, or significantly probative evidence that genuinely and materially responds to a fact stated in Texas's Motion for Partial Summary Judgment. As such, Texas's stated material facts remain undisputed. Fed. R. Civ. P. 56(a), 56(f)(1), (2), (4).

No. See NM Response to TX Motion for Partial Summary Judgment at page 56.

Identification of where NM cited the fact/evidence in its Motion for Partial Summary Judgment

By page

Texas's Response

The text and structure of the Compact indicate that the Project, Compact, and Drought Contingency Contracts are inextricably intertwined. The Compact incorporates the definitions of Project Storage into a number of provisions.

See NM-EX-330, Compact, Articles III(c)(5), VI, VII, and VIII; NM-EX-008, Lopez 2d Decl. at ¶ 14; NM-EX-107, Lopez Rep. at 15-25.

Yes. See NM Response to TX Motion for Partial Summary Judgment at page 56.

NM-EX-107; See General Objection #7; General Objection #2; Fed. R. Evid. 801(c), hearsay. The cited evidence does not support the stated "facts" in whole and in part. Fed. R. Civ. P. 56(c); Fed. R. Evid. 704. The statement includes impermissible legal conclusions.

Subject to the stated objections, the fact is cited in New Mexico's Response to Texas's Motion for Partial Summary Judgment but does not materially respond to facts stated therein. The stated fact and supporting evidence merely include New Mexico and Mr. Lopez's opinion on the meaning of Compact terms. New Mexico's stated fact is non-responsive and otherwise not supported by definite, competent, or significantly probative evidence that genuinely and materially responds to a fact stated in Texas's Motion for Partial Summary Judgment. As such, Texas's stated material facts remain undisputed. Fed. R. Civ. P. 56(a), 56(f)(1), (2), (4).

No. See NM Response to TX Motion for Partial Summary Judgment at page 56.
TEXAS'S RESPONSE

54 N/A

an intent to protect the Project is evident in the delivery obligations in Articles III and IV. Those constraints primarily benefit the Project. The schedules in Articles III and IV of the Compact were derived from streamflow data that was available in 1938. This assured that issuing was as of 1938 in Colorado, in New Mexico above Elephant Butte Reservoir and in the Rio Grande Project area below Elephant Butte were all protected while allowing Compact operation in variable hydrology. Further, both Colorado and New Mexico were allowed to develop additional water resources after 1938 subject to certain constraints that are specified in Articles V, VII and VIII. Notably, those constraints do not preclude additional developments but do constrain operations of post-1938 upstream reservoirs depending on the conditions at Elephant Butte Reservoir. To the extent that Articles project Supply during relatively dry periods, those protections benefit New Mexico below Elephant Butte, Texas, and Mexico.

Yes. See NM Response to TX - page 56

55 N/A

In its protection of preexisting uses as of 1938, the Compact protects certain pre-Compact rights in New Mexico that are not part of the Project.

See NM-EX 008, Lopez 2d Decl. at ¶ 50; NM-EX 237, Rule 50(b)(5) (Dep. of the State of New Mexico); and through Lopez (Sept. 18, 2020) at 81-83:15-16.

Yes. See NM Response to TX - page 6, 56

56 N/A

There is not any indication in the Compact that the stated intended to adopt a 1938 Condition. First, the plain text of the Compact does not refer to any 1938 Conditions, in contrast to other Compact Articles such as the Peace River Compact, NMDA 1978 ¶ 72-15-19 (1947). Second, the Downstream Contracts similarly do not refer to any 1938 Conditions. Third, the Downstream Contracts do not define a total volume of water to which the Districts are entitled.

See NM-EX 008, Lopez 2d Decl. at ¶ 24-25; see also NM-EX 012, Sullivan Decl. at ¶ 12; Lopez Rep. at ¶ 20-27, 41-43; NM-EX 108, Lopez Rep. at 6-9.

Yes. See NM Response to TX - page 46, 41, 50, 58

57 N/A

In effect, Article IV deliveries are delivered into the Project as a whole and benefit New Mexico, Texas, and Mexico. Nothing in Article IV indicates that the Compact was in Texas control, dominion, or ownership in the water delivered into Elephant Butte Reservoir. Rather, the Compact provides that New Mexico and Texas may each share in releases of "Usable Water," after satisfying the delivery to Mexico pursuant to the 1938 Treaty, to meet irrigation demands in accord with the ordinary operation of the Project and the Downstream Contracts.

See NM-EX 008, Lopez 2d Decl. at ¶ 12, 17, 40; NM-EX 107, Lopez Rep. at ¶ 20-22, 26-27; see also NM-EX 012, Sullivan Decl. at ¶ 12 (describing a number of reasons why portions of the water delivered into Elephant Butte Reservoir cannot be delivered to Texas).

Yes. See NM Response to TX - page 13, 18, 19, 56

58 N/A

Although the drafter certainly could have done so, the Compact does not define a specific delivery to the New Mexico-Texas State line. Rather, deliveries to Texas and its apportionment are effeected through the operation of the Rio Grande Project as a single unit that makes Project Supply available equally (i.e., on an acre-foot per acre-foot basis) to all authorized Project lands, whether in New Mexico or in Texas.

See NM-EX 008, Lopez 2d Decl. at ¶ 7, 24; see also NM-EX 330, Compact; NM-EX 107, Lopez Rep. at ¶ 19-22, 26-27; NM-EX 108, Lopez Rep. at 6-9; Apps. 1.

Yes. See NM Response to TX - page 13, 18, 19, 56

Subject to the stated objections, the fact is cited in New Mexico's Response to Texas Motion for Partial Summary Judgment but does not materially respond to facts stated therein. The stated fact and evidence cited in support are used to support New Mexico's argument that pumping in Texas impacts "New Mexico's appurtenance" (see NM Response at 56). Such an argument may address New Mexico's counterclaims against Texas, but does not address Texas's Motion for Partial Summary Judgment. New Mexico's stated fact and supporting evidence are non-responsive and otherwise not supported by definite, competent, or significantly probative evidence that genuinely and materially responds to a fact stated in Texas's Motion for Partial Summary Judgment. As such, Texas's stated material facts remain undisputed. Fed. R. Civ. P. 56(a), 56(e)(3).

NA

Yes. See NM Response to TX - page 28

Subject to the stated objections, the fact is cited in New Mexico's Response to Texas Motion for Partial Summary Judgment but does not materially respond to facts stated therein. The stated fact and evidence cited in support are used to support New Mexico's argument that pumping in Texas impacts "New Mexico's appurtenance" (see NM Response at 56). Such an argument may address New Mexico's counterclaims against Texas, but does not address Texas's Motion for Partial Summary Judgment. New Mexico's stated fact and supporting evidence are non-responsive and otherwise not supported by definite, competent, or significantly probative evidence that genuinely and materially responds to a fact stated in Texas's Motion for Partial Summary Judgment. As such, Texas's stated material facts remain undisputed. Fed. R. Civ. P. 56(a), 56(e)(3).

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Subject to the stated objections, the fact is cited in New Mexico's Response to Texas Motion for Partial Summary Judgment but does not materially respond to facts stated therein. The stated fact and evidence cited in support are used to support New Mexico's argument that pumping in Texas impacts "New Mexico's appurtenance" (see NM Response at 56). Such an argument may address New Mexico's counterclaims against Texas, but does not address Texas's Motion for Partial Summary Judgment. New Mexico's stated fact and supporting evidence are non-responsive and otherwise not supported by definite, competent, or significantly probative evidence that genuinely and materially responds to a fact stated in Texas's Motion for Partial Summary Judgment. As such, Texas's stated material facts remain undisputed. Fed. R. Civ. P. 56(a), 56(e)(3).

NA

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NA

See NM-EX 008, Lopez 2d Decl. at ¶ 14; see also NM-EX 330, Compact; NM-EX 107, Lopez Rep. at ¶ 19-22, 26-27; NM-EX 108, Lopez Rep. at 6-9; Apps. 1.
59  N/A  The absence of gages downstream of the Caballo Reservoir gives in Article II of the Compact also indicates that the comparing States had no intention to guarantee a specific state-line delivery to Texas. Texas has not requested any gages “necessary … for the carrying out of the [C]ompact” near the state line. See NM-EX-008, Lopez 2d Decl. at 5-6.

Yes.  See NM Response to TX at:  
- page 13, 18, 19, 56

NM-EX-008; See General Observation 02- Pad. R. Evid. 801(c), hearsay. The cited evidence does not support the stated “facts” in whole and/or in part. Fed. R. Civ. P. 56(c); Fed. R. Evid. 704. The statement includes impermissible legal conclusions.

Subject to the stated objections, the fact is cited in New Mexico’s Response to Texas’ Motion for Partial Summary Judgment but does not materially respond to facts stated therein. New Mexico’s stated fact discusses the Compact terms relating to New Mexico’s required delivery of water to Texas. New Mexico’s stated fact amount does not amounts to New Mexico and Mr. Lopez’s legal opinion regarding the meaning of Compact terms. New Mexico’s stated fact is non-responsive and otherwise not supported by definite, competent, or significantly probative evidence that genuinely and materially responds to a fact stated in Texas’s Motion for Partial Summary Judgment. As such, Texas’s stated material facts remain undisputed. Fed. R. Civ. P. 56(c), 56(f)(3), (4).

60  N/A  The diversion of rights under Article VII of the Compact, whereby only New Mexico and Colorado may offer reimbursement of water credit and only Texas may accept that reimbursement, reflects three practical concerns: (1) Texas’s sole apportionment under the Compact is entirely below Elephant Butte; (2) Texas is the only Compact party that cannot accrue Credits under the Compact that it could store at Elephant Butte; and (3) Texas cannot use Elephant Butte within which it could store water.

See NM-EX-008, Lopez 2d Decl. at 15; NM-EX-107, Lopez Rep. at 23.

Yes.  See NM Response to TX at:  
- page 22, 56

NM-EX-008, 107; See General Observation 02- Pad. R. Evid. 801(c), hearsay. The cited evidence does not support the stated “facts” in whole and/or in part. Fed. R. Civ. P. 56(c); Fed. R. Evid. 704. The statement includes impermissible legal conclusions.

Subject to the stated objections, the fact is cited in New Mexico’s Response to Texas’ Motion for Partial Summary Judgment but does not materially respond to facts stated therein. Texas’s Motion for Partial Summary Judgment discusses the Compact terms relating to New Mexico’s required delivery of water to Texas. New Mexico’s stated fact however amounts to New Mexico and Mr. Lopez’s legal opinion regarding the meaning of Compact terms. New Mexico’s stated fact is non-responsive and otherwise not supported by definite, competent, or significantly probative evidence that genuinely and materially responds to a fact stated in Texas’s Motion for Partial Summary Judgment. As such, Texas’s stated material facts remain undisputed. Fed. R. Civ. P. 56(c), 56(f)(3), (4).

61  N/A  Article VIII of the Compact reflects New Mexico’s apportionment interest below Elephant Butte Reservoir because it permits New Mexico, independent of Texas, to demand of Colorado a release of water intended to increase Usable Water in Project Storage.

See NM-EX-008, Lopez Decl. at 5 (citing also NM-EX-130, Compact at Art. VIII, NM-EX-107, Lopez Rep. at 24-27).

Yes.  See NM Response to TX at:  
- page 56

NM-EX-008, 107; See General Observation 02- Pad. R. Evid. 801(c), hearsay. The cited evidence does not support the stated “facts” in whole and/or in part. Fed. R. Civ. P. 56(c); Fed. R. Evid. 704. The statement includes impermissible legal conclusions.

Subject to the stated objections, the fact is cited in New Mexico’s Response to Texas’ Motion for Partial Summary Judgment but does not materially respond to facts stated therein. New Mexico’s stated fact amounts to New Mexico and Mr. Lopez’s legal opinion regarding the meaning of Compact terms (in this case, Article VIII). New Mexico’s stated fact is non-responsive and otherwise not supported by definite, competent, or significantly probative evidence that genuinely and materially responds to a fact stated in Texas’s Motion for Partial Summary Judgment. As such, Texas’s stated material facts remain undisputed. Fed. R. Civ. P. 56(c), 56(f)(3), (4).

62  N/A  The definition of “normal release” in Article VIII was a negotiated amount reflecting the amount of water thought to be needed for Project irrigation purposes in a given year, including deliveries to Mexico under the 1906 Treaty and an unquestioned allocation for flushing salts. There is no indication, in the structure of the Compact, that the normal release assumes any specific amount of return flow. Project return flows occur entirely below the Rio Grande below the Caballo Reservoir gage where releases from Project Storage are measured. Moreover, the Compact does not require the Actual Release in a given year to be 790,000 acre-feet/year, permitting variability to address annual changes in conditions.


Yes.  See NM Response to TX at:  
- page 19, 56

NM-EX-008, 107; See General Observation 02- Pad. R. Evid. 801(c), hearsay. The cited evidence does not support the stated “facts” in whole and/or in part. Fed. R. Civ. P. 56(c); Fed. R. Evid. 704. The statement includes impermissible legal conclusions.

Subject to the stated objections, the fact is cited in New Mexico’s Response to Texas’ Motion for Partial Summary Judgment but does not materially respond to facts stated therein. New Mexico’s stated fact amounts to New Mexico and Mr. Lopez’s legal opinion regarding the meaning of Compact terms (in this case, Article VIII). New Mexico’s stated fact is non-responsive and otherwise not supported by definite, competent, or significantly probative evidence that genuinely and materially responds to a fact stated in Texas’s Motion for Partial Summary Judgment. As such, Texas’s stated material facts remain undisputed. Fed. R. Civ. P. 56(c), 56(f)(3), (4).

63  N/A  Article VIII of the Compact reflects New Mexico’s apportionment interest below Elephant Butte Reservoir because it permits New Mexico, independent of Texas, to demand of Colorado a release of water intended to increase Usable Water in Project Storage.

See NM-EX-008, Lopez Decl. at 5 (citing also NM-EX-130, Compact at Art. VIII, NM-EX-107, Lopez Rep. at 24-27).

Yes.  See NM Response to TX at:  
- page 56

Subject to the stated objections, the fact is cited in New Mexico’s Response to Texas’ Motion for Partial Summary Judgment but does not materially respond to facts stated therein. New Mexico’s stated fact amounts to New Mexico and Mr. Lopez’s legal opinion regarding the meaning of Compact terms (in this case, Article VIII). New Mexico’s stated fact is non-responsive and otherwise not supported by definite, competent, or significantly probative evidence that genuinely and materially responds to a fact stated in Texas’s Motion for Partial Summary Judgment. As such, Texas’s stated material facts remain undisputed. Fed. R. Civ. P. 56(c), 56(f)(3), (4).

64  N/A  The provisions of Articles VII and VIII do not guarantee that 790,000 acre-feet of Usable Water will be available for a normal release in any given year.


Yes.  See NM Response to TX at:  
- page 19, 56

NM-EX-008, 107; See General Observation 02- Pad. R. Evid. 801(c), hearsay. The cited evidence does not support the stated “facts” in whole and/or in part. Fed. R. Civ. P. 56(c); Fed. R. Evid. 704. The statement includes impermissible legal conclusions.

Subject to the stated objections, the fact is cited in New Mexico’s Response to Texas’ Motion for Partial Summary Judgment but does not materially respond to facts stated therein. New Mexico’s stated fact amounts to New Mexico and Mr. Lopez’s legal opinion regarding the meaning of Compact terms (in this case, Article VII & VIII). New Mexico’s stated fact is non-responsive and otherwise not supported by definite, competent, or significantly probative evidence that genuinely and materially responds to a fact stated in Texas’s Motion for Partial Summary Judgment. As such, Texas’s stated material facts remain undisputed. Fed. R. Civ. P. 56(c), 56(f)(3), (4).

EXHIBIT A  
THE STATE OF TEXAS’S OBJECTIONS AND RESPONSES TO THE STATE OF NEW MEXICO’S CONSOLIDATED STATEMENT
<table>
<thead>
<tr>
<th>No.</th>
<th>CSMR #</th>
<th>NM's Prior Numbering</th>
<th>New Mexico's Stated &quot;Fact&quot;</th>
<th>DID NM CITE TO THE FACT/EVIDENCE IN TX 12/22/20 RESPONSE</th>
<th>TEXAS'S MOTION FOR PARTIAL SUMMARY JUDGMENT</th>
<th>TEXAS'S EVIDENTIARY OBJECTIONS</th>
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<th>Identification of where NM cited the evidence in its Response to the US Supply MSJ; NM App'nt MSJ</th>
<th>Identification of where NM cited the evidence in its MSJ Brief to the US</th>
<th>Identification of where TX cited the evidence in its Response to TX Motion for Partial Summary Judgment</th>
</tr>
</thead>
<tbody>
<tr>
<td>65</td>
<td>N.A</td>
<td>To the extent that the Compact negotiations had a nascent understanding of the interactions between groundwater extraction and surface flow, there is no indication in the text that they intended to apportion groundwater below Elephant Butte Reservoir. Initially, the Compact does not make any mention of groundwater. Next, the Compact defines two in-flow-outflow schedules above Elephant Butte (Article III and IV) that effectively require the administration of groundwater use in order to meet delivery obligations at the Colorado state line (Article III) and into Elephant Butte Reservoir (Article IV), but there is no similar mechanism in effect below Elephant Butte Reservoir.</td>
<td>Yes. See NM Response to TX at: page 56</td>
<td>See NM-EX-006, Lopez 2d Decl. at ¶¶ 22-23, 41.</td>
<td>NM-EX-006: See General Objection #2. The cited evidence does not support the stated &quot;facts&quot; in whole and/or in part. Fed. R. Civ. P. 56(c); Fed. R. Evid. 704. The statement includes impermissible legal conclusions.</td>
<td>Subject to the stated objections, the fact is cited in New Mexico's Response to Texas's Motion for Partial Summary Judgment but does not materially respond to facts stated therein. New Mexico's stated fact amounts to New Mexico and Mr. Lopez's legal opinion regarding the meaning of Compact terms. New Mexico's stated fact is non-responsive and otherwise not supported by definite, competent, or significantly probative evidence that genuinely and materially responds to a fact stated in Texas's Motion for Partial Summary Judgment. As such, Texas's stated material facts remain undisputed. Fed. R. Civ. P. 56(e), 56(f)(3), (2), (4).</td>
<td>Yes. See NM Response to TX at: page 14, 56</td>
<td>Yes. See NM Response to TX at: page 34, 38</td>
<td>Opp. to US- - page 19</td>
<td>NA</td>
<td>N/A</td>
</tr>
<tr>
<td>66</td>
<td>N.A</td>
<td>The Compact indicates that New Mexico’s apportionment comprises two parts: a Colorado’s required deliveries under Compact Article III plus inflows between the Colorado-New Mexico state line and Elephant Butte Reservoir less New Mexico’s delivery obligation to Elephant Butte under Article IV based on the flow at Otero gauge; and b. 57% of the Project Supply that remains after first having provided for Mexico’s allocation under the 1906 Treaty.</td>
<td>Yes. See NM Response to TX at: page 56</td>
<td>See NM-EX-330, Compact; NM-EX-107, Lopez Rep. at 8, 19-22 and 26-27.</td>
<td>NM-EX-006, 017: See General Objection #2; Fed. R. Evid. 801(c), hearsay. The cited evidence does not support the stated &quot;facts&quot; in whole and/or in part. Fed. R. Civ. P. 56(c); Fed. R. Evid. 704. The statement includes impermissible legal conclusions.</td>
<td>Subject to the stated objections, the fact is cited in New Mexico's Response to Texas's Motion for Partial Summary Judgment but does not materially respond to facts stated therein. New Mexico's stated fact amounts to New Mexico and Mr. Lopez's legal opinion regarding the meaning of Compact terms. New Mexico's stated fact is non-responsive and otherwise not supported by definite, competent, or significantly probative evidence that genuinely and materially responds to a fact stated in Texas's Motion for Partial Summary Judgment. As such, Texas's stated material facts remain undisputed. Fed. R. Civ. P. 56(e), 56(f)(3), (2), (4).</td>
<td>Yes. See NM Response to TX at: page 6, 76</td>
<td>Yes. See NM Response to TX at: page 23, 50, 51, 56</td>
<td>Yes. See NM Response to TX at: page 6, 73, 38, 50</td>
<td>Yes. See NM Response to TX at: page 18, 50, 51, 56</td>
<td>Apportionment page 1</td>
</tr>
<tr>
<td>67</td>
<td>N.A</td>
<td>The historical record indicates that another purpose of the Compact was to protect existing rights.</td>
<td>From TX's 12/22/20 Filings: NM-EX-111: Exhibit is incorrectly identified. NM-EX-112: See General Objection #2; Fed. R. Evid. 801(c), hearsay. NM-EX-005: Fed. R. Civ. P. 56(c)(4), Fed. R. Evid. 702 – the statement in the Stevens Decl. constitutes improper opinion testimony because it is not based on sufficient facts and is a mere conclusion. NM-EX-220: (Miltenberger deposition transcript, not properly cited) See General Objection #9.</td>
<td>From TX’s 12/22/20 Filings:</td>
<td>From TX's 12/22/20 Filings: Subject to the stated objections, the fact is stated in New Mexico's Response to Texas's Motion for Partial Summary Judgment but does not materially respond to facts stated therein. New Mexico's stated fact amounts to New Mexico and Mr. Lopez's legal opinion regarding the meaning of Compact terms. New Mexico’s stated fact is non-responsive and otherwise not supported by definite, competent, or significantly probative evidence that genuinely and materially responds to a fact stated in Texas’s Motion for Partial Summary Judgment. As such, Texas's stated material facts remain undisputed. Fed. R. Civ. P. 56(e), 56(f)(3), (2), (4).</td>
<td>From TX’s 12/22/20 Filings: Subject to the stated objections, the fact is stated in New Mexico's Response to Texas's Motion for Partial Summary Judgment but does not materially respond to facts stated therein. New Mexico's stated fact amounts to New Mexico and Mr. Lopez's legal opinion regarding the meaning of Compact terms. New Mexico’s stated fact is non-responsive and otherwise not supported by definite, competent, or significantly probative evidence that genuinely and materially responds to a fact stated in Texas’s Motion for Partial Summary Judgment. As such, Texas's stated material facts remain undisputed. Fed. R. Civ. P. 56(e), 56(f)(3), (2), (4).</td>
<td>Apportionment page 1</td>
<td>Apportionment page 36</td>
<td>Apportionment page 34</td>
<td>Apportionment page 34</td>
<td>N/A</td>
</tr>
</tbody>
</table>
TEXAS’S RESPONSE

Opp. to US

Apportionment N/A

However, there is no historical evidence indicating that the compacting States intended to freeze conditions in the Rio Grande Basin, as they did in the 1929 temporary compact. Rather, the available historical evidence indicates that each state intended to continue developing their supplies within the limits imposed by the protection of existing uses under the Compact.

Prior to negotiation of the Compact, Reclamation administered the Project as a single unit. In negotiating the Compact, the States understood that they would only to its obligations to deliver water in accordance with the schedules set forth”); see also, e.g., NM-EX 112, Stevens Rep. at 81 quoting Letter from Frank B. Clayton, Rio Grande Compact Commissioner, State of Texas, to E.H. Thornton, Jr. (Mar. 23, 1939).

NM-EX 111, Stevens 2d Decl. at ¶ 25. Yes. See NM Response to TX last: page 23, 56

Yes. See NM Response to TX last: page 23, 56

NM-EX-008: See General Objection #2; NM-EX-112: See General Objection #7; Fed. R. Evid. 403(c), hearsay.

Subject to the stated objections, the fact is cited in New Mexico’s Response to Texas’s Motion for Partial Summary Judgment but does not materially respond to facts stated therein. New Mexico’s stated fact amounts to a conclusory argument that there is no “1938 Condition” associated with the Compact apportionment. New Mexico’s stated fact does not materially address Texas’s argument on the “1938 Condition.” New Mexico’s stated fact is non-responsive and otherwise not supported by definite, competent, or significantly probative evidence that genuinely and materially responds to a fact stated in Texas’s Motion for Partial Summary Judgment. As such, Texas’s stated material facts remain undisputed. Fed. R. Civ. P. 56(e), 56(f)(1), (2), (4).

Yes. See NM Response to TX last: page 23, 56

Yes. See NM Response to TX last: page 23, 56

Subject to the stated objections, undisputed.

From TX’s 12/22/20 Filings: NM-EX-111: Exhibit is incorrectly identified; Fed. R. Evid. 401(c), hearsay.

Subject to the stated objections, undisputed.

From TX’s 12/22/20 Filings: Subject to the stated objections, undisputed. Apportionment page 5...

Apportionment page 5...

Opp. to US - page 82
The historical record reflects that the States agreed on the initial water releases, according to the Downstream Contracts. The cited evidence does not support the asserted statement regarding water quality concerns. NM-EX-112: Miltenberger Dec. in Opp. to NM at TX_MSJ_007371, paragraphs 1 – 7, 25, 49 - 51. Additionally, the deposition testimony attributed to Scott Miltenberger is misrepresented by New Mexico. Dr. Miltenberger expressly stated in his deposition that the recommendation cited above was not his. Dr. Miltenberger merely replied in the affirmative. NM-EX-215: Miltenberger Dec. in Opp. to NM at TX_MSJ_007371, paragraphs 1 – 7, 25, 49 - 51. Additionally, the cited evidence does not support the asserted statement regarding water quality concerns. NM-EX-112: Miltenberger Dec. in Opp. to NM at TX_MSJ_007371, paragraphs 1 – 7, 25, 49 - 51.

Subject to the stated objections, disputed. This paragraph is misleading because the Compact does not rely upon the Project to see that Project beneficiaries in New Mexico receive water – in other words, protecting the Project as an existing use. Miltenberger Declaration paragraphs 26-46 discuss this. TX_MSJ_1585.

Dr. Miltenberger did not testify that either was the case. Dr. Miltenberger merely replied in the affirmative. NM-EX-112: Miltenberger Dec. in Opp. to NM at TX_MSJ_007371, paragraphs 1 – 7, 25, 49 - 51. Additionally, the deposition testimony attributed to Scott Miltenberger is misrepresented by New Mexico. Dr. Miltenberger expressly stated in his deposition that the recommendation cited above was not his. Dr. Miltenberger merely replied in the affirmative. NM-EX-215: Miltenberger Dec. in Opp. to NM at TX_MSJ_007371, paragraphs 1 – 7, 25, 49 - 51.

An Apparition No. 41. The historical record reflects that the States agreed on the initial water releases, according to the Downstream Contracts. The cited evidence does not support the asserted statement regarding water quality concerns. NM-EX-112: Miltenberger Dec. in Opp. to NM at TX_MSJ_007371, paragraphs 1 – 7, 25, 49 - 51. Additionally, the deposition testimony attributed to Scott Miltenberger is misrepresented by New Mexico. Dr. Miltenberger expressly stated in his deposition that the recommendation cited above was not his. Dr. Miltenberger merely replied in the affirmative. NM-EX-215: Miltenberger Dec. in Opp. to NM at TX_MSJ_007371, paragraphs 1 – 7, 25, 49 - 51.

Subject to the stated objections, disputed. This paragraph is misleading because the Compact does not rely upon the Project to see that Project beneficiaries in New Mexico receive water – in other words, protecting the Project as an existing use. Miltenberger Declaration paragraphs 26-46 discuss this. TX_MSJ_1585.

Dr. Miltenberger did not testify that either was the case. Dr. Miltenberger merely replied in the affirmative. NM-EX-112: Miltenberger Dec. in Opp. to NM at TX_MSJ_007371, paragraphs 1 – 7, 25, 49 - 51. Additionally, the deposition testimony attributed to Scott Miltenberger is misrepresented by New Mexico. Dr. Miltenberger expressly stated in his deposition that the recommendation cited above was not his. Dr. Miltenberger merely replied in the affirmative. NM-EX-215: Miltenberger Dec. in Opp. to NM at TX_MSJ_007371, paragraphs 1 – 7, 25, 49 - 51.
TEXAS’S RESPONSE

Apportionment

75

Notice No. 46

The understanding of the compacting States was that [reclamation would continue to operate the Project] [as a unit].

NM-EX 326, Letter from Frank B. Clayton, Rio Grande Compact Commissioner, State of Texas, to Savenous B. Smith (Oct. 4, 1938) (“Obviously, neither Colorado nor New Mexico could be expected to guarantee any fixed deliveries at the Texas line when the operation of the dam is not within their control but is in the control of an independent agency.”). NM-EX 327, J.B. Bliss, Provisions of the Rio Grande Compact, 1 (Apr. 2, 1938) (“The measurement of the water at San Marcial rather than the New Mexico-Texas line is necessary because the Elephant Butte Project must be operated as a unit.”). NM-EX 112, Stevens Rep at 72.

76

Apportionment No. 46

Shortly after the Compact was finalized, Texas Commissioner Frank Clayton explained the way that the Compact divided water below Elephant Butte:

"[t]he question of the division of the water released from Elephant Butte reservoir is taken care of by contracts between the districts under the Rio Grande Project and the Bureau of Reclamation. These contracts provide that the waters within the Project have equal water rights, and the water is allocated according the acres involved in the two States. By virtue of the contract recently executed, the total area is "staked" at the figure representing the average now actually in cultivation: approximately 50,000 acres for Elephant Butte Irrigation District, and 87,000 for the El Paso County Water Improvement District No. 1, with a "cushion" of three per cent for each figure.


76

Apportionment No. 46

The expert historian for the United States agreed that this letter was "an important document," for understanding the way that the Compact divides the water below Elephant Butte.


77

Apportionment No. 47

Similarly, shortly after the Compact was finalized, Texas Commissioner Frank Clayton described the operation of the Compact to the Chairman of the Texas Board of Water Engineers. Commissioner Clayton explained:

Moreover, since the source of supply for all lands above Fort Quitman and below Elephant Butte reservoir, whether in Texas or New Mexico, is the reservoir itself, it could hardly be expected of Colorado and New Mexico that they should guarantee a certain amount of water to pass the Texas line, since this amount is wholly dependent upon the releases from the reservoir and the reservoir is under the control of an entirely independent agency – the Bureau of Reclamation.

Also, by contract between the New Mexico interests and the Texas interests in the Rio Grande Project, all the lands in the Project have equal water rights, and the amount to be irrigated is practically "staked" at its present figures, with a three percent "cushion.

It is therefore not necessary, even if it were practicable, to make any definite provision in the Compact for the amount of water to pass the Texas-New Mexico state line.

<table>
<thead>
<tr>
<th>NM-EX- 80</th>
<th>NM's Prior Numbering Section</th>
<th>New Mexico's Stated &quot;Fact&quot;</th>
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<th>DID NM CITE TO THE FACT/EVIDENCE IN TX'S 12/22/20 RESPONSE</th>
<th>TEXAS'S EVIDENTIARY OBJECTIONS</th>
<th>TEXAS'S RESPONSE</th>
<th>Identification of where NM cited the fact/evidence in its Supply MSJ; NM Apportionment MSJ</th>
<th>Identification of where NM cited the fact/evidence in its Motion for Partial Summary Judgment</th>
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<tr>
<td>78 Apportionment No. 48</td>
<td>In 1968, Raymond Hill, the Engineer-Advisor for the State of Texas during Compact negotiations, explained that the Rio Grande Compact Commissioners, at the time of executing the Rio Grande Compact of 1930, anticipated that compliance with Articles III and IV &quot;would result in enough water entering Elephant Butte Reservoir to sustain an average normal release of 790,000 AF per year from Project storage for use on lands in New Mexico downstream of Elephant Butte Reservoir and on lands in Texas and also to comply with the obligations of the Treaty of 1906 for delivery of water to Mexico.&quot;</td>
<td>NM-EX 401, Raymond A. Hill, Development of the Rio Grande Compact of 1930, at 34 (Oct. 19, 1994) (emphasis added); NM-EX 212, Gordon Dep. (Vol. II) (July 15, 2020) 20:11-21:11.</td>
<td>Yes. See NM Response to TX at: - page 14, 23, 56</td>
<td>From TX's 12/22/20 Filings: NM-EX 401; See General Objection #9; Fed. R. Evid. 801(c) hearsay.</td>
<td>From TX's 12/22/20 Filings: Subject to the stated objections. This paragraph does not provide sufficient context to understand fully the meaning of the quotation provided from Raymond Hill's Development of the Rio Grande Compact of 1930. The paragraph correctly quotes from Hill's narrative, but in the absence of context - much of which is also discussed in Miltenberger Declaration paragraphs.</td>
<td>Apportionment page 39</td>
<td>N/A</td>
<td></td>
</tr>
<tr>
<td>79 Apportionment No. 83</td>
<td>Consistent with the Reclamation Act, Texas adjudicated the Project Right in Texas. Specifically, it determined that EPCWID had the right to divert up to 376,000 AF from the Rio Grande.</td>
<td>NM-EX 105, Texas Comm'n on Tr's Quality, Certificate of Adjudication No. 25-5904, ¶ 5.1 h. (Mar. 7, 2007); see also Final Judgment and Decree: The Adjudication of Water Rights in the Upper Rio Grande Segment of Rio Grande Basin, No. 2006-3219 (El Paso Ct. Dist. Ct., Oct. 30, 2006).</td>
<td>Yes. See NM Response to TX at: - page 56</td>
<td>From TX's 12/22/20 Filings: NM-EX 001; See General Objection #9; Fed. R. Evid. 801(c) hearsay.</td>
<td>From TX's 12/22/20 Filings: Subject to the stated objections, disputed as follows: Regarding the &quot;facts&quot; asserted based on NM-EX-301, this paragraph is misleading in that the source documents provide additional factual context that New Mexico excluded and/or otherwise states &quot;item&quot; out of context.</td>
<td>Apportionment page 17</td>
<td>N/A</td>
<td></td>
</tr>
<tr>
<td>80 Apportionment No. 84</td>
<td>The Texas Compact Commissioner recognizes that a full supply release from the Project is 790,000 AF, and that Texas water users are entitled to 45% of Project supply and New Mexico water users are entitled to 55% of Project supply.</td>
<td>NM-EX 211, Gordon Dep. (July 14, 2020) at 71:16-76:13; NM-EX 212, Gordon Dep. (July 15, 2020) at 11:20-15:21, 20:11-21:11, 121-9.</td>
<td></td>
<td>From TX's 12/22/20 Filings: NM-EX 212; See General Objection #9.</td>
<td>From TX's 12/22/20 Filings: Subject to the stated objections, disputed in part. The stated &quot;fact&quot; mischaracterizes the disposition testimony listed as evidence. The Texas Rio Grande Compact Commissioner testified that the water below the Reservoir is divided according to downstream contracts, and that EP#2 is entitled to receive 45 percent of the &quot;790 times 120 percent on a full release.&quot; NM-EX 212, Gordon Dep. (Vol. II) (July 15, 2020) 15:13-24, 20:11-21:11; NM-EX 215, Gordon Dep. (Vol. III) (July 14, 2020) 71:18-72:10.</td>
<td>Apportionment page 17; Apportionment page 38</td>
<td>N/A</td>
<td></td>
</tr>
<tr>
<td>81 Apportionment No. 85</td>
<td>The Texas Compact Commissioner conciles that Rio Grande water is divided below Elephant Butte by the Drought Contracts &quot;are incorporated into the Compact.&quot;</td>
<td>NM-EX 312, Gordon Dep. (July 15, 2020) at 10:25-12:19, 15:6-18.</td>
<td>Yes. See NM Response to TX at: - page 46, 56</td>
<td>From TX's 12/22/20 Filings: NM-EX 212; See General Objection #9.</td>
<td>From TX's 12/22/20 Filings: Subject to the stated objections, disputed in part. The stated &quot;facts&quot; mischaracterizes the disposition testimony listed as evidence. The Texas Rio Grande Compact Commissioner testified that the water below the Reservoir is &quot;allocated...to Mexico under the 1956 treaty, and then to EBD and EP1 under the 1918 contracts.&quot; NM-EX 212, Gordon Dep. (Vol. II) (July 15, 2020) 11:13-19.</td>
<td>Apportionment page 17</td>
<td>N/A</td>
<td></td>
</tr>
</tbody>
</table>

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**EXHIBIT A**

**THE STATE OF TEXAS'S OBJECTIONS AND RESPONSES TO THE STATE OF NEW MEXICO'S CONSOLIDATED STATEMENT**

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**Part 1: Apportionment**

1. **Texas's Response**
   - Apportionment
   - The Compact
   - The Treaty of 1906
   - Settlement
   - The Drought Contracts

2. **New Mexico's Stated "Fact"**
   - The Drought Contracts
   - The Treaty of 1906
   - Settlement

3. **New Mexico's Supporting Evidence**
   - NM-EX 401
   - Raymond A. Hill, Development of the Rio Grande Compact of 1930
   - NM-EX-105
   - Texas Commissioner's Certificate of Adjudication No. 25-5904

4. **Did NM Cite to the Fact/Evidence in TX's 12/22/20 Response?**
   - Yes

5. **Texas's Evidentiary Objections**
   - NM-EX 401
   - See General Objection #9
   - Fed. R. Evid. 801(c) hearsay

6. **Texas's Response**
   - Subject to the stated objections. This paragraph does not provide sufficient context to understand fully the meaning of the quotation provided from Raymond Hill's Development of the Rio Grande Compact of 1930. The paragraph correctly quotes from Hill's narrative, but in the absence of context - much of which is also discussed in Miltenberger Declaration paragraphs.

---

**Part 2: Identification of where NM cited the fact/evidence in its Supply MSJ; NM Apportionment MSJ**

1. **Identification of where NM cited the fact/evidence in its Supply MSJ; NM Apportionment MSJ**
   - NM-EX 401
   - Raymond A. Hill, Development of the Rio Grande Compact of 1930
   - NM-EX-105
   - Texas Commissioner's Certificate of Adjudication No. 25-5904

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**Part 3: Identification of where NM cited the fact/evidence in its Motion for Partial Summary Judgment**

1. **Identification of where NM cited the fact/evidence in its Motion for Partial Summary Judgment**
   - NM-EX 401
   - Raymond A. Hill, Development of the Rio Grande Compact of 1930
   - NM-EX-105
   - Texas Commissioner's Certificate of Adjudication No. 25-5904
The Texas Compact Commissioner conceded that the Project acts as the mechanism by which water users in New Mexico receive 57% of Project supply and water downstream of Elephant Butte Reservoir. Article VIII of the Compact provides that the Texas Rio Grande Compact Commissioner further testified that he thinks the Project is "incorporated into the Compact," but not "under the Compact." The Compact was the mechanism for New Mexico to deliver its apportioned water to Texas. When the water is released from Elephant Butte reservoir, it's delivered to the downstream contracts – contractors as well as Mexico." NM-EX 212, Gordon Dep. (Vol. II) (July 15, 2020) 11:13-19.

The Texas Rio Grande Compact Commissioner testified that the water below the Reservoir is allocated to Mexico and the United States' continued obligations to Elephant Butte Irrigation District (EBID). The Compact does not apportion water to New Mexico below Elephant Butte Reservoir. The water released from Elephant Butte Reservoir downstream contracts – contractors as well as Mexico." NM-EX 213, Gordon Dep. (Vol. II) (July 15, 2020) 11:13-19.

Yes. See NM Response to TX at: - page 56

From TX's 12/22/20 Filings: NM-EX 212: See General Objectives 9.

The cited evidence does not support the stated “facts” in whole and/or in part. Fed. R. Civ. P. 56(c).


Subject to the stated objections, disputed in part. The cited deposition testimony cited as evidence.

The Texas Rio Grande Compact Commissioner further testified that he thinks the Project is "incorporated into the Compact," but not "under the Compact." The Compact was the mechanism for New Mexico to deliver its apportioned water to Texas. When the water is released from Elephant Butte reservoir, it's delivered to the downstream contracts – contractors as well as Mexico." NM-EX 212, Gordon Dep. (Vol. II) (July 15, 2020) 11:13-19.

The Texas Rio Grande Compact Commissioner further testified that he thinks the Project is "incorporated into the Compact," but not "under the Compact." The Compact was the mechanism for New Mexico to deliver its apportioned water to Texas. When the water is released from Elephant Butte reservoir, it's delivered to the downstream contracts – contractors as well as Mexico." NM-EX 212, Gordon Dep. (Vol. II) (July 15, 2020) 11:13-19.

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From TX's 12/22/20 Filings: Subject to the stated objections, disputed in part. The cited deposition testimony cited as evidence.

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Texas's Response

Apportionment

In its Complaint in this case, Texas made the apportionment below Elephant Butte Reservoir.

Mexico is entitled to 57% of Project supply. New Mexico is entitled to 43% of Project supply and the State of New Mexico's "stated "facts" are incorrect.

in paragraph 11 of his declaration submitted in support of the New Mexico motion for partial summary judgment (NM-EX-004) and referenced in paragraph 91, page 18, of the New Mexico motion on Compact apportionment. He also reviewed the representation of Estevan Lopez in paragraph 18 of his declaration submitted in support of the New Mexico motions for partial summary judgment (NM-EX-004) and referenced in paragraph 91, page 18, of the New Mexico motion on Compact apportionment. Both deponents refer to NM-EX-519. The notes depicted in NM-EX-519 were not "talking points that represented Texas's position on the Rio Grande Compact" as stated by declarants Lopez and Schmidt-Petersen. Further, the declarants' representations of Commissioner Gordon's statements, and Texas's "positions" are incorrect. Commissioner Gordon did not make any statement, or represent that it was the position of Texas, that the Compact apportions water below Elephant Butte Reservoir between New Mexico and Texas. Commissioner Gordon did not make any statement, or represent that it was the position of Texas, that there is a 57/43 apportionment pursuant to the Compact. See Gordon Decl. onOpp to MSJ, TX_MSJ_007269, paragraphs 1 – 8, 12.

The handwriting depicted in NM-EX-519 is not Commissioner Gordon's. He does not know whose handwriting is depicted in NM-EX-519. The notes depicted in NM-EX-519 were not "talking points that represented Texas's position on the Rio Grande Compact" as stated by declarants Lopez and Schmidt-Petersen. Further, the declarants' representations of Commissioner Gordon's statements, and Texas's "positions" are incorrect. Commissioner Gordon did not make any statement, or represent that it was the position of Texas, that there is a 57/43 apportionment pursuant to the Compact. See Gordon Decl. on Opp to MSJ, TX_MSJ_007269, paragraphs 1 – 8, 12.

From TX's 12/22/20 Filings:

See Gordon Dec. in Opp. to NM at TX_MSJ_007269, paragraphs 1 – 8, 12.

From TX's 12/22/20 Filings:

From TX's 12/22/20 Filings:

From TX's 12/22/20 Filings:

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TEXAS’S RESPONSE

Apportionment

Allegations in a Complaint (unverified), or language in a brief supporting a motion that is not based on evidence, do not constitute factual “evidence” as contemplated by Fed. R. Civ. P. 56(c). The pleadings discussed by New Mexico here are not supported by evidence and, as such, are inadmissible and irrelevant for purposes of summary judgment. Fed. R. Civ. P. 56(c); Fed. R. Evid. 403.

In full context, Paragraph 10 of Texas’s Complaint is simply stating that in lieu of a specific quantitative or rate line delivery measure, the Compact relied on the Project as it existed in 1938 to deliver Texas’s apportioned water from Elephant Butte to the state line. In other words, “the Compact utilized the Rio Grande Project to ensure that Texas receives the water that was apportioned to it. usable Water is available for release to meet irrigation demands on the Rio Grande Project lands in New Mexico and in Texas, as well as for delivery to Mexico to satisfy treaty obligations. It is not available for use and appropriations in New Mexico pursuant to New Mexico state law.”

Texas Brief in Opposition to New Mexico’s Motion to Dismiss Texas’s Complaint and the United States’ Complaint in Intervention, 28 (June 16, 2014). Page 22 of Texas’s 2014 Brief in Opposition to New Mexico’s Motion to Dismiss encapsulates the Complaint: “Texas asserts that the Compact requires New Mexico to deliver a scheduled amount of Rio Grande water into Elephant Butte Reservoir, to relinquish control of that water for storage and distribution by the Rio Grande Project, and not to intercept, delay or otherwise interfere with water released by the Rio Grande Project for the benefit of Rio Grande Project lands in Texas. Compl. at paragraphs 10-11, 13, 18-19. New Mexico violates the Compact, including its delivery obligation in Article IV, when it allows water users to intercept, deplete or otherwise divert flows of the Rio Grande below Elephant Butte, which adversely affects Rio Grande Project operations including the amount of water that flows to irrigable lands in Texas. Compl. at paragraphs 18-19.”

Texas Brief in Opposition to New Mexico’s Motion to Dismiss Texas’s Complaint and the United States’ Complaint in Intervention, 22 (June 16, 2014). “The water apportioned to New Mexico by the Compact is the water in the basin above Elephant Butte in excess of its delivery obligation, less the waters apportioned to Colorado. . . . No water below Elephant Butte is apportioned to New Mexico.”

Texas’s Brief in Response to New Mexico’s Motion to Dismiss Texas’s Complaint and the United States’ Complaint in Intervention, 10 (June 16, 2014).

Yes. See NM Response to TX 14 at: - page 56

b. Regarding Texas’s brief in support of its motion to file its complaint, the entity that this sentence actually concerns is the Elephant Butte Water Users Association, the predecessor entity to EBID, and in context the sentence is not referring to the Compact at all, but specifically to a 1906 compact between that entity and the United States for the use of non-yet-developed Rio Grande Project water.

Texas’s Brief in Support of Motion to File Complain at 7.

Yes. See NM Response to TX 14 at: - page 56

b. Regardless of whether the water at Elephant Butte is apportioned to New Mexico or not, New Mexico has ceded regulatory control over the Project to Texas. The compact required New Mexico to relinquish control of the Project and deliver water from Elephant Butte to the state line. In other words, “the Compact utilized the Rio Grande Project to ensure that Texas receives the water that was apportioned to it. usable water is available for release to meet irrigation demands on the Rio Grande Project lands in New Mexico and in Texas, as well as for delivery to Mexico to satisfy treaty obligations. It is not available for use and appropriations in New Mexico pursuant to New Mexico state law.”

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Texas’s Brief in Support of Motion to File Complain at 7.
**EXHIBIT A**

THE STATE OF TEXAS'S OBJECTIONS AND RESPONSES TO THE STATE OF NEW MEXICO'S CONSOLIDATED STATEMENT

<table>
<thead>
<tr>
<th>NM- EXHIBIT</th>
<th>NM's Prior Numbering Section</th>
<th>New Mexico's Stated &quot;Fact&quot;</th>
<th>New Mexico's Supporting Evidence</th>
<th>DID NM CITE TO THE FACT IN THEIR EVIDENCE IN THEIR 12/22/20 RESPONSE TO THE TEXAS MOTION FOR PARTIAL SUMMARY JUDGMENT*</th>
<th>TEXAS'S EVIDENTIARY OBJECTIONS</th>
<th>TEXAS'S RESPONSE</th>
</tr>
</thead>
<tbody>
<tr>
<td>No. 88</td>
<td>Apportionment</td>
<td>In further, in breach of exceptions to the First Interim Report of Special Master, Texas averred: &quot;[T]he compact utilizes the Rio Grande Project, operated by the United States, as the single vehicle by which to apportion Rio Grande water to Texas and New Mexico.&quot;</td>
<td></td>
<td>Yes. See NM Response to TX appt. at: page 56</td>
<td>Allegations in a Complaint (unverified), or language in a brief supporting a motion that is not based on evidence, do not constitute factual &quot;evidence&quot; as contemplated by Fed. R. Civ. P. 56(c). The pleadings discussed by New Mexico here are not supported by evidence and, as such, are inadmissible and irrelevant for purposes of summary judgment. Fed. R. Civ. P. 56(c); Fed. R. Evid. 403.</td>
<td>In Texas's briefing on exceptions to the First Interim Report of the Special Master, Texas stated: &quot;... the pleadings at page 40 at: of Article IV of the 1918 Compact requires New Mexico to relinquish control and dominion over the water it deposits in Elephant Butte Reservoir.&quot; First Report at 197. New Mexico's duties to relinquish control of the water at Elephant Butte and release from post-Compact depletions of water below Elephant Butte Reservoir do not arise from any implied covenant or implied term, but from the very meaning of the text of the Compact.&quot; Texas's Reply to Exceptions to First Interim Report of Special Master, 17 (July 28, 2017). &quot;The terms of the Compact provide that three sovereign states agreed to an equitable apportionment of an interstate stream, which Congress approved. Thus, the Compact is not silent on what occurs below Elephant Butte Reservoir. The line of equitable apportionment applies because the Compact expressly apportions Rio Grande water and thus used the Project as the &quot;soothing&quot; for distributing that equitable apportionment to New Mexico, Texas, and Mexico. First Report at 201. Likewise, the Compact is not silent on what occurs below Elephant Butte Reservoir when it expressly provides for New Mexico's obligation to &quot;deliver&quot; water at Elephant Butte. Neither New Mexico nor its citizens can take back or attempt to reassess control under state processes for water apportioned below Texas.&quot; Texas's Reply to Exceptions to First Interim Report of Special Master, 31 (July 28, 2017). &quot;New Mexico does not have the legal authority to administrate or adjudicate rights under state law to water that has been equitably apportioned to Texas under the Rio Grande Compact. Once New Mexico has delivered that apportioned water to Elephant Butte Reservoir, it has relinquished jurisdiction over the distribution of that water, as the Special Master properly held.&quot; Texas's Reply to Exceptions to First Interim Report of Special Master, 53 (July 28, 2017)</td>
</tr>
</tbody>
</table>
| No. 89 | Apportionment | In connection with filing the Complaint in this case, Texas issued a News Release. In that News Release, Texas admitted: "Biostatically, water apportioned under the Rio Grande Compact has resulted in approximately 57 percent of the water supply below the Elephant Butte Reservoir being delivered to New Mexico, and 43 percent being delivered across the New Mexico-Texas state line for Texas."

NM-EX-524, Tex. Comm'n on Env't Quality, Biennial Report to the 84th Legislature (2014) (emphasis added). | | Yes. See NM Response to TX appt. at: page 56 | From TX's 12/22/20 Filings: NM-EX-524: See General Objection 99; Fed. R. Civ. P. 56(c); Fed. R. Evid. 403(c), (d), (e). From TX's 12/22/20 Filings: NM-EX-524: See General Objection 99; Fed. R. Civ. P. 56(c); Fed. R. Evid. 403(c), (d), (e). From TX's 12/22/20 Filings: NM-EX-524: See General Objection 99; Fed. R. Civ. P. 56(c); Fed. R. Evid. 403(c), (d), (e). From TX's 12/22/20 Filings: NM-EX-524: See General Objection 99; Fed. R. Civ. P. 56(c); Fed. R. Evid. 403(c), (d), (e). | Subject to the stated objections, disputed. The cited evidence does not support the asserted facts. The document is unauthenticated, and there is no evidence of who the author was, or the authority of the author to make any statement on behalf of Texas as to the meaning and/or purpose of the Compact. | Apportionment page 19. N/A |
<p>| No. 90 | Apportionment | Every alternate year the Texas Commission on Environmental Quality (&quot;TCEQ&quot;) reports to the Texas Legislature about environmental issues, including interstate river compacts. In describing the Rio Grande Compact in 2014, the TCEQ explained: &quot;The compact did not contain specific wording regarding the apportionment of water in and below Elephant Butte Reservoir. However, the compact was drafted and signed against the backdrop of the 1915 Rio Grande Reservoir. Thus, the Compact is not silent on what occurs below Elephant Butte Reservoir. The line of equitable apportionment applies because the Compact expressly apportions Rio Grande water and thus used the Project as the &quot;soothing&quot; for distributing that equitable apportionment to New Mexico, Texas, and Mexico. First Report at 201. Likewise, the Compact is not silent on what occurs below Elephant Butte Reservoir when it expressly provides for New Mexico's obligation to &quot;deliver&quot; water at Elephant Butte. Neither New Mexico nor its citizens can take back or attempt to reassess control under state processes for water apportioned below Texas.&quot; Texas's Reply to Exceptions to First Interim Report of Special Master, 31 (July 28, 2017). &quot;New Mexico does not have the legal authority to administrate or adjudicate rights under state law to water that has been equitably apportioned to Texas under the Rio Grande Compact. Once New Mexico has delivered that apportioned water to Elephant Butte Reservoir, it has relinquished jurisdiction over the distribution of that water, as the Special Master properly held.&quot; Texas's Reply to Exceptions to First Interim Report of Special Master, 53 (July 28, 2017) | | Yes. See NM Response to TX appt. at: page 56 | From TX's 12/22/20 Filings: NM-EX-526: See General Objection 99; Fed. R. Civ. P. 56(c); Fed. R. Evid. 403(c), (d), (e). From TX's 12/22/20 Filings: NM-EX-526: See General Objection 99; Fed. R. Civ. P. 56(c); Fed. R. Evid. 403(c), (d), (e). From TX's 12/22/20 Filings: NM-EX-526: See General Objection 99; Fed. R. Civ. P. 56(c); Fed. R. Evid. 403(c), (d), (e). From TX's 12/22/20 Filings: NM-EX-526: See General Objection 99; Fed. R. Civ. P. 56(c); Fed. R. Evid. 403(c), (d), (e). | Subject to the stated objections, disputed. The cited evidence does not support the asserted facts. The document is unauthenticated, and there is no evidence of who the author was, or the authority of the author to make any statement on behalf of Texas as to the meaning and/or purpose of the Compact. | Apportionment page 19. N/A |
| No. 91 | Apportionment | In New Mexico's adjudication of Lower Rio Grande water rights, the United States requested that the New Mexico Adjudication Court &quot;reapportion an amount of up to 376,000 acre- feet per year for delivery to Texas.&quot; See NM-EX-527, Under (1) Granting Summary Judgment Regarding the Amounts of Water; (2) Denying Summary Judgment Regarding Priority Date; (3) Denying Summary Judgment to the Pre-1906 Claimants; and (4) Setting a Scheduling Conference, New Mexico ex rel. Office of the State Engineer v. Elephant Butte Irr. Dist., no. CV-96-888, § 4 (N.M. 3d Judicial Dist., Feb. 17, 2016) 1 fil In response to the United States request that New Mexico reapportion 376,000 AFA for delivery to Texas, the New Mexico Adjudication Court explained that the United States' request was beyond the jurisdiction of the court, but that the &quot;State of New Mexico's offer of judgment appropriately recognizes Project deliveries to Texas as an essential element of the Project.&quot; | | Yes. See NM Response to TX appt. at: page 56 | From TX's 12/22/20 Filings: Subject to the stated objections, disputed. This paragraph is misleading. Although the quoted language is contained within NM-EX-527, New Mexico does not include the full context of the Court's statement, and there is no foundation to infer the intent of the United States in making that statement, or others, to the Court. The full text of the Court's discussion in NM-EX-527 clearly states that the subject is &quot;Project deliveries to Texas as an essential element of the Project.&quot; Nothing in NM-EX-527 supports the implication that the statement attributed to the United States was predicated on a position about Compact apportionment as opposed to simply an effort to preserve its contract delivery obligations to Texas, or some other reason. | Apportionment page 19. N/A |</p>
<table>
<thead>
<tr>
<th>Document ID</th>
<th>Type</th>
<th>Page</th>
<th>Text</th>
</tr>
</thead>
<tbody>
<tr>
<td>NM-EX-301</td>
<td>Brief</td>
<td>5</td>
<td>The United States has taken the following relevant language in a brief filed by the Bureau of Reclamation, to the effect that the &quot;[P]roject is central to the [C]ompact,&quot; that the &quot;[P]roject is critical to the Compact,&quot; and that &quot;the Project is central to the Compact and is recited correctly, Texas disputes that Reclamation &quot;recognized&quot; anything pertaining to Compact apportionment below the Reservoir. New Mexico does not include the full context of the document. The stated purpose of the document is to &quot;update the status of the Project, ... operations agreements&quot; between EBID, EPWID, and the United States. There is no foundation to support New Mexico's implication that the quoted statement was Reclamation recognizing a Compact apportionment to New Mexico below Elephant Butte.</td>
</tr>
<tr>
<td>NM-EX-301</td>
<td>Brief</td>
<td>6</td>
<td>Reclamation has acknowledged the intent of the Compact &quot;to recognize a yearly average of 790,000 AF release from Project storage to satisfy water users within the Texas portion of the Compact.&quot; NM-EX-411, 2 (emphasis added).</td>
</tr>
<tr>
<td>NM-EX-301</td>
<td>Brief</td>
<td>7</td>
<td>Subject to the stated objections, disputed. New Mexico purports to rely on certain statements attributed to the United States that support its own positions on the apportionment issue while ignoring other adverse statements. The United States expresses in the same pleadings.</td>
</tr>
<tr>
<td>NM-EX-301</td>
<td>Brief</td>
<td>8</td>
<td>&quot;From TX's 12/22/20 Filings:&quot; Subject to the stated objections, disputed. New Mexico misrepresents the author's statement in NM-EX-411, 2 (emphasis added). NM-EX-411 actually supports Texas's position that the 790,000 AF release from Project storage is Texas's apportionment, subject to the 1968 Treaty and downstream construction (consisting &quot;water users within the 'Texas portion' of the Compact&quot;).</td>
</tr>
<tr>
<td>NM-EX-301</td>
<td>Brief</td>
<td>9</td>
<td>In discussing New Mexico's Motion to Dismiss Texas's Complaint, the United States concludes that the &quot;Project is central to the Compact,&quot; that &quot;the Project is critical to the Compact,&quot; and that &quot;the Project is central to the Compact and is recited correctly, Texas disputes that Reclamation &quot;recognized&quot; anything pertaining to Compact apportionment below the Reservoir. New Mexico does not include the full context of the document. The stated purpose of the document is to &quot;update the status of the Project, ... operations agreements&quot; between EBID, EPWID, and the United States. There is no foundation to support New Mexico's implication that the quoted statement was Reclamation recognizing a Compact apportionment to New Mexico below Elephant Butte. It is pure speculation as to the intent of the author in including the quoted language, and whether or not that language is intended to capture one of the parties' positions in this case, or otherwise.</td>
</tr>
</tbody>
</table>

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<tr>
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</tr>
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<tbody>
<tr>
<td>Apportionment page 19</td>
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<tr>
<td>Apportionment page 19</td>
<td>N/A</td>
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<td>Apportionment page 20</td>
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<td>N/A</td>
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<tr>
<td>Opp. to US Summary Judgment page 35</td>
<td>22 of 82</td>
</tr>
</tbody>
</table>
96 Apportionment No. 100 6. “Usable Water” is “available for release in accordance with irrigation demands in lower New Mexico, in Texas, and in Mexico.”
   c. If the Project is entitled to an annual release of up to 790,000 acre-feet. In accordance with the stated “fact” that the United States agreed to “the equitable apportionment of the waters of the Rio Grande, the compacting States incorporated and relied upon the existing Reclamation project as the vehicle to guarantee delivery of Texas’ and part of New Mexico’s equitable apportionment of the stream.” The United States agreed to that arrangement through congressional approval of the Compact.”
   d. “Usable Water” is “available for release in accordance with irrigation demands in lower New Mexico, in Texas, and in Mexico.”
   e. To effectuate an equitable apportionment of the waters of the Rio Grande, the compacting States incorporated and relied upon the existing Reclamation project to deliver Texas’s and part of New Mexico’s equitable apportionment of the stream.”

97 Apportionment No. 100 6. “Usable Water” is “available for release in accordance with irrigation demands in lower New Mexico, in Texas, and in Mexico.”
   c. To effectuate an equitable apportionment of the waters of the Rio Grande, the compacting States incorporated and relied upon the existing Reclamation project to deliver Texas’s and part of New Mexico’s equitable apportionment of the stream.”
   d. “Usable Water” is “available for release in accordance with irrigation demands in lower New Mexico, in Texas, and in Mexico.”
   e. The United States agreed to “the equitable apportionment of the waters of the Rio Grande, the compacting States incorporated and relied upon the existing Reclamation project as the vehicle to guarantee delivery of Texas’ and part of New Mexico’s equitable apportionment of the stream.” The United States agreed to that arrangement through congressional approval of the Compact.”

98 Apportionment No. 101 6. “Usable Water” is “available for release in accordance with irrigation demands in lower New Mexico, in Texas, and in Mexico.”
   c. To effectuate an equitable apportionment of the waters of the Rio Grande, the compacting States incorporated and relied upon the existing Reclamation project to deliver Texas’s and part of New Mexico’s equitable apportionment of the stream.”
   d. “Usable Water” is “available for release in accordance with irrigation demands in lower New Mexico, in Texas, and in Mexico.”
   e. The United States agreed to “the equitable apportionment of the waters of the Rio Grande, the compacting States incorporated and relied upon the existing Reclamation project as the vehicle to guarantee delivery of Texas’ and part of New Mexico’s equitable apportionment of the stream.” The United States agreed to that arrangement through congressional approval of the Compact.”

99 Apportionment No. 102 6. “Usable Water” is “available for release in accordance with irrigation demands in lower New Mexico, in Texas, and in Mexico.”
   c. To effectuate an equitable apportionment of the waters of the Rio Grande, the compacting States incorporated and relied upon the existing Reclamation project to deliver Texas’s and part of New Mexico’s equitable apportionment of the stream.”
   d. “Usable Water” is “available for release in accordance with irrigation demands in lower New Mexico, in Texas, and in Mexico.”
   e. The United States agreed to “the equitable apportionment of the waters of the Rio Grande, the compacting States incorporated and relied upon the existing Reclamation project as the vehicle to guarantee delivery of Texas’ and part of New Mexico’s equitable apportionment of the stream.” The United States agreed to that arrangement through congressional approval of the Compact.”

100 Apportionment No. 100 5. Yes, See NM Response to TX MSJ at: - page 13, 56
   Language/arguments in a brief supporting a motion do not constitute factual “evidence” as contemplated by Fed. R. Civ. P. 56(c).

100a The evidence (NM-EX-527) does not support the asserted fact.

100b New Mexico omits that Texas is the “intended destination” the United States refers to. The next sentence states: "Indeed, if the Compact did not prohibit New Mexico water users from interfering with Project deliveries, 'then the question of Texas’s equitable apportionment’ under the Compact would be ‘an open, major source of controversy,’ contrary to the basic purpose of the Compact to ‘effect[] an equitable apportionment of ‘the waters of the Rio Grande above Fort Quitman, Texas.’” (quoting First Interim Report of the Special Master, 200 (Feb. 9, 2017)).

100c The evidence (NM-EX-527) does not support the asserted fact.

100d The evidence (NM-EX-527) does not support the asserted fact.

100e The evidence (NM-EX-527) does not support the asserted fact.
TEXAS'S RESPONSE

TEXAS'S EVIDENCYARY OBJECTIONS

Yes. See NM Response to TX at: - page 56
From TX's 12/22/20 Filings: NM-EX-527; General Objective #9; Fed. R. Evid. 801(c), hearsay.

The cited evidence does not support the stated “fact” in whole or in part.

Yes. See NM Response to TX at: - page 56
From TX's 12/22/20 Filings: NM-EX-527; General Objective #9; Fed. R. Evid. 803(c), hearsay.

The cited evidence does not support the stated “fact” in whole or in part.

Yes. See NM Response to TX at: - page 56
From TX's 12/22/20 Filings: NM-EX-527; General Objective #9; Fed. R. Evid. 801(c), hearsay.

The cited evidence does not support the stated “fact” in whole or in part.
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<th>Texas's Evidenceary Objections</th>
<th>Texas's Response</th>
<th>Identification of where NM cited the fact/evidence in its 11/5/20 Motions (NM Supply MSJ; NM Apportionment MSJ)</th>
<th>Identification of where NM cited to the fact/evidence in its Response to the US Motion for Partial Summary Judgment</th>
</tr>
</thead>
<tbody>
<tr>
<td>103</td>
<td>Apportionment No. 107</td>
<td>Reclamation reports to the RGCC every year about operations that are relevant to the Compact. As part of that report, Reclamation provides information about the operations of the Rio Grande Project.</td>
<td>See, e.g., NM-EX-512, Bureau of Reclamation, Calendar Year 2009 Report to the Rio Grande Compact Commission, at 59-67 (Apr. 2010); NM-EX-003, Lopez Decl. ¶ 10; NM-EX-004, Schmidt-Petersen Decl. ¶ 13; NM-EX-405, Faustini from David Allen, El Paso Field Office, Bureau of Reclamation, to Darren Powell, Herman Sommeyer, at 23 (June 25, 1996); NM-EX-410, Faustini from Steve Vandiver, Engineer Adviser, State of Colorado, to Ken Maxey, Albuquerque Area Manager, Bureau of Reclamation, and Filiberto Cortez, Manager, El Paso Field Division, Bureau of Reclamation (Aug. 2, 2002).</td>
<td>Yes. See NM Response to TX at: - page 24, 25, 56</td>
<td>From TX 12/22/20 Filings: NM-EX-512: See General Objection ¶9; Fed. R. Evid. 801(c); hearsay. NM-EX-003: General Objection ¶2; Fed. R. Civ. P. 56(c)(4).</td>
<td>Subject to the stated objections, undisputed.</td>
<td>N/A</td>
<td></td>
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<tr>
<td>105</td>
<td>Apportionment No. 109</td>
<td>Reclamation interprets this accrued departure from normal release (Compact accounting provision) as a measure of how the Rio Grande Project is complying with its obligation to meet yearly demand from the water users of the Rio Grande Project and at the same time comply with the Rio Grande Compact intent to recognize a yearly average of 700,000 AF release from project storage to satisfy water users’ below Elephant Butte. See, e.g., NM-EX-411, Letter from Filiberto Cortez, Manager, El Paso Field Division, Bureau of Reclamation, to William A. Paullock, 2 (Sept. 11, 2002).</td>
<td>NM-EX-411, Letter from Filiberto Cortez, Manager, El Paso Field Division, Bureau of Reclamation, to William A. Paullock, 2 (Sept. 11, 2002).</td>
<td>Yes. See NM Response to TX at: - page 25, 56</td>
<td>From TX 12/22/20 Filings: NM-EX-411: General Objection ¶8; Fed. R. Evid. 801(c); hearsay. The cited evidence does not support the stated &quot;fact&quot; in whole or in part, Fed. R. Civ. P. 56(c)(4).</td>
<td>Subject to the stated objections, undisputed.</td>
<td>N/A</td>
<td></td>
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<tr>
<td>106</td>
<td>Apportionment No. 110</td>
<td>The releases from Project Storage are tracked so that the Compact Commissioner from each respective State is able to understand the amount of Project water that users in his or her State are entitled to.</td>
<td>NM-EX-004, Schmidt-Petersen Decl. ¶ 14, NM-EX-003, Lopez Decl. ¶ 13.</td>
<td>Yes. See NM Response to TX at: - page 25, 56</td>
<td>From TX 12/22/20 Filings: NM-EX-003: General Objection ¶2; Fed. R. Civ. P. 56(c)(4). NM-EX-004: Fed. R. Civ. P. 56(c)(4); Fed. R. Evid. 602, 701. The stated &quot;fact&quot; constitutes improper legal conclusions in whole or in part.</td>
<td>Subject to the stated objections, disputed.</td>
<td>N/A</td>
<td></td>
</tr>
</tbody>
</table>

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EXHIBIT A
THE STATE OF TEXAS'S OBJECTIONS AND RESPONSES TO THE STATE OF NEW MEXICO'S CONSOLIDATED STATEMENT

TEXAS'S OBJECTIONS TO NEW MEXICO'S CONSOLIDATED STATEMENT

NEW MEXICO'S STATED "FACT" | TEXAS'S EVIDENTIARY OBJECTIONS | TEXAS'S RESPONSE | identification of where NM cited to the fact/evidence in its motion for partial summary judgment
---|---|---|---
407 Apportionment No. 111 | The RGCC acts or speaks in a number of forms, including through resolutions, all of which must have unanimous agreement. NM-EX-002, D'Antonio Decl. at ¶ 14, NM-EX-003, Lopez Decl. at ¶ 15. | Yes. See NM Response to TX at: -page 25, 26 | From EX-12/22/20 Filings:  NM-EX-406: See General Objection 99; Fab. R. Evid. 801(d)(2); hearsay.  NM-EX-002: Fed. R. Civ. P. 56(c)(4); Fed. R. Evid. 403, 408, 702.  NM-EX-406: See General Objection 99; Fab. R. Evid. 801(d)(2); hearsay.  NM-EX-528: See General Objection 99; Fab. R. Evid. 801(d)(2); hearsay.  NM-EX-003: See General Objection 42; Fab. R. Civ. P. 56(c)(4). The cited evidence does not support the stated "facts" in whole or in part. Subject to the stated objections, disputed. The cited evidence does not support the stated legal conclusions summarized by New Mexico (as facts) in "a." and "b." The evidence (NM-EX-528) does not support the asserted fact. New Mexico, partially quoting Exhibit NM-EX-528, states "The Project is 'required to be operated in compliance with the Rio Grande Compact.'" But, Exhibit NM-EX-528 states only that "... El Vado Reservoir is a post-1929 reservoir and is required to be operated in compliance with the Rio Grande Compact.'" |
407 Apportionment No. 111 | Through unanimous resolutions, the RGCC has taken the following relevant positions: a. The State of New Mexico has a Compact apportionment in southern New Mexico below Elephant Butte, as recognized in the citations below: [citations]. ["[G]ray half of New Mexico's population is located within the Rio Grande basin and depends on New Mexico’s allocation of Rio Grande water under the Rio Grande compact." Subject to the stated objections, disputed. The cited evidence does not support the stated legal conclusions summarized by New Mexico (as facts) in "a." and "b." The evidence (NM-EX-528) does not support the asserted fact. New Mexico, partially quoting Exhibit NM-EX-528, states "The Project is 'required to be operated in compliance with the Rio Grande Compact.'" But, Exhibit NM-EX-528 states only that "... El Vado Reservoir is a post-1929 reservoir and is required to be operated in compliance with the Rio Grande Compact.'" |
407 Apportionment No. 111 | a. (i) NM-EX-406, Rio Grande Compact Commission, Resolution of the Rio Grande Compact Commission Regarding the Need for Careful Evaluation of the Water Supply and Socioeconomic Impacts of Any Designation of Critical Habitat for the Rio Grande Silverry Minnow (Mar. 25, 1999). | Yes. See NM Response to TX at: -page 25, 26 | From EX-12/22/20 Filings:  NM-EX-406: See General Objection 99; Fab. R. Evid. 801(d)(2); hearsay. Subject to the stated objections, disputed. The cited evidence does not support the stated legal conclusions summarized by New Mexico (as facts) in "a." and "b." The evidence (NM-EX-528) does not support the asserted fact. New Mexico, partially quoting Exhibit NM-EX-528, states "The Project is 'required to be operated in compliance with the Rio Grande Compact.'" But, Exhibit NM-EX-528 states only that "... El Vado Reservoir is a post-1929 reservoir and is required to be operated in compliance with the Rio Grande Compact.'" |
407 Apportionment No. 111 | b.  (ii) KI (emphasis added). | Yes. See NM Response to TX at: -page 25, 26 | From EX-12/22/20 Filings:  NM-EX-406: See General Objection 99; Fab. R. Evid. 801(d)(2); hearsay. Subject to the stated objections, disputed. The cited evidence does not support the stated legal conclusions summarized by New Mexico (as facts) in "a." and "b." The evidence (NM-EX-528) does not support the asserted fact. New Mexico, partially quoting Exhibit NM-EX-528, states "The Project is 'required to be operated in compliance with the Rio Grande Compact.'" But, Exhibit NM-EX-528 states only that "... El Vado Reservoir is a post-1929 reservoir and is required to be operated in compliance with the Rio Grande Compact.'" |
407 Apportionment No. 111 | c. (i) NM-EX-408, Rio Grande Compact Commission, Resolution of the Rio Grande Compact Commission Regarding the Development of an Appropriate Methodology for Determining the Annual Allocation of Usable Water in Rio Grande Project Storage (Mar. 21, 2002) (emphasis added). | Yes. See NM Response to TX at: -page 25, 26 | From EX-12/22/20 Filings:  NM-EX-406: See General Objection 99; Fab. R. Evid. 801(d)(2); hearsay. Subject to the stated objections, disputed. The cited evidence does not support the stated legal conclusions summarized by New Mexico (as facts) in "a." and "b." The evidence (NM-EX-528) does not support the asserted fact. New Mexico, partially quoting Exhibit NM-EX-528, states "The Project is 'required to be operated in compliance with the Rio Grande Compact.'" But, Exhibit NM-EX-528 states only that "... El Vado Reservoir is a post-1929 reservoir and is required to be operated in compliance with the Rio Grande Compact.'" |
407 Apportionment No. 111 | b.  (ii) KI (emphasis added). | Yes. See NM Response to TX at: -page 25, 26 | From EX-12/22/20 Filings:  NM-EX-406: See General Objection 99; Fab. R. Evid. 801(d)(2); hearsay. Subject to the stated objections, disputed. The cited evidence does not support the stated legal conclusions summarized by New Mexico (as facts) in "a." and "b." The evidence (NM-EX-528) does not support the asserted fact. New Mexico, partially quoting Exhibit NM-EX-528, states "The Project is 'required to be operated in compliance with the Rio Grande Compact.'" But, Exhibit NM-EX-528 states only that "... El Vado Reservoir is a post-1929 reservoir and is required to be operated in compliance with the Rio Grande Compact.'" |
407 Apportionment No. 111 | a. (i) NM-EX-528, Rio Grande Compact Commission, Resolution of the Rio Grande Compact Commission Regarding Temporary Modification of Operations at El Vado Reservoir in New Mexico during April, May, and June 2015 (Mar. 24, 2015); see also NM-EX-002, D'Antonio Decl. at ¶ 14, NM-EX-003, Lopez Decl. at ¶ 15. | Yes. See NM Response to TX at: -page 25, 26 | From EX-12/22/20 Filings:  NM-EX-003: General Objection 42; Fab. R. Civ. P. 56(c)(4). The cited evidence does not support the stated "facts" in whole or in part. Subject to the stated objections, disputed. The cited evidence does not support the stated legal conclusions summarized by New Mexico (as facts) in "a." and "b." The evidence (NM-EX-528) does not support the asserted fact. New Mexico, partially quoting Exhibit NM-EX-528, states "The Project is 'required to be operated in compliance with the Rio Grande Compact.'" But, Exhibit NM-EX-528 states only that "... El Vado Reservoir is a post-1929 reservoir and is required to be operated in compliance with the Rio Grande Compact.'" |
407 Apportionment No. 111 | c. The Project is "required to be operated in compliance with the Rio Grande Compact." | Yes. See NM Response to TX at: -page 25, 26 | From EX-12/22/20 Filings:  NM-EX-406: See General Objection 99; Fab. R. Evid. 801(d)(2); hearsay. Subject to the stated objections, disputed. The cited evidence does not support the stated legal conclusions summarized by New Mexico (as facts) in "a." and "b." The evidence (NM-EX-528) does not support the asserted fact. New Mexico, partially quoting Exhibit NM-EX-528, states "The Project is 'required to be operated in compliance with the Rio Grande Compact.'" But, Exhibit NM-EX-528 states only that "... El Vado Reservoir is a post-1929 reservoir and is required to be operated in compliance with the Rio Grande Compact.'" |
108 Apportionment No. 112

To address the potential for Project operations to impact New Mexico's (and Texas's) Compact apportionment, the RGCC has taken at least three actions by resolution:

a. First, the RGCC unanimously "request[ed] that the Bureau of Reclamation work cooperatively with the Engineer Advisors to develop procedures for determining the annual allotments of water supply in accordance with the Rio Grande Compact."

b. NM-EX 407, Memorandum of Understanding Between the Rio Grande Compact Commission and the United States Bureau of Reclamation, 2 (Mar. 21, 2002), see also NM-EX 002, D'Antonio Decl. at ¶ 15, NM-EX 003, Lopez Decl. at ¶ 16.

Yes. See NM Response to TX at: page 25, 33, 56.

From TX's 12/22/20 Filings:

- NM-EX-408: See General Objection 9; Fed. R. Evid. 801(c), hearsay. NM-EX-002: Fed. R. Civ. P. 56(c), Fed. R. Evid. 401, 602, 802. The statement is inadmissible, not within Mr. D'Antonio's personal knowledge, and constitutes impermissible hearsay. NM-EX-003: See General Objection 9; Fed. R. Civ. P. 56(c), Fed. R. Evid. 401, 602, 802. The statement is inadmissible, not within Mr. Lopez's personal knowledge, and constitutes impermissible hearsay. NM-EX-408 speaks for itself.

108 Apportionment No. 112

Second, the RGCC, among its memorandum of understanding ("MOU") with Reclamation to "conduct a water accounting documentation project," the purpose of the MOU was "to clarify and formally articulate the details of the duties, roles and responsibilities of each party for the water accounting, reporting, and documentation of the waters of the Rio Grande Basin above Fort Quitman, Texas, in accordance with the Compact."


Yes. See NM Response to TX at: page 25, 33, 56.

From TX's 12/22/20 Filings:


Subject to the stated objections, disputed. The cited evidence does not support the stated legal conclusion summarized by New Mexico (as fact) in its opening paragraph.

Apportionment page 23- 24

108 Apportionment No. 112

Third, the RGCC unanimously "request[ed] those federal agencies that operate water-related facilities within the Rio Grande basin to advise the Rio Grande Compact Commission prior to changing the operation of any of those facilities and when deemed necessary by the Rio Grande Compact Commission, seek its unanimous consent for changes prior to implementation."


Yes. See NM Response to TX at: page 25, 33, 56.

From TX's 12/22/20 Filings:


Subject to the stated objections, disputed. The cited evidence does not support the stated legal conclusion summarized by New Mexico (as fact) in its opening paragraph.

Apportionment page 23- 24

109 Apportionment No. 113

The Court held in this case that "the Compact . . . implicitly . . . incorporates the Downstream Contracts by reference."

Texas v. New Mexico, 136 S. Ct. at 939.

Yes. See NM Response to TX at: page 16, 56, 59.

From TX's 12/22/20 Filings:


Texas disputes the application of the Supreme Court opinion, or portion thereof, as a "fact" for purposes of summary judgment. Notably, the Supreme Court ruling in question did not arise from an evidentiary hearing.

The Court's opinion should only be considered in the context of the parties' legal arguments.

Apportionment page 24; Full supply page 2, 15

109 Apportionment No. 113

It noted that the "Compact is inextricably intertwined with the Rio Grande Project and the Downstream Contracts."

Texas v. New Mexico, 136 S. Ct. at 939.

Yes. See NM Response to TX at: page 16, 56, 59.

From TX's 12/22/20 Filings:


Texas disputes the application of the Supreme Court opinion, or portion thereof, as a "fact" for purposes of summary judgment. Notably, the Supreme Court ruling in question did not arise from an evidentiary hearing.

The Court's opinion should only be considered in the context of the parties' legal arguments.

Apportionment page 24; Full supply page 2, 15

110 Apportionment No. 114

The Court further held that "the United States might be said to serve, through the Downstream Contracts as a sort of agent of the Compact, charged with assuring that the Compact's equitable apportionment to Texas and part of New Mexico is, in fact, made."

Texas v. New Mexico, 136 S. Ct. at 939 (emphasis added; internal quotation marks omitted).

Yes. See NM Response to TX at: page 16, 56.

From TX's 12/22/20 Filings:


Texas disputes the application of the Supreme Court opinion, or portion thereof, as a "fact" for purposes of summary judgment. Notably, the Supreme Court ruling in question did not arise from an evidentiary hearing.

The Court's opinion should only be considered in the context of the parties' legal arguments.

Apportionment page 24; Full supply page 2, 15
Texas's Response

Texas's Stated "Fact"

Yes.  See NM Response to TX at: page 56, 66

Supply MSJ; NM cited the fact/evidence in its Motion for Partial Summary Judgment.

Yes.  See NM Response to TX at: page 33, 56

From TX's 12/22/20 Filings: Texas disputes the application of the Supreme Court opinion, or portion thereof, as a "fact" for purposes of summary judgment. Notably, the Supreme Court ruling in question did not arise from an evidentiary hearing. The Court's opinion should only be considered in the context of the parties' legal arguments. New Mexico's statement also mischaracterizes the Court's opinion.

Subject to the stated objections, the fact is cited in New Mexico's Response to Texas's Motion for Partial Summary Judgment but does not materially respond to facts stated therein. Texas's Motion for Summary Judgment does not sufficiently address state water rights in the Lower Rio Grande or New Mexico's water rights law. New Mexico's stated fact is non-responsive and otherwise not supported by definite, competent, or significantly probative evidence that genuinely and materially responds to a fact stated in Texas's Motion for Partial Summary Judgment. As such, Texas's stated material facts remain undisputed. Fed. R. Civ. P. 56(a)(1).

Subject to the stated objections, the fact is non-responsive and otherwise not supported by definite, competent, or significantly probative evidence that genuinely and materially responds to a fact stated in Texas's Motion for Partial Summary Judgment.

Texas's Stated "Fact"

Yes.  See NM Response to TX at: page 56, 61

To the Texas Motion for Partial Summary Judgment

In the Downstream Contracts, and in particular in the 1938 Downstream Contract, the federal government promised to supply Project water to the New Mexico water district Elephant Butte Irrigation District ("EBID") and to the New Mexico water district EPW/D (collectively, the "District") in accordance with their irrigable acres within the Project—roughly 57% for New Mexico and 43% for Texas.

Texas v. New Mexico, 134 S. Ct. at 957.

See NM-EX 006, Barroll 2d Decl. at ¶ 57, see also NM-EX 007, D'Antonio 2d Decl. at ¶ 37.

Yes.  See NM Response to TX at: page 16, 56, 66

TX 12/22/20 RESPONSE TO TEXAS MOTION FOR PARTIAL SUMMARY JUDGMENT

Yes.  See NM Response to TX at: page 56, 61

Subject to the stated objections, the fact is cited in New Mexico's Response to Texas's Motion for Partial Summary Judgment but does not materially respond to facts stated therein. Texas's Motion for Summary Judgment does not sufficiently address state water rights in the Lower Rio Grande or New Mexico's water rights law. New Mexico's stated fact is non-responsive and otherwise not supported by definite, competent, or significantly probative evidence that genuinely and materially responds to a fact stated in Texas's Motion for Partial Summary Judgment. As such, Texas's stated material facts remain undisputed. Fed. R. Civ. P. 56(a)(1).

Subject to the stated objections, the fact is non-responsive and otherwise not supported by definite, competent, or significantly probative evidence that genuinely and materially responds to a fact stated in Texas's Motion for Partial Summary Judgment.
Notice No. 2
Reclamation operates Elephant Butte Reservoir as part of the principal storage infrastructure for the Rio Grande Project.

Yes. See NM Response to TX Notice No. 2 at page 56.

From TX's 12/22/20 Filings:

From TX's 12/22/20 Filings:
- Subject to the stated objections. The cited "evidence" does not stand for the stated proposition. Fed. R. Civ. P. 56(c).

Notice page 2
N/A

Apportionment No. 53
Thus, approximately 57% of Project acreage was situated in EPCWID in Texas.

Yes. See NM Response to TX Notice No. 53 at page 56.

From TX's 12/22/20 Filings:

Subject to the stated objection. N/A

Apportionment No. 53
The Project beneficiary in New Mexico is EBID.

Yes. See NM Response to TX Notice No. 53 at page 56.

From TX's 12/22/20 Filings:
- NM-EX 202: See General Objection #9.

Subject to the stated objections. The cited "evidence" does not stand for the stated proposition. N/A

Notice page 4, 16
N/A

Apportionment No. 50
The Project beneficiary in New Mexico is EBBID.

Yes. See NM Response to TX Notice No. 50 at page 56.

From TX's 12/22/20 Filings:
- NM-EX 202: See General Objection #9.

Subject to the stated objections. The cited "evidence" does not stand for the stated proposition. N/A

Apportionment page 9
N/A

Apportionment No. 51
The Project beneficiary in Texas is EPCWID.

Yes. See NM Response to TX Notice No. 51 at page 56.

From TX's 12/22/20 Filings:
- NM-EX 202: See General Objection #9.

Subject to the stated objections. The cited "evidence" does not stand for the stated proposition. N/A

Apportionment page 9
N/A
TEXAS'S RESPONSE

Notice No. 3 The Project water users are located in [EBID] and N/A

Notice No. 3 Once delivered to the Elephant Butte Reservoir, Project water is allocated to the Rio Grande Project

Similar language in Full Supply

Yes. See NM Response to TX at: - page 56

From TX's 12/22/20 Filings: NM-EX 220; See General Observation #5; NM-EX 112, Stevens Rep. at 18; NM-EX 111, Miltenberger Rep. at 9.

From TX's 12/22/20 Filings: Subject to the stated objections, disputed in part. Paragraph two mischaracterizes the cited “evidence”; the “evidence” does not stand for the stated proposition; and contains an improper legal conclusion.

Notice page 2 N/A

Notice No. 3 The Project water users are located in [EBID] and [EPCWID] (referred to jointly as “Districts”).

Yes. See NM Response to TX at: - page 56

From TX's 12/22/20 Filings: NM-EX 220; See General Observation #5; NM-EX 112, Stevens Rep. at 18; NM-EX 111, Miltenberger Rep. at 9.

From TX's 12/22/20 Filings: Subject to the stated objections, disputed in part. Paragraph two mischaracterizes the cited “evidence”; the “evidence” does not stand for the stated proposition; and contains an improper legal conclusion.

Notice page 2 N/A

N/A

From TX's 12/22/20 Filings: Subject to the stated objections, disputed in part. Paragraph two mischaracterizes the cited “evidence”; the “evidence” does not stand for the stated proposition; and contains an improper legal conclusion.

N/A

The term “Project Supply” means the Usable Water released from Caballo Dam, plus Project return flows and inflows occurring below Caballo Dam, that can be allocated and delivered to the beneficiaries of the Project—namely ERBD and EPWC— and to Mexico. Not all water delivered into Elephant Butte Reservoir constitutes “Project Supply” because some water evaporates in storage, constitutes water in storage other than Usable Water (e.g., Crude Water), or may be used to satisfy pre-Compact water rights.

See NM-EX 868, Lojero 2d Decl. at ¶ 19; see also NM-EX 122, Sullivan & Wilde 2d Rep. (“Spronk Rep.”) at 41, 180.

See NM-EX 868: See General Observation #2; NM-EX 122: See General Observation #1; Fed. R. Evid. 801(c), hearsay.

Subject to the stated objections, the fact is cited in New Mexico's Response to Texas's Motion for Partial Summary Judgment but does not materially respond to facts stated therein. New Mexico's stated fact and the evidence cited in support regarding “normal release” does not materially respond to an argument made in Texas's Motion for Partial Summary Judgment and, in part, amounts merely to New Mexico and Mr. Lopez's legal opinion regarding the meaning of "normal release." New Mexico's stated fact is non-responsive and otherwise not supported by definite, competent, or significantly probative evidence that genuinely and materially responds to a fact stated in Texas's Motion for Partial Summary Judgment. As such, Texas's stated material fact remains unmeant. Fed. R. Civ. P. 56(a), 56(c)(1), (2), (4).

N/A

N/A

Yes. See NM Response to TX at: - page 56

From TX’s 12/22/20 Filings: Subject to the stated objections, disputed. The definition of “Project supply” for purposes of the Compact is a legal conclusion, not an undisputed fact. The definition of “Project supply” is a Compacted question that is outside Dr. Barrille's area of expertise. NM-EX 529: See General Observation #3; Fed. R. Evid. 801(c), hearsay. The cited evidence does not support the stated “facts” in whole and/or in part. Fed. R. Civ. P. 56(c).

From TX's 12/22/20 Filings: Subject to the stated objections, disputed. The definition of “Project supply” for purposes of the Compact is a legal conclusion, not an undisputed fact. The definition of “Project supply” is a Compacted question that is outside Dr. Barrille's area of expertise. NM-EX 529 does not support declarant's definition.

Full Supply page 3, 8, 14 N/A
TEXAS'S RESPONSE

Notice No. 4 Project Allocations are the amounts of Project Supply and the amount Mexico is entitled to receive by treaty.

Yes. See NM Response to TX at: page 56

From TX's 12/22/20 Filings: NM-EX 101; Texas objects to Barrell paragraph 15's definition of "Project Allocation" to the extent it incorporates paragraph 15's definition of "Project Supply," which is a legal conclusion and not a definition. TX's Motion for Partial Summary Judgment does not accurately or sufficiently define "Project Allocation" and thereby mischaracterizes the facts. Subject to the stated objections, the fact is cited in New Mexico's Response to Texas's Motion for Partial Summary Judgment but does not materially respond to facts stated therein. New Mexico's stated fact and the evidence cited in support regarding Project return flows do not materially respond to an argument made in Texas's Motion for Partial Summary Judgment. Further, New Mexico cites CSMF#127 in its opposition to Texas's Motion for Partial Summary Judgment only for its argument that pumping in Texas impacts New Mexico's apportionment (see NM Response at 56). New Mexico's stated fact is non-responsive and otherwise not supported by definite, competent, or significantly probative evidence that genuinely and materially responds to a fact stated in Texas's Motion for Partial Summary Judgment. As such, Texas's stated material facts remain undispited. Fed. R. Civ. P. 56(e)(1).

N/A

N/A

129 Notice No. 4 Project Allocations are the amounts of Project Supply and the amount Mexico is entitled to receive by treaty.

Yes. See NM Response to TX at: page 56

From TX's 12/22/20 Filings: NM-EX 101; Texas objects to Barrell paragraph 15's definition of "Project Allocation" to the extent it incorporates paragraph 15's definition of "Project Supply," which is a legal conclusion and not a definition. TX's Motion for Partial Summary Judgment does not accurately or sufficiently define "Project Allocation" and thereby mischaracterizes the facts. Subject to the stated objections, the fact is cited in New Mexico's Response to Texas's Motion for Partial Summary Judgment but does not materially respond to facts stated therein. New Mexico's stated fact and the evidence cited in support regarding Project return flows do not materially respond to an argument made in Texas's Motion for Partial Summary Judgment. Further, New Mexico cites CSMF#127 in its opposition to Texas's Motion for Partial Summary Judgment only for its argument that pumping in Texas impacts New Mexico's apportionment (see NM Response at 56). New Mexico's stated fact is non-responsive and otherwise not supported by definite, competent, or significantly probative evidence that genuinely and materially responds to a fact stated in Texas's Motion for Partial Summary Judgment. As such, Texas's stated material facts remain undispited. Fed. R. Civ. P. 56(e)(1).

N/A

N/A
TEXAS'S RESPONSE

APPORTIONMENT

No. Citation

130 N/A Reclamation determines Project Allocations before the beginning of the irrigation season and updates the Project Allocations as necessary throughout the season. Yes. See NM Response to TX fact: page 56

131 Apportionment No. 67 Historically, Reclamation calculated and declared the allocation of Project supply available to lands in New Mexico, lands in Texas, and Mexico on the basis of water in storage available for release and on historical return flows to the Rio Grande. Yes. See NM Response to TX fact: page 56

132 Apportionment No. 90 The allocation of Project supply available for lands in the two States was historically equally divided to all Project lands on an acre foot per acre basis. Yes. See NM Response to TX fact: page 56

133 N/A Reclamation releases Drible Water from Project Storage for delivery to Project beneficiaries and to Mexico as part of the operations of the Rio Grande Project. Releases are made in response to orders by the Districts, and in accordance with each year’s schedule of deliveries to Mexico. Yes. See NM Response to TX fact: page 56
The Rio Grande Compact incorporates the Rio Grande Project as the mechanism by which water users in Texas (EPCWID) receive the State's equitable apportionment of the waters of the Rio Grande. See NM-EX 212, Gordon Dep. (July 15, 2020) at 14:22-16:10; Texas's Reply to Exceptions to First Interim Report of Special Master, 40 (July 28, 2017); see also First Interim Report of the Special Master, 194-95 (Feb. 9, 2017); Texas’s Reply to Exceptions to First Interim Report of Special Master, 40 (July 26, 2017); Reply Brief for the United States on Exceptions by the States of New Mexico and Colorado to the First Interim Report of the Special Master, 18 (July 2017).

Yes. See NM Response to TX at: - page 56

From TX's 12/22/20 Filings:

Notice page 2, 8 N/A

Project Allocations are the amount of Project supply each District (EBID and EPCWID) is entitled to order (take) from the Project, each year, and the amount Mexico is entitled to receive by Treaty. NM-EX 001, Barroll Decl., ¶ 18; NM-EX 003, Lopez Decl., ¶ 23; NM-EX 307, Convention between the United States and Mexico: Equitable Distribution of the Waters of the Rio Grande (May 21, 1906); NM-EX 529, Bureau of Reclamation, Continued Implementation of the 2008 Operating Agreement for the Rio Grande Project, New Mexico and Texas: Final Environmental Impact Statement, at 4 (Sep. 30, 2010).

Yes. See NM Response to TX at: - page 56

From TX's 12/22/20 Filings:

Notice page 2, 8 N/A
The Project has changed significantly since 1938. Major changes to the Project include but are not limited to: completion of the Rectification and Canalization projects, proliferation of groundwater wells in both states and in Mexico, Project acreage built-up through urbanization of irrigated areas, changes in on-farm irrigation efficiencies, changes in crop mix, urbanization of Project area, growth of municipal water demands with significant amounts of that demand being supplied by the Project, significant Project accounting changes, infrastructure changes (e.g., construction of the American Canal and its Extension), designation of wastewater treatment plant treated effluent as non-Project water, transfer of ownership and operation of Project infrastructure from Reclamation to the Districts, and significantly modified Project operations under the 2018 Operating Agreement.


The cropping pattern in the Project has changed throughout the history of the Project.

The cropping pattern in the Project has changed throughout the history of the Project. Under the Reclamation Act, Congress intended that the beneficiaries would bear sufficient revenue to cover the approximate costs of construction and operation and maintenance. Thus, Reclamation intended for the total estimated costs of the Rio Grande Project to be equitably borne by its beneficiaries.


Subject to the stated objections, the fact is cited in New Mexico’s Response to Texas’s Motion for Partial Summary Judgment but does not materially respond to facts stated therein. New Mexico’s stated fact and the evidence cited in support regarding Project return flows do not materially respond to an argument made in Texas’s Motion for Partial Summary Judgment. Further, New Mexico cites CSMF #138 in its opposition to Texas's Motion for Partial Summary Judgment. The Compact, on its face, further does not address modifications to the Project. New Mexico’s stated fact is non-responsive and otherwise not supported by definitive, competent, or significantly probative evidence that generally and materially responds to a fact stated in Texas’s Motion for Partial Summary Judgment. As such, Texas’s stated material facts remain undisputed. Fed. R. Civ. P. 56(a), 56(e)(1), (2), (4).


Subject to the stated objections, the fact is cited in New Mexico’s Response to Texas’s Motion for Partial Summary Judgment but does not materially respond to facts stated therein. New Mexico’s stated fact and the evidence cited in support regarding modifications to the Project and impacts on the Compact do not respond to facts stated in Texas’s Motion for Partial Summary Judgment. The Compact, on its face, further does not address modifications to the Project. New Mexico’s stated fact is non-responsive and otherwise not supported by definitive, competent, or significantly probative evidence that generally and materially responds to a fact stated in Texas’s Motion for Partial Summary Judgment. As such, Texas’s stated material facts remain undisputed. Fed. R. Civ. P. 56(a), 56(e)(1), (2), (4).

The cited portion of the document is irrelevant hearsay; Fed. R. Evid. 401, 402. Subject to the stated objections, undisputed.

Subject to the stated objections, the fact is cited in New Mexico's Response to Texas's Motion for Partial Summary Judgment but does not materially respond to facts stated therein. New Mexico's stated fact and the evidence cited in support regarding Project return flows do not materially respond to an argument made in Texas's Motion for Partial Summary Judgment. Further, New Mexico cites CSMF #138 in its opposition to Texas's Motion for Partial Summary Judgment. The Compact, on its face, further does not address modifications to the Project. New Mexico's stated fact is non-responsive and otherwise not supported by definitive, competent, or significantly probative evidence that generally and materially responds to a fact stated in Texas's Motion for Partial Summary Judgment. As such, Texas's stated material facts remain undisputed. Fed. R. Civ. P. 56(a), 56(e)(1), (2).

Subject to the stated objections, the fact is cited in New Mexico's Response to Texas's Motion for Partial Summary Judgment but does not materially respond to facts stated therein. New Mexico's stated fact and the evidence cited in support regarding modifications to the Project and impacts on the Compact do not respond to facts stated in Texas’s Motion for Partial Summary Judgment. The Compact, on its face, further does not address modifications to the Project. New Mexico’s stated fact is non-responsive and otherwise not supported by definitive, competent, or significantly probative evidence that generally and materially responds to a fact stated in Texas’s Motion for Partial Summary Judgment. As such, Texas’s stated material facts remain undisputed. Fed. R. Civ. P. 56(a), 56(e)(1), (2).

The citation portion of the document is irrelevant hearsay; Fed. R. Evid. 401, 402. Subject to the stated objections, the fact is cited in New Mexico’s Response to Texas’s Motion for Partial Summary Judgment but does not materially respond to facts stated therein. New Mexico’s stated fact and the evidence in support regarding Project return flows do not materially respond to an argument made in Texas’s Motion for Partial Summary Judgment. Further, New Mexico cites CSMF #138 in its opposition to Texas’s Motion for Partial Summary Judgment. The Compact, on its face, further does not address modifications to the Project. New Mexico’s stated fact is non-responsive and otherwise not supported by definitive, competent, or significantly probative evidence that generally and materially responds to a fact stated in Texas’s Motion for Partial Summary Judgment. As such, Texas’s stated material facts remain undisputed. Fed. R. Civ. P. 56(a), 56(e)(1), (2).
TEXAS'S RESPONSE

Apportionment

Apportionment

Apportionment

TEXAS'S EVIDENTIARY OBJECTIONS

Yes. See NM Response to TX at: - page 16, 56

From TX's 12/22/20 Filings:

From TX's 12/22/20 Filings:

From TX's 12/22/20 Filings:

Subject to the stated objections, the fact is cited in New Mexico's Response to Texas's Motion for Partial Summary Judgment. As such, the fact is non-responsive and otherwise not undisputed.

The discussion is lengthy, and is incorporated herein by reference. See Miltenberger Dec. in Opp. to NM at TX_MSJ_007371, paragraphs 1 – 7, 54 – 59.

Subject to the stated objections, disputed in part. This paragraph correctly quotes from the cited document but recharacterizes the context and purpose of the 1938 Downstream Contract as discussed in paragraphs 54-55 of the Miltenberger Declaration. NM-EX-124. The discussion is lengthy, and is incorporated herein by reference. See Miltenberger Decl. in Opp. to NM at TX_MSJ_007371, paragraphs 1 – 7, 54 – 59.

From TX's 12/22/20 Filings:

From TX's 12/22/20 Filings:

From TX's 12/22/20 Filings:

Arbitration page 10-11; Arbitration page 30; Arbitration page 33; Arbitration page 39; Arbitration page 40

Arbitration page 11; Arbitration page 30; Arbitration page 33; Arbitration page 39; Arbitration page 40

Opp to US - page 39

Notice page 2; Full supply MSJ; NM cited the fact/evidence in its Motion for Partial Summary Judgment. See Miltenberger Decl. in Opp. to NM at TX_MSJ_007371, paragraphs 1 – 7, 54 – 59.

Identify facts that are undisputed and/or undisputed in part. See Miltenberger Dec. in Opp. to NM at TX_MSJ_007371, paragraphs 1 – 7, 54 – 59.

NA

NA
The Downstream Contracts do not address depletions, the Downstream Contracts generally restrict use of Apportionment.

Apportionment

See NM-EX-008, Lopez 2d Decl. ¶ 27; see also NM-EX-308, Articles of Agreement between the United States of America, Elephant Butte Water Users Association, and El Paso Valley Water Users’ Association (June 27, 1906). NM-EX-321, Contract between the United States and the Elephant Butte Irrigation District adjusting construction charges and for other purposes (Nov. 10, 1937); NM-EX-320, Contract between the United States and the Elephant Butte Irrigation District adjusting construction charges for other purposes (Nov. 9, 1937); NM-EX-324, Contract Between Elephant Butte Irrigation District and El Paso County Water Improvement District No. 1 (Feb. 16, 1938).

Yes. See NM Response to TX Motion for Partial Summary Judgment at: page 56.

NM-EX-008: The cited evidence does not support the stated “facts” in whole and/or in part. Fed. R. Civ. P. 56(c). The stated “facts” constitute improper legal conclusions in whole or in part.

Subject to the stated objections, the fact is cited in New Mexico’s Response to Texas’s Motion for Partial Summary Judgment but does not materially respond to facts stated therein. New Mexico’s stated fact and the evidence cited in support of the Texas’s Motion for Partial Summary Judgment but does not materially respond to facts stated therein. New Mexico’s stated fact is non-responsive and otherwise not supported by definite, competent, or significantly probative evidence that generally and materially responds to a fact stated in Texas’s Motion for Partial Summary Judgment. As such, Texas’s stated material fact remains undisputed. Fed. R. Civ. P. 56(c)(3).

N/A

The downstream contracts do not address depletions, whether in New Mexico, Texas, or Mexico, that may affect available Project supply.

The Downstream Contracts do not address depletions, whether in New Mexico, Texas, or Mexico, that may affect available Project supply.

See NM-EX-008, Lopez 2d Decl. ¶ 28; see also NM-EX-308, Articles of Agreement between the United States of America, Elephant Butte Water Users Association, and El Paso Valley Water Users’ Association (June 27, 1906). NM-EX-321, Contract between the United States and the Elephant Butte Irrigation District adjusting construction charges and for other purposes (Nov. 10, 1937); NM-EX-320, Contract between the United States and the Elephant Butte Irrigation District adjusting construction charges for other purposes (Nov. 9, 1937); NM-EX-324, Contract Between Elephant Butte Irrigation District and El Paso County Water Improvement District No. 1 (Feb. 16, 1938).

Yes. See NM Response to TX Motion for Partial Summary Judgment at: page 56.

NM-EX-008: The cited evidence does not support the stated “facts” in whole and/or in part. Fed. R. Civ. P. 56(c). The stated “facts” constitute improper legal conclusions in whole or in part.

Subject to the stated objections, the fact is cited in New Mexico’s Response to Texas’s Motion for Partial Summary Judgment but does not materially respond to facts stated therein. New Mexico’s stated fact and the evidence cited in support of the Texas’s Motion for Partial Summary Judgment but does not materially respond to facts stated therein. New Mexico’s stated fact is non-responsive and otherwise not supported by definite, competent, or significantly probative evidence that generally and materially responds to a fact stated in Texas’s Motion for Partial Summary Judgment. As such, Texas’s stated material fact remains undisputed. Fed. R. Civ. P. 56(c)(3).

N/A

At the time the Compact was signed, Reclamation had been operating the Project, in its entirety, as a single unit for over twenty years. During that time, the Project operated under Reclamation law.

At the time the Compact was signed, Reclamation had been operating the Project, in its entirety, as a single unit for over twenty years. During that time, the Project operated under Reclamation law.

See NM-EX-318 and NM-EX-005. NM-EX-005 paragraph 9 states that the fact stated in Texas’s Motion for Partial Summary Judgment was not supported by the cited evidence. NM-EX-318 and NM-EX-005. NM-EX-005 paragraph 9 states that the fact stated in Texas’s Motion for Partial Summary Judgment was not supported by the cited evidence.

Subject to the stated objections, the fact is cited in New Mexico’s Response to Texas’s Motion for Partial Summary Judgment but does not materially respond to facts stated therein. New Mexico’s stated fact is non-responsive and otherwise not supported by definite, competent, or significantly probative evidence that generally and materially responds to a fact stated in Texas’s Motion for Partial Summary Judgment. As such, Texas’s stated material fact remains undisputed. Fed. R. Civ. P. 56(c)(3).

N/A

In the years prior to the Compact being signed (1928-77), the average release from the Project was 780,640 acre-feet to satisfy irrigation demands on Project lands in both New Mexico and Texas.

In the years prior to the Compact being signed (1928-77), the average release from the Project was 780,640 acre-feet to satisfy irrigation demands on Project lands in both New Mexico and Texas.


Yes. See NM Response to TX Motion for Partial Summary Judgment at: page 56.

NM-EX-202: Subject to the stated objections, the cited evidence is misleading. The cited primary document, United States Reclamation Service, Project History Rio Grande Project Year 1937–1938, suggests that an equal allocation was set in 1937. NM-EX-323. However, it is unclear from that document if this was the practice in all years prior to the Compact. Even for 1937, the allotment base was abandoned because individual water users had exceeded that amount in July.

Subject to the stated objections, the cited evidence is misleading. The cited primary document, United States Reclamation Service, Project History Rio Grande Project Year 1937–1938, suggests that an equal allocation was set in 1937. NM-EX-323. However, it is unclear from that document if this was the practice in all years prior to the Compact. Even for 1937, the allotment base was abandoned because individual water users had exceeded that amount in July.

N/A

In the years prior to the Compact being signed, the Project would set an equal allotment for each Project user to satisfy irrigation demands.

In the years prior to the Compact being signed, the Project would set an equal allotment for each Project user to satisfy irrigation demands.


Yes. See NM Response to TX Motion for Partial Summary Judgment at: page 56.

From TX's 12/22/20 Filings: "facts" in whole and/or in part. Fed. R. Civ. P. 56(c). The stated “facts” constitute improper legal conclusions in whole or in part.

Subject to the stated objections, the subject to the stated objections, the fact is cited in New Mexico’s Response to Texas’s Motion for Partial Summary Judgment but does not materially respond to facts stated therein. New Mexico’s stated fact and the evidence cited in support regarding Project return flows do not materially respond to an argument made in Texas’s Motion for Partial Summary Judgment.

As such, Texas’s stated material fact remains undisputed. Fed. R. Civ. P. 56(c)(3).

N/A

Identification of where NM cited the fact/evidence in its Response to the US Motion for Partial Summary Judgment

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Identification of where NM cited the fact/evidence in its Response to the US Motion for Partial Summary Judgment
NRS

Citation

No. 140 Apportionment

No. 56

The amount of water that was actually used on each acre was dependent on the amount called for by the individual farmers.


Yes. See NM Response to TX MSJ at: page 56

NM-EX-202: See: General Objections #5.
NM-EX-100: See: General Objections #7; Fed. R. Evid. 403(h); hearsay.

Subject to the stated objections, disputed. The paragraph is misleading. The cited primary document, United States Reclamation Service, Project History Rio Grande Project Year 1937 (1970) suggests that an equal allocation was set in 1937. NM-EX-323. However, it is unclear from that document if this was the practice in all years prior to the Compact. Even for 1937, the allotment basis was abandoned for individual water users had exceeded that amount in July. See Milwaukee Dep. in Opp. to NM at EX MSJ 00371, paragraphs 1 - 7, 55.

Apportionment page 10; Apportionment page 30; Apportionment page 40

149 N/A

Prior to the Compact, return flow, generated both in New Mexico and Texas, was a substantial part of Project deliveries to EPCWD. EPCWD headgates diverted return flows generated in the upper part of the El Paso Valley as well as municipal effluent generated by the City of El Paso. The parenthetical of return flows shown throughout Table 191 is for the period from 1951 to 1979, 1979-1995 period. At the time of the negotiation of the Compact, the return flows generated within the El Paso basin were an integral part of Project Supply.


Yes. See NM Response to TX MSJ at: page 56, 37, 56, 58

NM-EX-066: Fed. R. Evid. 602; Dr. Barrall lacks personal knowledge regarding the stated facts to the extent the stated facts purport to address the history of irrigation district activities in the Rio Grande Basin. NM-EX-100: 101; See General Objection #7; Fed. R. Evid. 403(h); hearsay.

Subject to the stated objections, the fact that in New Mexico's Response to Texas's Motion for Partial Summary Judgment but does not materially respond to a fact stated therein. Texas's stated factual and the evidence cited in support regarding Project return flows do not materially respond to an argument made in Texas's Motion for Partial Summary Judgment. New Mexico's counterclaims and its apportionment motion address New Mexico's legal position on the interrelationship of the Project, Downstream Contracts and the Compact. CSMF #149 may relate to New Mexico's motion(s), but does not materially respond to Texas's Motion for Partial Summary Judgment. Further, New Mexico cites CSMF #149 in its opposition to Texas's Motion for Partial Summary Judgment only for its argument that pumping in Texas impacts New Mexico's apportionment (see, e.g., NM Response at 56). New Mexico's stated fact is non-responsive and otherwise not supported by definite, competent, or significantly probative evidence that genuinely and materially responds to a fact stated in Texas's Motion for Partial Summary Judgment. As such, Texas's stated material facts remain undisputed. Fed. R. Civ. P. 56(j)(1).

Subject to the stated objections, disputed. This paragraph is misleading. The cited primary document, United States Reclamation Service, Project History Rio Grande Project Year 1937 (1970) suggests that an equal allocation was set in 1937. NM-EX-323. However, it is unclear from that document if this was the practice in all years prior to the Compact. Even for 1937, the allotment basis was abandoned for individual water users had exceeded that amount in July. See Milwaukee Dep. in Opp. to NM at EX MSJ 00371, paragraphs 1 - 7, 55.

Opp to US - page 61 ("According to this definition, water that does not reach "the bed of the Rio Grande" does not even qualify as Project supply, and can therefore be used by EPCWD without being charged against an annual allocation, even if the water was on its way to the river, based on that..."

Opp to US - page 61

150 N/A

The data in Table 39-9 of the RGI reflects the diversion of return flows arising in the El Paso Valley.


Yes. See NM Response to TX MSJ at: page 56, 37, 56, 58

Rio Grande Joint Investigation: The cited evidence does not support the stated "facts" in whole and/or in part. Fed. R. Civ. P. 56(j); NM-EX-100, 101, 103; See General Objection #7; Fed. R. Evid. 403(h); hearsay.

Subject to the stated objections, the fact that in New Mexico's Response to Texas's Motion for Partial Summary Judgment but does not materially respond to a fact stated therein. Texas's stated factual and the evidence cited in support regarding water diversion from EPCWD drains do not materially respond to an argument made in Texas's Motion for Partial Summary Judgment. New Mexico's counterclaims and its apportionment motion address New Mexico's legal position on the interrelationship of the Project, Downstream Contracts and the Compact. CSMF #149 may relate to New Mexico's motion(s), but does not materially respond to Texas's Motion for Partial Summary Judgment. Further, New Mexico cites CSMF #149 in its opposition to Texas's Motion for Partial Summary Judgment only for its argument that pumping in Texas impacts New Mexico's apportionment (see, e.g., NM Response at 56). New Mexico's stated fact is non-responsive and otherwise not supported by definite, competent, or significantly probative evidence that genuinely and materially responds to a fact stated in Texas's Motion for Partial Summary Judgment. As such, Texas's stated material facts remain undisputed. Fed. R. Civ. P. 56(j)(1).

Subject to the stated objections, disputed. This paragraph is misleading. The cited primary document, United States Reclamation Service, Project History Rio Grande Project Year 1937 (1970) suggests that an equal allocation was set in 1937. NM-EX-323. However, it is unclear from that document if this was the practice in all years prior to the Compact. Even for 1937, the allotment basis was abandoned for individual water users had exceeded that amount in July. See Milwaukee Dep. in Opp. to NM at EX MSJ 00371, paragraphs 1 - 7, 55.

Opp to US - page 61

151 Apportionment

No. 99. Full Supply Nos. 9, similar language in Notice No. 12 (period from inception to 1951) and 15 (period from 1951 to 1979).

Until about 1979, Reclamation operated the entire Project, including delivering Project water to individual New Mexico and Texas farm headgates in response to firm orders, and Project farmers ordered water directly from Reclamation. Reclamation then determined what volumes and diversions were needed to fulfill those orders, reduced water from Cadillau reservoir, and diverted water at appropriate canal headgates. Reclamation ditch riders then delivered the ordered water to individual farms.


Yes. See NM Response to TX MSJ at: page 56

From TX's 12/22/20 Filings: See: General Objections #5.
From TX's 12/22/20 Filings: See: General Objections #9; Fed. R. Evid. 403(h); hearsay

The cited evidence does not support the stated "facts" in whole and/or in part. Fed. R. Civ. P. 56(j).

Subject to the stated objections, disputed. This paragraph is misleading. The cited primary document, United States Reclamation Service, Project History Rio Grande Project Year 1937 (1970) suggests that an equal allocation was set in 1937. NM-EX-323. However, it is unclear from that document if this was the practice in all years prior to the Compact. Even for 1937, the allotment basis was abandoned for individual water users had exceeded that amount in July. See Milwaukee Dep. in Opp. to NM at EX MSJ 00371, paragraphs 1 - 7, 55.

Apportionment page 11; Apportionment page 30; Notice page 3, 16, 17; full supply page 33
TEXAS’S RESPONSE: Apportionment

Texas claims the cited “evidence” does not stand for the stated proposition.

Subject to the stated objections, disputed in part. New Mexico’s reference in paragraphs 60, 65 and 64 of the Texas MSJ on Apportionment regarding how Project supply was historically allocated based on an equal acre foot per acre basis is not relevant to apportionment of Rio Grande water under the Compact. This allocation applies solely to Project water already stored in Elephant Butte Reservoir and inflows to the Rio Grande downstream of the reservoir, whereas the Compact applies to Rio Grande deliveries to Elephant Butte Reservoir. Project allocations made to respond to orders by the District water users do not form the basis of Texas’s Compact apportionment. The Compact requires New Mexico to deliver prescribed and indexed quantities of Rio Grande water to Texas in Elephant Butte Reservoir. The 1986 treaty with Mexico and the contracts between the federal government and the Districts then allocate the stored water in Elephant Butte Reservoir, along with downstream inflows to the Rio Grande, to Mexico, EBID, and EP#1. See Brandes Dec. in Opp. to NM at TX_MSJ_007312, paragraphs 1 – 9, 25-27.


From TX’s 12/22/20 Filings: Subject to the stated objections, disputed in part. The testimony cited by New Mexico does not support that “Prior to 1951, the Project enjoyed plentiful water supplies.” See TX MSJ on Apportionment regarding how Project supply was historically allocated based on an equal acre foot per acre basis is not relevant to apportionment of Rio Grande water under the Compact. This allocation applies solely to Project water already stored in Elephant Butte Reservoir and inflows to the Rio Grande downstream of the reservoir, whereas the Compact applies to Rio Grande deliveries to Elephant Butte Reservoir. Project allocations made to respond to orders by the District water users do not form the basis of Texas’s Compact apportionment. The Compact requires New Mexico to deliver prescribed and indexed quantities of Rio Grande water to Texas in Elephant Butte Reservoir. The 1986 treaty with Mexico and the contracts between the federal government and the Districts then allocate the stored water in Elephant Butte Reservoir, along with downstream inflows to the Rio Grande, to Mexico, EBID, and EP#1. See Brandes Dec. in Opp. to NM at TX_MSJ_007312, paragraphs 1 – 9, 25-27.

From TX’s 12/22/20 Filings: Subject to the stated objections, disputed in part. The cited “evidence” does not stand for the stated proposition. The cited “evidence” does not form the basis of Texas’s Compact apportionment. The Compact requires New Mexico to deliver prescribed and indexed quantities of Rio Grande water to Texas in Elephant Butte Reservoir. The 1986 treaty with Mexico and the contracts between the federal government and the Districts then allocate the stored water in Elephant Butte Reservoir, along with downstream inflows to the Rio Grande, to Mexico, EBID, and EP#1. See Brandes Dec. in Opp. to NM at TX_MSJ_007312, paragraphs 1 – 9, 25-27.

From TX’s 12/22/20 Filings: Subject to the stated objections, disputed in part. New Mexico’s reference in paragraphs 60, 65 and 64 of the Texas MSJ on Apportionment regarding how Project supply was historically allocated based on an equal acre foot per acre basis is not relevant to apportionment of Rio Grande water under the Compact. This allocation applies solely to Project water already stored in Elephant Butte Reservoir and inflows to the Rio Grande downstream of the reservoir, whereas the Compact applies to Rio Grande deliveries to Elephant Butte Reservoir. Project allocations made to respond to orders by the District water users do not form the basis of Texas’s Compact apportionment. The Compact requires New Mexico to deliver prescribed and indexed quantities of Rio Grande water to Texas in Elephant Butte Reservoir. The 1986 treaty with Mexico and the contracts between the federal government and the Districts then allocate the stored water in Elephant Butte Reservoir, along with downstream inflows to the Rio Grande, to Mexico, EBID, and EP#1. See Brandes Dec. in Opp. to NM at TX_MSJ_007312, paragraphs 1 – 9, 25-27.

From TX’s 12/22/20 Filings: Subject to the stated objections, disputed in part. The cited evidence does not support the stated “factual” in whole or in part. See Fed. R. Civ. P. 56(c).

From TX’s 12/22/20 Filings: Subject to the stated objections, disputed in part. The cited “evidence” does not stand for the stated proposition. The cited “evidence” does not form the basis of Texas’s Compact apportionment. The Compact requires New Mexico to deliver prescribed and indexed quantities of Rio Grande water to Texas in Elephant Butte Reservoir. The 1986 treaty with Mexico and the contracts between the federal government and the Districts then allocate the stored water in Elephant Butte Reservoir, along with downstream inflows to the Rio Grande, to Mexico, EBID, and EP#1. See Brandes Dec. in Opp. to NM at TX_MSJ_007312, paragraphs 1 – 9, 25-27.

From TX’s 12/22/20 Filings: Subject to the stated objections, disputed in part. The cited “evidence” does not stand for the stated proposition. The cited “evidence” does not form the basis of Texas’s Compact apportionment. The Compact requires New Mexico to deliver prescribed and indexed quantities of Rio Grande water to Texas in Elephant Butte Reservoir. The 1986 treaty with Mexico and the contracts between the federal government and the Districts then allocate the stored water in Elephant Butte Reservoir, along with downstream inflows to the Rio Grande, to Mexico, EBID, and EP#1. See Brandes Dec. in Opp. to NM at TX_MSJ_007312, paragraphs 1 – 9, 25-27.

From TX’s 12/22/20 Filings: Subject to the stated objections, disputed in part. The cited “evidence” does not stand for the stated proposition. The cited “evidence” does not form the basis of Texas’s Compact apportionment. The Compact requires New Mexico to deliver prescribed and indexed quantities of Rio Grande water to Texas in Elephant Butte Reservoir. The 1986 treaty with Mexico and the contracts between the federal government and the Districts then allocate the stored water in Elephant Butte Reservoir, along with downstream inflows to the Rio Grande, to Mexico, EBID, and EP#1. See Brandes Dec. in Opp. to NM at TX_MSJ_007312, paragraphs 1 – 9, 25-27.
Texa's Response
Apportionment

Notice  No. 20 Reclamation compiles its accounting of the Districts' allocations, takes water orders from the Districts, and directs water deliveries to farm headgates. Since those transfers, Reclamation started to allocate water to each District for delivery at the District's canal headings (i.e., Arrey, Arroyo Seco, etc.) for water users in each District. The Districts in turn take farm orders from their water users and issue notices of delivery to Reclamation. The Districts then allocate the delivered water among the water users in their respective districts for farm use.

In approximately 1979, Project operations changed with the transfer of some Project facilities to the Districts. Reclamation started to allocate water to each District for delivery at its canal headings (i.e., Arroyo Seco, Reedy, Franklin and Rieveski) rather than directly to farm headgates. Since those transfers, Reclamation determines the Districts' Project allocations, takes water orders from the Districts, releases water from Caballo Reservoir, and then makes deliveries to canal headings for water users in each District. The Districts in turn take farm orders from their members, place orders with Reclamation for water to be delivered as canal headings, and then take delivery of that water and deliver it to farm headgates in each state.

From TX's 12/22/20 Filings: See NM-EX-223: General Objection #7; Fed. R. Civ. P. 601(c), hearsay. The cited evidence does not support the stated "facts" in whole or in part. Fed. R. Civ. P. 76(c).

From TX's 12/22/20 Filings: See Brandes Dec. in Opp. to NM at TX_MSJ_007312, paragraphs 1 – 9, 25-27.

Subject to the stated objections, disputed. New Mexico's own data as reported in the underlying files of the Spronk Report are inconsistent with the diversion percentages reported in paragraph 65 of NM MSJ on Apportionment and attributed in paragraph 65 to the work of New Mexico's other expert, Peggy Barroll. In paragraph 65, New Mexico states that from 1931 to 1979, diversions by EP#1 totaled 45.5 percent of total diversions, but the Spronk data show only 41.7 percent, slightly less than the 45 percent allocation. Similarly, for 1951 to 1979, in paragraph 65 New Mexico reports that EP#1 diverted 43.8 percent of the total diversions, whereas the Spronk data show that EP#1 diverted only 38.5 percent. Methods used by Peggy Barroll and those described in the underlying data of the Spronk Report also differ in how the distributions of diversions by EP#1 in Mule Spring were made, with Barroll assuming 20 percent and Spronk an average of 14 percent. See Brandes Dec. in Opp. to NM at TX_MSJ_007312, paragraphs 9 – 26, 26-28, 26.

Apportionment page 12; Apportionment page 30; Apportionment page 46

No. 46

During this period, there is no record that any party lodged an objection, whether through the RGCC or Reclamation, to challenge Reclamation's principle of allocation on an equal per-acre basis.

Apportionment page 12; Apportionment page 30; Apportionment page 46

Yes. See NM Response to TX at page 16, 56

See NM-EX-901, Stevens Decl. ¶ 12; NM-EX-100, Lopez Dep. at 25; NM-EX-2, D'Antone Decl. ¶ 16.

Yes. See NM Response to TX at page 16, 56

No. 64

From 1931 to 1979, Reclamation operated the Project such that the diversions for EID in New Mexico totaled 45.5%; for EPCWID in Texas, 45.5%; and for EPCWID in Texas, 45.5%. In 1968, when Reclamation began enforcing allocations to each acre, the Districts reported that the actual diversions that each takes at its diversion point are not known with sufficient precision to be apportioned among the Districts.

Apportionment page 12; Apportionment page 30; Apportionment page 46

No. 65

No. 66

Subject to the stated objections, undisputed with regard to the first sentence. See NM-EX-210: General Objection #8. See NM-EX-222: General Objection #8.

From 1931 to 1979, Project operations changed with the transfer of some Project facilities to the Districts. Reclamation started to allocate water to each District for delivery at its canal headings for water users in each District. The Districts in turn take farm orders from their members, place orders with Reclamation for water to be delivered at canal headings, and then take delivery of that water and deliver it to farm headgates in each state.

Identification of where NM cited the fact/evidence in its Motion for Partial Summary Judgment

Identification of where NM cited the fact/evidence in this Response to the US

Identification of where NM cited the fact/evidence in NM MSJ; NM Full Supply MSJ; NM Apportionment MSJ

Reservoir and the deliveries to EP#1 to be reduced. (See Figures 9 and 10 to Brandes Dec).

The Compact requires Rio Grande water deliveries from New Mexico to Elephant Butte Reservoir for Texas, and the 1906 treaty with Mexico and the contracts between the federal government and the Districts allocate the stored water in Elephant Butte Reservoir, along with downstream inflows to the Rio Grande, to Mexico, EBID, and EP1. Furthermore, the D1/D2 method does not reflect Project water supply conditions as they existed at the time of Compact adoption in 1938. The D1/D2 method understates the supply of Project water available under the Compact because it is based on Project delivery conditions that occurred during 1951 and 1978 when substantial groundwater pumping had already developed in the Rincon and Mesilla basins of New Mexico (See Figure 5) causing flows in the drains and in the Rio Grande at El Paso relative to releases from Cathole Reservoir and the deliveries to EP1 to be reduced. (See Figures 9 and 10 to Brandes Dec).

See Brandes Dec. in Ops. to TX MSJ, 0073712, paragraphs 1 – 9, 25-26, 29.

From TX’s 12/22/20 Filings: Subject to the stated objections, disputed in part. This paragraph is misleading. The D1/D2 method referenced in paragraphs 68 through 70 and paragraphs 72 through 76 of NM MSJ Motion on Apportionment has nothing to do with Compact apportionment; rather, it relates to how the Project was operated during 1951 through 1978. The Compact requires Rio Grande water deliveries from New Mexico to Elephant Butte Reservoir for Texas, and the 1906 treaty with Mexico and the Districts allocate the stored water in Elephant Butte Reservoir, along with downstream inflows to the Rio Grande, to Mexico, EHID, and EP1. Furthermore, the D1/D2 method does not reflect Project water supply conditions as they existed at the time of Compact adoption in 1938. The D1/D2 method understates the supply of Project water available under the Compact because it is based on Project delivery conditions that occurred during 1951 and 1978 when substantial groundwater pumping had already developed in the Rincon and Mesilla basins of New Mexico (See Figure 5) causing flows in the drains and in the Rio Grande at El Paso relative to releases from Cathole Reservoir and the deliveries to EP1 to be reduced. (See Figures 9 and 10 to Brandes Dec).

Appornment - page 30; 44, 45

Opp to US - page 18; 28; 31

Under the D1/D2 Allocation Method, the D1 Curve is the observed relationship between total Project release from storage and firm delivery plus the delivery to Mexico, and the D2 Curve is the observed relationship between Project release from storage and total project delivery to Mexico. See NM-EX-905, Brattey 2nd Decl. at 5-7; see also NM-EX-100, Barrel Rep. at 31-31, Appx. A, A-15-17.

Subject to the stated objections, the fact is cited in New Mexico’s Response to Texas Motion for Partial Summary Judgment but does not materially respond to an argument raised in Texas’ Motion for Partial Summary Judgment. New Mexico’s evidence cited in support regarding the D1/D2 allocation method does not materially respond to an argument raised in Texas’ Motion for Partial Summary Judgment. New Mexico’s counterclaims and its apportionment position address New Mexico’s legal position on the international relationship of the Project, Downstream Contracts and the Compact. CSMP #134 may relate to New Mexico’s interests, but does not materially respond to Texas’ Motion for Partial Summary Judgment. New Mexico’s stated fact is non-responsive and otherwise not supported by definite, competent, or cogently probative evidence that generally and necessarily responds to a fact stated in Texas’ Motion for Partial Summary Judgment. As such, Texas’ stated material facts remain undisputed. Fed. R. Civ. P. 56(e)(3).

From TX’s 12/22/20 Filings: Subject to the stated objections, disputed in part. This paragraph is misleading. The D1/D2 method referenced in paragraphs 68 through 70 and paragraphs 72 through 76 of NM MSJ Motion on Apportionment has nothing to do with Compact apportionment; rather, it relates to how the Project was operated during 1951 through 1978. The Compact requires Rio Grande water deliveries from New Mexico to Elephant Butte Reservoir for Texas, and the 1906 treaty with Mexico and the Districts allocate the stored water in Elephant Butte Reservoir, along with downstream inflows to the Rio Grande, to Mexico, EHID, and EP1. Furthermore, the D1/D2 method does not reflect Project water supply conditions as they existed at the time of Compact adoption in 1938. The D1/D2 method understates the supply of Project water available under the Compact because it is based on Project delivery conditions that occurred during 1951 and 1978 when substantial groundwater pumping had already developed in the Rincon and Mesilla basins of New Mexico (See Figure 5) causing flows in the drains and in the Rio Grande at El Paso relative to releases from Cathole Reservoir and the deliveries to EP1 to be reduced. (See Figures 9 and 10 to Brandes Dec).

Appertainment - page 30; 44, 45

Opp to US - page 18; 28; 31

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Appertainment - page 30; 44, 45

Opp to US - page 18; 28; 31

Reclamation began making Project allocations using the D2 Curve, and Project Supply remaining from storage and farm delivery plus the delivery to Mexico, and the 1906 treaty with Mexico and the Districts allocate the stored water in Elephant Butte Reservoir, along with downstream inflows to the Rio Grande, to Mexico, EHID, and EP1. Furthermore, the D1/D2 method does not reflect Project water supply conditions as they existed at the time of Compact adoption in 1938. The D1/D2 method understates the supply of Project water available under the Compact because it is based on Project delivery conditions that occurred during 1951 and 1978 when substantial groundwater pumping had already developed in the Rincon and Mesilla basins of New Mexico (See Figure 5) causing flows in the drains and in the Rio Grande at El Paso relative to releases from Cathole Reservoir and the deliveries to EP1 to be reduced. (See Figures 9 and 10 to Brandes Dec).

See Brandes Dec. in Ops. to NM TX MSJ 0073712, paragraphs 1 – 9, 25-26, 29.

Appertainment - page 30; 44, 45

Opp to US - page 18; 28; 31
TEXAS'S RESPONSE

Notice No. 22 In order to calibrate releases of Project supply from the El Paso Canal and Elephant Butte reservoirs into the Rio Grande, Reclamation takes delivery orders from each District and makes appropriate reservoir release adjustments on a daily basis.

See NM-EX-202, Cortez Dep. (July 30, 2020) at 64-5-15.

NO From TX's 12/22/20 Filings: See NM-EX-202; See General Objection #8.

From TX's 12/22/20 Filings: See TX's Response to NM's Motion for Partial Summary Judgment.

Subject to the stated objections, the fact is cited in New Mexico's Response to Texas's Motion for Partial Summary Judgment but does not materially respond to facts stated therein. New Mexico's stated fact is non-responsive and otherwise not supported by definite, competent, or significantly probative evidence that genuinely and materially responds to a fact stated in Texas's Motion for Partial Summary Judgment but does not materially respond to facts stated therein. New Mexico's stated fact and the evidence cited in support regarding EPCWID drains do not materially respond to an argument made in Texas's Motion for Partial Summary Judgment. New Mexico's counterclaims and its apportionment motion address evidence cited in support regarding EPCWID drains do not materially respond to an argument made in Texas's Motion for Partial Summary Judgment. As such, Texas's stated material facts remain undisputed.

See NM-EX-409, Email from Filiberto Cortez, Manager, El Paso Field Division, Bureau of Reclamation, to Chris Rich et al. (Aug. 12, 2020).

From TX's 12/22/20 Filings: See NM-EX-409; See General Objection #8. See Fed. R. Evid. 801(c), hearsay.

Texas's stated material facts remain undisputed. As such, Texas's stated material facts remain undisputed.

See Brandes Decl. in Opp. to NM at TX_MSJ_000732, paragraphs 1 – 9, 25-26, 29.

From TX's 12/22/20 Filings: See TX's Response to NM's Motion for Partial Summary Judgment.

Subject to the stated objections, the fact is cited in New Mexico's Response to Texas's Motion for Partial Summary Judgment but does not materially respond to facts stated therein. New Mexico's stated fact and the evidence cited in support regarding EPCWID drains do not materially respond to an argument made in Texas's Motion for Partial Summary Judgment. New Mexico's counterclaims and its apportionment motion address evidence cited in support regarding EPCWID drains do not materially respond to an argument made in Texas's Motion for Partial Summary Judgment. As such, Texas's stated material facts remain undisputed.

See NM-EX-001, Barroll Decl. at ¶ 21.

From TX's 12/22/20 Filings: See NM-EX-208, 223: See General Objection #8.

From TX's 12/22/20 Filings: See TX's Response to NM's Motion for Partial Summary Judgment.

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NO From TX's 12/22/20 Filings: See NM-EX-202; See General Objection #8.

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See Brandes Decl. in Opp. to NM at TX_MSJ_000732, paragraphs 1 – 9, 25-26, 29.

From TX's 12/22/20 Filings: See NM-EX-202; See General Objection #8.

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See NM-EX-418, General Objection #8.

From TX's 12/22/20 Filings: See NM-EX-202; See General Objection #8.

From TX's 12/22/20 Filings: See TX's Response to NM's Motion for Partial Summary Judgment.

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Apportionment - page 34: 30, 45

NO From TX's 12/22/20 Filings: See NM-EX-007, Spronk Rep. at 19-20.


NO From TX's 12/22/20 Filings: See NM-EX-202; See General Objection #8.

From TX's 12/22/20 Filings: See TX's Response to NM's Motion for Partial Summary Judgment.

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See NM-EX-418, General Objection #8.
The state of Texas's objections and responses to the state of New Mexico's consolidated statement

Texas's response

Texas's Evidentiary Objections

Identification of where NMI cited the fact/evidence in its 11/5/20 Motion (NM Full Supply MSJ; NM Apportionment MSJ)

<table>
<thead>
<tr>
<th>NMI</th>
<th>Cosbr.</th>
<th>Fact/Evidence in</th>
<th>TEXAS'S EVIDENTIARY OBJECTIONS</th>
<th>TEXAS'S RESPONSE</th>
<th>Identification of where NMI cited the fact/evidence in its 11/5/20 Motion (NM Full Supply MSJ; NM Apportionment MSJ)</th>
</tr>
</thead>
<tbody>
<tr>
<td>171</td>
<td>Full Supply No.</td>
<td>11</td>
<td>Starting in about 1990, Reclamation determined that a release of 763,842 AFY from Project Storage was a full-supply condition.</td>
<td>Yes. See NM Response to TX at: (Apr. 3, 2008)  (“Reclamation Data Table”) at 509, Bureau of Reclamation Table, Rio Grande Project Water Supply Allocation Procedures [hereinafter “USWBAP”] at 4.</td>
<td>Subject to the stated objections, disputed in part. In NM-EX 001, the statement that “Reclamation will ensure” the allocation is available for diversion is not supported by citations NM-EX-400 or NM-EX-529.</td>
</tr>
<tr>
<td>171</td>
<td>Full Supply No.</td>
<td>11</td>
<td>Reclamation determined that this release from Project Storage would provide 931,841 AFY of divestible water at U.S. and Mexico canal headings.</td>
<td>Yes. See NM Response to TX at: 509, Bureau of Reclamation Table, Rio Grande Project Water Supply Allocation Procedures [hereinafter “USWBAP”] at 4.</td>
<td>Subject to the stated objections, disputed in part. In NM-EX 001, the statement that “Reclamation will ensure” the allocation is available for diversion is not supported by citations NM-EX-400 or NM-EX-529.</td>
</tr>
<tr>
<td>171</td>
<td>Full Supply No.</td>
<td>11</td>
<td>According to Project allocation procedures at that time, from this 931,841 AFY, 60,000 AFY was deducted for delivery to Mexico. Reclamation then divided the remaining 871,841 AFY, 47% (376,842 AFY) to EPCWID and 53% (494,979 AFY) to USWB in accordance with the percentages set out in the 1938 Diversion Contract.</td>
<td>Yes. See NM Response to TX at: 509, Bureau of Reclamation Table, Rio Grande Project Water Supply Allocation Procedures [hereinafter “USWBAP”] at 4.</td>
<td>Subject to the stated objections, disputed in part. In NM-EX 001, the statement that “Reclamation will ensure” the allocation is available for diversion is not supported by citations NM-EX-400 or NM-EX-529.</td>
</tr>
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<td>171</td>
<td>Full Supply No.</td>
<td>11</td>
<td>The 376,842 AFY quantity represents a full-supply Project allocation to EPCWID that Reclamation will ensure is available for diversions at EPCWID's headquarters if EPCWID orders (takes) this volume of water.</td>
<td>Yes. See NM Response to TX at: 509, Bureau of Reclamation Table, Rio Grande Project Water Supply Allocation Procedures [hereinafter “USWBAP”] at 4.</td>
<td>Subject to the stated objections, disputed in part. In NM-EX 001, the statement that “Reclamation will ensure” the allocation is available for diversion is not supported by citations NM-EX-400 or NM-EX-529.</td>
</tr>
<tr>
<td>172</td>
<td>Full Supply No.</td>
<td>12</td>
<td>Between 1983 and 1990, Reclamation had finalized the analysis described in the preceding paragraph above, Reclamation’s full-supply year determinations for EPCWID varied slightly from 376,842 AFY. For examples, from 1980 through 1985, Reclamation determined a full-supply year Project allocation to EPCWID to be 363,163 AFY; and in 1989 and 1990, Reclamation determined a full-supply year Project allocation to EPCWID to be 359,165 AFY. These were hydrologically wet years with plenty of water in Project Storage and full-supply allocations were available to both Districts (EHBID and EPCWID).</td>
<td>NO</td>
<td>From TX's 12/22/20 Filings: NM-EX 509: See: General Observation #9; Fed. R. Evid. 801(c), hearsay.</td>
</tr>
</tbody>
</table>

Note: Each row represents a different objection or response. The columns include the objection number, the type of response, and references to specific pages, documents, or citations.
Apportionment

In 2005, the Project began to suffer the effects of the severe drought that has plagued the Rio Grande basin for the last two decades. Nonetheless, in 2003 and 2004, Reclamation allocated 57% of Project water to New Mexico lands and 43% of Project water to Texas lands using the D1/D2 method. Subject to the stated objections, disputed in part. This paragraph is misleading. The D1/D2 method referenced in paragraphs 48 through 70 and paragraphs 72 through 76 of NM MSJ Motion on Apportionment has nothing to do with Compact apportionment; rather, it relates to how the Project was operated during 1951 through 1978. The Compact requires Rio Grande water deliveries from New Mexico to Elephant Butte Reservoir for Texas, and the 1906 treaty with Mexico and the contracts between the federal government and the Districts allocate the stored water at Elephant Butte Reservoir, along with downstream inflows to the Rio Grande, to Mexico, EBID, and EP1. Furthermore, the D1/D2 method does not reflect Project water supply conditions as they existed at the time of Compact adoption in 1938. The D1/D2 method understates the supply of Project water available under the Compact because it is based on Project delivery conditions that occurred during 1951 and 1978 when substantial groundwater pumping had already developed in the Rincon and Mesilla basins of New Mexico (See Figure 5) causing flows in the drains and in the Rio Grande at El Paso relative to releases from Cabeillo Reservoir and the deliveries to EP1 to be reduced. See Brandes Decl. in Opps. to NM at TX_MSJ_007312, paragraphs 1 – 9, 25-26, 29.

Reclamation continued making allocations to the Districts in the proportion of 57% of Project water to New Mexico lands and 45% of Project water to Texas lands using the D1/D2 method through 2005. Subject to the stated objections, disputed in part. This paragraph is misleading. The D1/D2 method referenced in paragraphs 48 through 70 and paragraphs 72 through 76 of NM MSJ Motion on Apportionment has nothing to do with Compact apportionment; rather, it relates to how the Project was operated during 1951 through 1978. The Compact requires Rio Grande water deliveries from New Mexico to Elephant Butte Reservoir for Texas, and the 1906 treaty with Mexico and the contracts between the federal government and the Districts allocate the stored water at Elephant Butte Reservoir, along with downstream inflows to the Rio Grande, to Mexico, EBID, and EP1. Furthermore, the D1/D2 method does not reflect Project water supply conditions as they existed at the time of Compact adoption in 1938. The D1/D2 method understates the supply of Project water available under the Compact because it is based on Project delivery conditions that occurred during 1951 and 1978 when substantial groundwater pumping had already developed in the Rincon and Mesilla basins of New Mexico (See Figure 5) causing flows in the drains and in the Rio Grande at El Paso relative to releases from Cabeillo Reservoir and the deliveries to EP1 to be reduced. See Brandes Decl. in Opps. to NM at TX_MSJ_007312, paragraphs 1 – 9, 25-26, 29.

In 2005, Reclamation was able to make a full D1/D2 allocation in the percentage of 57% to New Mexico lands and 45% to Texas lands. Subject to the stated objections, disputed in part. This paragraph is misleading. The D1/D2 method referenced in paragraphs 48 through 70 and paragraphs 72 through 76 of NM MSJ Motion on Apportionment has nothing to do with Compact apportionment; rather, it relates to how the Project was operated during 1951 through 1978. The Compact requires Rio Grande water deliveries from New Mexico to Elephant Butte Reservoir for Texas, and the 1906 treaty with Mexico and the contracts between the federal government and the Districts allocate the stored water at Elephant Butte Reservoir, along with downstream inflows to the Rio Grande, to Mexico, EBID, and EP1. Furthermore, the D1/D2 method does not reflect Project water supply conditions as they existed at the time of Compact adoption in 1938. The D1/D2 method understates the supply of Project water available under the Compact because it is based on Project delivery conditions that occurred during 1951 and 1978 when substantial groundwater pumping had already developed in the Rincon and Mesilla basins of New Mexico (See Figure 5) causing flows in the drains and in the Rio Grande at El Paso relative to releases from Cabeillo Reservoir and the deliveries to EP1 to be reduced. See Brandes Decl. in Opps. to NM at TX_MSJ_007312, paragraphs 1 – 9, 25-26, 29.
176 Apportionment No. 76: From 1979 to 2005, Reclamation allocated Project water such that 57% of Project supply was available for EBID lands in New Mexico and 43% of Project supply was available for EPCWID lands in Texas. From 1979 to 2005, the charged diversions by EBID in New Mexico (which accounts for water available and ordered by the Districts) totaled 58% and charged diversions for EPCWID in Texas totaled 42% of total diversions.


NO

From TX’s 12/22/20 Fillings: NM-EX-100

See General Objections #7; Fed. R. Evid. 801(c)(8)(D) hearsay; NM-EX-101; See General Objections #7; Fed. R. Evid. 801(c)(8)(D) hearsay.

From TX’s 12/22/20 Fillings: Subject to the stated objections, disputed in part. This paragraph is misleading. The D1/D2 method referenced in paragraphs 48 through 70 and paragraphs 72 through 74 of NM MSJ Motion on Apportionment has nothing to do with Compact apportionments; rather, it relates to how the Project was operated during 1951 through 1975. The Compact requires Rio Grande water deliveries from New Mexico to Elephant Butte Reservoir for Texas; and the 1968 treaty with Mexico and the contracts between the federal government and the Districts allocate the stored water in Elephant Butte Reservoir, along with downstream inflows to the Rio Grande, to Mexico, EBID, and EPV1. Furthermore, the D1/D2 method does not reflect Project water supply conditions as they existed at the time of Compact adoption in 1938. The D1/D2 method understates the supply of Project water available under the Compact because it is based on Project delivery conditions that occurred during 1951 and 1978 when substantial ground-water pumping had already developed in the Rincon and Mescalina basins of New Mexico (see Figure 5) causing flows in the drains and in the Rio Grande at El Paso relative to releases from Caballo Reservoir and the deliveries to EPV1 to be reduced. (See Figures 9 and 10 in Brandes Dec.)

See Brandes Dec. in Opp. to NM at TX_MSJ_007312, paragraphs 1 – 9, 25-26, 29.

Apportionment - page 15-16; 30, 45

N/A

176 Apportionment No. 76: This is illustrated in Figure A.5 of Dr. Barroll’s expert report:

Figure A.5. TOTAL ALLOCATION TO DISTRICTS AND MEXICO: D1/D2 ALLOCATION (1979-2005)

No citation

Full supply

Page 16

177 Full Supply No. 16: Reclamation determines that a full allocation of Project water was available for diversions at EPCWID’s headgates if such full allocation is based on historical data about irrigation demands; NM-EX 202, Forrest Dep. (Feb. 20, 2020) at 229-15-16 (“[from] about 1985 it’s 6, through about 2002...”). (Know to be years of full project supply.”)

NM-EX 210, Forrest Dep. (Feb. 20, 2020) at 229-15-16 (“[from] about 1985 it’s 6, through about 2002...”). (Know to be years of full project supply.”)

From TX’s 12/22/20 Filings: Subject to the stated objections, disputed in part. This paragraph is misleading. The D1/D2 method referenced in paragraphs 48 through 70 and paragraphs 72 through 74 of NM MSJ Motion on Apportionment has nothing to do with Compact apportionments; rather, it relates to how the Project was operated during 1951 through 1975. The Compact requires Rio Grande water deliveries from New Mexico to Elephant Butte Reservoir for Texas; and the 1968 treaty with Mexico and the contracts between the federal government and the Districts allocate the stored water in Elephant Butte Reservoir, along with downstream inflows to the Rio Grande, to Mexico, EBID, and EPV1. Furthermore, the D1/D2 method does not reflect Project water supply conditions as they existed at the time of Compact adoption in 1938. The D1/D2 method understates the supply of Project water available under the Compact because it is based on Project delivery conditions that occurred during 1951 and 1978 when substantial ground-water pumping had already developed in the Rincon and Mescalina basins of New Mexico (see Figure 5) causing flows in the drains and in the Rio Grande at El Paso relative to releases from Caballo Reservoir and the deliveries to EPV1 to be reduced. (See Figures 9 and 10 in Brandes Dec.)

See Brandes Dec. in Opp. to NM at TX_MSJ_007312, paragraphs 1 – 9, 25-26, 29.

Apportionment - page 15-16; 30, 45

N/A

178 Apportionment No. 71: According to Reclamation, prior to 2005, the Districts did not sign an “operating agreement, plan, or criteria,” but “acquiesced and cooperated with Reclamation’s procedures on a year to year basis.”

NM-EX 508, Bureau of Reclamation, Environmental Assessment and Finding of No Significant Impact for the Bureau of Reclamation Federal Rio Grande Project New Mexico- Texas Operating Procedures, Dona Ana, Sierra, and Socorro Counties, New Mexico and El Paso County, Texas, at 3 (June 11, 2007); NM-EX 202, Cortez Dep. (July 30, 2020) at 87-8-88-10.

NO

From TX’s 12/22/20 Fillings: NM-EX-508

See General Objections #7; Fed. R. Evid. 801(c)(8)(D) hearsay; NM-EX-202; See General Objections #7; Fed. R. Evid. 401: The testimony was not taken under Fed. R. Civ. Evid. 801(d)(2)(A).

From TX’s 12/22/20 Fillings: Subject to the stated objections, disputed. This paragraph is misleading. The D1/D2 method referenced in paragraphs 48 through 70 and paragraphs 72 through 74 of NM MSJ Motion on Apportionment has nothing to do with Compact apportionments; rather, it relates to how the Project was operated during 1951 through 1975. The Compact requires Rio Grande water deliveries from New Mexico to Elephant Butte Reservoir for Texas; and the 1968 treaty with Mexico and the contracts between the federal government and the Districts allocate the stored water in Elephant Butte Reservoir, along with downstream inflows to the Rio Grande, to Mexico, EBID, and EPV1. Furthermore, the D1/D2 method does not reflect Project water supply conditions as they existed at the time of Compact adoption in 1938. The D1/D2 method understates the supply of Project water available under the Compact because it is based on Project delivery conditions that occurred during 1951 and 1978 when substantial ground-water pumping had already developed in the Rincon and Mescalina basins of New Mexico (see Figure 5) causing flows in the drains and in the Rio Grande at El Paso relative to releases from Caballo Reservoir and the deliveries to EPV1 to be reduced. (See Figures 9 and 10 in Brandes Dec.)

See Brandes Dec. in Opp. to NM at TX_MSJ_007312, paragraphs 1 – 9, 25-26, 29.

Apportionment - page 15-16; 30, 45

N/A
In 2006 Reclamation began using a new method for allocating Project water between the two Districts. Neither the RGCC nor New Mexico were given input into the new method before it was implemented. In 2006 Reclamation began using a new method for allocating Project water between the two Districts. Neither the RGCC nor New Mexico were given input into the new method before it was implemented.

Subject to the stated objections, disputed in part. The cited evidence does not support the assertion that “Neither the RGCC nor New Mexico were given input into the new method before it was implemented.”

Subject to the stated objections, disputed. See Brandes Decl. in Opp. to NM at TX_MSJ 007312, paragraphs 1 – 24. The discussion is lengthy, and is incorporated herein by reference.

Subject to the stated objections, disputed. See Brandes Decl. in Opp. to NM at TX_MSJ 007312, paragraphs 1 – 24. The discussion is lengthy, and is incorporated herein by reference.

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Subject to the stated objections, disputed. See Brandes Decl. in Opp. to NM at TX_MSJ 007312, paragraphs 1 – 24. The discussion is lengthy, and is incorporated herein by reference.
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<td>182</td>
<td>N/A</td>
<td>The E3-Executive Pass Carryover method reduces E3RD's allocation by the total of all real or apparent discrepancies in Project performance relative to the 1951-1978 period. As a result, all increases in system issues that have occurred since the 1951-1978 period result in reductions to E3RD's allocation.</td>
<td>NM-EX 100, Barroll Rep. at 40-44.</td>
<td>Yes. See NM Response to TX at:</td>
<td>- page 30, 60</td>
<td>NM-EX-100: See General Objection #7; Fed. R. Evid. 801(c), hearsary. Subject to the stated objections, the fact is cited in New Mexico's Response to Texas Motion for Partial Summary Judgment but does not materially respond to facts stated therein. New Mexico's stated fact and the evidence cited in support regarding the D3 allocation method do not materially respond to an argument made in Texas Motion for Partial Summary Judgment. New Mexico's counterclaims and its apportionment motion address New Mexico's legal position on the interrelationship of the Project, Downstream Contracts and the Compact. CSMF #182 may relate to New Mexico's motion(s), but does not materially respond to Texas Motion for Partial Summary Judgment. New Mexico's stated fact is non-responsive and otherwise not supported by definite, competent, or significantly probative evidence that genuinely and materially responds to a fact stated in Texas Motion for Partial Summary Judgment. As such, Texas stated material facts remain undisputed. Fed. R. Civ. P. 56(e)(2).</td>
<td>N/A</td>
<td>Opp't to U.S. - page 14; 15 - page 47 - page 61, 62</td>
</tr>
<tr>
<td>182</td>
<td>N/A</td>
<td>Similarly, all reductions in allocated deliveries that have occurred as a result of changes in Project accounting cause reductions to E3RD's allocation.</td>
<td>NM-EX-003, Barroll 2d Diss. at ¶¶ 41, 58; see also NM-EX-428; Letter from Filiberto Cortez, Manager, Bureau of Reclamation, to Federal (July 9, 1999); NM-EX-100, Barroll Rep. at 30, 49-50; Appx. D, D-25-26; NM-EX-101, Barroll Rep. at 24-36.</td>
<td>Yes. See NM Response to TX at:</td>
<td>- page 30, 60</td>
<td>NM-EX-006: Fed. R. Civ. P. 56(e)(4); Fed. R. Evid. 702: the statement in the Barroll 2d Diss constitutes improper opinion testimony because it is not based on sufficient facts and is a mere conclusion. NM-EX-428: See General Objection #4; Fed. R. Evid. 801(c), hearsary. NM-EX-100, 101: See General Objection #7; Fed. R. Evid. 801(c), hearsary. SAME AS ABOVE (182)</td>
<td>N/A</td>
<td>Opp't to U.S. - page 14; 15 - page 47 - page 61, 62</td>
</tr>
<tr>
<td>182</td>
<td>N/A</td>
<td>For example, the fact that municipal effluent from the City of El Paso in the Rio Paso Valley is no longer accounted as Project Supply reduces E3RD's allocation.</td>
<td>NM-EX-003, Barroll 2d Diss. at ¶ 59; see also NM-EX-100, Barroll Rep. at 48.</td>
<td>Yes. See NM Response to TX at:</td>
<td>- page 30, 60</td>
<td>NM-EX-006: Fed. R. Evid. 401, 402; the cited portions of the document are irrelevant because it does not state the &quot;facts&quot; stated. The cited portions of the document do not address municipal effluent from the City of El Paso. NM-EX-100: See General Objection #7; Fed. R. Evid. 801(c), hearsary. SAME AS ABOVE (182)</td>
<td>N/A</td>
<td>Opp't to U.S. - page 14; 15 - page 47 - page 61, 62</td>
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<tr>
<td>183</td>
<td>N/A</td>
<td>Much of the apparent discrepancies in Project performance during the period from 2006 forward relative to the 1951-1978 period may be explained by changes to the accounting methods used in Project. New Mexico's analysis shows that changes in Project accounting are responsible for up to 74,000 AF of the apparent reduction in Project allocations or Project performance since the 1951-1978 period. D3 Allocation reduces E3RD's allocations for all these reductions in Project performance. Thus, up to 74,000 AF of reduction in E3RD's allocation are not a result of groundwater pumping in New Mexico.</td>
<td>NM-EX-003, Barroll 2d Diss. at ¶ 59; see also NM-EX-100, Barroll Rep. at 69.</td>
<td>Yes. See NM Response to TX at:</td>
<td>- page 30, 60</td>
<td>NM-EX-100: See General Objection #7; Fed. R. Evid. 801(c), hearsary. Subject to the stated objections, the fact is cited in New Mexico's Response to Texas Motion for Partial Summary Judgment but does not materially respond to facts stated therein. New Mexico's stated fact and the evidence cited in support regarding Rio Grande Project accounting do not materially respond to an argument made in Texas Motion for Partial Summary Judgment. New Mexico's counterclaims and its apportionment motion address New Mexico's legal position on the interrelationship of the Project, Downstream Contracts and the Compact. CSMF #183 may relate to New Mexico's motion(s), but does not materially respond to Texas Motion for Partial Summary Judgment. New Mexico's stated fact is non-responsive and otherwise not supported by definite, competent, or significantly probative evidence that genuinely and materially responds to a fact stated in Texas Motion for Partial Summary Judgment. As such, Texas stated material facts remain undisputed. Fed. R. Civ. P. 56(e)(2).</td>
<td>N/A</td>
<td>Opp't to U.S. - page 14; 15 - page 47 - page 61, 62</td>
</tr>
<tr>
<td>184</td>
<td>N/A</td>
<td>Also running in approximately 2006, Reclamation initiated minimal &quot;carrying over accounts&quot; for the Districts. Thereafter and during the allocation process, the amounts in the Carryover account, plus extra water needed to ensure delivery of those accounts, have been deducted from Project Storage before the D3 Allocations for the next year is calculated. Because of the contemporaneous reduction in its allocation, E3RD has not been able to take much advantage of Carryover. In contrast, PCWID has carried over large amounts of allocation in many years. The mechanics of how these Carryover accounts are implemented means that large amounts of PCWID Carryover have reduced the water available for allocation to E3RD.</td>
<td>NM-EX-003, Barroll 2d Diss. at ¶ 59; NM-EX-100, Barroll Rep. at 46-49; Appx. D, D-21-23; NM-EX-101, Barroll Rep. at 21-26.</td>
<td>Yes. See NM Response to TX at:</td>
<td>- page 47</td>
<td>NM-EX-100, 101: See General Objection #3; Fed. R. Evid. 801(c), hearsary. Subject to the stated objections, the fact is cited in New Mexico's Response to Texas Motion for Partial Summary Judgment but does not materially respond to facts stated therein. New Mexico's stated fact and the evidence cited in support regarding Rio Grande Project accounting do not materially respond to an argument made in Texas Motion for Partial Summary Judgment. New Mexico's counterclaims and its apportionment motion address New Mexico's legal position on the interrelationship of the Project, Downstream Contracts and the Compact. CSMF #184 may relate to New Mexico's motion(s), but does not materially respond to Texas Motion for Partial Summary Judgment. New Mexico's stated fact is non-responsive and otherwise not supported by definite, competent, or significantly probative evidence that genuinely and materially responds to a fact stated in Texas Motion for Partial Summary Judgment. As such, Texas stated material facts remain undisputed. Fed. R. Civ. P. 56(e)(2).</td>
<td>N/A</td>
<td>N/A</td>
</tr>
<tr>
<td>185 Apportionment No. 78</td>
<td>In November and February 2000, Reclamation, PCWID, and E3RD negotiated a new operating agreement for the Project as settlement for the two lawsuits among the parties (&quot;2000 Operating Agreement&quot;).</td>
<td>See generally NM-EX-511; Filiberto Cortez, Lower Rio Grande Project Operating Agreement: Settlement of Litigation (Oct. 2000).</td>
<td>NO</td>
<td>From EX-12/22/20 Filings: NM-EX-511: See General Objection #9; Fed. R. Evid. 801(c), hearsary. Subject to the stated objections, undisputed.</td>
<td>N/A</td>
<td>Apportionment - page 16</td>
<td>Opp't to U.S. - page 14; 15 - page 47 - page 61, 62</td>
<td></td>
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TEXAS'S RESPONSE

The negotiations were mediated by Pat Gordon, Texas’s Compact Commissioner.

From NM-EX 105, Gordon Depd. (July 15, 2020) at 24; 40-43; NM-EX 117, Lopez Repd. at 44.

EPCWID has been allocated and received less than its 57% share of Project Water.

See NM-EX 005, Barroll 2d Decl. at ¶ 69.

The United States did not perform any quantitative analysis of the impacts of New Mexico pumping at the time the 2008 Operating Agreement was adopted. See NM-EX 006, Barroll 2d Decl. at ¶ 65.

The 2008 Operating Agreement [adopted the D3-Allocation-Plus-Carryover allocation system], and therefore, it changed the amount of water that was available for lands in New Mexico and Texas.

NM-EX-100: Yes. See NM Response to TX Notice MSJ; NM Full Counterclaim Notice MSJ; NM Counterclaim Notice MSJ

The United States did not perform any quantitative analysis of the impacts of New Mexico pumping at the time the 2008 Operating Agreement was adopted. See NM-EX 006, Barroll 2d Decl. at ¶ 65.

The 2008 Operating Agreement [adopted the D3-Allocation-Plus-Carryover allocation system], and therefore, it changed the amount of water that was available for lands in New Mexico and Texas.

NM-EX-100: Yes. See NM Response to TX Notice MSJ; NM Full Counterclaim Notice MSJ; NM Counterclaim Notice MSJ

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NM-EX-100: Yes. See NM Response to TX Notice MSJ; NM Full Counterclaim Notice MSJ; NM Counterclaim Notice MSJ

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NM-EX-100: Yes. See NM Response to TX Notice MSJ; NM Full Counterclaim Notice MSJ; NM Counterclaim Notice MSJ

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The 2008 Operating Agreement [adopted the D3-Allocation-Plus-Carryover allocation system], and therefore, it changed the amount of water that was available for lands in New Mexico and Texas.

From TX’s 12/22/20 Filings: Subject to the stated objections, disputed. See NM-EX 006, Barroll 2d Decl. at ¶ 65.

The United States did not perform any quantitative analysis of the impacts of New Mexico pumping at the time the 2008 Operating Agreement was adopted. See NM-EX 006, Barroll 2d Decl. at ¶ 65.

The 2008 Operating Agreement [adopted the D3-Allocation-Plus-Carryover allocation system], and therefore, it changed the amount of water that was available for lands in New Mexico and Texas.

From TX’s 12/22/20 Filings: Subject to the stated objections, disputed. See NM-EX 006, Barroll 2d Decl. at ¶ 65.

The United States did not perform any quantitative analysis of the impacts of New Mexico pumping at the time the 2008 Operating Agreement was adopted. See NM-EX 006, Barroll 2d Decl. at ¶ 65.

The 2008 Operating Agreement [adopted the D3-Allocation-Plus-Carryover allocation system], and therefore, it changed the amount of water that was available for lands in New Mexico and Texas.

From TX’s 12/22/20 Filings: Subject to the stated objections, disputed. See NM-EX 006, Barroll 2d Decl. at ¶ 65.

The United States did not perform any quantitative analysis of the impacts of New Mexico pumping at the time the 2008 Operating Agreement was adopted. See NM-EX 006, Barroll 2d Decl. at ¶ 65.

The 2008 Operating Agreement [adopted the D3-Allocation-Plus-Carryover allocation system], and therefore, it changed the amount of water that was available for lands in New Mexico and Texas.

From TX’s 12/22/20 Filings: Subject to the stated objections, disputed. See NM-EX 006, Barroll 2d Decl. at ¶ 65.
The State of Texas's Objections and Responses to the State of New Mexico's Consolidated Statement

| NM's Case No. | NM's Prior Numbering Section | New Mexico's Stated "Fact" | New Mexico's Supporting Evidence | Did NM Cite to the Fact Evidence in TX 11/22/20 Response to the Texas Motion for Partial Summary Judgment? | Texas's Evidentiary Objections | Texas's Response | Identification of where NM cited the fact/evidence in its 11/5/20 Motions (NM Full Supply MSJ; NM Notice MSJ; NM Full Supply Motion for Partial Summary Judgment) | Identification of where NM cited the fact/evidence in its 11/5/20 Motion for Partial Summary Judgment to the US

191 Full Supply No. 14 During each irrigation season (approximately March
through October), each District is entitled to order delivery of Project Water up to its annual Project allocation. Deliveries to the Districts are measured by pages and are converted into what are known as "charged diversion" (or "Allocation Charges"), which are then subtracted from each District's allocation account as the irrigation season progresses.

NM-EX 001, Barroll Decl. at ¶ 21, 26; NM-
EX 510, 2008 Operating Agreement at 9-11; NM-

NO From TX's 11/22/20 Filings:

- NM-EX 001:
  - See General Objection 6;
  - NM-EX 510: See General Objection 8;
  - Fed. R. Evid. 801(c), hearsay.

From TX's 11/22/20 Filings:

- Subject to the stated objections, undisputed.

Full supply - page 6: *No citation to any UMFs in body of Full Supply Brief*

N/A

192 Full Supply No. 15 During the course of the irrigation season, Reclamation makes orders from the Districts and adjusts the gates of Caballo Dam so that these orders are delivered to the Districts' canal headings.


NO From TX's 11/22/20 Filings:

- NM-EX 531:
  - See General Objection 6;
  - Fed. R. Evid. 801(c), hearsay.

From TX's 11/22/20 Filings:

- Subject to the stated objections, disputed in part. Dr. Barroll cites Dr. Ferguson as her only source for her statement that "Historically, Reclamation has always been able to fulfill the orders made by the Districts." She has insufficient personal knowledge to assert this opinion for purposes of Rule 56 summary judgment, and at trial she would lack qualification to offer this opinion as an expert under Fed. R. Evid. 702(a), and it would additionally be based on insufficient facts and data under Fed. R. Evid. 702(a).

Full supply - page 7: *No citation to any UMFs in body of Full Supply Brief*

N/A

192 Full Supply No. 15 Reclamation sets the Caballo release amount taking into account the losses and gains between Caballo Dam and the canal headings to which it is delivering water, so that regardless of what losses or gains are occurring, the amount ordered will reach the canal heading for which the order is being made.

NM-EX 531, Operations Manual at 4-8.

NO NM-EX 531:

- See General Objection 6;
  - Fed. R. Evid. 801(c), hearsay.

Subject to the stated objections, disputed in part. Dr. Barroll cites Dr. Ferguson as her only source for her statement that "Historically, Reclamation has always been able to fulfill the orders made by the Districts." She has insufficient personal knowledge to assert this opinion for purposes of Rule 56 summary judgment, and at trial she would lack qualification to offer this opinion as an expert under Fed. R. Evid. 702(a), and it would additionally be based on insufficient facts and data under Fed. R. Evid. 702(a).

Full supply - page 7: *No citation to any UMFs in body of Full Supply Brief*

N/A

192 Full Supply No. 15 If the delivery to EPCWID falls short of the order, there is a procedure by which EPCWID, EBID, and Reclamation coordinate and water is released from EBID's works to temporarily mitigate the shortfall until adjustment of Caballo releases resolves the problem.

NM-EX 001, Barroll Decl., ¶ 27; NM-EX 531, Operations Manual, at 8.

NO NM-EX 531:

- See General Objection 6;
  - Fed. R. Evid. 801(c), hearsay.

Subject to the stated objections, disputed in part. Dr. Barroll cites Dr. Ferguson as her only source for her statement that "Historically, Reclamation has always been able to fulfill the orders made by the Districts." She has insufficient personal knowledge to assert this opinion for purposes of Rule 56 summary judgment, and at trial she would lack qualification to offer this opinion as an expert under Fed. R. Evid. 702(a), and it would additionally be based on insufficient facts and data under Fed. R. Evid. 702(a).

Full supply - page 7: *No citation to any UMFs in body of Full Supply Brief*

N/A

192 Full Supply No. 15 Historically, Reclamation has always been able to fulfill the orders made by the Districts.

NM-EX 001, Barroll Decl., ¶ 27; see also NM-
EX 105, Ferguson Decl. at 12-13 ("EPCWID received all water that the district ordered during the period 1979-2002."); NM-EX 210, Ferguson Dep. (Feb. 20, 2020) at 200-67 ("I'm not aware of any records that suggest EPWID ordered water that it did not receive.").

NO NM-EX 001:

- Fed. R. Civ. P. 56(c)(4), Fed. R. Evid. 702(a) –
  - Dr. Barroll cites Dr. Ferguson as her only source for her statement that "Historically, Reclamation has always been able to fulfill the orders made by the Districts." She has insufficient personal knowledge to assert this opinion for purposes of Rule 56 summary judgment, and at trial she would lack qualification to offer this opinion as an expert under Fed. R. Evid. 702(a), and it would additionally be based on insufficient facts and data under Fed. R. Evid. 702(a).

Subject to the stated objections, disputed in part. Dr. Barroll cites Dr. Ferguson as her only source for her statement that "Historically, Reclamation has always been able to fulfill the orders made by the Districts." She has insufficient personal knowledge to assert this opinion for purposes of Rule 56 summary judgment, and at trial she would lack qualification to offer this opinion as an expert under Fed. R. Evid. 702(a), and it would additionally be based on insufficient facts and data under Fed. R. Evid. 702(a).

Full supply - page 7: *No citation to any UMFs in body of Full Supply Brief*

N/A

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<th>NM-</th>
<th>CSMP</th>
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<th>DID NM CITE TO THE FACT IN ITS 12/22/20 RESPONSE TO THE TEXAS MOTION FOR PARTIAL SUMMARY JUDGMENT</th>
<th>TEXAS'S EVIDENTIARY OBJECTIONS</th>
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<th>Identification of where NM cited to the fact/evidence in the Response to the US Motion for Partial Summary Judgment</th>
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<tr>
<td>193</td>
<td>Full Supply No. 37</td>
<td>The years 2007 through 2010 were full-supply years for EPCWID because in each of those years EPCWID's annual allocation available for diversions at EPCWID's headquarters (if ordered) exceeded 376,862 AY—in the full-supply allocation amount determined by Reclamation in 1990—and also exceeded the higher full-supply allocation to EPCWID (398,102 AY) under the 2008 Operating Agreement.</td>
<td>NM-EX-081, Barroll Decl. at ¶ 26, 31, 34-37 &amp; Table 2; NM-EX-402, EPCWID Accounting Records; NM-EX-500, EPCWID Water Allocation Records (2006-2016); NM-EX-510, 2008 Operating Agreement, Tables 2 &amp; 4.</td>
<td>NO</td>
<td>From TX's 12/22/20 Filings: NM-EX-100: See General Objection ¶1. NM-EX-402: See General Objection ¶9; Fed. R. Evid. 801(c), hearsay. NM-EX-500: See General Objection ¶9; Fed. R. Evid. 801(c), hearsay.</td>
<td>From TX's 12/22/20 Filings: Subject to the stated objections, disputed. See Brandes Dec. in Opp. to NM at TX_MSJ_007312, paragraph 1 – 24. The discussion is lengthy, and is incorporated herein by reference.</td>
<td>Full Supply - page 7; *No citation to any CSMPs in body of Full Supply Brief</td>
<td>NA</td>
<td></td>
</tr>
<tr>
<td>194</td>
<td>Apportionment No. 80</td>
<td>In 2010, after it had an opportunity to study the new operations and method for allocating water, New Mexico raised several concerns about the 2008 Operating Agreement. One of New Mexico’s primary concerns was that the 2008 Operating Agreement was inconsistent with the Compact because it did not allocate 57% of Project supply to New Mexico lands.</td>
<td>NM-EX-517, Letter from John D’Antone, State Engineer, State of New Mexico to Michael Connor, Commissioner, United States Bureau of Reclamation (Mar. 4, 2010); NM-EX-002, D’Antone Decl. at ¶ 11.</td>
<td>NO</td>
<td>From TX’s 12/22/20 Filings: NM-EX-517: See General Objection ¶9; Fed. R. Evid. 801(c), hearsay.</td>
<td>From TX’s 12/22/20 Filings: Subject to the stated objections, disputed in part. In paragraph 79 of NM MSJ on Apportionment, New Mexico asserts that the 2008 Operating Agreement “changed the way that water was allocated between the two Districts, and therefore the amount of water that was available for lands in New Mexico and Texas.” In paragraph 80, New Mexico asserts its “primary concern” with the 2008 Operating Agreement is that it is not consistent with the Compact and does not allocate 57 percent of Project supply to New Mexico lands. In fact, under the Operating Agreement New Mexico has received more water than it otherwise should have based solely on the D2 Curve prior to implementation of the Operating Agreement. This is demonstrated by the graph in Figure 11. The blue X’s show total Project surface water diversions between 2008 and 2010; the black X’s show the total amount of diversions, including groundwater pumping by New Mexico, for the same period. See Brandes Dec. in Opp. to NM at TX_MSJ_007312, paragraph 1 – 9, 25-26, 30-31.</td>
<td>Apportionment - page 16, 46</td>
<td>NA</td>
<td></td>
</tr>
<tr>
<td>195</td>
<td>N/A</td>
<td>Under the 2008 Operating Agreement, Reclamation delivers New Mexico’s surface water to Texas without a required export permit required by New Mexico law.</td>
<td>See NM-EX-017, D’Antone 2d Decl. at ¶ 45-46.</td>
<td>Yes. See NM Response to TX MSJ at: - page 33</td>
<td>NM-EX-007: Fed. R. Civ. P. 56(c)(4). The cited evidence does not support the stated “facts” in whole and/or in part.</td>
<td>Subject to the stated objections, the fact is cited in New Mexico’s Response to Texas’ Motion for Partial Summary Judgment but does not materially respond to facts stated therein. New Mexico’s stated fact and the evidence in support regarding the 2008 Operating Agreement do not materially respond to an argument made in Texas Motion for Partial Summary Judgment. New Mexico’s counterclaims and its apportionment motion address New Mexico’s legal position on the interrelationship of the Project, Downstream Contracts and the Compact. CSMP #195 may relate to New Mexico’s motion(s), but does not materially respond to Texas’s Motion for Partial Summary Judgment. New Mexico’s stated fact is non-responsive and otherwise not supported by definite, competent, or significantly probative evidence that genuinely and materially responds to a fact stated in Texas’s Motion for Partial Summary Judgment. As such, Texas’ stated material facts remain undisputed. Fed. R. Civ. P. 56(c)(3).</td>
<td>N/A</td>
<td>N/A</td>
<td></td>
</tr>
<tr>
<td>196</td>
<td>N/A</td>
<td>Reclamation’s implementation of the D3 Allocation method and the 2008 Operating Agreement have reduced the delivery efficiency and performance of the Rio Grande Project as a whole.</td>
<td>NM-EX-100, Barroll Rep. at 77-78; NM-EX-101, Barroll 2d Suppl. Rep. at 18-19.</td>
<td>Yes. See NM Response to TX MSJ at: - page 66, 69</td>
<td>NM-EX-100, 101: See General Objection ¶7; Fed. R. Evid. 801(c), hearsay.</td>
<td>Subject to the stated objections, the fact is cited in New Mexico’s Response to Texas’ Motion for Partial Summary Judgment but does not materially respond to facts stated therein. New Mexico’s stated fact and the evidence in support in regard to the D3 allocation and 2008 Operating Agreement do not materially respond to an argument made in Texas’s Motion for Partial Summary Judgment. New Mexico’s counterclaims and its apportionment motion address New Mexico’s legal position on the interrelationship of the Project, Downstream Contracts and the Compact. CSMP #196 may relate to New Mexico’s motion(s), but does not materially respond to Texas’s Motion for Partial Summary Judgment. New Mexico’s stated fact is non-responsive and otherwise not supported by definite, competent, or significantly probative evidence that genuinely and materially responds to a fact stated in Texas’s Motion for Partial Summary Judgment. As such, Texas’s stated material facts remain undisputed. Fed. R. Civ. P. 56(c)(3).</td>
<td>N/A</td>
<td>Opp to US - page 47</td>
<td></td>
</tr>
<tr>
<td>197</td>
<td>N/A</td>
<td>Reclamation’s implementation of the D3 Allocation method used the 2008 Operating Agreement have substantially reduced its surface water supply in the LRG, and negatively impacting the water balance of groundwater systems of the Sacramento and Mescalero basins.</td>
<td>NM-EX-100, Barroll Rep. at 71-77.</td>
<td>Yes. See NM Response to TX MSJ at: - page 66, 69</td>
<td>NM-EX-100: See General Objection ¶7; Fed. R. Evid. 801(c), hearsay.</td>
<td>See above (196).</td>
<td>N/A</td>
<td>Opp to US - page 47</td>
<td></td>
</tr>
<tr>
<td>198</td>
<td>N/A</td>
<td>EPCWID and Texas have benefited by gaining a disproportionate share of surface water.</td>
<td>See NM-EX-005, Barroll 2d Decl. at ¶ 71-72.</td>
<td>Yes. See NM Response to TX MSJ at: - page 66, 69</td>
<td>NM-EX-006: Fed. R. Civ. P. 56(c)(4). The cited evidence does not support the stated “facts” in whole and/or in part.</td>
<td>To the extent the stated “facts” address Compact delivery obligations, they constitute improper legal conclusions in whole or in part.</td>
<td>See above (196).</td>
<td>N/A</td>
<td>Opp to US - page 47</td>
</tr>
</tbody>
</table>
197 Apportionment No. 81  After attempts to resolve the issue related to the 2006 Operating Agreement failed, in 2011, New Mexico filed suit in federal district court seeking to have the 2006 Operating Agreement set aside.

198 N/A  Texas filed the present original action in reaction to New Mexico’s 2011 federal district lawsuit.  By 1940, after decades of Project operations, very few of the pre-Project wells remained in operation. However, documentation with the New Mexico Office of the State Engineer suggests that at least some irrigation wells were drilled in the 1920s and 1930s.  In 1903, the New Mexico Agricultural Experiment Station recognized that groundwater was a potential source of irrigation supply.  No. 81

New Mexico’s Stated “Fact”  The New Mexico Agricultural Experiment Station reported that irrigators in Texas around El Paso had “been compelled to turn their attention to other sources of irrigation supply.  Station reported that irrigators in Texas around El Paso had “been compelled to turn their attention to other sources of irrigation supply.  Prior to construction of the Rio Grande Project, farmers in the Rio Grande Valley used surface supply.  However, when the Rio Grande Project was completed in 1931, the River ceased to provide an “ample quantity” of groundwater for irrigation described as “reliable and secure,” “subject to no fluctuations,” and “sufficient to meet all reasonable needs.”

New Mexico’s Supporting Evidence  The report noted that observation wells at the station demonstrated “an underflow in the Rio Grande Valley.” The report noted that observation wells at the station demonstrated “an underflow in the Rio Grande Valley.”

199 N/A Prior to the creation of the Project, farmers in the Rio Grande Valley below what is now Elephant Butte Reservoir recognized that groundwater was a potential source of irrigation supply. No. 81

200 N/A In 1903, the New Mexico Agricultural Experiment Station reported that irrigators in Texas around El Paso had “been compelled to turn their attention to other water supplies or else abandon all agricultural work. ... they have demonstrated the fact that crops can be profitably grown by irrigation from wells tapping the underflow in the Rio Grande Valley.” The report noted that observation wells at the station demonstrated “an ample quantity” of groundwater for irrigation described as “reliable and secure,” “subject to no fluctuations,” and “sufficient to meet all reasonable needs.” No. 81

201 N/A Prior to construction of the Rio Grande Project, irrigators in the Marfa Valley in New Mexico developed a number of groundwater wells to supply irrigation water during period of low and variable surface supply. No. 81

202 N/A By 1960, after decades of Project operations, very few of these pre-Project wells remained in operation. However, documentation with the New Mexico Office of the State Engineer suggests that at least some irrigation wells were drilled in the 1920s and 1930s. No. 81

DID NM CITe TO THE FACT/EVIDENCE IN TEX 12/22/20 RESPONSE TO THE TEXAS MOTION FOR PARTIAL SUMMARY JUDGMENT?  Yes.  See NM Response to TX at: page 54, 60

TEXAS’S EVIDENTIARY OBJECTIONS  From TX 12/22/20 Filings:  Subject to the stated objections, the fact is cited in New Mexico’s Response to Texas’s Motion for Partial Summary Judgment but does not materially respond to facts stated therein.  New Mexico’s stated fact and the evidence cited in support regarding the New Mexico’s position on Texas’s “intent” in filing this original action is not relevant to the issues raised in Texas’s Motion for Summary Judgment. New Mexico’s stated fact is non-responsive and otherwise not supported by definite, competent, or significantly probative evidence that genuinely and materially responds to a fact stated in Texas’s Motion for Partial Summary Judgment. As such, Texas’s stated material facts remain undisputed. Fed. R. Civ. P. 56(a)(3).

TEXAS’S RESPONSE:  New Mexico’s stated fact, and supporting evidence, are not cited in New Mexico’s Response to Texas’s Motion for Partial Summary Judgment and are therefore non-responsive and irrelevent. As such, Texas’s stated material facts remain undisputed. Fed. R. Civ. P. 56(a)(3).  New Mexico’s stated fact and supporting evidence, are not cited in New Mexico’s Response to Texas’s Motion for Partial Summary Judgment and are therefore non-responsive and irrelevent. As such, Texas’s stated material facts remain undisputed. Fed. R. Civ. P. 56(a)(3).  New Mexico’s stated fact and supporting evidence, are not cited in New Mexico’s Response to Texas’s Motion for Partial Summary Judgment and are therefore non-responsive and irrelevent. As such, Texas’s stated material facts remain undisputed. Fed. R. Civ. P. 56(a)(3).  New Mexico’s stated fact and supporting evidence, are not cited in New Mexico’s Response to Texas’s Motion for Partial Summary Judgment and are therefore non-responsive and irrelevent. As such, Texas’s stated material facts remain undisputed. Fed. R. Civ. P. 56(a)(3).
New Mexico's Stated "Fact" | New Mexico's Supporting Evidence | DID NM CITE TO THE FACT/EVIDENCE IN TEXAS'S MOTION FOR PARTIAL SUMMARY JUDGMENT? | TEXAS'S EVIDENTIARY OBJECTIONS | TEXAS'S RESPONSE | Identification of where NM cited the fact/evidence in its Notice MSJ; NM Full Apportionment MSJ)

283 | N/A | Following construction of the Rio Grande Project storage and diversion works there was continuing interest, in both New Mexico and Texas, in developing groundwater resources to supplement existing irrigation supplies. | See, e.g., NM-EX 346, D.C. Honey, Board of Engineers, Rio Grande Project, Report on Water Supply and Project Area High Line Canal Construction Power Development and City Water Supplies, at 58 (Nov. 1919); NM-EX 349, Harold Conkling, United States Reclamation Service, Water Supply of the Rio Grande River, at TX_00182134 (Jan 18, 1919); see also NM-EX 113, Stevens Rh. Rep. at 11 (discussing Conkling's conclusion that groundwater pumping to expand the irrigable acreage of the project would only have affected surface supply in the two lowest supply years in the 58 years of data examined); NM-EX 317; D.C. Honey, Board of Engineers, Rio Grande Project, Report on Water Supply and Project Area High Line Canal Construction Power Development and City Water Supplies, at 15-36 (Nov. 1919). | NO | NM-EX-113: See General Objection #7; Fed. R. Evid. 801(c), hearsay. | New Mexico's stated fact, and supporting evidence, are not cited in New Mexico's Response to Texas's Motion for Partial Summary Judgment and are therefore non-responsive and irrelevant. As such, Texas's stated material facts remain undisputed. Fed. R. Civ. P. 56(a), 56(c)(4). | N/A | Opt to US - page 20

284 | N/A | Ultimately, as of 1938, scientific understanding of the relationship between groundwater and surface water in the Rio Grande Basin was limited and conflicting. The RGJI did not include an investigation of groundwater resources below Elephant Butte. | See NM-EX 111, Stevens Rh. Rep. at 4, 8, 9; NM-EX 311, Stevens 2d Decl. at 5, 11, 12, e.g., NM-EX 342, Charles S. Stiecher, United States Geological Survey, Water Supply and Irrigation Paper No. 141, Observations on the Ground Waters of the Rio Grande Valley, at 27-29 (1933); NM-EX 347; E.L. Barrows, Report of Seepage Study on Rio Grande Between Elephant Butte Dam and Las Animas Dam, at 1 (Nov. 26-28, 1928). | NO | NM-EX-113: See General Objection #7; Fed. R. Evid. 801(c), hearsay. | New Mexico's stated fact, and supporting evidence, are not cited in New Mexico's Response to Texas's Motion for Partial Summary Judgment and are therefore non-responsive and irrelevant. As such, Texas's stated material facts remain undisputed. Fed. R. Civ. P. 56(a), 56(c)(4). | N/A | Opt to US - page 20

285 | N/A | Reclamation's and others' practice in the post-Compact drought during the 1940s and 1950s indicates that no contemporary actor believed that the Compact prohibited groundwater pumping. | See NM-EX 313, Stevens Rh. Rep. at 15; NM-EX 112, Stevens Rh. Rep. at 93-94. | NO | NM-EX-113, 112: See General Objection #7; Fed. R. Evid. 801(c), hearsay. | New Mexico's stated fact, and supporting evidence, are not cited in New Mexico's Response to Texas's Motion for Partial Summary Judgment and are therefore non-responsive and irrelevant. As such, Texas's stated material facts remain undisputed. Fed. R. Civ. P. 56(a), 56(c)(4). | N/A | Opt to US - page 30

286 | N/A | In the middle 1940s, the Project faced its first significant period of drought following execution of the Compact. As a result, Project Storage levels fell below average, causing Reclamation to warn of potential water rationing. | See NM-EX 408, Barnett 2d Decl. at 15; NM-EX 100, Barnett Rep. at 19; NM-EX 112, Stevens Rep. at 94. See, e.g., NM-EX 334, Barnett Excerpts of Rio Grande Project Histories 1906-38, at NM-00027847; NM-00027841; NM-00027861; NM-00028239; NM-00028240. | NO | NM-EX-006: Fed. R. Civ. P. 56(c)(3); Fed. R. Evid. 602, 702(a); Dr. Barnett also historical records in support of her conclusion but has insufficient personal knowledge to assert this opinion for purposes of Rule 56 summary judgment, and at trial she would lack qualification to offer this opinion as an expert under Fed. R. Evid. 702(a). NM-EX-112: See General Objection #7; Fed. R. Evid. 801(c), hearsay. | New Mexico's stated fact, and supporting evidence, are not cited in New Mexico's Response to Texas's Motion for Partial Summary Judgment and are therefore non-responsive and irrelevant. As such, Texas's stated material facts remain undisputed. Fed. R. Civ. P. 56(a), 56(c)(4). | N/A | Opt to US - page 17/18; 27; 32

287 | N/A | Drought conditions worsened in the 1950s. | See NM-EX 008, Barnett 2d Decl. at 17. | NO | in m | New Mexico's stated fact, and supporting evidence, are not cited in New Mexico's Response to Texas's Motion for Partial Summary Judgment and are therefore non-responsive and irrelevant. As such, Texas's stated material facts remain undisputed. Fed. R. Civ. P. 56(a), 56(c)(4). | N/A | Opt to US - page 17/18; 32

287 | N/A | Beginning in 1951, Reclamation announced limits to permit allocations to Project lands. | See id.; NM-EX 419, Barnett Excerpts of Rio Grande Project Histories 1906-38, at NM-00027853-07 (indicating, in a series of "Water Announcements," that "water rationing" would be mandatory and setting allotments). | NO | NM-EX-419: See General Objection #8; Fed. R. Evid. 801(c), hearsay. | New Mexico's stated fact, and supporting evidence, are not cited in New Mexico's Response to Texas's Motion for Partial Summary Judgment and are therefore non-responsive and irrelevant. As such, Texas's stated material facts remain undisputed. Fed. R. Civ. P. 56(a), 56(c)(4). | N/A | Opt to US - page 17/18; 32
Facing limited surface supply allocations, farmers within the region. In the course of the drought, Reclamation and the State of New Mexico recognized that groundwater pumping would be necessary to supplement their irrigation supplies.

Yes. See NM Response to TX at: page 58

Texas's stated fact, and supporting evidence, are not cited in New Mexico's Response to Texas's Motion for Partial Summary Judgment and are therefore non-responsive and irrelevant. As such, Texas's stated material facts remain undisputed. Fed. R. Civ. P. 56(g), 56(g)(2).

Subject to the stated objections, the fact is cited in New Mexico's Response to Texas's Motion for Partial Summary Judgment but does not materially respond to facts stated therein. New Mexico's stated fact and the evidence cited in support regarding the Project operations do not materially respond to an argument made in Texas's Motion for Partial Summary Judgment. New Mexico's counterclaims and its apportionment motion address New Mexico's motion(s), but do not materially respond to Texas's Motion for Partial Summary Judgment. New Mexico's stated fact is non-responsive and otherwise not supported by definite, competent, or significantly probative evidence that genuinely and materially responds to a fact stated in Texas's Motion for Partial Summary Judgment. As such, Texas's stated material facts remain undisputed. Fed. R. Civ. P. 56(g), 56(g)(3).

No NM cited the fact/evidence in its Response to the US Motion for Partial Summary Judgment and are therefore non-responsive and irrelevant. As such, Texas's stated material facts remain undisputed. Fed. R. Civ. P. 56(g), 56(g)(1).

No NM cited the fact/evidence in its Response to the US Motion for Partial Summary Judgment and are therefore non-responsive and irrelevant. As such, Texas's stated material facts remain undisputed. Fed. R. Civ. P. 56(g), 56(g)(1).
Texas's Response to New Mexico's Motion for Partial Summary Judgment

To the Texas motion for partial summary judgment, and as directed in the rule, I present evidence which shows that New Mexico's stated fact, and supporting evidence, are not cited in New Mexico's Response to Texas's Motion for Partial Summary Judgment and are therefore non-responsive and irrelevant. As such, Texas's stated material facts remain undepended. Fed. R. Civ. P. 56(a), 56(c)(4).
Texas's Response

Prior to 1980, the conjunctive use of surface and groundwater rights for irrigation in the Lower Rio Grande Basin in New Mexico. In response to this development and to appropriate a one hundred-year supply of groundwater within the Project, the State Engineer, State Engineer Order No. 135 [¶ 218] 

Texas's Evidentiary Objections

Subject to the stated objections, the facts in New Mexico's Response to Texas's Motion for Partial Summary Judgment but do not materially respond to facts stated therein. New Mexico's stated fact and the evidence cited in support regarding groundwater pumping and the Project, including actions taken by the Office of the State Engineer, do not materially respond to an argument made in Texas's Motion for Partial Summary Judgment. New Mexico's counterclaims and its apportionment motion address New Mexico's legal position on the interrelationship of the Project, Downstream Contracts and the Compact. CSMF #216 may relate to New Mexico's motion(s), but does not materially respond to Texas's Motion for Partial Summary Judgment. New Mexico's stated fact is non-responsive and otherwise not supported by definite, competent, or significantly probative evidence that genuinely and materially responds to a fact stated in Texas's Motion for Partial Summary Judgment. As such, Texas's stated material facts remain unduplicated. Fed. R. Civ. P. 56(c)(1).
TEXAS'S RESPONSE

NM-EX-123: N/A Farmers in both districts continue to rely, as they have
The average annual volume of LRG groundwater
In total, since the New Mexico State Engineer declared
result, drawdowns to the aquifer in the New Mexico
Agreement has reduced EBID's allocation by more than
reduced surface water allocations. In years in which the
steeply in order to maintain their crops and balance
Agreement, EBID's principals understood that a primary
number of private wells for supplemental irrigation use.
management of groundwater and surface supply.
1951-78 (179,100 AF).
(pumped in New Mexico during the period 1979-2005
encouraged to do so by the State Engineer. The vast
majority of these declarations reflect that the subject
wells were drilled during the droughts of the 1950s and
1970s.

Yes. See NM Response to TX at:
page 33
See NM-EX-007: See General Objection #3.
Subject to the stated objections, undispersed.

N/A Under NMSA 1978 §12-2-9 (1973), water rights users
who claim a priority date earlier than the September
1990 LRG Groundwater Basin declaration could file
with the State Engineer individual "declarations" describing
their claimed existing rights and were encouraged to do so by the State Engineer. The vast

223 N/A The average annual volume of LRG groundwater
pumped in New Mexico during the period 1979-2005
(109,800 AF) was much less than during the period
1970s. Subject to the stated objections, undisputed.
Fed. R. Civ. P. 56(a), (b)(3).

224 N/A Farmers in both districts continue to rely, as they have
throughout the history of the Project, upon conjunctive
management of groundwater and surface supply.
Fed. R. Civ. P. 56(a), (b)(3).

225 N/A Referring to EBID's reliance on conjunctive use, when
EBID and FCPCBD negotiated the 2006 Operating Agreement,
EBID's principals understood that a primary
effect of the agreement would be to "goasthead" levels of
groundwater pumping in New Mexico commensurate with the E2 period.
Fed. R. Civ. P. 56(a), (b)(3).

226 N/A Following the 2008 Operating Agreement, New Mexico
farmers were forced to reduce their groundwater use
steadily in order to maintain their crops and balance
irrigated surface water deliveries. As a result, to which the Project has a full supply available, the 2008 Operating Agreement has reduced EBID's allocation by more than
one-third, leading to increased groundwater pumping
in full supply and decreased opportunity for recharge. As a
result, drawdowns to the aquifer in the New Mexico
portion of the Project accelerated, and the aquifer fell to unprecedentedly low levels.
Fed. R. Civ. P. 56(a), (b)(3).
TEXAS'S RESPONSE

IDENTIFICATION OF WHERE NM CITED THE FACT/EVIDENCE IN ITS 11/5/20 MOTIONS (NM
Supply MSJ; NM Apportionment MSJ)

IDENTIFICATION OF WHERE NM CITED TO THE FACT/EVIDENCE IN ITS RESPONSE TO THE US
Response to the US Motion for Partial Summary Judgment

NO
NO
NO
NO
NO
NO
NO
NO
Yes, See NM Response to TX Mots. at p. 33.

See NM-EX-010, Serrano Decl. at ¶¶ 14, 20.

See NM-EX-010, Serrano Decl. at ¶¶ 35, 36.

See NM-EX-010, Serrano Decl. at ¶¶ 35, 36.

See NM-EX-010, Serrano Decl. at ¶¶ 35, 36.

See NM-EX-010, Serrano Decl. at ¶¶ 35, 36.

See NM-EX-010, Serrano Decl. at ¶¶ 35, 36.

See NM-EX-010, Serrano Decl. at ¶¶ 35, 36.

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See NM-EX-010, Serrano Decl. at ¶¶ 35, 36.

See NM-EX-010, Serrano Decl. at ¶¶ 35, 36.

See NM-EX-010, Serrano Decl. at ¶¶ 35, 36.
Texas's Response:

No, Texas's stated facts and supporting evidence are not cited in New Mexico's Response to Texas's Motion for Partial Summary Judgment and are therefore non-responsive and irrelevant. As such, Texas's stated material facts remain undepended. Fed. R. Civ. P. 56(e)(4).  

Identification of where New Mexico cited to the Texas Motion for Partial Summary Judgment:

Texas's Evidentiary Objections

No. 57 of 82

234

N/A Following the Compact, cities and towns in the LRG have grown in their reliance on groundwater supplies. Without groundwater supplies, cities and towns would be left without water for their citizens. Outside of established public utilities, domestic wells also continue to supply waters to individual homes.  

Subject to the stated objections, the fact is cited in New Mexico's Response to Texas's Motion for Partial Summary Judgment but does not materially respond to facts stated therein. New Mexico's stated fact and the evidence in support regarding the groundwater pumping in the State of Texas do not materially respond to an argument made in Texas's Motion for Partial Summary Judgment. New Mexico's counterclaims and its evidence cited in support regarding the groundwater pumping in the State of Texas do not materially respond to the facts remain undisputed. Fed. R. Civ. P. 56(a), 56(c)(1).  

Identification of where New Mexico cited to the Texas Motion for Partial Summary Judgment:

235

N/A For instance, Las Cruces has pumped groundwater since the late nineteenth century, gradually increasing its diversions as the population of the city increased.  

Subject to the stated objections, the fact is cited in New Mexico's Response to Texas's Motion for Partial Summary Judgment but does not materially respond to facts stated therein. New Mexico's stated fact and the supporting evidence, are not cited in New Mexico's Response to Texas's Motion for Partial Summary Judgment and are therefore non-responsive and irrelevant. As such, Texas's stated material facts remain undepended. Fed. R. Civ. P. 56(e)(4).  

Identification of where New Mexico cited to the Texas Motion for Partial Summary Judgment:

236

N/A Within New Mexico, the City of Las Cruces currently pumps approximately 15,000 AF/yr from wells in the Mesilla basin and 4,000 AF/yr from wells in the Jornada del Sierra, an adjoining but hydrologically disconnected basin.  

Subject to the stated objections, the fact is cited in New Mexico's Response to Texas's Motion for Partial Summary Judgment but does not materially respond to facts stated therein. New Mexico's stated fact and the supporting evidence, are not cited in New Mexico's Response to Texas's Motion for Partial Summary Judgment and are therefore non-responsive and irrelevant. As such, Texas's stated material facts remain undepended. Fed. R. Civ. P. 56(e)(4).  

Identification of where New Mexico cited to the Texas Motion for Partial Summary Judgment:

237

N/A However, given the amount of water the City of Las Cruces returns to the Rio Grande it supplies a net gain to the river system.  

Subject to the stated objections, the fact is cited in New Mexico's Response to Texas's Motion for Partial Summary Judgment but does not materially respond to facts stated therein. New Mexico's stated fact and the supporting evidence, are not cited in New Mexico's Response to Texas's Motion for Partial Summary Judgment and are therefore non-responsive and irrelevant. As such, Texas's stated material facts remain undepended. Fed. R. Civ. P. 56(e)(4).  

Identification of where New Mexico cited to the Texas Motion for Partial Summary Judgment:

238

N/A Traced effluent from Las Cruces, regardless of source, returns to the Rio Grande below Las Cruces and is available for diversion as part of Project Supply.  

Subject to the stated objections, the fact is cited in New Mexico's Response to Texas's Motion for Partial Summary Judgment but does not materially respond to facts stated therein. New Mexico's stated fact and the supporting evidence, are not cited in New Mexico's Response to Texas's Motion for Partial Summary Judgment and are therefore non-responsive and irrelevant. As such, Texas's stated material facts remain undepended. Fed. R. Civ. P. 56(e)(4).  

Identification of where New Mexico cited to the Texas Motion for Partial Summary Judgment:

239

N/A In New Mexico, groundwater pumping for municipal and industrial use comprises only 30 to 35% of total groundwater pumping, with the remainder being irrigation use. In contrast, Texas groundwater pumping comprises more than 50% of its total groundwater use. Subject to the stated objections, the fact is cited in New Mexico's Response to Texas's Motion for Partial Summary Judgment but does not materially respond to facts stated therein. New Mexico's stated fact and the supporting evidence, are not cited in New Mexico's Response to Texas's Motion for Partial Summary Judgment and are therefore non-responsive and irrelevant. As such, Texas's stated material facts remain undepended. Fed. R. Civ. P. 56(e)(4).  

Identification of where New Mexico cited to the Texas Motion for Partial Summary Judgment:
The Rio Grande within the LRG and El Paso Valley has historically had both gaining and losing reaches. During irrigation conveyances, increases in the seepage loss from natural streams and as well as the location and construction of the pumping location where that depletion occurs, and the amount of stream system, but the timing of the depletion, the aquifer, that pumping eventually depletes water from the irrigation groundwater in New Mexico is only about 37,000 AF/y, of which 17,000 AF/y returns to the Rio Grande as return flow.

Subject to the stated objections, the fact is cited in New Mexico's Response to Texas's Motion for Partial Summary Judgment but does not materially respond to facts stated therein. New Mexico's stated fact and the evidence cited in support generally describing stream depletion do not materially respond to an argument made in Texas's Motion for Partial Summary Judgment but does not materially respond to facts stated therein. New Mexico's Motion for Partial Summary Judgment. New Mexico's stated fact is non-responsive and otherwise not supported by definitive, competent, or significantly probative evidence that generally and materially responds to a fact stated in Texas's Motion for Partial Summary Judgment. As such, Texas's stated material facts remain undisputed. Fed. R. Civ. P. 56(c)(4), Fed. R. Evid. 401, 602.

NA

NA

Opt to US - page 63
Groundwater pumping by in Texas and New Mexico may cause stream depletions. These stream depletions may cause Reclamation to release more water from Project Storage in order to deliver water to Project beneficiaries than otherwise.

Yes. See NM Response to TX at: page 56, 58

See NM-EX-102, 122, 123: Subject to the stated objections, the fact is cited in New Mexico’s Response to Texas’s Motion for Partial Summary Judgment but does not materially respond to facts stated therein. New Mexico’s stated fact and the evidence cited in support generally describing stream depletion do not materially respond to an argument made in Texas’s Motion for Partial Summary Judgment. Additionally, the fact is cited in New Mexico’s opposition to Texas’s Motion for Partial Summary Judgment for the proposition that any “depletion limit” may apply to both New Mexico and Texas. CSMF #245 may relate to New Mexico’s motions for partial summary judgment and/or its counterclaims, but alleged depletions due to pumping in Texas is not the subject of Texas’s Motion for Partial Summary Judgment. New Mexico’s stated fact is non-responsive and otherwise not supported by definite, competent, or significantly probative evidence that genuinely and materially responds to a fact stated in Texas’s Motion for Partial Summary Judgment. As such, Texas’s stated material facts remain undisputed.


Or opt to US - page 46

Texas’s stated material facts remain undisputed.

Or opt to US - page 44; 45; 46 - page 63

The effects of groundwater pumping in New Mexico on Project deliveries are intermittent and variable for a number of reasons. First, pumping in New Mexico has varied substantially since it developed in the early 1950s, with higher amounts of pumping in low Project supply years and lower amounts of pumping in full supply years. Second, in full supply years, the Districts received all water they ordered, up to their total allocations, so pumping does not impact deliveries in those years. Third, some of the rise in stream depletions from pumping occur during the winter when the Project is not making deliveries. Fourth, the amount and timing of Rio Grande depletions from pumping depends on many factors, including the locations and depth of the wells, the timing and amount of pumping,aquifer characteristics, the interaction of ground water and surface water, Project and reservoir operations, including spills, and many other factors.

See NM-EX-012, Sudrious Decl. at ¶¶ 13-14, 102, see also NM-EX-122, Sprock Rep. at 194, 310, NM-EX-123, Sprock Rep. at 16-98.

Yes. See NM Response to TX at: page 56, 61

See NM-EX-102, 122, 123: See General Objection #7; Fed. R. Evid. 801(c); hearsay.

Subject to the stated objections, the fact is cited in New Mexico’s Response to Texas’s Motion for Partial Summary Judgment but does not materially respond to facts stated therein. New Mexico’s stated fact and the evidence cited in support generally describing stream depletion do not materially respond to an argument made in Texas’s Motion for Partial Summary Judgment. Additionally, the fact is cited in New Mexico’s opposition to Texas’s Motion for Partial Summary Judgment for the proposition that any “depletion limit” may apply to both New Mexico and Texas. CSMF #247 may relate to New Mexico’s motions for partial summary judgment and/or its counterclaims, but alleged depletions due to pumping in Texas is not the subject of Texas’s Motion for Partial Summary Judgment. New Mexico’s stated fact is non-responsive and otherwise not supported by definite, competent, or significantly probative evidence that genuinely and materially responds to a fact stated in Texas’s Motion for Partial Summary Judgment. As such, Texas’s stated material facts remain undisputed.


Or opt to US - page 44; 46
TEXAS'S RESPONSE

N/A Groundwater pumping in Texas has lowered groundwater levels, intercepted irrigation return flows, drilled up-drain, and increased seepage losses from the Rio Grande, impacting the entire Project. These effects have increased depletions to surface water flows and increased conveyance losses in delivering Project water. In fact, these drawdowns may have disconnected the saline system from the aquifer in the El Paso area, maximizing the seepage losses in this area.

Yes. See NM Response to TX at: - page 36, 56, 57


Subject to the stated objections, the fact is cited in New Mexico's Response to Texas's Motion for Partial Summary Judgment but does not materially respond to facts stated therein. New Mexico's stated fact and the evidence cited in support regarding groundwater pumping for purposes of Rule 56 summary judgment, and at trial she would lack qualification to offer this opinion as an expert under Fed. R. Evil. 702(a); Fed. R. Evil. 403, 602. The statement is inadmissible for purposes of a motion for summary judgment and/or response and/or not within Mr. Sullivan's personal knowledge. NM-EX-101, 122; See General Objection #7; Fed. R. Evil. 801(c), hearsay.

Yes. See NM Response to TX at: - page 36, 56, 57

NM-EX-012: Barroll 2d Decl. at ¶ 42, 44; NM-EX-012: Barroll 2d Decl. at ¶ 40, 62. The statement is inadmissible for purposes of a motion for summary judgment and/or response and/or not within Mr. Sullivan's personal knowledge.

See NM-ex-006, Barroll 2d Decl. at ¶ 44; see also NM-EX-100, Barroll Reb. Rep. at 73-77; NM-EX-012, Sullivan Decl. at ¶ 13, 45.

Subject to the stated objections, the fact is cited in New Mexico's Response to Texas's Motion for Partial Summary Judgment but does not materially respond to facts stated therein. New Mexico's stated fact and the evidence cited in support regarding groundwater pumping for purposes of Rule 56 summary judgment, and at trial she would lack qualification to offer this opinion as an expert under Fed. R. Evil. 702(a); Fed. R. Evil. 403, 602. The statement is inadmissible for purposes of a motion for summary judgment and/or response and/or not within Mr. Sullivan's personal knowledge. NM-EX-101, 122; See General Objection #7; Fed. R. Evil. 801(c), hearsay.

Subject to the stated objections, the fact is cited in New Mexico's Response to Texas's Motion for Partial Summary Judgment but does not materially respond to facts stated therein. New Mexico's stated fact and the evidence cited in support regarding groundwater pumping for purposes of Rule 56 summary judgment, and at trial she would lack qualification to offer this opinion as an expert under Fed. R. Evil. 702(a); Fed. R. Evil. 403, 602. The statement is inadmissible for purposes of a motion for summary judgment and/or response and/or not within Mr. Sullivan's personal knowledge.

See NM-ex-006, Barroll 2d Decl. at ¶ 44; see also NM-EX-100, Barroll Reb. Rep. at 73-77; NM-EX-012, Sullivan Decl. at ¶ 13, 45.

Subject to the stated objections, the fact is cited in New Mexico's Response to Texas's Motion for Partial Summary Judgment but does not materially respond to facts stated therein. New Mexico's stated fact and the evidence cited in support regarding groundwater pumping for purposes of Rule 56 summary judgment, and at trial she would lack qualification to offer this opinion as an expert under Fed. R. Evil. 702(a); Fed. R. Evil. 403, 602. The statement is inadmissible for purposes of a motion for summary judgment and/or response and/or not within Mr. Sullivan's personal knowledge.

See NM-ex-006, Barroll 2d Decl. at ¶ 64.

Subject to the stated objections, the fact is cited in New Mexico's Response to Texas's Motion for Partial Summary Judgment but does not materially respond to facts stated therein. New Mexico's stated fact and the evidence cited in support regarding groundwater pumping for purposes of Rule 56 summary judgment, and at trial she would lack qualification to offer this opinion as an expert under Fed. R. Evil. 702(a); Fed. R. Evil. 403, 602. The statement is inadmissible for purposes of a motion for summary judgment and/or response and/or not within Mr. Sullivan's personal knowledge.

See NM-ex-006, Barroll 2d Decl. at ¶ 64.

Subject to the stated objections, the fact is cited in New Mexico's Response to Texas's Motion for Partial Summary Judgment but does not materially respond to facts stated therein. New Mexico's stated fact and the evidence cited in support regarding groundwater pumping for purposes of Rule 56 summary judgment, and at trial she would lack qualification to offer this opinion as an expert under Fed. R. Evil. 702(a); Fed. R. Evil. 403, 602. The statement is inadmissible for purposes of a motion for summary judgment and/or response and/or not within Mr. Sullivan's personal knowledge.

See NM-ex-006, Barroll 2d Decl. at ¶ 64.

Subject to the stated objections, the fact is cited in New Mexico's Response to Texas's Motion for Partial Summary Judgment but does not materially respond to facts stated therein. New Mexico's stated fact and the evidence cited in support regarding groundwater pumping for purposes of Rule 56 summary judgment, and at trial she would lack qualification to offer this opinion as an expert under Fed. R. Evil. 702(a); Fed. R. Evil. 403, 602. The statement is inadmissible for purposes of a motion for summary judgment and/or response and/or not within Mr. Sullivan's personal knowledge.

See NM-ex-006, Barroll 2d Decl. at ¶ 64.
TEXAS'S RESPONSE

IDB NM CITE TO THE FACT EVIDENCE IN TX 12/22/20 RESPONSE TO THE TEXAS MOTION FOR PARTIAL SUMMARY JUDGMENT

TEXAS'S EVIDENTIARY OBJECTIONS

Identification of where NM cited to the fact/evidence in its Motion for Partial Summary Judgment

IDB NM CITE TO THE FACT EVIDENCE IN 11/5/20 Motion(s) (NM Notice MSJ: NM Full Supply MSJ: NM Apposition MSJ)

Identification of where NM cited to the fact/evidence in its Motion for Partial Summary Judgment

252
N/A
Because the D3 Allocation method reduces EBID's allocation to account for any real or apparent discrepancies in Project performance relative to the 1931-1937 period, groundwarter pumping in Texas reduced EBID's allocation. Analyses using the ILRG Model indicate that Project water diversions by New Mexico during 2006 - 2017 were reduced by an average of 15,500 A/F by Texas pumping, an average of 94,200 A/F by imposition of the 2008 OA, an average of 65,500 A/F by increases in Project operational waste (mostly in Texas) and by an average of 72,400 A/F by changes in EPWID operations. Due to nonuniformities in the ILRG Model, the foregoing impacts are not fully independent and additive.

Yes. See NM Response to TX - page 36, 60


Subject to the stated objections, the fact is in New Mexico's Response to Texas's Motion for Partial Summary Judgment but does not materially respond to facts stated therein. New Mexico's stated fact and the evidence cited in support regarding the Integrated Lower Rio Grande Model and the 2008 Operating Agreement do not materially respond to an argument made in Texas's Motion for Partial Summary Judgment. CSMF #253 may relate to New Mexico's motions for partial summary judgment and/or its counterclaims, but alleged depletions due to pumping in Texas is not the subject of Texas's Motion for Partial Summary Judgment. As such, Texas's stated material facts remain undisputed. Fed. R. Civ. P. 56(a), 56(c)(2).

253
N/A
Using the New Mexico Integrated Lower Rio Grande Model (“ILRGM”) to calculate the impact of New Mexico's pumping on Texas, New Mexico experts have shown that the impact is much smaller than the falsification of Project water flow from New Mexico during 2016 - 2017.

Yes. See NM Response to TX - page 36, 68

NM-EX-006: Fed. R. Civ. P. 56(f)(4); Fed. R. Evid. 404, 601, 602(a). Dr. Barroll has insufficient personal knowledge to assert this opinion for purposes of Rule 56 summary judgment to the extent the statement addresses modeling work by other New Mexico experts, and at trial she would lack qualification to offer this opinion as an expert under Fed. R. Evid. 702(a). NM-EX-103: See General Objection #7; Fed. R. Evid. 801(d)(2), hearsay.

Subject to the stated objections, the fact is in New Mexico's Response to Texas's Motion for Partial Summary Judgment but does not materially respond to facts stated therein. New Mexico's stated fact and the evidence cited in support regarding the Integrated Lower Rio Grande Model and the 2008 Operating Agreement do not materially respond to an argument made in Texas's Motion for Partial Summary Judgment. As such, Texas's stated material facts remain undisputed. Fed. R. Civ. P. 56(a), 56(c)(2).

254
N/A
Results from the ILRGM show that had New Mexico been allocated 57% of Project Supply since 2006, the Project as a whole would have experienced an average of 1,053,393 A/F more than under D3 Allocation, or, an average of 72,400 A/F/y by Texas pumping, an average of 94,200 A/F/y by imposition of the 2008 OA, an average of 65,500 A/F/y by increases in Project operational waste (mostly in Texas) and by an average of 72,400 A/F/y by changes in EPWID operations. Due to nonuniformities in the ILRG Model, the foregoing impacts are not fully independent and additive.

Yes. See NM Response to TX - page 36, 69

NM-EX-006: Fed. R. Civ. P. 56(f)(4); Fed. R. Evid. 404, 601, 602(a). Dr. Barroll has insufficient personal knowledge to assert this opinion for purposes of Rule 56 summary judgment to the extent the statement addresses modeling work by other New Mexico experts, and at trial she would lack qualification to offer this opinion as an expert under Fed. R. Evid. 702(a). NM-EX-103: See General Objection #7; Fed. R. Evid. 801(d)(2), hearsay.

Subject to the stated objections, the fact is in New Mexico's Response to Texas's Motion for Partial Summary Judgment but does not materially respond to facts stated therein. New Mexico's stated fact and the evidence cited in support regarding the Integrated Lower Rio Grande Model and the 2008 Operating Agreement do not materially respond to an argument made in Texas's Motion for Partial Summary Judgment. As such, Texas's stated material facts remain undisputed. Fed. R. Civ. P. 56(a), 56(c)(2).

255
N/A
The ILRGM also calculates that if New Mexico had been allocated 57% of Project Supply since 2006, the resulting improved groundwater conditions and associated reduction in river stage— and increased flow—would have resulted in a total increase in Project Supply deliveries of 803,700 A/F during 2006 through 2017, or an average of 72,000 A/F/y.

Yes. See NM Response to TX - page 36

NM-EX-006: Fed. R. Civ. P. 56(f)(4); Fed. R. Evid. 404, 601, 602(a). Dr. Barroll has insufficient personal knowledge to assert this opinion for purposes of Rule 56 summary judgment to the extent the statement addresses modeling work by other New Mexico experts, and at trial she would lack qualification to offer this opinion as an expert under Fed. R. Evid. 702(a). NM-EX-103: See General Objection #7; Fed. R. Evid. 801(d)(2), hearsay.

Subject to the stated objections, the fact is in New Mexico's Response to Texas's Motion for Partial Summary Judgment but does not materially respond to facts stated therein. New Mexico's stated fact and the evidence cited in support regarding the Integrated Lower Rio Grande Model and the 2008 Operating Agreement do not materially respond to an argument made in Texas's Motion for Partial Summary Judgment. As such, Texas's stated material facts remain undisputed. Fed. R. Civ. P. 56(a), 56(c)(2).

256
N/A
Had EBID been allocated and delivered its 57% share of Project Supply since 2006, the Project as a whole would have benefited from an improvement in groundwater conditions in New Mexico. This improvement in groundwater conditions would have increased Project delivery efficiency and thereby further increased EBID's allocation and delivery at little cost to EPWID.

Yes. See NM Response to TX - page 36, 67

NM-EX-006: Fed. R. Civ. P. 56(f)(4); Fed. R. Evid. 404, 601, 602(a). Dr. Barroll has insufficient personal knowledge to assert this opinion for purposes of Rule 56 summary judgment to the extent the statement addresses modeling work by other New Mexico experts, and at trial she would lack qualification to offer this opinion as an expert under Fed. R. Evid. 702(a). NM-EX-103: See General Objection #7; Fed. R. Evid. 801(d)(2), hearsay.

Subject to the stated objections, the fact is in New Mexico's Response to Texas's Motion for Partial Summary Judgment but does not materially respond to facts stated therein. New Mexico's stated fact and the evidence cited in support regarding the Integrated Lower Rio Grande Model and the 2008 Operating Agreement do not materially respond to an argument made in Texas's Motion for Partial Summary Judgment. As such, Texas's stated material facts remain undisputed. Fed. R. Civ. P. 56(a), 56(c)(2).
257 N/A The ILRG Model simulates the impact of pumping on surface water flows and the effects on Project operations and all simulated processes that result in the changed conditions. The IRG Model is the only model in this case that is capable of simulating the dynamic response of Project operations to changes in flow throughout the entire Project area. Concretely, the Texas Model fails to accurately simulate the Project's response to a change in flow that occurs during the Project release period (irrigation season) from impacts that occur during the non-irrigation season. In short, the absence of dynamic simulation of Project operations renders the Texas Model of no utility in analyzing the key issue presented in this case: impacts to Project deliveries from groundwater pumping and changes in historical Project operations on Project deliveries to Texas and New Mexico. The ILRG Model is superior to the Texas Model because (a) it simulates the entire Lower Rio Grande area from Elephant Butte Reservoir to Fort Quitman, (b) it employs monthly stress periods that allow it to simulate the important seasonal variations in groundwater and surface water flows, and (c) it is capable of simulating the dynamic response of Project operations to changes in flow throughout the entire Project area. Consequently, the Texas Model fails to accurately evaluate pumping effects to Project deliveries because it does not simulate the dynamic response of Project reservoir releases to changes in flows that occur without pumping, provides no simulations for the area downstream of the El Paso gate and thus cannot simulate the feedback response from a large part of the Project area, and uses annual stress periods that prevent distinguishing impacts that occur during the Project release period (irrigation season) from impacts that occur during the non-irrigation season. In short, the absence of dynamic simulation of Project operations renders the Texas Model of no utility in analyzing the key issue presented in this case: impacts to Project deliveries from groundwater pumping and changes in historical Project operations.

NM-EX-012, Sullivan Decl. at ¶ 118; see also NM-EX-122, Spronk Rep. at 9, 113.

Yes. See NM Response to TX at: page 68, 69


Subject to the stated objections, the fact is cited in New Mexico's Response to Texas's Motion for Partial Summary Judgment but does not materially respond to facts stated therein. New Mexico's stated fact and the evidence cited in support regarding the Integrated Lower Rio Grande Model and Rio Grande Project deliveries do not materially respond to an argument made in Texas's Motion for Partial Summary Judgment. CSMP 625 may relate to New Mexico's motions for partial summary judgment and/or its counterclaims, but alleged depletions due to pumping in Texas is not the subject of Texas's Motion for Partial Summary Judgment. New Mexico's stated fact is non-responsive and otherwise not supported by definite, competent, or significantly probative evidence that genuinely and materially responds to a fact stated in Texas's Motion for Partial Summary Judgment. As such, Texas's stated material facts remain undisputed. Fed. R. Civ. P. 56(a), 56(c)(1).

NA

258 N/A New Mexico's ILRG model simulates the impact of pumping on surface water flows and the effects on Project operations and all simulated processes that result in the changed conditions. The Texas Model is incapable of such analyses.


Yes. See NM Response to TX at: page 68


Subject to the stated objections, the fact is cited in New Mexico's Response to Texas's Motion for Partial Summary Judgment but does not materially respond to facts stated therein. New Mexico's stated fact and the evidence cited in support regarding the Integrated Lower Rio Grande Model and Rio Grande Project deliveries do not materially respond to an argument made in Texas's Motion for Partial Summary Judgment. CSMP 625 may relate to New Mexico's motions for partial summary judgment and/or its counterclaims, but alleged depletions due to pumping in Texas is not the subject of Texas's Motion for Partial Summary Judgment. New Mexico's stated fact is non-responsive and otherwise not supported by definite, competent, or significantly probative evidence that genuinely and materially responds to a fact stated in Texas's Motion for Partial Summary Judgment. As such, Texas's stated material facts remain undisputed. Fed. R. Civ. P. 56(a), 56(c)(1).

NA

259 N/A The ILRG Model has been used to run several model scenarios that evaluate New Mexico's pumping, Texas's pumping, the impacts of implementing the 2000 OA, the impacts of changes to historical Project operations and accounting in EPCWID for overall Project allocations, and various potential comparative use scenarios. The ILRG Model is the only model in the case that is capable of analyzing and quantifying the effects of these scenarios. The Texas Model is incapable of such analyses.

NM-EX-012, Sullivan Decl. at ¶ 119; see also NM-EX-122, Spronk Rep. at 47.

Yes. See NM Response to TX at: page 68


Subject to the stated objections, the fact is cited in New Mexico's Response to Texas's Motion for Partial Summary Judgment but does not materially respond to facts stated therein. New Mexico's stated fact and the evidence cited in support regarding the Integrated Lower Rio Grande Model and Rio Grande Project deliveries do not materially respond to an argument made in Texas's Motion for Partial Summary Judgment. CSMP 625 may relate to New Mexico's motions for partial summary judgment and/or its counterclaims, but alleged depletions due to pumping in Texas is not the subject of Texas's Motion for Partial Summary Judgment. New Mexico's stated fact is non-responsive and otherwise not supported by definite, competent, or significantly probative evidence that genuinely and materially responds to a fact stated in Texas's Motion for Partial Summary Judgment. As such, Texas's stated material facts remain undisputed. Fed. R. Civ. P. 56(a), 56(c)(1).

NA

260 N/A The City of El Paso diverted a considerable amount of Project Water for municipal purposes in the El Paso Valley. Much of this municipal use has replaced Project irrigation in Texas.


No

NM-EX-425: See General Objection ¶ 98; Fed. R. Evid. 801(c), hearsay.

New Mexico's stated fact, and supporting evidence, are not cited in New Mexico's Response to Texas's Motion for Partial Summary Judgment and are therefore non-responsive and irrelevant. As such, Texas's stated material facts remain undisputed. Fed. R. Civ. P. 56(a), 56(c)(1).

NA
<table>
<thead>
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<th>NM-EX-</th>
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<th>New Mexico's Supporting Evidence</th>
<th>DID NM CITE TO THE FACT/EVIDENCE IN TEX 12/22/20 RESPONSE</th>
<th>TEXAS'S EVIDENTIALY OBJECTIONS</th>
<th>TEXAS'S RESPONSE</th>
<th>Identification of where NM cited the fact/evidence in its Nov 15/20 Motions (NM Nature MJS) to Partial Summary Judgment</th>
<th>Identification of where NM cited the fact/evidence in its Dec 11/20 Motions (NM Appellate MJS) to Partial Summary Judgment</th>
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<td>260</td>
<td>N.A.</td>
<td>Some of those municipal diversions are a result of contractual agreements allowing for the exchange of Project Supply for municipal effluent, which is then considered to be &quot;District Supply&quot; for EPCWD, and not &quot;Project Supply.&quot;</td>
<td>See NM-EX-006, Barroll 2d Decl. at ¶ 54.</td>
<td>NO</td>
<td>n/a</td>
<td>New Mexico's stated fact, and supporting evidence, are not cited in New Mexico's Response to Texas's Motion for Partial Summary Judgment and are therefore non-responsive and irrelevant. As such, Texas's stated material facts remain undeputed. Fed. R. Civ. P. 56(f)(4).</td>
<td>N/A</td>
<td>N/A</td>
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<tr>
<td>261</td>
<td>N.A.</td>
<td>Municipal effluent and return flows associated with the municipal use of Project Water in the El Paso Valley were originally accounted as part of Project Supply.</td>
<td>NM-EX-100, Barroll Rep. at 30; NM-EX-428, Letter from Filiberto Cortez, Manager, Bureau of Reclamation, to Ediel flaws (July 4, 1999).</td>
<td>Yes. See NM Response to TX at: - page 16, 37, 58</td>
<td>Same (261 above)</td>
<td>N/A</td>
<td>Opp to US</td>
<td>page 01</td>
</tr>
<tr>
<td>262</td>
<td>N.A.</td>
<td>However, Texas now interprets those municipal Project return flows by diverting them directly into EPCWD conveyances and this water is no longer accounted for as Project Supply.</td>
<td>NM-EX-100, Barroll Rep. at 30; NM-EX-102, Barroll Rep. at 24-26.</td>
<td>Yes. See NM Response to TX at: - page 16, 37, 58</td>
<td>Same (261 above)</td>
<td>N/A</td>
<td>Opp to US</td>
<td>page 01</td>
</tr>
<tr>
<td>263</td>
<td>N.A.</td>
<td>The reduction in irrigation return flows in Texas, as well as the fact that Reclamation no longer charges EPCWD for the use of any such return flows, means that a portion of EPCWD's charged diversions consist of water that was never part of the reservoir, reducing the amount of water available for allocation to both New Mexico and Texas.</td>
<td>NM-EX-006, Barroll 2d Decl. at ¶ 55.</td>
<td>Opp to Texas</td>
<td>n/a</td>
<td>Subject to the stated objections, the fact is cited in New Mexico's Response to Texas's Motion for Partial Summary Judgment but does not materially respond to facts stated therein. New Mexico's stated fact and the evidences cited in support regarding Project supply, return flows in the State of Texas, and municipal use in the El Paso Valley do not materially respond to an argument made in Texas's Motion for Partial Summary Judgment. CSMF 4261 may relate to New Mexico's motions for partial summary judgment and/or its counterclaims, but alleged depletions due to pumping in Texas is not the subject of Texas's Motion for Partial Summary Judgment. New Mexico's stated fact is non-responsive and otherwise not supported by definite, competent, or significantly probative evidence that genuinely and materially responds to a fact stated in Texas's Motion for Partial Summary Judgment. As such, Texas's stated material facts remain undeputed. Fed. R. Civ. P. 56(f)(4).</td>
<td>N/A</td>
<td>Opp to US</td>
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Notice No. 26

Reclamation compiles an annual written report to the Rio Grande Compact Commission and gives an annual oral report to the Rio Grande Compact Commission meeting regarding operation of the Rio Grande Project. Those reports contain general, anonymized data concerning the operation of the Project, such as the total amount of water from Project Storage, the amount of water in Project Storage, and the annual allocations to each district.  

See NM-EX-202, Cortez Dep. (July 30, 2020) at 44-46, 6-A. 102-213; NM-EX-203, Cortez Dep. (July 31, 2020) at 209-220; 220-214, E.G., NM-EX-316, Bureau of Reclamation, Calendar Year 2009 Report to the Rio Grande Compact Commission, 56-57 (Mar. 2010); NM-EX-003, Lopez Decl. at ¶ 14-15. | NO | From TV's 12/22/20 Filming: NM-EX-202, 203. See General Objections #8; NM-EX-316; General Objections #9; Fed. R. Civ. 801(c); Barroll 2d Decl. at ¶ 54. Subject to the stated objections, the fact is cited in New Mexico's Response to Texas's Motion for Partial Summary Judgment but does not materially respond to an argument made in Texas's Motion for Partial Summary Judgment. CSMF 4261 may relate to New Mexico's motions for partial summary judgment and/or its counterclaims, but alleged depletions due to pumping in Texas is not the subject of Texas's Motion for Partial Summary Judgment. New Mexico's stated fact is non-responsive and otherwise not supported by definite, competent, or significantly probative evidence that genuinely and materially responds to a fact stated in Texas's Motion for Partial Summary Judgment. As such, Texas's stated material facts remain undeputed. Fed. R. Civ. P. 56(f)(4). | Notice - page 5; 17, 18 | N/A |
<table>
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<tr>
<th>NM-</th>
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<th>DID NM CITE TO THE FACT/EVIDENCE IN TX 12/22/20 RESPONSE TO THE TEXAS MOTION FOR PARTIAL SUMMARY JUDGMENT?</th>
<th>TEXAS'S EVIDENTIARY OBJECTIONS</th>
<th>TEXAS'S RESPONSE</th>
<th>Identification of where NM cited the fact/evidence in its 11/5/20 Motions (NM Notice MSJ, NM Full Supply MSJ, NM Appellate MSJ)</th>
<th>Identification of where NM cited to the Fact/Evidence in its Response to the CSMF Motion for Partial Summary Judgment</th>
</tr>
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<tr>
<td>264</td>
<td>Notice No. 27</td>
<td>Reclamation also provides to the State of New Mexico courtesy copies of periodic reports concerning Rio Grande Project operations, including reservoir elevations, flow readings, and storage transfers between reservoirs. See NM-EX 202, Comer Dep. (July 31, 2020) at 220:2-222:4, E.g., NM-EX 513, Letter from Filiberto Cortez, Manager El Paso Field Divisions, Bureau of Reclamation, to Water Accounting Division, U.S. Section, International Boundary Water Commission (Sept. 29, 2009); NM-EX 514, Letter from Filiberto Cortez, Manager El Paso Field Div., U.S. Bureau of Reclamation, to Lieutenant Col. Kimberly Calkittin, District Engineer, Army Corps of Engineers (Sept. 29, 2009). NO</td>
<td>From TX 12/22/20 Filings: NM-EX 205. See General Objection #9; NM-EX 513, 514. See General Objection #8; Fed. R. Evid. 801(c), hurary. Subject to the stated objections, undisputed.</td>
<td>N/A</td>
<td>Yes. See NM Response to TX at: page 24, 25</td>
<td>N/A</td>
<td></td>
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<tr>
<td>265</td>
<td>N/A</td>
<td>Reclamation also provides to the Engineer Advisors to the Rio Grande Compact Commission a report of Project accounting, prior to 2006, that Project accounting amounted to Compact accounting below Elephant Butte Reservoir for New Mexico (EBID) and Texas (EPCWID). After the changes in Project operations in 2006, Project accounting provides a record of the deviation from the apportionment in the Compact. See NM-EX 008, Lopez 2d Decl. at ¶ 31; see also NM-EX 107, Lopez Rep. at 24, 30, 32, 44-46.</td>
<td>From TX 12/22/20 Filings: NM-EX 008: Fed. R. Civ. P. 56(c)(4). The cited evidence does not support the stated &quot;fact&quot; in whole or in part. Fed. R. Civ. P. 56(c). The stated &quot;facts&quot; constitute improper legal conclusions in whole or in part. NM-EX 107: See General Objection #7; Fed. R. Evid. 801(c), hurary. Subject to the stated objections, the fact is cited in New Mexico's Response to Texas's Motion for Partial Summary Judgment but does not materially respond to facts stated therein. New Mexico's stated fact and the evidence cited in support regarding Project accounting do not materially respond to facts stated in Texas's Motion for Partial Summary Judgment. CSMF #265 may relate to New Mexico's motions for partial summary judgment and/or its counterclaims, but Project accounting is not the subject of Texas's Motion for Partial Summary Judgment. New Mexico's stated fact is non-responsive and otherwise not supported by reliable, competent, or significantly probative evidence that genuinely and materially responds to a fact stated in Texas's Motion for Partial Summary Judgment. As such, New Mexico's stated material facts remain undisputed.</td>
<td>N/A</td>
<td>N/A</td>
<td>N/A</td>
<td>N/A</td>
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<tr>
<td>266</td>
<td>Notice No. 28</td>
<td>New Mexico does not have, however, receive daily operation information such as the daily release amount, the order amounts, or the timing of releases to satisfy orders. New Mexico, therefore, does not have actual notice of the impact from its ground water pumping on Texas's apportionment is reflected in the operational information. New Mexico's depletions have been ongoing since the early 1950s, and New Mexico's depletion its ground water pumping was causing to Texas's apportionment was by means of daily Project accounting. See Miltenberger Dec. in Opp. to NM at TX_MSJ_007371, paragraphs 1-7, 63-77.</td>
<td>From TX 12/22/20 Filings: Subject to the stated objections, disputed. This paragraph is misleading insofar as it suggests that the only way that New Mexico had notice of the depletion its ground water pumping was causing to Texas's apportionment was by means of daily Project operational information. New Mexico's depletions have been ongoing since the early 1950s, and New Mexico's actual notice of the impact from its ground water pumping on Texas's apportionment is reflected in the following documents, with the earliest dated 1947: See Mihanberger Dep. in Opp. to NM at TX_MSJ_007371, paragraphs 1-7, 63-77.</td>
<td>N/A</td>
<td>N/A</td>
<td>N/A</td>
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<td>267</td>
<td>Notice No. 29</td>
<td>Likewise, New Mexico does not receive any routine notice that any specific water order, whether at the district or individual farmer level, has or has not been filled. NM-EX 002, D'Iamurro Decl. at ¶ 17; NM-EX 004, Schmidt-Peterson Decl. at ¶ 15.</td>
<td>From TX 12/22/20 Filings: Subject to the stated objections, disputed. This paragraph is misleading insofar as it suggests that the only way that New Mexico had notice of the depletion its ground water pumping was causing to Texas's apportionment was by means of daily Project operational information. New Mexico's depletions have been ongoing since the early 1950s, and New Mexico's actual notice of the impact from its ground water pumping on Texas's apportionment is reflected in the following documents, with the earliest dated 1947: See Mihanberger Dep. in Opp. to NM at TX_MSJ_007371, paragraphs 1-7, 63-77.</td>
<td>N/A</td>
<td>N/A</td>
<td>N/A</td>
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TEXAS’S RESPONSE

NO. CSMR Page | NM’s Prior Numbering System | New Mexico’s Stated "Fact" | New Mexico’s Supporting Evidence | DID NM CITE TO THE FACT-EVIDENCE IN TX 12/22/20 RESPONSE TO THE TEXAS MOTION FOR PARTIAL SUMMARY JUDGMENT* | TEXAS’S EVIDENTIARY OBJECTIONS | TEXAS’S RESPONSE | Identification of where NM cited the fact/evidence in its 11/5/20 Motion (NM Stated MSJ: NM Fund Supply MSJ: NM Appointees MSJ) | Identification of where TS cited the fact/evidence in its Response to the US Motion for Partial Summary Judgment

268 Notice No. 30
Accordingly, New Mexico has no means to know, at any given time, what proportion of the water in the Rio Grande below Elephant Butte Reservoir is destined for delivery to EBID, EPCWID, or Mexico.

NO From TX’s 12/22/20 Filings:
- NM-EX 002, D’Amore Decl. at ¶ 17; NM-EX 004, Schmidt-Petersen Decl. at ¶ 15.
- Ex-202: Cited "evidence" does not support the proposition; Subject to the stated objections, disputed.
- Ex-211: Cited "evidence" does not support the proposition. Further, this paragraph is misleading insofar as it suggests that the only way that New Mexico had notice of the depletion in ground water pumping was causing to Texas’s apportionment was by means of daily Project operational information. New Mexico’s depletions have been ongoing since the early 1950s, and New Mexico’s actual notice of the impact from its ground water pumping on Texas’s apportionment is reflected in the following documents, with the earliest dated 1947: See Miltenberger Dec. in Opp. to NM at TX_MSJ_007371, paragraphs 1-7, 63-77; TX_MSJ_6942-6981.

269 Notice No. 31
Further, New Mexico has no means to know, at any given time, whether the Rio Grande Project releases are in fact delivered to Texas in satisfaction of EPCWID orders.

NO From TX’s 12/22/20 Filings:
- NM-EX 002, D’Amore Decl. at ¶ 17; NM-EX 004, Schmidt-Petersen Decl. at ¶ 15; see also NM-EX 211, Gordon Dep. (July 14, 2020), HH 14-161-7.
- Ex-204: Cited "evidence" does not support the proposition; Subject to the stated objections, disputed.

270 Notice No. 32
Conversely, to the extent that any amount of water released from Project supply pursuant to a specific order is intercepted prior to delivery, New Mexico would have no basis to know of a shortage to either District without explicit notice.

NO From TX’s 12/22/20 Filings:
- NM-EX 002, D’Amore Decl. at ¶ 17; NM-EX 004, Schmidt-Petersen Decl. at ¶ 15.
- Ex-204: Cited "evidence" does not support the proposition. Further, this paragraph is misleading insofar as it suggests that the only way that New Mexico had notice of the depletion in ground water pumping was causing to Texas’s apportionment was by means of daily Project operational information. New Mexico’s depletions have been ongoing since the early 1950s, and New Mexico’s actual notice of the impact from its ground water pumping on Texas’s apportionment is reflected in the following documents, with the earliest dated 1947: See Miltenberger Dec. in Opp. to NM at TX_MSJ_007371, paragraphs 1-7, 63-77; TX_MSJ_6942-6981.

271 Notice No. 33
From 1938 through the inception of this litigation, New Mexico did not receive any notice, with the potential exception of one complaint concerning surface water diversions (discussed below), whether from Reclamation, Texas, EBID, or EPCWID, that the conduct of water users in New Mexico prevented the United States from making delivery of Project water called for by Texas (EPCWID).

NO From TX’s 12/22/20 Filings:
- NM-EX 002, D’Amore Decl. at ¶ 17; NM-EX 004, Schmidt-Petersen Decl. at ¶ 16; see NM-EX 218, Lopez Dep. (July 7, 2020) at 140-13-141-15; NM-EX 204, D’Amore Dep. (June 25, 2020) at 189-1-7.
- Ex-204: Cited "evidence" does not support the proposition; Subject to the stated objections, disputed.

272 Notice No. 34
Filiberto Cortez, El Paso Field Division Manager for Reclamation, testified that Reclamation has only made one communication to New Mexico that notified New Mexico of concerns regarding water use in New Mexico potentially impacting Project deliveries.

NO From TX’s 12/22/20 Filings:
- NM-EX 202, Gen. Objectives 98.
- Ex-202: Cited "evidence" does not support the proposition; New Mexico has never been on notice about the effect of its pumping on Texas’s apportionment since at least 1947 as shown in the following documents: See Miltenberger Dec. in Opp. to NM at TX_MSJ_007371, paragraphs 1-7, 63-77; TX_MSJ_6942-6981.

Notice No. 33 From 1938 through the inception of this litigation, New Mexico has no means to know, at any given time, what proportion of the water in the Rio Grande below Elephant Butte Reservoir is destined for delivery to EBID, EPCWID, or Mexico.

NO From TX’s 12/22/20 Filings:
- NM-EX 002, D’Amore Decl. at ¶ 17; NM-EX 004, Schmidt-Petersen Decl. at ¶ 15.
- Ex-202: Cited "evidence" does not support the proposition; Subject to the stated objections, disputed.
- Ex-211: Cited "evidence" does not support the proposition. Further, this paragraph is misleading insofar as it suggests that the only way that New Mexico had notice of the depletion in ground water pumping was causing to Texas’s apportionment was by means of daily Project operational information. New Mexico’s depletions have been ongoing since the early 1950s, and New Mexico’s actual notice of the impact from its ground water pumping on Texas’s apportionment is reflected in the following documents, with the earliest dated 1947: See Miltenberger Dec. in Opp. to NM at TX_MSJ_007371, paragraphs 1-7, 63-77; TX_MSJ_6942-6981.

Notice No. 31 Further, New Mexico has no means to know, at any given time, whether the Rio Grande Project releases are in fact delivered to Texas in satisfaction of EPCWID orders.

NO From TX’s 12/22/20 Filings:
- NM-EX 002, D’Amore Decl. at ¶ 17; NM-EX 004, Schmidt-Petersen Decl. at ¶ 15; see also NM-EX 211, Gordon Dep. (July 14, 2020), HH 14-161-7.
- Ex-204: Cited "evidence" does not support the proposition; Subject to the stated objections, disputed.

Notice No. 32 Conversely, to the extent that any amount of water released from Project supply pursuant to a specific order is intercepted prior to delivery, New Mexico would have no basis to know of a shortage to either District without explicit notice.

NO From TX’s 12/22/20 Filings:
- NM-EX 002, D’Amore Decl. at ¶ 17; NM-EX 004, Schmidt-Petersen Decl. at ¶ 15.
- Ex-204: Cited "evidence" does not support the proposition. Further, this paragraph is misleading insofar as it suggests that the only way that New Mexico had notice of the depletion in ground water pumping was causing to Texas’s apportionment was by means of daily Project operational information. New Mexico’s depletions have been ongoing since the early 1950s, and New Mexico’s actual notice of the impact from its ground water pumping on Texas’s apportionment is reflected in the following documents, with the earliest dated 1947: See Miltenberger Dec. in Opp. to NM at TX_MSJ_007371, paragraphs 1-7, 63-77; TX_MSJ_6942-6981.

Notice No. 33 From 1938 through the inception of this litigation, New Mexico did not receive any notice, with the potential exception of one complaint concerning surface water diversions (discussed below), whether from Reclamation, Texas, EBID, or EPCWID, that the conduct of water users in New Mexico prevented the United States from making delivery of Project water called for by Texas (EPCWID).

NO From TX’s 12/22/20 Filings:
- NM-EX 002, D’Amore Decl. at ¶ 17; NM-EX 004, Schmidt-Petersen Decl. at ¶ 16; see NM-EX 218, Lopez Dep. (July 7, 2020) at 140-13-141-15; NM-EX 204, D’Amore Dep. (June 25, 2020) at 189-1-7.
- Ex-204: Cited "evidence" does not support the proposition. Further, this paragraph is misleading insofar as it suggests that the only way that New Mexico had notice of the depletion in ground water pumping was causing to Texas’s apportionment was by means of daily Project operational information. New Mexico’s depletions have been ongoing since the early 1950s, and New Mexico’s actual notice of the impact from its ground water pumping on Texas’s apportionment is reflected in the following documents, with the earliest dated 1947: See Miltenberger Dec. in Opp. to NM at TX_MSJ_007371, paragraphs 1-7, 63-77; TX_MSJ_6942-6981.

Notice No. 34 Filiberto Cortez, El Paso Field Division Manager for Reclamation, testified that Reclamation has only made one communication to New Mexico that notified New Mexico of concerns regarding water use in New Mexico potentially impacting Project deliveries.

NO From TX’s 12/22/20 Filings:
- NM-EX 202, Gen. Objectives 98.
- Ex-202: Cited "evidence" does not support the proposition; New Mexico has never been on notice about the effect of its pumping on Texas’s apportionment since at least 1947 as shown in the following documents: See Miltenberger Dec. in Opp. to NM at TX_MSJ_007371, paragraphs 1-7, 63-77; TX_MSJ_6942-6981.
<table>
<thead>
<tr>
<th>NM's Citations</th>
<th>NM's Supporting Evidence</th>
<th>DID NM CITE TO THE FACT-EVIDENCE IN TX 12/22/20 RESPONSE TO THE TEXAS MOTION FOR PARTIAL SUMMARY JUDGMENT</th>
<th>TEXAS'S EVIDENTIARY OBJECTIONS</th>
<th>TEXAS'S RESPONSE</th>
<th>Identification of where NM cited to the fact/evidence in the foregoing pleadings supply state</th>
<th>Identification of where NM cited to the fact/evidence in the foregoing pleadings supply state</th>
</tr>
</thead>
<tbody>
<tr>
<td>Notice No. 36</td>
<td>Specifically, in April 2012, Reclamation informed the New Mexico Office of the State Engineer that the Districts and Reclamation had identified a number of four pumps that were “impacting the deliveries” from the Rio Grande Project to EPWID and Mexico.</td>
<td>NO From TXv's 12/22/20 Filings: NM-EX 526: Letter from Scott A. Verhines, State Engineer, State of N.M., to Ed Drusina, Comm'r, 1st Boundary and Water Comm'n, and Mike Hamman, Albuquerque Area Manager, U.S. Bureau of Reclamation (Sept. 21, 2012).</td>
<td>NO General Objection #8; Fed. R. Evid. 801(c); hearsay.</td>
<td>From TXv's 12/22/20 Filings: Subject to the stated objections, disputed. New Mexico has been on notice about the effect of its pumping on Texas's apportionment since at least 1947 as shown in the following documents: See Miltenberger Decl. in Opp. to NM at TX_MSJ_007371, paragraphs 1-7, 63-77. TX_MSJ_692-691. Also, one example of formal notice of illegal river pumping is irrelevant to the notice New Mexico has had for decades of its ground water pumping impact on Texas’s apportionment.</td>
<td>N/A</td>
<td>N/A</td>
</tr>
<tr>
<td>Notice No. 37</td>
<td>The New Mexico State Engineer performed an investigation of the water pumps at issue and responded on September 21, 2012. The investigation concluded that all but two of the sites were operating in compliance with adjudicated water rights that are senior to the Project’s or approved groundwater withdrawal permits. With regard to the remaining two sites, the investigation concluded that the pumps in question were no longer operable, and it was not possible to determine if any diversions occurred at either site.</td>
<td>NO From TXv's 12/22/20 Filings: NM-EX 527: Letter from Scott A. Verhines, State Engineer, State of N.M., to Ed Drusina, Comm'r, 1st Boundary and Water Comm'n, and Mike Hamman, Albuquerque Area Manager, U.S. Bureau of Reclamation (Sept. 21, 2012).</td>
<td>NO General Objection #8; Fed. R. Evid. 801(c); hearsay.</td>
<td>From TXv's 12/22/20 Filings: Subject to the stated objections, disputed. New Mexico has been on notice about the effect of its pumping on Texas’s apportionment since at least 1947 as shown in the following documents: See Miltenberger Decl. in Opp. to NM at TX_MSJ_007371, paragraphs 1-7, 63-77. TX_MSJ_692-691. Also, one example of formal notice of illegal river pumping is irrelevant to the notice New Mexico has had for decades of its ground water pumping impact on Texas’s apportionment.</td>
<td>N/A</td>
<td>N/A</td>
</tr>
<tr>
<td>Notice No. 38</td>
<td>Following this invitation, Reclamation made no further investigation of the water pumps at issue.</td>
<td>NO From TXv's 12/22/20 Filings: NM-EX 527: Letter from Scott A. Verhines, State Engineer, State of N.M., to Ed Drusina, Comm'r, 1st Boundary and Water Comm'n, and Mike Hamman, Albuquerque Area Manager, U.S. Bureau of Reclamation (Sept. 21, 2012).</td>
<td>NO General Objection #8; Fed. R. Evid. 801(c); hearsay.</td>
<td>From TXv's 12/22/20 Filings: Subject to the stated objections, disputed. New Mexico has been on notice about the effect of its pumping on Texas’s apportionment since at least 1947 as shown in the following documents: See Miltenberger Decl. in Opp. to NM at TX_MSJ_007371, paragraphs 1-7, 63-77. TX_MSJ_692-691. Also, one example of formal notice of illegal river pumping is irrelevant to the notice New Mexico has had for decades of its ground water pumping impact on Texas’s apportionment.</td>
<td>N/A</td>
<td>N/A</td>
</tr>
<tr>
<td>Notice No. 39</td>
<td>Subject to the stated objections, disputed. New Mexico has been on notice about the effect of its pumping on Texas’s apportionment since at least 1947 as shown in the following documents: See Miltenberger Decl. in Opp. to NM at TX_MSJ_007371, paragraphs 1-7, 63-77. TX_MSJ_692-691. Also, one example of formal notice of illegal river pumping is irrelevant to the notice New Mexico has had for decades of its ground water pumping impact on Texas’s apportionment.</td>
<td>Subject to the stated objections, disputed. New Mexico has been on notice about the effect of its pumping on Texas’s apportionment since at least 1947 as shown in the following documents: See Miltenberger Decl. in Opp. to NM at TX_MSJ_007371, paragraphs 1-7, 63-77. TX_MSJ_692-691. Also, one example of formal notice of illegal river pumping is irrelevant to the notice New Mexico has had for decades of its ground water pumping impact on Texas’s apportionment.</td>
<td>Subject to the stated objections, disputed. New Mexico has been on notice about the effect of its pumping on Texas’s apportionment since at least 1947 as shown in the following documents: See Miltenberger Decl. in Opp. to NM at TX_MSJ_007371, paragraphs 1-7, 63-77. TX_MSJ_692-691. Also, one example of formal notice of illegal river pumping is irrelevant to the notice New Mexico has had for decades of its ground water pumping impact on Texas’s apportionment.</td>
<td>Subject to the stated objections, disputed. New Mexico has been on notice about the effect of its pumping on Texas’s apportionment since at least 1947 as shown in the following documents: See Miltenberger Decl. in Opp. to NM at TX_MSJ_007371, paragraphs 1-7, 63-77. TX_MSJ_692-691. Also, one example of formal notice of illegal river pumping is irrelevant to the notice New Mexico has had for decades of its ground water pumping impact on Texas’s apportionment.</td>
<td>N/A</td>
<td>N/A</td>
</tr>
</tbody>
</table>
TEXAS'S RESPONSE

N/A The TX Rio Grande Compact Commissioner is not a tax attorney.

NO From TX's 12/22/20 Filings:


NM-EX-211: See General Objection #8.

From TX's 12/22/20 Filings:

Subject to the stated objections, disputed. New Mexico has been on notice about the effect of its pumping on Texas's apportionment since at least 1947 as shown in the following documents: See Miltenberger Doc. in Opp. to NM at TX_MSJ_007371, paragraphs 1-7; 63-77; TX_MSI_6965881. Also, one example of formal notice of illicit floor pumping is irrelevant to the notice New Mexico has had for decades of its ground water pumping impact on Texas's apportionment. Schmidt-Peterson Deps. 8/28/2020, 41-20-25 ("I mean, the first day I showed up on the job, which was in December of 1999, Joe G. Hanser, the then compact commissioner, stood up and said, you know, deliver or well rare. And thus just kind of a constant refrain in the entire time that I've been on here — what matter the supply is.")

Identification of where NM cited the fact/evidence in its 11/5/20 Motions (NM Supply MSJ; NM Appurtenant Supply MSJ; NM Appurtenant Apportionment MSJ)

Identification of where NM cited the fact/evidence in its Response to the US Motion for Partial Summary Judgment

Note — page 7; 19

N/A The TX Rio Grande Compact Commissioner is not a tax attorney.

NO From TX's 12/22/20 Filings:


NM-EX-211: See General Objection #8.

N/A The current Commissioner has no water background and is a tax attorney.

NO From TX's 12/22/20 Filings:


NM-EX-211: See General Objection #8.

N/A Groundwater use in Texas is subject to little direct oversight, but it has no management, compliance, or enforcement authority.

NO From TX's 12/22/20 Filings:


See Miltenberger Doc. in Opp. to NM at TX_MSJ_007371, paragraphs 1-7; 63-77; TX_MSI_6965881.

N/A The Texas Water Development Board ("TWDB") is the state agency statutorily charged with groundwater oversight, but it has no management, compliance, or enforcement authority.

NO From TX's 12/22/20 Filings:


See Miltenberger Doc. in Opp. to NM at TX_MSJ_007371, paragraphs 1-7; 63-77; TX_MSI_6965881.

N/A If, however, the Texas Commission on Environmental Quality ("TCEQ") is a political entity charged with management of groundwater resources and protecting property rights related to groundwater:

NO From TX's 12/22/20 Filings:


See Miltenberger Doc. in Opp. to NM at TX_MSJ_007371, paragraphs 1-7; 63-77; TX_MSI_6965881.

N/A Groundwater Conservation Districts ("GCDs") are political entities charged with management of groundwater resources, including permitting of groundwater wells, creating management plans, implementing policies and procedures to conserve groundwater resources and protecting property rights related to groundwater.

NO From TX's 12/22/20 Filings:


See Miltenberger Doc. in Opp. to NM at TX_MSJ_007371, paragraphs 1-7; 63-77; TX_MSI_6965881.

N/A All groundwater management, including well permitting, is pursuant to local GCDs.

NO From TX's 12/22/20 Filings:


See Miltenberger Doc. in Opp. to NM at TX_MSJ_007371, paragraphs 1-7; 63-77; TX_MSI_6965881.

N/A TWDB has no management, compliance, or enforcement authority over a GCD once created or its groundwater management plan.

NO From TX's 12/22/20 Filings: A political entity charged with management of groundwater resources and protecting property rights related to groundwater.


See Miltenberger Doc. in Opp. to NM at TX_MSJ_007371, paragraphs 1-7; 63-77; TX_MSI_6965881.

N/A In 1999 TCEQ designated El Paso County as PGMA 5.

NO From TX's 12/22/20 Filings: A political entity charged with management of groundwater resources and protecting property rights related to groundwater.


See Miltenberger Doc. in Opp. to NM at TX_MSJ_007371, paragraphs 1-7; 63-77; TX_MSI_6965881.
TEXAS'S RESPONSE

New Mexico's Stated "Fact":

- Texas water users have made extensive use of groundwater for both Project and non-Project uses (with United States knowledge).
- Texas farmers have improved irrigation efficiencies and changed their crop mix to higher water-crop mixes.
- Texas water users have made extensive use of Colorado Canalization projects; EPCWID has transferred the purpose of use of a significant portion of its Project Supply from irrigation use crops;
- Similarly, EPCWID, working with Reclamation but without review by other Compact parties, has negotiated contracts with Reclamation but without properly accounting for return flows; EPCWID has opted to forego use of available drain flows, instead calling for additional water out of Project Storage;
- EPCWID has sold Project water to Hudspeth County Conservation and Reclamation District No. 1; and
- EPCWID, working with EPCWID, Reclamation and Texas but without the other Compact parties, has deeded treated wastewater effluent as "non-Project" water— meaning its use but without being charged under its Project allocation;
- EPCWID has sold Project water to Hudspeth County Conservation and Reclamation District No. 1; and
- EPCWID, working with EPCWID, Reclamation and Texas but without the other Compact parties, negotiated the 2006 Operating Agreement which effectively changed Project operation and allocation contrary to the Compact to New Mexico's administration.
- Subject to the stated objections, the fact is cited in New Mexico's Response to Texas's Motion for Partial Summary Judgment and are therefore non-responsive and irrelevant. As such, Texas's stated material facts remain undisputed. Fed. R. Civ. P. 56(c)(1).

Texas's Stated Fact:

- Texas's stated material facts remain undisputed. Fed. R. Civ. P. 56(a), 56(c)(1).

New Mexico's Objection: New Mexico's stated fact, and supporting evidence, are not cited in New Mexico's Response to Texas's Motion for Partial Summary Judgment and are therefore non-responsive and irrelevant. As such, Texas's stated material facts remain undisputed. Fed. R. Civ. P. 56(c)(1).
Under the New Mexico Constitution and law, water in New Mexico belongs to the public. Private rights to the use of New Mexico’s unappropriated waters may be established by appropriations of water for beneficial use. Beneficial use is the basis, measure, and limit of a right to use water, and priority of appropriations gives the prior right. Since 1907, a permit from the State Engineer is required to use water, and priority of appropriation gives the prior right.

The provisions of beneficial use and priority of appropriation were first formally adopted into New Mexico law in the 1907 Water Code, NMSA 1978, Title 72. Based on a Model Water Code, the 1907 Water Code was enacted in anticipation of the Project in the LRG; it also places central authority in the State Engineer, a cabinet-level position and gives him broad and exclusive powers.

72 (1907 Water Code). Based on a Model Water Code, the 1907 Water Code was enacted in anticipation of the Project in the LRG; it also places central authority in the State Engineer, a cabinet-level position and gives him broad and exclusive powers.

The State Engineer serves as the Secretary to New Mexico’s Stated “Fact” Commissioner and has broad authority to develop a water right for surface water use.

Subject to the stated objections, the fact is non-responsive and otherwise not supported by definite, competent, or significantly probative evidence that genuinely and materially responds to a fact-stated in Texas’ Motion for Partial Summary Judgment. As such, Texas’s stated material facts remain undisputed.

The stated “facts” constitute improper legal conclusions in whole or in part. The cited constitutional provision and statute do not constitute factual “evidence” as contemplated by Fed. R. Civ. P. 56(c). Subject to the stated objections, the fact is non-responsive and otherwise not supported by definite, competent, or significantly probative evidence that genuinely and materially responds to a fact-stated in Texas’ Motion for Partial Summary Judgment. As such, Texas’s stated material facts remain undisputed.

The cited statute and case law do not constitute factual “evidence” as contemplated by Fed. R. Civ. P. 56(c).

Evidentiary Objections

The cited statute and case law do not constitute factual “evidence” as contemplated by Fed. R. Civ. P. 56(c).
TEXAS'S RESPONSE

N/A The State Engineer established seven local districts in exercise of this authority, the State of New Mexico has successfully employed this system to ensure compliance with the Compact and stands ready to utilize that system to enforce the orders of the Court in this case, whenever those orders may be.

292 N/A Since 1907, the State Engineer has actively exercised authority, the State of New Mexico has a robust and comprehensive system for water administrators and enforcement in the LRG. New Mexico has successfully employed this system to ensure compliance with the Compact and stands ready to utilize that system to enforce the orders of the Court in this case, whenever those orders may be.

293 N/A The State Engineer established seven local districts offices across New Mexico. District IV in Las Cruces, New Mexico, administers water in the Lower Rio Grande, including the New Mexico portion of the Project.

294 N/A Following the United States' appropriation of water rights in 1906 and 1908, the State Engineer has considered the Lower Rio Grande ("LRG") to be fully appropriated and has not permitted any new appropriation of surface waters.

295 N/A Further, after declaring the LRG groundwater basin in 1980, the State Engineer has not allowed any new rights or changes to existing rights to use groundwater without first finding, through the permitting process, that surface water was protected from any new depletions.
295 N/A **Through the permitting process, the Office of the State Engineer (“OSE”) is responsible for an application to either appropriate water or to change an existing water right to determine whether it will impact existing rights, in addition to considering whether the proposed change is contrary to conservation within New Mexico or detrimental to the public welfare. If the application is found to impair other water rights, the permit may be denied, or the amount of water requested reduced, or the permit may be issued with conditions to address the impairment or depletion, which may include a requirement that any resulting depletions of surface water be offset. The permitting process ensures that no new depletions to the fully appropriated Rio Grande stream system are allowed.**

See NM-EX 007, D’Antonio 2d Decl. at ¶ 51; see also NMSA 1978 § 72-12-11(1), as amended through 2019.

Yes. See NM Response to TX at: - page 32, 33

Yes. See NM-EX 007, See General Objection #5. NMSA. The cited evidence does not constitute factual “evidence”as contemplated by Fed. R. Civ. P. 56(c).

N/A

296 N/A **In 2003, the New Mexico Legislature enacted the Active Water Resource Management statute, NMSA 1978 § 72-9-1 (2003). Thereafter, the State Engineer created and promulgated Active Water Resources Management regulations (AWRM Framework Rules). The AWRM Framework Rules provide rules of statewide applicability and allow for the adoption of specific rules that could be promulgated separately for individual Water Master Districts.**

See NM-EX 007, D’Antonio 2d Decl. at ¶¶ 38-41; see also 19-25.15.7(C)-1 NMAC.

Yes. See NM Response to TX at: - page 32, 33, 34, 35


The stated “facts” constitute improper legal conclusions in whole or in part. NMAC. The cited statute do not constitute factual “evidence” as contemplated by Fed. R. Civ. P. 56(c).

Subject to the stated objections, the fact is cited in New Mexico’s Response to Texas’s Motion for Partial Summary Judgment but does not materially respond to facts stated therein. New Mexico’s stated fact and the evidence cited in support regarding New Mexico’s initiation of Active Water Resource Management in the Lower Rio Grande do not materially respond to an argument made in Texas’s Motion for Partial Summary Judgment. CSMF 296 may relate to New Mexico’s motions for partial summary judgment and/or its counterclaims, but alleged depletions due to pumping in Texas is not the subject of Texas’s Motion for Partial Summary Judgment. New Mexico’s stated fact is non-responsive and otherwise not supported by definite, competent, or significantly probative evidence that genuinely and materially responds to a fact stated in Texas’s Motion for Partial Summary Judgment. As such, Texas’s stated material facts remain undisputed. Fed. R. Civ. P. 56(c)(1).

N/A

297 N/A **The AWRM Framework Rules allows the State Engineer to support water right owners’ creation of agreements that share shortages among themselves rather than strictly adhering to the priority administration system.**

See NM-EX 007, D’Antonio 2d Decl. at ¶ 40.

Yes. See NM Response to TX at: - page 32, 33, 34, 35


The stated “facts” constitute improper legal conclusions in whole or in part. NMAC. The cited statute do not constitute factual “evidence” as contemplated by Fed. R. Civ. P. 56(c).

Subject to the stated objections, the fact is cited in New Mexico’s Response to Texas’s Motion for Partial Summary Judgment but does not materially respond to facts stated therein. New Mexico’s stated fact and the evidence cited in support regarding New Mexico’s Active Water Resource Management rules in the Lower Rio Grande do not materially respond to an argument made in Texas’s Motion for Partial Summary Judgment. CSMF 297 may relate to New Mexico’s motions for partial summary judgment and/or its counterclaims, but alleged depletions due to pumping in Texas is not the subject of Texas’s Motion for Partial Summary Judgment. New Mexico’s stated fact is non-responsive and otherwise not supported by definite, competent, or significantly probative evidence that genuinely and materially responds to a fact stated in Texas’s Motion for Partial Summary Judgment. As such, Texas’s stated material facts remain undisputed. Fed. R. Civ. P. 56(c)(1).

N/A

298 N/A **In 2004, the State Engineer issued a metering order in the LRG, requiring that all groundwater wells in the LRG be metered by March 1, 2006.**


Yes. See NM Response to TX at: - page 32, 33, 34, 35

Yes. See NM-EX 007, See General Objection #8; Fed. R. Evid. 801(c), hearsay. NMSA: The cited statute does not constitute factual “evidence” as contemplated by Fed. R. Civ. P. 56(c).

Subject to the stated objections, the fact is cited in New Mexico’s Response to Texas’s Motion for Partial Summary Judgment but does not materially respond to facts stated therein. New Mexico’s stated fact and the evidence cited in support regarding the origin of New Mexico’s well metering requirements in the Lower Rio Grande do not materially respond to an argument made in Texas’s Motion for Partial Summary Judgment. CSMF 298 may relate to New Mexico’s motions for partial summary judgment and/or its counterclaims, but alleged depletions due to pumping in Texas is not the subject of Texas’s Motion for Partial Summary Judgment. New Mexico’s stated fact is non-responsive and otherwise not supported by definite, competent, or significantly probative evidence that genuinely and materially responds to a fact stated in Texas’s Motion for Partial Summary Judgment. As such, Texas’s stated material facts remain undisputed. Fed. R. Civ. P. 56(c)(1).

N/A

299 N/A **Following litigation with EBRD among others, all irrigation, commercial, multi-family domestic, and municipal wells in the LRG were metered by 2008.**

See NM-EX 007, D’Antonio 2d Decl. at ¶ 54.

Yes. See NM Response to TX at: - page 32, 33, 34, 35

No. see above (298)

N/A
TEXAS'S RESPONSE

As part of the adjudication process, the State Engineer performed a hydrographic survey, including a review of all historic State Engineer and county records relating to claimed water rights, responses surveys, and aerial photography. Based on all known data, the State Engineer evaluated the information for each claimed water right and made separate offers of judgment to each claimant within a unique “subfile” to the adjudication. The State Engineer and the claimant may either agree on the Offer of Judgment, mediate a different result, or try the case to the court. The result of either agreement or mediation could take place within a unique "subfile" to the adjudication, which encompasses 15,548 water right claimants. Approximately 80% of these subfiles have been sent Offers of Judgment and 70% have been adjudicated.

Texas's stated material facts remain undisputed. Fed. R. Civ. P. 56(a), 56(c)(1).

Subject to the stated objections, the facts cited in New Mexico's Response to Texas's Motion for Partial Summary Judgment but does not materially respond to facts stated therein. New Mexico's stated fact and the evidence cited in support regarding the powers and duties and the actions of the New Mexico State Engineer do not materially respond to an argument made in Texas's Motion for Partial Summary Judgment. CSMF #300 may relate to New Mexico's motions for partial summary judgment and/or its counterclaims, but alleged depletions due to pumping in Texas is not the subject of Texas's Motion for Partial Summary Judgment. New Mexico's stated fact is non-responsive and otherwise not supported by definite, competent, or significantly probative evidence that genuinely and materially responds to a fact stated in Texas's Motion for Partial Summary Judgment. As such, Texas's stated material facts remain undisputed. Fed. R. Civ. P. 56(a), 56(c)(1).

See NM-EX-007, D'Antonio 2d Decl. at ¶ 81; see also NM-EX-226, Rule 306A(6) Day, of the State of New Mexico by and through Ransull (Aug. 21, 2020) at 37:5-22 (internal).

Yes. See NM Response to TX at: - page 32, 33, 35


The cited evidence does not support the stated "facts" in whole or in part. Fed. R. Civ. P. 56(c).

The cited evidence does not support the stated "facts" in whole or in part. Fed. R. Civ. P. 56(c).

The stated "facts" constitute improper legal conclusions in whole or in part. See General Objection 8.

Subject to the stated objections, the facts stated in New Mexico's Response to Texas's Motion for Partial Summary Judgment but does not materially respond to facts stated therein. New Mexico's stated fact and the evidence cited in support regarding the powers and duties and the actions of the New Mexico State Engineer do not materially respond to an argument made in Texas's Motion for Partial Summary Judgment. CSMF #301 may relate to New Mexico's motions for partial summary judgment and/or its counterclaims, but alleged depletions due to pumping in Texas is not the subject of Texas's Motion for Partial Summary Judgment. New Mexico's stated fact is non-responsive and otherwise not supported by definite, competent, or significantly probative evidence that genuinely and materially responds to a fact stated in Texas's Motion for Partial Summary Judgment. As such, Texas's stated material facts remain undisputed. Fed. R. Civ. P. 56(a), 56(c)(1).

See NM-EX-007, D'Antonio 2d Decl. at ¶ 23; see also NM-EX-007, D'Antonio 2d Decl. at ¶ 53; see also NM-EX-007, D'Antonio 2d Decl. at ¶ 35.

Yes. See NM Response to TX at: - page 32, 33, 35


The cited evidence does not support the stated "facts" in whole or in part. Fed. R. Civ. P. 56(c).

The cited evidence does not support the stated "facts" in whole or in part. Fed. R. Civ. P. 56(c).

The stated "facts" constitute improper legal conclusions in whole or in part. See General Objection 8.

Subject to the stated objections, the facts stated in New Mexico's Response to Texas's Motion for Partial Summary Judgment but does not materially respond to facts stated therein. New Mexico's stated fact and the evidence cited in support regarding the powers and duties and the actions of the New Mexico State Engineer do not materially respond to an argument made in Texas's Motion for Partial Summary Judgment. CSMF #299 may relate to New Mexico's motions for partial summary judgment and/or its counterclaims, but alleged depletions due to pumping in Texas is not the subject of Texas's Motion for Partial Summary Judgment. New Mexico's stated fact is non-responsive and otherwise not supported by definite, competent, or significantly probative evidence that genuinely and materially responds to a fact stated in Texas's Motion for Partial Summary Judgment. As such, Texas's stated material facts remain undisputed. Fed. R. Civ. P. 56(a), 56(c)(1).

See NM-EX-007, D'Antonio 2d Decl. at ¶ 81; see also NM-EX-007, D'Antonio 2d Decl. at ¶ 53; see also NM-EX-007, D'Antonio 2d Decl. at ¶ 35.

Yes. See NM Response to TX at: - page 32, 33, 35


The cited evidence does not support the stated "facts" in whole or in part. Fed. R. Civ. P. 56(c).

The cited evidence does not support the stated "facts" in whole or in part. Fed. R. Civ. P. 56(c).

The stated "facts" constitute improper legal conclusions in whole or in part. See General Objection 8.

Subject to the stated objections, the facts stated in New Mexico's Response to Texas's Motion for Partial Summary Judgment but does not materially respond to facts stated therein. New Mexico's stated fact and the evidence cited in support regarding the powers and duties and the actions of the New Mexico State Engineer do not materially respond to an argument made in Texas's Motion for Partial Summary Judgment. CSMF #299 may relate to New Mexico's motions for partial summary judgment and/or its counterclaims, but alleged depletions due to pumping in Texas is not the subject of Texas's Motion for Partial Summary Judgment. New Mexico's stated fact is non-responsive and otherwise not supported by definite, competent, or significantly probative evidence that genuinely and materially responds to a fact stated in Texas's Motion for Partial Summary Judgment. As such, Texas's stated material facts remain undisputed. Fed. R. Civ. P. 56(a), 56(c)(1).

Yes. See NM Response to TX at: - page 32, 33, 35


The cited evidence does not support the stated "facts" in whole or in part. Fed. R. Civ. P. 56(c).

The cited evidence does not support the stated "facts" in whole or in part. Fed. R. Civ. P. 56(c).

The stated "facts" constitute improper legal conclusions in whole or in part. See General Objection 8.

Subject to the stated objections, the facts stated in New Mexico's Response to Texas's Motion for Partial Summary Judgment but does not materially respond to facts stated therein. New Mexico's stated fact and the evidence cited in support regarding the powers and duties and the actions of the New Mexico State Engineer do not materially respond to an argument made in Texas's Motion for Partial Summary Judgment. CSMF #301 may relate to New Mexico's motions for partial summary judgment and/or its counterclaims, but alleged depletions due to pumping in Texas is not the subject of Texas's Motion for Partial Summary Judgment. New Mexico's stated fact is non-responsive and otherwise not supported by definite, competent, or significantly probative evidence that genuinely and materially responds to a fact stated in Texas's Motion for Partial Summary Judgment. As such, Texas's stated material facts remain undisputed. Fed. R. Civ. P. 56(a), 56(c)(1).

See NM-EX-007, D'Antonio 2d Decl. at ¶ 23; see also NM-EX-007, D'Antonio 2d Decl. at ¶ 53; see also NM-EX-007, D'Antonio 2d Decl. at ¶ 35.

Yes. See NM Response to TX at: - page 32, 33, 35


The cited evidence does not support the stated "facts" in whole or in part. Fed. R. Civ. P. 56(c).

The cited evidence does not support the stated "facts" in whole or in part. Fed. R. Civ. P. 56(c).

The stated "facts" constitute improper legal conclusions in whole or in part. See General Objection 8.
382 N.A. Agent from no orders on these individual subfiles, the LRG Adjudication Court has issued a number of orders governing the LRG Adjudication globally. These included the following: a. Stream System 101 (SS 101): In August 2011, the LRG Adjudication court entered a Final Judgment in Stream System 101 that sets the limits on groundwater and surface water use affecting all LRG claimants. In relevant part, the SS 101 Order does the following: The Order sets the annual FDR for the LRG at 4,500 AF/yr unless a claimant is able to prove beneficial use of up to 5,000 AF/yr. Surface water and groundwater use combined cannot exceed this total, and surface water available must be exhausted before groundwater may be used.

382 N.A. b. Stream System 103 (SS 103): The SS 103 Order addresses domestic wells and is currently on hold. Domestic and stock well use represents approximately 2,000 to 3,000 AF/yr. This less than one percent of total surface water and groundwater use in the Mosilla and Rincon basins. Domestic well and stock water use has a negligible effect on the issues in this case.

382 N.A. c. Stream System 104 (SS 104): The SS 104 Order addressed "the interests of the United States deriving from the establishment of the Rio Grande Project" for determination in the LRG Adjudication.

383 N.A. The LRG Adjudication court found that the Project has an "extensive priority date of March 1, 1903. No final order has been issued on this finding.

384 N.A. With a (non-final) priority date of March 1, 1903, the State of Texas’s Project water rights are subject to most of the groundwater rights in the LRG.
TEXAS'S EVIDENTIARY OBJECTIONS

TEXAS'S RESPONSE

The New Mexico Legislature statutorily created the New Mexico Interstate Stream Commission (“the ISC”) in 1935. NMSA 1978, Section 72-14-3 (1935). The ISC is responsible for statewide water planning, conservation, protection, and development of public waters; it is responsible for statewide water planning. It also administers the strategic water reserve pursuant to NMSA 1978, Sections 72-14-1.1 through 72-14-3.1 (2005, as amended through 2007) to assist complying with interstate stream compacts and court decrees, or endangered species water management in New Mexico.

Subject to the stated objections, the fact is cited in New Mexico’s Response to Texas’s Motion for Partial Summary Judgment but does not materially respond to facts stated therein. New Mexico’s stated fact and the evidence cited in support regarding intrastate water administration issues in the State of New Mexico do not materially respond to an argument made in Texas’s Motion for Partial Summary Judgment. CSMF #310 may relate to New Mexico’s motions for partial summary judgment and/or its counterclaims, but the alleged fact and evidence are not related to the subject matter of Texas’s Motion for Partial Summary Judgment. New Mexico’s stated fact is non-responsive and otherwise not supported by definite, competent, or significantly probative evidence that genuinely and materially responds to a fact stated in Texas’s Motion for Partial Summary Judgment. As such, Texas’s stated material facts remain undisputed. Fed. R. Civ. P. 56(e)(1).

In Texas’s stated material facts, the ISC does not exist. Texas’s stated material facts remain undisputed. Fed. R. Civ. P. 56(a), 56(c)(1).

The New Mexico Legislature statutorily created the New Mexico Interstate Stream Commission (“the ISC”) in 1935. NMSA 1978, Section 72-14-3 (1935). The ISC is a permanent body that negotiates interstate stream compacts and has broad powers to investigate, protest, contest, and develop New Mexico’s waters, including both intrastate and interstate stream systems. New Mexico is a party to eight interstate stream compacts, which are comprised of both state and federal law.

Subject to the stated objections, the fact is cited in New Mexico’s Response to Texas’s Motion for Partial Summary Judgment but does not materially respond to facts stated therein. New Mexico’s stated fact and the evidence cited in support regarding the New Mexico Interstate Stream Commission do not materially respond to an argument made in Texas’s Motion for Partial Summary Judgment. CSMF #311 may relate to New Mexico’s motions for partial summary judgment and/or its counterclaims, but the alleged fact and evidence are not related to the subject matter of Texas’s Motion for Partial Summary Judgment. New Mexico’s stated fact is non-responsive and otherwise not supported by definite, competent, or significantly probative evidence that genuinely and materially responds to a fact stated in Texas’s Motion for Partial Summary Judgment. As such, Texas’s stated material facts remain undisputed. Fed. R. Civ. P. 56(e)(1).

In Texas’s stated material facts, the ISC does not exist. Texas’s stated material facts remain undisputed. Fed. R. Civ. P. 56(a), 56(c)(1).

In Texas’s stated material facts, the ISC does not exist. Texas’s stated material facts remain undisputed. Fed. R. Civ. P. 56(a), 56(c)(1).
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<th>TEXAS'S RESPONSE</th>
</tr>
</thead>
<tbody>
<tr>
<td>354</td>
<td>N/A</td>
<td>The ISC's hydrologists, engineers, water management professionals, and attorneys analyze data related to New Mexico's interstate streams to assure compliance with all applicable obligations.</td>
<td>See NM-EX-009, Schmidt-Petersen 2d Decl. at ¶ 1.</td>
<td>Yes. See NM Response to TX at: - page 33</td>
<td>Subject to the stated objections, the fact is cited in New Mexico's Response to Texas's Motion for Partial Summary Judgment but does not materially respond to facts stated therein. New Mexico's stated fact and the evidence cited in support regarding the New Mexico Interstate Stream Commission do not materially respond to an argument made in Texas's Motion for Partial Summary Judgment. Further, New Mexico's response to Texas's Motion for Partial Summary Judgment does not mention &quot;Interstate Stream Commission&quot; or &quot;ISC.&quot; New Mexico's stated fact is non-responsive and otherwise not supported by definite, competent, or significantly probative evidence that genuinely and materially responds to a fact stated in Texas's Motion for Partial Summary Judgment. As such, Texas's stated material facts remain undisputed. Fed. R. Civ. P. 56(e)(1).</td>
<td>NA</td>
</tr>
<tr>
<td>355</td>
<td>N/A</td>
<td>Significantly, ISC staff reviews water right applications filed with the OSE and will file protocols, when necessary, to protect New Mexico's interests and obligations under the New Mexico interstate compacts. ISC staff also provides support in water rights adjudications to protect New Mexico's allocations and obligations under its interstate compacts.</td>
<td>See NM-EX-009, Schmidt-Petersen 2d Decl. at ¶ 10-11.</td>
<td>Yes. See NM Response to TX at: - page 33</td>
<td>Subject to the stated objections, the fact is cited in New Mexico's Response to Texas's Motion for Partial Summary Judgment but does not materially respond to facts stated therein. New Mexico's stated fact and the evidence cited in support regarding the New Mexico Interstate Stream Commission do not materially respond to an argument made in Texas's Motion for Partial Summary Judgment. Further, New Mexico's response to Texas's Motion for Partial Summary Judgment does not mention &quot;Interstate Stream Commission&quot; or &quot;ISC.&quot; New Mexico's stated fact is non-responsive and otherwise not supported by definite, competent, or significantly probative evidence that genuinely and materially responds to a fact stated in Texas's Motion for Partial Summary Judgment. As such, Texas's stated material facts remain undisputed. Fed. R. Civ. P. 56(e)(1).</td>
<td>NA</td>
</tr>
<tr>
<td>356</td>
<td>N/A</td>
<td>The ISC is a lead agency and a member of the executive committee of the Upper Rio Grande Water Operations Model (URGOM). The purpose of the executive committee is to develop a unified water operations model for the Rio Grande Basin from its headwaters in Colorado to Hudspeth County, Texas. The URGOM is used for reservoir and river planning, operations, and accounting upstream of Elephant Butte Reservoir.</td>
<td>See NM-EX-009, Schmidt-Petersen 2d Decl. at ¶ 12.</td>
<td>Yes. See NM Response to TX at: - page 33</td>
<td>Subject to the stated objections, the fact is cited in New Mexico's Response to Texas's Motion for Partial Summary Judgment but does not materially respond to facts stated therein. New Mexico's stated fact and the evidence cited in support regarding the New Mexico Interstate Stream Commission do not materially respond to an argument made in Texas's Motion for Partial Summary Judgment. Further, New Mexico's response to Texas's Motion for Partial Summary Judgment does not mention &quot;Interstate Stream Commission&quot; or &quot;ISC.&quot; New Mexico's stated fact is non-responsive and otherwise not supported by definite, competent, or significantly probative evidence that genuinely and materially responds to a fact stated in Texas's Motion for Partial Summary Judgment. As such, Texas's stated material facts remain undisputed. Fed. R. Civ. P. 56(e)(1).</td>
<td>NA</td>
</tr>
<tr>
<td>357</td>
<td>N/A</td>
<td>The ISC has undertaken significant river and drain maintenance works to aid in Rio Grande Compact compliance. These efforts include removing sediment, removing phreatophytes, maintaining river system infrastructure, operation of the Delta Canal Project, operating the Low Flow Conveyance Channel project (in collaboration with Reclamation and the MRGCD), operating the New Mexico Strangue Water Reserve to assure compliance with the Compact and other legal requirements (e.g., endangered species protections), and improving river gaging, data management, and reporting capabilities in New Mexico.</td>
<td>See NM-EX-009, Schmidt-Petersen 2d Decl. at ¶ 15. See at ¶ 14-15, 19-21.</td>
<td>Yes. See NM Response to TX at: - page 33</td>
<td>Subject to the stated objections, the fact is cited in New Mexico's Response to Texas's Motion for Partial Summary Judgment but does not materially respond to facts stated therein. New Mexico's stated fact and the evidence cited in support regarding the New Mexico Interstate Stream Commission do not materially respond to an argument made in Texas's Motion for Partial Summary Judgment. Further, New Mexico's response to Texas's Motion for Partial Summary Judgment does not mention &quot;Interstate Stream Commission&quot; or &quot;ISC.&quot; New Mexico's stated fact is non-responsive and otherwise not supported by definite, competent, or significantly probative evidence that genuinely and materially responds to a fact stated in Texas's Motion for Partial Summary Judgment. As such, Texas's stated material facts remain undisputed. Fed. R. Civ. P. 56(e)(1).</td>
<td>NA</td>
</tr>
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</table>
TEXAS’S RESPONSE

THE STATE OF TEXAS’S OBJECTIONS AND RESPONSES TO THE STATE OF NEW MEXICO’S CONSOLIDATED STATEMENT

318
N.A.
The ISC’s water and data maintenance efforts have contributed to the State of New Mexico’s ability to accrue a large volume of Accrued Credit (Compact Article VI, Section 5(c)); the ISC has reallocated approximately $800,000 of this Accrued Credit for use by the Project. In response to issues raised by EBID and others related to Project operations and groundwater use, the ISC has provided infrastructural support to New Mexico water users.

Yes. See NM Response to TX at: page 33

See NM-EX-009, Schmidt-Peterson 2d Decl. at ¶ 14.

TExAS’S EVIDENTIARY OBJECTIONS

N/M cited the fact/evidence in its Motion for Partial Summary Judgment.

Subject to the stated objections, the fact is cited in New Mexico’s Response to Texas’s Motion for Partial Summary Judgment but does not materially respond to facts stated therein. New Mexico’s stated fact and the evidence cited in support regarding New Mexico’s Interstate Stream Commission do not materially respond to an argument made in Texas’s Motion for Partial Summary Judgment. As such, Texas’s stated fact and the evidence cited in support regarding New Mexico’s Interstate Stream Commission do not materially respond to facts stated therein. New Mexico’s stated fact and the evidence cited in support regarding New Mexico’s Interstate Stream Commission do not materially respond to an argument made in Texas’s Motion for Partial Summary Judgment. Further, New Mexico’s response to Texas’s Motion for Partial Summary Judgment does not mention “Interstate Stream Commission” or “ISC.” New Mexico’s stated fact is non-responsive and otherwise not supported by definite, competent, or significantly probative evidence that genuinely and materially responds to a fact stated in Texas’s Motion for Partial Summary Judgment. As such, Texas’s stated material facts remain undepended.

319
N.A.
In the mid-to-late 2000’s, the ISC collaborated with the States of Colorado and Texas, and the stakeholders, in the Rio Grande Compact Commission’s “Rio Grande Salinity Management Coalition (“Coalition”)” to address salinity concerns largely raised by Texas. The ISC and the stakeholders evaluated changes in water quality (mostly salinity) from San Acacia, New Mexico to Fort Quitman, Texas. The Texas complaints were addressed and resolved. No further complaints from Texas about water quality were expressed until the original No. 141 was filed.

Yes. See NM Response to TX at: page 33

See NM-EX-009, Schmidt-Peterson 2d Decl. at ¶ 14.

Subject to the stated objections, the fact is cited in New Mexico’s Response to Texas’s Motion for Partial Summary Judgment but does not materially respond to facts stated therein. New Mexico’s stated fact and the evidence cited in support regarding New Mexico’s Interstate Stream Commission do not materially respond to an argument made in Texas’s Motion for Partial Summary Judgment. Further, New Mexico’s response to Texas’s Motion for Partial Summary Judgment does not mention “Interstate Stream Commission” or “ISC.” New Mexico’s stated fact is non-responsive and otherwise not supported by definite, competent, or significantly probative evidence that genuinely and materially responds to a fact stated in Texas’s Motion for Partial Summary Judgment. As such, Texas’s stated material facts remain undepended.

320
N.A.
The ISC-Rio Grande Region staff periodically communicates with Reclamation’s Rio Grande Project water operations staff throughout the year to understand Reclamation’s planed and actual operations. The purpose is to understand how those operations may both directly impact New Mexico water users at and downstream of Elephant Butte Reservoir and indirectly impact upstream reservoir operations (Compact Articles VI, VII or VIII are triggered).

Yes. See NM Response to TX at: page 33

See NM-EX-009, Schmidt-Peterson 2d Decl. at ¶ 22.

Subject to the stated objections, the fact is cited in New Mexico’s Response to Texas’s Motion for Partial Summary Judgment but does not materially respond to facts stated therein. New Mexico’s stated fact and the evidence cited in support regarding New Mexico’s Interstate Stream Commission do not materially respond to an argument made in Texas’s Motion for Partial Summary Judgment. Further, New Mexico’s response to Texas’s Motion for Partial Summary Judgment does not mention “Interstate Stream Commission” or “ISC.” New Mexico’s stated fact is non-responsive and otherwise not supported by definite, competent, or significantly probative evidence that genuinely and materially responds to a fact stated in Texas’s Motion for Partial Summary Judgment. As such, Texas’s stated material facts remain undepended.

NONE
N/A.
As a factual matter, this has never occurred. Reclamation has always been able to deliver water that was allocated and ordered.

Yes, page 27

NM-EX-006, Barroll 2d Decl. ¶ 13; see also NM-CSMP ¶ 177.

The fact statement included in the brief and the evidence that is cited in New Mexico’s Response to Texas’s Motion for Partial Summary Judgment do not materially respond to facts stated therein. New Mexico’s statement and the evidence cited in support regarding Reclamation water deliveries do not materially respond to an argument made in Texas’s Motion for Partial Summary Judgment. New Mexico’s statement in its brief is non-responsive and otherwise not supported by definite, competent, or significantly probative evidence that genuinely and materially responds to a fact stated in Texas’s Motion for Partial Summary Judgment. As such, Texas’s stated material facts remain undepended.

NONE
N/A.
And in 1999, the OSE issued the Mesilla Valley Numbering System (Compact Article VI, Section 5(c)); the ISC has reallocated approximately $800,000 of this Accrued Credit for use by the Project. In response to issues raised by EBID and others related to Project operations and groundwater use, the ISC has provided infrastructural support to New Mexico water users.

Yes, page 34


The fact statement included in the brief and the evidence that is cited in New Mexico’s Response to Texas’s Motion for Partial Summary Judgment do not materially respond to facts stated therein. New Mexico’s statement and the evidence cited in support regarding Reclamation water deliveries do not materially respond to a fact stated in Texas’s Motion for Partial Summary Judgment. As such, Texas’s stated material facts remain undepended.

NONE
N/A.
In 2006, the State Engineer created the Lower Rio Grande Water Master District in OSE District IV and required metering of all non-domestic wells.

Yes, page 34


The fact statement included in the brief and the evidence that is cited in New Mexico’s Response to Texas’s Motion for Partial Summary Judgment do not materially respond to facts stated therein. New Mexico’s statement and the evidence cited in support regarding Reclamation water deliveries do not materially respond to a fact stated in Texas’s Motion for Partial Summary Judgment. As such, Texas’s stated material facts remain undepended.
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<th>TEXAS'S RESPONSE</th>
<th>Identification of where NM cited the fact/evidence in its 11/5/20 Motion (NM Stated MSJ; NM Full Supply MSJ; NM Appopriation MSJ)</th>
<th>Identification of where NM cited the fact/evidence in its Response to the US Motion for Partial Summary Judgment</th>
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<tbody>
<tr>
<td>NONE</td>
<td>N/A</td>
<td>The draft DSRs received a negative response from some water users in the Lower Rio Grande, in particular BIBD. N</td>
<td>NM-EX 007, D’Antonio 2d Decl. ¶ 46.  Yes, page 35</td>
<td>The fact statement included in the brief and the evidence that is cited in New Mexico's Response to Texas's Motion for Partial Summary Judgment does not materially respond to facts stated therein. New Mexico's statement and the evidence cited in support regarding New Mexico's &quot;DSRs&quot; do not materially respond to an argument made in Texas's Motion for Partial Summary Judgment. New Mexico's statement in its brief is non-responsive and otherwise not supported by definite, competent, or significantly probative evidence that genuinely and materially responds to a fact stated in Texas's Motion for Partial Summary Judgment. As such, Texas's stated material facts remain undisputed. Fed. R. Civ. P. 56(a), (5)(5).</td>
<td>N/A</td>
<td>N/A</td>
<td></td>
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<tr>
<td>NONE</td>
<td>N/A</td>
<td>The draft DSRs contained additional provisions designed to protect Texas and Mexico deliveries, if necessary.</td>
<td>D’Antonio 2d Decl. ¶ 52</td>
<td>Yes, page 35</td>
<td>NM-EX 007: See General Objection #5. Subject to the stated objection, the fact statement included in the brief and the evidence that is cited in New Mexico's Response to Texas's Motion for Partial Summary Judgment do not materially respond to facts stated therein. New Mexico's statement and the evidence cited in support regarding New Mexico's &quot;DSRs&quot; do not materially respond to an argument made in Texas's Motion for Partial Summary Judgment. New Mexico's statement in its brief is non-responsive and otherwise not supported by definite, competent, or significantly probative evidence that genuinely and materially responds to a fact stated in Texas's Motion for Partial Summary Judgment. As such, Texas's stated material facts remain undisputed. Fed. R. Civ. P. 56(a), (5)(5), (2), (4).</td>
<td>N/A</td>
<td>N/A</td>
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<td>NONE</td>
<td>N/A</td>
<td>The primary reason the State Engineer never finalized the draft DSRs was the adoption of the 2008 Operating Agreement.</td>
<td>NM-EX 007, D’Antonio 2d Decl. ¶¶ 47- 48, 52</td>
<td>Yes, page 35</td>
<td>NM-EX 007: See General Objection #5. Subject to the stated objection, the fact statement included in the brief and the evidence that is cited in New Mexico's Response to Texas's Motion for Partial Summary Judgment do not materially respond to facts stated therein. New Mexico's statement and the evidence cited in support regarding New Mexico's &quot;DSRs&quot; do not materially respond to an argument made in Texas's Motion for Partial Summary Judgment. New Mexico's statement in its brief is non-responsive and otherwise not supported by definite, competent, or significantly probative evidence that genuinely and materially responds to a fact stated in Texas's Motion for Partial Summary Judgment. As such, Texas's stated material facts remain undisputed. Fed. R. Civ. P. 56(a), (5)(5), (2), (4).</td>
<td>N/A</td>
<td>N/A</td>
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<tr>
<td>NONE</td>
<td>N/A</td>
<td>Without a quantitative analysis, the 2008 Operating Agreement reduced-surface water allocations to New Mexico lands based on the United States' rationale that the reduced surface water was in exchange for allowing farmers to pump groundwater in New Mexico.</td>
<td>NM-EX 119, United States' Suppl. Disclosure of fact M. Ferguson at 4 (Sept. 13, 2019); NM-EX 238, Ferguson Dep. (Feb. 19, 2020) 129-20: 24.</td>
<td>Yes, page 35</td>
<td>NM-EX-119: See General Objection #7; Fed. R. Evid. 801(d), hearsay. NM-EX-238: See General Objection #8. Subject to the stated objections, the fact statement included in the brief and the evidence that is cited in New Mexico's Response to Texas's Motion for Partial Summary Judgment does not materially respond to facts stated therein. New Mexico's statement and the evidence cited in support regarding the 2008 Operating Agreement do not materially respond to an argument made in Texas's Motion for Partial Summary Judgment. New Mexico's statement in its brief is non-responsive and otherwise not supported by definite, competent, or significantly probative evidence that genuinely and materially responds to a fact stated in Texas's Motion for Partial Summary Judgment. As such, Texas's stated material facts remain undisputed. Fed. R. Civ. P. 56(a), (5)(5), (2), (4).</td>
<td>N/A</td>
<td>N/A</td>
<td></td>
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<tr>
<td>NONE</td>
<td>N/A</td>
<td>This out-of-state transport of New Mexico waters violates New Mexico law</td>
<td>NM-EX 007, D’Antonio 2d Decl. ¶ 50</td>
<td>Yes, page 35</td>
<td>The fact statement included in the brief and the evidence that is cited in New Mexico's Response to Texas's Motion for Partial Summary Judgment does not materially respond to facts stated therein. New Mexico's statement and the evidence cited in support regarding the 2008 Operating Agreement do not materially respond to an argument made in Texas's Motion for Partial Summary Judgment. New Mexico's statement in its brief is non-responsive and otherwise not supported by definite, competent, or significantly probative evidence that genuinely and materially responds to a fact stated in Texas's Motion for Partial Summary Judgment. As such, Texas's stated material facts remain undisputed. Fed. R. Civ. P. 56(a), (5)(5), (2), (4).</td>
<td>N/A</td>
<td>N/A</td>
<td></td>
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<tr>
<td>NONE</td>
<td>N/A</td>
<td>As anticipated by the United States, the reduced surface water allocations have forced New Mexico farmers to engage in more pumping in the Lower Rio Grande, not less. N.</td>
<td>Barrett 2d Decl. ¶¶ 62, 67; NM-EX 010, Serrano Decl. ¶ 36.</td>
<td>Yes, page 36</td>
<td>The fact statement included in the brief and the evidence that is cited in New Mexico's Response to Texas's Motion for Partial Summary Judgment does not materially respond to facts stated therein. New Mexico's statement and the evidence cited in support regarding the 2008 Operating Agreement do not materially respond to an argument made in Texas's Motion for Partial Summary Judgment. New Mexico's statement in its brief is non-responsive and otherwise not supported by definite, competent, or significantly probative evidence that genuinely and materially responds to a fact stated in Texas's Motion for Partial Summary Judgment. As such, Texas's stated material facts remain undisputed. Fed. R. Civ. P. 56(a), (5)(5), (2), (4).</td>
<td>N/A</td>
<td>N/A</td>
<td></td>
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<tr>
<td>NONE</td>
<td>N/A</td>
<td>From a Compact perspective, since adoption of the 2008 Operating Agreement, New Mexico—not Texas—is the injured party.</td>
<td>NM-EX 006, Barrett 2d Decl. ¶ 10; 81; NM-EX 007, D’Antonio 2d Decl. ¶ 49</td>
<td>Yes, page 36</td>
<td>NM-EX-007: See General Objection #3. Subject to the stated objection, the fact statement included in the brief and the evidence that is cited in New Mexico's Response to Texas's Motion for Partial Summary Judgment does not materially respond to facts stated therein. New Mexico's statement and the evidence cited in support regarding the 2008 Operating Agreement do not materially respond to an argument made in Texas's Motion for Partial Summary Judgment. New Mexico's statement in its brief is non-responsive and otherwise not supported by definite, competent, or significantly probative evidence that genuinely and materially responds to a fact stated in Texas's Motion for Partial Summary Judgment. As such, Texas's stated material facts remain undisputed. Fed. R. Civ. P. 56(a), (5)(5), (2), (4).</td>
<td>N/A</td>
<td>N/A</td>
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<td>TEXAS'S RESPONSE</td>
<td>Identification of where NM cited the fact/evidence in its 11/5/2020 Motions (NM Supply MSJ; NM Full Supply MSJ; NM App'nt Motion MSJ)</td>
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<tr>
<td>NONE</td>
<td>N/A</td>
<td>Under the 2008 Operating Agreement, Texas receives no more than 40% of Project water.</td>
<td>NM-EX 106, Barroll 2d Decl. ¶ 62</td>
<td>Yes, page 36</td>
<td>The fact statement included in the brief and the evidence that is cited in New Mexico's Response to Texas's Motion for Partial Summary Judgment does not materially respond to facts stated therein. New Mexico's statement and the evidence cited in support regarding the 2008 Operating Agreement do not materially respond to an argument made in Texas's Motion for Partial Summary Judgment. New Mexico's statement in its brief is non-responsive and otherwise not supported by definite, competent, or significantly probative evidence that genuinely and materially responds to a fact stated in Texas's Motion for Partial Summary Judgment. As such, Texas's stated material facts remain undisputed. Fed. R. Civ. P. 56(a), 56(c)(3).</td>
<td>N/A</td>
<td>N/A</td>
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<td>NONE</td>
<td>N/A</td>
<td>It has declined to use even the few administrative tools at its disposal, failing to form a groundwater management district anywhere within the Compact area in Texas despite recognizing that groundwater withdrawals are occurring that diminish the water level and that there are &quot;pretty sizable&quot; cones of depression in the area.</td>
<td>NM-EX 219, Mills Dep. (Aug. 27, 2020) 18:1- 11, 17-21; 29:3-25; 30:1-25; 39:1.</td>
<td>Yes, page 38</td>
<td>Subject to the stated objection, the fact statement included in the brief and the evidence that is cited in New Mexico's Response to Texas's Motion for Partial Summary Judgment does not materially respond to facts stated therein. New Mexico's statement and the evidence cited in support regarding impacts of groundwater pumping in the El Paso area do not materially respond to an argument made in Texas's Motion for Partial Summary Judgment. New Mexico's statement in its brief is non-responsive and otherwise not supported by definite, competent, or significantly probative evidence that genuinely and materially responds to a fact stated in Texas's Motion for Partial Summary Judgment. As such, Texas's stated material facts remain undisputed. Fed. R. Civ. P. 56(a), 56(c)(3).</td>
<td>N/A</td>
<td>N/A</td>
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<td>NONE</td>
<td>N/A</td>
<td>The Compact makes no mention of a &quot;1938 Condition&quot; below Elephant Butte, nor does it make any reference to the specific number of acre-feet that Texas now claims below Elephant Butte, nor does it make any reference to the specific number of acre-feet that Texas now claims in the limit of consumption in New Mexico under the supposed &quot;1938 Condition,&quot; which it quantities at 149,800 acre-feet per year in one of Texas's expert reports.5</td>
<td>NM-EX 126, Hatchense Dep. 41, ¶ 115.</td>
<td>Yes, page 40</td>
<td>Subject to the stated objection, the fact statement included in the brief and the evidence cited in support regarding the D1/D2 curve do not materially respond to an argument made in Texas's Motion for Partial Summary Judgment. New Mexico's statement and the evidence cited in support regarding the D1/D2 allocation method do not materially respond to an argument made in Texas's Motion for Partial Summary Judgment. New Mexico's statement therein. New Mexico's statement and the evidence cited in support regarding impacts of groundwater pumping in the El Paso area do not materially respond to an argument made in Texas's Motion for Partial Summary Judgment. The statement merely cites to Texas's evidence and says it's incorrect, with no evidence cited in support. New Mexico's statement in its brief is non-responsive and otherwise not supported by definite, competent, or significantly probative evidence that genuinely and materially responds to a fact stated in Texas's Motion for Partial Summary Judgment. As such, Texas's stated material facts remain undisputed. Fed. R. Civ. P. 56(a), 56(c)(3).</td>
<td>N/A</td>
<td>N/A</td>
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<td>NONE</td>
<td>N/A</td>
<td>As Texas acknowledges, in the early 1980s, Reclamation proposed the D1/D2 Allocation method. Tex. Br. 34; see NM-CSMF ¶ 174. During this time, Reclamation was changing from allocations to individual farms, to allocations to Districts.</td>
<td>NM-EX 081, Barroll Decl. ¶ 20-21</td>
<td>Yes, page 49</td>
<td>The fact statement included in the brief and the evidence that is cited in New Mexico's Response to Texas's Motion for Partial Summary Judgment does not materially respond to facts stated therein. New Mexico's statement and the evidence cited in support regarding the D1/D2 allocation method do not materially respond to an argument made in Texas's Motion for Partial Summary Judgment. The statement merely cites to Texas's evidence and says it's incorrect, with no evidence cited in support. New Mexico's statement in its brief is non-responsive and otherwise not supported by definite, competent, or significantly probative evidence that genuinely and materially responds to a fact stated in Texas's Motion for Partial Summary Judgment. As such, Texas's stated material facts remain undisputed. Fed. R. Civ. P. 56(a), 56(c)(3).</td>
<td>N/A</td>
<td>N/A</td>
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<td>NONE</td>
<td>N/A</td>
<td>In developing the method, Reclamation made hydrological evaluations of operational records for the period 1951 through 1976, which &quot;provided graphs, equations, and data&quot; which were to be &quot;used to ensure that future allocations to Mexico and the allocations to the U.S. maintain the historical relationship between the delivery of water to U.S. farms and Mexico.&quot;</td>
<td>NM-EX 400, WSNAP 9; NM-EX 106, Barroll 2d Decl. ¶ 57.</td>
<td>Yes, page 49</td>
<td>Subject to the stated objections, the fact statement included in the brief and the evidence that is cited in New Mexico's Response to Texas's Motion for Partial Summary Judgment does not materially respond to facts stated therein. New Mexico's statement and the evidence cited in support regarding the development of Reclamation's allocation methodology do not materially respond to an argument made in Texas's Motion for Partial Summary Judgment. New Mexico's statement in its brief is non-responsive and otherwise not supported by definite, competent, or significantly probative evidence that genuinely and materially responds to a fact stated in Texas's Motion for Partial Summary Judgment. As such, Texas's stated material facts remain undisputed. Fed. R. Civ. P. 56(a), 56(c)(3).</td>
<td>N/A</td>
<td>N/A</td>
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<td>NONE</td>
<td>N/A</td>
<td>The D2 Curve is based on the historical relationship between Project releases from storage and total Project diversions (including to Mexico) throughout the period 1951-1978, and, therefore, measures Project delivery performance over this 29-year period.</td>
<td>NM-EX 085, Barroll 2d Decl. ¶ 37</td>
<td>Yes, page 49</td>
<td>The fact statement included in the brief and the evidence that is cited in New Mexico's Response to Texas's Motion for Partial Summary Judgment does not materially respond to facts stated therein. New Mexico's statement and the evidence cited in support regarding the D2 curve do not materially respond to an argument made in Texas's Motion for Partial Summary Judgment. New Mexico's statement in its brief is non-responsive and otherwise not supported by definite, competent, or significantly probative evidence that genuinely and materially responds to a fact stated in Texas's Motion for Partial Summary Judgment. As such, Texas's stated material facts remain undisputed. Fed. R. Civ. P. 56(a), 56(c)(3).</td>
<td>N/A</td>
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The fact statement included in the brief and the evidence that is cited in New Mexico’s Response to Texas’s Motion for Partial Summary Judgment does not materially respond to facts stated therein. New Mexico’s statement and the evidence cited in support regarding activities by the U.S. Bureau of Reclamation do not materially respond to an argument made in Texas’s Motion for Partial Summary Judgment. New Mexico’s statement in its brief is non-responsive and otherwise not supported by definite, competent, or significantly probative evidence that genuinely and materially responds to a fact stated in Texas’s Motion for Partial Summary Judgment. As such, Texas’s stated material facts remain undisputed. Fed. R. Civ. P. 56(a), 56(c)(1).

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The fact statement included in the brief and the evidence that is cited in New Mexico's Response to Texas's Motion for Partial Summary Judgment does not materially respond to facts stated therein. New Mexico's statement and the evidence cited in support regarding the Water Supply shortfalls, the Great Depression, and flooding events that caused the river to move all caused long-term damage.

The fact statement included in the brief and the evidence that is cited in New Mexico's Response to Texas's Motion for Partial Summary Judgment does not materially respond to facts stated therein. New Mexico's statement and the evidence cited in support regarding the 2008 Operating Agreement do not materially respond to an argument made in Texas's Motion for Partial Summary Judgment. New Mexico's statement in its brief is non-responsive and otherwise not supported by definite, competent, or significantly probative evidence that genuinely and materially responds to a fact stated in Texas's Motion for Partial Summary Judgment. As such, Texas's stated material facts remain undisputed.

The fact statement included in the brief and the evidence that is cited in New Mexico's Response to Texas's Motion for Partial Summary Judgment does not materially respond to facts stated therein. New Mexico's statement and the evidence cited in support regarding groundwater pumping in the State of Texas do not materially respond to an argument made in Texas's Motion for Partial Summary Judgment. New Mexico's statement in its brief is non-responsive and otherwise not supported by definite, competent, or significantly probative evidence that genuinely and materially responds to a fact stated in Texas's Motion for Partial Summary Judgment. As such, Texas's stated material facts remain undisputed.

The fact statement included in the brief and the evidence that is cited in New Mexico's Response to Texas's Motion for Partial Summary Judgment does not materially respond to facts stated therein. New Mexico's statement and the evidence cited in support regarding return flows form part of the Project supply. New Mexico's statement and the evidence cited in support regarding return flows do not materially respond to an argument made in Texas's Motion for Partial Summary Judgment. New Mexico's statement in its brief is non-responsive and otherwise not supported by definite, competent, or significantly probative evidence that genuinely and materially responds to a fact stated in Texas's Motion for Partial Summary Judgment. As such, Texas's stated material facts remain undisputed.

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<table>
<thead>
<tr>
<th>NM- CSMF ¶</th>
<th>NM’s Prior Numbering System</th>
<th>New Mexico’s Stated “Fact”</th>
<th>New Mexico’s Supporting Evidence</th>
<th>DID NM CITE TO THE FACT/EVIDENCE IN ITS 12/22/20 RESPONSE TO THE TEXAS MOTION FOR PARTIAL SUMMARY JUDGMENT?</th>
<th>TEXAS’S EVIDENTIARY OBJECTIONS</th>
<th>TEXAS’S RESPONSE</th>
<th>Identification of where NM cited the fact/evidence in its 12/22/20 Motion (NM Notice MSJ; NM Full Supply MSJ; NM Apportionment MSJ)</th>
<th>Identification of where NM cited to the fact/evidence in its Response to the US Motion for Partial Summary Judgment</th>
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<tr>
<td>NONE</td>
<td>N/A</td>
<td>Since 2006, under the D3 Allocation plus Carryover method, Texas has been allocated more than its Compact Apportionment, at the expense of New Mexico</td>
<td>NM-CSMF ¶ 196; NM-EX 006, Barrel 2d Decl. ¶¶ 46, 63, 66-68, 72-73, 75</td>
<td>Yes, page 66</td>
<td>The fact statement included in the brief and the evidence that is cited to New Mexico’s Response to Texas’s Motion for Partial Summary Judgment does not materially respond to facts stated therein. New Mexico’s statement and the evidence cited in support regarding the D3 allocation do not materially respond to an argument made in Texas’s Motion for Partial Summary Judgment. New Mexico’s statement in its brief is non-responsive and otherwise not supported by definite, competent, or significantly probative evidence that genuinely and materially responds to a fact stated in Texas’s Motion for Partial Summary Judgment. As such, Texas’s stated material facts remain undisputed. Fed. R. Civ. P. 56(a), 56(c)(1).</td>
<td>N/A</td>
<td>N/A</td>
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<td>NONE</td>
<td>N/A</td>
<td>This improvement in groundwater conditions would, in turn, have increased Project delivery efficiency and thereby further increased EBD’s allocation and delivery at little cost to EPCWD</td>
<td>NM-EX 006, Barrel 2d Decl. ¶ 63</td>
<td>Yes, page 67</td>
<td>The fact statement included in the brief and the evidence that is cited to New Mexico’s Response to Texas’s Motion for Partial Summary Judgment does not materially respond to facts stated therein. New Mexico’s statement and the evidence cited in support regarding Project “efficiency” do not materially respond to an argument made in Texas’s Motion for Partial Summary Judgment. New Mexico’s statement in its brief is non-responsive and otherwise not supported by definite, competent, or significantly probative evidence that genuinely and materially responds to a fact stated in Texas’s Motion for Partial Summary Judgment. As such, Texas’s stated material facts remain undisputed. Fed. R. Civ. P. 56(a), 56(c)(1).</td>
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