

**EXHIBIT B**  
**THE STATE OF TEXAS'S OBJECTIONS AND RESPONSES TO THE STATE OF NEW MEXICO'S APPENDIX 1**

TAF NO.	"TEXAS ALLEGATION OF FACT" [New Mexico's Appendix 1 Table]	TEX. BR. PAGE	NEW MEXICO RESPONSE [New Mexico's Appendix 1 Table]	TEXAS RESPONSE
<b>HISTORICAL AND GENERAL STATEMENTS</b>				
1.	The Rio Grande is an interstate and international river, approximately 1,800 miles long, originating in southern Colorado. It winds southward approximately 400 miles across New Mexico, and crosses into Texas near the city of El Paso, where it defines the 1,250 mile international boundary between the United States and Mexico as it traverses to the Gulf of Mexico. Along its entire course, the Rio Grande provides a source of surface water that is used extensively to meet the needs of municipalities, industries, and agricultural irrigators, as well as to support various environmental uses. Numerous dams and reservoirs exist along the river primarily for water supply and flood control purposes; consequently, flows in much of the river are substantially controlled and regulated. With respect to the usage of water, the river is divided into two distinct sections, the Upper and Lower Rio Grande basins, at Fort Quitman.	9-10	This fact/s is undisputed by New Mexico.	<b>Texas's stated material fact is undisputed. Fed. R. Civ. P. 56(a), 56(c)(1).</b>
2.	The Upper Rio Grande basin (the area above Fort Quitman, Texas) is comprised of parts of Colorado and New Mexico, and a small part of Texas. The Upper Rio Grande basin itself is divided into three sections: (1) the San Luis section in Colorado, (2) the Middle section in New Mexico, and (3) the Elephant Butte-Fort Quitman section in New Mexico, Texas, and Mexico.	10	Undisputed, but <i>see</i> NM-EX 007, D'Antonio 2nd Decl., para. 2, n.2, describing the New Mexico terminology for Lower Rio Grande (LRG).	<b>Texas's stated material fact is undisputed. Fed. R. Civ. P. 56(a), 56(c)(1).</b>
3.	In the late-nineteenth century, Mexican irrigators in the vicinity of Juarez, and irrigators in the Mesilla Valley in New Mexico and the El Paso Valley in Texas, all began complaining of diminished Rio Grande flows reaching their lands. They attributed this depletion to extensive development of Colorado's San Luis Valley in the 1880s. Formal complaints lodged by the Mexican government prompted the Secretary of the Interior, in 1896, to impose an "embargo," or moratorium, on the use of all public lands, including federal land, for reservoirs and other facilities, bringing private irrigation efforts largely to a halt in the San Luis Valley. The embargo, while protested by Colorado interests, fostered settlement of the international dispute between the United States and Mexico and made the Project possible. The 1904 National Irrigation Congress advanced a proposal for a federal reservoir to store water to irrigate lands in Mexico, New Mexico, and Texas. The idea of an "international dam" in the vicinity of El Paso to deliver water to Mexico had been contemplated since the 1890s, but placement of the dam at the geological formation known as Elephant Butte, about 110 miles upstream of the New Mexico-Texas state line, offered an additional advantage: assuring water to lands in southern New Mexico and western Texas. Following the authorization of the Project in 1905, the United States entered into the Treaty with Mexico in 1906. Thereafter, Colorado agitated unsuccessfully for revocation of the embargo for nearly 30 years. Federal authorities, however, retained the moratorium out of concern that depletions above the now-constructed Elephant Butte Reservoir would reduce the quantity of water that flowed into the Reservoir and was available downstream for lands in Mexico, New Mexico, and Texas.	11-13	This fact/s is undisputed by New Mexico.	<b>Texas's stated material fact is undisputed. Fed. R. Civ. P. 56(a), 56(c)(1).</b>
<b>RIO GRANDE COMPACT STATEMENTS</b>				
4.	Viewing an interstate water compact as a means of ending the embargo, Colorado entered into negotiations with New Mexico and Texas in the early 1920s. Revocation of the embargo in 1925 prompted New Mexico to withdraw from the negotiations, and when the states met once more in 1928, Colorado was unable to convince either New Mexico or Texas that upstream reservoirs would not deplete flows to the downstream states.	13	This fact/s is undisputed by New Mexico.	<b>Texas's stated material fact is undisputed. Fed. R. Civ. P. 56(a), 56(c)(1).</b>
5.	The three states therefore committed to a temporary compact, approved by the legislatures of the signatory states in 1929, and approved by the United States Congress in 1930. The Temporary Compact was to last until 1935, allowing time for gathering the data necessary to resolve this issue and provide for a permanent compact.	13	This fact/s is undisputed by New Mexico.	<b>Texas's stated material fact is undisputed. Fed. R. Civ. P. 56(a), 56(c)(1).</b>
6.	The historical background forming the basis of the Compact negotiations is well documented, and not subject to any reasonable material dispute.	77	NM-EX 011, Stevens 2nd Decl., para. 24 and the entire Stevens Decl.	The cited paragraph of the Stevens 2nd Decl. and the entire Stevens Decl. do not establish any genuine dispute of fact. Fed. R. Civ. P. 56(a), 56(c)(1). The cited paragraphs do not dispute that "the historical background forming the basis of the Compact negotiations is well documented." The evidence cited in support of Texas's stated material fact relates to those events leading to and framing the Compact negotiations of the 1930s, including complaints of downstream depletions, the 1920s compact negotiations, litigation between the states, the Rio Grande Joint Investigation and related matters. The Stevens Decl. introduces additional facts relating to groundwater development prior to the Rio Grande Project (Stevens Decl., para. 14), Texas's positions on the Middle Rio Grande Conservancy District (Stevens Decl., paras. 13-14), and related matters. The additional evidence may, at best, provide additional context for Texas's stated fact, but do not materially dispute it. The cited paragraphs of the Stevens 2nd Decl. and Stevens Decl. do not materially dispute these fact concerning the background leading to the Compact. <b>Texas's stated material fact remains undisputed. Fed. R. Civ. P. 56(a), 56(c)(1).</b>
7.	The negotiation of a permanent compact proved troublesome in the early 1930s, with the states continuing to disagree over upstream development.	13	This fact/s is undisputed by New Mexico.	<b>Texas's stated material fact is undisputed. Fed. R. Civ. P. 56(a), 56(c)(1).</b>

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8.	During the negotiations for what became the 1938 Compact, there were three distinct positions. Colorado sought the right to develop lands within the Rio Grande watershed above the Colorado-New Mexico state line.	14	This fact/s is undisputed by New Mexico.	<b>Texas's stated material fact is undisputed. Fed. R. Civ. P. 56(a), 56(c)(1).</b>
9.	New Mexico sought to foster the Middle Rio Grande Conservancy District project above Elephant Butte Reservoir.	14	NM-EX 011, Stevens 2nd Decl., paras. 6, 7, 8, 9, 17.	The cited paragraphs of Stevens 2nd Decl. do not establish any genuine dispute of fact. Fed. R. Civ. P. 56(a), 56(c)(1). Rather, New Mexico agrees with the allegation of fact. "Fostering the MRGCD development helped both [New Mexico and Texas] users [and] . . . would better regulate flows into the Elephant Butte Reservoir." Stevens 2nd Decl., para. 6. <b>Texas's stated material fact remains undisputed. Fed. R. Civ. P. 56(a), 56(c)(1).</b>
10.	Texas sought to protect the Project as a unit, and thereby, Texas, from upstream depletions by Colorado and New Mexico.	14	NM-EX 011, Stevens 2nd Decl., paras. 8, 9, 19.	The cited paragraphs of Stevens 2nd Decl. do not establish any genuine dispute of fact. Fed. R. Civ. P. 56(a), 56(c)(1). The cited paragraphs address New Mexico's negotiating position and do not address the stated material fact regarding Texas's intention to "protect the Project as a unit." <b>Texas's stated material fact remains undisputed. Fed. R. Civ. P. 56(a), 56(c)(1).</b>
11.	In essence, these were the same positions of the states at the time of the 1929 Temporary Compact, and were reflected in the Supreme Court litigation.	14	NM-EX 011, Stevens 2nd Decl., paras. 11, 13, 14, 15, 21, 22.	The cited paragraphs of the Stevens 2nd Decl. do not establish any genuine dispute of fact. Fed. R. Civ. P. 56(a), 56(c)(1). None of the cited paragraphs dispute Texas's outline of the states' positions during the Compact negotiations. <b>Texas's stated material fact remains undisputed. Fed. R. Civ. P. 56(a), 56(c)(1).</b>
12.	Without deviation, in deliberating a compact, the three states advocated for what each thought important.	14	This fact/s is undisputed by New Mexico.	<b>Texas's stated material fact is undisputed. Fed. R. Civ. P. 56(a), 56(c)(1).</b>
13.	The decision to deliver Texas's water in Elephant Butte Reservoir was sound in 1938 when the Compact was adopted.	88	This fact/s is undisputed by New Mexico.	<b>Texas's stated material fact is undisputed. Fed. R. Civ. P. 56(a), 56(c)(1).</b>
14.	Indeed, the Project was authorized in 1905, and by 1938 had already been in operation for decades. Also in existence were the 1906 Treaty and the pre-existing contracts by and between the United States, EBID, and EP#1, addressing deliveries of Project water.	77	This fact/s is undisputed by New Mexico.	<b>Texas's stated material fact is undisputed. Fed. R. Civ. P. 56(a), 56(c)(1).</b>
15.	The Project was fully developed at the time the 1938 Compact was negotiated and approved.	79	TX-NM 006, Barroll 2nd Decl., para. 23.	The cited paragraph of the Barroll 2nd Decl. does not establish any genuine dispute of fact and cannot be presented at trial in any admissible form. Fed. R. Civ. P. 56(a), 56(c)(1), (2), (4); <i>see</i> Texas's General Objection #1. The cited paragraph addresses changes in the "cropping pattern in the Project" and does not address Texas's statement that the Project "was fully developed" at the time the Compact was negotiated and approved. Barroll Decl., para 23. <b>Texas's stated material fact remains undisputed. Fed. R. Civ. P. 56(a), 56(c)(1), (2), (4).</b>
16.	As a result of the negotiations to formalize the 1938 Compact, depletions were frozen at pre- 1938 conditions. The ultimate result of Compact negotiations, informed by streamflow data and analyses developed by the <i>JIR</i> , was an agreement that mimicked the 1929 Temporary Compact by freezing depletions at pre-1938 conditions. The Compact "freezes" depletions above Elephant Butte Reservoir to pre-1938 conditions. The provisions that reference 1937 and 1929 facilities create a 1938 Condition for Colorado and New Mexico. Compact, arts. II, IV, VI, VII, VIII.	14, 81, 82	NM-EX 011, Stevens 2nd Decl., paras. 21, 22, 23. NM-EX 008, Lopez 2nd Decl., paras. 8, 9, 10.	The cited paragraphs of the Stevens 2nd Decl. and the Lopez 2nd Decl. do not establish any genuine dispute of fact and the cited paragraphs of the Lopez 2nd Decl. cannot be presented at trial in any admissible form. Fed. R. Civ. P. 56(a), 56(c)(1), (2), (4); <i>see</i> Texas's General Objection #2. The cited paragraphs agree with the facts presented in the Miltenberger Declaration, cited in support of this paragraph, and simply disagree on the conclusion regarding the pre-1938 condition that Dr. Miltenberger draws from the facts. New Mexico does not dispute the stated facts with significant probative evidence. <b>Texas's stated material fact remains undisputed. Fed. R. Civ. P. 56(a), 56(c)(1), (2), (4).</b>
17.	The nub of the dispute between the states was not the volume of the Reservoir release alone, but rather how much of the water released (along with return flows and other downstream accretions) would ultimately reach Texas, 100 miles downstream.	86	NM-EX 011, Stevens 2nd Decl., para. 28. NM-EX 008, Lopez 2nd Decl., para. 19.	The cited paragraphs of the Stevens 2nd Decl. and the Lopez 2nd Decl. do not establish any genuine dispute of fact and the Lopez 2nd Decl. cannot be presented at trial in any admissible form. Fed. R. Civ. P. 56(a), 56(c)(1), (2), (4); <i>see</i> Texas's General Objection #2. Neither the cited paragraph from the Stevens 2nd Decl. nor the cited paragraph from the Lopez 2nd Decl. address Texas's stated material fact. <b>Texas's stated material fact remains undisputed. Fed. R. Civ. P. 56(a), 56(c)(1), (2), (4).</b>
18.	Specifically, the adjustment to the delivery schedule for depletions at Otowi Bridge, compared to the absence of a similar adjustment for depletions below Elephant Butte Reservoir, reflects that the drafters understood the operations of the Project in 1938 and intended them to continue.	82	NM-EX 011, Stevens 2nd Decl., para. 23. NM-EX 008, Lopez 2nd Decl., para. 10.	The cited paragraphs of the Stevens 2nd Decl. and the Lopez 2nd Decl. do not establish any genuine dispute of fact and the Lopez 2nd Decl. cannot be presented at trial in any admissible form. Fed. R. Civ. P. 56(a), 56(c)(1), (2), (4); <i>see</i> Texas's General Objection #2. Neither the cited paragraph from the Stevens 2nd Decl. nor the cited paragraph from the Lopez 2nd Decl. address Texas's stated material fact. In particular, neither of the cited paragraphs address the comparison of the delivery schedule at Otowi Bridge compared to the absence of a similar adjustment for depletions below Elephant Butte Reservoir. <b>Texas's stated material fact remains undisputed. Fed. R. Civ. P. 56(a), 56(c)(1), (2), (4).</b>

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19.	Two delivery schedules, or indices, were adopted: one for Colorado to New Mexico, and one for New Mexico to Elephant Butte Reservoir. These delivery mandates are based upon the adoption of two delivery schedules, or indices: one for Colorado to New Mexico, and one for New Mexico to Texas.	14, 80	NM-EX 008, Lopez 2nd Decl., para. 7.	The cited paragraph of the Lopez 2nd Decl. does not establish any genuine dispute of fact and cannot be presented at trial in any admissible form. Fed. R. Civ. P. 56(a), 56(c), (1), (2), (4); see Texas's General Objection #2. The cited paragraph addresses Mr. Lopez's opinion regarding "deliveries to Texas at the state line" and does not directly address Texas's statement regarding two delivery schedules or indices, including one for New Mexico "to Elephant Butte Reservoir." Lopez 2nd Decl., para. 7. <b>Texas's stated material fact remains undisputed. Fed. R. Civ. P. 56(a), 56(c)(1), (2), (4).</b>
20.	For New Mexico's delivery to Texas, the indices used were based upon flow data for an 1890-1929 period of record that nonetheless reflected an accepted 1938 Condition of consumption in the Middle Rio Grande that would protect the supply for lands below Elephant Butte Reservoir and to Texas.	81	NM-EX 011, Stevens 2nd Decl., para. 21.	The cited paragraph of the Stevens 2nd Decl. does not establish any genuine dispute of fact. Fed. R. Civ. P. 56(a), 56(c)(1). The cited paragraph does not address the temporal basis of the indices described in the paragraph at all. The cited paragraph merely asserts that "[t]he 1938 Compact in no way 'mimics' the 1929 temporary compact" and goes on to stress the temporary nature of the 1929 compact. Stevens 2nd Decl., para. 21. The cited paragraph of the Stevens 2nd Decl. does not dispute Texas's stated material fact. <b>Texas's stated material fact remains undisputed. Fed. R. Civ. P. 56(a), 56(c)(1).</b>
21.	These schedules were derived from streamflow data and analyses developed primarily by the <i>JIR</i> – an effort to provide the needed data to resolve the impasse over the apportionment of the Rio Grande waters above Fort Quitman. During Compact negotiations, the schedules were derived from streamflow data and analyses developed by the <i>JIR</i> , an investigation undertaken to provide the needed data to resolve the impasse over the apportionment of the Rio Grande waters above Fort Quitman. The indices were based upon data that existed in 1938 and were intended to maintain the 1938 Condition, protecting downstream interests from post-1938 depletions. There are provisions in Article III addressing post-1937 reservoirs that might be constructed in Colorado to ensure that those reservoirs, if constructed, will not deplete the flow at the gauge in excess of what existed in 1938. The indices were based upon data that existed in 1938 and were intended to maintain the 1938 Condition, protecting downstream interests from upstream post-1938 depletions by New Mexico. There are specific provisions in Article IV addressing and protecting Texas from other post-1929 depletions in New Mexico upstream from Elephant Butte Reservoir.	14-15, 35-36, 80	NM-EX 011, Stevens 2nd Decl., paras. 24, 31. NM-EX 008, Lopez 2nd Decl. para. 8.	The cited paragraphs of the Stevens 2nd Decl. and the Lopez 2nd Decl. do not establish any genuine dispute of fact and the cited paragraph of the Lopez 2nd Decl. cannot be presented at trial in any admissible form. Fed. R. Civ. P. 56(a), 56(c)(1), (2), (4). See Texas's General Objection #2. The Stevens 2nd Decl. denies that there is evidence from the historical record that would "provide details on precisely how the schedules in the Compact's Article III and IV were ultimately derived," and that such information is immaterial. Stevens 2nd Decl., para. 24. The Stevens 2nd Decl. however, does not expand on that conclusory statement and goes on to agree that ". . . these Articles were arguably the most controversial of the Compact, as they were, in a sense, the basis for the allocation." <i>Id.</i> Texas's stated fact cites to the evidence in support, which the cited paragraphs do not materially dispute. <b>Texas's stated material fact remains undisputed. Fed. R. Civ. P. 56(a), 56(c)(1), (2), (4).</b>
22.	This 1938 Condition also protected New Mexico from post-1938 depletions that could occur above the Colorado-New Mexico state line.	81	This fact/s is undisputed by New Mexico.	<b>Texas's stated material fact is undisputed. Fed. R. Civ. P. 56(a), 56(c)(1).</b>
23.	These provisions allowed the continued development of 1929 and 1937 facilities, addressed in the Compact, as long as they did not increase depletions beyond what existed in 1938. These protections were to the benefit of Texas and the Project, which was downstream from all of the developments above Elephant Butte.	15	NM-EX 011, Stevens 2nd Decl., para. 25. NM-EX 008, Lopez 2nd Decl., para. 8.	The cited paragraphs of the Stevens 2nd Decl. and the Lopez 2nd Decl. do not establish any genuine dispute of fact and the Lopez 2nd Decl. cannot be presented at trial in any admissible form. Fed. R. Civ. P. 56(a), 56(c)(1), (2), (4); see Texas's General Objection #2. The cited paragraph of the Stevens 2nd Decl. agrees that the Compact "accommodated developments on the river after 1929 and after 1937" which does not dispute Texas's stated material fact that "[t]hese provisions allowed the continued developed of 1929 and 1937 facilities." See Stevens 2nd Decl., para. 25. The cited paragraph of the Lopez 2nd Decl. does not dispute Texas's stated material fact. <b>Texas's stated material fact remains undisputed. Fed. R. Civ. P. 56(a), 56(c)(1), (2), (4).</b>
24.	The drafters provided for the necessary adjustments to deliveries in Elephant Butte Reservoir if New Mexico were to deplete river flow by building storage works above San Marcial.	79	This fact/s is undisputed by New Mexico.	<b>Texas's stated material fact is undisputed. Fed. R. Civ. P. 56(a), 56(c)(1).</b>
25.	Accordingly, it was Texas, in Articles VII and VIII, that was granted the Compact right to ensure that depletions upstream of Elephant Butte Reservoir were protected from post-1938 depletions by Colorado or New Mexico.	15	NM-EX 011, Stevens 2nd Decl., para. 19. NM-EX 008, Lopez 2nd Decl., para. 18.	The cited paragraphs of the Stevens 2nd Decl. and the Lopez 2nd Decl. do not establish any genuine dispute of fact and the Lopez 2nd Decl. cannot be presented at trial in any admissible form. Fed. R. Civ. P. 56(a), 56(c)(1), (2), (4); see Texas's General Objection #2. The cited paragraph of the Stevens 2nd Decl. does not dispute Texas's rights under Articles VII and VIII and merely includes Dr. Steven's improper legal conclusions regarding New Mexico's rights under Article VIII. Fed. R. Evid. 704; see Stevens 2nd Decl., para. 19. The cited paragraph of the Lopez 2nd Decl. includes Mr. Lopez's legal conclusions regarding the meaning of Articles VII and VIII of the Compact, which are improper and inadmissible. Fed. R. Evid. 704; see Texas's General Objection #2. <b>Texas's stated material fact remains undisputed. Fed. R. Civ. P. 56(a), 56(c)(1), (2), (4).</b>

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26.	The question of what specifically was being protected below Elephant Butte Reservoir was fiercely debated and focused on the right figure to attach to releases from the Reservoir. The amount of water to be released related directly to the upstream obligation to deliver water. The higher the amount to be released, the more water needed to be delivered to the Reservoir. Texas argued for a normal release of 800,000 acre feet as necessary to guarantee that a sufficient quantity and quality of water actually reached Texas. Texas's negotiating position was based on an understanding of then existing depletions to the Rio Grande, EBID's use of water in New Mexico, and the Treaty with Mexico.	15	NM-EX 011, Stevens 2nd Decl., para. 27.  NM-EX 008, Lopez 2nd Decl., para. 19.	The cited paragraphs of the Stevens 2nd Decl. and the Lopez 2nd Decl. do not establish any genuine dispute of fact and the cited paragraph of the Lopez 2nd Decl. cannot be presented at trial in any admissible form. Fed. R. Civ. P. 56(a), 56(c)(1), (2), (4). The cited paragraphs support the concept stated in the material fact that the figure for release of water from Elephant Butte Reservoir was contested. <i>See, e.g.</i> , Stevens 2nd Decl., para. 27. <b>Texas's stated material fact remains undisputed. Fed. R. Civ. P. 56(a), 56(c)(1), (2), (4).</b>
27.	Texas sought a volume that also took into account the degraded water quality of deliveries to Texas, resulting from the use and reuse of irrigation return flows on lands between the release point at Caballo and the Texas state lines.	15-16	NM-EX 011, Stevens 2nd Decl., para. 14.	The cited paragraph of the Stevens 2nd Decl. does not establish any genuine dispute of fact. Fed. R. Civ. P. 56(a), 56(c)(1). The cited paragraph states that Texas's "interpretation depended not on the quantity of water delivered to Elephant Butte, but on the quality of the water Texas used on its lands." Stevens 2nd Decl., para. 14. The Stevens 2nd Decl. does not materially dispute the stated fact. <b>Texas's stated material fact remains undisputed. Fed. R. Civ. P. 56(a), 56(c)(1).</b>
28.	In response, New Mexico, protecting its upstream apportionment from Colorado and its uses of that entitlement in the Middle Rio Grande, took a position at odds with the stance of interests downstream from Elephant Butte Reservoir. P16 New Mexico argued for a normal release around 750,000 acre feet, thereby protecting it from Texas's demand. [New Mexico] argued that a smaller figure could sustain uses below Elephant Butte, and thus it should be obligated to make lesser deliveries.	16	NM-EX 011, Stevens 2nd Decl., paras. 16, 18, 26.	The cited paragraphs of the Stevens 2nd Decl. do not establish any genuine dispute of fact. Fed. R. Civ. P. 56(a), 56(c)(1). The Stevens 2nd Decl. restates facts cited by Texas in support of the stated material fact. <i>See</i> Stevens 2nd Decl., paras. 16, 18, 26 (citing paragraphs 35-38 of the Miltenberger Declaration). New Mexico does not dispute the stated facts with significant probative evidence. <b>Texas's stated material fact remains undisputed. Fed. R. Civ. P. 56(a), 56(c)(1).</b>
29.	Ultimately, the parties agreed to a normal release of 790,000 acre feet. While this was a negotiated number, Texas believed the quantity adequate to secure the water apportioned to it under the 1938 Compact, assuming a 1938 Condition of consumption below Elephant Butte Reservoir.	16	NM-EX 011, Stevens 2nd Decl., para. 28.	The cited paragraph of the Stevens 2nd Decl. does not establish any genuine dispute of fact. Fed. R. Civ. P. 56(a), 56(c)(1). The cited paragraph agrees that the parties agreed to a normal release of 790,000 acre-feet. Stevens 2nd Decl., para. 28. The remainder of the cited paragraph does not address Texas's belief regarding the adequacy of the 790,000 acre-feet release. <i>Id.</i> <b>Texas's stated material fact remains undisputed. Fed. R. Civ. P. 56(a), 56(c)(1).</b>
30.	Texas did not anticipate that Project return flows, which were anticipated to comprise a significant portion of the 790,000 acre feet of Texas's entitlement, would be intercepted by New Mexico groundwater pumping.	16	NM-EX 011, Stevens 2nd Decl., para. 28. NM-EX 008, Lopez 2nd Decl., para. 23.	The cited paragraphs of the Stevens 2nd Decl. and the Lopez 2nd Decl. do not establish any genuine dispute of fact and the Lopez 2nd Decl. cannot be presented at trial in any admissible form. Fed. R. Civ. P. 56(a), 56(c)(1), (2), (4); <i>see</i> Texas's General Objection #2. The cited paragraph of the Stevens 2nd Decl. does not address the impact of groundwater pumping in New Mexico on return flows in Texas. Stevens 2nd Decl., para. 28. The cited paragraph of the Lopez 2nd Decl. addresses Mr. Lopez's improper and inadmissible legal opinion that the Rio Grande Compact "does not apportion groundwater" but it does not address the stated material fact regarding "intercept[ion]" of return flows due to "New Mexico groundwater pumping." Lopez 2nd Decl., para. 23. <b>Texas's stated material fact remains undisputed. Fed. R. Civ. P. 56(a), 56(c)(1), (2), (4).</b>
31.	The total water supply available for diversion by EBID, EP#1, and Mexico included storage in and releases from Elephant Butte Reservoir and return flows generated within EBID and EP#1.	16	NM-EX 008, Lopez 2nd Decl., para. 37.	The cited paragraph of the Lopez 2nd Decl. does not establish any genuine dispute of fact and cannot be presented at trial in any admissible form. Fed. R. Civ. P. 56(a), 56(c), (1), (2), (4); <i>see</i> Texas's General Objection #2. The cited paragraph of the Lopez 2nd Decl. describes "total Project water supply" and does not conflict with the stated material fact. <b>Texas's stated material fact remains undisputed. Fed. R. Civ. P. 56(a), 56(c)(1), (2), (4).</b>
32.	The Compact negotiators and engineers recognized that groundwater development below Elephant Butte would not augment the basin's supply, but rather deplete the available surface water. There was effectively no groundwater pumping below Elephant Butte Reservoir in New Mexico, the irrigation uses were limited to EBID, which holds a contract to water in the Reservoir, and the volume of M&I water used in 1938 was minor.	17-18, 88	NM-EX 011, Stevens 2nd Decl., para. 31. NM-EX 008, Lopez 2nd Decl., para. 22, 23, 30.	The cited paragraphs of the Stevens 2nd Decl. and the Lopez 2nd Decl. do not establish any genuine dispute of fact and the Lopez 2nd Decl. cannot be presented at trial in any admissible form. Fed. R. Civ. P. 56(a), 56(c)(1), (2), (4); <i>see</i> Texas's General Objection #2. The cited paragraph of the Stevens 2nd Decl. does not address the second sentence of the stated material fact. Stevens 2nd Decl., para. 31. The Stevens 2nd Decl. argues that "no conclusions were drawn related to groundwater below Elephant Butte, either related to additional supply or related to its connection to surface water." <i>Id.</i> This statement does not materially dispute the stated fact. It merely argues that lack of explicit conclusions in the Rio Grande Joint Investigation indicates that groundwater augmentation or supply was not considered. That is not a conclusion supported by probative evidence, rather it is a mere conclusion that does not materially dispute the stated fact. The cited paragraph of the Lopez 2nd Decl. discussess groundwater generally, but does not materially address or dispute the stated fact. <b>Texas's stated material fact remains undisputed. Fed. R. Civ. P. 56(a), 56(c)(1), (2), (4).</b>

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33.	This conclusion was also reflected in the United States Geological Survey study conducted at the request of the New Mexico State Engineer and EBID in the late 1940s and early 1950s.	18	NM-EX 011, Stevens 2nd Decl., para. 32. NM-EX 008, Lopez 2nd Decl., para. 23.	The cited paragraphs of the Stevens 2nd Decl. and the Lopez 2nd Decl. do not establish any genuine dispute of fact and the Lopez 2nd Decl. cannot be presented at trial in any admissible form. Fed. R. Civ. P. 56(a), 56(c)(1), (2), (4); see Texas's General Objection #2. The cited paragraph of the Stevens 2nd Decl. argues that the United States Geological Survey study "was not available at the time of the Compact signing in 1939." Stevens 2nd Decl., para. 32. That assertion is not relevant to Texas's stated material fact which does not state that the 1940s and 1950s studies pre-dated the signing of the Compact. The cited paragraph of the Lopez 2nd Decl. does not address the United States Geological Survey study. Lopez 2nd Decl., para. 23. <b>Texas's stated material fact remains undisputed. Fed. R. Civ. P. 56(a), 56(c)(1), (2), (4).</b>
34.	The preamble to the 1938 Compact declares that the signatory states intended to apportion equitably the waters of the Rio Grande above Fort Quitman, Texas.  The states' understanding that the basin was fully appropriated is incorporated into the 1938 Compact, and formed the basis for the agreement, "desiring to remove all causes of present and future controversy among the[] States."  The Compact drafters intended to "remove all causes of present and future controversy among [the] States . . . to the use of the waters of the Rio Grande above Fort Quitman, Texas," and to "effect[] an equitable apportionment of such waters."  Mr. Lopez testified that New Mexico understood that the waters of the Rio Grande below Elephant Butte Reservoir were fully appropriated in 1938 at the time it agreed to the Compact.	60, 85, 89	This fact/s is undisputed by New Mexico.	<b>Texas's stated material fact is undisputed. Fed. R. Civ. P. 56(a), 56(c)(1).</b>
35.	The 1938 Compact equitably apportions the waters of the Rio Grande from its headwaters to Fort Quitman, Texas, among Colorado, New Mexico, and Texas.	61	This fact/s is undisputed by New Mexico.	<b>Texas's stated material fact is undisputed. Fed. R. Civ. P. 56(a), 56(c)(1).</b>
36.	The United States' representative at the meeting of the Rio Grande Compact Commission in 1938 stated that the intent of the Compact was an "equitable division of the water of the Rio Grande" and "[i]t is my belief that the interests of the United States are fully safeguarded by (a) inclusion, in the State allocations, of all water to which Federal irrigation projects are entitled . . ."	78	This fact/s is undisputed by New Mexico.	<b>Texas's stated material fact is undisputed. Fed. R. Civ. P. 56(a), 56(c)(1).</b>
37.	Article I of the Compact contains definitions that are discussed below in the context of other articles in the Compact. Article I(k) defines "Project Storage" as the combined capacity of Elephant Butte Reservoir and Caballo Reservoir, but not more than 2,638,860 acre feet. Article I(l) defines "Usable Water" as all of the "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.	35, 37	This fact/s is undisputed by New Mexico.	<b>Texas's stated material fact is undisputed. Fed. R. Civ. P. 56(a), 56(c)(1).</b>
38.	(Notably, the references to "project storage" in this article (as well as in Articles I(m)-(q)) and the reference as a point of location "the lands of the Rio Grande Project" in Article I(k), are the only direct references to the Rio Grande Reclamation Project in the Compact.) These references, as well as the definitions of "Credit Water," "Unfilled Capacity," "Actual Release," "Actual Spill," and "Hypothetical Spill" all related to Elephant Butte Reservoir and are intended to ensure that deliveries into the Reservoir and Texas's apportionment are protected from upstream post-1938 depletions. The drafters' acknowledgment of the relationship between the Compact and the Project is apparent in Article I of the Compact by the inclusion of the reference to the Project in the definitions of "Project Storage" and "Usable Water."	37, 78	NM-EX 008, Lopez 2nd Decl., para. 4.	The cited paragraph of the Lopez 2nd Decl. does not establish any genuine dispute of fact and cannot be presented at trial in any admissible form. Fed. R. Civ. P. 56(a), 56(c), (1), (2), (4); see Texas's General Objection #2. The cited paragraph of the Lopez 2nd Decl. addresses Mr. Lopez's improper and inadmissible legal opinions regarding the meaning of Compact terms. <i>Id.</i> <b>Texas's stated material fact remains undisputed. Fed. R. Civ. P. 56(a), 56(c)(1), (2), (4).</b>
39.	The scope of the apportionment is also clear from the definition of "Rio Grande Basin," which means "all of the territory drained by the Rio Grande and its tributaries in Colorado, in New Mexico, and in Texas above Fort Quitman."	60	NM-EX 008, Lopez 2nd Decl., para. 5.	The cited paragraph of the Lopez 2nd Decl. does not establish any genuine dispute of fact and cannot be presented at trial in any admissible form. Fed. R. Civ. P. 56(a), 56(c), (1), (2), (4); see Texas's General Objection #2. The cited paragraph of the Lopez 2nd Decl. addresses Mr. Lopez's improper and inadmissible legal opinions regarding the meaning of Compact terms. <i>Id.</i> <b>Texas's stated material fact remains undisputed. Fed. R. Civ. P. 56(a), 56(c)(1), (2), (4).</b>
40.	Because the Compact is flexible with respect to delivery requirements allowing its operation to be governed by the natural hydrology of the Rio Grande, Article II requires the Rio Grande Compact Commission to cause various gaging stations on the river to be maintained and operated. Due to the concern about post-1938 depletions, gaging stations were to be maintained and operated below any reservoir constructed after 1929 and at other locations at each of the post- 1929 reservoirs.	35	NM-EX 008, Lopez 2nd Decl., para. 6	The cited paragraph of the Lopez 2nd Decl. does not establish any genuine dispute of fact and cannot be presented at trial in any admissible form. Fed. R. Civ. P. 56(a), 56(c), (1), (2), (4); see Texas's General Objection #2. The cited paragraph of the Lopez 2nd Decl. addresses Mr. Lopez's improper and inadmissible legal opinions regarding the meaning of Compact terms. <i>Id.</i> <b>Texas's stated material fact remains undisputed. Fed. R. Civ. P. 56(a), 56(c)(1), (2), (4).</b>

**EXHIBIT B**  
**THE STATE OF TEXAS'S OBJECTIONS AND RESPONSES TO THE STATE OF NEW MEXICO'S APPENDIX 1**

<u>TAF NO.</u>	<u>"TEXAS ALLEGATION OF FACT"</u> <u>[New Mexico's Appendix 1 Table]</u>	<u>TEX. BR. PAGE</u>	<u>NEW MEXICO RESPONSE</u> <u>[New Mexico's Appendix 1 Table]</u>	<u>TEXAS RESPONSE</u>
41.	<p>Article III of the Compact requires "Colorado to deliver water in the Rio Grande at the Colorado-New Mexico State Line . . . ."</p> <p>The quantity of water to be delivered is based upon indexed flows provided in the article.</p> <p>The actual quantity of water to be delivered is based upon the flow available in the river at the referenced gauges as compared with the indices provided for in the article.</p> <p>Article III of the Compact provides water for use in Colorado, subject to the obligation to deliver indexed flows of water to New Mexico just below the Colorado-New Mexico state line.</p> <p>Article III of the Compact requires "Colorado to deliver water in the Rio Grande at the Colorado-New Mexico State Line" in established quantities, based upon flows of water that are measured at various index stations.</p> <p>Footnoted: New Mexico admits this statement. NM Answer at paragraph 12.</p> <p>Water exceeding the delivery requirement to New Mexico is the Colorado apportionment to be used in Colorado.</p> <p>Articles III and IV of the Compact identify delivery of water by New Mexico as an obligation.</p> <p>New Mexico, by and through its State Engineer John D'Antonio, admits that when Colorado "delivers" water to New Mexico pursuant to Article III, Colorado loses dominion and control of the water.</p>	35, 61-63, 66-67	This fact/s is undisputed by New Mexico.	<b>Texas's stated material fact is undisputed. Fed. R. Civ. P. 56(a), 56(c)(1).</b>
42.	Water in excess of the delivery requirement is the Colorado apportionment to be used in Colorado.	35	NM-EX 011, Stevens 2nd Decl., para. 28	The cited paragraphs of Stevens 2nd Decl. do not establish any genuine dispute of fact. Fed. R. Civ. P. 56(a), 56(c)(1). The cited paragraph does not mention or address any subject matter related to Colorado. <b>Texas's stated material fact remains undisputed. Fed. R. Civ. P. 56(a), 56(c)(1).</b>
43.	<p>Articles III and IV of the Compact together provide water for use in New Mexico, subject to the obligation to deliver an indexed flow of water to Texas in Elephant Butte Reservoir.</p> <p>The obligation of New Mexico to deliver water in the Rio Grande at San Marcial . . . shall be that quantity set forth in the following tabulation of relationship which corresponds to the quantity at the upper index station.</p> <p>Similarly, Article IV requires New Mexico to deliver indexed flows of water in Elephant Butte Reservoir.</p>	36, 61, 66, 80	NM-EX 011, Stevens 2nd Decl., para.	New Mexico's response does not include a cite to a specific paragraph of the Stevens 2nd Decl. <b>Texas's stated material fact remains undisputed. Fed. R. Civ. P. 56(a), 56(c)(1).</b>
44.	Article IV of the Compact identified the volume of water that New Mexico could utilize in the Middle Rio Grande based upon the 1938 Condition.	55	NM-EX 008, Lopez 2nd Decl., para. 26.	The cited paragraph of the Lopez 2nd Decl. does not establish any genuine dispute of fact and cannot be presented at trial in any admissible form. Fed. R. Civ. P. 56(a), 56(c), (1), (2), (4); see Texas's General Objection #2. The cited paragraph of the Lopez 2nd Decl. addresses Mr. Lopez's improper and inadmissible legal opinions regarding the meaning of Compact terms. <i>Id.</i> <b>Texas's stated material fact remains undisputed. Fed. R. Civ. P. 56(a), 56(c)(1), (2), (4).</b>
45.	Article IV of the Compact also protected the delivery of water in Elephant Butte Reservoir from post-1938 depletions in the New Mexico Middle Rio Grande.	55, 82-83	NM-EX 008, Lopez 2nd Decl., para. 8.	The cited paragraph of the Lopez 2nd Decl. does not establish any genuine dispute of fact and cannot be presented at trial in any admissible form. Fed. R. Civ. P. 56(a), 56(c), (1), (2), (4); see Texas's General Objection #2. The cited paragraph of the Lopez 2nd Decl. addresses Mr. Lopez's improper and inadmissible legal opinions regarding the meaning of Compact terms. <i>Id.</i> The cited paragraph does not address the "New Mexico Middle Rio Grande." <b>Texas's stated material fact remains undisputed. Fed. R. Civ. P. 56(a), 56(c)(1), (2), (4).</b>
46.	New Mexico admits [These provisions [in Article IV] together ensured that the volume of indexed flows within the Rio Grande above Elephant Butte Reservoir would not be depleted above the depletion conditions that existed in 1938], but denies that there is any 1938 depletion condition below Elephant Butte Reservoir that would protect the volumes of water that Texas was apportioned.	55, 83	This fact/s is undisputed by New Mexico.	<b>Texas's stated material fact is undisputed. Fed. R. Civ. P. 56(a), 56(c)(1).</b>
47.	Thus, according to New Mexico, Colorado and New Mexico benefit and are protected from upstream depletions that exceed the depletions that occurred in 1938, but Texas has no such protections.	83	NM-EX 008, Lopez 2nd Decl., para. 11.	The cited paragraph of the Lopez 2nd Decl. does not establish any genuine dispute of fact and cannot be presented at trial in any admissible form. Fed. R. Civ. P. 56(a), 56(c), (1), (2), (4); see Texas's General Objection #2. The cited paragraph of the Lopez 2nd Decl. addresses Mr. Lopez's improper and inadmissible legal opinions regarding the meaning of Compact terms. <i>Id.</i> <b>Texas's stated material fact remains undisputed. Fed. R. Civ. P. 56(a), 56(c)(1), (2), (4).</b>

**EXHIBIT B**  
**THE STATE OF TEXAS'S OBJECTIONS AND RESPONSES TO THE STATE OF NEW MEXICO'S APPENDIX 1**

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48.	<p>New Mexico does not have any Compact apportionment below Elephant Butte Reservoir.</p> <p>Water that is delivered is the New Mexico apportionment to be used in New Mexico, subject to the delivery requirement in Article IV.</p> <p>Water delivered by Colorado at the New Mexico state line is the New Mexico apportionment to be used in New Mexico, subject to the delivery requirement in Article IV.</p> <p>For Colorado's delivery to New Mexico, the indices used were based upon flow data for a 1928-1937 period of record that nonetheless reflected an accepted 1938 Condition of consumption in the San Luis Valley that would protect flows for the Middle Rio Grande below the state line.</p> <p>Notably, the Compact was structured such that New Mexico's apportionment was above Elephant Butte Reservoir.</p> <p>Notably, absent post-1938 depletions caused by New Mexico, the Texas Project allocation and the Texas apportionment would be the same. The water New Mexico delivers in Elephant Butte Reservoir is apportioned to Texas, subject to the 1906 Treaty obligation to Mexico and subject to EBID's contract entitlements.</p> <p>The United States' Contracts with EBID fully define EBID's rights, and nothing in the contracts gives the state of New Mexico any rights. EBID is entitled to 88/155 of the available Project supply, which corresponds to its 56.7742 repayment obligation.</p> <p>The 1938 depletions are protected by the Compact, not by the Project contracts.</p>	61, 35, 63, 80, 81, 45,	NM-EX 008, Lopez 2nd Decl., paras. 24, 26.	The cited paragraphs of the Lopez 2nd Decl. do not establish any genuine dispute of fact and cannot be presented at trial in any admissible form. Fed. R. Civ. P. 56(a), 56(c), (1), (2), (4); see Texas's General Objection #2. The cited paragraphs of the Lopez 2nd Decl. address Mr. Lopez's improper and inadmissible legal opinions regarding the meaning of Compact terms and Mr. Lopez's improper and inadmissible legal conclusion regarding the apportionment under the Compact. <i>Id.</i> The cited paragraphs do not address the "New Mexico Middle Rio Grande." <b>Texas's stated material fact remains undisputed. Fed. R. Civ. P. 56(a), 56(c)(1), (2), (4).</b>
49.	<p>Article IV of the Compact requires "New Mexico to deliver water in the Rio Grande at San Marcial [later changed to Elephant Butte Reservoir] . . ."</p> <p>As was the case with Article III, the quantity of water to be delivered is based upon indexed flows provided for in the article. Water in excess of the delivery requirement is the New Mexico apportionment to be used in New Mexico above Elephant Butte Reservoir.</p> <p>Article VI establishes a system of "credits" and "debits, defined in Articles I(g)-(j).</p>	36-37	This fact/s is undisputed by New Mexico.	<b>Texas's stated material fact is undisputed. Fed. R. Civ. P. 56(a), 56(c)(1).</b>
50.	<p>Article IV requires adjustments to the scheduled amounts based on depletion of tributary runoff between Otowi Bridge and San Marcial during July, August, and September by works constructed after 1937. This protects Texas's apportionment from upstream development by ensuring an agreed upon level of flow to Elephant Butte Reservoir and normal releases from the Project.</p>	78-79	NM-EX 008, Lopez 2nd Decl., para. 34.	The cited paragraph of the Lopez 2nd Decl. does not establish any genuine dispute of fact and cannot be presented at trial in any admissible form. Fed. R. Civ. P. 56(a), 56(c), (1), (2), (4); see Texas's General Objection #2. The cited paragraph of the Lopez 2nd Decl. addresses Mr. Lopez's improper and inadmissible legal opinions regarding the meaning of Compact terms. <i>Id.</i> <b>Texas's stated material fact remains undisputed. Fed. R. Civ. P. 56(a), 56(c)(1), (2), (4).</b>
51.	<p>Articles II and V of the Compact deal with the placement of gauges on the Rio Grande.</p>	38	This fact/s is undisputed by New Mexico.	<b>Texas's stated material fact is undisputed. Fed. R. Civ. P. 56(a), 56(c)(1).</b>
52.	<p>There are two types of debits: "Annual Debits" and "Accrued Debits," and two types of credits: "Annual Credits" and "Accrued Credits."</p>	37	NM-EX 008, Lopez 2nd Decl., para. 13.	The cited paragraph of the Lopez 2nd Decl. does not establish any genuine dispute of fact and cannot be presented at trial in any admissible form. Fed. R. Civ. P. 56(a), 56(c), (1), (2), (4); see Texas's General Objection #2. The cited paragraph of the Lopez 2nd Decl. addresses Mr. Lopez's improper legal opinions regarding the meaning of Compact terms. <i>Id.</i> The cited paragraph of the Lopez 2nd Decl. agrees that "Annual" and "Accrued" credits and debits are different because they have a difference timeframe for accounting. See Lopez 2nd Decl., para 13. <b>Texas's stated material fact remains undisputed. Fed. R. Civ. P. 56(a), 56(c)(1), (2), (4).</b>
53.	<p>Once delivered, New Mexico's regulatory authority over water released from the Reservoir ceases.</p>	63	NM-EX 007, D'Antonio 2nd Decl., paras. 8, 24, 16, 17, 50, 51, 53, 54.	The cited paragraphs of the D'Antonio 2nd Decl. do not establish any genuine dispute of fact and cannot be presented at trial in any admissible form. Fed. R. Civ. P. 56(a), 56(c)(1), (2), (4); see Texas's General Objection #3. The cited paragraphs of the D'Antonio 2nd Decl. address Mr. D'Antonio's improper and inadmissible legal opinions regarding the meaning of Compact terms, and the scope of the Compact's apportionment. <i>Id.</i> <b>Texas's stated material fact remains undisputed. Fed. R. Civ. P. 56(a), 56(c)(1), (2), (4).</b>

**EXHIBIT B**  
**THE STATE OF TEXAS'S OBJECTIONS AND RESPONSES TO THE STATE OF NEW MEXICO'S APPENDIX 1**

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54.	Article VII precludes Colorado and New Mexico from increasing the amount of water in post- 1929 upstream storage reservoirs whenever there is less than 400,000 acre feet of usable water in Elephant Butte Reservoir and Caballo Reservoir. If there are accrued credits in Elephant Butte Reservoir, Colorado or New Mexico (depending on which or both have accrued credits in the Reservoir) may relinquish those credits at any time. Article VII of the Compact addresses upstream depletions and the release of water from upstream post-1929 reservoirs, in the context of relinquishment of credits by Colorado and New Mexico for the benefit of interests downstream of Elephant Butte Reservoir. The significance of accepting relinquishment is that Colorado or New Mexico can increase the amount of water stored in post-1929 upstream reservoirs in an amount equal to the water relinquished and accepted by Texas. But relinquishment alone is not effective unless Texas accepts that relinquishment.	37-38, 64	NM-EX 008, Lopez 2nd Decl., para. 14.	The cited paragraph of the Lopez 2nd Decl. does not establish any genuine dispute of fact and cannot be presented at trial in any admissible form. Fed. R. Civ. P. 56(a), 56(c), (1), (2), (4); see Texas's General Objection #2. The cited paragraph of the Lopez 2nd Decl. addresses Mr. Lopez's improper and inadmissible legal opinions regarding the meaning of Compact terms. <i>Id.</i> Further, the cited paragraph of the Lopez 2nd Decl. agrees with Texas regarding the general meaning of Article VII of the Compact. See Lopez 2nd Decl., para 14. <b>Texas's stated material fact remains undisputed. Fed. R. Civ. P. 56(a), 56(c)(1), (2), (4).</b>
55.	Articles VII and VIII of the Compact provide that the Texas Rio Grande Commission shall demand and ensure that Colorado and New Mexico limit their upstream activities and release water in Elephant Butte Reservoir to ensure that Texas receives its apportionment. Once Colorado delivers a certain indexed volume of water to New Mexico at the New Mexico state line, Colorado has no further dominion or control over the water delivered.	61, 63	This fact/s is undisputed by New Mexico.	<b>Texas's stated material fact is undisputed. Fed. R. Civ. P. 56(a), 56(c)(1).</b>
56.	But relinquishment alone is not effective unless Texas accepts that relinquishment. The power to accept relinquishment is solely vested in Texas because the water in Elephant Butte Reservoir is apportioned to Texas. New Mexico has no power to accept relinquishment because it has no interest in the water in Elephant Butte Reservoir. The Compact provides that Texas – not New Mexico –may accept relinquished water (relinquished by Colorado and New Mexico) thereby allowing additional storage in upstream reservoirs.	38, 65	NM-EX 008, Lopez 2nd Decl., para. 15.	The cited paragraph of the Lopez 2nd Decl. does not establish any genuine dispute of fact and cannot be presented at trial in any admissible form. Fed. R. Civ. P. 56(a), 56(c), (1), (2), (4); see Texas's General Objection #2. The cited paragraph of the Lopez 2nd Decl. addresses Mr. Lopez's improper and inadmissible legal opinions regarding the meaning of Compact terms. <i>Id.</i> Further, the cited paragraph of the Lopez 2nd Decl. agrees with Texas regarding the general meaning of Article VII of the Compact and states that "[u]nder Article VII of the Compact, Texas has the sole authority to accept relinquishment. . . ." See Lopez 2nd Decl., para. 15. <b>Texas's stated material fact remains undisputed. Fed. R. Civ. P. 56(a), 56(c)(1), (2), (4).</b>
57.	Article VIII of the Compact provides that during the month of January each year, Texas's Rio Grande Commissioner may demand of Colorado and New Mexico that they release water from upstream storage reservoirs constructed after 1929 to the amount of accrued debits in Elephant Butte Reservoir sufficient to bring the quantity of usable water in Elephant Butte and Caballo Reservoirs to 600,000 acre feet by March first, and to maintain this quantity in storage until April thirteenth, to the end that a normal release of 790,000 acre feet may be made from Project storage in that year.	38	This fact/s is undisputed by New Mexico.	<b>Texas's stated material fact is undisputed. Fed. R. Civ. P. 56(a), 56(c)(1).</b>
58.	Again, the demand is to be made by Texas in order to protect its apportionment in Elephant Butte and Caballo Reservoirs from upstream depletion. Article VIII of the Compact provides that the Texas Rio Grande Commissioner, not New Mexico, can demand of Colorado and New Mexico the release of water from these upstream storage reservoirs under specified circumstances. The drafters took great care to ensure that New Mexico delivers sufficient water in Elephant Butte Reservoir to maintain normal releases of Project water for irrigation demands in Texas, Project lands in New Mexico, and delivery to Mexico. During Compact negotiations, Texas argued that normal releases should be 800,000 acre feet and New Mexico, seeking to protect the Middle Rio Grande from Texas, argued for a much lower number. Ultimately, after much argument and negotiation, the states agreed to 790,000 acre feet as a normal release for Texas.	38, 64, 80, 86,	NM-EX 011, Stevens 2nd Decl., paras. 15, 27. NM-EX 008, Lopez 2nd Decl., paras. 16, 19, 20, 21.	The cited paragraphs of the Stevens 2nd Decl. and the Lopez 2nd Decl. do not establish any genuine dispute of fact and the Lopez 2nd Decl. cannot be presented at trial in any admissible form. Fed. R. Civ. P. 56(a), 56(c)(1), (2), (4). The cited paragraphs do not dispute that "the states agreed to 790,000 acre-feet as a normal release for Texas" and the Stevens 2nd Decl. indicates that New Mexico's negotiating position began at "no higher than 700,000 acre-feet," which can reasonably be inferred to be "a much lower number" than the 790,000 acre-feet that the states ultimately agreed to. Stevens 2nd Decl., para. 27. <b>Texas's stated material fact remains undisputed. Fed. R. Civ. P. 56(a), 56(c)(1), (2), (4).</b>
59.	Nor does [the Compact] provide the United States as the owner and operator of the Project any ability to protect the volume of water that is "delivered" in Elephant Butte Reservoir. That authority is vested solely in the Texas Rio Grande Commissioner.	64	NM-EX 011, Stevens 2nd Decl., para. 19. NM-EX 008, Lopez 2nd Decl., para. 17.	The cited paragraphs of the Stevens 2nd Decl. and the Lopez 2nd Decl. do not establish any genuine dispute of fact and the cited paragraph of the Lopez 2nd Decl. cannot be presented at trial in any admissible form. Fed. R. Civ. P. 56(a), 56(c)(1), (2), (4). See Texas's General Objection #2. The cited paragraphs of the Stevens 2nd Decl. and Lopez 2nd Decl. opine on the meaning of the Compact and include improper legal conclusions. Fed. R. Evid. 704. <b>Texas's stated material fact remains undisputed. Fed. R. Civ. P. 56(a), 56(c)(1), (2), (4).</b>
60.	Articles IX and X deal with the development of additional waters among New Mexico, Colorado, and the United States and how those waters are to be treated and used. These provisions do not allow for any post-1938 depletions.	38-39	NM-EX 008, Lopez 2nd Decl., para. 24.	The cited paragraph of the Lopez 2nd Decl. does not establish any genuine dispute of fact and cannot be presented at trial in any admissible form. Fed. R. Civ. P. 56(a), 56(c), (1), (2), (4); see Texas's General Objection #2. The cited paragraph of the Lopez 2nd Decl. addresses Mr. Lopez's improper and inadmissible legal opinions regarding the meaning of Compact terms. <i>Id.</i> Further, the cited paragraph of the Lopez 2nd Decl. does not even address Articles IX and X of the Compact. See Lopez 2nd Decl., para. 24. <b>Texas's stated material fact remains undisputed. Fed. R. Civ. P. 56(a), 56(c)(1), (2), (4).</b>

**EXHIBIT B**  
**THE STATE OF TEXAS'S OBJECTIONS AND RESPONSES TO THE STATE OF NEW MEXICO'S APPENDIX 1**

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61.	Article XI addresses the then-existing Supreme Court litigation between Texas and New Mexico and indicates that the Compact resolves that dispute.	39	This fact/s is undisputed by New Mexico.	<b>Texas's stated material fact is undisputed. Fed. R. Civ. P. 56(a), 56(c)(1).</b>
62.	Article XII of the Compact provides the powers of the Rio Grande Commission established in this article. The Commission may, by unanimous action, adopt rules and regulations to govern its proceedings. Finally, "the findings of the Commission shall not be conclusive in any court or tribunal which may be called upon to interpret or enforce this Compact."	39	This fact/s is undisputed by New Mexico.	<b>Texas's stated material fact is undisputed. Fed. R. Civ. P. 56(a), 56(c)(1).</b>
63.	Article XVI of the Compact provides that its provisions shall not affect the 1906 Treaty with Mexico or treaties and rights of Indian Tribes. Article XIV provides that any losses resulting from the delivery or loss of water to Mexico shall never affect the delivery schedules in Articles III and IV of the Compact.	39	This fact/s is undisputed by New Mexico.	<b>Texas's stated material fact is undisputed. Fed. R. Civ. P. 56(a), 56(c)(1).</b>
64.	The balance of the Compact provisions deal with miscellaneous matters.	39	This fact/s is undisputed by New Mexico.	<b>Texas's stated material fact is undisputed. Fed. R. Civ. P. 56(a), 56(c)(1).</b>
65.	In 1966, New Mexico and Texas together filed suit in the Supreme Court against Colorado, alleging that Colorado's upstream depletions were causing harm to the downstream states.	46	This fact/s is undisputed by New Mexico.	<b>Texas's stated material fact is undisputed. Fed. R. Civ. P. 56(a), 56(c)(1).</b>
66.	Texas brought the 1935, 1951, and 1966 actions, as well as entered the 1938 Compact, to prevent the water delivered in Elephant Butte Reservoir from being depleted by upstream actions. These were not academic exercises. This case, too, is focused on the fundamental importance of maintaining depletions at the conditions that existed in 1938. Texas took all of these actions to ensure that the volumes of water Texas had agreed to as its apportionment in 1938 would actually be received, and not intercepted and depleted between Elephant Butte Reservoir and Texas.	46	NM-EX 011, Stevens 2nd Decl., para. 14.	The cited paragraph of the Stevens 2nd Decl. does not establish any genuine dispute of fact. Fed. R. Civ. 56(a), 56(c)(1). The paragraph does not specifically address the 1935, 1951 and 1966 actions and the allegations in those actions speak for themselves. <b>Texas's stated material fact remains undisputed. Fed. R. Civ. 56(a), 56(c)(1).</b>
67.	In fact, no Compact accounting has ever taken place below Elephant Butte Reservoir because, as noted, Texas's apportionment is delivered to Elephant Butte Reservoir. The Report of the Engineer Advisors to the Rio Grande Compact Commissioners, dated February 22, 2002, demonstrates that there is nothing in all the figures that the Compact Commission collects that addresses the 57/43 split. This is because that is an allocation issue and not a Compact issue. If it were a Compact issue, it would have been accounted for as such.	71-72	NM-EX 008, Lopez 2nd Decl., para. 31.	The cited paragraph of the Lopez 2nd Decl. does not establish any genuine dispute of fact and cannot be presented at trial in any admissible form. Fed. R. Civ. P. 56(a), 56(c), (1), (2), (4); see Texas's General Objection #2. The cited paragraph of the Lopez 2nd Decl. does not even address Compact accounting below Elephant Butte Reservoir or Texas's statement that "there is nothing in all the figures . . . that addresses the 57/43 split. See Lopez 2nd Decl., para 31. <b>Texas's stated material fact remains undisputed. Fed. R. Civ. P. 56(a), 56(c)(1), (2), (4).</b>
68.	Section 2.1 of the Memorandum of Understanding between the Rio Grande Compact Commission and the BOR, included in the 2001 Report of the Rio Grande Compact Commission, confirms that the Compact accounting data includes "deliveries by New Mexico to Texas at Elephant Butte."	72	NM-EX 008, Lopez 2nd Decl., para. 32.	The cited paragraph of the Lopez 2nd Decl. does not establish any genuine dispute of fact and cannot be presented at trial in any admissible form. Fed. R. Civ. P. 56(a), 56(c), (1), (2), (4); see Texas's General Objection #2. The cited paragraph of the Lopez 2nd Decl. confirms the language in Section 2.1 of the Memorandum of Understanding between the Rio Grande Compact Commission and the BOR. See Lopez 2nd Decl., para. 32. <b>Texas's stated material fact remains undisputed. Fed. R. Civ. P. 56(a), 56(c)(1), (2), (4).</b>
69.	Based upon the application of well-established principles of compact interpretation, the Compact protects the Project and its operations under the conditions that existed in 1938, and relies on the Project, as it operated in 1938, as the means to provide Compact apportionments. Accordingly, the drafters did not provide river flow adjustments below Elephant Butte Reservoir because they understood the operations of the Project in 1938 and intended them to continue.	77, 79	NM-EX 008, Lopez 2nd Decl., para. 33.	The cited paragraph of the Lopez 2nd Decl. does not establish any genuine dispute of fact and cannot be presented at trial in any admissible form. Fed. R. Civ. P. 56(a), 56(c), (1), (2), (4); see Texas's General Objection #2. The cited paragraph of the Lopez 2nd Decl. addresses Mr. Lopez's improper and inadmissible legal opinions regarding the meaning of Compact terms. <i>Id.</i> <b>Texas's stated material fact remains undisputed. Fed. R. Civ. P. 56(a), 56(c)(1), (2), (4).</b>
70.	Other Compact provisions demonstrate the drafters' intent to protect the normal operation of the Project, i.e., a normal release of 790,000 acre feet from further development of the river.	78	NM-EX 011, Stevens 2nd Decl., para. 23.	The cited paragraph of the Stevens 2nd Decl. does not establish any genuine dispute of fact. Fed. R. Civ. P. 56(a), 56(c)(1). The cited paragraph of the Stevens 2nd Decl. does not address the "normal operation of the Project" or the "normal release of 790,000 acre feet." See Stevens 2nd Decl., para. 23. <b>Texas's stated material fact remains undisputed. Fed. R. Civ. P. 56(a), 56(c)(1).</b>
71.	The Compact also protects Project Storage to allow for "a normal release" from the Project. If Colorado or New Mexico have Accrued Debits stored in reservoirs constructed after 1929, then Texas may demand the release of that water to maintain the quantity of Usable Water in Project Storage at levels sufficient to allow "a normal release" of 790,000 acre feet from Project Storage in that year. Thus, the drafters protected the quantity of water flowing in Elephant Butte Reservoir during dry years, or years when New Mexico and Colorado are filling reservoirs constructed after 1929.	79	NM-EX 008, Lopez 2nd Decl., para. 21.	The cited paragraph of the Lopez 2nd Decl. does not establish any genuine dispute of fact and cannot be presented at trial in any admissible form. Fed. R. Civ. P. 56(a), 56(c), (1), (2), (4); see Texas's General Objection #2. The cited paragraph of the Lopez 2nd Decl. addresses Mr. Lopez's improper and inadmissible legal opinions regarding the meaning of Compact terms. <i>Id.</i> <b>Texas's stated material fact remains undisputed. Fed. R. Civ. P. 56(a), 56(c)(1), (2), (4).</b>

**EXHIBIT B**  
**THE STATE OF TEXAS'S OBJECTIONS AND RESPONSES TO THE STATE OF NEW MEXICO'S APPENDIX 1**

<u>TAF NO.</u>	<u>"TEXAS ALLEGATION OF FACT"</u> <u>[New Mexico's Appendix 1 Table]</u>	<u>TEX. BR. PAGE</u>	<u>NEW MEXICO RESPONSE</u> <u>[New Mexico's Appendix 1 Table]</u>	<u>TEXAS RESPONSE</u>
72.	Mr. Lopez, speaking on behalf of the state of New Mexico, indicates the Compact imposes an obligation on Colorado to maintain its depletions of the Rio Grande to those levels that existed in 1938. In New Mexico above Elephant Butte Reservoir, New Mexico is required to limit its depletions of the Rio Grande to the levels existing in 1938. New Mexico, however, contends the Compact imposes no limitation upon depletions of the Rio Grande Below Elephant Butte Reservoir. In an effort to qualify this distinction, Mr. Lopez testified "if our actions are such that were (sic) depleting the Project supply and Texas is not getting their apportionment and they let us know and, yes, in fact, we verify it, yes, I think we have to do something about it." He further elaborated that in the event Texas did not provide notice, but New Mexico was aware that Texas was not getting its apportionment, New Mexico would have an obligation to remedy the situation.	89-90	This fact/s is undisputed by New Mexico.	<b>Texas's stated material fact is undisputed. Fed. R. Civ. P. 56(a), 56(c)(1).</b>
<b>DOWNSTREAM CONTRACT ASSERTIONS</b>				
73.	These [DOWNSTREAM] contracts were negotiated, entered into, and approved contemporaneously with the negotiation and execution of the 1938 Compact.	40	This fact/s is undisputed by New Mexico.	<b>Texas's stated material fact is undisputed. Fed. R. Civ. P. 56(a), 56(c)(1).</b>
74.	<p>Repayment for municipal, power, and other non-irrigation components were required to bear interest. Initially, the repayment obligation was dealt with through the issuance of certificates to landowners and contracts with irrigation associations. Predecessor irrigation associations of EBID and EP#1 had these types of agreements with the United States.</p> <p>The 1937 US/EP#1 Contract and the 1937 US/EBID Contract are, in essence identical, with certain District-specific exceptions. Both were entered into in November 1937 (EBID on November 9, 1937 and EP#1 on November 10, 1937). The 1937 US/EP#1 Contract refers to predecessor contracts with the El Paso Valley Water Users' Association and the 1937 US/EBID Contract refers to the predecessor contract of the Elephant Butte Water Users' Association. Both 1937 contracts refer to joint contracts entered into over time between the two predecessor associations that dealt with various aspects of repayment and operation of the Project.</p> <p>Article 3 of both contracts explains the rationale for the 1937 contracts as relieving the Districts of construction costs associated with power, an interest bearing component of the Project, and allowing for the reallocation of the Districts' repayment obligation accordingly. In return, the power features of the Project were conveyed to the United States. This resulted in a reduction to each District of the construction costs chargeable to power development. The repayment obligation articulated in Article 5 of the respective contracts indicates that EBID is responsible for 56.7742 per centum of the fixed costs attributable to the repayment obligation and EP#1 is responsible for 43.2258 per centum of the fixed costs attributable to the repayment obligation. Article 6 of the contracts similarly adjusts the Districts' respective operation and maintenance costs for the Project. In Article 7, interest charges related to the power component of the Project for the years 1930-1936, were added to the Districts' repayment obligation.</p> <p>Article 8 in each of the 1937 contracts provides the new repayment obligation of the Districts and delineates how those payments are to be made. Article 9 in each of the two contracts deals with the segregation of the operation and maintenance purposes of the Project for power from the remaining features of the Project and the United States' obligation to continue to operate the Project. Article 10 of the two contracts deals with the payment by the Districts to the United States for the operation and maintenance of the Project and explains how operation and maintenance charges to the Districts for 1937 will be dealt with. Article 11 deals with how operation and maintenance charges will be dealt with after January 1, 1938.</p> <p>Article 12 addresses the provision of water to HCCRD in Texas and how the charges from HCCRD for the "rental" of water will be credited against the two Districts' payment obligation. Article 13 provides that the Project water supply will be primarily for irrigation. Articles 15 and 16 address the continued construction of Project features and how funding will be addressed. Articles 17 and 18 again deal with the power components of the Project, including the conveyance of the Districts' interest in power to the United States.</p> <p>Articles 19, 20, and 21 address payment, and also address the requirement to repay even if individuals within the Districts default on payments to the Districts and even if it requires the Districts to exercise their respective taxing authority to insure that payments are made. The remaining provisions of the contracts are general provisions.</p>	41-44	The contracts speak for themselves.	<b>Texas's stated material fact is undisputed. Fed. R. Civ. P. 56(a), 56(c)(1).</b>
75.	New Mexico admits that whatever interest New Mexico may have below Elephant Butte Reservoir, it is limited to the rights that exist pursuant to the EBID contracts. New Mexico also admits that New Mexico's interests below Elephant Butte Reservoir are strictly limited to the four corners of the 1937 contract between EBID and the United States and the 1938 contract between EBID, the United States, and EP#1. New Mexico admits that the use, place of use, timing of delivery, and total amount of water is absolutely limited by these contracts.	69-70	NM-EX 008, Lopez 2nd Decl., para. 30.	The cited paragraph of the Lopez 2nd Decl. does not establish any genuine dispute of fact and cannot be presented at trial in any admissible form. Fed. R. Civ. P. 56(a), 56(c), (1), (2), (4); see Texas's General Objection #2. The cited paragraph of the Lopez 2nd Decl. agrees that Texas's stated material fact relies on Mr. Lopez's 30(b)(6) deposition testimony. The attempt to provide additional context for the 30(b)(6) testimony in the Lopez 2nd Decl. does not create a genuine dispute of fact. <b>Texas's stated material fact remains undisputed. Fed. R. Civ. P. 56(a), 56(c)(1), (2), (4).</b>
76.	<p>The water delivered is apportioned to Texas, subject to the Treaty obligation to Mexico and the United States' Downstream Contracts with EBID. Texas's apportionment is delivered by New Mexico in Elephant Butte Reservoir pursuant to Article IV of the Compact, subject only to the 1906 Treaty and the United States' contract with EBID.</p> <p>Notably, absent post-1938 depletions caused by New Mexico, the Texas Project allocation and the Texas apportionment would be the same. The water New Mexico delivers in Elephant Butte Reservoir is apportioned to Texas, subject to the 1906 Treaty obligation to Mexico and subject to EBID's contract entitlements. The United States' Contracts with EBID fully define EBID's rights, and nothing in the contracts gives the state of New Mexico any rights. EBID is entitled to 88/155 of the available Project supply, which corresponds to its 56.7742 repayment obligation.</p> <p>The 1938 depletions are protected by the Compact, not by the Project contracts.</p>	36, 61, 45	NM-EX 008, Lopez 2nd Decl., paras. 24, 26. NM-EX 011, Stevens 2nd Decl., para. 23.	The cited paragraphs of the Lopez 2nd Decl. and Stevens 2nd Decl. do not establish any genuine dispute of fact and the cited paragraph of the Lopez 2nd Decl. cannot be presented at trial in any admissible form. Fed. R. Civ. P. 56(a), 56(c), (1), (2), (4); see Texas's General Objection #2. The cited paragraph of the Lopez 2nd Decl. and Stevens 2nd Decl. addresses Mr. Lopez and Dr. Stevens' improper and inadmissible legal opinions regarding the meaning of Compact terms. Fed. R. Evid. 704. <b>Texas's stated material fact remains undisputed. Fed. R. Civ. P. 56(a), 56(c)(1), (2), (4).</b>

**EXHIBIT B**  
**THE STATE OF TEXAS'S OBJECTIONS AND RESPONSES TO THE STATE OF NEW MEXICO'S APPENDIX 1**

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77.	This amount of water must be used on Project lands that are limited to 88,000 acres, plus up to an additional 2,640 acres. Absent subsequent contractual arrangements, the water is to be used for irrigation purposes.	45	NM-EX 008, Lopez 2nd Decl., para. 27.	The cited paragraph of the Lopez 2nd Decl. does not establish any genuine dispute of fact and cannot be presented at trial in any admissible form. Fed. R. Civ. P. 56(a), 56(c), (1), (2), (4); <i>see</i> Texas's General Objection #2. The cited paragraph of the Lopez 2nd Decl. does not address the "amount of water" used on Project lands and agrees that absent subsequent contractual arrangements, the water is to be used for irrigation purposes. <b>Texas's stated material fact remains undisputed. Fed. R. Civ. P. 56(a), 56(c)(1), (2), (4).</b>
78.	The contracts only deal with the available Project supply and cannot address depletions in New Mexico that reduce the volume of that supply.	45	NM-EX 008, Lopez 2nd Decl., para. 28.	The cited paragraph of the Lopez 2nd Decl. does not establish any genuine dispute of fact and cannot be presented at trial in any admissible form. Fed. R. Civ. P. 56(a), 56(c), (1), (2), (4); <i>see</i> Texas's General Objection #2. The cited paragraph of the Lopez 2nd Decl. states that Texas's assertion regarding the contracts "is correct." Lopez Decl., para. 28. <b>Texas's stated material fact remains undisputed. Fed. R. Civ. P. 56(a), 56(c)(1), (2), (4).</b>
79.	The repayment contract between EBID and EP#1 that established the Districts' respective allocations was effective in February 1938, one month before the states signed the Compact.	69	NM-EX 008, Lopez 2nd Decl. 29	The cited paragraph of the Lopez 2nd Decl. does not establish any genuine dispute of fact and cannot be presented at trial in any admissible form. Fed. R. Civ. P. 56(a), 56(c), (1), (2), (4); <i>see</i> Texas's General Objection #2. The terms of the contract speak for themselves. <b>Texas's stated material fact is undisputed. Fed. R. Civ. P. 56(a), 56(c)(1).</b>
80.	Thus, the Project was among the "present uses" of water in the three states that the Compact drafters intended to protect.	69	This fact/s is undisputed by New Mexico.	The cited paragraph of the Lopez 2nd Decl. does not establish any genuine dispute of fact and cannot be presented at trial in any admissible form. Fed. R. Civ. P. 56(a), 56(c), (1), (2), (4); <i>see</i> Texas's General Objection #2. The cited paragraph of the Lopez 2nd Decl. merely seeks to provide additional context for the undisputed Reynolds' quote. Further, para. 41 of the Lopez 2nd Decl. included improper and inadmissible legal opinion on the meaning of the Compact. <i>Id.</i> <b>Texas's stated material fact remains undisputed. Fed. R. Civ. P. 56(a), 56(c)(1), (2), (4).</b>
81.	Twelve years later, during the 1968 dispute with Colorado, New Mexico State Engineer Reynolds opined that the delivery schedules upon which the Compact relied "makes the control of ground water appropriations in the upstream states essential" as otherwise the states could not adhere to their "compact commitments."	18	NM-EX 008, Lopez 2nd Decl., para. 41.	The cited paragraph of the Lopez 2nd Decl. does not establish any genuine dispute of fact and cannot be presented at trial in any admissible form. Fed. R. Civ. P. 56(a), 56(c), (1), (2), (4); <i>see</i> Texas's General Objection #2. The cited paragraph of the Lopez 2nd Decl. discusses terms of the 1938 contract, which speak for itself. <b>Texas's stated material fact remains undisputed. Fed. R. Civ. P. 56(a), 56(c)(1), (2), (4).</b>
82.	The Project, in turn, is the means by which the water apportioned to Texas by the Compact is stored in Elephant Butte Reservoir and subsequently delivered to Texas, subject to deliveries to EBID pursuant to its contract with the United States, and to Mexico pursuant to the 1906 Treaty.	23	NM-EX 008, Lopez 2nd Decl., para. 40.	The cited paragraph of the Lopez 2nd Decl. does not establish any genuine dispute of fact and cannot be presented at trial in any admissible form. Fed. R. Civ. P. 56(a), 56(c), (1), (2), (4); <i>see</i> Texas's General Objection #2. The cited paragraph of the Lopez 2nd Decl. addresses Mr. Lopez's improper and inadmissible legal opinions regarding the meaning of Compact terms. <i>Id.</i> <b>Texas's stated material fact remains undisputed. Fed. R. Civ. P. 56(a), 56(c)(1), (2), (4).</b>
83.	Of the 790,000 acre feet delivered to the Reservoir, New Mexico argues that it is entitled to 57 percent of (1) usable water released from the Reservoir, (2) arroyo flow and other accretions below the Reservoir, and (3) return flows from the use of water on Project lands. There is no question that these are the elements associated with the total volume of water to which the Districts are entitled pursuant to the Downstream Contracts, and that these figures mirror the conditions that were contemplated in 1938.	P66 P67	NM-EX 008, Lopez 2nd Decl., para. 25.	The cited paragraph of the Lopez 2nd Decl. does not establish any genuine dispute of fact and cannot be presented at trial in any admissible form. Fed. R. Civ. P. 56(a), 56(c), (1), (2), (4); <i>see</i> Texas's General Objection #2. The cited paragraph of the Lopez 2nd Decl. addresses Mr. Lopez's improper and inadmissible legal opinions regarding the meaning of Compact terms. <i>Id.</i> <b>Texas's stated material fact remains undisputed. Fed. R. Civ. P. 56(a), 56(c)(1), (2), (4).</b>
84.	X			
<b>RIO GRANDE PROJECT AND HYDROLOGY RELATED STATEMENTS</b>				
85.	The Project was ultimately authorized pursuant to the Rio Grande Reclamation Project Act of 1905 as a federal project that provides water from the Rio Grande primarily for agricultural irrigation along the Rio Grande in southern New Mexico and in the El Paso Valley of Texas. Elements of the Project also provide hydropower, flood control, and water for municipal users. It included construction of Elephant Butte Dam and Reservoir ("Elephant Butte Reservoir" or "Reservoir") on the Rio Grande near Truth or Consequences, New Mexico, to provide stored water for Project users.	12	This fact/s is undisputed by New Mexico.	<b>Texas's stated material fact is undisputed. Fed. R. Civ. P. 56(a), 56(c)(1).</b>
86.	EBID water users receive deliveries of surface water from the Project and many also have groundwater wells.	22	This fact/s is undisputed by New Mexico.	<b>Texas's stated material fact is undisputed. Fed. R. Civ. P. 56(a), 56(c)(1).</b>

**EXHIBIT B**  
**THE STATE OF TEXAS'S OBJECTIONS AND RESPONSES TO THE STATE OF NEW MEXICO'S APPENDIX 1**

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87.	EBID landowners, and those entities owning EBID acres, such as the city of Las Cruces, are the only New Mexico water users authorized to use releases from the Reservoir.	22	NM-EX 006, Barroll 2nd Decl., para. 10.	The cited paragraph of the Barroll 2nd Decl. does not establish any genuine dispute of fact. Fed. R. Civ. P. 56(a), 56(c)(1). Dr. Barroll states that "[a] small amount of water released from Project storage is used by pre-Compact water rights such as those associate with the Bonita lateral." Barroll 2nd Decl., para. 10. Mr. Lopez, a New Mexico 30(b)(6) witness stated that the Bonita Lateral involves "not a large amount" of water [RSD to add Lopez 30b6 cite and excerpt for appendix]. The cited paragraph's regarding "the small amount of water" releaed for users on the Bonita Lateral is a red herring and does not materially dispute the fundamental point set forth in the stated fact that EBID and its patrons are the users of Elephant Butte Reservoir water. <b>Texas's stated material fact remains undisputed. Fed. R. Civ. P. 56(a), 56(c)(1).</b>
88.	EBID water users rely on releases from the Reservoir, and are also entitled to rely on return flows from Project operations.	22	NM-EX 006, Barroll 2nd Decl., paras. 28, 29, 46.	The cited paragraphs of the Barroll 2nd Decl. do not establish any genuine dispute of fact and the material cannot be presented at trial in any admissible form. Fed. R. Civ. P. 56(a), 56(c)(1), (2), (4); <i>see</i> Texas's General Objection #1. The cited paragraphs appear to agree that EBID water users are entitled to rely on return flows. See Barroll 2nd Decl, para. 46. <b>Texas's stated material fact remains undisputed. Fed. R. Civ. P. 56(a), 56(c)(1), (2), (4).</b>
89.	EBID water users also rely on groundwater pumping.	22	NM-EX 006, Barroll 2nd Decl., paras. 27, 28, 30, 31, 32, 33.	The cited paragraphs of the Barroll 2nd Decl. do not establish any genuine dispute of fact and cannot be presented at trial in any admissible form. Fed. R. Civ. P. 56(a), 56(c)(1), (2), (4); <i>see</i> Texas's General Objection #1. The cited paragraphs appear to agree that EBID water users also rely on groundwater pumping. <i>See, e.g.,</i> Barroll 2nd Decl, para. 28 ("[t]hroughout the history of the Project, . . . farmers throughout the Project have relied on groundwater supplies . . ."). <b>Texas's stated material fact remains undisputed. Fed. R. Civ. P. 56(a), 56(c)(1), (2), (4).</b>
90.	Municipal water users include the city of Las Cruces, the second largest city in New Mexico, which has grown from a population of several thousand in 1938 to a population of more than 100,000 in the city limits and considerably more in the service area in 2020.	22	This fact/s is undisputed by New Mexico.	<b>Texas's stated material fact is undisputed. Fed. R. Civ. P. 56(a), 56(c)(1).</b>
91.	The city of Las Cruces owns or leases approximately 1,412 acres of surface water rights in EBID.	23	NM-EX 013, Wilson Decl., para. 8.	The cited paragraph of the Wilson Decl. does not establish any genuine dispute of fact and cannot be presented at trial in any admissible form. Fed. R. Civ. P. 56(a), 56(c)(1), (2), (4); <i>see</i> Texas's General Objection #6. The cited paragraph of the Wilson Decl. does not dispute Texas's stated material fact. <b>Texas's stated material fact remains undisputed. Fed. R. Civ. P. 56(a), 56(c)(1), (2), (4).</b>
92.	The city does not use its EBID surface water supplies. Thus, Las Cruces relies solely on groundwater.	23	NM-EX 013, Wilson Decl., para. 8.	The cited paragraph of the Wilson Decl. does not establish any genuine dispute of fact and cannot be presented at trial in any admissible form. Fed. R. Civ. P. 56(a), 56(c)(1), (2), (4); <i>see</i> Texas's General Objection #6. The cited paragraph of the Wilson Decl. does not dispute Texas's stated material fact; it does not address whether the City of Las Cruces uses EBID surface water supplies. <b>Texas's stated material fact remains undisputed. Fed. R. Civ. P. 56(a), 56(c)(1), (2), (4).</b>
93.	The Project is dependent on the Compact for its water supply.	23	NM-EX 006, Barroll 2nd Decl., paras. 9, 46. NM-EX 100, Barroll Rep. at 1. NM-EX 107, Lopez Rep. at 24-26.	The cited paragraphs of the Barroll 2nd Decl. and the cited pages of the Barroll Rep. and Lopez Rep. do not establish any genuine dispute of fact and cannot be presented at trial in any admissible form. Fed. R. Civ. P. 56(a), 56(c)(1), (2), (4); <i>see</i> Texas's General Objections ##7, 1. The cited paragraphs of the Barroll 2nd Decl. assert that "Project return flows form part of Project supply" and that the Compact "provides limit[ed] and constraints" relating to Project storage. Barroll 2nd Decl., paras. 9, 46. The cited paragraphs of the Barroll 2nd Decl. do not address the stated material fact that "[t]he Project is dependent on the Compact for its water supply." The cited page of the Barroll Rep. does not even mention the Rio Grande Compact. Barroll Rep. at 1. <i>See</i> Texas's General Objection # 7. The cited pages of the Lopez Rep. include Mr. Lopez's improper and inadmissible legal conclusions regarding the meaning of terms of the Rio Grande Compact. <i>See</i> Texas's General Objections ## 7, 2. To the extent Mr. Lopez provides legal conclusions on the ultimate issues before the Special Master, it is improper. Fed. R. Evid. 704; <i>see</i> Texas's General Objection # 2. In addition, the cited pages of the Lopez Rep. merely states that "the Compact is inextricably intertwined with the Rio Grande Project" and do not address the stated fact that "[t]he Project is dependent on the Compact for its water supply." Lopez Rep. at 24; <i>see</i> Texas's General Objection # 7. <b>Texas's stated material fact remains undisputed. Fed. R. Civ. P. 56(a), 56(c)(1), (2), (4).</b>

**EXHIBIT B**  
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94.	The Project, in turn, is the means by which the water apportioned to Texas by the Compact is stored in Elephant Butte Reservoir and subsequently delivered to Texas, subject to deliveries to EBID pursuant to its contract with the United States, and to Mexico pursuant to the 1906 Treaty.	23	NM-EX 008, Lopez 2nd Decl. para. 39. NM-EX 012, Sullivan Decl., paras. 23, 99.	The cited paragraphs of the Lopez 2nd Decl. and the Sullivan Decl. do not establish any genuine dispute of fact and the cited paragraph of the Lopez 2nd Decl. cannot be presented at trial in any admissible form. Fed. R. Civ. P. 56(a), 56(c)(1), (2), (4). See Texas's General Objection #2. The cited paragraph of the Lopez 2nd Decl. address New Mexico's alleged notice issues regarding Texas's Complaint and does not address the stated material fact. Lopez 2nd Decl., para. 39. The cited paragraphs of the Sullivan Decl. state that the stated material fact implicates legal issues in the case and proceeds to assert Mr. Sullivan's legal opinion regarding ultimate issues in the litigation. That legal opinion is improper and inadmissible. Fed. R. Evid. 704. <b>Texas's stated material fact remains undisputed. Fed. R. Civ. P. 56(a), 56(c)(1), (2), (4).</b>
95.	Both the Project and the Compact were conceived and implemented prior to the significant development of groundwater in the Rincon and Mesilla basins of New Mexico, which began in the early 1950s.	23	NM-EX 006, Barroll 2nd Decl., paras. 14, 17, 19. NM-EX 012, Sullivan Decl., paras. 23, 99.	The cited paragraphs of the Barroll 2nd Decl. and the Sullivan Decl. do not establish any genuine dispute of fact. Fed. R. Civ. P. 56(a), 56(c)(1). The cited paragraphs of the Barroll 2nd Decl. do not dispute significant groundwater development in the 1950s (Barroll 2nd Decl., para. 19). The cited paragraphs of the Sullivan Decl. merely restate Texas's stated material fact. Sullivan Decl., para. 99. <b>Texas's stated material fact remains undisputed. Fed. R. Civ. P. 56(a), 56(c)(1).</b>
96.	Today, the Project includes Elephant Butte Dam and Reservoir, Caballo Dam and Reservoir located immediately below Elephant Butte Dam, a hydropower plant at Elephant Butte Dam, three diversion dams on the Rio Grande in New Mexico (Percha, Leasburg, and Mesilla), two diversion dams on the Rio Grande in Texas (American and International, both owned and operated by the International Boundary and Water Commission), and an extensive system of canals, laterals, waste ways, and drainage ways that support irrigation operations in EBID and EP#1.	24	NM-EX 006, Barroll 2nd Decl., paras. 48, 49, 50, 51, 54, 55. NM-EX 012, Sullivan Decl., para. 100.	The cited paragraphs of the Barroll 2nd Decl. and the Sullivan Decl. do not establish any genuine dispute of fact and the material cannot be presented at trial in any admissible form. <b>Fed. R. Civ. 56(a), 56(c)(1).</b> The cited paragraphs of the Barroll 2nd Decl. do not dispute the stated material fact regarding facilities existing today and provide historical information on the Project which is not relevant to the stated material fact. For example, para. 50 begins "[h]istorically, . . . EPCWID also had several river diversion[s] . . ." None of the cited material materially disputed the stated fact regarding facilities existing "[t]oday. The cited paragraph of the Sullivan Decl. does not dispute the stated material fact and merely provides additional context which is not a material dispute of a stated fact. Sullivan Decl., para. 100. <b>Texas's stated material fact remains undisputed. Fed. R. Civ. P. 56(a), 56(c)(1), (2), (4).</b>
97.	The major dams and reservoirs and the diversion dams included in the Project are identified in Figure 5.	24	NM-EX 006, Barroll 2nd Decl., para. 48. NM-EX 012, Sullivan Decl., para. 100.	The cited paragraphs of the Barroll 2nd Decl. and the Sullivan Decl. do not establish any genuine dispute of fact. Fed. R. Civ. P. 56(a), 56(c)(1). The cited paragraph of the Barroll 2nd Decl. does not address Figure 5, which is the subject of Texas's stated material fact. Barroll 2nd Decl., para. 48. The cited paragraph of the Sullivan Decl. does not dispute the stated material fact, but seeks only to provide additional context to what is presented in Figure 5 in the stated material fact. Sullivan Decl., para. 100. <b>Texas's stated material fact remains undisputed. Fed. R. Civ. P. 56(a), 56(c)(1).</b>
98.	There are 159,650 acres authorized within the Project, with 90,640 acres within EBID in New Mexico and 69,010 acres within EP#1 in Texas.	24-25	NM-EX 100, Barroll Rep. at 1. NM-EX 012, Sullivan Decl., para. 101.	The cited page of the Barroll Rep. and the cited paragraph of the Sullivan Decl. do not establish any genuine dispute of fact and the Barroll Rep. cannot be presented at trial in any admissible form. Fed. R. Civ. P. 56(a), 56(c)(1), (2), (4); see Texas's General Objection #7. The cited page of the Barroll Rep. does not provide the current number of acres authorized in the Project, which is the subject of Texas's stated material fact. Barroll Rep. at 1. The cited paragraph of the Sullivan Decl. does not dispute the stated material fact and merely states that "[t]his statement lacks context" which is not a material dispute of a stated fact. Sullivan Decl., para. 101. <b>Texas's stated material fact remains undisputed. Fed. R. Civ. P. 56(a), 56(c)(1), (2), (4).</b>
99.	These acreages translate to approximately a 57/43 split for the distribution of irrigable acres between EBID and EP#1 (collectively, "Districts").	25	NM-EX 100, Barroll Rep. at 1.	The cited page of the Barroll Rep. does not establish any genuine dispute of fact and the report cannot be presented at trial in any admissible form. Fed. R. Civ. P. 56(a), 56(c)(1), (2), (4); see Texas's General Objection # 7. The cited page of the Barroll Rep. does not address the 57/43 split. Barroll Rep. at 1. <b>Texas's stated material fact remains undisputed. Fed. R. Civ. P. 56(a), 56(c)(1), (2), (4).</b>
100.	As a practical matter, however, diversions by the Districts and Mexico consist of varying amounts of reservoir storage, return flows from upstream irrigation operations, and occasional arroyo inflows.	25	NM-EX 006, Barroll 2nd Decl., paras. 28, 29, 31, 55.	The cited paragraphs of the Barroll 2nd Decl. do not establish any genuine dispute of fact. Fed. R. Civ. P. 56(a), 56(c)(1). The cited paragraphs do not address practically the components of diversions by the Districts and Mexico, which is the subject of Texas's stated material fact. <b>Texas's stated material fact remains undisputed. Fed. R. Civ. P. 56(a), 56(c)(1).</b>

**EXHIBIT B**  
**THE STATE OF TEXAS'S OBJECTIONS AND RESPONSES TO THE STATE OF NEW MEXICO'S APPENDIX 1**

<u>TAF NO.</u>	<u>"TEXAS ALLEGATION OF FACT"</u> <u>[New Mexico's Appendix 1 Table]</u>	<u>TEX. BR. PAGE</u>	<u>NEW MEXICO RESPONSE</u> <u>[New Mexico's Appendix 1 Table]</u>	<u>TEXAS RESPONSE</u>
101.	Return flows are a key part of Project operations, and interference with return flows removes a critical component of deliveries to Project users.	25	NM-EX 006, Barroll 2nd Decl., paras. 13, 36, 50, 55. NM-EX 012, Sullivan Decl., paras. 25, 102.	The cited paragraphs of the Barroll 2nd Decl. and the Sullivan Decl. do not establish any genuine dispute of fact. Fed. R. Civ. P. 56(a), 56(c)(1). Two of the cited paragraphs of the Barroll 2nd Decl. do not address return flows, which is the subject of the stated material fact. Barroll 2nd Decl., paras. 13, 36. The other two cited paragraphs of the Barroll 2nd Decl. include allegations that Texas has "intercepted" "Project return flows" but do not address Texas's stated material fact. Barroll 2nd Decl., paras. 50, 55. The cited paragraphs of the Sullivan Decl. state merely that the stated fact is "incomplete" (Sullivan Decl., para. 102) and Mr. Sullivan's conclusion that "effects on Project operation resulting from interference with . . . return flows . . . is a complex matter requiring expert analysis and expert opinion." Sullivan Decl., para. 25. Mr. Sullivan further agrees that "return flows are a key component of Project operation . . . [and] become a portion of the Project supply that is delivered for downstream use." <b>Texas's stated material fact remains undisputed. Fed. R. Civ. P. 56(a), 56(c)(1).</b>
102.	Project return flows consist of excess irrigation tailwater and groundwater seepage from irrigated fields that are collected in drains that convey these return flows to the Rio Grande.	25	NM-EX 006, Barroll 2nd Decl., paras. 47, 51, 55. NM-EX 012, Sullivan Decl., paras. 26, 102.	The cited paragraphs of the Barroll 2nd Decl. and the Sullivan Decl. do not establish any genuine dispute of fact. Fed. R. Civ. P. 56(a), 56(c)(1). The cited paragraphs of the Barroll 2nd Decl. discuss return flows and do not dispute that return flows include irrigation tailwater and groundwater seepage. Barroll 2nd Decl., paras. 47, 51, 55. The cited paragraphs of the Sullivan Decl. state merely that the stated fact requires additional "context" (Sullivan Decl., para. 102). Mr. Sullivan takes issue with the stated fact's use of the word "excess" but does not dispute that tailwater is a component of Project return flows, and elaborates that "accumulation of tailwater and seepage from irrigated fields is a normal part of the irrigation process. Sullivan Decl., para. 26. The difference between Mr. Sullivan's definition of tailwater and the explanation in Texas's stated material fact is a distinction without meaning. <b>Texas's stated material fact remains undisputed. Fed. R. Civ. P. 56(a), 56(c)(1).</b>
103.	The proportion of return flows in the river increases in the downstream direction relative to stored water from the reservoirs, and the water diverted by Project users in the lower Mesilla basin and in the El Paso Valley of Texas includes diversion of significant quantities of return flows.	25	NM-EX 006, Barroll 2nd Decl., paras. 34, 47. NM-EX 012, Sullivan Decl., paras. 27, 102.	The cited paragraphs of the Barroll 2nd Decl. and the Sullivan Decl. do not establish any genuine dispute of fact. Fed. R. Civ. P. 56(a), 56(c)(1). The cited paragraphs of the Barroll 2nd Decl. do not address the proportion of return flows in the river or any of the stated material fact. Barroll 2nd Decl., paras. 34, 47. The cited paragraphs of the Sullivan Decl. state merely that the stated fact requires additional "context" (Sullivan Decl., para. 102). Mr. Sullivan argues that the stated material fact is "overly simplified" and does not dispute the stated fact. Sullivan Decl., para. 27. <b>Texas's stated material fact remains undisputed. Fed. R. Civ. P. 56(a), 56(c)(1).</b>
104.	Figure 6 shows the percentage of net diversions for each valley for reservoir releases, arroyo flow, and drain flow for the period prior to the Compact.  The net diversions in the Rincon portion of EBID contained 0.3 percent drain flow and seepage (return flows) and net diversions in the Mesilla portion of EBID contained 7.4 percent, while the net diversions into the Franklin canal in EP#1 contained 35.1 percent return flows and the net diversions into the Tornillo canal in EP#1 contained 57.7 percent return flows and only 38.2 percent of reservoir releases.	25	NM-EX 006, Barroll 2nd Decl., para. 48.  NM-EX 012, Sullivan Decl., para. 103.	The cited paragraphs of the Barroll 2nd Decl. and the Sullivan Decl. do not establish any genuine dispute of fact. Fed. R. Civ. P. 56(a), 56(c)(1). The cited paragraph of the Barroll 2nd Decl. does not address Figure 6 described in the stated material fact. Barroll 2nd Decl., para. 48. The cited paragraphs of the Sullivan Decl. acknowledges Figure 6 and then merely provides Mr. Sullivan's narrative explanation of the Figure 6, which does not materially dispute any of the stated fact. <b>Texas's stated material fact remains undisputed. Fed. R. Civ. P. 56(a), 56(c)(1).</b>
105.	After diversion by EP#1, Project water is delivered to the city of El Paso for municipal use under agreements with EP#1 and its constituents that assign their Project water allotments for specific land parcels to the city.	26	NM-EX 006, Barroll 2nd Decl., paras. 54, 55.	The cited paragraphs of the Barroll 2nd Decl. do not establish any genuine dispute of fact. Fed. R. Civ. P. 56(a), 56(c)(1). The cited paragraphs provide Dr. Barroll's narrative regarding the City of El Paso's diversions for municipal purposes. Barroll 2nd Decl., para. 54. The cited paragraphs do not address the stated fact regarding delivery of Project water to the City of El Paso for municipal use under various contracts and agreements. <b>Texas's stated material fact remains undisputed. Fed. R. Civ. P. 56(a), 56(c)(1).</b>
106.	Excess canal flows and return flows from Project lands within EP#1 also provide a supplemental water supply for approximately 18,000 acres of land within the Hudspeth County Conservation and Reclamation District No. 1 (HCCRD) below EP#1 down to Fort Quitman, Texas.	26	NM-EX 100, Barroll Rep. at 2. NM-EX 107, Lopez Rep. at 59.	The cited pages of the Barroll Rep. and the Lopez Rep. do not establish any genuine dispute of fact and the reports cannot be presented at trial in any admissible form. Fed. R. Civ. P. 56(a), 56(c)(1), (2), (4). See Texas's General Objection #7. The cited page of the Barroll Rep. states that HCCRD "receives operational waste from the Project under contract." Barroll Rep. at 2. Dr. Barroll's statement does not materially dispute the stated fact. The cited page of the Lopez Rep. also states that HCCRD receives "operational waste or surplus" which is not a material dispute to the stated fact. Lopez Rep. at 59. <b>Texas's stated material fact remains undisputed. Fed. R. Civ. P. 56(a), 56(c)(1), (2), (4).</b>

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**THE STATE OF TEXAS'S OBJECTIONS AND RESPONSES TO THE STATE OF NEW MEXICO'S APPENDIX 1**

<u>TAF NO.</u>	<u>"TEXAS ALLEGATION OF FACT"</u> <u>[New Mexico's Appendix 1 Table]</u>	<u>TEX. BR. PAGE</u>	<u>NEW MEXICO RESPONSE</u> <u>[New Mexico's Appendix 1 Table]</u>	<u>TEXAS RESPONSE</u>
107.	Project water was to be allocated between irrigators in southern New Mexico and in the El Paso Valley of Texas in proportion to the irrigated acreage of Project lands within each state.	26	NM-EX 006, Barroll 2nd Decl., paras. 56, 57, 58, 62.	The cited paragraphs of the Barroll 2nd Decl. do not establish any genuine dispute of fact. Fed. R. Civ. P. 56(a), 56(c)(1), (2), (4). The stated material fact addresses how "Project water was to be allocated." The cited paragraphs of the Barroll Decl. address Dr. Barroll's opinions regarding modifications to the allocation with time. For example, para. 62 addresses the years 2006-2019. The cited paragraphs do not materially dispute the stated fact addressing how "Project water was to be allocated." <b>Texas's stated material fact remains undisputed. Fed. R. Civ. P. 56(a), 56(c)(1).</b>
108.	Contracts executed with irrigation interests in New Mexico and Texas permitted the orderly operation of the Project both during construction and upon completion of Elephant Butte Reservoir in 1915.	26-27	NM-EX 006, Barroll 2nd Decl., paras. 58, 59, 60, 61, 62, 68.	The cited paragraphs of the Barroll 2nd Decl. do not establish any genuine dispute of fact. Fed. R. Civ. P. 56(a), 56(c)(1). The stated material fact addresses operation of the Project during the construction and completion of Elephant Butte Reservoir in 1915. The cited paragraphs of the Barroll 2nd Decl. do not dispute the stated material fact and address modern (post 2006) Project operations. Barroll 2nd Decl., paras. 58-62, 68. <b>Texas's stated material fact remains undisputed. Fed. R. Civ. P. 56(a), 56(c)(1).</b>
109.	Significant groundwater development began in the early 1950s in the Project area within the Rincon and Mesilla basins of New Mexico.	29	NM-EX 006, Barroll 2nd Decl., paras. 14, 15, 17. NM-EX 112, Stevens Rep. at 30. NM-EX 012, Sullivan Decl., para. 28.	The cited paragraphs of the Barroll 2nd Decl. and the Sullivan Decl., and the cited page of the Stevens Rep. do not establish any genuine dispute of fact and the Stevens Rep. cannot be presented at trial in any admissible form. Fed. R. Civ. P. 56(a), 56(c)(1), (2), (4); see Texas's General Objection #1. The cited paragraphs of the Barroll 2nd Decl. provide anecdotal evidence of the existence of wells prior to the 1950s in the Project area. See Barroll 2nd Decl., para. 14. That does not amount to a material dispute of the stated fact that "significant groundwater development" began in the early 1950s. That time frame corresponds with the drought discussed in paragraph 15 of the Barroll 2nd Decl. The cited paragraph of the Sullivan Decl. merely asserts that the stated fact does not address groundwater development in other basins in Texas. See Sullivan Decl, para. 28. That is not a dispute of the stated material fact. <b>Texas's stated material fact remains undisputed. Fed. R. Civ. P. 56(a), 56(c)(1), (2), (4).</b>
110.	Prior to the development of extensive groundwater pumping in the Rincon and Mesilla basins, groundwater levels generally were relatively high and fluctuated in response to the seasonal application of irrigation water from the Rio Grande on Project lands.	29-30	NM-EX 012, Sullivan Decl., para. 106.	The cited paragraph of the Sullivan Decl. does not establish a genuine dispute of fact. Fed. R. Civ. P. 56(a), 56(c)(1). The cited paragraph of the Sullivan Decl. does not materially dispute the stated fact, and merely states that it is Mr. Sullivan's opinion that the "statement is incomplete," and he provides additional context for the statement. Sullivan Decl., para. 106. This does not constitute a material dispute with the stated fact. <b>Texas's stated material fact remains undisputed. Fed. R. Civ. P. 56(a), 56(c)(1).</b>
111.	In the early days of the Project, this phenomenon created a serious problem.	30	This fact/s is undisputed by New Mexico.	<b>Texas's stated material fact is undisputed. Fed. R. Civ. P. 56(a), 56(c)(1).</b>
112.	Soon after the Project began delivering water to the irrigators, groundwater levels rose in New Mexico to and above ground level, thereby waterlogging and making useless land previously capable of growing crops. The solution was to construct a complex system of drains that would capture excess groundwater created by irrigation and return it to the river. This "return flow" became a significant source of irrigation water for downstream irrigators, particularly in Texas, a fact recognized and catalogued in the <i>JIR</i> .	30	NM-EX 012, Sullivan Decl., paras. 29, 105.	The cited paragraphs of the Sullivan Decl. do not establish a genuine dispute of fact. Fed. R. Civ. P. 56(a), 56(c)(1). Para. 29 of the Sullivan Decl. agrees that "[t]he solution was to construct a complex system of drains that would capture excess groundwater created by irrigation and return it to the river" "is generally correct." Sullivan Decl., para. 29. Mr. Sullivan provides his opinion on additional context but does not materially dispute the stated fact. Para. 105 of the Sullivan Decl. relates generally to water budgeting and does not address the stated material fact. <b>Texas's stated material fact remains undisputed. Fed. R. Civ. P. 56(a), 56(c)(1).</b>
113.	With the construction of the drains, irrigation water not consumed by crops and other vegetation or by evaporation, percolated down through the soil into the groundwater system, which typically flowed toward and into drains specifically designed for collecting groundwater and for conveying groundwater and excess irrigation tailwater away from fields and to the Rio Grande. p30	30	NM-EX 106, Barroll 2nd Decl., para. 47. NM-EX 012, Sullivan Decl., para. 30, 106.	The cited paragraphs of the Barroll 2nd Decl. and the Sullivan Decl. do not establish any genuine dispute of fact. Fed. R. Civ. P. 56(a), 56(c)(1). The cited paragraph of the 2nd Barroll Decl. discusses return flows through drains and does not in any way materially dispute the stated fact. Barroll 2nd Decl., para. 47. The cited paragraphs of the Sullivan Decl. state merely that the stated fact is "incomplete" and add additional context that Mr. Sullivan appears to believe is relevant to the stated material fact. Sullivan Decl., para. 106. Paragraph 30 of the Sullivan Decl. discusses other sources of drain water, beyond irrigation "water not consumed by crops," but does not materially dispute the stated fact. <b>Texas's stated material fact remains undisputed. Fed. R. Civ. P. 56(a), 56(c)(1).</b>

**EXHIBIT B**  
**THE STATE OF TEXAS'S OBJECTIONS AND RESPONSES TO THE STATE OF NEW MEXICO'S APPENDIX 1**

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114.	As shown, Project water is diverted from the Rio Grande into an irrigation system canal and then distributed to individual irrigated fields, where it is either consumptively used by the growing crops or evaporated into the atmosphere. Any excess irrigation water is either discharged directly to the drain as tailwater or percolated through the subsurface into the groundwater system. p31 The bottom of the drain is below the upper level of the groundwater; thus, groundwater is induced to flow toward and into the drain. Similarly, the bottom of the river channel is below the level of the groundwater, with water shown flowing in both directions depending on the relative heights of the water in the river and the groundwater from location to location. The irrigation tailwater and groundwater collected in the drain flows to the river and is referred to as return flow.	31	NM-EX 012, Sullivan Decl., paras. 31, 32, 33, 34, 106, 107.	The cited paragraphs of the Sullivan Decl. do not establish a genuine dispute of fact. Fed. R. Civ. P. 56(a), 56(c)(1). The cited paragraphs address Figure 10 in Texas's Motion for Partial Summary Judgment and argue that the figure is "highly idealized" (Sullivan Decl., para. 31), "over simplified" (Sullivan Decl., paras. 32, 33) and "incomplete" (Sullivan Decl., para. 34). Figure 10 in the Texas Motion is merely a demonstrative exhibit and Mr. Sullivan's criticisms do not amount to a material dispute of the demonstrative concepts depicted in the figure. <b>Texas's stated material fact remains undisputed. Fed. R. Civ. P. 56(a), 56(c)(1).</b>
115.	The return flow from the drain that is discharged into the Rio Grande provides an important supply of Project water for users located downstream, namely users in the lower Mesilla basin and in the El Paso Valley of Texas.	31	NM-EX 006, Barroll 2nd Decl., paras. 47, 50, 55. NM-EX 012, Sullivan Decl., paras. 35, 107.	The cited paragraphs of the Barroll 2nd Decl. and the Sullivan Decl. do not establish any genuine dispute of fact. Fed. R. Civ. P. 56(a), 56(c)(1). The cited paragraphs of the Barroll 2nd Decl. discuss return flows in the Project generally, and Dr. Barroll's positions regarding return flows and the Project. Barroll 2nd Decl., paras. 47, 50, 55. None of the three cited paragraphs materially dispute Texas's stated fact. The cited paragraphs of the Sullivan Decl. describe Mr. Sullivan's positions regarding return flows in the Project. Mr. Sullivan states that the fact "ignores the fact that return flows vary spatially and temporally" but it does not dispute the stated material fact and amounts to mere introduction of additional context regarding the stated fact. Sullivan Decl., para. 35. <b>Texas's stated material fact remains undisputed. Fed. R. Civ. P. 56(a), 56(c)(1).</b>
116.	This important source of water for Project users was contemplated in the early development of Project operations and in the negotiations among the states leading up to adoption of the 1938 Compact.	32	This fact/s is undisputed by New Mexico.	<b>Texas's stated material fact is undisputed. Fed. R. Civ. P. 56(a), 56(c)(1).</b>
117.	For example, the 1938 <i>JIR</i> , which was conducted by federal agencies at the request of the Rio Grande Compact Commissioners with input from Colorado, New Mexico, and Texas representatives, determined that approximately 35 percent of the total supply of Project water delivered to Texas in the El Paso Valley was from upstream return flows, with the majority of the balance originating as releases from Caballo Reservoir.	32	NM-EX 006, Barroll 2nd Decl., para. 50. NM-EX 012, Sullivan Decl., para. 108.	The cited paragraphs of the Barroll 2nd Decl. and the Sullivan Decl. do not establish any genuine dispute of fact. Fed. R. Civ. P. 56(a), 56(c)(1). Neither of the cited paragraphs dispute the stated material fact which is a recitation of content provided in the 1938 <i>JIR</i> . Mr. Sullivan states that the fact is "incomplete" and provides his own narrative regarding the 1938 <i>JIR</i> , but he does not materially dispute the stated fact. Sullivan Decl., para. 108. <b>Texas's stated material fact remains undisputed. Fed. R. Civ. P. 56(a), 56(c)(1).</b>
118.	Conversely, since water for Project users in New Mexico was diverted from the Rio Grande farther upstream, i.e., above the river outfalls of most drains, less than seven percent of New Mexico's total deliveries originated from return flows.	32	NM-EX 012, Sullivan Decl., para. 108.	The cited paragraph of the Sullivan Decl. does not establish a genuine dispute of fact. Fed. R. Civ. P. 56(a), 56(c)(1). The cited paragraph of the Sullivan Decl. does not address the stated material fact that "less than seven percent of New Mexico's total deliveries originated from return flows." Sullivan Decl., para. 108. <b>Texas's stated material fact remains undisputed. Fed. R. Civ. P. 56(a), 56(c)(1).</b>
119.	With the extensive development and use of groundwater in the Rincon and Mesilla basins of New Mexico that began during the early 1950s – particularly in the relatively shallow aquifers with generally high groundwater levels such as those along the Rio Grande – groundwater levels began to fluctuate and decline in some areas.	32	NM-EX 106, Barroll 2nd Decl., paras. 44, 45. NM-EX 012, Sullivan Decl., paras. 36, 109.	The cited paragraphs of the Barroll 2nd Decl. and the Sullivan Decl. do not establish any genuine dispute of fact. Fed. R. Civ. P. 56(a), 56(c)(1). Neither the cited paragraphs of the Barroll 2nd Decl. nor the cited paragraphs of the Sullivan Decl. dispute the stated material fact regarding groundwater levels beginning to decline during the 1950s. In fact, Mr. Sullivan agrees that "ground water levels in the Rincon and Mesilla basins declined when groundwater pumping increased during drought periods . . . ." Sullivan Decl., para. 36. Mr. Sullivan discusses groundwater levels after the drought period, which is not the subject of the stated fact and not a materially dispute to the stated fact. <b>Texas's stated material fact remains undisputed. Fed. R. Civ. P. 56(a), 56(c)(1).</b>
120.	This in turn caused reduction of discharges of groundwater into the drains, and directly into the river.	32	NM-EX 006, Barroll 2nd Decl., paras. 47, 52. NM-EX 012, Sullivan Decl., paras. 37, 109.	The cited paragraphs of the Barroll 2nd Decl. and the Sullivan Decl. do not establish any genuine dispute of fact. Fed. R. Civ. P. 56(a), 56(c)(1). Mr. Sullivan does not dispute the stated fact but merely states that "factors other than groundwater pumping also affect the timing and amount of water that returns to Project drains." Sullivan Decl., para. 37. That is not a material dispute of the stated fact. <b>Texas's stated material fact remains undisputed. Fed. R. Civ. P. 56(a), 56(c)(1).</b>

**EXHIBIT B**  
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121.	Eventually, with enough groundwater pumping, the groundwater gradient in many areas reversed, with significant reductions in the groundwater inflows to the drains and into the river.	32	NM-EX 006, Barroll 2nd Decl., para. 52. NM-EX 100, Barroll Rep. at 26-29. NM-EX 012, Sullivan Decl., paras. 38, 109.	The cited paragraphs of the Barroll 2nd Decl and Sullivan Decl., and the cited pages of the Barroll Rep. do not establish any genuine dispute of fact and the Barroll Rep. cannot be presented at trial in any admissible form. Fed. R. Civ. P. 56(a), 56(c)(1), (2), (4); <i>see</i> Texas's General Objection #1; <i>see also</i> Texas's General Objection #7. The cited paragraph of the Barroll 2nd Decl. does not address the stated material fact. Barroll 2nd Decl, para. 52. That paragraph addresses groundwater pumping and return flows in New Mexico and Texas. <i>Id.</i> The cited paragraphs of the Sullivan Decl. do not dispute the stated material fact and Mr. Sullivan merely argues that the stated fact is "incomplete" and adds additional narrative. Sullivan Decl., para. 39. The cited pages of the Barroll Rep. do not specifically address the stated material fact. Barroll Rep. at 26-29; <i>see</i> Texas's General Objection #1. <b>Texas's stated material fact remains undisputed. Fed. R. Civ. P. 56(a), 56(c)(1), (2), (4).</b>
122.	This condition is illustrated by the diagram in Figure 11. As shown, the level of the groundwater is below the bottom of the river channel and the drain, and water flowing in the river and into the drain moves toward and into the groundwater system, rather than the other way around, as it did prior to the initiation of groundwater pumping.	32	NM-EX 012, Sullivan Decl., paras. 39, 109, 110.	The cited paragraphs of the Sullivan Decl. do not establish any genuine dispute of fact. Fed. R. Civ. P. 56(a), 56(c)(1). The cited paragraphs address Figure 11 in the Texas Motion which is a demonstrative exhibit. Mr. Sullivan criticizes Figure 11 as "highly idealized" (Sullivan Decl., para. 39) and provides his own narrative on features that might be added to the figure. Mr. Sullivan's narrative does not amount to a material dispute of the facts contained in Figure 11. <b>Texas's stated material fact remains undisputed. Fed. R. Civ. P. 56(a), 56(c)(1).</b>
123.	The discharge of return flow from the drain into the river is substantially curtailed, if not reduced to zero, thereby also reducing the flow in the river.	33	NM-EX 006, Barroll 2nd Decl., paras. 13, 36. NM-EX 012, Sullivan Decl., paras. 40, 110.	The cited paragraphs of the Barroll 2nd Decl. and the Sullivan Decl. do not establish any genuine dispute of fact. Fed. R. Civ. P. 56(a), 56(c)(1). The cited paragraphs of the Barroll 2nd Decl. address water orders to Reclamation (para. 13) and Dr. Barroll's opinion regarding the impact of stream depletion by groundwater pumping on "water rights." Barroll Decl., para. 36. The cited paragraphs do not materially dispute the stated facts. The cited paragraphs of the Sullivan Decl. merely stated Mr. Sullivan's opinion that the stated fact "fails" and adds additional narrative. Sullivan Decl., para. 40. This does not amount to a material dispute of the stated fact. <b>Texas's stated material fact remains undisputed. Fed. R. Civ. P. 56(a), 56(c)(1).</b>
124.	The phenomenon of reduced river flows caused by groundwater withdrawals is an underlying component of what is referred to as streamflow depletions, and these streamflow depletions have increased along the Rio Grande within the Rincon and Mesilla basins since significant groundwater development began in the early 1950s.	33	NM-EX 006, Barroll 2nd Decl., paras. 13, 36, 37, 38. NM-EX 012, Sullivan Decl., paras. 41, 111.	The cited paragraphs of the Barroll 2nd Decl. and the Sullivan Decl. do not establish any genuine dispute of fact. Fed. R. Civ. P. 56(a), 56(c)(1). The cited paragraphs of the Barroll 2nd Decl. merely include New Mexico's allegations that pumping of groundwater in Texas has caused injury to New Mexico, and do not address the general concept of reduced river flows in the stated material fact. The cited paragraphs of the Sullivan Decl. include summaries of New Mexico's modeling work with the Integrated Lower Rio Grande Model and do not material dispute the generalized concept in the stated material fact. <i>See also</i> , Texas's General Objection #9. <b>Texas's stated material fact remains undisputed. Fed. R. Civ. P. 56(a), 56(c)(1).</b>
125.	One of the obvious impacts of these increased streamflow depletions has been to alter the Project water budget by reducing flows in the Rio Grande that otherwise would ultimately reach water users in the lower Mesilla basin and in the El Paso Valley in Texas.	33	NM-EX 006, Barroll 2nd Decl., paras. 13, 36, 37. NM-EX 100, Barroll Rep. at 8-13, and Appx. B. NM-EX 001, Barroll 1st Decl., paras. 33, 37. NM-EX 012, Sullivan Decl., paras. 42, 111.	The cited paragraphs of the Barroll 2nd Decl., Barroll Rep., Barroll 1st Decl., and Sullivan Decl. do not establish any genuine dispute of fact and the Barroll Rep. cannot be presented at trial in any admissible form. Fed. R. Civ. P. 56(a), 56(c)(1), (2), (4); <i>see</i> Texas's General Objection #7. The cited paragraphs of the Barroll 2nd Decl. and the Barroll 1st Decl. do not materially dispute the stated fact, but merely insert New Mexico's argument that groundwater pumping in Texas has impacted New Mexico. <i>See</i> , e.g., Barroll 2nd Decl, para. 36. The cited pages of the Barroll Rep. do the same, and do not materially dispute Texas's stated fact. Barroll Rep. at 9-13 and Appx. B; <i>see</i> Texas's General Objection #7. The cited paragraphs of the Sullivan Decl. likewise do not dispute the stated fact, but merely state Mr. Sullivan's opinion regarding depletions caused by pumping in both Texas and New Mexico. <b>Texas's stated material fact remains undisputed. Fed. R. Civ. P. 56(a), 56(c)(1), (2), (4).</b>
126.	In essence, the release of a specific quantity of water from Caballo Reservoir now contributes less to the surface water supply for these users because of the losses of flow due to the increased seepage from the Rio Grande and interior drainage ways, thus altering the previously existing Project water budget.	33-34	NM-EX 006, Barroll 2nd Decl., paras. 50, 55, 39, 41. NM-EX 012, Sullivan Decl., paras. 43, 111.	The cited paragraphs of the Barroll 2nd Decl. and the Sullivan Decl. do not establish any genuine dispute of fact. Fed. R. Civ. P. 56(a), 56(c)(1). The cited paragraphs of the Barroll 2nd Decl. do not dispute the stated material fact and are not relevant to the stated material fact. For example, para. 41 of the Barroll 2nd Decl. concerns the D3 allocation methodology. Barroll 2nd Decl., para. 41. The cited paragraphs of the Sullivan Decl. agree with the stated fact and merely add Mr. Sullivan's opinion that changes have occurred in the Project "as a result of pumping in New Mexico and Texas." Sullivan Decl., para. 43. The cited paragraphs of the Sullivan Decl. do not materially dispute the stated fact. <b>Texas's stated material fact remains undisputed. Fed. R. Civ. P. 56(a), 56(c)(1).</b>
127.	In the early 1980s, the BOR developed the D1 and D2 allocation curves for the Project based on 1951-1978 operating data.	34	This fact/s is undisputed by New Mexico.	<b>Texas's stated material fact is undisputed. Fed. R. Civ. P. 56(a), 56(c)(1).</b>

**EXHIBIT B**  
**THE STATE OF TEXAS'S OBJECTIONS AND RESPONSES TO THE STATE OF NEW MEXICO'S APPENDIX 1**

<b>TAF NO.</b>	<b>"TEXAS ALLEGATION OF FACT" [New Mexico's Appendix 1 Table]</b>	<b>TEX. BR. PAGE</b>	<b>NEW MEXICO RESPONSE [New Mexico's Appendix 1 Table]</b>	<b>TEXAS RESPONSE</b>
128.	Under normal supply conditions for the Project, these curves provided for 122 percent of the annual Caballo Reservoir release to be diverted from the Rio Grande for Project users. This additional 22 percent was almost entirely from return flows discharged into the Rio Grande from drains.	34	NM-EX 006, Barroll 2nd Decl., para. 57. NM-EX 100, Barroll Rep. at sections 6, 7.	The cited paragraph of the Barroll 2nd Decl. and the cited sections of the Barroll Rep. do not establish any genuine dispute of fact and the Barroll Rep. cannot be presented at trial in any admissible form. Fed. R. Civ. P. 56(a), 56(c)(1), (2), (4). See Texas's General Objection #7. The cited paragraphs of the Barroll 2nd Decl. and Barroll Rep. do not directly address the percentages for releases provided in the stated material fact. <b>Texas's stated material fact remains undisputed. Fed. R. Civ. P. 56(a), 56(c)(1), (2), (4).</b>
129.	This is shown on Figure 10, Schematic of Rio Grande and Groundwater System Interaction Prior to Development of Groundwater Pumping in Rincon and Mesilla basins. p34	34		New Mexico's did not respond. <b>Texas's stated material fact remains undisputed. Fed. R. Civ. P. 56(a), 56(c)(1).</b>
130.	These D1 and D2 allocation curves reflect conditions that are different from the flow regime that existed at the time of the Compact (1938 Condition).	34	NM-EX 100, Barroll Rep. at 20.	The cited page of the Barroll Rep. does not establish any genuine dispute of fact and the material cannot be presented at trial in any admissible form. Fed. R. Civ. P. 56(a), 56(c)(1), (2), (4); see Texas's General Objection #7. The cited page of the Barroll Rep. does not address the D1 and D2 allocation curves. Barroll Rep. at 20. <b>Texas's stated material fact remains undisputed. Fed. R. Civ. P. 56(a), 56(c)(1), (2), (4).</b>
131.	The D1 and D2 curves were based upon the depleted flow conditions influenced by the extensive groundwater pumping in New Mexico during the 1951-1978 period.	34	NM-EX 006, Barroll 2nd Decl., para. 57.	The cited paragraph of the Barroll 2nd Decl. does not establish any genuine dispute of fact and cannot be presented at trial in any admissible form. Fed. R. Civ. P. 56(a), 56(c)(1), (2), (4); see Texas's General Objection #1. The cited paragraph states that "the D1 and D2 Curves . . . are . . . based on data from 1951 through 1978, a time when farmers in both Districts . . . pumped large amount of groundwater." Barroll 2nd Decl., para. 57. The cited paragraph, which attempts to provide information regarding groundwater pumping in Texas, does not dispute the stated material fact regarding "extensive groundwater pumping in New Mexico." <b>Texas's stated material fact remains undisputed. Fed. R. Civ. P. 56(a), 56(c)(1), (2), (4).</b>
132.	Of the 790,000 acre feet delivered to the Reservoir, New Mexico argues that it is entitled to 57 percent of (1) usable water released from the Reservoir, (2) arroyo flow and other accretions below the Reservoir, and (3) return flows from the use of water on Project lands. There is no question that these are the elements associated with the total volume of water to which the Districts are entitled pursuant to the Downstream Contracts, and that these figures mirror the conditions that were contemplated in 1938.	86-87	NM-EX 008, Lopez 2nd Decl., para. 20, 25.	The cited paragraphs of the Lopez 2nd Decl. do not establish any genuine dispute of fact and cannot be presented at trial in any admissible form. Fed. R. Civ. P. 56(a), 56(c), (1), (2), (4); see Texas's General Objection #2. The cited paragraphs of the Lopez 2nd Decl. address Mr. Lopez's improper and inadmissible legal opinions regarding the meaning of Compact terms. <b>Texas's stated material fact remains undisputed. Fed. R. Civ. P. 56(a), 56(c)(1), (2), (4).</b>
133.	Missing from New Mexico's analysis, however, is a consideration of depletions from the volume of water that otherwise would have been available under the conditions that existed in 1938.	87	NM-EX 006, Barroll 2nd Decl., para. 53.	The cited paragraph of the Barroll 2nd Decl. does not establish any genuine dispute of fact and the material cannot be presented at trial in any admissible form. Fed. R. Civ. P. 56(a), 56(c)(1), (2), (4); see Texas's General Objection #1. The cited paragraph addresses Project allocations from 1950-2005 and does not dispute Texas's stated material fact. Barroll 2nd Decl., para. 53. <b>Texas's stated material fact remains undisputed. Fed. R. Civ. P. 56(a), 56(c)(1), (2), (4).</b>
134.	Regarding the 57/43 split, referable to Project allocations, the Project delivers the <i>water available to it</i> at the points of diversion on the river.	87	NM-EX 100, Barroll Rep. at 14-16 and Appx. C.	The cited pages and appendix of the Barroll Rep. do not establish any genuine dispute of fact and the Barroll Rep. cannot be presented at trial in any admissible form. Fed. R. Civ. P. 56(a), 56(c)(1), (2), (4); see Texas's General Objection #7. The cited pages of the Barroll Rep. summarize Dr. Barroll's opinions regarding "diversions structures" in Texas. Barroll Rep. at 14; see Texas's General Objection #7. The cited pages of the Barroll Rep. do not dispute the stated material fact that "the Project delivers the water available to it at the points of diversion on the river." <b>Texas's stated material fact remains undisputed. Fed. R. Civ. P. 56(a), 56(c)(1), (2), (4).</b>
135.	The volume of Project water that was split 57/43 in 1938 for the Project to make the allocation to EBID and EP#1 pursuant to the contracts with the United States reflected the acreages of irrigated land in the two Districts at that time and the generally gaining condition of the river below Caballo Reservoir as influenced by relatively high groundwater levels in the absence of significant pumping.	87	NM-EX 100, Barroll Rep. at 1. NM-EX 012, Sullivan Decl., paras. 44, 112.	The cited page of the Barroll Rep. and the cited paragraphs of the Sullivan Decl. do not establish any genuine dispute of fact and the Barroll Rep. cannot be presented at trial in any admissible form. Fed. R. Civ. P. 56(a), 56(c)(1), (2), (4); see Texas's General Objection #7. The cited page of the Barroll Rep. does not address the 57/43 split that is the subject of the stated material fact. Barroll Rep. at 1. The cited paragraphs of the Sullivan Decl. state Mr. Sullivan's opinion that the stated fact is "incorrect" but Mr. Sullivan's explanation includes the agreement that the 57/42 split "reflected . . . authorized Project acreages within each District" as reflect in the EBID/EPCWID/Reclamation contract. Sullivan Decl., para. 44. That statement does not amount to a material dispute with the stated fact. <b>Texas's stated material fact remains undisputed. Fed. R. Civ. P. 56(a), 56(c)(1), (2), (4).</b>

**EXHIBIT B**  
**THE STATE OF TEXAS'S OBJECTIONS AND RESPONSES TO THE STATE OF NEW MEXICO'S APPENDIX 1**

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136.	This changes beginning in the 1950s with the extensive development of groundwater in New Mexico and the subsequent lowering of groundwater levels along the Rio Grande that altered the condition of the river from a generally gaining stream to a generally losing stream.	87	NM-EX 100, Barroll Rep. at 19-21, 37-38. NM-EX 012, Sullivan Decl., paras. 45, 112.	The cited pages of the Barroll Rep. and the cited paragraphs of the Sullivan Decl. do not establish any genuine dispute of fact and the Barroll Rep. cannot be presented at trial in any admissible form. Fed. R. Civ. P. 56(a), 56(c)(1), (2), (4); see Texas's General Objection #7. The cited pages of the Barroll Rep. do not address the stated material fact and merely provide a summary of irrigation well development (Barroll Rep. at 21) and Project accounting (Barroll Rep. at 38). The cited paragraphs of the Sullivan Decl. do not materially dispute the stated fact, rather Mr. Sullivan introduces a temporal concept that the groundwater levels "recovered" during fully supply periods. Sullivan Decl., para. 45. <b>Texas's stated material fact remains undisputed. Fed. R. Civ. P. 56(a), 56(c)(1), (2), (4).</b>
137.	The implications of this change are obvious – river flow losses mean greater depletions and less Project water for downstream users.	87	NM-EX 006, Barroll 2nd Decl., paras. 34, 35, 36. NM-EX 012, Sullivan Decl., paras. 46, 112.	The cited paragraphs of the Barroll 2nd Decl. and the Sullivan Decl. do not establish any genuine dispute of fact. Fed. R. Civ. P. 56(a), 56(c)(1). The cited paragraphs of the Barroll 2nd Decl. state Dr. Barroll's opinion that "Reclamation adjusts releases . . . as necessary[] taking into account the gains and losses occurring between Caballo dam and the points of delivery, to ensure that all the water that has been ordered is in fact delivered." Barroll 2nd Decl., para. 36. The cited paragraphs of the Sullivan Decl. state that "Project efficiency" and other facts account for river flow losses. Sullivan Decl., para. 46. Neither the cited paragraphs of the Barroll 2nd Decl. nor the Sullivan Decl., however, dispute the stated material fact, rather they argue that Project operations may be a remedy for the issue addressed in the stated fact. <b>Texas's stated material fact remains undisputed. Fed. R. Civ. P. 56(a), 56(c)(1).</b>
138.	The Project has no control over New Mexico's depletions and can only allocate the amount of water remaining after the New Mexico groundwater pumping depletes Project water in the river, including Reservoir releases.	87	NM-EX 006, Barroll 2nd Decl., paras. 15, 17, 18, 19, 20, 28, 36, 37, 38, 39, 40, 41.	The cited paragraphs of the Barroll 2nd Decl. do not establish any genuine dispute of fact. Fed. R. Civ. P. 56(a), 56(c)(1). The cited paragraphs describe generally the development of groundwater resources in the Project area including reasons for development and historical facts regarding pumping. The cited paragraphs of the Barroll 2nd Decl. do not dispute the stated material fact that "[t]he Project has no control over New Mexico's depletions . . ." <b>Texas's stated material fact remains undisputed. Fed. R. Civ. P. 56(a), 56(c)(1).</b>
139.	Surface water and groundwater are interconnected in the Rincon and Mesilla basins.	27	NM-EX 012, Sullivan Decl., para. 47.	The cited paragraph of the Sullivan Decl. does not establish any genuine dispute of fact. Fed. R. Civ. P. 56(a), 56(c)(1). The stated material fact addresses the Rincon and Mesilla basins. Mr. Sullivan states that the fact is "incomplete" because it does not address the El Paso Valley. This is not a dispute of the stated material fact. <b>Texas's stated material fact remains undisputed. Fed. R. Civ. P. 56(a), 56(c)(1).</b>
140.	As water flows in a surface water feature (e.g., a stream, canal, or river), the surface water flow can either increase from the inflow of groundwater (referred to as a "gaining" stream) or decrease due to seepage losses to the underlying aquifer (referred to as a "losing" stream). When groundwater elevations are higher than surface water elevations, groundwater flows into the surface water body and surface flow increases (a gaining stream condition). When groundwater elevations are lower than surface water elevations, surface water flows into the surrounding aquifer and surface flow decreases (a losing stream condition).	27	This fact/s is undisputed by New Mexico.	<b>Texas's stated material fact is undisputed. Fed. R. Civ. P. 56(a), 56(c)(1).</b>
141.	This is a losing stream condition, and the seepage rate out of the stream is dependent on the difference between the elevation of the water in the stream and the elevation of the groundwater.	28	NM-EX 012, Sullivan Decl., para. 48.	The cited paragraph of the Sullivan Decl. does not establish a genuine dispute of fact. Fed. R. Civ. P. 56(a), 56(c)(1). Mr. Sullivan argues that the stated fact is "incomplete" and add his own narrative regarding the fact. Sullivan Decl., para. 48. This does not amount to a material dispute of the stated fact. <b>Texas's stated material fact remains undisputed. Fed. R. Civ. P. 56(a), 56(c)(1).</b>
142.	In this case, involving a disconnected stream, the seepage rate out of the stream has reached its maximum and is based on the depth of the stream only. p28	28-29	NM-EX 012, Sullivan Decl., para. 49.	The cited paragraph of the Sullivan Decl. does not establish a genuine dispute of fact. Fed. R. Civ. P. 56(a), 56(c)(1). Mr. Sullivan suggests that additional factors may impact the seepage rate but does not dispute that the stated material fact. Sullivan Decl, para. 49. <b>Texas's stated material fact remains undisputed. Fed. R. Civ. P. 56(a), 56(c)(1).</b>
143.	One of the impacts of groundwater pumping is the reduction of groundwater elevations (also known as drawdown). p29	29	This fact/s is undisputed by New Mexico.	<b>Texas's stated material fact is undisputed. Fed. R. Civ. P. 56(a), 56(c)(1).</b>
144.	Long-term groundwater pumping can result in drawdown to the point where a stream that has been historically gaining (i.e., groundwater flows into the stream providing base flow) can be changed to a losing or disconnected stream (i.e., water percolates out of the stream and recharges the underlying aquifer).	29	NM-EX 012, Sullivan Decl., para. 50.	The cited paragraph of the Sullivan Decl. does not establish a genuine dispute of fact. Fed. R. Civ. P. 56(a), 56(c)(1). Mr. Sullivan argues that the stated fact is "incomplete" and adds his own narrative regarding the fact. Sullivan Decl., para. 50. This does not amount to a material dispute of the stated fact. <b>Texas's stated material fact remains undisputed. Fed. R. Civ. P. 56(a), 56(c)(1).</b>

**EXHIBIT B**  
**THE STATE OF TEXAS'S OBJECTIONS AND RESPONSES TO THE STATE OF NEW MEXICO'S APPENDIX 1**

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145.	A water budget is an accounting for a defined time period of the inflows into, and the outflows from, a defined control area.	29	NM-EX 012, Sullivan Decl., paras. 51, 105.	The cited paragraphs of the Sullivan Decl. do not establish a genuine dispute of fact. Fed. R. Civ. P. 56(a), 56(c)(1). Mr. Sullivan argues that the stated fact is "incomplete" and adds his own narrative regarding the fact. Sullivan Decl., para. 51. This does not amount to a material dispute of the stated fact. <b>Texas's stated material fact remains undisputed. Fed. R. Civ. P. 56(a), 56(c)(1).</b>
146.	Often, performing a water budget with known volumes of inflows and outflows for a specific time period can lead to the quantification of one or more unknown variables for that same time period.	29	NM-EX 012, Sullivan Decl., paras. 52, 105.	The cited paragraphs of the Sullivan Decl. do not establish a genuine dispute of fact. Fed. R. Civ. P. 56(a), 56(c)(1). Mr. Sullivan agrees that the "statement is correct" but then provides additional narrative regarding scenarios not stated in the fact under which it may not be correct. Sullivan Decl., para. 52. This does not amount to a material dispute of the stated fact. <b>Texas's stated material fact remains undisputed. Fed. R. Civ. P. 56(a), 56(c)(1).</b>
147.	Performing multiple water budgets for a specific control area for different time periods can provide information regarding how certain phenomena may have changed.	29	NM-EX 012, Sullivan Decl., paras. 53, 105.	The cited paragraphs of the Sullivan Decl. does not establish a genuine dispute of fact. Fed. R. Civ. P. 56(a), 56(c)(1). Mr. Sullivan argues that the statement is "vague." Sullivan Decl., para. 53. This does not amount to a material dispute of the stated fact. <b>Texas's stated material fact remains undisputed. Fed. R. Civ. P. 56(a), 56(c)(1).</b>
148.	Even a visual depiction of the water budget for a control area showing the generalized movement of water into, within, and out of the Project area under different conditions and circumstances can be informative and help to understand how the Project water supply system was originally conceived to work and how it has changed with the development of groundwater in New Mexico.	29	NM-EX 012, Sullivan Decl., paras. 54, 105.	The cited paragraphs of the Sullivan Decl. do not establish a genuine dispute of fact. Fed. R. Civ. P. 56(a), 56(c)(1). Mr. Sullivan provides narrative on visual depictions and states that they can be "informative." Sullivan Decl., para. 54. This does not amount to a material dispute of the stated fact. <b>Texas's stated material fact remains undisputed. Fed. R. Civ. P. 56(a), 56(c)(1).</b>
149.	Since 1938, the volume of groundwater pumped in the Rincon and Mesilla Valleys in New Mexico has increased.	86	NM-EX 012, Sullivan Decl., paras. 55, 114.	The cited paragraphs of the Sullivan Decl. do not establish a genuine dispute of fact. Fed. R. Civ. P. 56(a), 56(c)(1). Mr. Sullivan argues that the statement is misleading because it "implies that the volume of groundwater pumping in New Mexico has increased continuously since 1938." Sullivan Decl., para. 55. The stated material fact, however, does not say that. <b>Texas's stated material fact remains undisputed. Fed. R. Civ. P. 56(a), 56(c)(1).</b>
150.	One of these groundwater models addresses the Rincon and Mesilla aquifers which underlie southern New Mexico and a small portion of Texas, and the other covers the Hueco Bolson aquifer which underlies the El Paso Valley.	90-91	NM-EX 012, Sullivan Decl., para. 57.	The cited paragraph of the Sullivan Decl. does not establish a genuine dispute of fact. Fed. R. Civ. P. 56(a), 56(c)(1). Mr. Sullivan argues that the stated fact is "incomplete" and adds his own narrative regarding the fact. Sullivan Decl., para. 57. This does not amount to a material dispute of the stated fact. <b>Texas's stated material fact remains undisputed. Fed. R. Civ. P. 56(a), 56(c)(1).</b>
151.	These groundwater models have been combined with a RiverWare model of the surface waters network in the Rincon, Mesilla, and El Paso Valleys.	91	NM-EX 012, Sullivan Decl., para. 58.	The cited paragraph of the Sullivan Decl. does not establish a genuine dispute of fact. Fed. R. Civ. P. 56(a), 56(c)(1). Mr. Sullivan argues that the stated fact is "incomplete" and adds his own narrative regarding the fact. Sullivan Decl., para. 58. This does not amount to a material dispute of the stated fact. <b>Texas's stated material fact remains undisputed. Fed. R. Civ. P. 56(a), 56(c)(1).</b>
152.	The ILRGM has been used by the New Mexico experts to evaluate various historic conditions and hypothetical situations involving the Compact's appropriation to Texas that New Mexico believes to be involved in this dispute.	91	NM-EX 012, Sullivan Decl., para. 59.	The cited paragraph of the Sullivan Decl. does not establish a genuine dispute of fact. Fed. R. Civ. P. 56(a), 56(c)(1). Mr. Sullivan argues that the stated fact is "incorrect" because the "ILRGM . . . simulates only one historical condition . . ." Sullivan Decl., para. 59. Mr. Sullivan merely states that there is one historical model run, which is not inconsistent with the stated material fact regarding "various historic conditions," which may be the subject of the single run. <b>Texas's stated material fact remains undisputed. Fed. R. Civ. P. 56(a), 56(c)(1).</b>
153.	Although Texas disputes the need for, and reliability of, the ILRGM to evaluate certain situations, results from this model are instructive regarding the question of whether groundwater pumping in the Rincon and Mesilla Valleys depletes the surface water flows of the Rio Grande below Elephant Butte and Caballo Reservoirs.	91	NM-EX 012, Sullivan Decl., para. 60.	The cited paragraph of the Sullivan Decl. does not establish a genuine dispute of fact. Fed. R. Civ. P. 56(a), 56(c)(1). Mr. Sullivan agrees that the results of the model runs are "instructive" for the purposes described in the stated material fact. Sullivan Decl., para. 60. <b>Texas's stated material fact remains undisputed. Fed. R. Civ. P. 56(a), 56(c)(1).</b>
154.	New Mexico has run its ILRGM and made calculations from the ILRGM output to address the surface water depletions.	91	NM-EX 012, Sullivan Decl., para. 61.	The cited paragraph of the Sullivan Decl. does not establish a genuine dispute of fact. Fed. R. Civ. P. 56(a), 56(c)(1). Mr. Sullivan argues that the stated fact is "incomplete" and adds his own narrative regarding the fact. Sullivan Decl., para. 61. This does not amount to a material dispute of the stated fact. <b>Texas's stated material fact remains undisputed. Fed. R. Civ. P. 56(a), 56(c)(1).</b>

**EXHIBIT B**  
**THE STATE OF TEXAS'S OBJECTIONS AND RESPONSES TO THE STATE OF NEW MEXICO'S APPENDIX 1**

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155.	Again, without conceding the need for or reliability of the ILRGM, its results are the only evidence that New Mexico has disclosed on these issues and serve as admissions.	91	NM-EX 012, Sullivan Decl., para. 62.	The cited paragraph of the Sullivan Decl. does not establish a genuine dispute of fact. Fed. R. Civ. P. 56(a), 56(c)(1). Mr. Sullivan argues that the statement is "incorrect" and points to data regarding depletions which are included in the Spronk Report. Sullivan Decl., para. 62. This does not amount to a material dispute of the fact and does not address that the disclosures are admissions. <b>Texas's stated material fact remains undisputed. Fed. R. Civ. P. 56(a), 56(c)(1).</b>
156.	New Mexico's analysis indicates that groundwater pumping during the period of 1940 to 2017 has depleted the streamflow of the Rio Grande, on average, in the amount of 66,351 acre feet per year (AF/yr).	91	NM-EX 012, Sullivan Decl., para. 63.	The cited paragraph of the Sullivan Decl. does not establish a genuine dispute of fact. Fed. R. Civ. P. 56(a), 56(c)(1). Mr. Sullivan argues that the stated fact is "misleading" and adds his own narrative regarding the fact. Sullivan Decl., para. 63. This does not amount to a material dispute of the stated fact. <b>Texas's stated material fact remains undisputed. Fed. R. Civ. P. 56(a), 56(c)(1).</b>
157.	New Mexico's calculations from this analysis further indicate that 52,610 AF/yr of the total depletion is attributable to New Mexico's pumping and 13,700 AF/yr is due to Texas's pumping.	91	NM-EX 012, Sullivan Decl., para. 64.	The cited paragraph of the Sullivan Decl. does not establish a genuine dispute of fact. Fed. R. Civ. P. 56(a), 56(c)(1). Mr. Sullivan argues that the stated fact is "misleading" and adds his own narrative regarding the fact. Sullivan Decl., para. 64. This does not amount to a material dispute of the stated fact. <b>Texas's stated material fact remains undisputed. Fed. R. Civ. P. 56(a), 56(c)(1).</b>
158.	The Project was authorized in 1905 and began deliveries in 1916 to the predecessor water user organizations of EP#1 and EBID.	99	NM-EX 011, Stevens 2nd Decl., para. 5.	The cited paragraph of the Stevens 2nd Decl. does not establish any genuine dispute of fact. Fed. R. Civ. P. 56(a), 56(c)(1). The Stevens 2nd Decl. agrees that the Project was authorized in 1905 and that deliveries were made to the New Mexico and Texas districts beginning in 1916. Stevens 2nd Decl., para. 5. <b>Texas's stated material fact remains undisputed. Fed. R. Civ. P. 56(a), 56(c)(1).</b>
159.	Upon adoption of the Compact, delivery of water into the Project became the basis for New Mexico to satisfy its Compact obligations to Texas, and New Mexico relinquishes regulatory authority over the water once it is delivered.	99		New Mexico did not respond. <b>Texas's stated material fact remains undisputed. Fed. R. Civ. P. 56(a), 56(c)(1).</b>
160.	It is undisputed that New Mexico pumping intercepts and depletes the Rio Grande [Hutchison Decl. at TX_MSJ_000657-000669; see section V.F.3, <i>supra</i> (New Mexico admitted that its pumping depletes surface water flows)], and as such, operation of these water rights under New Mexico law conflicts with the Compact – federal law – and the California rule has no application.	98-99	NM-EX 006, Barroll 2nd Decl., paras. 34-41. NM-EX 012, Sullivan Decl., para. 65.	The cited paragraphs of the Barroll 2nd Decl. and Sullivan Decl. do not establish any genuine dispute of fact. Fed. R. Civ. P. 56(a), 56(c)(1). The cited paragraphs of the Barroll 2nd Decl. state that "[g]roundwater pumping . . . may cause stream depletions." Barroll 2nd Decl., para. 37. That does not amount to a material dispute of the stated fact. The cited paragraph of the Sullivan Decl. argues that the fact is "disputed," but merely concludes that the impact of pumping is "complex" and "[t]here are times . . . when New Mexico pumping has no impact on Project deliveries." Sullivan Decl., para. 65. The cited paragraph of the Sullivan Decl. does not dispute that pumping intercepts and depletes the Rio Grande, it just suggests that there is a temporal element to the impact (sometimes there is depletion, other times not). That does not amount to a material dispute of the stated fact. <b>Texas's stated material fact remains undisputed. Fed. R. Civ. P. 56(a), 56(c)(1).</b>
161.	Mr. Lopez concedes that groundwater pumping in New Mexico below Elephant Butte Reservoir has depleted the surface water of the Rio Grande.	89	NM-EX 006, Barroll 2nd Decl., paras. 35, 37, 52. NM-EX 012, Sullivan Decl., para. 66.	The cited paragraphs of the Barroll 2nd Decl. and Sullivan Decl. do not establish any genuine dispute of fact and the cited paragraphs of the Barroll 2nd Decl. cannot be presented at trial in any admissible form. Fed. R. Civ. P. 56(a), 56(c)(1), (2), (4); see Texas's General Objection #1. Both the Barroll 2nd Decl. and the Sullivan Decl. argue that groundwater pumping "in both New Mexico and in the Texas Mesilla" impact or may impact surface water flow. See, e.g., Barroll 2nd Decl., para. 35. That argument does not dispute the stated material fact which is that pumping in New Mexico depletes surface water flow. Thus, the cited paragraphs of the Barroll 2nd Decl. and Sullivan Decl. agree with the stated material fact, and simply seek only to add argumentative additional material to the proposition. In addition, neither the Barroll 2nd Decl. nor the Sullivan Decl. address Mr. Lopez's testimony that is the basis for Texas's stated material fact. <b>Texas's stated material fact remains undisputed. Fed. R. Civ. P. 56(a), 56(c)(1), (2), (4).</b>
162.	In this matter, it is undisputed that groundwater pumping in New Mexico below Elephant Butte Reservoir depletes surface water flow of the Rio Grande, and that groundwater pumping has increased substantially since 1938.	85	NM-EX 006, Barroll 2nd Decl., paras. 35, 37, 52. NM-EX 012, Sullivan Decl., para. 67.	The cited paragraphs of the Barroll 2nd Decl. and Sullivan Decl. do not establish any genuine dispute of fact and the cited paragraphs of the Barroll 2nd Decl. cannot be presented at trial in any admissible form. Fed. R. Civ. P. 56(a), 56(c)(1), (2), (4); see Texas's General Objection #7. Both the Barroll 2nd Decl. and the Sullivan Decl. argue that groundwater pumping "in both New Mexico and in the Texas Mesilla" impact or may impact surface water flow. See, e.g., Barroll 2nd Decl., para. 35. That argument does not dispute the stated material fact which is that pumping in New Mexico depletes surface water flow. Thus, the cited paragraphs of the Barroll 2nd Decl. and Sullivan Decl. agree with the stated material fact, and simply seek only to add argumentative additional material to the proposition. See also, Texas's General Objection #9. <b>Texas's stated material fact remains undisputed. Fed. R. Civ. P. 56(a), 56(c)(1), (2), (4).</b>

**EXHIBIT B**  
**THE STATE OF TEXAS'S OBJECTIONS AND RESPONSES TO THE STATE OF NEW MEXICO'S APPENDIX 1**

TAF NO.	"TEXAS ALLEGATION OF FACT" [New Mexico's Appendix 1 Table]	TEX. BR. PAGE	NEW MEXICO RESPONSE [New Mexico's Appendix 1 Table]	TEXAS RESPONSE
163.	Now, New Mexico's post-Compact development has depleted that water supply by capturing returns flows that otherwise would have been available.	16	NM-EX 006, Barroll 2nd Decl., paras. 35, 37, 50, 52, 55. NM-EX 100, Barroll Rep. at 26-30, 49-50, 55-61. NM-EX 012, Sullivan Decl., para. 68.	The cited paragraphs of the Barroll 2nd Decl. and the Sullivan Decl. and the cited pages of the Barroll Rep. do not establish any genuine dispute of fact and the Barroll Rep. cannot be presented at trial in any admissible form. Fed. R. Civ. P. 56(a), 56(c)(1), (2), (4); <i>see</i> Texas's General Objection #7. The cited paragraphs of the Barroll 2nd Decl. describe generally the development of groundwater wells in the Project area and Project operations. The paragraphs do not materially dispute the stated fact. The cited pages of the Barroll Rep. likewise do not specifically address or dispute the stated fact. The cited paragraph of the Sullivan Decl. does not dispute the stated fact, but instead argues that the stated fact "omits . . . Texas pumping," which is not a dispute of the stated fact. Sullivan Decl., para. 68. <b>Texas's stated material fact remains undisputed. Fed. R. Civ. P. 56(a), 56(c)(1), (2), (4).</b>
164.	Few groundwater wells were in use at the time of Compact adoption in 1938.	17	NM-EX Stevens 2nd Decl., para. 30. NM-EX 006, Barroll 2nd Decl., para. 14.	The cited paragraphs of the Stevens 2nd Decl. and the Barroll 2nd Decl. do not establish any genuine dispute of fact and the cited paragraph of the Barroll 2nd Decl. cannot be presented at trial in any admissible form. Fed. R. Civ. P. 56(a), 56(c)(1), (2), (4); <i>see</i> Texas's General Objection #1. Texas's stated material fact is that there were "[f]ew groundwater wells" in use in 1938. The cited paragraphs of the Stevens 2nd Decl. states that "a number of pumping" wells were in existence around 1905. Stevens 2nd Decl., para. 30. The cited paragraph of the Barroll 2nd Decl. describes the existence of "some active irrigation wells" during the 1920's and 1930s. Barroll 2nd Decl., para. 14. Neither of the cited paragraphs disputes that there "few" groundwater wells as of 1938. <b>Texas's stated material fact remains undisputed. Fed. R. Civ. P. 56(a), 56(c)(1), (2), (4).</b>
165.	As early as the 1900s, studies determined that the groundwater and surface water in the Rio Grande below Elephant Butte Reservoir were interconnected.	17	NM-EX 011, Stevens 2nd Decl., para. 31.	The cited paragraph of the Stevens 2nd Decl. does not establish any genuine dispute of fact. Fed. R. Civ. P. 56(a), 56(c)(1). The Stevens 2nd Decl. merely states that "scientific understanding of the relationship between groundwater and surface water in the Rio Grande was limited" at the time of the signing of the Compact, but it does not address Texas's stated material fact regarding the existence of early 1900s studies on groundwater and surface water interconnection. Stevens 2nd Decl., para. 31. <i>See also</i> , Texas's General Objection #9. <b>Texas's stated material fact remains undisputed. Fed. R. Civ. P. 56(a), 56(c)(1).</b>
<b>NEW MEXICO WATER ADMINISTRATION ASSERTIONS</b>				
166.	By 1938, the Lower Rio Grande basin of New Mexico was fully appropriated.	17	NM-EX 007, D'Antonio 2nd Decl., para. 16.	The cited paragraph of the D'Antonio 2nd Decl. does not establish any genuine dispute of fact and cannot be presented at trial in any admissible form. Fed. R. Civ. P. 56(a), 56(c)(1), (2), (4); <i>see</i> Texas's General Objection #3. The cited paragraph of the D'Antonio 2nd Decl. agrees that the Lower Rio Grande Basin of New Mexico "has been fully appropriated since 1908." D'Antonio 2nd Decl, para. 16. <b>Texas's stated material fact remains undisputed. Fed. R. Civ. P. 56(a), 56(c)(1), (2), (4).</b>
167.	Few groundwater wells were in use at the time of Compact adoption in 1938.	17	NM-EX 008, Lopez 2nd Decl., para. 22. NM-EX 011, Stevens 2nd Decl., para. 4.	The cited paragraphs of the Lopez 2nd Decl. and the Stevens 2nd Decl. do not establish any genuine dispute of fact and the cited paragraph of the Lopez 2nd Decl. cannot be presented at trial in any admissible form. Fed. R. Civ. P. 56(a), 56(c)(1), (2), (4). <i>See</i> Texas's General Objection #2. Neither of the cited paragraphs address Texas's stated material fact that "[f]ew groundwater wells were in use at the time of Compact adoption in 1938. <i>See also</i> , Texas's General Objection #9. <b>Texas's stated material fact remains undisputed. Fed. R. Civ. P. 56(a), 56(c)(1), (2), (4).</b>
168.	At that time, and later, releases from Elephant Butte Reservoir comprised effectively all of the Rio Grande surface water supply in the Lower Rio Grande. Footnote 18: In addition to releases from the Reservoir, small amounts of seasonal arroyo discharges contribute to available water in the Rio Grande. Brandes Decl. at TX_MSJ_000001- 000016. These arroyo flows were included in the total volume of water that was to be made available downstream of the Reservoir. Id	17	NM-EX 006, Barroll 2nd Decl., para. 10. NM-EX 100, Barroll Rep. at section 5.	The cited paragraph of the Barroll 2nd Decl. and the cited section of the Barroll Rep. do not establish any genuine dispute of fact and the Barroll Rep. cannot be presented at trial in any admissible form. Fed. R. Civ. P. 56(a), 56(c)(1), (2), (4); <i>see</i> Texas's General Objection #7. The cited paragraph of the Barroll 2nd Decl. does not address the stated material fact, rather it provides Dr. Barroll's understanding of the meaning of "Project supply." Barroll 2nd Decl., para. 10. The cited section of the Barroll Rep. is a five page excerpt of the report that summarizes "Project supply." Neither source directly or materially addresses the stated fact. <b>Texas's stated material fact remains undisputed. Fed. R. Civ. P. 56(a), 56(c)(1), (2), (4).</b>
169.	By the mid-1950s, New Mexico's understanding of the connection between surface water and groundwater in the Upper Rio Grande basin was reduced to an order of the New Mexico State Engineer, S.E. Reynolds, using his statutory authority to declare an "Underground Water Basin" for the Middle Rio Grande. Reynolds' Order acknowledged that groundwater fed the Rio Grande.	18	NM-EX 008, Lopez 2nd Decl., para. 41.	The cited paragraph of the Lopez 2nd Decl. does not establish any genuine dispute of fact and the material cannot be presented at trial in any admissible form. Fed. R. Civ. P. 56(a), 56(c), (1), (2), (4); <i>see</i> Texas's General Objection #2. The cited paragraph of the Lopez 2nd Decl. merely seeks to provide additional context for the Reynold's order. Further, paragraph 41 of the Lopez 2nd Decl. includes improper and inadmissible legal opinion on the meaning of the Compact. Fed. R. Evid. 704. <b>Texas's stated material fact remains undisputed. Fed. R. Civ. P. 56(a), 56(c)(1), (2), (4).</b>

**EXHIBIT B**  
**THE STATE OF TEXAS'S OBJECTIONS AND RESPONSES TO THE STATE OF NEW MEXICO'S APPENDIX 1**

<u>TAF NO.</u>	<u>"TEXAS ALLEGATION OF FACT"</u> <u>[New Mexico's Appendix 1 Table]</u>	<u>TEX. BR. PAGE</u>	<u>NEW MEXICO RESPONSE</u> <u>[New Mexico's Appendix 1 Table]</u>	<u>TEXAS RESPONSE</u>
170.	Twelve years later, during the 1968 dispute with Colorado, New Mexico State Engineer Reynolds opined that the delivery schedules upon which the Compact relied "makes the control of ground water appropriations in the upstream states essential" as otherwise the states could not adhere to their "compact commitments."	18	NM-EX 008, Lopez 2nd Decl., para. 40.	The cited paragraph of the Lopez 2nd Decl. does not establish any genuine dispute of fact and cannot be presented at trial in any admissible form. Fed. R. Civ. P. 56(a), 56(c), (1), (2), (4); <i>see</i> Texas's General Objection #2. The cited paragraph of the Lopez 2nd Decl. merely seeks to provide additional context for the undisputed Reynolds' quote. Further, para. 40 of the Lopez 2nd Decl. included improper and inadmissible legal opinion on the meaning of the Compact. Fed. R. Evid. 704. <b>Texas's stated material fact remains undisputed. Fed. R. Civ. P. 56(a), 56(c)(1), (2), (4).</b>
171.	This acknowledgment of the impact groundwater pumping had on Rio Grande surface waters was also among the bases of the New Mexico State Engineer's opposition to the city of El Paso's efforts to appropriate groundwater in New Mexico.	18	NM-EX 007, D'Antonio 2nd Decl., para. 14.	The cited paragraph of the D'Antonio 2nd Decl. does not establish any genuine dispute of fact and the material cannot be presented at trial in any admissible form. Fed. R. Civ. P. 56(a), 56(c)(1), (2), (4); <i>see</i> Texas's General Objection #3. The cited paragraph of the D'Antonio 2nd Decl. stated that New Mexico had "concern" regarding El Paso's efforts to appropriate groundwater in New Mexico. D'Antonio 2nd Decl, para. 14. <b>Texas's stated material fact remains undisputed. Fed. R. Civ. P. 56(a), 56(c)(1), (2), (4).</b>
172.	Finally, in the early 1980s, an internal study of streamflow depletion below Elephant Butte Reservoir conducted by State Engineer Reynolds' office concluded that groundwater development since the 1950s in New Mexico had altered flows to such an extent that greater releases were required from the Reservoir for the same quantity of water to reach the city of El Paso under the accepted 1938 Condition.	18	NM-EX 007, D'Antonio 2nd Decl., para. 14, n.5.	The cited footnote of the D'Antonio 2nd Decl. does not establish any genuine dispute of fact and the material cannot be presented at trial in any admissible form. Fed. R. Civ. P. 56(a), 56(c)(1), (2), (4); <i>see</i> Texas's General Objection #7; <i>see also</i> Texas's General Objection #9. The cited footnote merely addresses Mr. D'Antonio's opinion on propriety of a document cited in Dr. Miltenberger's declaration. D'Antonio 2nd Decl, para. 14, n. 5. New Mexico provides no evidence or opinion based on historical evidence or otherwise that Texas expert Scott Miltenberger is wrong in his conclusion that the document was authored by someone in the OSE in 1982 and therefore that fact is not disputed. Nor does the New Mexico response go to the substance of the document's content. The fact remains that someone in the New Mexico OSE in 1982 found that the groundwater pumping was adversely affecting deliveries to EP#1 in significant amounts. The New Mexico "evidence" does not materially dispute the substance of the stated fact. <b>Texas's stated material fact remains undisputed. Fed. R. Civ. P. 56(a), 56(c)(1), (2), (4).</b>
173.	New Mexico understood that groundwater pumping would deplete the volume of Rio Grande surface water, and that the basin was fully appropriated.	19	NM-EX 007, D'Antonio 2nd Decl., para. 16. NM-EX 006, Barroll 2nd Decl., para. 43. NM-EX 008, Lopez 2nd Decl., para. 23.	The cited paragraphs of the D'Antonio 2nd Decl, Barroll 2nd Decl, and Lopez 2nd Decl. do not establish any genuine dispute of fact and cannot be presented at trial in any admissible form. Fed. R. Civ. P. 56(a), 56(c)(1), (2), (4); <i>see</i> Texas's General Objections ##1, 2, 3. The cited paragraph of the D'Antonio 2nd Decl. agrees that the "LRG . . . has been fully appropriated since 1908" and it further addresses appropriations of surface water. D'Antonio 2nd Decl., para. 16. The cited paragraph of the Barroll 2nd Decl. states that "New Mexico has long understood the impacts of groundwater pumping on surface water systems, and as related to New Mexico's Compact obligations." Barroll 2nd Decl., para. 43. The cited paragraph of the Lopez Decl. merely address New Mexico's belief that the Compact "does not apportion . . . groundwater." Lopez 2nd Decl., para. 23. None of the cited paragraphs address Texas's stated material fact. <b>Texas's stated material fact remains undisputed. Fed. R. Civ. P. 56(a), 56(c)(1), (2), (4).</b>
174.	Nonetheless, New Mexico authorized the appropriation of groundwater to address the immediate water supply problems associated with the drought of the 1950s.	19	NM-EX 007, D'Antonio 2nd Decl., para. 18. NM-EX 006, Barroll 2nd Decl., paras. 15, 17, 18, 19, 20. NM-EX 008, Lopez 2nd Decl., para. 23.	The cited paragraphs of the D'Antonio 2nd Decl, Barroll 2nd Decl, and Lopez 2nd Decl. do not establish any genuine dispute of fact and the material cannot be presented at trial in any admissible form. Fed. R. Civ. P. 56(a), 56(c)(1), (2), (4); <i>see</i> Texas's General Objections ##1, 2, 3. The cited paragraph of the D'Antonio 2nd Decl. agrees that "[a] significant number of irrigation wells were drilled during the 1950s through 1970s . . ." D'Antonio 2nd Decl., para. 18. The cited paragraphs of the Barroll Decl. acknowledge that there was a drought in the 1950s and that "pumped groundwater" was distributed in the Project. Barroll 2nd Decl., paras. 15-20. The cited paragraph of the Lopez Decl. merely acknowledges that "have made extensive use of . . . groundwater resources" in a time frame "since the early 1950s." Lopez 2nd Decl., para. 23. None of the cited paragraphs dispute Texas's stated material fact. <b>Texas's stated material fact remains undisputed. Fed. R. Civ. P. 56(a), 56(c)(1), (2), (4).</b>
175.	The number of groundwater wells has increased from 60 in 1938 to over 8,000 in 2020.	19	NM-EX 010, Serrano Decl., paras. 14, 18-21.	The cited paragraphs of the Serrano Decl. do not establish any genuine dispute of fact. Fed. R. Civ. P. 56(a), 56(c)(1). Mr. Serrano stated that there are "3,000 active wells in the LRG." Serrano Decl., para. 14. Mr. Serrano's number, however, does not include domestic wells. Serrano Decl., para. 14, n.4. Texas's stated material fact does not include that limitation and thus, Mr. Serrano does not materially dispute the stated fact. <b>Texas's stated material fact remains undisputed. Fed. R. Civ. P. 56(a), 56(c)(1).</b>

**EXHIBIT B**  
**THE STATE OF TEXAS'S OBJECTIONS AND RESPONSES TO THE STATE OF NEW MEXICO'S APPENDIX 1**

<b>TAF NO.</b>	<b>"TEXAS ALLEGATION OF FACT" [New Mexico's Appendix 1 Table]</b>	<b>TEX. BR. PAGE</b>	<b>NEW MEXICO RESPONSE [New Mexico's Appendix 1 Table]</b>	<b>TEXAS RESPONSE</b>
176.	In 1980, the New Mexico Office of the State Engineer (OSE) "closed" the basin to new appropriations.  As discussed at section C.2, supra, New Mexico "closed" the Lower Rio Grande groundwater basin in 1980, prohibiting new appropriations of groundwater, which should be seen as an admission that New Mexico understood the impacts on Texas's apportionment of Rio Grande surface water from Lower Rio Grande well pumping.	19, 103-04	NM-EX 007, D'Antonio 2nd Decl., paras. 15, 17, 18.	The cited paragraphs of the D'Antonio 2nd Decl. do not establish any genuine dispute of fact and the material cannot be presented at trial in any admissible form. Fed. R. Civ. P. 56(a), 56(c)(1), (2), (4); see Texas's General Objection #3. The cited paragraphs of the D'Antonio 2nd Decl. do not address the 1980 closure of the basin to new appropriations. D'Antonio 2nd Decl., paras. 15, 17, 18. The remainder of Texas's stated material fact is not disputed or addressed in the cited paragraphs for the D'Antonio 2nd Decl. <b>Texas's stated material fact remains undisputed. Fed. R. Civ. P. 56(a), 56(c)(1), (2), (4).</b>
177.	As a practical matter, the closure of the basin simply meant that no new appropriations were authorized (N.M. Stat. Ann. sections 72-12-3.1), and there was no water available for appropriation.	20	NM-EX 007, D'Antonio 2nd Decl., paras.19, 21-27. NM-EX 011, Stevens 2nd Decl., para. 4.	The cited paragraphs of the of the Stevens 2nd Decl. and the D'Antonio 2nd Decl. do not establish any genuine dispute of fact and the cited paragraphs of the D'Antonio 2nd Decl. cannot be presented at trial in any admissible form. Fed. R. Civ. P. 56(a), 56(c)(1), (2), (4); see Texas's General Objection #3. The cited paragraphs of the D'Antonio 2nd Decl. do not dispute the stated practical impact of the closure of the basin, and do not provide any instances of new appropriations following 1980. D'Antonio 2nd Decl., paras. 19, 21-27. The cited paragraph of the Stevens 2nd Decl. does not address at all the closure of the basin. Stevens 2nd Decl., para. 4. <b>Texas's stated material fact remains undisputed. Fed. R. Civ. P. 56(a), 56(c)(1), (2), (4).</b>
178.	Notwithstanding the closing of the basin, groundwater pumping in New Mexico continued unabated. In 2010, New Mexico determined the groundwater basin was being mined. Mining of a groundwater basin means that more water is being pumped from the groundwater basin than can be replaced, causing groundwater levels to decline and causing the further depletion of the volume of water available to Texas. Groundwater pumping in New Mexico continues unabated today. The net result is that, notwithstanding the ongoing and recognized depletion of surface water flow through New Mexico's groundwater pumping in New Mexico below Elephant Butte Reservoir, pumping continues unabated, to the detriment of Texas.	19-22	NM-EX 007, D'Antonio 2nd Decl., paras. 1-11, 21, 23-28, 43-49, 55, 57-59. NM-EX 010, Serrano Decl., paras. 4-7, 10-14, 16, 18-21, 37. NM-EX 006, Barroll 2nd Decl., paras. 41, 66.	The cited paragraphs of the D'Antonio 2nd Decl., Serrano Decl, and Barroll Decl. do not establish any genuine dispute of fact and paragraphs 1-11, 21, 49 and 58 of the D'Antonio 2nd Decl. cannot be presented at trial in any admissible form. Fed. R. Civ. P. 56(a), 56(c)(1), (2), (4); see Texas's General Objection #3; see also ,Texas's General Objection #9. The cited paragraphs of the D'Antonio 2nd Decl. do not specifically address the stated material fact, rather they address generally Mr. D'Antonio's summary of water management in New Mexico. Likewise, the cited paragraphs of the Serrano Decl. do the same. The cited paragraphs of the Barroll 2nd Decl. do not include any direct dispute to the stated material facts, and include Dr. Barroll's opinions regarding present Project operations and operations pre-dating adoption of the D3 allocation and the 2008 Operating Agreement. Barroll 2nd Decl., para. 66. None of the cited authorities include a direct attempt to dispute the stated material fact. <b>Texas's stated material fact remains undisputed. Fed. R. Civ. P. 56(a), 56(c)(1), (2), (4).</b>
179.	All wells continued unregulated groundwater pumping until December 3, 2004, when the OSE ordered the creation of a Water Master District on the Lower Rio Grande, appointed a water master, and ordered measurement and reporting of groundwater pumping. While New Mexico now measures how much groundwater is pumped, New Mexico has taken no action to establish a system for administration as required to meet downstream interstate delivery entitlements.	20-21	NM-EX 007, D'Antonio 2nd Decl., paras. 57-59. Serrano Decl., paras. 4-5, 10-30. NM-EX 006, Barroll 2nd Decl., para. 81.	The cited paragraphs of the D'Antonio 2nd Decl., Serrano Decl, and Barroll Decl. do not establish any genuine dispute of fact and paragraph 58 of the D'Antonio 2nd Decl. cannot be presented at trial in any admissible form. Fed. R. Civ. P. 56(a), 56(c)(1), (2), (4); see Texas's General Objection #3; see also ,Texas's General Objection #9. The cited paragraphs of the D'Antonio 2nd Decl. do not specifically address the stated material fact, rather they address generally Mr. D'Antonio's summary of water management in New Mexico and do not address "interstate delivery entitlements." D'Antonio 2nd Decl., paras. 57-59. The cited paragraphs of the Serrano Decl. likewise do not address "interstate delivery entitlements," which is the subject of the stated material fact. Serrano Decl., paras. 4-5, 10-30. The cited paragraph of the Barroll 2nd Decl. states that New Mexico "is developing mechanisms to address these groundwater issues" and describes a Pilot Project. Barroll 2nd Decl., para. 81. Dr. Barroll's statement does not dispute, however, that New Mexico "has taken no action to establish a system for administration as required to meet downstream interstate delivery requirements." None of the cited declarations include material that disputes the stated material fact. <b>Texas's stated material fact remains undisputed. Fed. R. Civ. P. 56(a), 56(c)(1), (2), (4).</b>
180.	Further, transfers of existing groundwater rights continue apace, both formally through the statutory transfer process and informally through the Lower Rio Grande's "owner management program" (OWMAN). OWMAN allows groundwater users to combine operations of multiple groundwater permits at one well. Similarly, New Mexico cannot use the fact that the groundwater diversions at issue in this case may be consistent with New Mexico law as a shield against Texas's Complaint that its apportionment is being depleted by New Mexico's groundwater pumping. Footnote 38: New Mexico groundwater permit holders in the Lower Rio Grande also have the benefit of the New Mexico OSE's OWMAN which authorizes groundwater users to combine their permitted amounts for diversion out of a single well. See section II.C.2, infra; see also Serrano Depo., 2/26/2019, at TX_MSJ_001224-001227, 85:17-88:6.	21, 96	NM-EX 010, Serrano Decl., paras. 4-5, 31-34.	The cited paragraphs of the Serrano Decl. do not establish any genuine dispute of fact. Fed. R. Civ. P. 56(a), 56(c)(1). The cited paragraphs of the Serrano Decl. do not materially dispute the general description of the OWMAN program or Mr. Serrano's deposition testimony. In fact, para. 33 of the Serrano Decl. cites and describes the same deposition testimony cited in footnote 38 in the stated material fact. Mr. Serrano argues that OWMAN is a "sharing of use" and not a "transfer." Neither characterization changes the fact that OWMAN "allows groundwater users to combine operations of multiple groundwater permits at one well." <b>Texas's stated material fact remains undisputed. Fed. R. Civ. P. 56(a), 56(c)(1).</b>
181.	Irrigation is the primary use of water in the Lower Rio Grande in New Mexico.	22	This fact/s is undisputed by New Mexico.	<b>Texas's stated material fact is undisputed. Fed. R. Civ. P. 56(a), 56(c)(1).</b>

**EXHIBIT B**  
**THE STATE OF TEXAS'S OBJECTIONS AND RESPONSES TO THE STATE OF NEW MEXICO'S APPENDIX 1**

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182.	As a practical matter, New Mexico has admitted through 30(b)(6) testimony, that it does not monitor farmer diversions of surface water within EBID.		NM-EX 007, D'Antonio 2nd Decl., paras. 26, 29-37, 54, 55. NM-EX 010, Serrano Decl., para. 13.	The cited paragraphs of the D'Antonio 2nd Decl. and the Serrano Decl. do not establish any genuine dispute of fact. Fed. R. Civ. P. 56(a), 56(c)(1). The cited paragraphs of the D'Antonio 2nd Decl. address the Lower Rio Grande adjudication (paras. 29-37) and ancillary matters, not related to administration. The cited paragraphs of the D'Antonio 2nd Decl. do not address the New Mexico 30(b)(6) testimony described in the stated fact. The cited paragraph in the Serrano Decl. likewise does not address the 30(b)(6) testimony described in the stated fact. <b>Texas's stated material fact remains undisputed. Fed. R. Civ. P. 56(a), 56(c)(1).</b>
183.	Similarly, the New Mexico State Engineer is not only authorized, he is obligated, to adopt regulations to "actively" administer the groundwater pumping in the Lower Rio Grande in New Mexico to protect Texas's apportionment from post-1938 depletions. In 2003, the New Mexico state Legislature adopted N.M. Stat. Ann. sections 72-2-9.1(A) and (B) (emphasis added): [STATUTORY PROVISIONS FOLLOW]	101	NM-EX 007, D'Antonio 2nd Decl., para. 38-48. NM-EX 006, Barroll 2nd Decl., para. 81.	The cited paragraphs of the D'Antonio 2nd Decl. and the Barroll 2nd Decl. do not establish any genuine dispute of fact. Fed. R. Civ. P. 56(a), 56(c)(1). The cited paragraphs of the D'Antonio 2nd Decl. describe generally Mr. D'Antonio's summary of Active Water Resource Management in New Mexico and do not materially dispute the stated fact, in particularly regarding N.M. Stat. Ann. § 72-2-9.1(A) and (B). The cited paragraph of the Barroll 2nd Decl. describes a Pilot Project to reduce groundwater depletions in the LRG, and does not address the stated fact regarding AWRM. <b>Texas's stated material fact remains undisputed. Fed. R. Civ. P. 56(a), 56(c)(1).</b>
184.	To lay the ground work for adoption of district specific Active Water Resource Management (AWRM) regulations, the New Mexico State Engineer imposed a metering order in December of 2004 on the Lower Rio Grande below Elephant Butte, requiring all groundwater wells to be metered; prior to that time, meters were not required on irrigation wells.	101	NM-EX 007, D'Antonio 2nd Decl., paras. 38-48, 54.	The cited paragraphs of the D'Antonio 2nd Decl. do not establish any genuine dispute of fact. Fed. R. Civ. P. 56(a), 56(c)(1). The cited paragraphs of the D'Antonio 2nd Decl. describe generally Mr. D'Antonio's summary of Active Water Resource Management in New Mexico and do not materially dispute the stated fact. Mr. D'Antonio does not materially dispute the background regarding metering in New Mexico. <b>Texas's stated material fact remains undisputed. Fed. R. Civ. P. 56(a), 56(c)(1).</b>
185.	However, to date, measuring is all New Mexico has done. Footnote 40: Other New Mexico witnesses have confirmed that there has been no curtailment of groundwater pumping in the Lower Rio Grande. See, e.g., Barroll Depo., 2/5/2020, at TX_MSJ_000901, 56:19-20 ("... so far in the Lower Rio Grande, we have not done active curtailment of any water rights"); Serrano Depo., 2/26/2019, at TX_MSJ_001194, 55:14-22; D'Antonio Depo., 6/26/2020, at TX_MSJ_000847, 325:10-23; Barroll 30(b)(6) Depo., 10/21/2020, at TX_MSJ_000976-000977, 31:23-32:5.	102	NM-EX 007, D'Antonio 2nd Decl., paras. 23, 24, 44-48, 53, 55, 56, 57. NM-EX 010, Serrano Decl., paras. 4-5, 10, 13-14, 22-30, 27 n.5. NM-EX 006, Barroll 2nd Decl., para. 81.	The cited paragraphs of the D'Antonio 2nd Decl., Serrano Decl., and Barroll Decl. do not establish any genuine dispute of fact. Fed. R. Civ. P. 56(a), 56(c)(1). The cited paragraphs of the D'Antonio 2nd Decl., Serrano Decl., and Barroll 2nd Decl. do not dispute that beyond measuring "there has been no curtailment of groundwater pumping in the Lower Rio Grande." The Barroll 2nd Decl. admits that "New Mexico is developing mechanisms to address these groundwater issues" but does not mention any attempt to do so to date. Barroll 2nd Decl., para. 81. None of the cited authorities includes a direct attempt to dispute the stated material fact. <b>Texas's stated material fact remains undisputed. Fed. R. Civ. P. 56(a), 56(c)(1).</b>
186.	As New Mexico's 30(b)(6) witness, Cheryl Thacker testified that "we can't manage what we don't measure."	101-02	This fact/s is undisputed by New Mexico.	<b>Texas's stated material fact is undisputed. Fed. R. Civ. P. 56(a), 56(c)(1).</b>
187.	As the legislation's title implies, Active Water Resource Management authorizes the New Mexico OSE to adopt regulations that will allow for "active" management of water rights. Asked about the distinction between "active" and "normal" or "standard" administration of water rights, Dr. Barroll responded: [N]ormal or standard administration of water rights versus active administration of water rights, active administration being more related to some sort of priority call or other curtailment of water rights, if necessary, in times of shortage.	102 102	This fact/s is undisputed by New Mexico.	<b>Texas's stated material fact is undisputed. Fed. R. Civ. P. 56(a), 56(c)(1).</b>
188.	In 2005 and 2006, the OSE began an effort to promulgate district specific regulations under the AWRM statute for the Lower Rio Grande at least in part to avoid a lawsuit from Texas.	102	NM-EX 007, D'Antonio 2nd Decl., paras. 38-48.	The cited paragraphs of the D'Antonio 2nd Decl. do not establish any genuine dispute of fact. Fed. R. Civ. P. 56(a), 56(c)(1). The cited paragraphs summarize Mr. D'Antonio's understanding regarding the development of AWRM in New Mexico. D'Antonio 2nd Decl., paras. 38-48. The cited paragraphs do not materially disputed that proposition that OSE began AWRM in the Lower Rio Grande "at least in part to avoid a lawsuit from Texas." See also, Texas's General Objection #9. <b>Texas's stated material fact remains undisputed. Fed. R. Civ. P. 56(a), 56(c)(1).</b>
189.	However, according to Dr. Barroll: "... so far in the Lower Rio Grande, we have not done active curtailment of any water rights." Footnote 42: Barroll Depo., 2/5/2020, at TX_MSJ_000901, 56:19-20; see also D'Antonio Depo., 6/26/2020, at TX_MSJ_000847, 325:21-23 ("[The district-specific regulations] aren't in place yet, so any active curtailment with respect to water administration, that piece is not in place yet.").	103	NM-EX 007, D'Antonio 2nd Decl., paras. 38-42, 53 n. 19. NM-EX 010, Serrano Decl., paras. 4-5, 10, 13-14, 22-30, 27 n. 5. NM-EX 006, Barroll 2nd Decl., para. 81.	The cited paragraphs of the D'Antonio 2nd Decl., Serrano Decl., and Barroll Decl. do not establish any genuine dispute of fact. Fed. R. Civ. P. 56(a), 56(c)(1). The cited paragraphs of the D'Antonio 2nd Decl., Serrano Decl., and Barroll 2nd Decl. do not dispute that beyond measuring there has been no curtailment of groundwater pumping in the Lower Rio Grande. The Barroll 2nd Decl. admits that "New Mexico is developing mechanisms to address these groundwater issues" but does not mention any attempt to do so to date. Barroll 2nd Decl., para. 81. None of the cited authorities includes a direct attempt to dispute the stated material fact. See also, Texas's General Objection #9. <b>Texas's stated material fact remains undisputed. Fed. R. Civ. P. 56(a), 56(c)(1).</b>

**EXHIBIT B**  
**THE STATE OF TEXAS'S OBJECTIONS AND RESPONSES TO THE STATE OF NEW MEXICO'S APPENDIX 1**

<b>TAF NO.</b>	<b>"TEXAS ALLEGATION OF FACT" [New Mexico's Appendix 1 Table]</b>	<b>TEX. BR. PAGE</b>	<b>NEW MEXICO RESPONSE [New Mexico's Appendix 1 Table]</b>	<b>TEXAS RESPONSE</b>
190.	However, the administrative closure did not limit pumping from existing wells, which continued to increase [see <b>Figures 3 and 4</b> ; Schorr Decl. at TX_MSJ_000697-000699] and did not impose a requirement to obtain a well permit.	104	NM-EX 007, D'Antonio 2nd Decl., paras. 5, 15, 18-21.	The cited paragraphs of the D'Antonio 2nd Decl. do not establish any genuine dispute of fact. Fed. R. Civ. P. 56(a), 56(c)(1). Mr. D'Antonio summarize administrative history regarding the Office of the State Engineer's management of the Lower Rio Grande but does not dispute Texas's stated material fact regarding administrative closure of the basin. <b>Texas's stated material fact remains undisputed. Fed. R. Civ. P. 56(a), 56(c)(1).</b>
191.	Indeed, the New Mexico OSE's Watermaster for the Lower Rio Grande admitted New Mexico's lack of action to ensure Compact compliance: Q: What does your office do to implement the terms of the Rio Grande Compact, if any? A: My office does not do anything locally to effectuate the Compact.	104	NM-EX 007, D'Antonio 2nd Decl., paras. 55 n.19, 57-59 NM-EX 010, Serrano Decl., paras. 4-5, 10-11, 13-14, 22-30, 27 n.5.	The cited paragraphs of the D'Antonio 2nd Decl. and the Serrano Decl. do not establish any genuine dispute of fact. Fed. R. Civ. P. 56(a), 56(c)(1). Neither of the cited authorities materially dispute Mr. Serrano's deposition testimony which is the basis for the stated material fact. <b>Texas's stated material fact remains undisputed. Fed. R. Civ. P. 56(a), 56(c)(1).</b>
192.	New Mexico could actively curtail groundwater pumping to ensure delivery of Texas's apportionment without interference. The [New Mexico] Legislature has directed the State Engineer to engage in this type of "active" administration. See, <i>supra</i> , section G.4 (discussion of AWRM); however, New Mexico has admitted it considered but ultimately rejected regulations which would have required curtailment of wells in the Lower Rio Grande.	104	NM-EX 007, D'Antonio 2nd Decl., paras. 38-40, 42, 44, 46-48. 55 n.19. NM-EX 010, Serrano Decl., paras. 4-5, 10, 13-14, 22-30, 27 n.5. NM-EX 006, Barroll 2nd Decl., para. 81.	The cited paragraphs of the D'Antonio 2nd Decl., Serrano Decl., and Barroll Decl. do not establish any genuine dispute of fact. Fed. R. Civ. P. 56(a), 56(c)(1). The cited paragraphs of the D'Antonio 2nd Decl., Serrano Decl., and Barroll 2nd Decl. do not dispute that New Mexico "could actively curtail groundwater pumping" and the Barroll 2nd Decl. even admits that "New Mexico is developing mechanisms to address these groundwater issues" but does not mention any attempt to do so to date. Barroll 2nd Decl., para. 81. <i>See also</i> , Texas's General Objection #9. <b>Texas's stated material fact remains undisputed. Fed. R. Civ. P. 56(a), 56(c)(1).</b>
193.	On numerous occasions, New Mexico witnesses have referred to "conjunctive use" of groundwater and surface water supplies as if allowing groundwater use to replace unavailable surface water is an acceptable means of controlling depletions. Plainly stated, it is not – conjunctive use simply means that surface water shortages will be made up for with groundwater pumping.	105	NM-EX 007, D'Antonio 2nd Decl., paras. 8, 23.	The cited paragraphs of the D'Antonio 2nd Decl. do not establish any genuine dispute of fact and the material cannot be presented at trial in any admissible form. Fed. R. Civ. P. 56(a), 56(c)(1), (2), (4); <i>see</i> Texas's General Objection #3; <i>see also</i> , Texas's General Objection #9. Neither of the cited paragraphs address the use of the phrase "conjunctive use" which is the subject of the stated material fact. <b>Texas's stated material fact remains undisputed. Fed. R. Civ. P. 56(a), 56(c)(1), (2), (4).</b>
194.	Regardless of the label applied by New Mexico, groundwater pumping depletes the surface water supply as admitted by New Mexico. The pumping does enhance the New Mexico water supply, but that is accomplished by depleting the surface water supply that otherwise would have been delivered to EP#1 and Mexico.	105	NM-EX 006, Barroll 2nd Decl., paras. 20, 28.	The cited paragraphs of the Barroll 2nd Decl. do not establish any genuine dispute of fact and cannot be presented at trial in any admissible form. Fed. R. Civ. P. 56(a), 56(c)(1), (2), (4); <i>see</i> Texas's General Objection #1. The cited paragraphs merely discuss the circumstances of the 1950s drought (Barroll 2nd Decl, para. 20) and increased pumping as a result of drought. <i>Id.</i> para. 28). The cited paragraphs of the Barroll 2nd Decl. do not address the concept stated in the fact that pumping "enhance[s] New Mexico water supply" "by depleting the surface water supply that otherwise would have been delivered to EP#1 and Mexico." <b>Texas's stated material fact remains undisputed. Fed. R. Civ. P. 56(a), 56(c)(1), (2), (4).</b>
195.	Under New Mexico law, "offsets" are authorized, and indeed under the 1999 "Mesilla Valley Administrative Area Guidelines for Review of Water Right Applications" (MVAA Guidelines) require gross volumetric "offsets" when a water user files an application to transfer groundwater rights <sup>46</sup> to either new places of use or new types of use. Footnote 46: It is undisputed that the Lower Rio Grande is fully appropriated and, according to Cheryl Thacker, there is no water available for any new appropriations. Thacker Depo., 4/18/2019, at TX_MSJ_001326-001327, 21:6-22:24. As applied by New Mexico in the Lower Rio Grande, offsets are volume-based replacement of depletions to the Rio Grande, and are typically designed to replace a volumetric amount of depletions, but offsets may be "paid" to the river in the next calendar year, and in any event do not ensure replacement in time and location. In addition, the State Engineer "will not require offsets of surface water depletions when the proposed transfer of water rights results in an increased calculated depletion of less than 3% of the total amount of water diverted and consumed." Similarly, in transfers of groundwater rights a de minimis volume of depletion is authorized. Thus, offsets are only imposed on transfers or new uses sought for existing groundwater rights, but all existing groundwater pumping is allowed without offsets or replacement water. In addition, even when offsets are required, under the MVAA Guidelines all depletions are not replaced in volume, and the guidelines have no requirements to replace depletions in time and location.	105-06	NM-EX 010, Serrano Decl., paras. 11-12. NM-EX 007, D'Antonio 2nd Decl., paras. 22, 23, 24.	The cited paragraphs of the Serrano Decl. and the D'Antonio 2nd Decl. do not establish any genuine dispute of fact. Fed. R. Civ. P. 56(a), 56(c)(1). The cited paragraphs of the Serrano Decl. do not establish "offsets" which is the subject of the stated material fact. Serrano Decl., paras. 11-12. The cited paragraphs of the D'Antonio 2nd Decl. likewise do not address "offsets." <b>Texas's stated material fact remains undisputed. Fed. R. Civ. P. 56(a), 56(c)(1).</b>