No. 141, Original

In the

SUPREME COURT OF THE UNITED STATES

STATE OF TEXAS,

Plaintiff,

v.

STATE OF NEW MEXICO and
STATE OF COLORADO,

Defendants.

OFFICE OF THE SPECIAL MASTER

THE STATE OF TEXAS'S EVIDENTIARY OBJECTIONS AND SUR-REPLY TO THE STATE OF NEW MEXICO'S NEW EVIDENCE SUBMITTED IN SUPPORT OF ITS THREE REPLY BRIEFS

Stuart L. Somach, Esq.*
Andrew M. Hitchings, Esq.
Robert B. Hoffman, Esq.
Francis M. Goldsberry II, Esq.
Theresa C. Barfield, Esq.
Sarah A. Klahn, Esq.
Brittany K. Johnson, Esq.
Richard S. Deitchman, Esq.
SOMACH SIMMONS & DUNN, PC
500 Capitol Mall, Suite 1000
Sacramento, CA 95814
Telephone: 916-446-7979
ssomach@somachlaw.com
**Counsel of Record*

April 6, 2021

The State of Texas (Texas) hereby submits the following sur-reply and evidentiary objections to the new evidence submitted by the State of New Mexico (New Mexico) in support of its reply briefs on its three pending motions for partial summary judgment.

Texas summarized its position with respect to the new evidence New Mexico submitted with its reply briefs in Texas's February 16, 2021 letter to the Special Master (Docket No. 477). As explained in the letter, on February 5, 2021, New Mexico filed three reply briefs in support of its three pending motions for partial summary judgment. In support of the reply briefs, New Mexico filed its "Final Exhibit Compendium: Index" setting forth "all exhibits submitted in its summary judgment submissions since November 5, 2020. *See* New Mexico's Final Exhibit Compendium: Index, filed Feb. 5, 2021 (Compendium), lodged with the Special Master as Docket No. 470. In its Compendium, New Mexico stated that "new exhibits filed in support of its replies filed on February 5, 2021, or modifications made, are indicated in green font . . . ." *Id.* The new exhibits, as noted by the green font, include sixteen new declarations by New Mexico's designated experts (NM-EX Nos. 014-029). The new exhibits also include six new expert reports, and thirteen new documents, transcripts, and/or pleadings (NM-EX Nos. 107A, 121A, 128-131, 353, 449-452, 551-552, 607-612).

Federal Rule of Civil Procedure 56 "requires the nonmoving party to be given notice and a reasonable opportunity to respond to the movant's summary judgment materials." *Beaird v. Seagate Tech.*, 145 F.3d 1159, 1164 (10th Cir. 1998), citing *Celotex Corp. v. Catrett*, 477 U.S. 317, 326 (1986). Accordingly, although New Mexico, as a moving party, may submit additional evidence in a reply brief, Texas, as the nonmoving party, should be granted an opportunity to respond. *Beard v. Seagate Tech.*, 145 F.3d at 1164, citing *Cia. Petrolera Caribe, Inc. v. Arco Caribbean, Inc*., 754 F.2d 404, 410 (1st Cir. 1985); *see*

also Vais Arms, Inc. v. Vais, 383 F.3d 287, 292 (5th Cir. 2004) ("a district court may rely on arguments and evidence presented for the first time in a reply brief as long as the court gives the nonmovant an adequate opportunity to respond").

Texas requests that the Special Master strike the new evidence filed in support of New Mexico's three reply briefs as untimely (exhibits identified as NM-EX 014-029, 107A, 121A, 128-131, 353, 449-452, 551-552, 607-612). In the alternative, pursuant to the schedule set forth in the Special Master's March 2, 2021 Order, Texas submits the following sur-reply, including evidentiary objections and responses to New Mexico's new evidence submitted with its three reply briefs.

EVIDENTIARY OBJECTIONS AND RESPONSE TO NEW MEXICO'S NEW EVIDENCE SUBMITTED WITH ITS FEBRUARY 5, 2021 REPLY BRIEFS

See Attachment 1.

Dated: April 6, 2021

Respectfully submitted,

s/ Stuart L. Somach

STUART L. SOMACH, ESQ.*
ANDREW M. HITCHINGS, ESQ.
ROBERT B. HOFFMAN, ESQ.
FRANCIS M. GOLDSBERRY II, ESQ.
THERESA C. BARFIELD, ESQ.
SARAH A. KLAHN, ESQ.
BRITTANY K. JOHNSON, ESQ.
RICHARD S. DEITCHMAN, ESQ.
SOMACH SIMMONS & DUNN, PC
500 Capitol Mall, Suite 1000
Sacramento, CA 95814
Telephone: 916-446-7979
ssomach@somachlaw.com

**Counsel of Record*

ATTACHMENT 1

State of New Mexico's Reply to Statement of Facts: Apportionment Motion

	New Mexico's Apportionment Motion UMFs (11-5-2020)	Texas's Response to New Mexico's Apportionment Motion UMFs (12-22-2020)	United States' Response to New Mexico's Apportionment Motion UMFs (12-22-2020)	New Mexico's Response / Final Disposition of Facts	Texas's Objections and Response to New Evidence Filed with New Mexico's 2/5/2021 Reply Brief
8	In its initial conception, Reclamation engineered the Project to deliver an annual release between 750,000 acre- feet and 800,000 acre-feet, enough to provide 60,000 acre-feet of water to Mexico and to irrigate 155,000 acres in the United States (assuming delivery of three acre- feet per acre, plus twenty percent loss in the distribution system), of which 110,000 acres would be situated in New Mexico and 45,000 in Texas. *See* NM-EX 310, Fund for Reclamation of Arid Lands, H.R. Doc. 61-1262, at 106 (1911); NM-EX 112, Stevens Rep. 21.	Subject to the stated objection, disputed. This paragraph is factually incomplete and mischaracterizes the cited primary- source document, Fund for Reclamation of Arid Lands, H.R. Doc 61-1262 (1911). NM-EX-310. References to 750,000 acre-feet and 800,000 acre-feet in the document are projections and estimates of "annual supply" from the reservoir – not as expected release figures. These estimates were based not only on reservoir capacity, but also flow, evaporation, and (as acknowledged by the paragraph), a three acre-feet per acre water duty and losses. Forty percent and not "20 per cent" was the total allowance to be made for those losses: 1) "loss in the distribution system" ("20 per cent"), and 2) "losses in transit" ("20 per cent"). Miltenberger Dec. in Opp. to NM at TX_MSJ_007371, paragraphs 1-7, 11.	**Disputed.** The report cited here was prepared in 1910, several years after the "initial conception" of the project and before the dam was constructed. The report states that "there seems to be an assured supply of 750,000 to 800,000 acre-feet" for the Project, and it considers the amount of water that would be provided for irrigation use from assumed releases of 750,000 acre feet ("af") and 800,000 af. NM-EX-310, Recl. Fund Rep., at 105, ¶¶ 15-16. The report finds the "amount required for diversion to lands in the United States is 581,250 acre-feet," in order to provide each farm enough water to apply 3 af/acre ("af/ac") after accounting for on- farm distribution losses. *Id.* at 106, ¶ 18. The report finds that "approximately 800,000 acre-feet would be required" to overcome the twenty percent transit loss in the river to make the 581,250 af available for diversion.*Id.* The report does not draw the same conclusion for a release of 750,000 af or any amount less than 800,000 af. *See id.* The report states that that "the total area in the Project is 155,000 acres," of which 45,000 acres were in Texas and 132,000acres were in new Mexico (110,000 acres plus 12,000 acres of public land "subject to the reclamation act," i.e., withdrawn from entry). *Id.* , 19.	**There is no genuine dispute as to this fact.** Response to Texas and the U.S.: Texas and the U.S. provide no evidence that in this context an "annual release" is any different from "an annual supply" is any different from an "assured supply." **See NM-EX 016, Stevens Decl., ¶ 5.** The confusion of the numbers presented by the parties do not create a genuine dispute as to the fact that the Reclamation estimates assumed the release or supply amount was sufficient to provide acre of the "total area in the Project" of 155,000 acres with three AF of water per acre.	NM-EX 016: Fed. R. Civ. P. 56(c)(4), the cited evidence does not support the stated "facts" in whole and/or in part. Subject to the stated objection, New Mexico's attempt to conflate the terms "annual release[,]" "annual supply[,]" and "assured supply" is inaccurate and further mischaracterizes the cited primary- source document, Fund for Reclamation of Arid Lands, H.R. Doc 61-1262 (1911). NM-EX-310. Moreover, New Mexico's response lacks any evidentiary support for their assertion that references to 750,000 acre-feet and 800,000 acre-feet in the source document were projections and estimates of release figures, rather than projections and estimates of "annual supply" as argued by Texas. Thus, the fact remains disputed.
15	The New Mexico Compact Commissioner supported the inclusion of Texas in further compact negotiations. He wrote the New Mexico Governor that the exclusion Texas "assumed" that Reclamation would "protect[]" the rights of the Project in negotiations, but this assumption proved false because "the Reclamation Service apparently decided to take no action whatever looking to the presentation of the rights of the Rio Grande Project either as to lands in New Mexico or Texas, although it was expected that this would be done."*See* NM-EX 315, Letter from J.O. Seth, Commissioner, State of New Mexico, to A.T. Hannett, Governor, State of New Mexico, at 3 (Feb. 20, 1925).	Subject to the stated objection, disputed. This paragraph is factually incorrect. The assumption expressed was not Texas's. In his February 20, 1925 letter to Governor A.T. Hannett in February 1925, New Mexico Compact Commissioner J.O. Seth noted that "Chapter 112 of the Session Laws of 1923 makes no provision whatever for according Texas the right of representation on the Commission." This law was New Mexico's own, authorizing compact negotiations with Colorado. The New Mexico Commissioner wrote to Hannett: The omission of the State of Texas from Chapter 112 of the Session laws of 1923 can be accounted for only on the theory that the Legislature assumed that the only lands in Texas that would be affected by any Compact or Agreement are those lying above Fort Quitman and within the Rio Grande Project of the United States Reclamation Service and that all rights to the waters of the Rio Grande held by these lands would be protected by the Reclamation Service. The full quotation, read in context, indicates that Commissioner Seth presumed the New Mexico State Legislature believed that Reclamation would safeguard Texas's Project water supply. Miltenberger Dec. in Opp. to NM at TX_MSJ_007371, paragraphs 1-7, 17	**Disputed.** The quoted portion of the letter states that the exclusion of Texas from the joint commission "can be accounted for only*on the theory* that the Legislature assumed that the only lands in Texas that would be affected by any Compact or Agreement [between New Mexico and Colorado] are those [in the Project] and that all rights to the waters of the Rio Grande held by these lands would be protected by the Reclamation Service." NM-EX- 315, Seth Letter at 3. The report states that "up to . . . October, 1924,"Reclamation had not taken action, but notes that had apparently been "taking steps to properly present the rights of the Rio Grande Project" since then. *Id* .	**There is no genuine dispute as to the fact**that the New Mexico Compact Commissioner supported the inclusion of Texas in further Compact negotiations. Response to Texas: If the "of", inadvertently omitted before the word "Texas" in the second sentence is supplied, it is clear that New Mexico was not attributing the statement to Texas. *See* **NM- EX 016, Stevens Decl., ¶ 6.**	NM-EX 016: Fed. R. Civ. P. 56(c)(4), the cited evidence does not support the stated "facts" in whole and/or in part. Subject to the stated objection, this paragraph remains factually incorrect. The full quotation, read in context, indicates that Commissioner Seth presumed the New Mexico State Legislature believed that Reclamation would safeguard Texas's Project water supply. Miltenberger Dec. in Opp. to NM at TX_MSJ_007371, paragraphs 1-7, 17. New Mexico's response does not address Texas's assertion that the full quotation is taken out of context, and thus factually incorrect. Further, supplementing the word "of", which New Mexico originally omitted, does not change the fact that New Mexico's Compact Commissioner's statement involved Texas, or that New Mexico failed to provide sufficient evidence to support its "fact." Thus, the fact remains disputed.
17	In December 1935, the Rio Grande Compact Committee met to continue negotiations. At that meeting, officials from the National Resources Committee presented a proposal for a comprehensive study of the Rio Grande in order to facilitate an agreement. *See* NM-EX 317, Proceedings of the Rio Grande Compact Commission held in Santa Fe, New Mexico December 2-3, 1935, at 5-7 (1935); NM-EX 112, Stevens Rep. at 55.	Subject to the stated objections, disputed in part. This paragraph excludes context essential to understanding how the resulting "comprehensive study" – the Rio Grande Joint Investigation (as referenced in paragraph 18 of New Mexico's Motion for Partial Summary Judgment on Compact Apportionment)– was framed. The proposal by the National Resources Committee (NRC) resulted from an NRC Board of Review's assessment that the "water resources of the Rio Grande were fully appropriated," and that New Mexico's Middle Rio Grande Conservancy District's project and other proposed projects in New Mexico and Colorado above Elephant Butte threatened the Rio Grande Project. Miltenberger Declaration paragraphs 12-16 addresses this context. TX_MSJ_001585 Miltenberger Dec. in Opp. to NM at TX_MSJ_007371, paragraphs 1-7, 14.	Not disputed.	**The material fact** that in December 1935 the Rio Grande Compact Committee met to continue negotiations, and that officials from the National Resources Committee presented a proposal for a comprehensive study of the Rio Grande in order to facilitate an agreement **is not disputed.** Response to Texas: It was the need for coordinated development that prompted the Rio Grande Joint Investigation. **NM-EX 016, Stevens Decl., ¶ 7.**	NM-EX 016: Fed. R. Civ. P. 56(c)(4), the cited evidence does not support the stated "facts" in whole and/or in part. Subject to the stated objection, this paragraph still excludes context essential to understanding how the resulting "comprehensive study" – the Rio Grande Joint Investigation (as referenced in paragraph 18 of New Mexico's Motion for Partial Summary Judgment on Compact Apportionment)– was framed. The proposal by the National Resources Committee (NRC) resulted from an NRC Board of Review's assessment that the "water resources of the Rio Grande were fully appropriated," and that New Mexico's Middle Rio Grande Conservancy District's project and other proposed projects in New Mexico and Colorado above Elephant Butte threatened the Rio Grande Project. Miltenberger Declaration paragraphs 12-16 addresses this context. TX_MSJ_001585.4 Miltenberger Dec. in Opp. to NM at TX_MSJ_007371, paragraphs 1 – 7, 14. New Mexico's response that the Rio Grande Joint Investigation was prompted by the need for "coordinated development" does not address or dispute Texas's assertion that the investigation was framed around concerns that projects in New Mexico and Colorado above Elephant Butte threatened the Rio Grande Project. Thus, the fact remains disputed.

	New Mexico's Apportionment Motion UMFs (11-5-2020)	Texas's Response to New Mexico's Apportionment Motion UMFs (12-22-2020)	United States' Response to New Mexico's Apportionment Motion UMFs (12-22-2020)	New Mexico's Response / Final Disposition of Facts	Texas's Objections and Response to New Evidence Filed with New Mexico's 2/5/2021 Reply Brief
20	In entering negotiations New Mexico stressed that for it to agree, the final compact needed to provide that "[a]ll existing rights to the use of water in the Rio Grande Basin in New Mexico shall be recognized as having the right to an adequate supply of water from said river system." This position was important to New Mexico, in part, because the surface water in the Lower Rio Grande in New Mexico was fully appropriated and New Mexico expected the final compact to protect those existing rights. *See* NM-EX 319, Rio Grande Compact Commission, *Proceedings of the Meeting of the Rio Grande Compact Commission Held in Santa Fe, New Mexico, September 27, to October 1, 1937* , 12-13 (1937); NM-EX 111, Miltenberger Rep. 25; NM- EX 112, Stevens Rep. 65; NM-EX 005, Stevens Decl. ¶ 8; NM-EX 002, D'Antonio Decl. ¶ 9.	Subject to the stated objections, disputed. This paragraph is misleading. According to the cited pages of the primary-source document - the September 27 to October 1, 1937 Rio Grande Compact Commission proceedings, NM-EX 319 – New Mexico expressed it "was willing to negotiate" for a compact on the basis of several "minimum requirements" (the fourth of which is the quoted statement), and not that the final compact had to possess all these elements for the state to consummate a Compact with Colorado and Texas, as this paragraph implies. The historical record further indicates that the Compact ultimately privileged uses over rights in the Upper Rio Grande Basin, and that New Mexico bargained for water uses above San Marcial and below the Colorado-New Mexico state line, while Texas bargained for water use below San Marcial. Miltenberger Declaration paragraphs 20-26 discuss the privileging of uses over rights, TX_MSJ_001585; and Miltenberger Declaration paragraphs 8, 24, 26, and 37 specifically address what NewMexico and Texas bargained for. TX_MSJ_001585. Miltenberger Dec. in Opp. to NM at TX_MSJ_007371, paragraphs 1-7, 16, 49.	**[a]** Not disputed. **[b] Disputed.** Whether this position was "important" to New Mexico is a subjective determination, not a statement of fact, and the reasons why the position might have been to New Mexico important are matters of speculation. The statement is also ambiguous in its reference to "those existing rights." The New Mexico Compact Commissioner explained that "[a]ll existing rights to the use of water in the Rio Grande Basin in New Mexico shall be recognized as having the right to an adequate supply of water from said River System," suggesting that New Mexico's affirmation of the Compact endorsed the Project as a mechanism for supplying an adequate water supply in the lower portion of New Mexico. NM-EX 319, RGCC Sept.-Oct. 1937, at 59.	**The material fact** that at the Rio Grande Compact Commission negotiation meetings New Mexico stated that a minimum requirement for New Mexico was that "[a]ll existing rights to the use of water in the Rio Grande Basin in New Mexico shall be recognized as having the right to an adequate supply of water from said River System" **is undisputed.** Response to Texas: In his declarations, Miltenberger expresses new expert opinions. New Mexico intends to object to the new opinions disclosed by Miltenberger pursuan to FRCP 56(c)(2), and reserves the right to file a motion to strike or a motion in limin as to Miltenberger's untimely expert opinions. Further, Miltenberger excluded the parts of the quote at issue that do not fit his theory.*See* **NM-EX 016, Stevens Decl., ¶ 8.**	NM-EX 016: Fed. R. Civ. P. 56(c)(4), the cited evidence does not support the stated "facts" in whole and/or in part. Subject to the stated objection, this paragraph is still misleading. According to the cited pages of the primary-source document – the September 27 to October 1, 1937 Rio Grande Compact Commission proceedings, NM-EX 319 – New Mexico expressed it "was willing to negotiate" for a compact on the basis of several "minimum requirements" (the fourth of which is the quoted statement), and not that the final compact had to possess all these elements for the state t consummate a Compact with Colorado and Texas, as this paragraph implies. The historical record further indicates that the Compact ultimately privileged uses over rights in the Upper Rio Grande Basin, and that New Mexico bargained for water uses above San Marcial and below the Colorado-New Mexico state line, while Texas bargained fo water use below San Marcial. Miltenberger Declaration paragraphs 20-26 discuss the privileging of uses over rights, TX_MSJ_001585; and Miltenberger Declaration paragraphs 8, 24, 26, and 37 specifically address what New Mexico and Texas bargained for. TX_MSJ_001585. Miltenberger Dec. in Opp. to NM at TX_MSJ_007371, paragraphs 1-7, 16, 49. New Mexico's response does not provide evidence disputing Texas's assertion that New Mexico was open to negotiating a compact on the basis of several minimum requirements, rather than making it a precondition that all the cited requirements in the primary-source document- the September 27 to October 1, 1937 Rio Grand Compact Commission proceedings, NM-EX 319 - must be satisfied before New Mexico would consummate a Compact with Colorado and Texas. Moreover, New Mexico's response regarding Dr. Miltenberger does not address Texas's response that the compact privileged uses over rights in the Upper Rio Grande Basin. Thus, the fact remains disputed.
23	Following negotiations, the Committee of Engineers revised its recommendation to provide for a normal release from the Reservoir of 790,000 acre-feet per year to meet the irrigation demands of Project lands in New Mexico and Texas and to make the 1906 treaty delivery to Mexico. *See* NM-EX 325, Letter from Thomas M. McClure, State Engineer, State of New Mexico, to S.O. Harper, Chairman, Rio Grande Compact Commission (Jan. 25, 1938), *in* Rio Grande Compact Commission, Proceedings of the Meeting of the Rio Grande Compact Commission Held at Santa Fe, New Mexico, March 3rd to March 18th, inc. 1938, at CO- 006216 (1938); NM-EX 325, Letter from E.B. Debler, et al., Committee of Engineer Advisors, Rio Grande Compact Commission, to Rio Grande Compact Commission (Mar. 9, 1938), in Rio Grande Compact Commission, Proceedings of the Meeting of the Rio Grande Compact Commission Held at Santa Fe, New Mexico, March 3rd to March 18th, inc. 1938, at CO-006226-33 (1938); NM-EX 112, Stevens Rep. 68-70; NM-EX 111, Miltenberger Rep. 33, 37-39.	Subject to the stated objections, disputed in part. This paragraph is misleading in that the source documents provide additional factual context that New Mexico excluded. The facts presented in this paragraph are incomplete and assert an incomplete understanding of the reasons for the revision. The Committee of Engineers (or Engineering Advisors) revised the normal release figure downward from 800,000 acre-feet to 790,000 acre-feet only after protests made by the Middle Rio Grande Conservancy District's consulting engineer H.C. Neuffer. New Mexico State Engineer and Compact Commissioner Thomas McClure supported Neuffer, even though McClure's engineering advisor John Bliss had accepted the 800,000 acre-feet figure for which Texas had advocated and which the Committee of Engineers had recommended in December 1937. Miltenberger Declaration paragraphs 35-38 discuss this change. TX_MSJ_001585. Miltenberger Dec. in Opp. to NM at TX_MSJ_007371, paragraphs 1-7, 18.	**Disputed.** The revised recommendation is "that the normal release from Elephant Butte Reservoir be deemed to be*an average of* 790,000 acre-feet per annum, adjusted for any gain or loss of usable water resulting from from the operation of any reservoir below Elephant Butte." NM-EX-325, RGCC Mar. 1938 Proc., at CO- 006233.	**The material fact** that "the Committee of Engineers revised its recommendation to provide for a normal release from the Reservoir of*in average of* 790,000 acre-feet per year to meet the irrigation demands of Project lands in New Mexico and Texas and to make the 1906 treaty delivery to Mexico" **is undisputed.** Response to Texas: The NM UMF does not address the "reasons" for the revision of the initial recommendation of 800,000 AF to 790,000 AF; Texas's proffered "reasons" are immaterial to this NM UMF and do not create a genuine dispute of fact. Further, the precise reasons are unknown. **NM-EX 016, Stevens Decl., ¶ 9.** Miltenberger's new opinion on the reasons conflict with his previous opinions on the reasons. *Id* . The historical record is clear that Texas's attempts to obtain the 800,000 AF figure relate to its concerns over water quality *Id* . Miltenberger's new opinion of the role of MRGCD and Neuffer mischaracterizaes the historical record *Id* .	NM-EX 016: Fed. R. Civ. P. 56(c)(4), the cited evidence does not support the stated "facts" in whole and/or in part. Subject to the stated objection, this paragraph is still misleading in that the source documents provide additional factual context that New Mexico excluded. The facts presented in this paragraph are incomplete and assert an incomplete understanding of the reasons for the revision. The Committee of Engineers (or Engineering Advisors) revised the normal release figure downward from 800,000 acre-feet to 790,000 acre-feet only after protests made by th Middle Rio Grande Conservancy District's consulting engineer H.C. Neuffer. New Mexico State Engineer and Compact Commissioner Thomas McClure supported Neuffer, even though McClure's engineering advisor John Bliss had accepted the 800,000 acre-feet figure for which Texas had advocated and which the Committee of Engineers had recommended in December 1937. Miltenberger Declaration paragraphs 35-38 discuss this change. TX_MSJ_001585. Miltenberger Dec. in Opp. to NM at TX_MSJ_007371, paragraphs 1-7, 18. New Mexico's response does not address Texas's assertion that the reduction of the normal release from 800,000 to 790,000 must be read in context with why the Committee of Engineers made the revision in the first place. Thus, the fact remains disputed.
37	Article VIII of the Compact permits New Mexico to demand of Colorado, and Texas to demand that Colorado and New Mexico, in January, release of water then held in storage from post- 1929 reservoirs upstream of Elephant Butte to the amount of any accrued debits of Colorado and New Mexico, respectively, as necessary to help bring the amount of water in Project Storage up to 600,000 acre feet by March first. The purpose of this provision is to bring the quantity of Usabl Water in Project Storage to 600,000 acre-feet by March first and to maintain this quantity until April thirtieth to allow for a normal release of 790,000 acre feet in that year. *See* 53 Stat. at 790.	Subject to the stated objections, disputed in part. Although the content of Article VIII as presented is correct, this paragraph does not acknowledge the second-order purpose of Article VIII: to protect the Project, and thus the water supply to Texas. Miltenberger Declaration paragraph 24 and paragraph 40 address this. TX_MSJ_001585. Miltenberger Dec. in Opp. to NM at TX_MSJ_007371, paragraphs 1-7, 22.	Not disputed.	**This fact is undisputed.** Response to Texas: Texas's gloss on this NM UMF as to a purported "second-order purpose of Article VII" is immaterial to the NM UMF and does not create a genuine dispute of fact. Correction to Texas: *See* **NM-EX 016, Stevens Decl., ¶¶ 12, 13.**	NM-EX 016: Fed. R. Civ. P. 56(c)(4), the cited evidence does not support the stated "facts" in whole and/or in part. Subject to the stated objection, New Mexico's response does not provide evidence disputing Texas's assertion that the purpose of Article VII was to protect the Project, which by turn would protect the water supply to Texas. Moreover, New Mexico's new evidence fails to resolve Texas's dispute that the cited paragraph fails to provide context for the underlying purpose of VII. Thus, the fact remains disputed.
39	The historical record indicates that another purpose of the Compact was to protect existing rights. NM-EX 106, Kryloff Dep. (Aug. 6, 2020) 108:9-109:18; NM-EX 005, Stevens Decl. ¶ 11. *See, e.g.,* NM-EX 319, Rio Grande Compact Commission, Proceedings of the Meeting of the Rio Grande Compact Commission Held in Santa Fe, New Mexico, September 27, to October 1, 1937, 12-13 (1937); NM-EX 322, Letter from E.B. Debler, et al., Committee of Engineer Advisors, Rio Grande Compact Commission, to Rio Grande Compact Commission (Dec. 27, 1937).	Subject to the stated objections, disputed. This paragraph mischaracterizes the historical record. The historical record makes clear that existing uses, circa 1938, not rights were to be protected by the Compact. Miltenberger Declaration paragraphs 20-27 address the privileging of uses over rights in the Compact. TX_MSJ_001585. Miltenberger Dec. in Opp. to NM at TX_MSJ_007371, paragraphs 1-7, 23.	**Disputed.** "Existing rights," as used in the statement, is ambiguous and disputed to the extent New Mexico construes it to mean the Compact was intended to protect the rights of water users within the States. The engineer advisors for the negotiating committee "avoided discussion of the relative rights of water users in the three States . . . ." *See* NM-EX-22, Dec. 1937 Eng. Rep., at 2 (pdf page).	**The material fact** that "The historical record indicates that another purpose of the Compact was to protect existing rights" **is undisputed.** Response to Texas: Miltenberger's effort to assert a meaningful distinction between uses and rights and to suggest that users were exclusively to be protected over rights i a gloss on the historical record with imagines a dispute where no genuine dispute exists. *See. e.g.* , NM UMF 20-21 and Miltenberger's objection thereto. In his declarations, Miltenberger expresses new opinions. New Mexico intends to object to the new opinions disclosed by Miltenberger pursuant to FRCP 56(c)(2), and reserves the right to file a motion to strike or a motion in limine as to Miltenberger's untimely expert opinions. The historical record is clear that Compact negotiators considered both uses and rights to craft their solutions. **NM-EX 016, Stevens Decl., ¶ 15.**	NM-EX 016: Fed. R. Civ. P. 56(c)(4), the cited evidence does not support the stated "facts" in whole and/or in part. Subject to the stated objection, the new evidence New Mexico cites to does not support its UMF. The historical recor makes clear that existing uses, circa 1938, not rights were to be protected by the Compact. Miltenberger Declaration paragraphs 20-27 address the privileging of uses over rights in the Compact. TX_MSJ_001585. Miltenberger Dec. in Opp. to NM at TX_MSJ_007371, paragraphs 1-7, 23. Thus, the fact remains disputed.

	New Mexico's Apportionment Motion UMFs (11-5-2020)	Texas's Response to New Mexico's Apportionment Motion UMFs (12-22-2020)	United States' Response to New Mexico's Apportionment Motion UMFs (12-22-2020)	New Mexico's Response / Final Disposition of Facts	Texas's Objections and Response to New Evidence Filed with New Mexico's 2/5/2021 Reply Brief
42	In negotiating the Compact, the States understood that all lands within the Project had equal rights to water. NM-EX 111, Miltenberger Dep. (June 8, 2020) 44:4-23; NM-EX 328, Letter from Frank B. Clayton, Rio Grande Compact Commissioner, State of Texas, to Sawnie B. Smith (Oct. 4, 1938); NM-EX 107, Lopez Rep. 26-27, 35, 67-68; NM-EX 005, Stevens Decl. ¶ 11.	Subject to the stated objections, disputed. This paragraph is misleading. In the cited Letter from Frank B. Clayton, Rio Grande Compact Commissioner, State of Texas, to Sawnie B. Smith (Oct. 4, 1938), Clayton was referencing contract rights – not appropriative rights. NM-EX 328. Miltenberger Declaration paragraphs 30 and 42-45 discuss the contracts for water delivery for the two Rio Grande Project districts – Elephant Butte Irrigation District (EBID) in New Mexico, and El Paso County Water Improvement District No. 1 (EP #1) in Texas. TX_MSJ_001585. The meaning and intent of the Clayton- Smith letter is addressed more fully in paragraphs 28-37. Miltenberger Dec. in Opp. to NM at TX_MSJ_007371, paragraphs 1-7, 24, 28-37.	**Disputed.** "Equal rights to water," as used in this statement, is ambiguous and the statement is disputed on that basis. Texas Commissioner Clayton's statement that "lands within the Project have equal water rights" does not mean that all acreage had equal rights to water. Mr. Clayton referred to the Project "areas involved in the two States," which he describes as 88,000 acres for Elephant Butte Irrigation District and 67,000 acres for El Paso Water Improvement District No. 1, not to individual lands or acres within the Project. NM-EX-328, Clayton Letter. Additionally, Mr. Clayton's letter says the water distribution "is of course a private one between the districts involved, and for that reason it was felt neither necessary nor desirable that it be incorporated in the terms of the Compact."	**There is no genuine dispute as to this fact.** Response to Texas and the U.S.: Clayton writes: "These contracts provide that the lands within the Project have equal water rights, and the water is allocated according to the areas involved in the two States." NM-EX 328, Clayton-Smith (1938) Letter. Response to Texas: In his declarations, Miltenberger expresses new opinions. New Mexico intends to object to the new opinions disclosed by Miltenberger pursuant to FRCP 56(c)(2), and reserves the right to file a motion to strike or a motion in limine as to Miltenberger's untimely expert opinions. Miltenberger's new interpretation of the letter (comprising ¶¶ 28-37 of Miltenberger Dec. Decl.) is a tortured attempt to subvert the fact that Clayton's letter says what it says. **NM-EX 016, Stevens Decl.,** ¶ 10. The difference between contract and appropriative rights is not at issue in this UMF. Response to U.S.: The U.S.'s current position contradicts its earlier responses in NM-EX 602, United States of America's Responses to New Mexico's First Set of Requests for Admission, RFAs 12, 13. A matter admitted under Fed. R. C. P. 36(b) "is conclusively established unless the court, on motion, permits the admission to be withdrawn or amended."	NM-EX 016: Fed. R. Civ. P. 56(c)(4), the cited evidence does not support the stated "facts" in whole and/or in part. Subject to the stated objection, this paragraph is still misleading. In the cited Letter from Frank B. Clayton, Rio Grande Compact Commissioner, State of Texas, to Sawnie B. Smith (Oct. 4, 1938), Clayton was referencing contract rights – not appropriative rights. NM-EX 328. Miltenberger Declaration paragraphs 30 and 42-45 discuss the contracts for water delivery for the two Rio Grande Project districts – Elephant Butte Irrigation District (EBID) in New Mexico, and El Paso County Water Improvement District No. 1 (EP #1) in Texas. TX_MSJ_001585. The meaning and intent of the Clayton- Smith letter is addressed more fully in paragraphs 28-37. Miltenberger Dec. in Opp. to NM at TX_MSJ_007371, paragraphs 1-7, 24, 28-37. New Mexico's response offers no evidence to support its "fact" because the letter from Frank B. Clayton does not mention appropriative rights anywhere, nor does New Mexico's newly cited evidence. Thus, the fact remains disputed.
43	The historical record reflects that the States agreed on 790,000 acre-feet per year as a normal release in the Compact because it was sufficient to satisfy irrigation demands in both New Mexico and Texas, as well as address water quality concerns. NM-EX 220, Miltenberger Dep. (June 8, 2020) 146:21-148:1; NM-EX 215, Kryloff Dep. (Aug. 6, 2020) 55:17-56:25, 89:20-90:1; NM-EX 106, Kryloff Rep. 25-26.	Subject to the stated objections, disputed. This paragraph is misleading. The 790,000 acre-feet release was to serve Project lands in New Mexico and Texas, the 1906 Mexican treaty obligation, and non- Project lands in Texas down to Ft. Quitman, ca. 1938. Miltenberger Declaration paragraphs 29-38 discuss this. TX_MSJ_001585. Miltenberger Dec. in Opp. to NM at TX_MSJ_007371, paragraphs 1– 7, 25, 49 - 51. Additionally, the cited evidence does not support the asserted statement regarding water quality concerns. NM- EX-106, the Kryloff Report, references that the *JIR* "incorporated certain modifications to account for salinity control" at page 25. Otherwise, none of the cited evidence mentions "water quality."	**Disputed.** The Joint Investigation Report did not conclude that a 790,000 acre-feet per year release addressed water quality concerns. The Report states that "[q]uality of water, as well as quantity of water, becomes [ ]an important consideration particularly to the waters that are available to the lowest lands in the basin, such as those in the Tornillo unit of the Rio Grande Project and in the Hudspeth District." JIR 62 (in U.S. App. at TX_00000561). The release from Elephant Butte Reservoir of 766,000 acre-feet of water was calculated to remove 620,000 tons of dissolved solids past Fort Quitman, indicating that the amount of pre-Compact releases of water and drainage return flows was important to maintain flushing of salts. *Id*. at 64. The continuing concern for water quality is demonstrated by Article XI permitting "recourse by a signatory state to the Supreme Court of the United States for redress should thecharacter or quality of the water, at the point of delivery, be changed hereafter by one signatory state to the injury of another."	**The material fact that** the States agreed on 790,000 AF/yr release as a normal release in the Compact, and that that amount was sufficient to satisfy irrigation demands in both New Mexico and Texas **is undisputed.** Response to Texas: New Mexico agrees that the 790,000 AF/yr also satisfies the Mexico Treaty obligation. New Mexico also agrees that the non-Project lands in Texas down to Ft. Quitman (*i.e.,* Hudspeth County Conservation and Reclamation District No. 1) were at the time of Compact negotiation receiving return flows form the Project, although there was not guarantee of a specific amount. Response to Texas and U.S.: That ***water quality concerns were addressed*** by the 790,000 AF/yr normal release agreed to by the Compact negotiators is amply supported and Texas and the U.S. are ignoring their own evidence.*See* Miltenberger Nov. Decl. ¶¶ 35, 38 (discussing the amount of water necessary to address water quality concerns). ***See also* NM-EX 016, Stevens Dec**l., ¶¶ 9, 13; NM-EX 113, Stevens Rep., 64-65.	NM-EX 016: Fed. R. Civ. P. 56(c)(4), the cited evidence does not support the stated "facts" in whole and/or in part. Subject to the stated objection, this paragraph is still misleading. The 790,000 acre-feet release was to serve Project lands in New Mexico and Texas, the 1906 Mexican treaty obligation, and non-Project lands in Texas down to Ft. Quitman, ca. 1938. Miltenberger Declaration paragraphs 29-38 discuss this. TX_MSJ_001585. Miltenberger Dec. in Opp. to NM at TX_MSJ_007371, paragraphs 1 – 7, 25, 49 - 51. Additionally, the cited evidence does not support the asserted statement regarding water quality concerns. The Kryloff Report, references that the JIR "incorporated certain modifications to account for salinity control" NM-EX-106 at 25. Otherwise, none of the cited evidence mentions "water quality." New Mexico's response conflates the term "salinity control" with water quality concerns and misconstrues Miltenberger's testimony. Further, New Mexico's response offers no evidentiary support for their assertion that water quality was a concern. Thus, the fact remains disputed.
44	The historical record indicates that the Compact relied upon the Project and its allocation and delivery of water in relation to the proportion of Project irrigable lands to provide the basis for the apportionment of Rio Grande waters to users in New Mexico and Texas. NM-EX 220, Miltenberger Dep. (June 8, 2020) 40:7-22; NM-EX 107, Lopez Rep. 67-68.	Subject to the stated objections, disputed. This paragraph is misleading because the Compact does not rely upon the Project to effectuate any apportionment between New Mexico and Texas below Elephant Butte, as the paragraph implies. Instead, it depends on the Project to see that Project beneficiaries in New Mexico receive water – in other words, protecting the Project as an existing use. Miltenberger Declaration paragraphs 26-46 discuss this. TX_MSJ_1585. Miltenberger Dec. in Opp. to NM at TX_MSJ_007371, paragraphs 1-7, 26, 49-51. Additionally, the deposition testimony attributed to Scott Miltenberger is misrepresented by New Mexico. Dr. Miltenberger testified that he agreed with Paragraph 10 of the Texas Complaint when it was read to him, and into the record, by counsel for New Mexico at his deposition. The statement he agreed to was the following: "The Rio Grande Compact did not specifically identify quantitative allocations of water below Elephant Butte Dam as between southern New Mexico and Texas, nor did it articulate a specific state line delivery allocation. Instead, it relied upon the Rio Grande project and its allocation and delivery of water in relation to the proportion of Rio Grande project irrigable lands in southern New Mexico and in Texas to provide the basis of the allocation of Rio Grande waters between Rio Grande project beneficiaries in southern New Mexico and the State of Texas." NM- EX-220, Miltenberger Dep. (June 8, 2020) 40:7-22 (emphasis added). New Mexico improperly changed the highlighted testimony above, which was a clear statement regarding the Project allocations to Project beneficiaries, to be a "basis for the apportionment of Rio Grande waters to users in New Mexico and Texas." UMF 44.	**Disputed.** The United States disputes that delivery of water "in relation to the proportion of Project irrigable lands" was an assumption on which the Compacting States "relied" as a basis for concluding that the operation of the Project would effect an equitable apportionment. Under the 1938 contract, the distribution of water was to be made in proportion of Project irrigable lands in the States only "in the event of a shortage of water for irrigation in any year," and only "so far as practicable." NM- EX-324, 1938 Contract. The United States does not dispute this statement if "in relation to the proportion of" is deleted.	**There is no genuine dispute as to this fact.** Response to Texas: To support its clam that the Compact fails to provide New Mexico an apportionment for the bottom third of the state, Texas largely relies on ***entirely new opinions*** offered by Miltenberger. New Mexico intends to object to the new opinions disclosed by Miltenberger pursuant to FRCP 56(c)(2), and reserves the right to file a motion to strike or a motion in limine as to Miltenberger's untimely expert opinions. Response to U.S.: The U.S. here denies its former admissions: **RFA / ANSWER 79:** "The United States admits that Reclamation implements the Compact through its operation of the Rio Grande Project." **NM-EX 607,** United States of America's Responses to New Mexico's Second Set of Requests for Admission (8-28-2020), RFA 79. A matter admitted under Fed. R. C. P. 36(b) "is conclusively established unless the court, on motion, permits the admission to be withdrawn or amended."	NM-EX 607: Fed. R. Civ. P. 56(c)(4), the cited evidence does not support the stated "facts" in whole and/or in part. Subject to the stated objection, this paragraph is still misleading because the Compact does not rely upon the Project to effectuate any apportionment between New Mexico and Texas below Elephant Butte, as the paragraph implies. Instead, it depends on the Project to see that Project beneficiaries in New Mexico receive water – in other words, protecting the Project as an existing use. Miltenberger Declaration paragraphs 26-46 discuss this. TX_MSJ_1585. Miltenberger Dec. in Opp. to NM at TX_MSJ_007371, paragraphs 1-7, 26, 49-51. New Mexico's response fails to cite to any evidence disputing Texas's assertion that the Compact depends on the Project to see that Project beneficiaries in New Mexico receive water, rather than relying upon the Project to effectuate apportionment below Elephant Butte between New Mexico and Texas. Thus, the fact remains disputed.

	New Mexico's Apportionment Motion UMFs (11-5-2020)	Texas's Response to New Mexico's Apportionment Motion UMFs (12-22-2020)	United States' Response to New Mexico's Apportionment Motion UMFs (12-22-2020)	New Mexico's Response / Final Disposition of Facts	Texas's Objections and Response to New Evidence Filed with New Mexico's 2/5/2021 Reply Brief
45	The historical record confirms that historically Project deliveries were made based upon the ratio between Project acreage in New Mexico and Project acreage in Texas. In other words, under the Compact, the delivery of water through the Project was based on the irrigable acres in each State. Historically that ratio is 57% to New Mexico and 43% to Texas. NM-EX 220, Miltenberger Dep. (June 8, 2020) 39:2-40:6, 47:17-48:18.	Subject to the stated objections, disputed. This paragraph mischaracterizes the historical record and Scott Miltenberger's deposition testimony. The historical record indicates that Project deliveries were generally based on irrigable acreage in the two states in a ratio of 57 percent for Project lands in New Mexico and 43 percent for Project lands in Texas. However, this paragraph does not offer any supporting evidence that deliveries were made in this fashion in every year and that deliveries were always made in accordance with the 57-43 percent ratio. Dr. Miltenberger did not testify that either was the case. Dr. Miltenberger merely replied in the affirmative when asked if he agreed with a portion of Texas's Complaint that noted this general historical distribution of Project water deliveries. At least one primary-source document produced by New Mexico in support of its motions in fact suggests that allotments of Project water were not always equal (see paragraph 53 to the Miltenberger Declaration). NM-EX-323. Moreover, there is no language in the Compact requiring deliveries of Project water in this manner, and Dr. Miltenberger did not testify that the Compact directed Project deliveries in any way, which the phrase "under the Compact" in this paragraph implies NM-EX-330. Miltenberger Dec. in Opp. to NM at TX_MSJ_007371, paragraphs 1-7, 27, 53.	**Disputed.** The terms "historically," "based upon," and "under the Compact," as used in this statement are ambiguous and the statement are disputed on that basis. The Compact does not address the allocation within the Rio Grande Project. 53 Stat. 785. As noted, the 1938 contract between EBID and EPCWID (NM-EX 324) called for the distribution of available supply in proportion to acreage only in the event of a shortage of water for irrigation, and only so far as practicable. Until 1978, the Project delivered water to lands and did not allocate to the districts. Diversion records show that the percentage of total diversions to EBID ranged from 48.5% to 65.6%, and that the average diversion to EBID was 56.2%. NM- EX-100, Barroll Oct. 2019 Rep. at A-7-A-8. See also Statement of Fact 62 (summary statistics that do not align with 57/43 split).	**There is no genuine dispute as to this fact.** Response to Texas: Texas does not dispute that the historical recordindicates that Project deliveries were made based upon the ratio between Project acreages in New Mexico and Texas at the ratio of 57% for New Mexico and 43% for Texas. Response to U.S.: The U.S. admitted: "Before 1980, Reclamation allocated water to Project lands that were under irrigation in a given year. This allocation was made per acre irrigated, without regard to the district in which the land was located. Thus, in some years, it is possible that water delivered to lands in EBID would not precisely equal 57% (or 88/155) of available Project water supply and water delivered to EPCWID would not precisely equal 43% (or 67/155) of available Project water supply, if the acres under irrigation were not in the same proportion. After 1980, Reclamation has allocated water to the districts, not to irrigated acres. The allocation is 88/155 of available Project water supply to EBID and 67/155 to EPCWID, prior to carryover accounting."**NM-EX 608**, U.S.'s Supplemental Responses to New Mexico's First Set of Discovery Requests (3-18- 2020), Response to Interrogatory 50, explaining U.S. response to New Mexico RFA 21. A matter admitted under Fed.R.C.P. 36(b) "is conclusively established unless the court, on motion, permits the admission to be withdrawn or amended."	NM-EX 607: Fed. R. Civ. P. 56(c)(4), the cited evidence does not support the stated "facts" in whole and/or in part. Subject to the stated objection, New Mexico's new evidence does not address Texas's assertion that New Mexico's "fact" does not provide evidentiary support that deliveries were consistently made according to the 57-43 percent ratio every year. Thus, NM mischaracterizes the historical record and the fact remains undisputed.
47	Similarly, shortly after the Compact was finalized, Texas Commissioner Frank Clayton described the operation of the Compact to the Chairman of the Texas Board of Water Engineers. Commissioner Clayton explained: Moreover, since the source of supply for all lands above Fort Quitman and below Elephant Butte reservoir, whether in Texas or New Mexico, is the reservoir itself, it could hardly be expected of Colorado and New Mexico that they should guarantee a certain amount of water to pass the Texas state line, since this amount is wholly dependent upon the releases from the reservoir and the reservoir is under the control of an entirely independent agency – the Bureau of Reclamation. Also, by contract between the New Mexico interests and the Texas interests in the Rio Grande Project, all the lands in the Project have equal water rights, and the acreage to be irrigated is practically "frozen" at its present figures, with a three per cent "cushion." It is therefore notnecessary, even if it were practicable, to make any definite provision in the Compact for the amount of water to pass the Texas-New Mexico state line." NM-EX 329, Letter from Frank B. Clayton, Rio Grande Compact Commissioner, State of Texas to C.S. Clark, Chairman, Board of Water Engineers, State of Texas (October 16, 1938).	Subject to the stated objection, disputed. This paragraph mischaracterizes the document, Letter from Frank B. Clayton, Rio Grande Compact Commissioner, State of Texas to C.S. Clark, Chairman, Board of Water Engineers, State of Texas (October 16, 1938). NM-EX 329. As with the Clayton-Smith letter, the quotation offered from the Clayton-Clark letter is correct. NM-EX 328. However, attention to the details of the letter and the essential context for the letter reveals a different purpose and meaning for the communication and the provided quotation. The discussion is lengthy, and is incorporated herein by reference*See* Miltenberger Dec. in Opp. to NM at TX_MSJ_007371, paragraphs 1-7, 38 45.	**Not disputed,** to the extent the statement is intended to report the fact of what Clayton wrote, and not to establish the specific contents of the letter as a factual matter.	**There is no genuine dispute as to this fact.** **The contents** of the Clayton-Clark (1938) Letter n.6**are undisputed.** Response to Texas: Miltenberger offers an***entirely new opinion*** of the NM-EX 328, Clayton-Clark(1938) Letter. New Mexico intends to object to the new opinions disclosed by Miltenberger pursuant to FRCP 56(c)(2), and reserves the right to file a motion to strike or a motion in limine as to Miltenberger's untimely expert opinions. Miltenberger's interpretation of the letter (comprising ¶¶ 38-45 of Miltenberger Dec. Decl.) a tortured attempt to subvert that fact that Clayton's letter is explicit that it explains how Compact apportionment works in southern New Mexico and Texas. See **NM-EX 016, Stevens Decl., ¶¶ 10, 11.** Response to U.S : The U.S. offers no evidence contradicting the New Mexico analysis of the contents of the Clayton-Clark (1938) Letter.*See discussion herein* .	NM-EX 016: Fed. R. Civ. P. 56(c)(4), the cited evidence does not support the stated "facts" in whole and/or in part. Subject to the stated objection, New Mexico's response does not dispute Texas's response, but merely states that it is a new opinion. Dr. Miltenberger's evidence was timely disclosed. *See* The State of Texas's Response to the State of New Mexico's Objections to and Motion to Strike Texas's Late-Filed Expert Opinions (Mar. 23, 2021) at 24-34. Thus, the fact remains disputed.
48	In 1968, Raymond Hill, the Engineer Advisor for the State of Texas during Compact negotiations explained "that the Rio Grande Compact Commissioners, at the time of executing the Rio Grande Compact of 1938, anticipated that compliance" with Articles III and IV "would result in enough water entering Elephant Butte Reservoir to sustain an average normal release of 790,000 AF per year from Project storage*for use on lands in New Mexico downstream of Elephant Butte Reservoir* and on lands in Texas and also to comply with the obligations of the Treaty of 1906 for deliveries of water to Mexico." NM-EX 401, Raymond A. Hill, *Development of the Rio* Grande Compact of 1938, 38 (Oct. 8, 1968) (emphasis added).	Subject to the stated objection, disputed. This paragraph does not provide sufficient context to understand fully the meaning of the quotation provided from Raymond Hill's*Development of the Rio Grande Compact of 1938* . NM-EX-401. The paragraph correctly quotes from Hill's narrative, but in the absence of context – much of which is also discussed in 29-46 – the quotation is misleading. TX_MSJ_001585. The discussion is lengthy, and is incorporated herein by reference*See* Miltenberger Dec. in Opp. to NM at TX_MSJ_007371, paragraphs 1-7, 46-51.	**Not disputed**, to the extent the statement is intended to report the fact of what Hill wrote, and not to establish the content of what he wrote as a factual matter**.**	**There is no genuine dispute as to this fact.** **The contents** of the Hill quotes**are undisputed.** Response to Texas: Miltenberger devotes 6 paragraphs to providing "context" for the language quoted in the NM UMF. Miltenberger Dec. Decl. ¶¶ 46-51. This "context" does not create an issue of disputed fact as to NM UMF 48.*See* **NM-EX 016, Stevens Decl., ¶ 14,** for a discussion of the flaws in the Miltenberger interpretation of the Hill document. Response to U.S.: The U.S. offers no evidencecontradicting the New Mexico analysis of the contents of the Raymond Hill Oct. 8, 1968 report.	NM-EX 016: Fed. R. Civ. P. 56(c)(4), the cited evidence does not support the stated "facts" in whole and/or in part. Subject to the stated objection, New Mexico responds that Dr. Miltenberger's interpretation of the Hill document is flawed. However, this response does not address thecrux of Texas's argument, that New Mexico's statement is taken out of context and misleading. NM-EX 016 does not clarify or provide context for New Mexico's position. Thus, the fact remains disputed.

	New Mexico's Apportionment Motion UMFs (11-5-2020)	Texas's Response to New Mexico's Apportionment Motion UMFs (12-22-2020)	United States' Response to New Mexico's Apportionment Motion UMFs (12-22-2020)	New Mexico's Response / Final Disposition of Facts	Texas's Objections and Response to New Evidence Filed with New Mexico's 2/5/2021 Reply Brief
54	At the time the Compact was signed, Reclamation had been operating the Project, in its entirety, as a single unit for overtwenty years. During that time, the Project operated under Reclamation law. *See, e.g.,* NM-EX 318, Harlow M. Stafford et al., Rio Grande Joint Investigation Part I: General Report of the Rio Grande Joint Investigation, ¶ 8 (1937); NM-EX 005, Stevens Decl. ¶ 9.	Subject to the stated objections, disputed in part. While this paragraph is correct that "[a]t the time the Compact was signed" the Project had been in operation for "over twenty years," the cited sources in this paragraph do not provide support for the claim that the Project had been operated "as a single unit" nor do they explain what is meant by "under Reclamation law." NM-EX-318 and NM-EX-005. NM-EX-005 paragraph 9 states that the Project was operated "as a single unit and pursuant to Reclamation law" but does not cite to documentary evidence. *See* Miltenberger Dec. in Opp. to NM at TX_MSJ_007371, paragraphs 1-7, 52.	**[a] Disputed.** As noted in response to Statement No. 40, "as a single unit" is ambiguous, and "in its entirety," as used in this statement is also ambiguous. Statement No. 54 is disputed because of those ambiguities. The United States does not dispute the statement if ", in its entirety, as a single unit" is deleted. [b] Not disputed, insofar as the Project has always been operated pursuant to federal reclamation law. The term "operated under Reclamation law" as used in the statement is disputed if given any other construction.	**There is no genuine dispute as to this fact.** Response to Texas: Texas provides no evidence contradicting New Mexico's evidence that Reclamation had been operating the Project, in its entirety, as a single unit. Further, Texas expert Miltenberger testified that Reclamation treated the Project "as an administrative unit" and the "Project must be operated as a unit." Miltenberger Nov. Decl. ¶¶ 30, 31; *see also* **NM-EX 128, Miltenberger Rep., 100-101.** Response to U.S.: The U.S. provides no evidence contradicting New Mexico's evidence that Reclamation had been operating the Project, in its entirety, as a single unit. See also NM UMF 54; **NM-EX 016, Stevens Decl., ¶ 10(b), 11.**	NM-EX 016: Fed. R. Civ. P. 56(c)(4), the cited evidence does not support the stated "facts" in whole and/or in part. NM-EX-128: Fed. R. Evid. 801(c), hearsay. Subject to the stated objections, New Mexico responds that "Texas provides no evidence contradicting New Mexico's evidence that Reclamation had been operating the Project, in its entirety, as a single unit." This distorts the facts and basis of Texas's response. New Mexico still does not provide evidence to support its claims to this regard. Thus, the fact remains disputed.
57	In 1937 and 1938, Congress authorized the execution of amended repayment contracts with EBID and EPCWID. These contracts addressed the repayment obligations of the Districts and established a corresponding right of use to a proportion of the annual Project water supply during times of shortage based on an established irrigation acreage in each District: 57% to EBID in New Mexico, and 43% to EPCWID in Texas. NM-EX 107, Lopez Rep. 26- 27; NM-EX 109, Estevan R. Lopez, P.E., Supplemental Rebuttal Expert Report of Estevan R. Lopez, P.E., 6-7 (July 15, 2020) ("Lopez Supp. Reb. Rep."); *see, e.g.,* NM-EX 308, Articles of Agreement between the United States of America, Elephant Butte Water Users Association, and El Paso Valley Water Users' Association (June 27, 1906); NM-EX 321, Contract between the United States and the El Paso County Water Improvement District No. 1 adjusting construction charges and for other purposes (Nov. 10, 1937); NM-EX 320, Contract between the United States and the Elephant Butte Irrigation District adjusting construction charges and for other purposes (Nov. 9, 1937); NM-EX 324, Contract Between Elephant Butte Irrigation District and El Paso County Water Improvement District No. 1 (Feb. 16, 1938) ("1938 Downstream Contract"). Collectively, these contracts are known as the "Downstream Contracts."	Subject to the stated objections, disputed in part. This paragraph is factually misleading. Congress authorized the execution of amended repayment contracts with EBID and EPCWID (or EP #1) in 1937, but it did not authorize the 1938 contract as such. The 1938 Downstream Contract was instead part of an effort by Reclamation, extending back to 1929, to fix the basis for repayments between the two districts. The districts themselves ultimately instigated this particular agreement to settle the issue. Miltenberger Declaration paragraphs 43-45 discuss the 1937 and 1938 Downstream Contracts. TX_MSJ_001585. The discussion is lengthy, and is incorporated herein by reference *See* Miltenberger Dec. in Opp. To NM at TX_MSJ_007371, paragraphs 1-7, 54-59.	**Disputed.** The 1937 contracts between the Secretary and the Districts do not provide for a "right of use to a proportion of the annual Project water supply during times of shortage based on an established irrigation acreage in each District." *See* NMEX-320, 1937 EBID Contract; NM-EX-321, 1937 EPCWID Contract. The 1938 contract between EBID and EPCWID states that "in the event of a shortage of water for irrigation in any year, the distribution of the available supply in such year, shall so far as practicable, be made in proportion" to the acreage. NM-EX- 324, 1938 Contract. The contract does not establish a "right of use."	**There is no genuine dispute as to this fact.** Response to Texas: Texas does not dispute the material fact that the Downstream Contracts "addressed the repayment obligations of the Districts and established a corresponding right of use to a proportion of the annual Project water supply during times of shortage based on an established irrigation acreage in each District: 57% to EBID in New Mexico, and 43% to EPCWID in Texas." In fact, this is the position Texas briefs in its Opposition to the State of New Mexico's Motion for Partial Summary Judgment on Compact Apportionment ("TX Apportionment Response"): "The repayment contract between EBIDand EP#1 that established the districts' respective allocations …" (emphasis added). *Id.* at 13. Miltenberger's inconsistent opinions about the Downstream Contracts is discussed in detail at **NM-EX 016, Stevens Decl., ¶¶ 16-17**. New Mexico intends to object to the new opinions disclosed by Miltenberger pursuant to FRCP 56(c)(2), and reserves the right to file a motion to strike or a motion in limine as to Miltenberger's untimely expert opinions. Response to U.S.: "In 1937, Congress authorized the execution of amended repaymen contracts with EBID and EPCWID. These contracts reduced the repayment obligations and established a corresponding right of use to a proportion of the annual water supply, based on an established irrigated acreage in each district: 57 percent to EBID and 43 percent to EPCWID …" NM-EX 529, FEIS (prepared by Reclamation), ¶ 1.4.2.1 (emphasis added).	NM-EX 016: Fed. R. Civ. P. 56(c)(4), the cited evidence does not support the stated "facts" in whole and/or in part. Subject to the stated objection, this paragraph is still factually misleading. Congress authorized the execution of amended repayment contracts with EBID and EPCWID (or EP #1) in 1937, but it did not authorize the 1938 contract as such. The 1938 Downstream Contract was instead part of an effort by Reclamation, extending back to 1929, to fix the basis for repayments between the two districts. The districts themselves ultimately instigated this particular agreement to settle the issue. New Mexico's response ignores Texas's assertion that New Mexico distorts the facts and provides misleading statements with regard to these facts. Thus, the fact remains disputed.
58	For example, the 1938 Downstream Contract quantified the authorized irrigable acreage within each district as 88,000 acres in EBID, and 67,000 acresin EPCWID (for a total of 155,000 Project acres). It goes on to state that in the even of a shortage of water, "the distribution of the available supply in such a year, shall so far as practicable, be made in the proportion of 67/155 [43%] thereof to the lands within [EPCWID], and 88/155 [57%] to the lands within [EBID]." NM-EX 324, Contract Between Elephant Butte Irrigation District and El Paso County Water Improvement District No. 1 (Feb. 16, 1938); NM-EX 107, Lopez Rep. 26-27; NM-EX 001, Barroll Decl. ¶19.	Subject to the stated objections, disputed in part. This paragraph correctly quotes from the cited document but mischaracterizes the context and purpose of the 1938 Downstream Contract as discussed in paragraphs 54-59 of the Miltenberger Declaration. NM-EX 324. The discussion is lengthy, and is incorporated herein by reference. See Miltenberger Dec. in Opp. to NM at TX_MSJ_007371, paragraphs 1 – 7, 54-60.	Not disputed.	**This fact is undisputed.** Response to Texas: See NM UMF 57. Miltenberger's inconsistent opinions about the Downstream Contracts is discussed in detail at **NM-EX 016, Stevens Decl., ¶¶ 16-17.** New Mexico intends to object to the new opinions disclosed by Miltenberger pursuant to FRCP 56(c)(2), and reserves the right to file a motion to strike or a motion in limine as to Miltenberger's untimely expert opinions.	NM-EX 016: Fed. R. Civ. P. 56(c)(4), the cited evidence does not support the stated "facts" in whole and/or in part. Subject to the stated objection, New Mexico's response is wholly unresponsive to Texas's response that New Mexico takes the cited paragraph out of context and mischaracterizes the purpose of the 1938 Downstream Contracts. Further, Dr. Miltenberger's evidence was timely disclosed. *See* The State of Texas's Response to the State of New Mexico's Objections to and Motion to Strike Texas's Late-Filed Expert Opinions (Mar. 23, 2021) at 24-34. Thus, the fact remains undisputed.
79	The 2008 Operating Agreement changed the way that water was allocated between the two Districts, and therefore the amount of water that was available for lands in New Mexico and Texas. NM-EX 202, Cortez Dep. (Vol. I) (July 30, 2020) 94:23-96:9 (examining NM-EX 506, Cortez Affidavit ¶¶ 11, 25 (Apr. 20, 2007)); NM-EX 100, Barroll Rep. 40-46; NM-EX 107, Lopez Rep. 44-46.	Subject to the stated objections, disputed in part. In paragraph 79 of NM MSJ on Apportionment, New Mexico asserts that the 2008 Operating Agreement "changed the way that water was allocated between the two Districts, and therefore the amount of water that was available for lands in New Mexico and Texas." In paragraph 80, New Mexico asserts its "primary concern" with the 2008 Operating Agreement is that it is not consistent with the Compact and does not allocate 57 percent of Project supply to New Mexico lands. In fact, under the Operating Agreement New Mexico has received more water than it otherwise should have based solely on the D2 Curve prior to implementation of the Operating Agreement. This is demonstrated by the graph in Figure 11. The blue x's show total Project surface water diversions between 2008 and 2016; the black x's show the total amount of diversions, including groundwater pumping by New Mexico, for the same period. *See* Brandes Dec. in Opp. to NM at TX_MSJ_007312, ¶¶ 1-9, 25-26, 30-31.	**Disputed.** The 2008 Operating Agreement did not change the 57/43 ratio in allotting the available supply to the Districts based on the D1/D2 methodology. Under the Operating Agreement, the Elephant Butte Irrigation District foregoes a portion of that allocation to account for deviations in Project performance to mitigate the effect of ground water pumping in New Mexico. NM-EX- 529, FEIS Appendix C at 8-9.	**There is no genuine dispute as to this fact.** Response to Texas: This UMF does not address receipt of water but allocation of water; Texas provides no evidence contradicting this UMF. ***See also* NM-EX 017, Sullivan 3rd Decl., ¶ 25 (discussing the errors in the calculations by Brandes).** Response to U.S.: The U.S. explains the allocation changes in its discovery responses: Under the 2008 Operating Agreement: "Reclamation estimates the available Project allocation to the lands using the D1 Curve … [then] … the diversion allocation is spli 57/43 between EBID and EPCWID. Reclamation applies a diversion ratio adjustment to calculate the portion of annual allocation that EBID voluntarily surrenders …" **NM-EX 608, U.S.'s Supplemental Responses to New Mexico's First Set of Discovery Requests (3-18-2020), Supp. Response to Interrogatory No. 19.**	NM-EX 017: Fed. R. Civ. P. 56(c)(4), the cited evidence does not support the stated "facts" in whole and/or in part. Subject to the stated objection, New Mexico responds that evidence that New Mexico received more water that it otherwise should have under the compact is unrelated to the change in allocation amounts triggered by the 2008 Operating Agreement. New Mexico's statement takes Texas's response out of context. Thus, the fact remains disputed.

	New Mexico's Apportionment Motion UMFs (11-5-2020)	Texas's Response to New Mexico's Apportionment Motion UMFs (12-22-2020)	United States' Response to New Mexico's Apportionment Motion UMFs (12-22-2020)	New Mexico's Response / Final Disposition of Facts	Texas's Objections and Response to New Evidence Filed with New Mexico's 2/5/2021 Reply Brief
83	Consistent with the Reclamation Act, Texas adjudicated the Project Right in Texas. Specifically, it determined that EPCWID had the right to divert up to 376,000 from the Rio Grande. NM-EX 505, Texas Comm'n on Env't Quality, Certificate of Adjudication No. 23-5940, ¶ 1.b. (Mar. 7, 2007); s*ee also* Final Judgment and Decree, *In re: The Adjudication of Water Rights in the Upper Rio Grande Segment of Rio Grande Basin* , No. 2006-3219 (El Paso Cty. Dist. Ct., Oct. 30, 2006). Using the D1/D2 method, 376,000 AF represents approximately 43% of Project water when there is a full supply. NM-EX 001, Barroll Decl. 23. 376,000 AF also represents approximately 43% of Project supply under a normal release of 790,000 AF, once return flows are taken into account. *See, e.g.,* NM-EX 212, Gordon Dep. (Vol. II) (July 15, 2020) 20:11-21:11.	Subject to the stated objections, disputed as follows: Regarding the "facts" asserted based on NM-EX-505, this paragraph is misleading in that the source documents provide additional factual context that New Mexico excluded and/or otherwise states "facts" out of context. Regarding the asserted "fact" that '[u]sing the D1/D2 method, 376,000 AF represents approximately 43% of Project water when there is a full supply:" The use of the D1/D2 method produces 376,000 acre-feet for EP#1. However, as the D1/D2 method does not reflect 1938 conditions and does not represent Texas's Compact apportionment. *See* Brandes Dec. in Opp. to NM at TX_MSJ_007312, paragraphs 1-9, 29-32. Regarding the last paragraph, the cited evidence does not represent the asserted "fact."*See* NM-EX 212, Gordon Dep. (Vol. II) (July 15, 2020) 20:11-21:11.	**[a] Disputed.** Whether the Texas adjudication was "[c]onsistent with the Reclamation Act" is a legal conclusion, not a statement of fact. The United States disputes the statement on this basis but does not dispute the statement if "Consistent with the Reclamation Act" is deleted. **[b] Disputed**. The cited paragraph of Dr. Barroll's declaration does not support the first sentence in the statement, and the figure she uses in that paragraph is 376,842 af, This number is not consistent with the number in the preceding paragraph (376,**862** af). "Project water" and "full supply" are ambiguous in the context of this statement, and the statement is disputed on that additional basis. The designation of a "full supply" in the 2008 Operating Agreement, or under the 1985 draft operating agreement, does not represent the maximum supply that could have been available but for the influence of groundwater pumping, as evidenced by the releases substantially greater than 790,000 af in some years before the Compact. See Resp. to Statement No. 55. [c] Disputed. The term "Project supply" as used in this statement is ambiguous. Dr. Barroll defines Project supply in her declaration in a way that includes the water allocated to Mexico under the treaty, and the calculations in her declaration show she excludes the treaty water. NM- EX 001, Barroll Decl. ¶ 22. This statement does not provide for an exclusion of treaty water. Further, 376,862 af is approximately 43% of the total diversion allocation to the Districts applying "the D1/D2 method" to an assumed release of 763,842 acre-feet.*Id*.	**The material fact** that "Texas adjudicated the Project Right in Texas; specifically, it determined that EPCWID had the right to divert up to 376,000 from the Rio Grande" **is undisputed.** **Further, the purported disputes with full supply amounts is not actually a dispute:** Response to Texas: With regard to Brandes calculations, *see* **NM-EX 017, Sullivan 3rd Decl., ¶ 26 (discussing the errors in the calculations by Brandes).** Response to U.S.: Dr. Barroll explains the U.S's confusion as to numbers at **NM-EX 014, Barroll 3rd Decl., ¶¶ 8-10.**	NM-EX 017, 014: Fed. R. Civ. P. 56(c)(4), the cited evidence does not support the stated "facts" in whole and/or in part. Subject to the stated objections, the "facts" asserted based on NM-EX-505, this paragraph are still misleading in that the source documents provide additional factual context that New Mexico excluded and/or otherwise states "facts" out of context. Regarding the asserted "fact" that '[u]sing the D1/D2 method, 376,000 AF represents approximately 43% of Project water when there is a full supply:" The use of the D1/D2 method produces 376,000 acre-feet for EP#1. However, as the D1/D2 method does not reflect 1938 conditions and does not represent Texas's Compact apportionment. New Mexico's response and new evidence do not resolve the dispute. Thus, the fact remains disputed.
88	In 2004, the Texas Compact Engineer Advisor from 1987 to 2015 wrote that "[t]he Compact specifies a normal release of 790,000 acre–feet annually from Project Storage for use in Texas and New Mexico and for delivery of water to Mexico." NM-EX 412, Herman R. Settemeyer, "Rio Grande Project/Rio Grande Compact Operation," in CLE International, *Rio Grande Superconference* G-1, G-2 (2004) ("Settemeyer CLE Presentation").	Subject to the stated objections, disputed. The cited evidence does not support the asserted facts. The document is unauthenticated, and there is no evidence of who the author was, or the authority of the author to make any statement on behalf of Texas as to the meaning and/or purpose of the Compact. Even if the documents contents were taken as true, the quoted sentence is taken out of context. The sentence, in context, concerns an explanation of Project operations.	Not disputed.	**There is no genuine dispute as to this fact.** Response to Texas: By its objections Texas's attempts to create an issue of disputed fact where there is none. Settemeyer was questioned about the document at his deposition and answered questions about its substance. **NM-EX 256, Settemeyer Dep. (7-31-2020), 326:6-330:3.**	NM-EX 256: Fed. R. Civ. P. 56(c)(4), the cited evidence does not support the stated "facts" in whole and/or in part. Subject to the stated objection, New Mexico still takes the sentence quoted in the state of fact out of context because it concerns Project operations. Regardless of the context, the cited materials do not stand for the proposition that "[t]he Compact specifies a normal release of 790,000 acre–feet annually from Project Storage for use in Texas and New Mexico and for delivery of water to Mexico." Thus, New Mexico's stated fact remains disputed.

State of New Mexico's Reply to Statement of Facts: Notice Motion

	New Mexico's Apportionment Motion UMFs (11-5-2020)	Texas's Response to New Mexico's Apportionment Motion UMFs (12-22-2020)	United States' Response to New Mexico's Apportionment Motion UMFs (12-22-2020)	New Mexico's Response / Final Disposition of Facts	Texas's Objections and Response to New Evidence Filed with New Mexico's 2/5/2021 Reply Brief
12	From inception of the Project until 1951, Reclamation administered the Rio Grande Project as a single unit to deliver water directly to farm turnouts in both States on the basis of individual farm orders. *See* NM-EX 202, Cortez Dep. (Vol. I) (July 30, 2020), 58:6-18; NM-EX 220, Miltenberger Dep. (June 8, 2020) 41:22-42:12; NM-EX 107, Estevan R. Lopez, *Expert Report of Estevan R. Lopez, P.E.* , 25 (Oct. 31, 2019) ("Lopez Rep.").	Subject to the stated objections, disputed. The cited "evidence" does not stand for the stated proposition.	**Disputed.** The phrase "administered . . . as a single unit," as used in this statement, is ambiguous and the statement is disputed on that basis. The letter from Commissioner Clayton on October 4, 1938 to the Compact Commission, states that the Project "is operated as an administrative unit by the Bureau of Reclamation, and the dam and releases from the reservoir are controlled by the Bureau and will continue to be at least until the federal government is repaid its investment, and very probably even beyond that time." NM-EX-328, Clayton Letter, at 1. The United States disputes any other construction of Statement of Fact No. 12.	**There is no genuine dispute as to this fact.** Response to the United States: The U.S. provides no evidence contradicting New Mexico evidence that Reclamation had been operating the Project as a single unit.*See also* NM-EX 506, Affidavit of Filiberto Cortez (4-20- 2007) (then Manager of the El Paso Field Division for Reclamation), ¶ 8. Texas expert Miltenberger testified that historic documents required that the "Project must be operated as a unit." Miltenberger Nov. Decl. ¶ 31;*see also* **NM-EX 128, Miltenberger Rep., 100-101 (noting that in a piece summarizing the Compact, Rio Grande Compact Commissioner Thomas B. McClure agreed with the NM-EX 328, Clayton-Smith (1938) Letter1 explanation that the absence of a state-line delivery to Texas "is necessary because the Rio Grande Project … must be operated as a unit.").**	NM-EX 128: Fed. R. Civ. P. 56(c)(4), the cited evidence does not support the stated "facts" in whole and/or in part. Subject to the stated objection, the new cited evidence is unresponsive to Texas. Thus, the fact remains disputed.

	New Mexico's Apportionment Motion UMFs (11-5-2020)	Texas's Response to New Mexico's Apportionment Motion UMFs (12-22-2020)	United States' Response to New Mexico's Apportionment Motion UMFs (12-22-2020)	New Mexico's Response / Final Disposition of Facts	Texas's Objections and Response to New Evidence Filed with New Mexico's 2/5/2021 Reply Brief
18	Reclamation retained, in the period after 1979, the responsibility toaccount for the total deliveries to each District (EBID and EPCWID) and to Mexico at their respective diversion headings in a given year. *See* NM-EX 202, Cortez Dep. (Vol. I) (July 30, 2020), 31:13-23, 49:3-11. From 1979 through 2005, Reclamation continued to operate the Project as a single unit on an equal amount of water per acre basis.	Subject to the stated objections, undisputed with regard to the firstsentence. Subject to the stated objections, disputed with regard to the second sentence. The cited "evidence" does not stand for the stated proposition.	*[a] Reclamation retained, in the period after 1979, the* responsibility to account for the total deliveries to each District (EBID and EPCWID) and to Mexico at their respective diversion headings in a given year. See NM-EX 202, Cortez Dep. (Vol. I) (July 30, 2020), 31:13-23, 49:3-11. [b] From 1979 through 2005, Reclamation continued to operate the Project as a single unit on an equal amount of water per acre basis. **RESPONSE: [a] Not disputed,** with the clarification that Reclamation included diversions at headings in its accounting. [b] **Disputed.** "[O]perate the Project as a single unit," as used in the statement, is ambiguous and the statement is disputed on that basis. The letter from Commissioner Clayton on October 4, 1938 to the Compact Commission, states that the Project "is operated as an administrative unit by the Bureau of Reclamation, and the dam and releases from the reservoir are controlled by the Bureau and will continue to be at least until the federal government is repaid its investment, and very probably even beyond that time." NM-EX-328, Clayton Letter, at 1. The United States disputes any other construction of Statement of Fact No. 18.	**It is not disputed that Reclamation retained, in theperiod after 1979, the responsibility to account for diversions to each District (EBID and EPCWID) and to Mexico at their respective diversion headings in a given year.** **Also, there is no genuine dispute that from 1979 through 2005, Reclamation continued to operate the Project as a single unit on an equal amount of water per acre basis.** Response to Texas: Texas identifies no material dispute with this latter fact. Response to the United States: Similarly, the U.S. provides no evidence contradicting New Mexico evidence that Reclamation had been operating the Project as a single unit. *See also* NM-EX 506, Affidavit of Filiberto Cortez (4-20-2007) (then Manager of the El Paso Field Division for Reclamation), ¶ 8. Texas expert Miltenberger testified that historic documents required that the "Project must be operated as a unit." Miltenberger Nov. Decl. ¶ 31;***see also*** **NM-EX 128, Miltenberger Rep., 100-101 (noting that in a piece summarizing the Compact, Rio Grande Compact Commissioner Thomas B. McClure agreed with the NM-EX 328, Clayton-Smith (1938) Letter2 explanation that the absence of a state-line delivery to Texas "is necessary because the Rio Grande Project ... must be operated as a unit.").**	NM-EX 128: Fed. R. Civ. P. 56(c)(4), the cited evidence does not support the stated "facts" in whole and/or in part. Subject to the stated objection, New Mexico does not attempt to explain how its new cited evidence supports the facts it is presented for. The cited evidence does not address whether "[f]rom 1979 through 2005, Reclamation continued to operate the Project as a single unit on an equal amount of water per acre basis". Thus, the fact remains disputed.

State of New Mexico's Reply to Statement of Facts: Apportionment Motion

	New Mexico's Apportionment Motion UMFs (11-5-2020)	Texas's Response to New Mexico's Apportionment Motion UMFs (12-22-2020)	United States' Response to New Mexico's Apportionment Motion UMFs (12-22-2020)	New Mexico's Response / Final Disposition of Facts	Texas's Objections and Response to New Evidence Filed with New Mexico's 2/5/2021 Reply Brief
17	The years 2007 through 2010 were also full-supply years for EPCWID because in each of those years EPCWID's annual allocation available for diversions at EPCWID's headgates (if ordered) exceeded 376,862 AFY—the full-supply allocation amount determined by Reclamation in 1990—and also exceeded the higher full-supply allocation to EPCWID (388,192 AFY) under the 2008 Operating Agreement. NM-EX 001, Barroll Decl., ¶¶ 28, 31, 34-37 & Table 2; NM-EX 402, EPCWID Accounting Records; NM-EX 500, EPCWID Water Allocation Records (2006-2016); NM-EX 510, 2008 Operating Agreement, Tables 2 & 4.	Subject to the stated objections, disputed. *See* Brandes Dec. in Opp. to NM at TX_MSJ_007312, paragraphs 1-24. The discussion is lengthy, and is incorporated herein by reference.	**RESPONSE: Not disputed, provided that "**for purposes of Reclamation's allocation procedures" is inserted after "full-supply years." As noted in response to Statement Nos. 11 and 16, the "full supply" and "full supply allocation" underthe Operating Agreement do not reflect the maximum supply or maximum allocation that would have been possible in the absence of groundwater pumping.	**This fact is undisputed.** Response to Texas: In Paragraph 8 of the Brandes Declaration, TX_MSJ_007312, Texas witness Dr. Brandes states, "I have reviewed Project allocations for the years 1985-2002, 2005 and 2007-2010 (Subject Years) identified by New Mexico as "full supply" years for the Rio Grande Project. I generally agree; however, based on annual allocations presented in the Barroll Report, the allocation for the year 2007 was less (by about 23,000 acre-feet) than the full supply allocation for the El Paso County Water Improvement District No. 1 (EP#1) as determined from the Bureau of Reclamation's D2 Curve." New Mexico witness Dr. Barroll explains why Dr. Brandes is mistaken regarding 2007. **NM-EX 014, Barroll 3d Decl. ¶¶ 8- 10.**	NM-EX 014: Fed. R. Civ. P. 56(c)(4), the cited evidence does not support the stated "facts" in whole and/or in part. Subject to the stated objection, New Mexico's own response concludes that "It can be debated whether the Project as whole had a full supply for all of the years 2007 through 2010." NM-EX 014 at 4. Thus, the fact remains disputed.

Texas's Response to Consolidated Reply to the Parties in Support of New Mexico's Motion for Partial Summary Judgment on Compact Apportionment

	Passage with New Evidence	Texas's Objections and Response to New Evidence Filed with New Mexico's 2/5/2021 Reply Brief
p. 9	Applying the correct standard, a careful review indicates that neither Texas nor the United States presents evidence that genuinely disputes any of the following material facts: -In 1951, Reclamation determined that 3.0241 acre-feet per acre constituted a full allocation to Project lands. NM-EX 202, Cortez Dep. (July 30, 2020), 19:8-20:4; UMF ¶ 62 (i.e., NM-CSMF ¶ 153);**NM-EX 612 at Interrog. No. 13.** - From 1951 until 1978, Reclamation allocated Project deliveries on an equal basis so that each acre of Project land was entitled to receive an equal amount of water. UMF ¶ 63 (i.e., NM-CSMF ¶ 154); NM-EX 602 at 7-8, RFA No. 13; **NM-EX 612 at Interrog. No. 13.**	NM-EX 612: Fed. R. Civ. P. 56(c)(4), the cited evidence does not support the stated "facts" in whole or in part. Subject to the stated objection, New Mexico summarily declares that neither Texas nor New Mexico "presents evidence that genuinely disputes material facts" relating to Rio Grande Project allocation in 1951 and 1951-1978. New Mexico's supports those stated facts with new evidence, submitted for the first time on 2/5/2021 in reply (NM-EX-612). Texas disputes New Mexico's characterization of the facts and reserves the opportunity to present evidence in response to this new evidence submitted by New Mexico, in subsequent proceedings and/or at trial.
p. 15	Fourth, for purposes of briefing, Texas now takes the position that the Rio Grande Project allocations to the Districts "are not coextensive with the apportionment." Tex. App. Resp. 13. But this is inconsistent with the position of Commissioner Gordon, who testified that the water apportioned to Texas is the same water that EPCWID is entitled to under its contract. NM-EX 212, Gordon Dep. (July 15, 2020), 11:25 – 12:10;**NM-EX 259, Gordon Dep. (July 15, 2020) 20:11-21:11, 23:15-20**; *see also* NM-EX 225, Settemeyer Dep. (July 30, 2020), 43:1-15 (explaining that the 43% allocation to EPCWID is the water apportioned to Texas).	NM-EX 259: Fed. R. Civ. P. 56(c)(4), the cited evidence does not support the stated "facts" in whole or in part. Subject to the stated objection, New Mexico mischaracterizes Mr. Gordon's deposition testimony submitted as NM-EX-259 on 2/5/2021. Mr. Gordon did not directly address New Mexico's stated fact in his deposition testimony, and Texas has consistently maintained its position that Rio Grande Project allocations are not coextensive with the Rio Grande Compact apportionment.
p. 15	Commissioner Gordon not only testified that the 43% of Project supply that is allocated to EPCWID is the same amount that Texas claims in this case, but also that the Downstream Contracts "are incorporated into the Compact." NM-EX 212, Gordon Dep. (July 15, 2020), 11:25 – 12:10;**NM-EX 259, Gordon Dep. (July 15, 2020), 21:19 – 22:2.**	NM-EX 259: Fed. R. Civ. P. 56(c)(4), the cited evidence does not support the stated "facts" in whole or in part. Subject to the stated objection, New Mexico mischaracterizes Mr. Gordon's deposition testimony submitted as NM-EX-259 on 2/5/2021. Mr. Gordon's testimony is misquoted. Mr. Gordon testified that ". . . the Rio Grande Project and the contracts, I believe, are incorporated or contemplated under the . . . Rio Grande Compact." NM-EX-259 at 21:25-22:2.
p. 17	Texas assigns importance to its observation that "whatever interest New Mexico may have below Elephant Butte Reservoir . . . is limited to the rights that exist pursuant to the EBID contracts." Tex. App. Resp. 15. New Mexico accepts that its apportionment below Elephant Butte is limited to 57% of Project supply, just as Texas accepts that its apportionment below Elephant Butte is limited to 43% of Project supply. NM-EX 212, Gordon Dep. (July 15, 2020), 11:25-12:6;**NM-EX 259, Gordon Dep. (July 15, 2020), 20:11-21:11, 23:15-20**; NM-EX 255, Settemeyer Dep. (July 30, 2020), 43:1-15. This in no way diminishes either State's sovereign interest to its Compact apportionment, and Texas offers no argument to the contrary.	NM-EX 259: Fed. R. Civ. P. 56(c)(4), the cited evidence does not support the stated "facts" in whole or in part. Subject to the stated objection, New Mexico mischaracterizes Mr. Gordon's deposition testimony submitted as NM-EX-259 on 2/5/2021. Mr. Gordon's cited testimony does not state that Texas "accepts" is apportionment below Elephant Butte is limited to 43% of Project supply.
p. 21	Texas seems to suggest that Dr, Miltenberger's new opinions undermine New Mexico's reliance on Commissioner Clayton's letter, but that is not the case. Texas admits that the Project delivered Project supply to New Mexico and Texas lands prior to the Compact, and admits that the percentage of Project lands existing in each State was 57% in New Mexico and 43% in Texas. And Texas concedes that the Project and the Downstream Contracts were incorporated into the Compact. NM-EX 212, Gordon Dep. (July 15, 2020), 11:13-12:10, 14:22-16:13;**NM-EX 259, Gordon Dep. (July 15, 2020) at 21:19-22:2**; *see also Texas v. New Mexico*, 138 S. Ct. at 959.	NM-EX 259: Fed. R. Civ. P. 56(c)(4), the cited evidence does not support the stated "facts" in whole or in part. Subject to the stated objection, New Mexico mischaracterizes Mr. Gordon deposition testimony submitted as NM-EX-259 on 2/5/2021. Mr. Gordon's testimony is misquoted. Mr. Gordon testified that ". . . the Rio Grande Project and the contracts, I believe, are incorporated or contemplated under the . . . Rio Grande Compact." NM-EX-259 at 21:25-22:2.

	Passage with New Evidence	Texas's Objections and Response to New Evidence Filed with New Mexico's 2/5/2021 Reply Brief
p. 22	Because the Project and Downstream Contracts were incorporated into the Compact, the existing operations became a matter of Compact apportionment, and the distinction between the Project and the Compact that Dr. Miltenberger strains so hard to identify loses all consequence. (n.7: This point is underscored because the Downstream Contracts themselves contain explicit provisions regarding the protection of existing and future "water rights" established through the use of Project water. *See* **NM-EX 016, Stevens Decl. ¶ 15**.")	NM-EX 016: Fed. R. Civ. P. 56(c)(4), the cited evidence does not support the stated "facts" in whole or in part; Fed. R. Evid. 704, the statement included impermissible legal conclusions. Subject to the stated objections, Texas disputes New Mexico's characterization of the facts and reserves the opportunity to present evidence in response to this new evidence submitted by New Mexico, in subsequent proceedings and/or at trial.
p. 24	Still today, Texas alleges in its Complaint that the Compact "relied upon the Rio Grande Project and its allocation and delivery of water in relation to the proportion of Rio Grande Project irrigable lands in southern New Mexico and in Texas, to provide the basis of the allocation of Rio Grande waters between Rio Grande Project beneficiaries in southern New Mexico and the State of Texas." Tex. Compl. ¶ 10. And Commissioner Gordon has confirmed that the only water to which Texas claims it is entitled is the 43% of Project supply that is allocated to EPCWID each year. NM-EX 212, Gordon Dep. (July 15, 2020), 11:25-12:6; **NM-EX 259, Gordon Dep. (July 15, 2020) 20:11-21:11, 23:15-20; NM-EX 255, Settemeyer Dep. (Vol. I) (July 30, 2020), 43:1-15 n.8.**	NM-EX 259, 255: Fed. R. Civ. P. 56(c)(4), the cited evidence does not support the stated "facts" in whole or in part. Subject to the stated objection, New Mexico mischaracterizes Mr. Gordon's deposition testimony submitted as NM-EX-259 on 2/5/2021. Mr. Gordon's cited testimony does not state that Texas "accepts" is apportionment below Elephant Butte is limited to 43% of Project supply. New Mexico mischaracterizes Mr. Settermeyer's deposition testimony submitted at NM-EX-255 on 2/5/2021. Mr. Settemeyer's cited testimony addressed Project allocations, not the Rio Grande Compact apportionment.
p. 27	During his deposition, New Mexico asked Commissioner Gordon about NM-EX 519 at length. Commissioner Gordon answered that he did not recall or did not know information about NM-EX 519 no less than *19 times* . **NM-EX 258, Gordon Dep. (July 14, 2020), 136:19 – 143:11**. Because he had no information about NM-EX 519, that led counsel for New Mexico to state that it would have to "ask somebody who remembers" the exhibit. It is therefore beyond surprising that Commissioner Gordon has now recovered his memory enough to suggest in his declaration that NM-EX 519 "were not talking points that represented Texas's position on the Rio Grande Compact' as stated by declarants Lopez and Schmidt-Petersen." Gordon Declaration at ¶ 12, TXMSJ_ 007274. *See also United States v. Lawrence* , 276 F.3d 193, 197 (5th Cir. 2001) (conclusory and "self-serving allegations are not the type of 'significant probative evidence' required to defeat summary judgment"). Texas and Commissioner Gordon had their chance to explain NM-EX 519 at his deposition. Having failed to do so, the Special Master should disregard Commissioner Gordon's newfound contrary and self-serving statements. *Jiminez v. All Am. Rathskeller, Inc.* , 503 F.3d 247, 253 (3d Cir. 2007) (trial court is justified in discounting affidavit that is "offered solely for the purpose of defeating summary judgment").	NM-EX 258: Fed. R. Civ. P. 56(c)(4), the cited evidence does not support the stated "facts" in whole or in part. Subject to the stated objection, Mr. Gordon's deposition testimony and declaration speak for themselves. Texas disputes that New Mexico asked Mr. Gordon about NM-EX-519 "no less than *19 times* ."
p. 28	Likewise, in its Apportionment Motion, New Mexico pointed to official remarks from Commissioner Gordon at a RGCC meeting. New Mexico State Engineer and Compact Commissioner D'Antonio expressed New Mexico's concerns that the Operating Agreement violated the Compact by drastically reducing the percentage of water that EBID received. N-MEX 518, Rio Grande Compact Commission, Transcript of the 72nd Annual Meeting (94th Meeting), 49:9 – 51:25. In response, Commissioner Gordon explained that "I agree that the purpose of the Compact was to allocate the water between the Districts and the 53 47 [sic] as provided in the Compact. I do agree with that." *Id.* at 59:2-4. He went on to "respectfully disagree that the Operating Agreement violates the Compact." *Id.* at 59:14-15. In his sworn deposition, Commissioner Gordon admitted that the exhibit reflects his actual statements, **NM-EX 258, Gordon Dep. (July 14, 2020), 134:3-9,** but offered that he may have misspoke, but only "[t]o the extent it's inconsistent with" the Compact, the Project and the Downstream Contracts. ***Id.*** **134:8-19**.	NM-EX 258: Fed. R. Civ. P. 56(c)(4), the cited evidence does not support the stated "facts" in whole or in part. Subject to the stated objection, New Mexico mischaracterizes Mr. Gordon's deposition testimony submitted as NM-EX-258 on 2/5/2021. Mr. Gordon testified that he did not recall his prior statement and that his prior statement is "probably not right." NM-EX-258 at 134:10. New Mexico's stated fact fails to provide adequate context for Mr. Gordon's statement.

	Passage with New Evidence	Texas's Objections and Response to New Evidence Filed with New Mexico's 2/5/2021 Reply Brief
pp. 28-29	Unfortunately for Texas, it could not wipe away all of its previous positions on the Compact, and it makes no effort to do so. Most important is the testimony of former Texas Engineer Advisor Herman Settemeyer. Mr. Settemeyer worked on the Rio Grande Compact on behalf of Texas for almost 20 years. **NM-EX 255, Settemeyer Dep. (July 30, 2020), 29:25 – 34:22**; NM-EX 609, Settemeyer Dep. Ex. 2. Contrary to Texas's new litigation position, Mr. Settemeyer testified that the Compact does not have a 1938 condition. **NM-EX 255, Settemeyer Dep. (July 30, 2020), 45:20 – 47:1.** Instead, "the Rio Grande Compact incorporated the Rio Grande Project and – and the water use associated with the Rio Grande Project by Texas and New Mexico." ***Id*. 42:14-25**. More specifically, Mr. Settemeyer offered the following testimony: Q. And what portion, then, was allocated to Texas? A. Well, the Rio Grande Project is apportioned 57 – 57 percent to – to New Mexico and 43 percent to Texas. So the portion that Texas got associated with the Rio Grande Project was the – was the 43 percent. Q. And describe for me what that's 43 percent of. Is it 43 percent of the waterin storage? A. No, the – the Bureau of Reclamation operates the Rio Grande Project and, as such, they make an allocation each and every year to – to New Mexico and to Texas, EBID EP No. 1, they make an allocation and those – that allocation is split 57/43 between the two districts, basically between the two states. ***Id*. 43:1-15.**	NM-EX 255: Fed. R. Civ. P. 56(c)(4), the cited evidence does not support the stated "facts" in whole or in part. Subject to the stated objection, New Mexico mischaracterizes Mr. Settermeyer's deposition testimony submitted as NM-EX-255 on 2/5/2021. Mr. Settermeyer testified that he did not "recall" or "think so" regarding New Mexico's questioning relating to a 1938 condition. NM-EX-255 at 46:1. He did not testify that the "Compact does not have a 1938 condition."
p. 49	First and foremost, the United States overlooks the primary dividing principle underlying the Compact. As the United States admits, "the Project allocation was allocated to all Project lands on an acre-foot-per-acre basis." NM-EX 602, 7, RFA No. 12. In the words of Reclamation witness Cortez, "the allocation has historically been*equally divided* to all Project lands on an acre-foot per acre basis . . . combining storage and return flows so that each acre of farm land received an equal amount of water regardless of the source of the water or what district the land was located." NMEX 506, Cortez Aff., ¶ 8 (emphasis added); *see also* **NM-EX 529, FEIS at 5 ("From 1908 through 1979, Reclamation operated the [Rio Grande Project ("RGP")]. Reclamation determined the annual allotment of RGP water per acre of authorized land and delivered the annual allotment to farm headgates and to the Acequia Madre for Mexico.")**. This dividing principle has historically applied in both times of shortage and in times of plenty. NM-EX 107, Lopez Rep. at 26-27; NMEX 108, Lopez Reb. Rep. at 6-9.	NM-EX 529: Fed. R. Evid. 801(c), hearsay. Subject to the stated objection, Texas does not dispute New Mexico's quote of content contained in NM-EX-529.
p. 51	The concept of Project supply is not a matter in dispute in this case. Reclamation witness Cortez defined Project supply as being "made out of two components, one being the usable water," and the other being "return flow back to the river, which is captured and delivered to the project water users." **NM-EX 257, Cortez Dep. (July 30, 2020), 77:18-22.**	NM-EX 257: Fed. R. Civ. P. 56(c)(4), the cited evidence does not support the stated "facts" in whole or in part. Subject to the stated objection, Texas disputes New Mexico's claim that "[t]he concept of Project supply is not a matter in dispute in this case." New Mexico's stated fact is not material to the Rio Grande Compact issues set forth in Texas's complaint.

	Passage with New Evidence	Texas's Objections and Response to New Evidence Filed with New Mexico's 2/5/2021 Reply Brief
pp. 61-62	Out of an abundance of caution, however, New Mexico withheld the groundwater issue from its Apportionment Motion because it recognizes that there are disputes over material facts that preclude summary judgment. Two examples are instructive. The United States (and the Districts) have taken the position that depletions from levels of groundwater pumping that existed from 1951 until 1978 *are consistent with* the Compact. They admitted as much by entering the 2008 Operating Agreement, which allocates water to EPCWID based on the D2 method. **NM-EX 608, U.S. Supp. Response to NM Interrog. 19**; NM-EX 529, FEIS at 7. The D2 method, in turn, incorporates the effects on Project supply of all groundwater pumping that occurred through the years 1951 to 1978. NM-CSMF ¶ 215; NM-EX 529, FEIS at 7-8. In entering the Operating Agreement, the United States therefore expressly recognized that this level of groundwater pumping is consistent "with the provisions of the Rio Grande Compact." NM-EX 510, 2008 Operating Agreement, 14, ¶ 6.12. Or, put another way, the Reclamation 30(b)(6) witness testified on behalf of Reclamation that the Operating Agreement "grandfathers" in the groundwater pumping from 1951 until 1978, and the level of groundwater pumping from this time period is allowed by the Compact. **NM-EX 260, Cortez 30(b)(6) Dep., (Aug. 20, 2020), 73:7 – 74:19**. But there is a dispute with New Mexico over whether the Compact limits groundwater pumping to 1978 levels as articulated by Reclamation, or whether all groundwater pumping is contemplated by the Compact, as advocated by New Mexico. And Texas, unlike the United States and the Texas District (EPCWID), does not accept that 1978 levels of groundwater pumping are allowed by the Compact (despite its failure to regulate any groundwater within the Compact area). It follows that the exact level of groundwater pumping allowed by the Compact will need to be decided at trial.	NM-EX 260, 608: Fed. R. Civ. P. 56(c)(4), the cited evidence does not support the stated "facts" in whole or in part. Subject to the stated objections, New Mexico's stated fact is not support by the evidence cited. Texas dispute that groundwater pumping levels from 1951-1978 are "allowed by the Compact." As explained in Texas's Motion for Partial Summary Judgement, the Compact contemplates a 1938 Condition. *See* The State of Texas's Motion for Partial Summary Judgment; Memorandum of Points and Authorities in Support Thereof, Federal Rule of Civil Procedure 56 (Nov. 5, 2020) at 77-84.
p. 62	Likewise, the United States argues in its response that the "Compact apportionment necessarily includes all of the return flows that would reach the Project but for" the actions of the States. U.S. Resp. 13. But as New Mexico explained in its Response to the United States, at 60- 62, the United States has previously defined return flows as only that water that actually "reaches the bed of the Rio Grande." NMCSMF ¶¶ 261, 286. For example, Reclamation witness Filiberto Cortez testified that return flows that do not reach the bed of the Rio Grande do not form part of Project supply. **NM-EX 260, Cortez 30(b)(6) Dep., (Aug. 20, 2020), 77:23 – 79:19.** This creates a dispute over material fact as to the United States' inconsistent argument and inconsistent approach to return flows from groundwater in Texas and New Mexico. NM Resp. to Tex. 60-62.	NM-EX 260: Fed. R. Civ. P. 56(c)(4), the cited evidence does not support the stated "facts" in whole or in part. Subject to the stated objection, the cited passage from Mr. Cortez's testimony (NM-EX-260) does not support New Mexico's statement that he testified that "return flows that do not reach the bed of the Rio Grande do not form part of Project supply." The cited excerpt does not address return flows.

Texas's Response to Consolidated Reply to the Parties in Support of New Mexico's Motion for Partial Summary Judgment to Exclude Texas's Claim for Damages in Certain Years		
	Passage with New Evidence	**Texas's Objections and Response to New Evidence Filed with New Mexico's 2/5/2021 Reply Brief**
pp. 5-6	As described in Dr. Barroll's declaration filed herewith, Reclamation established the "normal delivery" allotment to Project lands as 3.024 acre-feet per acre based on the average farm delivery per acre during the years 1946-1950**NM-EX 014, Barroll 3d Decl. ¶ 20.n.7.** This was memorialized in a 1956 IBWC memorandum, which described Reclamation's calculation for the 3.024 acre-feet per acre as the total acre-feet delivered to farms divided by the Project irrigated acres*Id.* Reclamation adopted the 3.024 acre-feet per acre after the 1946-1950 period as the basis for calculating Full Supply allocations, and re-confirmed its use of the 3.024 acre-feet per acre in its Water Supply Allocation Procedures (WSAP) document (circa 1990). ***Id.* ¶¶ 22, 23**. In the WSAP summary, Reclamation provides for a Full Supply allocation at the canal headings of 376,862 AFY to EPCWID in order to supply 3.024 acre-feet per acre to Texas's authorized acreage.***Id.* ¶¶ 22, 23;** NM-EX 400, WSAP. The WSAP also describes the D2 Curve and associated calculations (as further described below). **NM-EX 014, Barroll 3d Decl. ¶¶ 22, 23; NM-EX 400, WSAP.**	NM-EX 014: Fed. R. Civ. P. 56(c)(4), the cited evidence does not support the stated "facts" in whole or in part; NM-EX 400: Fed. R. Evid. 801(c), hearsay. Subject to the stated objections, Dr. Baroll's opinion regarding "normal delivery" is not material to the Rio Grande Compact issues addressed in this litigation. Texas disputes New Mexico's characterization of the facts and reserves the opportunity to present evidence in response to this new evidence submitted by New Mexico, in subsequent proceedings and/or at trial.
p. 6	As Reclamation explains in the above quotation, it used the D-1 curve to "estimate the release from Project storage that would provide for delivery of 3.024 acre-feet per acre," but it determined that 3.024 acre-feet per acre is the measure of a Full Supply based on an analysis of deliveries during the pre-pumping years of 1946-1950.*Id.* (emphasis added); **NM-EX 014, Barroll 3d Decl. ¶¶ 20, 22, 38.** As described below, the 2008 Operating Agreement changed the Full Supply release amount (from 763,000 AFY to 790,000 AFY) and EPCWID's Full Supply allocation (from 376,000 AFY to 388,000 AFY) without considering whether the additional water was needed to meet irrigation demands.	NM-EX 014: Fed. R. Civ. P. 56(c)(4), the cited evidence does not support the stated "facts" in whole or in part. Subject to the stated objection, Dr. Baroll's opinion is not material to the Rio Grande Compact issues addressed in this litigation. Texas disputes New Mexico's characterization of the facts and reserves the opportunity to present evidence in response to this new evidence submitted by New Mexico, in subsequent proceedings and/or at trial.
p. 7	The United States also supports 376,000 AFY as EPCWID's Project Full Supply allocation. The United States was a party to the Texas water rights adjudication and accepted the judgment awarding the United States and EPCWID the right to divert up to 376,000 AFY. *See* NM-EX 505. Since the adjudication, United States witnesses have acknowledged that the "Texas adjudication certificate define[s]" Texas's entitlement to water from the Project. **NM-EX 257, Cortez Dep. (July 30, 2020) 105: 14-16.** More recently, the United States argued in the New Mexico adjudication of water rights in the Lower Rio Grande that the Adjudication Court should "give full faith and credit" to the Texas adjudication and recognize the Project's water right includes "the right to deliver to Project diversion dams in Texas . . . up to a diversion amount of 376,000 acre-feet per annum." **NM-EX 611, United States' Memorandum in Support of Motion for Summary Judgment 28, New Mexico ex rel. State Engineer v. Elephant Butte Irrigation Dist., No. 96-cv-888 (N.M. 3d Jud. Dist. Ct., Apr. 24, 2013)**. The United States did not seek the right to deliver more than 376,000 AFY of water to Texas, which it could have done if it believed there was a legal and factual basis to make such a claim. Instead, the United States sought recognition of the Project's delivery of up to 376,000 AFY to EPCWID—the exact amount allocated to EPCWID in Project Full Supply years prior to 2006.	NM-EX 257:Fed. R. Civ. P. 56(c)(4), the cited evidence does not support the stated "facts" in whole or in part. NM-EX-611: Fed. R. Evid. 801(c), hearsay. Subject to the stated objections, Texas does not dispute New Mexico's characterization of the new evidence submitted as NM-EX-257 and NM-EX-611 but disputes that the evidence is material to the issues addressed in this litigation. Texas reserves the opportunity to present evidence in response to this new evidence submitted by New Mexico in subsequent proceedings and/or at trial.

	Passage with New Evidence	Texas's Objections and Response to New Evidence Filed with New Mexico's 2/5/2021 Reply Brief
pp. 9-10	Texas expert Dr. Brandes agrees that EPCWID (Texas) received a Project Full Supply allocation in each of 1985-2002, 2005 and 2007-2010, with the minor disagreement that he believes 2007 was slightly under a Full Supply for EPCWID. Brandes Decl. ¶ 8 (Dec. 22, 2020), TX_MSJ_007312. He claims that in 2007 EPCWID was allocated slightly less than a Full Supply by about 23,000 acre-feet. Id. Regardless, as Dr. Barroll explains in her two declarations filed in support of this Motion, this shortfall is more than made up once carryover water and the Reclamation credits EPCWID received are taken into account, which Dr. Brandes failed to do. Once these are factored in, then 2007 is clearly a Full Supply year. NM-EX 001, Barroll Decl. ¶ 31 & n.3; **NM-EX 014, Barroll 3d Decl. ¶¶ 8, 9; NM-EX 017, Sullivan 2d Decl. ¶ 14.**	NM-EX 014, 017: Fed. R. Civ. P. 56(c)(4), the cited evidence does not support the stated "facts" in whole or in part. Subject to the stated objections, New Mexico admits that Dr. Baroll and Mr. Sullivan have already submitted declaration testimony relating to the issues addressed by the statement of fact. Texas reserves the opportunity to present evidence in response to this new evidence submitted by New Mexico in subsequent proceedings and/or at trial.
p. 10-11	Dr. Brandes, who offers opinions on New Mexico's Integrated Model and its results for the first time in his December declaration, filed after the close of discovery, opines that results from this model show that Texas might have received additional allocation in three Full Supply years—2007, 2009, and 2010—had there been no groundwater pumping in New Mexico. Brandes Decl. ¶ 10 & Fig. 2 (Dec. 22, 2020), TX_MSJ_007312. EPCWID's initial allocation by Reclamation at the start of the irrigation season in each of these years was less than a Full Supply allocation; however, EPCWID's carryover account (created as a result of the 2008 Operating Agreement), and allocation credits, increased the water available for allocation to EPCWID in each of these three years. As a result, EPCWID's total allocation of Project water in each of these three years exceeded its Full Supply allocation and, in fact, in 2009 and 2010, EPCWID's Project allocation greatly exceeded its Full Supply allocation. NM-EX 001, Barroll Decl. ¶ 31 & Fig. 2; **NM-EX 014, Barroll 3d Decl. ¶¶ 8-10 & Fig. 1; NM-EX 017, Sullivan 2d Decl. ¶ 14.** As Dr. Barroll shows in Figure 2 in her first declaration, Dr. Brandes misses the mark even further in alleging that there was some negative impact to Texas because in each of those three years Texas did not even order all the water available to it. **NM-EX 014, Barroll 3d Decl. ¶¶ 12, 14, Figs. 3 & 4.** How Texas can now claim that it was shorted water due to groundwater pumping in New Mexico in years that Texas never even called for its full Project allocation is incomprehensible.	NM-EX 014, 017: Fed. R. Civ. P. 56(c)(4), the cited evidence does not support the stated "facts" in whole or in part. Subject to the stated objections, New Mexico admits that Dr. Baroll and Mr. Sullivan have already submitted declaration testimony relating to the issues addressed by the statement of fact. Texas reserves the opportunity to present evidence in response to this new evidence submitted by New Mexico in subsequent proceedings and/or at trial.
pp. 11-12	Dr. Brandes also opines, again for the first time in his December 22, 2020 declaration, that New Mexico's Integrated Model shows EPCWID's diversions would have been higher in certain Full Supply years but for New Mexico's pumping. Brandes Decl. ¶ 11 & Fig. 3 (Dec. 22, 2020), TX_MSJ_007312. Again, Dr. Brandes misinterprets the results of this model and misleads the Court. The increased "diversions" Dr. Brandes identifies do not establish EPCWID (Texas) was injured in any of these years because diversions is the wrong measure to evaluate, and moreover, Dr. Brandes misinterprets the model outputs as Mr. Sullivan describes in his declaration filed herewith. **NM-EX 017, Sullivan 2d Decl. ¶ 15.** Id. Dr. Brandes also ignores that the historical data show that EPCWID had more water available to it in many years, but chose not to order all of its allocation. **NM-EX 014, Barroll 3d Decl. ¶¶ 12, 14, Figs. 3 & 4.**	NM-EX 014, 017: Fed. R. Civ. P. 56(c)(4), the cited evidence does not support the stated "facts" in whole or in part. Subject to the stated objections, New Mexico admits that Dr. Baroll and Mr. Sullivan have already submitted declaration testimony relating to the issues addressed by the statement of fact. Texas reserves the opportunity to present evidence in response to this new evidence submitted by New Mexico in subsequent proceedings and/or at trial.

	Passage with New Evidence	Texas's Objections and Response to New Evidence Filed with New Mexico's 2/5/2021 Reply Brief
pp. 12-14	Texas's arguments based on the D2 methodology are irrelevant to the question of law presented in this Motion. D2 is a graph of the historical relationship between reservoir releases and canal heading diversions. The Full Supply allocation is the amount needed to be delivered to the canal headings in order to get a Full Supply to the farm headgates. The Full Supply allocation is a function of the number of authorized acres, the historical farm headgate requirement, and the historical conveyance losses between the canal headings and the fields; it is not a function of river gains and losses between the reservoir and the canal headings. **NM-EX 014, Barroll 3d Decl. ¶ 38**. Therefore, D2 is irrelevant to the Full Supply allocation for diversion at the canal headings. ***Id.*** It is true that the 2008 Operating Agreement changed the measure of Project Full Supply, instead defining a Full Supply based on a release of 790,000 acre-feet, which slightly increased the EPCWID Full Supply from 376,000 AFY to 388,192 AFY. NM-EX 529, FEIS at E-14 (PDF p. 311); **NM-EX 014, Barroll 3d Decl. ¶ 24.** This illustrates another problem with the 2008 Operating Agreement, which is that it fails to consider irrigation demands on Project lands, as required by Article I(l) of the Compact, and instead dictates that Reclamation release 790,000 acre-feet per year when possible. Regardless, this adjustment impacts only three of the twenty-three Full Supply years New Mexico identified in its Motion—2008 through 2010—and in these years, as New Mexico noted in its Motion, EPCWID (Texas) was not injured because it had far more allocation available to it than its Full Supply allocation under either pre- or post-2008 Operating Agreement allocation procedures; EPCWID failed to order the allocation that was available; and EPCWID (Texas) did not protest the allocation it received. **NM-EX 014, Barroll 3d Decl. ¶¶ 9, 10, 12 & Fig. 1, 3.** If Texas suffered any injury from a failure to receive sufficient water in these years, that injury is attributable to EPCWID's own failure to order sufficient water, not New Mexico pumping. Finally, New Mexico is unaware that Texas ever objected to the allocations it received in these years, or requested additional water. **NM-EX 015, Lopez 3d Decl. ¶ 4.** In these years, EPCWID had just executed the 2008 Operating Agreement, which Texas Compact Commissioner Pat Gordon mediated. **NM-EX 258, Gordon Dep. (July 14, 2020) 185:1-20**. Texas identifies no reason why it was damaged in years when it received large allocations, well in excess of any it received historically, and well in excess of Reclamations' previous determination of a Full Supply.	NM-EX 014, 015: Fed. R. Civ. P. 56(c)(4), the cited evidence does not support the stated "facts" in whole or in part. NM-EX 258: Fed. R. Civ. P. 56(c)(4). The cited evidence does not support the stated "facts" in whole or in part. Subject to the stated objections, New Mexico admits that Dr. Baroll and Mr. Lopez have already submitted declaration testimony relating to the issues addressed by the statement of fact. The new declaration testimony cited in support of the stated fact is duplicative, and amounts to a mere attempt to pad the record. Texas reserves the opportunity to present evidence in response to this new evidence submitted by New Mexico in subsequent proceedings and/or at trial.
pp. 15-16	The parties' course of performance under the Compact, specifically the United States' operation of the Project, confirms that the Compact does not mandate that the Project release 790,000 AFY. With few exceptions, Reclamation has not released 790,000 acre-feet or more in any given year, even when this amount, or more, was available in storage.**NM-EX 014, Barroll 3d Decl. ¶ 25.** For example, during the 1980s and 1990s, when the Project had ample water supplies available every year, the only years when the Project released 790,000 acre-feet or more were years when the Project spilled water from Project storage or threatened to spill from storage.Id. This is curious if the Compact required annual releases of 790,000 acre-feet from the Project, as Texas now claims. Certainly, if Reclamation had understood that the Compact required it to release 790,000 acre-feet whenever possible, it would have done so. Yet, Reclamation did not. Texas's own past behavior is also inconsistent with its expansive new theory of Compact apportionment. If Texas understood that it was entitled to a 790,000 acre-feet release, Texas no doubt would have demanded that Reclamation release this water. Yet Texas has never made this demand. **NM-EX 015, Lopez 3d Decl. ¶ 4.**	NM-EX 014, 015: Fed. R. Civ. P. 56(c)(4), the cited evidence does not support the stated "facts" in whole or in part. Subject to the stated objections, New Mexico admits that Dr. Baroll and Mr. Lopez have already submitted declaration testimony relating to the issues addressed by the statement of fact. The new declaration testimony cited in support of the stated fact is duplicative, and amounts to a mere attempt to pad the record. Texas reserves the opportunity to present evidence in response to this new evidence submitted by New Mexico in subsequent proceedings and/or at trial.

	Passage with New Evidence	Texas's Objections and Response to New Evidence Filed with New Mexico's 2/5/2021 Reply Brief
pp. 16-17	Regarding what the Project's measure of a Full Supply was during this period, and whether the Project made Full Supply allocations in the years New Mexico has identified, New Mexico observes that the United States has already agreed with New Mexico. In fact, in response to New Mexico's request that the United States explain what it considers "to be a full annual allocation of water from the Project to New Mexico and Texas," NM-EX 612, N.M. Interrog. to U.S. No. 13, the United States responded in detail regarding Full Supply, including as follows: • From 1950 to 1980, Reclamation delivered water to Project lands. A full annual allocation to Project lands was 3.024 AF/acre to each acre of authorized Project land under irrigation. • In 1980, EBID and EPCWID took over operation and maintenance of Project canals, laterals, and drains. . . . [A] full annual allocation to the U.S. canal headings ranged from 750,650 AF to 902,000 AF (392,111 AF to 478,039 AF to EBID; 298,539 AF to 363,961 AF to EPCWID). . . . • From 1991 to 2007, Reclamation allocated water to EBID and EPCWID based on the D1 and D2 Curves. During this period, a full annual allocation to the U.S. canal headings was 871,841 AF (494,979 AF to EBID; 376,862 to EPCWID). • From 2008 to present, Reclamation allocates water to EBID and EPCWID according to the Operating Agreement (2019 Allocation Spreadsheet). Under the Operating Agreement, the full annual diversion allocation to the U.S. canal headings is 898,056 AF (509,864 AF to EBID; 388,192 AF to EPCWID). . . . **NM-EX 612, U.S. Resp. to N.M. Interrog. No. 13 (emphasis added).**	Texas does not dispute New Mexico's characterization of NM-EX-612.
p. 17	Additionally, in response to a New Mexico interrogatory requesting that the United States "list all years in which [the United States was] able to make a full annual allocation of Project water to New Mexico and Texas as [the United States defined in its] response to Interrogatory No. 13," N.M. Interrog. to U.S. No. 14, the United States submitted a table of Project allocations for the years 1951 through 2018 showing that the Project made full allocations in the years 1985-2002 and 2005. **NM-EX 612, U.S. Resp. to N.M. Interrog. No. 14**. Though this table shows that the Project as a whole did not make full allocations in 2007 through 2010, as New Mexico explains above, and as relevant to this Motion, EPCWID still received more than a Full Supply of water in each of these years.	Texas does not dispute New Mexico's characterization of NM-EX-612.

Consolidated Reply ISO of New Mexico's Motion for Partial Motion of Summary Judgment to Exlcude Damages in Years that Texas Failed to Provide Notice

	Passage with New Evidence	Texas's Objections and Response to New Evidence Filed with New Mexico's 2/5/2021 Reply Brief
pp. 19-20	In support its alleged notice arguments, Texas points to 400 pages of documents Texas disclosed at TX_MSJ006492-891. Tex. Notice Resp., 4 n.3, 12. In Texas's Evidentiary Objections and Responses to New Mexico's Undisputed Facts, Texas also identifies the June 29, 2020 deposition transcript of Mr. Schmidt-Petersen, and a December 22, 2020 declaration filed by Texas's expert Scott A. Miltenberger, Ph.D. Tex. Evidentiary Obj. 107-14. Yet, in all of these documents, Texas fails to identify any evidence that Texas issued a priority call, or otherwise provided notice of a water shortage, under the Compact to New Mexico. In fact, Patrick R. Gordon, the Texas Rio Grande Compact Commissioner conceded in his deposition that Texas has never made a priority call in the New Mexico Lower Rio Grande, and that he is not aware of EPCWID ever issuing a call. **NM-EX 258, Gordon Dep. (Jul. 14, 2020), 12:21-22, 192:20-24.**	NM-EX 258: Fed. R. Civ. P. 56(c)(4), the cited evidence does not support the stated "facts" in whole or in part. New Mexico mischaracterizes Mr. Gordon's deposition testimony, submitted as NM-EX-258 on 2/5/2021. Mr. Gordon testified regarding the existence of historic priority calls based on his personal knowledge.

No. 141, Original

In the

SUPREME COURT OF THE UNITED STATES

STATE OF TEXAS,

Plaintiff,

v.

STATE OF NEW MEXICO and
STATE OF COLORADO,

Defendants.

OFFICE OF THE SPECIAL MASTER

CERTIFICATE OF SERVICE

This is to certify that on this 6th day of April 2021, I caused a true and correct copy of **THE STATE OF TEXAS'S EVIDENTIARY OBJECTIONS AND SUR-REPLY TO THE STATE OF NEW MEXICO'S NEW EVIDENCE SUBMITTED IN SUPPORT OF ITS THREE REPLY BRIEFS** to be served upon all parties and *amici curiae*, by and through the attorneys of record and/or designated representatives for each party and *amicus curiae* in this original action. As permitted by order of the Special Master, and agreement among the parties, service was effected by electronic mail to those individuals listed on the attached service list, which reflects all updates and revisions through the current date.

Respectfully submitted,

Dated: April 6, 2021

Yolanda De La Cruz

SERVICE LIST FOR ALL PARTIES AND AMICI CURIAE

SPECIAL MASTER

Special Master	**Honorable Michael J. Melloy** *Special Master* United States Circuit Judge 111 Seventh Avenue, S.E. Box 22 Cedar Rapids, IA 52401	TXvNM141@ca8.uscourts.gov (319) 432-6080
	Michael E. Gans, Clerk of Court United States Court of Appeals – Eighth Circuit Thomas F. Eagleton United States Courthouse 111 South 10th Street, Suite 24.329 St. Louis, MO 63102	TXvNM141@ca8.uscourts.gov (314) 244-2400

PARTIES
(Service via Electronic Mail)

PARTIES[1]

STATE	ATTORNEY & ADDRESS	PHONE & EMAIL
Texas	**STUART L. SOMACH*** **ANDREW M. HITCHINGS** **ROBERT B. HOFFMAN** **FRANCIS M. GOLDSBERRY II** **THERESA C. BARFIELD** **SARAH A. KLAHN** **BRITTANY K. JOHNSON** **RICHARD S. DEITCHMAN** SOMACH SIMMONS & DUNN, PC 500 Capitol Mall, Suite 1000 Sacramento, CA 95814-2403	(916) 446-7979 ssomach@somachlaw.com ahitchings@somachlaw.com rhoffman@somachlaw.com mgoldsberry@somachlaw.com tbarfield@somachlaw.com sklahn@somachlaw.com bjohnson@somachlaw.com rdeitchman@somachlaw.com Secretary: Corene Rodder crodder@somachlaw.com Secretary: Crystal Rivera crivera@somachlaw.com Paralegal: Christina M. Garro cgarro@somachlaw.com Paralegal: Yolanda De La Cruz ydelacruz@somachlaw.com
	KEN PAXTON *Attorney General of Texas* **BRENT WEBSTER** *First Assistant Attorney General* **GRANT DORFMAN** *Deputy First Assistant Attorney General* **SHAWN COWLES** *Deputy Attorney General for Civil Litigation* **PRISCILLA M. HUBENAK*** *Chief, Environmental Protection Div.* OFFICE OF THE ATTORNEY GENERAL OF TEXAS P.O. Box 12548 Austin, TX 78711-2548	(512) 463-2012 (512) 457-4644 Fax priscilla.hubenak@oag.texas.gov

[1] (*) = ***Counsel of Record***

New Mexico	**HECTOR H. BALDERAS** New Mexico Attorney General **TANIA MAESTAS** Chief Deputy Attorney General **CHOLLA KHOURY** Assistant Attorney General **ZACHARY E. OGAZ** Assistant Attorney General STATE OF NEW MEXICO P.O. Drawer 1508 Santa Fe, NM 87501 **Patricia Salazar –** Assistant **MARCUS J. RAEL, JR. *** **LUIS ROBLES** **SUSAN BARELA** Special Assistant Attorneys General ROBLES, RAEL & ANAYA, P.C. 500 Marquette Ave. NW, Suite 700 Albuquerque, NM 87102 **Chelsea Sandoval-**Firm Administrator **Pauline Wayland** – Paralegal **Bonnie DeWitt** – Paralegal **BENNET W. RALEY** **LISA M. THOMPSON** **MICHAEL A. KOPP** Special Assistant Attorneys General TROUT RALEY 1120 Lincoln St., Suite 1600 Denver, CO 80203 **JEFFREY WECHSLER** Special Assistant Attorney General MONTGOMERY & ANDREWS 325 Paseo De Peralta Santa Fe, NM 87501 **Diana Luna** - Paralegal **JOHN DRAPER** Special Assistant Attorney General DRAPER & DRAPER LLC 325 Paseo De Peralta Santa Fe, NM 87501 **Donna Ormerod** – Paralegal	hbalderas@nmag.gov tmaestas@nmag.gov ckhoury@nmag.gov zogaz@nmag.gov (505) 239-4672 psalazar@nmag.gov marcus@roblesrael.com luis@roblesrael.com susan@roblesrael.com (505) 242-2228 chelsea@roblesrael.com pauline@roblesrael.com bonnie@roblesrael.com braley@troutlaw.com lthompson@troutlaw.com mkopp@troutlaw.com (303) 861-1963 jwechsler@montand.com (505) 986-2637 dluna@montand.com john.draper@draperllc.com (505) 570-4591 donna.ormerod@draperllc.com

Colorado	**PHILIP J. WEISER** Colorado Attorney General **ERIC R. OLSON** Colorado Solicitor General **LAIN LEONIAK** Acting First Asst. Attorney General **CHAD M. WALLACE*** Senior Assistant Attorney General **PRESTON V. HARTMAN** Assistant Attorney General COLORADO DEPARTMENT OF LAW Ralph Carr Judicial Center 7th Floor 1300 Broadway Denver, CO 80203 **Nan Edwards** – Paralegal II	 eric.olson@coag.gov chad.wallace@coag.gov (720) 508-6281 (direct) preston.hartman@coag.gov (720) 508-6257 (direct) nan.edwards@coag.gov

United States	**ELIZABETH B. PRELOGAR *** Acting Solicitor General **EDWIN S. KNEEDLER** Deputy Solicitor General **JEAN E. WILLIAMS** Deputy Assistant Attorney General **FREDERICK LIU** Assistant to the Solicitor General U.S. DEPT. OF JUSTICE 950 Pennsylvania Ave, NW Washington, DC 20530-0001	supremectbriefs@usdoj.gov (202) 514-2217
	JAMES J. DUBOIS* **R. LEE LEININGER** U.S. DEPT. OF JUSTICE Environment & Natural Resources Div. 999 18th Street South Terrace – Suite 370 Denver, CO 80202	james.dubois@usdoj.gov (303) 844-1375 lee.leininger@usdoj.gov (303) 844-1364
	Seth C. Allison, Paralegal	seth.allison@usdoj.gov (303) 844-7917
	JUDITH E. COLEMAN **JENNIFER A. NAJJAR** U.S. DEPT. OF JUSTICE Environment & Natural Resources Div. P.O. Box 7611 Washington, DC 20044-7611	judith.coleman@usdoj.gov (202) 514-3553 jennifer.najjar@usdoj.gov (202) 305-0476

AMICI

AMICI	ATTORNEY AND ADDRESS	PHONE & EMAIL
Albuquerque Bernalillo County Water Utility Authority	**JAY F. STEIN** **JAMES C. BROCKMANN*** STEIN & BROCKMANN, P.A. P.O. Box 2067 Santa Fe, NM 87504 **Administrative Copy** **PETER AUH** Albuquerque Bernalillo County Water Utility Authority P.O. Box 568 Albuquerque, NM 87103-0568	jfstein@newmexicowaterlaw.com jcbrockmann@newmexicowaterlaw.com (505) 983-3880 administrator@newmexicowaterlaw.com pauh@abcwua.org (505) 289-3092
City of El Paso	**DOUGLAS G. CAROOM*** **SUSAN M. MAXWELL** BICKERSTAFF HEATH DELGADO ACOSTA LLP 3711 S. MoPac Expressway Building One, Suite 300 Austin, TX 78746	dcaroom@bickerstaff.com smaxwell@bickerstaff.com (512) 472-8021
City of Las Cruces	**JAY F. STEIN*** **JAMES C. BROCKMANN** STEIN & BROCKMANN, P.A. P.O. Box 2067 Santa Fe, NM 87504 **Administrative Copy** **JENNIFER VEGA-BROWN** **ROBERT CABELLO** LAS CRUCES CITY ATTORNEY'S OFFICE P.O. Box 20000 Las Cruces, NM 88004	jfstein@newmexicowaterlaw.com jcbrockmann@newmexicowaterlaw.com (505) 983-3880 administrator@newmexicowaterlaw.com jvega-brown@las-cruces.org rcabello@las-cruces.org (575) 541-2128

El Paso County Water Improvement District No. 1	**MARIA O'BRIEN*** **SARAH STEVENSON** MODRALL, SPERLING, ROEHL, HARRIS & SISK, P.A. 500 Fourth Street N.W., Suite 1000 Albuquerque, NM 87103-2168 **Shannon Gifford – Legal Assistant** **RENEA HICKS** LAW OFFICE OF MAX RENEA HICKS P.O. Box 303187 Austin, TX 78703-0504	mobrien@modrall.com sarah.stevenson@modrall.com (505) 848-1803 (direct) shannong@modrall.com rhicks@renea-hicks.com (512) 480-8231
Elephant Butte Irrigation District	**SAMANTHA R. BARNCASTLE*** BARNCASTLE LAW FIRM, LLC 1100 South Main, Suite 20 (88005) P.O. Box 1556 Las Cruces, NM 88004 **Janet Correll - Paralegal**	samantha@h2o-legal.com (575) 636-2377 Fax: (575) 636-2688 janet@h2o-legal.com
Hudspeth County Conservation and Reclamation District No. 1	**ANDREW S. "DREW" MILLER*** KEMP SMITH LLP 919 Congress Ave., Suite 1305 Austin, TX 78701	dmiller@kempsmith.com (512) 320-5466
New Mexico Pecan Growers	**TESSA T. DAVIDSON*** DAVIDSON LAW FIRM, LLC 4206 Corrales Rd. P.O. Box 2240 Corrales, NM 87048 **Jo Harden - Paralegal**	ttd@tessadavidson.com (505) 792-3636 jo@tessadavidson.com

New Mexico State University	**JOHN W. UTTON*** UTTON & KERY, P.A. P.O. Box 2386 Santa Fe, NM 87504 General Counsel Hadley Hall Room 132 2850 Weddell Road Las Cruces, NM 88003	john@uttonkery.com (505) 699-1445 gencounsel@nmsu.edu (575) 646-2446
State of Kansas	**DEREK SCHMIDT** Attorney General of Kansas **JEFFREY A. CHANAY** Chief Deputy Attorney General **TOBY CROUSE*** Solicitor General of Kansas **BRYAN C. CLARK** Assistant Solicitor General **DWIGHT R. CARSWELL** Assistant Solicitor General 120 S.W. 10th Ave., 2nd Floor Topeka, KS 66612	 toby.crouse@ag.ks.gov (785) 296-2215 bryan.clark@ag.ks.gov
Southern Rio Grande Diversified Crop Farmers Association	**ARNOLD J. OLSEN*** HENNIGHAUSEN OLSEN & McCREA, L.L.P. P. O. Box 1415 Roswell, NM 88202-1415 **Malina Kauai – Paralegal** **Rochelle Bartlett – Legal Assistant**	ajolsen@h2olawyers.com (575) 624-2463 mkauai@h2olawyers.com rbartlett@h2olawyers.com