

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

**DECLARATION OF RICHARD S. DEITCHMAN IN SUPPORT OF THE
STATE OF TEXAS'S MOTIONS IN LIMINE**

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*

July 20, 2021

I, Richard S. Deitchman, declare as follows:

I am an attorney admitted to practice before the United States Supreme Court and am a shareholder with the law firm of Somach Simmons & Dunn, attorneys for the State of Texas (Texas) in this matter. The following matters are within my personal knowledge and, if called as a witness, I can competently testify thereto.

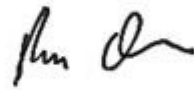
1. Attached hereto as **Exhibit A** is a true and correct copy of excerpts from the February 26, 2020, July 6, 2020, and September 18, 2020 depositions of Mr. Estevan Lopez, taken in this matter.

2. Attached hereto as **Exhibit B** is a true and correct copy of the State of New Mexico's Second Trial Witness List, dated June 30, 2021.

3. Attached hereto as **Exhibit C** is a true and correct copy of excerpts from the Expert Reports of Dana LK Hoag, dated October 31, 2019 and June 15, 2020.

4. Attached hereto as **Exhibit D** is a true and correct copy of excerpts from the February 6, 2020, July 9, 2020, and August 7, 2020 depositions of Dr. Peggy Barroll, taken in this matter.

I declare under penalty of perjury under the laws of the United States of America that the foregoing is true and correct. Executed this 20th day of July, 2021, at Sacramento, California.



Richard S. Deitchman

EXHIBIT A

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IN THE SUPREME COURT OF THE UNITED STATES
BEFORE THE OFFICE OF THE SPECIAL MASTER
HON. MICHAEL J. MELLO

STATE OF TEXAS)	
)	
Plaintiff,)	
	)	Original Action Case
VS.	)	No. 220141
	)	(Original 141)
STATE OF NEW MEXICO,)	
and STATE OF COLORADO,)	
)	
Defendants.)	

ORAL AND VIDEOTAPED DEPOSITION OF
ESTEVAN LOPEZ
FEBRUARY 26, 2020

ORAL AND VIDEOTAPED DEPOSITION of ESTEVAN LOPEZ,
produced as a witness at the instance of the
Plaintiff, and duly sworn, was taken in the
above-styled and numbered cause on February 26, 2020,
from 9:08 a.m. to 4:02 p.m., before Heather L. Garza,
CSR, RPR, in and for the State of Texas, recorded by
machine shorthand, at the DRURY PLAZA HOTEL - SANTA
FE, 820 Paseo De Peralta, Santa Fe, New Mexico,
pursuant to the Federal Rules of Civil Procedure and
the provisions stated on the record or attached
hereto; that the deposition shall be read and signed.

A P P E A R A N C E S

FOR THE PLAINTIFF STATE OF TEXAS:

Ms. Sarah A. Klahn
Mr. Francis M. Goldsberry, II (via telephone)
SOMACH SIMMONS & DUNN
2701 Lawrence Street, Suite 113
Denver, Colorado 80205
(720) 279-7868
sklahn@somachlaw.com
mgoldsberry@somachlaw.com

FOR THE DEFENDANT STATE OF NEW MEXICO:

Mr. David A. Roman
ROBLES RAEL ANAYA
500 Marquette NW, Suite 700
Albuquerque, New Mexico 87102
(505) 242-2228
droman@roblesrael.com

-and-

Ms. Shelly L. Dalrymple
STATE OF NEW MEXICO
SPECIAL ASSISTANT ATTORNEY GENERAL
130 S. Capitol Street
Concha Ortiz Y Pino Building
Santa Fe, New Mexico 87504
(505) 827-6150
shelly.dalrymple@state.nm.us

FOR THE DEFENDANT STATE OF COLORADO:

Mr. Chad Wallace
COLORADO DEPARTMENT OF LAW
1300 Broadway, 7th Floor
Denver, Colorado 80203
(720) 508-6281
chad.wallace@coag.gov

1 FOR THE UNITED STATES:

2 Mr. David W. Gehlert
U.S. DEPARTMENT OF JUSTICE
3 999 18th Street, South Terrace, Suite 370
Denver, Colorado 80202
4 (303) 844-1386
david.gehlert@usdoj.gov

5 -and-

6 Ms. Shelly Randel
7 U.S. DEPARTMENT OF THE INTERIOR
1849 C Street NW
8 Washington, DC 20240
(202) 208-5432
9 shelly.randel@sol.doi.gov

10 -and-

11 Mr. Christopher B. Rich (via telephone)
U.S. DEPARTMENT OF THE INTERIOR
12 125 South State Street, Suite 6201
Salt Lake City, Utah 84138
13 (801) 524-5677

14 FOR EL PASO COUNTY WATER IMPROVEMENT DISTRICT NO. 1:

15 Ms. Maria O'Brien
16 MODRALL SPERLING ROEHL HARRIS & SISK, P.A.
500 Fourth Street N.W.
17 Albuquerque, New Mexico 87103
(505) 848-1800
18 mobrien@modrall.com

19 FOR ELEPHANT BUTTE IRRIGATION DISTRICT:

20 Ms. Samantha R. Barncastle (via telephone)
21 BARNCASTLE LAW FIRM, LLC
1100 South Main, Suite 20
22 Las Cruces, New Mexico 88005
(575) 636-2377
23 samantha@h2o-legal.com

1 VIDEOGRAPHER:

2 Mr. Gary Goldblum

3 ALSO PRESENT:

4 Ms. Peggy Barroll

5 Mr. Jeff Wechsler

Mr. Erek Fuchs

6 Mr. Gary Esslinger

Ms. Michelle Estrada-Lopez

7 Mr. Ian Ferguson

Mr. Al Blair

8 Mr. James Brockmann

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1 THE VIDEOGRAPHER: Good morning. We are
2 going on the record. The time is 9:08 a.m. Today's
3 date is February 26th, 2020. Please note that the
4 microphones are very sensitive and may pick up
5 whispering, private conversations, and cellular
6 interference. Please turn off all cellphones or place
7 them away from the microphones as they can easily
8 interfere with the deposition's audio. Audio and
9 video recording will continue to take place unless all
10 parties agree to go off the record. This begins DVD
11 No. 1 in the video deposition of Estevan Lopez taken
12 by the plaintiff in the matter of Texas versus New
13 Mexico filed in the Supreme Court of the United
14 States, Case No. 141. This deposition is being held
15 at the Drury Plaza Hotel located at 828 Paseo De
16 Peralta, Santa Fe, New Mexico. My name is Gary
17 Goldblum, certified legal video specialist from The
18 Video Department. The court reporter is Heather Garza
19 from Veritext. I am not related to any party in this
20 action nor am I financially interested in the outcome.
21 Counsel and all present in the room and everyone
22 attending remotely will now state their appearances
23 and affiliations for the record.

24 MS. KLAHN: Sarah Klahn on behalf of the
25 State of Texas.

1 MR. ROMAN: David Roman on behalf of the
2 State of New Mexico.

3 MR. WECHSLER: Jeff Wechsler for the New
4 Mexico State Engineer.

5 MS. DALRYMPLE: Shelly Dalrymple for the
6 Interstate Stream Commission.

7 MS. BARNCASTLE: Samantha Barncastle for
8 the Elephant Butte Irrigation District.

9 MR. FUCHS: Erek Fuchs for Elephant
10 Butte Irrigation District.

11 MR. WALLACE: Chad Wallace for the State
12 of Colorado.

13 MS. O'BRIEN: Maria O'Brien for El Paso
14 County Water Improvement District No. 1.

15 MR. GEHLERT: David Gehlert for the
16 United States.

17 MS. KLAHN: And on the phone?

18 MR. GOLDSBERRY: Francis Goldsberry for
19 the State of Texas.

20 MR. RICH: Chris Rich, Solicitor's
21 Office, Department of the Interior.

22

23

24

25

1 ESTEVAN LOPEZ,
2 having been first duly sworn, testified as follows:

3 E X A M I N A T I O N

4 BY MS. KLAHN:

5 Q. Good morning, Mr. Lopez.

6 A. Good morning.

7 Q. We're back for day two of your deposition,
8 this time on your expert report. I can go over the
9 deposition guidelines if you're feeling like you can't
10 really remember how to handle a deposition.

11 A. I think I'm fine.

12 Q. You think you're fine. Okay. Very good.
13 Why don't you state your name for the record.

14 A. My name is Estevan Lopez.

15 Q. And your work address?

16 A. P.O. Box 302, Penasco, New Mexico.

17 MS. KLAHN: Mark this.

18 (Exhibit No. 1 was marked.)

19 MS. KLAHN: For everybody in the room, I
20 only brought eight copies, so you are going to have to
21 figure it out.

22 MR. ROMAN: Sarah, are we continuing the
23 numbers from the last time or are we starting new?

24 MS. KLAHN: Starting over.

25 MR. ROMAN: Okay.

1 just asked you before about any legal opinions in your
2 expert report, and I asked you if those were purported
3 to be the positions of the State of New Mexico in the
4 lawsuit, and you responded that you don't purport to
5 express any legal opinions. Are your opinions stating
6 New Mexico's positions in this case?

7 A. I think New Mexico's positions are stated
8 in -- in the documents that our lawyers have filed.
9 I'm giving opinions as a water administrator to
10 support the testimony that I'm giving.

11 Q. So to the extent your opinions differ from
12 what's stated in one of the pleadings filed by New
13 Mexico's lawyers, the rest of the litigants in the
14 case should assume that that is simply your opinion,
15 it's not the position of the State of New Mexico?

16 A. I'm not sure what you're asking.

17 Q. To the extent your opinions in your expert
18 report differ from the positions stated in the
19 pleadings filed in this case by your lawyers, by the
20 State of New Mexico, who should we believe are -- is
21 expressing the opinions?

22 A. Well, I think you ought -- you ought to
23 believe both of them in terms of I'm -- I'm expressing
24 my opinions as a water administrator to support my
25 testimony. The lawyers in the -- are expressing the

1 position of the State of New Mexico broadly.

2 Q. What if they're inconsistent?

3 A. I don't know what you do with that.

4 Q. That inconsistency doesn't -- isn't intended
5 to also be the position of the State of New Mexico?

6 A. I think you do with that whatever you feel is
7 appropriate.

8 Q. Okay.

9 (Exhibit No. 3 was marked.)

10 MS. KLAHN: This is the expert report.
11 I don't know if anybody needs one but...

12 (Exhibit No. 4 was marked.)

13 MS. KLAHN: This is the hundredth
14 version -- or the hundredth exhibit of the Rio Grande
15 Compact in this case.

16 Q. (BY MS. KLAHN) So, Mr. Lopez, you've been
17 handed two exhibits, Exhibit 2, which is your expert
18 report. Do you recognize that?

19 A. This is marked as Exhibit 3.

20 Q. Oh.

21 A. Yes.

22 Q. Okay. Exhibit 3. Sorry about that. And
23 then Exhibit 4 must be the Compact. And I want you to
24 just keep the Compact handy, because I'm going to ask
25 you some questions about your opinions vis-a-vis the

1 Compact throughout the -- throughout the day. So I'd
2 ask you to turn with me to Page 4, which is the
3 purpose of the expert report section.

4 A. I'm there.

5 Q. What -- what is the purpose of the expert
6 report? I mean, I see the enumerated paragraphs here
7 that provide the content that you've covered, but
8 what's the purpose of having your testimony in this
9 case? Do you have an understanding of that?

10 A. Well, I think the purpose is as laid out in
11 this case, but more broadly and more generally, I
12 think this case is about the Compact and so, at least
13 from my perspective, it seems appropriate to give us
14 some perspective about that Compact.

15 Q. Based on your time as the head of the
16 Interstate Stream Commission?

17 A. Primarily. That's -- that's what I worked
18 on.

19 Q. Your -- how would you describe the expertise
20 that you believe your lawyers should offer you and as
21 to the Court if you were to testify? What areas of
22 expertise would you think they should offer you in?

23 A. What's stated in my report, the bottom of
24 Page 3, I think I bring -- I have experience in
25 expertise in water policy, general water

1 engineer advisor?

2 A. By statute, the state engineer -- by the
3 Compact, the state engineer is the Compact
4 commissioner always. I guess for a very -- I guess
5 for a very short while, although there was no -- there
6 was no duties -- no -- no need for me to take any
7 action during that time, but for a very short while
8 between state engineers, I think I -- I may have
9 functioned as the acting state engineer, but it was
10 very brief, and as I said, there was not any need for
11 any sort of action on -- with regard to the state --
12 to the Rio Grande Compact.

13 Q. So you didn't develop any positions during
14 that time on the -- on -- you didn't develop any
15 positions for the State of New Mexico on the Compact
16 during those short periods that you were acting?

17 A. I don't believe so.

18 Q. So the next item listed is, "Compact
19 accounting." Would that -- why don't you tell me what
20 your ex -- what the basis for that expertise is?

21 A. Primarily had to do with the time that I
22 spent as engineer advisor on the Rio Grande Compact.
23 That was one of the duties that the engineer advisors
24 from the three states collaborated on. We prepared
25 the engineering -- or the -- excuse me -- the

1 accounting spreadsheets and so forth, and we presented
2 those to the Compact commission for their approval or,
3 I guess, they could disapprove if they so choose.

4 Q. "Reclamation operation -- Reclamation project
5 operations generally," is the -- is the next area
6 that's listed. What's the basis for that expertise?

7 A. My -- well, in part, some of my experience
8 while director of the Interstate Stream Commission in
9 terms of the -- my familiarity with the Rio Grande
10 project, with middle Rio Grande -- I don't know if
11 that's what it's called, El Vado and et cetera, the
12 supplying water to MRGCD, several projects also that
13 we're involved with, the -- the Compacts that -- that
14 I worked with, specifically the -- several on the
15 Colorado River, and then more -- more generally, my
16 time at Reclamation where I got exposure to, I won't
17 say all of Reclamation's projects. They have an awful
18 lot of projects and I didn't see all of them, but I
19 certainly visited and got general familiarity with
20 many of them.

21 Q. So familiarity with a project doesn't suggest
22 to me that you necessarily had familiarity with
23 project operations, and that's what this specifically
24 says. So that's a -- a big -- that's sort of the big
25 universe of -- what you've just told me, I think, is

1 sort of the big universe of your involvement with
2 Reclamation projects, but which ones have you had
3 specific experience with operations of?

4 MR. ROMAN: Object to form.

5 A. Well, I think that I've had specific -- not
6 to say that I've operated them. I haven't operated a
7 single one of them.

8 Q. (BY MS. KLAHN) I understand.

9 A. But I have familiarity in -- with the
10 operations of the -- of the Rio Grande project, middle
11 Rio Grande project, the Boulder Canyon project, the
12 components -- or at least some of the components of --
13 I'm not even sure what it's called, the various
14 reservoirs and river system of the upper Colorado
15 River system, some of the central valley project in
16 California, Klamath project, the Columbia River
17 project. Several others, and I'm not even going to
18 remember the names of them, but that -- where we got
19 into some of the -- the operational issues that those
20 projects were facing.

21 Q. And that would have been during your time as
22 commissioner of Reclamation?

23 A. Yes. And anything beyond the Colorado River
24 was pretty much exclusively during my time at
25 Reclamation.

1 Q. Okay. Now, when you were at Reclamation,
2 what was your involvement with the Rio Grande project?

3 A. None.

4 Q. Why is that?

5 A. As I've stated in my report, given -- given
6 my involvement with -- with the Compact on the project
7 while I was director of the Interstate Stream
8 Commission, I -- I voluntarily recused myself from any
9 involvement having to do with the Rio Grande project.
10 I guess there's one small aspect that I didn't recuse
11 myself from, but it -- it never came up during that
12 time and that had to do with just kind of general
13 or -- general budget administrations as -- as might be
14 needed for running the -- the Rio Grande project.
15 That -- there was discussion about whether I should
16 potentially, if I was trying to completely separate
17 myself from that, just not have any involvement,
18 and -- and I think in -- in discussing the issue with
19 Department of Interior attorneys and so forth, it was
20 felt and I agreed that I should retain some ability to
21 work on things like budgetary aspects, otherwise, it
22 would have just been too cumbersome.

23 Q. So your report states that you voluntarily
24 recused yourself. Didn't the ethical rules require
25 you to recuse yourself?

1 A. I don't believe so. And if they did, I'm not
2 going to opine on what the ethical rules require or
3 didn't. But as far as I know, I -- I don't think that
4 they required me to -- required me to.

5 Q. When you became Commissioner of Reclamation,
6 Texas had already filed its complaint, and Texas and
7 New Mexico were in litigation; isn't that right?

8 A. That's correct.

9 Q. So just that basis alone, wouldn't that
10 require you to recuse yourself, given your past work
11 with State of New Mexico?

12 A. I don't know. I'm not an attorney. I don't
13 know -- I don't know.

14 Q. Let's turn to your summaries of opinions.
15 And I realize these are summaries, and we'll get into
16 more detail on them as we move through your report,
17 but on Paragraph 4.5, there's a statement about what
18 the downstream contracts among Reclamation, EBID, and
19 EP1 and Reclamation's historic operation of the
20 project as a single unit, and based on those items,
21 then you go over on Page 6 and say, "That allocation
22 of water is based on," and the first point there
23 is, "Operation of the project as a single irrigation
24 system." What does that mean?

25 A. Just that. It -- the project functions as a

WITNESS CORRECTIONS AND SIGNATURE

Please indicate changes on this sheet of paper, giving the change, page number, line number and reason for the change. Please sign each page of changes.

PAGE/LINE	CORRECTION	REASON FOR CHANGE
-----------	------------	-------------------

15/13	strike "us"	- extraneous word
-------	-------------	-------------------

15/24	replace "in" with "and"	- incorrect word
-------	-------------------------	------------------

16/3	insert "Compact" before "accounting" and add "g" after ^{"accounting"}	- Clarity
------	--	-----------

18/21	strike "government"	- extraneous / incorrect
-------	---------------------	--------------------------

18/25	insert "New Mexico" before second "Compact"	- Clarity
-------	---	-----------

19/1	capitalize <u>U</u> pper	- Proper name
------	--------------------------	---------------

20/11	strike "state"	- clarity
-------	----------------	-----------

32/9	replace "and" with "in"	- incorrect word
------	-------------------------	------------------

33/14	replace "make" with "sell"	- clarity
-------	----------------------------	-----------

33/16	replace "it" with "effluent"	- clarity
-------	------------------------------	-----------

41/21	replace second "a" with "an" and insert "g" after disagreement	- clarity
-------	--	-----------

44/7	replace "they" with "the Commission"	- clarity
------	--------------------------------------	-----------

44/9	replace "we" with "New Mexico"	- clarity
------	--------------------------------	-----------

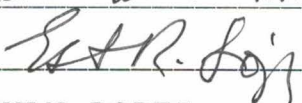
45/9 and 10	replace "couldn't" with "could" (2 occurrences)	- wrong word
-------------	---	--------------

47/23	replace "being" with "been"	- incorrect word
-------	-----------------------------	------------------

60/18	replace "it" with "waste" and "It's" with "Water is"	- clarity
-------	--	-----------

74/1	replace "were" with "are"	- clarity
------	---------------------------	-----------

75/4	replace "there" with "then"	- clarity
------	-----------------------------	-----------


ESTEVAN LOPEZ

Job No. TX3852996

WITNESS CORRECTIONS AND SIGNATURE

Please indicate changes on this sheet of paper, giving the change, page number, line number and reason for the change. Please sign each page of changes.

PAGE/LINE CORRECTION REASON FOR CHANGE

75/16 replace "model" with "modeling" - clarity

78/15 insert "--" after "super" - clarity

78/23 replace second occurrence of "it" with "ISC" - incorrect word

81/19 insert "," after "forth" - clarity

90/16 replace "effect" with "affect" - incorrect word

94/7 replace "El Vado" with "Lobatos" - incorrect name

112/17 replace "effect" with "affect" - incorrect word

112/23 replace "effect" with "affect" - incorrect word

114/9 and 10 replace "gained" with "gamed" (2 occurrences) - incorrect word

114/14 replace first occurrence of "of" with "in" - clarity

114/15 replace "what" with "one" - incorrect word

114/17 replace "500" with "500,000" - clarity

115/3 and 4 replace "effect" with "affect" (2 occurrences) - incorrect word

115/7 and 8 replace "effect" with "affect" (3 occurrences) - incorrect word

115/22 strike second occurrence of "by" - clarity

116/1 replace "effect" with "affect" - incorrect word

116/18 replace "gain" with "game" - incorrect word

118/8 replace "effect" with "affect" - incorrect word

Estevan Lopez

ESTEVAN LOPEZ

Job No. TX3852996

165 ERL
Page 164

WITNESS CORRECTIONS AND SIGNATURE

Please indicate changes on this sheet of paper,
giving the change, page number, line number and reason
for the change. Please sign each page of changes.

PAGE/LINE CORRECTION REASON FOR CHANGE

118/9 insert "going into effect" after "articles" and
replace "790" with "790,000" - clarity

122/6 strike "and" - clarity

125/5 replace "Mesillas" with "Mesilla" - incorrect name

125/15 replace second occurrence of "in" with "by" - clarity

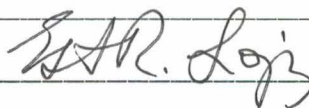
125/16 strike "New" - incorrect entity

133/16 replace "allure" with "lore" - incorrect word

158/13 replace "actual" with "actually" - incorrect word

158/14 replace first two occurrences of "I" with "they" - clarity

16/23 replace "did n't" with "did" - incorrect statement.



ESTEVAN LOPEZ

Job No. TX3852996

166 EPL
Page 164

S I G N A T U R E O F W I T N E S S

I, ESTEVAN LOPEZ, solemnly swear or affirm under
the pains and penalties of perjury that the foregoing
pages contain a true and correct transcript of the
testimony given by me at the time and place stated
with the corrections, if any, and the reasons therefor
noted on the foregoing correction page(s).

A handwritten signature in cursive script, appearing to read 'Estevan Lopez', is written over a horizontal line.

ESTEVAN LOPEZ

Job No. 3852996

IN THE SUPREME COURT OF THE UNITED STATES
BEFORE THE OFFICE OF THE SPECIAL MASTER
HON. MICHAEL J. MELLO

STATE OF TEXAS)	
)	
Plaintiff,)	
	)	Original Action Case
VS.	)	No. 220141
	)	(Original 141)
STATE OF NEW MEXICO,)	
and STATE OF COLORADO,)	
)	
Defendants.)	

REMOTE ORAL AND VIDEOTAPED DEPOSITION OF
ESTEVAN LOPEZ
JULY 6, 2020
VOLUME 1

REMOTE ORAL AND VIDEOTAPED DEPOSITION of ESTEVAN LOPEZ, produced as a witness at the instance of the Plaintiff State of Texas, and duly sworn, was taken in the above-styled and numbered cause on July 6, 2020, from 9:06 a.m. to 4:50 p.m., before Heather L. Garza, CSR, RPR, in and for the State of Texas, recorded by machine shorthand, at the offices of HEATHER L. GARZA, CSR, RPR, The Woodlands, Texas, pursuant to the Federal Rules of Civil Procedure and the provisions stated on the record or attached hereto; that the deposition shall be read and signed.

R E M O T E A P P E A R A N C E S

FOR THE PLAINTIFF STATE OF TEXAS:

Mr. Stuart L. Somach
Ms. Theresa C. Barfield
Mr. Robert B. Hoffman
SOMACH SIMMONS & DUNN
500 Capitol Mall, Suite 1000
Sacramento, California 95814
(916) 446-7979
ssomach@somachlaw.com
tbarfield@somachlaw.com
rhoffman@somachlaw.com

FOR THE DEFENDANT STATE OF NEW MEXICO:

Mr. Jeffrey Wechsler
MONTGOMERY & ANDREWS
325 Paseo De Peralta
Santa Fe, New Mexico 87501
(505) 986-2637
jwechsler@montand.com

-and-

Mr. John Draper
DRAPER & DRAPER, LLC
325 Paseo De Peralta
Santa Fe, New Mexico 87501
(505) 570-4591
john.draper@draperllc.com

FOR THE DEFENDANT STATE OF COLORADO:

Mr. Chad Wallace
Mr. Preston V. Hartman
COLORADO DEPARTMENT OF LAW
1300 Broadway, 7th Floor
Denver, Colorado 80203
(720) 508-6281
chad.wallace@coag.gov
preston.hartman@coag.gov

1 FOR THE UNITED STATES:

2 Mr. David W. Gehlert
3 U.S. DEPARTMENT OF JUSTICE
4 999 18th Street, South Terrace, Suite 370
5 Denver, Colorado 80202
6 (303) 844-1386
7 david.gehlert@usdoj.gov

8 FOR THE EL PASO COUNTY WATER AND IMPROVEMENT DISTRICT
9 NO. 1:

10 Ms. Maria O'Brien
11 MODRALL SPERLING ROEHL HARRIS & SISK, P.A.
12 500 Fourth Street N.W.
13 Albuquerque, New Mexico 87103
14 (505) 848-1800
15 mobrien@modrall.com

16 FOR THE ALBUQUERQUE BERNALILLO COUNTY WATER UTILITY
17 AUTHORITY AND THE CITY OF LAS CRUCES:

18 Mr. James C. Brockmann
19 STEIN & BROCKMANN, P.A.
20 Post Office Box 2067
21 Santa Fe, New Mexico 87504
22 (505) 983-3880
23 jcbrockmann@newmexicowaterlaw.com

24 FOR THE NEW MEXICO PECAN GROWERS:

25 Ms. Tessa T. Davidson
DAVIDSON LAW FIRM, LLC
4206 Corrales Road
Post Office Box 2240
Corrales, New Mexico 87048
(505) 792-3636
ttd@tessadavidson.com

1 FOR THE NEW MEXICO STATE UNIVERSITY:

2 Mr. John W. Utton

3 UTTON & KERY, P.A.

4 Post Office Box 2386

5 Santa Fe, New Mexico 87504

6 (505) 699-1445

7 john@uttonkery.com

8 VIDEOGRAPHER:

9 Ms. Kayla Brown

10 ALSO PRESENT:

11 Peggy Barroll

12 Ken Knox

13 Lela Hunt

14 Ian Ferguson

15 Michelle Estrada-Lopez

16 Gary Esslinger

17 Erek Fuchs

18 Susan Barela

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1 THE VIDEOGRAPHER: The time is 9:06 a.m.
2 We're on the record.

3 ESTEVAN LOPEZ,
4 having been first duly sworn, testified as follows:

5 E X A M I N A T I O N

6 BY MR. SOMACH:

7 Q. Mr. Lopez, I'm Stuart Somach, and I'm counsel
8 of record for the State of Texas in this litigation.
9 Let me -- before I ask you any questions and kind of
10 give you an idea of what -- what we'll do over today
11 and perhaps tomorrow, let's do some -- some
12 appearances for the record.

13 MR. SOMACH: Again, I'm Stuart Somach
14 for the State of Texas. With me are Theresa Barfield
15 and Robert Hoffman. I think that's all we've got.

16 For New Mexico?

17 MR. WECHSLER: Good morning. Jeff
18 Wechsler for the State of New Mexico. We also have
19 John Draper, Peggy Barroll, Ken Knox, and Lela Hunt.

20 MR. SOMACH: For the United States?

21 MR. GEHLERT: David Gehlert on behalf of
22 the United States, and I believe also on are Ian
23 Ferguson and Michelle Estrada-Lopez.

24 MR. SOMACH: For the State of Colorado.

25 MR. WALLACE: Good morning. This is

1 **Q. Did -- did New Mexico, to your knowledge,**
2 **ever attempt to actively participate in the**
3 **negotiations?**

4 A. In those negotiations that resulted in the
5 2008 operating agreement?

6 **Q. Correct. Correct.**

7 A. I don't believe that we did, and it had a lot
8 to do with the fact that these were done in the
9 context of some ongoing litigation, federal district
10 litigation that was going on. I think there was two
11 cases that were going on at that time simultaneously,
12 and we were not party to either one of them. And
13 we -- so given that it was in that context, no, we did
14 not try to -- to insert ourselves in that.

15 **Q. Did -- to your knowledge, did the State of**
16 **Texas involve yourself in those negotiations?**

17 A. My understanding is that they did, and I'm
18 not exactly sure what that meant, but my understanding
19 is that the Texas Compact commissioner, Mr. Pat
20 Gordon, with the assistance of the Texas engineering
21 advisor, Mr. Herman Setemeyer, they served, you know,
22 facilitation capacity for -- to negotiate in that
23 negotiation. Again, I wasn't there so I don't know
24 exactly what that entailed. But they --

25 **Q. Do you know --**

1 A. But they were involved.

2 Q. Did Mr. Gordon ever talk to you about the
3 operating agreement negotiations, the negotiations
4 associated with the operating agreement?

5 A. I don't recall.

6 Q. Did -- do you recall whether or not
7 Mr. Setemeyer ever talked to you about the
8 negotiations associated with the operating agreement?

9 A. I believe that he did. I have a memory of
10 it, but, you know, I also -- it's kind of convoluted
11 in terms of the amount of time that was involved that
12 may have come through some of my staff. I don't
13 recall.

14 Q. And do you recall whether or not either
15 Mr. Gordon or Mr. Setemeyer might have given you a
16 copy of the draft operating agreement at some point
17 during the negotiations?

18 A. If they did, I have no recollection of that
19 whatsoever.

20 Q. With respect to your first report, again, I'm
21 going to ask you a couple of questions about them.
22 Some of them may have been asked in some form or
23 another in the prior deposition, but I need to ask
24 these kind of to bring ourselves up to speed because
25 of the period of time, and I do know that you repeat a

1 lot of this stuff in your second report by reference
2 the other way. The first thing I want to do is if I
3 understood your testimony with respect to the first
4 report, you are not purporting to -- to be an expert
5 regarding legal questions; is that -- is that correct?

6 A. That's correct. I'm not -- not an attorney.
7 I don't purport to be an expert on law or legal
8 questions.

9 Q. To the extent that you opine about legal
10 issues, in what capacity are you rendering that
11 opinion?

12 A. Well, just as -- in the roles that I've
13 served as director of Interstate Stream Commission and
14 as commissioner of Reclamation, in both of those
15 roles, it -- I wouldn't say that I was required to --
16 to read through these things, but certainly it -- it
17 was -- it was something that -- that helped someone in
18 that position to do their job, to understand the
19 context they were dealing with, to understand the
20 precedents that were being set around, and -- and, I
21 think I was asked similar questions with regard to
22 kind of some of the -- the historical documentation
23 that I've done that I've referenced. Again, it was --
24 in -- as a matter of course in doing water
25 administration at that level, it's important to

1 understand the context of things. It's important to
2 understand, as well as I can, the -- the legal
3 decisions that might affect it. You know, in the
4 course of doing -- doing my job with both as
5 Interstate Stream Commission director and as
6 Reclamation commissioner, I -- I was -- came in
7 contact with and became friends with many of the water
8 managers from other states. We often had
9 conversations about legal proceedings that were going
10 on. Sometimes they -- that led me to go and dig into
11 some of that to understand it a little bit better.

12 **Q. As I understand what you're saying is what**
13 **you learned -- let's start with the law -- was based**
14 **upon stuff you read and perhaps even -- and you didn't**
15 **mention this -- conversations with attorneys; is that**
16 **correct?**

17 A. I certainly had conversations with attorneys.
18 We worked with them on a daily basis. But, you know,
19 most of this stuff, I kind of read on my own.

20 **Q. Okay. And you're not purporting to be a**
21 **legal expert; you're just reporting on what you read;**
22 **is that correct?**

23 A. Yes. I've already answered that.

24 **Q. And the same is true with respect to -- to**
25 **the historical information you provide in your report;**

1 you're not offering that as a expert historian, but
2 rather based on stuff you read?

3 MR. WECHSLER: Objection --

4 A. That's correct.

5 THE WITNESS: I'm sorry, Jeff.

6 A. That's -- that's correct. I am not the
7 expert historian. I -- but like everything else in
8 life, we get context by what has happened before us,
9 and -- and that's what I did in doing my job. And I
10 think, frankly, that's typical for -- for water
11 managers that I'm aware of.

12 Q. (BY MR. SOMACH) And I did notice in your
13 second report, you offered an opinion on the Texas
14 economist report. I assume you're not an expert on --
15 you're not purporting to be a economist, are you?

16 A. No, I'm not.

17 Q. So your opinions as a water administration or
18 as a water manager, is that -- is that where your
19 expertise lies and the expertise that's relied upon
20 for your report; is that -- is that correct?

21 A. Yeah. Here again, I'm just going to go back
22 to my report and -- and review what I've talked about
23 there as far as my -- my expertise.

24 Q. So it's just your qualifications as laid out
25 in your -- in your expert report; is that correct?



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September 2, 2020

Stuart Somach
Somach Simmons & Dunn
500 Capitol Mall, Suite 1000
Sacramento, CA 95814

Re: Deposition of **Estevan Lopez, Volume 1**
07/06/2020
141 ORIGINAL; State of Texas vs. State of New Mexico and State of Colorado

Dear Mr. Somach:

Enclosed please find the **signed and notarized** original deposition of the witness named in the above-referenced matter for filing among your records. By copy of this letter, we are informing all parties shown herein of the **amendments** made to the deposition.

If you have any questions regarding this matter, please feel free to contact our office.

Sincerely,

Minnie Adame
Worldwide Court Reporters, Inc.

Job No. 63570

cc:
Samantha R. Barncastle
Chad M. Wallace
Maria O'Brien
Jeffrey J. Wechsler
David W. Gehlert

Corporate Headquarters

3000 Wesleyan St. Suite 235 Houston TX 77027
713-572-2000 Fax 713-572-2009

For U.S. & International Services: 1-800-545-1101
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IN THE SUPREME COURT OF THE UNITED STATES
BEFORE THE OFFICE OF THE SPECIAL MASTER
HON. MICHAEL J. MELLOY

STATE OF TEXAS)	
)	
Plaintiff,)	
	)	Original Action Case
VS.	)	No. 220141
	)	(Original 141)
STATE OF NEW MEXICO,)	
and STATE OF COLORADO,)	
)	
Defendants.)	

THE STATE OF TEXAS :

COUNTY OF HARRIS :

I, HEATHER L. GARZA, a Certified Shorthand Reporter in and for the State of Texas, do hereby certify that the facts as stated by me in the caption hereto are true; that the above and foregoing answers of the witness, ESTEVAN LOPEZ, to the interrogatories as indicated were made before me by the said witness after being first remotely duly sworn to testify the truth, and same were reduced to typewriting under my direction; that the above and foregoing deposition as set forth in typewriting is a full, true, and correct transcript of the proceedings had at the time of taking of said deposition.

I further certify that I am not, in any capacity, a regular employee of the party in whose

1 behalf this deposition is taken, nor in the regular
2 employ of this attorney; and I certify that I am not
3 interested in the cause, nor of kin or counsel to
4 either of the parties.

5
6 That the amount of time used by each party at
7 the deposition is as follows:

8 MR. SOMACH - 05:01:50

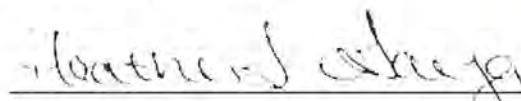
MR. WECHSLER - 00:00:00

9 MR. GEHLERT - 00:59:19

MR. WALLACE - 00:00:00

10 MS. O'BRIEN - 00:00:00

11
12 GIVEN UNDER MY HAND AND SEAL OF OFFICE,
13 this, the 22nd day of July, 2020.

14 

HEATHER L. GARZA, CSR, RPR, CRR

15 Certification No.: 8262

16 Expiration Date: 04-30-22

17 Worldwide Court Reporters, Inc.

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WITNESS CORRECTIONS AND SIGNATURE

Please indicate changes on this sheet of paper, giving the change, page number, line number and reason for the change. Please sign each page of changes.

PAGE/LINE CORRECTION REASON FOR CHANGE

18/13 Strike "a" and replace with "or"; wrong word

19/6 Strike "then" and replace with "and"; wrong word

21/3 Strike "projects" and replace with "project segments"; clarity

23/22 Insert "in a" before "facilitation"; clarity

26/4 Strike "with"; clarity

31/9 Strike "she" and replace with "he"; wrong pronoun.

31/12 Insert "It" before "Moved"; clarity.

35/20 Strike "effects" and replace with "affects"; wrong word

38/16 Strike "groundwater" and replace with "ground"; clarity

38/25 Strike "ground"; clarity

44/7 Strike "safe" and replace with "saved"; clarity

50/15 Strike "was" and replace with "were"; wrong word

65/6 Strike "not" and replace with "and"; clarity

65/7 Insert "to" before "Hudspeth"; clarity

66/11 Insert "separately" before "from"; clarity

74/6 Strike "Compact square. The Compact" and replace with "compacts where the compact"; clarity

74/15 Strike "lands" and replace with "man's"; wrong word


ESTEVAN LOPEZ, VOLUME I

WITNESS CORRECTIONS AND SIGNATURE

Please indicate changes on this sheet of paper,
giving the change, page number, line number and reason
for the change. Please sign each page of changes.

PAGE/LINE CORRECTION REASON FOR CHANGE

82/14 Strike both uses of "project" and replace each with "compact"; clarity

82/16 Strike "article" and replace with "project"; clarity

99/16 Change "schedule" to "schedules"; correcting quote

110/9 Strike "have" and replace with "had"; wrong word.

125/5 Strike "but it's" and replace with "when there's"; clarity

126/21 Strike the first instance of "the"; clarity

129/19 Strike "for"; clarity

147/3 Strike "eyes" and replace with "us"; clarity

149/6 Strike "repetition" and replace with "refutation"; wrong word

155/17 Strike "draws" and replace with "drawn"; wrong word

162/25 Strike "does" and replace with "has been done"; clarity

170/3 Strike "in"; clarity

176/14 Strike "may" and replace with "might"; clarity

176/16 Strike "I'm seeing" and replace with "I've seen"; clarity

177/3 Strike "in"; clarity

177/19 strike "post supply"; clarity

180/23 strike ". I mentioned" and replace with "or mention"; clarity

182/22 strike "Compact" and replace with "contract"; wrong word


ESTEVAN LOPEZ, VOLUME I

WITNESS CORRECTIONS AND SIGNATURE

Please indicate changes on this sheet of paper, giving the change, page number, line number and reason for the change. Please sign each page of changes.


PAGE/LINE	CORRECTION	REASON FOR CHANGE
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188/2 strike "the" and replace with "below"; clarity
188/3 strike "real estate" and replace with "the state"; clarity
190/23 strike "30" ; clarity
191/12 strike "the" ; clarity
192/25 strike "tightening" and replace with "tightly"; clarity
194/9 strike "system" and replace with "doctrine"; clarity
197/1 strike "delay" and replace with "define"; clarity

ESTEVAN LOPEZ, VOLUME I

S I G N A T U R E O F W I T N E S S

I, ESTEVAN LOPEZ, solemnly swear or affirm under the pains and penalties of perjury that the foregoing pages contain a true and correct transcript of the testimony given by me at the time and place stated with the corrections, if any, and the reasons therefor noted on the foregoing correction page(s).



ESTEVAN LOPEZ, VOLUME I

Job No. 63570

IN THE SUPREME COURT OF THE UNITED STATES
BEFORE THE OFFICE OF THE SPECIAL MASTER
HON. MICHAEL J. MELLO

STATE OF TEXAS)	
)	
Plaintiff,)	
	)	Original Action Case
VS.	)	No. 220141
	)	(Original 141)
STATE OF NEW MEXICO,)	
and STATE OF COLORADO,)	
)	
Defendants.)	

REMOTE ORAL AND VIDEOTAPED DEPOSITION OF
ESTEVAN LOPEZ
SEPTEMBER 18, 2020

REMOTE ORAL AND VIDEOTAPED DEPOSITION of ESTEVAN LOPEZ, produced as a witness at the instance of the United States, and duly sworn, was taken in the above-styled and numbered cause on September 18, 2020, from 9:02 a.m. to 12:38 p.m., before Heather L. Garza, CSR, RPR, in and for the State of Texas, recorded by machine shorthand, remotely at the offices of HEATHER L. GARZA, CSR, RPR, The Woodlands, Texas, pursuant to the Federal Rules of Civil Procedure and the provisions stated on the record or attached hereto; that the deposition shall be read and signed.

R E M O T E A P P E A R A N C E S

FOR THE PLAINTIFF STATE OF TEXAS:

Mr. Stuart L. Somach
Ms. Theresa C. Barfield
Mr. Francis Goldsberry II
SOMACH SIMMONS & DUNN
500 Capitol Mall, Suite 1000
Sacramento, California 95814
(916) 446-7979
ssomach@somachlaw.com
tbarfield@somachlaw.com
mgoldsberry@somachlaw.com

-and-

Ms. Sarah A. Klahn
SOMACH SIMMONS & DUNN
2701 Lawrence Street, Suite 113
Denver, Colorado 80205
(720) 279-7868
sklahn@somachlaw.com

FOR THE DEFENDANT STATE OF NEW MEXICO:

Mr. Jeffrey Wechsler
MONTGOMERY & ANDREWS
325 Paseo De Peralta
Santa Fe, New Mexico 87501
(505) 986-2637
jwechsler@montand.com

-and-

Mr. Luis Robles
Ms. Susan Barela
ROBLES, RAEL & ANAYA, P.C.
500 Marquette Avenue NW, Suite 700
Albuquerque, New Mexico 87102
(505) 242-2228
luis@roblesrael.com
susan@roblesrael.com

1 FOR THE DEFENDANT STATE OF COLORADO:

2 Mr. Chad Wallace
3 Mr. Preston V. Hartman
4 COLORADO DEPARTMENT OF LAW
5 1300 Broadway, 7th Floor
6 Denver, Colorado 80203
7 (720) 508-6281
8 chad.wallace@coag.gov
9 preston.hartman@coag.gov

10 FOR THE UNITED STATES:

11 Mr. R. Lee Leininger
12 Mr. James J. Dubois
13 U.S. DEPARTMENT OF JUSTICE
14 999 18th Street, Suite 370
15 Denver, Colorado 80202
16 (303) 844-1364
17 lee.leininger@usdoj.gov
18 james.dubois@usdoj.gov

19 -and-

20 Ms. Judith E. Coleman
21 U.S. Department of Justice
22 Post Office Box 7611
23 Washington, DC 20044
24 (202) 514-3553
25 judith.coleman@usdoj.gov

-and-

Ms. Shelly Randel
U.S. DEPARTMENT OF THE INTERIOR
1849 C Street NW
Washington, DC 20240
(202) 208-5432
shelly.randel@sol.doi.gov

-and-

Mr. Christopher B. Rich
U.S. DEPARTMENT OF THE INTERIOR
125 South State Street, Suite 6201
Salt Lake City, Utah 84138
(801) 524-5677

1 FOR THE EL PASO COUNTY WATER AND IMPROVEMENT DISTRICT
2 NO. 1:

3 Ms. Maria O'Brien
4 MODRALL SPERLING ROEHL HARRIS & SISK, P.A.
5 500 Fourth Street N.W.
6 Albuquerque, New Mexico 87103
7 (505) 848-1800
8 mobrien@modrall.com

9 -and-

10 Mr. Renea Hicks
11 LAW OFFICE OF MAX RENEH HICKS
12 Post Office Box 303187
13 Austin, Texas 78703
14 (512) 480-8231
15 rhicks@renea-hicks.com

16 FOR THE ELEPHANT BUTTE IRRIGATION DISTRICT:

17 Ms. Samantha R. Barncastle
18 BARNCASTLE LAW FIRM, LLC
19 1100 South Main, Suite 20
20 Las Cruces, New Mexico 88005
21 (575) 636-2377
22 samantha@h2o-legal.com

23 FOR THE ALBUQUERQUE BERNALILLO COUNTY WATER UTILITY
24 AUTHORITY AND CITY OF LAS CRUCES:

25 Mr. James C. Brockmann
STEIN & BROCKMANN, P.A.
Post Office Box 2067
Santa Fe, New Mexico 87504
(505) 983-3880
jcbrockmann@newmexicowaterlaw.com

FOR THE CITY OF EL PASO:

Mr. Douglas G. Caroom
BICKERSTAFF HEATH DELGADO ACOSTA, LLP
3711 S. MoPac Expressway Building One, Suite 300
Austin, Texas 78746
(512) 472-8021
dcaroom@bickerstaff.com

1 FOR THE NEW MEXICO PECAN GROWERS:

2 Ms. Tessa T. Davidson
3 DAVIDSON LAW FIRM, LLC
4 4206 Corrales Road
5 Post Office Box 2240
6 Corrales, New Mexico 87048
(505) 792-3636
ttd@tessadavidson.com

7 FOR THE NEW MEXICO STATE UNIVERSITY:

8 Mr. John W. Utton
9 UTTON & KERY, P.A.
10 Post Office Box 2386
11 Santa Fe, New Mexico 87504
12 (505) 699-1445
13 john@uttonkery.com

14 VIDEOGRAPHER:

15 Ms. Kayla Brown

16 ALSO PRESENT:

17 Shelly Dalrymple
18 Kari Olson
19 Al Blair
20 Greg Ridgley
21 John D'Antonio
22 Robin Cypher
23 Gary Esslinger
24 Erek Fuchs
25 Phil King
Cheryl Thacker
Daniel Ortiz

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WITNESS: ESTEVAN LOPEZ

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1 THE VIDEOGRAPHER: The time is 9:02 a.m.
2 We're on the record.

3 MR. DUBOIS: First, let's do
4 appearances. Mr. Lopez, my name is Jim Dubois. We've
5 met once before, pre COVID, I think your first
6 deposition when you were not an expert witness, and I
7 am representing the United States. Also on the line,
8 I believe, is Lee Leininger, who appears that -- oh,
9 and Judy Coleman, and that appears to be it for the
10 United States this morning. Jeff?

11 MR. WECHSLER: Jeff Wechsler for New
12 Mexico, and it looks like we have the state engineer,
13 John D'Antonio, Gregg Ridgley, Cheryl Thacker, Shelly
14 Dalrymple, Kari Olson, and Susan Barela, and Arianne
15 Singer.

16 MR. DUBOIS: And for the State of Texas?

17 MR. SOMACH: Yes, this is Stuart Somach.
18 I'll be asking Mr. Lopez questions to the extent
19 Mr. Dubois doesn't cover the universe. Sarah Klahn is
20 also on, and she'll be covering the other depositions
21 today. Theresa Barfield is on, Mac Goldsberry is on
22 for Texas, and I believe there are a couple of other
23 people, but to be honest with you, I'm not certain who
24 they are. But if anybody else, either at my firm or
25 representing Texas wants to make an appearance, that

1 would be good for the record.

2 **MR. DUBOIS:** Okay. For Colorado?

3 **MR. WALLACE:** Yes, this is Chad Wallace
4 for Colorado. Also with us today is Preston Hartman.

5 **MR. DUBOIS:** And we'll try and cover the
6 amici. I don't remember who everybody is. Let's
7 start with El Paso County Water Improvement District
8 No. 1.

9 **MS. O'BRIEN:** Good morning. This is
10 Maria O'Brien for El Paso County Water Improvement
11 District No. 1. Also on is Renea Hicks and Dr. Al
12 Blair.

13 **MR. DUBOIS:** Is there anybody on for
14 EBID?

15 **MS. BARNCASTLE:** Yes. Good morning.
16 This is Samantha Barncastle for EBID, and with me
17 today will be Gary Esslinger, the manager of the
18 district, Dr. Erek Fuchs, and Dr. Phil King.

19 **MR. DUBOIS:** Okay. City of El Paso?

20 **MR. CAROOM:** Doug Caroom for the City of
21 El Paso, and with me is Daniel Ortiz, general counsel
22 for El Paso Water.

23 **MR. DUBOIS:** Las Cruces and/or
24 Albuquerque Bernalillo?

25 **MR. BROCKMANN:** Yeah. This is Jim

1 Brockmann on behalf of both amici.

2 MR. DUBOIS: Mr. Utton, I'm blanking on
3 who you're representing. Is it NMSU?

4 MR. UTTON: Yes. Good morning. This is
5 John Utton representing New Mexico State University.

6 MR. DUBOIS: And for the water users
7 group?

8 MS. DAVIDSON: This is Tessa Davidson,
9 good morning, for New Mexico pecan growers.

10 MR. DUBOIS: And are there any other
11 amici who are on that I have missed?

12 (No response.)

13 MR. DUBOIS: Okay. Hearing none,
14 apparently that's everybody.

15 ESTEVAN LOPEZ,
16 having been first duly sworn, testified as follows:

17 E X A M I N A T I O N

18 BY MR. DUBOIS:

19 Q. All right. Mr. Lopez, you've been deposed
20 before in this proceeding several times. You've --
21 you've done video depositions in this case. I'm just
22 going to cover the very basic ground rules. You're
23 under oath this -- as if you're testifying in a court
24 of law. We need to try not to talk over each other.
25 Let me finish my questions, and I will try not to

1 interrupt your answers, and we'll have a cleaner
2 record. If you don't understand a question, please
3 ask me to clarify it, and I will try and rephrase it;
4 otherwise, I'll assume you're -- if you're answering,
5 you're understanding the question. And because this
6 is a remote deposition, your other communication
7 devices, e-mails, texts, things like that need to be
8 turned off. Is that all clear

9 A. It is.

10 Q. Let's pull up the -- the notice as a starting
11 point.

12 MR. DUBOIS: Kayla, if you can load up
13 the 30(b)(6) U.S. notice.

14 THE VIDEOGRAPHER: And how did you want
15 to mark this one?

16 MR. DUBOIS: That's a good question
17 because Mr. Lopez was up to 9 or 10, but this is --
18 this is a 30(b)(6) deposition, so it is slightly
19 different.

20 MR. SOMACH: Yes. Mark it 1, Jim,
21 because it is a 30(b)(6).

22 MR. DUBOIS: Yeah. Let's go with --
23 let's mark it Lopez 30(b)(6) No. 1.

24 (Exhibit No. 1 was marked.)

25 Q. (BY MR. DUBOIS) All right. Mr. Lopez, you

1 should have on your screen what's been marked as Lopez
2 30(b)(6) No. 1. Do you see that? Do you have that
3 up?

4 A. I do.

5 Q. Okay. And have you seen this before?

6 A. You know, I think that I have not.

7 Q. Okay. All righty. So this was not provided
8 to you by counsel?

9 A. You know, they may have. I -- I don't know.
10 I've seen so many documents that it's just not
11 registering with me.

12 Q. Okay. So you've been identified as -- as a
13 30(b)(6) witness on behalf of the State of New Mexico.
14 Do you understand that?

15 A. I do.

16 Q. Okay. And do you -- do you understand what a
17 30(b)(6) deposition is?

18 A. Well, I -- I understand it as it was
19 explained to me by my attorneys, yes.

20 Q. And how was that explained?

21 A. So it was -- I was told that I would be
22 answering as to the State's position on the questions
23 that I was being asked.

24 Q. Okay. So you understand you're testifying as
25 -- as if you were the State of New Mexico and -- and

1 the positions that you state are going to be binding
2 on the State?

3 A. Yes.

4 Q. As the State's positions? Okay. And looking
5 at the -- if you would go to Page -- the attachment to
6 the notice, which has a listing of topics. And my PDF
7 is -- I'm trying to get to that page of it, as well,
8 but my -- there we go. Keep scrolling down. I'm
9 going to try to find the appropriate PDF page number
10 here. All right. Go to PDF Page 11. You got it?
11 Okay. Now, you've been designated. Do -- do you
12 understand what portions of this notice that you've
13 been designated to testify about?

14 A. Yes.

15 Q. Okay. So my understanding is you've been
16 designated to testify about all of Topic A; is that
17 correct?

18 A. I believe that's correct.

19 Q. Okay. And Topic B, except for Counterclaim
20 Nos. 5 and 8; is that correct?

21 A. I believe that's correct. That's --

22 Q. Okay.

23 A. -- that's what I understood, as well, yes.

24 Q. All right. And then Topic C as to the
25 Interstate -- interstate Stream Commission's policies

1 **and -- and regulations; is that correct?**

2 A. I don't -- I don't know if I was told that,
3 but I think that I can.

4 **MR. WECHSLER:** Hey, Jim, that -- sorry
5 to interrupt. I think that designation was as to the
6 Compact issues, whereas to state administration
7 issues, that will be Ms. Thacker.

8 **MR. DUBOIS:** All right. And I think
9 Mr. Lopez as the star of the ISC rules regarding that
10 topic that he can answer, that he does know the
11 subject so if we've got coverage, we can -- can and
12 will ask?

13 **Q. (BY MR. DUBOIS) What did you do to prepare**
14 **for this deposition, Mr. Lopez?**

15 A. I reviewed my report -- my reports, my
16 original report from October, '19, and a rebuttal
17 report from June of this year, my supplemental report
18 from July. The report -- I reviewed other reports
19 from New Mexico witnesses. I reviewed transcripts of
20 my depositions, and I met with my attorneys.

21 **Q. How long did you spend in -- in preparation**
22 **for this deposition?**

23 A. Are you asking about how many hours or --

24 **Q. Yeah. How much time?**

25 A. I'm not certain, but I would -- I would

1 estimate 20 to 25 hours.

2 Q. Did you spend any time with representatives
3 of the state other than your attorneys?

4 A. I did have a meeting that included other
5 states.

6 Q. Which others?

7 A. I believe --

8 Q. Within the state?

9 A. I believe there was State Engineer John
10 D'Antonio, Rolf Schmidt-Petersen, Gregg Ridgley, and
11 Arianne Singer, and this was on a phone call. Yeah.
12 I think -- I think that was it.

13 Q. Okay. And nobody else from the State?

14 A. I spoke to -- to Peggy -- Dr. Peggy Barroll
15 at least one or two times.

16 Q. Were you involved in drafting New Mexico's
17 counterclaims in this case?

18 A. I was not.

19 Q. Okay. Now, you previously testified as an
20 outside independent consultant; is that correct?

21 A. Yes.

22 Q. And, now, you're testifying as essentially
23 the voice of the New Mexico government in this
24 deposition today, right?

25 A. I believe that's correct, but I'm still an

1 outside independent consultant.

2 Q. Okay. You're not an employee of the State?

3 A. I am not.

4 Q. Okay. And does your role as a 30(b)(6)
5 deponent change any of the responses you gave in your
6 prior depositions as an expert witness?

7 A. That's a very broad question, but I don't
8 think that it really changes any of the -- the
9 responses that I had before.

10 Q. Okay. So should we understand that the
11 opinions that you gave as an independent consultant
12 are the views of the State of New Mexico?

13 A. I believe that's correct. You know, there --
14 there may be some where some portions of the
15 depositions were done. It's been a lot of questions
16 asked. There may be certain questions if I were asked
17 today that I would answer in a more way. It's just as
18 I mentioned, it's a very, very broad question here
19 you're asking me. I don't -- unless I were asked a
20 specific question, I'm not sure that I could give you
21 a more specific answer than that.

22 Q. Okay. How about the -- the questions that
23 you were asked about what New Mexico's apportionment
24 is under the Compact, will those change?

25 A. No.

1 Q. Okay. Is it New Mexico's position that the
2 Rio Grande Compact is a complete apportionment of the
3 flows of the Rio Grande between the head waters and
4 Fort Quitman?

5 A. Yes. Excuse me. Can I ask a question, kind
6 of a process question?

7 Q. Sure.

8 A. In -- in prior depositions, I've had access
9 to realtime -- the realtime transcript. I don't have
10 that up right now. I'm not sure if that's --

11 Q. I think that's a good idea to get that up.

12 MR. DUBOIS: I assume, Heather, that it
13 is the usual transcript realtime.

14 THE REPORTER: Yes.

15 THE VIDEOGRAPHER: Do you want to go off
16 the record to set this up?

17 MR. DUBOIS: Yeah. Why don't we go off
18 the record and get that up.

19 THE VIDEOGRAPHER: The time is 9:18 a.m.
20 We're off the record.

21 (Break.)

22 THE VIDEOGRAPHER: The time is 9:23 a.m.
23 We're on the record.

24 Q. (BY MR. DUBOIS) Okay. I think that we -- you
25 -- we were just talking about whether or not the Rio

1 Grande Compact is complete apportionment of the flows
2 of the Rio Grande, and you said that it was. What --
3 what does New Mexico think that a -- a complete
4 apportionment of the flows of the Rio Grande means?
5 What does that mean?

6 A. I think that it means that all of the flows
7 that arise in the Rio Grande between the head waters
8 and Fort Quitman are divide -- are divided as between
9 the three states.

10 Q. So was there any flow of the Rio Grande
11 between the head waters and Fort Quitman that was not
12 apportioned by the Compact?

13 A. I cannot think of any, no.

14 Q. Okay. Now, you've also -- you previously
15 stated in earlier deposition that the Rio Grande below
16 Elephant Butte was fully appropriated by 1938. Do you
17 remember discussing that in depositions?

18 A. Yes.

19 Q. Okay.

20 A. Yes, I do.

21 Q. And -- okay. Do you still stand by the --
22 the conclusion that the Rio Grande below Elephant
23 Butte was fully appropriated in 1938?

24 A. I do.

25 Q. Okay. And so that -- I just want to be clear

1 that that's also the position of the State of New
2 Mexico then?

3 A. That's correct.

4 Q. Okay. Okay. What does it mean that the
5 river was fully appropriated?

6 A. That means that all of the waters -- all of
7 the surface waters of the river are -- have been
8 spoken for.

9 Q. Okay. So all of the surface water had
10 already been allocated to existing water rights? Is
11 that another way of saying it?

12 A. Yes. Let me -- let me review that. Yes,
13 that's correct.

14 Q. Okay. And does that mean that any additional
15 diversions after 1938 that deplete the river would
16 take water away from existing water rights?

17 MR. WECHSLER: Object to form.

18 A. It would impact those water rights, yes.

19 Q. (BY MR. DUBOIS) All right. If you're taking
20 water away from them, that would be a -- add adverse
21 impact of those water rights?

22 MR. WECHSLER: Object to form. And I
23 also think we're getting a little beyond the scope.

24 MR. DUBOIS: No, we aren't, but he can
25 answer if he knows anyway.

1 A. Generally speaking, I think that's correct.

2 Q. (BY MR. DUBOIS) Okay. Does the Rio Grande
3 Compact apportion water to New Mexico below San
4 Marcial?

5 A. Yes.

6 Q. Does New Mexico assert that it receives an
7 apportionment of water -- does New Mexico assert that
8 it receives an apportionment of water from the Rio
9 Grande below San Marcial?

10 A. I'm not sure I understand what distinction
11 you're making between that and your prior question.

12 Q. Okay. When did -- when did New Mexico
13 determine that it had an apportionment of water below
14 San Marcial?

15 A. I think when we agreed to the Compact.

16 Q. What is New Mexico's apportionment of water
17 under the Rio Grande Compact?

18 A. Under the Rio Grande Compact?

19 Q. Yes.

20 A. This is what we receive from Colorado under
21 Article 3 of the Compact at the state line, plus all
22 of the inflows that arise between the state line and
23 Elephant Butte, less our obligation to deliver water
24 into Elephant Butte under Article 4, plus 57 percent
25 of project supply below Elephant Butte, project supply

1 being comprised of releases of usable water, inflows
2 below Elephant Butte, and return flows, returning
3 drain flows.

4 Q. So let's -- let's -- and my question was
5 overly broad for my purposes, I guess. So let's just
6 focus on the apportionment of water below San Marcial,
7 the apportionment of water to New Mexico below San
8 Marcial. That's -- just focus on that and call that
9 out from the answer. So what's the apportionment of
10 water to New Mexico below San Marcial?

11 A. So I think this is probably the same thing,
12 but I'm going to -- I'm going to just clarify that I'm
13 referring to below Elephant Butte given that the
14 delivery point under Article 4 was changed in 1948.
15 So I'll -- I'll be responding --

16 Q. And that's fine. That's fine. I understand.

17 A. So as I -- as I answered above, and as I've
18 laid out in my reports and in questions -- in
19 responses to questions before, it is 57 percent of the
20 project supply, and that project supply being
21 comprised of releases of usable water inflows below
22 Elephant Butte and returning drain flows.

23 Q. So do the downstream contract -- do you --
24 are you familiar with what the term downstream
25 contracts refers to?

1 A. I am. Certainly as I've defined them in my
2 reports, there may -- and I think it's consistent with
3 how it's been used otherwise by others.

4 Q. And so when you're referring to the
5 downstream contracts, what are you referring to?

6 A. I'm referring -- in my report, I referred
7 specifically to three contracts, 19 -- I may get the
8 dates from memory, get them off, but --

9 Q. Would it be helpful to have them in front of
10 you?

11 A. I can look at my reports. I have the copy of
12 my reports in front of me. If it's all right, I can
13 refer to that if you'd like.

14 Q. You can. I can also -- I can also provide
15 you the contracts.

16 A. That's fine. So let me tell you generally,
17 it's a 1938 contract between Elephant Butte and --
18 Elephant Butte Irrigation District and Reclamation.
19 It's either 1937 to 1938, that -- that contract is,
20 and similar time frames for a contract between
21 Reclamation and El Paso County Water Improvement
22 District No. 1, and the third contract that I referred
23 to as one of the -- the downstream contracts is a 1938
24 contract between the two districts that was later
25 approved by the Department of Interior. I believe it

1 was in April of 1938. Is that -- is that sufficient
2 specificity?

3 Q. Yes. As I said, I can provide them. I just
4 wanted to make sure that we're talking about the same
5 things. So do the -- do the -- do the downstream
6 contracts between the United States and EBID and
7 between EBID and EPCWID define the apportionment to
8 New Mexico?

9 A. I think they inform the -- the apportionment
10 to New Mexico. They don't define it as explicitly as
11 -- as -- as I've defined here in my responses to you.
12 They inform it by -- in several ways. First of all,
13 the -- the contract between EBID and -- and EP No. 1
14 that is EPCWID has a shortage provision that is
15 specific and explicit about in times of shortage,
16 water is to be shared 57/43. In essence, in
17 proportion to the acreage in each of the districts as
18 a total of -- a total project authorized acreages.
19 And then the -- the two contracts between Reclamation
20 and the districts specify the acreages of each of the
21 districts, the authorized acreages of each of the
22 districts. That's consistent with that. Those two
23 contracts also have essentially identical terms except
24 for the -- the proportion of payment that is also
25 proportionate to the acreage and so those things

1 inform that apportionment, and in my report and in
2 responses to my prior depositions, I've explained how
3 the 57/43 that I assert is the apportionment below
4 Elephant Butte we get from a reading of the Compact
5 together with those downstream contracts and the
6 historical practice of how the project has been
7 operated up until essentially 2006.

8 Q. So is the contract with EBID the sole means
9 for New Mexico obtaining its apportionment under the
10 Compact?

11 MR. WECHSLER: Object to form.

12 A. Are you referring only to that -- the
13 apportionment below Elephant Butte?

14 Q. (BY MR. DUBOIS) Yes. I'm sorry. I should
15 have been clear on that. I apologize.

16 A. I believe that it is, yes.

17 Q. Okay. Is it New Mexico's position that the
18 contracts between the United States and the two
19 districts and the contract between the two districts
20 are integrated into the Compact?

21 A. I think what I testified is that they -- that
22 the Compact and the project are inextricably linked,
23 and the -- and the contracts are also kind of
24 inextricably linked to -- or inextricably intertwined,
25 I think is what I -- what I said in my report. I was

1 using some of the language that the -- that the
2 Supreme Court has used and relied on that -- on that
3 -- their findings, as well.

4 **Q. What do you mean by inextricably intertwined?**

5 A. They work together. They work together, and
6 you can't -- you can't -- you can't read them
7 independent of one another.

8 **Q. So anything -- I'm just trying to understand**
9 **this. So anything that impacts the project water**
10 **supply impacts the apportionment; is that correct?**

11 **MR. WECHSLER:** Object to form.

12 A. Could you rephrase that? I'm not
13 understanding what you're asking.

14 **Q. (BY MR. DUBOIS) Well, I'm trying to**
15 **understand when you say that they're inextricably**
16 **intertwined and that they have to be read as part and**
17 **parcel of each other; is that correct? Is that what**
18 **you're saying?**

19 A. Yes. And I'm specifically speaking as to how
20 you -- how you make a determination as to the
21 apportionment. Certainly, there is probably elements
22 that could be looked at independently, but -- but for
23 -- for getting to an apportionment below Elephant
24 Butte, I think you have to look at all three of these
25 -- all, I guess, four of these documents together.

1 Q. Okay. And so my question was then if they're
2 inter -- interdependent and intertwined, anything that
3 affects -- is anything that affects the project water
4 supply affecting the Compact?

5 A. So first of all, if -- I think you may have
6 just been reading what I answered earlier. I don't
7 think that I said they were inextricably
8 interdependent. I did they they were inextricably
9 intertwined. And that's -- if you're asking me the
10 difference, I don't know that I -- that I can say what
11 the difference is. But nevertheless, you asked if --
12 is anything that affects project supply also affecting
13 the Compact. I'm not sure. I don't know that. I
14 don't know the answer to that. Unless you give more
15 specificity to what you're talking about in -- in
16 anything.

17 Q. Is there any other apportionment in the
18 Compact to New Mexico below Elephant Butte, other than
19 the water under the contract with EBID?

20 MR. WECHSLER: Object to form.

21 A. I think I already answered that, and I said
22 no.

23 Q. (BY MR. DUBOIS) Okay. Is there any
24 apportionment of water to New Mexico below Elephant
25 Butte, other than project water that EBID is entitled

1 to under what we've been referring to as the
2 downstream contracts?

3 A. Again, I'm not seeing how this is different
4 than your prior question.

5 Q. It's slightly different so please answer it.
6 Or should I just -- can I take it that the answer to
7 that is no?

8 A. I'm rereading it.

9 Q. Uh-huh.

10 A. I think the answer is no.

11 Q. Okay. So are the -- the EBID project
12 allocation and New Mexico's apportionment under the
13 Rio Grande Compact below Elephant Butte the same?

14 A. They are not certainly -- they are certainly
15 not since the 2008 operating agreement.

16 Q. That's not what I asked. Are the EBID
17 project allotment and New Mexico's apportionment under
18 the Compact below Elephant Butte reservoir the same?

19 MR. WECHSLER: Object to form.

20 A. Not since two thousand -- not since 2006.

21 Q. (BY MR. DUBOIS) You're refusing to answer the
22 question.

23 A. I have answered the question.

24 Q. Let me try again.

25 A. You don't like my answer.

1 Q. All right. Let's rephrase the question then.
2 Is it the Compact's intent that the EBID project
3 allotment and New Mexico's apportionment under the Rio
4 Grande Compact below Elephant Butte reservoir the
5 same? Are they to be the same?

6 A. Would you please -- please define project
7 allotment for me, please?

8 Q. What EBID is entitled to receive under the
9 downstream contracts?

10 A. In that instance, I would say yes.

11 Q. Okay. Are the contracts for the Rio Grande
12 project the only means provided for in the Compact for
13 distribution of New Mexico's apportionment?

14 MR. WECHSLER: Object to form.

15 A. Well, to the extent that you're asking that
16 -- I guess the way I would say it and I have said it
17 is that the operation of the project is the -- is the
18 -- the mechanism for effectuating the Compact
19 apportionment.

20 Q. (BY MR. DUBOIS) And the operation of the
21 project is pursuant to the downstream contracts; is
22 that correct?

23 A. Generally, yes.

24 Q. Okay.

25 A. Or at least --

1 Q. So the downstream -- I'm sorry. What? I
2 didn't mean to cut you off.

3 A. Or at least it was.

4 THE REPORTER: I'm sorry. Please repeat
5 that again.

6 THE WITNESS: I said, "Or at least it
7 was."

8 Q. (BY MR. DUBOIS) Okay. Does Texas have an
9 apportionment of water under Elephant Butte -- below
10 Elephant Butte reservoir?

11 A. As I've testified in my reports and in my
12 depositions, my prior depositions, yes, it has an
13 apportionment below Elephant Butte.

14 Q. And I know some of this is repetitive,
15 Mr. Lopez, but you're now -- you're now speaking for
16 the State of New Mexico as opposed to as an
17 independent contractor so they seem redundant, but I'm
18 still needing to ask you these things. So it's fine
19 that you clarify and -- and reiterate your prior
20 testimony, but, you know, there's -- there is a reason
21 that we're covering some same ground?

22 A. I understand.

23 Q. So just --

24 A. I'm simply --

25 Q. Okay. All right.

1 A. -- simply trying to -- you asked me earlier
2 if -- if my responses had changed. They hadn't, and
3 hasn't really changed --

4 Q. Okay.

5 A. -- from my reports either.

6 Q. No, and that's -- and that's fine.
7 Basically, that's what we're trying to -- to make sure
8 that we're consistent going along here, so that's --
9 that's fine. Understand that I do appreciate some of
10 this is plowing old ground, but because of sort of
11 your -- your position in this deposition, we're going
12 to -- we're going to recover some of that. So I'm,
13 you know, just explaining that I'm not merely doing
14 this to be obnoxious, not the only reason.

15 A. And I'm not -- I'm not trying to be obnoxious
16 by responding by referring to --

17 Q. No.

18 A. -- my prior depositions or my reports. I
19 simply want to say that it hasn't changed.

20 Q. Okay. And that's -- and that's fine. So
21 just so we know that we're -- we're both on the same
22 track, so that's good.

23 So what's Texas' apportionment of the Rio
24 Grande Compact?

25 A. 47 -- excuse me. 43 percent or roughly 43

1 percent of the project supply that arises below
2 Elephant Butte, and that is comprised of releases of
3 usable water of Caballo reservoir, inflows between
4 there and Fort Quitman, and returning drain flows.

5 **Q. So do the downstream contracts define the**
6 **apportionment to Texas?**

7 A. My response here would be the same as my
8 response was to -- to their relationship to -- they
9 inform the apportionment to Texas in the same way that
10 they inform the apportionment to New Mexico that I
11 described above.

12 **Q. So under the Compact, is the EPCWID project**
13 **allotment intended to be identical to Texas'**
14 **apportionment?**

15 **MR. WECHSLER:** Object to form.

16 A. With the same caveats as my responses
17 earlier, that is that at least originally, yes.

18 **Q. (BY MR. DUBOIS) Okay. And are -- are the**
19 **contracts for the Rio Grande project to EPCWID the**
20 **only means provided for in the Compact for**
21 **distribution of Texas' apportionment?**

22 **MR. WECHSLER:** Object to form.

23 A. I will respond again mirroring my response to
24 your similar question on EBID, and that is that it's
25 my opinion that the -- that the operation of the

1 project is the means, the mechanism by which the
2 Compact apportionment is effectuated.

3 Q. (BY MR. DUBOIS) Is there any apportionment to
4 Texas under the Rio Grande Compact other than project
5 water that EPCWID is entitled to under its contracts?

6 MR. WECHSLER: Object to form.

7 A. I would say no.

8 Q. (BY MR. DUBOIS) Okay. Does New Mexico agree
9 that groundwater pumping in New Mexico below Elephant
10 Butte dam in the Mesilla and Rincon basins for
11 irrigation and municipal and industrial uses in New
12 Mexico deplete the flows of the Rio Grande that are
13 available for diversion by the Rio Grande Project?

14 MR. WECHSLER: Object to form; scope.

15 A. The groundwater pumping in New Mexico does
16 impact surface supply.

17 Q. (BY MR. DUBOIS) Does it deplete the surface
18 supply?

19 MR. WECHSLER: Same objection.

20 A. I think that it does, yes.

21 Q. (BY MR. DUBOIS) Okay. What obligation does
22 New Mexico have under the Compact to be sure that the
23 project water supply is not depleted or reduced by
24 non-project water users?

25 A. I'm not sure that we have any specific

1 obligation not to deplete or reduce project supply
2 unless -- unless there is some notice that -- that
3 there is -- that Texas is not getting its
4 apportionment. Having said that, New Mexico does and
5 has permitted such uses to -- to require that any
6 impacts -- any such impacts would be offset since it's
7 closed the basin -- or since it's -- since it's
8 declared the basin. Excuse me.

9 Q. All right. So all the development before it
10 closed the basin is ignored for purposes of
11 administration; is that correct?

12 MR. WECHSLER: Object to form.

13 A. No, it's not ignored, but I think that unless
14 -- unless we are put on notice that Texas is not
15 getting its apportionment, we don't necessarily have
16 to do anything about it.

17 Q. (BY MR. DUBOIS) So there's no obligation
18 under the -- let me rephrase that. If pumping of
19 groundwater in New Mexico depletes the flow of the Rio
20 Grande, either directly by pulling water from the
21 river drains or by preventing water from returning to
22 the river and -- and they reduce the project water
23 supply, do those depletions to the river count against
24 New Mexico's apportionment?

25 MR. WECHSLER: Object to form.

1 A. I think that it is non -- for non-project
2 uses. If it is for non-project uses, those might have
3 to be offset, but not if it's for project uses.

4 **Q. (BY MR. DUBOIS) Why not if it's for project**
5 **uses?**

6 A. Because -- well, one of the -- one of the
7 purposes of the Compact is to -- is to make the -- the
8 project viable over the long haul, and that viability
9 includes getting -- or having access to groundwater
10 for conjunctive use, and that's consistent in both
11 states.

12 **Q. Is there any limitation on New Mexico as to**
13 **how much surface water can be depleted by pumping in**
14 **New Mexico?**

15 **MR. WECHSLER:** Object to form.

16 A. Are you asking about for a specific purpose
17 or just generally?

18 **Q. (BY MR. DUBOIS) Generally.**

19 A. Well, yes, I think there is a limitation. If
20 -- if Texas is not getting 43 percent of its project
21 supply of the project supply then I think that would
22 -- that would set the limitation.

23 **Q. But you've told me that depletions to the**
24 **water supply from pumping, at least for pumping for**
25 **project beneficiaries, does not count against the**

1 these relatively quickly, because I know we have
2 others and other depositions that we want to get into
3 today. You indicated at the beginning of Mr. Dubois'
4 questions that you understood that you were testifying
5 as if you were New Mexico; is that correct?

6 A. Yes.

7 Q. That's the difference between your
8 depositions that were taken as an independent expert
9 versus your 30(b)(6) deposition that's being taken
10 here today, you understand that distinction; is that
11 correct?

12 A. Yes, that's correct.

13 Q. Okay. And so when I refer to you in this
14 deposition, I'll try to distinguish between your prior
15 depositions and your reports versus your speaking for
16 New Mexico and so do you understand that when I use
17 the word "you" in this deposition, I'm referring to
18 the State of New Mexico?

19 A. I will try and keep that in mind.

20 Q. Okay. And I'll remind you if there appears
21 to be any confusion. Is it your opinion that actions
22 by New Mexico are having -- with respect to -- to
23 actions below Elephant Butte reservoir are having no
24 injury, they're not injuring Texas in any respect?

25 A. I guess to the extent that you're asking in

1 any given year, I don't know the answer in any given
2 year. I think if you look at things cumulatively
3 through, let's say, I think from '85 through 2017, I
4 would say that, yes, there's -- there's been no injury
5 to Texas.

6 Q. And under the same qualification you just
7 made, are you saying that the converse or the contrary
8 is true with respect to Texas' injury to New Mexico,
9 that, in fact, over that period of time, Texas'
10 actions have injured New Mexico's rights under the
11 Compact?

12 A. So I -- let me just answer the question fully
13 just so that -- I believe that during that same time
14 period, Texas' actions have injured New Mexico.

15 Q. Okay. Does groundwater have any -- anything
16 to do at all with the 1938 Compact apportionment?

17 A. No. Other than I would say that the Compact
18 allows the conjunctive use of that groundwater.

19 Q. And -- and what do you refer to with respect
20 to the Compact that gives rise to that answer?

21 A. Well, again, I'm -- I'm referring to
22 documents that were contemporaneous with the Compact
23 and -- and -- and the practice that has happened since
24 -- since then up until now. The specific document
25 that I -- that I would refer to there is the rules and

1 regs of the -- of the -- of the Compact commission.

2 Q. Are you referring, when you say this, to the
3 rules and regulations or other historic documents that
4 relate to the fact that except as provided for in the
5 Compact, each state is allowed to fully develop their
6 water resources, is that -- is that what you're
7 talking about?

8 A. Yes. That's paraphrased, but yes.

9 Q. Okay. And --

10 A. And then the other -- the other aspect of it
11 that I was referring to has been the historic practice
12 that has -- that has come about since the Compact was
13 signed.

14 Q. Okay. Let's -- let me look upstream a little
15 bit here above Elephant Butte just to understand and
16 provide some context for that. Are there any limits
17 on Colorado's ability to develop its upstream
18 resources within the Compact, is there any Compact
19 limit on what they can do in terms of -- of developing
20 water upstream.

21 MR. WALLACE: Object to form?

22 A. I think there are, and specifically, I think
23 that they are able to develop their -- their upstream
24 resources as long as they continue to meet their
25 obligations under Article 3 and -- and then there's

1 other limitations in terms of the storage of water in
2 post-Compact reservoirs, I think, in their instance,
3 it's post '37 reservoirs, but other than that, you can
4 develop their resources.

5 Q. And I think we -- we may have talked about
6 this in one of your prior depositions, but those
7 limitations are to ensure that depletions in Colorado
8 would be -- it seems what existed in 1938; is that
9 correct?

10 MR. WALLACE: Object to form.

11 A. I think that's largely -- largely correct.
12 Mr. Somach, can I ask you to speak up just a little
13 bit? I'm having a little bit of trouble hearing you
14 as you ask your questions.

15 Q. (BY MR. SOMACH) I will -- I will try to speak
16 up and get closer to my microphone here.

17 A. Thank you.

18 Q. Now, with respect to development above
19 Elephant Butte reservoir, to the extent that there are
20 limits on what New Mexico can do in terms of
21 developing full water resources above Elephant Butte,
22 is that also similarly limited to -- to depletions
23 that would have existed at -- in 1938?

24 A. I think that's correct. I think there's
25 reference in New Mexico -- in New Mexico's case to

1 depletions as of 1929. I think there's a couple of
2 references to that, one with regard to reservoirs
3 built after '29, and then a second for the -- in the
4 resolution -- the 1948 resolution that changed the --
5 our delivery point from San Marcial to Elephant Butte,
6 I think there's also -- depletions above Otowi have to
7 be constrained to 1929, and if they're not, then you
8 have to make an adjustment as between above Otowi and
9 below Otowi.

10 Q. 1929 was the date of the temporary --
11 so-called temporary contract among Colorado, New
12 Mexico, and Texas; is that -- is that correct?

13 A. The temporary Compact, correct? Is that --

14 Q. I said contract. I meant Compact.

15 A. Yeah. Yes. That's correct.

16 Q. Were New Mexico's ability to develop -- fully
17 develop its water resources below Elephant Butte
18 Reservoir also constrained by ensuring that depletions
19 below Elephant Butte reservoir did not exceed that
20 which existed in 1938?

21 A. I don't think those are similarly
22 constrained, no.

23 Q. Okay. So -- and here, I'll -- I'll separate
24 out New Mexico from Texas below Elephant Butte. So
25 New Mexico -- Colorado was constrained by the

1 depletions that existed as of 1938 in its delivery to
2 New Mexico, and New Mexico was constrained in terms of
3 its deliveries into Elephant Butte reservoir based
4 upon depletions that existed in 1938, but New Mexico
5 below Elephant Butte reservoir is not constrained by
6 depletions that might have existed in 1938; is that --
7 is that what you're saying, that there's a distinction
8 between the obligations above Elephant Butte and those
9 that exist below Elephant Butte?

10 MR. WALLACE: Object to form.

11 A. I think that's correct. There is a
12 distinction.

13 Q. (BY MR. SOMACH) And explain to me that
14 distinction.

15 A. There is no constraint below Elephant Butte.
16 There is no 1938 -- in my report and in response to
17 previous depositions, I -- I've responded about the
18 '38 condition -- depletion condition. That's --
19 that's what I was talking about. There is -- there is
20 no -- there is no such condition placed in the Compact
21 for the section below Elephant Butte.

22 Q. Let -- let me clarify something here, and
23 that is -- and this is the distinction between you as
24 the State of New Mexico and you as Estevan Lopez,
25 independent expert. You've written a number of expert

1 reports that have been disclosed and submitted in this
2 case; is that correct?

3 A. I have.

4 Q. How many reports have you -- have you written
5 in this case?

6 A. I guess three, and then the third one has a
7 second edition.

8 Q. Okay. And that -- the last report was what
9 we got earlier this week, I think; is that correct?

10 A. That's correct. That's the second edition of
11 the supplemental.

12 Q. Okay. Those reports all have opinions within
13 them; is that correct?

14 A. They do.

15 Q. Do you, as New Mexico, have a -- a different
16 view with respect to the opinions that you rendered in
17 -- that -- that Estevan Lopez rendered in his reports
18 that Estevan Lopez did with respect to those opinions?
19 In other words -- let me try to say that better.

20 I'm just trying to figure out if -- if you,
21 as New Mexico, concur with all of the opinions that
22 were rendered in the Estevan Lopez expert reports.
23 I'm hoping that that will shorten things up because
24 we've asked you about all of those things, and I'm
25 just trying to figure out if that's the case?

1 A. I, as New Mexico, concur with the opinions
2 expressed by I, as Estevan Lopez.

3 Q. Okay. And presumably, to the extent that
4 questions were asked of you in depositions, you, as
5 the State of New Mexico, concur with the answers you
6 gave to those questions when you were acting as
7 Estevan Lopez, expert witness; is that correct?

8 A. Yes. That's generally correct. As I
9 mentioned earlier with Mr. Dubois, I think there was a
10 lot of questions, and I might answer some of those
11 questions with a bit of different nuance, answering on
12 behalf of the State of New Mexico.

13 Q. And why -- why is that? Why would it -- why
14 would your answers be more nuanced for the State of
15 New Mexico than when you responded to those same
16 questions on behalf of the -- of the -- on your own
17 behalf?

18 A. Well, I think -- I think even -- even from my
19 very first deposition, I've -- just speaking as -- as
20 Estevan Lopez, I think my understanding has evolved
21 somewhat over time of various aspects of things, and
22 -- and that continues into today as -- as I speak for
23 the State of New Mexico.

24 Q. Okay. So -- so it's just the evolution over
25 time of the more you've thought about these things,

1 the little variation, it's nothing more systemic, more
2 -- more substantive than just that evolution; is that
3 correct?

4 A. I think that's correct. I think as a result
5 of your questions and those of other lawyers, I
6 certainly have thought about things much in more
7 detail than I have as I wrote these things initially.

8 Q. Now, you referred to, I think, three
9 contracts as defining the apportionments of the
10 relative apportionments below Elephant Butte and to --
11 to Texas and to New Mexico, and those were the two
12 1937 contracts between the districts and the United
13 States, plus the 1938 contract among the United
14 States, EP No. 1, and EBID; is that correct -- is that
15 correct?

16 A. That's generally correct. I did not say that
17 they define the apportionments. I said they inform
18 the apportionments along with the Compact and with
19 historic practice.

20 Q. That's -- actually, you've -- you've --
21 you've hit on the exact question, whether you knew it
22 or not, that I wanted to ask. I don't understand what
23 the word inform means in the context of that response.
24 I simply don't know how you're using it there so
25 perhaps you can explain the difference between

1 something informing and -- and something being the
2 apportionment?

3 A. I'll do my best. What I mean is, you know,
4 I've said in -- in my reports, my Estevan Lopez
5 reports, that -- that the Compact is not explicit as
6 to how it apportions water. Well, nor -- the -- those
7 downstream contracts are not explicit that way either.
8 They don't say New Mexico gets 43 percent of the water
9 from the project, and Texas gets -- or New Mexico gets
10 57 percent, and Texas gets 43 percent. Rather,
11 there's other elements that -- that we read together
12 with the Compact with other historical documents from
13 the time and the practice that evolved from that to
14 come to the conclusion that the apportionment is
15 57/43. That's what I meant by saying that it informs
16 that.

17 Q. So do you start with those contracts? Is
18 that the place you start and then there is -- I mean,
19 the contracts provide certain specific things, don't
20 they?

21 A. They do provide certain specific things. I
22 start with the Compact first, and -- and then the --
23 then I look to the -- to the contracts, which were
24 essentially contemporaneous with the Compact. I think
25 they were probably at the fore of everybody's thinking

1 what the something is. So let's -- let's begin back
2 in 1938 when the Compact was executed. I understand
3 we won't call it a 1938 condition in the way you've --
4 you've disagreed with it, but certainly there was a
5 physical setting in 1938 upon which you could make the
6 57/43 allocation, and it included as you said usable
7 water that's released from the reservoir. It included
8 return flows. It include -- included other
9 accretions, and it presumably, it subtracted
10 depletions. Is that more or less what would have
11 occurred in 1938?

12 MR. WECHSLER: Object to form.

13 A. I don't believe that it subtracted the
14 depletions. I think there was a defined what was
15 referring to as a normal release, 790 up to, you know,
16 790 usable water that potentially could be used and --
17 and that the -- that based on the historical hydro--
18 hydro-graphical information that they had, they felt
19 would get them a full supply. In fact, the full
20 supply that they've used and delivered has been based
21 on releases less than 790, and so as far as I know, I
22 don't think that there was ever any subtraction of
23 depletions. There was, though, an expectation that
24 790 would yield a full supply, and to my
25 understanding, it always has, and less than that has

1 yielded a full supply, as has been defined by the
2 project.

3 Q. (BY MR. SOMACH) Well, I think you -- you also
4 said, though, that groundwater pumping, which is --

5 A. I'm sorry. I'm having trouble hearing you
6 again.

7 Q. I think you've also said that groundwater
8 pumping, which is a -- a condition of depletions has
9 increased over time and that that increase in
10 depletion has affected flow in -- in -- in the river.
11 I think you said that?

12 A. Well, you know, I think -- I think I probably
13 did say that, but let me put some fine point -- finer
14 points on that. It certainly increased pretty
15 dramatically in the '50s from essentially no
16 groundwater pumping, for project purposes, to pretty
17 substantial project -- groundwater pumping. Then we
18 have a period of full project supply where groundwater
19 pumping was greatly reduced in the early 2000s,
20 2003/2004, again, groundwater pumping went up pretty
21 dramatically, but not -- not appreciably more than
22 what we had that we experienced in the '50s. It did
23 go up appreciably after the 2006 and the 2008
24 operating agreement where New Mexico's surface water
25 allotments were dramatically reduced as a result of

1 the operating agreement.

2 Q. To the extent that -- that losses exist in
3 the system, do they -- do they reduce the amount of
4 surface water that -- that is available for
5 application of consumptive use in the project? And
6 here, I'm not -- I'm not distinguishing between --
7 between New Mexico project lands and Texas project
8 lands. I'm just asking the general question of
9 whether losses affect the amount of water that can be
10 applied and consumed by crops?

11 MR. WECHSLER: Object to form.

12 A. So certainly, losses reduce the amount of
13 water. If there were no losses, there would be more
14 water available. We could build up -- keep a lot more
15 water in the reservoir, wouldn't have to call -- call
16 for as much water. But the project -- you know, the
17 project anticipated that. Every project has losses,
18 and this one is no different.

19 Q. (BY MR. SOMACH) If losses are greater in one
20 year than they were in a prior year, with everything
21 else being equal, that is the amount of -- of usable
22 water released from the reservoir, if -- if losses are
23 greater in one year than another year, will that
24 result in less water available for actual application
25 to -- to irrigated lands?

1 **MR. WECHSLER:** Form and foundation.

2 A. It depends. It depends. I mean, certainly
3 losses probably vary every year. I doubt that they're
4 ever exactly the same from one year to the other.
5 But, you know, if you have a full supply period, you
6 might have very -- very high losses and still there's
7 absolutely no reduction to -- to the project users.
8 So that's a -- you're going to need a lot more
9 information before you can answer that question.

10 **Q. (BY MR. SOMACH) I think you said, and**
11 **actually, I wrote this down from the realtime. I**
12 **think you said, "I'm not sure that New Mexico has any**
13 **specific obligation not to deplete or reduce project**
14 **supply." Do you recall saying that?**

15 A. You're talking about earlier today?

16 **Q. Yeah.**

17 A. Yeah. I think -- I think that I did say
18 that.

19 **Q. I think you said that you -- you qualified**
20 **that by saying unless you have notice, and I think at**
21 **the very end of Mr. Dubois' questioning, you suggested**
22 **that the complaint itself in this case was -- was**
23 **notice; is that correct?**

24 A. I did.

25 **Q. Do you, State of New Mexico, think that you**

1 have a obligation not to deplete or reduce project
2 supply if you -- if you know that your actions are
3 depleting project supply?

4 MR. WECHSLER: Object to form.

5 A. Again, I -- I don't -- I don't think that we
6 -- if -- if our actions are such that were depleting
7 the project supply and Texas is not getting their
8 apportionment and they let us know and, yes, in fact,
9 we verify it, yes, I think we have to do something
10 about it.

11 Q. (BY MR. SOMACH) Yes. But you added something
12 to that in that if they let us know.

13 A. Right.

14 Q. What happens if you know but Texas hasn't
15 provided you whatever you are talking about in terms
16 of notice?

17 A. I'm sorry? I -- let me -- let me read this.
18 I'm having trouble hearing you.

19 Q. I'm sorry. You -- you qualified your answer
20 to the last question with "if Texas lets us know."
21 What happens if Texas doesn't provide you notice, but
22 nonetheless, you are aware that you are depleting
23 supplies that otherwise would be going to Texas? Do
24 you have an obligation if you know that that's what's
25 happening?

1 A. I would say no, not if we're depleting
2 supplies, but rather if Texas is not getting its
3 apportionment, then we have an obligation.

4 Q. Even if Texas hasn't provided you notice?

5 A. If we know about it, I would say yes.

6 Q. Does the Compact treat lands apportioned
7 water in New Mexico the same way as it treats lands
8 apportioned water in Texas?

9 A. I'm -- I'm puzzled by -- by your -- your
10 question asking about how the Compact treats lands.
11 What -- what are you getting at? Perhaps you can
12 expand on that.

13 Q. What I'm looking for or what I'm asking is
14 whether or not the -- the Compact apportionment treats
15 New Mexico below Elephant Butte the same as it treats
16 the apportionment to Texas below Elephant Butte
17 reservoir. Is there any distinction made in the
18 Compact?

19 A. In my estimation, no. I believe that both
20 should be treated -- that the Compact should -- treats
21 both equally.

22 Q. Okay. Let me look -- I want to be -- I want
23 to be done, actually. I want to in the worst possible
24 way be done, but hold on a second. I think you
25 indicated earlier that the historic operations of the

1 project, since 1938, are an element of understanding
2 New Mexico's apportionment; is that -- is that
3 correct?

4 A. I -- I think they're an element of
5 understanding both states' apportionment, yes.

6 Q. Are there any specific years after 1938 that
7 one looks to or is it the entire universe of years
8 from 1938 to price of time that one -- or at least in
9 2006 that one looks to?

10 A. I would look at the entire period between '38
11 and 2006, but recognizing that in the very first few
12 years, through the '40s, there was kind of a unique
13 situation, one was an abundance of supply. I think
14 that everybody was still getting used to -- used to
15 operating under a Compact and what that meant, and
16 finally, not until the late '40s and into early -- the
17 1950s, did they -- did Reclamation specifically start
18 really focusing in on tightening up its operation to
19 make sure that in less than full supply years, they
20 were allocating or apportioning water consistently.

21 Q. Well, can you point to any specific years
22 after 1938 where they got it right versus other years
23 where they got it wrong?

24 A. You know, no, that -- that -- I prefer not to
25 do that. I'd rather look at kind of the entire time

1 frame and, you know, this is a lot of what Dr. Barroll
2 did for us. She -- she tracked how much was delivered
3 to each district year by year, and under different
4 operations regimes and -- and largely, as I said, if
5 we just kind of remove the '40s from the '50s through
6 '78 is pretty consistent. Largely 57/43, then after
7 '78, D1/D2, that was meant to -- that was a mechanism,
8 frankly, to try and repeat what had happened before
9 under the control of three different entities as
10 opposed to a single entity, and largely, it
11 accomplished that, and the districts, by and large,
12 got 57/43. Not until 2006 did that really start
13 changing.

14 **MR. SOMACH:** Okay. I don't -- I don't
15 have anymore questions.

16 **THE WITNESS:** Am I done?

17 **MR. SOMACH:** I don't know.

18 **MR. DUBOIS:** Not quite. Not quite.
19 I've got literally one follow-up question, and I don't
20 know if anybody else is going to have any questions or
21 not so I'll just ask my one follow-up question, and
22 we'll work from there and see if anybody else has any
23 questions.

S I G N A T U R E O F W I T N E S S

I, ESTEVAN LOPEZ, solemnly swear or affirm under the pains and penalties of perjury that the foregoing pages contain a true and correct transcript of the testimony given by me at the time and place stated with the corrections, if any, and the reasons therefor noted on the foregoing correction page(s).

ESTEVAN LOPEZ

Job No. 65405

STATE OF TEXAS)
)
)
 Plaintiff,)
)
) Original Action Case
 VS.)
) No. 220141
) (Original 141)
)
 STATE OF NEW MEXICO,)
)
 and STATE OF COLORADO,)
)
)
 Defendants.)

I, HEATHER L. GARZA, a Certified Shorthand Reporter in and for the State of Texas, do hereby certify that the facts as stated by me in the caption hereto are true; that the above and foregoing answers of the witness, ESTEVAN LOPEZ, to the interrogatories as indicated were made before me by the said witness after being first remotely duly sworn to testify the truth, and same were reduced to typewriting under my direction; that the above and foregoing deposition as set forth in typewriting is a full, true, and correct transcript of the proceedings had at the time of taking of said deposition.

I further certify that I am not, in any capacity, a regular employee of the party in whose

behalf this deposition is taken, nor in the regular
employ of this attorney; and I certify that I am not
interested in the cause, nor of kin or counsel to
either of the parties.

That the amount of time used by each party at
the deposition is as follows:

MR. SOMACH - 00:48:35

MR. WECHSLER - 00:00:00

MR. DUBOIS - 02:02:47

MR. WALLACE - 00:00:00

MS. O'BRIEN - 00:13:01

MS. BARNCastle - 00:00:00

GIVEN UNDER MY HAND AND SEAL OF OFFICE, on
this, the 7th day of October, 2020.



Heather L. Garza
HEATHER L. GARZA, CSR, RPR, CRR
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EXHIBIT B

No. 141, Original

IN THE
SUPREME COURT OF THE UNITED STATES

◆

STATE OF TEXAS,

Plaintiff,

v.

STATE OF NEW MEXICO and
STATE OF COLORADO,

Defendants.

◆

OFFICE OF THE SPECIAL MASTER

STATE OF NEW MEXICO'S SECOND TRIAL WITNESS LIST

◆

HECTOR H. BALDERAS
New Mexico Attorney General
TANIA MAESTAS
Deputy Attorney General
CHOLLA KHOURY
Assistant Attorney General
ZACHARY E. OGAZ
Assistant Attorney General
P.O. Drawer 1508
Santa Fe, New Mexico 87501
505-239-4672

MARCUS J. RAEL, JR.*
LUIS ROBLES
SUSAN BARELA
Special Assistant Attorneys General
Robles Rael & Anaya
500 Marquette Ave NW #700
Albuquerque, NM 87102
marcus@roblesrael.com
505-242-2228

**Counsel of Record*

June 30, 2021

Comes now the State of New Mexico, pursuant to Appendix B of the September 6, 2018 Case Management Plan as modified by the April 9, 2021 Trial Management Order, and provides its list of the following witnesses New Mexico intends to call to testify at the September 13, 2021 trial in this proceeding.¹ The witnesses are separated according to whether they will definitely be called to testify at some point during trial ("Will-Call Witnesses"), and witnesses who may be called to testify ("May-Call Witnesses"):

New Mexico's Will-Call Witnesses:

1. **Richard G. Allen, Ph.D., P.E.**
c/o New Mexico Office of the Attorney General

Dr. Allen's expected testimony will include but not be limited to issues raised and matters and opinions discussed in his expert reports and disclosures, supplemental disclosures, depositions in this matter, and responses at trial to fact or expert evidence presented.

2. **Margaret Barroll, Ph.D.**
c/o New Mexico Office of the Attorney General

Dr. Barroll's expected expert testimony will include, but not be limited to, issues raised and matters and opinions discussed in her expert reports and disclosures, supplemental disclosures, depositions and declarations in this matter, and responses at trial to fact or expert evidence presented.

Dr. Barroll's expected percipient witness testimony will include but not be limited to her knowledge and experience in hydrology and in her work at the Office of the State Engineer on Lower Rio Grande and Rio Grande Project issues, issues raised and matters discussed in depositions and declarations in this matter, and responses at trial to fact or expert evidence presented.

3. **Gilbert Barth, Ph.D.**
c/o New Mexico Office of the Attorney General

Dr. Barth's expected testimony will include but not be limited to issues raised and matters and opinions discussed in his expert reports and disclosures, supplemental

¹ This witness list is provided for the "Phase I" portion of the trial on liability as described by the Special Master in ¶ IX of the April 9, 2021 Trial Management Order [Dkt. 501] and ¶ 3 of the June 4, 2021 Order [Dkt.508]. New Mexico anticipates separate witness and exhibit lists will be required for "Phase 2" of the trial on quantification of damages and remedies.

disclosures, depositions in this matter, and responses at trial to fact or expert evidence presented.

4. Gregory M. Carrasco

Vice President/Senior Relationship Manager Farm Credit of New Mexico
2000 Las Vegas Court
Las Cruces, NM 88007

Mr. Carrasco's expected testimony will include but not be limited to farm lending and valuation of agricultural land uses and water rights, potential impacts of fallowing and/or depletion reduction to farming and ancillary businesses, economic value of farming and ancillary businesses in southern New Mexico, and responses at trial to fact or expert evidence presented.

5. John Carron, Ph.D.

c/o New Mexico Office of the Attorney General

Dr. Carron's expected testimony will include but not be limited to issues raised and matters and opinions discussed in his expert reports and disclosures, supplemental disclosures, depositions in this matter, and responses at trial to fact or expert evidence presented.

6. John D'Antonio, P.E.

New Mexico State Engineer and
Rio Grande Compact Commissioner for New Mexico
New Mexico Office of the State Engineer
c/o New Mexico Office of the Attorney General

Mr. D'Antonio's expected testimony will include, but not be limited to, his duties, experiences, and obligations as New Mexico State Engineer and as New Mexico Commissioner to the Rio Grande Compact Commission, water rights and water rights administration, interstate compact administration and management, Rio Grande Compact Commission authority and actions, New Mexico rights and obligations under the Rio Grande Compact, Compact allocation, historic operations of the Rio Grande Compact and Rio Grande Project, interactions with the United States and Texas and EBID regarding water issues, the 2008 Operating Agreement, the 2011 Credit Water Release, injuries sustained and/or damages incurred by New Mexico, issues raised and matters discussed in his deposition and declarations, and responses at trial to fact or expert evidence presented.

7. Scott Eschenbrenner

Special Assistant to the President New Mexico State University
c/o New Mexico Office of the Attorney General

Mr. Eschenbrenner's expected testimony will include but not be limited to an overview of the NMSU mission and status as a land grant university, NMSU's economic impacts in the region, agriculture in the Lower Rio Grande in New

Mexico, economic value and impacts of agriculture in the LRG and New Mexico, the use of water for university and research purposes, water sources, water rights, water operations, historic water use, the impacts of the 2008 Operating Agreement on surface water supply, and responses at trial to fact or expert evidence presented.

8. **Shayne Franzoy**
2552 Calle De Vista
Las Cruces, NM 88007

Mr. Franzoy's expected testimony will include but not be limited to sources of irrigation water in New Mexico's Lower Rio Grande, impacts of the 2008 Operating Agreement, farming operations, EBID operations, interactions with the OSE, the economics of New Mexico's Lower Rio Grande agriculture, and responses at trial to fact or expert evidence presented.

9. **Jorge Garcia, Ph.D.**
Former Director of Utilities, City of Las Cruces
c/o New Mexico Office of the Attorney General

Dr. Garcia's expected testimony will include but not limited to all aspects of the City of Las Cruces water use and planning, utility management, issues raised and matters discussed at his deposition, and responses at trial to fact or expert evidence presented.

10. **Mike Greene**
Project Manager, Water Resources PNM Resources
c/o New Mexico Office of the Attorney General

Mr. Greene's expected testimony will include but not be limited to PNM actions and plans as to the Afton plant operations and water usage, the customer base and the economic impact of the electric utility throughout the region, financial investments, sources of water for electric utility operation, the acquisition process and ownership of water rights, PNM historic water use, water operations and planning, and responses at trial to fact or expert evidence presented.

11. **Randy Garay**
13636 NM-187
Arrey, NM 87930

Mr. Garay's expected testimony will include but not be limited to sources of irrigation water in New Mexico's Lower Rio Grande, impacts of the 2008 Operating Agreement, farming and plant operations, EBID operations, interactions with the OSE, the economics of New Mexico's Lower Rio Grande agriculture, and responses at trial to fact or expert evidence presented.

- 12. Dana Hoag, Ph.D.**
c/o New Mexico Office of the Attorney General

Dr. Hoag's expected testimony will include but not be limited to issues raised and matters and opinions discussed in his expert reports and disclosures, supplemental disclosures, depositions in this matter, and responses at trial to fact or expert evidence presented.

- 13. David Jordan, M.S., P.E.**
c/o New Mexico Office of the Attorney General

Mr. Jordan's expected testimony will include but not be limited to issues raised and matters and opinions discussed in his expert reports and disclosures, supplemental disclosures, depositions in this matter, and responses at trial to fact or expert evidence presented.

- 14. Nicolai Kryloff [by designation]**
c/o United States Department of Justice

Mr. Kryloff's designated testimony will include but not be limited to his opinions on the intent of the parties to the Rio Grande Compact of 1938, including the issues of water allocation or apportionment, groundwater, return flows, and issues raised and matters and opinions discussed in his May 31, 2019 expert report and in his deposition.

- 15. Steven Larson, M.S., P.H.**
c/o New Mexico Office of the Attorney General

Mr. Larson's expected testimony will include but not be limited to issues raised and matters and opinions discussed in his and Gilbert Barth's expert reports and disclosures, supplemental disclosures, depositions in this matter, and responses at trial to fact or expert evidence presented.

- 16. John Longworth, P.E.**
Senior Engineering Executive, New Mexico Office of the State Engineer Former
Director of the New Mexico Interstate Stream Commission
New Mexico Office of the State Engineer
c/o New Mexico Office of the Attorney General

Mr. Longworth's expected testimony will include but not be limited to interstate compact administration, consumptive irrigation requirements, evapotranspiration, Lower Rio Grande water use and sources, the 2008 Operating Agreement including impacts on New Mexico water users, issues raised and matters discussed at his deposition in this matter, and responses at trial to fact or expert evidence presented.

17. Estevan Lopez, P.E.

Former Executive Director of the New Mexico Interstate Stream Commission
c/o New Mexico Office of the Attorney General

Mr. Lopez's expected expert testimony will include, but not be limited to, issues raised and matters and opinions discussed in his expert reports and disclosures, supplemental disclosures, depositions, and declarations in this matter, and responses at trial to fact or expert evidence presented.

Mr. Lopez's expected percipient witness testimony will include, but not be to, limited his knowledge and experiences as New Mexico's Interstate Stream Director, and as Commissioner of the Bureau of Reclamation, and issues raised and matters discussed in his depositions and declarations in this matter, and responses at trial to fact or expert evidence presented.

18. Rosalba Montes [by Designation]

Supervisory Civil Engineer, Area operations Manager,
Upper Rio Grande Flood Field Offices
U.S. Section International Boundary and Water Commission
c/o United States Department of Justice

Ms. Montes' designated testimony will include but not be limited to Mexico water use and operations, IBWC river channel maintenance obligations and actions, Rio Grande Project Operations as they relate to Mexico, deliveries to the American Canal, water supply, allocation procedures, water accounting procedures, vegetation and sediment management within and adjacent to the channel of the Rio Grande, surface and groundwater diversions or uses in Mexico from groundwater aquifers, effects of groundwater pumping on Project releases, diversions, deliveries, and return flows, and issues raised and matters discussed in her deposition.

19. Daniel Morrissey, M.S., RPG

c/o New Mexico Office of the Attorney General

Mr. Morrissey's expected testimony will include but not be limited to issues raised and matters and opinions discussed in his expert reports and disclosures, supplemental disclosures, depositions in this matter, and responses at trial to fact or expert evidence presented.

20. Lewis Munk, Ph.D.

c/o New Mexico Office of the Attorney General

Dr. Munk's expected testimony will include but not be limited to issues raised and matters and opinions discussed in his expert reports and disclosures, supplemental disclosures, depositions in this matter, and responses at trial to fact or expert evidence presented.

- 21. David Salopek**
1985 Salopek Road Las Cruces, NM 88005

Mr. Salopek's expected testimony will include but not be limited to sources of irrigation water in New Mexico's Lower Rio Grande, impacts of the 2008 Operating Agreement, farming operations, EBID operations, interactions with the OSE, the economics of New Mexico's Lower Rio Grande agriculture, and responses at trial to fact or expert evidence presented.

- 22. Rolf Schmidt-Petersen**
Director, New Mexico Interstate Stream Commission New Mexico Office of the State Engineer
c/o New Mexico Office of the Attorney General

Mr. Schmidt-Petersen's expected testimony will include, but not be limited to, his role and experiences as Director of the Interstate Stream Commission, his role as the Rio Grande Bureau Chief, his role and experiences as Engineer Advisor to the Rio Grande Compact Commission, the role of the Interstate Stream Commission in New Mexico water administration, regional water planning, interstate compact administration, credit water releases, the relationship between the Rio Grande Compact Commission and the Rio Grande Project, interactions between the Parties related to the Rio Grande Compact, Compact accounting, the impacts of the 2008 Operating Agreement, injuries sustained and/or damages incurred by New Mexico, issues raised and matters discussed in his depositions and declarations, and responses at trial to fact or expert evidence presented.

- 23. Ryan Serrano**
LRG Water Master
Water Resource Allocation Program Water Rights Division
New Mexico Office of the State Engineer
c/o New Mexico Office of the Attorney General

Mr. Serrano's expected testimony will include, but not be limited to, his role and experiences as the Water Master in the Lower Rio Grande, well metering, data collection and computation, water rights administration, compliance, and enforcement, water sources and use in the Lower Rio Grande, farming, agricultural, and irrigation practices in the Lower Rio Grande, water infrastructure in the Lower Rio Grande, issues raised and matters discussed in his depositions and declarations, and responses at trial to fact or expert evidence presented.

- 24. Steve Setzer, M.S., P.E.**
c/o New Mexico Office of the Attorney General

Mr. Setzer's expected testimony will include, but not be limited to, issues raised and matters and opinions discussed in his expert reports and disclosures, supplemental disclosures, depositions in this matter, and responses at trial to fact or expert evidence presented.

- 25. Charles Spalding, M.S., PG**
c/o New Mexico Office of the Attorney General

Mr. Spalding's expected testimony will include but not be limited to issues raised and matters and opinions discussed in his expert reports and disclosures, supplemental disclosures, depositions in this matter, and responses at trial to fact or expert evidence presented.

- 26. Sally Stahmann-Solis**
Stahmanns Inc.
P.O. Box 70
San Miguel, NM 88058

Ms. Stahmann-Solis's expected testimony will include but not be limited to sources of irrigation water in New Mexico's Lower Rio Grande, impacts of the 2008 Operating Agreement, farming operations, EBID operations, interactions with the OSE, the economics of New Mexico's Lower Rio Grande agriculture, and responses at trial to fact or expert evidence presented.

- 27. Jennifer Stevens, Ph.D.**
c/o New Mexico Office of the Attorney General

Dr. Stevens's expected testimony will include but not be limited to issues raised and matters and opinions discussed in her expert reports and disclosures, supplemental disclosures, depositions and declarations in this matter, and responses at trial to fact or expert evidence presented.

- 28. Gregory Sullivan, M.S., P.E.**
c/o New Mexico Office of the Attorney General

Mr. Sullivan's expected testimony will include but not be limited to issues raised and matters and opinions discussed in his expert reports and disclosures, supplemental disclosures, depositions and declarations in this matter, and responses at trial to fact or expert evidence presented.

- 29. Texas Commission on Environmental Quality Representatives**
(Robin Cypher, Cari-Michele La Callie) [By designation]
c/o State of Texas

Designated testimony by any of these witnesses will include but not be limited to the role and activities of the TCEQ, water administration, Texas regional and state water use and planning, water administration, issues raised and matters discussed in their respective depositions.

- 30. Texas Water Development Board Representative
(Temple McKinnon) [By designation]**
c/o State of Texas

Designated testimony by Ms. McKinnon will include but not be limited to the role and activities of the TWDB, Texas regional and state water use and planning, Texas groundwater administration, groundwater use in the El Paso Valley, and issues raised and matters discussed in their depositions if applicable.

- 31. Bryan Thoreson, Ph.D., P.E.**
c/o New Mexico Office of the Attorney General

Dr. Thoreson's expected testimony will include but not be limited to issues raised and matters and opinions discussed in his expert reports and disclosures, supplemental disclosures, depositions in this matter, and responses at trial to fact or expert evidence presented.

- 32. Heidi Welsh, P.H.**
c/o New Mexico Office of the Attorney General

Ms. Welsh's expected testimony will include but not be limited to issues raised and matters and opinions discussed in her expert reports and disclosures, supplemental disclosures, depositions in this matter, and responses at trial to fact or expert evidence presented.

- 33. Brent Westmoreland**
CRRUA Executive Director
c/o New Mexico Office of the Attorney General

Mr. Westmoreland's expected testimony will include but not be limited to an overview of the CRRUA operations, service area, and customer base, sources of water, water available for offsets, water rights, water operations, the economic impact of CRRUA services, historic water use, and responses at trial to fact or expert evidence presented.

- 34. Lee Wilson, Ph.D.**
c/o New Mexico Office of the Attorney General

Dr. Wilson's expected testimony will include but not be limited to rebuttal of United States expert Phillip King by providing data on City of Las Cruces' water use, water rights, wells, hydrogeology, wastewater discharges, holdings of Rio Grande surface water rights, and how the City of Las Cruces offsets effects of its pumping on the Rio Grande. He may testify to his involvement in application by the City of El Paso to appropriate groundwater. He will also address issues raised and matters and opinions discussed in his expert disclosures, supplemental disclosures, depositions and declarations in this matter, and responses at trial to fact

or expert evidence presented.

35. Witnesses necessary for authentication of documents or to otherwise meet the requirements of the Federal Rules of Evidence.

New Mexico's May-Call Witnesses:

36. Gilbert Anaya

Supervisory Natural Resource Specialist,
Environmental Management Division,
U.S. Section International Boundary and Water Commission
c/o United States Department of Justice

Mr. Anaya's expected testimony will include but not be limited to Mexico water use and operations, IBWC river channel maintenance obligations and actions, Rio Grande Project Operations as they relate to Mexico, deliveries to the American Canal, water supply, allocation procedures, water accounting procedures, vegetation and sediment management within and adjacent to the channel of the Rio Grande, surface and groundwater diversions or uses in Mexico from groundwater aquifers, effects of groundwater pumping on Project releases, diversions, deliveries, and return flows, and issues raised and matters discussed in his deposition.

37. John Balliew

President/CEO
El Paso Water Utilities
1154 Hawkins Blvd.
El Paso, TX 79925

Mr. Balliew's expected testimony will include but not be limited to operation of the El Paso Water Utilities' water system, contracts between El Paso Water Utilities, EPCWID, Hudspeth County, and the Bureau of Reclamation, sources of municipal water for the City of El Paso, City of El Paso effluent, efforts to obtain groundwater for City use, subjects identified in his expert disclosure by Texas, and issues raised and matters and opinions discussed in his depositions.

38. Al Blair

Engineer Consultant to EPCWID
c/o Texas Counsel

Mr. Blair's expected testimony will include but not be limited to technical analyses of the Rio Grande Project operations including allocation, accounting, and delivery both prior to 2006 and after, hydrologic analyses he has performed, the Rio Grande Project water system (including the districts), groundwater use and pumping in Texas, EPCWID operations and water rights, maintenance of the Rio Grande channel, negotiations of and considerations for operating agreements through the

years, relationship between EPCWID and EBID, the 2008 Operating Agreement, subjects identified in his expert disclosures by Texas and the United States, and issues raised and matters and opinions discussed in his depositions.

39. Daniel Chavez

General Manager, Hudspeth County Conservation and Reclamation
71920 Texas Hwy 20
Fort Hancock, TX 79839

Mr. Chavez's expected testimony will include but not be limited to the history and operation of the Hudspeth County Conservation and Reclamation District No. 1, its contracts with the Bureau of Reclamation, and any other issues raised and matters discussed in his deposition.

40. Filiberto Cortez

Special Assistant to the Albuquerque Area Manager,
former Manager, El Paso Field Office
Bureau of Reclamation
c/o United States Department of Justice

Mr. Cortez's expected testimony will include but not be limited to Rio Grande Project history, Rio Grande Project operations, including allocation, accounting, and deliveries, historic operating agreements and negotiations for operating agreements and analyses undertaken for such negotiations (including the 2008 Operating Agreement), the 2008 Operating Agreement, determination and implementation of allocation methodologies including the D1/D2 and D3 methodologies, relationship between the Bureau of Reclamation, EBID, and EPCWID, relationship between the Rio Grande Compact Commission and the Rio Grande Project, Compact credit water, issues raised and matters and opinions discussed in his depositions.

41. Alma De Anda

Land and Water Rights Manager El Paso Water Utilities
1154 Hawkins Blvd.
El Paso, TX 79925

Ms. De Anda's expected testimony will include but not be limited to the administration of contracts between the City of El Paso and Project water users, the management of Project water rights lands owned or leased by El Paso, efforts to obtain groundwater for City use, and issues raised and matters discussed in her deposition.

42. Dale Doremus

c/o New Mexico Office of the Attorney General

Ms. Doremus' expected testimony will include water quality issues in the LRG, the

Salinity Coalition and interactions with Texas and the United States regarding water quality issues, and responses at trial to fact or expert evidence presented.

43. Edward Drusina

Former Commissioner,
U.S. Section International Boundary and Water Commission
c/o United States Department of Justice

Mr. Drusina's expected testimony will include but not be limited to Mexico water use and operations, IBWC river channel maintenance obligations and actions, Rio Grande Project Operations as they relate to Mexico, deliveries to the American Canal, water supply, allocation procedures, water accounting procedures, vegetation and sediment management within and adjacent to the channel of the Rio Grande, surface and groundwater diversions or uses in Mexico from groundwater aquifers, effects of groundwater pumping on Project releases, diversions, deliveries, and return flows, and issues raised and matters discussed in his deposition.

44. Gary Esslinger

Treasurer-Manager, EBID
530 S. Melendres St.
Las Cruces, NM 88005
c/o EBID

Mr. Esslinger's expected testimony will include, but not be limited to, EBID operations and infrastructure, Rio Grande Project operations including allocation and accounting, water sources and usage in the Lower Rio Grande, groundwater pumping in the Lower Rio Grande, EBID relationship with the OSE, EBID relationship with EPCWID, maintenance of the Rio Grande channel, the negotiation and operation of the 2008 Operating Agreement, subjects identified in the expert disclosure by Texas, and issues raised and matters and opinions discussed in his depositions and declarations in this matter.

45. Michelle Estrada-Lopez

Project Manager
Albuquerque Area Office, Bureau of Reclamation
c/o United States Department of Justice

Ms. Estrada-Lopez's expected testimony will include but not be limited to Project water accounting and allocations, Project operations, Compact credit water, subjects identified in the expert disclosure by the United States, and issues raised and matters and opinions discussed in her deposition.

46. Ian Ferguson

Hydrologic Engineer Bureau of Reclamation
c/o United States Department of Justice

Dr. Ferguson's expected testimony will include but not be limited to Rio Grande Project operations including allocation and accounting, water sources for the Rio Grande Project, analysis of and impacts of the 2008 Operating Agreement, work on Lower Rio Grande modeling, involvement in Environmental Assessment and Environmental Impact Statement for the 2008 Operating Agreement, subjects identified in his expert disclosure by the United States, issues raised and matters and opinions discussed in his deposition, and responses at trial to fact or expert evidence presented.

47. William Finn

Supervisory Hydrologist, Chief, Water Accounting,
U.S. Section International Boundary and Water Commission
c/o United States Department of Justice

Mr. Finn's expected testimony will include but not be limited to Mexico water use and operations, IBWC river channel maintenance obligations and actions, Rio Grande Project Operations as they relate to Mexico, deliveries to the American Canal, water supply, allocation procedures, water accounting procedures, vegetation and sediment management within and adjacent to the channel of the Rio Grande, surface and groundwater diversions or uses in Mexico from groundwater aquifers, effects of groundwater pumping on Project releases, diversions, deliveries, and return flows, and issues raised and matters discussed in his depositions.

48. Art Ivey

c/o State of Texas (EPCWID)

Mr. Ivey's expected testimony will include, but not be limited to, his role and responsibilities as a Board member of EPCWID, farming, crop, and irrigation issues in the Texas portion of the Rio Grande Project, water order processes, water supply and sources, water quality, agricultural trends, negotiation of and impacts of the 2008 Operating Agreement, subjects identified in his expert disclosure by Texas, and issues raised and matters and opinions discussed in his depositions.

49. Phillip King, Ph.D.

Engineer Consultant to EBID
c/o Texas Counsel

Dr. King's expected testimony will include, but not be limited to, technical analyses of the Rio Grande Project, Project history, historic and current Rio Grande Project operations including allocation and accounting, and agricultural practices both prior to 2006 and after, hydrology of the waters systems within the Rio Grande Project, conjunctive use by EBID constituents, maintenance of the Rio Grande channel, relationship between EBID and EPCWID, subjects identified in his expert disclosures by Texas and the United States, and issues raised and matters and

opinions discussed in his depositions.

- 50. Jean M. Moran, PG, CHG**
Supervising Hydrogeologist
Stetson Engineers, Inc.
c/o U.S. Department of Justice

Ms. Moran's expected testimony will include but not be limited to issues raised and matters and opinions discussed in her expert reports and disclosures, supplemental disclosures, depositions in this matter, and responses at trial to fact or expert evidence presented.

- 51. Scott Reinert, PE**
Water Resources Manager, El Paso Water Utilities 1154 Hawkins Blvd.
El Paso, TX 79925

Mr. Reinert's expected testimony will include but not be limited to the operation of El Paso Water Utilities' water system, groundwater modeling in the Hueco Bolson in Texas, impacts of groundwater pumping in Texas and Mexico, efforts to obtain groundwater for City use, and issues raised and matters discussed in his deposition.

- 52. Jesus Reyes**
General Manager, EPCWID
c/o State of Texas

Mr. Reyes's expected testimony will include but not be limited to his role and responsibilities at EPCWID, farming, crop, and irrigation issues in the Texas portion of the Rio Grande Project, ECWID history, operations, and infrastructure, water order processes, water use, supply, rights, and sources, water quality, agricultural trends, negotiation of and impacts of the 2008 Operating Agreement, and issues raised and matters discussed in his depositions.

- 53. Robert Rios**
Water Master, EPCWID
c/o State of Texas

Mr. Rios's expected testimony will include but not be limited to his duties and responsibilities at EPCWID, EPCWID history, infrastructure, and operations, and issues raised and matters discussed in his deposition.

- 54. Carlos Rubenstein**
Texas Water Development Board
c/o State of Texas

Mr. Rubenstein's expected testimony will include but not be limited to the role and activities of the TWDB, Texas regional and state water use and planning, Texas

groundwater administration, groundwater use and administration in the El Paso Valley.

55. Herman Settemeyer

Former Engineer Advisor to the Texas Commissioner of the Rio Grande Compact Commission
c/o State of Texas

Mr. Settemeyer's expected testimony will include, but not be limited to, the proceedings and actions of the Rio Grande Compact Commission, Compact apportionment, Compact credit water, groundwater pumping in the Rio Grande Compact areas, communications among the States in the context of the Rio Grande Compact Commission, effect of Rio Grande Compact resolutions and rules, the role of the Engineer Advisors to the Rio Grande Compact, Texas laws and practices relating to water management, Texas water adjudication, the 2008 Operating Agreement, Project operations and allocations, transfer of Project water to municipal uses, and issues raised and matters discussed in his deposition.

56. New Mexico Office of the State Engineer: Former State Engineers / Former New Mexico Rio Grande Compact Commissioners (Tom Blaine, Tom Turney, Scott Verhines)

c/o New Mexico Office of the Attorney General

Expected testimony by New Mexico's former State Engineers / Compact Commissioners may include but not be limited to water resource management, water rights administration, the role of the Rio Grande Compact Commission and Commissioners, Compact apportionment, communications with Texas and the United States regarding water management issues, impacts of the 2008 Operating Agreement, and responses at trial to fact or expert evidence presented.

57. Sally Spener

Foreign Affairs Officer, Secretary
U.S. Section International Boundary and Water Commission
c/o United States Department of Justice

Ms. Spener's expected testimony will include but not be limited to Mexico water use and operations, the effects of the 2008 Operating Agreement on Treaty obligations to Mexico, IBWC river channel maintenance obligations and actions, Rio Grande Project Operations as they relate to Mexico, deliveries to the American Canal, water supply, allocation procedures, water accounting procedures, vegetation and sediment management within and adjacent to the channel of the Rio Grande, surface and groundwater diversions or uses in Mexico from groundwater aquifers, effects of groundwater pumping on Project releases, diversions, deliveries, and return flows, and issues raised and matters discussed in her deposition.

- 58. John Stomp**
Former Chief Operating Officer
Albuquerque Bernalillo County Water Utility Authority c/o New Mexico Office
of the Attorney General

Mr. Stomp's expected testimony may include but not be limited to the Water Authority's water supply and demand, operations, groundwater management, conservation programs, reliance on New Mexico law for water rights administration, coordination with New Mexico that has ensured the State's compliance with the Rio Grande Compact in the Middle Rio Grande, including Article IV, potential ramifications for the Water Authority from the resolution of *Texas v. New Mexico*, Original No. 141, credit water releases, issues raised and matters discussed in his deposition, and responses at trial to fact or expert evidence presented.

- 59. Texas Commission on Environmental Quality Representatives**
(Kathy Alexander, Kelly Mills, David Galindo)
c/o State of Texas

Expected testimony by any of these witnesses will include but not be limited to the role and activities of the TCEQ, water administration, Texas regional and state water use and planning, water administration, issues raised and matters discussed in their respective depositions.

- 60. Texas Water Development Board Representative**
(Larry French)
c/o State of Texas

Mr. French's expected testimony may include but not be limited to the role and activities of the TWDB, Texas regional and state water use and planning, Texas groundwater administration, groundwater use in the El Paso Valley, and issues raised and matters discussed in their depositions if applicable.

In addition to the foregoing, New Mexico reserves the right to call any of the witnesses identified or disclosed by Texas, the United States, or Colorado, including designated experts. New Mexico also reserves the right to call rebuttal witnesses as necessary. Witnesses may testify, in addition to the areas listed for each witness, to any subject touched upon during their deposition, or any declaration submitted in connection with this case.

Respectfully submitted,

/s/ Jeffrey J. Wechsler

HECTOR H. BALDERAS
New Mexico Attorney General
TANIA MAESTAS
Deputy Attorney General
CHOLLA KHOURY
Assistant Attorney General
ZACHARY E. OGAZ
Assistant Attorney General
P.O. Drawer 1508
Santa Fe, New Mexico 87501
505-239-4672

JEFFREY J. WECHSLER
Special Assistant Attorney General
KALEB W. BROOKS
MONTGOMERY & ANDREWS, P.A.
325 Paseo de Peralta
Santa Fe, NM 87501
jwechsler@montand.com

JOHN B. DRAPER
Special Assistant Attorney General
CORINNE E. ATTON
DRAPER & DRAPER LLC
325 Paseo de Peralta
Santa Fe, NM 87501
john.draper@draperllc.com
505-570-4591

MARCUS J. RAEL, JR.*
LUIS ROBLES
SUSAN BARELA
Special Assistant Attorneys General
Robles Rael & Anaya
500 Marquette Ave NW #700
Albuquerque, NM 87102
marcus@roblesrael.com
505-242-2228

**Counsel of Record*

BENNETT W. RALEY
LISA M. THOMPSON
MICHAEL A. KOPP
Special Assistant Attorneys General
TROUT RALEY
1120 Lincoln Street, Suite 1600
Denver, Colorado 80203
303-861-1963

EXHIBIT C

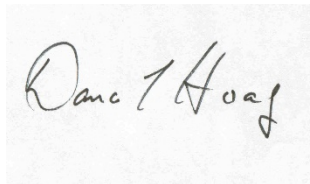
STATE OF TEXAS vs STATE OF NEW MEXICO AND STATE OF COLORADO,
No. 141 ORIGINAL.

Expert Report of Dr. Dana LK Hoag

October 31, 2019

Prepared for:
State of New Mexico

Prepared by:

A handwritten signature in black ink that reads "Dana LK Hoag". The signature is written in a cursive style with a large 'D' and 'H'.

Dr. Dana LK Hoag

415 E. Laurel St
Fort Collins, CO 80524
Dhoag100@gmail.com

I. INTRODUCTION

My name is Dr. Dana Hoag. Detailed information about my career can be found in my curriculum vitae in Appendix C. I received my Bachelor's degree in Farm and Ranch Management and Master's degree in Agricultural Economics from Colorado State University in 1980 and 1981, respectively; I received my Ph.D. in Agricultural Economics from Washington State University in 1984. My first position was as an Assistant Professor, followed by Associate Professor, at North Carolina State University, with a 50-50 split between research and agricultural extension. I wrote my Dissertation about soil conservation economics and focused my career on resource issues related to farms, mostly soil, water, and wildlife. I moved on to a research-teaching position at Colorado State University after 9 years in North Carolina. I later added a policy dimension to my skill set, as policy issues were increasingly a factor in the work I do on natural resource issues related to production agriculture. I teach, or have taught, undergraduate and graduate level courses in policy, production, risk management, farm management, and environmental/resource economics.

Being an Extension Economics Specialist in North Carolina had an important influence on my career and opinions offered in this expert rebuttal report. Extension Specialists are responsible for helping county agents build educational programs. North Carolina State University had a large and experienced staff of Extension Economists. I learned a lot of practical, real-world lessons from these experts, and by working directly with farmers, about understanding farm economics, which I apply in the courses I instruct, research I conduct and in the opinions reflected herein.

I have now been a Professor in Agricultural Economics for over 30 years. I have been involved with a number of projects requiring analyses similar to those needed for this project. In 1989, I was invited to spend a year helping the U.S. Environmental Protection Agency, Office of Policy Analysis, with issues relating to how the "Farm Bill" effects the environment. I helped them analyze and understand how various parts of the Bill could be leveraged to enhance environmental quality, especially soil and water. During that time, I moderated a Congressional Policy Workshop on potential for agricultural chemical contamination in groundwater and was an invited speaker about sustainable agriculture for The Joint Economic Committee. I have been included in projects involving ground and surface water management and/or contamination, agricultural sustainability, livestock waste management, wildlife conflicts with farmers, soil conservation, conservation easements on farms and ranches, and agricultural policy.

I have worked on several regional water quantity/quality projects. For example, in Colorado I worked for many years with the Agricultural Research Service on projects involving water use and quality and on developing computer assisted decision aids that could be used to evaluate on-farm tradeoffs between pollution (e.g. groundwater contamination from nutrients or chemicals) and crop production. I worked on a similar, but much larger scale, project on nutrient management focused on the South Platte and Poudre river basins in Colorado to establish a center called CLEAN (<https://erams.com/clean>). The center develops educational programming and technologies to help farmers make environmentally friendly decisions related to nutrients (nitrogen and phosphorus). In another project, I worked in the Lower Arkansas River Basin (LARV) to help local water users resolve conflicts between water use and nitrogen and selenium contamination. I supervised a Ph.D. and Masters student that did their research on evaluating and solving tradeoffs in the LARV (e.g.

Orlando, 2017 and Sharp, 2017). We produced journal and Extension articles. One of those publications, which is most closely related to the technical economic issues in this project, was entitled “The Economics of Irrigation in Colorado’s Lower Arkansas River Valley” (Osborn et. al, 2017). The LARV project concluded with two local full-day workshops on the economics of irrigation. All of our activities were coordinated with a local stakeholder group called the Arkansas River Management Action Committee, which provided me with advice and direction from local growers and water advisors.

My experience has resulted in multiple awards in teaching, research and extension. I have published over 120 refereed journal articles, 5 books, and over 170 other publications. I have been invited to present my ideas or findings over 75 times, and presented in professional settings over 275 times.

I am being compensated \$200/hr for my services, which is not dependent upon the outcome of this case. I have not provided deposition or court testimony within the last four (4) years.

II. ASSIGNMENT

Counsel for the State of New Mexico asked me to evaluate and comment on the economic analysis, findings and report prepared for the State of Texas in *Texas v. New Mexico and Colorado* No. 141, Original, which was prepared and submitted by Dr. David Sunding. Dr. Sunding’s Expert Report provides estimates of alleged economic injury to Texas for the period of 1985 through 2016. My objective is to evaluate the veracity of these estimates. I formulate my rebuttal opinions, in part, upon information provided by Dr. Sunding, and other experts for the state of New Mexico, including Dr. Lewis Munk and Mr. Greg Sullivan of Spronk Water Engineers. Furthermore, I applied learnings from the District IV Rio Grande Water Master Ryan Serrano and farmers in the Rincon and Mesilla Basins in formulating my opinions on the alleged agricultural damages by Dr. Sunding. The Expert Report provided by Dr. Sunding examines farms in the El Paso County Water Improvement District Number 1 (EPCWID), Hudspeth County Conservation & Reclamation District 1 (HCCRD), and urban water consumers in the El Paso Municipal Utility (EPWU).

III. REBUTTAL OPINIONS

It was important for me to reproduce Dr. Sunding’s key damage estimates in order to evaluate the veracity of relevant data, assumptions, and calculations. Some information about his data and calculations can be found in his report, but additional information is required. That information was found in Excel and other supplemental files that Dr. Sunding provided, which further relied on R files (a popular statistical package). I extracted information from R files that showed how key calculations in Sunding’s Tables 1-6 were made, then adapted and annotated two Excel files that Dr. Sunding provided (“Tables in Report” and “cropchoice results”), to create two supplemental Excel files that I provide as part of my report, “Economic Damage Analysis” and “R Table 6,” respectively. A complete description of this process and detailed explanations of variables used and calculations that are made in Sunding-Tables 1-6 can be found in “Appendix A: Detailed Guide to Sunding Data and Calculations.”

Dr. Sunding sums up crop damages in two main scenarios. The first scenario applies to crop yields

for historically irrigated acreage in EPCWID and HCCRD and presumes that damages are based on alleged elevated salt levels applied to crops that result from blending groundwater with surface water from the Rio Grande, with the presumption that groundwater pumped from the aquifers in the El Paso Valley are more saline than surface waters. The second scenario allows for the acreage in each major crop type to shift from presumed low economic value crops to high economic value crops in response to reduced salinity levels predicted if New Mexico reduces groundwater pumping by 60%. The hypothetical reduction of groundwater pumping in New Mexico by 60% was a prescribed amount provided by Dr. Hutchison to Dr. Sunding, without additional or independent analysis (Sunding, paragraph 3). Dr. Sunding also estimates damages to urban water consumers in the EPWU due to the elevated salts as the utility pumps more groundwater to offset alleged surface water losses.

Since actual damages cannot be observed, Dr. Sunding must estimate a hypothetical crop portfolio that might exist if New Mexico had reduced groundwater pumping by 60%. This requires him to develop estimates that are based on hypothetical data and assumptions. As I show throughout this report, and as documented and argued by other experts representing the State of New Mexico, the scope and accuracy of the data available, and assumptions and methods used, are insufficient to develop incontrovertible damage estimates, especially at the sub-regional scale.

The remainder of my opinions given below address the impact of critical data and/or assumptions on agricultural and urban damage estimates in Dr. Sunding's report. Since damages are highly dependent on presumed data and assumptions, I reserve the right to make additional computations at a later date if additional or subsequent findings in this case influence the basic assumptions of the Texas economic analysis.

Opinion 1 - Inaccurate assumptions about blending groundwater with surface water to meet irrigation demand

Dr. Sunding's damage estimates are based on a hypothetical increase in groundwater pumping in Texas to offset the claimed reduction in surface water from New Mexico. For agriculture, Dr. Sunding makes the assumption that all farmers in EPCWID and HCCRD mix ground and surface water at a constant rate over the entire growing season (paragraph 72). This conclusion conflicts with the actual practice of conjunctive surface and groundwater management applied by farmers in the Rincon, Mesilla and El Paso Valleys, as well as the general practice used by farmers in semi-arid areas in the western United States. Surface water is used when available in sufficient quantity and timing to meet irrigation demands. Groundwater is a supplemental water source, typically used when surface supplies are insufficient (in quantity or timing) for current needs because the cost of power and delivery is more expensive than surface water. Specifically, farmers in the El Paso Valley use supplemental groundwater to enable them to irrigate outside of the typical delivery season for surface water (e.g. March-September). For example, cotton farmers apply a "pre-irrigation," which occurs before surface water is delivered (e.g. see cotton enterprise budget in CARE, 2019). Ryan Serrano also explained that farmers will sometimes irrigate in the winter to drive down salts. Thus, mixing all groundwater and surface water in the region in a constant and consistent manner as described by Dr. Sunding is an exaggerated claim that overstates the adverse impacts of reduced crop yields in the El Paso Valley.

STATE OF TEXAS vs STATE OF NEW MEXICO and STATE OF COLORADO

No. 141 ORIGINAL,

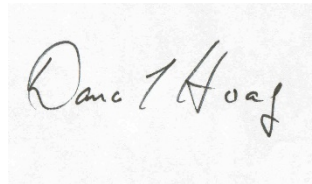
U.S. SUPREME COURT

REBUTTAL EXPERT REPORT

June 15, 2020

Prepared for:
State of New Mexico

by:

A handwritten signature in black ink, reading "Dana LK Hoag". The signature is written in a cursive style with a large initial 'D' and 'H'.

Dr. Dana LK Hoag
415 E. Laurel St
Fort Collins, CO 80524
Dhoag100@gmail.com

A. INTRODUCTION and ASSIGNMENT

My name is Dr. Dana Hoag. Detailed information about my career is contained in my Original Expert Report, dated October 31, 2019, and in my curriculum vitae attached as Appendix B to this Report.

Counsel for the State of New Mexico asked me to evaluate and comment on the economic analysis, findings and report prepared for the State of Texas in *Texas v. New Mexico and Colorado* No. 141, Original, U.S. Supreme Court, by Dr. David Sunding, dated May 31, 2019. Dr. Sunding's May 2019 Report provided estimates of alleged economic injury to Texas, due to groundwater pumping in New Mexico, for the period of 1985 through 2016. I evaluated and commented on his estimates in my October 2019 Report. In this Rebuttal Report, I am responding to the Reply and Supplemental Expert Report of Dr. David Sunding, dated December 30, 2019.

The economic injury (damages) I present in this report are corrections and/or revisions to Dr. Sunding's data or methods that I consider reasonable and necessary to improve the accuracy of his alleged damage estimates. My revisions should not be interpreted as my own independent estimation of damages, which I was not asked by Counsel to provide.

My responses to Dr. Sunding's Reply will be easier to frame and to follow if I first describe the basic methodology used by Dr. Sunding, and summarize my findings in my Original Report (Section B). I summarize my revised findings in Section C. I provide detailed responses to Dr. Sunding's Reply in Section D of this report. I provide a summary of my conclusions in Section E. Additional supporting information, including a list of supplemental files I provide with this report, can be found in Appendix A. Finally, to avoid confusion, I refer to the first reports by Dr. Sunding (dated May 31, 2019) and myself (dated October 31, 2019) as our "Original Reports" and the Reply report by Dr. Sunding (dated December 30, 2019) as his "Reply" and this June 15, 2020 report as my "Rebuttal" report.

Dr. Sunding makes two separate estimates of agricultural damages based on salinity calculations, one based on "historical" acreage of each crop ("Historical Acreage Scenario"), and one where he predicts acreages of each crop ("Predicted Acreage Scenario"). Each scenario is analyzed with and without 60% of the groundwater pumping in New Mexico. Alleged damages in Dr. Sunding's Historical Acreage Scenario result from lost revenue from reduced yields, and from increased costs to apply leaching water on each crop, each year, from 1985-2016, in the two agricultural regions in Texas: El Paso County Water Improvement District No. 1 ("EPCWID" or "El Paso") and Hudspeth County Conservation and Reclamation District No. 1 ("HCCRD" or "Hudspeth"). The alleged damages in his Predicted Acreage Scenario are computed very differently. They result from a change in the profitability of a single predicted crop acreage mix, with and without groundwater pumping in New Mexico. These single-year damages are then multiplied by 32 to represent the damages over the 32-year period from 1985-2016. Annual fluctuations in damages are not considered.

Dr. Sunding also estimates alleged urban damages, where he includes costs to the El Paso Water Utility and its consumers to mitigate or tolerate alleged higher salinity levels.

Dr. Sunding then uses the regional economic modelling program IMPLAN to compute his final damage estimates. He sums agricultural damages from his Predicted Acreage Scenario with urban damages, and then reports direct, induced and indirect damages. Dr. Sunding does not apply IMPLAN to the agricultural damages he estimated using his Historical Acreage Scenario.

In this Rebuttal report, I provide my expert opinion about the accuracy of each several of the damage claims that Dr. Sunding makes in his Reply. I begin with an examination of Dr. Sunding's "primary", and most expensive, damage claim, which I label the Predicted Acreage Scenario. I conclude that this scenario is too flawed to be used for damage estimates because it inaccurately reflects crop acreage, which artificially inflates damages, and additionally inflates damages through the method that Dr. Sunding uses to distribute his predictions over the time period of record, 1985-2016. I then consider his Historical Acreage Scenario. I begin with his estimate, then show how damages change as I correct errors in the data and methodology. Finally, I present the IMPLAN results for the combination of his agricultural estimates (incorporating my corrections) and his urban damages, and properly report Value Added, consistent with printed guidance from IMPLAN.

I label the **Historical Acreage Scenario** accordingly because it is based on a comprehensive review and recording of several unbiased sources of actual historical data from 1936 to 2018 by Dr. Kimmelshue at Land IQ.¹ According to Dr. Kimmelshue in his expert report: "*The United States Geological Survey (USGS-Landsat) was a primary source for these data, along with online state archives, the United States Department of Agriculture (USDA) National Agriculture Imaging Program (NAIP), and commercial vendor products*²(p.7)." I consider this data set to be a reasonable and thorough accounting of the historical record of crop acreage in the study region.

I use the term **Predicted Acreage Scenario** to convey that acreages used differ from the historical record. The predictions are based on a model that Dr. Sunding developed that uses Land IQ data, covering only four of the 32 years in the study period: 1996, 2006, 2014 and 2016. As I explain several times in this report, these predictions are not sufficiently consistent with the data on actual historical acreage or supported by the modeling framework to be reliable.

In his deposition on June 12, 2020³, Dr. Sunding said the following about the two different scenarios:

1 Source: Sunding original report, footnotes in Table 2: (Excel Files: CU_Calc_Hudspeth_2018Update_20190418 and CU_Calc_EPCWID1_2018Update_20190418

2 Expert Report of Joel E. Kimmelshue, Land Use Classification and Consumptive Use Estimates for the Rincon, Mesilla, and El Paso Valleys from 1936-2018, submitted May 31, 2019.

3 Deposition of Dr. David Sunding, Unedited Rough Draft, June 12, 2020.

Well, first, I prefer to think of it [Predicted Acreage Scenario] as I have my damage model where I calculate damages and then I have an ancillary or corroborating analysis of yield changes [Historical Acreage Scenario] (p. 35).

I disagree on two grounds. Firstly, the estimates are too unreliable to use, which I explain fully below. Secondly, Dr. Sunding gives no reason why the Predicted Acreage Scenario should be the primary scenario, and the Historical Acreage Scenario should be solely for corroboration. While Logit models are broadly accepted by economists, Dr. Sunding's application in his Predicted Acreage Scenario is unproven in court or by his peers in academic literature. I would recommend rejecting any journal article utilizing this method on the basis that the econometric model is mis-specified and because the data has major limitations. The methods used in the Historical Acreage Scenario have been around for decades, having been tested, improved, and retested many times. Furthermore, Dr. Sunding does not define what corroboration means nor discuss how the two models compare. I therefore recommend that the time-tested Historical Acreage Scenario, with my corrections, is used as the preferred and more accurate measure of damages.

B. SUMMARY OF ORIGINAL REPORTS

Alleged Agricultural Damages

In my Original Report I examined two mutually exclusive damage claims by Dr. Sunding related to agriculture, which were presented in Tables 4 and 6 of his Original Report. Dr. Sunding asserts that crop yields are reduced as a result of elevated salinity which occurs because farmers in Texas substitute alleged lost surface water from the Rio Grande with their own relatively more saline groundwater. Alleged damages in Table 4 of Dr. Sunding's Original Report included a cost for reduced yields allegedly caused by increased salinity, and a cost for added irrigation water to leach the salts in the soil. In this Table 4, Dr. Sunding used historical data from Land IQ to establish cropping patterns, and to model results to estimate salinity in applied irrigation water, which varied over the time frame of the study from 1985-2016.

In Table 6 of Dr. Sunding's Original Report, he develops a "Predicted Acreage Scenario" by using a multinomial Logit model. In both of his Historical and Predicted Acreage Scenarios, Dr. Sunding derives an estimate for an "actual" condition that represents crop earnings that occurred over the study period 1985-2016, and a "hypothetical" condition to represent what could have been earned if New Mexico had reduced groundwater pumping by 60%. The difference in earnings between these *actual* and *hypothetical* conditions then represents alleged direct damages (lost opportunity for profit⁴).

Predicted Acreage Scenario - In Table 6 of Dr. Sunding's Original Report (his Predicted Acreage Scenario), he used a multinomial Logit model to predict how crop acreages for five

⁴ For the purpose of this Rebuttal, the term profit means revenue – cost (crop yield x crop price – variable costs) per acre. Regional profitability is the profitability per acre for each crop times the acres for each crop.

EXHIBIT D

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IN THE SUPREME COURT OF THE UNITED STATES
BEFORE THE OFFICE OF THE SPECIAL MASTER
HON. MICHAEL J. MELLOY

STATE OF TEXAS)	
)	
Plaintiff,)	
	)	Original Action Case
VS.	)	No. 220141
	)	(Original 141)
STATE OF NEW MEXICO,)	
and STATE OF COLORADO,)	
)	
Defendants.)	

ORAL AND VIDEOTAPED DEPOSITION OF
PEGGY BARROLL
FEBRUARY 6, 2020
VOLUME 2

ORAL AND VIDEOTAPED DEPOSITION of PEGGY BARROLL,
produced as a witness at the instance of the
Plaintiff, and duly sworn, was taken in the
above-styled and numbered cause on February 6, 2020,
from 8:41 a.m. to 3:24 p.m., before Heather L. Garza,
CSR, RPR, in and for the State of Texas, recorded by
machine shorthand, at the DRURY PLAZA HOTEL - SANTA
FE, 828 Paseo De Peralta, Santa Fe, New Mexico,
pursuant to the Federal Rules of Civil Procedure and
the provisions stated on the record or attached
hereto; that the deposition shall be read and signed.

A P P E A R A N C E S

FOR THE PLAINTIFF STATE OF TEXAS:

Mr. Stuart L. Somach
Mr. Francis M. Goldsberry, II (via telephone)
SOMACH SIMMONS & DUNN
500 Capitol Mall, Suite 1000
Sacramento, California 95814
(916) 446-7979
ssomach@somachlaw.com
mgoldsberry@somachlaw.com

FOR THE DEFENDANT STATE OF NEW MEXICO:

Mr. David A. Roman
ROBLES RAEL ANAYA
500 Marquette NW, Suite 700
Albuquerque, New Mexico 87102
(505) 242-2228
droman@roblesrael.com

-and-

Ms. Lisa M. Thompson (via telephone)
Mr. Michael Kopp (via telephone)
TROUT RALEY
1120 Lincoln Street, Suite 1600
Denver, Colorado 80203
(303) 861-1963
lthompson@troutlaw.com
mkopp@troutlaw.com

-and-

Ms. Shelly L. Dalrymple
STATE OF NEW MEXICO
SPECIAL ASSISTANT ATTORNEY GENERAL
130 S. Capitol Street
Concha Ortiz Y Pino Building
Santa Fe, New Mexico 87504
(505) 827-6150
shelly.dalrymple@state.nm.us

1 FOR THE DEFENDANT STATE OF COLORADO:

2 Mr. Chad Wallace
3 COLORADO DEPARTMENT OF LAW
4 1300 Broadway, 7th Floor
5 Denver, Colorado 80203
6 (720) 508-6281
7 chad.wallace@coag.gov

8 FOR THE UNITED STATES:

9 Mr. R. Lee Leininger
10 U.S. DEPARTMENT OF JUSTICE
11 999 18th Street, Suite 370
12 Denver, Colorado 80202
13 (303) 844-1364
14 lee.leininger@usdoj.gov

15 -and-

16 Mr. Christopher B. Rich (via telephone)
17 U.S. DEPARTMENT OF THE INTERIOR
18 125 South State Street, Suite 6201
19 Salt Lake City, Utah 84138
20 (801) 524-5677

21 FOR EL PASO COUNTY WATER IMPROVEMENT DISTRICT NO. 1:

22 Ms. Maria O'Brien
23 MODRALL SPERLING ROEHL HARRIS & SISK, P.A.
24 500 Fourth Street N.W.
25 Albuquerque, New Mexico 87103
(505) 848-1800
mobrien@modrall.com

FOR ELEPHANT BUTTE IRRIGATION DISTRICT:

Ms. Samantha R. Barncastle
BARNCastle LAW FIRM, LLC
1100 South Main, Suite 20
Las Cruces, New Mexico 88005
(575) 636-2377
samantha@h2o-legal.com

1 VIDEOPHOTOGRAPHER:

2 Mr. Gary Goldblum

3
4 ALSO PRESENT:

5 Mr. Ian Ferguson

6 Mr. Jeff Wechsler

7 Mr. Estevan Lopez

8 Mr. John Utton

9 Mr. Gary Esslinger

10 Mr. Phil King

11 Mr. Al Blair

12 Mr. Gilbert Barth (via telephone)

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1 THE VIDEOGRAPHER: Today's date is
2 February 6th, 2020, and we are going on the record.
3 The time is 8:41 a.m. This begins DVD No. 4 in the
4 continuation of Dr. Peggy Barroll. The witness has
5 been sworn in, and you may proceed.

6 PEGGY BARROLL,
7 having been first duly sworn, testified as follows:

8 E X A M I N A T I O N

9 BY MR. LEININGER:

10 Q. Okay. Good morning, Dr. Barroll. This is --
11 for the record, this is Lee Leininger. I'm continuing
12 the questioning this morning. So yesterday, we had
13 discussed the draft AWRMs, and one question I want to
14 go back to, it's the first public draft, Exhibit 11.
15 Do you still have a copy of that in front of you?

16 A. Yes, I do.

17 Q. If you'd turn to Page 14.

18 A. Yes.

19 Q. And see Paragraph AAA --

20 A. Yes.

21 Q. -- called, "Supply administration date." And
22 it reads, "Supply administration date, colon, a date
23 to be determined as necessary by the State Engineer
24 for implementation of supply administration to
25 temporarily curtail junior water rights in years in

1 A. That's correct.

2 Q. Okay. Was there any particular reason why
3 you didn't focus your report on the period before
4 1951?

5 A. I focused on the -- I was requested to focus
6 my work on how the effects of changes in project
7 allocation and accounting have effected New Mexico,
8 particularly with reference to the 2008 operating
9 agreement, and the 2008 operating agreement, of
10 course, brings me to have to focus on the D2 curve of
11 the D2 period, because the 2008 operating agreement
12 springs from the D2 curve to a large extent in its
13 determination of Texas' -- of what EP No. 1's
14 allocation is.

15 Q. Have you done an analysis of the pre 1951
16 allocations?

17 A. Yes. I -- well, pre 1951 allocations, that
18 would be the Bureau's allotments to lands, and
19 actually, they didn't give any -- they didn't set any
20 limiting allotments, at least not any that stood to
21 the end of the year, prior to 1951. Back then, it was
22 simply all lands were entitled to order water equally
23 from Reclamation for delivery. That was the
24 allocation process such as it was prior to 1951.

25 Q. So did you do an analysis of that process?

1 A. Well, there was not really an allocation
2 process. It was the Bureau simply allowed people to
3 order water as they see fit. That was -- I mean, I
4 consider the allocation process when the Bureau is
5 telling the districts or the farmers how much they can
6 order, how much they're entitled to order. That's
7 what I call the allocation process. And prior to '51,
8 there were a few years in which the Bureau was saying,
9 looks like we might be short, everybody start
10 conserving water or you can only order two-and-a-half
11 or three, but by the end of the year, they had dropped
12 that limit. That's the extent of the allocation
13 process prior to 1951.

14 Q. Have you written a report or otherwise
15 provided information, anecdotal or otherwise, with
16 respect to the -- what I will call the allocation
17 process predicated, upon the fact that you've defined
18 that previously, that describes exactly what you just
19 talked about?

20 A. What I've talked about, I've learned from
21 reading the project histories. So what I'm describing
22 is -- is what I've gleaned from reading the project
23 histories of that time period.

24 Q. Have you done an analysis of the amount of
25 water apportioned to Texas under the 1930 -- 1938 Rio

1 Grande Compact?

2 A. No. The '38 Compact has quantitative
3 delivery obligations to Elephant Butte. That's -- and
4 I have played around with those relationships a little
5 bit. Beyond that, no.

6 Q. Explain what you mean by you've played around
7 with those relationships a little bit.

8 A. I -- somewhere I have a spreadsheet in which
9 the numbers from the delivery obligations are
10 tabulated, and I think I probably have the numbers
11 from the original Compact and the numbers after the
12 1948 change from delivery from San Marcial to Elephant
13 Butte and compared and contrasted those. That's what
14 I mean.

15 Q. Do you have an opinion -- an expert opinion
16 about the quantity of water that was apportioned to
17 Texas under the 1938 Compact?

18 A. Well, Texas -- I don't regard myself as an
19 expert on the Compact or what the Compact law is. I
20 think that's what the Supreme Court is going to tell
21 us.

22 Q. Do you have a -- a -- a opinion as an
23 engineer hydrologist who certainly has rendered
24 opinions with respect to what the allocation -- the
25 Bureau of Reclamation allocation responsibilities are,

1 do you have a similar view, a non-legal view as to
2 what Texas apportionment under the Rio Grande project
3 was?

4 A. My understanding is that at the time of the
5 Compact, there was an interdistrict contract in which
6 a division of water under times of shortage was set at
7 57/43 basically, and that I -- it seems to me that
8 that having been contemporaneous with the Compact that
9 there is a relationship between the 57/43 and what the
10 Compact is apportioning the states below Elephant
11 Butte. But this is, again, my speculation. When I
12 first started working the Lower Rio Grande, my
13 understanding of the law was that a court had decided
14 that the Compact kind of ended at Elephant Butte and
15 nothing that went on below the Elephant Butte was a
16 Compact matter.

17 Q. I'm sorry. I --

18 A. That nothing that went on below Elephant
19 Butte was a Compact matter. There was that case, El
20 Paso V. Reynolds in which I think New Mexico was
21 arguing there was Compact issues below Elephant Butte,
22 and the Court said, no, there are not. But, again,
23 this is my own vague understanding of how these things
24 work. It seems to me that what goes -- that any
25 apportionment below Elephant Butte is a difficult

1 subject.

2 Q. In what context then are you opining with
3 respect to obligations with respect to allocations
4 pursuant to D2?

5 MR. ROMAN: Object to form.

6 A. I -- again, I don't know what the Compact
7 obligates New Mexico to deliver to Texas below
8 Elephant Butte. I've -- I've read the complaints and
9 some of the responses in other court documents. I've
10 read some of what the first special master wrote and
11 some of what the second special master said. I find
12 it pretty confusing. There's a strong suggestion that
13 the Compact encompasses the project, and I've always
14 thought that the Compact was designed to kind of
15 protect the project and make sure enough water got
16 into Elephant Butte to supply the project and then the
17 project would then be responsible for delivering the
18 water between the two states below Elephant Butte. So
19 in the sense that the project is protected by the
20 Compact, the Compact is intended to support the
21 project in some ways as its delivery mechanism. I
22 would think that the Compact is not inconsistent with
23 a well-running project in both New Mexico and Texas,
24 which means that in low supply years, supplemental
25 pumping is necessary and is considered to be part of

1 keeping the project running.

2 Q. (BY MR. SOMACH) Is that only -- is that
3 pumping only in low supply years or is it allowable in
4 every year?

5 A. We're getting beyond where I'd want to
6 speculate. I -- I think, again, that's all going to
7 be up to the Supreme Court.

8 Q. Well, you have made a number of -- of --
9 you've rendered a number of opinions with respect to
10 New Mexico somehow being shorted because of the way
11 the Bureau of Reclamation is operating and allocating;
12 is that correct?

13 A. Yes. I think current allocation and delivery
14 is -- there's been a large change in allocation and
15 delivery to the detriment of New Mexico, and I think
16 that change has been too great.

17 Q. That change must be from some thing; is that
18 correct? In other words, there must be a baseline
19 upon which you are evaluating that change; is that
20 correct?

21 A. Yeah. That baseline would be the operations
22 of the Rio Grande project since its inception until
23 2005.

24 Q. So "since its inception" means all the way
25 back to, what, 19 -- some year in the early 1900s?

1 A. Yeah. Though I suppose it'd be more
2 reasonable to start for when the project has been --
3 was fully built out.

4 Q. When was that?

5 A. I'm not sure exactly when all together it --

6 Q. Let's use --

7 A. They were still building things in the '30s.

8 Q. Okay. Well, can we take the date of the
9 Compact, 1938?

10 A. That -- we could use that as a starting
11 point.

12 Q. So I'm just trying to understand the baseline
13 upon which you're making the evaluation that project
14 operations has harmed New Mexico. Is that a
15 comparison with a baseline that begins in 1938 and
16 moves to -- to today? Does it stop at some point in
17 time?

18 A. I guess I don't have a firm baseline I'm
19 working from except that I would say compared with the
20 period from 1979 through 2005, New Mexico's allocation
21 and the amount of water they've got is definitely
22 reduced compared to that. Also, I'd say compared to
23 the D2 period itself, '51 to '78, that EP No. 1 is
24 getting a larger share of water than they did during
25 that period, and New Mexico is getting a lesser share

1 of water than they did during -- than -- EBID is
2 getting a lesser share of water than EBID did during
3 that period.

4 Q. What about the period -- have you considered
5 the period from 1938 to 1951?

6 A. I've tried to look at data from that period,
7 but I haven't formed an opinion.

8 Q. What period was used for the Colorado
9 delivery requirements to New Mexico within the
10 Compact?

11 A. I'm afraid I don't know the Compact that well
12 that I could tell you. It would have been prior to
13 1938. It -- it may have come out of the joint
14 investigation -- it probably came out of the joint
15 investigation report, but I don't know how far back
16 their data went for that to determine that --

17 Q. In any event --

18 A. -- obligation.

19 Q. -- it wasn't the period from 1951 to 1971 --
20 1978, I -- I assume?

21 A. That would be correct.

22 Q. And do you know what period was used to
23 determine the New Mexico obligation to deliver water
24 into Elephant Butte under the Compact?

25 A. Well, originally, the obligation was to San

1 Marcial, and, again, that would have come out of the
2 joint investigation and whatever data set they had in
3 the joint investigation, I believe, and then when they
4 moved it in '48, again, there was another data set,
5 but I don't know the exact extent of that data set.
6 But it would have been, of course, data collected
7 prior to 1948.

8 Q. Okay. And so it wasn't the period from 1951
9 to 1978?

10 A. That's correct.

11 Q. Okay. Do you know of any basis why the
12 obligations below Elephant Butte should be predicated
13 upon a 1951 through 1978 period as opposed to a period
14 contemporaneous with the 1938 Compact?

15 MR. ROMAN: Objection; calls for a legal
16 conclusion.

17 Q. (BY MR. SOMACH) From a technical perspective.

18 A. I think that my -- my opinion on a technical
19 basis would be for based on how the project would be
20 most efficiently, most effectively, and most
21 successfully operated since the Compact is to protect
22 the project, then the project has to be able to run.
23 That is -- I mean, I -- I mean, we're -- again, this
24 is -- is this a second Compact obligation on New
25 Mexico? How is that to be defined? I think the Court

1 is going to do that, not me.

2 Q. What -- have you reviewed Dr. Brandes'
3 report?

4 A. I did.

5 Q. And you're familiar with the trend line that
6 he developed in that report, which is based upon data
7 that existed or is taken prior to 1930 and runs
8 through 1951?

9 A. Yes. He did a number of double mass curves
10 in that report, and I looked at them.

11 Q. Okay. And I think -- I think he referred to
12 the trend line that I'm talking about as the 1938
13 condition. Do you recall that?

14 A. Yes.

15 Q. Okay. Have you done an analysis of
16 Dr. Brandes' work with respect to the development of
17 that trend line?

18 A. I have plotted that data set myself and
19 developed -- and reproduced that kind of a double mass
20 curve.

21 Q. Is -- is that in your report?

22 A. No.

23 Q. Are you testifying with respect to that?

24 A. It's not in my direct report. Again, we're
25 still in -- doing rebuttal.

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IN THE SUPREME COURT OF THE UNITED STATES
BEFORE THE OFFICE OF THE SPECIAL MASTER
HON. MICHAEL J. MELLOY

STATE OF TEXAS)	
)	
Plaintiff,)	
	)	Original Action Case
VS.	)	No. 220141
	)	(Original 141)
STATE OF NEW MEXICO,)	
and STATE OF COLORADO,)	
)	
Defendants.)	

THE STATE OF TEXAS :
COUNTY OF HARRIS :

I, HEATHER L. GARZA, a Certified Shorthand Reporter in and for the State of Texas, do hereby certify that the facts as stated by me in the caption hereto are true; that the above and foregoing answers of the witness, PEGGY BARROLL, to the interrogatories as indicated were made before me by the said witness after being first duly sworn to testify the truth, and same were reduced to typewriting under my direction; that the above and foregoing deposition as set forth in typewriting is a full, true, and correct transcript of the proceedings had at the time of taking of said deposition.

I further certify that I am not, in any capacity, a regular employee of the party in whose

1 behalf this deposition is taken, nor in the regular
2 employ of this attorney; and I certify that I am not
3 interested in the cause, nor of kin or counsel to
4 either of the parties.

5
6 That the amount of time used by each party at
7 the deposition is as follows:

8 MR. LEININGER - 03:03:19

 MR. ROMAN - 00:00:00

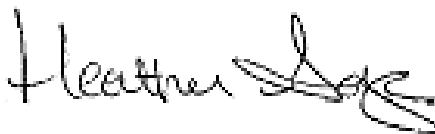
9 MR. SOMACH - 01:04:52

 MR. WALLACE - 00:00:00

10 MS. O'BRIEN - 00:00:00

 MS. BARNCASTLE - 00:00:00

11
12 GIVEN UNDER MY HAND AND SEAL OF OFFICE, on
13 this, the 24th day of February, 2020.

14 

15 HEATHER L. GARZA, CSR, RPR, CRR

 Certification No.: 8262

16 Expiration Date: 04-30-22

 VERITEXT LEGAL SOLUTIONS

17 Firm Registration No. 571

 300 Throckmorton Street, Suite 1600

18 Fort Worth, TX 76102

 1-800-336-4000

WITNESS CORRECTIONS AND SIGNATURE

Please indicate changes on this sheet of paper, giving the change, page number, line number and reason for the change. Please sign each page of changes.

PAGE/LINE	CORRECTION	REASON FOR CHANGE
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214/13	change "for" to "or"	transcription error
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223/13+14	omit "from surface water to groundwater"	I misspoke
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225/9	change "that the" to "what sort of"	I misspoke
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263/13	change "in" to "and"	transcription error
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277/3	change "and" to "in"	transcription error
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281/19	change "I've sorted" to "assorted"	transcription error
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297/4	should read "effect of changes in accounting between the two"	transcription error
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306/25-2	should read "the whole delta is 137,000 AF, and the delta	
----------	---	--

307/1	part I'm getting out of accounting is about 75,000"	
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	I found the numbers and made the calculation	
--	--	--

337/8	should read "We demonstrated that the quality etc"	
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	I misspoke	
--	------------	--

PEGGY BARROLL, VOLUME II

Job No. TX3852890

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S I G N A T U R E O F W I T N E S S

I, PEGGY BARROLL, solemnly swear or affirm under the pains and penalties of perjury that the foregoing pages contain a true and correct transcript of the testimony given by me at the time and place stated with the corrections, if any, and the reasons therefor noted on the foregoing correction page(s).

Peggy Barroll 5/4/2020

PEGGY BARROLL, VOLUME II

Job No. 3995842

IN THE SUPREME COURT OF THE UNITED STATES
BEFORE THE OFFICE OF THE SPECIAL MASTER
HON. MICHAEL J. MELLO

STATE OF TEXAS)	
)	
Plaintiff,)	
	)	Original Action Case
VS.	)	No. 220141
	)	(Original 141)
STATE OF NEW MEXICO,)	
and STATE OF COLORADO,)	
)	
Defendants.)	

REMOTE ORAL AND VIDEOTAPED DEPOSITION OF
PEGGY BARROLL
JULY 9, 2020

REMOTE ORAL AND VIDEOTAPED DEPOSITION of PEGGY BARROLL, produced as a witness at the instance of the Plaintiff State of Texas, and duly sworn, was taken in the above-styled and numbered cause on July 9, 2020, from 10:01 a.m. to 4:03 p.m., before Heather L. Garza, CSR, RPR, in and for the State of Texas, recorded by machine shorthand, at the offices of HEATHER L. GARZA, CSR, RPR, The Woodlands, Texas, pursuant to the Federal Rules of Civil Procedure and the provisions stated on the record or attached hereto; that the deposition shall be read and signed.

R E M O T E A P P E A R A N C E S

FOR THE PLAINTIFF STATE OF TEXAS:

Mr. Stuart L. Somach
Ms. Theresa C. Barfield
Mr. Francis Goldsberry II
Mr. Richard S. Deitchman
SOMACH SIMMONS & DUNN
500 Capitol Mall, Suite 1000
Sacramento, California 95814
(916) 446-7979
ssomach@somachlaw.com
tbarfield@somachlaw.com
mgoldsberry@somachlaw.com
rdeitchman@somachlaw.com

FOR THE DEFENDANT STATE OF NEW MEXICO:

Mr. Jeffrey Wechsler
MONTGOMERY & ANDREWS
325 Paseo De Peralta
Santa Fe, New Mexico 87501
(505) 986-2637
jwechsler@montand.com

-and-

Mr. Luis Robles
ROBLES, RAEL & ANAYA, P.C.
500 Marquette Avenue NW, Suite 700
Albuquerque, New Mexico 87102
(505) 242-2228
luis@roblesrael.com

FOR THE DEFENDANT STATE OF COLORADO:

Mr. Chad Wallace
COLORADO DEPARTMENT OF LAW
1300 Broadway, 7th Floor
Denver, Colorado 80203
(720) 508-6281
chad.wallace@coag.gov

1 FOR THE UNITED STATES:

2 Mr. R. Lee Leininger
3 U.S. DEPARTMENT OF JUSTICE
4 999 18th Street, Suite 370
5 Denver, Colorado 80202
6 (303) 844-1364
7 lee.leininger@usdoj.gov

8 -and-

9 Ms. Shelly Randel
10 U.S. DEPARTMENT OF THE INTERIOR
11 1849 C Street NW
12 Washington, DC 20240
13 (202) 208-5432
14 shelly.randel@sol.doi.gov

15 -and-

16 Mr. Christopher B. Rich
17 U.S. DEPARTMENT OF THE INTERIOR
18 125 South State Street, Suite 6201
19 Salt Lake City, Utah 84138
20 (801) 524-5677

21 FOR THE EL PASO COUNTY WATER AND IMPROVEMENT DISTRICT
22 NO. 1:

23 Ms. Maria O'Brien
24 MODRALL SPERLING ROEHL HARRIS & SISK, P.A.
25 500 Fourth Street N.W.
Albuquerque, New Mexico 87103
(505) 848-1800
mobrien@modrall.com

FOR THE ALBUQUERQUE BERNALILLO COUNTY WATER UTILITY
AUTHORITY AND THE CITY OF LAS CRUCES:

Mr. James C. Brockmann
STEIN & BROCKMANN, P.A.
Post Office Box 2067
Santa Fe, New Mexico 87504
(505) 983-3880
jcbrockmann@newmexicowaterlaw.com

FOR THE NEW MEXICO STATE UNIVERSITY:

Mr. John W. Utton

UTTON & KERY, P.A.

Post Office Box 2386

Santa Fe, New Mexico 87504

(505) 699-1445

john@uttonkery.com

VIDEOGRAPHER:

Ms. Kayla Brown

ALSO PRESENT:

Al Blair

Phil King

Gary Esslinger

Ian Ferguson

Michelle Estrada-Lopez

Rolf Schmidt-Petersen

Lela Hunt

Shelly Dalrymple

Susan Barela

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WITNESS: PEGGY BARROLL

EXAMINATION

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BY MR. SOMACH

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SIGNATURE REQUESTED

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State of Texas's Notice of Deposition
and Subpoena for Personal Appearance of
Peggy Barroll and Request for Production
of Documents

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Report on Studies of Rio Grande Channel
Losses from International Dam to
Riverside Canal Heading

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Letter dated August 26, 1937

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Map of Drain System in EP No. 1

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1 **THE VIDEOGRAPHER:** The time is 10:01
2 a.m. We're on the record.

3 PEGGY BARROLL,
4 having been first duly sworn, testified as follows:

5 E X A M I N A T I O N

6 BY MR. SOMACH:

7 Q. So I guess we have demonstrated the first
8 issue or problem with remote depositions, and that's
9 because we can't see each other quite as well as we
10 can when we're in the same room, we tend to talk over
11 one another so, let's -- Dr. Barroll, I'll try to wait
12 after I answer -- or after I ask a question, if you'll
13 wait before you respond, and we'll see if we can do
14 this so that we don't talk at the same time. Is
15 that -- is that okay with you?

16 A. I'll try my best.

17 Q. Okay. You -- I know you've had your
18 deposition taken before because I sat in on at least
19 two days of those. These remote depositions are very
20 similar to the one that we took when we were in Santa
21 Fe. The exception, of course, is the fact that we're
22 not in the same room and so that we know to
23 accommodate that fact, so I want to make sure that you
24 don't have any other devices open where you're
25 communicating with -- with anybody else. Have you

1 A. Yeah.

2 Q. Okay. You say at the top there that the --
3 well, I'll read the -- the section I want to ask you a
4 quick question about. It says, "Texas and the United
5 States, through their pleadings and expert reports,
6 make the disputed issues between the parties seem
7 deceptively simple; they claim merely that New Mexico
8 groundwater pumping hurts Texas. This is not the
9 whole story, nor even the primary story of the Rio
10 Grande Project operations and accounting issues
11 between these three parties." Have -- have -- did I
12 read that correctly?

13 A. Yes.

14 Q. Okay. What is the primary story?

15 A. I would say that the primary story relates to
16 the allocation and accounting of the Rio Grande
17 project and how there was disputes about it in recent
18 years. There was disputes apparently settled by an
19 operating agreement, but that operating agreement
20 changed the allocation drastically, and it -- as the
21 new operating agreement was implemented, as time went
22 on after its implementation, that became evident, and
23 the -- that -- that's how I -- I see this primary
24 story, but, of course, there's other aspects to it.

25 Q. You say that in that same sentence, you

1 say, "They claim merely that New Mexico groundwater
2 pumping hurts Texas." You see that?

3 A. Yes.

4 Q. Are you saying that New Mexico groundwater
5 pumping is not hurting Texas?

6 A. That's not what the sentence says, and I
7 would say that it's a complex question. That's not as
8 simple as Texas -- that's not as simple as what Texas
9 puts forward.

10 Q. Well, I -- I understand that. You're saying
11 that there are a lot of other facts or issues that are
12 part of the total story. I think that's what you're
13 saying or at least that's why I understand it, but I'm
14 focusing down now on whether or not part of that story
15 is the harm that groundwater pumping in New Mexico may
16 be having on Texas. Is that -- are you saying it's
17 not that or are you saying that's part of the more
18 complex story?

19 MR. WECHSLER: Object to form.

20 A. I believe that groundwater pumping in New
21 Mexico has an impact on the project and, therefore, it
22 has an impact on project beneficiaries, which include
23 farmers and municipal users in Texas, and calculating
24 that impact is a complex matter. Also changes, of
25 course, in allocation had an impact on the water users

1 in both states.

2 Q. (BY MR. SOMACH) Okay. Let's, if I could, ask
3 you to turn to -- again, this is little Roman numeral
4 9.

5 A. Roman numeral 9?

6 Q. It's where you list your conclusions.

7 A. Oh, okay.

8 Q. If that helps.

9 A. I gotcha. I was going the wrong way. Yes.

10 Q. Okay. In Conclusion No. 2, do you see that?

11 A. Yes.

12 Q. You say, "From the beginning of project
13 operations, each project acre was entitled to the same
14 delivery of water." Did I read that correctly?

15 A. Yes.

16 Q. Okay. And that appears to be a -- a
17 significant or critical point in your report; is
18 that -- is that accurate?

19 A. Yes. I think it's an important point.

20 Q. Okay. You say from the beginning of project
21 operations. I think we established at your first
22 deposition that you're not an expert on the Compact
23 itself; is that -- is that -- do I recall that
24 correctly?

25 A. I'm not an expert on the Compact itself.

1 Q. Okay. Could the project itself and its
2 operations, this notion that each project acre was
3 entitled to the same delivery of water, could that
4 be -- do you know whether or not that the Compact
5 could provide for something different than that?
6 That's what I'm trying to ask. If you know.

7 A. I can't say that I know. I assume that the
8 Compact -- Compact could apportion water as the states
9 all agree, and that not the same as what the project
10 had been doing previously.

11 Q. What -- what is the basis of your statement
12 from the beginning of project operations, project acre
13 was entitled to the same delivery of water?

14 A. My basis is what I read in project histories
15 and in written -- other written documents created by
16 people involved in the Rio Grande project that every
17 acre was equally entitled to order water from about
18 the time that the distribution system was there to
19 give it to them.

20 Q. You've done a great deal of work in terms of
21 looking at the accounting of project water over time;
22 is that correct?

23 A. Yes.

24 Q. Have you validated in that analysis that you
25 undertook that, in fact, each project acre was given

1 or provided the same delivery of water? I'm just
2 reading from your -- your conclusion here.

3 MR. WECHSLER: Object to form.

4 A. I would say, and I thought I had said here,
5 they were entitled to the same amount of water, which
6 means they had the same entitlement to order water.
7 How much water they actually got depended on what they
8 did, in fact, order.

9 Q. (BY MR. SOMACH) What they received may be
10 different in your mind from what they're entitled to?

11 A. Yeah.

12 Q. Okay. When you talk about entitled to
13 water -- we'll come back to the general issue, but I
14 understand from your report that you're talking about
15 surface water; is that correct?

16 A. That's correct.

17 Q. That you're -- you're excluding from that
18 number?

19 A. I'm just talking about project supply, which
20 is surface water.

21 Q. Take a look at your Conclusion No. 3, if you
22 could. You used the term and focusing again on what I
23 think is the second sentence where it says, "From 1938
24 through 1938." Do you see that?

25 A. Yes.

STATE OF TEXAS)
)
)
 Plaintiff,)
) Original Action Case
 VS.) No. 220141
) (Original 141)
 STATE OF NEW MEXICO,)
 and STATE OF COLORADO,)
)
)
 Defendants.)

THE STATE OF TEXAS :
COUNTY OF HARRIS :

I, HEATHER L. GARZA, a Certified Shorthand Reporter in and for the State of Texas, do hereby certify that the facts as stated by me in the caption hereto are true; that the above and foregoing answers of the witness, PEGGY BARROLL, to the interrogatories as indicated were made before me by the said witness after being first remotely duly sworn to testify the truth, and same were reduced to typewriting under my direction; that the above and foregoing deposition as set forth in typewriting is a full, true, and correct transcript of the proceedings had at the time of taking of said deposition.

I further certify that I am not, in any capacity, a regular employee of the party in whose

1 behalf this deposition is taken, nor in the regular
2 employ of this attorney; and I certify that I am not
3 interested in the cause, nor of kin or counsel to
4 either of the parties.

5
6 That the amount of time used by each party at
7 the deposition is as follows:

8 MR. SOMACH - 04:43:05

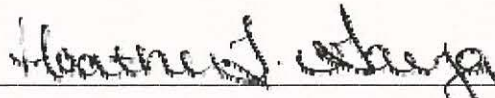
MR. WECHSLER - 00:00:00

9 MR. LEININGER - 00:00:00

MR. WALLACE - 00:00:00

10 MS. O'BRIEN - 00:00:00

11
12 GIVEN UNDER MY HAND AND SEAL OF OFFICE,
13 this, the 25th day of July, 2020.

14 

HEATHER L. GARZA, CSR, RPR, CRR

Certification No.: 8262

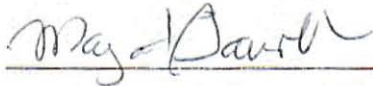
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SIGNATURE OF WITNESS

I, PEGGY BARROLL, solemnly swear or affirm under the pains and penalties of perjury that the foregoing pages contain a true and correct transcript of the testimony given by me at the time and place stated with the corrections, if any, and the reasons therefor noted on the foregoing correction page(s).



PEGGY BARROLL

Job No. 63574

WITNESS CORRECTIONS AND SIGNATURE

Please indicate changes on this sheet of paper,
giving the change, page number, line number and reason
for the change. Please sign each page of changes.

PAGE/LINE	CORRECTION	REASON FOR CHANGE
16/2	change "under" to "other"	Transcription error
17/23	change "we chose" to "there is"	" "
18/1	change "in" to "and"	" "
29/24	change "1938" to "1978"	" "
33/20-21	change "I never read" to "Or I read"	" "
49/6	omit "sort of"	" "
56/25	add "and" in between "diversion" and "use"	" "
60/4	change "gets" to "gives"	" "
63/18	change "credit" to "current"	" "
79/7	add "the Tornillo heading at" after "Historically"	clarification
79/16	add a period between "Grande" and "After"	clarification
98/19	change "now" to "how"	Transcription error
109/15	change "monthly" to "many"	" "
123/22	change "70" to "78", both places.	" "
128/1	change "in size" to "incised"	" "
133/17	should read "using the Modified Blaney-Criddle method"	" "
138/18	change "200,000" to "100,000"	" "
148/9	change "a posed" to "opposed"	" "

Mary T. Barroll

PEGGY BARROLL

IN THE SUPREME COURT OF THE UNITED STATES
BEFORE THE OFFICE OF THE SPECIAL MASTER
HON. MICHAEL J. MELLO

STATE OF TEXAS)	
)	
Plaintiff,)	
	)	Original Action Case
VS.	)	No. 220141
	)	(Original 141)
STATE OF NEW MEXICO,)	
and STATE OF COLORADO,)	
)	
Defendants.)	

REMOTE ORAL AND VIDEOTAPED DEPOSITION OF
PEGGY BARROLL
AUGUST 7, 2020
VOLUME 2

REMOTE ORAL AND VIDEOTAPED DEPOSITION of PEGGY BARROLL, produced as a witness at the instance of the Plaintiff State of Texas, and duly sworn, was taken in the above-styled and numbered cause on August 7, 2020, from 8:01 a.m. to 3:40 p.m., before Heather L. Garza, CSR, RPR, in and for the State of Texas, recorded by machine shorthand, at the offices of HEATHER L. GARZA, CSR, RPR, The Woodlands, Texas, pursuant to the Federal Rules of Civil Procedure and the provisions stated on the record or attached hereto; that the deposition shall be read and signed.

R E M O T E A P P E A R A N C E S

FOR THE PLAINTIFF STATE OF TEXAS:

Mr. Stuart L. Somach
Mr. Robert B. Hoffman
SOMACH SIMMONS & DUNN
500 Capitol Mall, Suite 1000
Sacramento, California 95814
(916) 446-7979
ssomach@somachlaw.com
rhoffman@somachlaw.com

FOR THE DEFENDANT STATE OF NEW MEXICO:

Mr. Jeffrey Wechsler
MONTGOMERY & ANDREWS
325 Paseo De Peralta
Santa Fe, New Mexico 87501
(505) 986-2637
jwechsler@montand.com

FOR THE DEFENDANT STATE OF COLORADO:

Mr. Chad Wallace
Mr. Preston V. Hartman
COLORADO DEPARTMENT OF LAW
1300 Broadway, 7th Floor
Denver, Colorado 80203
(720) 508-6281
chad.wallace@coag.gov
preston.hartman@coag.gov

FOR THE UNITED STATES:

Mr. R. Lee Leininger
U.S. DEPARTMENT OF JUSTICE
999 18th Street, Suite 370
Denver, Colorado 80202
(303) 844-1364
lee.leininger@usdoj.gov

1 FOR THE EL PASO COUNTY WATER AND IMPROVEMENT DISTRICT
2 NO. 1:

3 Ms. Maria O'Brien
4 MODRALL SPERLING ROEHL HARRIS & SISK, P.A.
5 500 Fourth Street N.W.
6 Albuquerque, New Mexico 87103
7 (505) 848-1800
8 mobrien@modrall.com

9 FOR THE ELEPHANT BUTTE IRRIGATION DISTRICT:

10 Ms. Samantha R. Barncastle
11 BARNCASTLE LAW FIRM, LLC
12 1100 South Main, Suite 20
13 Las Cruces, New Mexico 88005
14 (575) 636-2377
15 samantha@h2o-legal.com

16 FOR THE NEW MEXICO STATE UNIVERSITY:

17 Mr. John W. Utton
18 UTTON & KERY, P.A.
19 Post Office Box 2386
20 Santa Fe, New Mexico 87504
21 (505) 699-1445
22 john@uttonkery.com

23 VIDEOGRAPHER:

24 Mr. Christian Barrett

25 ALSO PRESENT:

Al Blair
Bert Cortez
Ian Ferguson
Shelly Dalrymple
Susan Barela
Estevan Lopez

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23	Water Supply Vulnerabilities Final	
	Report to the Interim Committee on Water	
24	and Natural Resources dated	
	August 31, 2015	
25		

1 THE VIDEOGRAPHER: The time is 8:01
2 a.m., and we are on the record.

3 PEGGY BARROLL,
4 having been first duly sworn, testified as follows:

5 E X A M I N A T I O N

6 BY MR. SOMACH:

7 Q. Dr. Barroll, we've got to quit meeting like
8 this. This is -- you know what I was thinking is we
9 should do some kind of an agreement, you stop writing
10 reports, and I will stop deposing you.

11 A. Okay.

12 Q. I don't think I've ever deposed a witness
13 over such a long period of time before. So that's a
14 deal, right?

15 A. Yeah. That's a deal.

16 Q. You'll stop writing reports?

17 MR. SOMACH: Let's make some
18 appearances. This is Stuart Somach on behalf of the
19 State of Texas. I notice that Robert Hoffman from our
20 office is also on the phone. Jeff, appearances for
21 New Mexico?

22 MR. WECHSLER: Jeff Wechsler on behalf
23 of the State of New Mexico, and we also have Shelly
24 Dalrymple, Susan Barela, and Estevan Lopez.

25 MR. SOMACH: Lee, for the United States?

1 A. Right. There might have been a shortage
2 in -- in -- and I think there probably was a shortage
3 to both EBID and EP No. 1 in at least one of those
4 years.

5 Q. What about -- this seems to show to me, so
6 I'm going to ask if it shows to you, that if
7 groundwater pumping in New Mexico, and obviously
8 you're dealing with these three years so let's --
9 let's -- let's focus on these three years. In these
10 three years, cessation of groundwater pumping benefits
11 the -- the project as a whole; is that correct?

12 A. If New Mexico did no groundwater pumping, the
13 project supply in 2003 through 2005 would have been
14 better than otherwise, but -- and having no
15 groundwater pumping in New Mexico would have had other
16 ill effects like perhaps collapse of agriculture
17 during the '50s drought or something like that. I
18 mean, there's -- these project supply in individual
19 years, not a full indicator of benefit or problems for
20 the project.

21 Q. Right. But I -- I preface that question by
22 saying since you're looking at these three years,
23 let's focus on these three years. In these three
24 years, it seems to me that these results show that
25 cessation of groundwater pumping would have benefitted

1 the project, not just EP No. 1, but also EBID; is
2 that -- is that correct? In terms of surface water
3 deliveries.

4 A. That's correct.

5 Q. It seems to me that these results also would
6 underscore something I think you've said in your
7 previous depositions that there is a relationship
8 between groundwater pumping and project supplies; is
9 that correct?

10 A. Yes. And this quantifies it.

11 Q. Okay. Now, the next major bullet point you
12 have under Run 3 Summary is once you get to that 2006
13 to 2017, the operating agreement is in -- in effect,
14 and -- and can you do this comparison analysis under
15 those circumstances or does it just change things so
16 dramatically that -- that you can no longer utilize
17 this -- this analysis?

18 A. I can't do the analysis based on the runs
19 that had been done. I -- I think it would be possible
20 to -- to fashion a run that could do it, but it --
21 it's pretty complicated.

22 Q. And so -- so you really can't do the same
23 kind of comparison, because there's a -- there's a
24 different rule with respect to how surface water is
25 delivered to EBID; is that a fair way of saying that?

1 A. Yes. We're combining two large things, the
2 operating agreement change in allocation and the no
3 New Mexico pumping. The model is not entirely linear
4 because the system is not entirely linear and so,
5 therefore, to tease out how much of the results are
6 related to each of these would require additional
7 model runs to separate everything out individually.
8 Can't do it from what we have here, from what the runs
9 that have been done so far.

10 Q. Okay. And I notice at the -- in -- in the
11 **entire Run 3 Summary describes impacts in the context**
12 **of either EPCWID or EBID, including the bullet point,**
13 **which -- which focuses on EBID farmers, but at the**
14 **end, you have this clause that says, "New Mexico was**
15 **shorted surface water." Did you mean to write EBID is**
16 **shorted surface water there? Why did you -- was there**
17 **a reason why you all of a sudden through New Mexico in**
18 **there as opposed to EBID?**

19 A. I don't think there is. I think I could have
20 said EBID.

21 Q. Okay. Okay.

22 A. I think that the -- my understanding from a
23 Compact perspective that -- that if EBID is shorted,
24 then New Mexico, under the Compact, is shorted. But,
25 again, as we said earlier, I'm not a Compact expert.

1 I base that on what I understand from Estevan Lopez.

2 Q. From your perspective, since you're not a
3 Compact expert, that -- that could -- could have been
4 stated EBID as opposed to New Mexico; is that correct?

5 A. Yes.

6 MR. SOMACH: Okay. We're real close
7 here. I was going to jump into the next one, but we
8 can pick that up when we come back. Are we clear on
9 when we're coming back? I may have been -- I may have
10 overcomplicated it. I want to make sure that before
11 we -- we break, we -- we know when we're coming back.
12 So --

13 MR. WECHSLER: My understanding, Stuart,
14 is -- and I'll just use Pacific Time, which is where
15 you are. If the status conference goes until 10:00
16 Pacific, 11:00 Mountain, we're going to break and come
17 back at 11:30 Pacific, 12:30 Mountain. If the status
18 conference ends before 10:00 Pacific, 11:00 Mountain,
19 then from whenever it breaks, we are going to wait 30
20 minutes and get back on.

21 MR. SOMACH: Okay. Okay. That's what
22 I -- good. At least I communicated something this
23 morning in a cogent fashion. Let's go off the record
24 then, and we'll resume when Jeff just said we'll
25 resume.



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September 28, 2020

Stuart Somach
Somach Simmons & Dunn
500 Capitol Mall, Suite 1000
Sacramento, CA 95814

Re: Deposition of **Peggy Barroll, Volume 2**
08/07/2020
141 ORIGINAL; State of Texas vs. State of New Mexico and State of Colorado

Dear Mr. Somach:

Enclosed please find the **signed and notarized** original deposition of the witness named in the above-referenced matter for filing among your records. By copy of this letter, we are informing all parties shown herein of the **amendments** made to the deposition.

If you have any questions regarding this matter, please feel free to contact our office.

Sincerely,

Minnie Adame
Worldwide Court Reporters, Inc.

Job No. 65038

cc:
Samantha R. Barncastle
Chad M. Wallace
Maria O'Brien
Jeffrey J. Wechsler
R. Lee Leininger

Corporate Headquarters

3000 Wesleyan St. Suite 235 Houston TX 77027
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IN THE SUPREME COURT OF THE UNITED STATES
BEFORE THE OFFICE OF THE SPECIAL MASTER
HON. MICHAEL J. MELLOY

STATE OF TEXAS

PLAINTIFFS,

VS.

STATE OF NEW MEXICO,
and STATE OF COLORADO,

DEFENDANT.

[illegible]

Original Action Case
No. 220141
(Original 141)

REMOTE ORAL AND VIDEOTAPED DEPOSITION OF OF

PEGGY BARROLL

AUGUST 7, 2020
VOLUME 2

ORIGINAL

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IN THE SUPREME COURT OF THE UNITED STATES
BEFORE THE OFFICE OF THE SPECIAL MASTER
HON. MICHAEL J. MELLOY

STATE OF TEXAS)	
)	
Plaintiff,)	
	)	Original Action Case
VS.	)	No. 220141
	)	(Original 141)
STATE OF NEW MEXICO,)	
and STATE OF COLORADO,)	
)	
Defendants.)	

THE STATE OF TEXAS :
COUNTY OF HARRIS :

I, HEATHER L. GARZA, a Certified Shorthand Reporter in and for the State of Texas, do hereby certify that the facts as stated by me in the caption hereto are true; that the above and foregoing answers of the witness, PEGGY BARROLL, to the interrogatories as indicated were made before me by the said witness after being first remotely duly sworn to testify the truth, and same were reduced to typewriting under my direction; that the above and foregoing deposition as set forth in typewriting is a full, true, and correct transcript of the proceedings had at the time of taking of said deposition.

I further certify that I am not, in any capacity, a regular employee of the party in whose

1 behalf this deposition is taken, nor in the regular
2 employ of this attorney; and I certify that I am not
3 interested in the cause, nor of kin or counsel to
4 either of the parties.

5
6 That the amount of time used by each party at
7 the deposition is as follows:

8 MR. SOMACH - 02:27:02

MR. WECHSLER - 00:00:00

9 MR. LEININGER - 01:39:53

MR. WALLACE - 00:00:00

10 MS. O'BRIEN - 00:00:00

MS. BARNCastle - 00:00:00

11
12 GIVEN UNDER MY HAND AND SEAL OF OFFICE, on
13 this, the 2nd day of September, 2020.

14 

15 HEATHER L. GARZA, CSR, RPR, CRR

16 Certification No.: 8262

17 Expiration Date: 04-30-22

Worldwide Court Reporters, Inc.

18 Firm Registration No. 223

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WITNESS CORRECTIONS AND SIGNATURE

Please indicate changes on this sheet of paper,
giving the change, page number, line number and reason
for the change. Please sign each page of changes.

PAGE/LINE CORRECTION REASON FOR CHANGE

176/20 ^{change} "charge" ^{to} "charged"

181/7 "the advantage" "is an advantage"

182/11 "so" "between"

200/12-13 "things are" "is"

201/22-23 change "is no longer being charged" "is"

to "is being charged as Project Supply now"

202/2 change "it" to "if"

204/11 "tic" to "tide"

209/19 "accomodation" to "combination"

218/22 change "in large supply years, it's minimized"

to "in low supply years, it's utilized"

228/22 change "start" to "short"

231/21 change "effluent in" to "effluent and"

246/21 "is when if it" to "that"

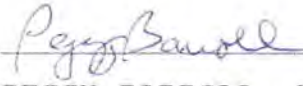
246/4 "little" "poor"

268/2 omit "were"

PEGGY BARROLL, VOLUME II

SIGNATURE OF WITNESS

I, PEGGY BARROLL, solemnly swear or affirm under the pains and penalties of perjury that the foregoing pages contain a true and correct transcript of the testimony given by me at the time and place stated with the corrections, if any, and the reasons therefor noted on the foregoing correction page(s).

 9/26/2020
PEGGY BARROLL, VOLUME II

Job No. 65038

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.

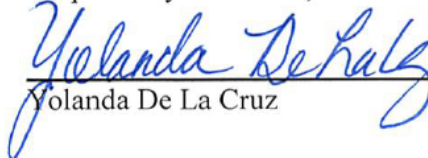
OFFICE OF THE SPECIAL MASTER

CERTIFICATE OF SERVICE

This is to certify that on this 20th day of July, 2021, I caused a true and correct copy of the Declaration of Richard S. Deitchman in Support of the State of Texas's Motions in Limine 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.

Dated: _July 20, 2021

Respectfully submitted,


Yolanda De La Cruz

SERVICE LIST FOR ALL PARTIES AND AMICI CURIAE

PARTIES
(Service via Electronic Mail)

SPECIAL MASTER

Special Master	Honorable Michael J. Melloy <i>Special Master</i> United States Circuit Judge 111 Seventh Avenue, S.E. Box 22 Cedar Rapids, IA 52401 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 (319) 432-6080 TXvNM141@ca8.uscourts.gov (314) 244-2400
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In the Supreme Court of the United States, Original No. 141
State of Texas v. State of New Mexico and State of Colorado

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 KEN PAXTON <i>Attorney General of Texas</i> BRENT WEBSTER <i>First Assistant Attorney General</i> GRANT DORFMAN <i>Deputy First Assistant Attorney General</i> SHAWN COWLES <i>Deputy Attorney General for Civil Litigation</i> WILLIAM F. COLE <i>Assistant Solicitor General</i> BEAU CARTER <i>Assistant Solicitor General</i> PRISCILLA M. HUBENAK* <i>Chief, Environmental Protection Div.</i> OFFICE OF THE ATTORNEY GENERAL OF TEXAS P.O. Box 12548 Austin, TX 78711-2548	(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: Yolanda De La Cruz ydelacruz@somachlaw.com (512) 463-2012 (512) 457-4644 Fax priscilla.hubenak@oag.texas.gov

In the Supreme Court of the United States, Original No. 141
State of Texas v. State of New Mexico and State of Colorado

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

In the Supreme Court of the United States, Original No. 141
State of Texas v. State of New Mexico and State of Colorado

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

In the Supreme Court of the United States, Original No. 141
State of Texas v. State of New Mexico and State of Colorado

United States	<p>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</p> <p>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 Seth C. Allison, Paralegal</p> <p>JUDITH E. COLEMAN JENNIFER A. NAJJAR U.S. DEPT. OF JUSTICE Environment & Natural Resources Div. P.O. Box 7611 Washington, DC 20044-7611</p>	<p>supremectbriefs@usdoj.gov (202) 514-2217</p> <p>james.dubois@usdoj.gov (303) 844-1375 lee.leininger@usdoj.gov (303) 844-1364</p> <p>seth.allison@usdoj.gov (303) 844-7917</p> <p>judith.coleman@usdoj.gov (202) 514-3553 jennifer.najjar@usdoj.gov (202)305-0476</p>

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

In the Supreme Court of the United States, Original No. 141
State of Texas v. State of New Mexico and State of Colorado

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 Charlie Padilla – Legal Assistant RENEA HICKS LAW OFFICE OF MAX RENE HICKS P.O. Box 303187 Austin, TX 78703-0504	mobrien@modrall.com sarah.stevenson@modrall.com (505) 848-1803 (direct) CharlieP@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

In the Supreme Court of the United States, Original No. 141
State of Texas v. State of New Mexico and State of Colorado

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