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IN THE SUPREME COURT OF THE UNITED STATES
STATE OF TEXAS,
Plaintiff,

VS. No. 141, Original

STATE OF NEW MEXICO and
STATE OF COLORADO,
Defendants.

VIDEOTAPED DEPOSITION OF MICHELLE ESTRADA-LOPEZ
February 12, 2020

9:21 a.m.

Robles, Rael & Anaya, P.C.

500 Marquette Avenue NW

Suite 700

Albuquerque, New Mexico 87102

PURSUANT TO THE NEW MEXICO RULES OF CIVIL
PROCEDURE, this deposition was:

TAKEN BY: MR. MICHAEL KOPP,

ATTORNEY FOR PLAINTIFF

REPORTED BY: ANNE D. WIESE, RPR, NM CCR #301

VIDEOGRAPHER: CAINE DEEGAN

TRATTEL COURT REPORTING

609 12TH STREET NW

ALBUQUERQUE, NEW MEXICO 87102

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MICHELLE ESTRADA-LOPEZ,
having been first duly sworn, testified as follows:
EXAMINATION
BY MR. KOPP:
Q. All right. Good morning, Ms. Estrada-Lopez.
My name is Michael Kopp. I'll be taking your deposition
today in the lawsuit Texas v. New Mexico. I represent
the State of New Mexico.
How are you doing this morning?
A. I'm okay. How are you?
Q. I'm fine, thank you.
Could you please state your full name for
the record.
A. Michelle Theresa Estrada-Lopez.
Q. Thank you.
And do you mind if I call you Michelle
during this deposition?
A. I would prefer that. Thank you.
Q. Okay. Thank you.
Could you please state your work address.
A. I know it --
Q. It's okay.
A. -- 555 Broadway Northeast.
Q. Okay. In Albuquerque?
A. In Albuquerque.

1 Q. Great.

2 Have you ever had your deposition taken
3 before?

4 A. I have not.

5 Q. Okay. I'll log over some of the ground rules
6 of a deposition with you, then.

7 First of all, you just took an oath. And
8 you do understand that your answers today are sworn
9 testimony just like you were testifying in court, right?

10 A. I do understand that.

11 Q. Okay. So some of the ground rules are if I ask
12 a question and you don't hear it, please just ask me to
13 repeat it.

14 If I ask a question that you don't
15 understand, which is highly likely because I don't
16 always know what I'm talking about, please just ask me
17 to rephrase it, and I'll do my best.

18 We can take a break any time you want to,
19 although I will ask, if there's a question pending, that
20 you answer the question before we go on break. I'll try
21 to call a break every hour or so, but if you need it
22 more frequently than that or if I just forget to do it,
23 please say something.

24 A. Okay.

25 COURT REPORTER: Can you slow down, please.

1 MR. KOPP: Yes.

2 Q. (By Mr. Kopp) The court reporter is
3 transcribing everything that we say. So first of all,
4 all your answers should be verbal so that the court
5 reporter can get that into the transcript. Please try
6 to say "Yes" or "No." Don't nod your head or shake your
7 head to answer, okay?

8 A. Okay.

9 Q. We should also both try not to speak over one
10 another; that just makes the record very confusing. So
11 I will do my best to wait until you finish answering a
12 question before I ask you another one, and if you could
13 do the same, that would be great.

14 A. Okay.

15 (Discussion off the record.)

16 Q. (By Mr. Kopp) Okay. And do you understand
17 that you're here today pursuant to a notice of
18 deposition and subpoena?

19 A. Yes.

20 MR. KOPP: Okay. I'm going to go ahead and
21 mark the first exhibit.

22 Can you please mark this as Exhibit 1.

23 (Deposition Exhibit No. 1 was marked for
24 identification.)

25 (Discussion off the record.)

1 MR. KOPP: I made eight copies of
2 everything. I don't know if we have enough.

3 Great.

4 Q. (By Mr. Kopp) Michelle, have you seen this
5 document before that I marked as Exhibit 1?

6 A. Yes.

7 Q. If you can tell me what that document is.

8 A. It's my deposition notice.

9 Q. Okay. Great.

10 And let's turn to Page -- sorry -- 2 on
11 that notice towards the bottom of the page.

12 A. (Witness complied).

13 Q. Do you see that number listed on there?

14 A. Yes.

15 Q. That requests various documents and other
16 materials that you relied on in forming your opinions in
17 this case.

18 Have you reviewed those requests?

19 A. Yes.

20 Q. Okay. And I know your attorneys made a
21 disclosure of some materials you relied on a few days
22 ago. Are there any other materials that you brought
23 with you today in response to the requests?

24 A. No.

25 Q. Okay. I'm going to ask you a little bit about

1 your background now.

2 Where did you grow up?

3 A. In Las Cruces, New Mexico.

4 Q. Okay. Is that where you went to college as
5 well?

6 A. It is.

7 Q. Okay. And did you get your -- and that was New
8 Mexico State University?

9 A. Yes.

10 Q. Okay. Did you get a bachelor's degree from
11 NMSU?

12 A. I got a bachelor's degree and a master's
13 degree.

14 Q. Okay. What was your bachelor's degree in?

15 A. Civil engineering.

16 Q. Okay. What year did you graduate?

17 A. In 2007.

18 Q. Okay. And then you mentioned your master's
19 degree. What was that in?

20 A. It was in civil engineering as well, and I
21 graduated in 2009.

22 Q. Was that also from NMSU?

23 A. Yes.

24 Q. Okay. Did you write a master's thesis or
25 anything like that?

1 A. I did.

2 Q. What was the topic of your master's thesis?

3 A. It was looking at evapotranspiration rates at
4 Caballo Reservoir.

5 Q. Okay. Was that evaporation from the water
6 surface or were you looking at vegetation?

7 A. It was comparing the water surface evaporation
8 rates with what was happening on the mud flats, along
9 with comparing that to the saltgrass in the area and the
10 Saltcedar in the area.

11 Q. After getting your MS, what did you do?

12 A. I got a job with the Bureau of Reclamation.

13 Q. Okay. What was your position when you were
14 first hired?

15 A. I was an intern in the Water Operations Group
16 in the Albuquerque area office.

17 Q. Okay. How long were you an intern for?

18 A. Two years.

19 Q. Okay. Was that from 2009 to 2011?

20 A. Yes.

21 Q. Okay. And what did you do after you finished
22 your internship?

23 A. I was converted to a full-time employee, or a
24 permanent employee.

25 Q. Okay. Was that also in the Albuquerque Office

1 of Reclamation?

2 A. Yes.

3 Q. Okay. And what was your position at that time?

4 A. It was still in the Water Operations Group.

5 Q. Okay. What were your duties in that position?

6 A. My main duty was the Pecos River water
7 operations and water accounting, and then I was backup
8 for Rio Grande operations and San Juan-Chama water
9 accounting.

10 Q. Okay. How long were you in that position?

11 A. Including the internship, total, three-ish
12 years.

13 Q. Okay. Until around 2014? Oh, you said
14 including the internship?

15 A. Including the internship.

16 Q. I see.

17 Okay. So that would have been until around
18 2012?

19 A. Uh-huh (yes).

20 Q. Okay. And then what position did you move into
21 after that?

22 A. It was still in the Water Operations Division,
23 and it was supposed to be an adaptive management
24 position, working on adaptive management science-type
25 work for the Middle Rio Grande Endangered Species

1 Collaborative Program, but that's not actually what I
2 did.

3 Q. So what did you actually do?

4 A. I continued a lot of my Pecos River duties, and
5 then I started as project manager in our office as a
6 detail, and then eventually, I got that job full-time.

7 Q. Okay. When you say "project manager," you
8 don't mean the Rio Grande project, do you?

9 A. No, I mean project manager as in that -- like
10 the role you play in overseeing the scope, schedule and
11 budget of different projects.

12 Q. What sorts of projects did you manage in that
13 position?

14 A. My main one was the Carlsbad Project.

15 Q. Okay.

16 A. So my main one was the Carlsbad Project, and
17 the more detailed work I did under the Carlsbad Project
18 was for the Pecos Water Acquisition Program. And then I
19 did smaller projects on the Middle Rio Grande Project,
20 and eventually, I started doing stuff on the Rio Grande
21 Project.

22 Q. And about when did you start doing projects on
23 the Rio Grande Project -- Rio Grande?

24 A. I briefly helped in the initial stages of the
25 evaluation for the MEPA compliance for the Rio Grande

1 Operating Agreement. That was just for a short time.
2 And then I started helping oversee the full project
3 budget, which is all of the work we do on the Rio Grande
4 Project, which, you know, includes water rights, water
5 operations, environmental work, operation and
6 maintenance of our facilities. And that was really like
7 high-level work, not detailed work.

8 Q. Okay. I'll ask you first about your work on
9 the MEPA compliance. Do you know if that was the EA,
10 the environmental assessment that was originally done,
11 or was that the EIS that was finished in I think 2016?

12 A. It was on the EIS. So I just started helping
13 with the modeling, but then that was taken over by other
14 people in Reclamation.

15 Q. Okay. What sort of work did you do on the
16 modeling?

17 A. I started with basically collecting the
18 historical hydrologic data and compiling it, and that's
19 about as far as I got on that project.

20 Q. Okay. And then approximately when did you
21 start overseeing the project budget?

22 A. Probably in 2015.

23 Q. Okay. And when you say you were overseeing
24 that budget, what did you actually do with respect to
25 that project?

1 A. Track what the projection for the overall
2 budget was with our budget analyst and determine which
3 contracts we could fund in a year and make that
4 recommendation to the assistant area manager, who would
5 make the decision.

6 Q. Okay. And when you say "project budget," do
7 you mean a financial budget, like money, not water?

8 A. Correct.

9 Q. Okay. I understand.

10 So that was around 2015 you started doing
11 that work. And how long did you do that?

12 A. I am currently doing that.

13 Q. You still do that?

14 A. Uh-huh (yes).

15 Q. Okay. So the position that you -- that we've
16 been discussing, is that the position you're still in?

17 A. The project manager position, yes.

18 Q. Okay. Since you got your degrees, have you
19 worked for anyone besides Reclamation?

20 A. Not in engineering.

21 Q. Okay. But in another capacity? You've had
22 other positions?

23 A. Yes.

24 Q. Okay. Anything related to your work as an
25 engineer or the expert opinions you're offering in this

1 case?

2 A. No.

3 Q. Okay. When did you first start working on
4 water accounting for the project?

5 A. For the Rio Grande Project, it was probably
6 around 2015. I don't remember the exact date.

7 Q. And what were your duties with respect to water
8 accounting for the Rio Grande Project at that time?

9 A. When I first started, I was just shadowing Bert
10 Cortez of our El Paso office and learning the Operating
11 Agreement, allocation and accounting procedures.

12 Q. And you are actually involved in performing
13 those procedures now; is that correct?

14 A. Yes, I am.

15 Q. When did you start doing that?

16 A. I know I wrote it in my report before, and I
17 can't recall the exact year that I wrote, but it was
18 around 2016 that I took over the full duties.

19 Q. Okay. I'm going to help you out here --

20 A. Thank you.

21 Q. -- and go ahead and introduce your report as an
22 exhibit. I'll go ahead and mark this as Exhibit 2.

23 (Deposition Exhibit No. 2 was marked for
24 identification.)

25 MS. O'BRIEN: Just so -- for the record, Al

1 Blair, the District Engineer for El Paso County Water
2 Improvement District No. 1, has joined by phone.

3 MR. KOPP: Thank you.

4 COURT REPORTER: What's his name again?

5 MS. O'BRIEN: Al -- Dr. Al Blair,
6 B-L-A-I-R.

7 Q. (By Mr. Kopp) All right. Michelle, I believe
8 I asked you what year you started doing water accounting
9 for the project using the OA, Operating Agreement,
10 procedures that you mentioned earlier. Now that you've
11 got a copy of what I'm going to call your expert report
12 in this case, do you remember now what year that was?

13 A. Yes, 2016.

14 Q. Okay. Great.

15 Let's set aside this Exhibit No. 2 for just
16 a second. I'm going to come back to this.

17 But I want to ask you if you're a member of
18 any professional organizations?

19 A. Not currently related to engineering.

20 Q. Okay.

21 A. I am in nonprofit organizations.

22 Q. Okay. Have you been a member of any
23 professional engineering organizations in the past?

24 A. Yes, American Society of Civil Engineers and
25 the Society of Women Engineers and Chi Epsilon, which is

1 a Civil Engineering Honor Society.

2 Q. And why did you stop being a member of those
3 organizations?

4 A. It was not advantageous for me to continue
5 paying for things that I was not participating in.

6 Q. Understood.

7 Other than your degrees, do you have any
8 licenses or certifications?

9 A. Not related to my work.

10 Q. Okay. I believe you mentioned you've never
11 been deposed before, but have you ever testified in a
12 court proceeding before?

13 A. No.

14 Q. Okay. Have you ever been designated as an
15 expert witness in a court case before?

16 A. No.

17 Q. Okay. Have you ever prepared any expert
18 reports for previous cases where you weren't designated
19 ultimately as an expert?

20 A. I helped work on the United States' report that
21 was recently submitted in Texas v. New Mexico on the
22 Pecos.

23 Q. Okay. But you've not been submitted as an
24 expert in that case?

25 A. No.

1 Q. And what work did you do on that report?

2 A. Just helping review the wording and recalling
3 what occurred in 2014.

4 Q. So you didn't perform any technical analysis
5 for that?

6 A. I did not.

7 Q. Okay. With respect to this case, what
8 materials did you review to prepare for your deposition
9 today?

10 A. To prepare for my deposition today, I reviewed
11 the spreadsheets that were submitted by my attorneys
12 from 2011 and two of the tables from the water
13 accounting report from 2011 that were also submitted by
14 my attorneys. And I briefly looked at the letters and
15 correspondence in the appendix from Esteban Lopez's
16 expert report.

17 Q. Okay. Did you review any deposition
18 transcripts?

19 A. No.

20 Q. Okay. Did you meet with counsel?

21 A. Yes.

22 Q. Okay. Did you meet with anyone other than
23 counsel?

24 A. No.

25 Q. Okay. So you didn't talk to any of the other

1 experts who had been put forward by the United States in
2 this case?

3 A. Not about my deposition.

4 Q. Okay. Have you provided us with a complete
5 list of all of the source materials used in preparation
6 of your report?

7 A. Yes.

8 Q. Okay. So let's go back to Exhibit 2 now, which
9 is your expert report.

10 Are you familiar with this document?

11 A. Yes.

12 Q. Okay. Did you create this document?

13 A. I created the Parts 3 and 4 but not the -- or
14 not the part about -- oh, so 1 -- so Parts 1, 3 and 4
15 but not the part about which case this is, and the
16 formatting for submission for the court.

17 Q. Okay. Let's mark that really quick.

18 And on Page 5, towards the bottom, do you
19 include the section that says "Opinion" at the bottom of
20 the page as part of Section 4?

21 A. I do.

22 Q. Okay. I realize this isn't an expert report in
23 the sense of, you know, a disclosed expert report under
24 maybe legal jargon, 26(a)(2)(b), I believe, if I'm not
25 getting nervous messing that up, but I'm going to refer

1 to it as your expert report. You'll know what I'm
2 talking about.

3 Is that okay?

4 A. Yes.

5 Q. Okay. So turning to Page 1 -- I'm sorry,
6 Page 2 of this document, under Section 1 -- let's
7 see -- about one, two, three lines down, it says that
8 your duties include representing Reclamation on the 2008
9 Operating Agreement, or OA, Committee for the Rio Grande
10 Project, which you've done since 2016.

11 Do you see that?

12 A. Yes, I do.

13 Q. Okay. What is the 2008 Operating Agreement
14 Committee for the Rio Grande Project?

15 A. It is a group of people who represent the three
16 parties to the Operating Agreement that meet and confer
17 on the calculations and documentation of the subjects in
18 the agreement.

19 Q. Okay. Is this committee also sometimes called
20 the Allocation Committee?

21 A. It is referred to.

22 Q. Okay. And it says here that you're a member of
23 that committee, correct?

24 A. I am.

25 Q. And you've been a member since 2016?

1 A. Yes.

2 Q. Okay. When was this committee formed?

3 A. I don't know.

4 Q. Okay. Do you know why it was formed?

5 A. I can make presumptions, but I don't know
6 specifically why.

7 Q. I don't want you to speculate. And if you
8 know, then great -- or -- but do you know if the
9 Operating Agreement explicitly requires the formation of
10 this committee?

11 A. I do not recall seeing that in the Operating
12 Agreement language.

13 Q. And you don't know how it was decided that this
14 committee would be formed?

15 A. I do not.

16 Q. Okay. What are the -- well, you mentioned
17 earlier that it's a committee of representatives from
18 the two districts in Reclamation, correct?

19 A. Yes.

20 Q. You confer on Operating Agreement subjects?

21 A. Yes.

22 Q. Could you elaborate a little bit more on what
23 the committee's responsibilities are.

24 A. Reclamation puts together a proposed
25 allocation, then the committee reviews that and

1 discusses the specific inputs and if there's any
2 concerns or recommended changes, and then the districts
3 put together their draft allocation charges, and then
4 the committee reviews the other party's charges, looks
5 for errors, asks questions, confers on things that are
6 unusual that occurred during the year, and makes
7 determinations on how the water should be accounted for.

8 Additionally, each of the parties can make
9 recommended updates to the Operating Agreement Manual,
10 and the committee members review those, sometimes write
11 technical memos associated with them, and then updates
12 the manual if it's agreed upon by all the parties.

13 Q. Okay. So when you're going through any of
14 these procedures, whether it's the allocations or the
15 charges or the Operating Agreement Manual, does the
16 committee always operate by unanimous consent?

17 A. Yes.

18 Q. So in other words, if there's some disagreement
19 about anything, does any party have the power to
20 overrule the other parties or can two of the three
21 members overrule a third member?

22 A. I don't know if that's how it's been operated
23 as I have been the member. I don't know if there would
24 be the possibility of overruling another two parties or
25 one party.

1 (Discussion off the record.)

2 VIDEOGRAPHER: The time is 4:17 p.m. We're
3 back on the record.

4 EXAMINATION

5 BY MR. WALLACE:

6 Q. Good afternoon. For the record, I'm Chad
7 Wallace for the State of Colorado.

8 May I call you Michelle during the
9 deposition?

10 A. You may.

11 Q. Thank you.

12 I have some questions for you from
13 Colorado's perspective to help clarify some issues in
14 your report. If you could turn to what's been marked as
15 Exhibit 2. That's your report in this case.

16 And are all of the opinions regarding
17 accounting for the Rio Grande Project that you expect to
18 give testimony on contained in this report?

19 A. Yes.

20 Q. And are you aware of any other people from the
21 Bureau of Reclamation that may give testimony on Rio
22 Grande Project accounting?

23 A. Ian Ferguson.

24 Q. Anyone else?

25 A. I suppose somebody might call Bert Cortez to

1 testify, but I don't know.

2 Q. Those are the two names you can think of right
3 now?

4 A. Yes.

5 Q. Okay. And if you were to give testimony
6 regarding Rio Grande Project accounting, issues that are
7 not contained in this report, would you expect to file
8 an amended report?

9 A. If I was planning to give testimony, if that's
10 the -- I've never done this before, so I don't know the
11 procedures. But if I was told that was the procedure,
12 that's what I would do.

13 Q. On Page 2 of your report -- this is about the
14 middle of the page on Section 1. And this is a section
15 that you wrote?

16 A. Yes.

17 Q. Okay. And you have a phrase in here -- I'll
18 just show you where I have it highlighted in my copies
19 to make it easier for you to find.

20 Do you see that highlighting?

21 A. Uh-huh (yes).

22 Q. It's "Using the Upper Rio Grande Water
23 Accounting Model is required for Rio Grande Compact
24 accounting."

25 What do you mean by that phrase?

1 A. My understanding for the San Juan-Chama Project
2 was that the Rio Grande Compact requires the San
3 Juan-Chama Project accounting for that, and that was
4 delegated to Reclamation, to conduct the San Juan-Chama
5 Project accounting and report that to the Rio Grande
6 Compact.

7 Q. So in using this phrase, are you limiting
8 it -- the use of the model to San Juan-Chama accounting?

9 A. Yeah. It does not do the Compact accounting
10 for the Compact, just the San Juan-Chama accounting, and
11 it's provided to the Compact.

12 Q. To the Compact Commission?

13 A. Commission, uh-huh (yes).

14 Q. And would it make any difference if you
15 referred to the accounting model or the operations model
16 in this phrase?

17 A. Yeah.

18 Q. What difference would that make?

19 A. The operations model is used for projections
20 and studies, and the accounting model is backward
21 looking and looks at the accounts of the San Juan-Chama
22 and the native water, or Rio Grande water.

23 Q. Okay. And are you aware of any documentation
24 of the requirements to use the accounting model for the
25 Rio Grande Compact accounting or San Juan-Chama water?

1 A. I am not aware of any documentation that says
2 that that model has to be used.

3 Q. So what is the basis for your statement?

4 A. That Reclamation is required to provide the
5 San Juan-Chama water accounting to the Compact
6 Commissioners, and that we use -- that we currently use
7 this accounting model in order to do that.

8 Q. And why do you say that it's required? What's
9 your understanding of why it's required for you to use
10 this?

11 A. That's the methodology that is --

12 Q. So --

13 A. -- agreed upon.

14 Q. Okay. So what I'm trying to get at is, if
15 you're not aware of any documentation setting out the
16 requirement, how is it that you've come to understand
17 that it is a requirement?

18 A. Using the model or doing the accounting?

19 Q. Using the model to give San Juan-Chama
20 accounting to the Compact Commission.

21 A. It's the agreed-upon methodology to provide
22 that required accounting.

23 Q. Okay. And do you know where that -- if that
24 agreement was documented?

25 A. I do not know.

1 Q. Okay. On Page 3 of your report -- this is the
2 same exhibit. It's the bottom of the first paragraph in
3 Section 3.

4 And you wrote Section 3?

5 A. Yes.

6 Q. And this last sentence says, "Each month or as
7 needed, Reclamation updates the allocations to the
8 districts to account for changes in the project,
9 including the reservoirs, due to releases, evaporation
10 and deliveries from New Mexico."

11 Did I read that correctly?

12 A. Yes.

13 Q. Okay. And this is something I want to get at.
14 This may be a quick way to kind of get through a lot of
15 the questions about how you put together the accounting
16 spreadsheets, the accounting model.

17 You do these on a -- they're done on a
18 monthly basis?

19 A. The allocation spreadsheets are typically done
20 on a monthly basis.

21 Q. And what's -- so if you do them on a monthly
22 basis, what period rate of data are inputted into those
23 monthly calculations, if you understand? Is it daily
24 data collated for a monthly output, or how does that
25 work?

1 A. The data put into the monthly allocation
2 spreadsheet is chosen from one day, and it is noted on
3 that. So if it says, "Data from end of month - July,"
4 it's from the day of the end of the month to the July.

5 Q. Okay. And is that compared, then, to the prior
6 month?

7 A. Compared?

8 Q. Like, say, you're getting a change and there's
9 more elevation releases.

10 A. It's noticed by me, the difference, but there's
11 no requirement for comparison in order to make any of
12 the determinations.

13 Q. So if you're -- if the project is making
14 releases from project storage of usable water to the
15 various districts, how is that determined, what those
16 releases are?

17 A. From the Caballo gauge data that the El Paso
18 office of the Bureau of Reclamation collects.

19 And then that data is provided to our
20 hydrologic database, which is put into the Upper Rio
21 Grande Water Accounting Model, and I sum all the days up
22 to the date that I'm looking at, and that's the total
23 volume released up until that day.

24 Q. Okay. So these gauges, they're
25 continuous-recording gauges?

1 A. Yes, I believe they record every 15 minutes.

2 Q. Okay. And is it important to get these
3 frequent inputs, or could you just look at the -- an
4 estimate of what the releases at the end of the month
5 are?

6 A. I don't know how you would estimate the
7 releases from a reservoir without a gauge.

8 Q. But how -- I guess my question is, how often
9 does that gauge need to be read in order for it to be
10 useful to you?

11 A. In order for it to be within the standards of
12 accuracy for hydrologic data, we're following the
13 U.S. Geological Survey methodology. And that's required
14 in order for it to be as accurate as needed for this
15 type of gauge.

16 Q. And with those methodologies that you follow,
17 how often are gauges supposed to be read?

18 A. I don't know what you mean by "read." We
19 collect the data continuously.

20 Q. Oh, so they're continuously. So they are
21 continuously summing the release volumes?

22 A. There's a daily flow, and those daily flows are
23 summed up for the monthly flow. The gauge does not do
24 any summations. It reads instantaneously.

25 Q. So you take a flow rate reading for any given

1 day and you create a volume release for that day with
2 that data?

3 A. Yes.

4 Q. In your report, in that same section, though,
5 it says each month, or as needed, you update the
6 allocations. What would cause you to update the
7 allocations other than on a monthly basis?

8 A. I have never done an allocation in November
9 because nobody cares in November --

10 Q. Uh-huh (yes).

11 A. -- so we skip that month. Sometimes we skip
12 December as well.

13 But I have, on occasion, done an allocation
14 using the beginning-of-the-month data, but it was during
15 a high inflow into the reservoirs, and so the districts
16 have asked for the allocation to be run again so that
17 they can make a higher allotment to their farmers at the
18 next board meeting.

19 Q. Okay. On the next page, Page 4, the last
20 sentence of that paragraph in the middle. And it says,
21 "Consequently, actual accounting for water physically in
22 the reservoir is necessary for New Mexico deliveries,
23 under Article 4 of the Compact, to be made available
24 upon delivery to the project beneficiaries."

25 Do you see that?

1 A. I do.

2 Q. What does that mean?

3 A. I'm going to read the rest of the paragraph for
4 the context of it.

5 Okay. This is in context of why
6 Reclamation estimates the physical Compact credit water
7 in Elephant Butte so that we can determine the inflow
8 into Elephant Butte, which, in my understanding, a
9 delivery by New Mexico under Article 4 of the Compact.
10 And a calculation of this type is the only way to
11 determine inflow accurately. And that water is -- can
12 then be made available to our project beneficiaries.

13 Q. And you say in the same paragraph that you do
14 this accounting on a daily basis?

15 A. We do.

16 Q. And do you make any distinction on water
17 flowing into Elephant Butte between water delivered to
18 meet Compact obligations by New Mexico under Article 4
19 or water that might be eventually accounted, under the
20 Compact, as credit water for New Mexico?

21 A. I do not.

22 Q. I want to just follow up on a few things that
23 you covered in part earlier today --

24 A. Okay.

25 Q. -- so I'm going to kind of be jumping around.

1 And please bear with me. Let me know if
2 you need more context to understand the question.

3 A. Okay.

4 Q. You said earlier that the Bureau of Reclamation
5 does not do Compact accounting; is that right?

6 A. Correct.

7 Q. So is there any expectation on behalf of the
8 United States that the calculations done by the Bureau
9 of Reclamation on Compact credit water would be used by
10 the Rio Grande Compact Commission in determining annual
11 or accrued credits or debits?

12 A. I don't know what the expectations are of the
13 other parties.

14 Q. But for the United States?

15 A. I don't have that expectation. I don't know if
16 anybody else in the United States has that expectation.

17 Q. Does anybody at the Bureau of Reclamation have
18 that expectation?

19 A. I don't think so, but I don't know what
20 everybody's thoughts on the matter are.

21 Q. You've mentioned earlier, Michelle, how you do
22 evaporation estimates.

23 A. Yes.

24 Q. And there's some questions about the deviation
25 error in those evaporations, and you said that there

1 were then -- well, do you recall what you said those
2 error ranges might be?

3 A. For evaporation?

4 Q. Yes.

5 A. I did not say what they are because I do not
6 know what they are, but I know that we are using the
7 standard method.

8 Q. Do you know what percentage range that might
9 fall into?

10 A. I don't feel comfortable speculating.

11 Q. So if you were to say what that error rate was,
12 it would be speculation?

13 A. Yeah. I have not read a technical report on
14 that.

15 Q. So I'm going to walk through a hypothetical
16 reservoir accounting situation for you.

17 If the Bureau is making an allocation of
18 usable water in project storage, that allocation can
19 exceed the actual water in physical storage; is that
20 right?

21 A. Yes.

22 Q. And if those full allocations are taken for
23 delivery, is it possible that the full amount delivered
24 could end up exceeding what was allocated?

25 MR. DuBOIS: Objection, lack of foundation,

1 calls for speculation.

2 You can answer if you can.

3 A. I don't know.

4 Q. (By Mr. Wallace) So in some of your earlier
5 spreadsheets, you had the negative carryover allocation
6 balance?

7 A. Yes.

8 Q. That seemed to indicate that a district ended
9 up taking delivery in excess of their allocation for
10 that year; is that right?

11 A. In excess of their final allocation --

12 Q. So --

13 A. -- yes.

14 Q. -- over the year? Okay.

15 If that is done, is it possible to have
16 released from the project more than the available usable
17 storage supply?

18 MR. DuBOIS: Again, objection, lack of
19 foundation and speculation.

20 You can answer if you can.

21 A. No, because you can't release more than what is
22 physically there.

23 Q. (By Mr. Wallace) Okay. So let me run through
24 this scenario for you. You're estimating Compact credit
25 water in accounts for purposes of making allocations.

1 A. Yes.

2 Q. And based on that, allocations are made
3 periodically through the year until you come to a final
4 end-of-the-year allocation.

5 A. Yes.

6 Q. And if the Compact Commission then informs you
7 the following year of a carryover Compact credit amount
8 that's different than your estimated Compact credit
9 amount, those two numbers would be different, right?

10 A. Yes, different numbers would be different.

11 Q. And if you -- you've mentioned before how
12 sometimes, after a Compact Commission meeting, you will
13 adjust those Compact credit amounts in your -- in the
14 accounting model, which are then reflected in the
15 spreadsheets?

16 A. Yes.

17 Q. And we had an exhibit wherein the Compact
18 credit numbers were adjusted I believe in the April time
19 frame, and you said that reflected adjustments because
20 the Commission gave the Bureau of Reclamation different
21 Compact numbers -- Compact credit account numbers?

22 A. That sounds correct.

23 Q. So again, this is a hypothetical. It's not an
24 allegation that this was done.

25 Is it possible that given numbers from the

1 Compact Commission that are higher than the estimated
2 numbers used by Reclamation, the sum of what's left in
3 storage in the Compact credit amounts from the
4 Commission could exceed what is actually in the storage
5 in the project?

6 MR. DuBOIS: Form of the question --
7 objection, form of the question, speculation.

8 Again, go ahead if you can.

9 A. Based solely on calculations and theoretical
10 situations that I don't think would be possible in real
11 life, because we talk to everybody all the time in the
12 State of New Mexico and the State of Colorado and how
13 much they think they are going to be under or over their
14 deliveries. Very remote theoretical probability that
15 could happen.

16 Q. (By Mr. Wallace) If it did -- and I understand
17 the qualifications you gave in your answer -- how would
18 Reclamation deal with it?

19 A. I do not know.

20 Q. So Michelle, did anything in the report that
21 you submitted cover Colorado's Compact credit account?

22 A. Yes.

23 Q. What?

24 A. Specifically, if you look on Page 4, in the
25 last paragraph, in the parentheses, it says, "About

1 33,000 acre-feet attributable to Compact credit
2 accounts." That is including both Colorado and New
3 Mexico.

4 Q. Is that the only thing?

5 A. The last sentence of that paragraph, which is
6 on the beginning of Page 5, it refers to the credit
7 water. That would be referring to both accounts.

8 Q. You spoke earlier how you have read the Rio
9 Grande Compact; is that right?

10 A. Yes.

11 Q. Do you know where, under the Compact,
12 Colorado's delivery obligation is located?

13 A. I don't recall specifically off the top of my
14 head.

15 Q. If I told you it was at the Lovatos gauge, does
16 that seem familiar?

17 COURT REPORTER: I'm sorry, if it was at
18 what?

19 MR. WALLACE: Lovatos.

20 COURT REPORTER: Okay.

21 A. I know of the gauge Lovatos, and if you told me
22 that that was it, I would believe you until I read the
23 Compact.

24 Q. (By Mr. Wallace) All right. If I further told
25 you that that gauge was near the Colorado-New Mexico

1 border, does that seem familiar to you?

2 A. Yes, and that would make sense.

3 Q. Okay. If Colorado makes its deliveries, under
4 the Compact, at the border between Colorado and New
5 Mexico, does Reclamation do anything to account for
6 that? Do you account for any of that in your project
7 accounting?

8 MR. DuBOIS: Objection, lack of foundation
9 and form of the question.

10 A. I have never personally thought about the water
11 passing the Lovatos gauge in developing my allocation.

12 Q. (By Mr. Wallace) Okay. Does Reclamation do
13 anything to account for whether the deliveries made by
14 Colorado appear in Elephant Butte Reservoir?

15 A. Reclamation, to my knowledge, does not track
16 the Colorado deliveries through the Rio Grande down to
17 Elephant Butte Reservoir in any significant or separate
18 manner than just looking at gauges for native water.

19 Q. So I'm not sure if I understand that answer.

20 Is there any distinction that Reclamation
21 makes for any flows into the Elephant Butte Reservoir,
22 whether that is a delivery by Colorado or by New Mexico?

23 A. Not that I know of.

24 Q. And Mr. Kopp was talking to you earlier about
25 one of the spreadsheets -- and I believe it was the June

1 data -- and there was a notation for underdeliveries by
2 New Mexico.

3 A. Uh-huh (yes).

4 Q. What does that mean?

5 A. I would imagine the term "underdelivery" means
6 that somebody thinks that there's less delivery than
7 anticipated.

8 Q. And what was that based on? Do you know?

9 A. I do not know.

10 Q. Do you have any opinion now on whether a
11 spreadsheet should track, on a monthly basis,
12 underdeliveries under the Compact?

13 A. By whom, anybody?

14 Q. By New -- well, let's start with New Mexico.
15 That was the example that was given, underdeliveries by
16 New Mexico.

17 A. As a citizen of New Mexico, I would hope that
18 the State of New Mexico would be tracking its water and
19 knowing prior to the end of the year if it was going to
20 be under- or overdelivering. But as a Bureau of
21 Reclamation employee --

22 Q. Well, let me --

23 A. -- I don't --

24 Q. Let me put it to you this way, because my
25 question caused some confusion. Do you have an opinion

1 whether Reclamation is tracking under- or overdeliveries
2 on a monthly basis under the Compact by New Mexico?

3 A. I don't know of anyone in Reclamation that is
4 tracking under- or overdeliveries on a monthly basis
5 under the Compact by New Mexico.

6 Q. Okay. So I'm going to follow up on that.

7 You mentioned that when that was noted in
8 the parentheses in the spreadsheet, it was corrected
9 next month?

10 A. I said for lack of a better word.

11 Q. Is there a better word that you can think of
12 now why that change was made?

13 A. If I could change time, I would have said
14 "adjusted."

15 And as I explained earlier, my
16 understanding is that there were conversations between
17 Reclamation and New Mexico during that time frame. And
18 then the next month's allocation came out, and it was a
19 different number.

20 Q. Okay. And now just I want to clarify a few,
21 for lack of a better word myself, big picture items.

22 So you've got these accounting spreadsheets
23 where you are figuring out the available allocation
24 amounts. In any terms that you're using in those
25 spreadsheets or in the model descriptions -- for

1 example, project water Compact credit accounts are
2 similar to those used in the Rio Grande Compact -- is it
3 your intention that they mean the same thing all the
4 time?

5 A. My intention on the spreadsheets is to use the
6 definitions in the Operating Agreement and the Operating
7 Agreement manual and technical memorandums associated
8 with those two. I understand that they are similar and
9 possibly related to Compact accounting definitions, but
10 I do not know that they mean the same thing all the
11 time.

12 Q. Do you intend them to mean different things or
13 do you intend them to mean the same thing all the time?
14 What I'm getting at is, if you're using the same term
15 for what you're doing in operating the Rio Grande
16 Project and there's an identical term for the Rio Grande
17 Compact, is it your intention to make them the same
18 thing or are they just, by happenstance, using the same
19 phrase and you're using it for a different purpose
20 altogether?

21 MR. DuBOIS: Object to the form of the
22 question.

23 A. I don't have intention and I have not
24 contemplated this prior to your question. Therefore, I
25 don't have intention while I'm doing the work.

1 Q. (By Mr. Wallace) Okay. So to follow up on
2 that, when Reclamation is doing accounting of Compact
3 credit accounts, do you intend for those account
4 numbers, that accounting balance to be bonding on any of
5 the states under the Rio Grande Compact?

6 A. Reclamation does not do any accounting of the
7 Compact credit accounts in relation to the development
8 of the allocation. And if I was not fully clear
9 earlier, the Operating Agreement states that it's not
10 intended to have an impact on the Compact.

11 And that is the end of my statement.

12 Q. So when you calculate evaporation of Compact
13 credit accounts, there's no intention for the Compact
14 states to be bound by those calculations?

15 MR. DuBOIS: Asked and answered.

16 A. I refer to my previous answer.

17 Q. (By Mr. Wallace) So I'm confused because you
18 said you didn't do any accounting of Compact credit
19 accounts.

20 MR. DuBOIS: That's not what she said.
21 Objection.

22 A. Reclamation does not do the Compact credit
23 accounting.

24 Q. (By Mr. Wallace) And by that, do you mean for
25 the Compact?

1 A. Yes.

2 Q. But you do calculate evaporative losses for the
3 project?

4 A. Yes. And calculating and accounting are not
5 the same to me.

6 Q. What's the difference?

7 A. An accounting is for the Compact. A
8 calculation is used in determining a value.

9 Q. And for what purpose do you determine the
10 value?

11 A. To determine the Rio Grande Project usable
12 water for allocation to the customers.

13 Q. And when you do the accounting, you start off
14 each year with a Compact credit account. Is that -- the
15 number that you use, is that given to you by the Compact
16 Commission?

17 You said earlier that you may make
18 adjustments depending on that number, so I'm assuming
19 you're -- is the reason you're waiting because you may
20 start with a number that's later adjusted, depending on
21 what the Commission gives you?

22 A. Yes.

23 And like this year, I'm using zero for New
24 Mexico, because New Mexico has informed us that they are
25 going to be in a debit status. So I'm using that

1 because I know, from their estimations and informing
2 Reclamation, I'm estimating it at zero.

3 Q. And that's an estimate.

4 And will that estimate be then firmed up by
5 whatever the Compact Commission gives you as final
6 end-of-year numbers for the prior year?

7 A. Yes.

8 Q. Have you ever encountered a situation, in
9 accounting for the Rio Grande Project, where the Compact
10 credit account volume given to you by the Commission
11 exceeds what you may have in physical storage accounted
12 for as Compact credit water?

13 A. I have never seen a situation in which the
14 Compact credit account volume is greater than the
15 physical storage in Elephant Butte. And I don't recall
16 if it was adjusted upward or downward in all the
17 situations that I've encountered.

18 Q. If that situation occurred, that you were given
19 by the Commission a number for Compact credit account
20 that exceeded what you had up to that point in physical
21 storage attributed to the Compact account -- credit
22 account, what -- do you know what you would do?

23 A. I do not.

24 Q. Okay. Would it be possible to adjust the
25 accounting to designate some of the water that's

1 physically there as Compact credit account water so as
2 to make the physical amount then attributed as Compact
3 credit water match what the Commission had identified as
4 the volume of Compact credit water?

5 MR. DuBOIS: Objection, form of the
6 question, calls for speculation, foundation.

7 A. I'm unsure what "designate" means in relation
8 to an allocation spreadsheet.

9 Q. (By Mr. Wallace) Well, would the number in the
10 allocation spreadsheet representing the physical supply
11 in the reservoir change in order to make the Compact
12 credit amount as given to you by the Commission the same
13 as what is physically in the reservoir identified as
14 Compact credit account water?

15 MR. DuBOIS: I was going to say objection,
16 calls for speculation.

17 Q. (By Mr. Wallace) But you can answer if you
18 know. You know, you're responding to material in your
19 expert report.

20 A. It depends on the time of the year.

21 And when the Compact provides the final
22 credit accounting is, as stated earlier, late March or
23 early April, and that is the January 1 number.

24 And I would not go back to the January
25 allocation and change that because I'm already working

1 on an April allocation. And I would only estimate the
2 credit water in storage on the date that I'm looking at
3 for that April allocation based on physical evaporation
4 that had happened from January 1st on that new Compact
5 credit number to that date.

6 Q. So you're saying you would make that adjustment
7 going forward incorporating monthly prorated evaporative
8 losses to that volume?

9 A. I did not say monthly prorated evaporative
10 losses.

11 Q. How would you calculate those evaporative
12 losses?

13 A. They're calculated daily in the accounting
14 model and monthly-ish. Like I said earlier, not every
15 month. I look at the day that I choose from the day
16 before or the week before up until that date and I sum
17 them up.

18 Q. Okay. And just to be clear, those evaporative
19 changes that you calculate at the Compact credit account
20 are for allocation purposes only, not for making
21 determinations of what the actual Compact credit water
22 to the states may be under the Compact?

23 A. Yes, it's only for allocation purposes.

24 MR. WALLACE: Thank you. That's all I
25 have.