

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 STUART L. SOMACH IN SUPPORT OF
TEXAS'S OPPOSITION TO NEW MEXICO'S MOTION TO STRIKE
TEXAS'S EXPERT DISCLOSURES ON WATER QUALITY**

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**Counsel of Record*

September 23, 2019

I, Stuart L. Somach, declare as follows:

1. 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. I am Counsel of Record for Texas. The following matters are within my personal knowledge and, if called as a witness, I can competently testify thereto.

2. On August 30, 2018, Texas timely issued its Initial Disclosures under Federal Rule of Civil Procedure 26(a). Texas's Initial Disclosures state: "Texas will fully disclose its computation of damages pursuant to the Case Management Plan timeline for expert witness disclosure and production of expert reports and supporting materials." State of Texas's Initial Disclosures, at 19.

3. On November 8, 2018, Texas served its Requests for Production of Documents, Set One to New Mexico, seeking information relating to "salinity and total dissolved solid statistics." State of Texas's Requests for Production of Documents, Set One to State of New Mexico, at 14.

4. On December 24, 2018, New Mexico objected to Texas's request seeking information relating to salinity and total dissolved solid statistics, "in that the request seeks information about the Rio Grande River that is not relevant to any party's claim or defense in the instant litigation and is outside the bounds of Federal Rule of Civil Procedure 26(b)." State of New Mexico's Objections to the State of Texas's Requests for Production of Documents, Set One to State of New Mexico, at 26. No further correspondence was received from, nor discussion initiated by, New Mexico following the issuance of this objection.

5. Between November 16, 2018, and May 7, 2019, Texas took the depositions of the following fact witnesses: Jesus Reyes, Art Ivey, George Brooks, Greg Daviet, Larry Ceballos, Bobby Kuykendall, Jerry Franzoy, Joe Paul Lack, Mike McNamee, Kary Samuel Salopek, James Salopek, Robert Sloan, Jorge Garcia, and Estevan Lopez. During these depositions, counsel for Texas asked pointed questions regarding water quality issues. Counsel for New Mexico participated in the above-listed depositions, in which counsel for New Mexico at times sought information regarding water quality and salinity issues in relation to the claims in this case.

a. Attached as Exhibit A is a true and correct copy of relevant excerpts of the transcript of the Oral Deposition of Jesus Reyes, taken on November 16, 2018.

b. Attached as Exhibit B is a true and correct copy of relevant excerpts of the transcript of the Oral Deposition of Art Ivey, taken on November 26, 2018.

c. Attached as Exhibit C is a true and correct copy of relevant excerpts of the transcript of the Oral Deposition of George Brooks, taken on November 27, 2018.

d. Attached as Exhibit D is a true and correct copy of relevant excerpts of the transcript of the Oral Deposition of Greg Daviet, taken on December 13, 2018.

e. Attached as Exhibit E is a true and correct copy of relevant excerpts of the transcript of the Oral Deposition of Larry Ceballos, taken on November 28, 2018.

- f. Attached as Exhibit F is a true and correct copy of relevant excerpts of the transcript of the Oral Deposition of Bobby Kuykendall, taken on December 12, 2018.
- g. Attached as Exhibit G is a true and correct copy of relevant excerpts of the transcript of the Oral Deposition of Jerry Franzoy, taken on December 13, 2018.
- h. Attached as Exhibit H is a true and correct copy of relevant excerpts of the transcript of the Oral and Videotaped Deposition of Joe Paul Lack, taken on December 17, 2018.
- i. Attached as Exhibit I is a true and correct copy of relevant excerpts of the transcript of the Oral Deposition of Mike McNamee, taken on December 17, 2018, Vol. 1.
- j. Attached as Exhibit J is a true and correct copy of relevant excerpts of the transcript of the Oral Deposition of Kary Samuel Salopek, taken on December 17, 2018, Vol. 1.
- k. Attached as Exhibit K is a true and correct copy of relevant excerpts of the transcript of the Oral Deposition of James Salopek, taken on December 18, 2018, Vol. 1.
- l. Attached as Exhibit L is a true and correct copy of relevant excerpts of the transcript of the Oral Deposition of Robert Sloan, taken on December 18, 2018.

m. Attached as Exhibit M is a true and correct copy of relevant excerpts of the transcript of the Oral Deposition of Jorge Garcia, taken on February 6, 2019.

n. Attached as Exhibit N is a true and correct copy of relevant excerpts of the transcript of the Oral Deposition of Estevan Lopez, taken on May 7, 2019.

6. Between May 23, 2019 and June 3, 2019, Texas issued 21 Subpoenas to Inspect Property, Information, or Objects to landowners in New Mexico and Texas that seek, in part, documents regarding water quality related irrigation practices. New Mexico did not object to these subpoenas. The inspections of the properties were completed by August 2, 2019.

7. On May 31, 2019, Texas filed its Disclosure of Expert Witnesses, as well as Supplemental Disclosures of Expert Witness Information on April 2, 2019, June 11, 2019, and August 12, 2019. Texas's retained experts – Dr. Lydia Dorrance, Dr. David Sunding, and Dr. Joel Kimmelshue – issued reports regarding, in whole or in part, water quality and the relevance of such information to the calculation of Texas's damages. Texas further disclosed the opinions of its non-retained experts John E. Balliew, Al Blair, and Art Ivey regarding decreased water quality and increased salinity as well as damages incurred by Texas.

8. Summarized, Texas's theory of economic injury is as follows: Texas's groundwater and surface water modeling expert, Dr. Bill Hutchison, estimates that on average between 1985 and 2016, an additional 71,000 acre-feet of surface water would

have been delivered to the Texas border each year under a hypothetical scenario where New Mexico reduced its groundwater pumping by 60 percent after 1938.

9. Texas agricultural expert Dr. Kimmelshue provides a literature review involving the impacts of salinity on the growth and yield of various plants and explained and summarized what was contained in those articles. Based on this review, Dr. Kimmelshue explains how saline irrigation supplies impact crop yields.

10. Texas's water quality expert, Dr. Dorrance, opines that if the volume of groundwater pumped in New Mexico is reduced, Texas irrigators would have more surface water to apply for irrigation, surface water that is of a better quality and lower salinity than the groundwater they rely on in the absence of adequate surface water supplies. Reduced groundwater pumping in New Mexico would result in more surface water supply being available to urban water users in El Paso, Texas.

11. Texas's expert economist, Dr. Sunding, evaluates the economic damages that Texas's agricultural and urban sectors have suffered as a result of reduced surface water supplies.

12. With respect to the agricultural sector, Dr. Sunding explains that Texas farmers blend surface water and groundwater to meet their water demands. Increased surface water deliveries to Texas reduces the salinity of water that farmers apply to irrigate their lands by allowing farmers to blend a larger share of surface water. Higher salinity water reduces yields, increases leeching requirements, and leads farmers in Texas to plant a systematically different, less profitable mix of crops than farmers in Rincon and Mesilla Valleys in New Mexico. To generate a damages figure, Dr. Sunding simulates the reduction in yield based on higher salinity irrigation water supplies, applies crop price

and returns data and cost studies, and models how farmers choose their long- and short-run crop mix based on crop inputs and yields. Dr. Sunding also shows the impact to local economies in Texas caused by the reduction of farm yields and lost economic opportunities.

13. With respect to urban water users, Dr. Sunding evaluates the economic injury caused by reduced Rio Grande surface water supplies delivered to El Paso Water Utility (EPWU), the City of El Paso's water utility, resulting from New Mexico's excessive groundwater pumping. EPWU must pump more groundwater to replace the surface water that would have been available to it if New Mexico had reduced its groundwater pumping. Costs attributable to increased reliance on groundwater include pumping costs, infrastructure investments to increase their capacity to produce groundwater and distribute groundwater to its service area, and the rehabilitation and maintenance of previously inactive wells. Additionally, Dr. Sunding demonstrates the injury caused to EPWU's residential, commercial, and industrial customers as a result of elevated salinity in their tap water.

14. In total, Dr. Sunding opines in his expert report that New Mexico's excessive groundwater pumping caused direct damages in the amount of \$174.40 million in lost farm profits to Texas's agricultural water users, \$76.81 million in incremental expenditures to Texas's urban water users, and \$100.50 million in regional economic impacts from lost jobs and employee compensation.

15. Subsequent to Texas's May 31, 2019 Rule 26(a)(2) disclosures, I received an unscheduled call from David Roman, counsel for New Mexico. Mr. Roman raised two issues with me. The first dealt with Texas's Rule 26(a)(2)(c) disclosure of

individuals that Texas had listed as non-retained experts. Mr. Roman expressed a view that the disclosure was too broad to allow New Mexico to properly proceed with discovery. I responded that although I did not necessarily agree, I would review the disclosure to determine if Texas would provide a supplemental disclosure. The second issue he raised concerned the nature of expert testimony disclosed in Texas's Rule 26(a)(2)(B) retained expert disclosures and reports that touched on water quality and damages. He indicated that to the extent that those reports dealt with water quality, he thought them improper. I do not remember the basis upon which he indicated that they were improper. I responded that I disagreed that there was a problem with the disclosures or reports and that what was discussed were manifestations of damage caused by the water shortages which were the subject of the Texas Complaint. I further indicated that I did not know what I could do to address the concerns that he raised. Mr. Roman indicated that he thought that that would be my response and added words to the effect that "he could write my response to what he had alleged." At the end of the call, he told me that I should not do anything and that he would put his concerns into a letter.

16. On July 3, 2019, I received a letter outlining Mr. Roman's concerns related to the first of the two issues he had raised as I have described it above. In response, Texas served a supplemental disclosure providing more definite descriptions of the topics disclosed non-retained expert witnesses' testimony would cover. To date, New Mexico has not further complained about the sufficiency of the supplemental non-retained expert disclosures, except perhaps as some of the non-retained expert witnesses are dealt with in the subject motion.

17. With respect to the second issue raised by Mr. Roman and discussed above, I had hoped that our discussion had ended the matter but assumed if it had not that I would receive a letter similar to the one I received on July 3, 2019. I have never received a letter addressing that issue. I was aware of the scheduling of the depositions of Dr. Sunding, Dr. Dorrance, and Dr. Kimmelshue, and until the filing of the subject motion, thought that New Mexico had dropped the issue.

18. Counsel for the parties participate in bi-weekly conference calls to discuss ongoing discovery, coordinate schedules, and confer on other matters related to case management. On the basis of information obtained from Theresa Barfield, counsel for Texas who participates in the conference calls, New Mexico never raised the objections it now presents to the Special Master in these bi-weekly conference calls. During these calls, counsel coordinated the scheduling of the depositions of Dr. Sunding, Dr. Dorrance, and Dr. Kimmelshue.

19. On November 6, 2018, New Mexico served its First Request for Production of Documents to the State of Texas. To date, this is the only written discovery served by New Mexico on Texas. New Mexico has not served any contention interrogatories on Texas. On August 30, 2019, one year after discovery opened on September 1, 2018, New Mexico noticed its first deposition: State of New Mexico's Notice of Rule 30(b)(6) Deposition of the City of El Paso. To date, New Mexico has not noticed the deposition of any Texas party witness, including the Rio Grande Commissioner, engineer advisors, or the El Paso County Water Improvement District No. 1 engineer.

20. During the discovery period, New Mexico has served subpoenas for documents on third parties, and has served written discovery on the United States.

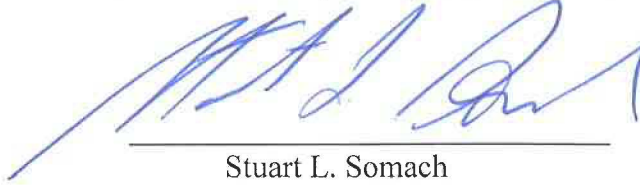
21. After filing the Motion to Strike Texas's Expert Disclosures, New Mexico continues to participate in discovery regarding water quality matters. On August 30, 2019, New Mexico noticed the Rule 30(b)(6) Depositions of the City of El Paso. On information and belief, on September 13, 2019, Michael Kopp, counsel for New Mexico, questioned John E. Balliew, a Rule 30(b)(6) witness for the City of El Paso, as to the quality of the City's groundwater wells, the presence and removal of salts from such well water, as well as Total Dissolved Solids levels. On information and belief, on the same day, Mr. Kopp questioned Scott Reinert, a Rule 30(b)(6) witness for the City of El Paso, regarding water quality concerns, including salinity increases. As of the filing of this declaration, the certified transcripts for these depositions are not available.

22. The deposition of Dr. Joel Kimmelshue took place on September 19 and 20, 2019. I attended the deposition, during which counsel for New Mexico asked questions related to the portions of Dr. Kimmelshue's expert report concerning water quality.

23. The deposition of Dr. Lydia Dorrance took place on September 17, 2019. I attended the deposition, during which counsel for New Mexico asked questions related to Dr. Dorrance's expert report concerning water quality.

24. The deposition of Dr. David Sunding is scheduled for October 10 and 11, 2019.

I declare under penalty of perjury under the laws of the United States of America
that the foregoing is true and correct. Executed this 23rd day of September 2019 at
Sacramento, California.



Stuart L. Somach

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STATE OF TEXAS,

Plaintiff,

v.

STATE OF NEW MEXICO AND
STATE OF COLORADO,

Defendants.

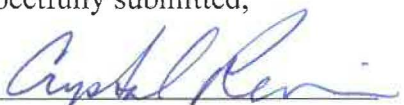
OFFICE OF THE SPECIAL MASTER

CERTIFICATE OF SERVICE

This is to certify that on this 23rd day of September 2019, I caused a true and correct copy of **DECLARATION OF STUART L. SOMACH IN SUPPORT OF TEXAS'S OPPOSITION TO NEW MEXICO'S MOTION TO STRIKE TEXAS'S EXPERT DISCLOSURES ON WATER QUALITY** to be served upon all parties and *amici curiae*, by and through the attorneys of record and/or designated representatives for each party and *amicus curiae* in this original action. As permitted by order of the Special Master, and agreement among the parties, service was effected by electronic mail to those individuals listed on the attached service list, which reflects all updates and revisions through the current date.

Respectfully submitted,

Dated: September 23, 2019


Crystal Rivera

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(Service via E-Mail and U.S. Mail)

Honorable Michael J. Melloy

Special Master
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)
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VS.) No. 220141
) (Original 141)
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and STATE OF COLORADO,)
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[11/16/2018 8:33 AM] Reyes, Jesus

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1 ALSO PRESENT:

2 Mr. Chuck Spalding
3 Mr. Ken Knox
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WITNESS: JESUS REYES

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Map of Area Served by El Paso No. 1	
District	

1 JESUS REYES,
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. Reyes. My name is Sarah
6 Klahn. I'm here today representing the State of Texas
7 in Texas v. New Mexico, and you're here for a
8 deposition.

9 A. Good morning. Yes, I understand.

10 Q. Could you state your name for the record?

11 A. Jesus Reyes.

12 Q. And your business address?

13 A. It's 13247 Almeda in Clint, Texas.

14 Q. Okay. And I'm going to hand you what's been
15 marked Reyes Exhibit 3.

16 (Exhibit No. 3 was marked.)

17 Q. (BY MS. KLAHN) This is the State of Texas's
18 notice of deposition. Have you seen this?

19 A. Yes.

20 Q. Okay. And you are Jesus Reyes, correct?

21 A. Yes, I am.

22 Q. Okay. Have you had your deposition taken
23 previously?

24 A. Yes, I have.

25 Q. Many times or --

1 eyes of conservation.

2 Q. Are there any other changes that you've made
3 because of the drought, those kind of operational
4 changes, to extend the water or the efficiency?

5 A. Well, there's -- there's -- we have upgraded
6 our -- our canal system. I've been concrete lining
7 the last eight years, every winter I'll concrete line
8 sections of canals and -- to better the efficiency and
9 delivery system. Right offhand, I can't think of
10 other issues right offhand.

11 Q. But you started that because of the drought,
12 the concrete lining?

13 A. Well, it's always been -- I had always wanted
14 to start that, having toured other irrigation
15 districts in other parts of the country, and just
16 making a better, more efficient delivery system. So
17 about eight years ago, we started to -- going seeking
18 grant money to -- to do concrete lining and so on.

19 Q. What other irrigation districts have you
20 toured?

21 A. I've toured Imperial Valley. I've toured, of
22 course, the lower Rio Grande Valley, different
23 districts down there. They use a lot of pipe down
24 there. I've toured some in California.

25 Q. And you did that because you were curious and

1 you wanted to see?

2 A. Yeah. I wanted to see just different
3 operations, see what -- what they're doing, not only
4 on delivery systems, but herbicide and weed control
5 and other things.

6 Q. Weed control on district easements?

7 A. On canals, yes.

8 Q. Yeah. Yesterday, Mr. Stubbs testified a
9 little bit about the district's wells, and I wanted to
10 ask you some questions about that.

11 A. Okay.

12 Q. So as I understood Mr. Stubbs' testimony, the
13 district wells are -- are fairly shallow; is that
14 right?

15 A. That's correct. They're locate -- the depths
16 are between 85 to 95 feet.

17 Q. And his understanding was that the water
18 that's being pumped in those wells is essentially
19 water that -- that he described as drain water. Would
20 that be your understanding, as well?

21 A. Yes. As my -- I guess, my -- my district
22 engineer could probably give you a better answer, but
23 as he explained to me, there was a -- there's a pocket
24 of water in that area that can -- could be utilized
25 that doesn't go into the -- the bolson and that could

1 | be utilized to recirculate the water and use it as
2 | irrigation water.

3 | Q. It has some challenges, because of the
4 | quality; is that right?

5 | A. That's correct. The further east you go, the
6 | more TDS you get. The higher the salt contents.

7 | Q. Okay. Are there meters on those wells?

8 | A. Yes, there are.

9 | Q. Okay. And do you have to report that well --
10 | water use to anybody?

11 | A. The three wells that we have in the upper
12 | valley, we do. We keep track of those, if we pump
13 | them, very closely, because any -- any water that we
14 | pump out of there comes off our Rio Grande project
15 | allocation.

16 | Q. Okay. So you have -- so the district has
17 | wells that it pumps as part of its Rio Grande -- if
18 | you pump them, they're part of your Rio Grande
19 | allocation?

20 | A. Yes. The three that are located in the upper
21 | valley.

22 | Q. Okay. And then where -- and there's --
23 | there's ten, I think, total; is that right?

24 | A. In the upper valley?

25 | Q. No, no, ten total in the district?

1 A. No, there's 58.

2 Q. 58?

3 A. Yes.

4 Q. All right. So three in the upper valley.

5 Where are the rest?

6 A. The rest are located in -- a few in District

7 -- District director 7 area.

8 Q. I didn't know you had a District Director 7.

9 Okay.

10 A. Well, that's the Division 7A/7B.

11 Q. Okay. Down south?

12 A. Yes.

13 Q. Okay.

14 A. And there's a few -- very few in that area,
15 and then from there on are the majority, and they all
16 are next to our canal system --

17 Q. Okay.

18 A. -- because we'll pump it directly into our
19 canal system.

20 Q. And tell me a geographic location for
21 District 7A and 7B so I can kind of --

22 A. Okay. 7 -- 7B --

23 Q. You know what, can we look at Exhibit 2 from
24 yesterday?

25 MS. KLAHN: Do you have those.

1 each of the ones you checked that are EPl maintained
2 or shared, do you have an estimate of how many years
3 of data you would have?

4 A. No, I don't.

5 MS. KLAHN: Okay. Well, I don't have
6 anything further at this time for this witness. I'll
7 turn it over to the others in the room.

8 MR. ROMAN: As far as New Mexico goes,
9 like yesterday, we don't intend to ask any questions
10 at this time, and we're invoking our intention to ask
11 questions to continue the deposition, if necessary, to
12 ask questions at a later date with the understanding
13 that it would be mutually acceptable to the deponent
14 and his counsel as far as the timing of it goes and
15 that it would be based on or related to outstanding
16 discovery requests once we get those answers, should
17 it be necessary, based on those -- those answers.

18 MS. O'BRIEN: And I'll just state for
19 the record that I'm not objecting at this point in
20 time to a possible continuation of Mr. Reyes'
21 deposition pursuant to the same terms and conditions I
22 stated on the record yesterday with regard to
23 Mr. Stubbs.

24 MR. DUBOIS: United States has got no
25 questions at this time.

1 MR. WALLACE: Colorado has no questions
2 with the understanding that the deposition may be
3 continued to a later date.

4 MS. BARNCASTLE: EBID has no questions.

5 THE REPORTER: Does everybody want a
6 copy of today's transcript, as well?

7 MS. KLAHN: Yes, please.

8 MS. O'BRIEN: Yes.

9 MR. ROMAN: Yes.

10 MR. WALLACE: Yes.

11 MS. BARNCASTLE: Yes.

12 MR. DUBOIS: Yes.

13 MS. KLAHN: So Mr. Reyes marked on
14 Stubbs Exhibit 2, and to avoid confusion, what we're
15 going to do is mark this as Reyes Exhibit 10, and
16 Stubbs Exhibit 2 will remain the unmarked map, which
17 the court reporter will handle those details. That's
18 agreeable to everybody, correct?

19 MS. O'BRIEN: Correct.

20 MR. ROMAN: Yes.

21 (Exhibit No. 10 was marked.)

22 (The deposition concluded at 10:23 a.m.)
23
24
25

Job No. 3069668

1 WITNESS CORRECTIONS AND SIGNATURE

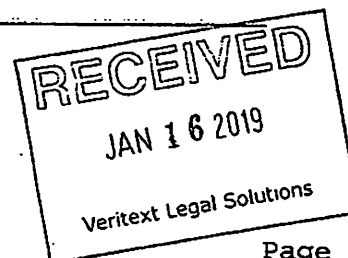
2 Please indicate changes on this sheet of paper,
3 giving the change, page number, line number and reason
4 for the change. Please sign each page of changes.

4 PAGE/LINE CORRECTION REASON FOR CHANGE

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24 JESUS REYES

25



Job No. 3069668

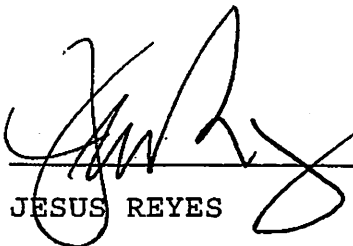
1 S I G N A T U R E O F W I T N E S S

2

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

9

10



JESUS REYES

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16 Job No. 3069668

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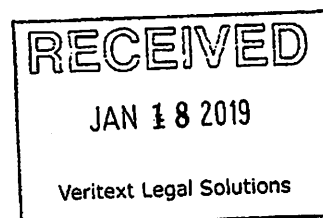
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IN THE SUPREME COURT OF THE UNITED STATES
BEFORE THE OFFICE OF THE SPECIAL MASTER
HON. MICHAEL J. MELLOY

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, JESUS REYES, 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 MS. KLAHN - 01:34:24

MS. O'BRIEN - 00:00:00

9 MR. WALLACE - 00:00:00

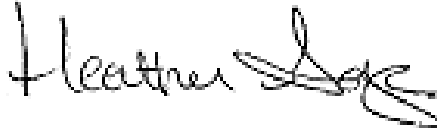
MR. ROMAN - 00:00:00

10 MR. DUBOIS - 00:00:00

MS. BARNCASTLE - 00:00:00

11 MR. CAROOM - 00:00:00

12
13 GIVEN UNDER MY HAND AND SEAL OF OFFICE, on
14 this, the 5TH DAY OF DECEMBER, 2018

15 

HEATHER L. GARZA, CSR, RPR, CRR

16 Certification No.: 8262

Expiration Date: 12-31-19

17 VERITEXT LEGAL SOLUTIONS

Firm Registration No. 571

18 300 Throckmorton Street, Suite 1600

Fort Worth, TX 76102

19 1-800-336-4000

EXHIBIT B

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

[11/26/2018 1:35 PM] Ivey, Art

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EXAMINATION INDEX

WITNESS: ART IVEY

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EXHIBIT INDEX

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1 ART IVEY,
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 afternoon, Mr. Ivey.

6 A. Good afternoon.

7 Q. My name is Sarah Klahn. I'm here today
8 representing the State of Texas in this case, Texas
9 versus New Mexico and Colorado, and you're here to
10 have your deposition taken.

11 A. Okay.

12 Q. Could you state your name and spell it for
13 the record?

14 A. Okay. My name is Arthur, A-R-T-H-U-R, H is
15 the middle initial, Ivey, I-V-E-Y, comma, J-R period.

16 Q. Okay. Is it okay if I call you Art?

17 A. Yes.

18 Q. All right.

19 A. Most people call me Art, but you can call me
20 Arthur or whatever you want.

21 Q. Have you had your deposition taken before?

22 A. No.

23 Q. Okay. I'm going to hand you the first
24 exhibit. We'll talk a little bit about how that
25 works.

1 guess, do you know anybody who still grows onions in
2 the winter?

3 A. Yeah. There's a farmer around Fabens still
4 grows some.

5 Q. Yeah.

6 A. And the upper valley still grows quite a bit
7 of -- when I say "the upper valley," I mean the New
8 Mexico -- EBID area still grows quite a bit of onions.
9 A lot more than we do.

10 Q. Okay. Let's talk about -- let's limit my
11 question to EP No. 1 then.

12 A. Okay.

13 Q. In the EP No. 1 district, do you know anybody
14 who grows --

15 A. Yes.

16 Q. -- onions in the winter?

17 A. Uh-huh.

18 Q. The fellow you mentioned around the Fabens
19 area?

20 A. Yes.

21 Q. And --

22 A. He runs a well.

23 Q. So he would not -- well, would he --

24 A. Well, he runs a well on some of it that I see
25 around Fabens. He also has some ground up around

1 Clint, and I don't know if he irrigates that. I
2 didn't happen to notice when they irrigate that
3 whether that was a well or it could have been return
4 flow, what we call return flow, which is just banked
5 storage out of the river and out of the drain ditches.

6 Q. Has the water quality of that return flow
7 water changed over time; do you know?

8 A. The lesser amount there is, the saltier it
9 is.

10 Q. Okay.

11 A. So if you have a real wet year or sometimes
12 starting off in the drains, it'll be a little better
13 quality than it will be towards the end of the season.
14 You can see it in the ground when it dries. You'll see
15 that white crust.

16 Q. Now, you were here for Mr. Stubbs'
17 deposition, I think?

18 A. Part of it, yeah.

19 Q. And he talked about the problems of using
20 groundwater -- the quality problems associated with
21 using groundwater on his ground?

22 A. Right.

23 Q. Have you had similar problems using
24 groundwater from your wells?

25 A. Yes, ma'am, I sure have.

1 Q. Okay. Can you describe what some of those
2 problems have been?

3 A. Well, in our area, and I guess -- and
4 listening to Johnny's, It'd be the same thing, but in
5 our area, around the Tornillo area, which is the lower
6 10 miles of the district, there's nobody I know of
7 that has, quote, good water. It's all in the area of
8 about 2,000 TDS, parts per million, total dissolved
9 solids, and of the 2,000, it's about 70, 75 percent of
10 it is sodium. So that's a very heavy dose of salt
11 you're putting on there every -- sodium salt every
12 time you're -- you're irrigating. So in -- in our
13 area with pecans, it's -- it's an emergency type of
14 water that if we don't have other water, it'll keep
15 them alive, but if I had to use just that water for a
16 period of number of years, we would ruin -- we would
17 kill those pecan trees over time. So it's just an
18 emergency thing that gets us through to a better -- to
19 a better time. If I had my druthers, we would never
20 use wells in our area. They're just an emergency fix.
21 Because the quality is similar to what we get out of
22 our drain ditches.

23 Q. Okay.

24 A. You can even think of our drain ditches as
25 horizontal wells. That's basically what they are.

1 They are a horizontal well that's drawing water out of
2 the sides.

3 Q. Okay.

4 A. Of the ground.

5 Q. So when you came back in the '70s, were there
6 similar kinds of water quality problems with wells
7 that --

8 A. They were always in our area, those -- the
9 water quality has always been poor, the groundwater
10 quality.

11 Q. Okay.

12 A. Yeah. Why that is, something to do with the
13 formation, you know.

14 Q. Sure.

15 A. The alluvial river valley, we had very deep
16 soil.

17 Q. The drain quality that you experienced in the
18 '70s, would have been similar to today, the drain
19 water quality?

20 A. Yes. Probably would.

21 Q. Okay. So you've testified that you have
22 about 400 acres of pecans; is that right?

23 A. Right.

24 Q. In a low water year, how do you manage,
25 because you can't fallow out pecan ground, right?

1 A. Right. I think Mr. Stubbs alluded to that in
2 his -- that's the advantage a cotton crop has. When
3 you have low water, you don't have to plant that
4 cotton crop. You can lay it fallow for a year.
5 Pecans, you can't do that. So if you got your pecans
6 planted, you got to keep them alive, so that's when we
7 pump our water, and we just pray that, that doesn't
8 become a year after year after year proposition
9 because, otherwise, we will not -- that crop will not
10 be viable.

11 Q. When you pump your groundwater, do you have
12 to use sulfur additive like Mr. Stubbs talked about?

13 A. Johnny does the -- the sulfur burner. I use
14 many different -- different -- I don't use a sulfur
15 burner, but I do use elemental sulfur. I use gypsum,
16 which is also a sulfur, and during the winter months
17 especially, we -- I always think of soil amendment to
18 sulfur, sulfuric acid, for example, because what it
19 does, it kicks off the sodium I had and makes it
20 leechable, so we leech it out of our root zone, and
21 that's how we try and keep our sodium leached. So we
22 think a mechanical means of fracturing the soil so we
23 always have drainage. Drainage is the secret. You
24 need good drainage to keep the salt, and you need
25 sulfur because of a chemical reaction in the ground.

1 The way I do it is elemental sulfur, and it -- we've
2 been using that for about 20 years now, and it was --
3 it was -- it was kind of -- it was luck. We didn't do
4 it on purpose, but about 20 years ago, we started
5 adding elemental sulfur as just part of our natural
6 business practices every year.

7 Q. I see.

8 A. And I spread it on the ground in the winter
9 and incorporate it in the top of the soil and so when
10 the drought hit in about 2003, '4, and '5, we had
11 already had a period of a bunch of years of that
12 happening, so it's kept our trees viable, but we've
13 never stopped. So we add sulfur every year to our
14 soil. I use -- I prefer elemental sulfur. It has to
15 go through a process. It's kind of like that first
16 year, you won't see much. It's year two and year
17 three and year four, it's kind of like manure. Manure
18 takes time.

19 Q. I see. Okay.

20 A. Yeah.

21 Q. So it's a solid? Elemental sulfur is a
22 solid?

23 A. Yeah.

24 Q. Okay.

25 A. It's a by-product out of -- the Odessa

1 Midland area is where we get it. It's a by-product of
2 the petroleum industry and they bind it with some sort
3 of clay, I think. So it's like 92 or 93 percent pure
4 sulfur and then another 7 percent is a binder of some
5 sort.

6 Q. Okay. So you just --

7 A. Comes in little small little pellets.

8 Q. And you just spread it?

9 A. Yeah.

10 Q. Okay. Do you test your -- do any chemical
11 testing of the water before you apply it?

12 A. No. I used to run -- run -- water run
13 sulfuric acid. Now, what Johnny was talking about was
14 a different type of -- it's sulfurous acid, which is
15 slightly different, but they're both after the same
16 thing. We used to run sulfuric acid, because it was
17 easy to get and it wasn't very expensive. There were
18 two firms in El Paso that used to use it, and as a
19 by-product, they would sell their spit, what they call
20 spit sulfuric acid to us farmers pretty cheap and we
21 would run -- water run that in our ditch and do the
22 same thing that Johnny did. You'd go a few hundred
23 yards down when you knew the waters were well mixed
24 and you'd try and basically get a neutral PH. You try
25 to bring your PH down to about a seven or something

1 like that.

2 Q. Okay.

3 A. And that way your water went out at least you
4 knew you weren't adding to your problems.

5 Q. But you don't do that anymore?

6 A. I do not for various reasons. The price went
7 way up. Regulations became more intense. I had
8 6,000-gallon tank on the back of the farm that
9 somebody with a 30 ought 6 decided to do target
10 practice. We lost an entire tanker full of sulfuric
11 acid on my ditch banks and it turns concrete -- from
12 here to that wall, it turned concrete just into talcum
13 powder almost. We just had to dig it all out and
14 bring in soil and rebuild a ditch, concrete, so that
15 and other things. I started looking at different
16 ways. And about that time, the oil industry in the
17 Midland/Odessa area was taking off, so we were able to
18 come up with this elemental sulfur.

19 Q. So the application of the elemental sulfur
20 basically allows you to put poor quality water on the
21 soil and use it?

22 A. We -- yes. We hope so. About 300 -- if I
23 remember right, my chemistry, it's about 350 pounds of
24 that elemental sulfur is about like putting one ton of
25 sulfuric acid on your ground.

1 Q. Okay.

2 A. That's probably about a minimum what you want
3 to do. I try and put out about 500 pounds of that
4 elemental sulfur every year.

5 Q. 500 for your whole 400 acres?

6 A. 500 per acre.

7 Q. 500 per acre?

8 A. Yeah.

9 Q. Oh, okay.

10 A. You incorporate it in the top of your soil
11 because, like I said, it needs some microbes and all
12 sorts -- there's all sorts of chemistry involved for
13 that elemental sulfur -- it basically becomes sulfuric
14 acid in your soil eventually and attaches to a sodium
15 ion and then you can leech that sodium, get it the
16 heck out of your roots.

17 Q. Okay. How deep are your wells approximately?

18 A. My personal wells on our farm?

19 Q. Yes.

20 A. They're -- they range, but they're in,
21 generally, about as shallow as 90, and I think my
22 deepest one is only about 135.

23 Q. Okay.

24 A. Something like that.

25 Q. Do you -- can you serve your entire 400 acres

1 down, up and down. For example, this coming year, we
2 know we're going to start with virtually no water, so
3 everybody knows they are going to have to run their
4 wells in our area to get started.

5 Q. So if in a poor water year, a low water year,
6 your pecans presumably still need -- well, I guess I
7 should start with this question: How much water would
8 you like to be able to deliver to your pecans every
9 year? 4 feet?

10 A. Out of the project?

11 Q. Just period. Like, how much water --

12 A. More or less -- yeah, more or less 4 foot.

13 Q. Okay. So in a year where you don't have a
14 lot of project water, how do you do your water
15 ordering and, you know, work with the wells --

16 A. Oh, I see.

17 Q. -- in order to deliver 4 feet?

18 A. I would probably -- and I -- you know, I'm
19 trying to think back. We would save that water for
20 the most intense heat when the shortest interval.
21 Let's say I only had enough water or allocation or
22 allotment was 8 inches and I knew that meant I got two
23 irrigations. I would probably save them for that June
24 or July when I know it's going to be the shortest
25 interval. That's when I would try and get the good

1 sweet water -- the good sweet water out of the dam.
2 Mainly because in my case and a lot of the farmers
3 down there, you can't make it all the way across your
4 farm in a short period of time. But I could with a
5 good high pressure water coming out of the dam.

6 Q. So that means in a year like that, the
7 example you just gave that the majority of the
8 irrigation would be groundwater?

9 A. Right.

10 Q. And that's where your sulfur is important?

11 A. Right. Because that -- that water is
12 basically -- and I think Mr. Stubbs alluded to that.
13 It's basically a poison. It's very -- our water is,
14 in my area, somewhere around 20 -- usually 2,000 to
15 2,200 TDS, and out of that TDS, about 70 to 75 percent
16 of that is sodium. So very high. That's -- if you
17 remember in the Bible, they salted the ground, so it
18 wouldn't produce anything. That's kind of what you're
19 doing. So you're using that because you have an
20 alternative. You have to keep this crop viable. That
21 goes back to you hope you don't do it so many years
22 that what happened to Hudspeth County, the county
23 right below us in the '50s during that drought, they
24 were able to grow cotton, much more salt tolerant, but
25 they salted their ground up so well -- so much so that

1 after a few years, they couldn't grow even cotton and
2 that ground lay out of production for 20 years before
3 it came back.

4 Q. Wow.

5 A. So that's what you try and do. You just try
6 and -- you have no choice if you have a permanent crop
7 like pecans.

8 Q. So when you're ordering water, what -- well,
9 let me take a step back. When I deposed Mr. Reyes
10 last -- a week ago or whatever, before Thanksgiving,
11 and he was talking about the electoral districts for
12 the EP No. 1, but he also mentioned something called
13 delivery districts. So what delivery district are you
14 in?

15 A. I'm in what they call 9A.

16 Q. Okay.

17 A. There's -- there's a District 9A and then
18 there's a 9B right above us.

19 Q. Okay.

20 A. "Above us" meaning the district generally
21 moves like the river. It moves towards the southeast
22 from the northwest. So I'm on the southeast corner.
23 That's 9A. 9B would be right above me. 8A would be
24 right above them, 8B.

25 Q. I see.

1 A. I guess Unit 9 is what they call it, Unit 8,
2 Unit 7, but there's an A and a B component of each of
3 those.

4 Q. And why is that?

5 A. I'm not sure. You'd have to ask somebody
6 else, maybe Mr. Reyes again.

7 Q. Okay. And so you get your water from EP1,
8 you don't get it -- you're not in the part of the
9 delivery districts that gets their water delivered
10 through EBID?

11 A. Oh, well, all of our water flows through the
12 river from the dam through EBID.

13 Q. Well, I understand that.

14 A. Yeah.

15 Q. But I thought there was a portion of EP1 --

16 A. Oh, I see what you're saying.

17 Q. -- where --

18 A. That's way up on Unit 5. Is it Unit 5 or
19 Unit 6? I need Mr. Reyes here again, I think.

20 Q. Okay.

21 A. But anyway, it's up in the -- there's a
22 little section where the state lines run through the
23 various laterals when the U.S. Bureau of Reclamation
24 originally built that project. So you have some
25 portions of lands up there that are in New Mexico that

1 long time.

2 Q. You wouldn't have any place to put the wheat,
3 would you?

4 A. I wouldn't have any place to put the wheat.
5 That's right. I'd have to rent some ground or buy
6 some more.

7 Q. And then the -- then the profit margin thing
8 gets all messed up.

9 A. There you go. There you go.

10 Q. Yeah. Do you see any difference in pecan
11 tree yields today from when you started growing
12 pecans?

13 A. Well, in general, there's a trail that goes
14 up, because I think all the pecan farmers are getting
15 better at it. Like any crop, we're learning a little
16 more about it all the time. So, yes, there's a
17 small -- there's a general increase in productivity.

18 Q. And that -- you attribute that really to just
19 being better --

20 A. Managers.

21 Q. Better managers?

22 A. Uh-huh.

23 Q. Okay.

24 A. Knowing what you're doing a little better.

25 Q. Do you keep records of your pecan yields?

1 A. Yes, ma'am.

2 Q. How -- would that go back to the '70s?

3 A. That'd be pretty early, wouldn't it? I might
4 be able to find some of those early records in the
5 '70s. Not sure. I'd have to go back and look.

6 Q. Okay. Do you notice differences in yield in
7 years where there's less water?

8 A. I'm sure we would if we went back and looked.

9 Q. Yeah.

10 A. Yeah.

11 Q. Are there -- have you ever lost any trees
12 because of water shortage or that you would attribute
13 to water shortage?

14 A. No. No, I have not. We have some loss of
15 yield I would attribute to salt in my opinion, too
16 much salt. I don't know if we've ever even lost an
17 actual tree, but the salt shows up towards the end of
18 the year. Like, even here in the -- if you live in
19 the city, if you put too much salt on a -- on a flower
20 of some type that you shouldn't be putting salt on,
21 you'll see the leaves start burning on the outer edge
22 of it. It'll crinkle up, and that's a salt burn.
23 You'll see that on our pecans in the most extreme
24 cases where a -- a farmer is not paying attention or
25 he's got a piece of ground that's -- that's

1 | waterlogged or something, you'll see that salt burn
2 | start to show up. Later in the season, you'll see it
3 | more. You'll even see a bronzing on the leaves
4 | sometimes. People will sometimes say that's a boron
5 | bronze, but it's usually a salt problem.

6 | Q. So as a -- I'm not sure I understand really
7 | the biology of a pecan tree if you will or the --
8 | that's probably not the right word. But, I mean, by
9 | the time -- by the time you're talking about that
10 | you'd see the leaf -- I'm sorry.

11 | A. Excuse me. Sorry.

12 | Q. Are you okay?

13 | A. I'm okay.

14 | MS. O'BRIEN: We can take a break.

15 | Q. (BY MS. KLAHN) Yeah.

16 | A. No, I'm all right. I'm all right. Okay. Go
17 | ahead. Finish your question.

18 | Q. I'm going to let you get a drink of water
19 | first.

20 | A. Okay.

21 | Q. Okay. So in a -- in a year when you might
22 | see that salt burn on the leaves, haven't the pecans
23 | already started to form, the fruits already started to
24 | form or the nuts?

25 | A. Right. Because it's usually towards the end

1 of the season.

2 Q. Okay.

3 A. If you pay -- if you're very, very good at it
4 and you paid real strict attention, you'd catch it
5 earlier that maybe you could do a little remediation
6 in season.

7 Q. I see.

8 A. Most of the time it happens so late in the
9 season that it's a done deal by that time. In
10 general, what'll happen is the nuts on that particular
11 tree or trees or that area of the field will be
12 smaller. They'll have what we call sticktight, the
13 shucks -- the green shucks will stick on them.
14 They'll be black prematurely. If you went ahead and
15 cracked those open, you'll find what we call wafers,
16 real thin meats. The meats never filled properly.
17 That's usually a function of salt.

18 Q. Okay.

19 A. Could be other problems. Could be a nitrogen
20 problem deficiency. Could be potassium or -- or a
21 phosphorous problem, you know, but in general, you'll
22 see those towards the end of the year, and it's
23 usually a salt problem in our particular area.

24 Q. So in your area when you see those signs on
25 the leaves, what you're saying is the damage has

1 already been done to the -- the tree fruit before --

2 A. Yeah. It's already been done.

3 Q. Okay.

4 A. It's already -- it's already -- you're just
5 seeing the manifestation of it, but it's already
6 happened to your pecans. You may have not a pecan on
7 that tree that's worth a darn.

8 Q. Wow. Okay.

9 A. When it goes through your cleaning plant, it
10 might get all blown out because they're lightweights,
11 or you might be able to save, you know, some of them.

12 Q. So in terms of -- so it would be possible
13 potentially to take your yield numbers and match it up
14 with water supplies and see whether the yields were
15 less in a low water year?

16 A. Yes. Probably. Probably. It may be hard.

17 Q. Okay. Why?

18 A. Because everything is so subjective to each
19 individual farmer and what he's doing and so on so
20 forth. So even in our case, because pecans are an
21 alternate bearing crop, meaning they tend to have on
22 years and off years.

23 Q. I see.

24 A. On years and off years. Kind of like a lot
25 of fruit trees. If you've ever grown fruit in your

1 case management plan and an agreement that we've
2 reached with your counsel. So I think that our
3 agreement still stands, and that's where we are right
4 now.

5 MS. O'BRIEN: Yeah. Just for the
6 record, our agreement -- our agreement being agreement
7 that counsel for EP No. 1, myself, has reached with
8 counsel for the State of New Mexico, we put on the
9 record in the deposition of Johnny Stubbs, but just to
10 clarify the record here, we do not believe that New
11 Mexico has an automatic right to continue the
12 deposition. The agreement we reached was that we
13 would not object at this point in time to the
14 continuation of the deposition for the reasons stated
15 on the record prior, as well as what Mr. Roman stated
16 now, and that is that to the extent the deposition
17 were noticed for continuance, it would need to be
18 based on the pending discovery requests and consistent
19 with the stipulation in the case management plan, and
20 we reserve the right to object at that point in time.

21 MR. DUBOIS: United States has got no
22 questions at this time subject to whether or not this
23 deposition is continued to a later date. That might
24 change things depending on what comes up at that
25 point, but at this point, we have no questions.

1 MR. WALLACE: No questions at this time
2 from Colorado pending the motion for -- or the request
3 for a continuance pursuant to the case management
4 plan.

5 MS. BARNCASTLE: EBID has no questions.

6 MS. O'BRIEN: And we'll read and sign.

7 MS. KLAHN: I'll take the rough draft.

8 THE REPORTER: Does everybody want a
9 copy of the transcript?

10 MS. O'BRIEN: Yes, please.

11 MR. WALLACE: Yes, please.

12 MR. DUBOIS: Yes.

13 MS. BARNCASTLE: Yes.

14 MR. KOPP: Yes.

15 (The deposition concluded at 3:14 p.m.)
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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
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	ART IVEY	
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S I G N A T U R E O F W I T N E S S

I, ART IVEY, 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).

ART IVEY

Job No. 3069679

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PAGE/LINE

CORRECTION

REASON FOR CHANGE

26/ 19 & 20

spit → spent

misunderstood/or misspoke

33/ 13

Pecans like alfalfa → pecans are like alfalfa, they like sandy loam.

(same reason as above)

~~33~~ 33/ 20

glen dale → glendale (one word)

34/ 3

I shorten it → I short it

misunderstood/or misspoke

~~62~~

62/ 11

the cotton belt → the pecan belt

misunderstood/or misspoke


 ART IVEY

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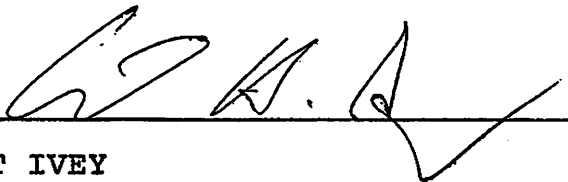
Page 74

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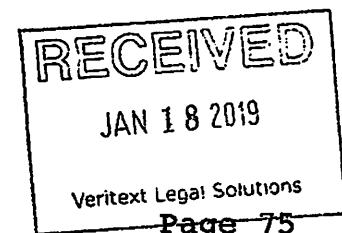
Job No. 3069679

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

I, ART IVEY, 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).


ART IVEY

Job No. 3069679



1 IN THE SUPREME COURT OF THE UNITED STATES
2 BEFORE THE OFFICE OF THE SPECIAL MASTER
 HON. MICHAEL J. MELLOY
3
4 STATE OF TEXAS)
)
5 Plaintiff,)
) Original Action Case
6 VS.) No. 220141
) (Original 141)
7 STATE OF NEW MEXICO,)
 and STATE OF COLORADO,)
8)
 Defendants.)

9
10
11 THE STATE OF TEXAS :
12 COUNTY OF HARRIS :

13 I, HEATHER L. GARZA, a Certified Shorthand
14 Reporter in and for the State of Texas, do hereby
15 certify that the facts as stated by me in the caption
16 hereto are true; that the above and foregoing answers
17 of the witness, ART IVEY, to the interrogatories as
18 indicated were made before me by the said witness
19 after being first duly sworn to testify the truth, and
20 same were reduced to typewriting under my direction;
21 that the above and foregoing deposition as set forth
22 in typewriting is a full, true, and correct transcript
23 of the proceedings had at the time of taking of said
24 deposition.

25 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 MS. KLAHN - 01:24:00

 MS. O'BRIEN - 00:00:00

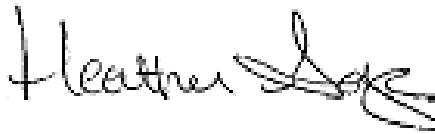
9 MR. WALLACE - 00:00:00

 MR. ROMAN - 00:00:00

10 MR. DUBOIS - 00:00:00

 MS. BARNCASTLE - 00:00:00

11
12 GIVEN UNDER MY HAND AND SEAL OF OFFICE, on
13 this, the 28TH DAY OF DECEMBER, 2018.

14 

15 HEATHER L. GARZA, CSR, RPR, CRR

 Certification No.: 8262

16 Expiration Date: 12-31-19

 VERITEXT LEGAL SOLUTIONS

17 Firm Registration No. 571

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EXHIBIT C

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

[11/27/2018 1:38 PM] Brooks, George

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EXAMINATION INDEX

WITNESS: GEORGE BROOKS

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EXHIBIT INDEX

EXHIBIT 12	PAGE
Notice of Deposition	5

1 (Exhibit No. 12 was marked.)

2 GEORGE BROOKS,

3 having been first duly sworn, testified as follows:

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

5 BY MS. KLAHN:

6 Q. Good afternoon, Mr. Brooks. My name is Sarah
7 Klahn. I'm here today on behalf of the State of Texas
8 in the case of Texas versus New Mexico and Colorado,
9 and you're here for your deposition. I'm going to
10 hand you Exhibit 12. Have you seen this before?

11 A. I have.

12 Q. Okay. This is the notice that was given to
13 your lawyer that provides the time and place for your
14 deposition. Have you had your deposition taken
15 before?

16 A. Never.

17 Q. Okay. The -- I've heard people describe it
18 as fairly uncivilized, but we'll try and be civil
19 today.

20 A. Okay. That would be nice.

21 Q. You'll -- you'll need to answer my questions.
22 If you don't understand a question, you can ask me to
23 repeat it or rephrase it or clarify. You'll need to
24 use full sentences or words at least.

25 A. Okay.

1 orders and deliveries go with what happens with EBID?

2 A. They're a mirror image. I don't have any
3 issues with either one.

4 Q. Well, I'm not suggesting that you would. I'm
5 just trying to understand if the processes are
6 different in the way you order or the way --

7 A. No. It's about the same. It's just that the
8 numbering system is different for the EBID stuff
9 versus the New Mexico stuff. They have different
10 numbers. But once you have them, I have them all on
11 my phone. When it's time to order, I call them and
12 say, okay, what's your order number, and I give them
13 that.

14 Q. Now, I understand that EP1 requires you also
15 to indicate what crop you're growing?

16 A. Yes, they do.

17 Q. Okay. Does EBID require you to tell what
18 crop you're growing?

19 A. You know, now that you mention it, I don't
20 think they do.

21 Q. Okay. You mentioned the -- one of the -- I
22 think the 10-acre parcel maybe in the EBID service
23 area has a well or the owner has a well?

24 A. Next to it -- the property next to it has a
25 well, and I will buy the water from him.

1 Q. Oh, I see. So the property next to the one
2 you're farming has a well.

3 A. Uh-huh.

4 Q. Is the well permitted --

5 A. Yes.

6 Q. -- to use on the property you're farming or
7 how does that work?

8 A. Yes. Because the property I'm farming used
9 to be a larger farm, and it was sold in half, but the
10 original owner still lets me water that.

11 Q. I see. Okay. And you mentioned the water
12 quality isn't good in the well?

13 A. Huh-uh.

14 Q. How do you know that?

15 A. It's not. Because I see the sediment. After
16 it waters, it goes directly into a concrete line ditch
17 and you'll see all the sand and sand particles. I
18 just tell by looking at the ditch after the irrigation
19 is finished and it's dry and you'll see a little white
20 line right along the top of where the top of the water
21 was. It's kind of alkaline. It's called brackish
22 water. Hasn't had a chance to filter real, real good.
23 If it was a much deeper well, probably be a little
24 less better quality.

25 Q. Now, when you were working on the school

1 district, working and living on the school district
2 farm in the upper valley, were there any wells
3 associated with that?

4 A. No, ma'am.

5 Q. Okay. Did you have any experience up there
6 with poor quality surface water when you were
7 irrigating up there?

8 A. No. No. We had a really good farm because
9 of the soil. The soil quality is spectacular there.

10 Q. Oh, really?

11 A. Uh-huh. Yeah. But there was no well
12 available that we could use.

13 Q. Now, when I asked you if you had any
14 experience with poor quality surface water, you -- you
15 responded by saying the soil was fantastic?

16 A. Uh-huh.

17 Q. So tell me how those two things are related,
18 the surface water quality and the soil.

19 A. Well, because you'll be able to water it
20 quickly and it seep in quickly. You want it to seep
21 in quickly.

22 Q. Okay. So had good drainage?

23 A. Yes.

24 Q. Did you ever have to do any of the deep
25 tillage practices that Johnny talked about?

1 A. It's going to go the course of least
2 resistance.

3 Q. Yeah.

4 A. That's usually to a drain. Sometimes you
5 don't see it until you hit because then it'll cave in.

6 Q. Any trends in crop -- crop type that you
7 think might be water driven since you've been out
8 there in the valley?

9 A. No. I know there's more pecans going in,
10 because there's -- it's more valuable. The product is
11 more valuable. The problem is with pecans, it takes a
12 long time to get them to where they are productive
13 where these annual crops or perennial crops are not
14 going to take that long.

15 Q. Do you know if anyone in the valley or have
16 you, yourself, attempted to use drip irrigation for
17 any crops?

18 A. No. I'm not very familiar with any drip
19 irrigations out there unless it's in a greenhouse
20 setting or something.

21 Q. Is that something you think that could be
22 tried?

23 A. It could be. Now that you're mentioning, I'm
24 trying to think who it is I've seen that's used some
25 drip irrigation, but I can't think of any.

1 Q. Would water quality be a challenge for drip
2 irrigation systems?

3 A. Probably would be, because if it's got too
4 much foreign material in there, it's going to plug up
5 the orifices for the delivery.

6 Q. By "foreign material," you mean like --

7 A. Salts.

8 Q. -- salts?

9 A. Uh-huh.

10 Q. Are you familiar with any water quality data
11 collection efforts by any of the growers that you're
12 working with or the landowners you're working with, I
13 mean?

14 A. Of them collecting water, no.

15 Q. Water quality data?

16 A. No. I'm not familiar with any of that yet.

17 Q. Do -- have you worked on any land where
18 people added sulfur?

19 A. Yes. Farmers that add sulfur. Some farmers
20 had gypsum, and then there's reasons for each.
21 Depends on what you need for what crop and what soil
22 type.

23 Q. But you haven't used that technique yourself?

24 A. No. If I need some fertilizer, I just call
25 the fertilizer dealer and tell them what I've got and

1 what my soil is like, and they've been very helpful
2 and supply me with what I need.

3 MS. KLAHN: Let's take a break.

4 (Break.)

5 Q. (BY MS. KLAHN) All right. You said at the
6 beginning, I think I asked you -- well, at some point
7 at the beginning of your testimony, you said that you
8 didn't think you had enough water?

9 A. Well, that's just like people and money.
10 They always want more than what they have.

11 Q. If you had more water, you feel like you
12 could use it on the parcels you're farming?

13 A. Yeah. Might even change what I farm and how
14 many acres I farm.

15 Q. What would make you farm more acres?

16 A. More available good water.

17 Q. Okay.

18 A. And a good market. I might consider
19 expanding a little bit more.

20 Q. What crops would you grow if you had more
21 water?

22 A. My background is mostly the forage crops. I
23 might put in alfalfa.

24 Q. How much more water?

25 A. If we had a good full allotment of 4 acre

1 MR. MACFARLANE: Yes, please.

2 MS. BARNCASTLE: Yes.

3 (The deposition concluded at 2:33 p.m.)

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Job No. 3075478

WITNESS CORRECTIONS AND SIGNATURE

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PAGE/LINE	CORRECTION	REASON FOR CHANGE
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13 / 13	'84 should be '80	Correction
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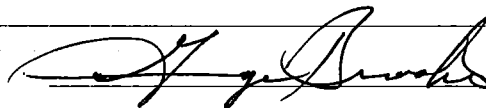
21 / 18	Should beardless wheat	"
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25 / 8	Should be EPWID, not EBID	"
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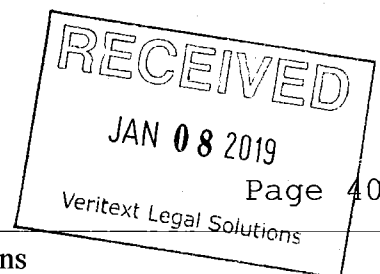
30 / 5	" " Beardless Wheat	"
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30 / 11	" " Agronomy not Agronomics	"
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33 / 6	" " "bake" not bail	"
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GEORGE BROOKS



Job No. 3075478

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

I, GEORGE BROOKS, 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).



GEORGE BROOKS

Job No. 3075478

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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, GEORGE BROOKS, 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 MS. KLAHN - 00:43:48

 MS. O'BRIEN - 00:00:00

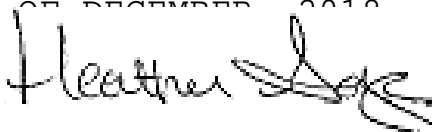
9 MR. WALLACE - 00:00:00

 MR. ROMAN - 00:00:00

10 MR. MACFARLANE - 00:00:00

 MS. BARNCASTLE - 00:00:00

11
12 GIVEN UNDER MY HAND AND SEAL OF OFFICE, on
13 this, the 13TH DAY OF DECEMBER, 2018

14 

 HEATHER L. GARZA, CSR, RPR, CRR

15 Certification No.: 8262

 Expiration Date: 12-31-19

16 VERITEXT LEGAL SOLUTIONS

 Firm Registration No. 571

17 300 Throckmorton Street, Suite 1600

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18 1-800-336-4000
19
20
21
22
23
24
25

EXHIBIT D

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

DECEMBER 13, 2018

[12/13/2018 12:37 PM] Daviet, Greg

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15 ALSO PRESENT:

16 Mr. Ryan Serrano
17 Ms. Peggy Barroll
18
19
20
21
22
23
24
25

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1 GREG DAVIET,
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. Daviet. My name is Sarah
6 Klahn. I'm here on behalf of the State of Texas in
7 the lawsuit Texas versus New Mexico and the State of
8 Colorado. You're here today for your deposition.
9 Before we get down to questions, I think we have a few
10 things to put on the record as far as your legal
11 representation at this deposition.

12 MS. KLAHN: As I understand it --
13 Samantha, would you like to summarize?

14 MS. BARNCASTLE: Yeah. So essentially
15 there is the issue of I am counsel for the Elephant
16 Butte irrigation district and Mr. Daviet has elected
17 to have his private counsel attend this deposition on
18 his behalf, as well. So we have a situation where two
19 attorneys will be attempting to defend the same
20 deposition.

21 MS. KLAHN: And under the Rules of Civil
22 Procedure, the rules regarding depositions provide
23 that the deposition shall provide -- proceed in the
24 same way as a trial would, and in trial, you 'd have
25 one lawyer so we, the State of Texas, officially

1 A. I think it was the fall of 1996.

2 Q. Okay. Is that when you -- did you then --
3 well, when did you start being involved in the pecan
4 farming of your family with your family? Before that?

5 A. I started being involved as a child. I
6 started managing the farm on June 5th, 1994.

7 Q. And you're still the manager?

8 A. Yes.

9 Q. So where is your farm located?

10 A. Two miles south of the plaza light in Mesilla
11 at the corner of Carver and Highway 28.

12 Q. Okay. In your experience -- that's the
13 Mesilla Valley, isn't it?

14 A. That's correct.

15 Q. Okay. Would you call that the lower Mesilla
16 Valley or middle or --

17 A. I don't think I've ever called it either of
18 those.

19 Q. Okay. In your experience since you started
20 managing Dixie Ranch, what factors, whether water,
21 whatever, have you seen that affect pecan yields?

22 A. Would you restate the question, please?

23 Q. Yes. Since you started managing Dixie Ranch,
24 what factors have you seen that affect pecan yields?

25 A. Water, sunlight, nutrition, soil conditions,

1 pests, manager experience. Those are the few off the
2 top of my head.

3 Q. Does water quality, has that been an issue
4 in -- for you in achieving good pecan yields?

5 A. I -- I would not classify it as being an
6 issue, understanding water quality is important as a
7 farm manager.

8 Q. Have you had water quality challenges with
9 the water supplies you use in your pecans?

10 A. Again, I don't think I would call them
11 challenges, but I understand the water quality of our
12 resources, and I try to manage our water accordingly.

13 Q. Do you do any water quality sampling of your
14 irrigation supplies, either groundwater or surface
15 water?

16 A. Yes.

17 Q. How frequently?

18 A. Every other year maybe.

19 Q. Ground water every other year?

20 A. Approximately, yes.

21 Q. Do you ever water quality sample your surface
22 water?

23 A. Yes.

24 Q. What have you learned over the years from
25 those water quality samples? Has there been any

1 changes in water quality for the ground water?

2 A. Yes.

3 Q. How so?

4 A. As the drought has progressed, salinity in
5 our ground water has increased.

6 Q. And what is that -- what kind of TDS are you
7 talking about as far as increase in salinity?

8 A. We have a range of TDS on our farm, and I --
9 I can't reference the amount that it has increased in
10 any of those. I do understand the range of -- of TDS
11 on our farm, though, and there has been an increase in
12 the last 15 years.

13 Q. Last time you sampled it, do you recall
14 what -- what the range of TDS was?

15 A. Yes.

16 Q. What was it?

17 A. Our groundwater wells range from about 700
18 parts per million to just over 2,000 parts per
19 million.

20 Q. Are any of those ground water sources
21 unusable because of the salinity?

22 A. No.

23 Q. What water sources do you use for irrigation?

24 A. We use surface water for the Rio Grande
25 project and ground water from the Mesilla Bolson.

1 Q. How many wells do you have in the Mesilla
2 Bolson?

3 A. We have four irrigation wells.

4 Q. Now, I understand that EBID allots its
5 surface water supplies to the water users in the
6 district; is that correct?

7 A. That is correct.

8 Q. Do you use a hundred percent of your EBID
9 surface water allotment every year?

10 A. We do not use a hundred percent every year.

11 Q. If you don't use it, what do you do with it,
12 anything?

13 A. If we haven't used it, it's because it's
14 undeliverable and so we -- we don't do anything with
15 it.

16 Q. What does that mean? How is it
17 undeliverable?

18 A. Depending upon operational circumstances for
19 the district, the ability to deliver water to our
20 location may be limited by infrastructure, by
21 competing demand, and it has not always been possible
22 for EBID to fully deliver the amount of water that
23 we've been allotted.

24 Q. Have you been able to transfer that water to
25 any of your neighbors or anyone else to use under the

E X A M I N A T I O N

BY MR. ROMAN:

Q. Good afternoon, Mr. Daviet. We've met before, but just for the record, I'm David Roman representing the State of New Mexico here today. I don't have too many questions for you, but one of the things I wanted to go back and follow up on a little bit was some of your farming practices as they relate to excavation and field preparation and the like. I know you discussed a little bit your excavation practices. Is that -- and -- and when you planted your trees in 2017, you excavated prior to planting; is that correct?

A. I excavated prior to planting the trees in 2017.

Q. Right. And can you describe the excavation process for me just a little bit?

A. It involves using an excavator to mechanically mix a certain width of soil. It is similar in appearance to digging a trench, but the soil doesn't tend to ever leave the trench.

Q. It just mixes as it's being dug?

A. We mix the soil as we dig it.

Q. Okay. And can you give me the reasons that you would do excavation?

1 A. We excavate to mechanically aggregate --
2 aggregate the various soil particle sizes.

3 Q. So the -- the soil processes the water as
4 efficiently as possible?

5 A. The aggregation of our soils improves the
6 ability of our soil to receive and release water.

7 Q. And do you do excavation because of perceived
8 salinity problems?

9 A. No. Excavating is not a remedy for salinity.

10 Q. Okay. What do you do to counter any
11 perceived salinity problems that you have from any of
12 the groundwater that you have to use that is higher in
13 TDS than you would want?

14 A. Salinity, as I understand it, has only a
15 single remedy, and that is the application of an
16 appropriate leeching fraction.

17 Q. And do you -- do you apply a leeching
18 fraction?

19 A. Yes.

20 Q. Which one is that?

21 A. Which fraction?

22 Q. What -- what do you apply to counter your
23 salinity? Maybe I misunderstood your answer. I'm
24 sorry.

25 A. The remedy for salinity is the application of

1 a leeching fraction, that is a fraction of additional
2 water.

3 Q. I understand now. Do you use any other soil
4 amendments or treatment to counter any sort of
5 salinity?

6 A. I'm not aware of any remedy for salinity
7 other than leeching fractions.

8 Q. Okay. Do you use sulfur or any other soil
9 amendments in your soil or sulfuric acid?

10 A. I apply both sulfur and sulfuric acid.

11 Q. And why do you do that?

12 A. The sulfuric acid is part of our acid-based
13 fertilizers. The sulfur component for it is an
14 essential element for growing crops.

15 Q. Okay. But to be clear, you don't use that
16 because of any perceived salinity problems?

17 A. Again, I'm not aware that there is any remedy
18 for salinity other than a leeching fraction. Sulfur
19 does not remedy salinity.

20 Q. Do you hedge your trees?

21 A. Yes. We hedge our trees.

22 Q. And what's your -- what's your process for
23 doing that, and how much do you hedge them?

24 A. Some part of our orchard is hedged annually.
25 Our hedging program is constantly evolving, so I can

1 tell you what I currently do.

2 Q. Okay.

3 A. We currently hedge 50 percent of our acreage
4 annually, and we cut all four sides of every tree.

5 Q. And why do you do that?

6 A. The purpose of hedging is to improve the
7 sunlight capture of a pecan tree.

8 Q. To increase the surface area that gets the
9 light?

10 A. Surface area is part of it, but it's also
11 managing how the sunlight moves through the canopy of
12 the tree.

13 Q. Is concern about drought a consideration in
14 whether you hedge or not?

15 A. No. Hedging is a process for managing
16 sunlight, not water.

17 Q. So if somebody said that they hedge their
18 trees because they were concerned about how much water
19 they had or concerned about drought, is that something
20 that you've heard other people say before?

21 A. No.

22 Q. Okay. Do you keep track of your pumping
23 costs? I would imagine you do.

24 A. Yes. We track our costs.

25 Q. Right. Do you know approximately in an

1 Q. Would it be safe to say that if you testified
2 that the executive committee does something that it
3 does not do, that may have been a mistake?

4 A. Yes.

5 Q. Are you aware that there are committees other
6 than the executive committee within EBID?

7 A. Yes.

8 Q. Would it be possible that the budget
9 committee actually reviews the first budget?

10 A. Highly possible.

11 MS. BARNCASTLE: I have no further
12 questions of this witness. We will read and sign.

13 MS. KLAHN: That's it.

14 (The deposition concluded at 2:34 p.m.)
15
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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
Pg 38, Ln 18:	Change 'is' to 'as'	(Mispronounced)
Pg 39, Ln 14:	Add 'use' between 'we' and 'an'	(Verb missing)
Pg 40, Ln 3:	Add '.' [period] after 'statement'. Change '.' [period] to ',' [comma] after 'agriculture'. (Correction to sentence break)	
Pg 42, Ln 24:	Change 'Bobby Gene Boyar' to 'Bobbie Jean Boyer'. (Misspelled)	
Pg 43, Ln 12:	Change 'Elisa' to 'Alicia'. (Misspelled)	
Pg 45, Ln 2:	Change 'Elisa' to 'Alicia'. (Misspelled)	
Pg 53, Ln 14:	Change 'Boyar' to 'Boyer'. (Misspelled)	
Pg 78, Ln 19:	Change 'an' to 'and'. (Mispronounced)	
Pg 80, Ln 15:	Change 'deficiency' to 'deficiencies'. (Mispronounced)	
Pg 91, Ln 3:	Change 'of the law at' to 'at the law of'. (The word order was misspoken)	


GREG DAVIET

Job No. 3128370

SIGNATURE OF WITNESSES

I, GREG DAVIET, 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).

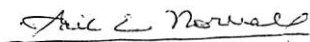

GREG DAVIET

Job No. 3128370

State of New Mexico

County of Dona Ana

The foregoing instrument was acknowledged before me this 12th day of February, 2019 by Gregory Daviet.


My Commission Expires
12/20/22

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IN THE SUPREME COURT OF THE UNITED STATES
BEFORE THE OFFICE OF THE SPECIAL MASTER
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STATE OF TEXAS)	
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Plaintiff,)	
)	Original Action Case
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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, GREG DAVIET, 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 MS. KLAHN - 01:57:12

 MS. O'BRIEN - 00:00:00

9 MR. MACFARLANE - 00:05:45

 MR. ROMAN - 00:21:32

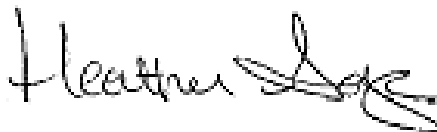
10 MR. WALLACE - 00:00:00

 MS. BARNCASTLE - 00:01:00

11 MS. DAVIDSON - 00:00:00

 MR. STEIN - 00:00:00

12
13 GIVEN UNDER MY HAND AND SEAL OF OFFICE, on
14 this, the 4th day of January, 2019.

15 

16 HEATHER L. GARZA, CSR, RPR, CRR

 Certification No.: 8262

17 Expiration Date: 12-31-19

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EXHIBIT E

STATE OF TEXAS)
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and STATE OF COLORADO,)
)
 Defendants.)

NOVEMBER 28, 2018

[11/28/2018 9:30 AM] Ceballos, Larry

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EXAMINATION INDEX

WITNESS: LARRY CEBALLOS

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Notice of Deposition	5

1 (Exhibit No. 13 was marked.)

2 LARRY CEBALLOS,

3 having been first duly sworn, testified as follows:

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

5 BY MS. KLAHN:

6 Q. Good morning, Mr. Ceballos.

7 A. Good morning.

8 Q. My name is Sarah Klahn. I'm here today
9 representing the State of Texas in the case of Texas
10 versus New Mexico and Colorado. I'm going to hand you
11 what's been marked Exhibit 13. Have you seen that
12 before?

13 A. Yes, ma'am.

14 Q. Okay. And that's the notice of deposition.

15 A. Right.

16 Q. And the reason why you're here today. Have
17 you had your deposition taken before?

18 A. No, ma'am.

19 Q. All right. A few ground rules. If you would
20 answer my questions with words instead of a nod of the
21 head or shaking of the head, because the court
22 reporter has to be able to hear it to write it down.
23 If you don't understand one of my questions, please
24 ask me to clarify or rephrase. If you need to take a
25 break, just let me know, but you can't take a break if

1 I've just asked you a question. I don't want you to
2 go out in the hall and get the answer from Maria.

3 A. Okay.

4 Q. And I don't know if this is going to be an
5 issue with us, but we should try not to talk over each
6 other. So I'll try and wait until you're done before
7 I talk, and then you try and wait before -- for me to
8 be done before I talk. How's that sound?

9 A. Sounds fair.

10 Q. Okay. Thank you. Could you state your name
11 for the record, please?

12 A. My name is Larry Ceballos.

13 Q. Could you spell that?

14 A. L-A-R-R-Y. Ceballos is C-E-B-A-L-L-O-S.

15 Q. Okay. What's your address?

16 A. My address is 17601 Island Tornillo Road.

17 Q. Okay. And are you a board member of the El
18 Paso County Water Improvement District No. 1?

19 A. Yes, ma'am.

20 Q. Do you have a officer position on the board?

21 A. Yes, ma'am.

22 Q. What is your position?

23 A. Secretary.

24 Q. Okay. What does a secretary do on the EP1
25 board?

1 me, you know, after. I've bought anywhere from five
2 to a hundred acres at a time.

3 Q. And the custom harvest business for pecans?

4 A. For pecans, yes, ma'am.

5 Q. Okay. So from starting in 1995, then, you
6 have experience with ordering water from EP1?

7 A. Yes, ma'am.

8 Q. How would you say that water ordering has
9 changed since 1995?

10 A. Not much. I mean, we -- well, I used to call
11 up the order, but now, I got my secretary, and she --
12 she sends the order. So that's what's changed.

13 Q. Sounds like a good change.

14 A. It's a good change. Yeah. She -- she puts
15 all the orders in, and usually she does it online or
16 sometimes she'll call it in.

17 Q. How many people work for you on --

18 A. On my operation, I got 17 employees.

19 Q. So they'd be the ones that would be out there
20 making sure the water is getting into the fields and
21 so on?

22 A. Well, a lot of the employees are in the bee
23 business.

24 Q. Oh, I see.

25 A. And I got two sons that work for me. They're

1 the ones that are in charge of -- of irrigations in
2 our farm.

3 Q. I see. Okay. Since 1995, have you -- have
4 you noticed a difference in the availability of water
5 for irrigation?

6 A. Drastically.

7 Q. How so?

8 A. The amount of water. A lot less water. The
9 quality of water, and the quality has -- has been a
10 little rougher, but it's wet. You know, we -- we
11 appreciate when we get what we get. But the quality,
12 and when we started farming, we had no issues, because
13 there was plenty of water, you know, back in those
14 days. Now, it's tougher. It brings on a lot of new
15 challenges.

16 Q. What are some of the challenges that you've
17 had?

18 A. Well, we -- we try to make everything as
19 efficient as we can through farming practices, through
20 lasering, through making our borders a lot closer
21 together, so we can push water a lot more faster
22 and -- and doing a -- sometimes we -- we even leave
23 the -- the ground, so we can mow it so it can be
24 cooler. Those type of practices, we were -- it
25 actually -- I consider -- I tell everybody it makes us

1 a better farm because we have to be real, real
2 cautious with the water that we got.

3 Q. So you mentioned that you have to order --
4 you try and order the water close together, so you can
5 push more water through?

6 A. No, no, no, no. The ordering -- the
7 ordering, we do it on -- on -- when we consider we
8 need it, but when we -- when we're pushing the water,
9 that means instead of -- instead of having wider
10 borders, we put borders closer together.

11 Q. I see.

12 A. Water that's concentrated will move a lot
13 faster.

14 Q. I see. Okay.

15 A. And, like, we have to pump some of that
16 water, you know, pumping is expensive. So that's one
17 of the main things we do. I've cut watering time in
18 half by doing that.

19 Q. Okay. When you say you have to pump some of
20 the water, are you using wells for some of --

21 A. Yes, ma'am.

22 Q. -- your supply? About how much of your
23 supply annually would you use wells or does it depend?

24 A. It depends on the amount allotment we got
25 every year, but I try to stay as minimal as I can and

1 10-acre parcel, and the biggest one I've got is 240
2 acres.

3 Q. Okay. Are they nearby or are they --

4 A. They're all within -- everything that I own
5 is within about a 3-mile radius.

6 Q. Okay.

7 A. So it's close, but they're not contiguous.

8 Q. Okay. And so I -- so I think you said 350 of
9 the 600 acres, you have well water you can use, and
10 the rest of the well water, you can't?

11 A. I can't.

12 Q. On the 250 acres that you can't use well
13 water, how do you maintain the pecans there?

14 A. I use return flow.

15 Q. Okay.

16 A. Return flow.

17 Q. Is it near one of the drains?

18 A. Well, there's drains in the whole valley.

19 Q. Yeah.

20 A. Are you talking about the canal system?

21 Q. Uh-huh.

22 A. Yeah. All our farms all have canals and all
23 have drains.

24 Q. So your return flows get lifted up and put
25 into one of the canals in order for you to --

1 A. Right. There's -- in the valley, there's
2 areas where you can use return flow, because of the
3 geographic area, and there's areas you can't. All my
4 farms are in return flow area.

5 Q. Okay. Is the quality of the return flows
6 remain the same since you acquired the 250 acres that
7 you use?

8 A. It ranges from -- I got a test meter that I'm
9 always testing my water, and it ranges from 1,300
10 parts per million to 1,400 parts per million in that
11 area.

12 Q. Is that usable water?

13 A. That's usable water. Yeah, when you're
14 looking at an 8,000 to 1,000, yeah, it's usable water.

15 Q. Okay. So when you order water from EP1 for
16 the first irrigation of the season, are you going to
17 be using all EP1 -- I'm not sure how to refer to it --
18 EP1 deliveries versus return flows for the first
19 irrigation of the season?

20 A. Well, it all depends on the allotment and the
21 time that the allotment is issued to us.

22 Q. Okay.

23 A. Like, if we -- if we don't get the allotment
24 until June, which has happened in the past years, June
25 or July, we'll -- we'll use the return flow and the

1 pumps.

2 Q. I see.

3 A. And with that return flow, I spread out the
4 irrigations because I have to. It's -- it's a
5 matter -- really in those 250 acres, it's a matter of
6 survival. It's a matter of making the trees survive.
7 And I -- I do different things to -- to, you know --
8 I've -- normally, I would like to irrigate the pecan
9 trees nine times a year, ten times a year. That's
10 what we do in the valley. And in these drought years,
11 there's some orchards that will only get six
12 irrigations on them.

13 Q. And that's even with return flow?

14 A. That's with return flow and the allotment
15 water.

16 Q. Now, from talking to the other folks on the
17 EP1 board, I -- my understanding is that in a poor
18 water year, there's going to be fewer -- there's going
19 to be less return flows. Has that been your
20 experience?

21 A. Yes. Yes. There's less return flows. It
22 gets harder.

23 Q. So this year, I understand there's some
24 concern about the --

25 A. There's big concern.

1 A. Pecan nut casebearer. So we have had more
2 issues.

3 Q. Why do you think that is or have you heard?

4 A. I think it's all because of -- how could I --
5 it's really -- probably what it is, is everything in
6 this world moves a lot more faster now. In
7 agriculture and everything, and everything is spread
8 out faster. Same thing in the bee business. We had a
9 mite in Florida that's been the biggest destruction of
10 bees, and they found it in Florida in 19, I think, '91
11 if I'm not mistaken. It's in the whole United States
12 right now. That's been one of the biggest -- I don't
13 know if you guys heard of it, colony collapse disease.
14 That's probably the -- the culprit to all. That's
15 what I would -- I would guess. So with -- with things
16 being transported like they are and everything, I
17 think that's one of the issues that -- that is causing
18 a lot of this.

19 Q. You don't think any of the pests or disease
20 issues arised from less water?

21 A. I really don't think so.

22 Q. Okay.

23 A. I don't think so.

24 Q. The plants aren't stressed because they're
25 not getting as much water as they would?

1 A. Well, in the pecans, the aphids, no, I
2 wouldn't say they were, no.

3 Q. Okay.

4 A. In the bee business, I would say, but not in
5 the pecans.

6 Q. In the bee business, you'd say that less
7 water is causing it?

8 A. Oh, yes, yes.

9 Q. How so?

10 A. Because it -- you got less crops. You got
11 less nectar available for the bees, so the bees stress
12 a lot longer so that causes them to -- to their
13 population to decrease. In wet years, it's a lot
14 easier.

15 Q. Yeah.

16 A. Over my experience, when it's drought, it's
17 very hard, and when it's wet years, it's a lot easier.

18 Q. Do you have any experience or understanding
19 with farming practices in the Mesilla Valley?

20 A. No, ma'am.

21 Q. How about in the Rincon Valley?

22 A. No.

23 Q. How about in the upper El Paso Valley?

24 A. No, I don't got none.

25 Q. Do you do any management techniques to manage

1 | soil salinity?

2 | A. Yes, ma'am.

3 | Q. What do you do?

4 | A. We -- like I just planted a hundred acres of
5 | pecans, and I excavated the whole farm, the tree row
6 | to trim the soil so the drainage will let the salts go
7 | down. We use element sulfur --

8 | Q. Okay.

9 | A. -- in the trees. We put 3 or 400 pounds to
10 | the acre.

11 | Q. Okay.

12 | A. Then we use humic acid in the pecan trees.
13 | That's an element to let the fertilizers and all our
14 | magnesium and potassium flow through the root. In my
15 | personal experience, what's really helped us out is
16 | our excavation and our pecan trees. I've seen sick
17 | trees and we excavate them and then we -- they turn
18 | around a little bit, because we got -- this whole
19 | valley is -- you can go from a sandy area to a clay
20 | soil in ten minutes.

21 | Q. Wow.

22 | A. It's --

23 | Q. And you -- you said you excavate, so is that
24 | the procedure where there's the big earth mover
25 | that --

1 A. Yes. We get a -- it's called the track hoe.

2 Q. A track hoe. Okay.

3 A. It's a track hoe. Then what we do, we --
4 what I try to do -- and I'm saying these figures,
5 because this is what I tell my men. I try to mix 60
6 percent of -- of sand with -- with 40 percent of clay
7 then we go down and dig. Areas we're digging --
8 there's areas we dig 20 feet, and there's areas we dig
9 only 6 feet.

10 Q. So you dig down until you get enough sand?

11 A. Enough sand. A mixture so we can push down
12 the salts.

13 Q. Now, do you do it just in every row? What's
14 your --

15 A. Well, when we pre-plant, we do it where the
16 trees -- the tree is, about 10 feet wide --

17 Q. Okay.

18 A. -- where the tree is going to be -- the line
19 of the tree is going to be sitting. And when I bought
20 producing orchards, we get about 5 feet away from the
21 tree root, and then we dig in the -- in that area.

22 Q. Do you do every row or every other row?

23 A. We -- I've done both. I've done every other
24 row, and then I come back years. And a lot of it has
25 to do with the economics, because it's very expensive.

1 Q. Right.

2 A. It's a very expensive procedure.

3 Q. Yeah.

4 A. I figure we -- on the average, we spend --
5 depends on the price of diesel. We spend about 12 to
6 \$1,300 an acre trying to do this.

7 Q. Practically buy the land again.

8 A. Well, the price of land now is real high.

9 Q. Have you seen any evidence of salt damage to
10 pecan leaves?

11 A. Oh, yes.

12 Q. What does that look like?

13 A. You'll have -- especially on younger trees,
14 you'll have the tips of the leaves that are all burned
15 and then you'll -- you'll see pecans a lot smaller and
16 tree will drop the nuts early. Yeah.

17 Q. So what do you do when you have those -- have
18 you had -- have you experienced those?

19 A. Yeah. We've experienced that, and -- and the
20 salts get tied up usually in the clay soil, so what we
21 do, we put in the excavator. I've even gone as far,
22 which is very expensive, as far as removing the clay
23 and bringing in sand.

24 Q. Wow.

25 A. I'll bring in two semi loads of sand for each

1 tree. It's an expensive deal, but it's like in an
2 orchard, I might do -- in a hundred acre orchard, I
3 might do 30, 40 trees. It takes me about two years to
4 see the results and then they start turning around.

5 Q. Two semi loads?

6 A. Yes, ma'am.

7 Q. Per tree?

8 A. Per tree, yes. It's very expensive. It's
9 not recommended, because of expensive.

10 Q. Well, you have to do what you have to do.

11 A. You have to do what you have to do.

12 Q. You carry around a little meter to do testing
13 of the water?

14 A. Yes, ma'am.

15 Q. How often do you test it?

16 A. I test it, especially my wells, I test it I'd
17 say about every two months or so.

18 Q. Do you keep any records of that?

19 A. Yes, ma'am.

20 Q. You do?

21 A. Yeah.

22 Q. Okay. Back to 1995, when did you start using
23 the meter?

24 A. The meter, I started using about -- I'd
25 imagine about seven years ago.

1 Q. Oh, okay.

2 A. Seven years ago.

3 Q. You seen any changes -- have you gone back
4 and looked at the data to see how it's changed over
5 time?

6 A. When I noticed the biggest change was
7 especially in the wells, they would start out with a
8 low TDS, and it went up about -- after pumping two
9 months or three months or -- I'd see the -- the TDS go
10 up about 400 points on the average on each well.

11 Q. That's happened over the seven years?

12 A. That's what's happened over the years. And
13 then say I didn't use the well for six/seven months,
14 it went back to the original. Why that is, I don't
15 know. But that's the biggest change. And then like I
16 tell you, the return flow -- return flow, I've always
17 monitored it, and it's been 1,300 to 1,500 parts per
18 million. The river water from the dams around a
19 thousand to 800.

20 Q. I had a question. I lost it. How deep are
21 your wells?

22 A. They run from 95 feet to 140 average in
23 between that area.

24 Q. I don't think I've asked you how many wells
25 you have?

1 A. I've got five wells.

2 Q. Okay. And how many of those have good -- how
3 many of those have 8,000 parts per million TDS?

4 A. 800 parts?

5 Q. 800 or 8,000. Wasn't that the number you
6 said, 8,000?

7 A. No. 8,000 was the place where I didn't drill
8 the well.

9 Q. Oh, you don't have a well there at all?

10 A. Oh, no, no, no.

11 Q. Okay.

12 A. That's just like salt water, like sea water.

13 Q. Yeah.

14 A. You put that on a crop, and you just might as
15 well just kill it.

16 Q. Right.

17 A. You'll kill the crop.

18 Q. Right. So you've drilled wells only in the
19 areas where you could use --

20 A. Right.

21 Q. -- the groundwater?

22 A. Only where we can use the groundwater.

23 Q. So those five wells all would serve that 350
24 acres you talked about?

25 A. Right. Correct.

1 MS. KLAHN: Let's take a break.

2 (Break.)

3 Q. (BY MS. KLAHN) Okay. Mr. Ceballos, we've
4 talked a little bit this morning about how you've seen
5 things change since you started farming in 1995. I'm
6 wondering if you've seen a change in the volume of
7 available return flows over the last period of years?

8 A. Yes. Yes, we have.

9 Q. Okay. And --

10 A. It's been less.

11 Q. It's been less?

12 A. Yes.

13 Q. Does it -- do you have any idea why that is?

14 A. My understanding is that the drains ain't
15 flowing in the upper areas, and that's what's causing
16 it. That's my understanding. But I'm not a hundred
17 percent sure, but that's --

18 Q. Okay. And, of course, you mentioned the
19 return flows are critical for you to be able to
20 maintain the crop on 250 of your acres, right?

21 A. Yes, ma'am.

22 Q. So that has real consequences for you?

23 A. Yes, ma'am.

24 Q. Do you feel like you have enough water?

25 A. No.

1 Q. What do you think you'd do differently if you
2 had more water?

3 A. I'd irrigate more, probably the trees a
4 little bit bigger, and probably make a better crop.

5 Q. Make more money?

6 A. Make more money.

7 Q. Yeah. Okay. I just want to be -- I think
8 all -- I think I know the answers to all these
9 questions, but let me just ask them. You -- have you
10 ever had any experience growing row crops?

11 A. I grew cotton, I think, around '97/'98, I
12 think, somewhere around there. This gentleman leased
13 me his property, but I quickly found out that it
14 wasn't for me.

15 Q. Why not?

16 A. Economically.

17 Q. Oh.

18 A. It's tough. To be a cotton grower, you've
19 got to have a lot of experience and a lot of acres to
20 make it nowadays, because the price of cotton hasn't
21 changed much, I think, since, what, the '50s and '60s,
22 the price of cotton. These new techniques they use
23 and bigger equipment make it more efficient, and
24 you've got to invest a lot of money to -- to purchase
25 that equipment. Equipment is not cheap. Those were

1 my main factors, and I lean more to pecans because of
2 the economics of the pecans, and to me, it seemed a
3 lot easier to grow pecan trees than cotton. But
4 that's me, because I -- I really didn't have that much
5 experience.

6 Q. When you say "the economics," you mean pecans
7 are more profitable?

8 A. Pecans are more profitable, yes, ma'am.

9 Q. Okay. Do you have any experience growing
10 alfalfa?

11 A. Yes. I -- I grew maybe 10, 15 acres. That
12 was for my son's horses and stuff like that so that's
13 my experience with alfalfa. It was more like an
14 expense really, because it was for their animals and
15 stuff like that.

16 Q. Yeah. You were growing their feed basically?

17 A. Feed. Yeah, just growing their feed.

18 Q. How about experience growing chili peppers?

19 A. None.

20 Q. Or onions?

21 A. None.

22 Q. Okay. The 200 or so acres that you said you
23 managed for other landowners or that you grow things
24 for other landowners, are those all pecans?

25 A. All pecans.

1 Q. Okay. Do you have any plans to increase your
2 portfolio of land either through purchasing or
3 acquiring other people that you're growing for?

4 A. I've done it for the last 15 years. I don't
5 know if I'll keep going or not. I don't know.

6 Q. You don't have any immediate plans?

7 A. No. That's what I said last year, and I
8 bought a hundred acres.

9 Q. Oh.

10 A. So, I mean, that's -- that's --

11 Q. So it depends what happens?

12 A. Because the land came up and it was my
13 neighbor and that's -- that's why I purchased it. But
14 I -- the price of land is high, and I -- I don't know.

15 Q. Not trying to pin you down, so that you miss
16 a good deal.

17 A. Yeah. You know, something comes up and I
18 think I can manage it, I'll probably buy it.

19 Q. Okay.

20 A. But at the moment, I don't have nothing in
21 mind.

22 MS. KLAHN: Okay. I think that's all I
23 have for this witness right now.

24 MR. ROMAN: No questions from Mexico at
25 this point, although we may seek to reconvene the

1 deposition at a later date based on answers to
2 discovery questions that are pending to EP1 right now
3 and based on an understanding with your counsel
4 subject to that understanding.

5 MS. O'BRIEN: And we put that
6 understanding and agreement on the record with regards
7 to the deposition of Mr. Stubbs and Mr. Ivey, so I
8 won't repeat that here. We'll just refer to those
9 prior articulations of the agreement.

10 MR. MACFARLANE: The United States has
11 no questions for this witness at this time.

12 MR. WALLACE: Colorado has no questions
13 at this time with the understanding that the
14 deposition may be continued at a later date.

15 MS. BARNCASTLE: EBID has no questions.

16 THE REPORTER: Does everybody want a
17 copy of the transcript?

18 MR. MACFARLANE: Yes, please.

19 MS. BARNCASTLE: Yes.

20 MR. ROMAN: Yes.

21 MR. WALLACE: Yes.

22 MS. O'BRIEN: Yes.

23 (The deposition concluded at 10:13 a.m.)
24
25

Job No. 3069691

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WITNESS CORRECTIONS AND SIGNATURE

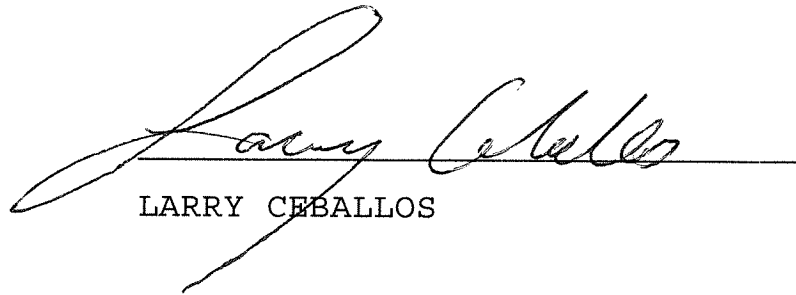
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for the change. Please sign each page of changes.

PAGE/LINE	CORRECTION	REASON FOR CHANGE
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LARRY CEBALLOS

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

I, LARRY CEBALLOS, 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).



LARRY CEBALLOS

Job No. 3069691



1 IN THE SUPREME COURT OF THE UNITED STATES
2 BEFORE THE OFFICE OF THE SPECIAL MASTER
 HON. MICHAEL J. MELLOY
3
4 STATE OF TEXAS)
)
5 Plaintiff,)
) Original Action Case
6 VS.) No. 220141
) (Original 141)
7 STATE OF NEW MEXICO,)
 and STATE OF COLORADO,)
8)
 Defendants.)

9
10
11 THE STATE OF TEXAS :
12 COUNTY OF HARRIS :

13 I, HEATHER L. GARZA, a Certified Shorthand
14 Reporter in and for the State of Texas, do hereby
15 certify that the facts as stated by me in the caption
16 hereto are true; that the above and foregoing answers
17 of the witness, LARRY CEBALLOS, to the interrogatories
18 as indicated were made before me by the said witness
19 after being first duly sworn to testify the truth, and
20 same were reduced to typewriting under my direction;
21 that the above and foregoing deposition as set forth
22 in typewriting is a full, true, and correct transcript
23 of the proceedings had at the time of taking of said
24 deposition.

25 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 MS. KLAHN - 00:37:13

 MS. O'BRIEN - 00:00:00

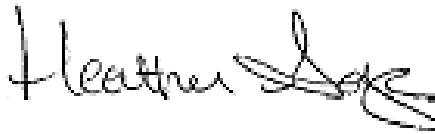
9 MR. WALLACE - 00:00:00

 MR. ROMAN - 00:00:00

10 MR. MACFARLANE - 00:00:00

 MS. BARNCASTLE - 00:00:00

11
12 GIVEN UNDER MY HAND AND SEAL OF OFFICE, on
13 this, the 13TH DAY OF DECEMBER, 2018.

14 

15 HEATHER L. GARZA, CSR, RPR, CRR

 Certification No.: 8262

16 Expiration Date: 12-31-19

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EXHIBIT F

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 DEPOSITION OF

BOBBY KUYKENDALL

DECEMBER 12, 2018

ORAL DEPOSITION of BOBBY KUYKENDALL, 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 December 12, 2018, from 1:40 p.m. to 3:39 p.m., before Heather L. Garza, CSR, RPR, in and for the State of Texas, recorded by machine shorthand, at the offices of ELEPHANT BUTTE IRRIGATION DISTRICT, 530 South Melendres Street, Las Cruces, 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.

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24 Ms. Peggy Barroll
25

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1 BOBBY KUYKENDALL,
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 afternoon, Mr. Kuykendall?

6 A. Kuykendall, uh-huh.

7 Q. My name is Sarah Klahn. I'm here today
8 representing the State of Texas in the case Texas
9 versus New Mexico and Colorado. Would you state your
10 name and spell it for the record?

11 A. My legal name is Joe Bob, B-O-B, Kuykendall.

12 Q. And?

13 A. K-U --

14 THE WITNESS: You got it?

15 THE REPORTER: Yes.

16 Q. (BY MS. KLAHN) What's your home address?

17 A. 124 North Berry, B-E-R-R-Y, Road.

18 Q. Las Cruces?

19 A. Anthony, New Mexico.

20 Q. Anthony. Have you ever had your deposition
21 taken before?

22 A. No, I haven't.

23 Q. All right. There's a few rules. One person
24 talks at a time. Please make your replies audible
25 instead of just nodding your head. If there's an

1 if you plant in January?

2 A. Oh, yeah.

3 Q. Is the -- is your farm in the Mesilla Valley?

4 A. Yes.

5 Q. Okay. Is there a sub way of talking about

6 that? Would you say the upper Mesilla or lower

7 Mesilla?

8 A. Lower.

9 Q. Lower Mesilla?

10 A. Uh-huh.

11 Q. Okay. What kinds of changes in production or

12 yields of your row crops have you seen in 22 years?

13 A. I guess, could I ask you to rephrase that

14 or --

15 Q. Uh-huh. Yeah. So you've been farming for 22

16 years, and you've been farming row crops, correct?

17 A. Correct.

18 Q. Have you seen any changes or trends maybe is

19 a better word in production or yields for any of your

20 row crops?

21 A. Not necessarily if you take the average.

22 Q. Okay. Some good years, some bad years?

23 A. Yeah. Right. And then climactic conditions

24 and so if you get hailed out, that's going to be a

25 very low yielder.

1 Q. Do you use different cultivars or varieties
2 than you -- today than you did when you started?

3 A. Oh, yes.

4 Q. So the --

5 A. It's always changing. The varieties change.
6 They get improved -- supposedly improved, so you buy
7 in on that. And, also, varieties go obsolete, also.
8 You know, they find better cultivars to work in
9 different regions.

10 Q. What are some of the considerations for
11 cultivars that are developed for the lower Mesilla
12 Valley?

13 A. Heat, drought, improved -- improved varieties
14 that -- that will take the heat better and take the
15 drought better. For instance, corn. I mean, they've
16 got some of these corns where they've got quite a bit
17 of drought tolerance built in now.

18 Q. I see.

19 A. So, yeah, it's always changing.

20 Q. What about salinity, is that an issue for row
21 crops?

22 A. Sure it is.

23 Q. Okay. How so?

24 A. Depending on how much underground water we
25 use, our sodium salts do come up and so if you're

1 | using a lot of underground water to irrigate, let's
2 | say over a period of two to five years, your sodium
3 | salt in a soil sample is going to come up, so you're
4 | searching for varieties that are tolerant to the
5 | sodium salts.

6 | Q. Do you have to do any soil treatments or
7 | amendments?

8 | A. Amendments. We do amendments.

9 | Q. What do you do?

10 | A. We use sulfur, either in the form of granular
11 | or sulfuric acid.

12 | Q. And do you -- do you test the water before
13 | you add the sulfur or do you just routinely add sulfur
14 | if you're using groundwater?

15 | A. I was -- I was testing quite regularly, let's
16 | say every quarter. It doesn't change that -- that
17 | quickly. It changes over a period of, you know, five
18 | years, eight years, and that depends on how much
19 | surface water you have. The amendments that I -- that
20 | I -- the way I base my amendments is usually on soil
21 | and water samples.

22 | Q. I see. So you test the soil, as well?

23 | A. Uh-huh.

24 | Q. And what are you looking for when you test
25 | the soil, sodium content?

1 A. Sodium content and your nitrogen potassium
2 potash.

3 Q. Uh-huh.

4 A. And phosphorous. So you just send a soil
5 sample off to a lab, and they'll come back with what
6 they detected and you can use your amendments to try
7 to buffer those one way or the other.

8 Q. I see. Do you -- thinking back over the last
9 22 years, was there a period of years when you had a
10 good supply of surface water?

11 A. When I started.

12 Q. How many years did that -- did that last?

13 A. About four.

14 Q. Okay. So early 2000/2001?

15 A. Late '90s, early 2000s.

16 Q. Okay. So basically since -- since the early
17 2000s, you've been dealing with short surface water
18 supplies?

19 A. Yes.

20 Q. Okay.

21 A. Shorter than a full allotment.

22 Q. Shorter than a full allotment. And what is a
23 full allotment?

24 A. Three acre feet, back in the day, and then
25 you had the option if the neighbors didn't use theirs,

1 you could purchase more water for your -- for your
2 farm.

3 Q. When you say a full allotment, you're talking
4 about the EBID allotment?

5 A. Yes. Surface water.

6 Q. Okay. And so in a year -- how much -- what
7 was the allotment last year for EBID?

8 A. For 2017 or '18?

9 Q. '18. Let's use '18.

10 A. 10 inches.

11 Q. 10 inches. How much -- so you made up -- how
12 much groundwater did you try and make up -- or how
13 much groundwater did you use to try and complete the
14 circle, as you described it before?

15 A. Depends on the crop.

16 Q. Okay. What'd you grow last year?

17 A. I had chile and alfalfa.

18 Q. Okay. So different amounts of water for
19 those?

20 A. Yeah. For each crop, yes.

21 Q. When do you plant chile?

22 A. Direct seed, we try to get it in March,
23 transplants April.

24 Q. What did you do in 2018, seed?

25 A. Both.

1 Q. Oh, why do you think that was?

2 A. Okay. Like, on chile, if you're going to
3 produce X amount of tons per acre, it's going to take
4 X amount of moisture to produce those tons, regardless
5 if it's sprinkler, flood, drip. The plant is going to
6 require that amount of moisture --

7 Q. Right.

8 A. -- to produce that load.

9 Q. Sure.

10 A. So the -- the main reason -- well, the main
11 reason that I got into drip was to control disease in
12 the crop.

13 Q. How does it do that?

14 A. Well, you're spoon feeding it, instead of --
15 like, a flood irrigation. You go to total ground
16 saturation for a period of time, depending on the type
17 of ground. With drip, you can -- you can spoon feed
18 it to -- up -- down to a quarter of an inch per acre
19 if you want to go that low and just do it every day
20 instead of putting 3 to 4 inches of -- of flood
21 irrigation water across that acre. So it's just a
22 more -- it's a management tool.

23 Q. Could you have grown the chile -- did you say
24 you grew it this year with drip irrigation?

25 A. Uh-huh.

1 Q. Do you think you could have grown the same
2 crop with the same yields if you hadn't used drip
3 irrigation?

4 A. No.

5 Q. So it did -- it did allow you to use more
6 water -- less water more efficiently?

7 A. Correct.

8 Q. Okay. During the first few years when you
9 were farming and you had a large -- relatively large
10 surface water supply, were your yields different than
11 today when you're relying more on groundwater?
12 Actually, let me strike that and ask a different
13 question.

14 Are you relying more on groundwater today
15 than you were when you started?

16 A. Definitely.

17 Q. Okay. So when you started and there were
18 good surface water years and you got a crop and could
19 be any row crop, were the yields better with that
20 surface water supply than when you now -- than now
21 when you have to rely more on groundwater?

22 A. Not necessarily, and the reason I say that is
23 it really depends on the quality of groundwater that
24 you're pumping on that crop.

25 Q. Okay.

1 A. Good quality groundwater yields about the
2 same as surface water.

3 Q. And what is the quality of -- first of all,
4 how many wells do you have that you could irrigate
5 with?

6 A. That I own or that we --

7 Q. That you could use.

8 A. Nine.

9 Q. And do all of those have good quality
10 groundwater associated with --

11 A. They vary.

12 Q. I see.

13 A. The shallower wells are lesser quality. The
14 deeper wells are better.

15 Q. When you say shallow versus deep, what
16 distance or what depths are you talking about?

17 A. A hundred-foot well versus a 500-foot well.

18 Q. Okay. So I want to talk to you a little bit
19 about your owner management plan, but just let me ask
20 you a few questions before we get into that because
21 that's what I need extra copies for. What -- what do
22 you understand the owner management plan to provide
23 for you as a farmer?

24 A. Can you explain owner management plan?

25 Q. Sure. You nodded your head so seriously, I

1 thought you knew what I meant so that's not -- it's
2 not fair to not show it to you.

3 MS. KLAHN: I guess we need to take a
4 break now and make a couple copies. Can we go off the
5 record for a few minutes?

6 (Break.)

7 (Exhibit No. 15 was marked.)

8 Q. (BY MS. KLAHN) All right. Mr. Kuykendall, I
9 don't think I asked you this: Can I call you Bobby?

10 A. Sure.

11 Q. All right. Bobby, I've handed you Exhibit
12 15.

13 A. Uh-huh.

14 Q. This is the list of water rights that we
15 found in the OSE database that appear to be connected
16 to people with the same name. How many of those water
17 rights, just looking at them there --

18 A. The top two.

19 Q. The top two?

20 A. Yes.

21 Q. Okay.

22 A. Kimberly being my wife.

23 Q. Okay. And then the bottom three, just for my
24 edification, are the bottom three Kuykendalls on that
25 list relatives at all?

1 mainly it would be a vegetable crop to a forage crop.

2 Q. Okay. And you say that is pretty much in
3 times of more surface water availability. Is that
4 because of the cost of groundwater pumping?

5 A. Yes.

6 Q. Now, you're growing, it sounds like, some
7 amount of nursery pecans?

8 A. Yes, sir.

9 Q. And I apologize if you already said about the
10 acreage of -- of the nursery pecans, but
11 approximately?

12 A. It'll be 13 acres of two different plantings,
13 so roughly 6-and-a-half and 6-and-a-half acres --

14 Q. Okay.

15 A. -- of --

16 Q. And do you have an estimate of how much water
17 those nursery pecans need versus other types of crops
18 that you've grown in the past?

19 A. Three to three-and-a-half acre feet.

20 Q. Okay. And what -- and you said that the --
21 the water needed for some of the other types of crops
22 you've had is up to four?

23 A. Up to four, uh-huh.

24 Q. We talked a little bit about soil preparation
25 and -- and maintenance. Do you do excavation on any

1 of the land --

2 A. No.

3 Q. -- to prepare the soil?

4 A. No.

5 Q. Because of the cost or some other reason?

6 A. It's not -- if it's not a permanent crop,
7 it's not economically feasible to do that.

8 Q. Sure. And do you use any soil amendments
9 other than sulfur, I think you mentioned?

10 A. Sulfur, sulfuric acid, hydrochloric acid.

11 Q. And do those soil amendments solely have to
12 do with water quality or are there other reasons to
13 do -- to add the sulfur/sulfuric acid?

14 A. Primarily water quality.

15 Q. Okay.

16 A. High sodium well, high sodium dirt.

17 Q. I'm sorry?

18 A. High sodium well, high sodium dirt.

19 Q. Gotcha. And so you would have to use
20 different soil amendments in areas where you use more
21 groundwater on the --

22 A. Potentially.

23 Q. Than surface water?

24 A. Not necessarily. As I explained earlier,
25 some wells are better than others, and you don't have

1 | to amend near as much.

2 | Q. Right. And that makes sense. I guess I was
3 | more getting at those wells that do have higher sodium
4 | contents, it's only on the land that you use those
5 | wells that you would do the additional sulfur?

6 | A. I wouldn't say only.

7 | Q. Okay.

8 | A. It would also depend on the next crop on
9 | another land that may not be as low of quality of
10 | water.

11 | Q. And, you know, you talked a little bit
12 | earlier about the salinity of the groundwater and how
13 | it varies across wells. In general, when you've been
14 | doing the testing, do you have an estimate of what the
15 | TDS is across various wells, kind of from the highest
16 | to lowest?

17 | A. Currently, I do not, no.

18 | Q. Do you ever test the salinity of the surface
19 | water?

20 | A. No.

21 | Q. Is there any reason to do that?

22 | A. No.

23 | Q. Okay. And how about, do you get any water
24 | that's returning from the drains that you can use?

25 | A. During irrigation season?

1 Q. Either before -- either during or outside of
2 the irrigation season.

3 A. Well, return flow north of us, I'm sure we're
4 getting some of that drain water back into the river.

5 Q. Right.

6 A. Back into the canal to our farm, yes.

7 Q. And do you test the salinity of the drain
8 water at all?

9 A. No. Because it's blended with surface.

10 Q. Okay.

11 A. No.

12 Q. Are you able to use all of the surface water
13 that you're allocated in the window that you have to
14 use it?

15 A. Depends on the year.

16 Q. Okay. So there are times when you have
17 situations, it sounds like, where you have surface
18 water that just because of the window you have --
19 window of time you have to use it, you're not able to
20 actually use the full amount?

21 A. Correct.

22 Q. And are you charged for that surface water
23 even if you're not able to use it?

24 A. Sure you are. Yes. But you also have the
25 option of selling that surface water.

1 Q. Understand. You talked about having access
2 to, I believe it was nine wells on the --

3 A. Yes.

4 Q. -- land you have right now? Do you know
5 approximately the -- the time period over which those
6 wells were drilled?

7 A. Yes. As a general answer, 1950 to today.

8 Q. Okay. None pre 1938, as far as you know?

9 A. As far as I know, no.

10 Q. And the depth you said ranges anywhere from
11 about a hundred to 500 feet?

12 A. 500, uh-huh.

13 Q. Do you know if any of the wells have had to
14 be deepened over time?

15 A. Yes. One of these wells on my -- my farm
16 here on the 39.11 acres, it sucked air, and it was at
17 a hundred feet in 2013.

18 Q. 2013. Okay.

19 A. And we drilled a supplemental well to the
20 depth of 400.

21 Q. Okay. And that was on Exhibit 17 for the
22 record?

23 A. Correct.

24 Q. Okay. So you went down an extra 300 feet in
25 2013 on that well?

1 Q. Right. Now, you talked about putting some
2 land either out of production through fallowing or
3 subleasing it because the economics weren't right. To
4 some extent, is some of the economics that you're
5 talking about the cost of pumping?

6 A. Cost of pumping versus price of product
7 raise.

8 Q. Right. And, I guess, what my question is
9 getting at is, is there land that you might have in
10 cultivation if you had more surface water and weren't
11 going to have the additional pumping costs?

12 A. Yes.

13 Q. Do you have an estimate of how much extra?

14 A. No.

15 Q. Have you change -- have you noticed a change
16 in your allotment of surface water since 2008?

17 A. Varies.

18 MS. BARNCASTLE: Objection to form.

19 Q. (BY MR. ROMAN) I'm sorry?

20 A. Varies.

21 Q. It varies. So there are times when it's less
22 than it used to be and times when it's more?

23 A. Sure.

24 Q. Sure.

25 MR. ROMAN: I'm going to take a real

1 quick break. I think I'm just about done, too.

2 (Break.)

3 MR. ROMAN: I don't have anymore
4 questions for you at this time. I really appreciate
5 that. It's very unlikely, but it's possible we may
6 seek to reconvene the deposition based on answers
7 received to pending discovery that's been sent to the
8 Board itself, but for today, I don't have anything
9 else, and I pass the witness.

10 MS. BARNCASTLE: Going once.

11 MR. DUBOIS: I've got just a couple.
12 Five minutes. Five minutes, but not even lawyer five
13 minutes. Really five minutes.

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

15 BY MR. DUBOIS:

16 Q. Mr. Kuykendall, my name is Jim Dubois. I'm a
17 lawyer with the Department of Justice representing the
18 United States. I've just got a couple follow-up
19 questions that actually sort of trail off of things
20 you've said to other folks. One question that Ms.
21 Klahn didn't ask when she was talking about
22 groundwater. Was -- has the groundwater quality
23 changed in -- in the area of your wells over the last
24 30 years?

25 A. I can only speak for 22 of those 30, but --

1 but --

2 Q. Fair enough. The last 22 years.

3 A. I found -- when I was testing, let's say
4 quarterly, I found that it varied depending if there
5 was surface water flowing or not surface water
6 flowing.

7 Q. But have you seen any long-term trend over
8 time?

9 A. No. I can't say that I have.

10 Q. Okay. And you talked about drains that come
11 in above you. Are there any drains that come through
12 the land that you -- that you farm?

13 A. I do have drains.

14 Q. You do have drains?

15 A. Uh-huh.

16 Q. Do they come down from some of the farms
17 above you or is it just coming off of your farm?

18 A. No. Above me, also.

19 Q. Okay. And when you turn on the wells, does
20 it affect the flow in those drains?

21 A. Yes.

22 Q. Does -- do you notice more impact from the
23 pumping of the hundred-foot-depth wells or the
24 500-foot-depth wells?

25 A. I can't -- I can't answer that. I can't tell

1 you that. I don't know.

2 Q. Okay. And you -- you talked about you had to
3 re-drill one of the two wells that you own in 2014 or
4 so?

5 A. Yes, sir.

6 Q. And that's because -- why did you have to
7 re-drill that?

8 A. We sucked air so we ran out of water.

9 Q. Which means that the water table dropped?

10 A. At least in that area.

11 Q. Do you know if it's dropped in the -- the
12 area around your properties?

13 A. Yes, but not consistently.

14 Q. Okay. What -- what kind of drops have you
15 seen?

16 A. Static water at 16 feet, might go to 40 feet
17 during mid season, and then it recovers.

18 Q. Back to 16 or --

19 A. Not necessarily. It -- it will recover back
20 to 16 once we get surface flow.

21 Q. Has there been a long-term trend for the
22 water table level to be falling?

23 A. No.

24 Q. Okay.

25 A. Not to my knowledge.

1 EBID is going to, for the record, oppose that request,
2 but we'll work that out later. I just have a few
3 follow-up questions, Bobby.

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

5 BY MS. BARNCASTLE:

6 Q. All right. Do you recall when New Mexico
7 asked you about your personal thoughts on the
8 operating agreement?

9 A. Yes.

10 Q. And do you recall your answer that the
11 operating agreement needs to be changed as things
12 change?

13 A. Yes. Potentially.

14 Q. When you said the operating agreement needs
15 to be changed, what did you mean by that?

16 A. I'm just saying the document that was written
17 in 2008 may not be a viable -- or parts of it might
18 not be a viable document in 2038. Not saying 2018.

19 Q. So is it your opinion that the document needs
20 to change today?

21 A. No.

22 MS. BARNCASTLE: Okay. No further
23 questions of this witness. We'll read and sign.

24 MS. KLAHN: Could I get a draft tonight?

25 THE REPORTER: Yes.

1 THE REPORTER: Does everybody want a
2 copy of the transcript?

3 MS. BARNCASTLE: Yes.

4 MS. KLAHN: Uh-huh.

5 MR. ROMAN: Yes, please.

6 MR. WALLACE: Yes.

7 MS. O'BRIEN: Yes.

8 MR. DUBOIS: Yes, please.

9 (The deposition concluded at 3:39 p.m.)
10
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24
25

Job No. 3128369

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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25/1	STOCK (NOT STALK)	
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BOBBY KUYKENDALL

Job No. 3128369


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

I, BOBBY KUYKENDALL, 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).


BOBBY KUYKENDALL

Job No. 3128369

The foregoing instrument was acknowledged before
me on this 13th Day of February, 2019 by Bobby Kuykendall.


Notary Public
My Commission expires 02/18/2019

Page 86

1 IN THE SUPREME COURT OF THE UNITED STATES
2 BEFORE THE OFFICE OF THE SPECIAL MASTER
 HON. MICHAEL J. MELLOY
3
4 STATE OF TEXAS)
)
5 Plaintiff,)
) Original Action Case
6 VS.) No. 220141
) (Original 141)
7 STATE OF NEW MEXICO,)
 and STATE OF COLORADO,)
8)
 Defendants.)

9
10
11 THE STATE OF TEXAS :
12 COUNTY OF HARRIS :

13 I, HEATHER L. GARZA, a Certified Shorthand
14 Reporter in and for the State of Texas, do hereby
15 certify that the facts as stated by me in the caption
16 hereto are true; that the above and foregoing answers
17 of the witness, BOBBY KUYKENDALL, to the
18 interrogatories as indicated were made before me by
19 the said witness after being first duly sworn to
20 testify the truth, and same were reduced to
21 typewriting under my direction; that the above and
22 foregoing deposition as set forth in typewriting is a
23 full, true, and correct transcript of the proceedings
24 had at the time of taking of said deposition.

25 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 MS. KLAHN - 00:54:01

MS. O'BRIEN - 00:00:00

9 MR. WALLACE - 00:00:00

MR. ROMAN - 00:31:47

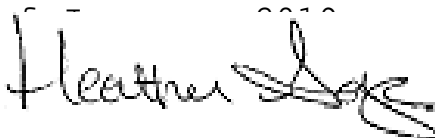
10 MS. BARNCASTLE - 00:01:00

MR. DUBOIS - 00:07:00

11 MS. DAVIDSON - 00:00:00

MS. DRIGGERS - 00:00:00

12
13 GIVEN UNDER MY HAND AND SEAL OF OFFICE, on
14 this, the 3rd day



15 HEATHER L. GARZA, CSR, RPR, CRR

16 Certification No.: 8262

Expiration Date: 12-31-19

17 VERITEXT LEGAL SOLUTIONS

Firm Registration No. 571

18 300 Throckmorton Street, Suite 1600

Fort Worth, TX 76102

19 1-800-336-4000
20
21
22
23
24
25

EXHIBIT G

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

[12/13/2018 8:36 AM] Franzoy, Jerry

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15 ALSO PRESENT:

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17 Ms. Peggy Barroll
18
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20
21
22
23
24
25

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WITNESS: JERRY FRANZOY

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1 JERRY FRANZOY,
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. Franzoy.

6 A. Good morning.

7 Q. My name is Sarah Klahn. I'm here today on
8 behalf of the State of Texas in the case Texas versus
9 New Mexico and Colorado. Could you state your name
10 for the record?

11 A. Jerry Franzoy.

12 Q. And your address?

13 A. P.O. Box 370, Salem, New Mexico 87941.

14 Q. Okay. Thank you. And I'm going to apologize
15 in advance. I am going to be looking at this
16 sometimes, this iPad, because that's where my
17 questions are, so I don't mean to be like all the
18 youngsters always looking at a screen, but that's how
19 it's going to be today.

20 MS. BARNCASTLE: So real quick, do you
21 have another iPad?

22 THE REPORTER: I do. Would you like
23 one?

24 MS. BARNCASTLE: Yes, please.

25 MS. KLAHN: Let's take a break and do

1 A. Back when I was managing, yes, I would make
2 the change on different varieties of onions or chile.

3 Q. Okay. What kinds of things were you looking
4 for that made you change varieties?

5 A. That's a -- that's a good question. When --
6 when I was farming mostly myself, Shayne was still
7 involved, but he was just starting, well, we would
8 raise onions for processing plants that would be onion
9 rings. So we had to get -- raise a variety that would
10 make single center onions.

11 Q. So you were interested in the qualities of
12 the -- of the produce?

13 A. Yes. The size and the -- and the quality for
14 making single-center onions. That's -- a lot of
15 people don't understand an onion, but that's where
16 your onion rings comes from.

17 Q. Okay.

18 A. And it has to be a certain variety to produce
19 those onion rings.

20 Q. Okay. Now, do you have -- isn't there, like,
21 a process involving onions where you have to dry
22 them -- not dry them, but they put them in warehouses
23 to cure or something?

24 A. Yes. We do have that.

25 Q. Yeah. How long do they sit there?

1 A. We -- we got our own driers. It sits there
2 about roughly four days.

3 Q. Oh, okay.

4 A. And then they're ready to pack. We pack and
5 ship them.

6 Q. And so from the -- in the shipping
7 perspective, do you contract with someone else to do
8 that or do you have your own trucks?

9 A. We contract trucks to ship them out of the
10 New Mexico -- most of them goes out of New Mexico, the
11 onions.

12 Q. Uh-huh.

13 A. I'm talking onions right now.

14 Q. I'm talking onions, too.

15 A. Okay.

16 Q. Did you ever make any decisions about crop
17 varieties based on the ability of a crop variety to
18 withstand drought?

19 A. Yes. Yes. Cotton, onions, chile not so
20 much, but cotton -- they're producing cotton now
21 that'll take less water, plus onions.

22 Q. So is -- has water quantity, the quantity of
23 irrigation water been a concern -- was it a concern
24 for you when you were farming -- when you were
25 involved in the day-to-day farming decisions?

1 A. We have two different types of water. We
2 have surface water and underground water, and in
3 Hatch, we're very concerned with good quality water,
4 like the surface water. When the dam is way down, it
5 hurts our quality of our water, and very concerns me
6 on that aspect.

7 Q. So the ground quality water of your wells is
8 not very good?

9 A. No. In certain areas.

10 Q. Okay. So how many wells do you have?

11 A. That's a good question. Since I've got
12 out -- you're talking about the Rio Grande Valley?

13 Q. Uh-huh.

14 A. Roughly about 15.

15 Q. Okay. And in your experience, can you use
16 all of those wells for irrigation?

17 A. Yes.

18 Q. At least sometimes?

19 A. There's -- when the lake is full, we won't
20 use the wells near as much.

21 Q. Okay. Describe for me how you mixed
22 ground -- in -- in a year when you didn't have a full
23 allotment of water from the project and you also
24 didn't fallow any land -- okay?

25 A. I did -- we did fallow some on our own.

1 Q. Okay.

2 A. When the lake was down.

3 Q. Okay. Well, let me ask you that question
4 then. How many -- do you -- do you have a sense of
5 how many years you had to fallow land because of water
6 supply issues?

7 A. I don't know exact how many years, but
8 since -- they was like a real low allotment, like,
9 less than a foot of water.

10 Q. Okay. That would -- less than a foot of
11 water allotment would --

12 A. Of surface water.

13 Q. -- would cause you to fallow?

14 A. Yes.

15 Q. So in a year where you had enough water that
16 you didn't have to fallow land, would you also use
17 your wells?

18 A. When I had enough water, surface water, I
19 didn't use them near as much.

20 Q. Okay.

21 A. In the 1990s, we -- we used them very little.

22 Q. That was a wet period for the project?

23 A. When we end up with, like, three-and-a-half
24 to almost -- there was some years as much as 4 feet of
25 water, surface water. And then we could buy it from

1 going dormant through the winter.

2 Q. Okay. So in a -- when you're using the
3 wells, but you also have some surface water
4 available --

5 A. Yes.

6 Q. -- do you have a sense of how much you
7 pumped?

8 A. This last three or four years?

9 Q. Not the last three or four years because you
10 weren't involved the last three or four years, right?

11 A. Yeah. Uh-huh.

12 Q. But prior to that, when you were still
13 involved in irrigation decisions, do you have a sense
14 of how much water you pumped?

15 A. That's a good question. Approximately when
16 the lake was low, we'd use up to three to
17 three-and-a-half feet of -- about three feet of water.
18 I need to go back to that. The reason we changed to
19 drip irrigation, it uses less water.

20 Q. Oh, I see. When did you change to drip?

21 A. We started changing to drip around 2000.

22 Q. Okay. So do you put surface water in your
23 drip system?

24 A. Yes, we do.

25 Q. Okay. And ground water?

1 A. Yes.

2 Q. Okay. You don't have any problems with
3 salinity issues with the drip system in the
4 groundwater?

5 A. With drip system, it's better than flood
6 irrigation, because drip pushes the salt out where
7 flood irrigation pushes it into the plant.

8 Q. I see.

9 A. You have a bed 40 inches wide. Maybe I
10 shouldn't sit here and discuss all that, but --

11 Q. Actually, I think you should.

12 A. But you got your plants and the bed is 40
13 inches wide.

14 Q. Okay.

15 A. When you flood irrigate, it pushes salt to
16 the plants. Drip is in the center of the bed, and it
17 pushes the salt out.

18 Q. Okay.

19 A. And the plants grow healthier that way.
20 That's one of the reasons we went to drip is because
21 less water, less salinity, and less fertilize.

22 Q. But in a given year, you still tried through
23 a mix of surface and ground water to put three acre
24 feet approximately on the crops?

25 A. With both of them, it's -- with onions, it's

1 close to 4 acre feet.

2 Q. Okay.

3 A. Between 3-and-a-half and 4 acre feet.

4 Q. Okay. But with chile?

5 A. Chile, it's about the same.

6 Q. Okay.

7 A. Now, cotton is a lot less. That's why we're
8 growing more cotton these last three years.

9 Q. Okay. So -- and, again, just returning to my
10 question about trying to get a idea of how you -- you
11 know, how did -- how did you use your wells versus,
12 you know, not quite enough surface water, your aim
13 over the course of the season for chile was 3,
14 3-and-a-half, 4 acre feet --

15 A. Yes.

16 Q. -- of the mix of the waters?

17 A. Yes. Because we only had, like, 6 to 8
18 inches of water.

19 Q. Sure.

20 A. So we had to have enough to bring it up to
21 close to 4 feet of water.

22 Q. Okay. So you mentioned that some of the
23 wells -- I think you said you -- you thought you might
24 have 15 wells; is that right?

25 A. Yes.

1 Q. Okay.

2 A. Roughly.

3 Q. You mentioned that some of them have poorer
4 quality than others?

5 A. Yes.

6 Q. So with the poor quality wells, how do you
7 mitigate those impacts on the plants?

8 A. Well, that's a good question. What we do
9 when we have them, like, 6 or 8 inches of water, we'll
10 take water from the farm that has good water, and
11 we'll move the surface water up to those farms.

12 Q. Oh, I see.

13 A. If we're growing onions or chile, we
14 concentrate on mostly surface water on those plants,
15 because they're a high-profit crops. Like, cotton
16 we'll go through salinity water more than chile or
17 onions. So we'll take where we're growing cotton, the
18 surface water off of it and stack it on the onions and
19 chile crops.

20 Q. Okay. So let me say that back to you to make
21 sure I understood it.

22 A. Okay.

23 Q. So you have a -- in a year where you have to
24 use both surface water and ground water, you deal with
25 the poor quality wells -- the poor quality water from

1 | some of the wells by putting that preferentially on
2 | the cotton and moving the surface water that would go
3 | on the cotton, stacking it on the land for the chile
4 | and the onions?

5 | A. Right.

6 | Q. Okay.

7 | A. And help you understand, certain farms has
8 | bad wells, but we still grow all the crops on that
9 | farm. We can't just grow cotton on that farm unless
10 | we stack more chile on the other farms. But more or
11 | less, we try to keep the same percentage of chile,
12 | cotton, and onions on each block of farm.

13 | Q. So --

14 | A. So what we do, we -- the cotton on the other
15 | farms, we'll bring it over and stack it on the high
16 | salinity wells.

17 | Q. I see.

18 | A. To grow onions or chile. Now, cotton, we
19 | won't on that farm with high salinity.

20 | Q. Okay.

21 | A. It's kind of confusing.

22 | Q. No, it makes sense, I think. When you
23 | say "high salinity," what are you talking about? What
24 | TDS are you talking about?

25 | A. Talking about 1,800 parts per million.

1 Q. Okay. In the past, have you measured the
2 quality of the wells?

3 A. Yes, we have.

4 Q. You do it routinely?

5 A. We do it probably about every three or four
6 years.

7 Q. Okay.

8 A. And when the lake fills up, that's when -- or
9 goes down, that's when we go and check our wells,
10 because that's when it'll change.

11 Q. Oh, really?

12 A. If the lake is full, we get plenty of surface
13 water as salinity goes down.

14 Q. Why do you think that is?

15 A. It washes it down. Water -- when you
16 irrigate, you got good quality water, it's like you
17 wash your clothes. It takes the salt down, washes it
18 off the surface, the first 3 feet of water. And,
19 plus, our -- our wells come up when we use a lot of
20 surface water when the lakes are full.

21 Q. So what's the static water level in a year
22 when the lake is full versus not?

23 A. It's about -- from 10 to 15 feet from the
24 surface. When the lake is down, it drops all the way
25 down to 30 to 40 feet from the surface.

1 Q. Wow. Okay.

2 A. Depending on what part of the valley you're
3 in.

4 Q. Yeah. Okay. Do you do any soil amendments
5 to deal with salinity issues?

6 A. Yes, we do.

7 Q. What do you use?

8 A. We use -- plus, you know, as much flood water
9 as we can, and then we use that pursuic acid through
10 our drip irrigation, and it helps break the salt down.

11 Q. Okay. Did you say pursuic?

12 A. It's -- it's --

13 Q. Prusuck?

14 A. It's an acid -- straight acid like you use in
15 your batteries. I don't know what the -- sorry. I --
16 I went blank.

17 Q. That's okay. That's okay. No. I think
18 others have testified about using sulfuric acid?

19 A. Sulfuric acid. And then we also use
20 acid-based fertilize.

21 Q. Oh, okay.

22 A. It has acid in it and that helps push the
23 salt away from your plants and down.

24 Q. Uh-huh.

25 A. It buffs your water, also. Sometimes we'll

1 drip it in irrigation ditches to buff the PH -- to get
2 the PH down.

3 Q. You mean buffer?

4 A. Yeah.

5 Q. I knew what you meant. Do you ever have to
6 do any deep -- I think they call it excavation of your
7 land to mix the soil --

8 A. Yes.

9 Q. -- and move the salts?

10 A. Yeah. That's a good question. Certain
11 soils, it -- it changes over the valley. Your real
12 heavy soils will rip it real deep down as high as --
13 deep as 2 feet to help the water percolate through
14 there and clean the salt out of the soil.

15 Q. How often have you done that?

16 A. We do it -- on some fields that's high in
17 salt, we'll do it every winter and maybe take the crop
18 out.

19 Q. About how many acres do you think you do it
20 every winter?

21 A. It's about 30 percent roughly.

22 Q. Okay. 30 percent of what total?

23 A. Of our total acres in the valley.

24 Q. So of your thousand acres?

25 A. Yeah.

1 Q. Okay. Is that expensive?

2 A. Yeah. It's very expensive, because once you
3 do that, you've got to go back and re-till your ground
4 and -- and laser level it, because it un-levels your
5 land.

6 Q. Do you have a sense of how many dollars per
7 acre it costs to do that every winter, including the
8 re-tilling and laser levelling?

9 A. Added cost to that is roughly about close to
10 \$300 an acre.

11 Q. Okay. Do you use any drain water?

12 A. No. I know my dad did many years ago.
13 Before they drilled wells, they did, but we don't
14 use -- we don't pump out of the drain. Is that the
15 question you're talking about?

16 Q. Yeah. Well, or do you have drains on your
17 property?

18 A. Yes, we do.

19 Q. Okay. Are they from your operations or from
20 farms up the valley? I mean, sorry, that's a bad
21 question.

22 A. Yeah.

23 Q. Did the drains collect water from your
24 irrigation or do they also collect water from farms up
25 the valley?

1 MR. MACFARLANE: Yeah, rough draft.

2 MS. O'BRIEN: Yes.

3 MR. WALLACE: Yes.

4 MS. BARNCASTLE: Yes.

5 (The deposition concluded at 9:55 a.m.)
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Job No. 3128370

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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
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JERRY FRANZOY

Job No. 3128370

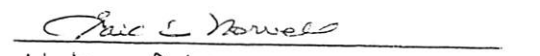
S I G N A T U R E O F W I T N E S S

I, JERRY FRANZOY, 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).


JERRY FRANZOY

Job No. 3128370

The foregoing instrument was acknowledged before me this
13th day of February, 2019 by Jerry Franzoy.


Notary Public
My Commission expires 12/20/22

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1 IN THE SUPREME COURT OF THE UNITED STATES
2 BEFORE THE OFFICE OF THE SPECIAL MASTER
 HON. MICHAEL J. MELLOY
3
4 STATE OF TEXAS)
)
5 Plaintiff,)
) Original Action Case
6 VS.) No. 220141
) (Original 141)
7 STATE OF NEW MEXICO,)
 and STATE OF COLORADO,)
8)
 Defendants.)

9
10
11 THE STATE OF TEXAS :
12 COUNTY OF HARRIS :

13 I, HEATHER L. GARZA, a Certified Shorthand
14 Reporter in and for the State of Texas, do hereby
15 certify that the facts as stated by me in the caption
16 hereto are true; that the above and foregoing answers
17 of the witness, JERRY FRANZOY, to the interrogatories
18 as indicated were made before me by the said witness
19 after being first duly sworn to testify the truth, and
20 same were reduced to typewriting under my direction;
21 that the above and foregoing deposition as set forth
22 in typewriting is a full, true, and correct transcript
23 of the proceedings had at the time of taking of said
24 deposition.

25 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 MS. KLAHN - 00:57:07

MS. O'BRIEN - 00:00:00

9 MR. WALLACE - 00:00:00

MR. ROMAN - 00:05:13

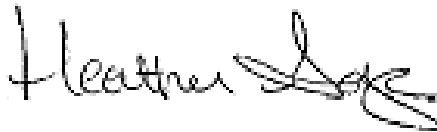
10 MR. MACFARLANE - 00:03:00

MS. BARNCASTLE - 00:00:00

11 MS. DAVIDSON - 00:00:00

MR. STEIN - 00:00:00

12
13 GIVEN UNDER MY HAND AND SEAL OF OFFICE, on
14 this, the 4th day of January, 2019.

15 

16 HEATHER L. GARZA, CSR, RPR, CRR

Certification No.: 8262

17 Expiration Date: 12-31-19

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EXHIBIT H

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,)
)
Defendant.)

ORAL AND VIDEOTAPED DEPOSITION OF

JOE PAUL LACK

December 17, 2018

Volume 1

1 ORAL AND VIDEOTAPED DEPOSITION OF JOE PAUL

2 LACK, produced as a witness at the instance of the
3 Plaintiff, and duly sworn, was taken in the above-styled
4 and numbered cause on the 17th day of December, 2018,
5 from 3:12 p.m. to 5:00 p.m., before Abigail Guerra, CSR,
6 in and for the State of Texas, reported by machine
7 shorthand, at the offices of Elephant Butte Irrigation
8 District, 530 South Melendres, Las Cruces, New Mexico,
9 pursuant to the Federal Rules of Civil Procedure and the
10 provisions stated on the record or attached hereto.

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ALSO PRESENT:

Mr. Joel Kimmelshue

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1 JOE PAUL LACK,
2 having been first duly sworn, testified as follows:

3 DIRECT EXAMINATION

4 BY MS. KLAHN:

5 Q. Good afternoon, Mr. Lack. My name is
6 Sarah Klahn. I'm here on behalf of the State of Texas.
7 And we're here today to take your deposition in Texas
8 vs. New Mexico and Colorado.

9 MS. KLAHN: I should have marked this. I'm
10 sorry.

11 Q. (BY MS. KLAHN) We're going to ask you some
12 questions today about your farming practices, about your
13 membership on the EBID board.

14 Have you ever had your deposition taken?

15 A. Yes, ma'am.

16 Q. Okay. Do you remember what the circumstances
17 were?

18 A. It was farm-related lawsuits and things of that
19 nature.

20 Q. Okay.

21 A. People getting hurt.

22 Q. About how many times?

23 A. Two or three.

24 Q. All right. And these were employment lawsuits?

25 A. Yes, and also product suits.

1 A. I think.

2 Q. It's not available for the other crops that you
3 grow?

4 A. Could be. I don't know. We just use it on
5 pecans. I don't -- I'm sure not a technician. They
6 might -- could do it on anything.

7 Q. Yeah. Okay.

8 A. But we use it on pecans.

9 Q. Okay. Well, we'll come back to that. I have
10 some more questions for you on pecans.

11 Have any of your changes in irrigation
12 practices, whether it's frequency or intensity or
13 amount -- amounts -- well, amounts doesn't work in this
14 context.

15 Frequency or intensity of irrigation, have
16 any of these been driven by the quantities of water that
17 you have available?

18 A. No.

19 Q. Okay. So your -- your irrigation -- again, for
20 the row crops, your irrigation sources are project
21 water, EBID project water, right? Surface water?

22 A. Also pump.

23 Q. Yeah, I was saying. That's one, but one of
24 them would be surface water?

25 A. Yes.

1 Q. And the other one is groundwater?

2 A. Yes.

3 Q. And for all of acres in your place and the
4 acres that you put onto the three exhibits that you made
5 for me, is it possible for you to irrigate any of those
6 acres with surface water or groundwater?

7 A. Yes.

8 Q. Okay. How many wells do you have available to
9 you for the row crops?

10 A. 20.

11 Q. And do you -- what's the water quality
12 associated with that?

13 A. Varies, usually.

14 Q. Okay. From good to bad, or good to not so
15 good, or...

16 A. Good, not so good, brackish.

17 Q. Okay. Do you ever -- where's the brackish
18 well?

19 A. Further south.

20 Q. Further south.

21 What crops have you -- did you have -- on
22 the ground that's served by the brackish well, what
23 crops did you have on there this year?

24 A. Pecans, onions, alfalfa, cotton, chili,
25 beardless wheat.

1 Q. Okay. Do you avoid using that well and put
2 surface water on those acres instead?

3 A. No.

4 Q. How do you deal with the brackishness?

5 A. Very badly.

6 Q. I don't think so from everything you've said.
7 I don't think you probably do anything badly as a
8 farmer.

9 A. There's land that, if I didn't have canal water
10 when we started to get the seedlings up --

11 Q. Uh-huh.

12 A. I would not be able to farm later. As the
13 plant gets bigger, as you know, it has more salt
14 tolerance.

15 Q. I see.

16 A. So we start with good canal water, hopefully.

17 Q. Uh-huh.

18 A. Ideally, and then end with the pumping.

19 Q. Do you ever take any of the surface water from
20 the acres up north and move it through the EBID process
21 to allow you to put it on the acres that have only the
22 brackish groundwater?

23 A. Absolutely.

24 Q. Okay. So that's a management technique that
25 you use sometimes?

1 A. Have to use it.

2 Q. Okay. Do you do any soil amendments to deal
3 with salinity?

4 A. Always.

5 Q. What kind do you use?

6 A. We use a scientist. We call him the soil
7 doctor. He pulls sample. And from those samples, we
8 come with the best fertilizer program that we can to
9 offset the penalties that the salts and the brackish
10 water give us.

11 Q. So you've -- you've -- your salinity management
12 practice is in the context of which fertilizers you
13 select?

14 A. It's by what the doctor recommends.

15 Q. Okay.

16 A. And you test your soil, you test your water,
17 you test your plants through tissue analysis --

18 Q. Uh-huh.

19 A. Through water that you're putting on the plant
20 and in the soil -- all three.

21 Q. Uh-huh.

22 A. It's a combination.

23 Q. Has he recommended putting sulfur on the
24 directly into the -- into the irrigation water?

25 A. For sure.

1 Q. Have you ever used sulfuric acid?

2 A. Yes.

3 Q. When you've used sulfur or sulfuric acid, have
4 you used it on any of the ground up north or just on the
5 ground with the brackish well?

6 A. All of hem.

7 Q. All of them. Okay.

8 Do you -- now, I'm not talking about
9 pecans. For your row crops, do you do any physical soil
10 management, like excavation, to try and distribute the
11 clay and sand in the soil more regularly?

12 A. Not real clear on that.

13 Q. It's trenching, deep rip.

14 A. Oh.

15 Q. As some people call it.

16 A. We have rippers and we rip.

17 Q. For the row crops?

18 A. And also the pecans.

19 Q. Yeah, okay. Okay.

20 So often do you do that?

21 A. Every year.

22 Q. For all of your ground?

23 A. Except -- no, you can't rip your alfalfa
24 because it's three years.

25 Q. Okay.

1 A. My own land.

2 Q. Your own land. Okay.

3 And that's where your pecans are?

4 A. Yes.

5 Q. Is that the only well -- is all the groundwater
6 available on your own land brackish?

7 A. No.

8 Q. Okay. So do you have some good groundwater?

9 A. Better. You said good, kind of good --

10 Q. Yeah.

11 A. Bad? It's in the kind of good.

12 Q. In the kind of good?

13 What's the TDS of kind of good in your
14 world?

15 A. You know, I don't -- that soil scientist, we
16 pull samples of all that.

17 Q. Uh-huh.

18 A. And I don't have those numbers, but I --

19 Q. Yeah.

20 A. I look at them every year.

21 Q. Okay.

22 A. I -- I just would be very uncomfortable trying
23 to give you an answer.

24 Q. That's okay. No, that's okay.

25 A. I can't even give you a ballpark, but yeah...

1 Q. So do you avoid putting the worst quality well
2 on your pecans?

3 A. You would think, but no.

4 Q. Okay. If you have enough surface water to mix
5 with it or -- how do you manage?

6 A. You just water with it.

7 Q. Okay.

8 A. And you're pushing it down, and you hope that
9 you can get some canal, later --

10 Q. Uh-huh.

11 A. -- water or rain, good rains, to push some
12 salts down.

13 Q. Uh-huh. Have you ever seen any browning on the
14 edges of your pecan leaves?

15 A. I've seen fields that don't grow, as well, and
16 we've tested it, and we've contribute it to too much
17 salt.

18 Q. Okay.

19 A. Not the browning of the leaves, but just not
20 the production, not the growth, not the -- the same
21 yields that you have on other pieces of your ground.

22 Q. Uh-huh.

23 A. And there's a correlation. It's just not
24 water. It's also ground.

25 Q. Uh-huh, I see. Okay.

1 So do you hedge your trees?

2 A. Yes.

3 Q. What's your favorite geometric shape?

4 A. We would do it -- it would be a housetop.

5 Q. Okay.

6 A. 25 percent of your orchards every year.

7 Q. Okay. So your -- I'm still learning the
8 geography here.

9 So your -- all of your ground is either in
10 the Hatch Valley or the Rincon Valley, or the -- is they
11 {sic} all in the same valley?

12 A. It's Mesilla Valley, but you've got -- Caballo
13 is a town. Garfield, Salem, Hatch, Rodey, and Rincon.

14 (Reporter clarification.)

15 A. You got Caballo up north, and then you have
16 Garfield. And you have Salem, you have Hatch, you have
17 Rodey, then you have Rincon; but it's all the same
18 valley.

19 Q. (BY MS. KLAHN) So it's all -- but it would be
20 called the upper Mesilla Valley?

21 A. I would call it that.

22 Q. Okay. Okay. When -- when you're making
23 decisions about what -- which source of water to use,
24 whether to use groundwater or surface water, do you have
25 any particular rules of thumb that you follow about

1 table --

2 A. Yes.

3 Q. -- generally? Okay.

4 Do you think your irrigation efficiencies
5 have improved over time?

6 A. Yes.

7 Q. How so?

8 A. By laser leveling, by drip.

9 Q. Have you done any physical efficiency
10 improvements, like, piping, laterals, or putting
11 concrete headgates in, or anything like that?

12 A. Yes, ma'am.

13 Q. And how much of those -- how much of your land
14 have you been able to do that, you think -- or how --
15 how many acres are served by those improvements, I
16 should say?

17 A. All of it.

18 Q. Okay. So your -- all of your land is served by
19 pipes?

20 A. Well, we went from the old headgates --

21 Q. Uh-huh.

22 A. -- to big turnouts.

23 Q. Okay.

24 A. We've lasered the complete 800 acres several
25 times. We've lined ditches. We've put pumps together.

1 We've done all of that to get a bigger head and push it
2 out faster.

3 Q. Uh-huh. Okay.

4 A. That all increases every one of those numbers
5 you're talking about.

6 Q. Sure.

7 Do you see any differences in yield based
8 on -- let's leave the brackish well out of it for now.

9 Do you see any differences in yield between your
10 groundwater-served acres and your surface water-served
11 acres?

12 A. For sure.

13 Q. And how so?

14 A. I'll give you an example on onions.

15 When you try to do it with just pump
16 water --

17 Q. Uh-huh.

18 A. -- 1200 sacks is a great yield. If we get
19 that, 11 or 12 is what we'll run. When we use canal
20 water, 15 to 2,000.

21 Q. Wow, okay.

22 A. Almost double.

23 Q. Okay.

24 A. Again, onion are very, very -- I'm going to say
25 vulnerable --

1 Q. Uh-huh.

2 A. -- to salts and stuff.

3 Q. Uh-huh.

4 A. They don't grow well. You've got a short
5 window to make them grow. You need good water.

6 Q. And when you say 1200 sacks, you mean, per
7 acre?

8 A. That's 1200 50-pound sacks.

9 Q. Per acre?

10 A. Per acre.

11 Q. Okay.

12 A. Versus 15 to 18.

13 Q. Right.

14 A. Even 2,000.

15 Q. That's a big difference.

16 A. Huge.

17 Q. Yeah.

18 Overall, since you started operating your
19 farm, would you say that the yields for your pecans have
20 increased or decreased or still the same?

21 A. Increased.

22 Q. Why?

23 A. Age mostly.

24 Q. Age of the trees?

25 A. Uh-huh.

1 Q. Okay.

2 A. Also, our ability to farm them with better
3 science, and better plant health, and feeding them a
4 balanced meal.

5 Q. Uh-huh.

6 A. Those all help your yield.

7 Q. Okay.

8 A. Hedging. All that's a science as we're
9 learning.

10 Q. Uh-huh.

11 A. It increases yield.

12 Q. Increases the yield? Yeah.

13 A. And quality.

14 Q. Quality of the crop? Yeah.

15 How about cotton? Does that increase over
16 time? Increased in yield?

17 A. Especially on the drip. Especially on the
18 drip.

19 Q. So for that you'd -- would you say it's because
20 of the change in irrigation technology?

21 A. It's a change in the way the plant is fed.

22 Q. Uh-huh.

23 A. It's fed small amounts more often, and it
24 doesn't have that peak and valley water. Water will
25 stop it when you run it down the row; but if you put it

1 the middle, and a quarter on top.

2 Q. Okay.

3 A. More or less. That's not exactly what that's
4 called.

5 Q. Okay. And where's the sub-irrigation occurring
6 that you mentioned?

7 A. It -- it's -- there's to irrigation. We have
8 ground that's down there on what we call the "ball ski."
9 And on the end of our farm, the water table on a normal
10 year, hasn't been normal for a while, 18 inches to a
11 foot, and we call that "sub." I don't know if that's
12 sub. That's what we call it.

13 Q. Okay.

14 A. When the rivers end.

15 Q. Do you have any drains on your property that
16 get backed up with sediment at all?

17 A. Not with -- well, there's some big old island
18 in the river that caused us a ton of trouble, that backs
19 up. That drain ditch that dumps into the river, yes.

20 Q. So it's right at the tail end of the drain
21 where it dumps into the river, and it gets backed up
22 with sediment there; is that right?

23 A. Yes.

24 Q. Okay. Do you have any wells in that area where
25 the water gets backed up?

1 A. Not real sure.

2 Do I have any wells down there?

3 Q. (Moving head up and down.)

4 A. We have wells about a mile from where it dumps
5 in. I don't know if that's close. If that's close to
6 you, then, yes.

7 Q. All right. Do those wells have -- on the scale
8 of your TDS from so-so to not very good, are those wells
9 the not very good wells or the pretty good wells down
10 there?

11 A. Three of them are better; two of them are
12 worse.

13 Q. Okay.

14 A. That will blow your mind.

15 Q. Do you have any acreage off the Benito lateral?

16 A. Yes.

17 Q. How many?

18 A. 100 -- 50 on the Benito.

19 Q. Okay. And is that surface-water-only land?

20 A. Yes, ma'am.

21 Q. Okay. When were most of your wells drilled?

22 A. According to what I remember, in '48, '49.

23 Q. And did most of those wells have to be
24 redrilled later on?

25 A. We have redrilled every one of them, but one.

1 Q. And when did you redrill?

2 A. Different times.

3 Q. Starting about when?

4 A. Ten years ago and finishing about three.

5 Q. And all your wells are metered?

6 A. Yes, ma'am.

7 Q. How much does it cost to use your wells for the
8 pumping costs?

9 A. Good question for my wife. Do not have a good
10 answer for you today.

11 Q. Okay. So you don't have an estimate for
12 either, like, per acre-foot or even a per acre number?

13 A. I could give you that at one time, but not
14 right -- I just don't know it today, hun. I don't
15 remember it.

16 Q. If you weren't able to pump groundwater and had
17 to rely just on your surface water allotment, would you
18 be able to stay in farming?

19 A. No, ma'am.

20 Q. And are all your wells permitted?

21 A. I'm going to say, yes, yes.

22 Q. Okay. Did you file permits on your wells?

23 A. Yes, ma'am.

24 Q. Do you remember if anybody objected to any of
25 your well permits?

1 mean your...

2 A. Partners.

3 Q. Partners. Okay.

4 A. At the growers meeting.

5 Q. And --

6 A. If that's what you're talking about.

7 That's -- I wasn't there on those discussions, but

8 that's -- I'm sure that could have happened.

9 Q. Okay. So your understanding was, the 2008
10 operating agreement had something to do with pumping
11 groundwater?

12 MS. BARNCASTLE: Objection to form and
13 foundation.

14 A. I don't know enough about that to be good.

15 Q. (BY MS. THOMPSON) So before coming onto the
16 board, you weren't aware of what the 2008 operating
17 agreement was about then?

18 MS. BARNCASTLE: Objection to form and
19 foundation.

20 THE WITNESS: Okay.

21 MS. BARNCASTLE: Go ahead.

22 THE WITNESS: I can answer?

23 MS. BARNCASTLE: (Moving head up and down.)

24 A. Oh. I just knew we had one. And basically,
25 what I said, we -- we needed to pump our wells, and they

1 needed to clear up on the water that reached their line.
2 And there was a lot of discussions, but I wasn't in on
3 them.

4 I mean, I heard about them -- coffee shop.
5 Didn't know enough about it to -- to even talk. Can't
6 even talk about it now very clearly, so there...

7 Q. (BY MS. THOMPSON) Okay. Do you have any
8 understanding of whether or not the 2008 operating
9 agreement has changed over time?

10 MS. BARNCASTLE: Objection to form and
11 foundation.

12 A. No --

13 MS. BARNCASTLE: And I'll instruct you to
14 answer to the extent that you can answer without
15 divulging information that you've received in
16 attorney-client privilege conversations.

17 A. I'll just say no.

18 Q. (BY MS. THOMPSON) Okay. Do you test your
19 wells for TDS?

20 A. What is that acronym for.

21 Q. Oh, total dissolves?

22 A. Yeah, yes, ma'am.

23 Q. For salts.

24 A. Yeah, that's what I thought. I want to make
25 sure, yes.

1 Q. Do you test the surface water as well for
2 salts?

3 A. Yes, and much more.

4 Q. I think earlier your testimony was that you
5 weren't sure what those levels were in either the wells
6 or the surface water; is that correct?

7 A. Yes.

8 Q. Okay. Do you know, does EBID test the TDS in
9 groundwater wells?

10 A. They have test wells.

11 Q. Okay. Do you happen to know what any of the
12 measurements for EBID wells were?

13 A. I do not know, no.

14 MS. THOMPSON: Okay. I don't have any more
15 questions.

16 FURTHER EXAMINATION

17 BY MR. LEININGER:

18 Q. I just have a few questions, sir. My name is
19 Lee Leininger. I work for the U.S. Department of
20 Justice. I represent the United States, specifically,
21 Bureau of Reclamation in this matter.

22 You were talking about something called
23 Phytech when you were asked questions regarding
24 water-use efficiency. And I just want to ask a few more
25 questions about Phytech.

1 So your answer seemed to be that Phytech is
2 a -- is a tool that you're using to increase your water
3 efficiency -- water-use efficiency; is that right?

4 A. Yes.

5 Q. Okay. And do you have some feel for how much
6 more efficient your water use has been?

7 A. I knew that was coming, no.

8 Q. You don't?

9 A. Everything's good until you get a heavy crop,
10 and you start getting those August and July rains. And
11 that's when it gets -- your pecans go into what we call
12 a water state. And if you short them then, you're going
13 to severely decrease the quality. And, of course,
14 that's -- and also yield. And then your August crop can
15 be severe. So, at that point in time, it's very hard
16 when you're having those rains to detect when you need
17 the water.

18 Q. Okay.

19 A. You water too soon, that's not good. You don't
20 water soon enough, that's even worse.

21 Q. Okay. So let's -- let's back up just a little
22 bit.

23 Phytech, how long have you been using them?

24 A. This is our first year.

25 Q. Okay. And by using a plural there, how many --

1 BY MS. BARNCASTLE:

2 Q. Joe Paul, I just have a couple of quick, maybe,
3 even just one quick follow-up question.

4 When you're referring to the Mesilla
5 Valley, geographically, where are you referring to?

6 A. From Rincon north.

7 MS. BARNCASTLE: Okay. That takes care of
8 that.

9 We will read and sign.

10 (Proceedings concluded at 5:00 p.m.)
11
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24
25

Job No. 3128376

CHANGES AND SIGNATURE

WITNESS NAME: JOE PAUL LACK

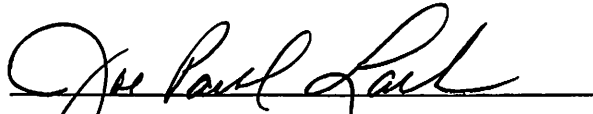
DATE OF DEPOSITION: December 17, 2018

PAGE	LINE	CHANGE	REASON
13/	5	Coranary To Corn	EAR WORM
		make same change	Everywhere Else
16/	23	Hainter to Hayner	
		make same change	Everywhere Else
30/	14	Phonetic =	AUILUCIA
30/	8	Phonetic = Change to	Boudens Everywhere Else
82/	8	ball-SKI -	Bosque

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Job No. 3128376

1 I, JOE PAUL LACK, have read the foregoing
2 deposition and hereby affix my signature that same is
3 true and correct, except as noted above.

4 
5 JOE PAUL LACK

6
7
8
9 THE STATE OF New Mexico)

10 COUNTY OF Dona Ana)

11 Before me, Gail E. Norvell, on
12 this day personally appeared JOE PAUL LACK, known to me
13 (or proved to me under oath or through
14 NM Drivers license) (description of identity card or
15 other document) to be the person whose name is
16 subscribed to the foregoing instrument and acknowledged
17 to me that they executed the same for the purposes and
18 consideration therein expressed.

19 Given under my hand and seal of office this
20 13th day of February, 2019.

21
22
23
24 Gail E. Norvell
NOTARY PUBLIC IN AND FOR
THE STATE OF New Mexico
25 Commission Expires: 12/20/22

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,)
)
Defendant.)

REPORTER'S CERTIFICATION
DEPOSITION OF JOE PAUL LACK
December 17, 2018

That the deposition transcript was delivered
to Ms. Sarah A. Klahn.

That a copy of this certificate was served on
all parties and/or the witness shown herein on
_____.

I further certify that pursuant to FRCP
Rule 30(f)(1) that the signature of the deponent:
_____ was requested by the deponent or a party
before the completion of the deposition and that
signature is to be before any notary public and returned
within 30 days from date of receipt of the transcript.

If returned, the attached Changes and
Signature Page contains any changes and the reasons
therefore:

1 _____ was not requested by the deponent or a
2 party before the completion of the deposition.

3 I certify that I am neither counsel for,
4 related to, nor employed by any of the parties or
5 attorneys in the action in which this proceeding was
6 taken, and further that I am not financially or
7 otherwise interested in the outcome of the action.

8 Certified to by me this _____ day of _____,
9 2019.

10
11
12
13 
14

ABIGAIL GUERRA, Texas CSR 9059

Expiration Date: 12/31/19

VERITEXT LEGAL SOLUTIONS

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Fort Worth, Texas 76102

Phone: (817) 336-3042

Job No. 3128376

COUNTY OF _____)
STATE OF TEXAS)

I hereby certify that the witness was notified
on _____, that the witness has 30 days or
(_____ days per agreement of counsel) after being
notified by the officer that the transcript is available
for review by the witness and if there are changes in
the form or substance to be made, then the witness shall
sign a statement reciting such changes and the reasons
given by the witness for making them;

That the witness' signature was/was not returned as
of _____.

Subscribed and sworn to on this, the _____
day of _____, 2019.



ABIGAIL GUERRA, Texas CSR 9059

Expiration Date: 12/31/19

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EXHIBIT I

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,)
)
Defendant.)

ORAL DEPOSITION OF

MIKE MCNAMEE

December 17, 2018

Volume 1

1 ORAL DEPOSITION OF MIKE MCNAMEE, produced as a
2 witness at the instance of the Plaintiff, and duly
3 sworn, was taken in the above-styled and numbered cause
4 on the 17th day of December, 2018, from 10:01 a.m. to
5 12:22 p.m., via videoconference before Abigail Guerra,
6 CSR, in and for the State of Texas, reported by machine
7 shorthand, at the offices of Elephant Butte Irrigation
8 District, 530 South Melendres Street, Las Cruces, New
9 Mexico pursuant to the Federal Rules of Civil Procedure
10 and the provisions stated on the record or attached
11 hereto.

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ALSO PRESENT:

Mr. Joel Kimmelshue

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1 MIKE MCNAMEE,
2 having been first duly sworn, testified as follows:

3 DIRECT EXAMINATION

4 BY MS. KLAHN:

5 Q. Good morning, Mr. McNamee.

6 A. Good morning.

7 Q. My name is Sara Klahn.

8 A. Hi, Sarah.

9 Q. I'm here today on behalf of the State of Texas

10 --

11 A. Okay.

12 Q. -- to take your deposition, in this case, Texas
13 v New Mexico, and Colorado.

14 Have you had your deposition taken before?

15 A. Yeah. But I can't -- I don't remember what the
16 heck it was for.

17 Q. Okay.

18 A. I have one time, yes.

19 Q. A long time ago?

20 A. Yes, ma'am.

21 Q. Okay. Well, so you probably remember that
22 -- it's important -- just a few rules so that the
23 transcript is clear.

24 It's important that we don't talk over each
25 other, if possible. Sometimes it happens. Try to use

1 you became 100 percent pecans?

2 A. In the early 2000s.

3 Q. Okay.

4 A. Mid-2000s.

5 Q. NAFTA was '98, '99?

6 A. I started in '92.

7 Q. Oh, it did.

8 Okay. All right. So then you
9 transitioned?

10 A. (Moving head up and down.)

11 Q. Okay. So from -- going back to your testimony
12 about being a cattle farmer, did you -- did you irrigate
13 at all when you were a cattle farmer?

14 A. Yes, ma'am.

15 Q. Did you -- irrigate pasture, alfalfa, or --

16 A. Pasture and different feedstuff, alfalfa, and
17 grains --

18 Q. Okay.

19 A. -- triticales.

20 Q. Okay. For your -- for your herd?

21 A. Yes, ma'am.

22 Q. Okay. And when you say you're a cattle farmer,
23 were you a -- what kind of cattle farmer were you?

24 A. We had a feed yard.

25 Q. Oh, okay. So you grew the feed for your feed

1 yard?

2 A. Yes, ma'am.

3 Q. Okay. Do you recall the irrigation decisions

4 you made during the 70s to grow that feed?

5 A. Absolutely.

6 Q. It was under EBID; is that right?

7 A. Yes, ma'am.

8 Q. Did you have a well at that time?

9 A. We did.

10 Q. What was your primary source of water that you

11 used for the -- for that -- for those kinds of crops in

12 the 70s when you had your feed yard?

13 A. There was a drought and so we pumped an awful
14 lot.

15 Q. Okay. Was the groundwater quality of the well

16 that you had at that -- was it one or two -- more wells

17 at the time?

18 A. Oh, at that time we had two wells.

19 Q. Okay. And groundwater quality was okay?

20 A. Yes, ma'am.

21 Q. Okay for what you were growing?

22 A. Yes, ma'am.

23 Q. Okay. And when surface water was available to
24 you, did you take it?

25 A. Yes, ma'am.

1 Q. Okay. How did you -- in the 70s, how did
2 you -- how were your allotments set?

3 Well, let me ask it this way: Were your
4 allotments for EBID water set differently in the 70s
5 than they are today?

6 A. I don't know.

7 Q. Oh, okay.

8 A. I was busy farming. I wasn't on the board.

9 Q. But you must've -- somebody must've
10 communicated to you how much -- how much water you had
11 on the project?

12 A. Yes, ma'am.

13 Q. Okay. Did they communicate it in the same -- I
14 mean, last year I -- for example, last year, I
15 understand I think some witness told me you had a
16 ten-inch allotment.

17 Is that the same -- the same kind of
18 communication you would've gotten in the 70s?

19 A. It -- it was written.

20 Q. Okay. And it was inches or feet?

21 A. Yes, ma'am.

22 Q. And it was up to you to ask for it?

23 A. Yes.

24 Q. Okay. And ask for it to be delivered?

25 A. Yes, ma'am.

1 growing pecans more densely than you were when you
2 started?

3 A. No, ma'am.

4 Q. How would you -- is it the same density or --

5 A. I would say basically it's the same.

6 Q. Okay. Some of the witnesses we've talked to
7 have said they've gotten more dense and then gone back
8 to being less dense.

9 But do you hedge your trees?

10 A. Absolutely. Yes, ma'am.

11 Q. What shape do you like to hedge them in? I'm
12 sure it's the same as the geometry question.

13 A. You get -- you get six pecan farmers together
14 and talk about hedging, and you'll get six different --
15 and we have a system that we are currently using that we
16 like, but we're always -- we're always learning.

17 Q. So what have you used recently? Just -- what
18 shape?

19 A. Well, we do a Christmas tree shape, but --
20 that's probably all I would say. I don't want to give
21 you all my secrets.

22 Q. Well, I have a pecan orchard plan, so not
23 really.

24 Do you do it every year?

25 A. Our current program is -- is every other row,

1 every other year.

2 Q. Okay. Do you think that hedging trees is --
3 allows you to be more efficient with your water use?

4 A. I'm not being evasive, I just don't know that
5 I'm qualified to make that answer.

6 Q. Okay. Why does Mr. Cox or other people who you
7 might have hired tell you that you have to hedge your
8 trees?

9 A. Oh, it's just not Mr. Cox. We have -- all
10 the farmers get together and share information. We have
11 conferences where we learn from each other.

12 Q. Sure.

13 A. And hedging, I think, has been a proven
14 cultural practice in the Mesilla Valley for at least
15 30 years now.

16 Q. Uh-huh.

17 A. And I think it's proven to improve the quality
18 of the crop and the quantity of the crop.

19 Q. Okay. When you were talking about deepening
20 your wells, you said you've gone from what you can
21 recall around a 120 feet to about 200 feet.

22 That's a lot of expense, isn't it, to go
23 that much deeper?

24 A. Yes, ma'am.

25 Q. Why did you go that much deeper if it was an

1 additional expense?

2 A. Looking for better quality and better volumes.

3 Q. Okay. So you -- well, that's enough for right
4 now.

5 Did -- do you have any drains that you use
6 for irrigation supplies?

7 A. The Valley is full of drain ditches.

8 Q. Sure.

9 A. And they're around all of our farms, but do we
10 drain from -- do we initiate anything other than just
11 percolation? No, ma'am.

12 Q. Okay. Have you noticed a change in the level
13 of waters that drains when you turn on your well?

14 A. Yes, ma'am.

15 Q. What happens?

16 A. It goes down.

17 Q. Okay. Looking at Exhibit 30, I think it is.

18 You still got those in front of you?

19 A. Okay. Yes, ma'am.

20 Q. Underneath the metered amounts in the middle of
21 the page -- first page there -- there is a -- some fine
22 print.

23 See where it says "note"? (As read):

24 "Total annual allowable diversion shown as based on 4.5
25 acre-feet per acre as described in adjudication court's

1 final judgment assess 97101. If a notice of intent to
2 prove up a higher FDR was filed by December 31st, 2011,
3 this may be adjusted up to 5.5 acre-feet per acre for
4 the accounting year 2012." Obviously, this is not 2012.

5 Did -- do you know if your -- you claimed
6 the 5.5 acre-feet per acre as an FDR, farm delivery
7 ratio?

8 A. I don't know.

9 Q. Okay. Who would know?

10 A. Robert.

11 Q. Okay. How long has Robert been working with
12 you on water -- on your water rights?

13 A. 2011.

14 Q. Okay. And how long has he been in the Valley?

15 A. If memory serves me right, he had been working
16 with a service company in the Valley for 15 years before
17 he joined us.

18 Q. And when you say "service company," what do you
19 mean by that?

20 A. They provide fertilizers and chemicals, and
21 such as that.

22 Q. Okay. So --

23 A. And he had been our farm representative. So I
24 knew Robert very well, and --

25 Q. Okay.

1 water-saving steps -- that we've done since I've started
2 farming, as well, but it is the most significant.

3 Q. Okay. What are some other water-saving steps
4 that you've taken?

5 A. When I started we had dirt ditches, and we used
6 siphon tubes. The water would go out the bottom of the
7 ditch. We replaced virtually every dirt ditch with a
8 concrete ditch, and then we had little gates where we
9 could open up.

10 Over time, we found out with the laser,
11 instead of the little 8 or 10-inch deck valves, we could
12 put in what's called a high-flow turnout --

13 Q. Sure.

14 A. -- and we could force the water across faster
15 and use less water.

16 Q. Uh-huh.

17 A. And the last thing that we are doing right now
18 is, we're piping as much water as we can -- both project
19 water and groundwater -- because we have found the most
20 efficient way to move water is in a plastic pipe.

21 Q. Uh-huh.

22 A. So I don't know if I'm going to get it all done
23 before I die, but we're -- we're going to try and
24 replace every concrete ditch with pipe.

25 Q. Wow. Okay.

1 Do you use sulfur as a soil additive?

2 A. I have. Don't currently do it.

3 Q. Okay. You don't see the need for it?

4 A. Pardon?

5 Q. You don't see the need -- or Mr. Jimerson

6 doesn't see the need for it in terms of --

7 A. Well, some of the liquid fertilizer compounds
8 that we use have a certain amount of sulfur, but it's
9 not a major -- it's not a major component.

10 Q. We've heard from witnesses who testified that
11 they put sulfur on almost every year as a means to deal
12 with the salinity issues.

13 Have you had to deal with salinity issues
14 in that manner?

15 A. No, ma'am.

16 Q. Have you had salinity issues on your ground?

17 A. Yes, ma'am.

18 Q. And how have you dealt with those? Just with
19 the excavation?

20 A. That's one method. Yes, ma'am. And then --
21 used to -- we'd put out sulfuric acid.

22 Q. Okay.

23 A. We got away from that because that's dangerous.

24 And so, like I say, some of the -- some of the
25 particular liquid fertilizers have got a component of

1 sulfur in them.

2 Q. Okay.

3 MS. KLAHN: All right. I think that's all
4 I have.

5 MS. BARNCASTLE: New Mexico.

6 FURTHER EXAMINATION

7 BY MS. THOMPSON:

8 Q. Mr. McNamee, I'm Lisa Thompson with the State
9 of New Mexico.

10 A. Yes, ma'am.

11 Q. We met earlier briefly.

12 A. Yes, ma'am.

13 Q. I have a few follow-up questions for you.

14 A. Sure.

15 Q. I might jump around a little bit, but I'll try
16 to keep it pretty brief, okay?

17 Early on, you mentioned you were the vice
18 president on the board for about a year now; is that
19 right?

20 A. Yes, ma'am.

21 Q. And how long have you been on the board, total?

22 A. Since 2014.

23 Q. And you mentioned you also serve on the
24 executive committee?

25 A. Yes, ma'am.

1 Q. And how often does the executive committee
2 meet?

3 A. It's not -- it's not regularly scheduled. It's
4 as needed.

5 Q. Okay.

6 A. Maybe once a month.

7 Q. Are those meetings open meetings?

8 A. No, ma'am.

9 Q. So they're not notice for the public to attend?

10 A. No. We do not have a quorum. The executive
11 committee, generally, would be two to three board
12 members.

13 Q. Who else attends the executive committee
14 meetings?

15 A. It -- you know, it -- it depends on the
16 particular subject. We have a very talented board, and
17 probably each board member has different talents. So
18 depending on whether it's engineering or, you know,
19 something like that, then -- and obviously, the
20 executive committee meets on the budget before it's
21 presented to the full board for approval. So we have
22 guys that are good with numbers, and they would be on
23 that -- on that committee.

24 Q. Okay. Does Phil King attend executive
25 committee meetings?

1 (Reporter clarification.)

2 Does Phil King, Dr. King?

3 A. Yeah. If it -- you know, if it's a water
4 issue.

5 Q. (BY MS. THOMPSON) And then you mentioned
6 that -- for board meetings, that Bureau Rec personnel
7 have attended those board meetings?

8 A. Yes, ma'am.

9 Q. Does Bureau Rec ever attend closed session
10 meetings?

11 A. No, ma'am.

12 Q. You also mentioned earlier on when Ms. Klahn
13 was asking about your wells, that early you had two
14 wells, and that the water quality was okay for what you
15 were growing at that time.

16 A. Yes, ma'am.

17 Q. And I believe you said you were growing some
18 grains for your feedlot; is that right?

19 A. Yes, ma'am.

20 Q. And when you said that water quality was
21 "okay," what did you -- what did you mean by that?

22 A. I'm not a scientist, but as I see water, what
23 makes it good quality or bad part quality, be total
24 dissolved solids, okay? TDS.

25 Q. Okay.

1 A. And so early on we had a gentleman that would
2 run water and analyze samples for us, okay? And so he
3 taught me, you know, anything this side is good.
4 Anything else on a scale -- this is good, this is bad.
5 So they were -- in my mind, the total TDS that would be
6 the dividing line for good or bad would be 1500 parts
7 per million.

8 Q. So presumably then at that time --

9 A. They were below that.

10 Q. -- those two wells were below?

11 A. Yes, ma'am.

12 Q. Do you know what your wells are for TDS are
13 now, currently?

14 A. It depends on currently. From time to time, we
15 pull water samples on the wells. So I would say in
16 general, yes, we do know the quality, but we may not
17 have sampled a water well for the last seven, eight
18 years.

19 Q. Can you give me an estimate of what you think
20 your TDS for your two wells is approximately?

21 A. Well, we now have more than the two water
22 wells, but they're -- none are over 1500.

23 Q. You also mentioned that in the 90s, it was a
24 very wet period, and you would take all your project
25 water; is that correct?

1 A. (Moving head up and down.) Yes, ma'am.

2 Q. And you mentioned that your project water was
3 "preferable," is the term you used.

4 A. Yes, ma'am.

5 Q. Can you explain why the project water is
6 preferable?

7 A. TDS.

8 Q. Explain to me, is the TDS lower in the project
9 water and that's why --

10 A. Yes, ma'am. Typically. Yes, ma'am.

11 Q. Do you ever measure the TDS in the project
12 water, the surface water?

13 A. I have. I have not done it recently.

14 Q. When is the last time you measured it about?

15 A. Ten years ago.

16 Q. Do you remember what it was then about?

17 A. I think it was about 800.

18 Q. You mentioned, for cotton, that sometimes
19 you'll do some pre-irrigation to get the soils moist. I
20 believe you said you would do that in -- sometime before
21 planting in March?

22 A. Yes, ma'am.

23 Q. Or around March.

24 How much water does it take for
25 pre-irrigation per acre?

1 MS. THOMPSON: Same, please, for New
2 Mexico.

3 MS. STEVENSON: Same.

4 MR. LEININGER: Same for the U.S.

5 MS. BARNCASTLE: Same for EBID.

6 (Proceedings concluded at 12:22 p.m.)
7
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1 _____ was not requested by the deponent or a
2 party before the completion of the deposition.

3 I certify that I am neither counsel for,
4 related to, nor employed by any of the parties or
5 attorneys in the action in which this proceeding was
6 taken, and further that I am not financially or
7 otherwise interested in the outcome of the action.

8 Certified to by me this _____ day of _____,
9 2019.

10
11
12
13
14


ABIGAIL GUERRA, Texas CSR 9059

Expiration Date: 12/31/19

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COUNTY OF _____)
STATE OF TEXAS)

I hereby certify that the witness was notified
on _____, that the witness has 30 days or
(_____ days per agreement of counsel) after being
notified by the officer that the transcript is available
for review by the witness and if there are changes in
the form or substance to be made, then the witness shall
sign a statement reciting such changes and the reasons
given by the witness for making them;

That the witness' signature was/was not returned as
of _____.

Subscribed and sworn to on this, the _____
day of _____, 2019.



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Expiration Date: 12/31/19

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EXHIBIT J

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,)
)
Defendant.)

ORAL DEPOSITION OF
KARY SAMUEL SALOPEK

December 17, 2018

Volume 1

1 ORAL DEPOSITION OF KARY SAMUEL SALOPEK,
2 produced as a witness at the instance of the Plaintiff,
3 and duly sworn, was taken in the above-styled and
4 numbered cause on the 17th day of December, 2018, from
5 12:46 p.m. to 2:28 p.m., via videoconference before
6 Abigail Guerra, CSR, in and for the State of Texas,
7 reported by machine shorthand, at the offices of
8 Elephant Butte Irrigation District, 530 South Melendres
9 Street, Las Cruces, New Mexico pursuant to the Federal
10 Rules of Civil Procedure and the provisions stated on
11 the record or attached hereto.

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ALSO PRESENT:

Mr. Joel Kimmelshue

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1 KARY SAMUEL SALOPEK,
2 having been first duly sworn, testified as follows:

3 DIRECT EXAMINATION

4 BY MS. KLAHN:

5 Q. Good morning, Mr. Salopek.

6 A. It's still morning.

7 Q. It's still morning.

8 A. Good morning.

9 Q. We've had a little delay. Thank you for your
10 patience with us.

11 My name is Sara Klahn. I'm here on behalf
12 on behalf of the State of Texas --

13 A. Okay.

14 Q. -- in this lawsuit, Texas vs. New Mexico and
15 Colorado.

16 Could you state your name for the record,
17 please?

18 A. My name is Kary Samuel Salopek.

19 Q. And your address?

20 A. 4915 Snow Road.

21 Q. Have you had your deposition taken before?

22 A. No, ma'am.

23 Q. Okay. A few preliminary advice -- advises.

24 It's important for you to answer my
25 questions with words instead of just nodding your head.

1 the acres that you own?

2 A. A bunch. Well, yeah, there's a mixture all
3 over. Yeah.

4 Q. Yeah. So some of it is such -- is so good, you
5 don't have to excavate?

6 A. Well, yeah, there's a little bit of that.

7 Q. Yeah.

8 A. Then you have your -- you know, a sandier
9 ground.

10 Q. Okay.

11 A. But.

12 Q. What did you do with that?

13 A. The only one we excavate is the heavy stuff.

14 Q. Okay. So the sandier ground, you just plant on
15 that, you don't have to do anything -- any soil
16 amendments or anything to --

17 A. No.

18 Q. Okay. Have you used land leveling?

19 A. Uh-huh.

20 Q. Laser leveling?

21 A. Yes, ma'am.

22 Q. Is that standard practice?

23 A. Standard.

24 Q. And you do that before you plant?

25 A. Oh, definitely.

1 Q. And do you do it after you plant? Do you touch
2 it up?

3 A. It's not a yearly deal. It's maybe every six,
4 seven years, we'll go -- go back in and relevel.

5 Q. Okay. What's the cost of that per acre? Do
6 you know?

7 A. I don't have a figure.

8 Q. Okay. Have you ever done any understory
9 grow -- cropping, where you grow a cover crop in between
10 the rows of the trees?

11 A. Well, water grass comes up, we'll mow that.
12 We've never planted a cover crop.

13 Q. What's water grass? It just comes up?

14 A. Yeah. It's a grass, and then we'll just mow it
15 and keep it down.

16 Q. Do you mow it and bale it?

17 A. No.

18 Q. Not like that?

19 A. No.

20 Q. Do you have to do anything to the soil to deal
21 with salinity issues?

22 A. Sometimes we put out sulfur or DISPER-SUL, but
23 other than that we don't.

24 Q. So it's not an annual thing?

25 A. No.

1 Q. What makes you -- what is the decision -- when
2 do you know that you need to do it? Do you get a little
3 burning on the leaves, or...

4 A. To be honest with you, we -- I don't how to
5 answer that one.

6 We will -- like, on the DISPER-SUL, we'll
7 do an annual app with all the other fertilizers.

8 Q. I see. And what is that -- what's the word
9 that you're saying --

10 A. It's DISPER-SUL. It's a sulfur-based product.

11 Q. I see. Okay.

12 A. Yeah.

13 Q. So you put it on the same time you do for the
14 fertilizer?

15 A. Yeah, first thing in the season.

16 Q. Okay. Have you ever seen any problems with
17 your -- the leaves on your pecans trees turning brown on
18 the edges?

19 A. Oh, yeah.

20 Q. Was that from -- what do you think that's from?

21 A. I'm guessing it's from a little bit of
22 salinity.

23 Q. Yeah. Do you take action then to try and
24 correct it, or is it not that common?

25 A. It's really not that common.

1 Q. So we started out and looked at Exhibit 32,
2 which had all the Salopek water rights on it.

3 And from looking at this list, I gather you
4 have a number of irrigation wells that you can use on
5 your land; is that right?

6 A. Uh-huh.

7 Q. And then, of course, you also have EBID
8 allocation --

9 A. Allotment.

10 Q. Allotment. Sorry.

11 A. Uh-huh.

12 Q. Do you use 100 percent of your EBID allotment?

13 A. It's close -- yeah, just about all of it.

14 Q. If you -- if there was a --

15 A. I will -- EBID would use all of it.

16 Q. I'm sure EBID would use all of it. Yeah.

17 But as far as you personally, if you don't
18 use it, is it because you couldn't get it at the time
19 that you wanted it, just because of delivery constraints
20 or something?

21 A. That's -- that's the most occasions.

22 Q. Uh-huh.

23 A. We're on -- yeah, just not being able to get
24 it.

25 Q. Where are you located in relation to the main

1 canals? Are you in a good location, like close to the
2 main canals or far out?

3 A. We're farther out. We have small canals, kind
4 of, feeding our farms so -- and the long way from the
5 mainland. So sometimes it -- you order water, and it
6 takes quite a while to get there.

7 Q. Uh-huh. What would be -- can you give me an
8 idea of how -- what, kind of, a long a time could be?

9 A. I don't know. Five, six days.

10 Q. Okay. If you need to irrigate in the meantime,
11 do you just go ahead and turn on your wells?

12 A. In the crucial time of drawing season, we do.

13 Q. Yeah.

14 A. We try to wait for it.

15 Q. Try to wait to turn your wells on?

16 A. Yeah. We try to wait and use our canal water
17 up, but in the crucial time of the year, we don't
18 hesitate to start them up.

19 Q. Now, do you have any water quality issues with
20 any of your groundwater supplies?

21 A. We used to take water quality samples all the
22 time when NMSU would sample them.

23 Q. Uh-huh.

24 A. Lately, we haven't been doing it.

25 Q. What -- do you recall what -- you were looking

1 for TDS numbers.

2 A. Uh-huh.

3 Q. Do you recall what NMSU was finding?

4 A. 700 to -- I don't know. Maybe in the -- I
5 don't know. 700 to about, maybe, 1100, in that range.

6 Q. Have you -- as a farmer, do you consider 1100
7 to be too high to use for irrigation?

8 A. No.

9 Q. No.

10 Last year, I understand EBID had a ten-inch
11 allotment for surface water.

12 Did you find yourself using your wells more
13 than you did -- than you have in years when you had more
14 water --

15 A. Yeah.

16 Q. More surface water?

17 A. That's correct.

18 Q. Yeah. Do you know how many irrigation wells
19 you have, physical wells?

20 A. We have 13.

21 Q. Are they -- are they located in such a way that
22 those 13 wells could irrigate any of the acres
23 -- physically irrigate any of the acres that you
24 operate?

25 A. Most of them -- let me retract that.

1 On our main farm, we have three that will
2 cover the whole acreage, and then on some of the other
3 farms, we have one or two that can be combined. We have
4 a couple of farms that only has one, so...

5 Q. So can -- so first of all, you talked about
6 your main farm.

7 That's the Snow Road?

8 A. Snow road, uh-huh.

9 Q. And how many acres is there?

10 A. That is about 200- -- 250 acres.

11 Q. Okay. And you said there's three wells that
12 you can use on that?

13 A. Uh-huh.

14 Q. But those three wells couldn't serve any of the
15 satellite acres because they're just physically
16 dislocated --

17 A. We --

18 Q. -- disconnected?

19 A. -- we could through the canal system if we had
20 to --

21 Q. Oh, okay.

22 A. But it would be -- it'd be a long haul.

23 Q. Okay. And if you -- and would the state --
24 would the water master allow that, for you to pump water
25 into the canal and deliver into different acres, if you

1 whether the instructions to not answer certain questions
2 were well-founded.

3 That's all I have.

4 MS. BARNCASTLE: I just have a few quick
5 questions, Sam.

6 FURTHER EXAMINATION

7 BY MS. BARNCASTLE:

8 Q. In 2012, before the court's deadline, in Stream
9 System Issue 101, to file additional prove-up evidence
10 to support a higher FDR of 5.5, did you file evidence?

11 A. We -- I did.

12 Q. Did you file before the court's deadline?

13 A. I did.

14 Q. And did your evidence support the
15 five-and-a-half FDR?

16 A. It did.

17 Q. Okay. Are you aware of how the Office of the
18 State Engineer keeps its records and records its data?

19 A. Of pumping or?

20 Q. Any of its data.

21 A. No.

22 Q. So you wouldn't necessarily know if this is an
23 accurate reflection referring to Salopek 33 of your
24 water right?

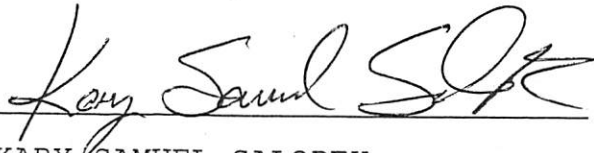
25 A. No, I wouldn't know.

1 MS. BARNCASTLE: I think we are done. We
2 will read and sign.

3 MS. KLAHN: The same as before.

4 (Proceedings concluded at 2:28 p.m.)
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1 I, KARY SAMUEL SALOPEK, have read the
2 foregoing deposition and hereby affix my signature that
3 same is true and correct, except as noted above.

4 
5 KARY SAMUEL SALOPEK

6
7
8
9 THE STATE OF New Mexico)

10 COUNTY OF Dona Ana)

11 Before me, Dale E Norvell, on
12 this day personally appeared KARY SAMUEL SALOPEK, known
13 to me (or proved to me under oath or through
14 NM Drivers License) (description of identity card or
15 other document) to be the person whose name is
16 subscribed to the foregoing instrument and acknowledged
17 to me that they executed the same for the purposes and
18 consideration therein expressed.

19 Given under my hand and seal of office this
20 13th day of February, 2019.

21
22
23
24 Dale E Norvell
NOTARY PUBLIC IN AND FOR
THE STATE OF New Mexico
25 Commission Expires: 12/20/22

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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,)
)
Defendant.)

REPORTER'S CERTIFICATION
DEPOSITION OF KARY SAMUEL SALOPEK
December 17, 2018

That the deposition transcript was delivered
to Ms. Sarah A. Klahn.

That a copy of this certificate was served on
all parties and/or the witness shown herein on
_____.

I further certify that pursuant to FRCP
Rule 30(f)(1) that the signature of the deponent:
_____ was requested by the deponent or a party
before the completion of the deposition and that
signature is to be before any notary public and returned
within 30 days from date of receipt of the transcript.

If returned, the attached Changes and
Signature Page contains any changes and the reasons
therefore:

1 _____ was not requested by the deponent or a
2 party before the completion of the deposition.

3 I certify that I am neither counsel for,
4 related to, nor employed by any of the parties or
5 attorneys in the action in which this proceeding was
6 taken, and further that I am not financially or
7 otherwise interested in the outcome of the action.

8 Certified to by me this _____ day of _____,
9 2019.

10
11
12
13
14


ABIGAIL GUERRA, Texas CSR 9059

Expiration Date: 12/31/19

VERITEXT LEGAL SOLUTIONS

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Job No. 3128376

COUNTY OF _____)
STATE OF TEXAS)

I hereby certify that the witness was notified
on _____, that the witness has 30 days or
(_____ days per agreement of counsel) after being
notified by the officer that the transcript is available
for review by the witness and if there are changes in
the form or substance to be made, then the witness shall
sign a statement reciting such changes and the reasons
given by the witness for making them;

That the witness' signature was/was not returned as
of _____.

Subscribed and sworn to on this, the _____
day of _____, 2019.



ABIGAIL GUERRA, Texas CSR 9059

Expiration Date: 12/31/19

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EXHIBIT K

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

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

ORAL DEPOSITION OF
ANTHONY JAMES SALOPEK
December 18, 2018
Volume 1

1 ORAL AND VIDEOTAPED DEPOSITION OF ANTHONY

2 JAMES SALOPEK, produced as a witness at the instance of
3 the Plaintiff, and duly sworn, was taken in the
4 above-styled and numbered cause on the 18th day of
5 December, 2018, from 12:39 p.m. to 1:56 p.m., via
6 videoconference before Abigail Guerra, CSR, in and for
7 the State of Texas, reported by machine shorthand, at
8 the offices of Elephant Butte Irrigation District, 530
9 South Melendres, Las Cruces, New Mexico, pursuant to the
10 Federal Rules of Civil Procedure and the provisions
11 stated on the record or attached hereto.

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ALSO PRESENT:

Mr. Joel Kimmelshue

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1 ANTHONY JAMES SALOPEK,
2 having been first duly sworn, testified as follows:

3 DIRECT EXAMINATION

4 BY MR. HOFFMAN:

5 Q. State your name for the record, please.

6 A. Anthony James Salopek.

7 Q. What was the -- it's James Salopek?

8 A. James Salopek.

9 Q. Okay.

10 A. My whole first name is Anthony James.

11 Q. Anthony James, okay.

12 A. But I go by James.

13 Q. Okay. And have you ever had your deposition
14 taken before?

15 A. Once. In a S&A bankruptcy.

16 Q. So you know the drill?

17 A. Yes.

18 Q. Okay. I'm not even going to go it through
19 because we're short of time?

20 A. Yeah.

21 Q. Okay. What's your educational background?

22 A. Two year -- high school and two years of
23 college.

24 Q. Okay. And what subject did you take in
25 college?

1 management group, for the -- it's run by the -- or at
2 least recognized by the Office of State Engineer? Do
3 you know what I'm talking about, the Oman program?

4 A. Yes.

5 Q. Are your lands part of the Oman program?

6 A. Yes.

7 Q. Okay. And when did you apply to become in the
8 Oman program?

9 A. When it first came out.

10 Q. Okay.

11 A. I don't know the date.

12 Q. Basically, all of your acreages in it?

13 A. Yes.

14 Q. And all of your wells are in it?

15 A. Yes.

16 Q. Have you included any other owners or acreage
17 wells in the Oman group that you have?

18 A. No.

19 Q. Okay. Do you lease any -- any land?

20 A. Yes.

21 Q. How many acres do you lease?

22 A. 1500.

23 Q. Is that all in pecans, also?

24 A. Yes.

25 Q. Okay. Do you lease out any of your lands?

1 A. No.

2 Q. And the 1500 acres, are those adjacent or -- to
3 your farms?

4 A. Adjacent.

5 Q. So you farm 4500 acres of pecans?

6 A. No. The 15 is in the 3,000.

7 Q. Oh, okay. Okay.

8 So it's 1500 at least?

9 A. Yeah.

10 Q. Okay. A couple of more questions.

11 Is the yield of a 15-year old orchard today
12 about the same as it was back in '76?

13 A. Yes.

14 Q. Okay. Other than sulfur, do you do anything
15 else to manage the salinity?

16 A. Just regular fertilizer.

17 Q. Fertilizer?

18 A. Yes.

19 Q. Do you add extra water to leach the salts out
20 sometimes?

21 A. Not extra. We just -- whatever the -- we need.

22 Q. Whatever is available?

23 A. Yeah.

24 Q. Before you entered the Oman program, had you
25 ever exceeded the amount of water -- the limit of the

1 amount of water that was in your water right pumping
2 from the well in any year?

3 A. No.

4 Q. Okay. Have you ever been cited for pumping too
5 much?

6 A. No.

7 Q. How would you describe your relationship with
8 the State Engineer's Office? Amicable?

9 A. No problems.

10 MR. HOFFMAN: Okay. Okay.

11 THE WITNESS: Okay what?

12 MR. HOFFMAN: I'm done. I'm done. So you
13 can get out of here.

14 THE WITNESS: Okay.

15 MR. HOFFMAN: That's why.

16 MS. BARNCASTLE: All right. Shall we go to
17 New Mexico, then?

18 FURTHER EXAMINATION

19 BY MS. THOMPSON:

20 Q. Mr. Salopek, my name is Lisa Thompson. I
21 represent the State of New Mexico in this matter. I
22 have a few questions for you. I'm going to just dive
23 right into the 2008 operating agreement because we're
24 pretty short on time today, okay?

25 A. Uh-huh.

1 THE WITNESS: An -- okay.

2 MR. HOFFMAN: An EBID, yes.

3 MS. THOMPSON: That's it.

4 MR. HOFFMAN: That's all.

5 MS. BARNCASTLE: We'll read and sign.

6 (Proceedings concluded at 1:56 p.m.)

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1 I, ANTHONY JAMES SALOPEK, have read the
2 foregoing deposition and hereby affix my signature that
3 same is true and correct, except as noted above.

4 
5 ANTHONY JAMES SALOPEK

6
7
8
9 THE STATE OF New Mexico)

10 COUNTY OF Dona Ana)

11 Before me, Eric E. Norwalk, on
12 this day personally appeared ANTHONY JAMES SALOPEK,
13 known to me (or proved to me under oath or through
14 Drivers License) (description of identity card or
15 other document) to be the person whose name is
16 subscribed to the foregoing instrument and acknowledged
17 to me that they executed the same for the purposes and
18 consideration therein expressed.

19 Given under my hand and seal of office this
20 4th day of February, 2019.

21
22
23 Eric E. Norwalk
24 NOTARY PUBLIC IN AND FOR
THE STATE OF New Mexico
25 Commission Expires: 12/20/22

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

STATE OF TEXAS

)

)

Plaintiff,

)

)

VS.

) Original Action Case

) No. 220141

STATE OF NEW MEXICO, and

) (Original 141)

STATE OF COLORADO,

)

)

Defendant.

)

REPORTER'S CERTIFICATION

DEPOSITION OF ANTHONY JAMES SALOPEK

December 18, 2018

That the deposition transcript was delivered
to Mr. Robert Hoffman.

That a copy of this certificate was served on
all parties and/or the witness shown herein on

_____.

I further certify that pursuant to FRCP
Rule 30(f)(1) that the signature of the deponent:

_____ was requested by the deponent or a party
before the completion of the deposition and that
signature is to be before any notary public and returned
within 30 days from date of receipt of the transcript.

If returned, the attached Changes and
Signature Page contains any changes and the reasons
therefore:

1 _____ was not requested by the deponent or a
2 party before the completion of the deposition.

3 I certify that I am neither counsel for,
4 related to, nor employed by any of the parties or
5 attorneys in the action in which this proceeding was
6 taken, and further that I am not financially or
7 otherwise interested in the outcome of the action.

8 Certified to by me this _____ day of _____,
9 2019.

10
11
12
13
14


ABIGAIL GUERRA, Texas CSR 9059

Expiration Date: 12/31/19

VERITEXT LEGAL SOLUTIONS

Firm Registration No. 571

300 Throckmorton Street

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Fort Worth, Texas 76102

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COUNTY OF _____)
STATE OF TEXAS)

I hereby certify that the witness was notified
on _____, that the witness has 30 days or
(_____ days per agreement of counsel) after being
notified by the officer that the transcript is available
for review by the witness and if there are changes in
the form or substance to be made, then the witness shall
sign a statement reciting such changes and the reasons
given by the witness for making them;

That the witness' signature was/was not returned as
of _____.

Subscribed and sworn to on this, the _____
day of _____, 2019.



ABIGAIL GUERRA, Texas CSR 9059

Expiration Date: 12/31/19

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EXHIBIT L

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

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

ORAL DEPOSITION OF

ROBERT SLOAN

December 18, 2018

Volume 1

1 ORAL DEPOSITION OF ROBERT SLOAN, produced as a
2 witness at the instance of the Plaintiff, and duly
3 sworn, was taken in the above-styled and numbered cause
4 on the 18th day of December, 2018, from 9:35 a.m. to
5 12:19 p.m., via videoconference, before Abigail Guerra,
6 CSR, in and for the State of Texas, reported by machine
7 shorthand, Elephant Butte Irrigation District, 530 South
8 Melendres, Las Cruces, New Mexico, pursuant to the
9 Federal Rules of Civil Procedure and the provisions
10 stated on the record or attached hereto.

A P P E A R A N C E S

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ALSO PRESENT:

Mr. Joel Kimmelshue

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1 ROBERT SLOAN,
2 having been first duly sworn, testified as follows:

3 DIRECT EXAMINATION

4 BY MR. HOFFMAN:

5 Q. Can you state your name for the record?

6 A. Robert Sloan.

7 Q. And where do you live, Mr. Sloan?

8 A. La Mesa, New Mexico.

9 Q. La Mesa. Is that close to Las Cruces?

10 A. South. It's south, about 10, 12 miles, I
11 guess.

12 Q. Okay. Have you had your deposition taken
13 before?

14 A. No, sir.

15 Q. The drill is I ask questions, you don't
16 interrupt, you wait until the end, even if you know what
17 I'm going to ask you. Wait, so the court reporter
18 doesn't get mixed up. You can't nod. You have to say
19 "yes" or "no," or give an answer because she can't take
20 nods down.

21 A. She can't take nods. Okay.

22 Q. Okay. And if you don't understand a question I
23 ask you, simply say that, and I'll try to rephrase it.

24 A. Okay.

25 Q. Okay. What's your educational background?

1 A. High school and college.

2 Q. Where did you go to college?

3 A. Here at MSU.

4 Q. And what did you study?

5 A. Agronomy.

6 Q. And is that your degree?

7 A. Yes, sir.

8 Q. And when did you get your degree?

9 A. 1979. It's been a while.

10 Q. Well, tell me.

11 So did you grow up in a farm here?

12 A. Yes, sir.

13 Q. Your father farmed?

14 A. Yes, sir.

15 Q. Grandfather farmed?

16 A. Yes, sir.

17 Q. Great-grandfather farmed?

18 A. Yes, sir. To some --

19 Q. All in --

20 A. To some extent. He was a school

21 teacher/farmer.

22 Q. All in EBID?

23 A. Yes, sir.

24 Q. Okay. So I take it you started farming even

25 before you went to school -- or working on farms?

1 once?

2 A. More than once.

3 Q. So you replaced more than one well; is that
4 right?

5 A. Yes, sir.

6 Q. How many?

7 A. I don't remember the exact number. Three,
8 four.

9 Q. Three or four out of the ten?

10 A. Yes, sir.

11 Q. Going back to fallowing, why do you fallow
12 ground -- because of crop rotational things, or because
13 of water shortage, or both?

14 A. Probably more to -- some on rotation, but
15 probably more so on -- on the availability of water.

16 Q. Do you have a -- sort of, a schedule of
17 rotation for your crop -- for your crops?

18 A. Yeah. Kind of, general -- general ideas of the
19 rotation.

20 Q. What is that general idea?

21 A. Well, like we talked about earlier, alfalfa
22 comes out, plant something else. You know, won't go
23 back to back on alfalfa. Cotton, you may go back to
24 back. Go to another crop. Just try to move them around
25 so you don't have the same crop, year after year, on the

1 same ground.

2 Q. Besides alfalfa, that you wouldn't go back to
3 back on, are there any other crops you wouldn't go back
4 to back on?

5 A. Typically, onions.

6 Q. And why don't you go back to back? What's the
7 deal? Why?

8 A. Weeds, disease.

9 Q. Do you have any management practices to deal
10 with soil salinity?

11 A. Yeah. I may try to apply some kind of soil
12 amenities -- like sulfur, for example -- to try to
13 combat the salinity a little bit.

14 Q. And do you do that on all of your fields, or do
15 you do it on a rotational basis, or what?

16 A. More on as-need-be basis.

17 Q. And how do you determine that?

18 A. Soil samples, crop visible -- the way that crop
19 is growing --

20 Q. Do you have a service that comes in and samples
21 your soil periodically?

22 A. We take some soil samples and then send them
23 off to different labs.

24 Q. And do you have a schedule for doing that, or
25 is it -- you just -- simple -- eyesight them?

1 A. Usually, it's this -- around this time of the
2 year, you know, after a crop finishes, and then decide
3 if you need to take some samples. This would be a good
4 time to take them.

5 Q. So do you do it for each of your fields every
6 year?

7 A. No. Try -- try to get representative samples.

8 Q. Do you leach the soils ever?

9 A. Under flood irrigation, every time, there's a
10 certain amount of leaching that occurs. I haven't done,
11 like -- it depends on how you define the leaching, you
12 know.

13 Q. You haven't done without a crop on it?

14 A. Not lately.

15 Q. You used to do that?

16 A. Yeah. We did occasional fields, yes.

17 Q. When was that?

18 A. Probably in the -- I don't know. I can't
19 remember the exact year.

20 Q. And the reason that you don't do that kind of
21 leaching now is because of your soil testing and the
22 amenities you add to the soil?

23 A. No. Probably, like, we mainly did it on onions
24 and we -- since we've changed to drip irrigation, we
25 haven't done -- haven't worried as much about it.

1 Q. Okay. What's the quality of the water that you
2 get out of your wells compared to the surface water you
3 get out of the river?

4 A. Probably in general, it's not as good.

5 Q. Do you test the water quality of your wells
6 periodically?

7 A. Yes.

8 Q. What's the highest TDS that you get out of your
9 wells now?

10 A. Best that I can recall, 2,000.

11 Q. And the lowest?

12 A. Somewhere in the rage of 500.

13 Q. Is that in your deeper well?

14 A. Not necessarily, no. I can't remember exactly
15 which wells.

16 Q. Have you noticed, with drip irrigation, that
17 yields of onions increases?

18 A. It has a potential.

19 Q. Have you noticed that that has happened or not?

20 A. Some years, yes.

21 Q. When you use drip irrigation, do you notice
22 that the plants are more vigorous than when you didn't
23 use drip irrigation?

24 A. No.

25 (Exhibit 46 marked.)

1 Q. (BY MR. HOFFMAN) Okay. Showing you
2 Exhibit 46.

3 Have you ever seen this document before?

4 A. No.

5 Q. It reports to be -- it purports to be a Water
6 Rights Summary by owner, in the New Mexico office, the
7 state engineer. And listed on it are all the Sloans in
8 the world, it appears.

9 You're the Robert Sloan on this, on the
10 second page?

11 A. Second page.

12 Q. There's -- are you different than Robert M.
13 Sloan?

14 A. Let's see. Based on the address, I must be the
15 Robert M. Sloan, based on the mailing address.

16 Q. The which one?

17 A. Based on the mailing address in the second,
18 third column.

19 Q. You're 1411 Archer Farm Road?

20 A. Yes, sir.

21 Q. And what about Route 1, Box 231; is that you?

22 A. Used to be. They changed the address.

23 Q. Okay. And I take it that Jackie Sloan is your
24 wife?

25 A. Yes.

1 Q. And how many acres have you sought to have 5.5
2 acre-feet --

3 A. I don't remember at this time.

4 Q. Can you give me a ballpark figure? I mean, is
5 it 700 or is it 300, or a lot less?

6 A. 500, give or take.

7 Q. Okay.

8 MS. THOMPSON: Thank you.

9 MS. BARNCASTLE: I forgot to ask you EP No.
10 1 if you have any questions.

11 MS. STEVENSON: No questions.

12 MS. BARNCASTLE: Okay. So I think, with
13 that, we're done. We'll read and sign.

14 (Proceedings concluded at 12:19 p.m.)

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25

1 I, ROBERT SLOAN, have read the foregoing
2 deposition and hereby affix my signature that same is
3 true and correct, except as noted above.

4 
5

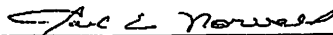
ROBERT SLOAN

6
7
8
9 THE STATE OF New Mexico)

10 COUNTY OF Dona Ana)

11 Before me, Gail E Norvell, on
12 this day personally appeared ROBERT SLOAN, known to me
13 (or proved to me under oath or through
14 NM Drivers License) (description of identity card or
15 other document) to be the person whose name is
16 subscribed to the foregoing instrument and acknowledged
17 to me that they executed the same for the purposes and
18 consideration therein expressed.

19 Given under my hand and seal of office this
20 13th day of February, 2019.
21
22
23



24 NOTARY PUBLIC IN AND FOR

THE STATE OF New Mexico

25 Commission Expires: 12/20/22

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

STATE OF TEXAS

Plaintiff,

VS.

STATE OF NEW MEXICO, and
STATE OF COLORADO,

Defendant.

)

)

)

)

) Original Action Case

) No. 220141

) (Original 141)

)

)

)

REPORTER'S CERTIFICATION
DEPOSITION OF ROBERT SLOAN

December 18, 2018

That the deposition transcript was delivered
to Mr. Robert Hoffman.

That a copy of this certificate was served on
all parties and/or the witness shown herein on

_____.

I further certify that pursuant to FRCP
Rule 30(f)(1) that the signature of the deponent:

_____ was requested by the deponent or a party
before the completion of the deposition and that
signature is to be before any notary public and returned
within 30 days from date of receipt of the transcript.

If returned, the attached Changes and
Signature Page contains any changes and the reasons
therefore:

1 ____ was not requested by the deponent or a
2 party before the completion of the deposition.

3 I certify that I am neither counsel for,
4 related to, nor employed by any of the parties or
5 attorneys in the action in which this proceeding was
6 taken, and further that I am not financially or
7 otherwise interested in the outcome of the action.

8 Certified to by me this ____ day of _____,
9 2019.

10
11
12
13 
14

ABIGAIL GUERRA, Texas CSR 9059

15 Expiration Date: 12/31/19

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16 Firm Registration No. 571

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17 Suite 1600

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18 Phone: (817) 336-3042
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20
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24
25

COUNTY OF _____)
STATE OF TEXAS)

I hereby certify that the witness was notified
on _____, that the witness has 30 days or
(_____ days per agreement of counsel) after being
notified by the officer that the transcript is available
for review by the witness and if there are changes in
the form or substance to be made, then the witness shall
sign a statement reciting such changes and the reasons
given by the witness for making them;

That the witness' signature was/was not returned as
of _____.

Subscribed and sworn to on this, the _____
day of _____, 2019.



ABIGAIL GUERRA, Texas CSR 9059

Expiration Date: 12/31/19

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EXHIBIT M

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 DEPOSITION OF

JORGE GARCIA

FEBRUARY 6, 2019

ORAL DEPOSITION of JORGE GARCIA, 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 February 6, 2019, from 8:34 a.m. to 10:59 a.m., before Heather L. Garza, CSR, RPR, in and for the State of Texas, recorded by machine shorthand, at the offices of LAS CRUCES UTILITIES, 680 North Motel Boulevard, Las Cruces, 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

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14 (505) 848-1800
15 mobrien@modrall.com

16 ALSO PRESENT:

17 Mr. Phil King
18 Mr. Ryan Serrano
19 Ms. Cheryl Thacker
20 Ms. Rhonda Diaz
21
22
23
24
25

EXAMINATION INDEX

WITNESS: JORGE GARCIA

EXAMINATION

BY MS. KLAHN

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SIGNATURE REQUESTED

79

REPORTER'S CERTIFICATION

80

1 JORGE GARCIA,
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, Dr. Garcia.

6 A. Good morning.

7 Q. My name is Sarah Klahn. I represent the
8 State of Texas. Could you state your name for the
9 record and spell it, please?

10 A. Jorge Garcia, J-O-R-G-E, G-A-R-C-I-A.

11 Q. And your work address?

12 A. Utility Center, 680 Motel Boulevard, Las
13 Cruces, New Mexico.

14 Q. What's your position with the City of Las
15 Cruces?

16 A. Director of utilities.

17 Q. Have you had your deposition taken before?

18 A. Yes.

19 Q. In what matters?

20 A. Litigation with another water company.

21 Q. How long ago was that?

22 A. Maybe four or five years. I don't know.

23 Q. Okay. Before that, had you had your
24 deposition taken?

25 A. Not before those cases.

1 Q. Okay. So you know you need to speak clearly
2 and not nod your head?

3 A. Yes. Yes and no, yeah.

4 Q. And if you have a question that you don't
5 understand -- if I ask a question you don't
6 understand, please ask me to clarify.

7 A. Yes.

8 Q. If there's a question pending on the table,
9 you cannot consult with your lawyer, but as soon as
10 you answer the question, we can certainly take a
11 break. Okay? And if you need a break at any time,
12 let me know.

13 A. Okay. Thank you.

14 Q. How long have you been the director of
15 utilities here?

16 A. Since the spring of 2001.

17 Q. Where did you work before that?

18 A. In the city. Here in the city utility.

19 Q. Also in the utility?

20 A. Yes.

21 Q. So how long have you been with the City of
22 Las Cruces Utilities Department in any capacity?

23 A. Approximately 29 years.

24 Q. Where did you go to college?

25 A. Utah State University.

1 Section 2.11.1. It starts on Page 32 and goes to Page
2 33. This is the section of the 2017, 40-year plan in
3 which the city's concerns, I guess, about the 2008
4 operating agreement are discussed. Do you have an
5 understanding of the 2008 operating agreement? Do you
6 know what I mean when I use that?

7 A. Yes.

8 Q. Do you have an understanding of --

9 A. I'm not an expert.

10 Q. Well, no one is?

11 MS. BARNCASTLE: I disagree.

12 MS. KLAHN: Okay. Possibly Phil King.

13 THE WITNESS: Probably Phil King.

14 MS. KLAHN: I got Maria here, too.

15 Q. (BY MS. KLAHN) So the -- let's look at the
16 first full paragraph -- second full paragraph on Page
17 33. The first sentence says, "One implication of the
18 operating agreement is that supplemental irrigation
19 pumping to supply EBID lands would increase so that
20 groundwater levels in the lower Rio Grande basin in
21 general and the Mesilla Valley in particular would
22 decline rather than being roughly in equilibrium as
23 had been the case historically." Based on your
24 understanding of the operating agreement, is that
25 your -- would that be your characterization of it?

1 A. Well, I agree with this paragraph that the --
2 the concern of the city is really the long-term impact
3 on groundwater supply, and it -- it appears to us
4 that -- that after 2008, there's been more pumping and
5 more pumping has led to some groundwater level
6 declines. To date, I have not seen a very
7 comprehensive evaluation or modelling of what the
8 long-term -- and I'm talking about 50 to a
9 hundred-year impacts are -- that would give us peace
10 of mind or -- or, you know, give us better
11 understanding of what is the impact to groundwater.

12 Q. So increased agricultural pumping in New
13 Mexico you think will have an adverse effect on Las
14 Cruces water supplies in the lower Rio Grande in New
15 Mexico, I should have said?

16 A. I think increased pumping not only in New
17 Mexico, but Texas and Mexico will affect the aquifer
18 so one big aquifer.

19 Q. And what -- what will the effect be? What is
20 the effect you're concerned about?

21 A. The effect would be -- it could be declining
22 water levels, water quality changes and all that. We
23 don't have a tool to date, I don't think, unless I
24 missed it, that quantifies that. So, now, deeper
25 wells or lesser water quality leads to treatment,

1 | leads to higher capital costs, higher operating costs,
2 | higher rates. So that -- that's -- as a utility
3 | manager, that's my worry. Not understanding the
4 | long-term big picture. Again, not five years and ten
5 | years.

6 | Q. Right.

7 | A. Talking about down the road.

8 | Q. Right. Given your concerns, the '08
9 | agreement has been in place for ten years. Have you
10 | taken any steps to challenge groundwater pumping in
11 | New Mexico, either in administrative agencies or
12 | adjudication?

13 | A. Not -- not personally. I mean --

14 | MR. STEIN: Are you asking legal
15 | positions that were taken by the city?

16 | Q. (BY MS. KLAHN) Has the utility department
17 | taken steps to object to increased agricultural
18 | pumping in the last ten years?

19 | A. Not to object. I think the steps that we've
20 | taken, and I think that is reflected in the lower Rio
21 | Grande group is tried to work together to look at the
22 | big picture solution with the district and the pecan
23 | growers and the row croppers and the city and county,
24 | mutual domestics, et cetera. So those steps, we have
25 | taken. Opposing, no.

1 Q. So if EBID could rely solely on surface water
2 diversions, would that result in an adverse effect on
3 Las Cruces, under the operating agreement, I should
4 say?

5 MR. STEIN: Objection as to the
6 vagueness of the question.

7 THE WITNESS: I don't understand it.

8 MR. STEIN: We'd have to determine what
9 period of record you're talking about or what the flow
10 conditions are or the climactic conditions. I don't
11 think you can just ask that question as a generality
12 to cover every conceivable hydrologic condition of
13 surface flow.

14 MS. KLAHN: Is that an objection?

15 MR. STEIN: Yes.

16 MS. KLAHN: And your objection is
17 overbroad?

18 MR. STEIN: Is vague and ambiguous.

19 MS. KLAHN: I'll be more specific. If
20 you can state your objection briefly, then I can fix
21 the problem with the question rather than having a lot
22 of narrative.

23 MR. STEIN: I was trying to be helpful.

24 MS. KLAHN: Thank you so much.

25 MR. STEIN: You're welcome.

1 cross-examination, but we will -- as yesterday, we
2 will object to any recalling of this witness pursuant
3 to Provision 5.4 of the case management plan, which
4 states that if a deposition is not finished by the end
5 of business day, it will continue on the following
6 business day and each business day thereafter, subject
7 to the availability of the witness. We have made
8 Dr. Garcia available this entire week, and time
9 limitations otherwise set by agreement or order of the
10 special master, and I am not aware of any of those.

11 MS. KLAHN: Thank you for your time,
12 Dr. Garcia.

13 THE WITNESS: Thank you.

14 (The deposition concluded at 10:59 a.m.)
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WITNESS CORRECTIONS AND SIGNATURE

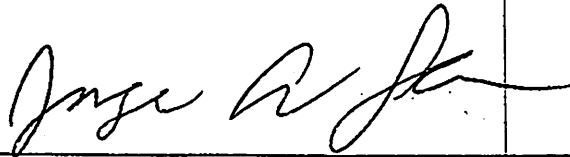
Please indicate changes on this sheet of paper, giving the change, page number, line number and reason for the change. Please sign each page of changes.

PAGE/LINE	CORRECTION	REASON FOR CHANGE
31/22	MINED	INCORRECT
36/19	PLANT	INCORRECT
46/5	HANDS	"Hands" plant
46/5	PLANT	"
68/22	MODFLOW	MODEL NAME
68/23	MODFLOW	MODEL NAME
74/1	DELETE "YEAR"	SHOULD BE 365-DAY...
52/19	WECHSLER	INCORRECT
61/17	ACEQUIA MADRE	(CORRECT WORD)

JORGE GARCIA

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

I, JORGE GARCIA, 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).



JORGE GARCIA

Job No. 3169882



OFFICIAL SEAL
LINDA DAWSON
NOTARY PUBLIC - STATE OF NEW MEXICO

My commission expires: 2020



1 IN THE SUPREME COURT OF THE UNITED STATES
2 BEFORE THE OFFICE OF THE SPECIAL MASTER
 HON. MICHAEL J. MELLOY
3
4 STATE OF TEXAS)
)
5 Plaintiff,)
) Original Action Case
6 VS.) No. 220141
) (Original 141)
7 STATE OF NEW MEXICO,)
 and STATE OF COLORADO,)
8)
 Defendants.)

9
10
11 THE STATE OF TEXAS :
12 COUNTY OF HARRIS :

13 I, HEATHER L. GARZA, a Certified Shorthand
14 Reporter in and for the State of Texas, do hereby
15 certify that the facts as stated by me in the caption
16 hereto are true; that the above and foregoing answers
17 of the witness, JORGE GARCIA, to the interrogatories
18 as indicated were made before me by the said witness
19 after being first duly sworn to testify the truth, and
20 same were reduced to typewriting under my direction;
21 that the above and foregoing deposition as set forth
22 in typewriting is a full, true, and correct transcript
23 of the proceedings had at the time of taking of said
24 deposition.

25 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 MS. KLAHN - 01:52:59

 MR. STEIN - 00:00:00

9 MR. ROMAN - 00:00:00

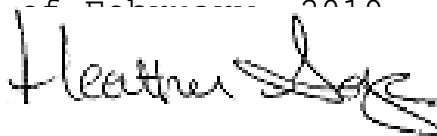
 MR. DUBOIS - 00:00:00

10 MS. BARNCASTLE - 00:00:00

 MR. BROCKMANN - 00:00:00

11 MR. WALLACE - 00:00:00

12
 GIVEN UNDER MY HAND AND SEAL OF OFFICE, on
13 this, the 25th day of February, 2019

14 
15

 HEATHER L. GARZA, CSR, RPR, CRR

16 Certification No.: 8262

 Expiration Date: 12-31-19

17 VERITEXT LEGAL SOLUTIONS

 Firm Registration No. 571

18 300 Throckmorton Street, Suite 1600

 Fort Worth, TX 76102

19 1-800-336-4000
20
21
22
23
24
25

EXHIBIT N

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

[5/7/2019 9:06 AM] Lopez, Estevan

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EXAMINATION INDEX

WITNESS: ESTEVAN LOPEZ

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EXHIBIT 130	108
Texas's Complaint	

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.

6 A. Good morning.

7 Q. Would you state your name for the record?

8 A. Estevan Lopez.

9 Q. I'm Sarah Klahn. I'm here today on behalf of
10 the State of Texas. You're here for your deposition.
11 Would you identify your place of employment?

12 A. I am retired.

13 Q. Your contact address, whether it's residence
14 or office or whatever?

15 A. My residence address is P.O. Box 302 Penasco,
16 New Mexico 877553.

17 Q. Okay. Mr. Lopez, have you been deposed
18 before?

19 A. I have.

20 Q. In what matters?

21 A. I don't recall all of them. I think --

22 Q. Multiple times?

23 A. Yes.

24 Q. Okay. So you know the drill?

25 A. Pretty much.

1 Peggy Barroll, Rolf Schmidt-Petersen, Nabil Shafik.

2 Q. After the draft regulations were completed,
3 are you aware of any meetings with outside groups in
4 which comments were requested?

5 A. If there were any, I don't recall.

6 Q. Is that the sort of thing you would have been
7 involved in if it was happening or might that have
8 been handled by other staff?

9 A. It could have been either.

10 Q. Do you recall if the -- well, let's leave
11 that for now.

12 MS. KLAHN: Let's mark this exhibit. I
13 view depositions as pot latches where you get to take
14 away more than you brought.

15 MR. ROMAN: And you get to fly back with
16 less than you came.

17 MS. KLAHN: Exactly.

18 (Exhibit Nos. 128 and 129 were marked.)

19 Q. (BY MS. KLAHN) So you've been handed two
20 exhibits. One is -- the first one is Exhibit 128,
21 which is, I think -- does it look like this
22 (indicating)?

23 A. It does. Identical.

24 Q. March 23rd, 2006, 67th annual meeting of the
25 Rio Grande Compact Commission in El Paso, Texas. This

1 is another one of those meeting summaries. And
2 Exhibit 129 is an excerpt from the transcript from the
3 March 23rd, 2006, meeting in El Paso that Exhibit 128
4 refers to. The Bates numbers unfortunately on Exhibit
5 129 got cut off, but I think it's New Mexico 15890,
6 and I will try and check that -- no, that's not true.
7 It's 15 -- we can figure it out here. I think it's
8 15800 New Mexico. Let's look at Exhibit 129 first.
9 Just take a look at that, and I'm going to ask you to
10 focus on our first questions on what would be one,
11 two, three, four, five pages in. So it's the third
12 actual physical page, but it's five printed pages in.
13 But take a look at the whole thing. As I say, it's an
14 excerpt.

15 A. You want me to review the whole thing?

16 Q. Yeah. But I would focus on the fifth page.

17 A. (Complying).

18 Q. So I want to focus on, as I said, the fifth
19 physical page. There 's a sentence -- there's a
20 paragraph that starts, "Now, for the Rio Grande water
21 quality issues," and goes on, "Since 2001, my staff
22 has focussed on increasing the stakes and
23 understanding of water quality issues in the Rio
24 Grande, including issues Texas previously identified
25 as concern within the Rio Grande project." Are you

1 familiar with what issues Texas would previously
2 identified as a concern within the Rio Grande project?

3 A. Generally speaking, yes.

4 Q. Can you tell me about those?

5 A. I believe that Texas had asserted that
6 salinity in the -- in the water they were receiving
7 was increasing as a result of water uses in New
8 Mexico.

9 Q. The next sentence in the paragraph
10 says, "We've been working in the lower Rio Grande, and
11 it currently" -- I apologize. I don't think this
12 court reporter was as good as ours. "We've been
13 working in the lower Rio Grande in currently
14 understanding of the issues and to conduct different
15 field work." What's your recollection of the efforts
16 that the state was making in the 2006 time frame to
17 understand the issues and conduct field work?

18 A. Well, just generally speaking, I think we
19 were doing what we could to -- to identify the sources
20 of salinity, and so -- so the specifics, I don't
21 recall. There was a -- there was -- there was a
22 pretty broad-ranging technical work that was going on
23 in -- in the basin, and -- but it was geared toward
24 really having an understanding of -- of what the
25 sources of -- of any perceived increase of the

1 salinity might be.

2 Q. Did you -- do you recall if the agency relied
3 on in-house technical people or did they hire a
4 contractor to work on the field work?

5 A. So typically, we -- we did both.

6 Q. Who would the contractor have been; do you
7 know?

8 A. In -- for this specific instance?

9 Q. (Nodding head.)

10 A. I don't recall.

11 Q. What contractor did the agency use when you
12 were director for water quality generally in the
13 state? Did you have one?

14 A. We used quite a few contractors, and I'm not
15 sure that I could identify the specific -- even a
16 specific one for water quality. I mean, we hired a
17 number of geohydrology experts, and I -- I don't
18 recall who specifically was working on salinity
19 issues.

20 Q. During the time you were director at ISC, was
21 salinity an issue in any other river basins that you
22 recall in New Mexico?

23 A. Well, not in New Mexico, but it was a -- a
24 river in which we have an interest, the Colorado
25 River. It was -- it was a very substantial salinity

1 | program on the Colorado River.

2 | Q. But other than the Colorado and the Rio
3 | Grande, any other rivers that you recall dealing with
4 | water quality issues?

5 | A. Within New Mexico?

6 | Q. Yeah.

7 | A. Yeah. On the Pecos, we -- we dealt with
8 | water quality issues. I don't recall any other
9 | specifics -- no, I take that back. We dealt with
10 | water quality issues on the -- on the Canadian River,
11 | as well.

12 | Q. Okay. Now, the water quality investigations
13 | that the agency was doing on the Rio Grande in this
14 | time frame, did they involve attempting to understand
15 | the fate and transport of salinity?

16 | A. I don't understand what you're asking.

17 | Q. Okay. Let me take a step back. Do you know
18 | what the nature of the field work was that was being
19 | done? You've described generally that you were
20 | looking for sources of salinity, but do you have any
21 | further understanding of what additional types of
22 | field work was being done related to that?

23 | A. So something that I'm re -- remembering, and
24 | it's somewhat of a vague recollection, but it had to
25 | do with, as I recall, we were doing transects of the

1 | river at various points, and through some of that
2 | work, we were able to identify that the -- the water
3 | flowed -- basically it came up to the surface in
4 | certain areas and then flowed deep into basins and
5 | then kind of accumulated. So the -- the groundwater
6 | and the surface water connection was such that the
7 | water was flowing deep into the basin and surfacing
8 | and -- and in certain instances, it was quite old
9 | salinity that was showing up in -- you know, as it
10 | flowed down -- down the river. That's, again, kind of
11 | a vague recollection that I had -- that I have about
12 | that, but --

13 | Q. When you say "old salinity," you mean old in
14 | terms of the chemical fingerprint of the salinity?

15 | A. Yeah.

16 | Q. Okay. Do you know if a report was produced
17 | about salinity issues?

18 | A. I can't remember a specific report, but
19 | almost certainly there was.

20 | Q. Do you recall if the salinity issue was
21 | discussed within a coalition or community of folks
22 | including representatives of Texas and EBID?

23 | A. I believe there was. And -- so in the
24 | context of kind of the engineer advisors and -- on the
25 | Rio Grande Compact, there was interest based on --

1 based on our experience and work on managing and
2 understanding salinity issues on the Colorado River,
3 there was an interest in trying to set up the same
4 sort of program -- collaborative program between the
5 states and water users on the Rio Grande. I -- I
6 can't give you dates. I can't give you who was there
7 or anything else, but I do recall discussions of that
8 nature.

9 Q. Prior to your leaving office, do you recall
10 if there was any resolution of the salinity issues?

11 A. So my recollection is that there was -- there
12 seemed to be a -- a consensus view that the whatever
13 salinity was being experienced was natural --
14 naturally occurring and not due to New Mexico's
15 activities, and there was also a -- I don't know that
16 I would call this a resolution, but I think there was
17 a agreement amongst the states that they would work to
18 set up a salinity type forum to deal with those issues
19 that would be collaborative as between the states and
20 include water users to the extent that they wanted to.

21 Q. And when you said that the salinity was
22 natural and not due to New Mexico's activities, what
23 New Mexico activities are you talking about there?

24 A. Well, I think the -- the -- the assertion by
25 Texas was that -- that the agricultural activities in

1 New Mexico were basically concentrating salinity
2 before it got to Texas.

3 Q. And just to make sure I understand, you don't
4 recall the nature of the field work, but you do
5 recall -- you believe that there was a consensus that
6 it was naturally occurring?

7 A. Yes.

8 Q. Okay. On Exhibit 128, this is a summary of
9 the same meeting that we were just reading from the
10 transcript. I'm going to ask you to focus -- this is
11 another one in which the Bates numbers are totally cut
12 off, so I apologize for that. This is Rio Grande
13 Compact Commission 67th Annual Meeting, March 23rd,
14 2006, El Paso, Texas. This is the entire document.
15 How would you -- as a former engineer advisor, how
16 would you refer to this document? How would you
17 characterize it? Is it minutes of the meeting?

18 A. I don't think it's minutes, per se.

19 Q. No?

20 A. As you've said, I think it's more of a
21 summary of the proceedings.

22 Q. Okay. Because I see at the back, there's a
23 space for the commissioners to sign and so these are
24 not -- this wasn't signed, but I just wondered what to
25 call it. I'm going to ask you to focus on Page 4.

1 Also, before we get to questions, though, I would note
2 that on Page 6, there's some underlining, which was in
3 the document when we received it. I don't know what
4 that -- where that came from, but it's not mine.

5 So on Page 4, the third paragraph down
6 starts, "Commissioner D'Antonio discussed Rio Grande
7 water quality issues." Why don't you take a minute
8 and review that?

9 A. Tell me again where.

10 Q. Third paragraph on Page 4.

11 A. Okay.

12 Q. Are you ready?

13 A. (Nodding head.)

14 Q. The paragraph -- third paragraph on Page 4,
15 the last sentence -- well, first of all, the third
16 paragraph on Page 4 basically is a summary of the
17 transcript sections we read in Exhibit 129. The last
18 sentence says, "He" -- referring to Commissioner
19 D'Antonio -- "indicated that the New Mexico engineer
20 advisor and staff would work with the other engineer
21 advisors to study the issue" -- the water quality
22 issue -- "and bring a recommendation to the
23 commission." You were the engineer advisor for New
24 Mexico at that time, were you not?

25 A. I believe so. I -- I don't recall exactly

1 when I stopped serving in that capacity, but I --

2 Q. What dates do you believe you were engineer
3 advisor?

4 A. Probably 2003 to about 2008 or so, but --

5 Q. Who took over after you?

6 A. Rolf Schmidt-Petersen did.

7 Q. Okay. Do you recall in the context of the
8 sentence that we were just talking about in Exhibit
9 128, do you recall working with the other engineer
10 advisors to bring a recommendation to the commission
11 on water quality issues?

12 A. Yes.

13 Q. What do you recall about that?

14 A. Pretty much what I told you earlier.

15 Q. Okay.

16 A. That -- that we had worked on trying to
17 establish -- I don't recall what we called it, but
18 the -- the analog on the Colorado River was the
19 salinity control forum and the salinity control --
20 there's two of them.

21 Q. Right.

22 A. We were trying to model our -- our
23 collaborative activities on -- on the Colorado River's
24 salinity activities. So there was work done to try
25 and set that up to formalize that and to establish an

1 ongoing group that would -- that would track those and
2 try and mitigate salinity -- salinity inputs.

3 Q. So even though your -- your recollection is
4 that the consensus was the salinity was naturally
5 occurring, the engineer advisors were committed to
6 trying to resolve the salinity issues?

7 A. Certainly to minimize their impacts. I don't
8 know that they're resolvable.

9 Q. Was there any discussion of constructing a
10 treatment plant?

11 MR. ROMAN: Object to form, just in
12 terms of among who?

13 Q. (BY MS. KLAHN) Was there any discussion
14 amongst the engineer advisors of constructing a
15 treatment plant?

16 A. I don't recall any such discussion, but there
17 could have been. I -- I don't recall any.

18 Q. Do you recall the -- a treatment plant as
19 something that any group involving the salinity
20 issues, excluding counsel, would have been discussing
21 to -- I think that's a really, like, totally confusing
22 question. Let me withdraw that. It was actually just
23 going to be a test for you.

24 Is the treatment -- was the treatment plant
25 ever discussed with anybody, excluding counsel, as a

1 resolution of the salinity issues?

2 A. If it was, I don't recall that. I don't
3 recall that being one of the outcomes of this, but
4 that doesn't mean it didn't happen.

5 Q. Okay. Are you familiar with the 2008
6 operating agreement?

7 A. Generally, yes.

8 Q. Did you have any involvement in the
9 state's -- developing the state's positions about the
10 2008 operating agreement?

11 A. Yes.

12 Q. What involvement was that?

13 A. What are you asking for? What are you asking
14 for?

15 Q. Did you oppose the 2008 operating agreement
16 when you were director of ISC?

17 A. Ultimately, yes. Not initially.

18 Q. Why not? Why not initially?

19 A. My recollection of this is that, you know,
20 there had been a long-running kind of low-level
21 conflict, and at times, not all that low level, but --
22 but there -- a long-running conflict between EBID and
23 EB No. 1 as to exactly how the -- how the project was
24 operated, and in -- that was ongoing probably the
25 entire time that I was -- at least until 2008, and in

1 in a standoff as far as all that, but that's -- that's
2 where we're at.

3 MR. ROMAN: I think that's reasonable.

4 MS. KLAHN: Okay. Fair enough. That's
5 it.

6 THE REPORTER: Does everybody want a
7 copy of the transcript?

8 MS. STEVENSON: Final.

9 MR. BROCKMANN: Final.

10 MS. KLAHN: Could we get a draft?

11 MR. ROMAN: Yes. We'll do the rough,
12 too.

13 MR. WALLACE: This is Chad. I'll take a
14 final, please.

15 MS. BARNCASTLE: This is Samantha. I
16 would also like a final only.

17 MR. LEININGER: I'm sure we would want a
18 final.

19 THE REPORTER: Y'all have been getting
20 drafts.

21 MR. LEININGER: Okay. Then that's our
22 standing order, yes, please.

23 (The deposition concluded at 2:21 p.m.)
24
25

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September 20, 2019

Ms. Sarah A. Klahn
SOMACH SIMMONS & DUNN
2701 Lawrence Street, Suite 113
Denver, Colorado 80205

Re: Original Action Case No. 220141
(Original 141)
STATE OF TEXAS
vs.
STATE OF NEW MEXICO,
and STATE OF COLORADO

Dear Ms. Klahn:

Our records indicate that the original and certified copies of the above referenced transcript were shipped on June 3, 2019. As of today, September 20, 2019, we have not received an errata from ESTEVAN LOPEZ. No changes or corrections were received.

If you have any questions concerning same, please do not hesitate to call or contact: errata-tx@veritext.com.

Sincerely,

Veritext Legal Solutions

Job No. 3273276

1 IN THE SUPREME COURT OF THE UNITED STATES
2 BEFORE THE OFFICE OF THE SPECIAL MASTER
 HON. MICHAEL J. MELLOY
3
4 STATE OF TEXAS)
)
5 Plaintiff,)
) Original Action Case
6 VS.) No. 220141
) (Original 141)
7 STATE OF NEW MEXICO,)
 and STATE OF COLORADO,)
8)
 Defendants.)

9
10
11 THE STATE OF TEXAS :
12 COUNTY OF HARRIS :

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

25 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 MS. KLAHN - 02:26:31

 MR. ROMAN - 00:00:00

9 MS. STEVENSON - 00:00:00

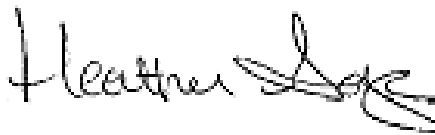
 MR. WALLACE - 00:00:00

10 MR. LEININGER - 00:53:00

 MR. BROCKMANN - 00:00:00

11 MS. BARNCASTLE - 00:00:00

12
 GIVEN UNDER MY HAND AND SEAL OF OFFICE, on
13 this, the 31st day of May, 2019.

14
15 
16
17

 HEATHER L. GARZA, CSR, RPR, CRR

18 Certification No.: 8262

 Expiration Date: 12-31-19

19 VERITEXT LEGAL SOLUTIONS

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