

SUPREME COURT OF THE UNITED STATES
NO. 141, ORIGINAL

STATE OF TEXAS,)
)
 Plaintiff,)
)
VS.) VOLUME v
)
STATE OF NEW MEXICO)
AND STATE OF COLORADO,)
)
 Defendants.)

TRANSCRIPT OF PROCEEDINGS

The above-entitled matter came on for HEARING
before HONORABLE MICHAEL A. MELLOY, SPECIAL MASTER,
held REMOTELY via Zoom, on OCTOBER 11, 2021,
commencing at 11:01 a.m.;

Proceedings reported by Certified Shorthand
Reporter and Machine Shorthand/Computer-Aided
Transcription.

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1 **JUDGE MELLOY:** All right. Are we ready
2 to get started, everyone? This is in Original No.
3 141, Texas versus the State of New Mexico and Colorado
4 with United States as intervenor. Let me start by
5 asking the counsel who will be appearing this morning
6 with this witness. Ms. Klahn, want to enter your
7 appearance?

8 **MS. KLAHN:** Yes, please. Sarah Klahn
9 for the State of Texas.

10 **JUDGE MELLOY:** And Mr. Wechsler?

11 **MR. WECHSLER:** Good morning, Your Honor.
12 Jeff Wechsler for the State of New Mexico.

13 **JUDGE MELLOY:** Mr. Dubois?

14 **MR. DUBOIS:** Good morning, Your Honor.
15 James Dubois for the United States.

16 **JUDGE MELLOY:** And Mr. Wallace?

17 **MR. WALLACE:** Good morning, Your Honor.
18 This is Chad Wallace for the State of Colorado.

19 **JUDGE MELLOY:** Is there anything we need
20 to discuss before we start with the witness? If not,
21 then let me ask the witness -- it's Dr. Blair,
22 correct?

23 **THE WITNESS:** Yes.

24 **JUDGE MELLOY:** Okay. Let me get there.
25 If you'd raise your right hand, please. Do you

1 solemnly swear or affirm that the testimony you're
2 about to give will be the truth, the whole truth, and
3 nothing but the truth?

4 THE WITNESS: I do.

5 JUDGE MELLOY: All right. Would you
6 state your name and address for the record, please?

7 THE WITNESS: My name is Allie Blair,
8 and my address is 3809 Duval Street, Austin, Texas.

9 JUDGE MELLOY: All right. Dr. Blair,
10 let me just start by asking you standard questions
11 I've asked the other witnesses. First of all, is
12 there anyone in the room with you during your
13 testimony.

14 THE WITNESS: No, there is not.

15 JUDGE MELLOY: Do you have any documents
16 available to you that you will be using during your
17 testimony other than the exhibit binders.

18 THE WITNESS: I have the exhibit binders
19 you said and I have a blank pad of paper with a pen.

20 JUDGE MELLOY: I want to remind you
21 you're not allowed to have any communication devices
22 in use during your testimony, including cellphones,
23 iPads, laptop computers that have any type of e-mail,
24 texting, or other types of capability. Do you
25 understand?

1 THE WITNESS: Yes.

2 JUDGE MELLOY: All right. Before we
3 begin the examination, let me just go over the
4 exhibits. There are a number of A exhibits, Blair
5 Demonstrative Exhibits 1 through 16 are designated as
6 A exhibits and will be admitted. Demonstrative
7 Exhibit 17 is objected to so we'll take that up when
8 it's used. Exhibits -- Demonstrative Exhibits 18
9 through 24 are A exhibits and will be admitted. 25,
10 26, and 27 are objected to so we'll take those up at a
11 later point. Blair Demonstrative Exhibits 28 through
12 37 are admitted and then King Demonstrative Exhibit
13 16, which I think is already in, but in case it's not,
14 that's admitted. Texas Exhibit 0088, that's 0-0-8-8,
15 Texas Exhibit 126, Texas Demonstrative Exhibit 780,
16 Texas Demonstrative Exhibit 785, Texas Demonstrative
17 Exhibit 786, U.S. Exhibit 079, U.S. Exhibit 080, New
18 Mexico Exhibit 0087, U.S. Exhibit 282, and U.S.
19 Exhibit 116 are all identified as A exhibits and will
20 be admitted at this time. I should also mention that
21 -- I alluded to this, I think, last week, Texas, as I
22 understand it, had a demonstrative exhibit prepared
23 and delivered to my chambers. It's basically a 2-by-8
24 map of the relevant portion. On the north end, it's
25 the Elephant Butte Reservoir, and at the southern end,

1 it is what's called N rectification project underline
2 begin preservation project. I assume counsel have all
3 been furnished a copy of this, maybe not in this big
4 of form, but just so everyone knows, that is -- that
5 is here, and I have it available to me. Any question
6 about the exhibits before we start the examination?
7 All right. If not, is -- is Dr. Blair your witness,
8 Ms. Klahn?

9 MS. KLAHN: Yes, sir.

10 JUDGE MELLOY: You may proceed.

11 MS. KLAHN: Thank you.

12 ALLIE BLAIR,
13 having been first duly sworn, testified as follows:

14 DIRECT EXAMINATION

15 BY MS. KLAHN:

16 Q. Good morning, Dr. Blair.

17 A. Good morning.

18 Q. Are you employed by the El Paso County Water
19 Improvement District No. 1?

20 A. Yes.

21 Q. In what capacity?

22 A. I'm the district engineer and a consulting
23 engineer.

24 Q. Could we have Exhibit 126, please -- I'm
25 sorry -- Blair Demo 2 is a -- basically a photocopy of

Exhibit Texas 126. What is this, Dr. Blair?

A. That's my vitae.

Q. And is it -- did you create it?

A. Yes.

Q. Is it accurate?

A. Yes.

Q. Is it current?

A. Yes.

Q. All righty. Let's -- let's go through your educational background. Where did you go to college?

A. I went to college at -- I got a bachelor's of science from University of Arizona at Tucson in agricultural engineering specialized in irrigation, a master's of science at Texas A&M University in agricultural engineering, specializing in irrigation, and a PhD in civil engineering from University of Texas at Austin specializing in water resources.

Q. And the bachelor's degree in ag engineering was entered -- when did you get that, what year?

A. 1980.

Q. And your master's from College Station?

A. 1982.

Q. And your PhD, what year?

A. In 1985.

Q. Okay. Could we have slide 3, please? So

1 this pulls out some of your employment history. Let's
2 take a look at the bottom one there, 1992 to 1994,
3 Blair and King Engineering. Tell us about your work
4 with that company, and tell us who Dr. King is.

5 A. During that time period, I was a professor --
6 a associate professor at New Mexico State University.
7 Dr. King was also a professor there and the university
8 allowed us to do one day of consulting a week and that
9 was the company we set up to conduct that consulting
10 work.

11 Q. And that's Dr. Phil King, who we heard from
12 last week; is that right?

13 A. That's correct.

14 Q. Okay. And then we have two different kind of
15 versions of Blair Engineering, 1996 to 2008, 2009 to
16 present. Can you tell us about the work you did for
17 Blair Engineering, just in general terms? I think
18 we'll get into some specifics here in a minute.

19 A. Yes. After -- in 1994, I moved to Austin,
20 Texas, and I started my own firm at that time and then
21 I went to work for a consulting -- we formed a
22 partnership -- a limited partnership with another --
23 with Axiom Engineering that lasted about five years
24 and then I went back to my sole proprietorship in
25 2009.

1 Q. Could we have Slide 3, please -- or Slide 4?
2 Thank you. Dr. Blair, let's talk a little bit about
3 some of your consulting experience that would be
4 particularly relevant to this case. Do these, the
5 highlighted activities on this slide, do those --
6 those related specifically to some of the things that
7 you're going to testify about in this case?

8 A. Yes.

9 Q. All right. So let's talk about the first
10 one, operation and control of surface water irrigation
11 districts. What kinds of work have you been doing for
12 surface irrigation districts?

13 A. I've worked for numerous districts in Texas
14 and EBID and New Mexico and several districts in
15 California primarily dealing with the design and
16 operation of control of the delivery system, the canal
17 system, and the structures that allow that control.

18 Q. Okay. And you mentioned your work with EBID.
19 What years was that?

20 A. That would have been probably from -- I'm not
21 sure the exact years, but it was some time around 1985
22 to 1992.

23 Q. Okay. And how long have you been with EP1?

24 A. Since 1991.

25 Q. Okay. Let's talk about design and

1 **construction management of the Riverside Canal**
2 **Project. Tell us about that.**

3 A. That's a -- it's a long-term conservation
4 project. That's the largest canal within EP No. 1.
5 Its design capacity is 800 CFS, and we started that
6 project quite a few years ago and are continuing it as
7 we receive funding or have funding available every
8 year to -- to line that large canal and -- and provide
9 better operation and safe water.

10 **Q. How many -- what's the capacity of the canal?**
11 **How many CFS can it carry?**

12 A. It's -- the design capacity is 800 CFS.

13 **Q. The next one there is listed as a de-watering**
14 **system for the All American Canal. Tell us, where is**
15 **the All American Canal?**

16 A. That's the canal that supplies water to
17 Imperial Irrigation District in California running
18 from Yuma, from the Colorado River near Yuma to
19 Imperial Valley.

20 **Q. And what did you do with the groundwater**
21 **de-watering system? What project did that involve?**

22 A. I was the design engineer and managed
23 construction -- assisted in construction management of
24 the de-watering system. The new -- a new concrete
25 lined canal. This canal is one of the largest canals

1 in the world. It has the capacity of about 10,000
2 CFS, and it was -- a new one was being constructed
3 under a conservation project to supply water to the
4 City of San Diego and other municipalities and so that
5 canal was parallel to the older canal, which was a
6 earthen-lined canal. Water had seeped out of the
7 earthen canal and created a ponding or an aquifer
8 adjacent to it, and that water had to be removed. We
9 had to capture any leakage from the old canal while we
10 were constructing the new canal, so it consisted of
11 hundreds of wells that were drilled and operated with
12 the purposes of de-watering the new canal and
13 preventing any -- capturing any water that would seep
14 out of the old canal and -- before so that it could
15 not harm the construction of the new canal.

16 Q. Okay. Let's take a look at your district
17 engineer entry there for El Paso County Water
18 Improvement District No. 1. I think we've been
19 referring to that as EP1 so far during this
20 examination. Is it okay if we keep referring it to in
21 that way?

22 A. Yes.

23 Q. And what is your -- what sorts of tasks do
24 you do as district engineer?

25 A. The district engineer for EP No. 1 is a

1 statutory designation so it's limited to the
2 facilities, so a typical example would be that if the
3 party -- if the Texas Department of Transportation or
4 someone else wanted to build a bridge across one of
5 our canals, I'd be responsible for reviewing the
6 design of that bridge, making sure that that bridge
7 didn't harm the functions of the canal and that was
8 compatible with the operations of the district.

9 **Q. Okay. And you've already referred to your**
10 **consulting work for EP1. Distinguish for us the**
11 **difference between those district engineer functions**
12 **and your consulting engineer functions.**

13 A. So the district engineer functions are -- are
14 specific to the facilities, the canals, the drains,
15 the system, diversion facilities in the river and
16 things of that nature. The consulting work has to do
17 with the -- with the -- generally with the hydrologics
18 and hydrology special projects where I'll do analysis,
19 where I'll become the engineer of record so, like, the
20 Riverside Canal lining project where I'd prepare
21 drawings. And so those involve also administrative,
22 and I think we have another slide that shows a list of
23 -- of various things I do as a consultant engineer.

24 **Q. Yeah, that's coming next. Let's go ahead and**
25 **move to that.**

1 MS. KLAHN: Thank you, Peder.

2 Q. (BY MS. KLAHN) So we've got your work from
3 1991 to present for EP1, and some of these things
4 you've touched on a little bit, but let's start with
5 that first one up there, "Assisted takeover of
6 operations focusing on flow measurements." What else
7 was happening in 1991? Why was the district taking
8 over operations focusing on flow measurements in 1991?

9 A. Well, starting in 1980, with progress made
10 every year all the way up to -- probably we had
11 completed that task some time around 1996, fully
12 completed it, but definitely majority of it by '92. I
13 was really brought in to take over the last part of
14 that, and that had to do with taking over the flow
15 measurement stations that Reclamation had managed
16 before or designed and designing new systems and
17 designing telemetry to go on the priority flow
18 measurement stations. So in '91, that was part -- a
19 task that was part of a bigger task that had already
20 been ongoing since 1980.

21 Q. And in 1980, that's when the transfer
22 contract was signed that transferred operations from
23 the Bureau to the District; is that right?

24 A. That's correct.

25 Q. Okay. So in -- then the next thing we have

1 is 2004, "Designated district engineer in charge of"
2 blank.

3 A. We left that blank. Yeah. That was left
4 blank because we already talked about the district
5 engineer quite a bit in the previous slide.

6 Q. Okay. So that's the year you were designated
7 district engineer was 2004?

8 A. Right.

9 Q. Okay. Then let's take a look at some of
10 these entries under 1994 to present. We've talked a
11 little bit about your engineer of record for canal
12 improvement projects. That was, for example,
13 Riverside, would that be right?

14 A. Yes.

15 Q. Okay. The second entry there, "EP1 member of
16 the Rio Grande Project Allocation Committee." Tell us
17 about that.

18 A. I was appointed by the board of directors
19 from EP No. 1 to be the first Rio Grande Project
20 Allocation Committee member from EP No. 1 and have
21 continued in that role to the present.

22 Q. When did that start?

23 A. In 2008.

24 Q. Okay. After the adoption of the Operating
25 Agreement; is that right?

1 A. Yes.

2 Q. Okay. Next entry, "Analysis and support for
3 all river operations, Caballo to American." Tell us
4 what you do under this heading.

5 A. So this has to do with the day-to-day and
6 sometimes hour-to-hour operations of releasing water
7 from Caballo and conveying it to the American Dam, the
8 last diversion point on the river that water is taken
9 to El Paso Valley at EP No. 1's facilities.

10 Q. Okay. The last one I'd like to focus on, on
11 this slide, is the design and programming support for
12 flow measurement telemetry system. What is a
13 telemetry system?

14 A. There's -- there's two types of telemetry
15 systems. The simplest telemetry system is one that
16 just transmits information. It typically may have
17 two-way communication, but it's really just sending
18 information like the -- what the flow is at a given
19 metering station, and those -- those systems can be
20 very -- very rapidly so we can get information every 5
21 minutes and typically every 30 minutes at a site
22 depending on its priority. There's a secondary one,
23 which can sort of be lumped into the general
24 telemetry. That's two-way telemetry and that's called
25 supervisory control and data acquisition. That's sort

1 of a mouthful for basically saying that not only can
2 we -- for example, our automatic gates, we can send
3 them commands to tell those gates to -- to make
4 operations and to change the setting of the gate.
5 That's also a form of telemetry, but that one's a
6 little more sophisticated.

7 Q. And are you involved with both of those types
8 of telemetry on behalf of EP1?

9 A. Yes. They're all integrated into one
10 physical system that's capable of doing both.

11 Q. Okay. Let's go on to Slide 6, please.
12 Actually, can you just take that down for a second?
13 Sorry about that.

14 Dr. Blair, where did you grow up?

15 A. I was born in Arizona.

16 Q. What business was your family in?

17 A. Ranching and farming.

18 Q. Were your farms irrigated?

19 A. Yes.

20 Q. With what sources of water?

21 A. The first farm that I worked on was irrigated
22 from the Salt River project with surface water from
23 the Salt River, and it had groundwater wells.

24 Q. Okay. What types of crops did your family
25 grow?

1 A. Primarily forage. There was -- that farm had
2 a feed lot on it, also, so we grew alfalfa, silage,
3 corn silage, corn for harvest, winter wheat, and
4 occasionally on some of the other farms, we did some
5 truck crops such as cantaloupes and watermelons.

6 Q. Were you involved with working on the farm?
7 Sounds like you were?

8 A. Yes. I don't think any discussion ever came
9 up that I would not work on a farm.

10 Q. Wasn't an option, huh?

11 A. Right.

12 Q. Were you involved with irrigating?

13 A. Yes.

14 Q. Okay. So how long would you say you've been
15 involved with farming?

16 A. 50 years.

17 Q. All right. Let's take a look at Slide 6.
18 Now, Dr. Blair, were you disclosed as a non-retained
19 expert by Texas and by the United States?

20 A. Yes.

21 Q. Do you recognize the photocopies of the
22 exhibits there, Texas 780, Texas 785, and the US-119?

23 A. I do.

24 Q. Okay. Do these disclosures reflect opinions
25 that you've disclosed in this case?

1 A. They do.

2 Q. All right. Will you be testifying about any
3 of these opinions today?

4 A. No.

5 Q. Okay. That's for the spring setting; is that
6 right?

7 A. That's correct.

8 Q. All right. So let's go on to Slide 7,
9 please. Does this slide reflect the scope of your
10 planned testimony for today?

11 A. It does.

12 Q. All righty. So for the first topic, I
13 understand you'll be testifying about Rio Grande
14 Project Infrastructure and Project Operations as they
15 relate to EP1; is that right?

16 A. Yes.

17 Q. Okay. And the second topic then will be
18 basically EP1 infrastructure and operations below the
19 American Dam; is that right?

20 A. It's below American Dam, and we have
21 infrastructures -- internal infrastructure operations
22 in the southern Mesilla Valley, also.

23 Q. Okay. Thank you for that correction. All
24 right. So let's -- you can take that down. Let's
25 talk a little bit about EP1. What would you describe

1 as EP1's primary purpose?

2 A. Its primary purpose is to deliver irrigation
3 water to authorize irrigable land.

4 Q. And who are EP1's major water users?

5 A. The largest user is the owners of the
6 irrigable land, and the second-largest user would be
7 pursuant to ownership of irrigable land and leasing of
8 irrigable land would be the City of El Paso.

9 Q. So in your answer when I asked you what the
10 purpose was is to -- was that EP1 delivers irrigation
11 water to authorized irrigable land. Tell us how that
12 works with regard to the City of El Paso.

13 A. The City of El Paso, through -- coordinated
14 through contracts with Reclamation, with the United
15 States, and with the District, has a long history of
16 participation in the Project by ownership of -- of
17 irrigable land and by leasing land that typically has
18 been developed lots, 2 acres or smaller, and they pay
19 for all the assessments and delivery fees, just as if
20 they were -- I think the language in one of the
21 contracts is they were the shoes of the irrigator or
22 irrigable landowner, and they are the irrigable
23 landowner. So to my knowledge, they've never farmed
24 any of that. There may be some situations where there
25 is some turf irrigation that the water is used for

1 instead of directly to the treatment plant, but it's
2 been primarily to go to water treatment plants for
3 treatment for drinking water.

4 Q. Okay. And you testified, I think, during the
5 introduction about your involvement with the Rio
6 Grande Project Allocation Committee. That's the same
7 Allocation Committee that Ms. Estrada-Lopez and
8 Dr. King described in their testimony last week,
9 correct?

10 A. That's correct.

11 Q. So rather than rehash that discussion of how
12 the Allocation Committee works in a sort of objective
13 fashion, can we talk a little bit about the allocation
14 process in 2021?

15 A. Sure.

16 Q. Tell us how the -- first of all, can you
17 characterize what kind of water year 2021 was for the
18 Project?

19 A. 2021 was an extreme drought year. If we had
20 not had water left in storage conserved from the
21 previous year, there would have been -- it is fully
22 possible we would not have had any irrigation in 2021.

23 Q. So how did the Allocation Committee go about
24 allocating that limited amount of water in the
25 Project?

1 A. So approximately -- or a little less than
2 half of the final amount of usable water that was in
3 storage in Elephant Butte and Caballo was there from
4 the previous year. That wasn't sufficient to start
5 the year to make an allocation. In other words, the
6 numbers were so low and so dire, just with the amount
7 of storage, that the committee did not take any action
8 to try to allocate and convey that water. We felt
9 that that was -- was going to be very difficult until
10 we received in excess of a hundred thousand acre-feet
11 of inflow during the January to May time period. Once
12 we had accumulated a larger amount of water, it was
13 sufficient to make an allocation and make a release,
14 we did so, and that was in May.

15 **Q. So you didn't quite say it, but is it -- is**
16 **it accurate that in a more normal or average water**
17 **year, you would have made an allocation sooner than**
18 **May?**

19 A. Typically, if there had been, let's say,
20 800,000 acre-feet of usable water in storage, we would
21 have made allocation in December or January, but as I
22 said earlier, there was a very small amount of water
23 in storage at that time.

24 **Q. And over the course of 2021, did that**
25 **allocation change at all?**

1 A. No. The inflows were -- were not sufficient
2 to increase allocation.

3 Q. Has New Mexico ever been involved in Project
4 water allocations?

5 A. Not to my knowledge, no.

6 Q. Has New Mexico ever been involved in Project
7 operations?

8 A. No.

9 MR. WECHSLER: Objection; foundation.

10 Q. (BY MS. KLAHN) Do you know if New Mexico has
11 ever been involved in Project operations?

12 A. I do. I have no knowledge of them ever being
13 involved in Project operations.

14 Q. How about Texas, has Texas ever been involved
15 in Project water allocations?

16 A. No.

17 Q. Or Project water operations, to the best of
18 your knowledge?

19 A. No, they have not.

20 Q. Now, a term that Dr. King and
21 Ms. Estrada-Lopez both touched on at least briefly was
22 this term allotment, and we've talked this morning
23 already about allocations.

24 MS. KLAHN: Could we have Slide 8,
25 please?

1 **Q. (BY MS. KLAHN) And you're involved in the**
2 **Allocation Committee, but could you remind us what the**
3 **difference is between a diversion allocation and an**
4 **authorized allotment?**

5 A. Yes. The previous slide we had shown that
6 had my two areas I was going to testify on, this is an
7 example of that. The diversion allocation is a
8 Project-level decision and action, as whereas the
9 authorized acreage is a district level. One's
10 internal to the district and not -- does not involve
11 the allocation committee. The allotment. We use
12 those two different words so that we don't get
13 confused. The allocation occurs at the diversion from
14 the river level, and the allotment occurs where we
15 deliver to the authorized acreage, typically at the
16 farm turnout.

17 **Q. Okay. So, for example, what was EP1's**
18 **allocation in 2021?**

19 A. You know, I'd have to look up the -- the
20 total amount, but it would have been in acre-feet.
21 The number is left as an acre-foot number for the
22 accounting charges at the river and as the diversions
23 are accounted for from the American Canal and American
24 Extension. The --

25 **Q. Does 121,000 ring a bell as far as EP1's**

1 allocation this year?

2 A. That sounds correct, yes.

3 Q. Okay. 121,000 acre-feet, so that's the
4 amount the District had to provide to its constituents
5 and then explain --

6 A. You know --

7 Q. -- what --

8 A. I want one caveat. We haven't finalized the
9 allocation, so we're still waiting for the official
10 numbers for the releases on Caballo and for deliveries
11 to Mexico so that's not the final number, but that's
12 approximately the magnitude that we discussed.

13 Q. Okay. That's fair. I was thinking about it
14 more from the operational perspective, and so at the
15 -- at the beginning of the season, which this year
16 started late, 121,000 acre-feet or so was what the
17 District had to work with. Do you recall what the
18 constituent allotments were, what each authorized
19 acreage was authorized -- was allotted? Sorry.

20 A. So that's the allocation from the Project at
21 the river so the -- you know, they're completely --
22 obviously that's the single-biggest input that goes
23 into determining the authorized acreage allotment, but
24 there's a lot of additional calculations going to
25 that, and that ended up being 18 inches.

1 Q. Okay.

2 A. Per acre.

3 Q. 18 inches per acre. Okay. We'll come back
4 to that, I think, a little bit later, but those two
5 terms are important. Are you involved with the
6 allotment decision making with the EP1 board?

7 A. Yes. I make the recommendation to the Board.

8 Q. Okay. Could we have Slide 10 and Slide 11
9 put up next to each other, please. So, Dr. Blair, I'd
10 like to look at the key Project features. Again,
11 we've looked at the key Project features with a couple
12 witnesses so let's try and focus in on a few things
13 that I'll highlight for you. First of all, on the
14 left is a diagram. Did you -- did you modify this
15 diagram from a previously-existing schematic?

16 A. Yes. This is a revised from a schematic that
17 was part of a consulting report for the City of El
18 Paso.

19 Q. Okay. And just to orient us again quickly,
20 we see a number of different symbols on here. Let's
21 just talk through them. The black triangles, what are
22 those?

23 A. The two large black triangles at the top are
24 the reservoirs, the two storage reservoirs for the
25 Project.

1 Q. Okay. And then we have some
2 rectangular-colored bars across a blue line. What's
3 the blue line?

4 A. The blue line symbolizes the Rio Grande.

5 Q. Okay. And what are the rectangular boxes
6 across that I see one at Percha, Leasburg, and so on?

7 A. Yeah. Those are the six diversion dams. The
8 one at the very end, Riverside, is not operational.

9 Q. Okay. Then we see some red circles, red and
10 white circles. What are those?

11 A. Those are a selected few of the river gages.
12 There's gages for almost -- I believe for all of
13 these, all the arrows that are on here, but those are
14 sort of from the operation of the river, some of the
15 critical gages we have on the river.

16 Q. Okay. And then we have the arrows pointing
17 into the river, mostly drains, and the arrows pointing
18 away look like they're canals. What's the
19 significance of the direction the arrow is pointing as
20 far as river water?

21 A. So away from the river would be diversions,
22 and those are canals, and then to the river, in this
23 case, there was -- the solid line is agricultural
24 drains that would be returning water to the river.

25 Q. Okay. Let's talk about those drains for a

1 minute. What are -- again, we've had some testimony
2 on drains, but from an operational perspective, what
3 are drains?

4 A. Drains are long -- they are
5 groundwater-control devices. Their primary function
6 was that they're dug below the ground, below the --
7 the ground level, the surrounding ground level, so
8 down into the -- into the soil. Some are as deep as
9 20 feet. They probably range around 10 to 15 typical.
10 They're engineered systems highly engineered to keep
11 them on grade and to the depth that they're dug.
12 These are designed in a very precise manner to
13 intercept the groundwater and convey that groundwater
14 like a horizontal well back to the river, and they do
15 that such with the idea that, for example, in between
16 two drains, that the water table, the groundwater
17 table does not get so high as to be damaging to the
18 crops so that an irrigated system, such as this
19 valley, is necessary to have a drainage system.
20 Secondly, they provide an historically -- it
21 continues from time for any runoffs, agricultural
22 runoff from the field, they'll collect that and return
23 that, for example, if they over irrigate a field, then
24 there would be a -- a drainage point where they could
25 drain that back into the drain and convey that back to

1 the river.

2 Q. So the drains return water to the river,
3 correct?

4 A. Yes.

5 Q. And let's look at the drains upstream of --
6 of El Paso, the El Paso gage, which is the red circle
7 there at the state line. Of the drains upstream of
8 the El Paso gage, to the extent they have water in
9 them at any time during the irrigation season and that
10 water gets into the river, is that water then going to
11 -- that drain water then going to be part of EP1's
12 available diversions at American Dam?

13 A. Yes. That water would be commingled, if
14 there was water being released at that time and be
15 part of all the diversions that occur below where that
16 water was commingled.

17 Q. And in your experience with EP1, have you
18 seen water in the drains in all of -- well, have you
19 seen water in any of the drains upstream of the El
20 Paso gage?

21 A. Numerous of these drains -- well, they're
22 ephemeral now. Some of them will have water for a
23 short period of time. Others have been -- have not
24 flume water for several years. The only one that
25 hasn't been ephemeral has been the Montoya drain and

1 part of the West and Nemexas that is in the lower end
2 of the valley. That's sort of the end of the bathtub
3 right there before you get -- so the ground -- the
4 aquifer comes up, and it's the lowest point in the
5 system. So those continue to drain today.

6 Q. Okay. Now, they're not shown on this
7 diagram, but are you familiar with any drains that
8 arise inside of the El Paso No. 1 District below the
9 American diversion dam?

10 A. Yeah. I'm familiar with all the drains
11 throughout the El Paso District below the American --

12 Q. So there are -- and my question just was are
13 there drains below the American Dam within El Paso?

14 A. Yes. There's a system of drains throughout
15 El Paso Valley.

16 Q. And are those drains also built in the same
17 way as the drains in the New Mexico part of the
18 Project, in other words, below grade, below the canal
19 level to drain into the river?

20 A. Yes, they are.

21 Q. Are -- is any of the drain water that might
22 appear in the drains in the EP1 water that can form
23 part of EP1's project diversions?

24 A. Well, our last project diversion is at
25 American Dam from the river, last diversion from the

1 river, and all those drains are downstream, so none of
2 those drains -- we don't have any more -- if they
3 return to the river, there's -- the first one that I
4 know that returns to the river would be near Fabens
5 Waste Channel almost towards the -- the end of the
6 district, and there's no possibility to divert that
7 water into any of our canals. It's -- at that point,
8 the canals are much higher than the river and -- and
9 it's just not -- has never been done at the -- at the
10 -- since the rectification project.

11 Q. Okay. All right. And then I'd also like to
12 --

13 A. Let me clarify that.

14 Q. Go ahead.

15 A. It's never been done by gravity since the
16 rectification project.

17 Q. Okay. The last thing I want to focus on with
18 regard to the schematic on Slide 10 there is the
19 dotted lines in the lower quarter of the screen that
20 are Settling Basin WW, Leon Street WW. What are
21 those?

22 A. The dotted lines you'll see are primarily
23 returning to the river, and they are indicated in the
24 legend above that they're wastewater treatment plant
25 flows, so the water that's treated -- sewage water

1 that's treated and then returned to the river.
2 There's really just two of those that are of
3 significance. There's quite a few smaller ones, but
4 of any -- any magnitude that are the Las Cruces
5 Wastewater Treatment Plant and the Northwest -- City
6 of El Paso's Northwest Wastewater Treatment Plant.
7 Both of those waters are commingled with release water
8 and drain water and diverted. Of course, Northwest
9 can only be diverted at American from Mexico or for
10 EP, but it is commingled. Down below farther, you see
11 the second designation, which those are wasteways, and
12 the American Dam, which we're going to talk about --
13 I'll talk about in more detail is -- has a unique
14 configuration. So below that, we have a series of
15 very large wasteways. These are not typical
16 throughout the entire district. These are ten times
17 typical in size of the typical wasteway, and they're
18 designed for various reasons throughout time on how
19 the system, the river and the canals, were configured
20 over time.

21 Q. So you say they're ten times the size of
22 what?

23 A. Of a typical wasteway. They have --

24 Q. Okay.

25 A. -- ten times the flow capacity, and they have

1 the -- they're fairly massive and expansive devices,
2 primarily because of floodwater, they have the ability
3 to handle large quantities of floodwater.

4 Q. Okay. And I think we have some photographs
5 later in the presentation about distinguishing
6 floodwaters and wasteways, so we'll wait for those.
7 Let's -- let's take a look at the slide on the right,
8 which we haven't talked about yet. Maybe you could
9 take down Slide 10 so we could see the whole of Slide
10 11, please. So, Dr. Blair, we just talked about that
11 schematic. We had to focus on the drains and the
12 wasteways, but help us link the -- connect the dots
13 between the schematic and what we're seeing here in
14 Slide 11. Could you start by telling us, what's
15 control volume?

16 A. So the -- as you saw in the schematic, that's
17 a one representation of the main features that we're
18 trying to control, specifically between Caballo, the
19 point of release, and the last diversion from the
20 river at American. So this control, this operation
21 control is of a volume. It's of a volume of water
22 that is in the river. So we -- we are -- we have an
23 extensive monitoring of this, as you saw all those --
24 in the schematic, all those gages are realtime gages.
25 And this picture -- this photograph is a typical

1 picture of a location within that volume. In the
2 center of it, you see the Rio Grande. But that's a
3 channelized, a canalized river at this point. In
4 other words, it's manmade. That was happened in the
5 rectification projects in the 1938 time period. On
6 either side, you have levees to restrict the flow, and
7 then you have what we call floodways so when we go
8 into flood stage, it comes out of the commands
9 channel. That's the one we try to stay in during
10 operations, and it would use the area between the
11 levees and the commands channel to convey floodwater.
12 There's a -- you can see a very small, to the left --
13 upper left corner of the photograph, a picture of an
14 antenna and a solar panel. That's one of our typical
15 telemetry systems that is monitoring the water and the
16 flow at this point and reporting that back to -- to
17 all the people involved in the operation on a realtime
18 basis. This particular site reports back every 15
19 minutes.

20 Q. Okay. So in talking about your involvement
21 with project operations, are there some definitions
22 that would be helpful to us?

23 A. Yes.

24 Q. Could we put up Slide 12 next to Slide 10,
25 please? Thank you. So let's talk about -- if we

1 could start through this slide, could you start with
2 releases and help us understand that particular term
3 of art in your world?

4 A. Sure. All six of these are critical
5 nomenclatures used in the -- and by purpose. We've
6 narrowed the definition of these so we understand
7 exactly what we mean when we talk between districts
8 and with Reclamation and with Mexico. So the release
9 is the easiest to understand and the simplest to
10 define. It's simply the amount of water that has been
11 or is being released from Caballo Reservoir for a time
12 period, so it's water released from Caballo.

13 Q. Okay.

14 A. The diversion, we've talked about -- excuse
15 me. Some of this has been in previous testimony. So
16 diversion is the water being diverted from the Rio
17 Grande. We're trying to control. That's part of that
18 control volume. We're very deliberate in trying to
19 set the gates. All the gates are on telemetry, and it
20 controls how much water is being purposefully taken
21 out by operations at different points along the Rio
22 Grande. The delivery, we reserve that word primarily
23 for delivery to farms. That's not at the river level,
24 except in one case, and that is really to Mexico. The
25 wastewater treatment plants divert a diversion from

1 the American Canal and American Extension Canal and
2 the Riverside Canal, but those -- those are truly
3 deliveries to that occur all right at one large
4 equivalent of a farm turnout to these treatment plants
5 at the two plants that are within those canal systems.
6 So that is really an internal -- the delivery is an
7 internal word for the district. Bypass is an -- is a
8 -- an amount of water that's ordered that you're
9 ordering specifically to divert water with the
10 intended purpose of returning that water to -- at a
11 specific location downstream, and it has a -- it's an
12 operational device that we use to improve the
13 efficiency of the diversions and of the operation of
14 the project.

15 Q. Okay. Let's take down Slide 10 and put up
16 Slide 13, please. But keep up the -- keep up the
17 definition slide, if you would, Slide 12. Thanks.
18 Slide 12. There we go. Could you pop out the
19 diversion orders spreadsheet so we can see a little
20 better? Thank you.

21 Okay. So you just mentioned bypass, and I
22 thought this Slide 13 might help illustrate your
23 testimony. What are we seeing in Slide 13 on the
24 right-hand side there?

25 A. Well, so the right side of it --

1 **Q. Just identify the document first.**

2 A. Yeah. This is the -- this is an order form
3 that the two districts and Mexico participate in and
4 submit to Reclamation to -- for their review and
5 consideration to make the release from Caballo.

6 **Q. Okay. And then you just finished talking**
7 **about bypass. On the left-hand side there in the**
8 **upper valley, there's some entries in the rows below**
9 **upper valley for bypass. Explain how those work in**
10 **terms of water ordering.**

11 A. Okay. So the -- there's three entries for
12 bypass, one for the Arrey Canal, for the Leasburg
13 Canal, and then for the Westside Canal. The -- at
14 this particular order sheet, the bypass of Arrey and
15 Leasburg are set to zero. The only one that's active
16 is that there's a 30 CFS order for the Westside Canal.
17 So you see 300 -- the current order is 300 CFS. Out
18 of that 300, 30 of that CFS would be bypassed, and
19 that's shown that at this particular location,
20 Wasteway 32, which is -- is about an hour's travel
21 time -- I mean, an hour -- excuse me, about a day's
22 travel time from where the water is diverted at the
23 west side to where 32 is. So it takes the water a day
24 to travel to get to 32. So that water, 30 CFS, is
25 going to be returned to the river at that point for a

1 diversion downstream.

2 Q. Why would you do that? Why not just order 30
3 CFS more at the top?

4 A. So that water is -- in the canal -- Westside
5 Canal has capacity to handle the bypass, is first
6 consideration, it does in this situation, and it's
7 used to convey sediment, to remove sediment from the
8 canal system. We have a large sediment boat, so we
9 can -- we use the word sluice, that means to take
10 water off the bottom of canal through a sluice gate, a
11 gate that culls water. The sediment tends to travel
12 and flow along the bottom and so we pull water off the
13 bottom so it'll be highly concentrated in sediment and
14 we bring that sediment back to the Rio Grande to get
15 it out of the canal. The other use of it is that
16 knowing that at this location, Wasteway 32, where
17 travel from the Caballo is more than three days, in
18 other words, the water that exists as we're talking
19 during the operations season at 32 was released three
20 days prior. So if there's a huge shortage, then the
21 water masters can make a decision, an operational
22 decision, to not use that water for -- for carrying
23 sediment but to use it for deliveries, and they can
24 switch that water by changing the order sheet and
25 agreement, you know, without the travel time. In

1 other words, they can address that acute shortage in
2 the upper valley in a matter of hours instead of days.

3 Q. Okay. All right. Could we go on and talk
4 about gains and losses? I think those are all shown
5 on the right side of the order sheet so if you can --
6 if you want to use that to help your definition,
7 that'd be great.

8 A. Yes. So I think these losses cover many
9 things, but the concept here is that you look at the
10 -- at the difference, the gains minus the losses, and
11 you -- because we need to know, this is an indication
12 of the conveyance efficiency of the river, the ability
13 to get water from Caballo to American, and we have to
14 know that number. So we look at these gaging stations
15 that we've talked about in the schematic, and we try
16 to calculate for every order sheet what -- how much
17 either -- if it's a positive number, that means we can
18 release less water from the -- from the reservoir
19 because we're getting -- our gains are greater than
20 our losses. If it's a negative number, it means the
21 losses are greater than the gains. So in this case,
22 around June 5th of this year, the total river boost,
23 which is the next term, is the sum of those gains and
24 losses for the different reaches. You can see that
25 there's -- the first one on there is a minus 300 from

1 the Caballo to Leasburg reach, and then 308 from the
2 Leasburg to Mesilla, and then 353 from Mesilla to
3 American. This is all total to the next definition,
4 which is the river boost. So that means that the
5 losses won, in this case, the losses are greater than
6 961, but the net losses, the net difference between
7 gains/losses is 961, so we need to put another 961
8 acre-feet into the river to balance.

9 Q. So in river boost, if you can highlight that
10 header, it's in the top right of the -- top line
11 almost of the -- there you go, yep.

12 So as I understand it then, the -- an order
13 for the water reflected on this order sheet, I mean,
14 the order is for a total of how much water, 300 CFS?

15 A. Well, the release -- the order for release,
16 which is -- this is a -- you know, this is a sheet
17 that is like a balance sheet. We're trying to match
18 the demand at the river, the orders that come from the
19 districts and Mexico with the operations, the control
20 of that volume of what we're releasing and what's
21 flowing in downstream. So the order for the -- the
22 release under this sheet is 2,490, but the specific
23 diversion orders you can see are distributed out
24 throughout the sheet.

25 Q. So the 2,490 release, how much -- that's --

1 first of all, 2,490 CFS is the release that was
2 ordered, and that unit is CFS, not acre-feet, correct?

3 A. That's correct.

4 Q. Okay. And then if we go up to the river
5 boost, that's 961 CFS of that 2,490 CFS order that is
6 what? What does that represent?

7 A. That represents the amount of additional
8 water we would have to release above the orders to
9 make up for the losses -- for the net losses, the
10 gains. So you take the total losses, and in this
11 case, we do have still gains, for example, the
12 wastewater treatment plants, and you add those in to
13 get the net number, this river boost number. So
14 that's how much, in addition to all the orders we have
15 to release, to make sure we have enough water to
16 divert at all the locations.

17 Q. And if you didn't release the river boost,
18 along with the demand order, what would happen?

19 A. Well, the Mexico and El Paso Valley would
20 have no water.

21 Q. Okay. Let's -- let's move on to talk a
22 little bit -- oh, well, let me first ask you one final
23 question on this Slide 13, the river order -- or the
24 diversion order sheet. Can you tell us how the order
25 form relates to the allocation that we talked about

1 **earlier?**

2 A. So -- so these numbers come from internal
3 operations within Mexico, EBID, and EP No. 1, so
4 that's a different process. That's the allotment and,
5 you know, making deliveries. But they -- they come up
6 with -- they think that the -- "they" being the water
7 masters and Mexico, the numbers that they need to
8 divert into their canals at these specific times, and
9 -- and I'm not sure I -- can you ask me the question
10 again. I'm not sure I answered it.

11 **Q. It's much simpler than that. This 1,529 CFS**
12 **demand, does that get debited somehow from the**
13 **allocation?**

14 A. These are just orders, so then we -- once
15 this water is released, remember in the control, we're
16 trying to make this happen. So -- so we have to do
17 the accounting. We measure all these locations and
18 just because you have an order for so much water
19 doesn't mean that that -- that that exact amount will
20 show up and there's some precision in setting the
21 gates. For example, we cannot set the gates.
22 Depending on the structure, there's only so much we
23 can hit these numbers probably within a few percent
24 most of the times, but easily within 5 percent. So
25 there's going to be some variation, and that's all

1 taken up in the accounting process. So I think of
2 this as more at the budgeting process. This is what
3 we want to happen. The water master has to make sure
4 he's got the water to do it from his allotment, but
5 the -- the next phase, to answer your question, is
6 what occurs when you do the allocation charges, when
7 you see based on the measurements, what actually
8 happened for this order.

9 Q. So is it accurate, just to think in
10 qualitative terms, not engineering terms, lawyer terms
11 for the moment, is it accurate to think about
12 allocation that the district gets as a budget for its
13 water use for the year?

14 A. Yes. That's --

15 MR. WECHSLER: Objection. I'm going to
16 object as vague. I'm not sure what "thinking in
17 lawyer terms" is.

18 MS. KLAHN: Okay. I'll take that out.

19 Q. (BY MS. KLAHN) Let me just ask the question
20 without the qualifier. Is it accurate to think about
21 the allocation to each of the districts as the budget
22 for their water use for the year?

23 A. It's the budget for their diversions from the
24 river.

25 Q. Okay. Thank you. So let's talk about river

1 measurement and how that informs your operational
2 recommendations and activities. Could we have Slide
3 15, please?

4 So what is -- Slide 15 is titled hydrographs.
5 What's a hydrograph, Dr. Blair?

6 A. The hydrograph is a record of the amount of
7 flow at any given metering station over time.

8 Q. And this hydrograph appears to be from what
9 date or dates?

10 A. This was for 2020. This was during a loss
11 study. We were evaluating the losses in the river for
12 the initial release in 2020 in March.

13 Q. So down at the bottom, are those the dates on
14 the X axis?

15 A. Yes. The dates and the time.

16 Q. Okay. So March 13th to March 19th, correct?

17 A. That's correct.

18 Q. Okay. And then on the Y axis, what do we
19 see?

20 A. So that's the amount of measured flow. The
21 telemetry system measures flow every 15 to 30 minutes
22 at these sites, and that's -- we see the -- on the
23 graph is that information, and then you see inter
24 dispersed with that calibration points where we send a
25 river team group of people, typically some of these

1 sites there are two people, and they physically go out
2 and measure the flow to make sure that the telemetry
3 is accurate.

4 Q. Do you do a loss study every year before you
5 turn on the system?

6 A. This one was -- we calculated losses almost
7 every day throughout the -- every year, but this was a
8 special system where we were, on purpose, trying to
9 control any diversions not to have any diversions that
10 we were making upstream of American Canal heading so
11 that we'd have a quasi steady state situation where we
12 could evaluate mathematically the loss relationships.

13 Q. Okay. So -- and I see there's a blue --
14 well, there's a line on the left that starts on March
15 13th and goes from about 180 CFS, it looks like, up to
16 about 2,000 plus CFS, and that's titled, "Below
17 Caballo." Can you talk us through what that line is
18 showing us?

19 A. Sure. That's the -- the release. That's the
20 amount of water released from Caballo, and that is a
21 -- a typical release pattern that's designed to -- to
22 -- you'll see the very first part of the design is
23 down early in the day that you'll see a little plateau
24 around 600 right to the left, to the far left of the
25 graph. Yes, right there. So we -- we opened the

1 gates up at a fairly low amount of water because
2 there's state parks downstream of these gates, and we
3 do have rangers in the parks making sure everybody is
4 out of the river at that time, but we try to start off
5 with a small amount of water that would not -- would
6 not harm someone, that they'd have the time to get out
7 of the river when they saw the water coming. Once we
8 get confirmation that there's nobody in the river
9 below, then it's increased to a -- the 2000 CFS, and
10 the purpose, you see that sort of little rectangle
11 there, the period of time of about 24 hours that we
12 have a lot of water going in. The purpose of that is
13 a slug of water to fill up the storage that occurs in
14 the river. The river obviously has water of a given
15 depth in it at the conveyance channel. You saw the
16 picture earlier. We have to put a quantity of water
17 that we can calculate into that to make up for
18 bringing the river back online, and there was going
19 from a dry condition to a flowing condition. So
20 that's what that first slug is intended to do. Then
21 you'll see that it drops off when we take it to a
22 steady state of around 1,300 CFS, and we hold that
23 until we can get a series of measurements of losses
24 downstream.

25 Q. So the blue line all the way across from

1 March 13th to the 19th is -- is all the -- the
2 measurements being collected by telemetry at the gage
3 below Caballo; is that right?

4 A. That's correct.

5 Q. Okay. And then we have a second curve there
6 from below Leasburg, and -- and then another one below
7 Mesilla and Anthony and Canutillo, and each time looks
8 like the curve goes down. What's happening there?

9 A. Well, as water is -- it's conveyed
10 downstream, initially in many of these locations, the
11 bed is very dry. So not only do we have to fill the
12 surface part of the Rio Grande, the part of the river,
13 we have to fill that up, but it also, the water
14 infiltrates at a very rapid rate into the ground and
15 into the groundwater. So if you're looking at that,
16 you can see for the reach between Caballo and
17 Leasburg, that the difference between those curves is
18 about 100 CFS, that there is a difference of about 100
19 CFS. So that would be the net losses, you know, the
20 gains plus the losses for -- for between -- for that
21 section of the river. The differences, as we go on
22 down, show those, and that's what we're trying -- from
23 operations, we're trying to get a handle on is how
24 these losses occur and what magnitude they are and so
25 that we can make that river boost prediction accurate.

1 If you get down to the very bottom, there's two gages
2 very close together, the El Paso Gage and the American
3 Canal Heading gage. Those two gages are right on top
4 of each other, and they should be. There is the
5 Northwest Treatment Plant comes in there and Montoya
6 Drain, which is upstream, so that's a wetter part of
7 the river. It's at the bottom of the Mesilla Valley.
8 We would expected those two. Canutillo is upstream of
9 that a good distance. It does show some initial loss
10 but not a significant amount, but then as we go
11 between Canutillo and Anthony, we see more and, of
12 course, the distances between Anthony and below
13 Mesilla is the largest gap, the largest amount of loss
14 in any given reach. So these numbers are all used in
15 the operation of the project.

16 Q. I'm sorry you don't have a laser pointer, but
17 can you just be a little bit clearer? The distance
18 between, for example, the below Leasburg line on March
19 16th and the below Mesilla line on March 16th, are
20 those -- that distance would show you the loss in the
21 river between Leasburg and below -- in those --
22 between those --

23 A. Yeah. Between those two metering stations.

24 Q. Okay.

25 A. So we're not -- at this point, we're not

1 trying to divert any water. There's no authorized
2 diversions and so the loss -- it's a net loss of any
3 returns to the river, but you can see that the losses
4 are -- are dominating here and between those lines,
5 it's approximately 300 CFS that's being lost.

6 **Q. Okay. And then if you get down to the**
7 **Canutillo to El Paso, that distance on March 16th**
8 **also, it's -- how much would you estimate that is just**
9 **eyeballing it?**

10 A. Well, that -- that looks to be in the
11 neighborhood of 20 to 100 -- well, I don't think it's
12 -- it's fairly small. It's -- it's a little -- the
13 other thing is that the distance between these
14 stations is not the same.

15 **Q. Sure.**

16 A. So you have to -- you have to go -- there's
17 -- there's -- you know, this is not part of my
18 testimony at this time, but there's a lot of -- this
19 is just the facts, the measurements that we're looking
20 at. There has to be a lot of analysis that goes into
21 this to actually determine the proper loss.

22 **Q. Okay. So during Dr. King's testimony, we**
23 **heard him testify a little bit about D2. Tell us --**
24 **remind us again what's the D2 curve?**

25 A. Well, the D2 is a line, regression line, for

1 measured diversion ratios from 1951 to 1978, 28 years,
2 and that -- that period is a -- was a -- is a
3 significant period, in fact, that went through many,
4 many extreme drought years like we're experiencing now
5 and wet years, too, so it has a good range of
6 conditions to evaluate the measured diversion ratio
7 and then the regression is the D2 curve or the D2
8 line.

9 **Q. So let's take a look at Slide 16. So what**
10 **are we seeing here on Slide 16?**

11 A. So this is the -- the D2 curve. Again, the
12 curve was -- was just legacy notation from -- from, I
13 believe, an appendix or a discussion by Reclamation.
14 It is a linear equation, Y equals MX plus B where Y is
15 the diversion so on the vertical axis, the diversions
16 you can see on the left, and then on the bottom is the
17 amount of release. So we're trying to find the
18 relationship with how much water is being released,
19 that's the X in the equation, and predict how much we
20 could divert. So you can immediately see the value of
21 this equation to operations that helps us try to
22 understand the relationship between the releases and
23 the diversions.

24 **Q. Okay. Let's go to Slide 17, and I believe**
25 **there was an objection -- I think this is the one**

1 **there was an objection to. Can you tell us about**
2 **slide 17?**

3 **MR. WECHSLER:** Your Honor, do you want
4 to resolve the objection?

5 **JUDGE MELLOY:** I assume that Ms. Klahn
6 was going to lay some foundation for it before we --
7 she moves its admission so why don't you get some
8 explanation what it is, and then we'll just handle the
9 objection.

10 **MS. KLAHN:** All right. Thank you.

11 **Q. (BY MS. KLAHN) What are we seeing here on**
12 **slide 17, Dr. Blair? We've got diversion ratio equals**
13 **diversions divided by release. What does that --**

14 **A.** So this -- this is the D2 equation derived in
15 terms of example if you take the D2 equation on the
16 previous slide -- let's go back to the previous slide.
17 So that's Y equals MX plus B. If you divide both
18 sides by release, so you divide the left side, which
19 is the diversion, and then you divide it by release,
20 that's the diversion ratio. So this equation shown on
21 this graph and equation on the next page are the same
22 information. They're the same axiomatic relationship.
23 In terms that is -- there's no -- it's just showing
24 the D2 representing the D2 as an equation solved for
25 diversion ratio, to show the relationship between

1 diversion ratio, and the D2 equation solved for
2 diversion, but it's the same information. There's no
3 difference.

4 Q. So let's go back to 17. So what you're --
5 your testimony is that this is -- if we go back to 8th
6 grade algebra, this is just the same information with
7 the equation rearranged to solve for X; is that right?

8 A. That's right. We've solved Y. Now, what
9 we're looking at is the diversion ratio predicted by
10 the D2 equation, so it's the same -- there's no more
11 information here than there was in the previous one.
12 It's just an algebraic adjustment to this new
13 equation. And it's important to understand what D2
14 represents.

15 Q. Okay.

16 MS. KLAHN: Your Honor, we'd offer Blair
17 Demo 17.

18 MR. WECHSLER: My objection, Your Honor,
19 is this represents an undisclosed expert opinion. I
20 recognize we've already had testimony this morning
21 basically verging on expert testimony, but -- but that
22 information had been fairly disclosed. This slide is
23 now introducing something in terms of the diversion
24 ratio. It's unclear whether Dr. Blair is relating
25 that to the diversion ratio as it's known in the 2008

1 operating agreement or something different because we
2 know that the D2 curve contains different data than
3 the diversion ratio, and we haven't seen this kind of
4 solving of an equation in any of the disclosures,
5 expert disclosures that were provided to us by Texas
6 or the United States and -- and so we're simply
7 unprepared to be able to handle a new expert opinion
8 based on this slide.

9 **MS. KLAHN:** Your Honor, may I speak to
10 that?

11 **JUDGE MELLOY:** You may.

12 **MS. KLAHN:** If we were live in the
13 courtroom, I could have Mr. Blair -- Dr. Blair go up
14 to a white board and plot this. This is math -- or,
15 actually, it's algebra. There's no hidden opinion in
16 here. It's simply another way of looking at the D2
17 equation, and it's provided for the background
18 information that will come in useful in the spring
19 when Mr. Wechsler's witnesses testify about this issue
20 and when Dr. Blair testifies again. So it's just
21 setting the foundation for what's to come, just like
22 the other things in this testimony.

23 **MR. WECHSLER:** Well, and, Your Honor,
24 conducting equations and plotting in the way that
25 Ms. Klahn is referencing is exactly expert opinion --

1 expert testimony, which is not allowed without being
2 disclosed.

3 **MS. KLAHN:** I think --

4 **JUDGE MELLOY:** Well --

5 **MS. KLAHN:** Sorry. Go ahead, sir.

6 **JUDGE MELLOY:** Let me make sure I
7 understand the D2 equation, to begin with. Go back to
8 the prior slide, if you would. So do I understand,
9 Dr. Blair, that if you go along the X axis, so let's
10 say we go to 500,000 acre-feet released per year, so
11 that's 500,000 acre-feet that's released from Caballo;
12 is that correct?

13 **THE WITNESS:** That's correct.

14 **JUDGE MELLOY:** And then if you go up to
15 the Y axis and you go straight up from that line, you
16 get a number that's just below 600,000, maybe 590; is
17 that correct?

18 **THE WITNESS:** That is correct.

19 **JUDGE MELLOY:** So is that telling us
20 that if you release 500,000 acre-feet from Caballo,
21 that just under 600,000 acre-feet will be delivered to
22 the Project?

23 **THE WITNESS:** Yes. That the diversions
24 -- let's assume, for simplicity now, that that release
25 of 500 in this equation produces 600,000 diversions.

1 So the net gains and losses are a hundred thousand, so
2 that means that the river is gaining, the gains are
3 greater than the losses, and that the release of 500
4 would be augmented with a net gain loss of another
5 hundred thousand for this condition.

6 **JUDGE MELLOY:** So if you know that in a
7 given year, you can release 500,000 acre-feet, do you
8 then allocate just under 600,000 acre-feet to the two
9 districts for diversion?

10 **THE WITNESS:** To the two districts and
11 Mexico.

12 **JUDGE MELLOY:** Two districts and Mexico.
13 Right. Take out the 60,000, assuming it's a full
14 allocation, then you have 540,000 to be allocated to
15 the two districts; is that correct?

16 **THE WITNESS:** That's correct.

17 **JUDGE MELLOY:** And similarly, if we're
18 at 600,000 released, it's just over 700,000 that's
19 able to be diverted to the -- to the two districts and
20 Mexico; am I reading that correctly?

21 **THE WITNESS:** You are. So this, the
22 diversion ratio -- so the 600 over the 500 is the
23 predicted diversion ratio for the D2 equation for that
24 release of 500. So that ratio being 1.2. So the math
25 that we're doing here is just -- is just calculating

1 606 over 5. So each one of these circles represents a
2 measured diversion ratio for that year for the
3 conditions of that year. The regression line is a
4 least squares. It's a statistical procedure to try to
5 come up with a straight line that minimizes the air
6 that occurs between all of these measurements and a
7 line. You can see in some years that the measured
8 diversion ratio is significantly off the predicted D2
9 equation.

10 **JUDGE MELLOY:** But the line itself, is
11 it a constant 1.2? If I look at 300,000 and do 1.2
12 times 300, would I get -- would I get the -- would I
13 get the amount available for diversion?

14 **THE WITNESS:** No. That's -- that's what
15 my next slide is trying to explain by -- by dividing
16 both sides of this line by the release so -- so that
17 we could look at the relationship that the diversion
18 ratio, same information. It's the word that -- that I
19 have to refer back to because it's such a powerful
20 word, and it is appropriate. It's axiomatic. It's 3
21 plus 2 equals 5 and 2 plus 3 equals 5. So we're just
22 looking at the same information to show that the
23 diversion ratio predicted by the D2, not the measured
24 diversion ratio, but the predicted diversion ratio of
25 the D2 equation changes. In fact, it goes to zero at

1 approximately 90,000 acre-feet of release. And you
2 can see that this particular graph doesn't extrapolate
3 on the left, but if you calculate -- let's do an
4 example similar to the one you did earlier. If we
5 release 200,000 acre-feet, and you go up to the curve
6 and you go across, you can see that the amount that
7 could be diverted is less than 200,000. So that means
8 that the diversion ratio is less than one at 200,000,
9 and that -- if you look at the graph, it shows that.

10 **JUDGE MELLOY:** So -- all right. So
11 that's -- so 17 is -- is a line that shows the -- the
12 -- that number, for instance, again going back to the
13 one I used, which was 500,000. So at 500,000, it's
14 just under 1.2. All right. Okay.

15 **THE WITNESS:** So that -- I could take
16 each one of these points along the line, and we could
17 solve for this -- this line here. There's no new
18 information. It 's just -- just an algebraic
19 rearrangement so that we can look at -- the D2 -- this
20 is all based on the same measured data so it -- it --
21 and the same regression equation. There's nothing
22 new, other than we divided both sides of the equation
23 by the release so that we could look at it, and it --
24 it tells -- I think it's informative in that -- we
25 look at that 280,000 release. That's at the point

1 that it predicts that the gains equal the losses. So
2 that's very -- you know, this is very important to me
3 in the operation of the district that I understand
4 these things and that for this particular D2
5 regression, this line is fundamental to a lot of the
6 discussions we've been having, that it says, hey, you
7 know, to get into this, it -- to make any significant
8 deliveries, that this line would tell you that you
9 need to start with the release above 90,000 acre-feet.
10 And so it explains some of the actions of allocation
11 committee.

12 **JUDGE MELLOY:** Does anybody want to
13 speak further about the exhibit?

14 **MR. WECHSLER:** Well, Your Honor, in
15 light of -- of that discussion, we'll withdraw that
16 objection to Blair Demonstrative 17 so that the Court
17 can understand that discussion in context.

18 **JUDGE MELLOY:** All right. Exhibit 17 is
19 admitted. Thank you.

20 You may proceed, Ms. Klahn.

21 **MS. KLAHN:** Thank you.

22 **Q. (BY MS. KLAHN)** Well, Dr. Blair, that was a
23 pretty thorough explanation of Blair 17. Is there
24 more to be said or should we put up Blair 18 and talk
25 about them together perhaps?

1 A. Yes. I think Blair 18 and the D2 equation
2 together would be appropriate.

3 **Q. Okay. There we go.**

4 A. Yes.

5 **Q. So tell us what we're seeing here.**

6 A. So from the same -- again, this is another
7 axiomatic relationship that you can say, okay, if you
8 know the relationship for the diversion ratio, you
9 know the gains -- relationship for the gains and the
10 net gains and losses. You don't know how much gain,
11 and you don't know how much loss. You just know gains
12 minus losses, the difference of those two. So that's
13 built in to D2 so that's part of the same information.
14 This is, again, no new data, no new measurements, same
15 measurements, same linear equation, just algebra at
16 this point. So it's looking at it a different way.
17 So you see that at that same point, around 290,000,
18 that's where the diversion ratio is one, and that's --
19 on this chart, says that's, you know, gains equal
20 losses, zero. So you can look at it and say from this
21 chart, same information, say, hey, how much water do
22 we expect the gains to be greater than losses of when
23 we release and what -- what situation when it's less.
24 So this -- this goes back to show that in the '51 to
25 '78 periods, that during extreme drought, that the

1 losses always, at least from their regression
2 analysis, are always going to be greater than the
3 gains at this -- at this pivot, at this point where
4 the diversion ratio equals one. And then for releases
5 above that amount, we would expect to see that the
6 gains would be greater than the losses. So that's
7 very important in terms of the allocation for the
8 diversion, the diversion allocation calculation.

9 Q. Okay. Thank you. We've been talking about
10 gains and losses and we've talked about it in the
11 context of D2. I have a more practical question to
12 ask you about the order sheet, which I think I forgot
13 to ask. Could you -- could we have Slide 13, please?
14 Let's go back to this for a minute. We talked
15 extensively about the river boost of 961. I wanted to
16 put this in context for the Court given the discussion
17 about gains and losses. Wanted to have you put it in
18 context. The date of this order form is June 5th,
19 2021. So that was this June, correct?

20 A. Yes.

21 Q. How long had the Project been in operation as
22 of June 5th?

23 A. Well, over a hundred years.

24 Q. For 2021. When did you turn on in 2021? I'm
25 sorry.

1 A. Okay. The water was released, I believe, on
2 the 30th or 31st of May.

3 **Q. Okay. So it was still very early in the**
4 **season, correct?**

5 A. Right. It's still -- we're still on the
6 wetting phase of that -- trying to make up for all the
7 void that is underneath the bed of the Rio Grande.

8 **Q. So what's a more standard river boost in the**
9 **middle of a season?**

10 A. You know, that -- it -- these numbers are
11 instantaneous for the time period of the order, so
12 that's what was going on to the -- from the 5th to the
13 6th, from the change from the 5th to the 6th. There
14 may have been a change, if it was significant in the
15 boost, that occurred on the 7th, and that would have
16 gone through. So literally, during these time periods
17 when we're first getting the river up and running,
18 we're on -- you know, we -- we go 24/7 in the
19 operations, and Dr. King and myself and Michelle and
20 other people that are looking at the river, it's the
21 last thing we see when we go to bed and the first
22 thing we see when we get up, and we have alarm systems
23 on from the telemetry to wake us up in the middle of
24 the night if something is going on. So I can't really
25 answer your question, but each year is different and

1 the losses, I believe, this year even towards the end
2 of the year were close to 300 CFS. There could be a
3 rain event that temporarily the gains would outweigh
4 the losses and you'd see that that number would go to
5 zero because of the rain, but in general, my
6 recollection is that we ended up with about a negative
7 300.

8 Q. Okay. Thank you. All right. Let's go to --
9 let's look at Slide 19 if we could. Could we have
10 Slide 21 put up next to that? Yeah. If you could pop
11 that out, that'd be great.

12 Okay. So, Dr. Blair, you've -- how many
13 years experience do you have working with the Rio
14 Grande Project roughly?

15 A. 30. 30 years.

16 Q. And have you become familiar with some things
17 that make it difficult to predict what the river is
18 going to be doing from time to time?

19 A. Yes.

20 Q. So let's take a look at the schematic on the
21 left here. This one looks just like the one we
22 started with in Slide 10, but now it's got an oval
23 around the lower Mesilla Valley. Why have you
24 highlighted that?

25 A. Well, the -- the complexity of operations

1 gets more complex as we go downstream. One of the --
2 the difficulties in the lower Mesilla Valley, the
3 southern Mesilla Valley, is that the state line is the
4 old bed of the Rio Grande back in the 1890s, whereas
5 in the 1930s, the Rio Grande, as we know it today, was
6 rectified or canalized, it was made into that picture
7 of where you have a conveyance channel of floodway and
8 then levees and so it shows that the state line and
9 the Rio Grande are not coincidental anymore, haven't
10 been since the rectification, and that the canal
11 system in both EBID and EPCWID go in and out of the
12 state line many times. The river goes in and out and
13 New Mexico extends all the way to American Dam.

14 **Q. Let's just go ahead and put up Slide 21 and**
15 **take down the schematic for now so you can focus on --**
16 **illustrate some of what you just said. In that Slide**
17 **21 on the -- the black line, what is the black line**
18 **that winds from the top of the screen down?**

19 A. That's the Texas/New Mexico state line.

20 **Q. Okay. And then where is the river?**

21 A. The river is, for the most part, to the east,
22 and it's the -- the segments of straight line, the
23 rectified conveyance channel that's now the river.

24 **Q. Okay. And when you get to this part of the**
25 **Project, what kinds of impacts do you see from this**

1 complicated geography and then the activities that are
2 going on in that area?

3 A. So not only do we have the need for more
4 complex operations at the district level because the
5 deliveries to Texas now are made internal to EBID, in
6 other words, water is converted in Mesilla and
7 conveyed, but the fact that some irrigated fields have
8 most Texas land and New Mexico land so requires
9 special consideration. It's also the southernmost
10 part of the Mesilla Valley so the geology changes, and
11 it's also location of significant urbanization in both
12 New Mexico and Texas, so as you can see by the well
13 fields that are supplying municipal water from the
14 groundwater. So we get a -- a confluence of
15 complexity as we move into this area.

16 Q. Okay. Let's look at Slide 22, I think. Oh,
17 I'm sorry. Let's look at Slide 20. I apologize.

18 MR. RUDLING: Sarah, I need just a minute.

19 MS. KLAHN: Apparently we're having a
20 few technical difficulties with the PowerPoint, Your
21 Honor.

22 JUDGE MELLOY: I know the observers
23 don't have the hard copies, but I think the -- the
24 parties do. Okay. Here we go.

25 MS. KLAHN: So let's go to 20, if we

1 could, Peder.

2 Q. (BY MS. KLAHN) So I just -- this is, I think,
3 a quick question, Dr. Blair, but is this the area
4 that's known as Unit 6A and 6B?

5 A. Yes, it is.

6 Q. And tell us -- remind us again, I think we
7 might have heard a little testimony about this
8 previously, what's unique about Unit 6A and 6B in the
9 Project?

10 A. It is that the -- that the lands, the
11 irrigated fields and the conveyance systems are
12 between Texas and New Mexico.

13 Q. Okay. And so on the left, what do we see?

14 A. On the left, we see just topographic maps
15 showing the New Mexico/Texas state line near Anthony,
16 Texas, Anthony, New Mexico, and the start of the
17 southern portion of the Mesilla Valley. The circled
18 part is enlarged in the photograph, and that's the
19 primary location. There's -- there's a secondary
20 location, but this is the primary location where water
21 is bifurcated coming from the Westside Canal, and that
22 goes into the La Union East canal. The eastern part
23 is operated by EP No. 1, and the western part is
24 operated by EBID. The eastern part makes deliveries
25 primarily to Texas, but there is New Mexico deliveries

1 in that canal, as you can see, because of the state
2 line meandering, and then the La Union West is
3 primarily EBID lands that's irrigated, but there are
4 portions of Texas land. So this -- this bifurcation
5 requires, for accounting purposes, a significant
6 amount of work to make sure that we are accounting for
7 the water properly between EBID and EP No. 1.

8 **Q. And it requires a great deal of cooperation**
9 **between the districts; is that right?**

10 A. Yes. And a long -- long time -- you know,
11 this goes back to the 1980s, so there's -- there's --
12 this is effectively the process that was come up with
13 at that time, the one that's adopted in the process
14 that we use today.

15 **Q. Okay. Let's -- if we could go on to Slide**
16 **23, please. So so far in your testimony, we've**
17 **basically taken the water one way or another from a**
18 **release from Caballo down towards American Dam, and I**
19 **have the wrong slide.**

20 A. 22 is the slide.

21 **Q. Yeah. That's fine. So what are we seeing**
22 **here? This is, I think, just orientation, is it --**

23 A. Yeah.

24 **Q. -- for the location of the American Dam?**

25 A. 22 and 23 are the same looking at it

1 differently. So that's -- as we -- you saw the
2 complexity of the southern Mesilla Valley, and as we
3 move down into the El Paso Canyon and -- and past the
4 gage is where the -- the American Dam exhibits --
5 right near the Gadsden Monument, the intersection of
6 Mexico, New Mexico, and Texas, then we go on to the
7 next slide and will continue.

8 **Q. Let's look at -- if we could, look at 23 --**
9 **let's look at Slide 23. What are we seeing here?**

10 A. This is the American Dam that was constructed
11 at the same time and part of the same projects for the
12 rectification. We can see a location map that is
13 right there at the Gadsden Monument and two aerial
14 photographs, one oblique at the bottom and one
15 vertical at the top. So this is a unique dam. This
16 dam is different by purpose, by the Act of Congress
17 that created this dam, and the purpose for which this
18 dam was created to be entirely located in the United
19 States, that the order for Mexico is passed through
20 the dam. So the diversion from Mexico is made not to
21 the left or the right of the dam, but it's made
22 through the dam and then conveyed approximately 2
23 miles to the -- to the point where Mexico takes
24 delivery. The remaining amount of water, whatever
25 that may be and may be changing from hour to hour, is

1 diverted and allowed to flow into the American Canal.
2 So this configuration was on purpose.

3 Q. And it was to solve a problem related to
4 issues with deliveries to Mexico previously?

5 A. It was to solve -- it was to prevent Mexico
6 from over -- from diverting more water than was --
7 than they were entitled to under the treaty.

8 Q. Okay. So let's go to Slide 24. So this
9 takes us back upstream a couple miles. What's the
10 significance -- from your operational perspective,
11 what's the significance of the Rio Grande at El Paso
12 gage?

13 A. So this is -- is one of the oldest -- or the
14 oldest gage in the Project. It goes back before the
15 1890s. It is -- it has been continuously operated in
16 that time, and it's maintained and operated by the
17 Boundary Commission, and it is for the operations for
18 EP1 and for Mexico, extremely critical because it
19 tells us are we on order, are we getting the water
20 that we expected from the 110 miles upstream that was
21 released plus the appropriate gains and losses that
22 occur between the release and this location. So this
23 is -- this is a -- a narrowing of the valley to where
24 there's bedrock on both sides. You know, it's a
25 canyon. We're coming into El Paso Canyon. So it's a

1 pinch point, and it's a change in valleys, a change in
2 hydrology, and a change in operations. We have two
3 sister gages, one that's in the American Canal that
4 measures the amount that is there, and then one below
5 the American Dam that measures how much is being
6 conveyed for diversion by Mexico, for delivery to
7 Mexico.

8 Q. Okay. All right. So I think we've covered
9 sort of the first topic of your testimony today
10 talking about the allocation and operation -- your
11 involvement with operation of the project upstream of
12 American Dam. Let's -- let's talk about what happens
13 below American Dam involving --

14 JUDGE MELLOY: Excuse me. Could I ask
15 -- I'd like to ask a question about that gage.
16 There's been some discussion about it before, and let
17 me ask Dr. Blair. So if a certain amount of water
18 flows through that gage, what is either diverted or
19 augmented between that gage and the American Dam that
20 would result in more or less water reaching --
21 reaching the American Dam?

22 THE WITNESS: So it's only -- it's about
23 2 miles, and it's -- and there's no -- there's no
24 significant aquifer there. In other words, if you
25 were to dig a hole at this location, you'd hit fairly

1 shallow. So the only inflows that we really have are
2 the Northwest Treatment Plant, and that's very
3 predictable and measured, and so we know that -- that
4 flow, and the storm water, there's an arroyo or two
5 that drain the urban area in this part of El Paso and
6 so really we have primarily inflows here. The water
7 you see there is primarily from the Montoya drain,
8 which discharges just maybe a quarter mile upstream of
9 this gage. So the -- the flow balancing between those
10 three gages is -- is very accurate. In other words,
11 the three gages match up with the northwest gages so
12 we can -- we understand the flow in detail in this
13 area.

14 **JUDGE MELLOY:** So between El Paso gage
15 and the American Dam, there's no diversions, but
16 there's inflow from the water treatment plants, which
17 is measured, and then storm water?

18 **THE WITNESS:** That's correct.

19 **JUDGE MELLOY:** Is the storm water
20 measured?

21 **THE WITNESS:** Not directly, but because
22 we have these gages, we can calculate the storm water
23 fairly accurately as the difference between the gages.

24 **JUDGE MELLOY:** Okay. Thank you.

25 **THE WITNESS:** That bridge, by the way,

1 that's Courchesne bridge, so sometimes this site is
2 known as Courchesne.

3 Q. (BY MS. KLAHN) We see that on maps sometimes,
4 don't we, Courchesne instead of El Paso gage?

5 A. Instead of El Paso, but I believe the USGS
6 designates the Rio Grande at El Paso.

7 Q. Okay. So let's -- in your work for EP1
8 regarding operational decisions about the distribution
9 of Project water, are there statutes and contracts
10 that you refer to regularly to guide your decision
11 making?

12 A. Yes.

13 Q. Dr. Blair, are you a lawyer?

14 A. No.

15 Q. Why would you be looking at statutes?

16 A. The -- the operation of the project is
17 problematic. In other words, at -- at numerous Acts
18 of Congress and the associated and the required
19 contracts under those acts govern the day-to-day
20 activities that I -- administration and calculations I
21 have to do.

22 Q. Okay. Could we have slide 26, please? And I
23 believe there was some objection about this, but I'm
24 not sure if that's been withdrawn?

25 MR. WECHSLER: It has not been

1 withdrawn.

2 JUDGE MELLOY: Why don't you lay some
3 foundation then.

4 MS. KLAHN: Yeah.

5 Q. (BY MS. KLAHN) Let's talk a little bit about
6 Slide 26. So we have -- what do we have on this
7 slide, Dr. Blair? Just explain the content.

8 A. There's two classifications of statutes that
9 we were talking about a minute ago that to have
10 information that I -- that are essential to my daily
11 operations.

12 Q. Okay. So let's work with the structural
13 statutes first. Can you explain to the Court what
14 types of operational decision making would require you
15 to consult, for example, the American Dam Act?

16 MR. WECHSLER: Now, Your Honor, this
17 seems like we're going beyond foundation. We're just
18 offering substantive testimony about the slide. I'm
19 happy to describe our concern with the slide if that
20 would be helpful.

21 JUDGE MELLOY: Go ahead.

22 MR. WECHSLER: Yeah. Again, this is
23 verging into areas of expert testimony. Here, you can
24 see it's characterizing types of statutes into how to
25 and accounting statutes and structural statutes. I

1 don't have a problem, if Mr. Blair just says, you
2 know, on -- on a regular basis, I have to consult X
3 statute, and here's how I do that, but to be
4 characterizing these in some way, I really have no
5 idea what that means or -- or certainly don't think
6 it's appropriate for a witness, particularly a
7 non-legal witness, to be testifying to that. It
8 amounts to an expert opinion.

9 **MR. WALLACE:** Your Honor, for the
10 record, the State of Colorado joins in the objection
11 to this exhibit on the grounds that it is offering a
12 legal opinion and the opinion being given on this is
13 misleading and contrary to deposition testimony
14 provided by the witness.

15 **JUDGE MELLODY:** All right. I'm going to
16 allow the witness to testify as to the statutes that
17 he refers to and contracts for that matter that he
18 refers to on a daily or regular basis in performing
19 his duties, but I will sustain the objection as to --
20 to the extent that it characterizes the statutes as
21 described by Mr. Wechsler.

22 All right. You may proceed.

23 **MS. KLAHN:** Thank you.

24 **Q. (BY MS. KLAHN) Dr. Blair, do you understand**
25 **the limitation?**

1 A. Yes.

2 Q. Okay. So -- and I think this question fits
3 within the limitation. Can you give the Court an
4 example of how you would refer to -- why you would
5 find it necessary to refer to the American Dam Act
6 during the course of your regular work for the
7 District?

8 A. So the -- the configuration of the dam -- so
9 is described in that Act, and we use that dam to
10 divert water to El Paso Valley.

11 Q. Okay. What about the American Canal
12 Extension Act, is there particular activities you do
13 on a regular basis that require you to refer to that?

14 A. The -- the Act sets forth responsibilities
15 and contractual -- prescribes contractual development
16 for the operation of that canal.

17 Q. Okay. Can you just say a little bit more
18 about that to be a little clear about what types of
19 contractual requirements it might set forth?

20 A. Well, the -- it required us to -- that Act
21 required the EP No. 1 and the U.S. IBWC to enter into
22 an operations and maintenance agreement as to how the
23 canal would be operated and how it would be
24 maintained.

25 Q. Okay. Now, let's look at the how to and

1 **accounting statutes. Let's start with the**
2 **Miscellaneous Purposes Act. What relation or what**
3 **role does that statute have in your regular day-to-day**
4 **activities?**

5 A. It's the statute that's cited to or
6 referenced to in numerous contracts we have for
7 delivery of municipal water.

8 **Q. Delivery of municipal water to El Paso Water**
9 **Utility?**

10 A. Yes.

11 **Q. And the Lower Valley Water District?**

12 A. Yes.

13 **Q. Let's leave the Compact for now. What about**
14 **the 1992 Transfer Act, how does that statute relate to**
15 **your regular duties?**

16 A. So that act -- actions were taken prior to
17 that act that relate to it, and it's probably all the
18 contracts that are associated with that act are
19 probably both as district engineer and as a consultant
20 or ones I have to -- have to refer to on a daily
21 basis. So there's just a -- a tremendous amount of
22 other actions that are contained in -- in everything
23 from accounting for and metering stations and canals
24 and easements and third-party uses that are all
25 covered in that -- in that Transfer Act.

1 **Q. What is the Transfer Act? What did it**
2 **accomplish to the best of your understanding?**

3 A. It's the culmination of -- initially without
4 congressional action, the contracts were entered to
5 for the operational transfer, not the physical
6 transfer, once the repayment contracts were paid off,
7 and this now set up the requirements for additional
8 contracts, specifically the 6A and 6B contract.
9 Previous requirements that were in the other ones was
10 example for an operating agreement and then actually
11 the deed authorized Reclamation to issue a deed to EP1
12 and to EP -- EBID for the land that was within -- in
13 the facilities within the two districts.

14 **Q. Okay. So let's go onto Slide 27, which**
15 **relates to the Compact.**

16 **MS. KLAHN:** Does your objection,
17 Mr. Wallace, cover -- have you stated your objection
18 with regard to this one, as well?

19 **MR. WALLACE:** Yes. This one, Your
20 Honor, I want to note, I believe, that Colorado's
21 objections were miss noted. Our objections are to
22 Demonstrative Exhibits 26 and 27, not to Exhibit 25.
23 So we would have the same or similar objection to this
24 one. It's giving a legal opinion, and it's also
25 construing the Compact by paraphrasing and, in fact,

1 the definitions are not verbatim but are paraphrased,
2 which seems to be offering a legal interpretation of
3 the Compact and that the witness is not capable of
4 doing that.

5 **MS. KLAHN:** We'd offer it as the same
6 purpose for the other side, just to reflect his
7 operational -- his operational understanding of how
8 the Compact interfaces with this project operations.

9 **JUDGE MELLOY:** Well, it's a
10 demonstrative exhibit, and I'll admit it for
11 demonstrative purposes only to show his operational
12 understanding, so to speak.

13 Ms. Klahn, we're getting pretty close to
14 the break time. Let me know if this is a good point
15 or do you want to finish up with this exhibit and then
16 maybe we'll do it after that?

17 **MS. KLAHN:** I think -- let's just do
18 this slide and then, yeah, I think that would be a
19 great time to take a break.

20 **JUDGE MELLOY:** All right. Thank you.

21 **MS. KLAHN:** Thank you.

22 **Q. (BY MS. KLAHN)** So, Dr. Blair, we're looking
23 at Slide 27. Can you talk us through your
24 understanding of the relationship with the Compact to
25 your involvement with Rio Grande Project operations?

1 A. Yes. It's very limited. The Article 1,
2 determination of the usable water, is done by
3 Reclamation, and that's provided to the Allocation
4 Committee. The contracts that I administer with the
5 City of El Paso and other municipal lower valley water
6 district have language that address that the release
7 -- that the water being provided to them under those
8 contracts for them, their lease or ownership of
9 irrigable land has to be made in accordance with
10 irrigation demand so that carries over into those
11 contracts, that part of it. And then my -- the
12 articles that mention 790,000 acre-feet, the operating
13 agreement does use that number as a limit as a maximum
14 amount that could be allocated new allocations in any
15 given year based on that amount of release.

16 **MS. KLAHN:** Okay. Thank you. I think
17 now would be a good time for a break, Your Honor.

18 **JUDGE MELLOY:** Let me just clarify what
19 Dr. Blair said. You do not have any role in
20 determining the amount of usable water. Is that
21 exclusively within the province of Reclamation?

22 **THE WITNESS:** Yes.

23 **JUDGE MELLOY:** All right. Thank you.
24 All right. We'll break for 20 minutes. Thank you,
25 everyone.

1 (Recess.)

2 JUDGE MELLOY: Ms. Klahn, you may
3 proceed.

4 MS. KLAHN: Thank you.

5 Q. (BY MS. KLAHN) All right. Dr. Blair, let's
6 take a look at some of the contracts that you consult
7 regularly in your work for EP1. Could we have Slide
8 28, please?

9 All right. So, Dr. Blair, would you tell us
10 -- did you create this slide?

11 A. Yes, I did.

12 Q. And can you summarize what it's showing us?

13 A. Shows five categories of contracts that --
14 that I -- that I have to refer to for administration
15 and operations.

16 Q. Okay. Let's start with municipal water
17 supply. I see a list of contracts there by date.

18 MS. KLAHN: And, Your Honor, I think the
19 1941, '49, and '62 contracts were admitted without
20 objection today, and then the 2001 contract, I think,
21 was admitted during Ms. Estrada-Lopez's testimony.

22 Q. (BY MS. KLAHN) Dr. Blair, could you talk to
23 us about how you use these various contracts in your
24 daily work? For example, what would a 1941 contract
25 have to do with your day-to-day work for EP1?

1 A. That contract is -- has to do with the land
2 that was purchased by the City of El Paso, irrigable
3 land with authorized acreage, for which they get an
4 allocation for.

5 **Q. Okay. And what about the --**

6 A. Excuse me. They get an allotment for. They
7 get an allotment for that.

8 **Q. Okay. Thank you for that correction. What**
9 **about the 1949 contract?**

10 A. That has to do with excess flow, so it's a
11 fairly -- during flood times or -- or periods when
12 there's no requirement for any project users for the
13 water.

14 **Q. How about the 1962 contract, how do you use**
15 **that?**

16 A. That's -- I believe that is used almost daily
17 for -- because of leases. We have a significant
18 number of leases with the -- that we administer -- the
19 City has entered into with irrigable landowners.

20 **Q. So the City not only owns land within EP1, it**
21 **has leases for irrigable lands within EP1?**

22 A. For use of the water associated with the
23 land.

24 **Q. Okay. And let's skip over to the -- well, is**
25 **there something significance for the 1988 or 1998**

1 **contract you'd like to draw the Court's attention to?**

2 A. No. The -- the '88 contract is -- the City
3 acts as the agent for the lower valley water district
4 in that, and we do leases there, too, so we do have
5 daily administration, but -- and the '98 is sort of a
6 parent contract to the 2001.

7 **Q. Okay. And what is the 2001 contract, is that**
8 **important to your day-to-day work?**

9 A. Yes. It's -- it's the most complex of any of
10 those contracts, and that covers a multitude of -- of
11 issues with the City.

12 **Q. Related -- can you give us some examples?**

13 A. It has permissions that amended the '41
14 contract so they could own additional land. It has
15 conditions regarding the Haskell sewage water, the
16 American Canal Extension and Canutillo well field, to
17 name a few.

18 **Q. Okay. Let's look up at Project authorized**
19 **acres. And this is -- this relates to the 1938**
20 **contract between EP1 and EBID. I believe we have**
21 **Joint Exhibit 426, if we could put that up.**

22 **MR. RUDLING:** I apologize. I need another
23 minute?

24 **Q. (BY MS. KLAHN) All right. Dr. Blair, this**
25 **is Joint Exhibit 426, and it was admitted, I believe,**

1 during Ms. Estrada-Lopez's testimony.

2 MS. KLAHN: I'm going to tell the
3 parties and the Court, this should have been on his
4 exhibit list. I'm not sure if it was. We'd like to
5 use it even though it wasn't on the exhibit list. So
6 just going to put that out there in case there's
7 concern.

8 JUDGE MELLOY: Any objection?

9 MR. WECHSLER: No objection.

10 JUDGE MELLOY: Go ahead.

11 Q. (BY MS. KLAHN) Joint Exhibit 426, do you
12 recognize this, Dr. Blair?

13 A. I do.

14 Q. What is it?

15 A. It's the contract between EP No. 1 and EBID
16 regarding authorized acreage within the Project.

17 Q. Okay. And is this one of the contracts that
18 you have occasion to consult during your day-to-day
19 work for EP1?

20 A. Well, it's the basis of the day-to-day -- of
21 the relationship in the allotments between the two
22 districts.

23 Q. How so?

24 A. It established the amount and the ratios of
25 authorized acreage subject to construction charge. It

1 provided an increase in that by 3 percent, and it
2 discusses that in event of a shortage, how the
3 distribution of supply would occur.

4 Q. Okay. Let's take a look at Slide 29, please.
5 Dr. Blair, you're seeing what's been identified as
6 Blair Demo 29. Did you create this?

7 A. Yes, I did.

8 Q. And what is it?

9 A. It's just demonstrating the -- as going into
10 a '38 contract, that there was 155,000 acres that were
11 irrigated and subject to construction charges and then
12 the -- the agreement, the '38 contract, increased
13 those by 3 percent cushion. Primarily my
14 understanding had to do with the term roads and farm
15 roads and things that were within a given plat that
16 weren't irrigated to allow for the tax to be
17 calculated on the entire land and the ratio didn't
18 change so the contract went in with this ratio and
19 came out with the same ratio.

20 Q. Okay. And you mentioned when we were looking
21 at the contract that it -- the contract also provides
22 for splitting up the -- splitting up water between --
23 during a shortage?

24 A. The available -- the available supply in a
25 year with storage.

1 **Q. What water does that project or does that**
2 **contract relate to?**

3 A. That's the -- the supply for the Project is
4 the usable water in storage and the -- any returns --
5 any usable -- any water that returns to the river that
6 we discussed in -- in the allotment process that could
7 be diverted for the districts downstream. It only
8 discusses the distribution of that supply in regard to
9 the two districts, not in regard to Mexico.

10 **Q. Okay. And when you say "that supply," do you**
11 **mean Project supply?**

12 A. Yes. Project supply.

13 **Q. Okay. Let's talk a little bit about -- we're**
14 **getting close to the end here. Let's talk a little**
15 **bit about the EP1 internal operations and structural**
16 **changes. You've described -- could we have Slide 30,**
17 **please? Now, this is a schematic we've seen before.**
18 **It's now got an oval in the lower third of the --**
19 **lower quarter of the -- of the schematic. What are we**
20 **looking at here, Dr. Blair?**

21 A. So we've already discussed part of the
22 complexities of the El Paso to International Dam
23 region, but this is the -- you know, the transition
24 point between the Mesilla and the El Paso Valley and
25 the key operation point, and it's changed over the --

1 over the decades in terms of how that facilities were
2 configured.

3 **Q. Okay. Before we get into the changes in the**
4 **facilities, I want to pause briefly to talk about the**
5 **implications for EP1 to be at the bottom of the**
6 **system. Does that mean that you have to deal with**
7 **flooding?**

8 A. The flooding occurs throughout the Project,
9 but obviously, as in most watersheds, the magnitude of
10 the floods increases significantly as you get
11 downstream because it's draining a larger share of the
12 watershed below Caballo. So -- so, yes, we -- we have
13 -- this year as an example, it's a -- I laugh at it,
14 but it's not -- it's a serious matter. So we had a
15 flooding that was occurring from upstream runoff at
16 the same time that we had dry conditions downstream in
17 the El Paso Valley that we were trying to make
18 irrigation deliveries of and so you -- you basically
19 can be at both under standard operating procedures and
20 emergency operating procedures at the same time.

21 **Q. How does that work? How do you continue to**
22 **deliver Project water if you're trying to deal with**
23 **floodwaters?**

24 A. Well, there -- there's two components to
25 that. One is -- is the quantity of water so and that

1 obviously through emergency procedures depend -- what
2 procedures you do depend how big the flood is. As we
3 discussed before, we have a series of flood control
4 gates, wasteways, that serve a purpose primarily for
5 flood control and to be able to trim hydrographs so
6 that we can -- flood hydrograph can come into our
7 system but we can trim and get it out of the system
8 before it gets into our delivery system, into the
9 canals that we're using to deliver water.

10 **Q. Let's look at Slide 31. Does this illustrate**
11 **what you're talking about?**

12 A. Yeah. We talked about this in terms of the
13 size. So the -- the top part is an aerial photograph
14 of Wasteway 32 where we do that bypass, and that
15 wasteway is designed and built for 150 CFS for the
16 maximum capacity, typically operated at much lower
17 than that, but that's the maximum. As we go
18 downstream and we get to the first wasteway in the El
19 Paso American Dam area, you can see the photograph of
20 this structure is much bigger, you know, maybe 100 to
21 \$150,000 to construct the wasteway at the top and
22 multimillions of dollars to construct the one at the
23 bottom. It is designed to be able to handle ten times
24 the flow.

25 **Q. Okay. So let's go back to 30, Slide 30, and**

1 just focus on the -- down at the bottom there. Can
2 you identify the flood structures that are at the
3 bottom of the --

4 A. Sure. We were just looking at the Settling
5 basin Wasteway, so that takes -- as we talked before,
6 the American Dam has an unusual configuration. It was
7 designed to divert all the water into the American
8 Canal and bypass the ability making it impossible for
9 Mexico to divert that water at International Dam on
10 purpose. The amount that they're to divert is passed
11 through the dam and delivered to them at International
12 and then right below that, so if we get floodwaters,
13 our first shot at that is at the Settling Basin. We
14 try to -- it also has to protect downtown El Paso so
15 it's a key flood control spot in the Project.

16 Q. Okay. I see there's an American Canal
17 Extension on the kind of vertical, if you will, on the
18 right-hand side. Is that a relatively new structure?

19 A. Yes. It was built in the late 1990s.

20 Q. Okay. Let's look at how the structural
21 orientation of -- of the American Canal and related
22 structures has changed.

23 MS. KLAHN: Could we have Slide 33,
24 please? Oh, Slide 32. Sorry.

25 Q. (BY MS. KLAHN) So did you create this table,

1 Dr. Blair?

2 A. Yes.

3 Q. And what's it showing us?

4 A. It's showing three periods in time that there
5 was significant change to the facilities, Project
6 facilities, in the American Canal and below.

7 Q. Now, let's just focus on Riverside Dam for a
8 minute. I think one of the slides you showed early on
9 indicated that Riverside Dam is no longer -- diversion
10 dam is no longer used. Tell us about the Riverside
11 Dam.

12 A. So the Riverside Dam, prior to 1928, the
13 diversions -- really, prior to 1938, they're all
14 related. The diversions were routed. The American
15 Canal didn't exist. I think it says it was routed
16 through that, but it was -- had to be routed through
17 International Dam, and down to -- to various
18 structures, some of which were temporary in nature, to
19 make diversions from the river. In fact, down towards
20 Fabens, there was actually a pumping plant at that
21 time. So in '28, it normalized that and brought the
22 Riverside Dam so that it could be used. So after
23 that, water could flow through -- the American Dam
24 didn't exist, it could flow through the International
25 Dam and down to Riverside Dam to be diverted for El

1 Paso. That was the limitation was that all of our
2 water was targeted for -- and say "our water," I mean
3 EP No. 1's would have to flow through the
4 International Dam before it could be delivered to
5 Riverside Dam at that time.

6 **Q. Okay. The next entry has some references to**
7 **Caballo, American, and River Rectification. What does**
8 **that refer to?**

9 A. So that was a major project, a work program
10 project for the depression that had to do with the
11 flood control and rectification of the river. We
12 discussed that a little before in the -- in the maps I
13 showed for the southern Mesilla, but the -- the
14 Caballo Dam was a very significant one. All these
15 projects were conservation projects and flood control
16 projects that made more water available to the
17 project, significantly more water with the addition of
18 Caballo Dam, and we're intended to protect the Project
19 authorized acreage from flooding.

20 **Q. Okay. So let's go on to American Canal**
21 **Extension and just tell us generally what that is and**
22 **then I think we have some diagrams to show how -- how**
23 **it's changed.**

24 A. So -- so the problem that we discussed for
25 the reason American Dam was built was to be able to

1 route the water around the International Dam. At that
2 time there had been discussions of continuing the
3 American Canal all the way to Riverside. Riverside
4 was built at that time. But there was land disputes
5 with Mexico that hadn't been solved and weren't solved
6 until the 1960s, and so the route of that canal and
7 use of that canal and the funding for that canal was
8 not approved until much later. That canal was
9 discussed in the 1930 engineering reports actually
10 became what exists today now as the American Canal
11 Extension, which was operational in '99.

12 **Q. Let's take a look at the Slide 33, please.**
13 **So Slide 33 says pre 1936. Can you just describe what**
14 **we're seeing here?**

15 A. Yes. So no American Dam. There's no
16 American Cam, no American Canal, no Extension. The
17 water for the Franklin Canal was diverted at the
18 International Dam, and the water from Mexico was
19 diverted to International Dam. The water for the
20 Riverside Canal was allowed to flow through the
21 International Dam and go downstream to Riverside.

22 **Q. How did that work?**

23 A. So this configuration allowed Mexico to take
24 unauthorized amounts by gravity. In other words, they
25 could -- could just open their gates on the Mexican

1 side and take what they wanted to take and then we
2 would be shorted at the Riverside or the Franklin,
3 depending -- we'd get to make the decision which one
4 we would -- would typically we would take, you know --
5 it would make common sense that we would take our full
6 order at Franklin Canal, as much as we could, and --
7 and hope that Mexico would allow our water to pass to
8 Riverside.

9 **Q. Okay. Let's look at Slide 34. So this looks**
10 **like the time after the -- is this after the**
11 **authorization of the American Dam?**

12 **A.** Yes. So the American Dam is built, and at
13 this point, you know, it's got that unique
14 configuration where only water from Mexico is passed
15 through the dam, so all the orders for El Paso Valley
16 are -- the diversions are made there into the American
17 Canal, but we don't have the American Canal Extension
18 so we can't -- we don't have a canal that can go all
19 the way to Riverside so the water has to be returned,
20 and Leon Street Spillway, it's a large spillway
21 capable of flood control, but it was primarily used to
22 control and regulate the order going to Riverside
23 Canal -- Riverside Dam/Riverside Canal.

24 **Q. So you take water at the American Diversion**
25 **Dam down the American and Franklin Canals and put it**

1 **into the Leon Street Spillway to get water into the**
2 **Riverside?**

3 A. Yeah. The -- that's correct. And then that
4 water would flow downstream in the Rio Grande to
5 Riverside Dam and be diverted. The difficulty with
6 that was that now while it's not as convenient or as
7 easy for Mexico to take that water, they established,
8 at various locations, pumps where they could pump that
9 water primarily to irrigate land in Mexico, and there
10 was one location that if the narrow Riverside where
11 they could divert by gravity, it was a fairly small
12 canal, but nonetheless, they would -- they would try
13 to divert by gravity or because we were backing the
14 water up from Riverside or they would use a pump.

15 **Q. Okay. Let's look at Slide 35. So this the**
16 **current orientation of the structures that deliver**
17 **water to EP1?**

18 A. Yes, it is.

19 **Q. And what's changed here?**

20 A. Well, now, at this point, Leon Street
21 Spillway no longer has to be used except for emergency
22 operation, so it's not used at all hardly. We keep it
23 operational in case we have problems at Settling
24 Basin, we have floodwater that we need to do that. We
25 added a third spillway closer to Riverside Dam so that

1 if water got past the first two and we needed to get
2 rid of it, we could. But now, effectively, the river
3 is dry below International and so there's no
4 opportunity anymore for Mexico to make any
5 unauthorized diversions.

6 Q. Okay. Thank you. So I want to --

7 MS. KLAHN: You can take that down for
8 the moment. Thanks.

9 Q. (BY MS. KLAHN) So I want to -- in getting
10 ready for our wrap up, I want to take you back,
11 Dr. Blair, to the contracts that we discussed a minute
12 ago. Is the 2008 Operating Agreement one of the
13 contracts that's important to your day-to-day work for
14 EP1?

15 A. Yes.

16 Q. Do you have an understanding of why the
17 Operating Agreement was adopted?

18 A. There was a requirement to enter into part of
19 the transfer of operations and maintenance and lands
20 between the federal government and the districts.

21 Q. So that transfer contract that I think we
22 heard about from Dr. King required an Operating
23 Agreement?

24 A. 1980, yes.

25 Q. Okay. I don't want to get into the technical

1 details of how the Operating Agreement works, but I
2 want to ask you to explain, from an operational
3 perspective, how did water allocation methods from the
4 Project change?

5 A. So the -- the 1980 was the start of
6 discussions, and those continued for those 28-year
7 periods, and many -- many of the -- the discussions in
8 the proposed drafts, many of the process -- we
9 discussed one, for example, the La Union Canal, those
10 procedures were incorporated into the agreement, the
11 2008 agreement, but the -- at a high level, what the
12 agreement provided for was sustainability of the
13 Project. It's a robust agreement that's adaptable.
14 We've made provisions that as we go through changes in
15 the water supply and changes in climate, that it can
16 adjust to those. The ability -- the sophistication
17 that's incorporated in it in terms of the solution
18 work to keep both EBID and EP No. 1 operational, to
19 keep us capable of running this project for the three
20 entities that receive water from that from full
21 allocation to extreme drought, as illustrated by this
22 year, and it provides the -- the language, the
23 specific language that the employees of the two
24 districts and of the United States and the Boundary
25 Commission need to be able to efficiently operate the

1 Project so that we know, for example, if we have a --
2 a situation of shortage and we can't -- and we have to
3 figure it out, we know what procedures to follow under
4 that. We know how to precisely order water at Caballo
5 now and how to make sure that that amount of water is
6 released and metered. So all of those detailed, some
7 very minute details, provide that level of
8 sophistication.

9 Q. So prior to 2008, you were -- you were
10 working for EP1, correct?

11 A. Yes.

12 Q. And prior to 2008, how was water allocation
13 done? First of all, who was in charge?

14 A. It was the Reclamation was -- prior to 1980,
15 it was all done by Reclamation.

16 Q. Right.

17 A. During the transition, there was a -- a
18 multi, what, almost 30-year period of negotiations
19 starting right around when the 1980 contract was
20 signed and the requirement for an operating agreement
21 was done. So every year, what was fortunate for that
22 time period, as previous people have testified from,
23 is that we were in a time of abundant water supply,
24 that the snow pack and the runoff into Elephant Butte
25 was significantly high. We had too much water during

1 the mid '80s. One of my first jobs in the Hudspeth
2 District south of El Paso was because of flooding
3 issues, in other words, the -- there were -- there was
4 as much as a million acre-feet of floodwater that --
5 that had to be disposed of that was harmful to the
6 Project. So the hydrology changes significantly
7 during that time period. It was a wet hydrologic time
8 period starting in 2003. We've transitioned to an
9 extremely dry time period.

10 Q. Okay. Let's take a look at Slide 36, which
11 is our -- our last slide for today, I think.

12 Dr. Blair, when you look at Slide 36, you've talked
13 today about some of the differences between the upper
14 valley and the lower valley. Does this slide
15 summarize your conclusions about those differences?

16 A. Yes.

17 Q. Could you just briefly talk us through this?
18 I don't think you have to go through every line in it.

19 A. I think just an overview is good. I mean,
20 obviously operations are effected by geography because
21 I think a simple example is that the Arrey Canal at
22 Percha Dam is located approximately 2 miles below the
23 release point, and if -- if the Project needs to make
24 an adjustment at the Arrey Canal with flow rate, it
25 can adjust at Caballo, and within a few hours, that

1 adjustment can be made at Arrey. So to remain
2 efficient and to not waste water and not over release
3 water. It rains in the Rincon Valley so we can make
4 adjustments very quickly up at that post. The
5 opposite is true as you get down to American. At
6 American Dam, the water that is in American Dam on one
7 day was released three days prior. So three days of
8 activity within the Project, rainfall, storms,
9 flooding, whatever it may be, changes in demand
10 because of impacts on farms because of rainfall on the
11 farms down to as far down as to the county line in El
12 Paso all make it much more difficult for us to keep a
13 steady supply there, whereas Arrey sees a steady
14 supply at all times. It's right at the top. So that
15 matter of degree changes as you go down. It gets much
16 -- it gets unsteadier as you move down and harder to
17 adjust for. The geology changes significantly, a huge
18 difference, not only at the bottom of the system and
19 we get the storm water and the waste and the bulk of
20 the sediment flow that we have to deal with in the
21 regular flows, but when we transition to El Paso
22 Valley, the geology is different that our wells are
23 saline. We're basically recycling the irrigation
24 water that's applied to the fields. If I drilled and
25 I'm responsible for drilling and supervise the

1 drilling of those wells, that if I were to penetrate
2 -- to make the well too deep, I would hit a brackish
3 aquifer underneath that -- that perch shallow aquifer.
4 So in our case, the shallow poor quality water, even
5 though it was saline, was better than if we were to go
6 deeper into the Hueco aquifer and hit the brackish.
7 So I was careful never to penetrate through that
8 confining layer. You know, that makes a big
9 difference in times of shortages on doing that. The
10 same thing is true of water quality from the
11 reservoir. The water quality diminishes, not just by
12 salt content, but it diminishes by the amount of
13 sediment. If you look at the water coming out of
14 Caballo and flowing into Arrey and you were -- to look
15 into the canal, you could see the bottom of the canal
16 easily. The water is clear enough to do that. If you
17 put your hand in the water at American Dam, you
18 probably can't see it a few inches under the water.
19 It -- that's because it has so much suspended sediment
20 from the arroyos and the -- and the hills that are in
21 between Caballo and American. So all these things
22 make a profound difference on the operation and what
23 the El Paso Valley District must address as opposed to
24 farther upstream.

25 MS. KLAHN: Thank you. I don't think I

1 have any further questions at this time for Dr. Blair.

2 **JUDGE MELLOY:** Thank you, Dr. Blair. As
3 I understand, there will be no cross-examination of
4 Dr. Blair at this time. Unless anybody has something
5 to say, I will excuse Dr. Blair. We thank you for
6 your testimony. Thank you, Doctor.

7 **THE WITNESS:** Thank you.

8 **JUDGE MELLOY:** Let's take a five-minute
9 break, and we'll get ready for the next witness. In
10 connection with the next witness, it appears that the
11 United States and Texas are not on the same page as to
12 cross-examination exhibits. I don't know. Is -- was
13 that intentional, Ms. Klahn and Mr. Dubois? There's
14 something -- some are objected to by one and not the
15 other.

16 **MS. KLAHN:** I'll let Mr. Dubois speak
17 for the United States.

18 **MR. DUBOIS:** Yes, Your Honor. We didn't
19 necessarily agree with all of the objection analysis,
20 and we are -- we are not a proponent of Mr. Reyes and
21 Mr. -- I mean, we did not call them. They were not on
22 our witness list so, you know, the -- the primary
23 issue should be Texas' objections. There were a few
24 less that we objected to than Texas objected to.

25 **JUDGE MELLOY:** All right. Well, let's

1 get Mr. Reyes ready to go, and we'll look at the
2 objections and see what can be admitted out of the box
3 and which ones we have to wait on. All right. Thank
4 you, everyone.

5 (Recess.)

6 **JUDGE MELLOY:** All right. Are we ready
7 to get started? I see we've had -- Ms. Najjar, you're
8 going to be filling in for Mr. Dubois?

9 **MS. NAJJAR:** Yes, Your Honor.

10 **JUDGE MELLOY:** We're changing -- not
11 filling in. That's probably not the right term. But
12 you're -- you're going to be taking this witness; is
13 that correct?

14 **MS. NAJJAR:** Yes. I believe Ms. Klahn
15 will be asking the questions.

16 **JUDGE MELLOY:** Okay. All right. Are we
17 ready to go?

18 **MS. KLAHN:** Yes, sir.

19 **JUDGE MELLOY:** Is it Mr. Reyes? Am I
20 pronouncing that correctly?

21 **THE WITNESS:** It's Reyes.

22 **JUDGE MELLOY:** Reyes. Okay. Mr. Reyes,
23 would you raise your right hand, please? Do you swear
24 or affirm that the testimony you're about to give will
25 be the truth, the whole truth, and nothing but the

1 truth?

2 THE WITNESS: I do, sir.

3 JUDGE MELLOY: All right. Mr. Reyes,
4 let me just tell you a couple of things or ask you a
5 couple questions we've been asking all the witnesses.
6 First of all, is there anyone in the room with you
7 during your testimony?

8 THE WITNESS: No, sir, there is not.

9 JUDGE MELLOY: Where are you testifying
10 from, by the way? Looks like you have the same
11 background as our prior witness.

12 THE WITNESS: Yes. We're actually in
13 Denver at the attorney -- or the U.S. Attorney's
14 Office.

15 JUDGE MELLOY: Oh, all right. Okay.
16 Thank you. And do you have any papers or documents
17 with you that you will be using during your testimony,
18 other than the exhibit book?

19 THE WITNESS: I have one sheet of paper,
20 Your Honor, that there's going to be some pictures
21 that will be offered for evidence. All I have is
22 documentation of the dates they were taken and who
23 took those pictures.

24 JUDGE MELLOY: All right. Well, if
25 there's any question about that, I'll let the parties

1 ask that. Then finally, I wanted to advise you that
2 you're not allowed to have any communication devices
3 with you during your testimony, including cellphones,
4 laptops, computers that have any type of e-mail,
5 texting, instant messaging capability, et cetera. Do
6 you understand?

7 THE WITNESS: Yes, sir, I understand,
8 and I have none.

9 JUDGE MELLOY: All right. Thank you.
10 All right. Well, let's take a moment now to talk
11 about the exhibits. As I understand it for Texas'
12 direct examination, Reyes Demonstrative Exhibits 1
13 through 9 are not objected to and will be admitted as
14 demonstrative exhibits. The other three exhibits
15 Texas plans to use have already been admitted, that's
16 Joint Exhibit 426, US-458, and US-512. Assuming we've
17 correctly reconciled the two objection lists of the
18 United States and Texas to the cross-examination
19 exhibits that New Mexico intends to use, the following
20 exhibits are jointly agreed to as being admitted: New
21 Mexico 201, New Mexico 226, New Mexico 427, New Mexico
22 630, New Mexico 639, New Mexico 2243, New Mexico 2287,
23 which is also US-77 and Texas 88, New Mexico 2358, New
24 Mexico Demonstrative Exhibits 1, 2, and 3, New Mexico
25 Demonstrative Exhibit 18, Texas 279, US-116, and I

1 think -- I think that is it. Any other exhibits that
2 New Mexico intends to use will have to be offered and
3 admitted during the course of the testimony.

4 All right.

5 **MR. WECHSLER:** Your Honor, are those
6 exhibits that you just identified then admitted?

7 **JUDGE MELLOY:** They are admitted. I'm
8 sorry. Yes, they are admitted.

9 **MR. WECHSLER:** And also, I'll just note
10 for the record, many of those were already admitted
11 when New Mexico was providing you with that. We'll
12 try and identify that for you. And I -- I'd also ask
13 just the parties if it's possible, I understand the
14 two United States and Texas have different objections,
15 but if they could be reconciled in a single list, that
16 would be very helpful for us so that we understand
17 what people are objecting to?

18 **JUDGE MELLOY:** Why don't we do this. In
19 the future, whoever is the proponent of the witness,
20 why don't you send the list to Texas' case to U.S. for
21 this witness or vice versa, and then Texas or the
22 other party can indicate which ones they don't agree
23 with, because it did take some time to reconcile the
24 two lists so it would be a lot easier if we just had
25 one list.

1 **MR. DUBOIS:** Your Honor, I have to
2 apologize. That was an error on our part to send the
3 separate one.

4 **JUDGE MELLOY:** All right. Thank you.
5 Ms. Klahn, is this your witness?

6 **MS. KLAHN:** Yes.

7 **JUDGE MELLOY:** You may proceed.

8 **MS. KLAHN:** Thank you.

9 JESUS REYES,
10 having been first duly sworn, testified as follows:

11 DIRECT EXAMINATION

12 BY MS. KLAHN:

13 **Q. Good afternoon, Mr. Reyes.**

14 **A. Good afternoon.**

15 **Q. Mr. Reyes, what's your current professional**
16 **position?**

17 **A. I am general manager for the El Paso County**
18 **Water Improvement District No. 1.**

19 **Q. And where did you grow up?**

20 **A. I grew up in the upper valley area of the**
21 **Canutillo area.**

22 **Q. And that's close to the Canutillo well field**
23 **that we've seen on some maps and heard about?**

24 **A. That's correct, yes.**

25 **Q. Okay. How long has your family been in the**

1 upper valley?

2 A. Since the early 1920s.

3 Q. Were they farmers?

4 A. Yes. They were my grandparents, my parents,
5 my uncle.

6 Q. Okay. And they farmed with water made
7 available to them by EP1?

8 A. Yes, ma'am.

9 Q. Were you involved in farming when you were a
10 youngster?

11 A. Yes. There was ten of us, six brothers and
12 four sisters. The oldest three of which I was the
13 third one, we were very involved with helping our
14 father in any -- any way we can, in any assignment
15 that we would get. At a young age, we learned how to
16 operate a tractor, a truck, and how to assist in
17 irrigating.

18 Q. Do you still have any farmland that you
19 manage?

20 A. Yes. My wife and I have 3 acres of land with
21 our home, and I have 40 pecan trees on those 3 acres.

22 Q. Do you still irrigate with water from EP1?

23 A. Yes, ma'am, I do.

24 Q. All right. Did you go to college?

25 A. Yes, ma'am. I attended some college at the

1 community college there in El Paso and the University
2 of Texas at El Paso. I don't have a degree, though.

3 **Q. What areas did you study in?**

4 A. At the time I was working law enforcement so
5 I took a lot of law enforcement classes.

6 **Q. And did you have any -- what was your**
7 **professional -- what was your profession before you**
8 **joined EP1?**

9 A. I worked for the El Paso County Sheriff's
10 Department there in El Paso.

11 **Q. How long did you work there?**

12 A. 15 years.

13 **Q. What was your -- what was the last job you**
14 **held with the El Paso County Sheriff's Department?**

15 A. I held the position of chief deputy, the
16 assistant to the sheriff.

17 **Q. Prior to becoming general manager for EP1,**
18 **did you have any other association with EP1 prior to**
19 **that official association?**

20 A. Yes, ma'am. I ran for the board of
21 directors, and I served on the board of directors for
22 three years.

23 **Q. Okay. And how long have you been general**
24 **manager?**

25 A. 18 years. I started September 3rd of 2003 to

1 present.

2 Q. Could you just -- we're going to get into
3 this in a little more detail, but in a couple
4 sentences, could you tell us the general duties of the
5 general manager at EP1?

6 A. Yes. Yes, ma'am. Well, I'm responsible for
7 -- for operating and supervising the irrigation
8 district. I have 105 employees. I have six assistant
9 managers that I rely a lot on, and I try and meet with
10 them on a daily basis to get an idea of what's going
11 on, what they're working on, and anything that I need
12 to be briefed on.

13 Q. Okay. Let's take a look at Reyes
14 Demonstrative Exhibit 1, please -- oops, 3, sorry.
15 Mr. Reyes, do you recognize Reyes Demonstrative
16 Exhibit 3?

17 A. Yes, ma'am. That's the latest organizational
18 chart for the EP No. 1 district.

19 Q. Okay. Could you start with the water master
20 and operate -- operations manager and sort of walk us
21 through what the people that report to you do?

22 A. Okay. The water master, he handles all the
23 operations for bringing down the irrigation water,
24 taking the orders from farmers from El Paso City,
25 water utilities. He handles all the supervision of

1 the water records, handles our dispatch office, our
2 river team, and all our ditch riders, and he also has
3 five assistant supervisors that -- that assist him.
4 During irrigation, we operate 24 hours, 7 days a week.

5 **Q. Okay. What about the maintenance manager?**

6 A. Our maintenance manager is in charge of up
7 keeping all our maintenance, whether it be canals,
8 drains. He also supervises the mechanics shop and any
9 repairs that need to be done to the system, whether it
10 be replacement of turnouts or repairing banks on -- on
11 the canals. He'll do -- he'll do all that. He's also
12 in charge of our mechanics and welders, and we
13 manufacture almost all the gates that we utilize now
14 there locally in our shop, and we also do probably
15 about 99 percent of the mechanic work, anything from
16 tune ups to oil changes to overhauls and so on.

17 **Q. So the maintenance manager is also**
18 **responsible for maintaining the canal and the delivery**
19 **system that the District operates?**

20 A. That's correct. He's -- he's got a number of
21 -- of employees, and he's got -- also has five
22 assistant managers that -- that assist him with the
23 supervision of the men, but he'll do everything from
24 mowing canals, supervising that to rebuilding
25 structures and so on.

1 **Q. How many miles of canals does he have**
2 **responsibility for?**

3 A. We have 350 miles of canals, 250 miles of
4 drains, and 30 miles of laterals that -- that we own
5 and operate.

6 **Q. Okay. What does the licensing manager do?**

7 A. The licensing manager, he takes care of our
8 engineer section of -- of our office. He handles
9 anything from people wanting to cross our canals or
10 drains to put in streets or just any type of issue
11 that comes up. Sometimes we -- we get requests to put
12 in water lines and so on so he handles all the
13 licensing issues.

14 **Q. All right. Then we get to the chief**
15 **administrative officer. What does that person do?**

16 A. Yes. The chief administrative officer
17 assists me with communication with the other managers.
18 She's also in charge of our IT section, our HR
19 section, and -- and really handles a lot of the duties
20 that -- that I give her. She also supervises our
21 grant writer.

22 **Q. And we'll hear more about grants later,**
23 **correct?**

24 A. Yes, ma'am.

25 **Q. All right. What about the office manager/tax**

1 **collector, what does that person focus on?**

2 A. Our office manager/tax collector, she handles
3 nothing but the taxing part of the irrigation
4 district, collecting taxes, sending out notices, and
5 keeping records of -- of the taxing part of it.

6 **Q. Why is that -- why is that an important**
7 **function for EP1?**

8 A. It's an important function from the start, we
9 -- we would collect taxes to repay the -- the debt
10 that we had with -- with the Bureau of Reclamation.

11 **Q. And what happens if someone doesn't pay their**
12 **taxes?**

13 A. Well, the -- if someone doesn't pay their
14 taxes, they don't receive Project water, and if it's a
15 delinquent account past two years, then we refer to an
16 attorney for -- for an attempt to collect.

17 **Q. Okay. Do you -- do you supervise Dr. Blair?**

18 A. Yes, I do.

19 **Q. And what -- I see chief financial officer up**
20 **there. Is that someone else who you work closely**
21 **with?**

22 A. Yes. The chief financial officer actually
23 reports directly to the Board, but the Board gave me
24 also the authority to -- to supervise, and I work very
25 closely with her on -- on different issues on -- on

1 funding, on grants, on keeping track of -- of our
2 budget and so on.

3 Q. Okay. So we -- and then as far as another
4 area in which you have some responsibility, this
5 morning we heard some testimony from Dr. Blair
6 distinguishing between allocations from the Project
7 and allotments for the individual users within the
8 District. Do you agree that the volume of water made
9 available to the District's water users can be
10 referred to as an allotment?

11 A. Yes, ma'am.

12 Q. And are you involved in that process?

13 A. Yes, I am. When Dr. Blair meets with the
14 allocation committee, he'll keep me briefed on -- on
15 what their discussions have been, what they're looking
16 at, what the water levels are at the -- at the dams
17 and what they expect -- what -- what the snow pack is
18 and -- and so on, and then he'll -- he and I will
19 jointly do a presentation to our board of directors
20 where then they, at the recommendation of -- of
21 Dr. Blair, they'll -- they'll issue an allotment to
22 our water users.

23 Q. And are you involved in the farmer meetings
24 when the allotments are announced each year?

25 A. Yes, ma'am. I try and meet with farmers

1 three or four times a -- during the irrigation season
2 to keep them abreast of -- of what the allotment is
3 looking like, what -- if -- if we started off with --
4 with a low allotment, then as -- and if it's possible
5 to increase, I keep them abreast of the increases when
6 we increase the allotment.

7 Q. Okay. Now, sometimes I think the terms
8 allotment and allocation get used interchangeably by
9 the Board and -- and in your office. Does that happen
10 sometimes?

11 A. Yes, it does.

12 Q. So during this examination, I'm going to try
13 and ask you to stick to water allotments being that
14 which is the amount or the volume that's provided to
15 the constituents each year. Does that sound okay?

16 A. Yes, ma'am.

17 Q. Okay. Now, Mr. Reyes, have you received any
18 awards as general manager?

19 A. Yes, ma'am, I've been fortunate. I -- I
20 received the blue legacy award in 2017 from the Texas
21 Water Development Board. They recognized me and
22 recognized our district on -- on the upgrades of our
23 system, of our concrete lining of canals and
24 replacement of head gates and upgrading our telemetry
25 system.

1 **Q.** How often does the Texas Water Development
2 Board give that award?

3 A. On a yearly basis.

4 **Q.** Did you also receive an award for innovation
5 from AT&T?

6 A. I did. I received an AT&T award in 2020 on
7 the upgrading of our telemetry system, the utilization
8 of solar panels and -- and upgrading of -- of some of
9 our gates, making them automatic.

10 **MS. KLAHN:** Okay. Could we have Reyes
11 Demo Exhibit 1, please?

12 **Q.** (BY MS. KLAHN) Were you -- have you also been
13 recognized by Irrigation Leader?

14 A. Yes. That's a national magazine. I was
15 recognized in June of 2017 with the magazine. They
16 recognized some of the projects, did an interview with
17 me on what I was doing to upgrade our system, actually
18 came out and physically toured our district and took
19 pictures of -- of us constructing gates and replacing
20 gates and -- and some of the projects that we've
21 completed.

22 **Q.** Okay.

23 **MS. KLAHN:** And let's have Reyes Exhibit
24 2, please.

25 **Q.** (BY MS. KLAHN) Were you also recognized by

1 the same publication in 2020?

2 A. Yes. They recognized a group of us managers,
3 irrigation managers, throughout the United States, and
4 for our accomplishments, so they recognized me again
5 in that magazine.

6 Q. Okay. Pretty nice. Let's talk a little bit
7 about the history of the district.

8 MS. KLAHN: Could we have what's been
9 marked and admitted before as U.S. Exhibit 458,
10 please?

11 Q. (BY MS. KLAHN) Mr. Reyes, you're being shown
12 the Rio Grande Project Contract November 10th, 1937,
13 El Paso County Water Improvement District No. 1. Do
14 you recognize this exhibit?

15 A. Yes, ma'am, I do.

16 Q. What is it?

17 A. It's the repayment contract that we signed
18 with the Department of Interior on repaying the debt
19 for the construction of -- of the Project and our
20 portion of it, our ancestors committed to it early on,
21 and we followed through until that debt was paid off.

22 Q. Okay. What was the purpose of the -- I'm
23 sorry. You just explained what the purpose of the
24 repayment contract was. Did EP1 repay the Bureau of
25 Reclamation?

1 A. Yes, we did.

2 Q. Okay. Let me show you what's been marked as
3 U.S. Exhibit 512 and also previously admitted.

4 Mr. Reyes, this is U.S. Exhibit 512. It's a contract
5 between the United States of America and El Paso
6 County Water Improvement District No. 1, transfer of
7 the Operation and Maintenance of Project Works. Have
8 you seen this before?

9 A. Yes, ma'am, I have.

10 Q. What is it?

11 A. This is the contract, there again, when the
12 Department of Interior, when we took over all
13 operations and maintenance of -- of the Project.

14 Q. What did the transfer contract accomplish
15 after you paid off your debt?

16 A. Well, it accomplished a lot. We were able to
17 take over the Project, and the water master, the ditch
18 riders and so on came under our jurisdiction and then
19 this -- this agreement also called for us to come up
20 with an operating agreement.

21 Q. Okay.

22 A. Between the Bureau of Reclamation, EBID, and
23 ourselves.

24 Q. Okay. And did you -- what's the date of this
25 contract; do you know? We can look at --

1 A. It was 1980.

2 Q. Okay.

3 A. March 14th of 1980.

4 Q. Okay. And when was an operating agreement
5 finally entered into?

6 A. It was finally in 2008.

7 Q. Okay. All right. Let's take a look at Reyes
8 Exhibit 4, please. Okay. Mr. Reyes, could you please
9 identify what we're seeing on this map?

10 A. Yes. That's a map of our irrigation district
11 from the New Mexico state line down to the Hudspeth
12 County line, and it shows our different units, our
13 different divisions. It starts up in the -- in the
14 north in the Canutillo area and then works its way
15 down south all the way to the Hudspeth County line.

16 Q. Okay. And the individual water units are
17 colored different colors?

18 A. That's correct. We have the first one 6B
19 that's -- it's located on the west side. Our district
20 is divided by the Franklin Mountains and by downtown
21 El Paso, and -- and then it continues below downtown
22 El Paso, and then we have Unit 7A, 7B, 8A, 8 B, 9A,
23 and 9B, all the way down to the Hudspeth County line.

24 Q. Okay. And did the Bureau of Reclamation
25 create those units?

1 A. Yes, they did.

2 **Q. Okay. As general manager, how would you**
3 **describe EP1's primary function?**

4 A. Our primary function is to efficiently and
5 most economically bring Project water down from
6 Caballo Dam and deliver it to our water users.

7 **Q. What are water-righted acres?**

8 A. Water-righted acres are those acres that --
9 that are in good standing with the District that
10 actually are within our -- our irrigation district and
11 can actually receive water through our canal system
12 into our laterals and -- and into the community
13 ditches or farm ditches.

14 **Q. Are -- are all the acres within EP1**
15 **water-righted acres?**

16 A. No, they're not.

17 **Q. How many water-righted acres do you have?**

18 A. 69,010.

19 **Q. Okay. Let's talk about the categories of**
20 **water users in the district. You have, I think, two**
21 **categories of irrigation water users; is that right?**

22 A. Yes. Actually, three with the City of El
23 Paso.

24 **Q. Okay.**

25 A. The small tract water user, that's 2 acres or

1 less, and then the farm tracts, that's 2 acres or
2 more.

3 Q. Okay. And then the City of El Paso, which
4 also owns or leases water-righted acres?

5 A. That's correct.

6 Q. Okay. So let's talk about the -- let's start
7 with the larger farm parcels, those over 2 acres. Can
8 you describe, generally, how the farmers order water
9 through the District?

10 A. Yes. They -- they can either call our
11 dispatch office on the phone or fax their water order
12 or get online and -- and -- and e-mail in a water
13 order or we still have a lot of farmers that prefer to
14 come in personally and place their water order.

15 Q. So if a farmer were to come in today -- well,
16 not today. If a farmer were to come in, in the middle
17 of June, for example, and the Project was operating,
18 would they be able to order water for the next day?

19 A. It would depend. If we had water in that
20 canal and we could deliver to them the next day, then
21 we would, but when they place their water order, they
22 -- they give us a due date. That due date consists of
23 when the farmer is going to be ready, when he'll have
24 his field prepared and ready to be irrigated, and we
25 try and meet that due date. Sometimes it's a few days

1 before. If we have water in the area and they're
2 ready, we go ahead and deliver it early, and sometimes
3 it's a few days afterwards, if there's been some type
4 of issue or somebody hasn't finished irrigating above
5 stream from them, then they'll have to wait their
6 turn.

7 **Q. Okay. So does the system work the same for**
8 **the small tracts, those under 2 acres?**

9 A. No, ma'am. The small tracts, we schedule
10 them the whole irrigation season. We'll -- we'll come
11 out with -- with a schedule. Once we know what the
12 allotment is, we'll come out with a schedule by date.
13 So the small tracts irrigators will know exactly what
14 date they will receive the water throughout the
15 irrigation season.

16 **Q. And small tract irrigators, are those mainly**
17 **sort of large suburban lots or are there actually some**
18 **small farm operations?**

19 A. There's -- there's small -- they're a lot of
20 small farm area that have vegetables or have -- like I
21 have 40 pecan trees. There's different type -- type
22 of products that are -- that are grown.

23 **Q. And why is it more efficient to -- is it more**
24 **-- do you -- do you do the small tract operations that**
25 **way because it's more efficient?**

1 A. Yes. Because we have so many of them. There
2 are large number of small tracts so -- so anyway, we
3 do them jointly by neighborhoods so that way -- the
4 other way, if they were -- we allow them to -- to call
5 for their water, they would call for the water, bring
6 it down, irrigate, and maybe their neighbor wouldn't
7 want to irrigate until two or three days later, and
8 we'd have to do the same thing again. So we would
9 lose a lot of water through seepage and evaporation.
10 So irrigating the -- by neighborhood has -- has worked
11 out great, and we conserve and it's very efficient.

12 **Q. How long have you been doing that type of**
13 **procedure for the small tracts?**

14 A. Actually, this procedure started right after
15 when we took operations a year or two after that, they
16 started with small tract irrigators.

17 **Q. In the early 1980s?**

18 A. Yes.

19 **Q. Okay. Now, let's talk about the City of El**
20 **Paso. We've -- we've heard from Dr. Blair that the**
21 **City owned some water-righted acres, they leased some**
22 **water-righted acres. How did they -- how did they**
23 **place their water orders?**

24 A. They place them the same way. They'll fax in
25 or e-mail in their -- their water order to our

1 operation office, to our dispatch office, and then
2 from there, Mr. Rios, our water master, will -- will
3 coordinate their -- their delivery.

4 Q. Are deliveries to the El Paso Water Utility
5 charged to EP1 the same as the other deliveries to
6 other EP1 users?

7 A. Yes. They get the same type of allotment
8 that everyone else does.

9 Q. Okay. What is the maximum amount of Project
10 water that EP1 -- sorry -- that El Paso Water Utility
11 could get in a given year?

12 A. They could get up to 60,000 acre-feet.

13 Q. So there's another municipal water supplier,
14 I believe, in the lower valley. Is it -- are you
15 familiar with the Lower Valley Water District?

16 A. Yes.

17 Q. Do they also receive Project water?

18 A. Yes, they do. Under the 1920 Act, they can
19 also -- they entered into a contract in 1988 that they
20 -- they get -- go out and seek leases. They don't own
21 any -- any land, but they do go out and get leases and
22 -- and then that water is delivered to El Paso Water
23 Utilities where it -- it's treated and then they
24 deliver it into Lower Valley Water District's lines.

25 Q. And just looking at Reyes Exhibit 4, can you

1 just describe generally which water units the Lower
2 Valley Water District operates in?

3 A. Yes. Lower Valley Water District is located
4 outside the city limits in the Lower Valley area of El
5 Paso County, and it's roughly where the -- the end of
6 Unit 7B ends and -- and the other divisions start, and
7 then it'll go all the way down to the little town of
8 Fabens.

9 Q. So if -- if folks down there that can access
10 that water then don't have to be on a well; is that
11 right?

12 A. That is correct. We still have unfortunately
13 a lot of people that have wells for their residence,
14 and if they have wells, then that means they don't
15 have sewer system either, and they have what's called
16 a septic tank. So it poses a lot of issues, a lot of
17 health issues, and so the more people that can -- can
18 be hooked up to potable water, the better off for
19 everybody in the community.

20 Q. All right. You can -- let's just leave the
21 map up there for now.

22 As general manager, what do you consider to
23 be the main source of water for EP1's constituents?

24 A. Definitely the Project water that comes out
25 of --

1 **Q. Why?**

2 A. Because we know exactly how much water is
3 available after the Allocation Committee meets, and --
4 and it's -- it's a secured amount of water that --
5 that's going to be delivered to our constituents,
6 during full allocations, then we -- or full
7 allotments, we have plenty of water to deliver to them
8 up to 4 acre-feet.

9 **Q. Does -- does the El Paso Water Utility also**
10 **discharge some effluent into EP1's canals?**

11 A. Yes, ma'am.

12 **Q. Could you generally locate where that**
13 **effluent gets discharged by -- just by -- maybe by**
14 **water unit?**

15 A. Yes. The Haskell Water Treatment Plant
16 delivers just south of -- of downtown El Paso when --
17 where our Lower Valley District starts more or less,
18 right in that area right there, and that -- that water
19 is -- is delivered into the American Canal Extension,
20 and then the Robert Bustamonte Water Treatment Plant
21 delivers water into our Riverside Canal.

22 **Q. Okay. Now, let me ask you a couple questions**
23 **about the availability of the effluent from El Paso**
24 **Water Utilities. I want to first ask you about**
25 **availability on a 24-hour period and then on an annual**

1 period. So first, is the -- is the effluent from
2 Haskell and Bustamonte, is it discharged into the
3 canals at a constant rate over the course of 24 hours?

4 A. No. It's actually like a roller coaster.
5 After 5:00 p.m. in the afternoon, water levels that
6 are discharged rise, and after midnight, they go down.
7 As people are utilizing water in their homes and it's
8 being sent to the water treatment plants, that's
9 what's available. During the -- the -- the long year,
10 we receive effluent water during the winter months.
11 During the summer months, that water goes into what's
12 called the Rio Bosque Park under agreements with El
13 Paso Water Utilities.

14 Q. So it's used for irrigation in Rio Bosque
15 Park?

16 A. Yes. It's a 400-acre park that receives
17 water into their -- their ponds and into all their
18 cottonwoods and so on that -- all the vegetation that
19 they have.

20 Q. Sure. So during -- as comparing the
21 irrigation season with the non-irrigation season,
22 which of those receives more -- in which of those do
23 you receive more effluent?

24 A. During the winter months, we receive more.

25 Q. Okay. What about the quality of the

1 effluent, can -- could -- if it was available, could
2 all EP1 farmers make use of the El Paso Water Utility
3 effluent?

4 A. No. Because you -- you shouldn't use that
5 water, like, if you have vegetables or you're growing
6 onions or any type of edible project that you might
7 have, you cannot use effluent water.

8 Q. Could you use the effluent as a replacement
9 for Project water?

10 A. No.

11 Q. Because of the limitations we've been
12 discussing?

13 A. Yeah. It's so low, and the -- just depends
14 on when you get it and the hours that -- that you get
15 it in.

16 Q. With that said, does the District sometimes
17 make use of the effluent if it is available during the
18 irrigation season?

19 A. Yes. If it's being discharged into our
20 Riverside Canal and we have Project water in there,
21 also, it'll mix with our Project water.

22 Q. Okay. Maybe stretch the Project water a
23 little further?

24 A. That -- that gives us more water for our
25 constituents, yes.

1 Q. What about -- let's talk about groundwater.
2 Does the District have some groundwater wells?

3 A. Yes.

4 Q. And do you have some in the upper valley?

5 A. Yes. We have three in the upper valley just
6 south of Canutillo.

7 Q. Okay.

8 A. And the rest are in the lower valley, and all
9 those are located, oh, below Unit 7B at the start
10 maybe of 7A.

11 Q. Okay.

12 A. So not all our constituents could receive
13 that well water.

14 Q. Let's talk about them in two groups. Let's
15 talk about the upper valley wells first.

16 A. Okay.

17 Q. Do you use the upper -- do the upper valley
18 wells produce an adequate quality of groundwater?

19 A. Yes. It's very good quality water.

20 Q. And if you pump the wells in the upper
21 valley, are they charged against your project
22 allocation?

23 A. They are.

24 Q. Is that because they're connected to the
25 river?

1 A. They're close to the river so we get charged
2 for it.

3 Q. Okay. Do you use those wells from time to
4 time?

5 A. We do. Our water master will sometimes
6 utilize it if he needs them to push Project water for
7 delivery, he'll go ahead and turn them on.

8 Q. Okay. Let's talk about the groundwater in
9 the -- or the wells, rather, in the lower valley. Is
10 -- what's -- is the quality of the groundwater in the
11 wells in the lower valley good?

12 A. No. If -- like, Dr. Blair said earlier, it's
13 water that's recovered from our irrigation system,
14 mostly drain water that's at a certain level. Our
15 wells are only at -- between 90 and 100 feet deep, and
16 it's very poor quality water. There -- we have wells
17 that are 1,200 TDS, but they -- and then we have some
18 wells that rise all the way up to 3,200 TDS, which is
19 a lot of salt.

20 Q. Do the farmers object when you turn on the
21 wells in the lower valley?

22 A. Yes. Yes, they do.

23 Q. Do you sometimes have to turn on the wells in
24 the lower valley at all?

25 A. Yes, we do. There again, if -- if the river

1 -- if the Project water that's coming down the river
2 is dropped and Robert needs to turn on some wells to
3 utilize them as push water to deliver Project water,
4 he will. He'll notify me and then he'll turn on
5 whatever wells he needs for a short period of time.

6 **Q. Could they be replacement -- could the lower**
7 **valley wells be replacement for Project water?**

8 A. No. No. Because of the poor quality and --
9 and then the -- the amount of -- of acre-feet that
10 they would deliver is not ample enough to -- to
11 satisfy everybody.

12 **Q. Okay.**

13 A. And then -- then they're not located where
14 they could -- they could deliver water to -- to all
15 our constituents.

16 **Q. Okay. Let's talk about -- let's change gears**
17 **a little bit. Are you familiar with the term primary**
18 **irrigation season?**

19 A. Yes, ma'am.

20 **Q. What does that refer to?**

21 A. The primary irrigation season is when we have
22 -- when we release Project water out of the -- out of
23 Caballo Dam.

24 **Q. And generally, when is primary irrigation**
25 **season?**

1 A. Well, during a full allocation, it would be
2 between March to mid October.

3 Q. And in a dry year like this, what was the
4 primary irrigation season?

5 A. We started June 1 and ended up September 4th.

6 Q. Okay. Is there a secondary irrigation
7 season?

8 A. Yes. There is.

9 Q. Is that also known as winter?

10 A. Yes.

11 Q. Does water get released from the dam during
12 the secondary irrigation season?

13 A. No, ma'am. The -- we utilize return flows,
14 any -- any effluent water that we might be receiving
15 for secondary.

16 Q. And do many farmers take delivery of
17 irrigation water during the secondary irrigation
18 season?

19 A. No. There is very few that -- that utilize
20 it.

21 Q. Does EBID have a secondary irrigation season?

22 A. Yes, they do.

23 Q. Do you know what the source of water for
24 farmers is for their secondary irrigation season in
25 EBID?

1 A. Yes. They're groundwater wells.

2 Q. I'd like to ask you about the Hudspeth County
3 Conservation and Reclamation District. Are you
4 familiar with -- I'm going to abbreviate that for
5 Hudspeth. Are you familiar with Hudspeth?

6 A. Yes, ma'am.

7 Q. Can you just point out on Exhibit 4 where the
8 Hudspeth District starts?

9 A. Yes, ma'am. It's at the tail end of our
10 district where our district ends where you see
11 Tornillo Canal, just a little bit further is the
12 Hudspeth County line, and that's where Hudspeth County
13 starts.

14 Q. Okay. That's where the district line is, as
15 well, Hudspeth District line, as well?

16 A. Yes, ma'am.

17 Q. Okay. During opening statements, New Mexico
18 counsel emphasized that there was a contractual
19 relationship between Hudspeth and EP1, and I'd like to
20 explore that with you from a factual perspective. Is
21 that an accurate statement, are there contracts
22 currently between Hudspeth and the El Paso District?

23 A. No, ma'am, there is not.

24 Q. For any kind of water, no current contracts;
25 is that right?

1 A. That -- that's correct.

2 Q. Okay. Now, have there been contracts in the
3 past between EP1 and Hudspeth?

4 A. Yes, ma'am. There was a contract. Prior to
5 me coming on as general manager, there was a contract
6 to deliver effluent water to them.

7 Q. And so this would have been effluent from the
8 El Paso Water Utility, correct?

9 A. That's correct.

10 Q. And that effluent would potentially have had
11 some Project water as the source of the effluent,
12 correct?

13 A. Yes, ma'am.

14 Q. And if El Paso had taken Project water into
15 their system, the El Paso District would have been
16 charged for it, correct?

17 A. That's correct, yes, ma'am.

18 Q. Okay. So in the 1990s, was that when those
19 contracts were that you're familiar with?

20 A. Yes.

21 Q. And remind us when you started as manager.

22 A. In September 3rd of 2003.

23 Q. Okay. So based on your time as manager, have
24 you ever run across any records of whether there was
25 any water or any effluent delivered to Hudspeth during

1 **that time frame in the 19 --**

2 A. Yes. I have seen some records of some water
3 was delivered to them in the '90s.

4 **Q. Okay. Now, there's -- there was a contract**
5 **entered with Hudspeth during your tenure, wasn't**
6 **there, in 2010?**

7 A. Yes, ma'am. In 2010, there was a ten-year
8 contract that was signed between EP No. 1 and -- and
9 Hudspeth County.

10 **Q. Why?**

11 A. I guess it was wishful thinking that we were
12 going to come out of drought and maybe we could start
13 delivering effluent water to them again. They were in
14 dire need of -- of water for their crops.

15 **Q. Are they still in dire need of water?**

16 A. Yes. It's a constant battle for -- for them.
17 They -- they receive whatever goes down our drains and
18 out our -- our system or any storm water that comes
19 down off the arroyos and into their canal system.

20 **Q. So were there ever any deliveries of water**
21 **made to Hudspeth during the time that 2010 effluent**
22 **contract was in place?**

23 A. No, ma'am.

24 **Q. Okay. Let's talk about the District's**
25 **relationship to Mexico. Does the District coordinate**

1 **with Mexico regarding deliveries of Project supply?**

2 A. Yes, ma'am. We do International Boundary and
3 Water Commission call for a joint meeting once a month
4 between EBID, ourselves, EP No. 1, and -- and Mexico
5 and the Bureau of Reclamation. In there, we discuss
6 if it's prior to the irrigation season, we -- Mexico
7 relies a lot on us as to when we're going to release,
8 because the 1906 Treaty says they cannot receive any
9 water unless it's in the El Paso vicinity, which would
10 mean we would have -- EP No. 1 would have to order
11 water and bring it down and -- and have it in our
12 system where they could start taking their water.

13 **Q. What are the benefits of this kind of**
14 **coordination?**

15 A. Well, we feel that by coordinating together,
16 we can conserve, not only us, but -- and Mexico, but
17 also EBID. We try and coordinate as much as we can
18 where we can release -- release together and -- and
19 have water and have ample water for everybody if -- if
20 we have it.

21 **Q. Okay. I'd like to turn to the District's**
22 **water management and conservation efforts. Does EP1**
23 **have a water management conservation program?**

24 A. Yes, ma'am, we do.

25 **Q. Why is that?**

1 A. Well, it -- it gives our water master an idea
2 of -- of what water is available, what's coming down
3 by -- by us having telemetry from the time the water
4 is released at Caballo and on down the river. We've
5 got several telemetry sites where we monitor the water
6 and so he knows exactly what water is coming down, and
7 if he needs to order more push water, then -- then he
8 will, or if he needs to -- if he's had push water and
9 he needs to cut down on it, he will do that. He
10 coordinates very closely with -- with EBID's water
11 master, also, on that.

12 Q. Let me just take a step back. I think you're
13 -- you may be describing some of your water management
14 efforts when you're talking about your telemetry and
15 water measurement program; is that right?

16 A. Yes, ma'am.

17 Q. And I -- and I just wanted to ask sort of a
18 threshold question, which is why do you have a program
19 that specifically focuses on water management and
20 conservation? What's -- what are the benefits?

21 A. Well, the benefits is we're trying to
22 conserve and deliver more -- as efficient as we can
23 water down to our -- our constituents, the City of El
24 Paso and our small tract water users or our farmers.

25 Q. Okay. So let's put up Reyes Exhibit 7,

1 please. The photograph we have here, is this an
2 example of some of the telemetry you were talking
3 about a minute ago?

4 A. Yes, ma'am. We have telemetry not only along
5 the river when the water is released at Caballo, we
6 start monitoring the water once it's released at
7 Caballo and it's brought down the river and it makes
8 its way to the American Dam and Mesilla Dam and then
9 we monitor and we have telemetry along some of our
10 main canals and in a lot of our laterals. We have a
11 little over 200 telemetry sites now that we have
12 installed.

13 Q. Okay. And when was this picture taken?

14 A. This picture was taken -- and I'll refer to
15 my -- my one sheet of -- this picture was taken April
16 of 2019. This is the I-57 lateral.

17 Q. Who took the picture?

18 A. It was taken by Omar Martinez.

19 Q. Okay. And he works for you, right?

20 A. He works for us, yes. And he's our --

21 Q. Is he your grant writer?

22 A. -- grant writer and keeps track of all the
23 work we're doing and documentation that -- because we
24 need to send in reports if it's grants that we receive
25 from Texas Water Development Board, there's several

1 things that we have to comply with to keep delivering
2 reports to them or if it's the Bureau of Reclamation,
3 we do the same thing for them. And then we give a
4 monthly report to our board of directors, also,
5 because they fund some of these projects.

6 Q. Okay. So I think it may have gotten a little
7 bit mixed up just because of the order that I asked
8 the questions, but let me just go back. So I think
9 you talked a couple times about having telemetry and
10 measurement devices in New Mexico. So I just want to
11 make sure that I'm clear. So EPl maintains
12 measurement devices and telemetry on structures within
13 the Project in New Mexico; is that correct?

14 A. That -- that is correct. From the time the
15 water leaves the dam at Caballo.

16 Q. Okay. So let's turn and talk about
17 conservation for a minute. Can you tell me what types
18 of projects your conservation program focuses on?

19 A. Yes. We're doing a lot of reshaping of our
20 canals and making them more efficient, narrowing them,
21 and then concrete lining them and replacing head gates
22 along the way, modernizing. These are head gates that
23 have existence since the early 1950s in some areas, so
24 they need a lot of upgrading.

25 Q. Okay. Let's take a look at photos of some of

1 the projects that you've either completed or are in
2 the process of.

3 MS. KLAHN: Would we have Reyes Exhibit
4 5, please?

5 Q. (BY MS. KLAHN) Mr. Reyes, could you describe
6 what we're seeing here?

7 A. Yes. This is our -- our Riverside Canal, and
8 just -- just at the bottom is -- is our -- what we
9 call our partidior structure. It's Hispanic word for
10 the parting of the water, because it parts it into the
11 Riverside Canal that continues on, and you'll see a
12 picture further down, and then it sends water into our
13 Franklin feeder, also. But this is a Riverside Canal.
14 This is a mile and a half of concrete lining that we
15 just completed this last winter, and if you'll look,
16 that's the Franklin Mountains at the top of the
17 photograph, and then to your left, you can barely see
18 the Jonathan Rogers Water Treatment Plant and the
19 Robert Bustamonte Sewer Treatment Plant.

20 Q. So the red -- kind of the red stacks that you
21 can barely see there?

22 A. Yes. That's Jonathan Rogers Water Treatment
23 Plant.

24 Q. Okay. And behind the Rogers Water Treatment
25 Plant, is that the border wall we're seeing?

1 A. That's correct. That's -- that's just a
2 little further down is where the American Canal
3 Extension ends and our Riverside Canal starts and then
4 that's the intake where Jonathan Rogers takes water
5 into their plant from our Riverside Canal.

6 **Q. Okay.**

7 A. And that's part of the tour that we did.

8 **Q. Part of the basin tour?**

9 A. We went to that location.

10 **Q. Okay. Could you tell us who took this**
11 **picture?**

12 A. Yes. This picture was taken, again, by Omar
13 Martinez, and it was taken June 1 of 2021.

14 **Q. Okay. Let's have Reyes Exhibit 6, please.**
15 **Mr. Reyes, looking at Exhibit 6, what are we seeing**
16 **here?**

17 A. This is a continuation of our Riverside
18 Canal. This is just downstream of the partidor that I
19 talked about. That brown fence that you see there,
20 that's the border fence, so our Riverside Canal runs
21 parallel with that border fence. We concrete lined
22 close to a mile this last year in this section, and
23 we're scheduled to concrete line about 2 miles this --
24 this winter. As a matter of fact, our men have
25 already started reshaping the -- the canal channel

1 it's onto -- to start their concrete lining.

2 Q. Okay. Did Omar Martinez take this picture?

3 A. He did. He took this picture April 9th of
4 2021.

5 Q. Okay. Let's take a look at Reyes Exhibit 8.
6 What are we seeing here?

7 A. Okay. This is our Riverside Canal, but this
8 is the earthen portion of it. You can see it's much
9 wider. There's green vegetation on both banks
10 growing. When you have earthen canals, you have that
11 issue that constantly have to mow the banks to keep
12 the vegetation down. This is a -- the bridge that
13 you're seeing there is a telemetry site. This is
14 water being monitored as to the flow and how much
15 water is in -- in the channel, and then the bridge
16 there further back, that's a border patrol bridge that
17 -- and you see the gates that go into the -- towards
18 the river.

19 Q. So this -- so this is a -- this is a part of
20 the Riverside Canal that's not been concrete lined,
21 correct?

22 A. That's correct. This is part that's targeted
23 to be concrete lined this winter.

24 Q. So seepage from the Riverside Canal currently
25 in this section, part of it would go to Mexico,

1 **wouldn't it?**

2 A. Yes. The -- the flows of water, once -- once
3 it goes underground, it flows towards -- towards the
4 river and towards Mexico.

5 **Q. Okay.**

6 A. And this is -- this is a huge problem area
7 for us in this canal. It's very porous. We lose a
8 lot of water by seepage and evaporation.

9 **Q. Okay. So conservation -- I'm sorry. What is**
10 **-- just for the record, why don't you explain what**
11 **concrete lining does that is beneficial?**

12 A. Okay. Well, concrete lining, I'll tell you
13 what some of the projects that we've done, it has
14 conserved a little over 3,200 acre-feet of water.
15 3,200 acre-feet of water could irrigate 800 acres of
16 land with a full allocation. So the more that we
17 concrete line, the more efficient our -- our system
18 gets, and we're able to deliver water a lot faster and
19 lose less water. Any time we apply for a grant, we
20 have to comply with it, whether it be Texas Water
21 Development Board or the Bureau of Reclamation. They
22 want to know exactly what we estimate how much water
23 we are going to conserve. So that's one of the
24 requirements.

25 **Q. So do you just estimate how much water you're**

1 going to conserve or do you actually do any studies to
2 measure?

3 A. We actually do what's called the seepage test
4 that are different canals and -- and submit the
5 results to whether it be the Bureau of Reclamation or
6 Texas Water Development Board. So that's how we
7 estimate more or less how much water we're going to
8 conserve.

9 Q. Okay. Let's take a look at the last picture,
10 which is Reyes Exhibit 9. This project looks a little
11 different. I see some houses back there. Can you
12 tell us about this conservation project?

13 A. Yes, ma'am. This -- this is -- this picture
14 was taken by Omar Martinez, also. This was taken
15 January 11th of 2019. This is the east lateral. It's
16 a smaller lateral, but we targeted it because we have
17 homes -- in some areas, we have homes on both sides of
18 that lateral, and in some areas, we have homes on one
19 side and businesses on the other and there's always a
20 concern when you have an earthen canal that you're
21 going to have a ditch break, kids will go mess with
22 your gates or people will go and throw different
23 things, tires or we've even fished out refrigerators
24 and so on that could block a culvert and back up the
25 water and you'd have an overtopping and cause a ditch

1 break. Certainly it's -- it's -- it's a nightmare
2 when those things happen because you never want to
3 flood somebody's home.

4 **Q. So about how much money have you spent on**
5 **your conservation program since you started?**

6 A. We have received a little over \$12 million of
7 grant funding, whether it be from the state or -- or
8 the federal government, and -- and then we've also had
9 our board of directors put in a little over \$2 million
10 to continue our projects in areas that we did not
11 receive grant funding and -- and we need to work on.
12 So it's -- it's been a work in progress, but it's --
13 it's been paying off.

14 **Q. So is there -- are there more projects on**
15 **your list for the future?**

16 A. We actually, we have a five-year plan that we
17 worked on between our water master, our maintenance
18 manager, our -- our district engineer and myself on
19 planning the next five years and -- and we actually
20 have funding scheduled for the next five years. We
21 have a little over \$5 million already that we've been
22 awarded, whether it be from Texas Water Development
23 Board or the Bureau of Reclamation to continue
24 concrete lining and upgrading our system.

25 **Q. So what is the next big project that you have**

1 **on this drawing board?**

2 A. We -- we have a section of the -- I mentioned
3 the Franklin feeder from the partidor to Socorro Road.
4 It's about a mile and a quarter that we need to --
5 that finish concrete lining. Once we do that this
6 year, we'll be completely finished with the Franklin
7 feeder. It'll be completely concrete lined. And then
8 we have the continuation of the Riverside Canal.
9 We're going to do another two miles this year, and we
10 have a million dollars already awarded to us that
11 we'll be able to -- to concrete line in 2022 and
12 continue on with the concrete lining. So we are about
13 7 miles of concrete lining that canal, the Riverside
14 Canal, and then we're -- we have a -- a canal that's
15 called the island main where we concreting lining. We
16 did about half a mile last year. That was funded by
17 our board of directors, and we're going to continue
18 doing that, and then we also have -- if -- if
19 everything goes right, special earmark from one of our
20 U.S. representatives that we were awarded close to
21 \$900,000 to finish concrete lining that island main
22 canal.

23 Q. Okay. So you've talked a lot about what the
24 district does for purposes of conservation. Do you do
25 anything to encourage or assist the farmers with

1 **conservation?**

2 A. Yes. We -- we were always looking at what --
3 what funding is available for them to upgrade their
4 turnouts, concrete line their -- their farmers'
5 ditches or laser levelling their fields. So as we
6 meet with them, we try and pass on information to
7 them. A lot of them have taken advantage of -- of --
8 of applying for some of that grant money, but we work
9 very close with a farmer. If they want to replace a
10 turnout or increase the volume of a turnout, then we
11 -- we work with them by -- they fund buying the -- the
12 equipment that we need for the turnout, and we'll do
13 the installation. That saves them money.

14 **Q. Okay. So I want to take a step back and ask**
15 **you, for purposes of planning your conservation and**
16 **water management programs, do you plan on a**
17 **year-by-year basis or for the long term?**

18 A. No. We -- we're always planning for the long
19 term.

20 **Q. Why is that?**

21 A. Well, if things aren't getting -- they're not
22 looking any better with, you know, climate change and
23 less water to work with and so on so we're always
24 looking at the future, what -- what can we do to
25 secure that we'll be able to continue delivering water

1 to our -- to our constituents and to the City of El
2 Paso.

3 Q. Okay. Are you familiar with the 2008
4 Operating Agreement?

5 A. Yes, ma'am, I am.

6 Q. Why -- why are you familiar with it?

7 A. I -- I sat on a lot of the meetings with --
8 with Dr. Blair helping him answer any questions that I
9 could at the time, but it was something that we worked
10 on for some time to get it finished out.

11 Q. Do you consider the 2008 Operating Agreement
12 a conservation and water management measure for the
13 district?

14 A. Oh, most definitely.

15 Q. Let's start with conservation. How is the
16 operating agreement a conservation measure for the
17 district?

18 A. Well, we -- we really wanted to -- to be able
19 to carry over if we conserved any water and -- and
20 carried it over from one year to the next, we really
21 wanted that, I really wanted that, because that gives
22 me the opportunity early on if we conserved water to
23 be able to tell our constituents early on, this is how
24 much water we -- we have for our conservation efforts,
25 not only the district but the farmers and all our

1 water users, and -- and this is what we estimate we
2 are getting allocated this year, so this is how much
3 the allotment will be to begin. That's number one.
4 Number two, I'm also able to tell John Balliew at El
5 Paso Water, this is how much water we're -- we have,
6 and he can plan. His budget starts March 1, so he can
7 plan on budgeting what he needs to do. If there's
8 ample water, then he doesn't have to pump from -- pump
9 his wells during the irrigation season. If we're not
10 going to have any water past two or three months, then
11 he'll have to pump his wells. So he can adjust
12 appropriately, also.

13 **Q. Prior to the operating agreement, you did**
14 **sometimes leave water in the reservoir that you didn't**
15 **use, though, didn't you?**

16 A. Yes, ma'am, we did.

17 **Q. What happened to it at the beginning of the**
18 **next irrigation season of the volume that EP1 had left**
19 **in the reservoir?**

20 A. It was split. 57 percent of it went to EBID
21 and 43 to us. So we lost more than half of it.

22 **Q. Okay. But if you had water in the reservoir,**
23 **why wouldn't you take it all? Why wouldn't you**
24 **allocate and use all of it?**

25 A. Well, we do. We try and utilize -- you know,

1 the water does not belong to the District. It belongs
2 to the constituents, to the water users. They place
3 their water orders, and we deliver it as efficient and
4 as fast as possible to them. You know, they -- we --
5 we try and conserve as much as we can, but it's hard
6 to go out and tell your constituents, hey, you know,
7 practice watering and saving as much as you can when
8 you're going to lose 57 percent of it. It was tough
9 to convince them of that.

10 **Q. Was carryover an important part of your -- of**
11 **your allocation this year in 2021?**

12 A. Yes. Without carryover, we -- we probably
13 wouldn't have opened up -- we wouldn't have had an
14 irrigation season.

15 **Q. Okay. And -- and how did that water get**
16 **carried over? Was 2020 an especially good year?**

17 A. I'll go back to 2019. 2019, we started
18 irrigating June 1, also, and -- and -- but we had a
19 lot of runoff that came in late, but a lot of our
20 cotton farmers didn't plant that year. They laid out
21 a lot of their land, so we carried over a lot of -- a
22 lot of water. We carried over, over 232,000, which is
23 our max cap, but we transferred over 82,000 acre-feet
24 to EBID under the operating agreement, and so that
25 placed us in better position for the following year.

1 We had ample water. We gave a full allocation. But
2 then we didn't have the runoff that we thought we
3 would have, and we fell back into the hole and -- and
4 without the carryover that we had, we wouldn't have
5 opened up this year.

6 Q. So in 2019, you said that you started late,
7 in June, I think, and then there was some late runoff.

8 A. Yes.

9 Q. And -- and you made a comment about the
10 cotton farmers laying out a bunch of ground. What did
11 you mean by that? What -- when did -- when would a
12 cotton farmer have to make that kind of a decision at
13 EP1?

14 A. Well, they've got to make it early on.
15 That's why we release in March. They have to wet
16 their fields in March where they can plant their seeds
17 in April, and in order to make a -- a yield of -- of
18 cotton in October, and if -- if they don't do that,
19 then it's too late for them to -- to get a good yield
20 of -- of cotton.

21 Q. So a June 1st start date means a lot of
22 people can't plant cotton in EP1?

23 A. If -- if they don't have wells, then they
24 don't even attempt it.

25 Q. Do you remember how many acres of cotton were

1 -- are -- would -- would be planted in a good year,
2 like a 2020 year, in EP1?

3 A. Close to between 24 and 25,000 acres of
4 cotton land.

5 Q. About how many were planted this year,
6 Mr. Reyes?

7 A. This year, we didn't have 5,000 acres.

8 JUDGE MELLOY: All right. It's about
9 3:00. I think we've been going for quite a while.
10 Why don't we take our break at this point for 20
11 minutes, and then we'll come back. All right?

12 MS. KLAHN: Thank you.

13 JUDGE MELLOY: Thank you.

14 (Recess.)

15 JUDGE MELLOY: All right. Are we ready
16 to get started again, Ms. Klahn?

17 MS. KLAHN: Yes, thank you, Your Honor.

18 Q. (BY MS. KLAHN) Mr. Reyes, I think we just
19 have one more question. You were saying before the
20 break about the impact of late start to the Project on
21 cotton farmers. During 2021, did you -- did you
22 completely empty your carryover account?

23 A. Yes, ma'am, we did.

24 MS. KLAHN: That's all the questions I
25 have for this witness at this time.

1 JUDGE MELLOY: Ms. Najjar, do you have
2 any questions?

3 MS. NAJJAR: The United States does not
4 have any questions for Mr. Reyes at this time.

5 JUDGE MELLOY: Okay. And Mr. Wechsler?

6 MR. WECHSLER: Thank you, Your Honor.

7 CROSS-EXAMINATION

8 BY MR. WECHSLER:

9 Q. Mr. Reyes, before I start, I just want you to
10 know I have your hat with me. I'm not going to wear
11 it because it doesn't go with my suit, but thank you
12 again for that. Nice to see you again. Good
13 afternoon. I'm going to cover with you, I think, five
14 general topics, some of which you covered with Ms.
15 Klahn. I want to talk to you about the district
16 itself and its infrastructure, the district's water
17 supplies, the process for ordering and receiving
18 project water, operations within the district once
19 water arrives, and then a little bit about state
20 regulation of water. So -- so let's start just with
21 the district, and I'm going to show you U.S. Exhibit
22 066, and I'm going to use this as a demonstrative but
23 let's make sure you recognize this. Go to Page 1.

24 JUDGE MELLOY: Excuse me. Is this New
25 Mexico 066?

1 **MR. WECHSLER:** I believe it's U.S., Your
2 Honor. US-66.

3 **JUDGE MELLODY:** Okay.

4 **Q. (BY MR. WECHSLER)** Mr. Reyes, you recognize
5 this document?

6 **A.** Yes, I do.

7 **Q.** This is a presentation you actually gave,
8 right?

9 **A.** Yes.

10 **Q.** And we can see it has the official stamp
11 there of EP No. 1, and you gave that as part of your
12 duties as the general manager?

13 **A.** Yes, sir.

14 **Q.** And this is also kept in the files of EP1 or
15 in the electronic files, I should say; is that right?

16 **A.** Yes, sir.

17 **MR. WECHSLER:** Your Honor, I move U.S.
18 Exhibit 66.

19 **MS. KLAHN:** Your Honor, could I have a
20 minute? There are so many New Mexico cross exhibits.
21 I just need to kind of find this in the list and see
22 what our objections were and then I'll be able to
23 generate a reaction.

24 I am -- looks like we had a hearsay
25 objection, and I will withdraw that.

1 JUDGE MELLODY: All right. Exhibit --
2 U.S. Exhibit 66 is admitted.

3 Q. (BY MR. WECHSLER) All right. Let's turn to
4 Page 4 now. And, Mr. Reyes, the EP1 is organized as a
5 Texas entity, right?

6 A. Yes, sir. We're formed under Chapter 55 and
7 59.

8 Q. Of the Texas Constitution?

9 A. That's correct.

10 Q. It's also a political subdivision of the
11 State of New Mexico -- of the State of Texas? My
12 apologies.

13 A. Yes, sir.

14 Q. It's a direct beneficiary of the Project,
15 correct?

16 A. I didn't understand the question.

17 Q. My question is: It's a direct Project
18 beneficiary of the Rio Grande Project? You're aware
19 of that?

20 A. Yes.

21 Q. In fact, it's the only direct Project
22 beneficiary in the State of Texas, right?

23 A. I am not sure on that.

24 Q. From your -- from its share of Project water,
25 EP1, as you testified on direct, supplies

1 approximately 69,000 acres of Project land in El Paso
2 County, Texas, right?

3 A. 69,010, yes, sir.

4 Q. And all of those lands are located in the
5 state of Texas?

6 A. Yes, sir.

7 Q. Let's turn to Page 6 of this document. This
8 is US-66. There's a variety of crops that are grown
9 within EP1, right?

10 A. Yes.

11 Q. They include pecans; is that right?

12 A. Yes.

13 Q. And then moving to Page 7, cotton?

14 A. Yes.

15 Q. Next page, corn and wheat?

16 A. Yes.

17 Q. And the next page, chile and onions?

18 A. Yeah. Although it's very rare. You mostly
19 don't find that anymore.

20 Q. I think you told me in your deposition,
21 onions are actually sometimes grown in the winter; is
22 that right?

23 A. That -- that's correct.

24 Q. And the next page, and you also have alfalfa
25 in -- in the district, right?

1 A. Yes. We have some.

2 Q. Each of these crops is irrigated with
3 different irrigation amounts, right, different amounts
4 of water?

5 A. I don't understand your -- by different
6 amounts.

7 Q. Each crop that we just talked about requires
8 a different amount of water?

9 A. What we -- we -- the board allots to the
10 farmer what water is available, and -- and then they
11 determine when to call for it and -- and what their --
12 their crops need.

13 Q. I understand that, Mr. Reyes. I think that's
14 an answer to a different question. My only question
15 is -- we just went through a number of different
16 crops, and my question is: Each of those types of
17 crops requires a different amount of water, right?

18 A. Yes.

19 Q. And some of them are irrigated with different
20 irrigation techniques?

21 A. Meaning Project water in wells or Project
22 water --

23 Q. Well, I mean, the farmers might use a
24 different technique. In other words, you -- you are
25 going to irrigate alfalfa differently than you might

1 cotton?

2 A. Yes. Probably.

3 Q. But we heard from Mr. Ivey's testimony that
4 it's actually up to the farmers, the crops that they
5 want to grow, right?

6 A. That's correct.

7 Q. And it's also up to the farmers what
8 irrigation method they use, in other words, flood or
9 sprinkler or drip?

10 A. Yeah, but we don't have any drip or any
11 sprinkler, because of our -- because of all the sand
12 that we get in the water.

13 Q. Ultimately, that's up to -- that's up to the
14 farmers?

15 A. I don't -- I don't know of any sprinkler or
16 drip system in our valley.

17 Q. Again, my only question is, it's up to the
18 farmers how they irrigate once they're given water?

19 A. Yes. It's up to them to -- to call for their
20 water and -- and know how many times they -- or what
21 the balance is and what -- how many times they can
22 irrigate.

23 Q. Over the years, the crop mix in EP1 has
24 changed, right?

25 A. Yes.

1 Q. For example, the percentage of pecans has
2 grown in EP1 since 1997?

3 A. Yes.

4 Q. Today, there's close to 16,000 acres of
5 pecans grown in EP1?

6 MS. KLAHN: Objection; foundation.

7 JUDGE MELLODY: I'll overrule it. He's
8 the general manager. He's familiar with the Project.
9 You may answer.

10 A. Yes.

11 Q. (BY MR. WECHSLER) Even the amount of acreage
12 that's irrigated has changed, right?

13 A. Yes.

14 Q. So today only 49,000 acres approximately of
15 land is irrigated in EP1?

16 A. I'm not sure on that figure.

17 Q. Are you aware that approximately 10,000 acres
18 of EP1 has been assigned to EPWU, to the City?

19 A. I don't know exactly how much they have.

20 Q. Does that sound ballpark correct?

21 A. More or less.

22 Q. One of the principles for the Compact
23 baseline proposed by New Mexico is that the Project
24 should be operated as a single unit, so let me ask you
25 a couple questions about that. First, one of the

1 diversion points for EP1 is in Mesilla is at Mesilla
2 Dam in New Mexico, right?

3 A. Yes.

4 Q. And next, EP1 uses numbers, as you explained,
5 and Units 6A and 6B are located in the northern part
6 of the district closest to New Mexico, right?

7 A. Yes.

8 Q. And in that area along the New Mexico/Texas
9 state line, the state line meanders between Units 6A
10 and 6B, right?

11 A. That's correct.

12 Q. As a result, EBID delivers some water to EP1
13 users in Texas, right?

14 A. Yes.

15 Q. And vice versa, EP1 actually delivers some
16 water to EBID users in New Mexico, right?

17 A. Yes.

18 Q. And that led you to remark actually as part
19 of this case in an affidavit that the Rio Grande
20 Project cannot be operated as independent units based
21 on the state line; do you recall saying that?

22 A. Yes.

23 Q. You think that's true?

24 A. Yes.

25 Q. Another theory that's been discussed in this

1 case is whether the Compact intended to lock in
2 conditions as of 1938, so let's talk about some of the
3 changes that have occurred. Now, we already talked
4 about the changes in crops that can occur on a yearly
5 basis, right?

6 A. Yes.

7 Q. You're familiar with the canalization or
8 rectification project?

9 A. Yes.

10 Q. What is that -- what was that project?

11 A. It was -- it was a project by the Bureau of
12 Reclamation to upgrade the system.

13 Q. As part of that Project the United States
14 changed the location of the Rio Grande River, right?

15 A. I am not sure.

16 Q. Do you know when that project was completed?

17 A. No, I don't.

18 Q. Turning to the diversion points, EP1
19 currently diverts water from the Mesilla Dam and the
20 American Dam; is that correct?

21 A. Yes.

22 Q. But in the past, EP1 use to divert water from
23 Riverside Dam?

24 A. Yes. Until it failed.

25 Q. EP1 actually no longer uses that Riverside

1 Dam, right?

2 A. No.

3 Q. Instead, you use the American Canal
4 Extension?

5 A. That's correct.

6 Q. We can look at a picture of that at US-66
7 again, Page 21. We looked at it earlier, as well.
8 How many miles was the American Canal Extension?

9 A. I believe it was 17 miles.

10 Q. Do you know when it was completed?

11 A. In the late '90s.

12 Q. And, now, the American Canal Extension is
13 actually the primary conveyance for water in the lower
14 valley, right?

15 A. Not necessarily. The Franklin Canal also
16 carries a lot of water.

17 Q. Fair enough. So you have the American Canal
18 and the Franklin Canal in the lower valley?

19 A. Yes.

20 Q. The American Canal Extension was not present
21 in 1938, will you agree?

22 A. Yes.

23 Q. All right. So turning to some more recent
24 channels that you -- changes that you talked about
25 earlier, so EP1 has been converting some open channels

1 to underground pipes, right?

2 A. Very little. We -- we've done very little of
3 them. Mostly in front of schools.

4 Q. Is that right? So let's take a look at Page
5 19 of this document. We can see one of those. Is
6 that a picture of one of these pipes in front of a
7 school?

8 A. Yes.

9 Q. And how many miles have you actually
10 converted?

11 A. Probably not even a mile.

12 Q. And you've also, as you testified earlier,
13 and we can look at Page 14 here, you've been lining
14 some of your canals, as well, right?

15 A. Yes.

16 Q. And lining the canals limits the amount of
17 seepage, right?

18 A. Yes.

19 Q. So whereas that water used to go into the
20 aquifer, now it's remaining in the canal, correct?

21 A. That's correct.

22 Q. Which means the amount of the water that's
23 seeping from a lined canal is different now than it
24 was in 1938?

25 A. If it's concrete lined, do you mean?

1 Q. I do.

2 A. Okay. Yes.

3 Q. Okay. So, now, you've been working on
4 on-farm projects, as well, right? And let's look at
5 32 for that. Is that correct, you've been working on
6 some on-farm projects?

7 A. Yes.

8 Q. And those include laser-controlled land
9 grading at Page 33, right? That's on the farm?

10 A. That -- that's the farmers doing that, yes,
11 not the District.

12 Q. But you've been -- well, it's within EP1,
13 right?

14 A. Within our irrigation district, yes.

15 Q. There's also been minimum tillage, which is
16 shown on Page 34; is that right?

17 A. I'm not sure about that.

18 Q. Okay. And then you talked about concrete
19 lining, which is the next slide.

20 A. Okay.

21 Q. And that's happening in the district, as
22 well, with support from EP1?

23 A. Yes. Well, if it's a farmer's ditch, it's on
24 -- you know, it's up to them. We just do our -- our
25 canals and laterals, just canals and laterals that EP1

1 owns. We -- we try and provide the farmer with
2 information as to where they can seek grant funding
3 for concrete lining and laser levelling.

4 Q. That's helpful. Thank you. Let's just take
5 a look, generally, at the District. So if we go to
6 New Mexico Demonstrative Exhibit 1 is -- is this
7 Google Earth, and I'm going to show you something
8 here, Mr. Reyes. And what I want to do is we're going
9 to click on six. It looks like we're there. And then
10 you're going to, under EPCWID, open the arrow. There
11 it is. Now, just click on major conveyances there on
12 the box next to EPCWID. There you go. And then
13 double-click on -- yeah. So this should show us,
14 hopefully, Mr. Reyes, the -- the district. You
15 recognize that as showing EP1 and its canals and
16 laterals?

17 A. Yes. It's not a complete photograph of it,
18 but -- but, yes, it shows some of the -- the canals
19 and so on.

20 Q. Yeah. I think that's right. We could click
21 in the rest of it if we wanted, but for my purposes,
22 what I really just wanted, as we're looking at this,
23 can you tell me what percentage now of -- of your
24 conveyance system is concrete lined?

25 A. Probably, maybe 35 percent.

1 Q. So, now, that's a long way of saying that a
2 lot has changed in EP1 since 1938; is that right?

3 A. As far as concrete lining, yes.

4 Q. Well, we talked about some other things, too,
5 right, crops and whatnot, correct?

6 A. Yes.

7 Q. All right. Let's talk about sources of
8 water, which you also talked about with Ms. Klahn. As
9 general manager, it's important for you to understand
10 the sources of water that are available for the
11 District?

12 A. Yes.

13 Q. And you've discussed previously that EP1
14 generally has three sources of water, you have Project
15 water, groundwater, and municipal effluent, right?

16 A. Yes.

17 Q. All right. Let's take those one at a time.
18 We're going to talk about surface water first, and
19 EP's surface water supplies generally the Project
20 supply that's allocated to the District, right?

21 A. That's allocated by the Allocation Committee,
22 yes.

23 Q. Let's look at Joint Exhibit 436. You
24 recognize this document?

25 A. No.

1 Q. Back out. You don't recognize this document?

2 A. The adjudication document, yes.

3 Q. Correct. Yeah. You do recognize it? And
4 you can see from the stamp that it's a Texas
5 Commission of Environmental Quality document, right?

6 A. Yes.

7 Q. And, in fact, you can see that it also was --
8 was filed there in the County of, looks like, Travis,
9 right?

10 A. I believe so.

11 Q. You see that, Mr. Reyes?

12 A. Okay. Yes.

13 Q. TCEQ is the Texas agency that's responsible
14 for adjudicating water rights?

15 A. Yes.

16 Q. And -- and this document, you understand,
17 applies to the surface waters of EP1?

18 A. Yes.

19 Q. And this is also a document that's kept on
20 file at the District, right?

21 A. Yes.

22 Q. In fact, you were manager of the District
23 when this document was issued?

24 A. Yes.

25 MR. WECHSLER: Your Honor, I offer Joint

1 Exhibit 436.

2 **JUDGE MELLOY:** Any objection?

3 **MS. KLAHN:** Your Honor, we object on the
4 basis of relevance. The relevance of a Texas
5 adjudication certificate to a case that's an Original
6 Action is not clear and it's likely to just lead to
7 some confusion. There's also a foundational objection
8 to the extent depending on what he asks about it, I
9 guess, and so we'd object to its admission.

10 **JUDGE MELLOY:** Where are you going with
11 this exhibit, Mr. Wechsler?

12 **MR. WECHSLER:** Yeah, Your Honor, this is
13 the amount of water that the State of Texas, the party
14 to this case, has determined EP No. 1 is entitled to
15 take. As to the foundation for the document, it's
16 been laid, and as to the relevance, I think that it
17 should be obvious, but as to any confusion, to the
18 extent that the -- the Court is confused, they should
19 have that document before them. I mean, we are
20 talking about the Supreme Court of the United States
21 and not a jury.

22 **MS. KLAHN:** The Texas apportionment is
23 not limited by a Texas state adjudication certificate
24 and so producing this and asking a bunch of questions
25 about it just leads to a whole rat's nest of things

1 that don't have anything to do with the dispute in
2 this case.

3 MR. WECHSLER: Certainly they can
4 address that, Your Honor, but, again, this is the
5 amount of water Texas is determining they are entitled
6 to take.

7 JUDGE MELLOY: Well, I'm not sure where
8 we're going with this, but I'll admit 236.

9 Q. (BY MR. WECHSLER) All right. Turning then to
10 Page 5, which you can see on the right-hand side
11 there, Mr. Reyes, the -- you can see it
12 indicates, "Now, therefore, this certificate to
13 appropriate waters of the State of Texas is issued to
14 the United States of America and EP No. 1." You
15 understand, again, that this applies -- that this
16 certificate applies to the EP No. 1 district, right?

17 A. Yes.

18 Q. And then if we turn then to Paragraph 1B.
19 There we go. You can see that it authorized EP1 to
20 use an aggregate amount of water from the Rio Grande
21 not in excess of 376,000 acre-feet per year, right?

22 MS. KLAHN: Objection; relevance.

23 JUDGE MELLOY: Overruled.

24 Q. (BY MR. WECHSLER) Did you understand my
25 question, Mr. Reyes?

1 A. Yes, I did. And the -- it says the Rio
2 Grande not in excess of 376,000 acre-feet per year.

3 Q. And you understand that that then represents
4 the limit of the amount that EP No. 1 can take from
5 the State of Texas, right?

6 MS. KLAHN: Objection.

7 JUDGE MELLOY: I'm going to sustain
8 that. I think that's a legal conclusion. The
9 document speaks for itself.

10 Q. (BY MR. WECHSLER) Mr. Reyes, we've seen that
11 number, 376 acre-feet, a number of times in this
12 litigation. Are you familiar with the term D2?

13 A. Yes. I'm familiar with it. I can't explain
14 it, but I'm familiar with it.

15 Q. I'm not sure I could explain it either.
16 You're aware that approximately 376,000 acre-feet is
17 the full supply amount for EP1 under the D2 curve?

18 MS. KLAHN: Objection; foundation.

19 He said he doesn't even understand it
20 well enough to explain it.

21 JUDGE MELLOY: Well, but he uses it
22 every -- all the time. I'm going to overrule that
23 objection.

24 Q. (BY MR. WECHSLER) Mr. Reyes?

25 A. Ask your question again.

1 Q. Happy to. Are you aware that approximately
2 376,000 acre-feet is the full supply amount for EP No.
3 1 under the D2 curve?

4 A. No, I really couldn't answer that.

5 Q. All right. Before we turn to groundwater,
6 let's talk about the project allocations. You're
7 aware that project allocations are determined through
8 that Allocation Committee, right?

9 A. Yes.

10 Q. And the project water is generally allocated
11 to project lands based on the irrigable lands in New
12 Mexico and Texas; is that right?

13 A. Yes.

14 Q. Let's turn to New Mexico Exhibit 818. That's
15 818. I think you recognize this document; is that
16 right, Mr. Reyes?

17 A. Yes.

18 Q. What is it?

19 A. It's the Far West Texas Water Plan that's
20 prepared for by Texas Water Development Board.

21 Q. And this was issued January, 2021; is that
22 right?

23 A. Yes.

24 Q. It says that it was prepared by the Far West
25 Texas Water Planning Group. What is the Far West

1 **Texas Water Planning Group?**

2 A. It's a group -- there -- there's 18 water
3 planning groups in the State of Texas. The Far West
4 Texas Water Planning Group is -- is that one that
5 you're seeing there in bold colors that represents
6 those -- those areas.

7 Q. And it includes El Paso County, right?

8 A. Yes.

9 Q. This document also indicates it was prepared
10 for the Texas Water Development Board. Can you please
11 tell us what the Texas Water Development Board is?

12 A. Yes. It's a funding agency for the State of
13 Texas. They fund different irrigation projects,
14 different water projects.

15 Q. Among other things, they have responsibility
16 for water planning throughout Texas?

17 A. Yes.

18 Q. Let's turn to Page 438 of this document, and
19 let's just call out that table. We can see,
20 Mr. Reyes, there on the second column towards the
21 bottom, it actually identifies you as a committee
22 member, right?

23 A. Yes.

24 Q. And then we can also see a couple other
25 people in this case that are worth looking at in the

1 next, we can see Mr. John Balliew. You see that?

2 A. Yes.

3 Q. And you know who that is?

4 A. John Balliew, yes, I do.

5 Q. I think he's our next witness; is that --
6 well, maybe after Mr. Rios; is that right?

7 A. I'm not sure.

8 Q. Yeah. Fair enough. And then we can see
9 Mr. Johnny Stubbs there at the bottom, too. Who's
10 Mr. Johnny Stubbs?

11 A. He's our board president.

12 Q. Let's turn to the next page, Page 439. And
13 let's call out that Table 10-3 in the middle down at
14 the bottom. There you go. And here, this says the
15 officers and executive committee members, and that's
16 for this plan, right?

17 A. Yes.

18 Q. And you actually were chairman of the -- this
19 effort?

20 A. Yes.

21 MR. WECHSLER: All right. So, Your
22 Honor, I move New Mexico Exhibit 818. Its
23 authenticity has been stipulated, and it qualifies as
24 both a public record and the business exception to
25 hearsay.

1 MS. KLAHN: Our objection remains,
2 relevance.

3 MR. WECHSLER: Well, do I need to
4 address the relevance?

5 JUDGE MELLOY: No. I'll admit 818. Go
6 ahead.

7 MR. WECHSLER: Thank you.

8 Q. (BY MR. WECHSLER) Mr. Reyes, if you'd turn to
9 Page 169, we were talking about Project allocations,
10 and I want to look at the fourth paragraph here.
11 Here, it says -- it's talking about deliveries of
12 Project -- of Rio Grande Project water. You agree
13 those deliveries are based on irrigation requirements?

14 A. I'm reading.

15 Q. Please take your time.

16 A. Okay.

17 Q. Yeah. So my only question was: Do you agree
18 that Project water is based on -- Project deliveries
19 is based on irrigation requirements?

20 A. Not necessarily, no.

21 Q. You understand the Rio Grande Project was
22 established to -- to allow for irrigation in EBID and
23 EP1?

24 A. Yes.

25 Q. And under the Enabling Act -- well, are you

1 familiar with the Enabling Act for the Rio Grande
2 Project?

3 A. No. I'm not.

4 Q. All right. Let's look at the fifth
5 paragraph, and this time, we're going to look at the
6 last sentence. It says, "Total diversion allocations
7 are 495,000 acre-feet to EBID, 376,000 acre-feet to
8 EPCWID No. 1, and 60,000 acre-feet to Mexico during
9 years of full supply." Here's that number we saw in
10 this certificate, right, the 376,000 acre-feet, and
11 that's the same number we saw in that previous
12 exhibit?

13 A. Yes.

14 Q. You agree that this sentence is accurate?

15 A. Yes.

16 Q. Let's turn to New Mexico Exhibit 2280. At
17 the beginning of the year, Mr. Reyes, you will
18 typically receive an initial allocation letter from
19 Reclamation; is that right?

20 A. I don't recall.

21 Q. Well, I'm just asking generally, Mr. Reyes.
22 At the beginning of each year, do you receive an
23 allocation letter with an initial allocation from the
24 Bureau of Reclamation?

25 A. Not that I can recall, no.

1 Q. Okay. Well, let's just take a quick look at
2 this third page of this. You can see that, actually,
3 you're copied here. You're the first CC on this. Do
4 you see that?

5 A. Yes.

6 Q. You understand that to be you?

7 A. Yes. That's a number of years ago.

8 Q. Fair enough. But you don't remember that
9 each year, you receive an initial allocation letter,
10 Mr. Reyes?

11 A. Not -- not since the -- the Operating
12 Agreement went into effect, no.

13 Q. All right. Let me ask you this then: The
14 EPCWID allocations, we heard testimony in this case
15 previously that during the years 1979 to 2002, the
16 districts received a full supply, and I think you
17 agree with that, right?

18 A. From '79 to what year?

19 Q. 2002.

20 A. I'm not sure. Without looking at the
21 records, I couldn't tell you.

22 Q. Let's just have a look at your 2020
23 deposition. Do you have that in front of you?

24 A. No.

25 Q. Unfortunately it's not loaded here, so I'm

1 going to read a section to you and see if you
2 recognize it. This is -- I'm reading from -- for
3 other attorneys -- Page 53, Line 23 to Page 54. And
4 here you're asked, "QUESTION: We've heard testimony
5 in this case that the years from 1979 until 2002 were
6 full supply years. Do you agree that those years were
7 full supply years?"

8 "ANSWER: Yes."

9 Do you recall giving that testimony,
10 Mr. Reyes?

11 A. I don't recall, but I'll take your word for
12 it.

13 Q. Turning then to the Operating Agreement,
14 which you discussed with Ms. Klahn, just a couple of
15 questions about the Operating Agreement before we
16 leave the subject of allocations, you understand that
17 Project allocations are made based on the 2008
18 Operating Agreement?

19 A. Yes.

20 Q. You talked with Ms. Klahn that you actually
21 were involved in the negotiations, right?

22 A. Yes. I sat and assisted Dr. Blair, yes.

23 Q. That agreement was negotiated in 2007 and
24 2008, right?

25 A. Yes.

1 Q. You were general manager of EP1 during that
2 time period?

3 A. Yes.

4 Q. And then ultimately, that agreement was
5 adopted in 2008, right?

6 A. Yes.

7 Q. At the time the Operating Agreement is
8 negotiated, the Rio Grande Compact Commissioner for
9 Texas was Pat Gordon, right?

10 A. That's correct.

11 Q. In fact, he was the Texas Rio Grande Compact
12 Commissioner until earlier this year?

13 A. Yes.

14 Q. Commissioner Gordon played a key role in
15 reaching the Operating Agreement?

16 A. Yes.

17 Q. In fact, I think you've previously said that
18 Commissioner Gordon helped you address issues such as
19 Mexico's allocations, the maximum allocation based on
20 a release of 790, and carryover; is that right?

21 A. I'm not sure if I said that or not.

22 Q. Well, let me refresh your recollection.
23 Let's take a look at New Mexico Exhibit 2046. And
24 that's a picture of you, right, Mr. Reyes?

25 A. Yes, it is.

1 Q. And we can see, it indicates this is -- it
2 has your name in the middle, right?

3 A. Yes.

4 Q. And you recall talking to the WRRI, W-R-R-I,
5 conference about the Operating Agreement?

6 A. I don't really recall it. It's been a number
7 of years ago. I can tell by our old address, it was
8 prior to us moving to our new offices.

9 Q. All right. Well, let's see if you -- this
10 helps your recollection. Let's look at Page 2, and
11 we're going to look at the third paragraph that
12 starts, "Gary is absolutely correct." If you take a
13 look at that and see if this refreshes your
14 recollection. Again, I'm asking: Did Commissioner
15 Gordon help you address issues such as Mexico
16 allocations, the maximum allocation based upon a
17 release of 790,000 acre-feet, and carryover?

18 A. I believe Gary is the one that was quoted,
19 and I said -- I said that I agreed with Gary, he was
20 correct that Pat Gordon did play a part in getting
21 that operating agreement done.

22 Q. In 2007 and 2008, the Rio Grande Compact
23 Commissioner for New Mexico was John D'Antonio. Are
24 you aware of that?

25 A. I know he was the commissioner, but I don't

1 know what years.

2 Q. Was the New Mexico Compact Commissioner
3 involved in negotiating the Operating Agreement?

4 A. No.

5 Q. Let's look at New Mexico Exhibit 287. You
6 recognize this as minutes of a board meeting for EP1?

7 A. Yes.

8 Q. And you can see the date is July 11th, 2007,
9 right?

10 A. Yes.

11 Q. Which we just talked about is during the time
12 period either during or immediately before the
13 operating agreement was negotiated, right?

14 A. Yes.

15 Q. You can see you were present, and it's your
16 habit to attend board meetings, right?

17 A. It's not my habit. I like to stay informed,
18 and, yes, I did play a big part in the board meetings.

19 Q. We can -- if you turn to Page 6 of this
20 document, you can see that it's signed by -- do you
21 pronounce his name Singh or Singh?

22 A. Indar Singh.

23 Q. Thank you. Who is that?

24 A. He used to be our secretary. He's passed
25 away now.

1 Q. It's the habit for the secretary to sign the
2 board minutes, right?

3 A. Yes. It's his obligation.

4 Q. I think the board minutes also get filed with
5 the El Paso County, right?

6 A. Yes. With the county clerk's office.

7 Q. And they're kept on file at EP1?

8 A. Yes.

9 MR. WECHSLER: Your Honor, I'd move the
10 admission of New Mexico 287. Its authenticity has
11 been stipulated. It satisfies the business record
12 exception for hearsay.

13 JUDGE MELLOY: Any objection?

14 MS. KLAHN: No objection.

15 JUDGE MELLOY: New Mexico 287 is
16 admitted.

17 Q. (BY MR. WECHSLER) Mr. Reyes, EP1 regularly
18 attaches relevant documents to its minutes, right?

19 A. Yes.

20 Q. Let's turn to Page 44 of this document. Here
21 we can see in the re line is what's a professional
22 services contract for legal services. Do you see
23 that?

24 A. Yes.

25 Q. And the date is August 15, 2007?

1 A. Yes.

2 Q. Now, if we -- well, you can see it's
3 addressed to Mr. Stubbs, and he was the president of
4 the Board in 2007?

5 A. That's correct.

6 Q. If we turn to Page 48 of this document, you
7 can see that it's signed both by Mr. Stubbs and a
8 representative of the law firm, right?

9 A. Yes.

10 Q. And, now, let's turn to Page 45. Under the
11 third paragraph, "Responsible Professionals," we can
12 see that one of the people responsible for providing
13 services under this contract was a Mr. Patrick Gordon.
14 Do you see that?

15 A. Yes.

16 Q. You understand that to be Patrick Gordon, the
17 Texas Compact Commissioner?

18 A. Yes. It's his law firm.

19 Q. All right. Let's turn to allotments. We can
20 take that down. Once the Project allocation for EP1
21 is known, the District sets the allotments; is that
22 right?

23 A. Yes. Our board of directors does.

24 Q. And that's the amount of water for each acre
25 of district land?

1 A. Correct.

2 Q. And every member gets an allotted -- an equal
3 amount per acre, right?

4 A. Correct. That includes the City of El Paso.
5 Everybody is treated the same.

6 Q. Right. Everyone who owns land; is that
7 correct?

8 A. Irrigable land, yes.

9 Q. Understood. Yeah, you did make that
10 distinction during your direct. And let's go ahead
11 and look at New Mexico Exhibit 2269A, which I
12 understood was not objected to, but maybe I'm wrong.
13 Let me ask you this, Mr. Reyes: Did you -- do you
14 recognize Exhibit 2269A?

15 A. Yes.

16 Q. What is it?

17 A. It's a memo to all our employees within the
18 District, EP No. 1, El Paso Water Utilities, the PSB,
19 the U.S. Bureau of Reclamation, and IBWC.

20 Q. And --

21 A. And it's from me.

22 Q. Those are your initials there, right?

23 A. That's my signature, yes.

24 Q. And -- and this is, again, kept in the files
25 at EP1?

1 A. Yes.

2 **MR. WECHSLER:** Your Honor, I offer
3 Exhibit New Mexico 2269A.

4 **MS. KLAHN:** No objection.

5 **JUDGE MELLOY:** Any objection?

6 **MS. NAJJAR:** No objection.

7 **MS. KLAHN:** No objection.

8 **Q. (BY MR. WECHSLER) All right.**

9 **JUDGE MELLOY:** Excuse me a second. New
10 Mexico 2269A is admitted.

11 **MR. WECHSLER:** My apologies, Your Honor.

12 **Q. (BY MR. WECHSLER) And here you're indicating**
13 **that the allocation was being increased to 48 inches,**
14 **right?**

15 A. That's -- that's correct. We started off
16 with a lesser allocation, and we increased it as we
17 went along as the water came into the dam.

18 **Q. And so you inform the stakeholders when that**
19 **happens?**

20 A. That's correct.

21 **Q. You testified earlier 48 inches or 4 feet is**
22 **the maximum allotment that EP1 awards; is that right?**

23 A. That's correct.

24 **Q. That's true today, too, right? In other**
25 **words, this -- we're looking at a document from 2008,**

1 but currently 4 acre-feet per acre allotment is the
2 amount that's given during a full allocation; is that
3 right?

4 A. That's correct.

5 Q. So in those years when EP1 gets an allotment
6 of 4 acre-feet per acre, is it fair to understand that
7 that's a year in which the District had a full
8 allocation of water?

9 A. Like I explained, it might be that we started
10 off with a much lower allocation -- allotment, and
11 then we increased it as -- as we went along.

12 Q. So that if you get to 4 acre-feet, that's the
13 maximum amount, and you have a full allocation?

14 A. Correct.

15 Q. All right. Let's take a look at
16 Demonstrative Exhibit 2, New Mexico Demonstrative
17 Exhibit 2. I want you to just confirm some of these
18 numbers for me. I think it's Page -- I think it's No.
19 -- maybe it's Demonstrative 3, Page 2. My apologies.
20 There we go. I just want you to look, Mr. Reyes, at
21 the right-hand column, which is the E P1 allotment.
22 Do these numbers look accurate to you?

23 MS. KLAHN: I'm going to object on
24 foundation. This is obviously a -- a document
25 produced by New Mexico's -- one of their consultants,

1 and I'm sure the data associated with allotments must
2 be publicly available. I don't know that Mr. Reyes
3 has the ability to recall the allotments for all these
4 years.

5 **MR. WECHSLER:** Your Honor, demonstrative
6 exhibits have no evidentiary value outside of what is
7 actually said by witnesses, which is precisely why I'm
8 asking Mr. Reyes if he's able to, to verify the data
9 in the right-hand column.

10 **JUDGE MELLOY:** All right. I'll let the
11 witness answer.

12 **MS. KLAHN:** I was objecting to
13 foundation about the question, not the exhibit.

14 **JUDGE MELLOY:** The witness can answer.

15 A. I'm not sure on all those dates at all. You
16 failed to include EBID's groundwater pumping, though.

17 **Q. (BY MR. WECHSLER)** Well, that's right. You
18 understand that the allocation that comes from the
19 Project is a surface water allocation, right?

20 A. Yes. It comes from the Project, yes.

21 **Q.** Yeah. So what I'm putting here -- what we're
22 putting here are that allotment that comes from the
23 Project, and so you don't know whether or not this is
24 accurate?

25 A. No, I don't.

1 Q. And when you were talking about groundwater
2 there, when EP No. 1 does allotments, does it include
3 the amount of groundwater that's pumped from private
4 wells from EP1 farmers?

5 A. No. I have no control over that.

6 Q. All right. So am I correct that 4 acre-feet
7 was not always the full allotment in EP1?

8 A. That's correct. It was less.

9 Q. Let's take a look at the document that'll
10 help us understand that. This time, I want to turn to
11 Exhibit 491, New Mexico 491, and we can see this is
12 entitled, "Water Operations Department Operations
13 Guide." You understand this to be a document produced
14 by EP1?

15 A. No. It was prior to my time.

16 Q. You don't recall being shown this document
17 during your deposition?

18 A. You might have showed it to me.

19 Q. Do you recall at that time which was -- your
20 deposition was taken in 2020; is that correct?

21 A. Yes.

22 Q. And at that time, do you recall remembering
23 this document?

24 A. I might have remembered it, yes.

25 Q. This time I'm going to read to you from Pages

1 -- Page 50, Lines 4 through 13 of the 2020 deposition.
2 Let's see. "QUESTION: I'm going to show you another
3 exhibit, which I'll mark as Deposition Exhibit 6" --

4 MR. WECHSLER: And I'll represent that's
5 this document, Your Honor.

6 Q. (BY MR. WECHSLER) -- "do you recognize this
7 document?"

8 "ANSWER: Yes. It's an old operations
9 guide."

10 "QUESTION: Is there a more recent operations
11 guide?"

12 "ANSWER: No."

13 "QUESTION: Is this document still used for
14 any purpose by EP No. 1?"

15 "ANSWER: I believe our water master still
16 uses some of it."

17 Do you recall that question and answer from
18 your deposition, Mr. Reyes?

19 A. Yes.

20 Q. And so does that help you recall this
21 operations guide?

22 A. Yes. But since then, I found out our water
23 master does not use it here.

24 Q. Understood. But you recognize the document;
25 is that correct?

1 A. Yes.

2 Q. And it's -- at one point in time, this was
3 the relevance operations guide for EP No. 1; is that
4 right?

5 MS. KLAHN: Objection to the extent it
6 characterizes as relevance. He doesn't know.

7 MR. WECHSLER: It's a foundational
8 question. I'm asking him, Your Honor.

9 JUDGE MELLOY: The witness can answer.

10 A. I'm not sure.

11 Q. (BY MR. WECHSLER) Do you know if this
12 document is kept in the normal course of business at
13 EP1?

14 A. No, it's not.

15 Q. You -- you don't -- you think this document
16 is not kept at the El Paso County Water Improvement
17 District No. 1 office?

18 A. We might have it there, but it's not used in
19 the course of operations.

20 Q. I understand. Maybe we'll ask Mr. Rios about
21 this. Do you know what the allotment was in the -- in
22 previous years -- you can take down the exhibit -- for
23 EP1?

24 In other words, let me back up. We talked
25 about the fact that currently, the maximum allotment

1 is 4 acre-feet per acre, right?

2 A. Yes.

3 Q. Has it been 4 acre-feet per acre since you
4 became general manager?

5 A. Yes.

6 Q. You mentioned that some time before you
7 became general manager, the maximum allotment in EP
8 No. 1 was something less than 4 acre-feet. Do you
9 know what it was before it became 4 acre-feet per
10 acre?

11 A. No. It was 3 point something, but I don't
12 recall exactly what the number was.

13 Q. Do you know what year it changed?

14 A. No, I don't.

15 Q. Do you know why it was changed?

16 A. Because the efficiency in our operations
17 improved and because of the -- the district's
18 percentage on deliveries increased, and we were able
19 to save more water and deliver more water to our
20 constituents, so we decided to raise it to 4 acre-feet
21 per acre during a full allocation.

22 Q. Once they received their allotment, the
23 farmers are given discretion on how to use those
24 allotments, right?

25 A. That's correct. It's their farm. They call

1 for it as they feel they need it.

2 Q. Let's turn to the subject of groundwater. So
3 groundwater is another element that we talked about in
4 New Mexico's baseline, so I want to talk about two
5 kinds of wells with you, district-owned wells and
6 operated -- district-owned and operated wells, and
7 private wells. Do you understand the distinction
8 between those two types of wells?

9 A. Yes.

10 Q. What is the distinction?

11 A. District-owned wells are EP No. 1 wells, and
12 privately-owned wells are owned by whoever drilled
13 them and paid for them.

14 Q. Let's take a look at New Mexico Exhibit 66,
15 Page 15. You recognize this as -- looks like a
16 drilling rig at the time the wells were being put in;
17 is that right?

18 A. Yes, sir. That's drilling rig. That's a
19 company that we hired to -- to drill some of our
20 wells.

21 Q. Those wells were drilled some time in
22 2002/2003 time frame; is that right?

23 A. Yes.

24 Q. At the time you initially drilled 62 of them;
25 is that right?

1 A. Yes.

2 Q. I understand only 58 are functional today; is
3 that still accurate?

4 A. Yes.

5 Q. If I understood you correctly from your
6 direct testimony, those wells were drilled to
7 somewhere between 90 to 100 feet deep?

8 A. That's correct. The drilling method that
9 this company uses, they can only go as deep, I
10 believe, to 100 feet.

11 Q. Now, you mentioned three of these wells are
12 in the upper valley, right?

13 A. Yes.

14 Q. I think you said that you're charged for
15 water that's pumped from those wells in the upper
16 valley. Did I hear that correctly?

17 A. That's correct.

18 Q. But you're not pumped -- you're not charged
19 for all of the water that's pumped; is that right?

20 A. Out of those three wells, yes.

21 Q. All right. Well, we heard testimony from
22 Ms. Estrada-Lopez that it wasn't the entire amount of
23 the wells. Do you recall that?

24 A. No.

25 Q. All right. Fair enough. Now, the remainder

1 of the district wells are located in the lower valley
2 of EP1; is that right?

3 A. That's correct.

4 Q. And those wells are generally located along
5 the canals?

6 A. Yes. Within our property, yes.

7 Q. And those wells pump directly into the canal
8 system, right?

9 A. Yes.

10 Q. Let's look at New Mexico Demonstrative
11 Exhibit 18. We're going to look at Page 2. Do you
12 recognize this as a picture of one of the district
13 wells?

14 A. Yes.

15 Q. And this is along the Franklin feeder?

16 A. Yes.

17 Q. Let's look at another picture because I like
18 pictures, New Mexico Demonstrative Exhibit 2, Page 59,
19 and you recall traveling along the Riverside Canal
20 during the basin tour?

21 A. Yes.

22 Q. You recognize this as one of the wells
23 located along the Riverside Canal within EP1?

24 A. Yes.

25 Q. Now, during the winter, you perform

1 maintenance on the EP1 wells to make sure they're
2 prepared and ready for the following season; is that
3 right?

4 A. That's correct. We've been relieving some of
5 our wells because originally, they were -- they were
6 built to last ten years, so they're not -- now going
7 on 20 something years.

8 Q. Understood. And you use those wells when
9 needed to supplement Project water; is that right?

10 A. Yes. Only when Project water is released in
11 the canal system.

12 Q. In other words, when Project supply is low,
13 that's when you use these wells?

14 A. Yes. But only when we've released Project
15 water from the dam, and there's Project water in the
16 canals.

17 Q. Understood. Now, if you pump the wells
18 continuously, they would produce 30,000 acre-feet of
19 water?

20 A. I don't think they can produce that much now,
21 but I'd say safely maybe 24,000 acre-feet. If we were
22 to pump them all -- all of them, which we never do, I
23 mean, that's probably what they could produce.

24 Q. Let's look at U.S. Exhibit 66 again, this
25 time Page 18. You've estimated that the cost of

1 pumping the wells is approximately \$32 per acre-foot;
2 is that right?

3 A. It's probably more with the cost of diesel
4 and everything else.

5 Q. What would you estimate it is now?

6 A. I have -- I have no idea.

7 Q. \$32 was whenever you gave this presentation?

8 A. Yes. And I don't know -- it doesn't have a
9 date. I don't know when that was given. I know it
10 was -- let's see. It was our old offices so more than
11 ten years ago.

12 Q. You moved to your new offices ten years ago?

13 A. Yes.

14 Q. Turning to the issue of private wells then,
15 so away from district wells. So during the drought, a
16 number of farmers refurbished their wells; is that
17 correct?

18 MS. KLAHN: Objection; foundation.

19 MR. WECHSLER: Your Honor, you're on
20 mute. You're still on mute.

21 JUDGE MELLOY: There we go. I'll
22 overrule the objection.

23 Q. (BY MR. WECHSLER) Do you recall the question,
24 Mr. Reyes?

25 A. State it again, please.

1 Q. Certainly. During the drought, a number of
2 farmers refurbished their wells; is that correct?

3 A. Yes.

4 Q. And those -- that refurbishment made those
5 wells operable again; is that right?

6 A. Well, I couldn't answer that. I would think
7 so, but I'm not sure.

8 Q. You don't actually know how many private
9 wells there are within EP1, do I have that right?

10 A. That's correct.

11 Q. Let me show you a document, New Mexico
12 Exhibit 2243, and this document had no objection. Let
13 me just get you to -- ask you: Do you recognize this
14 document, Mr. Reyes?

15 A. Yes, I do.

16 Q. And, in fact, if we turn to Page 4, we can
17 see that as part of -- well, while we're looking at
18 that, can you tell us what this document is?

19 A. It's a grant application for -- for a project
20 that we did with five farmers, and it was a project
21 that we didn't continue on because it was so expensive
22 to fund.

23 Q. We can see your signature there verifying
24 that the statements within this document are correct,
25 right?

1 A. Yes.

2 Q. If we turn to Page 17, and, again, we're
3 talking about these private wells here, and there's
4 something in here that's relevant to that. We're
5 looking at the -- yeah, if you highlight that whole --
6 it says -- the third sentence says, "A significant
7 portion of the agricultural irrigated land within El
8 Paso County has access to private irrigation wells of
9 which a majority of the wells produce water with total
10 dissolved solids greater than 1,000 milligrams per
11 liter with significant sodium content and poor sodium
12 absorption ratios." Do you see that?

13 A. Yes, I see it.

14 Q. Is that accurate?

15 A. I am not sure. I think this was prepared by
16 our district engineer.

17 Q. When -- with regard to these individual
18 wells, the individual farmers with EP1 decide on how
19 to use those wells; is that right?

20 A. Yes.

21 Q. Those -- to your knowledge, those private
22 wells are not required to have meters?

23 A. That's correct.

24 Q. And you don't know whether the data -- the
25 district collects data on how much water is pumped

1 from the private wells?

2 A. No. I can tell you that we don't collect
3 any.

4 Q. You don't? So you do know, and the fact is
5 you don't collect that information. And EP1 has not
6 evaluated the impacts of groundwater pumping on -- in
7 Texas on the Project supply; is that right?

8 A. Not to my knowledge, no.

9 Q. And EP1 also has not evaluated the impact of
10 groundwater pumping in New Mexico on the Project
11 supply; is that right?

12 A. Not EP1, no.

13 Q. Let's go back to New Mexico Exhibit 818,
14 which we admitted earlier. This time, I want you to
15 look at Page 116. Let's -- you can see this is
16 talking about Juarez. Do you see that? We can scroll
17 up -- we can blow up the first half. Yeah.

18 A. Yeah, if you would, please.

19 Q. Can you see that, Mr. Reyes?

20 A. Yes.

21 Q. And -- and so my question here is: You
22 understand that there is groundwater pumping within
23 Mexico in the vicinity of EP1; is that right?

24 A. Yes.

25 Q. And this particular document is talking about

1 pumping within the City of Juarez; is that right?

2 A. I guess so. I don't know where they -- who
3 got the numbers.

4 Q. Are you aware that there is pumping done by
5 the City of Juarez?

6 A. Yes. From what I've been told, yes.

7 Q. And then I -- I just want to show you another
8 image on the New Mexico Demonstrative Exhibit 1, which
9 you recall that's the -- the Google Earth. So this
10 time, if we click on No. 9 and open that up and then
11 click -- click the box for the well legend. Now, go
12 to No. 11, Mexico, and -- and then click on Mexico
13 wells, and let's let those populate for a moment. You
14 can see at least in this demonstrative -- yeah. Can
15 you click -- can you un-click all the other wells,
16 please? It's just taking time so un-click No. 9.
17 There you go. Go ahead and double-click that Mexico
18 wells.

19 So here, I'll represent to you, Mr. Reyes,
20 that this is just populating the Mexico wells, and if
21 you click once more on well legend up at the top
22 there, just the well legend, there you go. You can
23 see the orange wells, at least in this, are
24 representing irrigation wells, and the brown ones are
25 representing Juarez municipal. I'll just ask you:

1 Are you aware that there are also irrigation wells
2 within Mexico in the vicinity of EP No. 1?

3 A. No, not that I've ever seen, no. I couldn't
4 answer that.

5 Q. That's not something that EP No. 1 pays
6 attention to?

7 A. No.

8 Q. All right. Let's turn to the third source of
9 water that you indicated, and that's effluent. So the
10 City of El Paso is the largest water user by volume in
11 the district; is that right?

12 A. Yes.

13 Q. During the irrigation season, at least 50
14 percent of the water utilized by the City of El Paso
15 comes from the Rio Grande Project?

16 A. During full allocations, that would be
17 correct.

18 Q. There is effluent that comes from the
19 wastewater treatment plants that returns to EP1
20 canals, right?

21 A. Yes.

22 Q. Including effluent from Haskell Wastewater
23 Treatment Plant?

24 A. Yes. Haskell and Robert Bustamonte.

25 Q. That water can be used by EB1 farmers, right?

1 A. Yes.

2 Q. In fact, when the District is factoring the
3 amount to order from Caballo Reservoir, it considers
4 the amount of effluent available?

5 A. From --

6 MS. KLAHN: Objection; foundation. He's
7 testified he doesn't do the water ordering from the
8 reservoir.

9 JUDGE MELLOY: I'm not sure if he
10 testified to that or not, but if you know, you can
11 answer.

12 A. And I don't know.

13 Q. (BY MR. WECHSLER) I'm going to ask you,
14 again, about a portion of your deposition, Mr. Reyes.
15 This is the 2020 deposition at Page 75, Lines 5 -- 5
16 through 13 for those following along at home.

17 "QUESTION: So does the district factor in
18 that effluent in evaluating how much to order from
19 Caballo?"

20 "ANSWER: Yes. Yes, we can. We can factor in
21 the -- what to order. We -- Robert calculates how
22 much sewer-treated water we're getting at that
23 particular time from the water treatment plants, and
24 he can adjust to that."

25 Do you recall giving that testimony,

1 Mr. Reyes?

2 A. Yes. That's done by our water master.

3 Q. That reference to "Robert" is Robert Rios; is
4 that right?

5 A. Yes.

6 Q. All right. Let's look at a quick picture
7 again of the Haskell outfall. This is New Mexico
8 Demonstrative Exhibit No. 2. You recognize this as
9 effluent at the Haskell outfall?

10 A. Yes.

11 Q. And you recall stopping there at the -- on
12 the basin tour with the Special Master?

13 A. Yes.

14 Q. EP1 is not charged for the effluent from the
15 Haskell Wastewater Treatment Plant; is that right?

16 A. That's correct.

17 Q. And that's because EP1's actually given a
18 credit in the Project accounting for the Haskell
19 effluent?

20 A. I don't know. I think that would be a better
21 question for Dr. Blair to answer.

22 Q. I'll ask him. Now, we talked about
23 Bustamonte, and EP1 is also not charged for the
24 effluent from the Bustamonte Wastewater Treatment
25 Plant; is that right?

1 A. That's correct.

2 Q. And that's because the effluent discharged
3 from the Bustamonte Wastewater Treatment Plant is
4 below the gage for the Riverside Canal, right?

5 A. It is below the -- the gage.

6 Q. So, in fact, EP1 never gets charged for that
7 water?

8 A. It's not Project water.

9 Q. But EP1's not charged for it; is that right?

10 A. That's correct. It's not Project water.

11 Q. Let's look at New Mexico Exhibit 201. And
12 this is another exhibit that there was no objection
13 to. You recognize this document, Mr. Reyes?

14 A. Yes.

15 Q. And what is it?

16 A. It's a -- it's a document that's put together
17 by Dr. Blair that goes to El Paso Water, and I'm
18 copied on it.

19 Q. Yeah. There's actually one of these memos
20 that's -- that's sent every year; is that right?

21 A. Yes.

22 Q. And it shows the final charges to EPWU for
23 the year, and this one happens to be for the year
24 2014; is that right?

25 A. I believe so. You'd have to probably ask

1 Dr. Blair. I couldn't be sure.

2 Q. Okay. Well, I -- what I do want to ask you
3 about is just sort of your general understanding of
4 some of these contracts that are listed in that
5 summary of water allocations, and if you don't know
6 the answer to this, please just let me know. The
7 first one is that 1941 PSB contract. Are you familiar
8 with that contract?

9 A. It's a few years before my time, but I'm not
10 that familiar with it.

11 Q. All right. How about the 1949 excess water
12 contract, are you familiar with that one?

13 A. Same thing.

14 Q. Are you familiar with any of these contracts?

15 A. Just the -- the ones I'm familiar with would
16 be the '62 that allows the leases and -- and then the
17 '88 that allowed Lower Valley Water District to -- to
18 go to seek leases, also.

19 Q. Okay. Let me just ask you quickly about
20 those ones then. That 1962 contract, my general
21 understanding is that the City's utility may lease
22 water rights for district owners whose tracts are less
23 than 2 acres in size under that contract; is that
24 right?

25 A. That's correct.

1 Q. Is there a limit to the total acreage that
2 the City can lease under that 1962 contract?

3 A. No.

4 Q. Turning then to the 1988 contract, and I
5 understand this contract permits the Lower Valley
6 Water District Authority to acquire Project water
7 either by purchasing lands or purchasing water right
8 assignments; is that right?

9 A. They -- they have the right to water,
10 although they do not own any -- any land, any
11 irrigable land.

12 Q. All right. Let's take a quick look at that
13 2001 contract. I understand it's complicated. I'm
14 not going to ask you a lot of details, but there's a
15 few things I want to understand. And this is U.S.
16 Exhibit 116. We've previously looked at this before.
17 If you look at Page 3, I think you can see this is the
18 cover page to that implementing third-party contract,
19 and you're familiar with this contract, right?

20 A. Yes.

21 Q. If we look at Pages 11 to 12, I'm looking at
22 Section 7A1. In here, it's under the
23 heading, "Quantities." Do you see that at the bottom
24 of the page?

25 A. Yes.

1 Q. And this contract requires EP1 to sell water
2 to the city utility in addition to the other contracts
3 we just looked at; is that right?

4 A. Yes.

5 Q. And then if we go to Page 12, Line 9, we can
6 see that the maximum amount of water to be sold under
7 this contract is 28,116 acre-feet; is that right?

8 A. I believe so. I'm not reading the whole
9 thing, but it says 28,116 acre-feet of district water.

10 Q. Understood. And then looking at the next
11 sentence, it says when the allocation -- basically it
12 says when the allocation is less than 4 acre-feet per
13 acre, then the amount required under the contract is
14 also reduced; is that right?

15 A. That's what it says, yes.

16 Q. Was that your understanding?

17 A. Yes. But I tell you, Dr. Blair could
18 probably answer this one better.

19 Q. Understood. I will ask Dr. Blair in -- in
20 the spring, but there's just a few basics I wanted to
21 establish in the fall.

22 If we then turn to Page 116. This is Section
23 11. Page 116. There's no Page 116. It may not have
24 the attachments in this version. Let me just ask you
25 this, Mr. Reyes. We can take that down, and we'll

1 double-check and see if there's portions of this
2 particular document missing. Are you aware that under
3 the contract, the City can take up to the maximum
4 amount allotted per acre of EP1 water? Do you
5 understand that question?

6 A. No, I don't understand your question.

7 Q. Yeah. My question is just: The amount of
8 water that the City can take is based on the -- the
9 allotment, right?

10 A. Yes. And everybody's allotted the same, like
11 I answered before.

12 Q. Right. So -- so, in other words, if the
13 maximum allotment for a year is 4 acre-feet per acre,
14 then that's the amount that the City can take, right?

15 A. Correct.

16 Q. Okay.

17 A. On City-owned land, yes.

18 Q. Understood. All right. So let's talk a
19 little bit about ordering water. We can take that
20 down. And to determine how much of the EP1 allocation
21 is needed, the District takes the orders of the
22 farmers, right?

23 A. Yes.

24 Q. And you talked about the ways that -- four
25 ways that gets -- that happens, but a number of

1 factors can impact the amount of water that the
2 farmers order, like temperature and precipitation,
3 right?

4 A. Correct.

5 Q. And also the crops that are being grown?

6 A. Yes.

7 Q. Now, turning to the process, based on the
8 orders from the farmers, the District determines how
9 much is needed from the Project to satisfy those
10 farmer orders, right?

11 A. Yes.

12 Q. And the orders are made based on the
13 conditions on the ground within EP No. 1?

14 A. Correct. That's done on a daily basis during
15 irrigation season.

16 Q. And, actually, during -- on that daily basis,
17 the districts are coordinating with each other to
18 order that water?

19 A. Yes. With each other and with Mexico and the
20 Bureau of Reclamation.

21 Q. In fact, EP1 participates in daily -- at
22 least daily conference calls with Reclamation; is that
23 right?

24 A. And EBID.

25 Q. And those -- we talked about him earlier, but

1 those conference calls are actually attended by the
2 district water manager; is that right?

3 A. By the water master, that's correct.

4 Q. Water master. I'm sorry. Yes. And, again,
5 that's Mr. Rios, who we will hear from next, but it is
6 Mr. Rios, right?

7 A. Yes. And I attend some of them.

8 Q. One of the water master's duties, so one of
9 Mr. Rios' duties, is to ensure that the water that is
10 ordered arrives at the District; is that right?

11 A. Yes.

12 Q. So Mr. Rios provides information about how
13 much water to release, the timing of releases, and
14 when and where the water is needed, right?

15 A. That's correct. He coordinates with EBID's
16 water master.

17 Q. And so then the gates of Caballo are set
18 every day in response to those needs, those orders; is
19 that right?

20 A. Yes.

21 Q. And then it takes two to three days to travel
22 from Caballo to get to EP1?

23 A. Yes.

24 Q. And as you talked about, there's meters in
25 both EBID and EP1, right?

1 A. Correct.

2 Q. And you consider -- you consider the metering
3 that's in EP1 and EBID to be accurate?

4 A. Yes. We keep up with it. We have a river
5 team that keeps up with our telemetry system, our
6 metering.

7 Q. So you track those meters because you want to
8 make sure that the water that you order arrives at
9 EP1, right?

10 A. Yes.

11 Q. All right. So, now, let's talk -- let's talk
12 about a few questions about operations within the
13 District once the water arrives there. So let me ask
14 you first: Are you familiar with the term stacking,
15 as in you can stack a water right?

16 A. I'm familiar with the term, yes.

17 Q. What do you understand that term to mean?

18 A. That means that some -- someone could stack
19 water above their -- their allocation, their
20 allotment.

21 Q. So, for example, if a farmer owns 100 acres,
22 he can stack all of the water on 50 acres, as long as
23 he doesn't increase the overall amount; is that right?

24 A. As long as he doesn't go over his allotment,
25 he can utilize call for the water as he sees fit.

1 Q. And he can stack water on his acreage; is
2 that right?

3 A. I'm not sure if there's stacking or if
4 they've laid out half of it and -- and they're making
5 sure that -- that the half that they did plant will
6 survive.

7 Q. And then farmers within EP1, they're also
8 allowed to lease water; is that right?

9 A. To lease water?

10 Q. To each other. In other words, one farmer
11 can lease water from another farmer?

12 A. If -- if they're not utilizing it?

13 Q. Correct.

14 A. Yes. They can do that. They can work that
15 out on their own.

16 Q. All right. Let's talk about the use of
17 winter flows. So, now, during the winter, the
18 district delivers some water to farmers; is that
19 right?

20 A. Yes.

21 Q. And that water is used to, for example, wet
22 alfalfa?

23 A. It's mostly used for winter wheat and barley.
24 The alfalfa -- during the winter year, alfalfa does
25 not -- it goes dormant.

1 Q. Understood. But do you wet the ground to
2 prepare for alfalfa, say, in February?

3 A. If there's water available and -- and the
4 farmer wants to do that, yes.

5 Q. All right. And return flow water in the
6 winter is almost always available?

7 A. Not necessarily, no.

8 Q. All right. We'll move onto a different
9 subject, and that is combining sources. So we talked
10 earlier about the three sources of water for EP1, and
11 you talked about how the sources of water have
12 different salinities; is that right? In other words,
13 I understood you to be saying that water from the
14 wastewater treatment plant effluent is more saline,
15 for example, than Project water. Did I have that
16 correct?

17 A. That's correct.

18 Q. So one way you address that is by blending
19 water from, say, the effluent with Project water,
20 right?

21 A. Mixing water, yes.

22 Q. Yeah. And you can mix water with the
23 groundwater, as well, right?

24 A. If there's Project water being pumped in the
25 canal, then -- and Mr. Rios feels he needs the -- the

1 wells, then yes, he can do that.

2 Q. All right. And then let's -- let's turn to
3 Hudspeth. You talked with Ms. Klahn about Hudspeth.
4 Let's take a look at Joint Exhibit 449. You actually
5 talked about a contract from 2010, so let's go to the
6 last page of this document, Page 7. Let's see if this
7 is the contract you're talking about. You see there,
8 this is from 2010, right?

9 A. Yes.

10 Q. And, again, it's signed by Mr. Singh and
11 Mr. Stubbs on behalf of EP1, right?

12 A. Yes.

13 Q. And you can see it's got a couple signatures
14 there from Hudspeth County Conservation and
15 Reclamation District; do you see that?

16 A. Yes.

17 Q. Then if we go back to the first page, you
18 indicated with Ms. Klahn you were talking about a term
19 of ten years, right? So if you look at the term there
20 in Paragraph 2, you can see it's for a ten-year
21 period, right?

22 A. That's correct.

23 Q. Is this the contract that you discussed with
24 Ms. Klahn?

25 A. Yes.

1 MR. WECHSLER: Your Honor, I move Joint
2 Exhibit 449.

3 JUDGE MELLOY: Any objection?

4 MS. KLAHN: No.

5 MS. NAJJAR: No objection.

6 JUDGE MELLOY: Exhibit 449 is admitted.

7 Q. (BY MR. WECHSLER) And I think you indicated
8 that -- well, let's first look at Page 2, Section 3A.
9 You can see here that it says, "Provided that HCCRD
10 shall in no event be required to purchase more than
11 20,716 acre-feet," right? You see that?

12 A. Yes.

13 Q. And I think you indicated with Ms. Klahn that
14 no water was actually sold under this contract. Did I
15 have that right?

16 A. That's correct.

17 Q. And that was because of the drought, you
18 didn't have sufficient water for the District; is that
19 right?

20 A. That's correct.

21 Q. But water was sold under a previous contract
22 in the 1990s?

23 A. Yes. Before my time, yes.

24 Q. Do you know how many years it was sold?

25 A. I do not.

1 Q. Do you know how much water was sold?

2 A. I do not. All I know is there was effluent
3 water, so it wasn't that much.

4 Q. There's certain maximum amounts of water that
5 comes from the wastewater treatment plant; is that
6 right?

7 A. Yes.

8 Q. Yeah. Okay. So, finally, we can take that
9 down. Let's talk about -- well, before we leave that,
10 let me ask you one last question. Do you know what
11 year -- the first year that an agreement was signed
12 between Hudspeth and EP No. 1?

13 A. I do not.

14 Q. All right. So, now, let's turn to regulation
15 and administration of water in EP1, and let's start
16 with surface water. So to your knowledge, TCEQ does
17 not monitor the amount of water that's delivered to
18 each acre of land in EP1, right?

19 A. Not that I know of, no.

20 Q. And --

21 JUDGE MELLOY: Excuse me a second. Did
22 you say TCQ?

23 MR. WECHSLER: TCEQ, Your Honor.

24 JUDGE MELLOY: Texas --

25 MR. WECHSLER: Texas Commission on

1 Environmental Quality.

2 Q. (BY MR. WECHSLER) Do I have that right,
3 Mr. Reyes?

4 A. Yes.

5 JUDGE MELLOY: All right. Thank you.

6 Q. (BY MR. WECHSLER) So then, Mr. Reyes, to your
7 knowledge, neither TCEQ nor anyone from the State of
8 Texas has ever limited the amount of water that EP1
9 can divert from the Rio Grande River; is that right?

10 A. That's correct.

11 Q. And you're not aware of any rule or law that
12 limits the amount of surface water that can be applied
13 to each acre of land in EP1, right?

14 A. Just by board direction that their allotment
15 is 4 acre-feet per acre.

16 Q. But nothing from either TCEQ or the State of
17 Texas?

18 A. That's correct.

19 Q. Okay. Let's turn to the subject of
20 groundwater regulation. To do this, I want to go back
21 to New Mexico Exhibit 818 because this feels more
22 complicated to me. And here, you can see this
23 Paragraph 1.1.4, and there's a reference here
24 to, "Groundwater Conservation Districts." I'm just
25 going to read this to you, Mr. Reyes, and then I'm

1 going to look at a map on the next page. It
2 says, "The Texas legislature has established a process
3 for local management of groundwater resources through
4 Groundwater Conservation Districts, GCDs." Are you
5 familiar with the concept of groundwater conservation
6 districts?

7 A. No, I'm not.

8 Q. Let's look at the next page. This is Figure
9 1-2, Page 75. You can see in this figure, El Paso is
10 -- doesn't -- it's indicated that there isn't a
11 groundwater conservation district, so let me ask you:
12 Are you aware of a groundwater conservation district
13 anywhere within El Paso County?

14 A. No, I'm not.

15 Q. All right. And then let's turn to Page 77.
16 This whole area within this document is discussing
17 groundwater. But here, this is saying -- you can see
18 being highlighted. There's, "An overview evaluation,"
19 and then if you look in the sentence before, it's
20 talking about 1990. "Recognized that the Hueco Bolson
21 aquifer had a long history of water-level decline and
22 water-quality deterioration and the expected life of
23 the aquifer, under then current understanding, was
24 about 60 years at best." Were you aware of the
25 water-level decline issues in the Hueco Bolson?

1 **MS. KLAHN:** Objection.

2 **JUDGE MELLOY:** Just a second. What's
3 your objection?

4 **MS. KLAHN:** Relevance. He hasn't
5 established what the Hueco Bolson even is.

6 **MR. WECHSLER:** Sounds like foundation.
7 I'm happy to lay a foundation.

8 **JUDGE MELLOY:** Well, I'll let the
9 witness answer. You can answer.

10 A. I am not aware. This would be a question you
11 might want to ask Mr. Balliew.

12 **Q. (BY MR. WECHSLER)** I'll do that. Let's see.
13 Let's look at one more thing. If you look at the last
14 paragraph here, and, again, this page is a long
15 discussion of this whole section about groundwater
16 regulation in the area. Here, it's talking about that
17 eventually El Paso County was declared a primary
18 priority groundwater management area. Are you
19 familiar with the term priority groundwater management
20 area?

21 A. That was back in '98. That was before my
22 time.

23 **Q.** All right. And then if we turn to the next
24 page, Page 78, and this time, I want to actually
25 highlight the whole top part down to -- there we go.

1 And -- and here it says, "El Paso has clearly
2 demonstrated a significant effort toward regional
3 cooperation, planning, and voluntary implementation of
4 actions to address water supply problems, and that is
5 not clear -- it is not clear that creating a
6 groundwater conservation district for the El Paso
7 County overlying the Hueco Bolson aquifer would be in
8 the public interest, meet a public need, or benefit
9 the property therein at this time."

10 MS. KLAHN: I'm going to object to
11 foundation and relevance again, Your Honor.

12 MR. WECHSLER: I haven't even asked a
13 question.

14 JUDGE MELLOY: All right. Go ahead and
15 ask your question.

16 Q. (BY MR. WECHSLER) Then it says at the
17 end, "Since the conclusion of this action, El Paso
18 County Commissioner's Court has not promulgated any
19 water availability requirements within the County."
20 My question for you, Mr. Reyes, is: Are you aware
21 sitting here today of any water availability
22 requirements within El Paso County?

23 A. I am not aware of it, no.

24 Q. All right. So -- but turning to today,
25 meters are not required on groundwater wells in El

1 Paso County, right?

2 A. On the farmers' wells or our wells, no.

3 Q. And so to your knowledge, there's no Texas
4 state agency that monitors groundwater pumped in El
5 Paso County?

6 A. I'm not -- I'm not sure of that, no.

7 Q. You're just not -- you're not aware of one?
8 To your knowledge, you don't know?

9 A. I don't know.

10 Q. And to your knowledge, there are no
11 limitations on the amount of groundwater that can be
12 pumped in El Paso County?

13 MS. KLAHN: Your Honor, I'm going to
14 object to this reference to El Paso County. I believe
15 the witness is certainly able to testify about El Paso
16 No. 1, but looking at the map, as we did earlier, it's
17 clear El Paso No. 1 doesn't cover El Paso County.

18 MR. WECHSLER: I'm happy to limit it to
19 EP1.

20 JUDGE MELLOY: All right. With that
21 limitation -- with that limitation, I'll let the
22 witness answer.

23 A. State your question again.

24 Q. (BY MR. WECHSLER) Happy to. To your
25 knowledge, there are no limitations on the amount of

1 groundwater that can be pumped in EP1?

2 A. That's correct.

3 Q. All right. And finally, one last short
4 subject, and that is you're aware that in New Mexico,
5 there's an opportunity to protest an application such
6 as a groundwater application; is that right?

7 A. I'm not really familiar with how they
8 operate, no.

9 Q. But, in fact, EP1 has protested a groundwater
10 application in New Mexico in the past; is that right?

11 A. For a mining company, I believe, yes, we
12 joined EBID.

13 Q. Yeah. That was for a copper mine, right?

14 A. Yes.

15 Q. And are you aware that there was a hearing on
16 that application?

17 A. No, I'm not.

18 Q. Are you aware of the outcome of that
19 application?

20 A. No, I'm not.

21 MR. WECHSLER: With that, Mr. Reyes,
22 Your Honor, thank you very much. I appreciate it. No
23 further questions. Oh, Your Honor, I'm being told
24 that we just want to be clear that it was Joint 436
25 and not Joint 236 that was admitted I referred to

1 earlier.

2 JUDGE MELLOY: All right. With that
3 understanding Joint 436 is admitted.

4 MR. WECHSLER: Thank you.

5 JUDGE MELLOY: Did you have anything,
6 Mr. Wallace?

7 MR. WALLACE: No questions. Thank you,
8 Your Honor.

9 JUDGE MELLOY: All right. Ms. Klahn, do
10 you have any redirect?

11 MS. KLAHN: I have a couple. Could I
12 have, like, three minutes to get organized and then I
13 think we can finish this today?

14 JUDGE MELLOY: All right. We'll take a
15 short break.

16 MS. KLAHN: Thank you.

17 (Recess.)

18 JUDGE MELLOY: Are we ready to go,
19 Ms. Klahn?

20 MS. KLAHN: Yeah. We just need the
21 witness. We're both in the Department of Justice
22 offices, and the witness room is all the way around
23 the building from the attorney room, so I think he
24 went to the restroom.

25 JUDGE MELLOY: So how long do we think

1 Mr. Rios will be?

2 MS. KLAHN: Well, I guess it all depends
3 on Mr. Wechsler.

4 MR. WECHSLER: I am crossing Mr. Rios.
5 I don't expect that cross-examination to be very long,
6 Your Honor.

7 MS. KLAHN: The direct will be a little
8 bit over an hour, Your Honor.

9 JUDGE MELLOY: Well, then we should be
10 able to get to at least one more witness tomorrow.

11 MS. KLAHN: I think we should be able to
12 get to Mr. Balliew.

13 MR. WECHSLER: Yeah, I'm certain of it.

14 JUDGE MELLOY: What is his role again?

15 MS. KLAHN: Mr. Balliew?

16 JUDGE MELLOY: Yeah.

17 MS. KLAHN: He's the utility director
18 for El Paso Water Utilities.

19 JUDGE MELLOY: Okay.

20 MS. KLAHN: And I see the witness is
21 back.

22 JUDGE MELLOY: Okay. All right. I
23 think we're ready to go. Ms. Klahn, you may proceed.

24 MS. KLAHN: Thank you, Your Honor.
25 After having a chance to compile my notes, I don't

1 have any redirect for Mr. Reyes.

2 JUDGE MELLOY: All right. I think
3 you're done then, Mr. Reyes. Thank you for your
4 testimony. You're excused, and --

5 THE WITNESS: Thank you, Your Honor.

6 JUDGE MELLOY: Is there anything we need
7 to take up with counsel before we adjourn for the
8 evening?

9 MS. KLAHN: Not that I'm aware of.

10 JUDGE MELLOY: All right. If not then
11 we'll see everybody in the morning. Thank you,
12 everyone.

13 MS. KLAHN: Thank you.

14 MR. WECHSLER: Thank you, Your Honor.

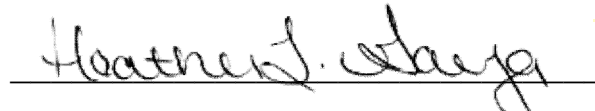
15 (The proceedings adjourned at 4:53 p.m.)
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