

SUPREME COURT OF THE UNITED STATES
NO. 141, ORIGINAL

STATE OF TEXAS,)
)
 Plaintiff,)
)
 VS.) VOLUME VII
)
 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 13, 2021, commencing at 11:00 a.m.;

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

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1 **JUDGE MELLOY:** All right. Shall we get
2 started? Again, this is in United States Supreme
3 Court Original No. 141, Texas versus New Mexico and
4 Colorado. Let me ask the parties who will be
5 appearing for the continued cross-examination of
6 Mr. Balliew to enter their appearance. For Texas?

7 **MS. BARFIELD:** Good morning, Your Honor.
8 This is Theresa Barfield on behalf of Texas.

9 **JUDGE MELLOY:** And for New Mexico?

10 **MR. KOPP:** Good morning, Your Honor.
11 This is Michael Kopp for the State of New Mexico.

12 **JUDGE MELLOY:** United States?

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

15 **JUDGE MELLOY:** Mr. Wallace, are you on?

16 (No response.)

17 **JUDGE MELLOY:** Let's wait one minute for
18 Mr. Wallace. I'm going to have somebody give him a
19 call and make sure we're not having crossed signals
20 here. Just one second.

21 **MR. WALLACE:** I was having some Internet
22 connection issues this morning. I'm sorry for keeping
23 you-all delayed.

24 **JUDGE MELLOY:** We tried to call, but I
25 see Mr. Wallace is here now so I think we're ready to

1 proceed.

2 Let me -- before we start with resuming
3 the cross-examination so that I don't forget, New
4 Mexico did submit their deposition excerpts from the
5 deposition of Nicolai Kryloff. Am I pronouncing that
6 correctly, Mr. Kopp?

7 **MR. KOPP:** I believe so, Your Honor.

8 **JUDGE MELLOY:** Which has been marked as
9 New Mexico Exhibit 3000. Is there any objection to
10 admission of that exhibit?

11 **MS. BARFIELD:** No objections, Your
12 Honor.

13 **JUDGE MELLOY:** All right. New Mexico
14 Exhibit 3000 will be admitted.

15 All right. Anything further before we
16 start the cross -- resume the cross-examination? And
17 I would just remind you, Mr. Balliew, that you're
18 still under oath. Mr. Kopp, you may proceed.

19 **MR. KOPP:** Thank you, Your Honor.

20 JOHN BALLIEW,
21 having been previously duly sworn, testified further
22 as follows:

23 FURTHER CROSS-EXAMINATION

24 BY MR. KOPP:

25 Q. Good morning, Mr. Balliew. I just have a few

1 more questions for you today. I want to start by
2 asking you about the drought in the Rio Grande Basin.
3 We've heard from several other witnesses in this case
4 that the Rio Grande Basin has been in a drought since
5 the early 2000s. Do you agree with that?

6 A. I would say that we're cycling in and out of
7 the drought since the early 2000s.

8 Q. So is it your understanding that in some
9 years, there have not been reduced surface allocations
10 in the Rio Grande?

11 A. In -- in -- in some of those years between
12 2000 and let's say the present, we've had a -- pretty
13 close to a full allotment. In some cases, we've had
14 something that's low, but in other cases, it's been in
15 between. So I refer to it as cycling in and out of
16 the drought.

17 Q. Okay.

18 MR. KOPP: Let's pull up Texas 7739.

19 Q. (BY MR. KOPP) I wanted to ask you a couple of
20 questions about this exhibit. On Page 1 here, the
21 Lower Valley and Central Well fields are Source 7. Do
22 you see that?

23 A. Yes, I do.

24 Q. Those are marked with horizontal lines there,
25 correct?

1 A. Yes.

2 Q. So on Page 2 of this exhibit, if we look at
3 the map on the right, that's the water distribution
4 outside of the irrigation season, right?

5 A. Yes.

6 Q. So it appears on this map that those wells
7 are being used in the winter in central El Paso,
8 correct?

9 A. Okay. The -- when they are used, this is
10 what it looks like, but we don't use them all the
11 time, and the reason I say that is because if we have
12 sufficient groundwater from the airport wells, the
13 yellow in this case, we would not need them. The
14 reason that we would hesitate to use them is because
15 of their overall general brackish content. Some of
16 them, as I testified, have reverse osmosis units, but
17 many of them don't. So in general, we try not to use
18 them. So the circumstance where they would be used
19 where you would see something like this chart here
20 would be where we have, let's say, a hot spring, a hot
21 March 15th, let's say. We have to have more water
22 than the airport wells can supply so we would turn on
23 those lower quality wells.

24 Q. I see. Looking at the map on the right,
25 though, the October to February map, it appears that

1 all the sources of water the city is using to supply
2 its customers in the winter are groundwater sources,
3 correct?

4 A. Yes.

5 Q. That's not affected by the amount of EP water
6 surface allocation, correct?

7 A. Correct.

8 Q. Okay. Let's turn, now, to Texas 91. I want
9 to ask you a few high-level questions about this
10 exhibit. I am reserving questions on the specific
11 quantifications until a later date, as I indicated
12 yesterday. So this was prepared in 2017, correct?

13 A. Correct.

14 Q. And I think you testified you prepared this
15 at the request of Dr. Sunding?

16 A. Yes.

17 Q. What did Dr. Sunding ask you to provide?

18 A. He wanted to know what we did as a response
19 to the inconsistency in surface water delivery, so we
20 had a discussion as to what -- what that could be,
21 what it looks like, and as a result of that, we went
22 off and compiled this report.

23 Q. I see. Is this a complete tabulation of the
24 expenses that you were alleging El Paso Water incurred
25 as a result of these inconsistent surface water

1 **allocations from 2000 to 2016?**

2 A. Yes. As I testified, we -- we restricted
3 this to just those things that we could attribute to
4 the uncertainty in the surface water allocation.

5 **Q. Okay. And you did not provide any expenses**
6 **prior to the year 2000, correct?**

7 A. Correct.

8 **Q. Do you know which years during the period**
9 **from 2000 to 2016 that EP1 had a full allocation of**
10 **water from the Project?**

11 A. I don't recall off the top of my head.

12 **Q. In a year EP1 received its full allocation,**
13 **EP Water also received full allocation, correct?**

14 A. Yes.

15 **Q. For any year EP1 didn't receive a full**
16 **Project allocation, you didn't analyze the cause of**
17 **that decreased allocation, correct?**

18 A. Well, so when we have a decreased allocation,
19 in some cases, it's -- it's relatively obvious. So I
20 don't remember if we had a full allocation during this
21 time frame, but I do remember when we did it. So 2003
22 would be an example and 2013, and those were clearly
23 drought events because a limited snow pack, limited
24 runoff, so the period of allocation, the season, the
25 water delivery season, was shortened in those years.

1 So outside of that, there are times when the delivery
2 was reduced, but I can't say that it was due to a
3 drought. But I didn't do a specific analysis. Just
4 based on my observation and our experience in the way
5 that surface deliveries had happened in the past, 2003
6 and 2013 were clearly drought years.

7 **Q. So understood that in some years, there are**
8 **clear drought conditions, low snow pack, and so on,**
9 **but for those other years, do I understand you**
10 **correctly that you didn't attempt to determine the**
11 **cause of the reduced surface allocation?**

12 A. Correct.

13 **Q. Okay. In this document, did you exclude**
14 **projects that would be needed to serve the growing**
15 **population we talked about yesterday?**

16 A. Yes. Those were excluded.

17 **Q. And how did you do that?**

18 A. Well, there are many other projects that we
19 did during this time frame, so let's say we're talking
20 about additional wells. In this report, we allocated
21 the cost to two of those wells, but during this time
22 frame, we probably drilled 12 or 14 wells. Some of
23 those were related to growth; some of them were for
24 wells that we had to replace because they went out of
25 service, but only the ones that were specific to the

1 uncertainty in the surface water allocation did we put
2 in this report.

3 Q. Okay. And I think you testified yesterday
4 that in some years, El Paso Water does not order its
5 full allocation of water, correct?

6 A. Yes.

7 Q. Okay. When you were compiling these
8 expenses, did you consider years in which El Paso
9 Water didn't order its full allocation?

10 A. No. As I testified, the reason why we
11 wouldn't order a full allocation has to do with the
12 timing of delivery and the demand in the system. So
13 if delivery comes, and let's say we're talking again
14 about a spring delivery, a full March, we don't have
15 enough demand in the system to be able to treat our
16 hundred million gallons per day of surface water that
17 we would be entitled to. So we have to treat whatever
18 is demanded in -- in the system. So it's not like
19 we're able to plan that and -- and figure it out
20 exactly. That's the reason we need the aquifer
21 storage and recovery project that I talked about so
22 that we could, in fact, do that kind of plan.

23 Q. Okay. When you are able to order your full
24 allocation, do you ever carry over some of that unused
25 allocation in project storage?

1 A. My understanding is we don't have the ability
2 to do any -- any sort of carryover. We're a user of
3 the district and so we place an order -- we place
4 orders throughout the -- the week, two times during
5 the course of the week, and then we receive that
6 water. If we replace that order, we place an order,
7 and we're not able to take the water for whatever
8 reason, then we pay for it, and it's gone. But we
9 can't carry over storage. The District might be able
10 to do that, and then the next year, that gets
11 allocated among their users, including El Paso Water,
12 but we don't have any say in how that happens.

13 **Q. Okay. We talked a little bit yesterday about**
14 **how El Paso Water sometimes gets charged for some of**
15 **its Canutillo groundwater pumping as if it were a**
16 **surface diversion; is that correct?**

17 A. Yes.

18 **Q. Did you consider these Canutillo charges when**
19 **you were determining how much surface water El Paso**
20 **Water received each year?**

21 A. No. And -- and the reason for that is
22 because of the problem that we -- not problem, but the
23 constraint that we have where we're frequently unable
24 to use all of the allotment because of the season, the
25 capacity, and the demand in the system. So we always

1 have water rights left over that we have been unable
2 to use and so if we're unable to discharge the amount
3 of water that is in the contract, let's say to the bed
4 of the river from the northwest plant, then it's
5 charged from that allotment that we have that we were
6 unable to use.

7 **Q. What about in a year where you have a reduced**
8 **surface allocation so you don't have any unused**
9 **allotment, do you still get Canutillo charges in those**
10 **years?**

11 A. We -- you know, I -- based on my
12 recollection, we always will have some water left over
13 because we don't -- we don't want to over order it.
14 It's not like we want to be in a position where we've
15 ordered water and then we're unable to use it. So we
16 err on the side of not wasting any of that -- of that
17 water, because there might be farmers in the El Paso
18 County Water Improvement District system who could use
19 that water so we don't want to order it and not be
20 able to have anybody use it.

21 **Q. So even in a reduced surface allocation year,**
22 **you'll have some unused allocation?**

23 A. I believe so.

24 **Q. And did you consider that unused allocation**
25 **as part of the supply available to you in those**

1 reduced surface years when you compiled this exhibit,
2 Texas 91?

3 A. Well, in terms of the order of magnitude,
4 that's a very small number in comparison to the water
5 supply projects that we're talking about here, so the
6 answer to your question is no, we didn't really
7 consider it.

8 Q. Okay. I want to move on now and ask you a
9 few questions about the Kay Bailey Hutchison
10 desalination plant.

11 MR. KOPP: Can we pull up New Mexico 243
12 again, the map on Page 15?

13 Q. (BY MR. KOPP) So the desalination plant is
14 shown right here in the middle of the map, and that
15 appears to be located pretty close to the dividing
16 line between the fresh and brackish portions of the
17 aquifer, correct?

18 A. Yes.

19 Q. In fact, I think one purpose of the desal
20 plant is to prevent brackish water intrusion into
21 those freshwater portions of the aquifer, right?

22 A. Yes.

23 Q. It does that by intercepting the brackish
24 water before it can intrude further into the
25 freshwater portion?

1 A. Yes. What's missing from this graphic here
2 is just above the dot that represents the Kay Bailey
3 Hutchison plant, you see a black line that loops up
4 and goes through the letter F there. That represents
5 a -- a highway, and along that highway are a series of
6 wells that go directly to the Kay Bailey Hutchison
7 plant, so those are the wells that are intercepting
8 specifically that brackish water.

9 **Q. I see. So the -- the location of the pumping**
10 **for the desal plant is not right where the desal plant**
11 **is, it's to the north?**

12 A. And -- and to the west. So the line of red
13 wells that are right on that dotted yellow line --
14 dashed yellow line, so those feed water to the plant.
15 Those refer to the feed as the feed wells and the
16 wells along that highway as the blend wells, but they
17 both go to the Kay Bailey Hutchison plant.

18 **Q. I see. And the feed wells and the blend**
19 **wells both pump brackish water, correct?**

20 A. Yes.

21 **Q. Okay. Mr. Balliew, would you agree that the**
22 **capacity of the desal plant was designed with this**
23 **goal of preventing the brackish water intrusion in**
24 **mind?**

25 A. Yes. So when it comes to the capacity, that

1 27.5 number, that includes some different -- different
2 components, but part of that capacity was for the
3 interception of that brackish water.

4 Q. Okay. And looking again at this map, these
5 red dots that are to the west of the desal plant, I
6 think you testified the wells that are right along the
7 line are wells that are supplying the plant, correct?

8 A. Correct.

9 Q. And the wells that are a little bit farther
10 west, those are the wells that the plant is
11 essentially protecting from this brackish water
12 intrusion?

13 A. Correct.

14 Q. Okay. If you reduced pumping from the desal
15 plant too much, would you begin to experience problems
16 with brackish water intrusion into these wells?

17 A. Yes.

18 Q. Okay. Let's go to Page 35 on New Mexico 243.
19 So this slide is labeled "EPWU Support for Fort
20 Bliss." I just want to ask you a few questions about
21 this slide. Do you remember giving this presentation
22 and discussing Fort Bliss?

23 A. Yes.

24 Q. So it says here in the first column -- first
25 paragraph, excuse me, that, "El Paso Water is given

1 assurances to the pentagon that the City of El Paso
2 has a sustainable water supply." Is that right?

3 A. Yes.

4 Q. And the second paragraph states that these
5 assurances were -- I'm sorry. Still the first -- I'm
6 sorry. This is the wrong page.

7 MR. KOPP: Is this Page 35? Could you
8 go to 34? Yes, I'm sorry. This is the correct page.
9 My apologies.

10 Q. (BY MR. KOPP) The second paragraph on this
11 page, excuse me, states that, "The assurances you gave
12 the pentagon are a significant factor in the
13 pentagon's decision to expand Fort Bliss." Would you
14 agree with that?

15 A. Yes.

16 Q. And, finally, the last paragraph states, "El
17 Paso Water partnered with Fort Bliss to construct the
18 desal plant," correct?

19 A. Yes.

20 Q. I believe Fort Bliss provides water to El
21 Paso Water for treatment at the desal plant?

22 A. So the wells that I talked about that are
23 along that highway that are to the north of the plant
24 are on Fort Bliss property, so we drilled and
25 constructed the wells, and the -- the value of the

1 real estate for those wells, each individual well
2 site, plus the plant itself is incorporated in a -- in
3 a kind of a lease arrangement that we have with Fort
4 Bliss, but for the water resource itself, we pay the
5 Army for the water that comes out. So if that water
6 is fresh, we pay a certain rate for it. If it's
7 brackish, we pay a different rate for it. And then
8 that gets blended up -- not blended up, combined with
9 the water that we sell Fort Bliss and then they pay us
10 the net difference.

11 Q. I see. So they provide water to you and then
12 you also sell some of that water back to them?

13 A. Yes.

14 Q. Okay. Would you agree that Fort Bliss is a
15 major contributor to the economy of the El Paso area?

16 A. Yes.

17 Q. Okay. All right. Let's go back to -- excuse
18 me.

19 MR. KOPP: At this time, Your Honor, I
20 would like to submit Page 34 of New Mexico 243 into
21 evidence.

22 JUDGE MELLOY: Any objection?

23 MS. BARFIELD: No objection, Your Honor.

24 JUDGE MELLOY: All right. Page 34 is
25 admitted.

1 **MR. KOPP:** I'm sorry. I'm being told I
2 said the wrong number. It's 243, Exhibit New Mexico
3 243. I think you're on mute, Your Honor.

4 **JUDGE MELLOY:** It's Page 34 of Exhibit
5 243, right?

6 **MR. KOPP:** Correct.

7 **JUDGE MELLOY:** All right. That page is
8 admitted.

9 **MR. KOPP:** Thank you.

10 **Q. (BY MR. KOPP)** Let's go back to Texas 91 for a
11 moment. And on Page 2. So this exhibit lists several
12 other projects and improvements besides the Kay Bailey
13 Hutchison plant, correct, Mr. Balliew?

14 **A.** Yes.

15 **Q.** Okay. And yesterday, I believe you testified
16 El Paso Water would not have undertaken these projects
17 absent these disruptions to its surface water
18 deliveries; is that right?

19 **A.** Yes.

20 **Q.** Okay.

21 **MR. KOPP:** Can we pull up New Mexico
22 2152?

23 **Q. (BY MR. KOPP)** Mr. Balliew, I'm showing you
24 what's been marked as Exhibit New Mexico 2152. This
25 document is titled, "El Paso Water Resource Management

1 **Plan Phase 3 Completion Report." Do you see that?**

2 A. Yes.

3 **Q. Do you recognize this document?**

4 A. I'm familiar with the -- with the Boyle
5 report. It's been many, many years since I've
6 actually seen it.

7 **Q. Okay. Could you describe what this document**
8 **is?**

9 A. There was a period of time when El Paso Water
10 hired Boyle Engineering to do a water resource
11 management plan and three-volume reports.

12 **Q. Okay.**

13 A. These three volumes.

14 **Q. I think you were part of that planning**
15 **process, correct?**

16 A. Yes. There was a technical advisory group
17 collection of people, and I was the manager of that
18 group of people, the technical side.

19 **Q. I see. And is this document maintained in El**
20 **Paso Water's records?**

21 A. Yes.

22 **MR. KOPP:** Okay. I'd like to submit New
23 Mexico's Exhibit 2152 into evidence.

24 **JUDGE MELLOY:** Any objection?

25 **MS. BARFIELD:** No objection, Your Honor.

1 **JUDGE MELLOY:** New Mexico 2152 is
2 admitted.

3 **MR. KOPP:** Can we turn to Page 3? Can
4 you highlight the last two paragraphs there or blow
5 them up?

6 **Q.** (BY MR. KOPP) So the second sentence of this
7 first paragraph states, "The Phase 3 of this plan
8 development involved estimating the cost of three
9 alternative plans formulated in Phase 2, evaluating
10 and ranking the three plans, and selecting the
11 preferred plan, and documenting the adopted plan." Do
12 you see that?

13 **A.** I see it.

14 **Q.** Okay. And then the second paragraph
15 indicates that the plans were considered by both the
16 technical advisory committee and the management
17 advisory committee, and then the preferred plan was
18 selected in consultation with both committees,
19 correct?

20 **A.** Yes, I see that.

21 **Q.** Okay. Let's turn to Page 5 now. Actually, I
22 want to look at this first sentence, which starts at
23 the very bottom of Page 4. It states, "The plan
24 adopted for management of El Paso's water resources
25 through the next 50 years, Scenario A, consists of the

1 following principal elements." Do you see that?

2 A. Yes, I do.

3 Q. Okay. And then let's zoom out here. I want
4 to just highlight a couple of these factors that are
5 just summarized here. First, let's look at Item 6.
6 This states that, "One of the goals in this management
7 plan was perfection of an agreement with the EPCWID
8 and the USBR by 1992 enabling the PSB to store its
9 Project surface water supplies in Elephant Butte
10 Reservoir and make deliveries of surface water from
11 storage during the non-irrigation season." Is that
12 right?

13 A. I see that, yes.

14 Q. Okay. El Paso Water never executed such a
15 contract, correct?

16 A. No, we did not.

17 Q. Is El Paso Water still pursuing such an
18 agreement?

19 A. No, we're not.

20 Q. Okay. Let's look now at Item 7. So this
21 states, "El Paso Water was planning to expand
22 groundwater production from the Mesilla Bolson in
23 Texas at an average increase of 1,500 acre-feet per
24 year starting immediately and continuing through the
25 year 2010." Do you see that?

1 A. I see that.

2 **Q. Has El Paso Water expanded pumping in the**
3 **Mesilla Bolson in Texas since this report was issued?**

4 A. Not to that extent. So following this
5 report, we did modeling of the Mesilla Bolson that
6 indicated that it could not support a substantial
7 increase of expansion in pumping. So as far as I
8 know, nothing of this nature ever took place.

9 **Q. Was there some increase in pumping from the**
10 **Mesilla Bolson since that time?**

11 A. I would characterize it as we -- we put in
12 some additional facilities, but we maintained
13 relatively constantly the pumping rate from the
14 Mesilla for many years.

15 **Q. Okay. Let's turn to Page 6 now. So the**
16 **second sentence at the top of the page indicates,**
17 **"This is a list of the principal additional water**
18 **supply facilities which must be constructed in the**
19 **next 40 years to implement the adopted water resource**
20 **management plan." Do you see that?**

21 A. I do see that.

22 **Q. Okay. Looking at the first bullet on Page 6,**
23 **it indicates, El Paso Water planned to construct 39**
24 **wells in the Mesilla Bolson in Texas; is that right?**

25 A. I see that.

1 Q. Okay. I believe yesterday you testified
2 there were approximately 35 wells total in the
3 Canutillo well field, correct?

4 A. Correct.

5 Q. Okay. And these wells are El Paso Water's
6 only wells in the Mesilla Bolson in Texas?

7 A. Yes.

8 Q. Okay. So these 39 new wells discussed in
9 Exhibit 2152 haven't been constructed then?

10 A. Correct. They have not.

11 Q. Okay. I think you also testified yesterday
12 that the northwest water treatment plant has a
13 capacity of around 60 million gallons per day; is that
14 right?

15 A. The -- the upper valley.

16 Q. Excuse me. Sorry to interrupt.

17 A. Yes. In that -- yes, that's the answer.

18 Q. Okay. But I think you also testified that
19 the existing wells that supply that plant only produce
20 a little less than 30 million gallons per day,
21 correct?

22 A. That's correct. So when the plant was
23 constructed, it put together what we refer to as a
24 campus style, so it's not a series of treatment units
25 that are back to back but a series of units with space

1 in between. So the plant was designed with a future
2 thought that there might be surface water available
3 that could be treated and so the plant capacity is
4 higher so that it could take the groundwater and
5 additional surface water, but as yet that surface
6 water has not materialized. So even though the plant
7 capacity is 60 million gallons per day, the most we've
8 ever treated, I think, is 28, and typically it's 25 or
9 less.

10 Q. I see. Were these additional Canutillo wells
11 mentioned here in Exhibit 2152, were they planned to
12 allow the upper valley treatment plant to treat water
13 at its full capacity?

14 A. No. This -- this report here predates the
15 construction of the upper valley plant, so I think
16 that after this was done, there was additional
17 planning and refinement before the upper valley plant
18 was constructed.

19 Q. I see. Let's move down here to the sixth
20 bullet on this page. This mentions a 36-inch to
21 72-inch diameter southern transmission pipeline along
22 Doniphan Drive in the Rio Grande corridor linking
23 Canutillo well field, the Robertson Umbenhauer water
24 treatment plant, and the Jonathan Rogers water
25 treatment plant. Do you see that?

1 A. Yes.

2 Q. So at this time El Paso Water was planning to
3 build a new 36 to 72-inch diameter pipeline linking
4 these facilities?

5 A. Yes.

6 MR. KOPP: Can we turn quickly to Page
7 76?

8 Q. (BY MR. KOPP) So in the bottom left, the
9 legend states that this is Scenario A, capital
10 improvements plan to be built as of the year 2000. Do
11 you see that?

12 A. Yes.

13 Q. And once again, Scenario A is the management
14 plan that was selected in this report, correct?

15 A. Yes.

16 Q. So looking above that Scenario A on the
17 bottom left, the legend states that the proposed water
18 transmission line appears on here in a thick black
19 line. Do you see that?

20 A. Yes.

21 Q. So if we look over here at the map, the
22 portion of this pipeline that was planned to be built
23 as of 2000 is shown running from the Mesilla in the
24 north along the river south into central El Paso. Do
25 you see that?

1 A. Yes.

2 Q. The capacity measurements for that pipeline
3 are shown in little print next to it, and they seem to
4 range from 48 inches to 72 inches. Do you see that?

5 A. Right.

6 Q. Okay. Let's go back to Texas 91 for a
7 moment. I want to go to Page 163. On this page, this
8 is a summary of costs you're alleging El Paso Water
9 incurred to power its wells during periods when it had
10 reduced surface water allotments, correct?

11 A. Yes.

12 Q. Okay. And on Page 165, let's turn to that.
13 This table shows what appears to be water delivering
14 pumping data; is that right?

15 A. Yes.

16 MR. KOPP: Can we put up Page 166 next
17 to this?

18 Q. (BY MR. KOPP) Thanks for your patience. Do
19 you see those both on your screen now?

20 A. I do.

21 Q. Okay. So in the table on Page 166, it
22 appears you took the groundwater produced supplement
23 lack of surface water column from the 165 table and
24 then used that to calculate the expenses shown on Page
25 163; is that right?

1 A. Yes.

2 Q. Okay. So we can take down the table on 166
3 now. Looking back at this table on 165, the column on
4 the left, Rio Grande acre-feet, do you see that?

5 A. Yes, I do.

6 Q. That has values in acre-feet, right?

7 A. Yes.

8 Q. Okay. But the rest of the columns are in
9 units of 1,000 gallons, correct?

10 A. Yes.

11 Q. Okay. And the Rio Grande acre-feet column,
12 that shows El Paso Water's diversions of surface water
13 from the river each year, correct?

14 A. Yes.

15 Q. And the groundwater produced supplement lack
16 of surface water column, that shows the amount you're
17 claiming El Paso Water pumps to compensate when it
18 didn't receive enough surface water, correct?

19 A. Yes.

20 Q. All right.

21 MR. KOPP: Can we pull up Demonstrative
22 19?

23 Q. (BY MR. KOPP) So, Mr. Balliew, we prepared
24 this exhibit using the information from the table we
25 were just talking about on Page 165. This graph shows

1 the values from the Rio Grande acre-feet column in
2 orange and the values from the groundwater produced to
3 supplement lack of surface water column in blue. Do
4 you see that? So when we added these two numbers
5 together for each year from the table on Page 165, we
6 found they always add up to about 61,000 acre-feet,
7 and, Mr. Balliew, we discussed earlier how El Paso
8 Water currently has the capacity to use about 61 or
9 62,000 acre-feet of surface water per year, correct?

10 A. 62,000 acre-feet is the most that we've
11 treated, but yes.

12 Q. Okay. So looking at this demonstrative,
13 isn't it true that you made a simple assumption that
14 from 2000 to 2016, El Paso Water would receive at
15 least 61,000 acre-feet of surface water each year?

16 A. Are you asking if that was the assumption
17 that was used to produce the table that we previously
18 looked at?

19 Q. Yes.

20 A. I don't think that's the case.

21 Q. Then what assumption did you use?

22 A. I think what we looked at is year by year
23 what wells were run in the -- in the summertime,
24 essentially in the -- in the period of critical peak
25 pricing from the electric company that we would not

1 have normally run if we did have the 62,000 acre-feet
2 allotment.

3 Q. So you -- you capped that groundwater pumping
4 at 61 or 62,000 acre-feet that you used to calculate
5 these values?

6 A. I believe something like that.

7 Q. Okay. Then you subtracted out the Rio Grande
8 diversions from that number?

9 A. Yes.

10 Q. Okay. And you used that to calculate the
11 pumping expenses, correct?

12 A. We did that for each individual well.

13 Q. I see. Those pumping costs are the ones that
14 are summarized in Item 9 that's on Page 163, correct?

15 A. Well, you might want to show it to me again.

16 Q. Sorry. Yeah.

17 MR. KOPP: Can you please pull that up?

18 A. So your question again? Sorry.

19 Q. (BY MR. KOPP) Yes. The pumping costs are the
20 ones that are -- are summarized here, correct?

21 A. Yes.

22 Q. Okay. And the wells we were just discussing
23 that you had to run to produce this sur -- excuse me,
24 supplemental groundwater, are those the same wells
25 that you list for maintenance costs in Item 8 on Page

1 **161?**

2 **MR. KOPP:** Can we go to 161?

3 A. Okay. So there's a difference between the
4 two types of wells. So in this table that you're
5 looking at here, the well maintenance and
6 rehabilitation, this refers to all of the wells in
7 general that could supply water to where surface water
8 is normally used. So I would say this is a larger set
9 of wells. The reason for this particular project was
10 to increase reliability so we needed all of the wells
11 to be reliable, not just those that are specific to
12 the ability to produce water when the surface water is
13 not available.

14 **Q. (BY MR. KOPP) I think that makes sense.**

15 **Thank you.**

16 **MS. BARFIELD:** Could I ask a question of
17 clarification to the Court?

18 **JUDGE MELLOY:** Go ahead.

19 **MS. BARFIELD:** Thank you, Your Honor.
20 It appears that Mr. Kopp is going to go ahead and
21 cross-examine specific expense items in Texas 091, so
22 I would ask for clarification on the Court's ruling.
23 I think it's prejudicial to the State of Texas for
24 Mr. Kopp to get to ask some of his expense-related
25 questions now and then save some of them for later so

1 I think the choice is -- I think he's opened the door,
2 and I would ask that he go ahead and complete his
3 cross-examination today as opposed to his statement
4 earlier that he was going to reserve such questions.

5 **MR. KOPP:** May I respond, Your Honor?

6 **JUDGE MELLOY:** You may.

7 **MR. KOPP:** Yesterday, Ms. Barfield asked
8 the witness a number of questions about assumptions he
9 made when preparing the costs shown in this exhibit.
10 I was just probing some of those assumptions, but I'm
11 done with my questioning. I have no further questions
12 on this.

13 **JUDGE MELLOY:** All right.

14 **MR. KOPP:** We do --

15 **JUDGE MELLOY:** How much longer are you
16 going to be with your cross?

17 **MR. KOPP:** Probably five minutes, Your
18 Honor. I'm almost finished.

19 **JUDGE MELLOY:** All right. You may
20 proceed.

21 **MR. KOPP:** All right. And just to
22 clarify, we can still reserve the right to call this
23 witness back in the next phase, if necessary?

24 **JUDGE MELLOY:** Yes.

25 **MR. KOPP:** Thank you.

1 Q. (BY MR. KOPP) Mr. Balliew, I really do just
2 have a few more questions for you. You testified
3 yesterday that the City began drilling wells and
4 switched its municipal supply to groundwater starting
5 around 1903, correct?

6 A. Yes.

7 Q. Okay. Do you know how much groundwater El
8 Paso pumped in 1938?

9 A. No. I think in that 1990 Ashworth report,
10 the number is in there.

11 Q. Okay. Is it fair to assume that El Paso
12 pumped less groundwater in 1938 than it does today?

13 MS. BARFIELD: Objection; it lacks
14 foundation.

15 A. I don't really remember.

16 JUDGE MELLOY: I'm going to sustain
17 that. He said it's in the report. He doesn't know.

18 MR. KOPP: That's fine.

19 Q. (BY MR. KOPP) Do you know approximately how
20 many groundwater wells El Paso had in 1938?

21 A. No, I don't.

22 Q. Do you know if El Paso Water has more wells
23 today than it did in 1938?

24 A. I don't directly know that since I don't know
25 how many there were in 1938.

1 Q. That's fair. You also testified yesterday
2 that about 50 percent of your effluent is derived from
3 surface water, right?

4 A. Yes. And so I made that statement on the
5 basis of 50 percent of our water supply in a normal
6 year, that is to say a non-drought year, comes from
7 surface water so that would end up in the wastewater
8 treatment plants and come out as effluent.

9 Q. Sure. Just to be clear, the surface water El
10 Paso Water uses is all Project water, correct?

11 A. Correct.

12 Q. I do just have one more question about
13 Exhibit New Mexico 202.

14 MR. KOPP: Can we pull that up quickly?

15 Q. (BY MR. KOPP) There are two rows here on the
16 left that I wanted to ask you about. Here in the
17 middle, it's the 2001 contract water and 2001 contract
18 water effluent rows. Do you see those?

19 A. Yes, I do.

20 Q. So the next column over is titled, "Irrigable
21 Land Acres," but it's correct that the numbers shown
22 for these rows don't reflect acres of land the City
23 owns, right?

24 A. That is correct.

25 Q. Okay. And in these rows, they just represent

1 water that El Paso Water has purchased from EP1,
2 correct?

3 A. Yes.

4 Q. Okay. Or I guess in the case of the 2001
5 contract water effluent credit, that's water that El
6 Paso Water receives in exchange for effluent from EP1,
7 correct?

8 A. Well, so specifically, that number 11,032
9 that's there, we received the credit for 50 percent of
10 that. That's where that next column number comes into
11 play. I'll grant you, it's a little bit confusing
12 because it is not actually acres, and the 50 percent
13 is not actually acre-feet per acre. It's just
14 representing the fact that -- and I'm -- that the
15 11,032 was the effluent that was put into the system
16 under this -- in the El Paso County Water Improvement
17 system as part of this, but we get the 50 percent
18 credit.

19 Q. I see. So in the irrigable land acres
20 column, that's -- for that row, that's reflecting the
21 volume of effluent you provided EP1, and then over in
22 the allocation acre-feet column, that's the water El
23 Paso Water received in exchange, correct?

24 A. Yes.

25 Q. I see.

1 A. If you can bear with me one minute, I'm
2 locked up here on the video so I need to get somebody
3 to help me. Okay.

4 Q. Is your video working now, Mr. Balliew?

5 A. Yes.

6 Q. Okay. I just have one more question. You
7 mentioned yesterday that in the early 1980s, I think,
8 El Paso Water filed applications to drill some wells
9 in the Mesilla Bolson and New Mexico, correct?

10 A. Yes. I believe the Mesilla and the Hueco
11 Bolson.

12 Q. I see. And this led to litigation with New
13 Mexico?

14 A. Yes.

15 Q. Do you know for the -- the wells that El Paso
16 Water applied for in the Mesilla, did any Texas
17 official tell El Paso Water at that time that pumping
18 groundwater in New Mexico could violate a 1938
19 Condition?

20 A. I don't recall anything of that nature.

21 **MR. KOPP:** All right. Thank you. I
22 have no further questions.

23 **JUDGE MELLOY:** Mr. Wallace, I guess you
24 would be next if you have any questions.

25 **MR. WALLACE:** No questions. Thank you,

1 Your Honor.

2 **JUDGE MELLOY:** All right. Ms. Barfield,
3 do you have any redirect?

4 **MS. BARFIELD:** I have a couple of quick
5 questions, Your Honor.

6 **REDIRECT EXAMINATION**

7 **BY MS. BARFIELD:**

8 **Q. Mr. Balliew, are you aware that the Canutillo**
9 **wells get charged to the EP1 allocation?**

10 **A. No.**

11 **Q. Okay. Well, that brings me to my next**
12 **question. El Paso Water is not responsible for those**
13 **calculations or how the Canutillo wells get charged;**
14 **is that correct?**

15 **A. Correct. We are not.**

16 **Q. Okay. You don't know any specifics about**
17 **that?**

18 **A. No, I don't.**

19 **Q. Do you have an understanding that Dr. Blair**
20 **is the one responsible for that?**

21 **A. Yes. That's correct.**

22 **MS. BARFIELD:** Thank you. No further
23 questions, Your Honor.

24 **JUDGE MELLOY:** Well, just to follow up,
25 and maybe Mr. Balliew doesn't know based on his

1 answer, but what do we mean by getting charged? Do
2 you know what -- do you know what they're talking
3 about with the Canutillo wells getting charged to your
4 allotment?

5 THE WITNESS: I think what it means is
6 that of the -- of the allotment that we're unable to
7 use, that they would charge us for that water. In
8 other words, I think that we paid for it, but we don't
9 actually use the water.

10 JUDGE MELLOY: Okay. All right.
11 Anybody want to follow up on that?

12 MS. BARFIELD: No, Your Honor.

13 JUDGE MELLOY: All right. Okay. Thank
14 you, Mr. Balliew. We appreciate your testimony, and
15 you're excused. Thank you very much.

16 THE WITNESS: Thank you.

17 JUDGE MELLOY: All right then. Is there
18 anything else we need to take up today?

19 MS. BARFIELD: Your Honor, I have one
20 question regarding the Texas exhibit list.

21 JUDGE MELLOY: For today or in general?

22 MS. BARFIELD: It involves the
23 Miltenberger presentation for next Monday.

24 JUDGE MELLOY: Okay. I don't -- I don't
25 have that, I don't think.

1 **MS. BARFIELD:** Oh, no. You don't yet.
2 And this -- earlier in the week, we determined that
3 Dr. Miltenberger is going to use two historic maps
4 during his presentation, which are all among the
5 materials that have been circulated in the case, but
6 they just never had specific assigned exhibit numbers
7 for the maps. We circulated this to the parties
8 earlier in the week, told them we would like to assign
9 exhibit numbers to these historic maps. There were no
10 objections to that request, so we are now requesting
11 of Your Honor that we be allowed to stamp these two
12 maps as additional Texas exhibits and go ahead and
13 upload them to Box.com, as well as add them to our
14 exhibit list.

15 **JUDGE MELLOY:** So basically supplement
16 your exhibit list?

17 **MS. BARFIELD:** Exactly.

18 **JUDGE MELLOY:** Okay. And do I
19 understand, Mr. Kopp, you have no objection.

20 **MR. KOPP:** That's correct, Your Honor.
21 We have no problem with that proposal, though we
22 reserve our right to lodge objections to the entry of
23 those exhibits into evidence.

24 **JUDGE MELLOY:** All right. The request
25 will be granted. So let's talk a little bit, since we

1 have a minute here, about the schedule. So we have
2 Miltenberger, which will probably take all of Monday,
3 I assume, and maybe into Tuesday, but let's hope we
4 get done in one day, and then Stephens will be the
5 same, I assume, about a full day? Does that sound
6 about right, Mr. Kopp?

7 **MR. KOPP:** Yes, Your Honor.

8 **JUDGE MELLOY:** Okay. And then are you
9 still planning to call all the witnesses on your list,
10 Mr. Kopp, or do you -- or are you looking at
11 scratching any of them?

12 **MR. KOPP:** There are a few that we may
13 not call. We haven't made a final determination of
14 that yet, though.

15 **JUDGE MELLOY:** Okay. And do you think
16 your time estimates are still relatively accurate?

17 **MR. KOPP:** I would say yes, Your Honor.

18 **JUDGE MELLOY:** Okay. So let me do some
19 quick math here. Okay. Don't hold me to this because
20 I added very quickly, but if we -- once you get past
21 Dr. Stephens, it looks like you have about 30 hours of
22 direct. If we assume similar cross, that'd be 60
23 hours, about ten days. That would be about ten days
24 of testimony.

25 **MR. KOPP:** I think that's pretty close,

1 Your Honor.

2 **JUDGE MELLOY:** So we probably won't get
3 done by the end of the week we come back, but we may
4 get close. And if you -- if you drop a few witnesses
5 or there's less cross, we may get done by the end of
6 that week.

7 **MR. KOPP:** I think that's right, Your
8 Honor. Thank you.

9 **JUDGE MELLOY:** Okay. Are there any
10 other -- any questions about that? And we'll get the
11 Miltenberger exhibits uploaded today? Is that the
12 schedule?

13 **MS. BARFIELD:** Yes, that is correct,
14 Your Honor.

15 **JUDGE MELLOY:** Okay. Then you'll have
16 them to us -- ship them out tonight -- or, no,
17 tomorrow, so that we'll have them on Friday?

18 **MS. BARFIELD:** That is correct, yes.

19 **JUDGE MELLOY:** Okay. All right. Then
20 you'll be uploading the Stephens exhibits tomorrow,
21 Mr. Kopp, and we'll have those on Monday, right?

22 **MR. KOPP:** That's correct, Your Honor.

23 **JUDGE MELLOY:** Are there going to be a
24 lot of exhibits for Miltenberger?

25 **MS. BARFIELD:** Yes, Your Honor, there

1 are significant amount of exhibits given the fact that
2 he's the historian. I will say that the PowerPoint
3 that we will use to walk through his presentation is
4 approximately 73 slides. Within those slides are
5 depicted cover pages and so forth or callouts from
6 historic documents, so we will hit a very large number
7 of the documents that are on the list just by virtue
8 of moving through the presentation itself. There are
9 also a number of historic documents that will be
10 included on the list, which we are assuming we won't
11 get objections to because they are, in fact, historic,
12 which we might not use, but they are nonetheless
13 direct source material for Dr. Miltenberger's
14 opinions.

15 **JUDGE MELLOY:** Okay. Well, it will be
16 interesting to compare the two historians back to back
17 as to what -- what areas of agreement and disagreement
18 they may have. I assume that there are probably a
19 fair number of areas in which they don't dispute each
20 other, but I guess -- I guess we'll see on Monday and
21 Tuesday.

22 All right. Anything else before we sign
23 off? If not, then I'll see everybody first thing
24 Monday morning. Thank you, everyone.

25 **MS. BARFIELD:** Thank you, Your Honor.

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MR. KOPP: Thank you, Your Honor.

MR. WALLACE: Thank you, Your Honor.

(The proceedings adjourned at 11:54
a.m.)

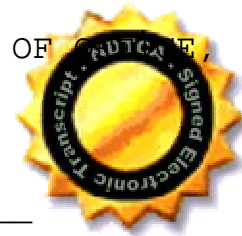
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