

SUPREME COURT OF THE UNITED STATES
NO. 141, ORIGINAL

STATE OF TEXAS,)
)
 Plaintiff,)
)
VS.) VOLUME II
)
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 5, 2021, commencing
at 11:00 a.m.;

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1 **JUDGE MELLOY:** Good morning, everyone.
2 Are we ready to get started? This, of course, is in
3 the matter of United States Supreme Court Original No.
4 141. I'd ask the attorneys who are going to be
5 participating today to enter their appearance, please.

6 **MS. KLAHN:** Good morning, Your Honor.
7 This is Sarah Klahn for the State of Texas.

8 **JUDGE MELLOY:** All right.

9 **MR. DUBOIS:** Good morning, Your Honor.
10 This is James Dubois for the United States of America,
11 and also later today when we -- if and when we switch
12 witnesses, Ms. Jennifer Najjar will also be appearing.

13 **MR. WECHSLER:** Your Honor, Jeff Wechsler
14 for the State of New Mexico, and with Ms. Spener,
15 it'll be Lisa Thompson.

16 **JUDGE MELLOY:** Okay. And --

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

19 **JUDGE MELLOY:** All right. Well, what
20 I'm going to do today is I -- I think we'll just start
21 in on the cross-examination. We do have some issues
22 that need to be resolved as -- as to the exhibit
23 protocols, and there's some issues that have come up,
24 but I'm going to hold off on that and just start in on
25 the cross-examination, see how far we get, and at some

1 point, we will be talking about exhibits. But let's
2 get started on the cross-examination of
3 Ms. Estrada-Lopez. So who ever is responsible for
4 getting her on the screen.

5 **MR. DUBOIS:** There we are.

6 **JUDGE MELLOY:** Okay. Ms. Estrada-Lopez,
7 let me remind you that you're still under oath, and
8 I'll just ask you briefly again, anyone in the room
9 with you?

10 **THE WITNESS:** No, there's not.

11 **JUDGE MELLOY:** And anyone have -- do you
12 have any materials with you, other than the exhibits
13 that have been admitted into evidence?

14 **THE WITNESS:** No, I do not.

15 **JUDGE MELLOY:** All right. Then,
16 Mr. Wechsler, you may proceed.

17 **MR. WECHSLER:** Thank you, Your Honor.

18 MICHELLE ESTRADA-LOPEZ,
19 having been previously duly sworn, testified further
20 as follows:

21 CROSS-EXAMINATION

22 BY MR. WECHSLER:

23 **Q. Good morning, Ms. Estrada-Lopez.**

24 **A. Good morning, Jeff -- or Mr. Wechsler.**

25 **Q. You're welcome to call me Jeff. I'll**

1 probably use Ms. Estrada-Lopez. I tend to be formal.
2 Unfortunately, I have a lot of questions for you, in
3 part because you're the first witness, but let me
4 start by saying that during discovery, you were
5 designated as an expert to discuss the 2011 credit
6 water release; is that correct?

7 A. Yes.

8 Q. But you were not offered as an expert
9 yesterday?

10 A. No.

11 Q. Do you recall being asked at your deposition
12 what you plan to testify if called as a witness?

13 A. I don't remember exactly, but it sounds
14 right.

15 Q. Do you recall that your answer was you plan
16 to testify about the matters in your report, meaning
17 your disclosure, but nothing else?

18 A. I don't recall.

19 Q. We don't need to go any further into that.
20 Turning a little bit into your background, do you
21 first recall working on Rio Grande issues in 2012; is
22 that right?

23 A. That sounds correct.

24 Q. So you wouldn't have been working on those
25 Rio Grande issues in 2011?

1 A. That's correct. I did not.

2 Q. You offered some testimony about the Compact,
3 the engineer advisors, and the Rio Grande Compact
4 Commission; do you recall that?

5 A. Yes.

6 Q. But you have never worked as an engineer
7 advisor to one of the states on the Rio Grande
8 Compact?

9 A. I have not.

10 Q. You explained the difference between project
11 accounting and Compact accounting yesterday?

12 A. My understanding of it, yes.

13 Q. But you have never done Compact
14 administration or Compact accounting, have you?

15 A. I have not.

16 Q. One of your duties is to track San Juan-Chama
17 project water and Rio Grande water, right?

18 A. Yes.

19 Q. And as you testified yesterday, you do that
20 using an accounting model that's based on the
21 RiverWare program?

22 A. Yes.

23 Q. You consider the RiverWare program to be
24 generally reliable?

25 A. Yes.

1 Q. In fact, Reclamation uses RiverWare in the
2 Pecos River for the annual operating plan and
3 long-term studies, right?

4 A. Yes, we do.

5 Q. And you're aware that RiverWare is used by
6 Reclamation in other river basins?

7 A. Yes, I am.

8 Q. All right. Before we turn to more
9 substantive issues, I want to ask you if I'm correct
10 that Bert Cortez no longer works for the Bureau of
11 Reclamation?

12 A. That's correct. He no longer works here.

13 Q. For that reason, you're the only current
14 representative of Reclamation that's testifying during
15 the fall part of the trial; is that right?

16 A. Yes. That's my understanding.

17 Q. And the reason I ask is because we have a --
18 a number of requests for admission that the United
19 States has admitted in this litigation. They've
20 already been admitted as New Mexico Exhibits 1055 and
21 1066. I just wanted to give you a head's up that I
22 may be needing to go into those subjects with you
23 because you are the Reclamation witness during this
24 fall part.

25 All right. So let's start with some basic

1 features of the project and project history.

2 Generally, the project is intended to satisfy
3 irrigation demands on project lands, right?

4 A. Yes. Generally it's for irrigation purposes.

5 Q. Those project lands are spread out into two
6 different states?

7 A. Yes, they are.

8 Q. As you testified yesterday, the project
9 beneficiary in New Mexico is the Elephant Butte
10 Irrigation District or EBID?

11 A. Yes, it is.

12 Q. Now, you confirmed yesterday that EBID is the
13 only entity in New Mexico that's entitled to project
14 water, right?

15 A. They're the only one with the contract to
16 call for water, yes.

17 Q. You're aware that EBID was created by a New
18 Mexico statute?

19 A. I have seen that, yes.

20 Q. EP1 is the only project beneficiary in Texas,
21 right?

22 A. Yes.

23 Q. They were created -- EP1 was created by a
24 statute in the State of Texas, right?

25 A. I would assume so, but I haven't seen that.

1 Q. Fair enough. The two districts are given an
2 irrigation -- are given an allocation, I should say,
3 each year, right? That was your testimony?

4 A. Yes.

5 Q. And that allocation represents the total
6 amount of water that each district is entitled --
7 entitled to order for each year?

8 A. Yes.

9 Q. On direct, you indicated that New Mexico does
10 not have a contract with the United States -- and
11 these were your words -- under which it can demand
12 water from the Rio Grande Project; do you recall that?

13 A. I don't recall saying those words, but I do
14 recall saying that New Mexico does not have a contract
15 with Reclamation to call for project water.

16 Q. That's also true of Texas, Texas does not
17 have a contract with the United States, correct?

18 A. That is correct.

19 Q. And you indicated yesterday that, amongst
20 other things, not having that contract means that New
21 Mexico is not allowed to use Rio Grande Project water,
22 right?

23 A. Correct.

24 Q. That's also true for the State of Texas?

25 A. Correct.

1 Q. And, finally, you also indicated that New
2 Mexico has never had a contract -- these, again, your
3 words, never, quote, had a contract with the United
4 States under which it could demand release or use of
5 project water; do you recall that?

6 A. I don't recall those exact words, but that
7 sounds accurate.

8 Q. Again, this is also true of Texas?

9 A. Yes.

10 Q. In performing your professional duties for
11 Reclamation, you understand that it's important to
12 follow Reclamation law in operating the project?

13 A. Yes.

14 Q. And you recognize that it's also important to
15 follow other federal laws, right?

16 A. Yes.

17 Q. The Rio Grande Compact is a federal statute;
18 is it not?

19 A. Yes, it is.

20 Q. And so putting those two things together in
21 carrying out your professional responsibilities, you
22 recognize that it's important to follow the Rio Grande
23 Compact?

24 A. Yes.

25 Q. Okay. So, now, turning to the relationship

1 between the Compact and the project, Reclamation
2 implements the Compact through its operation of the
3 Rio Grande Project, right?

4 A. I think there's lots of aspects to the
5 Compact, but I know that the Rio Grande Project is
6 within the area of the Rio Grande Compact.

7 Q. All right. And, again, I'm asking this, and
8 I just wanted to give you a head's up because this is
9 one of the things that the United States admitted.
10 Were you aware that the United States had admitted
11 that Reclamation implements the Compact through its
12 operation of the Rio Grande Project?

13 A. I probably worked on the admissions, so yes.

14 Q. Fair enough. I will -- I'll refer the Court
15 to Exhibit New Mexico 1061 and Request for Admission
16 No. 79 on Page 3, but I'll move on so as not to
17 belabor the point. The project releases water to
18 which water users in New Mexico and Texas are
19 entitled, right?

20 A. Yes.

21 Q. And in that way, Reclamation ensures that the
22 Compact's equitable apportionment to Texas and part of
23 New Mexico is made; is that right?

24 MR. DUBOIS: Objection; calls for a
25 legal conclusion.

1 MR. WECHSLER: Again, Your Honor --

2 JUDGE MELLOY: I'm going to overrule
3 that.

4 MR. WECHSLER: Thank you, Your Honor.

5 Q. (BY MR. WECHSLER) Would you like me to repeat
6 the question, Ms. Estrada-Lopez?

7 A. Yes, please.

8 Q. My question was -- We had talked about the
9 project releases water to which users in New Mexico
10 and Texas are entitled, and the question on the table
11 is: In that way, Reclamation ensures that the
12 Compact's equitable apportionment to Texas and part of
13 New Mexico is made?

14 A. I would never refer to that part of the
15 project under splitting the equitable apportionment
16 between New Mexico and Texas, but Rio Grande Project
17 does split the water between EBID and EP No. 1.

18 Q. I'll accept that. I'll, again, refer the
19 Court to New Mexico Exhibit 1061, Page 3, Request for
20 Admission No. 79. Turning to some of the testimony
21 from yesterday, you indicated that you developed the
22 initial allocations, right?

23 A. Yes, I do.

24 Q. Let's take a look at Exhibit -- New Mexico
25 Exhibit 2270 -- 2270, yeah. Again, this exhibit has

1 been admitted yesterday, and do you recognize this as
2 sort of in the form of an initial allocation letter?
3 We can see the date here from 2007.

4 A. Yes. This looks like it would come from
5 Reclamation.

6 Q. And if we look at Page 4, we can see there's
7 Mr. Cortez's signature, and he was your predecessor on
8 the allocation committee, right?

9 A. That's correct.

10 Q. Okay. I just -- we're continuing this
11 discussion about the connection between the Project
12 and the Compact, and I want to look at that bottom
13 paragraph for starters. Here we can see that it's
14 telling you that the storage available for release is
15 -- is made after adjusting for Rio Grande Compact
16 credit waters, right?

17 A. Yes. That's what it says.

18 Q. And as you discussed yesterday, those Compact
19 credit water, that's defined by the Compact, right?

20 A. Yes. They give us the numbers for January
21 1st.

22 Q. Starting with -- looking -- turning then to
23 Page 2, and we're going to look at the first
24 paragraph. Here we can see a reference to Article 7
25 of the Compact, and looking more broadly at that whole

1 paragraph, Mr. Cortez is alerting the interested
2 parties when he estimates Article 7 restrictions will
3 be lifted based on his accounting procedures, right?

4 A. Yes.

5 Q. Turning to the fifth paragraph, here we can
6 see Mr. Cortez indicating that the long-term average
7 release for project storage is governed by the
8 Compact, right, to use his words?

9 A. That is what is written.

10 Q. And you agree with that?

11 A. I do know that the 790 acre-feet is listed as
12 a normal release in the Compact.

13 Q. All right. We'll have a chance to look at
14 more correspondence on that later in this trial. We
15 can see Mr. Cortez is also explaining that average
16 releases should be 790,000 acre-feet, as specified in
17 the Compact -- Compact, right?

18 A. It appears that he's using average and normal
19 release interchangeably.

20 Q. At the end of the paragraph, we can see there
21 in the sentence that reads -- it's being highlighted
22 now -- "the total amount of water released from
23 storage for all Project purposes, including carryover
24 water, shall not cause the yearly average release to
25 exceed the 790,000 acre-feet established by Compact

1 rules." Do you see that?

2 A. I do see that.

3 Q. And so as Mr. Cortez is explaining the
4 average 790,000 release includes carryover water,
5 right?

6 A. That's what that says.

7 Q. Turning to Hudspeth -- and we can take down
8 this exhibit for the moment. Hudspeth County
9 Conservation and Reclamation District has a Warren Act
10 contract with Reclamation. You explained that
11 yesterday, right?

12 A. Yes, I did.

13 Q. Hudspeth does not relieve any allocations for
14 Project water from Reclamation?

15 A. Is that a question?

16 Q. It is a question.

17 A. They do not receive allocations.

18 Q. And it cannot order water from the Project?

19 A. It cannot.

20 Q. It's not entitled to any set amount of water?

21 A. It is not.

22 Q. Turning to the water rights underlying the
23 Project, Elephant Butte Reservoir and Caballo
24 Reservoir are located in New Mexico, right?

25 A. Yes.

1 Q. And New Mexico law generally governs the use
2 of water in New Mexico, including groundwater, right?

3 MR. DUBOIS: Objection; lacks
4 foundation; calls for legal conclusion.

5 JUDGE MELLOY: I -- I'm going to sustain
6 that.

7 MR. WECHSLER: Very well, Your Honor.

8 Q. (BY MR. WECHSLER) I'd like to turn to Exhibit
9 1055. And we're going to go to Page 7, Request for
10 Admission No. 7. I'll just ask you to read with me
11 here, Ms. Estrada-Lopez. Here we see that in the
12 middle of the admission here that, "The United States
13 admits that New Mexico law, which incorporates the
14 Compact, generally governs the use of water in New
15 Mexico, including groundwater." Did I read that
16 correctly?

17 A. Yes, you read that correctly.

18 Q. The water rights for the Project are
19 generally governed by state law and federal
20 Reclamation law; is that right?

21 MR. DUBOIS: Objection; lack of
22 foundation, Ms. Estrada-Lopez's knowledge of these
23 laws.

24 JUDGE MELLOY: Again, I'm going to
25 sustain that without some foundation as to Ms.

1 Estrada-Lopez's knowledge of New Mexico law.

2 MR. WECHSLER: Very well.

3 Q. (BY MR. WECHSLER) I'll just turn to Page 5 of
4 this same exhibit. This time, we'll look at Request
5 for Admission No. 3. And, again, I'll ask you to read
6 with me, Ms. Estrada-Lopez. You can see towards the
7 bottom, "The United States admits that its water
8 rights for the Project are generally governed by New
9 Mexico law, which incorporates the Compact, as well as
10 by federal reclamation law." Did I read that
11 correctly?

12 A. Yes. That's what that says.

13 Q. Are you familiar with the Project water
14 rights?

15 A. Generally, but not specifically.

16 Q. Well, let me just get you to identify a
17 couple of documents. We're going to start with Joint
18 Exhibit 436. You recognize Joint Exhibit 436?

19 A. It says that it's a Certificate of
20 Adjudication from the Texas Commission on
21 Environmental Quality.

22 Q. Understood, Ms. Estrada-Lopez. The reason
23 I'm asking, I just want to know if you are familiar
24 with this document. If not, then I'm not going to ask
25 you about this.

1 A. I'm not familiar with it.

2 Q. All right. How about Joint Exhibit 472, are
3 you familiar with Joint Exhibit 472?

4 A. No.

5 Q. How about Exhibit -- Joint Exhibit 473?

6 A. No.

7 Q. And Joint Exhibit 474?

8 A. No.

9 Q. Very well. We'll ask somebody else about
10 those. You said you're generally familiar with the
11 Project water rights. Are you aware that the Project
12 or Reclamation has no permits for groundwater wells in
13 the State of Texas?

14 A. I've never looked for a permit for us. I've
15 never seen one.

16 Q. And are you aware of any groundwater wells in
17 the -- permits for groundwater wells in the State of
18 New Mexico that Reclamation has?

19 A. I've never seen one for Rio Grande Project.

20 Q. Fair enough. Turning then to project supply
21 and return flows. Now, project supply is made up of
22 usable water and project storage and return flows;
23 would you agree?

24 A. Yes.

25 Q. Return flows that return to project drains,

1 project facilities, or the bed of the Rio Grande are
2 part of project supply, right?

3 A. Yes. That's the definition we use.

4 Q. And that includes return flows that appear in
5 the El Paso Valley, those are part of project supply?

6 A. Yes.

7 Q. Now, you testified yesterday about river
8 drains. Do you recall that?

9 A. Drains. I don't think we have river drains.

10 Q. Fair enough. Between 1945 and 1984, water
11 users in El Paso No. 1 sometimes diverted water from
12 river drains into the Riverside Canal extension?

13 MR. DUBOIS: Objection; lack of
14 foundation.

15 JUDGE MELLOY: I'll overrule. If she
16 knows.

17 A. I know that there was diversions at Riverside
18 and that drains come in above Riverside.

19 Q. (BY MR. WECHSLER) And drain water included
20 flows resulting from the application of Project water
21 to lands in EP No. 1?

22 A. I haven't studied it, but I would assume so.

23 Q. From 1938 to the construction of the American
24 Canal extension, drains in EP1 delivered water to
25 Project diversions. Are you aware of that?

1 A. Can you say the first part again? I'm sorry.

2 Q. I can. It was just a time frame. So from
3 1938 to the construction of the American Canal
4 extension, and then the rest of the question was that
5 drains in EP1 delivered water to Project diversions?

6 A. That makes sense based on the way the system
7 was set up.

8 Q. From 1951 to 1979, water diverted by EP1
9 farmers from Project drains was considered to be part
10 of the Project's delivery?

11 A. Water diverted at the canal headings is
12 considered Project supply and so that was partly drain
13 water.

14 Q. And from that same period, 1951 to 1978, EP1
15 would have been charged for water diverted from
16 Project drains, right?

17 A. In the same manner that they are charged for
18 diversions of other water.

19 Q. And, in fact, turning to the present, say
20 2018 until the present, some water users in EP1
21 continue to use water in drains, right?

22 MR. DUBOIS: Objection; lack of
23 foundation.

24 JUDGE MELLOY: I'll overrule.

25 Q. (BY MR. WECHSLER) Do you need me to repeat

1 the question?

2 A. Yes, please. I'm sorry.

3 Q. Sure. We were talking about the present,
4 2018 until current. Some water users in EP1 continue
5 to use water in drains?

6 A. I'm not super familiar with how all of the
7 drains connect to the canals and laterals within the
8 EP1 system, but if they do, then they can take the
9 canal and laterals to their farms. If that includes
10 the drain water, then, yes, they're using drain water.

11 Q. Okay. And on this one, I'll refer the Court
12 to Exhibit New Mexico 1061, Page 13, Request for
13 Admission No. 100. And I'll ask you as a follow-up,
14 an increase in Project return flows reaching EP No. 1
15 water users generally results in lower reservoir
16 releases?

17 A. I'm going to have to have you say that again.

18 Q. Yeah. Happy to. Again, I'm reading from a
19 -- Exhibit 1061, Page 30, RFA No. 145. The question
20 is: Would you agree that an increase in Project
21 return flows reaching EP No. 1 water users generally
22 results in lower reservoir releases?

23 A. If the drain water reaching EP1 is used to
24 meet the crop demand, then I would say that that would
25 be directly related to a request from -- a release

1 from Caballo, so that could decrease the request of
2 the releases from Caballo.

3 Q. Which is to say the amount of water from
4 return flows in the El Paso Valley affects the amount
5 of water in Project storage, right?

6 A. Yes. Anything that changes the crop demand
7 affects how much water is going to stay in Elephant
8 Butte and Caballo.

9 Q. All right. Let's turn to the subject of
10 groundwater. Now, you're aware there's groundwater
11 pumping throughout the Project area, right?

12 A. I am aware.

13 Q. And you understand there was a drought in the
14 late 1940s and early 1950s?

15 A. Yes. I've seen that data.

16 Q. One of the responses of the water users in
17 both EBID and EP1 to that drought was to drill wells
18 and pump groundwater, right?

19 MR. DUBOIS: Objection; lack of
20 foundation.

21 JUDGE MELLOY: Well, she's testified she
22 knows about the drought and about wells. I'll let her
23 -- to the extent she knows, she can answer.

24 A. I have read about that, but that -- they did
25 pump.

1 Q. (BY MR. WECHSLER) For example, have you read
2 some of the documents reflected in the project
3 histories?

4 A. Probably. I have read some project
5 histories.

6 Q. And some of those project histories indicate
7 that Reclamation was encouraging water users to use
8 groundwater?

9 MR. DUBOIS: Objection; lack of
10 foundation; assumes facts not in evidence.

11 JUDGE MELLOY: I'm going to sustain that
12 until you lay some more foundation, Mr. Wechsler.

13 MR. WECHSLER: Certainly.

14 Q. (BY MR. WECHSLER) Let's look at Joint Exhibit
15 206, which has already been admitted, and we'll look
16 at Page 52. Here, we're looking at a water
17 announcement. You're aware that as part of those
18 project histories, Reclamation frequently gave water
19 announcements to the water users, right?

20 A. Yeah, I've seen those before.

21 Q. And if we look at the last paragraph on this
22 page, we can see it's saying, "Water users who have
23 pumps of good capacity that will supply their needs
24 are requested to arrange for transfer of part of their
25 unused allotment to those who are in need of

1 additional water." Do you see that?

2 A. I do see that sentence.

3 Q. And if they're willing to negotiate a
4 transfer, they're asked to contact one of the offices
5 of the Bureau of Reclamation, right?

6 A. Yes. That's what it says.

7 Q. You're aware that similar language was
8 included in subsequent project histories?

9 A. I don't recall.

10 Q. All right. Well, I'll just refer the Court
11 to New Mexico Exhibit 1055 at 7, Request for Admission
12 No. 11 on that issue.

13 More generally during the years 1951 to 1978,
14 groundwater wells were drilled in both New Mexico and
15 Texas. Were you aware of that?

16 A. I've seen some reports on that.

17 Q. And from 1950 to the present, the United
18 States was aware of groundwater pumping in New Mexico?

19 A. Yes.

20 Q. Water was pumped from those groundwater wells
21 during that period, 1951 to 1978?

22 MR. DUBOIS: Objection; lack of
23 foundation.

24 MR. WECHSLER: Your Honor, again, this
25 comes from a request for admission, so I'll simply

1 refer you to Exhibit 1055 at 21, RFA No. 60 -- I'm
2 sorry. This is -- I had the wrong cite there. This
3 is New Mexico 1061. This is Pages 20 through 22
4 because it's Request for Admissions No. 114 to 120,
5 and also Request -- New Mexico 1055 at 12, Request for
6 Admission No. 26.

7 Q. (BY MR. WECHSLER) Now, let me ask you this,
8 Ms. Estrada-Lopez: Groundwater pumped from wells is
9 not accounted for as Project water, right?

10 A. There are some accountings related to the
11 water pumped from groundwater.

12 Q. For example, the Canutillo wellfield?

13 A. Yes.

14 Q. We'll get to that, but in general,
15 groundwater is not accounted for as Project water,
16 right?

17 A. We do not collect the groundwater data and
18 put it into the accounting generally.

19 Q. All right. Fair enough. And as a more
20 complete answer, I'll also refer to 1055 at 21, RFA
21 No. 60. And as we said, Reclamation does not own or
22 operate any wells in the Project area, right?

23 A. Not that I'm aware of.

24 Q. All right. So in turning to EBID on this
25 same subject, in the 1970s, Reclamation -- well, let

1 me just ask: Are you aware that Reclamation and the
2 United States Geological survey provided engineering
3 and technical assistance to EBID when the district was
4 considering irrigation wells?

5 A. I don't know about that.

6 Q. Okay. I'm going to ask you to read along
7 with me on a couple of these RFAs again. This is New
8 Mexico Exhibit 1055. We are going to look at Page 6,
9 No. 10. Here you can see that towards the top -- just
10 read along with me -- "The United States admits that
11 in the 1970s, Reclamation and the U.S. Geological
12 Survey rendered engineering and technical assistance
13 to EBID when the District was considering feasibility
14 plans to drill deep irrigation wells in the District."
15 Do you see that?

16 A. Yes, I see that.

17 Q. All right. Let's do this with a couple more
18 in this general area. So we're going to move further
19 down to Request No. 11 here, but let me ask you: Are
20 you aware that the Project superintendent for much of
21 the D2 period was a man named J.W. Kirby? Are you
22 familiar with him?

23 A. I've heard the name.

24 Q. All right. And then turning to the RFA then
25 -- yeah. So -- well, what I think we should be

1 looking at is 1055 at 3, RFA No. 4. Is that right?
2 No -- yeah. And you can see here at the bottom, it
3 indicates, "The United States also admits that a" --
4 well, let's start above there. "The United States
5 admits that in the Mestas litigation, the United
6 States represented that Project superintendent J.W.
7 Kirby orally approved EBID's location of five wells on
8 Project right of way." Do you see that?

9 A. Yes, I see that.

10 Q. Again, continuing there, it says that, "The
11 United States also admits that a declaration submitted
12 in the Mestas litigation that is signed by J.W. Kirby
13 and dated 11/21/78 states that, quote, during the last
14 25 years approximately, I estimate that perhaps 200 to
15 300 privately-owned irrigation wells have been
16 constructed on Bureau of Reclamation right-of-ways
17 within the Elephant Butte District." Did I read that
18 correct?

19 A. Yes.

20 Q. Turning to EP No. 1 then, groundwater pumping
21 has occurred in EP No. 1, right?

22 A. That's my understanding.

23 Q. Is it also your understanding that that
24 groundwater pumping has occurred in both the Mesilla
25 portion of EP1 and the Hueco Bolson portion of EP1?

1 A. That is my understanding.

2 **Q. Is it your understanding that beginning, say,**
3 **in the 1930s to the 1990s, the pumping in Texas in the**
4 **Hueco Bolson aquifer in Texas increased?**

5 A. I have not studied --

6 **MR. DUBOIS:** Objection -- Your Honor,
7 objection. This is beyond the scope of her direct
8 examination, and it is asking regarding historical
9 documents from -- from prior periods that we haven't
10 established that she has -- that Ms. Lopez-Estrada has
11 reviewed or analyzed. This is -- this is inconsistent
12 with her percipient testimony.

13 **MR. WECHSLER:** So, Your Honor, if I can
14 respond. I mean, first, Ms. Michelle --
15 Ms. Estrada-Lopez testified to the Project, the
16 Project area, water use within the Project, Project
17 facilities, water users within the Project; second,
18 New Mexico has identified Ms. Estrada-Lopez as a
19 may-call witness, and it was for precisely this
20 reason, in case we wanted to raise additional issues
21 with Ms. Estrada-Lopez, and so, I mean, if -- if
22 Ms. Estrada-Lopez and Mr. Dubois simply want us to
23 call her back in the later part of this October trial,
24 we're happy to do that, but it certainly strikes me as
25 inefficient.

1 **JUDGE MELLOY:** I'm going to overrule.
2 To the extent she has knowledge of that, I'll let her
3 answer. Why don't you restate the question,
4 Mr. Wechsler.

5 **MR. WECHSLER:** Sure. Happy to.

6 **Q. (BY MR. WECHSLER)** My question is that pumping
7 from the Hueco Bolson aquifer in Texas increased
8 during the 1930s to the 1990s. Were you aware of
9 that?

10 **A.** I --

11 **MR. DUBOIS:** Objection; lack of
12 foundation to the question itself.

13 **MR. WECHSLER:** Your Honor, the question
14 is was she aware, which is a foundational question
15 itself, and so --

16 **MR. DUBOIS:** Well, actually --

17 **MR. WECHSLER:** There's been a number of
18 objections that seem a little uncalled for.

19 **JUDGE MELLOY:** Overrule the objection.

20 **Q. (BY MR. WECHSLER)** I understood,
21 **Ms. Estrada-Lopez,** you were not aware of that?

22 **A.** I've not looked at that data.

23 **Q.** I'll -- I'll refer the Court to New Mexico
24 1055 at 19, Request for Admission No. 55.

25 **Ms. Estrada-Lopez,** over the last 10 to 15 years, EP

1 No. 1 has pumped and discharged groundwater into
2 Project canals and laterals; you're aware of that?

3 A. I don't recall that.

4 Q. All right. And I'll simply refer the Court
5 then to Exhibit 1055 at 5, RFA No. 9. And are you
6 aware that pumping in the Texas part of the Rio Grande
7 Basin caused average groundwater elevations in the El
8 Paso Valley to decrease between the 1950 and 1990s?

9 MR. DUBOIS: Objection; lack of
10 foundation for the question.

11 MR. WECHSLER: Again, Your Honor, the
12 question is, is she aware.

13 JUDGE MELLOY: Overruled.

14 Q. (BY MR. WECHSLER) Were you aware of that,
15 Ms. Estrada-Lopez?

16 A. I have not looked at the groundwater levels
17 in the Hueco Bolson.

18 Q. Have you looked at the groundwater levels
19 anywhere within the Project area?

20 A. I oversee the contract with USGS, and they
21 are looking at them. So I've seen some of the
22 results.

23 Q. In what area of the Project?

24 A. In the Rincon and Mesilla Basins.

25 Q. Does that include the Mesilla part in Texas?

1 A. Yes.

2 Q. But not the Hueco Bolson?

3 A. No.

4 Q. Does that Project date back to the 1950s?

5 A. The groundwater collection -- data collection
6 project that I'm part of started, I think, in the
7 1980s, and the modeling project that I'm leading the
8 contract on is looking at historical data, which does
9 include that time period.

10 Q. Let me ask you this then: Some groundwater
11 pumping in Texas has reduced the amount of Project
12 water available for delivery to Project water users in
13 Texas, right?

14 A. I haven't looked at specifically that
15 groundwater pumping has specifically reduced. I
16 haven't looked at that data.

17 Q. All right. Let's -- I'm going to refer the
18 Court then to Exhibit -- New Mexico 1055, Page 22, RFA
19 No. 62. I want to get you to look at a -- an older
20 Reclamation document, Ms. Estrada-Lopez, and this is
21 Joint Exhibit 462. If you look at the top there, you
22 can see this is a Bureau of Reclamation document. You
23 can see the title shown on the screen, "River Loss
24 Caballo Dam to El Paso and Irrigation Wells," then if
25 we look further down, you can see the year, July 1st,

1 1952. Have you ever seen this document before?

2 A. Probably, but I don't recall it specifically.

3 Q. My -- my general question -- we can take down
4 that exhibit if you haven't seen it before -- is that
5 the United States has generally been aware over the
6 years of groundwater pumping throughout the basin. We
7 talked about that. Was -- was Reclamation also aware
8 of the impacts that that groundwater pumping could
9 have on Project supply?

10 A. I don't know what was aware by whom at what
11 time.

12 Q. Since you've been working for Reclamation
13 roughly 2009, Reclamation has been aware that -- of
14 the impacts of groundwater pumping in the basin; is
15 that right?

16 A. Yes. I've seen documents that refer to that.

17 Q. And have you seen documents reflecting that
18 Reclamation was aware of impacts to groundwater
19 pumping dating from before the time you started at
20 Reclamation?

21 A. I don't recall specifically. It makes sense.

22 Q. It just makes sense; you don't know one way
23 or the other?

24 A. Correct.

25 Q. All right. So that takes us to the

1 allocations. As you testified yesterday, an
2 allocation is an amount of water that is set by
3 Reclamation, and that's available for a Project user
4 to order for release, right?

5 A. For delivery to their diversion point, not
6 for release.

7 Q. The release gets done by Reclamation with the
8 intent of allowing that water to get to the delivery
9 point?

10 A. For a portion of that water, yes.

11 Q. The allocations determine the amount of
12 storage that can be released and for what purpose,
13 right?

14 A. It determines what can be released for the
15 Project.

16 Q. Right. And for what purpose the Project will
17 release that water?

18 A. I'm not sure what purpose it is referring to.
19 I'm sorry.

20 Q. Well, in other words, you testified yesterday
21 you have -- there's a number of accounts in the
22 Project, right? There's an account for EBID, right?

23 A. Yes.

24 Q. And water can be released in response to
25 orders from EBID?

1 A. Yes.

2 Q. And those orders are for irrigation purposes,
3 you mentioned earlier today, right?

4 A. Yes.

5 Q. There's also an account for EP No. 1?

6 A. Yes.

7 Q. And then you mentioned there's water in the
8 Project that is Compact credit water, correct?

9 A. Project storage, yes, there is.

10 Q. That water is released when it is
11 relinquished by one of the states, right?

12 A. We only release Project water.

13 Q. Fair enough. And I think that's a bad
14 question. If a relinquishment occurs, then it becomes
15 part of Project water, right?

16 A. Yes.

17 Q. And you also mentioned yesterday, there is
18 San Juan-Chama water?

19 A. Yes.

20 Q. Now, at least since 1980, the districts were
21 allotted a diversion allocation that's made up of both
22 usable water in storage and return flows, right?

23 A. Yes.

24 Q. As you go through the year, Reclamation is
25 coordinating and making sure the districts are not

1 ordering and diverting more water than they've
2 released -- than -- than they're allocated, I should
3 say?

4 A. Correct.

5 Q. One reason to track the allocations is that
6 you want to make sure that there's water available to
7 meet orders?

8 A. Track allocations to make the allocations.

9 Q. Is it important to ensure that there's enough
10 water in the reservoir to meet Project orders?

11 A. The order should only be based on water
12 that's been allocated, and that allocated water is
13 based on the water that's in the storage.

14 Q. Very well. I'll accept that. Let's turn to
15 Mexico generally, and we'll come back to Mexico again
16 later. But let's look at Joint Exhibit 439. As
17 that's coming up, the allocation to Mexico is based on
18 this convention or treaty that you identified
19 yesterday, right?

20 A. Yes.

21 Q. And the -- this convention was adopted in
22 1906?

23 A. Yes. That's the date on it.

24 Q. So it was in place prior to the adoption of
25 the Compact?

1 A. Yes.

2 Q. A full allocation to the United States for
3 delivery to Mexico is 60,000 acre-feet; is that
4 correct?

5 A. Yes.

6 Q. When Mexico has allocated 60,000 acre-feet of
7 water, that's generally considered to be a full supply
8 year?

9 A. For Mexico, and then if people are asking,
10 like, from the public for information, this is the
11 easiest data to pull to say if it was a full year or
12 not.

13 Q. The orders then -- the water from Mexico is
14 then ordered by IBWC, right?

15 A. Yes, it is.

16 Q. And that water is delivered to the bed of the
17 Rio Grande at the heading of the Acequia Madre?

18 A. Yes.

19 Q. I think you looked at some pictures of the
20 Acequia Madre yesterday?

21 A. Yes, I did.

22 Q. Let's highlight that language just below the
23 table. We see this is the language you testified to
24 yesterday that, "In -- in times of extraordinary
25 drought, the amount delivered to the Mexican Canal

1 shall be diminished in the same proportion as the
2 water delivered to lands under said irrigation system
3 in the United States," right?

4 A. Yes, that's the language.

5 Q. And you actually perform a check every year
6 to make sure that this is followed, correct?

7 A. Yes.

8 Q. We'll have an opportunity to review how
9 that's done in a moment so we can take down Joint
10 Exhibit 439.

11 Now, prior to 1980, Reclamation operated the
12 entire Project?

13 A. Yes. That's correct.

14 Q. So before 1950, and that's changing time
15 period right now, so prior to 1950, Reclamation
16 delivered water directly to Project lands, right?

17 A. Yes.

18 Q. And that process of delivering directly to
19 lands continued until somewhere in the early 1980s
20 when the title transfer occurred?

21 A. Yes. That's my understanding.

22 Q. Some time in the early 1950s, the Project
23 began the process of giving specific allocations or
24 allotments directly to the lands, right?

25 A. Yes. That's what I recall seeing.

1 Q. And so from 1950 to 1980, the Project
2 allocation was allocated to all Project land on an
3 acre-foot-per-acre basis?

4 A. Yes. That's my understanding.

5 Q. Prior to 1979, Reclamation would combine
6 storage and return flows so that each acre of Project
7 land received an equal amount of water, regardless of
8 what district the land was located in?

9 MR. DUBOIS: Objection; lack of
10 foundation.

11 MR. WECHSLER: This goes to allocations,
12 Your Honor. If she doesn't know the answer to that,
13 she certainly can say, and I'd be concerned.

14 JUDGE MELLOY: Well, she has talked
15 about the contract and -- and the changes into the --
16 how the allocation was made from directly to the farms
17 to the water districts, so I think it's within the
18 scope, and I'll overrule.

19 Q. (BY MR. WECHSLER) Would you like me to repeat
20 that question?

21 A. Yes, please.

22 Q. So the question was: Prior to 1979,
23 Reclamation would combine storage and return flows so
24 that each acre-Project land received an equal amount
25 of water, regardless of what district the land was

1 located in?

2 MR. DUBOIS: Objection; Your Honor,
3 still lack of foundation because Mr. Wechsler's
4 question is delivery to the farm, not allocation.
5 Ms. Estrada-Lopez's testimony was regarding
6 allocation.

7 JUDGE MELLODY: I'm going to overrule.
8 You may answer.

9 A. I don't know how much water was delivered to
10 the farms.

11 Q. (BY MR. WECHSLER) Fair enough. I'll direct
12 Counsel and the Court to New Mexico 1055 at Pages 7 to
13 8, Request for Admission No. 13. So,
14 Ms. Estrada-Lopez, a full allocation to Project lands
15 from 1950 to 1980 was 3.024 acre-feet per acre; is
16 that right?

17 A. That sounds right, because the 3.024 is what
18 I've seen as being labeled a full allocation.

19 Q. I'm going to turn to Page -- to Joint Exhibit
20 469, which has not been admitted yet -- oh, I was just
21 informed that the -- the United States and Texas have
22 withdrawn their objection to Joint 469. I don't know
23 if that's correct or not?

24 MS. KLAHN: It's my understanding that
25 that 's accurate from Texas' point of view, and I

1 believe from U.S.

2 MR. WECHSLER: Your Honor, you're on
3 mute.

4 JUDGE MELLOY: To the extent 469 has not
5 been admitted, is there an objection?

6 MR. DUBOIS: No, Your Honor.

7 JUDGE MELLOY: I'll admit Exhibit 469.

8 Q. (BY MR. WECHSLER) All right. Then,
9 Ms. Estrada-Lopez, turning to -- to Joint Exhibit 469,
10 then we can see this is a memorandum of conversation
11 at the top dated June 29th, 1956, with the subject
12 line, "1906 Treaty Deliveries to Mexico." Do you see
13 that?

14 A. I do.

15 Q. Then just to identify a couple of these
16 players here, which we may hear from the historians,
17 but we can see there in particular, the principal
18 engineer was a Mr. J.F. Friedkin. Do you see that?

19 A. Yes.

20 Q. Have you seen other documents with
21 Mr. Friedkin's name on it?

22 A. His name, I do not recall.

23 Q. Fair enough. All right. So I do want to
24 just look very briefly at the steps that are outlined
25 here, and so if -- if we back out there, we can see --

1 it says just above there -- highlight that section.
2 We can see that he's advising -- Mr. Resch is advised
3 that the determination of the amount to Mexico is made
4 by Reclamation on the following bases. And then I
5 just want to ask if you're familiar with this process.
6 So if we look at No. 1 here, "At the beginning of an
7 irrigation season, determination is made of the amount
8 of water available for irrigation at that time." Do
9 you see that?

10 A. Okay. Yes.

11 Q. They go on, "Which is the amount of water
12 then in project storage, less the estimated
13 evaporation losses and less silt encroachment," right?

14 A. Yes. That's what it says.

15 Q. And then that's somewhat consistent with the
16 process you described yesterday, right, you first have
17 to figure out how much water is in Project storage?

18 A. Yes. It looks similar.

19 Q. Then if you go to the next page under the
20 heading No. 2, there we can see that, "On the basis of
21 experience and judgment, determination is then made as
22 to the probable operating efficiency of the Rio Grande
23 Project, which is defined as the ratio of the quantity
24 of water applied to lands, delivery at the farmers'
25 gates, to the total release at Caballo Dam." Do you

1 see that?

2 A. Yes, I see that.

3 Q. And yesterday, you testified at length about
4 figuring out the river efficiency, right?

5 A. Yes.

6 Q. And then turning then to the third step here
7 outlined in 1956, we see then that, "The efficiency
8 factors applied to the total amount of water --
9 project storage to determine tentatively the amount
10 available for delivery." Do you see that?

11 A. Yes, I see that.

12 Q. And then turning to No. 4, then this goes to
13 the -- what we were just talking about by Mexico --
14 about Mexico, that the tentative percent of normal
15 delivery to the United States lands is applied to
16 Mexico, right?

17 A. Yes.

18 Q. Do you see that?

19 A. Yes.

20 Q. All right. So were you familiar with this
21 process that occurred, at least as of 1956, for
22 allocating water? We can go through the other steps,
23 but certainly this is an exhibit already?

24 A. Yes. I know it wasn't the way I do it now,
25 and this looks like a written description of that

1 process --

2 Q. All right.

3 A. -- in that time.

4 Q. We're still talking about this period, 1950
5 to 1979. Let's look at what the allocations were
6 during that time, and for that, I'll refer to Joint
7 Exhibit 470, which has already been admitted. Let's
8 highlight that period, 1951 to -- let's go all the way
9 to 1984. There you go. Is that big enough for you to
10 see, Ms. Estrada-Lopez?

11 A. I think so.

12 Q. All right. We can see the years on the
13 left-hand column, and then the final allotment is the
14 fifth column over there. You see that? No, one over.
15 It says, "Final allotment to Project lands." Do you
16 see that?

17 A. Yes.

18 Q. And then we can see in acre-foot per acre the
19 amount that was allotted from 1951 all the way to 1984
20 on an acre-foot-per-acre basis, right?

21 A. Yes.

22 Q. We can see consistent with that 3.024 number
23 that we talked about earlier, I counted up only three
24 years, those being in 1958, '59, and 1960, where that
25 amount -- acre-foot-per-acre amount rose above 3

1 acre-feet per acre. If you take a look at that, does
2 that look correct?

3 A. Well, I can see in 1962, it says 3.25.

4 Q. You're right. 1962, yep, thank you. Any
5 others you notice above 3.0 acre-feet per acre?

6 A. I don't see any others.

7 Q. So turning then to the D2 period allocations
8 -- we can take down Joint Exhibit 470. As you
9 mentioned yesterday, in the early 1980s, EBID and EP
10 No. 1 took over operation and maintenance of Project
11 canals, laterals, and drains, right?

12 A. Yes, they did.

13 Q. And will you understand me if I refer to that
14 as the title transfer? I think I already used that
15 term. I should have asked you then.

16 A. Yes.

17 Q. So as part of title transfer, Reclamation
18 would no longer be delivering water to the lands of
19 the farmers, right?

20 A. Correct.

21 Q. Instead, they'd be delivering water to the
22 diversion points for the two districts?

23 A. Yes.

24 Q. And those diversion points means diversions
25 from the Rio Grande?

1 A. I don't know that it specifically means that.

2 Q. Oh, fair enough. Now, in order to determine
3 the allocations following that title transfer,
4 Reclamation developed the D1 and D2 curves; is that
5 right?

6 A. That's my understanding.

7 Q. And the D1 and D2 curves were developed from
8 operations data from 1951 to 1978?

9 A. That's my understanding.

10 Q. And we sometimes refer to those years, those
11 1951 to 1978, as the D2 period. Are you familiar with
12 that term?

13 A. I am.

14 Q. So the data from that D2 period reflect
15 historic Project performance during those years,
16 right?

17 A. It reflects the deliveries and releases. I'm
18 not sure what Project performance is related to.

19 Q. Okay. Well, those deliveries and releases,
20 that data also includes the effects of losses and
21 inflows on Project deliveries, right?

22 A. Yes.

23 Q. So to the extent that those deliveries and
24 releases from 1951 to 1978 was impacted by existing
25 groundwater pumping, the effect would be reflected in

1 the data?

2 A. I haven't studied that, but to the extent the
3 deliveries were impacted by losses in the river, and I
4 testified yesterday that the river losses are related
5 to groundwater levels, then that could make sense.

6 Q. Okay. So turning then to the D1 curve, as
7 you testified yesterday, it's a linear regression
8 equation that represents the historic relationship
9 between deliveries to lands and Project releases?

10 A. Deliveries to lands and the Acequia Madre and
11 Project releases.

12 Q. Thank you for that correction. From 1980
13 through 2005, Reclamation calculated the allocation of
14 water to Mexico using the D1 curve, right?

15 A. I don't know that they use the D1 curve.

16 Q. How do you think they allocated water from
17 1980 through 2005 to Mexico?

18 A. Well, I would have to look at the data
19 specifically, but from what I recall, most of those
20 years were 60,000 acre-feet, which is the -- just the
21 values stated in the treaty.

22 Q. In other words, for most of those years, it
23 was a full supply year to Mexico?

24 A. That's what I recall.

25 Q. Turning to the D2 curve, the D2 curve, as you

1 testified to yesterday, is a -- a linear regression
2 equation that represents the historic relationship
3 between total Project deliveries to canal headings and
4 Project releases?

5 A. It says on the graph project, the delivery to
6 Project headings and then the total releases.

7 Q. So are you agreeing with me?

8 A. You said canal headings, and that's not what
9 it says.

10 Q. Oh, you're just saying it's just a headings
11 -- Project headings. Got it. Now, the D2 curve
12 includes data on deliveries to all authorized points
13 of diversion; is that right?

14 A. I have not studied all of the data that went
15 into the D2 curve so I cannot answer that.

16 Q. How about this, if I said the D2 curve
17 relates the amount of water released from storage to
18 the amount of water delivered to the diversions
19 downstream, would you agree with that?

20 A. Yes. It's the relationship.

21 Q. And I think you agreed the D2 calculation is
22 based on actual data from 1951 to 1978, right?

23 A. That's my understanding.

24 Q. And I -- I think you also agreed that it
25 would have included the effects of water use during

1 that period?

2 A. I don't think I said that.

3 Q. Well, would you agree it does include the
4 effects of water use during that period?

5 A. I think that's too general for me to say yes.

6 Q. How would you correct it?

7 A. Like I said earlier, it would reflect the
8 losses in the river and losses in the river are
9 related to groundwater levels near the river.

10 Q. Okay. If -- let's see. Do you know that --
11 do you know what the lowest delivery point included in
12 the D2 curve was?

13 MR. DUBOIS: Objection; vague.

14 JUDGE MELLODY: I'll overrule.

15 A. Again, I have not looked at the data that
16 went into the D2.

17 Q. (BY MR. WECHSLER) All right. So I -- I do
18 want to look at a demonstrative exhibit now, though,
19 and see if you'll agree with me. This is New Mexico
20 Demonstrative Exhibit 1.

21 MR. WECHSLER: Your Honor, I'm informed
22 that there are no objections to this demonstrative
23 exhibit, which is essentially just a Google Earth with
24 some data from part of the case in it. Can I just ask
25 -- Your Honor, you're on mute again.

1 JUDGE MELLOY: Sorry. If it's not
2 already admitted, it will be for demonstrative
3 purposes only.

4 MR. WECHSLER: Understood.

5 Q. (BY MR. WECHSLER) Are you able to see that on
6 your screen, Ms. Estrada-Lopez?

7 A. Yes, I am.

8 Q. All right. And I'm going to sort of walk
9 through the process here in case any of the parties or
10 the Special Master wants to -- to start operating
11 this. I mean, here, I'll ask Ms. Ferguson, our
12 technician here, to click on the arrow for EPCWID, and
13 that opens up -- as you can see, it opens up that
14 area, and then we're going to click on the arrow for
15 EPCWID Major Conveyances, which is already opened, and
16 then we're going to click on the arrow for Main
17 Canals, which is also already opened, and then we're
18 going to click on the box for -- yeah, for Riverside
19 Canal, and then we're going to double click Riverside
20 Canal. Ms. Estrada-Lopez, are you able to see the
21 first -- the blue line there on New Mexico
22 Demonstrative Exhibit 1?

23 A. Yes, I am.

24 Q. And you recognize that as being in the
25 general location of the Rio Grande River?

1 A. Yes, I do.

2 Q. And then you see the orange line there?

3 A. Yes, I do.

4 Q. You recognize that generally as the Riverside
5 Canal?

6 A. Yes.

7 Q. Do you know if the data from deliveries to
8 the Riverside Canal was included in the D2 curve?

9 A. I believe it was, but I have not looked at
10 the data that went into the D2 curve.

11 Q. All right. We're also going to click the
12 button here for the Riverside Canal delivery. Do you
13 see that, the Riverside Canal Delivery Gage. You can
14 see that just came up as a little orange triangle,
15 right?

16 A. Yes, I see that.

17 Q. Do you recognize that as the location of the
18 area where water is delivered into the Riverside
19 Canal?

20 A. Yes.

21 Q. Now, we're going to go up to Caballo
22 Reservoir, so we'll -- we'll click on the box for --
23 on the arrow for Rio Grande Project Dams, which is a
24 little bit lower. There it is. It's already been
25 opened, and then we're going to click the box to pin

1 Caballo, and then we're going to double-click on
2 Caballo there, and this is going to shift to -- it's
3 okay. Double-click Caballo, and that's going to take
4 us up to Caballo Reservoir. Does that look,
5 generally, like the location of Caballo?

6 A. Yes, it does.

7 Q. All right. So, now, I want to look at the
8 wells in the Project between those two locations, so
9 I'm just going to ask Ms. Ferguson to just click on
10 the box for wells. There we go. And then we're
11 double-clicking on the wells button, and you'll see
12 these wells being populated. It may take just a
13 moment. I understand that you likely don't have all
14 of this data. This will be presented later. But I'll
15 just represent, these are wells within the -- the
16 basin. You can see the key there for the types of
17 wells. And if we look carefully, we can still see the
18 Riverside Canal delivery gage at the bottom of the
19 screen. Do you see that?

20 A. Yes, I do.

21 Q. And then we can see Caballo at the top,
22 right?

23 A. Yes.

24 Q. And so if -- if -- to the extent any of these
25 wells were drilled and pumping water prior to 1979,

1 then that data would be included in the D2 curve,
2 right?

3 A. I don't think that groundwater pumping data
4 was included.

5 Q. Well, the effects on releases and deliveries
6 would be incorporated?

7 A. The releases and deliveries were
8 incorporated.

9 Q. So the effects on those releases and
10 deliveries would be incorporated?

11 A. Again, I don't know that for sure.

12 Q. All right. Now, we can get rid of this for
13 now. We'll come back to it later. In case I didn't
14 ask you it earlier, from the early 1980s until roughly
15 2005, the allocations to the districts were calculated
16 using the D2 curve; is that right?

17 A. I don't know that specifically.

18 Q. You're in charge of allocations on behalf of
19 Reclamation now; is that right?

20 A. Yes, I am.

21 Q. If I'm understanding you correctly, there's
22 parts of the D2 curve you're unfamiliar with?

23 A. I have not reviewed the data. Dr. Ferguson
24 and Dr. Al Blair know enough about the data to review
25 that, but I do not.

1 Q. Understood. But neither Dr. Blair or -- or
2 -- well, Dr. Blair doesn't work for Reclamation,
3 right?

4 A. No, he does not.

5 Q. And you're the one who sits on the allocation
6 committee for Reclamation; is that right?

7 A. Yes, I am.

8 Q. You have not reviewed that data?

9 A. I have not.

10 Q. And you don't know whether or not from the
11 1980s until 2005, the allocations to the districts
12 were done using the D2 curve?

13 A. Well, my understanding is the D2 curve was
14 being developed starting in the 1980s, and I have not
15 looked at every single allocation through that time
16 period and the calculation that went into that.

17 Q. So my question again, you don't know what
18 happened during that time period?

19 A. I do not know everything that happened.

20 Q. Let's take a look at a document and see if
21 you're familiar with this document. It's Joint
22 Exhibit 440, and this has not been admitted yet. Are
23 you familiar with this document, Ms. Estrada-Lopez?

24 A. I've seen it.

25 Q. And where did you see it?

1 A. In Reclamation files.

2 Q. You can see on the face of it, it says
3 created by the Bureau of Reclamation, and it's
4 entitled, "Operating Agreement," right?

5 A. I don't see that it says that it was created
6 by the Bureau of Reclamation.

7 Q. All right. Well, it does say -- it
8 identifies the Bureau of Reclamation, El Paso County
9 Water Improvement District No. 1, and Elephant Butte
10 Irrigation District, correct?

11 A. That's what it says.

12 Q. It also has the title, "Operating Agreement"?

13 A. Yes, it does.

14 Q. And it refers to the Rio Grande Project,
15 right?

16 A. Yes.

17 Q. Turning to Page 2, you recognize the name of
18 Roger K. Patterson?

19 A. I do not.

20 Q. Do you recognize the name Steve Reynolds?

21 A. I do.

22 Q. Who is he?

23 A. He was the state engineer from New Mexico for
24 a very long time.

25 Q. Are you familiar with the past Project

1 **superintendents of the Project?**

2 A. I have not had occasion to review that.

3 Q. You can see here this is stamped received
4 **January 31st, 1985. Do you see that?**

5 A. Yes.

6 Q. This has been identified as a joint exhibit.
7 **If you go out to Page 1, let's take a look at that.**
8 **Do you see that Joint Exhibit 440?**

9 A. Yes, I see that.

10 **MR. WECHSLER:** Your Honor, I'm going to
11 go ahead and offer this exhibit now.

12 **JUDGE MELLOY:** Any objection,
13 Mr. Dubois?

14 **MR. DUBOIS:** None from the United
15 States, Your Honor.

16 **JUDGE MELLOY:** Ms. Klahn? You're muted.
17 There you go.

18 **MS. KLAHN:** Sorry, Your Honor. My only
19 objection would be foundation as far as whether this
20 witness really knows enough that she could talk about
21 this agreement, given that she doesn't -- wasn't
22 working for Reclamation at the time, and wasn't
23 familiar with Mr. Patterson.

24 **JUDGE MELLOY:** Well, she did testify,
25 though, she had seen the document in the files of the

1 -- of the Reclamation so I'm going to admit 440.

2 Q. (BY MR. WECHSLER) Turning, Ms. Estrada-Lopez,
3 to Page 8 of this document -- and if at any time
4 there's parts of this that you simply don't know or
5 don't understand, please let me know. And I'm going
6 to look at the definition here at Project supply,
7 which has now been highlighted. You can see in this
8 document, this operating agreement -- well, let me --
9 before we go there, are you familiar -- are you aware
10 of any other operating agreements from the period 1980
11 to 2005 for the Rio Grande Project?

12 A. I'm not.

13 Q. So we can see the definition of Project
14 supply here included, "Stored water legally available
15 for release in Elephant Butte and Caballo Reservoirs."
16 Do you see that?

17 A. Yes.

18 Q. And then it also included water that,
19 "legally appropriated waters reaching the bed of the
20 Rio Grande between Caballo Dam and Riverside Diversion
21 Dam." Do you see that?

22 A. Yes, I do.

23 Q. We looked at Riverside gage earlier just a
24 moment ago, right?

25 A. Yes, we did.

1 Q. If we move down to the next definition here
2 of allocated water, and here we can see that it's
3 defined as that portion of water that's determined to
4 be available for diversion, right?

5 A. That's what it says.

6 Q. Yeah. Okay. So I want to move to the last
7 paragraph of -- of this page. I'm calling it Page 8.
8 I'm using the Bates numbers at the very bottom rather
9 than the actual number of the document, just for the
10 purposes of the record. And here we can see in the
11 second sentence, it says, "The amount delivered to the
12 Mexican Canal, Acequia Madre, shall be furnished in
13 the same proportion as the water delivered to lands
14 under said irrigation system." Do you see that?

15 A. Yes, I see that.

16 Q. And that's consistent with the testimony you
17 gave earlier about the treaty, right?

18 A. Yes, it is.

19 Q. The next sentence says, "The first allocation
20 to lands in the United States was made in 1951." Do
21 you see that?

22 A. I see that's what it says.

23 Q. Is that consistent with your understanding?

24 A. It is.

25 Q. And then the next sentence says, "An analysis

1 done at that time established 3.024 acre-feet as a
2 full supply to U.S. farms." Do you see that?

3 A. Yes.

4 Q. And that's also consistent with your
5 understanding?

6 A. I have seen it referred to as the full
7 supply.

8 Q. And here, they identify that number as
9 482,800 acre-feet, which they explain in the
10 parenthetical is that full supply number of 3.024
11 acre-feet per acre times 159,650 acres. Do you see
12 that?

13 A. I do see that.

14 Q. All right. So turning to the next page to
15 Page 9, in the top paragraph, let's go ahead and blow
16 that up. First, it tells you that, "Statistical
17 evaluations of operational records for the period of
18 1951 through 1978 inclusive have been made," and
19 that's consistent with your earlier testimony, right?

20 A. Yes.

21 Q. And let's see. It then says, "These
22 evaluations have provided graphs, equations, and data
23 that can be used to ensure that future allocations to
24 Mexico and the allocations to the U.S. maintain the
25 historical relationship between the delivery of water

1 to U.S. farms and Mexico." Do you see that?

2 A. I do see that.

3 Q. All right. Then let's take a look a little
4 bit further down to see those statistical -- so if we
5 look at the second paragraph, which has been
6 highlighted here, they're referring there to the D1
7 curve, right? And -- you see that?

8 A. Yes. I see the word D1 -- Curve D1.

9 Q. It refers to this exhibit. Why don't we take
10 a look at the exhibit, which is on Page 40 of this
11 document, again, using the Bates stamps at the bottom.
12 This may be difficult to read. It's an old document.
13 If you look in the far right-hand corner, it
14 says, "Curve D1." Do you see that?

15 A. I do see that.

16 Q. You recognize this as the D1 curve?

17 A. It looks correct.

18 Q. All right. And then if we go back to Page 9,
19 and we were looking at the second paragraph, I
20 believe, on Page 9. And this confirms that it's the
21 relationship between the water released from storage
22 and the delivery to, it says, "Farms in the United
23 States and to the heading of the Mexican Canal,"
24 right?

25 A. Yes. That's what it says.

1 Q. All right. Now, let's look at D2. So if we
2 look at, I think it's -- yeah, there we go. Here we
3 say, "The amount" -- it says, "The amount available
4 for irrigation to U.S. river headings is determined
5 from Curve D2, enclosed as Exhibit No. 3." Do you see
6 that?

7 A. Yes, I see that.

8 Q. Let's go take a look at D2. So that's on
9 Page 41 of this document. And, again, hard to read.
10 I apologize. You look in the lower right-hand corner,
11 you can see it says, "Curve D2." Do you see that?

12 A. Yes, I see that.

13 Q. You recognize this as the D2 curve?

14 A. That looks correct.

15 Q. Okay. Now, let's turn back to Page 9, and
16 let's look this time down below there at -- at Section
17 B, which is entitled, "Determination of Allotment for
18 Full Supply." Do you see that?

19 A. Yes, I see that.

20 Q. And in the first paragraph, they're telling
21 you that a full supply is based on total delivery of
22 482,800 acre-feet to U.S. farms. Do you see that?

23 A. I see that.

24 Q. And we just looked at the origin of that
25 number on the previous page, right?

1 A. Yes.

2 Q. And then if you look at those two next
3 paragraphs, it goes onto tell you that, "This
4 translates into a release from Project storage of
5 780,800 acre-feet." Do you see that?

6 A. Yes, I see that.

7 Q. And then we can see in the last paragraph
8 there, it tells you that, "From Curve D2, the historic
9 net diversions at Headings, U.S. and Mexico, for a
10 release of 780,000 is 902,000 acre-feet." Do you see
11 that?

12 A. I do see that.

13 Q. All right. So I want to turn to Page 10 now
14 because they have a helpful illustration here, and
15 let's just blow out the whole page if we can. Up to
16 there. Perfect. Here you can see at the top, it
17 says, "Allocation for a full supply," right?

18 A. That's what it says.

19 Q. You understand this to be an example for 100
20 percent allotment?

21 A. Also what it says.

22 Q. You can see at Step 4, "The amount available
23 for diversions in this full supply is -- to Mexico is
24 60,000 acre-feet." You see that?

25 A. Yes.

1 Q. That's consistent with your testimony
2 earlier?

3 A. Yes.

4 Q. You can see for EBID, at least under this
5 operating agreement, a full supply was 478,037
6 acre-feet, right?

7 A. I see that.

8 Q. And then for EP1, the full supply, at least
9 under this operating agreement, was 363,963 acre-feet.
10 Do you see that?

11 A. I see that.

12 Q. Okay. We can take down this document now,
13 and let's put up New Mexico 697, which was admitted
14 yesterday. And let's look at the title page first.
15 Let me just ask you, Ms. Estrada-Lopez: Do you
16 recognize this document, which is entitled, "Rio
17 Grande Project Water Supply Allocation Procedures"?

18 A. I see it.

19 Q. Is this a document that is in the Bureau of
20 Reclamation files?

21 A. Yes, it is.

22 Q. I'll just -- for the Court's understanding,
23 you can see that the very next page of this document,
24 which has the Bates stamp of Page 2, is actually
25 labeled Page 3. Again, just by way of explanation,

1 I'm not aware of, and certainly Mr. Dubois or Ms.
2 Klahn can correct me if I'm wrong. It's not an
3 incomplete copy; it's simply that we have not found
4 anybody who has the other pages of those -- of that
5 document. But at any rate, this document has already
6 been admitted.

7 So I -- just to confirm a couple of other
8 things here and compare it to that last document we
9 just looked at, Ms. Estrada-Lopez. So here we can see
10 under the second paragraph here, Paragraph 2A, it
11 says, "Allocation Procedure," right?

12 A. Yes, that's what it says.

13 Q. Yeah. And then let's back out of there, and
14 then we're going to look at -- if -- if under the
15 procedure, we capture that second paragraph that
16 starts with "1906." And here it's telling you --
17 you'll recognize some similar language. For example,
18 we see there it says, "The first allocation to lands
19 in the United States was made in 1951." You see that?

20 A. Yes, I see that.

21 Q. We saw that language in the last document, as
22 well, correct?

23 A. Yes, we did.

24 Q. And then you can see in the next sentence, it
25 says, "An analysis done at that time established 3.024

1 acre-feet per acre, applied to lands, as a full supply
2 to U.S. farms." Do you see that?

3 A. Yes, I see that.

4 Q. And -- and that's pretty similar to the
5 language we saw on the previous document, correct?

6 A. Yes, it's similar.

7 Q. And -- but here's where it gets a little bit
8 different. They then say that that full supply is
9 468,720 acre-feet. You see that?

10 A. I see that.

11 Q. And that's a different number than we saw on
12 the 1985 document, right?

13 A. I don't a hundred percent remember.

14 Q. Fair enough. The record will reflect that.
15 But we now see in the parens, you have 3.024 acre-feet
16 per acre times, and I think here is where the
17 difference comes from, it's 155,000 acres. Do you see
18 that?

19 A. Yes.

20 Q. And that 155,000 acres, that's consistent
21 with the total authorized acreage; is that right?

22 A. I have to go back and look at the contracts.
23 It doesn't sound wrong but --

24 Q. All right.

25 A. It's a lot of questions.

1 Q. That -- that's a fair point. All right. We
2 can put this document down then. And I'm just -- now,
3 you indicated you weren't exactly aware of the
4 procedures that were used to allocate water between
5 1980 and 2005, but let me ask you this: Are you aware
6 that during that time period, approximately 57 percent
7 of the acreage -- Project acreage was in New Mexico,
8 and approximately 43 percent was in Texas?

9 A. My understanding is based on the contracts
10 that the authorized acreage, that's the split.

11 Q. And are you aware that between 1980 and --
12 and 1985, the allocation of water was done on the
13 basis of the respected authorized acreage in each
14 district?

15 A. I have seen some allocations during that time
16 period that did that.

17 Q. Let's take a look at Colorado 214, and this
18 is another document that's already been admitted.
19 Well, actually, I apologize for going backwards, but I
20 want to show you the origin of these numbers, so I
21 don't know if Ms. Ferguson can actually call up at the
22 same time that Colorado 214 and also New Mexico 697,
23 and then I'll ask that you put up Page 4 at the top of
24 the page of New Mexico 697. Yeah. We can just go
25 under the allocation for a full supply. We looked at

1 this for the 1985 document, and I should have showed
2 you this, Ms. Estrada-Lopez, for 1991, as well. Here
3 you can see for -- based on that document, the New
4 Mexico 697, the full allocation to EBID there was
5 494,979 acre-feet. Do you see that?

6 A. Yes.

7 Q. And it actually tells you, and this goes to
8 our previous question, that it's -- represents 56.774
9 percent of 871,841 acre-feet. Do you see that?

10 A. Yes.

11 Q. And then we can see the full supply, at least
12 under that document, New Mexico 697, to EP No. 1, was
13 that 43.226 percent of the 871,841. Do you see that?

14 A. Yes.

15 Q. And for a total to EP1 of 376,862. Do you
16 see that?

17 A. Yes.

18 Q. All right. Now, we can see the highlighted
19 portion of Colorado 214 below there, and it tells
20 you, "The following is the final allocation for the
21 Rio Grande Project water supply." Do you see that?

22 A. Yes.

23 Q. We can see Mexico was at 60,000, and you've
24 said that's a full supply for Mexico, right?

25 A. Yes.

1 Q. Then we can see EBID received 494,979
2 acre-feet, which we can see matches that amount from
3 the previous document from the New Mexico 697, right?

4 A. Yes.

5 Q. And, also, if we look at the EP No. 1
6 allocation from 2002, it was 376,862, which also
7 matches the EP1 allocation from the New Mexico 697,
8 right?

9 A. Yes.

10 Q. And then if we back out of those two
11 documents here and go over to Colorado 214 and -- and
12 highlight the second full paragraph there -- yeah,
13 that one -- and we can see here that in this letter,
14 it's being indicated that -- maybe we need to go to
15 Page 2. Yeah, there you see at the top paragraph
16 that's bolded. Here it says that, "This final
17 allocation" -- meaning the one we just looked at
18 -- "represents a full supply." You see that, and it
19 tells you the increase amount for 2002?

20 A. Yes, I see that.

21 MR. DUBOIS: Your Honor, I'm going to
22 object to this line of questioning at this point. I
23 mean, Mr. Wechsler is not really asking any questions.
24 He's presenting documents, and the documents speak for
25 themselves. But there are no questions that are

1 within the scope of Ms. Estrada-Lopez's testimony
2 yesterday, so I'm going to object to the line of
3 question and just sort of reading in documents.

4 **MR. WECHSLER:** Well, I do think that the
5 -- the allocation was clearly within her testimony,
6 and we're, through this witness, exploring and showing
7 you the relevant documents.

8 **MR. DUBOIS:** The allocation she talked
9 about is what she does as far as allocation, and
10 Mr. Wechsler is simply reading in documents that speak
11 for themselves.

12 **MR. WECHSLER:** I understand that
13 Reclamation is not comfortable with these allocation
14 procedures, but they were the ones they adopted during
15 this period.

16 **JUDGE MELLODY:** I'm going to overrule.
17 I'll let the witness answer.

18 **Q. (BY MR. WECHSLER)** All right. And, actually,
19 we're -- we're done with those two exhibits, and we're
20 going to move on, now, to the -- the operating
21 agreement. So we've covered the period prior -- the
22 D2 period. We've covered, now, that period between
23 1980 and 2005, so, now, we're going to move to that
24 period of the operating agreement. Can you remind us,
25 Ms. Estrada-Lopez, when was the operating agreement

1 adopted?

2 A. It was signed in 2008.

3 Q. Okay. So before we move to the operating
4 agreement, I want to look at some of the positions of
5 the Rio Grande Compact Commission on the allocations,
6 and -- and I want to start with Joint Exhibit 391,
7 which has already been admitted. I want to start with
8 just the first page of that document. You can see
9 this is Rio Grande Compact Commission report from
10 2001, and you indicated you had reviewed some past
11 Compact Commission documents; is that right?

12 A. Yes, I have.

13 Q. Let's find out if this is -- as I said, it's
14 already admitted, but let's find out if this is
15 something that you have reviewed. Let's turn to Page
16 16. And we're going to use that first column -- this
17 is one of the resolutions of the Rio Grande Compact
18 Commission. You're familiar with resolutions being
19 passed by the Rio Grande Compact Commission,
20 Ms. Estrada-Lopez?

21 A. Yes, I know they do that.

22 Q. Yeah. So let's look at what's being resolved
23 here. Here we can see it says that, "The Rio Grande
24 Compact Commission hereby requests that the Bureau of
25 Reclamation work cooperatively with the engineer

1 advisors to develop procedures for determining the
2 annual allotments of water supply in accordance with
3 the Rio Grande Compact." Did you see that? Have you
4 seen that before?

5 A. I think so.

6 Q. Is this something that you consider as part
7 of your allocation development?

8 A. No. I follow the operating agreement
9 procedures.

10 Q. All right. Let's turn to Page 12 of this
11 same document. And here, let's just highlight that
12 first couple paragraphs there. You can see this is
13 entitled a, "Memorandum of Understanding between the
14 Rio Grande Compact Commission and the United States
15 Bureau of Reclamation." We can see there below, "To
16 describe the duties, roles and responsibilities of
17 each agency in the water accounting, reporting and
18 documentation of the waters of the Rio Grande Basin
19 above Fort Quitman, Texas, in accordance with the Rio
20 Grande Compact." Do you see that?

21 A. I see that sentence.

22 Q. Okay. Then let's turn to Page 15. In that
23 left-hand column, which I'll just represent because
24 you don't have the whole document in front of you,
25 this is the signature part of that document, and you

1 can see this was signed by Ken Maxey of the U.S.
2 Bureau of Reclamation, dated March 21st, 2002. You're
3 familiar with who Ken Maxey is?

4 A. Yes. I've heard his name.

5 Q. At the time, he was the area manager?

6 A. That's my understanding.

7 Q. All right. Well, let's turn then to Page 15,
8 which is right before this signature page. I'm sorry.
9 Page 14. And let's go ahead and highlight that whole
10 Section 5.0. Here you can see under that
11 heading, "Protocols," it's entitled, "Protocols for
12 Implementing Future Changes to Approved Methods,"
13 right?

14 A. That's what it's titled.

15 Q. In the last sentence of that first paragraph,
16 it says, "No accounting adjustments will be
17 implemented without the prior approval of the
18 Commission." Do you see that?

19 A. I see that.

20 Q. Is this something that you take into
21 consideration as you're developing allocations?

22 MR. DUBOIS: Objection; lack of
23 foundation as to her familiarity with this particular
24 document.

25 Q. (BY MR. WECHSLER) Have you ever seen this

1 document, Ms. Estrada-Lopez?

2 A. I have seen this document.

3 Q. And do you take it into account when you do
4 your allocations?

5 A. I'm just following the procedures. I don't
6 know what this is referring to without reviewing the
7 entire document.

8 Q. Fair enough. So -- but I understand then the
9 answer to my question is no, it's not something that
10 you have considered when you've developed allocations?

11 A. No.

12 Q. Do you know if the Rio Grande Compact
13 Commission approved the operating agreement?

14 A. I've never seen anything that said they did.

15 Q. Let's turn to the operating agreement.
16 That's Exhibit 2373. You looked at this yesterday.
17 It's been admitted, and you recognize this as a copy
18 of the 2008 operating agreement?

19 A. Yes, I do.

20 Q. Now, the two primary changes from the
21 previous allocation methods were the separate district
22 carryover accounts, and that's present in the
23 operating agreement, right?

24 A. The -- it talks about carryover of allocation
25 balance.

1 Q. We'll talk about that in -- in some detail in
2 a moment. And -- and, also, the use of the diversion
3 ratio, which is also identified in the operating
4 agreement, right?

5 A. Yes. That's in the operating agreement.

6 Q. Okay. Let's turn to Page 5, and we're going
7 to highlight here Section 2.5. And really the last
8 sentence here is what we're going to look at. Here it
9 tells you, "The amount of annual allocated water shall
10 be determined using the D2 equation for EPCWID,"
11 right? Do you see that?

12 A. Yes.

13 Q. That's consistent with your understanding?

14 A. Yes.

15 Q. Then it says, "Using equation 2-1 for the
16 United States, pursuant to the Convention of 1906,"
17 and that's consistent with your understanding?

18 A. I don't know what equation 2-1 is without
19 looking in the document.

20 Q. Is -- for the United States, pursuant to the
21 Convention, is it the D1 equation that determines that
22 amount of water?

23 A. 60,000 or the D1 equation.

24 Q. All right. And then this says, "And using
25 the diversion ratio, parens, ratio of the amount of

1 water charged to the amount of water released, for
2 EBID in accordance with Tables 1 through 4 herein."

3 Do you see that?

4 A. Yes, I see that.

5 Q. And that's consistent with your
6 understanding, right?

7 A. Yes.

8 Q. Let's turn to Table 2 -- let's turn to Table
9 1, which is on the next page. You can -- you can --
10 it's fine. Table 2 is also fine. And -- and you
11 recognize this as a -- a copy of basically the
12 allocation spreadsheet, as it looked in 2008?

13 A. Yes. This is a table in the operating
14 agreement.

15 Q. Right. And it parallels the allocation
16 spreadsheet that you work with, right?

17 A. Yes. It's based off of this.

18 Q. And so each year, you -- you've actually --
19 there have been some lines added to the allocation
20 spreadsheet since 2008; is that right?

21 A. That's correct.

22 Q. But every year, you use an Excel spreadsheet
23 in developing the initial allocation?

24 A. Yes, I do.

25 Q. And it's based essentially on this

1 spreadsheet from the operating agreement?

2 A. Yes.

3 Q. And if you turn to Page 8 of this same
4 document, and let's -- can we pull that out just a
5 little bit? In here, you can see, this is a
6 description of the values and calculations from that
7 table that we were just looking at, right?

8 A. Yes, it is.

9 Q. Again, some of these values and calculations
10 have been changed; many are still the same from 2008,
11 right?

12 A. Yes. Most are still the same.

13 Q. Okay. So, now, let's talk a little bit about
14 the allocation committee. Now, the allocations to
15 Mexico, EP1, and EBID are done by the allocation
16 committee, right? Ultimately they're approved by the
17 allocation committee?

18 A. I would not say that.

19 Q. What would you say?

20 A. The allocation to Mexico is done by the
21 United States and then it's put into the calculation
22 for the initial allocations to the districts, and that
23 part is approved by the committee.

24 Q. All right. So you -- so the initial
25 allocations are done by Reclamation, and you testified

1 you do that, right?

2 A. Yes.

3 Q. And then it -- that initial allocation is
4 submitted to the allocation committee?

5 A. Yes.

6 Q. And ultimately, the allocation committee
7 approves of the final allocations?

8 A. Yes.

9 Q. And action by the allocation committee, if I
10 understood you correctly yesterday, must be unanimous?

11 A. Yes.

12 Q. Now, if we look at Exhibit US-547, just for
13 purposes of creating a record here, this is the
14 memorandum that ultimately delegates to you authority
15 to be on the allocation committee, right?

16 A. Yes.

17 Q. And that's already been admitted -- admitted.
18 Now, you first became a member of the allocation
19 committee in 2016?

20 A. I have to look at the -- what I wrote in my
21 report or something, but that sounds right.

22 Q. Somewhere -- somewhere in -- around 2016?

23 A. Yeah.

24 Q. Now, I think you already testified that you
25 replaced Bert Cortez as the Reclamation

1 representative?

2 A. Yes, I did.

3 Q. And to your knowledge, other than you,
4 Mr. Cortez is the only person who's ever been on the
5 allocation committee for Reclamation?

6 A. That's correct.

7 Q. The other two members of the allocation
8 committee, again, based on your testimony yesterday,
9 is a representative of EBID, which is Dr. King, right?

10 A. Yes.

11 Q. And a representative from EP1, and that's
12 Dr. Blair, right?

13 A. Yes.

14 Q. To your knowledge, Dr. King and Dr. Blair are
15 the only members who have ever sat on the allocation
16 committee for EBID and EP1 respectively?

17 A. Yes.

18 Q. Okay. Now, the allocation committee has no
19 other members?

20 A. No.

21 Q. So there's no representative from either the
22 State of Texas or the State of New Mexico?

23 A. No.

24 Q. The -- and the allocation committees are not
25 open to the public; is that right?

1 A. No.

2 Q. Okay. So, now, turning to the process for
3 developing the allocations under the operating
4 agreement, let -- let me just ask you this: Will you
5 agree with me that it's a complicated process?

6 A. Yes.

7 Q. In fact, you've testified you're responsible
8 for the initial allocations, but you don't use all of
9 the lines in the allocation spreadsheet, do you?

10 A. I don't know what you mean by use them.

11 Q. Well, you -- you don't actually use them in
12 developing the allocations?

13 A. If they're on my spreadsheet, then that is
14 what I send out to the allocation committee, and then
15 that's what the allocation committee approves for the
16 allocation.

17 Q. Let me ask you this then: There are some
18 lines within the allocation spreadsheet that you don't
19 know why they're there?

20 A. I did not -- I was not part of the
21 development of the original allocation spreadsheet so
22 I can't speculate all the reasons why something would
23 be there.

24 Q. So is that a yes to my question, you don't
25 know why all of the lines were there?

1 A. I do not know why all the lines are there.

2 Q. All right. To help us understand a little
3 bit about the process, I'll -- I'll ask you to look at
4 US Exhibit 563, and this has been admitted. I'm going
5 to turn to Page 2 of this document and look at the
6 figure there. So -- there we go. So if you look at
7 the Step 1, Step 2, Step 3, Step 4, et cetera, does
8 that accurately describe the current process for
9 developing the allocations?

10 A. Yes. That's a generalization of it.

11 Q. And then let me -- let me point you to,
12 because there are now some new equations in the
13 spreadsheet, let -- let's look at Page 3 of this
14 US-563 and call that out. Here you can see this
15 says, "Rio Grande Project Allocation Table, Data and
16 Calculations Used to Determine Rio Grande Project
17 Allocations." Do you see that?

18 A. Yes, I see that.

19 Q. You recognize --

20 JUDGE MELLOY: Mr. Wechsler, can I
21 interrupt you for just a second?

22 MR. WECHSLER: Of course.

23 JUDGE MELLOY: This -- this exhibit
24 raises an issue we've noticed with a couple of the
25 exhibits. There -- it's labeled, "Highly

1 confidential." I just wanted to make sure that none
2 of the exhibits are being admitted under any kind of
3 seal or confidential status; is that correct?

4 **MR. WECHSLER:** That's my understanding,
5 Your Honor. I'll certainly let Mr. Dubois speak to
6 that issue considering it's a U.S. document.

7 **MR. DUBOIS:** Your Honor, this was --
8 this was disclosed in discovery, and we are not
9 claiming any -- any need to have this under seal.

10 **JUDGE MELLOY:** And as I understand it,
11 there's other documents that have similar notations on
12 them. As I understand it, unless otherwise indicated,
13 any document that's admitted is not admitted under
14 seal or subject to any type of protective agreement at
15 this time; is that everyone's understanding?

16 **MR. WECHSLER:** That's my understanding.

17 **JUDGE MELLOY:** Okay. Any disagreement.

18 **MR. DUBOIS:** Not that I know of, Your
19 Honor.

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

22 **MR. WECHSLER:** And just by way of
23 explanation, Your Honor, during depositions, we did
24 learn from some of the deponents that they simply had
25 a practice of labeling somewhat sensitive documents

1 with the highly confidential label.

2 JUDGE MELLOY: All right. Very good.
3 You may proceed.

4 MR. WECHSLER: Thank you.

5 Q. (BY MR. WECHSLER) All right. So -- and so I
6 think, Ms. Estrada-Lopez, just to pick up that train
7 of thought, did you already answer the question, this
8 -- this table, to the best of your understanding,
9 reflects the -- the current calculations used to
10 determine -- to determine Rio Grande Project
11 allocations; is that right?

12 A. That looks correct, but I would have to look
13 at my spreadsheet and all the equations to make sure
14 it was exact.

15 Q. All right. Well, let's look at one of your
16 spreadsheets now, and -- and what I want to do is look
17 at -- this is New Mexico 1171, and it -- it has the
18 designation A, Your Honor -- I'm sorry. 1711.
19 1711-A.

20 A. Mr. Wechsler?

21 Q. Yes, ma'am.

22 THE WITNESS: Before we start this
23 section, can I have a five-minute break, Your Honor?

24 MR. WECHSLER: You're on mute, Your
25 Honor.

1 **JUDGE MELLOY:** Why don't we take our
2 recess at this time? We'll make it a 20-minute break,
3 and we'll come back at 1:10. All right?

4 **THE WITNESS:** Thank you.

5 **MR. DUBOIS:** Very good, Your Honor.

6 (Recess.)

7 **JUDGE MELLOY:** All right. We will get
8 started. You may -- you may continue, Mr. Wechsler.

9 **MR. WECHSLER:** Thank you, Your Honor.

10 **Q. (BY MR. WECHSLER)** Ms. Estrada-Lopez, before
11 the break, I was just going to ask you to look at New
12 Mexico Exhibit 1711A, and I was going to explain to
13 the Special Master that there was originally an
14 objection to 1711. We've worked out with the other
15 parties that just a portion of that Exhibit 1711 could
16 be admitted, and it's the electronic version of one of
17 the tabs that was called Final 2018 Allocation, and
18 we've identified that as Exhibit 1711A -- New Mexico
19 1711A.

20 **JUDGE MELLOY:** Do we have that exhibit?

21 **MR. WECHSLER:** It's on the screen, Your
22 Honor, and I believe it was disclosed last night or
23 two nights ago.

24 **JUDGE MELLOY:** All right. I'm going to
25 leave it up to New Mexico then to supply a hard copy

1 of that exhibit to us.

2 MR. WECHSLER: Understood.

3 JUDGE MELLOY: Okay. So just for the
4 record then, 1711A, as in apple, will be admitted.

5 MR. WECHSLER: Thank you, Your Honor.

6 Q. (BY MR. WECHSLER) And so, Ms. Estrada-Lopez,
7 are you able to see Exhibit 1711A, the final 2018
8 allocation spreadsheet on your screen?

9 A. Yes, I am.

10 Q. And -- and this is what those spreadsheets
11 look like when you're doing those allocations, right?

12 A. Yes.

13 Q. And, in fact, this was one of your
14 spreadsheets from 2018?

15 A. Yes, it is.

16 Q. And we can see what it says is -- the tab
17 says in the lower left-hand corner says, "Final 2018
18 Allocation," and you can see at the top, the date is
19 as of April 1, 2018. Do you see that?

20 A. Yes.

21 Q. And -- and the reason I think -- and,
22 actually, let me pose that as a question. Is the
23 reason that the final '18 -- 2018 allocation was the
24 same as for April 1st, 2018, because there were no
25 changes that warranted changes to the allocation?

1 A. I don't remember offhand, but that is
2 typically what I would do.

3 Q. All right. So -- so if we recall back on
4 that US-563 -- and we don't have to go back to it --
5 but the Step 1 is for data inputs, and -- and so the
6 information that goes into this spreadsheet comes from
7 one of the districts, Reclamation, or the Rio Grande
8 Compact Commission; is that correct?

9 A. Yes.

10 Q. There are a few lines here that require some
11 discretion or level of judgment, right?

12 A. Yes.

13 Q. Step 2 is determining the storage and release
14 amounts. Do you recall that? We can look at it again
15 if you want, but is that a step that you would then go
16 through as you're doing the allocation is determining
17 the storage and release amounts?

18 A. Yes.

19 Q. Okay. So let's look at this spreadsheet
20 then, and Line 4 of New Mexico's 1711A, we're looking
21 there at Line 4, and that is the total Rio Grande
22 Project Storage, right?

23 A. Yes.

24 Q. And that's the amount that is in Elephant
25 Butte and Caballo combined?

1 A. Yes.

2 Q. And the next line that's important for the
3 allocations is the total usable water available for
4 release, and that's shown in Line 8, right?

5 A. Yes.

6 Q. And if we click on the box there for Line 8,
7 which is C8, you can see the Excel formula, right?

8 A. Yes, I can.

9 Q. So this includes -- it's the sum of the total
10 project storage, the credit waters, the San Juan-Chama
11 water, and the water already released from storage,
12 right?

13 A. Yes.

14 Q. Now, also important for determining the
15 allocations is understanding the carryover obligation,
16 right?

17 A. Yes.

18 Q. And that's shown in Line 9, right?

19 A. Yes.

20 Q. And the reason that's important is because
21 carryover is excluded from the current year
22 allocations?

23 A. It's not quite right.

24 Q. Well, let's look at the formula then for the
25 -- the total usable water available for release is

1 seen in Line 8, right? And then we see the total
2 usable water available for current year allocation is
3 in Line 11; is that right?

4 A. Yes.

5 Q. And there, you see that that number is the --
6 the minimum of either 790,000 acre-feet, right?

7 A. Yes.

8 Q. Or Lines 8, which is the total usable water
9 available for release, plus Line 9, which is the
10 carryover obligation, right, plus Line 10, which is
11 the estimate of end-of-year adjustment -- minus 9 -- I
12 think I said plus, so to be clear, that total usable
13 water available for current year allocation in Line 11
14 is the minimum of 790 or Line 8, the amount available
15 for release minus Line 9, which is the carryover
16 obligation, right?

17 A. Yes.

18 Q. And then C10 is just the sort of, what you
19 call, the end-of-season adjustment project water for
20 reservoir evaporation or dead storage, right?

21 A. Yes.

22 Q. So you take those together, the total usable
23 water available for the current year allocation is
24 that amount available for release shown in Line 8, and
25 you're deducting the carryover obligation, right?

1 A. Yes.

2 Q. And so if we look then a little more
3 carefully at Line 9 and click on the box there, again,
4 you can see the formula at the top, right?

5 A. Yes.

6 Q. And -- and it looks at the amount of unused
7 water from the previous years, which is Lines 12 for
8 EBID and Line 13 for EP No. 1, right?

9 A. Yes.

10 Q. So the carryover in this year for EBID was
11 11,239 acre-feet shown in Box C12, right?

12 A. Yes.

13 Q. And the carryover for EP1 was 202,102
14 acre-feet, right?

15 A. Yes.

16 Q. But you don't just add those, which you can
17 see just ball parking it would total somewhere around
18 213,000 acre-feet, you also apply the diversion ratio
19 to that carryover, right?

20 A. Yes.

21 Q. And the diversion ratio we can see here in
22 this spreadsheet is in Line 28, and so this year --
23 and we'll talk more about the diversion ratio. You
24 can see there it's the 0.904597, right?

25 A. Yes.

1 Q. And as you talked about -- testified
2 yesterday, that diversion ratio is the ratio of
3 allocation charges to the releases from Caballo,
4 right?

5 A. Yes.

6 Q. And -- and so in -- in that way, if I
7 understood you correctly, it can be thought of as a
8 measure of the river efficiency or the efficiency of
9 the Project, right?

10 A. I don't think I said that. That's proportion
11 that's applied to the volume that's released to
12 estimate how much can be delivered.

13 Q. You don't consider the diversion ratio to be
14 a measure of the efficiency of the Project?

15 A. It's not a measurement of the Project
16 efficiency.

17 Q. Is it a way of evaluating the Project
18 efficiency?

19 A. Yes.

20 Q. Now, again, we'll talk about the diversion
21 ratio more in a moment, but a diversion ratio of one
22 means that every acre-foot of water released from
23 Caballo, an acre-foot of water is charged to the
24 project accounting, right?

25 A. Yes.

1 Q. And that means if a diversion ratio is less
2 than one, it results in additional water being devoted
3 to the Line 9 carryover obligation, right?

4 A. Yes.

5 Q. And because it's part of that carryover
6 obligation, it's not available for current year
7 allocation?

8 A. Yes.

9 Q. All right. So next in determining the
10 allocation, you -- you have to determine that total
11 usable available water for current year allocation,
12 right? That's Line 11. We talked about that. And I
13 want to mention two things about that Line 11. The
14 first is, if we click on that Box C11, the maximum of
15 water -- amount of water that can be available for
16 allocations is that 790,000 acre-feet, right?

17 A. Well, that's what's in the formula.

18 Q. Right. And so you follow this formula when
19 you do the allocations, correct?

20 A. Yes.

21 Q. And so under the formula, the maximum amount
22 available for allocations is 790,000 acre-feet, right?

23 A. Yes.

24 Q. And that's consistent with the Rio Grande
25 Compact's language about the normal release of 790,000

1 acre-feet?

2 A. Yes. It's in there, as well.

3 Q. Now, the second thing about this Line 11,
4 because the water available for allocation at Line 11
5 is the water available for release minus the carryover
6 obligation, this, again, emphasizes that carryover
7 reduces the amount of water available for allocation,
8 right?

9 A. That's not quite right.

10 Q. Well, it -- it reduces the amount for current
11 year allocation?

12 A. Yes.

13 Q. And so finally for allocation purposes, we
14 need to determine the current usable water, and that's
15 shown in Line 17, right?

16 A. Yes.

17 Q. And if we click on the box for Line 17, you
18 can see there the formula. The current usable water
19 can be thought of as the amount of water that
20 Reclamation thinks will be able to release in that
21 year; is that right?

22 A. Yes.

23 Q. All right. So, now, let's turn to Mexico.
24 So the Step 3 from US-563 talked about the allocation
25 to Mexico as Step 3, so let 's talk about that now and

1 how that allocation is done under the operating
2 agreement. So to do that, you first have to determine
3 the D1 delivery, which is Line 19, right?

4 A. Yes.

5 Q. And the D1 delivery is the total amount of
6 the D1, in other words the delivery to all lands and
7 the -- the heading for the Acequia Madre?

8 A. Yeah. That's the Y axis from D1 equation.

9 Q. Understood. And so -- and so the releases
10 would be that amount of water you release to get that
11 amount of water to those head gates -- I'm sorry -- to
12 the lands and the Acequia Madre head gate?

13 A. Based on that historical relationship, yes.

14 Q. And that D1 curve is the same D1 curve that
15 has historically been used?

16 A. Since I've been doing it, yes.

17 Q. Now, that amount in Line 19, the D1 delivery,
18 will change depending on the amount of water that's
19 released or that's assumed to be released for purposes
20 of the equation, right?

21 A. Yes.

22 Q. Now, for the Mexico allocation, the D1
23 equation, the -- the release, is the current usable
24 water from Line 17, right?

25 A. Can we highlight 19?

1 Q. 19? Sure.

2 A. Yes.

3 Q. And so that line -- and -- but we'll see in
4 -- in a moment that the amount assumed to be released
5 for purposes of the D2 curve is a -- is a different
6 number, right, it's not that Line 17?

7 A. Correct.

8 Q. And so we see in D1 delivery, Line 19 for
9 this year, that total delivery applying the curve to
10 Line 17 gives you 331,933 acre-feet, right?

11 A. Yes.

12 Q. And that's the amount that's estimated could
13 be delivered to lands and the Acequia Madre?

14 A. Yes.

15 Q. So, next, you have to figure out the portion
16 of that Line 19 that should be allocated to Mexico,
17 correct?

18 A. Yes.

19 Q. And so Mexico -- and you can click on Line --
20 or Box C20 for this, and we can see that Mexico is
21 allocated the lesser of either 60,000 acre-feet or
22 approximately 11 percent of the total D1 delivery,
23 right?

24 A. Yes.

25 Q. Now, I do have one question about that and

1 this came from some of the things that you said
2 yesterday and I just want to understand that better.
3 So I understood you yesterday, you were using
4 Demonstrative Slide No. 17 to discuss the Mexico
5 allocation. Do you recall that?

6 A. Yes.

7 Q. And you indicated that the way you determine
8 whether there is an extraordinary drought is whether
9 there is 600,000 acre-feet of water available for
10 release; is that right?

11 A. Yes.

12 Q. And so when you're doing that, are you
13 talking about the Line 8, the total usable water
14 available for release?

15 A. I would probably use Line 17, because we
16 would not release the evaporation in that storage.

17 Q. All right. Fair enough. So we'll use Line
18 17. So this is where my confusion comes from. I'm
19 going to leave this exhibit and come back to it in a
20 moment, but if we turn to Exhibit US-200, and let's go
21 to Page 3, and this has already been admitted. Let's
22 highlight -- yeah, that portion will capture well
23 enough. So we can see in this example, the current
24 usable water is 888,423 acre-feet. You see that?

25 A. Yes.

1 Q. So that's above that 600,000, and if I
2 understood your testimony yesterday, I mean, I
3 understood you to be saying under those circumstances,
4 it's not an extraordinary drought, and we're not going
5 to reduce the portion to Mexico. Did I have that
6 right?

7 A. That's how I do it now.

8 Q. We can see here, though, in Line 19 in this
9 year, Mexico did not receive 60,000 acre-feet, right?

10 A. That's what it says.

11 Q. And so -- well, let -- we can go to another
12 one. Let's go to Page 9. This is more recent. This
13 is 2016. Were you doing these initial allocations in
14 2016?

15 A. I believe so.

16 Q. You can see again, Line 17, that current
17 usable water, you can see the total amount is above
18 the 600,000 acre-feet, right?

19 A. Yes.

20 Q. But when you look at Mexico allocation in
21 Line 20, again, it's reduced from the 60,000
22 acre-feet?

23 A. Yes.

24 Q. So is that just a very recent change?

25 A. Yes.

1 Q. When did --

2 A. Discussed it with IBWC.

3 Q. When was that change made?

4 A. I don't recall.

5 Q. Okay. Let's turn back then to Exhibit 1711A,
6 and let me just ask you this. It may not be reflected
7 in this spreadsheet because it's 2018. So did the
8 formula in Line 20 change as a result of that change
9 in the procedure?

10 A. No.

11 Q. All right. Okay. Now, thinking then about
12 the 2018, in this year, Line 20, Mexico was allocated
13 37,670 acre-feet, right?

14 A. Yes.

15 Q. And once you have that number, now, you're --
16 that's when you do that status check to ensure you're
17 in compliance with the treaty that we talked about
18 earlier, right?

19 A. Yes.

20 Q. And you do that status check every year?

21 A. Yes.

22 Q. We can see the status check for this year in
23 this spreadsheet on the right-hand side of New Mexico
24 Exhibit 1711A, right?

25 A. Yes.

1 Q. Okay. So let's look at that then. So the
2 first thing you do, and I'm looking here at Box L9.
3 You -- you figure out the water supply to U.S.
4 irrigation lands, and that takes the number from the
5 D1 delivery in Line 19, and it subtracts out the
6 portion allocated to Mexico, right?

7 A. Yes.

8 Q. That gives you, you can see in Line P9,
9 294,264 acre-feet, right?

10 A. Yes.

11 Q. Now, you take that number, and you plug it
12 into K12, and that's the amount allocated to the water
13 supply to U.S. district lands, right?

14 A. No.

15 Q. The 294,264 is not the water supply to U.S.
16 irrigation's district's lands?

17 A. It's not been allocated.

18 Q. Okay. The water supply to U.S. irrigation
19 lands, right?

20 A. That's what it says.

21 Q. Yeah. And then you divide that number by
22 155,000, right?

23 A. Yes.

24 Q. And that represents the amount of acreage
25 within the Project, right?

1 A. Yes.

2 Q. Which gives you an amount per acre of 1.89847
3 acre-feet per acre, correct?

4 A. Yes.

5 Q. Then in Line K13, you divide that number,
6 1.89847 acre-feet per acre, you divide that by the
7 3.024 acre-feet per acre, right?

8 A. Yes.

9 Q. And that 3.024, as we looked at earlier,
10 represents that full supply that was determined back
11 in the 1950s, right?

12 A. Yes.

13 Q. Which gives you a percentage of the full
14 supply allotments to U.S. lands, correct?

15 A. Yes.

16 Q. And that percentage in this year, 2018,
17 happened to be 62.78 percent, right?

18 A. Yes.

19 Q. Okay. So, now, you compare that to the
20 amount of -- for -- for Mexico, the percentage for
21 Mexico, right?

22 A. Yes.

23 Q. We can see that in K19, so you're taking the
24 Mexico current diversion allocation of 37,670
25 acre-feet and dividing it by the full supply of 60,000

1 acre-feet, right?

2 A. Yes.

3 Q. Giving you a number of 62.78 percent, right?

4 A. Yes.

5 Q. Then when you compare those two, the
6 percentage for the U.S. lands and the Mexico lands, it
7 turns out they're the same, and you know you're in
8 compliance with the treaty, right?

9 A. Yes.

10 Q. And, again, that's a check you're doing every
11 year?

12 A. Yes.

13 Q. Okay. Let me -- let me just ask you this:
14 Do you compare the allocation to lands to the -- the
15 actual allotments in EBID and EP No. 1?

16 A. I do not.

17 Q. I want to get you to look at another exhibit
18 before we look at those allotments, and that's Joint
19 Exhibit 426.

20 MR. WECHSLER: Which, again, Your Honor,
21 I understand that Texas and the United States have
22 withdrawn their objection to this.

23 JUDGE MELLOY: Exhibit 426 will be
24 admitted -- Joint Exhibit 426.

25 Q. (BY MR. WECHSLER) All right. And so if we --

1 we look at this, this is a contract that was entered
2 into by the Districts and Reclamation, right? If you
3 want, we can go to the next page, and you can see --
4 well, scroll out so she can see all of it. Yeah. You
5 can see the signatures of EBID, EP1, and the assistant
6 secretary of the Interior, right?

7 A. Yeah.

8 Q. And then if you go back to Page 1, and we are
9 going to look at this language we've looked at -- or
10 in this case we've looked at in the fourth paragraph
11 where it says, "It is further agreed." And we see
12 here that in the -- it says that, "It's agreed that in
13 the event of shortage of water for irrigation in any
14 year, the distribution of the available supply in such
15 year shall so far as practicable be made in the
16 proportion of 67 divided 155 thereof to the lands
17 within El Paso County Water Improvement District No.
18 1, and 88 divided by 155 to the lands within the
19 Elephant Butte Irrigation District," right?

20 A. That's what it says.

21 Q. 67 over 155 gives you approximately 43
22 percent?

23 A. Yes.

24 Q. 88 divided by 155 gives you approximately 57
25 percent?

1 A. Yes.

2 Q. So this is saying in times of shortage, the
3 distribution of available supply has to be 43 percent
4 to EP1 and 57 percent to EBID?

5 MR. DUBOIS: Objection; misstates the
6 document, which speaks for itself.

7 JUDGE MELLOY: I'll sustain that. The
8 document speaks for itself.

9 MR. WECHSLER: I'm happy to stand on the
10 document.

11 Q. (BY MR. WECHSLER) Let's compare it then,
12 Ms. Estrada-Lopez, to the actual allotments, which
13 we're going to look at in New Mexico Demonstrative
14 Exhibit 3. And so just as a reminder for the Court,
15 that amount in 2018 was 1.89847 acre-feet per acre in
16 the Project. Do you recall that, Ms. Estrada-Lopez?

17 A. Yes.

18 Q. We can look at 2018, and -- and assuming this
19 is accurate, and I know you may not know off the top
20 of your head, but you can see here at least this is
21 reflecting an allotment in 2018 for EP1 of 4 acre-feet
22 and for EBI D of less than 1 acre-foot, and that's --
23 those are different numbers than 1.89847, right?

24 A. Yes. Those are different numbers.

25 Q. And also different, and maybe this is

1 apparent from the figure, the amount to EP No. 1 in
2 every year is higher than that allotted to EBID lands,
3 right?

4 A. That's what's shown in this figure.

5 Q. Do you have any information to suggest that
6 these -- the information shown in this figure is not
7 correct?

8 A. No. I have not evaluated the information
9 that was used in this document.

10 Q. All right. Let's go to -- I want to turn
11 back to -- as we're talking here about Mexico, and so
12 we're -- I'm done talking about that allotment and the
13 status check, but I do want to look at another feature
14 of Mexico, and that's shown in New Mexico 2270. And
15 we looked at this earlier. This is that final
16 allocation letter from Mr. Cortez. You remember
17 looking at this earlier?

18 A. Yes.

19 Q. We turn to Page 2 this time, and we're going
20 to go to the sixth paragraph, so the next paragraph.
21 There it says, "Mexico" -- here, Mr. Cortez was
22 explaining that, "Mexico's allocation shall be based
23 on Reclamation's D1 curve," right, and you testified
24 to that, right?

25 A. Yes and yes.

1 Q. And -- and -- and it will be allocated in
2 compliance with the provisions of the Rio Grande
3 Compact and the Convention of 1906. Do you see that
4 in the last sentence?

5 A. That's what it says.

6 Q. If you look at the first sentence of that
7 paragraph, it says, "Mexico's allocation shall be
8 based on Reclamation's D1 curve and the total amount
9 of Project water legally available for release from
10 Project storage including any water associated with
11 the balance of water in the District's allocation
12 accounts that was carried over from one year to the
13 next." Do you see that?

14 A. Yes, I see that.

15 Q. And my understanding of that is that Mexico's
16 allocation is not impacted by the amount in the
17 carryover accounts; is that correct?

18 A. That is how the calculation works, yes.

19 Q. So it's your understanding that Mexico should
20 not be impacted by the Mexico carryover -- I mean, by
21 the EBID or EP No. 1 carryover, right?

22 A. Correct.

23 Q. All right. Let's go back to the spreadsheet
24 because there's a feature of this that didn't seem
25 consistent with that to me. So if we go back to

1 1711A, and, now, remember, we're -- we're looking at
2 the Mexico allocation is in Line 20. That's that
3 37,670, right?

4 A. Yes.

5 Q. And I want to point out a couple lines that
6 we haven't looked at yet, and that's Lines 14 and 15.
7 This is EBID Allocation Balance End of Year and EPCWID
8 Allocation Balance End of Year. Do you see that?

9 A. I see that.

10 Q. That's basically the amount that's expected
11 to be carried over at the end of 2018, right?

12 A. Could be.

13 Q. And, in fact, we know -- we can go and look
14 at US-563, but this is a number, for example, for the
15 EPCWID Allocation Balance End of Year, it's a number
16 that comes from EP No. 1, right?

17 A. I don't see that I've actually entered a
18 value in for that.

19 Q. No, you haven't. I don't know -- have you
20 ever entered a value into either one of those boxes?

21 A. I have been playing around with this
22 spreadsheet. I don't recall specifically from over
23 the last six years if I've done it in an actual
24 spreadsheet.

25 Q. Well, let's play around with it actually.

1 Before we do that, I'll just say to the judge and
2 parties, I mean, we can look at Exhibit 563, that Page
3 3, and we can see where that Line 15 comes from. We
4 don't have to do it now. But let's assume that that
5 Line 15, the EPCWID Allocation Balance, is a hundred
6 thousand acre-feet. So I'm going to ask Ms. Ferguson
7 to put in a hundred thousand and hit return. And we
8 can see now, Line 20, Mexico changed from 37,000 and
9 change to 27,000 and change, right? If Ms. Ferguson
10 can go back and hit undo, you can see that number
11 change again. Do you see that?

12 A. Yes, I see that.

13 Q. So the point being, that number in Lines 14
14 and 15 will actually change the Mexico allocations,
15 right?

16 A. Yes.

17 Q. Okay. Let's hit undo on that and go back to
18 the original way the spreadsheet is, and, now, let's
19 go to the allocations to the districts. Here, we're
20 looking at Step 4 from that US-563, and -- and, now,
21 we're talking about establishing allocations to EBID
22 and EP No. 1. So first, if you look at -- we -- we
23 saw that language earlier that says EP No. 1's
24 allocation for the current year is based on D2, right?

25 A. I'm sorry. Can you say that again?

1 Q. I can. I was just pointing out, we looked at
2 language earlier from one of the documents indicating
3 that the EP No. 1 current year allocation is based on
4 the D2 curve?

5 A. Yes.

6 Q. Okay. And so if you look at Line 22, this is
7 the gross D2 diversion allocation, right?

8 A. Yes.

9 Q. The -- the -- now, the D2 curve used in this
10 spreadsheet is mostly the same as the historic D2
11 curve and D2 method, right?

12 A. Yes.

13 Q. And the one change that I understand is that
14 whereas the D2 curve historically had stopped at a
15 certain number, now the D2 curve has been extended to
16 790,000 acre-feet under the operating agreement; is
17 that right?

18 A. I don't see that in this equation.

19 Q. Okay. Is -- is it -- do you just not know
20 whether that's correct or not?

21 A. Well, that's not what I see in this equation
22 so --

23 Q. Well, that's true. This equation actually
24 still refers to 760,842, right?

25 A. Yes.

1 Q. All right. Which we can go and look at
2 Exhibit New Mexico 697, the water supply allocation
3 procedures, and I think we'll find that, but we don't
4 need to do that today.

5 All right. So if we look at -- we're looking
6 at that Box C22, and that's the formula for the D2,
7 right? And you can see this time for releases, it's
8 using that Line C11, the total usable water available
9 for current year allocation?

10 A. Yes.

11 Q. But as we talked about earlier, when you do
12 the Mexico allocation and apply the D1 curve, you
13 actually use the Line 17 for releases for the D1
14 curve, right?

15 A. Yes.

16 Q. And just a simple comparison in 2008, you can
17 see that the current usable water in Line 17 is almost
18 twice as much as the total usable water available for
19 allocation shown in Line 11, right?

20 A. It's not almost twice as much.

21 Q. Well, okay. It's more. Will you grant me
22 that?

23 A. Yes.

24 Q. Thank you. All right. And so because it's
25 more and we don't need to actually plug those numbers

1 into this spreadsheet, but because the release is
2 more, that's going to also -- that would also result
3 in a larger D2 diversion allocation? In other words,
4 let me say that a different way. In other words, if
5 you used for the release number the -- the current
6 usable water, 525,563, instead of Line 11, the total
7 water available for allocation, 289,812, that would
8 result in a larger number for the gross D2 diversion
9 allocation in Line C22?

10 A. Yes. That's how the math works.

11 Q. Right. It's all math. So continuing with
12 the process, to get to the amount on which you base
13 the U.S. allocations in Line 24, you subtract out the
14 Mexico allocation in Line 20 from Line 22. So, in
15 other words, to say that another way, to get to the
16 net D2 current year diversion allocation for EBID and
17 EPCWID in Line 24, you subtract the Mexico allocation
18 of 37,670 from the gross D2 diversion allocation of
19 297,740, right?

20 A. Yes.

21 Q. That gives you 260,071 acre-feet for this
22 year, 2018, right?

23 A. Yes.

24 Q. Now, one of the purposes of the operating
25 agreement and the diversion ratio was to ensure that

1 EP1 received its D2 allocation, right?

2 A. I wasn't part of developing, so I don't know
3 exactly why they entered into the agreement.

4 Q. Is that your understanding?

5 A. That is part of my understanding.

6 Q. That means after determining the net D2
7 current year diversion allocation for EBID and EPCWID
8 in Line 24, that amount is used to establish EP No.
9 1's current year allocation, right?

10 A. Yes.

11 Q. Okay. So -- so that number, the D2 current
12 year diversion allocation for EPCWID is shown in Line
13 25, that's 112,418, right?

14 A. Yes.

15 Q. And that's 43 percent of the net D2 current
16 year diversion allocation, right?

17 A. Yes, approximately.

18 Q. And it's -- it's approximately the same
19 amount that EP1 would have received using the
20 allocation process from 1980 to 2005, right?

21 A. I haven't compared it to that process.

22 Q. Is that your understanding?

23 A. Can you say it one more time?

24 Q. I can. My point is that D2 amount shown in
25 -- for EP No. 1 shown in Line 25 entitled, "D2 Current

1 Year Diversion Allocation for EPCWID," we talked about
2 the fact that that is 43 percent of the net D2 current
3 year diversion allocation for EBID and EPCWID in Line
4 24. Are you with me so far?

5 A. Yes.

6 Q. And if you assume the same amount of releases
7 between 1980 to 2005, that would give you that same
8 amount for EP No. 1 that's shown in Box C25?

9 A. I don't think it would be the exact same
10 amount.

11 Q. Why not?

12 A. Because the -- there was a different process
13 and no process for the allocation balance.

14 Q. But you agreed with me it was the same curve
15 that was used from 1980 -- that was historically used,
16 right?

17 A. It was generally my understanding.

18 Q. And if you apply the same release amount,
19 then you're going to get the same answer, right?

20 A. The equation gets the same answer.

21 Q. All right. Now, to get to EP No. 1's total
22 allocation, though, you have to add in the amount that
23 -- of the E P No. 1 carryover, right?

24 A. The previous year allocation balance.

25 Q. Okay. Which is shown in Line 13, right?

1 A. Yes.

2 Q. And oftentimes, that's referred to as
3 carryover?

4 A. Yes. I've heard people say that.

5 Q. Yeah. In other words, it's the allocation
6 that they didn't use from the previous year, right?

7 A. Yes.

8 Q. And it's, therefore, carried over into the
9 next year?

10 A. Yes.

11 Q. So that number, though, we see reflected in
12 Line 26, and we can click on the box there. So we can
13 see it's Line 25, that's the line we just talked
14 about, plus C13, right, that's the total EPCWID
15 diversion allocation without conservation credit,
16 right?

17 A. Yes.

18 Q. And we still need to add in the conservation
19 credit?

20 A. Yes.

21 Q. Which doesn't come until the end of the year?

22 A. Correct.

23 Q. We'll talk about that in a moment. We can
24 see in this spreadsheet, it's actually zero. But --
25 so, now, let's turn to EBID's allocation and that

1 process. So unlike EP No. 1, using this spreadsheet,
2 EBID is not allocated 57 percent of the gross D2
3 diversion allocation, right?

4 A. The question is confusing.

5 Q. Okay. Well, let's -- let's back it out then.
6 For the D2 curve, we use that Line 24 for EBID and
7 EPCWID, right? That's 260,000 acre-feet?

8 A. Yes.

9 Q. And if you simply apply the D2 curve, we can
10 see what that number is, it's Line 31, right, for EBID
11 would yield 147,653, right?

12 A. Yes.

13 Q. Okay. But that's not the amount we can see
14 that EBID is actually allocated in this spreadsheet,
15 is it?

16 A. It is not.

17 Q. Okay. So let's talk about that process. To
18 get to the EBID allocation, you apply the diversion
19 ratio, right?

20 A. Yes.

21 Q. Now, the master asked about the diversion
22 ratio earlier and I want to show you a description of
23 that and I'm going to turn to New Mexico Exhibit 210.
24 It's not an admitted exhibit yet, so I'm going to ask
25 you some questions about it. I'll point out to the

1 Special Master first that this is also designated as
2 US Exhibit 657. You've seen this document before,
3 right, Ms. Estrada-Lopez?

4 A. Yes, I have.

5 Q. And you're generally familiar with it?

6 A. Generally, yes.

7 Q. It's the final environmental impact statement
8 for the continued implementation of the 2008 operating
9 agreement for the Rio Grande Project, New Mexico and
10 Texas?

11 A. Yes. That's the title.

12 Q. This is the most recent NEPA document that
13 was available for this project, right?

14 A. I don't know if there's any other NEPA
15 documents after this.

16 Q. This document was produced by Reclamation?

17 A. Yes.

18 Q. It's required by statute?

19 A. I don't know the statutes.

20 Q. You understand, though, that it was required
21 to be produced?

22 A. Yes.

23 Q. It's made publicly available, right?

24 A. Yes, it is.

25 Q. In fact, it's accessible from the Reclamation

1 Website?

2 A. Yes.

3 Q. And kept on file by Reclamation?

4 A. Yes.

5 Q. By 2016, you were actually working for
6 Reclamation, right?

7 A. Yes.

8 Q. And, in fact, you worked on some of the
9 modeling efforts that ultimately went into this
10 document?

11 A. At the very beginning, yes.

12 MR. WECHSLER: Your Honor, I offer New
13 Mexico Exhibit 210.

14 JUDGE MELLOY: Any objection?

15 MR. DUBOIS: No objection, Your Honor.

16 JUDGE MELLOY: All right. Exhibit 210
17 is admitted.

18 Q. (BY MR. WECHSLER) Let's turn, please, to Page
19 27. And, again, Ms. Estrada-Lopez, I'm going to use
20 the Bates numbers at the bottom of the page. Here,
21 there's a heading you can see it's entitled, "The OA,
22 operations Manual, and diversion Ratio." See that?

23 A. Yes, I do.

24 Q. We're going to look at this second paragraph,
25 the one that says, "Second." Before we do that, let's

1 look at that first paragraph. You see that it
2 says, "The OA largely reflects historical operation of
3 the RGP with two key changes." And it says, "First,
4 the OA provides carryover accounting for any unused
5 portion of the annual diversion allocations to EBID
6 and EPCWID." Do you see that?

7 A. Yes, I see that.

8 Q. And that was a change from the historical
9 operation; you understand that?

10 A. Yes.

11 Q. Okay. Now, let's look at that second
12 paragraph. And this is where we talk about the
13 diversion ratio. And it says, "Second, the OA adjusts
14 the annual allocations to EBID and EPCWID to account
15 for changes in RG performance, as characterized by the
16 diversion ratio." You understand the diversion ratio
17 to be a second change from historical operations,
18 right?

19 A. Yes, I do.

20 Q. Okay. So, now, let's look down, and we can
21 look at the -- the third sentence. It begins
22 with, "The diversion ratio provision of the OA was
23 developed to adjust the annual RGP allocations to the
24 districts so as to provide RGP deliveries to EPCWID
25 consistent with historical operations." Do you see

1 that?

2 A. Yes, I can see that.

3 Q. And that -- you understood that to be one of
4 the purposes of the operating agreement, right?

5 A. I understand that's what I did.

6 Q. Yeah. So -- and then I -- in looking at the
7 last two sentences here -- well, we can highlight the
8 rest. It says, "Prior to substantial increases in
9 groundwater pumping within EBID and corresponding
10 decreases in RGP performance." Right? That's what it
11 says?

12 A. Yes.

13 Q. And then the next sentence says, "The annual
14 RGP allocation to EBID is then adjusted to
15 current-year RGP performance as represented by the
16 diversion ratio." And that -- you understand that to
17 be correct, right?

18 A. Yes.

19 Q. Then it says, "When the diversion ratio is
20 high, greater than one, EBID generally receives an
21 increase in allocation compared to historical
22 operations." Do you see that?

23 A. Yes.

24 Q. And, "When the diversion ratio is low, less
25 than one, EBID generally receives a decrease in RGP

1 allocation compared to historical operations," right?

2 A. Yes.

3 Q. You've never actually seen a diversion ratio
4 of greater than one, have you?

5 A. Not in the ones like that.

6 Q. So let's turn back to New Mexico 1711A, and
7 let's look at that diversion ratio. We can see Line
8 28, the diversion ratio, is .9, right? .904597?

9 A. Yes.

10 Q. That number actually gets adjusted throughout
11 the year depending on the diversion ratio, right?

12 A. Yes.

13 Q. And that has a corresponding impact on the
14 allocations?

15 A. Yes, it does.

16 Q. Okay. Now, to get to -- we're still talking
17 about how we get to EBID's allocation, and so that
18 diversion ratio, that 0.9, is applied to Line 17,
19 which is the current usable water, right?

20 A. If you click on the equation for that, then I
21 can confirm that.

22 Q. Sure. You want to click on -- you want to
23 click on, I think, the EBID diversion ratio allocation
24 in Line 33? Is that what you're looking for?

25 A. No, that's not helping.

1 Q. Oh, yeah. So you're looking at -- let's see.
2 If we back out and we say -- try Line 30. No, that's
3 not the one that we're looking for here. What you're
4 looking for, Ms. Estrada-Lopez, is one of these lines
5 that tells you to apply the diversion ratio, right?

6 A. Yes.

7 Q. And -- and how it gets applied to Line 17.
8 So let's see. Try Line 31. No, that's just the EBID
9 current year allocation. Do you know off the top of
10 your head, Ms. Estrada-Lopez?

11 A. I think we should try Line 29.

12 Q. Line 29. Oh, yeah.

13 A. Yeah.

14 Q. So there -- here, you're getting the
15 diversion ratio adjustment and so you're applying the
16 diversion ratio from Line 28 to Line 17, right?

17 A. Yes.

18 Q. Okay. And, now, when -- when we arrived at
19 the D2 diversion allocation that was in Line 22, we
20 were actually applying the diversion ratio to Line 11,
21 the total usable water available for current year
22 allocation, right?

23 A. Yes.

24 Q. But, now, we're applying the diversion ratio
25 to get to EBID's allocation, and we see there in that

1 diversion ratio adjustment that, well, now, we're
2 applying this to Line 17, which, again, is -- is more
3 than Line 11, right? I mean, simple math, again,
4 525,653 is more than 289,812, right, or -- yeah?

5 A. Yes, that sounds correct.

6 Q. And let me just explain why that's important.
7 So applying the diversion ratio to the larger number
8 in Line 17 gives you that number that we see in Line
9 29 of 50,149, right?

10 A. Which row are we -- I mean, I know which row
11 the 50,00 is. What other row are we referring to?

12 Q. Well, if you look at the box on C29 --

13 A. Yes.

14 Q. -- you can see that what you're applying that
15 number to the larger number, the 525,653, which you
16 just agreed with me is larger than the Line 11 number
17 of 289,812, right?

18 A. Yes. I'm asking which row are you referring
19 to that I'm applying it to?

20 Q. Well, in order to get the 50,149, you're
21 looking at Line 29, right, and you're applying the
22 diversion ratio from Line 28 to Line 17, correct?

23 A. Yes.

24 Q. And that gives you 50,149?

25 A. Yes.

1 Q. Okay. And the reason that that's important
2 is that amount in Line 30, if you deduct 50,149 from
3 -- actually, if you see Line 17, current usable water,
4 plus Line 29, that gives you that 475,504, right?

5 A. Yes.

6 Q. And so if that number in -- shown in Line 29
7 is smaller than the sum of release and diversion ratio
8 adjustment, that's going to be bigger, right, that
9 stands to reason?

10 A. Yes.

11 Q. All right. Now, to get to the EBID
12 allocation, though, we're looking at Line 33, so let's
13 click on that. That's that 112,076, right? That's
14 called the EBID diversion ratio allocation, right?

15 A. Yes.

16 Q. Here what you're doing is you're taking that
17 number from Line 30, the 475,504, you're subtracting
18 out the EP No. 1 allocation in Line 27 of 314,520,
19 right?

20 A. Yes.

21 Q. And then you're subtracting out the Mexico
22 allocation of 37,670, right?

23 A. Yes.

24 Q. And then you subtract out the ACE credit, but
25 we don't actually know it right now, right?

1 A. That sounds correct.

2 Q. Yeah. So in this year, 2018, before the ACE
3 credit is known, that gives you that number that we're
4 seeing in 33, 112,076, right?

5 A. Yes.

6 Q. And that number after that whole process
7 gives you the EBID diversion ratio allocation, right?

8 A. Yes.

9 Q. Okay. And then you add in, to get their
10 total allocation, you're now going to add in EBID's
11 carryover, shown in Line 12 of 11,239, right?

12 A. Yes.

13 Q. Which gives you that 123,315 acre-feet?

14 A. Yes.

15 Q. And so to get to EBID's allocation, it's
16 sometimes -- have you -- it's sometimes referred to as
17 you use the diversion ratio to figure out the
18 departures from the D2 curve; would you agree with
19 that?

20 A. Yes.

21 Q. And all of those departures then come out of
22 EBID's allocation, right?

23 A. Except for as provided by the other
24 adjustments.

25 Q. Okay. Well, we'll take a look at one of

1 those adjustments later. Is there any in particular
2 you're thinking of?

3 A. There's the drought correction factor and
4 then also on Line 32, I explained during direct that
5 that's another adjustment based on the difference in
6 the EBID diversion ratio.

7 Q. Right. Okay. So all of those departures
8 come out of EBID's allocation except as the drought
9 allocation factor applies and except for Line 32, and
10 we'll talk about those in a moment so that's right?

11 A. Yes.

12 Q. Okay. The drought correction factor here is
13 -- can you point me to the line there? Is it 21,
14 multiyear extreme drought D2 correction factor?

15 A. Yes, that's it.

16 Q. In this year, you can see the amounts of
17 water that you had, but that multiyear extreme drought
18 D2 correction factor was one, right?

19 A. Yes.

20 Q. Which means there wasn't any change to the
21 spreadsheet as a result of that factor in this year,
22 correct?

23 A. Correct.

24 Q. And so that's -- that's what that means. If
25 it 's one in any other year, as well, then there's no

1 change to the spreadsheet from the drought factor,
2 right?

3 A. Correct.

4 Q. We're going to talk about Line 32, which you
5 did mention on direct earlier, in just a moment. So
6 let's see. Now, the assumption in charging EBID with
7 all of those departures from the D2 curve, is that the
8 reason that the project cannot deliver the D2 amount
9 in any given year is because of actions that take
10 place in New Mexico, right?

11 A. I don't know that that's what's assumed.

12 Q. Do you know what's assumed?

13 A. I didn't work on the development of the
14 operating agreement.

15 Q. You just don't know?

16 A. No.

17 Q. You've never thought about it?

18 A. I think about a lot of things.

19 Q. Now, Reclamation, though, doesn't actually do
20 any assessment in any given year as to whether it's
21 actions within New Mexico that are causing all of
22 those departures from the D2 curve, right?

23 A. No, we do not.

24 Q. In fact, there are some actions in Texas that
25 can also impact the diversion ratio, right?

1 **MR. DUBOIS:** Objection; lack of
2 foundation.

3 **MR. WECHSLER:** Well, if she doesn't
4 know, I'd love to hear that.

5 **JUDGE MELLOY:** Well, she's talked
6 extensively about the diversion ratio, so I'm going to
7 have her answer.

8 **Q. (BY MR. WECHSLER) Ms. Estrada-Lopez, do you**
9 **remember the question?**

10 **A. I'm getting tired. Could you please say it**
11 **again.**

12 **Q. I'm getting tired, too. My question was:**
13 **There are some actions in Texas that can also impact**
14 **the diversion ratio?**

15 **A. The diversion ratio comes from charges to all**
16 **three entities, which includes charges in Texas, so**
17 **yes.**

18 **Q. And -- and, also, those actions that are**
19 **above, say, the Acequia Madre, those would also impact**
20 **-- potentially impact the diversion ratio, right?**

21 **A. They could.**

22 **Q. Yeah. As an example, groundwater pumping in**
23 **the Mesilla part of the Texas basin or in Mexico could**
24 **affect the diversion ratio, right?**

25 **A. It could.**

1 Q. But under this formula, as we just saw,
2 regardless of where those actions take place, it still
3 comes out of EBID's allocation?

4 A. The diversion ratio's methodology applies to
5 the EBID allocation.

6 Q. All right. So, now, let's turn to that Line
7 32. So yesterday, you said that you adjusted the D2
8 portion -- or the adjusted D2 portion for EBID is
9 split proportionately between the two districts. You
10 recall saying that?

11 A. Yeah.

12 Q. And you were referring there to that Line 32,
13 right, the difference between EBID diversion ratio
14 allocation and D2 diversion allocation?

15 A. Yes.

16 Q. Okay. We can see -- we can see here in -- in
17 Line 32 that that difference is actually zero, right?

18 A. In this calculation, yes.

19 Q. And -- and have you ever had a spreadsheet of
20 final allocation or an initial allocation where Line
21 32 was not zero?

22 A. I really do not recall.

23 Q. Can't remember any, though, that were?

24 A. I do not recall details of that.

25 Q. All right. And if we look at the box in C32,

1 which we're looking at now, it shows that for this
2 adjustment to apply, the estimated current release,
3 that's that Line 17, has to be more than 600,000,
4 right?

5 A. Yes. Wait, no.

6 Q. Less than 600,000?

7 A. Correct.

8 Q. Yeah. My -- my apologies. It does have a
9 carat facing the other way. And the EBID diversion
10 ratio allocation has to be more than the D2
11 allocation, right? In other words, I think we're
12 looking at 33 has to be more than 31?

13 A. Yes.

14 Q. And -- and so that means that the amount that
15 EBID would normally get under D2 shown in Line 31 has
16 to be less than the diversion ratio allocation in 33,
17 right?

18 A. Yes.

19 Q. All right. Let -- let's look at a graphic of
20 that, and we're going to look at US Exhibit 564. This
21 has been admitted. Page 17. And you can see it's
22 indicating this diversion ratio allocation so in this
23 slide, the red star is showing the data point from
24 this hypothetical year, right?

25 A. Yes.

1 Q. And it's below the D2 curve?

2 A. Yes.

3 Q. And in those circumstances, as we just
4 discussed, EBID is charged with all of the negative
5 departures from the D2 curve, right?

6 A. Yes. That's what we discussed.

7 Q. But if the data point from the current year
8 were above the D2 curve, which it's not here, but if
9 it were above there -- do you follow me?

10 A. Yes.

11 Q. -- that would mean that the diversion ratio
12 is producing more water than is predicted by the D2
13 curve, right?

14 A. Yes.

15 Q. And in those circumstances, that's when you
16 split up the difference, right? In other words, EBID
17 would not get all of the benefit of that water above
18 the D2 curve; it only gets 57 percent, right?

19 A. Yes. I think that's how the math works.

20 Q. And 43 percent then goes to EP No. 1?

21 A. Yes.

22 Q. Which is really just another benefit for EP
23 No. 1?

24 MR. DUBOIS: Objection as to form.

25 JUDGE MELLOY: Sustained.

1 Q. (BY MR. WECHSLER) Looking at -- going back to
2 Exhibit US-200. We looked at this earlier. You said
3 you couldn't remember what happened in Line 32. Let's
4 go to Page 9. We're already on Page 9. And if you
5 look there at Line 32, the difference between EBID
6 diversion ratio allocation and diversion allocation,
7 that number is zero, right? Do you see that? It's
8 zero.

9 A. Yes.

10 Q. And this is from 2016, right?

11 A. Yes.

12 Q. All right. Let's go to the next year, which
13 will be Page 10, and we can look, again, at that Line
14 32, and this is for 2017, right?

15 A. Yes.

16 Q. And we, again, see Line 32, zero, right?

17 A. Yes.

18 Q. Then let's go to Line -- the next page, Page
19 11, and one more time, we can look at that Line 32 for
20 2018, and that also is zero, correct?

21 A. Yes.

22 Q. All right. Let's go back to Exhibit 1711A,
23 and a couple of other things I want to point out about
24 this allocation method. Now, normally if you assume
25 the same release amount, in other words, the same

1 amount being released from Caballo, the amount
2 calculated by the D2 curve will be greater than the
3 amount calculated by the D1 curve, right?

4 A. Yes.

5 Q. And that's because the amount at the river
6 head gate estimated by D2 is -- is typically greater
7 than the amount arriving at the lands estimated by D1,
8 right?

9 A. Yes.

10 Q. And that, in turn, is true because there are
11 typically losses between the river diversion to the
12 lands, things like evaporation and seepage, right?

13 A. Yes.

14 Q. But when we look at here and compare the two
15 amounts for D1 and D2, that's not true here, right? I
16 mean, we can see the D1 delivery amount is 331, and
17 the gross D2 is 297,740, right?

18 A. Yeah, but we're not using the same volume to
19 plug into those equations.

20 Q. My point exactly. You're using a different
21 release amount, right?

22 A. Yes.

23 Q. Okay. Let -- let 's talk a little bit more
24 about the diversion ratio. Now, the diversion ratio,
25 as we talked about, is in some ways a measure of

1 efficiency, right?

2 A. It's a -- no, it's not a measure of
3 efficiency.

4 Q. Well, we talked earlier, and I said could you
5 think about it as a measure of project efficiency, and
6 you ultimately said, yeah, you could think of it that
7 way.

8 A. I think we changed the word measurement in
9 that agreement.

10 Q. To -- to what? To -- what would --

11 A. It's related. It's related.

12 Q. All right. Fair enough. That efficiency or
13 that -- maybe I should just say the diversion ratio
14 itself can be impacted by a number of factors, right?

15 A. Yes.

16 Q. For example, it could be impacted by crop
17 selection?

18 A. It could be.

19 Q. Irrigation methods?

20 A. Yes, it could be.

21 Q. Temperature?

22 A. It could be.

23 Q. Precipitation?

24 A. It could be.

25 Q. Yeah. And we've already talked about actions

1 in Mexico and Texas, right?

2 A. We have talked about those.

3 Q. And many of those things are not under the
4 control of the State of New Mexico, right?

5 A. I don't think they are.

6 Q. Now, the diversion ratio is calculated as the
7 total amount of project supply delivered and charged
8 each year divided by the year's release from Caballo,
9 right?

10 A. Yes.

11 Q. Now, under the D2 curve, are you familiar
12 with that it was the amount of diversions as opposed
13 to charged diversions that were actually forming the
14 data set for D2?

15 A. As I explained earlier, I've not looked at
16 the underlying data for D2.

17 Q. All right. But will you agree with me that
18 the diversion ratio can be impacted by Project
19 accounting? Will you agree with that?

20 A. Yes.

21 Q. For example, current Project accounting
22 involves a number of credits and calculations, right?

23 A. Yes, it does.

24 Q. But that kind of accounting did not exist
25 during the D2 period, right?

1 A. I don't believe I reviewed the type of
2 accounting from the D2 period.

3 Q. So let me ask you this: Do you recognize a
4 distinction between total diversions and charged
5 diversions?

6 A. Yes.

7 Q. And those numbers can be different, right?

8 A. Yes.

9 Q. The charged diversions are those diversions
10 that are actually charged through Project accounting?

11 A. Yes, they are.

12 Q. If water is diverted but that water is not
13 charged in Project accounting, then the diversion
14 ratio will be lower as a result?

15 A. Can you explain your question again? I'm
16 sorry.

17 Q. Sure, I can. So we talked about the
18 difference between total diversions and charged
19 diversions, right?

20 A. Yes.

21 Q. Now, I'll ask you to make an assumption,
22 since you weren't sure about this, but assume that the
23 D2 curve is based on total diversions and not charged
24 diversions, right? And if water is diverted, but that
25 water is not charged by the Project accounting, then

1 that would result in a lower diversion ratio, right?

2 A. I don't know what we're comparing to. I'm
3 sorry.

4 Q. No, that's okay. I'm sure it's a
5 poorly-phrased question. What about this: The
6 diversion ratio is sensitive to small changes or
7 EBID's allocation, I should say, is sensitive to small
8 changes in the diversion ratio?

9 MR. DUBOIS: Objection; lack of
10 foundation.

11 JUDGE MELLOY: Well, she does the math
12 so I think this is a -- basically a math question, so
13 I'm going to overrule.

14 Q. (BY MR. WECHSLER) Do you want me to repeat
15 that, Ms. Estrada-Lopez?

16 A. No, thank you. If the diversion ratio
17 changes, EBID's allocation changes.

18 Q. And it's sensitive to small changes, right?

19 MR. DUBOIS: Objection to the form of
20 the question.

21 JUDGE MELLOY: Well, I think it -- I'm
22 going to sustain that.

23 Q. (BY MR. WECHSLER) All right. Let's go take a
24 look at Exhibit 1711A, and we can perform this
25 calculation, if that's your preference. Are you

1 looking at Line 28, Ms. Estrada-Lopez?

2 A. Okay.

3 Q. That's the diversion ratio, right?

4 A. Yes.

5 Q. Let's look at EBID's -- let's just go to
6 their -- the total EBID diversion allocation in Line
7 35, and we can see there, that number is, what,
8 123,315, right, acre-feet?

9 A. Yes.

10 Q. Let's change the diversion ratio to .8, and,
11 now, we can see there that that same number in -- in
12 Row 35 has changed to 86,164 acre-feet, right?

13 A. Yes.

14 Q. And that's by -- that's only by changing the
15 diversion ratio and nothing else?

16 A. Yes.

17 Q. All right. Let -- let's -- so that's a drop
18 of 37,000 acre-feet or something like that?

19 A. Okay.

20 Q. Yeah. You don't need to confirm that. So
21 let's hit undo just to go back to -- to where we were.
22 And let's talk a little bit about carryover. Now, for
23 nearly 100 years of Project operations, the unreleased
24 storage water or unused diversion allocation from
25 either district went back into the Project supply to

1 be allocated the next year, right?

2 A. That's correct.

3 Q. Which is to say, there were no separate
4 carryover accounts for the districts, right?

5 A. Correct.

6 Q. For the first time in 2006, a district had
7 the ability to carry over part of its full annual
8 allocation?

9 A. Yes.

10 Q. And under the operating agreement, the
11 districts have the ability to carry over up to 60
12 percent of the full annual allocation, right?

13 A. Yes.

14 Q. And since that operating agreement was
15 adopted, Reclamation maintains separate carryover
16 accounts for EBID and EP No. 1?

17 A. Yes.

18 Q. You consider carryover to be an accounting
19 balance, right?

20 A. Yes.

21 Q. It's not necessarily an amount in storage?

22 A. Will you rephrase that? It's confusing.

23 Q. Yeah. In other words, it's not -- it doesn't
24 represent an actual amount of water that is present in
25 storage; it's a accounting balance?

1 A. It's an accounting balance.

2 Q. Yeah. Evaporation to the carryover amounts
3 is not calculated? Do you want me to rephrase that?
4 You look confused.

5 A. I didn't hear a question.

6 Q. You didn't? Can you hear me now?

7 A. I heard a sentence. I didn't hear a
8 question.

9 Q. Well, I certainly was intending that as a
10 question, so am I correct that evaporation to the
11 carryover amounts is not calculated?

12 A. It's not.

13 Q. That's not correct? Carryover is not
14 calculated; is that what you're saying?

15 A. It's not calculated.

16 Q. Thank you. Apologize for the
17 miscommunication.

18 And, therefore, there's no adjustment to the
19 carryover allocation balance for evaporation?

20 A. There is not.

21 Q. Let's look again at the spreadsheet to see
22 the impact of carryover. Again, if we're looking at
23 Line 35 there, we see the total EBID diversion of
24 123,315, and we talked about the carryover amounts
25 being in Lines 12 and 13, so let's see what happens to

1 the EBID amount if we zero those out. So let's put a
2 zero in 12 and a zero in 13 and, now, let's go down to
3 Line 35 and see how much that is. So, now, we're at
4 189,036 acre-feet, right?

5 A. That's what it says.

6 Q. Which is more than 123,315?

7 A. Yes.

8 Q. And representing an increase by removing
9 carryover of approximately 60,000 acre-feet, right?

10 A. Yes.

11 Q. All right. Let's hit undo to go back to the
12 normal spreadsheet then. And then there's many years
13 between 1985 and the present that EP No. 1 did not
14 order all of the project water allocated to the
15 district, right?

16 A. I haven't reviewed it.

17 Q. Well, let's take a look at Demonstrative
18 Exhibit 4, New Mexico Demonstrative Exhibit 4. Here,
19 we're looking at annual EP allocation and diversion
20 charges from 1985 to 2005, and the -- the red line
21 here represents the diversion charge, and are you
22 saying, Ms. Estrada-Lopez, that you have not reviewed
23 the diversion charges reflected in that red line as
24 compared to the actual allocations to EP No. 1?

25 A. I have not.

1 Q. All right. Are you aware that in many years,
2 EP No. 1 did not order the full amount available to
3 it?

4 MR. DUBOIS: Objection; assumes facts
5 not in evidence.

6 MR. WECHSLER: I'm just asking if she's
7 aware.

8 JUDGE MELLOY: She can -- go ahead.
9 Overruled.

10 A. I've been told that.

11 Q. (BY MR. WECHSLER) All right. Let's turn to
12 credits that you talked about before. So let's look
13 at Exhibit -- New Mexico Exhibit 2464. I think this
14 will be the operating agreement that you looked at
15 yesterday, and you can see on the right there is Page
16 12 of that document. You can see this is -- the title
17 is, "Example of EPCWID's monthly water allocation
18 charges report," right?

19 A. Yes. That's the title.

20 Q. So in addition to everything we discussed
21 before, EP also gets some credits to its charges,
22 right?

23 A. Yes.

24 Q. So let's talk about a couple of those. You
25 can see the Haskell Street Wastewater Treatment Plant

1 effluent shown down there below Riverside Canal. Do
2 you see that?

3 A. Yes, I see that.

4 Q. Then let's talk about the -- you can see the
5 estimated annual conservation credit diversion
6 allocation; do you see that?

7 A. Yes.

8 Q. And I also want to talk about Riverside
9 Canal, which is shown there on that figure, right?

10 A. Okay.

11 Q. Okay. So talking first about municipal
12 effluent, now, during the period 1940 until 2002,
13 municipal effluent was discharged into either the
14 river or project facilities, right?

15 MR. DUBOIS: Objection; assumes facts
16 not in evidence.

17 MR. WECHSLER: I'm asking her if that's
18 true.

19 JUDGE MELLODY: Overruled.

20 A. That's my understanding.

21 Q. (BY MR. WECHSLER) And during the period 1940
22 until 2002, that municipal effluent contained some
23 water that originated from Project supply?

24 A. Can you say the years again?

25 Q. Yeah. 1940 to 2002. I'm tracking another

1 Request for Admission, which I'll just for the record
2 say is in New Mexico Exhibit 1061, Pages 5 through 8,
3 RFAs No. 87, 89, and 91. Do you want me to repeat
4 that, Ms. Estrada-Lopez?

5 A. I believe there was some project water used
6 by the City of El Paso during that time period.

7 Q. Okay. And -- and during that time period,
8 municipal effluent discharged into the river or the
9 project facilities would have contributed to water
10 diverted by EP1 farmers?

11 MR. DUBOIS: Objection; lack of
12 foundation.

13 JUDGE MELLODY: I'll overrule that.

14 A. If the water came into the system and then
15 was put into the facilities that sent water to EP1
16 farmers, then yes.

17 Q. (BY MR. WECHSLER) Therefore, if that water
18 was diverted by EP1 farmers, diverted by EP No. 1,
19 during the period of 1951 to 1978, then it would form
20 part of the D2 data set, right?

21 A. It would be part of the D2 data set.

22 Q. So today, EP1 farmers in the El Paso Valley
23 divert water that contains municipal effluent, right?

24 A. That's my understanding.

25 Q. And are you aware that the City of Las Cruces

1 also has effluent discharged into the Rio Grande?

2 A. I am.

3 Q. And we actually saw that with the Special
4 Master on the basin tour, right?

5 A. Yes, we did.

6 Q. Can you tell me how Reclamation accounts for
7 that Las Cruces effluent?

8 A. I don't believe that it is part of the
9 accounting process.

10 Q. In other words, it's water that enters from
11 the Las Cruces wastewater treatment plant, simply
12 forms part of Project supply?

13 A. Yes. And then it's accounted for when it's
14 diverted.

15 Q. And if it were diverted and accounted for,
16 then EBID would be charged for that?

17 A. Whoever diverted it.

18 Q. Let's talk about the Haskell Street
19 Wastewater Treatment Plant, and let's go back to that
20 -- actually, let's look at a photograph from the basin
21 tour in New Mexico Demonstrative Exhibit 2, and this
22 is Page 51 of that document. You recognize this as a
23 photograph, I'll represent that I took it, of the --
24 the wastewater treatment plant effluent outfall from
25 Haskell Street?

1 A. That looks like it.

2 Q. Prior to 1998, the Haskell Wastewater
3 treatment plant discharged treated effluent into the
4 Rio Grande, right?

5 MR. DUBOIS: Objection; lack of
6 foundation.

7 Q. (BY MR. WECHSLER) Do you know?

8 JUDGE MELLOY: If she knows.

9 A. I don't know where that discharged.

10 Q. (BY MR. WECHSLER) Okay. I'll then refer the
11 Court to Exhibit New Mexico 1061, Page 10 and 11, RFA
12 No. 97, and, also, Page 14, No. 102. Now, turning to
13 the period of 2003 until the present, municipal
14 effluent from Haskell and Bustamante wastewater
15 treatment facilities contain water that originated
16 from the Project, right, from Project supply?

17 MR. DUBOIS: Objection; lack of
18 foundation.

19 MR. WECHSLER: She's --

20 JUDGE MELLOY: Overruled.

21 A. I know part of the City of El Paso's water
22 comes from the Project.

23 Q. (BY MR. WECHSLER) Today, the diversion and
24 use of municipal effluent discharged by the Haskell
25 Wastewater Treatment Plant is not charged as Project

1 supply, right?

2 A. No, it's not.

3 Q. That's because the Haskell effluent is
4 metered and deducted from EP No. 1's allocation
5 charges?

6 A. Yes.

7 Q. All right. Turning then to the Bustamonte
8 wastewater treatment plant, and this time, I want to
9 use Google Earth, which was New Mexico Demonstrative
10 Exhibit 1. So if we go back to the -- we can -- we
11 can un-click the wells so click the little box. Yep.
12 And then double-click on Riverside Canal and give it a
13 second to work. All right. We talked earlier this is
14 the Riverside Canal. I'll ask Ms. Ferguson then to
15 zoom in up there on the Riverside Canal delivery gage.
16 And keep going. We're going to go in nice and tight.
17 Keep going. I want to actually see the picture.
18 There you go. That's probably good enough.
19 Ms. Estrada-Lopez, you recognize this as the general
20 location of the Riverside Canal gage?

21 A. Yes.

22 Q. We saw that, again, on the basin tour with
23 the Special Master, right?

24 A. Yes, we did.

25 Q. And this is the location where EP No. 1 is

1 charged for water in the Riverside Canal, right?

2 A. Yes, it is.

3 Q. Okay. Then, now, I'm going to ask Ms.
4 Ferguson to -- under EPWU Infrastructure. El Paso
5 Valley, yeah, there you see EPWU Infrastructure.
6 Yeah. And, now, click Bustamonte discharge, click the
7 box first. Now, double-click on the button. It
8 should take us there. Okay. Now, we can see, this is
9 where the Bustamonte Wastewater Treatment Plant
10 discharge -- is discharged into the Riverside Canal,
11 right?

12 A. Okay.

13 Q. Is that correct?

14 A. I think so.

15 Q. That's also where we -- we also visited that
16 with the Special Master?

17 A. Yes.

18 Q. And this discharge occurs below the Riverside
19 Canal gage, right?

20 A. Yes.

21 Q. Because it's downstream or below the
22 Riverside Gage, it's -- EP1 is not charged for that
23 water, correct?

24 A. If it's not in the accounting sheet, then
25 they're not charged for it.

1 Q. Yeah. So Reclamation doesn't track the
2 amount of effluent discharged from the Bustamonte
3 Wastewater Treatment Plant?

4 A. No, we do not.

5 Q. And Reclamation does not account for or
6 otherwise charge EP No. 1 for that water?

7 A. No, we do not.

8 Q. But water users in EP No. 1 use that effluent
9 downstream, right?

10 A. I assume so.

11 Q. All right. Let's turn to the American Canal
12 Extension. That's a lined canal in EP No. 1 that was
13 constructed in the late 1990s, right?

14 A. Yes.

15 Q. Canal --

16 MR. DUBOIS: Your Honor, I'm sorry.
17 We've been going for about an hour and a half, and
18 since Mr. Wechsler is shifting to a new line of
19 inquiry, maybe it'd be an appropriate time to take a
20 break?

21 JUDGE MELLOY: How much longer do you
22 think you're going to be, Mr. Wechsler?

23 MR. WECHSLER: I'm always reluctant to
24 make estimates, because lawyers are notoriously bad,
25 but I would say 45 minutes.

1 **JUDGE MELLOY:** All right. Let's take a
2 15-minute -- we'll take a 20-minute recess at this
3 point.

4 **MR. DUBOIS:** Thank you, Your Honor.

5 (Recess.)

6 **JUDGE MELLOY:** All right. Looks like we
7 have everybody. Mr. Wechsler, you may proceed.

8 **MR. WECHSLER:** Thank you, Your Honor.

9 **Q.** **(BY MR. WECHSLER)** Ms. Estrada-Lopez, before
10 the break, we turned to the American Canal Extension,
11 and I'll sometimes refer to that as the ACE. Do you
12 understand what I'm referring to?

13 **A.** Yes, I do.

14 **Q.** So the ACE is located entirely in Texas,
15 correct?

16 **A.** Yes.

17 **Q.** A credit is given on an annual basis for
18 water conserved by the ACE?

19 **A.** Yes.

20 **Q.** The credit is based on the volume of water
21 that is saved by using that American Canal Extension?

22 **A.** Yes.

23 **Q.** And the credit is applied at the end of the
24 year?

25 **A.** Typically.

1 Q. And the -- the same credit that's given to EP
2 No. 1 is deducted from EBID's allocation?

3 A. Yes.

4 Q. But you don't know why the ACE credit is
5 deducted from EBID's allocation?

6 A. I don't know why.

7 Q. Now, you indicated yesterday that there are
8 some years in which the ACE credit -- credit is split
9 between EBID and EP No. 1. Do you recall that?

10 A. Yes.

11 Q. And you had said that occurs when there's a
12 transfer of carryover water from EP No. 1 to EBID,
13 right?

14 A. Yes.

15 Q. And that only happens when EP No. 1 has a
16 full supply and has an additional 60 percent of a full
17 supply in carryover; isn't that right?

18 A. I don't think that's always the case.

19 Q. Well, when transfer occurs, they have to be
20 -- well, when transfer occurs, they have to be
21 carrying over 60 percent of a full supply; will you
22 agree with that part?

23 A. Yes.

24 Q. So since you've been working on the
25 allocations, has such a transfer occurred?

1 A. Yes.

2 Q. In what year?

3 A. I would have to look at the spreadsheets.

4 Q. And since 2008, are you aware of the total
5 number of years that transfer has happened?

6 A. Not off the top of my head. I would have to
7 look at the spreadsheets.

8 Q. Less than five?

9 A. I really can't give you a guess.

10 Q. Okay. We can -- well, actually, let's look
11 at New Mexico Demonstrative Exhibit 4. Let's see if I
12 have the right number. Yep. Then let's scroll down
13 to the last page, which should be Page 5. Here, you
14 see transfer from EPCWID and transfer to EBID as a
15 couple of the columns. Do you see that?

16 A. I do see that.

17 Q. And at least assuming this is accurate, that
18 occurred in 2009 and 2010, right?

19 A. If this is accurate, that's what it says.

20 Q. Do you have any information to suggest
21 otherwise?

22 A. Not for these years.

23 Q. Now, as we heard on the basin tour, EBID
24 actually moves some of its water through its system in
25 pipes. Were you aware of that?

1 A. Yes.

2 Q. Moving water through pipes would prevent
3 water losses through seepage or evaporation?

4 A. Yes.

5 Q. But despite that, EBID does not get a credit
6 for this water that's not lost to the system, right?

7 A. There's not a credit on their accounting
8 sheets for that.

9 Q. All right. Let's turn to Canutillo, and we
10 can take down this demonstrative for now. You
11 mentioned yesterday that a charge is given for pumping
12 in Texas at the Canutillo well field, right?

13 A. Yes.

14 Q. And pumping started -- well, the Canutillo
15 well field is a -- a well field in the northern part
16 of EP1, right?

17 A. Yes.

18 Q. And we actually looked at one of the wells on
19 the basin tour?

20 A. Yes.

21 Q. Pumping has occurred in the Canutillo well
22 field since some time in the 1950s. Are you aware of
23 that?

24 A. I have not looked at the data.

25 Q. Pumping in Canutillo well field has been

1 occurring at least since you've been involved with the
2 Rio Grande Project?

3 A. Yes.

4 Q. Are you aware that estimates have been done
5 to show that 90 percent of Canutillo pumping comes
6 directly from the Rio Grande?

7 A. I don't recall that number.

8 Q. Are you aware that a significant amount of
9 that pumping from the Canutillo well field comes from
10 the Rio Grande?

11 A. Yes.

12 Q. Are you able to estimate the percentage of
13 that pumping that does come from the Rio Grande?

14 A. No, I'm not a groundwater modeler.

15 Q. Is that something that Reclamation is
16 generally aware of?

17 A. I'm confused as to what you're asking.

18 Q. I'm asking if -- if you know, as part of your
19 professional duties at the Bureau of Reclamation,
20 whether Reclamation has a calculation for how much
21 water comes out of the Rio Grande due to the Canutillo
22 well pumping?

23 A. I'm aware that there is a calculation in the
24 2001 contract related to that, and I'm aware that
25 there is a calculation for a charge that could be

1 applied in the Rio Grande Project accounting.

2 Q. You just don't know what that calculation is?

3 A. I've seen it.

4 Q. Let's take a look at New Mexico Demonstrative
5 Exhibit 17.

6 MR. WECHSLER: Which, Your Honor, we
7 just disclosed this last night after hearing
8 Ms. Estrada-Lopez's testimony yesterday. I'm just
9 pausing to see if there's any objections to it.

10 MR. DUBOIS: It's offered as a
11 demonstrative, so there's not a -- I mean, I have no
12 idea what the source of the data is, but Mr. Wechsler,
13 I'm sure, will tell us.

14 MR. WECHSLER: Well, I'll -- it is
15 purely demonstrative, Your Honor. I will have a
16 witness later on explain the source of the data. I do
17 think at the bottom there, it says pumping values
18 reported in EPCWID accounting spreadsheets.

19 JUDGE MELLOY: All right. Go ahead.

20 MR. WECHSLER: Thank you, Your Honor.

21 Q. (BY MR. WECHSLER) So, Ms. Estrada-Lopez,
22 looking at New Mexico Demonstrative Exhibit No. 17, do
23 you, as part of your duties, track the amount of
24 annual pumping from the Canutillo well field?

25 A. I do.

1 Q. Looking at the second column there with the
2 heading "Canutillo Annual Pumping," and you can see
3 there it references the EPWU reporting in EPWCID
4 accounting spreadsheets. Do those numbers look
5 roughly correct? In other words, are they in general
6 proportion to the 20,000 acre-feet range?

7 A. That appears correct.

8 Q. Now, the charge that you referenced yesterday
9 to EP No. 1 for Canutillo pumping, that is prorated
10 for the release season, right?

11 A. Yes.

12 Q. What do you consider the release season for
13 the Project?

14 A. When we are releasing.

15 Q. And, generally, when is that?

16 A. It's -- it's different every year.

17 Q. Can you give me an estimate?

18 A. With lots of water, it's from March through
19 October.

20 Q. How about if in a water short year? How
21 about this --

22 A. It's been -- I'm sorry.

23 Q. I didn't mean to interrupt you. I was going
24 to ask maybe exactly what you were going to offer, and
25 that is: What is the shortest release season that

1 you've seen?

2 A. I think it was about six weeks or around two
3 months.

4 Q. And so it's only during that period that the
5 charge to EP No. 1 for the Canutillo pumping is
6 applied?

7 A. I'd have to go back and look at the
8 calculation exactly. I don't recall.

9 Q. Let me ask you this: In the second column
10 there, there's a column that says, "Was any adjustment
11 made?" And you can see in a number of years, at least
12 in this column, it reflects that no adjustment was
13 made or charge given for the Canutillo pumping. Are
14 you aware that there were some years in the past where
15 there was no charge for Canutillo pumping?

16 A. I am aware of that.

17 Q. Let me ask you about 2014. You see there's
18 some question marks there in this New Mexico
19 Demonstrative Exhibit 17. Do you know if there was an
20 adjustment made in 2014 for -- or a charge given to EP
21 No. 1 for Canutillo annual pumping?

22 A. I don't know that off the top of my head.

23 Q. Looking at the third column there, the one
24 that's titled, "Amount of Canutillo Accounting Charge
25 in Acre Feet," do those numbers look roughly

1 consistent with your memory?

2 A. Yes.

3 Q. So assuming all of this is correct, the
4 highest that the charge has ever been is 10,000
5 acre-feet or so, right?

6 A. According to this, yes.

7 Q. Which is below 50 percent of the annual
8 pumping from Canutillo, right?

9 A. Yes.

10 Q. Many years, there was no charge given, right?

11 A. Correct.

12 Q. And then in a number of other years, it's
13 only a fraction of the total Canutillo annual pumping?

14 A. Correct.

15 Q. We talked earlier about full supply in the
16 period 1951 to 1979, and also during the period 1980
17 to 2005. Let's talk a little bit about full supply
18 under the operating agreement. Under the 2008
19 operating agreement, as we saw before, the -- the full
20 supply release has changed to 790,000 acre-feet; is
21 that right?

22 A. Can you say that again?

23 Q. I can. We're talking about the 2008
24 operating agreement, and my question is: Under that
25 agreement, a full supply release is considered to be

1 **790,000 acre-feet?**

2 A. That's not what I would say.

3 **Q. What would you say?**

4 A. That 790,000 is used as a maximum for the
5 volume of water that would go into the current-year
6 allocation process.

7 **Q. All right. We talked about that earlier?**

8 A. Yes.

9 **Q. How about this, under the operating**
10 **agreement, the full annual diversion allocation to the**
11 **U.S. canal headings is considered to be 898,056**
12 **acre-feet?**

13 A. I don't recall seeing that number in that.

14 **Q. Do you recall that the full allocation under**
15 **the operating agreement to EBID is 509,864 acre-feet?**

16 A. If that's what it says in the operating
17 agreement.

18 **Q. And how about for EP No. 1, do you recall**
19 **that a full supply under the operating agreement for**
20 **EP No. 1 is considered to be 388,192 acre-feet?**

21 A. If that's what it says in the operating
22 agreement.

23 **Q. Let's look at the final allocations over the**
24 **years under the operating agreement. I want to call**
25 **up again Demonstrative Exhibit No. 3, Page 5. I'm**

1 being told maybe it's 4 that we need to look at, so
2 let's look at New Mexico Demonstrative Exhibit 4.
3 That's it. Yeah. That's Page 5 of New Mexico
4 Demonstrative Exhibit 4. And here, we're looking at
5 what's titled, "Annual Allocation and Diversion
6 Charges 2006 to 2018." 2006 is the year that the D3
7 plus carryover methodology was adopted, right?

8 A. I don't know what you mean.

9 Q. You're not familiar with the term D3 plus
10 carryover?

11 A. I've never used that term.

12 Q. The methodology that's -- well, are you
13 familiar with the term generally?

14 A. I've heard New Mexico people use it.

15 Q. And what do you understand it refers to?

16 A. I think that they are using it for what
17 they're calling the operating agreement.

18 Q. You understand that the operating agreement
19 was adopted in 2008, right?

20 A. Yes.

21 Q. But in 2006, Reclamation used a method that
22 allowed for carryover; is that right?

23 A. Yes.

24 Q. And -- and also applied the diversion ratio
25 beginning in 2006?

1 A. Yes, I believe so.

2 Q. Have you ever seen a memo from Dr. King
3 entitled the D3 methodology?

4 A. Not that I recall.

5 Q. Let's look back at Demonstrative Exhibit 4,
6 Page 5 here. So we see the period 2016 to 2018, and
7 if you look at EBID, you can see those total charges
8 in what looks like the fifth total allocation that's
9 entitled in the fifth column. You see that?

10 A. Yes.

11 Q. And then if you compare those to the EP No. 1
12 total allocation, which is second from the right, you
13 see that column?

14 A. I can see it.

15 Q. And if you look at those total allocations,
16 when I see them, in all but two years, the total
17 allocation to EP No. 1 was greater than that to EBID.
18 Do you see that?

19 A. That appears correct.

20 Q. Do you have any reason to think that that's
21 not correct?

22 A. No.

23 Q. All right. We can put that down, and let's
24 talk a little bit about the mechanics for orders. So
25 once those allocations are set, they represent the

1 maximum amount of water that's available for a
2 district to order, right?

3 A. I think they could order more.

4 Q. More than what's allocated to them? In other
5 words, you have a total allocation charge for that
6 year, right? Is that right?

7 A. There is a total allocation charge for a
8 year.

9 Q. And that represents the maximum amount that a
10 district can order for that year?

11 A. I just don't think that that would add up to
12 similar -- the exact same numbers.

13 Q. How about if I just say the -- I think I used
14 the word charge, it looks like from realtime, so the
15 total allocation represents the maximum amount that
16 can be ordered. Can you agree with that?

17 A. No.

18 Q. Why not?

19 A. Because the order sheets include lots of
20 things, including bypass and river boost.

21 Q. So they can order more than they're actually
22 allocated?

23 A. That would be how the math works.

24 Q. They can only be charged for -- or the
25 maximum amount they can be charged for is represented

1 by the total allocation; is that right?

2 A. No.

3 Q. We talked earlier about allocations. You
4 recall that?

5 A. Yes.

6 Q. And I think you generally said the allocation
7 represents the total amount of water that each
8 district is entitled to order for the year. Do you
9 recall that?

10 A. Yes, I do.

11 Q. And that's a correct statement?

12 A. I would say it's a general statement. It
13 doesn't include caveats.

14 Q. Yes. As we've looked at the spreadsheet,
15 it's quite complicated, right?

16 A. Yes.

17 Q. All right. So -- so we looked at the
18 operating manual earlier. Let's look back at it for
19 the mechanics for ordering those allocations. And I
20 want to look at -- so it's New Mexico Exhibit 2464,
21 and I want to look at Page 5, Section 4.1. This is
22 under a heading, "Water Delivery and Accounting,
23 Ordering of Water by the Districts," right?

24 A. Okay.

25 Q. Is that right?

1 A. That's what's on the screen.

2 Q. Yeah. And that -- it's this operating manual
3 that sets the way in which water is ordered by the
4 districts, right?

5 A. Yes.

6 Q. If you look at Figure 1, Page 7, in here we
7 see Figure 1, Internet-based order forms. Do you see
8 that?

9 A. Yes.

10 Q. And you looked at something similar to this
11 yesterday during your direct testimony. You recall
12 that?

13 A. Yes.

14 Q. And we see that any time -- well, the -- the
15 -- let me just ask you this: When there's a change in
16 the release from Caballo, does Reclamation perform a
17 flow measurement below the dam?

18 A. If it's greater than a hundred CFS change, we
19 do.

20 Q. So staying on this Page 7, the goal is to
21 release enough water to meet the orders; is that
22 correct?

23 A. Yes.

24 Q. And in determining how much to release,
25 Reclamation considers return flows, other flows in the

1 river, deliver efficiency -- delivery efficiency, and
2 other factors, right?

3 A. Yes.

4 Q. And as you look at this Figure 1 on New
5 Mexico 2464 on Page 7, we can see that the amount of
6 water arriving at each location is tracked as it flows
7 down through the system, right?

8 A. Yes.

9 Q. Which allows the districts and Reclamation to
10 know where the water is so that they can be sure it
11 arrives where it's supposed to arrive, right?

12 A. Yes.

13 Q. You can see in that right-hand column, a box
14 for river boost, and you talked about that with
15 Mr. Dubois. You recall that?

16 A. Yes.

17 Q. And we can see here at -- at -- towards the
18 bottom of that, you can see a line that says, "Total
19 Gains/Loss." Do you see that?

20 A. Can you highlight it for me?

21 Q. Sure. It's three from the bottom in the
22 right-hand column. Right there (indicating).

23 A. Yes, I see that.

24 Q. And that -- that column is a measure of how
25 much water is being gained or lost as the water

1 travels to the American Dam, right?

2 A. It's an estimate.

3 Q. When Reclamation determines its releases, it
4 takes into account the gains and losses that are
5 occurring in the system?

6 A. Yes.

7 Q. That way Reclamation is able to adjust to
8 ensure that water arrives at the district when it's
9 ordered?

10 A. Yes.

11 Q. And Reclamation releases the amount of water
12 that it deems sufficient to meet EP No. 1 orders?

13 A. What we estimate is needed, new release.

14 Q. All right. Two more subjects,
15 Ms. Estrada-Lopez. The first is a couple quick
16 questions about maintenance, and then you talked about
17 credit water and how that's accounted for yesterday,
18 and I have a few questions about that. So, first, in
19 terms of river maintenance, sediment in the bed of a
20 river can effect evaporative losses from that river;
21 is that right?

22 MR. DUBOIS: Objection; lack of
23 foundation.

24 MR. WECHSLER: I'm happy to lay a
25 foundation, Your Honor.

1 JUDGE MELLODY: All right. Go ahead.

2 Q. (BY MR. WECHSLER) Are you aware,
3 Ms. Estrada-Lopez, of the effect of sedimentation?

4 A. On what?

5 Q. On evaporative losses.

6 A. I've not had occasion to look at that.

7 Q. You are responsible for releases from the
8 Project, are you not?

9 A. Yes, I am.

10 Q. And also for allocations?

11 A. Yes, I am.

12 Q. You haven't had occasion to look at
13 evaporative losses related to sediment in the river?

14 A. No, I have not.

15 MR WECHSLER: On that question, Your
16 Honor, about evaporative losses, I'll refer to New
17 Mexico Exhibit 1055 at Page 25, RFA No. 74.

18 Q. (BY MR. WECHSLER) Do you know or have you had
19 an occasion, Ms. Estrada-Lopez, to look at the growth
20 of the effect of sedimentation on the growth of water
21 consuming vegetation along the channel of the river?

22 A. I'm not -- I don't recall looking at
23 vegetation growth based on sediment.

24 Q. All right.

25 MR. WECHSLER: On this, Your Honor, I'll

1 refer to New Mexico Exhibit 1055 at 26, RFA No. 75.

2 Q. (BY MR. WECHSLER) Ms. Estrada-Lopez, below
3 Caballo, the IBWC has responsibility for river
4 maintenance; is that right? Or yesterday, you may
5 have said below Percha.

6 MR. DUBOIS: Objection; lack of
7 foundation; calls for a legal conclusion.

8 MR. WECHSLER: Again, I'm happy to lay
9 foundation.

10 JUDGE MELLODY: Go ahead, but I do think
11 she testified about this yesterday, but go ahead.

12 MR. WECHSLER: Yeah, she did.

13 Q. (BY MR. WECHSLER) That's my question,
14 Ms. Estrada-Lopez. Can -- can you tell us --
15 yesterday, you talked about river maintenance, right,
16 and the responsibilities below Caballo; do you recall
17 that?

18 A. I recall there was a question on
19 responsibilities below Elephant Butte.

20 Q. And what was your answer?

21 A. That Reclamation does channel maintenance
22 between Elephant Butte and Caballo and between Caballo
23 and Percha.

24 Q. And who's responsible for that maintenance
25 below Percha?

1 **MR. DUBOIS:** Objection; Your Honor,
2 calls for lack of foundation and calls for a -- a
3 legal conclusion as it's been phrased.

4 **JUDGE MELLODY:** I'm going to overrule.
5 You may answer.

6 A. I'm aware that IBWC does channel maintenance
7 below Percha.

8 **Q. (BY MR. WECHSLER)** But you don't know if
9 they're responsible for that or not; is that the
10 distinction you're making?

11 A. Yes.

12 **Q. Does the work that IBWC does below Percha**
13 **include controlling sedimentation?**

14 A. I don't know if they're controlling it.

15 **Q. What do -- are they doing any work with**
16 **sedimentation?**

17 A. I have seen presentations on where they are
18 talking about sediment removal.

19 **Q. Fair enough. I think we have an IBWC witness**
20 **that's better to ask them that question. So let's**
21 **turn then to credit water release. You testified to**
22 **the way that Compact credit water is adjusted for**
23 **evaporation during the year; do you recall that?**

24 A. Yes.

25 **Q. Credit water is defined by the terms of the**

1 Rio Grande Compact?

2 A. Yes.

3 Q. It represents a credit for water that
4 Colorado or New Mexico is given for deliveries above
5 what is required by the Compact?

6 A. Yes.

7 Q. You were not personally involved in any of
8 the events involving credit water in 2011; is that
9 right?

10 A. I was not.

11 Q. You do acknowledge that Articles 6 and 7 of
12 the Compact govern the accounting for credit water; is
13 that right?

14 MR. DUBOIS: Objection; calls for a
15 legal conclusion.

16 JUDGE MELLOY: I'll sustain that.

17 MR. WECHSLER: Very well. I'll just
18 refer Your Honor to Exhibit 1055 at Page 18, RFA No.
19 51.

20 Q. (BY MR. WECHSLER) Let's go ahead and take a
21 look at the Compact then. That's Joint Exhibit 428.
22 Here, we're looking at Page 1. Let's look at Articles
23 1G and 1H, which should be on the first page. There
24 it is. You see the Compact actually defines annual
25 debits and annual credits, does it not?

1 A. Yes, it does.

2 Q. And then we can turn to the next page to look
3 at it, but it also defines credit water. Are you
4 aware of that?

5 A. Yes, I am.

6 Q. Are you aware that Article 4, as -- as it was
7 amended by the 1948 Resolution, addresses New Mexico's
8 delivery obligations into Elephant Butte?

9 A. I believe that's the correct article.

10 Q. Yeah. Let's look at the resolution here at
11 Page 10, which is the one that switched the delivery
12 point. Oops. And here we can see that -- I'm just
13 looking for the language. Apologize. Let's try the
14 next page. Yeah, if you look -- if you look for --
15 just as an example, we can look in the last paragraph
16 there. We can see that the -- it says that the
17 Elephant Butte effective supply index, and then it
18 refers to during the calendar year. You see that?

19 A. Yes.

20 Q. And we can turn back to Article 6. Are you
21 aware that Article 6 actually states that all credits
22 and debits of Colorado and New Mexico shall be
23 computed for each calendar year?

24 MR. DUBOIS: Objection; Your Honor, I'm
25 going to object to this whole line of questioning.

1 Contrary to New Mexico's prior statements, this
2 obviously is intended to continue to pursue the
3 dismissed claim regarding 2011 credit water.

4 **MR. WECHSLER:** Yeah, Your Honor, I -- I
5 have a number of reactions to that, if you are
6 interested in hearing them.

7 **JUDGE MELLOY:** Go ahead.

8 **MR. WECHSLER:** Yeah, so -- so No. 1,
9 Ms. Estrada-Lopez gave a fair amount of testimony
10 yesterday about credit water and credit water
11 accounting and the relationship between the Project
12 and the Compact; secondly, we're not -- we understand
13 your ruling. We're not entitled to pursue a claim
14 against the United States, but the credit water issue
15 bears directly on how much water was in 2011 and how
16 much was allocated to New Mexico and how much was
17 allocated to Texas, and, therefore, it bears on the
18 apportionment and the Compact issues and New Mexico's
19 claims against Texas, and for that matter, New
20 Mexico's defenses against Texas for those same years.

21 **JUDGE MELLOY:** Well, tell me, where --
22 where are you going with this, Mr. Wechsler?

23 **MR. WECHSLER:** Well, her -- her point
24 what she was making yesterday -- the point she was
25 making yesterday, Your Honor, was that there's a

1 distinction between Project -- the way the Project
2 deals with credit water and the way the Compact deals
3 with credit water, and there's no overlap. And what
4 I'm showing is that, in fact, credit water is defined
5 by the Project. It's defined in an annual way, and --
6 and as you'll learn later in the trial, there were
7 changes in the accounting method at the urging of
8 Texas that resulted in additional water going to -- to
9 Texas in that year of 2011.

10 **JUDGE MELLOY:** Well, all right. You can
11 ask her about the changes in 2011, but the Compact
12 speaks for itself so let's -- let's get to the --
13 let's get to that issue.

14 **MR. WECHSLER:** I'm happy to get to that.
15 I -- I'll -- she does not know about the events in
16 2011, but I do want to ask her whether or not she
17 follows some directives from the -- the Rio Grande
18 Compact Commission. May I ask those questions?

19 **JUDGE MELLOY:** You may.

20 **MR. WECHSLER:** All right. Thank you.

21 **Q. (BY MR. WECHSLER)** So turning away from -- we
22 can take off that joint exhibit, which is the -- the
23 Compact, and let's turn to Joint Exhibit 391. This is
24 going to be this MOU we looked at earlier. And let's
25 turn to Page 13. And here under the definition

1 of, "Approved Method" in the second column. Let's
2 call that out. Here it says that, "An approved method
3 is a method of performing a calculation or accounting
4 procedure formally approved by the Commission. The
5 adjustment of New Mexico's and Colorado's Compact
6 credit water stored in Elephant Butte Reservoir for
7 loss due to evaporation is an example of an approved
8 method." Do you see that?

9 A. Yes, I can see that.

10 Q. And when you're performing Project accounting
11 on credit water and conducting evaporation, have you
12 taken into account this MOU between the federal
13 government and the Rio Grande Compact Commission?

14 A. I'm pretty sure that this agreement is
15 related to the San Juan-Chama Project accounting so
16 it's not relevant to my Project accounting.

17 Q. You think that when it says -- well, you
18 think when it says the -- the adjustment of New Mexico
19 and Colorado's Compact credit water stored in Elephant
20 Butte, that that relates to San Juan-Chama water?

21 A. My understanding from this agreement is this
22 is about how the San Juan-Chama Project accounting for
23 the Compact, and San Juan-Chama water is stored in
24 Elephant Butte.

25 Q. So let me just explore that just a little

1 bit. Are you saying that Reclamation, when it's
2 calculating the amount of water, San Juan-Chama water
3 takes direction from the Rio Grande Compact
4 Commission?

5 A. From what I recall, the methodologies were
6 reviewed and approved by the Compact Commission.

7 Q. Including the methodology --

8 A. For San Juan-Chama Project.

9 Q. Thank you. I apologize for interrupting.
10 Does that include the methodologies for evaporation
11 for San Juan-Chama water?

12 A. Yes, it does.

13 Q. Very well. With that understanding, as to
14 your understanding of this document, we can take that
15 down. Now, let's look at Joint Exhibit 395. This
16 will be the Rio Grande Compact Commission Annual
17 Report for 2005. I think you indicated yesterday, you
18 had looked at some Rio Grande Compact Commission
19 documents; is that right?

20 A. Yes, I have.

21 Q. And let -- let's look at Page 20. And here,
22 you can see -- let's just call out the top part -- or
23 that's fine. Here you can see this is a memo from the
24 engineer advisors to the Rio Grande Compact
25 Commission, subject, "Accounting of Accrued Rio Grande

1 Compact Credit Water in Project Storage." You see
2 that?

3 A. Yes, I can see that.

4 Q. I think you were aware of this memo, right?

5 A. Yes, I am.

6 Q. Let's turn to Page 22. Here, just call out
7 that recommendation piece. Here, we see the engineer
8 advisors saying that -- just to read the second one --
9 well, the first one indicates that, "The commission
10 direct that the accrued credit water be held constant
11 during the year." See that?

12 A. Yes, I see that.

13 Q. And you're aware that ultimately, the Rio
14 Grande Compact Commission approved these three
15 recommendations of the engineer advisors?

16 A. Yes. That's my understanding.

17 Q. All right. Let's turn to the 2019 Rio Grande
18 Compact Commission Report. This is the last document
19 we'll take a look at, Ms. Estrada-Lopez. This is New
20 Mexico Exhibit 409. It's the Rio Grande Compact
21 Commission Report from 2019.

22 MR. WECHSLER: I don't know, Your Honor,
23 if this one has been admitted or not. I did not
24 indicate that in my notes.

25 JUDGE MELLOY: Is there not any

1 objection?

2 MS. KLAHN: Is this 2019? It says 2000.

3 MR. DUBOIS: It would be -- I assume
4 that this would be for the prior year so the -- are
5 you referring to after the fact that it covers
6 calendar year 2019 -- I mean -- 1999, actually, I
7 suppose.

8 MR. WECHSLER: No. You know what,
9 actually, it looks to me like -- are -- can we just go
10 to the next page? It looks like I may have gotten the
11 wrong exhibit number. Yeah, I'm not intending to call
12 this document up.

13 Q. (BY MR. WECHSLER) Let me just ask you this.
14 We can take this document down. My question,
15 Ms. Estrada-Lopez, is you talked -- you referred
16 yesterday to the methodologies from the -- the Compact
17 Commission for -- for doing -- calculating credit
18 water. Do you recall that testimony?

19 A. Yes, I do.

20 Q. And you're aware that there are actually
21 three different methods that are identified by the
22 three different states; is that right?

23 A. For -- yes. There is some years where
24 there's three methods.

25 Q. And, in fact, those methods are attached to

1 each one of the -- the Rio Grande Compact Commission
2 Annual Reports, right?

3 A. Yes.

4 Q. And that's an unresolved issue among the Rio
5 Grande Compact Commission, right?

6 A. That's my understanding.

7 MR. WECHSLER: With that, Your Honor, I
8 have no further questions.

9 Thank you very much for your patience,
10 Ms. Estrada-Lopez.

11 THE WITNESS: Thank you, Mr. Wechsler.

12 JUDGE MELLOY: Mr. Dubois, any redirect?

13 MR. DUBOIS: I have a few questions,
14 Your Honor, not actually very many.

15 MR. WALLACE: Your Honor, this is Chad
16 Wallace.

17 MR. DUBOIS: Oh, I'm sorry.
18 Mr. Wallace.

19 MR. WALLACE: With your permission, Your
20 Honor, I'd like to ask just a few questions. I'll
21 endeavor to be more brief than Mr. Wechsler in his
22 examination.

23 MR. DUBOIS: We appreciate that.

24 JUDGE MELLOY: Go ahead.
25

CROSS-EXAMINATION

BY MR. WALLACE:

Q. Ms. Estrada-Lopez, I'm Chad Wallace representing the State of Colorado. How are you doing this afternoon?

A. I'm surviving. Thank you.

Q. I've got a few questions to clarify some of the answers that you've given over the prior two days. Yesterday, while testifying, you stated that Reclamation's determinations about water available as usable water were not binding on the Rio Grande Compact Commission as part of its Compact accounting; is that correct?

A. That's what I said.

Q. So as part of that, your calculations of credit water are not the same thing as the Compact Commission calculations of credit water; is that correct?

A. They are not the same thing, correct.

Q. You also mentioned yesterday that during the irrigation season, the amount of usable water that you have available for allocation can be impacted by other accounts in the reservoir, such as San Juan-Chama or credit water; is that right?

A. Yes.

1 Q. And the amounts of that credit water can
2 change from actions such as relinquishment by the
3 Compact states?

4 A. Yes.

5 Q. So that if during an irrigation season, one
6 or more of the Compacting states offers and there's an
7 acceptance of a relinquishment, that changes the
8 usable water available for allocation; is that right?

9 A. Yes, it does.

10 MR. WALLACE: Thank you. That's all I
11 have.

12 JUDGE MELLOY: Mr. Dubois?

13 MR. DUBOIS: Thank you, Your Honor.

14 REDIRECT EXAMINATION

15 BY MR. DUBOIS:

16 Q. Ms. Estrada-Lopez, I've got a few questions.
17 Let's sort of start at the back and talk about the
18 changes due to relinquishment or other aspects of the
19 credit water. When you're updating the allocations,
20 is there a change in the -- the usable water and the
21 -- the Compact credit water associated with the
22 Compact Commission determination of the amount of
23 credit water in storage, as of December 31st?

24 A. Yes. I update it per that information.

25 Q. And then do you have to recalculate the

1 evaporation based on whatever the determination of the
2 Compact Commission was?

3 A. Yes, I do.

4 Q. And, again, that's using the URGWOM model?

5 A. The URGWOM accounting model, yes.

6 Q. Yeah. And the URGWOM accounting model
7 processes were approved by the State of New Mexico; is
8 that right?

9 A. Yes.

10 Q. Okay. Yesterday, there was some questioning
11 from the Court regarding gages and the gaging of
12 water. I believe that the discussion with the Special
13 Master was intended to talk about the gaging of water
14 at the -- at the diversion dams in the canals. Do you
15 recall that?

16 A. Yes, I do.

17 Q. And so your -- your response was related to
18 the measurement and -- and gaging at -- at those
19 diversion canals; is that right?

20 A. Yes.

21 Q. And are there other gages on the river
22 besides the -- the gages at those canals and the
23 Caballo gage run by Reclamation?

24 A. No. Well, not in the Project area.

25 Q. In the Project area, does -- does the USGS

1 have gages?

2 A. Yes. I think they do.

3 Q. All right. So there are gages on the river
4 at locations other than the canal headings and the
5 Caballo gage that are on the Rio Grande and within the
6 Project area; is that correct?

7 A. Yes, there are.

8 Q. Is the El Paso gage one such gage?

9 A. Yes, it is.

10 Q. And who -- who operates and maintains the El
11 Paso gage?

12 A. I believe it's IBWC.

13 Q. And where is that located relative to
14 American Dam?

15 A. It is north of American Dam.

16 Q. About how far?

17 A. I think it's just a few miles.

18 Q. Okay. You had a discussion with Mr. Wechsler
19 about the diversion ratio as discussed in the EIS, and
20 I believe Mr. Wechsler was suggesting to you that the
21 diversion ratio of less than one means that EBID gets
22 less water -- necessarily gets less water than the D2
23 relationship would display. Is that -- is that
24 actually correct? Let me rephrase that.

25 Isn't the -- isn't the issue with the

1 diversion ratio that what causes a change is whether
2 or not the diversion ratio is consistent with the
3 diversion ratio implicit in the D2 curve?

4 MR. WECHSLER: Objection; leading. I
5 understand we're trying to get somewhere here, but
6 it's still a leading question.

7 Q. (BY MR. DUBOIS) Okay. All right. Does the
8 D2 -- Ms. Estrada-Lopez, does the D2 curve represent a
9 constant diversion ratio of one?

10 A. Yes, I think that makes sense.

11 Q. It makes -- the -- the diversion ratio built
12 into -- or the -- that would be determined from D2 is
13 always one? That an acre-foot of diversion anywhere
14 on the D2 curve -- or an acre-foot of release anywhere
15 on the D2 curve means there would be an acre-foot of
16 aversion?

17 A. I don't think it's a one-for-one ratio, no.

18 Q. Okay. So does the -- does the D2 curve
19 itself represent a changing diversion ratio?

20 A. I -- I'm not sure that that's what it
21 represents. I think it represents a relationship in
22 how much water can be delivered based on a release.

23 Q. But is the diversion ratio, as you go along
24 the curve, always the same?

25 A. I think, because the slope of the curve

1 doesn't change, then the ratio would be the same, but
2 I don't know that that's the same thing as the
3 diversion ratio.

4 Q. Okay. Now, with respect to the diversion
5 efficiency, Mr. Wechsler listed a number of things
6 that he posited could affect the diversion efficiency
7 in part of your discussion about sedimentation. Do
8 you recall that?

9 A. Yes.

10 Q. One thing he did not mention is the impact of
11 groundwater pumping. Can the impact of groundwater
12 pumping cause a change in the diversion efficiency, as
13 well?

14 A. Yes.

15 Q. Is that -- is that a significant cause of the
16 -- no, strike that. That would ask for an expert
17 opinion. We're going to skip that.

18 Mr. Wechsler also played with one of the
19 spreadsheets and changed the diversion ratio from .9
20 something to .8. Do you recall that?

21 A. Yes, I do.

22 Q. So that would be something over a 10 percent
23 change in the diversion ratio; is that correct?

24 A. Yes.

25 Q. In his hypothetical. Is a 10 percent change

1 in the diversion ratio a small change in that ratio?

2 A. No, it is not.

3 Q. Why not?

4 A. I would classify a small change as being,
5 like, around 1 percent or less. A 10 percent ratio is
6 one tenth of -- of one -- one ratio, and so that's
7 quite large.

8 Q. You also had an exchange with Mr. Wechsler
9 about the -- about what was purported to be a 1985
10 operating agreement. Do you recall that?

11 A. Yes, I do.

12 Q. I'm trying to recall the exhibit number
13 offhand, and I -- and I don't. I apologize.

14 MR. WECHSLER: You might try -- sorry to
15 interrupt. You might try Joint 440.

16 MR. DUBOIS: Thank you. I had just
17 found that myself. Joint 440. Thank you.

18 Q. (BY MR. DUBOIS) Do you know if -- if the
19 document, Joint 440, the operating agreement from --
20 or the purported operating agreement from 1985, do you
21 know if that was ever signed by the districts and the
22 United States?

23 A. I've never seen signatures on it.

24 Q. Okay. To the best of your knowledge, was
25 that ever adopted by the districts and the United

1 States as a -- an operating policy binding on all of
2 the parties?

3 A. I don't think so.

4 Q. Okay. You also had an exchange with
5 Mr. Wechsler about releases of 790,000 and how that is
6 used in the allocation sheet. Do you remember that?

7 A. Yes, I do.

8 Q. Is 790,000 acre-feet a cap on releases from
9 storage in a given year?

10 A. No, it's not.

11 Q. Are there years in which more than 790,000
12 acre-feet have been released from Caballo Reservoir?

13 A. Yes, there are.

14 Q. Do you have a rough idea of what percentage
15 of the years of -- of record have releases in excess
16 of 790,000 from Caballo Reservoir?

17 A. I'm sorry, I don't.

18 Q. Okay. Is the -- is the -- the -- is the
19 790,000 acre-foot limit, if you will -- I think that
20 you -- you testified that it is a limit. What is it a
21 limit for?

22 A. In the operating agreement allocation
23 spreadsheet, it is used to limit the volume of water
24 for the current year allocation process.

25 Q. Okay.

1 **MR. DUBOIS:** Thank you, Your Honor. I
2 don't have any additional questions for
3 Ms. Estrada-Lopez today.

4 **JUDGE MELLOY:** Mr. Wechsler, any further
5 cross?

6 **MR. WECHSLER:** No thank you, Your Honor.

7 **JUDGE MELLOY:** All right. Thank you --

8 **MS. KLAHN:** Your Honor --

9 **JUDGE MELLOY:** I'm sorry. Ms. Klahn, do
10 you have something?

11 **MS. KLAHN:** I don't have any questions
12 for Ms. Estrada-Lopez, but I do have one more item to
13 raise regarding this examination, if I could.

14 **JUDGE MELLOY:** Go ahead.

15 **MS. KLAHN:** Yesterday, the Court
16 admitted a number of exhibits, and Mr. Wechsler did
17 not rely on all of the exhibits that were admitted.
18 We'd like to move to strike the exhibits that he did
19 not rely on with this witness. Of course, without
20 prejudice, he could come back and try and use them
21 again, but rather than have the record filled with
22 exhibits that don't have any context by relation to
23 testimony, we'd propose to take this course of action.

24 **JUDGE MELLOY:** Mr. Wechsler, what's your
25 response?

1 **MR. WECHSLER:** Yeah. We would object to
2 that, Your Honor. Obviously, had we known -- the
3 process was established ahead of time. Had we known
4 ahead of time that the rule would be we had to have
5 Ms. Estrada-Lopez talk about those exhibits, we would
6 have done that, or we may have offered them and
7 presented them directly through her. There might be
8 some of those exhibits, and I don't know offhand, that
9 we would have offered through her rather than another
10 witness, and so, again, the rules of the game were
11 established long ago. These were present in your --
12 your Trial Management Order dating back to April 9th,
13 2001, where you indicated for Category A, documents to
14 which neither party objects, quote, "They will be
15 deemed admitted in evidence at the commencement of the
16 trial and will be available for use by any party at
17 any stage of the proceeding without further offer,
18 proof, or objection," and that was confirmed in our
19 status conference from last week for exhibits that
20 were not objected to as part of the five -day process.

21 **JUDGE MELLOY:** Well, I'm going to --
22 I'll deny the motion without prejudice to re-urging it
23 at the end of the case if these exhibits are never
24 used for any purpose. I certainly would be willing to
25 entertain a motion at that time to, you know,

1 essentially clean up any extraneous exhibits, but --
2 but just because an exhibit is not necessarily used in
3 the examination of a witness doesn't mean it's not
4 relevant or admissible, and I think Mr. Wechsler's
5 right, we had indicated in the pre-trial order that
6 they would be admitted, and so I'm going to deny the
7 motion to strike.

8 Anything further with this witness?

9 **MS. KLAHN:** No, Your Honor.

10 **JUDGE MELLOY:** All right. Then,
11 Ms. Estrada-Lopez, you're free to -- you're done.
12 You're free to go.

13 **THE WITNESS:** Thank you.

14 **JUDGE MELLOY:** Thank you.

15 **MR. WECHSLER:** Thank you,
16 Ms. Estrada-Lopez.

17 So, Your Honor, if I may, I'm going to
18 switch places with Ms. Thompson.

19 **MR. DUBOIS:** Your Honor, there's going
20 to be a couple of switching of places.

21 **JUDGE MELLOY:** Well --

22 **MR. DUBOIS:** Do you want to take five
23 minutes while we rearrange?

24 **JUDGE MELLOY:** Yeah. And we need to do
25 -- take a look at our evidence binders, too, so let's

1 -- let's take a ten-minute break, and then we'll come
2 back. What time is it now? We'll be back at -- at
3 4:10.

4 (Recess.)

5 **JUDGE MELLOY:** All right. Are we ready
6 to go? Do we have everyone back?

7 **MS. NAJJAR:** We're ready.

8 **MS. THOMPSON:** Yes, Your Honor.

9 **JUDGE MELLOY:** I guess I don't have my
10 video on, do I? There we go. All right. Let me
11 start -- is it Spener? Am I pronouncing that
12 correctly?

13 **THE WITNESS:** That is correct, Your
14 Honor.

15 **JUDGE MELLOY:** Will you raise your right
16 hand, please? Do you swear or affirm that the
17 testimony you're about to give will be the truth, the
18 whole truth, and nothing but the truth?

19 **THE WITNESS:** I do.

20 **JUDGE MELLOY:** Would you please state
21 your name for the record and spell your name, please?

22 **THE WITNESS:** Sally Spener, S-A-L-L-Y,
23 S-P-E-N-E-R.

24 **JUDGE MELLOY:** We're asking all the
25 witnesses a couple of preliminary questions,

1 Ms. Spener. First of all, is there anyone in the room
2 with you, other than yourself?

3 THE WITNESS: No, there is not.

4 JUDGE MELLOY: Do you have any materials
5 that you will be referring to during your testimony.

6 THE WITNESS: No, I do not.

7 JUDGE MELLOY: Finally, I want to
8 caution you that you're not allowed to have any
9 communication devices such as laptops, iPhones, or
10 e-mail/texting capability so with that understanding,
11 we'll proceed.

12 So who's going to be -- for this portion
13 of the proceedings, let me ask the parties to enter
14 their appearance. For Texas, Ms. Klahn, you're still
15 online?

16 MS. KLAHN: Yes.

17 JUDGE MELLOY: Okay. And for United
18 States?

19 MS. NAJJAR: Good afternoon, Your Honor.
20 Jennifer Najjar on behalf of the United States.

21 JUDGE MELLOY: And for New Mexico?

22 MS. THOMPSON: Good afternoon, Your
23 Honor. Lisa Thompson for the State of New Mexico.

24 JUDGE MELLOY: All right. And are you
25 going to be going first, Ms. Najjar, or is it Ms.

1 Klahn?

2 **MS. NAJJAR:** Yes, Your Honor, I'll be
3 going first.

4 **JUDGE MELLOY:** Go ahead.

5 **MS. NAJJAR:** The United States calls
6 Ms. Sally Spener.

7 SALLY SPENER,
8 having been first duly sworn, testified as follows:

9 DIRECT EXAMINATION

10 BY MS. NAJJAR:

11 **Q. Could you please state your name for the**
12 **record?**

13 A. My name is Sally Spener.

14 **Q. And what have you been asked to come testify**
15 **about today?**

16 A. The purpose of my testimony today is to
17 provide background information about the International
18 Boundary and Water Commission United States and
19 Mexico, especially the United States section of the
20 commission, and about the Convention of 1906 between
21 the United States and Mexico for the equitable
22 division of waters of the Rio Grande.

23 **Q. Have you ever testified in court before?**

24 A. No, I have not.

25 **Q. Ms. Spener, could you please tell the Court**

1 **about your educational background?**

2 A. I have a bachelor's degree from Wesleyan
3 University in Middletown, Connecticut.

4 **Q. What was your major?**

5 A. I was a double major in theater and Latin
6 American studies with a focus on history, specifically
7 Mexican history.

8 **Q. Did you conduct a senior thesis or senior**
9 **project of some sort?**

10 A. Yes, I did.

11 **Q. What was that about?**

12 A. It was a research project about a precursor
13 movement to the Mexican Revolution based in the border
14 state of Sonora.

15 **Q. Let's talk a little bit about your employment**
16 **now. Where are you currently employed?**

17 A. I'm currently employed by the United States
18 Section of the International Boundary and Water
19 Commission United States and Mexico.

20 **Q. And may I just refer to that as USIBWC?**

21 A. Yes, you may. And I may refer to it as the
22 U.S. Section, as well.

23 **Q. What is your current title?**

24 A. My current title in accordance with the 1944
25 Water Treaty is United States Secretary. My civil

1 service title is Foreign Affairs Officer.

2 Q. We'll talk about the 1944 Treaty in a little
3 while, but are those two titles interchangeable?

4 A. They are essentially interchangeable.
5 They're both correct. When I am dealing in an
6 international context with counterparts from Mexico, I
7 would use the title of secretary in that particular
8 context.

9 Q. And how long have you been employed by
10 USIBWC?

11 A. I've been employed by USIBWC since 1999.

12 Q. So roughly 22 years?

13 A. That's correct.

14 Q. And of those 22 years, how long have you been
15 serving as secretary?

16 A. I have been the secretary since 2012.

17 Q. Prior to your role as secretary, did you hold
18 any other position?

19 A. Yes, I did.

20 Q. What was that?

21 A. I was the public affairs officer for the U.S.
22 Section from 1999. There were a couple breaks in that
23 such as when I had a temporary promotion to U.S.
24 Secretary.

25 Q. You previously mentioned that you work for

1 **the USIBWC. Is there another section?**

2 A. Yes, there is, the Mexican section of the
3 International Boundary and Water Commission.

4 **Q. Could we please pull up what has previously**
5 **been marked as Spener Demonstrative 01?**

6 **Generally, how are the two sections of IBWC**
7 **structured?**

8 A. Well, we have the International Boundary and
9 Water Commission United States and Mexico as an
10 international organization, but then within that, we
11 have the United States Section and then we also have
12 the Mexican Section.

13 **Q. Who heads each section?**

14 A. Each section is headed by an engineer
15 commissioner appointed by his or her respective
16 federal government.

17 **Q. And who are the treaty officers?**

18 A. The treaty officers are the two
19 commissioners, the two secretaries, one from each
20 section. We have two principal engineers, two from
21 the United States and two from Mexico, and then each
22 section has a legal advisor. There are also other
23 people who are not considered treaty officers, but who
24 are employees of the two sections.

25 **Q. And are the two sections administered**

1 **independently of each other?**

2 A. Yes. They are. The United States Section is
3 an independent federal commission of the U.S.
4 government, and the Mexican Section is likewise a part
5 of Mexico's federal government.

6 **Q. What is the mission of IBWC?**

7 A. The mission of the International Boundary and
8 Water Commission United States and Mexico is to apply
9 the boundary and water treaties between those two
10 countries and to settle differences that arise in the
11 application of the treaties.

12 **Q. Let's talk about the U.S. Section in a little**
13 **more detailed. Where is it headquartered?**

14 A. The headquarters of the U.S. Section is in El
15 Paso, Texas.

16 **Q. Could we please turn to what has previously**
17 **been marked as Spener Demonstrative 2?**

18 **Could you please describe to the Court what**
19 **we are seeing here?**

20 A. This is an organizational chart for the U.S.
21 Section of the IBWC, and it is showing the executive
22 office of the commissioner and then the three major
23 departments of the commission.

24 **Q. Which office or department do you fall under**
25 **as secretary?**

1 A. As secretary, I am in the Foreign Affairs
2 Office that is considered to be part of the executive
3 office of the commissioner.

4 **Q. I want to talk a little bit in more detail**
5 **about this, and specifically what you said about the**
6 **three main departments. Could we please turn to what**
7 **has previously been marked as Spener Demonstrative 3?**

8 **Could you please describe the various**
9 **components in the engineering department?**

10 A. So the engineering department is responsible
11 for, as it implies, the engineering work of the
12 Commission. That includes our environmental
13 management division, so responsible for environmental
14 compliance, if we're doing habitat restoration
15 projects, water quality monitoring, et cetera, that
16 would fall under the environmental management
17 division. We also have the engineering services
18 division, and that primarily comprises our design
19 function, as well as our construction division, as
20 well as other sorts of technical studies that may be
21 required.

22 **Q. Could we please turn to Spener Demonstrative**
23 **4?**

24 **Could you elaborate a little bit more on the**
25 **operations department?**

1 A. The operations department is the largest
2 department that we have at the USIBWC. That is
3 primarily because it is where we have our operations
4 and maintenance division. That is the division that
5 is responsible for operating and maintaining our
6 infrastructure all along the U.S./Mexico border on the
7 U.S. side, primarily through various field offices, so
8 we do things like operate and maintain flood control
9 projects, diversion dams, storage dams, hydroelectric
10 power plants, wastewater treatment plants, maintaining
11 the boundary demarcation features along the
12 U.S./Mexico border. We also have our security
13 division, and safety is also part of the operations
14 department, and then we have our water accounting
15 division, and the water accounting division is the
16 part of our agency that is responsible for determining
17 the national ownership of waters, and they deal with
18 our gaging stations and the data that is associated
19 with that.

20 Q. Could we please turn to what has been marked
21 as Spener Demonstrative 5, and, Ms. Spener, could you
22 please elaborate on what components are part of the
23 administration department?

24 A. So our administration department is something
25 that I think would be typical of most agencies. So we

1 have our acquisitions division, which is our
2 procurement contracting office. We have our budget
3 function, accounting, IT, known as our information
4 management division, are some of the major parts of
5 our administration department.

6 **Q. And you mentioned that you work in the**
7 **Foreign Affairs Office, so could we please bring up**
8 **Spener Demonstrative 6. Let's talk a little bit more**
9 **about what your role looks like generally. What**
10 **responsibilities does this position as secretary**
11 **entail?**

12 A. So generally, I supervise both the Foreign
13 Affairs and Public Affairs functions of the Commission
14 of the U.S. Section.

15 **Q. Could you please tell the Court some of your**
16 **general responsibilities as it relates to the public**
17 **affairs section?**

18 A. Yes. In terms of public affairs, that
19 involves media relations, so responding to inquiries
20 from the news media, preparing news releases, setting
21 up and conducting interviews, that sort of thing. We
22 also have our stakeholder outreach activities, and
23 that is a whole range of stakeholders who are
24 interested in the work that we do. That includes
25 conducting public meetings through a program I

1 established called, "The Citizens Forum Program,"
2 which are public meetings where we share information
3 with the public about our activities and hear about
4 other entities work along the U.S./Mexico border.
5 There's also an internal communication function that
6 is part of that, such as, you know, providing
7 information and briefing to our own personnel about
8 our work, and then we also handle special events,
9 ribbon-cutting ceremonies, groundbreaking ceremonies.
10 We recently had a swearing-in ceremony for our new
11 commissioner.

12 **Q. Could you please tell the Court a little bit**
13 **more about your responsibilities as it relates to the**
14 **Foreign Affairs Office?**

15 A. Yes. So for the Foreign Affairs Office, I'm
16 involved in various activities. This includes
17 providing foreign policy advice to the commissioner,
18 the principal engineers, and other staff regarding our
19 obligation under the treaties and minutes, which are
20 binding implementing agreements to the treaties. I am
21 very closely involved in negotiating, drafting, and
22 finalizing international agreements between the United
23 States and Mexico on issues related to the boundary
24 and water treaties. I supervise the translation and
25 interpretation function because, of course, we have

1 documents and speakers in both English and Spanish. I
2 review all correspondence that is exchanged between
3 the U.S. Section and the Mexican Section of the
4 Commission to ensure that it is consistent with our
5 obligations under the international agreements, and so
6 those are some of the major aspects of -- of what I do
7 in addition, of course, to coordinating on a
8 near-daily basis with my counterpart in the Mexican
9 Section of the Commission and organizing Commission
10 meetings.

11 **Q. You mentioned Commission meetings. What**
12 **exactly is a Commission meeting?**

13 A. A Commission meeting is a formal meeting
14 between the U.S. and Mexican Sections of the
15 International Boundary and Water Commission that would
16 have the participation of the commissioners, principal
17 engineers, and secretaries from both sections, as well
18 as additional technical personnel, depending on the
19 specific topic or topics of a meeting.

20 **Q. What is the purpose of hosting a Commission**
21 **meeting?**

22 A. So a Commission meeting relates to our
23 responsibilities to apply the boundary and water
24 treaties between the two countries, so we review our
25 activities under the boundary and water treaties, we

1 coordinate operation and maintenance of the
2 infrastructure that we're responsible for under the
3 treaties, and address any policy issues that require
4 our attention.

5 **Q. You mentioned that IBWC is responsible for**
6 **applying the boundary and water treaties between the**
7 **United States and Mexico. What treaties or**
8 **conventions exist between the United States and Mexico**
9 **related to the shared waters at the border?**

10 A. So we have a treaty that is commonly referred
11 to as the 1944 Water Treaty. It has a rather long
12 name, but most people know it as the 1944 Water
13 Treaty. And then we also have the Convention of 1906
14 for the equitable distribution of the waters of the
15 Rio Grande.

16 **Q. Let's talk about each of those in turn.**
17 **Could you tell me a little bit more about the 1944**
18 **Water Treaty?**

19 A. The 1944 Water Treaty established a
20 modern-day International Boundary and Water
21 Commission, and, in fact, that is how we got our name
22 of International Boundary and Water Commission. It
23 established the structure that was shown in a previous
24 slide, and it also provides for the sharing of waters,
25 the Rio Grande from Fort Quitman to the Gulf of

1 Mexico. Fort Quitman is a location on the Rio Grande
2 about 90 miles downstream from El Paso, Texas, Ciudad
3 Juarez, Chihuahua. It also provides for the
4 distribution of waters of the Colorado River, and it
5 also addresses the Tijuana River and lays out an
6 expectation of a possible future agreement providing
7 for the division of waters of the Tijuana River.

8 **Q. What is the Convention of 1906?**

9 A. The Convention of 1906 is the treaty that
10 provides for the distribution of the waters of the Rio
11 Grande in a separate geographical area from that of
12 the 1944 Treaty, that separate geographical area being
13 the region of El Paso, Texas through Ciudad Juarez,
14 Chihuahua, so it allots Rio Grande water to Mexico at
15 Ciudad Juarez or the Juarez Valley.

16 **MS. NAJJAR:** Could we please pull up
17 what has previously been marked as Joint Exhibit 439.

18 **Q. (BY MS. NAJJAR) Ms. Spener, you're seeing**
19 **what has been marked as Joint Exhibit 439, and I do**
20 **not believe there are any objections to this exhibit,**
21 **but do you recognize this document?**

22 A. Yes, I do.

23 **Q. What do you recognize it to be?**

24 A. It looks like it is a copy of the Convention
25 of 1906.

1 **Q. Is there a statutory version?**

2 **A. Yes.**

3 **Q. And how do you recognize this document?**

4 **A. I recognize this document because it's a**
5 document that I have referred to on numerous occasions
6 during the course of my employment with the USIBWC.

7 **MS. NAJJAR:** Your Honor, we offer Joint
8 Exhibit 439 into evidence.

9 **JUDGE MELLOY:** Any objection?

10 **MS. THOMPSON:** No, Your Honor.

11 **JUDGE MELLOY:** Hearing none, Joint
12 Exhibit 439 is admitted.

13 **Q. (BY MS. NAJJAR) Ms. Spener, you mentioned**
14 **that the 1906 Convention provides for the equitable**
15 **distribution of Rio Grande water to Mexico. How does**
16 **the Convention of 1906 provide for the equitable**
17 **distribution of water?**

18 **A. The Convention of 1906 provides for the**
19 delivery to Mexico, as you can see on your screen, of
20 a total of 60,000 acre-feet of water annually in the
21 bed of the Rio Grande at the point where the head
22 works of the Acequia Madre, known as the old Mexican
23 Canal, now exists above the city of Juarez, Mexico.
24 So just in summary, we say that it allots for 60,000
25 acre-feet of water per year to Mexico for Juarez.

1 **Q. And is 60,000 acre-feet always delivered?**

2 A. There are exceptions to that.

3 **Q. What do you mean by "exceptions"?**

4 A. Well, under Article 2 of the Convention of
5 1906, it states, as you see on your screen, that in
6 the case of extraordinary drought or serious accident
7 to the irrigation system in the United States, the
8 amount delivered to the Mexican Canal shall be
9 diminished in the same proportion as the water
10 delivered to lands under said irrigation system in the
11 United States.

12 **Q. In general terms, is it fair to just refer to**
13 **this as a proportional reduction?**

14 A. Yes. That is what we commonly refer to it
15 as, the proportional reduction.

16 **Q. So what is IBWC's role in ensuring that the**
17 **water is delivered to Mexico in compliance with the**
18 **Convention of 1906?**

19 A. So when it is a full allocation year,
20 certainly we are responsible for making sure that the
21 60,000 acre-feet are delivered or the appropriate
22 proportional reduction. We also operate and maintain
23 two diversion dams, American Dam and International
24 Dam.

25 **Q. And does -- what is IBWC's role in managing**

1 **the Rio Grande Project?**

2 A. The USIBWC does not manage the Rio Grande
3 Project. That is managed by the U.S. Department of
4 the Interior Bureau of Reclamation.

5 **Q. Ms. Spener, how would gains or losses in the**
6 **Rio Grande impact the United States obligation under**
7 **the Convention of 1906 in a year where there are no**
8 **exceptional circumstances like extraordinary drought?**

9 A. So our obligation is to deliver to Mexico
10 60,000 acre-feet, regardless of gains or losses in the
11 river. So we must meet the 60,000 acre-feet unless
12 those exceptions apply, and Mexico would not be
13 entitled to more than that, if there were gains.

14 **Q. Who is responsible for conveyance losses?**

15 A. The United States. The treaty provides that
16 the United States shall assure delivery to Mexico of
17 the specified volumes.

18 **Q. Who is responsible for losses caused by**
19 **unauthorized pumping for the Rio Grande above Acequia**
20 **Madre?**

21 A. Again, the United States has that
22 responsibility. If we are not policing the river and
23 some unauthorized individual were pumping water out of
24 the river, we would still need to meet our obligations
25 under the treaty.

1 **Q. Let's talk a little bit more about IBWC's**
2 **role in ensuring that those treaty obligations are**
3 **met. Generally, what is IBWC's role in determining**
4 **the volume of water owed to Mexico?**

5 A. So we need to make sure that when it is a
6 full supply year that the appropriate volume of 60,000
7 acre-feet is allocated to Mexico, and then we also
8 coordinate with Reclamation and others to review the
9 information and make sure that the allocation to
10 Mexico, in accordance with the treaty, is -- is
11 carried out.

12 **Q. How do you obtain the data about the volume**
13 **of allocations in a given year?**

14 A. So we have regular communication with
15 Reclamation. We exchange letters with them. We meet
16 with them regularly. They provide briefings, and then
17 we also have meetings with Reclamation, the Mexican
18 Section of the Commission, the Mexican Irrigation
19 District, and the U.S. Irrigation Districts. Those
20 are typically held monthly during the irrigation
21 season or just prior to the irrigation season so
22 there's a lot of communication and transparency.

23 **Q. What department at USIBWC determines the**
24 **amount of water owed to Mexico?**

25 A. The water accounting division within the

1 operations department is the part of the USIBWC that
2 works closely with Reclamation to review the data and
3 also informs Mexico of its allocations under the
4 Convention of 1906.

5 **Q. Let's talk a little bit more about when the**
6 **water is delivered to Mexico under the Convention of**
7 **1906. Under the Convention of 1906, how are**
8 **deliveries scheduled?**

9 A. So the Convention of 1906 actually has a
10 schedule in it, and it provides for deliveries to
11 Mexico on -- for certain months out of the year, and
12 you can see that on your screen, starting in February
13 and going through November, and then the acre-feet per
14 month that are noted on the exhibit is for a year when
15 there is a full allocation of 60,000 acre-feet.

16 **Q. Is this delivery schedule always followed?**

17 A. No. It is not. There are occasions when
18 there are deviations from this schedule. There have
19 been deviations on a regular basis since about 1940.

20 **Q. Are those deviations required or mandatory?**

21 A. No, they are not. It is something that is
22 done through an administrative arrangement of the U.S.
23 and Mexican governments, and it is done on a voluntary
24 basis out of consideration for the request of Mexico
25 to diverge from the delivery schedule.

1 **Q. If the treaty specifies a schedule to Mexico,**
2 **then what is the process of how this deviation occurs?**

3 A. So the administrative arrangement that has
4 existed for many decades is a process that is known as
5 an exchange of diplomatic notes where the Mexican
6 government sends a diplomatic note requesting that
7 there be changes to the delivery schedule.

8 **Q. Could you explain what a diplomatic note is?**

9 A. A diplomatic note is a type of diplomatic
10 communication. In this case, it is between the
11 Secretary of Foreign Relations in Mexico and the U.S.
12 Department of State.

13 **Q. Could you explain how a diplomatic note works**
14 **in relation to the 19 -- the Convention of 1906?**

15 A. Yes. So as I mentioned, this is something
16 that's been going on for decades and so what happens
17 is early in the year, the Mexican government sends a
18 diplomatic note, again, from its Secretary of Foreign
19 Relations to the U.S. Department of State asking that
20 the International Boundary and Water Commission be
21 authorized to diverge from the schedule that exists in
22 the Convention of 1906 based on Mexico's request for
23 changes to the delivery schedule. The U.S. Department
24 of State then sends a note in response, and that
25 diplomatic note indicates that they are authorizing

1 the U.S. commissioner to modify the schedule as the
2 U.S. commissioner determines appropriate based on
3 Mexico's request, and then as we have -- as I -- I
4 believe was noted in previous testimony, the
5 allocations tend to change on a monthly basis, and so
6 Mexico, as Mexico is informed of their allocations on
7 a monthly basis, they send us their updated schedule
8 and then we implement the schedule or the commissioner
9 agrees to the schedule if he deems that's appropriate.

10 **Q. Since we're discussing USIBWC's role in**
11 **ensuring that the United States treaty obligations are**
12 **met, let's talk about the 2008 Operating Agreement.**
13 **Are you familiar with the 2008 Operating Agreement?**

14 A. Yes.

15 **Q. How are you familiar with it?**

16 A. When it was first being discussed or adopted,
17 so about 13 years ago, I had the opportunity to review
18 it and try to understand it and understand how it
19 would or would not impact our responsibilities.

20 **Q. What did the USIBWC conclude?**

21 A. So we concluded that the 2008 operating
22 agreement did not impede our ability to fulfill our
23 obligations to Mexico under the Convention of 1906,
24 that it was consistent with the requirements of that
25 treaty.

1 Q. And did the Mexican Section of the IBWC have
2 the opportunity to review the 2008 Operating
3 Agreement?

4 A. Yes.

5 MS. NAJJAR: Ms. Spener, I don't have
6 any further questions for you at this time.

7 JUDGE MELLOY: Need to un-mute here.
8 I'm sorry. Ms. Thompson, you may proceed.

9 MS. THOMPSON: Thank you, Your Honor.

10 CROSS-EXAMINATION

11 BY MS. THOMPSON:

12 Q. Good afternoon, Ms. Spener.

13 A. Good afternoon.

14 Q. My name is Lisa Thompson. I'm an attorney
15 with the State of New Mexico. I don't believe we have
16 met before.

17 A. I don't believe so.

18 Q. I just have a few follow-up questions. Seems
19 like you were lucky enough to go second and much
20 faster.

21 A. I was lucky.

22 Q. Yes. So the USIBWC is responsible for
23 ensuring compliance with the Convention of 1906,
24 correct?

25 A. Yes.

1 Q. In other words, IBWC is responsible for
2 assuring Mexico gets its water entitlement under the
3 Convention, correct?

4 A. Yes.

5 Q. And you're one of the treaty officers for the
6 1906 Convention, right?

7 A. Yes.

8 Q. And my understanding is that you also serve
9 as an expert advisor on treaty interpretation; is that
10 right?

11 MS. NAJJAR: Objection. This witness is
12 offered as a percipient witness.

13 MS. THOMPSON: I understand that she's a
14 percipient witness.

15 JUDGE MELLOY: Well, she's just asking
16 if she's -- I'm going to overrule at this point.
17 We'll see where this is going. You may answer.

18 Q. (BY MS. THOMPSON) My understanding is you're
19 an expert advisor on treaty interpretation; is that
20 right?

21 A. I do provide -- I do conduct research and
22 provide advice to the commissioner and the principal
23 engineers.

24 Q. And you accompany the U.S. commissioner to
25 commission meetings; is that right?

1 A. Yes.

2 Q. To your knowledge, you're the only IBWC
3 witness that's being called by the U.S. or Texas; is
4 that right?

5 A. I'm not sure.

6 Q. So I want to go back and look then a little
7 bit closer at the Convention, which is Joint Exhibit
8 439. I just want to go back through -- we went
9 through it pretty quickly, so I want to go back
10 through and confirm some of the provisions. Okay?

11 A. Okay.

12 Q. So Article 1 requires the U.S. delivery to
13 Mexico a total of 60,000 acre-feet annually, correct?

14 A. Yes.

15 Q. And that's measured at the head of the
16 Acequia Madre, correct?

17 A. Yes.

18 Q. And then as you mention, Article 2 then
19 confirms that the U.S. must assure those deliveries to
20 Mexico, correct?

21 A. Yes.

22 Q. And under Article 2, as you mention, that
23 delivery must be distributed in the same proportions
24 as the water supply proposed to be furnished to what
25 I'll shorthand as EP1, if that's okay?

1 A. Article 2 states, "The delivery of the set
2 amount of water shall be assured by the United States
3 and shall be distributed through the year in the same
4 proportions as the water supply proposed to be
5 furnished from the said irrigation system to lands in
6 the United States in the vicinity of El Paso, Texas,
7 according to the following schedule as nearly as may
8 be possible."

9 **Q. And is that area in the vicinity of El Paso,**
10 **Texas, is your interpretation, is that the area of**
11 **EP1?**

12 A. I am aware that the irrigation district in El
13 Paso, Texas is the El Paso County Water Improvement
14 District No. 1, commonly known as EP No. 1.

15 **Q. Thank you. And Article 2 also has, as you**
16 **mentioned, a schedule that, according to Article 2,**
17 **those deliveries are supposed to conform with that**
18 **schedule as nearly as may be possible; is that right?**

19 A. Article 2 states, yes, that it is the
20 following schedule, "According to the following
21 schedule, as nearly as may be possible."

22 **Q. And under that schedule in the convention,**
23 **there's columns for the month, the amount, and the**
24 **corresponding CFS, correct?**

25 A. Right. I -- I -- I believe that is not

1 correct. I don't believe it is CFS. It's just cubic
2 feet.

3 Q. Thank you. The delivery, though, the point I
4 want to make and ask you about is that it's not a
5 delivery for year-round delivery; is that right?

6 A. The schedule includes deliveries for ten
7 months out of the year, so there are two months -- two
8 winter months where the schedule does not show
9 deliveries.

10 Q. And is it your understanding that this
11 delivery is to match with the irrigation season
12 deliveries?

13 A. So the treaty addresses irrigation needs and
14 deliveries, so yes.

15 Q. And, in fact, the treaty mentions in the
16 first proclamation, if you want to skip back to the
17 first page, that it's the equitable distribution of
18 water of the Rio Grande, quote, for irrigation
19 purposes; is that right?

20 A. That is what it says, yes.

21 Q. And as you mentioned, the delivery schedules
22 have, in fact, not historically followed the Article 2
23 schedule, correct?

24 A. That's correct.

25 Q. And as I understand it, that's because

1 through diplomatic notes, the deliveries are adjusted
2 every -- pretty much every year from that established
3 treaty schedule; is that right?

4 A. That's correct.

5 Q. Is it your understanding that historically,
6 in fact, the deliveries have occurred mostly from
7 March through September and maybe October?

8 A. I do not have the full record and familiarity
9 with the whole record of -- of delivery, but certainly
10 in recent years, March to September more or less has
11 -- has been the time when irrigation deliveries are
12 made, but it does -- it can vary.

13 Q. Is that because it's typically where the
14 deliveries are happening concurrent with deliveries to
15 the U.S. Project lands?

16 A. I'm not sure I understand your -- your
17 question. Could you rephrase it --

18 Q. Sure.

19 A. -- or ask it again?

20 Q. Sure. The deliveries that are occurring in
21 the March through September/October time frame, is it
22 your understanding that those are occurring typically
23 concurrent with deliveries to the U.S. Project lands?

24 A. That is not necessarily the case, no.

25 Q. Do the irrigation districts and the USIBWC

1 try to coordinate so that those deliveries are
2 occurring concurrently?

3 A. Yes.

4 Q. And Article 2 also says that there's -- if
5 there's an extraordinary drought, the amount of water
6 delivered to Mexico must be diminished in the same
7 proportion as the water delivered to the U.S. Project
8 lands; is that right?

9 A. It says, "As the water delivered to lands
10 under said irrigation system in the United States."

11 Q. And do you understand that to mean to be
12 delivered to lands for the Project in the United
13 States, the Rio Grande Project?

14 A. So I understand it to mean exactly what it
15 says, "to lands under said irrigation system in the
16 United States," and I'm certainly aware that the Rio
17 Grande project geographical region is in this area
18 that is affected by the Convention of 1906.

19 Q. And how has extraordinary drought, that term,
20 been historically interpreted by the IBWC?

21 A. There is no definition of extraordinary
22 drought, but there have been numerous years when there
23 has been a proportional reduction applied to Mexico.

24 Q. Is it your understanding then that any time
25 there's less than a full supply or full allocation to

1 the U.S. lands that, in fact, the Mexico allocation is
2 then proportionally reduced?

3 A. When there is less than a full supply, if it
4 is due to extraordinary drought or accident to the
5 irrigation system in the United States in accordance
6 with the treaty, the amount delivered to the Mexican
7 Canal shall be diminished in the same proportion as
8 the water delivered to lands under said irrigation
9 system in the United States.

10 Q. So then what's your criteria for
11 extraordinary drought based on that answer?

12 A. So, again, there have been -- there is no
13 definition of extraordinary drought, but there have
14 been numerous proportional reductions applied to
15 Mexico because there are reduced allocations.

16 Q. In your experience then, is there any time
17 that there is less than a full supply, those
18 proportional reductions occur?

19 A. So when there is less than a full -- when
20 there is less than 60,000 acre-feet provided to
21 Mexico, then there would be -- that would be
22 considered a proportional reduction.

23 Q. If the U.S. lands are reduced in their
24 project delivery is 50 percent, isn't it true then
25 that there is a proportional reduction to the Mexico

1 allocation of approximately 50 percent?

2 MS. NAJJAR: Objection; assumes facts
3 not in evidence.

4 MS. THOMPSON: Your Honor, I'm just
5 trying to understand her interpretation of how the
6 reduction occurs.

7 JUDGE MELLODY: Overruled. The witness
8 may answer the question.

9 A. Could you ask the question again?

10 Q. (BY MS. THOMPSON) Sure. If the delivery to
11 the U.S. lands is reduced 50 percent, then -- below a
12 full allotment or full allocation, then Mexico's total
13 treaty entitlement of 60,000 acre-feet would also get
14 reduced approximately 50 percent; is that right?

15 A. So that's a hypothetical scenario, but in
16 general, that is how a proportional reduction would be
17 applied.

18 Q. And, therefore, based on that, then IBWC
19 needs to know then whether, in fact, there's a full
20 allocation determined each year; is that right?

21 A. Yes.

22 Q. And IBWC would need to know whether or not
23 there's going to be less than a full allocation each
24 year, correct?

25 A. Yes.

1 Q. And during your 22 years at IBWC, have you
2 had the opportunity to investigate how the Mexico
3 treaty entitlement is determined in a reduced
4 allocation year by Reclamation?

5 A. Could you repeat that question, please?

6 Q. Sure. During your time or your 22 years at
7 IBWC, have you investigated how the Mexico treaty
8 entitlement is calculated for a reduced allocation by
9 the Bureau of Reclamation?

10 A. So I don't think I would say that I have
11 conducted an investigation, no.

12 Q. Are you aware that others at IBWC have asked
13 the same question and investigated how that reduction
14 is calculated?

15 A. So I guess I'm not sure what you mean
16 by "investigated."

17 Q. Sure. Let's look at Joint Exhibit 0469.
18 It's already been admitted. This is a memo that
19 appears to have the International Boundary and Water
20 Commission header at the top for United States and
21 Mexico Section, correct?

22 A. This appears to have -- could you state that
23 again, please?

24 Q. I was just identifying the document, the
25 header on the document, that it states it's from the

1 International Boundary and Water Commission, United
2 States and Mexico, United States Section?

3 A. That's correct.

4 Q. And this document is dated June 29th, 1956,
5 correct?

6 A. Yes.

7 Q. Appears to be an official record of the IBWC.
8 Would you agree with that?

9 A. It appears to be an official record of the
10 USIBWC, yes.

11 Q. And the subject of this document is the 1906
12 Treaty deliveries to Mexico. Do you see that?

13 A. Yes, I see that.

14 Q. And the participants on this document include
15 both an individual from the Bureau of Reclamation, as
16 well as individuals from the International Boundary
17 and Water Commission. Do you see that on the
18 document?

19 A. Yes.

20 Q. Have you reviewed this document before?

21 A. Prior to this trial, I don't believe I've
22 seen this document before.

23 Q. Okay. When you reviewed this document, did
24 you understand, based on the first paragraph, that in
25 this document, Mr. Resch from Bureau of Reclamation,

1 the author, excuse me, and Mr. Resch met to learn and
2 discuss the manner of determination during years of
3 inadequate supply of the allotment to waters -- excuse
4 me -- supply of the allotment of water to land in the
5 United States Rio Grande Project?

6 A. So I am aware -- I was made aware recently
7 that this was one of the exhibits, but it's not an
8 exhibit that I was familiar with previously. So if
9 you're asking me does it say what you just said it
10 said, I can read it to you and tell you what it says.

11 Q. When you had the chance, Ms. Spener, to
12 review this document, did you understand that it lists
13 steps for calculating the reduction to the Mexico
14 treaty entitlement?

15 A. Could you ask that question again, please?

16 Q. Sure. When you reviewed this document, did
17 you understand that it included steps on calculating
18 the Mexico full supply -- excuse me -- the Mexico
19 allocation under the treaty?

20 A. So if you could show me other parts of the
21 document, I might be able to answer that question if I
22 see that that is included in the document.

23 Q. Sure.

24 MS. NAJJAR: Your Honor, objection;
25 foundation. Ms. Spener has testified that she wasn't

1 made aware of this document until I think it was
2 disclosed within the last 24 or 48 hours by New
3 Mexico.

4 **MS. THOMPSON:** Your Honor, it's an
5 official record of the IBWC and details how, in fact,
6 Mexico gets a reduction from full allocation, so I'm
7 trying to explore whether or not this witness
8 understands those steps, not that she has actually
9 seen this particular document.

10 **MS. NAJJAR:** This is a document from
11 1956. Ms. Spener said she's not familiar with it.

12 **JUDGE MELLOY:** Well, it seems to me the
13 document speaks for itself, and this witness has
14 testified that she's just recently seen it. It's a
15 1956. I think it's of somewhat marginal relevance.
16 I'm going to sustain the objection.

17 **Q. (BY MS. THOMPSON)** Ms. Spener, do you
18 understand the way a full allocation to the U.S.
19 Project lands is determined?

20 **MS. NAJJAR:** Objection; foundation.

21 **JUDGE MELLOY:** She can answer that
22 question if -- if she's aware.

23 **A.** I have a general understanding of that.

24 **Q. (BY MS. THOMPSON)** And can you describe for me
25 how that is determined or calculated?

1 A. So certainly there is consideration given to
2 the water that is available in storage at Elephant
3 Butte and Caballo Reservoirs, and then there is -- you
4 know, we hear a lot about the D1 curve and the D2
5 curve, but there is a determination made as to how
6 much water would need to be released to make the
7 deliveries to the various downstream users, and, of
8 course, the amount that they receive is different from
9 the amount that's released so a calculation needs to
10 be done.

11 Q. And for a full allotment to the U.S. lands,
12 have you seen any documentation of the calculation
13 using the 3.024 acre-foot-per-acre number?

14 A. I don't recall.

15 Q. Okay. If we could turn to Joint -- excuse me
16 -- New Mexico Exhibit 2304.

17 MS. THOMPSON: My understanding, there's
18 no objection to this exhibit, Your Honor, so I'd ask
19 -- I'll go ahead and ask a few questions and ask that
20 it be admitted.

21 Q. (BY MS. THOMPSON) For this letter, Ms.
22 Spener, this document is also on IBWC letterhead. Do
23 you see that?

24 A. Yes.

25 Q. And this document is dated a little more

1 recently from April, 1979; is that correct?

2 A. Yes.

3 Q. And if you could look at the first paragraph
4 on the first page. I'll go ahead and read it. "The
5 letter is in response to the telephone call from
6 Principal Engineer Bustamonte of your staff on April
7 2nd in which he referred to the 1906 Water Treaty and
8 kindly asked for a statement describing the manner of
9 determining the reduction in deliveries to Mexico at
10 times of extraordinary drought or serious accident to
11 the irrigation system in the United States as provided
12 in the Treaty." Did I read that correctly?

13 A. Yes.

14 Q. Then if we go over to the next page, Page 2,
15 and this letter is -- is, frankly, clearer in the
16 steps that are described here than what we had looked
17 at before, and the first step here describes that, "At
18 the beginning of an irrigation season, a determination
19 is made of the quantity of water in storage available
20 for release in Elephant Butte reservoir and also in
21 Caballo reservoir." Do you see that statement?

22 A. Yes.

23 Q. And it goes on to describe, "That quantity
24 consists of the total quantity of water in storage in
25 the reservoirs, according to the storage level and

1 area-capacity data." Do you see that?

2 A. Yes.

3 Q. And there's a brief description of some items
4 that are subtracted out. I don't think I need to read
5 that, but do you see that, as well?

6 A. Yes.

7 Q. And then under the second step, it describes
8 then the -- what you described just a minute ago of
9 the losses for delivering the water, and it
10 states, "From the quantity of water available for
11 release from storage, there are deducted the water
12 losses expected in conveying the releases from the
13 storage reservoirs to the Mexican Canal heading and to
14 the lands under the irrigation system in the United
15 States." Did I read that correctly?

16 A. Yes.

17 Q. Okay. And then if we go on to the third step
18 -- and I won't read this whole item here, but at the
19 beginning, it states, "The net remaining waters
20 available for delivery are then divided between Mexico
21 and the United States, in accordance with the Treaty,
22 so that the Treaty allotment to Mexico to be delivered
23 at the Mexican Canal, is diminished in the same
24 proportion as the full entitlement to lands under the
25 irrigation system in the United States is diminished."

1 Did I read that correctly?

2 A. Yes.

3 Q. And, Ms. Spener, when you just described your
4 understanding of how that reduction happens, is it
5 accord in general with those three steps we just
6 mentioned or described in this letter?

7 A. Well, I think this certainly has much more
8 detail than my general understanding of the process.

9 Q. Did you see anything inconsistent with your
10 understanding?

11 A. To the extent that my understanding and
12 description was general, I don't think that you can
13 say that it's consistent or inconsistent.

14 Q. The next statement says and gives an example
15 here that, "If deliveries to the U.S. lands are 80
16 percent of their full entitlement, the delivery to
17 Mexico is 80 percent of its Treaty entitlement." So
18 that would be 80 percent of the 60,000 acre-feet.
19 Again, is that generally accord with your
20 understanding of the reduction?

21 A. So that is generally my understanding of a
22 proportional reduction.

23 Q. Thank you. And I'll just go over one more
24 sentence of this letter here, which is, "The annual
25 full entitlement for lands in the United States is

1 36.29 inches per acre of land based upon the water
2 requirements in the years of full supply, 1946 through
3 1950." Ms. Spener, the -- the number there, 36.29,
4 does that number, do you recognize that number from
5 your evaluations at all of reductions or allocations
6 to Mexico?

7 A. I don't recall.

8 Q. And -- and that number equivalent -- my
9 understanding is that it's equivalent to that 3.024 I
10 mentioned before. Does that number -- do you
11 understand that number to be used by Bureau of
12 Reclamation when it's determining full supply to U.S.
13 lands?

14 MS. NAJJAR: Objection; foundation.

15 JUDGE MELLOY: If she knows.

16 A. I have heard that number before, but I'm not
17 certain of how Reclamation currently uses that number.

18 Q. (BY MS. THOMPSON) And if we look over then at
19 the next exhibit, New Mexico 0697, which also has
20 already been admitted, Your Honor. This is the water
21 supply allocation procedures that was testified to
22 before by Ms. Estrada-Lopez.

23 MS. NAJJAR: Objection; outside the
24 scope of direct.

25 JUDGE MELLOY: Let me -- just a second.

1 What I was going to ask, Ms. Thompson, are you at all
2 close to being done? If not, I think we're going to
3 break because we need to talk about some scheduling
4 issues and exhibits, and we've got some other things
5 to take up. How much longer do you think you'll be.

6 **MS. THOMPSON:** Your Honor, I probably
7 have at least another 45 minutes, maybe a little bit
8 longer.

9 **JUDGE MELLOY:** Then we're going to -- I
10 know you'd like to be done tonight, Ms. Spener, but
11 we're going to hold you over to tomorrow and ask you
12 to come back and continue your examination at that
13 time. You can stay on camera or not as you choose.
14 We're going to talk about some -- some issues dealing
15 with scheduling and exhibits.

16 All right. Between Texas and United
17 States, how many witnesses have you actually sent out
18 the binders with the exhibits so far? Which witnesses
19 are you through with actually sending out the binders?

20 **MS. NAJJAR:** At least three, we believe
21 -- four. I'm sorry.

22 **JUDGE MELLOY:** Through Esslinger?

23 **MS. NAJJAR:** Yes.

24 **MS. KLAHN:** Yes.

25 **JUDGE MELLOY:** Okay. So I assume you'll

1 be sending out some more tomorrow. What I am going to
2 direct in terms of the --

3 **MS. KLAHN:** Your Honor, my team is
4 correcting me that Mr. Sloan, that exhibits for him
5 have already gone out, and also that Mr. --
6 Dr. Blair's will go out in the morning.

7 **JUDGE MELLOY:** Does that mean they have
8 not gone out for Blair, Rios, Ivey, Cortez, Balliew,
9 and Miltenberger; is that right?

10 **MS. KLAHN:** Correct. Although there
11 aren't any for Mr. Ivey, but yes.

12 **JUDGE MELLOY:** Okay. All right. Well,
13 what I'm going to suggest you do is hold off on
14 sending them out first thing in the morning, and as
15 far as the exhibits for the witnesses who have not --
16 the binders have not been put together, I'm going to
17 direct that if New Mexico wants the U.S. and Texas
18 exhibits included in the binders, they're going to
19 have to advise the United States and Texas by tomorrow
20 as to what those cross-examination exhibits are going
21 to be. I assume that you will know what they are by
22 tomorrow, and if you're not able to advise Texas and
23 United States, then you're going to have to supply
24 them when you -- when you do know what they are, but
25 if you supply them to Texas and the United States by

1 tomorrow, then I will direct the Texas and United
2 States include your designated exhibits that are U.S.
3 and Texas exhibits in the binders that they will be
4 mailing out to me. Anything that you add or are
5 unable to designate by -- by tomorrow, I'm going to
6 direct then you're going to have to supply them to me.

7 **MS. KLAHN:** Your Honor, just to clarify,
8 with the deadline for those additional cross exhibits,
9 if they don't supply them tomorrow, would that remain
10 the same as what it is right now, two days, I think?

11 **JUDGE MELLOY:** Yes.

12 **MS. KLAHN:** Okay. Thank you.

13 **JUDGE MELLOY:** And you can hold off on
14 sending out those binders until you receive that
15 information.

16 **MS. KLAHN:** Okay. Thank you.

17 **JUDGE MELLOY:** Okay. A couple other
18 things. One of the paralegals, I believe it was from
19 New Mexico, but I'm not sure, had e-mailed my judicial
20 assistant wanting to compare a list of admitted
21 exhibits so that all the parties will be on the same
22 page, so to speak, as to what's been admitted. Let me
23 tell you what I think we're going to do with exhibits,
24 and if you have a problem with this or think it isn't
25 going to work, let me know, but what we're going to do

1 is after each exhibit -- or after each witness
2 completes his or her testimony, we will scan our sheet
3 that shows what we have indicated from the exhibit
4 lists that you supplied to us are admitted or not
5 admitted, and -- and we will e-mail that to you. You
6 can then compare your list against our list, and if
7 there are any discrepancies, you can bring it to our
8 attention. At the end of this fall session, what we
9 plan to do is take the daily sheets and then transfer
10 that information to the master exhibit list that each
11 of you have provided to us, and then we will actually
12 file that as a document on the docket to show what
13 exhibits have been admitted during this phase of the
14 trial. Again, encourage you to double-check your list
15 against ours to make sure that -- that we haven't
16 missed anything or incorrectly noted anything, and
17 certainly you're free to bring that to our attention.
18 Any questions about that?

19 **MS. NAJJAR:** No, Your Honor.

20 **MS. KLAHN:** No.

21 **JUDGE MELLOY:** One other issue about
22 exhibits is in the list that was used for
23 Ms. Estrada-Lopez, there were certain exhibits that
24 were identified as both a U.S. exhibit and a New
25 Mexico exhibit, but from our review, they're not the

1 same. Let me just give you an example. One of the
2 exhibits that was listed, and I think it was admitted
3 without objection, is US-380, which we understand from
4 the Box.com filing is 167-page Operations and
5 Maintenance Manual for the Upper Rio Grande Projects.
6 It was represented that New Mexico 265 is the same
7 exhibit, but that's just a four or five-page -- I
8 don't have it right in front of me. I could find it.
9 But it's just a very short exhibit titled, "Rio Grande
10 Rectification Project." I don't know if 265 is part
11 of 380 or whether there's some misunderstanding about
12 what the exhibits are and exhibit numbers, but I would
13 ask that you take a look at that and determine and
14 double-check to make sure that when you were
15 representing that US exhibit or a Texas exhibit with
16 the particular exhibit number is the same as the New
17 Mexico or joint exhibit that they, in fact, are the
18 same documents, because -- that's just one we caught.
19 I don't know if there's others, but that's one we
20 particularly noticed as did not appear to be the same
21 exhibit.

22 Scheduling-wise, so we'll assume that
23 the current witness will be hopefully completed by
24 within roughly an hour tomorrow, including any
25 redirect, and then that leaves us with -- let me see

1 here. Let me look at the list. Then you'll do
2 Mr. Esslinger, which you estimate to be two hours, and
3 what's his -- what's his testimony?

4 **MS. KLAHN:** That's Texas, Your Honor.
5 He's the manager/treasurer for the Elephant Butte
6 Irrigation District.

7 **JUDGE MELLOY:** Okay. And from the New
8 Mexico perspective, do you think his cross-examination
9 is going to be lengthy?

10 **MS. THOMPSON:** Your Honor, we estimate
11 about an hour to an hour and a half of
12 cross-examination.

13 **JUDGE MELLOY:** Okay. So let's say four
14 hours on the outside, hopefully keep it to three. So
15 that would be -- that'd take us through about -- four
16 to five hours tomorrow. So we should be able to get
17 into Dr. King by sometime tomorrow with any -- with
18 any luck, and you're estimating him to be four hours;
19 is that right, Ms. Klahn?

20 **MS. KLAHN:** I believe so. I'll let
21 Ms. Najjar speak because I think the U.S. is handling
22 Dr. King.

23 **JUDGE MELLOY:** Ms. Najjar?

24 **MS. NAJJAR:** Yes, Your Honor, I believe
25 four hours is correct.

1 **JUDGE MELLOY:** And what about the cross
2 on him, do you think that's going to be lengthy? I
3 assume it'll be.

4 **MS. THOMPSON:** Your Honor, New Mexico
5 has reserved all cross for Dr. King and Dr. Blair so
6 there will be no cross, so we should be able to get to
7 that quite fast.

8 **JUDGE MELLOY:** Okay. All right. So
9 then that means by Thursday, we should be into
10 Mr. Sloan and maybe even through Mr. Blair, with any
11 luck.

12 **MS. KLAHN:** I think what we're going to
13 do, Your Honor, is have Mr. Ivey out of order on
14 Thursday afternoon, probably as the last witness that
15 day, and then start Dr. Blair on Monday because his
16 testimony will be several hours, and we expect -- we
17 just didn't want to break it up.

18 **JUDGE MELLOY:** Okay. All right. Well,
19 that then -- that's a good segue into my last point I
20 want to talk about, which is the schedule. I had
21 indicated when we established the schedule for the --
22 for this session that my current intention was to hold
23 court on the holiday, and Monday is a federal holiday.
24 My -- my intention is still to do that, but I wanted
25 to make sure that that didn't cause any problems for

1 anyone. You know, as -- as someone mentioned
2 yesterday, I assume everybody is working pretty much
3 seven days a week anyway, so I'm not -- so I'm not --
4 I'm not sure anybody would be taking Monday off in any
5 event. My only -- my only reservation, and I'll --
6 and I don't think it's going to be a problem -- is we
7 had some technical issues yesterday. I think we got
8 those all worked out, and assuming things go smoothly
9 the next couple days, I don't have any big problem
10 with going ahead on Monday. We will probably be
11 somewhat limited in our IT support with the courthouse
12 closed down and -- and so on so if -- if we start to
13 have a lot of technical problems, that may be an
14 issue. But does anybody have a problem with going
15 forward on Monday?

16 **MS. THOMPSON:** No, Your Honor.

17 **MS. KLAHN:** No, Your Honor.

18 **MS. NAJJAR:** No, Your Honor.

19 **JUDGE MELLOY:** All right. Well, then
20 we'll plan on that unless we start to some technical
21 problems, but I think we got that worked out.

22 Anything else we need to talk about
23 today? If not, we'll -- we'll be adjourned. See you
24 tomorrow morning. Thank you, everyone.

25 **MS. KLAHN:** Thank you.

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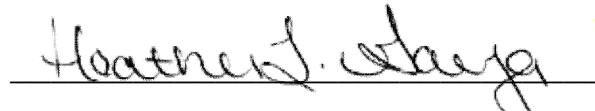
MS. THOMPSON: Thank you.
(The proceedings adjourned at 5:19 p.m.)

CERTIFICATE

I, HEATHER L. GARZA, a Certified Shorthand Reporter in and for the State of Texas, do hereby certify that the facts as stated by me in the caption hereto are true; that the foregoing pages comprise a true, complete and correct transcript of the proceedings had at the time of the hearing.

I further certify that I am not, in any capacity, a regular employee of any of the parties in whose behalf this status hearing is taken, nor in the regular employ of any of the attorneys; and I certify that I am not interested in the cause, nor of kin or counsel to any of the parties.

GIVEN UNDER MY HAND AND SEAL OF
on this, the 7th day of December, 2021.


HEATHER L. GARZA, CSR, RPR, CRR
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