

SUPREME COURT OF THE UNITED STATES
NO. 141, ORIGINAL

STATE OF TEXAS,)
)
 Plaintiff,)
)
 VS.) VOLUME XIII
)
 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 NOVEMBER 2, 2021, commencing at 11:00 a.m.;

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1 **JUDGE MELLOY:** All right. Should we get
2 started this morning? This is in Original No. 141,
3 Texas versus New Mexico and Colorado with United
4 States as intervenor. I'd ask the parties who are
5 going to be appearing at today's session to enter
6 their appearance. All of a sudden my screen went
7 blank. Okay. I got it back now. All right.
8 Ms. Klahn?

9 **MS. KLAHN:** Good morning, Your Honor.
10 Sarah Klahn.

11 **JUDGE MELLOY:** Mr. Wechsler?

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

14 **JUDGE MELLOY:** Mr. Wallace?

15 **MR. WALLACE:** Good morning, Your Honor.
16 Chad Wallace for the State of Colorado.

17 **JUDGE MELLOY:** Mr. Leininger.

18 **MR. LEININGER:** Good morning, Your
19 Honor. Lee Leininger for the United States.

20 **JUDGE MELLOY:** Before we resume the
21 examination of the witness, let me just mention one
22 administrative issue. I was contacted by Judge
23 Boylan, the proposed mediator in this case, and who
24 indicated he had been in consultation with the parties
25 and have set up -- and set up some mediation sessions

1 for December, but essentially the reason he contacted
2 me was to ask that I enter an order formally
3 appointing him mediator. I expect to do that today or
4 at the latest tomorrow. It'll be essentially the same
5 order that I used for Judge Wanger with the exception
6 that Judge Boylan indicated that the parties wanted
7 his hourly rate specified in the order, so I will add
8 that to the order. I also anticipate sending an
9 e-mail and contacting Judge Wanger just to express
10 appreciation for his services and acknowledge the fact
11 that he'll no longer be serving as mediator in the
12 case. I don't know if Judge Boylan wants to be added
13 to the service list. If he does, we'll certainly add
14 him, and I'll take Judge Wanger off the list. Any
15 questions or did I misunderstand anything from Judge
16 Boylan as to your discussions with him? If not, then
17 we will resume the testimony of the witness.

18 Mr. --

19 **MS. KLAHN:** Your Honor, could I raise
20 one administrative issue myself?

21 **JUDGE MELLOY:** Sure.

22 **MS. KLAHN:** We are going to be
23 supplementing the cross-examination exhibits for Danny
24 Chavez with the Texas drone video, which the United
25 States provided to you back at the beginning of the

1 trial on a thumb drive, I think. It's Texas Exhibit
2 1200. The question came up this morning. We can
3 certainly send another thumb drive. We're happy to do
4 that. But we didn't know if you wanted to have two of
5 those rattling around or if you're fine just using the
6 one that you have for the United States.

7 **JUDGE MELLOY:** I think one should be
8 sufficient.

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

10 **JUDGE MELLOY:** Mr. Salopek, we'll resume
11 the examination. I just need to remind you that
12 you're still under oath, and the admonitions about
13 communications with anyone from the outside are still
14 in effect. All right. Mr. Wechsler, you may resume.

15 **MR. WECHSLER:** Thank you.

16 **DAVID SALOPEK,**
17 having been previously duly sworn, testified further
18 as follows:

19 **FURTHER DIRECT EXAMINATION**

20 **BY MR. WECHSLER:**

21 **Q. Good morning, Mr. Salopek. Can you say**
22 **something again, Mr. Salopek? We didn't hear you.**

23 **MR. WECHSLER:** Your Honor, could we just
24 take a moment and see -- we apparently are having
25 technical difficulties. We checked this earlier but

1 are now having trouble.

2 A. Can you hear me now?

3 Q. (BY MR. WECHSLER) Yes, we can.

4 A. Okay. Easy fix.

5 Q. Yesterday, when we left off, we were about to
6 turn to the subject of farm irrigation management, and
7 to do that, I'll ask that we put up the New Mexico
8 demonstrative again for purposes of your testimony.
9 That's New Mexico demonstrative 34, and this time,
10 we're going to look at Page 3. Let me ask you: How
11 much water is needed to irrigate an acre of pecans?

12 A. Approximately 4 to 6 acre-feet.

13 Q. Why the variance between 4 and 6?

14 A. Soil type has a lot to do with it. Your
15 heavy clay soils will use less water, and your very
16 sandy soils will use more. The -- and it also depends
17 on the year. Crop load will have a factor on that.
18 Pecan trees will alternate bear when they have a big
19 crop and a smaller crop, and the larger-crop years
20 will have a little bit more water use.

21 Q. And is the reason that clay soils need less
22 water because clay retains more water?

23 A. Yes. They have a much greater water-holding
24 capacity.

25 Q. Even though it might be a different amount of

1 water put on the acreage, 4 to 6 acres, is the tree
2 still consuming the same amount of water?

3 A. Yes. Regardless of the soil type, the tree
4 will use what the tree needs, and that's what goes
5 through the roots, through the trunk, through the
6 leaves to the crop to produce every -- the -- what
7 we're trying to do is grow pecans. So the soil is the
8 median that the tree is in.

9 Q. Is there a general understanding about how
10 much water is needed to grow pecans in the LRG region?

11 A. Yeah. It's 4 to 6 acre-feet. There's an
12 average out there that is at 5-and-a-half.

13 Q. How about the amount that the tree actually
14 uses/consumes?

15 A. That's the CIR, which is consumptive
16 irrigation requirement. That is 48 inches.

17 Q. That's the amount of water that actually is
18 used by the tree?

19 A. Yeah. That's what goes through the root
20 system, through the tree, through the leaves, through
21 the pecans and the crop and then it's -- from your
22 growing season, it will measure out to be right around
23 48 inches.

24 Q. Have there been studies in the lower Rio
25 Grande that you've used in your operations?

1 A. Yes, there is. We actually participated in a
2 large study that was started in 2002 and went through
3 two complete crop cycles, which was important because
4 you had two off crops and two on crops, and the
5 average consumptive irrigation requirement ended up
6 being right around 48 inches, maybe a hair higher if
7 memory serves me right, and the farm delivery
8 requirement, which is the FDR, that's the exact amount
9 of water that you're applying to the field. So the
10 difference of the 48 and the 5, 5-and-a-half that
11 you're applying is what percolates into the soil a lot
12 of times, but the 48 inches is what goes through the
13 tree, but we applied 5-and-a-half to -- 5 to 6
14 acre-feet during those crop cycles.

15 **Q. That was a study conducted on your property.**
16 **When was that study conducted?**

17 A. It started in 2002, and I believe it
18 completed at the end of the 2005 season.

19 **Q. Based on your years of experience in**
20 **nationwide and regional pecan organizations, is that**
21 **amount of water consistent with the amount of water**
22 **that pecans use nationwide?**

23 A. Yes, it is. It's understood through the
24 different studies, whether it's Arizona, West Texas,
25 and the western region, those studies are very

1 consistent that have been done. But even if you go
2 all the way to the southeast where Georgia is, they
3 happen to be in a 60-inch rain belt, so they get 5
4 feet of water a year. Those farmers over there still
5 have sprinkler systems inside those orchards to
6 supplement the 5 feet of water they get through
7 rainfall.

8 Q. Looking back at New Mexico Demonstrative
9 Exhibit 34, Page 3, what sources of water do you use
10 to irrigate?

11 A. We use surface water, which is EBID water,
12 and we use groundwater.

13 Q. I want to turn to another exhibit to talk
14 about surface water. That's Joint Exhibit 421. Do
15 you recognize this document?

16 A. Yes. I have seen this before on EBID's
17 Website.

18 Q. This is a description from EBID, including
19 irrigation information. It's already been admitted.
20 And the part I want to ask you about is under the
21 heading, "Assessment," and it's that last paragraph in
22 the first column on the left. We can see a
23 description here about the assessment. Do you pay an
24 assessment to EBID every year?

25 A. Yes, we do.

1 Q. When is the amount of the assessment from
2 EBID announced?

3 A. Typically in November.

4 Q. What's your understanding of the purpose of
5 the assessment? Please feel free to use the exhibit
6 if that's helpful.

7 A. It's to cover the operating cost of the
8 district. That's the maintenance of the
9 infrastructure and the salaries of the employees and
10 purchase of any equipment they might need, repairs on
11 equipment. So it's general operation of the -- of the
12 district.

13 Q. Is the dollar amount of the assessment
14 adjusted depending on the amount of surface water that
15 is available?

16 A. No.

17 Q. Is the assessment based on an amount per
18 acre?

19 A. Yes.

20 Q. What -- if -- let's go back to Demonstrative
21 Exhibit 34, Page 3. What was the assessment per acre
22 in 2021?

23 A. It was \$90 an acre.

24 Q. What was your total EBID payment that year?

25 A. Approximately 156,000.

1 Q. Is water allotted to EBID members on a
2 per-acre basis, as well?

3 A. Yes, it is.

4 Q. Does EBID guarantee an amount of water per
5 acre if you pay your assessment?

6 A. No, they don't.

7 Q. How much water was allotted to EBID members
8 in 2021?

9 A. It was 4 inches, approximately one-third of
10 an acre-foot.

11 Q. Do you use all of your surface water each
12 year?

13 A. Yes, I do.

14 Q. Now, you indicated earlier that pecans take
15 much more than 4 inches, consume 48 inches, and -- and
16 you need to put on the fields 4 to 6 acre-feet. Can
17 you give us an example of how you used that 4 inches
18 in 2021?

19 A. Well, this year, they did not open the head
20 gates at the reservoirs until the first of June, and
21 at that time, you're able to call in an order -- put
22 in an order for acreage that you want to irrigate. So
23 what I did is as soon as the water was available, I
24 placed orders on all the farms that had irrigations
25 coming up, and we applied the EBID water as soon as we

1 got it to those acreages.

2 Q. How many irrigations did that 4 inches give
3 you?

4 A. One and just a hair.

5 Q. In 2021, do you know when EBID had used all
6 of its project allocations so that it stopped taking
7 project water?

8 A. I believe it was right around the first of
9 July.

10 Q. In 2021, do you know when EP No. 1 had used
11 all of its project allocation?

12 A. I don't know exactly the day, but I remember
13 seeing water still in the system the first week or two
14 of September, so 70 days after we were off.

15 Q. In your experience since 2008, is it common
16 for EBID to use all of its project allocation before
17 EP No. 1?

18 A. That has been the common situation since
19 2008.

20 Q. In a year like 2021 when EBID uses all of its
21 project allocation first before EP1, do you know if
22 EBID continues to have tasks related to the surface
23 water?

24 A. Yes. EBID's employees, the ditch riders on
25 those ditch that carry the water to Texas are still

1 monitoring that water, and the ditches are keeping
2 clean and they're making sure the water makes it to
3 Texas. So, yeah, they're still operating on those
4 canals, best of my knowledge, 24 hours a day.

5 **Q. Is that part of your assessment that pays for**
6 **that?**

7 A. Yes. We are -- we are paying for monitoring
8 Texas water to go through our system.

9 **Q. Does anyone track the amount of surface water**
10 **that you use?**

11 A. EBID does, and I do.

12 **Q. Turning to groundwater use on your farms,**
13 **have you investigated when the original groundwater**
14 **wells on your main farm were drilled?**

15 A. Yes. After my father passed away, Bill
16 Stahmann, our neighbor, mentored my mom and I and
17 helped us with various farming tasks and understanding
18 how to pecan farm, and one of the important things
19 that he emphasized to us was trying to develop
20 historical records, finding any old record about when
21 wells were drilled, and keeping track of your water
22 use through water records. So we -- we did that, and
23 we discovered that the first well that was drilled on
24 our main farm was in 1948, and then --

25 **Q. What about --**

1 A. And then we had subsequent wells that were
2 drilled in '50 and '51.

3 **Q. Based on your records and research, do you**
4 **know why the wells on your main farm were drilled?**

5 A. Yes. Things were starting to dry out a
6 little bit in the district so the wells were put in to
7 supplement the crops so they could finish them out or
8 start them if there was a later release date. So the
9 wells were used to take care of our crops so you
10 wouldn't lose them.

11 **Q. Did your family have to obtain any loans in**
12 **order to drill the wells?**

13 A. I'm sure they did. We owed a lot of money
14 over the years.

15 **Q. How about when your father transferred the**
16 **farm to you, were there loans on the property based on**
17 **well use?**

18 A. Yes. We owed a lot of money when my father
19 died, and he had put in two deep wells prior to his
20 death in '77/'78.

21 **Q. And today -- I'm sorry to interrupt. Please.**

22 A. Go ahead. I was -- anyway, yeah, we -- we
23 definitely had a lot of debt.

24 **Q. In today's dollars, approximately how much**
25 **does it cost to drill a new well?**

1 A. Drilled a new deep well last year, and the
2 cost of that well was \$335,000.

3 **Q. Do you need a permit from the New Mexico**
4 **state engineer to use groundwater?**

5 A. Yes, we do.

6 **Q. Are you familiar with the application process**
7 **to the state engineer?**

8 A. I am.

9 **Q. We will have folks from the state engineer**
10 **testify to that, but can you please summarize your**
11 **understanding of that application process?**

12 A. Well, if you have -- if you need to put in a
13 well for well failure, supplemental well, you'll go to
14 the state engineer's office and you will talk to the
15 tech who's going to help you there, and they will
16 determine if you have water rights, first of all, and
17 then you will show them where you're thinking about
18 putting the well on your -- on a map. They have a lot
19 of aerial maps in there, and then after that, you will
20 describe to them approximately how deep you think
21 you're going to put the well in, and then you will --
22 they'll get the coordinates, then you'll get a legal
23 description, you'll put it in a newspaper, it'll be
24 advertised for, I think it's three weekends -- three
25 weeks, maybe four, but I know it's a significant

1 amount of time, and then if there's no issues with
2 your application, then you will be issued a permit.

3 Q. Does that notice period provide an
4 opportunity for other individuals and water users to
5 protest?

6 A. Yes, it does.

7 Q. Do you have well permits on all of your
8 groundwater wells?

9 A. Yes, we do.

10 Q. How many total wells do you have on all of
11 your farms combined?

12 A. 32.

13 Q. Does that mean you've gone through the
14 application and permitting process on all of those
15 wells?

16 A. They have all been permitted, yes.

17 Q. During that process, did the United States,
18 Texas, EBID, or EP1 protest any of those 32 wells?

19 A. No.

20 Q. Before we leave this demonstrative exhibit
21 here, New Mexico Demonstrative 34, Page 3, at the
22 bottom here, you indicate that the variable operating
23 cost is \$305,000. What does that mean?

24 A. That's been the average electric utility cost
25 that I have spent on my pecan operation for the last

1 four years, five years.

2 Q. As we continue to talk about your water
3 permits, let's look at one of those permits on Page 4
4 of this demonstrative exhibit. Do you recognize this
5 permit?

6 A. Excuse me a second.

7 Q. It is small.

8 A. Yes, I do.

9 Q. And let's -- we can see the date it was
10 received, and you can see the state engineer stamp
11 there in the upper right-hand corner. So 92, 93.
12 Let's highlight Paragraph 7 there. You can see here
13 that it's an application to combine the wells and
14 commingle the water. What's your understanding of
15 what this permit allows?

16 A. Well, the reason we applied for this permit
17 is we had bought some neighboring farms next to our
18 farm, and if you look over here on top, you'll see the
19 LRG 1872 and then all the S's are supplemental. If
20 you look down here, it's LRG 2041. Those were the
21 wells on the neighboring farm that we had purchased,
22 so we combined and commingled all those wells together
23 so we can irrigate any acre of land on that farm with
24 any of those wells.

25 Q. Are you familiar with the owner management

1 **plans, or O-W-M-A-N, used by the state engineer to**
2 **administer water rights today?**

3 A. Yes, I am familiar with them.

4 **Q. What do OWMAN plans do?**

5 A. They recognize your historical use of water
6 amongst your operation, and it's like a larger version
7 of the combine and commingle permit that we saw here.
8 It allows you, if you have farms that are many miles
9 away, you're not going to be running water down the
10 canal to get to them, but you can transfer your
11 district water and irrigate it on that particular farm
12 because some farms have an easier times of getting
13 district water than other farms. Some farms are
14 cheaper and faster to irrigate with district water
15 than it is with well water, depending on what you
16 have, and also, like at the end of the season, for
17 example, in 2021, we had remnants of water that was
18 left over when we had irrigated the farm so we --
19 remnants of EBID water, so we transferred all that
20 water to one farm and then we irrigated that farm with
21 the remnant EBID water, and what OWMAN did is it
22 recognized the historical practices of using water in
23 our valley of our putting water to historic beneficial
24 use basically.

25 **Q. We're looking at one type of permit here. Do**

1 you have other types of permits from the Office of the
2 State Engineer?

3 A. Yes, I do.

4 Q. What are some of those types of permits?

5 A. We have done well replacement permits, and
6 then we have --

7 Q. Stop there.

8 A. Go ahead.

9 Q. Well, what's -- what's a replacement permit?

10 A. You know, a well that gets old and fails,
11 collapses in upon itself, various reasons why. I had
12 one well actually that was drilled on a fault, and we
13 had some smaller quake in the valley there, and it
14 broke the well in half, so I had to replace it. So
15 there's things that can happen to these wells, and
16 you'll have to replace them from time to time. That's
17 a well replacement, and the other types of permit that
18 I have are supplemental well permits.

19 Q. What's a supplemental well permit?

20 A. It allows you, if you have your original
21 well, and you want to try and develop a bigger head of
22 water so you can actually use less water, it allows
23 you to drill another well that will help push the
24 water along so it'll be a more efficient use of water.

25 Q. Are those supplemental well permits? Do they

1 allow you to pump new water or increase your water
2 use?

3 A. No, they don't.

4 Q. Do your state engineer permits limit the
5 amount of water you can use?

6 A. Yes, they do.

7 Q. How?

8 A. It's stated on our permit, the amount of
9 water that you can use on all those wells,
10 supplemental wells, or whatever it is, and whether
11 it's a 5.5 FDR, I have some that are that, I have some
12 that are 4.5 FDRs, and you cannot go over the amount
13 of 4.5 between EBID water and well water combined.

14 Q. To break that out a little bit, your permits
15 have a maximum amount of water that can be used under
16 the permit and then there is also a maximum amount of
17 water that can be used on each acre; is that correct?

18 A. That is correct.

19 Q. Are all of your wells metered?

20 A. Yes, they are.

21 Q. Does anyone keep track of how much
22 groundwater you use?

23 A. I do, and the state engineer does.

24 Q. Do OSE water masters periodically check your
25 wells?

1 A. Yeah. They're checking them all the time.

2 **Q. I want to turn to New Mexico Demonstrative**
3 **Exhibit 34, Page 5. We see here at the top a**
4 **reference to Block 37, Well 303. Can you tell us what**
5 **Block 37, Well 303 is?**

6 A. Block 37 is one of my pecan farm blocks, and
7 Well 303 happens to be the well that's on that block.

8 **Q. This is also an exhibit. Let's look at that**
9 **version. It's New Mexico 2077. Is this the same**
10 **document we were just looking at?**

11 A. It appears to be, yes.

12 **Q. Was this a document created by you or under**
13 **your supervision?**

14 A. Yes, it is.

15 **Q. For what purpose?**

16 A. Well, in order to know what you're doing on
17 farming, you have to keep track of the dates you
18 irrigate, and this is basically signifying the dates
19 that we irrigated that particular block in that given
20 year.

21 **Q. Do you use this document in your farming**
22 **operations?**

23 A. Yes, we do.

24 **Q. Do you keep it in your business records in**
25 **the normal course of business?**

1 A. Yes, we do.

2 **Q. Did you produce this document in response to**
3 **a subpoena from Texas?**

4 A. Possibly. I don't remember exactly, but I
5 might have.

6 **Q. You did produce a number of documents in**
7 **response to a subpoena?**

8 A. Yes.

9 **MR. WECHSLER:** Your Honor, I offer New
10 Mexico Exhibit 2077.

11 **JUDGE MELLOY:** Any objection?

12 **MS. KLAHN:** Your Honor, could I voir
13 dire the witness about this?

14 **JUDGE MELLOY:** You may.

15 **MS. KLAHN:** Mr. Salopek, my name is
16 Sarah Klahn. I represent the State of Texas. If you
17 -- I understood your testimony that this particular
18 document is kept in the ordinary course of business.
19 If we went into your files, would we find identical
20 documents for -- in this format with this type of
21 setup to show the different water uses for years prior
22 to 2011?

23 **THE WITNESS:** I have documents that are
24 similar to this. I have some that reflect the same
25 information in a different form.

1 **MS. KLAHN:** So was this document in this
2 format created at the direction of counsel?

3 **THE WITNESS:** No.

4 **MS. KLAHN:** How did you come up with
5 this document?

6 **THE WITNESS:** I had an intern who worked
7 for me a few years ago, and we put this together.

8 **MS. KLAHN:** Your Honor, my concern is
9 simply that this sounds an awful lot like expert
10 testimony when you get into this question of was this
11 created by you or under your direction. The fact that
12 he has similar information but not in this format in
13 his records suggests to me that this might be pushing
14 the envelope in terms of percipient testimony. We
15 don't object to this in the demonstrative context
16 because as Mr. Wechsler has said on numerous
17 occasions, what's in the demonstrative exhibit doesn't
18 matter, it's the testimony. So I would object to
19 this, but we don't object to the demonstrative that
20 has the same information.

21 **MR. WECHSLER:** Your Honor --

22 **MR. LEININGER:** Your Honor, the United
23 States -- the United States joins in that objection.
24 We don't object to this being used as a demonstrative.
25 We do object to it being admitted.

1 **MR. WECHSLER:** Your Honor, if I may
2 respond.

3 **JUDGE MELLOY:** You may.

4 **MR. WECHSLER:** He's laid sufficient
5 foundation. He testified that he created this in the
6 normal course of business. It had nothing to do with
7 the litigation despite Ms. Klahn's unfounded
8 suspicions. He uses it as part of his business. He
9 is a percipient witness who is going to testify to
10 exactly how he has used that in the past. That's
11 precisely what a fact witness does. We're not asking
12 him to offer any kind of expert opinion.

13 **JUDGE MELLOY:** And as I understand it
14 from the witness, the blue refers to well water, and
15 the pink or whatever that color is, is canal water; is
16 that right?

17 **THE WITNESS:** Yes, sir.

18 **JUDGE MELLOY:** And canal water, does
19 that mean EBID water?

20 **THE WITNESS:** Yes, it does.

21 **JUDGE MELLOY:** Well, I -- I think the
22 witness has laid sufficient foundation that it's
23 created in the ordinary course of business and is a
24 business record so I'll overrule the objection. The
25 exhibit is admitted.

1 Q. (BY MR. WECHSLER) Mr. Salopek, can you please
2 explain what this spreadsheet shows?

3 A. Sure. If you go to the top number and start
4 in 2011, that 32411 was the first irrigation of that
5 season on that block. If you go to '12, the first
6 irrigation of that season was '09. '13 was March
7 14th, et cetera, all the way through, and it allows
8 you to see the original dates that we irrigated that
9 particular block and then every date after that is a
10 subsequent irrigation. As you go through the season,
11 you'll see that the irrigation dates get a little bit
12 tighter, and on those particular years, like in '11,
13 it made more sense to transfer my EBID water to
14 another farm so that farm only received well water.
15 You can look at 2017, for example, where we had more
16 canal water, and you can see more of the -- I'm
17 calling it taupe, colors for the 2017, and then at the
18 bottom down there, it's the total amount of
19 irrigation, and you can see they fluctuate a little
20 bit between 16 and 12 at a low, and in 2019, it was
21 not completed because we didn't ever finish it out.
22 When we were doing this, the season wasn't complete
23 yet when I lost my intern. The -- and if you -- just
24 to give you a little explanation, just as a sidebar
25 note, you see the date is not always the same when we

1 started irrigation season. It fluctuates. And that
2 indicates whether we had a wet winter or a dry winter.
3 So if we got no moisture over the wintertime, you'll
4 see an irrigation start date like 3/9 because the
5 ground is very dry. So if it had moisture in it, we
6 would start a little bit later.

7 **Q. That's when you start your irrigation at the**
8 **beginning of the season. During the irrigation**
9 **season, how do you decide when to irrigate?**

10 A. We use three methods. Calendar obviously is
11 one that you're looking at here. We use a instrument
12 called a tensiometer, and you put it in the ground
13 about 16 to 18 inches deep, 15 inches, and it has a
14 ceramic tip on the bottom. You fill it with water.
15 It has a gage on it and as the ground dries out, it
16 pulls moisture out of the ceramic tip, and you'll see
17 a higher reading on the gage. The higher the number,
18 the drier the ground is. We also use a handheld soil
19 probe that you can stick in the ground, and over the
20 years in using tensiometers and using a soil probe,
21 you have a really good idea what's happening with the
22 soil. So those are the methods we use to determine
23 irrigation. A lot of experience.

24 **Q. (BY MR. WECHSLER) You mentioned this when Ms.**
25 **Klahn was asking you some questions, but have you kept**

1 records of your past water use?

2 A. We have.

3 Q. During the time that you've been tracking,
4 has your water use on your farms remained consistent
5 or stable?

6 A. I would say stable. They fluctuate a little
7 bit just depending on environmental elements and size
8 of crop.

9 Q. Let's turn to New Mexico Demonstrative
10 Exhibit 34, Page 36. Here you can, see, Mr. Salopek,
11 at the top it says, "2020 water usage recap." Do you
12 see that?

13 A. Yes.

14 Q. Again, I'm going to turn your attention to
15 the actual exhibit in this matter, which is Exhibit
16 New Mexico 990. You recognize this as the same
17 document we were just looking at on the demonstrative
18 exhibit?

19 A. Yes, I do.

20 Q. Was this a document that was created by you
21 or under your supervision?

22 A. Yes. It was created in office.

23 Q. Was it created by you as part of your farming
24 operations?

25 A. Yes. This was created when we had to start

1 keeping exact track of our water. This is what I used
2 to track it.

3 Q. And to Ms. Klahn's point, did you create this
4 for purposes of this litigation?

5 A. No, sir.

6 Q. Do you keep this document in your business
7 records in the normal course of business?

8 A. I do.

9 Q. Did you produce this document as part of your
10 response to the subpoena?

11 A. I don't remember. I could have. I don't
12 remember.

13 MR. WECHSLER: Your Honor, I offer New
14 Mexico 990.

15 JUDGE MELLOY: Any objection?

16 MS. KLAHN: No objection.

17 JUDGE MELLOY: 990 is admitted.

18 Q. (BY MR. WECHSLER) Mr. Salopek, can you please
19 explain what we're looking at with this spreadsheet?

20 A. Yes. It's pretty busy so -- but I will try
21 to -- if you can go to the far left side there,
22 everything is what I call each of those individual
23 farms.

24 Q. Do you want us to call -- sorry. Do you want
25 us to call any part of it out? Do you want --

1 A. Well, I'm going to talk about the main farm
2 because once you understand how it works, you can look
3 at any farm and understand how it works.

4 **Q. All right. We're going to call out -- let's**
5 **do the top column, as well.**

6 A. Okay.

7 **Q. The row.**

8 A. As we have gone through the adjudication, you
9 look there, and you see the EBID acreage, the deeded
10 acreage, and the OSE, which stands for the Office of
11 State Engineer. Our deeded acreage is what we
12 physically paid for when that farm was bought, 599.37
13 acres, approximately 600 acres. The EBID acreage is
14 the amount that we pay EBID for the assessment, which
15 is 555 acres, and the 539 is the amount that the state
16 engineer had determined that we were allowed -- that
17 we were irrigating, so we had been cut back on the
18 actual acreage that we own. The next column over
19 there is available well water and then the next column
20 over is available EBID water and then the next column
21 is total water available. So when you look at that,
22 this particular year, this was 2020, so this was last
23 year's chart. I think it was December of 2020. If
24 you look at the OSE EBID water available, that's -- we
25 had 1.167 acre-feet from EBID. This particular farm,

1 the main farm, has a 5.5 FDR that we have applied for,
2 and it is -- or entered evidence of the usage of that
3 amount of water rather, and so you subtract 5.5. You
4 subtract 1.167 from 5.5, and that gives you 4.333
5 acre-feet of well water you can use. Does that make
6 sense? Any questions so far?

7 **Q. I think I understand what you're saying. So**
8 **you're --**

9 A. Okay. So --

10 **Q. Sorry. You're -- when you get the 4.33,**
11 **that's from that top column, and then the available**
12 **EBID water, the 1.167, that's from the column, the**
13 **fourth column; is that right?**

14 A. Right. And the one that -- that we are
15 measured on is the OSE number. The other ones are on
16 there just for my benefit of what I -- what I feel I
17 should have, but anyway, I don't. The -- and then you
18 have the total water available over there, so as you
19 go through the season, you can see the OSE total water
20 available was 2,969.34, and then if you go to the
21 total water used to date, I used 2,935 acre-feet.
22 That gave me the amount of water I used was 5.436.
23 You can see that my deeded acreage, had I had that
24 recognized would have been 4.8, and if you look at the
25 EBID number, it was 5.2. And then if you go to the

1 rear column, you see the OSE number. I was very close
2 to the 5.5, but it was .064 was the amount of water
3 that I had remaining that I did not -- that I could
4 have used that I did not use.

5 Q. And just to make sure we're on the same page,
6 when you're looking at the column that says "total
7 water used to date" and "remaining water balance,"
8 that's in total acre-feet, right?

9 A. That is correct.

10 Q. But the -- the next column over,
11 the "acre-feet used to date," the 5.4, that's on an
12 acre-foot per acre basis?

13 A. That is correct.

14 Q. If we back out of this document -- the call
15 out, and we look at the -- well, you actually do this
16 for each of your farms; is that right?

17 A. That is correct.

18 Q. And then at the bottom, you can see a column
19 there that says "totals"?

20 A. Yes.

21 Q. And is that a total for all your farms?

22 A. That is an average, because of the OWMAN that
23 we have. So if you look over here, our total usage
24 was on the OSE acre-feet used to date, the total usage
25 for the whole year was 4.574 acre-feet, and my average

1 for everything, I could have used .774 more over
2 everything.

3 **Q. Can you explain what you do to decide whether**
4 **to use surface water or groundwater?**

5 A. First of all, if surface water is available.
6 That's the first thing you would consider. And if
7 it's available, then you will place your orders and
8 try to use it in a timely fashion, especially like
9 this year because we only had one month to use it.
10 And then the rest of the time is going to be relying
11 on well water.

12 **Q. Are there advantages to either surface water**
13 **or groundwater?**

14 A. Well, surface water is better quality water.
15 You typically will have a little bigger head of water
16 so it's a little more efficient to irrigate with,
17 saves you in labor. You can apply -- you know, the
18 bigger the head of the water, the less water you're
19 going to put on the field because you can travel
20 across it faster.

21 **Q. Please.**

22 A. Go ahead.

23 **Q. You also mentioned that there's higher costs**
24 **with groundwater; is that right?**

25 A. Absolutely. I mean, energy cost, every drop

1 of water that you're putting on at the well has an
2 energy cost of some form to it.

3 Q. Let's look at those energy costs, and let's
4 look at New Mexico Exhibit -- well, let's look at the
5 Demonstrative 34, Page 7, and then let's turn to the
6 actual exhibit, which is New Mexico 984. Do you
7 recognize this document?

8 A. Yes, I do.

9 Q. What is it?

10 A. This is what we do every year to track our
11 kilowatt usage.

12 Q. If we turn to Page 4 of this document, is
13 this the same document we were just looking at in New
14 Mexico Demonstrative 34, Page 7?

15 A. Yes, it is.

16 Q. This is the energy usage on all farms; is
17 that right?

18 A. Everything that has an electric well on it,
19 yes.

20 Q. Was this document created by you or under
21 your supervision?

22 A. Yes, it was.

23 Q. For what purpose?

24 A. It's just interesting to track our kilowatt
25 hour usage every year so at the end of the season, I

1 always like to see how it compares.

2 Q. And was this document created in the normal
3 course of business or created for litigation?

4 A. No. It's something we do every year.

5 Q. Do you use this document in your farming
6 operations?

7 A. Yes, we do.

8 Q. Do you keep it in the normal course of
9 business?

10 A. Yes, we do.

11 MR. WECHSLER: Your Honor, I'll offer
12 New Mexico Exhibit 984.

13 JUDGE MELLOY: Any objection?

14 MS. KLAHN: Yes, Your Honor. Could I
15 voir dire?

16 JUDGE MELLOY: You may.

17 MS. KLAHN: Mr. Salopek, you started
18 tracking kilowatt hours in 1993? You don't have any
19 records prior to that; is that right?

20 THE WITNESS: That's as far as I had my
21 intern go back to.

22 MS. KLAHN: And what was the source of
23 information that your intern used?

24 THE WITNESS: Electric meter bills.

25 MS. KLAHN: So it was literally the bill

1 from the electric power company that they consulted.

2 THE WITNESS: Yes.

3 MS. KLAHN: And was there any adjustment
4 made for changes in the electric grid that might have
5 changed the way that the kilowatt hours were tracked?

6 THE WITNESS: I don't believe there was
7 any changes with the grid.

8 MS. KLAHN: But you're familiar with
9 what I'm talking about?

10 THE WITNESS: Not really.

11 MS. KLAHN: Okay. Your Honor, my
12 concern about this is I don't know that it is
13 meaningful. It may reflect what was on his electric
14 bill, but there are sort of notorious problems with
15 kilowatt hour data, especially when it relates to well
16 pumping, so I just don't think it's reliable, and if
17 he wants to testify from the demonstrative about what
18 his understanding of his electric bill has been,
19 that's fine, but I don't think this should go into the
20 record.

21 MR. WECHSLER: Again, Your Honor, it's
22 in the same unit, kilowatt hours. Ms. Klahn seems to
23 be suggesting that there are notorious problems.
24 There's no evidence of that whatsoever. He simply
25 used records he has in his farming operations, created

1 these in order to track the amount of water he's using
2 for well pumping and -- and uses that as part of his
3 normal operations.

4 **JUDGE MELLOY:** All right. I'll admit
5 the exhibit. 984 is admitted.

6 **Q. (BY MR. WECHSLER) Mr. Salopek, can you please**
7 **explain what we're looking at here on Page 4 of New**
8 **Mexico Exhibit 984?**

9 A. Well, it's -- if you look at it, you can see
10 when we had high water, river water in '93, we had low
11 kilowatt usage, and as you look at it, you can start
12 to see that the drought had begun in -- kind of in '99
13 and continued and then we had a -- in 2003, you can
14 see we -- I think we got 3 or 4 inches of surface
15 water that year. So you can see a very large use of
16 kilowatt hours that year, and then there was a little
17 more surface water so it's very reflective of the
18 amount of surface water we get. So, like, when I was
19 talking about my irrigation sheet here a couple of
20 slides back in 2017, if you remember, had more
21 irrigation dates from the district. If you look at
22 2017, you can see it actually went down on kilowatt
23 usage, so it is very reflective of -- of the amount of
24 water that we're getting from the district, and as you
25 look at it from the time the operating agreement

1 started, it's trended higher.

2 Q. You indicated 2017 was a higher surface
3 water. What are your average energy costs in a year
4 like 2017 when the allocation is higher?

5 A. Around \$75 an acre.

6 Q. What are your typical energy costs in a year
7 when the project allocation is low, only several
8 inches?

9 A. It's been running \$150 an acre, more or less.

10 Q. Let's turn back to New Mexico Demonstrative
11 Exhibit 34, Page 8 this time. Using this page as a
12 guide, Mr. Salopek, can you please summarize your
13 fixed and variable costs?

14 A. Our fixed costs are going to be the EBID
15 assessment. We're going to pay that every year up
16 front, and depending on how much water we get from
17 EBID will reflect on our variable cost of the energy
18 that we have to use with wells. So EBID is more fixed
19 cost, and then availability of water will help
20 fluctuate the -- the cost of our energy that we have
21 to use to irrigate wells.

22 Q. Let's turn to Demonstrative Exhibit 34, Page
23 9. How important is it for commercial orchards to
24 have timely irrigation?

25 A. It's incredibly important.

1 **Q. Tease that out a little bit. In your**
2 **experience, what's the impact of a lack of irrigation**
3 **water during the spring?**

4 A. You'll make your trees sick. They'll get
5 really thin leaves. They'll be kind of almost see
6 through, and they'll be, you know, struggling.

7 **Q. In your experience, what's the impact of a**
8 **lack of irrigation water during the summer?**

9 A. When it gets hot, if you don't have enough
10 water to get through the peak hot time of the year,
11 you'll probably have tree death. If nothing else, the
12 tree will die back to the trunk, but I've seen trees
13 die in the middle of the summer without sufficient
14 water.

15 **Q. In your experience, what's the impact of a**
16 **lack of irrigation water during the fall?**

17 A. In the fall is highly critical. That's when
18 you're, as I had discussed earlier about monsoonal
19 rains and the crop maturing age, if you do not have
20 adequate water in the late part of the season, I've
21 seen trees abort most of their crop by missing
22 irrigation date in as little as three days, so if you
23 went weeks without water, you would abort the whole
24 crop or if it didn't abort it, you would have an
25 entire crop look like that picture on the left there.

1 **Q. In your experience --**

2 A. Un-edible.

3 **Q. In your experience, what's the impact on**
4 **pecans of a year-long irrigation of deficit water --**
5 **of irrigation water?**

6 A. You're going to have severe tree death, and
7 if they die back to the trunk, you have killed most of
8 your roots, also. So the consequences of that are
9 just -- it would not really be a viable orchard any
10 more.

11 **Q. Have you personally seen any effects of low**
12 **project water supply on pecans in the LRG and New**
13 **Mexico?**

14 A. Yes, I have. Starting in 2003 when we only
15 had one irrigation, there were lots of orchards up and
16 down the valley that did not have access to well
17 water, and there's many, many dead orchards up and
18 down the valley now.

19 **Q. Turn our attention to the New Mexico pecan**
20 **growers. What kind of organization is the New Mexico**
21 **pecan growers?**

22 A. It is a nonprofit group for the benefit of
23 New Mexico pecan growers.

24 **Q. Why was it formed?**

25 A. Previously, the only organization that we had

1 in the area was Western Pecan Growers Association,
2 which was West Texas, New Mexico, Arizona, and
3 California. That organization was formed in 1966 to
4 1967. As the pecan industry grew in New Mexico, there
5 became opportunities for marketing money from the
6 State of New Mexico. We had legislative people that
7 wanted to talk to New Mexico pecan growers. So we
8 just didn't have an organization that could fill the
9 needs just for New Mexico issues so we formed it in
10 2001.

11 **Q. What has been your role in the New Mexico**
12 **Pecan Growers?**

13 A. I was a founding member, and I was president
14 for the first ten years.

15 **Q. Are you still a board member?**

16 A. Yes, I am.

17 **Q. What's the membership of the New Mexico Pecan**
18 **Growers?**

19 A. Roughly 300 members.

20 **Q. Do you know how many acres they represent?**

21 A. Close to 30,000.

22 **Q. Let's look at New Mexico Exhibit 470. Do you**
23 **recognize this document?**

24 **MR. WECHSLER:** This has been admitted,
25 Your Honor.

1 Q. (BY MR. WECHSLER) We can see, Mr. Salopek, if
2 you back out, your signature at the bottom here.

3 A. Yes, I recognize this.

4 Q. What is it?

5 A. It was a letter that we sent out to our
6 membership because of the active AWRM regs, active
7 water resource management that came out. I had
8 attended a evening meeting some time in early
9 November, and the state engineer was talking about the
10 new regulations they were going to impose on the lower
11 Rio Grande, and alarm bells went off after I heard
12 their talk.

13 Q. And if we call out that first paragraph, we
14 can see what you're referring to, the Active Water
15 Resources Administration. Sometimes those are called
16 Active Water Resources Management; is that right?

17 A. That is correct.

18 Q. You used the term AWRM. Does that refer to
19 those proposed organizations?

20 A. That was an acronym that was used mostly.

21 Q. Sometimes people say A-W-R-M, and that's the
22 same thing, right?

23 A. Yes, sir.

24 Q. Let's back out of here and look add the
25 numbered paragraphs here. In the first paragraph,

1 you're indicating a concern about the possible
2 limitation of 4 acre-feet. Do you see that?

3 A. Yes. I do.

4 Q. Can you please explain why that was a concern
5 for the New Mexico Pecan Growers?

6 A. Sure. We had just gotten done with that
7 study on my farm that was showing that we were using 5
8 to 6 acre-feet of water to grow a commercial crop, and
9 we had been putting our water to historic beneficial
10 use for 60 to 70 years and all of a sudden, we didn't
11 have our day in court to prove up our water. This was
12 taking away all the administration that the state had
13 put in place.

14 Q. Did you have any other concerns about the
15 AWRM proposed in --

16 A. Yeah, there was. Besides the 4 acre-feet
17 deal, it got rid of all the adjudication efforts. So
18 like I said, our day in court was no longer going to
19 be available with this. And it also had a deal as you
20 read in the regs further about limiting wells that
21 were within X amount of distance from the river, which
22 is pretty much every well in the valley. So it was a
23 -- it was a business killer. It was a -- it was not
24 going to work.

25 Q. You mentioned that your concern was that 4

1 acre-feet of water wouldn't be enough for pecans. Did
2 you and the New Mexico Pecan Growers recognize that
3 some crops use less than or the same amount as 4
4 acre-feet?

5 A. Yes. There was a broad brush attempt to
6 average everybody the same, whether you had a low use
7 crop that was using 2 or 3 acre-feet. It was -- it
8 was unfair to try and categorize everybody the same.
9 We're not disagreeing that there might be a 4
10 acre-foot average in the valley, but averages are
11 highs and lows, so it just threw everybody into the
12 same -- same pot of soup basically.

13 Q. Let's look at New Mexico Exhibit 689, and,
14 again, this has been admitted already, Mr. Salopek,
15 but do you recognize this document?

16 MS. KLAHN: Excuse me, Your Honor. I --
17 I thought that these were cross exhibits, and I guess
18 I just don't know the Court's policy if an exhibit is
19 admitted for cross, is it fair game for direct, and so
20 that's my question, I guess.

21 MR. WECHSLER: Your Honor, it's been
22 admitted for all purposes. They're certainly on
23 notice that this exhibit might come up with
24 Mr. Salopek. I don't -- I don't understand Ms.
25 Klahn's point.

1 **MS. KLAHN:** I'm simply asking for a
2 policy decision. I'm not --

3 **JUDGE MELLOY:** You can use it. You can
4 use the cross exhibits.

5 **MS. KLAHN:** Thank you. So would it be
6 the same the other way? So if there's a direct
7 exhibit that's been admitted and we don't identify it
8 on cross, we're okay to use it, correct?

9 **JUDGE MELLOY:** Yes.

10 **MS. KLAHN:** Okay. Thank you.

11 **Q. (BY MR. WECHSLER) Mr. Salopek, did you finish**
12 **your answer? I had asked you if you recognized this**
13 **document.**

14 A. Yes. I remember seeing it.

15 **Q. Was this a response from State Engineer John**
16 **D'Antonio to your concerns?**

17 A. It addressed our letter. It didn't address
18 our concerns.

19 **Q. Fair enough. Following this document, did**
20 **you enter into a dialogue with the State of New Mexico**
21 **over the needs of pecans in the Lower Rio Grande?**

22 A. Well, we did a few things. Obviously we had
23 sent a letter to the state engineer, and this was the
24 response that we got, which was unsatisfactory. So we
25 reached out to our legislators. We reached out to the

1 governor of New Mexico, and we had many meetings and
2 actually ended up having a meeting with the governor
3 of New Mexico over the AWRM regulations.

4 **Q. Did you ultimately engage in a series of**
5 **negotiations with the state engineer over the**
6 **appropriate water use for pecans in the Lower Rio**
7 **Grande?**

8 A. Yes, we did. We -- we negotiated heavily
9 starting in January presenting loads of information.
10 We had hired an attorney. We had a hydrologist, and
11 we -- we spent months in many, many, many meetings
12 presenting evidence showing the historic beneficial
13 use of our growing pecans in the Lower Rio Grande.

14 **Q. Did those negotiations result in an**
15 **agreement?**

16 A. Yes, it did.

17 **Q. Is that what's become known as the pecan**
18 **settlement?**

19 A. Yes, it is.

20 **Q. Was the pecan settlement agreement signed by**
21 **individual pecan farmers?**

22 A. Yes, it was.

23 **Q. Do you know how many?**

24 A. I -- I want to remember, it was close to 300.

25 **Q. Do you know how many acres they represented?**

1 A. If I remember correctly, it was 25,000 plus.

2 Q. What happened to the pecan settlement
3 agreement?

4 A. It was entered into the adjudication court
5 with Judge Valentine.

6 Q. Let's take a look at New Mexico -- I'm sorry
7 -- Joint Exhibit 474. Do you recognize this document
8 as the final judgment in what's become known as Stream
9 System Issue 101 in the New Mexico adjudication court?

10 A. Yes.

11 Q. If we call out that first paragraph,
12 Mr. Salopek, this reflects that the pecan settlement
13 was filed in the adjudication court, and that's what
14 you just testified to; is that right?

15 A. That is correct.

16 Q. Let's turn to Page 8 -- I'm sorry -- Page 3,
17 Paragraph 8. After the pecan settlement agreement was
18 entered, did the adjudication court open a proceeding
19 to determine the consumptive use and farm delivery
20 requirements for all of the acreage in crops in the
21 LRG and New Mexico?

22 A. That's what I remember, yes, and that's what
23 it says right there.

24 Q. Did the New Mexico Pecan Growers participate
25 in the litigation and trial in that case?

1 A. Yes, we did.

2 **Q. Were you scheduled to be a witness in the**
3 **proceeding?**

4 A. I was.

5 **Q. What happened during the trial?**

6 A. What I remember is we had trial for
7 approximately a week. Evidence was being put on. The
8 judge had to stop at the end of the week. He had some
9 previous obligations, so we did not continue with
10 trial the following week. All parties were motivated
11 to continue talking, so we met with the diversified
12 growers, the pecan farmers, the state engineer, and
13 EBID met the following week, and we were actually able
14 to come up with a settlement agreement that next week.

15 **Q. During the middle of litigation, you actually**
16 **resolved the issue?**

17 A. Yes, we did.

18 **Q. Let's turn to Page 11 of this final order,**
19 **and we see in Exhibit A, which is attached to the**
20 **final order, then go to Page 12, and just call out the**
21 **top part so we can see what this is. Is this the**
22 **settlement agreement that was reached during the**
23 **middle of litigation?**

24 A. I believe it is.

25 **Q. And to be clear, this is different than what**

1 has become known as the pecan settlement; is that
2 right?

3 A. Yes, it is.

4 Q. If we turn to Page 20 of this document, is
5 that your signature?

6 A. Yes, it is.

7 Q. Now, John Longworth will testify about this
8 particular order and how it's used in New Mexico
9 administration, but I want to ask you about your
10 understanding of the agreement as a farmer who's
11 regulated by the state engineer. So let's start with
12 Page 12 of this document, which is Section 2, and do
13 you understand that the order established limits as to
14 how much water could be used on each acre of land in
15 New Mexico?

16 A. Yes. I'm aware of that.

17 Q. Are you familiar with the term conjunctive
18 use?

19 A. Yes, I am.

20 Q. What do you understand that term to mean?

21 A. Well, conjunctive use is the use of surface
22 water and groundwater. It's a practice that's been
23 going on in our valley for over 70 years.

24 Q. If we turn to Page -- and was it your
25 understanding that this agreement codified that

1 conjunctive use?

2 A. It certainly recognized it and put it to
3 print.

4 Q. If we turn to Page 16, and this time we're
5 going to be looking at Section 6I, so if we call out
6 "I" there. Here, it indicates that EBID members shall
7 take full delivery of their surface water. How has
8 that work in practice?

9 A. Obviously you're paying for it and want to
10 use it, and when it's available, you have to use your
11 water if you're going to use whatever you think you
12 need to grow your crops with because on the EBID deal,
13 either use it or lose it. It still goes against your
14 FDR whether you use it or not?

15 Q. Still counts against you?

16 A. Yes, it does.

17 Q. Let's turn to Page 15 spilling into Page 16,
18 which is Section 6H, little H, of this agreement.
19 Give you a second while we call that out for you,
20 Mr. Salopek. There we go. This discusses water
21 administration. Does the New Mexico Pecan Growers and
22 you understand this order could be used as part of
23 priority administration, if necessary?

24 A. Yes, we do.

25 Q. Let's take a look at Page 15, Section 6A.

1 Did the New Mexico Pecan Growers understand they would
2 be limited to water that had previously been put to
3 beneficial use?

4 A. Yes.

5 Q. And what's your understanding of that?

6 A. Historic beneficial use is what was used to
7 grow our crops, whether it was pecans, alfalfa, if you
8 were double cropping, triple cropping. It's your
9 historic use with -- of water.

10 Q. And you mentioned the historic practice over
11 60, 70 years. Is it that amount of water that had
12 been actually put to use over that period?

13 A. Yes.

14 Q. Let's turn to Page 13, Section 4 of Exhibit

15 A. This section of the agreement allows for
16 establishment of water in excess of 4.5 acre-feet per
17 year. Was that something that the New Mexico Pecan
18 Growers negotiated for?

19 A. Yes. It was a compromise that we all agreed
20 upon, all the farmer groups, including EBID, that if
21 you were farming and you were comfortable, that you
22 could make it on 4-and-a-half. You did not have to
23 present any evidence to the state, to the Office of
24 the State Engineer, but if you had practices and
25 historic use of using more than 4-and-a-half of your

1 beneficial use, you could prove up to 5.5. If you're
2 using more than 5.5, you would not be able to prove
3 above that, and if you were not quite using 5.5, maybe
4 it was 5.2, that's the limit you could prove up to is
5 whatever you could show evidence of your beneficial
6 use.

7 **Q. Gave you the opportunity to present evidence?**

8 A. That is correct.

9 **Q. Look at Page 13, Section 3 of Exhibit A.**

10 **This is one last feature of this that I want to call**
11 **to your attention. We can see here a reference to**
12 **groundwater being stacked. Do you see that? I'm**
13 **looking at the last sentence. Are you familiar with**
14 **the term stacking groundwater?**

15 A. I am.

16 **Q. What does that mean?**

17 A. I'll give a little example. Say you have
18 Farm A and Farm B, and farm A has 3 acre-feet, Farm B
19 has 3 acre-feet. You may stack the water from Farm A
20 onto Farm B. That's 6 acre-feet, but no more water
21 can be put on Farm A so it's a net gain, net zero
22 situation.

23 **Q. It's allowing you to use your water rights**
24 **where it's needed?**

25 A. That is correct.

1 Q. But there's no additional water use, no
2 increase of the water use?

3 A. There's no increased depletions.

4 Q. We talked about the OWMAN program earlier.
5 Mr. Serrano will testify to that, but from your
6 perspective as a farmer, is the OWMAN program helpful?

7 A. It's very helpful.

8 Q. Why?

9 A. It allows you to utilize water efficiently.
10 It allows you to put the water where it's needed, and
11 you -- you've proven up the amount that you need to.
12 Some farms may have a 4-and-a-half, some may have a
13 5-and-a-half, and it allows you to prove up the -- to
14 use your water effectively through the deal. In my
15 case, I have some farms, and that's really what I know
16 the most, is it is easier to get access to surface
17 water. So I will use more of my surface water on
18 those farms, and I will use groundwater on my other
19 farms that have a hard time getting surface water.
20 It's -- all it is is an average of all your properties
21 you own.

22 Q. We were looking here at the settlement
23 agreement in Stream System Issue 101. Did Judge
24 Valentine, the adjudication judge, hear testimony
25 about the irrigation requirements of all crops?

1 A. Yes, he did.

2 **Q. He heard testimony about this settlement**
3 **agreement?**

4 A. Yes, he did.

5 **Q. Was there an expert that presented testimony?**

6 A. Yes, there was.

7 **Q. Do you know who that was?**

8 A. That was Dr. Phil King.

9 **Q. Did that result in this final judgment?**

10 A. Yes, it did.

11 **Q. So turning away from Stream System Issue 101,**
12 **have -- has the New Mexico Pecan Growers continued to**
13 **be involved in water-related issues in the lower Rio**
14 **Grande?**

15 A. Yes, we have.

16 **Q. Can you describe some of the issues you've**
17 **been involved in?**

18 A. Well, obviously Stream System Issue 101, and
19 we've been continuing to work with the state on our
20 metering order. When 1903 surface water was being
21 developed, we actually worked with Lee Leininger with
22 the U.S. on that one to help prove our 1903 date. We
23 -- they have a fallowing program that the state has
24 been implementing, and we have participated in that.
25 There is a large working group called the Lower Rio

1 Grande Users Association. I'm terrible with acronyms
2 so -- anyway, and that is all the big stakeholders in
3 the lower Rio Grande, City of Las Cruces, NMSU, and
4 farmers, and that is to try and come up with a plan in
5 the event that we have extreme drought so we're not
6 all fighting over priority administration. We're
7 trying to come up with the rules of engagement, so we
8 can all survive it instead of just going to court.
9 And then obviously we're participating in Texas v. New
10 Mexico.

11 **Q. Let's turn to the impacts of the 2008**
12 **operating agreement. Are you aware of that agreement**
13 **between EBID, EP1, and Reclamation?**

14 A. Yes, I am now.

15 **Q. Prior to the finalization of the 2008**
16 **operating agreement, did EBID hold any meetings with**
17 **its members to discuss the terms of that agreement?**

18 A. No, they didn't.

19 **Q. Did EBID farmers have an opportunity to vote**
20 **or approve of the operating agreement?**

21 A. No, not that I remember.

22 **Q. After the agreement was entered, did EBID**
23 **hold any meetings to explain its terms to its members?**

24 A. Yes, it did.

25 **Q. Did you attend any of those meetings?**

1 A. I did.

2 **Q. What was your understanding of the operating**
3 **agreement?**

4 A. It sounded like there were some positive
5 things and some negative things.

6 **Q. Please explain.**

7 A. On the positive realm of the world, we were
8 told that we were going to be able to pump without any
9 impediment from the U.S. or EP1, and we were also told
10 that it was going to stop all litigation. There was
11 never going to be any interstate stream litigation
12 again after this agreement was signed. Those are the
13 two positive things that came out of this.

14 **Q. What were the negatives?**

15 A. The negative was the fact that carryover
16 storage became part of the project, carryover storage
17 for one district away from the other district.

18 **Q. Why was that a problem?**

19 A. Well, we had been practicing splitting the
20 carryover storage at the end of every season for 90
21 years, then all of a sudden, that changed, and it's --
22 for years and years and years, EBID had beat the drum
23 that they would never agree to carryover storage, and
24 then all of a sudden, it's in there. So to this day,
25 I'm still shocked and surprised because we paid for 50

1 -- 57 percent of that dam.

2 **Q. Does the New Mexico Pecan Growers Board**
3 **review and approve all written materials before**
4 **they're filed in this matter?**

5 A. Yes, we do.

6 **Q. Why has the New Mexico Pecan Growers actively**
7 **participated as an amici?**

8 A. Once the Texas v. New Mexico lawsuit was
9 filed and we read it and we saw that they wanted to go
10 back to a 1938 Condition, we realized that that was
11 going to be devastating to our industry if -- if they
12 got their wish.

13 **Q. Would it be possible for you to farm like you**
14 **did -- you would have in 1938?**

15 A. No, it would not. I mean, when I really
16 think about 1938, and we're going to get rid of 80
17 years' worth of infrastructure, all the municipalities
18 will have to cap their wells, stop the El Paso from
19 using surface water, all our groundwater for all the
20 farms in the district go away, get rid of cement
21 ditches, unlevel our fields, I mean, where does it
22 stop? I just -- it doesn't make any sense.

23 **Q. What is the New Mexico Pecan Growers'**
24 **position on the 2008 Operating Agreement?**

25 A. We feel like it -- we've been harmed by it.

1 Once the -- now that we've lived with it for many
2 years, since '08, before their -- all the losses in
3 drought, times of drought, were split amongst the
4 districts. Now that we are guaranteeing all the
5 losses, it doesn't matter where the losses come from
6 as they go down the river. The New Mexico farmers are
7 taking all the losses. So any city pumping, lack of
8 maintenance of the stream system, you know, the
9 riverbeds, everything is coming off of our backs now,
10 domestic wells. It doesn't matter. The huge well
11 field that they put on the -- the New Mexico/Mexico
12 border, ultimately we're going to pay for all those
13 losses, too, the way this is.

14 **Q. Is there an inequity in the amount that the**
15 **water costs now?**

16 A. Very much so.

17 **Q. Please explain.**

18 A. This last year, we spent \$90 for 4 inches of
19 water, and we -- that comes out when you divide it out
20 to \$270 an acre-foot. Our sister district, EP1, they
21 got 2 acre-feet of water this year, and their district
22 fees were \$25. So it's 12.50 for an acre-foot versus
23 270. That just doesn't feel like a partnership or
24 fair anymore. The -- the other thing that is
25 happening is we're making up all the difference in our

1 irrigation needs with well water, which is expensive.

2 Q. Has there been an impact on the amount of
3 your highest priority or I should say earliest
4 priority water right, the surface water right?

5 A. Well, when you really think about it, the
6 1903 water that we have is our most valuable water
7 because it's the last one that could get called, and
8 that's the one we're getting the least of now, so I
9 would say yes.

10 Q. If New Mexico Pecan Grower members were no
11 longer able to use groundwater, how would it impact
12 their operations?

13 A. We would be out of business in less than a
14 year.

15 MR. WECHSLER: Thank you, Mr. Salopek.
16 No further questions, Your Honor.

17 JUDGE MELLOY: All right. Who's going
18 to go first? Ms. Klahn? Well, let me ask this:
19 Mr. Wallace, do you have any questions?

20 MR. WALLACE: No questions, Your Honor.

21 JUDGE MELLOY: Okay. Mr. Leininger, are
22 you going to go first?

23 MR. LEININGER: I'm going to go first,
24 Your Honor, yes. Thank you.

25 JUDGE MELLOY: You may proceed.

CROSS-EXAMINATION

1
2 BY MR. LEININGER:

3 Q. Good morning, Mr. Salopek.

4 A. Good morning.

5 Q. Lee Leininger for the U.S. Department of
6 Justice. Let's start with your -- what was presented
7 as New Mexico 990 exhibits. This is your graph that
8 Mr. Wechsler was asking you about.

9 A. Okay.

10 Q. And you gave some testimony with regard to
11 the various farms that you own and then the amount of
12 water available and then the amount of water used and
13 remaining water. You talked about your main farm up
14 there.

15 A. Yes.

16 Q. And if we look over to remaining water in
17 acre-feet from the OSE, that is remaining, and I
18 believe you testified this is the end-of-the-year
19 figures --

20 A. That is correct.

21 Q. -- as .064. So that is what your conjunctive
22 use ability to pump consistent with that judgment,
23 that 101 judgment?

24 A. It is.

25 Q. Okay. And if we look down at the bottom, you

1 have a number of farms in Hatch.

2 A. That is correct.

3 Q. And if we look over at the remaining water
4 there, it shows amounts above 4, above 4.8, above 2.
5 And I have a question with regard to the OWMAN
6 process. That's the OSE, the Office of the State
7 Engineer process for transfer of district water. Were
8 -- were these -- were these wells and properties
9 involved in the OWMAN transfer process?

10 A. They are.

11 Q. Okay. So the water at these wells in Hatch,
12 which remained unused, was that transferred so that it
13 could be used in your main farms?

14 A. No, sir.

15 Q. So --

16 A. It wasn't physically transferred. I mean, it
17 was just part of the average here. You're talking
18 about the surface water transfer? What are you
19 talking about?

20 Q. No, I'm talking about your conjunctive
21 ability to use water, surface water and groundwater.
22 The reasons that there are remaining water in your
23 Hatch farms, was that water involved in the OWMAN
24 transfer process, which I understand is not a physical
25 transfer of water, it's the ability to transfer across

1 the districts for use of water elsewhere. So --

2 A. They're part of my overall OWMAN process,
3 yes.

4 Q. Okay. So these -- these farms in Hatch,
5 which -- which had remaining water, were used in the
6 OWMAN process and then transferred to use in your main
7 farms?

8 A. They weren't transferred for use. It was
9 just an average of use.

10 Q. Okay. So you're -- you're reducing your use
11 of water in Hatch such that you can pump more water in
12 your main farms up to an average, which remains -- I
13 think you pointed this out, remains about 4.5; is that
14 a fair assessment?

15 A. That's -- that is the -- the fair assessment
16 is my average of 4.5.

17 Q. Okay. And your main farm, that's located
18 within a mile of the river within the Mesilla Valley?

19 A. Yeah. I would say so. I have many deep
20 wells on my main farm. A lot of them are over 600
21 feet deep.

22 Q. That's the next question I have for you. We
23 testified about the number of wells you have, 32
24 wells, I believe.

25 A. Yes.

1 Q. And you said a number of these went in, I
2 think your grandfather put in '49, '50, 1949 to '50,
3 something like that. Were those wells, the early
4 wells, were they in the shallow aquifer?

5 A. The wells that are still functioning from
6 that early date, one is 120 feet, the other one is 350
7 feet, the other one I'm not using anymore. I think it
8 was 87 feet, if I remember right. I mean, these are
9 close.

10 Q. And then -- then we saw a permit -- you had
11 shown a permit I think as one of your demonstratives.
12 That was for a well in 1992, and that identified
13 source of water in 1992 as the shallow aquifer for
14 that well, correct?

15 A. I'd have to go back and look at the permit.
16 Is that the combine and commingle you're talking
17 about?

18 Q. It's the application for permit that you were
19 discussing.

20 A. If it was a combine and commingle, it didn't
21 really talk about depths of wells. It was just
22 talking about the wells together.

23 Q. Let's -- let's go back to your demonstrative
24 for that permit.

25 JUDGE MELLOY: Can I interrupt for just

1 a second here? Just -- I know we talked about this,
2 but can I make sure we're all on the same page? What
3 does the witness understand a shallow well to be
4 versus a deep -- how deep -- how deep is shallow, and
5 how deep is deep, and is there an intermediate? I'm
6 asking the witness. When you're using the term
7 shallow, what do you mean? How deep is shallow?

8 THE WITNESS: I would say a shallow well
9 would be 120 feet or less. I would say a medium depth
10 well would be to 250 feet. And this is just my -- my
11 terminology. Anything deeper than 250 would start
12 being in the realm of a deep well.

13 JUDGE MELLOY: Okay.

14 Q. (BY MR. LEININGER) So this is the --
15 Mr. Salopek, can you see this? It's the application
16 for permit that was discussed by your counsel.

17 A. Uh-huh.

18 Q. And if we just blow up the top half of that,
19 we'll see that this is drilled in 1992, or the
20 application at least was --

21 A. It wasn't drilled. That was the date we
22 applied for the permit of combine and commingle. All
23 these wells were existing.

24 Q. I see. And so this confirms that these are
25 wells in the shallow that's called the shallow water

1 **supply?**

2 A. Not necessarily. I think that was put on
3 there. I don't know that that is accurate because
4 several of those wells listed here are much deeper
5 than shallow.

6 **Q. So you don't know if this application for**
7 **permit is accurate?**

8 A. I'm saying it's accurate that we combine and
9 commingle. I think the word shallow -- I mean, you
10 tell me what shallow means. I mean, honestly.

11 **Q. You just identified what your definition of**
12 **shallow is, and I'm just asking you to confirm --**

13 A. Right. So if we use my definition, several
14 of those wells are much deeper than shallow.

15 **Q. All right. But this particular application**
16 **for a permit shows the source of water supply, and it**
17 **identifies shallow water aquifer. So this -- this**
18 **application at least accesses the shallow aquifer in**
19 **19 -- at this time, correct?**

20 A. I would say some of the wells are in the
21 shallow aquifer, yes.

22 **Q. Okay. So you also testified --**

23 **MR. LEININGER:** We can drop this. Thank
24 you.

25 **Q. (BY MR. LEININGER) So you also testified that**

1 you had drilled a new well last year, and you defined
2 it as a deep well. I think I looked at that permit,
3 and that deep well was over 600 feet, right?

4 A. It was 790 feet.

5 Q. So you drilling below the shallow aquifer and
6 that well is being completed in the Santa Fe
7 formation, the deeper aquifer?

8 A. It might even be beyond that. I had 350 feet
9 of blank on it, and then I put 340 feet of screen
10 below that.

11 Q. So why are you drilling --

12 A. I put 450. It's 790 feet so whatever -- I
13 know there's 350 of blank, and the difference is
14 screen.

15 Q. All right. So why did you drill a well
16 almost 800 feet deep last year?

17 A. Water quality.

18 Q. And water quantity?

19 A. Same as my other wells. Right around about
20 2,500 to 3,000 gallons a minute.

21 Q. Why didn't -- so are you saying that you
22 could drill shallow wells, also, and receive the same
23 amount of water production?

24 A. Yes. It'd just be different quality.

25 Q. Let's go to New Mexico 470 exhibit, and this

1 has already been presented by your counsel.

2 A. Okay.

3 Q. And you recognize this letter, right? This
4 is your letter from you to the New Mexico Pecan Grower
5 members, and it's dated November 23rd, 2006. Let's
6 blow up that first paragraph. So from this first
7 paragraph, you've already testified a little bit about
8 this, but you were raising concerns to the pecan
9 grower members about the proposed rules and
10 regulations for Active Water Resource Administration
11 of the lower Rio Grande, correct?

12 A. That is correct.

13 Q. And this has been the -- and I may -- I may
14 slip and call it the AWRMs, also, because --

15 A. I'll know what you're talking about.

16 Q. You'll know what I'm talking about. Great.
17 So the AWRMs were drafted by the New Mexico Office of
18 the State Engineer, correct?

19 A. Uh-huh.

20 Q. And if we look at one line in here, you
21 identified the, "AWRMs as regulations that result in
22 actions that will ensure delivery of allocated water
23 to Texas as mandated under the Rio Grande Compact and
24 the Rio Grande Project." Did I read that correctly?

25 A. That's what it says, yes.

1 Q. Was that your interpretation of what the AWRM
2 was to accomplish?

3 A. Say that again.

4 Q. Was that -- this is your letter. Is that
5 your interpretation of what the AWRM was to
6 accomplish?

7 A. I don't believe those are my words. I think
8 those are words that came off the AWRM regulations.

9 Q. Okay. So you are just referring to the AWRM
10 regulations here for purposes of informing your pecan
11 growers members, right?

12 A. That's what -- if I remember right, that's
13 what's in the regulations, and all we did was recite
14 their words.

15 Q. And we'll have more testimony on the AWRM
16 from the Officer of the State Engineer witnesses,
17 including the state engineer, but let's look at what
18 is on the next page, the elements of -- I'm sorry --
19 the first page, first numbered paragraph, and I
20 believe you introduced this right above as, "Elements
21 of importance," and you testified a little bit about
22 this. Your concern was the AW RMs had a limit on
23 combined surface and groundwater use of 4 acre-feet,
24 and that's 4 acre-feet per acre, right?

25 A. Yes.

1 Q. Okay. So the purpose of this letter was to
2 protest the OSE's limit of 4 acre-feet per ag -- sorry
3 -- irrigated agriculture in the lower Rio Grande,
4 correct?

5 A. The purpose of this letter is we really
6 wanted our day in court so we could be adjudicated to
7 our lawful right of beneficial use.

8 Q. All right. Let's go to the next exhibit,
9 which is New Mexico 689. And this was also presented
10 earlier by Mr. Wechsler.

11 A. I'm still looking at 3470.

12 Q. So am I. I've just been informed that our
13 Trial Director is loading so hang on one second,
14 please. Oh, there we go. Do you see Exhibit 689 now?

15 A. I do now.

16 Q. Okay. So this is a letter you testified to.
17 It's from the State Engineer John D'Antonio to you in
18 response to your November 23rd letter, right?

19 A. That is correct.

20 Q. Okay. Let's go to PDF 3 here.

21 MR. LEININGER: Your Honor, these --
22 these pages, it's four pages in this exhibit, and it
23 appears that they were out of order, so Page 3 of the
24 exhibit here at the bottom appears to be the second
25 page of the letter, and then the second page of the

1 exhibit, which we'll get to, is an attachment.

2 Q. (BY MR. LEININGER) So let's look at the
3 second page of the letter, and let's pop out the third
4 full paragraph. Here, Mr. D'Antonio is describing the
5 purpose of the proposed rules and regulations, and he
6 states that the AWRM is to ensure that New Mexico can
7 take full advantage of its water resources and ensure
8 Texas and Mexico get their fair share of water,
9 correct?

10 A. That's what it says.

11 Q. That's what you were referring to, you had
12 looked at other parts of the AWRMs, and that is what
13 had gone into your November 23rd letter?

14 A. No. What our concern was is this
15 circumvented state law, and we were wanting our day in
16 court to have state law. This completely went around
17 state law. So we have proved beneficial use. We have
18 old water. We wanted our senior water rights looked
19 at and protected. This was just something that was
20 born that went around state law so we didn't like it.

21 Q. Sure. Mr. Salopek, my question is: You had
22 testified that in your letter to the pecan grower
23 members that you were quoting from the AWRMs and the
24 Office of the State Engineer that -- that those rules
25 and regulations were the ensure that Texas and Mexico

1 get their water. Do you recall that from your letter?

2 A. I think that was the state engineer's goal.

3 Q. Okay. So this is just confirming that that
4 is the state engineer's goal, would you agree?

5 A. It was his goal with AWRM, but it was
6 circumventing state law.

7 Q. Okay. Let's go to PDF 2 of this document.
8 And we'll go --

9 MR. LEININGER: This is the attachment,
10 Your Honor, to the letter.

11 Q. (BY MR. LEININGER) Mr. D'Antonio addresses
12 the number of complaints that you had in your letter,
13 and if we look under No. 1, we see in the italics,
14 that was one of the numbered parts of your November
15 13th -- sorry -- November, 2006, letter, and then here
16 is Mr. D'Antonio's response to it. And he states
17 that, "I will limit" -- sorry. He states in the
18 second sentence, "The limits on irrigation well
19 pumping will be calculated based upon a farm delivery
20 requirement of 4.0 -- 4 acre-feet per acre, which is
21 the average amount of water required to grow a crop in
22 the Lower Rio Grande and takes into account current
23 cropping patterns. Similar average limits already
24 apply to irrigated farmland in the Roswell Basin, 3.5
25 acre-feet per acre, and the Carlsbad Basin, 3.7

1 acre-feet per acre, and lower limits apply to other
2 basins in the state." Were you aware that other
3 basins in the state have a lower delivery requirement
4 than the Lower Rio Grande?

5 A. I'm not aware of those other basins. I'm
6 only aware of what they're trying to do in our basin.

7 Q. Okay. So you're not aware that the other
8 basins have lower than 4.0 acre-foot per acre farm
9 delivery requirement?

10 A. I'm only focused on my basin.

11 Q. Let's look at Paragraph 2. I believe it's
12 the -- Mr. D'Antonio's addressing your -- your same
13 question here. Here, the state engineer states that
14 the, "Pecan farmers have long obtained extra water for
15 their crop by leasing additional EBID surface water,
16 some of it deriving from fallow lands still assessed
17 by EBID." That's a correct statement, isn't it?

18 A. What year?

19 Q. Are you unable to confirm or deny what the
20 state engineer is saying here?

21 A. It wouldn't have worked this last year.
22 There was no water, so you can't lease water from
23 other areas.

24 Q. Okay.

25 A. Or other farmers.

1 Q. But -- I'm sorry. But the state engineer
2 states that, "Pecan farmers have long obtained extra
3 water for their crop by leasing additional," so over
4 the long term, do you agree with this statement?

5 A. No, I don't.

6 Q. You don't agree with this statement? Have
7 you ever leased water from fallowed lands?

8 A. No, I haven't.

9 Q. Let's go to the next PDF. This is PDF 4.
10 This is the second page of the attachment. If we look
11 at what the state engineer says here in the second
12 paragraph, he talks about a groundbreaking proposal by
13 EBID that'll be the centerpiece for the alternative
14 administration plan for the Lower Rio Grande. And he
15 notes that the EBID proposal -- I think it's the third
16 sentence. "The EBID proposal will achieve the purpose
17 of assuring the delivery of Texas' and Mexico's fair
18 share of the Rio Grande Project supply." And he
19 "considers EBID's proposal, if fully developed and
20 implemented, to be a strong basis for any alternative
21 form of administration that could make priority
22 administration largely unnecessary." And then he goes
23 onto praise EBID for this initiative and instructed
24 his staff to assist EBID and the Lower Rio Grande
25 Water Users Organization to flesh out the alternative

1 administration plan built around EBID's proposal. But
2 -- but you and the Pecan Growers Association rejected
3 the state engineer's proposal, right?

4 A. In reference to the Active Water Resource
5 Management, AWRM?

6 Q. Yes.

7 A. Yes.

8 Q. And you rejected a farm delivery requirement
9 of 4.0 acre-feet, correct?

10 A. Farm delivery requirement of 4.0, yes.

11 Q. All right. The state engineer also responded
12 to another one of your concerns. Let's go back to PDF
13 2. And here, let's look at what's labeled as
14 Paragraph 3 where you were concerned that the state
15 engineer's AWRMs would temporarily suspend groundwater
16 pumping within a high-impact area, and then the state
17 engineer responds, and let's just highlight the second
18 sentence here. And Mr. D'Antonio is warning that if
19 the Active Water Resource Management plan was not
20 adopted, that priority administration would be
21 implemented in terms of shortage, but goes onto
22 say, "Only if necessary to ensure that Reclamation is
23 able to deliver Rio Grande Project water ordered by
24 Texas and Mexico." So you see that highlighted
25 section, right?

1 A. I see that.

2 Q. The Rio Grande -- my question to you is: The
3 Rio Grande Basin is in a period of drought now, right,
4 and the area has been since 2008, right?

5 A. Some areas of the Project are in a worse
6 drought than others.

7 Q. Right. And the Project has been dealing with
8 what Mr. D'Antonio terms here as times of shortage
9 since 2008, except for a few full allocation years; is
10 that correct?

11 A. Restate your question. I didn't understand
12 it.

13 Q. Sure. The state engineer here refers to
14 times of shortage, and since 2008, the Project has
15 been dealing with times of shortage, right?

16 A. Is that written in there? I don't see that.

17 Q. I'm sorry. In the first highlighted part of
18 that sentence says, "Priority administration would be
19 implemented only in times of shortage."

20 A. Okay. And they still have that tool,
21 priority administration, yes.

22 Q. And you would agree that since 2008, the
23 Project pretty much has been in times of shortage?

24 A. Not for both districts.

25 Q. Right. So even while there's reduced supply

1 in reservoir storage, would you agree that under the
2 2008 operating agreement, Reclamation is delivering
3 Texas' allocation?

4 A. Texas appears to be getting several full
5 allotments in the last 13 years.

6 Q. Texas is getting its allocation delivered by
7 Reclamation, correct, under the 2008 operating
8 agreement?

9 A. Some full allotments, yes.

10 Q. And -- and so if there was no 2008 operating
11 agreement, the state engineer may need to administer
12 in priority and suspend pumping to ensure delivery to
13 Texas and Mexico; isn't that what Mr. D'Antonio is
14 saying here?

15 MR. WECHSLER: Objection; foundation and
16 speculation.

17 A. I'm not an attorney --

18 JUDGE MELLOY: Well, just a second.
19 Just a second.

20 THE WITNESS: I'm sorry.

21 JUDGE MELLOY: He's talked about his
22 understanding of how the Project operates from a
23 farmer's perspective, so I'll let him answer from his
24 perspective. And he did testify about this
25 negotiation back and forth so -- so go ahead and

1 answer the question, if you can.

2 A. Could you restate your question?

3 Q. (BY MR. LEININGER) Certainly. If there was
4 no 2008 Operating Agreement, the state engineer may
5 need to administer in priority and suspend pumping to
6 ensure delivery to Texas and Mexico; isn't that what
7 Mr. D'Antonio is saying here? Is that your
8 interpretation of his --

9 A. Yes. Priority administration, whether it's
10 the operating agreement or not, is still available as
11 a tool.

12 Q. Let's go to the next exhibit. This is New
13 Mexico 600. I'm sorry. It just takes a moment to
14 load. And I believe you had discussed this, but I
15 don't know if this had been presented. This is a
16 e-mail that I believe you had sent -- let's blow that
17 up -- in January, so this is just a couple months
18 after that letter exchanged with the state engineer,
19 January 3rd, 2007, and the subject is the meeting with
20 the governor, and here you're thanking David Hume.
21 Who is David Hume, what was his -- what was his
22 position in the governor's office?

23 A. He was an assistant to the governor.

24 Q. He was Governor Richardson's director of
25 policy and strategic planning, right?

1 A. If that's the full term. I know him as an
2 assistant to the governor.

3 **Q. Okay. And you met with the governor to**
4 **protest the Office of the State Engineer proposal to**
5 **limit irrigation water to 4 acre-feet per acre?**

6 A. Yes. We explained to the governor the crisis
7 that this was going to create for the pecan industry
8 and destroy one of his largest agricultural industries
9 in the state in that part of the area.

10 **Q. How many times did you or your counsel meet**
11 **with the governor or his staff?**

12 A. Governor Richardson, we just had the one
13 meeting, and Bill Hume was just making sure that we
14 were able to meet with the state engineer so he
15 afforded that opportunity for us so we could present
16 our evidence to show the amount of water that pecan
17 trees used.

18 **MR. LEININGER:** Your Honor, I'll move
19 for the admission of what's been labeled as New Mexico
20 600.

21 **JUDGE MELLOY:** Any objection?

22 **MR. WECHSLER:** I think it's already in,
23 Your Honor.

24 **JUDGE MELLOY:** If it's not in --

25 **MR. LEININGER:** Oh, I apologize.

1 **JUDGE MELLOY:** If it's not already
2 admitted, it's admitted. Go ahead.

3 **MR. LEININGER:** Okay. Thank you. And I
4 stand corrected. Thank you, Jeff.

5 **Q. (BY MR. LEININGER)** So let's go to New Mexico
6 602. And I think if we go to the second page, we'll
7 see that this is what you sent to New Mexico Pecan
8 Growers?

9 **A.** That is correct.

10 **Q.** Okay. And I apologize. This didn't have the
11 signed version, but you recognize this document,
12 right?

13 **A.** Yes, I do.

14 **Q.** If we go back to the first page, so it's
15 titled -- before we blow it up there, it's titled the,
16 "NMPG Announces Settlement Agreement with the State
17 Engineer." And if we go to the third full paragraph,
18 it notes that a little over a year after the meeting
19 with the governor's staff, this agreement with the OSE
20 was reached. It gives the pecan growers 5.5 acre-feet
21 of water, right?

22 **A.** No, sir. They didn't give us anything. We
23 proved it.

24 **Q.** Okay. But it -- the agreement was that you
25 will be adjudicated farm delivery requirement of 5.5

1 acre-feet?

2 A. That was an average of what we can prove
3 through all our data. We actually had some data that
4 showed more.

5 Q. All right. Let's go back to what you had
6 presented, which was, I believe, Joint Exhibit 474,
7 and this was the final judgment in the Lower Rio
8 Grande adjudication. If we go back to Paragraph D,
9 which you had identified, this talks a little bit
10 about the conjunctive use. I'm just blowing up this
11 paragraph. I'm sure we'll have a lot more testimony
12 with other witnesses on Stream System Issue 101, but
13 do you see that this references 3.024 acre-foot per
14 acre?

15 A. I see it, but I'm not exactly sure what
16 context it's in.

17 Q. Okay. So you don't know what 3.024, where
18 that number comes from?

19 A. That was the amount of water, if memory
20 serves me right, that initially was with the district.

21 Q. Right. That was the amount of calculated
22 farm delivery requirement, and that was calculated
23 back in the 1950s; is that your understanding?

24 A. I don't know what year it was calculated.

25 Q. All right. But you understand that to be

1 Reclamation's figure of the amount of water that was
2 available under a full allocation to each acre-foot --
3 to each acre, excuse me, in -- in the Project?

4 A. I am not confident that that's what it says.

5 Q. All right. Well, we'll move on from here
6 then.

7 So this settlement resulted in 5.5 acre-feet,
8 but if I recall from your demonstrative, you said that
9 you use water in pecans from 4 to 6 acre-feet?

10 A. That is correct.

11 Q. So the -- the 6 exceeds the final -- final
12 judgment limit to beneficial use of 5.5?

13 A. That would be on your sandier soil, so yes,
14 it does.

15 Q. All right. And last question, the Active
16 Water Resource Management regulations for the Lower
17 Rio Grande, they were never passed, were they?

18 A. Say that again.

19 Q. The AWRMs, the regulations for the Lower Rio
20 Grande, they were never passed?

21 A. I don't know exactly what the status of the
22 AWRM regulations are. I know that they had gone
23 through lots of court trials, et cetera, but the
24 current status of it, I do not know.

25 Q. You don't know if they are, in fact, in force

1 and effect right now?

2 A. I don't.

3 MR. LEININGER: Very good. I have no
4 further questions. Thank you.

5 JUDGE MELLOY: Ms. Klahn, do you have
6 anything?

7 MS. KLAHN: I have a few questions, Your
8 Honor. Thank you.

9 JUDGE MELLOY: Go ahead.

10 CROSS-EXAMINATION

11 BY MS. KLAHN:

12 Q. Good morning, Mr. Salopek. Sarah Klahn,
13 again, for the State of Texas.

14 A. Good morning.

15 Q. I wanted to ask you about the comparison you
16 made when you were talking with Mr. Wechsler about the
17 combine and commingle permit, and you compared it to
18 the owner management plan approach that's currently
19 available in the Lower Rio Grande. Do you recall that
20 testimony?

21 A. I do.

22 Q. And I think you testified that the combine
23 and commingle recognizes historical use of more than
24 one well and consolidates it; is that right?

25 A. Not really. The combine and commingle allows

1 you to use any well on that given property, especially
2 when you buy your neighbor's farm. It allows you to
3 use any well on any of those given acres. That's what
4 the purpose of the combine and commingle is.

5 Q. And if you file for a permit for combine and
6 commingle that goes to public notice, and there's a
7 possibility for a protest, correct?

8 A. I believe that was filed. Not -- I don't
9 know that every permit has to be filed with legal
10 notice. I -- I do not remember. I just know we -- it
11 could have been.

12 Q. And for the owner management plan, there is
13 no public notice or opportunity to comment or protest
14 the owner management plans, is there?

15 A. It is a process that you work out with the
16 state engineer.

17 Q. Okay. And there's not even any -- as far as
18 -- as far as you're aware, there's not even any
19 central register where all of the owner management
20 plans could be consulted if somebody wanted to go and
21 look and say so --

22 A. I am not.

23 Q. -- where's the water coming from? Have you
24 ever seen anything like that?

25 A. I'm not aware of any of that. That's not my

1 wheelhouse.

2 Q. Okay. I think you testified that when you
3 stack -- well, first of all, let's talk about just
4 that terminology, stacking. I'm not sure it's been
5 defined in this case. As an EBID member, you're
6 familiar with the EBID rules and regulations that
7 allow you to stack irrigation water, aren't you?

8 A. I am aware that you can stack EBID water,
9 yes.

10 Q. Okay. And when you stack water, you're
11 basically moving it with EBID's permission or at least
12 acknowledgment, you're moving that water -- surface
13 water from one farm to another farm so you can stack
14 that water to get more irrigation water in a second
15 farm, right?

16 A. You could, yes. That's my understanding of
17 it.

18 Q. And -- and for the EBID stacking, you're
19 limited to stacking it -- stacking twice the -- the
20 annual available water supply, right? So you couldn't
21 -- you couldn't take three sets of -- three farms
22 worth of irrigation surface water and stack it onto a
23 farm, correct?

24 A. I don't know that. I -- I don't know the
25 limits of the stacking. You might be able to stack

1 four farms on one. I don't know the limits of that.

2 Q. Okay. And you testified that if you stack,
3 you're not increasing the beneficial use or
4 consumptive use, I guess, of the water because you
5 were using 3 acre-feet over here, and now, you're
6 using 3 acre-feet over there, correct?

7 A. If you transfer 3 acre-feet from Farm A and
8 put it on Farm B, and if Farm B had 3 acre-feet and
9 you now have 6 acre-feet on Farm B, if they're the
10 same acreage, it's a net sum gain, zero.

11 Q. But it would also have to be the same crop,
12 right? Because, for example, cotton doesn't -- you
13 don't irrigate cotton for as many months as you
14 irrigate pecans. So if you took water that had been
15 previously used on a cotton farm and stacked it onto a
16 pecan farm, you would actually be increasing the
17 length of time that you were irrigating with the water
18 from cotton farm, right?

19 A. I don't know the answer to that. I'm not a
20 cotton farmer.

21 Q. But you own some farms in Hatch, correct?

22 A. I have farms in Hatch, yes.

23 Q. And you don't actually cultivate those farms,
24 correct?

25 A. I have them leased out to tenants.

1 Q. And you take the water off of those farms and
2 move it down to your main farm in the Mesilla,
3 correct?

4 A. No, ma'am. They still farm with the water
5 that's up there.

6 Q. I thought Mr. --

7 A. Go ahead.

8 Q. I thought Mr. Leininger talked to you about
9 moving your -- the fact that you had moved some of
10 that water under an OWMAN from the Hatch farms down to
11 --

12 A. I never said I moved it.

13 JUDGE MELLOY: Excuse me.

14 A. I said it was an average.

15 Q. (BY MS. KLAHN) So it's important that we not
16 talk over each other because there's a court reporter
17 that we can't see and she's writing all this stuff
18 down, and the judge is about to tell us both to stop
19 interrupting, so let's -- let's try that again.

20 My understanding -- and maybe I misunderstood,
21 but my understanding of your testimony with
22 Mr. Leininger was that some of the irrigation water
23 that can be used on the Hatch farms has been
24 administratively moved under the OWMAN program to the
25 main farm; is that correct?

1 A. No, ma'am, that's not correct.

2 Q. Okay.

3 A. It is an average. So those farms are
4 included in my average of water usage.

5 Q. Your personal average?

6 A. My average of all my farms that I own.

7 Q. But I'm trying to understand this from an
8 administrative perspective. When Mr. Serrano looks at
9 your water usage --

10 A. All right. I'll give you my explanation for
11 it. All right. You have a thousand -- let's do a
12 hundred acres because it's easy math, and you have 5.5
13 acre-feet. That's 550 acre-feet of water you may use
14 on that hundred acres. Okay. So, now, you have 50
15 acres where my farm is and 50 acres in Hatch. They
16 both have a 5.5 amount of water you can use, so that's
17 550 acre-feet of water. If you plant a crop up there
18 on one farm that only uses 2 or 3 acre-feet, but you
19 have a 5.5 average, the difference, you are entitled
20 to use it on the other land. It is not an increase of
21 use of water. It is a recognition of your beneficial
22 use that you have done and used those practices for
23 decades is what it is. It is a recognition of the
24 use. It is an average on your farm, just like the
25 AWRM 4 acre-feet number was an average of the whole

1 valley.

2 Q. I was trying to understand it from an
3 administrative perspective.

4 A. I just explained it.

5 Q. And I under -- and I understand that you have
6 that availability to essentially use some of the water
7 from Hatch on your main farm so long as you don't
8 exceed 5.5 acre-feet per acre on all your ground; is
9 that right?

10 A. On everything that -- I have some farms that
11 have a 4.5 FDR. I have some that are 5.5. I have
12 some that aren't quite 5.5. It is an average of all
13 of those together that you are able to use.

14 Q. Let's turn to Exhibit 990, I think.

15 MS. KLAHN: Could we have that put up,
16 please?

17 Q. (BY MS. KLAHN) So this document has some
18 highlighting under "remaining water balance." What's
19 the purpose of the highlighting?

20 A. That way I can tell if I go over or under on
21 any particular farm.

22 Q. And is this something that you maintain
23 throughout the season or something that you completed
24 at the end of the year?

25 A. We read our wells every month, so I do this

1 monthly.

2 Q. Okay. So this is your December, 2020,
3 summary basically for the year?

4 A. It's a recap of the season.

5 Q. Now, on this -- for purposes of the
6 discussions we're having in this case, which involve
7 water administration, water regulation, how much water
8 New Mexico should be using, et cetera, would you agree
9 with me that for purposes of this case, it's the OSE
10 columns that are the ones that matter? That's how
11 you're regulated is under the OSE columns, right, that
12 show --

13 A. The OSE column is the one I live and die by.

14 MS. KLAHN: Okay. You can take that
15 down. Could we have New Mexico 989, please? I
16 must've written that down wrong. I'm looking for the
17 kilowatt hours one. What number was that? 984, I
18 think. Thank you.

19 Q. (BY MS. KLAHN) So you testified that this --
20 first of all, this is a plot of kilowatt hours,
21 correct?

22 A. Yes, ma'am.

23 Q. It's not a plot of surface water?

24 A. No, ma'am.

25 Q. Okay. And you testified that by looking at

1 **this, you can tell how much surface water you had**
2 **available. Do you recall that?**

3 A. This is a different slide than the one we
4 looked at earlier, because it's -- we're missing --
5 okay. This is the main farm. Excuse me. Is this the
6 one that was in the record? All right. Go ahead.

7 **Q. I believe so.**

8 A. All right.

9 **Q. I believe this is the one that was admitted.**

10 **MS. KLAHN:** Could you pop it out again,
11 Justin?

12 **Q. (BY MS. KLAHN) I believe your testimony was**
13 **that by looking at this, it's possible to infer how**
14 **much surface water was available to you from looking**
15 **at the amount of kilowatt hours; is that right?**

16 A. You could extrapolate it out that there was
17 more surface water on less kilowatt hours, yes.

18 **Q. But would you agree with me that there was a**
19 **full water supply from the late 1990s until about**
20 **2002?**

21 A. I don't know that we had a full water supply
22 in 2002. I know we didn't in '03. If my memory
23 serves me correctly, our water supply was less
24 starting in '99 or 2000, but I do not have that data
25 in front of me.

1 Q. So if we actually put surface water
2 availability under EBID up here against these kilowatt
3 hours, you're actually not sure whether or not it
4 would show that you pumped more in years with less
5 surface water, correct?

6 A. Say that again.

7 Q. I said if we put the actual surface water
8 availability that would -- was available to you under
9 EBID up here against these kilowatt hours, you're not
10 actually able to say, as you sit here, whether or not
11 this actually reflects, for example, 2003 has 313,295
12 kilowatt hours, but you just said you thought it was a
13 full supply year. If that's the case, that's higher
14 than everything that came before it.

15 A. I don't remember if that was a full supply
16 year or not. I would -- I would suggest that it
17 wasn't because of those numbers.

18 Q. So you -- but you haven't made that
19 comparison for purposes of your testimony today,
20 correct?

21 A. I haven't. And, you know, quite frankly, if
22 we had a partial un-full supply year that year, I may
23 have transferred that water of EBID to another farm
24 and used the water there, which showed a little bit
25 higher usage on, say, 2002 or '3. Maybe they were

1 going to tell us we were going to run out of water in
2 September so I was trying to use it somewhere else. I
3 don't remember the details.

4 **MS. KLAHN:** I don't think I have
5 anything further for this witness. Thank you.

6 **JUDGE MELLOY:** Mr. Wechsler, do you have
7 anything for redirect?

8 **MR. WECHSLER:** I have a few questions,
9 Your Honor. May I proceed?

10 **JUDGE MELLOY:** You may.

11 REDIRECT EXAMINATION

12 BY MR. WECHSLER:

13 **Q.** Mr. Salopek, I want to start with the combine
14 and commingle permit. Do you recall discussing that
15 with Mr. Leininger?

16 **A.** I do.

17 **Q.** And Mr. Leininger was suggesting something
18 about the shallow aquifer. Do you know how the state
19 engineer defined shallow aquifer for administrative
20 purposes?

21 **A.** I don't.

22 **Q.** We talked about -- you talked about the
23 letter from 2006 from the state engineer with
24 Mr. Leininger. Do you recall that?

25 **A.** I do.

1 Q. And between 2006 and the time that the Court
2 heard evidence on the Stream System Issue 101 and then
3 entered its final order, was there a significant
4 amount of study and evidence presented by all parties
5 on the water use in the Lower Rio Grande?

6 A. Mr. Wechsler, could you restate the question?
7 I -- I missed part of it. Sorry.

8 Q. Yeah. I'm happy to. My point is: You were
9 looking at a letter from 2006, right?

10 A. Yes.

11 Q. And then the Stream System Issue 101 was
12 resolved in that final judgment many years later; is
13 that right?

14 A. It was -- well, 2011, so five years later.

15 Q. During those five years, was there evidence
16 presented, analysis done that evaluated the water use
17 in the Lower Rio Grande?

18 A. Yes. Enormous amount of time, money, and
19 resources were put into that.

20 Q. Do you know if the United States participated
21 or at least was aware of Stream System Issue 101?

22 A. They would have been notified about it, yes.

23 Q. Was -- and you testified that Dr. King
24 actually testified to the correct amount of water use
25 during the proceeding; is that right?

1 A. That is correct.

2 Q. And then ultimately, that's what led Judge
3 Valentine to enter the final judgment?

4 A. Yes.

5 Q. Did EBID accept -- I mean, you testified that
6 the New Mexico Pecan Growers did not accept the limit
7 of 4 acre-feet per acre that was initially proposed by
8 the state engineer. Do you know if EBID accepted that
9 amount of 4 acre-feet per acre?

10 A. I believe they didn't. I know when there was
11 the initial fight in the initial litigation, EBID was
12 protesting that, as well as we were, so I would say
13 no, they weren't -- they didn't like it.

14 Q. During your discussion with Mr. Leininger,
15 you indicated -- he asked you a question about if
16 there's been a shortage for the districts in recent
17 years, and you said, "Not for both districts." Do you
18 recall that?

19 A. Yes, I do.

20 Q. What did you mean?

21 A. Since the operating agreement, EP1 has had
22 several full allotment years, and we have had none.

23 Q. We'll actually get a chance to look at some
24 of these documents, I think, later that -- that you
25 presented, but in terms of the evidence that you

1 presented to the state engineer during your
2 negotiations and ultimately the court, can you just
3 give us an idea of what was presented? What was it
4 that you were showing in order to establish that
5 pecans had historically used a larger amount of water
6 than 4 acre-feet per acre?

7 A. One of the -- the areas that we used was the
8 -- the Sammis study, which was done on my farm. We
9 did the Miyamoto study, which was done in the lower
10 valley, which actually showed more water use than we
11 had. We did several other studies. I think there
12 were some in -- other ones at NMSU that had been
13 previously done. I think there were some in Arizona
14 that we might have used. It's been a while. There
15 was a lot of studies and a lot of paperwork that had
16 been done.

17 Q. And those --

18 A. We also used some of the personal records of
19 farmers showing how much water they had put on the
20 fields.

21 Q. And -- and those -- all of that evidence
22 showed that pecans had used CIR of more than 48 inches
23 or 48 inches?

24 A. It is a 48-inch or more, correct.

25 Q. And, finally, you were asked some questions

1 both by Mr. Leininger and by Ms. Klahn about OWMAN and
2 how that worked and -- and sort of transferring water
3 between farms. Let me just ask you: On the main
4 farm, what's your limit for water use on the main farm
5 for those acres?

6 A. An FDR of 5.5.

7 Q. And have you historically, going back those
8 60/70 years you've been testifying to, has that farm
9 always used that 5.5 acre-feet per acre?

10 A. I would assume so. We grew a lot of alfalfa
11 on that farm over the years. As my father
12 transitioned into pecans in 1955 going forward, there
13 was a lot of alfalfa that he grew.

14 Q. Why do you reference alfalfa?

15 A. It is a high-water-use crop.

16 Q. Like pecans, it also uses a large amount of
17 water?

18 A. That or more.

19 MR. WECHSLER: No further questions,
20 Your Honor. Thank you.

21 JUDGE MELLOY: Anything further,
22 Mr. Leininger or Ms. Klahn?

23 MR. LEININGER: No, Your Honor. Thank
24 you.

25 JUDGE MELLOY: Ms. Klahn?

1 **MS. KLAHN:** No, Your Honor.

2 **JUDGE MELLOY:** All right. Then the
3 witness is excused. We appreciate your testimony, and
4 we'll take a break at this time until 1:25 our time,
5 get your next witness lined up, and then we'll come
6 back then. Thank you, everyone.

7 (Recess.)

8 **JUDGE MELLOY:** All right. We're back on
9 the record in connection with Original No. 141, Texas
10 versus New Mexico. Let me ask the parties to enter
11 their appearance for this afternoon session. I see we
12 have some different folks so for Texas?

13 **MR. DEITCHMAN:** Good afternoon, Your
14 Honor. Rich Deitchman for the State of Texas.

15 **JUDGE MELLOY:** Okay. And for New
16 Mexico?

17 **MS. DALRYMPLE:** Good afternoon, Your
18 Honor. Shelly Dalrymple for the State of New Mexico.

19 **JUDGE MELLOY:** Okay. And then for
20 Colorado, Mr. Wallace, I see you're still with us?

21 **MR. WALLACE:** Yes, Your Honor.

22 **JUDGE MELLOY:** And then for United
23 States?

24 **MR. DUBOIS:** Good afternoon, Your Honor.
25 James Dubois for the United States.

1 **JUDGE MELLOY:** All right. And then --
2 all right. New Mexico may call its next witness,
3 Ms. Dalrymple.

4 **MS. DALRYMPLE:** Thank you, Your Honor.
5 We're just turning on the camera in the witness room.
6 One second. New Mexico calls Mr. Gregg Carrasco.
7 Good afternoon, Mr. Carrasco.

8 **THE WITNESS:** Good afternoon.

9 **JUDGE MELLOY:** Just a second. Just a
10 second. Before we start, Mr. Carrasco, I need to
11 swear you as a witness. Would you raise your right
12 hand, please? Do you swear or affirm that the
13 testimony you're about to give will be the truth, the
14 whole truth, and nothing but the truth?

15 **THE WITNESS:** I do.

16 **JUDGE MELLOY:** All right. And I need to
17 give you a couple admonitions we're going over with
18 each of the witnesses. First, let me ask you: Is
19 there anyone in the room with you?

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

21 **JUDGE MELLOY:** Do you have available to
22 you any papers or documents other than the exhibit
23 book to which you would be referring to during your
24 testimony?

25 **THE WITNESS:** I do not.

1 **JUDGE MELLOY:** And I need to advise you
2 that you're not allowed to have any communication
3 devices such as iPhones, iPads, laptops, et cetera,
4 for texting, e-mail, or any other communication needs.
5 Do you understand that?

6 **THE WITNESS:** I do Your Honor.

7 **JUDGE MELLOY:** All right. Thank you.
8 And I should ask you, also, to, for the record, state
9 and spell your name.

10 **THE WITNESS:** My name is Gregory M.
11 Carrasco, G-R-E-G-O-R-Y, M, C-A-R-R-A-S-C-O.

12 **JUDGE MELLOY:** All right. You may
13 proceed.

14 **MR. DEITCHMAN:** Your Honor, sorry to
15 interrupt. The state of Texas would like to assert a
16 standing objection to this witness' testimony, and if
17 I could state that for the record now.

18 **JUDGE MELLOY:** You may.

19 **MR. DEITCHMAN:** Your Honor, it is our
20 position that this witness' testimony and the
21 described scope in the State of New Mexico's
22 anticipated order of witness, it's Docket 599 at Page
23 3, this testimony is improper. The categories of
24 testimony are listed as follows: Valuation of
25 agriculture land uses and water rights, potential

1 impacts of fallowing and/or depletion reduction to
2 farming and ancillary businesses, and the economic
3 value of farming and ancillary businesses in Southern
4 New Mexico. This witness was not disclosed as an
5 expert, was not disclosed as a retained expert, was
6 not disclosed as a nonretained expert. Each of those
7 categories is the subject for expert testimony. In
8 addition, the testimony goes to damages and remedies.
9 New Mexico admits as much in saying that he'll testify
10 about the potential impacts of fallowing and/or
11 depletion reduction to farming and ancillary
12 businesses, so Texas would renew our motion in limine
13 No. 3, which was to exclude the introduction of
14 evidence at trial relating to damages allegedly
15 sustained by New Mexico. They never disclosed that
16 witness for that purpose, an expert witness, and they
17 certainly never disclosed Mr. Carrasco as an expert
18 witness for that purpose.

19 Finally, Mr. Carrasco is not an
20 economist. There's no basis for him to provide his
21 opinion on economic impacts to the region, which they
22 describe as all of Southern New Mexico. According to
23 his resume, he's retired from Farm Credit. He may do
24 some limited consulting work for them, but there's no
25 basis for this witness to provide this testimony.

1 Thank you.

2 **MR. DUBOIS:** Your Honor, this is James
3 Dubois. The United States also joins in that
4 objection. I understand the testimony has not been
5 offered yet. I expect that as we get to the specifics
6 of the testimony, we will be -- we will be raising
7 this objection again and giving you some additional
8 authority for that.

9 **JUDGE MELLOY:** What is -- what's the
10 position of -- of New Mexico on this issue?

11 **MS. DALRYMPLE:** Thank you, Your Honor.
12 Your Honor, the New Mexico position is that the
13 evidence to be presented by Mr. Carrasco is relevant
14 because New Mexico and, in fact, Texas have made
15 injunctive claims and claims for injunctive relief and
16 whether that injunctive relief is appropriate is at
17 issue. New Mexico needs to establish that it's
18 entitled to injunctive relief. What's involved and
19 what the testimony will go to is the balance of harms,
20 injury, the public interest. It's important that the
21 Court understand the importance of the agricultural
22 industry to the issues at this case, to the community,
23 to the state, and that the Court understand that the
24 entire Lower Rio Grande area has been dependent upon
25 groundwater pumping and has had certain understandings

1 about its regulatory use and its use in both New
2 Mexico and Texas. That's our position on the
3 relevance of his testimony that, in fact, this goes
4 right to the heart of the injunctive relief being
5 sought by both parties.

6 As to Mr. Carrasco's status as an
7 expert, we are not proffering him as an expert. When
8 I have an opportunity to present his qualifications as
9 a fact witness, it will become very clear that under
10 Rule 701, his testimony is based on -- is rationally
11 based on his perceptions based on 35 years in the
12 lending business, in the appraisal business, and in
13 the farming business. It will help to clearly
14 understand the issues at this case. He is not being
15 proffered as an expert, and it will be clear as he is
16 permitted to testify that it is based on his own
17 rational experience -- experience and perceptions.

18 **JUDGE MELLOY:** Well --

19 **MR. DEITCHMAN:** Your Honor, may I
20 provide one additional comment?

21 **JUDGE MELLOY:** You may.

22 **MR. DEITCHMAN:** First, Texas has not at
23 this time objected to the relevance of the testimony.
24 That remains to be seen. The objection here is that
25 he has not been disclosed as an expert, and the time

1 for that is long passed. Second, as to the injunctive
2 relief, I believe that's for the remedies phase, which
3 is some time in the future.

4 **JUDGE MELLOY:** Well --

5 **MS. DALRYMPLE:** Your Honor, if I may --
6 I'm sorry.

7 **JUDGE MELLOY:** Let me speak. I do
8 believe that the United States has asked for an
9 immediate injunction, and that was in the motion for
10 summary judgment paper, so I'm not sure where we are,
11 whether the United States is still asking for
12 immediate injunctive relief, which they did ask for at
13 one time, or whether they are willing to wait until
14 the remedies phase for that. So I -- I do think that
15 is -- that is an issue that's at least on the table.
16 I'll let New Mexico have further word, but what you
17 have said, Counsel, some of which you've indicated
18 sounds an awful lot like expert testimony. In my
19 experience, appraisal is -- appraisers are experts.
20 They're not -- they're not fact witnesses. So if you
21 want to say something further, that's fine, and I'll
22 certainly let the witness testify, but there may be
23 areas where I will sustain objections if -- if it does
24 turn out to be expert testimony, and that's certainly
25 an area where I think expert testimony may -- may, in

1 fact -- well, that may be a problem. So I'll just
2 leave it at that.

3 **MS. DALRYMPLE:** Thank you, Your Honor.
4 We understand, and I think it will become very clear
5 that Mr. Carrasco is not offering expert testimony,
6 but rather observations that will be helpful to Your
7 Honor based on his years of experience in this
8 industry and in the community. I understand that we
9 may be subject to objections based on individual
10 pieces of testimony that we can discuss when those
11 arise, but I think if we can lay the foundation for
12 Mr. Carrasco's testimony, it will be clear that he's
13 not offering expert testimony.

14 **JUDGE MELLOY:** Go ahead.

15 **MS. DALRYMPLE:** Thank you.

16 GREGORY CARRASCO,
17 having been first duly sworn, testified as follows:

18 DIRECT EXAMINATION

19 BY MS. DALRYMPLE:

20 **Q. Let's try this again, Mr. Carrasco. Good**
21 **afternoon.**

22 A. Good afternoon.

23 **Q. Mr. Carrasco, what is your current**
24 **professional position?**

25 A. I retired from Farm Credit on the end of

1 February. I've been retained as an independent
2 consultant with them for the management of some
3 specific assets and some special projects. I also
4 provide some independent contracting services to some
5 other ag businesses in the area.

6 **JUDGE MELLOY:** Excuse me. Mr. Carrasco,
7 could you get a little -- maybe bring the microphone a
8 little closer? I'm having a little trouble.

9 **Q. (BY MS. DALRYMPLE)** Greg, it looks like you
10 turned it off. It's not red anymore. There, thank
11 you.

12 **Mr. Carrasco, we'll talk about Farm Credit a**
13 **little later. Where did you grow up, sir?**

14 **A.** I grew up in Las Lunas, which is small down
15 in the middle Rio Grande just south of Albuquerque.

16 **Q. Did your family farm?**

17 **A.** We did. We had irrigated farms there, and we
18 also ranched in the area.

19 **Q. And what does ranching mean?**

20 **A.** Cattle ranching on rangeland, non-irrigated
21 land.

22 **Q. Thank you. I'm going to ask Ms. Ferguson to**
23 **pull up New Mexico Demonstrative 25 and ask you to**
24 **take a look at that. Mr. Carrasco, do you recognize**
25 **this -- first of all, did it show up for you?**

1 A. I have it in front of me, yes, I do.

2 **Q. Okay. What is this, sir?**

3 A. This is a CV that I put together showing my
4 education, employment history, and those things.

5 **Q. Is it accurate?**

6 A. It is.

7 **Q. Let's use it to walk through a little of your
8 background. Can you tell us a little bit about your
9 education, please?**

10 A. Sure. I attended New Mexico State University
11 and graduated in 1980 with a double major in animal
12 science and agricultural economics.

13 **Q. I'm sorry. I was just looking on the dates
14 on there. That got me a little confused. Do you have
15 any certifications or other accreditations?**

16 A. I do. I've been an accredited rural
17 appraiser since 1985 by the American Society of Farm
18 Managers and Rural Appraisers. I'm also a state
19 certified general appraiser under the State of New
20 Mexico's licensing law since 1991.

21 **Q. Okay. Thank you. And then you mentioned you
22 have recently retired from Farm Credit. When did you
23 -- let's go backwards from your most recent position
24 with Farm Credit. When did you start with Farm
25 Credit?**

1 A. My most recent position was from 1999 to
2 2021. For most of that time period, I was the branch
3 manager for the Las Cruces area. The last couple of
4 years, '19 to 2021, I was in a transitional position
5 as we brought in a new branch manager. I was
6 basically senior relationship officer working special
7 projects across the state of New Mexico.

8 **Q. Thank you. And before you went with Farm
9 Credit in 1999, where did you work?**

10 A. I owned two separate businesses. 1993, I
11 bought Southwestern Abstract & Title Company. It was
12 a title and abstract real estate closing services
13 company here in Dona Ana County. Also at that same
14 time, I invested in what was called IDEA Corporation.
15 IDEA produced ruggedized computer communications
16 platform that the Department of Defense used and some
17 forward deployments and those two businesses, I ran
18 for that time period.

19 **Q. Okay. What did you do before you owned those
20 two businesses, sir?**

21 A. Upon graduation from college, I went to work
22 for at that time what was called Federal Land Bank
23 Association of Las Cruces. Through a series of
24 consolidations and stuff, it eventually became what
25 was Farm Credit Services of New Mexico. It was a \$90

1 million branch office that I managed. I began
2 managing that office about 1984, about four years
3 after I started. It was, you know, general duties
4 were the management of the office, the extension of
5 credit to agricultural operations in the area, and the
6 appraisal of real estate and personal property to
7 support those loans.

8 **Q. Mr. Carrasco, those duties that you just**
9 **discussed for your earlier stint with Farm Credit, can**
10 **you elaborate on those as to in your most recent**
11 **22-year stint with Farm Credit, what your duties and**
12 **responsibilities were?**

13 A. Yes. I basically managed an office that took
14 in the southern part of the state. We made both real
15 estate loans and operating loans to agricultural
16 producers. The area that's within the lower Rio
17 Grande basin is the primary lending area for that
18 office. So in addition to general management,
19 everything from human resource management to some
20 financial management, my main job was underwriting and
21 approval of loans, review of appraisals for
22 agricultural operations there in that area.

23 **Q. Do you live in Las Cruces now, sir?**

24 A. I do.

25 **Q. Is that where Farm Credit is based, at least**

1 **the office you worked in?**

2 A. It is, yes.

3 **MS. DALRYMPLE:** I'm going to move to
4 admit New Mexico Demonstrative 25, please.

5 **JUDGE MELLOY:** Any objection?

6 **MR. DEITCHMAN:** No objection.

7 **MR. DUBOIS:** None from the United
8 States.

9 **JUDGE MELLOY:** Exhibit 25 is admitted.

10 **MS. DALRYMPLE:** Thank you.

11 **Q. (BY MS. DALRYMPLE) Going back to your CV,**
12 **sir, you mentioned some other businesses and personal**
13 **investments. As I look at that, it looks like you own**
14 **three areas of farmland; is that correct?**

15 A. Those are three different companies. Three
16 Saints, LLC, these are all held by just myself and my
17 wife, own some agricultural real estate there in the
18 valley. There's about 86 acres of irrigated farmland
19 just south of Las Cruces. The Slash 3C Ranch is a
20 large desert ranch located west of Las Cruces out on
21 the mesa, and Tierra de Dona Ana is a real estate
22 holding company that owns some nonagricultural type
23 properties.

24 **Q. As to these farming properties and ranching**
25 **properties in the lower Rio Grande, do you have water**

1 **rights?**

2 A. As to the farms under -- owned by Three
3 Saints, yes, they have both surface water rights
4 through the Elephant Butte Irrigation District, and
5 supplemental groundwater rights that we produce out of
6 wells.

7 **Q. Have your groundwater rights been**
8 **adjudicated?**

9 A. They have been.

10 **Q. What's your adjudicated acre-foot number?**

11 A. 4.5 acre-feet as a farm delivery.

12 **Q. Thank you. Do you have any groundwater wells**
13 **on these properties?**

14 A. We do. We have three wells, one of which is
15 not operable.

16 **Q. As to the other two, are they metered?**

17 A. They are. They're metered. We were required
18 to provide meter readings quarterly to the Office of
19 State Engineer, so they can monitor the use of those
20 wells.

21 **Q. And I believe you mentioned that you are a**
22 **member of EBID; is that correct?**

23 A. I'm a member of EBID because I own property
24 within Elephant Butte Irrigation District, and I, of
25 course, pay my assistants.

1 **Q. Are you allotted Rio Grande Project surface**
2 **water?**

3 A. I am through the Elephant Butte Irrigation
4 District.

5 **Q. And do you supplement your Rio Grande Project**
6 **surface water with groundwater pumping on your farms**
7 **as necessary?**

8 A. Yes. With 4 acre delivered this year, most
9 of the water was pumped that we used to grow crops.

10 **Q. Okay. Looking back at your CV, I don't**
11 **believe we have talked about your civic organize**
12 **involvement. Can you tell us a little bit about**
13 **those?**

14 A. Yes. You know, like most of the people
15 involved in this case, you know, civil involvement,
16 giving back to the community, is important to all of
17 us, but been involved with the Diocese of Las Cruces,
18 New Mexico State University and its foundation,
19 Southern New Mexico State Fair and Rodeo, New Mexico
20 Cattle Growers, Southern New Mexico Diversified Crop
21 Growers Association, and American Angus.

22 **Q. So the Southern New Mexico Diversified Crop**
23 **Growers Association, sometimes we shorthand that as**
24 **Diversified Growers. That is an amicus in this case;**
25 **is that right?**

1 A. That is my understanding, yes, ma'am.

2 **Q. Okay. And I think this is cut off a little**
3 **bit.**

4 **MS. DALRYMPLE:** Ms. Ferguson, could you
5 open that? No, it's not.

6 **Q. (BY MS. DALRYMPLE) Are you involved in any**
7 **professional organizations? I don't think I've**
8 **covered that.**

9 A. I am, largely through the appraisal side.
10 I'm a member of the American Society of Farm
11 Management and Rural Appraisers, and, of course, there
12 is a state chapter. I was a member of their national
13 educational committee back in the early '90s. After
14 the appraisal standards board was brought in in
15 response to the S&L failures, they were trying to put
16 some educational information together across the State
17 of New Mexico. Most of that information had been
18 based on Midwest appraisal techniques, and they wanted
19 somebody with some background in lending and doing
20 appraisals within a Bureau of Reclamation and with
21 some assured backgrounds such as BLM or forest service
22 so was on that national committee for a while. I also
23 served as a president for the New Mexico Chapter for a
24 couple years here in New Mexico.

25 **Q. Thank you. What I was looking for a minute**

1 ago, and I don't see it on here, is that you are also
2 a member of -- you are a commissioner on the
3 Interstate Stream Commission; is that correct, of New
4 Mexico?

5 A. I am. I was appointed in 2019.

6 Q. Who appointed you, sir?

7 A. The current governor.

8 Q. I want to make it perfectly clear that you're
9 not here to testify as an ISC commissioner. Can you
10 agree with that?

11 A. I do.

12 Q. Do you know how it -- how the governor came
13 to appoint you? Do you have any insight into why she
14 appointed you or put your name forward as a
15 commissioner?

16 A. I don't know exactly. I'm assuming the name
17 was proposed by some of the agricultural groups down
18 in that area. Jeff Witte, who's the secretary of ag,
19 was probably involved in that process, as well. I
20 think just because of the background in the area and
21 involvement in other aspects of agricultural
22 situations with zoning or the land use planning, I'm
23 assuming that is why I was nominated for that
24 position.

25 Q. Mr. Carrasco, how do you receive information

1 **about water use and conditions in the Lower Rio**
2 **Grande?**

3 A. Probably same source as everybody else does,
4 and that is Elephant Butte actually -- the Elephant
5 Butte District actually has a very good Website that
6 provides quite a little bit of information. They also
7 have informational meetings generally on an annual
8 basis, but there's other sources that, you know, are
9 available to us. You know, probably most of the
10 information is from direct conversations with farmers.
11 We spent a lot of time talking to farmers, trying to
12 understand what their needs are, and -- and most of
13 the information we will have from actual farmers that
14 -- that are impacted by water situation there in that
15 basin.

16 Q. Okay. Let's turn, Mr. Carrasco, to your work
17 with Farm Credit of New Mexico. Based on your CV and
18 history, it looks like you've spent, all told, about
19 35 years with Farm Credit of New Mexico; is that about
20 right?

21 A. That's correct.

22 **MS. DALRYMPLE:** Ms. Ferguson, could you
23 please pull up New Mexico Demo 26?

24 Q. **(BY MS. DALRYMPLE)** And, Mr. Carrasco, I'd
25 like to ask you to describe to us what Farm Credit of

1 **New Mexico does.**

2 **MR. DEITCHMAN:** Your Honor, I just would
3 like to object to relevance. I'm not sure why that's
4 relevant to this case.

5 **MS. DALRYMPLE:** Your Honor, this is --
6 this has been listed as Category A, no objection. I
7 move for its admittance.

8 **MR. DEITCHMAN:** I don't object to the
9 exhibit. I'm just objecting to the testimony --

10 **MR. DUBOIS:** You're on mute, Your Honor.

11 **MR. DEITCHMAN:** -- about Farm Credit.

12 **MS. DALRYMPLE:** Farm Credit, as
13 Mr. Carrasco will establish, is well settled in the
14 community. Based on his job with Farm Credit, he has
15 extensive experience with farmers, with their
16 financial needs, with investments in the community,
17 and if you'll give me a little leeway, he'll explain
18 that.

19 **MR. DUBOIS:** You're on mute, Your Honor.

20 **MS. DALRYMPLE:** Your Honor, I think
21 you're on mute.

22 **JUDGE MELLOY:** Go ahead. Did you have
23 something you wanted to say, Mr. Dubois?

24 **MR. DUBOIS:** I was just saying, Your
25 Honor, you're on mute.

1 **JUDGE MELLOY:** Okay. For the record,
2 New Mexico Demo 25 and 26 are both listed as A
3 exhibits so it will be admitted. I'll allow the
4 testimony. I'm not sure where we're going with all
5 this, but go ahead.

6 **MS. DALRYMPLE:** Thank you.

7 **Q. (BY MS. DALRYMPLE) Mr. Carrasco, I'm trying**
8 **to get back to my question. Oh, could you describe to**
9 **us what Farm Credit of New Mexico does?**

10 **A.** Basically, Farm Credit of New Mexico is a
11 co-op. It's owned by its members. It provides a
12 number of services. The biggest portion of that is
13 lending funds into agriculture, whether that's real
14 estate loans under mortgages, operating loans. We
15 also provide some equipment in agribusiness loans and
16 some insurance services.

17 **Q. This --**

18 **A.** It's about a \$2 billion company in the state
19 of New Mexico. It is the major source of agricultural
20 financing in the state.

21 **Q. And what are the primary types of loans that**
22 **Farm Credit extends to its clients?**

23 **A.** There 'd be two basic categories. One would
24 be real estate loans. Those are loans backed up by
25 farm real estate. Those are typically longer-term

1 loans, longer than seven-year term periods. The
2 operating loans are typically operating cycle type
3 loans or equipment loans that are paid over a shorter
4 period of time.

5 **Q. To your knowledge, is Farm Credit one of the**
6 **largest lenders to farming and farming operations in**
7 **Southern New Mexico?**

8 A. It is clearly the largest lender in the area.

9 **Q. And could you please describe your client**
10 **base in the Lower Rio Grande?**

11 A. Our clients include a large number of farmers
12 that are multigenerational. We have had a
13 relationship with most of them. During my career, and
14 going on third generations in many instances, but they
15 include farmers in the area, agri businesses that
16 process and market those kind of products, dairy
17 farms. So it's the whole array of agribusinesses and
18 farming that takes place in the Lower Rio Grande
19 Basin.

20 **Q. Mr. Carrasco, what is Farm Credit's goal when**
21 **it extends credit or makes a loan to a farming**
22 **operation?**

23 **MR. DEITCHMAN:** Objection, Your Honor.
24 I think it would be helpful to clarify for the record
25 whether Mr. Carrasco is testifying in his personal

1 capacity or on behalf of Farm Credit.

2 **MS. DALRYMPLE:** Mr. --

3 **JUDGE MELLOY:** Go ahead.

4 **MS. DALRYMPLE:** Mr. Carrasco is here in
5 his personal capacity as a former officer and 35-year
6 employee of Farm Credit based on -- and will discuss
7 his experience during that time period.

8 **JUDGE MELLOY:** Go ahead.

9 **MS. DALRYMPLE:** Let me just look at the
10 question again.

11 **Q. (BY MS. DALRYMPLE) Mr. Carrasco, can you tell**
12 **me what is Farm Credit of New Mexico's goal when it**
13 **extends credit or makes a loan to a farming operation?**

14 **A.** As structured as a co-op and per its mission
15 it's to increase the viability of -- they're a farming
16 operation in the general rural economy of the area and
17 so the goal is to provide capital in a manner that's
18 useful and helpful to that operator so that they can
19 meet their goals financially and to basically provide
20 a basis for the rural economy in the area.

21 **Q. Mr. Carrasco, can you just briefly describe**
22 **the lending process to us? What's involved? If I**
23 **come into you and I own a farm in the LRG and I need a**
24 **loan, what's the process we go through?**

25 **MR. DEITCHMAN:** Objection; relevance.

1 **JUDGE MELLOY:** Where are we going with
2 this, Ms. Dalrymple? I'm having some trouble
3 following the relevance of all of this.

4 **MS. DALRYMPLE:** Your Honor, I would like
5 -- Mr. Carrasco will establish the fact that the
6 community, the economics in the Lower Rio Grande are
7 based on historic understanding and historic
8 conditions relating to the agricultural community
9 there, which were based on reliance on certain water
10 conditions through the years upon which the entire
11 community down there has been built. We look to the
12 historic conditions there to make forward-looking
13 decisions. You heard from Mr. Salopek about the
14 significant investment he's made based on his
15 understandings of what New Mexico waters he was
16 entitled to, and I think Mr. Carrasco will establish
17 that, in fact, the entire community has based
18 expectations and forward plans on those historic
19 conditions and understanding of the regulatory
20 environment.

21 **MR. DUBOIS:** Your Honor, if I may? I'm
22 sorry.

23 **JUDGE MELLOY:** Go ahead.

24 **MR. DUBOIS:** Your Honor, I mean, what
25 Ms. Dalrymple is -- is describing is clearly expert

1 testimony that was not disclosed. As -- as
2 Mr. Deitchman said, New Mexico had the opportunity to
3 disclose this witness as a nonretained expert and did
4 not, but the economic valuation of regional areas is
5 not a matter of personal perception. That is --
6 that's a matter of training and experience. Under
7 702, he wants to testify as an expert. He has not
8 been qualified as an expert or identified as an
9 expert. This is exactly what Mr. Deitchman was
10 talking about earlier.

11 **MR. DEITCHMAN:** And, further, Your
12 Honor, if he's going to testify about historic
13 conditions, I think is the word Ms. Dalrymple used, he
14 certainly is not a historian, has not been identified
15 as a historian or disclosed as a historian.

16 **MS. DALRYMPLE:** Your Honor, New Mexico
17 is not proffering any expert testimony -- veiled
18 expert testimony through Mr. Carrasco. We are not
19 going to talk about numbers. We're going to talk
20 about the New Mexico understanding -- we're not going
21 to talk about any numbers. What we have the right to
22 do at this stage when injunctive relief is on the
23 table is to establish our right to injunctive relief.
24 Numbers, quantification, whatever --

25 **JUDGE MELLOY:** Hold on just a second.

1 I'll have to go look at your counterclaim. Are you
2 asking for injunctive relief?

3 **MS. DALRYMPLE:** We have -- I'm sorry,
4 Your Honor. We have -- we have affirmative defenses
5 that are equitable and that would be the more proper
6 way for me to say that.

7 **JUDGE MELLOY:** Well -- all right. It
8 just seems to me that Mr. Dubois and Mr. Deitchman are
9 pretty close and spot on that what we're talk about is
10 historical expert witnesses, appraisal expert
11 witnesses, and economists. You know, if you want to
12 ask him what the interest rate was in 1982 when he was
13 employed by Farm Credit, yeah, he can probably talk
14 about that if it's relevant, but to talk about
15 economic trends, that's what economists do. Talk
16 about what a land is appraised to, I mean, you --
17 right on his CV, he says he's -- he's been qualified
18 as an expert in appraisal. I'll let you go a little
19 ways, but -- but I -- I'm having real trouble seeing
20 how this isn't expert testimony.

21 **MS. DALRYMPLE:** Thank you.

22 **MR. DUBOIS:** And I would point out in
23 addition, Your Honor, his -- his testimony is
24 apparently not even just limited to his perceptions,
25 but he wants to talk about the land and agricultural

1 within the entire Lower Rio Grande Basin, and, again,
2 I -- I'm beating a dead horse, but it's clearly expert
3 witness.

4 **JUDGE MELLOY:** Let's see where this
5 goes, and we'll -- well, okay. I don't think we need
6 to spend a lot of time on the application process for
7 a loan.

8 **MS. DALRYMPLE:** Sure.

9 **JUDGE MELLOY:** But let's go ahead.

10 **MS. DALRYMPLE:** Thank you, Your Honor.

11 **Q. (BY MS. DALRYMPLE) Mr. Carrasco, in your role**
12 **with Farm Credit over 35 years, can you explain to us**
13 **how you as a Farm Credit lender historically factored**
14 **water use and availability as a risk when you**
15 **personally were looking at loan applications?**

16 **MR. DUBOIS:** Objection, again, Your
17 Honor, this is asking for expert testimony because it
18 is by dent of his training experience over his 35
19 years as a lender that he's making these assessments.

20 **MR. DEITCHMAN:** Texas joins the
21 objection.

22 **MS. DALRYMPLE:** Your Honor, we'll --

23 **JUDGE MELLOY:** I'll let him talk about
24 his personal experience. Go ahead.

25 **MS. DALRYMPLE:** Thank you.

1 Q. (BY MS. DALRYMPLE) Do you remember the
2 question, Mr. Carrasco?

3 A. If you could restate it, please.

4 Q. Sure. Mr. Carrasco, in your role with Farm
5 Credit over 35 years, can you explain to us how you as
6 a farm credit lender historically factored water use
7 and availability as a risk when you looked at loan
8 applications?

9 A. Yes. From my immediate hiring, I was told
10 this is one of the factors that we absolutely have to
11 look at. The Federal Land Bank of Wichita, which we
12 were under at that time, had district engineers,
13 engineering appraisers. A gentleman by the name of
14 Dexter Henderson who worked for the Bureau was hired
15 and he came down and we spent time and he told us that
16 --

17 MR. DUBOIS: Objection; hearsay.

18 MR. DEITCHMAN: Join the objection.

19 Q. (BY MS. DALRYMPLE) Mr. Carrasco, can you
20 just, in general, explain your understanding of how --
21 of why water was evaluated as a risk -- I'm sorry --
22 water use was evaluated as a risk?

23 A. Yes. Let me get more focused then. And that
24 is, is that you don't grow anything in that valley
25 without irrigation water, it is simply not feasible to

1 plant the crop if you don't have irrigation water. 6
2 inches of rainfall won't do it, and so the stability
3 and the source of that water, the ability to secure
4 that as collateral is absolutely critical from a
5 lending standpoint.

6 **Q. Mr. Carrasco, today or before February, when**
7 **you retired, would you loan to a farming operation**
8 **that did not have groundwater rights?**

9 A. No. Simply the lack of inability in the
10 amount of surface water only available in Lower Rio
11 Grande is not sufficient to provide for feasible crop
12 production.

13 **Q. Mr. Carrasco, in your position with Farm**
14 **Credit of New Mexico, have you made loans to non-farm**
15 **businesses that are related to the agricultural**
16 **sector?**

17 A. Yes.

18 **Q. Can you give me some examples? Can you give**
19 **us an example of what's non-farming operation but**
20 **related to the agricultural industry?**

21 A. Yes, ma'am. With specialized crops, vertical
22 integration into marketing is absolutely critical, so
23 we have a number of chile dehydration plants, green
24 chile processing plants, pecan sorting and storage
25 facilities. We have a large number of onion sorting

1 and shipping facilities. We've made loans on cotton
2 gin operations. There's a large number of
3 agribusinesses that are tied to this industry in that
4 area.

5 Q. Mr. Carrasco, it seems to me what you're --
6 can you tell me if -- if the loans to farm operations
7 and farming agriculturally-related businesses, does
8 that have a ripple effect?

9 MR. DEITCHMAN: Objection --

10 MR. DUBOIS: Objection --

11 MR. DEITCHMAN: -- calls for expert
12 testimony.

13 JUDGE MELLOY: I'll sustain that.

14 Q. (BY MS. DALRYMPLE) Okay. Mr. Carrasco,
15 you've been involved in lending to the Lower Rio
16 Grande farming community for some 35 years. You've
17 testified a little bit about loaning directly to
18 farming operations. Can you tell me when you have a
19 farming operations loan application in front of you,
20 what -- what do you consider when you decide whether
21 that's going to be a good loan?

22 A. The factors are similar to any other credit,
23 and that would be a character factor assessment, which
24 in this area very much includes an assessment of
25 management. It also includes an assessment of

1 vertical integration to the agribusinesses that
2 support these either by association or by contract, an
3 assessment of financial feasibility as a company,
4 including historical performance on it, but also the
5 collateral, and the collateral is very much highly
6 dependent in this area on the availability of a stable
7 water supply --

8 **MR. DUBOIS:** Objection, Your Honor, he's
9 getting into appraisal factors, and this is clearly
10 expert testimony again.

11 **MR. DEITCHMAN:** Join.

12 **JUDGE MELLOY:** He's talking about his
13 experience as to what are lending factors, so I will
14 -- I will -- you may finish your answer.

15 A. So the final portion of that would be, of
16 course, the conditions that a loaner is led under
17 would include several things but also would include
18 the ability to secure that loan against the assets
19 that are pledged, and in this case, would be water
20 rights, as well, as the land surface.

21 **Q. (BY MS. DALRYMPLE)** So water rights are
22 considered the land surface, the infrastructure or
23 investments on the property itself; is that correct?

24 A. That is correct.

25 **Q.** In your work, Mr. Carrasco, for 35 years with

1 Farm Credit, have you considered the role that Rio
2 Grande Project surface water plays in the economic
3 output of that region?

4 MR. DEITCHMAN: Objection; calls for
5 expert testimony.

6 JUDGE MELLOY: I'll let him answer. Go
7 ahead.

8 A. Yes. Again, in that area, irrigated -- I
9 mean, crop production is just not possible, whether
10 it's permanent plantings like pecan trees or annual
11 crop without irrigation water, that'd be both surface
12 irrigation water as well as the underground water.
13 The quality of that water will also drive the
14 production of that land and the surface water is just
15 simply better quality water than the groundwater
16 that's pumped.

17 MR. DUBOIS: Objection to that and ask
18 that that be stricken. Again, he's making expert
19 testimony regarding water quality and farm production,
20 and he hasn't been qualified for that at all.

21 JUDGE MELLOY: Well, I'll leave it in.
22 I mean, I don't think there's -- I mean, a lot of
23 people have testified to that on both sides already so
24 I don't think there's -- that's a matter of great
25 dispute.

1 Go ahead.

2 **MS. DALRYMPLE:** Thank you, Your Honor.

3 **Q. (BY MS. DALRYMPLE)** Mr. Carrasco, I'm going to
4 ask you just a couple questions of what's been -- we
5 know as the 2008 Operating Agreement. Are you
6 familiar with the 2008 Operating Agreement?

7 A. Yes.

8 **Q.** How did you become familiar with the
9 operating agreement?

10 A. I became familiar mostly because of
11 conversations with farmers as they were coming in
12 asking for additional credit, drill additional wells
13 or replacement wells. They were pointing towards the
14 fact that they were not --

15 **MR. DUBOIS:** Objection, Your Honor;
16 hearsay.

17 **MR. DEITCHMAN:** Join the objection.

18 **JUDGE MELLOY:** I'll sustain it.

19 **Q. (BY MS. DALRYMPLE)** Mr. Carrasco, in
20 discussing how you became familiar with the operating
21 agreement, other than what you heard directly from
22 farmers about their needs for new loans, were there
23 other ways that you became aware of the operating
24 agreement?

25 A. Since I was aware of it, I did have to make

1 presentation to our board of directors. I do have a
2 copy of it saved on the server, and I have looked at
3 it.

4 **Q. Mr. Carrasco, why did you have to advise your**
5 **board of directors about the operating agreement?**

6 A. It was my responsibility to basically advise
7 them of any major aspects that were taking place in
8 the -- in my lending area that might affect loan
9 quality or performance.

10 **Q. Well, what was it about the operating**
11 **agreement that made you think it might affect loan**
12 **quality or performance?**

13 A. I'm not a hydrologist or an engineer or
14 anything else, but I'm pretty good with numbers, and
15 if you look at the hypothetical examples within the
16 operating agreement, the outcomes become very
17 different between the two districts.

18 **Q. The outcomes become very different. Can you**
19 **explain that to me, please?**

20 **MR. DEITCHMAN:** Objection; calls for
21 expert testimony.

22 **MR. DUBOIS:** And he's got no foundation
23 for -- as he said, he's not a hydrologist or an
24 engineer, and he wants to give engineering testimony
25 now.

1 **JUDGE MELLOY:** He can testify as to what
2 he told his Board. Go ahead.

3 **MS. DALRYMPLE:** Thank you.

4 A. Within the operating agreement are two
5 hypothetical examples of what happens with a full
6 amount of water and less than a full amount of water
7 available to the two districts or to the Bureau to
8 District to the two districts. If you follow just
9 through the math in those two hypothetical examples,
10 you know, the outcome is much different between the
11 two districts as to the water available on a per-acre
12 basis.

13 **Q. (BY MS. DALRYMPLE)** Mr. Carrasco, that's the
14 substance of what -- or part of the substance of what
15 you described to your Board, after reviewing the
16 operating agreement. Since that time, do you know if,
17 in fact, the operating agreement has resulted in a
18 difference in water to the districts?

19 **MR. DEITCHMAN:** Objection; calls for
20 expert testimony. This is clearly asking for expert
21 testimony, not what he told the Board.

22 **JUDGE MELLOY:** I'm going to sustain
23 that.

24 **Q. (BY MS. DALRYMPLE)** Mr. Carrasco, as a farmer
25 of acreage in the Project, in the Rio Grande Project,

1 do you keep track of the EBID allotments?

2 A. I do.

3 Q. Do you know what you're allotted this year?

4 A. 4 inches per acre.

5 Q. Do you have any reason to keep track of the
6 allotments to the Texas District EP No. 1?

7 A. I do not.

8 Q. Do you ever visit their Website?

9 A. I have not.

10 Q. Okay. Thank you. Mr. Carrasco, through your
11 work with Farm Credit and your discussion with your
12 farmer clients and as a farmer yourself, are you aware
13 of any practical effects with regard to what you do
14 and did for 35 years with Farm Credit that result from
15 the operating agreement?

16 A. Yes. It appears like there is inequity of
17 the water that's been delivered between the two
18 districts.

19 Q. Did you -- can you differentiate these
20 differences in quantity based on your experience as a
21 farmer and as a lender from -- between the operating
22 agreement versus being a product of the drought that
23 we all know we've been going through?

24 MR. DEITCHMAN: Objection; calls for
25 expert testimony.

1 **MR. DUBOIS:** And objection to the form
2 of the question because she's asking him a two-part
3 question, one as a lender and one as a farmer, and
4 we'll get into the amount of farming there is actually
5 in cross, but it's a compound question.

6 **JUDGE MELLOY:** All right. Break it out.

7 **MS. DALRYMPLE:** Sure. I have to think
8 of what I was asking.

9 **Q. (BY MS. DALRYMPLE) Mr. Carrasco, you**
10 **testified that one of the issues you discussed with**
11 **your Board was your concern that the operating**
12 **agreement was going to provide different amounts of**
13 **water to the New Mexico farmers versus the Texas**
14 **farmers. Do you recall that testimony?**

15 A. I do.

16 **Q. And do you know if, in fact, that is what**
17 **happened?**

18 A. Yes.

19 **Q. How do you know what you're about to tell me?**
20 **How do you know that there is a difference?**

21 A. Because Farm Credit of New Mexico also had
22 loans in the Lower Rio Grande or -- we called it the
23 Lower Rio Grande, but it's basically EP Improvement
24 District No. 1, so we had loans in both districts and
25 were aware that different amounts of water were being

1 delivered into two different districts.

2 Q. Thank you. Mr. Carrasco, are you aware that
3 New Mexico sued the Bureau of Reclamation and EBID
4 over the 2008 Operating Agreement in August of 2011?

5 A. I was, yes.

6 Q. How were you aware of that?

7 A. It hit the papers. I mean, it's fairly well
8 known in the area that the filing took place.

9 Q. And did you have to report that information
10 to anyone?

11 A. I did. I made a presentation on it also to
12 the Board.

13 Q. Why did you present that to the Board?

14 A. Again, it was just another risk that might
15 impact that loan portfolio in that area.

16 Q. Mr. Carrasco, are you -- well, let me
17 rephrase that.

18 How did you become aware of the Supreme Court
19 lawsuit in which you are testifying.

20 A. Pretty much the same way. It was reported in
21 the papers and well known in the community.

22 Q. Do you follow this litigation?

23 A. Somewhat. You know, I have a general idea of
24 what it is.

25 Q. Is this also of the level of magnitude that

1 you had to report it to your Board?

2 A. It is.

3 Q. In general, what's the deciding factor for
4 what information you have to bring to your board in
5 terms of how it might impact a portfolio?

6 MR. DEITCHMAN: Objection, Your Honor.
7 I just want to be clear, the question is phrased in
8 the way that's in the present tense, but I understand
9 that Mr. Carrasco is retired.

10 JUDGE MELLOY: I understand the question
11 to refer to when he was still an employee at Farm
12 Credit.

13 Go ahead.

14 A. That would be factors that would impact a
15 general area that would be more of a -- an action that
16 would cover a significant portion of a portfolio that
17 could change a risk assessment. We also have to make
18 disclosures to the Farm Credit Administration and
19 auditors of any issues out there that may have an
20 adverse impact to loan quality, performance, and
21 repayments.

22 Q. (BY MS. DALRYMPLE) Mr. Carrasco, are you
23 aware of what relief Texas is asking for in this
24 litigation?

25 A. In --

1 **MR. DUBOIS:** Objection; relevance.

2 **Q. (BY MS. DALRYMPLE)** Mr. Carrasco --

3 **JUDGE MELLOY:** Well, just a second. I
4 didn't -- I'll let him answer.

5 **Q. (BY MS. DALRYMPLE)** Do you want me to repeat
6 that?

7 **A.** If you could restate -- yes, please.

8 **Q.** Sure. Do you know, Mr. Carrasco, what relief
9 Texas is seeking from New Mexico in this litigation?

10 **A.** In general terms, the groundwater pumping in
11 New Mexico was interfering with the delivery of
12 Project water to Texas.

13 **Q.** That's their claim. Mr. Carrasco, let me ask
14 you: Do you know what Texas is asking for to get out
15 of this litigation?

16 **A.** I do not.

17 **Q.** Mr. Carrasco, if -- if as a result of this
18 litigation, there is significant limitation put on
19 groundwater pumping in New Mexico, do you have an
20 opinion of how that might impact Farm Credit's
21 business?

22 **MR. DEITCHMAN:** Objection; calls for
23 expert testimony.

24 **Q. (BY MS. DALRYMPLE)** Do you have an opinion as
25 to how it might impact Farm Credit's lending policies

1 and procedures?

2 MR. DEITCHMAN: Same objection.

3 JUDGE MELLOY: Go ahead. You can
4 answer.

5 A. Yes. Basically in a decision that greatly
6 curtailed the availability of surface water and
7 groundwater that would impact the productivity of
8 those farms in that area, and because of that, the
9 agribusinesses that are dependent on it would have a
10 major impact on Farm Credit.

11 Q. (BY MS. DALRYMPLE) It would have a major
12 impact on Farm Credit in relationship to the loans
13 that it's able to make and extend to its members and
14 borrowers; is that --

15 MR. DUBOIS: Objection; leading.

16 Q. (BY MS. DALRYMPLE) How would the impact to
17 Farm Credit impact its -- how would this negative
18 impact to Farm Credit impact its members and
19 borrowers?

20 A. If these farmers were not able to -- to plant
21 their entire acreage or they weren't able to hit the
22 productivity levels that they're used to having and
23 that they have based their business plans on and their
24 credit requests from us on, it would have a very
25 negative impact on them.

1 **Q.** And would that negative impact on your
2 farming clients have an impact on those other
3 industries and businesses that you have testified are
4 related to the farming operations business you do?

5 **MR. DUBOIS:** Objection --

6 **MR. DEITCHMAN:** Objection; leading.

7 **MR. DUBOIS:** And calls for expert
8 testimony.

9 **JUDGE MELLOY:** Go ahead. You can
10 answer.

11 **A.** Absolutely. You know, the integration of
12 marketing, processing into a valley, specialized
13 crops, anything that impacts the growing of those
14 specialized crops is going to impact both the input
15 side in that economy as well as the finishing and
16 marketing portion of those economy. So anything that
17 would limit what would be produced in that valley from
18 what has been historically produced at the
19 productivity levels that it has seen will have an
20 adverse impact.

21 **MS. DALRYMPLE:** Mr. Carrasco, I don't
22 have any more questions. Thank you.

23 **JUDGE MELLOY:** Mr. Deitchman?

24 **MR. DEITCHMAN:** Thank you. Yeah, I have
25 a couple questions.

CROSS-EXAMINATION

1
2 BY MR. DEITCHMAN:

3 Q. Mr. Carrasco, you've heard my voice, but I'll
4 introduce myself. My name is Rich Deitchman. I'm one
5 of the attorneys for Texas in this case. Nice to meet
6 you today. I think this is pretty clear from the
7 record, but I want to make sure it's clear on the
8 record. You have not been disclosed as an expert in
9 this litigation, correct?

10 A. That is correct.

11 Q. Okay. And you're currently retired, correct?

12 A. I'm currently retired. My wife says I'm
13 failing badly so I do do some independent consulting
14 work, both for Farm Credit and some other clients.

15 Q. And I'm correct that you retired from Farm
16 Credit in February of 2021, right?

17 A. That is correct.

18 Q. I'll represent to you that on the witness
19 list that New Mexico provided in this litigation, they
20 listed you as VP and senior relationship manager of
21 Farm Credit of New Mexico. Were you involved in
22 listing that role and providing advice to list that
23 role on the witness list?

24 A. I don't know the date of that -- that witness
25 list. I provided at some point in time that

1 information.

2 Q. Are you being paid to be here today?

3 A. I am not.

4 Q. And you -- let's take a look at Demonstrative
5 25, which was your resume. If Justin can pull that
6 up. You testified earlier today that this is an
7 accurate resume; am I right?

8 A. Yes, sir.

9 Q. But you also testified that you're an
10 interstate Stream Commissioner, correct?

11 A. I am.

12 Q. Is there a reason you didn't list that on
13 your resume?

14 A. There's not a reason. I didn't know if it
15 was appropriate on there or not.

16 Q. Did you prepare this resume in anticipation
17 of testifying today?

18 A. I did.

19 Q. And if I remember your testimony correctly,
20 you were appointed the ISC commissioner in July of
21 2009, right -- 2019, right?

22 A. Yes. July, 2019.

23 Q. Was the ISC commissioner position -- is the
24 ISC commissioner position that you're in, is that for
25 the Lower Rio Grande region?

1 A. I don't know if it's specific to the Lower
2 Rio Grande region or not.

3 **Q. And prior to your appointment to that**
4 **position, was that position vacant?**

5 **MS. DALRYMPLE:** Your Honor, I'm going to
6 object as outside the scope. We specifically did not
7 go into the ISC Commission issues.

8 **MR. DEITCHMAN:** He did testify that he's
9 a commissioner for the Lower Rio Grande.

10 **JUDGE MELLOY:** Well, I'll allow some of
11 this. Go ahead.

12 **Q. (BY MR. DEITCHMAN) Do you need me to repeat**
13 **the question?**

14 A. If you would, please.

15 **Q. Okay. So prior to your appointment as the**
16 **ISC commissioner, was that position that you took, was**
17 **that position vacant?**

18 A. You know, I don't know. I assume that with a
19 new governor, she appointed a new set of
20 commissioners, and so it was probably vacant for some
21 period of time, and then I was appointed.

22 **Q. So if I understand your testimony, you're an**
23 **ISC commissioner statewide; it doesn't have a focus on**
24 **the local Lower Rio Grande Region?**

25 A. I believe that appointments are statewide.

1 They try to get some geographic diversity when they
2 make those appointments, but, no, I don't have a
3 constituency in that specific area.

4 Q. Just one more question on that topic. Isn't
5 it true that in the over two years that you've been an
6 ISC commissioner for the Lower Rio Grande, you've not
7 met with the EBID board in your role as ISC
8 commissioner; is that correct?

9 MS. DALRYMPLE: Objection; relevance.

10 JUDGE MELLOY: Overruled. Do you need
11 the question repeated?

12 A. If you would, please. I'm sorry.

13 Q. (BY MR. DEITCHMAN) Sure. Isn't it true that
14 in the over two years that you've been an ISC
15 commissioner for the Lower Rio Grande, you've not met
16 with the EBID board in your role as ISC commissioner;
17 is that correct?

18 MS. DALRYMPLE: Objection; assumes facts
19 that are -- that we've just established are not true.
20 He is not a ISC commissioner for the Lower Rio Grande.

21 MR. DEITCHMAN: He already overruled the
22 objection to the question. I was just repeating it.

23 MS. DALRYMPLE: I didn't hear it the
24 first time, Your Honor. I'm sorry. I didn't hear the
25 modifier.

1 **JUDGE MELLOY:** Go ahead. You may
2 answer.

3 A. I have not met in my role as an ISC
4 commissioner with Elephant Butte District Board.

5 **Q. (BY MR. DEITCHMAN) Just a couple more**
6 **questions on different topics. So you testified that**
7 **you own land within the Elephant Butte Irrigation**
8 **District; is that correct?**

9 A. I do.

10 **Q. How many acres of land do you own in EBID?**

11 A. About 86 acres, I believe.

12 **Q. Okay. And what kind of crops do you grow on**
13 **that land?**

14 A. That farm this year was planted in triticale
15 for the first part of the year on a small portion of
16 it, but it's basically been in alfalfa for the balance
17 of the year.

18 **Q. Do you farm it yourself or do you lease it?**

19 A. Well, there's three properties. There's the
20 60-acre tract that is crop shared with Bobby Sloan,
21 who testified, I believe, the other day. Him and his
22 son, James Sloan, under Monte Vista Farms, farms that
23 on a risk share kind of a crop share basis. There's
24 two other tracts, one is cash leased out to an
25 adjacent farmer, and then the tract there where I

1 live, I operate myself.

2 Q. And do you -- do you lease any of the water
3 that's associated with your 86 acres of land to
4 others?

5 A. No.

6 MR. DEITCHMAN: Your Honor, Texas has no
7 further questions for this witness.

8 JUDGE MELLOY: Mr. Dubois?

9 MR. DUBOIS: I've only got a couple,
10 Your Honor, to follow up.

11 CROSS-EXAMINATION

12 BY MR. DUBOIS:

13 Q. Good afternoon, Mr. Carrasco. My name is
14 James Dubois. I'm with the United States. I'm with
15 the Department of Justice representing the United
16 States in this case. On the land that you say you
17 irrigate yourself, that totals 3.4 acres, am I right?

18 A. That is correct.

19 Q. Okay. And you have a well on that to
20 supplement?

21 A. I do, yes.

22 Q. Did you have any shortage of water this year
23 as far as total water available to irrigate that land?

24 A. Not if you include both the groundwater as
25 well as the surface water. I got 4 inches of surface

1 water that balances --

2 Q. And how deep is your groundwater well?

3 A. That well is about 157 feet, I believe.

4 Q. So it's basically a very shallow well. How
5 close are you to the Rio Grande?

6 MS. DALRYMPLE: Objection; relevance;
7 outside scope.

8 JUDGE MELLOY: Overruled.

9 You may answer.

10 A. Approximately 2 miles, I believe.

11 Q. (BY MR. DUBOIS) Okay. And the 2008 Operating
12 Agreement didn't prohibit you from pumping water from
13 your well, did it?

14 A. Not in 2021, no, sir.

15 Q. Okay. So operating under the 2008 operating
16 plan, you had no shortage of water in 2021, correct?

17 A. That would be correct.

18 Q. Okay. That's fine.

19 A. Just a very short surface water delivery.

20 Q. Understand. It's basically a horse pasture
21 you've got, right?

22 A. It -- it's used for bull development, but
23 yes, sir.

24 Q. You're talking about, and you were allowed to
25 testify, that an outcome that reduces the water

1 availability with EP -- EBID affects Farm Credit risks
2 within EBID; is that what I understood you to say?

3 A. I'm sorry. If you could restate that, I'd
4 appreciate it.

5 Q. An outcome of this case that reduces surface
6 water availability to EBID, I believe you said that it
7 affects Farm Credit's -- Farm Credit Company's risks
8 within EBID. Was that -- is that what I understood?

9 MS. DALRYMPLE: I need to object. I
10 think that what he testified to was that an outcome
11 that restricts surface water and -- and/or
12 groundwater.

13 MR. DUBOIS: All right.

14 MS. DALRYMPLE: I believe that's what we
15 were talking about.

16 MR. DUBOIS: Okay.

17 A. I will answer it as to, yes, if there's an
18 outcome that restricted the use of surface water
19 combined with the groundwater below the historical
20 productivity levels would impact Farm Credit's
21 portfolio.

22 Q. (BY MR. DUBOIS) And would an outcome on this
23 case that reduced water availability to EP1 affect
24 Farm Credit's risks within Texas?

25 MS. DALRYMPLE: Objection; no foundation

1 for -- for Mr. Carrasco's knowledge of what goes on in
2 the Texas region.

3 **MR. DUBOIS:** He's already testified --

4 **JUDGE MELLOY:** He's already testified
5 that he knows what goes on in the Texas region, and
6 they got loans out there, so I'll overrule.

7 A. If I could get the question again, please.

8 **Q. (BY MR. DUBOIS) Sure. And would an outcome**
9 **of this case that reduces water availability to EP1**
10 **affect Farm Credit's risks within Texas?**

11 A. An outcome of this case that affected their
12 ability to use both surface water and groundwater in
13 Texas would impact Farm Credit.

14 **Q. Okay. Thank you. One just final question**
15 **just to be clear. Your Slash 3C Ranch, that's not**
16 **within EBID, is it?**

17 A. No, sir. It's out on the mesa. It's --

18 **Q. That's what I thought.**

19 A. -- a desert ranch.

20 **Q. Okay. That's what I thought.**

21 **MR. DUBOIS:** All right. Nothing
22 further, Your Honor. Thank you.

23 **JUDGE MELLOY:** Ms. Dalrymple, any
24 redirect?

25 **MS. DALRYMPLE:** No, Your Honor. Thank

1 you.

2 **JUDGE MELLOY:** All right. Then the
3 witness is excused. We appreciate your testimony,
4 Mr. Carrasco, and you're free to go. Thank you very
5 much.

6 **THE WITNESS:** Thank you.

7 **JUDGE MELLOY:** Should we take five
8 minutes to let you get your next witness situated,
9 Ms. Dalrymple?

10 **MS. DALRYMPLE:** We'd appreciate that,
11 Your Honor. Thank you.

12 **JUDGE MELLOY:** All right.

13 (Recess.)

14 **JUDGE MELLOY:** All right. Are we ready
15 to get started with our next witness? Why don't I get
16 appearances for this session. For Texas,
17 Mr. Deitchman, you're still on?

18 **MR. DEITCHMAN:** Yes. Rich Deitchman for
19 Texas.

20 **JUDGE MELLOY:** Mr. Dubois, you're still
21 on for the United States.

22 **MR. DUBOIS:** I am.

23 **JUDGE MELLOY:** Mr. Ogaz, you're
24 appearing for --

25 **MR. OGAZ:** New Mexico.

1 **JUDGE MELLOY:** And New Mexico -- I'm
2 sorry. I can't recall your name, sir.

3 **MR. HARTMAN:** Preston Hartman for the
4 State of Colorado. Sorry if my name tag is incorrect.

5 **JUDGE MELLOY:** All right. New Mexico
6 may call its next witness.

7 **MR. OGAZ:** Thank you, Your Honor. The
8 State of New Mexico called Shayne Franzoy.

9 **JUDGE MELLOY:** Mr. Franzoy, I need to
10 swear you in as a witness. Would you raise your right
11 hand, please? Do you swear or affirm that the
12 testimony you're about to give will be the truth, the
13 whole truth, and nothing but the truth?

14 **THE WITNESS:** Yes.

15 **JUDGE MELLOY:** Would you state and spell
16 your name for the record, please?

17 **THE WITNESS:** Rodney Shayne Franzoy.
18 It's R-O-D-N-E-Y, Shayne, S-H-A-Y-N-E, Franzoy,
19 F-R-A-N-Z-O-Y.

20 **JUDGE MELLOY:** Mr. Franzoy, I need to
21 ask you a couple questions. First of all, is there
22 anyone in the room with you?

23 **THE WITNESS:** No.

24 **JUDGE MELLOY:** Do you have any documents
25 you'll be referring to other than the exhibit book?

1 THE WITNESS: No.

2 JUDGE MELLOY: I need to advise you that
3 the witnesses are not allowed to have any
4 communication devices such as iPhones, iPads, laptops
5 that would have any type of communication capabilities
6 such as texting or e-mail or so on. Do you
7 understand?

8 THE WITNESS: Yes.

9 JUDGE MELLOY: All right. And then as
10 far as exhibits are concerned, we have New Mexico 673,
11 New Mexico 791 are both A exhibits and will be
12 admitted. New Mexico Demonstrative 008, 023, and
13 Demonstrative 024 are A exhibits and will be admitted.
14 New Mexico Demonstrative No. 1 has been admitted for
15 demonstrative purposes previously. We also have Texas
16 Exhibit 155, which according to the submission we
17 received is indicated as an admitted exhibit, however,
18 our records do not show that that exhibit has been
19 admitted. Is there any objection to its admission?

20 MR. OGAZ: There's no objections, Your
21 Honor.

22 JUDGE MELLOY: All right. Exhibit 155
23 -- Texas Exhibit 155 is admitted if it has not already
24 been done so.

25 All right.

1 **MR. DEITCHMAN:** Your Honor, I believe
2 there's also New Mexico 791. I don't know if I missed
3 that.

4 **JUDGE MELLOY:** I missed it. I'm sorry.
5 I did miss it.

6 **MR. DEITCHMAN:** Thank you.

7 **JUDGE MELLOY:** 791 is also admitted.

8 **MR. DEITCHMAN:** Thank you.

9 **JUDGE MELLOY:** Mr. Ogaz, you may
10 proceed.

11 **MR. OGAZ:** Thank you, Your Honor.

12 RODNEY SHANE FRANZOY,
13 having been first duly sworn, testified as follows:

14 DIRECT EXAMINATION

15 BY MR. OGAZ:

16 **Q.** Good afternoon, Mr. Franzoy. Can you tell
17 the Court where you currently live?

18 A. I live in Las Cruces, New Mexico.

19 **Q.** How long have you lived there?

20 A. Since 2008.

21 **Q.** Where are you originally from?

22 A. I am from Hatch, New Mexico, 40 miles north
23 of Las Cruces.

24 **Q.** Okay. Can you tell the Court what you do for
25 a living?

1 A. Yes. I own and manage a farming operation in
2 the Hatch Valley.

3 **Q. What is the name of your farming operation?**

4 A. Chile River, Inc.

5 **Q. Okay. Was this a company that you started?**

6 A. No. Me and my dad started. I used to --
7 both of us used to farm on our own, and in 1996, we
8 decided to put -- join together both of our operations
9 under one umbrella.

10 **Q. And where are your operations based out of?**

11 A. Our farming operations, we have some farms in
12 Hatch Valley. We farm in Las Uvas and in Deming.

13 **Q. Can you tell the Court a little about what
14 Chile River does?**

15 A. Chile River, we -- we farm some of our own
16 property. We have some rental properties. We own a
17 processing facility. We process and market our
18 onions.

19 **Q. And where are your farms located?**

20 A. We have some in the Hatch Valley, Las Uvas,
21 and in Deming.

22 **Q. Okay. And are you affiliated with any local
23 farm organizations?**

24 A. Yes. I am the president of the Southern Rio
25 Grande Diversified Crop Farmers Association.

1 Q. If I refer to the Southern Rio Grande
2 Diversified Crop Farmers Association, as the diverse
3 crop farmers, will you understand what I'm talking
4 about?

5 A. Yes.

6 Q. Okay. How long have you been with the
7 Diversified Crop Farmers?

8 A. We started the organization in 2009. I have
9 been the president ever since.

10 Q. And what kinds of farmers compose the
11 Diversified Crop Farming group?

12 A. Row croppers, farmers that grow multiple
13 different crops on their properties.

14 Q. And how many members are in the Diversified
15 Crop Farming Group?

16 A. I'm not sure how many members we have now.
17 At one time we had over 400 members.

18 Q. Okay. The Diversified Crop Farmers are an
19 amicus in this case, correct?

20 A. Yes.

21 Q. Why is that?

22 A. We have a lot at stake in this lawsuit. We
23 are, you know, becoming more reliant on groundwater.
24 We have -- you know, EBID is supporting, you know,
25 their operating agreement, and we wanted to support

1 the State of New Mexico in any way that we could to
2 protect all of our waters in New Mexico. You know, we
3 -- we felt that we've paid our fair share for the
4 Project. We wanted to make sure we got our fair share
5 of water.

6 **Q. Okay. Turning now to your own farming**
7 **experience, how did you get started farming?**

8 A. I am a fourth-generation farmer so I grew up
9 on the farm. I started working on the farm at a very
10 young age helping the family chop cotton, mow weeds.
11 As I got older, my responsibilities grew from tractor
12 driver to irrigator, managing people, helping with the
13 harvest of the crops in the packing facility,
14 shipping, eventually doing some sales and
15 transportation to ownership.

16 **Q. When you started farming, were you originally**
17 **helping your dad on the farm?**

18 A. Yes.

19 **Q. What time period was that?**

20 A. The late '70s, early '80s.

21 **Q. And how old were you then?**

22 A. Seven to ten years old.

23 **Q. How many years have you been farming now?**

24 A. About 40 years.

25 **Q. Going back to what your dad was growing, what**

1 crops was your dad growing back during that time
2 period?

3 A. He grew onions, chile, corn, alfalfa, cotton,
4 cabbage, lettuce, wheat.

5 Q. Do you recall if your dad used ground and
6 surface water to irrigate?

7 A. Yes. He used both.

8 Q. Okay. And do you know how many groundwater
9 wells your dad had?

10 A. You know what, I'm not sure how many
11 groundwater wells he had because it varied from year
12 to year, depending on, you know, how many rental
13 properties he had, but every farm that he did farm did
14 have a well on it.

15 Q. Okay. Do you know when those wells were
16 drilled by chance?

17 A. I don't have the priority dates on those
18 wells, but I'm sure that they were all drilled in the
19 '50s and '60s.

20 Q. And so were those wells drilled before you
21 started working on the farm?

22 A. Yes.

23 Q. Are you using any of those farms still today?

24 A. Yes.

25 Q. Okay. And you mentioned you were a

1 fourth-generation farmer. Did your grandfather farm,
2 as well?

3 A. Yes.

4 Q. Okay. Where did he farm?

5 A. He farmed in the Hatch Valley.

6 Q. Are you still farming some of that same land
7 today?

8 A. Yes.

9 Q. Okay. What crops did your grandfather grow?

10 A. He grew the similar crops we grow today,
11 alfalfa, onions, chile, lettuce, cabbage, wheat, corn,
12 alfalfa.

13 Q. And did your grandfather use surface and
14 groundwater to irrigate?

15 A. Yes.

16 Q. Do any of your children work with you on the
17 farm today?

18 A. Yes. I have my oldest son helps manage the
19 farms. My wife manages my process -- onion processing
20 facility, and my daughter, she's still in high school,
21 but she assists my wife in the summertime with the
22 harvest of our onion crop.

23 Q. So is it safe to say that Chile River is a
24 family-run business and operation?

25 A. It is a family-run business.

1 **Q. Okay. Turning to your operations, what point**
2 **did you start your own farming operation?**

3 A. I went to college for a couple -- for two
4 years, decided that wasn't for me. I came back to the
5 farm in 1995 and started farming on my own.

6 **Q. How many acres did you start with?**

7 A. I started with about 50 acres. I grew cotton
8 and some onions.

9 **Q. And how many acres are you growing now?**

10 A. I farm approximately 2,000 acres.

11 **Q. And do you own all 2,000 acres?**

12 A. No. I -- I own approximately 1,200 acres,
13 and I rent about 800 acres.

14 **Q. Can you describe how your arrangement works**
15 **for the land that you are renting?**

16 A. It varies from, you know, landlord to
17 landlord, but in the Lower Rio Grande properties that
18 I rent, I have a rental agreement. I paid for the
19 rent up front. The landlord pays for the EBID
20 assessment and any repairs or maintenance to the
21 wells. I pay for all energy costs associated with
22 pumping of groundwater.

23 **Q. Are all of the 2,000 acres that you farm**
24 **located in the Hatch Valley?**

25 A. No.

1 Q. Where are your other farms located?

2 A. I farm about 800 acres in the Hatch Valley.
3 I own about 500 of those and rent the other 300 and
4 then I farm in Las Uvas Valley and in Deming.

5 Q. Okay. So let's start with the acreage you're
6 farming in the Hatch Valley. Can we pull up New
7 Mexico Demonstrative Exhibit 1? All right. Click on
8 the EBID area, the Garcia Field. Can you see the
9 outlined property in this image?

10 A. Yes.

11 Q. Do you recognize the outlined property in
12 this image?

13 A. Yes. This is a farm that I have in the Hatch
14 Valley that we call the Garcia Farm.

15 Q. Okay. And we can take that down and let's go
16 to New Mexico Demonstrative Exhibit 23. Mr. Franzoy,
17 do you recognize this document?

18 A. Yes. This is the same farm. This is a crop
19 map that I generated out of a farm program that I
20 have.

21 Q. And do you create a document like this for
22 all of your fields?

23 A. Yes.

24 Q. All right. And why is that?

25 A. We use it -- there's different applications

1 for this program, and we generate the farm maps for
2 different reasons. Some of it's for our employees
3 that we give them. Some of it's for -- we have to
4 record what crops we grow with FSA, and then we use it
5 for our rotation. It actually keeps records of what
6 crops are grown on each field. We can pull it up
7 from, you know, years past, what crops we had on a
8 particular field.

9 **Q. Okay. How many farmable acres are on this**
10 **tract?**

11 A. Approximately 250.

12 **Q. What crops are you growing on this property**
13 **this year?**

14 A. This year, we had onions, Hatch chile, pima
15 cotton, upland cotton, and pecan trees.

16 **Q. How much water per acre does each of these**
17 **crops use?**

18 A. The water usage varies from field to field,
19 year to year. You know, there's an approximate, like,
20 green chile approximately uses 4 acre-feet. Onions
21 about the same, about 4-acre feet. Cotton uses a
22 little over 3 acre-feet, 3.2, and then my pecan trees
23 are immature pecan trees and approximately 4
24 acre-feet.

25 **Q. What is the growing season for each of these**

1 **crops?**

2 A. They're different. The chile, we planted the
3 chile in March and harvested through October. The
4 onions were planted last September, and we harvested
5 them in June. The cotton was planted in late April
6 and May, and we will harvest it -- we started
7 harvesting some actually last week, and we will
8 harvest probably until the middle of December. The
9 pecan trees are four-year-old trees.

10 **Q. Does that mean they're not producing yet?**

11 A. No.

12 **Q. Okay. Are you growing any other crops that**
13 **are not shown here?**

14 A. Yes. We grow alfalfa. We grow corn,
15 watermelons, wheat, and some forage crops.

16 **Q. How much water per acre does each of those**
17 **crops use?**

18 A. Alfalfa, you know, we have some fields that
19 are study soils that uses over 6 acre-feet, but
20 typically around 5-and-a-half acre-feet. Watermelons
21 use about 3-and-a-half acre-feet. Corn is about 4
22 acre-feet. Wheat is about 3 acre-feet.

23 **Q. What is the growing season for those crops?**

24 A. Watermelons we plant in -- in May and harvest
25 through September. Alfalfa is -- usually we'll --

1 established crop will last three years. We'll plant
2 typically in the fall and then harvest it for three
3 consecutive years after that. The corn is planted in
4 late April and May and harvested in August and
5 September.

6 **Q. Thank you. Mr. Franzoy, are you familiar**
7 **with the term crop rotation?**

8 A. Yes.

9 **Q. Can you describe what crop rotation is?**

10 A. For my operation, what we try to do is we
11 want to rotate to benefit what we call our cash crops,
12 which is the vegetables like chile and onions. On
13 this particular farm, for instance, we will plant one
14 field in onions. We will follow that field the next
15 year with hatch green chile, and after the chile,
16 we'll farm it for three years with the rotational
17 crop, and that varies from year to year depending on
18 the prices of each crop, but for this year, we used
19 cotton. Sometimes it's alfalfa or corn or some kind
20 of forage crop or wheat even.

21 **Q. Do you have to rotate your crops?**

22 A. For vegetables, we do. It helps with disease
23 pressure. These vegetables carry diseases, and we
24 plant rotational crops that aren't carriers of that
25 disease and try to eliminate that disease pressure

1 before we come back to that crop.

2 **Q. When you say disease pressure, can you**
3 **describe what you mean?**

4 A. Well, you know, it depends on each crop.
5 Like onions have a root disease called pink root, and
6 if you plant onions back to back, year after year, the
7 disease effects the roots where it will not produce
8 marketable crop. The chile has diseases like
9 phytophthora or Verticillium that will kill --
10 actually kill the plant, so we have to rotate so that
11 we can eliminate this disease pressure.

12 **Q. Are there any other benefits to rotating your**
13 **crops?**

14 A. Yes. You know, some of the weeds that can
15 carry the disease so we do plant some crops that are
16 herbicide resistant, and we could use those to clean
17 up the fields because the vegetables, you know, we
18 can't spray herbicides on it so we want to eliminate
19 as much weeds -- seed -- what we call seed bank in our
20 soil as we can before we plant these expensive crops.
21 Other benefits to it, you know, maybe salt management.
22 We have recently started to leave some of these
23 grounds fallow and use the surface water to leach the
24 salts down below the root zone so we can produce
25 higher quality, better-yielding vegetables.

1 **Q. So how do you decide which crops to include**
2 **in your rotation?**

3 A. We do projections and cash flow. It's all
4 dependent on price, what we're going to get the best
5 return on our investment.

6 **Q. Okay. And earlier, you mentioned the term**
7 **fallowing. What does fallowing mean?**

8 A. Fallowing means that you will not plant a
9 crop on a particular field or apply any water to that
10 particular field.

11 **Q. You did say that you fallowed portions of**
12 **your land. Why do you fallow?**

13 A. Well, on mine, I don't plant a crop, but I do
14 apply water. I try to apply surface water and leach
15 the salts. The reason why I do that is because, you
16 know, here recently with all the -- well, with the
17 little amount of surface water that we get, we found
18 it more cost effective to leave the land fallow than
19 grow crop like wheat because wheat is grown in the
20 wintertime, and you're applying salts with the
21 groundwater so we found it more cost effective just to
22 not plant anything and leach the salts.

23 **Q. Okay. Are there any crops that you grow**
24 **every year?**

25 A. Since we have an onion facility, we grow

1 onions every year. The demand for hatch chile is high
2 so we grow green chile every year. Those are two
3 crops that we do grow every year.

4 **Q. Generally, what percentage of your acreage is**
5 **dedicated every year to those crops?**

6 A. We found that a five-year rotation is
7 beneficial for controlling our diseases so about 20
8 percent of our property is planted in chile and 20
9 percent in onions.

10 **Q. How many pounds of chile and onions do you**
11 **harvest on average each year?**

12 A. You know, I don't know. On chile, we harvest
13 about 6,000, 7,000 tons of chile, and on -- on onions,
14 we harvest about 700,000 50-pound bags.

15 **Q. What is the current market rate for chile and**
16 **onions?**

17 A. You know, I don't know. On chile, all of our
18 chile is contracted, and then the -- on the onions, it
19 varies. It's dependent on supply and demand.

20 **Q. You also mentioned that you grow cotton. Do**
21 **you know what the current market rate for cotton is?**

22 A. I don't know what it is currently today. I
23 know cotton is at a record high right now, especially
24 pima cotton, with the -- I think the last I heard, it
25 was \$2.65 a pound.

1 **Q. How has your crop mix changed over the last**
2 **20 years?**

3 A. It changes every year depending on what the
4 -- you know, the prices are for these different crops.
5 You know, it could be -- one year, it could be, you
6 know, heavy alfalfa, the next year corn or cotton,
7 but, you know, the chile and the onions stays pretty
8 much the same, and over the last 20 years, I mean, it
9 varies from year to year, but pretty much, it stayed
10 the same.

11 **Q. Is your crop -- is your crop mix influenced**
12 **heavily by the market price?**

13 A. Yes.

14 **Q. Okay. How does surface water allotments**
15 **influence your crop mix?**

16 A. It does have an affect. I have, you know,
17 certain farms that have, you know, over 2,000 TDS on
18 the well water and so when we have a low, you know,
19 small allotment of surface water, you know, we tend to
20 avoid planting any onions on those pieces of property.

21 **Q. Okay. So using this property as an example,**
22 **can you explain to the court how you would irrigate**
23 **using surface water?**

24 A. Using surface water, we have to, you know,
25 pay our EBID assessment and then EBID makes -- you

1 know, has a meeting some time in the spring. They
2 decide, you know, how much water we're going to get
3 and when that release is going to be, and whenever
4 they make those decisions and so we decide, you know,
5 where we're going to utilize that, the water, you
6 know, to benefit us the best, we will place a water
7 order, and after a certain amount of time, EBID will
8 deliver that water to our turnout. We have installed
9 drip irrigation on this particular farm so we have a
10 piping system that we open the canal water into and
11 pressure that water up and irrigate through subsurface
12 drip irrigation.

13 **Q. Can you describe how it is you would irrigate**
14 **with groundwater?**

15 A. Groundwater is similar. I mean, we use the
16 same piping system. The only difference is, is we
17 don't use the canal, so we would shut the gate off to
18 the canal and open valves from our different wells.
19 In this farm, we have five different wells so we would
20 divert all that water into the same irrigation system
21 and irrigate.

22 **Q. Would you irrigate all of this tract at the**
23 **same time or do you use different timings for it?**

24 A. No. We use different timings. We can only
25 irrigate so much at a time.

1 **Q. How much can you irrigate at one time?**

2 A. You know what, it just depends. With the
3 canal water, we can irrigate more because there's more
4 -- a higher volume of water than our wells, so we can
5 irrigate, like, five different valves at a time with
6 canal water versus, you know, three to four with the
7 wells.

8 **Q. Is it faster to irrigate with surface water
9 than it is to irrigate with groundwater?**

10 A. Yes.

11 **Q. How do you decide when to irrigate?**

12 A. Mainly from experience. We do use, like, the
13 soil probe, and we probe our soil. We check the soil
14 content in the root zone of the crop.

15 **Q. What months of the year do you use the most
16 water?**

17 A. We use it in the summer months, June, July,
18 and August.

19 **Q. And why is it you irrigate more in those
20 summer months?**

21 A. Because it's hotter at that time of year.
22 The days are longer and our crops are more mature.
23 They require more water.

24 **Q. What happens to your crops if you don't
25 provide them with enough water during those critical**

1 months?

2 A. They don't produce fruit, and they can
3 actually abort fruit.

4 **Q. How often do you need to irrigate during**
5 **those summer months?**

6 A. You know, it just depends. From crop to
7 crop, soil type to soil type, onions, we water about
8 every 72 hours. With the drip and green chile, we
9 water about every 48 hours.

10 **Q. How does a lack of water impact the crop?**

11 A. Well, with -- you know, it varies from crop
12 to crop. With green chile, it can affect the size of
13 the PODs. Our -- the processors require a certain
14 size, you know, to be processed that we have to meet
15 that criteria. There is -- it can create what they
16 call a blossom-end rot where there is deformation in
17 the chile POD that becomes unmarkable. On the onions,
18 it affects the size. You know, our customers require
19 certain size to -- to be delivered. There is USDA
20 standards for those sizes that we have to meet.

21 **Q. Earlier, you mentioned that the soil will**
22 **impact the amount you have to irrigate. How does this**
23 **soil change the -- the amount that you need to use on**
24 **your crop?**

25 A. Well, the soil in the valley varies from -- I

1 mean, in the same field, it varies, but from field to
2 field definitely, and the sandier soils don't hold as
3 much water so they require, you know, a significant
4 amount more than your clay soils or even your loam
5 soils.

6 **Q. Generally, how does the total amount of water**
7 **you use each year change from year to year?**

8 A. It varies somewhat due to climate. It could
9 be, you know, the specific crops that I decide to
10 plant for that year, but generally, you know, from
11 year to year, it stays about the same. It averages
12 about the same.

13 **Q. Mr. Franzoy, are you a member of EBID?**

14 A. Yes.

15 **Q. Okay. Do you get all of your surface water**
16 **from EBID?**

17 A. Yes.

18 **Q. Can you describe how your arrangement with**
19 **EBID works?**

20 A. I have -- on my farms, I have so many
21 water-righted acres through EBID. I have to pay an
22 assessment fee every year to EBID, and EBID is
23 responsible for delivering that water to my head gate.

24 **Q. Okay. And does every farmer pay the same**
25 **rate?**

1 A. Yeah. Every farmer pays the same rate.
2 Every farmer gets the same amount of water.

3 Q. All right. How much did you pay per acre
4 this year?

5 A. \$90 an acre.

6 Q. Does paying your EBID bill guarantee you any
7 water?

8 A. No.

9 Q. Does EBID release water for your use year
10 round?

11 A. No.

12 Q. When does EBID release water to farmers?

13 A. It varies from year to year.

14 Q. When did EBID release water to you this year?

15 A. The first week of June.

16 Q. Okay. When did they stop releasing water for
17 use for the farmers?

18 A. The end of June, last week of June.

19 Q. Okay. Mr. Franzoy, are you familiar with the
20 term full supply or a full allotment?

21 A. Yes.

22 Q. And what does that term full supply mean to
23 you?

24 A. A full supply is 3.024 acre-feet.

25 Q. Okay. How many inches is that?

1 A. 36.

2 Q. And does --

3 A. Or a little more than 36. Sorry.

4 Q. And how much surface water were you allotted
5 per acre from EBID this year?

6 A. 4 inches.

7 Q. And what crops can you grow with 4 inches?

8 A. With 4 inches in a three-week --
9 three-and-a-half week period, nothing.

10 Q. And so does that mean you have to supplement
11 with groundwater?

12 A. Yes.

13 Q. Mr. Franzoy, does having more surface water
14 available to you improve your crop yields?

15 A. Yes.

16 Q. Have you been more reliant on groundwater
17 over the last 20 years?

18 A. Definitely, yes.

19 Q. Can you describe some of the costs associated
20 with groundwater pumping?

21 A. Yes. We have had to do, you know, a lot of
22 repair and maintenance on the wells. We've had to
23 replace some wells. They deteriorate over a period of
24 time. We have energy costs associated with pumping
25 these wells. We've installed drip irrigation to help

1 better manage our salts in our water. We've done
2 piping where we pipe and combine wells together to be
3 more efficient with our irrigation. We have to apply
4 amendments to our soil, such as sulfur and gypsum, to
5 help leach our salts. We apply acids, specifically
6 sulfuric acid, to our water to buffer our water to
7 help move the salts away from our root zones.

8 **Q. Do your groundwater costs go down when you**
9 **receive more surface water?**

10 A. They don't go down, but we use less
11 groundwater, so our energy costs and maintenance costs
12 does go down, yes.

13 **Q. All right. How many groundwater wells do you**
14 **own in the Hatch Valley?**

15 A. I own 12.

16 **Q. And when was the last time you drilled a well**
17 **in the Hatch Valley?**

18 A. 2015.

19 **Q. Was this a replacement well or a new well?**

20 A. Replacement well.

21 **Q. All right. And why would you have to replace**
22 **the well?**

23 A. With the low water quality, it deteriorated
24 the well casing, and the well collapsed.

25 **Q. How deep was the well that you drilled?**

1 A. 65 feet.

2 Q. Okay. And how come you didn't drill that
3 well any deeper?

4 A. In the -- in the Hatch Valley, our aquifer is
5 only 65 feet deep, but below that, it's, like, 12,
6 1,500 feet, I heard, of clay, so it's a lot different
7 than the Las Cruces Valley where -- so the aquifer is
8 a lot deeper.

9 Q. Have you drilled wells elsewhere?

10 A. Yeah. I drilled a well on my farm in Las
11 Uvas. We drilled a thousand feet.

12 Q. All right. And how much did it cost you to
13 drill that well?

14 A. 370,000.

15 Q. How much did it cost you to drill the well in
16 the Hatch Valley area?

17 A. It was about 65,000.

18 Q. So does the cost of the well depend on how
19 deep you're drilling it?

20 A. Yes.

21 Q. If you couldn't afford to drill a well, would
22 you have to rely on surface water alone?

23 A. Yes.

24 Q. Could you continue farming if you have to
25 rely on surface water alone?

1 A. No.

2 **Q. Mr. Franzoy, are you familiar with the term**
3 **water stacking?**

4 A. Yes.

5 **Q. What does that term mean to you?**

6 A. To me, what it means specifically, talking
7 about surface water, for instance, this year we didn't
8 get our surface water until the first week of June.
9 We had already harvested some of our crops, so we
10 couldn't apply that surface water to those crops so we
11 moved that water and applied it to another crop or we
12 used it to leach salts on some fields.

13 **Q. Do you stack water rights for any other**
14 **reason?**

15 A. We -- you know, we may stack water rights
16 because we want to apply the higher-quality water to
17 our higher-value crops like chile and onions, and, you
18 know, instead of using the wells that are high in salt
19 to, you know, so we can produce, you know,
20 higher-yielding, better-quality crop with the higher
21 value.

22 **Q. So do your chile and onions prefer surface**
23 **water to groundwater?**

24 A. Definitely.

25 **Q. And why is that?**

1 A. Well, it just -- it's really low in salts.
2 It helps with -- the salts tie up nutrient uptake.
3 They also tie up water uptake so the crops, you know,
4 produce a lot better crops with surface water. We
5 actually apply less fertilizers when we do use surface
6 water.

7 **Q. Okay. And, Mr. Franzoy, do you measure your**
8 **water quality?**

9 A. From time to time, yes, I do.

10 **Q. How do you measure the quality of your**
11 **groundwater and surface water?**

12 A. I hire a consultant and he takes a sample and
13 he sends the sample off to a laboratory in Phoenix,
14 Arizona.

15 **Q. And do you test for total dissolved solids?**

16 A. Yes.

17 **Q. And what kinds of measurements do you get for**
18 **your total dissolved solids in your groundwater?**

19 A. You know what, it varies from well to well.
20 Specifically, you know, the further you get away from
21 the river, your salts are higher, but, you know, it's
22 anywhere from 1,700 to 2,700 on my farms.

23 **Q. And are you still able to farm those lands**
24 **using that level of salinity in your groundwater?**

25 A. We are. We have to -- you know, installing

1 the drip irrigation has really helped, you know,
2 manage it, and then it helps to apply, you know, the
3 amendments better and move the salts away from the
4 root zone by leaching. You know, we're able to do
5 that. I mean, it does, you know, affect our yields.
6 Our yields aren't as good as where we don't have the
7 high salts, but we are able to do it.

8 **Q. All right. And can you describe, you know,**
9 **how the drip irrigation system helps you manage the**
10 **salinity?**

11 A. Yes. We -- we apply the drip tape subsurface
12 below the root zone, and by applying our water in that
13 area and applying and buffering that water with acid,
14 we're able to move the salts away from the root zone.

15 **Q. And you mentioned the term leaching. Can you**
16 **describe what leaching is?**

17 A. What we do with leaching is we actually apply
18 the water flood irrigated large amounts of water and
19 flood it and try to push the salts below the root
20 zone.

21 **Q. If you don't apply any of the soil amendments**
22 **or if you don't leach or you don't use your drip**
23 **irrigation, can you describe the impact salinity will**
24 **have on your crops?**

25 A. It impacts them, hurts the quality of the

1 fruit, the size of the fruit, yield, chile. You know,
2 we have to meet certain requirements for POD size and,
3 you know, the POD length and color and different
4 things. You know, the high salinity does affect water
5 uptake of the plant so we do end up with some blossom
6 end rot and aborting fruit. The onions, it affects
7 the size of onions. We do have a quality issue with
8 that because if you do have high salts, it could stain
9 the leaves on the onion skins, and that staining is
10 actually a defect according to USDA, so we won't be
11 able to market that onion as a U.S. No. 1. We have to
12 sell it at a discount as a commercial grade.

13 **Q. So does the salinity impact the price you can**
14 **sell your crops for?**

15 A. Yes.

16 **Q. All right. And roughly how much do you spend**
17 **on soil amendments every year?**

18 A. It varies from field to field, farm to farm.
19 I don't have a specific number for, you know, the
20 total number.

21 **Q. Are those expenses a regular part of your**
22 **farming operations?**

23 A. They are. They have been. You know, they've
24 increased, you know, every year, and, you know, with
25 the amount of groundwater that we're having to use,

1 it's been more and more every year.

2 **Q. All right. How much have you invested in**
3 **drip irrigation?**

4 A. It varies from -- from, you know, farm to
5 farm, depending on the design and the layout, but we
6 spent anywhere from 2,500 to \$3,000 an acre.

7 **Q. Do you grow any crops that reduce the**
8 **salinity of your soils?**

9 A. You know, we -- you know, we tried, you know,
10 forage crops, they do remove salts from your soil.
11 What we found that, you know, most of these forage
12 crops, you know, with the low amount of surface water
13 we're getting, we're actually applying more salts than
14 what we're removing so we've kind of started leaning a
15 little more towards, you know, more fallowing and less
16 of forage crops until we can get some more surface
17 water.

18 **Q. Turning now to your water permits, do you**
19 **need a permit to use groundwater?**

20 A. Yes.

21 **Q. What kind of permit do you need to use**
22 **groundwater?**

23 A. We have to have a permit with Office of the
24 State Engineer.

25 **Q. Can you describe how your permit with the**

1 **Office of the State Engineer works?**

2 A. Yes. We have to own a water right, and you
3 have to, you know, apply for a permit to, you know, if
4 you need to drill a well, you have to apply for a
5 permit and, you know, pay for a permit. I -- you have
6 to submit advertisement in a local newspaper. I can't
7 remember the amount of time. It's, like, three or
8 four weeks it has to be running in a newspaper ad, and
9 then you have a certain amount of time after that,
10 that anybody could protest that water right and then
11 the state engineer has to approve it.

12 **Q. Do you have a cap or a limit on the amount of**
13 **water you can use each year?**

14 A. Yes.

15 **Q. What is your current cap or limit?**

16 A. Well, we have water meters on all of our
17 wells, and with the EBID allotment, we, you know,
18 subtracting the EBID allotment, I guess with the EBID
19 allotment and the groundwater combined, we can only
20 use 5-and-a-half acre-feet of water.

21 **Q. Do you have to use all of your surface water**
22 **each year?**

23 A. Yes. You have to use your surface water.

24 **Q. Okay. Are there any other rules that you**
25 **have to follow under your permit?**

1 A. Yes. We have to have every one of our wells
2 metered. We have to submit meter readings on a
3 quarterly basis to the Office of the State Engineer.

4 **Q. Mr. Franzoy, have you ever used more water**
5 **than you were allowed to?**

6 A. Yes.

7 **Q. Let's see. Can we pull up New Mexico Exhibit**
8 **791? Mr. Franzoy, I'm showing you what's been marked**
9 **as New Mexico Exhibit 791. Do you recognize this**
10 **document?**

11 A. Yes.

12 **Q. Do you see the date of this document?**

13 A. Yeah. July 8, 2013.

14 **Q. And what is this document?**

15 A. This was a letter that I received from the
16 Office of the State Engineer stating that I had over
17 diverted on a 14-acre piece of property that I rented.

18 **Q. And what actions did you take when you**
19 **received this letter from the Office of the State**
20 **Engineer?**

21 A. I called the state engineer. I talked to
22 Ryan Serrano to see what I needed to do to become
23 compliant.

24 **Q. How did Mr. Serrano help you get into**
25 **compliance?**

1 A. This particular farm was an oversight of
2 mine. I did not include it into my OWMAN and so Ryan
3 assisted me in updating my OWMAN.

4 **Q. All right. And what is an OWMAN?**

5 A. It's an operating management tool that was
6 part of the 101 settlement in the state adjudication
7 court, and it allows us to put, you know, multiple
8 farms together under one umbrella, as long as we don't
9 divert more water than our allotment is.

10 **Q. Have you diverted -- over diverted since**
11 **2013?**

12 A. No.

13 **Q. What are some of the benefits of that OWMAN**
14 **program you had mentioned?**

15 A. Well, in my operation, you know, we farm a
16 lot of different properties. Some of them are really
17 small tracts. And what we like to do is plant our
18 crops in larger areas to make it more efficient to
19 manage so it allows us to manage all of our farms as,
20 like, one farm, and we could -- you know, we have some
21 farms that are adjacent to each other, and we can
22 utilize our wells to -- together to, you know, more
23 efficiently irrigate our farms with the bigger supply
24 of water. We can move across the fields faster and
25 more efficiently.

1 Q. Okay. Earlier, you mentioned that your
2 permit required you to meter your wells.

3 MR. OGAZ: Can we pull up New Mexico
4 Exhibit 673?

5 Q. (BY MR. OGAZ) Mr. Franzoy, do you recognize
6 this document?

7 A. Yes.

8 Q. What is the date of that document?

9 A. December 18th, 2019.

10 Q. And do you recall receiving this document?

11 A. Yes.

12 Q. What is this document?

13 A. This was a -- a document that I received from
14 the state engineer stating that one of my meters was
15 not functioning properly.

16 Q. Okay. And what did you do when you received
17 this document from the state engineer?

18 A. I contacted the state engineer's office. I
19 talked to Ryan Serrano on what -- you know, what
20 actions I needed to take to become compliant.

21 Q. And what actions did you take to become
22 compliant?

23 A. We removed the meter, and we took it to a
24 shop and got it repaired and reinstalled the meter and
25 then I contacted Ryan, let him know that that was

1 done, and I believe they sent their field techs out to
2 check it and, you know, I haven't heard from them
3 since so I'm assuming I'm in compliance.

4 **Q. Are all of your -- are all of your wells**
5 **metered now?**

6 A. Yes, they are.

7 **Q. Okay. And do you know if all other farmers**
8 **in the Hatch Valley area also have to have their wells**
9 **metered?**

10 A. Yeah. Everybody in the LRG has to have their
11 wells metered.

12 **Q. And how often do you report your meter**
13 **readings?**

14 A. Quarterly.

15 **Q. Okay. Changing topics.**

16 **JUDGE MELLOY:** Mr. Ogaz, if we're going
17 to change topics, we took a fairly decent break
18 between witnesses, but I do think we need to take at
19 least a short break at this point. Let's break until
20 3:45, and we'll come back then and continue with the
21 testimony.

22 (Recess.)

23 **JUDGE MELLOY:** While we're waiting for
24 him to get on, let me just mention a couple things.
25 For some reason, the quality of the video from your

1 witness room is not as good as the quality of the
2 video from any of the other locations, and I don't
3 know if you can take a -- have somebody take a look at
4 that. Fortunately, I don't have any trouble with the
5 audio. The audio is very clear, but if you could have
6 somebody take a look at that, it can sometimes get
7 pretty fuzzy.

8 The other thing I would mention is that
9 we at certain times of the day have some bandwidth
10 problems in the building. We're trying to get our
11 bandwidth increased, but, again, I don't have any
12 trouble with audio, and I can still see the people,
13 but the sharpness of the video is not always great
14 when we start having bandwidth problems. So if
15 anybody -- you know, I think when we originally set
16 the ground rules for this, we indicated that the four
17 parties and the witness and myself would be on screen.
18 If any of the parties who aren't participating want to
19 -- want to turn off their video, I have no objection
20 to that. I know, you know, Mr. Hartman, if you want
21 to listen and not have your video on, I'm not saying
22 you have to, but -- or any of the other parties for
23 that matter, feel free to turn off your video and just
24 come back on when you actually have to participate.
25 It might be a little difficult if you think you're

1 going to be making objections, but if you're just
2 basically observing and you want to turn off the
3 video, feel free to do so.

4 All right. We're ready to go. Go
5 ahead, Mr. Ogaz.

6 MR. OGAZ: Thank you, Your Honor.

7 Q. (BY MR. OGAZ) Mr. Franzoy, can you hear me?

8 A. Yes.

9 Q. Okay. So I only have a few more questions
10 for you, Mr. Franzoy. Are you aware of the 2008
11 operating agreement between EBID, EP1, and the Bureau
12 of Reclamation?

13 A. Yes.

14 Q. Did EBID hold any meetings for farmers before
15 the 2008 operating agreement was signed?

16 MR. DEITCHMAN: Objection; cumulative.
17 We heard this testimony this morning.

18 MR. OGAZ: From who?

19 MR. DEITCHMAN: Mr. Salopek.

20 MR. OGAZ: Again, this is -- sorry, Your
21 Honor. Go ahead.

22 JUDGE MELLOY: Well, we have heard this
23 testimony before. Some of it is starting to get
24 pretty cumulative, but I'll let the witness answer.

25 MR. OGAZ: Okay.

1 A. Can you repeat the question?

2 Q. (BY MR. OGAZ) Did EBID hold any meetings for
3 farmers before the 2008 Operating Agreement went into
4 effect?

5 A. No.

6 Q. Did you attend any of those meetings?

7 A. No.

8 Q. And did the -- did EBID hold any meetings for
9 farmers after the 2008 Operating Agreement was signed?

10 A. I believe so.

11 Q. And what was your understanding of the
12 operating agreement after attending those meetings?

13 A. That it was an agreement between EBID and EP
14 No. 1 to settle a lawsuit. It was going to allow us
15 to continue pumping and was going to, you know, end
16 all future -- future lawsuits.

17 Q. And how has your understanding changed?

18 A. Well, I'm sitting here in a lawsuit with
19 Texas versus New Mexico. You know, they are disputing
20 my ability to use groundwater.

21 Q. Were the Diversified Crop Farmers consulted
22 before the operating agreement was signed?

23 A. No.

24 Q. Have you noticed any changes in water
25 availability since the operating agreement was signed?

1 A. Yes. We are getting less and less surface
2 water and having to rely more and more on groundwater.

3 **Q. Have you noticed any increases in salinity**
4 **loads in your groundwater?**

5 A. Yes.

6 **Q. How has the salinity loads changed?**

7 A. Well, with using more groundwater, we're
8 actually applying more salts to our soils.

9 **Q. Have you had to use more soil amendments now**
10 **than when the operating agreement was signed?**

11 A. Yes.

12 **Q. And why is that?**

13 A. We use different soil amendments to help
14 leach our salts away from our root zones and below
15 them.

16 **Q. If you were unable to use groundwater, how**
17 **would that impact the number of acres you farm each**
18 **year?**

19 A. Well, this year, I wouldn't farm any acres in
20 the Hatch Valley.

21 **Q. Mr. Franzoy, how many people do you employ on**
22 **your farm?**

23 A. I have around 35 full-time employees. I hire
24 about 150 employees seasonal to help harvest the crop
25 in the fields. I hire another 65 seasonal employees

1 at my onion facility to help sort, package, and ship
2 onions.

3 Q. Earlier, you said you also process crops.
4 What crops do you process?

5 A. I process onions.

6 Q. Do you process any other crops?

7 A. No.

8 Q. How many employees do you have at your
9 processing plant?

10 A. 65 part-time, and 5 full-time.

11 Q. And where do you hire your employees from?

12 A. We try to hire locals, as many as we can. We
13 have to supplement that with guest workers from
14 Mexico.

15 Q. And can you describe some of the activities
16 you have your workers do on the farm?

17 A. Yes. We have our full-time employees do
18 irrigations, tractor driving, repairing irrigation
19 systems, you know, we have mechanics. We have office
20 staff, you know, I have an accountant, other office
21 personnel. We have people that help pull the weeds
22 out of the fields, harvest onions and chile. It's all
23 done by hand so we, you know, use people to harvest
24 those crops and then, you know, at the onion facility,
25 we use them to, you know, drive forklifts, sort

1 onions, manage equipment, you know, do inventory
2 management and, you know, forklift, shipping, and
3 such.

4 **Q. Mr. Franzoy, if you were to have to cut back**
5 **on the number of acres you farmed, how would that**
6 **impact your processing operations?**

7 A. It would have a severe impact. I mean, we --
8 we -- you know, our facility is, you know, very
9 expensive to run so, you know, we'd have to, you know,
10 cut back on, you know, how many onions that we
11 package, and it would make it difficult, you know, for
12 us to meet our obligations with our bank on the money
13 that we borrowed to, you know, build a facility and
14 purchase the equipment.

15 **Q. Would you also have to cut back on the number**
16 **of employees you hire?**

17 A. Yes. Definitely.

18 **MR. OGAZ:** Thank you, Mr. Franzoy. I
19 know that this is your busy season so I appreciate you
20 taking the time out of your day today.

21 I have no further questions, Your Honor.

22 **JUDGE MELLOY:** Mr. Deitchman, are you
23 going to go first?

24 **MR. DEITCHMAN:** Mr. Dubois is going to
25 go first.

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JUDGE MELLOY: Mr. Dubois?

MR. DUBOIS: Thank you, Your Honor.

CROSS-EXAMINATION

BY MR. DUBOIS:

Q. Mr. Franzoy, my name is James Dubois, and I'm an attorney with the Department of Justice representing the United States in this case. I understand from your testimony, you have about 800 acres in the Hatch Valley; is that right?

A. Yes.

Q. And another 1,200 in the Mesilla Valley?

A. No. I have about 320 in Las Uvas Valley. It's out of the LRG, and then I have another 900 in Deming, this is also out of the LRG.

Q. Okay. So the rest of the acreage is not within the LRG. All right. And all of the 800 acres you have in the Hatch Valley, are they all within EBID?

A. No. I believe I have roughly 20 acres that's not in the EBID boundary.

Q. Are those irrigated acres?

A. Yes.

Q. So you've got about, call it, 780 acres within EBID; is that right?

A. Yeah, roughly.

1 Q. Okay. With respect to the land in EBID, your
2 operation is entitled to whatever the EBID allocation
3 is for that year times roughly times 780 acres; is
4 that right?

5 A. As far as surface water and --

6 Q. Yes. As far as surface water?

7 A. Yes.

8 Q. Okay. And can the surface water get to all
9 of your acres located in the Hatch Valley?

10 A. That's within EBID boundary, yes.

11 Q. Okay. And you can stack the surface water on
12 your EBID acres; is that right?

13 A. Yes.

14 Q. And my understanding is the limitation on
15 stacking within EBID is you can only double the
16 surface water on a given acre, so if you've got 400
17 acres of irrigation -- of irrigated EBID water, you
18 could double that on 200, but you can't take the
19 entire 400 and put it on 100, right?

20 A. I'm not sure I understand. I'm -- I know
21 that we can -- I could put -- if I wanted to, I could
22 put 400 on one acre if I wanted to.

23 Q. Under EBID's rules of the surface water?

24 A. I believe so.

25 Q. Okay.

1 A. As long as I don't go over my total allotted
2 water that -- you know, for all my properties.

3 Q. All right. And you're not entitled to
4 deliver the surface water from EBID to those 20 acres
5 that are outside the boundary, right?

6 A. No.

7 Q. So we can agree that groundwater is the only
8 irrigation source to the land located outside EBID,
9 right?

10 A. Correct.

11 Q. Do you lease or own any land in the Mesilla
12 Basin?

13 A. Yes. Excuse me. I'm sorry. I don't lease
14 or own any in the Mesilla Basin. All of my property
15 is in the Rincon.

16 Q. Okay. That's what I was trying to get
17 cleared up, so thank you. All right. So all of your
18 testimony here today has been about your land in the
19 Rincon or Hatch Valley because the other pieces of
20 land you talked about within your 2,000 acres are
21 outside of EBID and outside of -- and outside of the
22 -- both the Rincon and Mesilla Basins?

23 A. Correct.

24 Q. All right. Thank you. How many wells do you
25 have that are located on your irrigated land in -- in

1 the -- can I use the Hatch Valley and the Rincon
2 Valley interchangeably for purposes of talking with
3 you today because I -- I think of it as -- I think of
4 it in the area you're in as the Hatch Valley, and I
5 know that it's -- technically it's the Rincon Valley,
6 but if I -- if I use Hatch, can we just agree that
7 we're talking about the area in the Rincon Valley?

8 A. Yes.

9 Q. Thank you. So how many wells do you have
10 that are located on your irrigated land in the Hatch
11 Valley?

12 A. 12.

13 Q. And as I understand it, all of those are --
14 are piped together; is that correct?

15 A. No, they're not. I have specific farms that
16 they're piped together. I have some farms that are
17 adjacent to each other that --

18 Q. Okay.

19 A. -- are piped together, but not all of them
20 are -- you know, they're not all combined together,
21 no.

22 Q. Okay. When were the wells located in the
23 Hatch Valley drilled? I know you talked about the
24 last one being drilled in 2015. When were the others
25 drilled?

1 A. I don't have that information.

2 Q. Okay. Is maintain -- excuse me. Is
3 maintenance of your wells a regular part of the
4 operation of irrigating with wells?

5 A. Can you repeat that again, please?

6 Q. Sure. Is maintenance of your wells a regular
7 part of the operation of the irrigation operation with
8 wells?

9 A. Yes, it is.

10 Q. Okay. So you've always had to do regular
11 maintenance on those wells?

12 A. Yes. We've -- in the -- you know, like in
13 the past when we would get a full allotment, you know,
14 we didn't have to utilize all the wells at one time.
15 It kind of was dependent on, you know, the quantity of
16 surface water that we received and, you know, here
17 recently, I mean, we've had to rely on all the wells
18 and have all the wells in working order in order to be
19 able to, you know, supply our crops with the water
20 that they needed.

21 Q. Were you doing regular maintenance on the
22 wells prior to 2008?

23 A. Not as -- not as frequent because we didn't
24 run them as much so they didn't require as much
25 maintenance as they do now.

1 **Q. How deep is the aquifer under your ground in**
2 **the Hatch Valley?**

3 A. It varies, you know, throughout the valley,
4 but in general, that's around 60 to 70 feet.

5 **Q. Does that refer to the uniform depth or**
6 **thickness under your land?**

7 A. The water?

8 **Q. Uh-huh. The depth -- the thickness of the**
9 **aquifer, the water-bearing part of the aquifer?**

10 A. Yeah, it's pretty close. Varies from -- I
11 have some that's 57 feet and some, like, 70 feet so,
12 you know, it kind of varies within that on my farms
13 within that depth.

14 **Q. Does the thickness in the aquifer at**
15 **individual well sites affect the well performance?**

16 **MR. OGAZ:** Objection; foundation.

17 **MR. DUBOIS:** They're his wells.

18 **JUDGE MELLOY:** He's talking about his
19 wells. Go ahead.

20 A. Can you repeat the question?

21 **Q. (BY MR. DUBOIS) I can. Does the thickness of**
22 **the aquifer at individual well sites affect the well**
23 **performance?**

24 A. No. I think it's more of -- more of what's,
25 you know, below the well, you know, the foundation,

1 you know, what kind of groundwater rocks it has below
2 it more than a depth.

3 **Q. Does the depth of the -- the thickness of the**
4 **aquifer affect the water quality in the wells?**

5 A. You know that, I'm not sure.

6 **Q. Okay. Does the -- and I think you've --**

7 **JUDGE MELLOY:** Let me just ask,
8 Mr. Dubois, let me make sure I understand what you're
9 asking about here. When you say "thickness," are you
10 talking about there's a depth of ground until you get
11 to the aquifer and then are you talking about from
12 that point I recall at the top of the aquifer to the
13 bottom of the aquifer? Is that what you mean by
14 thickness?

15 **MR. DUBOIS:** Saturated thickness is
16 basically, you know, a more technical term might be
17 saturated thickness. The -- the -- let me -- let me
18 -- let me ask a couple of questions to -- to help
19 frame it for you a little bit, Your Honor.

20 **Q. (BY MR. DUBOIS) Mr. Franzoy, you said that**
21 **the -- the thickness of your -- the depth of your**
22 **wells is basically 60 to 70 feet underlying most of**
23 **your land; is that correct?**

24 A. Yes.

25 **Q. And below that, there is a -- a rather thick**

1 clay layer, isn't there?

2 A. Yes.

3 Q. Okay. So when we're talking about depth of
4 the well, we're talking about the -- the depth of the
5 sediments above that clay layer, are we -- is that how
6 you're referring to it?

7 A. Yes. From the surface --

8 Q. Okay.

9 A. -- of the ground to the bottom of the
10 aquifer, yes.

11 Q. Okay. Yes, that's -- so we're talking about
12 the same thing. I just want to make sure that the
13 judge is -- is following our conversation. Thanks.

14 You -- you were talking about the water
15 quality in your wells earlier, and you -- you -- I
16 believe you said that the water quality varies from
17 1,700 to 2,700 parts per million TDS; is that correct?

18 A. Yes.

19 Q. So the minimum TDS in any of your wells is
20 1,700 parts per million?

21 A. Yes.

22 Q. Okay. And you said you had permits for all
23 the wells, right?

24 A. Yes.

25 Q. And all those wells allow you to take -- do

1 all -- are all those wells permitted to take 5.5
2 acre-feet per acre?

3 A. All the wells that -- that I own, yes. I do
4 have some rental properties that, you know, may be at
5 4-and-a-half acre-feet, but I believe -- I believe I'm
6 not renting those anymore. I think everything that I
7 rent and own now is at 5-and-a-half acre-feet.

8 Q. All right. And that means the combined
9 volume between surface and groundwater is -- that's
10 allowed to be withdrawn every year is 5.5 acre-feet,
11 correct, per acre, excuse me?

12 A. Yes.

13 Q. Can the water from the wells be stacked on a
14 smaller number of acres than the 800 acres?

15 A. As long as I don't go over my total
16 allotment, yes.

17 Q. Okay. So the total allotment is roughly 800
18 acres times 5.5?

19 A. Yes.

20 Q. So roughly 4,400 acre-feet. Okay. Is there
21 any limit on the amount of groundwater that can be
22 stacked on any one acre? Could you put the entire
23 4,000 acre-feet of water on a hundred acres.

24 A. Yeah, you could.

25 Q. Okay. I just want to make sure I'm

1 understanding how the water can be used. So there's
2 not a limitation of 5-and-a-half acre-feet being
3 applied to any acre, it is a limit of 5-and-a-half
4 acre-feet per each acre of -- of permitted irrigated
5 ground?

6 A. Yes. I have a right to use 5-and-a-half
7 acre-feet per acre.

8 Q. As I understand the testimony from earlier
9 today from David Salopek -- sorry about that. I just
10 blanked on his name for a second. I apologize -- the
11 individual farmers had the opportunity to prove up the
12 -- the difference between the 4-and-a-half acre-feet
13 per acre and the 5-and-a-half acre-feet per acre as
14 far as their -- what would be allotted under their
15 permit; is that correct?

16 MR. OGAZ: Objection, Your Honor; beyond
17 the scope of direct.

18 MR. DUBOIS: Actually, Your Honor, it's
19 not because he's already testified he's got
20 5-and-a-half acre-feet per acre and I'm trying to
21 ascertain how that was developed.

22 JUDGE MELLOY: Go ahead.

23 Q. (BY MR. DUBOIS) Mr. Franzoy, to be entitled
24 to take 5-and-a-half acre-feet per acre, you had to
25 make proof of that use to the -- to the state; is that

1 correct?

2 A. Yes.

3 Q. Were you limited to the period of time in
4 which that proof -- the -- the evidence would -- would
5 be from? I mean, could you bring in proof that you
6 were using 5-and-a-half acre-feet per acre starting in
7 1990 or 2000?

8 A. I'm not sure I understand your question. Can
9 you rephrase that?

10 Q. Sure. Did you -- in order to establish
11 5-and-a-half acre-feet per acre, did you have to
12 establish that you were using that amount prior to
13 1980?

14 A. I don't believe that they gave us a specific
15 date when we had to -- a specific year that we had to
16 use. We just had to prove that -- you know, that we
17 had used 5-and-a-half or more acre-feet.

18 Q. Okay. So it didn't -- it didn't have to be
19 using 5-and-a-half before 1980, it just had to be
20 using 5-and-a-half before the -- the time period that
21 you were presenting that information to the state
22 engineer?

23 A. I can't remember, you know, the year, but,
24 yes, we had to prove that we did use 5-and-a-half
25 acre-feet to be able to submit the proof.

1 Q. Okay. Do you use your wells in the Hatch
2 Valley in -- in years in which you get a full
3 allocation of 3 acre-feet per acre from EBID?

4 A. I haven't received a full allocation in quite
5 some time. You know, as far as I can remember, back
6 when we did receive a full allocation, back in the
7 '90s, we used surface water all the time except for
8 there was a short period of time between when they
9 turned the water off or, you know, shut the system
10 down -- down and opened it up that we used wells, and
11 then there would be emergency cases when EBID couldn't
12 deliver us the water, we would, you know, use the
13 wells to supplement.

14 Q. You pumped groundwater for irrigation prior
15 to 2008, right?

16 A. Yes.

17 Q. And you pumped groundwater for irrigation in
18 the 1990s, right?

19 A. Yes.

20 Q. We can agree that you pumped groundwater
21 prior to the -- to the drought that started in about
22 2002?

23 A. Yes.

24 Q. Okay. I guess maybe there's a question
25 there. Can we agree that the -- that the -- that

1 we're currently in a drought?

2 A. You know, I don't -- it just depends on what
3 the definition of a drought is. I know this year,
4 this summer, we received quite a bit of, you know,
5 rain than we have in a long time, so I don't know if
6 that technically takes us out of the drought or not.

7 Q. Can we agree that the drought that -- that
8 the Lower Rio Grande has been suffering started in
9 about 2002?

10 A. Yes.

11 Q. All right. So beginning in about 2002 or
12 2003, Project deliveries started to drop, right?

13 A. Yes.

14 Q. Okay. So it's fair to say that you had to --
15 you had to rely more on groundwater since 2002,
16 correct?

17 A. Yes.

18 Q. And you stated earlier today that you'd been
19 using more groundwater in recent years, right?

20 A. Yes.

21 Q. Okay. And I think we can agree that we've
22 been in -- that the Lower Rio Grande has been in a
23 drought for the better part of 20 years, right?

24 A. Yes.

25 MR. OGAZ: Objection, Your Honor; asked

1 and answered.

2 Q. (BY MR. DUBOIS) And --

3 JUDGE MELLOY: Go ahead.

4 Q. (BY MR. DUBOIS) -- can we agree that you
5 expect to use more groundwater during prolonged
6 drought?

7 A. Yes.

8 Q. And how much of your increased production
9 costs, your soil amendment, your pumping costs, how
10 much of that is simply due to the drought that the
11 basin has been in for the last 19 or 20 years?

12 MR. OGAZ: Objection; speculative.

13 MR. DUBOIS: This is testimony regarding
14 the 2008 Operating Agreement, Mr. Ogaz, but let's ask
15 -- I'm sorry, Your Honor.

16 JUDGE MELLOY: That's all right. You
17 can go ahead and answer the question.

18 A. You know, there's been a significant cost of,
19 you know, the inputs with -- you know, with the
20 drought, of course.

21 Q. (BY MR. DUBOIS) Okay. Do you use the entire
22 permitted amount of 5-and-a-half acre-feet per acre in
23 most years for -- for -- unbalanced for your land?

24 A. No.

25 Q. What percentage of your permitted water do

1 you usually take each year?

2 A. I'm not sure. I haven't -- I don't recall
3 what the numbers are.

4 Q. Okay. On average, do you know how many
5 acre-feet of water you apply to your -- to your land
6 in the Hatch Valley?

7 A. I don't have that.

8 Q. Okay. And as I understand it, chiles are
9 more sensitive to extreme heat than crops like pecans;
10 is that correct?

11 A. I -- I don't know. I don't have a lot of
12 expertise in pecans, so I wouldn't know the answer to
13 that.

14 Q. Okay. Do you have any pecans?

15 A. I have some young trees, some four-year-old
16 trees. I recently acquired in Deming a 20-acre
17 orchard.

18 Q. Okay. So they're not producing yet?

19 A. The 20-acre orchard is producing. It was in
20 poor condition when I purchased it, and it's finally,
21 you know, coming in to good production this year.

22 Q. Okay. All right. And as I understand it,
23 you use mostly drip irrigation system in the Hatch
24 Valley; is that correct?

25 A. Yes. I do use some flood irrigation, also.

1 Q. Okay. When did you start shifting to drip
2 irrigation?

3 A. I started to --

4 Q. I guess, when I say -- when I say "you," I
5 mean the -- the Chile River Ranch operation.

6 A. Sure.

7 Q. Because I understand that your -- technically
8 your dad was sort of the man in charge until the last
9 decade or so. So I'm sorry. I asked you when you
10 started converting to drip irrigation?

11 A. We started experimenting with drip irrigation
12 in 2005/2006.

13 Q. Okay. And about what percentage of your
14 fields are in drip irrigation?

15 A. Everything that we own is in drip irrigation,
16 and we have some -- some drip irrigation in some
17 rental property that we rent.

18 Q. Okay. Is labor your biggest expense on your
19 farm ground?

20 A. Yes.

21 Q. As I understand it, there's been a problem
22 with a shortage of labor over the last couple of
23 years?

24 A. Yes.

25 Q. If you're short of labor, does that cause you

1 to lose -- can that cause you to lose part of your
2 chile crop?

3 A. It can. We -- we're able to utilize the --
4 what they call the H2A program. It's a guest worker
5 program with Mexico so we're bringing guest workers
6 across to assist with the harvest. So we were able
7 to, you know, fix that issue with the labor shortage
8 by bringing in the guest workers.

9 Q. But my understanding is, am I correct that
10 chiles have to be picked by hand basically?

11 A. Yes. That is -- green chile. They do have
12 mechanization for the red chile, and green chile,
13 they're working on it, but they haven't perfected it
14 yet.

15 Q. And onions, do onions have to be picked by
16 hand?

17 A. Onions, most onions are mechanically
18 harvested. The type of onion that we grow in our
19 valley is a fresh sweeter onion that doesn't -- that's
20 not as durable as some of the onions that you might be
21 familiar with that are more of a long day storage type
22 onion that are more durable and can be mechanical
23 harvested.

24 Q. Okay. Now, are there any -- are there any
25 drains that run through or around the edge of your

1 fields, near your fields?

2 A. Yes.

3 Q. Okay. Which one? Which drain or drains?

4 A. I think it's called the Salem drain. I'm not
5 for sure. But that drain actually runs through --
6 same drain runs through all of my farms.

7 Q. And does water sometimes flow in the drain?

8 A. Yes.

9 Q. And in his deposition, your dad said that
10 when you turn on your wells, you see a change in the
11 water levels in the drains. Would you agree with your
12 dad on that?

13 A. Can you repeat that again, please?

14 Q. Yeah. In his deposition, your dad said that
15 when you turn on your wells, you see -- he sees -- he
16 saw a change in the water levels in the drains. Do
17 you agree with your dad on that?

18 A. No, I don't. I haven't -- you know, I don't
19 really pay attention. I never really watched the
20 water levels in the drains when -- when I turn on my
21 wells. I haven't witnessed that.

22 Q. All right. You testified a little bit about
23 the OWMAN program, and I think that the Special Master
24 understands the OWMAN program. I think I understand
25 the OWMAN program now. I understand that the OWMAN

1 allows a farmer to -- who either owns or manages land
2 to marshal all his water resources under essentially a
3 single umbrella that's a -- a net for all of the farm
4 ground; is that a fair summary?

5 A. Yes.

6 Q. Okay. And so -- so if you're an owner or
7 manager of 800 acres and you can divert 4,400
8 acre-feet of combined surface and groundwater, I guess
9 it -- in your case, it'd be 5,500 acre -- no, 4,500.
10 As long as your average for the entire amount of acres
11 doesn't exceed that gross net number of acres times
12 5.5, you are within -- you are -- you are protected
13 from administration by the OWMAN program; is that
14 correct?

15 A. As long as I don't over divert my water
16 right, I am protected, yes.

17 Q. Okay. And if you have land -- and you may
18 not know this. I don't know the answer to this one.
19 If you have land in both the Rincon and the Mesilla
20 Basin, can you put all of that land under the OWMAN
21 program and then net between the two basins?

22 A. I believe so.

23 Q. Okay. Thank you. So you could -- you could
24 lease some -- you could lease some land down, say, in
25 Mesilla Valley that had groundwater rights, and you

1 would be able to -- to average those acres against
2 your land in the -- in the Rincon -- in the Hatch
3 Valley; is that correct?

4 A. Can you repeat that question?

5 Q. Probably not.

6 A. Well, you said -- you said groundwater
7 rights, and, you know, I don't know --

8 Q. Let me rephrase the question and hopefully
9 help both of us out. If you had -- let's say you had
10 a hundred acres in the Mesilla Valley that had -- that
11 had wells --

12 A. Okay.

13 Q. -- and you needed the water because you're
14 over diverting your water in the Hatch Valley where
15 you've got chile and alfalfa and -- and too many acres
16 and it's a -- a year in which you -- you over divert.
17 But if you've got that Mesilla Valley acreage under
18 your OWMAN program, you can use that to -- as part of
19 your averaging so that you can effectively swap the
20 Mesilla Basin Valley -- the Mesilla Basin water into
21 the Hatch Valley; is that correct?

22 A. You know, I don't know. I do -- everything
23 that I farm is in the Hatch Valley, so I guess you
24 could include farms from the Mesilla Valley in your
25 OWMAN if you needed to, if you have farms in both

1 places.

2 Q. Okay. Now, I want to turn you to New Mexico
3 Exhibit 791 that you were looking at earlier. And I
4 believe you said that the -- that this related to a
5 14-acre piece of property that you rented; is that
6 right?

7 A. Yes.

8 Q. But it was not under your OWMAN program as it
9 existed at the time of -- of this letter?

10 A. That is correct.

11 Q. Okay. So this is after OWMAN was in place,
12 this 14 acres was simply not included in your -- in
13 your OWMAN program?

14 A. Right. I overlooked it, and I did not add it
15 to my OWMAN.

16 Q. Okay. And if this would have been under your
17 -- your OWMAN program, is it -- is the OWMAN program,
18 is it a permit? I mean, I'm -- we've been talking
19 about it and Mr. Ogaz was talking about it and it's
20 unclear to me exactly how that program is formalized
21 so that the State knows what is in and out. What's
22 the process for that?

23 A. We have to go to the state engineer's office
24 and fill out all of the specific farms that are going
25 to be part of our OWMAN with all of the LRG numbers,

1 including all of our, you know, allotments for each
2 specific property and fill all of that out at the
3 state engineer's office. And we have to have -- if
4 we're going to put some rental property under there,
5 we have to have permission from the landlords to do
6 that.

7 Q. Okay. And is it -- does it take the form of
8 -- of a permit or is it simply a -- a former program
9 that is approved by the Office of State Engineer?

10 A. You know what, I'm not necessarily sure on
11 that. I just know that I have to go in there and --
12 and fill it out and get their permission. They have
13 to okay that. So I guess it does have to be approved.

14 Q. Do you know anybody who's ever had a proposal
15 denied by the State Engineer?

16 A. No.

17 Q. Okay. So if -- if back in -- in 2013, if
18 this 14 acres would have been included within your
19 OWMAN system, you would not have gotten this letter;
20 is that correct?

21 A. That is correct.

22 Q. Okay. And if you exceed your diversion
23 limits under the OWMAN system, would your water use be
24 curtailed in the year you over divert?

25 A. Not in the year you over divert. I -- you

1 know, and I'm -- I think it's taken on the next year,
2 and I believe it's two for one.

3 Q. And if you exceeded your diversion limits
4 under the OWMAN system, would you expect to get
5 another letter like the one in New Mexico 791
6 requiring you to obtain additional water or credit?

7 A. Yes.

8 Q. Okay. And I think that -- that as you
9 expressed it, Mr. Serrano helped you get in compliance
10 after he sent you the letter from 2013; is that right?

11 A. Yes.

12 Q. Is that correct?

13 A. Yes.

14 Q. And would you expect Mr. Serrano to help you
15 get in compliance if you over diverted under your
16 OWMAN system?

17 A. Yeah. I would need their assistance. I'd
18 have to figure out, you know, what I needed to do to
19 comply.

20 Q. Okay. And Mr. Serrano and the Office of
21 State Engineer is helpful in that regard?

22 A. Yes.

23 Q. Okay. Does Mr. Serrano help direct farmers
24 to -- to other individuals or entities that might have
25 additional water for lease?

1 A. Not that I'm aware of.

2 Q. Okay. Do you know anyone who's not been able
3 to find additional water when they -- when they needed
4 water under their OWMAN program?

5 A. You know what, I'm not familiar with any
6 other entities but my own. Mine keeps me pretty
7 occupied.

8 Q. Fair enough. Do you know anyone in the Hatch
9 Valley has actually had groundwater pumping curtailed
10 for over diversion from their well or wells?

11 A. I don't.

12 Q. Okay. Let's switch to Exhibit 673, please.
13 And this is New Mexico 673. Do you remember talking
14 about this one?

15 A. Yes.

16 Q. And when were meters first required in the
17 Hatch Valley; do you recall?

18 A. I don't recall the year, no.

19 Q. Okay. Do you know when you put your meters
20 in?

21 A. I don't recall the exact year it was.

22 Q. Was it after 2010?

23 A. No. It was before then.

24 Q. Okay. Was it after 2008?

25 A. I believe it was before then. I can't

1 remember what year it was, but --

2 Q. Okay.

3 A. -- I want to think it was, like, 2005.

4 Q. All right.

5 A. Maybe '4.

6 Q. Now, in this letter, which is dated, I
7 believe, December, 2019, the last paragraph of the
8 letter, the -- the State says, "The drought has opened
9 our eyes to the urgency of better managing our limited
10 water resources." Do you see that?

11 A. Yes.

12 Q. Okay. And this was 2019, right?

13 A. Yes.

14 Q. But the drought, I think we would agree,
15 started about 17 years before this letter, right?

16 A. Roughly, yes.

17 Q. Okay. And the next sentence in this letter
18 says -- states that, "Active Water Resource Management
19 relies on a step-by-step approach of implementing a
20 set of administrative tools, including metering and
21 District-specific regulations." Do you see that?

22 A. Yes.

23 Q. So you obviously know about the metering,
24 right?

25 A. Yes.

1 Q. But there haven't been any District-specific
2 regulations adopted by the State of New Mexico for the
3 Hatch Valley since the start of the drought roughly 19
4 years ago, have there?

5 A. Can you repeat the question, please?

6 Q. Sure. Let me rephrase it this way. Are you
7 aware of any District-specific regulations adopted by
8 the State of New Mexico for the Hatch Valley since the
9 start of the drought 19 years ago?

10 A. I don't know. I don't know if there's any
11 regulations. I know that they have been working on a
12 fallowing program for the, you know, last few years
13 developing, you know, a fallowing program.

14 Q. But as far as you know, there are no
15 District-specific regulations that have been
16 implemented in the Hatch Valley in the last 20 years?

17 A. As far as I know, no.

18 Q. Okay. All right.

19 MR. DUBOIS: Could we go to
20 Demonstrative 8, please?

21 Q. (BY MR. DUBOIS) This is Demonstrative 8 that
22 you talked about, lab value. Where is this well? It
23 is on the Garfield lateral, right?

24 A. Yes. Surface water is irrigated off the
25 Garfield lateral. It's a rental property that I rent.

1 This well is -- we mean the coughing well, but it's
2 located right off of Highway 187.

3 **Q. Where is this well relative to the map you**
4 **looked at in New Mexico Demo 23?**

5 A. This well is on a farm adjacent to that farm,
6 so the farm is actually a rock-throwing distance from
7 this well.

8 **Q. Okay. East or west?**

9 A. It would be north and east, a little east.

10 **Q. Okay. So north and east of this -- okay. So**
11 **that would be essentially along the east edge of the**
12 **-- of the Hatch Valley?**

13 A. Yeah. It's on the west side of Highway 187.

14 **Q. Okay.**

15 A. So it's kind of on the corner of where the
16 Garfield lateral crosses 187 the second time.

17 **Q. You sort of anticipated my next question is**
18 **what's a coughing well?**

19 A. Well, this well has actually been replaced.
20 It's a well on a rental property. It was replaced, I
21 want to say 2016 or 2017. The well that it replaced
22 didn't have -- you know, pump very well, so the water
23 -- it would pump for a little while and then it would
24 surge and then pump again, so we'd call it the
25 coughing well because of that.

1 **Q. What does -- what do you mean when you say it**
2 **surges?**

3 A. All the perforations were plugged up so it
4 would actually kind of run out of water, and we
5 probably had the pump oversized for the amount of
6 water that it pumped. So, you know, with all the --
7 the salts and iron in the water, it had plugged up the
8 perforations and so we had to -- we had -- our
9 landlord actually replaced the well, and now it
10 produces a decent amount of water.

11 **Q. Okay. And since this is a rental property,**
12 **it's not tied into the system you share with your**
13 **other properties; is that correct?**

14 A. We do share water back and forth. We use,
15 you know, the water together to, you know, get a
16 larger quantity to irrigate more efficiently.

17 **Q. Am I correct that -- that this report should**
18 **be read that -- that this well -- is this -- was this**
19 **the measurement before or after you replaced the well?**

20 A. After.

21 **Q. Okay. And it shows measurement of 2,045**
22 **parts per million total dissolved solids, is that the**
23 **way I read this?**

24 A. Yes.

25 **Q. Okay. How many of your other wells have TDS**

1 in excess of 2,000 parts per million?

2 A. On the Garcia Farm, we have five wells on
3 there, and all of those test above 2,000.

4 MR. DUBOIS: Let's go to Exhibit 24,
5 please, Demo Exhibit 24.

6 Q. (BY MR. DUBOIS) Mr. Franzoy, this is your
7 letter to EBID dated April 16th, 2014, right?

8 A. Yes.

9 Q. Okay. And in the letter, you acknowledge
10 that, "EBID advocated for the growers groups in
11 adopting and implementing the operating agreement to,
12 quote, protect our groundwater."

13 MR. DUBOIS: Can you blow that up, Seth?
14 First paragraph.

15 Q. (BY MR. DUBOIS) My apologies for not having
16 that blown up so that I can actually read it. The
17 first sentence, the second line says, "Acknowledges
18 Elephant Butte Irrigation District, EBID's advocacy
19 for grower groups in the adoption and implementation
20 of the Operating Agreement to protect our
21 groundwater." Do you see that?

22 A. Yes.

23 Q. And your father helped negotiate the 2008
24 Operating Agreement; am I right?

25 MR. OGAZ: Objection; beyond the scope

1 of direct.

2 **JUDGE MELLOY:** Well, he's talked about
3 the operating -- go ahead.

4 A. My dad was a board meeting -- I mean, I'm
5 sorry, a board member during that time.

6 **Q. (BY MR. DUBOIS)** More than that, he actually
7 helped negotiate it, didn't he?

8 A. I'm not aware that he did any negotiating on
9 the operating agreement.

10 **Q. Okay. So roughly six years after the 2008**
11 **Operating Agreement was entered into, it was your**
12 **stated position that the Operating Agreement was**
13 **adopted quote, to protect our groundwater, right?**

14 A. Yes.

15 **MR. DUBOIS:** Okay. All right. I have
16 nothing further of this witness, Your Honor. Thank
17 you.

18 Thank you, Mr. Franzoy.

19 **JUDGE MELLOY:** Mr. Deitchman?

20 **MR. DEITCHMAN:** Yes, Your Honor. I just
21 have one question.

22 CROSS-EXAMINATION

23 BY MR. DEITCHMAN:

24 **Q. Mr. Franzoy, my name is Rich Deitchman. I'm**
25 **one of the attorneys for Texas in this case. Nice to**

1 meet you today.

2 A. Nice to meet you.

3 Q. Mr. Franzoy, isn't it true that you want more
4 surface water and the ability to continue to pump
5 groundwater to the extent the crops need them?

6 A. It is true that I prefer surface water over
7 groundwater.

8 Q. But you -- you ultimately want more surface
9 water and to maintain the ability to continue to pump
10 groundwater, correct?

11 A. Yes.

12 MR. DEITCHMAN: I have no further
13 questions, Your Honor.

14 JUDGE MELLOY: Redirect?

15 MR. OGAZ: Yes, Your Honor. A couple
16 few questions.

17 REDIRECT EXAMINATION

18 BY MR. OGAZ:

19 Q. Mr. Franzoy, do you use 5-and-a-half
20 acre-feet on all of your acreage every year?

21 A. No.

22 Q. Does the amount of water you use on each acre
23 vary per year?

24 A. The amount varies from field to field and
25 year to year.

1 **Q. What is the most water you use on an acre?**

2 A. I -- I have one particular farm that has
3 really sandy soil, and we've used up to 7-and-a-half
4 acre-feet of water on alfalfa.

5 **Q. What is the least amount of water that you**
6 **use on an acre?**

7 A. I've used zero. I've left some fallow and
8 not applied any water.

9 **Q. All right. And earlier, you said that you**
10 **usually use about 3-and-a-half acre-feet per acre; is**
11 **that correct?**

12 A. Yeah, it's approximate.

13 **Q. So what would happen to an acre of chile if**
14 **you used 5-and-a-half acre-feet on that acre?**

15 A. It would die with disease that we get, what
16 they call phytophthora. It's a root rot. It would
17 kill the plant.

18 **Q. How much has -- how has your -- let me**
19 **rephrase that. Have you installed more drip**
20 **irrigation since 2006?**

21 A. Well, yes, I have. We tested it in 2006 and
22 then applied or started installing later on and year
23 by year until about three or four years ago, we have
24 everything.

25 **Q. How much water did you -- sorry. How many**

1 **acres of drip irrigation did you start with?**

2 A. 12.

3 **Q. How many acres do you have drip irrigation on**
4 **now?**

5 A. About 600 in -- in the Hatch Valley. All of
6 my properties outside of the Hatch Valley is drip
7 irrigation.

8 **Q. How much -- or what was the reason for the**
9 **increased amount of drip irrigation you're using?**

10 A. To better manage my water and specifically
11 the salinity of my water.

12 **MR. OGAZ:** Thank you. No further
13 questions, Your Honor.

14 **JUDGE MELLOY:** Mr. Dubois, anything
15 further?

16 **MR. DUBOIS:** No, Your Honor. Sorry.
17 Little slow on the trigger on my mouse.

18 **JUDGE MELLOY:** All right.
19 Mr. Deitchman?

20 **MR. DEITCHMAN:** Nothing further for this
21 witness.

22 **JUDGE MELLOY:** All right. Thank you,
23 Mr. Franzoy. You're excused. We appreciate your
24 testimony.

25 **THE WITNESS:** Thank you, Judge.

1 **JUDGE MELLOY:** Well, it's getting close,
2 but let's -- let's start with Mr. Garcia. Let's bring
3 him in, and we'll get the preliminaries out of the
4 way. Who's going to take the examination, Mr. Ogaz?

5 **MR. OGAZ:** Ms. Atton, I believe.

6 **JUDGE MELLOY:** Why don't we just go off
7 camera while we switch. As soon as we can make the
8 change, let's at least get the preliminaries out of
9 the way.

10 **MR. OGAZ:** Excuse me. It'll be
11 Mr. Draper.

12 **MR. DEITCHMAN:** We're switching
13 attorneys here, as well.

14 **JUDGE MELLOY:** Okay.

15 (Recess.)

16 **MR. DRAPER:** Good afternoon, Your Honor.

17 **JUDGE MELLOY:** Good afternoon,
18 Mr. Draper. The record should reflect that we have
19 Ms. Barfield for Texas, Ms. Coleman for United States,
20 Mr. Draper for New Mexico, and Mr. Hartman remains on
21 for Colorado. I know we won't get very far into
22 substantive testimony, but I thought we could get some
23 of the preliminaries out of the way so are you ready
24 to call your witness, Mr. Draper?

25 **MR. DRAPER:** Yes. Thank you, Your

1 Honor. We would call Dr. Jorge Garcia to the stand.

2 **JUDGE MELLOY:** Dr. Garcia, would you
3 raise your right hand, please, to be sworn? Do you
4 swear or affirm that the testimony you're about to
5 give will be the truth, the whole truth, and nothing
6 but the truth? You're on mute. You're still on mute.

7 **MR. DRAPER:** It looks like there's an
8 additional mute, Your Honor. Let me -- let me see if
9 I can get that taken care of quickly.

10 There, I think that may have taken care
11 of it, Your Honor.

12 **JUDGE MELLOY:** Okay. I think I heard
13 you -- saw you mouth "I do"; is that correct?

14 **THE WITNESS:** I do, Your Honor.

15 **JUDGE MELLOY:** Thank you. Let me just
16 ask you a couple questions we've asked all of the
17 witnesses. First, is there anyone in the room with
18 you?

19 **THE WITNESS:** No, no one.

20 **JUDGE MELLOY:** Do you have any documents
21 that you will be referring to beyond what's in the
22 witness binders -- pardon me, exhibit binders?

23 **THE WITNESS:** Just the exhibit binder.

24 **JUDGE MELLOY:** All right. Then I do
25 need to advise you, Mr. Garcia, that you're not

1 allowed to have any communication devices, iPhones,
2 iPads, laptops, et cetera. Do you understand that?

3 THE WITNESS: Yes. I don't have any.

4 JUDGE MELLOY: All right. Thank you.

5 Then I'd ask if you would state your name and spell it
6 for the record, please.

7 THE WITNESS: Jorge A. Garcia,
8 J-O-R-G-E, A, G-A-R-C-I-A.

9 JUDGE MELLOY: And then let me go over
10 the exhibits. We have a number of A exhibits here,
11 New Mexico 881, New Mexico 943, 944, 946, 947, 949,
12 955, 956, 957, 963, New Mexico 2140 -- excuse me --
13 New Mexico 2491, New Mexico 2492, and New Mexico 2493
14 are all A exhibits and will be admitted. New Mexico
15 Demonstrative Exhibit Garcia is an A exhibit and will
16 be admitted. For cross-examination we have New Mexico
17 952, 956 are A exhibits and will be admitted. Texas
18 366 is an A exhibit and will be admitted.

19 All right. Mr. Draper, you may begin.

20 MR. DRAPER: Thank you, Your Honor.

21 JORGE GARCIA,
22 having been first duly sworn, testified as follows:

23 DIRECT EXAMINATION

24 BY MR. DRAPER:

25 Q. Good afternoon, Dr. Garcia.

1 A. Good afternoon.

2 Q. You are here to provide information and
3 testimony with regard to the City of Las Cruces Water
4 Users?

5 A. That's correct.

6 Q. All right. Let's start with your resume.
7 That's Exhibit New Mexico 0963, if you please. Is
8 this your resume, Doctor?

9 A. Yes.

10 Q. All right. Is it a true and accurate record
11 of your professional career?

12 A. Yes.

13 Q. Using this resume as a -- as a guide, would
14 you please briefly state your education and
15 professional experience relative to your testimony
16 today?

17 A. I hold a PhD in civil engineering, a master's
18 in civil engineering and a bachelor's in ag and
19 irrigation engineering from Utah State University.

20 Q. And in addition to that, you have some
21 professional licenses, do you?

22 A. I'm a licensed professional engineer in New
23 Mexico and Colorado.

24 Q. When did you start working for the City of
25 Las Cruces?

1 A. 1989.

2 **Q. And how many years did you work for the City**
3 **of Las Cruces Utilities Department as an employee?**

4 A. About 30 years and ten months.

5 **Q. During your employment with the Utilities**
6 **Department, prior to being appointed director of the**
7 **Department, what were your responsibilities during**
8 **that period?**

9 A. I was a design -- I started in 1989 as a
10 design engineer. I was involved in the design of
11 water wells, pump stations, pipelines, water storage
12 tanks. I was involved in the development or the
13 implementation of the first supervise --
14 computer-based supervisory control system. It's also
15 called SCADA system, and I was involved in quite a few
16 other design projects, mainly on the water area. When
17 I became department head in 1986, chief utilities
18 engineer, I was in charge of all of the engineering
19 for gas water, wastewater, and solid waste of the
20 utilities.

21 **Q. All right. And when did you become director**
22 **of the department?**

23 A. In 2001.

24 **Q. And what were your duties and**
25 **responsibilities as director?**

1 A. The main responsibilities were administrative
2 and financial management of all of the utilities, gas
3 water, wastewater, solid waste. That involved rate
4 setting, financing for -- for projects. I also remain
5 very involved in a lot of big or large projects with
6 -- with my staff, like the water quality laboratory,
7 the Greek Walnut treatment facility, the wastewater
8 treatment plant, projects, and more recently, I was
9 very involved in the bringing the first two
10 performance contracts to the Utility in an agreement
11 with the private sector. We had a contract for the
12 water utility on advance metering infrastructure and a
13 contract, Part B of that project is the energy --
14 energy performance contract for the wastewater
15 utilities, and that was one of the last projects I was
16 involved in.

17 **Q. Now, as director, did you continue to provide**
18 **technical oversight as well as the type of oversight**
19 **you just mentioned?**

20 A. That is correct. I was very involved in a
21 lot of the large projects, not on the smaller
22 projects.

23 **Q. When did you retire from the Utilities**
24 **Department?**

25 A. September 1, 2020.

1 **Q. Do you have a continuing relationship with**
2 **the Las Cruces Utilities Department?**

3 A. I'm currently a consultant for the city
4 utility.

5 **Q. To the present time?**

6 A. Yes.

7 **Q. All right. Let's take a look at**
8 **Demonstrative No. 2. This demonstrative -- thank you**
9 **-- is a summary of the primary topics of your**
10 **testimony. Could you briefly describe for the Master**
11 **what you expect to cover today in your testimony?**

12 A. Yes. The first topic is going to be my
13 experience over 30 years with the city water and waste
14 -- principally water and wastewater systems. I was
15 very involved in the 40-year water development plan,
16 2017 plan, that includes all of our city municipal
17 rights and permits. I'll be presenting some
18 information or discussing some of the recent
19 diversions and return flows based on the data compiled
20 by the City. I will be talking about some of the
21 state engineer regulations that -- that the City was
22 compliant with. I will provide some summary of the
23 CLC water conservation program and a discussion of
24 ownership of EBID acres and water rights.

25 **Q. Thank you. And if I understand correctly,**

1 you will be testifying based on your personal
2 knowledge gained over the years from 1989 to the
3 present; is that right?

4 A. That is correct.

5 Q. Okay. All right. Let's go to the next
6 demonstrative, No. 3, if you please. Let's -- let's
7 point -- point out for the Court the location of the
8 City of Las Cruces in the basin with the help of the
9 two maps that are shown on this demonstrative, if you
10 please.

11 A. Yeah. The map on the left is adapted from
12 the report of the Rio Grande Compact Commission. You
13 can see the Rio Grande Basin, the red circle, we are
14 indicating the location of the City of Las Cruces.
15 The map to the right is extracted from the 40-year
16 water plan Figure 1, and basically shows the -- in
17 gray, it shows the -- the Utility or water service
18 area of the Utility. You have labeled there the
19 Jornada del Muerto Basin at the top. The map shows --
20 goes all the way to the area of the Hueco Basin, and
21 then you see the Mesilla Basin to the south of the
22 bottom of the map, and the Corralitos and Nutt-Hockett
23 basin to the west of the city. The Jornada and
24 Mesilla Basins are the main basins where the city well
25 fields are located.

1 **Q. All right. You mentioned also the Hueco**
2 **basin is shown on the map?**

3 A. I mentioned that, yes. We don't have any
4 wells on that basin.

5 **Q. All right. What is the approximate**
6 **population of the city at this time?**

7 A. It's 111,385, I believe, according to the
8 2020 census.

9 **Q. And are most of the water users served by the**
10 **Las Cruces Utilities Department within the city**
11 **limits?**

12 A. Yes. We have a significant number of
13 customers. There was an acquisition of private water
14 utility a few years back so we acquired about 3,500
15 customers in a growing area surrounding the city.

16 **Q. All right. Now, one of these maps, the one**
17 **on the right is from the 40-year water development**
18 **plan. Let's bring that up. That's New Mexico Exhibit**
19 **2492. What is the -- the 40-year water development**
20 **plan of the City of Las Cruces?**

21 A. Well, the document in front of us is the
22 cover of the main document that describes the -- the
23 overall planning framework for water supply for the
24 city. The last plan was the 2017 plan.

25 **Q. Was the 40-year plan that we're seeing here**

1 as Exhibit New Mexico 2492, was that prepared by you
2 or under your supervision?

3 A. It was prepared by Shomaker & Associates, a
4 water resource and environmental consulting firm, and
5 I did supervise and was involved in the review of the
6 work in conjunction with a lot of my staff.

7 Q. Approximately how long did it take to prepare
8 this plan?

9 A. About a year and a half.

10 Q. Now, as a 40-year water development plan, is
11 that a voluntary exercise or is that required by the
12 New Mexico state engineer?

13 A. Well, it is required, but I believe the City
14 would do it anyway. It's a very robust document that
15 it is the first level of planning of -- of your water
16 supply and population projections and conservation
17 efforts, so it's a very important document.

18 Q. Is it fair to say that the plan covers just
19 about all the important aspects of the city water
20 rights and water planning?

21 A. That is correct.

22 Q. Let's take a look at the -- at the table of
23 contents, which appear on Pages 10 and 11 of the
24 document. There we have it. Using that as a guide,
25 would you briefly describe what the contents are of

1 **the plan?**

2 A. Yeah. The plan starts with a executive
3 summary and describes some of the growth projections
4 and move the conservation goals in a very short
5 summary, then it goes into water supply development,
6 looks at different supply alternatives, in this case
7 importation, aquifer storage and recovery, potentially
8 in the future deep well brackish desalination. In
9 some of the timelines for implementation for some of
10 those alternatives. Then the plan goes into a very
11 detailed description of the water rights and wells at
12 the time of the -- of the plan -- plan development.
13 It presents, on the demand side, the demand potential
14 water demand projections and population growth
15 projections in the next 40 years. It gives an outline
16 of conservation measures in place and projected
17 conservation measures, and then there's a series of
18 references that contain tables, figures, and large
19 list of appendices that detail -- provide background
20 in -- to the main document.

21 **Q. Now, together with the appendices, about how**
22 **many pages is this 40-year water development plan?**

23 A. I believe 750 pages or so.

24 **Q. Let's take a look at the list of appendices.**
25 **This appears on Page 14 of the exhibit. Would you**

1 **pick out from this list of appendices the ones that**
2 **are the most important in your view?**

3 A. Well, in my view, very critical ones are
4 Appendices A, B, and C first. The first one is a
5 description of the pre-basin LRG-430 right. Appendix
6 B addresses the permits for the -- in the Jornada del
7 Muerto Basin, and Appendix C addresses the West Mesa
8 well field permit. There's also a section in
9 background on hydrogeology is very summarized, a list
10 of existing wells. Appendix H describes the return
11 flow plan framework that is used to report wastewater
12 returns back into the river. There's a series of
13 details on other smaller water rights that the City
14 has. There is water conservation ordinance in the
15 water conservation plan at the time, and the goals are
16 attached as part of that Appendix P, I believe. The
17 last appendix is water rights associated with the
18 acquisition of the private water company I discussed
19 earlier.

20 **Q. Now, the -- the appendices are -- are**
21 **contained in three exhibits separate from the text of**
22 **the report; is that right?**

23 A. That's correct. They are grouped in three
24 exhibits.

25 **Q. For the record, I would state that Appendices**

1 A through G that we're seeing here are contained in
2 New Mexico Exhibit 2491. Appendices H through L are
3 contained in Exhibit New Mexico 2493, and Appendices M
4 through Q are contained in New Mexico Exhibit 956.

5 JUDGE MELLOY: Mr. Draper, is this a
6 good point to break or do you want to finish up on the
7 -- on -- if you have a few more questions about this,
8 that's fine. Otherwise, if it's a good breaking
9 point, maybe we'll stop for the evening.

10 MR. DRAPER: Let me just ask the witness
11 two more questions if I may, Your Honor, and then I'll
12 be --

13 JUDGE MELLOY: Sure. Go ahead.

14 Q. (BY MR. DRAPER) Is this 2017 water
15 development plan the most recent plan that's been
16 prepared by the City of Las Cruces?

17 A. Yes, it is.

18 Q. And how often does the City redo or update
19 the 40-year plan?

20 A. At least every ten years. This one was just
21 done nine years after the prior one.

22 MR. DRAPER: All right. Your Honor,
23 this would be a good place to break then.

24 JUDGE MELLOY: All right. Then we'll
25 take our evening recess, and I'll see everyone

1 tomorrow morning at 11:00 Central time. Is there
2 anything we need to talk about before we break?

3 **MR. DRAPER:** Not that I'm aware of, Your
4 Honor.

5 **JUDGE MELLOY:** All right. We'll see
6 everybody in the morning. Thank you.

7 (The proceedings adjourned at 5:05 p.m.)
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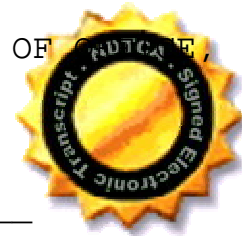
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