

SUPREME COURT OF THE UNITED STATES
NO. 141, ORIGINAL

STATE OF TEXAS,)
)
 Plaintiff,)
)
VS.) VOLUME XV
)
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 4, 2021,
commencing at 11:00 a.m.;

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

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1 **JUDGE MELLOY:** Looks like we have
2 everyone so let's get started. This is in Original
3 No. 141, Texas versus New Mexico, Colorado, and the
4 United States as intervenor. I'd ask the parties who
5 are going to be appearing for today's first witness to
6 enter their appearance, please. Ms. Klahn?

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

9 **JUDGE MELLOY:** And for Colorado,
10 Mr. Wechsler?

11 **MR. WECHSLER:** For New Mexico, Your
12 Honor.

13 **JUDGE MELLOY:** New Mexico. I'm sorry.
14 I'm getting mixed up.

15 **MR. WECHSLER:** That's okay. I like
16 Colorado very much. Mr. Kopp will actually be
17 examining Mr. Chavez. I'm just appearing to see if
18 you wanted to talk about the schedule. It would be
19 helpful for us to just know how you want to handle
20 that, and then I'll yield the chair to Mr. Kopp.

21 **JUDGE MELLOY:** All right. Mr. Dubois?

22 **MR. DUBOIS:** I will be on for
23 Mr. Chavez. Good morning, Your Honor.

24 **JUDGE MELLOY:** And Mr. Wallace on for
25 Colorado. All right.

1 **MR. WALLACE:** Yes. Good morning, Your
2 Honor.

3 **JUDGE MELLOY:** I do want to talk about
4 the schedule a little bit, but before we do that, one
5 issue that was left hanging yesterday was the motion
6 to admit New Mexico Exhibit 1027 and that portion of
7 New Mexico Exhibit 847 that incorporated 1027. I've
8 given this some thought over the evening, and this
9 will be my ruling. I'm going to admit those exhibits
10 but for a very limited purpose at this time. I am
11 very concerned about the fact that 1027 was created
12 arguably for litigation purposes and contains a
13 considerable amount of secondary and even tertiary
14 hearsay. Having said that, however, I do believe it
15 does qualify under the -- under the historical records
16 exception to the hearsay rule, so it can be admitted
17 for that -- under that rule. However, I am going to
18 admit it at this point for the limited purpose of
19 showing that New Mexico State University has been
20 pumping groundwater almost from the day of its
21 founding in 1888 and maybe from the date it was
22 founded in 1888 but at least back to very close to
23 that date and has been continuously pumping since that
24 time to the extent that that's relevant particularly
25 to a pre-1938 condition. I'm not even sure that's a

1 matter that's in much dispute. But in any event, for
2 that limited purpose only, it will be admitted. If
3 for some reason as we go forward, it becomes necessary
4 to get into the issue of exactly how much pumping was
5 being done, what was done with the water, how much was
6 shared with Las Cruces, what wells were pumped when,
7 we can revisit the issue, but I'm not using this
8 report at this time for any of those purposes. I -- I
9 think we need some more primary sources if we're going
10 to get into that issue, either during this phase or a
11 damages or remedies phase. But as I say, for the
12 limited purpose of showing that they had wells drilled
13 almost from the date of inception of the university up
14 to the present time, I will admit it for that purpose
15 only.

16 All right. Let's move on to the
17 schedule. Let me get my notes here. So we have
18 Mr. Chavez up first; is that right, Mr. Wechsler?

19 **MR. WECHSLER:** Yes, that's correct. And
20 we expect Mr. Chavez, taking into account what we
21 heard about cross-examination, will take somewhere
22 between one to two hours, so call it two hours.

23 **JUDGE MELLOY:** So what do we have,
24 Mr. Chavez, Ms. -- is Kelly a man or a woman?

25 **MR. WECHSLER:** I believe it's a mister.

1 **JUDGE MELLOY:** Mr. Mills, Mr. French,
2 maybe we get into Mr. Stomp, maybe not today.

3 **MR. WECHSLER:** That's correct.

4 **JUDGE MELLOY:** Do we have anybody on
5 deck for tomorrow?

6 **MR. WECHSLER:** Well, that's what we need
7 to talk about. You had asked us about moving
8 Mr. Longworth to tomorrow. We're happy to do that.
9 Mr. Longworth is available, but I understand the
10 United States may have some concerns about that so
11 I'll let them speak to -- to that.

12 **JUDGE MELLOY:** Okay.

13 **MR. DUBOIS:** I believe the United States
14 and Texas, Your Honor. You know, we -- we do have
15 concerns that suddenly we're being sort of jammed on
16 this on a very short notice, and we did not see the
17 documents until last night for direct, so I -- I think
18 both the United States and Texas have concerns with
19 going fully forward with Mr. Longworth on Friday. I
20 believe Texas has a proposal that may be a middle
21 ground, but I'm only getting that secondhand so I will
22 pass it onto Ms. Klahn.

23 **JUDGE MELLOY:** Ms. Klahn, what's your
24 position?

25 **MS. KLAHN:** You know, I think what we

1 could do on Friday, Your Honor, is have -- finish
2 Mr. Stomp, which seems likely, and have Mr. Longworth
3 on direct. We're -- as Mr. Dubois said, we didn't
4 even get the direct exhibits until last night, and
5 there's 21 of them. I think there's 21 of them. So I
6 think -- and I think it will be a substantial direct
7 based on what we understand the plan to be so that
8 would at least take up a good chunk of Friday and then
9 we could start cross first thing on Monday.

10 **MR. WECHSLER:** Your Honor, we -- we
11 object to that. We're happy to put on Mr. Longworth,
12 but if we're going to do that, we ought to put him on
13 until we're done; otherwise, we can wait until Monday
14 and put Mr. Longworth on. I don't -- I don't think
15 it's quite fair to adjust the schedule, tinker with
16 the schedule in that way, to give an advantage to
17 those doing cross-examination. I can tell you, if it
18 gives you any comfort, when we look at the schedule,
19 if you were to wait until Monday for Mr. Longworth, we
20 expect we'll be done on Wednesday, and even if we
21 started -- even if we did Mr. Longworth completely on
22 -- on Friday, we think it's likely we would finish
23 either Tuesday afternoon or the morning of Wednesday
24 the -- I think that's the 10th.

25 **JUDGE MELLOY:** And Mr. Westmoreland is

1 not available tomorrow; is that correct?

2 **MR. WECHSLER:** Unfortunately not, Your
3 Honor. He was on vacation in Mexico, so I don't feel
4 too sorry for him, but he's not available.

5 **JUDGE MELLOY:** All right.

6 **MS. KLAHN:** Your Honor --

7 **JUDGE MELLOY:** Well --

8 **MS. KLAHN:** -- we were all planning to
9 have a day of trial tomorrow, and I think it's
10 reasonable to go forward with Mr. Longworth, at least
11 in part.

12 **MR. WECHSLER:** Happy to, yeah, as long
13 as we continue all the way through to the end of the
14 day. That seems perfectly fair. Normally in trial,
15 you don't -- you don't have this whole five-day
16 process. You simply deal with the exhibits as they
17 come up. So if -- if that's the preference of the
18 Court, we're happy to go forward on Friday, but
19 splitting him over the weekend seems prejudicial to
20 New Mexico and unfair.

21 **JUDGE MELLOY:** Well --

22 **MR. DUBOIS:** And, Your Honor, just --
23 just for what it's worth, I don't have -- the United
24 States doesn't have any problem with just putting
25 Mr. Longworth on, on Monday. I agree with

1 Mr. Wechsler that, as I look at the schedule,
2 regardless, we finish on Wednesday.

3 **JUDGE MELLOY:** All right. Well, let's
4 -- okay. We'll put Mr. Longworth on, on Monday. You
5 still plan -- do you still plan to go ahead with
6 Mr. Westmoreland before Longworth or would it make
7 more sense -- because it very well could be that if
8 you do an hour and a half of Westmoreland, say an hour
9 of cross, that's two-and-a-half hours, then you do
10 three hours of Longworth, you're probably going to be
11 carried over anyway on the cross-examination.

12 **MR. WECHSLER:** It's -- yeah, we -- we
13 can put Mr. Longworth on first on Monday, but -- but,
14 actually, I don't anticipate that Mr. Longworth will
15 take three hours. I think we overestimated with
16 Mr. Longworth. I think it's likely closer to two
17 hours.

18 **JUDGE MELLOY:** And he's the state
19 engineer, right?

20 **MR. DUBOIS:** No.

21 **MR. WECHSLER:** No. Mr. John D'Antonio
22 is the state engineer. He'll be in the spring.
23 Mr. Longworth is the special assistant to the state
24 engineer who will be talking about Stream System Issue
25 101 and related issues.

1 **JUDGE MELLOY:** Okay. Well -- all right.
2 Well, then we'll wait until Monday, which means
3 tomorrow will probably be a pretty short day but --

4 **MR. WECHSLER:** I think that's likely
5 because Mr. Stomp is a very short witness.

6 **JUDGE MELLOY:** Okay. All right. Let's
7 go ahead then. Are we ready to proceed?

8 **MR. WECHSLER:** Yes, Your Honor.

9 **JUDGE MELLOY:** Mr. Kopp are you ready to
10 go?

11 **MR. KOPP:** Yes, good morning, Your
12 Honor.

13 **JUDGE MELLOY:** All right. Mr. Chavez, I
14 need to swear you as a witness. Would you raise your
15 right hand, please? Do you swear or affirm that the
16 testimony you're about to give will be the truth, the
17 whole truth, and nothing but the truth?

18 **THE WITNESS:** I do.

19 **JUDGE MELLOY:** All right. Mr. Chavez, I
20 need to advise you that -- of a few ground rules we've
21 been going over with each of the witnesses. First,
22 let me ask you: Is there anyone in the room with you
23 as you're giving your testimony?

24 **THE WITNESS:** The IT guy is walking out.

25 **JUDGE MELLOY:** He's walking out, did you

1 say?

2 THE WITNESS: Yes, your Honor.

3 JUDGE MELLOY: Okay. Do you have any
4 documents available to you that you will be referring
5 to during your testimony, other than the exhibit book?

6 THE WITNESS: No, Your Honor.

7 JUDGE MELLOY: And then finally, I need
8 to advise you that you're not allowed to have any
9 communication devices, such as iPads, iPhones,
10 laptops, et cetera, available to you or any e-mail,
11 texting, and so on. Do you understand?

12 THE WITNESS: I understand.

13 JUDGE MELLOY: All right. Well, let's
14 go over the exhibits for a minute here. We have Joint
15 Exhibit 449, which I understand has already been
16 admitted. We have Texas -- excuse me -- we have New
17 Mexico 30, 32, and 33, all of which are A exhibits and
18 will be admitted. There is -- this may be a typo.
19 There's a reference to New Mexico Demo 31, which --

20 MR. KOPP: Yes, Your Honor. I
21 apologize. That is a typo.

22 JUDGE MELLOY: That should be New Mexico
23 Demo 1, correct?

24 MR. KOPP: That's correct, Your Honor.

25 JUDGE MELLOY: That's the Google Earth

1 demo you've used with a number of witnesses; is that
2 correct?

3 **MR. KOPP:** Yes.

4 **JUDGE MELLOY:** Okay. That has been
5 admitted. Then we have US-436, which has been
6 admitted, and then for cross-examination, we have --
7 we have Texas 31.

8 **MR. KOPP:** I believe that's New Mexico
9 31, Your Honor.

10 **JUDGE MELLOY:** Excuse me. New Mexico
11 31. Thank you. We have New Mexico 31, which is an A
12 exhibit and will be admitted, and Texas Demo 1200,
13 which is the drone footage, which is an A exhibit, and
14 that will be admitted.

15 **MS. KLAHN:** Your Honor, could I raise a
16 preliminary matter with this witness?

17 **JUDGE MELLOY:** Sure.

18 **MS. KLAHN:** The witness has been on the
19 schedule and so on routinely identified as a hostile
20 witness and we're not sure he meets the standard for a
21 hostile witness and I just would like to have that
22 discussion on the record so if you are going to allow
23 Mr. Kopp to ask leading questions, there's a record of
24 why.

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

1 see where we go with the examination and if Mr. Kopp
2 starts to lead too much in the claim of a hostile
3 witness, we'll cross that bridge when we get to it.

4 Mr. Kopp, you may proceed.

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

6 DANNY CHAVEZ,
7 having been first duly sworn, testified as follows:

8 DIRECT EXAMINATION

9 BY MR. KOPP:

10 Q. Good morning, Mr. Chavez.

11 A. Good morning.

12 Q. My name is Michael Kopp, and I represent the
13 State of New Mexico in this case. You might remember
14 that we met when I took your deposition last summer.
15 I just have some questions for you today about the
16 Hudspeth County Conservation and Reclamation District
17 No. 1, specifically I want to ask you about the
18 District's operations and sources of water. What is
19 your current professional position?

20 A. I'm the manager.

21 Q. How long have you been in that position?

22 A. For 11 years.

23 Q. So when did you first start working for the
24 District?

25 A. I started October of 2010.

1 Q. And by "District," you understand I'm
2 referring to the Hudspeth County Conservation and
3 Reclamation District?

4 A. I do.

5 Q. I may also refer to it as Hudspeth; is that
6 okay?

7 A. Sure.

8 Q. Generally speaking, where is the district
9 located?

10 A. It is located east of El Paso County.

11 Q. Okay.

12 MR. KOPP: Can you pull up New Mexico
13 Demo 001 now, and can we go to Hudspeth and then
14 Hudspeth area?

15 Q. (BY MR. KOPP) So, Mr. Chavez, I'll represent
16 to you, this is a satellite view of the district as
17 shown on Google Earth, and as shown here, this shows
18 the district along the Rio Grande, and that is
19 southeast basically of El Paso County; is that correct
20 in your understanding?

21 A. Yes.

22 Q. Okay. So you said you've been the manager
23 for 11 years, correct?

24 A. Correct.

25 Q. And you started in 2010?

1 A. Correct.

2 Q. Were you hired as the general manager of the
3 district?

4 A. I was.

5 Q. So have you ever held any other positions at
6 the district?

7 A. No, sir.

8 Q. Okay. What are your responsibilities as
9 general manager?

10 A. To oversee the day-to-day activities of
11 delivering water to the farmers.

12 Q. Okay. Is that the primary purpose of the
13 district, to deliver water to its members?

14 A. I believe so.

15 Q. Okay. How many acres are there in the
16 district?

17 A. Approximately 18,000.

18 Q. Okay. And how many of those acres are
19 classified as irrigable acres?

20 A. Somewhere around 17,000.

21 Q. Okay. And what is the water that Hudspeth
22 provides to its members used for?

23 A. Irrigation of crops.

24 Q. Okay. And what are the most common crops
25 grown in your district?

1 A. Commonly, it's going to be cotton and
2 alfalfa.

3 Q. Okay. But some other crops are also grown,
4 right?

5 A. In previous years, yes. Years back, there
6 was more variety of crops planted in the -- it hasn't
7 been like that lately.

8 Q. Sure. Are any pecans grown within your
9 district?

10 A. There's a small orchard of 46 acres.

11 Q. Right. Does the district have a board of
12 directors?

13 A. Yes, they do.

14 Q. Okay. Who sets the district's water
15 allocations?

16 A. The board of directors.

17 Q. Okay. Can the district order water from the
18 Project?

19 A. No.

20 Q. Okay. Does the District just take the water
21 that shows up at its delivery points?

22 A. Pretty much, yes.

23 Q. Okay. Does the District have an engineering
24 consultant?

25 A. Yes.

1 Q. And who is that?

2 A. Dr. Al Blair.

3 Q. Is that the same Dr. Blair who is the
4 consultant for EP1?

5 A. Yes.

6 Q. How long has Dr. Blair been the District's
7 engineering consultant?

8 A. Ever since I've been there.

9 Q. Okay.

10 MR. KOPP: So, Your Honor, I would
11 request permission to treat this witness as an adverse
12 witness. He's the manager of a Texas water district.
13 They're an amicus curiae in this case, and they filed
14 briefs supportive of Texas. Recognize that he's not
15 identified with the State of Texas, but he's certainly
16 identified with an adverse party.

17 MS. KLAHN: Your Honor, you're on mute.

18 JUDGE MELLOY: What's your position, Ms.
19 Klahn.

20 MS. KLAHN: Mr. Chavez is associated
21 with the district that gets its water through a Warren
22 Act contract. New Mexico's position all along has
23 been that Hudspeth doesn't deserve any water and so
24 it's hard to imagine how they could be associated with
25 the State of Texas in a Compact case if New Mexico's

1 position is Hudspeth doesn't get any water. He's just
2 here to tell the truth, and he doesn't know very much,
3 as the deposition reflects. Mr. Kopp is likely going
4 to re-plow that ground today so I just don't see any
5 reason to treat him as a hostile witness. I don't
6 think he satisfies the standard under 611.

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

8 **JUDGE MELLOY:** You may.

9 **MR. KOPP:** While New Mexico has asserted
10 that Hudspeth District is not owed any water under the
11 Compact, we understand that Texas has asserted that
12 part of their Compact apportionment is for the
13 Hudspeth District, and they've certainly asserted
14 claims of damages on behalf of Hudspeth and so our
15 position is that while he may not be an official of
16 the State of Texas, he's certainly identified with an
17 adverse party under 611C.

18 **JUDGE MELLOY:** Are you claiming damages
19 on behalf of Hudspeth, Ms. Klahn?

20 **MS. KLAHN:** I believe there are. I
21 believe Dr. Sunding's analysis does include damage to
22 Hudspeth.

23 **JUDGE MELLOY:** All right. I'll allow
24 you to treat the witness as a hostile witness.

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

1 Q. (BY MR. KOPP) Mr. Chavez, the District's
2 primary source of water is waste and drainage water
3 from the Project, right?

4 A. Correct.

5 Q. Okay. And in the past, the District has also
6 purchased effluent from EP1, right?

7 A. Before my time.

8 Q. Okay. Hudspeth is also able to pump
9 groundwater it can use to supplement its surface
10 water?

11 A. Correct.

12 Q. Finally, Hudspeth is sometimes able to use
13 intermittent storm water flows from the arroyos,
14 correct?

15 A. Correct.

16 Q. I want to ask you a few questions now about
17 the water you received from the Project. So the
18 District has contracts with the Bureau of Reclamation
19 to rent waste and seepage water from the Project,
20 right?

21 A. Correct.

22 MR. KOPP: Can we go ahead and pull up
23 Exhibit US-0 436?

24 Q. (BY MR. KOPP) So, Mr. Chavez, I'm showing you
25 a document that's been marked as Exhibit US-0436.

1 It's titled, "Amendatory Contract for Rental of Water
2 by Hudspeth County Conservation and Reclamation
3 District No. 1," and it's dated April 27, 19516789 do
4 you see that?

5 A. Yes.

6 Q. Do you recognize this document?

7 A. I recognize making a copy, yes.

8 Q. Okay. I'm not going to ask you detailed
9 questions about it, but I just want to ask you about
10 your general understanding. Is this the contract that
11 Hudspeth has with the Bureau of Reclamation to
12 purchase waste and drainage water from the Project?

13 A. I'm not sure about that.

14 Q. Okay. But you know in general the district
15 has an agreement with Reclamation to purchase waste
16 and drainage water from the Project, right?

17 A. Yes.

18 Q. Okay. And that agreement specifies the rate
19 that the District pays for water from the Project,
20 right?

21 A. I don't know.

22 Q. Okay. Well, let's -- I just want to --

23 MR. KOPP: You can pull that down now.

24 Q. (BY MR. KOPP) Let's look briefly at one of
25 your bills from Reclamation.

1 MR. KOPP: Can we pull up New Mexico 30?

2 Q. (BY MR. KOPP) Mr. Chavez, I'm showing you a
3 document that's been marked as Exhibit New Mexico 30
4 titled, "Bill for Collection," and that's dated May 9,
5 2011. This exhibit has also been admitted. Do you
6 recognize this document?

7 A. Yes.

8 Q. Okay. What is it?

9 A. It's the yearly bill we received or we
10 receive from the Bureau of Reclamation for the water.

11 Q. Okay. And do you receive statements from
12 Reclamation every year for Project water?

13 A. For Project water?

14 Q. Well, for the water that you purchase from
15 the Bureau of Reclamation?

16 A. Correct.

17 Q. Okay. So in the middle of this bill under
18 the heading "Description," do you see the line
19 starting, "Water available to district"?

20 A. Yes.

21 Q. Okay. And next to that are some volumes of
22 water listed three different delivery points. Do you
23 see that?

24 A. Yes.

25 Q. Those are the three locations where the

1 District receives water from the Project, right?

2 A. Correct.

3 Q. The amount of water delivered to each of
4 these points is measured by gages?

5 A. Yes.

6 Q. So it shows here the total delivered at these
7 three points in 2010 was 93 -- excuse me -- 94,374.

8 Do you see that?

9 A. Yes.

10 Q. I should specify that's in acre-feet, right?

11 A. I believe so.

12 Q. Okay. Do you see beneath that where it says,
13 "5 AF per acre for 13,177 acres"?

14 A. Yes.

15 Q. 13,177 acres was the number of acres
16 irrigated in 2010?

17 A. Yes.

18 Q. Okay. And do you see under that where it
19 says, "Rate per acre, \$1.25"?

20 A. Yes.

21 Q. Under that, it shows 13,177 acre-feet times
22 125. Do you see that?

23 A. Yes.

24 Q. So Hudspeth charge for this year was \$1.25
25 per irrigated acre or \$16,471.25, right?

1 A. Correct.

2 Q. To your knowledge, has the District ever
3 disputed the amount of any invoice it's received from
4 Reclamation?

5 A. Not to my knowledge.

6 Q. Okay. But the District doesn't receive as
7 much water every year as it did in 2010, right?

8 A. Correct.

9 Q. But every year, the District gets charged for
10 some amount of water, right?

11 A. Correct.

12 Q. Okay.

13 MR. KOPP: Can we go ahead and pull up
14 New Mexico 31?

15 Q. (BY MR. KOPP) Mr. Chavez, I'm showing you a
16 document now that's been marked as Exhibit New Mexico
17 31. It's also titled, "Bill for Collection." This
18 one is dated May 24, 2013, and this exhibit has also
19 been admitted. Do you see that?

20 A. Yes.

21 Q. Okay. Do you recognize this document?

22 A. Yes.

23 Q. So this is your bill for water delivered in
24 2012, right?

25 A. Correct.

1 Q. Okay. 2012 was a dry year, right?

2 A. I cannot remember.

3 Q. Okay. Well, let's look now at the amount of
4 water the District received in this year. So just
5 like the last exhibit, this bill shows in the middle
6 of the page water delivered in 2012. Do you see where
7 it shows on the right side that Hudspeth received
8 17,451 acre-feet this year?

9 A. Yes.

10 Q. So just under that, we see the number of
11 acres again. This time it's listed as 6,697. Do you
12 see that?

13 A. Yes.

14 Q. That shows that it's multiplied by 5
15 acre-feet per acre. That calculation is done because
16 the District's charges get prorated if it gets less
17 than 5 acre-feet per acre, right?

18 A. Yes.

19 Q. Okay. And so just below this, we see the
20 amount due is 6,697 acre-feet times 65 cents or
21 \$4,353.05, right?

22 A. Yes.

23 Q. Okay. So generally speaking, when the
24 District receives lower deliveries of surface water,
25 the rate it pays for that water also decreases; is

1 that right?

2 A. Yes.

3 Q. Okay. We discussed how these bills show
4 three points where the District takes water from EP1.
5 The water the District receives at these three points,
6 that includes drain water from EP1, right?

7 A. Correct.

8 Q. If the amount of drain water leaving EP1 is
9 diminished for any reason, that would also decrease
10 the amount of water that flows into Hudspeth, right?

11 A. Yes.

12 Q. You're aware that there are wells in El Paso
13 County that pump groundwater?

14 A. Yes.

15 Q. Are you concerned that groundwater pumping in
16 El Paso County diminishes the District's surface water
17 deliveries?

18 A. Yes.

19 Q. Have you ever investigated whether pumping in
20 El Paso County impacts the District's surface water?

21 A. No.

22 Q. Okay. Let's move on now. I want to ask you
23 a few questions about, you mentioned how before your
24 time, the District had purchased effluent from EP1. I
25 just want to ask you a few questions about that.

1 A. Okay.

2 Q. The District has signed contracts with EP1 to
3 purchase this effluent, right?

4 A. Currently?

5 Q. In the past?

6 A. In the past, yes.

7 Q. Does the District currently have any
8 contracts with EP1 to purchase effluent?

9 A. No.

10 Q. Okay. Well, let's look at one of these past
11 agreements then.

12 MR. KOPP: Can we pull up Joint Exhibit
13 449?

14 Q. (BY MR. KOPP) So I'm showing you a document
15 that's been marked as Exhibit Joint 449. This is
16 titled, "Agreement for the sale of sewage effluent for
17 irrigation." This document has also been admitted.
18 Do you see it on your screen?

19 A. Yes.

20 Q. So if you turn to Page 7, you can see that
21 this was signed in February of 2010. Do you see that?

22 A. Yes.

23 Q. Okay. Do you recognize this document?

24 A. I've seen it before.

25 Q. Okay. Let's look at Paragraph 3, which

1 starts at the bottom of Page 2. Most of the text is
2 on Page 3, though. The first sentence under
3 Subparagraph A indicates that between February 15 and
4 October 15 of each year, "EPCWID or EP1 shall sell and
5 deliver to HCCRD all sewage effluent EPCWID determines
6 in its sole discretion to be available for delivery to
7 HCCRD." And on the next line -- well, I guess we'll
8 just keep going. It says, "Provided that HCCRD shall
9 in no event be required to purchase more than 20,716
10 acre-feet of sewage effluent during any such period."
11 Do you see that?

12 A. Yes.

13 Q. Can we look at Subparagraph B quickly? So
14 the middle of the paragraph there, there's a statement
15 that, "HCCRD shall have the option for 30 days after
16 any such notice to purchase up to 5,000 acre-feet per
17 year of the sewage effluent available in excess of
18 20,716 acre-feet." Do you see that?

19 A. Yes.

20 Q. I believe this contract expired last year,
21 correct?

22 A. Yes.

23 Q. Okay. So during the term of this agreement,
24 did the District buy any effluent from EP1?

25 A. No.

1 Q. Okay. When was the last time the District
2 bought effluent from EP1?

3 A. I think it was in 2009.

4 Q. Okay. And Hudspeth hasn't purchased any
5 effluent from EP1 since 2009 because EP1 is using all
6 of its effluent, right?

7 A. Correct.

8 Q. And is that the case in the winter, too?

9 A. Yes.

10 Q. Okay. So we just discussed how this exhibit
11 was signed in 2010, but I think you just said the last
12 time the District purchased effluent was 2009, right?

13 A. I believe so.

14 Q. So the District had contracts to purchase
15 effluent from EP1 dating from before this agreement?

16 A. Yes.

17 Q. Let's look at one of those.

18 MR. KOPP: Can you pull up New Mexico
19 32?

20 Q. (BY MR. KOPP) So, Mr. Chavez, I'm showing you
21 a document that's been marked as New Mexico Exhibit
22 32. This is also titled, "Agreement for the Sale of
23 Sewage Effluent for Irrigation." And this exhibit has
24 also been admitted. Do you have that up on your
25 screen?

1 A. Yes.

2 Q. Okay. If we turn to Page 5 of this
3 agreement, we can see this was signed in 2001, and one
4 of the signatories here is H.D. Hilley. That states
5 that he was the president of the board of directors
6 for the Hudspeth District; is that right?

7 A. Correct.

8 Q. Okay. Do you recognize this document?

9 A. Yes.

10 Q. Okay. Let's look back at Page 1. Paragraph
11 2 indicates that this agreement, just like the last
12 one, had a ten-year term. Do you see that?

13 A. Yes.

14 Q. And then if we look at Paragraph 3A, towards
15 the middle of that paragraph, it indicates, again,
16 that the District can purchase up to 20,716 acre-feet
17 of effluent during the February 15 to October 15
18 period each year, do you see that?

19 A. Yes.

20 Q. Okay. And then on the next page,
21 Subparagraph B, at the top also indicates like the
22 last contract that, "The District would have the
23 option to purchase up to 5,000 additional acre-feet
24 per year if it were available." Do you see that?

25 A. Yes.

1 Q. Okay. Sorry. Lost my place here. So I
2 think you just testified that Hudspeth purchased
3 effluent from EP1 in 2009, but that wasn't the first
4 time Hudspeth bought effluent from EP1, right?

5 A. I wouldn't know.

6 Q. Okay. So you don't know how many years
7 during this period of 2001 to 2010 the District bought
8 effluent from EP1?

9 A. No, sir.

10 Q. Do you recall that the District bought
11 effluent from EP1 in 2002?

12 A. No, sir.

13 Q. Okay. Let's pull up New Mexico 33 for a
14 moment. So, Mr. Chavez, I'm showing you what's been
15 marked as Exhibit New Mexico 33. This exhibit has
16 also been admitted. So on Page 2, this shows a letter
17 dated May 21, 2001 -- I'm sorry -- 2002, sent by Jake
18 Cline at HCCRD No. 1 to Angel Colon at the El Paso
19 District. Do you see that?

20 A. Yes.

21 Q. Mr. Cline was your predecessor as the general
22 manager of Hudspeth, correct?

23 A. Correct.

24 Q. Okay. This says this is in regards to --
25 there's a reference to some numbers and then "B.E.P."

1 Do you see that?

2 A. Yes.

3 Q. This letter is on Hudspeth letterhead?

4 A. Yes.

5 Q. Okay. Let's look at Page 3. So this shows a
6 fax cover sheet, but then Page 4 is labeled March,
7 2002, B.E.P. charges, with a parenthesis under that,
8 that says, "Bustamante effluent plan." Do you see
9 that?

10 A. Yes.

11 Q. So it has various columns showing orders,
12 charges, and at the bottom a this month total
13 acre-feet charge row, a previous month to date total,
14 and a to date total. Do you see all that?

15 A. Yes.

16 Q. Let's turn to Page 5. As you can see, this
17 is very similar to Page 4, but it says it's from
18 March, 2002, at the top. Let's just turn briefly to
19 Page 6. This shows February, 2002. Mr. Chavez, do
20 you recognize this document?

21 A. I've seen it.

22 Q. Okay. Pages 4 through 6 of this document
23 show monthly charges and effluent deliveries to
24 Hudspeth from EP1 in part of 2002, right?

25 A. Correct.

1 Q. So Hudspeth ordered effluent from EP1 in
2 2002, right?

3 A. Seems like it, yes.

4 Q. Okay. Do you know when Hudspeth first began
5 purchasing effluent from EP1?

6 A. No.

7 Q. Okay. So during your deposition, I showed
8 you several contracts that date from the 1990s and
9 state they're between EP1 and Hudspeth regarding the
10 sale of sewage effluent. I believe you testified you
11 weren't familiar with those agreements. Do you recall
12 that?

13 A. Yes.

14 Q. Since your deposition, have you reviewed any
15 contracts between Hudspeth and EP1 to buy effluent
16 that date from before 2001?

17 A. No, sir.

18 Q. Okay. But you're generally aware that the
19 District had agreements to purchase effluent from EP1
20 prior to this 2001 contract we just discussed?

21 A. Yes.

22 Q. Okay. And you're generally aware that
23 Hudspeth purchased effluent from EP1 before 2001?

24 MS. KLAHN: Objection; assumes facts not
25 in evidence.

1 **MR. KOPP:** I'm just asking him if he's
2 aware if they did that.

3 **JUDGE MELLOY:** Overruled. You may
4 answer.

5 A. I don't know for a fact.

6 **Q. (BY MR. KOPP)** Okay. Before we move on, I
7 just have a couple more questions about effluent.
8 Generally speaking, the quality of effluent from EP1
9 is worse than the quality of the Project surface water
10 the District receives, right?

11 A. Correct.

12 **Q.** Okay. And does the District ever divert
13 effluent in the winter without getting charged by EP1?

14 A. Charged by EP1?

15 **Q.** Correct.

16 A. I don't know.

17 **Q.** Okay. The District can divert water from the
18 Rio Grande if it's available, right?

19 A. Yes.

20 **Q.** Okay. In general, if there ever is water in
21 the river where the District can divert it and the
22 District can use that water, it would divert the
23 water, right?

24 A. Yes.

25 **Q.** Okay. Mr. Chavez, I want to move on now and

1 ask you a few questions about groundwater. So
2 Hudspeth owns wells it can use to supply groundwater
3 to its members, right?

4 A. Correct.

5 Q. Okay. And individual farmers within the
6 District also own groundwater wells?

7 A. Yes.

8 Q. Okay. As for the District, it owns 18 wells,
9 right?

10 A. Yes.

11 Q. Okay.

12 MR. KOPP: Let's pull up Demo 1 again.
13 Can you go back to Hudspeth and then to Hudspeth
14 Feeder Canal?

15 Q. (BY MR. KOPP) It's a little bit hard to see
16 on this map because it's so close to the river, but
17 can you see the -- I can't even tell which one it is
18 now honestly, but the Hudspeth Feeder Canal is there
19 right along the Rio Grande, correct?

20 A. Correct.

21 Q. Okay.

22 MR. KOPP: Can you zoom out a little
23 bit, April? It's a little bit too close now.

24 Q. (BY MR. KOPP) Can you tell us where
25 approximately on this map the District's wells are

1 located?

2 A. Approximately where the hand is.

3 Q. Okay. Along the Hudspeth Feeder Canal; is
4 that right?

5 A. Correct.

6 Q. Okay. In fact, those wells along the
7 Hudspeth Feeder Canal are actually in El Paso County,
8 correct?

9 A. Yes.

10 Q. Okay. But that's still within the Hudspeth
11 District?

12 A. Yes.

13 Q. Okay. And the District uses these wells to
14 supply groundwater to its members, right?

15 A. We have.

16 Q. Okay. If Hudspeth is willing to pay the
17 pumping cost, it can produce around 7,500 acre-feet
18 per year from its wells, right?

19 A. I don't know about the number, but yes, it
20 can produce water for its farmers.

21 Q. Okay.

22 MR. KOPP: Could we pull up Chavez 001
23 for a moment?

24 Q. (BY MR. KOPP) I want to see if I can refresh
25 your recollection here. This is a -- a -- it's

1 minutes of a board meeting of the District from 2005.
2 I recognize this is a little bit before your time, but
3 there's a statement here in the middle of the page
4 from Jake Cline, your predecessor at the district.
5 There in Paragraph 1, the second sentence, it
6 says, "He advised the Board the District can pump
7 approximately 7,500 acre-feet of water from the
8 District wells." Do you have any reason to disagree
9 with that statement?

10 MS. KLAHN: Your Honor, I'm going to
11 object. If he wants to refresh the witness's
12 recollection with a document that he's seen before, I
13 guess he could do that, but I don't see how this
14 satisfies that ability, given that he just admitted it
15 was in 2005, and he hasn't even asked him if he's seen
16 it.

17 JUDGE MELLODY: I agree. I'll sustain
18 the objection.

19 MR. KOPP: Fair enough.

20 Q. (BY MR. KOPP) Do you agree, Mr. Chavez, that
21 in years when the surface supplies are low, the
22 District uses its wells more?

23 A. In years past, yes.

24 Q. Okay. The quality of the water from the
25 District's wells is similar to the quality of the

1 surface water the District receives, right?

2 A. No.

3 Q. Okay. I think we discussed that at your
4 deposition, and I believe that at that time you told
5 me that it was.

6 MR. KOPP: Can we pull that up? Let's
7 look at Deposition Page 101.

8 Q. (BY MR. KOPP) So here on Page 101 of your
9 deposition, I had asked you, "Have you sampled the TDS
10 from these wells before?" And you said, "We have." I
11 said, "Do you recall what the TDS measurements have
12 been?" Your answer, "I'd say they average 2,000,
13 2,200."

14 "Is that comparable to the TDS of the surface
15 water you're getting?"

16 "Yes."

17 Does that refresh your recollection of that
18 exchange?

19 A. Comparable, yes.

20 Q. Okay. But not exactly the same?

21 A. Correct.

22 Q. Okay. The District has also in the past
23 leased water from private well owners, right?

24 A. Yes.

25 Q. Okay. I want to ask you a few questions now

1 about your reservoirs. The District has three
2 reservoirs, correct?

3 A. Yes.

4 Q. I believe at least one of those was a stop on
5 the basin tour. How does the District use those
6 reservoirs?

7 A. They are used as regulating reservoirs, so
8 when there's a, example, rainstorm or a increase in
9 water that the District farmlands cannot use, they're
10 either pumped or put into those lakes.

11 Q. Okay. Does the District generally try to
12 fill those reservoirs up before the irrigation season
13 begins?

14 A. Yes.

15 Q. Okay. And those reservoirs have a combined
16 capacity of about 4,000 acre-feet, right?

17 A. Correct.

18 Q. Okay. Believe it or not, Mr. Chavez, we're
19 almost done. I just have a few more questions for
20 you. I'm going to ask you a few questions now about
21 sedimentation. The District has experienced problems
22 with sediment buildup in the Rio Grande, correct?

23 A. Yes.

24 Q. I understand sediment is blocking the drains
25 in some parts of your district?

1 A. Yes.

2 Q. And that prevents farmers from flushing salts
3 from the land served by those drains, right?

4 A. Yes.

5 Q. Has that resulted in salt accumulation on
6 those lands?

7 A. I would assume so.

8 Q. Okay. Are those lands, does that impact the
9 ability of the farmers to farm those lands?

10 A. Yes.

11 Q. Okay. When was the last time the IBWC
12 dredged the portion of the river blocking your drains?

13 A. I believe it was in the '80s.

14 Q. Okay. Have you requested that the IBWC
15 dredged the rivers so they can unblock those drains?

16 A. Yes.

17 Q. And what was their response?

18 A. Lack of funds.

19 MR. KOPP: Okay. Your Honor, I have no
20 further questions for this witness at this time.

21 JUDGE MELLOY: Ms. Klahn, are you going
22 to go first?

23 MS. KLAHN: Yes, sir.

24 JUDGE MELLOY: Go ahead.

25

CROSS-EXAMINATION

BY MS. KLAHN:

Q. Good morning, Mr. Chavez. My name is Sarah Klahn. I represent the State of Texas. I'd like to start by showing you the drone video, TX 1200.

MS. KLAHN: And if we could go to 2103, Justin.

Q. (BY MS. KLAHN) So, Danny, what I'd like to do is play the video, and we will stop it at four or five different spots and I'm going to ask you a few questions about what we're seeing. I want to start by -- before we start the video, just asking you to identify what we're seeing here, and I'd like you to keep in mind that this is a written record at the end of the day, and for anybody reviewing this to be able to connect the dots, we need to be pretty careful about specifying what you're talking about in the video. So with that in mind, can you explain to us what we're seeing, first of all, on the map, and then on the right-hand side of the picture?

A. The map is the El Paso/Hudspeth County line, so that is where the picture is pretty much starting at the upper reservoir is what we term it.

Q. You call it the upper reservoir? Okay. Does New Mexico sometimes term that the Ainsworth

1 **Reservoir? Have you heard that?**

2 A. I've heard it. I think it was an old name.

3 **Q. Okay. So the upper reservoir. Was that part**
4 **of the basin tour as far as you understand?**

5 A. That's where we ended.

6 **MS. KLAHN:** Mr. Berns, could you start
7 the video, please?

8 (The video was played.)

9 **MS. KLAHN:** I guess I'm having a hard
10 time because I don't know where we are. I'd like to
11 stop it at 2126, Justin.

12 **Q. (BY MS. KLAHN) Mr. Chavez, could you identify**
13 **what we're seeing here at this location in the video,**
14 **please?**

15 A. In the video, that is the southeastern edge
16 of the reservoir with the 46 acres of pecans.

17 **Q. And that's 46 acres out of 17,000 acres of**
18 **irrigable land in Hudspeth; is that correct?**

19 A. Correct.

20 **Q. Okay. And then I see a canal heading south**
21 **-- I think that's south -- out of the picture there.**
22 **What is that canal?**

23 A. That is the Hudspeth main.

24 **Q. And is there another canal that we can't**
25 **really see that's coming in from the west side, the**

1 right side of the screen?

2 A. Yes. That -- that would be the Tornillo
3 drain.

4 Q. Okay. So it's one of those sources of water
5 that Mr. Kopp talked to you about on the Bureau of
6 Reclamation exhibit, I think it was Exhibit 32, New
7 Mexico 32?

8 A. Correct.

9 MS. KLAHN: Okay. Let's keep going
10 Justin -- Mr. Berns, sorry. Let's go to 2156.

11 (The video was played.)

12 MS. KLAHN: This is a good stopping
13 point.

14 Q. (BY MS. KLAHN) Can you tell us what we're
15 seeing here, first, the field in the foreground and
16 then the trees and then the field in the background on
17 the right side of the road?

18 A. Okay. That -- the fields are fallow fields.
19 The -- the dark green lines are going to be -- are --
20 are drains.

21 Q. So you talked with Mr. Kopp about the drains
22 being all clogged up because of failures of IBWC to
23 dredge. Many of your drains still actually carry
24 water; is that correct?

25 A. In a storm event, yes.

1 Q. Okay. What is the field -- what are the
2 fields on the south side of the drain then? Are those
3 also fallow?

4 A. Yes.

5 Q. Okay.

6 MS. KLAHN: Let's keep going, Mr. Berns,
7 to 2207.

8 (The video was played.)

9 MS. KLAHN: Okay. Let's stop here.

10 Q. (BY MS. KLAHN) Can you identify the crop
11 there on the right-hand side of the photo, the video?

12 A. Yes. Just not by the picture. I can
13 identify it by knowledge that it's cotton.

14 Q. And how do you get that knowledge?

15 A. From the daily activities that -- my daily
16 duties, I guess.

17 Q. Okay. Let's keep going.

18 (The video was played.)

19 MS. KLAHN: Let's just keep going to
20 2407.

21 Q. (BY MS. KLAHN) So, Mr. Chavez, as we're
22 looking at this, most of the green fields would be
23 irrigated alfalfa or cotton, based on your testimony
24 to Mr. Kopp; is that correct?

25 A. Correct.

1 Q. You can see from the cars that we already
2 have this going double time so, I'm sorry it's kind of
3 -- seems to be taking a long time.

4 MS. KLAHN: Could we stop it right here,
5 please? What would the video -- I'm referring to the
6 times, Mr. Berns, based on the entire video length,
7 and right now, we're at 2:27 on the clip. Do you know
8 what the time would be on the entire video length?
9 Maybe you could send me an e-mail, and I'll put that
10 into the record later.

11 Q. (BY MS. KLAHN) Mr. Chavez, could you
12 identify what we're seeing here? This doesn't look
13 either like fallowed land or irrigated land. Is it
14 something different?

15 A. Yes. This is sand hill land.

16 Q. So what is that, sand hill land? What does
17 that mean?

18 A. Well, it's land that has not -- has never
19 been suited for the District. When the District was
20 established, it was lands that could be irrigated by
21 surface irrigation, so these lands are out of the
22 District.

23 Q. I see. So they're within the boundaries of
24 the District, but they're not part of the lands that
25 you serve?

1 A. Correct.

2 Q. Okay. And let's keep going to 2409, please.

3 (The video was played.)

4 Q. (BY MS. KLAHN) So, Mr. Chavez, there's
5 another canal or something on the left side of the
6 video just on the other side of that reservoir. Could
7 you tell us what the body of water is and what the
8 canal is, please?

9 A. The body of water, we term it as Reservoir
10 No. 2, the middle reservoir, and the canal is the
11 continuation of the Hudspeth main.

12 Q. Does the Tornillo drain come in around here
13 some place?

14 A. It does. It's at the southeast point of the
15 reservoir.

16 Q. So the Tornillo drain goes all the way
17 through the Hudspeth District all the way to the
18 southeast corner of this reservoir, and that's where
19 it would enter the Hudspeth main canal?

20 A. Correct.

21 Q. Okay.

22 MS. KLAHN: Let's keep playing the
23 video, please.

24 (The video was played.)

25 Q. (BY MS. KLAHN) Mr. Chavez, in the foreground

1 here at 3:38 on the clip, is that the yard, as you
2 call it, for the Hudspeth District?

3 A. Yes.

4 Q. Where the offices are and so on?

5 A. Yes. We're -- we're getting into Fort
6 Hancock.

7 Q. Okay. Fort Hancock is one of the towns in
8 your area, right?

9 A. Yes.

10 Q. Okay.

11 MS. KLAHN: Let's keep going, Mr. Berns.

12 (The video was played.)

13 MS. KLAHN: Let's stop it right here,
14 please, Mr. Berns.

15 Q. (BY MS. KLAHN) So here at 5:03 in the clip,
16 we're seeing more sand hills; is that right?

17 A. Correct.

18 Q. And in the distance in the sort of upper
19 right of the video, is that your third reservoir?

20 A. It is.

21 Q. Okay.

22 MS. KLAHN: Please proceed, Mr. Berns.

23 (The video was played.)

24 MS. KLAHN: So let's stop it right here
25 at 5:19.

1 Q. (BY MS. KLAHN) Mr. Chavez, are you familiar
2 with -- do you recognize the location of the video and
3 the identified pin on the map?

4 A. Yes. The Fort Quitman Gage is the last gage
5 for the Project.

6 Q. And Hudspeth -- just to state the obvious,
7 Hudspeth is located north and west of the Fort Quitman
8 Gage, correct?

9 A. Correct.

10 Q. Okay.

11 MS. KLAHN: Let's finish this,
12 Mr. Berns.

13 (The video was played.)

14 Q. (BY MS. KLAHN) While that video is playing --

15 MS. KLAHN: And you don't need to stop
16 it, Mr. Berns, it's fine.

17 Q. (BY MS. KLAHN) -- Mr. Chavez, in your work as
18 manager, have you become familiar with the uses of the
19 land down around the Fort Quitman Gage?

20 A. Yes.

21 Q. What's your understanding of the way the land
22 is used currently?

23 A. All this land used to be farmed. That is all
24 land that is just left fallow in 30 to 50 years.

25 Q. If you had enough water, could you grow crops

1 on it now? What do you think?

2 A. I would -- it would take a lot of money to
3 clear them. They've gone back to their Bosque
4 appearance, but, yes, it could be possible.

5 Q. Okay. Let's talk about a few more things.

6 MS. KLAHN: Thank you. You can take
7 that down.

8 Q. (BY MS. KLAHN) So let's talk about this issue
9 of Hudspeth ordering -- or Hudspeth's past history of
10 contracts with EP1, and I want to start with the
11 question of why you would pay EP1 for water that is
12 potentially going to cross into the District at one of
13 those three locations anyway. I mean, you're paying
14 for all the water that crosses those telemetry sites,
15 correct?

16 A. Correct.

17 Q. And then those past contracts demonstrate
18 that you also paid EP1 for the same water or some of
19 it anyway, right?

20 A. Correct.

21 Q. Why would the District do that?

22 A. Well, it's all about planning and the
23 availability when you need it. Our -- our farmers
24 cannot make the expense of planting ground or getting
25 stuff ready if the water is not going to be there so

1 we have to be able to say during the growing season,
2 do we have an idea of how much water we're going to
3 have.

4 Q. And I think Mr. Kopp asked you whether you do
5 make an allocation to farmers, but I don't think he
6 asked you how much. What is the allocation that the
7 District makes to its farmers in February or March of
8 every year?

9 A. We start with 1 inch per acre.

10 Q. Are there any crops that can be grown with
11 only 1 inch of irrigation water?

12 A. Not to my knowledge.

13 Q. How is it helpful to have 1 inch per acre if
14 you are a farmer in Hudspeth? What do the farmers do
15 to make that work?

16 A. Well, it allows the farmers to at least plan
17 for planting a percentage of their land.

18 Q. We've heard from EBID farmers that they're
19 able to stack acres so they can lease or otherwise
20 obtain, you know, control over another farmer's or
21 another farm's allocation of water. Does that happen
22 in the Hudspeth District, too?

23 A. Yes, it does.

24 Q. Okay.

25 MS. KLAHN: So let's put up Exhibit 31,

1 please -- New Mexico 31. I'm sorry.

2 Q. (BY MS. KLAHN) Mr. Chavez, this is the --
3 this is the Bureau of Reclamation charge sheet that
4 you talked about with Mr. Kopp, and I believe he asked
5 you whether this amount of water, 17,451 -- well, I'm
6 not sure if he asked you this. I will ask you.
7 17,451 acre-feet, if that's a relatively average
8 amount of water in your experience that the District
9 receives?

10 A. Yes. In my experience.

11 Q. All right. And, now, I'd like to put up New
12 Mexico 31 -- or 30, please. And this was the one
13 Mr. Kopp started with, with the 94,374 acre-feet. I
14 want to talk to you a little bit about those three
15 sources of water, Tornillo Canal at Alamo Alto is the
16 first one. Do you have an understanding of the
17 sources of water that would arrive at the telemetry at
18 the Tornillo Canal at Alamo Alto, what sources would
19 make up that water? Is it just operational waste?

20 A. No, not just operational waste. It -- it
21 could be a storm with the arroyos hitting the tail end
22 there at Alamo Alto.

23 Q. Because there is an arroyo down in Alamo
24 Alto, isn't there?

25 A. A big one, yes.

1 Q. Okay. And the -- so the amount 27,062
2 acre-feet at Alamo Alto could be, in your
3 understanding, could include arroyo storm flows,
4 correct?

5 A. Correct.

6 Q. Okay. And then the Tornillo drain and the
7 Hudspeth Feeder Canal, what would the sources of that
8 water be?

9 A. That could still be operational spill but it
10 would be more from the upper end of the District and
11 the storm flows from, say, the little towns of Isleta,
12 Socorro, and Clint would bring the water in through
13 those.

14 Q. And looking at a bill like this for 94,374
15 acre-feet, it's not possible to say when this water
16 arrived at the telemetry in the Hudspeth District;
17 isn't that right?

18 A. Correct.

19 Q. So, for example, if any portion of this
20 arrived in the winter months, say in December or
21 January, what would the Hudspeth District likely do
22 with, for example, 27,062 acre-feet that arrived in
23 December or January? Would you give that -- would you
24 be able to give that to the farmers?

25 A. At that time there would be no need for the

1 farmers to water with it.

2 Q. So what would happen to that water? Where
3 would it go?

4 A. It would go out the tail end.

5 Q. So, like, at the Fort Quitman Gage, for
6 example?

7 A. Correct.

8 Q. Okay. So let's talk a minute about
9 groundwater. Mr. Kopp asked you about the District's
10 groundwater wells. How frequently have you used the
11 groundwater wells in your time as manager?

12 A. In times of emergency, in order to save a
13 crop, we've used them sporadically, yes.

14 Q. Didn't you tell Mr. Kopp in your deposition
15 that you used them something like 20 hours in four
16 years or something like that?

17 A. Yes.

18 Q. And the -- let's talk a minute about
19 groundwater quality versus surface water quality.
20 What's the -- you've testified that the District's
21 wells are up near the Hudspeth County line, and what's
22 -- and what's your understanding of the TDS of those?
23 Have you ever sampled up there?

24 A. We have. We don't do it regularly because we
25 don't run them long enough, but yes, it's up in the

1 22s and further up now. As they go older and the
2 water gets worse, that's what we're seeing.

3 Q. So you mean as the wells age?

4 A. Correct.

5 Q. Okay. And what do you mean about the water
6 getting worse?

7 A. It seems like we're pumping -- the quality of
8 those wells has gotten worse.

9 Q. Okay. And I don't -- are there -- and the
10 farmers in your district, they do have wells; is that
11 right?

12 A. Some farmers, yes.

13 Q. And what's the -- are you familiar with the
14 quality of any of the wells -- farmers' wells in the
15 District?

16 A. I'm familiar with them. Sometimes they will
17 come and ask me to test it for them. Some -- some are
18 twice as bad as ours.

19 Q. Does the quality decline as you go south
20 towards Fort Quitman?

21 A. Very much so.

22 Q. I just want to make clear. There were some
23 questions during your direct or whatever one calls
24 that when you're a hostile witness that was relating
25 to the use -- the District's receipt of Project water,

1 but you don't get releases from the dam, correct.

2 A. Correct.

3 Q. You may get Project return flows, operational
4 waste, and so on from EP1, correct?

5 A. Correct.

6 Q. So if during your testimony, you used the
7 term or were agreeing to a question in which the term
8 was used Project water, that should be limited to
9 Project return flows or operational waste, correct?

10 A. Correct.

11 MS. KLAHN: I don't think I have any
12 further questions for this witness.

13 JUDGE MELLOY: Mr. Dubois?

14 MR. DUBOIS: No questions from the
15 United States, Your Honor. Thank you.

16 JUDGE MELLOY: Any redirect?

17 MR. KOPP: Just a few questions, Your
18 Honor.

19 REDIRECT EXAMINATION

20 BY MR. KOPP:

21 Q. Mr. Chavez, Ms. Klahn asked you about the
22 District's allocations, and you mentioned that the
23 allocation often starts out around 1 inch per acre,
24 correct?

25 A. Yes.

1 Q. Does the allocation increase through the year
2 if more water is available?

3 A. Yes.

4 Q. Okay. You also discuss with Ms. Klahn what
5 the District does with the water it receives in the
6 winter, right? If the District is able to, would it
7 put water that it receives in winter into its
8 reservoirs?

9 A. Yes.

10 Q. Is the winner typically a very rainy time in
11 your area?

12 A. No.

13 Q. Okay. You also discuss with Ms. Klahn how
14 the District doesn't use its wells much recently,
15 correct?

16 A. Correct.

17 Q. But in the past, the District has used its
18 wells more, right?

19 A. Yes.

20 Q. In fact, in 2011, you were the manager in
21 2011, correct?

22 A. Correct.

23 Q. And in 2011, I believe the District planned
24 to pump its wells for 180 days; is that right?

25 A. Correct.

1 **Q.** **Okay.**

2 **MR. KOPP:** I have no further questions,
3 Your Honor.

4 **JUDGE MELLOY:** Anything further? If not
5 -- pardon me?

6 **MS. KLAHN:** Can I just ask one question?

7 **JUDGE MELLOY:** You may.

8 RE CROSS EXAMINATION

9 BY MS. KLAHN:

10 **Q.** **Mr. Chavez, the reservoirs hold about 4,000**
11 **acre-feet, correct?**

12 **A.** **Yes.**

13 **Q.** **And if you divide that out over about 17,000**
14 **acres, does that equal about 1 inch per acre?**

15 **A.** **It'd be a lot less.**

16 **MS. KLAHN:** Okay. All right. Thank
17 you. That's all I have.

18 **JUDGE MELLOY:** Anything further? If
19 not, then you're excused, Mr. Chavez. We appreciate
20 your testimony. Thank you.

21 **THE WITNESS:** Thank you.

22 **JUDGE MELLOY:** You're free to go.
23 Who's up next, Mr. Kopp? Mr. Mills; is
24 that right?

25 **MR. KOPP:** I believe that's correct,

1 Your Honor, but we need to change seats so if we could
2 have just a moment.

3 **JUDGE MELLOY:** We'll take five minutes.
4 Thank you.

5 **MR. DUBOIS:** United States will also be
6 changing attorneys, Your Honor. Thank you.

7 **MS. KLAHN:** As will Texas. Ms. Barfield
8 will be handling these.

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

10 (Recess.)

11 **JUDGE MELLOY:** Looks like we're about
12 ready to go. Why don't we have the appearances
13 entered for this witness starting with Texas.

14 Ms. Barfield?

15 **MS. BARFIELD:** Good morning, Your Honor.
16 Theresa Barfield on behalf of Texas.

17 **JUDGE MELLOY:** And for Colorado?

18 **MR. WALLACE:** Good morning, Your Honor.
19 This is Chad Wallace for Colorado.

20 **JUDGE MELLOY:** New Mexico? I think
21 you're on mute or you're -- either that or your
22 microphone is not working.

23 **MS. DALRYMPLE:** Good morning.
24 Apologies, Your Honor. This is Shelly Dalrymple for
25 the State of New Mexico. I believe the computer says

1 I'm Michael Kopp. I will change that at the break.

2 **JUDGE MELLOY:** That's fine. Then

3 Ms. Najjar for the U.S.?

4 **MS. NAJJAR:** Yes. Good morning, Your
5 Honor.

6 **JUDGE MELLOY:** All right. New Mexico
7 may call its next witness.

8 **MS. DALRYMPLE:** New Mexico calls Kelly
9 Wade Mills.

10 **JUDGE MELLOY:** Mr. Mills, would you
11 raise your right hand, please, to be sworn? Do you
12 swear or affirm that the testimony you're about to
13 give will be the truth, the whole truth, and nothing
14 but the truth?

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

16 **JUDGE MELLOY:** All right. I think I
17 forgot to do this for the last witness, but would you
18 state and spell your name for the record, please?

19 **THE WITNESS:** Yes, sir. My name is
20 Kelly Wade Mills, spelled K-E-L-L-Y, W-A-D-E,
21 M-I-L-L-S.

22 **JUDGE MELLOY:** Mr. Mills, I need to ask
23 you a couple questions or ground rules that we've gone
24 over with the other witnesses. First of all, is there
25 anyone in the room with you during your testimony?

1 THE WITNESS: No, Your Honor.

2 JUDGE MELLOY: Do you have any documents
3 available to you other than the witness book that you
4 have -- will be referring to?

5 THE WITNESS: No, Your Honor.

6 JUDGE MELLOY: Then finally, I need to
7 advise you that you're not allowed to have any
8 communication devices, such as laptops, iPhones,
9 iPads, et cetera that you can use for texting or
10 e-mail or that type of thing. Do you understand?

11 THE WITNESS: Yes, sir. They're all in
12 the other room.

13 JUDGE MELLOY: All right. Very good.
14 Now, maybe to expedite things a little bit here, I
15 understand that the exhibits for this witness and for
16 the -- and for Mr. French are basically very similar.
17 Are you going to be taking both witnesses,
18 Ms. Dalrymple?

19 MS. DALRYMPLE: I am, Your Honor.

20 JUDGE MELLOY: Okay. All right. So for
21 both witnesses, we have New Mexico 348, which is an A
22 exhibit and admitted, then for Mr. Mills, we have New
23 Mexico 349, which is A; 859, which is also a French
24 exhibit. They're both admitted. New Mexico 860 and
25 861 are both A, and they're both also French exhibits.

1 They're admitted. New Mexico 2153 is an A exhibit and
2 is admitted. New Mexico 2166 was an exhibit for both
3 witnesses and is an A exhibit and is admitted. New
4 Mexico Demonstrative 36 is an A exhibit, and it's
5 admitted. New Mexico -- is it Demo 41? Is that
6 correct? Is that what it is?

7 **MS. DALRYMPLE:** Yes, that's correct,
8 Your Honor.

9 **JUDGE MELLOY:** Okay. That's an A
10 exhibit and admitted, and that's for both witnesses.
11 Then New Mexico Demonstratives 43 and 44 are both A
12 witnesses and admitted, and they're both being used
13 for both -- for both witnesses. Let me look here if
14 there's any. For French -- we might as well get this
15 out of the way. For French, there's 2111, which is
16 not on the list for Mr. Mills. That's admitted as an
17 A exhibit. Mr. French has 2240, which is an A exhibit
18 and will be admitted, and comparing the two lists,
19 looks like there's a New Mexico Demonstrative 36 on
20 French list, which will be admitted. Now,
21 interestingly enough, New Mexico 42 is a C exhibit on
22 Mr. Mills' list, but an A exhibit on Mr. French's
23 list. Apparently Texas and the government do not
24 believe that Mr. Mills can lay the foundation for that
25 exhibit so as of now, it's not admitted. Then -- then

1 the only other exhibit that's an A exhibit on the
2 French list is 44, which is also an exhibit for
3 Mr. Mills, and then -- oh, one other cross -- there's
4 one cross-exam exhibit for Mr. French, and that's
5 Texas a demonstrative exhibit, and that will be
6 admitted. Hope that's not too confusing to anybody.

7 All right. Ms. Dalrymple, you may
8 proceed.

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

10 KELLY MILLS,
11 having been first duly sworn, testified as follows:

12 DIRECT EXAMINATION

13 BY MS. DALRYMPLE:

14 **Q. Good morning, Mr. Mills.**

15 **A. Good morning.**

16 **Q. Mr. Mills, what is your current professional**
17 **position?**

18 **A. I am a member of the sunset team at the Texas**
19 **Commission Environmental Quality in the executive**
20 **director's office.**

21 **Q. The sunset team. What is that, please?**

22 **A. Sunset occurs in the State of Texas. It's a**
23 **process whereby agencies and their programs are**
24 **evaluated by the sunset advisory committee and -- or**
25 **sunset advisory commission, and it's basically a -- on**

1 a 12-year cycle. I'm on the team that's working on
2 our sunset.

3 Q. Is that a new position, Mr. Mills?

4 A. It is. It was effective -- I moved to that
5 team effective July the 1st.

6 Q. July the 1st of 2021?

7 A. Yes, ma'am.

8 Q. Before you moved to the sunset team, you were
9 the assistant director of TCEQ -- excuse me -- of the
10 Texas Commission on Environmental Quality Water
11 Availability Decision -- Division; is that true?

12 A. That is true.

13 Q. And how long were you in that position as
14 assistant director of -- will you understand when I
15 abbreviate TCEQ, which is how we commonly refer to
16 that agency?

17 A. Yes, ma'am.

18 Q. Okay. How long were you assistant director
19 of TCEQ's water availability division?

20 A. From June, 2015, to July 1, 2021.

21 Q. And, sir, how long were you actually with the
22 water availability division? When did you join?

23 A. The water availability division was created
24 about ten years ago when the agency established its
25 office of water, and I was -- I was on the team at

1 that point in time.

2 Q. So about 2011?

3 A. That's around 2011, yes, ma'am.

4 Q. Okay. And what is TCEQ?

5 A. So the Texas Commission on Environmental
6 Quality is the state's environmental agency. We have
7 -- are responsible for the protection of air, water,
8 and responsible for safe disposal of waste. We have
9 about 27 -- 2,700 employees, and we have a pretty
10 wide-ranging program.

11 Q. And, again, you were with the water
12 availability division in the water office, correct?

13 A. I was, yes, ma'am.

14 Q. And TCEQ is an executive agency of the Texas
15 state government, correct?

16 A. Yes, ma'am.

17 Q. Let's just briefly go over your background,
18 sir. You recall that you testified in August of 2020,
19 correct?

20 A. Yes, ma'am.

21 Q. And you testified as a representative for the
22 State of Texas on certain designated issues?

23 A. Yes, ma'am.

24 Q. Okay. You have obtained a bachelor's degree
25 in geology science from -- or geoscience from Texas

1 Tech, correct?

2 A. Yes, ma'am.

3 Q. And that was in 1985?

4 A. Yes, ma'am.

5 Q. And you are a licensed professional geologist
6 for the State of Texas?

7 A. Yes, ma'am.

8 Q. Okay. Going back to CE -- TCEQ -- I'm sorry
9 I'm having trouble with that today -- I want to talk a
10 little bit about that agency, but first of all, that
11 agency has undergone several name changes through the
12 years, hasn't it?

13 A. Yes, ma'am.

14 Q. Because we might run into some of those and
15 some of the documents we might look at, I just want to
16 alert us to the fact that it's also been called the
17 Texas Natural Resource Conservation Commission; is
18 that right?

19 A. That is correct.

20 Q. And the Texas Department of Water Resources?

21 A. That is correct.

22 Q. And the Texas Board of Water Engineers?

23 A. That is correct.

24 Q. Okay. I think there were some others, but
25 those are the ones we might run into. Could you

1 please describe the scope of TCEQ's jurisdiction as it
2 pertains to water in the state?

3 A. Yes. You know, we're responsible for
4 protection of water quality within the State of Texas,
5 and we're also responsible for the administration of
6 surface water rights in the State of Texas.

7 Q. The scope of TCEQ's jurisdiction does not
8 include regulation of groundwater; is that correct?

9 A. That is correct.

10 Q. And is it fair to say that the Texas Water
11 Development Board, which is a separate entity, is
12 largely responsible for groundwater issues?

13 A. They are for a lot of groundwater study-type
14 issues, modeling-type issues, not regulatory-type
15 issues.

16 Q. Thank you. Earlier, I think you testified
17 that you started at the Water Availability Division in
18 about 2011. Sir, you began working for TCEQ in 1993;
19 is that correct?

20 A. Yes, ma'am.

21 Q. And how did -- what was the position when you
22 started out with TCEQ?

23 A. I was hired in as a member of the groundwater
24 planning assessment section, and I was hired in as a
25 Geologist 3 onto that team.

1 Q. And then you -- was the groundwater
2 assessment section in -- I think that predated the
3 Water Availability Division; is that right?

4 A. Yes, ma'am. You know, since 1993 until --
5 until now. There's been a lot of reorganizations.

6 Q. I understand. During the time that you were
7 the assistant director of the Water Availability
8 Division, did the groundwater assessment planning
9 section report to you?

10 A. When I was the assistant director of the
11 Water Availability Division, yes, the Groundwater
12 Planning and Assessment team reported to me.

13 Q. And is it fair to say that you've been in
14 groundwater divisions or with groundwater
15 responsibilities with TCEQ since you started in '93?

16 A. Yes, ma'am. Right up until July of this
17 year.

18 Q. Right. In your positions throughout the
19 years with TCEQ, have you worked with other state
20 agencies on projects related to the missions or goals
21 of TCEQ?

22 A. Yes, ma'am.

23 Q. Have you worked with universities along those
24 lines?

25 A. Yes, ma'am.

1 Q. Thank you. I want to talk a little bit about
2 the TCEQ Water Availability Division. Can you briefly
3 tell us the responsibilities of that division?

4 A. So the primary focus of the water
5 availability division is the administration of surface
6 water rights. We also have responsibility -- or that
7 division also has responsibility for the water master
8 program, and as well as the -- we provide
9 administrative support to the Texas Compact
10 commissioners.

11 Q. And --

12 A. We have the groundwater team. I'm sorry.

13 Q. Right. And you call that groundwater
14 planning and assessment team; is that correct?

15 A. That is correct.

16 Q. And it is the responsibility of that division
17 to comply with certain sections of the Texas Water
18 Code; is that correct?

19 A. That is correct.

20 Q. Okay. The code and the rules and regulations
21 relating to the Water Availability Division
22 responsibilities is on the TCEQ Website; is that
23 correct? Do you know?

24 A. I don't know if I know. I would --

25 Q. Okay.

1 A. I think it would probably be, but I don't
2 know that for a fact.

3 Q. Okay. There's a great deal of information,
4 though, on the TCEQ Website, isn't there?

5 A. Yes, ma'am.

6 Q. And items posted on the TCEQ Website have
7 been posted for access by the public, correct?

8 A. That is correct, yes, ma'am.

9 Q. They've been -- they've been vetted before
10 they've been put on the Website, correct? You expect
11 them to be accurate?

12 A. Yes, ma'am.

13 Q. Okay. Briefly turning to -- I want to talk
14 just briefly about a couple of the -- the departments
15 that reported to you in your position. You mentioned
16 the water master program was part of your division.
17 What is, just real briefly, a water master responsible
18 for?

19 A. Water masters are responsible for
20 administering surface water rights within their basin.
21 If you're in a water master area, you have to let the
22 water master know when you plan to withdraw water, and
23 then you have to also report use.

24 Q. Okay. So there's a water master for the Rio
25 Grande south of Fort Selden, but not for the Rio

1 Grande Project area around El Paso. Do you agree with
2 that?

3 A. There's a Rio Grande water master for the
4 area of the Rio Grande south of Fort Quitman, and it
5 excludes the Pecos and the river basins.

6 Q. Thank you. One of the other functions of
7 your former division was well driller reports. You
8 were responsible for making well driller reports
9 available to the public, correct?

10 A. That's correct. We're the repository of
11 those reports.

12 Q. Were those reports kept on the Website?

13 A. Yes, ma'am.

14 Q. But within that responsibility, your division
15 was not responsible for determining whether a well can
16 or should be drilled; is that correct?

17 A. That's correct.

18 Q. And your division was not responsible for
19 monitoring groundwater wells or pumpage?

20 A. No, ma'am.

21 Q. Moving on, I think you testified that the
22 primary function of the Water Availability Division is
23 to process water rights and permits and amendments?

24 A. Yes, ma'am.

25 Q. And that's relating only to surface water; is

1 that correct?

2 A. Yes, ma'am.

3 Q. Are you familiar with the 1996 adjudication
4 of surface water rights in the El Paso area?

5 A. No, ma'am.

6 Q. Okay. Mr. Mills, I believe you have some
7 familiarity with computer water models; is that true?

8 A. Some, yes.

9 Q. Some?

10 A. I'm aware of them.

11 Q. Okay. And they are -- however, members of
12 your team use them, don't they, to analyze surface
13 rights?

14 A. Yes. We have water availability models for
15 all of the basins in Texas, and they are used to --
16 when we have -- when we have an application for a new
17 appropriation of water, they are used to evaluate
18 whether that water will impact other water rights, if
19 that water is available in the prior appropriation
20 order.

21 Q. Thank you. Turning now to something
22 different, Mr. Mills, what is the Texas Groundwater
23 Protection Committee?

24 A. The Texas Groundwater Protection Committee is
25 -- is required by the Texas legislature. It's

1 composed of TCEQ. TCEQ is the chair of the Texas
2 Groundwater Protection Committee. The Water
3 Development Board serves as the vice chair. There are
4 eight other state agency organization members of the
5 committee. It's a quasi state agency that receives no
6 funding from the legislature, but it has certain
7 responsibilities it's supposed to uphold.

8 Q. Thank you. And I think you -- you said that
9 you were the chair of that committee, correct, as the
10 TCEQ designee?

11 A. I principally serve as the designated chair
12 of the committee for the executive director, yes.

13 Q. And how long have you served as the chair of
14 that committee?

15 A. I'd say a little over two years when the
16 previous chair retired and was -- I was pegged next.

17 Q. You were what?

18 A. I was pegged -- picked next.

19 Q. Okay. Thank you. Sir, can you describe for
20 us the statutory charge of the Groundwater Protection
21 Committee?

22 A. Yes. So it is charged to develop and update
23 a state groundwater protection strategy, which was
24 last updated in 2018. It's charged on an annual basis
25 to compile a report that documents all of the

1 groundwater contamination cases that are under the
2 jurisdiction of the member agencies, and it is
3 required on a biennial basis to submit a report to the
4 Texas legislature outlining the activities of the
5 committee, the previous biennial, and to recommend any
6 regulatory changes if the committee believes that
7 there are regulatory groundwater protection gaps in
8 the state law.

9 **Q. Thank you. And those biennial reports,**
10 **they're posted on the Website; is that correct?**

11 A. Yes, ma'am.

12 **Q. But in addition, I believe the committee**
13 **prepares white papers periodically based on scientific**
14 **data and need?**

15 A. Yes, ma'am. The committee has two
16 subcommittees. It has a groundwater issues
17 subcommittee and a public outreach and education
18 subcommittee. They both also meet on a quarterly
19 basis. They develop white papers between the members
20 that serve on the subcommittee and bring those to the
21 committee for decision whether they want to post it or
22 not.

23 **Q. Okay.**

24 A. Approve it or not.

25 **Q. Thank you. And just to be clear, the Texas**

1 Groundwater Protection Committee has no authority to
2 enforce compliance with any Texas rules or
3 regulations; is that correct?

4 A. That's correct.

5 Q. I want to turn now to what are called
6 groundwater management areas, and I know those are
7 often called GMAs, but because I'm afraid I will
8 confuse everybody with an alphabet soup, I'm going to
9 try and call them groundwater management areas. And
10 this is a level of Texas water designation, correct?

11 A. That is correct. Groundwater management
12 areas have been designated by the Texas Water
13 Development Board.

14 Q. Okay. Do you know why they are created?

15 A. The primary purpose is the groundwater
16 conservation districts --

17 MS. BARFIELD: I'm sorry. I'm going to
18 need to interrupt. I apologize. My video froze. I
19 didn't hear the question. If you'll give me a second,
20 I'll just read the transcript back.

21 Okay. I'm caught up. Hopefully I won't
22 have any more technical issues, but thank you.

23 MS. DALRYMPLE: Well, we've all had
24 them, Theresa.

25 Q. (BY MS. DALRYMPLE) Mr. Mills, you were

1 **talking about why groundwater management areas are**
2 **created?**

3 A. Yes. So the groundwater conservation
4 districts that are within a groundwater management
5 area are required to joint -- do some joint
6 groundwater management planning, and that's pretty
7 much the primary purpose for groundwater management
8 area.

9 Q. Okay. We're going to come back a little
10 later to the conservation districts. I just want to
11 clear up a few things about groundwater management
12 areas. TCEQ along with the Texas Water Development
13 Board designates the groundwater management areas; is
14 that correct?

15 A. Prior to 1997, that was a role of the TCEQ or
16 its predecessor agencies, and that responsibility was
17 transferred to the Water Development Board in 1997.

18 Q. Okay. Thank you.

19 MS. DALRYMPLE: Ms. Ferguson, could you
20 please pull up New Mexico 859?

21 Q. (BY MS. DALRYMPLE) Mr. Mills, groundwater
22 management areas have been created to encompass all
23 the major and minor aquifers in Texas; is that
24 correct?

25 A. That is correct.

1 Q. Sir, do you recognize this document?

2 A. It appears to be a Texas Water Development
3 Board map of the groundwater management areas.

4 Q. Mr. Mills, I spent a lot of time on the
5 Websites trying to get the clearest documents, and I
6 am sure TCEQ has similar maps, but this one was the
7 clearest. Can you agree that it accurately reflects
8 the groundwater -- groundwater management areas in
9 Texas?

10 A. To the best of my knowledge, it does.

11 MS. DALRYMPLE: Okay. Move to -- I'm
12 sorry?

13 A. I mean, I don't know that I can verify that
14 everything is accurate on this map, but it appears to
15 be.

16 Q. (BY MS. DALRYMPLE) Thank you. Pardon me.
17 It's already admitted so let me just ask you: The
18 main purpose of this is to show, and I think you
19 agree, that all the major and minor aquifers are
20 encompassed in a groundwater management area of some
21 sort in the State of Texas?

22 A. Yes, ma'am.

23 Q. The one we'll be talking about, the area
24 we'll be talking most about this morning is GMA 5,
25 which is way over on the panhandle. Can you see that?

1 A. Yes, ma'am.

2 Q. Can you agree that El Paso County and
3 portions of Hudspeth County have been designated GMA
4 5?

5 A. Yes, ma'am.

6 Q. Mr. Mills, are you familiar with the -- the
7 Hueco Bolson?

8 A. I'm familiar that it's been designated as a
9 major aquifer by the Texas Water Development Board,
10 yes.

11 Q. Okay. And we may see a different map later,
12 but can you confirm that the Hueco Bolson is
13 encompassed within Groundwater Management Area 5?

14 A. Yes, ma'am.

15 Q. Okay. And just because I think people might
16 be curious, what -- what does Bolson mean?

17 A. I believe the Bolson is a intermountain basin
18 -- sedimentary basin that basically catches water,
19 holds water, in the Bolson.

20 Q. Well, sometimes in Texas documents, I see --
21 we always see the Hueco discussed in terms of the
22 Hueco Bolson, but sometimes we see the Mesilla Bolson,
23 but in New Mexico, we sometimes call it the Mesilla
24 Basin. So is it fair to say that basin and Bolson are
25 interchangeable or is that not true?

1 **MS. BARFIELD:** I'm going to object that
2 the question is overbroad. Without specificity, I
3 think it's impossible for the witness to answer, and
4 it might call for expert testimony, as well.

5 **MS. DALRYMPLE:** Okay. I was just trying
6 to clarify for the Court the use of the term
7 basin/Bolson.

8 **JUDGE MELLOY:** Go ahead. Why don't you
9 ask another question.

10 A. I believe that's --

11 **JUDGE MELLOY:** I'm going to ask Ms.
12 Dalrymple to go on and ask another question.

13 **Q. (BY MS. DALRYMPLE)** Let's move on, Mr. Mills,
14 to talk about priority groundwater management areas?

15 **JUDGE MELLOY:** Well, actually, if you're
16 going to switch topics, maybe this might be a good
17 time to take our break. Why don't we -- why don't we
18 break until 1:10? All right?

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

20 **JUDGE MELLOY:** Thank you.

21 (Recess.)

22 **JUDGE MELLOY:** Sorry for the delay. I
23 think we're about ready to go once we get Ms.
24 Dalrymple back. All right. Ms. Dalrymple, you may
25 proceed.

1 MS. DALRYMPLE: Apologies, Your Honor.

2 Q. (BY MS. DALRYMPLE) We're back, Mr. Mills, and
3 we were just going to start talking about priority
4 groundwater management areas. Now, we talked a little
5 bit about groundwater management areas. This is a
6 separate designation under Texas law; is that correct?

7 A. That is correct.

8 Q. Do you know how many priority groundwater
9 management areas there are in Texas?

10 A. Seven, I believe.

11 Q. Okay. Because this one is such a mouthful,
12 I'm going to call them PGMAs. Can you -- would you
13 understand it if I call them PGMAs?

14 A. Yes, ma'am.

15 Q. Thank you. There is a statutory process for
16 creating a PGMA in Texas, is there not?

17 A. Right. In the Texas Water Code.

18 Q. Okay.

19 MS. DALRYMPLE: Ms. Ferguson, could you
20 pull up New Mexico Demo 43, please?

21 Q. (BY MS. DALRYMPLE) This is in the Texas
22 Groundwater Code, but this might be faster. Do you
23 recognize this document, sir?

24 A. Yes, ma'am.

25 Q. Let 's go to Page 2. In fact, you're one of

1 the editors of this publication; is that right?

2 A. I was, yes, ma'am.

3 Q. Okay. What was this created for?

4 A. It was created for educational outreach, and
5 it was create -- it was -- Val Silvy put it together
6 for Texas A&M AgriLife Extension, and it's -- a little
7 disclaimer there. So the purpose of the publication
8 is to present useful information about the priority
9 groundwater management area process so that's what it
10 is.

11 Q. Okay. As its editor, can you vouch for its
12 accuracy in its discussion on PGMAs?

13 A. I can.

14 Q. You can, and you do?

15 A. Well, this is a little dated. I can't
16 remember what the year it is, like, 2007 and so, so --

17 Q. Let's go to the first page.

18 A. 2008, looks like, September, 2008. So there
19 have probably been some statutory changes since this
20 was published, and those wouldn't be reflected in this
21 document.

22 Q. Okay. Well, I'm not sure we're going to go
23 into areas that technical. Let's go to Page 5. What
24 I want to ask is do you think this abbreviated list of
25 the steps for creating a PGMA is still accurate in

1 terms of that process?

2 A. Let me take a second to read it. It's more
3 or less pretty accurate. There's some details that it
4 doesn't really cover.

5 Q. Okay. Well, maybe we'll talk about those.

6 MS. DALRYMPLE: Your Honor, I move to
7 admit New Mexico Demo 43 into evidence.

8 JUDGE MELLOY: I believe 43 is already
9 in evidence.

10 MS. BARFIELD: It is, Your Honor.

11 JUDGE MELLOY: Okay.

12 MS. DALRYMPLE: Pardon me.

13 Q. (BY MS. DALRYMPLE) In the creation of a PGMA,
14 let's go through this process. It's -- the first step
15 is to identify areas with groundwater concerns; is
16 that correct?

17 A. That is correct.

18 Q. And is that done both by TCEQ and the Texas
19 Water Development Board?

20 A. We meet annually with the Texas Water
21 Development Board to discuss the data that they have
22 collected and the decision to actually initiate a
23 study is the call of the executive director of TCEQ.

24 Q. Okay. And then once the TCEQ director
25 determines that a study is needed, they -- he requests

1 **those studies from various agencies; is that correct?**

2 A. Yes. We request studies from the Texas Water
3 Development Board and Texas Parks and Wildlife, and
4 then the Texas Department of Agriculture is also
5 invited to provide comments.

6 **Q. Then a report is compiled, and**
7 **recommendations are made for or against designating**
8 **the area; is that correct?**

9 A. That's correct.

10 **Q. And then at that point, the public gets**
11 **involved; is that right?**

12 A. Public's involved on the front end. The
13 first step of the process, the statute identifies who
14 the water stakeholders are, and on the front end of
15 the process, we provide notice that a study is going
16 to be initiated, and the stakeholders are provided 45
17 days to provide comments on the front end, and then on
18 the back end, when it comes to the contested case
19 hearing, the public participate at that point, as
20 well.

21 **Q. Once a determination or a recommendation is**
22 **made for designation as a P GMA, there is this public**
23 **hearing, correct?**

24 A. It's on the -- it's on the recommendation,
25 yes.

1 Q. On the recommendation stage. And people --
2 stakeholders might contest designation as a PGMA; is
3 that correct?

4 A. That is correct.

5 Q. Why would they contest designation as a PGMA?

6 A. As this kind of lays out, a PGMA is kind of a
7 precursor, one way it can be a precursor for creating
8 a groundwater conservation district, and groundwater
9 conservation districts are units of local government
10 that are regulatory, and they're also either financed
11 by ad valorem taxes or through well production fees
12 and some people don't like those things.

13 Q. After a hearing, the judge presents
14 recommendations to the TCEQ commission; is that
15 correct?

16 A. Yes. He will submit a proposal for decision
17 to the TCEQ.

18 Q. And then -- I'm sorry. Go ahead.

19 A. To the TCEQ. I'm sorry.

20 Q. Based on the record in front of it, which
21 includes technical reports and reports by agencies,
22 the TCEQ makes a determination as to whether to
23 designate, correct?

24 A. That's correct.

25 Q. Okay. Mr. Mills, do you recall testifying

1 that the primary purpose of designating a PGMA is to
2 create a groundwater conservation district?

3 A. Yes, ma'am.

4 Q. Okay. Now, the division that we've talked
5 about earlier, the groundwater planning and assessment
6 team that is part of -- was part of your formal
7 division, that is the program within TCEQ that
8 implements the PGMA program, correct?

9 A. That is correct.

10 Q. So what does it mean to implement the PGMA
11 program?

12 A. Like I said, we review the data that's
13 developed for the Water Development Board and their
14 planning processes. We meet annually with the Water
15 Development Board to discuss that data, and if -- if a
16 study is initiated, then we will be the folks
17 responsible for putting together the report and
18 recommendation to the Commission.

19 Q. So, Mr. Mills, that sounds to me like you're
20 talking about the -- you implement the programming
21 getting to the designation stage; is that right?

22 A. I think that's fair to say. I mean, we --

23 Q. Okay.

24 A. -- we put together a report and
25 recommendation and then it goes to hearing and then it

1 goes to the Commission. We provide, you know -- we
2 provide support as requested at those stages.

3 Q. Okay. And then after the PGMA has been
4 designated, does your groundwater planning and
5 assessment team have any role in -- after the
6 designation of a PGMA?

7 A. We would be responsible for providing the
8 Commission's order to the stakeholders in the area and
9 municipalities, county government, county
10 commissioners, court, and we're also responsible for
11 providing the information to Texas A&M AgriLife
12 Extension, and we would -- we would make those actions
13 and then we monitor -- we monitor activity past that
14 point in time.

15 Q. You monitor the activity after it's been
16 designated a PGMA?

17 A. We monitor the activity to see if -- if the
18 local governments or the local folks, local landowners
19 establish a groundwater conservation district.

20 Q. Okay. And your former division performs
21 those functions for all the seven PGMA's that have been
22 established in Texas?

23 A. Yes, ma'am.

24 Q. Thank you.

25 MS. DALRYMPLE: Ms. Ferguson, could you

1 pull up New Mexico 348, please?

2 Q. (BY MS. DALRYMPLE) Can you see New Mexico
3 348, Mr. Mills?

4 A. Yes, ma'am.

5 Q. Do you recognize that document?

6 A. Yes, ma'am. This is a map that was prepared
7 in 2019 by the Water Availability Division Groundwater
8 Planning and Assessment Team.

9 Q. Let's see. This has -- this shows seven
10 PGMA's, correct?

11 A. Yes, ma'am.

12 Q. And if we look again out in the far west
13 panhandle, it -- it has a bubble that says, El Paso
14 County PGMA 1998; is that correct?

15 A. Yes, ma'am.

16 Q. And is that when the El Paso County PGMA was
17 created?

18 A. Yes, ma'am.

19 Q. Mr. Mills, it doesn't say it on this map, but
20 can you confirm for us that the El Paso County PGMA is
21 also known as PGMA 13? Are you aware of that
22 designation?

23 A. You know, when they -- what I'm aware of is
24 when they did the initial PGMA studies, they all had a
25 number, and I do believe El Paso was No. 13.

1 Q. Okay. I've seen that number a lot, but I'll
2 try not to refer to it that way, instead to call it
3 the El Paso County PGMA.

4 MS. DALRYMPLE: Ms. Ferguson, could you
5 pull up New Mexico 2153, please?

6 Q. (BY MS. DALRYMPLE) Mr. Mills, I'm pulling up
7 this report. Do you recognize this report?

8 A. Yes, ma'am. That is the executive director's
9 1998 El Paso County Priority Groundwater Management
10 Area Report and recommendation to the commission. It
11 was prepared by Steve Musick.

12 Q. Thank you. If we look up to the top left, it
13 says October, 1988, but that's incorrect, isn't it?
14 The rest of the report says '98?

15 A. It says August, 1988, and that is incorrect.
16 It should be 1998, which it says on the second page.

17 Q. Yeah. Thank you. And then if you look also
18 at the top left, it's got TNRCC, and -- standing for
19 Texas Natural Resource Conservation Commission, and,
20 again, that's another predecessor name for TCEQ; is
21 that right?

22 A. That is correct.

23 Q. Mr. Mills, let's jump right to the -- first
24 to the conclusions and recommendations on Page 44, PDF
25 44.

1 MS. DALRYMPLE: Your Honor, I will be
2 using the trial exhibit sticker numbers.

3 Q. (BY MS. DALRYMPLE) This is the conclusions
4 and recommendations of the planning group who put
5 together that report, and it states that, "Critical
6 groundwater conditions exist in El Paso County as
7 evidenced by declining water levels and water quality
8 in the Hueco Bolson aquifer and by current and
9 projected groundwater pumpage in excess of the average
10 annual recharge for aquifers generally in the study
11 area and especially for the Hueco Bolson. Based on
12 the projected population growth and the resultant
13 increased projected water demands for the study area,
14 these critical groundwater conditions will continue to
15 exist and will likely worsen over the next 25-year
16 period." You recall that the reports that fed into
17 this report were intended to do a 25-year projection,
18 correct?

19 A. Correct.

20 Q. Right. The -- this conclusion and
21 recommendation further says, "The locally available
22 supplies of ground and surface water are inadequate to
23 meet the increased projected demand without
24 significant efforts to acquire additional supplies of
25 groundwater and surface water." And then it goes on

1 to make the recommendation. Is that correct?

2 A. That is correct. That's what it says.

3 Q. Yeah. Let's just make sure we know what
4 aquifers we're talking about.

5 MS. DALRYMPLE: Ms. Ferguson, could you
6 go to Page 46, please?

7 Q. (BY MS. DALRYMPLE) This is sort of an old --
8 well, an old picture, but do you recognize this, sir,
9 as the -- well, can you point out to us which is the
10 Hueco and which is the Mesilla Bolson?

11 A. Yes. This -- the gray-shaded area in the
12 middle of the county is the Hueco Bolson aquifer, and
13 the Mesilla Bolson is in white to the west of the
14 Franklin Mountains.

15 Q. Right. And then that one little slice in
16 between the gray and the Mesilla is the -- is the
17 Franklin Mountains, right?

18 A. That is correct.

19 Q. Okay. Let's discuss some of the -- or
20 investigate some of the technical findings that TCEQ
21 relied on to inform its decision to designate the area
22 as the El Paso County PGMA.

23 MS. DALRYMPLE: Ms. Ferguson, could you
24 go to Page 19 and the fourth full paragraph?

25 Q. (BY MS. DALRYMPLE) Mr. Mills, you've read

1 **this report before, correct?**

2 A. I have. It's been a number of years ago, but
3 I have read it before.

4 Q. Okay. One of these technical findings is
5 that water levels in the Rio Grande alluvium declined
6 by as much as 20 feet from 1936 to 1967. Now, this
7 portion of the report states that some of those
8 declines are due to water lost from seepage from the
9 paving over an increase and impervious cover in
10 formerly irrigated farmland areas. Mr. Mills can you
11 -- do you have an idea of what they're talking about
12 there?

13 MS. BARFIELD: Objection. The question
14 calls for expert opinion and lacks foundation that
15 there's any basis to testify outside of eliciting
16 expert opinion.

17 MS. DALRYMPLE: May I respond, Your
18 Honor?

19 JUDGE MELLOY: You may.

20 MS. DALRYMPLE: Thank you. This is the
21 very report that Mr. Mills' agency made decisions
22 about and upon which his team -- or the team prior to
23 his own team made their decisions on how to process
24 this report and the agency is charged with having --
25 making informed decisions about the technical

1 information they were given. Not asking for an expert
2 opinion, just asking if he knows what it means.

3 **JUDGE MELLODY:** I'm going to overrule the
4 objection. You may answer the question.

5 A. Your Honor, you know, I can only speculate
6 that this information was, you know, some of the
7 information that was identified and provided by the
8 Texas Water Development Board. I can comprehend what,
9 you know, declines attributed to water lost from
10 seepage mean, and I can also understand impervious
11 cover of formerly irrigated farmland.

12 **Q. (BY MS. DALRYMPLE) Mr. Mills, when it**
13 **says "impervious cover," does that mean things like**
14 **parking lots, roads?**

15 A. That would be what I would think, yes.

16 **Q. So urbanization? Is that fair statement?**

17 A. That's fair.

18 **Q. Thank you.**

19 **MS. DALRYMPLE:** Ms. Ferguson, let's go
20 to 25.

21 **Q. (BY MS. DALRYMPLE) In explaining how the El**
22 **Paso County got into this situation, the report has**
23 **some summaries of historical condition. You know, I**
24 **don't think -- yeah. Let's look at -- I'm sorry. I**
25 **put the wrong paragraph in there. Oh, 22. I'm sorry.**

1 Could we go to Page 22, the last partial.

2 Mr. Mills, this portion of the report states
3 that, "Groundwater supplies have historically provided
4 most of the nonagricultural water demands in the study
5 area." Nonagricultural demands would mean
6 municipalities, right, businesses?

7 A. Industrial, municipal, yes, ma'am.

8 Q. Yeah. It further says that, "Pumpage from
9 the Hueco Bolson has exceeded recharge of the aquifer
10 since the early 1900s." Pumpage is a word I wasn't
11 real familiar with. Does that just mean groundwater
12 pumping?

13 A. Yes. That's what I would think that means,
14 yes.

15 Q. Okay.

16 MS. DALRYMPLE: Ms. Ferguson, could you
17 go to Page 25, the first partial paragraph?

18 Q. (BY MS. DALRYMPLE) The report says, "Pumpage
19 above this amount" -- we've skipped over the amount
20 -- "removes or mines water from storage in an aquifer
21 and results in water-level declines." Sir, what
22 does "mines water" mean? Can you explain to the Court
23 what mining an aquifer is?

24 MS. BARFIELD: Again, Your Honor, I
25 object on the basis of these questions going beyond

1 the scope of a layperson. That calls for expert
2 testimony, and Counsel has not established foundation
3 that Mr. Mills has any information to answer these
4 sorts of questions. He did testify that the data that
5 upon which this report is based, the technical data,
6 was provided by the Texas Water Development Board, not
7 TCEQ.

8 **JUDGE MELLOY:** Well, I'll let him
9 testify as to what his understanding of the report
10 means. I don't think that's the type of expert
11 testimony that would be precluded. You may answer.

12 **THE WITNESS:** Thank you, Your Honor.

13 A. So I would answer that, I think what this
14 sentence means or what mining groundwater means is you
15 are producing or pumping more groundwater out of the
16 system that is going into the system. It's recharging
17 into the system. So you're basically taking from the
18 savings account.

19 **Q. (BY MS. DALRYMPLE)** Is that how you look at
20 it, sir, like a checking and savings account?

21 A. It's one way to look at it.

22 **Q. Thank you.**

23 **MS. DALRYMPLE:** Could you please go to
24 Page 30?

25 **Q. (BY MS. DALRYMPLE)** The report directs us to

1 Figure 3 on this page, and this is a hydrograph --
2 well, as it says, "Hydrograph of selected observation
3 wells in El Paso County, Texas." Mr. Mills, do you
4 work with hydrographs? Well, maybe not on the sunset
5 team, but in your previous position, did you work with
6 hydrographs?

7 A. Some. Not a whole lot, but some.

8 Q. Okay. Are you able to tell us what this
9 hydrograph shows?

10 A. I would say that it shows water-level
11 declines occurring in these two wells, one of them for
12 a span of, what, 60-plus years, and the other one for
13 a span of 20-plus years.

14 Q. So the -- to be specific, the time period is
15 along, and I can't remember if it's an X or Y axis,
16 but along the bottom line, and it looks like the
17 hydrograph period starts in about 1938; is that
18 correct?

19 A. Yes. For the -- for the first one, for the
20 longest time.

21 JUDGE MELLOY: Yes.

22 Q. (BY MS. DALRYMPLE) Right. And then this one
23 ends obviously about when the report was done between
24 1990 and 2000, correct?

25 A. Yes. That's what it appears, yes.

1 Q. Could you please go to Page 29? Now, one
2 result of this decline in the groundwater level is
3 water quality degradation; is that correct?

4 A. That can be a result, yes.

5 Q. Okay. And this report actually finds there
6 at the bottom of the first full paragraph, total
7 dissolved solids.

8 MS. DALRYMPLE: Go all the way up to the
9 first paragraph, Ms. Ferguson. Could you pull that
10 out? Thank you.

11 Q. (BY MS. DALRYMPLE) This says, and I'm going
12 to skip down to where -- right in the middle where it
13 says, "Figure 6 plots total dissolved solids
14 concentrations for the period 1980 to 1995." Just to
15 be clear, Mr. Mills, are you familiar with the term
16 total dissolved solids?

17 A. Yes, ma'am.

18 Q. And it's abbreviated TDS, correct?

19 A. That is correct, yes.

20 Q. And in -- in general, the way we've been
21 using that in this case is to talk about the salinity
22 of water. Is that your experience?

23 A. Yes. Salinity and other solids, yes.

24 Q. Right. Okay. This goes on to say, "Total
25 dissolved solids concentrations have increased

1 significantly over this time period," and the time
2 period is 1980 to '95, and that is reflected -- I
3 think I got ahead of myself. "The concentrations in
4 two of the wells shown have increased to above the
5 secondary drinking water standard for dissolved
6 solids." So is it fair to summarize this paragraph as
7 saying that the water degradation in the area over a
8 period of decades has increased the salinity and TDS
9 of the water in the El Paso County?

10 MS. BARFIELD: Objection. Again, the
11 question calls for expert testimony. There's been no
12 foundation laid that this witness can testify to the
13 breadth of that question. There are several citations
14 within this depicted paragraph to treatises or
15 articles and so forth that clearly are expert related.

16 JUDGE MELLOY: All right. I'm going to
17 sustain that. It also talks about all of El Paso
18 County. The paragraph says what it says.

19 MS. DALRYMPLE: Thank you, Your Honor.

20 Q. (BY MS. DALRYMPLE) I would just like to look
21 at the second paragraph there where it attributes,
22 "The degradation of water, meaning the increased TDS,
23 to heavy pumpage causing the vertical and horizontal
24 movement of water with higher dissolved solids towards
25 the center of pumpage. The heavy pumpage,

1 particularly in the Hueco Bolson aquifer, has caused
2 declines in artesian pressure near the centers of
3 pumpage inducing the movement of deeper more saline
4 water into the freshwater zone." So, again, the heavy
5 pumpage in the El Paso County has created a -- an
6 aquifer situation where the more brackish water is
7 flowing into what used to be freshwater; is that
8 correct?

9 MS. BARFIELD: Again, Your Honor, I'm
10 going to object on the same basis as the prior
11 objection that Your Honor sustained. It's outside the
12 scope of what this witness has foundation to testify
13 on. I would also object that the entire line of
14 questioning appears to have a relevance problem
15 inasmuch as there has not been any established fact in
16 evidence that what's going on downstream, even if Ms.
17 Dalrymple's suggestions were true, would affect
18 upstream, and until that is established as a fact,
19 this seems to be completely irrelevant.

20 JUDGE MELLOY: Well, I'll let -- I'm
21 going to overrule the relevance objection at this
22 time. The witness can testify as to what he
23 understands that -- that section to mean.

24 MS. DALRYMPLE: Thank you, Your Honor.

25 Q. (BY MS. DALRYMPLE) One other thing on this

1 issue of overdraft, Mr. Mills. Near the bottom, you
2 see it says, "Over the 25-year planning period, 1995
3 to 2020, total annual water use demand is expected to
4 increase by 25,000 acre-feet."

5 A. Yes.

6 JUDGE MELLOY: Is there a question?

7 MS. DALRYMPLE: I'm sorry, Your Honor.
8 I think I had pulled out the wrong -- the wrong
9 paragraph. Let's move on to Page 15.

10 Q. (BY MS. DALRYMPLE) During this process, sir,
11 the PGMA process related to El Paso County. The City
12 of El Paso was the major opponent to designating the
13 areas of PGMA; is that correct?

14 A. I don't recall.

15 Q. Okay. Let's -- let's look at a page of the
16 report and see if that refreshes your recollection.

17 MS. DALRYMPLE: Could you pull out those
18 last two paragraphs on Page 15?

19 Q. (BY MS. DALRYMPLE) If we look at those two
20 paragraphs, sir, it says, "Comments related to the
21 scope and appropriateness of the study were received
22 from the City of El Paso and the Rio Grande Compact
23 Commission." And then the second paragraph says, "The
24 City of El Paso was the major and near sole commenter
25 on the scope, process, and potential impacts of a

1 designation." El Paso, it says, reiterated their
2 concern from the earlier proposal. You will recall
3 that there was a previous report submitted in 1990 on
4 designating El Paso County as a PGMA; is that correct?

5 A. Yes. It was made the recommendation to
6 designate it as a critical area. It was a precursor
7 to a PGMA.

8 Q. So that process started in 1990 went on a
9 back burner until it was revived here in '97/'98 time
10 period?

11 A. That is correct. There were pretty big
12 changes to the Texas Water Code in 1997, and there
13 were two studies, there was this El Paso study, and
14 there was another study on North Texas alluvium that
15 had kind of been left pending like this and the
16 legislature directed the TCEQ to complete those two
17 studies so Mr. Musick did this one, and I did the
18 other one.

19 Q. What was the one you did, sir?

20 A. It was the North Texas alluvium and Paleozoic
21 aquifer prior to groundwater management area study.

22 Q. Okay. Going back to the report, if we look
23 at that bottom paragraph there, it says that, "El Paso
24 in its comments on the report questioned the
25 appropriateness of creating a Chapter 36 water code

1 district," and that's what we're calling a groundwater
2 conservation district; is that correct?

3 A. That is correct.

4 Q. Okay. We'll talk about that in just a
5 minute. "Due to citizen concerns about additional
6 taxing and bureaucracy." And I think you testified
7 earlier that you have seen that pushback before?

8 A. Yes. The groundwater conservation district
9 is a regulatory district, and they're funded by ad
10 valorem taxes or well production fees.

11 Q. Right. Then if we go down, "El Paso
12 suggested that pumpage restrictions on Texans alone
13 would not adequately address the groundwater problems
14 in the Hueco Bolson and the need for interstate and
15 international cooperation and management." Mr. Mills,
16 in that paragraph, do you understand the need for
17 interstate to refer to Texas and New Mexico?

18 A. That's what I would interpret that to mean,
19 yes, ma'am.

20 Q. Okay. And international cooperation to refer
21 to the Republic of Mexico and Texas?

22 A. Yes, ma'am.

23 Q. Thank you, sir.

24 MS. DALRYMPLE: Could you please go to
25 Page 21?

1 Q. (BY MS. DALRYMPLE) Now, at the time of this
2 report, this -- the City of El Paso used 87 percent of
3 the groundwater being pumped in that area; is that
4 correct?

5 A. If that's what the report says, then I assume
6 that it's correct, yes, ma'am.

7 Q. Okay. Also at the time of the report, the
8 city of El Paso regulated its own wells and
9 groundwater connections -- I'm sorry -- groundwater
10 production; is that correct?

11 A. I assume that is correct.

12 Q. Okay. This makes me think, Mr. Mills, do you
13 know the name for the laws applicable to groundwater
14 regulation in the State of Texas?

15 A. The name of the laws?

16 Q. I'm sorry. That was a bad question. What
17 I'm getting to is it's called the law of capture; is
18 that correct?

19 A. The rule of capture exists in the State of
20 Texas, yes.

21 Q. Can you tell us --

22 JUDGE MELLOY: Excuse me a second.
23 Excuse me a second. Mr. Mills, could you move a
24 little closer to the microphone? You're starting to
25 kind of fade out a little bit.

1 THE WITNESS: Sorry about that, Your
2 Honor.

3 JUDGE MELLOY: Go ahead.

4 Q. (BY MS. DALRYMPLE) Could you just explain to
5 us briefly what the rule of capture is?

6 A. Rule of capture is based on 1904 case law in
7 Texas. It's basically the English common law rule of
8 capture. If it's on your property, it belongs to you.
9 Under the rule of capture, the landowner can pump and
10 use for his beneficial use the groundwater under his
11 property. There are some judicial caveats on the rule
12 of capture. You can't pump to maliciously harm your
13 neighbor. You can't waste the water, and then through
14 the creation of special law districts and groundwater
15 conservation districts, those entities have the
16 ability to make changes to the rule of capture. So
17 say in the Edwards aquifer authority around San
18 Antonio, they have a special law groundwater district,
19 and the rule of capture does not apply in that area.

20 Q. Thank you, sir. When evaluating this report
21 to make a decision on whether to designate a PGMA,
22 TCEQ relied on the entirety of the report; is that
23 correct?

24 A. Can you repeat that question, please?

25 Q. Yeah. That was sort of a bad question. When

1 making its decision to designate El Paso County as a
2 PGMA, TCEQ relied on the entirety of the report,
3 correct? They didn't just use one or two paragraphs?

4 A. No. I assume that they used the entirety of
5 the report and any supporting reports, as well.

6 Q. Okay.

7 MS. DALRYMPLE: Could we go to Page 54,
8 Ms. Ferguson?

9 Q. (BY MS. DALRYMPLE) So at the end of the
10 report, they've attached an appendix, and it is --
11 well, I would have called this a 50-year plan, but
12 it's really a 49-year plan for El Paso Water Resource
13 Management Plan, and that is appended to the report.
14 Let's look at the first page where it sets up its
15 plan. That's not the first page. I'm sorry. It's
16 Page 55. Okay. Next page. Let's pull up the top
17 paragraph.

18 Mr. Mills, this has a cute little remark by
19 Will Rogers on it that everybody in water knows about,
20 but I'm going to go to the second sentence.

21 Says, "Aware that the City has been over drafting the
22 Hueco Bolson for more than six decades, the El Paso
23 Water Utilities/Public Service Board in September 1980
24 initiated action to obtain groundwater supplies from
25 the plentiful reserves in the Mesilla Bolson in New

1 Mexico. The ensuing legal battles continued until
2 March 6, 1991, on which date the historic settlement
3 agreement between El Paso and New Mexico was signed."
4 Mr. Mills, are you aware of the lawsuit referenced
5 there?

6 A. No, ma'am.

7 MS. DALRYMPLE: April, go to I, please.

8 Q. (BY MS. DALRYMPLE) I'm going to pull up a
9 document, Mr. Mills, and see if it refreshes your
10 recollection about this historic lawsuit referenced in
11 the plan. This is -- do you recognize this document,
12 sir?

13 A. It appears to be the Texas State Water Plan
14 from back in November of 1984.

15 Q. Right. And this is maintained on the TCEQ
16 Website; is that right?

17 A. I doubt that it is. It may be on the Water
18 Development Board's Website, but I doubt that it would
19 be on ours.

20 Q. Okay. I -- I'm pretty sure I got it from
21 TCEQ, but you could be right. Maybe I got it from
22 TWDB.

23 MS. DALRYMPLE: Could you please go to
24 Page 54? That lower left paragraph, please.

25 Q. (BY MS. DALRYMPLE) Just want to see, sir, if

1 this reminds you of the lawsuit referenced in the PGMA
2 plan, which this provision of the state water plan
3 says, "The city of El Paso faces potentially severe
4 water shortages by 2030 due to over drafting of the
5 City's groundwater supplies. Surface water supplies
6 are fully committed to permit holders in the Rio
7 Grande Project. The City is aggressively pursuing
8 municipal water conservation to reduce demands, and is
9 implementing artificial recharge program to increase
10 future supplies. The long-term solution to the City's
11 water needs, however, will lie in acquiring additional
12 water sources. To that end, El Paso is seeking
13 groundwater in southern New Mexico and is involved in
14 litigation with that state." Does that refresh your
15 recollection about the City of El Paso versus Reynolds
16 lawsuit?

17 A. No, ma'am.

18 Q. Okay. Let's go back to the PGMA report,
19 please, on Page 58. Actually, let's go -- yeah, Page
20 58. No, let's go to Page 60. I'm sorry. The judge
21 has seen enough of this. Let's go to Page 60.

22 Sir, we're back in the PGMA report in the El
23 Paso -- City of El Paso section, and this section is
24 called Section 6.1, and in this part, they set out
25 their 50-year plan. Are 50-year plans something that

1 municipalities typically submit to TCEQ?

2 A. I would say no, I'm not aware that they do.
3 I'm sure this was submitted by the City of El Paso for
4 the Commission to consider in their designation
5 deliberations.

6 Q. Okay. Thank you.

7 MS. DALRYMPLE: Let's go to Provision
8 6.1.5, please.

9 Q. (BY MS. DALRYMPLE) This provision of the plan
10 says -- there's several elements here, and we're not
11 going to go through all of them -- "Commencing in or
12 around the year 2009 obtain water from New Mexico at
13 an average incremental increase of about 2,300
14 acre-feet per year until a production of 68,500
15 acre-feet per year is attained by the year 2038. The
16 management plan is based on the assumption the New
17 Mexico water will be obtained from Mesilla Bolson
18 groundwater." Mr. Mills, we earlier discussed the
19 Mesilla Bolson, and the map we were looking at showed
20 a Texas portion, but across the state line, there's
21 also a New Mexico portion of the Mesilla Bolson; is
22 that correct?

23 A. To the best of my knowledge, yes.

24 Q. Okay. So the City of El Paso planned to
25 drill wells to obtain 68,500 acre-feet a year on the

1 New Mexico part of the Mesilla Bolson; is that
2 correct?

3 MS. BARFIELD: Lacks foundation; calls
4 for speculation. There's been no foundation
5 established that the witness has any knowledge
6 specifically of this El Paso water utilities plan.

7 JUDGE MELLOY: Well, again, I think the
8 documents speak for themselves, but if the witness has
9 personal knowledge, he can answer.

10 A. I would -- I mean, the report says what it
11 says. I'm not familiar with this report.

12 Q. (BY MS. DALRYMPLE) Okay. Thank you.

13 MS. DALRYMPLE: Let's go to Section
14 6.1.4, please.

15 Q. (BY MS. DALRYMPLE) Another part of the El
16 Paso plan was to expand the Canutillo and Anthony well
17 fields to increase groundwater production from the
18 Texas Mesilla Bolson. Are you familiar with those
19 well fields, sir?

20 A. No, ma'am.

21 Q. Okay. And they intended to -- those are --
22 I'm sorry. We'll get to that later. Those are
23 intended to increase total capacity up to 50,000
24 acre-feet a year by the year 2005.

25 MS. DALRYMPLE: Let's go to Page -- I'm

1 sorry -- Section 6.2.6, and then we'll be done with
2 this little bit.

3 **MS. BARFIELD:** I'm sorry. Your Honor, I
4 object to counsel just reading a paragraph into the
5 record, not turning it to a question, and then moving
6 on seemingly just for the purpose of reading it into
7 the record. I would ask that that be stricken.

8 **JUDGE MELLOY:** I'll overrule that, but
9 let's move on.

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

12 You can take that down, Ms. Ferguson.

13 **Q. (BY MS. DALRYMPLE)** Mr. Mills, as you
14 testified, El Paso County was designated a PGMA in
15 1998, and according to the statute and according to
16 your prior testimony, once the PGMA was created, a
17 groundwater conservation district was intended to be
18 created; is that correct?

19 **A.** Not -- not in El Paso County, not for that
20 PGMA study.

21 **Q.** Right. They came to a -- a different
22 finding, but let me just ask you, sir, in general, is
23 a groundwater conservation district supposed to be
24 created within two years of a PGMA being designated?

25 **A.** In general, yes.

1 Q. Okay. This report recommended that instead
2 of a groundwater conservation district --

3 MS. DALRYMPLE: Could we go to Page 45
4 on that document, Ms. Ferguson?

5 Q. (BY MS. DALRYMPLE) -- a different
6 governmental entity should be established; is that
7 right?

8 A. Yes, that is correct.

9 Q. Right. They recommended that a regional
10 approach is needed to focus on management of
11 groundwater resources in the Hueco Bolson. The
12 regional approach should include development of a
13 government -- governmental organization or entity that
14 would be responsible for coordinating management
15 strategies. So -- and I believe you testified about
16 this at your deposition. They recommended a different
17 entity than a groundwater conservation district; is
18 that correct?

19 A. That is correct.

20 Q. And that was also the position the City of El
21 Paso took in their submissions; is that correct?

22 A. That's what that paragraph you showed me a
23 while ago seemed to indicate, yes.

24 Q. All right.

25 MS. DALRYMPLE: Could we go to Page 43,

1 please?

2 Q. (BY MS. DALRYMPLE) To your knowledge,
3 Mr. Mills, was -- has a different type of governmental
4 organization been created to serve in lieu of a
5 groundwater conservation district?

6 A. Not to my knowledge, no.

7 Q. The report further -- even though it made
8 this recommendation, it went onto say, "Questions
9 remain as to whether voluntary efforts can be
10 sustained and whether these efforts will be sufficient
11 to adequately address the identified problems." And
12 it -- it specifically notes, "Management strategies
13 will require cessation or limitation of pumping in
14 many wells and in specific areas." Mr. Mills, do you
15 know if any attempt by any agency has been made to
16 require cessation or limitation of pumping in the
17 Hueco Bolson?

18 A. I'm not aware of any, no.

19 Q. Thank you. Let's turn our attention now to
20 this entity we've talked about a little bit, the
21 groundwater conservation districts.

22 MS. DALRYMPLE: Ms. Ferguson, could you
23 bring those next two exhibits up side by side? Oh,
24 well, you're ahead of me. Thank you.

25 Q. (BY MS. DALRYMPLE) Sir, I've got these two up

1 because I think one was presented in your deposition,
2 and another is on the Website, and they have a
3 different numbering system. So I was wondering if you
4 could tell us which is the more recent or correct
5 because, for instance, if you look in far west Texas,
6 on 861, it's -- there's something called No. 38, that
7 bright pink one, but the same one over in 860 is No.
8 4. Are you able to guide us on which is the correct
9 map?

10 A. I believe they're both correct. The -- the
11 map that was on the left is a map that's prepared by
12 the Texas Commission on Environmental Quality. It
13 lists the groundwater conservation districts by the
14 date they were established. The map on the right is
15 groundwater conservation district map prepared by the
16 Texas Water Development Board. I believe it lists the
17 districts alphabetically and the -- there's a
18 different number because TCEQ considers the two
19 subsidence districts on the Edwards Aquifer Authority
20 to be groundwater conservation districts because they
21 do have the authority to regulate groundwater
22 production and use, and the Board, those two
23 subsidence districts and the Edwards Aquifer
24 Authority, to my understanding, are not required to
25 participate in the regional water planning -- not the

1 regional -- joint groundwater monitoring and -- I'm
2 sorry, excuse me, in the joint groundwater
3 conservation district planning process. That's my
4 understanding.

5 Q. Okay. So the agencies are fighting over
6 names and numbers. Then because your agency created
7 860, we'll use that one. You might be more familiar
8 with that one. And so this map reflects all the
9 groundwater conservation districts as of August, 2020,
10 in the State of Texas; is that correct?

11 A. Yes, ma'am.

12 Q. Can you tell us a little bit about a
13 groundwater conservation district?

14 A. What would you like to know?

15 Q. Well, let's talk about it. Is it a political
16 entity?

17 A. It is a unit of local government, yes, ma'am.

18 Q. And what is its purpose?

19 A. Purpose is to conserve, preserve, protect
20 groundwater resources. They are authorized to
21 regulate groundwater production and use. They
22 implement well permitting and registration programs.
23 They develop comprehensive groundwater management
24 plans, and they carry out those plans. They're
25 generally governed by an elected board of directors,

1 although there are quite a few that are governed by
2 appointed directors within the state.

3 Q. Thank you. And would it be correct to say
4 that all groundwater management in the State of Texas
5 is the province of groundwater conservation districts?

6 A. Well, it's certainly their province where
7 they are established.

8 Q. Right. And where they are not established,
9 let's look at the far west section over there where El
10 Paso is. There is no groundwater conservation
11 district in El Paso County, is there?

12 A. There is not.

13 Q. And despite the fact that that area, El Paso
14 County, and part of Hudspeth County are covered by
15 groundwater -- I'm sorry -- are subject or designated
16 as a priority groundwater management area, they did
17 not create a groundwater conservation district?

18 A. Only El Paso -- portions of El Paso County
19 are designated as a priority groundwater management
20 area. Hudspeth County was evaluated in '04/'05, that
21 time frame. It was determined not to be a priority
22 groundwater management area. There is an existing
23 district on the north side of Hudspeth County. I
24 can't recall the aquifer that it regulates there.
25 However, there's no groundwater conservation district

1 in El Paso County.

2 Q. Okay. Thank you. Understood. One of the
3 mandates of a groundwater conservation district is to
4 create a comprehensive management plan; is that
5 correct, as to its groundwater resources?

6 A. It's requires -- yes, required to adopted a
7 groundwater management plan.

8 Q. It is also required to develop a system for
9 registering and permitting groundwater wells, correct?

10 A. That is correct.

11 Q. And it must also create or adopt rules to
12 implement the management plan, correct?

13 A. That is correct.

14 Q. And, in fact, the groundwater conservation
15 district has authority to enforce compliance; is that
16 right?

17 A. That's correct.

18 Q. Thank you. Now, as to the comprehensive
19 management plan that a groundwater conservation
20 district is mandated to create, it has to provide
21 provisions for the most efficient use of groundwater;
22 is that right?

23 A. I believe that is one of the requirements of
24 the statute, yes.

25 Q. Okay. It also has to address conjunctive

1 **surface water management issues, correct?**

2 A. I believe that is correct.

3 **Q. And it has to address what -- what the**
4 **statute calls desired future conditions. Can you tell**
5 **us what desired future conditions are?**

6 A. I can. It's a little outside of TCEQ's
7 realm, but, you know, the groundwater conservation
8 districts that are located in a common groundwater
9 management area are required to share their management
10 plans with each other and then they develop a desired
11 future condition, which is basically a -- the best way
12 to say this, I would say it's a policy of what they
13 want their aquifer to look like at a 50-year time
14 frame and they develop those desired future conditions
15 and then they're supposed to adopt them at the local
16 level, at the groundwater district level, and then if
17 they need to amend their rules to achieve that desired
18 future condition, they're supposed to do that, as
19 well.

20 **Q. Okay. If a GCD had been created in the El**
21 **Paso County, it would have been required to create one**
22 **of these plans and establish a desired future**
23 **condition; is that right?**

24 A. That's correct.

25 **Q. The way you describe the desired future**

1 conditions, is that based on -- you know, would they
2 have used groundwater and surface water models to
3 determine what would be feasible for the 50-year plan?

4 A. I would speculate they would use the
5 groundwater availability models that are available at
6 the Texas Water Development Board in forming that
7 decision. They would use data that's built into the
8 Texas state and regional water planning process to
9 build that data. How much they would use TCEQ's water
10 availability modeling to inform that decision,
11 probably not.

12 Q. Okay. But in essence, it's a data-driven
13 decision to establish a desired future condition?

14 A. It's data driven, and it also is outward
15 looking to the future so...

16 Q. Mr. Mills, you'll be happy to hear we're
17 almost done. Has TCEQ revisited the topic about
18 whether they should be a groundwater conservation
19 district established within the El Paso County
20 priority groundwater management area?

21 A. No, ma'am.

22 Q. Has TCEQ taken any actions within the last
23 decade to determine whether a groundwater conservation
24 district would be appropriate for the El Paso PGMA?

25 A. No, ma'am.

1 Q. Has TCEQ, the water availability division,
2 done any studies or modeling as to the amount of
3 recharge to the El Paso County groundwater resources?

4 A. No, ma'am.

5 Q. Sir, one of the primary reasons --

6 MS. DALRYMPLE: Could we go to 861,
7 please.

8 Q. (BY MS. DALRYMPLE) -- El Paso objected to the
9 creation of -- I'm sorry. The City of El Paso
10 objected to the creation of a groundwater conservation
11 district was that it would require the involvement of
12 the Republic of Mexico. Does that -- do you remember
13 that?

14 A. Yes.

15 Q. So when we look at the groundwater
16 conservation district's map, the Rio Grande --

17 MS. DALRYMPLE: Yeah, thank you, April.
18 Could you go further, please, take it bigger?

19 Q. (BY MS. DALRYMPLE) -- the Rio Grande
20 comprises that border all the way up from the El Paso
21 area in the far northwest clear -- clear down to where
22 it gets to the gulf; is that correct?

23 A. Yes, ma'am.

24 Q. What we can see in this map is that there are
25 at least three groundwater conservation districts that

1 have the border with Mexico; is that correct?

2 A. Yeah. There's more than three.

3 Q. You know what, you're right. Oh my gosh.
4 Yeah, I miscounted, right? So there's Presidio
5 County, Brewster County -- I can't -- is that Terrell
6 County?

7 A. Terrell County, yes.

8 Q. Terrell. Sorry. Kinney County for No. 43,
9 and Starr County. And those areas that are in
10 priority groundwater management districts and yet
11 share a border with the Republic of Mexico have formed
12 groundwater conservation districts; is that correct?

13 MS. BARFIELD: Just one second,
14 Mr. Mills. I want to object on the grounds of
15 relevance. These areas, these geographic areas of
16 Texas referred to by Counsel are not relevant to this
17 litigation. She also hasn't established any
18 foundation for these questions.

19 JUDGE MELLOY: I'll overrule. I'll let
20 him answer.

21 A. So your statement is not correct. None of
22 these other counties on the border were designated as
23 priority groundwater management areas, and all of
24 these groundwater conservation districts were driven
25 by local initiative to create the groundwater

1 conservation districts, and all of those districts
2 were created by a special legislative act of the Texas
3 legislature.

4 Q. (BY MS. DALRYMPLE) Thank you for that
5 correction, sir. So in those five counties, the
6 stakeholders in the groundwater in their areas
7 determined that they wanted to be able to regulate
8 their groundwater use?

9 A. That's correct.

10 Q. Okay. Thank you. And that -- and they all
11 -- I apologize for my confusion on that PGMA issue,
12 but all of these districts prepare management plans,
13 correct, and those are posted on their Website?

14 A. Yes, ma'am. If they have Websites. Some of
15 them might not.

16 Q. Okay. You mentioned earlier, much earlier,
17 that the Texas Groundwater Protection Committee makes
18 reports to the Texas legislature. Has -- have -- have
19 you made any reports -- has the Texas Groundwater
20 Protection Committee made any reports seeking funding
21 for studies or further investigation as to whether El
22 Paso County PGMA needs further study or needs to be
23 revisited in any way whatsoever?

24 A. No. The Texas Groundwater Protection
25 Committee has not made any recommendations like that,

1 and its recommendation would be geared towards
2 groundwater protection programs as opposed to a
3 groundwater management-type program.

4 Q. Mr. Mills, I have one last question. What is
5 the budget of TCEQ?

6 A. I don't know the answer to that off the top
7 of my head.

8 Q. Okay. You wouldn't have any reason to
9 dispute what's posted on the Website, correct?

10 A. I would not.

11 MS. BARFIELD: Objection; relevance.

12 MS. DALRYMPLE: The relevance --

13 JUDGE MELLOY: The answer is in. Go
14 ahead.

15 Q. (BY MS. DALRYMPLE) Okay. Mr. Mills, were you
16 aware of or ever responsible for the budget for your
17 water availability division?

18 A. I had some responsibility, yes.

19 Q. Do you remember what the budget was for 2020?

20 A. No, not off the top of my head.

21 Q. Do you remember in round millions, what it's
22 been for any year in the past five years?

23 MS. BARFIELD: It lacks -- objection;
24 lacks foundation; relevance.

25 JUDGE MELLOY: Yeah, what's the

1 relevance of this?

2 **MS. DALRYMPLE:** The relevance, Your
3 Honor, is the fact that I believe his answer will show
4 that Texas has significantly more resources than New
5 Mexico does to provide for adequate administration of
6 its water resources.

7 **JUDGE MELLOY:** I think that probably
8 could be stipulated. It's, I think, at least -- at
9 least eight times as big a state population wise. I
10 think it's about 30 million to 3 million, isn't it?

11 **MS. DALRYMPLE:** Yes. It's something
12 like that. Okay, Your Honor. I'll withdraw that
13 question. Thank you. I have no more, Mr. Mills.

14 **JUDGE MELLOY:** Ms. Barfield?

15 **MS. BARFIELD:** Yes.

16 CROSS-EXAMINATION

17 BY MS. BARFIELD:

18 **Q.** Good afternoon. Is it afternoon? It is,
19 **Mr. Mills.**

20 **A.** It is here.

21 **Q.** So let me ask just a few cleanup questions
22 here. It's true that we just had a bit of
23 conversation about the PGMA, which I will short cite
24 as PGMA. Isn't that how TCEQ refers to that process,
25 the PGMA process?

1 A. That is our slang, yes.

2 Q. Okay. It's certainly easier than the acronym
3 so I'll use PGMA. So you've talked a bit about the
4 PGMA process, and you've talked a bit about the
5 creation of the GCID and counsel has been critical, it
6 appears, of the lack of recommendation of GCD in the
7 west Texas/El Paso area, but when -- as an agency of
8 the state, TCEQ effectively identified a concern in
9 the West Texas area, performed an investigation, and
10 on the basis of that investigation, made a
11 recommendation to the State of Texas that a GCED -- a
12 GCD was not the right solution for that geographic
13 area; isn't that correct?

14 A. That is correct.

15 Q. Okay. And TCEQ did so regardless of whether
16 or not the specific landholders, the specific
17 stakeholders, the City of El Paso wanted that process
18 to happen or didn't want that process to happen; isn't
19 that also true?

20 A. That is true.

21 Q. Okay. And as I understand it, the TCEQ
22 recommendation not to perform -- not to form a GCD in
23 that West Texas area, that was due to the
24 international implication that you described, which is
25 an area completely outside of the control of the Texas

1 legislature; isn't that true?

2 A. That is true.

3 Q. Okay. And the international implication that
4 you describe, that was involving the issue, which --
5 which that was in the PGMA report that we referred to
6 multiple times today, but that was involving the issue
7 of groundwater pumping across the border in Mexico in
8 Juarez involving the Hueco Bolson aquifer; is that
9 right?

10 A. That's my understanding, yes, ma'am.

11 Q. Okay. And -- and as far as you know and from
12 your role at TCEQ for a number of years now, Texas
13 would have no authority to regulate pumping in the
14 Juarez, Mexico area; isn't that true?

15 A. We do not.

16 Q. Okay. So I want to talk to you really
17 quickly. I think there's been some maybe muddiness
18 with the identification of the geographic area of the
19 PGMA that was, in fact, designated in the West
20 Texas/El Paso area, as well as the geographic area of
21 the investigation that surrounded that PGMA
22 designation. Now, as you understand it as a TCEQ
23 representative, the investigation that was performed
24 was directed to both the Mesilla Bolson and the Hueco
25 Bolson aquifers; is that right?

1 A. That's correct.

2 Q. Okay. But ultimately, only the geographic
3 area of the Hueco Bolson aquifer was recommended by
4 TCEQ to be designated as a PGMA, not the Mesilla
5 Bolson area, right?

6 A. That's correct.

7 Q. Okay. You also mentioned several times the
8 data that was considered by more specifically the TCEQ
9 executive director in determining whether or not to
10 designate a geo -- a GCD in that area. Now, that data
11 is from Texas Water Development Board; is that true?

12 A. Yes, ma'am.

13 Q. Okay. I don't think counsel for New Mexico
14 asked you to describe the data, so could you please do
15 that for us and give us an idea of the substance, the
16 type of data that TCEQ received and considered from
17 the Texas Water Development Board?

18 A. Yes. We review and we consider the data
19 that's built into the state and regional water plans.
20 That includes supply data, use data, projection data,
21 population projection data. We consider all of that.
22 We consider the data that Texas Water Development
23 Board develops in their groundwater availability
24 modeling programs. It's some kind of indication on
25 what might be available for pumpage in certain areas

1 or in areas that we're looking at. And then the joint
2 groundwater conservation district planning process, we
3 also would look at data that might get generated or
4 developed in that process, as well.

5 Q. All right. Now, is it true that TCEQ takes
6 an active role in keeping an eye on that sort of data
7 in the statistics in terms of all this data that's
8 publicly available and collected and provided by the
9 Water Development Board?

10 A. Yes, we do. We look at it on an annual
11 basis, and we -- the executive director of TCEQ and
12 the executive administrator of Texas Water Development
13 Board meet annually to discuss that data.

14 Q. All right. And if TCEQ notes something in
15 this sort of watchdog position that it's in, it's
16 potentially of a concern, the executive director has
17 authority to take investigative action, right?

18 A. That's correct.

19 Q. Okay. And that's, in fact, what happened
20 when the PGMA process was initiated in the West Texas
21 area, resulting in a full investigation and a
22 recommendation, correct?

23 A. Correct.

24 Q. All right. Counsel for New Mexico mentioned
25 well drilling records at one point, but we didn't get

1 **into any specifics about that, so what Texas state**
2 **agency monitors well drilling?**

3 A. The Texas Department of Licensing and
4 Registration's water well drillers and pump installers
5 program has requirements for the licensure of water
6 well drillers and also have water well construction
7 standards, as well.

8 **Q. Okay. And do folks in the State of Texas, do**
9 **they have an obligation to affirmatively file reports**
10 **on well drilling?**

11 A. Yes. What well drillers are required to file
12 state well report, and TCEQ is, again, recipient of
13 those reports.

14 **Q. Okay. How long do they have to file those**
15 **reports, if you know, in the State of Texas?**

16 A. My understanding since the -- since the early
17 part of the '60s.

18 **Q. All right. Now, is that type of information**
19 **available publicly online?**

20 A. Yes. Around 2003, we worked with the
21 Department of Licensing and Regulation and with the
22 Texas Water Development Board so that licensed water
23 well drillers that wanted to could file their state
24 well reports online. So pretty much everything that
25 comes in through that process is available on the

1 Texas Water Development Board's groundwater viewer.
2 We still get a handful of -- of hard copy. Texas
3 Department of Licensing and Regulation collects those
4 for us. TCEQ for all of the older wells, older than
5 2003, has a -- a water well driller viewer online, and
6 you can pull that information up. And then we add the
7 new stuff in that doesn't -- that comes in.

8 Q. All right. And that includes information or
9 identification of plugged wells versus active wells;
10 is that true?

11 A. That information is in there, yes.

12 Q. Okay. So anyone can see in a very
13 transparent way all of the well reports in the State
14 of Texas, as you described, since the '60s online; is
15 that right?

16 A. That's correct.

17 Q. Okay. I want to bring your attention to
18 another issue. You had an opportunity, as I
19 understand it, to read at least portions of the trial
20 testimony of Mr. Jesus Reyes; is that right?

21 A. Yes, ma'am.

22 Q. Okay. There was a discussion during portions
23 of that trial testimony regarding TCEQ and its
24 interaction or actions with respect to either the
25 Compact or the Rio Grande Project. And I don't want

1 to bring up that testimony, but just as a subject, do
2 you generally recall that subject being addressed?

3 A. Yes. In general, yes.

4 Q. Okay. So I want to -- I want to clarify a
5 few things. Other than administrative functions like
6 processing invoices, for example, TCEQ does not have a
7 function in the oversight of the Rio Grande Compact;
8 is that right?

9 A. That is correct.

10 Q. Okay. And TCEQ is not part of Compact
11 accounting; is that also right?

12 A. That's correct.

13 Q. Okay. And it also has no role in monitoring
14 Compact apportionments, right?

15 A. That is correct.

16 Q. Okay. And are you familiar generally with
17 what's known as the Rio Grande Project?

18 A. In general, yes, ma'am.

19 Q. Okay. And do you understand very generally
20 on very basic level that the Rio Grande Project
21 operates to deliver Project water to beneficiaries at
22 the Project?

23 A. Yes, ma'am.

24 Q. Okay. Does TCEQ have any role in Rio Grande
25 Project operations?

1 A. No, ma'am.

2 Q. Okay. And to your knowledge, is there any
3 role of any other Texas agency in the Rio Grande
4 Project operations?

5 A. Not any other agency. That's the
6 responsibility of Texas' Rio Grande Compact
7 Commissioner.

8 Q. All right. So, you know, on that note, is it
9 fair to say that TCEQ doesn't have the power to
10 intervene in Rio Grande Project operations or Compact
11 accounting or Compact apportionments?

12 A. That's fair to say.

13 Q. Okay. All right. Now, as -- as a former,
14 not so long ago assistant director of the Water
15 Availability Division for TCEQ, as far as you know and
16 to the best of your knowledge, has TCEQ ever received
17 any notice from the State of New Mexico or any
18 communication from the State of New Mexico that
19 suggested an adverse impact in New Mexico as a result
20 of any groundwater pumping in the State of Texas?

21 A. I'm not aware of any.

22 Q. Okay. And in a similar vein, are you aware
23 of any -- whether TCEQ has been given any independent
24 evidence to support such an adverse impact, as
25 suggested by New Mexico, of groundwater pumping in the

1 Hueco?

2 A. I'm not aware of any information like that.

3 MS. BARFIELD: That's all the questions
4 I have, Your Honor. You're on mute.

5 JUDGE MELLOY: Yeah, just a second.
6 Before you start, Ms. Najjar, is anybody else having
7 trouble with the realtime? Mine's --

8 MS. NAJJAR: Mine's frozen.

9 MS. BARFIELD: Mine just froze.

10 MS. DALRYMPLE: Mine's been frozen, and
11 I didn't realize it.

12 JUDGE MELLOY: Do you need to reboot,
13 Heather?

14 (Discussion off the record.)

15 JUDGE MELLOY: Ms. Najjar, do you have
16 anything?

17 MS. NAJJAR: No, we have no questions.

18 JUDGE MELLOY: Ms. Dalrymple, do you
19 have any redirect?

20 MS. DALRYMPLE: I have just one
21 question, Your Honor, if I may.

22 JUDGE MELLOY: Okay.

23 MS. DALRYMPLE: Thank you.
24
25

REDIRECT EXAMINATION

BY MS. DALRYMPLE:

Q. Mr. Mills, you were talking about the well-drilling reports that are available going back to 1964 on the Website in response to some questions from Ms. Barfield. Those reports do not reflect to any pumping or groundwater use information; is that correct?

A. There may be a little bit of, you know, pump size, things like that in the well report, but there wouldn't be any actual pumpage data.

Q. Right. And unless they're trying to drill a well in a groundwater conservation district, there is no requirement that the driller even seek approval before drilling a well, correct? Was that question too convoluted?

A. You know, the -- I just -- I can -- I can answer that if a landowner wants to drill a water well or a municipality or whoever it is, they have to use a licensed water well driller. If they're in a groundwater conservation district, they would have to apply to get a permit to drill that well. Outside of the groundwater conservation district, they would not have to apply for a permit.

MS. DALRYMPLE: Thank you very much,

1 Mr. Mills. I have no further questions.

2 JUDGE MELLOY: Anything further from
3 Mr. Mills? If not, Mr. Mills, you're excused. We
4 appreciate your testimony. You're free to go.

5 THE WITNESS: Thank you, Your Honor.

6 JUDGE MELLOY: Why don't we -- it's a
7 little early, but why don't we take our break, and,
8 Heather, maybe you can reboot. It's still frozen on
9 my end so -- is everybody else still frozen?

10 MS. DALRYMPLE: Yes, Your Honor.

11 MS. BARFIELD: Yes.

12 JUDGE MELLOY: So maybe why don't we
13 take 20 minutes at this point, and we can make the
14 change on witnesses and maybe you can reboot your
15 system and see if that'll help.

16 MS. BARFIELD: Thank you, Your Honor.

17 MS. DALRYMPLE: Thank you, Your Honor.

18 (Recess.)

19 JUDGE MELLOY: All right. We're back on
20 the record in Original No. 141. It appears that the
21 same attorneys who were present for the prior witness,
22 Mr. Mills, is also here for Mr. French. Before I
23 swear Mr. French, the New Mexico Demo 42 is not
24 objected to as to this witness, and so it will be
25 admitted pursuant to our prior agreement concerning

1 the exhibits. Mr. French, I need to swear you, so
2 would you raise your right hand, please? Do you swear
3 or affirm that the testimony you're about to give will
4 be the truth, the whole truth, and nothing but the
5 truth? I didn't hear that. I don't know if that's my
6 system or --

7 **THE REPORTER:** I didn't hear it either.

8 **MS. BARFIELD:** We don't have any audio.

9 **JUDGE MELLOY:** Why don't you say
10 something, "test test," Mr. French. Okay. We don't
11 have audio.

12 **MS. BARFIELD:** I'm going to get in
13 contact with the AG's office there and send a tech
14 person in.

15 **THE WITNESS:** Testing. Can you hear me
16 now?

17 **JUDGE MELLOY:** Yes.

18 **MS. BARFIELD:** Yes.

19 **JUDGE MELLOY:** You do need to turn the
20 camera on, though. There we go. All right.

21 **THE WITNESS:** Sorry about that.

22 **JUDGE MELLOY:** I administered the oath,
23 and I think you -- I think I heard you say -- or
24 mouth "I do." Is that correct, Mr. French?

25 **THE WITNESS:** That is correct, yes.

1 **JUDGE MELLOY:** All right. For the
2 record, would you state your name and spell it,
3 please?

4 **THE WITNESS:** My name is Larry French,
5 L-A-R-R-Y, F-R-E-N-C-H.

6 **JUDGE MELLOY:** All right. Mr. French, I
7 need to go over a couple things with you that we set
8 out the ground rules for each of the witnesses.
9 First, is there anyone in the room with you?

10 **THE WITNESS:** No.

11 **JUDGE MELLOY:** Do you have any documents
12 available to you other than the exhibit book?

13 **THE WITNESS:** No.

14 **JUDGE MELLOY:** And I need to advise you
15 that you're not allowed to have any communication
16 devices, including iPads, iPhones, laptops, et cetera,
17 that have any communication facilities such as texting
18 or e-mail and so on. Do you understand?

19 **THE WITNESS:** I do, yes.

20 **JUDGE MELLOY:** All right. And I think I
21 just said we can admit Demo No. 42 with this witness.
22 So unless there's anything further, you can proceed,
23 Ms. Dalrymple. You're on mute.

24 **MS. DALRYMPLE:** Apologies.

25 **JUDGE MELLOY:** Go ahead.

1 LARRY FRENCH,
2 having been first duly sworn, testified as follows:

3 DIRECT EXAMINATION

4 BY MS. DALRYMPLE:

5 Q. Good afternoon, Mr. French.

6 A. Good afternoon.

7 Q. My name is Shelly Dalrymple. I'm an attorney
8 for the State of New Mexico. I'm going to talk to you
9 a little bit about your work with the Texas Water
10 Development Board. Sir, can you tell us what is your
11 current professional position?

12 A. Yes. I am the director of the groundwater
13 division at the Texas Water Development Board.

14 Q. Okay. I'm glad to hear that, that you
15 haven't changed your position. Mr. Mills threw me
16 with that. Did you have an opportunity to watch the
17 testimony of Mr. Mills?

18 A. Yes, I did.

19 Q. Thank you. Could you tell us, what is the
20 Texas Water Development Board?

21 A. The water development board is a state
22 agency. That is a resource agency, not a regulatory
23 agency, and it is charged with the responsible
24 conservation and development of water resources
25 throughout the state.

1 Q. Thank you. Mr. French, the board members are
2 appointed by the Texas governor with the advice and
3 consent of the senate; is that correct?

4 A. That's correct.

5 Q. And when did you start with Texas Water
6 Development Board? I'm going to call that the Board.
7 Is that all right if we -- will we understand what I'm
8 talking about?

9 A. Yes. That's fine.

10 Q. Okay. When did you start with the Board?

11 A. I started December of 2011.

12 Q. And have you been in the same position as
13 director since that time?

14 A. Yes, I have.

15 Q. And what does the groundwater resources
16 division do?

17 A. The groundwater resources division does
18 several -- several things. We monitor groundwater
19 conditions across the state, both from water level
20 measurements and water quality. We also develop,
21 maintain, and use groundwater models. We also provide
22 technical assistance to both the public and
23 groundwater conservation districts and then finally,
24 we have a department that is charged with the
25 characterization of brackish groundwater resources

1 around the state.

2 Q. I'm sorry. The characterization of what?

3 A. Of brackish groundwater resources.

4 Q. Thank you. The groundwater division has no
5 enforcement authority, though; is that correct?

6 A. That's correct.

7 Q. Just to be clear, the Texas water development
8 board of which the groundwater division is a division
9 has no responsibilities to ensure the efficient use of
10 groundwater; is that correct?

11 A. That's correct.

12 Q. Or to ensure that withdrawals of groundwater
13 do not affect surface water?

14 A. That's correct.

15 Q. Or to regulate groundwater wells they're
16 pumping?

17 A. Right. We do not regulate.

18 Q. Right. And those types of administration to
19 the extent they are done are done at the groundwater
20 conservation district level; is that correct?

21 A. That's correct. The groundwater conservation
22 districts are the preferred management of resources --
23 groundwater resources.

24 Q. In Texas?

25 A. Yes. In Texas.

1 Q. Thank you. We might talk a little bit about
2 those later on, but I wanted to talk a little bit
3 about the planning functions of the Board and -- and
4 your division in that. Your department is responsible
5 for Texas Regional Water Plans; is that correct?

6 A. Our division is not responsible. There's a
7 separate division within the Board that does -- is
8 responsible for the planning aspects of the agency.

9 Q. You provide support to those planning areas
10 to prepare the regional plans?

11 A. We can provide support such as data and
12 information that they use, yes.

13 Q. Okay. Thank you. These regional water plans
14 feed up to the state water plan; is that a fair
15 statement?

16 A. Yes, it is.

17 Q. Okay. And the Board maintains all the Texas
18 state water plans and regional plans on its Website;
19 is that correct?

20 A. Yes, we do.

21 Q. And you, yourself, refer people, the public,
22 and professionals to the Website to obtain board
23 information and data; is that correct?

24 A. Yes. We do that.

25 Q. Can we assume that anything posted on the

1 Website has been properly vetted?

2 A. Yes.

3 Q. And you as the division director --

4 JUDGE MELLOY: Excuse me a second, Ms.
5 Dalrymple. Just so -- I'll check with everybody else.
6 My realtime is back up. Does everybody have it back
7 up? Anybody not have it.

8 MS. DALRYMPLE: No, Your Honor. I do
9 not.

10 MS. BARFIELD: I have it.

11 MS. DALRYMPLE: I do not have it.

12 THE REPORTER: If you don't have it up,
13 you may need to try to manually reconnect.

14 MS. DALRYMPLE: We'll work on that.
15 Apologies, Mr. French. We are all technologically
16 very dependent. I'm going to continue.

17 JUDGE MELLOY: Go ahead.

18 MS. DALRYMPLE: I'll ask Heather to read
19 something back if I need to. Thank you.

20 Q. (BY MS. DALRYMPLE) Can you tell us,
21 Mr. French, what needs to be included in a regional
22 water plan?

23 A. A regional water plan includes information
24 regarding the -- the supplies -- water supplies in a
25 region. Also describes the demands that -- for water

1 in that region that would be related to population
2 growth and projections and so forth, and it also
3 identifies water needs and strategies to address those
4 needs.

5 Q. Thank you. Mr. French, in assessing supplies
6 and demands, is that a data-driven exercise by the
7 regional planning groups that prepare their reports?

8 A. Yes. That is -- I would describe it as data
9 driven information that's available on the local and
10 regional level.

11 Q. Thank you. However, with regard to these
12 regional plans, is it fair to say that the Board does
13 not have authority to enforce a regional plan?

14 A. A regional plan is simply a plan. Yes, we do
15 not enforce a plan.

16 Q. Thank you.

17 MS. DALRYMPLE: Ms. Ferguson, could you
18 please pull up New Mexico Demo 44?

19 Q. (BY MS. DALRYMPLE) Mr. French, can you see
20 this document that's been pulled up?

21 A. Yes, I can.

22 Q. Do you recognize that document?

23 A. Yes, I do.

24 Q. And what is that document?

25 A. It's a one-page description of the Hueco and

1 Mesilla Bolson aquifer. I believe it was in one of
2 our state water plans.

3 Q. Right. Actually just so the record can be
4 clear, it's the 2007 state water plan. From being on
5 your Website, Mr. French, it looks like the format for
6 the state water plans has changed quite a bit through
7 the years. Do you agree?

8 A. Yes. The state water plan is moved more and
9 more to a online presence, although there is a hard
10 copy available, but it's -- much of the information is
11 interactive now.

12 Q. Thank you. I would like to just pull up the
13 little map on the upper left. Just to make sure we
14 all know what we're talking about, this is a tiny map
15 of the groundwater management areas in Texas, which we
16 discussed with Mr. Mills, and can you agree that the
17 area we're discussing, the El Paso area, is
18 Groundwater Management 5?

19 A. Yes, that's correct.

20 Q. Okay.

21 MS. DALRYMPLE: Let's not worry about
22 that. Could we go to the other map?

23 Q. (BY MS. DALRYMPLE) Regional planning areas.
24 This map, sir, I believe sets out the regional
25 planning areas that Texas has determined, and would

1 that be the Board that has designated these regional
2 planning areas?

3 A. Yes. The Board did designate those areas.

4 Q. Okay. And so the area is -- is quite a bit
5 different. Region E, I think it's called, takes over
6 the Texas Panhandle and down into -- is there a word
7 for that dip at the -- at Texas?

8 A. We call it the Big Bend area.

9 Q. Okay. So that would be Region E that
10 encompasses the El Paso area, correct?

11 A. Yes.

12 Q. And isn't that area also called more
13 informally the far west Texas regional planning area?

14 A. Yes, it is.

15 Q. You've seen it called that?

16 A. Yes.

17 Q. Okay. I'm going to pull up -- actually, no,
18 let me go to some language in there.

19 MS. DALRYMPLE: Ms. Ferguson, would you,
20 yeah, make that language big, which is not a great way
21 to say it.

22 Q. (BY MS. DALRYMPLE) This -- this -- this blurb
23 from the state water plan, sir, talks about the Hueco
24 Bolson, and it is one of the major aquifers in Texas;
25 is that correct?

1 A. Yes. That's correct.

2 Q. And if you look about halfway down in the --
3 towards the end of the sentence, it says, "The Hueco
4 Bolson is the principal aquifer for the El Paso area
5 and Ciudad Juarez in Mexico. Nearly 90 percent of the
6 water pumped from the Mesilla and the Hueco Bolsons in
7 Texas is used for public supply. Several hundred feet
8 of water level decline have occurred, primarily due to
9 municipal pumping in the Hueco Bolson." It's not
10 clear in that statement, but do you presume that means
11 the municipal pumping of both Juarez and El Paso, City
12 of El Paso?

13 MS. BARFIELD: The question as phrased
14 calls for speculation. She asked him to presume.

15 JUDGE MELLOY: Rephrase your question.

16 MS. DALRYMPLE: Actually, I'll move on.

17 Q. (BY MS. DALRYMPLE) The next sentence says
18 that, "The Far West Texas Regional Water Planning
19 Group recommends the conjunctive use of water from the
20 Rio Grande with groundwater from the Hueco Bolsons
21 aquifer ." Can you -- are you familiar with the term
22 conjunctive use, Mr. French?

23 A. Yes, I am.

24 Q. Can you tell us what that means?

25 A. That refers to the coordinated use of both

1 groundwater and surface water to meet water supply
2 needs.

3 Q. Addressing conjunctive use is one of the
4 mandatory items in the management plan for a GCD, a
5 groundwater conservation district; is that correct?

6 A. That is one of the items that they are --
7 they are to consider, yes.

8 Q. Okay. Thank you.

9 MS. DALRYMPLE: Could we please pull up
10 No. 818.

11 Q. (BY MS. DALRYMPLE) Mr. French, are you able
12 to see this document that's New Mexico 818?

13 A. Yes, I can.

14 Q. Do you recognize this document?

15 A. Yes, I do.

16 Q. Can you tell us what it is?

17 A. This is the latest edition of the Far West
18 Texas Regional Water Plan.

19 Q. Is this posted on the Website?

20 A. I believe that it is.

21 Q. Okay. I think that's where I got it, sir.

22 In addition to -- looking at this little map, in
23 addition to El Paso County, it includes at least of
24 the counties along the border with Mexico, it includes
25 Hudspeth and Presidio and Brewster; is that correct?

1 A. Yes. And also Terrell County, as well.

2 Q. Right. Thank you. Thank you. There are --

3 MS. DALRYMPLE: Let's go to Page 12,
4 please. We're going to look a little bit at this
5 report.

6 Q. (BY MS. DALRYMPLE) I'm sorry. I was learning
7 what those counties were so we were looking at that
8 listing, and if we blow up that paragraph just above
9 the buttons, please -- yeah, that one. This says
10 that, "The Texas legislature has established a process
11 for local management of groundwater resources through
12 groundwater conservation districts." These are the
13 districts we've been discussing, correct?

14 A. Yes.

15 Q. And they are charged with managing
16 groundwater; is that correct?

17 A. Yes, that's correct.

18 Q. And in this Far West Texas Region, or Region
19 E, there are actually six groundwater conservation
20 districts; is that correct?

21 A. Yes, that is correct.

22 Q. But there is not one in El Paso County; is
23 that correct?

24 A. That is also correct.

25 MS. DALRYMPLE: Okay. Ms. Ferguson,

1 could we go to Page 11, the second full paragraph.

2 Q. (BY MS. DALRYMPLE) Looking at Page 11 of this
3 report, the second sentence says, "High concentrations
4 of TDS." Mr. French, do you know what TDS is? Are
5 you familiar with the term?

6 A. Yes, I am.

7 Q. And does it, in general, refer to salinity of
8 water?

9 A. Yes. That would be another way to express
10 that, yes.

11 Q. Thank you. "High concentrations of TDS are
12 primarily the result of the lack of sufficient
13 recharge and restricted circulation." When it talks
14 about lack of sufficient recharge, are you able to
15 tell us what that means based on your work with these
16 regional planning groups and hydrology?

17 A. That would refer to Far West Texas Region is
18 an arid region with the low precipitation rates and,
19 therefore, low recharge. So that's what that would
20 refer to.

21 Q. You've just said the recharge refers to low
22 precipitation. Would it also refer to surface water
23 recharge to the aquifer?

24 A. It could in that case.

25 Q. Okay. Thank you. Let's go down a little

1 further where it says -- third paragraph. Yes, thank
2 you. The third paragraph says, "Beneath El Paso and
3 Ciudad Juarez, the average concentration of dissolved
4 solids in the Hueco Bolson aquifer has increased as
5 the fresher water in the aquifer is being consumed."
6 Mr. French, are you aware of what is consuming the
7 fresher water in the aquifer?

8 A. That would be groundwater pumping to supply
9 water needs would be consuming that fresher water.

10 Q. Thank you.

11 MS. DALRYMPLE: Could we go to Page 9?
12 At the bottom third of the page.

13 Q. (BY MS. DALRYMPLE) This is the last piece
14 we're going to look at in this report, sir. As to the
15 projects, the Far West planning group proposes for
16 municipal and industrial users in the region, the
17 report says, "To adequately consider the unique
18 challenges faced by municipal and industrial water
19 users in El Paso County, a conjunctive approach was
20 used to establish feasible strategies capable of
21 identifying sufficient future supplies." Again, we're
22 going back to that conjunctive use meaning the mixed
23 use of groundwater and surface water; is that correct?

24 A. Yes.

25 Q. Okay. And among the recommended projects is

1 included expansion of existing groundwater use. Do
2 you know, does the report -- are you familiar with
3 this report or any report where they -- the Far West
4 Planning Group discusses what groundwater it intends
5 to expand into?

6 A. I am not familiar with the report enough to
7 know what -- what specific expansion they're talking
8 about.

9 MS. DALRYMPLE: I think there's a little
10 bit below this, Ms. Ferguson. No? Okay. Thank you.

11 Q. (BY MS. DALRYMPLE) One of the things it also
12 mentioned up there, and I just wanted to ask you
13 about, sir, something called ASR. Do you know what
14 that is?

15 A. Yes, I do.

16 Q. Can you tell us?

17 A. Yes. It's an acronym. ASR stands for
18 aquifer storage and recovery. It's a strategy that --
19 that involves injecting water into an aquifer for
20 storage and then retrieving it or pumping back out
21 when it is needed for use.

22 Q. Texas is currently in the process of studying
23 ASR, correct?

24 A. That is true, yes.

25 Q. Thank you. Mr. French, I want to talk to you

1 a little bit about one of your departments in the
2 groundwater resources division, and that's called the
3 groundwater monitoring department. Can you tell me
4 what is the function or what are the duties of that --
5 that department?

6 A. Sure. The -- that department is charged with
7 -- with collecting groundwater level measurements
8 throughout the state. They also collect and analyze
9 groundwater quality samples in the state, and we also
10 install and maintain a network of what we call
11 recorder wells throughout the state to provide near
12 realtime measurements of water levels.

13 Q. Right. And you mentioned these recorder
14 wells. They're a type of monitoring well, correct?

15 A. Yes. They're a monitoring well that's
16 instrumented with special sensors that -- that can
17 measure and then record almost realtime water level
18 changes and then provide that information to our
19 agency via satellite link. So -- so the public can
20 see that information nearly realtime.

21 Q. Public -- you said it's on the Website,
22 right?

23 A. It is, yes, correct, on the Website.

24 Q. Okay. Sir, this -- these recorder devices,
25 is that also known as a continuous water level

1 recorder?

2 A. Yes.

3 Q. Okay.

4 MS. DALRYMPLE: Could you please pull up
5 French Larry Demo 2, please?

6 Q. (BY MS. DALRYMPLE) So, Mr. French, is it true
7 that Page 2, I think -- Mr. French, did -- are you
8 familiar with this document?

9 A. Yes, I am.

10 Q. Did you create this document?

11 A. I did or -- or someone working with me
12 created it. I don't recall.

13 Q. And did you obtain the information on this
14 document, even the pictures from the Website?

15 A. The Website or from our staff files of our
16 work.

17 Q. Okay. And, Mr. French, if we look over on
18 the very far left again in the panhandle, there are
19 only two of these continuous water level recorders in
20 El Paso County; is that correct?

21 A. That's correct.

22 Q. Now, on the Website, on the Board Website,
23 this is identified as state well No. 49 --

24 MS. DALRYMPLE: Could you please pull up
25 -- yeah, thank you.

1 Q. (BY MS. DALRYMPLE) -- 4904476. Did you know
2 that?

3 A. No, I didn't have that number memorized for
4 sure.

5 Q. Yeah, I'm sure you didn't. And, actually, I
6 may have been confusing. You've got two dots way out
7 there on the panhandle. One's red, and one's blue,
8 and I believe the red one means, if we look at the
9 legend, that that's a cooperater well with the USGS;
10 is that correct?

11 A. That is correct.

12 Q. And what does cooperater mean in your world?

13 A. That's a term we use to describe other
14 organizations that we cooperate and share data with
15 so, for example, the -- in this case, the U.S.
16 Geological Survey. In much of the other parts of the
17 state, it'd be individual groundwater conservation
18 districts.

19 Q. Thank you.

20 MS. DALRYMPLE: Ms. Ferguson, could you
21 pull up New Mexico Demo 48?

22 Q. (BY MS. DALRYMPLE) Now, Mr. French, you won't
23 recognize the document because it's a screenshot, but
24 do you recognize this Website?

25 A. Yes, I do.

1 Q. And is this on the -- on the Website
2 maintained by the Board?

3 A. Yes, it is. The water data for Texas.

4 Q. Thank you. And does it accurately reflect
5 the TWDB board information on the state Website?

6 A. Yes, it does.

7 Q. Okay. Thank you. And are you able to tell
8 -- again, you said you didn't have the number
9 memorized, but are you able to confirm that this is
10 that very far left USGS cooperator well?

11 A. Yes. In the description on the page, it does
12 identify the entity or such cooperator as the U.S.
13 Geological Survey.

14 Q. Okay. And then --

15 MS. DALRYMPLE: Yeah, thank you. Could
16 you please expand that?

17 Q. (BY MS. DALRYMPLE) This well information
18 indicates that the well is in El Paso, correct?

19 A. Correct.

20 Q. And then it has a period of record from
21 August 7, 2018, and then to whatever date I printed
22 this off. It's still current as of today, correct?

23 A. That's correct.

24 Q. Okay. And in the aquifer formation it is
25 measuring is the Mesilla Bolson, correct?

1 A. Yes. That's correct.

2 **MS. DALRYMPLE:** I'm going to ask Ms.
3 Ferguson to pull up what we call Demo 46 and put it
4 next to it. Are you able to do that, to put them next
5 to each other?

6 **Q. (BY MS. DALRYMPLE)** Okay. Sir, we've pulled
7 up New Mexico Demo 46 on the left, and I will tell you
8 that this is also a screen shot, but of the USGS
9 Website, and I believe this to be the same well. Are
10 you familiar with the USGS Website?

11 A. Generally, yes.

12 **Q.** You are aware that it maintains well
13 information on it, correct?

14 A. Correct.

15 **Q.** Then if we look at the -- the -- the name up
16 on Exhibit 46 in the middle, it says, JL-49-04-476,
17 which corresponds to the name -- the Texas name for
18 the well; is that correct?

19 A. Yes, that's correct.

20 **Q.** Yeah. The other thing that I think I
21 understand is that Texas employs a naming convention
22 for your wells where the first number relates to the
23 Texas region it's in; is that correct?

24 A. I don't recall exactly it relates to certain
25 numbers. It references them geographically.

1 Q. Okay. I think 49 refers to far west or the
2 El Paso area out by the panhandle, correct?

3 A. I believe so.

4 Q. Okay.

5 MS. DALRYMPLE: Ms. Ferguson, could you
6 scroll down a little bit on 46? Yeah.

7 Q. (BY MS. DALRYMPLE) So I'd like you to look at
8 these two. When we look at the Demo 48, which is the
9 Texas Website, you can see that the period of record
10 for which it shows the graph --

11 MS. DALRYMPLE: April, if you could do
12 that, the other one, too.

13 Q. (BY MS. DALRYMPLE) -- you can see that it
14 goes back to September, 2018, but the USGS site has
15 data from that well back to 2008. Do you see that?

16 A. I do, yes.

17 Q. And is that because -- well, why is that?
18 Did you just affiliate on this well in 2008 -- '18?

19 A. I'm not sure for the reason why that's so,
20 but yes, I do cover different periods of time.

21 Q. Okay. And then if we compare the -- the
22 Texas hydrograph -- is this a hydrograph?

23 A. Yes.

24 Q. Thank you. -- to the one provided by the
25 USGS, the one from the USGS goes back -- I can't do

1 the math -- 12 years -- 12 or 13 years, and so you get
2 a -- a different view of -- of what a trend might look
3 like over those years, and -- and if you look at the
4 USGS hydrograph, you will see that there is a decline
5 in the groundwater level. Can you agree with that?

6 MS. BARFIELD: Objection, Your Honor.
7 Asking this witness to perform a comparison of two
8 different hydrographs in the course of his testimony
9 as we sit here is expert testimony.

10 MS. DALRYMPLE: I'll withdraw the
11 question. And, Your Honor, you're off. I'm sorry.
12 Your mic is off. I spoke over you.

13 JUDGE MELLOY: Go ahead. Go ahead. You
14 said you're withdrawing the question. Go ahead.

15 MS. DALRYMPLE: I will withdraw that.

16 Q. (BY MS. DALRYMPLE) I would ask instead,
17 Mr. French, is looking only at the USGS hydrograph,
18 based on your experience for years in the water
19 industry, can you tell me, does this show a decline in
20 the depth-to-water level from that well?

21 MS. BARFIELD: Objection, Your Honor.
22 Asking the witness to interpret this hydrograph from
23 the USGS Website calls for expert testimony.

24 JUDGE MELLOY: I'll overrule. Go ahead.
25 You can answer.

1 A. I see -- the hydrograph to me displays a
2 great deal of fluctuation in the water levels over
3 time.

4 Q. (BY MS. DALRYMPLE) Okay. And I think I've
5 been told before, Mr. French, that that fluctuation
6 that in your industry, you call that noise; is that
7 right?

8 A. Well, those are actual readings. That would
9 appear to be actual readings, so I would -- I would
10 say it's a reflection of -- of real readings that are
11 -- that have been measured or reported in that well.

12 Q. Okay. Thank you.

13 MS. DALRYMPLE: Ms. Ferguson, could we
14 go just to the USGS report? Wait, wait, wait.

15 Your Honor, I'm going to move to admit
16 New Mexico Demo 48.

17 JUDGE MELLOY: Ms. Barfield, what's your
18 position?

19 MS. BARFIELD: I don't have an
20 objection, Your Honor.

21 JUDGE MELLOY: Ms. Najjar?

22 MS. NAJJAR: No objection, Your Honor.

23 JUDGE MELLOY: All right. Exhibit 48 is
24 admitted.

25 MS. DALRYMPLE: Okay. Thank you.

1 **JUDGE MELLOY:** Excuse me. 48 is the New
2 Mexico graph.

3 **MS. DALRYMPLE:** Correct. Correct, Your
4 Honor.

5 Okay. We can take that one down, Ms.
6 Ferguson, and just focus on the USGS.

7 **Q. (BY MS. DALRYMPLE)** And if we scroll down a
8 little bit on this document, there's a -- a grid
9 there, daily depth to water level. This information
10 is provided by the USGS, and what that tells us, if --
11 if you agree with me, is that there are 33 water years
12 of record as to this well; is that correct?

13 **A.** That's what it says, yes.

14 **Q.** Yeah. And then on the far left, it says that
15 the minimum depth to water level was in 1986, and it
16 was 34.71 acre-feet -- feet, correct?

17 **A.** That's correct.

18 **MS. BARFIELD:** I'm just going to object
19 to the line of questions, Your Honor, that the
20 document speaks for itself. She can read the data and
21 ask him if it's correct, but I'm not sure that that's
22 relevant.

23 **JUDGE MELLOY:** Well, I'm also a little
24 bit concerned about this is not an admitted exhibit,
25 as I understand it, so I'm going to sustain the

1 objection.

2 **MS. DALRYMPLE:** Your Honor, I move to
3 admit New Mexico Demo 46. I think the witness has
4 established he is familiar with the material, and it
5 is the same well that Texas plots.

6 **JUDGE MELLOY:** Ms. Barfield?

7 **MS. BARFIELD:** Your Honor, I would
8 object to the admission of this particular
9 demonstrative exhibit. It is not from the Texas Water
10 Development Board Website. It is from the USGS
11 Website, seen for the first time during the testimony
12 of Ms. French today -- Mr. French today. Regardless
13 of whether he's familiar with the well itself. She's
14 also asking this witness to interpret data from a
15 demonstrative, which I think goes far beyond the
16 purpose and scope of a demonstrative.

17 **JUDGE MELLOY:** I'm going to sustain
18 that. Go ahead. Let's go onto a different exhibit.

19 **Q. (BY MS. DALRYMPLE)** Mr. French with regard to
20 --

21 **MS. DALRYMPLE:** Let's go back to the one
22 that was admitted, please.

23 **Q. (BY MS. DALRYMPLE)** With regard to this well,
24 I'm going to call it State Well 476, because those are
25 the last three numbers that well -- again, it is a

1 USGS cooperator well --

2 MS. DALRYMPLE: I don't want that.

3 Q. (BY MS. DALRYMPLE) -- is part of a -- is --
4 this well is one of the piezometers installed by the
5 USGS in the 1980s as part of the USGS Mesilla Basin
6 monitoring program, correct?

7 A. I don't personally know that. I don't have
8 that information myself.

9 Q. Let me ask you, sir, first of all, can you
10 tell us what a piezometer is?

11 A. A piezometer is a groundwater well that would
12 be capable of monitoring conditions within a specific
13 zone in an aquifer.

14 Q. Okay. You were a member of or you attended
15 the Mesilla Basin monitoring program meetings,
16 correct?

17 A. No, I've not attended those meetings.

18 Q. You are aware of that program, correct?

19 A. Not directly.

20 Q. In what sense were you aware of it?

21 MS. DALRYMPLE: Could you pull up New
22 Mexico 2249?

23 Q. (BY MS. DALRYMPLE) In what sense are you
24 aware of it?

25 A. Just looking at the various documents, I've

1 seen references to it, but I've not participated in
2 it.

3 **Q.** Okay. I've pulled up something to hopefully
4 refresh your recollection about this. Mr. French, can
5 you look way up at the top. Mr. French, do you know
6 who Erika Mancha is?

7 **A.** Yes, I do.

8 **Q.** Who is that?

9 **A.** She is the manager of the conservation and
10 innovative water department within our agency.

11 **Q.** Thank you.

12 **MS. DALRYMPLE:** Let's go down, April, to
13 that one with Mr. French. Nope, just to the bottom of
14 the page. Thank you.

15 **Q.** **(BY MS. DALRYMPLE)** And you are on this e-mail
16 trail, Mr. French, sending an e-mail to Mr. Dupnik.
17 Who is Mr. Dupnik?

18 **MS. BARFIELD:** Your Honor, I'm going to
19 object. This is not on the exhibit list. Counsel
20 purports to raise this or bring this document up to
21 refresh recollection. If counsel desires to do so,
22 she needs to refresh recollection. She's asking
23 questions about the document without refreshing
24 recollection.

25 **Q.** **(BY MS. DALRYMPLE)** I will take you right to

1 the point, Mr. French. This e-mail from you states,
2 if you look at the highlights, "The Mesilla Basin
3 monitoring program was established in 1987 to document
4 the hydrologic conditions of New Mexico's southernmost
5 Rio Grande rift basin." Does this -- seeing this
6 e-mail refresh your recollection about your
7 involvement in that program?

8 A. Well, I certainly wrote the e-mail, and I'm
9 pretty sure that I got that material from another
10 document that was summarizing the information for
11 Mr. Dupnik.

12 Q. Okay. The last bullet there talks about 190
13 wells were measured. Are you -- does this refresh
14 your recollection that, in fact, a series of -- three
15 groups of what I understand are called nests of
16 piezometers were placed at different locations in the
17 Mesilla Basin to monitor groundwater?

18 MS. BARFIELD: Your Honor, I object.
19 The purpose of this document being raised to refresh
20 recollection was not to refresh recollection on any
21 purported knowledge of wells relative to that last
22 question. This was a document that was not on the
23 direct examination list, and I object to her using it
24 in that manner.

25 JUDGE MELLOY: Well, I'll -- I'll let

1 the witness answer.

2 A. Could you repeat the question?

3 Q. (BY MS. DALRYMPLE) Well, my realtime is down
4 and I can't quite remember it, but let me just think
5 about it. The point I was going for is as far as your
6 memory of the Mesilla Basin monitoring program, do you
7 recall that the group installed three groups of
8 monitoring wells back in the, I think the '80s to --
9 to monitor developments of the Mesilla Bolson?

10 A. My understanding would be based on either
11 reading other reports or getting accounts from people
12 who have attended the meetings. Not -- not my direct
13 involvement.

14 Q. Thank you, sir. And just one last question
15 about that program, the Mesilla Basin Monitoring
16 Program. Do you recall who was involved in that
17 program or who sponsored it?

18 A. Are you talking about somebody from the water
19 development board?

20 Q. No. I was talking a little bit bigger. The
21 USGS was the sponsor, and there were cooperators. Do
22 you remember who else cooperated?

23 A. I do not, no.

24 Q. Okay. So with regard --

25 MS. DALRYMPLE: Ms. Ferguson, could we

1 pull up 48 again.

2 Q. (BY MS. DALRYMPLE) With regard to this well
3 in the El Paso -- in the El Paso Valley, has the Board
4 taken any action with the information gathered from
5 this piezometer?

6 A. No. We have not taken any action relative to
7 that piezometer.

8 Q. (BY MS. DALRYMPLE) Mr. French, the other
9 continuous water level recorder in the El Paso area is
10 the other dot on your map, and we're going to pull up
11 Demo 49, please.

12 Now, I believe that one -- I'm sorry. Do you
13 recognize this document, sir?

14 A. Yes, it's -- looks like a screenshot from our
15 water data for Texas Website recorder well program.

16 Q. And it accurately reflects the Board
17 information on the Texas state -- I'm sorry -- as to
18 this monitor well?

19 A. Yes, it does.

20 Q. Now, this well also is El Paso County under
21 well information, correct?

22 A. That's correct.

23 Q. And this period of record dates from December
24 5th of 2002 to, again, current, correct?

25 A. That's correct.

1 Q. But in this case, it is monitoring the Hueco
2 Bolson?

3 A. That's correct.

4 Q. Okay. Let's look at that.

5 MS. DALRYMPLE: Could you pull up the
6 hydrograph, please, make that bigger?

7 Q. (BY MS. DALRYMPLE) Now, this hydrograph,
8 which has data from about 2006 to 2020 clearly shows a
9 decline in water level. Do you agree?

10 A. I would agree --

11 MS. BARFIELD: Object, Your Honor, on
12 the basis of Ms. Dalrymple asking the witness to
13 interpret data is expert testimony.

14 JUDGE MELLOY: Overruled. You may
15 answer.

16 A. The hydrograph does show that water levels
17 have shown a -- a decrease over time.

18 Q. (BY MS. DALRYMPLE) Thank you. But a -- a --
19 data like this doesn't tell us why, right? It just
20 reflects a condition?

21 A. That's correct.

22 Q. Right. Mr. French, you've -- does -- do
23 members of your department rely on USGS data?

24 A. I'm not sure what -- what you mean by relying
25 on it. We certainly use that information, and we

1 provide it on our Website, but -- and we use it in
2 terms of developing our groundwater models and so
3 forth, so we use data from various sources including
4 USGS.

5 Q. Okay. You have no reason to doubt the
6 accuracy of USGS data, correct?

7 A. That's correct.

8 Q. Okay. I want to draw your attention on this
9 document that's up on your screen. On the way far
10 left, right up against the vertical access, there's a
11 series of -- of partial dots or not-colored-in dots
12 that show a -- a squiggle line. Do you agree? And
13 pardon my scientific language.

14 A. Yes, I see that.

15 Q. Okay. I would like to have Ms. Ferguson
16 bring up Demo 47 right next to it. And scroll down a
17 little bit, please. And, again, this is from the USGS
18 Website, and this, I believe, to be the same well, it
19 indicates the same location, and, again, it's got the
20 same naming convention. Do you see that?

21 A. Yes, I do.

22 Q. Can you confirm that that's the same well?

23 A. It -- yes. It does appear to be the same
24 well.

25 Q. And, sir, this period of record, though, is

1 different. This period of record is back to 1964.

2 Can you see that? Versus 2004 on the Texas Website?

3 A. Yes, I can.

4 MS. BARFIELD: Objection, Your Honor.

5 Now, the line of questioning appears to go into a
6 substantive evaluation of the USGS document. It's not
7 an admitted document in evidence. In fact, neither of
8 these are admitted documents in evidence. They are
9 both demonstratives, and for the same reasons that I
10 objected to the prior USGS document, I object to this
11 one, as well.

12 JUDGE MELLOY: Well, I'll -- I'll let
13 the witness -- you can go ahead and ask a few more
14 questions, but we'll see how far we get without
15 admitting it. Go ahead.

16 MS. DALRYMPLE: Thank you, Your Honor.

17 Q. (BY MS. DALRYMPLE) I actually had a very
18 specific question here. The Texas data starts in
19 about 2006, and the USGS data starts in about -- ends
20 in about 2006. Is that because -- do you enter an
21 agreement and take over the management of certain
22 monitoring wells or do you know how something like
23 that came about?

24 A. I'm not sure the reason for that -- that --
25 the change there. I'm not sure.

1 **Q.** **Okay.**

2 **MS. DALRYMPLE:** Could you take those
3 down and just put them side by side, please? I am
4 going to move to admit New Mexico Demonstrative 49,
5 which is a web shot of the Board's site of the well
6 that Mr. French has testified about.

7 **JUDGE MELLOY:** Any objection?

8 **MS. BARFIELD:** No objection to 49 for
9 demonstrative purposes only, of course.

10 **MS. DALRYMPLE:** And I am going to move
11 --

12 **JUDGE MELLOY:** Just a second.

13 **MS. DALRYMPLE:** I'm sorry.

14 **JUDGE MELLOY:** Ms. Najjar, any
15 objection?

16 **MS. NAJJAR:** No objection.

17 **JUDGE MELLOY:** 49 is admitted. Go
18 ahead.

19 **MS. DALRYMPLE:** I am going to move to
20 have New Mexico Demonstrative 47 also admitted.
21 Mr. French has testified to its reliability. It's a
22 recognized business and governmental source. I think
23 the standard for excluding a demonstrative is that
24 it's clearly misleading, and this reliable report is
25 obviously not clearly misleading.

1 **JUDGE MELLOY:** Any objection?

2 **MS. BARFIELD:** Yes, Your Honor. For the
3 same reasons that we objected -- or I objected,
4 rather, to the prior USGS report, I -- or Website
5 printout, I object to this one. Mr. French is seeing
6 this for the first time here today. His reliability I
7 don't think was specific to this particular printout.
8 He talked about USGS in general and that the Texas
9 Water Development Board often utilizes data from the
10 USGS. That doesn't make this particular printout from
11 the Website reliable. She's asked Mr. French to
12 testify about specific content, which goes outside the
13 realm of what a demonstrative should be used for in
14 terms of interpretation, and I just think it's wrong.

15 **MS. NAJJAR:** The United States joins the
16 objection.

17 **JUDGE MELLOY:** I'm going to sustain the
18 objection. I just don't think there's enough
19 foundation for -- for the admission of Demo Exhibit
20 47.

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

22 **Q. (BY MS. DALRYMPLE)** Mr. French, with regard to
23 --

24 **MS. DALRYMPLE:** Yeah, you can take that
25 one down. Thank you.

1 Q. (BY MS. DALRYMPLE) With regard to the
2 information for well -- and I'll use the last three
3 numbers again, Well No. 301, whether it be this
4 information or other information you may have
5 collected and that may be somewhere else on the
6 Website, has the Board taken any action with this
7 information that it's gathered?

8 A. Not to my knowledge, no action has been taken
9 with this information.

10 Q. Thank you. Mr. --

11 MS. DALRYMPLE: We can take that down,
12 Ms. Ferguson. Let's go -- would you mind pulling up
13 the Larry French Demo No. 1, Page 1? Thank you.

14 Q. (BY MS. DALRYMPLE) Mr. French, are you
15 familiar with this document?

16 A. Yes, I am.

17 Q. Did you create this document?

18 A. Actually, a member of my staff created the
19 document.

20 Q. Is it based on information from the Website
21 or something internal?

22 A. Yes. It's -- it's based on information that
23 -- that's developed -- that we have at the water
24 development board.

25 Q. Okay.

1 **MS. DALRYMPLE:** Ms. Ferguson, could you
2 blow up that far left -- yeah, thank you.

3 **Q.** **(BY MS. DALRYMPLE)** This -- and to Ms.
4 Barfield's point earlier, if we look at the very tip
5 of the panhandle, at the very far end is a cluster of
6 yellow dots and then there's a white space in between.
7 Do you see that before the dots pick up again?

8 **A.** Yes, I do.

9 **Q.** That's the Franklin Mountains, isn't it?

10 **A.** That's correct.

11 **Q.** Okay. And then those on the west side of the
12 Franklin Mountains, those are USGS wells, aren't they?

13 **A.** They're certainly wells that are monitored by
14 the USGS.

15 **Q.** Okay. And in a case like that where they're
16 wells monitored by the USGS, do they send you the data
17 or do you independently gather that data?

18 **A.** They -- they provide the data to us.

19 **Q.** And do they do that via Website or e-mails or
20 how do they give you that data?

21 **A.** You know, I'm not sure the vehicle in which
22 -- how they deliver that data, but it's -- I'm sure
23 it's electronic, either e-mail or -- or spreadsheets
24 or something like that.

25 **Q.** Okay. And because the wells on what is the

1 east side are also yellow, can I assume those are also
2 USGS wells?

3 A. Yes. Those -- those wells are also monitored
4 by the USGS.

5 Q. And then who -- who monitors or provides the
6 information for the blue wells, the blue-dot wells?

7 A. The blue-dot wells are those wells that are
8 monitored by the staff of the Water Development Board.

9 Q. Okay. And as to the USGS wells, we can
10 obtain historical data going back many, many years
11 from the USGS Website; is that correct?

12 A. I believe that would be correct.

13 Q. And as to the state-monitored wells, the blue
14 ones, are we able to get that information, also, from
15 the USGS?

16 A. I don't know if you can get it from USGS, but
17 certainly you can obtain that from the Water
18 Development Board.

19 Q. Do you know, sir, if any of those wells
20 belong to El Paso County Water Improvement District
21 No. 1, which we call EP No. 1 in this case?

22 A. I don't know offhand, but we would have a
23 record of who owns those wells on our Website.

24 Q. Okay. And what do you do with the data you
25 obtained from those monitoring wells?

1 A. Those data are -- are -- are incorporated
2 into our groundwater database and then available to
3 the general public for -- for their use.

4 Q. Thank you. You testified earlier,
5 **Mr. French, that another division of your department**
6 **monitors water quality; is that correct?**

7 A. Yeah. The groundwater monitoring department
8 handles that.

9 Q. You're aware of the complaints about TDS
10 levels, again, salinity, in the El Paso Region
11 Groundwater Management Area 5, and particularly in El
12 Paso County?

13 A. I have read descriptions of the concerns
14 about salinity, yes.

15 Q. And do you know if -- as a result of being
16 aware of those concerns, have you directed your staff
17 to do any water monitoring of TDS levels in the El
18 Paso Valley?

19 A. We -- we do a -- we have not changed any --
20 any of our parameters that we -- we measure and
21 collect for, and we -- we have a suite of analytes
22 that are naturally-occurring constituents that we
23 monitor for and then determine what the salinity is
24 based on those measurements.

25 Q. Okay. You are -- Mr. French, are you aware

1 that according to the study that designated the El
2 Paso County as a priority groundwater management area
3 and that a major factor in the rise in TDS levels in
4 that basin is groundwater pumping? Are you aware of
5 that?

6 A. I have read that description, yes.

7 Q. And you heard Mr. Mills testify to that?

8 A. I believe so.

9 Q. And so what action has the Board taken with
10 regard to that cause of water quality degradation?

11 A. We have -- we have taken no action with
12 regard to that.

13 Q. Thank you. I'm going to move on, sir, to a
14 couple questions about computer models. Your division
15 conducts regional scale groundwater modeling; is that
16 correct?

17 A. Yes, that's correct.

18 Q. What is the purpose of doing that groundwater
19 modeling?

20 A. The purpose of our groundwater modeling is to
21 assist decision makers and planners in the regional
22 planning process in the state.

23 Q. How does it do that, sir?

24 A. It provides information on the groundwater
25 flow conditions and also can be used in a predictive

1 manner to understand the consequences of various
2 development projects, understand the consequences of
3 -- of drought scenarios and impacts on -- on water
4 levels.

5 Q. Okay. You would agree with me, Mr. French,
6 that computer models are excellent tools for assessing
7 the effect of pumping and droughts on groundwater
8 availability?

9 A. They can be a very good tool, yes.

10 Q. In fact, sir, Texas law requires that
11 groundwater conservation districts and regional water
12 planning groups use modeling data related to
13 groundwater; is that correct?

14 A. Yes. The groundwater availability models are
15 the tools used to provide groundwater availability
16 numbers or estimates to those groups.

17 Q. And that's all part of -- at least one
18 function is part of the groundwater conservation
19 district developing its future desired conditions
20 portion of its goal setting, correct?

21 A. Yes. The -- those planning groups use -- use
22 the models to assist them in their evaluation of
23 potential desired future conditions, and the Board
24 also calculates the groundwater availability estimates
25 based on the desired future conditions that are --

1 that are adopted.

2 Q. Okay. And in general, your division has used
3 these models to evaluate the interaction between
4 surface water and groundwater?

5 A. For the most part, those models are not
6 calibrated well for that purpose, although they --
7 they can be used in a limited fashion.

8 Q. But you have used them for that purpose on a
9 statewide level; is that correct?

10 A. We have -- we have used them to help -- help
11 estimate them, but each of the models are -- are
12 calibrated differently and serve different functions
13 and so they -- we provide some limitations to how that
14 -- how those models are used for that purpose.

15 Q. Okay. Has the Board specifically evaluated
16 the interaction between -- excuse me -- surface water
17 and groundwater in El Paso County?

18 A. We have not specifically evaluated the --
19 directly that -- the possibility of relationship
20 between groundwater and surface water.

21 Q. Okay. I want to turn to another subject,
22 sir. Excuse me. I believe we discussed that you are
23 familiar with priority groundwater management areas?

24 A. Yes, in general.

25 Q. Okay. And you understand that PGMA 123,

1 which includes the El Paso County, was designated in
2 1998?

3 A. I believe that's true.

4 Q. Okay. As to groundwater conservation
5 districts, we -- if you saw Mr. Mills' testimony, you
6 know that we discussed groundwater conservation
7 districts with him. I just want to clarify a couple
8 issues from the point of view of the Board. You agree
9 that all groundwater management is left to the -- you
10 know what, you've already told me that. I'm sorry.
11 The Board has no management compliance or enforcement
12 authority over a groundwater conservation district; is
13 that correct?

14 A. That's correct.

15 Q. Okay. However, you do provide technical
16 resources and assistance to the districts; is that
17 correct?

18 A. Yes, we do.

19 Q. And after a groundwater conservation district
20 is created, it's required to develop a management
21 plan?

22 A. Yes, that's true.

23 MS. DALRYMPLE: Could we pull up Demo
24 42, please?

25 Q. (BY MS. DALRYMPLE) Mr. French, we're putting

1 up on the board here what is New Mexico Demo 42. I'm
2 going to ask you if you've seen that document before?

3 A. Yes, I have.

4 MS. DALRYMPLE: I'm sorry. I believe
5 this is admitted for Mr. French. Is that correct?

6 JUDGE MELLOY: It is.

7 MS. DALRYMPLE: Okay. Thank you.

8 Q. (BY MS. DALRYMPLE) Do you recognize this
9 document, sir?

10 A. Yes, I do.

11 Q. Which you already told me. I understand.
12 Could you tell me -- tell us what it is?

13 A. This is a -- a checklist that has been
14 developed by the Board, our staff, to assist our
15 review, our administrative completeness review of
16 groundwater management plans that are prepared by
17 groundwater conservation districts.

18 Q. So is it a useful tool, sir, in determining
19 -- to make sure that you cover everything on the
20 groundwater management plan?

21 A. Yes, it is. It has been developed to track
22 and coincide with specific statutory requirements that
23 are required -- required elements of groundwater
24 management plan. So the checklist has been designed
25 to reflect that.

1 Q. I just want to look at the second page there,
2 the fourth box down. The measurement plan is required
3 to address conjunctive surface water management
4 issues; is that correct?

5 A. Yes, it is.

6 Q. And also two up -- three up, to provide the
7 most efficient use of groundwater?

8 A. Yes.

9 Q. Mr. French, the groundwater conservation
10 districts have the authority to determine each
11 activity in the district for which a permit is
12 required; is that correct?

13 A. Are you talking about a -- a drilling -- what
14 kind of permit? I'm sorry. If you could clarify
15 that.

16 Q. I can. The groundwater conservation district
17 can issue pumping permits, for instance; is that
18 correct?

19 A. That is correct.

20 Q. And they can determine limits on the amount
21 of groundwater pumping; is that correct?

22 A. Yes, they can.

23 Q. And they can also actually deny -- deny
24 permission for a groundwater pump to be installed; is
25 that correct?

1 A. Yes, they can do that.

2 Q. Okay. Mr. French, you are not aware of any
3 efforts made during your tenure to create a
4 groundwater conservation district in the El Paso
5 County priority groundwater management area, are you?

6 A. No, not aware of any attempt to do that.

7 MS. DALRYMPLE: Mr. French, thank you.
8 Those are all the questions I have.

9 JUDGE MELLOY: Thank you. Ms. Barfield?

10 MS. BARFIELD: Thank you, Your Honor.

11 CROSS-EXAMINATION

12 BY MS. BARFIELD:

13 Q. All right, Mr. French. Before we go into a
14 few of the areas of testimony addressed by Ms.
15 Dalrymple, I want to go back to a little bit of the
16 grounding of -- in the State of Texas of the Texas
17 groundwater system on the -- from groundwater
18 management philosophy. You're aware, and you heard
19 Mr. Mills' testimony. You're aware of the rule of
20 capture, I assume; is that right?

21 A. Yes. Yes, I am.

22 Q. Can you briefly describe your understanding
23 of the rule of capture in the State of Texas?

24 A. Yes. In Texas, groundwater is owned by the
25 landowner, and that landowner has the right to pump

1 and capture as much water beneficially for their use
2 with certain limitations.

3 Q. Okay. What do you mean by "certain
4 limitations"?

5 A. I believe Mr. Mills also mentioned that
6 landowner is not allowed to waste the water or to pump
7 it maliciously to damage its neighbor's resource.
8 Also, there's -- there's limitations on pumping that
9 would create land subsidence.

10 Q. Okay. So, in other words, and regardless of
11 whether or not a groundwater conservation district has
12 been established in any given geographic area, and
13 despite the rule of capture that the -- the resources
14 under a person's land belong to that person, there's
15 still limits to what a property owner in the State of
16 Texas can do, right?

17 A. Yes.

18 MS. DALRYMPLE: Objection; misstates
19 testimony.

20 JUDGE MELLOY: I'll overrule.

21 Q. (BY MS. DALRYMPLE) As the director of
22 groundwater resources for the Texas water development
23 board, does the rule of capture inform us as to the
24 groundwater management philosophy of the State of
25 Texas?

1 A. Well, the management philosophy is first of
2 all the groundwater is a -- is the private property
3 right, and it also is a local -- local management is
4 -- is a key -- key component of the management
5 philosophy for groundwater.

6 **Q. Understanding groundwater is the private**
7 **property of the owner of the overlying land, it**
8 **doesn't mean that Texas is ignoring the management of**
9 **the groundwater resources in the state, right?**

10 A. No. The --

11 **MS. DALRYMPLE:** Objection; outside
12 scope, going afield, I think.

13 **JUDGE MELLOY:** Go ahead. Overruled.
14 You may answer.

15 A. The state law indicates that groundwater
16 conservation districts are the preferred management
17 approach for the state so where they exist, the
18 groundwater conservation districts have the ability to
19 modify the rule of capture by instituting well spacing
20 requirements, limits on pumping, well -- well
21 registrations, and other regulations to manage
22 groundwater locally.

23 **Q. (BY MS. DALRYMPLE) Now, you mentioned**
24 **managing groundwater locally. Isn't it correct that**
25 **part of the overall groundwater management philosophy**

1 in the State of Texas is a recognition and focus of
2 communities and regions to be involved in the
3 management of their own resources?

4 A. Yes. It reflects the diversity of
5 groundwater conditions throughout the state and that
6 -- that local communities are best suited to
7 understand the local resource and what the uses are
8 and the diversity of aquifer types that would occur
9 across the state and the different climate topography,
10 as well.

11 Q. So if what I'm hearing is correct, you're
12 talking about the size of Texas in general and the
13 different climate and the different topography and
14 geology in fact that all influences and lends to this
15 philosophy of the State of Texas that -- that
16 groundwater management should be locally driven by the
17 folks who know the most about the resources and their
18 own community, right?

19 A. Yes. That's true.

20 Q. All right. Now, there's been a bit of
21 discussion with counsel for New Mexico that's pointed
22 to identifying where Texas doesn't do certain
23 management things. I'd like to direct your attention
24 and the Court's attention to the things that Texas
25 does do from a management perspective. In order to do

1 that, let's go ahead and start with the Demonstrative
2 No. 1 for Mr. French. That was a demonstrative that,
3 in fact, Texas identified, but New Mexico used and so
4 talked about it a little bit already. So we've
5 established that this is a Texas Water Development
6 Board map, and the data on the map was at least
7 derived under your direction; is that right?

8 A. Yes.

9 Q. Okay. Overall, I know counsel for New Mexico
10 is focused on Far West Texas, but overall, what does
11 this map show in terms of -- without going into color
12 coding, in terms of the spattering of the dots?

13 A. Well, the dots represent the groundwater
14 wells that are monitored by -- by the state. Blue
15 dots representing those wells that are monitored by
16 the water development board staff and the green and
17 the orange dots representing different cooperators
18 throughout the state, quote, groundwater conservation
19 districts with -- with a large -- high density of
20 wells, particularly in the northwest part of the
21 state, in fact, they tend to merge together into one
22 giant green blob, and then other -- other areas such
23 as the USGS monitors such as the Houston and El Paso
24 areas depicted in the orange.

25 MS. DALRYMPLE: Your Honor, I'm going to

1 object to this line of questions. What happens in
2 Dallas or Houston or El Paso -- not El Paso, Amarillo,
3 has no bearing on any of the issues in this case and
4 will take up time.

5 MS. BARFIELD: May I respond, Your
6 Honor?

7 JUDGE MELLOY: I don't think it's
8 necessary.

9 MS. BARFIELD: Thank you.

10 JUDGE MELLOY: As I understand it, you
11 spent most of your direct examination going over what
12 the state doesn't do. I think it's fair game for Ms.
13 Barfield to go over what the state does do, so I'm
14 going to overrule.

15 MS. BARFIELD: Thank you, Your Honor.

16 Q. (BY MS. BARFIELD) Now, Mr. French, I see a
17 reference on the right-hand side of this demonstrative
18 to 7,500 water-level network wells. Am I correct that
19 this map depicts 7,500 water-level network monitoring
20 wells by the state of Texas, in the State of Texas?

21 A. Yes. That's certainly an approximate number.
22 It varies from year to year, but that's generally a
23 good number.

24 Q. All right. Focusing on that far west Texas
25 area that New Mexico's counsel pointed out to you a

1 little while ago, and I think you used a term of art a
2 minute ago for the clusters, which was not a term of
3 art, it was -- I don't recall what you said, but
4 they're so close together, you can't really see what's
5 going on; is that right?

6 A. Yes. In certain areas, yes.

7 Q. So that far west Texas area where we see
8 these muddled clusters of orange dots and blue dots,
9 the wells in that area are too numerous for this map
10 to even define where they're individually located; is
11 that correct?

12 A. Yeah. You need a different scale map to
13 really pick out the individual well locations clearly.

14 Q. All right.

15 MS. BARFIELD: You can zoom back out on
16 that. Thank you.

17 Q. (BY MS. BARFIELD) Just for orientation, as
18 well, there's other shading I want to point out. I
19 see light green shading kind of underlying the dots
20 and I also see some sort of light, I don't know if
21 it's tan or yellow. What does that represent?

22 A. The blue shadings represent the land extent
23 of the major and minor aquifers, which have been
24 designated by the Water Development Board. The green
25 represents the major aquifers, and the tan or other

1 color is the minor aquifers.

2 Q. All right. And according to, again, some
3 notes that are on this particular demonstrative,
4 there's nine major and 22 minor aquifers in the State
5 of Texas?

6 A. Correct.

7 Q. Okay. Does the -- I mean, that's a lot of
8 aquifers. Does that also lend to this overall
9 philosophy that you just described to us about
10 groundwater management in Texas as to why it's
11 important that the communities and the regions
12 themselves be in charge of or at least have a -- have
13 a voice in how to manage the resources in that
14 community?

15 A. Well, the -- yes. The -- as you can see, the
16 -- the aquifers cover extensive areas, and so they --
17 you know, from -- from the Water Development Board
18 standpoint, the -- it's really impossible to focus in
19 on local areas for individual groundwater management.

20 Q. All right. Now, there's another comment on
21 this particular demonstrative that says, "The
22 representative number of wells per county, per aquifer
23 are determined by the amount pumped." What is meant
24 by that comment?

25 A. When we looked to see where we should be

1 focusing our resources to monitor water levels
2 throughout the state, we wanted to consider -- we
3 wanted to look at every county in the state, and we
4 also wanted to focus on those areas that were
5 experiencing the most pumping. So we -- we basically
6 tailored our monitoring program to address where --
7 where groundwater was being more heavily used with
8 more dense well network and then where it's being less
9 used, obviously fewer wells to monitor.

10 **Q. All right. So how does the Water Development**
11 **Board determine the amount pumped that's referenced**
12 **here on this demonstrative?**

13 A. The Water Development Board receives survey
14 information every year from water suppliers,
15 groundwater districts, municipalities on how much
16 water they are pumping from the aquifers and so we --
17 we get that information every year, and that is --
18 that has been used to help us -- or guide us in the
19 monitoring programs.

20 **Q. Is there metering?**

21 A. Metering occurs in some areas of the state,
22 not all areas, but in some areas, yes.

23 **Q. Okay. What about El Paso County?**

24 A. I'm not sure whether, you know, what El Paso
25 does in terms of metering.

1 Q. All right. But in any event, there's
2 reporting from El Paso County based upon these water
3 well level monitoring systems, correct?

4 A. Yes. We do receive reports from El Paso.

5 Q. Okay. Let's go ahead and go to Demonstrative
6 No. 2, please. And, again, Counsel for New Mexico has
7 already discussed this particular map, but can you
8 describe the difference between the type of well level
9 monitoring that's being done that we saw the 7,500
10 well locations versus this one, where it appears that
11 there's 200 plus?

12 A. Yes. The previous slide with the 7,500
13 wells, those are manually monitored wells with, you
14 know, by individual staff. This particular map shows
15 the roughly 200 automatic water level recorder well
16 locations. So those are wells as I mentioned earlier
17 that are specifically instrumented with sensors that
18 pick up regular, almost realtime water level readings
19 and transmit those data to the water development board
20 Website.

21 Q. All right. Is that a photograph of one?

22 A. Yes, it is.

23 Q. Okay. Do you want to describe what we're
24 seeing in the photograph?

25 A. So what this photograph shows is a well

1 location, and above it is a kind of housing, which
2 protects the recorder instrumentation itself. You can
3 see -- then on a pole next to the housing is, you
4 know, a solar panel that provides power to the
5 equipment and then a transmitter, which then uploads
6 that information via satellite to the Water
7 Development Board Website.

8 Q. All right. And then --

9 MS. BARFIELD: Thank you. You can
10 decrease the size of the photo. There we go.

11 Q. (BY MS. BARFIELD) Okay. And just real
12 quickly, the -- the two triangles that we already
13 talked about -- or you already talked about, rather,
14 with counsel for New Mexico, just to confirm, the --
15 the red triangle indicates a continuous water level
16 recorder in the Mesilla Bolson in west Texas, right?

17 A. Yes. That's correct.

18 Q. Okay. And that was monitored by USGS,
19 correct?

20 A. Yes. And we -- we received that information
21 just as if it were a well that had been directly
22 monitored by the Water Development Board.

23 Q. All right. And then the blue indicates a
24 continuous water level recorder in the Hueco Bolson in
25 west Texas, correct?

1 A. That's correct.

2 Q. Okay. So both of these geographic areas in
3 terms of the Mesilla Bolson area of the aquifer and
4 the Hueco Bolson area are monitored continuously in
5 terms of the water levels of those -- of the region,
6 right?

7 A. Yes.

8 Q. Okay. Let's go ahead and look at
9 Demonstrative No. 3. Okay. We've also already seen
10 this one, so counsel for New Mexico discussed this
11 with you a little bit, but let's look at the broad
12 scale of it. This is -- this depicts water quality
13 sampling in the State of Texas; is that right?

14 A. Yes, it does. It shows the locations of
15 wells that we include in our groundwater quality
16 monitoring program.

17 Q. Okay. And how many groundwater wells in
18 Texas does the Texas Water Development Board collect
19 water quality data from?

20 A. Well, it varies between 12 and 1600 wells.
21 That number varies from year to year. We actually --
22 each year, we collect about a quarter -- we visit
23 about a quarter of that number, and we cover the whole
24 state in a four-year cycle. So any given year, we're
25 typically monitoring 300-ish wells and collecting

1 samples of those wells and analyzing the water
2 samples.

3 **Q. And what type of data is being collected?**

4 A. We collect basically basic chemistry data.
5 That would include cations, anions. Examples of that
6 would be chlorides, sulfate, naturally-occurring
7 metals, silicon, calcium, sodium. We measure PH
8 conductivity, and then we also calculate the total
9 dissolved solid based on those analytical results we
10 receive.

11 **Q. What does the photograph show us?**

12 A. That's just one of our staff members in the
13 process of collecting a groundwater sample.

14 **Q. All right. And then going back to the map**
15 **itself, from the color coding, I see that the blue**
16 **dots now, that indicates where groundwater**
17 **conservation districts, the GCDs, or other cooperators**
18 **are doing the water quality sampling; am I right about**
19 **that?**

20 A. That's correct. So in those locations, they
21 -- individual GCDs typically, they have their own
22 water quality monitoring programs, and they share the
23 data with us, and it all together gets uploaded to our
24 groundwater database.

25 **Q. All right. And in the west Texas area, in**

1 the El Paso County area, into Hudspeth County, I see a
2 clustering of water -- water quality sampling dots so
3 that indicates that the Water Development Board, even
4 though there's no groundwater conservation district
5 out there, is nonetheless actively monitoring the
6 water quality of the wells, right?

7 A. Yes, that's right.

8 Q. Okay. And, in fact --

9 MS. BARFIELD: You can take that down.

10 Q. (BY MS. BARFIELD) In fact, if you look at the
11 state as a whole, the majority of the water quality
12 sampling done in the State of Texas is done by the
13 Texas Water Development Board, not the groundwater
14 conservation districts; isn't that right?

15 A. That's correct.

16 Q. Okay. So --

17 MS. BARFIELD: You can take that down.

18 Thank you.

19 Q. (BY MS. BARFIELD) So you mentioned a little
20 bit with counsel for New Mexico about the water well
21 database that's maintained by the Texas Water
22 Development Board. So Texas maintains and shares well
23 records from across the state, right?

24 A. Yes, we do.

25 Q. Okay. And first of all, how many wells?

1 A. I believe the -- the latest number that we
2 have roughly 140,000 wells within our database, which
3 -- yeah, I believe that's the latest number I've seen.

4 **Q. Okay. What type of information is available**
5 **for each of these 140,000 wells on the Texas Water**
6 **Development Board -- in the Texas Water Development**
7 **Board database?**

8 A. That information varies, but typically we'll
9 have information on, of course, the location of the
10 well, the depth, construction details, where the well
11 might be screened, when it was drilled, who drilled
12 it. It'll have a -- whatever records we have in terms
13 of a water-level measurements and water quality data
14 from that well. We also, in some cases, have
15 information about any testing that's been done on the
16 well in terms of its yield. So that information
17 varies, but that's typically what the kind of
18 information that's available.

19 **Q. All right. What is the Texas water**
20 **development board groundwater viewer?**

21 A. That is a -- a user-friendly interface that's
22 available on our agency Website, which allow --
23 basically a -- a map-based interface that allows the
24 user to zoom in on any particular area of the state
25 and then that map will display locations of wells that

1 are within the groundwater database. It'll also
2 display locations of wells that have been recently
3 drilled and have information from the submitted water
4 well driller's database. So a user can, you know,
5 click on that on a particular well and pull up any
6 kind of record that's available for that location.

7 Q. For any of the 140,000 wells that you
8 described?

9 A. Yes.

10 Q. All right. Now, and this -- obviously it's
11 online so how long has this online system been
12 available?

13 A. It's been available for at least 20 years.
14 I'm not sure when the first version came out, but it's
15 been a couple of decades, I'm sure.

16 Q. All right. And I'm assuming the information
17 that you described is available in the groundwater
18 viewer for at least those 20 years, correct?

19 A. Yes.

20 Q. What about before then, has the Water
21 Development Board loaded up this online system with
22 this -- these types of records predating the 20 years?

23 A. Oh, yes. Well, our -- our records, you know
24 -- we'll have the records that go back much further
25 than the existence of the groundwater viewer. We have

1 some records, I believe, that go back even to the late
2 1800s, you know, for some locations.

3 Q. All right. And this includes information
4 regarding what -- regarding well drilling; is that
5 correct?

6 A. Yes. We'll have information on -- if it's
7 available, on when/how the well would have been
8 drilled and so forth.

9 Q. All right. So it sounds like anyone can see
10 in a very publicly-available and transparent way all
11 of the information that you've described going back to
12 the 1800s in some instances; is that right?

13 A. Yes, that's true.

14 Q. Okay. What is the overall purpose of
15 providing such a robust set of information regarding
16 the wells in Texas to the public?

17 A. Really, one of the kind of fundamental
18 purposes of what we do in the groundwater division is
19 to make -- is to help the public and decision makers
20 across the state have the -- the best information
21 available so they can make -- make informed choices on
22 how they manage their groundwater. So that's --
23 that's really our -- our purpose is to provide the
24 information.

25 Q. Okay. It sounds like, at least from what I'm

1 hearing, this, again, speaks to the overall
2 groundwater or Texas groundwater management philosophy
3 that you talked about earlier that it's important in
4 the state of Texas for the groundwaters where the
5 water resources are -- for the folks where the water
6 resources are located to have a voice as because
7 they're the people in the best position to speak about
8 how to best utilize the resources in the region,
9 right?

10 A. Yes. We provide the information for whoever
11 wants it.

12 Q. Okay. Now, there was a bit of discussion
13 about water development's role in the PGMA process,
14 and when I say PGMA, as I understand it and from
15 Mr. Mills' testimony, PGMA is just a way of saying
16 priority groundwater management area in a way that's
17 not such a tongue twister; is that right?

18 A. Yes. That's true.

19 Q. Okay. So I'll refer to it as PGMA. It's
20 certainly easier for me. Now, I understand that --
21 that water development board's primary involvement and
22 specifically with respect to El Paso County for a
23 PGMA, as well as a GCD, that was providing the
24 technical data; is that right?

25 A. That's right. We're a data agency, so that's

1 -- our role is to provide the information to the TCEQ
2 for that purpose.

3 Q. Okay. And can you specifically tell us what
4 data was provided for the evaluation by TCEQ in the El
5 Paso County area for PGMA and GCD?

6 A. Well, kind of information provided would be,
7 you know, information on -- on aquifer
8 characteristics, the water level -- records of water
9 levels through time, any available water quality
10 information that would be useful information on
11 groundwater usage, you know, who uses it for what
12 purpose and whatever records we have through time. So
13 that would be the kind of information provided for
14 that analysis.

15 Q. All right. And sounds like it's a type of
16 robust data sets that are also provided in the
17 groundwater viewer that you described to us; is that
18 right?

19 A. That would be one -- one source, yes.

20 Q. Okay. Texas Water Development Board also
21 meets with the folks over at TCEQ to discuss this data
22 to ensure that those persons at TCEQ understand the
23 technical data before they make recommendations; is
24 that true?

25 A. Yes. We meet a minimum once a year to have a

1 formal meeting between the head of both agencies to
2 discuss that information.

3 Q. Okay. And I understand from Mr. Mills'
4 testimony that -- that there's also other entities
5 involved in the evaluation process, which include
6 Texas Parks and Wildlife, as well as the Texas
7 Department of Agriculture and, of course, Texas Water
8 Development Board. Do you share that understanding?

9 A. Yes.

10 Q. Okay. From your role as the director of
11 groundwater resources for the Texas Water Development
12 Board, are you aware of any of those other agencies,
13 Parks and Wildlife, Department of Agriculture, ever
14 asking for a reconsideration or further studies
15 regarding whether or not a groundwater conservation
16 district should be implemented in El Paso County?

17 A. No, not aware of any such request.

18 Q. Now, counsel for New Mexico had several
19 questions that were surrounded around the state water
20 planning process. I'd like to delineate how that
21 process works, because I think the record might be a
22 little bit muddy on that. As I understand it, there
23 are multiple levels of water management in the State
24 of Texas; is that right?

25 A. Yes. I would say so.

1 Q. And are there two -- are there two primary
2 parts to the water management system in the State of
3 Texas?

4 A. Well, the -- so groundwater -- groundwater
5 management is conducted by groundwater conservation
6 districts that -- that occur within common groundwater
7 management area. There's 16 of those areas. Those, I
8 believe Mr. Mills also described, they meet together
9 and develop common policy goals called desired future
10 conditions. Those desired future conditions represent
11 a statement of what -- what an aquifer should look
12 like, what they want them to look like, over a plan,
13 typically 50 years. Once they develop those
14 statements, the water development board receives those
15 statements, and we use the best available tools, which
16 is typically our groundwater availability models to
17 then determine how much water can be -- is available
18 to achieve those policy goals. So we have -- that's
19 how groundwater availability is determined on -- on a
20 aquifer regional basis. Those -- those numbers then
21 are fed into the regional water planning group
22 process.

23 Q. Okay. Can I stop you there? Before we move
24 into regional water planning process, let me ask you
25 just a couple quick questions on groundwater --

1 A. Sure.

2 Q. -- availability planning. So in terms of the
3 two primary parts of the groundwater management system
4 in the state, we have groundwater availability
5 planning. That's one section over here, right? And
6 then we have regional water planning that feeds into
7 the state plan; is that right?

8 A. That's correct.

9 Q. Okay. So you just described for us the
10 groundwater availability planning, and more
11 specifically, there are 16 groundwater management
12 areas in Texas; is that right?

13 A. That's correct.

14 Q. Okay. How were the boundaries drawn for the
15 16 groundwater management areas in Texas?

16 A. They're drawn to encompass the major aquifers
17 of the state.

18 Q. Okay. And the El Paso County and part of
19 Hudspeth, they're part of Groundwater Management Area
20 No. 5 within the groundwater availability planning
21 Tier; is that right?

22 A. That's correct.

23 Q. Okay. What is the utility of designating 16
24 different groundwater management areas across the
25 state of Texas?

1 A. Well, like I mentioned, they are drawn on
2 major aquifers, so it -- it provides a way to
3 regionalize the water -- water management --
4 groundwater management decisions for the groundwater
5 conservation districts.

6 Q. All right. And we looked at -- I don't need
7 to pull it up, but New Mexico's counsel brought up
8 Demonstrative No. 42, which was that checklist. You
9 recall that?

10 A. Yes.

11 Q. Okay. And that checklist is utilized as part
12 of this prong of the groundwater management system in
13 Texas, the groundwater availability planning, right?

14 A. Well, they're used -- that checklist was for
15 the administrative completeness evaluation of
16 individual groundwater management plans.

17 Q. All right. And by administrative
18 completeness, do you mean that the Water Development
19 Board evaluates whether or not a groundwater
20 management plan addresses all of the items that the
21 statute requires?

22 A. Yes.

23 Q. Okay. But the State of Texas allows the
24 substantive decisions about groundwater management to
25 be made by the local communities, correct?

1 A. Yes.

2 Q. Okay. And, again, it seems to be a theme at
3 this point, but does that go back and lend to this
4 overall groundwater management philosophy in the State
5 of Texas that people in their own communities are in
6 the best place to know what's most likely to benefit
7 the circumstances and needs of that particular
8 community?

9 A. Right. The state law expresses that the
10 local groundwater conservation districts are the
11 preferred management approach.

12 Q. Then separate from that, there are also 16
13 regional water planing groups in the State of Texas,
14 correct?

15 A. That's correct.

16 Q. Okay. And for me, the 16 was confusing.
17 There's 16 groups over the areas that we just
18 discussed in this tract, the other tract, the
19 groundwater management area tract, then there's also
20 16 different regional groups, correct?

21 A. That is correct.

22 Q. All right. So how are the 16 regions in the
23 regional water planning process defined?

24 A. They are -- they are defined, not exactly but
25 more or less to align with major river basins in the

1 state.

2 Q. All right. And are each of these 16 regions
3 statutorily required to perform certain activities
4 related to both surface water and groundwater
5 management?

6 A. Yes. They're required to develop regional
7 water plans that -- that account for supplies and
8 demands and future water needs.

9 Q. Okay. And the El Paso area, that's the Far
10 West Texas Regional Water Plan that we looked at with
11 counsel for New Mexico; is that right?

12 A. That is right.

13 Q. Okay. Now, each of these 16 areas, regional
14 areas in Texas, have to develop a similar plan; is
15 that right?

16 A. They are required to develop regional plans
17 to account for, you know, like I mentioned, the water
18 supplies, demands, future needs, and so forth.

19 Q. Okay. And those 16 regional areas, which are
20 specified by statute in the State of Texas, that
21 covers the entire geography in the State of Texas,
22 correct?

23 A. Yes. The entire state is covered.

24 Q. So regardless of whether or not a groundwater
25 conservation district is implemented in any given

1 area, there's still this regional water planning
2 process that has definite and specific statutory
3 guidelines, correct?

4 A. That's correct.

5 Q. Okay. And ultimately when each of these 16
6 different regional areas produce their regional water
7 plan, does all that then get packaged up in one big
8 state water plan?

9 A. Yeah. The individual regional planning
10 groups, they submit their regional plans to the Water
11 Development Board. The Water Development Board then
12 takes those plans, combines them together to form the
13 state water plan for the entire state.

14 Q. How often does that happen?

15 A. That is -- that happens every five years.

16 Q. Okay. Is that made publicly available?

17 A. Yes. The information for both the regional
18 plans and the state water plan are available on the
19 agency Website.

20 Q. Let's look real quick at New Mexico 818.
21 This was also discussed in your direct examination. I
22 just have what I hope to be a quick question about it.
23 As a reminder, this is the Far West Texas Water Plan
24 prepared in January, 2021; is that right?

25 A. Yes.

1 Q. The Far West Texas Water Plan is that
2 geographic area that encompasses the county of El Paso
3 and Hudspeth?

4 A. Yes, it does.

5 Q. And other counties, but the ones I care about
6 are El Paso and Hudspeth for purposes of this
7 question. All right. Could we look at Page 76? So
8 for the record, that's New Mexico 818-0076. And I
9 want to kind of focus your attention on this area,
10 Section 1.1.6 where it says, "El Paso Water is the
11 declared regional water supply planner." Now, do you
12 have an understanding that the Texas legislature
13 designated El Paso Water Utilities as the official
14 regional water and wastewater planner for El Paso
15 County?

16 A. Yes. As described in the -- in the document
17 there, yes.

18 Q. Okay. So this Section 1.1.6 of the Far West
19 Texas Water Plan describes the role of El Paso Water
20 Utilities as the statutorily designated regional water
21 and wastewater planner for El Paso County, correct?

22 A. Yes, that's correct.

23 Q. Okay. And you've had an opportunity to read
24 this section. I also think it might continue on to
25 the next page, just so that we're clear.

1 MS. BARFIELD: Mr. Berns, could we look
2 at 77? Yeah.

3 Q. (BY MS. BARFIELD) So I wanted the record to
4 be clear. So starting on -- now we're seeing both
5 pages side by side. Okay. So starting on New Mexico
6 818-0076 and continuing on to 818-0077, Section 1.1.6,
7 you've had an opportunity to review that section; is
8 that correct?

9 A. Yes.

10 Q. Okay. That accurately describes El Paso
11 Water Utilities role as the regional planner for water
12 resource management in El Paso County; is that right?

13 A. Yes, it does.

14 Q. Okay.

15 MS. BARFIELD: You can take that down.
16 Thank you.

17 Q. (BY MS. BARFIELD) One more series of
18 questions. Similar to Mr. Mills, and I know you did
19 hear his testimony, but there have been questions by
20 counsel for New Mexico with prior witnesses that seem
21 to suggest at the very least that certain agencies in
22 the State of Texas have some sort of authority over
23 Compact or Project operations, so I want to make it
24 clear, a clear record of Texas Water Development's
25 role or lack thereof. So does Texas Water Development

1 Board have any function whatsoever in the oversight of
2 the Rio Grande Compact?

3 A. No, we do not.

4 Q. Okay. And the Water Development Board is not
5 part of Compact accounting, right?

6 A. No, we don't.

7 Q. Okay. You do understand that there's a Rio
8 Grande Project?

9 A. Yes.

10 Q. Okay. Does Texas Water Development Board
11 have any authority whatsoever on Project operations?

12 A. I believe we do not.

13 Q. Okay. And to the best of your knowledge,
14 does any Texas agency have any role whatsoever
15 regarding Rio Grande Project operations, Rio Grande
16 Project accounting, Compact accounting, or Compact
17 apportionments?

18 A. No, not that I'm aware of.

19 Q. Okay. And then a couple final questions. As
20 the director of groundwater resources for Texas Water
21 Development Board, and to the best of your knowledge
22 in that role, has the Texas Water Development Board
23 ever received any notice from the State of New Mexico
24 or any communications what soever from the State of
25 New Mexico suggesting an adverse impact in New Mexico

1 due to groundwater pumping in the Hueco Bolson aquifer
2 in Texas?

3 A. I have not received any, no.

4 Q. Okay. And in your role as director of
5 groundwater resources, are you aware of whether or not
6 Texas Water Development Board has ever been given any
7 independent evidence in support of an adverse impact
8 in New Mexico due to groundwater pumping in the Hueco
9 Bolson area of Texas?

10 A. I'm not aware of any -- any such notice.

11 MS. BARFIELD: All right. That's all
12 the questions I have at this time, Your Honor.

13 JUDGE MELLOY: Ms. Najjar, do you have
14 any questions?

15 MS. NAJJAR: No, Your Honor. The United
16 States has no questions for Mr. French.

17 JUDGE MELLOY: Ms. Dalrymple, you may
18 redirect if you have any questions.

19 MS. DALRYMPLE: Thank you. I have no
20 further questions, Your Honor.

21 JUDGE MELLOY: All right. Then it looks
22 like, Mr. French, you're done for the day. You're
23 excused. We appreciate your testimony, and you're
24 free to go. Thank you very much.

25 THE WITNESS: Thank you.

1 **JUDGE MELLOY:** Well, we have one more
2 witness to complete this week. I assume that we can't
3 get through Mr. Stomp in a half an hour, so I --
4 unless there's -- unless there's any objection, I
5 think might as well break until tomorrow morning. How
6 long do you think Mr. Stomp will be, Ms. Dalrymple?

7 **MS. DALRYMPLE:** Yes, my understanding is
8 that Mr. Stomp on direct might be less than an hour.

9 **JUDGE MELLOY:** Okay. But certainly not
10 less than a half an hour so --

11 **MS. DALRYMPLE:** No, not less than a half
12 an hour.

13 **JUDGE MELLOY:** Well, let's -- we'll take
14 him in the morning, but with the understanding
15 tomorrow will be a pretty short day. All right.
16 We'll reconvene then at 11:00 Central time tomorrow.
17 We'll see everybody tomorrow. Thank you, everyone.

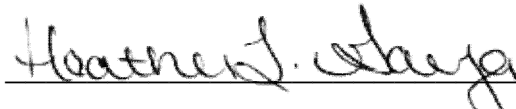
18 (The proceedings adjourned at 4:32 p.m.)
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1 CERTIFICATE

2
3 I, HEATHER L. GARZA, a Certified
4 Shorthand Reporter in and for the State of Texas, do
5 hereby certify that the facts as stated by me in the
6 caption hereto are true; that the foregoing pages
7 comprise a true, complete and correct transcript of
8 the proceedings had at the time of the hearing.

9 I further certify that I am not, in any
10 capacity, a regular employee of any of the parties in
11 whose behalf this status hearing is taken, nor in the
12 regular employ of any of the attorneys; and I certify
13 that I am not interested in the cause, nor of kin or
14 counsel to any of the parties.
15
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17 GIVEN UNDER MY HAND AND SEAL OF OFFICE,
18 on this, the 16th day of December, 2021.

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