

SUPREME COURT OF THE UNITED STATES
NO. 141, ORIGINAL

STATE OF TEXAS,)
)
 Plaintiff,)
)
 VS.) VOLUME XVI
)
 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 5, 2021, commencing at 11:01 a.m.;

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INDEX

	Page
JOHN MILTON STOMP III	
Direct Examination by Mr. Wechsler	6
Cross-Examination by Ms. Klahn	33
Cross-Examination by Mr. Wallace	38
Redirect Examination by Mr. Wechsler	40
REPORTER'S CERTIFICATION	45

1 **JUDGE MELLOY:** All right. It looks like
2 we have just about everyone. Let the record show
3 we're back on the record in Original No. 141, Texas
4 versus New Mexico and Colorado and with United States
5 as intervenor. Let me ask the parties who will be
6 appearing for today's witness to enter their
7 appearance. Ms. Klahn?

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

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

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

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

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

16 **JUDGE MELLOY:** And Ms. Najjar?

17 **MS. NAJJAR:** Good morning, Your Honor.
18 Jennifer Najjar for the United States.

19 **JUDGE MELLOY:** All right. Is there
20 anything we need to talk about before we take up
21 Mr. Stomp? If not, Mr. Wechsler, you may call your
22 witness.

23 **MR. WECHSLER:** Thank you, Your Honor.
24 New Mexico calls John Stomp.

25 **JUDGE MELLOY:** Mr. Stomp, I need to

1 administer the oath. Would you raise your right hand,
2 please? Do you swear or affirm that the testimony
3 you're about to give will be the truth, the whole
4 truth, and nothing but the truth?

5 THE WITNESS: I do.

6 **JUDGE MELLOY:** All right. Would you
7 state your name for the record, please?

8 THE WITNESS: My name is John Milton
9 Stomp III.

10 **JUDGE MELLOY:** And spell your name,
11 please.

12 THE WITNESS: J-O-H-N, Stomp, S-T-O-M-P,
13 like you stomp your foot.

14 **JUDGE MELLOY:** Okay. Mr. Stomp, I need
15 to go over a couple ground rules we've used for all
16 the witnesses. First of all, let me ask you: Is
17 there anyone in the room with you?

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

19 **JUDGE MELLOY:** Do you have any documents
20 or papers available to you, other than the witness
21 book or -- excuse me, the exhibit book?

22 THE WITNESS: No, sir. I have the
23 exhibit book, and that's all.

24 **JUDGE MELLOY:** And I do need to advise
25 you that you're not allowed to have any communication

1 devices, such as laptops, iPhones, iPads with any
2 e-mail, texting ability, or so on. Do you understand?

3 THE WITNESS: Yes, I do. And I do not
4 have any of those items.

5 JUDGE MELLOY: Before we start the
6 examination, let me just note that New Mexico has four
7 exhibits identified for this witness, all of which are
8 A exhibits. Those are New Mexico 997, New Mexico
9 1004, New Mexico 1009, and Texas 325, which as I
10 indicated are all A exhibits and will be admitted.
11 For cross-examination, Texas has identified New Mexico
12 2099, Texas 326, and Texas 333. Again, all of which
13 are A exhibits and will be admitted.

14 Mr. Wechsler, you may proceed.

15 MR. WECHSLER: Thank you, Your Honor.

16 JOHN MILTON STOMP III,
17 having been first duly sworn, testified as follows:

18 DIRECT EXAMINATION

19 BY MR. WECHSLER:

20 Q. Good morning, Mr. Stomp.

21 A. Good morning, Mr. Wechsler.

22 Q. I intend to ask you about two subjects this
23 morning that address issues raised by Texas and the
24 United States in their direct case. The first is how
25 water in the Middle Rio Grande is administered to

1 address Dr. Miltenberger's testimony about the use of
2 water above Elephant Butte Reservoir, and the second
3 is storage of San Juan-Chama water in Elephant Butte
4 Reservoir that was addressed by Ms. Estrada-Lopez.
5 You're here to provide testimony related to the
6 Albuquerque Bernalillo County Water Utility Authority
7 and its water uses; is that right?

8 A. Yes, I am.

9 Q. We can agree to call it the Water Authority
10 for purposes of today's testimony?

11 A. Yes, I think that's easier.

12 Q. What is the Water Authority?

13 A. The Water Authority was created by the state
14 legislature. It is a quasi state entity. It was
15 created by the legislature in 2003 to manage and
16 oversee the operations of the water and the wastewater
17 utility in Albuquerque and Bernalillo County.

18 Q. Was there a predecessor to the Water
19 Authority?

20 A. Yes. The City of Albuquerque was the
21 predecessor to the Water Authority.

22 Q. The Water Authority is an amici in this case.
23 What is the Water Authority's interest?

24 A. Well, the Water Authority's interest, there's
25 a number of them, starting first with protecting our

1 water rights, our water rights permits, and also
2 protecting the administration of our water rights so
3 that we can continue to operate as we have in the
4 past, present, and in the future in accordance with
5 our hundred-year water plan. We're concerned about
6 the 1938 condition and the idea that there's a fixed
7 amount of depletions in the Middle Rio Grande,
8 concerned about the effects of San Juan-Chama water
9 stored in Elephant Butte Reservoir, and we're
10 concerned about the United States' claims that
11 groundwater that's hydrologically connected to the
12 surface water downstream of a Reclamation project
13 becomes project water subject to contract with the
14 Bureau of Reclamation as opposed to state
15 administration.

16 **Q. Let's talk about your professional**
17 **background. To do that, we'll use New Mexico Exhibit**
18 **1009. Is this a copy of your resume?**

19 A. Yes, it is.

20 **Q. Is it correct and accurate to the best of**
21 **your knowledge?**

22 A. I believe it is.

23 **Q. So using your resume as a guide, please**
24 **briefly describe your educational background.**

25 A. I have a bachelor's in science in civil

1 engineering in 1988 from the University of New Mexico.
2 I have a masters of civil engineering and graduated
3 from University of New Mexico in 1997, and I am a
4 full-time law student at University of New Mexico set
5 to graduate in December of '22, about a year from now.

6 **Q. Obviously a glutton for punishment. Do you**
7 **hold any professional licenses?**

8 A. Yes. I'm a registered professional engineer
9 in New Mexico. My license number is 12015.

10 **Q. How many years did you work for either the**
11 **City of Albuquerque or the Water Authority?**

12 A. Around 25 years.

13 **Q. Let's talk just about that experience that**
14 **you had. So starting at Page 4, and under that**
15 **heading, "Senior Engineer," was that the first**
16 **position you had with the City or the Water Authority?**

17 A. Yes. After about eight years in the public
18 and private sector, I changed to the City of
19 Albuquerque. I started in the utility development
20 division as a senior engineer. In -- in that
21 division, my responsibilities included evaluating
22 water and wastewater, system operations related to new
23 development, so new development would request service,
24 and we would provider letters back to them telling
25 them what they would need to get service from the City

1 at the time in accordance with the water master plans
2 and the wastewater master plans.

3 **Q. Let's turn to Page 2 and look at your next**
4 **position as water resource manager. Again, please**
5 **summarize what your responsibilities were as water**
6 **resources manager.**

7 A. I was promoted to water resources manager in
8 August -- I'm sorry -- July of -- no -- yeah, July of
9 1997. Sorry about that. I was in that position for
10 13 years. As the water resources manager, I was
11 responsible for overseeing and supervising the water
12 rights program, the water conservation program, the
13 water resources storage contracts, the arsenic
14 technical investigation, groundwater protections. I
15 was also responsible for overseeing and implementing
16 the Albuquerque Water Resources Management strategy,
17 which was a comprehensive water resources strategy to
18 transition from sole reliance on groundwater to
19 surface water, and I was the project manager for the
20 drinking water project.

21 **Q. And finally, if we turn to Page 1, we can see**
22 **your final position there was chief operating officer.**
23 **Please summarize what your responsibilities were as**
24 **chief operating officer of the Water Authority?**

25 A. In 2010, I was promoted to chief operating

1 officer. I worked directly for the executive
2 director. I was responsible for managing and
3 operating/supervisor the operations of the water and
4 wastewater utility. I had the plant division
5 underneath me, which included the water plant and
6 wastewater plant. I had the field operations group,
7 which all the wastewater collection system and the
8 water transmission facilities, and also the
9 groundwater wells, reservoirs, tanks, and so on, all
10 the personnel and the 24/7 operations associated with
11 that. I also managed the water resources division and
12 the utility development division and the capital
13 improvement program were all under my supervision.

14 **Q. Are you currently working for the Water**
15 **Authority?**

16 A. No, I am not. I retired at the end of 2020.

17 **Q. Are you working as a law clerk?**

18 A. Yes. I'm currently working as a law clerk
19 for Stein & Brockmann.

20 **Q. You're no longer with the Water Authority,**
21 **but is the Water Authority aware that you're providing**
22 **this testimony on their behalf?**

23 A. Yes. I was a designated witness when I was
24 the chief operating officer, and I -- they asked me to
25 continue in that role today.

1 **Q. When you were working for the Water**
2 **Authority, were you responsible for operating the**
3 **water system to ensure compliance with state engineer**
4 **rules, regulations, and permits?**

5 A. Yes. I oversaw and supervised the water
6 resources and the water rights programs that included
7 our -- our state engineer's permits and also our
8 storage contracts with both the Corps of Engineers and
9 the Bureau of Reclamation.

10 **Q. Did your responsibilities at the Water**
11 **Authority require you to understand the Rio Grande**
12 **Compact?**

13 A. Yes.

14 **Q. Why?**

15 A. Well, our diversion permit includes a native
16 water component, and that native water component has
17 flow restrictions on it so understanding what's going
18 to happen in the system that year so that you can
19 understand how you're going to operate your surface
20 water system and in conjunction with your groundwater
21 system is important part of the job. So every year,
22 the conditions changed. The water flows, and the
23 amount available to New Mexico under Article 4 changes
24 every year. The amount of rainfall that could come
25 into the system changes every year so you -- you need

1 to be prepared for that, and so that's how I became
2 familiar -- very familiar with how the system
3 operates, both native and San Juan-Chama water and as
4 it relates to Rio Grande Compact operations.

5 **Q. So switching to water administration, we**
6 **heard testimony a couple weeks ago from the Texas**
7 **expert historian, and as the basis for his opinion,**
8 **below Elephant Butte Reservoir, Dr. Miltenberger**
9 **seemed to suggest there was a 1938 Condition in the**
10 **Middle Rio Grande and to understand that opinion**
11 **provide context, I want to ask you a few questions**
12 **about your experience with water use and permitting.**
13 **Let's start by talking about Water Authority and its**
14 **resources. Can you describe the Water Authority's**
15 **service area?**

16 A. Yeah. The service area is the incorporated
17 city of Albuquerque and the unincorporated area of
18 Bernalillo County.

19 **Q. How many people does the Water Authority**
20 **serve?**

21 A. About 675,000 people.

22 **Q. What are the sources of water supply for the**
23 **Water Authority?**

24 A. We conjunctively manage both groundwater and
25 surface water so we have two groundwater permits,

1 RG-960 and RG-4462. We have two surface water
2 permits, SP-4819, which is a diversion permit -- a
3 small diversion permit, and then we have a larger
4 diversion permit, SP-4830, which is the drinking water
5 project. We also use our wastewater effluent for
6 non-potable purposes, so those are our three primary
7 sources of supply.

8 **Q. Let's start with groundwater. We heard about**
9 **the declaration of the Lower Rio Grande Groundwater**
10 **Basin in 1980 and '82. Based on your understanding,**
11 **in the 1938 when the Compact was entered, had the**
12 **Middle Rio Grande Groundwater Basin been declared?**

13 A. No, it had not.

14 **Q. Is the Middle Rio Grande Groundwater Basin**
15 **declared today?**

16 A. Yes, it is.

17 **Q. When was it declared?**

18 A. The state engineer declared the basin in 1956
19 and took jurisdiction over the basin such that any new
20 groundwater appropriations would require permits from
21 the state engineer's office. It would require
22 metering and measuring of those diversions and returns
23 and monthly reports to him and then also to pay back
24 the river, in other words, if there's a depletion on
25 the river from that point forward, you had to have the

1 water rights to be able to offset the depletions
2 associated with that pumping on the river. So he
3 recognized that the ground and the surface water were
4 hydrologically connected and that any additional
5 depletions beyond 1956 would require offsets.

6 Q. You said that happened in 1956, approximately
7 20 years after the Compact was entered in 1938?

8 A. Yes.

9 Q. I'd like to look at Exhibit New Mexico 997.
10 First, Mr. Stomp, do you recognize New Mexico 997?

11 A. Yes, I do.

12 Q. What is it?

13 A. It is an application for permit and an
14 improved permit under RG-960 for an increased
15 appropriation of groundwater from 132,000 acre-feet
16 per year to 155,000 acre-feet per year.

17 Q. And you say an increase in groundwater.
18 What's the year that this was applied for? Can you
19 see the stamp there on the side near the table?

20 A. Yeah. The application was filed in June of
21 1993.

22 Q. Looking at this table that we're -- we're
23 viewing currently on the screen, are you familiar with
24 the term "pre-basin rights"?

25 A. Yes, I am.

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

2 A. Well, when the state engineer declared the
3 basin, he granted pre-basin rights to those
4 individuals, including the City of Albuquerque at the
5 time, the amount of consumptive use on the river and
6 the amount of diversion right. For the city of
7 Albuquerque, that was around 36,000 acre-feet per year
8 of a diversion right, and about -- as you can see on
9 Table 1, 17,875 acre-feet of a consumptive use right
10 on the river.

11 **Q. Of that pre-basin right, is the Water
12 Authority required to offset any of those depletions?**

13 A. No, they're not.

14 **Q. Turn to Page 5 of New Mexico 997. This time,
15 we're going to look at Condition of Approval No. 2.
16 Let's look at the table, as well. Mr. Stomp, what is
17 Table 1 showing us?**

18 A. As I said, the permit that was approved
19 allowed for an increase of diversion from 132,000
20 acre-feet a year to 155. The state engineer placed
21 limitations on those permit increases and so you could
22 see through the year 2015, he continued to allow us to
23 use the 132,000 acre-feet per year and then a further
24 limitation up to from 2016 to 2029 and so on. So
25 basically he incremented, he allowed the additional

1 appropriation in increments over a period of time.
2 But Condition No. 2 also placed a limitation on that,
3 any of the diversion of water under this would be
4 further limited by the amount of water that the Water
5 Authority would have available plus return flows to
6 the river. So it's -- it's basically allowing
7 diversion but incrementing it over time.

8 **Q. You're talking about increased groundwater,**
9 **ability to pump groundwater. To your knowledge, has**
10 **there ever been an outright prohibition on groundwater**
11 **wells or groundwater pumping in the Middle Rio Grande?**

12 A. No.

13 **Q. Turn to Page 6, and this time we'll look at**
14 **Condition of Approval No. 5. This condition,**
15 **Mr. Stomp, refers to at the end there the Middle Rio**
16 **Grande Administrative Area Guidelines. Are you**
17 **familiar with those?**

18 A. Yes, I am.

19 **Q. What are they?**

20 A. Well, the state engineer established rules in
21 1956. He redid those rules in the year 2000, so the
22 Middle Rio Grande Administrative Area Guidelines
23 provide the -- the evaluation methodology for pending
24 and future applications starting in -- in the year
25 2000. In that new guidelines, he adopted the use of a

1 three-dimensional groundwater flow model as -- as a
2 means of determining what the offset requirements are,
3 and then, also, established critical management areas
4 for groundwater in the -- in the Albuquerque and the
5 Middle Rio Grande Basin.

6 **Q. Can you say a little bit more about how they**
7 **would work to -- how they would apply to an**
8 **application?**

9 A. Sure. In this particular case, this
10 application was filed in 1993, but it wasn't approved
11 until after the guidelines, so this application was
12 approved -- this permit was approved after the
13 guidelines and so it includes limitations on drawdowns
14 and critical management areas and non-critical
15 management areas. So if you look at Condition No. 5,
16 "The pumping schedule, when combined of all the
17 existing wells, cannot cause groundwater declines in
18 any model cell in the non-critical management air."
19 So basically this three-dimensional groundwater flow
20 has cells that are one mile squares. Within those
21 one-mile squares, you might have a well or couple of
22 wells. The state engineer will ask or the model
23 itself will calculate what the drawdown is in that
24 particular cell, and the state engineer is concerned
25 about making sure that we monitor what that might be

1 in these critical management areas and outside of
2 these critical management areas. So it was a way of
3 protecting the long-term sustainability of the
4 groundwater in the Middle Valley.

5 **Q. To your knowledge, has there ever been a**
6 **depletion limit in the Middle Rio Grande?**

7 A. No.

8 **Q. Have depletions from the Water Authority or**
9 **its predecessor in interest changed since 1938?**

10 A. Yes.

11 **Q. Let's talk about surface water. To do that,**
12 **let's turn to Texas 325. Do you recognize Texas 325?**

13 A. Yes, I do.

14 **Q. What is it?**

15 A. It's the findings and report of
16 recommendation of the hearing examiner for Permit
17 SP-4830.

18 **Q. And that's a permit of the Water Authority?**

19 A. That's the surface water permit for the --
20 which we call the drinking water project. So this is
21 the drinking water project permit and this is the
22 report of recommendations of the hearing examiner, and
23 the back of it is the draft of the unsigned version of
24 the permit.

25 **Q. If we look at Page 4, Paragraph 5, we see**

1 here, Mr. Stomp, a reference to the San Juan-Chama
2 project water. Please explain what San Juan-Chama
3 water is?

4 A. San Juan-Chama in its simplest form is moving
5 water from the San Juan River to the Rio Chama, San
6 Juan-Chama. Essentially Congress authorized the San
7 Juan-Chama project under the Colorado River storage
8 Project Act in 1956 and then Congress authorized the
9 construction of the project in 1962 under public law
10 87483, and in that, authorized the construction of
11 three diversions and tributaries in the San Juan River
12 in southern Colorado and then it's -- that water is
13 diverted at those -- those tributaries and then
14 brought underneath the continental divide through a
15 tunnel, about 13-mile tunnel, about 12-foot in
16 diameter and then comes into the Rio Grande Basin on
17 the Rio Chama into Heron reservoir. The project
18 itself imports about a hundred thousand acre-feet a
19 year. There are 20 contractors that have contracts
20 with Reclamation, and the Water Authority's contract
21 is for 48,200 acre-feet of that amount.

22 Q. Was the San Juan-Chama Project water imported
23 into the Rio Grande Basin in 1938?

24 A. No --

25 MS. KLAHN: Your Honor, if I could just

1 interject here. The testimony has become very
2 narrative, and I think that's not appropriate. There
3 ought to be more questions.

4 **JUDGE MELLOY:** All right. Go ahead.

5 **MR. WECHSLER:** I'm not -- yeah, I'm not
6 sure I understand the objection, Your Honor, so I --
7 I'll --

8 **MS. KLAHN:** I could interrupt the
9 witness the next time he's a narrative. I thought it
10 was a little more polite to do it this way. That's
11 all. Apologize.

12 **MR. WECHSLER:** Your Honor, it is direct
13 testimony. May I proceed?

14 **JUDGE MELLOY:** You may.

15 **Q. (BY MR. WECHSLER) Had you finished your**
16 **answer, Mr. Stomp, about whether or not the San**
17 **Juan-Chama water was imported in 1938?**

18 A. No. It was not imported in 1938. The
19 Project began operations in the early 1970s and so
20 water began flowing into Heron Reservoir in the early
21 1970s.

22 **Q. Please describe the drinking water project.**

23 A. The drinking water project is the -- is
24 permitted under SP-4830. The Water Authority diverts
25 San Juan-Chama water and an equal amount of native

1 water that is borrowed and returned back to the stream
2 system about 15 miles downstream of our diversion.
3 That San Juan-Chama water is treated, and it's -- at a
4 water treatment plant and then distributed to our
5 customers. So kind of stepping back, that water -- we
6 call for that water to be released from Abiquiu
7 Reservoir. We have a storage account in Abiquiu
8 Reservoir with the Corps of Engineers. We call for
9 that water to be released. That water is -- makes its
10 way through the river system to our diversion facility
11 that's located just south of Alameda Boulevard.

12 **Q. So that's a significant change in**
13 **infrastructure since 1938. Has the other**
14 **infrastructure or water use of the Water Authority**
15 **changed since 1938?**

16 A. Yes. Our -- our use has changed quite a bit,
17 as has our depletions. Our depletions were increasing
18 until the drinking water project came online with our
19 significant water conservation efforts and the
20 drinking water project coming on in 2008, we've
21 reduced our native water depletions on the river by
22 about 20 percent, and the aquifer has been rising
23 since 2008. So we've transitioned away from sole
24 reliance on the Rio Grande native water system to a
25 portion of the depletions of San Juan-Chama water and

1 native water.

2 Q. Turn to Pages 24 to 25 of this Texas Exhibit
3 325. We're looking, Mr. Stomp, at Paragraph 13. We
4 can look at it there in your paper version. At the
5 end of this paragraph, it has a reference to the
6 Compact here and says that the state engineer -- if
7 the state engineer determines that suspension of the
8 permit is necessary to meet Compact obligations, the
9 permit can be suspended. My question to you is: How
10 does, overall, this paragraph or condition of approval
11 13 work?

12 A. As I said, there's flow conditions that are
13 based on the amount of native water flow that's in the
14 system. So the state engineer says that if there's
15 not a minimum flow of 122 CFS at the central avenue
16 gage, which it's called the Albuquerque gage, then we
17 need to suspend operations. We also have a flow
18 limitation of 130 CFS at our diversion facility of
19 native water or 195 CFS above the diversion facility,
20 assuming that we would borrow 65 CFS of native. So
21 typically the normal operations would be a 65 CFS
22 diversion of San Juan-Chama water, equal amount of
23 diversion of native water. Again, that native water
24 would be returned back to the system. So this
25 condition itself is really focused on the native water

1 portion of it, and a lot of the conditions in SP-48 --
2 4830 are based and looked at protecting the native
3 water system as the drinking water project operates.

4 **Q. Does the Water Authority work closely with**
5 **the New Mexico State Engineer to facilitate Compact**
6 **compliance?**

7 A. Yes. Yes, we do.

8 **Q. Please explain.**

9 A. Well, all the water users work closely
10 together with the state engineer's office for Compact
11 compliance. There's a lot of planning that goes in.
12 As I said, we divert native water and San Juan-Chama
13 water every year, but the amount of water that comes
14 into the system every year that's available for New
15 Mexico changes. So the planning part of what's going
16 to happen in developing an operational plan for the
17 year takes a lot of timing and work to look at. Are
18 you going to have a year like 2002 that was very low?
19 Are you going to have a year like 2006 where we had a
20 tremendous amount of rainfall and runoff coming in
21 from the tributary -- tributaries of the Middle Rio
22 Grande? Are you going to have a year like 2018 that's
23 average of snow melt runoff? I mean, each one of
24 those proposes challenges so you need to understand
25 how the system is going to operate, how much snow melt

1 is going to come in so that you can prepare your plan
2 for diversion for the year. As part of that, we look
3 at snow melt forecast and runoff forecast so we can
4 predict what the amount that's going to pass Otowi
5 gage in an effort to see what the delivery requirement
6 is going to be that year and then all the water users
7 work collectively to do that, to evaluate and work
8 collectively with the state engineer to make delivery
9 obligations.

10 **Q. So when you're talking about the water users**
11 **working collectively with the state engineer, are**
12 **there regular communications in order to coordinate?**

13 A. Yes. There's conference calls that happen on
14 a weekly basis, sometimes on a daily basis. They're
15 hosted by the Bureau of Reclamation. The Corps of
16 Engineers participates, the state engineer's office,
17 the Interstate Stream Commission, the Water Authority,
18 the Middle Rio Grande Conservancy District. Basically
19 those conference calls are all about coordinating the
20 operations for that day or for that week. So we're
21 always constantly talking about where water is going
22 to be delivered, how much the releases are going to
23 be, say, from El Vado Reservoir from MRGCD operations,
24 releases for endangered species at compliance, and
25 people are coordinating constantly about what the

1 releases and diversions are going to be during the
2 season. So there's good -- good communication.

3 **Q. You just mentioned one water user, the Middle**
4 **Rio Grande Conservancy District, sometimes called the**
5 **MRGCD. What is the MRGCD?**

6 A. It's a quasi state entity that's basically
7 responsible for irrigation and flood control in the
8 Middle Rio Grande. They provide water to six Middle
9 Rio Grande pueblos and then also non-Indian interests
10 starting about Cochiti Reservoir and going down to
11 Bosque del Apache National Wildlife Refuge. So a very
12 large area both upstream and downstream of the City of
13 Albuquerque. So they have a diversion facility
14 upstream of Albuquerque or our diversion and a couple
15 downstream of ours.

16 **Q. Is the Water Authority in regular**
17 **communication about water use with MRGCD?**

18 A. Yes. We talk with them all the time.
19 They're making releases from the reservoir. They're
20 making diversions at Angostura. That's the diversion
21 just about 8 miles upstream of Albuquerque. So when
22 they make diversions of native water there, that
23 affects the amount of water at our diversion facility
24 and also affects the amount of water at the central
25 avenue gage, so we're in constant communications to

1 make sure we're coordinating what's going on in the
2 system. We make releases from Abiquiu Reservoir.
3 Takes two days to get to our diversion facility. So
4 there's a lot of communication that goes on. If
5 there's a problem in the system, say the ET,
6 evapotranspiration of the system, is larger than what
7 is expected and we see a flow change, then we're in
8 constant communication. The MRGCD will call the Water
9 Authority, we'll get together and figure out how to
10 coordinate the operations during that time. But
11 there's a lot of communication. And when there's
12 issues, we get notices and phone calls from
13 Reclamation, from MRGCD, whoever it is, depending on
14 what the situation might be.

15 **Q. Let's turn to San Juan-Chama storage. We**
16 **heard from Ms. Estrada-Lopez about evaporation of San**
17 **Juan-Chama water in Elephant Butte Reservoir. Does**
18 **the Water Authority have the ability to store water in**
19 **Elephant Butte Reservoir?**

20 A. Yes. We have a contract with Reclamation for
21 storage of 48,200 acre-feet per year.

22 **Q. Take a look at New Mexico 1004. Do you**
23 **recognize this document?**

24 A. Yes, I do.

25 **Q. What is it?**

1 A. It's our storage contract with the Bureau of
2 Reclamation for storage in Elephant Butte Reservoir.

3 **Q. Please explain how the Water Authority's**
4 **storage of San Juan-Chama water in Elephant Butte**
5 **Reservoir works.**

6 A. Well, there's a couple situations that I
7 think are easier to explain. When the Water Authority
8 can deliver San Juan-Chama water, say, from Abiquiu
9 and it's released down Abiquiu to be stored in
10 Elephant Butte, the Bureau of Reclamation has loss
11 rates that they use that are approved by the Compact
12 Commission so we have losses that get to Elephant
13 Butte. We store the water in Elephant Butte. Under
14 our RG-960 permit, if you remember, we talked about
15 the offset requirements. If those offset requirements
16 require us to pay back some of that river that
17 affected the Compact operations, we could take water
18 that's stored in San Juan-Chama water that's stored in
19 Elephant Butte and just change it from that pool over
20 to the usable project pool or the -- the native water
21 storage. So we can make that transfer directly into
22 Elephant Butte as opposed to maybe releasing it from
23 Abiquiu later. There's also times when flood control
24 operations take effect at Abiquiu Reservoir because
25 there's downstream capacity issues, and so when that

1 happens, the Corps of Engineers will shut off all
2 diversions of San Juan-Chama water, and they'll be
3 evacuating flood water as soon as they possibly can in
4 accordance with the Rio Grande Compact. During that
5 time, we'll have water stored in Elephant Butte.
6 We'll continue to operate our drinking water project
7 by diverting native water and then paying that water
8 back at -- at Elephant Butte by transferring that in.
9 So those are the two primary ways of -- of having
10 water in Elephant Butte that we can transfer back into
11 native water storage pool.

12 **Q. Can you please summarize the steps that were**
13 **necessary for the Water Authority to obtain the**
14 **ability to store water in Elephant Butte Reservoir?**

15 A. Yes. The City had a contract with Elephant
16 -- I'm sorry -- with Reclamation back in the late
17 1970s. Jicarilla Apache Nation sued the United States
18 saying that contract was invalid and that the water
19 should not be allowed to be stored in Elephant Butte
20 Reservoir. The tenth circuit came back and says, yes,
21 we agree with Jicarilla Apache, so they said the
22 contract was invalid because recreational purposes was
23 not a beneficial use in the San Juan-Chama Project
24 Act. So we went to Congress, and Congress authorized
25 storage of San Juan-Chama water in Elephant Butte,

1 identified recreational purposes as a beneficial use,
2 and provided limitations on that San Juan-Chama water
3 to be stored in Elephant Butte. That is the same
4 authorization in 97 -- public law 97-140 that allowed
5 for --

6 **JUDGE MELLOY:** Why don't you slow down
7 just a little bit? You're talking awful fast.

8 **THE WITNESS:** Your Honor, that's a bad
9 habit of mine. I apologize. I'll slow down.

10 **JUDGE MELLOY:** Slow down.

11 **Q. (BY MR. WECHSLER) You were -- I think you**
12 **were talking about the public law?**

13 **A.** Yes. Congress authorized the storage of San
14 Juan-Chama water in Abiquiu and Elephant Butte under
15 Public Law 97-140. So we are allowed to store San
16 Juan-Chama water under contract with the Corps in
17 Abiquiu. That's the releases I talked about earlier.
18 And we have a contract with Reclamation in accordance
19 with that congressional authorization. In that
20 congressional authorization, there was also
21 limitations placed on that storage, and those
22 limitations were that the -- the potential for spills
23 for evaporative losses that would be suffered by San
24 Juan-Chama needed to be in compliance with the Rio
25 Grande Compact Commission and approved by the Rio

1 Grande Compact Commission.

2 **Q. Let's take a look at Page 4, Paragraph 2B of**
3 **this exhibit, New Mexico 1004. As part of obtaining**
4 **the right to store San Juan-Chama water in Elephant**
5 **Butte Reservoir, was it necessary to negotiate the**
6 **amount of evaporation that would be charged to the**
7 **Water Authority?**

8 A. Well, under the Public Law 97-140, we had to
9 get approval from the Rio Grande Compact Commission
10 that set the rules for how San Juan-Chama would be --
11 would work, if it's is to be stored in Elephant Butte
12 Reservoir. So it would have to share in evaporative
13 losses with other water that's stored in the
14 reservoir, and then you would also have to address how
15 spills would happen in the event that Elephant Butte
16 actually filled and spilled again.

17 **Q. Are you familiar with the 2008 Operating**
18 **Agreement?**

19 A. Yes. I've read the agreement.

20 **Q. Why did you become familiar with that**
21 **agreement?**

22 A. Primarily through our discussion with
23 Reclamation on this storage contract.

24 **Q. Does the 2008 Operating Agreement affect or**
25 **have the potential to affect the San Juan-Chama**

1 **Project water stored in Elephant Butte Reservoir?**

2 A. Yes. I believe it does. The 2008 Operating
3 Agreement allows for carryover storage so currently,
4 there's allowed for pools for native water storage for
5 usable project, there's credit water, and then there's
6 San Juan-Chama water. The normal usable project water
7 and San Juan-Chama water suffered evaporative losses
8 together. There's rules that were established by the
9 Rio Grande Compact Commission as to how those two
10 relate to each other based on the amounts stored
11 equally amongst those, and then also, there's rules
12 associated with San Juan-Chama spilling. So in the
13 event that Elephant Butte fills, San Juan-Chama water
14 spills first. So the Compact Commission approved
15 operating rules for how San Juan-Chama would work
16 with, for example, usable project water. But
17 carryover water -- carryover storage is not addressed
18 in that -- in those operating rules so it's not clear
19 how that would -- how that would affect what would
20 happen in a spill, what would happen with the
21 evaporative losses with respect -- with respect to
22 carryover storage. So it's unclear and so that --
23 that means there's some uncertainty involved with how
24 that might -- how that might affect our San Juan-Chama
25 water.

1 **Q.** And because the San Juan-Chama water spills
2 first, could carryover have an impact on when and how
3 much water spills?

4 **A.** Again, there's no real rules to how that
5 would be affected. The carryover storage could be a
6 very large quantity of water according to the
7 operating agreement, so definitely could make San
8 Juan-Chama spill earlier. Depending on how much
9 carryover storage and other waters there, it could
10 make evaporative losses higher. So there are some
11 potential impacts to San Juan-Chama being stored in
12 Elephant Butte under the 2008 Operating Agreement.

13 **MR. WECHSLER:** Thank you, Mr. Stomp.

14 Your Honor, I have no further questions.

15 **JUDGE MELLOY:** All right. Ms. Klahn,
16 are you -- Ms. Klahn, are you going first?

17 **MS. KLAHN:** I am. And I just have a
18 couple questions, Your Honor.

19 **JUDGE MELLOY:** Go ahead.

20 CROSS-EXAMINATION

21 BY MS. KLAHN:

22 **Q.** Good morning, Mr. Stomp. My name is Sarah
23 Klahn. I represent the State of Texas. I think I
24 took your deposition. Nice to see you again.

25 **A.** Good morning. Nice to see you, too.

1 Q. Are you getting paid for your time here
2 today?

3 A. Yes, I am.

4 Q. Were you paid to get prepared for today?

5 A. Yes, I was.

6 Q. By who?

7 A. By the Water Authority.

8 Q. Not by Stein & Brockmann?

9 A. Well, I work for Stein & Brockmann. My hours
10 are being billed to the Water Authority.

11 Q. I see. And Stein & Brockmann both have --
12 that law firm has clients that are amicus in this case
13 in addition to Albuquerque, don't they?

14 A. I believe they do, yes.

15 Q. City of Las Cruces?

16 A. Yes.

17 Q. Any others?

18 A. Not that I'm aware of.

19 Q. Okay. I wanted to talk to you about, I think
20 it's New Mexico 997 -- 997. Yeah. So you had some
21 testimony with -- some discussions with Mr. Wechsler
22 about this exhibit, and you pointed out --

23 MS. KLAHN: If we could pop out that
24 table on the first page there, Mr. Berns?

25 Q. (BY MS. KLAHN) You pointed out the 17,875

1 acre-feet. If I got it right, that is the amount of
2 consumptive use the Water Authority is entitled to
3 under this permit without having to provide any
4 offsets for the well pumping; is that right?

5 A. Yes. And I -- if you don't mind, I'll
6 clarify. The 17,875 was the amount that was granted
7 under the declaration in 1956. There were other
8 pre-basin rights that were also granted to other
9 entities and to other properties, so this permit
10 actually includes additional pre-basin rights on there
11 that start with RG-606 and go down to RG-9788.

12 Q. Yeah. I recall that from your deposition. I
13 -- I really just want to ask you some questions about
14 the way the pumping associated with those pre-basin
15 water rights works. So all the wells that the
16 authority pumps, potentially -- or actually deplete
17 the river, correct?

18 A. Yes. To some extent.

19 Q. To some extent. So it's just that state law
20 only requires offsets for the wells that are -- that
21 were authorized under this permit that came after
22 1956, correct?

23 A. I'm sorry. Could you say that question
24 again? I apologize.

25 Q. So it's -- it's your understanding that state

1 law only requires offsets for the wells and the well
2 pumping that were authorized under this permit after
3 1956, correct?

4 A. Yes.

5 Q. Okay. But the wells that this permit
6 authorizes -- sorry, pumping that this permit
7 authorizes that predates 1956 is still depleting the
8 river to some extent, correct?

9 A. I don't understand your question. I
10 apologize. Could you clarify that for me? I'm sorry.

11 Q. The pumping associated with the -- this
12 permit that -- that predates 1956, the pumping that
13 you don't have to offset, that pumping still depletes
14 the river to some extent, correct?

15 A. Well, just to clarify, the original
16 declaration that was provided to the city was 1964.
17 That's when the state engineer first recognized the
18 pre-basin rights. This permit itself added additional
19 rights that were on -- that were in addition to that.
20 But, yes, the original permit that was approved by the
21 state engineer allowed for wells that were already
22 existing that had a diversion right and then a
23 consumptive use right of the river, and we do not have
24 to offset the effects of those wells.

25 Q. Even though that well pumping does deplete

1 the river to some extent, correct?

2 A. Yes, they do.

3 MS. KLAHN: Could we go to Texas 325,
4 please? And I'd like to look at Paragraph 13. I
5 think it continues over on to the next page, yeah, so
6 maybe you could -- thank you. Could you highlight the
7 last phrase there after the semicolon?

8 Q. (BY MS. KLAHN) So based on your understanding
9 as the previous -- or the prior -- in your prior roles
10 with the Water Authority, based on your understanding
11 of this permit, the way this permit is currently
12 written, if the Court decides that there needs to be
13 curtailment of any water rights in New Mexico in order
14 to satisfy Texas' claims in this case, this permit
15 already has a term in it that would facilitate that
16 curtailment. Would you agree?

17 A. Well, if the Court granted your request and
18 the state -- the State of New Mexico was responsible
19 as part of a remedy to do that, there may be a number
20 of issues that the state engineer would do to use
21 that, but this condition itself allows for the state
22 engineer to retain jurisdiction in the event that
23 there is an issue with the -- the Rio Grande Compact.
24 So, yes, I believe that this -- he would be allowed to
25 suspend diversions of native water under this

1 condition in the event that there's an issue that he
2 finds with the Rio Grande Compact.

3 **MS. KLAHN:** Thank you. Your Honor,
4 that's all the questions I have for this witness.

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

7 **MS. NAJJAR:** No, Your Honor. We don't
8 have any questions.

9 **JUDGE MELLOY:** And, Mr. Wallace, I
10 assume you don't have anything, or do you?

11 **MR. WALLACE:** Actually, Your Honor, I
12 may have a question or two for the witness.

13 **JUDGE MELLOY:** Go ahead.

14 CROSS-EXAMINATION

15 BY MR. WALLACE:

16 **Q.** Mr. Stomp, my name is Chad Wallace. I'm an
17 attorney for the State of Colorado. How are you doing
18 this morning?

19 **A.** I'm good. Thank you very much. How are you?

20 **Q.** I'm doing very well. You testified earlier
21 that you had familiarity with the Rio Grande Compact,
22 right?

23 **A.** Yes, sir.

24 **Q.** You're also familiar with Article 4; is that
25 right?

1 A. Yes, I am.

2 **Q. And that article requires delivery by the**
3 **State of New Mexico essentially into Elephant Butte**
4 **Reservoir or is measured at Elephant Butte Reservoir;**
5 **is that right?**

6 A. Yes. It's an index gage where a portion that
7 flows by there needs to be delivered to Elephant Butte
8 Reservoir.

9 **Q. In your time working with the Water**
10 **Authority, you just testified in response to questions**
11 **by Ms. Klahn about potential depletions caused by the**
12 **Authority's wells to the Rio Grande, right?**

13 A. Yes. I'm sorry.

14 **Q. Okay. To your knowledge, have any of those**
15 **depletions caused New Mexico to fail to meet its**
16 **Article 4 delivery obligations?**

17 A. No. I don't believe those depletions caused
18 New Mexico's failure to meet their delivery
19 obligations.

20 **MS. KLAHN:** Objection. That wasn't the
21 question.

22 **MR. WALLACE:** That's all the questions I
23 have.

24 **JUDGE MELLOY:** I'm not sure I
25 understand. Let me reread exactly what was asked. I

1 don't understand your objection, Ms. Klahn.

2 **MS. KLAHN:** Never mind, Your Honor.

3 **JUDGE MELLOY:** All right.

4 **MS. KLAHN:** I was going to re-ask the
5 question, but never mind.

6 **JUDGE MELLOY:** Did you have anything
7 further, Mr. Wechsler?

8 **MR. WECHSLER:** I just have a couple of
9 questions, if I may.

10 **JUDGE MELLOY:** Go ahead.

11 **REDIRECT EXAMINATION**

12 **BY MR. WECHSLER:**

13 **Q. Mr. Stomp, you were asked about depletions**
14 **caused by groundwater pumping from the Water**
15 **Authority's wells by Ms. Klahn. Do you recall that?**

16 **A. Yes, I do.**

17 **Q. Does the -- the total depletions depend on**
18 **the timing and location of the groundwater pumping?**

19 **A. Yes. As I talked about, the Middle Rio**
20 **Grande Administrative Criteria has a flow model so**
21 **each well has its own sort of characteristic as it**
22 **relates to its depletion on the river.**

23 **MR. WECHSLER:** No further questions.

24 Thank you, Your Honor.

25 **JUDGE MELLOY:** Ms. Klahn, anything

1 further?

2 **MS. KLAHN:** No, thank you.

3 **JUDGE MELLOY:** Ms. Najjar, I assume
4 nothing?

5 **MS. NAJJAR:** No, Your Honor.

6 **JUDGE MELLOY:** All right. Thank you,
7 Mr. Stomp. You're done. Good luck with your legal
8 career, and you're free to go. Thank you very much.
9 I guess that's it for the day then,
10 right?

11 **MR. WECHSLER:** That's correct, Your
12 Honor.

13 **JUDGE MELLOY:** Okay. So who are we
14 going to take up first Monday, Mr. Wechsler?

15 **MR. WECHSLER:** Well, I understood that
16 the parties' preference was to take up Mr. Longworth
17 first, followed by Westmoreland.

18 **JUDGE MELLOY:** Okay. Probably makes
19 sense. We would hopefully ensure he's done on Monday,
20 and that would leave Serrano. Serrano is going to be
21 a long witness, too; is that right?

22 **MR. WECHSLER:** Yes, Your Honor. I
23 expect Mr. Serrano will be longer than Mr. Longworth.

24 **JUDGE MELLOY:** Okay. We want to try to
25 do Serrano on Tuesday or does -- what -- remind me,

1 who does Mr. Longworth work for?

2 **MR. WECHSLER:** Mr. Longworth is a former
3 director of the ISC and currently a special assistant
4 to the New Mexico Office of the State Engineer, and
5 Mr. Serrano is the Water Master in the Lower Rio
6 Grande, so he'll be talking about water administration
7 in New Mexico.

8 **JUDGE MELLOY:** I'm just thinking, do we
9 want to -- well, maybe it's just as easy to do
10 Longworth then do Westmoreland and Serrano, is that --
11 is that the order you were thinking of?

12 **MR. WECHSLER:** That's -- that's right,
13 Your Honor. I was just handed a note saying that
14 Mr. Westmoreland has to go on the 11th, so I guess --
15 he's not available on the 11th.

16 **JUDGE MELLOY:** The 11th is what day? Is
17 that -- oh, that's Thursday. We hope to be done by
18 Thursday.

19 **MR. WECHSLER:** Yeah. I don't expect
20 there to be any kind of problem. So I -- I -- as I
21 said, I fully expect we'll be finished by Wednesday.

22 **JUDGE MELLOY:** All right. So we'll do
23 -- if we plan on Longworth Monday, hopefully get
24 Westmoreland on for at least part of his testimony on
25 Monday, and then he'll probably spill over into

1 Tuesday, it looks like. Is that kind of where we
2 think we are?

3 **MR. WECHSLER:** I think that's right,
4 Your Honor. It depends on cross-examination. We
5 expect Mr. Longworth's direct testimony to take
6 between two and three hours. If we assume roughly the
7 same on cross or a couple of hours, perhaps
8 Mr. Westmoreland can get on and off. We don't expect
9 that to be a long testimony either. So we'll have to
10 see.

11 **JUDGE MELLOY:** All right. Is there
12 anything else we need to take up before we adjourn for
13 the weekend? I should mention, I did send an e-mail
14 to the former mediator thanking him for his service
15 and sort of acknowledging the fact that he's been
16 replaced, just so you know that. I got a thank you
17 back, and that was about the extent of it. But just
18 so you know, I did thank him for his service, and as I
19 understand it, Mr. Somach was -- I believe called him
20 so my e-mail hopefully didn't come out of the blue.
21 Other than that, anything else?

22 **MR. WECHSLER:** Not for New Mexico.

23 **JUDGE MELLOY:** All right. Then we'll
24 see everybody on Monday. Thank you, everyone. Have a
25 good weekend.

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(The proceedings adjourned at 11:49 a.m.)

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I, HEATHER L. GARZA, a Certified Shorthand Reporter in and for the State of Texas, do hereby certify that the facts as stated by me in the caption hereto are true; that the foregoing pages comprise a true, complete and correct transcript of the proceedings had at the time of the hearing.

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A	affirm 5:2	appearance 4:7	10:24 11:15,20	basically 16:25
a.m. 1:12 44:1	ago 13:6	appearing 4:6	11:21 12:2,11	17:6 18:19
ability 6:2 17:9	agree 7:9 29:21	application	13:13,19,23	25:18 26:6
27:18 29:14	37:16	15:13,20 18:8	16:12 17:5	basin 14:10,12
Abiquiu 22:6,7	agreement 31:18	18:10,11	19:8,18 21:24	14:14,18,19
27:2 28:8,9,23	31:19,21,24	applications	22:14 24:4	16:3 18:5
28:24 30:14,17	32:3 33:7,12	17:24	25:17 26:16	20:16,23
able 15:1	ahead 21:4	applied 15:18	27:9,18 28:7	basis 13:7 25:14
above-entitled	33:19 38:13	apply 18:7	29:13 31:7	25:14
1:11	40:10	appropriate	34:7,10 35:2	began 21:19,20
account 22:7	air 18:18	21:2	35:16 37:10	behalf 11:22
accurate 8:20	Albuquerque	appropriation	39:10	45:11
acknowledging	7:6,17,20 9:11	15:15 17:1	Authority's 7:23	believe 8:22 32:2
43:15	9:19 10:16	appropriations	7:24 13:14	34:14 37:24
acre-feet 15:15	13:17 16:4,7	14:20	20:20 28:3	39:17 43:19
15:16 16:7,9	18:4 23:16	approval 16:15	39:12 40:15	beneficial 29:23
16:20,23 20:18	26:13,14,21	17:14 23:10	authorization	30:1
20:21 27:21	34:13	31:9	30:4,19,20	Bernalillo 7:6,17
35:1	allow 16:22	approved 16:18	authorized 20:6	13:18
Act 20:8 29:24	allowed 5:25	18:10,12,12	20:8,10 29:24	Berns 34:24
added 36:18	16:19,25 29:19	28:11 30:25	30:13 35:21	best 8:20
addition 34:13	30:4,15 32:4	32:14 36:20	36:2	beyond 15:5
36:19	36:21 37:24	approximately	authorizes 36:6	billed 34:10
additional 15:4	allowing 17:6	15:6	36:7	bit 18:6 22:16
16:25 35:10	allows 32:3	aquifer 22:22	available 5:20	30:7
36:18	37:21	area 13:15,16,17	12:23 17:5	blue 43:20
address 6:23 7:1	Almeda 22:11	17:16,22 26:12	24:14 42:15	book 5:21,21,23
31:14	amici 7:22	areas 18:3,14,15	avenue 23:15	borrow 23:20
addressed 7:4	amicus 34:12	19:1,2	26:25	borrowed 22:1
32:17	amount 8:7	arsenic 10:13	average 24:23	Bosque 26:11
adjourn 43:12	12:23,24 16:5	article 12:23	aware 11:21	Boulevard 22:11
adjourned 44:1	16:6 17:4	38:24 39:2,16	34:18	Box 2:20
administer 5:1	20:21 21:25	asked 11:24	awful 30:7	briefly 8:24
administered	23:13,22 24:13	39:25 40:13		Broadway 2:15
6:25	24:20 25:4	assistant 42:3	B	Brockmann
administration	26:23,24 31:6	associated 11:10	bachelor's 8:25	11:19 34:8,9
8:2,15 13:5	35:1,6	15:2 32:12	back 4:3 9:24	34:11
42:6	amounts 32:10	35:14 36:11	14:23 19:23	brought 20:14
Administrative	ANDREWS 2:9	assume 38:10	22:1,5 23:24	Bureau 8:14
17:16,22 40:20	Angostura	41:3 43:6	28:16 29:8,10	12:9 25:15
admitted 6:10	26:20	assuming 23:20	29:16,20 43:17	28:1,10
6:13	answer 21:16	attorney 38:17	background	Butte 7:2,3 8:9
adopted 17:25	Apache 26:11	attorneys 45:12	8:17,24	13:8 27:17,19
advise 5:24	29:17,21	August 10:8	bad 30:8	28:2,4,10,13
affect 31:24,25	apologize 21:11	authority 7:6,9	based 14:10	28:13,19,22
32:19,24	30:9 35:24	7:12,13,19,21	23:13 24:2	29:5,8,10,14
	36:10	7:22 9:11,16	32:10 37:8,10	29:19,25 30:3

30:14 31:5,11 31:15 32:1,13 33:12 39:3,4,7	Chama 20:5,17 change 22:12 27:7 28:19 changed 9:18 12:22 19:9 22:15,16 changes 12:23 12:25 24:15 characteristic 40:21 charged 31:6 chief 10:22,24 10:25 11:24 circuit 29:20 city 7:20 9:11,16 9:18,25 13:17 16:4,6 26:12 29:15 34:15 36:16 civil 8:25 9:2 claims 8:10 37:14 clarify 35:6 36:10,15 clear 32:18 clerk 11:17,18 clients 34:12 closely 24:4,9 Cochiti 26:10 collection 11:7 collectively 25:7 25:8,11 Colorado 1:6 2:5,13,14,15 4:4,15 20:7,12 38:17 combined 18:16 come 12:24 25:1 43:20 comes 20:16 24:13 coming 22:20 24:20 commencing 1:12 Commission 25:17 28:12	30:25 31:1,9 32:9,14 communication 5:25 26:2,17 27:4,8,11 communicatio... 25:12 26:25 Compact 12:12 13:4 14:11 15:7 23:6,8 24:5,10 28:11 28:17 29:4 30:25 31:1,9 32:9,14 37:23 38:2,21 complete 45:7 compliance 12:3 24:6,11 25:24 30:24 component 12:16,16 comprehensive 10:17 comprise 45:7 concerned 8:5,8 8:10 18:24 condition 8:6 13:9 16:15 17:2,14,14 18:15 23:10,25 37:21 38:1 conditions 12:22 23:12 24:1 conference 25:13,19 Congress 20:6,8 29:24,24 30:13 congressional 30:19,20 conjunction 12:20 conjunctively 13:24 connected 8:11 15:4 Conservancy 25:18 26:4	conservation 10:12 22:19 constant 26:25 27:8 constantly 25:21 25:25 construction 20:9,10 consumptive 16:5,9 35:2 36:23 context 13:11 continental 20:14 continue 8:3 11:25 29:6 continued 16:22 continues 37:5 contract 8:13 20:20 27:20 28:1 29:15,18 29:22 30:16,18 31:23 contractors 20:19 contracts 10:13 12:8 20:19 control 26:7 28:23 coordinate 25:12 27:10 coordinating 25:19,25 27:1 copy 8:18 Corps 12:8 22:8 25:15 29:1 30:16 correct 8:20 35:17,22 36:3 36:8,14 37:1 41:11 45:7 counsel 45:14 County 7:6,17 13:18 couple 5:15 13:6 18:21 26:14 28:6 33:18	40:8 43:7 Court 1:1 37:12 37:17 45:23 created 7:13,15 credit 32:5 Criteria 40:20 critical 18:3,14 19:1,2 cross 43:7 cross-examina... 3:5,5 6:11 33:20 38:14 43:4 CRR 45:19 Cruces 34:15 CSR 45:19 currently 11:14 11:18 15:23 32:3 37:11 42:3 curtailment 37:13,16 customers 22:5
C				D
C 2:1 calculate 18:23 call 4:21 7:9 19:20 22:6,8 27:8 called 23:16 26:4 43:19 calls 4:24 25:13 25:19 27:12 capacity 28:25 45:10 capital 11:12 caption 45:6 career 41:8 carryover 32:3 32:17,17,22 33:2,5,9 case 6:24 7:22 18:9 34:12 37:14 cause 18:17 45:13 caused 39:11,15 39:17 40:14 cell 18:18,24 cells 18:20 central 23:15 26:24 CERTIFICATE 45:1 Certification 3:8 45:20 Certified 1:13 45:3 certify 45:5,9,12 CFS 23:15,18,19 23:20,21 Chad 2:14 4:14 38:16 chad.wallace... 2:16 challenges 24:24				daily 25:14 Date 45:20 day 25:20 41:9 42:16 45:17 days 27:3 DC 2:20 De 2:10 December 9:5 45:17 decides 37:12 declaration 14:9 35:7 36:16 declared 14:12 14:15,17,18 16:2 declines 18:17 DEFENDANT 2:8,13 Defendants 1:7 definitely 33:7 del 26:11 deliver 28:8

delivered 25:22 39:7	discussions 34:21	43:20	enter 4:6	36:22
delivery 25:5,8 39:2,16,18	distributed 22:4	earlier 30:17 33:8 38:20	entered 14:11 15:7	expect 41:23 42:19,21 43:5 43:8
Denver 2:5,15	District 25:18 26:4	early 21:19,20	entities 35:9	expected 27:7
DEPARTME... 2:14,19	diversion 12:15 14:2,3,4 16:6,8 16:19 17:3,7	easier 7:11 28:7	entitled 35:2	experience 9:13 13:12
depend 40:17	diversions 14:22 20:11 26:1,20	easy 42:9	entity 7:14 26:6	expert 13:7
depending 27:13 33:8	document 27:23	educational 8:24	equal 21:25 23:22	Expiration 45:20
depends 43:4	documents 5:19	effect 28:24	equally 32:11	explain 20:2 24:8 28:3,7
deplete 35:16 36:25	doing 38:17,20	effects 8:8 36:24	essentially 20:6 39:3	extent 35:18,19 36:8,14 37:1 43:17
depletes 36:13	downstream 8:12 22:2 26:12,15 28:25	effluent 14:5	established 17:20 18:3 32:8	<hr/>
depleting 36:7	Dr 7:1 13:8	effort 25:5	Estrada-Lopez 7:4 27:16	F
depletion 14:24 19:6 40:22	draft 19:23	efforts 22:19	ET 27:5	facilitate 24:5 37:15
depletions 8:7 15:1,5 16:12 19:8 22:17,17 22:21,25 39:11 39:15,17 40:13 40:17	drawdown 18:23	eight 9:17	evacuating 29:3	facilities 11:8
deposition 33:24 35:12	drawdowns 18:13	either 9:10 43:9	evaluate 25:7	facility 22:10 23:18,19 26:13 26:23 27:3
describe 8:24 13:14 21:22	drinking 10:20 14:4 19:20,21 21:22,23 22:18 22:20 24:3 29:6	El 25:23	evaluation 17:23	fact 43:15
designated 11:23	Dr 7:1 13:8	Elephant 7:2,3 8:9 13:8 27:17 27:19 28:2,4 28:10,12,13,19 28:22 29:5,8 29:10,14,15,19 29:25 30:3,14 31:4,11,15 32:1,13 33:12 39:3,4,7	evaporation 27:16 31:6	facts 45:5
determines 23:7	drawdowns 18:13	employ 45:12	evaporative 30:23 31:12 32:7,21 33:10	fail 39:15
determining 18:2	Dr 7:1 13:8	employee 45:10	evapotranspir... 27:6	failure 39:18
developing 24:16	draft 19:23	endangered 25:24	event 31:15 32:13 37:22 38:1	familiar 13:2,2 15:23 17:17 31:17,20 38:24
development 9:19,23,23 11:12	drawdowns 18:13	engineer 9:8,15 9:20 12:3 14:18 16:2,20 17:20 18:22,24 23:6,7,14 24:5 25:8,11 36:17 36:21 37:20,22 42:4	evaporative 30:23 31:12 32:7,21 33:10	familiarity 38:21
devices 6:1	drinking 10:20 14:4 19:20,21 21:22,23 22:18 22:20 24:3 29:6	engineer's 12:7 14:21 24:10 25:16	evapotranspir... 27:6	fast 30:7
diameter 20:16	duly 6:17	engineering 9:1 9:2	event 31:15 32:13 37:22 38:1	Fe 2:10
direct 3:4 6:18 6:24 21:12 43:5	DUNN 2:4	Engineers 12:8 22:8 25:16 29:1	evaporation 27:16 31:6	field 11:6
directly 11:1 28:21	<hr/>	ensure 12:3 41:19	evaporative 30:23 31:12 32:7,21 33:10	figure 27:9
director 11:2 42:3	E		evapotranspir... 27:6	filed 15:20 18:10 19:22
discussion 31:22	E 2:1,1,1,1		event 31:15 32:13 37:22 38:1	filled 31:16
	e-mail 6:2 43:13		exactly 39:25	fills 32:13
			examination 3:4 3:6 6:6,18 40:11	final 10:22
			examiner 19:16 19:22	finally 10:21
			example 32:16	findings 19:15
			excuse 5:21	finds 38:2
			executive 11:1	finished 21:15 42:21
			exhibit 5:21,23 8:17 15:9 23:2 31:3 34:22	firm 34:12 45:23
			exhibits 6:7,8,10 6:13	first 5:16 6:17
			existing 18:17	

6:24 7:25 9:15 15:10 32:14 33:2,16 34:24 36:17 41:14,17 fixed 8:6 flood 26:7 28:23 29:3 Floor 2:15 flow 12:17 18:1 18:19 23:12,13 23:15,17 27:7 40:20 flowing 21:20 flows 12:22 17:5 39:7 focused 23:25 followed 41:17 follows 6:17 foot 5:13 forecast 25:3,3 foregoing 45:6 form 20:4 former 42:2 43:14 forward 14:25 four 6:6 free 41:8 full-time 9:4 fully 42:21 further 16:23 17:4 33:14 40:7,23 41:1 45:9 future 8:4 17:24	40:10 41:8 42:14 goes 24:11 27:4 going 12:17,19 16:15 24:15,18 24:19,22,25 25:1,4,6,21,22 26:1,10 27:1 33:16 40:4 41:14,20 good 4:8,11,17 6:20,21 26:2,2 33:22,25 38:19 41:7 43:25 graduate 9:5 graduated 9:2 Grande 6:25 8:7 12:11 13:4,10 14:9,12,14 17:11,16,22 18:5 19:6 20:16,23 22:24 24:22 25:18 26:4,8,9 29:4 30:25 31:1,9 32:9 37:23 38:2,21 39:12 40:20 42:6 granted 16:3 35:6,8 37:17 ground 5:15 15:3 groundwater 8:11 10:14,18 11:9 12:20 13:24,25 14:8 14:9,12,14,20 15:15,17 17:8 17:9,10,11 18:1,4,17,19 19:4 40:14,18 group 11:6 guess 41:9 42:14 guide 8:23 guidelines 17:16 17:22,25 18:11 18:13	<hr/> H <hr/> habit 30:9 hand 5:1 45:16 handed 42:13 happen 12:18 24:16 25:13 31:15 32:20,20 happened 15:6 happens 29:1 he'll 42:6,25 heading 9:15 heard 13:6 14:8 27:16 hearing 1:11 19:16,22 45:8 45:11 HEATHER 45:3,19 held 1:12 hereto 45:6 Heron 20:17 21:20 higher 33:10 highlight 37:6 historian 13:7 hold 9:7 Honor 4:8,11,14 4:17,23 6:15 20:25 21:6,12 30:8 33:14,18 38:3,7,11 40:2 40:24 41:5,12 41:22 42:13 43:4 HONORABLE 1:11 hope 42:17 hopefully 41:19 42:23 43:20 hosted 25:15 hours 34:9 43:6 43:7 Houston 45:24 hundred 20:18 hundred-year 8:5	hydrologically 8:11 15:4 <hr/> I <hr/> idea 8:6 identified 6:7,11 30:1 III 3:4 5:9 6:16 impact 33:2 impacts 33:11 implementing 10:15 important 12:21 imported 20:22 21:17,18 imports 20:18 improved 15:14 improvement 11:13 included 9:21 11:5 12:6 includes 12:15 18:13 35:10 including 16:4 incorporated 13:16 increase 15:17 16:19 increased 15:14 17:8 increases 16:21 increasing 22:17 incremented 16:25 incrementing 17:7 increments 17:1 index 3:1 39:6 indicated 6:10 individuals 16:4 infrastructure 22:13,14 intend 6:22 interest 7:23,24 19:9 interested 45:13 interests 26:9	interject 21:1 interrupt 21:8 Interstate 25:17 intervenor 4:5 invalid 29:18,22 investigation 10:14 involved 32:23 iPads 6:1 iPhones 6:1 irrigation 26:7 ISC 42:3 issue 37:23 38:1 issues 6:23 27:12 28:25 37:20 items 6:4 <hr/> J <hr/> J-O-H-N 5:12 Jeff 4:12 Jeffrey 2:9 Jennifer 2:19 4:18 jennifer.najja... 2:21 Jicarilla 29:17 29:21 job 12:21 John 3:4 4:24 5:8 6:16 Juan 20:5,11 Juan-Chama 7:3 8:8 13:3 20:1,2,4,6,7,22 21:17,25 22:3 22:25 23:22 24:12 27:15,17 28:4,8,18 29:2 29:23,25 30:2 30:14,16,24 31:4,10,25 32:6,7,12,13 32:15,24 33:1 33:8,11 JUDGE 4:1,10 4:13,16,19,25 5:6,10,14,19
---	--	---	---	---

5:24 6:5 21:4 21:14 30:6,10 33:15,19 38:5 38:9,13 39:24 40:3,6,10,25 41:3,6,13,18 41:24 42:8,16 42:22 43:11,23 July 10:8,8 June 15:20 jurisdiction 14:19 37:22 JUSTICEC 2:19 jwechsler@m... 2:11	leave 41:20 legal 41:7 legislature 7:14 7:15 let's 8:16 9:13 10:3 13:13 14:8 16:16 19:11,12 27:15 31:2 letters 9:24 license 9:9 licenses 9:7 limit 19:6 limitation 16:24 17:2 23:18 limitations 16:21 18:13 30:2,21,22 limited 17:4 little 18:6 21:10 30:7 located 22:11 location 40:18 long 41:21 43:9 long-term 19:3 longer 11:20 41:23 Longworth 41:16,23 42:1 42:2,10,23 Longworth's 43:5 look 10:3 15:9 16:15,16 17:13 18:15 19:25 23:4 24:17 25:2 27:22 31:2 37:4 looked 24:2 looking 15:22 23:3 looks 4:1 43:1 loss 28:10 losses 28:12 30:23 31:13 32:7,21 33:10 lot 24:1,11,17	27:4,11 low 24:18 Lower 14:9 42:5 luck 41:7 <hr/> M <hr/> M 2:1 Machine 1:13 making 18:25 26:19,20 manage 7:15 13:24 managed 11:11 management 10:16 18:3,14 18:15,18 19:1 19:2 manager 10:4,6 10:7,10,19 managing 11:2 master 1:11 10:1 10:2 42:5 masters 9:2 matter 1:11 mean 16:1 24:23 means 18:2 32:23 measured 39:4 measuring 14:22 mediator 43:14 meet 23:8 39:15 39:18 MELLOY 1:11 4:1,10,13,16 4:19,25 5:6,10 5:14,19,24 6:5 21:4,14 30:6 30:10 33:15,19 38:5,9,13 39:24 40:3,6 40:10,25 41:3 41:6,13,18,24 42:8,16,22 43:11,23 melt 24:23,25 25:3 mention 43:13	mentioned 26:3 metering 14:22 methodology 17:23 Mexico 1:6 2:8 2:10 4:4,12,24 6:6,8,8,9,11 8:17 9:1,3,4,9 12:23 15:9,10 16:14 24:5,15 27:22 31:3 34:20 37:13,18 39:3,15 42:4,7 43:22 Mexico's 39:18 MICHAEL 1:11 Middle 6:25 8:7 13:10 14:12,14 17:11,15,22 18:5 19:4,6 24:21 25:18 26:3,8,8 40:19 mile 18:20 miles 22:2 26:21 Miltenberger 13:8 Miltenberger's 7:1 Milton 3:4 5:8 6:16 mind 35:5 40:2 40:5 mine 30:9 minimum 23:15 model 18:1,18 18:22 40:20 Monday 41:14 41:19 42:23,25 43:24 monitor 18:25 MONTGOM... 2:9 monthly 14:23 morning 4:8,11 4:17 6:20,21 6:23 33:22,25 38:18	moving 20:4 MRGCD 25:23 26:5,5,17 27:8 27:13 <hr/> N <hr/> N 2:1 Najjar 2:19 4:16 4:17,18 38:6,7 41:3,5 name 5:7,8,10 33:22 38:16 narrative 21:2,9 Nation 29:17 National 26:11 native 12:15,16 13:3 21:25 22:21,24 23:1 23:13,19,20,23 23:23,25 24:2 24:12 26:22 28:20 29:7,11 32:4 37:25 near 15:19 necessary 23:8 29:13 31:5 need 4:20,25 5:14,24 9:25 12:25 23:17 24:24 43:12 needed 30:24 needs 37:12 39:7 negotiate 31:5 never 40:2,5 new 1:6 2:8,10 4:4,12,24 6:6,8 6:8,9,11 8:17 9:1,3,4,9,22,23 12:23 14:19 15:9,10 16:14 17:25 24:5,14 27:22 31:3 34:20 37:13,18 39:3,15,18 42:4,7 43:22 Nice 33:24,25 non-critical
<hr/> K <hr/> kin 45:13 kind 22:5 42:20 43:1 Klahn 2:4 3:5 4:7,8,9 20:25 21:8 33:15,16 33:17,21,23 34:23,25 37:3 37:8 38:3,5 39:11,20 40:1 40:2,4,15,25 41:2 know 43:16,18 knowledge 8:21 17:9 19:5 39:14	<hr/> L <hr/> L 45:3,19 laptops 6:1 large 26:12 33:6 larger 14:3 27:6 Las 34:15 late 29:16 law 2:14 9:4 11:17,18 20:9 30:4,12,15 31:8 34:12 35:19 36:1 Lawrence 2:5			

18:14,18	32:2,15,18	participates	8:23 10:4,23	proceed 6:14
non-Indian 26:9	33:7,12	25:16	20:2 21:22	21:13
non-potable	operating/sup...	particular 18:9	24:8 28:3	proceedings 1:9
14:6	11:3	18:24	29:12 37:4	1:13 44:1 45:8
normal 23:21	operational	parties 4:5 45:10	plus 17:5	professional
32:6	24:16	45:14	point 14:25	8:16 9:7,8
note 6:6 42:13	operations 7:16	parties' 41:16	pointed 34:22	program 10:12
notices 27:12	9:22 11:3,6,10	Paseo 2:10	34:25	10:12 11:13
NOVEMBER	13:4 21:19	pass 25:4	polite 21:10	programs 12:6
1:12	23:17,21 25:20	pay 14:23 28:16	pool 28:19,20	prohibition
number 7:25 9:9	25:23 27:10	paying 29:7	29:11	17:10
37:19	28:17,24	pending 17:23	pools 32:4	project 8:12,13
	opinion 13:7,10	people 13:19,21	pop 34:23	10:19,20 14:5
	opposed 8:14	25:25	portion 22:25	19:20,21 20:2
	28:22	Peralta 2:10	24:1 39:6	20:7,8,9,17,22
O 2:1	order 25:12	percent 22:22	position 9:16	21:19,22,23
oath 5:1	37:13 42:11	period 17:1	10:4,9,22	22:18,20 24:3
objection 21:6	original 1:1 4:3	permit 12:15	possibly 29:3	28:20 29:6,23
39:20 40:1	36:15,20	14:2,3,4 15:13	Post 2:20	32:1,5,6,16
obligations 23:8	Otowi 25:4	15:14 16:18,21	potential 30:22	promoted 10:7
25:9 39:16,19	ought 21:3	18:12 19:16,18	31:25 33:11	10:25
obtain 29:13	outright 17:10	19:19,21,24	39:11	properties 35:9
obtaining 31:3	outside 19:1	23:8,9 28:14	potentially	proposes 24:24
Obviously 9:6	overall 23:10	35:3,9,21 36:2	35:16	protecting 7:25
office 2:20 14:21	oversaw 12:5	36:5,6,12,18	pre-basin 15:24	8:2 19:3 24:2
24:10 25:16	oversee 7:16	36:20 37:11,11	16:3,11 35:8	protections
42:4 45:16	overseeing 10:11	37:14	35:10,14 36:18	10:14
officer 10:22,24	10:15	permits 8:1 12:4	predates 36:7,12	provide 7:5
11:1,24		12:7 13:25	predecessor	13:11 17:23
offset 15:1 16:12		14:2,20	7:18,21 19:9	26:8 35:3
18:2 28:15,15	P	permitted 21:24	predict 25:4	provided 30:2
36:13,24	P 2:1,1	permitting	preference	36:16
offsets 15:5 35:4	page 3:3 9:14	13:12	41:16	provider 9:24
35:20 36:1	10:3,21 16:14	personnel 11:10	prepare 25:1	providing 11:21
oh 42:17	17:13 19:25	phone 27:12	prepared 13:1	public 9:17 20:9
Okay 5:14 34:19	31:2 34:24	phrase 37:7	34:4	30:4,12,15
36:5 39:14	37:5	placed 16:20	present 8:4	31:8
41:13,18,24	pages 23:2 45:6	17:2 30:21	previous 37:9	pueblos 26:9
one-mile 18:21	paid 34:1,4	Plaintiff 1:4 2:3	Primarily 31:22	pump 17:9
online 22:18	paper 23:4	plan 8:5 24:16	primary 14:6	pumping 15:2
operate 8:3	papers 5:20	25:1 42:23	29:9	17:11 18:16
12:19 24:25	paragraph	planning 24:11	prior 37:9,9	35:4,14 36:2,6
29:6	19:25 23:3,5	24:15	private 9:18	36:11,12,13,25
operates 13:3	23:10 31:2	plans 10:1,2	probably 41:18	40:14,18
24:3	37:4	plant 11:4,5,6	42:25	pumps 35:16
operating 10:22	part 12:21 24:15	22:4	problem 27:5	punishment 9:6
10:24,25 11:24	25:2 31:3	please 5:2,7,11	42:20	purposes 7:10
12:2 31:17,24	37:19 42:24			

14:6 29:22 30:1	29:22 30:1 redid 17:21 Redirect 3:6 40:11 reduced 22:21 reference 20:1 23:5 refers 17:15 Refuge 26:11 registered 9:8 Registration 45:23 regular 25:12 26:16 45:10,12 regulations 12:4 relate 32:10 related 7:5 9:22 relates 13:4 40:22 released 22:6,9 28:9 releases 25:22 25:24 26:1,19 27:2 30:17 releasing 28:22 reliance 10:18 22:24 remedy 37:19 remember 28:14 remind 41:25 REMOTELY 1:12 replaced 43:16 report 19:15,22 reported 1:13 Reporter 1:13 45:4 REPORTER'S 3:8 Reporters 45:23 reports 14:23 represent 33:23 request 9:23 37:17 require 12:11 14:20,21 15:5 28:16	required 16:12 requirement 25:5 requirements 18:2 28:15,15 requires 35:20 36:1 39:2 reread 39:25 reservoir 7:2,4 8:9 13:8 20:17 21:20 22:7,8 25:23 26:10,19 27:2,17,19 28:2,5,24 29:14,20 31:5 31:12,14 32:1 39:4,4,8 reservoirs 11:9 resource 10:4 resources 10:6,7 10:10,13,16,17 11:11 12:6 13:14 respect 32:21,21 response 39:10 responsibilities 9:21 10:5,23 12:10 responsible 10:11,15 11:2 12:2 26:7 37:18 restrictions 12:17 resume 8:18,23 retain 37:22 retired 11:16 return 17:5 returned 22:1 23:24 returns 14:22 RG-4462 14:1 RG-606 35:11 RG-960 14:1 15:14 28:14 RG-9788 35:11 right 4:1,19 5:1	5:6 7:7 16:6,8 16:9,11 21:4 31:4 33:15 35:1,4 36:22 36:23 38:22,25 39:5,12 40:3 41:6,10,21 42:12,22 43:3 43:11,23 rights 8:1,1,2 10:12 12:6 15:1,24 16:3 35:8,10,15 36:18,19 37:13 Rio 6:25 8:7 12:11 13:4,10 14:9,12,14 17:11,15,22 18:5 19:6 20:5 20:16,17,23 22:24 24:21 25:18 26:4,8,9 29:4 30:24,25 31:9 32:9 37:23 38:2,21 39:12 40:19 42:5 rising 22:22 river 14:24,25 15:2 16:5,10 17:6 20:5,7,11 22:10,21 28:16 35:17 36:8,14 36:23 37:1 40:22 role 11:25 roles 37:9 room 5:17 roughly 43:6 RPR 45:19 rules 5:15 12:4 17:20,21 31:10 32:8,11,15,18 33:4 runoff 24:20,23 25:3	S S 2:1 S-T-O-M-P 5:12 San 7:3 8:8 13:3 20:1,2,4,5,5,6 20:11,22 21:16 21:25 22:3,25 23:22 24:12 27:15,16 28:4 28:8,18 29:2 29:23,25 30:2 30:13,15,23 31:4,10,25 32:6,7,12,13 32:15,24 33:1 33:7,11 Santa 2:10 Sarah 2:4 4:9 33:22 satisfy 37:14 saying 29:18 42:13 says 23:6,14 29:20 schedule 18:16 science 8:25 screen 15:23 SEAL 45:16 season 26:2 second 7:2 sector 9:18 see 10:21 15:19 16:8,22 19:25 25:5 27:7 33:24,25 34:11 43:10,24 semicolon 37:7 send 43:13 senior 9:15,20 sense 41:19 Serrano 41:20 41:20,23,25 42:5,10 serve 13:20 service 9:23,25 13:15,16 43:14
--------------------	--	---	---	---

43:18	spilling 32:12	storage 7:3	suspend 23:17	34:21 42:24
set 9:4 31:10	spills 30:22	10:13 12:8	37:25	43:5,9
share 31:12	31:15 32:14	20:7 22:7	suspended 23:9	Texas 1:3 2:3
Shorthand 1:13	33:1,3	27:15,21 28:1	suspension 23:7	4:3,9 6:9,11,12
45:4	squares 18:20	28:2,4,21	sustainability	6:12,23 13:6
Shorthand/Co...	18:21	29:11,25 30:13	19:3	19:12,12 23:2
1:13	stamp 15:19	30:21 31:23	swear 5:2	33:23 37:3
show 4:2	start 6:5 13:13	32:3,4,17,22	switching 13:5	45:4
showing 16:17	14:8 35:11	33:5,9	sworn 6:17	Texas' 37:14
shut 29:1	started 9:19	store 27:18	system 9:22 11:7	texting 6:2
side 15:19	starting 7:25	28:13 29:14	12:3,18,20,21	thank 4:23 6:15
significant 22:12	9:14 17:24	30:15 31:4	12:25 13:2	33:13 37:6
22:19	26:10	stored 8:9 28:9	22:2,10,24	38:3,5,19
SIMMONS 2:4	state 1:3,6,6 2:3	28:18,18 29:5	23:14,24 24:3	40:24 41:2,6,8
simplest 20:4	2:8,13 4:9,12	29:19 30:3	24:14,25 27:2	43:16,18,24
sir 5:18,22 38:23	4:15 5:7 7:13	31:11,13 32:1	27:5,6	thanking 43:14
situation 27:14	7:14 8:14 12:3	32:10 33:11		think 7:11 21:2
situations 28:6	12:7 14:18,21	strategy 10:16	T	28:7 30:11
six 26:8	16:2,20 17:20	10:17	T 2:1	33:23 34:19
sklahn@soma...	18:22,24 23:6	stream 22:1	table 15:19,22	37:5 43:2,3
2:6	23:7,14 24:5	25:17	16:9,16,17	thinking 42:8,11
slow 30:6,9,10	24:10 25:8,11	Street 2:5	34:24	thought 21:9
small 14:3	25:16 26:6	student 9:4	take 4:20 27:22	thousand 20:18
snow 24:23,25	33:23 35:19,25	subject 8:13	28:17,24 31:2	three 14:6 20:11
25:3	36:17,21 37:18	subjects 6:22	41:14,16 43:5	43:6
sole 10:18 22:23	37:18,20,21	sued 29:17	43:12	three-dimensi...
Somach 2:4	38:17 39:3	suffered 30:23	taken 45:11	18:1,19
43:19	42:4 45:4	32:7	takes 24:17 27:3	Thursday 42:17
soon 29:3	stated 45:5	suggest 13:9	talk 4:20 8:16	42:18
sorry 10:8,9	States 1:1 2:18	Suite 2:5 45:24	9:13 19:11	time 10:1 16:5
29:16 35:23	4:4,18 6:24	summarize 10:5	26:18 34:19	16:14 17:1,7
36:6,10 39:13	29:17	10:23 29:12	talked 28:14	17:13 21:9
sort 40:21 43:15	States' 8:10	supervised 12:5	30:17 40:19	26:18 27:10
sources 13:22	status 45:11	supervising	talking 13:13	29:5 34:1 39:9
14:7	Stein 11:19 34:8	10:11	17:8 25:10,21	45:8
south 22:11	34:9,11	supervision	30:7,12 42:6	times 28:23
southern 20:12	stepping 22:5	11:13	tanks 11:9	timing 24:17
SP-48 24:1	steps 29:12	supply 13:22	technical 10:14	40:18
SP-4819 14:2	stomp 3:4 4:21	14:7	telling 9:24	today 11:25
SP-4830 14:4	4:24,25 5:9,12	SUPREME 1:1	tenth 29:20	14:15 34:2,4
19:17 21:24	5:13,14 6:16	sure 18:9,25	term 15:24	today's 4:6 7:10
special 1:11 42:3	6:20 15:10	21:6 27:1	37:15	total 40:17
species 25:24	16:16 17:15	39:24	testified 6:17	transcript 1:9
spell 5:10	20:1 21:16	surface 8:12	38:20 39:10	45:7
spill 32:20 33:8	23:3 33:13,22	10:19 12:19	testimony 5:2	Transcription
42:25	38:16 40:13	13:25 14:1	7:1,5,10 11:22	1:14
spilled 31:16	41:7	15:3 19:11,19	13:6 21:1,13	transfer 28:21

29:10	understood	wanted 34:19	30:14,16 31:4	went 29:24
transferring	41:15	Washington	31:7,13 32:1,4	Weslayan 45:24
29:8	unincorporated	2:20	32:5,6,6,7,13	Westmoreland
transition 10:18	13:17	wasn't 18:10	32:16,17,25	41:17 42:10,14
transitioned	United 1:1 2:18	39:20	33:1,3,6 34:7	42:24 43:8
22:23	4:4,18 6:24	wastewater 7:16	34:10 35:2,15	Wildlife 26:11
transmission	8:10 29:17	9:22 10:2 11:4	37:10,13,25	witness 4:6,22
11:8	University 9:1,3	11:6,7 14:5	39:9 40:14	5:5,8,12,18,20
treated 22:3	9:4	water 6:25 7:2,3	42:5,6	5:22 6:3,7
treatment 22:4	unsigned 19:23	7:6,7,9,12,13	waters 33:9	11:23 21:9
tremendous	upstream 26:12	7:16,18,21,22	way 19:2 21:10	30:8 38:4,12
24:20	26:14,21	7:23,24 8:1,1,2	22:10 35:14	41:21
tributaries	usable 28:20	8:5,8,12,13	37:11	witnesses 5:16
20:11,13 24:21	32:5,6,16	9:11,16,22	ways 29:9	words 14:24
tributary 24:21	use 7:1 8:17	10:1,4,5,7,10	we'll 8:17 17:13	work 9:10 18:7
true 45:6,7	13:12 14:5	10:11,12,13,16	27:9 29:5,6	23:11 24:4,9
truth 5:3,4,4	16:5,9,23	10:17,19,20,24	42:21,22 43:9	24:17 25:7,7
try 41:24	17:25 22:14,16	11:3,5,8,11,14	43:23	31:11 32:15
Tuesday 41:25	26:17 28:11	11:20,21 12:1	we're 4:3 8:5,9	34:9 42:1
43:1	29:23 30:1	12:3,5,6,10,16	15:22,22 16:15	worked 11:1
tunnel 20:15,15	35:2 36:23	12:16,20,22	23:3 25:20	working 11:14
turn 10:3,21	37:20	13:3,5,12,13	26:25 27:1,7	11:17,18 12:1
16:14 17:13	user 26:3	13:14,19,22,23	we've 5:15 22:20	25:11 39:9
19:12 23:2	users 24:9 25:6	13:25 14:1,4	22:23	works 28:5
27:15	25:10	15:1,3 16:11	Wechsler 2:9	35:15
two 6:22 13:25	uses 7:7	17:3,4,4 19:8	3:4,6 4:10,11	Worldwide
14:1 27:3 29:9	utility 7:6,17	19:11,18,19,20	4:12,21,23	45:23
32:9 38:12	9:19 11:4,12	19:21 20:2,3,5	6:14,15,19,21	written 37:12
43:6		20:12,20,22	21:5,12,15	
TX 45:24	V	21:17,20,22,23	30:11 33:13	X
typically 23:21	Vado 25:23	21:24,25 22:1	34:21 40:7,8	XVI 1:5
	Valley 19:4	22:3,4,5,6,9,9	40:12,23 41:11	
U	version 19:23	22:14,14,18,19	41:14,15,22	Y
U.S 2:19	23:4	22:20,21,24,25	42:2,12,19	yeah 10:8 13:16
uncertainty	versus 4:4	23:1,13,19,22	43:3,22	15:20 21:5
32:23	viewing 15:23	23:23,23,25	Wednesday	34:20 35:12
unclear 32:22	VOLUME 1:5	24:3,3,4,9,12	42:21	37:5 42:19
underneath 11:5	VS 1:5	24:13,13 25:6	week 25:20	year 9:5 12:18
20:14		25:10,17,21	weekend 43:13	12:21,24,25
understand 6:2	W	26:3,8,16,17	43:25	15:16,16,18
12:11,19 13:10	Wallace 2:14 3:5	26:22,23,24	weekly 25:14	16:7,20,22,23
21:6 24:24	4:13,14,14	27:8,17,18,18	weeks 13:6	17:21,24 20:19
36:9 39:25	38:9,11,15,16	28:3,4,7,8,13	wells 11:9 17:11	24:13,14,17,18
40:1 43:19	39:22	28:17,18,20	18:17,22 35:15	24:19,22 25:2
understanding	want 13:11	29:2,3,5,6,7,7	35:20 36:1,5	25:6 27:21
12:17 14:10	35:13 41:24	29:10,11,13,14	36:21,24 39:12	years 9:10,12,17
35:25 37:8,10	42:9	29:18,25 30:2	40:15	10:10 15:7

Z	1988 9:1	38 3:5		
Zoom 1:12	1993 15:21 18:10	4		
0	1997 9:3 10:9	49 :14 12:23 19:25 31:2 38:24 39:16		
04-30-22 45:20	2	40 3:6 45 3:8 48,200 20:21 27:21 4830 24:2		
1	2 10:3 16:15 17:2 20 15:7 20:19 22:22 2000 17:21,25 2002 24:18 2003 7:15 2004 2:20 2006 24:19 2008 22:20,23 31:17,24 32:2 33:12 2010 10:25 2015 16:22 2016 16:24 2018 24:22 202 2:21 2020 11:16 2021 1:12 45:17 2029 16:24 2099 6:12 22 9:5 223 45:23 235 45:24 24 23:2 24/7 11:10 25 9:12 23:2 2701 2:5 279-7868 2:6 2B 31:2	5	5 1:12 16:14 17:14 18:15 19:25 505 2:11 508-6281 2:16	
1 10:21 16:9,17 1004 6:9 27:22 31:3 1009 6:9 8:18 11:01 1:12 11:49 44:1 113 2:5 11th 42:14,15,16 12-foot 20:15 12015 9:9 122 23:15 13 10:10 23:3,11 37:4 13-mile 20:15 130 23:18 1300 2:15 132,000 15:15 16:19,23 141 1:1 4:3 15 22:2 155 16:20 155,000 15:16 16th 45:17 17,875 16:9 34:25 35:6 1938 8:6 13:9 14:11 15:7 19:9 20:23 21:17,18 22:13 22:15 195 23:19 1956 14:18 15:5 15:6 17:21 20:8 35:7,22 36:3,7,12 1962 20:9 1964 36:16 1970s 21:19,21 29:17 1980 14:10	3	6	6 3:4 17:13 65 23:20,21 675,000 13:21	
	3	7	720 2:6,16 7611 2:20 77027 45:24 7th 2:15	
	3	8	8 26:21 800-745-1101 45:25 80203 2:15 80205 2:5 82 14:10 8262 45:20 87483 20:10 87501 2:10	
	3	9	97 30:4 97-140 30:4,15 31:8 986-2637 2:11 997 6:8 15:9,10 16:14 34:20,20	