

NO. 141 Original

In The

SUPREME COURT OF THE UNITED STATES

STATE OF TEXAS

v.

STATE OF NEW MEXICO and
STATE OF COLORADO

TRANSCRIPT OF AUGUST 27, 2021, REMOTE
HEARING BEFORE HONORABLE MICHAEL A. MELLOY, SPECIAL
MASTER, UNITED STATES CIRCUIT JUDGE, 111 SEVENTH
AVENUE, SE, CEDAR RAPIDS, IOWA 52401, beginning at
11:01 a.m.

R E M O T E A P P E A R A N C E S

FOR THE STATE OF TEXAS:

Mr. Stuart L. Somach
Ms. Theresa C. Barfield
Mr. Robert B. Hoffman
Mr. Francis Goldsberry II
Mr. Richard S. Deitchman
SOMACH SIMMONS & DUNN
500 Capitol Mall, Suite 1000
Sacramento, California 95814
(916) 446-7979

ssomach@somachlaw.com
tbarfield@somachlaw.com
rhoffman@somachlaw.com
mgoldsberry@somachlaw.com
rdeitchman@somachlaw.com

-and-

Ms. Sarah A. Klahn
SOMACH SIMMONS & DUNN
2701 Lawrence Street, Suite 113
Denver, Colorado 80205
(720) 279-7868
sklahn@somachlaw.com

-and-

Ms. Priscilla M. Hubenak
STATE OF TEXAS ATTORNEY GENERAL'S OFFICE
Post Office Box 12548
Austin, Texas 78711
(512) 463-2012
priscilla.hubenak@oag.texas.gov

FOR THE STATE OF NEW MEXICO:

Mr. Jeffrey Wechsler
MONTGOMERY & ANDREWS
325 Paseo De Peralta
Santa Fe, New Mexico 87501
(505) 986-2637

jwechsler@montand.com

-and-

1 Ms. Lisa M. Thompson
Mr. Michael A. Kopp
2 TROUT RALEY
1120 Lincoln Street, Suite 1600
3 Denver, Colorado 80203
(303) 861-1963
4 lthompson@troutlaw.com
mkopp@troutlaw.com

5 -and-

6
7 Mr. Luis Robles
Ms. Susan Barela
ROBLES, RAEL & ANAYA, P.C.
8 500 Marquette Avenue NW, Suite 700
Albuquerque, New Mexico 87102
9 (505) 242-2228
luis@roblesrael.com
10 susan@roblesrael.com

11 -and-

12 Mr. John Draper
DRAPER & DRAPER, LLC
13 325 Paseo De Peralta
Santa Fe, New Mexico 87501
14 (505) 570-4591
john.draper@draperllc.com

15 -and-

16
17 Ms. Cholla Khoury
Mr. Zachary E. Ogaz
NEW MEXICO ATTORNEY GENERAL'S OFFICE
18 Post Office Drawer 1508
Santa Fe, New Mexico 87501
19 (505) 329-4672
ckhoury@nmag.gov
20 zogaz@nmag.gov

21
22
23
24
25

1 FOR THE STATE OF COLORADO:

2 Mr. Chad Wallace
3 Mr. Preston V. Hartman
4 COLORADO DEPARTMENT OF LAW
5 1300 Broadway, 7th Floor
6 Denver, Colorado 80203
7 (720) 508-6281
8 chad.wallace@coag.gov
9 preston.hartman@coag.gov

10 FOR THE UNITED STATES:

11 Mr. James J. Dubois
12 Mr. R. Lee Leininger
13 U.S. DEPARTMENT OF JUSTICE
14 999 18th Street, Suite 370
15 Denver, Colorado 80202
16 (303) 844-1375
17 james.dubois@usdoj.gov
18 lee.leininger@usdoj.gov

19 -and-

20 Ms. Judith E. Coleman
21 Ms. Jennifer A. Najjar
22 U.S. Department of Justice
23 Post Office Box 7611
24 Washington, DC 20044
25 (202) 514-3553
judith.coleman@usdoj.gov
jennifer.najjar@usdoj.gov

-and-

Ms. Shelly Randel
U.S. DEPARTMENT OF THE INTERIOR
1849 C Street NW
Washington, DC 20240
(202) 208-5432
shelly.randel@sol.doi.gov

-and-

Mr. Christopher B. Rich
U.S. DEPARTMENT OF THE INTERIOR
125 South State Street, Suite 6201
Salt Lake City, Utah 84138
(801) 524-5677

1 FOR THE EL PASO COUNTY WATER AND IMPROVEMENT DISTRICT
2 NO. 1:

3 Ms. Maria O'Brien
4 MODRALL SPERLING ROEHL HARRIS & SISK, P.A.
5 500 Fourth Street N.W.
6 Albuquerque, New Mexico 87103
7 (505) 848-1800
8 mobrien@modrall.com

9 -and-

10 Mr. Renea Hicks
11 LAW OFFICE OF MAX RENEA HICKS
12 Post Office Box 303187
13 Austin, Texas 78703
14 (512) 480-8231
15 rhicks@renea-hicks.com

16 FOR THE ELEPHANT BUTTE IRRIGATION DISTRICT:

17 Ms. Samantha R. Barncastle
18 BARNCASTLE LAW FIRM, LLC
19 1100 South Main, Suite 20
20 Las Cruces, New Mexico 88005
21 (575) 636-2377
22 samantha@h2o-legal.com

23 FOR THE ALBUQUERQUE BERNALILLO COUNTY WATER UTILITY
24 AUTHORITY:

25 Mr. James C. Brockmann
STEIN & BROCKMANN, P.A.
Post Office Box 2067
Santa Fe, New Mexico 87504
(505) 983-3880
jcbrockmann@newmexicowaterlaw.com

1 FOR THE CITY OF EL PASO:

2 Mr. Douglas G. Caroom

Ms. Susan M. Maxwell

3 BICKERSTAFF HEATH DELGADO ACOSTA, LLP

3711 S. MoPac Expressway Building One, Suite 300

4 Austin, Texas 78746

(512) 472-8021

5 dcaroom@bickerstaff.com

smaxwell@bickerstaff.com

6
7 FOR THE CITY OF LAS CRUCES:

8 Mr. Jay F. Stein

STEIN & BROCKMAN, P.A.

9 Post Office Box 2067

Santa Fe, New Mexico 87504

10 (505) 983-3880

jfstein@newmexicowaterlaw.com

11
12 FOR THE NEW MEXICO PECAN GROWERS:

13 Ms. Tessa T. Davidson

DAVIDSON LAW FIRM, LLC

14 4206 Corrales Road

Post Office Box 2240

15 Corrales, New Mexico 87048

(505) 792-3636

16 ttd@tessadavidson.com

17
18 FOR THE NEW MEXICO STATE UNIVERSITY:

Mr. John W. Utton

19 UTTON & KERY, P.A.

Post Office Box 2386

20 Santa Fe, New Mexico 87504

(505) 699-1445

21 john@uttonkery.com

1 FOR HUDSPETH COUNTY CONSERVATION AND RECLAMATION
2 DISTRICT:

3 Mr. Andrew S. "Drew" Miller
4 KEMP SMITH, LLP
5 816 Congress Avenue, Suite 1260
6 Austin, Texas 78701
7 (512) 320-5466
8 dmiller@kempsmith.com

9 FOR THE SOUTHERN RIO GRANDE DIVERSIFIED CROP FARMERS
10 ASSOCIATION:

11 Mr. A.J. Olsen
12 HENNIGHAUSEN OLSEN & MCREA
13 604 North Richardson Avenue
14 Roswell, New Mexico 88202
15 (575) 624-2463
16 ajolsen@h2olawyers.com

17 COURT REPORTER:

18 Ms. Heather L. Garza
19 WORLDWIDE COURT REPORTERS
20 3000 Wesleyan Street, Suite 235
21 Houston, Texas 77027
22 (800) 745-1101
23 heather_garza@ymail.com
24
25

1 **JUDGE MELLOY:** Good morning. This is
2 Judge Melloy. Let's get started in connection with
3 our hearings. In the matter of State of Texas versus
4 State of New Mexico and State of Colorado, United
5 States Supreme Court Original No. 141. We'll start by
6 taking the appearances. Mr. Somach, do you want to
7 enter the appearances for the State of Texas?

8 **MR. SOMACH:** Yes, Your Honor. This is
9 Stuart Somach, lead counsel for the State of Texas.
10 With me from my law office are Theresa Barfield, Sarah
11 Klahn, Francis Goldsberry, Robert Hoffman, Rich
12 Deitchman. From the Texas Attorney General's Office,
13 Priscilla Hubenak, and then, also with us is Bobby
14 Skov, the Texas Rio Grand Compact Commissioner, and
15 Suzy Valentine, his engineer advisor.

16 **JUDGE MELLOY:** Okay. Mr. Wechsler, you
17 on for New Mexico?

18 **MR. WECHSLER:** Yes, Your Honor. Good
19 morning. Jeff Wechsler from Montgomery & Andrews for
20 the State of New Mexico. I also have Kayla Brooks
21 with me from my office; Cholla Khoury from the New
22 Mexico Attorney General's Office; Zachary Ogaz, also
23 from that office; Luis Robles and Susan Barela from
24 Robles Rael & Anaya; Lisa Thompson and Michael Kopp
25 from Trout Raley; John Draper and Corinne Atton from

1 Draper & Draper. We have the state engineer and
2 Compact commissioner Mr. John D'Antonio. We have Greg
3 Ridgley, the general counsel for the Office of State
4 Engineer; Arianne Singer, the general counsel of the
5 Interstate Stream Commission; and Shelly Dalrymple.

6 **JUDGE MELLOY:** And for Colorado,
7 Mr. Wallace, are you on?

8 **MR. WALLACE:** Yes, good morning, Your
9 Honor. This is Chad Wallace for the State of
10 Colorado. Also from the attorney general's office are
11 Preston Hartman, Dan Rheiner, and Scott Steinbrecher.

12 **JUDGE MELLOY:** United States,
13 Mr. Dubois?

14 **MR. DUBOIS:** Good morning, Your Honor.
15 James Dubois for the United States. Also on for
16 Department of Justice are Judith Coleman, Lee
17 Leininger, and Jennifer Najjar, and from the
18 solicitor's office, Chris Rich and Shelly Randel.

19 **JUDGE MELLOY:** Okay. The Albuquerque
20 Water Utility Authority?

21 **MR. BROCKMANN:** Good morning, Judge
22 Melloy. This is Jim Brockmann for the Albuquerque
23 Bernalillo County Water Utility Authority.

24 **JUDGE MELLOY:** Anybody else on for that
25 -- for the Water Authority?

1 **MR. BROCKMANN:** I believe it'll just be
2 me this morning and this afternoon, however long it
3 takes. Mr. Peter Auh, the general counsel, may join
4 at some point during the day, but he did have some
5 other commitments.

6 **JUDGE MELLOY:** Okay. City of El Paso?

7 **MR. CAROOM:** Good morning, Your Honor.
8 Doug Caroom for the City of El Paso, and with me is
9 Susan Maxwell.

10 **JUDGE MELLOY:** Okay. City of Las
11 Cruces? Anyone on for the City of Las Cruces?
12 Mr. Stein, are you here? Apparently not. All right.

13 **MR. BROCKMANN:** Your Honor, this is Jim
14 Brockmann. Mr. Stein is on the line for the City of
15 Las Cruces, along with their utilities director,
16 Delilah Walsh and Adrienne Widmer.

17 **JUDGE MELLOY:** Okay. El Paso County
18 Water Improvement District No. 1?

19 **MS. O'BRIEN:** Yes, good morning, Your
20 Honor. Maria O'Brien for El Paso county water
21 improvement district No. 1. Renea Hicks is also on,
22 Dr. Al Blair, the district engineer, and Mr. Jesus
23 Reyes, the general manager for the district, are also
24 on.

25 **JUDGE MELLOY:** Okay. Elephant Butte

1 Irrigation District?

2 **MS. BARNCASTLE:** Good morning, Your
3 Honor. Samantha Barncastle for the Elephant Butte
4 Irrigation District, and with me today is Dr. Phil
5 King.

6 **JUDGE MELLOY:** I'm sorry. Who did you
7 say was with you?

8 **MS. BARNCASTLE:** Dr. Phil King, our
9 consultant.

10 **JUDGE MELLOY:** Okay. All right. Thank
11 you. Hudspeth County Conservation and Reclamation
12 District No. 1?

13 **MR. MILLER:** Yes, good morning, Your
14 Honor. This is Drew Miller on behalf of the Hudspeth
15 County District.

16 **JUDGE MELLOY:** Okay. New Mexico pecan
17 growers?

18 **MS. DAVIDSON:** Good morning, Judge
19 Melloy. Tessa Davidson on behalf of New Mexico pecan
20 growers.

21 **JUDGE MELLOY:** New Mexico State
22 University?

23 **MR. UTTON:** Good morning, Your Honor.
24 This is John Utton on behalf of NMSU, and I believe
25 joining me -- I can't tell if it's Scott Field with

1 the general counsel's office, or Scott Brenner, but is
2 also on the call -- or at the meeting. Thank you.

3 **JUDGE MELLOY:** Southern Rio Grande
4 Diversified Crop Farmers Association?

5 **MR. OLSEN:** Good morning, Your Honor.
6 A.J. Olsen on behalf of the Southern Rio Grande
7 Diversified Crop Farmers.

8 **JUDGE MELLOY:** I might add for the
9 record, we did get a request from one news
10 organization to listen in, and we granted that so
11 there's at least one news organization on the line.
12 Should be aware of that. Did I miss any of the
13 appearances? Anyone who's appearing that I missed?

14 (No response.)

15 **JUDGE MELLOY:** All right. Then let me
16 just start by saying that as I think you-all know, we
17 had a site visit on Monday and Tuesday of this week,
18 and I think it went very well. I thought the
19 information and sites that we did visit were certainly
20 very helpful for me to get some context of what we're
21 talking about when we talk about specific ditches and
22 canals and return flows and drains and so on so forth.
23 So I -- I thought it was very useful, and I just want
24 to, again, express my appreciation to all those who
25 went to, I know, a lot of work to put the visit

1 together. As I said, I do appreciate the work that
2 went into that.

3 This is kind of down the line a little
4 bit in what I was going to talk about, but since we're
5 talking about the visit. You had said you were going
6 to bring us up to date on the status of the -- of the
7 drone flyover, Ms. Barfield. Is there anything to
8 report on that?

9 **MS. BARFIELD:** Yes, Your Honor.
10 Actually, if you don't mind, I'm going to allow Ms.
11 Klahn to get you up to date. She's been the person
12 most involved with the drone issue.

13 **JUDGE MELLOY:** Ms. Klahn?

14 **MS. KLAHN:** Good morning, Your Honor.
15 The drone flyover is complete down through the -- I
16 would say the delivery system -- main delivery system
17 of the El Paso No. 1 district, and those drone videos
18 have been made available to the parties as part of our
19 exhibit list, and we are in the process of flying the
20 rest of the river down to Fort Quitman. I -- I
21 anticipate, based on what the consultant told us, we
22 should have those videos early next week, and we'll
23 provide those immediately, of course, and then we'll
24 have the whole river from -- from Elephant Butte
25 Reservoir down to Fort Quitman.

1 **JUDGE MELLOY:** Okay. Thank you. All
2 right. Let's take up the motion to continue. As
3 everyone knows, Texas has filed a motion to continue
4 and asked for a six-month continuance. Most of the
5 parties and amici have responded. Some supportive;
6 some in opposition. Let me, I guess, start by asking,
7 does anyone on the Texas side want to be heard orally
8 on the motion to continue?

9 **MS. HUBENAK:** Your Honor, I'd like to be
10 heard. This is Priscilla Hubenak with the attorney
11 General's Office in Texas.

12 **JUDGE MELLOY:** Go ahead.

13 **MS. HUBENAK:** Good morning, Your Honor.
14 May it please the Court, Texas has made a compelling
15 case for a six-month extension in this litigation that
16 has been lasting over eight years. This situation is
17 the very type of situation where the Court can
18 reasonably exercise its discretion to grant a trial
19 continuance. This case is highly complex and
20 technical, and it's very important to three states, to
21 many citizens of those respective states, and to the
22 United States, and Texas hired Mr. Somach to be the
23 lead counsel for this important water law case to the
24 state, and we now find ourself in the situation where
25 he may -- he is required to be absent from the

1 in-person trial that is set. First, I want to just go
2 through the points of our motion, and then I want to
3 respond to three issues that have arisen in the
4 responses. His absence from the courtroom is
5 unexpected and totally unplanned. His unavailability
6 has really arisen at the 11th hour on the eve of
7 trial. The six-month extension that we're asking is
8 minimal compared to the length of time that this case
9 has been in litigation. Even considering that the
10 Supreme Court decision in 2018 that allowed the
11 parties to actually begin the actual litigation part
12 of the trial, that's three-and-a-half years ago, so
13 another six months is minimal compared to that. It is
14 not simple or easy to substitute another attorney in
15 as lead counsel. There are -- Mr. Somach has lawyers
16 in his firm that are very competent and knowledgeable
17 about this case, but, you know, up until a little more
18 than three weeks ago, no one of them envisioned that
19 they would be the lead counsel in the courtroom, and
20 they -- whichever person is going to do that task
21 needs additional time to work with Mr. Somach to
22 prepare for that role. Mr. Somach is not only
23 unavailable to be present in the courtroom, he, for
24 much of the time, will be unavailable to be involved
25 in the case at all, so participation even from a

1 distance will be limited for him. It's not just a
2 matter of him being absent from the courtroom. He's
3 also going to be forced to be absent from the trial
4 completely, and with all the preparation and filings
5 that have gone on in the past few months and the past
6 immediate weeks, there has not been adequate time for
7 the Texas team to adjust to this change in
8 circumstances surrounding this upcoming trial.

9 In sum, Texas will be prejudiced if it
10 is required to go to trial without its lead counsel.
11 The responses raised three issues that I want to
12 address. The first is, much is written in the
13 responses about the volume of water that New Mexico
14 may be harmed by this delay, as they refer to it.
15 What volumes of water Texas or New Mexico will be
16 harmed is the very disputed facts that are going to be
17 heard in the trial. Texas filed this lawsuit to
18 achieve relief for water that it believes it is not
19 getting. That amount, like the amount stated in the
20 responses, will be decided by Your Honor, and the
21 prejudice that Texas is asserting today is not the
22 lack of water, but the lack of its lead counsel in the
23 trial.

24 Second, one amici response accuses Texas
25 of not being serious about reaching a negotiated

1 resolution. We completely disagree with this
2 statement. It is not appropriate for me to discuss
3 with the court settlement discussions, but I'm just
4 going to re-urge that that statement is inaccurate.

5 Building -- third, building upon the
6 topic of settlement, additional time could be put to
7 good use. Practically, if the six-month continuance
8 would be granted, Texas and New Mexico would continue
9 settlement discussions, and in that vein, if the
10 continuance is granted, Texas will actually propose a
11 new mediator who could help facilitate more meaningful
12 settlement discussions that have occurred in the past.
13 And, frankly, Your Honor, I'm reminded of your
14 recommendation of a mediator who was able to settle
15 the NFL lawsuit. If someone that strong can do that,
16 we need someone who will bring the parties to the
17 table.

18 Mr. Somach is the key legal strategist
19 for the Texas team. The amici El Paso County Water
20 Improvement District No. 1, the City of El Paso and
21 its utilities board, and the Hudspeth County
22 Reclamation District have all relied on Texas to
23 present its best case to protect their interests and
24 so on behalf of their interests and the interest of
25 Texas itself, we respectfully request that the Court

1 exercise its discretion to grant the six-month
2 continuance for trial. No party wanted to go to trial
3 faster than Texas wanted to go, but we find ourselves
4 in a situation where we need additional time for the
5 trial team.

6 Thank you, Your Honor.

7 **JUDGE MELLOY:** Well, let me ask you
8 this, Ms. Hubenak. On the settlement issue, and I
9 don't want to obviously get into the particulars of
10 settlement discussions, but who are the lead players,
11 so to speak, on the two sides for purposes of -- of
12 discussion of -- are you taking the lead on that issue
13 or how --

14 **MS. HUBENAK:** Your Honor, in the past, I
15 have not taken the lead on that issue. It's been
16 really led by Mr. Somach, although I've been -- I've
17 participated in settlement discussions. I have had
18 discussions with the New Mexico Attorney General's
19 Office going forward on settlement discussions. It
20 would be led by my office, and I anticipate it would
21 be led by the New Mexico Attorney General's Office, as
22 well.

23 **JUDGE MELLOY:** What 's your response to
24 the argument that one of the parties or amici raised
25 that this is sort of your -- your coming to the table

1 pretty late, that an offer was -- a detailed proposal
2 was submitted back, I think in June, and it took three
3 months or two months, whatever, for Texas to even give
4 a response.

5 **MS. HUBENAK:** Your Honor, I think Ms.
6 Barncastle and her response on behalf of Elephant
7 Butte Irrigation District answered that very well.
8 She pointed out that that was the first substantive
9 response that we had ever received from New Mexico and
10 it came at a time when everyone was preparing for
11 trial and it was a very substantive response, but
12 there was not sufficient time to respond to that.
13 Texas has since responded to New Mexico to that offer.

14 **JUDGE MELLOY:** All right. Thank you.
15 Let me -- let me handle it this way. Is there anyone
16 who wishes to speak in support of the motion to
17 continue before I ask if anyone wants to speak in
18 opposition? Anyone want to be heard in support?

19 **MS. O'BRIEN:** Your Honor, Maria O'Brien
20 on behalf of El Paso County Water Improvement District
21 No. 1. I believe you have received our response in
22 support of Texas' motion for continuance, and I won't
23 repeat what we said there, but would support
24 everything that Ms. Hubenak articulated regarding the
25 compelling reasons to grant a continuance. Ms.

1 Hubenak focused on the ability to use that time for
2 settlement purposes, which we concur would be a very
3 valuable use of time. Now, I -- I would note, and I
4 think probably most, if not all, the lawyers, perhaps
5 Your Honor, could concur in this, that I have never
6 been involved in a complex case, certainly a complex
7 water case, where there was successful settlement
8 while litigation was simultaneously ongoing. It
9 simply is not really reasonable or feasible that the
10 parties would be able to make sufficient progress when
11 they're grappling with both litigating the complex
12 issues as well as trying to settle them. So I think
13 this presents a real opportunity here, as Ms. Hubenak
14 described.

15 I would note, we also did, in our
16 response, include a proposal/suggestion of another way
17 to make use of the need of continuance by Texas, which
18 is to obtain perhaps some greater clarity on the
19 parameters that Your Honor has set for the case to
20 date by providing an opportunity to present those
21 legal issues to the Court and for the parties to weigh
22 in on exceptions. So that -- that is also something
23 that could be done as settlement negotiations
24 proceeded. As Texas has indicated and is committed to
25 and, you know, New Mexico can speak for -- for itself

1 on that matter. So, again, we would just strongly
2 concur on the request by Texas and believe that given
3 the import of -- of this case, it's -- it's necessary
4 and that there are opportunities here to make very
5 good use, valuable use, of the time that Texas has
6 requested. Thank you.

7 **JUDGE MELLOY:** Let me ask you this,
8 Ms. O'Brien. What -- what are the issues that you
9 think the Supreme Court should address right now?

10 **MS. O'BRIEN:** We believe that your --
11 your two orders, the -- the March, 2020, order
12 dismissing the counterclaims, as well as the May,
13 2021, issues addressing what issues relate to
14 liability under -- under the Compact, we believe those
15 orders, taken together, define legal issues in the
16 case and to be tried, and the -- we believe the
17 counterclaims as against the United States were
18 dismissed, and we believe that Counterclaim 4 as
19 against Texas was modified and narrowed with regard to
20 Your Honor's determinations with regard to summary
21 judgment. We believe that providing an opportunity to
22 package those rulings up for the Supreme Court will
23 enable the Court to weigh in on the issues of the
24 counterclaims, the scope of those counterclaims,
25 propriety of those counterclaims, and address Your

1 Honor's determinations on summary judgment regarding
2 what are the Compact's -- Compact rights and
3 obligations and how those interface or do not
4 interface with the counterclaims New Mexico seeks to
5 bring in this case. I think as you've seen that there
6 is -- there is a disagreement certainly amongst the
7 parties and amici about the -- the import of your --
8 of your rulings and what should or could be set for
9 trial at this point. I -- I would point to the
10 responses of New Mexico -- both New Mexico and some of
11 the New Mexico amici to the Texas motion to continue
12 where they say that the prejudice -- they would be
13 prejudiced by granting a continuance because the
14 operating agreement, the 2000 operating agreement to
15 which Texas is not a party, would continue to -- would
16 harm them in the interim. We believe the prejudice
17 they claim of is actually not a remedy that's
18 available to them in that case, and that is for Your
19 Honor to determine that the operating agreement is not
20 valid and, in fact, that they believe, we think, based
21 on what they have said, that Your Honor could, in
22 fact, enjoin the operating agreement and provide water
23 to them that they think they are entitled to. So we
24 believe that having an opportunity for the Supreme
25 Court and then the parties to address the issues that

1 you have determined and, again, how the counterclaim
2 issues interface with Compact rights and obligations,
3 that we think is the more narrow issue before Your
4 Honor here. We do not think that reclamation law
5 issues or the validity of the operating agreement is
6 at issue, and that continues to be attempted to be put
7 at play by New Mexico, and I think that's evident from
8 the motions in limine, evidence -- evident by the
9 responses to the -- responses to Texas' motion to
10 continue. So I think it would provide clarity to the
11 parties and to Your Honor in terms of what should be
12 tried, and we believe it would thereby result in
13 greater efficiency in the long run.

14 **JUDGE MELLOY:** All right.

15 **MR. DUBOIS:** Your Honor, Jim Dubois for
16 the United States. I'd like to just make one
17 observation. As you know from our pleadings, we are
18 not taking a position on the six-month stay, but the
19 question you raised earlier about the -- the New
20 Mexico proposal in late June. I would just observe
21 that -- I would agree that the problem there largely
22 was timing, and the -- the proposal from New Mexico
23 was, in fact, substantive, but only a starting point
24 for very lengthy discussions that would have had to
25 follow, and with the preparations necessary to get

1 ready for September trial, that was simply not
2 possible; however, those preparations basically are
3 done, which changes the dynamics, you know, if for --
4 for -- if you choose to give the states room to try
5 and enter into substantive settlement negotiations,
6 that dynamic has completely changed because trial
7 preparation should be essentially done. So I just
8 observe that there is a very different situation from
9 the timing of the New Mexico proposal to forward from
10 here.

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

12 **MR. MILLER:** This is Drew Miller on
13 behalf of the Hudspeth District. May I have just a
14 few words?

15 **JUDGE MELLOY:** Yes.

16 **MR. MILLER:** Thank you. Your Honor, we
17 -- I filed a letter on behalf of the Hudspeth District
18 in support of Texas' motion.

19 **JUDGE MELLOY:** I've seen it. Yes.

20 **MR. MILLER:** We agree with the points
21 raised in its motion by Ms. Hubenak today, points made
22 by the Texas amici, counsel for EPCWID, Ms.
23 Barncastle. I just want to underscore one thing I
24 made mention of in my letter very briefly, but I'd
25 like to underscore it. The Hudspeth District is of

1 very limited financial means. They've had to be very
2 selective in terms of the extent of my and my law
3 firm's participation in this matter so -- so the
4 Hudspeth District and its constituents, you know, we
5 rely on the State of Texas, counsel for the State of
6 Texas, and in particular, we've relied on Mr. Somach
7 to protect our interest. We don't really fend for
8 ourselves in this case. We rely on -- on counsel for
9 the State of Texas and Mr. Somach. So I just wanted
10 to -- to underscore that point in support of the
11 State's motion.

12 **JUDGE MELLOY:** All right. Thank you.
13 Who would like to speak, if anyone, in opposition to
14 the motion?

15 **MR. WECHSLER:** Your Honor, this is Jeff
16 Wechsler. I won't review the things we've put in our
17 response. I'm sure you've read it. We're ready to go
18 to trial. We think that trial should commence
19 September 13th as scheduled. As we've pointed out,
20 Texas has quite able counsel. While we're not
21 unsympathetic to the plight of Mr. Somach's family,
22 they do have seven other attorneys representing 200
23 years of experience. They're aligned with the United
24 States. Their interests will be well protected. If
25 necessary, Mr. Somach can certainly participate

1 virtually. If -- if experience has taught us
2 anything, it's that that's possible now.

3 As we indicated in our motion, we're
4 quite concerned about the delay because the expert
5 analysis that's been done over the course of the last
6 couple years shows that New Mexico is being deprived
7 of at least 94,000 acre-feet per year under the
8 current status quo. We filed -- we originally filed
9 in Federal District Court to vindicate those rights.
10 It's been over ten years, and -- and it's time. It's
11 time for us to have that done so that the farmers
12 don't have to go another growing season without that
13 water so that the municipalities in New Mexico don't
14 have to continue having this cloud over their title,
15 and it -- the last reason we pointed out is it's --
16 it's difficult to reserve three months for trial. It
17 would be disruptive and costly to try and reschedule
18 this some time down the line six months from now. A
19 couple of responses to the things that were raised by
20 Texas. I don't disagree with Ms. Hubenak that the --
21 it ultimately is for this Court to determine exactly
22 how much water New Mexico is being deprived, but our
23 point is, it's not fair for New Mexico to bear that
24 burden of this delay, which is what we think would be
25 happening.

1 On the issue of settlement, surprised to
2 learn of the extreme interest now in settlement talks
3 because, as you know, this process went on for quite
4 some time without that kind of interest, from our
5 perspective. While I don't want to -- I can't get
6 into the details, I will disagree strongly with Ms.
7 Hubenak's characterization that this was the first
8 substantive offer that New Mexico had made. Perhaps
9 she's not aware of it, but, in fact, New Mexico had
10 made a number of substantive offers over the course of
11 several years. From our perspective, ultimately, New
12 Mexico's interests really weren't being listened to,
13 and that was one of the reasons that settlement was
14 unsuccessful. But I just don't want you to be
15 thinking that that -- the first substantive offer from
16 New Mexico was in June. That's not correct.

17 **JUDGE MELLOY:** Well, this is the first
18 time I've heard that there was some discussion about
19 changing mediators. Have you -- are you aware of that
20 request, Mr. Wechsler, and what's your -- do you have
21 a view on it?

22 **MR. WECHSLER:** I'm not aware of the
23 specific request. I am familiar with the suggestion
24 from Texas and the reasons for it. I think New Mexico
25 shares the -- the belief that if you were to deny this

1 motion and we were to engage again in what we would
2 hope be more productive settlement discussions, that a
3 change in approach, a change of the mediator would be
4 helpful.

5 **JUDGE MELLOY:** Okay. All right. Thank
6 you.

7 **MR. DUBOIS:** For what it's worth, Your
8 Honor, on that last point, I think the United States
9 also agrees that a change in mediation strategy might
10 be more productive if -- if we're going to go down
11 that path.

12 **JUDGE MELLOY:** Okay. All right. Anyone
13 else wish to be heard in opposition to the motion to
14 continue?

15 **MR. STEIN:** Your Honor, this is Jay
16 Stein.

17 **JUDGE MELLOY:** Go ahead.

18 **MR. STEIN:** Representing the City of Las
19 Cruces. The City of Las Cruces strongly supports the
20 positions that were enunciated by Mr. Wechsler
21 recently, and the City of Las Cruces also opposes any
22 request for a continuance for reasons of its own, and
23 that is because the City of Las Cruces is a municipal
24 water supplier with numerous obligations to supply a
25 community with the water supply and to treat

1 wastewater. The City's water rights have been under a
2 cloud since the initiation of this case in 2013, and
3 that inhibits and obstructs our ability to plan for
4 the future. Accordingly, we strongly oppose the
5 continuation request from Texas because of the cloud
6 that it presents to the City's water rights and the
7 obstruction to our ability to plan for future water
8 supply. Thank you, Your Honor.

9 **JUDGE MELLOY:** All right. Thank you.
10 Anyone else want to be heard?

11 (No response.)

12 **JUDGE MELLOY:** Well, I've given this a
13 lot of thought, and one of my concerns is one of the
14 last points that Mr. Wechsler raised, which is that
15 it's hard, both professionally and personally, for
16 people to set aside three months of time -- block of
17 time for a trial, and -- and I can't speak for the
18 attorneys, I can only speak for myself, but I've sort
19 of structured my whole year around this trial, so to
20 move the whole trial to the spring will be difficult.
21 Having said that, however, one of the things that has
22 not been discussed this morning, although it was
23 certainly talked about in the written responses, is --
24 is this whole issue of the Delta variant and the COVID
25 problem. If I understand Ms. Barncastle's letter, she

1 is, in essence, asking that the three or four EBID
2 witnesses all be allowed to testify remotely. My
3 sense is that other parties are about ready to ask for
4 the same thing, and I know Mr. Wallace asked if they
5 could -- if the attorneys could appear remotely. I --
6 I'm having great concerns that we will start this
7 trial, and one or -- or two things will happen, or
8 maybe both. One is that it'll be one day live, one
9 day remote, we're going to be flipping back and forth,
10 which will be very inefficient. And the other
11 possibility is the one that's been alluded to by
12 several people, what are we going to do if one of the
13 attorneys or myself test positive, which would
14 probably bring the -- the trial to a screeching halt
15 for some period of time. What I am going to rule is
16 that I'm going to grant the motion, but I'm going to
17 -- I want to talk a little bit about what kind of a
18 continuance it's going to be. Since there's a very
19 real possibility, and Mr. Dubois was kind of reading
20 my mind on this in his -- in his filing, that much of
21 the trial, if we started it in -- in two or three
22 weeks, would be -- would have to be remote. I would
23 like to suggest that we go ahead with at least part of
24 the trial this fall, but do it remotely. It seems to
25 me that going over the witness list that we could take

1 a lot of the percipient witnesses, the witnesses who
2 were going to testify about project management,
3 project operations remotely, and I have a feeling that
4 a lot of those witnesses would want to testify
5 remotely in any event. We could take the farmers
6 remotely and leave for the live testimony in March the
7 -- the key expert witnesses that Mr. Somach's
8 participation would be particularly important on and
9 who, I think, may provide -- or may be better to have
10 those people live. And I don't -- I just don't see
11 why we couldn't get maybe several weeks of testimony
12 out of the way with -- with a number of the witnesses
13 that have been identified. I don't know if -- if we
14 didn't do that with people were reluctant to travel,
15 particularly in the Delta variant gets worse, are we
16 going to compel them to come to Cedar Rapids? I think
17 we just run into a host of issues together with that.
18 So what I'm going to suggest is that the parties get
19 together and look at their witness lists, and we'll
20 reconvene in a week on this issue or probably next
21 Thursday, because I -- I know the Friday is the start
22 of a long weekend, and talk about which witnesses we
23 could take remotely, and as I say, maybe get to a
24 point where we don't have to block out three months in
25 the spring and get the trial down to five or six weeks

1 in the spring. We may even be able to take the
2 historians remotely. I don't know that their
3 testimony is in the same level of technicality and
4 scientific difficulty that hydrologists and other
5 experts might -- might testify. But this would
6 require -- and I know New Mexico would not be happy
7 with this, but this is going to require New Mexico
8 also to put part of their case on before Texas
9 completes its case because I can't very well expect
10 Texas and the United States to put on a big chunk of
11 their case remotely and then allow New Mexico to not
12 put on any case. But I do think we could separate out
13 the issues in a way that we could, over the next two
14 to three months, get a number of weeks of testimony
15 concluded this fall and leave for the spring the more
16 complex testimony.

17 As far as Texas' motion and Mr. Somach's
18 unavailability, I'm assuming that the type of
19 testimony we're talking about here is the type of
20 thing that with a little preparation that the other
21 people in Mr. Somach's office could get up to speed on
22 and that probably a number of the depositions were
23 already taken by a number of people in Mr. Somach's
24 office. So it may be splitting the baby a little bit,
25 but that's sort of where I'm -- I'm coming from.

1 Mr. Somach, did you want to say
2 something?

3 **MR. SOMACH:** Yes. I -- I just wanted to
4 indicate that I will have some ability to -- I mean,
5 in reality, this has been very difficult on both the
6 professional and personal level. That should, I hope,
7 go without -- without saying. But if we proceed as
8 you have just outlined, I can participate with the
9 understanding that there may be days where I just
10 simply won't be available even remotely. But working
11 with the other folks that have been working on the
12 case, I think we can move forward and come up with a
13 strategy to put on the witnesses that you suggested.
14 In fact, we've been thinking about all of these things
15 as -- as ways of managing what needs to be managed.
16 So I think we will be able to do that, and hopefully
17 if we resume in March where my participation is, in
18 fact, intended to be greater -- I have my fingers
19 crossed, and hopefully things will be such that --
20 that that won't create a problem in terms of -- and
21 hopefully the COVID thing will be behind us a bit,
22 that I'll be able to travel to Cedar Rapids, and we
23 can -- we can proceed that way. But I -- I think the
24 accommodation that you suggested is one that we
25 certainly can manage around and will manage around.

1 **MR. WECHSLER:** May I ask a question,
2 Your Honor?

3 **JUDGE MELLOY:** You may. Certainly.

4 **MR. WECHSLER:** Actually, I have three
5 questions. The first is I just want to confirm that
6 we can stand down on preparation then for September
7 13th because those are ongoing and somewhat furious
8 right now. So that's not going to happen if I
9 understand your order; is that correct?

10 **JUDGE MELLOY:** Yes. Subject to we need
11 to discuss when we will start the remote testimony,
12 but I could -- certainly if we're going to do that, we
13 could -- I could give all the parties an extra week or
14 two and push it back to closer to October 1st just so
15 -- because I know this is going to cause both some
16 technical changes, as well as changes in strategy and
17 logistics and so we have some issues to work through
18 on how we're going to do this, but yes.

19 **MR. WECHSLER:** Understood. So you
20 answered my second question about when, and I
21 understand that we'll talk about it next week as you
22 contemplate, and hopefully by then, the parties will
23 have had time to discuss.

24 So my third issue was I would ask that
25 if in the order in which you're granting in part

1 Texas' motion, I would ask that you specify that no
2 party can use this time to be modifying or
3 supplementing their expert disclosures. This has been
4 an ongoing concern of New Mexico's, and it seems
5 unfair to use this to be changing the parties' cases.
6 So thank you for that consideration.

7 **JUDGE MELLODY:** Well, I guess I'll let --
8 maybe I should let Texas respond, but my -- my initial
9 reaction to what you suggested, Mr. Wechsler, is I
10 generally agree, although I think it's in a nature of
11 expert testimony that depending on how Texas' experts
12 testify, your experts may want to modify their
13 opinions a little bit or -- or address issues that
14 they didn't anticipate being raised or raised in the
15 way they were raised so that's sort of inherent, I
16 think, in any expert testimony, but I think as a
17 general proposition, I don't have any problem with
18 what you're suggesting.

19 What do you -- Mr. Somach, do you have
20 any response?

21 **MR. SOMACH:** Yes. We -- we have no
22 inherent problem with that. I mean, we -- we
23 certainly -- I can assure you that that was not in our
24 -- our mind. I will suggest this, though, and this
25 ironically is for the benefit of New Mexico. You

1 know, a couple of their motions refer to the fact that
2 somehow they didn't have the opportunity to depose
3 some of our experts. I think they refer to
4 Dr. Kimmelshue and -- and maybe Dr. Brandes. One of
5 the things we were going to say in response to that
6 motion in limine is the -- we don't -- we dispute that
7 they didn't have that opportunity, but notwithstanding
8 that, we were going to suggest if they wanted to --
9 the proper course of doing that was not to exclude
10 testimony, but rather to give them an opportunity to
11 take a supplemental deposition on the issues that they
12 claim they didn't have an opportunity to take a
13 deposition for. This would provide that opportunity,
14 and it would resolve those issues in the way those
15 issues are normally resolved in any normal trial. I
16 mean, I've been involved with trials where we got
17 done, we went and took that deposition until 8:00,
18 9:00, 10:00 at night, and if it had to go on a couple
19 of nights, we -- we did that. So this gives that
20 opportunity. So it would take some of those issues
21 just off the table so there could be no argument that
22 weren't given an opportunity to get the information
23 they say they weren't able to get.

24 **JUDGE MELLOY:** All right. Well, I'll
25 let the two of you talk about that, and we can visit

1 about that a little bit more next week.

2 A couple -- since I -- I've entered this
3 ruling, I think that obviates some of the issues,
4 particular COVID-related issues that were raised in --
5 in the request for agenda items. I think it also
6 probably means we need to refocus on some of the
7 logistical issues. One of the issues that was raised,
8 though, was what are we going to do about -- do I want
9 paper copies of all the exhibits, and it's my
10 understanding of what we talked about previously, and
11 I -- and I may -- my understanding may be incorrect is
12 that I would not request or require paper copies of
13 all the exhibits. They could be submitted
14 electronically. However, at some point prior to
15 testimony, this kind of ties into Ms. Barfield's
16 e-mail a couple weeks ago that I forgot to address at
17 the last status conference, that at some point prior
18 to each witness testifying, the proponent of a witness
19 will identify which exhibits are going to be used for
20 that witness, and that those -- those exhibits will be
21 made available in hard copy. Is that -- am I
22 misunderstanding what I thought we had agreed upon or
23 is -- did anybody understand it differently?

24 **MR. SOMACH:** That is what Texas
25 understood the situation, Your Honor.

1 **MR. DUBOIS:** United States, as well.

2 **JUDGE MELLOY:** Okay.

3 **MR. WECHSLER:** Yeah. We understood
4 that, as well, Your Honor, although we were intending
5 to provide an entire copy for your convenience. With
6 the hybrid version of the trial, however, we'll likely
7 rethink that approach.

8 **JUDGE MELLOY:** All right. Thank you.
9 And do we want to take up the motions in limine today
10 since we're here or -- and -- so let's -- let's go
11 ahead on that.

12 As you-all know, and as -- as the -- as
13 the opponent to each motion in limine likes to point
14 out, they're -- they're highly discouraged in Original
15 Supreme Court actions where we want to make a complete
16 and thorough record so, but I will let -- I guess
17 Texas goes first in this. Do you want to be heard on
18 any of your motions?

19 **MR. SOMACH:** Let me -- let me indicate
20 that from a fundamental perspective, we -- we think
21 what we wrote was -- was sufficient. I wanted to make
22 a couple of points, however, that on -- on three of
23 the -- of the motions in particular. The first was
24 with respect to the issues associated with the fourth
25 claim for relief, which we had kind of a mini argument

1 or discussion about at the last status conference. I
2 didn't want to belabor it, but I did want to
3 underscore what we were saying there is that there is
4 a difference between an affirmative counterclaim
5 against Texas based upon actions that Texas has
6 absolutely no control over. I mean, you can move to
7 the question of, well, even if you're right, what
8 would the remedy for that be since Texas has no
9 control over the operation of the project or the
10 operating agreement or the contracts that are wrapped
11 up in all of that stuff. We just simply have nothing
12 to do with that. That is in -- in -- in contrast to
13 the idea that somehow they be -- you know, if -- if
14 the argument that New Mexico is making is not an
15 affirmative argument, that Texas, you're harming us by
16 doing all of these things, what I'm saying there is
17 we're not doing anything. We don't have any control
18 over any of that stuff. If what they're saying is
19 we're not harming you, Texas, the harm that you're
20 suffering is being caused by all these other things,
21 that's quite a different case, and we're not
22 suggesting that they can't claim, for example, that
23 groundwater pumping in New Mexico is not the cause of
24 Texas' harm, but rather it's the way the project is
25 operated and the operating agreement and all those

1 things. They certainly can make that case if -- if
2 they want to, as an affirmative defense against our
3 claim that groundwater pumping is causing a problem.
4 What they can't do is make the argument somehow that
5 we are liable for the actions of third parties to
6 which we are absolute strangers to. And I contrast
7 that, of course, with -- with our claim against New
8 Mexico, which doesn't involve third parties. It just
9 says you've authorized and permitted the interception
10 of water that otherwise was intended and apportioned
11 to Texas. So -- so I just wanted to clarify that
12 because we had had discussion last week about it.

13 The other motion I wanted to -- to at
14 least elaborate a little bit on was this 1938
15 condition situation. You know, in some respects, that
16 issue got litigated out to a degree in the motions for
17 summary judgment, but up until the motion for summary
18 judgment, New Mexico's position had been there is no
19 1938 condition, so there is no disclosure of an expert
20 to talk about what the contours of a 1938 condition,
21 which is where the -- the summary judgment order left
22 us. There is no expert they've disclosed to -- to
23 talk about what the contours of the '38 condition are.
24 There's been no one disclosed on that point
25 whatsoever, and we've asked. We've asked their

1 30(b)(6) witness. We've asked their experts. And --
2 and the unanimous reframe is there is no 1938
3 condition. What we're saying in our motion is, well,
4 you can't come up for the first time when you put a
5 witness on trial and then all of a sudden explain what
6 the 1938 condition are, what the contours of that
7 condition are. And -- and that's what the motion goes
8 to.

9 The last one I want to talk about is
10 this question of injury to New Mexico. They've made
11 no disclosure. They've got no witness disclosed or
12 otherwise to talk about injury. I was astounded when
13 I read the New Mexico opposition to the continuance
14 motion, as well as their amici. It's loaded with
15 allegations of injury. I want to let you know that
16 those letters and that opposition is the first time
17 anywhere you'll see anything about injury to New
18 Mexico. So what our motion goes to is the fact that
19 you can't -- if you haven't disclosed stuff, you can't
20 for the first time argue that or put on evidence of
21 that at the time of trial. That's just simply --
22 that's plain old Rule 26.101. It has nothing to do
23 with original actions or anything like that. Those
24 are the -- those are the --

25 **JUDGE MELLOY:** How does that argument

1 tie into the bifurcation?

2 **MR. SOMACH:** Well, to a degree, it does.
3 You have -- you haven't indicated whether or not there
4 will be new Rule 26 disclosures with respect to the
5 question of -- of damages. I had some assumption that
6 maybe you would do that and that those issues would be
7 renewed. But herein for basically what the New Mexico
8 argument has been is that violation of the Compact
9 alone is injury. We don't disagree with that. We
10 don't disagree with that. What I indicated to you, we
11 talked about our injury witness list, we wanted to
12 show you that beyond mere violation, there were
13 injuries that we could describe and would describe to
14 you at the time of trial. There is no counterpart in
15 any evidence, any disclosure that New Mexico has made,
16 that would be the counterpart to that, and that is --
17 that is something beyond just the mere violation of
18 the Compact is -- is sufficient injury. That's what
19 I'm talking about. To the extent that you want to
20 monetize that or you want to deal with damages,
21 including their fourth claim to the extent they can
22 make an unjust enrichment argument, it seems to me
23 that that's where that stuff belongs. We should have
24 some opportunity if they're going to make new
25 disclosures in that regard before the remedy phase,

1 that -- that they be put to the test of doing that,
2 and then we can take depositions and undertake
3 discovery on whatever it is that they're alleging,
4 including all this new stuff that we've seen for the
5 first time in -- in these letters that have been
6 submitted related to the -- to the continuance motion.

7 **JUDGE MELLODY:** Mr. Wechsler, do you want
8 to respond?

9 **MR. WECHSLER:** Yes. I'll -- I'll focus
10 on each of the motions in limine that Mr. Somach just
11 identified. So the first -- and I'll take them in
12 order. The first was his Motion in Limine No. 4,
13 which deals with the fourth counterclaim. So as we
14 point out in the briefing, it's not the time or place
15 for a dispositive motion. This has been addressed
16 already. You've denied their motions. We signed a
17 robust body of law that indicates you can't bring that
18 as a motion in limine, and any attempt to do so must
19 be denied, and they don't make any attempt to argue
20 otherwise. The Motion in Limine No. 4 rests on this
21 false distinction that it's very hard to understand in
22 that Texas has struggled and been unable to explain,
23 and that is that the Court has held that the project
24 is inextricably intertwined with the Compact and that
25 the apportionment can only be accomplished because of

1 Reclamation's operations. And then you, in turn, held
2 that New Mexico is entitled to 57 percent of project
3 supply, which necessarily means that the division of
4 project supply is relevant in this Compact action.
5 And in case there was any question about it, you have
6 been clear. This is a quote from your order on the
7 counterclaims dismissal where you said the operating
8 agreement may be relevant on the issue of whether each
9 state is receiving the water to which it is entitled
10 under the Compact. To the extent current operations
11 are inconsistent with the Court's ultimate decree on
12 apportionment, any operating agreement will have to be
13 brought into conformity with the decree. If New
14 Mexico or Texas has been deprived of its equitable
15 apportionment under the Compact, it is very possible
16 that any such short fall may be the result of a
17 combination of factors, including United States
18 project operations and New Mexican Texan -- or Mexican
19 surface groundwater diversions. New Mexico's
20 counterclaim provides more than ample opportunity for
21 the parties to flesh out their theories regarding the
22 impact of project operations on the State's receipt of
23 their Compact apportionments. And that's really all
24 we're asking to do here. New Mexico's counterclaims
25 collectively claim that there's a Compact violation

1 when New Mexico receives less than 57 percent of
2 supply, and Texas receives more of that same supply.
3 And in those circumstances, it is the State of Texas
4 that benefits from that extra water, and it -- as
5 Texas has acknowledged throughout this litigation, it
6 is responsible for the actions of its citizens and --
7 and of its Compact commissioner. And then Texas
8 suggests as part of this motion that New Mexico can
9 address the allegations of unjust enrichment in the
10 remedies phase, but that misunderstands the basic
11 nature of -- of claims. I mean, New Mexico is
12 entitled to seek a remedy only if it establishes the
13 elements of the claim, and here for unjust enrichment,
14 those elements are a benefit for Texas in the form of
15 extra water under the Compact; No. 2, at New Mexico's
16 expense; and, 3, for which it would be unjust for
17 Texas to retain. New Mexico is entitled to put on
18 evidence of each of those claims, and because of that,
19 it seems obvious that motion should be denied.

20 The next motion that Mr. Somach raised
21 was -- was Motion in Limine No. 2, which is this
22 baseline condition, and -- and, again, in their motion
23 and here today again, Mr. Somach argues that, well,
24 New Mexico hasn't offered any facts relating to this
25 baseline condition, and -- and I can't -- it's hard

1 for me to tell if Texas is not paying attention to our
2 case or if they're intentionally distorting New
3 Mexico's position, but this is -- it's simply
4 categorically false that we didn't put on evidence of
5 a baseline condition, and that took multiple forms, as
6 we outlined in our -- our brief on this. We do have
7 experts that point out the problems with the 1938
8 condition. We don't believe that this Compact has a
9 1938 condition. We do have experts that explain, for
10 example, things like in other Compacts, this is what a
11 year condition looks like, for example, the 1947
12 condition in the Pecos Compact, and that the -- what
13 Texas advocates for looks nothing like that because
14 they ignore all of the actions that are going on in
15 Texas. All of this is part of our Rule 26
16 disclosures. New Mexico has always advocated for a
17 baseline condition, and specifically, we argue that
18 the Compact intended to protect project operations in
19 order to meet irrigation demand. We have expert
20 witnesses that show that what that baseline looks like
21 is 57 percent of project supply based on an equal
22 amount of project water to each acre, but there's
23 supplemental groundwater pumping to meet irrigation
24 demands and then continued operation of the project to
25 limit waste, and then that's translated into a -- a

1 baseline. And we have also explained this is
2 consistent with the long-time accepted standard, which
3 was the D2 baseline condition. But we also put on
4 modeling evidence that shows that if the Special
5 Master chooses to select a different baseline, we have
6 multiple model runs done by, you know, our multiple
7 modeling experts, which are showing modifications of
8 this -- this -- this baseline, including various
9 aspects of what Texas' 1938 condition would look like
10 so that it -- it shows that there would still be, even
11 under that scenario, an impact to New Mexico. So I
12 don't -- I don't know if Mr. Somach simply hasn't read
13 those reports or what's going on. So, again, the very
14 basis on which Mr. Somach is -- is -- is making this
15 argument is simply incorrect.

16 And then finally turning to their Motion
17 in Limine No. 3, which is the evidence of injury,
18 again, Mr. Somach here says today, we didn't present
19 any evidence of this, and I -- I simply don't know
20 what Mr. Somach has been paying attention to. We,
21 again, as outlined in our brief, have presented very
22 robust evidence in -- in multiple ways of -- of the
23 injury, focusing on two things. One was the
24 deprivation of New Mexico's equitable share of Compact
25 water and that reduction in supply, which was, as I

1 said, it's modeling that allows us to get to that
2 94,000 acre-foot number. We also have done that
3 simply by looking at the reports of the -- the project
4 operations, the project histories, to show that it's
5 all consistent with our modeling effort, again,
6 showing a very significant and robust injury on the
7 part of New Mexico. And then we have had more than
8 one witness testify that the -- about the harm that
9 results to New Mexico from that reduction of Compact
10 water, for example, things like our aquifers is -- is
11 incurring significant damage from which it may never
12 recover and so these are all part of the Rule 26
13 disclosures. It's also misleading to suggest that we
14 have not disclosed individual fact witnesses on this
15 -- this point. If you want to hear more about that,
16 I'm happy to do so, but there will be farmers who are
17 explaining why their reduction in -- in project supply
18 has impacted their operations and, of course,
19 Mr. D'Antonio and -- and the ISC director,
20 Mr. Schmidt-Petersen, will also be presenting evidence
21 as to the impact on New Mexico. So, I mean, for all
22 those reasons, those motions should be denied.

23 **JUDGE MELLOY:** Well, I'm -- and this is
24 probably going to apply to some of the motions both by
25 Texas and United States. It's really difficult to

1 rule on these in a vacuum without seeing what
2 testimony is going to attempt to be introduced, and so
3 generally, I'm going to deny the motions because I
4 just don't know with -- with enough specificity as to
5 what exactly is asked to be excluded, and it's
6 certainly without prejudice to Texas, for instance,
7 arguing at the time New Mexico tries to put on
8 evidence about damages that it wasn't properly
9 disclosed, and if it wasn't properly disclosed, it'll
10 be excluded. But if it was -- but I don't -- I'm not
11 going to cut off the attempt by New Mexico at this
12 point to -- to present that evidence. The same --
13 same with Motion in Limine No. 2 and -- and as to --
14 as to Motion in Limine No. 1 dealing with introduction
15 of issues relating to -- that have been decided by the
16 prior special -- prior orders, I assume primarily the
17 motion for summary judgment and, of course, also the
18 motion to dismiss order, as I understand it, New
19 Mexico says they're not going to be doing that. You
20 know, of course, what that evidence is is in the eye
21 of the beholder. Again, I don't know by way of motion
22 in limine that I can say, you know, this piece of
23 evidence can't come in. I think -- again, I think
24 these are all things that are going to have to be
25 sorted out at the time New Mexico tries to introduce

1 the evidence.

2 As to Point No. 4, to me, this is just
3 the reverse of New Mexico's motion in limine as to
4 Texas' expert witness. Texas says essentially, as I
5 understand it, other than maybe some limited
6 groundwater pumping out of the aquifer that straddles
7 the Texas/New Mexico line, there's nothing that Texas
8 does once the water gets south of the -- of the New
9 Mexico/Texas border that has any impact on -- on New
10 Mexico, and, therefore, any evidence about that is
11 irrelevant. New Mexico says don't even consider
12 Texas' expert because they didn't consider all the
13 things that are happening south of the border, and you
14 can't determine the -- the case without -- without
15 that evidence and without an expert opining on -- on
16 the effects of what Texas' pumping and use by
17 municipalities and other uses might -- might entail.
18 At this point, I don't think I can say one way or the
19 other that what Texas is doing is or is not relevant.
20 That's -- I want to hear the evidence, and -- and so
21 I'm going to deny the motions in limine as to 1, 2, 3,
22 and 4. As to 5, this actually ties into one that the
23 United States also raises, motion to exclude the
24 introduction of evidence of improper legal arguments.
25 Well, yes, improper legal arguments should be

1 excluded. Now, what's an improper legal argument?
2 That's a -- again, a very difficult issue to answer in
3 a vacuum. Expert witnesses -- what I -- I think
4 they're talking about mainly here is an expert
5 witness. Expert witnesses cannot opine as to the
6 meaning of the Compact; however, an expert witness can
7 opine as to technical terms, terms of art, common
8 usage, particularly as it might have been understood
9 in 1938. Those certainly are areas. And, you know,
10 in the -- in the legal parlance, there are mixed
11 questions of law and fact, and what becomes improper
12 legal argument as opposed to proper opinion about
13 matter of -- of technical analysis, I think, is -- is
14 just lines that are going to have to be drawn at the
15 time the testimony comes in. Certainly, No. 6 is a
16 legitimate request to an expert will not be allowed to
17 testify outside the scope of their area of expertise,
18 but, again, until they -- until New Mexico proffers
19 testimony that meets that definition and is properly
20 objected to, I don't know that I can grant the motion.
21 So I -- I feel like I need to deny all the motions at
22 this point, subject to them being reasserted at the
23 time the testimony comes in. So anyway, do we want to
24 talk about New Mexico's motions?

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

1 Ms. Thompson will be talking about New Mexico's
2 motions.

3 **MS. THOMPSON:** Good morning, Your Honor.

4 **JUDGE MELLOY:** Excuse me a second.

5 Before -- let me ask a question that may short-circuit
6 this a little bit, for Mr. Somach. One of the motions
7 in limine goes to the two witnesses from Land IQ that
8 were going to testify. From the deposition, the
9 motion to file deposition excerpts, do I understand
10 you're not going to call anybody from Land IQ? I'm
11 not sure I understood exactly what's going on there.
12 Can -- can you tell me what's happening there?

13 **MR. SOMACH:** We are going to call
14 Dr. Kimmelshue, who is the main Land IQ witness, and I
15 believe that we've placed Mica Heilmann on the
16 may-call list. Those were the two main Land IQ
17 witnesses. Our intention is to offer them -- the
18 reason why we're not certain yet with respect to -- to
19 Ms. Heilmann is we think Dr. Kimmelshue can probably
20 handle most of that, but we want to, in abundance of
21 caution, if we have to put on Ms. Heilmann, we -- we
22 will certainly do so. But, no, we -- we intend to put
23 on Dr. Kimmelshue. He's one of our significant
24 witnesses, and -- and so I -- I'm not sure where the
25 confusion is, but I -- but we are going to put him on.

1 **JUDGE MELLOY:** All right. Okay. Thank
2 you. That cores it up. I didn't know because of the
3 deposition designation, if that meant you weren't
4 going to put something on for them at all so that
5 cores that up for me.

6 All right. Ms. Thompson, why don't you
7 speak to that portion first because I have a couple
8 questions about that I'd like to sort of lead off
9 with.

10 **MS. THOMPSON:** Sure. When you say "that
11 portion," you mean the --

12 **JUDGE MELLOY:** The Land IQ.

13 **MS. THOMPSON:** Okay. Sure. So we, of
14 course, filed three different Daubert motions, one of
15 which was seeking to exclude the testimony from Land
16 IQ, and specifically Dr. Kimmelshue and their may-call
17 witness, Ms. Heilmann. New Mexico requested this
18 exclusion because Land IQ has a methodology that they
19 call their random forestland classification
20 methodology. It's a proprietary methodology or was
21 asserted as proprietary until very recently. Land IQ
22 used this methodology in 11 different years to come up
23 with irrigated acreage and the crop identification.
24 We took the initial deposition of Mr. Kimmelshue. He
25 stated repeatedly at that time that it was a

1 proprietary method, and they would not be disclosing
2 information on it. Later on, we came to an agreement
3 that they would disclose information under a
4 stipulated order and a very strict confidentiality
5 order. So you may recall that order, and there --
6 thereafter, what we ended up agreeing to is for
7 Mr. Kimmelshue to provide information on a thumb drive
8 that would be sent to us, and we anxiously awaited for
9 that thumb drive, and when we received it, there was
10 basically one document on it that's an overview of
11 this methodology that at the time, again, they were
12 claiming was proprietary. Our experts, we have two
13 experts that have reviewed the materials that they
14 have provided, and had stated in their rebuttal
15 reports very clearly that the information did not give
16 enough detail for anyone to actually understand the
17 methodology, review it, repeat it. The methodology,
18 like I said, is 22 pages overview, and it focuses on
19 just one of those 11 years. And I'll give a concrete
20 example from that methodology. There's a section of
21 it that talks about models, and it says, Oh, you can
22 pick one of four models to run this methodology,
23 however, we used, you know, some of these in year
24 2018, the others, we're not sure. We don't have the
25 inputs for those codes. We don't have the outputs for

1 that code. And even though we raised this repeatedly
2 with Dr. Kimmelshue, and we were allowed to take his
3 deposition, and we certainly did ask questions about
4 it, there are no files that we have ever received that
5 allow us to actually interpret their results and be
6 able to repeat those results. Again, I just wanted to
7 say that in conclusion here, that Mr. Kimmelshue
8 himself admitted during the deposition that the
9 methodology has not been peer reviewed. There are
10 components. What we keep hearing, though, is that
11 this methodology is actually a series of steps, and
12 those steps are confidential; it's just how they put
13 those steps together. So, in essence, the ingredients
14 aren't secret, but the way you combine those
15 ingredients and cook with it is secret. So we, to
16 this date, still do not have enough information to
17 understand this random forest methodology, and, in
18 fact, on their disclosure, the 22-page disclosure,
19 there is on the very front page of it, and this has
20 been now attached to the motion so you -- you should
21 have that at hand there, that it states the process is
22 refined and customized every image, every crop, every
23 date, and every area analyzed. It is never exactly
24 the same. It also states that because of individual
25 expertise moving throughout the analytical process, it

1 is likely impossible to ever exactly replicate the
2 results. We think that's right. We think that's
3 true. It is unlikely to ever be able to replicate
4 those results. So for those reasons, we don't believe
5 the methodology has been properly disclosed in detail
6 for litigation. We don't believe it's repeatable. We
7 don't believe it's been peer reviewed based on the
8 steps that we've understood to occur so, therefore, we
9 have asked in our Daubert motion to have that
10 particular testimony from Land IQ excluded. I want to
11 make clear, though, Land IQ has many other areas of
12 testimony, and we are not seeking exclusion at this
13 time for those other areas, just on this one
14 particular methodology.

15 **JUDGE MELLOY:** And what they are
16 testifying to, as I understand it, is what the crops
17 were in different sections of the -- of the project,
18 both in Texas and New Mexico or just Texas?

19 **MS. THOMPSON:** That's right.

20 **JUDGE MELLOY:** Or just New Mexico
21 rather?

22 **MS. THOMPSON:** Yeah. It's in New
23 Mexico, and it's related to in those particular 11
24 years, how they have used satellite imagery to
25 identify irrigated acreage and the crops.

1 **JUDGE MELLOY:** Do you have an expert
2 that's done essentially the same thing?

3 **MS. THOMPSON:** We do not have an expert
4 that has done that same methodology. We have an
5 expert that has looked at irrigated acreage and a
6 separate expert who has identified crops based on the
7 Bureau of Reclamation records. So we do not have one
8 that does this methodology.

9 **JUDGE MELLOY:** I guess that was a
10 question I'm -- I have in my mind is is this even
11 something that has to be -- that even requires expert
12 testimony? In other words, one of the things -- one
13 of the comments that was made -- been made a couple
14 times, including on our tour the other day, is that
15 the Rio Grande may be the most stunning river in the
16 United States, other than the Colorado, and I can't
17 imagine that between Reclamation, the water districts,
18 crop insurance companies, New Mexico State University
19 Extension Service, that there's even a tenth of an
20 acre that you can't tell what was being grown on any
21 of those -- those lands. I mean, is -- aren't there
22 just -- aren't there records out there that would tell
23 us what the answer is to that question?

24 **MS. THOMPSON:** Yes, Your Honor, there
25 are, and that is exactly what our expert has used.

1 It's a combination of the Bureau of Reclamation
2 records, the District records, plus there are crop
3 distribution records that are put out by travel
4 agencies, as well.

5 **JUDGE MELLOY:** Don't the water districts
6 keep track of which acres are being irrigated?
7 Because they -- they charge based on irrigated acres,
8 don't they.

9 **MS. THOMPSON:** That is correct. And
10 they do in more recent time.

11 **JUDGE MELLOY:** So why was the 11-year
12 time period picked?

13 **MS. THOMPSON:** It was 11 separate years,
14 so back in time, it's roughly one per decade back in
15 time that they used this methodology. So it wasn't 11
16 years in a row.

17 **JUDGE MELLOY:** Okay. Is your expert
18 doing essentially the same thing? I mean, not same
19 method, but doing something similar a number of
20 representative years back several decades?

21 **MS. THOMPSON:** We do have an expert
22 that's looking back in time and identifying irrigated
23 acreage. The specific crop identification that the
24 crop mix during those times, we're using the records
25 as opposed to this type of satellite imagery

1 interpretation.

2 **JUDGE MELLOY:** I guess I'll ask
3 Mr. Somach the same question maybe or whoever is
4 responsible for this particular witness. Why don't
5 you just go to the records?

6 **MS. KLAHN:** Your Honor, Sarah Klahn for
7 the State of Texas. I'm going to be handling this
8 argument. Just take -- the -- the reason you don't
9 just go to the records is that back in time, the
10 records are quite accurate. More recently, the
11 records are much less accurate. So if you're just
12 relying on Bureau of Reclamation or most recently
13 district records, it's true the districts do track how
14 many acres are irrigated, but that doesn't answer the
15 question of which crops are grown, and as the Court is
16 aware, the fight in this case is over the amount of
17 water that New Mexico is consuming and how much of the
18 water that New Mexico is consuming is actually water
19 that Texas is entitled to. And so in order to answer
20 the second question, how much is -- how much of that
21 was Texas entitled to, we have to know how much they
22 consumed. And so that's why the crop mix is so
23 important, and so going back in time, if you're using
24 the methodology that Land IQ used -- and I'll -- I can
25 address the specific objections that New Mexico's put

1 in their motion in a minute. Just putting it in
2 context, if you go back in time, and you use images,
3 aerial images, and you can really only go back to the
4 '50s to do this, because prior to that, the aerial
5 imagery is not very good. But if you go back in time,
6 it's possible to look at the aerials, and there's data
7 inside somehow in the -- in the -- in the images, and
8 you can use that to train -- essentially train
9 computers to recognize different crop types. And so
10 what the argument that Ms. Thompson's motion is making
11 is that because New Mexico doesn't have an expert --
12 well, New Mexico doesn't have an expert who's done
13 this work, and I think she said that. So there's
14 really no dispute about that. The -- in deposition,
15 Mr. Jordan, their expert, testified he's never used
16 the random forest type of model, which is one of the
17 types that Land IQ uses. So if you -- but if you are
18 able to use those things, you can actually go back in
19 time and get a good representation of which crops were
20 grown. Now, I want to make it clear, this is just one
21 of the steps that Land IQ uses in order to get to that
22 particular crop mix in those 11 years. So what they
23 did was say from 1938 to 2018, let's pick a decadal
24 year, one of 11 of them, and let's try and map what
25 happened during that year, which will give us a better

1 ability to -- to evaluate whether those records on
2 either side of the year we mapped are accurate. Now,
3 obviously crop mixes change and that kind of stuff,
4 but, you know, the big crops in the Rio Grande Valley
5 is, as you may be aware now after your tour, pecans,
6 alfalfa, and cotton, and so it's important to track
7 when those -- when the cotton went down and when
8 pecans went up, because that's what tracks with
9 consumptive use of water by New Mexico during those
10 years and during this entire study period. So you
11 didn't ask me, but can I just go ahead and address the
12 motion, the merits of the motion, or do you have a
13 question?

14 **JUDGE MELLOY:** Well, I had one question,
15 and this is not information that the New Mexico State
16 University Extension Service has?

17 **MS. KLAHN:** No.

18 **JUDGE MELLOY:** I mean, or crop insurance
19 companies have? Because around here, you know,
20 farmers have to report X number of acres of soybeans
21 and X number of acres of corn every year, both for
22 crop insurance purposes, the Extension Office tracks
23 that. I mean, there isn't an acre you could go back
24 on without knowing pretty much what was planted on it
25 for the last 50 years. Those kind of records don't

1 exist in New Mexico?

2 **MS. KLAHN:** Well, they exist in the
3 project. And like I say, when the Bureau was in
4 charge of the project, and I would say the world was a
5 different place prior to our electronic world, the
6 data sheets -- and we'll show these to you during
7 trial. The data sheets are very -- they're very
8 detailed. So they ask farmers to fill these out every
9 year where there is, like, a lot of different crops to
10 choose from. In more recent years, the crop types are
11 much many fewer listed so you don't have the
12 opportunity to say if you're a farmer, you know, it's
13 still cotton, alfalfa, and pecans, but did you grow
14 chile, did you grow onions, did you grow spring wheat?
15 Those things aren't even necessarily listed. And then
16 there's not the -- the checking. You know, the Bureau
17 had a lot of folks that went out in the field, and
18 they checked and said is this right, is this what's
19 really happening? So there's some question about the
20 reliability of more recent years, and I think that's
21 why New Mexico and Texas both did these -- these field
22 surveys where, like, Land IQ went out on four
23 occasions, and they drove around EBID, and they have a
24 whole methodology, which they'll describe. I think
25 Mr. -- Dr. Kimmelshue's declaration goes into this

1 where they identified what was happening in the
2 fields, and they used that as a basis for their
3 mapping, and then they -- they used this technical
4 method that is the subject of the motion to -- to map
5 the acres they didn't see because the records are just
6 not that reliable. So that's why that -- that's why
7 it's been handled that way.

8 **JUDGE MELLOY:** Okay. All right. And
9 you said you wanted to speak more to the merits of the
10 motion? Go ahead.

11 **MS. KLAHN:** I want to -- I want to start
12 with this idea of peer review, which New Mexico seems
13 to limit to the concept of publication in a
14 peer-reviewed scientific journal. That certainly is
15 one type of peer review, but peer review can be
16 defined in different ways, and the California
17 Department of Water Resources has hired Land IQ for
18 the last seven years to do -- to do mapping of
19 irrigated acres and crop types in California, which is
20 mandated by state statute. So they map 10 million
21 acres. They -- they spend every year, a couple of
22 days every year, kind of work shopping with the DWR
23 employees to -- to explain the methodology, to explain
24 what they're doing, and Department of Water Resources
25 in California historically has done this work

1 themselves, but when this new law was passed a number
2 of years ago, they didn't have the manpower to do it
3 all because it now has to be done every year instead
4 of every five years. So Land IQ was brought in to do
5 this. They've also been hired to do the same types of
6 mapping by a number of commodity groups, including the
7 pecan counsel of America. So there's -- there may not
8 be peer review in the sense of published journal
9 articles about the steps that they use, but there's
10 peer reviews in the sense that the people that are
11 regulating this in California and the commodity groups
12 that rely on this for their, you know, marketing --
13 how many -- how many acres are in pecans, that's going
14 to help them figure out how much the yield might be,
15 what should they -- what should their budget be.
16 They're relying on this. So this is a type of peer
17 review that I think speaks to the reliability of the
18 methods that Land IQ has used in this case.

19 The -- the second thing I just want to
20 touch on is this idea that somehow New Mexico hasn't
21 had a chance to discover these things. The -- they --
22 they took one -- one-and-a-half days of deposition in
23 2019 at the time when Land IQ was asserting that this
24 was proprietary. Since 2019, the -- their methods
25 have changed enough in what they're doing with

1 Department of Water Resources that they don't consider
2 this proprietary anymore, and I -- I can't speak to it
3 any more than that. That's just what Dr. Kimmelshue
4 has said. They took about a half-a-day deposition of
5 Dr. Kimmelshue in June of 2020. So we're over a year
6 later. If they want to take another deposition of
7 Dr. Kimmelshue and Ms. Heilmann, we're certainly
8 willing to make them available. They should perhaps
9 find somebody who can also advise them about how to
10 ask the questions and that kind of thing because I'm
11 afraid that Mr. Jordan's testimony in his deposition
12 demonstrates that whatever the merits of Mr. Jordan's
13 work for New Mexico, he may not be the right person to
14 help them understand what Land IQ did. So -- so I
15 think that's -- I'll stop there, and if you have
16 specific questions about -- about anything else, I'm
17 happy to answer them.

18 **JUDGE MELLOY:** No. I'm going to
19 overrule the motion. I think this goes to the weight,
20 and certainly New Mexico will have an opportunity, if
21 they want to, to voir dire the Land IQ witnesses as to
22 their qualifications, but I -- I think this goes to
23 the weight.

24 Let me just say this one other thing
25 before I let Ms. Thompson talk about Brandes and

1 Hutchison. As I understand it, Texas does not plan to
2 call Hornberger as a witness; is that correct?

3 **MR. SOMACH:** That's correct. We have no
4 plans of calling Dr. Hornberger.

5 **JUDGE MELLOY:** Okay. So what I'm going
6 to do as to that motion is I'm going to reserve my
7 ruling on that. If he's not called, then it becomes a
8 moot issue. If he is called, it'll still be a live
9 motion. New Mexico can certainly re-urge it at the
10 time. Two hours isn't a lot of time to prepare, but
11 we'll make a final ruling on that if -- if, in fact,
12 Hornberger is ever actually called as a witness, so
13 I'll just reserve ruling on that and that portion of
14 the motion.

15 What about Hutchison and Brandes,
16 Ms. Thompson?

17 **MS. THOMPSON:** Your Honor, we have one
18 more Daubert motion dealing with Dr. Hutchison, and
19 then we have two separate motions in limine seeking to
20 exclude the expanded scope of Dr. Brandes and
21 Dr. Hutchison. I will say on those last two items,
22 when Mr. Somach just spoke to the idea that because of
23 additional time, maybe we should talk about additional
24 depositions. I think if it's acceptable to you, Your
25 Honor, that we would have those discussions with

1 Dr. -- with Mr. Somach on those expanded scope areas
2 and then bring that back to you next week on those
3 last two, and then I'll go ahead and address the
4 remaining Daubert if that's okay.

5 **JUDGE MELLOY:** Go ahead.

6 **MS. THOMPSON:** All right. To start off,
7 we certainly recognize your comment, Your Honor, that
8 in special -- or Original actions, the Court is
9 reluctant to rule on pre-trial Daubert motions because
10 generally, certainly the approach is to allow for a
11 full -- full record. But I do want to point out,
12 though, that Special Master Thompson in the Montana
13 case did recognize that Daubert motions are certainly
14 relevant in original actions. He just chose to hold
15 off until trial, as you have stated may be your
16 preference here, as well. Likewise, Special Master
17 Kayatta did the same thing, said that Dauberts are
18 certainly appropriate in original actions, but favored
19 under the facts of that case or the limited facts of
20 the record of that case to wait until trial. On the
21 specific motion related to Dr. Hutchison's modeling, I
22 would assert that, frankly, we have an extensive
23 record already before you related to the modeling, the
24 different approaches of the model, and there's very
25 limited time or there has been very limited time for

1 trial on expert testimony. The general standard, as
2 you know, is laid out in Rule 702. It relates
3 specifically to did those experts rely upon sufficient
4 facts and data, and then did they apply their
5 methodology utilizing those important facts and data.
6 We assert that Dr. Horn -- excuse me -- Dr. Hutchison
7 did not.

8 Mr. Somach admitted last week that the
9 Texas model is a groundwater model that only measures
10 increases or decreases in flow at a single gage on the
11 Rio Grande. It's at the El Paso gage. Mr. Somach
12 also acknowledged that that is not a Compact
13 compliance point. It's not a project delivery point.
14 Their model has no project operations incorporated
15 into it. It is a simple groundwater model focused
16 solely on New Mexico. It also only operates on an
17 annual basis, so it doesn't even operate on the same
18 time step or same basis as project releases occurred.
19 Dr. Hutchison model assumes -- and this is an
20 important point here -- that all of the increased
21 flows and drains in the river that may occur when he
22 reduces his pumping all show up at the El Paso gage
23 and all is owed to Texas. This is simply not how the
24 project or the river is operated. He ignores that the
25 project releases are actually continually adjusted to

1 make sure that those project flows are meeting project
2 demands at project delivery points. Under the New
3 Mexico model, these additional flows that all go to
4 Texas exceed project demands, exceed project orders,
5 exceed a full supply, and, frankly, show up as waste
6 at the bottom of the system. This in no way has any
7 bearing towards reality of how historically this river
8 has been managed, has no reality on any other project
9 operations, but Dr. Hutchison's model completely
10 ignores this. We have raised this repeatedly
11 throughout our expert reports, and Dr. Hutchison chose
12 not to file a rebuttal report addressing any of these
13 concerns. I also want to just make sure that I
14 mention that the U.S.'s key modeling expert, Ms.
15 Moran, also raises many of these same concerns. So
16 this is an area where Texas and the U.S. diverge. Ms.
17 Moran stated expressly in her report that you needed
18 to have something less than an annual model, at least
19 a seasonal model, to look at the fact that releases
20 are only occurring during irrigation season. Project
21 deliveries are only occurring during that sub part in
22 time. She also acknowledges that there are no project
23 operations in Dr. Hutchison's model, therefore, she
24 attempted to do some type of reallocation herself;
25 however, she acknowledges that under his existing

1 model, the way it is a simplified MODFLOW model, does
2 not reflect reality. So it's New Mexico's position
3 then, Your Honor, that we shouldn't have to sit
4 through hours and hours of testimony on a groundwater
5 model that, frankly, doesn't have any basis in
6 reality. It does not reflect those project operations
7 that are critical, therefore, in addition to the fact
8 that you have ruled that there is a 57/43 split, it
9 can't measure 43 of anything. It can't measure
10 whether or not Texas is getting more or less than that
11 43 percent. Therefore, we ask that the testimony from
12 Dr. Hutchison be excluded on his groundwater model
13 only. He certainly had filed a limited rebuttal
14 report on a different issue. It was related solely to
15 his statements related to New Mexico's Hueco or
16 basically the El Paso Valley groundwater model. We
17 are not seeking to exclude those opinions at all, just
18 the opinions on the groundwater model. Thank you,
19 Your Honor.

20 **JUDGE MELLOY:** Does Texas have a
21 response?

22 **MS. KLAHN:** Yes, Your Honor. Sarah
23 Klahn for Texas. New Mexico's motion assumes the
24 predicate. They assume, A, that their modeling is
25 accurate; B, it assumes that the model -- the modeled

1 project operations accurately reflect project
2 operations; and, C, it assumes New Mexico's choice to
3 model project operations is necessary to answer the
4 questions in this case. So we think that the New
5 Mexico model is -- or the New Mexico motion is not a
6 Daubert motion at all. It's a -- it's a dispute -- it
7 reflects a dispute between the two states about how
8 our experts have chosen to approach the question of
9 New Mexico's consumption of water and modeling that
10 consumption over the period of record. I would say
11 that the fact that the El Paso gage, which is what
12 Mr. Hutchison ties his modeling to and it's sometimes
13 called the Courchesne gage, it's -- it's at the
14 narrows. It's at the point where all the water below
15 that goes to Texas. It's -- it's also in the New
16 Mexico model. Whether or not it's a Compact
17 compliance point is irrelevant. It's the right point
18 to -- to take a look at how much water would have
19 passed the El Paso gage in the absence of New Mexico's
20 pumping. Ms. -- the -- the invocation of United
21 States' expert, what Dr. Moran says, is --
22 oversimplifies her report. At the end of the day, Ms.
23 Moran concludes that the Texas model is adequate and
24 appropriate for the uses for which it is being
25 offered, and that's an issue that will come out during

1 Ms. Moran's testimony. It's something that New Mexico
2 can cross on, and we simply don't think that this even
3 rises to the level of raising Daubert issues. It just
4 is seeking an advantage to -- to try and make their
5 model the only model in the case. We'd ask you to --
6 to deny the motion.

7 **JUDGE MELLOY:** All right. I'm going to
8 deny the motion. I think this goes to the weight and
9 not the admissibility of the testimony, and if it
10 turns out that Dr. Hutchison didn't include all
11 relevant factors, well then presumably his testimony
12 won't be given a lot of weight, and if the New Mexico
13 model is a better model, their numbers will be the one
14 that controls. But I -- but I think that's a matter
15 for trial, not a matter for a Daubert motion at this
16 point so -- so anyway, I'm going to overrule that
17 motion.

18 Any -- I think that disposes of New
19 Mexico's motions. United States, you want to be
20 heard, Mr. Dubois?

21 **MR. DUBOIS:** Ms. Coleman is going to
22 take on the motions in limine for the United States,
23 Your Honor.

24 **JUDGE MELLOY:** Okay.

25 **MS. COLEMAN:** Good afternoon, Your

1 Honor. Judy Coleman for the United States. I heard
2 and appreciate everything that you stated with respect
3 to Texas' overlapping motions, and I -- I do want to
4 address a few things that I think we still can get on
5 the record today that address our concerns, fully
6 understanding the Special Master's interest in having
7 a full and robust record for the court and in having
8 specific evidence in front of him to consider with
9 these motions. We were very clear in our motions that
10 we were seeking prophylactic rulings, largely for
11 trial management purposes. As you may have seen, New
12 Mexico has listed almost 2,500 exhibits on its exhibit
13 list. We should also take up Colorado's 1,400
14 exhibits perhaps later in this conference. And so I
15 think we do have a clear need to have some sort of
16 guidance, and especially with this -- perhaps some of
17 this extra time we have for the parties to be further
18 refining their -- their list. I'd like to think the
19 United States has done so going from 2,600 to about
20 600 exhibits. And so to that end, I think there's
21 some relief, short of a granting of an exclusionary
22 motion, that can help us here. First, I think we'd be
23 looking for some guidance that the 15 statements that
24 we had listed in our summary judgment motion in limine
25 should be treated as established for purposes of

1 trial. I -- I know, and Mr. Wechsler said and New
2 Mexico said in its brief, they will abide by the
3 summary judgment ruling, but I think we also heard
4 some statements just now from Mr. Wechsler that shows
5 that they are not. I will read directly from the
6 transcript on this. "We don't believe that this
7 Compact has a 1938 condition. New Mexico has always
8 advocated for a baseline condition, and specifically,
9 we argue that the Compact intended to protect project
10 operations in order to meet irrigation demand. We
11 have expert witnesses that show that what the baseline
12 looks like is 57 percent of project supply based on
13 equal amount of project water to each acre, but
14 there's supplemental groundwater pumping to meet
15 irrigation demands and then continued operation to
16 limit waste, and that becomes the baseline or that's
17 translated into the baseline." These statements, in
18 several respects, directly contradict the statements
19 in your summary judgment order. You say on Pages 6
20 and 24 that the Compact is a 1938 condition. We leave
21 the details of that to be determined at trial. Why
22 are we still hearing New Mexico say that it's not a
23 1938 condition? I understand there's course and
24 performance arguments, and those go to what the intent
25 is. I know there's acquiescence arguments that go to

1 how much damage, you know, Texas can really be
2 asserting if it's, you know, agreed to or acquiesced
3 in some amount of pumping, but when we talk about that
4 the 1938 condition is, as you said, the baseline, and
5 it's a summary judgment ruling to that effect. And
6 the fact that we are still hearing things like that
7 from New Mexico at this late stage on the record after
8 saying they would not contest summary judgment is why
9 we need guidance, we -- we suggest, on the record.

10 So, first, we'd like to have those 15
11 statements that have confirmed to be established New
12 Mexico did not identify any substantive dispute with
13 them, and surely the Special Master is free to edit
14 them as he wishes to conform to -- to what he wrote in
15 May.

16 The second relief, short of -- short of
17 a grant -- full-on grant of an exclusion is direction
18 to counsel, I think, to avoid lines of testimony that
19 are -- that are inconsistent with the ruling. And I
20 -- that's gauzy, but it's something that the United
21 States can point to, and Texas, and if New Mexico
22 wants to for itself, we can point to at trial. We
23 just want a piece of paper or electronics to hold up
24 and say the Special Master said that ruling was real.
25 Similarly for the counterclaims motion, which I do

1 want to get into a little bit more, we did provide
2 some examples, you know, for -- we all know by now
3 that there are -- there's going to be significant
4 disputes about what Estevan Lopez can testify to. We
5 take that as granted, it'll come up at trial. That's
6 an example of where we would like some direction that
7 that testimony should be confined to some extent, much
8 as Dr. Littlefield's testimony was confined in Montana
9 versus Wyoming in advance of trial. That's the sort
10 of guidance that would be helpful. Similarly, we did
11 not see anything as glaring, I think, in Dr. Steven's
12 testimony, but since he's in the same realm as
13 Dr. Littlefield and worked with him, in fact, that's
14 just another sort of advisory that we would be
15 interested in pursuing. Similarly, to the extent that
16 there's lengthy discussion of acquiescence or lots of
17 talk about everyone intended to protect groundwater
18 pumping that was minimal at the time of the Compact
19 but is now maximal, that sort of guidance, I think,
20 needs to be entered.

21 Earlier, I believe you already addressed
22 what my third statement was going to be, which is some
23 direction that testimony going to interpretation of
24 the Compact will not be permitted except, you know, to
25 the extent that it's consistent with expertise and the

1 like. I think we all understand that and can defer
2 that for trial.

3 Now, the counterclaims. So I was
4 listening to the August 17th status conference from an
5 Uber on my one day of vacation this year, so I -- I
6 might have messed up, but based on the transcript, I
7 think the one issue does seem to be important to
8 clarify, which is this distinction between affirmative
9 defenses and counterclaims. There was some discussion
10 of this. Mr. Dubois made clear the United States'
11 position that we understand affirmative defenses are
12 -- are in this case, and there's overlap. But I think
13 it -- it's worth looking at what New Mexico's
14 affirmative defenses actually are and going to our --
15 back a bit to our summary judgment motion, whether
16 they -- to what extent they survive and are available
17 against the United States. Now, again, this is not
18 intended for, you know, categorical exclusion of broad
19 swaths of testimony, but for purposes of guidance. So
20 looking at New Mexico's answer to the United States'
21 complaint, we have eight affirmative defenses. I will
22 dispatch with them quickly. No. 1, ripeness on the
23 ground that the harm was speculative. This was
24 rejected on summary judgment. The Special Master
25 concluded that New Mexico interfered with project

1 deliveries in 2003 and 2004.

2 No. 2, notice. This was rejected as to
3 Texas because New Mexico's motion only went to Texas,
4 but the logic that the Special Master applied applies
5 equally to the United States so that affirmative
6 defense is rejected.

7 No. 3, failure to mitigate. Now, this
8 is where we get into the most overlap with the New
9 Mexico true affirmative defenses, I would say, which
10 is that there's groundwater pumping in Texas,
11 groundwater pumping in New Mexico -- sorry,
12 groundwater -- there's obviously groundwater pumping
13 in New Mexico -- groundwater pumping in Mexico, and
14 channel maintenance sediment vegetation. Those were
15 the three things that New Mexico identified, and we
16 agree that if New Mexico -- that New Mexico can put on
17 evidence that is relevant to show that depletions
18 associated with things other than New Mexico
19 groundwater pumping are alternative or additional
20 contributing causes to shortages to Texas. We accept
21 that. We don't think they necessarily have that
22 evidence as to maintenance, but if they want to point
23 to it, they're welcome to. But the question is the
24 United States' failure to mitigate, and to the extent
25 there was summary judgment for us on -- you know, on

1 declaratory relief, that one has been extinguished.
2 Failure to exhaust also rejected, and for the same
3 reasons it was rejected as to Texas. And then we get
4 into three equitable defenses, unclean hands,
5 acceptance and laches. These are not available
6 against the United States, and I think that -- and I
7 would be happy to cite additional cases on top of the
8 ones we cited. In addition, the unclean hands one is
9 essentially a counterclaim one against Texas.

10 Finally, we get to failure to state a
11 claim. Paragraph 48 in the answer, groundwater is not
12 a part of project supply. That argument was rejected
13 in summary judgment. We can talk about details,
14 extent to which, et cetera, but as far as that
15 affirmative defense, it does not apply the United
16 States on declaratory relief.

17 And then the next is about the federal
18 contracts to pump groundwater, which is a legal issue
19 and not a factual one. So when you look at that, I
20 think the -- what it boils down to on affirmative
21 defenses is groundwater pumping in Texas, groundwater
22 pumping in Mexico, and channel maintenance, and then
23 New Mexico's counterclaim against Texas, which is that
24 New Mexico's argument that it has been shorted water
25 and has not received water to which it is entitled,

1 which is a numerical -- it's a quantification applied
2 to the baseline condition or adjustments thereto that
3 may be appropriate. So these are the limited
4 categories that -- that we agree are relevant. I
5 would just -- going through -- and that's -- and I
6 think it's important to compare the defenses to the
7 counterclaims in order to figure out what -- what is
8 really available to New Mexico and so this request
9 finally that we would suggest would be to have some
10 guidance on the record looking at the New Mexico
11 counterclaims and -- and saying what is and is not
12 there or what is and is not relevant or appropriate so
13 that New Mexico and the United States and Texas can
14 shape their cases.

15 So I want to turn back, finally, to
16 Ms. Barncastle's letter, and things Ms. O'Brien said
17 earlier, which is the New Mexico oppositions to the
18 Texas motion for continuance, even if they did not --
19 even if the line was cut before filing clearly presume
20 that New Mexico is seeking an order invalidating and
21 enjoining the operating agreement out of this trial.
22 We thought that the Special Master had put that to bed
23 by saying, quote, this is neither the time nor the
24 forum to address the validity of the 2008 operating
25 agreement, but all the responses we saw last night are

1 180 degrees to the contrary of that. So we would just
2 appreciate some guidance on the record to help us
3 prepare for trial. Thank you.

4 **JUDGE MELLOY:** Thank you. Who for New
5 Mexico wants to respond, if anybody?

6 **MR. WECHSLER:** I'll respond, Your Honor.
7 This is Jeff Wechsler. So I'll try and take that
8 argument, which is quite different than the papers
9 that were filed, in some order and then address some
10 of the things that actually were filed. So as to this
11 first issue, Ms. Coleman seems to suggest this
12 baseline condition that we're saying something
13 inconsistent with that. So let's just read directly
14 from your order. You say -- you're summarizing. You
15 say on Page 5 to 6, "The Compacting states intended to
16 protect not merely water deliveries into the
17 reservoir, but also a baseline level of project
18 operations generally as reflected in project
19 operations prior to Compact formation. The Compacting
20 states did not express and intend for agricultural
21 practices, irrigation practices, and other forms of
22 development to remain static." And let me pause right
23 there and say this 1938 condition that they're arguing
24 for is exactly that so to the extent this is
25 inconsistent with anyone's position, it's of the

1 United States and Texas. You continue, "But they also
2 did not express an intent to allow unlimited indirect
3 capture of Rio Grande surface flows through the
4 unregulated capture of hydrologically-connected water
5 or the illumination of project return flows." I'll
6 pause there again and say -- and that's exactly the
7 position that New Mexico has articulated to you
8 multiple times then you go on and say, "The protection
9 of baseline level of project operations required at a
10 minimum the protection of return flows to effectuate
11 the Compact's apportionment." Again, precisely what
12 New Mexico has argued. In fact, as I said, we've
13 offered a number of alternative baselines. And then
14 you conclude, "In broad strokes, this condition can be
15 viewed as akin to a 1938 condition, as urged
16 generally, by Texas, but the exact contours of that
17 condition remain to be established at trial." And
18 then you go onto point out multiple times that one of
19 the primary issues that we will be dealing with at
20 trial is, in fact, that baseline condition. Now, I
21 could go on and on and explain why that 1938 condition
22 that Texas has -- and the United States have advocated
23 for are inconsistent with -- with your prior rulings,
24 but I think that's a substantive issue, which really
25 brings me to the next point that I have, and that is

1 the lengthy argument we just heard from Ms. Coleman
2 seems to be confused as to what stage of the
3 proceedings we're at. We're past the motion to
4 dismiss stage. We're past the dispositive motion
5 stage. Now, Ms. Coleman seemed to be asking for this
6 broad prophylactic guidance, are, I think, the words
7 that she used, but we cite to you a very robust set of
8 cases which say specifically that's not the purpose
9 for motions in limine, that motions in limine are not
10 the stage to be resolving those broader issues. It is
11 the time to be talking very specifically about
12 specific evidence, which is -- is or is not admissible
13 for specific purposes, which is why it's so difficult
14 to deal with any of the United States' motions
15 because, you know, they actually highlighted in their
16 reply, they say, well, there are up to 200 exhibits
17 where we've identified a problem with, and it sure
18 would have been nice for them to actually identify
19 those 200 exhibits, because I can assure you that we
20 could point to specific reasons why we're offering
21 those, and all of those would be within the contours
22 of your order. We went through carefully each of our
23 exhibits in order to ensure that they -- they did
24 apply to something. This idea that you should, I
25 guess, repackage your summary judgment order in 15

1 different statements, we don't see any real need to do
2 that. You've already provided your order, which is,
3 as we've been clear about, we're -- we embrace as
4 largely consistent with our own view.

5 The -- this -- this lengthy discussion
6 that Ms. Coleman had about the affirmative defenses,
7 I'm not sure how to respond to. That's not something
8 we're prepared to talk about today, because none of
9 the motions dealt with New Mexico's affirmative
10 defenses. They did have a motion about the
11 counterclaims, which we're certainly prepared to talk
12 about if you'd like to hear about those. But Ms.
13 Coleman seems to be laboring under a sort of mistaken
14 understanding of the difference between defenses and
15 -- and affirmative defenses, which I think you
16 addressed quite well in our last status conference,
17 and that is, you know, that the broad claims here
18 brought by Texas and the United States are that New
19 Mexico received more than 57 percent of project
20 supply, and Texas received less than 43 percent of
21 project supply, and all of those things, which go to
22 those issues, those reasons why that might be true or
23 is not true, are things that are relevant. I want to
24 point to a concession that New Mexico -- that the
25 United States made in their briefing that I can't tell

1 if Ms. Coleman is backing away from those or not, but
2 in their briefing, they say that they conceded that
3 the evidence that we're talking about here really is
4 admissible and agreed that, quote, "Evidence relevant
5 to New Mexico's counterclaims against Texas, end
6 quote, is admissible." They agree that, quote,
7 "Evidence as to whether project deliveries since 1985
8 have resulted in a 57 percent/43 percent split of the
9 project water supply as it would have been under the
10 protected baseline condition, end quote, is
11 admissible," and they agree that, quote, "The
12 operating agreement is relevant and testimony is
13 appropriate to show where the water goes," end quote.
14 Now, these concessions go to virtually all the
15 evidence that will be presented in the case, and I'm
16 not sure what's left. And so this whole discussion
17 that Ms. Coleman had seems contrary to that. And --
18 and finally, this last-ditch request from United
19 States for more guidance on the operating agreement, I
20 mean, again, I read to you the passage earlier where
21 you outlined this quite nicely. We -- we, in our
22 briefing, have cited multiple other passages, as well,
23 but you have been quite clear that the operating
24 agreement is, quote, "Relevant on the issue of whether
25 each state is receiving the water to which it is

1 entitled under the Compact and to the extent current
2 operations are consistent with the Court's ultimate
3 decree on apportionment, any operating agreement will
4 be brought into conformity with the decree," end
5 quote. What New Mexico is interested in pursuing is
6 both defenses that show we didn't receive more than 57
7 percent of supply, which is a regular defense, not an
8 affirmative defense, as suggested, and, also, our
9 counterclaims, which show that, in fact, New Mexico
10 received significantly less than 57 percent of supply,
11 which is in itself a Compact violation against New
12 Mexico. So -- so at this point, I'm not sure what it
13 is the United States is -- is asking, but I think the
14 best course of action is deny all of their motions in
15 limine, and we can take up any specific evidentiary
16 issues, which is what we thought we were talking about
17 here, at trial. Thank you.

18 **JUDGE MELLOY:** Well, I want to take a
19 look at these motions a little further. I'm going to
20 take this particular one under -- under advisement,
21 and I should be able to let you know by the time we
22 have our next hearing. I just want to bring -- take
23 up a couple other real quick points, and then I -- I
24 think we'll be done for today, other than to set a --
25 a date for next week, unless anybody else has

1 something to talk about.

2 Ms. Barfield, you had sent an e-mail,
3 which I failed to address the last time, dealing with
4 the exchange of exhibits, which I understand has been
5 agreed upon, and when the parties will identify who a
6 witness is and what exhibits will be used and so on.
7 I don't have any problem with that, and certainly
8 would modify the trial order to that extent. Does
9 anybody have anything further they want to say about
10 that?

11 (No response.)

12 **JUDGE MELLOY:** I would also mention that
13 at the -- I need to go through the trial management
14 order, and I should have done this earlier. I just
15 thought of this. I think there may be some deadlines
16 coming up on trial briefs and so on. Given the ruling
17 on the motion to continue, I'll suspend those and re
18 -- and reset them if we need to next week when we have
19 our further conference.

20 And then finally, I have a number of
21 letters requesting access to the video feed. I don't
22 anticipate I will be denying any of those, but I'll
23 take a look at them and -- and enter some type of
24 order on those requests. Is there anything else
25 anybody thinking we need to talk about today, other

1 than the date for next week?

2 (No response.)

3 **JUDGE MELLOY:** How does Thursday, the
4 2nd, look? Are you going to be back, Mr. Wechsler?

5 **MR. WECHSLER:** I believe I come back on
6 Wednesday. Thank you.

7 **JUDGE MELLOY:** Could we have the same
8 time on Thursday, the 2nd? Does that work for
9 everybody?

10 **MR. SOMACH:** Yes, Your Honor. It works
11 for Texas.

12 **JUDGE MELLOY:** Okay. All right. And in
13 the meantime, I want the parties to, as I said, look
14 at their witness list, think about which witnesses we
15 can take remotely, and -- and discuss that with each
16 other, and we'll try to come up with at least a
17 tentative list, and as we go through the trial, we may
18 realize we can either expand it or have to contract
19 it, but we'll at least have something to start with.

20 All right. If there's nothing further,
21 we'll be adjourned. Thank you, everyone.

22 **MR. SOMACH:** Thank you, Your Honor.

23 **MR. DUBOIS:** Thank you, Your Honor.

24 (The proceedings adjourned at 12:59
25 p.m.)

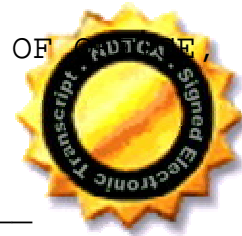
1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

CERTIFICATE

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

I further certify that I am not, in any capacity, a regular employee of any of the parties in whose behalf this status hearing is taken, nor in the regular employ of any of the attorneys; and I certify that I am not interested in the cause, nor of kin or counsel to any of the parties.

GIVEN UNDER MY HAND AND SEAL OF OFFICE
on this, the 22nd day of September, 2021.



Heather L. Garza
HEATHER L. GARZA, CSR, RPR, CRR
Certification No.: 8262
Expiration Date: 04-30-22

Worldwide Court Reporters, Inc.
Firm Registration No. 223
3000 Wesleyan, Suite 235
Houston, TX 77027
800-745-1101

| | | | | |
|--------------------------|-------------------------|-------------------------|-------------------------|-------------------------|
| A | acre-foot 48:2 | 68:8 | ajolsen@h2ol... | 57:23 59:14,19 |
| A.J 7:8 12:6 | acreage 53:23 | Adrienne 10:16 | 7:10 | 65:17 71:3 |
| a.m 1:16 | 56:25 57:5 | advance 76:9 | akin 82:15 | 77:20 79:11 |
| abide 74:2 | 58:23 | advantage 72:4 | Al 10:22 | answered 19:7 |
| ability 20:1 29:3 | acres 58:6,7 | advise 65:9 | Albuquerque | 34:20 |
| 29:7 33:4 61:1 | 59:14 61:20,21 | advisement | 3:8 5:4,16 9:19 | anticipate 13:21 |
| able 17:14 20:10 | 63:5,19,21 | 86:20 | 9:22 | 18:20 35:14 |
| 25:20 32:1 | 64:13 | advisor 8:15 | alfalfa 61:6 | 87:22 |
| 33:16,22 36:23 | action 44:4 | advisory 76:14 | 62:13 | anxiously 54:8 |
| 55:6 56:3 | 86:14 | advocated 46:16 | aligned 25:23 | anybody 9:24 |
| 60:18 86:21 | actions 38:15 | 74:8 82:22 | allegations | 37:23 52:10 |
| absence 15:4 | 39:5 40:5 | advocates 46:13 | 41:15 45:9 | 81:5 86:25 |
| 71:19 | 41:23 45:6 | aerial 60:3,4 | alleging 43:3 | 87:9,25 |
| absent 14:25 | 46:14 67:8,14 | aerials 60:6 | allow 13:10 | anymore 65:2 |
| 16:2,3 | 67:18 | affirmative 39:4 | 32:11 55:5 | anyone's 81:25 |
| absolute 40:6 | actual 15:11 | 39:15 40:2 | 67:10 82:2 | anyway 51:23 |
| absolutely 39:6 | add 12:8 | 77:8,11,14,21 | allowed 15:10 | 72:16 |
| abundance | addition 70:7 | 78:5,9 79:15 | 30:2 51:16 | Apparently |
| 52:20 | 79:8 | 79:20 84:6,9 | 55:2 | 10:12 |
| accept 78:20 | additional 15:21 | 84:15 86:8 | allows 48:1 | appear 30:5 |
| acceptable | 17:6 18:4 | afraid 65:11 | alluded 30:11 | appearances 8:6 |
| 66:24 | 66:23,23 69:3 | afternoon 10:2 | alternative | 8:7 12:13 |
| acceptance 79:5 | 78:19 79:7 | 72:25 | 78:19 82:13 | appearing 12:13 |
| accepted 47:2 | address 16:12 | agencies 58:4 | America 64:7 | applied 78:4 |
| access 87:21 | 21:9,25 22:25 | agenda 37:5 | amici 14:5 16:24 | 80:1 |
| accommodation | 35:13 37:16 | ago 15:12,18 | 17:19 18:24 | applies 78:4 |
| 33:24 | 45:9 59:25 | 37:16 64:2 | 22:7,11 24:22 | apply 48:24 68:4 |
| accomplished | 61:11 67:3 | agree 23:21 | 41:14 | 79:15 83:24 |
| 43:25 | 73:4,5 80:24 | 24:20 35:10 | amount 16:19 | apportioned |
| accurate 59:10 | 81:9 87:3 | 78:16 80:4 | 16:19 46:22 | 40:10 |
| 59:11 61:2 | addressed 43:15 | 85:6,11 | 59:16 74:13 | apportionment |
| 70:25 | 76:21 84:16 | agreed 37:22 | 75:3 | 43:25 44:12,15 |
| accurately 71:1 | addressing | 75:2 85:4 87:5 | ample 44:20 | 82:11 86:3 |
| accuses 16:24 | 21:13 69:12 | agreeing 54:6 | analysis 26:5 | apportionments |
| achieve 16:18 | adequate 16:6 | agreement 22:14 | 51:13 | 44:23 |
| acknowledged | 71:23 | 22:14,19,22 | analytical 55:25 | appreciate 13:1 |
| 45:5 68:12 | adjourned 88:21 | 23:5 39:10,25 | analyzed 55:23 | 73:2 81:2 |
| acknowledges | 88:24 | 44:8,12 54:2 | Anaya 3:7 8:24 | appreciation |
| 69:22,25 | adjust 16:7 | 80:21,25 85:12 | and- 2:11,15,25 | 12:24 |
| ACOSTA 6:3 | adjusted 68:25 | 85:19,24 86:3 | 3:5,11,15 4:12 | approach 28:3 |
| acquiesced 75:2 | adjustments | agrees 28:9 | 4:17,22 5:6 | 38:7 67:10 |
| acquiescence | 80:2 | agricultural | Andrew 7:2 | 71:8 |
| 74:25 76:16 | admissibility | 81:20 | Andrews 2:22 | approaches |
| acre 46:22 57:20 | 72:9 | ahead 14:12 | 8:19 | 67:24 |
| 61:23 74:13 | admissible 83:12 | 28:17 30:23 | annual 68:17 | appropriate |
| acre-feet 26:7 | 85:4,6,11 | 38:11 61:11 | 69:18 | 17:2 67:18 |
| | admitted 55:8 | 63:10 67:3,5 | answer 51:2 | 71:24 80:3,12 |

| | | | | |
|-------------------------|------------------------|-------------------------|-------------------------|-------------------------|
| 85:13 | 12:4 | B 2:4 4:23 70:25 | beholder 49:21 | 74:2 |
| aquifer 50:6 | assume 49:16 | baby 32:24 | belabor 39:2 | briefing 43:14 |
| aquifers 48:10 | 70:24 | back 19:2 30:9 | belief 27:25 | 84:25 85:2,22 |
| area 51:17 55:23 | assumes 68:19 | 34:14 58:14,14 | believe 10:1 | briefly 24:24 |
| 69:16 | 70:23,25 71:2 | 58:20,22 59:9 | 11:24 19:21 | briefs 87:16 |
| areas 51:9 56:11 | assuming 32:18 | 59:23 60:2,3,5 | 21:2,10,14,16 | bring 13:6 17:16 |
| 56:13 67:1 | assumption 42:5 | 60:18 61:23 | 21:18,21 22:16 | 22:5 30:14 |
| argue 41:20 | assure 35:23 | 67:2 77:15 | 22:20,24 23:12 | 43:17 67:2 |
| 43:19 46:17 | 83:19 | 80:15 88:4,5 | 46:8 52:15 | 86:22 |
| 74:9 | astounded 41:12 | backing 85:1 | 56:4,6,7 74:6 | brings 82:25 |
| argued 82:12 | attached 55:20 | Barela 3:7 8:23 | 76:21 88:5 | broad 77:18 |
| argues 45:23 | attempt 43:18 | Barfield 2:4 | believes 16:18 | 82:14 83:6 |
| arguing 49:7 | 43:19 49:2,11 | 8:10 13:7,9 | belongs 42:23 | 84:17 |
| 81:23 | attempted 23:6 | 87:2 | benefit 35:25 | broader 83:10 |
| argument 18:24 | 69:24 | Barfield's 37:15 | 45:14 | Broadway 4:3 |
| 36:21 38:25 | attention 46:1 | Barncastle 5:12 | benefits 45:4 | BROCKMAN |
| 39:14,15 40:4 | 47:20 | 5:12 11:2,3,8 | Bernalillo 5:16 | 6:8 |
| 41:25 42:8,22 | Atton 8:25 | 19:6 24:23 | 9:23 | Brockmann |
| 47:15 51:1,12 | attorney 2:17 | Barncastle's | best 17:23 86:14 | 5:17,18 9:21 |
| 59:8 60:10 | 3:17 8:12,22 | 29:25 80:16 | better 31:9 | 9:22 10:1,13 |
| 79:12,24 81:8 | 9:10 14:10 | based 13:21 | 60:25 72:13 | 10:14 |
| 83:1 | 15:14 18:18,21 | 22:20 39:5 | beyond 42:12,17 | Brooks 8:20 |
| arguments | attorneys 25:22 | 46:21 56:7 | BICKERSTA... | brought 44:13 |
| 50:24,25 74:24 | 29:18 30:5,13 | 57:6 58:7 | 6:3 | 64:4 84:18 |
| 74:25 | 89:12 | 74:12 77:6 | bifurcation 42:1 | 86:4 |
| Arianne 9:4 | August 1:14 | baseline 45:22 | big 32:10 61:4 | budget 64:15 |
| arisen 15:3,6 | 77:4 | 45:25 46:5,17 | bit 13:4 30:17 | building 6:3 |
| art 51:7 | Auh 10:3 | 46:20 47:1,3,5 | 32:24 33:21 | 17:5,5 |
| articles 64:9 | Austin 2:18 5:8 | 47:8 74:8,11 | 35:13 37:1 | burden 26:24 |
| articulated | 6:4 7:4 | 74:16,17 75:4 | 40:14 52:6 | Bureau 57:7 |
| 19:24 82:7 | Authority 5:16 | 80:2 81:12,17 | 76:1 77:15 | 58:1 59:12 |
| aside 29:16 | 9:20,23,25 | 82:9,20 85:10 | Blair 10:22 | 62:3,16 |
| asked 14:4 30:4 | authorized 40:9 | baselines 82:13 | block 29:16 | Butte 5:11 10:25 |
| 40:25,25 41:1 | available 13:18 | basic 45:10 | 31:24 | 11:3 13:24 |
| 49:5 56:9 | 22:18 33:10 | basically 24:2 | board 17:21 | 19:7 |
| asking 14:6 15:7 | 37:21 65:8 | 42:7 54:10 | Bobby 8:13 | |
| 30:1 44:24 | 77:16 79:5 | 70:16 | body 43:17 | <hr/> |
| 83:5 86:13 | 80:8 | basis 47:14 63:2 | boils 79:20 | C |
| aspects 47:9 | Avenue 1:16 3:8 | 68:17,18 70:5 | border 50:9,13 | C 2:1,4 4:19 |
| assert 67:22 | 7:3,9 | bear 26:23 | bottom 69:6 | 5:17 71:2 |
| 68:6 | avoid 75:18 | bearing 69:7 | Box 2:17 4:14 | California 2:7 |
| asserted 53:21 | awaited 54:8 | bed 80:22 | 5:8,18 6:9,14 | 63:16,19,25 |
| asserting 16:21 | aware 12:12 | beginning 1:16 | 6:19 | 64:11 |
| 64:23 75:2 | 27:9,19,22 | behalf 11:14,19 | Brandes 36:4 | call 12:2 52:10 |
| associated 38:24 | 59:16 61:5 | 11:24 12:6 | 65:25 66:15,20 | 52:13 53:19 |
| 78:18 | | 17:24 19:6,20 | Brenner 12:1 | 66:2 |
| Association 7:7 | <hr/> B <hr/> | 24:13,17 89:11 | brief 46:6 47:21 | called 66:7,8,12 |
| | | | | 71:13 |

| | | | | |
|--|--|---|--|---|
| <p>calling 66:4 canals 12:22 capacity 89:10 Capitol 2:6 caption 89:6 capture 82:3,4 carefully 83:22 Caroom 6:2 10:7,8 case 14:15,19,23 15:8,17,25 17:23 20:6,7 20:19 21:3,16 22:5,18 25:8 29:2 32:8,9,11 32:12 33:12 39:21 40:1 44:5 46:2 50:14 59:16 64:18 67:13,19 67:20 71:4 72:5 77:12 85:15 cases 35:5 79:7 80:14 83:8 categorical 77:18 categorically 46:4 categories 80:4 cause 34:15 39:23 89:13 caused 39:20 causes 78:20 causing 40:3 caution 52:21 Cedar 1:16 31:16 33:22 certain 52:18 certainly 12:19 20:6 22:6 25:25 29:23 33:25 34:3,12 35:23 40:1 49:6 51:9,15 52:22 55:3 63:14 65:7,20</p> | <p>66:9 67:7,10 67:13,18 70:13 84:11 87:7 CERTIFICATE 89:1 Certification 89:20 Certified 89:3 certify 89:5,9,12 cetera 79:14 Chad 4:2 9:9 chad.wallace... 4:5 chance 64:21 change 16:7 28:3,3,9 61:3 changed 24:6 64:25 changes 24:3 34:16,16 changing 27:19 35:5 channel 78:14 79:22 characterizati... 27:7 charge 58:7 62:4 checked 62:18 checking 62:16 chile 62:14 choice 71:2 Cholla 3:16 8:21 choose 24:4 62:10 chooses 47:5 chose 67:14 69:11 chosen 71:8 Chris 9:18 Christopher 4:23 chunk 32:10 CIRCUIT 1:15 circumstances 16:8 45:3 cite 79:7 83:7 cited 79:8 85:22</p> | <p>citizens 14:21 45:6 City 4:24 6:1,7 10:6,8,10,11 10:14 17:20 28:18,19,21,23 City's 29:1,6 ckhoury@nm... 3:19 claim 22:17 36:12 38:25 39:22 40:3,7 42:21 44:25 45:13 79:11 claiming 54:12 claims 45:11,18 84:17 clarify 40:11 77:8 clarity 20:18 23:10 classification 53:19 clear 44:6 56:11 60:20 73:9,15 77:10 84:3 85:23 clearly 54:15 80:19 closer 34:14 cloud 26:14 29:2 29:5 code 55:1 codes 54:25 Coleman 4:13 9:16 72:21,25 73:1 81:11 83:1,5 84:6,13 85:1,17 collectively 44:25 Colorado 1:11 2:13 3:3 4:1,3 4:4,9 8:4 9:6 9:10 57:16 Colorado's 73:13</p> | <p>combination 44:17 58:1 combine 55:14 come 31:16 33:12 41:4 49:23 53:22 71:25 76:5 88:5,16 comes 51:15,23 coming 18:25 32:25 87:16 commence 25:18 comment 67:7 comments 57:13 Commission 9:5 commissioner 8:14 9:2 45:7 commitments 10:5 committed 20:24 commodity 64:6 64:11 common 51:7 community 28:25 Compact 8:14 9:2 21:14 22:2 23:2 42:8,18 43:24 44:4,10 44:15,23,25 45:7,15 46:8 46:12,18 47:24 48:9 51:6 68:12 71:16 74:7,9,20 76:18,24 81:19 86:1,11 Compact's 22:2 82:11 Compacting 81:15,19 Compacts 46:10 companies 57:18 61:19 compare 80:6 compared 15:8</p> | <p>15:13 compel 31:16 compelling 14:14 19:25 competent 15:16 complaint 77:21 complete 13:15 38:15 89:7 completely 16:4 17:1 24:6 69:9 completes 32:9 complex 14:19 20:6,6,11 32:16 compliance 68:13 71:17 components 55:10 comprise 89:7 computers 60:9 conceded 85:2 concept 63:13 concern 35:4 concerned 26:4 concerns 29:13 30:6 69:13,15 73:5 concession 84:24 concessions 85:14 conclude 82:14 concluded 32:15 77:25 concludes 71:23 conclusion 55:7 concrete 54:19 concur 20:2,5 21:2 condition 40:15 40:19,20,23 41:3,6,7 45:22 45:25 46:5,8,9 46:11,12,17 47:3,9 74:7,8 74:20,23 75:4 80:2 81:12,23</p> |
|--|--|---|--|---|

| | | | | |
|--|---|--|---|--|
| 82:14,15,17,20 82:21 85:10 conference 37:17 39:1 73:14 77:4 84:16 87:19 confidential 55:12 confidentiality 54:4 confined 76:7,8 confirm 34:5 confirmed 75:11 conform 75:14 conformity 44:13 86:4 confused 83:2 confusion 52:25 Congress 7:3 connection 8:2 Conservation 7:1 11:11 consider 50:11 50:12 65:1 73:8 consideration 35:6 considering 15:9 consistent 47:2 48:5 76:25 84:4 86:2 constituents 25:4 consultant 11:9 13:21 consumed 59:22 consuming 59:17,18 consumption 71:9,10 consumptive 61:9 contemplate 34:22 contest 75:8 context 12:20 60:2 | continually 68:25 continuance 14:4,19 17:7 17:10 18:2 19:22,25 20:17 22:13 28:22 30:18 41:13 43:6 80:18 continuation 29:5 continue 14:2,3 14:8 17:8 19:17 22:11,15 23:10 26:14 28:14 82:1 87:17 continued 46:24 74:15 continues 23:6 contours 40:20 40:23 41:6 82:16 83:21 contract 88:18 contracts 39:10 79:18 contradict 74:18 contrary 81:1 85:17 contrast 39:12 40:6 contributing 78:20 control 39:6,9 39:17 controls 72:14 convenience 38:5 cook 55:15 copies 37:9,12 copy 37:21 38:5 cores 53:2,5 Corinne 8:25 corn 61:21 Corrales 6:14,15 correct 27:16 34:9 58:9 66:2 | 66:3 89:7 costly 26:17 cotton 61:6,7 62:13 counsel 8:9 9:3,4 10:3 14:23 15:15,19 16:10 16:22 24:22 25:5,8,20 64:7 75:18 89:14 counsel's 12:1 counterclaim 21:18 23:1 39:4 43:13 44:20 79:9,23 counterclaims 21:12,17,24,24 21:25 22:4 44:7,24 75:25 77:3,9 80:7,11 84:11 85:5 86:9 counterpart 42:14,16 county 5:1,16 7:1 9:23 10:17 10:20 11:11,15 17:19,21 19:20 couple 26:6,19 36:1,18 37:2 37:16 38:22 53:7 57:13 63:21 86:23 Courchesne 71:13 course 13:23 26:5 27:10 36:9 40:7 48:18 49:17,20 53:14 74:23 86:14 court 1:6 7:12 7:14 8:5 14:14 14:17 15:10 17:3,25 20:21 21:9,22,23 22:25 26:9,21 | 38:15 43:23 59:15 67:8 73:7 89:23 Court's 44:11 86:2 courtroom 15:4 15:19,23 16:2 COVID 29:24 33:21 COVID-related 37:4 create 33:20 critical 70:7 crop 7:6 12:4,7 53:23 55:22 57:18 58:2,23 58:24 59:22 60:9,22 61:3 61:18,22 62:10 63:19 crops 56:16,25 57:6 59:15 60:19 61:4 62:9 cross 72:2 crossed 33:19 CRR 89:19 Cruces 5:13 6:7 10:11,11,15 28:19,19,21,23 CSR 89:19 current 26:8 44:10 86:1 customized 55:22 cut 49:11 80:19 | data 60:6 62:6,7 68:4,5 date 13:6,11 20:20 55:16,23 86:25 88:1 89:20 Daubert 53:14 56:9 66:18 67:4,9,13 71:6 72:3,15 Dauberts 67:17 Davidson 6:13 6:13 11:18,19 day 10:4 30:8,9 57:14 71:22 77:5 89:17 days 33:9 63:22 64:22 DC 4:15,20 dcaroom@bic... 6:5 De 2:22 3:13 deadlines 87:15 deal 42:20 83:14 dealing 49:14 66:18 82:19 87:3 deals 43:13 dealt 84:9 decadal 60:23 decade 58:14 decades 58:20 decided 16:20 49:15 decision 15:10 declaration 62:25 declaratory 79:1 79:16 decreases 68:10 decree 44:11,13 86:3,4 defense 40:2 78:6 79:15 86:7,8 defenses 77:9,11 77:14,21 78:9 |
|--|---|--|---|--|

| | | | | |
|--|---|---|---|---|
| 79:4,21 80:6 84:6,10,14,15 86:6 defer 77:1 define 21:15 defined 63:16 definition 51:19 degree 40:16 42:2 degrees 81:1 Deitchman 2:5 8:12 delay 16:14 26:4 26:24 DELGADO 6:3 Delilah 10:16 deliveries 69:21 78:1 81:16 85:7 delivery 13:16 13:16 68:13 69:2 Delta 29:24 31:15 demand 46:19 74:10 demands 46:24 69:2,4 74:15 demonstrates 65:12 denied 43:16,19 45:19 48:22 Denver 2:13 3:3 4:4,9 deny 27:25 49:3 50:21 51:21 72:6,8 86:14 denying 87:22 Department 4:3 4:8,14,19,23 9:16 63:17,24 65:1 depending 35:11 depletions 78:17 depose 36:2 deposition 36:11 36:13,17 52:8 | 52:9 53:3,24 55:3,8 60:14 64:22 65:4,6 65:11 depositions 32:22 43:2 66:24 deprivation 47:24 deprived 26:6 26:22 44:14 describe 42:13 42:13 62:24 described 20:14 designation 53:3 detail 54:16 56:5 detailed 19:1 62:8 details 27:6 74:21 79:13 determinations 21:20 22:1 determine 22:19 26:21 50:14 determined 23:1 74:21 development 81:22 difference 39:4 84:14 different 24:8 39:21 47:5 53:14,22 56:17 60:9 62:5,9 63:16 67:24 70:14 81:8 84:1 differently 37:23 difficult 26:16 29:20 33:5 48:25 51:2 83:13 difficulty 32:4 dire 65:21 direction 75:17 76:6,23 directly 74:5,18 | 81:13 director 10:15 48:19 disagree 17:1 26:20 27:6 42:9,10 disagreement 22:6 disclose 54:3 disclosed 40:22 40:24 41:11,19 48:14 49:9,9 56:5 disclosing 54:1 disclosure 40:19 41:11 42:15 55:18,18 disclosures 35:3 42:4,25 46:16 48:13 discouraged 38:14 discover 64:21 discovery 43:3 discretion 14:18 18:1 discuss 17:2 34:11,23 88:15 discussed 29:22 discussion 18:12 27:18 39:1 40:12 76:16 77:9 84:5 85:16 discussions 17:3 17:9,12 18:10 18:17,18,19 23:24 28:2 66:25 dismiss 49:18 83:4 dismissal 44:7 dismissed 21:18 dismissing 21:12 dispatch 77:22 disposes 72:18 dispositive | 43:15 83:4 dispute 36:6 60:14 71:6,7 75:12 disputed 16:16 disputes 76:4 disruptive 26:17 distance 16:1 distinction 43:21 77:8 distorting 46:2 distribution 58:3 district 5:1,11 7:1 10:18,21 10:22,23 11:1 11:4,12,15 13:17 17:20,22 19:7,20 24:13 24:17,25 25:4 26:9 58:2 59:13 districts 57:17 58:5 59:13 ditches 12:21 diverge 69:16 Diversified 7:6 12:4,7 diversions 44:19 division 44:3 dmiller@kem... 7:5 document 54:10 doing 36:9 39:16 39:17 43:1 49:19 50:19 58:18,19 63:24 64:25 Doug 10:8 Douglas 6:2 Dr 10:22 11:4,8 36:4,4 52:14 52:19,23 53:16 55:2 62:25 65:3,5,7 66:4 66:18,20,21 67:1,21 68:6,6 | 68:19 69:9,11 69:23 70:12 71:21 72:10 76:8,11,13 drains 12:22 68:21 Draper 3:12,12 3:12 8:25 9:1,1 Drawer 3:18 drawn 51:14 Drew 7:2 11:14 24:12 drive 54:7,9 drone 13:7,12 13:15,17 drove 62:23 Dubois 4:7 9:13 9:14,15 23:15 23:15 28:7 30:19 38:1 72:20,21 77:10 88:23 DUNN 2:6,12 DWR 63:22 dynamic 24:6 dynamics 24:3 |
| <hr/> E <hr/> | | | | |
| E 2:1,1,1,1 3:17 4:13 e-mail 37:16 87:2 earlier 23:19 76:21 80:17 85:20 87:14 early 13:22 easy 15:14 EBID 30:1 62:23 edit 75:13 effect 75:5 effects 50:16 effectuate 82:10 efficiency 23:13 effort 48:5 eight 14:16 77:21 | | | | |

| | | | | |
|-----------------------------|-------------------------|-------------------------|-------------------------|--------------------------|
| either 61:2 88:18 | EPCWID 24:22 | exceed 69:4,4,5 | experts 32:5 | facts 16:16 |
| El 5:1 6:1 10:6,8 | equal 46:21 | exceptions 20:22 | 35:11,12 36:3 | 45:24 67:19,19 |
| 10:17,20 13:17 | 74:13 | excerpts 52:9 | 41:1 46:7,9 | 68:4,5 89:5 |
| 17:19,20 19:20 | equally 78:5 | exchange 87:4 | 47:7 54:12,13 | factual 79:19 |
| 68:11,22 70:16 | equitable 44:14 | exclude 36:9 | 68:3 71:8 | failed 87:3 |
| 71:11,19 | 47:24 79:4 | 50:23 53:15 | Expiration | failure 78:7,24 |
| elaborate 40:14 | especially 73:16 | 66:20 70:17 | 89:20 | 79:2,10 |
| electronic 62:5 | essence 30:1 | excluded 49:5 | explain 41:5 | fair 26:23 |
| electronically | 55:13 | 49:10 51:1 | 43:22 46:9 | fall 30:24 32:15 |
| 37:14 | essentially 24:7 | 56:10 70:12 | 63:23,23 82:21 | 44:16 |
| electronics | 50:4 57:2 | exclusion 53:18 | explained 47:1 | false 43:21 46:4 |
| 75:23 | 58:18 60:8 | 56:12 75:17 | explaining 48:17 | familiar 27:23 |
| elements 45:13 | 79:9 | 77:18 | express 12:24 | family 25:21 |
| 45:14 | established | exclusionary | 81:20 82:2 | far 32:17 79:14 |
| Elephant 5:11 | 73:25 75:11 | 73:21 | expressly 69:17 | farmer 62:12 |
| 10:25 11:3 | 82:17 | excuse 52:4 68:6 | Expressway 6:3 | farmers 7:6 12:4 |
| 13:24 19:6 | establishes | exercise 14:18 | extension 14:15 | 12:7 26:11 |
| embrace 84:3 | 45:12 | 18:1 | 15:7 57:19 | 31:5 48:16 |
| employ 89:12 | Estevan 76:4 | exhaust 79:2 | 61:16,22 | 61:20 62:8 |
| employee 89:10 | et 79:14 | exhibit 13:19 | extensive 67:22 | faster 18:3 |
| employees 63:23 | evaluate 61:1 | 73:12 | extent 25:2 | favored 67:18 |
| enable 21:23 | eve 15:6 | exhibits 37:9,13 | 42:19,21 44:10 | Fe 2:23 3:13,18 |
| ended 54:6 | event 31:5 | 37:19,20 73:12 | 76:7,15,25 | 5:19 6:9,20 |
| engage 28:1 | everybody 88:9 | 73:14,20 83:16 | 77:16 78:24 | feasible 20:9 |
| engineer 8:15 | evidence 23:8 | 83:19,23 87:4 | 79:14 81:24 | federal 26:9 |
| 9:1,4 10:22 | 41:20 42:15 | 87:6 | 86:1 87:8 | 79:17 |
| enjoin 22:22 | 45:18 46:4 | exist 62:1,2 | extinguished | feed 87:21 |
| enjoining 80:21 | 47:4,17,19,22 | existing 69:25 | 79:1 | feel 51:21 |
| enrichment | 48:20 49:8,12 | expand 88:18 | extra 34:13 45:4 | feeling 31:3 |
| 42:22 45:9,13 | 49:20,23 50:1 | expanded 66:20 | 45:15 73:17 | fend 25:7 |
| ensure 83:23 | 50:10,15,20,24 | 67:1 | extreme 27:2 | fewer 62:11 |
| entail 50:17 | 73:8 78:17,22 | expect 32:9 | eye 49:20 | field 11:25 62:17 |
| enter 8:7 24:5 | 83:12 85:3,4,7 | expense 45:16 | | 62:21 |
| 87:23 | 85:15 | experience | F | fields 63:2 |
| entered 37:2 | evident 23:7,8 | 25:23 26:1 | F 6:8 | fight 59:16 |
| 76:20 | evidentiary | expert 26:4 31:7 | facilitate 17:11 | figure 64:14 |
| entire 38:5 | 86:15 | 35:3,11,16 | fact 22:20,22 | 80:7 |
| 61:10 | exact 82:16 | 40:19,22 46:19 | 23:23 27:9 | file 52:9 69:12 |
| entitled 22:23 | exactly 26:21 | 50:4,12,15 | 33:14,18 36:1 | filed 14:3 16:17 |
| 44:2,9 45:12 | 49:5 52:11 | 51:3,4,5,6,16 | 41:18 48:14 | 24:17 26:8,8 |
| 45:17 59:19,21 | 55:23 56:1 | 57:1,3,5,6,11 | 51:11 55:18 | 53:14 70:13 |
| 79:25 86:1 | 57:25 81:24 | 57:25 58:17,21 | 66:11 69:19 | 81:9,10 |
| enuniated | 82:6 | 60:11,12,15 | 70:7 71:11 | files 55:4 |
| 28:20 | example 39:22 | 68:1 69:11,14 | 75:6 76:13 | filing 30:20 |
| envisioned | 46:10,11 48:10 | 71:21 74:11 | 82:12,20 86:9 | 80:19 |
| 15:18 | 54:20 76:6 | expertise 51:17 | factors 44:17 | filings 16:4 |
| | examples 76:2 | 55:25 76:25 | 72:11 | fill 62:8 |

| | | | | |
|-------------------------|-------------------------|-------------------------|-------------------------|-------------------------|
| final 66:11 | Fort 13:20,25 | give 19:3 24:4 | 86:19 88:4 | 59:2 83:25 |
| finally 47:16 | forth 12:22 30:9 | 34:13 36:10 | Goldsberry 2:5 | guidance 73:16 |
| 79:10 80:9,15 | forum 80:24 | 54:15,19 60:25 | 8:11 | 73:23 75:9 |
| 85:18 87:20 | forward 18:19 | given 21:2 29:12 | good 8:1,18 9:8 | 76:10,19 77:19 |
| financial 25:1 | 24:9 33:12 | 36:22 72:12 | 9:14,21 10:7 | 80:10 81:2 |
| find 14:24 18:3 | four 30:1 54:22 | 87:16 89:16 | 10:19 11:2,13 | 83:6 85:19 |
| 65:9 | 62:22 | gives 36:19 | 11:18,23 12:5 | |
| fingers 33:18 | fourth 5:3 38:24 | glaring 76:11 | 13:14 14:13 | H |
| firm 5:12 6:13 | 42:21 43:13 | go 14:12 15:1 | 17:7 21:5 52:3 | half-a-day 65:4 |
| 15:16 89:23 | Francis 2:5 8:11 | 16:10 18:2,3 | 60:5,19 72:25 | halt 30:14 |
| firm's 25:3 | frankly 17:13 | 25:17 26:12 | Grand 8:14 | hand 55:21 |
| first 15:1 16:12 | 67:22 69:5 | 28:10,17 30:23 | Grande 7:6 12:3 | 89:16 |
| 19:8 27:7,15 | 70:5 | 33:7 36:18 | 12:6 57:15 | handle 19:15 |
| 27:17 34:5 | free 75:13 | 38:10 59:5,9 | 61:4 68:11 | 52:20 |
| 38:17,23 41:4 | Friday 31:21 | 60:2,3,5,18 | 82:3 | handled 63:7 |
| 41:16,20 43:5 | front 55:19 73:8 | 61:11,23 63:10 | grant 14:18 18:1 | handling 59:7 |
| 43:11,12 53:7 | full 67:11,11 | 67:3,5 69:3 | 19:25 30:16 | hands 79:4,8 |
| 73:22 75:10 | 69:5 73:7 | 74:24,25 82:8 | 51:20 75:17,17 | happen 30:7 |
| 81:11 | full-on 75:17 | 82:18,21 84:21 | granted 12:10 | 34:8 |
| five 31:25 64:4 | fully 73:5 | 85:14 87:13 | 17:8,10 76:5 | happened 60:25 |
| flesh 44:21 | fundamental | 88:17 | granting 22:13 | happening |
| flipping 30:9 | 38:20 | goes 38:17 41:7 | 34:25 73:21 | 26:25 50:13 |
| Floor 4:3 | furious 34:7 | 41:18 52:7 | grappling 20:11 | 52:12 62:19 |
| flow 68:10 | further 73:17 | 62:25 65:19,22 | great 30:6 | 63:1 |
| flows 12:22 | 86:19 87:9,19 | 71:15 72:8 | greater 20:18 | happy 32:6 |
| 68:21 69:1,3 | 88:20 89:9 | 85:13 | 23:13 33:18 | 48:16 65:17 |
| 82:3,5,10 | future 29:4,7 | going 13:4,5,10 | Greg 9:2 | 79:7 |
| flying 13:19 | | 15:20 16:3,16 | ground 77:23 | hard 29:15 |
| flyover 13:7,15 | G | 17:4 18:19 | groundwater | 37:21 43:21 |
| focus 43:9 | G 6:2 | 28:10 30:9,12 | 39:23 40:3 | 45:25 |
| focused 20:1 | gage 68:10,11,22 | 30:15,16,16,18 | 44:19 46:23 | harm 22:16 |
| 68:15 | 71:11,13,19 | 30:25 31:2,16 | 50:6 68:9,15 | 39:19,24 48:8 |
| focuses 54:18 | Garza 7:13 89:3 | 31:18 32:7 | 70:4,12,16,18 | 77:23 |
| focusing 47:23 | 89:19 | 34:8,12,15,18 | 74:14 76:17 | harmed 16:14 |
| folks 33:11 | gauzy 75:20 | 36:5,8 37:8,19 | 78:10,11,12,12 | 16:16 |
| 62:17 | general 9:3,4 | 42:24 46:14 | 78:13,19 79:11 | harming 39:15 |
| follow 23:25 | 10:3,23 12:1 | 47:13 48:24 | 79:18,21,21 | 39:19 |
| forced 16:3 | 35:17 68:1 | 49:2,3,11,19 | groups 64:6,11 | HARRIS 5:3 |
| foregoing 89:6 | general's 2:17 | 49:24 50:21 | grow 62:13,14 | Hartman 4:2 |
| forest 55:17 | 3:17 8:12,22 | 51:14 52:8,10 | 62:14 | 9:11 |
| 60:16 | 9:10 14:11 | 52:11,13,25 | growers 6:12 | hear 48:15 50:20 |
| forestland 53:19 | 18:18,21 | 53:4 59:7,23 | 11:17,20 | 84:12 |
| forgot 37:16 | generally 35:10 | 64:13 65:18 | growing 26:12 | heard 14:7,10 |
| form 45:14 | 49:3 67:10 | 66:5,6 72:7,16 | grown 57:20 | 16:17 19:18 |
| formation 81:19 | 81:18 82:16 | 72:21 73:19 | 59:15 60:20 | 27:18 28:13 |
| forms 46:5 | getting 16:19 | 76:3,22,23 | guess 14:6 35:7 | 29:10 38:17 |
| 81:21 | 70:10 | 77:14 80:5 | 38:16 57:9 | 72:20 73:1 |

| | | | | |
|-------------------------|-------------------------|--------------------------|--------------------------|-------------------------|
| 74:3 83:1 | 23:4,11,15 | hydrologically... | improvement | 42:11,18 47:17 |
| hearing 1:15 | 24:16 25:15 | 82:4 | 5:1 10:18,21 | 47:23 48:6 |
| 55:10 74:22 | 28:8,15 29:8 | hydrologists | 17:20 19:20 | inputs 54:25 |
| 75:6 86:22 | 34:2 37:25 | 32:4 | in-person 15:1 | inside 60:7 |
| 89:8,11 | 38:4 51:25 | | inaccurate 17:4 | instance 49:6 |
| hearings 8:3 | 52:3 57:24 | I | include 20:16 | insurance 57:18 |
| HEATH 6:3 | 59:6 66:17,25 | idea 39:13 63:12 | 72:10 | 61:18,22 |
| Heather 7:13 | 67:7 70:3,19 | 64:20 66:22 | including 42:21 | intend 52:22 |
| 89:3,19 | 70:22 72:23 | 83:24 | 43:4 44:17 | 81:20 |
| heather_garza... | 73:1 81:6 | identification | 47:8 57:14 | intended 33:18 |
| 7:16 | 88:10,22,23 | 53:23 58:23 | 64:6 | 40:10 46:18 |
| Heilmann 52:15 | Honor's 21:20 | identified 31:13 | inconsistent | 74:9 76:17 |
| 52:19,21 53:17 | 22:1 | 43:11 57:6 | 44:11 75:19 | 77:18 81:15 |
| 65:7 | HONORABLE | 63:1 78:15 | 81:13,25 82:23 | intending 38:4 |
| held 43:23 44:1 | 1:15 | 83:17 | incorporated | intent 74:24 |
| help 17:11 64:14 | hope 28:2 33:6 | identify 37:19 | 68:14 | 82:2 |
| 65:14 73:22 | hopefully 33:16 | 56:25 75:12 | incorrect 37:11 | intention 52:17 |
| 81:2 | 33:19,21 34:22 | 83:18 87:5 | 47:15 | intentionally |
| helpful 12:20 | Horn 68:6 | identifying | increased 68:20 | 46:2 |
| 28:4 76:10 | Hornberger | 58:22 | increases 68:10 | interception |
| HENNIGHA... | 66:2,4,12 | ignore 46:14 | incurring 48:11 | 40:9 |
| 7:8 | host 31:17 | ignores 68:24 | indicate 33:4 | interest 17:24 |
| hereto 89:6 | hour 15:6 | 69:10 | 38:19 | 25:7 27:2,4 |
| Hicks 5:7,7 | hours 66:10 70:4 | II 2:5 | indicated 20:24 | 73:6 |
| 10:21 | 70:4 | illumination | 26:3 42:3,10 | interested 76:15 |
| highlighted | Houston 7:15 | 82:5 | indicates 43:17 | 86:5 89:13 |
| 83:15 | 89:24 | image 55:22 | indirect 82:2 | interests 17:23 |
| highly 14:19 | Hubenak 2:16 | imagery 56:24 | individual 48:14 | 17:24 25:24 |
| 38:14 | 8:13 14:9,10 | 58:25 60:5 | 55:24 | 27:12 |
| hired 14:22 | 14:13 18:8,14 | images 60:2,3,7 | inefficient 30:10 | interface 22:3,4 |
| 63:17 64:5 | 19:5,24 20:1 | imagine 57:17 | inextricably | 23:2 |
| historians 32:2 | 20:13 24:21 | immediate 16:6 | 43:24 | interfered 77:25 |
| historically | 26:20 | immediately | information | interim 22:16 |
| 63:25 69:7 | Hubenak's 27:7 | 13:23 | 12:19 36:22 | INTERIOR |
| histories 48:4 | Hudspeth 7:1 | impact 44:22 | 54:2,3,7,15 | 4:19,23 |
| Hoffman 2:4 | 11:11,14 17:21 | 47:11 48:21 | 55:16 61:15 | interpret 55:5 |
| 8:11 | 24:13,17,25 | 50:9 | ingredients | interpretation |
| hold 67:14 75:23 | 25:4 | impacted 48:18 | 55:13,15 | 59:1 76:23 |
| Honor 8:8,18 | Hueco 70:15 | import 21:3 22:7 | inherent 35:15 | Interstate 9:5 |
| 9:9,14 10:7,13 | Hutchison 66:1 | important 14:20 | 35:22 | intertwined |
| 10:20 11:3,14 | 66:15,18,21 | 14:23 31:8 | inhibits 29:3 | 43:24 |
| 11:23 12:5 | 68:6,19 69:11 | 59:23 61:6 | initial 35:8 | introduce 49:25 |
| 13:9,14 14:9 | 70:12 71:12 | 68:5,20 77:7 | 53:24 | introduced 49:2 |
| 14:13 16:20 | 72:10 | 80:6 | initiation 29:2 | introduction |
| 17:13 18:6,14 | Hutchison's | impossible 56:1 | injuries 42:13 | 49:14 50:24 |
| 19:5,19 20:5 | 67:21 69:9,23 | improper 50:24 | injury 41:10,12 | invalidating |
| 20:19 22:19,21 | hybrid 38:6 | 50:25 51:1,11 | 41:15,17 42:9 | 80:20 |

| | | | | |
|--------------------------|--------------------------|-------------------------|------------------------|--------------------------|
| invocation 71:20 | 49:9 66:8 76:5 | 24:11,15,19 | 36:4 52:14,19 | lack 16:22,22 |
| involve 40:8 | items 37:5 66:21 | 25:12 27:17 | 52:23 53:16,24 | laid 68:2 |
| involved 13:12 | | 28:5,12,17 | 54:7 55:2,7 | Lake 4:24 |
| 15:24 20:6 | J | 29:9,12 34:3 | 65:3,5,7 | Land 52:7,10,14 |
| 36:16 | J 4:7 | 34:10 35:7 | Kimmelshue's | 52:16 53:12,15 |
| IOWA 1:16 | James 4:7 5:17 | 36:24 38:2,8 | 62:25 | 53:18,21 56:10 |
| IQ 52:7,10,14,16 | 9:15 | 41:25 43:7 | kin 89:13 | 56:11 59:24 |
| 53:12,16,18,21 | james.dubois... | 48:23 52:4 | kind 13:3 27:4 | 60:17,21 62:22 |
| 56:10,11 59:24 | 4:10 | 53:1,12 56:15 | 30:17,19 37:15 | 63:17 64:4,18 |
| 60:17,21 62:22 | Jay 6:8 28:15 | 56:20 57:1,9 | 38:25 61:3,25 | 64:23 65:14,21 |
| 63:17 64:4,18 | jcbrockmann... | 58:5,11,17 | 63:22 65:10 | lands 57:21 |
| 64:23 65:14,21 | 5:20 | 59:2 61:14,18 | King 11:5,8 | largely 23:21 |
| ironically 35:25 | Jeff 8:19 25:15 | 63:8 65:18 | Klahn 2:12 8:11 | 73:10 84:4 |
| irrelevant 50:11 | 81:7 | 66:5 67:5 | 13:11,13,14 | Las 5:13 6:7 |
| 71:17 | Jeffrey 2:21 | 70:20 72:7,24 | 59:6,6 61:17 | 10:10,11,15 |
| irrigated 53:23 | Jennifer 4:13 | 81:4 86:18 | 62:2 63:11 | 28:18,19,21,23 |
| 56:25 57:5 | 9:17 | 87:12 88:3,7 | 70:22,23 | last-ditch 85:18 |
| 58:6,7,22 | jennifer.najja... | 88:12 | know 12:16,25 | lasting 14:16 |
| 59:14 63:19 | 4:16 | judgment 21:21 | 15:17 20:25 | latches 79:5 |
| irrigation 5:11 | Jesus 10:22 | 22:1 40:17,18 | 23:17 24:3 | late 19:1 23:20 |
| 11:1,4 19:7 | jfstein@newm... | 40:21 49:17 | 25:4 27:3 30:4 | 75:7 |
| 46:19,23 69:20 | 6:10 | 73:24 74:3,19 | 31:13,21 32:2 | law 4:3 5:7,12 |
| 74:10,15 81:21 | Jim 9:22 10:13 | 75:5,8 77:15 | 32:6 34:15 | 6:13 8:10 |
| ISC 48:19 | 23:15 | 77:24 78:25 | 36:1 38:12 | 14:23 23:4 |
| issue 13:12 18:8 | John 3:12 6:18 | 79:13 83:25 | 39:13 40:15 | 25:2 43:17 |
| 18:12,15 23:3 | 8:25 9:2 11:24 | Judith 4:13 9:16 | 41:15 47:6,12 | 51:11 64:1 |
| 23:6 27:1 | john.draper@... | judith.colema... | 47:19 49:4,20 | Lawrence 2:13 |
| 29:24 31:20 | 3:14 | 4:16 | 49:21,22 51:9 | lawsuit 16:17 |
| 34:24 40:16 | john@uttonk... | Judy 73:1 | 51:20 53:2 | 17:15 |
| 44:8 51:2 66:8 | 6:21 | June 19:2 23:20 | 54:23 59:21 | lawyers 15:15 |
| 70:14 71:25 | join 10:3 | 27:16 65:5 | 61:4,19 62:12 | 20:4 |
| 77:7 79:18 | joining 11:25 | Justice 4:8,14 | 62:16 64:12 | lead 8:9 14:23 |
| 81:11 82:24 | Jordan 60:15 | 9:16 | 68:2 74:1,25 | 15:15,19 16:10 |
| 85:24 | Jordan's 65:11 | jwechsler@m... | 75:1,2 76:2,2 | 16:22 18:10,12 |
| issues 15:3 16:11 | 65:12 | 2:24 | 76:24 77:18 | 18:15 53:8 |
| 20:12,21 21:8 | journal 63:14 | K | 78:25 83:15 | learn 27:2 |
| 21:13,13,15,23 | 64:8 | Kayatta 67:17 | 84:17 86:21 | leave 31:6 32:15 |
| 22:25 23:2,5 | Judge 1:15 8:1,2 | Kayla 8:20 | knowing 61:24 | 74:20 |
| 31:17 32:13 | 8:16 9:6,12,19 | keep 55:10 58:6 | knowledgeable | led 18:16,20,21 |
| 34:17 35:13 | 9:21,24 10:6 | KEMP 7:3 | 15:16 | Lee 4:8 9:16 |
| 36:11,14,15,20 | 10:10,17,25 | KERY 6:19 | knows 14:3 | lee.leininger@... |
| 37:3,4,7,7 | 11:6,10,16,18 | key 17:18 31:7 | Kopp 3:1 8:24 | 4:11 |
| 38:24 42:6 | 11:21 12:3,8 | 69:14 | L | left 40:21 85:16 |
| 49:15 72:3 | 12:15 13:13 | Khoury 3:16 | L 2:3 7:13 89:3 | legal 17:18 |
| 82:19 83:10 | 14:1,12 18:7 | 8:21 | 89:19 | 20:21 21:15 |
| 84:22 86:16 | 18:23 19:14 | Kimmelshue | laboring 84:13 | 50:24,25 51:1 |
| it'll 10:1 30:8 | 21:7 23:14 | | | 51:10,12 79:18 |

| | | | | |
|--------------------------|---------------------------|-------------------------|------------------------|----------------------|
| legitimate 51:16 | 73:12,24 | Luis 3:6 8:23 | 10:9 | 58:5,11,17 |
| Leininger 4:8 | listen 12:10 | luis@roblesra... | may-call 52:16 | 59:2 61:14,18 |
| 9:17 | listened 27:12 | 3:9 | 53:16 | 63:8 65:18 |
| length 15:8 | listening 77:4 | | MCREA 7:8 | 66:5 67:5 |
| lengthy 23:24 | lists 31:19 | M | mean 33:4 35:22 | 70:20 72:7,24 |
| 76:16 83:1 | litigated 40:16 | M 2:1,16 3:1 6:2 | 36:16 39:6 | 81:4 86:18 |
| 84:5 | litigating 20:11 | main 5:13 13:16 | 45:11 48:21 | 87:12 88:3,7 |
| let's 8:2 14:2 | litigation 14:15 | 52:14,16 | 53:11 57:21 | 88:12 |
| 38:10,10 60:23 | 15:9,11 20:8 | maintenance | 58:18 61:18,23 | mention 24:24 |
| 60:24 81:13 | 45:5 56:6 | 78:14,22 79:22 | 85:20 | 69:14 87:12 |
| letter 24:17,24 | little 13:3 15:17 | making 39:14 | meaning 51:6 | mere 42:12,17 |
| 29:25 80:16 | 30:17 32:20,24 | 47:14 60:10 | meaningful | merely 81:16 |
| letters 41:16 | 35:13 37:1 | Mall 2:6 | 17:11 | merits 61:12 |
| 43:5 87:21 | 40:14 52:6 | manage 33:25 | means 25:1 37:6 | 63:9 65:12 |
| level 32:3 33:6 | 76:1 86:19 | 33:25 | 44:3 | messed 77:6 |
| 72:3 81:17 | Littlefield 76:13 | managed 33:15 | meant 53:3 | method 54:1 |
| 82:9 | Littlefield's 76:8 | 69:8 | measure 70:9,9 | 58:19 63:4 |
| liability 21:14 | live 30:8 31:6,10 | management | measures 68:9 | methodology |
| liable 40:5 | 66:8 | 31:2 73:11 | mediation 28:9 | 53:18,20,20,22 |
| likes 38:13 | LLC 3:12 5:12 | 87:13 | mediator 17:11 | 54:11,17,17,20 |
| Likewise 67:16 | 6:13 | manager 10:23 | 17:14 28:3 | 54:22 55:9,11 |
| limine 23:8 36:6 | LLP 6:3 7:3 | managing 33:15 | mediators 27:19 | 55:17 56:5,14 |
| 38:9,13 43:10 | loaded 41:14 | mandated 63:20 | meet 46:19,23 | 57:4,8 58:15 |
| 43:12,18,20 | logic 78:4 | manpower 64:2 | 74:10,14 | 59:24 62:24 |
| 45:21 47:17 | logistical 37:7 | map 60:24 63:4 | meeting 12:2 | 63:23 68:5 |
| 49:13,14,22 | logistics 34:17 | 63:20 | 69:1 | methods 64:18 |
| 50:3,21 52:7 | long 10:2 23:13 | mapped 61:2 | meets 51:19 | 64:24 |
| 66:19 72:22 | 31:22 | mapping 63:3 | Melloy 1:15 8:1 | Mexican 44:18 |
| 73:24 83:9,9 | long-time 47:2 | 63:18 64:6 | 8:2,16 9:6,12 | 44:18 |
| 86:15 | look 31:19 47:9 | March 21:11 | 9:19,22,24 | Mexico 1:11 |
| limit 46:25 | 60:6 69:19 | 31:6 33:17 | 10:6,10,17,25 | 2:20,23 3:8,13 |
| 63:13 74:16 | 71:18 79:19 | Maria 5:2 10:20 | 11:6,10,16,19 | 3:17,18 5:4,13 |
| limited 16:1 | 86:19 87:23 | 19:19 | 11:21 12:3,8 | 5:19 6:9,12,15 |
| 25:1 50:5 | 88:4,13 | marketing 64:12 | 12:15 13:13 | 6:17,20 7:9 8:4 |
| 67:19,25,25 | looked 57:5 | Marquette 3:8 | 14:1,12 18:7 | 8:17,20,22 |
| 70:13 80:3 | looking 48:3 | Master 1:15 | 18:23 19:14 | 11:16,19,21 |
| Lincoln 3:2 | 58:22 73:23 | 47:5 67:12,16 | 21:7 23:14 | 16:13,15 17:8 |
| line 10:14 12:11 | 77:13,20 80:10 | 75:13,24 77:24 | 24:11,15,19 | 18:18,21 19:9 |
| 13:3 26:18 | looks 46:11,13 | 78:4 80:22 | 25:12 27:17 | 19:13 20:25 |
| 50:7 80:19 | 46:20 74:12 | Master's 73:6 | 28:5,12,17 | 22:4,10,10,11 |
| lines 51:14 75:18 | Lopez 76:4 | materials 54:13 | 29:9,12 34:3 | 23:7,20,22 |
| Lisa 3:1 8:24 | lot 12:25 29:13 | matter 8:3 16:2 | 34:10 35:7 | 24:9 26:6,13 |
| list 13:19 30:25 | 31:1,4 62:9,17 | 21:1 25:3 | 36:24 38:2,8 | 26:22,23 27:8 |
| 42:11 52:16 | 66:10 72:12 | 51:13 72:14,15 | 41:25 43:7 | 27:9,16,24 |
| 73:13,18 88:14 | lots 76:16 | MAX 5:7 | 48:23 52:4 | 32:6,7,11 |
| 88:17 | lthompson@t... | maximal 76:19 | 53:1,12 56:15 | 35:25 39:14,23 |
| listed 62:11,15 | 3:4 | Maxwell 6:2 | 56:20 57:1,9 | 40:8 41:10,13 |

| | | | | |
|---|--|---|--|---|
| 70:2,15,23 71:2,4,5,9,15 71:19 72:1,12 72:18 73:11 74:1,7,22 75:7 75:11,21 77:13 77:20,25 78:3 78:8,11,13,15 78:16,16,18 79:23,24 80:8 80:10,13,17,20 81:4 82:7,12 84:9,18,24 85:5 86:5,9,11 news 12:9,11 NFL 17:15 nice 83:18 nicely 85:21 night 36:18 80:25 nights 36:19 NMSU 11:24 normal 36:15 normally 36:15 North 7:9 note 20:3,15 notice 78:2 notwithstandi... 36:7 number 27:10 31:12 32:14,22 32:23 48:2 58:19 61:20,21 64:1,6 82:13 87:20 numbers 72:13 numerical 80:1 numerous 28:24 NW 3:8 4:19 | objections 59:25 obligations 22:3 23:2 28:24 observation 23:17 observe 23:20 24:8 obstruction 29:7 obstructs 29:3 obtain 20:18 obviates 37:3 obvious 45:19 obviously 18:9 61:3 78:12 occasions 62:23 occur 56:8 68:21 occurred 17:12 68:18 occurring 69:20 69:21 October 34:14 offer 19:1,13 27:8,15 52:17 offered 45:24 71:25 82:13 offering 83:20 offers 27:10 office 2:17,17 3:17,18 4:14 5:7,8,18 6:9,14 6:19 8:10,12 8:21,22,23 9:3 9:10,18 12:1 14:11 18:19,20 18:21 32:21,24 61:22 89:16 Ogaz 3:17 8:22 Oh 54:21 okay 8:16 9:19 10:6,10,17,25 11:10,16 14:1 28:5,12 38:2 53:1,13 58:17 63:8 66:5 67:4 72:24 88:12 old 41:22 Olsen 7:8,8 12:5 | 12:6 once 50:8 one-and-a-half 64:22 ones 79:8 ongoing 20:8 34:7 35:4 onions 62:14 operate 68:17 operated 39:25 68:24 operates 68:16 operating 22:14 22:14,19,22 23:5 39:10,25 44:7,12 80:21 80:24 85:12,19 85:23 86:3 operation 39:9 46:24 74:15 operations 31:3 44:1,10,18,22 46:18 48:4,18 68:14 69:9,23 70:6 71:1,2,3 74:10 81:18,19 82:9 86:2 opine 51:5,7 opining 50:15 opinion 51:12 opinions 35:13 70:17,18 opponent 38:13 opportunities 21:4 opportunity 20:13,20 21:21 22:24 36:2,7 36:10,12,13,20 36:22 42:24 44:20 62:12 65:20 oppose 29:4 opposed 51:12 58:25 opposes 28:21 opposition 14:6 | 19:18 25:13 28:13 41:13,16 oppositions 80:17 orally 14:7 order 21:11 34:9 34:25 40:21 43:12 44:6 46:19 49:18 54:4,5,5 59:19 60:21 74:10,19 80:7,20 81:9 81:14 83:22,23 83:25 84:2 87:8,14,24 orders 21:11,15 49:16 69:4 organization 12:10,11 original 1:3 8:5 38:14 41:23 67:8,14,18 originally 26:8 ourself 14:24 outlined 33:8 46:6 47:21 85:21 outputs 54:25 outside 51:17 overlap 77:12 78:8 overlapping 73:3 overrule 65:19 72:16 oversimplifies 71:22 overview 54:10 54:18 owed 68:23 | package 21:22 page 55:19 81:15 pages 54:18 74:19 89:6 paper 37:9,12 75:23 papers 81:8 Paragraph 79:11 parameters 20:19 parlance 51:10 part 13:18 15:11 30:23 32:8 34:25 45:8 46:15 48:7,12 69:21 79:12 participate 25:25 33:8 participated 18:17 participation 15:25 25:3 31:8 33:17 particular 25:6 37:4 38:23 56:10,14,23 59:4 60:22 86:20 particularly 31:8,15 51:8 particulars 18:9 parties 13:18 14:5 15:11 17:16 18:24 20:10,21 22:7 22:25 23:11 30:3 31:18 34:13,22 40:5 40:8 44:21 73:17 87:5 88:13 89:10,14 parties' 35:5 party 18:2 22:15 35:2 Paseo 2:22 3:13 |
| <hr/> O <hr/> O 2:1 O'Brien 5:2 10:19,20 19:19 19:19 21:8,10 80:16 objected 51:20 | | | | <hr/> P <hr/> P 2:1,1 P.A 5:3,18 6:8 6:19 P.C 3:7 p.m 88:25 |

| | | | | |
|---|--|---|---|--|
| Paso 5:1 6:1 10:6,8,17,20 13:17 17:19,20 19:20 68:11,22 70:16 71:11,19 | perspective 27:5 27:11 38:20 Peter 10:3 phase 42:25 45:10 Phil 11:4,8 pick 54:22 60:23 picked 58:12 piece 49:22 75:23 place 43:14 62:5 placed 52:15 plain 41:22 plan 29:3,7 66:1 plans 66:4 planted 61:24 play 23:7 players 18:10 pleadings 23:17 please 14:14 plight 25:21 plus 58:2 point 10:4 22:9 22:9 23:23 25:10 26:23 28:8 31:24 37:14,17 38:13 40:24 43:14 46:7 48:15 49:12 50:2,18 51:22 67:11 68:13,13,20 71:14,17,17 72:16 75:21,22 78:22 82:18,25 83:20 84:24 86:12 pointed 19:8 25:19 26:15 points 15:2 24:20,21 29:14 38:22 69:2 86:23 portion 53:7,11 66:13 position 23:18 40:18 46:3 | 70:2 77:11 81:25 82:7 positions 28:20 positive 30:13 possibility 30:11 30:19 possible 24:2 26:2 44:15 60:6 Post 2:17 3:18 4:14 5:8,18 6:9 6:14,19 Practically 17:7 practices 81:21 81:21 pre-trial 67:9 precisely 82:11 predicate 70:24 preference 67:16 prejudice 16:21 22:12,16 49:6 prejudiced 16:9 22:13 preparation 16:4 24:7 32:20 34:6 preparations 23:25 24:2 prepare 15:22 66:10 81:3 prepared 84:8 84:11 preparing 19:10 present 15:23 17:23 20:20 47:18 49:12 presented 47:21 85:15 presenting 48:20 presents 20:13 29:6 Preston 4:2 9:11 preston.hartm... 4:5 presumably | 72:11 presume 80:19 pretty 19:1 61:24 previously 37:10 primarily 49:16 primary 82:19 prior 37:14,17 49:16,16 60:4 62:5 81:19 82:23 Priscilla 2:16 8:13 14:10 priscilla.hube... 2:19 probably 20:4 30:14 31:20 32:22 37:6 48:24 52:19 problem 23:21 29:25 33:20 35:17,22 40:3 83:17 87:7 problems 46:7 proceed 33:7,23 proceeded 20:24 proceedings 83:3 88:24 89:8 process 13:19 27:3 55:21,25 productive 28:2 28:10 professional 33:6 professionally 29:15 proffers 51:18 progress 20:10 project 31:2,3 39:9,24 43:23 44:2,4,18,22 46:18,21,22,24 48:3,4,17 56:17 62:3,4 68:13,14,18,24 68:25 69:1,1,2 | 69:4,4,8,20,22 70:6 71:1,1,3 74:9,12,13 77:25 79:12 81:17,18 82:5 82:9 84:19,21 85:7,9 proper 36:9 51:12 properly 49:8,9 51:19 56:5 prophylactic 73:10 83:6 proponent 37:18 proposal 19:1 23:20,22 24:9 proposal/sugg... 20:16 propose 17:10 proposition 35:17 proprietary 53:20,21 54:1 54:12 64:24 65:2 propriety 21:25 protect 17:23 25:7 46:18 74:9 76:17 81:16 protected 25:24 85:10 protection 82:8 82:10 provide 13:23 22:22 23:10 31:9 36:13 38:5 54:7 76:1 provided 54:14 84:2 provides 44:20 providing 20:20 21:21 publication 63:13 published 64:8 pump 79:18 |
|---|--|---|---|--|

| | | | | |
|--|--|---|--|---|
| pumping 39:23 40:3 46:23 50:6,16 68:22 71:20 74:14 75:3 76:18 78:10,11,12,13 78:19 79:21,22 | 27:3 39:21 59:10 81:8 84:16 85:21,23 Quitman 13:20 13:25 quo 26:8 quote 44:6 80:23 85:4,6,6,10,11 85:13,24 86:5 | realize 88:18 reallocation 69:24 really 15:6 18:16 20:9 25:7 27:12 44:23 48:25 60:3,14 62:19 75:1 80:8 82:24 85:3 | 67:23 71:10 73:5,7 75:7,9 80:10 81:2 records 57:7,22 58:2,2,3,24 59:5,9,10,11 59:13 61:1,25 63:5 recover 48:12 reduces 68:22 reduction 47:25 48:9,17 refer 16:14 36:1 36:3 refined 55:22 refining 73:18 reflect 70:2,6 71:1 reflected 81:18 reflects 71:7 refocus 37:6 reframe 41:2 regard 21:19,20 42:25 regarding 19:24 22:1 44:21 Registration 89:23 regular 86:7 89:10,12 regulating 64:11 rejected 77:24 78:2,6 79:2,3 79:12 relate 21:13 related 43:6 56:23 67:21,23 70:14,15 relates 68:2 relating 45:24 49:15 releases 68:18 68:25 69:19 relevant 44:4,8 50:19 67:14 72:11 78:17 80:4,12 84:23 | 85:4,12,24 reliability 62:20 64:17 reliable 63:6 relied 17:22 25:6 relief 16:18 38:25 73:21 75:16 79:1,16 reluctant 31:14 67:9 rely 25:5,8 64:12 68:3 relying 59:12 64:16 remain 81:22 82:17 remaining 67:4 remedies 45:10 remedy 22:17 39:8 42:25 45:12 reminded 17:13 remote 1:14 30:9,22 34:11 remotely 30:2,5 30:24 31:3,5,6 31:23 32:2,11 33:10 88:15 Renea 5:7,7 10:21 renewed 42:7 repackage 83:25 repeat 19:23 54:17 55:6 repeatable 56:6 repeatedly 53:25 55:1 69:10 replicate 56:1,3 reply 83:16 report 13:8 61:20 69:12,17 70:14 71:22 Reporter 7:12 89:4 Reporters 7:14 89:23 reports 47:13 |
| purpose 83:8 purposes 18:11 20:2 61:22 73:11,25 77:19 83:13 pursuing 76:15 86:5 push 34:14 put 12:25 17:6 23:6 25:16 32:8,10,12 33:13 41:4,20 43:1 45:17 46:4 47:3 49:7 52:21,22,25 53:4 55:12 58:3 59:25 78:16 80:22 putting 60:1 | Q qualifications 65:22 quantification 80:1 question 23:19 34:1,20 39:7 41:10 42:5 44:5 52:5 57:10,23 59:3 59:15,20 61:13 61:14 62:19 71:8 78:23 questions 34:5 51:11 53:8 55:3 65:10,16 71:4 quick 86:23 quickly 77:22 quite 25:20 26:4 | realm 76:12 reason 26:15 52:18 59:8 reasonable 20:9 reasonably 14:18 reasons 19:25 27:13,24 28:22 48:22 56:4 79:3 83:20 84:22 reasserted 51:22 rebuttal 54:14 69:12 70:13 recall 54:5 receipt 44:22 receive 86:6 received 19:9,21 54:9 55:4 79:25 84:19,20 86:10 receives 45:1,2 receiving 44:9 85:25 reclamation 7:1 11:11 17:22 23:4 57:7,17 58:1 59:12 Reclamation's 44:1 recognize 60:9 67:7,13 recommendati... 17:14 reconvene 31:20 record 12:9 38:16 67:11,20 | Q qualifications 65:22 quantification 80:1 question 23:19 34:1,20 39:7 41:10 42:5 44:5 52:5 57:10,23 59:3 59:15,20 61:13 61:14 62:19 71:8 78:23 questions 34:5 51:11 53:8 55:3 65:10,16 71:4 quick 86:23 quickly 77:22 quite 25:20 26:4 | |

| | | | | |
|---|--|--|---|---|
| 48:3 54:15 69:11 representation 60:19 representative 58:20 representing 25:22 28:18 request 12:9 17:25 21:2 27:20,23 28:22 29:5 37:5,12 51:16 80:8 85:18 requested 21:6 53:17 requesting 87:21 requests 87:24 require 32:6,7 37:12 required 14:25 16:10 82:9 requires 57:11 reschedule 26:17 reserve 26:16 66:6,13 reservoir 13:25 81:17 reset 87:18 resolution 17:1 resolve 36:14 resolved 36:15 resolving 83:10 Resources 63:17 63:24 65:1 respect 38:24 42:4 52:18 73:2 respectfully 17:25 respective 14:21 respects 40:15 74:18 respond 15:3 19:12 35:8 | 43:8 81:5,6 84:7 responded 14:5 19:13 response 12:14 16:24 18:23 19:4,6,9,11,21 20:16 25:17 29:11 35:20 36:5 70:21 87:11 88:2 responses 15:4 16:11,13,20 22:10 23:9,9 26:19 29:23 80:25 responsible 45:6 59:4 rest 13:20 rests 43:20 result 23:12 44:16 resulted 85:8 results 48:9 55:5 55:6 56:2,4 resume 33:17 retain 45:17 rethink 38:7 return 12:22 82:5,10 reverse 50:3 review 25:16 54:17 63:12,15 63:15 64:8,17 reviewed 54:13 55:9 56:7 reviews 64:10 Reyes 10:23 Rheiner 9:11 rhicks@renea... 5:9 rhoffman@so... 2:9 Rich 4:23 8:11 9:18 Richard 2:5 Richardson 7:9 | Ridgley 9:3 right 10:12 11:10 12:15 14:2 19:14 21:9 23:14 24:11 25:12 28:5,12 29:9 34:8 36:24 38:8 39:7 53:1 53:6 56:2,19 62:18 63:8 65:13 67:6 71:17 72:7 81:22 88:12,20 rights 22:2 23:2 26:9 29:1,6 Rio 7:6 8:14 12:3,6 57:15 61:4 68:11 82:3 ripeness 77:22 rises 72:3 river 13:20,24 57:15 68:21,24 69:7 Road 6:14 Robert 2:4 8:11 Robles 3:6,7 8:23,24 robust 43:17 47:22 48:6 73:7 83:7 ROEHL 5:3 role 15:22 room 24:4 Roswell 7:9 roughly 58:14 row 58:16 RPR 89:19 rule 30:15 41:22 42:4 46:15 48:12 49:1 67:9 68:2 ruled 70:8 ruling 37:3 66:7 66:11,13 74:3 75:5,19,24 | 87:16 rulings 21:22 22:8 73:10 82:23 run 23:13 31:17 54:22 runs 47:6 <hr/> S <hr/> s 2:1,5 6:3 7:2 18:23 Sacramento 2:7 Salt 4:24 Samantha 5:12 11:3 samantha@h... 5:14 Santa 2:23 3:13 3:18 5:19 6:9 6:20 Sarah 2:12 8:10 59:6 70:22 satellite 56:24 58:25 saw 80:25 saying 12:16 33:7 39:3,16 39:18 41:3 75:8 80:11,23 81:12 says 40:9 47:18 49:19 50:4,11 54:21 71:21 scenario 47:11 scheduled 25:19 Schmidt-Peter... 48:20 scientific 32:4 63:14 scope 21:24 51:17 66:20 67:1 Scott 9:11 11:25 12:1 screeching 30:14 SE 1:16 SEAL 89:16 | season 26:12 69:20 seasonal 69:19 second 16:24 34:20 52:4 59:20 64:19 75:16 secret 55:14,15 section 54:20 sections 56:17 sediment 78:14 see 31:10 41:17 63:5 76:11 84:1 seeing 49:1 seek 45:12 seeking 53:15 56:12 66:19 70:17 72:4 73:10 80:20 seeks 22:4 seen 22:5 24:19 43:4 73:11 select 47:5 selective 25:2 sense 30:3 64:8 64:10 sent 54:8 87:2 separate 32:12 57:6 58:13 66:19 September 24:1 25:19 34:6 89:17 series 55:11 serious 16:25 Service 57:19 61:16 set 15:1 20:19 22:8 29:16 83:7 86:24 settle 17:14 20:12 settlement 17:3 17:6,9,12 18:8 18:10,17,19 20:2,7,23 24:5 |
|---|--|--|---|---|

| | | | | |
|---|--|---|--|---|
| 27:1,2,13 28:2 seven 25:22 63:18 SEVENTH 1:15 shape 80:14 share 47:24 shares 27:25 sheets 62:6,7 Shelly 4:18 9:5 9:18 shelly.randel... 4:21 shopping 63:22 short 44:16 73:21 75:16,16 short-circuit 52:5 shortages 78:20 shorted 79:24 Shorthand 89:4 show 42:12 46:20 48:4 62:6 68:22 69:5 74:11 78:17 85:13 86:6,9 showing 47:7 48:6 shows 26:6 47:4 47:10 74:4 side 14:7 61:2 sides 18:11 signed 43:16 significant 48:6 48:11 52:23 76:3 significantly 86:10 similar 58:19 Similarly 75:25 76:10,15 SIMMONS 2:6 2:12 simple 15:14 68:15 simplified 70:1 simply 20:9 24:1 | 33:10 39:11 41:21 46:3 47:12,15,19 48:3 68:23 72:2 simultaneously 20:8 Singer 9:4 single 68:10 SISK 5:3 sit 70:3 site 12:17 sites 12:19 situation 14:16 14:17,24 18:4 24:8 37:25 40:15 six 15:13 26:18 31:25 six-month 14:4 14:15 15:7 17:7 18:1 23:18 sklahn@soma... 2:14 Skov 8:14 smaxwell@bic... 6:5 SMITH 7:3 solely 68:16 70:14 solicitor's 9:18 Somach 2:3,6,12 8:6,8,9 14:22 15:15,21,22 17:18 18:16 25:6,9,25 33:1 33:3 35:19,21 37:24 38:19 42:2 43:10 45:20,23 47:12 47:14,18,20 52:6,13 59:3 66:3,22 67:1 68:8,11 88:10 88:22 Somach's 25:21 | 31:7 32:17,21 32:23 somebody 65:9 somewhat 34:7 sorry 11:6 78:11 sort 18:25 29:18 32:25 35:15 53:8 73:15 76:9,14,19 84:13 sorted 49:25 south 4:24 5:13 50:8,13 Southern 7:6 12:3,6 soybeans 61:20 speak 18:11 19:16,17 20:25 25:13 29:17,18 53:7 63:9 65:2 speaks 64:17 special 1:15 47:4 49:16 67:8,12 67:16 73:6 75:13,24 77:24 78:4 80:22 specific 12:21 27:23 58:23 59:25 65:16 67:21 73:8 83:12,13,20 86:15 specifically 46:17 53:16 68:3 74:8 83:8 83:11 specificity 49:4 specify 35:1 speculative 77:23 speed 32:21 spend 63:21 SPERLING 5:3 split 70:8 85:8 splitting 32:24 spoke 66:22 spring 29:20 | 31:25 32:1,15 62:14 ssomach@so... 2:8 stage 75:7 83:2,4 83:5,10 stand 34:6 standard 47:2 68:1 start 8:5 12:16 14:6 30:6 31:21 34:11 63:11 67:6 88:19 started 8:2 30:21 starting 23:23 state 1:9,11,11 2:2,17,20 4:1 4:24 6:17 8:3,4 8:4,7,9,20 9:1 9:3,9 11:21 14:24 25:5,5,9 44:9 45:3 57:18 59:7 61:15 63:20 79:10 85:25 89:4 State's 25:11 44:22 stated 16:19 53:25 54:14 67:15 69:17 73:2 89:5 statement 17:2,4 76:22 statements 70:15 73:23 74:4,17,18 75:11 84:1 states 1:6,15 4:6 8:5 9:12,15 14:20,21,22 21:17 23:16 24:4 25:24 28:8 32:10 38:1 44:17 | 48:25 50:23 55:21,24 57:16 71:7 72:19,22 73:1,19 75:21 77:17 78:5 79:6,16 80:13 81:15,20 82:1 82:22 84:18,25 85:19 86:13 States' 71:21 77:10,20 78:24 83:14 static 81:22 status 13:6 26:8 37:17 39:1 77:4 84:16 89:8,11 statute 63:20 stay 23:18 Stein 5:18 6:8,8 10:12,14 28:15 28:16,18 Steinbrecher 9:11 step 68:18 steps 55:11,12 55:13 56:8 60:21 64:9 Steven's 76:11 stipulated 54:4 stop 65:15 straddles 50:6 strangers 40:6 strategist 17:18 strategy 28:9 33:13 34:16 Stream 9:5 Street 2:13 3:2 4:9,19,24 5:3 7:14 strict 54:4 strokes 82:14 strong 17:15 strongly 21:1 27:6 28:19 29:4 structured 29:19 |
|---|--|---|--|---|

| | | | | |
|-------------------------|-------------------------|--------------------------|--------------------------|-------------------------|
| struggled 43:22 | 75:5,8 77:15 | T | 52:12 57:20,22 | 38:17 39:5,5,8 |
| Stuart 2:3 8:9 | 77:24 78:25 | T 2:1 6:13 | 84:25 | 39:15,19 40:11 |
| study 61:10 | 79:13 83:25 | table 17:17 | ten 26:10 | 43:22 44:14 |
| stuff 39:11,18 | supplemental | 18:25 36:21 | tentative 88:17 | 45:2,3,5,7,14 |
| 41:19 42:23 | 36:11 46:23 | take 14:2 30:25 | tenth 57:19 | 45:17 46:1,13 |
| 43:4 61:3 | 74:14 | 31:5,23 32:1 | terms 23:11 25:2 | 46:15 48:25 |
| stunning 57:15 | supplementing | 36:11,12,20 | 33:20 51:7,7 | 49:6 50:4,7,19 |
| sub 69:21 | 35:3 | 38:9 43:2,11 | Tessa 6:13 11:19 | 56:18,18 59:7 |
| subject 34:10 | supplier 28:24 | 55:2 59:8 65:6 | test 30:13 43:1 | 59:19,21 62:21 |
| 51:22 63:4 | supply 28:24,25 | 71:18 72:22 | testified 60:15 | 66:1 68:9,23 |
| submitted 19:2 | 29:8 44:3,4 | 73:13 76:5 | testify 30:2 31:2 | 69:4,16 70:10 |
| 37:13 43:6 | 45:2,2 46:21 | 81:7 86:15,18 | 31:4 32:5 | 70:20,23 71:15 |
| substantive 19:8 | 47:25 48:17 | 86:20,22 87:23 | 35:12 48:8 | 71:23 75:1,21 |
| 19:11 23:23 | 69:5 74:12 | 88:15 | 51:17 52:8 | 78:3,3,10,20 |
| 24:5 27:8,10 | 79:12 84:20,21 | taken 18:15 | 76:4 | 79:3,9,21,23 |
| 27:15 75:12 | 85:9 86:7,10 | 21:15 32:23 | testifying 37:18 | 80:13,18 82:1 |
| 82:24 | support 19:16 | 89:11 | 56:16 | 82:16,22 84:18 |
| substitute 15:14 | 19:18,22,23 | takes 10:3 | testimony 31:6 | 84:20 85:5 |
| successful 20:7 | 24:18 25:10 | talk 12:21 13:4 | 31:11 32:3,14 | 88:11 89:4 |
| sudden 41:5 | supportive 14:5 | 30:17 31:22 | 32:16,19 34:11 | Texas' 19:22 |
| suffering 39:20 | supports 28:19 | 34:21 36:25 | 35:11,16 36:10 | 23:9 24:18 |
| sufficient 19:12 | Supreme 1:6 8:5 | 40:20,23 41:9 | 37:15 49:2 | 32:17 35:1,11 |
| 20:10 38:21 | 15:10 21:9,22 | 41:12 51:24 | 51:15,19,23 | 39:24 47:9 |
| 42:18 68:3 | 22:24 38:15 | 65:25 66:23 | 53:15 56:10,12 | 50:4,12,16 |
| suggest 30:23 | sure 25:17 52:11 | 75:3 76:17 | 57:12 65:11 | 73:3 |
| 31:18 35:24 | 52:24 53:10,13 | 79:13 84:8,11 | 68:1 70:4,11 | Texas/New 50:7 |
| 36:8 48:13 | 54:24 69:1,13 | 87:1,25 | 72:1,9,11 | thank 11:10 |
| 75:9 80:9 | 83:17 84:7 | talked 29:23 | 75:18 76:7,8 | 12:2 14:1 18:6 |
| 81:11 | 85:16 86:12 | 37:10 42:11 | 76:12,23 77:19 | 19:14 21:6 |
| suggested 33:13 | surely 75:13 | talking 12:21 | 85:12 | 24:11,16 25:12 |
| 33:24 35:9 | surface 44:19 | 13:5 32:19 | Texan 44:18 | 28:5 29:8,9 |
| 86:8 | 82:3 | 42:19 51:4 | Texas 1:9 2:2,17 | 35:6 38:8 53:1 |
| suggesting 35:18 | surprised 27:1 | 52:1 83:11 | 2:18 5:8 6:4 | 70:18 81:3,4 |
| 39:22 | surrounding | 85:3 86:16 | 7:4,15 8:3,7,9 | 86:17 88:6,21 |
| suggestion 27:23 | 16:8 | talks 27:2 54:21 | 8:12,14 14:3,7 | 88:22,23 |
| suggests 45:8 | surveys 62:22 | task 15:20 | 14:11,14,22 | theories 44:21 |
| Suite 2:6,13 3:2 | survive 77:16 | taught 26:1 | 16:7,9,15,17 | Theresa 2:4 8:10 |
| 3:8 4:9,24 5:13 | Susan 3:7 6:2 | tbarfield@so... | 16:21,24 17:8 | thereto 80:2 |
| 6:3 7:3,14 | 8:23 10:9 | 2:8 | 17:10,19,22,25 | thing 24:23 30:4 |
| 89:24 | susan@robles... | team 16:7 17:19 | 18:3 19:3,13 | 32:20 33:21 |
| sum 16:9 | 3:10 | 18:5 | 20:17,24 21:2 | 57:2 58:18 |
| summarizing | suspend 87:17 | technical 14:20 | 21:5,19 22:11 | 64:19 65:10,24 |
| 81:14 | Suzy 8:15 | 34:16 51:7,13 | 22:15 24:22 | 67:17 |
| summary 21:20 | swaths 77:19 | 63:3 | 25:5,6,9,20 | things 25:16 |
| 22:1 40:17,17 | system 13:16,16 | technicality 32:3 | 26:20 27:24 | 26:19 29:21 |
| 40:21 49:17 | 69:6 | tell 11:25 46:1 | 29:5 32:8,10 | 30:7 33:14,19 |
| 73:24 74:3,19 | | | 35:8 37:24 | 36:5 39:16,20 |

| | | | | |
|--|--|--|--|---|
| 40:1 46:10 47:23 48:10 49:24 50:13 57:12 60:18 62:15 64:21 73:4 75:6 78:15,18 80:16 81:10 84:21,23 think 12:16,18 19:2,5 20:4,12 21:9 22:5,20 22:23 23:3,4,7 23:10 25:18 26:24 27:24 28:8 31:9,16 32:12 33:12,16 33:23 35:10,16 35:16 36:3 37:3,5 38:20 49:23,23 50:18 51:3,13 52:19 56:2,2 60:13 62:20,24 64:17 65:15,19,22 66:24 71:4 72:2,8,14,18 73:4,15,18,20 73:22 74:3 75:18 76:11,19 77:1,7,12 78:21 79:6,20 80:6 82:24 83:6 84:15 86:13,24 87:15 88:14 thinking 27:15 33:14 87:25 third 17:5 34:24 40:5,8 76:22 Thompson 3:1 8:24 52:1,3 53:6,10,13 56:19,22 57:3 57:24 58:9,13 58:21 65:25 66:16,17 67:6 67:12 | Thompson's 60:10 thorough 38:16 thought 12:18 12:23 29:13 37:22 80:22 86:16 87:15 three 14:20 15:3 15:18 16:11 19:2 26:16 29:16 30:1,21 31:24 32:14 34:4 38:22 53:14 78:15 79:4 three-and-a-h... 15:12 thumb 54:7,9 Thursday 31:21 88:3,8 tie 42:1 ties 37:15 50:22 71:12 time 15:8,21,24 16:6 17:6 18:4 19:10,12 20:1 20:3 21:5 26:10,11,18 27:4,18 29:16 29:17 30:15 34:23 35:2 41:4,16,20,21 42:14 43:5,14 49:7,25 51:15 51:23 53:25 54:11 56:13 58:10,12,14,15 58:22 59:9,23 60:2,5,19 64:23 66:10,10 66:23 67:25,25 68:18 69:22 73:17 76:18 80:23 83:11 86:21 87:3 88:8 89:8 times 57:14 | 58:24 82:8,18 timing 23:22 24:9 title 26:14 today 11:4 16:21 24:21 38:9 45:23 47:18 73:5 84:8 86:24 87:25 told 13:21 top 79:7 topic 17:6 totally 15:5 touch 64:20 tour 57:14 61:5 track 58:6 59:13 61:6 tracks 61:8,22 train 60:8,8 transcript 1:14 74:6 77:6 89:7 translated 46:25 74:17 travel 31:14 33:22 58:3 treat 28:25 treated 73:25 trial 14:18 15:1 15:7,12 16:3,8 16:10,17,23 18:2,2,5 19:11 22:9 24:1,6 25:18,18 26:16 29:17,19,20 30:7,14,21,24 31:25 36:15 38:6 41:5,21 42:14 62:7 67:15,20 68:1 72:15 73:11 74:1,21 75:22 76:5,9 77:2 80:21 81:3 82:17,20 86:17 87:8,13,16 88:17 trials 36:16 | tried 21:16 23:12 tries 49:7,25 Trout 3:2 8:25 true 56:3 59:13 78:9 84:22,23 89:6,7 try 24:4 26:17 60:24 72:4 81:7 88:16 trying 20:12 ttd@tessadavi... 6:16 Tuesday 12:17 turn 44:1 80:15 turning 47:16 turns 72:10 two 18:11 19:3 21:11 30:7,21 32:13 34:14 36:25 47:23 52:7,16 54:12 66:10,19,21 67:3 71:7 TX 89:24 type 14:17 32:18 32:19 58:25 60:16 63:15 64:16 69:24 87:23 types 60:9,17 62:10 63:19 64:5 | unavailable 15:23,24 unclean 79:4,8 underscore 24:23,25 25:10 39:3 understand 29:25 34:9,21 37:23 43:21 49:18 50:5 52:9 54:16 55:17 56:16 65:14 66:1 74:23 77:1,11 87:4 understanding 33:9 37:10,11 73:6 84:14 understood 34:19 37:25 38:3 51:8 52:11 56:8 undertake 43:2 unexpected 15:5 unfair 35:5 United 1:6,15 4:6 8:4 9:12,15 14:22 21:17 23:16 25:23 28:8 32:10 38:1 44:17 48:25 50:23 57:16 71:20 72:19,22 73:1 73:19 75:20 77:10,17,20 78:5,24 79:6 79:15 80:13 82:1,22 83:14 84:18,25 85:18 86:13 University 6:17 11:22 57:18 61:16 unjust 42:22 45:9,13,16 unlimited 82:2 |
|--|--|--|--|---|

| | | | | |
|-------------------------------|--------------------------|-------------------------|-------------------------|------------------------|
| unplanned 15:5 | video 87:21 | 38:21 40:11,13 | 15:7 25:17,20 | 83:22 |
| unregulated 82:4 | videos 13:17,22 | 42:11 55:6 | 26:3 28:10 | weren't 27:12 |
| unsuccessful 27:14 | view 27:21 84:4 | 63:9 | 30:9 32:19 | 36:22,23 53:3 |
| unsympathetic 25:21 | viewed 82:15 | wants 19:17 | 34:12,18 38:10 | Weslayan 7:14 |
| upcoming 16:8 | vindicate 26:9 | 75:22 81:5 | 39:17,19,21 | 89:24 |
| urged 82:15 | violation 42:8 | Washington | 41:3 44:24 | whatsoever |
| usage 51:8 | 42:12,17 44:25 | 4:15,20 | 52:18 54:24 | 40:25 |
| use 17:7 20:1,3 | 86:11 | wasn't 49:8,9 | 58:24 65:5,7 | wheat 62:14 |
| 20:17 21:5,5 | virtually 26:1 | 58:15 | 81:12 83:3,3,4 | whichever 15:20 |
| 35:2,5 50:16 | 85:14 | waste 46:25 69:5 | 83:20 84:3,8 | Widmer 10:16 |
| 60:2,8,18 61:9 | visit 12:17,19,25 | 74:16 | 84:11 85:3 | willing 65:8 |
| 64:9 | 13:5 36:25 | wastewater 29:1 | we've 25:6,16,19 | wish 28:13 |
| useful 12:23 | voir 65:21 | water 5:1,16 | 33:14 40:25,25 | wishes 19:16 |
| uses 50:17 60:17 | volume 16:13 | 9:20,23,25 | 41:1 43:4 | 75:14 |
| 60:21 71:24 | volumes 16:15 | 10:18,20 14:23 | 52:15 56:8 | witness 30:25 |
| Utah 4:24 | W | 16:13,15,18,22 | 82:12 83:17 | 31:19 37:18,18 |
| utilities 10:15 | W 6:18 | 17:19 19:20 | 84:3 | 37:20 41:1,5 |
| 17:21 | wait 67:20 | 20:7 22:22 | Wechsler 2:21 | 41:11 42:11 |
| Utility 5:16 9:20 | Wallace 4:2 9:7 | 26:13,22 28:24 | 8:16,18,19 | 48:8 50:4 51:5 |
| 9:23 | 9:8,9 30:4 | 28:25 29:1,6,7 | 25:15,16 27:20 | 51:6 52:14 |
| utilizing 68:5 | Walsh 10:16 | 40:10 44:9 | 27:22 28:20 | 53:17 59:4 |
| Utton 6:18,19 | want 8:6 12:23 | 45:4,15 46:22 | 29:14 34:1,4 | 66:2,12 87:6 |
| 11:23,24 | 14:7 15:1,2 | 47:25 48:10 | 34:19 35:9 | 88:14 |
| V | 16:11 18:9 | 50:8 57:17 | 38:3 43:7,9 | witnesses 30:2 |
| v 1:10 4:2 | 19:18 24:23 | 58:5 59:17,18 | 51:25 74:1,4 | 31:1,1,4,7,12 |
| vacation 77:5 | 27:5,14 29:10 | 59:18 61:9 | 81:6,7 88:4,5 | 31:22 33:13 |
| vacuum 49:1 | 30:17 31:4 | 63:17,24 65:1 | Wednesday 88:6 | 46:20 48:14 |
| 51:3 | 33:1 34:5 | 71:9,14,18 | week 12:17 | 51:3,5 52:7,17 |
| Valentine 8:15 | 35:12 37:8 | 74:13 79:24,25 | 13:22 31:20 | 52:24 65:21 |
| valid 22:20 | 38:9,15,17 | 81:16 82:4 | 34:13,21 37:1 | 74:11 88:14 |
| validity 23:5 | 39:2,2 40:2 | 85:9,13,25 | 40:12 67:2 | words 24:14 |
| 80:24 | 41:9,15 42:19 | way 19:15 20:16 | 68:8 86:25 | 57:12 83:6 |
| Valley 61:4 | 42:20 43:7 | 31:12 32:13 | 87:18 88:1 | work 12:25 13:1 |
| 70:16 | 48:15 50:20 | 33:23 35:15 | weekend 31:22 | 15:21 34:17 |
| valuable 20:3 | 51:23 52:20 | 36:14 39:24 | weeks 15:18 | 60:13 63:22,25 |
| 21:5 | 56:10 60:20 | 49:21 50:18 | 16:6 30:22 | 65:13 88:8 |
| variant 29:24 | 63:11,11 64:19 | 55:14 63:7 | 31:11,25 32:14 | worked 76:13 |
| 31:15 | 65:6,21 67:11 | 69:6 70:1 | 37:16 | working 33:10 |
| various 47:8 | 69:13 72:19 | ways 33:15 | weigh 20:21 | 33:11 |
| vegetation 78:14 | 73:3 75:23 | 47:22 63:16 | 21:23 | works 88:10 |
| vein 17:9 | 76:1 78:22 | we'll 8:5 13:22 | weight 65:19,23 | world 62:4,5 |
| version 38:6 | 80:15 84:23 | 13:23 31:19 | 72:8,12 | Worldwide 7:14 |
| versus 8:3 76:9 | 86:18,22 87:9 | 34:21 38:6 | welcome 78:23 | 89:23 |
| | 88:13 | 62:6 66:11 | went 12:18,25 | worse 31:15 |
| | wanted 18:2,3 | 86:24 88:16,19 | 13:2 27:3 | worth 28:7 |
| | 25:9 33:3 36:8 | 88:21 | 36:17 61:7,8 | 77:13 |
| | | we're 12:20 13:4 | 62:17,22 78:3 | wrapped 39:10 |

| | | | | |
|---|---|------------------------------------|---|--------------------------------|
| written 16:12 29:23 | 1000 2:6 | 2004 78:1 | 4 21:18 43:12,20 50:2,22 | 7611 4:14 |
| wrote 38:21 75:14 | 11 53:22 54:19 56:23 58:13,15 60:22,24 | 20044 4:15 | 4206 6:14 | 77027 7:15 89:24 |
| Wyoming 76:9 | 11-year 58:11 | 2008 80:24 | 43 70:9,11 84:20 | 78701 7:4 |
| <hr/> X <hr/> | 11:01 1:16 | 2013 29:2 | 446-7979 2:7 | 78703 5:8 |
| X 61:20,21 | 1100 5:13 | 2018 15:10 54:24 60:23 | 463-2012 2:18 | 78711 2:18 |
| <hr/> Y <hr/> | 111 1:15 | 2019 64:23,24 | 472-8021 6:4 | 78746 6:4 |
| Yeah 38:3 56:22 | 1120 3:2 | 202 4:15,20 | 48 79:11 | 792-3636 6:15 |
| year 26:7 29:19 46:11 54:23 60:24,25 61:2 61:21 62:9 63:21,22 64:3 65:5 77:5 | 113 2:13 | 2020 21:11 65:5 | 480-8231 5:9 | 7th 4:3 |
| years 14:16 15:12 25:23 26:6,10 27:11 53:22 54:19 56:24 58:13,16 58:20 60:22 61:10,25 62:10 62:20 63:18 64:2,4 | 11th 15:6 | 2021 1:14 21:13 89:17 | <hr/> 5 <hr/> | <hr/> 8 <hr/> |
| yield 64:14 | 12:59 88:24 | 20240 4:20 | 5 50:22 81:15 | 8:00 36:17 |
| you-all 12:16 38:12 | 125 4:24 | 2067 5:18 6:9 | 50 61:25 | 800 7:15 |
| <hr/> Z <hr/> | 12548 2:17 | 208-5432 4:20 | 500 2:6 3:8 5:3 | 800-745-1101 89:25 |
| Zachary 3:17 8:22 | 1260 7:3 | 22 54:18 | 505 2:23 3:9,14 3:19 5:4,19 6:10,15,20 | 801 4:25 |
| zogaz@nmag.... 3:20 | 1300 4:3 | 22-page 55:18 | 508-6281 4:4 | 80202 4:9 |
| <hr/> 0 <hr/> | 13th 25:19 34:7 | 223 89:23 | 50s 60:4 | 80203 3:3 4:4 |
| 04-30-22 89:20 | 141 1:3 8:5 | 2240 6:14 | 512 2:18 5:9 6:4 7:4 | 80205 2:13 |
| <hr/> 1 <hr/> | 15 73:23 75:10 83:25 | 22nd 89:17 | 514-3553 4:15 | 816 7:3 |
| 1 5:1 10:18,21 11:12 13:17 17:20 19:21 49:14 50:21 77:22 | 1508 3:18 | 235 7:14 89:24 | 524-5677 4:25 | 8262 89:20 |
| 1,400 73:13 | 1600 3:2 | 2386 6:19 | 52401 1:16 | 84138 4:24 |
| 10 63:20 | 17th 77:4 | 24 74:20 | 57 44:2 45:1 46:21 74:12 84:19 85:8 86:6,10 | 844-1375 4:10 |
| 10:00 36:18 | 180 81:1 | 242-2228 3:9 | 57/43 70:8 | 848-1800 5:4 |
| | 1849 4:19 | 26 42:4 46:15 48:12 | 570-4591 3:14 | 861-1963 3:3 |
| | 18th 4:9 | 26.101 41:22 | 575 5:14 7:10 | 87048 6:15 |
| | 1938 40:14,19 40:20 41:2,6 46:7,9 47:9 51:9 60:23 74:7,20,23 75:4 81:23 82:15,21 | 27 1:14 | <hr/> 6 <hr/> | 87102 3:8 |
| | 1947 46:11 | 2701 2:13 | 6 51:15 74:19 81:15 | 87103 5:4 |
| | 1985 85:7 | 279-7868 2:14 | 600 73:20 | 87501 2:23 3:13 3:18 |
| | 1st 34:14 | 2nd 88:4,8 | 604 7:9 | 87504 5:19 6:9 6:20 |
| | <hr/> 2 <hr/> | <hr/> 3 <hr/> | 6201 4:24 | 88005 5:13 |
| | 2 45:15,21 49:13 50:21 78:2 | 3 45:16 47:17 50:21 78:7 | 624-2463 7:10 | 88202 7:9 |
| | 2,500 73:12 | 30(b)(6) 41:1 | 636-2377 5:14 | <hr/> 9 <hr/> |
| | 2,600 73:19 | 300 6:3 | 699-1445 6:20 | 9:00 36:18 |
| | 20 5:13 | 3000 7:14 89:24 | <hr/> 7 <hr/> | 916 2:7 |
| | 200 25:22 83:16 83:19 | 303 3:3 4:10 | 700 3:8 | 94,000 26:7 48:2 |
| | 2000 22:14 | 303187 5:8 | 702 68:2 | 95814 2:7 |
| | 2003 78:1 | 320-5466 7:4 | 720 2:14 4:4 | 983-3880 5:19 6:10 |
| | | 325 2:22 3:13 | 745-1101 7:15 | 986-2637 2:23 |
| | | 329-4672 3:19 | | 999 4:9 |
| | | 370 4:9 | | |
| | | 3711 6:3 | | |
| | | 38 40:23 | | |
| | | <hr/> 4 <hr/> | | |