

EXHIBIT C.7

New Mexico Designations

1 IN THE SUPREME COURT OF THE UNITED STATES
BEFORE THE OFFICE OF THE SPECIAL MASTER

2 HON. MICHAEL J. MELLOY

3 STATE OF TEXAS, '
'

4 Plaintiff, '
'

5 vs. ' ORIGINAL ACTION
' CASE NO.: 220141

6 STATE OF NEW MEXICO, ' (ORIGINAL 141)
and STATE OF COLORADO, '

7 '
Defendants. '

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12 REMOTE VIDEOCONFERENCED DEPOSITION OF

13 TEMPLE MCKINNON

14 AUGUST 31, 2020

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25 Job No. 65192

1 REMOTE VIDEOCONFERENCED DEPOSITION OF
2 TEMPLE MCKINNON, produced as a witness at the
3 instance of Defendant State of New Mexico, and
4 remotely duly sworn by agreement of all counsel, was
5 taken in the above-styled and numbered cause on
6 August 31, 2020, from 11:32 a.m. to 1:03 p.m.
7 before Karen L. D. Schoeve, RDR, CRR, reported
8 remotely by computerized machine shorthand, pursuant
9 to the Federal Rules of Civil Procedure and the
10 provisions stated on the record or attached hereto;
11 that the deposition shall be read and signed.

12

13 This deposition is being conducted
14 remotely regarding the COVID-19 State of Disaster
15 status of the world.

16

17 REPORTER'S NOTE: Please note that due to
18 the quality of a Zoom videoconference and
19 transmission of data and overspeaking causes audio
20 distortion which disrupts the process of preparing a
21 videoconference transcript.

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3 you are in possession of said rough draft, please
4 replace it immediately with this CERTIFIED FINAL
5 TRANSCRIPT.

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7 Quotation marks are used for clarity and
8 do not necessarily reflect a direct quote.

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Registered Diplomat Reporter
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1 P R O C E E D I N G S

2 THE VIDEOGRAPHER: Time is 11:32 a.m.

3 We're on the record.

4 MR. ROBLES: Good afternoon, I think,

5 since you're in Central Time. How are you today?

6 THE WITNESS: Good, how are you?

7 MR. ROBLES: I'm good. I'm good.

8 At this time I'm going to ask the

9 court reporter to swear you in.

10 TEMPLE McKINNON,

11 having been first duly sworn to tell the truth, the

12 whole truth, and nothing but the truth, so help her

13 God, testified as follows:

14 EXAMINATION

15 BY MR. ROBLES:

16 Q. Would you please state and spell your

17 name.

18 A. Temple McKinnon. T-e-m-p-l-e.

19 M-c-K-i-n-n-o-n.

20 Q. Capital K?

21 A. Correct.

22 Q. Have you ever had your deposition taken

23 before?

24 A. No, I have not.

25 Q. I believe you sat in, you know, in air

1 quotes, sat in on the deposition of your fellow
2 Texas Water Development Board Director, Larry . . .
3 good Lord. I'm forgetting his name already.

4 A. Larry French.

5 Q. French, yes.

6 A. I did.

7 Q. So you have a sense for how this
8 particular process goes?

9 A. Yes.

10 Q. Is that fair?

11 A. Yes.

12 Q. Now, I may ask questions that are
13 difficult to understand or just simply don't make
14 any sense, and if I do that, will you tell me?

15 A. Yes, I will.

16 Q. And if anytime you want to take a break,
17 consult with your attorney, have a convenience
18 break, will you let me know as well?

19 A. Yes.

20 Q. And if at any time during this deposition,
21 you're uncertain about the direction it's headed or
22 you have other concerns that may not be apparent to
23 me but are apparent to you, will you let me know?

24 A. Yes.

25 Q. I'd like to begin by asking you about your

1 education. Would you please tell me the formal
2 education that you received that qualified you for
3 your position with the Texas Water Development
4 Board?

5 A. Yes, I have a Bachelor of Science degree
6 in Geological Sciences and a Master's
7 Degree -- Master of Science degree in Geological
8 Sciences.

9 Q. From which university did you obtain your
10 bachelor's degree?

11 A. University of Texas at Austin.

12 Q. And what year was that?

13 A. 1991.

14 Q. From which university did you obtain your
15 master's of science degree?

16 A. University of Montana in 2001.

17 Q. Aside from the two degrees that you've
18 just listed for me, had you received any other
19 formal education, you know, worked on a Ph.D.,
20 obtained a Ph.D., anything like that?

21 A. No.

22 Q. Prior to working with the Texas Water
23 Development Board, what is your relevant work
24 history?

25 A. I was a manager of a geochemical

1 laboratory at the University of Montana. Prior to
2 that, I worked at Texas Commission of Environmental
3 Quality, but I did air quality work, not water. And
4 then, I worked for an environmental consulting firm
5 right out of my undergraduate degree.

6 Q. So let me go over that. Did you state
7 those particular positions in the order in which you
8 held them?

9 A. Yeah, in reverse from present.

10 Q. Okay. So after obtaining your master's
11 degree, you worked as a consultant -- with a
12 consulting firm?

13 A. I'm sorry. So I'll restate that
14 chronologically. So after I received my bachelor's
15 degree, I worked for an environmental consulting
16 firm called EnecoTech.

17 After a couple of years with them, I
18 worked for what is now the Texas Commission on
19 Environmental Quality. And then I got my master's
20 degree.

21 And after I received my master's
22 degree, I came to work for the Water Development
23 Board.

24 Q. Now, you had also mentioned working as a
25 manager of a geochemistry lab at University of

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1 Montana?

2 A. Correct.

3 Q. Where does that figure?

4 A. What does it -- can you restate that?

5 Q. I believe you testified that you have
6 worked as the manager of a geochemistry lab at the
7 University of Montana?

8 A. That, okay, where does that figure.

9 That is -- as I completed my master's
10 degree and about eight months after my master's
11 degree before I returned to Texas to work with the
12 Water Development Board.

13 Q. So what type of work did you do with, I
14 believe it's EcoTech?

15 A. EnecoTech, E-n-e-c-o-T-e-c-h.

16 I conducted site assessments for
17 underground petroleum storage tanks that had
18 released contents to the soil and groundwater,
19 primarily.

20 Q. So when you say "conduct site
21 assessments," did you -- did you actually conduct a
22 testing of the ground beneath the storage tank that
23 apparently had a leak?

24 A. I collected the samples and took them to a
25 laboratory for analysis.

1 Q. To what extent did it involve conducting
2 groundwater testing, that particular job you had
3 with EnecoTech?

4 A. It involved monitor well installations,
5 the well development, sample collection of
6 groundwater.

7 Q. After working at EnecoTech, I understand
8 that you worked for the Texas Commission on
9 Environmental Quality?

10 A. Yes.

11 Q. And anytime that you worked for that
12 particular agency, did you do any work in either
13 surface water or groundwater?

14 A. No.

15 Q. You worked on your master's degree and
16 then you went to work for the Texas Water
17 Development Board; is that right?

18 A. Yes.

19 Q. When did you begin your work at the Texas
20 Water Development Board?

21 A. In 2001.

22 Q. In what position did you obtain -- what
23 was your entry position at the Texas Water
24 Development Board in 2001?

25 A. A research specialist.

1 Q. What is the job description of a research
2 specialist at the Texas Water Development Board?

3 A. The description of the job that I had was
4 to assist in the Office of Planning, for the
5 director of the Office of Planning, that was
6 primarily charged with developing the State water
7 plan. So any project he directed me towards, I was
8 to work on.

9 Q. I understand that you are now in surface
10 water?

11 A. No, I'm in planning.

12 Q. Oh, you're in planning. I'm sorry. I'm
13 sorry.

14 A. Right.

15 Q. After your work as a, I guess, a research,
16 I want to say, specialist; is that right?

17 A. Yes.

18 Q. What was your next position at the Texas
19 Water Development Board?

20 A. Regional water planner.

21 Q. What is a regional water planner?

22 A. It's a staff person that works directly
23 with regional water planning groups in the state.
24 So job responsibilities include management of the
25 grant contract that supports technical work for that

1 regional water planning group and then any
2 administrative or technical assistance that planning
3 group may need as they develop their regional water
4 plans.

5 Q. I apologize for interrupting.

6 A. That's okay.

7 Q. When did you take the position of regional
8 water planner?

9 A. Towards the end of 2002.

10 Q. How long did you work as the regional
11 water planner?

12 A. I worked in that department in various
13 capacities until 2016.

14 Q. In 2016, what was -- what was the position
15 that -- to which you were, I guess, hired or
16 assigned?

17 A. In 2016 I became director of the Water Use
18 Plant Projections and Planning Division.

19 Q. What are the goals and objectives of the
20 Water Use and Planning Division?

21 A. In our division, there are three
22 departments. One is charged with collecting water
23 use data and administering the planning data
24 collection. The other department is charged with
25 the oversight of the regional water planning groups

1 in the state. And then the third group is charged
2 with developing population and water demand
3 estimates and projections.

4 Q. What is the name of that -- I guess is it
5 a department or a group?

6 A. There's my division, so Water Use
7 Projections and Planning. And the three departments
8 under that division. There's the Water Use and
9 Planning Data Department. There's the Regional
10 Water Planning Department, and there's the Economic
11 and Demographic Analysis Department.

12 Q. Now, you went through them and I guess
13 maybe I should -- hold on a second. I apologize for
14 making you wait.

15 (Examined realtime screen.)

16 What is the -- so what is your role in
17 supervising those three departments that you
18 referenced in your testimony?

19 A. I'm responsible for the oversight of their
20 work and any identifying program initiatives,
21 keeping executive management informed of the
22 department's work.

23 Q. What is the -- what is the -- what are the
24 objectives, the goals of the regional water planning
25 department -- I'm sorry.

1 (Examined realtime screen.)

2 What are the objectives and goals of
3 the Water Use and Planning Data Department?

4 A. The -- so there's a requirement to conduct
5 an annual water use survey. That responsibility
6 falls within that department. They also administer
7 water system boundary viewer. So that's in
8 conjunction with the water use -- the annual water
9 use survey administration.

10 And then there's also a team that is
11 responsible for assisting external stakeholders,
12 with the -- primarily the regional water planning
13 group technical consultants, with the collection of
14 their planning data. And providing data request
15 information to external and internal parties of the
16 agency.

17 Q. You used the term "external stakeholder";
18 is that right?

19 A. Correct.

20 Q. What do you mean by that term?

21 A. Oh, that's generally anybody associated
22 with the regional water planning process. So
23 planning group members or the technical consultants
24 that support each of those planning groups. Any
25 interested person in the public, any other agency

1 staff that are involved with the planning process or
2 legislative increase. Anybody that has an interest
3 in regional water planning, State water planning.

4 Q. How would you define the term "just a
5 stakeholder"?

6 A. I'm confused.

7 Q. I'm sorry, I should ask a better question.

8 I asked you to define "external
9 stakeholder."

10 A. Um-hum.

11 Q. How does "external stakeholder" differ
12 from "just a stakeholder"?

13 A. Oh. I'm sorry. I differentiate between
14 internal and external parties that are interested.
15 So there's other areas of our agency that we
16 interface with for planning information. So I
17 should clarify, I guess all stakeholders in that
18 case would be external parties.

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19 Q. So internal stakeholder are the other
20 divisions, departments within the Texas Water
21 Development Board; does that sound right?

22 A. Right. They might ask our division for
23 data requests or data that we collect to support
24 their program efforts.

25 Q. There is the third department. I believe

1 it is the economic and demographic analysis

2 department; is that right?

3 A. Yes.

4 Q. What is the economic and demographic

5 analysis department's objectives and goals?

6 A. They are responsible for developing annual

7 population estimates and annual water use estimates,

8 gallons per capita per day.

9 They're responsible for every five

10 years projecting the population and water demands

11 utilized in the regional water planning process.

12 They're also responsible for the

13 development of the socioeconomic impact analysis

14 that's utilized by the regional water planning

15 groups and included in the State water plan.

16 Q. You used the term "socioeconomic"; is that

17 correct?

18 A. Correct.

19 Q. What do you mean by that term?

20 A. The State water plan is required to look

21 at the socioeconomic impacts of not meeting water

22 needs. So that is an analysis that's typically

23 conducted by our group and provided to the regional

24 water planning groups to include in their plans.

25 Q. Now there is the term in the name of the

1 department "economic" and demographic analysis
2 department. What economic analysis, aside from the
3 socioeconomic analysis, is conducted by the economic
4 and demographic analysis department?

5 A. That's primarily the extent of their work
6 that's involved with an economic analysis.

7 Q. I just want to be clear. Is it correct to
8 say that the extent of the economic -- of the
9 economic and demographic analysis department's group
10 view of the effect of the lack of water on a given
11 population, that's the extent to which there is an
12 economic analysis?

13 A. Correct.

14 Q. So -- and help me understand this. In
15 using the term "economic," it sounds as if there is
16 an analysis, a cost-benefit analysis, or simply an
17 analysis on the cost of the different ways in which
18 water policy might affect the community.

19 A. It is not a cost-benefit analysis. It's
20 an analysis of potential economic impact to a
21 community that does not have its water supply needs
22 met.

23 Q. In your experience, if you could just give
24 me an example of what you mean. I should say, based
25 on your experience as a director, would you please

1 give me an example of what you mean?

2 A. An example would be estimated job
3 losses -- or rather the estimated population losses
4 from an area that has a water shortage that's not
5 met.

6 Q. So the focus of the economic analysis
7 conducted by the department which you supervise is
8 focused on what effect water shortages will have on
9 the economy?

10 A. Correct.

11 Q. To what extent, if any, does this
12 department focus on the economic effects of water
13 quality?

14 A. None.

15 Q. And just to give you a precise example to
16 make sure that you and I are speaking the same
17 language, so to speak. If, let's say, surface water
18 has a certain salinity content to it, would your --
19 would this department conduct any economic analysis
20 to determine the impact of salinity on, let's say,
21 farm production?

22 A. No.

23 MS. BARFIELD: Objection; foundation.

24 Q. (BY MR. ROBLES) Is there any group,
25 department, or division within the Texas Water

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1 Development Board that would look at the economic
2 impact of water quality on a particular group, an
3 industry such as that, like, for example,
4 agriculture?

5 A. Not that I'm aware of.

6 Q. Having worked at the Texas Water -- the
7 Texas Commission on Environmental Quality, did you
8 ever run across any individuals who did work to
9 determine the economic impact of water quality?

10 A. No.

11 MS. BARFIELD: I'm sorry, the question
12 was not clear, were you asking her about what
13 happened at TCEQ?

14 MR. ROBLES: Yes. To the extent based
15 on her knowledge and her time at that department in
16 that particular agency.

17 A. All right. No.

18 MS. BARFIELD: Outside the scope of
19 this witness's designated testimony.

20 Q. (BY MR. ROBLES) It is correct to say,
21 that the Water Use Projections and Planning
22 Department is responsible for collecting and
23 compiling the planning data?

24 A. Correct.

25 Q. What is planning data?

Texas
Counter De...

1 A. The quantified elements and the regional
2 water plans as they're developed. So it would be
3 water availability, water supplies, and then the
4 estimated volumes and costs of water management
5 strategies that are recommended by each water
6 planning group.

7 Q. Let me just. . . .

8 You used the term "the estimated
9 volumes and cost of water management strategies"; is
10 that right?

11 A. Yes.

12 Q. What does that mean?

13 A. A water management strategy is what a
14 planning group recommends as a way to address
15 identified water supply needs that they find in
16 their planning efforts.

17 Q. Is that particular statement, is it
18 applicable to all -- to all -- you know, to the
19 entire State of Texas or is it specific to any
20 particular area within Texas?

21 A. It's applicable to the whole state. There
22 are 16 planning groups statewide, and they all are
23 held to the same rules and guidance as one another.

24 Q. Is it correct to say that your department
25 administers regional and state water planning

1 processes?

2 A. Yes.

3 Q. What is a state water planning process?

4 A. Every five years, our agency is charged
5 with developing a State water plan, and we do that
6 by aggregating the results of the five-year cycle of
7 the regional water planning groups, the plans they
8 develop.

9 Q. What is the -- what is a regional water
10 planning process -- what is the regional water
11 planning process?

12 A. It is within the State of Texas, there are
13 16 regional water planning groups, and it's by
14 statute.

15 There's specific interest groups that
16 must be represented on these planning groups. And
17 they have five years to produce a plan that
18 demonstrates their projected water demands for
19 certain categories of water use and identify water
20 supply needs for those categories of use; and then
21 come up with ways they're recommending to address
22 those water supply needs.

23 Q. What is the name of the regional water
24 planning area for El Paso County and Hudspeth
25 County?

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Designations

1 A. It's the Far West Texas Regional Water
2 Planning Group, but it's also referred to as Region
3 E.

4 Q. You also mentioned in your answer
5 interested stakeholders -- specific interest groups.
6 Do you remember saying that?

7 A. Yes.

8 Q. What do you mean by that term?

9 A. Statute defines there be representatives
10 from 12 categories of interest, and off the top my
11 head, I might miss them all. But some examples
12 would be municipalities, counties, water districts,
13 river authorities, industries, the public,
14 environmental interests, steam electric power
15 generation, and I'm sure there's a couple of others
16 I'm not thinking of right now.

17 Q. What is a regional water planning
18 database?

19 A. That is database that our agency maintains
20 and oversees that collects the quantified data that
21 supports the plan development for each of the
22 planning groups.

23 Q. Who has -- where would one find the
24 regional water planning database that's collected by
25 your department?

Texas
Counter De...

1 A. The technical consultants that are hired
2 by each regional water planning group are granted
3 access to this database to enter the data they are
4 developing as they produce their plan.

5 Q. So maybe I should have asked this
6 question: Who collects the data that goes into the
7 regional water planning data?

8 A. Well, each regional water planning group
9 has contracted technical consulting teams that
10 assists them with the development of their plan, and
11 those technical consultants are the ones that
12 develop the data and enter it into the database that
13 our agency administers and oversees.

14 Q. That would be true for Region E as well?

15 A. Yes.

16 Q. Do you know who collects the data -- the
17 regional water base planning data for Region E?

18 A. The name of the consulting firm, is that
19 what you're asking?

20 Q. Yes.

21 A. The primary consultant on that region is
22 WSP.

23 Q. And that's an acronym, would that be
24 correct to say?

25 A. Correct.

1 Q. What does that acronym stand for?

2 A. I don't know, off the top of my head.

3 Q. Fair enough.

4 What, if anything, does the Texas
5 Water Development Board do to determine whether the
6 data it's receiving from the contractors from the
7 various regions is accurate and reliable?

8 A. There are -- the water demands data and
9 population projections, those are developed by our
10 economic and demographic analysis group and then
11 provided to the planning groups for review and
12 revision. And then upon approval by our agencies,
13 we upload that data into the database.

14 Water availability is determined by
15 the desired future conditions process, and those
16 numbers are developed by the Water Development
17 Board. So we know directly from the source that
18 we're receiving that availability information.

19 And then we have various checks in the
20 database for strategy data that makes sure that
21 volumes of strategies don't over-allocate sources of
22 supply. Other water availabilities are determined
23 by the technical consultants and are based upon
24 existing water rights and contracts that exist in
25 the planning area in which they're developing the

Texas
Counter De...

1 plan.

2 Q. Maybe it's the way that I asked the
3 question, so forgive me. But I was hoping to find
4 out what particular types of testing -- sample
5 testing, spot testing -- that the Texas Water
6 Development Board does in order to ensure that the
7 data that it's receiving from the various
8 contractors for the region is, in fact, accurate and
9 reliable.

10 A. I guess, can you give me an example of
11 spot testing that you're asking about?

12 Q. If you received, for example, that there
13 is a certain level of water in a groundwater
14 reservoir in a particular region. What efforts are
15 made -- and you learned that from the contractor
16 who's providing you with that data. And then over
17 the course of a particular period of time, that that
18 level has changed, to a certain degree.

19 What efforts are made to determine
20 that the data that was received from that contractor
21 is, in fact, accurate?

22 A. So the groundwater availability data
23 that's reflected, it's a quantified amount as
24 established through the joint planning process, the
25 DFC process. So that's a modeled number. That's a

Texas
Counter De...

1 separate process that occurs every five years, and
2 the results of that separate process inform the
3 regional water planning process.

4 Q. So one thing is the question about the
5 validity and reliability of a model, which is not
6 what I'm asking. But, how do you determine that the
7 data that's actually placed in the model that you
8 obtained from contractors, is in -- to what extent
9 do you do anything to verify its accuracy?

10 A. That's not conducted in my department.

11 Q. Do you know of any department in the Texas
12 Water Development Board that determine -- that
13 checks the accuracy of the data that's being
14 received from the various contractors in the regions
15 that provide your department with information?

16 A. Oh, I thought you were asking me about
17 verifying models.

18 Q. No-no-no. I'm not asking you about
19 models. I'm asking you about data that goes into
20 the models.

21 A. Data that goes into models? Well, for
22 surface water availability, the planning groups have
23 to use the water availability models that are
24 administered by TCEQ.

25 The groundwater availability models,

1 those are developed by the Groundwater Division of
2 the Water Development Board. So those two groups
3 would be in charge of checking data going into model
4 development.

5 Q. Now, I wanted to be sure about a term you
6 had mentioned to me. So that, you know, that when I
7 mention it, you and I are talking about the same
8 thing. And that is "Region E."

9 Now, Region E is a regional water
10 planning area; is that correct?

11 A. Correct.

12 Q. So when I say "Region E," is it okay with
13 you that you and I both understand that we're
14 talking about a regional water planning area, the
15 Far West Texas area that you had mentioned
16 previously?

17 A. Yes.

18 Q. Well, how is sociodemographic data
19 analyzed by your department?

20 A. We are conducting a socioeconomic impact
21 analysis. We build out -- and plan model with
22 various sets of data collected and apply it to each
23 regional water planning area, based upon the water
24 supply needs they've identified -- that group has
25 identified.

1 Q. So, again, my simple way of looking at
2 things. Is it correct to say that the socio-
3 demographic analysis takes into account a population
4 and its growth or decline and determines the water
5 needs of that population over time?

6 A. No, the model itself just looks at water
7 supply needs that aren't met. We -- in our
8 projections, that's for population and growth.
9 That's -- different models are used for population
10 projections and growth and decline estimates --
11 independent of the economic model I had previously
12 referenced.

New Mexico
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13 Q. What is a Water Use Survey Program?

14 A. Our annual Water Use Survey Program
15 is -- collects -- it surveys the active community
16 public water systems in the state and industrial
17 facilities across the state.

18 Q. How is that data used that's collected?

19 A. That data produces historic water use
20 estimates that are utilized in our development of
21 our water demand projections.

22 It also collects groundwater pumpage
23 data that's utilized in the development of the
24 groundwater availability model. It's utilized by
25 technical consultants of planning groups to inform

1 their supplies for the entities that they're
2 planning for.

3 Q. Does the Texas Water Development Board
4 reach conclusions that it provides to the regions,
5 or do the regions take the data that's collected
6 and come up with a plan which the Texas Water
7 Development Board approves?

8 A. The regions develop a plan for the Texas
9 Water Development Board to approve.

10 Q. What is the name of that plan?

11 A. The Regional Water Plan.

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12 Q. What is the Texas Water Development
13 Board's, I guess -- what does the -- what is the
14 role of the Texas Water Development Board in
15 approving or declining to approve a Regional Water
16 Plan?

17 A. So each planning cycle, there's a point at
18 which a draft Regional Water Plan is submitted for
19 review.

20 That plan is also referred to as an
21 "initially prepared plan." My staff -- or we
22 have -- our executive administrator has 120 days
23 following submittal of that draft plan to submit
24 review comments to the planning group that must be
25 addressed before their final adopted Regional Water

1 Plan is due.

2 And then once the final adopted plan
3 is submitted to the Water Development Board, we
4 again review that plan to make sure that the
5 executive administrator's comments were sufficiently
6 addressed in order to take that plan to our board
7 for approval.

8 Q. What is the nature of the group you
9 conducted by your department of the regional water
10 plans? Is it procedural, that is, you're looking
11 for different things to sort of check the boxes, or
12 is it substantive; that is, to determine whether it
13 meets the goals of the Texas Water Board?

14 A. It's -- it's a bit of both. There are
15 administrative review aspects to our review. We
16 also conduct quantitative reviews. We have to make
17 sure that no supply source utilized in the plan
18 development is over-allocated by utilization of
19 current supplies and recommended future supplies.

20 Q. Is one of the purposes of developing a
21 Regional Water Plan, is it to conserve water
22 resources?

23 A. That is one aspect. Planning groups
24 definitely recommend conservation water management
25 strategy, yes.

1 Q. If your review of a plan reveals that
2 there is the missed allocation, the waste of water
3 resources, what, if anything, does the Texas Water
4 Development Board do to prevent that particular plan
5 from going forward?

6 A. We don't specifically review for waste of
7 water resources. You asked about a missed
8 allocation. We review quantitatively to make sure
9 that no source of supply is over-allocated, meaning
10 you can't have current supplies and anticipated
11 future supplies from the same source that exceeds
12 the availability of that source.

13 Q. So if, for example, the available
14 groundwater in a particular region is declining at a
15 rate that will no longer allow for the allocated use
16 of that resource, do you have the region change the
17 plan?

18 A. Yes.

19 Q. In what way would you have the region
20 change the plan in the scenario that I just
21 described?

22 A. Our database would check quantitatively if
23 they're relying upon water that is not there. And
24 they would either have to develop an alternative
25 recommended strategy to address that need or they

1 would have an unmet water supply need. We cannot
2 show that they're meeting that need with a source of
3 supply by over-allocating it.

4 Q. When a plan reveals -- upon analysis, if a
5 plan reveals that there is an unmet need, what steps
6 do you take to ensure the plan accurately will
7 follow the amount of water that will be available in
8 the future?

9 A. Can you restate that question?

10 Q. When your department comes across a plan
11 that reveals that there is a -- that there is water
12 being allocated and it simply won't be that water in
13 the future, what do you do to ensure that the plan
14 is revised to ensure that it will only, you know,
15 essentially plan for water that will actually be
16 there?

17 A. We notify the consultants developing the
18 plan at the time they enter that information into
19 the database, and it's flagged as an over-allocation
20 that they're given notice. That's an issue at that
21 point in time, so they're able to correct it before
22 their draft plan is due.

23 If it still remains that way when the
24 draft plan is due, then we give them a comment that
25 they have an over-allocated source that must be

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1 corrected, but the expectation that that be

2 addressed before their final plan.

3 Q. If the Regional Water Plan is presented to

4 you and your staff, which reveals that adequate

5 steps are not being taken to conserve water

6 resources, what steps, if any, will the Texas Water

7 Development Board take to reform or modify the

8 Regional Water Plan?

9 A. Our governing statute requires the

10 conservation must be considered for all identifying

11 water needs. And we issue a comments to the

12 planning group that they submit a draft plan to us

13 that does not have a recommended conservation

14 strategy, yet has an identified water need for that

15 specific entity.

16 Q. What are the sanctions that -- and, again,

17 I'll say that word broadly -- what sanctions, if

18 any, does the Texas Water Development Board have if

19 a region is unwilling to change their water -- the

20 Regional Water Plan to conform with the comments and

21 recommendations of the Texas Water Development

22 Board?

23 A. There's certain comments that must be

24 addressed for an approvable plan, and if they're not

25 addressed, then our board would not approve

1 their -- we would not take a plan to our board and
2 recommend they approve it.

3 Q. So the sanction that's available -- and
4 correct me if I'm wrong, the sanction that's
5 available for a region that's not enacted -- or does
6 not prepare and produce a final plan that meets all
7 the comments that's provided by your department, is
8 that it simply won't be approved by the Commission?

9 A. By the Water Development Board, yes.

10 Q. Board, I'm sorry. Is that right?

11 A. Yes.

12 Q. What authority does the Texas Water
13 Development Board have when a region does not follow
14 its Regional Water Plan?

15 A. Can you define what you mean by "follow"?

16 Q. If, for example, a particular region
17 prepares and submits to you a conservation plan
18 and you approve the Regional Water Plan with the
19 understanding that this conservation strategy will
20 be implemented, which you find out later that the
21 region is not implementing the strategy that the
22 Texas Water Development Board approved, what
23 authority do you have to take any action?

24 A. It's -- our agency does not have authority
25 to force implementation of any recommended strategy.

1 That's up to local level and utilities to develop
2 projects that they identify and recommend.

3 Q. What steps or efforts are undertaken by
4 the Texas Water Development Board to ensure that a
5 region is following its approved Regional Water
6 Board?

7 MS. BARFIELD: I'm sorry. The
8 question lacks foundation based on her prior
9 response. Go ahead.

10 A. You mean "implementing" when you say
11 following?

12 Q. (BY MR. ROBLES) I'm fine with the term
13 that you're using, and maybe I should restate it.

14 A. Okay.

15 Q. If a region fails to implement the
16 approved Regional Water Plan, what steps or efforts
17 does the Texas Water Development Board take to find
18 out if that's happened?

19 A. Each regional water planning group, as
20 part of their plan development, they're required to
21 assess implementation progress from the previous
22 plan, so with their implementation survey that's
23 conducted with each plan. So that's how we assess
24 implementation progress.

25 Q. So it's correct to say that the way in

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Designations

1 which the Texas Water Development Board determines
2 whether there is compliance by a region with its
3 Regional Water Plan is self-reporting?

4 A. Correct, plus any implementation our
5 agency is aware of by entities that come to our
6 agency for funding of projects. We provide that
7 information to planning groups so they're aware.

8 Q. So I want to take an example. If -- and,
9 again, this is, I guess, real world stuff.

10 If there is a very severe drought and
11 there needs to be conservation measures taken as a
12 result of it, and those conservation measures are
13 memorialized in the Regional Water Plan. But the
14 Region decides to continue with a water use that
15 exceeds the amount that -- or that exceeds the
16 amount that would be advisable under drought
17 conditions. Who, if anyone, can take action to
18 enforce the Regional Water Plan?

19 A. Conservation strategies and the Regional
20 Water Plan are informed by required conservation
21 plans that must be submitted to the TCEQ and the
22 Water Development Board. But the Water Development
23 Board does not enforce implementation of any
24 conservation programs. The TCEQ may, but I don't
25 know that.

1 Q. In your experience, in your work in both
2 state agencies, the TCEQ and Texas Water Development
3 Board, have you ever seen a situation in which
4 enforcement action was necessary as a result of a
5 region not following its Regional Water Plan?

6 MS. BARFIELD: The question is outside
7 of this witness's defined testimony and lacks
8 foundation.

9 A. No, I have not.

10 MR. ROBLES: I see that we've almost
11 gone about an hour. Good time to take about a
12 ten-minute break?

13 MS. BARFIELD: Sure.

14 MR. ROBLES: So we'll join you at 1:30
15 Central Time.

16 THE VIDEOGRAPHER: The time is 12:21.
17 We're off the record.

18 (A recess was taken from 12:21 p.m. to
19 12:33 p.m.)

20 THE VIDEOGRAPHER: The time is
21 12:33 p.m. We're on the record.

22 Q. (BY MR. ROBLES) To what extent, if any,
23 does the Texas Water Development Board's planning
24 process address the issue of water salinity?

25 A. Regional plans must discuss water quality

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1 impacts of the strategies they recommend.

2 Q. What role, if any, does the Texas Water
3 Development Board play in the Rio Grande salinity
4 project?

5 A. None that I'm aware of.

6 Q. Who, if any -- maybe as opposed to asking
7 about a person -- which department, based on your
8 experience, would deal with a project such as that,
9 the Rio Grande salinity project?

10 A. I don't know.

11 Q. Does that term ring a bell at all?

12 A. No.

13 Q. With regard to the planning process, has
14 the Texas Water Development Board identified an
15 acceptable salinity level or budget?

16 A. No.

17 MS. BARFIELD: Lacks foundation.

18 Q. (BY MR. ROBLES) Would you please explain
19 how the planning process at the Texas Water
20 Development Board views, assesses, and issues
21 recommendations on water salinity?

22 MS. BARFIELD: Question lacks
23 foundation. It's outside the scope of the testimony
24 that this witness is designated to give.

25 A. Some plans recommend desalination of

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1 groundwater as a future source of supply.

2 Q. (BY MR. ROBLES) Aside from recommending
3 the desalination of groundwater for future supply,
4 is there any other way in which the planning process
5 of the Texas Water Development Board addresses the
6 issue of water salinity?

7 MS. BARFIELD: Again, lacks foundation
8 and goes outside the scope of the testimony that
9 this witness is designated to provide.

10 A. There are other regional plans across the
11 state, not Region E, but they have seawater
12 desalination recommended. At least one other
13 regional plan has a chloride control project
14 recommendation -- recommended strategy.

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Counter De...

15 Q. (BY MR. ROBLES) What do you know about
16 Region E and the issue of water salinity?

17 MS. BARFIELD: Lacks foundation, goes
18 outside the scope of the testimony this witness is
19 designated to provide.

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20 A. I know that they have recommended
21 strategies of brackish groundwater desalination.

22 Q. (BY MR. ROBLES) Aside from desalination
23 of brackish groundwater, have you run across any
24 other issue regarding water salinity in Region E?

25 MS. BARFIELD: Same objections.

1 Overbroad, vague, ambiguous.

2 A. No, I have not.

3 Q. (BY MR. ROBLES) To what extent, if any,
4 has your department made an economic assessment, a
5 socioeconomic assessment about the impact of water
6 salinity in Region E?

7 A. None that I'm aware of.

8 Q. What does the Texas Water Development
9 Board do to ensure that its regional water plans
10 provide for the efficient use of water?

11 A. Other than conservation strategies that I
12 previously discussed, we don't assess the efficiency
13 of water use.

14 Q. What does the Texas Water Development
15 Board do in its planning process to control and
16 prevent waste in its review and approval of regional
17 water plans?

18 A. We don't specifically review for control
19 and prevention of waste in the regional water plan.

20 Q. And that would be a correct statement --

21 A. I guess -- can I correct that statement?

22 Q. Oh, sure.

23 A. Each planning group has to take into
24 consideration information from water loss audits
25 that our agency also -- the program they oversee.

1 So our review would be an administrative check that
2 that information was considered.

3 Q. What is a water loss audit?

4 A. That is a program administered by a
5 different division, but broadly it is that utilities
6 report to our agency the degree of water loss in
7 their system.

8 Q. When you say "water loss," are you
9 referring to water that's unaccounted for or that
10 there is a difference from projected water and what
11 water is actually available?

12 A. I'm referring to water in their
13 distribution system that they determined to be lost
14 in their system.

15 Q. So when you say "lost in their system,"
16 that means leaks in pipes. Is that what you mean?

17 A. Yes, generally. There may be more to it
18 than that. It's not a program I administer.

19 Q. Okay. Fair enough.

20 How does the planning department use
21 water loss audit information in its planning
22 processes?

23 A. It's information that's provided to the
24 planning groups to consider if they feel that it is
25 appropriate to recommend a strategy to address water

1 and possible with the infrastructure they have, yes,
2 it is possible.

3 Q. I notice that in the manner in which you
4 answered that question, you seemed a bit taken back
5 by what I had asked. Is that something that
6 actually happens, or am I just posing a hypothetical
7 that you had not seen in your experience?

8 A. I just wanted to make sure I understood
9 your question. I don't know, off the top of my
10 head, what Region E, what their volumes of reused
11 water are projected to be. So I just wanted to make
12 sure I understood what you were asking me, if it was
13 possible or they were -- what they were claiming. I
14 can't tell you off the top of my head the quantified
15 amounts of projected reuse they have in their plan.

16 Q. Because the Texas Water Development Board
17 is responsible, not just for Region E but for all
18 the regions in the Rio Grande -- along the Rio
19 Grande Basin, isn't there a concern that if reused
20 water allows for a higher-projected use in one
21 region, that the downstream region would have less
22 available water of its own?

23 MS. BARFIELD: Argumentative as
24 phrased. Potentially lacks foundation and goes
25 outside the scope of this witness's testimony. Go

1 ahead.

2 A. If more water is reused in a system, it is
3 potentially possible that less water would be
4 discharged into the river.

5 Q. (BY MR. ROBLES) How does -- in such a
6 scenario, how would the Texas Water Development
7 Board address such a situation?

8 A. That's not a programmatic issue that we're
9 charged with administering. That's a water rights
10 issue.

11 Q. And who would address that water rights
12 issue?

13 A. TCEQ.

14 Q. We've talked about -- and I guess you use
15 the term "reused water" or "reuse water"; is that
16 right?

17 A. Yes, reclaimed.

18 Q. Reclaimed. Why is the term "reclaimed"
19 not appropriate and "reuse" is, just for my
20 edification?

21 A. I'm just using it -- I'm sure they're
22 interchangeable.

23 Q. Okay. Aside from the various issues that
24 we've discussed about reused water, is there any
25 other way in which the Texas Water Development Board

1 Planning Division addresses reused water?

2 A. We collect it through our annual water
3 use survey. We apply that information in our
4 water demand -- in our water use estimates and
5 projections, and we provide the data collected to
6 planning groups for consideration in their plan
7 development.

8 Q. And if there's a dispute between an
9 upstream and a downstream region, that's not
10 something in which the Texas Water Development Board
11 embroils itself in?

12 A. What do you mean by a "dispute"?

13 Q. If the downstream region is claiming that
14 the upstream region is using -- is using or reusing
15 water and not making it available for the downstream
16 region, that's a situation in which the Texas Water
17 Development Board does not involve itself in?

18 A. In their planning efforts, if two regions
19 are claiming the same source of water and can't
20 resolve that issue amongst themselves, they may
21 potentially have an interregional conflict. Which
22 if regions can't resolve that themselves, our board
23 is charged with resolving it for them.

24 Q. Do you know of any consulting group,
25 university, or other academic who has peer-reviewed

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1 the planning process undertaken by the Texas Water
2 Development Board?

3 A. We've had a consulting group review
4 portions of our process, but specifically our
5 projections methodology and our -- give us input on
6 our socioeconomic impact analysis methodology.

7 Q. No?

8 A. Well, so holistically our entire process,
9 I guess, no. Only specific portions of it.

10 Q. What steps has the Texas Water Development
11 Board taken internally to assess the validity and
12 reliability of the various analysis that it
13 undertakes in the planning process?

14 A. So as I just mentioned, we hired a
15 consulting group to review our water demand
16 projections methodologies for certain categories of
17 use.

18 We have contracted to collect data, I
19 guess that was with the University -- the Bureau of
20 Economic Geology through a grant from the United
21 States Geological Survey to get better handle on
22 water use in the mining sector.

23 We -- and fundamentally, our process,
24 any information we provide to the planning groups,
25 there is an opportunity within the guidelines we

1 give them to provide us with better locally
2 available data to supplement our revised information
3 produced by our agency with the data that we have
4 available.

5 Q. What is the name of the consulting group
6 to which you refer?

7 A. CDM Smith reviewed our projections
8 methodologies at the beginning of this planning
9 round.

10 BBC Consulting reviewed our
11 socioeconomic impact analysis methodology.

12 And then the Bureau of Economic
13 Geology, that's a -- for lack of a better word, a
14 division of the University of Texas at Austin. They
15 are -- they've conducted a study in the past and
16 will be embarking on a study in the near future for
17 better water use data in the mining sector.

18 Q. What is the name of the CDM report?

19 A. The name of the report. I don't know off
20 the top of my head, but I believe it's available on
21 our website.

22 Q. Where would I look for it?

23 A. I think you can find it under -- on our
24 agency's website, there's a water planning tab and
25 then -- I'm speculating without navigating on our

1 web page directly. Should I just provide it to you
2 following my deposition?

3 Q. Fair enough.

4 A. Okay.

5 Q. What is the name of the report prepared by
6 BBC?

7 A. Same thing. I don't know the name of the
8 report off the top of my head.

9 Q. Where can I find BBC's report?

10 A. It would be in our regional water planning
11 web page, I believe. But I would have to give you
12 that exact address after I look at it myself.

13 Q. With regard to that -- I believe it's the
14 Bureau of Economic Geology; is that correct?

15 A. Correct.

16 Q. What is the name of the report that this
17 entity prepared?

18 A. Again, I don't know the exact name of that
19 report. I can provide it.

20 Q. Where would I find that report?

21 A. It would be on the same page where you
22 could find the CDM Smith report, I believe. So I
23 can provide that to you.

24 Q. Have you ever presented to a group,
25 whether it's government citizens or college

Texas
Counter De...

1 students, a presentation in which you explained the
2 planning process to them?

3 A. Yes.

4 Q. Where would that be?

5 A. That would be on our regional water
6 planning page. We have some educational resources.

7 But I've given several presentations, in my
8 experience, so specific presentations would be in my
9 files.

10 Q. Are any of those presentations publicly
11 available?

12 A. Yes. The ones on our regional water
13 planning website are. We have several presentations
14 for components and requirements of the regional
15 water planning process.

16 Q. Now, I've asked this question indirectly,
17 so I want to ask this question much more directly,
18 changing subjects.

19 What is the authority of the Texas
20 Water Development Board over the regions in the
21 State of Texas?

22 A. Our authority is to provide the regions
23 legislatively appropriated funds through grant
24 contracts. So to fund their planning efforts in the
25 development of their regional water plans.

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1 Q. Aside from the allocation of grant
2 funding, is there any other authority which the
3 Texas Water Development Board has over its 16
4 regions?

5 A. Just to assist those groups in developing
6 their regional water plans by statutory deadlines.

7 MR. ROBLES: So, Theresa if you gave
8 me five minutes, I think I may be done.

9 MS. BARFIELD: Yes, that's fine.

10 MR. ROBLES: We'll come back -- it
11 would be 1:00 Mountain Time. 2:00 Central Time.

12 MS. BARFIELD: Great.

13 MR. ROBLES: Thanks.

14 THE VIDEOGRAPHER: The time is
15 12:55 p.m. We're off the record.

16 (A recess was taken from 12:55 p.m. to
17 1:03 p.m.)

18 THE VIDEOGRAPHER: The time is
19 1:03 p.m. We're on the record.

20 MR. ROBLES: Miss McKinnon, those are
21 all the questions I have for you.

22 Other attorneys may have questions for
23 you, but those are the questions I have.

24 Thank you, once again, for sitting for
25 this deposition.

1 THE WITNESS: Sure. Thank you.

2 MS. BARFIELD: Does anyone else have
3 questions?

4 MR. DuBOIS: None from the U.S.

5 MS. HALVORSEN: None from Colorado.

6 MS. BARFIELD: Okay. We're all done.

7 Thank you.

8 MR. ROBLES: Thank you.

9 THE VIDEOGRAPHER: The time is
10 1:03 p.m. We're off the record.

11

12 (Remote deposition concluded at

13 1:03 p.m., August 31, 2020.)

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IN THE SUPREME COURT OF THE UNITED STATES
BEFORE THE OFFICE OF THE SPECIAL MASTER

HON. MICHAEL J. MELLOY

STATE OF TEXAS,	§
	§
Plaintiff,	§
	§
vs.	§ ORIGINAL ACTION
	§ CASE NO.: 220141
STATE OF NEW MEXICO,	§ (ORIGINAL 141)
and STATE OF COLORADO,	§
	§
Defendants.	§

REPORTER'S CERTIFICATE
REMOTE VIDEOCONFERENCED DEPOSITION OF
TEMPLE MCKINNON
AUGUST 31, 2020

I, Karen L. D. Schoeve, Registered Diplomate Reporter, Certified Realtime Reporter, and Realtime Systems Administrator, residing in the State of Texas, do hereby certify that the foregoing proceedings were reported by me and that the foregoing transcript constitutes a full, true, and correct transcription of my stenographic notes, to the best of my ability and hereby certify to the following:

1 Subscribed and sworn to on this the 8th day of
2 September, 2020.



3
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