

No. 141, Original

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In the  
SUPREME COURT OF THE UNITED STATES

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STATE OF TEXAS,

Plaintiff,

v.

STATE OF NEW MEXICO and  
STATE OF COLORADO,

Defendants

---

OFFICE OF THE SPECIAL MASTER

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SUPPLEMENTAL APPENDIX TO THE UNITED STATES OF AMERICA'S  
REPLY TO THE STATE OF NEW MEXICO'S MOTIONS FOR SUMMARY  
JUDGMENT

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**TO THE SPECIAL MASTER, ALL PARTIES AND THEIR ATTORNEYS OF RECORD:**

**PLEASE TAKE NOTICE** that the United States of America hereby provides the following supplemental appendix to their recently filed Reply in Support of Motion for Partial Summary Judgment. The documents contained in the below appendix are those that have not been previously provided to the Special Master, either as part of the United States of America’s Motion for Partial Summary Judgment or the State of New Mexico’s Motions for Summary Judgment and subsequent responses. The documents contained in the below appendix have been submitted to the Special Master via electronic media and have been deposited into the Box.com repository. The documents deposited in the box.com repository may now be downloaded by persons who have set up accounts for the use of this service. In addition, the United States understands that the documents will be transferred to the Veritext system by third parties.

Deposition Transcript Excerpts		
Bates Beg	Bates End	File Name
		Deposition Excerpts of John D’Antonio, June 25, 2020 (Vol. II)
		Deposition Excerpts of John Longworth, November 20, 2020 (Vol.II)
		Deposition Excerpts of Cheryl Thacker, September 18, 2020

Respectfully submitted this 5th day of February, 2021.

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**OFFICE OF THE SPECIAL MASTER**

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**CERTIFICATE OF SERVICE**

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This is to certify that on the 5th day of February, 2021, I caused a true and correct copy of the **SUPPLEMENTAL APPENDIX TO THE UNITED STATES OF AMERICA’S REPLY TO THE STATE OF NEW MEXICO’S MOTIONS FOR SUMMARY JUDGMENT** to be served via electronic mail upon those individuals listed on the Service List, attached ~~Respectfully~~ respectfully submitted,

/s/ Seth C. Allison  
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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,	)	
	)	Original Action Case
VS.	)	No. 220141
	)	(Original 141)
STATE OF NEW MEXICO,	)	
and STATE OF COLORADO,	)	
	)	
Defendants.	)	

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REMOTE ORAL AND VIDEOTAPED DEPOSITION OF  
JOHN D'ANTONIO  
JUNE 25, 2020  
VOLUME 2

\*\*\*\*\*

REMOTE ORAL AND VIDEOTAPED DEPOSITION of JOHN D'ANTONIO, produced as a witness at the instance of the Plaintiff State of Texas, and duly sworn, was taken in the above-styled and numbered cause on June 25, 2020, from 9:15 a.m. to 12:57 p.m., before Heather L. Garza, CSR, RPR, in and for the State of Texas, recorded by machine shorthand, at the offices of HEATHER L. GARZA, CSR, RPR, The Woodlands, Texas, pursuant to the Federal Rules of Civil Procedure and the provisions stated on the record or attached hereto; that the deposition shall be read and signed.

1 the need for New Mexico farmers to pump groundwater.  
2 When -- when I was putting this active water resource  
3 management initiative in place, I would have had  
4 control of limitations on -- on how we would get  
5 together with this Lower Rio Grande Water Users group  
6 and implement, I would say limitations on pumping and  
7 other things that were in my control, since -- since  
8 the operating agreement, yeah, I'm even more concerned  
9 about the groundwater pumping because -- because it  
10 has changed the project apportionments and is forcing  
11 New Mexico to pump much greater amounts of  
12 groundwater.

13 **Q. Let's take a look at the next slide, which is**  
14 **0539814.**

15 A. Is that it?

16 **Q. I used the word concerned before. You define**  
17 **it here as a problem. Is that -- is that correct?**

18 A. Well, I want to confirm I'm on the right  
19 slide.

20 **Q. That's it.**

21 A. Okay.

22 **Q. We got it so large now that -- but it's good**  
23 **for my old eyes, I can assure you, so I'm not**  
24 **complaining.**

25 A. Let me reduce it a little bit, so I can see

1 more of it. Okay.

2 Q. You define groundwater pumping here as a  
3 problem; is that correct?

4 A. Yes.

5 Q. And you -- you talk about heavy reliance on  
6 groundwater without controls on it and then you list  
7 three bullet points, right?

8 A. Yes.

9 Q. And you say in the first bullet point, I will  
10 repeat essentially what you said before, in that  
11 groundwater and surface waters are linked, but here  
12 you use the word closely linked. What does -- what  
13 does that mean?

14 A. A direct connection, hydrologic connection.

15 Q. And on the second bullet point, you  
16 say, "Pumping" -- presumably groundwater  
17 pumping -- "reduces river flow"; is that correct?

18 A. Yes.

19 Q. Okay. So river flow is how water gets from  
20 Elephant Butte reservoir to Texas; is that -- is that  
21 correct?

22 A. Yes.

23 Q. So if groundwater pumping in New Mexico  
24 reduces river flow, does that mean it also reduces the  
25 amount of water flowing to Texas?

1                   **MR. WECHSLER:** Object to form.

2           A.     Not necessarily. When you say to water  
3 flowing to Texas, there -- there's enough -- what  
4 this -- what this presentation doesn't say and doesn't  
5 include is all the groundwater pumping that  
6 historically happened in Texas to disconnect that  
7 groundwater from its surface water supply and the  
8 effects of that surface water, as it goes through the  
9 Texas basins that have been over pumped. So this --  
10 this presentation is meant for the water users within  
11 New Mexico and -- and so, you're right, as we -- as we  
12 managed water within the State of New Mexico,  
13 obviously we were very concerned about making sure any  
14 increased activity with respect to permitting would  
15 only look at transfers of the consumptive use portion  
16 so that we would minimize any of the ground and  
17 surface water connections and -- and impacts.

18           **Q. (BY MR. SOMACH)** Let's isolate. A moment ago,  
19 you said that the interconnection between these  
20 so-called over pumped basins in Texas and the basins  
21 in New Mexico, Mesilla and Rincon valleys, that their  
22 hydrologic connection was very limited. And so  
23 let's -- let's focus on the flow of water through New  
24 Mexico, and -- and it's true that water released from  
25 Caballo that was intended to go to Texas must flow

1 through New Mexico; is that correct?

2 A. Yeah, that's correct.

3 Q. Okay. And so to the extent that there is  
4 surface water in the Rio Grande that is flowing to  
5 Texas, will groundwater pumping in New Mexico have an  
6 affect on that flow of water?

7 MR. WECHSLER: Objection; ambiguous.

8 A. I can say it will have a affect. I'm not  
9 sure exactly what affect. And I think that goes back  
10 again to asking our modelers and our experts on what  
11 exactly that affect is.

12 Q. (BY MR. SOMACH) If -- is New Mexico river --  
13 is -- is water flowing in the river -- the Rio Grande  
14 in New Mexico, that is used by New Mexico interest any  
15 different from the flow of water in the Rio Grande  
16 that is intended for use by Texas? Are they -- is  
17 there some physical distinction between that flow that  
18 is used in New Mexico and that flow that is intended  
19 for Texas? What -- what's the physical difference?

20 MR. WECHSLER: Object to form.

21 A. Well, there -- the physical difference would  
22 be as water flows. There is a hydraulic gradient  
23 associated with groundwater levels and drawdown levels  
24 with respect to the basins that it overflows. There  
25 definitely could be a physical difference of that

1 water being affected greater when it -- when it is in  
2 the Texas area than in New Mexico. I would answer it  
3 that way.

4 Q. (BY MR. SOMACH) Yeah, but I -- I'm isolating  
5 now on New Mexico. We're only talking about New  
6 Mexico here, and what I'm asking is: Does groundwater  
7 pumping, which reduces river flow, discriminate  
8 against New Mexico where it doesn't discriminate and  
9 reduce the amount of water that's -- that's available  
10 to Texas?

11 MR. WECHSLER: Object to form.

12 A. Well, I think, you know, what -- what -- what  
13 I would focus on is the -- the -- the amount of water  
14 that's -- that's -- that's allocated to the project,  
15 again, and so -- let me read your question again. I  
16 would say no, it doesn't discriminate whether it's New  
17 Mexico or --

18 Q. (BY MR. SOMACH) Right. It's a reduction in  
19 flow; isn't that correct?

20 A. It could be a -- there could be a reduction  
21 in flow.

22 Q. But in turn --

23 A. You have to look at location --

24 Q. Go ahead. I'm sorry. I shouldn't interrupt.

25 A. Well, I said there could be a reduction in

1 flow, and then I think I would go back to, you know, a  
2 question more properly answered by my -- my technical  
3 experts within the State of New Mexico on what those  
4 effects are.

5 Q. But -- but when you use in your slide here on  
6 the second bullet point, "Pumping reduces river flow,"  
7 it's whatever flow is in the river; isn't that  
8 correct?

9 MR. WECHSLER: Object to form.

10 A. Yeah, the focus of this presentation is water  
11 administration within the State of New Mexico.

12 Q. (BY MR. SOMACH) I understand that. I  
13 understand that. And I'm just referring to flow in  
14 the Rio Grande. What you're talking about there is  
15 groundwater pumping reduces the flow in the Rio  
16 Grande; isn't that correct?

17 A. That's what this slide says, yes.

18 Q. Is that your opinion now or do you have a  
19 different opinion than when the slide was created?

20 A. No, that's -- that was my opinion then and,  
21 yeah, pumping does and can affect river flow. I'm  
22 saying to quantify it and to understand the effects  
23 would be more appropriately answered by one of the  
24 technical experts.

25 Q. Your last bullet point there says, "Surface

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BEFORE THE OFFICE OF THE SPECIAL MASTER  
HON. MICHAEL J. MELLOY

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	)	
Plaintiff,	)	
	)	Original Action Case
VS.	)	No. 220141
	)	(Original 141)
STATE OF NEW MEXICO,	)	
and STATE OF COLORADO,	)	
	)	
Defendants.	)	

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REMOTE ORAL AND VIDEOTAPED DEPOSITION OF  
JOHN LONGWORTH  
NOVEMBER 20, 2020  
VOLUME 2

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REMOTE ORAL AND VIDEOTAPED DEPOSITION of JOHN LONGWORTH, produced as a witness at the instance of the United States, and duly sworn, was taken in the above-styled and numbered cause on November 20, 2020, from 1:03 p.m. to 5:33 p.m., before Heather L. Garza, CSR, RPR, in and for the State of Texas, recorded by machine shorthand, at the offices of HEATHER L. GARZA, CSR, RPR, The Woodlands, Texas, pursuant to the Federal Rules of Civil Procedure and the provisions stated on the record or attached hereto; that the deposition shall be read and signed.

1 direction to the state engineer in terms of what are  
2 appropriate methodologies for adjudication processes,  
3 and we utilized those methods in this report in  
4 determining the C.

5 Q. (BY MS. KLAHN) So is it possible in the --  
6 let me withdraw that. So the FDR and CIR numbers that  
7 were agreed upon ultimately in the settlement apply  
8 across the board with the various qualifications that  
9 you talked about with Mr. Leininger and so on, but  
10 those apply across the board to the cropping acreage  
11 in the Lower Rio Grande; is that right?

12 A. Those acreages that qualify as groundwater  
13 only or as surface water with groundwater or surface  
14 water.

15 Q. Okay. So it's possible that there was one  
16 farmer -- one or more parcels, let's say, that ended  
17 up with a more generous CIR than what they had  
18 historically diverted; would you agree with that?

19 MR. WECHSLER: Object to form.

20 A. The State's analysis of which I prepare is a  
21 basin wide determination of historical view of what  
22 was consumptively used. To the extent there are  
23 parcels that use less than that, then in the sense I  
24 believe you're using the word generous, meaning more  
25 than what we determine, then, yes, they would have

1 received a higher CIR and FDR than they historically  
2 used. The converse, of course, is also true where an  
3 entity, farmer here, had parcels that perhaps use a  
4 higher consumptive use and FDR and they're confined or  
5 constrained by the Court's determination. In our  
6 report, it could be both above and below.

7 Q. (BY MS. KLAHN) Okay. And the -- when you use  
8 the adjective historical in your answer there, that  
9 would be an historical view back to 2008, based on the  
10 basin wide land survey that was performed?

11 A. That's a good question because I thought that  
12 you were talking about historically diverted, meaning  
13 over the course of time within the period that we look  
14 at to get the general CIR -- I mean, the basin wide  
15 CIR. So perhaps you can help me understand what you  
16 meant by historically diverted.

17 Q. No, I think you understood what I meant when  
18 I asked the question, which was that the CIR and FDR  
19 numbers could be more generous in the sense of being a  
20 larger rate of flow or volume than what was  
21 historically diverted, but when you answered the  
22 question, you said, "The State's analysis of which I  
23 prepared is a basin wide determination of historical  
24 view of what was consumptively used," and I was just  
25 trying to define historical in your answer, and I

1 under -- so my question was: Does that refer back to  
2 the 2008 land survey that you mentioned a minute ago?

3 A. So when we look at and how we incorporate  
4 historical uses, we basic -- we utilize the climatic  
5 data and ultimately average that so that gives us a  
6 historical average of the various climatic conditions  
7 and then apply that through the modified  
8 Blaney-Criddle equation to the 2008 cropping pattern.  
9 So the cropping pattern is static. The climatic data  
10 is average over a period of time from a particular  
11 weather station. That's how we go back to having a  
12 historical view. It's based on the climatic data.

13 Q. And I -- I'm pretty sure. You're welcome to  
14 look through this Exhibit 7. I'm pretty sure that  
15 there's not any statement about the period of record  
16 that you use. Do you recall what years of record for  
17 the weather data that you used?

18 A. I believe it's on Page 5. Uses 71-year  
19 period of record from the state university station,  
20 which was previously the agricultural college station.

21 Q. I see. And the period starts in 1938 when  
22 the Rio Grande Compact was signed?

23 A. That was the year it was signed, yes.

24 Q. No. I'm just reading from the sentence in  
25 the third to last sentence in that top paragraph on

1 Page 5. It says, "This period starts in the year the  
2 Rio Grande Compact was signed in 1938 and ends in  
3 2008."

4 A. Yeah. I believe -- that's what I said. It  
5 was the year that was signed, yes. But January, we  
6 weren't signed in January, so take an annual respect  
7 that we didn't start the date that the Compact was  
8 signed and ratified by the various states and the  
9 United States.

10 Q. Why was 1938 the starting point instead of  
11 1929, for example, or 1919 when?

12 A. You kind of -- 1919 when? Is there more to  
13 that?

14 Q. Why was 1938 the starting point?

15 A. It was our professional determination that  
16 that would be an appropriate starting point given that  
17 that -- at that point, the State of New Mexico was  
18 obligated under a Compact.

19 Q. So we had some conversation before the break  
20 about whether the Compact entered into the Stream  
21 System 101 final judgment. Let me ask that question a  
22 different way. How did the Compact enter into your  
23 engineering analyses that are reflected in your  
24 reports that were disclosed in the Stream System 101  
25 proceeding?

1           A.    I don't think the Compact entered into our  
2 engineering analyses. We utilized the Compact signing  
3 year as the climatic data, but that was -- as far as I  
4 can remember, that was it.

5           **Q.    In your answer a minute ago, you said that it**  
6 **was your professional determination that 1938 would be**  
7 **an appropriate starting point given that at that**  
8 **point, the State of New Mexico was obligated under a**  
9 **Compact. What did you mean by that?**

10          A.    Well, at that point, I guess it wasn't 1938,  
11 per se, but in and around 1938, the State of New  
12 Mexico entered into a Compact with its neighboring  
13 states on the Rio Grande.

14          **Q.    What significance would that have to the**  
15 **starting point for your historical weather data**  
16 **evaluation in your reports?**

17          A.    That was the time frame that we  
18 professionally thought was a good starting point.

19          **Q.    Was it your intent when you prepared those**  
20 **engineering analyses to try and determine what**  
21 **historically had been used in New Mexico since the**  
22 **signing of the Compact?**

23          A.    No.

24                   **MS. KLAHN:** I think that's all the  
25 questions I have for this witness.

IN THE SUPREME COURT OF THE UNITED STATES  
BEFORE THE OFFICE OF THE SPECIAL MASTER  
HON. MICHAEL J. MELLOY

STATE OF TEXAS	)	
	)	
Plaintiff,	)	
	)	Original Action Case
VS.	)	No. 220141
	)	(Original 141)
STATE OF NEW MEXICO,	)	
and STATE OF COLORADO,	)	
	)	
Defendants.	)	

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REMOTE ORAL AND VIDEOTAPED DEPOSITION OF  
CHERYL THACKER  
SEPTEMBER 18, 2020

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REMOTE ORAL AND VIDEOTAPED DEPOSITION of CHERYL THACKER, produced as a witness at the instance of the United States, and duly sworn, was taken in the above-styled and numbered cause on September 18, 2020, from 1:33 p.m. to 4:42 p.m., before Heather L. Garza, CSR, RPR, in and for the State of Texas, recorded by machine shorthand, remotely at the offices of HEATHER L. GARZA, CSR, RPR, The Woodlands, Texas, pursuant to the Federal Rules of Civil Procedure and the provisions stated on the record or attached hereto; that the deposition shall be read and signed.

1 as long as the two farmers are in agreement that they  
2 plan to do the same thing.

3 Q. Okay. And the same thing is to come into  
4 compliance with the water use that would normally be  
5 applied from groundwater pumping on those lands?

6 A. Can you restate that? I'm not sure I  
7 followed.

8 Q. Yeah. Sorry. I -- the question is that the  
9 agreement is an agreement that water use on those  
10 lands is in compliance with the permitted or declared  
11 amount of water for that acreage?

12 A. Right. For the two farms together, the total  
13 water rights is not exceeded. The allowable water for  
14 the two farms together isn't exceeded as a whole.

15 Q. Okay. That is essentially based on a 4.5  
16 acre-foot per acre farm delivery requirement?

17 A. For the most part, yes.

18 Q. When you make these determinations of over  
19 diversion, is there any evaluation of groundwater  
20 pumping that is making depletions to surface flows?

21 A. Well, I'm kind of puzzled with determinations  
22 of over diversion. What are you referring to there?

23 Q. Sure. So you just testified with regard to  
24 how you define -- how the OSE defines over diversion  
25 for purposes of groundwater pumping, right?

1 A. Yes.

2 Q. And essentially, the pumper could not exceed  
3 the FDR that's been decreed under Stream System Issue  
4 101, right?

5 A. That's right.

6 Q. Okay. And that amount is 4.5 acre-feet per  
7 acre?

8 A. Yes.

9 Q. So the question is if they exceed that amount  
10 they're entitled to as the OSE has determined, is  
11 there any evaluation of how that impacts -- the over  
12 diversion, impacts surface water flow?

13 A. Well, we just assume the over diversion needs  
14 to be replaced on a one-to-one basis.

15 Q. Is there any determination of the impacts of  
16 the over diversion on depletions from the Rio Grande?

17 A. Well, within the scope of the same ownership  
18 management program, we don't do any kind of hydrologic  
19 analysis, if that's what you're asking.

20 Q. No. I'm not asking about the ownership  
21 management program in this question. The question is:  
22 You make a determination that a farmer is over  
23 diverting groundwater pumping under, let's just take  
24 the scenario of permitted right. You've made the  
25 determination that they have exceeded what they're

1 entitled to based on the FDR. Okay?

2 A. Okay.

3 Q. And in that scenario where there is already  
4 made the determination that they are receiving their  
5 permitted amount, is there any analysis as to what  
6 that over diversion impacts are on surface flows in  
7 the Rio Grande?

8 A. No. Other than there's no determine other  
9 than replacing that water, that over diversion in the  
10 following irrigation season on a one-to-one basis.

11 Q. Okay. Is there any analysis as to what that  
12 over diversion impacts are on surface flows and  
13 drains?

14 A. I don't do any analysis like that, no.

15 Q. The OSE does not do any analysis like that?

16 A. We do an analysis when application is filed,  
17 and that's when we do in my work to make sure that the  
18 flows to the river are protected. But as far as the  
19 over diversion issue, our view in protecting the water  
20 of the surface -- surface water is to have those over  
21 diversions be replaced on a one-to-one basis.

22 Q. But not during the irrigation season?

23 A. That's correct. Unless the water master  
24 comes into an agreement with that farmer in a  
25 different manner.

1           Q.    Okay.  That threw me for a loop.  What do you  
2 mean by a different manner?  How does that occur  
3 during the irrigation season which the over diversion  
4 is discovered?

5           A.    You know, I can't -- I threw in a caveat just  
6 to make sure that there may be other arrangements that  
7 the water masters put together with the farmer, so  
8 that's all I was referring to.

9           Q.    Okay.  And I'm talking about what  
10 arrangements there may be that account for the over  
11 diversion and correct for the over diversion during  
12 the irrigation season in which the over diversion is  
13 occurring.  Okay?

14          A.    Uh-huh.

15          Q.    So what -- what, if any, arrangements do the  
16 water masters make?

17          A.    You know, I -- the only thing I can think of  
18 straight away is if the farmer has a way to repay that  
19 water in some other manner, but -- within that same  
20 irrigation season, but, you know, I'd have to defer to  
21 the water master for specifics.  I apologize.  I don't  
22 know.

23          Q.    Okay.  So sitting here today, you're not  
24 aware of any of those arrangements?

25          A.    I'm not.  It's almost always in the following

1 irrigation season.

2 MR. LEININGER: Okay. We've been going  
3 well over an hour so I apologize for that, Ms.  
4 Thacker, but why don't we -- why don't we take a  
5 ten-minute break. Is that okay?

6 THE WITNESS: Yes, please. Thank you.

7 THE VIDEOGRAPHER: The time is 2:50 p.m.  
8 We're off the record.

9 (Break.)

10 THE VIDEOGRAPHER: The time is 3:03 p.m.  
11 We're on the record.

12 Q. (BY MR. LEININGER) So, Ms. Thacker, I only  
13 have a few more questions, then I'm going to turn it  
14 over to Ms. Klahn. Are you familiar with the AWRM?

15 A. I am.

16 Q. Okay. And that's a state statute, correct?

17 A. Yes, it is.

18 Q. And it stands for -- I don't actually have a  
19 copy of it in front of me, but it stands for  
20 alternative water right management; is that correct?

21 A. I think it's active water resource  
22 management.

23 Q. Oh, okay. That sounds better. Yes, thank  
24 you. So are there rules and regulations promulgated  
25 for the lower Rio Grande pursuant to the AWRM statute?

1 injury of junior use to a senior water right. So in  
2 the lower Rio Grande, you mentioned the constitution,  
3 and then you mentioned the statutes, and if you could  
4 just define for me what those statutes are that the  
5 OSE uses to administer in that scenario?

6 **MR. WECHSLER:** Again, object to form.

7 A. Well, it would depend on the situation to be  
8 honest. It would depend on who's causing the injury.  
9 We need need more specificity on who's doing --  
10 causing the injury. So, yes, absolutely. We have the  
11 authority to -- the state engineer has the authority  
12 to protect surface waters of the State of New Mexico  
13 and the -- the whole water system, but without knowing  
14 specifically who's causing the harm, I can't speak to  
15 how we would administer that.

16 **Q. (BY MR. LEININGER)** Okay. Without rules and  
17 **regs promulgated and adopted for the LRG, can the OSE**  
18 **still use the AWRM statute to enforce within priority?**

19 A. Well, my understanding of the AWRM is so we  
20 don't have to administer in priority. It's to give us  
21 the tools for a priority call -- or administering by a  
22 priority is not -- you know, that's the nuclear  
23 option, as it were. We want to use AWRMs so that we  
24 don't have to do that.

25 **Q. Okay. And that AWRM tool is one that's**

1 tools such as Glover-Balmer software and modeling  
2 software to be sure that the impacts to the river  
3 don't exceed what has occurred historically.

4 Q. But, I mean, I understand the Glover-Balmer's  
5 equation. I -- I get that, but you are making that  
6 comparison with current existing conditions on the  
7 river, right? You're not going back to 1980 to make  
8 sure that there's not been any changes since 1980,  
9 correct?

10 A. Well, if there's a water right, the -- that  
11 began exercised in 1956, for instance, we look at a  
12 hundred-year modeling, the effects to the river on  
13 that -- on the river due to pumping from 1956, and so  
14 that's our modeling, and so what we look at is that if  
15 another well -- a replacement well is drilled, we make  
16 sure that the depletions to the river due to the  
17 replacement well don't exceed what has occurred  
18 historically from 1956.

19 Q. But when you do that, you aren't in a  
20 position to say this is the status quo of the river  
21 that we're trying to maintain ; it's not some  
22 objective historical condition, it's just comparing  
23 what that 1956 water right was doing against what the  
24 water right owner wants to do with the replacement  
25 well, for example, correct?

1           A.    That's right, yes.

2           **Q.    You used the term nuclear option with regard**  
3 **to curtailment.  Why is curtailment a nuclear option?**

4           A.    No.  I would say priority administration.  
5 Curtailment isn't a nuclear option.  And I guess the  
6 question, too, is what do you mean by curtailment in  
7 your eyes.

8           **Q.    Shutting down a water right period.**

9           A.    Okay.

10          **Q.    Lock the well, lock the head gate, don't let**  
11 **them take water.  That's curtailment.**

12          A.    Okay.

13          **Q.    How do you define it?**

14          A.    I would agree.  And when I say nuclear  
15 option, I mean priority administrations where we make  
16 a call on the river and shut a whole bunch of water  
17 rights down.  Yes, the state engineer has that  
18 authority, but we would prefer to use the active water  
19 resource management tools so we don't have to do that.

20          **Q.    So in your view, in your job, active water**  
21 **resource management provides you tools so you can**  
22 **avoid operating under strict priority system?**

23          A.    Well, I think it's to encourage shortage  
24 sharing and cooperation with the farmers and just  
25 managing the river so that -- excuse me -- managing

1 groundwater diversions so that the farmers don't  
2 exceed their water rights as it is on file.

3 **Q. So what do you mean by shortage sharing?**

4 A. I think that's where our same ownership  
5 management comes in to where two farmers can  
6 essentially put two farms under one ownership  
7 management and where one farmer cannot necessarily  
8 irrigate their field, and instead, the other farmer  
9 used that water on his lands. So that gives us the  
10 tools to do that.

11 **Q. So in that example, one farmer is not**  
12 **irrigating, and the other farmer is using more water**  
13 **than he's entitled to, correct?**

14 A. No, that's not right.

15 **Q. Well, I don't understand where the shortage**  
16 **comes in then?**

17 A. Well, the farmer isn't using more than he's  
18 entitled to. It's all within the same water rights as  
19 in the two water rights, the mass balance is  
20 maintained.

21 **Q. Using more -- the farmer that's using**  
22 **additional water is using more water than he would be**  
23 **able to if his neighbor hadn't agreed to loan him his**  
24 **water, correct?**

25 A. That's true.