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Non-binding Arbitrations Before
Jeffrey C. Fereday, Arbitrator

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Initiated Pursuant to Final Settlement Stipulation

Kansas v. Nebraska & Colorado

No. 126, Orig., U.S. Supreme Court

Decree of May 29, 2003, 538 U.S. 720

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Nebraska N-CORPE Augmentation Plan

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**PRE-FILED TESTIMONY OF KANSAS EXPERT
DAVID W. BARFIELD, P.E., KANSAS CHIEF ENGINEER**

Nebraska N-CORPE Augmentation Plan

February 24, 2014

1 **1. Qualifications and Expert reports**

2 **Q: Please state your name, professional position, and address for the**
3 **record.**

4 A: David W. Barfield, Chief Engineer, Division of Water Resources, (“DWR”),
5 Kansas Department of Agriculture, 109 SW 9th St., Topeka, Kansas, 66612.

6 **Q: Please identify this document identified as Barfield Exh. WSY/RC K7.**

7 A: This is a copy of my curriculum vitae.

8 **Q: Is Exh. WSY/RC K7 an accurate description of your experience and**
9 **qualifications?**

10 A: Yes.

11 **Q: In the Rock Creek arbitration you provided an overview of your**
12 **experience and qualifications, particularly with respect to the Republican**
13 **River Basin (“Basin”) and the issues in this litigation. Is that still**
14 **accurate?**

15 A: Yes, except for the additional experience since that time particularly related
16 to review and analysis of the various disputed matters.

17 **Offer of Mr. Barfield as an Expert**

18 **To The Arbitrator:** The State of Kansas offers Mr. Barfield as an expert in the
19 fields of water resources engineering, application of hydrologic modeling,

1 Republican River Compact accounting, and state and interstate water rights
2 administration.

3 Assignment in This Case

4 **Q: Mr. Barfield, as Chief Engineer, what responsibility was yours with**
5 **respect to this case?**

6 A: Prior to becoming Chief Engineer, I served for 15 years as DWR's lead
7 technical staff on the Interstate Water Issues team and in that capacity served on
8 the Republican River Compact Administration's (RRCA) Engineering Committee
9 and was involved in all aspects of the negotiation and implementation of the Final
10 Settlement Stipulation. Since 2007, I have served as Chief Engineer and Kansas
11 Commissioner to the RRCA; it is my duty to ensure that Kansas fulfills its Compact
12 obligations and to ensure that Kansas receives its share of Republican River waters.
13 I closely monitor Nebraska's and Colorado's activities related to the Compact, and
14 work cooperatively with them to improve administration of the Compact. To that
15 end, I prepared an expert report on the N-CORPE augmentation plan under
16 arbitration in this case.

17 **Q: Please identify the document identified as Barfield Exh. NCORPE**
18 **K106.**

19 A: This is my expert report on Nebraska N-CORPE Augmentation Plan.

1 **Q: Does that report also include a copy of your expert report on Rock**
2 **Creek?**

3 A: Yes, I included the body of that report, but have omitted the attachments.

4 **Q: Do you still agree with everything in those reports?**

5 A: Yes. As I indicated in my N-CORPE expert report, except for my opinions
6 with respect to the need to limit deliveries to the historic consumptive use of its
7 wells, the concerns expressed in my Rock Creek report and testimony, Exhs.
8 WSY/RC K8 and K10, apply here as well and I have not repeated them.

9 **2. Transit losses not considered in determination of**
10 **augmentation credit**

11 **Q: Why does Kansas maintain that transit losses be considered in**
12 **augmentation credits?**

13 A: The Republican River Compact allocates the Basin's water supply between
14 Colorado, Kansas, and Nebraska. The FSS provides for the specific measures of
15 compliance negotiated by the States, including specific methods for determining
16 groundwater computed beneficial consumptive use (CBCU) and imported water
17 supply (IWS) credit. As a downstream state, Kansas obtains its share if the upper
18 basin states constrain their use to their allocations.

19 Augmentation projects are allowed as a general concept by the FSS but
20 details of their operations and methods of accounting were not agreed upon by the

1 States in the FSS. Such details and methods were specifically reserved in the FSS
2 for future negotiation by the States and are clearly subject to the approval of the
3 RRCA. See FSS III.B.1.k.

4 The purpose of augmentation is to offset excessive CBCU (depletions), in this
5 case to aid in Nebraska's compliance, typically during water-short periods. As such,
6 it represents "compliance water", which Nebraska has regularly represented as
7 "Kansas water." If this compliance water is lost before it reaches Kansas, it is of no
8 benefit to Kansas.

9 By considering losses in the accounting, this would assure that Kansas is
10 obtaining its share of the basin's water supply. If augmentation water is lost from
11 the project discharge to the state line but Nebraska pretends it all arrives at the
12 state line, then Nebraska's augmentation credit is excessive and Kansas loses not
13 only a portion of its allocation but a corresponding reduction in what it can expect in
14 terms of wet water from Nebraska in that year.

15 The Compact and the FSS do not prohibit consideration of transit losses to
16 augmentation supply. The FSS does require that augmentation plans be approved
17 by the RRCA. As long as Nebraska's plans fail to provide for the protection of
18 Kansas' interests, Kansas cannot support those plans.

19 **Q: In his responsive report, Dr. Schneider provides an example of the**
20 **potential impact of unaccounted losses in the accounting to Nebraska's**
21 **detriment and states his belief that this will incentivize Nebraska to**

1 **minimize these losses. How would you interpret his example and what do**
2 **you conclude from it?**

3 A: In this example, Dr. Schneider postulates a delivery of 60,000 acre-feet to the
4 N-CORPE outfall but only 40,000 acre-feet of this water reaching Kansas. Thus
5 there is a 20,000 acre-feet loss.

6 Due to the varying percentages allocated to the States from the various sub-
7 basins, where the losses occur impacts the specific accounting impact to Kansas and
8 Nebraska. However, as over 90% of Medicine Creek water supply is allocated to the
9 mainstem, its effective split between the states is similar to the mainstem, which is
10 spit approximately 50/50. For purposes of this illustration, I will assume that 50%
11 of the unaccounted-for losses reduce Nebraska's allocation and 50% of these losses
12 reduce Kansas' allocation.

13 Under Nebraska's plan, it would obtain a 60,000 acre-feet credit in the
14 accounting. In this example its allocation would be reduced by 10,000 acre-feet, for a
15 net compliance benefit of 50,000 acre-feet for 40,000 acre-feet of water delivered to
16 Kansas. Kansas allocation would be reduced by 10,000 acre-feet due to the
17 unaccounted-for losses of the augmentation water supply.

18 While Nebraska may be motivated to minimize losses, its proposed
19 accounting has Kansas being charged for roughly half of those losses, reducing this
20 motivation. Meanwhile, instead of receiving 100% of the allocation that it is entitled
21 to, Kansas bears a cost for Nebraska's unaccounted-for losses. More significant in

1 my view, Nebraska receives a credit greater than is appropriate, reducing its
2 compliance requirement and thereby reducing the amount of wet water that
3 Nebraska must ensure Kansas receives during critical dry periods.

4 **3. Imported Water Supply credit as a model for augmentation**
5 **credit determination**

6 **Q: Are losses considered in the determination of the IWS Credit?**

7 A: Yes. The determination of the IWS credit involves a quantitative analysis of
8 the benefits to streamflow in the Republican River Basin caused by imports of
9 Platte River water by the RRCA Groundwater Model. In the quantification, the
10 Model determines how the imported water affects or interacts with: 1) returns to
11 the Platte River system, 2) diversions by groundwater pumping, 3) increases to
12 groundwater storage and 4) consumption by evapotranspiration (ET) as a result of
13 additional water in the system.

14 Thus the Model evaluates real-world effects on these flows as they move
15 through the stream network down to the various RRCA accounting points. The IWS
16 credit is reduced by the losses to storage and increases in ET estimated by the
17 Groundwater Model.

18 **Q: How does this provide the appropriate template for augmentation**
19 **credits?**

1 A: The method agreed upon by the States ensures that Nebraska gets
2 appropriate credit for the net increases – accretions to streamflow minus storage
3 and ET losses – to Republican River streamflow caused by Platte River water that
4 seeps into the Republican River groundwater system. This is similar to what
5 Kansas asking for in this proceeding. Nebraska should obtain an augmentation
6 credit for waters which benefit Kansas.

7 **4. Nebraska’s water administration leaves Kansas with**
8 **uncertainty on the degree that Kansans will benefit from**
9 **augmentation supply**

10 **Q: Why is Nebraska’s administration of augmentation water through**
11 **the basin of concern to Kansas?**

12 A: Augmentation water is to offset depletions for compliance, thus to replace
13 that supply that should otherwise exist if the state kept its use within its allocation.

14 Previously I described how unaccounted-for losses can reduce Kansas access
15 to this water through reducing Kansas’ allocation and providing an inappropriate
16 credit to Nebraska. Nebraska has represented that the exact volume of
17 augmentation water will be made available to Kansas. However, Nebraska’s
18 administration activities have effectively denied Kansas access to this replacement
19 supply including inappropriate bypassing of inflows and timing of storage releases,
20 or otherwise denying Kansas control of its share of the water supply. Additionally,
21 Nebraska’s administration is based on projections and those projections are revised

1 throughout the year giving Kansas even less certainty about timing and quantity of
2 the water it might receive.

3 In the lower basin, Kansas' share of the Basin's water supply is assured when
4 the upper states constrain their use to their allocations. This water supply consists
5 of the unregulated flows below Harlan County dam and the regulated supply above
6 Harlan County.

7 The Kansas Bostwick Irrigation District is the first and principle user of
8 Kansas' mainstem supply. This was clearly envisioned by the Compact, illustrated
9 in the provision that Kansas may divert any or all of its mainstem allocation at
10 Guide Rock, the diversion point of the Courtland Canal, which serves KBID. Harlan
11 County Lake, the Nebraska and Kansas Bostwick Irrigation Districts; and Guide
12 Rock diversion dam were all part of this plan.

13 The ability of HCL to regulate Kansas' allocation is of great value to Kansas
14 and is a fundamental element of the management of the lower basin water supply.
15 HCL has been the dominant water management tool for the approximately 11,400
16 irrigated acres of the upper district which are above, and therefore not serviced by,
17 Lovewell Reservoir and a significant source of water for the lower district's
18 approximately 26,500 irrigated acres. KBID develops its planting strategies around
19 projected water supplies and the ability to access its water from HCL when it will
20 do the most good, including keeping it in the reservoir for use in a subsequent year

1 if that seems most prudent and beneficial as well as following sound multi-reservoir
2 management.

3 **Q: How are Kansas concerns illustrated in Nebraska's water**
4 **administration under the current generation of Integrated Management**
5 **Plans during Compact Call Years in 2013?**

6 A: Until 2013, Kansas has been able to regulate its share of the Basin's water
7 supply originating above Harlan County dam, including deciding that such storage
8 had greater potential value in the subsequent year and carrying a portion over.

9 2013 was the first Compact Call Year under Nebraska's current compliance
10 plan, and Kansas' first experience with the actual implementation of Nebraska's
11 Compact Call Year operations.

12 Multi-year droughts and resulting shortages to KBID have occurred regularly
13 in the past. With the significant increases to groundwater depletions in the basin, I
14 expect shortages to occur more frequently and to increase in magnitude. To
15 maximize the benefit of its supply, KBID utilizes the storage in HCL over multiple
16 years.

17 Each year, the Bureau of Reclamation (Bureau) provides to the States an
18 estimate of the projected supply available to the Bostwick Irrigation Districts based
19 on procedures that have been established in conformity with the consensus plan
20 developed between the Bureau and the Corps of Engineers, which owns and
21 operates HCL. Based on the Bureau's estimate, the known rules of the consensus

1 plan, and its own plans and needs, KBID sets an allocation to its patrons. KBID's
2 allocation decisions are revised as the year progresses and in some cases adjusted.

3 During January 2013, the Bureau estimated an available supply of 12 inches
4 per acre. The KBID Board of Directors decided it was most prudent and beneficial
5 to its patrons to hedge against the threat of a continuing drought by carrying over
6 some water to 2014 and thus initially set an allocation of nine-inches for 2013.

7 On December 10, 2012, I received Commissioner Dunnigan's letter, Exh.
8 NCORPE K109, informing me of a meeting between Nebraska and the Bureau
9 regarding Nebraska's planned administration activities for 2013. I called
10 Commissioner Dunnigan shortly afterward to discuss the matter. He indicated that
11 Nebraska was working with the Bureau regarding its planned administration in the
12 basin and would provide Kansas with as much flexibility as possible to use the
13 water Nebraska was making available through its administration, but indicated
14 that unless an agreement was reached otherwise, all of the "compact call" water
15 would all need to get to Kansas in 2013. He gave no indication of an impending May
16 3, 2013 deadline for release of waters accruing to storage in the spring.

17 **Q: Why was Nebraska insistent that "compliance water" be released**
18 **during 2013?**

19 A: Under the FSS, water that is impounded over the course of a year and that
20 remains in the federal reservoirs at the end of that year does not generate allocation
21 in that year. Allocation to the States is generated when water is released from

1 storage and reaches the stateline or is first consumed as defined in the accounting.
2 Nebraska's projections assume all of the water resulting from its CCY activities will
3 become part of the computed water supply (CWS) and thus increase its allocation.

4 **Q: How did these matters lead to a dispute in the spring of 2013?**

5 A: During the spring of 2013, principally through discussions of the States on
6 March 20 and April 12, Kansas learned of Nebraska's intention to order, prior to the
7 start of the irrigation season, the release of water that had been stored in HCL
8 starting on January 1, 2013.

9 To prevent this, Kansas suggested that the accounting could be adjusted to
10 allow both Kansas to continue to control its share of HCL storage while ensuring
11 Nebraska's compliance activities were not compromised. The essence of this
12 agreement was to count the water stored during 2013 as if it was delivered in 2013
13 and to subtract these flows from the water supply computations in the year it is
14 released to avoid double counting of this water.

15 On April 15, Commissioner Dunnigan wrote a letter, Exh. WSY/RC J26, to
16 express his understanding of those discussions and to list the terms under which
17 Nebraska would allow Kansas to manage its share of the water supply. The same
18 letter announced that if Kansas did not meet these terms, Nebraska would order
19 releases from HCL on or about May 1, before irrigation releases were needed, and
20 at a time when KBID was performing maintenance work on the Courtland Canal
21 and not prepared to take water.

1 Kansas responded with an April 19 letter, Exh. WSY/RC J28, containing a
2 reasonable offer to meet Nebraska's stated requirements and to allow Kansas to
3 control its water in HCL. The letter included a proposal to adjust the compact
4 accounting for water retained for Kansas and to charge Kansas with any additional
5 evaporation that might result. On April 29, Nebraska outlined its counter-proposal,
6 Exh. WSY/RC J30, offering Kansas one day to review and agree to the proposal
7 before it would begin releases of this stored water. Nebraska's proposal added
8 several new, substantive conditions including providing for a make-up period for
9 any shortage in Nebraska's compliance balance, Kansas agreement that the
10 proposal would be considered an Alternative Water-Short Year Administration
11 Plan, and that the proposal would be in effect for multiple years. In addition, the
12 proposal did not prevent double counting of waters. Kansas provided a counter offer
13 on April 30, Exh. WSY/RC J30.

14 On May 3, Commissioner Dunnigan ordered releases from HCL to begin,
15 Exh. WSY/RC J36.

16 Releases from HCL were discontinued only after KBID agreed to abandon its
17 planned management of its share of the water supply and use all the water
18 impounded in 2013 before the end of 2013 or see it released. This required KBID to
19 enter into Warren Act contract and pay the Bureau for water which, but for
20 Nebraska's interference, would have accrued to KBID's supply in HCL.

1 During the fall, the States had another round of negotiations to prevent the
2 release of unused water in HCL when KBID was not yet ready to receive the water
3 supply into Lovewell Reservoir due to canal repairs. This included a threat from
4 Nebraska to release this stored water from HCL unless Kansas accepted what
5 Kansas considers was an excessive and unfair assessment of evaporation charges in
6 order to allow KBID to move the remaining 2013 water to Lovewell Reservoir, Exhs.
7 NCORPE K110 and K111. The experience with Nebraska's Compact Call Year
8 administration shows that even if N-CORPE water actually makes it to HCL, it
9 may be released at a time when no Kansas irrigators can use it.

10 Nebraska's administration stymied KBID's management of its share of the
11 water supply at HCL.

12 **5. The project will facilitate continued dewatering of the**
13 **basin leading to increased transit losses.**

14 **Q: Why is Kansas concerned about the potential dewatering of the**
15 **Republican River Basin?**

16 Nebraska seeks approval of this augmentation plan and its accounting in
17 perpetuity, and therefore Kansas must evaluate its potential impacts over the long
18 term. It would be irresponsible of me to approve Nebraska's augmentation plans
19 without considering their long-term implications and protecting Kansas'
20 entitlement into the future.

1 In Kansas v. Nebraska and Colorado, Kansas examined the likely long-term
2 effects of Nebraska’s groundwater pumping under their Integrated Management
3 Plans, Exh. WSY/RC K26. Future scenarios examined included both 75% and 80%
4 of the 1998 -2002 baseline pumping, as well as the effect of intermittent and
5 permanent shut down of the Rapid Response Region.

6 Development of the Rock Creek and N-CORPE augmentation plans are
7 intended to avoid intermittent or permanent shut down of the Rapid Response
8 Region.

9 In his deposition, Dr. Schneider indicated that he expected the current level
10 of groundwater pumping in Nebraska to continue into the foreseeable future, Exh.
11 NCORPE K152, page 42, line 21ff. While Dr. Schneider expects Nebraska
12 groundwater depletions to remain steady, Exh. NCORPE K152, page 42, line 4ff
13 Kansas has demonstrated that under the current level of pumping, the ongoing
14 dewatering of the basin in Nebraska will continue with increasing groundwater
15 depletions and diminishing baseflows over time, Exh. WSY/RC K26, Figure 9, page
16 29 and Figure 11, page 38. Nebraska has provided no analysis to back up Dr.
17 Schneider’s assertions of a future where depletions are steady.

18 Kansas is concerned that transit losses will increase in the future as
19 Nebraska will find itself discharging augmentation water into increasingly dry
20 streambeds.

1 **Q: In the arbitration regarding the Rock Creek Augmentation plan and**
2 **again here regarding the N-CORPE plan, Nebraska seeks to characterize**
3 **the expected losses as minimal or de minimis Exh. NCORPE K151, page 75.**
4 **What is your response to this?**

5 A: While Nebraska has provided spot readings, Nebraska has not demonstrated
6 to Kansas that this assertion is correct even currently, much less into the future.
7 Even though Nebraska has been pumping its Rock Creek augmentation project for
8 nearly a year, it has not yet provided Kansas the operational data that could
9 validate its assertion.

10 Even without the detailed records, a casual review of recent gage records
11 gives evidence of concern with Nebraska's assertion. Flows at the Republican River
12 at Stratton, Nebraska, just above Swanson Reservoir have been zero at times and
13 well below the expected 28 cfs of pumping from the Rock Creek project, Exh.
14 NCORPE K112. This has led the Bureau to express its concerns with Nebraska's
15 assertion as well, Exh. NCORPE K113.

16 Similar concerns are evidenced on the mainstem above Harlan County. Exhs.
17 NCORPE K114 and K115 show gaged flows at the Republican River near Orleans,
18 Nebraska, just above Harlan County Reservoir for 2012 and 2013 respectively. The
19 zero flow values for much of these years brings into question Nebraska's assertions
20 that losses of augmentation water will be de minimis.

1 **6. The N-CORPE proposal is incomplete**

2 **Q: In what ways is the N-CORPE proposal incomplete?**

3 A: Many of the deficiencies of this augmentation plan are shared with
4 Nebraska's Rock Creek plan and noted in my report for the Rock Creek plan. My
5 additional concerns are:

6 1. The N-CORPE plan lacks specifics with regard to how the augmentation
7 supplies will be administered through the basin and in particular, with respect to
8 storage in Harry Strunk Reservoir and Harlan County Lake.

9 Unlike the Colorado CCP which targets augmentation deliveries during
10 winter months to minimize transit losses, Nebraska's plan provides no specifics on
11 the timing of deliveries. The timing of augmentation deliveries will also have an
12 effect on the usability of such supplies to Kansas.

13 2. Regarding reporting and monitoring;

14 a. There is a lack of stream data along Medicine Creek.

15 b. The project will supply water to both the Platte River and Republican
16 River. Given the significance of this water supply and its augmentation credits,
17 clear and regular reporting of deliveries to both Rivers should be required.

18 3. Nebraska's proposed accounting

1 a. Beyond the failure to address transit losses, Nebraska’s proposed
2 accounting is unclear with respect to its markup of the accounting procedures.

3 i. The proposal is silent with respect to the effect of the storage of
4 augmentation water on the accounting and the credit that Nebraska would receive
5 in the year. With Nebraska’s silence on this matter, storage of augmentation
6 deliveries above Harlan County Lake would provide a full credit to Nebraska, but to
7 the extent so stored would deprive Kansas of any benefit from the augmentation
8 water in that year and would reduce Kansas allocations in that year.

9 ii. It is unclear if Nebraska is proposing that its model runs described
10 in its attachment to the plan be made a part of the accounting procedures.
11 Nebraska has indicated that it may modify its proposal. If so, this will need to be
12 evaluated.

13 While Nebraska now apparently is willing to agree to periodic reviews every
14 20 years, no specifics have been provided.

15 **7. It would be unreasonable for Kansas to vote to approve the**
16 **N-CORPE plan**

17 **Q: Nebraska has asserted that augmentation deliveries should be**
18 **treated as surface water, including ignoring of losses in the evaluation of**
19 **the augmentation credit. Why is that unacceptable to Kansas?**

1 A: There is no specific requirement in the FSS that augmentation deliveries and
2 credits be treated as surface water. The FSS specifically reserves the determination
3 of modeling and accounting related to augmentation plans to the States future
4 consideration, “prior to implementation.”

5 Unlike Colorado which chose to put its augmentation deliveries at the state
6 line, Nebraska’s selection of sites for augmentation has raised transit losses as a
7 major issue to be addressed in any plan that Kansas could approve.

8 **Q: In the past, Nebraska has noted Kansas’ lack of agreement on**
9 **Colorado’s augmentation pipeline as a demonstration of Kansas’**
10 **unwillingness to agree. Please provide your understanding of the matter.**

11 A: Colorado first proposed its CCP in 2008. From the beginning Kansas
12 expressed its principle concerns regarding its accounting concerns and concerns
13 regarding Colorado’s plan to replace South Fork overuse on the North Fork. Kansas
14 worked with Colorado to address the concerns but those negotiations failed to
15 produce an agreement.

16 Colorado triggered the dispute resolution provisions of the FSS and the
17 matter was arbitrated in 2010. In 2010, Arbitrator Pagel found Kansas concerns
18 reasonable.

19 In the subsequent 3 years of negotiations with Colorado, Colorado failed to
20 address Kansas principle concerns and raised two new issues. Colorado waited until
21 2013 to propose an alternative that addressed Kansas accounting concerns and did

1 so with a surprise proposal first put before the States at the same time as invoking
2 fast-track arbitration.

3 In the 2013 arbitration, Arbitrator Pagel again agreed our concerns were
4 valid.

5 **Q: Have the states reached a temporary agreement allowing Colorado**
6 **to make deliveries in 2014?**

7 A: Yes. We have a one-year agreement to allow Colorado to obtain credit for
8 deliveries in 2013, using Colorado's proposed method for incorporating
9 augmentation deliveries into all runs of the groundwater model and other
10 agreements we have reached on the majority of issues that have divided us. This
11 year's operational experience will be helpful to the States in reaching a long-term
12 agreement.

13 **Q: Why does Kansas not support approval of the N-CORPE plan?**

14 A: The FSS does not prescribe how an augmentation plan should be developed,
15 operated, or accounted for, but it does require that augmentation plans be approved
16 by the RRCA, thus specifically reserving Kansas right to ensure its interests are
17 fully protected in the consideration of the plan. For all the reasons explained above,
18 it would be unreasonable and irresponsible for Kansas to vote in favor of approval of
19 an augmentation plan that injures Kansas either in the short or long term. Kansas
20 should not be required to approval a plan that diminishes its supply.

1 There is no indication that Nebraska plans on reducing its groundwater
2 pumping to stabilize or reduce its pumping impact. Nebraska's N-CORPE plan fails
3 to hold Nebraska responsible for actions and requires Kansas to take responsibility
4 for roughly half of the effect of Nebraska's failure. Timing is also critically
5 important to the beneficial utility of water.

6 **Q: Have the States attempted to negotiate terms of operation of the**
7 **augmentation supplies?**

8 A: No. On January 14, 2013, at Nebraska's request, I provided Nebraska with a
9 listing of items that Kansas needed to be addressed in an Augmentation Plan
10 (Exhibit WSY/RC J12). When many of these concerns were not included in
11 Nebraska's plan for Rock Creek, Kansas attempted to add a discussion of the items
12 at the Rock Creek Augmentation Plan work session. Nebraska responded that it
13 had determined what needed to be in an augmentation plan and had no interest in
14 modifying the plan to address Kansas' concerns beyond that. The N-CORPE plan
15 has the same inadequacies and Nebraska continues to hold that it is entitled to an
16 augmentation plan regardless of Kansas' concerns.

17 Kansas has always been and remains willing to discuss terms, including
18 evaporation charges and needed adjustments to the compact accounting to marry
19 Kansas' and Nebraska's needs.

Pursuant to 28 U.S.C. §1746, I declare under penalty of perjury that the foregoing is true and correct.

Executed on February 24, 2014.

David W. Souffert