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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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N-CORPE Augmentation Plan  
(Arbitration Initiated July 10, 2013)

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DEPOSITION OF: DR. JAMES SCHNEIDER

DATE: February 18, 2014

TIME: 9:02 a.m.

PLACE: 1221 N Street, Suite 600, Lincoln,  
Nebraska

1 APPEARANCES  
2  
3 APPEARING FOR KANSAS:  
4 Mr. Christopher M. Grunewald (telephone)  
5 Assistant Attorney General  
6 120 SW 10th Ave, 2nd Floor  
7 Topeka, KS 66612  
8 chris.grunewald@ksag.org  
9 APPEARING FOR NEBRASKA:  
10 Mr. Thomas R. Wilmoth (telephone)  
11 Mr. Don G. Blankenau  
12 Attorneys at Law  
13 206 South 13th Street  
14 Suite 1425  
15 Lincoln, NE 68508  
16 -and-  
17 Mr. Justin D. Lavene  
18 Assistant Attorney General  
19 2115 State Capitol  
20 Lincoln, NE 68509  
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22  
23 ALSO PRESENT:  
24  
25 Jasper Fanning, Thomas Riley, Marc  
Groff, Brian Dunnigan

1 PROCEEDINGS  
2 (Exhibit Nos. 1-5 were marked  
3 for identification.)  
4 DR. JAMES SCHNEIDER,  
5 Being first duly cautioned and solemnly sworn as  
6 hereinafter certified, was examined and  
7 testified as follows:  
8 DIRECT EXAMINATION  
9 BY MR. GRUNEWALD:  
10 Q. Good morning, Dr. Schneider.  
11 A. Good morning.  
12 Q. Since we're doing this by telephone,  
13 I'll do my best to not talk over you and  
14 hopefully we can make a clear record. I  
15 apologize in advance if we have to repeat  
16 stuff, and we've I think done this sort of  
17 thing before, so hopefully it'll work out okay.  
18 Is there any reason that you won't be  
19 able to give complete or truthful answers this  
20 morning?  
21 A. No.  
22 Q. Great. And we're scheduled to go for a  
23 couple of hours. I figure we'll probably take  
24 at least one break. Here in the middle, if you  
25 need a break -- or just if you need a break,

1 I-N-D-E-X  
2  
3 WITNESS Direct  
4 James Schneider 4  
5  
6  
7  
8 EXHIBITS Marked  
9 1. Notice of Deposition 4  
10 2. Response to Kansas' Reports 4  
11 on Nebraska's N-CORPE Aug. Plan  
12  
13 3. Forecast of Allowable Depletions 4  
14  
15 4. Letter to Mr. Gary Campbell 4  
16  
17 5. Letter to Mr. Brian Dunnigan 4  
18  
19  
20  
21  
22  
23  
24  
25

1 let me know. Does that sound okay?  
2 A. Yep.  
3 Q. And we marked before the deposition  
4 started here, the reporter marked up some of  
5 those exhibits. Are those exhibits in front of  
6 you now?  
7 A. Yes.  
8 Q. Okay. And Exhibit Number 1 should be a  
9 deposition notice. And have you seen that  
10 before?  
11 A. Yes, I have.  
12 Q. And in that notice, it requests that any  
13 backup that hasn't previously been provided for  
14 your reports be brought with you or provided.  
15 Do you have anything that falls into that  
16 category?  
17 A. No.  
18 Q. Okay. And Exhibit Number 2 should be  
19 your report dated February 7th, 2014; is that  
20 right?  
21 A. Yes.  
22 Q. Does that look like a copy, a complete  
23 copy of your report?  
24 A. Yes.  
25 Q. And I'll go ahead and walk through some

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1 questions on the report. We might talk about  
2 some of the other exhibits and come back to it  
3 later. If you -- well, I want to confirm who  
4 worked on the report. Who drafted the text for  
5 the report?  
6 A. I did.  
7 Q. And did anyone else help draft text?  
8 A. There would have been some, you know,  
9 feedback in terms of working through the  
10 editing of the report with attorneys and others  
11 at the Department as well as consultants.  
12 Q. Were you the primary author of the  
13 report?  
14 A. Yes.  
15 Q. Is there anybody else you would consider  
16 a coauthor?  
17 A. No.  
18 Q. Who was it that helped you with the  
19 report?  
20 A. Legal counsel, Brian Dunnigan, and Jesse  
21 Bradley at the Department; Tom Riley and  
22 possibly others at the Flatwater Group.  
23 Q. And when you say the "Department," you  
24 mean the Nebraska Department of Natural  
25 Resources; right?

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1 A. Yes.  
2 Q. Thanks. The report here that's dated  
3 February 7th, does that contain all of your  
4 responsive opinions regarding the N-CORPE  
5 Project? And I should pause to spell that out.  
6 "N-CORPE" is an acronym for Nebraska  
7 Cooperative Republican Platte Enhancement, and  
8 so I'll ask my question again.  
9 Does this report contain all of your  
10 responsive opinions regarding the N-CORPE  
11 Project?  
12 A. It contains all of my responsive  
13 opinions regarding the Kansas reports that were  
14 filed.  
15 Q. Thank you. Could you turn to page two,  
16 please?  
17 A. Yes.  
18 Q. Thank you. Right there up at the top of  
19 the page, the first sentence, do you see that  
20 sentence? It says "Comparison of Model output  
21 to the actual real-world conditions."  
22 A. Yes.  
23 Q. What comparison are you talking about?  
24 And by that, I mean, did you do a comparison?  
25 A. Yes. I looked at the results that were

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1 presented by the Kansas experts and compared  
2 that to the actual real-world conditions that  
3 both I observed and was further illuminated on  
4 through Mr. Riley's report.  
5 Q. Besides the Kansas results, did you look  
6 at any other Model results to compare to  
7 Mr. Riley's work?  
8 A. Nothing that's coming to mind at this --  
9 right now.  
10 Q. Okay. So moving down to the -- let's  
11 see. I'm not sure if that's a new paragraph or  
12 not. We'll go with, it looks like the fourth  
13 paragraph. It starts "In contrast." Do you  
14 see that?  
15 A. Yes.  
16 Q. And when you say "In contrast, the Model  
17 appears to compute," are you referring just to  
18 the Kansas Model results there?  
19 A. Yes.  
20 Q. And so the Kansas Model results you're  
21 saying show that perennial flow in Medicine  
22 Creek begins 10 miles downstream of the  
23 discharge of the project?  
24 A. Right. That's what the Model results  
25 appear to be showing when I reviewed the

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1 reports.  
2 Q. Thank you. If we could go to  
3 page three?  
4 A. Okay.  
5 Q. And there is a paragraph that says  
6 "Ultimately, transit losses." Do you see that?  
7 A. Yes.  
8 Q. And I wanted to see if I understood what  
9 you were saying in this paragraph. The second  
10 sentence there, if you see it, it says in the  
11 middle of the sentence, "Kansas fails to note  
12 Nebraska's allocation would be harmed even  
13 more," and I wanted to understand what you  
14 meant by "even more."  
15 A. Well, it's just the way the math works  
16 out as I guess tried to explain in the rest of  
17 the sentence because we receive a higher  
18 allocation for Medicine Creek.  
19 Q. And what is that allocation?  
20 A. It's about -- it's about 53 and a half  
21 percent of the total once you factor in the  
22 direct allocation and the split of the  
23 unallocated water.  
24 Q. Now, moving to the next paragraph, you  
25 give an example there. Do you see that?

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1 A. Yes.  
2 Q. And I want to make sure I understand the  
3 example. If I was following your description  
4 there, it takes on a hypothetical situation  
5 where there's a credit for 60,000 acre-feet; is  
6 that right?  
7 A. Yes.  
8 Q. And there's an amount of that water that  
9 was for the credit, the amount that shows up at  
10 the State line. In this hypothetical, it's  
11 40,000 acre-feet; is that right?  
12 A. Yes.  
13 Q. And I take it it's saying here that --  
14 you're saying that there's a problem if the  
15 full 60,000 doesn't arrive at the State line.  
16 Is that -- is that a fair characterization?  
17 A. Right, because if we needed to make up  
18 60,000 acre-feet in terms of our Compact  
19 compliance balance and that full amount didn't  
20 show up, we would have a 60,000 acre-foot  
21 credit, but the allocation that we received  
22 would be reduced so we would still end up with  
23 a shortfall.  
24 Q. Now, would the reduced allocation be  
25 more or less than the credit you were getting?

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1 A. Well, it would be less.  
2 Q. Now, in that paragraph, you have a  
3 sentence that says "this is exactly why." Do  
4 you see that?  
5 A. Yes.  
6 Q. Are you saying there that because  
7 there's a reduced allocation to Nebraska,  
8 therefore, Nebraska must ensure that the full  
9 60,000 of the credit actually hits the State  
10 line; is that what you're saying there?  
11 A. It's -- yeah. It's saying that if we  
12 don't ensure that all of the water gets there,  
13 then our allocation will be reduced and we  
14 don't make up the full amount of water that we  
15 needed to.  
16 Q. Now, the reduced allocation showing up  
17 in this hypothetical, did you intend that the  
18 reduced allocation is showing up in several  
19 places or just one of the reaches?  
20 A. Well, I don't think it's necessary to  
21 worry about where it shows up. The bottom line  
22 is that it shows up overall basin-wide.  
23 Q. So for the purposes of this  
24 hypothetical, it could either all be the 20,000  
25 acre-feet that is not present in flow could be

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1 at the Medicine Creek gage, for example?  
2 A. Well, it's I suppose possible, although  
3 what really matters is that it doesn't make it  
4 to the State line. That's kind of the  
5 underlying assumption.  
6 Q. Now, if all of the -- if the losses in  
7 this hypothetical were all at the Medicine  
8 Creek gage, then does it matter what's  
9 happening after the Medicine Creek gage?  
10 A. It could. Possibly not, possibly so, I  
11 guess.  
12 Q. Now, how is it that Nebraska is going to  
13 know that all of the water didn't show up at  
14 the State line that you wanted it to?  
15 A. Well, we have the forecast that we work  
16 through and it's basically got us working under  
17 a forecasted shortfall. So, you know, if we  
18 generate credits upstream but don't get the  
19 water to the State line, there's kind of a  
20 feedback loop where some of the water is made  
21 up, but then the -- so the shortfall shrinks,  
22 but then the allocation shrinks and so the  
23 shortfall grows again.  
24 So, you know, aside from that, we'll --  
25 I guess we'll know that the water is showing up

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1 at the State line. It's really kind of the  
2 other way around from the way your question was  
3 posed, I think.  
4 Q. Does that mean that if Nebraska met its  
5 compliance target, then all of the water must  
6 have shown up?  
7 A. Well, it's not necessarily that water.  
8 Again, I'm a little concerned that we're  
9 getting into the issue of drops of water over  
10 volumes of water. But the water is obviously  
11 getting there if we meet our compliance  
12 objective.  
13 Q. If the water is getting there, does that  
14 mean there's no transit loss?  
15 A. Well, again, transit loss is about drops  
16 of water. There's probably transit losses that  
17 occur within the system. That's just something  
18 we have to deal with, you know, with or without  
19 an augmentation project.  
20 Q. It seemed to me like you were suggesting  
21 that there's -- Nebraska has an incentive to  
22 eliminate transit losses because there will be  
23 a problem for Nebraska if there are transit  
24 losses. Is that what you were suggesting?  
25 A. Well, I guess it's probably partly that;

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1 that, you know, it's to our advantage to try to  
2 ensure that transit losses are minimized if  
3 they're going to occur, but it's also, you  
4 know, if they're inherent and something that is  
5 occurring, it's something that we have to deal  
6 with anyway.  
7 Q. And so is it an incentive driving  
8 Nebraska's work on the augmentation project?  
9 A. I'm sorry. Did you mean minimizing  
10 transit loss? Is that the incentive that  
11 you're getting at?  
12 Q. Yes. That's right.  
13 A. Right. So I think the way those  
14 projects were designed and constructed, that  
15 that was something that was taken into account  
16 and that at least, you know, in the vicinity of  
17 the delivery area and, you know, in terms of  
18 the economic tradeoffs of, you know, building a  
19 pipe further downstream versus where is -- you  
20 know, where is an outfall reasonably situated  
21 so that transit losses would be minimized.  
22 That's clearly something that would be taken  
23 into account, and was.  
24 Q. Now, I want to make sure I've captured  
25 everything you're trying to suggest here in

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1 terms of when you say "this is exactly why."  
2 It seems to me that you're saying that if there  
3 are large transit losses with the augmentation  
4 deliveries, that works against Nebraska's  
5 efforts to meet their compliance target. Is  
6 that a fair characterization of what you're  
7 suggesting here?  
8 A. Well, I think in terms of specifically  
9 what this is talking about, it's just simply  
10 saying that, regardless of what happens, we  
11 have to get that same volume of water to the  
12 State line.  
13 Q. And how is it that Nebraska is going to  
14 make sure that those transit losses aren't  
15 working against your compliance efforts?  
16 A. Well, I guess we do that by managing  
17 volumes of water instead of drops of water and  
18 everything is laid out in the Integrated  
19 Management Plans that we've been over.  
20 Q. That we've talked about a couple of  
21 times?  
22 A. Yeah.  
23 Q. Well, when you say "volumes of water,"  
24 is it fair to say that you are looking for a  
25 volume of water generated by an augmentation

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1 project like N-CORPE to arrive at some  
2 downstream location? Is that what you mean by  
3 managing volume of water?  
4 A. Well, it's a little broader than that.  
5 It's not necessarily that water. I mean, it's  
6 just an equivalent volume. Maybe that's what  
7 you meant.  
8 Q. It is. And the downstream location  
9 you're looking at is the State line?  
10 A. Correct.  
11 Q. Let's go to the next section right there  
12 below. There's a heading "Compact Call Year  
13 Water Administration." Do you see that?  
14 A. Yes.  
15 Q. In the second sentence of that first  
16 paragraph, it says "Nebraska administered this  
17 water in strict accordance with its Integrated  
18 Management Plans." Do you see that?  
19 A. Yes.  
20 Q. Could you explain what you mean by  
21 "strict accordance"?  
22 A. Well, there's a surface-water control in  
23 the Integrated Management Plan that requires  
24 the Department to administer surface-water in  
25 Compact Call Years in order to ensure Compact

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1 compliance.  
2 Q. And so when you say "administered this  
3 water," what are you referring to specifically?  
4 A. I'm sorry. I didn't understand.  
5 Q. What do you mean by "administered this  
6 water"? Which water and how was it  
7 administered?  
8 A. I mean the streamflow in the Basin and  
9 it was administered under prior appropriations.  
10 Q. Do you mean the closing notices?  
11 A. Closing notices are a part of water  
12 administration, yes.  
13 Q. Is there anything else besides the  
14 closing notices you're referring to here?  
15 A. Well, there were -- there was an order  
16 that was signed on January 1st. There were  
17 closing notices that went out. There was  
18 subsequent opening notices and then further  
19 subsequent closing notices, so it's just kind  
20 of the whole -- everything that we did, I  
21 guess.  
22 Q. If I crack open an IMP, am I going to  
23 find when an opening notice is issued after a  
24 closing notice and then when the closing notice  
25 is going to be issued again? Is that in the

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1 IMP?  
2 A. Only the first closing notice. The rest  
3 of it is all depending upon conditions and  
4 it's -- that's what's clearly contemplated, and  
5 it's, as I said, simply and clearly stated that  
6 we administer to ensure Compact compliance. So  
7 that's our -- that's our tool. We use the  
8 Compact accounting to determine when -- if,  
9 when, how many closing/opening notices are sent  
10 out.  
11 Q. In 2013 there, you mentioned that there  
12 were some -- well, I want to make sure I've got  
13 this right. The operations that happened in  
14 2013, that they include these closing notices  
15 and then opening notices you were referring to?  
16 A. Yes.  
17 Q. And when we're talking about closing  
18 notices, is that also or does that include  
19 notices issued for the Bureau of Reclamation's  
20 reservoirs in Nebraska in the Republican River  
21 Basin?  
22 A. Yes.  
23 Q. And so were those reservoirs part of  
24 this administration you were referring to?  
25 A. Yes.

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1 Q. What was the volume of water that was  
2 managed -- To pick up on your earlier point  
3 about managing the volume, what volume of water  
4 was managed for Compact Call purposes in 2013?  
5 A. Well, I'm speaking from memory, so I may  
6 not have this exact. In April -- and I guess  
7 there was another component beyond the closing  
8 and opening notices, which were storage release  
9 notices.  
10 So early in the year, we closed the  
11 reservoirs, but didn't require immediate  
12 releases of water under those closing notices.  
13 Release notices were sent out in April for  
14 release of water that had accrued in January,  
15 February, and March. I believe that was about  
16 10,000 acre-feet. And then another notice was  
17 sent out in May for additional release of water  
18 that accrued in April, and I believe that was  
19 13,000 acre-feet, although I may have those two  
20 volume numbers mixed up. It may have been  
21 13 first and 10 second.  
22 There was also a notice issued for  
23 Harlan to evacuate Compact water in May, which  
24 was further stayed or lifted, but before that,  
25 about 8,000 acre-feet was released downstream,

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1 much of which was diverted through the Cortland  
2 Canal. That was in May.  
3 Then later in the year, later in the  
4 irrigation season, about 6,000 acre-feet of  
5 Compact water was released to the Kansas  
6 Bostwick Irrigation District for irrigation  
7 purposes. And then later in the year, there  
8 was about 10,000 acre-feet remaining which was  
9 required to make it to the State line for  
10 Compact compliance purposes, so we -- that  
11 water was released and transferred into  
12 Lovewell Reservoir where it resides right now.  
13 Q. Thank you. Was there any water that had  
14 been administered in reservoirs upstream of  
15 Harlan County Lake that was allowed to remain  
16 in those reservoirs through the end of 2013?  
17 A. Yes. I don't recall the exact  
18 volume. I believe it was somewhere over  
19 20,000 acre-feet, and so that would have been  
20 water that was accrued in May and early June --  
21 well, probably all of June. The reservoirs  
22 were open during July and August.  
23 At a certain point, all of the  
24 appropriations were opened and then they were  
25 subsequently closed in September through the

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1 end of the year so that while we evaluated  
2 whether or not that water was also going to be  
3 needed to ensure Compact compliance, it, in  
4 fact, was not. So that water was turned back  
5 over to the Bureau's project water,  
6 legally-stored water on January 1st of 2014.  
7 Q. So can or is Nebraska planning to call  
8 for that water to be released?  
9 A. No. As I said, that was -- that's now  
10 considered legally-stored water by order of the  
11 Director. The Department can't order a release  
12 of legally-stored water, at least under prior  
13 appropriations. There may be a dam safety  
14 issue I'm not as familiar with that may allow  
15 us to order the evacuation of a facility,  
16 but --  
17 Q. Okay.  
18 A. -- that would be a different thing.  
19 Q. Besides the dam safety issue that you  
20 mentioned as a potential other reason to  
21 release, is there any other reason to release  
22 that you would be thinking of?  
23 A. No. I mean, that water is  
24 legally-stored water for them to use under  
25 their storage-use appropriations as they see

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1 fit.  
2 Q. Let's go to page four. The last  
3 paragraph of this section, just above the  
4 heading for 4.0, do you see that?  
5 A. Yes.  
6 Q. And there's a mention of Nebraska's  
7 Alternative Water-Short Year Plan as well as a  
8 Rock Creek Plan. Do you see that?  
9 A. Yes.  
10 Q. That's the Rock Creek Augmentation Plan;  
11 is that right?  
12 A. Yes.  
13 Q. Was the Rock Creek Augmentation Plan  
14 operating in 2013?  
15 A. Yes.  
16 Q. How much water was delivered out of the  
17 pipeline for the Rock Creek Augmentation  
18 Project?  
19 A. Approximately 16,000 acre-feet.  
20 Q. And do you know when those deliveries  
21 happened in sort of general terms throughout  
22 the year?  
23 A. I believe they began in mid February and  
24 ran through December 31st.  
25 Q. Was it constant deliveries?

Page 23

1 A. More or less.  
2 Q. Let's see. So if I divide 16,000 by  
3 11 for 11 months, I'll get the delivery amounts  
4 that were done each month?  
5 A. Approximately I believe that would work.  
6 I don't know when they started in February.  
7 Q. You don't have a better estimation?  
8 A. Well, obviously we'll have the actual  
9 data from the pumping and delivery that will be  
10 available here by April but, you know, there  
11 was -- there was, you know, a few brief times  
12 where they had to bring the system down for a  
13 day, at least once that I know of. You know, I  
14 think they ramped it up initially so, you know,  
15 there would be those considerations, but you  
16 could obtain estimates the way that you laid  
17 out.  
18 Q. Was the Rock Creek Augmentation Project  
19 deliveries, was that amount of water used in  
20 determining Nebraska's Compact compliance  
21 situation for 2013?  
22 A. Yes.  
23 (Mr. Brian Dunnigan joined the  
24 deposition.)  
25 Q. (By Mr. Grunewald) And how was it used?

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1 A. We included it in the streamflow. I  
2 mean, I suppose more straightforwardly, we used  
3 the streamflow that was gaged at the Rock  
4 Creek, at Parks gage, and that included the  
5 augmentation water.  
6 Q. Do you know how much of the deliveries  
7 from the pipeline outfall reached the Parks  
8 gage?  
9 A. Well, based on the gage readings that I  
10 observed throughout the year, it appeared to be  
11 nearly all of it, if not all of it.  
12 Q. Did you look at anything besides the  
13 gage reading at Parks?  
14 A. I have not at this point.  
15 Q. Did you look at the pipeline outfall  
16 discharge amount?  
17 A. I have not looked at that data at this  
18 point.  
19 Q. I just wanted to make sure I'm  
20 following. I might be missing something. So  
21 you looked at the gage data which had a number,  
22 but you didn't look at any other number and  
23 that was the basis for your conclusion that all  
24 of the water was reaching the gage?  
25 A. Yes. That data didn't give me any

Page 25

1 other -- any reason to believe otherwise.  
2 Q. And how much water did you expect was  
3 leaving the pipe at that point?  
4 A. My understanding is it operates at  
5 approximately 28 cfs.  
6 Q. And do you know if it was operating at  
7 28 cfs when you were looking at the Parks gage  
8 data?  
9 A. It was a fairly constant discharge. You  
10 know, the one thing I can say is when they --  
11 like on days when it went down for -- I think  
12 there was a one-day time that it went down for  
13 repair and it was quite apparent in the data  
14 that it wasn't operating at that level.  
15 Q. I would like to switch over to Exhibit 3  
16 if we could. We'll come back to your report in  
17 a moment. Could you pull out Exhibit 3 for me?  
18 A. I have it.  
19 Q. Thanks. Now, do you recognize  
20 Exhibit 3?  
21 A. I do.  
22 Q. And did you help prepare or direct the  
23 preparation of this document?  
24 A. Yes.  
25 Q. Does it look like a complete copy of

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1 this document, which is labeled "Forecast"?

2 A. Yes.

3 Q. If you were to paraphrase what this

4 document is for, what does it do for Nebraska?

5 A. Well, this determines whether or not we

6 need to declare a Compact Call Year under the

7 Integrated Management Plan.

8 Q. And this particular one is being done

9 for the current year we're in, 2014; is that

10 right?

11 A. Yes. This applies to 2014.

12 Q. And will 2014 be a Compact Call Year?

13 A. It is a Compact Call Year. That

14 determination was made on January 1st.

15 Q. And once your -- once Nebraska is in a

16 Compact Call Year, can it ever come out of a

17 Compact Call Year?

18 A. No.

19 Q. Now, if you can turn to page two, I

20 would appreciate it. You can maybe draw your

21 attention to Table 1. Do you see that?

22 A. Yes.

23 Q. I just wanted to connect the dots. So

24 this is a forecast which is looking at

25 provisional data for 2013 and a forecast of

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1 2014 to put together, I'm going to call it a

2 target for Compact Compliance. Is that a fair

3 characterization?

4 A. Yes.

5 Q. And so earlier we were talking about the

6 Rock Creek Augmentation deliveries and how they

7 were used and you mentioned streamflow; that

8 you looked at streamflow with respect to the

9 Compact compliance situation. In Table 1, I

10 see under "2013 Provisional," one of the items,

11 it uses streamflow and it says "provisional

12 records." Is that -- just to connect the dots,

13 that's where the Rock Creek Augmentation

14 Pipeline deliveries would show up in Nebraska's

15 forecast for Compact compliance?

16 A. Right. Because Kansas has rejected

17 Nebraska's ability to claim a credit, then

18 that's the only place that it would show up in

19 the accounting at this point.

20 Q. And if Nebraska's proposed credit method

21 were used, then the Rock Creek Augmentation

22 discharge would be removed from the streamflow

23 as a matter of accounting; isn't that right?

24 A. Well, I mean, I suppose that's a way to

25 look at it. I would -- I guess I would look at

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1 it a little differently; that in the

2 computation of the virgin water supply, the

3 augmentation water supply credit would be

4 subtracted out and then reassigned after the

5 allocations were divvied up from that virgin

6 water supply to the -- fully to the State.

7 Q. Thank you. You used the word "credit"

8 there. I think we just -- we had a decision

9 come down from the arbitrator regarding Rock

10 Creek, and I think he would refer to it as the

11 augmentation water supply being removed from

12 the virgin water supply calculation. Does that

13 sound right to you?

14 A. I believe so, yes. The specific details

15 of how we implement that -- those tweaks would

16 need to be worked out but, yeah, we would have

17 to account for those new net depletions in

18 determining the credit. So there's that to

19 address, but I wasn't trying to address that in

20 my answer.

21 Q. Fair enough. And since we're talking

22 about the Rock Creek Arbitrator's order, I have

23 a follow-up question on that and it relates as

24 well to the N-CORPE Project, which is that

25 arbitrator recommended that the Republican

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1 River Compact Administration, which I'll

2 probably call "RRCA" from here on out, should

3 review an Augmentation Plan in 20 years. Are

4 you familiar or do you remember that

5 recommendation?

6 A. Yes.

7 Q. And did Nebraska agree that that should

8 be done for augmentation planning?

9 A. Yes.

10 Q. Does the FSS require that?

11 A. Not to my knowledge.

12 Q. And why is Nebraska agreeing to it?

13 A. It seemed to be a reasonable concession.

14 In my view, the FSS requires review of the

15 accounting every year. So under that

16 requirement, anything that is related to the

17 accounting is reviewed by the RRCA every year.

18 So simply putting on paper that we'll review

19 this in 20 years is just a bit redundant in my

20 view, but it perhaps sets a timeline where we

21 do a more thorough review if that's what's

22 needed at that point.

23 Q. Let's pick up on that. If you can go

24 back to your expert report and flip to

25 page six, I would appreciate it. Let me know

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1 when you're there.  
2 A. I'm there.  
3 Q. So it's a section called "Conclusions  
4 and Opinions," and Number 4 discusses this  
5 review. Do you see that?  
6 A. Yes.  
7 Q. And in your report, it says "review the  
8 Plan in 20 years and discuss any potential  
9 revisions to the Plan that should be considered  
10 at that time." Does that -- that's your  
11 conclusion?  
12 A. Yes.  
13 Q. I want to understand how that relates to  
14 what you said a little earlier here regarding  
15 it being redundant in terms of what the RRCA  
16 reviews. Are you saying that this should  
17 happen every year?  
18 A. I'm saying that there's an opportunity  
19 for this every year, just as there's an  
20 opportunity to review any aspect of the  
21 accounting procedures every year.  
22 Q. I guess I just want to understand. Does  
23 Nebraska see this as conceding something  
24 additional or is Nebraska's position that what  
25 happens every year is what's going to happen in

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1 the 20th year; that nothing different happens  
2 in 20 years?  
3 A. No, that's not what I'm trying to say.  
4 I guess the point is that the ability to review  
5 this is there every year, but it may be that  
6 there is no cause raised by any of the three  
7 states to do a review for the first 19 years,  
8 so this just programs in that review so that we  
9 would do it in that 20th year, but that it  
10 could be done any year.  
11 Q. Okay. Thank you. If we could turn to  
12 Exhibit 4, please. And that's a letter dated  
13 January 21st, 2014. Do you see that?  
14 A. I do.  
15 Q. Have you ever seen this letter?  
16 A. Yes.  
17 Q. And what is this letter?  
18 A. It's a letter from the Army Corps of  
19 Engineers to the Bureau of Reclamation.  
20 Q. Have you had any conversations with the  
21 Corps of Engineers about this letter or the  
22 issues that it discusses?  
23 A. No.  
24 Q. Do you know if anybody on your staff has  
25 done -- has done that?

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1 A. I don't believe so.  
2 Q. Do you know if Director Dunnigan has?  
3 A. I don't believe so.  
4 Q. Now, this letter, on the first page  
5 there, the last paragraph talks -- it has a  
6 sentence, "authorized beneficial purposes." Do  
7 you see that?  
8 A. I do.  
9 Q. Are you familiar with what the Corps  
10 letter means by "authorized beneficial  
11 purposes"?  
12 A. Generally speaking, I am.  
13 Q. Do you know what the authorized  
14 beneficial purposes are for Harlan County Lake?  
15 A. Well, it lists these five items. To the  
16 best of my knowledge, that's what they are.  
17 Q. Do you think there are any in addition  
18 to those five?  
19 MR. BLANKENAU: Are you asking  
20 him for a legal conclusion, Chris?  
21 MR. GRUNEWALD: I'm just asking  
22 if he thinks there are any besides those five.  
23 MR. LAVENE: That sounds like a  
24 legal question.  
25 MR. GRUNEWALD: Well, I'm asking

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1 the question.  
2 MR. BLANKENAU: Well, you're  
3 asking him for an opinion outside of his  
4 expertise it would seem to me.  
5 MR. GRUNEWALD: I'm not asking  
6 for an expert opinion here. I'm asking if he  
7 knows of any other authorized beneficial  
8 purposes.  
9 THE WITNESS: I don't know.  
10 Q. (By Mr. Grunewald) If you can turn to  
11 Exhibit 5, please.  
12 A. I have it.  
13 Q. Thank you. And do you -- have you ever  
14 seen Exhibit 5 before?  
15 A. I have.  
16 Q. Are you familiar with this letter?  
17 A. Yes.  
18 Q. And could you just describe it? What is  
19 this letter?  
20 A. It's a letter from the Bureau of  
21 Reclamation to Director Brian Dunnigan of the  
22 Department of Natural Resources.  
23 Q. Have you reviewed this letter before  
24 this morning?  
25 A. Yes.

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1 Q. Did Nebraska prepare a response to this  
2 letter?  
3 A. Yes.  
4 Q. Did you work on that response?  
5 A. Yes.  
6 Q. So for this February 5th letter from the  
7 Bureau, do you agree with the letter, the  
8 contents of the letter?  
9 A. Well, I don't agree with it entirely,  
10 that's for certain. There probably are parts  
11 in here that are accurate, such as their  
12 recitation of one of the IMP goals. Their  
13 characterization of the situation in 2013 is --  
14 I don't agree with.  
15 Q. What in particular don't you agree with?  
16 A. Well, I think some of the numbers with  
17 regard to releases are consistent with my  
18 understanding, such as the -- some of this  
19 stuff on the first page. The characterization  
20 that Compact Call administration impacted  
21 federal storage facilities by no less than  
22 50,000 acre-feet, I don't agree with. I could  
23 go through it sentence-by-sentence if you like.  
24 Q. Well, let's start on page one that you  
25 mentioned. I wanted to make sure if we found

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1 something that you did agree with. You  
2 mentioned numbers for releases. So on page one  
3 there at the bottom, there's references to some  
4 additional storage. I'm sorry. I should say  
5 the first number there, the first sentence on  
6 the last paragraph is a number related to  
7 releases. Is that what you were referring to,  
8 that the numbers are consistent with your  
9 understanding?  
10 A. Right. Earlier I described a 10,000 and  
11 a 13,000 acre-foot release, so they've summed  
12 those numbers up.  
13 Q. And the reference to the additional  
14 11,466 acre-feet stored in Reclamation's  
15 upstream reservoirs, do you agree with that  
16 figure?  
17 A. I haven't reviewed the data. I don't  
18 have any reason to doubt it. I know that would  
19 be a subset of the water that I referred to  
20 earlier that was I believe in excess of 20,000  
21 acre-feet that was turned back over to the  
22 projects at the end of the year.  
23 Q. Now, up in the -- on the first paragraph  
24 of the first page, there are references to  
25 forecasts done by Nebraska. Is that the

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1 forecast document or -- well, is it the  
2 forecast document we were looking at earlier?  
3 A. Yes.  
4 Q. And it refers to an amount of acre-feet  
5 that -- well, maybe we'll just do it generally.  
6 Do you disagree with the numbers that they have  
7 in that first paragraph?  
8 A. They appear to be accurate. I'm just  
9 looking at the forecast document and they are  
10 what was contained on the forecast document.  
11 Q. If we stop at the first page, we've got  
12 all sorts of agreement. Now, the forecast  
13 document is making a hypothetical assessment of  
14 Nebraska's Compact compliance situation under  
15 particular conditions is my understanding; is  
16 that right?  
17 A. It's a drier forecast of the compliance  
18 outcome for the upcoming year, absent any  
19 additional management actions. I'm sorry.  
20 Q. So that forecast document took  
21 provisional data for 2013 and then projections  
22 for 2014; is that right?  
23 A. Well, I wouldn't call them projections  
24 but, yes, there's estimates of various terms  
25 that are a part of the accounting that allow us

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1 to forecast the potential shortfall for 2014 or  
2 the potential compliance balance under a dry  
3 year.  
4 Q. Now, if you had hopefully gone back to  
5 the forecast document, do you still have  
6 Exhibit 3 there in front of you?  
7 A. Yes.  
8 Q. On page three, there's Table 3.  
9 A. Yes.  
10 Q. And it looks like the -- if you just had  
11 a one year, looking at the year 2013 based on  
12 provisional numbers, it looks like there's a  
13 negative balance there in the last cell, and it  
14 shows minus 10,140 as in acre-feet; is that  
15 right?  
16 A. Yes.  
17 Q. Now, is that what Nebraska thinks the  
18 situation is when you only look at that one  
19 year for the year 2013?  
20 A. That was our provisional assessment as  
21 of December 31st or thereabouts.  
22 Q. Now, at the time coming into that  
23 forecast, had Nebraska predicted that the  
24 situation was better than the minus 10,140?  
25 A. I don't believe so.

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1 Q. So it sounded like there were a certain  
2 amount of water, that 10,000 acre-feet, that  
3 Nebraska didn't call to bring down from  
4 upstream reservoirs and I want to see if I can  
5 understand. Why wouldn't Nebraska be trying to  
6 make that number closer to zero or even instead  
7 of leaving water on the table, if you will?  
8 Could you explain the decision-making process  
9 there?  
10 A. Sure. Well, obviously for 2013, we had  
11 to look at the two-year average of 2012 and  
12 2013, so that averages out with that 2012 value  
13 to produce a positive two-year average. The  
14 other part of it is that we had -- we had  
15 forecasted for 2013 that if we took the  
16 management actions that were required to stay  
17 in compliance, we would end up at a balance of  
18 around 10 or 11,000 acre-feet to the negative.  
19 So we were trying to make sure that we ended up  
20 at that -- at that value going forward because  
21 that's where -- that was the plan and target  
22 that we had set out at the beginning of 2013.  
23 Q. Is the thinking there that the minus  
24 10,000 acre-foot of a one-year amount is the  
25 sort of one-year shortfall that can be

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1 compensated for in the following year?  
2 A. That's how the accounting would work,  
3 yeah.  
4 Q. Is that how Nebraska approaches it?  
5 A. Yes.  
6 Q. If we could go back to Exhibit 5. We  
7 got through page one. If we turn to page two,  
8 you mentioned one item already that you  
9 disagreed with, and that was the impact to the  
10 federal project; is that right?  
11 A. Yes.  
12 Q. Is there any other issues on page two  
13 that you disagree with?  
14 A. Well, there's an overarching problem  
15 here; that they're making this assumption which  
16 actually was quite surprising to me that we  
17 should have deviated from the IMPs in order to  
18 somehow change the way that we were managing  
19 surface-water and groundwater users in 2013,  
20 and I disagree with that very strongly. We  
21 committed to following those to the letter and  
22 that's exactly what we did.  
23 Q. And how is it you think they were  
24 suggesting the deviation?  
25 A. When they're discussing potential

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1 requests for additional management actions on  
2 groundwater users in the second to last  
3 paragraph, for example.  
4 Q. Okay. Anything else?  
5 A. Well, I should note that we had the  
6 benefit of having a pretty lengthy meeting with  
7 Aaron Thompson and Craig Scott regarding this  
8 letter prior to them sending it. They -- they  
9 sent us a draft letter and scheduled a meeting  
10 with us so that we could discuss it before they  
11 sent it. And so quite a bit of the statements,  
12 which I can't recall exactly for you here, but  
13 quite a bit of the statements and arguments and  
14 discussion that they brought to that meeting  
15 would also factor into my position.  
16 Q. Okay. And is there anything else that  
17 you would pick out, a particular point of  
18 disagreement, that we haven't already talked  
19 about with the content of this letter?  
20 A. I would take issue with the  
21 characterization that we arbitrarily  
22 disregarded or forgot parts of the Integrated  
23 Management Plan as they state on the top of  
24 page three. There may be other things.  
25 MR. GRUNEWALD: Okay. What I

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1 would like to suggest is we take a -- I'm going  
2 to suggest a 10-minute break. I show it's  
3 ten -- about 10:05 for me. We can just  
4 reconvene at 10:15 Central. Does that work?  
5 MR. BLANKENAU: That sounds  
6 fine.  
7 MR. GRUNEWALD: Okay. Thank  
8 you.  
9 (A short recess was taken.)  
10 Q. (By Mr. Grunewald) Back on the record.  
11 I would like to go back to your report and look  
12 at -- discuss the work on page four in the  
13 Section IV, "Future Conditions in the  
14 Republican River Basin." Do you see that?  
15 A. Yes.  
16 Q. Is your basis for disagreeing with  
17 Mr. Barfield's work that it was rejected by the  
18 Special Master?  
19 A. I disagreed with it before it was  
20 rejected by the Special Master.  
21 Q. Besides the Special Master rejecting it,  
22 what else is it? How would you describe why  
23 else you disagree with it?  
24 A. I guess I would refer you to my  
25 responsive expert report in the litigation.

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1 Q. Fair enough. Do you have any opinions  
2 on what the trends on base flows in the  
3 Republican River Basin are looking forward?  
4 A. I know that we plan through our IMPs to  
5 keep groundwater depletions at a, you know,  
6 steady rate. So if the only thing that factors  
7 into base flows in the future are groundwater  
8 depletions, then I think they'll be flat, but I  
9 don't necessarily believe that that's the case  
10 because there are other things that affect base  
11 flows.  
12 Q. And the other things you're referring  
13 to, when you're thinking of the other things  
14 that might have an impact, what categories of  
15 things are you talking about?  
16 A. Climate, weather, land use as examples.  
17 Q. And you think those things are likely to  
18 cause base flows to rise or to increase?  
19 A. I don't know. I guess it would depend  
20 on -- it would depend on what happens.  
21 Q. And what about trends on groundwater  
22 pumping in the Nebraska portion of the Basin?  
23 Do you have any opinion on whether there's a  
24 trend?  
25 A. Are you talking about the future or --

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1 Q. I'm talking about the -- do you have an  
2 opinion on the trend looking into the future?  
3 A. Well, I think that we'll keep them at  
4 least stable over the long-term. Conditions  
5 will dictate whether or not those values have  
6 to decrease, but I would see them flat,  
7 averaged out over the long-term.  
8 Q. Is the groundwater pumping associated  
9 with Augmentation Plans intended to be kept at  
10 or under the historical groundwater pumping  
11 that was associated with those wells?  
12 A. I think that's the general desire.  
13 Q. Do the plans require it?  
14 A. No.  
15 Q. What if the pumping is higher than the  
16 historic levels, what do you think is going to  
17 happen?  
18 A. Well, we demonstrate that in the plans.  
19 There will be some very -- very minor increases  
20 in depletions.  
21 Q. If we can turn to page five and there's  
22 a Section 5.0. Do you see it?  
23 A. Yes.  
24 Q. And in that Section 5.0, it mentions in  
25 the third paragraph the Platte River portion of

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1 the N-CORPE Project. Is there anything that  
2 the Nebraska DNR -- well, that the Nebraska  
3 Department of Natural Resources has to approve  
4 for the Platte portion of the project to become  
5 operational?  
6 A. Not to my knowledge.  
7 Q. Are there any accruals at all related to  
8 how the project will be run in relation to the  
9 Platte River?  
10 A. Well, I suspect the N-CORPE Board will  
11 take some kind of action on that, but I don't  
12 know.  
13 Q. Is there anything like a plan, on the  
14 order of an Augmentation Plan like is being  
15 submitted here, that is prepared and submitted  
16 by the State of Nebraska?  
17 A. No.  
18 Q. Are there any plans to -- for the State  
19 of Nebraska to collect data on whatever  
20 pipeline routes there might be that would go to  
21 the Platte River?  
22 A. Yes.  
23 Q. What other plans?  
24 A. We would coordinate that work with Twin  
25 Platte Natural Resources District in terms of

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1 calculating and quantifying, summarizing the  
2 offsets that are provided, whether it be under  
3 requirements of the Integrated Management Plans  
4 for statutory requirements or for the -- for  
5 our new Depletions Plan under the Platte River  
6 Program.  
7 Q. I want to ask you more generally about  
8 data with respect to this plan. What data is  
9 intended to be collected and by whom is it  
10 collected?  
11 A. The groundwater pumping data and the  
12 augmentation discharge data will be collected  
13 by the N-CORPE group.  
14 Q. Any data collected by them that you know  
15 of?  
16 A. I can't think of any off the top of my  
17 head.  
18 Q. When is it collected?  
19 A. I believe that would be in real-time.  
20 Q. Is that data going to be provided to  
21 anybody?  
22 A. Well, it'll be provided to the  
23 Department and then the Department would  
24 provide that to the RRCA through the Data  
25 Exchange.

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1 Q. And that includes both the pumping and  
2 the discharge data?  
3 A. Well, under the plan, it would. I don't  
4 know that the discharge data would be relevant  
5 given -- you know, until there's an approved  
6 plan.  
7 Q. So at the moment, there are no plans to  
8 provide the discharge data?  
9 A. You know, we hadn't really thought about  
10 it at this point. We may provide it anyway. I  
11 don't know that there's any requirements.  
12 Q. Are you willing to provide it?  
13 A. I don't know that I can answer that  
14 right now. I don't see why not, but --  
15 Q. What sort of factors will go into  
16 deciding whether or not you're willing to  
17 provide it?  
18 A. I suspect the litigious environment that  
19 we're in would be the primary factor.  
20 MR. BLANKENAU: Chris, a point  
21 of clarity. Are you talking about providing it  
22 to the RRCA or to whom are you referencing your  
23 question?  
24 MR. GRUNEWALD: Yeah. I think  
25 that's a fair characterization. I was trying

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1 to follow the thread of what data was being  
2 provided from the Department to the RRCA, and I  
3 believe I had asked after that whether it was  
4 both pumped and discharged, so I was just  
5 trying to follow the thread of what was being  
6 provided to the RRCA.  
7 MR. BLANKENAU: Okay.  
8 Q. (By Mr. Grunewald) So, Dr. Schneider,  
9 if in light of that you thought you were  
10 answering a different question, let's make sure  
11 that we got the right answer. Is there  
12 anything in your answer that you would like to  
13 clarify?  
14 A. I don't believe so.  
15 Q. Does the Department have any plans to  
16 add streamflow gages on Medicine Creek?  
17 A. We've talked about it very  
18 preliminarily. I'm not certain if we will or  
19 not, but I think it's something that we're  
20 considering. We don't have any concrete plans  
21 at this time, no.  
22 Q. And do you know if anyone else such as  
23 the N-CORPE Board or an NRD or anyone else is  
24 planning on adding stream gages --  
25 A. I don't know.

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1 Q. -- on Medicine Creek?  
2 A. No. I don't know.  
3 Q. If you had to determine what transit  
4 losses are occurring on Medicine Creek, how  
5 would you do it?  
6 A. Well, I suppose if I were to set out and  
7 study something like that -- and I assume you  
8 mean transit losses of the augmentation water?  
9 Q. Yes. Let's start with that.  
10 A. Then I would take measurements on the  
11 creek.  
12 Q. How often would you measure?  
13 A. I haven't considered that very  
14 thoroughly. It would depend on, I guess, the  
15 operational pattern of the project. If we were  
16 operating in a fairly constant manner, then  
17 probably less often than if there were a lot of  
18 changes in the outflow.  
19 Q. Is there anything else that you would  
20 consider doing?  
21 A. I can't think of any. You know, I  
22 haven't given it a lot of thought. That's all  
23 I can think of off the top of my head.  
24 Q. Okay. Thank you. I want to ask a few  
25 questions about the -- if water is being

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1 delivered out of the N-CORPE Pipeline, what  
2 might happen to that water. And can Nebraska  
3 store the water that comes out of the  
4 augmentation pipeline?  
5 A. You're going to have to help me a little  
6 bit by what you mean by Nebraska.  
7 Q. Well, let's start with the Department of  
8 Natural Resources.  
9 A. We don't have any storage facilities or  
10 agreements I suppose with those that do.  
11 Q. Is it possible for Nebraska to take  
12 actions that would allow for augmentation water  
13 to be stored by other entities?  
14 A. Well, I mean, it would kind of be -- I  
15 guess I would look at it from the opposite  
16 direction; that if -- you know, we've granted  
17 storage permits for various facilities that lie  
18 between the outfall and the State line on the  
19 Republican River. So if we didn't preclude  
20 that storage, then those entities would be  
21 allowed to store the water if they chose to.  
22 Q. Okay. Do you expect that the  
23 augmentation water from the N-CORPE Project is  
24 going to be passed through Harry Strunk  
25 Reservoir?

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1 A. Well, eventually it all will be. That's  
2 the only --  
3 Q. What do you mean by "eventually"?  
4 A. Well, that's really the only place for  
5 it to go, is downstream from there.  
6 Q. Is it possible that it could be held  
7 over a calendar year?  
8 A. It's possible.  
9 Q. Is it possible that it could be lost to  
10 evaporation?  
11 A. Well, evaporation will occur regardless  
12 of whether or not that water is there, so I  
13 don't know. I don't really know if those drops  
14 of water will evaporate.  
15 Q. So do you expect that the water from the  
16 augmentation pipeline will be passed through  
17 Harry Strunk Reservoir in the same year that  
18 the pipeline discharged the water?  
19 A. I would expect that certainly the  
20 majority of it would be.  
21 Q. Following it downstream, the next  
22 reservoir, federal reservoir down the stream is  
23 Harlan County Lake on the main staff?  
24 A. Yes.  
25 Q. Do you expect that the water -- the

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1 majority of the water that is from the  
2 augmentation pipeline will be passed through  
3 Harlan County Lake in the same year that it's  
4 discharged?  
5 A. I would expect that all of the water  
6 that we stage in Harlan County Lake for  
7 compliance will be delivered to Kansas in most  
8 conditions anyway. There could be other  
9 agreements or other climatic factors that could  
10 come into play that produced, you know,  
11 significant flows below Harlan County Lake that  
12 could take the place of that water and give us  
13 the opportunity to not require its release but,  
14 you know, setting all of that stuff aside, I  
15 would expect it all to go downstream.  
16 Q. When you say staged for Kansas, can you  
17 explain what you mean by that?  
18 A. Yeah. Essentially as opposed to  
19 requiring the bypass of the water as it gets to  
20 Harlan County Lake, we've worked with the  
21 Bureau of Reclamation and the Kansas Bostwick  
22 Irrigation District to allow for the temporary  
23 impoundment of the water, particularly during  
24 the spring, so that it's available for use in  
25 the irrigation season.

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1 Q. Does the Augmentation Plan require that  
2 staging for Kansas you just referred to?  
3 A. No.  
4 Q. Do you consider that the water that's  
5 being held in upstream reservoirs above Harlan  
6 County Lake under temporary authorization from  
7 the Department to also be staged for Kansas?  
8 A. Well, potentially.  
9 Q. I just want to get at whether the  
10 staging is only in Harlan County Lake or if  
11 it's also occurring elsewhere in the Basin in  
12 Nebraska.  
13 A. Well, last year we had water that was  
14 temporarily impounded and released from those  
15 reservoirs in the spring and we had other water  
16 that was temporarily impounded and turned back  
17 to the Districts so, you know, it could be  
18 either of those.  
19 Q. So it's staged or it's stored, but  
20 whether or not it's coming downstream is a  
21 decision that's made later?  
22 A. That's -- that's how last year worked,  
23 yes; that we initiated those releases based on  
24 our ongoing assessment of Compact compliance.  
25 Q. And is that how it works for Harlan

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1 County Lake as well?  
2 A. That's how it's been working.  
3 Q. Do you expect that it's going to work  
4 that way in 2014?  
5 A. I do. It appears that we've got those  
6 arrangements in place, so that's -- at least --  
7 at least for the 30,000 acre-feet of water that  
8 Kansas Bostwick has contracted for, so that's  
9 kind of what we're working towards right now.  
10 When we get to that volume, I don't know where  
11 we'll be in the year and where we'll be in  
12 terms of Compact compliance, but that -- that  
13 appears to be the amount of water they need  
14 this year. So water over and above that, you  
15 know, we haven't gotten to that point and made  
16 those decisions.  
17 Q. You mentioned "contracted for." What  
18 did you mean by that, "contracted for"?  
19 A. The Irrigation District has a Warren Act  
20 Contract with the Bureau of Reclamation for --  
21 basically to allow for the storage of that  
22 water in 2014 and delivery.  
23 Q. And does Nebraska support the use of the  
24 Warren Act Contract there?  
25 A. Well, I don't really know much about the

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1 legal aspects of it and whether or not it  
 2 should or shouldn't be required, but the end  
 3 outcome of what it's providing, we certainly do  
 4 support.  
 5 Q. I really want to say the end justifies  
 6 the means, but I'll withdraw that -- that  
 7 question.  
 8 MR. GRUNEWALD: I think if we  
 9 could just take a short break, I'm pretty close  
 10 to being done. So maybe just a couple minutes.  
 11 I'm just going to put you on mute if that's  
 12 okay.  
 13 MR. BLANKENAU: Okay.  
 14 (A short recess was taken.)  
 15 MR. GRUNEWALD: I don't have any  
 16 other questions.  
 17 MR. BLANKENAU: Okay. I guess  
 18 that concludes your deposition.  
 19 THE WITNESS: All right.  
 20 MR. GRUNEWALD: No questions --  
 21 we never did get Colorado on the phone; did we?  
 22 MR. BLANKENAU: I don't believe  
 23 so. Scott, you haven't joined us; have you?  
 24 Nope.  
 25 MR. GRUNEWALD: All right.

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1 We're all done. Thank you, Dr. Schneider.  
 2 THE WITNESS: You're welcome.  
 3 (At 10:41 a.m., the deposition  
 4 was concluded.)  
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1 DEPOSITION OF DR. JAMES SCHNEIDER  
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 3  
 4 Signature of witness  
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 7 STATE OF )  
 : ss.  
 8 COUNTY OF )  
 9  
 10 Subscribed and sworn to before me this  
 11 day of , .  
 12  
 13  
 14 GENERAL NOTARY PUBLIC  
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1 C-E-R-T-I-F-I-C-A-T-E  
 2 STATE OF NEBRASKA )  
 : ss.  
 3 COUNTY OF LANCASTER )  
 4 I, Jill R. Pilkington, RMR, General  
 5 Notary Public in and for the State of Nebraska,  
 6 do hereby certify that DR. JAMES SCHNEIDER was  
 7 by me duly sworn to testify the truth, the  
 8 whole truth and nothing but the truth, and that  
 9 the deposition by him as above set forth was  
 10 reduced to writing by me.  
 11 That the within and foregoing deposition  
 12 was taken by me at the time and place herein  
 13 specified and in accordance with the within  
 14 stipulations; the reading and signing of the  
 15 witness to his deposition having not been  
 16 waived.  
 17 That I am not counsel, attorney, or  
 18 relative of either party or otherwise  
 19 interested in the event of this suit.  
 20 IN TESTIMONY WHEREOF, I have placed my  
 21 hand and notarial seal the day of  
 22 February, 2014.  
 23  
 24 Jill R. Pilkington, RMR  
 25

1	DEPOSITION OF DR. JAMES SCHNEIDER
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