
Non-Binding Arbitrations before
Jeffrey C. Fereday, Arbitrator

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

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

DEPOSITION OF: DR. JASPER FANNING

DATE: February 18, 2014

TIME: 1:14 p.m.

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

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1 APPEARANCES
2
3 APPEARING FOR KANSAS:
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18
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20
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22
23
24
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1 I-N-D-E-X
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3 WITNESS Direct
4 Dr. Fanning 4
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8 EXHIBITS Marked
9 1. Notice of Deposition 4
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1 PROCEEDINGS
2 (Exhibit No. 1 was marked for
3 identification.)
4 DR. JASPER FANNING,
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 afternoon, Dr. Fanning.
11 A. Good afternoon, Mr. Grunewald.
12 Q. And we have I think -- not I think, I
13 know, just the one deposition exhibit and that
14 would be your deposition notice. Let me pause
15 and make sure the reporter and you have that.
16 A. We do.
17 Q. There's nothing much to do with that. I
18 just want to make sure, have you seen that
19 notice before?
20 A. Yes. I received it this morning.
21 Q. Great. Okay. And for today, will you
22 be able -- can you think of any reason why you
23 won't be able to give complete and truthful
24 answers today?
25 A. I cannot.

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1 Q. And you are planning to testify in this
2 proceeding as a fact witness instead of as an
3 expert witness; is that right?
4 A. That's my understanding.
5 Q. Thank you. So you haven't prepared any
6 expert reports for the N-CORPE Arbitration;
7 have you?
8 A. I have not.
9 Q. Are you planning to?
10 A. I am not planning to.
11 Q. Now, as I recall, you wear several
12 different hats so I want to make sure while
13 we're doing this deposition that I understand
14 which capacity or several capacities that you
15 are testifying today. So I would like to at
16 least start with what are your current
17 occupations or assignments with your current
18 job, how many do you have. If you could
19 describe that, I would appreciate it.
20 A. I am the General Manager of the Upper
21 Republican Natural Resources District, a
22 consultant for the State of Nebraska, a
23 consultant for the American Veterinary Medical
24 Association, a consultant for Ag Business
25 Specialists, a private farmer and rancher.

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1 That covers most of it, I think. I can't think
2 of anything I left off.
3 Q. Okay. And one thing I notice there is,
4 there's not a separate assignment with respect
5 to the N-CORPE Project. So if there -- am I
6 missing one there or are you doing work for --
7 work in relation to the N-CORPE Project as part
8 of your duties for the Upper Republican Natural
9 Resources District or something else?
10 A. My association with N-CORPE is through
11 my position as General Manager of the Upper
12 Republican Natural Resources District.
13 Q. Are you doing any of that work as part
14 of your consultant work for the State of
15 Nebraska?
16 A. No.
17 Q. Thank you. When did your involvement
18 with the N-CORPE Project begin?
19 A. September, late September of 2011.
20 Q. And what did you start doing?
21 A. Well, we had previously studied
22 augmentation and the implementation of
23 augmentation projects. In late September, we
24 became aware of an irrigated property that
25 would be well-suited for augmentation, and so

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1 the first consideration was acquiring the
2 property.
3 Q. Now, at that point, was there a Board
4 that had been formed? I heard reference to an
5 N-CORPE Board. Did it already exist at that
6 point?
7 A. No. The N-CORPE Interlocal Agency had
8 not yet been formed.
9 Q. When was that formed?
10 A. I don't remember the exact date that it
11 was formed. It seems like it was -- the first
12 meeting of N-CORPE would have been in November,
13 and that the Boards would have acted on their
14 own adopting the Interlocal Agreement probably
15 at their regular board meetings or special
16 board meetings in November of 2011 -- or excuse
17 me, I said 2011 -- 2012 for both the September
18 meetings and the November -- November meetings.
19 Q. Thank you. So the September meetings,
20 and that had to do with the first thing you
21 mentioned, which was the property --
22 A. Right.
23 Q. -- that the folks were interested in.
24 So it basically started in 2012?
25 A. Yes, in September of 2012.

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1 Q. And have you had several different
2 assignments or categories of involvement with
3 the project? Would you break it into phases or
4 it would have been the same thing the entire
5 time?
6 A. Well, I think as far as responsibilities
7 with respect to the project, the first was --
8 that I mentioned was acquisition of the real
9 estate, and then everything else really falls
10 into design and construction of the
11 infrastructure.
12 Q. When it came to figuring out the size of
13 the project, was there a particular size in
14 terms of augmentation water delivery amount or
15 some other size component that was used as a
16 driving factor for the project, or was it
17 something else?
18 A. Well, there were several -- several
19 factors that were considered in arriving at the
20 design criteria or capacity. First was, you
21 know, we looked at how many different Districts
22 were ultimately decided to be part of the joint
23 agency and want to receive benefit and what
24 their historical needs had been. Second, we
25 looked at the amount of existing uses that we

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1 had retired in the area and we looked at, you
2 know, I think, in part, excuse me, the overall
3 State balance of accounting historically.
4 Q. Thanks. Was any one of those factors
5 more important than any of the others?
6 A. I can't say that any one of those is any
7 more important than the others.
8 Q. Now, you described an acquisition phase
9 and then a design and construction phase. Were
10 you primarily responsible for the acquisition
11 or was somebody else primarily responsible for
12 that?
13 A. Well, the final acquisition of course
14 and the documentation had to be approved by a
15 Board of the agency, which was -- which, you
16 know, was formed with --
17 (At this time, the phone
18 disconnected.)
19 (The telephonic participants
20 rejoined the deposition.)
21 (The last question was read
22 back.)
23 THE WITNESS: And I began
24 stating that once N-CORPE, the Interlocal
25 Agency, was formed and there was a Board of

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1 Directors, ultimately they were the ones that
2 had to make the decision to finalize the
3 acquisition.
4 Q. (By Mr. Grunewald) Okay. And in your
5 work on this, on all phases of the project,
6 have you had somebody else or other people
7 helping you with it or has it pretty much just
8 been you?
9 A. Well, there's been assistance by a
10 number of people both in our District and the
11 other Natural Resource Districts, our legal
12 counsel, and consulting engineering firms.
13 Q. Can you give me a rundown of who the
14 major contributors are that you're including in
15 that category of assistance?
16 A. Sure. You know, within our District,
17 Nate Jenkins and Dirk Dinnel, Mike Keller who's
18 our onsite employee. Then there in the Middle
19 Republican Natural Resources District, Dan
20 Smith, their former manager; Bob Merrigan,
21 their assistant manager; their new manager,
22 Mr. Jack Russell. In the Twin Platte NRD, Kent
23 Miller has been very instrumental.
24 In the Lower Republican Natural
25 Resources District, Mike Clements has primarily

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1 been involved as well as all of their
2 administrative staff. Then within -- as
3 far as consulting engineering firms, we're
4 working with Miller & Associates, with HDR,
5 Incorporated, and The Flatwater Group has
6 helped to some extent.
7 Q. Thank you. And this project involves
8 both the Republican River side and Platte River
9 side; is that right?
10 A. The project will have the capability of
11 delivering water both to the South Platte
12 sub-basin as well as the Medicine Creek
13 sub-basin of the Republican River, that's
14 correct.
15 Q. Now, is the acquisition of the land
16 intended to serve both the Republican River and
17 Platte River deliveries?
18 A. It is.
19 Q. The design and construction phase that
20 we haven't talked in detail about yet, is
21 that -- is your involvement with that both the
22 Republican River side and the Platte River
23 side?
24 A. Mostly the Republican River side. To
25 the extent I've been involved on the Platte,

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1 it's more just as staying informed as opposed
2 to actually assisting with making that
3 decision.
4 Q. And when you say "decision," who is
5 making the decision?
6 A. Well, the only Natural Resources
7 District involved in the project that has any
8 responsibility associated with the Platte River
9 would be the Twin Platte Natural Resources
10 District, and so ultimately their Board of
11 Directors will make that decision and their
12 representative on the N-CORPE Board will be
13 involved in that.
14 Q. And decisions on what to do with the
15 Platte side of the project need to be approved
16 by the N-CORPE Board?
17 A. Well, the N-CORPE Board would have to
18 approve whatever operation of the project for
19 the Platte for it to be carried out, but as far
20 as how they construct their pipeline, the
21 Republican members of the agency are not
22 involved in those details.
23 Q. And who is represented on the N-CORPE
24 Board?
25 A. The Upper Republican, the Middle

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1 Republican, the Lower Republican, and Twin
2 Platte Natural Resources Districts.
3 Q. And besides those four Natural Resources
4 Districts, is anybody else, any other entity or
5 individuals represented on the Board?
6 A. No.
7 Q. Has the Board appointed any one person
8 to act as an executive director or general
9 manager for the project?
10 A. There's -- there's been some authority
11 in that regard directed towards myself, but I'm
12 not the general manager or executive director.
13 Q. How would you describe the authority
14 that's been directed at you?
15 A. Well, it's authority that would be
16 similar to that of a manager for the agency,
17 but the Board is still very involved in the
18 decision-making process.
19 Q. Is it the sort of thing where you're
20 executing the tasks that will bring the project
21 to completion?
22 A. Yeah, just much as a general manager of
23 a Natural Resources District implements the
24 policies and programs of a Board of Directors.
25 It's very similar to that.

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1 Q. Does the N-CORPE Board have any
2 policies, written policies?
3 A. We do.
4 Q. You say you do?
5 A. Yes.
6 Q. Have those been published anywhere?
7 A. They've been approved by the Board. As
8 far as publishing, they're not required to be
9 published anywhere.
10 Q. Are they kept online anywhere?
11 A. I don't know that the policies are
12 online, no.
13 Q. What do the policies cover? Are we
14 talking about a one-page document or is it a
15 long document?
16 A. It's -- it's mostly the Interlocal
17 Agreement that the Districts all approved which
18 lays out what the obligations of the individual
19 Districts are and what authorities that the
20 Interlocal Agency has, and that all relates
21 back to statute in Nebraska. Political
22 subdivisions that enter into an Interlocal
23 Agreement or form an Interlocal Agency convey
24 some or part of their authorities to the
25 Interlocal Agency.

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1 So in simplistic terms, N-CORPE is sort
2 of -- you know, has any authorities that a
3 Natural Resources District have that were
4 conveyed by the members that joined the
5 Interlocal Agency.
6 Q. Thank you. Dr. Fanning, your answers
7 are fading out just a little bit every now and
8 then, so I don't know if there's something you
9 guys could do to keep the phone closer to you.
10 I don't know if it's that or not, but I wanted
11 to mention it.
12 What's the status of the N-CORPE Project
13 with respect to the two sides? I would like to
14 know a description of how you describe the
15 status of the Republican River side as well as
16 the Platte River side.
17 A. Well, the Republican River side is
18 currently operational. Maximum capacity of the
19 well field will be complete by roughly March 1.
20 All of the wells should be complete on or very
21 near March 1. The Platte River side, the
22 pipeline that goes from the well field to the
23 Platte, I think they're currently at the -- at
24 the point where they're going to purchase pipe
25 or they're contemplating the purchase of pipe

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1 so that they'll have it onsite for construction
2 in the spring.
3 Q. For the Platte side, does that mean that
4 they've settled on a location for the pipeline?
5 A. They've -- my understanding is, and I
6 haven't been involved in some of the more
7 recent meetings, they have narrowed it down to
8 two or three different locations and they could
9 purchase enough pipe to take it to any one of
10 those three locations.
11 Q. Do you know anything about those
12 locations?
13 A. Very little.
14 Q. Do you know if the pipelines are
15 intended to take the outfall, if you will, all
16 the way to the Platte River?
17 A. Yeah, I don't know the exact location.
18 One outfall location would have been the South
19 Platte River, another one would have been
20 placing the water into a canal operated by
21 NPPD, and I believe a third location was
22 looking at a lake that that canal empties into
23 of NPPD's to put the water in.
24 Q. Thank you. The Republican River status,
25 you mentioned operational and a max capacity.

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1 What is the maximum capacity that you expect
2 the project to have?
3 A. Well, for our initial design with the
4 30 wells, it's somewhere around 83 to 85 cfs.
5 Q. And you said initial design of 30 wells.
6 Is that what you said?
7 A. That's correct.
8 Q. Has there been a subsequent design?
9 A. There's an additional -- the well field
10 was designed to allow the incorporation of at
11 least 10 more wells into the design.
12 Q. Are those wells that already exist or
13 wells that would have to be drilled?
14 A. Depending on the condition of the
15 existing wells, we would either use existing
16 wells or replacement wells.
17 Q. Are those wells associated with
18 additional property that hasn't been acquired?
19 A. No.
20 Q. So this would just be either reusing or
21 putting new wells within the existing land
22 boundary?
23 A. That's correct.
24 Q. The addition of those 10 wells, would
25 that increase the discharge maximum flow?

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1 A. No. The maximum discharge flow -- well,
2 I suppose arguably. I haven't -- wasn't
3 involved in the engineering calculations to
4 figure at what point the pipe would burst apart
5 or peel off the internal lining of the pipe,
6 but while it might increase the output
7 marginally, it wouldn't be -- it wouldn't be to
8 increase the total maximum outflow.
9 Q. And so does that mean that those
10 additional 10 wells are not -- are not to
11 increase over the 60,000 acre-foot pipeline
12 discharge per year?
13 A. That's correct. The 10 additional wells
14 might -- might allow more flexible scheduling
15 of deliveries to both the Republican and the
16 Platte if they were operating simultaneously
17 but, you know, we're probably at least five or
18 six years away from operating for the Platte I
19 would think. It seems like their requirement
20 is not until like 2019 or something.
21 Q. What's the amount of water that you
22 anticipate will be delivered to the Platte from
23 the project?
24 A. I don't know if they have a final number
25 for that yet. There's still a lot of Modeling

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1 going on on the Platte to figure out exactly
2 what their requirement is on the Platte.
3 Q. So if the project is operating right
4 now -- sorry. Let me rephrase that. Is the
5 maximum output available from the project
6 intended to be 60,000 acre-feet per year?
7 A. Say that again.
8 Q. Is the maximum output for the project
9 intended to be 60,000 acre-feet per year?
10 A. The maximum output or delivery to the
11 Medicine Creek discharge location is designed
12 and expected and anticipated to be no more than
13 60,000 acre-feet per year.
14 Q. Well, and what I'm trying to understand
15 is whether or not the discharge to the Platte
16 is going to be on top of that or if the 60,000
17 is kind of the project maximum and then that's
18 like one pie and it has to be split between the
19 two rivers.
20 A. The 60,000 acre-feet is a limitation
21 of -- that we put through design on the
22 Republican River discharge location. It has no
23 relationship with the Platte River.
24 Q. And are the pipe -- is the pipeline for
25 the Platte River, a portion of the project,

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1 going to be connected to the exact same well
2 that the Republican River side is at?
3 A. Through the valving, it would be
4 possible to have it connected or partially
5 disconnected.
6 Q. Is there any intention to keep the wells
7 separate for the two rivers' portions of the
8 project?
9 A. I don't -- I don't -- there's no
10 intention of doing that and I don't -- I guess
11 I haven't thought of any reason that it would
12 benefit us to keep them separate.
13 Q. You mentioned you've done a lot of work
14 with the design and construction phase. Can
15 you give me the broad categories that you've
16 done for the design and construction phase?
17 A. Mostly coordination and management.
18 Q. That could mean a lot of things I think.
19 So are there, again, sub-phases of getting this
20 project online that you march through? Did you
21 just issue contracts and somebody else did all
22 of the designing and all of the building? Can
23 you describe with a little more detail what it
24 is you did?
25 A. Well, I guess I coordinated and managed,

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1 along with the other Natural Resources District
2 managers, the design process with the
3 consulting engineers, and ultimately once we
4 had arrived at a final design, the bidding
5 process and the award of contracts, the
6 financing, and then the actual construction.
7 Q. How is the project being financed?
8 A. By borrowing made possible through our
9 Occupation Tax and bonding authorities.
10 Q. Does that financing cover only the
11 design and construction or does it also cover
12 the maintenance and operations?
13 A. The financing is for just the land
14 acquisition and the infrastructure. The
15 maintenance and operations will be covered
16 not -- you know, we won't issue bonds for
17 annual operating costs.
18 Q. What do you anticipate the annual
19 maintenance and operation costs to be for the
20 project for the Republican River side?
21 A. Well, it depends on if we're -- if we're
22 operating or not. Anywhere from a quarter of a
23 million to three or three and a half million
24 dollars per year.
25 Q. So I'm going to try and focus my

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1 questions on the Republican River side of the
2 project. So if I don't specify, let's go ahead
3 and assume it's that. But if you're not sure,
4 please ask the question and I'll try to
5 clarify.
6 When it comes to operating the project,
7 turning it on and having it discharge to
8 Medicine Creek, who is it that's going to make
9 the decision to turn the pipeline on?
10 A. Well, ultimately the Board will approve
11 the overall operation, and the day-to-day
12 management decisions of that will be made by
13 the NRD managers and the onsite employee of
14 N-CORPE.
15 Q. Does that mean that if one NRD would
16 like it to be on, that they ask for it to be on
17 and then the Board will do something with that
18 request? Is there a process that's been set up
19 for that sort of thing?
20 A. Well, basically each NRD is entitled to
21 use up to its share of the capacity of the
22 project in a given year and to utilize the
23 additional capacity that's available if another
24 District doesn't need their share of the
25 capacity. So, you know, ultimately each --

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1 each District, you know, ultimately indicates
2 how much they would like to be able to pump
3 from the project, and to the extent that can be
4 accommodated, the Board will operate it to that
5 extent.
6 Q. You mentioned shares assigned to the
7 NRD. So do each of the four NRDs have a share
8 assigned to the project?
9 A. Well, each of the four Districts, in
10 essence, has a 25 percent share of the
11 project's capacity.
12 Q. And how were those shares allotted?
13 A. Well, each District -- each District
14 provided an equal contribution for the land
15 purchase and retirement of water rights.
16 Q. I missed a little bit of your answer.
17 Did you say for land and -- equal contribution
18 of land for the water rights?
19 A. Yeah. We purchased the land which
20 included the irrigated acres and groundwater
21 irrigation.
22 Q. Are there any plans right now to expand
23 the project?
24 A. Expand in what regard?
25 Q. Increase the delivery amount.

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1 A. No. Basically once we chose the size of
2 pipe that's been installed in the ground, you
3 know, that became fixed. So we don't have any
4 ability to really stretch the pipe, so to
5 speak.
6 Q. What sort of data is being collected on
7 behalf of the N-CORPE Board for the project
8 during this operation?
9 A. We'll have a SCADA System installed that
10 will monitor all sorts of parameters at the
11 well sites, most notably I think are the
12 pumping rates of each well. Likewise, there
13 will be a flow meter at the discharge locations
14 monitoring the delivery.
15 Q. And is that everything that's going to
16 be collected?
17 A. Well, I think the SCADA System will
18 collect amperage draw, pumping levels, and
19 various other parameters related to the
20 variable frequency drives on those wells,
21 operating temperature and those sorts of
22 things.
23 Q. And sorry if I missed it. Did you
24 include the discharge amount coming out of the
25 pipeline and that data that's being collected?

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1 A. Yes, I did.
2 Q. And are there plans in place to turn
3 over that data in any periodic way to any other
4 entity?
5 A. Well, we'll of course provide it to the
6 Department of Natural Resources for, you know,
7 reporting under the Compact.
8 Q. All of the data?
9 A. Certainly the pumping volumes by each
10 well and the -- you know, I believe if we had
11 an approved Augmentation Plan, we would be
12 required to provide the discharge data.
13 Q. And you mentioned provide to the
14 Nebraska Department of Natural Resources for
15 reporting, so that would be turn it over once a
16 year on an annual turning it over; is that
17 right?
18 A. Yeah. I think we would be required to
19 do that. I doubt that if they would want it
20 more frequently, that we would tell them no.
21 Q. So we talked a bit about the decisions
22 to turn the project on. The Board makes the
23 final decisions; is that right?
24 A. Yes. The Board makes the final
25 decision.

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1 Q. So it's possible at least that one of
2 the NRDs that's got representatives on the
3 Board would want it turned on, but the Board
4 could decide not to? Is that possible?
5 A. I don't know if that's possible or not.
6 Q. I'm sorry. I couldn't hear your entire
7 answer.
8 A. I said I'm not sure if that's possible
9 or not.
10 Q. And is there a relationship between the
11 N-CORPE Board and the Nebraska Department of
12 Natural Resources in terms of connecting the
13 pipeline operations to the Augmentation Plan
14 that was submitted?
15 A. What was the question?
16 (The last question was read
17 back.)
18 THE WITNESS: I think the
19 relationship would be, if the Augmentation Plan
20 submitted were approved, that we would operate
21 the project pursuant to that Plan.
22 Q. (By Mr. Grunewald) In the construction
23 work related to the project, have you been
24 involved with any work involving culverts or
25 expanding culverts related to the discharge of

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1 the pipeline?
2 A. Yes, I have.
3 Q. What was the purpose of putting the
4 culverts in?
5 A. Well, the purpose of putting new
6 culverts in was simply so that the landowners
7 whose driveways those culverts were under
8 wouldn't experience any more overtopping of
9 their roadways during storm events when we were
10 operating than they were likely to have
11 experienced prior to our project operating.
12 Q. Is all of that work done?
13 A. Not all of that work is complete.
14 Nearly all of that work that needs to be
15 completed prior to operation is -- is being
16 completed as we speak.
17 Q. And when do you -- when do you expect
18 that the pipeline will be turned on for the
19 first time?
20 A. Sometime between now and the middle of
21 March. As early as next week.
22 Q. And is that expected to be a test or is
23 that expected to turn it on and leave it on?
24 A. Yes, both of those things.
25 Q. Here I thought I missed part of the

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1 answer. So are there any plans to turn it off
2 after you've turned it on in the middle of
3 March?
4 A. No. I anticipate once we have started
5 it and tested it -- no, we've tested a lot of
6 the components already; that it'll remain
7 operational. You know, I could see it shutting
8 off for a day or two for minor repairs during
9 initial startup, but other than those types of
10 things, the plan is to continue to operate it.
11 Q. And so is it -- what's the amount of
12 water you expect is going to discharge from the
13 pipeline by the end of the calendar year?
14 A. I don't remember the exact number. It's
15 on the order of 50,000 acre-feet, just a little
16 bit less than that.
17 Q. And is there a request pending by one or
18 more NRD for that flow to be useable for the
19 NRDs' purposes?
20 A. Yes.
21 Q. Which NRDs?
22 A. The Lower Republican and Middle
23 Republican Natural Resources Districts are
24 going to utilize N-CORPE Project water to
25 offset depletions.

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1 Q. So if I'm following, there could be
2 50,000 acre-feet by the end of the year that
3 discharge from the pipe, and does that mean the
4 Lower and Middle Republican Natural Resources
5 Districts will split the discharge 50/50?
6 A. It's not exactly 50/50. It was based on
7 each -- each of the Districts' needs. The
8 exact number is, as I recall, is somewhere
9 between 47 and 48,000 acre-feet; that those two
10 Districts will utilize the project. And the
11 Lower Republican had a little bit more than --
12 had more than 50 percent of the need this year
13 than the -- excuse me, the Middle Republican
14 had a little bit less. The Lower Republican
15 had a little bit more than 50/50.
16 Q. Are the operation and maintenance costs
17 assessed in relation to which NRDs are using
18 the project?
19 A. Yeah. That is -- that is the policy
20 that we've all agreed to.
21 Q. When are -- when would requests be made
22 in a -- looking forward, what's the typical
23 expectation for when requests would be made by
24 an NRD to use the pipeline?
25 A. Well, with respect to the Republican, I

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1 would anticipate those -- those requests or
2 notices to be made by the end of January
3 because that's when we're submitting our plans
4 to the Department for compliance. And so this
5 year, the Middle and Lower indicated prior to
6 January 31 before we sent in our joint plan to
7 the Department for Compact compliance in
8 compliance with our IMPs.
9 Q. So it's connected to the process in the
10 Integrated Management Plans for alternative
11 management actions; is that right?
12 A. Yeah. Each -- each district has to give
13 notice to the Department of what their
14 management actions are going to be in the
15 upcoming year prior to January 31. And so, you
16 know, there's -- we're sharing this project,
17 and inevitably, you know, if one District needs
18 to use a little bit more than its share in a
19 given year, we have to go through a process of
20 making sure that that much water is available.
21 Q. Has there been any legal challenges
22 inside the state of Nebraska to operation of
23 the N-CORPE Project?
24 A. Yeah. There was a challenge of a number
25 of things related to N-CORPE and augmentation

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1 in general by a couple of irrigation districts,
2 but that was dismissed.
3 Q. Was that a lawsuit?
4 A. Well, I think that's what it was, yes.
5 When I read the Complaint, it was hard to tell.
6 I'm not an attorney, remember.
7 Q. Any other challenges besides that one
8 you just listed?
9 A. No legal challenges that I'm aware of.
10 Q. What I would like to do is take a -- I
11 would like to take a 5-minute break and I'll
12 see what else I might have, but I think I'm
13 pretty close to done. Does that sound okay?
14 A. That's fine.
15 (A short recess was taken.)
16 Q. (By Mr. Grunewald) Dr. Fanning, have
17 you -- you've been present for the depositions
18 we did earlier today with Dr. Schneider and
19 Mr. Riley?
20 A. Yes, I have been.
21 Q. And did you hear the entire depositions
22 for the two of them?
23 A. Most of it, yes. Yes.
24 Q. Is there anything that you heard that
25 you disagree with?

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1 A. Not that I can think of.
2 Q. And have you reviewed the N-CORPE Plan
3 that was submitted to the RRCA?
4 A. Yes, I've reviewed that.
5 Q. Do you agree with it?
6 A. I do.
7 Q. And there's nothing in it that you
8 disagree with?
9 A. Not that I can think of.
10 Q. Have you reviewed the expert reports by
11 Dr. Schneider and Mr. Riley in this
12 arbitration?
13 A. I have.
14 Q. And is there anything in either of those
15 reports that you disagree with?
16 A. Nothing that comes to mind.
17 Q. Were you present for Dr. Schneider's
18 deposition earlier in January for this
19 arbitration?
20 A. I've got to say, I don't recall if I was
21 or not.
22 Q. I don't have my notes in front of me. I
23 couldn't tell you either, but I wanted to know
24 whether or not there's anything you disagreed
25 with from that deposition.

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1 A. Not recalling if I was there or not, I
2 would have to say there's nothing that I know
3 of.
4 Q. That seems like a safe answer. I don't
5 have any further questions.
6 A. All right. Thank you.
7 MR. WILMOTH: No cleanup on our
8 part.
9 MR. GRUNEWALD: We should just
10 double-check and make sure, is Scott or Dan on
11 for Colorado?
12 MR. WILMOTH: For the court
13 reporter's benefit, we would request a read and
14 sign on the transcript, please.
15 (At 2:08 p.m., the deposition
16 was concluded.)
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1 DEPOSITION OF DR. JASPER FANNING
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 3
 4
 5 Signature of witness
 6
 7
 8 STATE OF)
 : ss.
 9 COUNTY OF)
 10
 11 Subscribed and sworn to before me this
 12 day of , .
 13
 14
 15 GENERAL NOTARY PUBLIC
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1 DEPOSITION OF DR. JASPER FANNING
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 3 PAGE & LINE / REASON FOR CHANGE
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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. JASPER FANNING 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

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