

No. 126, Original

IN THE
SUPREME COURT OF THE UNITED STATES

STATE OF KANSAS,

Plaintiff,

v.

STATE OF NEBRASKA

and

STATE OF COLORADO,

Defendants.

Before The Honorable William J. Kayatta, Jr.
Special Master

**KANSAS' REPORT ON DEVELOPMENT
OF THE INTEGRATED SOLUTION ALTERNATIVE
TO NEBRASKA'S 5-RUN PROPOSAL**

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May 28, 2013

Comes now the State of Kansas, by and through its counsel, and states as follows:

1. During the May 23, 2013, telephone conference of counsel before Judge William J. Kayatta, Jr., Special Master, Judge Kayatta accepted Kansas' counsel's offer to investigate and report to him regarding when the Integrated Solution described in Appendix B of *Kansas' Expert Report on Nebraska's 5-Run Proposal* by Steven P. Larson, dated May 15, 2013, was provided by Dr. Samuel Perkins to members of the Kansas litigation team other than counsel of record. Judge Kayatta also questioned whether the Integrated Solution was within the scope of § 1.2 of Case Management Order ("CMO") No. 9.

2. Counsel has investigated the issues identified by Judge Kayatta and submits the following report ("Report").

3. Dr. Perkins is an employee in the Interstate Water Issues Unit at the Kansas Division of Water Resources ("DWR") in the position of "Professional Civil Engineer 1" with routine ongoing modeling responsibilities for the Republican River Basin and other basins. A copy of Dr. Perkins' Personnel Position Description is attached here to as Exhibit A. Specifically, Dr. Perkins' duties include "adapting the model to run future scenarios and the development of procedures and computer programs to facilitate the building of model data sets, the review of model inputs, and the review of output data sets." Exhibit A at ¶ 21. Dr. Perkins is also a member of the Kansas litigation team for this case.

4. In January 2012, Dr. Perkins decided to undertake, as part of his routine duties, a general investigation of possible alternative solutions to the existence of residuals in the use of the RRCA Groundwater Model under the RRCA Accounting Procedures. Dr. Perkins began this

investigation on his own, without any request from others at DWR or counsel for the State of Kansas.

5. After January 2012, Dr. Perkins continued to work, as time allowed, without any specific mandate from his superiors at DWR, on his independent investigation. During this period, he discussed his investigation with others at DWR, including David W. Barfield, the Kansas Chief Engineer and a member of the Kansas litigation team in this case, and received encouragement to pursue his investigation as time allowed.

6. After Nebraska announced on May 16, 2012, its change to the 5-run proposal excluding the Mound from the baseline, Dr. Perkins began to consider how his independent investigation might be applied to the 5-run proposal.

7. On August 9, 2012, Dr. Perkins produced computer run output files applying his work to the 5-run proposal. He produced Word and Excel files describing his work and comparing solutions between August 9 and September 19, 2012.

8. Dr. Perkins continued to analyze the results of his work during the fall of 2012, and he discussed those results with Mr. Barfield and others at DWR.

9. The Special Master's Draft Report was issued on January 9, 2013, noting that Kansas had not provided alternatives to the 5-run proposal but suggesting that Kansas would be given an opportunity to challenge the fairness of the 5-run proposal, Report of the Special Master 34-40 (January 9, 2013). Shortly thereafter, on January 11, 2013, Dr. Perkins, with encouragement from Mr. Barfield, provided his work to other members of the litigation team not including anyone from the office of counsel of record.

10. In January and February 2013, Mr. Larson reviewed the Integrated Solution and asked that it be analyzed with respect to assumed average and variable future conditions. The

analysis showed that the magnitude of the residuals associated with the RRCA Accounting Procedures could be expected to increase over time and that the residuals associated with the 5-run proposal could be expected to increase over time to an even greater degree.

11. Since the issuance of CMO No. 9, on January 25, 2013, Kansas has legitimately understood that Order to allow the proposal of an alternative to the 5-run proposal for solving the problem identified by the Special Master in his draft report of January 9, 2013. Kansas has communicated to the Special Master and to the parties its intention to submit such a proposal. This is clear from its submittals with regard to the discovery disputes under CMO No. 9, in which Kansas explicitly asserted its intention to submit an alternative to the 5-run proposal. Kansas Request for Approval of Discovery 3 (February 5, 2013) (“Kansas needs to be allowed to inquire into these matters and to matters that may be raised by other possible alternatives to the 5-run solution”); Kansas’ Response to Request for Hearing ¶ 9, at 3 (February 13, 2013) (“In sum, Kansas is seeking the opportunity to propose a fair remedy for Nebraska’s counterclaim that is consistent with the Draft Report”); Declaration of Steven P. Larson in Support of Kansas’ Supplemental Request for Approval of Discovery ¶ 10, at 4 (March 25, 2013) (“While we do not know what the data and information requested by Kansas will show, it may be important for Kansas to assess the 5-run proposal and to determine if other alternative accounting methods are more desirable”). Colorado adamantly opposed the suggestion by Kansas that it was preparing to submit an alternative to the 5-run proposal, arguing that “Nebraska and Colorado should not now be required to arbitrate new proposals or defend against those proposals during the August 2013 hearing.” Colorado’s Brief Opposing Kansas’ Discovery Requests 3 (February 13, 2013); see also Colorado’s Request for Conference and Leave to File Brief 1-2 (February 8, 2013).

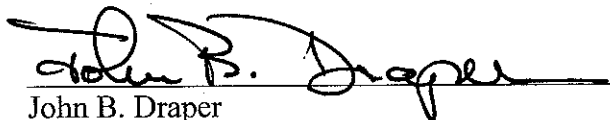
Judge Kayatta did not rule on Colorado's request that Kansas be prohibited from submitting an alternative to the 5-run proposal.

12. Individual declarations, based on personal knowledge of the matters addressed herein, will be provided if desired by the Special Master.

13. This Report is submitted pursuant to a specific request from Judge Kayatta. Kansas does not otherwise waive any attorney/client or work product privileges with respect to the subjects addressed.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I hereby certify, as counsel of record for the State of Kansas, that Kansas' Report on Development of the Integrated Solution Alternative to Nebraska's 5-Run Proposal was sent by U.S. Mail and email, this 28th day of May, 2013, addressed as follows. I further certify that all parties required to be served have been served.

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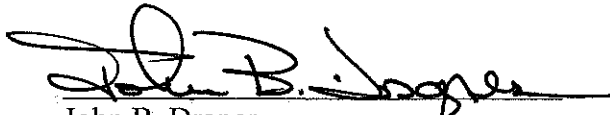
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DA 281-2 State of Kansas Department of Administration

Rev. 1-86 DIVISION OF PERSONNEL SERVICES

Position Description

Read each heading carefully before proceeding. Make statements simple, brief, and complete. Be certain the form is signed. Send the original to the Division of Personnel Services.

CHECK ONE: NEW POSITION EXISTING POSITION

PART I—Items 1 through 12 to be completed by department head or personnel office.

1. Agency Name				9. Position Number		10. Budget Program Number	
Kansas Department of Agriculture 046				K0216553		6799	
2. Employee Name (leave blank if position vacant)				11. Present Class Title (if existing position)			
Samuel Parker Perkins, Jr.				Professional Civil Engineer I			
3. Division				12. Proposed Class Title			
Water Resources							
4. Section				13. Allocation			
Water Management Services							
5. Unit				14. Effective Date			
Interstate Water Issues							
6. Location (address where employee works)				15. By		Approved	
City	Topeka	County	Shawnee	16. Audit			

7. (Circle appropriate time)					Date:	By:	
Full time XX Perm. XX Inter.							Date:
Part time Temp. 100%						17. Position Reviews	
8. Regular hours of work: (Circle appropriate time)						Date:	Date:
FROM:	8:00	AM/PM TO:	5:00	AM/PM	Date:	Date:	
PART II "To be completed by department head, personnel office or supervisor of the position"							
18. If this is a request to reallocate a position, briefly describe the reorganization, reassignment of work, new function added by law or other factors which changed the duties and responsibilities of the position.							
19. Who is the supervisor of this position? (Who assigns work, gives directions, answers questions and is directly in charge.)							
Name		Title			Position Number		
David Barfield		Professional Civil Engineer II			K0049481		
Who evaluates the work of an incumbent in this position?							
Name		Title			Position Number		
David Barfield		Professional Civil Engineer II			K0049481		
20. a) How much latitude is allowed employee in completing the work? b) What kinds of instructions, methods and guidelines are given to the employee in this position to help do the work? c) State how and in what detail assignments are made.							
<p>a) Employee is given broad latitude and is expected to use own judgement and resources in completing work.</p> <p>b) General instructions, methods and guidelines are provided via verbal and written communication from supervisor.</p> <p>c) Specific assignments are usually verbal and general in description. Employee is expected to work independently with periodic progress reviews by the supervisor and final work reviewed for compliance to instructions.</p>							

21. Describe the work of this position using this page or one additional page only. (Use the following format for describing job duties.):

What is the action being done (use an action verb); to **whom** or **what** is the action directed (object of action); **why** is the action being done (be brief); **how** is the action being done (be brief). For each task state: Who reviews it? How often? What is it reviewed for?

Number Each Task and Indicate Percent of Time	
<p>1. 20%</p> <p>2. 20%</p> <p>3. 30%</p> <p>4. 15%</p> <p>5. 10%</p> <p>6. 5%</p>	<p>Republican River Compact Administration groundwater modeling and data management - The RRCA groundwater model is the tool used to determine the impact of groundwater pumping on the basin's water supply and is a key component in determining Compact compliance. This position will be thoroughly familiar with the model, will develop Kansas' annual updates to the model, evaluate Nebraska and Colorado's annual update data, and evaluate model's performance. A summary of findings will be developed for supervisor and other interstate team members. Assist the team in management of Republican River data. This position will need to coordinate with Agency legal counsel to determine if any of this work is confidential. Progress will be reviewed by supervisor periodically.</p> <p>Republican River Compact Administration groundwater modeling enhancements - A number of enhancements to the RRCA groundwater model is needed to allow the State of Kansas to assess actions it may need to take to insure it remains in Compact compliance and to evaluate the actions of the other compacting states. These enhancement include adapting the model to run future scenarios and the development of procedures and computer programs to facilitate the building of model data sets, the review of model inputs, and the review of output data sets. This work shall be done under the direction of supervisor and with input from other team members. This position will prepare summaries of results, coordinating with Agency legal counsel to determine if any of this work is confidential. Progress will be reviewed by supervisor periodically.</p> <p>Kansas-Colorado Arkansas River Compact modeling and data management - The Hydrological-Institutional Model (H-I Model) was developed in Kansas vs Colorado to evaluate the impact of Colorado's development on its obligation to not further deplete usable stateline flows to Kansas after 1948. This position will become thoroughly acquainted with this complex model and its data sets and their development. This position will assist team members in the assembly and analysis of model data sets and determining the sensitivity of model results to various input data. Assist the team in management or Arkansas River data. This position will prepare summaries of results, coordinating with Agency legal counsel to determine if any of this work is confidential. Progress will be reviewed by supervisor periodically.</p> <p>Provide modeling, data manipulation, and other technical support to DWR staff completing water availability studies and investigating water shortage complaints. Work will be assigned and periodically reviewed by supervisor.</p> <p>Provide training to other DWR staff in groundwater modeling and manipulation of data sets associated with modeling efforts. Work will be assigned and periodically reviewed by</p>

	supervisor. Perform other assigned duties, as assigned by supervisor.
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22. a. If work involves leadership, supervisory, or management responsibilities, check the statement which best describes the position.

- Lead worker assigns, trains, schedules, oversees, or reviews work of others.
- Plans, Staffs, evaluates, and directs work of employees of a work unit.
- Delegates authority to carry out work of a unit to subordinate supervisors or managers.

b. List the names, class titles, and position numbers of all persons who are supervised directly by employee on this position.

Title	Position Number
May serve as lead worker on specific projects	

23. Which statement best describes the results of error in action or decision of this employee?

- Minimal property damage, minor injury, minor disruption of the flow of work.
- Moderate loss of time, injury, damage, or adverse impact on health and welfare of others.
- Major program failure, major property loss, or serious injury or incapacitation.
- Loss of life, disruption of operations of a major agency.

Please give examples.

Work associated with interstate river compacts may be used in future compact enforcement efforts. Failure to properly analyze data related to Kansas water entitlements and benefits from interstate stream

systems can lead to significant social and economic problems for the State of Kansas.

24. For what purpose, with whom and how frequently are contacts made with the public, other employees or officials?

Frequent contact is made with co-workers, agency, consultants and government officials and less frequently with the public. This employee is considered an important source of knowledge on specifics of computer models and technical analysis and must be able to explain details of this work to those with less technical knowledge.

25. What hazards, risks or discomforts exist on the job or in the work environment?

Typical office situation, except for occasional field work. A significant amount of interaction with staff will occur and a limited amount with water users. Since interstate water issues are sensitive and of considerable interest to the public, the incumbent must deal positively with individuals who may verbalize adversarial opinions about the Department's actions.

26. List machines or equipment used regularly in the work of this position. Indicate the frequency with which they are used.

Microcomputer and peripheral equipment on a daily basis. Occasionally overhead projectors and similar presentation equipment.

PART III To be completed by the department head or personnel office

27. List in the spaces below the minimum amounts of education and experience which you believe to be necessary for an employee to begin employment in this position.

Education General

Please reference the Class Specs for a PCE I.

Education or Training Special or professional

Please reference the Class Specs for a PCE I. Courses in groundwater modeling and surface water modeling is strongly preferred. Courses in GIS, hydrology, or geology is desirable.

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Licenses, certificates and registrations			
Professional engineering license recognized by the Kansas Board of Technical Professions. Valid Drivers license.			
Special knowledge, skills and abilities			
Considerable technical and responsible experience in groundwater or surface water modeling is strongly preferred. Experience in use of GIS and conducting hydraulic or hydrologic studies and investigations is desirable.			
Experience—Length in years and kind			
Please reference the Class Specifications for a PCE I.			
28. SPECIAL QUALIFICATIONS			
State any additional qualifications for this position which are necessary either as a physical requirement of an incumbent on the job, a necessary special requirement, a bona fide occupational qualification (BFOQ), or other requirement, that do not contradict the education and experience statement in the class specification. Any special requirement must be listed here in order to obtain selective certification.			
In state travel and out of state travel may be required of this position.			
	Signature of Employee	Date	
			Approved:
	Signature of Supervisor	Date	
			Signature of Personnel Official
			Date
			Signature of Agency Head or Appointing Authority
			Date