

No. 126, Original

In The
Supreme Court of the United States

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STATE OF KANSAS,

Plaintiff,

v.

STATE OF NEBRASKA

and

STATE OF COLORADO,

Defendants.

◆

DIRECT TESTIMONY OF BRIAN DUNNIGAN; DIRECTOR, NEBRASKA DEPARTMENT
OF NATURAL RESOURCES RE: NEBRASKA'S FIRST AMENDED COUNTERCLAIM
(PROPOSED CHANGES TO THE RRCA ACCOUNTING PROCEDURES)

◆

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July 19, 2012

1. I, Brian Dunnigan, offer the following as my Direct Testimony.

2. The purpose of my testimony is to provide context for the claims at issue in this proceeding by reviewing Nebraska's need to conclude the dispute about its proposed changes to the Republican River Compact Administration's ("RRCA") Accounting Procedures.

PERSONAL AND PROFESSIONAL BACKGROUND

3. I am the Director of the Nebraska Department of Natural Resources ("Department"). In this capacity, I am ultimately responsible for managing the State's surface water resources and the State's interstate water rights and obligations, including among others, the Upper Niobrara River Compact, the Blue River Basin Compact, the North Platte Decree, the South Platte River Compact, and the Republican River Compact ("Compact").

4. Of course, I rely on staff to assist me in meeting these obligations. Of particular assistance to me is my Deputy Director, Dr. James C. Schneider, on whom I rely to understand the intricacies of Compact accounting, along with use of the RRCA Groundwater Model and the RRCA Accounting Procedures and Reporting Requirements ("Current Accounting Procedures").

5. I was appointed Acting Director on March 24, 2008, and appointed Director on December 9, 2008. Prior to that time, I served as Acting Deputy Director beginning on August 20, 2005 until I was appointed Deputy Director on January 3, 2007.

6. I have worked within the Department, in one capacity or another, for the last 26 years. Before becoming the Deputy Director, and later Director, I was previously the Division Head for Floodplain Management, Dam Safety, and Surveys.

7. I am a licensed professional engineer. I received a B.S. in Civil Engineering (1981) from the University of Nebraska.

8. As Director, I am Nebraska's Commissioner on the RRCA. The RRCA is composed of one Commissioner from each of the three States of Colorado, Kansas, and Nebraska. In that capacity I am responsible for administering the Compact in Nebraska.

NEBRASKA'S FIRST AMENDED COUNTERCLAIM

9. In 2007, Nebraska became aware of a problem in the Current Accounting Procedures related to how outputs from the Model are applied within the Current Accounting Procedures.

10. Specifically, the problem related to the application of the outputs used to determine the Computed Beneficial Consumptive Use from groundwater and the Imported Water Supply Credit. The problem was of such a magnitude that final Compact accounting balances were misrepresented by as much as 10,000 acre-feet per year. In effect, the Current Accounting Procedures are distorting the Virgin Water Supply, thus undermining the allocations specifically provided for in the Compact.

11. The technical aspects of this issue, as well as its detailed history, are the subject of Dr. Schneider's *Direct Testimony Of Dr. James C. Schneider, Ph.D., Re: Nebraska's First Amended Counterclaim (Proposed Changes To The RRCA Accounting Procedures)*. I wish only to reiterate the importance of swift resolution of this issue to the State of Nebraska.

12. Within months of identifying this problem, Nebraska developed a relatively straightforward correction. Nebraska explained its concern and offered a proposed solution to the RRCA (i.e., the so-called "Five-Run Solution" as discussed by Dr. Schneider). Kansas criticized Nebraska's solution and offered no alternative solutions, but instead suggested a test by which any accounting method could be evaluated.

13. Nebraska, in response, expanded its proposal to satisfy that test (creating the so-called Sixteen-Run Proposal as discussed by Dr. Schneider) and presented the same to the RRCA

for review. Kansas then rejected Nebraska's Sixteen-Run Proposal despite the fact that it was specifically tailored by Nebraska to address concerns from Kansas regarding Nebraska's Five-Run Proposal. Kansas still refused to offer any solutions of its own.

14. Ultimately, the issue was presented to the Arbitrator, who concluded there was a problem with the Current Accounting Procedures, but was not convinced Nebraska's Sixteen-Run Proposal was the necessary solution. He recommended the RRCA further study the matter, but the RRCA has taken no such action.

15. Today, in my personal and professional estimation, there is absolutely no hope that the RRCA can effectively resolve this issue because I firmly believe that any resolution benefitting Nebraska's accounting balance will be rejected by Kansas.

16. I declare under penalty of perjury that the foregoing is true and correct.

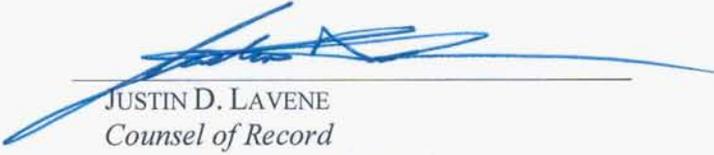
Executed this 18th day of July, 2012.


Brian Dunningan

Respectfully submitted this 19th day of July, 2012.

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CERTIFICATE OF SERVICE

I, Justin D. Lavene, counsel for the State of Nebraska in the above-captioned matter, hereby certify that on July 19, 2012, the original and one copy of the attached DIRECT TESTIMONY OF BRIAN DUNNIGAN; DIRECTOR, NEBRASKA DEPARTMENT OF NATURAL RESOURCES RE: NEBRASKA’S FIRST AMENDED COUNTERCLAIM (PROPOSED CHANGES TO THE RRCA ACCOUNTING PROCEDURES) were e-mailed and/or mailed to the non-party deponent and all parties as indicated in Appendix A of Case Management Plan No. 2 dated October 17, 2011.

I further certify that on the same date, this Certificate of Service was distributed to the parties listed below as specified in Appendix A of the Case Management Plan:

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