

1 No. 126, Original
2 ____‡____
3 IN THE
4 SUPREME COURT OF THE UNITED STATES
5 ____‡____
6 STATE OF KANSAS,
7 Plaintiff,
8 v.
9 STATE OF NEBRASKA
10 and
11 STATE OF COLORADO,
12 Defendants.
13
14 ____‡____
15 BEFORE THE OFFICE OF THE SPECIAL MASTER
16 ____‡____

17
18
19
20 DEPOSITION OF: BRAD EDGERTON
21 DATE: April 4, 2012
22 TIME: 1:05 p.m.
23 PLACE: 1221 N Street, Lincoln, Nebraska
24
25

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9

10 ALSO PRESENT: Donna Ormerod, Scott Ross, Brian
Dunnigan, Jim Schneider, Blake Johnson, Marc Groff,
11 Jesse Bradley and David Kracman

12 Via Telephone - Dale Book

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1 BRAD EDGERTON,
2 Of lawful age, being first duly cautioned and
3 solemnly sworn as hereinafter certified, was examined
4 and testified as follows:

5

6 DIRECT EXAMINATION

7 BY MR. WILMOTH:

8 Q. Good afternoon, Mr. Edgerton. Thank you for
9 coming.

10 A. You bet.

11 Q. I'm going to go ahead and start off by handing
12 you a copy of the deposition notice and just ask you
13 if you've seen this document.

14 MR. WILMOTH: We'll mark this as
15 Exhibit 1 to the deposition.

16 (Exhibit No. 1, marked for identification.)

17 A. I have.

18 Q. And thank you for appearing.

19 Do you have any materials with you in response
20 to the request contained in that subpoena?

21 A. I did, I brought some things.

22 Q. Could you walk me through each one of those and
23 just generally identify them, please.

24 A. Sure. A couple maps of the Republican River
25 basin and then a brochure of the Frenchman Cambridge

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1 Irrigation District. The next packet is a resolution
2 that was adopted April 3rd, 2012, by the board of
3 directors from Frenchman Cambridge Irrigation
4 District.

5 And then also a resolution that was adopted
6 October 6th of 2009 by Frenchman Cambridge Irrigation
7 District, Frenchman Cambridge Valley Irrigation
8 District, Nebraska Bostwick Irrigation District and
9 Red Willow -- or Hitchcock County and Red Willow
10 Irrigation District.

11 MR. DRAPER: Off the record.

12 (Whereupon, Mr. Book was connected via telephone
13 to the deposition.)

14 Q. (BY MR. WILMOTH) Please continue, Mr. Edgerton.

15 A. The next item is the contract between Frenchman
16 Cambridge Irrigation District and United States
17 Department of Interior, Bureau of Reclamation, and
18 the contract number is 009D6B0122.

19 And then I also have amendments to that
20 contract, Amendment 1, 2 and 3. I believe they're
21 all here.

22 And the next item is contract between the United
23 States Department of Interior, Bureau of Reclamation
24 and the Frenchman Cambridge Irrigation District, and
25 the contract number is 11SD6B0084, and this is a

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1 contract to repair -- or for repayment of the repairs

2 on Red Willow dam that are ongoing at this time.

3 Q. Please continue.

4 A. Okay. I believe this entire packet is all the

5 documents that were submitted in the irrigation

6 districts and Republican River basin and the Nebraska

7 portion to request a hearing with the department on

8 the adoption of the IMPs.

9 Q. All right. Thank you very much.

10 Anything else?

11 A. No.

12 Q. Mr. Edgerton, when were you first contacted to

13 serve as a witness for the State of Kansas?

14 A. March 21.

15 Q. Of what year?

16 A. 2012.

17 Q. And with whom did you speak?

18 A. John Draper.

19 Q. And what was the nature of the request by

20 Mr. Draper?

21 A. He was asking if I would be willing to testify

22 in this deposition. Basically wanted to know my

23 involvement when I was employed by the Department of

24 Natural Resources, and then also after changing jobs

25 and becoming manager of Frenchman Cambridge

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1 Irrigation District, what my involvement there was.

2 Q. And did you answer those questions at that time?

3 A. Yes, I did.

4 Q. And could you just give me the general substance
5 of what you -- how you responded, excuse me?

6 A. I'm going to back up a little bit. I believe we
7 set up a second phone conference on the 23rd.

8 Q. Okay.

9 A. And then we discussed, you know, a little bit
10 about my background and those kind of things, the
11 different things I was involved with, my general
12 duties as field office supervisor for the Cambridge
13 field office, and then also my involvement in the
14 compact settlement litigation, data collection, all
15 of the above, I guess, so...

16 Q. Okay. And did that span the DNR and FCID
17 service?

18 A. Yes.

19 Q. And did you inform your board of that contact?

20 A. I did.

21 Q. And did you obtain authorization to appear in
22 response to it?

23 A. I did, and that's what that resolution that I
24 presented signifies.

25 Q. Any limitations imposed upon you today by your

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1 board?

2 A. No.

3 Q. What did you inform your board about the nature
4 of the contact?

5 A. Basically I told them everything I told you,
6 that I was subpoenaed to testify, and they actually
7 thought that would be a good thing so...

8 Q. Did you inform your board that Kansas is seeking
9 to curtail 300,000 acres of irrigation permanently in
10 the Republican River basin?

11 A. Pardon me, what was?

12 MR. WILMOTH: Read it back.

13 (The record was read by the reporter as
14 requested.)

15 A. They already thought that.

16 Q. (BY MR. WILMOTH) What is the board's position
17 with regard to that request?

18 A. I guess I can't speak for the board with that
19 regard. We didn't do a straw vote on what their
20 position would be or anything so...

21 Q. Do you have an opinion about the propriety of
22 that request?

23 A. No, I don't.

24 Q. How would that affect Frenchman Cambridge
25 Irrigation District if it were imposed?

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1 A. If those acres were curtailed?

2 Q. Yes.

3 A. According to Kansas' remedy?

4 Q. Yes, sir.

5 A. My recollection from reading the remedy is that

6 surface water -- federal surface water projects in

7 the basin would basically become whole because of

8 that. I believe that curtailment was just for

9 groundwater.

10 Q. And that would be favorably received by the

11 district, I assume?

12 A. Yes.

13 Q. Why so?

14 A. Because we have contract obligations with the

15 federal government and then also obligations to our

16 water users to deliver a constant supply of water,

17 year after year.

18 Q. So anything that shuts down groundwater uses

19 favors surface water uses; is that the view?

20 A. I guess I'm not qualified to answer that

21 question.

22 Q. Is the district in favor of curtailing

23 groundwater users?

24 A. I don't believe the district has a position on

25 that.

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1 Q. Is the district concerned about the effect of
2 the Kansas remedy on its ability to use surface
3 water?

4 A. I don't believe the district has a position on
5 that either.

6 Q. Do any of your water users have groundwater
7 wells?

8 A. I'm sure they do.

9 Q. Do you know how many?

10 A. I don't.

11 Q. Do any of your board members have groundwater
12 wells?

13 A. Yes, they do.

14 Q. Do you know how many?

15 A. I don't.

16 Q. Do you know how much of the acreage within the
17 district is also irrigated with groundwater?

18 A. I don't know that information.

19 Q. Is there any irrigated with groundwater?

20 A. Yes, there is.

21 Q. Did you ever provide the State of Kansas with
22 any formal documentation in response to any requests
23 by them?

24 A. No.

25 Q. No written materials?

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1 A. (Witness nods.)

2 Q. No electronic materials?

3 A. (Witness nods.)

4 Q. Did you have occasion to coordinate with any of
5 the other members of the Kansas litigation team such
6 as Mr. Ross or Mr. Burke or Mr. -- Dr. Hamilton?

7 A. Could you rephrase the question?

8 Q. Did you have any occasion to coordinate with any
9 of the other members of the Kansas litigation team?

10 A. We met in the motel briefly.

11 Q. Today --

12 A. Yes.

13 Q. -- or yesterday. All right.

14 What was the nature of that meeting?

15 A. Just basically to get introduced, I guess, and I
16 had some material that I presented here and I also
17 presented that material to them at that time.

18 Q. Have you reviewed any of the Kansas expert
19 reports that have been prepared for this litigation?

20 A. No, I have not.

21 Q. But you're familiar with the general remedy
22 they're seeking?

23 A. Yes, I am.

24 Q. Is that because you've reviewed the petition
25 filed with the Supreme Court?

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1 A. I actually read the remedy when it was submitted
2 to the Department of Natural Resources.

3 Q. When was that, do you recall?

4 A. I don't -- I don't have an exact date.

5 Q. That was when you were in the employment of the
6 department --

7 A. Right.

8 Q. -- is that right?

9 Were you ever contacted by any of the Kansas
10 experts to assist them with the preparation of their
11 expert reports?

12 A. No.

13 Q. So what is the anticipated testimony that you
14 intend to provide in this proceeding?

15 A. I basically intend to answer all the questions
16 that I have knowledge to, and I guess I don't know
17 where the questioning is going to go so...

18 Q. What is it that you believe your board wants to
19 accomplish by your participation?

20 A. Well, the board feels that our interests are
21 sort of in line with Kansas' interest and right down
22 to the fact that we have been shorted water by a
23 state not complying with the compact.

24 Q. And can you explain to me how that occurred?

25 A. We are just downstream of Colorado and a federal

14

1 reservoir located on the Republican River near
2 Trenton, the Swanson Reservoir has an appropriation
3 to store water, and Colorado has violated the compact
4 since 2003.

5 And we believe that that water was subject to
6 appropriation and should have been stored in Swanson
7 Reservoir and used by other surface water users
8 upstream if it would not have been illegally diverted
9 by Colorado.

10 Q. So is the substance of your testimony then going
11 to be limited to the actions of the State of
12 Colorado?

13 A. No.

14 Q. Okay. With regard to the actions of the State
15 of Colorado, how did those affect your operations,
16 your district's operations?

17 A. We had one canal that was without water for six
18 consecutive years during the drought, and grant you
19 that the drought had some to do with it, but during
20 that period, Colorado also exceeded their compact
21 allocation in excess of 60,000 acre-feet, so that
22 theoretically should have supplied water to our
23 district for two or three years.

24 Q. And you would have beneficially used that water
25 within the state of Nebraska?

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1 A. Yes, we would.

2 Q. And with regard to the actions of the State of
3 Nebraska, what is your expected testimony?

4 A. I guess I don't understand your question.

5 Q. We just discussed the general nature of your
6 testimony with regard to the actions of Colorado, are
7 there actions that have been taken by the State of
8 Nebraska regarding which you intend to testify?

9 A. Yes, there is.

10 Q. Could you identify those for me, please.

11 A. It's basically spelled out in those documents,
12 requesting a hearing on those surface water controls
13 in the IMP.

14 Q. Anything else?

15 A. No.

16 Q. Thank you very much for that brief overview.

17 Let me back up just a little bit at this point
18 and learn a little bit about you, Mr. Edgerton,
19 although we've known each other for a while.

20 For the record, could you just generally give me
21 a thumbnail sketch of your personal background, where
22 were you born, where did you attend high school, did
23 you go to the university, those kind of things?

24 A. Okay. I was actually born in Beatrice,
25 Nebraska, but pretty much grew up in the Cambridge

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1 area, attended Cambridge High School.

2 During high school and after high school, I was
3 employed at our General Motors dealership until 1983.
4 And in June of '83, I was employed by the Department
5 of Water Resources.

6 In 2000, I was named division supervisor for the
7 Republican River basin with then the department --
8 Department of Natural Resources at that time, after
9 the merger with the two agencies.

10 And then in January of 2009, I was employed as
11 general manager for the Frenchman Cambridge
12 Irrigation District.

13 Q. And could you please describe for me your
14 educational background?

15 A. No -- no college education.

16 Q. You said Beatrice High School, correct?

17 A. No. Cambridge High School.

18 Q. Oh, Cambridge. I apologize.

19 And did you receive any specialized training
20 while you were with the Department of Water Resources
21 prior to its becoming the Department of Natural
22 Resources?

23 A. Yes, I did.

24 Q. Would you describe the nature of that for me,
25 please.

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1 A. I attended quite a few U.S. geological survey
2 workshops on stream gauging and record computations
3 and just other job-related workshops. Dam
4 inspections and those kind of things.

5 Q. What were the general nature of your duties at
6 the Department of Water Resources from June of '83
7 until 2000?

8 A. Basically stream gauging, doing dam inspections.

9 Q. Did you work for the dam safety section or
10 something comparable to that?

11 A. We did the inspections for the dam safety
12 section of the department. Field offices typically
13 did majority of the inspections on the low-hazard
14 dams.

15 Q. Okay.

16 A. We also did groundwater monitoring and measuring
17 on a monthly rotation throughout the Republican River
18 basin. Did water administration, canal measuring.

19 Q. Do you recall your official positions that you
20 held at the Department of Water Resources from '83 to
21 2000?

22 A. Started out as a water resource specialist one,
23 and then promoted to a two, and then promoted to a
24 three, and then when I became division supervisor, it
25 was water resource specialist four.

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1 Q. And you mentioned that the department underwent
2 a change in 2000. Could you describe the change of
3 the Department of Water Resources and how that change
4 changed when these two agencies merged?

5 A. I was involved in the field level and not a lot
6 changed there. I know a lot of things changed in the
7 Lincoln office, but I guess I don't know the details
8 of that.

9 Q. Did anything change in regard to your
10 day-to-day --

11 A. No.

12 Q. -- duties?

13 A. No.

14 Q. And while you were working with the Department
15 of Natural Resources, let's say from 2000 forward
16 then, to whom did you report?

17 A. It was the assistant director.

18 Q. Who was that individual?

19 A. Ann Bleed for a while.

20 Q. And subsequently?

21 A. Brian Dunnigan.

22 Q. What were your general responsibilities as the
23 Cambridge field supervisor? Did I get that right?

24 A. Yep. Basically make sure all the work got done
25 and reports filed with the department and, you know,

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1 make sure water administration was handled correctly,
2 in a timely manner and basically supervised three
3 other employees.

4 Q. You mentioned filing certain reports, what
5 reports are you referring to?

6 A. Just weekly reports, monthly reports, water
7 administration reports, reports for the Republican
8 River Compact Commission, field investigations for
9 water adjudications, time sheets, you know, goes on
10 and on, I guess, so...

11 Q. With regard to water administration and
12 adjudications, what did that activity entail?

13 A. Basically going out and investigate water rights
14 by examining the fields, the conditions, interviewing
15 the owners or tenants, assembling a field report and
16 then basically proceeding to hearing with that field
17 report, if needed.

18 Q. Were those investigations focused on surface
19 water or groundwater or both?

20 A. Just surface water.

21 Q. Did you have any experience with groundwater
22 rights directly?

23 A. No.

24 Q. Did you view your role at that time to protect
25 surface water rights from groundwater interference?

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1 A. No.

2 Q. How did you view your responsibilities in that
3 regard?

4 A. Basically administered water rights first in
5 time, first in right, according to state statutes.

6 Q. Did you have any views about the potential for
7 groundwater uses to interfere with surface water
8 rights at that time?

9 A. No, I didn't.

10 Q. Did you ever work directly with former Director
11 Patterson?

12 A. Yes, I did.

13 Q. And could you describe the nature of that
14 relationship?

15 A. Basically I attended many meetings with him
16 shortly after the settlement. Some of them were to
17 implement the settlement, others were just
18 informational meetings to basically go out, inform
19 the public of what the settlement involved, those
20 kind of things.

21 Q. And did you ever work with former Director
22 Bleed?

23 A. Yes, I did.

24 Q. And what was the nature of that relationship?

25 A. Same as mentioned with Roger.

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1 Q. How about Director Dunnigan?

2 A. Yes, I did.

3 Q. Same relationship?

4 A. Same.

5 Q. And specifically what was your role relative to

6 the state's efforts to comply with the Republican

7 River Compact?

8 A. Basically I would collect the surface water

9 pumping data. I would also inspect the surface water

10 pumpers to make sure they're complying within the

11 terms of their water rights, read the meters and

12 basically enforce Nebraska statutes with regards to

13 water administration.

14 Q. Solely on the surface water side, though?

15 A. Right.

16 Q. And did you have occasion to interact with the

17 Natural Resource District?

18 A. Yes, we did.

19 Q. What was nature of that interaction?

20 A. At what time period?

21 Q. During your tenure as the field supervisor for

22 the Cambridge field office.

23 A. I basically attended a lot of the meetings with

24 them, and then also was involved in the

25 development -- development of their integrated

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1 management plans.

2 Q. Which ones?

3 A. I guess we'll call 'em generation one.

4 Q. Okay. The first generation IMPs, was there a
5 subsequent generation?

6 A. I believe so.

7 Q. Were you involved in that?

8 A. For a short time, I was.

9 Q. Did you have occasion to see those through to
10 completion before you left?

11 A. I'm not sure about the dates when they were
12 actually approved. I think I was just departing the
13 department about the time Brian was ready to sign the
14 orders on those.

15 Q. So if I understand then, you had no role in the
16 third generation IMPs; is that right?

17 A. That's correct.

18 Q. Did you perform any technical analyses of the
19 first or second generation IMPs?

20 A. I'm going to say no, because I don't know what
21 type of technical analysis you're referring to.

22 Q. Did you conduct any modeling exercises or
23 anything like that --

24 A. No, I didn't.

25 Q. -- to determine their efficacy?

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1 Did you engage in any compact accounting to try
2 and determine how they would operate on the system?

3 A. No, I didn't.

4 Q. During your tenure at DNR, did you ever
5 communicate directly with the State of Kansas on any
6 of the issues involved in this litigation?

7 A. I did sit in on engineering committee reports
8 and assembly of those reports, so I'm sure there was
9 some interaction there.

10 Q. By the engineering committee, are you referring
11 to the Republican River Compact Administration
12 Committee?

13 A. Yes.

14 Q. Okay. So if I understand then, the only
15 communications you had were in public settings?

16 A. Correct.

17 Q. And you left your post in January of 2009; is
18 that right?

19 A. That's correct.

20 Q. Why did you elect to leave?

21 A. A lot of personal reasons.

22 Q. When were you first approached by the district?

23 A. To?

24 Q. Frenchman Cambridge Irrigation District.

25 A. To do what?

24

1 Q. To begin as their manager.

2 A. They had a position opening and they asked if I
3 would submit a resume for that, I believe in August
4 of '08. And then not a lot happened until December
5 actually, so...

6 Q. What happened in December?

7 A. I think the former manager of the district
8 announced his retirement.

9 Q. And were you informed at that time that your
10 application was accepted?

11 A. It was late December, I believe.

12 Q. And when did you inform the department of your
13 intention to depart?

14 A. I think I informed Brian and -- when we were in
15 Colorado on some things, it had been a couple three
16 weeks before the end of the year.

17 Q. Was it before or after you had agreed to take
18 the position at FCID?

19 A. What's that, the --

20 Q. Did you inform the department of your intention
21 to leave before or after you accepted the position?

22 A. I think -- I think in Colorado I told Brian I
23 was considering the position, so he was aware of it.
24 And then I gave him a two-weeks' notice.

25 Q. Since your departure, have you worked with

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1 Kansas in any regard concerning the issues in this
2 litigation?

3 A. No, I haven't.

4 Q. How about the Bureau of Reclamation, have you
5 worked with the bureau directly in any respect?

6 A. Work with the bureau on an ongoing basis just
7 basically because of our contracts with them.

8 Q. Do you interface with the Bureau of Reclamation
9 about the district's views on Republican River
10 Compact matters?

11 A. Yes.

12 Q. What's the nature of that interaction?

13 A. We are -- we are concerned about the bureau's
14 water rights and the fact that they're also involved
15 in the surface water controls, and we are asking them
16 to basically protect those water rights so that they
17 don't violate their contract with us.

18 Q. So do you view the district's interests as
19 aligned with those of the bureau?

20 A. Not necessarily.

21 Q. In what respect do they depart?

22 A. I guess I don't know, you know, we have
23 contracts with them and we have an obligation to
24 fulfill our end of the contracts and they have an
25 obligation to fulfill their end of the contracts.

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1 Q. How did you end up at the district, did they
2 approach you?

3 A. I believe I answered that question earlier,
4 didn't I?

5 Q. Perhaps, I'm sorry.

6 MR. DRAPER: Yes, he did.

7 Q. (BY MR. WILMOTH) I may have forgotten. They
8 approached you?

9 A. They asked me to submit my resume.

10 Q. Do you know why they singled you out?

11 A. I don't.

12 Q. Did you work with them directly in your role as
13 the Cambridge field supervisor?

14 A. They held water rights like all the other water
15 right holders in the basin, so I did deal with them
16 quite a bit actually. And I believe in 2006 and '7,
17 we did a -- went through the map transfer process on
18 the district, so quite a bit of work involved with
19 that.

20 Q. Just for the sake of the record, would you
21 clarify what that means, the map transfer?

22 A. It's sort of an adjudication process that sort
23 of allows the district to realign all their water
24 rights, and it kind of moves into a different aspect
25 of how we make changes to our water right in the

27

1 future. I believe state Statutes 46 2021 through

2 2029 kind of spells all that out.

3 Q. Provides you additional flexibility in where you

4 can use some of the water?

5 A. Yeah.

6 Q. Is that the idea?

7 A. It takes some -- some of the department's

8 authority out of it and turns it over to the

9 district, as far as doing transfers and those kind of

10 things.

11 Prior to the map transfer, the district had

12 water rights, and then they had taken out other water

13 rights and puzzled them in there.

14 So, for instance, one field might have three or

15 four different water rights across that field, and

16 with the map transfer, it basically picked up all the

17 water rights and spread them over every acre. So in

18 essence, you had layers of water rights over the

19 45,669 acres.

20 Q. And when was that map transfer processed?

21 A. It was approved, I believe, in 2007.

22 Q. Were you informed of the compensation package

23 you would receive by the district before you left the

24 department?

25 A. Yes, I was.

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1 Q. Did that create any kind of conflict for you?

2 A. No, it didn't.

3 Q. Can you explain the district's interest in water
4 management in the basin generally?

5 A. Their interest is basically making sure they
6 have the ability to supply water to the water users
7 in a consistent year-after-year basis.

8 Q. And why is that important to the district?

9 A. Well, for one thing, we have water users that
10 rely on that water, and then also we have employees
11 that rely on a job to deliver that water.

12 Q. Can you describe the structure of the district's
13 water rights? I understand some are held by the
14 bureau, and I assume some are held by the district?

15 A. I can. The district holds the natural flow
16 permits or the permits to divert directly out of the
17 river, and the bureau holds the storage use permits,
18 which is the permit to take storage water out of the
19 three reservoirs mentioned in our contract and apply
20 it to those same acres, so basically every water
21 right -- every acre has two water rights attached to
22 it.

23 Q. A natural flow right and a storage right?

24 A. That's correct.

25 Q. And some of them have groundwater rights

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1 attached to them, if I understood?

2 A. I can't -- I can't speak to that. Not the

3 districts.

4 Q. I see. The individual pieces of ground might?

5 A. It could.

6 Q. Okay. And all of the rights you just mentioned

7 are all issued by the State of Nebraska; is that

8 correct?

9 A. That is correct.

10 Q. And to your knowledge, do your operations

11 conform to the laws of the State of Nebraska?

12 A. Yes, they do.

13 Q. And do the bureau's?

14 A. I believe so.

15 Q. You provided us a map earlier of the district's

16 infrastructure. Could you just generally describe

17 that from east to west?

18 A. From east to west?

19 Q. Excuse me, from west to east.

20 A. West to east?

21 Q. That would be easier --

22 A. Okay.

23 Q. -- if we were flowing in the direction of the

24 river.

25 A. The west end, we have Swanson Reservoir, I

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1 believe it has a storage capacity of about 112,000
2 acre-feet. We have a canal on the south side of the
3 river that diverts directly out of the reservoir and
4 serves approximately 18,000 acres. I believe there's
5 about 69 miles of canal under that system.

6 And then in addition to releasing water down
7 Meeker Canal, historically they have released water
8 in the river, and it would flow about 60 miles
9 downstream and be diverted at the Bartley Diversion
10 Dam, which is located between Bartley and Indianola,
11 Nebraska, and that canal is on the south side of the
12 river, serves roughly 6500 acres.

13 Going to the north side of the river, we have
14 Red Willow Canal which diverts off the Red Willow
15 Creek halfway down from Hugh Butler Reservoir and to
16 the confluence of the Republican River. And I
17 believe there is about 45-, 4600 acres under that
18 canal.

19 And then in addition to that, we have Cambridge
20 Canal which can divert water from Harry Strunk
21 Reservoir, and then it also picks up water from Hugh
22 Butler and Swanson Reservoir. If we have extra water
23 in the system, we can take that water into Cambridge
24 Canal and throttle back Harry Strunk so that we
25 utilize all the water that we released.

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1 As I mentioned earlier, there's 45,669 acres
2 under permit.

3 Q. And how does that compare with the total
4 irrigated acreage in the Nebraska portion of the
5 basin?

6 A. I guess I don't know what that number is.

7 Q. Do you know how it compares to the
8 groundwater-irrigated acreage in the basin?

9 A. I don't.

10 Q. What's the total annual production, gross
11 production in the district?

12 A. As far as the crops grown and those kind of
13 things?

14 Q. Yes.

15 A. We do a survey, but we don't get a hundred
16 percent return on those surveys, so I don't -- I
17 don't have a total number on that for ya. The
18 bureau -- the bureau kind of looks at those numbers.

19 Q. Do you have any idea how that compares to the
20 total production in the Nebraska portion of the
21 basin?

22 A. I don't.

23 Q. And you don't know how that compares to the
24 groundwater-irrigated portion, I assume?

25 A. I would say an acre of corn is an acre of corn.

1 Q. You mentioned that 45,000, roughly, acres are
2 irrigated, slightly more than 45,600?

3 A. Are permitted.

4 Q. Are permitted.

5 The district was originally authorized to
6 irrigate over 66,000 acres, wasn't it?

7 A. I think that was the Frenchman Cambridge
8 division.

9 Q. Okay.

10 A. Which would include Frenchman Valley and H&RW.

11 Q. Okay. And do those collectively irrigate
12 66,000 acres now?

13 A. I haven't done the math to see what it totals up
14 to.

15 Q. The projects were built in the '40s; is that
16 right?

17 A. Late '40s, early '50s.

18 Q. How have you observed, over the course of your
19 career and your interaction with the district,
20 efficiencies change since that time in the district,
21 and by that I mean, water, irrigation application
22 efficiency?

23 A. The Frenchman Cambridge Irrigation District has
24 been proactive in going after funds to be more
25 efficient. In the '80s, they adopted what they call

1 a R and B program which entailed basically burying
2 all of their open ditch laterals and putting them
3 into buried pipe. That in itself was a huge water
4 savings for the district.

5 And then in recent years, our operators have
6 been installing center pivot irrigation systems.
7 They also installed surge valves for flood
8 irrigation, those kind of things.

9 And then just recently, the district purchased
10 some gate automation for one canal, and that's going
11 to be installed this May. And then we've also
12 applied for some federal grant money to install more
13 gate automation.

14 And in addition to that, we were awarded a water
15 smart contract, federal contract for a -- to build a
16 pumping station, to supplement the Bartley Canal from
17 the Cambridge Diversion Dam. That's a \$1.2 million
18 project, and we got 50 percent cost share from the
19 federal government, and that project is underway
20 right now so...

21 Q. What percentage of the district would you say is
22 under center pivot now?

23 A. On the Cambridge and Bartley Canal, it's in
24 excess of 50 percent. And on the Meeker Canal, it's
25 approaching 35 percent. And then on Red Willow

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1 Canal, it's around 30 percent.

2 Q. And how much of the district, percentagewise,
3 would you say has converted to underground pipe?

4 A. Underground pipe as far as?

5 Q. How many laterals did you bury?

6 A. All of them.

7 Q. All of them.

8 A. 156 miles.

9 Q. What have you observed that that has done to
10 your overall water use in the district over the last,
11 say, 20 years?

12 A. We're ending up with more water in storage at
13 the end of the year. One other management aspect we
14 adopted was to -- we actually requested that the
15 bureau modify our contract and redefine our
16 irrigation start date as April 15th.

17 And so we've been putting water in the canal as
18 early as possible, and with the conversion to center
19 pivots, people are able to utilize that water a lot
20 earlier than they historically have.

21 Q. What's the benefit of all of that?

22 A. They can basically irrigate the day after they
23 plant or the day they plant and with river water if
24 it's available and we're not pulling water out of
25 storage to do that.

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1 Q. About how much water do you think you've saved
2 through those measures?

3 A. Tons, lots of water. I don't -- I don't have an
4 exact number. It's documented in all our grants that
5 we apply for and stuff so...

6 Q. Has that helped you deal with drought conditions
7 and water shortages?

8 A. It is helping. The projects were originally set
9 up to use natural flow as the primary source of water
10 and then use the reservoirs as supplemental.

11 So in the past, we've got away from that, and
12 basically, you know, the natural flow is basically
13 diminished to the point where we're irrigating every
14 year with just what we have in storage, so we try --

15 Q. So you don't use any natural flow water anymore?

16 A. We do, but we're trying to turn that around and
17 take advantage of the water that's there earlier.

18 And that was the reason we modified our contract, so
19 we could put water in the canal earlier and utilize
20 our natural flow permit.

21 Q. Has that been a success?

22 A. Yes.

23 Q. What are you currently charging your users for
24 water, what are your water rates?

25 A. We charge them \$33 an acre.

1 Q. How has that changed in the last 10 years?

2 A. In 2008, it was \$30 an acre, and I think in
3 2009, it was 30, and then we raised it 33. I don't
4 have the numbers on top of my head on what it was 10
5 years ago.

6 Q. And if I understood you correctly, earlier you
7 indicated that the district would benefit if the
8 inflows to the federal reservoirs were increased; is
9 that right?

10 A. Increased and also they would just stabilize and
11 stay constant, would be a big benefit too.

12 Q. And am I correct in understanding that the
13 district believes that if Kansas prevails in this
14 action, that will be the result?

15 A. No, I don't think we believe that at all, but
16 it's definitely a step in the right direction.

17 Q. You mentioned that you hadn't calculated the
18 amount of water that you saved, but it was a lot of
19 water. Where would I find that information? You
20 mentioned some grants or somebody calculates it for
21 grants; is that right?

22 A. Right, the Bureau of Reclamation furnishes data
23 to the Republican River Compact Administration. If
24 you look at the historic data, it will have losses
25 from open ditch laterals, and then as those laterals

1 were buried, converted to pipe, then those numbers
2 basically went to zero. So you could tally up those
3 savings from that.

4 Q. And you, I think, suggested that the efforts to
5 utilize water earlier in the season and amend the
6 contract were successful, how do you quantify that
7 success? Is that because you can irrigate with a
8 different source of water or for a longer period of
9 time or are you seeing greater yields or?

10 A. With the fact that we have so many center
11 pivots, people can water early and get their profile
12 in the ground built up so that when July and August
13 hits, we don't have everybody calling for water on
14 the same day.

15 And you can see it with -- historically, we've
16 diverted, you know, up to the capacity of the canal,
17 which would be like 325 second feet, for instance, on
18 Cambridge Canal, and now we're maxing out at about
19 225 second feet during those periods so...

20 With the conversion to center pivot under the
21 formulas and compact, we're actually reducing our
22 consumptive use.

23 Q. Do you have any idea how much?

24 A. By half on the pivots.

25 Q. I want to turn to your district's testimony on

1 the third generation IMPs. And I understand for the
2 record, you did not participate in these while you
3 were at the department, in developing these.

4 A. That's right.

5 Q. But you did formulate some opinions with regard
6 to those; is that right?

7 A. Correct.

8 Q. In developing that testimony, did you coordinate
9 with the Bureau of Reclamation?

10 A. No, I didn't.

11 Q. Did you provide them a copy of the testimony?

12 A. I did.

13 Q. What was their response?

14 A. I don't know that they did respond.

15 MR. WILMOTH: We'll mark this as

16 Exhibit 2.

17 (Exhibit No. 2, marked for identification.)

18 Q. (BY MR. WILMOTH) Mr. Edgerton, we received this
19 from the State of Kansas as having been disclosed in
20 this proceeding. Could you take a look at KS262 down
21 there in the bottom right-hand corner for me.

22 I would like to ask you if that is a copy of the
23 district's testimony on the middle Republican's third
24 generation IMP?

25 A. It is.

1 Q. And you offered this testimony on behalf of the
2 district; is that correct?

3 A. That's correct.

4 Q. Did you coordinate at all with the State of
5 Kansas in preparing this testimony?

6 A. No, I did not.

7 Q. Did you provide the state a copy of this
8 testimony?

9 A. I don't remember if I did or not.

10 Q. Did you work with anyone else in preparing this
11 testimony?

12 A. My board of directors.

13 Q. So I can assume this has the full approval of
14 the board?

15 A. Correct.

16 Q. Let's just walk through this kind of piece by
17 piece.

18 MR. DRAPER: Is this Exhibit

19 No. 2?

20 MR. WILMOTH: Two, yeah.

21 Q. (BY MR. WILMOTH) If you look at the second
22 paragraph there, you indicate that the IMP has some
23 potential to avoid most short-term compact
24 violations.

25 I'm curious, which violations can be avoided in

40

1 your view? And by you, to clarify, I mean the
2 district, assuming this is offered on behalf of the
3 district?

4 A. Well, if the state did curtail surface water use
5 that -- in the short term, that would satisfy terms
6 of the compact.

7 Q. And are there long-term violations that you
8 don't believe can be avoided, assuming the IMP is
9 implemented, of course? The IMPs are implemented,
10 excuse me?

11 A. And they were. Yeah, we believe that mining
12 groundwater is going to further reduce the base flow
13 in the streams upstream and the federal projects.

14 Q. And what do you base that opinion on?

15 A. Historical data.

16 Q. What data?

17 A. Stream flow data.

18 Q. What do those data show?

19 A. Basically Enders Reservoir drying up.

20 Q. How do the historical data show Enders Reservoir
21 drying up in the future?

22 A. Basically the inflows diminished is a direct
23 correlation to the development of groundwater wells
24 upstream.

25 Q. Is this what's colloquially referred to as the X

41

1 graph?

2 A. You know of it.

3 Q. How does the X graph incorporate the principles

4 of the IMP?

5 A. We don't believe that they're reducing the

6 groundwater pumps enough to basically maintain those

7 base flows.

8 Q. What is your understanding of what the so-called

9 X graph shows?

10 A. Stream depletions increasing.

11 Q. And the number of wells in the basin, why does

12 that give us any more information than the number of

13 automobiles in the basin? Is there any correlation

14 between the number of automobiles and the number of

15 stream depletions?

16 A. No.

17 Q. Are you suggesting that there is a correlation

18 between the wells --

19 A. Yes, I am.

20 Q. -- and the stream depletions -- and what do you

21 base that on?

22 A. On the data that's available out there.

23 Q. Historical data?

24 A. Stream flow data.

25 Q. Okay. But you would agree that we could plot

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1 just about anything on the Y axis of that X graph and
2 show a similar correlation, couldn't we, number of
3 sheep, number of cars, number of --

4 A. I guess I'm not --

5 Q. -- lawyers?

6 A. I'm not following you.

7 Q. Do you have any technical data that supports
8 your assessment of the historical data?

9 A. I think 25 years of stream gauging is my best
10 experience.

11 Q. Okay. So you're relying entirely on past events
12 to make an assumption about the future; is that
13 right?

14 A. Yes, I am.

15 Q. Okay. And the X graph doesn't attempt to
16 incorporate any part of the IMP; is that right? Does
17 it have any analysis of this in it?

18 A. I don't believe so.

19 Q. Okay. Have you or the district conducted any
20 technical analysis of these IMPs?

21 A. No.

22 Q. Can you identify for me the violations over the
23 long term that will not be avoided?

24 A. From graphs provided by the department, the
25 depletions trend is continuing upward. Even though

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1 they have reduced pumping, the depletions tend to be
2 trending upward, and as long as there is base flow
3 above those reservoirs, I believe that those
4 depletions will continue.

5 As long as they keep mining groundwater and, you
6 know, they will eventually stop when the base flow's
7 gone and then there won't be any more water to
8 deplete.

9 Q. So do I understand you to say that you're
10 relying on the department's work to draw the
11 conclusion that the IMPs will not be affected?

12 A. In part, some of the department's work.

13 Q. Are there other things besides the department's
14 work and the X graph?

15 A. I can't think of any right offhand.

16 Q. Okay. Do you have any idea or opinion as to
17 when precisely the state will be unable to comply
18 with the compact?

19 A. I don't.

20 Q. Little bit further down in here, you -- in the
21 third paragraph, you speak about intensifying
22 internal dispute among water users. What disputes
23 are you referring to?

24 MR. DRAPER: Which paragraph are
25 you on?

1 MR. WILMOTH: Third paragraph,
2 first sentence.

3 A. I think the adoption of the surface water
4 controls have already intensified those disputes.

5 Q. (BY MR. WILMOTH) Which disputes?

6 A. The disputes as far as surface water being
7 curtailed to solve the groundwater overpumping
8 problem.

9 Q. So a dispute between surface water users and
10 groundwater users within the state of Nebraska?

11 A. (Witness nods.)

12 Q. I need --

13 A. Yes.

14 Q. -- an affirmative.

15 (Discussion off the record.)

16 Q. So the concern here is a purely intrastate
17 issue, correct?

18 A. Yes.

19 Q. What is the nature of those -- that dispute or
20 those disputes, as you would characterize them?

21 A. Well, there is only so much water in a basin
22 above our reservoirs, so if somebody else is
23 consuming it, then we don't get to consume it.

24 Q. So your goal on behalf of the district is to get
25 as much of the pie as you can?

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1 A. That's correct. As much as our water rights
2 permit us in our federal contracts.

3 Q. And what precisely does that have to do with
4 compact compliance?

5 A. The fact that the state is now adopting surface
6 water controls to achieve compact compliance.

7 Q. And you don't like the surface water controls
8 because they adversely impact the district, right?

9 A. That's correct.

10 Q. But you're not suggesting that they would be
11 ineffective for purposes of ensuring compliance, are
12 you?

13 A. No.

14 Q. You also go on to state that existence of these
15 conflicts will demonstrate to Kansas and the U.S.
16 Supreme Court that Nebraska's water policies and
17 integrated management is flawed and inept.

18 Do you see that? Same paragraph.

19 A. Okay, yep.

20 Q. Now, the district is at the heart of some of
21 these disputes, is it not?

22 A. That's correct.

23 Q. Is it the district's purpose to help prove
24 Kansas' case by pursuing these conflicts?

25 A. No, it is not.

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1 Q. So purely hypothetically, if Nebraska were to
2 agree through a settlement or some other mechanism to
3 just simply adopt the Kansas remedy in the middle
4 Republican NRD, would the district approve of that?

5 A. I don't think I can speak for my board on that.

6 Q. Would you personally approve of that?

7 A. I don't think I can comment on that.

8 Q. Why not?

9 A. I don't -- I don't think it's relevant.

10 Q. Well, I guess we'll be the judge of what's
11 relevant. If you have an opinion, I would like to
12 know. If you don't, that's fine.

13 A. Okay. You want to repeat the question?

14 MR. WILMOTH: Why don't you read
15 it back.

16 (The record was read by the reporter as
17 requested.)

18 Q. (BY MR. WILMOTH) And then my follow-up question
19 was: Would you approve of that personally, if your
20 district does not?

21 A. I guess I don't really want to get into
22 hypotheticals.

23 Q. So you won't answer that question?

24 A. No.

25 Q. No, all right.

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1 A little further down, you express a view that
2 groundwater users are not being regulated heavily
3 enough and that surface water users are
4 overregulated.

5 Is it your position that all wells should be
6 curtailed before a single surface water user is shut
7 down?

8 A. No.

9 Q. Do you have an opinion about that?

10 A. No.

11 Q. I'm sorry, no?

12 A. No.

13 Q. Do you believe that wells should be regulated in
14 priority as part of the prior appropriation system?

15 A. No opinion on that.

16 Q. Do you share the bureau's perspective that all
17 surface water users affixed by compact compliance
18 efforts should be compensated monetarily?

19 A. Yes, I do.

20 Q. So is it correct then that your view is surface
21 water users cannot be curtailed for compact
22 compliance without compensation?

23 A. That would be a fair statement.

24 Q. Now, you talk about a couple of specific
25 objectives here that you're critiquing, if you will.

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1 And with regard to Objective 2, I infer that you're
2 trying to express an opinion about the meaning of the
3 compact and federal law; is that right?

4 A. I guess I don't understand your question.

5 Q. Are you expressing a interpretation of federal
6 law in the compact in this section labeled No. 1
7 entitled Objectives No. 2?

8 A. No.

9 Q. Is that your intent?

10 A. Excuse me just a second.

11 (Witness reading document.)

12 A. I think what I'm saying is, I don't believe the
13 compact has provisions in there to administer
14 Nebraska surface water.

15 Q. And what is your interpretation of the compact
16 based on?

17 A. Basically a contract that divides up the water
18 supply of the basin.

19 Q. So this is just your reading of the compact?

20 A. (Witness nods.)

21 Q. And you're not an attorney, are you?

22 A. No.

23 Q. With regard to Objectives 3 and Goal No. 5, as
24 you identify them here, so these are numbered
25 Points 2 and 3 in your testimony, I interpret those

1 to be analyses indicating that the compact -- excuse
2 me, that Nebraska's actions are insufficient to
3 comply with the compact.

4 Is that what you're getting at there?

5 A. I think they were basically using the wrong date
6 in the IMP. I think that's what I was -- it was when
7 the preliminary determination was made and not the
8 final. So it would have been uses that occurred
9 after May 20th of 2003.

10 Q. Okay. So do you have an opinion about whether
11 the 20 percent reduction in pumping listed as Point
12 No. 2 and the further reductions here in Goal 5 are
13 going to be effective or not, are you suggesting they
14 won't be effective?

15 A. Where are you at on that?

16 Q. I'm just generally between the two points,
17 trying to understand their meaning.

18 Are you suggesting that these two efforts are --
19 will be ineffective to ensure compact compliance?

20 A. Are you on Objective No. 3?

21 Q. We can start there, sure.

22 A. That's basically saying that the 20 percent
23 reduction doesn't represent -- there is no
24 correlation between the '98/'02 pumping and the
25 depletions, so 20 percent reduction in pumping

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1 doesn't mean that you're going to get the 20 percent
2 reduction in depletions. I think it's -- there is
3 such a big lag effect there, you're not going to know
4 when that occurs.

5 Q. So you're suggesting that the reduction needs to
6 be greater than 20 percent --

7 A. Yes.

8 Q. -- is that your point?

9 Do you have any idea how great it should be?

10 A. No.

11 Q. Have you conducted any analyses to indicate
12 such?

13 A. No.

14 Q. Now, with regard to the surface water controls
15 discussion, Point No. 4 on the following page, you
16 indicate that restrictions on surface water rights
17 could lead to shutting down federal projects and
18 bankrupting political subdivisions; is that correct?

19 A. Could happen.

20 Q. Which projects are in jeopardy over which
21 political subdivisions are going to be bankrupted, in
22 your view?

23 A. It would be difficult for the irrigation
24 districts to make their federal payments if we don't
25 have water to deliver.

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1 Q. Is that true in -- if you don't have water to
2 deliver in one year or two years or ten years?

3 A. It gets worse. I mean, we have some reserve to
4 get us through one or two years but...

5 Q. So you could tolerate a one-year or two-year
6 curtailment?

7 A. I don't know that we could tolerate it but...

8 Q. Could you financially survive it?

9 A. Depends on the circumstances at the time.

10 Q. Could you approach the bureau for deferment of
11 charges, for example?

12 A. We could.

13 Q. Have you done so in the past?

14 A. We have.

15 Q. Have those deferments been granted?

16 A. Yes.

17 Q. And with regard to the political subdivisions
18 that would be bankrupt today, I assume that was the
19 irrigation district itself?

20 A. Right.

21 Q. Do you know when that would occur?

22 A. I don't.

23 Q. Do you have an opinion as to whether the
24 projects would be entirely shut down or just
25 partially shut down?

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1 A. In what circumstance?

2 Q. Well, I don't believe -- I'm asking you what you
3 meant here.

4 A. If the surface water controls are implemented,
5 it's my understanding that our natural flow permits
6 would be closed and the bureau's permit to store
7 water in the reservoirs would be closed.

8 So it would depend on how much water we actually
9 had in the reservoir at the time we received the
10 closing notices as to whether or not we could
11 irrigate that year or not.

12 Q. Okay. So you're not trying to identify any
13 particular point in time when this might occur or
14 under any condition where it might occur, this is
15 just a hypothetical?

16 A. Okay.

17 Q. Is that correct?

18 A. Yes.

19 Q. Are you assuming in this hypothetical that only
20 the surface water controls are employed or that
21 surface water controls are employed along with any
22 other measures, such as groundwater curtailment?

23 A. Yes, I'm only concerned with the surface water
24 controls.

25 Q. Does the district concede that its water rights

1 are subject to state law?

2 A. Yes.

3 MR. WILMOTH: All right. Let's

4 take a break.

5 (Recess was taken.)

6 Q. (BY MR. WILMOTH) Mr. Edgerton, we broke 15

7 minutes ago, right?

8 A. Correct.

9 Q. I would like you to summarize for me the last 15

10 minutes of your life.

11 MR. DRAPER: Tom, let me provide

12 you a document, something that Mr. Edgerton

13 provided us. You had asked about what documents

14 had been, he neglected to mention that.

15 MR. WILMOTH: Okay. Well, let's

16 get to this in a moment.

17 Q. (BY MR. WILMOTH) What did you just discuss with

18 Mr. Draper?

19 A. He was asking me about the formula and the

20 compact accounting where, I believe -- when I stated

21 that we reduced our consumption by half when we

22 installed pivots.

23 Q. And what was the response?

24 A. I explained to him my understanding of the

25 compact formula.

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1 Q. Any other issues you discussed?

2 A. And then he mentioned that document there that I
3 neglected.

4 Q. Did you bring this with you or did Mr. Draper
5 give this to you?

6 A. He had it with him.

7 Q. Are there any other documents that you might
8 have neglected to --

9 A. I don't believe so.

10 Q. -- provide?

11 And what was the nature of the transmission that
12 resulted in this document?

13 A. Resolution that the irrigation district signed,
14 it was presented to the middle Republican NRD board
15 at that -- at that board meeting, so I was just
16 pointing out where -- basically where it was
17 presented to the board.

18 Q. So just so I understand what happened here, I
19 asked you earlier if you had any communications with
20 Kansas, you indicated no, and Mr. Draper reminded you
21 that you had had this communication?

22 A. Yes.

23 Q. Okay. Is it possible that you had any other
24 communications that jog your memory?

25 A. I don't believe so.

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1 Q. Okay. Do you remember whether you had --

2 A. That was during the -- I believe the second

3 phone conversation we had on the 23rd.

4 Q. Let's talk a little bit about Red Willow dam --

5 A. Sure.

6 Q. -- Mr. Edgerton.

7 That facility was recently determined to have

8 some safety concerns, was it not?

9 A. That's correct.

10 Q. Could you describe those for me?

11 A. Basically had had some serious cracks they

12 discovered in the dam and determined that it was

13 unwise to continue to store water in that dam, so

14 they drained it.

15 Q. And it's drained presently?

16 A. It currently holds about 5,000 acre-feet, 5- to

17 5500. It's about a foot, foot and a half above the

18 lowest point they can physically drain water out of

19 it.

20 Q. What does it typically hold?

21 A. I believe it has a storage permit for about

22 40,000 acre-feet.

23 Q. Is FCID in -- strike that.

24 Is the district participating in the repair of

25 the facility?

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1 A. We are responsible to pay for 15 percent of the
2 repairs.

3 Q. What's the source of that funding?

4 A. It is basically part of the fee we collect from
5 our water users, so it would be part of that \$33 that
6 we charge.

7 Q. What's the total cost that you expect to incur?

8 A. At the --

9 Q. Your 15 percent, what is the total cost that's
10 going to amount to?

11 A. The contract that was awarded was for
12 15.3 million, but it's subject to revision after
13 final completion, I guess.

14 Q. So you're in for something like a million and a
15 half, give or take; does that sound right?

16 A. I believe so.

17 Q. My math is bad so...

18 A. I...

19 Q. As everyone here will attest.

20 So if the district is concerned about whether
21 these facilities will have sufficient water supplies,
22 why make that investment?

23 A. So we can operate Red Willow Canal.

24 Q. So is it the board's view that regardless of
25 what Nebraska does from a management standpoint, it's

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1 appropriate to make that investment?

2 A. Yes.

3 Q. And whatever water comes, it comes?

4 A. (Witness nods.)

5 Q. Presently, that water that would otherwise be

6 stored in Red Willow dam is passing through it; is

7 that right?

8 A. Correct.

9 Q. What happens to that water?

10 A. I suppose it's stored in Harlan County, and when

11 it's full, it passes on down the stream.

12 Q. And water stored in Harlan County Lake

13 facilitates compact compliance, doesn't it?

14 A. I believe all water does.

15 Q. So it's not really helping the district, is it,

16 at this point when it's sitting in Harlan County

17 Lake?

18 A. No.

19 Q. So would you agree that there are times when the

20 movement of water through the system facilitates

21 compact compliance even if it doesn't benefit the

22 district?

23 A. I'm not going to answer that question.

24 Q. You're not going to answer that question?

25 A. I don't think I'm qualified.

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1 Q. In association with your testimony, you authored
2 a document called The Reality of a Water Short Year;
3 does that ring a bell?

4 A. It does.

5 MR. WILMOTH: Mark this as

6 Exhibit 3.

7 (Exhibit No. 3, marked for identification.)

8 Q. (BY MR. WILMOTH) Is this the document to which I
9 just referred?

10 A. It is. Appears to be.

11 Q. What is the basis of this hypothetical?

12 A. I guess I wanted to point out to the board of
13 directors for the middle Republican NRD on how I
14 thought things could play out, if these IMPs were
15 adopted.

16 Q. So this is based on your reading of the IMPs; is
17 that correct?

18 A. That's correct.

19 Q. How likely is that scenario to occur, in your
20 view?

21 A. I don't know.

22 Q. So let's assume that, for the sake of argument,
23 that scenario played out exactly as you've
24 anticipated it, is Nebraska in compliance with the
25 compact?

1 A. I believe they are, the first year.

2 Q. So your point there is not that there is a
3 compliance problem but that there is not enough water
4 for the district?

5 A. I think it's just poor management of water in
6 general. I mean, we're sending water down the river
7 at a time when it can't be utilized, and then in
8 addition to that, you know, our boards have to decide
9 on whether or not we'll try to irrigate with the
10 limited supply we have in storage. That's a decision
11 they have to make, you know.

12 It's kind of been our rule of thumb, if we don't
13 have 8 inches, we're probably wasting water by
14 delivering that water. So, you know, that may change
15 with, you know, the more pivots we have in. We may
16 be able to deliver some water first year, but, you
17 know, we're going to end up with depleted reservoirs,
18 and not having the ability to store water in those
19 reservoirs means that we're recovering -- we're
20 basically storing water in the future to fill those
21 reservoirs.

22 Q. So help me understand how increased consumption
23 by your district facilitates Nebraska's compliance
24 with the compact.

25 A. What do you mean by increased consumption?

1 Q. I assume that you want that water so you can
2 consume it?

3 A. We want the water so we can deliver it to our
4 customers.

5 Q. Who consume it?

6 A. Yeah, I mean, that's just the nature of it.

7 Q. And if their consumption increases, does that
8 make it easier or more difficult for Nebraska to
9 comply with the compact?

10 A. I don't believe I'm qualified to answer that
11 question.

12 Q. And you conclude this scenario -- excuse me, you
13 concluded your IMP testimony, returning back to that
14 for a moment, by indicating Nebraska's willing to do
15 whatever it takes to comply with the compact.

16 Is that your view?

17 A. No, that was statements made by Brian Dunnigan.

18 Q. But this is your testimony, right?

19 MR. DRAPER: Where are you
20 reading, Tom?

21 MR. WILMOTH: First sentence of
22 the conclusion in the testimony.

23 MR. DRAPER: Okay. Thank you.

24 A. Yeah, that was based on statements I heard at
25 public meeting in Holdrege, basically Nebraska will

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1 be in compliance.

2 Q. (BY MR. WILMOTH) Uh-huh. And that's the nub of
3 this current litigation. So if that's your view,
4 what's -- what's the concern? What is the relevance
5 of your action, your involvement in this case, of the
6 district's involvement?

7 A. I'm just trying to make sure that I can deliver
8 water to my customers year after year.

9 Q. Regardless of compliance?

10 A. Compliance isn't the district's responsibility.

11 Q. Okay.

12 (Discussion off the record.)

13 Q. Mr. Edgerton, I want to talk with you about
14 various statements that you've made publicly. That's
15 Exhibit No. 4.

16 (Exhibit No. 4, marked for identification.)

17 Q. And unless you'll tell me otherwise, I'll just
18 infer that these are all statements on behalf of the
19 district, not your personal views, but if you would
20 like to clarify that, that's fine.

21 Do you recognize the subject matter of this
22 article?

23 A. Yes, I do.

24 Q. And do you recall giving this interview?

25 A. I do.

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1 Q. Would you generally explain the circumstances
2 surrounding the interview.

3 A. I guess I don't recall what the circumstances
4 were.

5 Q. The article mentions that the district is
6 seeking an over-appropriated designation in their
7 basin.

8 A. Okay.

9 Q. Can you explain why that's the case?

10 A. We were seeking a over-appropriated upstream of
11 the Cambridge Diversion Dam, not the basin.

12 Q. And what was the purpose of that?

13 A. We believe that upstream of our diversion dams,
14 that the basin's been overdeveloped and there is not
15 enough water to go around to all the water users.

16 Q. And if you succeeded in obtaining that
17 designation, what would it mean for your district?

18 A. We were requesting an evaluation, I would hope
19 that an evaluation would have been done to see what
20 the case would actually be.

21 Q. And if it were designated as over appropriated,
22 what would that mean for your district?

23 A. It depends what course of action they take after
24 that designation was made. I believe statute
25 requires them to get back to fully appropriated.

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1 Q. And what would that mean for your district?

2 A. That means the water that's upstream of our
3 diversion dam would be sufficient to give everybody
4 an equal supply, surface water and groundwater. And
5 we wouldn't have to have these curtailments.

6 Q. How would the department go about doing that?

7 A. That's the department's call.

8 Q. What do you believe is your fair share of the
9 water, as you identified it in the third paragraph on
10 the second page of this article?

11 A. We have an amount stated in our contracts, you
12 know, we think a full supply is, you know, what we
13 consider a fair share.

14 Q. What are you protecting your water right from,
15 as you use that term here?

16 A. From diminished flows.

17 Q. Do you have an opinion as to what's causing that
18 diminished flow?

19 A. There is lots of different things causing it.

20 Q. Such as?

21 A. Groundwater pumping, phreatophytes or vegetation
22 growing along the streams and those kind of things,
23 farming practices. I mean, it's a lot of different
24 things.

25 Q. So if I understand it, the idea is to ensure

1 that you get a full right under your contract and

2 that there is no interference with that right; is

3 that the sum and substance?

4 A. I don't think we asked for a full right. I

5 think we asked for our fair share so...

6 Q. Okay. What are the intentions between surface

7 water users and the NRDs, as you articulated them in

8 this article?

9 A. I don't think I can speak for my water users on

10 that question.

11 Q. Little bit later down there, your counsel

12 references a crisis situation and certain draconian

13 actions that the district feared.

14 What are those?

15 A. You would need to ask LeRoy Sievers that

16 question.

17 MR. DRAPER: Is that the one

18 you're referring to?

19 MR. WILMOTH: Yes.

20 Q. (BY MR. WILMOTH) You don't have an opinion about

21 what those actions might be?

22 MR. DRAPER: Where is the

23 reference that you're talking about?

24 MR. WILMOTH: Bottom of the page,

25 top of the next page. Bottom of Page 2, top of

1 Page 3.

2 MR. DRAPER: Thank you.

3 Q. No? No opinion?

4 A. No.

5 MR. WILMOTH: Offer another

6 article that we'll mark as Exhibit 5.

7 (Exhibit No. 5, marked for identification.)

8 Q. (BY MR. WILMOTH) I'd like you to review that.

9 Ask you if you have any recollection of this article.

10 (Witness complies.)

11 Q. Before we get into this, I'm sorry, I forgot to

12 ask you one question. With regard to that request

13 for over-appropriated designation, did that proceed,

14 was it decided?

15 A. Our request was to have the basin evaluated, and

16 we were, I believe, declared that we didn't have

17 standing to ask that question.

18 Q. The court declared that?

19 A. Yes.

20 Q. Which court?

21 A. Supreme Court of Nebraska.

22 Q. Do you recall this article at all?

23 A. I do vaguely, I guess, I...

24 Q. Do you recall the circumstances surrounding its

25 publication?

1 A. I think I was at Central's board meeting giving
2 them an update on the Republican River basin.

3 Q. And what was the gist of that update?

4 A. Just they wanted to know basically what the
5 irrigation district was doing.

6 Q. And you indicated here on the first page that
7 you wanted to get people to make some noise, stand up
8 for our water users and protect their water rights,
9 right?

10 A. Yeah, I don't know if that's a direct quote or
11 not, but -- I don't remember saying it exactly like
12 that but...

13 Q. Were you concerned at that time about water use
14 in the state of Colorado?

15 A. Yeah, we've always been concerned with their
16 overuse since the settlement.

17 Q. Was that the primary concern at the time of this
18 particular discussion?

19 A. I can't recall that.

20 Q. If I understood your testimony earlier, you
21 mentioned that the water that Colorado used would
22 have likely been -- made its way to Swanson --

23 A. Eventually, yeah.

24 Q. -- is that correct.

25 And would have been used by the district?

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1 A. Correct.

2 Q. Would it have been used in any particular
3 division of the district or district wide?

4 A. It would have been released into Meeker Canal if
5 we had sufficient supply to justify irrigating in a
6 particular year.

7 Q. Do you have an opinion about the scope of that
8 impact financially on the district?

9 A. I don't.

10 Q. Does Colorado water use still impact your
11 district?

12 A. Yes, it does.

13 Q. In a similar fashion?

14 A. Yeah, it's been wet, so they're -- out there, so
15 they're -- they haven't been as far out of compliance
16 as they have in the past, but they're still out of
17 compliance. And they have done things, they bought
18 out surface water rights up there too, drained Bonny
19 Reservoir.

20 Q. Has that been effective, in your view?

21 A. I think we're seeing some water showing up at
22 Swanson Reservoir, I mean, seems to be a little more
23 flow in the south fork of the Republican River.

24 Q. Mr. Edgerton, I would like to hand you what
25 we'll mark as Exhibit 6, and ask you if you recall

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1 providing this testimony to the RRCA.

2 (Exhibit No. 6, marked for identification.)

3 Q. If you look at what's marked as Page 81, that's

4 where your name appears first.

5 A. What was your question?

6 Q. Do you recall providing this testimony to the

7 RRCA?

8 A. Yes, I do.

9 MR. DRAPER: What is the date of

10 this document?

11 MR. WILMOTH: You know, John, I

12 think this is from 2009, but let's ask

13 Mr. Edgerton that question.

14 Q. (BY MR. WILMOTH) Do you recall the date when

15 this was provided?

16 A. I don't recall the date.

17 Q. Does that summarize your view, generally, of the

18 district's concerns relative to Colorado's water use?

19 A. Some of our concerns, I suppose.

20 Q. Are there any that you wish to elaborate on?

21 A. No.

22 Q. Mr. Edgerton, we talked earlier about the notion

23 of monetary compensation for the states -- State of

24 Nebraska's regulatory efforts as they might shut down

25 surface water users. Do you recall that

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1 conversation, generally?

2 A. I do.

3 Q. My understanding is that the district believes
4 that its users should be compensated if they're shut
5 down. If they were compensated by the state, would
6 they be content?

7 A. I don't think I can speak for my users on that.

8 In general, I think they would rather have the water.

9 Q. Do you have any idea what it might cost to make
10 them content?

11 A. I don't.

12 Q. Mr. Edgerton, I'm going to hand you what we'll
13 mark as Exhibit 7, which I believe is an editorial
14 you authored; is that correct?

15 (Exhibit No. 7, marked for identification.)

16 A. Yep.

17 Q. And could you describe the circumstances
18 surrounding this editorial?

19 A. I believe I was responding to a letter that Dan
20 Smith had in the paper basically saying that
21 irrigation districts would be completely shut down.

22 Q. And for the record, who is Mr. Smith?

23 A. Dan Smith is the manager of the middle
24 Republican NRD.

25 Q. And about halfway down here, you appear to be

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1 criticizing the forecasting concept that the
2 department has implemented, and you state that
3 "Bypassing inflow based on a forecast by DNR is not a
4 sound management decision."

5 Do you see that statement?

6 A. Yep, I see it.

7 Q. What is the basis of that opinion?

8 A. Well, for -- if the bureau's ordered to bypass
9 inflows and then we get a big rainstorm downstream
10 that sends additional water to Kansas and we're in
11 compliance by a huge amount, then we've basically
12 drained reservoirs that didn't need to be drained or
13 bypassed inflow that didn't need to be bypassed.

14 Q. So you don't want to overcomply, in other words?

15 A. That's correct.

16 Q. You don't want to see the state overcomply?

17 A. That's correct.

18 Q. But if the department's forecast indicates that
19 the water should be bypassed to avoid the risk of
20 compact compliance, do you still think that it should
21 be held back?

22 A. I believe that the surface water controls they
23 adopted are unreasonable.

24 Q. Okay. Well, is it basically true that the
25 district would just rather see itself with additional

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1 water than see the compact met -- compact obligations

2 met?

3 A. No, I believe Nebraska has to comply with the

4 compact.

5 Q. But that's not your paramount concern, is it?

6 A. I was hired to make sure the district water

7 users had a supply of water every year and they have

8 the ability to use it.

9 Q. Here's an article, Exhibit 8, that appeared in

10 the Kearney Hub. Just like you to look at it and see

11 if you recall these statements.

12 (Exhibit No. 8, marked for identification.)

13 (Witness complies.)

14 Q. Your name first appears at the bottom of Page 3.

15 A. Okay.

16 Q. Do you recall giving this interview?

17 A. I do.

18 Q. Can you identify the circumstances surrounding

19 the interview?

20 A. I believe it was at the state NWRA, NSIA water

21 conference, and I think it was more of a presentation

22 than an interview.

23 Q. What was the -- well, for the record, could you

24 identify that acronym?

25 A. Nebraska State Water Resource Association and

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1 Nebraska State Irrigation Association jointly sponsor

2 a conference in the fall of every year.

3 Q. And what was the nature of your presentation?

4 A. I think I was giving an overview of the

5 situation in Republican River basin as far as the

6 surface water districts are concerned.

7 Q. And you indicate here that H&RW had not received

8 water since 2001; is that correct?

9 A. 2001 or '2.

10 Q. And is that still true today?

11 A. It is.

12 Q. And what is your understanding of Nebraska's

13 compliance status during that period, compact

14 compliance status?

15 A. From 2000 --

16 Q. 2001 forward 'till today.

17 A. You mean as far as which years were compliant

18 and which years weren't?

19 Q. Yes, sir.

20 A. I think it depends on the disputed number,

21 doesn't it?

22 Q. I'm just asking your understanding. I'm not

23 asking you to identify those years.

24 A. Okay. Yeah.

25 Q. Through the accounting, just your understanding.

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1 A. Yeah, I believe we were out of compliance in
2 those years.

3 Q. In every year since 2001?

4 A. I don't -- I don't know about since 2001.

5 Q. Yeah, that was my question.

6 A. I don't think the settlement accounting started
7 'till 2003.

8 Q. Sure. So my question is just: What is your
9 understanding of Nebraska's compliance status between
10 2001 and today?

11 A. I believe we were out of compliance in those
12 early years and now we are in compliance.

13 Q. So there are some years in which Nebraska's in
14 compliance and some years in which it is not in
15 compliance, but in every year, H&RW is out of water,
16 correct?

17 A. Correct.

18 Q. So what is the relationship between H&RW's water
19 supply and Nebraska's compliance status?

20 A. I don't believe there is a relationship.

21 MR. WILMOTH: We'll mark this as
22 Exhibit 9.

23 Q. This is another article I would like you to
24 review, and just let me know if you recognize it.

25 (Exhibit No. 9, marked for identification.)

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1 A. Okay. What was the question with regards to
2 this article?

3 Q. Do you recall granting this interview?

4 A. I do.

5 Q. Could you identify the circumstances surrounding
6 the article?

7 A. I believe this is after the Supreme Court
8 hearing that was conducted on fully and
9 over-appropriated status.

10 Q. Is this the court hearing you were referring to
11 earlier?

12 A. Yeah, the Supreme Court hearing, yes.

13 Q. And seven lines down, you are quoted as saying,
14 "The department is the one with the scientists and
15 those who need to evaluate. I trust their
16 expertise."

17 Do you see that?

18 A. I do.

19 Q. Do you believe that the department has relied on
20 science in developing its third generation IMPs?

21 A. I do.

22 Q. And do you understand that the department has
23 concluded the IMPs will ensure compact compliance?

24 A. I guess I don't have an opinion on that.

25 Q. You don't know whether they have --

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1 A. I don't know.

2 Q. -- made that conclusion?

3 A. No.

4 Q. But do you trust their expertise still?

5 A. I do.

6 MR. WILMOTH: Let's just take a
7 break then.

8 (Recess was taken.)

9 Q. (BY MR. WILMOTH) Mr. Edgerton, I want to clarify
10 something that we talked about earlier with regard to
11 the district's views about compensation.

12 Is it the district's position that compensation
13 is owing any time Nebraska regulates surface water
14 users within the district or is it the position that
15 compensation is owing only if the regulation is to
16 effect compact compliance?

17 A. I believe it would be the latter. I mean, we're
18 regulated during normal activities of water
19 administration.

20 Q. So junior users are shut down, for example,
21 without compensation?

22 A. We do have some junior permits.

23 Q. That are curtailed temporarily without
24 compensation; is that right?

25 A. That's right, but we have senior permits that

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1 basically, you know -- we're not actually being
2 curtailed from irrigation, we have other permits to
3 cover the acres so...

4 Q. So only if the action is a compact compliance
5 call would compensation be due, in the district's
6 view?

7 A. Correct.

8 Q. I asked you earlier about commingled acres
9 within the district, and I recall you suggested you
10 weren't -- weren't familiar with the amount of
11 acreage that has both surface water and groundwater
12 rights; is that correct?

13 A. Right.

14 Q. We tried to look into this. If I told you that
15 within FCID, 41 -- excuse me, 43.1 percent of the
16 ground was commingled, would that surprise you?

17 A. 43.1?

18 Q. Percent of the ground.

19 A. Is commingled?

20 Q. Yes.

21 A. I guess.

22 Q. It would surprise you?

23 A. I'm not surprised one way or another, I guess.

24 I mean, it is what it is.

25 Q. And within FCID, if I told you 77.6 percent of

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1 that ground was commingled, would that surprise you?

2 A. Which irrigation district?

3 Q. Frenchman Valley.

4 A. Frenchman Valley, I really don't have any

5 experience with what they do up there so...

6 Q. How about H&RW, if I told you 71.9 percent was

7 commingled --

8 A. No reaction, I guess.

9 Q. And 69.6 percent in Riverside was commingled,

10 same -- same answer?

11 A. Right.

12 Q. So if I told you that under the Kansas remedy,

13 36,193 and a half acres would be shut down at least

14 as to groundwater, would that surprise you, within

15 your district?

16 A. Now, say that again.

17 Q. Within your district, if I told you over 36,000

18 acres would be shut down, would that surprise you?

19 A. No reaction.

20 Q. So you don't have any idea how much ground might

21 be shut down within your district under the Kansas

22 remedy, do you?

23 A. I don't. And, you know, my fears with

24 groundwater wells curtailed is that if we have water

25 in storage, then all of those acres would be asking

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1 for surface water at that time, which, you know, we
2 don't have any, you know. We know what we deliver
3 now to the acres and stuff, but would probably go up
4 if -- if the wells are curtailed. I mean, our -- I
5 mean, that's good information to know and it will
6 help us.

7 Q. Any of these matters we discussed about
8 compensation or the impact of the Kansas remedy, any
9 of these issues that we've discussed, did your board
10 take any straw pulls or make any formal votes on any
11 of those matters, take any official positions?

12 A. No.

13 Q. So the only official position of the board to
14 date is your authorization to testify?

15 A. (Witness nods.)

16 Q. I asked you earlier about your exposure to and
17 experience with former Directors Patterson and Bleed
18 and with Director Dunnigan.

19 Do you recall that conversation?

20 A. Yes.

21 Q. And if I understood you correctly, you worked
22 somewhat with each of those individuals and --

23 A. (Witness nods.)

24 Q. Am I right about that?

25 A. That's correct.

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1 Q. Less so with Director Dunnigan, I guess.

2 (Witness nods.)

3 Q. And did I understand you to say that you helped
4 to work with those individuals to facilitate compact
5 compliance?

6 A. Correct.

7 Q. In your experience with those individuals, do
8 you have any reason to believe that those folks were
9 working in bad faith?

10 A. No.

11 MR. WILMOTH: We don't have
12 anything further, John. You want to take a
13 break?

14 MR. DRAPER: Sure.

15 (Recess was taken.)

16 MR. DRAPER: Autumn, do you have
17 any questions?

18 MS. BERNHARDT: I do.

19 CROSS EXAMINATION

20 BY MS. BERNHARDT:

21 Q. I just have a few, though. I don't really want
22 to repeat what Tom asked you, but I do have a few.

23 A. Okay.

24 Q. It seems like you made some statements with
25 regard to Colorado's compact compliance. Who do you

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1 speak for in making those statements, whose

2 authority?

3 A. On the irrigation district's.

4 Q. The Frenchman Cambridge Irrigation District?

5 A. (Witness nods.)

6 Q. And could I turn your attention to Exhibit 6,

7 please.

8 A. Okay.

9 Q. I believe it's the transcript from the RRCA

10 meeting?

11 A. Yep.

12 Q. Could you go ahead and read Line 13 through 16

13 on Page 82.

14 A. We do appreciate the work that Colorado has done

15 towards compact compliance -- or towards compliance

16 with the compact and understand that sac -- sacrifice

17 Colorado water users are making to help achieve

18 compact compliance.

19 Q. Thank you for reading that.

20 Are you familiar with all of Colorado's compact

21 compliance measures?

22 A. I would say most of 'em.

23 Q. Could you describe what you're aware of?

24 A. I know that you bought out all the surface water

25 rights and you're currently draining Bonny Reservoir

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1 or it is drained. And then also I know that you're

2 constructing the pipeline.

3 Q. Are you familiar with any CREP programs or EQUIP

4 programs?

5 A. I do know that they have those too, I guess,

6 so...

7 Q. And as far as -- would you consider yourself

8 a -- well versed in Colorado state law?

9 A. No.

10 Q. Well versed in what -- the actual parameters of

11 our compliance efforts?

12 A. I wouldn't say well versed but versed.

13 Q. Familiar with at least?

14 A. I've attended a couple of meetings out there.

15 MS. BERNHARDT: Okay. And I think

16 that's all I have. Thank you.

17 MR. DRAPER: Any further

18 questions, Tom?

19 MR. WILMOTH: No.

20 MR. DRAPER: We have no further

21 questions. Read and sign.

22 (The deposition concluded at 3:36 p.m.)

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24

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1 Deposition of BRAD EDGERTON

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Signature of witness

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7 STATE OF _____)

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: SS.

9 COUNTY OF _____)

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Subscribed and sworn to before me this

14

___ day of _____, 20___

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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, Christine M. Salerno, RPR, CCR, General
5 Notary Public in and for the State of Nebraska, do
6 hereby certify that, BRAD EDGERTON was by me duly
7 sworn to testify the truth, the whole truth and
8 nothing but the truth, and that the deposition by
9 said witness was reduced to writing by me.

10 That the within and foregoing deposition was
11 taken by me at the time and place herein specified
12 and in accordance with the within stipulations; the
13 reading and signing of the witness to said deposition
14 having not been waived.

15 That the foregoing deposition is a true and
16 accurate reflection of the proceedings taken in the
17 above case.

18 That I am not counsel, attorney, or relative of
19 either party or otherwise interested in the event of
20 this suit.

21 IN TESTIMONY WHEREOF, I have placed my hand and
22 notarial seal this 11th day of April, 2012.

23 _____

24 Christine M. Salerno, RPR, CCR

25

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1 DEPOSITION OF BRAD EDGERTON

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3 PAGE & LINE REASON FOR CHANGE

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