

1/25/2012

KENNY NELSON

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1 .

2 In The Supreme Court of the United States

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4 \_\_\_\_\_

5 STATE OF KANSAS,

6 Plaintiff,

7 v.

8 STATE OF NEBRASKA

9 and

10 STATE OF COLORADO,

11 Defendants.

12 \_\_\_\_\_

13 .

14 .

15 DEPOSITION OF

16 KENNETH NELSON

17 taken on behalf of the Defendant State of  
18 Nebraska, pursuant to Notice to Take Deposition,  
19 beginning at 10:35 a.m. on the 25th day of  
20 January, 2012, at 109 Southwest 9th Street, in the  
21 City of Topeka, County of Shawnee, State of  
22 Kansas, before Michelle D. Hancock, RPR, C.S.R.

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1 KENNETH NELSON,  
2 of lawful age, having been first duly sworn on his  
3 oath to state the truth, the whole truth, and  
4 nothing but the truth, testified as follows:

5 DIRECT EXAMINATION

6 BY MR. WILMOTH:

7 Q. Good morning, Mr. Nelson.

8 A. Morning.

9 Q. Could you please state your full name and  
10 spell your name for the record.

11 A. Kenneth Nelson. K E N N E T H,  
12 N E L S O N.

13 Q. Thank you. And my name is Tom Wilmoth,  
14 and I'm an attorney for the state of Nebraska in  
15 this proceeding. To my right is my partner Don  
16 Blankenau and Justin Lavene from the Nebraska  
17 Attorney General's office. Before we begin, I'd  
18 like to just ask you a simple question, and I  
19 don't want you to provide me any intimate details  
20 to your health history.

21 A. Uh-huh.

22 Q. But are you presently today suffering any  
23 ailment or on any medication that would preclude  
24 you from testifying truthfully and accurately to  
25 the best of your ability?

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1 A. No.

2 Q. Thank you. Mr. Nelson, I'm going to hand  
3 you a copy of a subpoena that was provided which  
4 we'll mark as Exhibit 1.

5 (WHEREUPON, Deposition Exhibit No 1 was  
6 marked for identification.)

7 BY MR. WILMOTH:

8 Q. Could you please look at that document  
9 and tell me if you recognize it.

10 A. Yes, I recognize it.

11 Q. All right. And in that document we had  
12 asked if you could please bring any additional  
13 materials that you felt were supplemental to the  
14 materials that the district provided to Nebraska  
15 in response to its earlier request for production  
16 of documents. Are you aware of any materials like  
17 that and have you brought any?

18 A. Not aware of any, and I didn't bring any.

19 Q. Thank you very much. Before we get too  
20 far down the road, I wanted to express to you the  
21 state's appreciation for your willingness to come  
22 down and talk to us today. Right, wrong or  
23 indifferent, your district finds itself in the  
24 middle of this conflict, and your testimony will  
25 be very helpful to everybody, so thank you very

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1 much.

2 A. You're welcome.

3 Q. Could you please describe for me  
4 generally your educational background.

5 A. I am a high school graduate of Courtland  
6 High School, and I have a BS degree in business  
7 administration from Fort Hays State University.

8 Q. Did you have any particular focus in your  
9 business administration degree? Marketing or  
10 statistics or anything like that?

11 A. No.

12 Q. Just a general business administration --

13 A. Yes.

14 Q. -- degree? Okay. Could you describe for  
15 me very briefly the nature of the coursework that  
16 supported that degree.

17 A. I would say it was just your typical  
18 accounting and business management and those type  
19 of courses.

20 Q. Thank you. And could you please describe  
21 your professional background from the time that  
22 you received that degree.

23 A. I received that degree, I returned to  
24 Courtland, Kansas, where my family farms, and I  
25 went to work for Kansas Bostwick Irrigation

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1 District and have been there ever since. And I  
2 also farm.

3 Q. Do you farm in the district?

4 A. No.

5 Q. Where is your farm located?

6 A. My farm is located near the district  
7 boundaries, but not within. I'm a dryland farmer.

8 Q. And approximately what percentage of your  
9 time would you say you devote to farming versus  
10 your duties to the district?

11 A. I probably devote -- of working hours, I  
12 probably devote 15 to 20 percent to my farming  
13 operation, the remainder to the irrigation  
14 district.

15 Q. So do you remember which year you joined  
16 the district?

17 A. 1973.

18 Q. And could you list for me, since that  
19 time, your positions with the district.

20 A. From '73 till the spring of '77 I was a  
21 ditch rider and general maintenance worker. I  
22 operated a machine, a drag line. And then in '77  
23 I was promoted to superintendent, the position I  
24 hold today.

25 Q. And could you explain to me your general

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1 day-to-day duties in that capacity.

2 A. I'm responsible to see that the general  
3 workload of the irrigation district every day,  
4 whether it be maintenance season or irrigation  
5 season, is getting done and underway. I have a  
6 foreman that works for us, and he and I make those  
7 -- work schedule up day by day, and then all other  
8 operations of the district, management-wise, the  
9 buck stops here.

10 Q. So do you interface, for example, with  
11 your producers in the district?

12 A. Yes.

13 Q. And what is the typical range of topics  
14 on which you interface with those producers?

15 A. Well, there's a wide range of topics.  
16 Most producers are interested in improving their  
17 operations and installing pivots and making  
18 changes in their fields, and I interface with them  
19 in that respect. There's also occasionally  
20 questions about water deliveries and what the  
21 policies are and this type of thing.

22 Q. When you say they inquire about ways to  
23 improve their operations, what do you mean by  
24 improve the operation? Are you talking about a  
25 system improvement such as a -- going from a

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1 gravity irrigation to a center pivot?

2 A. Yes, there's a lot of that.

3 Q. And with respect to water deliveries, are  
4 you in the position of determining how much water  
5 the producers will receive?

6 A. That determination is made by the board  
7 of directors off of conferences with myself.

8 Q. And do you receive input from the  
9 producers on what they perceive as their water  
10 needs?

11 A. Not really.

12 Q. Do you typically interface with the state  
13 of Kansas in your role?

14 A. We report to the state of Kansas  
15 regarding the amount of water we use annually.

16 Q. Is that a one-time annual report?

17 A. Yes.

18 Q. And those reports I believe have been  
19 produced to the state of Nebraska in response to  
20 the request for production, is that right?

21 A. Yes, they have.

22 Q. Are there any years, to your knowledge,  
23 for which those reports were not produced?

24 A. Not to my knowledge.

25 Q. And can you describe for me the process

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1 by which that information is gathered.

2 A. That information is gathered based upon  
3 the annual usage of the irrigation district  
4 through the records we keep throughout the whole  
5 entire irrigation season and summarized, and then  
6 it is reported to the state of Kansas from that  
7 information.

8 Q. We'll return to some of these  
9 recordkeeping issues in a bit, but do you have  
10 occasion in your role as district manager to  
11 interface with the Bureau of Reclamation?

12 A. Yes.

13 Q. And can you describe generally the nature  
14 of your work with the bureau.

15 A. Primary work with the bureau is with  
16 their water operations branch out of McCook, and  
17 it's in regards to releases of water to and from  
18 the reservoirs.

19 Q. The reservoirs being Harlan County Lake  
20 and Lovewell Reservoir?

21 A. Yes.

22 Q. And in those interactions, what  
23 information are you providing or receiving?

24 A. The majority of those conversations are  
25 in regards to our needs for water and what we want

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1 released from the reservoirs, released or not  
2 released, and that's -- that's the basics of it.

3 Q. And do you find the bureau to be  
4 generally responsive to your needs or desires as  
5 you express them to the bureau?

6 A. For those releases, yes.

7 Q. So would you say that the district  
8 dictates the nature of those releases or the  
9 bureau really dictates the nature of those  
10 releases?

11 A. The district dictates the nature of those  
12 releases.

13 Q. Did I understand you to say that you  
14 perform a recordkeeping role? Or is that  
15 delegated to someone else in your --

16 A. That's delegated to --

17 Q. -- position?

18 A. -- others in my -- under my authority.

19 Q. So you don't actually collect on-farm  
20 data, for example.

21 A. I don't, per se. You know, in the  
22 mornings when I come to work, then if there's  
23 water orders come in and this type thing, I take  
24 them, but it's not my duty to put those records  
25 together.

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1 Q. Do you do any accounting for the  
2 district?

3 A. No.

4 Q. Are there any other agencies such as the  
5 KDWR or anyone else that you typically interface  
6 with in your role?

7 A. Well, we do -- we do have conversations  
8 with them occasionally.

9 Q. What is the nature of those  
10 conversations, generally?

11 A. It would be regarding water rights and  
12 this sort of thing.

13 Q. Okay. We'll return to that in a bit. Do  
14 you receive any financial or political support  
15 from the state of Kansas?

16 A. No.

17 Q. Does the district receive any funds from  
18 the state to improve its system efficiency?

19 A. From the state of Kansas?

20 Q. Yes.

21 A. No.

22 Q. Does the district receive any drought  
23 relief funding?

24 A. We received some drought relief funding  
25 in a couple of years that the state of Kansas had

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1 received from the interior department. I believe  
2 they received it from the interior department.  
3 And then that was -- that was granted to us.

4 Q. Do you have any reason to believe that  
5 your testimony today would be influenced by the  
6 district's relationship to the state?

7 A. No.

8 Q. And are you receiving any compensation,  
9 financial or otherwise, for your testimony today?

10 A. No, sir, I'm not.

11 Q. As a point of clarification, is the State  
12 of Kansas Attorney General's Office or Mr. Draper  
13 representing you in this proceeding today?

14 A. No.

15 Q. Do you have an attorney present --

16 A. No, I do not.

17 Q. -- here today? Have you had any  
18 conversations about this proceeding with Mr.  
19 Draper or the Kansas Attorney General's Office?

20 A. Yes, we have.

21 Q. Could you describe those for me.

22 A. When we were subpoenaed to present  
23 documents, we asked about what we were supposed to  
24 do and what it was supposed to involve, and they  
25 helped us with that.

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1 Q. Could you just describe the nature of the  
2 assistance you received.

3 A. We've had phone calls and just went over  
4 the questions that were asked that we were  
5 subpoenaed to develop, and we wanted to make sure  
6 that we had answered them sufficiently, and in  
7 those phone conversations, that was discussed.

8 Q. Was there any information that you  
9 elected not to provide on advice of the attorney  
10 general's office?

11 A. No.

12 Q. I'd like to turn now, if we may, to the  
13 district's general operations. Help me understand  
14 a few things. I'd like to hand you a copy of the  
15 district's operating plan. This is KSR 112.

16 (WHEREUPON, Deposition Exhibit No 2 was  
17 marked for identification.)

18 BY MR. WILMOTH:

19 Q. I'm going to apologize in advance if it  
20 appears that I'm throwing things over on that side  
21 of the table at you, but I'm a short man, and I  
22 can't reach that far. Do you recognize this  
23 document, Mr. Nelson?

24 MR. DRAPER: Are you marking this as an  
25 exhibit?

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1 MR. WILMOTH: Yes, this will be Exhibit

2 2.

3 A. Yes, I recognize it.

4 BY MR. WILMOTH:

5 Q. Could you identify the document for the  
6 record.

7 A. This is the Bureau of Reclamation's work  
8 with the district operating plan from 2004. I  
9 don't honestly remember for sure what all this is,  
10 but I do recognize it.

11 Q. Is this -- do you know if this plan is in  
12 effect today?

13 A. Yes, this is still in effect today.

14 Q. I'd like to just walk through a few  
15 provisions in this document to eliminate my  
16 understanding of how the district and the bureau  
17 interface and implement this plan. As a  
18 preliminary matter, if you look at the last  
19 paragraph on this first page, there's a statement  
20 regarding depleting water supplies. Do you see  
21 that?

22 A. Uh-huh.

23 Q. Can you explain to me your understanding  
24 of the nature of these depletions?

25 A. My understanding of the nature of the

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1 depletions, is what you asked?

2 Q. Yes, sir. Would you like me to rephrase  
3 that?

4 A. Yes, please.

5 Q. Do you agree that there is a depleted  
6 water supply to the district?

7 A. Yes, I agree.

8 Q. Do you have an opinion as to the cause of  
9 those depletions?

10 A. I have an opinion that it was caused by  
11 ground water pumping.

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

13 A. On my years of experience and the lack of  
14 flows as the years went by in the river.

15 Q. And where is the ground water pumping  
16 occurring that you attribute those depletions to?

17 A. I don't know that I can answer you on  
18 that other than they're occurring upstream from  
19 us.

20 Q. Thank you. Now, on the second page of  
21 this document, second paragraph, under the heading  
22 irrigation deliveries? And --

23 A. On the second page?

24 Q. Yes, sir. In the second and third  
25 paragraph, there's a discussion of determining the

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1 amount of irrigation water that will be available  
2 to the district and how that will be released. Do  
3 you see that?

4 A. Yes.

5 Q. Can you explain to me the role of the  
6 contracting officer in that capacity.

7 A. Contracting officer is to determine the  
8 amount of flows that can come out of the amount of  
9 -- excuse me, not flows -- the amount of supply  
10 that can come out of the reservoir, and that is  
11 the amount that we're -- that we're limited to in  
12 those years.

13 Q. So earlier you mentioned that the  
14 district conveys to the bureau --

15 A. Uh-huh.

16 Q. -- its desired amount of irrigation  
17 water.

18 A. Amount of releases.

19 Q. Amount of releases. And how does that --  
20 how is that used by the contracting officer in  
21 your understanding?

22 A. The contracting officer calculates those  
23 amounts and keeps track of it and sees that we're  
24 limited to the supplies available to us --

25 Q. So there's --

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1 A. -- throughout the year.

2 Q. Thank you. So if the contracting officer  
3 determines that no additional water can be  
4 released, as a practical matter, what does that  
5 mean for the district?

6 A. If the contracting officer determined  
7 that we had used all of our supply that was  
8 available to us, then we would not get any more  
9 releases at that point.

10 Q. And what happens if the contracting  
11 officer determines that there is more than enough  
12 water available to meet your request?

13 A. Well, if the -- our request is for a  
14 determined amount of release, and his obligation  
15 is the total supply. As long as we haven't used  
16 more than that total supply, then those releases  
17 will be made.

18 Q. And assume for this next question that  
19 all of the releases that you seek are made, but  
20 there is some remaining supply. What happens to  
21 that supply?

22 A. And the supply was not limited?

23 Q. Yes.

24 A. The contracting officer determines that  
25 supply the first of the year, and then if there's

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1 additional supplies that come in throughout the  
2 season, I believe this thing says that, if you  
3 read it far enough, then -- then you can take  
4 those supplies. So that supply increases as the  
5 season goes on.

6 Q. And do you ever reach a situation where  
7 you simply don't need additional releases?

8 A. Yes.

9 Q. And what happens to the water in storage  
10 at that point?

11 A. It's left in storage.

12 Q. And does that, then, carry over to the  
13 following year?

14 A. Yes.

15 Q. And is that carryover memorialized in  
16 some kind of written document like a contract or  
17 an operating plan such as this?

18 A. The supply that's carried over between  
19 the two irrigation districts that irrigate from  
20 Harlan County is recalculated then into next  
21 year's supply and the next year's starts over in  
22 January 1.

23 Q. And then is that divided between the  
24 Nebraska Bostwick Irrigation District and the  
25 Kansas Bostwick Irrigation District?

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1 A. It is.

2 Q. If you continue down this page, paragraph  
3 number one talks about some estimated reservoir  
4 elevations. Do you see that?

5 A. Estimated elevations?

6 Q. Where the paragraph reads, by January 15  
7 of each year. Do you see that?

8 A. Yes.

9 Q. There seemed -- I infer from that there  
10 is an estimate made of reservoir elevations and  
11 irrigation supplies, is that --

12 A. Yes, there is.

13 Q. -- a fair reading?

14 A. That's correct.

15 Q. And it appears that the first estimate is  
16 provided to you on January 15, is that correct?

17 A. That's correct.

18 Q. And a second final calculation is  
19 provided to you when?

20 A. June 15th.

21 Q. How do your producers or perhaps your  
22 district deal with the estimate? How do you --  
23 what do you do with that estimate to inform your  
24 decisions?

25 A. We take that estimate, and the board of

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1 directors analyze it, and if it's -- if we're  
2 short water, if it's years of short supply, then  
3 we try to inform our producers as soon as possible  
4 either through direct correspondence, written  
5 correspondence to them, or else through  
6 newsletters and try to tell -- give them some idea  
7 of what that supply is.

8 Q. When you say short supply, are you  
9 referring to the estimated supply?

10 A. If that estimated supply is short enough  
11 that we're going to have to restrict the flows for  
12 the year, then we want to tell our producers as  
13 soon as possible.

14 Q. And typically when does that occur? When  
15 is as soon as possible typically?

16 A. If the supplies are extremely short, then  
17 we would be telling our producers as soon as we  
18 got the estimate from the bureau in January, and  
19 then we would update that as needed. If they're  
20 not extremely short, we probably would not inform  
21 them at that time.

22 Q. Is that because folks have grown  
23 accustomed to a certain average supply and they  
24 plan around that? Why would you not inform them,  
25 is my question.

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1 A. Yeah, well, normally the irrigator pretty  
2 well knows at the end of the fall what our supply  
3 has been and where we're at, and so we don't go  
4 out of our way to inform him unless we think that  
5 supply is going to be such that they want to  
6 change their -- their farming operation to adjust  
7 to it.

8 Q. I see. So if I understand, when you say  
9 they know what the supply is generally in the  
10 fall, you're talking about the fall preceding --

11 A. Uh-huh.

12 Q. -- the January 15 period.

13 A. That's correct.

14 Q. And so you -- do you keep them informed  
15 of the status of the system, if you will, during  
16 that fall period leading up to the January 15  
17 estimate?

18 A. Yes. I send out a quarterly news report  
19 that usually has what our -- always has water  
20 supply article in it.

21 Q. And in your experience, are the producers  
22 within the district utilizing that information in  
23 the fall to make decisions about purchasing, oh,  
24 fertilizers or --

25 A. Yes.

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1 Q. -- seed or anything? Okay. And how  
2 often would you say in a short year do you keep  
3 them informed about the estimated supply as you  
4 proceed toward June 15th? Is that a monthly  
5 update or a quarterly update?

6 A. If you take the years that we were  
7 extremely short, we would have informed them  
8 shortly after we were told in January. And then  
9 if there was any -- in that letter, we would have  
10 said, if there's any improvements, we will let you  
11 know. And if there was improvements, then we  
12 would let them know as soon as possible. So it  
13 would just depend upon the situation.

14 Q. Do you have any standardized increments  
15 of additional storage that you think merit another  
16 piece of correspondence to your producers? In  
17 other words, do you send a new letter out every  
18 time you get an additional three feet of storage  
19 or five feet of storage?

20 A. We don't have -- we don't have a standard  
21 increment, no.

22 Q. If we proceed through the document, there  
23 are a number of equations, and I'm not sure I  
24 could formulate a cogent question about those, so  
25 I will refrain from doing so, but I would like to

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1 proceed to what is marked at the bottom page 36 of  
2 this document. Do you see paragraph D as in  
3 David?

4 A. Yes.

5 Q. Does this paragraph address the division  
6 of water between the Kansas Bostwick Irrigation  
7 District and the Nebraska Bostwick Irrigation  
8 District?

9 A. Yes.

10 Q. And the paragraph seems to indicate there  
11 would be a separate agreement to do that. Are you  
12 familiar with that agreement?

13 A. I'm not real sure what that statement  
14 means in the -- regarding separate agreement.  
15 There is a agreement between the two irrigation  
16 districts regarding operations.

17 Q. Could you describe the nature of that  
18 agreement?

19 A. It's about the operations of the Guide  
20 Rock diversion dam and the water that's delivered  
21 to Nebraska Bostwick and the water that's  
22 delivered to Kansas Bostwick, and also about the  
23 amount of payments that Nebraska Bostwick makes to  
24 us for maintaining the Courtland canal in  
25 Nebraska, and that type of thing.

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1 Q. And what is your understanding of the way  
2 in which the two districts divide the available  
3 supply?

4 A. The Bureau of Reclamation actually does  
5 that, and it's in -- it's developed by the amount  
6 of water that's used. I don't remember exactly  
7 how they develop all of that, but it's split  
8 between the two of us.

9 Q. Do you have any input in that process?

10 A. No.

11 Q. Now, continuing down this page, under the  
12 heading water conservation measures, there's a  
13 reference to a revolving water conservation fund  
14 in that paragraph, first sentence. Do you see  
15 that?

16 A. Uh-huh.

17 Q. Can you explain the nature and purpose of  
18 that fund.

19 A. Yeah. The district in their contract  
20 have a conservation fund that we use to improve  
21 the system, and that's what the conservation fund  
22 is for, that you can use it to build pipe laterals  
23 and this type of thing.

24 Q. And is that term conservation used in  
25 this context to discuss water conservation?

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1 A. Yes.

2 Q. So would that include things such as the  
3 conversion to center pivots we talked about  
4 before?

5 A. We don't fund anything regarding a  
6 farmer's operation. The only conservation funds  
7 we use is for the system itself.

8 Q. I see. And by the system, you're  
9 referring to the various canals and laterals.

10 A. Canal and lateral system.

11 Q. And diversion mechanisms, things --

12 A. Yes.

13 Q. -- like that? Can you tell me what the  
14 status of that fund is today? Is it currently --  
15 does it currently have any money in it?

16 A. It currently has money in it. I can't  
17 tell you the exact amount.

18 Q. Do you have any idea how much? Roughly?

19 A. No, I don't.

20 Q. How has that fund been used to date to  
21 improve your system?

22 A. We have buried a lot of laterals, and  
23 when we do, we take out of that fund and use that  
24 -- use that for that.

25 Q. Is that the only activity that the fund

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1 is used for?

2 A. I don't recall actually pulling money out  
3 of that fund for something else that would have  
4 been -- that we would have called conservation,  
5 but that's been by far the biggest percentage of  
6 the use of it is since it was developed at  
7 contract renewal.

8 Q. Do you have a knowledge of how many say  
9 linear feet or maybe miles is easier of canal have  
10 been buried?

11 A. Approximately 80 miles.

12 Q. 80 miles? And do you have any idea how  
13 much that has improved your delivery efficiency?

14 A. I don't have that number exactly, but  
15 each one has added to considerable improvements.  
16 We're much more efficient than we were.

17 Q. When you say you're much more efficient  
18 than you were, could you give me a date range?  
19 Let's say since 2000, how has your efficiency  
20 improved?

21 A. We started our lateral programs in the  
22 early '90s and the -- since 2000, in contract  
23 renewal, we come under an obligation to improve  
24 our system, and we've been working at it steadily  
25 ever since, and we're approximately 50 percent

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1 buried in our laterals. Easy 50 percent.

2 Q. So do you have any idea how much your  
3 overall system efficiency has improved since 2000?

4 A. I don't.

5 Q. Do you know the typical losses from the  
6 buried lateral?

7 A. A typical -- what you would call a  
8 typical loss in an open lateral is 30 percent.

9 Q. Is there no loss in a buried lateral?

10 A. The only -- the only loss that would be  
11 there would be any meter error or things like that  
12 in reading the meters, so it's a minute amount.

13 Q. Before you undertook to engage in the  
14 lateral program, do you know what your general  
15 system efficiencies were?

16 A. No.

17 Q. Is there any difference between the area  
18 that I'll refer to as above Lovewell and below  
19 Lovewell in terms of system efficiency?

20 A. No, there's no difference.

21 Q. So are the buried laterals equally  
22 divided between those areas, for example?

23 A. They would be fairly equally divided. We  
24 made every effort to spread the improvements out  
25 throughout the whole system.

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1 Q. Would it be fair to say, then, that the  
2 system efficiency is generally the same above and  
3 below Lovewell?

4 A. That would be fair.

5 Q. Is there a more accurate or proper way to  
6 refer to those two areas in your view, or is it --

7 A. That --

8 Q. -- okay for me to say that?

9 A. That's very much okay.

10 Q. All right. Thank you. Do you know what  
11 the typical transit loss between the Courtland  
12 canal headgate and the state line is?

13 A. No, I don't know.

14 Q. Do you know what the typical system loss  
15 is in the Courtland canal system?

16 A. Typically you'll lose two CFS a mile.

17 Q. Was that generally true in 2005 or 2006?

18 A. No, because we changed our operations in  
19 2005 and 2006 to adjust to that.

20 Q. And do you know what the losses might  
21 have been in those years?

22 A. I don't.

23 Q. How did you change the operations to  
24 adjust?

25 A. In 2005 we actually didn't have any water

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1 up there except for what -- what would -- what  
2 little river flows would come by. And in 2006  
3 when we received deal water from Nebraska, when  
4 the Nebraska Bostwick give their supply up to us,  
5 then we operated the upper end of the reservoir on  
6 the bottom, and the bottom end where we was making  
7 deliveries, we brought up to surface.

8 Q. Do you have any evaporative losses off of  
9 the canal system itself?

10 A. Sure.

11 Q. Do you have any idea what those might be?

12 A. No.

13 Q. What is the capacity of the Courtland  
14 canal above Lovewell?

15 A. The design capacity is 785 feet, but the  
16 actual capacity is more like 500.

17 Q. And why is that?

18 A. Because the system has changed and  
19 there's been some bridges removed and tubes put in  
20 in their place, and it won't run the full capacity  
21 that it used to.

22 Q. And what is the capacity of the canal  
23 below Lovewell?

24 A. 635 CFS is design capacity, I believe.

25 Q. And is that the true capacity today?

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1 A. We haven't been anywhere near that for a  
2 number of years.

3 Q. What are the limitations on capacity?

4 A. It's not limited so much as the fact that  
5 we've improved our operations enough that we don't  
6 run that high a flows.

7 Q. I see. What is the average flow you run  
8 in that canal?

9 A. I believe we've been up to 500 CFS in the  
10 last few years once or twice, but typically we're  
11 running around 400.

12 Q. And what would you say is the dominant  
13 system type on farm in the district: Center pivot  
14 or flood irrigation or --

15 A. We are now over 50 percent center pivot.

16 Q. How has that affected your water needs --

17 A. It's --

18 Q. -- in terms what of what you convey to  
19 the bureau?

20 A. In terms of what we convey to the bureau.

21 Q. Let me rephrase it. How has that  
22 affected your overall water need?

23 A. It's lessened our demand considerably.

24 Q. Do you have any idea of, on a percentage  
25 basis, how much?

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1 A. As a general rule, we say that if you  
2 need 15 inches under flood irrigation that you  
3 would need nine under pivot. It's not scientific.  
4 That's just what we're -- the numbers that we use.

5 Q. And if I understood you correctly, you  
6 indicated that now you're rough -- you're a little  
7 over 50 percent center pivot?

8 A. Uh-huh.

9 Q. Can you tell me how much of your district  
10 was in center pivot in 2005 and 2006?

11 A. I can't tell you off the top of my head.  
12 We do have that in a survey that we do that --  
13 every four years that shows the changes. It  
14 doesn't show five and six.

15 Q. Do you know the last time that survey was  
16 conducted?

17 A. 2010.

18 Q. So would there have been a report in  
19 2006, then?

20 A. Yes.

21 Q. Do you know if we received that report in  
22 response to our request?

23 A. Yes. It's in the annual reports.

24 Q. Thank you. And how much water, in your  
25 experience, is delivered to an average field, say

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1 a 160-acre field in your service area?

2 A. Are you talking about long-term numbers  
3 or --

4 Q. In an -- in an average condition.

5 A. I wish I knew what an average condition  
6 was.

7 Q. But --

8 A. Our base supply is 15 inches.

9 Q. Uh-huh.

10 A. And over a long period of time 15 inches  
11 was the -- the typical delivery in a typical year.

12 Q. Has this conversion to center pivot,  
13 then, affected that?

14 A. Yes, it has.

15 Q. And is that the effect of going from the  
16 15 inch to the nine inch need that you mentioned  
17 earlier?

18 A. Yes, it has.

19 Q. For those lands --

20 A. Yes.

21 Q. -- that have center pivot. Well, we've  
22 talked a little bit about irrigation application.  
23 I'd like to talk to you a little bit about how you  
24 get rid of the excess water and your drainage  
25 infrastructure. Are you familiar generally with

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1 the infrastructure within the district?

2 A. Yes.

3 Q. Could you explain to me why the district  
4 has installed that infrastructure?

5 A. You have to look at a map of a long  
6 period of time. We've installed it because in the  
7 '60s and '70s, high water table was a tremendous  
8 problem. It was affecting production, and there  
9 was -- the district contracted through the bureau  
10 installation of a tremendous amount of drains, and  
11 in order to lower that water table and bring  
12 production back into where it should be.

13 Q. And can you describe the nature of the  
14 drains. Are these tiles? Drain tiles?

15 A. We have about 150 miles -- no, 250 miles  
16 of tiles and open drains, and about 50 miles then  
17 were open drains.

18 Q. Did I hear correctly, 250 --

19 A. 250.

20 Q. -- miles? Okay. Thank you. So 300  
21 total miles --

22 A. Yes.

23 Q. -- of drainage infrastructure. And what  
24 percentage of the lands within the districts are  
25 drained in that fashion?

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1 A. I don't know the exact percentage. I  
2 would say it's around 70.

3 Q. Is that drainage, again, equally --  
4 roughly equally divided between upper -- excuse me  
5 -- above Lovewell and below Lovewell?

6 A. Yes, it is.

7 Q. Are there any factors that affect  
8 drainage above Lovewell that don't affect drainage  
9 below Lovewell or vice versa?

10 A. No.

11 Q. No difference in soil types or anything  
12 like that that might affect the functionality of  
13 the drains?

14 A. I cannot answer you on that, but to my --  
15 you know, my opinion, the amount of drainage in  
16 both places, I don't see any major thing that is a  
17 difference.

18 Q. Do you have a series of gauges or any  
19 other way to measure the volume of the outflow  
20 from those drains?

21 A. No.

22 Q. Do you make any effort to do that as part  
23 of your recordkeeping?

24 A. No.

25 Q. Do you recall seeing any of the drains

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1 flowing, carrying drainage water, in 2005 or 2006?

2 A. I spent very little time looking at  
3 drains in 2005-2006, so, no, I don't recall.

4 Q. Do you have any idea how long it takes  
5 that irrigation water that's applied to KBID lands  
6 to percolate through the system, exit the drains,  
7 and reach the river?

8 A. No, I have no idea.

9 Q. Has the district conducted any studies of  
10 that question?

11 A. No.

12 Q. Do you know of any studies that are  
13 directed to answer that question?

14 A. I don't know of any.

15 Q. Thank you. Can you describe for me how  
16 producers within the district or folks outside the  
17 district might utilize return flows from the  
18 district?

19 A. No, I don't.

20 Q. Do you ever communicate with folks  
21 outside of the district about the availability of  
22 return flows or the projected availability of  
23 returned flows?

24 A. I've talked with individuals, you know,  
25 about, it's obvious that there's drains that runs

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1 to the river, but that's all it's ever been.

2 Nothing official of any kind.

3 Q. Folks downstream don't call up and say,  
4 just curious how much water you're going to apply  
5 this year? See if we can --

6 A. No.

7 Q. -- plan for the use of those flows?

8 A. I get more of them calling wanting to  
9 know if the water is being released from level so  
10 they can go fishing. No, I don't get those kind  
11 of calls.

12 Q. How is the fishing in Lovewell?

13 A. On and off.

14 Q. What do you catch out there?

15 A. White bass if you're lucky.

16 Q. Good eating?

17 A. Yeah, if they don't have blue green  
18 algae.

19 Q. Getting back to the operating plan, you  
20 in this same paragraph, you might see reference to  
21 an annual assessment?

22 A. Uh-huh.

23 Q. Which I infer is designed to help fund  
24 the water conservation fund? Is that --

25 A. Annual assessments are how we're funded,

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1 period.

2 Q. Okay. Is this an annual assessment  
3 that's specific to the fund?

4 A. On that conservation fund?

5 Q. Yes.

6 A. There's no obligation to an annual  
7 assessment in the conservation fund. It's simply  
8 a way upkeeping the conservation fund.

9 Q. I see. How do you typically determine  
10 your annual assessments?

11 A. As a whole?

12 Q. Yes.

13 A. It's the -- based upon the needs of the  
14 district, the budget and the budget requirements  
15 for the next year.

16 Q. And how are those needs identified?

17 A. By the budgeted items that the district  
18 has, general operations.

19 Q. Okay. What do you typically budget for?

20 A. What items?

21 Q. Yes.

22 A. Equipment, labor, just whatever it takes  
23 to operate the district.

24 Q. And when do you typically set that  
25 budget?

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1 A. We're required to set the budget in  
2 August.

3 Q. For the upcoming year?

4 A. Yes.

5 Q. And can you tell me what the average  
6 assessment has been over the last five years? Not  
7 to the penny, just your best recollection.

8 A. Yeah. In the -- there's two assessments,  
9 O&M, and repayment. And the O&M assessment is the  
10 one that we're talking about now, which is our  
11 operations and maintenance, and we're in the mid  
12 30s range for the last -- dollars an acre.

13 Q. \$30 an acre.

14 A. Uh-huh.

15 Q. Mid 30s --

16 A. Uh-huh.

17 Q. -- an acre. Thank you. And with regard  
18 to the repayment portion, what is the figure  
19 there?

20 A. Currently it's \$4 an acre.

21 Q. Would that be roughly true in 2005 and  
22 2006 or were the rates substantially different?

23 A. In 2005 -- in 2004 and 2005 our repayment  
24 was deferred, and in 2006 we had some legislation  
25 that changed that repayment, so it was different

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1 that year as well. And in 2005 and 2006, we were  
2 charging \$22 an acre on O&M, and the folks above  
3 Lovewell were charged \$10 an acre because we  
4 didn't know if they'd get any water.

5 Q. Does the availability of water usually  
6 factor into your assessment, then, above versus  
7 below Lovewell? Is that a typical thing?

8 A. Being short of water is not typical, so  
9 --

10 Q. But if you are short, then --

11 A. If we were short --

12 Q. -- you would factor that?

13 A. If we were -- when we were very short, it  
14 did definitely factor in.

15 Q. Can you describe how you determined the  
16 total number of acres that would be irrigated  
17 within KBID in any given year?

18 A. We don't make that determination.

19 Q. How is that number arrived at? Is that  
20 driven by your producers?

21 A. That's driven by the producer.

22 Q. And do they inform you of their intent to  
23 irrigate a certain number of acres?

24 A. Only if we ask.

25 Q. Do you ask regularly?

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1 A. No.

2 Q. Do you not find that information relevant  
3 to your operations or do you just don't have time  
4 to ask?

5 A. No, we think that the -- we think the  
6 decision for the amount of acres that an  
7 individual is going to irrigate is his.

8 Q. Has any producer that wanted to irrigate  
9 ground been denied access to water that was  
10 otherwise available within KBID by the district?

11 A. Rephrase that question.

12 Q. Has any producer within the district who  
13 expressed a desire to irrigate land within the  
14 district been denied access to water that was  
15 otherwise available for any reason?

16 A. Okay. You're saying that water is  
17 available and an irrigator who is qualified to  
18 irrigate from us has asked for water?

19 Q. Yes.

20 A. Then he would receive it within the same  
21 terms that any other irrigator would receive it.  
22 If there was no water, he would get none.

23 Q. And in a normal year, when do you  
24 finalize your decisions about how much water will  
25 be available? Is that related to the district

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1 operating plan dates or are there other internal  
2 considerations?

3 A. That decision becomes more of a board  
4 decision which is normally a monthly decision, and  
5 it can change with the supply, the reservoirs, at  
6 any time.

7 Q. Is there a date certain that you will  
8 always make that decision by?

9 A. By the start of irrigation season we will  
10 have a restriction set that our ditch riders can  
11 work with. It's not something that can't be  
12 changed if the supply changed.

13 Q. And what is the start of the irrigation  
14 season?

15 A. Typically it's mid June.

16 Q. So if your producers are not certain  
17 about how much water will be available until mid  
18 June, how do they deal with the contingencies of  
19 ordering supplies and other materials?

20 A. They are as certain as we can tell them  
21 of the water that will be available up until that  
22 time, and we communicate with them before that  
23 time.

24 Q. Try to keep them informed, as we --

25 A. Right.

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1 Q. -- talked about before.

2 A. Uh-huh.

3 Q. Thank you. So we've talked a little bit  
4 about the application of irrigation water, and  
5 we've talked a little bit about drainage. I'd  
6 like to speak with you for a moment about the  
7 operation of the facilities, and specifically  
8 Lovewell Reservoir. Can you describe for me  
9 generally how Lovewell Reservoir is operated for  
10 the benefit of your district.

11 A. We don't operate Lovewell Reservoir. The  
12 Bureau of Reclamation does. And that goes back to  
13 our discussion about calling in releases and  
14 turnbacks of water, and it's operated through the  
15 requirements that I make through water control in  
16 McCook, Nebraska on a daily basis, and then the  
17 bureau takes care of that.

18 Q. Is it typical practice to fill Lovewell  
19 Reservoir in priority to Harlan County Lake?

20 A. No.

21 Q. Does the district prefer one to fill  
22 sooner than the other?

23 A. If the district had its way, Harlan  
24 County would be full as much and as soon as it  
25 could, but there's no preference. We take what we

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1 get.

2 Q. Does Lovewell Reservoir fill into the  
3 flood pool?

4 A. Sometimes.

5 Q. Under what circumstances would that  
6 occur?

7 A. Usually a rain event that brings  
8 additional waters down the White Rock Creek,  
9 usually.

10 Q. Are you aware of any operational  
11 restrictions on storing water in the flood pool?

12 A. Yes.

13 Q. Could you describe those.

14 A. The Corps of Engineers does not like to  
15 store water in the flood pool. If it's there,  
16 they'll typically order it out.

17 Q. Are there any arrangements currently in  
18 place to allow the storage of water in the flood  
19 pool?

20 A. Currently, yes.

21 Q. Could you describe the nature of those  
22 arrangements.

23 A. I'm trying to remember the name of that  
24 -- what they call that, but the corps and the  
25 bureau and the state of Kansas have an agreement

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1 that can allow a certain amount of storage in  
2 Lovewell, but I'm not -- I can't tell you exactly  
3 how that goes.

4 Q. Do you ever see the bureau making  
5 releases from Lovewell to satisfy non-irrigation  
6 uses?

7 A. No.

8 Q. Have you ever been in a position where  
9 the bureau has effectively required the district  
10 to take water into Lovewell from Harlan County  
11 Lake that you didn't want sent to Lovewell?

12 A. I don't recall anything like that.

13 Q. How many total acres within your district  
14 are certified to receive irrigation water?

15 A. 43,000.

16 Q. And do all of those acres receive  
17 irrigation water every year?

18 A. No.

19 Q. And what factors influence that?

20 A. Farmers' decisions on what they want to  
21 plant and where.

22 Q. In the event that a farmer decides not to  
23 take irrigation water through the district, might  
24 that farmer be using a well to irrigate with  
25 ground water?

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1 A. I don't know. It would -- I wouldn't  
2 know that.

3 Q. Are you aware of any producers within  
4 your district who have wells?

5 A. Yes.

6 Q. And do you have any idea, on a percentage  
7 basis, how many acres are served by a well?

8 A. No.

9 Q. Do you have any idea how many producers  
10 have wells?

11 A. Producers that are -- no, I don't know.

12 Q. Within the district.

13 A. No.

14 Q. Do you have an opinion on the quality of  
15 irrigation water within the district?

16 A. Do I have an opinion on it?

17 Q. Excuse me. Ground water used for  
18 irrigation in the district. Do you have an  
19 opinion on the quality of the ground water?

20 A. I have no idea.

21 Q. Thank you. In the last say five years,  
22 are you aware of any producers who had water  
23 available to them but elected not to take it?

24 A. In the last five years.

25 Q. Yeah.

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1 A. Yes.

2 Q. What are the typical circumstances that  
3 would lead to that decision?

4 A. There was an individual that told me he  
5 had put his land in an EQIP program with NRCS, and  
6 I'm not -- I don't know what that was, but he  
7 didn't take water.

8 Q. Is that the only time you can think of  
9 that happening?

10 A. That someone has told me?

11 Q. That someone has elected not to take  
12 water otherwise available to them.

13 A. Yeah. I mean, that's the only one that I  
14 can point to.

15 Q. Are you aware of anyone in 2005 or 2006  
16 that had water available and decided not to take  
17 it?

18 A. I know there was a lot of them there. I  
19 don't -- I don't keep track of who those  
20 individuals were or where.

21 Q. Do you have any idea why they made that  
22 decision?

23 A. I think they didn't think they was going  
24 to get enough to raise a crop, but that's my  
25 opinion.

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1 Q. So in that situation, did they plant  
2 dryland crops or did they take a prevented  
3 planting payment or what was the typical  
4 circumstance?

5 A. Once again, I never -- you know, we never  
6 surveyed them to ask those kind of questions. I  
7 think the answer to what you're asking is some of  
8 all.

9 Q. Do you have any sense as to how many  
10 acres were dryland farmed in your district in 2005  
11 and 2006?

12 A. No, I do not.

13 Q. Do you have any idea how many acres  
14 within your district are dryland farmed today?

15 A. No, I do not.

16 Q. Can you describe for me just the basic  
17 differences in -- if any, in operations above  
18 Lovewell and below Lovewell.

19 A. There's really no difference in  
20 operations as far as for water being delivered to  
21 the farm. Lovewell -- above Lovewell comes off of  
22 a canal system and below Lovewell comes out of the  
23 lake, so it's -- you know, it's pretty simple, but  
24 the operations are the same.

25 Q. But occasionally the allocations may be

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1 different above Lovewell or below Lovewell?

2 A. They were in a few years.

3 Q. Does that generally only occur in water  
4 short years?

5 A. Yes.

6 Q. And what are the considerations that  
7 factor into your decision to set allocations  
8 differently above and below Lovewell?

9 A. If the supply from Harlan County  
10 Reservoir will not -- will not equal for the  
11 people above Lovewell the same amount as what the  
12 people below Lovewell are getting, we have to set  
13 different restrictions.

14 Q. And why would it not equal the same  
15 amount?

16 A. There's not as much water there.

17 Q. Because water is available in Lovewell  
18 physically, but not physically available in Harlan  
19 County Lake? Is that what you're --

20 A. Correct.

21 Q. -- suggesting?

22 A. Right. The people above Lovewell cannot  
23 get water out of Lovewell Lake.

24 Q. Sure. And when that happens, water has  
25 been taken from Harlan County Lake and put into

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1 Lovewell?

2 A. No.

3 Q. Okay. Explain to me, if you will, why  
4 there's more water in Lovewell than in Harlan  
5 County Lake if Harlan County Lake is the upstream  
6 facility.

7 A. Because Lovewell can be filled in the  
8 winter months from the Republican River and the  
9 White Rock Creek.

10 Q. And do you have any sense as to the  
11 contribution that White Rock Creek represents in  
12 an average year?

13 A. There's absolutely no average with White  
14 Rock Creek.

15 Q. Okay. So if I understand your statement  
16 a moment ago, water is moved through Harlan County  
17 Lake into Lovewell during the non-irrigation  
18 season, and the --

19 A. No, you did not understand me.

20 Q. Could you --

21 A. It's not moved through Harlan County.  
22 It's picked up below Harlan County --

23 Q. Okay.

24 A. -- and moved into Lovewell in the off  
25 season.

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1 Q. Okay. So none of the Harlan County Lake  
2 water is moved into Lovewell during the  
3 non-irrigation season.

4 A. No.

5 Q. That -- that just never happens.

6 A. Unless it's -- unless they're making  
7 flood releases up there and we're picking that up,  
8 something like that.

9 Q. Thank you. How do you set the start date  
10 or the end date of your irrigation season?

11 A. Once again, it's consultation with the  
12 board of directors, and it's based upon the supply  
13 and the amount of days that we think that we can  
14 deliver it in. I'm talking here about the short  
15 years, and I think that's what your question was  
16 about. Am I right?

17 Q. That's fine.

18 A. Okay. And so then we try to determine  
19 the amount of days that we would take to deliver  
20 that amount of water in, so we set the beginning  
21 and ending.

22 Q. And in a normal year would the situation  
23 be the same, just a longer season?

24 A. That's correct.

25 Q. How do such things as precipitation

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1 patterns affect your decision on the irrigation  
2 season?

3 A. On the length of the irrigation season?

4 Q. Yes.

5 A. They can change it after we've set it if  
6 we're caught with precipitation we're not  
7 anticipating.

8 Q. And then does that affect your decision  
9 about how much water to draw from the reservoirs?

10 A. It can.

11 Q. In what way?

12 A. If we're short of water and we receive  
13 precipitation in those water short years, had that  
14 happened, we may have stopped and carried some  
15 supply over, if it actually allowed some to be  
16 left.

17 Q. In your experience is the land above  
18 Lovewell more or less valuable than the land below  
19 Lovewell?

20 A. I don't see any difference in it.

21 Q. They -- those lands sell for roughly the  
22 same price?

23 A. It all brings too much, but, yeah, I  
24 don't see any difference.

25 Q. What's land down there bringing these

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1 days?

2 A. Well, there hasn't been much sold, but  
3 there was some dryland that sold down around  
4 Beloit for 6,000 an acre, so --

5 MR. BLANKENAU: That is too much.

6 A. Yeah. Way too much.

7 BY MR. WILMOTH:

8 Q. What does land down that way lease for  
9 these days?

10 A. I honestly don't know the answer to that.

11 Q. Do you know what land was selling for in  
12 2005 and 2006?

13 A. I don't. I don't know the answer.

14 Q. Something south of 6,000, I would  
15 imagine?

16 A. Yes.

17 Q. Do you have any idea what land was  
18 leasing for then?

19 A. I really don't. I really try hard not to  
20 know those things.

21 Q. Why is that?

22 A. Because it can just get you in trouble.

23 Q. On days like today?

24 A. Irrigators like you to be -- to know  
25 those things and to get in between landowners and

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1 tenants, and it's not a good thing to do, so --

2 Q. Do you lease any of your ground as a  
3 producer outside of KBID?

4 A. I lease land from others, yes.

5 Q. Could you tell me how much you're leasing  
6 that land for?

7 A. I have a lease on crop shares.

8 Q. What's your typical share?

9 A. I typically raise wheat, and I get  
10 two-thirds and the landowner gets a third.

11 Q. Have you purchased any land for your  
12 operation lately?

13 A. No.

14 Q. Does the district ever, for lack of a  
15 better word, exchange water between users above  
16 Lovewell or below Lovewell? Is there any kind of  
17 an exchange --

18 A. No.

19 Q. -- program? Mr. Nelson, I'm going to hand  
20 you a document that -- I don't have another one --  
21 and just ask you to -- this will be marked as  
22 Exhibit 3.

23 (WHEREUPON, Deposition Exhibit No 3 was  
24 marked for identification.)

25 BY MR. WILMOTH:

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1 Q. Just ask you to identify this document.

2 A. This is the crop census for 2005.

3 Q. And what is the general purpose of that  
4 document?

5 A. It's to determine the amount of acres  
6 that were irrigated, the yields, and the gross  
7 values of the crops that were raised.

8 Q. And is this information that you report  
9 to the Bureau of Reclamation?

10 A. It is.

11 Q. And how often do you do that?

12 A. Annually.

13 Q. Is the information that you report always  
14 the same as that reported by the bureau?

15 A. I don't know what the bureau reports.

16 Q. Okay.

17 A. But we report this to them.

18 Q. Very good. Mr. Nelson, I'm going to hand  
19 you a table here with statistics and just ask you  
20 to accept on faith that we received this from the  
21 Department of the Interior in response to a  
22 request to the department for some information.

23 A. Uh-huh.

24 Q. I'm not going to ask you to interpret  
25 this table, but I would just like to ask if it's

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1 your understanding that the kind of information  
2 that you provide through Exhibit 3 --

3 (Off-the-record discussion.)

4 BY MR. WILMOTH:

5 Q. -- is the kind of information you're  
6 seeing reflected there?

7 A. I would say so, yes.

8 Q. Okay. Thank you very much. And we'll  
9 mark that as Exhibit 4 to the deposition.

10 (WHEREUPON, Deposition Exhibit No 4 was  
11 marked for identification.)

12 BY MR. WILMOTH:

13 Q. I'd like to ask you just a couple of  
14 questions about that document that I just handed  
15 you, and I understand you're not the author, but  
16 I'd like your view on a couple of points, if you  
17 have one. If you look at this document, you'll  
18 see in the third column a reference to what I  
19 think is irrigated acres, the fourth column, a  
20 gross crop value, and the fifth column a net  
21 supply number. Do you see those?

22 A. Yes, I see them.

23 Q. Do you have a view of what those  
24 represent?

25 A. On their report?

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1 Q. (Indicating.) Do they look familiar to  
2 you in any way?

3 A. Well, I can't recall why they're not  
4 putting gross crop values down there. I think we  
5 still send that to them, but I'm assuming those  
6 values came from our crop census that we send  
7 them.

8 Q. My question is related to the  
9 relationship between your view of available water  
10 supply, what I think is net supply on this column  
11 --

12 A. Uh-huh.

13 Q. -- and the gross crop value. And I want  
14 to call your attention to two years in particular:  
15 1992 and 1993.

16 A. Okay.

17 Q. If we look at 1992, you'll see a net  
18 supply of 20,323 acre-feet.

19 A. Uh-huh.

20 Q. Does that sound reasonable?

21 A. I think that was probably correct.

22 Q. And a gross crop value of roughly \$7.6  
23 million?

24 A. Uh-huh.

25 Q. Does that sound reasonable?

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1 A. I would think so.

2 Q. And then in 1993 you'll see a net supply  
3 of 30,542 acre-feet and a gross crop value of \$7.5  
4 million, roughly. Does that sound reasonable?

5 A. I assume that it is.

6 Q. It seems in this situation that there was  
7 a substantially significant increase in net supply  
8 in 1993 with a small decrease in gross crop value.  
9 I'm wondering if you think that sounds accurate;  
10 and, if so, what would you attribute that to?

11 A. Well, whether that's accurate or not, I  
12 don't know. These were the wet years, and --

13 Q. Could you tell me what you mean by the  
14 wet years.

15 A. 1993 it rained the whole year long.  
16 Started in '92.

17 Q. Okay.

18 A. And I don't remember what commodity  
19 prices were doing in those years, but gross crop  
20 values has a great deal to do with that, so, don't  
21 know.

22 Q. And then if you look in 1998 and 1999, in  
23 1998 you'll see a gross crop value of roughly 9.5  
24 million and a net supply of roughly 90,000  
25 acre-feet. Do you see that?

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1 A. '98 and '99?

2 Q. Yes, sir.

3 A. I've got 11.4 and --

4 Q. Yes. In 1999 you'll see roughly 11.4  
5 million in gross crop value and a net supply of  
6 68,414?

7 A. 75,370.

8 Q. Oh. Wait. I'm using the wrong figure  
9 here. Sorry. I gave you the wrong number. What  
10 I'm looking at is 1998 and 1989.

11 A. Oh.

12 Q. Sorry.

13 A. '98 and '89?

14 Q. Yeah.

15 A. Okay.

16 Q. And here you see a situation, it seems,  
17 with a significantly higher net supply and a  
18 significantly lower gross crop value. Do those  
19 numbers seem reasonable to you?

20 A. I would imagine they are.

21 Q. And would you explain that difference  
22 based on climate in this case also?

23 A. You would have to study this whole thing  
24 and go back and look through the situations to  
25 know that, and I don't know.

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1 Q. Okay. Do you think that the relationship  
2 between the net supply and the gross crop value is  
3 linear? Are they closely related?

4 A. Yes.

5 Q. And so when you have a situation like  
6 this where they -- there seems to be a disconnect  
7 -- well, do you agree that there's a disconnect in  
8 this situation?

9 A. Well, net supply and gross crop values  
10 have a linear connection, but there's other things  
11 that play into those gross crop values.

12 Q. What would those be?

13 A. Commodity prices, the amount of acres  
14 planted, and that type thing.

15 Q. Well, we're right at noon on the button.  
16 Why don't we take our lunch break and we'll come  
17 back at 1:30. Is that what you'd prefer?

18 MR. DRAPER: Does that sound good?

19 MR. WILMOTH: Sounds good to me.

20 MR. DRAPER: Okay.

21 MR. WILMOTH: Thanks very much, Mr.

22 Nelson. We're off the record.

23 (WHEREUPON, there was a recess from 12:02

24 PM 1:33 PM.)

25 BY MR. WILMOTH:

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1 Q. Mr. Nelson, welcome back. Thank you for  
2 returning.

3 A. Yes, sir.

4 Q. We always want to make sure the deponent  
5 comes back after lunch.

6 MR. DRAPER: Yeah. We lost him for a  
7 moment. We thought maybe he bolted.

8 MR. BLANKENAU: Made a run for it.

9 BY MR. WILMOTH:

10 Q. This morning we spent a little bit of  
11 time reflecting on your deliveries and drainage  
12 system, some reservoir operations. You recall  
13 that conversation?

14 A. Uh-huh.

15 Q. I'd like to clarify a point of confusion  
16 in my mind.

17 A. Okay.

18 Q. If I understood you correctly earlier,  
19 you stated that you don't typically receive  
20 information from your producers about their water  
21 needs during the course of the year, is that  
22 correct? Did I understand that correctly?

23 A. We don't go to our producers and ask  
24 them, as a practice, you know, what -- how much  
25 water do you need? These discussions are held

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1 with board members to try to determine, you know,  
2 that what do we think people may need and this  
3 type of thing, but the decision for the amount of  
4 water to be used is more based upon what the  
5 supply is and not what the producers' needs are,  
6 in our opinion.

7 Q. So could you tell me, then, how you  
8 determine not only how much water you intend to  
9 deliver but how you determine the schedule on  
10 which that water will be delivered or the timing  
11 of its delivery, if you will.

12 A. Okay. How much water we detend -- how  
13 much water do we determine that we intend to  
14 deliver was your first question?

15 Q. Yes.

16 A. And then the second one was --

17 Q. The schedule on which that's delivered.

18 A. Okay.

19 Q. How do you determine that schedule?

20 A. Okay. When it gets close to irrigation  
21 season, irrigators will call in and say, you know,  
22 I'm wanting to irrigate, and we will -- we won't  
23 turn -- now I'm talking about water short years.  
24 I'm not talking about average years. Do you want  
25 to know average years or do you want to know --

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1 Q. I'd like to know both, but if you'd like  
2 to start with water short --

3 A. Okay.

4 Q. -- that would be fine.

5 A. In water short years we actually do set a  
6 starting date ahead of time and say, this is the  
7 dates when we would start deliveries, and those  
8 dates could change if weather conditions and so on  
9 allowed. And so then the irrigators will try to  
10 plan their demands based upon those dates. And  
11 then in those water short years we tried to look  
12 at how many acre-feet of water we had to deliver  
13 and how many days that we'd be able to deliver  
14 that in, then we'd set a shut-off date. Now, on a  
15 -- the second part of your question. On just  
16 average years, we normally try to prepare our  
17 system, get it -- get the canal system full and  
18 ready to irrigate, and by the time we do that --  
19 the time we get to that point, usually producers  
20 are ready to irrigate. And if we're ready for  
21 them, we will start irrigating. We wouldn't start  
22 for someone unreasonably soon, but we'll start  
23 irrigating when they're ready, and then shut them  
24 off at the end of the year when we determine the  
25 year's over.

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1 Q. So it sounds like you receive some input  
2 from your producers, but it really relates to just  
3 a basic desire to take water or not take water,  
4 but they don't tell you how much they want or when  
5 they want it, is that right?

6 A. They would tell us how much they want and  
7 when they want it, but we won't necessarily be  
8 prepared for them with either that amount or that  
9 date.

10 Q. Okay. So just so I understand the order  
11 of things, producer calls or multiple producers  
12 call and they say, we would like some water this  
13 year. Is that correct? And does that precede the  
14 date on which you determine --

15 A. A producer would call --

16 Q. -- how much water you're going to  
17 deliver?

18 A. -- the first of the year and say, I want  
19 a foot and a half of water on Tuesday. And he'd  
20 call in on Friday. And we don't have that canal  
21 system ready, he won't get that water on Tuesday,  
22 he'll get it when we get it ready for him. If  
23 we're all ready and it's ready to go, he will.

24 Q. Okay. Do you deliver a fixed volume of  
25 water throughout the course of the irrigation

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1 season that you've set or do you try to time it to  
2 respond to calls like that?

3 A. We have the canal system ready and  
4 producers are to call in two days ahead of time,  
5 and so we know how much water we need on a given  
6 day, and we release flows from the reservoirs to  
7 equal those flows in the different laterals that  
8 it's got to go down and so on each day.

9 Q. So is it fair to say that the timing of  
10 the delivery or the schedule of the deliveries is  
11 variable?

12 A. That's fair to say.

13 Q. Throughout the course of the irrigation  
14 season?

15 A. That's correct.

16 Q. And in your experience what factors  
17 influence the producers' requests for water?

18 A. Well, weather is the big one, of course.  
19 The condition of the plant, where it's at at the  
20 time. The supply. All these things.

21 Q. Are there set scheduled deliveries to  
22 customers; for example, every other Tuesday for  
23 three days they'll have water available, or is it  
24 truly just a case by case, producer by producer  
25 basis?

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1 A. Case by case, producer by producer. Now,  
2 there could be a situation in the short years  
3 where we tried to -- tried to schedule water that  
4 way, because it would have worked more  
5 efficiently.

6 Q. And if a user calls and schedules water,  
7 are there any situations in your experience where  
8 the user doesn't take that water? Changes his  
9 mind, for example.

10 A. Rains.

11 Q. Okay. And what happens to that water  
12 that's in the system for delivery that's not taken  
13 at that turnout or --

14 A. Below Lovewell that doesn't happen,  
15 because we turn the water out that's used each day  
16 each day, so we wouldn't turn it out.

17 Q. So whether the producer could use it or  
18 not, it's turned out?

19 A. Below Lovewell, no. Below Lovewell it's  
20 scheduled two days in advance, and so we know what  
21 that's -- what that demand is going to be for that  
22 day. If it comes up and rains that day and we  
23 know they're not going to want that or they call  
24 in not wanting it, that water won't be released.

25 Q. I understand. Okay. Now, above Lovewell

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1 how does that work?

2 A. Above Lovewell is a little -- more of a  
3 difficult situation, because there's two days of  
4 travel time in the river if everything is working  
5 right.

6 Q. From which point to which --

7 A. From Harlan County to Guide Rock. So  
8 above Lovewell, if there's a big rain event and  
9 the producer doesn't need it, the water goes into  
10 Lovewell.

11 Q. And then is that water available for  
12 later release to users below Lovewell?

13 A. Yes.

14 Q. I'd like to talk to you about what I will  
15 call water transfers, and if I am not using a term  
16 that you're familiar with or perhaps you have a  
17 different term for what I'm trying to get at,  
18 please let me know so we're talking the same  
19 language here.

20 A. Okay.

21 Q. We've reviewed some of the materials that  
22 you have given us, and my understanding is that  
23 there is a water transfer policy that the district  
24 has adopted I think in 2004?

25 A. Uh-huh.

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1 Q. Does that ring a bell?

2 A. That's correct.

3 Q. Can you describe the policy to me.

4 A. In Kansas, the landowner is the one who  
5 is charged the O&M charges with his taxes, and so  
6 it's our -- the way we view it is the landowner is  
7 the one who buys the water. And so if a landowner  
8 has tenants -- has a tenant that works for -- that  
9 rents his ground, then if he chooses to assign  
10 that water to that tenant to use somewhere else,  
11 he can.

12 Q. When you say to use that water somewhere  
13 else, do you mean somewhere else on the same  
14 leased land or on another parcel of ground?

15 A. It can be either. A lot of tenants are  
16 cash renting land, and if that water is assigned  
17 to a tenant and he chooses not to irrigate this  
18 piece but he can irrigate this one, so that he can  
19 stack that water and get more inches per acre on  
20 his piece of land, then we think that's a better  
21 use of the water than trying to divide it between  
22 the two.

23 Q. So does the water transfer policy try to  
24 facilitate that kind of stacking?

25 A. The policy doesn't try to encourage

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1 people to do that one way or the other. We just  
2 make that available.

3 Q. And if that happens, and the lessee who  
4 has elected to stack water desires to do that, is  
5 there an application process?

6 A. They have to -- the landowner has to  
7 assign that water to him through our office so  
8 that we can account for that water in his accounts  
9 instead of the landowner's.

10 Q. Account for that water in the lessee's  
11 account.

12 A. Uh-huh.

13 Q. Okay. And in your experience typically  
14 what happens with the land from which the water is  
15 transferred?

16 A. We don't keep track of that, but I would  
17 tell you it's probably dry farmed.

18 Q. And is that typically farmed by the same  
19 lessee, in your experience?

20 A. Yes, because that's the -- it has to be.  
21 In order for an owner to transfer water, he has to  
22 transfer it to the person who's leasing his land.  
23 He can't transfer it to someone else.

24 Q. I see. And is there a cost associated  
25 with this transfer?

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1 A. No.

2 Q. There's no processing cost.

3 A. No.

4 Q. Do you know if there is a payment made by  
5 the lessee to the landowner typically?

6 A. Nothing that we have anything to do with.

7 Q. But it happens.

8 A. I don't think so.

9 Q. Okay. So that is not a transaction that  
10 involves any exchange of money?

11 A. Typically the people who are doing this  
12 are cash renting that ground, and the landowner  
13 gets the same rent whether he assigns that water  
14 or not. Most landowners like their tenants and  
15 they simply assign it to them.

16 Q. Does the district have a role in actually  
17 approving the transfer, or is it essentially a  
18 given that an application like that would be  
19 approved? Are you just recording the transfer, or  
20 do you actually review it and approve it?

21 A. We have the policy. The people choosing  
22 to do it must read the policy, and then we have an  
23 assignment paper that they can assign, and it's  
24 done.

25 Q. Are there certain obligations that they

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1 assume under that policy when they elect to make a  
2 transfer?

3 A. What kind of obligations?

4 Q. I don't know. Unfortunately, I don't  
5 know the policy.

6 A. The answer then -- the answer then is no.

7 Q. There's no obligation, for example, to  
8 provide you any data or monitoring or anything  
9 like that as to how much they actually use on that  
10 land?

11 A. We just account for that in their normal  
12 -- in their normal accounting of how much water is  
13 ran through their turnout.

14 Q. Does the Bureau of Reclamation have any  
15 role in approving those transfers?

16 A. No.

17 Q. Does the KDWR have any role in that?

18 A. No.

19 Q. No state or federal agency, then, has any  
20 role.

21 A. No.

22 Q. Okay. Can you explain to me what a  
23 reassignment of water allocation is.

24 A. I think that's what we've just been  
25 talking about.

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1 Q. Okay. That's fine. I'm going to provide  
2 you a document, and I just want to confirm --

3 A. Okay.

4 Q. -- my understanding that that is what  
5 we're discussing.

6 A. All right.

7 Q. We'll mark this as Exhibit 5 to the  
8 deposition.

9 (WHEREUPON, Deposition Exhibit No 5 was  
10 marked for identification.)

11 BY MR. WILMOTH:

12 Q. Can you just explain to me what's  
13 happening in this transaction between the two  
14 members, it looks like, of the Allen family?

15 A. Uh-huh. The Allen family here, they're  
16 talking about a couple of brothers, David and  
17 Ronald, and actually Lewis W. and Rita is their  
18 mom and dad. And they own some land as joint  
19 owners. And then they also -- Rita and -- Rita  
20 and Lewis own land on their own, and they -- and  
21 then they -- the lessees are Lewis and Rita, so in  
22 this case Ronald and David have given Lewis and  
23 Rita Allen permission to use their water on their  
24 property.

25 Q. And can you tell how much water that is

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1 in this transaction? Or is that something that is  
2 just determined --

3 A. Yeah, it's the --

4 Q. -- later?

5 A. -- '05 year, and however much water was  
6 allocated in that year, that's the amount that it  
7 is.

8 Q. And if I understood you correctly, these  
9 transfers can occur on different acres within a  
10 single farm unit or they could occur on different  
11 farms. The transfer could go from one farm to  
12 another farm.

13 A. That's correct.

14 (WHEREUPON, Deposition Exhibit No 6 was  
15 marked for identification.)

16 BY MR. WILMOTH:

17 Q. Mr. Nelson, I'm going to hand you a copy  
18 of what I believe are minutes of a board meeting  
19 on a particular date, June 6th, 2006. Am I  
20 correct in identifying that document?

21 A. That's correct.

22 Q. Down toward the bottom of the page,  
23 second to last paragraph, there's a reference to a  
24 transfer acre request. Can you explain what that  
25 is.

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1 MR. DRAPER: Is this document going to be  
2 a deposition exhibit?

3 MR. WILMOTH: Yes. We marked it as six.  
4 Excuse me.

5 A. Oh, this is a transfer acre request. And  
6 a transfer acre is the way we move classified  
7 irrigated acres around within our district to  
8 allow for pivot irrigation. The fields that were  
9 originally classified were not circular, and so  
10 people who are wishing to put in -- they're  
11 wishing to put in a pivot, they can actually move  
12 those acres around to make that circle, but they  
13 have to transfer the acres from one location to  
14 another.

15 BY MR. WILMOTH:

16 Q. So that's not a transaction between two  
17 individuals. That's simply a way for a single  
18 individual to modify his operation to accommodate  
19 a center pivot, is that right?

20 A. Yeah. There's two requests in this  
21 particular piece that we're reading here.

22 Q. Yes. I wanted to ask you about the  
23 reference to a neutral trade request. Is that  
24 also the similar concept or is that something  
25 different?

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1 A. Occasionally we have to add two or three  
2 acres because they don't have enough, and so then  
3 -- so then it would be a situation where they  
4 would have added some acreage in order to get the  
5 circle.

6 Q. And is that acreage that is being added,  
7 is that taken away from somewhere else?

8 A. No. It's added.

9 Q. So does this process, then, bring  
10 additional ground into production? Is that the  
11 idea?

12 A. It does.

13 Q. Do you have any idea of how much  
14 additional ground has been brought into production  
15 through this mechanism?

16 A. I don't have that number at the top of my  
17 head. It's probably around 500 acres over a  
18 period of a good many years.

19 Q. And can you tell me what the transfer  
20 acre bank is.

21 A. That is the place where these additional  
22 acres that we're talking about come from.

23 Q. And how do the acres -- excuse me.  
24 Strike that. Let me rephrase this. How is the  
25 bank debited, if you will, with acres? How are

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1 acres put into the bank?

2 A. If people choose to remove acres from  
3 service and the board approves it, those acres  
4 will be put in the bank, and then people who need  
5 acres like this will get them from there.

6 Q. And when someone puts acres into the bank  
7 and the bank receives a credit, I assume.

8 A. Uh-huh.

9 Q. And what causes people to put acres into  
10 the bank?

11 A. When we set this policy up prior to water  
12 shortages, there's a lot of people who just simply  
13 didn't want to irrigate anymore and they wanted  
14 their land removed, and it was removed.

15 Q. Are those folk --

16 A. If the board approved them.

17 Q. Are those folks then relieved of their  
18 O&M charges, for example?

19 A. Yes.

20 Q. Are there any transactional costs  
21 associated with either putting acres into the bank  
22 or taking acres out of the bank?

23 A. No.

24 Q. In your experience do individuals who  
25 would like to rely on the bank for, say, two or

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1 three acres, pay compensation to those who have  
2 put acres into the bank?

3 A. None that I know of.

4 Q. Do the individuals who would like to rely  
5 on the bank for additional acres pay the bank  
6 anything?

7 A. No.

8 Q. So there's no transaction costs and  
9 there's no market costs associated with the bank.

10 A. The only cost, and this is not associated  
11 with the bank, but the only cost is when acres are  
12 added and classifications changed, to complete a  
13 circle, it has to be sent to the Bureau of  
14 Reclamation and they have to approve it, and they  
15 have a cost the producers and the district share.

16 Q. Mr. Nelson, I'll hand you a document that  
17 I believe was sent to you by the bureau.

18 A. Uh-huh.

19 Q. And we'll mark this as Exhibit 7 to the  
20 deposition.

21 (WHEREUPON, Deposition Exhibit No 7 was  
22 marked for identification.)

23 BY MR. WILMOTH:

24 Q. Does this document represent the bureau's  
25 compilation of the kinds of transactions to which

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1 you just referred?

2 A. I believe it does. It's a little dark to  
3 read that in the columns, but I'm pretty sure  
4 that's what that's saying. Yes.

5 Q. So can you just explain to me generally  
6 what this table represents? I know it's hard to  
7 read the columns, and I apologize. I don't think  
8 I could do any better. But do these figures  
9 represent anything to you?

10 A. Yeah. This is what this is, and I wish I  
11 could read those columns, but the bureau was  
12 wanting us to advance them money for these  
13 charges. They do, oh, cultural resource  
14 investigations and so on, on them, and so we were  
15 advancing them so much money, and then when they'd  
16 do them, they'd write back to us how much they  
17 were, and then we shared these costs with the  
18 producers. The district would pay half of it and  
19 the producer would pay the other half.

20 Q. And is this the cost that you were  
21 referring to earlier?

22 A. It is. This is a Bureau of Reclamation  
23 cost, not irrigation district.

24 Q. Thank you. And I think you might have  
25 told me. 500 acres have come out of the bank and

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1 been added this way. Do you know how many have  
2 been put into the bank?

3 A. That's approximately where the balance  
4 is. I told you earlier we have 43,000 acres, and,  
5 you know, I think our contract calls for 42,500,  
6 and so we've actually exceeded that a little bit.

7 Q. Can you describe for me a bit about the  
8 land classifications within KBID. And by that I  
9 believe that you have certain lands classified by  
10 numbers?

11 A. Uh-huh.

12 Q. Class one lands, two lands. Can you  
13 describe to me what that classification represents  
14 and how those lands are classified.

15 A. The original classifications of the  
16 district was four land classes: One, two, three,  
17 four. And it was based upon topography and slope.  
18 And I don't remember what year it was, we had a  
19 change on that where we actually put class one and  
20 class two lands together and class three and class  
21 four lands together. We still call them one, two,  
22 three, four, but they're paying the same amount,  
23 because the value of water is higher and we  
24 thought that there should not be that disparity  
25 between the four land classes.

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1 Q. So if I understand, then, all four land  
2 classes pay the same for water?

3 A. One and two pay a little more than three  
4 and four.

5 Q. And why is that?

6 A. Because the productivity of three and  
7 four land class is not thought to be as high as  
8 one and two.

9 Q. And what does class one and two pay  
10 presently?

11 A. You mean like for 2012?

12 Q. Yes.

13 A. We're at \$38.88, and then three and four  
14 would be a dollar less, I believe.

15 Q. And was that structure generally true in  
16 2005 and 2006?

17 A. Yes.

18 Q. And do you know what the charges were  
19 then?

20 A. Number one was paying 22. Number one and  
21 two were paying 22, so three and four would have  
22 been close to that. There isn't too much  
23 disparity between them anymore.

24 Q. And do you know generally, on a pure  
25 percentage basis or proportional basis, how many

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1 of the KBID lands are one and two and how many are  
2 three and four?

3 A. About 85 percent is number one.

4 Q. Okay.

5 A. The rest is the other.

6 Q. Some mix of two, three --

7 A. Yes.

8 Q. -- and four? You mentioned earlier that  
9 your portion of your reclamation costs had been  
10 deferred in 2004, I believe, and 2005, is --

11 A. Uh-huh.

12 Q. -- that right?

13 A. Uh-huh.

14 Q. And could you refresh my recollection  
15 about what happened in 2006?

16 A. We had applied for -- to change our  
17 contract and we had to get a piece of legislation  
18 through Congress and we did what they called  
19 evening out of the payments, so the remaining --  
20 we took -- because we had to repay those  
21 deferments, so we took the remaining balance that  
22 we owed the federal government and the amount that  
23 we owed from the two deferments, and instead of  
24 paying them off by the year 2025, which they was  
25 contracted to be paid out by, we stretched them

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1 out to the end of the contract and evened out the  
2 payments, and that way dropped that repayment  
3 charge from -- I believe it was \$12 and something  
4 down to \$4 and something.

5 Q. In the years of the deferral? Is that  
6 what you mean?

7 A. No, this is in the year 2006 and on.

8 Q. Okay. Okay. And what was the effect of  
9 the deferral in 2004 and five?

10 A. What was the --

11 Q. The effect of the deferral.

12 A. We didn't have to pay anything.

13 Q. And how did that affect the charge that  
14 you charged to your producers for water in those  
15 years?

16 A. They didn't have to pay -- they paid the  
17 repayment charge, whatever we're charged, they pay  
18 it, so they didn't pay anything for repayment.

19 Q. Can you identify any federal grant or  
20 cooperative agreement programs that you're  
21 involved in with the federal government?

22 A. That we are involved in?

23 Q. Yes.

24 A. Currently we're involved in a Water Smart  
25 grant fund.

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1 Q. Could you explain the purpose and scope  
2 of that program.

3 A. Water Smart is to improve efficiencies on  
4 the systems and conserve water, and we're burying  
5 laterals into pipe, and the cost share on them are  
6 up to 50 percent. We're actually doing more than  
7 -- our share is more than 50 percent on these  
8 projects.

9 Q. Do you know approximately how much money  
10 you have spent on that project?

11 A. The one that we're on now?

12 Q. Yes.

13 A. How much we have spent?

14 Q. Yes.

15 A. We spent around two hundred and some  
16 thousand this year, but I think it's pretty close  
17 to 300,000 we spent.

18 Q. And since that program began how much  
19 have you spent on system improvements?

20 A. You're kind of asking me questions that  
21 run together here. The water -- before Water  
22 Smart we had 2025 funds.

23 Q. Okay. Let's --

24 A. And before that we had field service  
25 funds.

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1 Q. Okay.

2 A. So I'm not sure I can answer -- I don't  
3 know how to answer your question.

4 Q. Combining all three of those programs,  
5 how much money has the district spent on system  
6 improvements?

7 A. Including those funds?

8 Q. Yes, sir.

9 A. Okay. The 2025 fund we spent -- we spent  
10 around eight hundred and some thousand dollars on  
11 that one. We have done several field service  
12 programs that would have been around 100,000 each.  
13 Probably three or four. And the current Water  
14 Smart program we're working on now is probably  
15 going to cost us around a million, and the  
16 government share of that is 300,000. The million  
17 is including the 300,000.

18 Q. Were you or are you being reimbursed by  
19 the government for any portion of the 2025  
20 expenditure or the field service expenditures?

21 A. We were.

22 Q. You were.

23 A. Yes.

24 Q. So of the 800,000 under I think it was  
25 2025, you received a portion of that?

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1 A. 300,000.

2 Q. From the federal government.

3 A. Right.

4 Q. Any contribution by the state of Kansas  
5 in that program?

6 A. No.

7 Q. How about the field service program?

8 A. No.

9 Q. Or the Water Smart program?

10 A. Those were all interior department.

11 Q. Okay.

12 A. Bureau of Reclamation.

13 Q. Do you have any similar arrangements with  
14 the state of Kansas?

15 A. No.

16 Q. Do you have any additional plans, aside  
17 from the Water Smart program, to improve system  
18 efficiencies?

19 A. Yes.

20 Q. Could you elaborate on those plans.

21 A. We have what we call a 70/30 policy where  
22 if irrigators want to have a lateral buried, and  
23 it's one that we agree that can and should be  
24 buried, then if they pay 70 percent of the cost of  
25 the materials, the irrigation district will pay

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1 the other 30 percent plus do the construction.

2 Q. How has participation been in that  
3 program?

4 A. When we first come out with that program,  
5 it was very, very good. It was used extremely,  
6 because it was small -- usually small laterals and  
7 small projects. It was fairly reasonably cost.  
8 It's not as much -- it's not used as much now  
9 because we completed so many of those small  
10 projects and the ones that are left out there are  
11 quite expensive.

12 Q. How many miles of lateral would you say  
13 were buried under that program?

14 A. Under the 70/30 one?

15 Q. Yes.

16 A. I can't give you a number that would have  
17 been just it.

18 Q. Can you tell me the source of funds that  
19 the district uses to support that program?

20 A. It's O&M funds, the annual operation and  
21 maintenance funds, and the conservation funds that  
22 we talked about earlier.

23 Q. Do you know what percentage of the  
24 overall O&M charge that represents?

25 A. No.

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1 Q. Do you know if your producers participate  
2 in any federal crop insurance programs?

3 A. It's nothing that I know for a fact, but  
4 I know they do.

5 Q. Do you have any idea which programs?

6 A. Now, which did you ask me again?

7 Q. Do you have any --

8 A. Crop insurance?

9 Q. Crop insurance. Federal crop insurance  
10 --

11 A. Yeah.

12 Q. -- programs.

13 A. Yeah. I assume most of them -- most all  
14 of them participate in that because you have to  
15 participate in that to be in the farm program.

16 Q. Do you have any idea of how much those  
17 programs have paid out to your producers?

18 A. No idea.

19 Q. And those programs don't make any  
20 payments out to the district, do they?

21 A. No.

22 Q. Do you know if your producers participate  
23 in prevented planting programs?

24 A. Once again, that's nothing that I keep  
25 track of. We've had insurance companies that have

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1 asked us for information and stuff, but we don't  
2 -- you know, we have nothing to do with that other  
3 than just to inform the people.

4 Q. Do you know whether that happens? Even  
5 if --

6 A. I'm sure it does.

7 Q. -- you don't track it? No idea how many  
8 people participate, though?

9 A. No.

10 Q. Or how many acres might be enrolled?

11 A. No.

12 Q. Mr. Nelson, I'd like to hand you another  
13 copy of what I believe are board minutes dated  
14 August 3, 2010. This will be Exhibit 8 to the  
15 deposition.

16 (WHEREUPON, Deposition Exhibit No 8 was  
17 marked for identification.)

18 BY MR. WILMOTH:

19 Q. Are these a copy of your board minutes  
20 for that date?

21 A. Yes, they are.

22 Q. I'd like to direct your attention to the  
23 second to the last paragraph in those minutes. It  
24 discusses a sale of water. Do you see that --

25 A. Uh-huh.

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1 Q. -- reference?

2 A. Uh-huh. Yes, I do.

3 Q. Can you describe to me what that sale  
4 involved.

5 A. This is in 2010, and we had an ample  
6 supply of water, and there was a few producers  
7 that were running out of their 15-inch base supply  
8 that they pay their O&M for. And so it was  
9 decided to sell them an additional three inches if  
10 needed, and this was a board decision to allow  
11 that to happen.

12 Q. How many producers were in that position,  
13 do you recall?

14 A. Two.

15 Q. And why would they be running out of  
16 their allocation?

17 A. They had fields that were very difficult  
18 to irrigate that basically ran water three  
19 directions on a field in point rows and this type  
20 of thing, and they used-- they simply used more  
21 than others.

22 Q. So if I understand, they received their  
23 15-inch allocation, but --

24 A. Uh-huh.

25 Q. -- it wasn't producing the benefit

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1 desired, is that right?

2 A. Yes, they -- they came -- it was coming  
3 to the end of the season. This is August 3. They  
4 weren't -- they probably weren't out yet at this  
5 time, I'm sure they weren't, but it looked like  
6 they may run out, and so the decision was made  
7 before they ran out to allow the three inches  
8 extra, because we didn't -- we had a good supply  
9 of water.

10 Q. Was that water actually sold to those  
11 producers?

12 A. I think one of them -- one of them used a  
13 little bit of it. The other one purchased some  
14 water and then it rained and we refunded him  
15 because he didn't use it.

16 Q. Were there any additional transactional  
17 costs associated with that sale?

18 A. No.

19 Q. I have another document that I'll hand  
20 you which may be the same situation.

21 A. Yeah.

22 Q. I would just like to confirm --

23 A. Sure.

24 Q. -- if it is or not. I believe these are  
25 board minutes dated August 2 of this past summer.

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1 This will be Exhibit 9.

2 (WHEREUPON, Deposition Exhibit No 9 was  
3 marked for identification.)

4 BY MR. WILMOTH:

5 Q. If you look toward the bottom of the page  
6 you'll see reference to a transaction which sounds  
7 similar to the one you described. Could you  
8 confirm that for me, or if it's different, please  
9 explain how.

10 A. This is the same thing.

11 Q. Okay. And do you recall if all of that  
12 water was sold?

13 A. I don't think any of it was sold. We  
14 just had such a large supply -- this is the year  
15 that reservoirs were actually in the flood pool  
16 till way late in the summer, and so we went ahead  
17 and raised the limitation, but it wasn't used.

18 Q. Thank you. I'd like to take you back to  
19 2005 now. We've talked quite a lot in general  
20 about operations in various aspects of the  
21 district. I'd like you to reflect, if you will,  
22 back, now, seven years to the specific year of  
23 2005. And for the next few questions, just assume  
24 that all of them relate to that year and that year  
25 alone. If you need to modify your answer to

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1 accommodate that, that's -- please do so. Do you  
2 recall about how many acres were irrigated in 2005  
3 within the district?

4 A. I think it was a little over 20,000. A  
5 little over 20,000.

6 Q. Acres irrigated?

7 A. Yeah. Maybe twenty-two or three.

8 Q. Could you have irrigated more acreage in  
9 that year?

10 A. Oh, absolutely.

11 Q. How much more do you think you could have  
12 irrigated?

13 A. Our -- the answer to your question is  
14 42,500. That's our total irrigated acres. But  
15 our history would say that we should have been  
16 irrigating around thirty-nine.

17 Q. What history is that, may I ask?

18 A. The amount of acres irrigated from our  
19 crop census.

20 Q. Is that an average number?

21 A. That would have been the numbers that we  
22 would have been seeing in the years prior to that.

23 Q. And were those average years?

24 A. No. 2004 was as bad as 2005. But if you  
25 look back to when we had a good water supply, we

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1 were irrigating 39,000.

2 Q. So in the good years you're irrigating  
3 39,000, and the dry years you're irrigating  
4 something less than that. What about your average  
5 year?

6 A. The irrigation district has always lagged  
7 behind our assessed acres because our irrigators  
8 don't necessarily irrigate all of their acres  
9 every year, but what you'd seen in the last 15, 20  
10 years is that number getting closer and closer  
11 because the value of irrigation is higher. And so  
12 to say an average year is hard to do, but we were  
13 irrigating 39, so it should have been 39 if we'd  
14 had a full water supply.

15 Q. Would anything have changed that that  
16 occurred in 2005?

17 A. Short of a full water supply at the start  
18 of the year, no.

19 Q. So the rains that you received in the  
20 summer of 2005 in June, July, and August would not  
21 have affected your --

22 A. Planted acres, no.

23 Q. Okay. Let me ask you about the water  
24 delivered to those acres.

25 A. There would have been more water

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1 delivered to those acres.

2 Q. Regardless of how much rain you received.

3 A. Well, you know, how much rain are we  
4 talking about?

5 Q. I'm talking about the actual rain that  
6 you received in 2005.

7 A. Oh. Well, that was not enough rain to,  
8 you know, to change the amount of water that -- we  
9 delivered all we could in 2005. Every bit we  
10 could. And the rains weren't enough to change  
11 that.

12 Q. I understand that, but my question is, if  
13 you had a full supply in 2005, would you have  
14 delivered it all or would the rains that you  
15 received in June, July, and August led you to  
16 elect not to deliver it all?

17 A. If we had had a full supply starting out  
18 in those years, and would we have delivered it all  
19 was your question.

20 Q. That is my question.

21 A. I doubt we would have delivered it all.

22 Q. Why not?

23 A. Well, because if we had a full supply  
24 starting out, even if it didn't rain, I don't know  
25 that we would have used all of our supply up in

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1 one year.

2 Q. And what would have happened to that  
3 water had you not utilized it in that year?

4 A. We would have carried it over to the  
5 next.

6 Q. Thank you. Mr. Nelson, I'm going to hand  
7 you a document here that we received from the  
8 district. I'm curious if you recognize this  
9 document. We will mark this as Exhibit 10.

10 (WHEREUPON, Deposition Exhibit No 10 was  
11 marked for identification.)

12 A. Yes, I recognize it.

13 BY MR. WILMOTH:

14 Q. Can you describe what's going on on June  
15 10th, 2005 as described in this document.

16 A. This is an e-mail from Dave Barfield. He  
17 was just keeping people updated here on -- on what  
18 our plans were, and coming into the -- coming into  
19 the water season of 2005.

20 Q. There seems to be some deliberation in  
21 the second bullet point there about whether to  
22 take all of the remaining water available to you  
23 from Harlan County Lake or not.

24 A. Uh-huh.

25 Q. Is that an accurate characterization?

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1 A. That's accurate.

2 Q. Can you tell me how that question was  
3 resolved.

4 A. In board meetings there was a question of  
5 whether we should take every drop of water out of  
6 Harlan County that year and try to deliver some to  
7 create some value above Lovewell, and the decision  
8 was still not made. We was talking about a  
9 two-inch threshold, but the decision later on was  
10 made not to take any of it.

11 Q. And was that water then carried over  
12 along the lines you discussed earlier?

13 A. It was. In Harlan County.

14 Q. Thank you. I'm going to hand you another  
15 document that we received from you we'll mark as  
16 Exhibit 11.

17 (WHEREUPON, Deposition Exhibit No 11 was  
18 marked for identification.)

19 BY MR. WILMOTH:

20 Q. Could you take a moment and let me know  
21 if you recognize this document.

22 A. Yes, I recognize it.

23 Q. I'd just call your attention to the  
24 second bullet point there, and my question relates  
25 to the producers' view of your decision to leave

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1 that water in Harlan County Lake in that year.

2 Was that well received?

3 A. I think what this is referring to --  
4 because I think it -- by August 8th of 2005 we  
5 were still taking water from Harlan -- or 2008,  
6 rather. Oh, this is 2005. Excuse me. I was  
7 reading that wrong. Okay. This is 2005. There  
8 were some people who felt that we should have  
9 taken that small amount of water, and that's what  
10 that's saying.

11 Q. And what went into the board's decision  
12 to leave that water in storage?

13 A. I was telling the board that it was my  
14 opinion that we would not get enough down to us to  
15 be beneficial, and it would be a mistake to try to  
16 use it because we'd just lose it.

17 Q. Can you describe for me the crop yields  
18 within the district in 2005. The corn yield, for  
19 example.

20 A. We have a crop census that we do, and I  
21 think you have that information. You know, we --  
22 the crop census shows the irrigated acres only, so  
23 it did not include those above Lovewell, just  
24 those below.

25 Q. So there were no irrigated acres above

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1 Lovewell in that year?

2 A. We ran a little bit of natural flows down  
3 and made as hard an effort as we could to deliver  
4 those, but it was such a small amount it was  
5 pretty insignificant.

6 Q. Do you have any information on the  
7 dryland yields above Lovewell --

8 A. No.

9 Q. -- in that year?

10 A. No.

11 Q. Do you have any anecdotal stories that  
12 you recall?

13 A. Not that I recall.

14 Q. How would you describe the yields below  
15 Lovewell, for corn, say?

16 A. Considering they were so short of water,  
17 they were pretty good.

18 Q. Have you had better yields since then?

19 A. Yes.

20 Q. What were those yields?

21 A. Well, in 2010 we had 220 bushel corn.

22 Q. Do you have any idea what the crop mix  
23 was like on the drylands above Lovewell in that  
24 year?

25 A. No, I do not.

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1 Q. What was your crop mix like that year as  
2 a producer outside of KBID?

3 A. I had my usual, corn -- or wheat and  
4 milo. And lived with it.

5 Q. How was the yield?

6 A. Fair.

7 Q. Meaning average?

8 A. Yeah.

9 Q. And how far is your ground from KBID?

10 A. I have ground that borders KBID like  
11 within a mile or half a mile.

12 Q. Are you aware of any purchases or  
13 transfers that occurred in KBID in 2005? Of  
14 water, that is. Maybe some of the acre transfers  
15 or --

16 A. There were reassignments of allocation,  
17 if that's what you're asking.

18 Q. For example, certainly.

19 A. Yeah, there was -- that went on.

20 Q. Was that a robust practice in 2005 or how  
21 would you describe the level of interest in the  
22 reassignments?

23 A. Individuals who cash rent land took  
24 advantage of that situation, that ability to do  
25 that.

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1 Q. You don't know what they're paying for  
2 the cash rents, though?

3 A. No.

4 Q. Doing okay?

5 A. Yeah, I'm fine.

6 Q. You let me know if you want to take a  
7 break, and we will do so. I'd like to hand you  
8 another document which we'll mark as Exhibit 12.

9 (WHEREUPON, Deposition Exhibit No 12 was  
10 marked for identification.)

11 BY MR. WILMOTH:

12 Q. And I want to state for the record that  
13 it was difficult for me to determine where this  
14 particular document started and ended.

15 A. Oh, uh-huh.

16 Q. So we may have some extraneous material  
17 in this exhibit, and I apologize for that in  
18 advance. Can you identify for me at least what  
19 these first three pages represent: The letter  
20 July 22, 2005, and the attached memorandum of  
21 agreement.

22 A. The Kansas Water Office received drought  
23 assistance from the interior department, and  
24 through the memorandum agreement they assigned  
25 that -- or forwarded that to us.

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1 Q. By that, are you referring to the drought  
2 assistance --

3 A. Yes.

4 Q. -- payment?

5 A. Payment, uh-huh.

6 Q. And if we look at the second page, which  
7 is the first page of a memorandum of agreement  
8 between the district and the Kansas Water Office,  
9 is this the vehicle by which that transfer was  
10 made? The contract, if you will.

11 A. Yes, I believe it is.

12 Q. I'd like to call your attention to the  
13 second recital that begins, whereas leaving  
14 additional storage water.

15 A. Where's that at?

16 Q. That is the memorandum of agreement.

17 MR. DRAPER: Is this KBID page 454?

18 BY MR. WILMOTH:

19 Q. Yes, sir. I think you might be past it,  
20 Mr. Nelson.

21 A. Oh, okay. I'm sorry. 454. Okay.

22 Q. The second recital where it begins,  
23 whereas leaving additional storage, do you see  
24 that?

25 A. Uh-huh.

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1 Q. There's a reference there to in-reservoir  
2 uses, and the sustenance of those uses. Can you  
3 explain to me what the objective was at that time  
4 with regard to those uses?

5 A. Once again, this is not my document, but  
6 that was -- I want to call them wildlife and  
7 parks, but that's not right. But it was -- it was  
8 fish and wildlife. It was for those purposes, if  
9 I remember right.

10 Q. Okay. I just want to clarify that Mr.  
11 Hobson signed this document, right?

12 A. Yes.

13 Q. Okay. So this is a document with the  
14 district?

15 A. Uh-huh.

16 Q. Okay. And there's also a reference in  
17 that recital to additional water for the next  
18 irrigation season. Do you see that?

19 A. Uh-huh.

20 Q. Does that reference indicate that there  
21 was a decision to kind of carry over some  
22 additional water, if you will, in the lake at that  
23 time? And, more specifically, how does that relate  
24 to your decision not to take the two inches that  
25 we talked about earlier?

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1 A. This was part of that decision.

2 Q. And a little further on down in --

3 A. Let's put it this way. Had we taken that  
4 water, we would not have qualified for this.

5 Q. I see. A little further on down in  
6 paragraph 2(a) there's a reference to a \$12,000  
7 payment. Do you see that?

8 A. Yes.

9 Q. How did that number come about?

10 A. Well, I think maybe there was a dollar  
11 value for the acre-feet left, and --

12 Q. Did you assign that value to that water?

13 A. No, we didn't do that. The Kansas Water  
14 Office received a payment and then we received it  
15 from them.

16 Q. So you had no involvement in determining  
17 --

18 A. Negotiating that?

19 Q. -- the value of that water.

20 A. No. I don't remember having anything to  
21 do with that. I don't recall doing -- having  
22 anything to do with that.

23 Q. Do you recall whether you received that  
24 payment?

25 A. We did receive that payment.

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1 Q. Thank you. I'd like to then turn to  
2 2006, but it's 2:35, and if you'd like to take  
3 maybe 10 minutes, we can do that, or we can just  
4 continue on. What's the will of the group?

5 MR. DRAPER: I think a short break would  
6 be a good idea.

7 MR. WILMOTH: Okay.

8 (WHEREUPON, there was a recess from 2:37  
9 PM to 2:55 PM.)

10 BY MR. WILMOTH:

11 Q. Mr. Nelson, I have to ask again, did you  
12 have any communications during the break with  
13 counsel for Kansas?

14 A. Yes, we talked.

15 Q. Could you tell me the nature of your  
16 communications.

17 A. Oh, he talked about wondering what your  
18 question regarding -- what was that question? I'm  
19 drawing a blank right now. Don, what was that we  
20 talked about?

21 MR. WILMOTH: I have no objection if you  
22 want to refresh his recollection.

23 MR. DRAPER: Don't look at me.

24 A. Oh, just a minute. I'll think of it  
25 here. I really was thinking about Scott Ross and

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1 his shoot and release quail hunting, and so that's  
2 why I'm having a hard time remembering this.

3 MR. BLANKENAU: Usually it's better if  
4 you release than shoot, but either way.

5 A. Oh, yeah. It was the question about had  
6 we had a full supply and got five inches of water,  
7 and I guess I'm -- I was somewhat confused on  
8 whether that was a full supply in Lovewell or  
9 Harlan County or the entire works or what it was,  
10 so

11 BY MR. WILMOTH:

12 Q. Did you receive any instruction from  
13 counsel?

14 A. No.

15 Q. Did you receive any documents from  
16 counsel?

17 A. No.

18 Q. Did you review any documents?

19 A. No.

20 Q. Okay. Thank you.

21 A. So which did you mean?

22 Q. You'll find out.

23 A. Okay.

24 Q. Can you tell me what the Irrigation  
25 Project Reauthorization Council is?

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1 A. The Irrigation Project Reauthorization  
2 Council was a consortium of districts that was  
3 formed to work on contract renewal and/or title  
4 transfer projects in the '90s.

5 Q. And did the project reauthorization  
6 council assist in your efforts to defer contract  
7 payments?

8 A. No. I don't think so.

9 Q. Does the council still perform any  
10 functions?

11 A. Maybe they did. I think we did actually  
12 use -- we did get together as a council because we  
13 still had some funds left over from contract  
14 renewal, and so we did do some -- some efforts as  
15 a council. I'd forgot that.

16 Q. We talked before we broke about what  
17 we've marked as Exhibit 12, the assistance from  
18 the --

19 A. Oh, yes. Okay.

20 Q. -- drought act?

21 A. Uh-huh.

22 Q. Were there any other years in which you  
23 received similar assistance since 2005?

24 A. Not since 2005.

25 Q. Any other years that you received similar

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1 assistance under maybe a different act?

2 A. Since 2005?

3 Q. Yes, sir.

4 A. No.

5 Q. Mr. Nelson, I'm going to hand you a  
6 letter that I think is similar to the one which is  
7 marked as Exhibit 12, and we'd mark this as  
8 Exhibit 13.

9 (WHEREUPON, Deposition Exhibit No 13 was  
10 marked for identification.)

11 BY MR. WILMOTH:

12 Q. I would just ask what the nature of this  
13 letter is, if you can tell me.

14 A. Well, I stand corrected on what I just  
15 told you, because I thought we got the relief in  
16 2004 and 2005, but I guess it was 2005 and 2006.

17 Q. Okay.

18 A. So this is assistance that was received.

19 Q. Okay. Thank you. And is this generally  
20 the same type of assistance that we discussed  
21 earlier?

22 A. It is.

23 Q. Okay. And if I understand, then, from  
24 this document -- strike that. Let me rephrase.

25 Do I understand from this document that the

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1 district received a payment in this year?

2 A. We did.

3 Q. And how much was that payment?

4 A. 38,750.

5 Q. And that payment was for how much water?

6 A. 5,500 acre-feet.

7 Q. And what happened to that water?

8 A. It was water that would have been left in  
9 Harlan County.

10 Q. Okay. Would it have been left there for  
11 the 2000 irrigation -- excuse me. Strike that.  
12 The 2007 irrigation season?

13 A. For use in the 2007 irrigation season.

14 Q. Thank you. Mr. Nelson, have you had an  
15 opportunity to review any of the expert reports  
16 provided by Kansas -- excuse me -- filed by Kansas  
17 to date in this matter?

18 A. I've reviewed a report by Spronk  
19 Engineering.

20 Q. Can you describe for me your  
21 participation in that report?

22 A. I had no participation in it.

23 Q. Did you review it after the fact, then?

24 A. Yes.

25 Q. And were you contacted by Spronk at any

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1 point in an effort to develop information for that  
2 report?

3 A. I don't recall being contacted for that.  
4 We could have been.

5 Q. But you weren't personally.

6 A. No.

7 Q. What do you understand to be the purpose  
8 of that report that you reviewed?

9 A. From my review of it, it appears to be an  
10 effort to determine how much water should have  
11 come our way in the years 2005 and six.

12 Q. Was the report designed in part to  
13 determine how that water might have been used in  
14 your district?

15 A. I don't know. From reading it, it  
16 appears that it could have been that way, yes.

17 Q. Do you have an opinion as to the validity  
18 of the conclusions in that report?

19 A. I didn't go over it that closely to see  
20 whether I would -- to agree or not, but it  
21 appeared to be reasonable.

22 Q. The report assumes that all the water  
23 would have been regulated through Harlan County  
24 Lake. Do you agree with that assumption? By all  
25 the water, I mean the water that Spronk identified

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1 as that which would have been available.

2 A. Repeat that question.

3 Q. Do you believe that all of the water that  
4 Spronk identified would have been regulated  
5 through Harlan County Lake?

6 A. I don't know.

7 Q. Was all the water that you actually took  
8 in 2005 and 2006 regulated through Harlan County  
9 Lake?

10 A. No.

11 Q. Would some of that water have been  
12 re-regulated through Lovewell in those years?

13 A. The water that we took?

14 Q. Yes.

15 A. Yes.

16 Q. How so?

17 A. We took water in '05 and '06 during the  
18 off season to fill Lovewell Reservoir.

19 Q. Spronk relies on the years 1994 to 2000  
20 as a series of normal delivery years. Do you  
21 recall that assumption?

22 A. I don't recall the assumption.

23 Q. If that were the case, would you think  
24 those years were representative of normal years?

25 A. There we are, trying to determine that

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1 normal again. '94 through --

2 Q. 2000. And if you'd like, I would refer  
3 your attention to Exhibit 4, which --

4 A. '94 through 2000 would be closer to  
5 normal than -- than other years would be.

6 Q. Do those years include some of your  
7 highest irrigated acreages?

8 A. I can't answer you exact, but I think  
9 they probably are pretty close.

10 Q. Any other series of years that you would  
11 consider normal?

12 A. No.

13 Q. Spronk indicates that the additional  
14 supply also would have produced additional  
15 streamflow downstream of Hardy. Do you agree with  
16 that?

17 A. Additional supply would have produced  
18 additional streamflow downstream of Hardy. I  
19 would think that it would have.

20 Q. Do you have any opinion about how much?

21 A. No.

22 Q. Do any of your producers or does the  
23 district as a whole recapture and reuse return  
24 flows that might otherwise reach the river?

25 A. There has been some of that, and with the

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1 coming in of pivot irrigation a lot of that went  
2 away.

3 Q. Does that mean there's essentially less  
4 water applied within the district and more going  
5 out?

6 A. Less water applied within the district  
7 and less water going out.

8 Q. Less water going out. Thank you. Have  
9 you had a chance to review what's referred to I  
10 think as the Cloke report, or Cloke, perhaps? I  
11 may be mispronouncing his name.

12 A. I don't recall reviewing that.

13 Q. Have you had a chance to review the  
14 reports of Misters -- or Dr., I believe, Hamilton  
15 and Dr. Robison?

16 A. Once again, I don't recall. A lot of  
17 those type of reports, I may have seen them, but  
18 they're kind of too technical for me and I didn't  
19 give them too much time.

20 Q. Does the district support efforts to  
21 store water in Harlan County Lake or Lovewell for  
22 non-irrigation purposes?

23 A. Do we support that?

24 Q. Does the district have a position on that  
25 issue?

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1 A. Those reservoirs have various functions,  
2 and we support those other functions as well.

3 Q. Mr. Nelson, I'll hand you a letter that  
4 we obtained I believe during the course of some  
5 investigations in the original arbitration  
6 proceedings.

7 (WHEREUPON, Deposition Exhibit No 14 was  
8 marked for identification.)

9 BY MR. WILMOTH:

10 Q. I would just mark this as Exhibit 14 and  
11 ask if you recognize this letter.

12 A. Yes, I recognize it.

13 Q. Could you describe the purpose of this  
14 letter. What was going on at the time this letter  
15 was written?

16 A. Yeah. Just give me a minute, please.  
17 The Kansas Water Office was conducting some  
18 hearings on let's just say the possibilities in  
19 some of the Western Kansas reservoirs of the  
20 irrigation -- recreational purposes going to the  
21 irrigation districts and trying to buy out the  
22 irrigation districts from those reservoirs, and  
23 this letter is a letter to them saying we didn't  
24 think that was appropriate.

25 Q. When you say not appropriate, are you

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1 referring to the efforts to purchase the western  
2 facilities or your facilities?

3 A. The news release that the Kansas Water  
4 Office had put out didn't say which facilities,  
5 necessarily, was being talked about, so we were  
6 simply talking about any or all of the facilities.

7 Q. Would that include yours?

8 A. Yes.

9 Q. So is it fair to say that at least as of  
10 that date you were not interested in selling the  
11 project or your interest in the project?

12 A. That's correct.

13 Q. Do you know whether the state acquired  
14 any facilities under this program?

15 A. I don't believe that they did.

16 Q. I'd like to ask you briefly about  
17 practices outside of the district of which you're  
18 aware. Do you know, based on your personal  
19 experience, what the -- how the crop mix outside  
20 of the district differs from that inside the  
21 district in any typical year?

22 A. Now, if you're just asking my opinion --

23 Q. I am.

24 A. In our area, you get outside the district  
25 and things have changed a lot in recent years with

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1 a lot of introduction of short season corns, and  
2 so you see more dryland corn raised than you used  
3 to. There's still a big -- you know, the majority  
4 of the dryland acres are wheat in our area, and  
5 you'll see some dryland corn and there's still a  
6 lot of milo and some soybeans.

7 Q. Do those folks outside of the district in  
8 your experience tend to irrigate on the same  
9 schedule, same irrigation season, roughly?

10 A. Well, you want to remember, in our area,  
11 there's not much irrigation outside our area.  
12 Only River Valley, and, yeah, they pretty much  
13 irrigate along the same -- at least my opinion is  
14 they do.

15 Q. Do they tend to have the same cost inputs  
16 in your experience, other than the obvious OM&R  
17 costs for water from the project.

18 A. Yeah. And I don't know that I can give  
19 you an answer on that, because I'm not -- you  
20 know, I'm not attuned to what those people are  
21 paying for -- along the river for pumping costs  
22 and this type of thing. I would assume they're  
23 similar, but I honestly don't know.

24 Q. Do you know if those folks tend to  
25 participate in the same types of prevented

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1 planting programs?

2 A. I don't know.

3 Q. Crop insurance programs?

4 A. My assumption is that they do.

5 Q. And do you know if the yields are the  
6 same generally inside of KBID as outside of KBID?

7 A. Irrigated yields?

8 Q. Yes.

9 A. No, I don't know.

10 Q. How about dryland yields?

11 A. Dryland yields inside the boundaries of  
12 the district versus outside the boundaries of the  
13 district are probably not that much different.

14 Q. Did KBID make any significant purchases  
15 of equipment, for example, in 2005 or 2006?

16 A. We bought -- I think we bought -- may  
17 have bought a tractor. We actually cut down on  
18 the pickups that we had and that type of thing,  
19 just trying to buy the minimal amounts.

20 Q. Any idea what your cost was on that  
21 tractor?

22 A. I don't remember.

23 Q. Do any of your producers as you know them  
24 live or work in the state of Nebraska?

25 A. Yes.

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1 Q. Do you have any idea about how many?

2 A. I would guess there's maybe a dozen.

3 Q. Does the district ever purchase goods  
4 from vendors within the state of Nebraska?

5 A. Yes.

6 Q. Could you describe what might be  
7 purchased.

8 A. Anywhere from vehicles to just general  
9 supplies.

10 Q. When you interact with the Bureau of  
11 Reclamation, do you have occasion to express  
12 concerns to the bureau about Nebraska's compact  
13 compliance? And by that I mean the Republican  
14 River Compact.

15 A. The state of Nebraska?

16 Q. Yes, sir.

17 A. I don't recall having discussions that  
18 were substantive in any way.

19 Q. How about with the state of Kansas? Have  
20 you ever, as a district, expressed concerns to the  
21 state with regard to Nebraska's performance under  
22 the compact?

23 A. We have expressed concerns to both states  
24 in the past regarding river pumping and not being  
25 able to get our supply of water and this type of

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KENNY NELSON

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1 thing, so I guess the answer is yes.

2 Q. If you were in a position to have  
3 unlimited funds, how would you improve the  
4 district in any way? Or are you satisfied with  
5 its structural system?

6 A. I would complete all the conservation  
7 projects that could possibly be done and burying  
8 the rest of the laterals, and -- you said  
9 unlimited funds?

10 Q. Unlimited funds. I'm going to give you  
11 --

12 A. Watch out, folks.

13 Q. -- an open checkbook. This is the best  
14 part of the day.

15 A. I would completely, you know, improve the  
16 -- improve the system, lining and pipe laterals  
17 and -- and all of those type things. Be as  
18 efficient as possible.

19 Q. Do you know whether the board shares that  
20 view?

21 A. We have a very aggressive conservation  
22 program right now, and the board agrees with it.  
23 If I had unlimited funds, they might have other  
24 ideas.

25 Q. You probably wouldn't be sitting here,

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1 would you? Just a point of clarification, I did  
2 want to revisit the topic of the expert reports.  
3 I believe I asked you if you had participated in  
4 developing the Spronk report. I don't think I  
5 asked you if you participated in developing either  
6 the Cloke report or the Hamilton and Robison  
7 report. I'd like to ask you that now.

8 A. I don't think I participated in helping  
9 --

10 Q. Okay.

11 A. -- develop those.

12 Q. Thank you. Why don't we break for about  
13 15 minutes, till 3:30, and then we're probably  
14 pretty close to done.

15 MR. DRAPER: Okay.

16 (WHEREUPON, there was a recess from 3:19  
17 PM to 3:34 PM.)

18 BY MR. WILMOTH:

19 Q. So, Mr. Nelson, we're back on the record.

20 Do you recall, leading into the 2005 calendar  
21 year, whether there were any limitations on your  
22 ability to store water either in Harlan County  
23 Lake or Lovewell Reservoir due to maintenance  
24 issues, perhaps?

25 A. The bureau had -- leading into the

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1 calendar year?

2 Q. Correct.

3 A. The bureau did some work at Lovewell. I  
4 can't recall which year it was for sure, but it  
5 could have been the fall of '04 leading into '05,  
6 so I'm not sure about the year, but there was some  
7 work that was done on the gates, if I remember  
8 right.

9 Q. How did that affect your ability to store  
10 water -- or I should say the bureau's ability to  
11 store water for your benefit?

12 A. They needed the reservoir so low in order  
13 to do to work that they had to do, and I think  
14 there was -- if I remember right -- and I really  
15 can't recall completely, but we might have had --  
16 not been able to start refilling as soon as we  
17 wanted to or something like that. I know there  
18 was an issue back then, but I don't exactly  
19 remember what it was.

20 Q. But the limitations you're referring to  
21 apply to Lovewell Reservoir?

22 A. Yes.

23 Q. Okay. Were you ever contacted in the  
24 last five years by the state of Nebraska seeking  
25 support for a Water Smart grant?

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1 A. Yes, I was.

2 Q. Do you recall generally what the purpose  
3 of that request was?

4 A. They wanted us to write a letter of  
5 support.

6 Q. Do you recall generally the nature of the  
7 project that was sought to be undertaken?

8 A. Nebraska's project?

9 Q. Yes.

10 A. They were wanting to study some of that  
11 upstream area. I don't remember the exact studies  
12 that was being requested, but that's what it was.

13 Q. Upstream from your district?

14 A. Uh-huh.

15 Q. Did you write a letter of support?

16 A. I did not.

17 Q. Did the district write a letter of  
18 support?

19 A. They did not.

20 Q. Why did you elect not to do that?

21 A. At that time the state of Kansas was  
22 looking at doing some of the same, and I was sort  
23 of advised that it may not be the thing to do, so  
24 we did not.

25 Q. Let me just take one second. Mr. Nelson,

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1 can you tell me who from the state of Kansas  
2 advised you not to support that --

3 A. You know, I really don't remember.

4 Q. Okay.

5 A. I don't remember.

6 Q. Thank you. That's all we have. I  
7 appreciate your time very much. I think perhaps  
8 the state of Kansas may have some questions for  
9 you.

10 A. Okay.

11 Q. And also the state of Colorado? No. Let  
12 the record reflect Mr. Ampe --

13 MR. LAVENE: Very disappointing.

14 MR. WILMOTH: -- shook his head  
15 vigorously.

16 MR. BLANKENAU: Maybe next time, Kenny.

17 THE WITNESS: What's this next time?

18 MR. WILMOTH: Still waiting for that  
19 blank check.

20 MR. DRAPER: Okay. We have no further  
21 questions.

22 MR. WILMOTH: All right. Excellent.

23 Thank you very much for your participation today.

24 THE WITNESS: You're welcome.

25 (WHEREUPON, at 3:40 PM the deposition was

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KENNY NELSON

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1 concluded.)

2 .

3 SIGNATURE

4 .

5 The deposition of KENNETH NELSON was  
6 taken in the matter, on the date, and at the time  
7 and place set out on the title page hereof.

8 .

9 It was requested that the deposition be  
10 taken by the reporter and that same be reduced to  
11 typewritten form.

12 .

13 It was agreed by and between counsel and  
14 the parties that the deponent will read and sign  
15 the transcript of said deposition.

16 .

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KENNY NELSON

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1 AFFIDAVIT

2 .

3 STATE OF \_\_\_\_\_:

4 COUNTY/CITY OF \_\_\_\_\_:

5 .

6 Before me, this day, personally appeared,  
7 KENNETH NELSON, who, being duly sworn, states that the  
8 foregoing transcript of his/her Deposition, taken in  
9 the matter, on the date, and at the time and place set  
10 out on the title page hereof, constitutes a true and  
11 accurate transcript of said deposition, along with the  
12 attached Errata Sheet, if changes or corrections were  
13 made.

14 .

15 \_\_\_\_\_

16 KENNETH NELSON

17 .

18 SUBSCRIBED and SWORN to before me this \_\_\_\_\_  
19 day of \_\_\_\_\_, 2012 in the  
20 jurisdiction aforesaid.

21 .

22 \_\_\_\_\_

23 My Commission Expires

Notary Public

24 .

25 .

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1 DEPOSITION ERRATA SHEET

2 RE: APPINO & BIGGS

3 REPORTING SERVICE, INC.

4 FILE NO.: 20014

5 CASE: STATE OF KANSAS VS.

6 STATE OF NEBRASKA AND STATE OF COLORADO

7 DEPONENT: KENNETH NELSON

8 DEPOSITION DATE: 1/25/12

9 To the Reporter:

10 I have read the entire transcript of my Deposition taken in the  
11 captioned matter or the same has been read to me. I request that  
12 the following changes be entered upon the record for the reasons  
13 indicated. I have signed my name to the Errata Sheet and the  
14 appropriate Certificate and authorize you to attach both to the  
15 original transcript.

16 PAGE LINE FROM TO REASON

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24 SIGNATURE: \_\_\_\_\_ DATE: \_\_\_\_\_

25 KENNETH NELSON

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1 CERTIFICATE

2 STATE OF KANSAS

3 ss:

4 COUNTY OF SHAWNEE

5 I, Michelle D. Hancock, a Certified  
6 Shorthand Reporter, commissioned as such by  
7 the Supreme Court of the State of Kansas,  
8 and authorized to take depositions and  
9 administer oaths within said State pursuant  
10 to K.S.A. 60-228, certify that the foregoing  
11 was reported by stenographic means, which  
12 matter was held on the date, and the time  
13 and place set out on the title page hereof  
14 and that the foregoing constitutes a true  
15 and accurate transcript of the same.

16 I further certify that I am not related  
17 to any of the parties, nor am I an employee  
18 of or related to any of the attorneys  
19 representing the parties, and I have no  
20 financial interest in the outcome of this  
21 matter.

22 Given under my hand and seal this  
23 day of \_\_\_\_\_, 2012.

24 \_\_\_\_\_  
25 Michelle D. Hancock, C.S.R. No. 0392

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