

6/27/2012

DAVID BARFIELD, VOL. 2

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2

No. 126, Original

3

In the

4

Supreme Court of the United States

5 .

6

STATE OF KANSAS

7

Plaintiff,

8

vs.

9

STATE OF NEBRASKA

10

and

11

STATE OF COLORADO

12

Defendants.

13 .

14

BEFORE THE OFFICE OF THE SPECIAL MASTER

15

Volume II

16

DEPOSITION OF

17

DAVID BARFIELD

18

taken on behalf of the Defendants, pursuant to

19

Notice to Take Deposition, beginning at 11:05 a.m.

20

on the 27th day of June, 2012, at the Kansas

21

Department of Agriculture, 109 S.W. 9th Street, in

22

the City of Topeka, County of Shawnee, and State

23

of Kansas, before Marlene Percefull, Certified

24

Shorthand Reporter.

25 .

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1 (Deposition Exhibit No 1 and No 2 were
2 marked for identification.)

3 DAVID BARFIELD,
4 having first been duly sworn to testify the truth,
5 the whole truth and nothing but the truth,
6 testified as follows:

7 DIRECT EXAMINATION

8 BY MR. BLANKENAU:

9 Q. Mr. Barfield, good morning. This is
10 Donald Blankenau.

11 A. Good morning.

12 Q. Why don't you go ahead and just for the
13 record state your full name and spell your last
14 name, please?

15 A. Sure. David W. Barfield,
16 B-A-R-F-I-E-L-D.

17 Q. Thank you. Mr. Barfield, when did you
18 receive a copy of Dr. Schneider's report entitled
19 Nebraska's Responsive Expert Report concerning
20 Nebraska's future compliance?

21 A. It was around March 15th of 2012.

22 Q. And from whom did you receive that
23 report?

24 A. I presume that I received it via e-mail
25 from John Draper.

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1 Q. By "I presume," you just don't recall
2 specifically?

3 A. No, but John has been forwarding such
4 things to me so I'm fairly confident that's the
5 case.

6 Q. Okay. And did you receive any
7 instructions when you received that report?

8 A. No.

9 Q. What did you do when you received his
10 report?

11 A. I printed a copy and at some point
12 reviewed that report.

13 Q. You participated in the previous
14 arbitration, did you not?

15 A. I did.

16 Q. You had an opportunity to hear Dr.
17 Schneider testify at that arbitration proceeding?

18 A. Yes, I did.

19 Q. You reviewed his prior expert report in
20 the arbitration proceeding?

21 A. Yes, I did.

22 Q. Did you attend any of his depositions?

23 A. In this proceeding or the arbitration
24 proceeding?

25 Q. In the arbitration.

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1 A. I do not believe I did.

2 Q. Did you review any of the transcripts of
3 his deposition testimony from the arbitration?

4 A. I don't recall, but I believe so.

5 Q. With respect to your original report in
6 this action, did it not include that Nebraska's
7 IMPs were not effective tools for water management
8 to achieve compact compliance?

9 A. That report, as I recall, concluded that
10 they were insufficient to assure compact
11 compliance.

12 Q. And when did you prepare that report?

13 A. November of last year.

14 Q. And when you prepared that report, did
15 you have any reason to believe that Nebraska would
16 agree with that conclusion?

17 A. Repeat the question.

18 Q. Fair. When you prepared that original
19 report, did you have any reason to believe that
20 Nebraska would agree with you on that conclusion?

21 A. Well, I'm sure that I would have believed
22 they would have disagreed with the fundamental
23 conclusion, yes.

24 Q. So you weren't really surprised -- I'm
25 sorry, did I cut you off?

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1 A. No.

2 Q. So you weren't really surprised by Dr.
3 Schneider's conclusion in his report, were you?

4 A. Well, I was surprised at certain --
5 certain opinions that he had and analysis that he
6 did, but if you're speaking of the funda -- well,
7 what specifically are you asking me with respect
8 to his report?

9 Q. Well, Dr. Schneider's report spends a
10 good deal of time going over the effectiveness of
11 the IMPs in achieving compact compliance. Was
12 there anything in his analysis that struck you as
13 new or something that you hadn't considered
14 previously?

15 A. Let me ask a question to clarify your
16 question. You're speaking about his responsive
17 report, correct?

18 Q. I'm speaking about his responsive report,
19 correct?

20 A. Which, as I recall, I don't have that in
21 front of me, was mostly a critique of my report.
22 So repeat your question then, now that I
23 understand what you're --

24 Q. Sure.

25 A. Report you're speaking of.

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1 Q. Was there anything in Dr. Schneider's
2 report that struck you as new or something you
3 hadn't previously considered?

4 A. Well, there certainly was analyses and
5 conclusions and critiques that I had not
6 contemplated and, you know, specifically my report
7 speaks to one of those.

8 Q. Okay. We'll get into that in a little
9 bit then. Did anyone assist you in preparing your
10 rebuttal report?

11 A. Sam Perkins assisted me in assembling the
12 data and graphing it and so forth.

13 Q. Did he prepare any of the text?

14 A. No.

15 Q. When did you begin working on your
16 rebuttal report?

17 A. Within two weeks of the date of the
18 report.

19 Q. Two weeks prior to the May 25, 2012,
20 date?

21 A. Yes.

22 Q. Okay. Did you provide a draft of your
23 rebuttal report to counsel?

24 A. Yes.

25 Q. When did you do that?

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1 A. I would say within a week of that date.

2 Q. So you prepared the draft within a week
3 and then submitted it to counsel for review?

4 A. Something in that time frame. I don't
5 have any of those exact dates.

6 Q. Okay. Did you receive any edits back
7 from counsel?

8 A. Counsel and I discussed the report and,
9 yes, he provided some input on the narrative.

10 Q. Anything substantive?

11 A. What's your definition of substantive?

12 Q. Anything that was not related to grammar
13 or spelling?

14 A. Well, my recollection is most of his
15 input was the scope of what should be included in
16 the report.

17 Q. What would those items have been?

18 A. I don't recall specifically but, again,
19 it was just essentially helping to determine what
20 was necessary to support the fundamental
21 conclusion of my report.

22 Q. You don't recall anything specific
23 though?

24 A. Well, I would say the report is more
25 narrow than the original version of my report.

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1 Q. It's highly unusual that lawyers shorten
2 things. Can you recall what -- do you recall what
3 was edited out, Mr. Barfield?

4 A. Well, I certainly --

5 MR. DRAPER: Let me just interject here,
6 Mr. Barfield. I think the case management plan
7 specifies that we will not be getting into draft
8 reports and I think that's what you're getting
9 into now and I would object to that.

10 UNIDENTIFIED VOICE: I'll honor that
11 objection.

12 THE REPORTER: Okay.

13 MR. GRUNEWALD: Sorry. Don, hang on.
14 We've got to identify the objector. That was John
15 Draper.

16 THE REPORTER: Okay.

17 MR. DRAPER: Yes. I confirm that. That
18 was me, John Draper. Sorry.

19 THE REPORTER: Thank you.

20 BY MR. BLANKENAU:

21 Q. All right. Mr. Barfield, let's shift to
22 the section of the aspects of your rebuttal
23 report. If I understand correctly, one of the
24 points of your report is that Nebraska's
25 groundwater pumping has been reduced because of

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1 higher precipitation. Do I understand that
2 correctly?

3 A. Well, my report states that the -- the
4 later period, 2007 to 2011, in Dr. Schneider's
5 analysis, had substantially higher precipitation
6 than normal and, therefore, pumping was reduced.

7 Q. And under those circumstances would the
8 crop irrigation requirement be lower when
9 precipitation is higher?

10 A. Generally speaking, that's correct.

11 Q. Maybe for the record we should have you
12 briefly explain what the crop irrigation
13 requirement is?

14 A. Okay. Well, it's essentially an estimate
15 of the amount of irrigation supply that is
16 necessary to meet the crop demand in excess of
17 effective precipitation.

18 Q. Okay. And who determines what the CIR or
19 crop irrigation requirement is for the Nebraska
20 portion of the basin?

21 A. Nebraska -- each state is required to
22 provide those estimates for the state as part of
23 the accounting procedures.

24 Q. And then with respect to your rebuttal
25 report. Exhibit 2, which you have before you,

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1 correct?

2 A. I do have it before me.

3 Q. Did you consider specific CIR information
4 for the years and areas in Nebraska when you
5 prepared your report?

6 A. The report does not use CIRs.

7 Q. So you didn't consider that at all?

8 A. Not as part of this report.

9 Q. Okay. Well, as part of your report as a
10 general proposition is the timing of precipitation
11 important to crop production and irrigation
12 demands?

13 A. Yes.

14 Q. In what respect?

15 A. Well, precipitation must be effective. I
16 used that word a moment ago. You can have ten
17 inches of precipitation in an evening and only a
18 certain fraction of that would be effective in
19 that case and the rest of it would run off and be
20 ineffective so timing is important.

21 Q. And why don't you go ahead and explain
22 what makes rainfall effective.

23 A. Well, again, if that rainfall can be
24 introduced into the -- with soil and be usable to
25 the crop.

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1 Q. My co-counsel here handed me a note
2 asking whether we had put before you Exhibit 1,
3 which is actually the Notice and I don't recall
4 whether we've done that or not. Have you seen
5 that Notice, Mr. Barfield?

6 A. I have the Notice in front of me and I
7 have seen the Notice, yes.

8 Q. Okay. And that will be a part of the
9 deposition record then, Exhibits 1 and 2. You
10 have a good deal of precipitation analysis in your
11 report, Mr. Barfield. Can you tell me the source
12 of your data?

13 A. Yes. With respect to precipitation data,
14 this is data that's collected pursuant to the RRCA
15 accounting procedure and exchanged among the
16 states pursuant to that. Actually, the states
17 have contracted with Colorado's modeler, William
18 Schroeder, to do that for the Compact
19 Administration so that's the source of the
20 precipitation data.

21 Q. Okay. Can you explain the process you
22 used to develop the average precipitation in the
23 Nebraska portion of the basin?

24 A. Yes. We took the data that was -- that I
25 just described was collected and it is put in a

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1 series of data sets and there's a program with
2 initials RRPP, or the Republican River
3 Preprocessing Program, that Sam Perkins used to
4 extract the precipitation stations for actually
5 each of the states within the model domain. And
6 those were put in a spreadsheet that we provided
7 to you and averaged over the respective states and
8 years.

9 Q. Was that something that you personally
10 did or was that something Dr. Perkins did?

11 A. That was something Dr. Perkins did and I
12 reviewed.

13 Q. How much supervision did you exercise
14 over the preparation of that work?

15 A. How would you want me to quantify that?

16 Q. I'll leave it to you as to how you would
17 best describe it.

18 A. Well, I made the assignment. This is
19 actually something that was done previously and he
20 completed the assignment and returned a
21 spreadsheet with the numbers and graphs, which I
22 reviewed to ensure it was done as I specified.

23 Q. Okay. Did you instruct Mr. Perkins to
24 make any efforts to deal with where precipitation
25 occurred and when it occurred and rainfall

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1 intensity?

2 A. Not for this analysis.

3 Q. So your report really doesn't distinguish
4 between precipitation that might have occurred as
5 snowfall in January versus rainfall in July or how
6 fast that precipitation came down?

7 A. It does not look at those things.

8 Q. Can you tell me whether allocations under
9 the Compact are based upon precipitation or on
10 stream flow?

11 A. Allocations are based on stream flow and
12 estimates of the beneficial consumptive uses.

13 Q. Okay. In preparing your report, your
14 rebuttal report, did you review Nebraska's IMPs
15 that were in effect during the 2007 to 2011
16 period?

17 A. As part of the preparation of this
18 rebuttal report?

19 Q. Yes.

20 A. Well, not for this rebuttal report, but I
21 had reviewed those -- those IMPs though.

22 Q. Do you recall whether the IMPs in effect
23 for 2007 to 2011 contained any provisions that
24 required groundwater pumping to be reduced?

25 A. Reduced from what?

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1 Q. Reduced from prior levels?

2 A. Yes, they do.

3 Q. Do you recall in what amounts?

4 A. Well, there has been a series of IMPs and
5 different amounts for each corresponding
6 generation. I think the first generation, from my
7 recollection, is about five percent, and the
8 second 20 percent, and the third 20 to 25 percent
9 with a goal of 25 percent reduction.

10 Q. Let me refer you to Page 3 of your
11 exhibit. That should be KS 1195. There's a
12 figure 1 there, do you see that?

13 A. I do.

14 Q. Is there a correlation between
15 groundwater pumping in Nebraska and your
16 precipitation figures?

17 A. The graph shows annual precipitation and
18 annual irrigation pumping depth.

19 Q. And is there any correlation between
20 those two graphs?

21 A. Between precipitation and pumping depth?
22 Is that your question?

23 Q. Right, yes.

24 A. Yes, there is, I believe.

25 Q. Can you describe that correlation?

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1 A. It's essentially an inverse correlation
2 generally, more precipitation generally yields
3 less pumping and vice versa.

4 THE REPORTER: You said inverse, correct?

5 A. Inverse, yes.

6 THE REPORTER: Okay.

7 BY MR. BLANKENAU:

8 Q. Does Figure 1 contain any plot showing
9 the groundwater pumping restrictions that were
10 required by Nebraska's IMPs?

11 A. No, it does not.

12 Q. Can you tell me how many total acres
13 there are in Nebraska's portion of the Republican
14 River Basin?

15 A. That's not a question about Figure 1,
16 right?

17 Q. No, that is not. Thank you.

18 A. And you're talking about total acres or
19 irrigated acres?

20 Q. Total acres.

21 A. I don't know that number off the top of
22 my head.

23 Q. Do you know how many irrigated acres
24 there are?

25 A. Well, it's between 1.1 and 1.2 million

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1 irrigated acres is my recollection.

2 Q. And did your analysis examine only those
3 lands that were being irrigated in Nebraska?

4 A. The irrigation depths here correspond to
5 groundwater irrigated acres.

6 Q. But, let me take you a little closer.
7 Did your development of the precipitation, was
8 that calculated solely on those irrigated acres or
9 did it include nonirrigated lands as well?

10 A. The precipitation data is averages of the
11 precipitation stations that's used in the
12 groundwater modeling.

13 Q. So that would include acres outside of
14 those that are being irrigated, is that correct?

15 A. They are for the entire basin. There's,
16 you know, something on the order of one station
17 per county.

18 Q. Okay. Is precipitation relatively
19 uniform across the basin or is it very location
20 specific?

21 A. Well, it varies across the basin. Did I
22 answer that question?

23 Q. Well, you said it varies. Can you be a
24 little more specific?

25 A. Yeah -- well, again, repeat your question

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1 for me, please.

2 Q. Sure. Is -- is precipitation uniformly
3 distributed throughout the basin or does it come
4 in different amounts and in different locations?

5 A. Well, it is not uniform certainly and it
6 does come in different amounts in different
7 locations.

8 Q. And going back to Figure 1 again, that
9 was prepared by Dr. Perkins, was it not?

10 A. Yes.

11 Q. Why isn't his name not listed in the
12 preparation of this report?

13 A. Well, because he did it pursuant to my
14 directions so he was -- but he was not directing
15 the effort or coming to the conclusions in the
16 report.

17 Q. Okay. Let me draw your attention to Page
18 3 of your report again below here. Is that KS
19 1195? Looks like the last sentence where you
20 state, "In fact, Dr. Schneider's own figures show
21 that groundwater computed beneficial consumptive
22 use increased from an average of 194,000 acre-feet
23 per year to an average of 217,000 acre-feet per
24 year between the two periods," do you see that?

25 A. Yes, I do.

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1 Q. Does groundwater CBCU always go down when
2 water pumping is reduced?

3 A. No.

4 Q. If Nebraska had cut its CBCU by, say, 50
5 percent in 2008, would the average CBCU over the
6 2007-2011 have decreased below 194,000?

7 A. Can you -- I'm sorry. Can you repeat the
8 question?

9 Q. Sure. If Nebraska had cut its pumping
10 by, say, 50 percent in 2008 --

11 A. Uh-huh.

12 Q. - would the average CBCU over the
13 2007-2011 period have decreased below the 194,000
14 acre-feet?

15 A. Not necessarily.

16 Q. So you can reduce groundwater pumping but
17 the delayed impacts of pumping from prior years
18 may still result in an increase in CBCU for an
19 average period?

20 A. It could.

21 Q. I think we may be almost done, but we'd
22 like to take a brief break just to make sure.
23 Yeah, you can stay in here, that way you don't
24 have to mess with the phone or ask me to back up.

25 (WHEREUPON, a short break was taken,

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1 after which the following was heard:)

2 MR. BLANKENAU: Okay. Thank you very
3 much. Mr. Barfield, that concludes our
4 questioning.

5 MR. DRAPER: This is John Draper. We
6 have no further questions.

7 MR. BLANKENAU: All right. Thank you
8 very much.

9 MR. DRAPER: And Colorado's not here but.

10 MR. BLANKENAU: I'm going to gamble and
11 say --

12 MR. DRAPER: Yeah. All right. Okay. I
13 think we're done then.

14 MR. BLANKENAU: Thank you very much.
15 Appreciate it, Dave.

16 A. All right. Thank you.

17 MR. BLANKENAU: We'll ring off now.

18 MR. GRUNEWALD: Hang on. John, can you
19 hand on for a second?

20 MR. BLANKENAU: Sure.

21 MR. GRUNEWALD: Can we go off the record?

22 THE REPORTER: What about signature?

23 MR. GRUNEWALD: Yeah, so, we just have
24 formalities, signature, yes?

25 MR. BLANKENAU: Yeah, we'll review and

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1 sign.

2 MR. GRUNEWALD: Also the exhibits -- off
3 the record.

4 (THEREUPON, the hearing was concluded at
5 11:37 a.m.)

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1 SIGNATURE

2 .

3 The deposition of DAVID BARFIELD, VOL 2
4 was taken in the matter, on the date, and at the
5 time and place set out on the title page hereof.

6 .

7 It was requested that the deposition be
8 taken by the reporter and that same be reduced to
9 typewritten form.

10 .

11 It was agreed by and between counsel and
12 the parties that the deponent will read and sign
13 the transcript of said deposition.

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1 AFFIDAVIT

2 .

3 STATE OF _____:

4 COUNTY/CITY OF _____:

5 .

6 Before me, this day, personally appeared,
7 DAVID BARFIELD, VOL 2, who, being duly sworn, states
8 that the foregoing transcript of his/her Deposition,
9 taken in the matter, on the date, and at the time and
10 place set out on the title page hereof, constitutes a
11 true and accurate transcript of said deposition, along
12 with the attached Errata Sheet, if changes or
13 corrections were made.

14 .

15 _____

16 DAVID BARFIELD, VOL 2

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: DAVID BARFIELD, VOL 2

8 DEPOSITION DATE: 6/27/2001

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.

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24 SIGNATURE: _____ DATE: _____

25 DAVID BARFIELD, VOL 2

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1 CERTIFICATE

2 STATE OF KANSAS

3 ss:

4 COUNTY OF SHAWNEE

5 I, Marlene Percefull, 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 Marlene Percefull, C.S.R. No. 0656

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