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OTHERS PRESENT: Brian Dunnigan; James Schneider; Jesse
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Ormerod; David Kracman; Marc Groff; Craig Scott; Vanessa
Silke.

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1 PROCEEDINGS:

2 THE REPORTER: Will you raise your right hand,
3 please? Do you solemnly swear or affirm the testimony
4 you're about to give will be the truth, the whole truth, and
5 nothing but the truth?

6 MR. THOMPSON: I do.

7 AARON THOMPSON

8 Called as a witness on behalf of the State of
9 Nebraska, having been first duly sworn, testified as
10 follows:

11 DIRECT EXAMINATION

12 BY MR. WILMOTH:

13 Q Good morning, Mr. Thompson.

14 A Good morning.

15 Q Would you please state and spell you name in full
16 for the record?

17 A My name is Aaron Thompson, A-a-r-o-n,
18 T-h-o-m-p-s-o-n.

19 Q And for purposes of my next question, I don't want
20 a medical history or anything, but are you presently
21 suffering any ailments or on any medication that would
22 preclude you from offering accurate and truthful testimony
23 today?

24 A I am not.

25 Q Thank you. You were sent, I think, through your

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1 counsel, a subpoena and what is commonly referred to as a
2 Touhy Request, were you not?

3 A Yes, I was.

4 (Exhibit 1 was marked for identification. See
5 Index.)

6 Q We'll mark this as Exhibit A to the deposition --
7 Mr. Thompson, does this document look familiar to you?
8 Excuse me, Exhibit 1, I apologize.

9 A Yes, this document looks familiar to me.

10 Q And could you just generally describe your
11 understanding of this document and what it is intended to
12 do?

13 A I guess, to summarize my general understanding of
14 this document, it's to request the United States to provide
15 information to the parties that requested it.

16 Q And were you responsible for responding to that
17 request?

18 A My office, as well as other offices within the
19 Bureau of Reclamation were responsible for compiling the
20 information, and then myself being here so that I could be
21 asked questions pursuant to the request within the document.

22 Q Could you identify which other offices were
23 involved in that effort?

24 A My office, which is the Nebraska-Kansas Area
25 Office, and the Great Plains Regional Office in Billings,

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1 Montana.

2 Q And would that include efforts by Mr. Aycock, for
3 example?

4 A Yes, that would be -- Mr. Aycock's out of the
5 Billings Office and he helped with preparing the documents
6 requested here in this document.

7 Q Thank you. And to the best of your knowledge, is
8 the response that was received -- prepared and received by
9 the states a complete response?

10 A To the best of my knowledge, we gave a complete
11 and accurate response to all requested documents.

12 Q Do you have any intent to supplement the response?

13 MR. DUBOIS: I'll answer that, yes. We've dug up
14 some additional emails from retired employees. I've just
15 gotten copies of those, I've got to go through for
16 privilege. I expect that we should get you those shortly.

17 MR. WILMOTH: Is it appropriate to identify the
18 individual or would you like to wait?

19 MR. DUBOIS: Yeah, it was Marv -- I think it's
20 Marv Swanda's emails, and he's retired. And so it was --

21 MR. AYCOCK: And Steve Ronshaugen.

22 MR. WILMOTH: Could you, Jim, or you, Aaron, just
23 generally state when those people were employed with the
24 Bureau so we know a time frame?

25 MR. DUBOIS: I guess the question is, when did

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1 Marv retire, because 30 years prior to that would be the
2 range.

3 THE WITNESS: Marv retired at the end of 2010.

4 MR. WILMOTH: And how about Mr. Ronshaugen?

5 MR. DUBOIS: A couple, three years ago.

6 MR. WILMOTH: Thank you.

7 Q (By Mr. Wilmoth) As part of this Touhy response,
8 Mr. Thompson, did you require some authorization to speak to
9 us and respond to our questions today?

10 A Yes. It was required that I had to get approval
11 from my boss, the Great Plains Regional Director, Mike Ryan,
12 to appear here today.

13 Q I'm going to hand you a letter dated November 14,
14 2011. We'll mark this as Exhibit 2 to the deposition.

15 (Exhibit 2 was marked for identification. See
16 Index.)

17 Could you explain the nature of this letter,
18 please?

19 A The nature of this letter is a response to the
20 September 1st request, Touhy Request and Subpoena of
21 Documents, to verify not only that we received the document,
22 but that we were going to provide the information in my
23 testimony. And it outlined the -- I guess what I would kind
24 of summarize as side boards to what I could talk about
25 today.

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1 Q Thank you. So, is this essentially the
2 authorization you were referring to earlier?

3 A Yes.

4 Q And you mentioned the side boards in here. These
5 are the limitations, if you will, on the scope of your
6 testimony, is that correct?

7 A I would describe that as the limitations on where
8 I can testify.

9 Q And have you been given any additional limitations
10 of which we're not aware in this letter?

11 A I haven't been given any additional limitations.

12 Q So, to the best of your knowledge, this is the
13 only writing that contains any restrictions on your
14 testimony.

15 A Yes.

16 Q Thank you. Do you know why you're here today, Mr.
17 Thompson?

18 A I'm here today to provide information from the
19 government to the requestee.

20 Q And in your understanding, who is the requestee?

21 A It's an interesting question, because the
22 requestee is -- is, excuse me, both the State of Nebraska
23 and State of Kansas -- and the State of Nebraska. The
24 reason I hesitated is, they were all signed by one
25 gentleman, but there's three signature lines on the bottom.

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1 Q Certainly, certainly. And are you aware that the
2 State of Kansas has offered you as an expert in this
3 proceeding for certain matters?

4 A It's my understanding that the State of Kansas has
5 requested that I provide testimony at a later date.

6 Q I'm going to hand you an Expert Witness Disclosure
7 that was filed in the matter by the State of Kansas. This
8 will be Exhibit 3.

9 (Exhibit 3 was marked for identification. See
10 Index.)

11 Have you seen that document before, Mr. Thompson?

12 A Yes. This document looks familiar. I've seen it
13 before.

14 Q When did you see it?

15 A I can't tell you the exact date.

16 Q Can you describe its contents for me?

17 A The contents of the letter are seven attachments
18 for which Kansas has issued in this letter as documents I
19 can refer to in my testimony.

20 Q And with regard to that testimony, is it your
21 intent to testify on behalf of the State of Kansas against
22 the State of Nebraska in this proceeding?

23 A No.

24 Q What is the intent of your testimony?

25 A I intend to provide factual information about the

Aaron Thompson -- direct

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1 information that the government provided in these
2 attachments.

3 Q Prior to filing this document, did Kansas ever
4 contact you about making this filing and inform you of their
5 intent to offer you as an expert?

6 A Could you repeat the question?

7 Q Prior to the filing of this document, did the
8 State of Kansas contact you and inform you of their intent
9 to offer you as an expert witness in this matter?

10 A Yes.

11 Q Can you elaborate on the nature of that
12 discussion? Who was involved, for example?

13 A Mr. Draper called me. Mr. Chaffin with the
14 Solicitor's Office out of Billings, Montana, was involved
15 and they simply ran through a list of documents and asked if
16 I was familiar with the documents and asked about the
17 procedures it takes to get a government employee to testify
18 in a hearing or a case like this.

19 Q Are those procedures dictated by the rules of the
20 Office of Government Ethics, by chance?

21 A I don't know.

22 Q Are you being compensated in any regard for your
23 testimony today?

24 A I am not being compensated, but it is my
25 understanding that the states will pay for my travel here,

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1 my time here, and that's paid directly to the government.

2 Q I sure hope somebody's paying for that. The
3 coffee's free, though.

4 A Thank you.

5 (Laughter.)

6 Q Could you please describe your educational
7 background for me?

8 A After graduating from high school at Broken Bow,
9 Nebraska, I attended the University of Lincoln and received
10 a degree in mechanical engineering. And about five years
11 after that, I attended the University of Phoenix and
12 received a master's in business administration.

13 Q Was there any particular emphasis in the context
14 of your MBA?

15 A I would say there was no particular emphasis. I
16 know they offered programs like -- you could emphasis in
17 computers or computer technology. Mine was all general
18 business administration classes.

19 Q And have you received any advanced training in any
20 topic through your employment with the Bureau?

21 A I've attended numerous training classes on
22 everything from how to operate a power plant with WAPA to
23 EEO classes, safety training, but none that resulted in a
24 degree or formal university certificate or degree.

25 Q And did you join the Bureau directly after your

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1 MBA was obtained?

2 A When I left the University of Nebraska with my
3 mechanical engineering degree in December of 1998, I went to
4 work for a consulting firm, Black & Veatch out of Kansas
5 City and worked with them through September of -- or excuse
6 me, August of 2011 (sic), where I started with the Bureau of
7 Reclamation at Hoover Dam.

8 Q And what year was that, I'm sorry?

9 A I'm sorry, I think I said 2011. I meant to say
10 August of 2001. Thank you for --

11 Q And you were at the Boulder City office there for
12 the Bureau at Hoover Dam?

13 A The Boulder City office was the Regional Office.
14 I was actually located at Hoover Dam, which is called the
15 Lower Colorado Dams Office, but it's part of the region
16 which is located in Boulder City.

17 Q And who was your supervisor at that time with the
18 Bureau?

19 A My direct supervisor's name was Chau Nguyen at
20 Hoover Dam.

21 Q Was Mr. Nguyen an engineer?

22 A She was a --

23 Q Excuse me.

24 A -- engineering -- that's okay. She was an
25 engineering manager. She was an electrical engineer, but

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1 managed the mechanical and electrical engineers.

2 Q What was your capacity there at Hoover Dam, your
3 professional capacity?

4 A My professional capacity was mechanical engineer.

5 Q And how long did you perform that function at
6 Hoover Dam?

7 A I think I was at Hoover Dam for about three years.

8 Q Did you then proceed to Nebraska or did you have
9 another position with the Bureau before you came to
10 Nebraska?

11 A Before I came to -- when I left Hoover Dam, I went
12 down -- I became the manager at Davis Dam, which is a dam
13 80-some river miles downstream of Hoover, and I worked there
14 for a few years. And then, early 2006, I moved -- I took a
15 job as the Special Assistant to the Regional Director in
16 Billings, Montana, and worked there for -- through the
17 spring and summer. And then, in the fall, I was -- I
18 applied for a job at the Wyoming Area Office as the Deputy
19 Area Manager and stayed there for about a year. That should
20 get us to fall of 2007, where I took the job that I have
21 now, which is Area Manager in Nebraska-Kansas Area Office.

22 Q Returning to the Davis Dam work, can you generally
23 describe your day-to-day function in that role?

24 A As manager of Davis Dam, my day-to-day function
25 was to make sure that the mechanical, electrical, and

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1 operations crews were performing the work that was
2 prioritized and expected. And then I also spent a lot of
3 time preparing for power customer meetings on the nearly
4 day-to-day basis.

5 Q In that capacity, then, would you interface with
6 Western Area Power Administration or those types of -- is
7 that the customer to which you refer?

8 A I guess I wouldn't refer to Western Area Power
9 Administration as a customer, but to answer the first part
10 of your question, would I interact with those folks, and I
11 would. We would essentially present presentations to the
12 customers which were Metropolitan District of LA, City of
13 Needles, California. I think there was roughly 20-some
14 customers, and we would present to them to get our budget.
15 And Western would present to them and Bureau of Reclamation
16 would present to these folks. That's generally where we
17 interacted the most.

18 Q So, it sounds to me like, for the first few years,
19 while you were at Reclamation, you really focused on
20 hydroelectric power issues. Is that a fair assessment?

21 A Yes.

22 Q And then, when you moved to Billings, as I
23 understand it, you were a Special Assistant to the Regional
24 Director?

25 A (Nodding head.)

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1 Q Can you generally describe your role there for
2 that year, it sounds like?

3 A It was a Special Assistant to the Regional
4 Director. You asked that question, I shook my head, but I
5 said yes, or now I'm saying yes.

6 Q You're free to correct, if that was not the
7 right --

8 A No, it was. When you said it, I shook my head
9 instead of verbally saying yes for the court reporter.

10 And I wasn't quite there a year for that special
11 assistant job. But generally, I would assist the Regional
12 Director in preparing documents for briefing -- basically
13 briefing papers for the Washington Office on the different
14 topics that were going on within the Region. The Region
15 covers five area offices. The states are Montana, North and
16 South Dakota, Wyoming, Colorado, both the Dakotas, Nebraska,
17 Kansas, Texas, and Oklahoma. And so there was a lot of
18 issues going on with all the states all the time. And one
19 of my responsibilities was to prepare -- my main
20 responsibility was to prepare briefing papers for the
21 Regional Director to transmit to Washington, D.C., and of
22 course, I did that with the assistance of all those area
23 offices.

24 Q So, would these briefing papers, would those be
25 summaries of the issues involved?

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1 A The briefing papers would be, yes, a summary of
2 the issues involved.

3 Q And if I understand your statement earlier about
4 relying on some of the other offices, would that reliance
5 include technical assistance or narrative assistance to help
6 understand the issues, or what would the nature of that
7 assistance be?

8 A I think it would be both, in some cases, technical
9 assistance and narrative assistance. I might help an area
10 office find a technical resource within the Regional Office
11 to help with that or I might help with it myself.

12 Q Anything going on in 2006 in the Nebraska-Kansas
13 area that caused you to prepare a briefing paper?

14 A I'm sure there was a briefing paper prepared, yes.

15 Q Would that generally be on the issue of Compact
16 compliance or --

17 A Without specifically remembering any one briefing
18 paper, I can say, I think, with relative confidence that I'm
19 sure there was one on the Republican River.

20 Q Can you generally describe some of the other
21 topics that you might remember that came up during the
22 course of your year there that might have merited a briefing
23 paper?

24 A Well, there was a -- it seems like there was a lot
25 of topics in the Dakotas and Red River Valley. There was

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1 St. Mary's-Milk River that had some international issues
2 with Canada.

3 Q Are you referring to the transmission of biota
4 across interstate lines potentially?

5 A No. I think I just can't remember the specific
6 issues other than the title.

7 Q Anything else come to mind from the Nebraska-
8 Kansas-Colorado Region?

9 A As my time as Special Assistant?

10 Q Yes, during '06.

11 A Nothing else comes to mind.

12 Q Now, as I understand it, in 2007 you went to
13 Wyoming, is that correct?

14 A In late 2006, I went to take the job in Wyoming,
15 the Deputy Area Manager's position.

16 Q What were your day-to-day functions in that
17 position?

18 A My day-to-day functions as the Wyoming Deputy Area
19 Manager revolved -- or were typically dealing with large
20 contracts, what we called the RAX program. These are large
21 construction type projects on our facilities. It was over
22 that group that managed those contracts and the folks that
23 were contracted and I was -- managed the safety officer. I
24 also did a lot of work in -- or, excuse me, I had staff that
25 did a lot of work in cultural resources for the State of

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1 Wyoming and -- our area offices aren't necessarily divided
2 by state lines, as we know here today. They're divided by
3 basins, and we did a lot of work in the Platte River Basin
4 on cultural resources within -- that traveled into Nebraska.

5 Q When you say "cultural resources," do you mean
6 investigating the existence of cultural resources during a
7 construction project?

8 A Typically, I guess, when I refer to cultural
9 resources, I'm talking about the documentation of the
10 cultural resources on the project and clearance to -- for an
11 irrigation district or for a construction company or someone
12 to pass through where these cultural resources might be and
13 disturb them, or, in some cases, not disturb them.
14 Generally, a clearance on what they can and can't do.

15 Q So, you weren't necessarily reviewing the
16 structural components of the work, but you were
17 administering the contract, it sounds like. Is that a fair
18 statement?

19 A Yeah. I would clarify. I was administering
20 contracts from a second level management point of view.

21 Q What instigated your move to Nebraska, then?

22 A I saw an opportunity to live and work in the state
23 that I was born and raised in. And quite frankly it looked
24 like a challenging job, and it turned out to be very
25 challenging, so just interest in not only the location, but

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1 the job.

2 Q And what is your general responsibility as
3 the -- let me make sure I get your title right. Why don't
4 you explain it?

5 A My general responsibility as the Area Manager for
6 the Nebraska-Kansas Area Office is to oversee the projects
7 that area within the boundaries of the Nebraska-Kansas
8 office. We typically -- for about 15 projects. They're
9 nearly evenly split between Nebraska and Kansas and we have
10 one project in Colorado, Bonny Dam. And it's my
11 responsibility to oversee those projects and the 40-some
12 employees that are directly employed under my office.

13 Q Do those projects include projects in the
14 Republican River Basin?

15 A Yes.

16 Q In overseeing those projects, do you, for example,
17 develop policies concerning their administration?

18 A Could you reword or --

19 Q Are you responsible for developing or implementing
20 policies with regard to the administration of the projects
21 in the Republican River Basin?

22 A I guess I'm having trouble with the word "policy."
23 But, I guess, to answer the question, I'm responsible for
24 the contracts that we have with our managing partners, our
25 irrigation districts, and I'm responsible that we follow

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1 those and that any questions that come up regarding those,
2 that I, within my authority, answer or resolve any issues.

3 Q So, are you responsible for developing the
4 Bureau's perspective on water management efforts within the
5 three-state area?

6 A Yes.

7 Q Do you have any additional responsibilities in
8 your capacity as area manager?

9 A From time to time, I would consider additional
10 responsibilities such as attending Missouri River study or
11 coordination meetings, things like that. I might sit in for
12 the Regional Director or someone from our Great Plains
13 Regional Office when those meetings are held in the Nebraska
14 area or Kansas area. But generally, my responsibilities
15 stay within the Nebraska-Kansas office for those projects
16 within the office.

17 Q Are you responsible for interfacing with the State
18 of Nebraska, State of Colorado, or the State of Kansas on
19 Republican River matters?

20 A Oh, yes.

21 Q To what extent have you received any training in
22 hydrology as a science?

23 A I would say no formal education in hydrology as a
24 science.

25 Q And have you received any training or do you have

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23

1 any formal education in surface or groundwater modeling?

2 A No.

3 Q Do you have individuals within your office who are
4 responsible for those types of analyses -- hydrologic
5 analyses or modeling analyses?

6 A Yes.

7 Q Who would those individuals be?

8 A We have -- in our Great Plains Regional Office, we
9 have a hydrology group and folks within that group would be
10 generally responsible for hydrology.

11 Q Are those the same individuals that would conduct
12 modeling analyses, for example, of systems, river systems?

13 A Not knowing what they specifically do, I would
14 think that would be the group that would look at models for
15 river systems.

16 Q Do you have a group that actually runs any models
17 that are either proprietary through the Bureau or that are
18 in the public domain?

19 A You know, I don't know if they run any models
20 today or not.

21 Q As mentioned earlier, Kansas has offered your
22 testimony as an expert witness. Do you view yourself as an
23 expert in any particular area?

24 A I think the term "expert" would probably need to
25 be defined. I've always defined myself as having a lot of

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1 eggshell thin knowledge, a lot of knowledge about a lot of
2 different things, some useful, some not so useful. But it
3 doesn't always go very deep and in other areas it does. So,
4 I think it -- to answer your question, I think it depends on
5 the term "expert" and how you use it.

6 Q For purposes of this discussion, I'm mostly
7 interested in your view of the term and how you would define
8 it. You mentioned a couple areas you have some depth of
9 knowledge. Could you identify those for me?

10 A Well, I suppose, when you look back at my work
11 history, they range from how to align a hydroelectric
12 turbine to maybe in this -- a little more specific in this
13 case, and an expert in what my office does, what my office
14 does to prepare documents, the information that
15 the -- excuse me, an expert maybe in the area of how the
16 government within my office or my authority prepares
17 documents.

18 Q Would you consider yourself an expert in
19 hydrology?

20 A I would not consider myself an expert in
21 hydrology.

22 Q Would you consider yourself an expert in
23 groundwater modeling?

24 A No.

25 Q Does the Bureau of Reclamation have an interest in

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1 the projects that is unique among other surface water users
2 in the basin, in your view?

3 A Yes.

4 Q Could you describe that interest generally?

5 A I think a general view of the Bureau of
6 Reclamation's interest in the projects in the basin would be
7 the fact that the Bureau spent a lot of money on the
8 projects in the basin, which is -- for which they have a lot
9 of interest in, fish and wildlife, recreation, irrigation.
10 We have all those different components on our reservoirs
11 within the Republican River Basin and the subsequent water
12 rights that we received for those projects.

13 Q Is it your -- excuse me, is part of your role as
14 the area manager to advocate the Bureau's position with
15 regard to protecting those interests?

16 A Yes.

17 Q Let's turn to the document that's marked as
18 Exhibit 3, which is your -- the Expert Witness Disclosure.
19 You briefly earlier described the content of that document.
20 Can you look at the various exhibits within it and just
21 generally explain what they are?

22 A Attachment A is a statement by the Bureau of
23 Reclamation regarding the proposed integrated management
24 plan for the Middle Republican Natural Resource District on
25 June 8th, 2010.

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1 Q And there are some additional exhibits in there.
2 Without necessarily identifying each one, are those
3 generally your testimony on Nebraska's integrated management
4 plans?

5 A Generally, they're the testimony on Nebraska's
6 integrated management plans, and it looks like the last one
7 is a -- is different. The last one is a followup letter to
8 our questions and concerns related to the proposed
9 integrated management plans to Brian Dunnigan on September
10 30th.

11 Q Thank you. I'd like to turn your attention to
12 Exhibit A, which is, I believe, testimony on the Middle
13 Republican NRD's integrated management plan.

14 MR. DRAPER: That's Attachment A.

15 Q (By Mr. Wilmoth) Attachment A, is that correct?

16 A Yes.

17 MR. WILMOTH: For the record, I will probably use
18 the term IMP, which is an acronym for the integrated
19 management plan.

20 Q (By Mr. Wilmoth) And what I'd like to do, Mr.
21 Thompson, is just walk down through this document with you
22 and discuss some of the statements made within it. I will
23 try to direct your attention to where the statements are
24 made so that we're all on the same page.

25 The opening paragraph indicates that the Bureau

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1 "recognizes the appropriate role of the State of Nebraska to
2 establish and enforce water policy." I'm curious what you
3 mean by "the appropriate role" in that regard.

4 A I think what is meant by the appropriate role is
5 the authority that the State has in enforcing and
6 establishing water rights that the Bureau of Reclamation
7 would have to follow.

8 Q For purposes of this next question, I'm not asking
9 you as an attorney your legal opinion, but as an
10 administrator of Reclamation contracts and projects. Is the
11 Bureau subject to state regulation?

12 A The Bureau -- I guess I would phrase it as the
13 Bureau has to follow state water law.

14 Q And are there limits to that in your view as an
15 administrator?

16 A Yes.

17 Q Can you elaborate on those limitations?

18 A The limitations would be if the -- I think,
19 hypothetically if the State weren't following state law.

20 Q A couple of sentences down, you note that the IMPs
21 are "a step in the right direction." Are there other steps
22 in your view that would further that direction?

23 A Yes.

24 Q Could you describe those steps in your view?

25 A I think, I guess, as we'd seen, the IMPs have had

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1 different generations or different -- there's been numerous
2 IMPs put in place within the districts, and the reason I
3 answered yes to that was, I think you can always come up
4 with other options with other alternatives to improve water
5 management within the basin.

6 Q So, is it your view as a water manager, then, that
7 water managers should be adaptable? Is that what you're
8 suggesting?

9 A Yes.

10 Q And would that include maintaining flexibility to
11 adjust to changing conditions?

12 A Yes.

13 Q A couple of lines down in your testimony, you
14 suggest that the IMPs fail "to protect Reclamation's senior
15 water rights from" groundwater development. On what do you
16 base that opinion?

17 A I think the sentence the way it ends, you know,
18 somewhat speaks for itself. "The hydrologically connected
19 waters of the Republican River Basin" -- excuse me, "the
20 development of the hydrologically connected waters of the
21 Republican River Basin" are essentially what fail to protect
22 Reclamation's senior water rights.

23 Q Did the Bureau conduct some modeling analysis to
24 draw that conclusion?

25 A No independent modeling analysis.

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1 Q Did you rely on any other modeling analysis?

2 A We relied on information provided to us through
3 USGS, our own data, and I think some of that data was DNR
4 data that came from -- those numbers would have come from
5 the Compact's Groundwater Model.

6 Q So, you might have reviewed some information that
7 DNR created by running the groundwater model?

8 A That would have come, yes, that would have come
9 from the groundwater model.

10 I guess I'd like to clarify, when I said DNR, I
11 meant Nebraska DNR.

12 Q Thank you. So, if I understand what you're
13 saying, the Bureau has reviewed that data and concluded that
14 it is erroneous?

15 A I don't know what you mean.

16 Q DNR seems to be of the view that the IMPs will
17 ensure Compact compliance. Do you disagree with that
18 conclusion?

19 A Just repeat your question.

20 Q DNR seems to be of the view that the IMPs will
21 ensure Compact compliance. Do you disagree with that
22 conclusion?

23 A I remain concerned that the IMPs will not result
24 in Compact compliance.

25 Q Is that a separate issue from the failure to

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1 protect Reclamations water rights?

2 A Could you restate your question?

3 Q When you discussed the concern about the IMP's
4 failure to protect Reclamation's senior rights, is that at
5 issue different from Compact compliance concerns? I'm just
6 trying to understand how this particular concern fits in
7 with the objectives of the IMP.

8 A I think the concerns -- I apologize. I mean, I
9 have to ask you to restate it again.

10 Q That's fine. In this document, you indicate that
11 the IMPs fail to protect Reclamation's senior water rights
12 from direct and substantial groundwater development. If I
13 understood your testimony a moment ago, you indicated that
14 was because that development was impacting hydrologically
15 connected waters. Is that correct so far?

16 A Yes.

17 Q And then we discussed whether Reclamation engaged
18 in any modeling to draw that conclusion, and I understood
19 the answer to be no.

20 A We didn't do an independent model, but we may have
21 looked at data that was from the groundwater model.

22 Q Yes. And the Department of Natural Resources from
23 Nebraska provided that data. And then we got back to the
24 question of the Department of Natural Resources seems to
25 think that the IMPs will be effective to ensure Compact

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1 compliance. And maybe that's where we got off. Have I
2 introduced a new issue that's separate from this issue? Is
3 that what's causing the confusion?

4 A And then I answered that I remain concerned that
5 the IMPs would not provide --

6 Q Ensure Compact compliance.

7 A -- compliance.

8 Q Is that a different concern than the concern
9 expressed here about the impact of groundwater development
10 on Reclamation's senior water right?

11 A No, I think the concern about being in Compact
12 compliance is the protection of our senior water rights.

13 Q Okay. Do you think that the State of Nebraska can
14 be in Compact compliance without protecting the senior water
15 rights held by Reclamation?

16 A Yes.

17 Q A bit further down in the second paragraph, you
18 indicate that Nebraska water policy -- I'm looking at the
19 second line of the second paragraph, "ignores the physical
20 reality of the hydrological connection between surface and
21 groundwater sources." Can you explain the connection that
22 you're referring to there?

23 A I guess to not restate, but I think the next
24 sentence states it quite well. "The policy separation
25 between the surface and groundwater has led to an

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1 overdevelopment of the finite resources in the Republican
2 River Basin."

3 Q So, is it a legal shortcoming in Nebraska law that
4 you're seeing?

5 MR. DUBOIS: Objection to the extent it calls for
6 a legal conclusion.

7 Q (By Mr. Wilmoth) Is it a policy disconnect that
8 you're seeing?

9 A I think, yes, when you have one group, a state
10 group, NRD, I guess, is a better way to say Nebraska --
11 excuse me, Nebraska DNR managing surface water and you have
12 local control or NRD managing groundwater, that would be an
13 example of a separation of the two polices and the
14 difficulties of managing a system.

15 Q Okay, thank you. So, can you explain your basic
16 understanding of how DNR, that's the Department of Natural
17 Resources, and the NRDs, the natural resources districts,
18 interact to manage that resource?

19 A Well, I think a good example of how they interact
20 to try to manage the two resources which we're referring to,
21 surface water and groundwater, is an integrated management
22 plan or IMP that we've been talking about. That's one
23 example where they -- I think a good example to point out
24 where they interact.

25 Q And the -- what is your understanding of the

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1 purpose of the IMP?

2 A I guess I would say the general purpose of the IMP
3 is to try to manage the groundwater and surface water in
4 conjunction with one another.

5 Q You mentioned a couple of lines down there that
6 Nebraska's policy choices have led to an overdevelopment of
7 the resources of the basin. Could you just explain what you
8 mean by overdevelopment?

9 A I think generally what is meant by overdevelopment
10 there is there's more uses than there -- uses for the
11 resource than there is the resource which is water.

12 Q You testified that the development infrastructure
13 of the United States is in jeopardy. Can you explain
14 precisely what is in jeopardy and what are the jeopardizing
15 actions?

16 A My opinion of the infrastructure that is in
17 jeopardy, we have -- I think, in the next sentence it
18 indicated we have irrigation, recreation, fish and wildlife
19 benefits. I kind of break those into kind of two different
20 sets. The recreation, fish and wildlife benefits, because
21 of the decline in inflows to the reservoirs, we're not
22 seeing the benefits that could be realized for recreation,
23 fish and wildlife. And then I guess I kind of divide
24 irrigation into another component, which we have contracts
25 for with our irrigation districts and those districts are

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1 not paying the amount of money that they were in the past
2 because of the reduced water supplies to pay for the
3 distribution works and the O&M on the facilities. Their
4 ability to pay has been reduced. And --

5 Q So -- I'm sorry.

6 A I guess I didn't really have a comment, I
7 apologize.

8 Q That's okay. So, how would you describe the
9 financial health of the districts at this point in time?
10 And by the districts, I'm referring to the irrigation
11 districts, excuse me.

12 A I guess I would describe the financial health of
13 the irrigation districts as deteriorating over time. With
14 aging infrastructure and aging distribution works, there is
15 an increased need for maintenance, replacements, just
16 general care of the infrastructure put in place. And as it
17 ages, those costs increase, and with the resource for which
18 the district uses to grow crops diminishing, it becomes more
19 and more difficult to pay for those costs that come with
20 aging infrastructure.

21 Q You mention this potential that Congress
22 envisioned for irrigation, for example. What is your
23 understanding of that potential when the projects were
24 originally authorized?

25 A When the projects were initially authorized, the

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1 Bureau of Reclamation issued DPRs. I believe it's definite
2 plan reports. And those reports identified the water supply
3 that the district could expect. And subsequently, the
4 Bureau of Reclamation wrote contracts with the districts
5 based upon that expected supply of water. And without
6 getting into the details of those exact numbers or the
7 amount of acres that were expected, the supplies have
8 diminished over time since the infrastructure was built.

9 Q Is that generally true of all the Republican River
10 Basin projects?

11 A Yes.

12 Q You mentioned the definite plan reports. I'm
13 going to hand you a document that was disclosed in response
14 to the Touhy Request by the Department of the Interior.

15 We'll mark this as Exhibit -- excuse me, Exhibit
16 4, yes.

17 (Exhibit 4 was marked for identification. See
18 Index.)

19 I realize you may not have familiarity with every
20 shred of paper that was produced, so if you would, just take
21 a moment and have a look at this document and let me know if
22 you can generally identify what it's discussing.

23 A Generally, this document is discussing the average
24 water deliveries over time. First, what I'm going to
25 call -- there's two tables on the document. I'll call the

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1 first table goes through years, it looks like it goes in
2 ten-year intervals from '66 through '75, '76 through '85,
3 and on with that same succession all the way up to '96
4 through 2005. And at the end, it says, "Expected supply
5 DPR." And it looks like it just covers our Republican River
6 districts and canals.

7 Q With regard to that reference to DPR, is that a
8 reference to the definite project (sic) reports you were
9 referring to earlier?

10 A It is.

11 Q And do you see the table on the right-hand side,
12 the first column has a reference to DPR average. Is that
13 also a reference to the definite project reports?

14 MR. DUBOIS: Plan reports.

15 MR. WILMOTH: Plan reports, pardon me.

16 A It is.

17 Q (By Mr. Wilmoth) So, am I correct that the
18 expected supply referenced in the DPRs for these projects
19 was 18 inches per acre?

20 A On the first column, yes -- or on the first table
21 last column, yes.

22 Q And given your knowledge of the projects and the
23 history of their development, do you believe that was a
24 reasonable expectation?

25 A Yes.

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1 Q And was that expectation appropriate to apply
2 throughout the basin or would there be any accommodation
3 made for climatic differences throughout the basin?

4 A Not being around or part of the discussion when
5 they planned -- did these DPRs, it looks, based on the
6 information, that they used the same number throughout the
7 basin and I simply can't answer the question whether they
8 looked at climate variability.

9 Q You weren't alive when they --

10 A Right, yeah, correct.

11 Q -- developed the DPRs and so -- okay, so you don't
12 have any opinion on what they were thinking at the time.

13 A No.

14 Q In your view today as we sit here, as a water
15 manager, would it be equally reasonable to project an
16 18-inch supply in eastern Colorado and western Nebraska and
17 eastern Kansas, or would you make some accommodation for
18 climatic variability.

19 A So, if you knew what you knew when you created the
20 DPR, would you have done it differently, and that, I guess,
21 is my way of answering the question. I would take all
22 inputs into consideration that I had access to when
23 developing a water management plan in a basin.

24 Q So, it would be better to look at the information
25 you currently knew and try to make a reasonable projection

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1 instead of projecting out into the future.

2 A I guess I'd just phrase it slightly differently.
3 I would phrase it -- you would take all the information to
4 date that you had, if that's -- if you were trying to
5 project out to the future.

6 Q Now, if you look at the table on the right-hand
7 side of the page, and you look at Norton Reservoir, for
8 example, it appears to me that the average annual inflow for
9 Norton Reservoir never exceeded 77 percent of the annual
10 inflow projected in the DPR. Am I reading that correctly?

11 A The first year that we have data for, for Norton
12 for the first ten years is projecting 77 percent of the DPR
13 expected average inflow, yes.

14 Q I'm sorry, I'm not sure I heard that. I'm not
15 sure I understood that. Is this a projection in this
16 right-hand table or is this the actual data?

17 A The right-hand table, the data would be the actual
18 data from the ten-year period used.

19 Q So, if the maximum amount of average inflow
20 received at Norton never exceeded 77 percent of that
21 expected in the DPR, what does that tell you about the DPR
22 projection? Was it still reasonable in your view?

23 MR. DUBOIS: Objection to the extent that assumes
24 facts not in evidence.

25 MR. WILMOTH: You can answer that.

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1 THE WITNESS: You'll have to repeat it. I
2 apologize.

3 MR. WILMOTH: That's okay.

4 Q (By Mr. Wilmoth) Subject to the same objection,
5 if the inflow, the average annual inflow into Norton never
6 exceeded 77 percent of that projected in the DPR, does that
7 tell you anything about the reasonableness of the DPR
8 projection?

9 A Without knowing how they came to that projection
10 and then what may have changed or happened in those years,
11 '56 through '65, not knowing if it was a wet season, dry
12 season, prolonged wet, prolonged dry, I don't know if that
13 can -- to me, I can't answer whether that gives me more or
14 less confidence with the DPR average number listed.

15 Q Thank you. Let's refer back to your testimony in
16 Exhibit A -- excuse me, Attachment A to the expert testimony
17 offered by Kansas. We were discussing the congressional
18 expectation at the time that these projects were constructed
19 and the threat to the United States' investment in those
20 projects. Does that ring a bell?

21 A Yes.

22 Q And we had just had a discussion about jeopardy to
23 those interests, and if I understood your testimony
24 correctly, part of that involves a diminishing water supply
25 which compromises your customer's ability to pay. Is that

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1 fair?

2 A I'd say that's a fair assessment.

3 Q So, if all the projects are similarly situated,
4 I'd like to ask you about your efforts at Red Willow. Can
5 you generally tell us what's happening at Red Willow at this
6 point in time?

7 A The current -- currently, as of today, Red Willow,
8 the back side of Red Willow is getting a, essentially, a new
9 filter on it. A couple of years ago in October, we
10 discovered a sinkhole at Red Willow. The theory, after a
11 lot of geologists and other folks, technical folks out of
12 our TSC office looked at the -- Technical Service Center,
13 looked at the project. They determined that these cracks
14 were propagating from the base of the dam and moving their
15 way up, which formed the holes that we saw at the top of the
16 Red Willow Dam. We did a study, went through all the
17 process and procedure to get a contract to fix the facility.
18 And just in basic terms, the contractor will take off about
19 ten to 15 feet of dirt off the downstream side, or what I
20 call the back face of the dam, put in a sand/gravel filter,
21 put a geomembrane mesh over that, and then put that dirt
22 that they took off back on plus a little more. And the
23 current -- the reasoning for that is if you do have cracks
24 that propagate from the bottom of the dam for which water
25 from the reservoir can find its way through, it will have a

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1 safe filter to enter into and drain down the back face of
2 the dam into a designed drainage area so that the dam is
3 safe.

4 Q Is the intent of that to facilitate the
5 continuation of irrigation from that project?

6 A Yes. The intent of the fix is -- the way
7 it -- the recommendation now from the engineers from the TSC
8 Center was we were unable to store water above a certain
9 elevation, I think about two to four feet above dead pool.
10 We weren't allowed to store any more water, so once this fix
11 is in place, we'll be able to continue to store water for
12 recreation, fish, wildlife, and irrigation uses.

13 Q What is the cost associated with that repair?

14 A From my recollection, the awarded amount on the
15 contract was \$15.3 million, but, of course, there's costs
16 associated with preparing for a contract, for field services
17 during contracts, reviewing documentation and things like
18 that. So, I don't know what those costs will be.

19 Q The hard costs of the repair, though, were 15.3
20 million?

21 A It was an open bid contract, yeah, 15.3.

22 Q Are those costs being borne by the United States
23 or the Reclamation contractors?

24 A Policy for repayment costs for the Safety of Dams
25 Program is that if it's determined to be a Safety of Dams

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1 fix, the United States government will pick up 85 percent of
2 the cost and the folks that have -- the irrigation districts
3 that have contracts for that water are responsible for 15
4 percent of that cost.

5 Q Is that cost wrapped into their existing repayment
6 term?

7 A I'm not sure if it's wrapped into the existing
8 payment term.

9 Q Do you know if it's a lump sum due right away or
10 if it's on a term payment?

11 A In the case -- from what I recall, in the case of
12 Red Willow Dam, it was a negotiated amount with the
13 irrigation district over a period of time.

14 Q Did you conduct any kind of alternatives analysis
15 when you were determining how to make that fix to the dam?

16 A Yes. Alternatives were considered as part of the
17 corrective action.

18 Q Did those alternatives include different design
19 fixes?

20 A Throughout the process that I wasn't involved
21 with --

22 MR. DUBOIS: Tom, I'm going to stop him here.
23 This seems to be beyond the Touhy Request and it's not
24 within the scope of what Mr. Thompson's been authorized to
25 talk about. And it's also beyond the scope of what was

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1 asked of him through the request.

2 MR. WILMOTH: Let me ask this question and I think
3 it will become clear what the point of this line is. If you
4 still object, that's fine.

5 MR. DUBOIS: Okay.

6 Q (By Mr. Wilmoth) You have a statement about the
7 jeopardy of the project, yet there's an effort being made to
8 reconstruct this project. My fundamental question is, what
9 expectations or analyses did you conduct to determine that
10 it was appropriate to repair that project, if at the same
11 time it's in jeopardy?

12 MR. WILMOTH: That's the relationship between this
13 line.

14 MR. DUBOIS: Okay.

15 MR. WILMOTH: So, there's a question in there. If
16 you'd like me to restate it, I can.

17 MR. DUBOIS: I think probably putting that in the
18 form of -- can you restate that in the form of a question?

19 Q (By Mr. Wilmoth) My question, Mr. Thompson, is,
20 what analyses or scenarios did you evaluate to determine it
21 was appropriate to fix Red Willow Dam if you believe it is
22 in jeopardy?

23 A My office didn't perform the, what I call
24 corrective action study, but I think that's the analysis
25 that I would refer to that was used to determine not only

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1 what the fix should be, but if the fix -- and one of those
2 alternatives within there was breaching the facility. And I
3 am not familiar with that document enough to go through the
4 specifics of what they analyzed before they took that to,
5 essentially, Congress for approval to spend the money.

6 Q You also mentioned, getting back to your testimony
7 that certain irrigation, recreation, and fish and wildlife
8 benefits are below their potential as envisioned by
9 Congress, can you describe your understanding of that
10 potential or that vision that you're referring to?

11 A I suppose there's lots of different ways to define
12 "below their potential." I think one of the first that
13 comes to mind is the irrigation districts' repayment. When
14 we entered into new contracts for the districts in 2000,
15 their ability to pay went from the 20- to 30-percent range
16 to the one- to five--percent range. And I would describe
17 that as below their potential, because they used to pay a
18 higher amount than they currently do today.

19 Q The districts pay a portion of the fish and
20 wildlife and recreation benefits?

21 A I was referring to the irrigation districts and
22 what they pay. And it's my understanding they're not
23 responsible for paying for the benefits of the recreation,
24 fish and wildlife.

25 Q All right. But do I understand you to say that

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1 their -- that Congress envisioned some use of these
2 facilities when they were constructed for fish and wildlife
3 purposes?

4 A Generally speaking, they envision -- envisioned
5 the projects for all three that were currently mentioned,
6 irrigation, recreation, and fish and wildlife.

7 Q Do you have any understanding of that potential
8 that was envisioned at that time?

9 A Can you restate your question?

10 Q Certainly. The phrase that I'm trying to
11 understand is, these "recreation, fish and wildlife benefits
12 are below their potential as envisioned and authorized."
13 Are you referring to what Congress envisioned as potential
14 when the projects were constructed or some other potential
15 as you see it today?

16 A I guess I would answer the question that I'm, in
17 viewing their potential, the example I gave was in what I
18 would call recent history. And then I would have to go back
19 to the -- and educate myself on the history before that, but
20 I believe it's both, not only their initial potential as
21 developed, but also we can see it in their current potential
22 has been diminished.

23 Q And just to be clear on this, how far below the
24 potential are we and what do you base that on?

25 A I don't think I could put a number to -- or a

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1 percentage or a specific number to how far we're below the
2 potential, but, you know, recent years, the districts have
3 even gone to Congress to get deferments on their payment
4 because of water --

5 Q On the irrigation side.

6 A On the irrigation side for water-short years.

7 Q In this last paragraph on this page -- excuse me,
8 of the introduction, you suggest that Reclamation is
9 prepared to assist in developing a long-term solution. What
10 do you think is the best solution to the problem you
11 identify?

12 A I think if I had a solution to the problem in the
13 Republican River Basin, I'd be a rich man.

14 (Laughter.)

15 MR. WILMOTH: We'd all be out of business, though,
16 so that's no good.

17 A But maybe, with a little less flippant response, I
18 would say I don't have the solution, but what I have is a
19 group of water managers throughout the West, the 17 western
20 states -- Reclamation represents projects in all of the 17
21 western states. And I have a resource that I can bring to
22 the table to help develop a long-term solution for the
23 basin.

24 Q (By Mr. Wilmoth) We're clearly going to get into
25 this in a moment, but just to be clear, you don't believe

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1 that the IMPs represent a long-term solution, is that
2 correct?

3 A I remain concerned and I have a lot of questions
4 as to whether the IMPs will be a long-term solution.

5 Q Does that mean you don't -- you're not
6 definitively stating that they don't represent a long-term
7 solution. Can you definitively state that today?

8 A No, I cannot.

9 Q Okay, thank you. You mentioned finally at the end
10 here, the possibility of a water market. I'm curious what
11 you mean by that term and how you see that working.

12 A Well, I think there's a lot of different ways in
13 which a water market can be successful and can work. And
14 what I was doing here was trying to throw out, like I said
15 in the testimony, a potential option to establish a water
16 market. I'd just spoken with some managers in the South
17 Platte Basin. I apologize, but his name escapes me at this
18 point in time, and wanted to at least throw in an option on
19 something that, from initial conversations with, looked like
20 something that we ought to explore in the Republican River
21 Basin.

22 Q Would this be a free market concept or perhaps
23 you're not prepared to elaborate, but obviously there's some
24 interest in the concept and we're just curious what your
25 view of it is.

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1 A I think my view of a water marked can range, but
2 when you have a willing buyer and a willing seller that you
3 would have in a market situation, I think that that opens up
4 the opportunities for people to buy and sell a resource.
5 And how -- the specifics of how that would look in this
6 basin, I think would need to be developed by, quite frankly,
7 all the people in this room.

8 Q Do you see that as something different than what
9 occurred, for example, in Nebraska in 2007 with respect to
10 purchases of district water, or is that part of the concept
11 as you envision it?

12 A I think that would be a part of the concept, but
13 not what I was -- not specifically what I was referring to
14 here.

15 MR. WILMOTH: Okay, well, we're through the
16 introduction. Why don't we take a break. Fifteen minutes?

17 (Off the record from 8:47 a.m. until 9:05 a.m.)

18 Q (By Mr. Wilmoth) Mr. Thompson, I want to return
19 to the scope of your testimony and your authorization under
20 the Touhy Request. Did you receive a second request from
21 the State of Kansas recently under those regulations to
22 appear at trial?

23 A We received a letter just last week from the State
24 of Kansas. I don't have a copy of it with me.

25 Q That's fine. I just want to clarify, does the

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1 November 2011 letter from Mr. Ryan include an authorization
2 to appear at trial or is that still in process.

3 MR. DUBOIS: As Mr. Thompson pointed out, we only
4 just got the Touhy Request for Deposition, so that acutally,
5 obviously comes well after the November 14th letter.

6 MR. WILMOTH: Very well, thank you very much.

7 Q (By Mr. Wilmoth) Now, returning to your IMP
8 testimony, Mr. Thompson, under the heading Compact History,
9 you indicate about halfway down that first paragraph that in
10 the 1930s, the Bureau recognized that a compact was needed
11 to insure long-term feasibility. I'm curious what you based
12 that opinion on.

13 A I think, where the statement -- where the sentence
14 "insure long term project feasibility" comes from, I'll just
15 read the whole sentence just to --

16 Q Sure.

17 A -- kind of refresh my memory out loud, but "This
18 was needed to prevent conflict between the states to insure
19 long term project feasibility to protect the large Federal
20 investment." That -- and then as I read on in the
21 testimony, that Reclamation did a Reconnaissance Report and
22 the information contained in the Reconnaissance Report, and
23 we put it in quotes, "To avoid expensive litigation as a
24 result of possible conflicting uses of water in the various
25 states, further development of irrigation should be preceded

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1 by a three-state compact or similar agreement on the use of
2 water." So, that is why the -- I said that the states
3 should be in -- should have a compact.

4 Q So, you haven't conducted any research or have any
5 specialized knowledge of the Bureau's intent in the '30s,
6 then. Are there documents out there that you relied on or
7 are you reviewing the Compact as a whole in making that
8 conclusion?

9 A I would assume that "during the late '30s" refers
10 to when they started work on the Reconnaissance Report.

11 Q You would assume what about that?

12 A Restate the question, I guess.

13 Q Are there documents contemporaneous with this
14 period that you looked at to draw this conclusion?

15 A I don't specifically remember the date of any
16 documents within the Reconnaissance Report listed here and
17 the document that was indicated as started in 1940.

18 Q Did you review the Reconnaissance Report?

19 A I've seen the Reconnaissance Report and I've
20 looked at it. I can't say that I've read the Reconnaissance
21 Report front to back.

22 Q Do you know if that Reconnaissance Report was
23 provided in response to the Touhy Request?

24 A I believe it was.

25 Q Your references to long-term project feasibility,

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1 could you tell me what you mean by "project feasibility"?

2 A Trying not to just reword or restate the sentence,
3 but to me, project feasibility is when you build and
4 construct a project for the intended purposes that we did
5 build these projects for, that they would remain feasible
6 for the long term.

7 Q By feasible, do you mean financially viable
8 or --

9 A I think it would range from everything from
10 financially viable to, going back to the Red Willow
11 conversation, making sure that the structure is safe and can
12 store water for the intended purposes. And then, one not
13 mentioned earlier, flood control benefits that are provided
14 for the projects.

15 Q Are there provisions of the Compact that you
16 believe contain that insurance?

17 A I think later on in that paragraph, it reads that,
18 you know, "The first attempt to adopt the Compact by the
19 states was vetoed by President Roosevelt, because the United
20 States did not participate in negotiations of the Compact.
21 After participation by the United States, the Compact was
22 renegotiated and revised to include Articles 10 and 11."
23 And I think that goes to answer your question that after
24 they renegotiated, it included additional articles within
25 the Compact.

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1 Q So, Articles 10 and 11 are the ones that you are
2 referring to as ensuring this project feasibility.

3 A I'm not saying that those -- without reading those
4 articles, I'm not saying that those articles ensure the
5 feasibility, specifically.

6 Q Do you think that it is necessary to limit
7 groundwater development to ensure project feasibility?

8 A Yes.

9 Q And if that's the case, what specific provisions
10 of the Compact do you think explicitly limit groundwater
11 development?

12 MR. DUBOIS: Asks for a legal conclusion.

13 THE WITNESS: Repeat the question, please.

14 Q (By Mr. Wilmoth) Let me frame it slightly
15 differently. If a necessary precondition to ensuring the
16 feasibility of the projects is a limitation on groundwater
17 development, which provisions of the Compact do you believe
18 contain those limitations?

19 MR. DUBOIS: Same objection.

20 A I'm obviously not a legal expert. I think the
21 Compact, as I understand it, gave each state an allocation
22 to stay within and that would be the, in my opinion,
23 limitations in which the states need to stay within.

24 Q (By Mr. Wilmoth) A bit further down, you indicate
25 that Reclamation assisted the states in preparing hydrology

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1 analysis for the basin approximately when the Compact was
2 being negotiated. Can you identify those analyses and do
3 you know whether they've been provided to the states?

4 A I cannot identify those analyses and I'm not for
5 certain whether they were provided.

6 Q Okay. You mentioned that the Compact became a
7 framework for final planning and design of the federal
8 reservoir system in the basin. How did that framework
9 develop? Was that subsequent to the signing of the Compact?

10 A Could you reask your question?

11 Q Sure. You mentioned that the Compact became a
12 framework for final planning and design of the Reclamation
13 project. Who developed that framework and when did that
14 framework get developed?

15 A Well, I was not there, was not born at the time.
16 But just reading the sentence out loud, after the Compact
17 was finalized, the water allocation became the framework for
18 final planning and design of the system. I think that
19 answers the question.

20 Q So, getting back to your earlier statement about
21 the allocation being the limitation within which the states
22 have to live, that facilitated in the design of the project?

23 A The projects, from my understanding, were designed
24 to operate within the Compact so that the states wouldn't be
25 in violation of the Compact. The projects were designed

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1 to -- well, I think it might actually go on to say what I'm
2 trying to say. Let me read a few document pages here.

3 Q Uh-huh.

4 A I think kind of the wording I was looking for, I
5 found it here in the last paragraph of that section,
6 "Reclamation believed by acquiring the necessary water
7 rights and designing its projects within each state's
8 allocation -- or each state's allocated share of the water,
9 the water supply for those federal projects would be
10 protected against further water development."

11 Q Do you know whether the State of Nebraska was
12 consulted about that design?

13 A I don't know the answer to that question.

14 Q Do you know what Reclamation anticipated with
15 regard to groundwater development in the 1940s? By that I
16 mean, whether it would occur, how much might occur?

17 A I don't know from the 1940s the extent to which
18 Reclamation knew about or expected to know about the
19 development of groundwater.

20 Q Toward the end of this page under the heading
21 Compact Accounting, you indicate that essentially
22 groundwater use has been increasing relative to surface
23 water use, consumptive use, excuse me. Do you see that
24 reference? The last sentence there.

25 A Last sentence, "Groundwater consumptive use has

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1 gradually increased over time while there has been a sharp
2 decline in surface water consumptive use." Yes.

3 Q Does the Compact differentiate between groundwater
4 consumptive use and surface water consumptive use?

5 A It's my understanding that it does not.

6 Q I'm going to hand you a document that was provided
7 to us in response to the Touhy Request.

8 (Exhibit 5 was marked for identification. See
9 Index.)

10 Could you take a look at this graphic and just
11 identify it for me?

12 MR. WILMOTH: This is Exhibit 5 to the deposition,
13 by the way.

14 A The graphics title is Inflow into Enders and
15 Number of Wells by Completion Date in Chase County,
16 Nebraska. So, there is -- I typically refer to this graph
17 as an X graph. The lines on the graph typically show an X,
18 but the registered irrigated wells start in -- it looks like
19 nearly 1950 and go all the way up to 2006, and they kind of
20 gradually increase through the mid- to late-'60s and then
21 sharply increase through the mid-'80s and then gradually
22 increase from the mid-'80s on to 2006. And then the other
23 scale on the graph, the left-hand side is inflow into
24 Enders, which is kind of a jagged line, not as smooth as the
25 other one, but it starts also in 1950 and shows kind of a

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1 sporadic change until about the mid-1960s where it shows a
2 decline pretty much -- with the exception of a few bumps in
3 the graph to 2006.

4 Q Do you recognize this graphic? Is this something
5 you're familiar with?

6 A This looks like a graphic that was produced by
7 Reclamation.

8 Q And what would be your typical use of this
9 information?

10 A I believe this graphic was used in testimony on
11 some earlier IMPs in the basin.

12 Q Do you draw from this graphic some conclusion
13 about the relationship of inflow to Enders and the number of
14 wells by completion date in this county?

15 A Yes.

16 Q Can you tell me what the conclusion is?

17 A From just looking at this graph, it would show
18 that as the number of registered wells increased in the
19 county, the inflows into Enders decreased.

20 Q Do you attribute the decrease in inflows to the
21 increase in wells?

22 A I think the decrease in inflows as it relates to
23 the -- excuse me, the decrease in inflows as it relates to
24 the increase in registered wells in the county, I draw the
25 conclusion that they had an effect on the inflows at

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1 Enders -- into Enders Reservoir.

2 Q Can you describe the nature of that effect and the
3 scope of that effect?

4 A I'm not sure what you mean.

5 Q What effect do they have -- what effect do wells
6 have on inflows into Enders?

7 A I think, as you just look at this graph, the
8 effect is that the wells have -- the wells affect streamflow
9 and as you get more wells, you get less streamflow.

10 Q Are there any other factors that affect
11 streamflow?

12 A Participation -- or rainfall, excuse me.

13 Q And does this tell us anything about the climate
14 patterns during this period?

15 A This graph does not have any accumulated rain flow
16 averages or rainfall on the graph. I think that was
17 provided in other parts of the documentation.

18 Q Do you know generally what was going on in
19 Colorado west of the state line at this time with regard to
20 wells?

21 A With regard to wells? I've seen graphs that show
22 the amount of registered wells in Kansas, Colorado, and
23 Nebraska as a total, and so I believe they leveled off much
24 earlier than they did in Nebraska.

25 Q Does this graphic tell you anything about the

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1 effect of really any other factors other than the number of
2 wells? For example, conservation practices or --

3 A No. It simply has two data points. It has the
4 year across the bottom, registered wells on one side, and
5 inflow on the other.

6 Q And some of those wells in Chase County are below
7 Enders, aren't they?

8 A I'd have to get out my map, but I would assume if
9 Chase County is -- Enders is in Chase County, some would be
10 above and some would be below.

11 Q Is this the kind of thing that you rely on to
12 support your testimony on the IMPs?

13 A This is an example of data that would be used to
14 support the testimony in the IMPs.

15 Q And is there any modeling information or any
16 analyses that you have conducted that identify the effect of
17 these wells on inflows? Or is this simply just a plot of
18 statistics?

19 A This particular graph is a plot of statistics and
20 I think as I, a reasonable person looks at it, and as you
21 graph and look at other data such as rainfall in the basin,
22 whether it's increasing in time or decreasing in time, and
23 you look at averages of inflows into the reservoirs
24 increasing and decreasing in time and you have groundwater
25 use increasing, the reasonable person comes to the

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1 conclusion that that has an effect on streamflow.

2 Q Are any of those well owners customers, if you
3 will, of Reclamation? Are they Reclamation contract
4 holders?

5 A I can't say definitively in Chase County how many
6 well owners might also be part of an irrigation district.
7 But I think one would reasonably assume there's a lot of
8 irrigators in the basin that have both groundwater wells and
9 surface water irrigation district -- or are within the
10 surface water irrigation district boundaries.

11 Q Is that generally true throughout the basin that
12 Reclamation project customers are also well owners?

13 A I think that's generally true, yes.

14 Q But you're not sure what the extent of that
15 relationship is?

16 A In Chase County? No.

17 Q Throughout the basin, just generally, do you have
18 any idea of statistically how many Reclamation contract
19 holders also use groundwater to irrigate?

20 A I don't know.

21 Q Getting back to your testimony, you indicate that
22 the current IMPs allow for the unreasonable use of surface
23 water supplies to make up for deficits caused by years of
24 groundwater overuse. Can you explain what Reclamation views
25 as an unreasonable use of surface water?

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1 A Just to read the sentence out loud, "This draft
2 IMP continues to allow for the unreasonable use of surface
3 water supplies to make up for deficits caused by years of
4 groundwater overuse." And your question was the --

5 Q My question was, in Reclamation's view, what is an
6 unreasonable use of surface water supplies? Is that a
7 reference, for example, to Nebraska's purchases of surface
8 water in 2007, for example?

9 A No. What the Bureau was trying to -- and I was
10 trying to highlight there by the unreasonable use of surface
11 water supplies, you know, we have a lot of, as we stated in
12 here, a lot of concerns about the IMP and we continued to
13 have a lot of questions that remained unanswered with
14 regards to unreasonable use of surface water supplies. I
15 think you could go back to our September 30th letter and it
16 would highlight better what we thought were unreasonable
17 uses of surface water supplies.

18 Q Okay, we'll talk about that in a moment.
19 Fundamentally, does the Bureau contend that groundwater uses
20 should be incorporated into the prior appropriation doctrine
21 and regulated like, for example, in Colorado some of those
22 uses are?

23 A I believe the Bureau wants to protect its senior
24 right or its senior water use right and I understand,
25 although I'm not an attorney, I do understand there's a

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1 difference in prior appropriations in Nebraska for
2 water -- surface water use and correlative rights for
3 groundwater use, but having those developments in
4 groundwater use negatively affect the developments of
5 surface water that was developed prior to the groundwater
6 use is something the Bureau of Reclamation has an interest
7 in.

8 Q So, whether or not it's formally called the prior
9 appropriation system or brought into the prior appropriation
10 system, am I understanding you to say that the principle of
11 regulating this "first in time, first in right" management
12 objective is what the Bureau seeks at this point?

13 A I guess I wouldn't state it as the Bureau seeks,
14 but I guess I would restate it as the Bureau wants to
15 maintain their water right and the uses for that water
16 right, and things that have harmed that water right
17 subsequent to the development and infrastructure being
18 built, we want to protect our projects.

19 Q So, would curtailing wells that post-dated your
20 right effectively do that in your view?

21 A That would be, I think, along the lines of making
22 everything "first in time, first in right."

23 Q Would that have the effect of protecting your
24 interests as you see them?

25 A I think a good example is when you just stick to

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1 surface water, when you're a junior, you're a junior, and a
2 senior can call you out and take your water. And I do view
3 the subsequent development as junior to our development.

4 Q You testified earlier, I think, that you weren't
5 aware of the Bureau's views in the '30s and '40s about
6 groundwater expectation, is that right?

7 A I haven't -- in my opinion, I haven't thoroughly
8 read that document that we were referring to then, and, no,
9 I wasn't around and haven't done the history to know the
10 Bureau's views -- thoroughly know the Bureau's views from
11 the late '30s and early '40s.

12 Q So, you don't know whether the Bureau had an
13 expectation that its projects would be protected from
14 groundwater development or not? Certainly, there may be
15 that expectation today. I'm just asking --

16 A I don't -- you're -- I do not know their
17 expectations from that time period.

18 Q There's a lot of discussion throughout the
19 document concerning equity among surface water users and
20 groundwater users. By that -- well, let me ask what you
21 mean by that? If you prefer, we can defer that question.
22 We'll get to that in sections, if you like.

23 A I was just going to try to find where we talked
24 about it in this.

25 Q Why don't we just work through it then? Do you

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1 recall appearing in the arbitration that preceded this
2 action?

3 A I do.

4 Q And you have some discussion of that in your
5 report on -- excuse me, your testimony on page 3. You
6 testified that without additional groundwater controls in
7 Nebraska, surface water supplies will continue to decline
8 and make things more difficult for Nebraska to comply with
9 the Compact. Is that a fair summary of your view at that
10 time?

11 A Yes.

12 Q Can you tell me what technical analysis that
13 opinion is based on? Did you conduct any model runs to draw
14 those conclusions, for example?

15 A We did not conduct any model runs.

16 Q Did you rely on anyone else's work to draw that
17 conclusion?

18 A As we looked at the data and the trends for the
19 inflows into the reservoirs, we -- to my knowledge we
20 haven't seen where the inflow into the reservoirs is
21 increasing or stabilizing. It's continued to decreasing --
22 and we've -- throughout this testimony and subsequent
23 letters to the State, we've asked relatively consistently,
24 do these plans continue to have inflows as decreasing,
25 stabilizing, or increasing. A simple question that we

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1 haven't received an answer from the State on that.

2 Q If the information you were requesting showed that
3 it was stable or increasing, would that satisfy your
4 concern?

5 A I would have to see the information on -- as
6 to --

7 Q Fair enough.

8 A I would have to see that kind of information.

9 Q When you refer to evaluating conditions and
10 situations that help you draw those conclusions, are you
11 referring to things like this Exhibit 5 to the deposition?

12 A That would be one item we'd refer to, yes.

13 Q Can you explain your view of why surface water
14 supplies are necessary to Compact compliance from Nebraska's
15 standpoint and its ability to comply?

16 A I guess just from a general viewpoint, you have to
17 have a -- water traveling from one state into the subsequent
18 state. You know, I've heard all sorts of theories
19 throughout the basin as we've had conversations, you know,
20 but there needs to be an amount of water moving between
21 those states depending on each state's use.

22 Q Is that another way of saying the states need to
23 live within their allocations, essentially?

24 A I think that's, yeah, I think that's a fair way to
25 say it, is the states have to live within their allocations,

Aaron Thompson -- direct

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1 and, I guess, that each state use their full allocation
2 that -- and nothing more, nothing less than -- I guess I
3 don't know if -- that's too hypothetical, I guess, the
4 situation how that would work.

5 Q Okay. You also testified that "groundwater
6 consumptive use must be reduced to a level that will allow
7 base flows to recover to an extent that will allow Nebraska
8 to consistently comply with the Compact in both the near and
9 long term." Can you tell me, first of all, what the
10 relationship of base flows is to Nebraska's ability to
11 comply with the Compact?

12 A Well, since the Republican River is not a -- it
13 doesn't receive runoff from snowfall in the mountains. It
14 receives water one of two -- two basic ways, from base flows
15 and from rainfall. And so, if one of those two decreases or
16 increases, it has an effect on the system, so if base flows
17 increase, the river system will see an increase.

18 Q And how would base flow increase?

19 A I think from a basic point of view as groundwater
20 levels rise or fall, that has a direct relationship to base
21 flows into the stream.

22 Q Does there need to be a hydrologic connection,
23 then, between the water table and the river to establish a
24 base flow?

25 A A very good -- we would strictly be referring to

Aaron Thompson -- direct

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1 where the groundwater is hydrologically connected to the
2 stream.

3 Q So, for example, in portions of northwest
4 Kansas -- or excuse me, yeah, northwest Kansas or
5 southwestern Nebraska where there's a disconnect, you
6 would -- you're talking about actually restoring that
7 connection?

8 A If there's a portion of the basin where the
9 hydrologic connection has been broken, then to receive more
10 base flows or to increase the base flows, you would have to,
11 yes, re-establish that connection.

12 Q Okay, so when you talk about groundwater
13 consumptive use being reduced to a level that will allow
14 base flows to recover, are you saying that Nebraska should
15 be managing groundwater, and presumably Kansas, to
16 re-establish that hydrologic connection?

17 MR. WILMOTH: Notice how I left you out of that,
18 Pete.

19 A What I'm indicating here is -- the sentence really
20 doesn't talk about whether the connection's been broken or
21 not, but I think the basic objective of it is to highlight
22 that as groundwater consumptive use is reduced and the
23 groundwater levels come up, base flows will increase. And
24 that -- you're right. This testimony was for Nebraska only,
25 but that would apply to any other situation in any other

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1 state from a basic point of view.

2 Q But you don't necessarily know what level of
3 reduction in groundwater consumptive use is needed to make
4 that happen, do you?

5 A I guess I don't understand the question.

6 Q Do you know how much groundwater consumptive use
7 must be reduced to allow base flows to recover in that way?

8 A I think that would just vary across the basin and
9 across the three states and basinwide that would vary as to
10 where groundwater levels have decreased the most. And in
11 some cases, there's a groundwater mound. So, I think that
12 would -- I think the answer is it would vary across the
13 basin.

14 Q Have you conducted any analysis to estimate what
15 that level of reduction would be?

16 A Maybe a little more specific with your question.

17 Q Has Reclamation conducted any modeling analysis or
18 other analysis to identify the amount of the reduction in
19 groundwater consumptive use that would be required to
20 re-establish base flows as you're discussing in this
21 document?

22 A The Bureau of Reclamation has not conducted the
23 model analysis to determine in each section of the basin or
24 any section of the basin what that level or reduction would
25 need to be specifically to that section.

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1 Q Okay. A little later on there you testify that
2 "the only way Nebraska can meet the IMP goals of 'sustaining
3 a balance between water uses and water supplies'" is to
4 recover base flows in this way. Am I understanding that
5 correctly? At the top of page 4 there, "This is the only
6 way Nebraska can meet the IMP goal."

7 A Yeah, I guess if -- the statement, I think is
8 still accurate. "This is the only way Nebraska can meet an
9 IMP goal of 'sustaining a balance between water uses and
10 water supplies.'"

11 Q Recovering base flow is the only way that Nebraska
12 can meet the IMP goal that you're referring to? I'm just
13 reading that sentence and the preceding sentence in
14 conjunction and trying to understand the point.

15 A Yes, the sentence is referring to the previous
16 sentence of reducing groundwater consumptive use.

17 Q To the point that base flow is recovered.

18 A Reduced to a level that will allow base flows to
19 recover.

20 MR. WILMOTH: Let's take a quick break, come back
21 in ten.

22 (Off the record from 9:53 a.m. until 10:05 a.m.)

23 Q Mr. Thompson, just a couple of additional
24 questions on this base flow concept. Is groundwater pumping
25 the only factor that influences base flow?

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1 A No.

2 Q What are the other factors that might influence
3 base flow?

4 A I think you have the groundwater that influences
5 base flow. You have rainfall that, I guess, what I was
6 thinking percolates into the ground and comes back as base
7 flow. You have -- I'm thinking of that standard -- that
8 model where you always show the cloud, the stream, the
9 system, you know.

10 Q The hydrologic cycle?

11 A Thank you, hydrologic cycle. And there's all
12 these things that have inputs and it either goes towards the
13 stream, away from the stream.

14 Q Sure. And is the Republican River generally a
15 base flow-dominated system?

16 A The Republican River relies highly on base flows.

17 Q Is it dominated by base flow or surface runoff, or
18 do you know?

19 A I don't know the exact percentage of each one.

20 Q And when you speak in terms of developing a plan
21 to restore base flows, does Reclamation give any
22 consideration to socio-economic effects of plans that would
23 do that? For example, the economic impact on producers.

24 A When Reclamation makes statements in regards to
25 the need to get back to -- or the need to, excuse me,

Aaron Thompson -- direct

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1 increase base flows, I think there's a lot of components
2 that are considered, Compact compliance, project viability
3 from our part -- from the Reclamation's, and then, of
4 course, project viability of a private irrigator.

5 Q I'm going to hand you a document entitled Nebraska
6 IMPs Key Issues to Consider. And we'll mark this as Exhibit
7 6 to the deposition.

8 (Exhibit 6 was marked for identification. See
9 Index.)

10 If I understood you, Mr. Thompson, you just drew a
11 distinction between Compact Compliance and project
12 feasibility, of course, Reclamation project feasibility.
13 Are you familiar with this document that I just handed you?

14 A I've seen this document, yes.

15 Q Do you have any idea who authored the document?

16 A I don't know the specific person that authored the
17 document, but it would have been authored by -- I think with
18 input not only from my office, but from the Regional Office.

19 Q Does that heading NKAO refer to the
20 Nebraska-Kansas Area Office?

21 A Correct.

22 Q This document indicates that complying with the
23 Compact should be a secondary goal of the IMPs after first
24 meeting the goal of sustainability. Do you see that?

25 A Yep.

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1 Q First of all, what does Reclamation mean by
2 sustainability in that context?

3 A The document goes on to say, "Meeting the goal of
4 sustainability will go a long way in providing Compact
5 compliance and minimizing the need for drastic measure
6 during water-short years." There's a -- there's currently a
7 team in the basin trying to define the term sustainability
8 and I've been to a few of their meetings. It proves to be a
9 very difficult term to define, but in general terms, when I
10 think of sustainability I think of water uses meeting water
11 demands.

12 Q Like a safe yield principle, is that -- inflow
13 equals outflow, so to speak?

14 A So to speak. Inflow -- I want to clarify, I don't
15 quite know what you mean by safe yield, but inflow meeting
16 outflow.

17 Q Is that a concept that generally applies to
18 surface water projects?

19 A Well, I think that's a concept you can apply to
20 any type of project whether it's your own checking account,
21 revenue in, revenue out, obviously, surface water enough to
22 meet the irrigated acres for any given season, carry folks
23 through water-short times, through droughts.

24 Q So, why does Reclamation view that as a goal
25 that's more important than ensuring Compact compliance?

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1 A Well, I think, you know, we have to look at the
2 context of the memo here. It's an internal document we use
3 and we were trying to think, for lack of better words,
4 outside the box. And we were working with the Lower
5 Republican NRD in the development of their IMPs and we were
6 trying to put down in writing some concepts that we were
7 developing over time as we worked with the Lower Republican
8 NRD for developing their IMP. And so I refrain to say
9 Reclamation versus Nebraska-Kansas Area Office view. And I
10 think the last sentence of that sums it up quite well. The
11 goal meaning sustainability, all the inputs equal the
12 outputs, it will go a long way in achieving Compact
13 compliance.

14 Q When Nebraska is in compliance with the Compact,
15 are Reclamation's interests essentially protected?

16 A Not necessarily.

17 Q So, Compact compliance is something different than
18 this sustainability objective.

19 A I think they can be separate, yes. I think
20 they're connected, though, too. If you --

21 Q But the mere fact that Nebraska is living within
22 its allocation doesn't necessarily satisfy Reclamation's
23 concerns about its project, is that correct?

24 A I was -- I apologize, I don't mean to be rude, but
25 you did interrupt what I was thinking.

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1 Q No problem. I was the rude one.

2 A And I have to admit I just lost track of what I
3 was going to finish and your current question.

4 Q I'm the rude one and I apologize. Let me restate.
5 If Nebraska is in compliance with the Compact, what
6 interests of Reclamation are not being adequately protected?

7 A Well, you can have Compact compliance without
8 equity within the basin. And I guess that would just depend
9 on how -- it would depend on if you have -- what type of
10 Compact compliance you have and how you got there. And if
11 it means not allowing surface water users to store water
12 when they typically, historically were able to store water
13 and you were able to achieve Compact compliance but not have
14 as much storage water for the surface water users to use to
15 carry them through drought, which is what the reservoirs are
16 used for, then you could have Compact compliance and
17 essentially frustrating the federal projects.

18 Q So, when you talk about this prioritization, isn't
19 the real concern of Reclamation here the viability of the
20 projects and not Compact compliance?

21 A I think Reclamation's concerned with both.

22 Q But the viability of the projects is the primary
23 concern. Is that a fair assessment?

24 A I guess I've never -- I can't recall placing an
25 emphasis on one or the other that -- I guess, to restate

Aaron Thompson -- direct

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1 that, is the goal achieving Compact Compliance? I think the
2 way the Bureau has always tried to frame that through its
3 testimony and things like that would be that if you have
4 sustainability, if you have this equitable use in the basin,
5 it will go a long way in achieving Compact compliance.

6 Q But if I ask you to rank the Bureau's concerns
7 today as expressed in these documents and this particular
8 document, isn't the particular concern, the paramounted
9 concern to ensure the projects are adequately protected?

10 A In this particular document, it clearly says
11 providing sustainability should be a primary goal of each
12 NRD. Meaning Compact compliance should be secondary.
13 That's specifically what this document says.

14 Q And this is a document that you worked with the
15 Lower Republican Natural Resources District on?

16 A This is -- the Lower Republican Natural Resource
17 District did not work on this document. As we were working
18 with the Lower Republican NRD, that is the time when the
19 Bureau of Reclamation created this document to try to think
20 about ideas, think about where we're at, and evaluate all
21 the interests in the basin.

22 Q The document expresses some concerns about a
23 proliferation of irrigated acres after the Final Settlement
24 Stipulation was signed. Can you explain the nature of that
25 concern?

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1 A I think No. 2 in the document highlights that
2 concern quite well. I'll just read a couple sentences.
3 "The intent" -- I'll start with the first one. "The first
4 issue addressed in the FSS is a moratorium on new wells.
5 The intent of this was to cap new development preventing an
6 expansion of irrigated land after 2002. It is our
7 understanding that while no new wells were drilled after
8 2002, there was a large number of new irrigated lands added
9 after 2002 under wells that were previously drilled but not
10 developed."

11 Q And you indicate there that that seems to violate
12 the intent of the FSS. Can you explain what provision of
13 the FSS that violates in your view?

14 A I cannot.

15 Q Do you know what has happened to groundwater
16 consumption in Nebraska since the FSS was signed?

17 A I believe in our Touhy Request we submitted
18 some -- there's some data that shows groundwater consumptive
19 use trend lines.

20 Q And what does that trend show since 2002?

21 A I can't say without looking at the graph what it
22 shows since 2002. There's thousands of documents. I just
23 can't remember them all.

24 Q I understand. It's a lot of material. All right,
25 let's return back to the concerns and expectations

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1 discussion on page 4 of Attachment A to the Kansas filing.

2 MR. DUBOIS: Would it be easier to refer to the KS
3 Bates number at the bottom --

4 MR. WILMOTH: Sure, KS806.

5 MR. DUBOIS: Thanks.

6 MR. WILMOTH: Sure.

7 Q (By Mr. Wilmoth) We talked a little bit about
8 Reclamation's priorities a minute ago and this statement
9 indicates that Reclamation is concerned about Nebraska's
10 failure to comply but even more concerned about the
11 continuing depletion of inflows to federal reservoirs. Does
12 this mean that Reclamation's priority, again, is protecting
13 those inflows?

14 A Could you help me out what sentence you just read
15 on the --

16 Q Sure. The first two sentences under Concerns and
17 Expectations.

18 A Could you repeat the question now that I've read
19 those two sentences?

20 Q Do these two sentences reflect a priority for
21 Reclamation to protect inflows to its reservoirs?

22 A As I read the two sentences, they don't indicate a
23 priority over one issue or the other.

24 Q So, the terminology you're even more concerned
25 doesn't indicate any priority between those two things?

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1 A I guess, as I read those two sentences, we say
2 Reclamation is concerned, and then so that -- from my
3 writing style, Reclamation, you don't have the exact same
4 sentence, so you don't have two sentences that start with
5 very concerned and the second sentence start with very
6 concerned. It's just written differently.

7 Q Okay.

8 A I don't, as I, of course, signed the document, but
9 had help from numerous staff members to write it, I wouldn't
10 necessarily use the word "priority" over one over the other.
11 I would just stick with the terms used, concerned, very
12 concerned, and even more concerned.

13 Q Can you tell me who else had input into the
14 document?

15 A Well, people from my staff on the operations side
16 of the house, numerous folks within the Nebraska-Kansas Area
17 Office, and then folks within the Regional Office within the
18 hydrology group I know had input. And then from there, it
19 goes through a review process up in the region by my former
20 title, which is the Special Assistant to the Regional
21 Director, takes it around for a review process. And, you
22 know, I don't know exactly who that -- where it goes,
23 actually, from there.

24 Q Who in your office was involved?

25 A Oh, specific names?

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1 Q Yes, please.

2 A Craig Scott, Bill Peck, Mark Rouse, Jack Wergen.
3 Well, at the time of -- I was trying to recollect who had
4 retired. Those two people had retired, so --

5 Q Do you know any specific parties from the Regional
6 Office who were involved?

7 A Gordon Aycok, Pat Erger, the Special Assistant at
8 the time. That changes a lot, so I can't remember who would
9 have been there in June of 2010.

10 Q What kind of technical support you mentioned, I
11 think, was provided by the Regional Office? Was any
12 modeling conducted to support any of this testimony? By
13 Reclamation, excuse me.

14 A As I've answered before, Reclamation didn't
15 perform any independent modeling.

16 Q Can you just generally tell me -- obviously, we've
17 talked about Exhibit 5 here. Can you generally tell me what
18 other types of information you might have relied on in
19 formulating this document?

20 A I think --

21 Q I think you might have mentioned a USGS input.

22 A Based on my memory, we would have had -- thanks
23 for helping me there, the USGS maps of groundwater levels.
24 It seems like the State, in conjunction with federal
25 agencies, put out a map. That might be the one that I'm

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1 thinking of. Frenchman Valley Appraiser Report, as they
2 went through that, DNR from Nebraska did do some modeling
3 runs on that. Compact data that was provided to us during
4 the annual Compact meetings.

5 Q It sounds like most of this was publicly
6 accessible information.

7 A Yeah.

8 Q Were you responsible, then, ultimately for kind of
9 assembling this data and analyzing it and summarizing it in
10 these comments or was that something that was done at the
11 Regional Office? How was this brought together is my
12 question.

13 A I guess the easiest way to answer that is that
14 it's -- the data was brought together through a lot of
15 different processes. It takes a lot of time and work to
16 develop this kind of statement and testimony. And I, alone,
17 wasn't responsible or -- to compile all the information from
18 all the different folks that provided input. I think it
19 was -- I think the answer to your question, it was
20 definitely a combination between the Regional Office and my
21 Area Office employees.

22 Q Is there any portion of this for which you would
23 assume primary responsibility?

24 A I guess when I hear the term, in this case, when I
25 hear "primary responsibility," I would think I'm primarily

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1 responsible for the whole thing.

2 Q Let me rephrase that. Primarily responsible for
3 the written text, actually creating the written text and the
4 content. Are there any sections, for example, that you were
5 principally the author on?

6 A I don't think we could point to an entire section
7 and say I authored any entire section of this, but my input
8 is definitely throughout the document as we developed it and
9 eventually signed it.

10 Q As we noted earlier, you expressed a concern here
11 about the continuing depletion of inflows to federal
12 reservoirs. Again, I'm on page KS806. And if I understood
13 you correctly, there -- we have established a distinction
14 between Compact compliance and ensuring inflows to federal
15 reservoirs. Is that an accurate characterization?

16 A I would guess, throughout our discussion, we've
17 characterized that there is a difference between, or can be
18 a difference between Compact compliance and equitable and
19 historic and future inflows in the reservoirs.

20 Q And we also talked about the fact that the
21 projects were designed to operate within the state's
22 allocations under the Compact, is that correct?

23 A We did.

24 Q I want to try to understand the connection between
25 these two lines of testimony. The projects are designed to

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1 operate within the allocations. If the state is in
2 compliance and is living within its allocation, then why is
3 the project not operating as intended?

4 A The states, as agreed upon by the Final Settlement
5 Stipulation, both Colorado and Nebraska have, as far as
6 accounting numbers have been agreed upon, were out of their
7 allocation, were not in compliance.

8 Q My question, though, assume the state is in
9 compliance. If the states are in compliance and the
10 projects are designed to operate within their allocations,
11 why are the projects not operating as intended? Under the
12 Compact, not under some other authority, perhaps, but under
13 the Compact.

14 A The projects aren't operating as intended, because
15 the inflows in the projects have decreased over time.

16 Q A little further down here you testify that the
17 IMP fails to address impacts from past groundwater use and
18 future groundwater declines that will essentially deplete
19 streamflow. I just want to confirm you've conducted no
20 modeling analysis to draw that conclusion, correct?

21 A No modeling analysis, correct. But I don't think
22 that means that we didn't look at information provided by
23 the states that would show that groundwater increased,
24 decreased, or stayed the same.

25 Q And do you attribute all of the inflow reduction

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1 to consumption in Nebraska?

2 A No.

3 Q What other factors are at play in that case?

4 A I guess I'd like to clarify that -- are you -- if
5 we're talking about groundwater pumping. Groundwater
6 pumping has occurred in Nebraska, Kansas, and Colorado. And
7 Bonny Dam is a good example where inflows have also
8 decreased there because of groundwater pumping.

9 Q Have you conducted any analysis to assign a
10 relative proportion of impact to each of the states'
11 consumption?

12 A I'm not sure I understand your question.

13 Q Do you know, for example, how much relative impact
14 Kansas pumping has on your projects versus Colorado pumping?

15 A I think it -- as we look at data compiled by the
16 states that show the impacts from groundwater pumping, I
17 don't think they get specific enough from what I recall to
18 show the impact specifically to each project. They
19 typically show the impacts to the state.

20 Q Overall through the whole basin you're saying?

21 A Through the basin in that particular state.

22 Q Okay, so, for example, with respect to Enders, if
23 I understand, you don't know the relative proportion of
24 impact attributable to Colorado or Nebraska. You, in other
25 words, have a reduced inflow figure, but you don't know the

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1 extent to which Colorado pumping or Nebraska pumping caused
2 that, do you?

3 A Correct. On Enders Reservoir, I don't know -- I
4 just want to rephrase it so I know I heard it right.

5 Q I may not be very articulate.

6 A Well, in Nebraska -- or Enders Reservoir in
7 Nebraska has seen decreased inflow due to groundwater
8 pumping. And this has come from both Nebraska and Colorado,
9 and I don't know the total effect from Nebraska's portion
10 versus Colorado's portion. And I don't know if that was
11 looked at in the Frenchman Valley Appraisal Study or not.

12 Q And I think you mentioned earlier that climatic
13 differences or climatic issues such as precipitation might
14 have an impact, is that correct?

15 A That's correct.

16 Q Would agricultural conservation practices have an
17 impact?

18 A Yes, they would.

19 Q Do you know if district customers ever recapture
20 their return flows, for example, using wells? And by return
21 flows, I'm referring to surface water applied irrigation and
22 the return flows that result from that. Do those well
23 owners ever capture that return flow?

24 MR. DUBOIS: In aid of an objection, are we still
25 talking about Enders --

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1 MR. WILMOTH: Yes.

2 MR. DUBOIS: -- and that project or are we talking
3 about statewide?

4 MR. WILMOTH: I'll start with Enders.

5 Q (By Mr. Wilmoth) Are there any customers of
6 Reclamation at Enders who utilize wells to capture surface
7 water return flow?

8 A I guess -- the question is -- I guess I'm not
9 supposed to rephrase your question, but --

10 Q It's okay. Do you understand the fact pattern
11 that I'm trying to establish?

12 A I'm going to ask you to rephrase that one more
13 time.

14 Q Do you understand the fact pattern I'm
15 establishing? You have a surface water irrigator with a
16 Reclamation contract.

17 A Yep.

18 Q That Reclamation user also has a well which he
19 pumps. My question is, when he applies his surface water
20 irrigation rights and that manifests itself as essentially
21 percolated water that would otherwise return to the system,
22 do any of those individuals, to your knowledge, capture that
23 water using wells before it returns to the river?

24 A We have a number of people within our district
25 boundaries that have both surface water on their property

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1 and then what we call commingled. They also have
2 groundwater wells. And assuming that those are -- one year
3 they use surface water. The next year they use groundwater.
4 Then they would receive the benefits from the recharge
5 of -- recharge benefits they would receive from applying the
6 surface water.

7 Q So, some of your customers may be capturing water
8 that would otherwise manifest itself as return flow.

9 A Yes.

10 Q And is that true throughout the basin?

11 A I'd say it's -- I'd say generally across the basin
12 you have, within district boundaries, you're going to have
13 commingled acres in the district boundaries.

14 Q Do you have any guess at percentage of how many
15 are commingled basinwide?

16 A I personally don't.

17 Q Do you know if you keep statistics on that
18 information at Reclamation?

19 A I don't know the extent of the information that
20 shows groundwater wells on surface water acres. It seems
21 like something that was provided in a Touhy Request a couple
22 years ago.

23 Q Okay, in response to one that perhaps Kansas filed
24 in the arbitration?

25 A Well, we had two Touhy Requests, we had one from

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1 Nebraska and one from Kansas.

2 Q It's been a long time, hasn't it?

3 A Yeah. So, it seemed -- from my recollection, it
4 seems like that was a topic of those requests and I simply
5 can't remember.

6 Q Have you given any thought to what a -- strike
7 that. In this particular document, you mentioned that the
8 groundwater pumping in the Middle Republican affects the
9 water supply for several canals associated with the project.
10 Can you tell me which canals you were referring to there?

11 MR. DRAPER: Where are you referring to in the
12 document, if you please?

13 MR. WILMOTH: This next paragraph, John, the
14 second paragraph under Concerns and Expectations, it talks
15 about directly affecting the water supply for several
16 canals.

17 Q (By Mr. Wilmoth) I'm just curious which canals
18 you were referring to.

19 A You know, without getting out a map of the Middle
20 Republican NRD and where that crosses our boundaries, I
21 honestly just can't think of which -- I don't want to be
22 incorrect, and I can't think of which canals would be
23 specifically in the Middle Republican.

24 Q You mentioned a little further down there that
25 Reclamation expects the water rights associated with the

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1 projects to be protected by Nebraska and the NRDs. That's
2 the first sentence of that last paragraph under the heading.
3 Could you elaborate on that expectation just a bit, please?

4 A Well, I think, you know, we talked about this
5 earlier. Reclamation when they built their projects went to
6 the State and obtained water rights and I think it's just
7 pretty clear that -- I'm sorry, pretty clear from the
8 sentence that Reclamation expects those rights with the
9 projects to be protected and not harmed or damaged in any
10 way.

11 Q Is that a reference maybe to continuing to operate
12 for the authorized purposes in the following sentence? Is
13 that what you mean by "protected"?

14 A I think the sentences are related, but I'm not
15 sure -- I think the "protected" simply needs to stay or was
16 intended there to stay with the water rights. The water
17 rights associated with the projects need to be protected.
18 And then -- and as the, I guess, to further explain it, as a
19 result of that, Reclamation would expect to continue to
20 operate the federal projects as authorized.

21 Q You don't necessarily mean free from regulation,
22 do you? You don't -- by protection, you don't mean free
23 from regulation by the State, do you?

24 A No.

25 Q Do you think that Reclamation's rights are

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1 protected only if a full supply is available to Reclamation
2 contractors?

3 A I think -- it's one of the advantages of a
4 reservoir is that in a given year, reservoirs kind of act
5 like capacitors and you're able to hold back some water for
6 future demands. And so there was -- there's never an
7 expectation that we're not going to go through climatic
8 events that cause our reservoirs to lower and, of course,
9 cause the reservoirs to enter into flood control. And so,
10 there's not an expectation that you'll have even when you
11 built these projects and as they operate them today and
12 yesterday that you're always going to have inflows that will
13 result in a full water supply every year. That's just the
14 nature of our business.

15 Q Are there any authorized purposes of these
16 facilities for which Reclamation cannot presently operate?

17 A I guess, could you be more specific or restate
18 your question?

19 Q Sure. I don't want to discuss potential --

20 A Sure.

21 Q But my question is, are there any authorized
22 purposes that Reclamation cannot operate for today in the
23 basin?

24 MR. DUBOIS: In the Republican River Basin?

25 Q (By Mr. Wilmoth) Totally precluded in the

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1 Republican River Basin.

2 A So, Red Willow is an easy one to pick out. It
3 currently has an operating restriction on it, so we are
4 unable to operate it for the intended purposes as designed.

5 Q Is that related to the safety concern of the dam?

6 A That's the safety concern of the dam.

7 Q Is that the only such example you can think of?

8 A Well, Bonny Reservoir, they've taken it below the
9 boat ramps out there, and so the recreational component has
10 gone away without the ability to put a boat in it.

11 Q Can you just briefly describe the sequence of
12 events that led to that decision?

13 A Could you restate your question?

14 MR. DUBOIS: Tom, I actually think that
15 we're -- aren't we getting well beyond what your request is
16 when we wander into the procedure for Bonny?

17 MR. WILMOTH: Fair enough.

18 Q (By Mr. Wilmoth) Any other examples, specifically
19 in the Nebraska portion of the basin or the Kansas portion?

20 A None that come to mind.

21 Q All right, thank you. You conclude this section
22 by explaining that reducing groundwater depletions is the
23 only way to allow streamflows to recover, which I think
24 we've discussed and we don't need to revisit, but to
25 "provide equity among users and assist Nebraska in achieving

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1 long-term" compliance. Can you tell me what you mean by the
2 term "equity among water users"?

3 A As I read this sentence and look at it, I think to
4 provide equity among water users I think is referring to the
5 difference between what surface water users may get in a
6 current year versus what groundwater users may receive for
7 an allocation in a current year.

8 Q So, are you -- by that do you mean the amount of
9 water they can use?

10 A I guess I wouldn't describe it as the amount of
11 water, because surface water is always limited by simply
12 what is in the reservoir to take.

13 Q Are you suggesting that the surface water users
14 and the groundwater users should be regulated in the same
15 way?

16 A I don't think I'm making that suggestion.

17 Q Are you suggesting that they should have the same
18 access to water? If you want to restate what you said
19 before and I just missed it, I'm sorry. I'm just not sure I
20 understood it.

21 A I guess to answer your question, they'll never
22 have the same access. I'm not sure where we're going.

23 Q Are you aware of Nebraska's efforts to purchase
24 surface water in 2007 for Compact compliance purposes?

25 A I'm aware of the purchases from our irrigation

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1 districts in 2007.

2 Q Are you aware of any efforts on the part of
3 Nebraska to investigate a potential augmentation project.

4 A Yes.

5 Q Are those efforts designed to facilitate Compact
6 compliance in your understanding?

7 A Yes.

8 Q Then why is it that you suggest that reducing
9 groundwater depletions is the only way for Nebraska to
10 ensure Compact compliance toward the end of this discussion?
11 Are those other things relevant in the equation?

12 A I think this gets back to one of the key questions
13 that I've asked the State throughout my testimony and
14 questions of the State is, groundwater pumping causes
15 depletions to streamflow, and these depletions to streamflow
16 continue to increase. As we look at a graph, they're
17 probably just like inflows to reservoirs. Sometimes they
18 increase and decrease, but the trends that I've seen, they
19 continue to increase. And I think that's important to
20 understand that -- and that's remained some of our, just
21 like the title says, concerns. Will these depletions to
22 streamflow continue? And if they do, in dry years when you
23 get there, pumping more water out of the system and putting
24 it into the river, will that result in sustainability,
25 equitable use for all the water users in the basin? And

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1 those are questions and concerns that we still have.

2 Q Well, let's talk about some of these specific
3 comments, because I think some of them do include questions.
4 At the end of page 4 here, you've got a question posed. Why
5 don't you just take a look at that question. Do you see
6 that question there?

7 A Yep.

8 Q Did you receive a response to that question?

9 A I believe in Brian Dunnigan's August 23rd letter,
10 he responded to that question.

11 Q And has that influenced your view at all? That
12 response, has it affected your view at all?

13 A I'd have to look at the specific response, but
14 generally the responses to those questions in the August
15 23rd letter were very general and very vague.

16 Q Comment No. 2 here opines that groundwater levels
17 have continued to decline since 2004. Excuse me,
18 groundwater depletions, pardon me, have continued to
19 increase since 2004. Can you tell me where those increases
20 have occurred?

21 A I can't tell you the exact location in the basin
22 where those have occurred.

23 Q You mentioned some records indicating these facts.
24 Do you recall the source of the information, what the
25 records were?

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1 A I don't recall the specific record listed here.

2 Q Do you know if these events are or have occurred
3 in the State of Kansas also?

4 A I can't think of any documentation I've seen that
5 would show -- that would enable me to answer that question.

6 Q Do you know if any groundwater levels have
7 increased anywhere in the basin?

8 A You know, from what I recall, groundwater levels
9 have increased in what they commonly refer to as the
10 groundwater mound.

11 Q Do you know if groundwater depletions have
12 decreased anywhere in the basin since 2004?

13 A I can't answer specifically that question.

14 Q Let's look at comment No. 3. You refer to
15 carryover uses. That's my term, carryover uses. Sorry.

16 A Okay.

17 Q What was your understanding of those provisions at
18 the time?

19 MR. DUBOIS: I'm going to object to the question
20 on grounds that it's vague, because I'm not sure what uses
21 you're talking about. And then you tossed out carryover
22 use, which you defined as something you're using, but
23 not -- it's not in the document, so --

24 MR. WILMOTH: I'll just ask Mr. Thompson.

25 Q (By Mr. Wilmoth) Do you know what I'm referring

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1 to by carryover uses?

2 A Typically in the basin, when people refer to
3 carryover, it's my understanding you're talking about an
4 allocation that you might have for a period of time and
5 you've underused your allocation in one period of time and
6 you were able to take that into the future.

7 Q Is that what you were referring to in No. 3? If
8 I've misunderstood your comment, I apologize.

9 A I'm just reading it. You know, in answer to your
10 question about No. 3, we didn't use the word carryover here
11 and I guess I refrain from using it when I answer this
12 question. But I think what they're getting at, which -- or
13 what I was getting at is that if the IMP, as we understood
14 it when we wrote this, allows you to pump higher volumes in
15 a water-short year, that would work against compliance with
16 the Compact if there wasn't enough water to be in
17 compliance.

18 Q You said that when you wrote this that that was
19 your understanding. Has your understanding changed in any
20 regard with regard to that point No. 3?

21 A No.

22 Q Comment No. 4 talks about the level of pumping
23 reduction that's necessary for Compact compliance. Do you
24 see that comment there? Specifically, there's a statement
25 to the effect that reductions need to be higher, reductions

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1 to groundwater pumping. Do you maintain that position
2 today?

3 A Yes.

4 Q Do you have any opinion as to the level of
5 groundwater pumping reduction that is appropriate?

6 A I don't have an exact number, but the sentence
7 that says, "Reductions need to be higher to improve surface
8 water supplies and achieve long-term compliance."

9 Q Does this relate back to the base flow
10 re-establishment concept?

11 A Yes.

12 MR. DUBOIS: Would this be a place to take a
13 break?

14 MR. WILMOTH: We can do one of two things. We can
15 break for lunch for, say, an hour, or if you want to break
16 for five or ten minutes and come back, I -- you know, it's
17 pretty obvious where we're going here. We can rip through
18 the rest of these specific comments if you want and then
19 break for lunch or we can just take a break now. It's
20 totally up to you.

21 THE WITNESS: Let's do lunch.

22 (Off the record from 11:08 a.m. until 12:08 p.m.)

23 Q (By Mr. Wilmoth) Mr. Thompson, welcome back from
24 lunch. We were discussing comments that were made in your
25 IMP testimony on the Middle Republican NRD IMP. We are

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1 presently at page KS807 in what is Exhibit 3 to the
2 deposition. With respect to Comment No. 5, you mention --
3 you make reference to long-term compliance. Can you just
4 give me your view of what the long term is in that context?
5 Are you looking over a set period of time or --

6 A I think in that sentence when I'm referring to
7 long-term compliance, I'm talking about something generally
8 in the history of how long they've been along -- been around
9 to date.

10 Q The IMPs?

11 A The projects.

12 Q The projects, okay. So, to make sure I
13 understand, if the projects have been around for, say, 50
14 years, your view is -- of long-term is the next 50 years?

15 A I was careful not to put a year with it, but
16 generally that's what I'm looking at. The projects have
17 been around since the mid-'50s, '60s, somewhere in that time
18 frame. I would view long-term compliance as the next half
19 of that -- or not half of that, excuse me, the next duration
20 of that. And, you know, long-term, you know, another way I
21 think I think about that is it needs to be as long as the
22 projects are there and are operating.

23 Q Let me make sure that we're talking about the same
24 thing. You're talking about now the duration of the
25 projects. When I read the term long-term compliance, I

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1 infer Compact compliance. Is that what you're referring to
2 there?

3 A You know, it's both. In part of it I'm referring
4 to long-term surface water flows, and in the other part, to
5 achieve long-term compliance.

6 Q So, when you're measuring the potential
7 performance of a management decision, are you asking
8 yourself how that performs over the next 50 years? Is that
9 the lens through which you're measuring the IMPs?

10 A When I look at -- when I make management
11 decisions, whether it's operational or maintenance
12 management decisions, on projects within the basin, you
13 know, the duration of time varies. When you repair the
14 paint on a gate, and when you did that way back when they
15 allowed lead-based paint to be put on the gate, then you may
16 have been looking at a longer-term solution than today when
17 you put paints that aren't lead-based paint. I use that
18 just as an example, because I think that every management
19 decision in a basin, water management decision, you do have
20 to evaluate, you know, what is your idea of long-term? And
21 sometimes, that could be the example of the gate where
22 you're looking at 35 years, for example. It's the example I
23 always kind of use with painting, or, you know, you're
24 entering into contracts that are 40 years long or other
25 activities. So, I think you have to evaluate what kind of

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1 long-term solution you're looking for when you are making
2 management decisions in the basin.

3 Q What's your understanding of the duration of the
4 IMPs?

5 A You know, my understanding of the duration of the
6 IMPs, it seems to be when you're at meetings or other
7 functions within the basin and you're talking about the
8 IMPs, they're generally referred to in a five-year term.
9 But as you read the IMPs, there is -- they can really be
10 changed at any time or revised or updated at any time. And
11 to my knowledge, they don't come with an expiration date.

12 Q With respect to comment No. 6 on this page, you
13 indicate that the surface water controls in a provision of
14 the IMPs are vague and do not describe the intent of the
15 Compact Call. Do you see that?

16 A Yep.

17 Q So, does this mean at the time of your testimony
18 you did not understand the nature of those controls?

19 A At the time we delivered this testimony, no, we
20 did not understand the full nature of those controls.

21 Q Have you had any clarification of that process
22 since the time you offered this testimony?

23 A Yes, we've had some clarification.

24 Q Has that improved your understanding at all of the
25 provision?

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1 A I think it has allowed us to understand it more
2 from the State's point of view or from the NRD's point of
3 view, but we still have concerns and we outlined those in a
4 series of letters ending with our September 30th letter that
5 I think very well outlines what we heard from the State,
6 what we understood the IMPs to do. And we asked the State
7 to either clarify or agree or disagree with us on our
8 understanding. And we never received a reply back.

9 Q And just to expedite this, I will -- is it
10 acceptable for me to infer that the vagaries expressed in
11 No. 7 and No. 8 concerning Compact Call Years are in a
12 similar vein, in other words, you didn't understand those at
13 the time of the testimony?

14 A I think it's fair to say that we still have
15 numerous questions and concerns that haven't been answered
16 about the IMPs, and where we have indicated that they may be
17 vague or we have those questions, we still have those today.

18 Q Okay. So, this really can't be considered your
19 final testimony on IMPs.

20 A I guess I would say that, yes, we asked further
21 questions, some just like this and then continued to ask
22 questions. But, you know, for the formal process, this was
23 our testimony in front of the Board.

24 Q So, it was final when it was presented, but
25 additional conversations, additional information has been

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1 exchanged to some degree of satisfaction and some degree of
2 dissatisfaction I understand, but some additional things
3 transpired after this?

4 A Some additional questions and comments were asked
5 after this testimony that was taken formally at the hearing.
6 And I guess to answer your question, more on the
7 dissatisfied side of replies.

8 Q And we'll get to that letter in a bit. Comment
9 No. 9 speaks again to equity between water users and uses
10 the term "discriminatory" to describe closing natural flow
11 rights while not curtailing all groundwater wells
12 hydrologically connected to the streams. Do you see that?

13 A Uh-huh, yes.

14 Q Is it Reclamation's view that all hydrologically
15 connected wells must be curtailed whenever surface water
16 rights are curtailed?

17 A I think if you're going to curtail surface water
18 rights and allow groundwater -- hydrologically connected
19 groundwater to continue to pump without just compensation,
20 is not equity, is not fair.

21 Q To whom would the just compensation be paid?

22 A To the folks that are being curtailed.

23 Q On the surface water side or on both sides?

24 A Question No. 9 is -- or response No. 9 is
25 referring to the surface water folks.

Aaron Thompson -- direct

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1 Q So, if surface water folks are curtailed, am I
2 understanding you to say they should receive just
3 compensation?

4 A Yes.

5 Q Is that true in all cases or certain cases that
6 you want to identify?

7 A Well, I guess I'd like to identify surface water
8 irrigators that have been curtailed and there's a junior
9 groundwater pumper or someone who's developed their
10 groundwater pumping subsequent to the development of the
11 surface water producer, then thus, in my opinion taking
12 their water right, they need to provide compensation to the
13 surface water user.

14 Q Is it possible that those might be the same
15 individual in the case of commingled acreage?

16 A In the case if a groundwater pumper who has
17 commingled acres is curtailed from pumping their water while
18 another groundwater pumper is allowed to pump their water, I
19 would think the same arrangement should be made.

20 Q What if the user has both groundwater wells and
21 surface water rights, the same user?

22 A I suppose it would depend on the time in which
23 their rights were acquired and the time at which they also
24 put in their groundwater well.

25 Q So, is this another way of putting the groundwater

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1 rights in priority relative to the surface water rights?

2 A I think it's a way of saying that who developed
3 their projects first should be entitled to their water
4 first.

5 Q Who came first, the ditch or the well.

6 Would it change your view at all if the
7 curtailment of surface water rights had a more immediate
8 impact on streamflows than the curtailment of groundwater
9 rights?

10 A No.

11 Q Let's look at comment No. 10. You note, "The IMP
12 is unclear whether any groundwater use in the rapid response
13 area will occur during a Compact Call Year." What is your
14 understanding today of how that question would be answered?

15 A Well, we can look at the August 23rd letter and
16 see how the State of Nebraska answered it. I honestly can't
17 remember.

18 Q So, you don't know presently whether groundwater
19 use in the rapid response area will be allowed or not
20 allowed during a Compact Call Year? I mean as we sit here
21 today, not --

22 A That's a clarifying question I asked in our
23 September 30th letter that I've not received an answer to.

24 Q Okay. So, the answer is no, you don't know
25 whether it will be allowed or not be allowed.

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1 A I don't know with certainty.

2 Q Same thing with regard to No. 11. "The IMP does
3 not define 'allowable surface flow depletions.'" And you
4 mention a better understanding of that concept is required.
5 Is that something addressed later on in your September
6 letter also, or did you receive any response to that?

7 A Well, let me clarify. I believe the August 23rd
8 letter responded to all of these questions. I just want to
9 back up and make sure I illustrated that for question No.
10 10, as well. So, we have received a response to these
11 questions. Without looking at them, I can't remember what
12 the response is.

13 Q Why don't we look at that letter? Everybody's got
14 the same copy, August 23, 2010? Is that what yours is?

15 A Yes.

16 Q This is Exhibit No. 7 to the deposition.

17 (Exhibit 7 was marked for identification. See
18 Index.)

19 Mr. Thompson, is this the letter to which you're
20 referring?

21 A Yes.

22 Q And can you tell me, kind of in the interest of
23 time, how did this letter come about?

24 A We asked a series of questions as we've gone
25 through in our IMP testimony. It was our later

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1 understanding that we came to after we testified that the
2 State nor the NRD was prepared to -- or I shouldn't say
3 prepared, was going to respond to these questions, and it
4 was our understanding that we needed to make a formal
5 request of these questions, and we did so to the State and
6 to the NRDs. And I believe we added a few questions in our
7 initial letter. I'm struggling to remember the date of
8 that, but I can find it if we need to.

9 Q I might know it.

10 A And then this was a response to that letter, as
11 well as a response to an in-person meeting that we had with
12 the State on -- July 9th and July 30th were the dates we met
13 with the State.

14 Q So, is it fair to say that this August 23 letter
15 is an effort, reserving judgment on your view about the
16 quality of the effort, was an effort to respond to the 11
17 points you raised in your IMP testimony?

18 A Yes.

19 Q And how, if at all, did that response change your
20 views of the IMPs?

21 A I would guess -- or I would say that generally our
22 views of the IMPs from our initial testimony didn't change
23 from the response we received from our August -- from the
24 August 23rd letter.

25 Q Is that what then led to the September 30 letter?

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1 A Correct.

2 MR. WILMOTH: And the September 30 letter, for the
3 record, is Attachment --

4 MR. DRAPER: G.

5 MR. WILMOTH: -- G, thank you, John, to the Kansas
6 filing, is that correct?

7 THE WITNESS: Correct.

8 Q (By Mr. Wilmoth) Can you tell me about these
9 intervening meetings? I think you mentioned one July 9 and
10 this letter KS840 refers to a meeting on July 30th. Can you
11 explain to me the intent of those meetings and who
12 participated?

13 A To answer your question about the intent of the
14 meetings, the intent of the meetings was to get a better
15 understanding of how the IMPs would work. As to who
16 participated in the meetings, I -- for July 9th and July
17 30th, I don't remember all the specific people that were
18 there.

19 Q Can you tell me what agencies were present?

20 A DNR and, of course, the Bureau of Reclamation.
21 And at some of those meetings there would have been NRD
22 folks.

23 Q And what was the general purpose of the meeting
24 was to --

25 A The general intent or purpose of the meeting was

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1 to gain a better understanding of how the IMPs would work.

2 Q Did you develop any improved understanding of the
3 IMP's functionality?

4 A I think as you step through our initial testimony,
5 or initial questions and then our September 30th letter, you
6 can see the -- where we started to focus our questions as to
7 our concerns and clarifications that we're requesting within
8 the IMPs.

9 Q And if I understand your testimony earlier, you
10 have not received a written response to the September 30
11 letter, correct?

12 A Correct.

13 Q So, is it accurate to infer that to the extent
14 there are questions presented in this letter, you still
15 don't know the answer to those questions?

16 A I think it would be accurate to say that if the
17 questions and concerns and comments we were asking for
18 clarification on the September 30th letter that we still
19 have all of those comments, questions, and concerns.

20 Q What is it that you would need to know or hear to
21 satisfy your concerns about the IMPs, in a nutshell?

22 A To summarize or, I guess as you said, put in a
23 nutshell, the types of -- type of information we would need
24 to see and understand to bring clarity to how we think or
25 how we would know the IMPs would operate, would be going

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1 through -- I think a start would be going through the
2 September 30th letter and answering all the questions. And
3 as we illustrate in this letter, this may not be all of
4 them, but I think that would be a good start.

5 Q Did DNR, at these meetings in July, the 9th and
6 the 30th, did they share any modeling information with you
7 concerning the likely impact of the IMPs?

8 A During the July 30th meeting, I'm reading the last
9 paragraph in the September 30th letter to refresh my memory,
10 but it indicates that they went through some PowerPoint
11 charts and slides presented for the Forecasting Meeting in
12 November of '09 and presented that during discussions. I
13 don't specifically remember if that had modeling data in it
14 or did not, but we did ask for -- we did ask to
15 specifically -- if we could review the spreadsheets that
16 produced the IMP evaluation for the '99 through 2008
17 historic data from that presentation that they gave us.

18 Q So, you don't recall if DNR shared any model
19 information with you?

20 A During that meeting, I don't recall.

21 Q Do you recall if DNR expressed an opinion about
22 the efficacy of the IMPs in ensuring Compact compliance?

23 A I'm not sure what you mean by efficacy.

24 Q Whether they were going to be effective or not in
25 ensuring Compact compliance.

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1 A Just reading the notes or section of the September
2 30th letter, we also understood, and I'll add some -- "We
3 also understood" from the State, the "from the State" is
4 added to the comment, "from the July 30th meeting that you
5 believe the limit placed on NRDs to stay within their
6 proportional share of allowable groundwater depletions will
7 make it highly improbable that Compact Calls will be
8 necessary once the IMPs are implemented." So, the
9 State -- we also asked for, you know, we asked the State,
10 you know, "We appreciate your careful review of the above
11 statements," and we didn't get that. So, not knowing
12 whether we captured that correctly, I would say it's fair to
13 say the State was telling us that these -- once these are
14 implemented, that it'll become highly improbable that
15 Compact Calls will be necessary once these IMPs are
16 implemented.

17 Q Do you disagree with that conclusion?

18 A I guess the statement I read is really a -- is my
19 staff trying to take from the meeting what they understood
20 the State to say, so I guess it's difficult to say I agree
21 or disagree with their conclusion without getting that
22 reference from the State.

23 Q Let's go back to the conclusions in your testimony
24 on the Middle Republican NRD. This is KS808. You see the
25 first sentence under the Conclusion, Reclamation expresses

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1 support with Nebraska's efforts to comply with the Compact.

2 Do you see that statement?

3 A No.

4 Q The first sentence.

5 A First sentence, thank you. Okay.

6 Q Can you tell me which specific efforts Reclamation
7 supports?

8 A "Reclamation supports Nebraska's effort," I
9 guess -- excuse me, not "I guess." "Reclamation supports
10 Nebraska's effort to comply with the Compact." And what, in
11 my opinion, this is referring to is entering into this, the
12 goal of the IMP, to manage the groundwater and surface
13 water. Reclamation is supportive of the goals that are set
14 forth -- excuse me, I'd like to not say "goals set forth."
15 I would like to say with the intent of managing the water as
16 one system.

17 I still don't like the way I answered that
18 question. I guess I'd like to clarify. I'd like to clarify
19 that Reclamation is supportive of Nebraska's efforts to
20 comply with the Compact. The nature of that support is the
21 State, the NRD working together to try to get into Compact
22 compliance.

23 Q Through the IMP --

24 A Process.

25 Q -- process.

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1 A Through the IMP process.

2 Q So, Reclamation supports the concept of an
3 integrated management plan, but has concerns about the
4 content. Is that a fair characterization?

5 A I think that's fair.

6 Q Now, the following sentence says a plan that
7 curtails all surface water use but allows groundwater use
8 and mining to occur is unreasonable and not acceptable. Is
9 that your understanding of what the IMP does?

10 A It's my understanding, my current understanding of
11 the IMP, that surface water use could be shut off while
12 hydrologically connected groundwater wells would be allowed
13 to continue to pump.

14 Q Is that true in all situations or just certain
15 situations?

16 A I think once again that gets back to our questions
17 that we have about the IMPs and how they work. And I don't
18 think it would be fair of me to say in which situations
19 those would and wouldn't work.

20 Q We had spoken earlier and you restate the concern
21 here that essentially the taxpayer investment in the
22 Reclamation projects will be undermined in the future. Do
23 you base that on the factors that we've already discussed?

24 MR. WILMOTH: Trying to help you here, Jim.

25 MR. DUBOIS: I'm thinking an objection for the

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1 question is vague might be appropriate. I'm not sure what
2 you're saying.

3 MR. WILMOTH: I'm sorry, I'm just trying to
4 facilitate the speed of this.

5 Q (By Mr. Wilmoth) On what basis do you conclude
6 that the taxpayers' expectations will be undermined?

7 A I think as we look at the project purposes for the
8 projects and those purposes continue to be diminished, that
9 affects the taxpayers.

10 Q I'm going to hand you a document that was
11 disclosed from the Department of the Interior in response to
12 the Touhy Request and just ask if you can identify this
13 document. It is entitled the Republican River Revenue
14 Foregone. It will be Exhibit 8 to the deposition.

15 (Exhibit 8 was marked for identification. See
16 Index.)

17 A I recognize this document.

18 Q Did you prepare this document?

19 A No, I did not.

20 Q Do you know who prepared this document?

21 A I believe this document was prepared by folks in
22 our Regional Office in the -- for lack of better words, I'll
23 just give you the manager's name, Lynnette Smith's office.
24 It's something of contracts and something else, I can't
25 remember.

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1 Q And, I'm sorry, that person resides in the
2 Regional Office?

3 A Correct.

4 Q Did you have any input in the development of this
5 document?

6 A No.

7 Q Have you read this document before?

8 A Yes.

9 Q Okay. Well, I'll ask you some questions about it,
10 but if you don't have the background to address them, just
11 let me know that. Can you explain the purpose for which
12 this document was prepared?

13 A From my recollection, the purpose -- the reason
14 this document was prepared was to help answer the Touhy
15 questions from approximately two years ago.

16 Q Thank you. And this document indicates that
17 certain revenue losses -- this is in the first paragraph.
18 Certain revenue losses are due to depletions from
19 "groundwater pumping and other upstream junior uses." Do
20 you see that reference?

21 A Uh-huh.

22 Q Does that include surface water uses? What are
23 the other upstream junior uses?

24 A Not having prepared this document, I guess I don't
25 know specifically what the intent of the writer was to say

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1 upstream junior users -- uses, excuse me.

2 Q This document breaks down this identified impact
3 into two categories. On the first page, you'll see Present
4 Value of Capital Repayments. On the second page, you'll see
5 OM&R. With regard to the capital payments, it appears that
6 the district contracts were renewed in 2000. Is that your
7 understanding?

8 A Yes. Just to clarify, the districts in the
9 Republican River Basin --

10 Q Yes.

11 A -- renewed in 2000.

12 Q Thank you. And can you just very briefly describe
13 the nature of those contracts and their term? Are these
14 water delivery contracts?

15 A Well, all the contracts, except for the Frenchman
16 Valley, was repayment contract.

17 Q Repayment contracts. And what was the Frenchman
18 Valley contract?

19 A I have to admit I'm reading here from the
20 document.

21 Q Sorry, take your time.

22 A Well, Frenchman Valley's contract was a water
23 service contract.

24 Q Why do you think Reclamation would enter into
25 these contracts given all of the concerns about inflows to

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1 its projects that you've expressed today?

2 MR. DUBOIS: Objection to the extent it calls for
3 speculation into the mind of Reclamation.

4 MR. WILMOTH: If you don't know, that's fine.

5 A I wasn't actually working at Reclamation when
6 these were signed and --

7 Q (By Mr. Wilmoth) The document indicates that the
8 district started struggling to repay their obligations in
9 2003 due to diminishing water supplies. Is that consistent
10 with your understanding?

11 A Yes, it is.

12 Q And that reflects some of the issues that you
13 talked about earlier with regard to diminishing water and
14 revenue, I assume.

15 A Yes, it does.

16 Q What other factors affect a district's ability to
17 repay, in your experience?

18 A Well, the most recent one that comes to mind is
19 when you have large, extraordinary maintenance items or, I
20 guess, what I'm trying to get to is safety dams activities.

21 Q The Red Willow situation.

22 A The Red Willow would be an example where large
23 costs can affect the district's ability to make payments.

24 Q Any other factors that you're aware of?

25 A I was reading this document to refresh my mind if

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1 it listed any other ones.

2 None other that currently come to mind.

3 Q Would you think the cost of equipment and the
4 relative price of crops would be relevant? The price of
5 corn, for example.

6 A I guess we could go down the path of what's the
7 cost for health insurance for the employees that the
8 district hires, the cost of fertilizer compared to your
9 gross yield that you get from your crop at the end of the
10 year, gas prices, all those type of activities would affect
11 the district's bottom line.

12 Q So, the implication here is that due to the
13 diminishing water supply, in other words, that that is the
14 cause of this inability to repay, the districts are
15 struggling. Am I understanding you to say, though, that
16 there could be other causes, other factors?

17 A Yeah. I think there could be other factors that
18 affect a district's ability to pay. To what extent each
19 factor affects a district, I can't tell you.

20 Q This document also mentions various deferments as
21 you'll see in the table for 2004 and 2005. It looks like in
22 one case 2003. Under these deferment plans, does
23 Reclamation receive the same overall amount of money just on
24 a different schedule or is some of this debt forgiven
25 altogether?

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1 A It's my understanding that the debt is not
2 forgiven. The last sentence in this paragraph just below
3 that, "Each time a low water supply year occurs the
4 districts request and were granted an additional deferment
5 repeating this cycle resulting in even higher annual
6 payments for the remaining years."

7 Q If I understand this correctly, at the top of page
8 2, Reclamation assigns a \$1 million reduction in revenue,
9 which I infer is the lost time value of money, is that
10 right? How do you interpret that?

11 A I think the previous sentence is the answer to the
12 question from my opinion. "Each of the districts is still
13 repaying the same amount of money but the timing of the
14 payments is several years later. As a result, Reclamation
15 is foregoing revenue from a present value standpoint. The
16 impact to Reclamation" is the \$1 million.

17 Q If this loss is of concern, why grant the
18 defenments?

19 MR. DUBOIS: I'll object to the question. At this
20 point, I think we've gone -- although this is fascinating,
21 this is a document that he didn't create, that he didn't
22 have -- he's testified that he wasn't working in this part
23 of the country when apparently these deferments happened, in
24 2000, and you're beyond the scope of -- this has no relation
25 either to the Touhy Request or to -- that I can see, to

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1 his -- to the disclosure filed by Mr. Draper. At this
2 point, we just seem to be well beyond the scope of all of
3 the Touhy stuff and time is running out.

4 MR. WILMOTH: Let me tell you where I'm going and
5 tell me what you think. The testimony on the IMPs is that
6 Nebraska's actions are jeopardizing the fiscal ability of
7 these districts to repay their obligations. And this
8 document speaks to -- which was apparently prepared in
9 response to an earlier Touhy Request on this question, the
10 nature of that repayment obligation. And so, I'm trying to
11 test the veracity of the opinion that this fiscal health is
12 in jeopardy. I do appreciate that Mr. Thompson wasn't here
13 and didn't draft this document; however, he -- I think he
14 did say he does administer contracts in his present
15 position. And as I said, if at any time you have hesitance
16 to answer these questions because you don't understand the
17 document, feel free to say that. I think it's within the
18 Touhy scope, because I think it relates specifically to
19 testimony in the IMPs, which are themselves part of the
20 Touhy scope. That's my pitch, Jim, but I'll respect your --

21 MR. DUBOIS: Okay, you can go ahead and answer.

22 THE WITNESS: Can we repeat the question after all
23 that?

24 MR. WILMOTH: I don't even remember the question.

25 Q (By Mr. Wilmoth) The question is, if a million

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1 dollars is of significant concern to Reclamation, why grant
2 the deferrals? Couldn't Reclamation simply say, we're not
3 going to grant those deferrals, and save the million bucks
4 in other words?

5 A It's my understanding that the irrigation
6 districts went to Congress to get the law passed so that we
7 could grant the deferments.

8 Q And what happens, in your experience, if a
9 district simply can't make its repayment obligations? Is
10 the federal interest secured in any way?

11 A The first part of your question again?

12 Q What happens if a district can't make its
13 repayments -- can't meet it's repayment obligation or the
14 district dissolves?

15 A I've never been in a situation where I've had a
16 district not meet its required payment obligation, so I
17 can't tell you the process we'd go down to do that. I have
18 had districts that have late payments, but usually in the
19 contracts, there's a way of dealing with that and they've
20 always been paid.

21 Q Okay, thank you. Let's revisit your conclusions
22 on KS808, then. In here you testified that the IMP will
23 "not allow Reclamation to operate as authorized by
24 Congress." Which aspects of those operations will not be
25 operational, in your view? I'm looking at the first

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1 sentence of the second paragraph, Mr. Thompson.

2 A I think the -- just reading the next sentence, if
3 the IMPs were adopted, it would prevent Reclamation from
4 delivering water to irrigation districts that are subject to
5 a Compact Call, as we understand Compact Call.

6 Q Do you think that the IMPs will preclude all such
7 deliveries in Compact Call Years?

8 A Once again, you know, we've asked questions as to
9 the subject of, will storage water be able to be taken from
10 the reservoir. In the Touhy documentation, there's an
11 editorial by the Middle Republican NRD manager that
12 indicates storage water will not be allowed to be used. We
13 asked for clarification in our September 30th letter that we
14 haven't received.

15 Q Are you aware of any other situations where
16 Reclamation is precluded from making full contract
17 deliveries by some state regulation? I don't just mean in
18 the Republican River Basin. I mean in your experience.

19 A Please repeat the question.

20 Q Are you aware of any other situations in your
21 experience where Reclamation has been precluded from making
22 a full contract delivery due to some state law provision?

23 A I'm unaware of any specific examples to tell you
24 about.

25 Q Are you aware of any such situation where a

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1 federal law precludes full contract delivery, for example,
2 the Endangered Species Act?

3 A Luckily, I have not been part of a situation,
4 personally, that precluded me from delivering contracted
5 water to an entity because of your example, Endangered
6 Species Act. I don't have any experience with that kind of
7 situation directly.

8 Q Are you aware of that happening in Reclamation?
9 Any of your other office managers dealing with that?

10 A I am unaware of the specifics on how Endangered
11 Species Act -- I'm trying to think of the Platte River
12 Recovery Program, for example, here in the state of Nebraska
13 and how that affects project deliveries. I'm just not aware
14 of how that intermingles with the contracts that we have
15 with our irrigation districts or managing partners.

16 Q Do you have a savings clause in your contracts
17 that kind of preclude federal liability in the event you're
18 unable to deliver a full supply?

19 A We -- generally speaking, it's my understanding
20 our contracts don't guarantee a quantity of water.

21 Q At the end of this paragraph, you note a direct
22 and substantial reduction in the economic benefits provided
23 by the federal project. And you've talked a little bit
24 about your view of how that works. My question is, have you
25 quantified that in any regard? The reduction.

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1 A I'm aware of the quantifications that were made in
2 the previous Exhibit 8 that we went through, the million
3 dollars and then the five million dollars for O&M. But as
4 far as other economic benefits such as the crop production
5 loss or gain, the recreational use loss or gain, I'm unaware
6 of those specific calculations to those benefits.

7 Q Do you think anyone in your office would have
8 information in that regard or have conducted that analysis?

9 A It seems that as I was going through the documents
10 prepared in the Touhy Request, it seems there were some
11 spreadsheets there that at some times showed crop production
12 valuations, things like that. I know there are economists
13 that work for Reclamation both in the Denver Office and in
14 our Regional Office that produce that kind of information,
15 but I -- but specifically related to the Republican River
16 Basin --

17 Q Correct.

18 A -- I am unaware of any specifics. But, you know,
19 as we talked earlier about the corrective action study for
20 Red Willow, some of those numbers were put in there,
21 recreation, fish and wildlife benefits.

22 Q I wanted to ask you about a document that we came
23 across that was disclosed by the Department in the Touhy
24 Response. This will be Exhibit 9.

25 (Exhibit 9 was marked for identification. See

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1 Index.)

2 Mr. Thompson, do you recognize this document at
3 all?

4 MR. WILMOTH: And for the record, it appears the
5 title of the document is Bureau of Reclamation Plan for Use
6 of Republican River Water to Comply with Compact. Do you
7 see that at the top?

8 THE WITNESS: I do.

9 A I don't recognize this document.

10 Q Any idea who might have produced this?

11 A No.

12 Q Thank you. All right, I think that concludes
13 everything with regard to the Middle NRD IMP. And in an
14 effort to expedite things, I think you had some specific
15 concerns relative to the Lower Republican NRD, but is it
16 fair to say that your general concerns were similar over all
17 the IMPs? I'm not trying to put words in your mouth, I'm
18 just trying to see how far we need to go.

19 A I'll restate it. I think my general concern about
20 the Upper, Middle, and Lower's recently implemented IMPs are
21 generally the same.

22 Q Okay. Now, you did list some specific comments
23 with regard to the Lower Republican NRD IMP comments. And
24 this would be at KS833 in Exhibit 3. Some of these issues
25 we may have already covered, so I'll try to address those we

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1 have not. Comment No. 2 seems to inquire whether best
2 management practices are going to be imposed on surface
3 water users. Is that -- was that your intent in that
4 comment?

5 A I'd like to not change my previous statement, but
6 highlight my previous statement. I believe the words I used
7 were "Reclamation's comments and concerns are generally the
8 same on all implemented IMPs." This is testimony on the
9 Lower Republican Natural Resource District's IMP that was
10 not implemented.

11 And I forgot your question.

12 Q It relates to comment No. 2, Best Uses, Best
13 Management Practices. I just want to clarify my
14 understanding here. Is it your view or Reclamation's view
15 that best management practices should not be imposed on
16 surface water users?

17 A After reading No. 2, Best Use, Best Practices, in
18 reply to your question, I think it was our intent to better
19 understand how the Lower Republican NRD could impose their
20 best management, best practices on our surface water uses.

21 Q Comment No. 5 indicates -- I'm sorry, I'm -- the
22 numbers get a little goofy here. What I'm referring to is
23 Roman numeral three there on page KS834.

24 A Yep.

25 Q This indicates that surface water users should be

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1 fairly compensated for any surface water taken for RRC
2 compliance. I just want to understand if you were using the
3 term "taken" in a legal sense as in a constitutional sense
4 or some other sense.

5 MR. DRAPER: Tom, where are we, if you please?

6 MR. WILMOTH: If you look at KS834, John, there's
7 a Roman numeral three about a third of the way down the
8 page. It says Reservations.

9 MR. DRAPER: Yes.

10 MR. WILMOTH: The last sentence on that paragraph
11 uses the term "taken" and I was just curious if that was
12 used in a legal sense and a constitutional sense or if that
13 was presented in some other context.

14 Q (By Mr. Wilmoth) Maybe I could ask you another
15 way. It is Reclamation's view that whenever Nebraska
16 operates to regulate Reclamation users that that water is
17 being taken in either a legal or other sense?

18 MR. DUBOIS: Objection to the extent it calls for
19 a legal conclusion.

20 Q (By Mr. Wilmoth) Yeah, and to be clear, I'm not
21 asking you as a matter of law if that is happening. I'm
22 just asking if, as the author of this, you intended to
23 convey that legal gravitas.

24 A The first thing about the written document, I
25 can't quite tell if it's a -- what is copied from the IMP,

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1 draft IMP, and then what is added. I think if the first
2 part of it was taken and the last sentence was added, then I
3 think, as an author, trying to use the same language. But I
4 guess, to try to get at your question, if you are going to
5 take a surface water from a user or allow it to be bypassed
6 and not diverted and not compensate that person for the
7 water, then -- what I'm trying to say is the person
8 should -- or the entity should be compensated for the water
9 not allowed to be used.

10 Q Does it matter to you or -- strike that. Is it
11 relevant to you in making that conclusion or offering that
12 opinion whether or not that water is needed to ensure
13 Compact compliance?

14 A I guess it doesn't matter what somebody takes it
15 for, what the state agency takes it for, if they're taking a
16 water right, they need to fairly compensate somebody for
17 that.

18 MR. WILMOTH: Okay, why don't we take 15 minutes
19 and come back at 1:30. Should be done by 2:30.

20 (Off the record from 1:15 p.m. until 1:35 p.m.)

21 Q (By Mr. Wilmoth) Mr. Thompson, we've worked
22 through your testimony on the IMPs. I would like to just
23 briefly revisit and make sure I understand the progression
24 of events that led to that testimony in the summer of 2010
25 and what I understand to be some remaining issues that have

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1 not yet been resolved. I'm going to hand you a letter which
2 we will mark as Exhibit 10.

3 (Exhibit 10 was marked for identification. See
4 Index.)

5 Mr. Thompson, can you identify this letter,
6 please?

7 A Yes, this was a May 26, 2010, letter to Brian
8 Dunnigan and a request for data related to the proposed
9 integrated management plans just before the hearing on the
10 plans.

11 Q Could you explain the purpose of this letter?

12 A I'd say the general purpose of this letter is to
13 try to get a better understanding of the proposed IMPs.

14 Q And did you receive a response to that letter?
15 And before you answer, let me show you what will be marked
16 as Exhibit 11 and ask you if that might have been the
17 response.

18 (Exhibit 11 was marked for identification. See
19 Index.)

20 A I would say this is an update, which would be -- I
21 wouldn't consider it responsive to the materials requested,
22 but I would consider it a response to let me know that they
23 received my letter. And I think they sent one just like it
24 says here, 30 days later.

25 (Exhibit 12 was marked for identification. See

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1 Index.)

2 Q Do you recognize this correspondence, Mr.
3 Thompson?

4 A This is -- at the end of my last statement, this
5 is the letter I was referring to that I thought was
6 delivered 30 days later.

7 Q And then you mentioned, and we discussed earlier,
8 two meetings in July on the 9th and the 30th. Do I have
9 those dates right, July 9 and July 30th?

10 A I believe so.

11 Q Fundamentally, Mr. Thompson, my question is, if
12 you had questions about the content of the IMPs in May, and
13 then you offered testimony in June, and then you had some
14 additional requests and some additional meetings, how, if at
15 all during the course of that period, did your understanding
16 of the IMPs change either personally or as an institution at
17 the Bureau?

18 A I think, as I've indicated previous today that the
19 responses in the August 23rd letter were short and vague.

20 Q Those are responses from the Department of Natural
21 Resources?

22 A Correct.

23 Q To your -- excuse me, let me ask you. Were those
24 responses to questions presented at the meetings?

25 A Those responses in the August 23rd letter were in

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1 response to my July 27th letter.

2 Q And do I understand you to say you found those
3 responses unsatisfactory?

4 A Generally, yes.

5 Q And in what respect did you find them to be
6 deficient?

7 A I felt that the answers didn't -- weren't of
8 length or of quality to further the Bureau of Reclamation's
9 understanding of the existing IMPs.

10 Q And just a moment ago -- I just want to clean up
11 the record here. Just a moment ago, you referenced a July
12 27 letter. This letter I'm handing out bears that date. Is
13 this the letter to which you were referring? This will be
14 Exhibit 13.

15 (Exhibit 13 was marked for identification. See
16 Index.)

17 A Yes.

18 Q And just to bring this full circle, as I
19 understand it, to the extent you felt that Director
20 Dunnigan's answers were deficient, the remaining
21 deficiencies are set forth in your September 30th
22 correspondence?

23 A I wouldn't classify it as remaining deficiencies.
24 I -- what our attempt to do in the September 30th
25 correspondence was to highlight what we'd heard in the

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1 meetings that we'd had with the State or NRDs and to
2 highlight our main concerns and where we thought we needed
3 the most explanation as to how the IMPs worked.

4 Q Were any of your concerns expressed during the
5 course of the summer resolved satisfactorily in your mind?
6 You, in your mind, personally.

7 A Not going through each individual concern unless
8 you'd like to, but generally speaking, most of my concerns
9 were not resolved satisfactorily.

10 Q Did anyone on you staff express any improved
11 understanding of the IMPs throughout that summer?

12 A Well, as you progress through these letters, we
13 change and try to narrow in and focus on what our concerns
14 are with the culmination of the September 30th letter, and I
15 think that September 30th letter tries to show our best
16 understanding of the IMPs and really tries to focus in on
17 what our remaining -- or what our current concerns are to
18 the IMPs.

19 Q This may sound obvious, but just to be clear, if
20 it isn't referenced in the September 30 letter, may we infer
21 that it has been resolved?

22 A No.

23 Q So, there are some unstated outstanding issues
24 that remain. Can you generally identify what those are?

25 A Well, walking down the September 30th letter, I

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1 can highlight the comments that are generally --

2 Q Well, let me restate my question, because I think
3 I understand. If it's in the September 30 letter, I
4 understand you continue to have reservations about it.

5 A Yes.

6 Q Let me just try my question one more time, make
7 sure we're on the same page. If it is not contained in the
8 September 30 letter, can I infer that whatever that issue
9 was has been resolved?

10 A No. We cannot assume the issue has been resolved
11 if it's not listed in the September 30th letter.

12 Q What issues not identified in this letter are
13 outstanding. Does that make sense now? Sorry.

14 A It's difficult to answer that question because the
15 answers to some of the September 30th questions may answer
16 other -- may help answer other questions that we left out
17 from our July -- or from our May 26th and our July 27th
18 letter.

19 Q As we sit here today, can you readily identify
20 those outstanding issues? If not, that's fine. I'm not
21 asking you to speculate.

22 A Once again, I think -- I can go through this, but
23 a lot of these get, for lack of a better word, commingled
24 with other questions. There's still a lot of questions in
25 here and if I want to compare them directly to the 14 that

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1 were asked in the first meeting or the first three that were
2 asked in May 26th -- let me see if I can find an example.

3 Just thumbing through and looking for an example,
4 No. 10 on the July 27th letter indicates, "Will surface
5 water users in the basin be compensated when their natural
6 flow or storage permits are closed while junior surface
7 (sic) water users are allowed to continue to use
8 hydrologically (sic) connected water?" The State made it
9 clear in their answer that they would not pay for
10 those -- they would not compensate those users for the water
11 taken. However, the NRDs' IMP testimony is still, in my
12 opinion, vague as to whether they are going to attempt to
13 pay for that language. So --

14 Q And that's important to Reclamation for the
15 reasons you discussed earlier about being compensated for
16 water taken for Compact compliance purposes.

17 A For a damaged water right.

18 Q Does the Justice Department share your view on
19 that requirement as a matter of law?

20 MR. DUBOIS: I'll object.

21 MR. WILMOTH: Just asking.

22 Q (By Mr. Wilmoth) Let me discuss for a moment with
23 you your coordination with our friends to the south in
24 Kansas over the last couple of years in regard to these
25 IMPs. Did you have a meeting, you, yourself, personally or

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1 Reclamation as an agency, with Kansas in May of 2010?

2 A I can't specifically remember a meeting in May of
3 2010 with Kansas.

4 Q I have a document from the Touhy Request that I'll
5 just offer you to possibly refresh your recollection.

6 MR. DUBOIS: You going to mark this as 14?

7 MR. WILMOTH: Yes, excuse me, Exhibit 14.

8 (Exhibit 14 was marked for identification. See
9 Index.)

10 Mr. Thompson, does this electronic communication
11 refresh your recollection in any regard with regard to the
12 meeting I inquired about?

13 A It does help. It's May 26th, it's two days after
14 my birthday. So, I remember where I was at May 24th.

15 (Laughter.)

16 But this does help refresh --

17 MR. WILMOTH: Must have been a good birthday.

18 THE WITNESS: I was out at Bonny Dam, speaking of.

19 MR. WILMOTH: Wasn't, then.

20 (Laughter.)

21 MR. DUBOIS: I told you, don't volunteer.

22 (Laughter.)

23 THE WITNESS: Well, now that I've been redirected
24 by the Department of Justice, this does help jog my memory a
25 bit. It looks like we had a meeting set up for Wednesday,

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1 May 26th.

2 Q (By Mr. Wilmoth) And do you recall generally the
3 nature of the meeting, the purpose for the meeting?

4 A Just to clarify, I guess that's the date of the
5 email, not necessarily the date of the meeting. The purpose
6 of the meeting, pretty clear down here in the email message,
7 "The purpose of the call is to share thoughts and views on
8 the intent and potential impact of the draft revisions to
9 the IMPs for the" Upper and Middle and Nebraska DNR.

10 Q Do you have any recollection now of the actual
11 date of the meeting?

12 A Not the actual date, but I -- excuse me, I do.
13 The email appointment shows that it was Wednesday the 26th
14 at 10:00 a.m. Central Time.

15 Q And the date on Exhibit 10, your letter to
16 Director Dunnigan requesting information about the IMPs I
17 notice is marked the same date, May 26. Did Kansas provide
18 you any assistance in formulating an opinion about the IMPs
19 or helping to understand their contents, and specifically,
20 help you formulate your letter of May 26?

21 A To be honest, I don't know if the letter was
22 formulated before or after the call.

23 Q How about offering additional assistance in
24 interpreting the IMPs or their effect?

25 A From my recollection of working with -- or talking

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1 with Kansas on the proposed IMPs, I can't remember any
2 specifics that Kansas helped us out with or didn't help us
3 with as far as an understanding of the IMPs. But I do
4 definitely recall talking about the proposed IMPs with the
5 State of Kansas.

6 Q And in your view, did that have any influence on
7 any of your testimony?

8 A None that I can recall.

9 Q Did you have a conference call with Kansas or
10 perhaps a face-to-face meeting in September of 2010, by
11 chance?

12 A I can't remember that specific date.

13 Q I'm going to hand you another document disclosed
14 in response to the Touhy Request. This will be Exhibit 15.

15 (Exhibit 15 was marked for identification. See
16 Index.)

17 Mr. Thompson, does this refresh your recollection
18 at all?

19 A It does. The email is dated September 28th;
20 however, I don't see the exact date for the conference call
21 on the email.

22 Q Let me give you an additional document. This was
23 also provided to us from the Touhy request. Do you
24 recognize this document which will be Exhibit 16?

25 (Exhibit 16 was marked for identification. See

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1 Index.)

2 A Yes, I recognize this document.

3 Q How did you first come across this document?

4 A I believe this -- well, it says right on the front
5 page, it's a PowerPoint presentation to the Bureau of
6 Reclamation. It's dated September 30th. I recall seeing or
7 getting the document around that -- the time of that
8 presentation that was given to us by the State of Kansas.

9 Q What was the purpose of that presentation?

10 A From my recollection, the purpose of the
11 presentation was to give Bureau of Reclamation an update on
12 the actions that Kansas was proposing in the Republican
13 River Basin.

14 Q Did this information influence your views of the
15 IMP in any way -- IMPs, excuse me, in any way?

16 A I think, as it relates to data that we get from
17 all sources, we would take a look at this as we evaluate
18 testimony in the basin.

19 Q And are you familiar with the remedy, if you will,
20 that Kansas is seeking in this action? By that I mean, with
21 regard to future compliance.

22 A I would say that I have an awareness of the
23 proposed remedy, but I wouldn't say that I have a lot of
24 deep detail information about that.

25 Q Do you have any idea, for example how many acres

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1 of irrigation would be curtailed under that proposal in
2 Nebraska?

3 A Without reading the -- or rereading the, whatever,
4 I would call petition to the Court, I don't recall those
5 numbers.

6 Q Do you have any opinion about how that remedy
7 might effect Reclamation customers and their ability to
8 repay their federal debt?

9 A No opinion.

10 Q Have you performed any analysis to determine the
11 answer to that question?

12 A I personally haven't performed any analysis on
13 that, no.

14 Q Do you know if anyone within the agency has?

15 A And I'm not aware if anyone in the agency has.

16 Q There's a statement heading on one of these slides
17 and I apologize that these are not numbered. The 12th page
18 of the document -- I believe you're there, yes -- indicates
19 at the top, "Kansas and federal concerns are largely
20 congruent." Would you agree with that statement?

21 A As it relates to the two bullet points, I would
22 generally agree with that statement.

23 Q Are there any other ways, in your view, that those
24 interests of Kansas and those interests of the Bureau are
25 congruent?

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1 MR. DUBOIS: Just to make sure. We're talking
2 about these two bullet points when you say those? I'm just
3 trying to clarify so that we don't have an answer that --

4 MR. WILMOTH: I think Mr. Thompson was saying that
5 insofar as these two bullet points go, there is a --

6 MR. DUBOIS: Correct.

7 MR. WILMOTH: -- congruent view.

8 Q (By Mr. Wilmoth) And my question was, were there
9 any other provisions, essentially, in this document or
10 anything else, with regard to Compact compliance in which
11 Kansas has a view that's congruent with that of Reclamation?
12 Or the other way around.

13 A Having projects in all three states within the
14 Republican River Basin, I think, at times the federal
15 interests are aligned with some of the states' interests and
16 at times they can be diverging from the states' or federal
17 interests. And with the case of these two bullet points, as
18 I understand them and they're briefly written here, I think
19 those are -- those concerns are shared by the Bureau of
20 Reclamation. Are there other concerns by Kansas to which we
21 share the same concern? No specifics that I can think of
22 that have been in writing.

23 Q Let me just ask you finally, have there been any
24 other meetings or conferences or coordination efforts
25 between Kansas and the Bureau with regard to the IMPs or

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1 this action, frankly, that you can recall?

2 A Help me understand what you meant by "this
3 action."

4 Q This legal proceeding, excuse me.

5 A Without going through the correspondence in the
6 Touhy Request, there's none that I can recall at this time.

7 Q How about lunch today, did you guys dine together?

8 A No.

9 Q Did you have any conversations after we broke for
10 lunch?

11 A Mr. Draper and the Department of Justice attorney
12 with me had a conversation and I was trying to get him to go
13 to lunch, so it was tough to break them up.

14 Q I would imagine it is. Did that conversation
15 relate to this proceeding?

16 A Quite honestly I heard them mention the word
17 Harlan County and some other things, and like I said, I was
18 trying to get to go to lunch so that we could get back on
19 time.

20 Q I'm glad for that. Let's talk about your
21 coordination as the Bureau's coordination with the Corps of
22 Engineers for just a brief moment. This is a letter that
23 was authored by the Department of the Army, which will be
24 Exhibit 17.

25 (Exhibit 17 was marked for identification. See

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1 Index.)

2 Have you seen that letter, Mr. Thompson?

3 A Yes, this letter looks familiar.

4 Q Can you explain the extent to which you had
5 involvement in the development of this letter either
6 personally or as the agency?

7 A I can tell you that personally I didn't have any
8 involvement with the development of this letter, but our
9 agencies work closely together, specifically, you know,
10 Harlan County Reservoir. We have -- they're in charge of
11 the dam and we're allocated the water supply in the
12 reservoir and we work closely with them specifically around
13 that reservoir. And that we have -- we continue to maintain
14 a good working relationship as I hope we do with all the
15 entities, not only in this room, but all the managing
16 partners that we have.

17 Q Did you perform any -- excuse me, I know you said
18 you had no direct involvement. Do you know if Reclamation
19 performed any technical assistance that would have been sent
20 to the Corps of Engineers in helping them formulate this
21 opinion?

22 A I don't specifically know, directly have knowledge
23 of involvement with my staff or other folks within the
24 agency, but like I said, we do -- my staff works with the
25 folks at the Corps. It was signed by a gentleman, but we

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1 work very closely with a gentleman, Edward Parker, who it
2 says to contact if you have any questions.

3 Q Are you aware of any independent analyses that the
4 Corps conducted that they provided you in association with
5 this letter?

6 A No, I am not.

7 Q Some concern is expressed in the letter as I
8 understand it and I believe in your testimony on the Lower
9 Republican NRD IMP about interference with the Consensus
10 Plan for Harlan County. Can you explain the nature of that
11 concern to us?

12 A I think the nature of the general concern, I think
13 it's laid out in our September 30th letter, but generally
14 the Consensus Plan is calculated or evaluated based on
15 inflows it expects to see January through May, for example,
16 and that under this IMP, if all flows are bypassed by the
17 State of Nebraska and the NRDs, that essentially renders
18 that plan invalid as to the way we have historically
19 computed the water -- expected water supply in Harlan
20 County.

21 Q And let me just take a step back for the record.
22 Can you tell me what the Consensus Plan is?

23 A I believe the Consensus Plan is Appendix K of the
24 Final Settlement Stipulation. And just generally, it is an
25 agreement between Reclamation and the Corps of Engineers to

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1 determine the amount of irrigation water available to the
2 districts downstream of Harlan County at the end of June
3 each year. I'll stop there.

4 Q Are you familiar with how that calculation is
5 made?

6 A I'm not familiar with the exact way in which that
7 calculation is made.

8 Q So, I have some questions about just the logistics
9 of that calculation. Who would be the appropriate person to
10 address those to?

11 A Well --

12 Q Within the Bureau, sorry.

13 A Within the Bureau who --

14 Q Who does that for you within your office?

15 A My operations group in the Nebraska-Kansas Area
16 Office performs those calculations.

17 Q And who would be in charge of that group? Who
18 would make that calculation is my question.

19 A You know, within that group, I don't know, but
20 Craig Scott is the head of that -- of the Operation and
21 Maintenance Group and Bill Peck is in charge of the
22 Operations Group.

23 Q Have they informed your opinion of how the
24 Consensus Plan might be adversely impacted by something
25 Nebraska's proposing? Can you tell me -- let me rephrase

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1 that. Can you tell me how this adverse impact will come
2 about? What is the nature of the adverse impact?

3 A Yeah. Just looking at Exhibit 6, "Surface water
4 stored in priority through the proper exercise of all
5 storage permits shall not be subject to a Compact Call. In
6 addition, the bypass of inflows through Harlan County
7 invalidates the requirements of the FSS relative to the
8 determination of a water-short year as well as the
9 determination of 130,000 acre-feet of irrigation supply.
10 Bypassing inflows is contrary to the intent of the Consensus
11 Plan and renders the calculation of the water-short years
12 meaningless."

13 Q So, can you tell me how natural flows are factored
14 into the determination of available supply?

15 A I guess, like I said, it was my basic
16 understanding that they used an average to help determine
17 the amount of water that was going to be available for
18 irrigation in Harlan County Reservoir and that -- and if you
19 didn't have that inflow, if that inflow is being bypassed,
20 it would change the assumption made about the amount of
21 water that would be stored in Harlan County Reservoir.

22 THE WITNESS: I'd like to get a very short break.

23 MR. WILMOTH: You bet.

24 (Off the record from 2:15 p.m. until 2:25 p.m.)

25 Q Mr. Thompson, let's try to finish up timely here.

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1 We were talking about this issue of interference with the
2 Consensus Plan before we broke, and I just want to make sure
3 I understand the concern here. If I understood you
4 correctly, the concern was with the passage of natural flow
5 through Harlan. And if that were required, it would affect
6 assumptions in the Consensus Plan, does that sound correct?

7 A Yes.

8 Q So, does the Bureau today hold water in Harlan for
9 the benefit of Kansas without a Nebraska water right?

10 A The water supply for Kansas Bostwick and Nebraska
11 Bostwick is stored in Harlan County Reservoir.

12 Q And the water that you hold in Harlan County to
13 send to KBID, is there a Nebraska water right associated
14 with that water?

15 A Yes -- or, I'm sorry. You said KBID and I was
16 thinking Nebraska --

17 Q Kansas Bostwick.

18 A -- Bostwick Irrigation District, so I apologize
19 for answering too quickly there. Is there a -- if the
20 question is, is there a Nebraska water right for KBID in
21 Harlan County, I'm not for certain. Under the Touhy
22 Request, somewhere in there we provided the list of water
23 storage use permits, storage permits for the reservoirs.

24 Q Now, if you received a closing notices -- excuse
25 me, a closing notice that -- strike that. Let me rephrase.

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1 If you received a closing notice from the State of Nebraska
2 that exempted the water stored for the benefit of Kansas,
3 what would you do? Would that be a problem?

4 A Just rephrase the question or restate it.

5 Q If you receive a closing notice requiring the
6 passage of natural flow, but it exempted water to be sent to
7 KBID, for example, would that satisfy your concern?

8 A I'm not certain. We treat the water supply to
9 Kansas Bostwick and Nebraska Bostwick as one water supply.
10 We have natural flow that goes to the two districts and
11 that's typically split over the irrigated acres that those
12 districts use. And then we have storage water within Harlan
13 County Reservoir that we split appropriately based on the
14 irrigated acres between the two districts. If one district
15 would not be able to get natural flow, would I then
16 supplement the remaining storage water differently so that
17 both districts still got the same amount of water to put on
18 their irrigated acres? And I think that is some of the
19 confusion I have with how, during a Compact Call Year, the
20 Bureau of Reclamation would operate its projects and stay
21 within the requirements of state law.

22 Q But if the water at issue weren't required to be
23 bypassed through Harlan County, then the Consensus Plan
24 would not be adversely affected, is that right?

25 A Are you saying and no water is bypassed upstream

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1 either?

2 Q What I'm saying is -- what I'm hearing is your
3 concern that it is the passage of natural flow through
4 Harlan County that interferes with the Consensus Plan. Is
5 that -- am I understanding that correctly?

6 A Yes. Where --

7 Q Pursuant to a closing notice, for example.

8 A Yes, the pa- -- just let me maybe restate it. The
9 passing of natural flow through Harlan County that would
10 otherwise historically be stored in Harlan County. The
11 Consensus Plan, January through May, assumes that that water
12 would be stored, and if it's bypassed, that simple
13 calculation that they perform, it would change the intent of
14 how they performed that calculation.

15 Q But if the water to benefit KBID could be stored,
16 the issue would resolve itself?

17 A I guess, are you saying you'd store storage water
18 for one district but not the other?

19 Q Yeah.

20 A I don't know how that would work.

21 Q You made reference to calculating water supplies
22 for NBID and KBID, Nebraska Bostwick Irrigation District and
23 Kansas Bostwick Irrigation District. Are you the person
24 responsible for making those calculations?

25 A No, I have staff that make those calculations.

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1 Q Who would that be?

2 A Once again that would be --

3 Q The Operations Office?

4 A -- the Operations Office and the chief of that
5 group would be Bill Peck and then his boss would be Craig
6 Scott.

7 MR. WILMOTH: Okay, I think that's all we have,
8 Aaron.

9 THE WITNESS: I would like to make one
10 clarification. Earlier I indicated the shutoff elevation of
11 Harlan County was performed at the end of June. I misspoke
12 and meant to say the end of May.

13 MR. WILMOTH: Thank you.

14 MR. DUBOIS: Let me take five minutes to see
15 whether we want to ask any followup.

16 MR. AMPE: I don't know if you want to have us go
17 and then you guys --

18 MR. DUBOIS: Well then, let's finish -- yeah,
19 let's finish Peter first, Tom.

20 CROSS-EXAMINATION

21 BY MR. AMPE:

22 Q Mr. Thompson, my name's Peter Ampe with the
23 Colorado Attorney General's Office. Just a couple of
24 questions. Looking at Exhibit 5, I think you called it the
25 X graph. And if I recall correctly, you stated your

Aaron Thompson -- cross

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1 interpretation of this data is that it shows a fairly
2 steady decline in inflows into Enders Reservoir, is that
3 correct?

4 A Correct.

5 Q And as you had your conversation with Mr. Wilmoth,
6 you stated that in part that was due to pumping in Colorado
7 and Nebraska. Did I hear that correctly?

8 A Correct.

9 Q But you are not able to parse out what effect
10 from pumping in each state had that impact on the inflows,
11 is that correct?

12 A I don't recall whether the data -- the effects to
13 streamflow on Compact accounting showed how much came from
14 Colorado versus how much came from Nebraska as it relates
15 to Enders Reservoir.

16 Q And hypothetically, if Colorado were to shut off
17 all pumping of groundwater within its boundary in the
18 Republican River Basin, what impact would that have on the
19 flows into Enders Reservoir?

20 A I would expect over the long term that the
21 groundwater levels would rise and the base flows would
22 increase.

23 Q Do you know by how much?

24 A No.

25 Q What do you base your expectation on?

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1 A I base my expectation that if you, for example,
2 Nebraska in their IMPs, they cut their pumping to try to
3 increase streamflows or they cut their pumping so that they
4 don't cause as many depletions to streamflows. My
5 expectation would be that groundwater levels would
6 eventually return over the long term and that it would -- in
7 cases where it's not hydrologically connected or it remains
8 hydrologically connected, those base flows would increase.

9 Q And if it's not hydrologically connected and the
10 pumping in Nebraska maintains it as not hydrologically
11 connected, if Colorado shut off all pumping, would you
12 expect base flows to increase?

13 A Could you restate your question?

14 Q Yes. Assuming, and I'm asking you assume, that
15 the streamflow into Enders Reservoir, that stream is not
16 hydrologically connected to the aquifer, if Colorado
17 stopped all of its pumping, Nebraska continues pumping and
18 that lack of connectivity is maintained, would you expect
19 base flows to increase?

20 A I think, if I heard your question correctly, if
21 pumping is reduced --

22 Q In Colorado.

23 A -- in Colorado --

24 Q But not in Nebraska, say.

25 A I would at least -- I would expect to see more

Aaron Thompson -- cross

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1 water coming in the state line from Colorado.

2 Q Would that necessarily translate into increased
3 base flow?

4 A If you assume they're not hydrologically
5 connected and remain not hydrologically connected, the
6 assumption would be that streamflows may not increase,
7 decrease, or stabilize.

8 Q And the data on the inflow to Enders Reservoir
9 that was used to create this graph, may I just assume
10 that's from a gage, a streamflow gage? Do you know?

11 A I don't know.

12 Q Would you assume -- do you know if there is a
13 gage above Enders?

14 A If there's not a gage, there's a way to, I'm
15 sure, measure the elevation of the reservoir as it goes up
16 or down.

17 Q So, you don't know if this is elevation or a
18 gage.

19 A I simply don't know.

20 Q You can't recall if there is a gage somewhere on
21 the inflow to Enders on Frenchman Creek or whatever it is.

22 A I don't know.

23 MR. AMPE: That's all I have.

24 MR. DUBOIS: Now we can take five minutes.

25 (Off the record from 2:40 p.m. until 2:45 p.m.)

1 MR. DRAPER: I have no questions.

2 MR. DUBOIS: I've got no redirect -- or no cross.

3 So, we're done.

4 MR. WILMOTH: Thank you very much, Mr. Thompson.

5 THE WITNESS: Thank you, everybody.

6 (Whereupon, at 2:46 p.m. on January 24, 2012, the
7 deposition was concluded.)

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