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Non-Binding Arbitrations before  
Jeffrey C. Fereday, Arbitrator

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Initiated Pursuant to Final Settlement  
Stipulation

KANSAS v. NEBRASKA & COLORADO  
No. 126, Orig, U.S. Supreme Court  
Decree of May 29, 2003, 538 U.S. 720

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N-CORPE Augmentation Plan  
(Arbitration Initiated July 10, 2013)

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DEPOSITION OF: DR. JAMES SCHNEIDER

DATE: February 18, 2014

TIME: 9:02 a.m.

PLACE: 1221 N Street, Suite 600, Lincoln,  
Nebraska

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1 APPEARANCES  
2  
3 APPEARING FOR KANSAS:  
4 Mr. Christopher M. Grunewald (telephone)  
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9 APPEARING FOR NEBRASKA:  
10 Mr. Thomas R. Wilmoth (telephone)  
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16 -and-  
17 Mr. Justin D. Lavene  
18 Assistant Attorney General  
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22  
23 ALSO PRESENT:  
24  
25 Jasper Fanning, Thomas Riley, Marc  
Groff, Brian Dunnigan

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1 I-N-D-E-X  
2  
3 WITNESS Direct  
4 James Schneider 4  
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6  
7  
8 EXHIBITS Marked  
9 1. Notice of Deposition 4  
10 2. Response to Kansas' Reports 4  
11 on Nebraska's N-CORPE Aug. Plan  
12  
13 3. Forecast of Allowable Depletions 4  
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15 4. Letter to Mr. Gary Campbell 4  
16  
17 5. Letter to Mr. Brian Dunnigan 4  
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1 PROCEEDINGS  
2 (Exhibit Nos. 1-5 were marked  
3 for identification.)  
4 DR. JAMES SCHNEIDER,  
5 Being first duly cautioned and solemnly sworn as  
6 hereinafter certified, was examined and  
7 testified as follows:  
8 DIRECT EXAMINATION  
9 BY MR. GRUNEWALD:  
10 Q. Good morning, Dr. Schneider.  
11 A. Good morning.  
12 Q. Since we're doing this by telephone,  
13 I'll do my best to not talk over you and  
14 hopefully we can make a clear record. I  
15 apologize in advance if we have to repeat  
16 stuff, and we've I think done this sort of  
17 thing before, so hopefully it'll work out okay.  
18 Is there any reason that you won't be  
19 able to give complete or truthful answers this  
20 morning?  
21 A. No.  
22 Q. Great. And we're scheduled to go for a  
23 couple of hours. I figure we'll probably take  
24 at least one break. Here in the middle, if you  
25 need a break -- or just if you need a break,

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1 let me know. Does that sound okay?  
2 A. Yep.  
3 Q. And we marked before the deposition  
4 started here, the reporter marked up some of  
5 those exhibits. Are those exhibits in front of  
6 you now?  
7 A. Yes.  
8 Q. Okay. And Exhibit Number 1 should be a  
9 deposition notice. And have you seen that  
10 before?  
11 A. Yes, I have.  
12 Q. And in that notice, it requests that any  
13 backup that hasn't previously been provided for  
14 your reports be brought with you or provided.  
15 Do you have anything that falls into that  
16 category?  
17 A. No.  
18 Q. Okay. And Exhibit Number 2 should be  
19 your report dated February 7th, 2014; is that  
20 right?  
21 A. Yes.  
22 Q. Does that look like a copy, a complete  
23 copy of your report?  
24 A. Yes.  
25 Q. And I'll go ahead and walk through some

<p style="text-align: right;">Page 6</p> <p>1 questions on the report. We might talk about</p> <p>2 some of the other exhibits and come back to it</p> <p>3 later. If you -- well, I want to confirm who</p> <p>4 worked on the report. Who drafted the text for</p> <p>5 the report?</p> <p>6 A. I did.</p> <p>7 Q. And did anyone else help draft text?</p> <p>8 A. There would have been some, you know,</p> <p>9 feedback in terms of working through the</p> <p>10 editing of the report with attorneys and others</p> <p>11 at the Department as well as consultants.</p> <p>12 Q. Were you the primary author of the</p> <p>13 report?</p> <p>14 A. Yes.</p> <p>15 Q. Is there anybody else you would consider</p> <p>16 a coauthor?</p> <p>17 A. No.</p> <p>18 Q. Who was it that helped you with the</p> <p>19 report?</p> <p>20 A. Legal counsel, Brian Dunnigan, and Jesse</p> <p>21 Bradley at the Department; Tom Riley and</p> <p>22 possibly others at the Flatwater Group.</p> <p>23 Q. And when you say the "Department," you</p> <p>24 mean the Nebraska Department of Natural</p> <p>25 Resources; right?</p>	<p style="text-align: right;">Page 8</p> <p>1 presented by the Kansas experts and compared</p> <p>2 that to the actual real-world conditions that</p> <p>3 both I observed and was further illuminated on</p> <p>4 through Mr. Riley's report.</p> <p>5 Q. Besides the Kansas results, did you look</p> <p>6 at any other Model results to compare to</p> <p>7 Mr. Riley's work?</p> <p>8 A. Nothing that's coming to mind at this --</p> <p>9 right now.</p> <p>10 Q. Okay. So moving down to the -- let's</p> <p>11 see. I'm not sure if that's a new paragraph or</p> <p>12 not. We'll go with, it looks like the fourth</p> <p>13 paragraph. It starts "In contrast." Do you</p> <p>14 see that?</p> <p>15 A. Yes.</p> <p>16 Q. And when you say "In contrast, the Model</p> <p>17 appears to compute," are you referring just to</p> <p>18 the Kansas Model results there?</p> <p>19 A. Yes.</p> <p>20 Q. And so the Kansas Model results you're</p> <p>21 saying show that perennial flow in Medicine</p> <p>22 Creek begins 10 miles downstream of the</p> <p>23 discharge of the project?</p> <p>24 A. Right. That's what the Model results</p> <p>25 appear to be showing when I reviewed the</p>
<p style="text-align: right;">Page 7</p> <p>1 A. Yes.</p> <p>2 Q. Thanks. The report here that's dated</p> <p>3 February 7th, does that contain all of your</p> <p>4 responsive opinions regarding the N-CORPE</p> <p>5 Project? And I should pause to spell that out.</p> <p>6 "N-CORPE" is an acronym for Nebraska</p> <p>7 Cooperative Republican Platte Enhancement, and</p> <p>8 so I'll ask my question again.</p> <p>9 Does this report contain all of your</p> <p>10 responsive opinions regarding the N-CORPE</p> <p>11 Project?</p> <p>12 A. It contains all of my responsive</p> <p>13 opinions regarding the Kansas reports that were</p> <p>14 filed.</p> <p>15 Q. Thank you. Could you turn to page two,</p> <p>16 please?</p> <p>17 A. Yes.</p> <p>18 Q. Thank you. Right there up at the top of</p> <p>19 the page, the first sentence, do you see that</p> <p>20 sentence? It says "Comparison of Model output</p> <p>21 to the actual real-world conditions."</p> <p>22 A. Yes.</p> <p>23 Q. What comparison are you talking about?</p> <p>24 And by that, I mean, did you do a comparison?</p> <p>25 A. Yes. I looked at the results that were</p>	<p style="text-align: right;">Page 9</p> <p>1 reports.</p> <p>2 Q. Thank you. If we could go to</p> <p>3 page three?</p> <p>4 A. Okay.</p> <p>5 Q. And there is a paragraph that says</p> <p>6 "Ultimately, transit losses." Do you see that?</p> <p>7 A. Yes.</p> <p>8 Q. And I wanted to see if I understood what</p> <p>9 you were saying in this paragraph. The second</p> <p>10 sentence there, if you see it, it says in the</p> <p>11 middle of the sentence, "Kansas fails to note</p> <p>12 Nebraska's allocation would be harmed even</p> <p>13 more," and I wanted to understand what you</p> <p>14 meant by "even more."</p> <p>15 A. Well, it's just the way the math works</p> <p>16 out as I guess tried to explain in the rest of</p> <p>17 the sentence because we receive a higher</p> <p>18 allocation for Medicine Creek.</p> <p>19 Q. And what is that allocation?</p> <p>20 A. It's about -- it's about 53 and a half</p> <p>21 percent of the total once you factor in the</p> <p>22 direct allocation and the split of the</p> <p>23 unallocated water.</p> <p>24 Q. Now, moving to the next paragraph, you</p> <p>25 give an example there. Do you see that?</p>

<p style="text-align: right;">Page 10</p> <p>1 A. Yes.</p> <p>2 Q. And I want to make sure I understand the</p> <p>3 example. If I was following your description</p> <p>4 there, it takes on a hypothetical situation</p> <p>5 where there's a credit for 60,000 acre-feet; is</p> <p>6 that right?</p> <p>7 A. Yes.</p> <p>8 Q. And there's an amount of that water that</p> <p>9 was for the credit, the amount that shows up at</p> <p>10 the State line. In this hypothetical, it's</p> <p>11 40,000 acre-feet; is that right?</p> <p>12 A. Yes.</p> <p>13 Q. And I take it it's saying here that --</p> <p>14 you're saying that there's a problem if the</p> <p>15 full 60,000 doesn't arrive at the State line.</p> <p>16 Is that -- is that a fair characterization?</p> <p>17 A. Right, because if we needed to make up</p> <p>18 60,000 acre-feet in terms of our Compact</p> <p>19 compliance balance and that full amount didn't</p> <p>20 show up, we would have a 60,000 acre-foot</p> <p>21 credit, but the allocation that we received</p> <p>22 would be reduced so we would still end up with</p> <p>23 a shortfall.</p> <p>24 Q. Now, would the reduced allocation be</p> <p>25 more or less than the credit you were getting?</p>	<p style="text-align: right;">Page 12</p> <p>1 at the Medicine Creek gage, for example?</p> <p>2 A. Well, it's I suppose possible, although</p> <p>3 what really matters is that it doesn't make it</p> <p>4 to the State line. That's kind of the</p> <p>5 underlying assumption.</p> <p>6 Q. Now, if all of the -- if the losses in</p> <p>7 this hypothetical were all at the Medicine</p> <p>8 Creek gage, then does it matter what's</p> <p>9 happening after the Medicine Creek gage?</p> <p>10 A. It could. Possibly not, possibly so, I</p> <p>11 guess.</p> <p>12 Q. Now, how is it that Nebraska is going to</p> <p>13 know that all of the water didn't show up at</p> <p>14 the State line that you wanted it to?</p> <p>15 A. Well, we have the forecast that we work</p> <p>16 through and it's basically got us working under</p> <p>17 a forecasted shortfall. So, you know, if we</p> <p>18 generate credits upstream but don't get the</p> <p>19 water to the State line, there's kind of a</p> <p>20 feedback loop where some of the water is made</p> <p>21 up, but then the -- so the shortfall shrinks,</p> <p>22 but then the allocation shrinks and so the</p> <p>23 shortfall grows again.</p> <p>24 So, you know, aside from that, we'll --</p> <p>25 I guess we'll know that the water is showing up</p>
<p style="text-align: right;">Page 11</p> <p>1 A. Well, it would be less.</p> <p>2 Q. Now, in that paragraph, you have a</p> <p>3 sentence that says "this is exactly why." Do</p> <p>4 you see that?</p> <p>5 A. Yes.</p> <p>6 Q. Are you saying there that because</p> <p>7 there's a reduced allocation to Nebraska,</p> <p>8 therefore, Nebraska must ensure that the full</p> <p>9 60,000 of the credit actually hits the State</p> <p>10 line; is that what you're saying there?</p> <p>11 A. It's -- yeah. It's saying that if we</p> <p>12 don't ensure that all of the water gets there,</p> <p>13 then our allocation will be reduced and we</p> <p>14 don't make up the full amount of water that we</p> <p>15 needed to.</p> <p>16 Q. Now, the reduced allocation showing up</p> <p>17 in this hypothetical, did you intend that the</p> <p>18 reduced allocation is showing up in several</p> <p>19 places or just one of the reaches?</p> <p>20 A. Well, I don't think it's necessary to</p> <p>21 worry about where it shows up. The bottom line</p> <p>22 is that it shows up overall basin-wide.</p> <p>23 Q. So for the purposes of this</p> <p>24 hypothetical, it could either all be the 20,000</p> <p>25 acre-feet that is not present in flow could be</p>	<p style="text-align: right;">Page 13</p> <p>1 at the State line. It's really kind of the</p> <p>2 other way around from the way your question was</p> <p>3 posed, I think.</p> <p>4 Q. Does that mean that if Nebraska met its</p> <p>5 compliance target, then all of the water must</p> <p>6 have shown up?</p> <p>7 A. Well, it's not necessarily that water.</p> <p>8 Again, I'm a little concerned that we're</p> <p>9 getting into the issue of drops of water over</p> <p>10 volumes of water. But the water is obviously</p> <p>11 getting there if we meet our compliance</p> <p>12 objective.</p> <p>13 Q. If the water is getting there, does that</p> <p>14 mean there's no transit loss?</p> <p>15 A. Well, again, transit loss is about drops</p> <p>16 of water. There's probably transit losses that</p> <p>17 occur within the system. That's just something</p> <p>18 we have to deal with, you know, with or without</p> <p>19 an augmentation project.</p> <p>20 Q. It seemed to me like you were suggesting</p> <p>21 that there's -- Nebraska has an incentive to</p> <p>22 eliminate transit losses because there will be</p> <p>23 a problem for Nebraska if there are transit</p> <p>24 losses. Is that what you were suggesting?</p> <p>25 A. Well, I guess it's probably partly that;</p>

<p style="text-align: right;">Page 14</p> <p>1 that, you know, it's to our advantage to try to</p> <p>2 ensure that transit losses are minimized if</p> <p>3 they're going to occur, but it's also, you</p> <p>4 know, if they're inherent and something that is</p> <p>5 occurring, it's something that we have to deal</p> <p>6 with anyway.</p> <p>7 Q. And so is it an incentive driving</p> <p>8 Nebraska's work on the augmentation project?</p> <p>9 A. I'm sorry. Did you mean minimizing</p> <p>10 transit loss? Is that the incentive that</p> <p>11 you're getting at?</p> <p>12 Q. Yes. That's right.</p> <p>13 A. Right. So I think the way those</p> <p>14 projects were designed and constructed, that</p> <p>15 that was something that was taken into account</p> <p>16 and that at least, you know, in the vicinity of</p> <p>17 the delivery area and, you know, in terms of</p> <p>18 the economic tradeoffs of, you know, building a</p> <p>19 pipe further downstream versus where is -- you</p> <p>20 know, where is an outfall reasonably situated</p> <p>21 so that transit losses would be minimized.</p> <p>22 That's clearly something that would be taken</p> <p>23 into account, and was.</p> <p>24 Q. Now, I want to make sure I've captured</p> <p>25 everything you're trying to suggest here in</p>	<p style="text-align: right;">Page 16</p> <p>1 project like N-CORPE to arrive at some</p> <p>2 downstream location? Is that what you mean by</p> <p>3 managing volume of water?</p> <p>4 A. Well, it's a little broader than that.</p> <p>5 It's not necessarily that water. I mean, it's</p> <p>6 just an equivalent volume. Maybe that's what</p> <p>7 you meant.</p> <p>8 Q. It is. And the downstream location</p> <p>9 you're looking at is the State line?</p> <p>10 A. Correct.</p> <p>11 Q. Let's go to the next section right there</p> <p>12 below. There's a heading "Compact Call Year</p> <p>13 Water Administration." Do you see that?</p> <p>14 A. Yes.</p> <p>15 Q. In the second sentence of that first</p> <p>16 paragraph, it says "Nebraska administered this</p> <p>17 water in strict accordance with its Integrated</p> <p>18 Management Plans." Do you see that?</p> <p>19 A. Yes.</p> <p>20 Q. Could you explain what you mean by</p> <p>21 "strict accordance"?</p> <p>22 A. Well, there's a surface-water control in</p> <p>23 the Integrated Management Plan that requires</p> <p>24 the Department to administer surface-water in</p> <p>25 Compact Call Years in order to ensure Compact</p>
<p style="text-align: right;">Page 15</p> <p>1 terms of when you say "this is exactly why."</p> <p>2 It seems to me that you're saying that if there</p> <p>3 are large transit losses with the augmentation</p> <p>4 deliveries, that works against Nebraska's</p> <p>5 efforts to meet their compliance target. Is</p> <p>6 that a fair characterization of what you're</p> <p>7 suggesting here?</p> <p>8 A. Well, I think in terms of specifically</p> <p>9 what this is talking about, it's just simply</p> <p>10 saying that, regardless of what happens, we</p> <p>11 have to get that same volume of water to the</p> <p>12 State line.</p> <p>13 Q. And how is it that Nebraska is going to</p> <p>14 make sure that those transit losses aren't</p> <p>15 working against your compliance efforts?</p> <p>16 A. Well, I guess we do that by managing</p> <p>17 volumes of water instead of drops of water and</p> <p>18 everything is laid out in the Integrated</p> <p>19 Management Plans that we've been over.</p> <p>20 Q. That we've talked about a couple of</p> <p>21 times?</p> <p>22 A. Yeah.</p> <p>23 Q. Well, when you say "volumes of water,"</p> <p>24 is it fair to say that you are looking for a</p> <p>25 volume of water generated by an augmentation</p>	<p style="text-align: right;">Page 17</p> <p>1 compliance.</p> <p>2 Q. And so when you say "administered this</p> <p>3 water," what are you referring to specifically?</p> <p>4 A. I'm sorry. I didn't understand.</p> <p>5 Q. What do you mean by "administered this</p> <p>6 water"? Which water and how was it</p> <p>7 administered?</p> <p>8 A. I mean the streamflow in the Basin and</p> <p>9 it was administered under prior appropriations.</p> <p>10 Q. Do you mean the closing notices?</p> <p>11 A. Closing notices are a part of water</p> <p>12 administration, yes.</p> <p>13 Q. Is there anything else besides the</p> <p>14 closing notices you're referring to here?</p> <p>15 A. Well, there were -- there was an order</p> <p>16 that was signed on January 1st. There were</p> <p>17 closing notices that went out. There was</p> <p>18 subsequent opening notices and then further</p> <p>19 subsequent closing notices, so it's just kind</p> <p>20 of the whole -- everything that we did, I</p> <p>21 guess.</p> <p>22 Q. If I crack open an IMP, am I going to</p> <p>23 find when an opening notice is issued after a</p> <p>24 closing notice and then when the closing notice</p> <p>25 is going to be issued again? Is that in the</p>

<p style="text-align: right;">Page 18</p> <p>1 IMP?</p> <p>2 A. Only the first closing notice. The rest</p> <p>3 of it is all depending upon conditions and</p> <p>4 it's -- that's what's clearly contemplated, and</p> <p>5 it's, as I said, simply and clearly stated that</p> <p>6 we administer to ensure Compact compliance. So</p> <p>7 that's our -- that's our tool. We use the</p> <p>8 Compact accounting to determine when -- if,</p> <p>9 when, how many closing/opening notices are sent</p> <p>10 out.</p> <p>11 Q. In 2013 there, you mentioned that there</p> <p>12 were some -- well, I want to make sure I've got</p> <p>13 this right. The operations that happened in</p> <p>14 2013, that they include these closing notices</p> <p>15 and then opening notices you were referring to?</p> <p>16 A. Yes.</p> <p>17 Q. And when we're talking about closing</p> <p>18 notices, is that also or does that include</p> <p>19 notices issued for the Bureau of Reclamation's</p> <p>20 reservoirs in Nebraska in the Republican River</p> <p>21 Basin?</p> <p>22 A. Yes.</p> <p>23 Q. And so were those reservoirs part of</p> <p>24 this administration you were referring to?</p> <p>25 A. Yes.</p>	<p style="text-align: right;">Page 20</p> <p>1 much of which was diverted through the Cortland</p> <p>2 Canal. That was in May.</p> <p>3 Then later in the year, later in the</p> <p>4 irrigation season, about 6,000 acre-feet of</p> <p>5 Compact water was released to the Kansas</p> <p>6 Bostwick Irrigation District for irrigation</p> <p>7 purposes. And then later in the year, there</p> <p>8 was about 10,000 acre-feet remaining which was</p> <p>9 required to make it to the State line for</p> <p>10 Compact compliance purposes, so we -- that</p> <p>11 water was released and transferred into</p> <p>12 Lovewell Reservoir where it resides right now.</p> <p>13 Q. Thank you. Was there any water that had</p> <p>14 been administered in reservoirs upstream of</p> <p>15 Harlan County Lake that was allowed to remain</p> <p>16 in those reservoirs through the end of 2013?</p> <p>17 A. Yes. I don't recall the exact</p> <p>18 volume. I believe it was somewhere over</p> <p>19 20,000 acre-feet, and so that would have been</p> <p>20 water that was accrued in May and early June --</p> <p>21 well, probably all of June. The reservoirs</p> <p>22 were open during July and August.</p> <p>23 At a certain point, all of the</p> <p>24 appropriations were opened and then they were</p> <p>25 subsequently closed in September through the</p>
<p style="text-align: right;">Page 19</p> <p>1 Q. What was the volume of water that was</p> <p>2 managed -- To pick up on your earlier point</p> <p>3 about managing the volume, what volume of water</p> <p>4 was managed for Compact Call purposes in 2013?</p> <p>5 A. Well, I'm speaking from memory, so I may</p> <p>6 not have this exact. In April -- and I guess</p> <p>7 there was another component beyond the closing</p> <p>8 and opening notices, which were storage release</p> <p>9 notices.</p> <p>10 So early in the year, we closed the</p> <p>11 reservoirs, but didn't require immediate</p> <p>12 releases of water under those closing notices.</p> <p>13 Release notices were sent out in April for</p> <p>14 release of water that had accrued in January,</p> <p>15 February, and March. I believe that was about</p> <p>16 10,000 acre-feet. And then another notice was</p> <p>17 sent out in May for additional release of water</p> <p>18 that accrued in April, and I believe that was</p> <p>19 13,000 acre-feet, although I may have those two</p> <p>20 volume numbers mixed up. It may have been</p> <p>21 13 first and 10 second.</p> <p>22 There was also a notice issued for</p> <p>23 Harlan to evacuate Compact water in May, which</p> <p>24 was further stayed or lifted, but before that,</p> <p>25 about 8,000 acre-feet was released downstream,</p>	<p style="text-align: right;">Page 21</p> <p>1 end of the year so that while we evaluated</p> <p>2 whether or not that water was also going to be</p> <p>3 needed to ensure Compact compliance, it, in</p> <p>4 fact, was not. So that water was turned back</p> <p>5 over to the Bureau's project water,</p> <p>6 legally-stored water on January 1st of 2014.</p> <p>7 Q. So can or is Nebraska planning to call</p> <p>8 for that water to be released?</p> <p>9 A. No. As I said, that was -- that's now</p> <p>10 considered legally-stored water by order of the</p> <p>11 Director. The Department can't order a release</p> <p>12 of legally-stored water, at least under prior</p> <p>13 appropriations. There may be a dam safety</p> <p>14 issue I'm not as familiar with that may allow</p> <p>15 us to order the evacuation of a facility,</p> <p>16 but --</p> <p>17 Q. Okay.</p> <p>18 A. -- that would be a different thing.</p> <p>19 Q. Besides the dam safety issue that you</p> <p>20 mentioned as a potential other reason to</p> <p>21 release, is there any other reason to release</p> <p>22 that you would be thinking of?</p> <p>23 A. No. I mean, that water is</p> <p>24 legally-stored water for them to use under</p> <p>25 their storage-use appropriations as they see</p>

<p style="text-align: right;">Page 22</p> <p>1 fit.</p> <p>2 Q. Let's go to page four. The last</p> <p>3 paragraph of this section, just above the</p> <p>4 heading for 4.0, do you see that?</p> <p>5 A. Yes.</p> <p>6 Q. And there's a mention of Nebraska's</p> <p>7 Alternative Water-Short Year Plan as well as a</p> <p>8 Rock Creek Plan. Do you see that?</p> <p>9 A. Yes.</p> <p>10 Q. That's the Rock Creek Augmentation Plan;</p> <p>11 is that right?</p> <p>12 A. Yes.</p> <p>13 Q. Was the Rock Creek Augmentation Plan</p> <p>14 operating in 2013?</p> <p>15 A. Yes.</p> <p>16 Q. How much water was delivered out of the</p> <p>17 pipeline for the Rock Creek Augmentation</p> <p>18 Project?</p> <p>19 A. Approximately 16,000 acre-feet.</p> <p>20 Q. And do you know when those deliveries</p> <p>21 happened in sort of general terms throughout</p> <p>22 the year?</p> <p>23 A. I believe they began in mid February and</p> <p>24 ran through December 31st.</p> <p>25 Q. Was it constant deliveries?</p>	<p style="text-align: right;">Page 24</p> <p>1 A. We included it in the streamflow. I</p> <p>2 mean, I suppose more straightforwardly, we used</p> <p>3 the streamflow that was gaged at the Rock</p> <p>4 Creek, at Parks gage, and that included the</p> <p>5 augmentation water.</p> <p>6 Q. Do you know how much of the deliveries</p> <p>7 from the pipeline outfall reached the Parks</p> <p>8 gage?</p> <p>9 A. Well, based on the gage readings that I</p> <p>10 observed throughout the year, it appeared to be</p> <p>11 nearly all of it, if not all of it.</p> <p>12 Q. Did you look at anything besides the</p> <p>13 gage reading at Parks?</p> <p>14 A. I have not at this point.</p> <p>15 Q. Did you look at the pipeline outfall</p> <p>16 discharge amount?</p> <p>17 A. I have not looked at that data at this</p> <p>18 point.</p> <p>19 Q. I just wanted to make sure I'm</p> <p>20 following. I might be missing something. So</p> <p>21 you looked at the gage data which had a number,</p> <p>22 but you didn't look at any other number and</p> <p>23 that was the basis for your conclusion that all</p> <p>24 of the water was reaching the gage?</p> <p>25 A. Yes. That data didn't give me any</p>
<p style="text-align: right;">Page 23</p> <p>1 A. More or less.</p> <p>2 Q. Let's see. So if I divide 16,000 by</p> <p>3 11 for 11 months, I'll get the delivery amounts</p> <p>4 that were done each month?</p> <p>5 A. Approximately I believe that would work.</p> <p>6 I don't know when they started in February.</p> <p>7 Q. You don't have a better estimation?</p> <p>8 A. Well, obviously we'll have the actual</p> <p>9 data from the pumping and delivery that will be</p> <p>10 available here by April but, you know, there</p> <p>11 was -- there was, you know, a few brief times</p> <p>12 where they had to bring the system down for a</p> <p>13 day, at least once that I know of. You know, I</p> <p>14 think they ramped it up initially so, you know,</p> <p>15 there would be those considerations, but you</p> <p>16 could obtain estimates the way that you laid</p> <p>17 out.</p> <p>18 Q. Was the Rock Creek Augmentation Project</p> <p>19 deliveries, was that amount of water used in</p> <p>20 determining Nebraska's Compact compliance</p> <p>21 situation for 2013?</p> <p>22 A. Yes.</p> <p>23 (Mr. Brian Dunnigan joined the</p> <p>24 deposition.)</p> <p>25 Q. (By Mr. Grunewald) And how was it used?</p>	<p style="text-align: right;">Page 25</p> <p>1 other -- any reason to believe otherwise.</p> <p>2 Q. And how much water did you expect was</p> <p>3 leaving the pipe at that point?</p> <p>4 A. My understanding is it operates at</p> <p>5 approximately 28 cfs.</p> <p>6 Q. And do you know if it was operating at</p> <p>7 28 cfs when you were looking at the Parks gage</p> <p>8 data?</p> <p>9 A. It was a fairly constant discharge. You</p> <p>10 know, the one thing I can say is when they --</p> <p>11 like on days when it went down for -- I think</p> <p>12 there was a one-day time that it went down for</p> <p>13 repair and it was quite apparent in the data</p> <p>14 that it wasn't operating at that level.</p> <p>15 Q. I would like to switch over to Exhibit 3</p> <p>16 if we could. We'll come back to your report in</p> <p>17 a moment. Could you pull out Exhibit 3 for me?</p> <p>18 A. I have it.</p> <p>19 Q. Thanks. Now, do you recognize</p> <p>20 Exhibit 3?</p> <p>21 A. I do.</p> <p>22 Q. And did you help prepare or direct the</p> <p>23 preparation of this document?</p> <p>24 A. Yes.</p> <p>25 Q. Does it look like a complete copy of</p>

<p style="text-align: right;">Page 26</p> <p>1 this document, which is labeled "Forecast"?</p> <p>2 A. Yes.</p> <p>3 Q. If you were to paraphrase what this</p> <p>4 document is for, what does it do for Nebraska?</p> <p>5 A. Well, this determines whether or not we</p> <p>6 need to declare a Compact Call Year under the</p> <p>7 Integrated Management Plan.</p> <p>8 Q. And this particular one is being done</p> <p>9 for the current year we're in, 2014; is that</p> <p>10 right?</p> <p>11 A. Yes. This applies to 2014.</p> <p>12 Q. And will 2014 be a Compact Call Year?</p> <p>13 A. It is a Compact Call Year. That</p> <p>14 determination was made on January 1st.</p> <p>15 Q. And once your -- once Nebraska is in a</p> <p>16 Compact Call Year, can it ever come out of a</p> <p>17 Compact Call Year?</p> <p>18 A. No.</p> <p>19 Q. Now, if you can turn to page two, I</p> <p>20 would appreciate it. You can maybe draw your</p> <p>21 attention to Table 1. Do you see that?</p> <p>22 A. Yes.</p> <p>23 Q. I just wanted to connect the dots. So</p> <p>24 this is a forecast which is looking at</p> <p>25 provisional data for 2013 and a forecast of</p>	<p style="text-align: right;">Page 28</p> <p>1 it a little differently; that in the</p> <p>2 computation of the virgin water supply, the</p> <p>3 augmentation water supply credit would be</p> <p>4 subtracted out and then reassigned after the</p> <p>5 allocations were divvied up from that virgin</p> <p>6 water supply to the -- fully to the State.</p> <p>7 Q. Thank you. You used the word "credit"</p> <p>8 there. I think we just -- we had a decision</p> <p>9 come down from the arbitrator regarding Rock</p> <p>10 Creek, and I think he would refer to it as the</p> <p>11 augmentation water supply being removed from</p> <p>12 the virgin water supply calculation. Does that</p> <p>13 sound right to you?</p> <p>14 A. I believe so, yes. The specific details</p> <p>15 of how we implement that -- those tweaks would</p> <p>16 need to be worked out but, yeah, we would have</p> <p>17 to account for those new net depletions in</p> <p>18 determining the credit. So there's that to</p> <p>19 address, but I wasn't trying to address that in</p> <p>20 my answer.</p> <p>21 Q. Fair enough. And since we're talking</p> <p>22 about the Rock Creek Arbitrator's order, I have</p> <p>23 a follow-up question on that and it relates as</p> <p>24 well to the N-CORPE Project, which is that</p> <p>25 arbitrator recommended that the Republican</p>
<p style="text-align: right;">Page 27</p> <p>1 2014 to put together, I'm going to call it a</p> <p>2 target for Compact Compliance. Is that a fair</p> <p>3 characterization?</p> <p>4 A. Yes.</p> <p>5 Q. And so earlier we were talking about the</p> <p>6 Rock Creek Augmentation deliveries and how they</p> <p>7 were used and you mentioned streamflow; that</p> <p>8 you looked at streamflow with respect to the</p> <p>9 Compact compliance situation. In Table 1, I</p> <p>10 see under "2013 Provisional," one of the items,</p> <p>11 it uses streamflow and it says "provisional</p> <p>12 records." Is that -- just to connect the dots,</p> <p>13 that's where the Rock Creek Augmentation</p> <p>14 Pipeline deliveries would show up in Nebraska's</p> <p>15 forecast for Compact compliance?</p> <p>16 A. Right. Because Kansas has rejected</p> <p>17 Nebraska's ability to claim a credit, then</p> <p>18 that's the only place that it would show up in</p> <p>19 the accounting at this point.</p> <p>20 Q. And if Nebraska's proposed credit method</p> <p>21 were used, then the Rock Creek Augmentation</p> <p>22 discharge would be removed from the streamflow</p> <p>23 as a matter of accounting; isn't that right?</p> <p>24 A. Well, I mean, I suppose that's a way to</p> <p>25 look at it. I would -- I guess I would look at</p>	<p style="text-align: right;">Page 29</p> <p>1 River Compact Administration, which I'll</p> <p>2 probably call "RRCA" from here on out, should</p> <p>3 review an Augmentation Plan in 20 years. Are</p> <p>4 you familiar or do you remember that</p> <p>5 recommendation?</p> <p>6 A. Yes.</p> <p>7 Q. And did Nebraska agree that that should</p> <p>8 be done for augmentation planning?</p> <p>9 A. Yes.</p> <p>10 Q. Does the FSS require that?</p> <p>11 A. Not to my knowledge.</p> <p>12 Q. And why is Nebraska agreeing to it?</p> <p>13 A. It seemed to be a reasonable concession.</p> <p>14 In my view, the FSS requires review of the</p> <p>15 accounting every year. So under that</p> <p>16 requirement, anything that is related to the</p> <p>17 accounting is reviewed by the RRCA every year.</p> <p>18 So simply putting on paper that we'll review</p> <p>19 this in 20 years is just a bit redundant in my</p> <p>20 view, but it perhaps sets a timeline where we</p> <p>21 do a more thorough review if that's what's</p> <p>22 needed at that point.</p> <p>23 Q. Let's pick up on that. If you can go</p> <p>24 back to your expert report and flip to</p> <p>25 page six, I would appreciate it. Let me know</p>



<p style="text-align: right;">Page 30</p> <p>1 when you're there.</p> <p>2 A. I'm there.</p> <p>3 Q. So it's a section called "Conclusions</p> <p>4 and Opinions," and Number 4 discusses this</p> <p>5 review. Do you see that?</p> <p>6 A. Yes.</p> <p>7 Q. And in your report, it says "review the</p> <p>8 Plan in 20 years and discuss any potential</p> <p>9 revisions to the Plan that should be considered</p> <p>10 at that time." Does that -- that's your</p> <p>11 conclusion?</p> <p>12 A. Yes.</p> <p>13 Q. I want to understand how that relates to</p> <p>14 what you said a little earlier here regarding</p> <p>15 it being redundant in terms of what the RRCA</p> <p>16 reviews. Are you saying that this should</p> <p>17 happen every year?</p> <p>18 A. I'm saying that there's an opportunity</p> <p>19 for this every year, just as there's an</p> <p>20 opportunity to review any aspect of the</p> <p>21 accounting procedures every year.</p> <p>22 Q. I guess I just want to understand. Does</p> <p>23 Nebraska see this as conceding something</p> <p>24 additional or is Nebraska's position that what</p> <p>25 happens every year is what's going to happen in</p>	<p style="text-align: right;">Page 32</p> <p>1 A. I don't believe so.</p> <p>2 Q. Do you know if Director Dunnigan has?</p> <p>3 A. I don't believe so.</p> <p>4 Q. Now, this letter, on the first page</p> <p>5 there, the last paragraph talks -- it has a</p> <p>6 sentence, "authorized beneficial purposes." Do</p> <p>7 you see that?</p> <p>8 A. I do.</p> <p>9 Q. Are you familiar with what the Corps</p> <p>10 letter means by "authorized beneficial</p> <p>11 purposes"?</p> <p>12 A. Generally speaking, I am.</p> <p>13 Q. Do you know what the authorized</p> <p>14 beneficial purposes are for Harlan County Lake?</p> <p>15 A. Well, it lists these five items. To the</p> <p>16 best of my knowledge, that's what they are.</p> <p>17 Q. Do you think there are any in addition</p> <p>18 to those five?</p> <p>19 MR. BLANKENAU: Are you asking</p> <p>20 him for a legal conclusion, Chris?</p> <p>21 MR. GRUNEWALD: I'm just asking</p> <p>22 if he thinks there are any besides those five.</p> <p>23 MR. LAVENE: That sounds like a</p> <p>24 legal question.</p> <p>25 MR. GRUNEWALD: Well, I'm asking</p>
<p style="text-align: right;">Page 31</p> <p>1 the 20th year; that nothing different happens</p> <p>2 in 20 years?</p> <p>3 A. No, that's not what I'm trying to say.</p> <p>4 I guess the point is that the ability to review</p> <p>5 this is there every year, but it may be that</p> <p>6 there is no cause raised by any of the three</p> <p>7 states to do a review for the first 19 years,</p> <p>8 so this just programs in that review so that we</p> <p>9 would do it in that 20th year, but that it</p> <p>10 could be done any year.</p> <p>11 Q. Okay. Thank you. If we could turn to</p> <p>12 Exhibit 4, please. And that's a letter dated</p> <p>13 January 21st, 2014. Do you see that?</p> <p>14 A. I do.</p> <p>15 Q. Have you ever seen this letter?</p> <p>16 A. Yes.</p> <p>17 Q. And what is this letter?</p> <p>18 A. It's a letter from the Army Corps of</p> <p>19 Engineers to the Bureau of Reclamation.</p> <p>20 Q. Have you had any conversations with the</p> <p>21 Corps of Engineers about this letter or the</p> <p>22 issues that it discusses?</p> <p>23 A. No.</p> <p>24 Q. Do you know if anybody on your staff has</p> <p>25 done -- has done that?</p>	<p style="text-align: right;">Page 33</p> <p>1 the question.</p> <p>2 MR. BLANKENAU: Well, you're</p> <p>3 asking him for an opinion outside of his</p> <p>4 expertise it would seem to me.</p> <p>5 MR. GRUNEWALD: I'm not asking</p> <p>6 for an expert opinion here. I'm asking if he</p> <p>7 knows of any other authorized beneficial</p> <p>8 purposes.</p> <p>9 THE WITNESS: I don't know.</p> <p>10 Q. (By Mr. Grunewald) If you can turn to</p> <p>11 Exhibit 5, please.</p> <p>12 A. I have it.</p> <p>13 Q. Thank you. And do you -- have you ever</p> <p>14 seen Exhibit 5 before?</p> <p>15 A. I have.</p> <p>16 Q. Are you familiar with this letter?</p> <p>17 A. Yes.</p> <p>18 Q. And could you just describe it? What is</p> <p>19 this letter?</p> <p>20 A. It's a letter from the Bureau of</p> <p>21 Reclamation to Director Brian Dunnigan of the</p> <p>22 Department of Natural Resources.</p> <p>23 Q. Have you reviewed this letter before</p> <p>24 this morning?</p> <p>25 A. Yes.</p>

<p style="text-align: right;">Page 34</p> <p>1 Q. Did Nebraska prepare a response to this 2 letter? 3 A. Yes. 4 Q. Did you work on that response? 5 A. Yes. 6 Q. So for this February 5th letter from the 7 Bureau, do you agree with the letter, the 8 contents of the letter? 9 A. Well, I don't agree with it entirely, 10 that's for certain. There probably are parts 11 in here that are accurate, such as their 12 recitation of one of the IMP goals. Their 13 characterization of the situation in 2013 is -- 14 I don't agree with. 15 Q. What in particular don't you agree with? 16 A. Well, I think some of the numbers with 17 regard to releases are consistent with my 18 understanding, such as the -- some of this 19 stuff on the first page. The characterization 20 that Compact Call administration impacted 21 federal storage facilities by no less than 22 50,000 acre-feet, I don't agree with. I could 23 go through it sentence-by-sentence if you like. 24 Q. Well, let's start on page one that you 25 mentioned. I wanted to make sure if we found</p>	<p style="text-align: right;">Page 36</p> <p>1 forecast document or -- well, is it the 2 forecast document we were looking at earlier? 3 A. Yes. 4 Q. And it refers to an amount of acre-feet 5 that -- well, maybe we'll just do it generally. 6 Do you disagree with the numbers that they have 7 in that first paragraph? 8 A. They appear to be accurate. I'm just 9 looking at the forecast document and they are 10 what was contained on the forecast document. 11 Q. If we stop at the first page, we've got 12 all sorts of agreement. Now, the forecast 13 document is making a hypothetical assessment of 14 Nebraska's Compact compliance situation under 15 particular conditions is my understanding; is 16 that right? 17 A. It's a drier forecast of the compliance 18 outcome for the upcoming year, absent any 19 additional management actions. I'm sorry. 20 Q. So that forecast document took 21 provisional data for 2013 and then projections 22 for 2014; is that right? 23 A. Well, I wouldn't call them projections 24 but, yes, there's estimates of various terms 25 that are a part of the accounting that allow us</p>
<p style="text-align: right;">Page 35</p> <p>1 something that you did agree with. You 2 mentioned numbers for releases. So on page one 3 there at the bottom, there's references to some 4 additional storage. I'm sorry. I should say 5 the first number there, the first sentence on 6 the last paragraph is a number related to 7 releases. Is that what you were referring to, 8 that the numbers are consistent with your 9 understanding? 10 A. Right. Earlier I described a 10,000 and 11 a 13,000 acre-foot release, so they've summed 12 those numbers up. 13 Q. And the reference to the additional 14 11,466 acre-feet stored in Reclamation's 15 upstream reservoirs, do you agree with that 16 figure? 17 A. I haven't reviewed the data. I don't 18 have any reason to doubt it. I know that would 19 be a subset of the water that I referred to 20 earlier that was I believe in excess of 20,000 21 acre-feet that was turned back over to the 22 projects at the end of the year. 23 Q. Now, up in the -- on the first paragraph 24 of the first page, there are references to 25 forecasts done by Nebraska. Is that the</p>	<p style="text-align: right;">Page 37</p> <p>1 to forecast the potential shortfall for 2014 or 2 the potential compliance balance under a dry 3 year. 4 Q. Now, if you had hopefully gone back to 5 the forecast document, do you still have 6 Exhibit 3 there in front of you? 7 A. Yes. 8 Q. On page three, there's Table 3. 9 A. Yes. 10 Q. And it looks like the -- if you just had 11 a one year, looking at the year 2013 based on 12 provisional numbers, it looks like there's a 13 negative balance there in the last cell, and it 14 shows minus 10,140 as in acre-feet; is that 15 right? 16 A. Yes. 17 Q. Now, is that what Nebraska thinks the 18 situation is when you only look at that one 19 year for the year 2013? 20 A. That was our provisional assessment as 21 of December 31st or thereabouts. 22 Q. Now, at the time coming into that 23 forecast, had Nebraska predicted that the 24 situation was better than the minus 10,140? 25 A. I don't believe so.</p>

<p style="text-align: right;">Page 38</p> <p>1 Q. So it sounded like there were a certain 2 amount of water, that 10,000 acre-feet, that 3 Nebraska didn't call to bring down from 4 upstream reservoirs and I want to see if I can 5 understand. Why wouldn't Nebraska be trying to 6 make that number closer to zero or even instead 7 of leaving water on the table, if you will? 8 Could you explain the decision-making process 9 there? 10 A. Sure. Well, obviously for 2013, we had 11 to look at the two-year average of 2012 and 12 2013, so that averages out with that 2012 value 13 to produce a positive two-year average. The 14 other part of it is that we had -- we had 15 forecasted for 2013 that if we took the 16 management actions that were required to stay 17 in compliance, we would end up at a balance of 18 around 10 or 11,000 acre-feet to the negative. 19 So we were trying to make sure that we ended up 20 at that -- at that value going forward because 21 that's where -- that was the plan and target 22 that we had set out at the beginning of 2013. 23 Q. Is the thinking there that the minus 24 10,000 acre-foot of a one-year amount is the 25 sort of one-year shortfall that can be</p>	<p style="text-align: right;">Page 40</p> <p>1 requests for additional management actions on 2 groundwater users in the second to last 3 paragraph, for example. 4 Q. Okay. Anything else? 5 A. Well, I should note that we had the 6 benefit of having a pretty lengthy meeting with 7 Aaron Thompson and Craig Scott regarding this 8 letter prior to them sending it. They -- they 9 sent us a draft letter and scheduled a meeting 10 with us so that we could discuss it before they 11 sent it. And so quite a bit of the statements, 12 which I can't recall exactly for you here, but 13 quite a bit of the statements and arguments and 14 discussion that they brought to that meeting 15 would also factor into my position. 16 Q. Okay. And is there anything else that 17 you would pick out, a particular point of 18 disagreement, that we haven't already talked 19 about with the content of this letter? 20 A. I would take issue with the 21 characterization that we arbitrarily 22 disregarded or forgot parts of the Integrated 23 Management Plan as they state on the top of 24 page three. There may be other things. 25 MR. GRUNEWALD: Okay. What I</p>
<p style="text-align: right;">Page 39</p> <p>1 compensated for in the following year? 2 A. That's how the accounting would work, 3 yeah. 4 Q. Is that how Nebraska approaches it? 5 A. Yes. 6 Q. If we could go back to Exhibit 5. We 7 got through page one. If we turn to page two, 8 you mentioned one item already that you 9 disagreed with, and that was the impact to the 10 federal project; is that right? 11 A. Yes. 12 Q. Is there any other issues on page two 13 that you disagree with? 14 A. Well, there's an overarching problem 15 here; that they're making this assumption which 16 actually was quite surprising to me that we 17 should have deviated from the IMPs in order to 18 somehow change the way that we were managing 19 surface-water and groundwater users in 2013, 20 and I disagree with that very strongly. We 21 committed to following those to the letter and 22 that's exactly what we did. 23 Q. And how is it you think they were 24 suggesting the deviation? 25 A. When they're discussing potential</p>	<p style="text-align: right;">Page 41</p> <p>1 would like to suggest is we take a -- I'm going 2 to suggest a 10-minute break. I show it's 3 ten -- about 10:05 for me. We can just 4 reconvene at 10:15 Central. Does that work? 5 MR. BLANKENAU: That sounds 6 fine. 7 MR. GRUNEWALD: Okay. Thank 8 you. 9 (A short recess was taken.) 10 Q. (By Mr. Grunewald) Back on the record. 11 I would like to go back to your report and look 12 at -- discuss the work on page four in the 13 Section IV, "Future Conditions in the 14 Republican River Basin." Do you see that? 15 A. Yes. 16 Q. Is your basis for disagreeing with 17 Mr. Barfield's work that it was rejected by the 18 Special Master? 19 A. I disagreed with it before it was 20 rejected by the Special Master. 21 Q. Besides the Special Master rejecting it, 22 what else is it? How would you describe why 23 else you disagree with it? 24 A. I guess I would refer you to my 25 responsive expert report in the litigation.</p>

<p style="text-align: right;">Page 42</p> <p>1 Q. Fair enough. Do you have any opinions 2 on what the trends on base flows in the 3 Republican River Basin are looking forward? 4 A. I know that we plan through our IMPs to 5 keep groundwater depletions at a, you know, 6 steady rate. So if the only thing that factors 7 into base flows in the future are groundwater 8 depletions, then I think they'll be flat, but I 9 don't necessarily believe that that's the case 10 because there are other things that affect base 11 flows. 12 Q. And the other things you're referring 13 to, when you're thinking of the other things 14 that might have an impact, what categories of 15 things are you talking about? 16 A. Climate, weather, land use as examples. 17 Q. And you think those things are likely to 18 cause base flows to rise or to increase? 19 A. I don't know. I guess it would depend 20 on -- it would depend on what happens. 21 Q. And what about trends on groundwater 22 pumping in the Nebraska portion of the Basin? 23 Do you have any opinion on whether there's a 24 trend? 25 A. Are you talking about the future or --</p>	<p style="text-align: right;">Page 44</p> <p>1 the N-CORPE Project. Is there anything that 2 the Nebraska DNR -- well, that the Nebraska 3 Department of Natural Resources has to approve 4 for the Platte portion of the project to become 5 operational? 6 A. Not to my knowledge. 7 Q. Are there any accruals at all related to 8 how the project will be run in relation to the 9 Platte River? 10 A. Well, I suspect the N-CORPE Board will 11 take some kind of action on that, but I don't 12 know. 13 Q. Is there anything like a plan, on the 14 order of an Augmentation Plan like is being 15 submitted here, that is prepared and submitted 16 by the State of Nebraska? 17 A. No. 18 Q. Are there any plans to -- for the State 19 of Nebraska to collect data on whatever 20 pipeline routes there might be that would go to 21 the Platte River? 22 A. Yes. 23 Q. What other plans? 24 A. We would coordinate that work with Twin 25 Platte Natural Resources District in terms of</p>
<p style="text-align: right;">Page 43</p> <p>1 Q. I'm talking about the -- do you have an 2 opinion on the trend looking into the future? 3 A. Well, I think that we'll keep them at 4 least stable over the long-term. Conditions 5 will dictate whether or not those values have 6 to decrease, but I would see them flat, 7 averaged out over the long-term. 8 Q. Is the groundwater pumping associated 9 with Augmentation Plans intended to be kept at 10 or under the historical groundwater pumping 11 that was associated with those wells? 12 A. I think that's the general desire. 13 Q. Do the plans require it? 14 A. No. 15 Q. What if the pumping is higher than the 16 historic levels, what do you think is going to 17 happen? 18 A. Well, we demonstrate that in the plans. 19 There will be some very -- very minor increases 20 in depletions. 21 Q. If we can turn to page five and there's 22 a Section 5.0. Do you see it? 23 A. Yes. 24 Q. And in that Section 5.0, it mentions in 25 the third paragraph the Platte River portion of</p>	<p style="text-align: right;">Page 45</p> <p>1 calculating and quantifying, summarizing the 2 offsets that are provided, whether it be under 3 requirements of the Integrated Management Plans 4 for statutory requirements or for the -- for 5 our new Depletions Plan under the Platte River 6 Program. 7 Q. I want to ask you more generally about 8 data with respect to this plan. What data is 9 intended to be collected and by whom is it 10 collected? 11 A. The groundwater pumping data and the 12 augmentation discharge data will be collected 13 by the N-CORPE group. 14 Q. Any data collected by them that you know 15 of? 16 A. I can't think of any off the top of my 17 head. 18 Q. When is it collected? 19 A. I believe that would be in real-time. 20 Q. Is that data going to be provided to 21 anybody? 22 A. Well, it'll be provided to the 23 Department and then the Department would 24 provide that to the RRCA through the Data 25 Exchange.</p>

<p style="text-align: right;">Page 46</p> <p>1 Q. And that includes both the pumping and 2 the discharge data? 3 A. Well, under the plan, it would. I don't 4 know that the discharge data would be relevant 5 given -- you know, until there's an approved 6 plan. 7 Q. So at the moment, there are no plans to 8 provide the discharge data? 9 A. You know, we hadn't really thought about 10 it at this point. We may provide it anyway. I 11 don't know that there's any requirements. 12 Q. Are you willing to provide it? 13 A. I don't know that I can answer that 14 right now. I don't see why not, but -- 15 Q. What sort of factors will go into 16 deciding whether or not you're willing to 17 provide it? 18 A. I suspect the litigious environment that 19 we're in would be the primary factor. 20 MR. BLANKENAU: Chris, a point 21 of clarity. Are you talking about providing it 22 to the RRCA or to whom are you referencing your 23 question? 24 MR. GRUNEWALD: Yeah. I think 25 that's a fair characterization. I was trying</p>	<p style="text-align: right;">Page 48</p> <p>1 Q. -- on Medicine Creek? 2 A. No. I don't know. 3 Q. If you had to determine what transit 4 losses are occurring on Medicine Creek, how 5 would you do it? 6 A. Well, I suppose if I were to set out and 7 study something like that -- and I assume you 8 mean transit losses of the augmentation water? 9 Q. Yes. Let's start with that. 10 A. Then I would take measurements on the 11 creek. 12 Q. How often would you measure? 13 A. I haven't considered that very 14 thoroughly. It would depend on, I guess, the 15 operational pattern of the project. If we were 16 operating in a fairly constant manner, then 17 probably less often than if there were a lot of 18 changes in the outflow. 19 Q. Is there anything else that you would 20 consider doing? 21 A. I can't think of any. You know, I 22 haven't given it a lot of thought. That's all 23 I can think of off the top of my head. 24 Q. Okay. Thank you. I want to ask a few 25 questions about the -- if water is being</p>
<p style="text-align: right;">Page 47</p> <p>1 to follow the thread of what data was being 2 provided from the Department to the RRCA, and I 3 believe I had asked after that whether it was 4 both pumped and discharged, so I was just 5 trying to follow the thread of what was being 6 provided to the RRCA. 7 MR. BLANKENAU: Okay. 8 Q. (By Mr. Grunewald) So, Dr. Schneider, 9 if in light of that you thought you were 10 answering a different question, let's make sure 11 that we got the right answer. Is there 12 anything in your answer that you would like to 13 clarify? 14 A. I don't believe so. 15 Q. Does the Department have any plans to 16 add streamflow gages on Medicine Creek? 17 A. We've talked about it very 18 preliminarily. I'm not certain if we will or 19 not, but I think it's something that we're 20 considering. We don't have any concrete plans 21 at this time, no. 22 Q. And do you know if anyone else such as 23 the N-CORPE Board or an NRD or anyone else is 24 planning on adding stream gages -- 25 A. I don't know.</p>	<p style="text-align: right;">Page 49</p> <p>1 delivered out of the N-CORPE Pipeline, what 2 might happen to that water. And can Nebraska 3 store the water that comes out of the 4 augmentation pipeline? 5 A. You're going to have to help me a little 6 bit by what you mean by Nebraska. 7 Q. Well, let's start with the Department of 8 Natural Resources. 9 A. We don't have any storage facilities or 10 agreements I suppose with those that do. 11 Q. Is it possible for Nebraska to take 12 actions that would allow for augmentation water 13 to be stored by other entities? 14 A. Well, I mean, it would kind of be -- I 15 guess I would look at it from the opposite 16 direction; that if -- you know, we've granted 17 storage permits for various facilities that lie 18 between the outfall and the State line on the 19 Republican River. So if we didn't preclude 20 that storage, then those entities would be 21 allowed to store the water if they chose to. 22 Q. Okay. Do you expect that the 23 augmentation water from the N-CORPE Project is 24 going to be passed through Harry Strunk 25 Reservoir?</p>

<p style="text-align: right;">Page 50</p> <p>1 A. Well, eventually it all will be. That's</p> <p>2 the only --</p> <p>3 Q. What do you mean by "eventually"?</p> <p>4 A. Well, that's really the only place for</p> <p>5 it to go, is downstream from there.</p> <p>6 Q. Is it possible that it could be held</p> <p>7 over a calendar year?</p> <p>8 A. It's possible.</p> <p>9 Q. Is it possible that it could be lost to</p> <p>10 evaporation?</p> <p>11 A. Well, evaporation will occur regardless</p> <p>12 of whether or not that water is there, so I</p> <p>13 don't know. I don't really know if those drops</p> <p>14 of water will evaporate.</p> <p>15 Q. So do you expect that the water from the</p> <p>16 augmentation pipeline will be passed through</p> <p>17 Harry Strunk Reservoir in the same year that</p> <p>18 the pipeline discharged the water?</p> <p>19 A. I would expect that certainly the</p> <p>20 majority of it would be.</p> <p>21 Q. Following it downstream, the next</p> <p>22 reservoir, federal reservoir down the stream is</p> <p>23 Harlan County Lake on the main staff?</p> <p>24 A. Yes.</p> <p>25 Q. Do you expect that the water -- the</p>	<p style="text-align: right;">Page 52</p> <p>1 Q. Does the Augmentation Plan require that</p> <p>2 staging for Kansas you just referred to?</p> <p>3 A. No.</p> <p>4 Q. Do you consider that the water that's</p> <p>5 being held in upstream reservoirs above Harlan</p> <p>6 County Lake under temporary authorization from</p> <p>7 the Department to also be staged for Kansas?</p> <p>8 A. Well, potentially.</p> <p>9 Q. I just want to get at whether the</p> <p>10 staging is only in Harlan County Lake or if</p> <p>11 it's also occurring elsewhere in the Basin in</p> <p>12 Nebraska.</p> <p>13 A. Well, last year we had water that was</p> <p>14 temporarily impounded and released from those</p> <p>15 reservoirs in the spring and we had other water</p> <p>16 that was temporarily impounded and turned back</p> <p>17 to the Districts so, you know, it could be</p> <p>18 either of those.</p> <p>19 Q. So it's staged or it's stored, but</p> <p>20 whether or not it's coming downstream is a</p> <p>21 decision that's made later?</p> <p>22 A. That's -- that's how last year worked,</p> <p>23 yes; that we initiated those releases based on</p> <p>24 our ongoing assessment of Compact compliance.</p> <p>25 Q. And is that how it works for Harlan</p>
<p style="text-align: right;">Page 51</p> <p>1 majority of the water that is from the</p> <p>2 augmentation pipeline will be passed through</p> <p>3 Harlan County Lake in the same year that it's</p> <p>4 discharged?</p> <p>5 A. I would expect that all of the water</p> <p>6 that we stage in Harlan County Lake for</p> <p>7 compliance will be delivered to Kansas in most</p> <p>8 conditions anyway. There could be other</p> <p>9 agreements or other climatic factors that could</p> <p>10 come into play that produced, you know,</p> <p>11 significant flows below Harlan County Lake that</p> <p>12 could take the place of that water and give us</p> <p>13 the opportunity to not require its release but,</p> <p>14 you know, setting all of that stuff aside, I</p> <p>15 would expect it all to go downstream.</p> <p>16 Q. When you say staged for Kansas, can you</p> <p>17 explain what you mean by that?</p> <p>18 A. Yeah. Essentially as opposed to</p> <p>19 requiring the bypass of the water as it gets to</p> <p>20 Harlan County Lake, we've worked with the</p> <p>21 Bureau of Reclamation and the Kansas Bostwick</p> <p>22 Irrigation District to allow for the temporary</p> <p>23 impoundment of the water, particularly during</p> <p>24 the spring, so that it's available for use in</p> <p>25 the irrigation season.</p>	<p style="text-align: right;">Page 53</p> <p>1 County Lake as well?</p> <p>2 A. That's how it's been working.</p> <p>3 Q. Do you expect that it's going to work</p> <p>4 that way in 2014?</p> <p>5 A. I do. It appears that we've got those</p> <p>6 arrangements in place, so that's -- at least --</p> <p>7 at least for the 30,000 acre-feet of water that</p> <p>8 Kansas Bostwick has contracted for, so that's</p> <p>9 kind of what we're working towards right now.</p> <p>10 When we get to that volume, I don't know where</p> <p>11 we'll be in the year and where we'll be in</p> <p>12 terms of Compact compliance, but that -- that</p> <p>13 appears to be the amount of water they need</p> <p>14 this year. So water over and above that, you</p> <p>15 know, we haven't gotten to that point and made</p> <p>16 those decisions.</p> <p>17 Q. You mentioned "contracted for." What</p> <p>18 did you mean by that, "contracted for"?</p> <p>19 A. The Irrigation District has a Warren Act</p> <p>20 Contract with the Bureau of Reclamation for --</p> <p>21 basically to allow for the storage of that</p> <p>22 water in 2014 and delivery.</p> <p>23 Q. And does Nebraska support the use of the</p> <p>24 Warren Act Contract there?</p> <p>25 A. Well, I don't really know much about the</p>

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1 legal aspects of it and whether or not it  
2 should or shouldn't be required, but the end  
3 outcome of what it's providing, we certainly do  
4 support.  
5 Q. I really want to say the end justifies  
6 the means, but I'll withdraw that -- that  
7 question.  
8 MR. GRUNEWALD: I think if we  
9 could just take a short break, I'm pretty close  
10 to being done. So maybe just a couple minutes.  
11 I'm just going to put you on mute if that's  
12 okay.  
13 MR. BLANKENAU: Okay.  
14 (A short recess was taken.)  
15 MR. GRUNEWALD: I don't have any  
16 other questions.  
17 MR. BLANKENAU: Okay. I guess  
18 that concludes your deposition.  
19 THE WITNESS: All right.  
20 MR. GRUNEWALD: No questions --  
21 we never did get Colorado on the phone; did we?  
22 MR. BLANKENAU: I don't believe  
23 so. Scott, you haven't joined us; have you?  
24 Nope.  
25 MR. GRUNEWALD: All right.

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1 We're all done. Thank you, Dr. Schneider.  
2 THE WITNESS: You're welcome.  
3 (At 10:41 a.m., the deposition  
4 was concluded.)  
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1 DEPOSITION OF DR. JAMES SCHNEIDER  
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4 Signature of witness  
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7 STATE OF )  
8 : ss.  
9 COUNTY OF )  
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11 Subscribed and sworn to before me this  
12 day of , .  
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14 GENERAL NOTARY PUBLIC  
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1 C-E-R-T-I-F-I-C-A-T-E  
2 STATE OF NEBRASKA )  
3 : ss.  
4 COUNTY OF LANCASTER )  
5 I, Jill R. Pilkington, RMR, General  
6 Notary Public in and for the State of Nebraska,  
7 do hereby certify that DR. JAMES SCHNEIDER was  
8 by me duly sworn to testify the truth, the  
9 whole truth and nothing but the truth, and that  
10 the deposition by him as above set forth was  
11 reduced to writing by me.  
12 That the within and foregoing deposition  
13 was taken by me at the time and place herein  
14 specified and in accordance with the within  
15 stipulations; the reading and signing of the  
16 witness to his deposition having not been  
17 waived.  
18 That I am not counsel, attorney, or  
19 relative of either party or otherwise  
20 interested in the event of this suit.  
21 IN TESTIMONY WHEREOF, I have placed my  
22 hand and notarial seal the day of  
23 February, 2014.  
24 Jill R. Pilkington, RMR  
25

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DEPOSITION OF DR. JAMES SCHNEIDER

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