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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. JASPER FANNING

DATE: February 18, 2014

TIME: 1:14 p.m.

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

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1 APPEARANCES  
2  
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17 ALSO PRESENT:  
18  
19 Marc Groff, Thomas Riley  
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21  
22  
23  
24  
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Page 3

1 I-N-D-E-X  
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3 WITNESS Direct  
4 Dr. Fanning 4  
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8 EXHIBITS Marked  
9 1. Notice of Deposition 4  
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Page 4

1 PROCEEDINGS  
2 (Exhibit No. 1 was marked for  
3 identification.)  
4 DR. JASPER FANNING,  
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 afternoon, Dr. Fanning.  
11 A. Good afternoon, Mr. Grunewald.  
12 Q. And we have I think -- not I think, I  
13 know, just the one deposition exhibit and that  
14 would be your deposition notice. Let me pause  
15 and make sure the reporter and you have that.  
16 A. We do.  
17 Q. There's nothing much to do with that. I  
18 just want to make sure, have you seen that  
19 notice before?  
20 A. Yes. I received it this morning.  
21 Q. Great. Okay. And for today, will you  
22 be able -- can you think of any reason why you  
23 won't be able to give complete and truthful  
24 answers today?  
25 A. I cannot.

Page 5

1 Q. And you are planning to testify in this  
2 proceeding as a fact witness instead of as an  
3 expert witness; is that right?  
4 A. That's my understanding.  
5 Q. Thank you. So you haven't prepared any  
6 expert reports for the N-CORPE Arbitration;  
7 have you?  
8 A. I have not.  
9 Q. Are you planning to?  
10 A. I am not planning to.  
11 Q. Now, as I recall, you wear several  
12 different hats so I want to make sure while  
13 we're doing this deposition that I understand  
14 which capacity or several capacities that you  
15 are testifying today. So I would like to at  
16 least start with what are your current  
17 occupations or assignments with your current  
18 job, how many do you have. If you could  
19 describe that, I would appreciate it.  
20 A. I am the General Manager of the Upper  
21 Republican Natural Resources District, a  
22 consultant for the State of Nebraska, a  
23 consultant for the American Veterinary Medical  
24 Association, a consultant for Ag Business  
25 Specialists, a private farmer and rancher.

<p style="text-align: right;">Page 6</p> <p>1 That covers most of it, I think. I can't think 2 of anything I left off. 3 Q. Okay. And one thing I notice there is, 4 there's not a separate assignment with respect 5 to the N-CORPE Project. So if there -- am I 6 missing one there or are you doing work for -- 7 work in relation to the N-CORPE Project as part 8 of your duties for the Upper Republican Natural 9 Resources District or something else? 10 A. My association with N-CORPE is through 11 my position as General Manager of the Upper 12 Republican Natural Resources District. 13 Q. Are you doing any of that work as part 14 of your consultant work for the State of 15 Nebraska? 16 A. No. 17 Q. Thank you. When did your involvement 18 with the N-CORPE Project begin? 19 A. September, late September of 2011. 20 Q. And what did you start doing? 21 A. Well, we had previously studied 22 augmentation and the implementation of 23 augmentation projects. In late September, we 24 became aware of an irrigated property that 25 would be well-suited for augmentation, and so</p>	<p style="text-align: right;">Page 8</p> <p>1 Q. And have you had several different 2 assignments or categories of involvement with 3 the project? Would you break it into phases or 4 it would have been the same thing the entire 5 time? 6 A. Well, I think as far as responsibilities 7 with respect to the project, the first was -- 8 that I mentioned was acquisition of the real 9 estate, and then everything else really falls 10 into design and construction of the 11 infrastructure. 12 Q. When it came to figuring out the size of 13 the project, was there a particular size in 14 terms of augmentation water delivery amount or 15 some other size component that was used as a 16 driving factor for the project, or was it 17 something else? 18 A. Well, there were several -- several 19 factors that were considered in arriving at the 20 design criteria or capacity. First was, you 21 know, we looked at how many different Districts 22 were ultimately decided to be part of the joint 23 agency and want to receive benefit and what 24 their historical needs had been. Second, we 25 looked at the amount of existing uses that we</p>
<p style="text-align: right;">Page 7</p> <p>1 the first consideration was acquiring the 2 property. 3 Q. Now, at that point, was there a Board 4 that had been formed? I heard reference to an 5 N-CORPE Board. Did it already exist at that 6 point? 7 A. No. The N-CORPE Interlocal Agency had 8 not yet been formed. 9 Q. When was that formed? 10 A. I don't remember the exact date that it 11 was formed. It seems like it was -- the first 12 meeting of N-CORPE would have been in November, 13 and that the Boards would have acted on their 14 own adopting the Interlocal Agreement probably 15 at their regular board meetings or special 16 board meetings in November of 2011 -- or excuse 17 me, I said 2011 -- 2012 for both the September 18 meetings and the November -- November meetings. 19 Q. Thank you. So the September meetings, 20 and that had to do with the first thing you 21 mentioned, which was the property -- 22 A. Right. 23 Q. -- that the folks were interested in. 24 So it basically started in 2012? 25 A. Yes, in September of 2012.</p>	<p style="text-align: right;">Page 9</p> <p>1 had retired in the area and we looked at, you 2 know, I think, in part, excuse me, the overall 3 State balance of accounting historically. 4 Q. Thanks. Was any one of those factors 5 more important than any of the others? 6 A. I can't say that any one of those is any 7 more important than the others. 8 Q. Now, you described an acquisition phase 9 and then a design and construction phase. Were 10 you primarily responsible for the acquisition 11 or was somebody else primarily responsible for 12 that? 13 A. Well, the final acquisition of course 14 and the documentation had to be approved by a 15 Board of the agency, which was -- which, you 16 know, was formed with -- 17 (At this time, the phone 18 disconnected.) 19 (The telephonic participants 20 rejoined the deposition.) 21 (The last question was read 22 back.) 23 THE WITNESS: And I began 24 stating that once N-CORPE, the Interlocal 25 Agency, was formed and there was a Board of</p>

<p style="text-align: right;">Page 10</p> <p>1 Directors, ultimately they were the ones that</p> <p>2 had to make the decision to finalize the</p> <p>3 acquisition.</p> <p>4 Q. (By Mr. Grunewald) Okay. And in your</p> <p>5 work on this, on all phases of the project,</p> <p>6 have you had somebody else or other people</p> <p>7 helping you with it or has it pretty much just</p> <p>8 been you?</p> <p>9 A. Well, there's been assistance by a</p> <p>10 number of people both in our District and the</p> <p>11 other Natural Resource Districts, our legal</p> <p>12 counsel, and consulting engineering firms.</p> <p>13 Q. Can you give me a rundown of who the</p> <p>14 major contributors are that you're including in</p> <p>15 that category of assistance?</p> <p>16 A. Sure. You know, within our District,</p> <p>17 Nate Jenkins and Dirk Dinnel, Mike Keller who's</p> <p>18 our onsite employee. Then there in the Middle</p> <p>19 Republican Natural Resources District, Dan</p> <p>20 Smith, their former manager; Bob Merrigan,</p> <p>21 their assistant manager; their new manager,</p> <p>22 Mr. Jack Russell. In the Twin Platte NRD, Kent</p> <p>23 Miller has been very instrumental.</p> <p>24 In the Lower Republican Natural</p> <p>25 Resources District, Mike Clements has primarily</p>	<p style="text-align: right;">Page 12</p> <p>1 it's more just as staying informed as opposed</p> <p>2 to actually assisting with making that</p> <p>3 decision.</p> <p>4 Q. And when you say "decision," who is</p> <p>5 making the decision?</p> <p>6 A. Well, the only Natural Resources</p> <p>7 District involved in the project that has any</p> <p>8 responsibility associated with the Platte River</p> <p>9 would be the Twin Platte Natural Resources</p> <p>10 District, and so ultimately their Board of</p> <p>11 Directors will make that decision and their</p> <p>12 representative on the N-CORPE Board will be</p> <p>13 involved in that.</p> <p>14 Q. And decisions on what to do with the</p> <p>15 Platte side of the project need to be approved</p> <p>16 by the N-CORPE Board?</p> <p>17 A. Well, the N-CORPE Board would have to</p> <p>18 approve whatever operation of the project for</p> <p>19 the Platte for it to be carried out, but as far</p> <p>20 as how they construct their pipeline, the</p> <p>21 Republican members of the agency are not</p> <p>22 involved in those details.</p> <p>23 Q. And who is represented on the N-CORPE</p> <p>24 Board?</p> <p>25 A. The Upper Republican, the Middle</p>
<p style="text-align: right;">Page 11</p> <p>1 been involved as well as all of their</p> <p>2 administrative staff. Then within -- as</p> <p>3 far as consulting engineering firms, we're</p> <p>4 working with Miller &amp; Associates, with HDR,</p> <p>5 Incorporated, and The Flatwater Group has</p> <p>6 helped to some extent.</p> <p>7 Q. Thank you. And this project involves</p> <p>8 both the Republican River side and Platte River</p> <p>9 side; is that right?</p> <p>10 A. The project will have the capability of</p> <p>11 delivering water both to the South Platte</p> <p>12 sub-basin as well as the Medicine Creek</p> <p>13 sub-basin of the Republican River, that's</p> <p>14 correct.</p> <p>15 Q. Now, is the acquisition of the land</p> <p>16 intended to serve both the Republican River and</p> <p>17 Platte River deliveries?</p> <p>18 A. It is.</p> <p>19 Q. The design and construction phase that</p> <p>20 we haven't talked in detail about yet, is</p> <p>21 that -- is your involvement with that both the</p> <p>22 Republican River side and the Platte River</p> <p>23 side?</p> <p>24 A. Mostly the Republican River side. To</p> <p>25 the extent I've been involved on the Platte,</p>	<p style="text-align: right;">Page 13</p> <p>1 Republican, the Lower Republican, and Twin</p> <p>2 Platte Natural Resources Districts.</p> <p>3 Q. And besides those four Natural Resources</p> <p>4 Districts, is anybody else, any other entity or</p> <p>5 individuals represented on the Board?</p> <p>6 A. No.</p> <p>7 Q. Has the Board appointed any one person</p> <p>8 to act as an executive director or general</p> <p>9 manager for the project?</p> <p>10 A. There's -- there's been some authority</p> <p>11 in that regard directed towards myself, but I'm</p> <p>12 not the general manager or executive director.</p> <p>13 Q. How would you describe the authority</p> <p>14 that's been directed at you?</p> <p>15 A. Well, it's authority that would be</p> <p>16 similar to that of a manager for the agency,</p> <p>17 but the Board is still very involved in the</p> <p>18 decision-making process.</p> <p>19 Q. Is it the sort of thing where you're</p> <p>20 executing the tasks that will bring the project</p> <p>21 to completion?</p> <p>22 A. Yeah, just much as a general manager of</p> <p>23 a Natural Resources District implements the</p> <p>24 policies and programs of a Board of Directors.</p> <p>25 It's very similar to that.</p>

<p style="text-align: right;">Page 14</p> <p>1 Q. Does the N-CORPE Board have any</p> <p>2 policies, written policies?</p> <p>3 A. We do.</p> <p>4 Q. You say you do?</p> <p>5 A. Yes.</p> <p>6 Q. Have those been published anywhere?</p> <p>7 A. They've been approved by the Board. As</p> <p>8 far as publishing, they're not required to be</p> <p>9 published anywhere.</p> <p>10 Q. Are they kept online anywhere?</p> <p>11 A. I don't know that the policies are</p> <p>12 online, no.</p> <p>13 Q. What do the policies cover? Are we</p> <p>14 talking about a one-page document or is it a</p> <p>15 long document?</p> <p>16 A. It's -- it's mostly the Interlocal</p> <p>17 Agreement that the Districts all approved which</p> <p>18 lays out what the obligations of the individual</p> <p>19 Districts are and what authorities that the</p> <p>20 Interlocal Agency has, and that all relates</p> <p>21 back to statute in Nebraska. Political</p> <p>22 subdivisions that enter into an Interlocal</p> <p>23 Agreement or form an Interlocal Agency convey</p> <p>24 some or part of their authorities to the</p> <p>25 Interlocal Agency.</p>	<p style="text-align: right;">Page 16</p> <p>1 so that they'll have it onsite for construction</p> <p>2 in the spring.</p> <p>3 Q. For the Platte side, does that mean that</p> <p>4 they've settled on a location for the pipeline?</p> <p>5 A. They've -- my understanding is, and I</p> <p>6 haven't been involved in some of the more</p> <p>7 recent meetings, they have narrowed it down to</p> <p>8 two or three different locations and they could</p> <p>9 purchase enough pipe to take it to any one of</p> <p>10 those three locations.</p> <p>11 Q. Do you know anything about those</p> <p>12 locations?</p> <p>13 A. Very little.</p> <p>14 Q. Do you know if the pipelines are</p> <p>15 intended to take the outfall, if you will, all</p> <p>16 the way to the Platte River?</p> <p>17 A. Yeah, I don't know the exact location.</p> <p>18 One outfall location would have been the South</p> <p>19 Platte River, another one would have been</p> <p>20 placing the water into a canal operated by</p> <p>21 NPPD, and I believe a third location was</p> <p>22 looking at a lake that that canal empties into</p> <p>23 of NPPD's to put the water in.</p> <p>24 Q. Thank you. The Republican River status,</p> <p>25 you mentioned operational and a max capacity.</p>
<p style="text-align: right;">Page 15</p> <p>1 So in simplistic terms, N-CORPE is sort</p> <p>2 of -- you know, has any authorities that a</p> <p>3 Natural Resources District have that were</p> <p>4 conveyed by the members that joined the</p> <p>5 Interlocal Agency.</p> <p>6 Q. Thank you. Dr. Fanning, your answers</p> <p>7 are fading out just a little bit every now and</p> <p>8 then, so I don't know if there's something you</p> <p>9 guys could do to keep the phone closer to you.</p> <p>10 I don't know if it's that or not, but I wanted</p> <p>11 to mention it.</p> <p>12 What's the status of the N-CORPE Project</p> <p>13 with respect to the two sides? I would like to</p> <p>14 know a description of how you describe the</p> <p>15 status of the Republican River side as well as</p> <p>16 the Platte River side.</p> <p>17 A. Well, the Republican River side is</p> <p>18 currently operational. Maximum capacity of the</p> <p>19 well field will be complete by roughly March 1.</p> <p>20 All of the wells should be complete on or very</p> <p>21 near March 1. The Platte River side, the</p> <p>22 pipeline that goes from the well field to the</p> <p>23 Platte, I think they're currently at the -- at</p> <p>24 the point where they're going to purchase pipe</p> <p>25 or they're contemplating the purchase of pipe</p>	<p style="text-align: right;">Page 17</p> <p>1 What is the maximum capacity that you expect</p> <p>2 the project to have?</p> <p>3 A. Well, for our initial design with the</p> <p>4 30 wells, it's somewhere around 83 to 85 cfs.</p> <p>5 Q. And you said initial design of 30 wells.</p> <p>6 Is that what you said?</p> <p>7 A. That's correct.</p> <p>8 Q. Has there been a subsequent design?</p> <p>9 A. There's an additional -- the well field</p> <p>10 was designed to allow the incorporation of at</p> <p>11 least 10 more wells into the design.</p> <p>12 Q. Are those wells that already exist or</p> <p>13 wells that would have to be drilled?</p> <p>14 A. Depending on the condition of the</p> <p>15 existing wells, we would either use existing</p> <p>16 wells or replacement wells.</p> <p>17 Q. Are those wells associated with</p> <p>18 additional property that hasn't been acquired?</p> <p>19 A. No.</p> <p>20 Q. So this would just be either reusing or</p> <p>21 putting new wells within the existing land</p> <p>22 boundary?</p> <p>23 A. That's correct.</p> <p>24 Q. The addition of those 10 wells, would</p> <p>25 that increase the discharge maximum flow?</p>

<p style="text-align: right;">Page 18</p> <p>1 A. No. The maximum discharge flow -- well, 2 I suppose arguably. I haven't -- wasn't 3 involved in the engineering calculations to 4 figure at what point the pipe would burst apart 5 or peel off the internal lining of the pipe, 6 but while it might increase the output 7 marginally, it wouldn't be -- it wouldn't be to 8 increase the total maximum outflow. 9 Q. And so does that mean that those 10 additional 10 wells are not -- are not to 11 increase over the 60,000 acre-foot pipeline 12 discharge per year? 13 A. That's correct. The 10 additional wells 14 might -- might allow more flexible scheduling 15 of deliveries to both the Republican and the 16 Platte if they were operating simultaneously 17 but, you know, we're probably at least five or 18 six years away from operating for the Platte I 19 would think. It seems like their requirement 20 is not until like 2019 or something. 21 Q. What's the amount of water that you 22 anticipate will be delivered to the Platte from 23 the project? 24 A. I don't know if they have a final number 25 for that yet. There's still a lot of Modeling</p>	<p style="text-align: right;">Page 20</p> <p>1 going to be connected to the exact same well 2 that the Republican River side is at? 3 A. Through the valving, it would be 4 possible to have it connected or partially 5 disconnected. 6 Q. Is there any intention to keep the wells 7 separate for the two rivers' portions of the 8 project? 9 A. I don't -- I don't -- there's no 10 intention of doing that and I don't -- I guess 11 I haven't thought of any reason that it would 12 benefit us to keep them separate. 13 Q. You mentioned you've done a lot of work 14 with the design and construction phase. Can 15 you give me the broad categories that you've 16 done for the design and construction phase? 17 A. Mostly coordination and management. 18 Q. That could mean a lot of things I think. 19 So are there, again, sub-phases of getting this 20 project online that you march through? Did you 21 just issue contracts and somebody else did all 22 of the designing and all of the building? Can 23 you describe with a little more detail what it 24 is you did? 25 A. Well, I guess I coordinated and managed,</p>
<p style="text-align: right;">Page 19</p> <p>1 going on on the Platte to figure out exactly 2 what their requirement is on the Platte. 3 Q. So if the project is operating right 4 now -- sorry. Let me rephrase that. Is the 5 maximum output available from the project 6 intended to be 60,000 acre-feet per year? 7 A. Say that again. 8 Q. Is the maximum output for the project 9 intended to be 60,000 acre-feet per year? 10 A. The maximum output or delivery to the 11 Medicine Creek discharge location is designed 12 and expected and anticipated to be no more than 13 60,000 acre-feet per year. 14 Q. Well, and what I'm trying to understand 15 is whether or not the discharge to the Platte 16 is going to be on top of that or if the 60,000 17 is kind of the project maximum and then that's 18 like one pie and it has to be split between the 19 two rivers. 20 A. The 60,000 acre-feet is a limitation 21 of -- that we put through design on the 22 Republican River discharge location. It has no 23 relationship with the Platte River. 24 Q. And are the pipe -- is the pipeline for 25 the Platte River, a portion of the project,</p>	<p style="text-align: right;">Page 21</p> <p>1 along with the other Natural Resources District 2 managers, the design process with the 3 consulting engineers, and ultimately once we 4 had arrived at a final design, the bidding 5 process and the award of contracts, the 6 financing, and then the actual construction. 7 Q. How is the project being financed? 8 A. By borrowing made possible through our 9 Occupation Tax and bonding authorities. 10 Q. Does that financing cover only the 11 design and construction or does it also cover 12 the maintenance and operations? 13 A. The financing is for just the land 14 acquisition and the infrastructure. The 15 maintenance and operations will be covered 16 not -- you know, we won't issue bonds for 17 annual operating costs. 18 Q. What do you anticipate the annual 19 maintenance and operation costs to be for the 20 project for the Republican River side? 21 A. Well, it depends on if we're -- if we're 22 operating or not. Anywhere from a quarter of a 23 million to three or three and a half million 24 dollars per year. 25 Q. So I'm going to try and focus my</p>

<p style="text-align: right;">Page 22</p> <p>1 questions on the Republican River side of the 2 project. So if I don't specify, let's go ahead 3 and assume it's that. But if you're not sure, 4 please ask the question and I'll try to 5 clarify. 6 When it comes to operating the project, 7 turning it on and having it discharge to 8 Medicine Creek, who is it that's going to make 9 the decision to turn the pipeline on? 10 A. Well, ultimately the Board will approve 11 the overall operation, and the day-to-day 12 management decisions of that will be made by 13 the NRD managers and the onsite employee of 14 N-CORPE. 15 Q. Does that mean that if one NRD would 16 like it to be on, that they ask for it to be on 17 and then the Board will do something with that 18 request? Is there a process that's been set up 19 for that sort of thing? 20 A. Well, basically each NRD is entitled to 21 use up to its share of the capacity of the 22 project in a given year and to utilize the 23 additional capacity that's available if another 24 District doesn't need their share of the 25 capacity. So, you know, ultimately each --</p>	<p style="text-align: right;">Page 24</p> <p>1 A. No. Basically once we chose the size of 2 pipe that's been installed in the ground, you 3 know, that became fixed. So we don't have any 4 ability to really stretch the pipe, so to 5 speak. 6 Q. What sort of data is being collected on 7 behalf of the N-CORPE Board for the project 8 during this operation? 9 A. We'll have a SCADA System installed that 10 will monitor all sorts of parameters at the 11 well sites, most notably I think are the 12 pumping rates of each well. Likewise, there 13 will be a flow meter at the discharge locations 14 monitoring the delivery. 15 Q. And is that everything that's going to 16 be collected? 17 A. Well, I think the SCADA System will 18 collect amperage draw, pumping levels, and 19 various other parameters related to the 20 variable frequency drives on those wells, 21 operating temperature and those sorts of 22 things. 23 Q. And sorry if I missed it. Did you 24 include the discharge amount coming out of the 25 pipeline and that data that's being collected?</p>
<p style="text-align: right;">Page 23</p> <p>1 each District, you know, ultimately indicates 2 how much they would like to be able to pump 3 from the project, and to the extent that can be 4 accommodated, the Board will operate it to that 5 extent. 6 Q. You mentioned shares assigned to the 7 NRD. So do each of the four NRDs have a share 8 assigned to the project? 9 A. Well, each of the four Districts, in 10 essence, has a 25 percent share of the 11 project's capacity. 12 Q. And how were those shares allotted? 13 A. Well, each District -- each District 14 provided an equal contribution for the land 15 purchase and retirement of water rights. 16 Q. I missed a little bit of your answer. 17 Did you say for land and -- equal contribution 18 of land for the water rights? 19 A. Yeah. We purchased the land which 20 included the irrigated acres and groundwater 21 irrigation. 22 Q. Are there any plans right now to expand 23 the project? 24 A. Expand in what regard? 25 Q. Increase the delivery amount.</p>	<p style="text-align: right;">Page 25</p> <p>1 A. Yes, I did. 2 Q. And are there plans in place to turn 3 over that data in any periodic way to any other 4 entity? 5 A. Well, we'll of course provide it to the 6 Department of Natural Resources for, you know, 7 reporting under the Compact. 8 Q. All of the data? 9 A. Certainly the pumping volumes by each 10 well and the -- you know, I believe if we had 11 an approved Augmentation Plan, we would be 12 required to provide the discharge data. 13 Q. And you mentioned provide to the 14 Nebraska Department of Natural Resources for 15 reporting, so that would be turn it over once a 16 year on an annual turning it over; is that 17 right? 18 A. Yeah. I think we would be required to 19 do that. I doubt that if they would want it 20 more frequently, that we would tell them no. 21 Q. So we talked a bit about the decisions 22 to turn the project on. The Board makes the 23 final decisions; is that right? 24 A. Yes. The Board makes the final 25 decision.</p>

<p style="text-align: right;">Page 26</p> <p>1 Q. So it's possible at least that one of</p> <p>2 the NRDs that's got representatives on the</p> <p>3 Board would want it turned on, but the Board</p> <p>4 could decide not to? Is that possible?</p> <p>5 A. I don't know if that's possible or not.</p> <p>6 Q. I'm sorry. I couldn't hear your entire</p> <p>7 answer.</p> <p>8 A. I said I'm not sure if that's possible</p> <p>9 or not.</p> <p>10 Q. And is there a relationship between the</p> <p>11 N-CORPE Board and the Nebraska Department of</p> <p>12 Natural Resources in terms of connecting the</p> <p>13 pipeline operations to the Augmentation Plan</p> <p>14 that was submitted?</p> <p>15 A. What was the question?</p> <p>16 (The last question was read</p> <p>17 back.)</p> <p>18 THE WITNESS: I think the</p> <p>19 relationship would be, if the Augmentation Plan</p> <p>20 submitted were approved, that we would operate</p> <p>21 the project pursuant to that Plan.</p> <p>22 Q. (By Mr. Grunewald) In the construction</p> <p>23 work related to the project, have you been</p> <p>24 involved with any work involving culverts or</p> <p>25 expanding culverts related to the discharge of</p>	<p style="text-align: right;">Page 28</p> <p>1 answer. So are there any plans to turn it off</p> <p>2 after you've turned it on in the middle of</p> <p>3 March?</p> <p>4 A. No. I anticipate once we have started</p> <p>5 it and tested it -- no, we've tested a lot of</p> <p>6 the components already; that it'll remain</p> <p>7 operational. You know, I could see it shutting</p> <p>8 off for a day or two for minor repairs during</p> <p>9 initial startup, but other than those types of</p> <p>10 things, the plan is to continue to operate it.</p> <p>11 Q. And so is it -- what's the amount of</p> <p>12 water you expect is going to discharge from the</p> <p>13 pipeline by the end of the calendar year?</p> <p>14 A. I don't remember the exact number. It's</p> <p>15 on the order of 50,000 acre-feet, just a little</p> <p>16 bit less than that.</p> <p>17 Q. And is there a request pending by one or</p> <p>18 more NRD for that flow to be useable for the</p> <p>19 NRDs' purposes?</p> <p>20 A. Yes.</p> <p>21 Q. Which NRDs?</p> <p>22 A. The Lower Republican and Middle</p> <p>23 Republican Natural Resources Districts are</p> <p>24 going to utilize N-CORPE Project water to</p> <p>25 offset depletions.</p>
<p style="text-align: right;">Page 27</p> <p>1 the pipeline?</p> <p>2 A. Yes, I have.</p> <p>3 Q. What was the purpose of putting the</p> <p>4 culverts in?</p> <p>5 A. Well, the purpose of putting new</p> <p>6 culverts in was simply so that the landowners</p> <p>7 whose driveways those culverts were under</p> <p>8 wouldn't experience any more overtopping of</p> <p>9 their roadways during storm events when we were</p> <p>10 operating than they were likely to have</p> <p>11 experienced prior to our project operating.</p> <p>12 Q. Is all of that work done?</p> <p>13 A. Not all of that work is complete.</p> <p>14 Nearly all of that work that needs to be</p> <p>15 completed prior to operation is -- is being</p> <p>16 completed as we speak.</p> <p>17 Q. And when do you -- when do you expect</p> <p>18 that the pipeline will be turned on for the</p> <p>19 first time?</p> <p>20 A. Sometime between now and the middle of</p> <p>21 March. As early as next week.</p> <p>22 Q. And is that expected to be a test or is</p> <p>23 that expected to turn it on and leave it on?</p> <p>24 A. Yes, both of those things.</p> <p>25 Q. Here I thought I missed part of the</p>	<p style="text-align: right;">Page 29</p> <p>1 Q. So if I'm following, there could be</p> <p>2 50,000 acre-feet by the end of the year that</p> <p>3 discharge from the pipe, and does that mean the</p> <p>4 Lower and Middle Republican Natural Resources</p> <p>5 Districts will split the discharge 50/50?</p> <p>6 A. It's not exactly 50/50. It was based on</p> <p>7 each -- each of the Districts' needs. The</p> <p>8 exact number is, as I recall, is somewhere</p> <p>9 between 47 and 48,000 acre-feet; that those two</p> <p>10 Districts will utilize the project. And the</p> <p>11 Lower Republican had a little bit more than --</p> <p>12 had more than 50 percent of the need this year</p> <p>13 than the -- excuse me, the Middle Republican</p> <p>14 had a little bit less. The Lower Republican</p> <p>15 had a little bit more than 50/50.</p> <p>16 Q. Are the operation and maintenance costs</p> <p>17 assessed in relation to which NRDs are using</p> <p>18 the project?</p> <p>19 A. Yeah. That is -- that is the policy</p> <p>20 that we've all agreed to.</p> <p>21 Q. When are -- when would requests be made</p> <p>22 in a -- looking forward, what's the typical</p> <p>23 expectation for when requests would be made by</p> <p>24 an NRD to use the pipeline?</p> <p>25 A. Well, with respect to the Republican, I</p>



<p style="text-align: right;">Page 30</p> <p>1 would anticipate those -- those requests or</p> <p>2 notices to be made by the end of January</p> <p>3 because that's when we're submitting our plans</p> <p>4 to the Department for compliance. And so this</p> <p>5 year, the Middle and Lower indicated prior to</p> <p>6 January 31 before we sent in our joint plan to</p> <p>7 the Department for Compact compliance in</p> <p>8 compliance with our IMPs.</p> <p>9 Q. So it's connected to the process in the</p> <p>10 Integrated Management Plans for alternative</p> <p>11 management actions; is that right?</p> <p>12 A. Yeah. Each -- each district has to give</p> <p>13 notice to the Department of what their</p> <p>14 management actions are going to be in the</p> <p>15 upcoming year prior to January 31. And so, you</p> <p>16 know, there's -- we're sharing this project,</p> <p>17 and inevitably, you know, if one District needs</p> <p>18 to use a little bit more than its share in a</p> <p>19 given year, we have to go through a process of</p> <p>20 making sure that that much water is available.</p> <p>21 Q. Has there been any legal challenges</p> <p>22 inside the state of Nebraska to operation of</p> <p>23 the N-CORPE Project?</p> <p>24 A. Yeah. There was a challenge of a number</p> <p>25 of things related to N-CORPE and augmentation</p>	<p style="text-align: right;">Page 32</p> <p>1 A. Not that I can think of.</p> <p>2 Q. And have you reviewed the N-CORPE Plan</p> <p>3 that was submitted to the RRCA?</p> <p>4 A. Yes, I've reviewed that.</p> <p>5 Q. Do you agree with it?</p> <p>6 A. I do.</p> <p>7 Q. And there's nothing in it that you</p> <p>8 disagree with?</p> <p>9 A. Not that I can think of.</p> <p>10 Q. Have you reviewed the expert reports by</p> <p>11 Dr. Schneider and Mr. Riley in this</p> <p>12 arbitration?</p> <p>13 A. I have.</p> <p>14 Q. And is there anything in either of those</p> <p>15 reports that you disagree with?</p> <p>16 A. Nothing that comes to mind.</p> <p>17 Q. Were you present for Dr. Schneider's</p> <p>18 deposition earlier in January for this</p> <p>19 arbitration?</p> <p>20 A. I've got to say, I don't recall if I was</p> <p>21 or not.</p> <p>22 Q. I don't have my notes in front of me. I</p> <p>23 couldn't tell you either, but I wanted to know</p> <p>24 whether or not there's anything you disagreed</p> <p>25 with from that deposition.</p>
<p style="text-align: right;">Page 31</p> <p>1 in general by a couple of irrigation districts,</p> <p>2 but that was dismissed.</p> <p>3 Q. Was that a lawsuit?</p> <p>4 A. Well, I think that's what it was, yes.</p> <p>5 When I read the Complaint, it was hard to tell.</p> <p>6 I'm not an attorney, remember.</p> <p>7 Q. Any other challenges besides that one</p> <p>8 you just listed?</p> <p>9 A. No legal challenges that I'm aware of.</p> <p>10 Q. What I would like to do is take a -- I</p> <p>11 would like to take a 5-minute break and I'll</p> <p>12 see what else I might have, but I think I'm</p> <p>13 pretty close to done. Does that sound okay?</p> <p>14 A. That's fine.</p> <p>15 (A short recess was taken.)</p> <p>16 Q. (By Mr. Grunewald) Dr. Fanning, have</p> <p>17 you -- you've been present for the depositions</p> <p>18 we did earlier today with Dr. Schneider and</p> <p>19 Mr. Riley?</p> <p>20 A. Yes, I have been.</p> <p>21 Q. And did you hear the entire depositions</p> <p>22 for the two of them?</p> <p>23 A. Most of it, yes. Yes.</p> <p>24 Q. Is there anything that you heard that</p> <p>25 you disagree with?</p>	<p style="text-align: right;">Page 33</p> <p>1 A. Not recalling if I was there or not, I</p> <p>2 would have to say there's nothing that I know</p> <p>3 of.</p> <p>4 Q. That seems like a safe answer. I don't</p> <p>5 have any further questions.</p> <p>6 A. All right. Thank you.</p> <p>7 MR. WILMOTH: No cleanup on our</p> <p>8 part.</p> <p>9 MR. GRUNEWALD: We should just</p> <p>10 double-check and make sure, is Scott or Dan on</p> <p>11 for Colorado?</p> <p>12 MR. WILMOTH: For the court</p> <p>13 reporter's benefit, we would request a read and</p> <p>14 sign on the transcript, please.</p> <p>15 (At 2:08 p.m., the deposition</p> <p>16 was concluded.)</p> <p>17</p> <p>18</p> <p>19</p> <p>20</p> <p>21</p> <p>22</p> <p>23</p> <p>24</p> <p>25</p>

<p style="text-align: right;">Page 34</p> <p>1 DEPOSITION OF DR. JASPER FANNING</p> <p>2</p> <p>3</p> <p>4</p> <p>5 Signature of witness</p> <p>6</p> <p>7</p> <p>8 STATE OF )</p> <p>9 : ss.</p> <p>10 COUNTY OF )</p> <p>11</p> <p>12 Subscribed and sworn to before me this</p> <p>13 day of , .</p> <p>14</p> <p>15 GENERAL NOTARY PUBLIC</p> <p>16</p> <p>17</p> <p>18</p> <p>19</p> <p>20</p> <p>21</p> <p>22</p> <p>23</p> <p>24</p> <p>25</p>	<p style="text-align: right;">Page 36</p> <p>1 DEPOSITION OF DR. JASPER FANNING</p> <p>2</p> <p>3 PAGE &amp; LINE / REASON FOR CHANGE</p> <p>4 /</p> <p>5 /</p> <p>6 /</p> <p>7 /</p> <p>8 /</p> <p>9 /</p> <p>10 /</p> <p>11 /</p> <p>12 /</p> <p>13 /</p> <p>14 /</p> <p>15 /</p> <p>16 /</p> <p>17 /</p> <p>18 /</p> <p>19 /</p> <p>20 /</p> <p>21 /</p> <p>22 /</p> <p>23 /</p> <p>24 /</p> <p>25 /</p>
<p style="text-align: right;">Page 35</p> <p>1 C-E-R-T-I-F-I-C-A-T-E</p> <p>2 STATE OF NEBRASKA )</p> <p>3 : ss.</p> <p>4 COUNTY OF LANCASTER )</p> <p>5 I, Jill R. Pilkington, RMR, General</p> <p>6 Notary Public in and for the State of Nebraska,</p> <p>7 do hereby certify that DR. JASPER FANNING was</p> <p>8 by me duly sworn to testify the truth, the</p> <p>9 whole truth and nothing but the truth, and that</p> <p>10 the deposition by him as above set forth was</p> <p>11 reduced to writing by me.</p> <p>12 That the within and foregoing deposition</p> <p>13 was taken by me at the time and place herein</p> <p>14 specified and in accordance with the within</p> <p>15 stipulations; the reading and signing of the</p> <p>16 witness to his deposition having not been</p> <p>17 waived.</p> <p>18 That I am not counsel, attorney, or</p> <p>19 relative of either party or otherwise</p> <p>20 interested in the event of this suit.</p> <p>21 IN TESTIMONY WHEREOF, I have placed my</p> <p>22 hand and notarial seal the day of</p> <p>23 February, 2014.</p> <p>24</p> <p>25 Jill R. Pilkington, RMR</p>	