

NON-BINDING ARBITRATION BEFORE
JEFFREY C. FEREDAY, ARBITRATOR

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

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

DEPOSITION OF DICK WOLFE, P.E.

Wednesday, January 15, 2014

9:05 a.m.

PURSUANT TO NOTICE and the Federal Rules of Civil Procedure, the above-entitled deposition was taken on behalf of the State of Kansas at 1313 Sherman Street, Suite 821, Denver, Colorado, before Denise A. Freeman, Registered Professional Reporter and Notary Public within Colorado.

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 17
 Also Present:
 18 Dr. Willem Schreüder
 Daniel Steuer
 19 Dale Book
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1 PROCEEDINGS
 2 DICK WOLFE, P.E.,
 3 having been first duly sworn, was examined and
 4 testified as follows:
 5 EXAMINATION
 6 BY MR. GRUNEWALD:
 7 Q. Good morning, Mr. Wolfe.
 8 A. Good morning.
 9 Q. And I'll just note for the record that you
 10 are here with a notice of telephonic deposition, and
 11 this is the deposition primarily regarding your joint
 12 expert report with Dr. Willem Schreüder. Have you seen
 13 that notice?
 14 A. Yes.
 15 Q. Now you have been deposed before; is that
 16 right?
 17 A. Correct.
 18 Q. And you are familiar with the process; is
 19 that right?
 20 A. Yes.
 21 Q. What we are going to do is -- by phone, it's
 22 a little trickier -- but we will try to make a clear
 23 record here with complete answers, and I will do my best
 24 to not talk over you.
 25 If you think of something later that you

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1 INDEX
 2 EXAMINATION PAGE
 3 January 15, 2014
 4 By Mr. Grunewald 4
 5 EXHIBITS INITIAL REFERENCE
 6 1 Notice of Telephonic Deposition of 5
 Dick Wolfe, P.E.
 7
 8 2 Letter to David Barfield, P.E., and 14
 Dick Wolfe, P.E., from Brian P.
 Dunnigan, P.E., dated June 10, 2013
 9
 10 3 Joint Expert Report; Dick Wolfe, 8
 P.E., State Engineer, and Dr. Willem
 Schreüder, Principia Mathematica
 11 (Exhibits attached to original and electronic
 transcripts to counsel ordering same.)
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1 want to add, please let me know and we'll make sure you
 2 give a complete answer. Or if you don't understand my
 3 questions, please let me know. Does that sound okay?
 4 A. Yes.
 5 Q. And if you need to take a break, just let me
 6 know.
 7 A. Okay. Thank you.
 8 Q. Is there any reason this morning, such as
 9 medication or any other reason, you think your answers
 10 will not be truthful and complete?
 11 A. No.
 12 (Deposition Exhibit 1 was marked.)
 13 Q. (BY MR. GRUNEWALD) Great. The deposition
 14 notice, which is Exhibit 1 here for your deposition,
 15 refers to your joint expert report, and the notice
 16 requests that you bring any backup materials, either
 17 electronic or hard copy, that haven't previously been
 18 provided. Is there any such material that needs to be
 19 provided to the states?
 20 A. No.
 21 Q. Regarding the joint expert report, who was
 22 it that drafted the text of your joint expert report?
 23 A. I would say, it was a joint effort between
 24 myself and Dr. Schreüder.
 25 Q. Were there any portions that were just your

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1 portions of the text?

2 A. I don't remember exactly. I remember, in
3 the process, we worked together on this and were
4 exchanging drafts going back and forth and were making
5 modifications to those drafts.

6 So I believe that the final version you see
7 before you is truly a joint effort. I don't think I
8 could parse out a specific paragraph or sections in
9 there that were specifically myself or Dr. Schreüder.

10 Q. Is there any portion of the text of the
11 report that was not drafted by either you or
12 Dr. Schreüder?

13 A. I don't believe so.

14 Q. And did anyone else besides Dr. Schreüder
15 assist you in completing the report?

16 A. I don't think there was anybody else who
17 assisted in completing it. I know that our counsel did
18 review the report before it was submitted.

19 Q. So there were no other staff at the Colorado
20 Division of Water Resources that worked on the report?

21 A. I don't believe so.

22 Q. And do you know if anyone else besides
23 Dr. Schreüder, with Principia Mathematica, his company,
24 or other consultants -- do you know if any of those
25 others worked on the report?

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1 A. I did not have any contact with other
2 individuals other than Dr. Schreüder. He would have to
3 respond whether there were other staff members in his
4 office that assisted him in that effort.

5 Q. Thank you. Did you or anyone else for
6 Colorado perform any analysis of the impact that
7 operating the N-CORPE project -- let me back up. For
8 the reporter's sake, I'll go over acronyms, which I
9 should have done at the beginning.

10 I referred to N-CORPE, and so the second
11 exhibit gives you the spelling out of the acronym, and
12 what we are going over here is a proposal by Nebraska.
13 And the acronym stands for the following: Nebraska
14 Cooperative Republican Platte Enhancement.

15 And some other acronyms we might be
16 referring to this morning are FSS, which is Final
17 Settlement Stipulation. And also RRCA, which is
18 Republican River Compact Administration.

19 And please interject, Mr. Wolfe or the court
20 reporter, if you want us to explain more.

21 So, Mr. Wolfe, did you or anyone for
22 Colorado perform any analysis of the impact of operating
23 the N-CORPE project on the Compact accounting results
24 for Colorado?

25 A. I did not perform such an analysis, but I

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1 would have to defer to Dr. Schreüder if he had done any
2 specific analysis beyond the review of the materials
3 that Nebraska had provided as part of their report.

4 Q. So Dr. Schreüder did not discuss with you
5 any accounting results regarding Colorado's accounting
6 results regarding operation of this project?

7 A. Well, we did discuss the project and the
8 materials submitted and the accounting that was provided
9 by Nebraska and the results therefrom, but the way I
10 understood your question is whether we performed an
11 independent analysis of that and did our own accounting,
12 if you will. And that's what I was referring to in my
13 previous response.

14 Q. Great. Thank you. And you understood my
15 question correctly.

16 The accounting results from Nebraska that
17 you were referring to, do you remember what those
18 accounting results showed regarding Colorado's Compact
19 accounting results?

20 A. In my discussion with Dr. Schreüder, I guess
21 the result of all of that is, there was not an impact to
22 Colorado regarding the operation of the N-CORPE project.
23 (Deposition Exhibit 3 was marked.)

24 Q. (BY MR. GRUNEWALD) Thank you. The joint
25 report that is Exhibit 3 here for your deposition, does

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1 that joint expert report contain all of your opinions
2 about the proposal?

3 A. Yes.

4 Q. I am going to ask you a couple of questions
5 about the proposal. I don't think you will need it
6 handy, but you can certainly get it in front of you, if
7 you would like. Does the N-CORPE proposal contain a
8 maximum limit to the annual pumping?

9 A. What I believe to be the maximum limit
10 associated with this project is the 60,000 acre-feet
11 that's described in the proposal.

12 Q. Is that 68,000 acre-feet of pumping?

13 A. Yes. And just to be clear, 60,000. I
14 didn't know if you said 68- or 60-, but 60,000 acre-feet
15 of pumping, is my response.

16 Q. Thank you. Does the proposal contain a
17 maximum limit on the amount of credit that Nebraska can
18 receive under the plan?

19 A. Again, I think, depending on the operations,
20 based on their simulated runs, it appears that the
21 possible maximum credit could be 60,000 acre-feet in a
22 given year.

23 Q. Thank you. The N-CORPE proposal has a
24 pipeline discharging into Medicine Creek in Nebraska.
25 Does that sound right?

<p style="text-align: right;">10</p> <p>1 A. Yes.</p> <p>2 Q. Are you familiar with the Medicine Creek</p> <p>3 reach in Nebraska?</p> <p>4 A. When you say, "familiar," could you be more</p> <p>5 specific?</p> <p>6 Q. Do you know where it is?</p> <p>7 A. Yes, I know where it's geographically</p> <p>8 located.</p> <p>9 Q. I am going to ask you some questions about</p> <p>10 Medicine Creek, so just let me know if you don't</p> <p>11 understand my questions.</p> <p>12 A. Sure.</p> <p>13 Q. Are there surface water gauges that are on</p> <p>14 Medicine Creek, to your knowledge?</p> <p>15 A. Yes.</p> <p>16 Q. Do you know what gauges there are?</p> <p>17 A. I guess the one that comes to mind is,</p> <p>18 there's a gauge that is located upstream of the</p> <p>19 reservoir.</p> <p>20 Q. Which reservoir is that?</p> <p>21 A. Harry Strunk.</p> <p>22 Q. Is Harry Strunk Reservoir on Medicine Creek?</p> <p>23 A. That's my understanding, yes.</p> <p>24 Q. Are there any other gauges besides the gauge</p> <p>25 upstream of the reservoir?</p>	<p style="text-align: right;">12</p> <p>1 than 10. But, again, I don't remember the exact</p> <p>2 distance, but I certainly don't recall it being in the</p> <p>3 order of, like, a hundred miles.</p> <p>4 Q. Will there be any transit losses of the</p> <p>5 water discharged from the augmentation pipeline as it</p> <p>6 goes from the discharge point to Harry Strunk Reservoir?</p> <p>7 A. My general understanding of that, based on</p> <p>8 my discussions with Dr. Schreüder and my recollection of</p> <p>9 the discussion that took place at the workshop on</p> <p>10 June 27 and at the actual special meeting on July 9, is</p> <p>11 that that's generally a gaining reach.</p> <p>12 Q. Does that mean there will be no transit</p> <p>13 losses of the water discharged from the augmentation</p> <p>14 pipeline?</p> <p>15 A. Could you help me -- when you are describing</p> <p>16 transit losses, are you talking about them physically or</p> <p>17 what the net result of flow is in that reach? I just</p> <p>18 want to be clear in your question. I apologize.</p> <p>19 Q. Please don't apologize. I am sure it has to</p> <p>20 do with my question, if anything, but let's certainly</p> <p>21 try and make things clear.</p> <p>22 Physically is the water that's discharged</p> <p>23 from the augmentation pipeline, is that physical</p> <p>24 quantity of water going to reach Harry Strunk Reservoir</p> <p>25 in total or is anything less than that physical amount</p>
<p style="text-align: right;">11</p> <p>1 A. I don't recall any. I am just recalling the</p> <p>2 one immediately above the reservoir, but I am not</p> <p>3 absolutely certain if there are other gauges on Medicine</p> <p>4 Creek either above or below the reservoir.</p> <p>5 Q. Does the Compact accounting take in any data</p> <p>6 from any of the gauges on Medicine Creek?</p> <p>7 A. It's my understanding that the gauge above</p> <p>8 Harry Strunk is one of those gauges.</p> <p>9 Q. It's your understanding that the gauge above</p> <p>10 Harry Strunk Reservoir is used for the Compact</p> <p>11 accounting?</p> <p>12 A. That's my understanding, yes.</p> <p>13 Q. Do you know how many stream miles there are</p> <p>14 between the discharge point of the pipeline for the</p> <p>15 project and Harry Strunk Reservoir?</p> <p>16 A. I know that number's been presented before.</p> <p>17 I am just not recalling the exact distance here today.</p> <p>18 I know it's a distance between them, but I don't</p> <p>19 remember the exact stream mileage.</p> <p>20 Q. Could you estimate it? Is it more like</p> <p>21 10 miles or more like a hundred miles?</p> <p>22 A. No. I think it's in the order of a few</p> <p>23 miles versus a hundred miles.</p> <p>24 Q. So less than 10?</p> <p>25 A. My recollection -- as I recall, it was less</p>	<p style="text-align: right;">13</p> <p>1 going to reach Harry Strunk Reservoir?</p> <p>2 A. I guess I can't answer that absolutely</p> <p>3 because that -- I did not look at any specific</p> <p>4 calculations or analyses in regards to any specific</p> <p>5 transit loss.</p> <p>6 My understanding of that is just based on</p> <p>7 discussions with, again, Dr. Schreüder and what he has</p> <p>8 described to me, the characteristics of that stream, and</p> <p>9 has indicated to me that it's generally a gaining reach</p> <p>10 in there.</p> <p>11 And I recollect that that was maybe about</p> <p>12 the extent of my discussion with him on that. So he</p> <p>13 would maybe be one to further explore whether any</p> <p>14 specific analysis was done on the actual transit loss</p> <p>15 determination.</p> <p>16 Q. I believe you said you didn't look at any</p> <p>17 specific analyses, so I wanted to make sure I</p> <p>18 understood. So you haven't seen any specific analyses</p> <p>19 of the reach on Medicine Creek between the discharge</p> <p>20 point of the pipeline and Harry Strunk Reservoir? Is</p> <p>21 that what you are saying?</p> <p>22 A. I don't recall looking at a specific, say,</p> <p>23 report or analysis. I am vaguely remembering that this</p> <p>24 was part of the discussion that took place at the</p> <p>25 workshop. And as I recollect, I think Kansas was asking</p>

<p style="text-align: right;">14</p> <p>1 some questions of Nebraska about the transit loss and 2 they were describing their understanding of the transit 3 loss that you refer to there. 4 And I don't recall if there were specific 5 reports or analyses they have done that they had 6 represented their evaluation of that. As part of this 7 evaluation here, I have just got the specific report 8 that I have looked at and then, again, my discussions 9 with Dr. Schreüder regarding that. 10 Q. You just mentioned the report you looked at. 11 What report is that? 12 A. This is Exhibit 2 that I was referring to. 13 (Deposition Exhibit 2 was marked.) 14 Q. (BY MR. GRUNEWALD) Do you mean the N-CORPE 15 proposal from Nebraska? 16 A. Yes. 17 Q. Thank you. You mentioned you had a 18 discussion with Dr. Schreüder about this reach being a 19 gaining reach. Can you tell me what you discussed 20 specifically? 21 A. All I recall, in the context of that being a 22 gaining reach, is his evaluation of the model outputs 23 that Nebraska had provided and my request of him to 24 determine whether their operations created any impact to 25 Colorado. And it was in that context that we discussed</p>	<p style="text-align: right;">16</p> <p>1 of today, but there may have been some reference to 2 those during some of the discussions at the workshop. I 3 just don't recall them. 4 Q. Did you review any of those studies that 5 might exist when you were preparing your joint expert 6 report? 7 A. No. 8 Q. Did Dr. Schreüder review any of those? 9 A. I don't know. 10 Q. If you could turn to Exhibit 2, which is the 11 N-CORPE proposal, and go to page 6 for me, please. 12 A. I'm there. 13 Q. Do you see in basically the middle of the 14 page there's two sets of equations that are titled as 15 referring to the RRCA accounting procedures? Do you see 16 those? 17 A. Yes. 18 Q. The first equation under both of those 19 headings begins with the term "VWS." What is that term? 20 A. Virgin water supply. 21 Q. Thank you. And after the equals sign, the 22 very first term in that equation is the word "gauge." 23 Could you tell me what you understand that term to mean? 24 A. That is the stream flow that's recorded at 25 that gauging station on Medicine Creek.</p>
<p style="text-align: right;">15</p> <p>1 the gaining reach and to what extent that was or was not 2 a factor in those determinations. 3 Q. After water flows into Harry Strunk 4 Reservoir, can you tell me where water goes downstream 5 of that as it moves through the Republican River Basin? 6 A. Medicine Creek is a tributary to the main 7 stem, and as it's released out of there, it would make 8 its way down to the main stem and then flow on 9 downstream through Nebraska and ultimately into Kansas. 10 Q. Are there any other reservoirs downstream on 11 either tributaries of the main stem downstream of Harry 12 Strunk Reservoir? 13 A. I guess I am not clear on your question. 14 Could you rephrase that again, please, to make sure I 15 understand your question. 16 Q. Is there a reservoir on the main stem 17 downstream of where Medicine Creek joins the main stem? 18 A. Harlan County Reservoir is downstream. 19 Q. Will there be any transit losses, physical 20 losses of augmentation water, as it moves downstream 21 from Harry Strunk Reservoir to Harlan County Reservoir? 22 A. I don't know. 23 Q. Are you aware of any studies of that reach 24 regarding losses of water or gains of water? 25 A. I am not recalling any specific studies as</p>	<p style="text-align: right;">17</p> <p>1 Q. And does Nebraska's proposal involve making 2 any changes in the accounting procedures to that gauge 3 term? 4 A. I don't think specific to the gauge term. 5 They do make a -- in their examples here, a 6 consideration of the change in the CBCU that is adjusted 7 to that gauge flow for their prediction here in their 8 example, but I am not aware that they have adjusted the 9 gauge factor itself, per se. 10 Q. You mentioned CBCU adjustment. I wanted to 11 make sure I understood. What do you mean by that? 12 A. Well, they were just trying to, in their 13 example here with the operation of the Medicine Creek 14 project or N-CORPE, what the projected change would be 15 in the gauge flow, because that's where it's recorded, 16 and trying to demonstrate through these calculations 17 what the ultimate determination would be on the 18 allocations to both Nebraska and Kansas and ultimately 19 the balance to Nebraska on the Medicine Creek Subbasin. 20 So they were just assuming that there would 21 be that increase in this example of 100 acre-feet in the 22 CBCU. So that would indicate that the gauge would be 23 reduced down under the operations. Instead of recording 24 at a thousand, at some point it would be showing 900. 25 And so they just made that adjustment accordingly in</p>

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1 this example. That's the adjustment that I guess I was
2 referring to.
3 It's just for this example calculation.
4 It's not an adjustment in the accounting procedures to
5 the gauge factor itself. It's just for this example
6 calculation, is what I was referring to in that
7 adjustment.
8 Q. Thank you. If you could flip to page 1 of
9 the proposal.
10 A. Okay.
11 Q. I'm sorry. I apologize. I meant page 1 of
12 your report.
13 A. Okay.
14 Q. Down there at the bottom, the last
15 paragraph, the last sentence, it says, "Nebraska
16 addressed all of Colorado's questions during the
17 workshop." Do you see that?
18 A. Yes.
19 Q. Can you tell me, what were those questions?
20 A. I don't remember the specific questions. As
21 I recall, generally what those represented were just
22 getting clarification on operations, accounting, as it
23 was presented in the report.
24 Q. So you don't remember any specific
25 questions?

19

1 A. I apologize. I am not recollecting the
2 specific questions. But as I recall from that, the
3 general nature of those questions was, again, just
4 making sure we understood the operation of the project
5 and the specific accounting that Nebraska had proposed
6 in regards to the accounting procedures, again, just to
7 affirm our understanding of how the project was going to
8 operate.
9 We wanted to ensure, before I took a vote on
10 this, that I clearly understood how they were going to
11 operate the project. And so, again, I think they were
12 intended to be -- or I recollect that they were
13 principally clarifying questions for myself.
14 Q. Thank you. Just a couple more questions and
15 I think we are done with the report. The states
16 recently concluded an arbitration regarding another
17 augmentation plan or proposal from Nebraska on
18 Rock Creek in Nebraska. Do you remember that?
19 A. Yes.
20 Q. The arbitrator issued a decision in late
21 December on that dispute. Did you read that decision?
22 A. Yes.
23 Q. In your opinion, does anything in Nebraska's
24 N-CORPE proposal need to be changed as a result of the
25 Rock Creek arbitration decision?

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1 A. Given it's been a while since I read that
2 decision -- it was right after it was issued -- I did
3 not make that analysis of the Rock Creek decision by
4 Mr. Fereday and this specific proposal to make the
5 determination, to answer your question. I would have to
6 go back and again refresh myself on that decision to
7 make that comparison that you suggest in your question.
8 Q. Do you have any plans to do that in the
9 future before this arbitration on the N-CORPE project is
10 done?
11 A. It's possible.
12 Q. It's possible you have plans, or you don't
13 have any plans but it's possible that it will happen?
14 A. The reason I guess I respond the way I did
15 was, as it has been with all of these projects, there
16 continue to be discussions and settlement discussions,
17 if you will, as these projects move forward or the
18 processes associated with them.
19 And it's been my experience that Colorado
20 has done this, and I would suspect Nebraska could
21 continue to offer up additional terms and conditions or
22 alternatives to address concerns of either of the
23 states.
24 And it's in that context that those
25 evaluations may require going in and looking at other

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1 decisions that have been made -- in this case,
2 Mr. Fereday's decision on Rock Creek -- and to the
3 extent there's decisions in there that would be
4 applicable to the N-CORPE project, I would say that
5 would be why I would consider looking at that as part of
6 that evaluation on any future modifications to this
7 proposal if Nebraska were to submit any.
8 MR. GRUNEWALD: Thank you. I don't have any
9 more questions.
10 MR. STEINBRECHER: Nebraska, do you have any
11 questions?
12 MR. WILMOTH: No, we don't.
13 MR. STEINBRECHER: Nothing from Colorado.
14 MR. GRUNEWALD: We can go off the record.
15 (WHEREUPON, the deposition concluded at 9:36 a.m.)
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1 I, DICK WOLFE, P.E., do hereby certify
 2 that I have read the foregoing transcript and that the
 3 same and accompanying correction sheets, if any,
 4 constitute a true and complete record of my testimony.
 5
 6
 7 _____
 8 Deponent
 9
 10 () No changes () Amendments attached
 11
 12 Subscribed and sworn to before me this
 13 _____ day of _____, 2014.
 14
 15 My commission expires _____.
 16
 17 _____
 18 Notary Public
 19
 20 Address _____
 21 _____
 22
 23 df
 24 N-CORPE Augmentation Plan
 25

24

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 4 January 17, 2014
 5
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 8 Natural Resources and Environment
 9 Federal and Interstate Water Unit
 10 Ralph L. Carr Colorado Judicial Center
 11 1300 Broadway, 7th Floor
 12 Denver, Colorado 80203
 13
 14 Case Name: N-CORPE Augmentation Plan
 15 Deposition of DICK WOLFE, P.E.
 16 The deposition in the above-entitled matter is ready
 17 for reading and signing. Please attend to this
 18 matter by complying with ALL blanks checked below:
 19 arrange with us at (303)696-7680 to read and
 20 sign the deposition in our office
 21
 22 OR (if applicable),
 23
 24 have deponent read your copy; signing
 25 attached original signature page and any
 amendment sheets.
 _____ read enclosed deposition, sign attached
 signature page and any amendment sheets.
 within 30 days of the date of this letter.
 by _____ due to a trial date of _____
 Please be sure that the signature page and
 accompanying amendment sheets, if any, are signed
 before a notary public and returned to our office at
 the above address.
 If this matter has not been taken care of within said
 period of time, the deposition will be filed unsigned
 pursuant to the Rules of Civil Procedure.
 Thank you.
 Enclosures: (As above noted)
 cc: Christopher M. Grunewald, Esq.; Justin D.
 Lavene, Esq.

23

1 REPORTER'S CERTIFICATE
 2 STATE OF COLORADO)
 3) SS.
 4 COUNTY OF DENVER)
 5 I, Denise A. Freeman, do hereby certify
 6 that I am a Registered Professional Reporter and
 7 Notary Public within the state of Colorado; that
 8 previous to the commencement of the examination,
 9 the deponent was duly sworn by me to testify to the
 10 truth.
 11 I further certify that this deposition was
 12 taken in shorthand by me at the time and place herein
 13 set forth and was thereafter reduced to typewritten
 14 form, and that the foregoing constitutes a true and
 15 correct transcript.
 16 I further certify that I am not related
 17 to, employed by, nor of counsel for any of the parties
 18 or attorneys herein, nor otherwise interested in the
 19 result of the within action.
 20 In witness whereof, I have affixed my
 21 signature this 17th day of January, 2014.
 22
 23 _____
 24 PATTERSON REPORTING & VIDEO
 25 Denise A. Freeman
 Registered Professional Reporter
 and Notary Public

25

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 9 120 SW 10th Avenue, 2nd Floor
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 11
 12 Dear Mr. Grunewald:
 13
 14 Re: Deposition of DICK WOLFE, P.E.
 15
 16 _____ Signed, no changes.
 17
 18 _____ Signed, with changes, copy attached.
 19
 20 _____ No signature required.
 21
 22 _____ Reading and signing not requested pursuant to
 23 CRCP Rule 30(e).
 24 _____ Signature waived.
 25 Forwarding original transcript unsigned;
 signature pages and/or amendments will be
 forwarded, if received.
 _____ Original exhibits included in ongoing notebook
 and will be filed with counsel at conclusion of
 discovery.
 _____ Via Email.
 Enclosures: (As above noted)
 cc: Scott Steinbrecher, Esq.; Justin D. Lavene, Esq.