

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.

PURSUANT TO NOTICE, the above-entitled
deposition was taken on behalf of the State of
Kansas at 1313 Sherman Street, Denver, Colorado
80203, on February 20, 2014, at 9:00 a.m., before
Angela Smith, Professional Reporter and Notary
Public.

<p style="text-align: right;">2</p> <p>1 APPEARANCES: 2 Telephonically for the State of Nebraska: 3 JUSTIN D. LAVINE, ESQ. 4 Nebraska Attorney General's Office 5 2115 State Capitol 6 Lincoln, Nebraska 68509 7 justin.lavene@nebraska.gov 8 9 - and - 10 11 TOM WILMOTH, ESQ. 12 DON BLANKENAU, ESQ. 13 Blankenau Wilmoth Jarecke, LLP 14 206 South 13th Street, Suite 1425 15 Lincoln, Nebraska 68508 16 402-475-7080 17 For the State of Colorado: 18 SCOTT STEINBRECHER, ESQ. 19 State of Colorado, Department of Law 20 1300 Broadway, 7th Floor 21 Denver, Colorado 80203 22 720-508-6287 23 Scott.steinbrecher@state.co.us 24 Telephonically for the State of Kansas: 25 CHRISTOPHER M. GRUNEWALD, ESQ. 120 Southwest 10th Avenue, 3rd Floor Topeka, Kansas 66612-1597 785-368-8424 Burke.griggs@ksag.org</p> <p style="text-align: center;">EXAMINATION INDEX</p> <p>By Mr. Grunewald Page 4</p>	<p style="text-align: right;">4</p> <p style="text-align: center;">P R O C E E D I N G S</p> <p>WHEREUPON, the following proceedings were taken pursuant to the Federal Rules of Civil Procedure: * * * * *</p> <p>(Deposition Exhibits 1 and 2 were marked for identification.) DICK WOLFE, PE, having been first duly sworn to state the whole truth, testified as follows: EXAMINATION BY MR. GRUNEWALD: Q Good morning, Mr. Wolfe. A Good morning. Q And we're here to do a deposition, in large part, connected to a joint expert rebuttal report that was prepared by you and Dr. Schreuder. MR. GRUNEWALD: I'm going to ask that maybe we just deal with spelling of names and cleanup after the deposition. Q (By Mr. Gruenwald) And that report was filed on February 7, 2014; is that right? A That is correct. (Mr. Don Blankenau telephonically joined the deposition.)</p>										
<p style="text-align: right;">3</p> <p style="text-align: center;">EXHIBIT INDEX</p> <table border="0"> <thead> <tr> <th style="text-align: left;">FOR IDENTIFICATION</th> <th style="text-align: left;">INITIAL REFERENCE</th> </tr> </thead> <tbody> <tr> <td>Deposition Exhibit 1</td> <td>4</td> </tr> <tr> <td>Notice of Deposition</td> <td></td> </tr> <tr> <td>Deposition Exhibit 2</td> <td>13</td> </tr> <tr> <td>Joint Expert Rebuttal Report</td> <td></td> </tr> </tbody> </table>	FOR IDENTIFICATION	INITIAL REFERENCE	Deposition Exhibit 1	4	Notice of Deposition		Deposition Exhibit 2	13	Joint Expert Rebuttal Report		<p style="text-align: right;">5</p> <p>Q (By Mr. Grunewald) Mr. Wolfe, is there any reason why you can't give complete and truthful answers here this morning? A No. Q This is a phone deposition. I'll do my best to not talk over you. Please feel free to let me know if you need to clarify or expand or if you're having trouble hearing me. Is that okay? A Okay. Q Now, there are two authors for the joint report; is that right? A Correct. Q And I should follow up. The deposition notice asked for any backup materials that were not previously provided for the report. Is there anything that falls in that category? A I have no other materials here with me today. Q Do any exist that you didn't bring with you that haven't been disclosed? A No other materials exist. Q Thank you. So there were two primary authors. Did anyone else, besides you and</p>
FOR IDENTIFICATION	INITIAL REFERENCE										
Deposition Exhibit 1	4										
Notice of Deposition											
Deposition Exhibit 2	13										
Joint Expert Rebuttal Report											

<p style="text-align: right;">6</p> <p>1 Dr. Schreuder, write the text of the report?</p> <p>2 A As I recall, I believe Mike Sullivan,</p> <p>3 my deputy, had reviewed this at some stage and may</p> <p>4 have provided some comments on what we had prepared.</p> <p>5 As well as my counsel, Scott Steinbrecher, also</p> <p>6 reviewed the report before we finalized it.</p> <p>7 Q So am I right, no one else drafted the</p> <p>8 text, you just got some editorial comments?</p> <p>9 A Correct.</p> <p>10 Q And besides you and your co-author,</p> <p>11 did anyone else -- and the people that you just</p> <p>12 listed, is there anybody else that you consider to</p> <p>13 have assisted you in preparing the report?</p> <p>14 A I don't recall anyone else being</p> <p>15 involved.</p> <p>16 Q Does the report contain all of your</p> <p>17 rebuttal expert opinions for this arbitration?</p> <p>18 A Yes.</p> <p>19 Q And for the record, I'll probably</p> <p>20 refer to the proposal. This is an arbitration about</p> <p>21 Nebraska's N-CORPE Augmentation Plan. N-CORPE is an</p> <p>22 acronym, and it stands for Nebraska Cooperative</p> <p>23 Republican Platte Enhancement.</p> <p>24 Who made the decisions of which</p> <p>25 opinions to include in your report?</p>	<p style="text-align: right;">8</p> <p>1 A Correct.</p> <p>2 Q Have you ever operated the model; run</p> <p>3 it, so to speak?</p> <p>4 A No.</p> <p>5 Q Do you know how to run the model?</p> <p>6 A As of today, without assistance from</p> <p>7 Dr. Schreuder, I probably could not complete that</p> <p>8 task unilaterally.</p> <p>9 Q In terms of the pieces of the joint</p> <p>10 report, is it fair to say that the pieces referring</p> <p>11 to the groundwater model are Dr. Schreuder's parts</p> <p>12 of the report?</p> <p>13 A I guess I'd have to have you</p> <p>14 specifically point to some, because I think some of</p> <p>15 the references we make are just concepts or</p> <p>16 conceptual things in terms of what the model</p> <p>17 considers or how it handles certain activities as it</p> <p>18 may relate to actual evaluation of model results</p> <p>19 that may have been considered as part of this plan,</p> <p>20 though certainly would have been conducted by</p> <p>21 Dr. Schreuder.</p> <p>22 So, again, it may just depend on the</p> <p>23 context and the portion of the report. I don't know</p> <p>24 that it's carte blanche for every reference to the</p> <p>25 groundwater model that that would have only been</p>
<p style="text-align: right;">7</p> <p>1 MR. STEINBRECHER: I'll object to the</p> <p>2 form of the question. We're getting into draft</p> <p>3 report material.</p> <p>4 Q (By Mr. Gruenwald) You can answer.</p> <p>5 A Could you repeat the question again,</p> <p>6 just so I'm clear on what you were asking.</p> <p>7 MR. GRUENWALD: Sure. Can the</p> <p>8 reporter please read it back.</p> <p>9 (The question was read.)</p> <p>10 A As I recall, it was a joint decision</p> <p>11 between myself and Dr. Schreuder, on the sections</p> <p>12 that were included in the joint report.</p> <p>13 Q (By Mr. Gruenwald) Were there any</p> <p>14 opinions -- and I'm not asking for what they are,</p> <p>15 but were there any opinions that you rejected or did</p> <p>16 not include in the report?</p> <p>17 A I don't recall that we considered one</p> <p>18 and then rejected it.</p> <p>19 Q I'm going to refer to a couple of</p> <p>20 other acronyms here. So I'll put those on the</p> <p>21 record. One is the Republican River Compact</p> <p>22 Administration. And I may refer to that as the</p> <p>23 RRCA.</p> <p>24 The RRCA has an approved groundwater</p> <p>25 model; is that right?</p>	<p style="text-align: right;">9</p> <p>1 something considered by Dr. Schreuder.</p> <p>2 Q So I want to make sure I'm following.</p> <p>3 Did you evaluate any model results in preparing the</p> <p>4 text of your report?</p> <p>5 A Well, I did look at some of the model</p> <p>6 results that Larson & Perkins had done as part of</p> <p>7 their report, in terms of the summary information,</p> <p>8 if you will, or the results of that that were</p> <p>9 presented in their report. And so I did look at</p> <p>10 that and evaluate it and was part of the basis</p> <p>11 forming the opinions that you see herein.</p> <p>12 But I did not look at the actual model</p> <p>13 results that come directly out of the model that may</p> <p>14 have been the interim step before they prepared,</p> <p>15 say, some of the drafts that were in their expert</p> <p>16 report. If that's clear.</p> <p>17 Q Thank you. Are you familiar with the</p> <p>18 RRCA accounting procedures?</p> <p>19 A Yes.</p> <p>20 Q Do you agree or disagree with the</p> <p>21 statements in the Kansas reports that not accounting</p> <p>22 for transit losses to augmentation water would</p> <p>23 negatively impact the allocations to the state under</p> <p>24 the accounting procedures?</p> <p>25 A See if I can try to answer your</p>

<p style="text-align: right;">10</p> <p>1 questions. I understand how you asked the 2 consideration of transit losses. We've stated the 3 FSS does not define transit loss and is not 4 currently considered in any of the accounting 5 procedures in the current version. 6 So I'm trying to answer your question. 7 I'm trying to make sure what context you're asking 8 that. If it's hypothetically, if we were to 9 consider transit loss, and that was part of the 10 equation that was included in the computed water 11 supply, if that would have an impact on the 12 allocations. 13 I'm just trying to make sure I 14 understand the context in which you're phrasing your 15 question to me. Just so I understand it and can 16 answer it accurately. 17 Q Sure. I'll do my best to see if I can 18 do that. 19 Are you aware that Kansas' expert 20 reports address the issue of accounting for transit 21 losses to augmentation water as it travels 22 downstream from the discharge point? 23 A Yes. Each of the expert reports 24 address this transit loss issue. They've each 25 approached it in a different way, as we've described</p>	<p style="text-align: right;">12</p> <p>1 the calculation with losses? 2 A With Nebraska's. 3 Q So is it your opinion that the states 4 receive larger allocations under Nebraska's credit 5 calculation than adjusting for losses that might 6 occur in the sub-basin? 7 A I guess I'd have to work through an 8 example with some numbers in it to answer your 9 question. I'm just trying to think through that and 10 determine whether that results in a greater or less 11 allocation. 12 Q So I just want to see if I understand 13 your position, as you sit here today. If you have 14 two situations that you're comparing and one is that 15 you use the Nebraska credit calculation and the 16 other is that you make an adjustment in that 17 calculation for transit losses -- and this is the 18 calculation of the virgin water supply -- you're not 19 sure whether or not transit losses have an impact on 20 that? 21 A And, again, I think to convince myself 22 in terms of answering that statement, I'd have to 23 run through an example there. In reflecting back on 24 your question, I may have misunderstood your first 25 question when you asked about whether it affected</p>
<p style="text-align: right;">11</p> <p>1 in the report. But they are describing this concept 2 of transit loss and how they believe it should be 3 considered as an adjustment to the credit allowed 4 for the augmentation water supply. 5 Q And under the proposal by Nebraska, 6 the full amount of augmentation discharge is 7 subtracted from the virgin water supply 8 calculations, right? 9 A Correct. 10 Q If some of that water is lost, as it 11 moves down to the accounting point on Medicine 12 Creek, do you agree that that has an impact on the 13 allocation? 14 A Well, I don't agree that transit loss 15 should be considered as a reduction in the 16 augmentation water supply. But if you're asking me 17 hypothetically if we were to adjust the augmentation 18 water supply by a transit loss and reduce that 19 amount, certainly that computation would result in a 20 change in the computed water supply, which would 21 then affect the allocations. 22 Q Comparing the two scenarios, the 23 hypothetical Nebraska credit calculation and the 24 hypothetical adjustment for losses, are the 25 allocations higher under the Nebraska proposal or</p>	<p style="text-align: right;">13</p> <p>1 the allocation. I was thinking about the total 2 amount of credit that was -- in terms of received by 3 the augmentation water, would have been greater in 4 Nebraska's example than the other one, was what I 5 was thinking of when you asked that question. 6 What it does to the allocation, by 7 considering the transit loss in that computation, 8 I'd have to run through an example for the specific 9 basin that you're referring to, because I'm more 10 familiar with the computations for virgin water 11 supply and computed water supplies as it relates to 12 Colorado's determinations. 13 I don't run those in any particular 14 frequency or for any reason for Nebraska or Kansas. 15 So I'd have to step through an example of some 16 numbers to make sure I can accurately answer your 17 question about what that ultimate change in 18 allocation would be by considering a transit loss. 19 And the reason I'm answering that way 20 is because I'm -- in reviewing the three reports 21 that were done, they each approach that 22 determination or adjustment in different ways. So I 23 just want to make sure I understand which approach 24 you're talking about and what that ultimately would 25 do to a computation that you're trying to present to</p>

<p style="text-align: right;">14</p> <p>1 me.</p> <p>2 Q Okay. Thanks. I'd like you to turn</p> <p>3 to your expert report, which is Exhibit 2.</p> <p>4 A Okay.</p> <p>5 Q There on page 1 under the heading</p> <p>6 Transit Loss, do you see the last sentence on that</p> <p>7 page?</p> <p>8 A Uh-huh.</p> <p>9 Q And it refers to the RRCA Groundwater</p> <p>10 Model, and says it's not informed of several things</p> <p>11 there regarding surface water. Do you see that?</p> <p>12 A Yes.</p> <p>13 Q There's currently an approved --</p> <p>14 temporary approval, I should say, for Colorado's</p> <p>15 compact compliance pipeline; is that right?</p> <p>16 A Yes.</p> <p>17 Q Does the accounting that's approved</p> <p>18 for that temporary approval include informing the</p> <p>19 groundwater model of the pipeline discharge?</p> <p>20 A Yes, it does in that case.</p> <p>21 Q Is that the sort of thing that this</p> <p>22 sentence was directed at?</p> <p>23 A This sentence was directed at the</p> <p>24 context of the N-CORPE Augmentation Plan.</p> <p>25 Q So do you still agree that it's not</p>	<p style="text-align: right;">16</p> <p>1 Q Are you saying, under the stipulated</p> <p>2 Colorado pipeline proposal, that the model is not</p> <p>3 informed of the augmentation water?</p> <p>4 A No, that's not what I said.</p> <p>5 Q I'm trying to get at whether it's true</p> <p>6 or not that the model is informed of surface water</p> <p>7 operations, if surface water operations are</p> <p>8 including augmentation pipeline discharge.</p> <p>9 A The only situation I'm aware that it's</p> <p>10 been informed is in the temporary approval for the</p> <p>11 CCP.</p> <p>12 Q So as I hear you this morning, you're</p> <p>13 saying that is the one time it is informed?</p> <p>14 A Correct.</p> <p>15 Q Would you like to correct your</p> <p>16 statement in the report?</p> <p>17 A No, I think this statement is</p> <p>18 accurate.</p> <p>19 Q I don't quite understand how. If we</p> <p>20 just had an agreement that it is informed in one</p> <p>21 situation, and your statement says it's not</p> <p>22 informed, it doesn't have any qualifications.</p> <p>23 A I guess I'm confused about your</p> <p>24 question then.</p> <p>25 Q Okay. Let's move on. Does the FSS</p>
<p style="text-align: right;">15</p> <p>1 informed of any other surface water operations, or</p> <p>2 did you mean to limit your statement to it's not</p> <p>3 informed of N-CORPE operations?</p> <p>4 A Well, it's our position that the</p> <p>5 groundwater model is not to be used or be informed</p> <p>6 of any surface water activities. It handles</p> <p>7 groundwater in the baseflow in the streams.</p> <p>8 It was only by a stipulated agreement</p> <p>9 that Colorado decided to inform the groundwater</p> <p>10 model for purposes of settlement and agreeing to the</p> <p>11 one-year approval. But it's our position that</p> <p>12 that's not a requirement of the FSS or the compact.</p> <p>13 And that's the general basis of making that</p> <p>14 statement.</p> <p>15 Q Okay. I just want to understand. It</p> <p>16 seems like it's a factual statement here that it's</p> <p>17 not informed. And I think I just heard you say it</p> <p>18 is informed under that settlement.</p> <p>19 I'm just trying to get clear on what</p> <p>20 you mean by informed in that statement, whether it's</p> <p>21 happening or not.</p> <p>22 A Yes, in the context of this plan, in</p> <p>23 general, it's our position that it is not to be</p> <p>24 informed. And Nebraska has not presented, in their</p> <p>25 proposal, that it be informed of that outflow.</p>	<p style="text-align: right;">17</p> <p>1 prohibit an augmentation plan that accounts for</p> <p>2 transit losses?</p> <p>3 A I'm not aware that it prohibits, but</p> <p>4 it does not require it.</p> <p>5 Q Thank you. Can you turn to page 5,</p> <p>6 please. And if you could look at the last paragraph</p> <p>7 on page 5, it begins, "If Nebraska had." Do you see</p> <p>8 that?</p> <p>9 A Yes.</p> <p>10 Q And could you review that first</p> <p>11 sentence, please, for me. You can read it to</p> <p>12 yourself or aloud, whichever you prefer.</p> <p>13 A Yes, I've read it.</p> <p>14 Q There's a part of that sentence that</p> <p>15 says "there is no doubt that 100% of the pipeline</p> <p>16 would have been considered imported water."</p> <p>17 Do you see that?</p> <p>18 A Yes.</p> <p>19 Q Is that a statement that's based on</p> <p>20 the negotiations of the FSS?</p> <p>21 A No. That's a statement of myself and</p> <p>22 Dr. Schreuder.</p> <p>23 Q Okay. I just want to understand what</p> <p>24 the basis for it is. How is it you know there is no</p> <p>25 doubt that that hypothetical situation would have</p>

18	20
1 been considered imported water?	1 MR. WILMOTH: No, Scott.
2 A Well, I think just because of the	2 MR. STEINBRECHER: Well, thank you,
3 physical situation. This is water that the	3 Chris.
4 Republican River Basin has never seen, and it would	4 Colorado has no questions.
5 be a direct discharge to the stream. It would not	5 (WHEREUPON, the deposition was
6 be similar to how water may be imported now in and	6 concluded at 9:33 a.m.)
7 is used within the Republican River Basin. And the	7
8 amount that makes it into the groundwater system and	8
9 then shows up as a credit, there's that, as we	9
10 describe in the report. The model is used for that	10
11 situation.	11
12 But because this is like -- we've	12
13 stated in our report and numerous times that the	13
14 model is not informed of these surface water	14
15 deliveries. And in this case, these are waters that	15
16 aren't even native to the basin in the Republican	16
17 River. They're not even previously stored reservoir	17
18 water that's released out. The model's not informed	18
19 of those.	19
20 So it's in that context why we're	20
21 making that statement that we believe there's no	21
22 doubt that that pipeline would have been considered	22
23 imported water.	23
24 Q And when you say "imported water,"	24
25 here, do you mean imported water supply as defined	25
19	21
1 in the FSS?	1 I have read the foregoing transcript of my
2 A Well, I'd have to go back again just	2 testimony and have indicated same by my signature.
3 to confirm the exact definition in there. But the	3
4 context as here is reflecting the physical nature,	4
5 that it's imported water, that it's coming from the	5
6 Platte River system and water that's not native to	6 DICK WOLFE, P.E.
7 the Republican River Basin.	7 STATE OF COLORADO
8 Q Are you aware that imported water	8 CITY AND COUNTY OF DENVER
9 supply is a defined term in the FSS?	9
10 A Yes.	10 Subscribed and sworn to before me by the
11 Q Are you aware that imported water	11 said DICK WOLFE, P.E., this _____ day of
12 supply credit is a defined term in the FSS?	12 _____, 2013.
13 A Yes.	13 My commission expires: _____.
14 Q When you wrote the words "imported	14
15 water," did you mean imported water supply as	15
16 defined in the FSS?	16 Notary Public
17 A I believe here we were referring to it	17
18 more in the generic sense of an imported water	18
19 supply, not to confuse it with how the imported	19 Address
20 water supply credit is determined as defined in the	20
21 FSS.	21
22 MR. GRUENWALD: Okay. I don't have	22
23 any more questions.	23
24 MR. STEINBRECHER: Nebraska, do you	24
25 have any questions this morning?	25

Dick Wolfe, PE

<p style="text-align: right;">22</p> <p>1 CERTIFICATE 2 STATE OF COLORADO) 3)ss. 4 CITY AND COUNTY OF DENVER) 5 6 I, Angela Smith, Professional Reporter and Notary Public for the State of Colorado, do 7 hereby certify that previous to the commencement of the examination, the said deponent, DICK WOLFE, P.E., was duly sworn by me to testify to the truth 8 in relation to the matters in controversy between the said parties. 9 I further certify that said deposition was taken in shorthand by me and was reduced to 10 typewritten form by computer-aided transcription, that the foregoing is a true transcript of the 11 questions asked, testimony given, and proceedings had. 12 I further certify that I am not an attorney nor counsel nor in any way connected with any attorney or counsel for any of the parties to 13 said action or otherwise interested in its event. IN WITNESS WHEREOF, I hereunto affix my 14 hand and notarial seal this 21st day of February 2014. 15 My commission expires January 22, 2015. 16 17 18 19 Angela Smith Professional Reporter/Notary Public Calderwood-Mackelprang, Inc. 20 21 22 23 24 25</p>	<p style="text-align: right;">24</p> <p>1 CALDERWOOD-MACKELPRANG, INC. 7150 East Hampden Avenue, Suite 303 2 Denver, Colorado 80224 (303) 477-3500 3 4 CHRISTOPHER M. GRUNEWALD, ESQ. 120 Southwest 10th Avenue, 3rd Floor 5 Topeka, Kansas 66612-1597 6 Re: Kansas v. Nebraska & Colorado 7 Dear Mr. Grunewald: 8 Enclosed is the deposition of: DICK WOLFE, P.E. 9 _____ Previously filed. Forwarding signature page and amendment sheets. 10 11 _____ Signed, no changes. 12 _____ Signed, with changes, copy enclosed. 13 _____ Unsigned, notice duly given _____, pursuant to the Rules of Civil Procedure. 14 _____ Not signed, notice duly given _____, since trial is set for _____. 15 _____ No signature required. 16 _____ Signature waived. 17 _____ To be signed in court. 18 _____ Signature pages/amendment sheets to be 19 returned to court on date of trial. 20 _____ Mailed by Certified Mail No. _____. 21 _____ Hand-delivered on approximately _____. 22 Angela Smith, Professional Reporter 23 cc: Counsel of Record 24 25</p>
<p style="text-align: right;">23</p> <p>1 CALDERWOOD-MACKELPRANG, INC. 7150 East Hampden Avenue, Suite 303 2 Denver, Colorado 80224 (303) 477-3500 3 4 February 21, 2014 5 6 SCOTT STEINBRECHER, ESQ. State of Colorado, Department of Law 1300 Broadway, 7th Floor 7 Denver, Colorado 80203 Re: Kansas v. Nebraska & Colorado 8 Deposition of: DICK WOLFE, P.E. 9 The deposition in the above-entitled matter is ready for reading and signing. Please attend to this 10 matter by complying with ALL blanks checked below: 11 _____ arranging with us at the number listed below to read and sign the deposition in our 12 office. 13 xxxxxx having deponent read your copy and sign amendment sheets, if any (original signature 14 page enclosed.) 15 _____ reading enclosed deposition, signing signature page and correction sheets, if 16 any 17 _____ within 35 days of the date of this letter 18 19 xxxxx by 2/28/2014 due to trial/hearing date of 3/5/2014. 20 Please be sure that the signature page and amendment 21 sheets, if any, are signed before a Notary Public and returned to our office. If this matter has not 22 been taken care of within said period of time, the deposition will be filed unsigned pursuant to the Rules of Civil Procedure. 23 24 Angela Smith, Professional Reporter cc: Counsel of Record 25</p>	

7 (Pages 22 to 24)

Calderwood-Mackelprang, Inc. 303.477.3500

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