

BEFORE THE DIRECTORS OF THE  
UPPER REPUBLICAN NATURAL RESOURCES DISTRICT

-----X  
UPPER REPUBLICAN NATURAL RESOURCES )  
DISTRICT PUBLIC HEARING ) TRANSCRIPT OF  
HEARING I OF II  
-----X

HEARING HELD this March 3, 2005, at 7:00 p.m. MT at  
the Senior Center, 1000 Wellington Street, Imperial,  
Nebraska with TERRY SAVAGE presiding as HEARING OFFICER.

Members of the Board of Directors; Joel Burke, ..  
Attorney at Law; Tom Davidson, Attorney at Law;  
Jasper Fanning, manager; Tina Kurtz, Mike Thompson,  
and Brad Edgerton of Department of Natural Resources;  
and general public present.

MEMBERS OF THE BOARD OF DIRECTORS PRESENT:

KERRY BERNHARDT	TOM TERRYBERRY
GREG PELSTER	KENNY OWENS
TERRY MARTIN	MICHAEL STRAND
DEAN LARGE	DON GENGENBACH
TIM SCHILKE	

**ORIGINAL**

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25

INDEX

WITNESSES:

PAGE

GREG SMITH

10

HAL WALKER

14

\*\*\*\*\*

EXHIBITS:

NO.    DESCRIPTION

MARKED

RULED ON

1.	PUB AFF BENKELMAN POST	4	9
2.	PUB AFF WAUNETA BREEZE	4	9
3.	PUB AFF IMPERIAL REPUBLICAN	4	9
4.	PUB AFF GRANT TRIBUNE	4	9
5.	ORDER 27 NRD	4	10
6.	EVIDENCE LIST	4	10
7.	DNR INTEGRATED MGT PLAN	4	10
8.	ADVERTISEMENT-STAKEHOLDER	4	10
9.	MATERIAL REC AT STAKEHOLDER	4	10
10.	3 TAPES - STAKEHOLDER MTG	4	10
11.	PUB AFF OF NOTICE OF HEARING BENKELMAN POST	4	10
12.	PUB AFF OF NOTICE OF HEARING WAUNETA BREEZE	4	10
13.	PUB AFF OF NOTICE OF HEARING IMPERIAL REPUBLICAN	4	10
14.	PUB AFF OF NOTICE OF HEARING GRANT TRIBUNE	4	10
15.	ADVERTISEMENT OF PUBLIC HRG	4	10
16.	POWER POINT PRESENTATION NEB GAME & PARKS	4	17

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25

C E R T I F I C A T E

STATE OF NEBRASKA )  
COUNTY OF KEITH )

I, Tania M. Fox, Court Reporter and General Notary Public, do hereby certify that the within and following transcript is a correct and complete transcription of the evidence requested to be transcribed by me taken from the proceedings at the time and place set forth herein in the before-captioned case.

This transcript consists of the following:

- VOLUME I - TRANSCRIPT (PAGES 1 - 17 INCLUSIVE)
- EXHIBITS (1 THROUGH 16 INCLUSIVE)

Dated this 15th day of March, 2005.

\_\_\_\_\_  
Tania M. Fox  
General Notary Public

PROCEEDINGS

(The hearing in this matter commenced at 7:00 p.m. on this 3d day of April, 2005. Exhibit Nos. 1 through 15 marked for identification.)

CHAIRMAN PELSTER: Good Evening. Thank you for coming tonight, and I want to welcome you to our hearing this evening. I'll start with the introductions. I am Greg Pelster from Perkins County. I reside south of Elsie in Subdistrict 10. I am the Board Chairman. Will each of the Board members stand and introduce themselves, please.

MR. SCHILKE: I'm Tim Schilke. I reside in Subdistrict 4 and I live south of Lamar.

MR. DEAN LARGE: I'm Dean Large, Subdistrict 6. I live north of Wauneta.

MR. TERRY MARTIN: Terry Martin, Subdistrict 2, central Dundy County.

MR. KENNY OWENS: Kenny Owens, Imperial, Subdistrict 5.

MR. TOM TERRYBERRY: Tom Terryberry, Subdistrict 7, Imperial.

MR. KERRY BERNHARDT: Kerry Bernhardt, Subdistrict 3, southwest of Champion.

MR. BURKE: Joel Burke, legal counsel.

MR. DAVIDSON: Tom Davidson, legal

1 counsel.

2 HEARING OFFICER: Terry Savage from  
3 Imperial. I'll be the hearing officer.

4 MR. FANNING: Jasper Fanning, manager.

5 MR. EDGELTON: I'm Brad Edgerton with the  
6 Department of Natural Resources out of Cambridge.

7 TINA KURTZ: Tina Kurtz, Department of  
8 Natural Resources out of Lincoln.

9 MR. THOMPSON: I'm Mike Thompson, and I'm  
10 also with the DNR out of Lincoln.

11 CHAIRMAN PELSTER: We have a court  
12 reporter, Tania Fox, is here this evening. She'll be  
13 taking down what all is said.

14 We're here to conduct two public hearings.  
15 The first public hearing is on the consideration of the  
16 scientific data that was comprised and accumulated in the  
17 development of the IMP. At the end of that hearing I'll  
18 entertain a motion from the Board to either reject or  
19 approve that data set as an order. We'll act upon that  
20 motion.

21 And then we'll go into the second public  
22 hearing which is to receive evidence relative to the  
23 adoption of the IMP, at a future date, we anticipate that  
24 this would be at the May regular meeting providing we  
25 meet all the time standards and everything.

1                   At this time I'll introduce Terry Savage,  
2 who is the hearing officer for tonight's hearings. And  
3 he'll conduct the business. Thank you, Terry.

4                   HEARING OFFICER: Thank you, Greg. I look  
5 out and I see a lot of familiar faces. As most of you  
6 know I've been hearing officer for about 25 to 30 years.  
7 But I've been out of commission for a couple of years.  
8 I'm glad to be back with you.

9                   As Greg said we're going to do two public  
10 hearings tonight. The first one is to consider adopting  
11 a list of the types of data, scientific and otherwise,  
12 that would be considered by the Board when they  
13 deliberate on an IMP.

14                   The second hearing then is going to be to  
15 receive actual evidence from you that the Board can take  
16 and deliberate on in making their discussion as to what  
17 to do in regards to an IMP.

18                   We have our court reporter. She's going  
19 to take down every word that is said. This is very  
20 important because we're doing a two-fold project tonight,  
21 so to speak.

22                   One, we're making a record that the Board  
23 can use to deliberate upon. Secondly, we're making a  
24 record that could be used for judicial review. And this  
25 could be either instituted by the Board or it could be

1 instituted by an interested party. And the Court cannot  
2 consider what we thought, casual conversations, that sort  
3 of thing. It has to be in this record before it can be  
4 properly utilized.

5 I'd like to get, at this time, an idea of  
6 how many people intend to testify. If you know that you  
7 are if you could raise your hand for me.

8 (Public responds.)

9 HEARING OFFICER: I'm seeing probably less  
10 than ten hands at the present time. So we won't put any  
11 time limitations on testimony. But if we need to, we  
12 will do that later on tonight so we can all get home at a  
13 decent hour.

14 Well, let's get some general guidelines  
15 here for those of you upfront. When you want to testify  
16 you'll need to come forward and sign in on the tablet  
17 there on that table. Use the mic if you think you need  
18 to. And you might because you're going to be facing away  
19 from the audience and you're also going to be facing away  
20 from the court reporter.

21 By the way, can you all hear me? I'll try  
22 to speak a little louder because there is only one mic  
23 and we're going to let the testifying people use that mic  
24 that's up here at this table.

25 But you'll be facing away from the court

1 reporter. So it's important that you speak slowly enough  
2 and use the mic so that she can pick up what you say and  
3 get it into the record.

4                   After you sign in you can address the  
5 Board. If you have any documents or material items that  
6 you want to be placed in the record just bring them  
7 forward to me and I will mark them. And I will receive  
8 them, if they appear to be relevant and not repetitive or  
9 redundant.

10                   Now, that's the same for oral testimony.  
11 The Board wants to hear everything that you have to say  
12 on these subjects, but it won't do us any good to hear it  
13 multiple times.

14                   Now, I don't say this to discourage  
15 anybody from testifying. But simply because it's an  
16 evening hearing and we're going to want to try to move  
17 forward and hear everything you have to say, but  
18 hopefully only hear it once or twice at the most.

19                   We do have a protocol for these hearings  
20 that we've used for many, many, many years. And we take  
21 testimony in an order. And that order is as follows. We  
22 would hear from state and local -- that's state and  
23 federal agencies first. We would hear from other  
24 governmental subdivisions second. We would hear from NRD  
25 staff and Board third. And fourth we would hear from any



1 other person.

2                   Now, I want to reiterate one more thing  
3 before we get started, and that is our purpose is to take  
4 testimony from you. Now, Board members may choose to  
5 testify. And that's their right to do so. But we don't  
6 have the time, and this is not the proper forum for them  
7 to address you. This is a time for you to address the  
8 Board.

9                   So I will -- We've already got an open  
10 hearing because we're taking the record. So we'll start  
11 now and we'll take testimony on the first subject, which  
12 is the list, so to speak, of those types of data and  
13 material and evidence that will be considered by the  
14 Board in deliberating on the integrated management plan.  
15 So don't hesitate to be the first one to come forward if  
16 you have anything on that subject.

17                   Greg, come on forward and come up and have  
18 a seat. I am going to take a minute of your time though  
19 as long as you're signing in. I want to remind you that  
20 we have premarked some exhibits. For this hearing I have  
21 marked 15 exhibits, 1 through 4 are the publisher's  
22 affidavits that were relative to the stakeholders  
23 meetings as they called it. Those have been received.

24                   I've got a proposed Order 27 that's  
25 available on the table. That's the list I've been

## GREG SMITH, TESTIMONY

1 referring to. I've got the -- I've got -- I've also  
2 received as Exhibit 6 an earlier list of which the Order  
3 27 was based. I've got the Department of Natural  
4 Resources list. By the way the statutes of Nebraska  
5 required this Board to adopt a similar list of what's  
6 been adopted by the NDNR.

7 I have received an advertisement that was  
8 published regarding the Stakeholders meeting. And I have  
9 received an envelope including three audiotapes of  
10 material that was presented at that Stakeholders meeting.

11 I have marked and received four  
12 publisher's affidavits of the published notice of this  
13 hearing. An, lastly, I've received at this time Exhibit  
14 15 which is an Advertisement regarding the -- the public  
15 meeting, the public information meeting that was held.

16 So, Greg, you can give us your testimony  
17 now if you wish. You will need to tell the court  
18 reporter your name and spell it if she indicates she  
19 needs spellings.

20 MR. GREG SMITH: My name is Greg Smith. I  
21 am from Imperial, Nebraska. I am representing Water  
22 Claim on this particular issue. Gentlemen, I want to  
23 thank you for the opportunity to talk with you right now.  
24 This hearing is regarding the information to be  
25 considered in the development of an integrated management

## GREG SMITH, TESTIMONY

1 plan.

2                   As I understand this integrated management  
3 plan is already completed. It has been negotiated in  
4 executive session with the DNR already. And now we are  
5 having the hearing to decide on what things should be  
6 considered in the development of an integrated management  
7 plan. I think if the plan is already done it's a little  
8 late to have a hearing regarding what's supposed to be  
9 considered.

10                   But, nevertheless, if you're still  
11 considering these facts, I want to ask a couple questions  
12 on Item No. 4. You are to consider as one of the things  
13 to consider is the local recharge characteristics and  
14 rates from any sources, if available. I believe these  
15 are available. I do not believe that this has been done.

16                   Item No. 6, the crop water needs within  
17 the proposed integrated management plan area, I believe  
18 that this has not been done. I don't think that there is  
19 a definite estimate on schedule here or on record here of  
20 what corn, for example, needs on an annual basis in a dry  
21 year and wet year.

22                   Item No. 10, the availability of  
23 supplemental water supplies, including the opportunity  
24 for groundwater recharge within the proposed integrated  
25 management plan area. I don't believe that this has yet

## GREG SMITH, TESTIMONY

1 been studied even though there is potential for bringing  
2 supplemental water from the Platte River Basin.

3                   And even though that has been advertised  
4 and presented by our organization, and has been even  
5 passed on unanimous vote by this Board to at least  
6 consider that. And I think if you're going to consider  
7 it that it at least warrants a committee on the subject,  
8 and perhaps a little bit of money to investigate the  
9 feasibility of that project, but that has not been done  
10 to this date.

11                   Number 12 the opportunity to integrate and  
12 coordinate the use of water from different sources of  
13 supply within the proposed plan, that goes along with No.  
14 10.

15                   And No. 14, the relative economic value of  
16 different uses of groundwater proposed. I personally  
17 believe that for every inch of water that we do not use  
18 it represents probably long-term about \$1,000 worth per  
19 acre-foot of economic value beginning right here in our  
20 own district and continuing on up the food chain.

21                   I don't see that any research or study has  
22 been done yet to discover how much economic value our  
23 water actually has and how much we would lose if you do  
24 cut our water uses. Thank you for your time.

25                   HEARING OFFICER: Greg, do you have any

## GREG SMITH, TESTIMONY

1 published material or printed material?

2 MR. GREG SMITH: No, I do not.

3 HEARING OFFICER: Thank you very much.

4 MR. TAB MARTIN: Terry, can I ask a  
5 question? Those people that come up like Greg and talk,  
6 can any of us that feel that he is representing our own  
7 thoughts is it okay that we stand up or applaud him or  
8 show so that the Board members don't think he is the only  
9 one that is thinking that?

10 HEARING OFFICER: Well, the problem is and  
11 we talked about the record, and that kind of thing won't  
12 show in the record.

13 MR. TAB MARTIN: Uh-huh, but it would be a  
14 record in their mind.

15 HEARING OFFICER: That's fine. If that  
16 would be the case, if you can figure out some way to  
17 demonstrate that, that's fine. But it will not be part  
18 of the record because there is no way to get it in the  
19 record. But that's fine.

20 MR. TAB MARTIN: Okay. Anybody that  
21 thinks that Greg and some of these things that we're  
22 going to discuss tonight is things that need to be placed  
23 in the mind of these Board members, I ask that you stand  
24 up now so that they know that you're thinking along the  
25 same lines.

## HAL WALKER, TESTIMONY

1 (Public responds.)

2 HEARING OFFICER: Okay. That's good. And  
3 another thing I did not mention yet but would before the  
4 evening is over is this record of the next hearing,  
5 that's on the IMP itself, that will be held open for  
6 seven days. And we will receive documentary evidence  
7 during that period, just as has been done by the NRD for  
8 many, many years.

9 And I know in past years statements have  
10 been put together and then signatures affixed to them.  
11 And the Board has received those. And they're part --  
12 they become part of this record I keep referring to. So  
13 there's another alternative. But nobody is going to tell  
14 you you can't stand up, you know, if a witness says  
15 something you particularly agree with, feel free.

16 MR. TAB MARTIN: Thank you.

17 HEARING OFFICER: Does anybody else wish  
18 to testify at this first hearing?

19 MR. HAL WALKER: My name is Hal Walker.  
20 I'm with Nebraska Game & Parks.

21 (Brief interruption.)

22 MR. HAL WALKER: My name is Hal Walker.  
23 I'm with Nebraska Game & Parks Commission. I'm from Rock  
24 Creek Hatchery in Parks, Nebraska. I would request that  
25 the Board accept the U.S.G.S. historical streamflow data

## HAL WALKER, TESTIMONY

1 and trends that have been submitted at the previous  
2 meetings as well as the Bureau Reclamation and Reservoir  
3 inflow data and the participation data.

4           And I would also ask the Board to include  
5 the stream flow data -- Okay. I'm sorry; I would ask  
6 again that the Board include the Rock Creek Hatchery MBT  
7 data on effluent monitoring which is a 30-year record of  
8 stream flow recorded weekly at the hatchery. I would  
9 also ask that you include the N.G P.C. data on economic  
10 impacts and user data that Darrel Eichnar has submitted.

11           One thing that I didn't include the other  
12 night which I would like to add to the record, Mr. Owens  
13 asked what I thought they should consider.

14           First, I would like to go on record of  
15 saying that we oppose the 13 1/2 inch allocation. And  
16 Mr. Owens asked what I thought we ought to have for an  
17 allocation and I said 6 inch allocation.

18           That is somewhat supported by Terry  
19 Martin's brother Dr. Dale Martin from UNL who stated that  
20 the January 12 NRCS meeting here in Imperial that 6 inch  
21 allocation in Benkelman could produce 180 bushel corn.

22           And in my way of thinking if we could get  
23 180 bushel corn out of 6 inches that we could get double  
24 the life of the aquifer compared to 13 1/2 allocation.

25           Darrel, did you have anything else? We

## HAL WALKER, TESTIMONY

1 would also present data of our power point presentation  
2 for --

3 HEARING OFFICER: Okay. Did you hear that  
4 last -- Do you want to have that -- Are you going to just  
5 show that to people who wants to stay later, or do you  
6 want that part of the record?

7 MR. HAL WALKER: We would like to present  
8 this power point presentation at the end of the other  
9 meeting, if that's all right.

10 HEARING OFFICER: Okay. Thank you.

11 MR. DARREL EICHNAR: Can we do both?

12 HEARING OFFICER: Yes, you may. You can  
13 put that in the record now and I'll give you permission,  
14 so to speak, to withdraw it to show it to people who want  
15 to stay for a few minutes or however long it takes. And  
16 then we'll put it back in the record. So do you have  
17 that with you?

18 Now, to refresh you just a little bit, now  
19 this testimony that we're trying to receive at this point  
20 is on this list that we're calling -- I'm calling it a  
21 list, maybe nobody else does. The things that -- Here,  
22 I'll mark yours -- the list of -- the types of data and  
23 information and material that will be considered by the  
24 Board in its deliberations.

25 Keep in mind we're going to have a second



## HAL WALKER, TESTIMONY

1 hearing here momentarily on the IMP itself. Does anybody  
2 else wish to testify on the list? Okay. Apparently not.

3                   Keep in mind that obviously we're  
4 expecting testimony at the second hearing. So I'm going  
5 to mark this power point presentation from Game & Parks  
6 as Exhibit 16. And we're going to receive it and permit  
7 its withdraw for use in this room after the second  
8 hearing for anyone who wishes to stay and see the  
9 presentation.

10                   (Exhibit No. 16 marked for  
11                   identification.)

12                   HEARING OFFICER: I think what we'll do at  
13 this point is close the record for this first hearing.  
14 And we'll go off the record at this time.

15                   (Hearing concluded at 7:25 p.m.)

16

17

18

19

20

21

22

23

24

25