

No. 126, Original

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IN THE  
SUPREME COURT OF THE UNITED STATES

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STATE OF KANSAS,

*Plaintiff,*

v.

STATE OF NEBRASKA

and

STATE OF COLORADO,

*Defendants.*

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Before The Honorable William J. Kayatta, Jr.  
Special Master

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**DECLARATION OF STEVEN P. LARSON  
JUNE 10, 2012**

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COMES NOW Steven P. Larson, pursuant to 28 U.S.C. § 1746, and, having personal knowledge of the matters contained herein, states as follows:

1. I am over 18 years of age. My qualifications have been previously submitted in a Declaration in this case dated May 25, 2012.
2. I understand that the State of Nebraska is going to be allowed to change to a new counterclaim ("New Counterclaim") as specified in the Notice of Stipulation and Request for Status Conference dated May 16, 2012 in this case.
3. Nebraska filed its expert report supporting its First Counterclaim on November 18, 2011. Mr. Book and I provided our defensive expert report on Nebraska's First

Counterclaim on March 15, 2012. This allowed Mr. Book, me and our staffs four months to review the expert report, participate in the necessary discovery, conduct the analysis required and prepare our expert report. This amount of time was adequate.

4. A new expert report, based on new analysis, addressing the New Counterclaim, will be necessary. The prior Kansas defensive expert report has been rendered irrelevant by Nebraska's change to the New Counterclaim.

5. Nebraska's New Counterclaim will require more analysis than the analysis required for Nebraska's First Counterclaim. The change to the Accounting Procedures of the Final Settlement Stipulation ("FSS") proposed in Nebraska's First Counterclaim were already familiar to us because they had been raised in earlier arbitration. Nebraska's New Counterclaim was not pursued by Nebraska in any prior arbitration. We have had no reason to analyze the New Counterclaim which was based on essentially an off-hand suggestion by a Colorado expert who was opposing the First Counterclaim. No analysis of this off-hand suggestion was required of Kansas, nor was any performed except as noted below.

6. Nebraska's New Counterclaim seeks to establish a new baseline computer run of the RRCA Groundwater Model ("Model"), different from the current base run under the RRCA Accounting Procedures and different from the baselines proposed in Nebraska's First Counterclaim. The proposed new baseline consists of a run of the Model that is not based on, or calibrated with respect to, historical conditions. Therefore, significant investigation and analysis will be necessary with respect to this new hypothetical baseline. For instance, the new baseline, unlike the calibrated baseline of the current RRCA Accounting Procedures, requires explicit reliance on estimation of Platte River Basin canal seepage return flows. These canal seepage return flows have never been thoroughly analyzed by Kansas in this regard before because the previous baselines being considered were either historical or without all historical

pumping and return flows. With the new baseline proposed by Nebraska and Colorado, these historical return flows alone are now much more important, and the data and analysis that produce the estimates that go into that new baseline must be more thoroughly analyzed. This may require new data production. It may also require depositions of those who collect and those who analyze the pertinent data. An investigation of whether changes in the FSS data reporting requirements would be necessary may be required.

7. The one aspect of Nebraska's New Counterclaim known to me at this time is that it departs further from satisfying the test asserted by Dr. Schneider in his expert report of November 18, 2011 than the present RRCA Accounting Procedures. As noted by Arbitrator Dreher, this test may be a useful test in evaluating any proposal to change the current RRCA Accounting Procedures. The reasons for this increased failure to meet Dr. Schneider's test must be investigated.

8. It will be necessary to evaluate all aspects of the differences between the New Counterclaim and the current RRCA procedures. This will require analysis of many computer runs. It will also be necessary to evaluate the impact of the New Counterclaim on Kansas, Nebraska and Colorado under varying conditions.

9. No basis has been articulated for the opinions of Drs. Schneider and Schreuder that Nebraska is burdened with the consumption of imported water by the current RRCA Accounting Procedures. The meaning and basis of that opinion will need to be discovered and analyzed.

10. In light of the foregoing, I estimate that my analysis of Nebraska's New Counterclaim and the preparation of a new expert report will require at least six full uninterrupted weeks. Additional time will be necessary for discovery.

11. My schedule in June and July is fully booked, as follows:

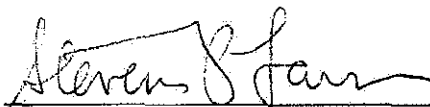
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| June 10-13      | Travel and taking of my deposition in Pensacola, Florida in <i>Thomas v. ConocoPhillips, Inc.</i> , Escambia County Case No. 2008 CA 001381                                |
| June 14, 15, 18 | Prepare for next deposition  |
| June 19-22      | Travel and taking of my deposition in Denver in <i>Atlantic Richfield Co. v. State of California</i> , Los Angeles County – Civil Action No. BC 380474                     |
| June 25-29      | Prepare testimony for this case  |
| July 2-6        | Prepare for next deposition  |
| July 9-13       | Travel, preparation and taking of my deposition in Orange, County, California, in <i>Orange County Water District v. Northrop Corp.</i> , Orange County Case No. 04CC00715 |
| July 16-19      | Finalize my testimony in this case   |
| July 23-27      | Testify at trial in <i>Orange County Water District v. Northrop Corp.</i>  |

I will also require the participation of Mr. Book, who participated in the preparation of the previous Kansas defensive expert report. I understand that Mr. Book's time is similarly restricted.

12. Based on the foregoing, it is my considered opinion that there is insufficient time to prepare a new defensive expert report on Nebraska's New Counterclaim within the current trial schedule.

I declare under penalty of perjury that the foregoing is true and correct.

Executed on June 10, 2012.

  
Steven P. Larson