

No. 126, Original  
In the  
Supreme Court of the United States

STATE OF KANSAS,

Plaintiff,

v.

STATE OF NEBRASKA

and

STATE OF COLORADO,

Defendants.

BEFORE THE OFFICE OF THE SPECIAL MASTER

DEPOSITION OF: AARON THOMPSON

DATE: May 21, 2012

TIME: 1:34 p.m.

PLACE: 1221 N Street, Lincoln, Nebraska

COPY

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1  
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4 Goff, Tom Riley  
5  
6  
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I - N - D - E - X

<u>WITNESS</u>	<u>Direct</u>	<u>Cross</u>	<u>Redirect</u>
A. Thompson	5	98-Bernhardt	101
		99-Dubois	

<u>EXHIBITS</u>	<u>Marked</u>	<u>Offered</u>
Nos. 18 - 20	7	
No. 21	18	
No. 22	19	
No. 23	40	
No. 24	43	
No. 25	48	
No. 26	51	
No. 27	55	
No. 28	57	
No. 29	60	
No. 30	62	
No. 31	66	
No. 32	68	
No. 33	71	
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No. 35	77	
No. 36	82	
No. 37	89	
No. 38	91	
No. 39	92	
No. 40	94	
No. 41	95	

1                   AARON THOMPSON,

2           Being first duly cautioned and solemnly sworn  
3           as hereinafter certified, was examined and  
4           testified as follows:

5                   DIRECT EXAMINATION

6           BY MR. WILMOTH:

7           Q.       Good afternoon, Mr. Thompson. Thanks  
8           for coming back again. Let's get some of the  
9           formalities out of the way here. I'd like to  
10          hand you a couple of documents with which I  
11          hope you are familiar. Could you just have a  
12          quick look at that document. And before you  
13          are finished with that, I'm going to just go  
14          ahead and hand you a couple more documents  
15          because they really all relate to each other.

16                   MR. DUBOIS: Are we going to  
17          start numbering from the first depo?

18                   MR. WILMOTH: We're numbering  
19          from one, yeah.

20                   MR. DUBOIS: I don't remember  
21          what number we were up to in the last go-round.

22                   MR. WILMOTH: Actually, that's  
23          not a bad idea, Jim, just to continue. Is that  
24          all right with you, John?

25                   MR. DRAPER: Yes.

1 MR. WILMOTH: We were at  
2 Exhibit 17. So why don't we go ahead and mark  
3 these beginning with Exhibit 18. So these  
4 would be 18, 19 and 20. The subpoena will be  
5 18.

6 MR. DRAPER: Supplemental notice  
7 of deposition?

8 MR. WILMOTH: Yes, Interior  
9 request will be 19, which is this document  
10 here.

11 MR. DRAPER: Is that one.

12 MR. DUBOIS: May 3rd, 2012.

13 MR. DRAPER: May 3rd which  
14 includes certain attachments.

15 MR. WILMOTH: Yeah. And then 20  
16 would be the response.

17 MR. DRAPER: That's the letter  
18 dated May 15, 2012.

19 MR. WILMOTH: Can we use one of  
20 these sets to mark?

21 MR. DRAPER: To finish our  
22 delineation, Exhibit 20 is the May 15, 2012  
23 letter from Michael J. Ryan to Justin?

24 MR. WILMOTH: Yes, that would  
25 be 20.

1 (Exhibit Nos. 18, 19 and 20  
2 marked for identification.)

3 (An off-the-record discussion was held.)

4 Q. (By Mr. Wilmoth) Mr. Thompson, when  
5 you've had a chance to look at those, would you  
6 let me know if you've had a chance to see them  
7 before?

8 A. Looks like I have seen 19 and 20. 18 I  
9 just don't recall seeing but it's pretty  
10 self-explanatory.

11 Q. All right. It is indeed. And with  
12 regard to Exhibit 20, the May 15 letter --

13 A. Uh-huh yes.

14 Q. -- to the best of your understanding is  
15 that an accurate description of the limitations  
16 of your testimony today?

17 A. Yes, it is.

18 Q. And for the record, those limitations  
19 appear on page two of that exhibit, correct?

20 A. Yes, they do.

21 Q. Thank you very much.

22 MR. WILMOTH: Jim, do you need  
23 to say anything further about that?

24 MR. DUBOIS: No, unless and  
25 until we get an afoul of those limitations. I

1 think with Marv's tomorrow I'll probably want  
2 to make some things clearer up front because  
3 there are some different kind of limitations on  
4 that.

5 MR. WILMOTH: Very good.

6 Q. (By Mr. Wilmoth) Mr. Thompson, last time  
7 we spoke we spent a lot of time looking at  
8 individual statements and documents that the  
9 Bureau had produced and we spent -- well, many  
10 hours, I guess, going through each document and  
11 dissecting each sentence and statement.

12 And for purposes of this deposition, you  
13 probably have been informed that it's a  
14 supplemental deposition. In other words, we  
15 are not going to be back rehashing things that  
16 we discussed before. At least I'm going to try  
17 not to do that.

18 My principal objective at this point is  
19 to try to get a better understanding of the  
20 development of some these statements or  
21 policies or positions that have been taken by  
22 the Bureau over the years. And my  
23 understanding is that we will be able to  
24 explore some of the evolution of those policies  
25 or statements based on some of the documents

1       that we've been provided since we had an  
2       opportunity to talk last.

3               So that's my general objective here as a  
4       preliminary matter. One of the things that I  
5       was hoping you could do for me is to draw a  
6       very simple organizational chart highlighting  
7       your office, the regional office, and the  
8       Washington office and the relationship between  
9       those three. And I brought some paper here, if  
10      you are able to do that for me. And I'd like  
11      to --

12                   MR. DUBOIS: Not on the back of  
13      these.

14                   THE WITNESS: I just was  
15      flipping them over.

16      Q.        (By Mr. Wilmoth) I'd like to suggest to  
17      you that I have a set of names that have been  
18      extracted from the documents that have been  
19      produced. And so as you prepare your  
20      organizational chart, my next questions would  
21      be to ask to place various individuals in that  
22      chart so we can see their relationship to one  
23      another.

24                   With that in mind, would you be able to  
25      prepare a basic chart for us?

10

1 A. I would. Would you like me to start?

2 Q. If you could start with the Washington  
3 office and work --

4 A. Work down.

5 Q. -- backward to the Nebraska-Kansas area  
6 office.

7 A. Okay. I'm not going to -- hopefully I'm  
8 not going to be graded on my art.

9 Q. No.

10 MR. BLANKENAU: Not by us  
11 anyway.

12 A. Start with the commissioner of the  
13 Bureau of Reclamation. Below the commissioner  
14 there is a series of what I'm going to call  
15 deputy commissioners. If we had online access  
16 there is a really good chart on this on the  
17 Bureau of Reclamation web page. But we'll keep  
18 we'll keep going and see how good I can get  
19 this.

20 Deputy commissioner, there is a series  
21 of them. Dave Murillo is the one I'm going to  
22 point out here. He is my boss's boss, for lack  
23 of better words. And right under him I'm going  
24 to put Mike Ryan. That is the regional  
25 director, RD, for the Great Plains region.

1           He has two deputy regional directors.  
2           One is Gary Campbell and the other one is John  
3           Soucy. I report directly to Gary Campbell.  
4           Gary Campbell is generally in charge of the  
5           area offices. We have Nebraska-Kansas area  
6           office, Oklahoma-Texas area office, the Dakotas  
7           which includes both North and South, Wyoming  
8           area office, Montana area office, and Colorado  
9           area office. So he has six area managers that  
10          work for Gary Campbell.

11          The other side of the house, John Soucy.  
12          A lot of the directors in the regional -- in  
13          the regional office in Billings report to John  
14          Soucy, whereas Gary Campbell had kind of the  
15          outside folks.

16          And one of John Soucy's directors under  
17          him is a guy by the name of Dan Fritz. I don't  
18          know the exact title of Dan Fritz's shop, but  
19          underneath Dan Fritz a gentleman by the name of  
20          Patrick Erger works there. And under Patrick  
21          Erger we had names like Gordon Aycock that were  
22          used earlier. And I believe now Gordon is  
23          retired but Gordon would have reported to  
24          Patrick Erger. And also underneath there would  
25          be Scott Guenthner.

12

1           And then, sorry, going back down to my  
2 side of the house, back over to Aaron Thompson.  
3 I have a couple folks that report directly to  
4 me. Craig Scott is one of them. And Marla  
5 Simpson is the other.

6           Underneath Craig Scott's shop you have  
7 the operation side of the house and you have  
8 the maintenance side of the house. Under the  
9 operation side of the house you have Bill Peck.  
10 And then under the maintenance side you have  
11 Carl Koenig.

12           And then directly reporting to Craig  
13 Scott would be the engineering group. And that  
14 includes Bob Schieffer, Mark Rouse, Jeff  
15 Majors. Do you -- keep going down or is that  
16 enough detail?

17 Q.       (By Mr. Wilmoth) I think that's fine.  
18 Let me --

19 A.       Trying to think of the names we had  
20 involved.

21 Q.       Sure. Let me make sure I understand,  
22 given your diagram there. Could you circle, if  
23 you would, the regional side versus the  
24 Nebraska-Kansas area office side or somehow  
25 delineate the two?

13

1 A. Yeah, let's put a circle here and call  
2 this, just in case we have to expand it, Great  
3 Plains region.

4 Q. If I understand what you said earlier,  
5 your office and multiple other offices report  
6 to the regional office, is that right?

7 A. That's right.

8 Q. So that branch of yours there concerning  
9 your office is one of four or five others?

10 A. Yeah.

11 Q. All right.

12 A. You know, I can -- ECAO, MTAO, these are  
13 all states.

14 Q. Uh-huh.

15 A. Dakotas, Oklahoma-Texas area office.

16 Q. Okay.

17 A. And I know already messed up there. I  
18 didn't draw that around.

19 Q. Okay.

20 A. That's -- I don't know.

21 MR. DUBOIS: The engineer takes  
22 over and starts drawing connections.

23 A. I -- the written words here aren't going  
24 to be real fun to read, but the diagram is not  
25 much better.

14

1 Q. (By Mr. Wilmoth) That's okay. So let's,  
2 if we can, just go back through that. Some of  
3 these names you have already mentioned. I want  
4 to make sure that, to the extent we can, we  
5 associate titles with names.

6 So I think we probably all know who  
7 Mr. Connor is, for example.

8 A. Correct.

9 Q. He's the commissioner?

10 A. Commissioner.

11 Q. And his predecessor was Bob Johnson, is  
12 that right?

13 A. That is correct. I believe we had a  
14 temporary one, though, between Bob Johnson and  
15 Commissioner Connor, but only for a brief  
16 period of time.

17 Q. And you mentioned Mr. Ryan. Is he the  
18 director of the regional office?

19 A. He is the direct -- he's the regional  
20 director for the Great Plains region.

21 Q. And yourself, just refresh our  
22 recollections as to your title.

23 A. Area manager for the Nebraska-Kansas  
24 area office.

25 Q. And Mr. Swanda is retired but where

1 would he have fit into that chart?

2 A. Marv Swanda would have fit in the chart  
3 the same place Craig Scott currently fits into  
4 the chart.

5 Q. So Mr. Scott was assigned to  
6 Mr. Swanda's duties?

7 A. Just for clarification, from an outside  
8 perspective he did. We changed some of the  
9 duties that that position had. It used to be  
10 called the McCook field office manager. It's  
11 now called the engineering and infrastructure  
12 division manager. But essentially the same  
13 position Marv Swanda had.

14 Q. Okay. Was Mr. Swanda's title the McCook  
15 field area supervisor then?

16 A. I believe his title was McCook field  
17 office manager.

18 Q. And you mentioned Mr. Aycock. He's in  
19 the regional office, I understand?

20 A. Correct.

21 Q. What is his -- or was his title? Is he  
22 still employed at the Bureau?

23 A. He is retired.

24 Q. He is retired, okay. When did he  
25 retire?

1 A. I want to say a few months ago. Two or  
2 three months ago.

3 Q. Do you recall what his title was?

4 A. I don't know his exact title.

5 Q. How about Mr. Esplin?

6 A. Brent Esplin.

7 Q. Brent Esplin?

8 A. Prior to making some organizational  
9 changes in my office, under me and before you  
10 got to Craig and Marla's position that they  
11 currently have here, I had a deputy area  
12 manager. I no longer have a person between  
13 those two direct reports that report directly  
14 to me now.

15 Q. Is Mr. Esplin still employed with the  
16 Bureau?

17 A. He is. He's in the Phoenix area office  
18 as the deputy area manager there.

19 Q. And you mentioned Mr. Scott. What is  
20 his current title? Is he the head of this  
21 engineering --

22 A. Engineering and infrastructure division.

23 Q. Okay. Thank you. And could you tell  
24 me, Mr. Peck's title?

25 A. I'm not sure I have his official title,

17

1 but I would call him the operations manager.

2 Q. And how about Jack Wergin?

3 A. Jack Wergin works under here under Marla  
4 Simpson. And he is a supervisory engineering  
5 manager in charge of our water -- when the  
6 districts have change of boundaries or when the  
7 districts want to apply for water conservation  
8 field services program, those type of  
9 activities.

10 Q. Do I understand then that the functions  
11 that are presently served by Mr. Scott and --

12 A. Marla Simpson.

13 Q. -- Marla Simpson are essentially the  
14 duties that had previously been served by a  
15 single employee?

16 A. No. I would -- I would classify this,  
17 Craig Scott is more of the -- what we call vice  
18 Marv Swanda.

19 Q. Is that an official title?

20 A. HR and the government tends to use the  
21 word vice when they are referring to a former  
22 employee. Or a former position, excuse me.  
23 And Marla Simpson filled in essentially for a  
24 gentleman that retired at the end of the year  
25 named Mike Kube. And the duties that were

1 assigned to the deputy area manager were  
2 distributed to myself and those two employees.  
3 So this dotted box is no longer -- no longer  
4 there and those duties were given to those two.

5 Q. Now, you mentioned earlier on the  
6 regional side Mr. Patrick Erger.

7 A. Uh-huh.

8 Q. What would his title be?

9 A. I don't know his exact title. I want to  
10 say it has something -- has the word hydrology  
11 in it, but I'm not positive, so --

12 Q. Can you tell me just generally what the  
13 nature of that position is or what his  
14 responsibilities are, as you understand them?

15 A. Well, it's my understanding generally  
16 he's in charge of a group of hydrologists.

17 Q. Okay. May I just have a quick look at  
18 that? Thank you. Let's mark this as  
19 Exhibit 21.

20 (Exhibit No. 21 marked for  
21 identification.)

22 (An off-the-record discussion was held.)

23 Q. (By Mr. Wilmoth) I'd like to mark this  
24 as Exhibit No. 22 and ask you to take a look at  
25 this, Mr. Thompson.

1 (Exhibit No. 22 marked for  
2 identification.)

3 (An off-the-record discussion was held.)

4 Q. (By Mr. Wilmoth) Mr. Thompson, this is  
5 one of the documents that was produced to us  
6 earlier this spring. And I'm less concerned  
7 about the specific details or statements in it,  
8 a little bit more about the -- a little bit  
9 more interested in the process.

10 If you look at the electronic mail  
11 transmitting this communication, there are a  
12 number of individuals listed on the email,  
13 either recipients or senders, what-have-you.  
14 But these appear to me to be some preliminary  
15 thoughts on the IMPs. Is that a fair  
16 characterization?

17 A. I -- yes, I think it's fair to describe  
18 these as preliminary or draft comments as we  
19 developed our IMP testimony.

20 Q. And I'd like you to tell me a little bit  
21 about the process that you undertook to do  
22 that. Specifically I notice on here  
23 Mr. Swanda, yourself, Mr. Esplin, Mr. Scott,  
24 Mr. Aycock, are all somehow connected to this  
25 particular communication.

1           Can you tell me what the general process  
2           was within Reclamation to develop the views  
3           that ultimately were embodied in the June 2010  
4           comments on the Nebraska integrated management  
5           plans?

6           A.       The general process that I go through  
7           when developing testimony like this, you know,  
8           first we find out when the test -- when the  
9           testimony hearing is, when we need to have the  
10          testimony delivered.

11          My office -- I usually have someone in  
12          my office start with a draft, develop and look  
13          at points that were made in previous testimony,  
14          look at the data and the information that we  
15          have, gather that, put that information  
16          together, summarize it, and start trying to  
17          narrow down the key points that we want to make  
18          in that testimony.

19          And at the stage that it looks like in  
20          here would be Marv has gathered those key  
21          points and has delivered it to myself and my  
22          deputy area manager for review.

23          Q.       Who is your deputy area manager at this  
24          time?

25          A.       At this time it was Brent Esplin.

1 Q. And Mr. Swanda would gather this  
2 information, it appears that he may have  
3 gathered some of that information from the  
4 others on this list, is that correct?

5 A. I would think -- I don't know exactly  
6 how Mr. Swanda gathered the information but I  
7 would assume that Mr. Swanda got information  
8 from all the people on the list --

9 Q. Okay.

10 A. -- at one point in time or another,  
11 whether it be, you know, data from previous  
12 testimony or directly related to this. I know  
13 Mr. Swanda works with those people that were  
14 cc'd on the email list here.

15 Q. So if I'm just reading the face of his  
16 electronic communication he indicates, attached  
17 are what Gordon, Craig and myself believe to be  
18 the main points. Is that, just for clarity's  
19 sake, Mr. Aycock and Mr. Scott and Mr. Swanda  
20 that he's referring to there, do you think?

21 A. Yes.

22 Q. So if I understand this, they would  
23 collectively prepare one of these drafts that  
24 you are talking about and then you would review  
25 that in the way you've suggested earlier?

1       A.       Yes. I would review the draft that they  
2       put together and either give comments back to  
3       them or have them continue working as -- as the  
4       bullet points -- as the bullet points that  
5       highlight our main points, have them continue  
6       working with the ones they have come up with.

7       Q.       Is that an iterative process? In other  
8       words, they present you some concepts, you  
9       review it, suggest them -- excuse me, suggest  
10      to them some direction, and then they pursue it  
11      based on that direction?

12      A.       Just like any process we go through,  
13      whether it be testimonies like this or any  
14      other correspondence we have going outside the  
15      government, sometimes it can be a lot of back  
16      and forth between not only internally to my  
17      office but externally, meaning to my regional  
18      office. There can be a lot of back and forth  
19      and sometimes it can go rather smoothly and we  
20      get -- we get a draft out pretty quick and  
21      without a lot of -- without a lot of comments.

22              On this particular one I don't remember  
23      how much correspondence we had tweaking the key  
24      points that we wanted to make. But I'm sure  
25      there was some.

1           Q.       I notice on -- at the top of this email  
2           Mr. Ryan's name appears, Mr. Campbell's name  
3           appears, your name appears. Is it common for  
4           the regional office to be brought in and work  
5           simultaneously with the Kansas --  
6           Nebraska-Kansas area office, or is it more  
7           typical that the Nebraska-Kansas area office  
8           formulates a position and then conveys that to  
9           the regional office?

10          A.       I would say on a general basis, the area  
11          office, which I'm part of, I manage, generally  
12          comes up with the concepts and then we  
13          inform -- I inform my boss, or in this case my  
14          boss's boss, on the progress we're making, the  
15          points we want to make. And I -- that can just  
16          like -- just like I mentioned earlier, can vary  
17          based on -- based on the interest and/or  
18          comments received back from whoever gets to  
19          review or look at draft documents.

20          Q.       Do you have kind of a standard protocol  
21          in your office identifying the person who is  
22          generally assigned to take the first crack at  
23          these drafts, or is it all hands on deck,  
24          whoever is available takes them over?

25          A.       I guess I wouldn't go as far to say that

1 we have an established protocol because it  
2 seems like every topic is different. But, for  
3 example, in the case right now of the  
4 Republican River, Craig Scott usually leads the  
5 effort to get the data consolidated, write up  
6 the drafts, things of those nature.

7 During this time when Marv was employed,  
8 it would have been Marv Swanda who would have  
9 been taking the lead, you might say, for  
10 creating these type of documents. But he would  
11 be getting input, though, from folks like  
12 Craig, Gordon.

13 Q. Okay. Based on your description of the  
14 organization of the regional office, I  
15 understand that Mr. Aycock would be within the  
16 hydrology branch of the regional office, is  
17 that correct?

18 A. Yes, before he retired he was in the  
19 hydrology branch in the regional office.

20 Q. And so was he then providing hydrology  
21 analysis or hydrology assistance with regard to  
22 the comments?

23 A. Gordon would have looked at any and all  
24 data that we had, whether it was data from  
25 compact accounting to history of inflows and

1 outflows to the reservoirs, Gordon Aycock would  
2 have been looking at that type of data.

3 Q. So he would provide that to Mr. Swanda  
4 and then what -- what role did Mr. Swanda have  
5 in working with that data? Was it Mr. Swanda  
6 who was drawing the conclusions about what the  
7 data show or was it more of a group think  
8 exercise?

9 A. I would say that it -- I would say it  
10 probably depended on what -- what the  
11 information that was being conveyed in the  
12 testimony in this case was. It could have  
13 been, like you said, part of a group activity,  
14 everybody getting together on a conference call  
15 and talking about how to word it. And it could  
16 have been Marv consolidating the concepts and  
17 theories that he was given and putting those on  
18 paper.

19 Q. You are not sure about this particular  
20 set of comments?

21 A. I can't tell you on these specific  
22 comments who -- who drafted them specifically.

23 Q. Who would have been responsible for  
24 conducting the kind of impact analyses, if you  
25 will, on Reclamation projects? There are a

1        number of comments, for example, in the IMP  
2        suggesting concerns about how certain actions  
3        might affect the project.

4                Who within this framework would have  
5        done the analyses that would have been provided  
6        to help you articulate a position?

7        A.        I think all the people we have talked  
8        about so far would have helped provide that  
9        framework.

10       Q.        So, for example, Mr. Aycock would have  
11       the hydrology background and he would maybe  
12       look at some accounting outputs or maybe some  
13       model outputs and provide some information to  
14       Mr. Swanda and Mr. Swanda would have some input  
15       on operations or some other input and provide  
16       you with a recommendation about what the  
17       Bureau's position ought to be on the IMPs, is  
18       that how it works?

19       A.        I think generally that's a fair way,  
20       that as -- as the groups give -- as the  
21       operation group gives different information to  
22       the hydrology group, or in this case the McCook  
23       field office manager or myself, those would all  
24       help, I guess, drive or take -- take the  
25       direction in which the testimony would be

1 delivered in final form.

2 Q. I think you mentioned Mr. Scott has  
3 taken over some of Mr. Swanda's duties today,  
4 is that right?

5 A. Specifically I was talking about he has  
6 taken over a lot of his duties outside the  
7 Republican River but also specifically he has  
8 taken over a lot of the responsibilities of  
9 Reclamation's involvement in the Republican  
10 River.

11 Q. And prior to Mr. Swanda's retirement,  
12 what would have been Mr. Scott's role at this  
13 time?

14 MR. DUBOIS: Just to be clear,  
15 when you are saying this time, you are talking  
16 about the time of the email, the May 20, 2010,  
17 email?

18 MR. WILMOTH: Yes.

19 A. I'm going to have to let you know that  
20 Craig was once in our operations division and  
21 then moved over to our engineering division,  
22 both under Marv Swanda. And I -- at this time  
23 May 20, 2010, I don't know -- I don't remember  
24 which position he was in.

25 Q. (By Mr. Wilmoth) Okay. Is he fairly

1 characterized as a hydrologist?

2 MR. DUBOIS: Objection. Who he?

3 Q. (By Mr. Wilmoth) Mr. Scott. In other  
4 words, do you rely on his opinions for  
5 hydrologic analysis?

6 A. I guess to answer the first part of the  
7 question, I don't know if Craig has a degree in  
8 hydrology. But I do rely on his analysis of  
9 the hydrology in the basin.

10 Q. Is the same true of Mr. Swanda, at least  
11 as of the time of this email? Did you rely on  
12 his work from a hydrologic standpoint?

13 A. I did.

14 Q. And either directly or indirectly I  
15 assume you relied on Mr. Aycock's work in some  
16 measure?

17 A. I did.

18 Q. Do you have an opinion from a purely  
19 technical standpoint about who within the  
20 Bureau at this time was really best qualified  
21 to analyze the IMPs from a purely technical  
22 standpoint, not a policy standpoint or  
23 anything, but trying to understand the impact  
24 of the IMPs from a hydrologic standpoint on the  
25 system?

1 A. Could you repeat the question?

2 Q. Do you think you can tell me who within  
3 the Bureau was best able to analyze the IMPs  
4 from a purely technical standpoint in May of  
5 2010?

6 A. I've got to tell you that would be hard  
7 to say who was best. I think all the folks  
8 listed on this page, or listed in Marv Swanda's  
9 email for sure, all are very qualified to  
10 provide analysis of the IMPs.

11 Q. Okay. Each with their own strength or  
12 weakness, I suppose, but --

13 A. I think that's a fair assessment, each  
14 with their own strength.

15 Q. With regard to these three folks, could  
16 you identify for me what you believe to be  
17 their greatest strength? Mr. Aycock,  
18 Mr. Swanda, Mr. Scott. For purposes, of  
19 course, of analyzing the IMPs, nothing else.

20 A. Well, I think, you know, first -- we're  
21 talking about Mr. Swanda, Mr. Aycock and  
22 Mr. Scott. I think the first general strength  
23 all three have is a good history of the  
24 Republican River Basin, how it operates, how it  
25 works. Some of those have a longer history

1       than -- for example, Marvin and Gordon have a  
2       little longer history than Craig, but they have  
3       all been in the basin for quite a while  
4       working -- working with the projects that we  
5       have in the basin and they all have a good  
6       history. I think that's a strength they all  
7       have.

8               I think as far as Craig's strengths go,  
9       I think it has -- he has a good ability to put  
10      it all together, to see all the different  
11      aspects, everywhere from operations, how it  
12      might affect our contracts, to, you know,  
13      knowing the maintenance that's going to be  
14      required in the facilities in the next -- in  
15      the future.

16             Gordon has, I think, a great strength in  
17      not only the history but then finding the  
18      information within that group of historical  
19      documents and data and analyzing it and giving  
20      a concise -- a concise document on what that  
21      information is saying or meaning.

22             And then of course Marv I would say  
23      along the same lines as -- kind of along the  
24      same lines as Gordon, just working in the  
25      basin. I think he started with the Bureau in

1 McCook in the late '70s and worked all the way  
2 through up until a few years ago and just --  
3 just an ability to know not only the operations  
4 but was around when the contracts were -- with  
5 the districts were being renegotiated and  
6 signed, and that ability to have that  
7 information and look at the IMPs and help  
8 develop a direction for the Bureau of  
9 Reclamation.

10 Q. Ultimately when those folks provide you  
11 with a draft like this, is it your call to  
12 determine what gets conveyed to the region?

13 A. It would be my discretion as to what  
14 I -- information that I pass on to my  
15 supervisors.

16 Q. Do you ever receive direction from your  
17 supervisors, either at region or in Washington,  
18 as to positions that should be passed on? In  
19 other words, are you ever told not to pass on  
20 certain positions?

21 A. I can't -- in the United States  
22 government, being given direction is a direct  
23 order. And from my memory, I can't be -- I  
24 can't remember being given a direct order as to  
25 what I should or should not put in the IMP

1 testimony.

2 Q. Based on this communication, which  
3 includes the regional director, I infer that  
4 regional office does have input on the IMP  
5 testimony as you are developing it. Is that a  
6 fair reference?

7 A. That is. I think when we were talking  
8 about the process, I kind of stopped with  
9 myself. But then ultimately at some point in  
10 time, whether it's in draft form or near final  
11 form, testimony like this, I will always give  
12 my supervisors a chance to review it before I  
13 sign it.

14 Q. And I'd like to talk with you a little  
15 bit about the manner in which communications  
16 are made up to the commissioner's office. Is  
17 it common for you to communicate directly with  
18 the commissioner's office or is that something  
19 that's typically vetted through the region?

20 A. Typically for the purposes of something  
21 like this, testimony that I send up to the  
22 region, there is an a liaison position, which  
23 is not on our chart, that works directly for  
24 Gary Campbell. And I used to have that job in  
25 2006, early 2007.

1           That position will typically transmit  
2           the information to Denver -- or to, excuse me,  
3           Washington, DC. I don't know in the case of  
4           this testimony whether that was transmitted to  
5           DC or not.

6           Q.       What you just described, though, is kind  
7           of a typical procedure, is that what you are  
8           saying? For things that merit Washington's  
9           attention, typically it's vetted through  
10          Mr. Campbell's assistant?

11          A.       Mr. Campbell's special assistant  
12          probably with his -- I don't want to use the  
13          word direction, but with his advice probably to  
14          that person, whether this -- who should see  
15          this information from a review point of view or  
16          from a for-your-information-only point of view.

17          Q.       And is Mr. Ryan typically informed or  
18          asked his opinion about that question or is  
19          that just handled by Mr. Campbell?

20          A.       I would -- I would -- when I was in that  
21          position, it could have been both.

22          Q.       How would you characterize the region's  
23          interest in the Republican River relatively  
24          speaking? Is it a significant issue, is it  
25          high on the radar screen, or is it fairly

1 commonplace type of issues that they deal with?

2 A. Well, they deal with a lot of -- a lot  
3 of the high profile issues. But I would --  
4 from my office, I would consider this a  
5 significant issue that they have interest in.

6 Q. Is Mr. Ryan ultimately responsible for  
7 making recommendations to the commissioner?

8 A. Yes.

9 Q. So if you have a position on the IMPs,  
10 you would make that recommendation to Mr. Ryan  
11 and Mr. Ryan would decide whether or not that  
12 recommendation should be made to the  
13 commissioner?

14 A. Let me add just a bit of clarification  
15 to that. I think -- I think Mr. Ryan -- I  
16 would make any recommendations to Gary and  
17 Mike, and Mike would make his recommendations  
18 to his supervisor, which is the deputy  
19 commissioner, and maybe not necessarily  
20 directly to the commissioner.

21 Q. And just for the record, the deputy  
22 commissioner is --

23 A. Currently Dave Murillo.

24 Q. Dave Murillo. Previously who would that  
25 have been? In May of 2010, for example?

1           A.       Prior to Dave Murillo was -- I had it  
2           and it just -- just left me. And I'm not sure  
3           he would have been the one in 2010.

4           Q.       That's fine.

5           A.       Karl Wirkus was his name and that was  
6           prior to Dave Murillo, but I'm not sure he was  
7           in on the time of this email.

8           Q.       Okay. I'd like to mark Exhibit 23, just  
9           ask you to have a peek at this and see if this  
10          refreshes your recollection as to its general  
11          nature and content.

12                       (Exhibit No. 23 marked for  
13                       identification.)

14           MR. DUBOIS: This is one of the  
15          ones that was on the clawback list?

16           MR. WILMOTH: No. Mr. Riley  
17          spent all weekend double-checking to make sure  
18          we didn't use anything on the clawback list.  
19          If you contract it to that, we can talk about  
20          that. But we've been fairly careful to try and  
21          limit that.

22           MR. DUBOIS: I think this is  
23          what was number ten on the privileged log that  
24          we emailed you last week.

25           MR. WILMOTH: Do we have -- can

1           you show me how the connection is made?

2                       MR. DUBOIS: There is a copy of  
3           it. And this is questions on Kansas versus --  
4           from DOJ. This one is solicitor's office in  
5           DC, Kristin Johnson is.

6                       MR. WILMOTH: All right. Very  
7           good.

8                       MR. DUBOIS: Thank you.  
9           Appreciate that.

10                      MR. WILMOTH: Do you want to  
11           give me those back? Let's just unmark that  
12           exhibit then, there is no reason to get into  
13           that.

14                      (An off-the-record discussion was held.)

15                      MR. WILMOTH: If we run across  
16           that, alert us to it, because we tried to spend  
17           some quality time --

18                      MR. DUBOIS: I understand.  
19           That's fine. I just have been trying to clip  
20           through this and I saw Kristin Johnson on that  
21           one and that was a red flag.

22                      MR. BLANKENAU: She's an  
23           attorney, though, right?

24                      MR. DUBOIS: Yeah, she's with  
25           solicitor's office.

1 Q. (By Mr. Wilmoth) Mr. Thompson, let me  
2 ask you, without specific reference to the  
3 document, do you work with the justice  
4 department to help them understand issues in  
5 the Republican Basin?

6 A. As you can see from Exhibit 22,  
7 attachment 22, I copied John Chaffin on those,  
8 those type of documents. I refer to John as  
9 the solicitor's department. And I have to  
10 admit my knowledge of the difference between  
11 solicitor's and justice department is -- I  
12 don't -- I necessarily don't know the  
13 difference there.

14 Q. That's fine. I should be a little bit  
15 more direct in my questioning.

16 MR. BLANKENAU: We can't tell  
17 the difference either.

18 MR. DUBOIS: Ow. So much for  
19 friendly depositions.

20 Q. (By Mr. Wilmoth) When I worked for the  
21 solicitor's office I was told that the justice  
22 department were the real lawyers and the  
23 solicitors were the advisor.

24 A. I would never say that.

25 Q. I didn't say that either when I was in

1 the solicitor's office.

2 MR. DUBOIS: We're on the  
3 record. I'm not touching anything.

4 Q. (By Mr. Wilmoth) Let me ask it this way.  
5 The Department of Justice was involved in  
6 developing a position as to whether to  
7 recommend to the court that the case brought by  
8 Kansas should be accepted or not. Are you  
9 familiar with that fact?

10 A. I don't know how the Department of  
11 Justice determines whether we should or should  
12 not be involved in a case of this magnitude  
13 from an internal point of view.

14 Q. So you weren't involved in any such  
15 discussions?

16 A. From my recollection, I can remember  
17 being on telephone calls that included the  
18 Department of Justice, but I can't say  
19 specifically -- I know -- I can say  
20 specifically they were about the Republican  
21 River and about this case. I can't  
22 specifically remember the details of those  
23 conversations at this time without some sort of  
24 refresher.

25 Q. Okay. Do you remember who else from

1 Reclamation were on calls like that with you?

2 A. Typically always John Chaffin would be  
3 on the call. Jim Dubois. Kristin Johnson's  
4 name comes to mind, I don't know if  
5 specifically she was on that call. But those  
6 are --

7 Q. How about Mike Ryan?

8 A. If I were on a call with -- at that  
9 level, I would definitely invite Mike Ryan to  
10 be on the call.

11 Q. And how about Mr. Connor?

12 A. I don't recall Mike Connor being on the  
13 calls that I'm thinking of. I don't recall  
14 Mike Connor being on those positions -- on  
15 those calls, but that would be up to my boss to  
16 invite him.

17 MR. WILMOTH: Okay. Let's take  
18 about ten minutes, why don't we, and reconvene.

19 (Recess taken at 2:28 p.m. to 2:42 p.m.)

20 Q. (By Mr. Wilmoth) Mr. Thompson, we were  
21 talking a little bit about the process of  
22 preparing these briefings for either the  
23 regional director or the commissioner.

24 And I have a series of them here that we  
25 obtained and I wanted to walk through some of

1       them to understand to the best of my ability  
2       some of the thinking of the Bureau as it  
3       progressed to the point where I think it kind  
4       of culminates in this IMP testimony.

5               I recognize that this first one I'm  
6       giving you may precede your present position.  
7       But nevertheless, perhaps you can give me your  
8       views on its general content and the message  
9       being conveyed. But let me go ahead and get  
10      this marked as Exhibit 23.

11                       (Exhibit No. 23 marked for  
12                       identification.)

13      Q.        (By Mr. Wilmoth) Mr. Thompson, is this  
14      the kind of document that is typical within the  
15      Bureau in terms of providing information to the  
16      Washington offices?

17      A.        The document on page two?

18      Q.        Yes.

19      A.        The briefing paper?

20      Q.        Yes.

21      A.        That is -- that is a standard form  
22      briefing paper for which, yes, we send  
23      briefings, not only possibly to my supervisor,  
24      regional director, but more commonly to the  
25      Washington, DC office.

1 Q. And you say this was a standard form.  
2 Is the idea to convey certain points at all  
3 times, I mean certain things that the  
4 Washington office wants to know or must know  
5 and they want to make sure that's covered?

6 A. Typically when you get new leadership in  
7 the Washington office, the highlighted points,  
8 like purpose for paper, current status,  
9 background, those might be tweaked some -- some  
10 degree.

11 But, yeah, those are the standard  
12 information that has been requested by that  
13 leadership and we always use the same form for  
14 a period of time until it's changed, but --

15 Q. And I call your attention to the bottom  
16 of this first page of the actual briefing  
17 paper, in the position of the interested  
18 parties. Do you see that?

19 A. Yes, I do.

20 Q. There is a reference to certain, quote,  
21 unquote, drastic measures that are being  
22 evaluated by Nebraska and Colorado. Do you see  
23 that?

24 A. Yes, I do.

25 Q. To the best of your knowledge, was that

1 a fair characterization, you think, in 2007 of  
2 what was going on?

3 A. For my assessment as to whether that's a  
4 fair characterization, I'm not sure who put  
5 this together, if this is the final form in  
6 which this -- this document ultimately went to  
7 the commissioner or if the document actually  
8 went to the commissioner.

9 I'd have to reserve, you know, judgment  
10 for the person who wrote it to, if they viewed  
11 that as a fair assessment at that period of  
12 time. In March of 2007 I was working in the  
13 Wyoming area office.

14 Q. Okay. Just for the record, if you look  
15 at the preceding page, the electronic  
16 communication transmitting this memoranda, does  
17 it appear to you that Mr. Aycock wrote these  
18 words?

19 A. Based on the way I see it, Gordon said  
20 here is my -- attached is a revised copy of the  
21 brief with my changes. So I can see that from  
22 his email he made changes, but I'm not sure if  
23 he wrote the document or not.

24 Q. All right. Let me give you another one  
25 of these papers. We'll mark this as

1 Exhibit 24.

2 (Exhibit No. 24 marked for  
3 identification.)

4 Q. (By Mr. Wilmoth) Do you recognize this  
5 particular briefing paper?

6 A. I can't say that I recognize the  
7 document. It's May of 2008. But it definitely  
8 looks like something I would have seen in that  
9 time period and some of the quick language that  
10 I read looks familiar.

11 Q. Okay. I notice that the purpose of the  
12 paper is described as the protection of surface  
13 water interests in the Republican River Basin.  
14 Is that concept or that point separate and  
15 apart from compact compliance concerns?

16 A. From just reading the title, protection  
17 of surface water interests in the Republican  
18 Basin, I don't know if -- without reading the  
19 rest of the document, if it's connected to  
20 compact compliance or not.

21 Q. When did you join the Nebraska-Kansas  
22 area office?

23 A. Fall of 2007.

24 Q. So this would have been transmitted  
25 during your tenure --

1 A. Yes.

2 Q. -- as the area manager?

3 A. Yes, it would have been.

4 Q. To the best of your knowledge, did the  
5 Bureau pursue a policy in the basin designed to  
6 protect its surface water interests?

7 A. There was no formal policy developed  
8 from a -- no formal written policy to develop  
9 a -- I can't remember quite how you ended that  
10 sentence. But there is no formal policy  
11 developed.

12 Q. So perhaps you could enlighten me a  
13 little bit on the purpose of a briefing like  
14 this. Is this just an informational document  
15 that is periodically transmitted to keep the  
16 commissioner informed?

17 A. In this case it was an information  
18 document to the deputy commissioner, Karl  
19 Wirkus. I'd like to read a little more of it.

20 Q. That's fine, take your time.

21 A. Okay. I have had a chance to --

22 Q. Great. My basic question, Mr. Thompson,  
23 is whether this document is designed to  
24 persuade the commissioner to adopt a position  
25 that the surface water rights within the basin

1 and the project should be protected. Is that  
2 the function of this document?

3 A. Not knowing all the activities that  
4 were -- surrounded this document, I read this  
5 as more of an information update on a high  
6 profile topic to the deputy commissioner.

7 Q. Okay. So you didn't have any  
8 responsibility in developing this document?

9 A. My office would have helped -- well, I'm  
10 sorry. Generally speaking, not seeing -- oh,  
11 actually, yes. Reading the cover page, the  
12 email, my office -- Kim Parish was the acting  
13 deputy area manager at the time. So my office  
14 would have been involved in creating this  
15 document.

16 Q. Sure. So somebody within your office  
17 developed a briefing paper entitled this  
18 protection of surface water interests in the  
19 basin, and that was signed off on by Regional  
20 Director Ryan, is that right?

21 A. I don't know if -- what parts of this my  
22 office specifically -- if my office came up  
23 with the title or, as we discussed earlier, we  
24 had input from Gordon Aycock or someone --  
25 someone from the regional office.

1           So I'm not sure exactly who came up with  
2           the title. But my office definitely would have  
3           had input. But ultimately, since it goes to  
4           the deputy commissioner, it comes from Mike  
5           Ryan.

6           Q.       Okay. So ultimately, and I notice this  
7           to be the case on virtually all these briefing  
8           papers, Mr. Ryan is the person listed as the  
9           preparer?

10          A.       And if it was a document sent to Mike  
11          Ryan, I would be typically -- typically listed  
12          as the preparer.

13          Q.       Very good, okay. I understand. There  
14          is a reference in the first paragraph under the  
15          current status to the acreage irrigated by  
16          groundwater compared to the acreage irrigated  
17          by surface water.

18                 I'm curious if anyone in your office has  
19          developed any economic analyses of the impact  
20          of curtailing groundwater or surface water in  
21          the basin.

22          A.       I don't know of such analysis.

23          Q.       And just so I'm clear, this document in  
24          your view was not intended to be a  
25          recommendation to protect the surface water

1 interests in the basin, it was more of an  
2 informational piece expressing some concerns of  
3 the region?

4 A. I think it's -- it is an informational  
5 piece. And the recommendations one through  
6 three were made in the last section of the  
7 recommendations.

8 Q. Do you have any idea of whether those  
9 recommendations were adopted or pursued in any  
10 respect?

11 A. I don't know if Karl Wirkus, the person  
12 that received this briefing, I don't know or  
13 remember what he did or did not do with these  
14 recommendations.

15 Q. You didn't receive any direction, in  
16 other words, in response to his recommendations  
17 from either the commissioner's office or  
18 Mr. Ryan?

19 A. None that I can recall.

20 Q. I'd like to hand you another document  
21 that's not the actual briefing but an electric  
22 communication discussing the briefing. And I  
23 should say, excuse me, to clarify, I believe  
24 this is a separate briefing in 2009.

25 MR. DRAPER: Exhibit 25.

1 MR. WILMOTH: Yes.

2 (Exhibit No. 25 marked for  
3 identification.)

4 Q. (By Mr. Wilmoth) And the subject  
5 basically appears to be just a general briefing  
6 on the Republican River. Does that look about  
7 right?

8 A. Yes.

9 Q. And, again, I'm less concerned with the  
10 specifics but I'm interested in the process  
11 here. I note that there is a reference about  
12 two-thirds of the way down to Mr. Ryan's  
13 desires with regard to the brief. Do you see  
14 that? Says M. Ryan has some questions plus  
15 some suggestions on this one.

16 A. Okay. I see that.

17 Q. And then if you follow that down, you  
18 start to see some points that I infer Mr. Ryan  
19 wanted to include. And about five points down  
20 it states that Nebraska and Colorado are not in  
21 compliance, do you see that?

22 A. Under, he also wanted to see these  
23 points?

24 Q. Yes.

25 A. And then I found your bullet point

1 Nebraska and Colorado are not in compliance.

2 Q. Yes.

3 A. Okay.

4 Q. Am I correct in interpreting that to  
5 mean that Mr. Ryan wanted those comments  
6 inserted into a briefing paper to the  
7 commissioner?

8 A. Well, I guess I'd like to make one  
9 point. We do have a lot of briefing -- I don't  
10 know if the word a lot. We have numerous  
11 briefing papers, as you have seen already, that  
12 go from the -- that discuss this topic.

13 Q. Sure.

14 A. So specifically these comments, I can  
15 only read what I hear from Ann Petersen's email  
16 that Mike Ryan, according to Ann, had some  
17 questions and some suggestions. And I would  
18 say that's typical of my boss, either one of  
19 them, Gary or Mike, if they read something,  
20 they will have -- and they have some comments,  
21 that's -- that's usually how they deliver them  
22 back.

23 Q. Okay. So this was a communication from  
24 Ms. Petersen directly to you and Mr. Esplin, is  
25 that right?

1 A. Yes.

2 Q. And so am I correct in understanding  
3 that you would have had some ownership of this  
4 paper and they are providing you some direction  
5 in terms of how to formulate the paper?

6 A. Correct. And Ann even added her own  
7 comment. She -- she said, or at least  
8 condensed, and she wrote Ann's thoughts, just I  
9 think to probably -- I don't know what she was  
10 doing, but I think that's to show Ann's version  
11 of what she was trying to do.

12 Q. Sure, okay. Now, in May of 2009, was it  
13 your understanding that Nebraska and Colorado  
14 were out of compliance with the compact?

15 A. Well, in May of 2009 -- I don't think  
16 we -- the three states have agreed on numbers  
17 since 2005 or 2006.

18 Q. So do you have an opinion as we sit here  
19 today whether the states are in compliance with  
20 the compact?

21 A. My opinion, based on the draft data that  
22 we get at the annual Republican River  
23 Conservation Committee, without looking at that  
24 specific information, typically shows whether a  
25 state is in or out of compliance.

1 Q. Do you know if Nebraska was in  
2 compliance at the time of this communication in  
3 '09?

4 A. I'd have to look at the data.

5 Q. And for the record you'd look at the  
6 accounting from the RRCA meetings?

7 A. I'd look at the information received at  
8 the RRCA meetings. And I think since -- at  
9 least for the last few years has been marked --  
10 typically been marked provisional.

11 MR. WILMOTH: Okay. This will  
12 be Exhibit 26.

13 (Exhibit No. 26 marked for  
14 identification.)

15 Q. (By Mr. Wilmoth) Mr. Thompson, this is  
16 another briefing paper to deputy commissioner  
17 Wirkus dated June 25, 2009. And I note in the  
18 transmittal email someone asked, I guess,  
19 Mr. Esplin to strengthen the recommendation.  
20 Do you see that?

21 A. Yes, I do.

22 Q. Could you turn to that recommendation  
23 and have a look at it and tell me if you recall  
24 being involved at all in this drafting of this  
25 document?

1       A.       I can't say specifically if I had made  
2       this recommendation and/or influenced this  
3       recommendation from the information you have  
4       given me. I can't remember. Like I said, we  
5       do an awful lot of briefing papers.

6       Q.       Do you have any recollection as to  
7       whether this recommendation was acted upon or  
8       not?

9       A.       I can't specifically say whether Karl  
10      Wirkus acted on this recommendation. But I can  
11      tell you that from my office's point of view we  
12      do continue to work with all the parties  
13      involved to look for ways to help or we do look  
14      for ways to be involved with the RRCA.

15     Q.       And I'm interested in the second  
16     recommendation there, the last sentence in  
17     particular. To your knowledge, has Reclamation  
18     instituted any litigation to protect its  
19     surface water rights in the basin?

20     A.       To my knowledge, we haven't had a court  
21     or -- court action or legal action.

22     Q.       Does Reclamation view the instant action  
23     as an opportunity to do that, in your view?

24     A.       Can I just finish one topic?

25     Q.       Yeah, absolutely.

1 A. I apologize. But, you know, we have  
2 been involved in asking the department on other  
3 issues for clarification or other type of --

4 Q. Do you mean the Department of Justice?

5 A. The Department of Natural Resources here  
6 in Nebraska.

7 Q. Oh, sorry.

8 A. And my mind is -- I can't recall exactly  
9 what that topic was about. So I'll stop there.

10 Q. Do you know whether the Bureau views the  
11 instant action as an opportunity to obtain some  
12 certainty about its surface water rights and  
13 how they will be protected in the future?

14 A. Could you repeat the question?

15 Q. Do you view the instant action as a  
16 surrogate for litigation to ensure your  
17 projects are adequately protected? By you of  
18 course I mean the Bureau.

19 A. You'll have to help me out, I'm not an  
20 attorney. By instant action do you mean this  
21 lawsuit?

22 Q. Kansas lawsuit, yeah.

23 A. Help me out with the question one more  
24 time.

25 MR. WILMOTH: Can you read that

1 back.

2 (Reporter read the pending question.)

3 A. I don't -- I don't believe the Bureau of  
4 Reclamation sees this lawsuit as a -- as a way  
5 to protect their interest.

6 Q. (By Mr. Wilmoth) Are you --

7 A. Or as a --

8 Q. Go ahead, sorry.

9 A. -- as a primary means or what I would  
10 refer to your language as surrogate, the  
11 connection, primary means for Reclamation to  
12 save or protect its water rights.

13 Q. To the extent it doesn't infringe on any  
14 confidential communications, can you tell me  
15 what the Bureau's view of the action is in  
16 terms of its desires and desired outcomes?

17 A. I think one of the key desired outcomes  
18 for Reclamation would be a healthier water  
19 supply in the basin for not only our projects  
20 but the projects in the other -- all three  
21 states.

22 Q. Here is another briefing paper that I  
23 think I'm one copy short on. We'll mark this  
24 as 27. I'd like you to take a look at this  
25 paper, Mr. Thompson, and tell me if you have

1 any opinion -- or, excuse me, recollection  
2 about this document.

3 (Exhibit No. 27 marked for  
4 identification.)

5 A. I don't necessarily remember this exact  
6 briefing paper, but it definitely looks  
7 familiar to me.

8 Q. (By Mr. Wilmoth) And if you look at the  
9 first sentence of the background section here,  
10 it states Nebraska remains out of compliance  
11 with the compact. Do you see that?

12 A. Uh-huh, I do.

13 Q. And the date of this communication is  
14 March 5, 2010, is that right?

15 A. That's correct.

16 Q. To your knowledge, was it true that  
17 Nebraska was out of compliance with the compact  
18 at that time?

19 A. Without reviewing the numbers that  
20 were -- as I just expressed earlier, without  
21 looking at those, I couldn't tell you.

22 Q. And, again, just for the record, you  
23 would look at the official accountings from the  
24 RRCA?

25 A. I would look at the official accountings

1       that have been processed and then the  
2       preliminary data that was given to us by the  
3       states.

4       Q.       I note this document is authored by --  
5       or at least prepared by Mr. Ryan. Would he  
6       have formulated that opinion on his own or  
7       would he have relied on someone to tell him  
8       that Nebraska was out of compliance?

9       A.       Not knowing who put that exact sentence  
10      in there, I don't know if Mike Ryan formulated  
11      that on his own or was given that information  
12      as part of the briefing paper.

13     Q.       Do you know typically whether he would  
14      conduct his own analysis to draw a conclusion  
15      like that?

16     A.       I think typically Mike Ryan would rely  
17      on the information that he was presented.

18     Q.       And who would present that information  
19      to him specifically with regard to the  
20      accounting?

21     A.       With regard to the accounting? It would  
22      most likely be me or my staff as part of a  
23      conference call or email or other means of  
24      communication.

25     Q.       And by your staff are you referring to

1 Mr. Swanda?

2 A. Referring to anyone that -- by my staff,  
3 anyone that works under me on that  
4 organizational chart.

5 Q. Would he rely on anybody within the  
6 region like Mr. Aycock?

7 A. He -- he could. As part of his people  
8 that work for him, he could rely on those type  
9 of folks.

10 (Exhibit No. 28 marked for  
11 identification.)

12 Q. (By Mr. Wilmoth) Let me hand you what  
13 we'll mark as Exhibit 28. This is along a  
14 similar line of questions, but it's important  
15 for us to try to understand a little bit how  
16 Mr. Ryan formulates opinions about compact  
17 compliance.

18 This communication involves a number of  
19 people. Perhaps you could just quickly  
20 identify those folks for me to the extent we  
21 haven't already identified them.

22 A. Okay. Starting at the top.

23 Q. Sure.

24 A. John Chaffin we didn't necessarily  
25 identify on our org chart, but we all know who

1 he is, and represents the solicitor. Ann  
2 Lois -- Lois Ann Petersen, I referred to Ann  
3 Petersen, was identified on the chart, if I  
4 recall, but not by name. That would be the  
5 special assistant to Gary Campbell.

6 Q. Okay.

7 A. Dan Fritz, Gary and John were all  
8 identified.

9 Q. And then about halfway down this  
10 particular communication, it appears to me that  
11 this was sent by Mr. Ryan to this group. And  
12 if I just look at the subject line, it talks  
13 about the Middle Republican NRD surface water  
14 controls added to the IMP. Do you see that?

15 A. I do.

16 Q. So I believe that this is a  
17 communication, at least from that point down,  
18 from Mr. Ryan. And if you could turn your page  
19 for me, you'll see a direction to the  
20 commissioner's folks. Do you see that?

21 A. Yes, I do.

22 Q. And if you just read those first few  
23 sentences for a moment.

24 A. Commissioner's folks, this is a --

25 Q. You don't need to read it out loud. I

1       just wanted you to read it yourself.

2       A.       Thank you.

3       Q.       Once again in the third sentence there  
4       is a reference to Nebraska being out of  
5       compliance with the compact. I assume the  
6       answers you gave earlier about how Mr. Ryan  
7       would formulate that opinion would hold for  
8       this view of his?

9       A.       Sure. And like just to highlight, I  
10      don't know what information Mike Ryan saw when  
11      he wrote this. He may have been looking at  
12      formal compact accounting and agreed to by all  
13      the three states, and he might have been  
14      looking at information past that. I simply  
15      don't know what -- what he was looking at,  
16      though, when he wrote those words.

17      Q.       And I think I know the answer but just  
18      for the record, do you have an opinion as to  
19      whether that was true on February 12 of 2010 or  
20      would you need to refer to the compact  
21      accounting again?

22      A.       I think we -- I think the same answer  
23      applies. Since the states haven't agreed on  
24      the numbers, I'd have to look at the  
25      preliminary data. And maybe just a highlight

1 on that, since the states haven't agreed  
2 through the RRCA in the last few years, whether  
3 they are in or out of compliance.

4 Q. Okay. I'll hand you another briefing  
5 paper here this is marked 28, Exhibit 28. I'm  
6 sorry, 29, pardon me.

7 (Exhibit No. 29 marked for  
8 identification.)

9 Q. (By Mr. Wilmoth) If you read that cover  
10 memo, obviously at least at this time it  
11 appears you had not seen this document yet, but  
12 I assume that you subsequently saw it. Would  
13 you take a look at that and tell me if you are  
14 familiar with it or not.

15 A. All these documents are getting newer.  
16 I can't say that I remember it, but it does  
17 look familiar.

18 Q. And in the recommendation section you'll  
19 see a recommendation to support the Kansas  
20 petition which I believe is the petition to the  
21 US Supreme Court which led us to this point  
22 today.

23 A. I see that.

24 Q. So you know who to thank for this  
25 deposition.

1 MR. DUBOIS: My name isn't on  
2 here.

3 Q. (By Mr. Wilmoth) My question,  
4 Mr. Thompson, is whether you were responsible  
5 for developing this recommendation.

6 A. This is a recommendation that's -- or a  
7 briefing paper that's going directly to the  
8 commissioner. And so I would say Mike Ryan was  
9 responsible for at least the recommendation  
10 that's within that. But that's not -- but I  
11 don't recall if I had influence to Mike Ryan on  
12 this particular recommendation or not.

13 Q. Okay. You don't recall conducting or  
14 directing any analysis to support the  
15 recommendation?

16 A. What do you mean by analysis?

17 Q. Well, I assume some analysis went into  
18 the development of this document, perhaps  
19 hydrologic analysis or policy analysis.

20 A. I would have been -- I would have been  
21 part of the group that would have helped put  
22 this document together. Obviously from the  
23 cover Aaron is traveling and has not seen it  
24 yet. I -- and Ann indicates, I have indicated  
25 to him what is described in the recommendation.

1       So she probably gave me a call or a separate  
2       email.

3       Q.       But ultimately it's Mr. Ryan who is  
4       responsible for the recommendation?

5       A.       Ultimately in this case with the  
6       briefing paper going directly to the  
7       commissioner, that would be Mike Ryan's  
8       recommendation.

9       Q.       Do you have any recollection as to who  
10      would have been primarily responsible on the  
11      technical side for working on this document?  
12      Would it just be those listed on the email?

13      A.       I think those folks on the email, from a  
14      technical point of view, Craig Scott, Gordon  
15      Aycock, Marv Swanda, probably would have been  
16      the key technical --

17      Q.       The technical --

18      A.       -- folks.

19      Q.       -- experts? This will be Exhibit 30.

20                       (Exhibit No. 30 marked for  
21                       identification.)

22      Q.       (By Mr. Wilmoth) Just have a look at  
23      this briefing paper. Do you recognize this?

24      A.       Yes, I do.

25      Q.       This is November 15, 2010. Once again,

1 we see this reference to Nebraska being out of  
2 compliance with the compact. If I ask you how  
3 he drew that conclusion and who he relied on, I  
4 assume I would receive the same response, is  
5 that right?

6 A. As my previous testimony, or deposition,  
7 yes.

8 Q. Let's assume for the sake of this  
9 question that Nebraska were not out of  
10 compliance. How do you think that would have  
11 influenced the commissioner's views about what  
12 was happening in the basin?

13 A. I don't know how Mike Connor's views  
14 would have been influenced, whether -- whether  
15 a state, and I assume we're talking Nebraska,  
16 was in or out of compliance.

17 Q. Sure. To your knowledge, was that an  
18 important consideration to Reclamation in terms  
19 of formulating its views with the IMPs, for  
20 example?

21 A. I think it's important to -- I think  
22 being in compliance or out of compliance is  
23 important to Reclamation. And a percentage of  
24 how important it is on any particular issue,  
25 whether it be IMPs or projects, I couldn't --

1       couldn't give you an order of magnitude. But I  
2       think it is -- it is an important issue to  
3       Reclamation that the states be in compact  
4       compliance.

5       Q.       And if this document in the background  
6       section had read, for example, Nebraska is  
7       presently in compliance with the compact, do  
8       you think that that would have had any  
9       influence whatsoever on the commissioner's  
10      views?

11      A.       Like I said, I don't know how that would  
12      have influenced the commissioner's views.

13                      MR. WILMOTH: Why don't we take  
14      15 minutes and come back at 20 'til, 3:40.

15              (Recess taken at 3:28 p.m. to 3:47 p.m.)

16      Q.       (By Mr. Wilmoth) Mr. Thompson, when we  
17      left we were talking a little bit about some of  
18      these briefing papers and how they were  
19      developed and conducted.

20              Who were the key technical people that  
21      you rely onto formulate your opinions which you  
22      then may convey or not convey to the next  
23      level?

24      A.       On the Republican River issues?

25      Q.       Yes.

1       A.       Currently today I rely on primarily  
2       Craig Scott. And then in the regional office I  
3       call Scott Guenthner periodically to get  
4       information. But I know Craig and Scott --  
5       Scott Guenthner and Craig Scott communicate on  
6       these issues.

7       Q.       And who were you relying on in June  
8       of 2010?

9       A.       I believe my primary resource within my  
10      office was Marv Swanda and Craig Scott.

11     Q.       Anyone else outside of your office?

12     A.       And typically Gordon Aycock outside of  
13     my office on Republican River issues.

14     Q.       And were these the folks that had the  
15     technical background to evaluate the impact of  
16     the IMPs on the river and your projects?

17     A.       These are the folks that I relied on  
18     from a technical point of view for the  
19     information that we developed for the IMPs.

20             Just clarifying my answer from before, I  
21     was always talking about kind of the technical  
22     folks, not necessarily our legal solicitor's  
23     office or anything, what I rely on for those  
24     kind of issues.

25     Q.       Sure. And then is it a fair assessment

1 to say that Mr. Ryan, to the extent he relies  
2 on your recommendations, is relying in some  
3 measure on those people himself?

4 A. Yes.

5 (Exhibit No. 31 marked for  
6 identification.)

7 Q. (By Mr. Wilmoth) Let me hand you  
8 Exhibit 32 (sic).

9 (An off-the-record discussion was held.)

10 Q. (By Mr. Wilmoth) Could you take a look  
11 at the timeline that's set forth in that email  
12 and tell me if you believe it represents a fair  
13 characterization of the events discussed?

14 A. I think it does.

15 Q. Okay. And then if you will continue to  
16 read beyond the timeline, you'll see some  
17 specific issues and responses.

18 A. I see them but I haven't read them all.

19 Q. Take a minute and just have a look at  
20 those.

21 A. I have gone through the specific issues  
22 and responses section there.

23 Q. All right. Three bullets down there,  
24 perhaps four, you'll see a reference, if the  
25 IMPs mean what the DNR explained at our

1 July 30th meeting. Do you see that?

2 A. I do.

3 Q. What was explained to you at the  
4 July 30th meeting?

5 A. I think the best way to review that,  
6 I -- I'm not so certain I was actually at the  
7 July 30th meeting. I was at -- there were a  
8 couple meetings in July. But when we wrote a  
9 letter back to the State of Nebraska, we -- we  
10 indicated what we had heard in the July 30th  
11 meeting and asked the State of Nebraska to  
12 either agree with that, clarify that  
13 understanding that we heard in that July 30th  
14 meeting. That's a letter that we had not  
15 received a reply back to.

16 Q. Do you know who would have attended that  
17 meeting, if you did not?

18 A. I don't know the exact attendees to that  
19 meeting.

20 Q. Did Mr. Aycock attend that meeting?

21 A. I don't know.

22 Q. Did Mr. Swanda?

23 A. I don't know.

24 Q. Was any insight gained by Reclamation at  
25 that meeting, to your knowledge? Did you learn

1 anything new that you hadn't learned or  
2 understood about the IMPs prior?

3 A. At this time I don't recall what we  
4 learned at that July 30th meeting that would  
5 have improved our understanding of the IMPs.  
6 It did give us the ability to write a  
7 clarifying letter to the state to try to  
8 clarify what we had heard.

9 Q. I'm going to give you Exhibit 32.  
10 (Exhibit No. 32 marked for  
11 identification.)

12 Q. (By Mr. Wilmoth) You are not listed on  
13 this electric communication but I'm curious  
14 about your understanding of what's stated in  
15 the communication. And this appears to be a  
16 statement by Mr. Aycock halfway down. Do you  
17 see the sentence that begins, it is our  
18 understanding?

19 A. I see that sentence, yes.

20 Q. Could you just read that sentence for me  
21 out loud?

22 A. It is our understanding that the Upper  
23 Republican NRD and Lower Republican NRD draft  
24 IMPs now rely primarily on curtailing  
25 groundwater use to meet compact compliance. As

1 we --

2 Q. That's fine. Is that Reclamation's  
3 present understanding? Or do you in any way  
4 disagree with that statement?

5 A. I think that that goes back to the  
6 requested information we've asked from the  
7 state as to how these IMPs will work, not only  
8 entering into a compact call year or prior to a  
9 compact call year but during a compact call  
10 year.

11 And I think that specific information of  
12 who will be shut down first, how -- whether  
13 it's groundwater, surface water, how many  
14 groundwater acres prior to or post  
15 determination of a compact call year, I think  
16 that's the type of information that we were  
17 trying to better understand from the State of  
18 Nebraska, and continue to want to understand.

19 Q. And if that statement were true, would  
20 it give you any comfort?

21 A. I think if -- I think if we had more  
22 certainty on how the curtailing of groundwater  
23 was going to happen, I don't want to say we  
24 would be given more comfort but we would  
25 definitely have a better understanding of how

1 to might impact our projects.

2 Q. So just to be very clear about this  
3 point, if I understand what you are saying,  
4 Reclamation is not suggesting that these IMPs  
5 will not ensure compact compliance but you  
6 don't have enough information to make that  
7 determination, is that what is being said here?

8 A. I think as we've pointed out, you know,  
9 not only my previous deposition but the  
10 information that we've delivered as compact  
11 compliance and curtailing -- compact compliance  
12 can be completely separate than project  
13 viability from my project's point of view or  
14 from groundwater project's point of view.

15 And not having an understanding of how  
16 the IMPs are going to be implemented leads to  
17 not knowing how they might affect compact  
18 compliance completely, or stream flows, whether  
19 they are going to increase, decrease,  
20 stabilize. We simply don't have that  
21 information from the state.

22 Q. Okay.

23 A. Or from the NRDs.

24 Q. Okay. Let me give you another exhibit  
25 here. This will be 33.

1 (Exhibit No. 33 marked for  
2 identification.)

3 Q. (By Mr. Wilmoth) Again, I recognize you  
4 are not listed on this electronic  
5 communication. But are these the kinds of  
6 communications that are typically ongoing  
7 within your office as you formulate opinions on  
8 IMPs?

9 A. I think typically, as we develop  
10 testimony for IMPs, there is a lot of  
11 communication that happens between my office,  
12 regional office or just internally. I  
13 currently have two locations in my office and  
14 sometimes people have to communicate, you know,  
15 between Grand Island and McCook.

16 Q. And if I understood you earlier, you  
17 mention that Marv Swanda, Craig Scott and  
18 Gordon Aycock were the three people that  
19 assisted you primarily.

20 If you look at the first paragraph there  
21 under Mr. Aycock's message beginning, I looked  
22 at the data.

23 A. I see that.

24 Q. Could you just read those first two  
25 sentences for me?

1 A. Okay.

2 Q. Insofar as it concerns the forecasting  
3 components of the IMP, is that Reclamation's  
4 view presently?

5 A. I don't think we can derive  
6 Reclamation's view from one email from Gordon  
7 Aycock.

8 Q. Is this the kind of technical work that  
9 you would ask Mr. Aycock to perform to help you  
10 formulate your opinion?

11 A. It is.

12 Q. Do you have any reason to doubt what is  
13 stated there?

14 A. I wouldn't necessarily say I have a  
15 reason to doubt it. But I don't -- I don't  
16 have the complete context in which they may  
17 have been discussing this, at what period of  
18 time they were looking at, what information  
19 they did know at this time compared to what  
20 they know today.

21 Q. Do you have any opinion about the  
22 effectiveness of the forecasting methods in the  
23 IMP?

24 A. Currently I don't have any opinion.

25 Q. This will be Exhibit 34.

1 (Exhibit No. 34 marked for  
2 identification.)

3 Q. (By Mr. Wilmoth) This is an additional  
4 communication between Mr. Swanda and Mr. Scott,  
5 appears to involve Mr. Aycock and Mr. Edgerton  
6 from the Frenchman Cambridge Irrigation  
7 District.

8 With regard to Mr. Aycock's comment,  
9 could you take a quick look at that, the  
10 sentence beginning although we don't like it?

11 A. I have looked -- I have read that.

12 Q. Do you disagree with the statement that  
13 he has made there, in particular the first  
14 sentence?

15 A. Well, it's tough to disagree or agree  
16 when someone puts a statement like "the only  
17 way," which is what Gordon said. And there is  
18 probably more than one way to be in compact  
19 compliance. So I can't say that I agree with  
20 it is the only way.

21 Q. Have you conducted any analysis on your  
22 own to identify those other ways?

23 A. You know, as -- as we become more  
24 educated in the basin, as we see different  
25 activities, you know, I can't say that five

1       years ago I would have believed the State of  
2       Colorado would have put in a compliance  
3       pipeline.

4               And I just use that as an example, as  
5       that's one way in which the State of Colorado  
6       is going to become in -- is going to attempt or  
7       try to come in compliance, from my  
8       understanding of the pipeline.

9               So I guess I just -- I refrain from  
10       saying that's -- that's the only way without  
11       having access to some information that was  
12       requested that might help influence our  
13       decision if that would be the limiting factor  
14       on being in compliance.

15       Q.       Is this the kind of input you would rely  
16       on to determine whether it was necessary to  
17       curtail surface water uses to comply with the  
18       compact?

19       A.       I don't have to determine, I'm not the  
20       one that determines if surface water uses are  
21       curtailed or not.

22       Q.       But you are responsible for formulating  
23       an opinion about whether that's a good idea or  
24       not a good idea, aren't you? Isn't that part  
25       of your IMP testimony?

1 A. Repeat the question.

2 MR. WILMOTH: Why don't you read  
3 it back.

4 (Reporter read the pending question.)

5 A. I am responsible for the testimony  
6 that's delivered to the NRDs and to the state  
7 on the IMPs.

8 Q. (By Mr. Wilmoth) And in developing that,  
9 I understand you rely on conclusions just like  
10 this?

11 A. I do.

12 Q. And does Reclamation presently believe  
13 that curtailing surface water use is necessary  
14 to comply with the IM -- with the compact?

15 A. I think as the sentence states, if the  
16 state or the NRDs choose to curtail surface  
17 water, there is a process for justly  
18 compensating those folks.

19 Q. But that doesn't have anything to do  
20 with compliance, right? That's a policy  
21 matter.

22 A. If the senior folks -- if the folks in  
23 the basin, the surface water users that  
24 developed prior to the groundwater users or  
25 prior to other surface water users, want to use

1 the seniors' water -- want to use that water  
2 that is senior to them, it's my understanding  
3 there is, if -- if compensation is made, that  
4 is a way to obtain that water.

5 Q. Right. But I'm talking about the first  
6 sentence here. This is clearly a technical  
7 opinion, is it not? I mean, this is Mr. Aycock  
8 saying the only way they can get into  
9 compliance is to shut down surface irrigation.  
10 It's pretty plainly stated.

11 I'm not asking whether they should be  
12 compensated or not. My question is, do you  
13 have any reason to believe from a technical  
14 standpoint that that's not a fair assessment?

15 A. I think it's a fair assessment to say  
16 that picking this Friday, September 3rd email  
17 out of all the emails that go back and forth, I  
18 don't think it's a fair assessment to say that  
19 that could be the only way in which the State  
20 of Nebraska could come into compliance.

21 But in the context in which Gordon wrote  
22 this, I don't know what he was thinking. And I  
23 don't know the specific information they were  
24 trying to communicate.

25 Q. Let me give you an exhibit here. This

1 will be 35. This is a document that your name  
2 does appear on.

3 (Exhibit No. 35 marked for  
4 identification.)

5 Q. (By Mr. Wilmoth) This is dated  
6 November 2010. Do you recall this document?

7 A. I do.

8 Q. And halfway down page one there is a  
9 sentence that begins, however. Excuse me, page  
10 one, number one, there is a sentence that  
11 begins, however. Do you see that?

12 A. I do.

13 Q. Could you read that aloud for me,  
14 please?

15 A. However, if Nebraska's revised 2010 IMPs  
16 are enforced as the Nebraska DNR has recently  
17 explained, these revised IMPs should limit  
18 future groundwater pumping to a level that  
19 ensures Nebraska stays within its compact  
20 allocation.

21 Q. Now, this is Reclamation comments on  
22 some brief that was filed in this action, is  
23 that right?

24 A. I wouldn't say these comments are the  
25 ones -- this is -- according to the email, this

1 is a draft document that looks like in  
2 preparation of Reclamation filing its, I guess  
3 for lack of better word, briefs with the --  
4 with the courts in this matter.

5 Q. Okay. This is Mr. Aycock's comments,  
6 correct?

7 A. According to the email, it's from  
8 Gordon, it attaches my draft document with my  
9 initial comments on the filing. I can't tell  
10 you if he -- by comments he created this entire  
11 thing or he simply made comments to it.

12 Q. Well, let's assume for the sake of this  
13 discussion Mr. Aycock wrote this document.  
14 Now, Mr. Aycock is one of your technical  
15 people, he's an expert in hydrology, correct?

16 A. Gordon -- Gordon Aycock is one of the  
17 technical folks I rely on.

18 Q. And he concludes that the IMPs will  
19 limit groundwater consumption to a level that  
20 ensures compact compliance, is that right?

21 A. He indicated in his email this is a  
22 rough draft and not complete.

23 Q. Uh-huh.

24 A. So I can't speak for Mr. Aycock, if  
25 that's his final determination.

1 Q. That's a fairly profound statement,  
2 given the nature of the litigation. Do you  
3 have any understanding of the facts surrounding  
4 that statement? Did he change his view or was  
5 he directed to change his view or did it evolve  
6 somehow? That's not something we've seen  
7 before.

8 A. Okay. By profound statement you are  
9 talking about this sentence?

10 Q. Yes.

11 A. And the question again about the --  
12 about the sentence, as you decided, a profound  
13 statement.

14 Q. Do you have any understanding of why  
15 that is not presently Reclamation's position?

16 A. Well, I think we can go back to some  
17 letters to DNR that have asked them to clarify.

18 Q. But this postdates those letters,  
19 doesn't it? This is November 2010.

20 A. Okay.

21 Q. So presumably when Mr. Aycock writes  
22 this, he doesn't have those answers either.

23 A. He doesn't. And we don't have those  
24 answers today.

25 Q. Right. So what happened as this --

1 A. I --

2 Q. -- decision or as this analysis made its  
3 way through the chain? How did this get lost?

4 A. I don't know where this -- that sentence  
5 landed ultimately. Did it -- did it make its  
6 way to the filings that the Bureau provided? I  
7 can't answer that question.

8 Q. Do you agree with the statement?

9 A. I -- if -- the statement says, as the  
10 Nebraska DNR has recently explained. I believe  
11 that if we could get clarity on how the State  
12 of Nebraska intends to enforce their IMPs and  
13 limit groundwater pumping, I think that would  
14 help me know that that statement is accurate or  
15 not.

16 Q. But it sounds like Mr. Aycock already  
17 had that clarity. Did Mr. Aycock share with  
18 you a view that --

19 A. I can't answer that. That's  
20 specifically Mr. Aycock's statement in there.

21 Q. Okay. Well, let's assume for the sake  
22 of argument it's Mr. Aycock's -- someone  
23 clearly had -- had something explained to them  
24 and drew a conclusion about it. And I'm  
25 understanding that you don't share that view

81

1       because you don't possess the level of clarity  
2       that this person did. Is that the?

3       A.       I wouldn't say that's accurate.

4       Q.       Okay. How would you characterize it?

5       A.       I would clarify it as that -- that we  
6       have an explanation from DNR on how they are  
7       going to limit future groundwater pumping and  
8       we don't have clarification from the state,  
9       from the NRDs, on how specifically they are  
10      going to do that. And we tried to -- we tried  
11      to make that clear in our -- in our questions  
12      that we made to the state.

13      Q.       So whoever had this understanding, it  
14      doesn't reflect the Bureau's position today, is  
15      that right?

16      A.       We -- as of today, we still don't have  
17      clarity on how these IMPs are going to reduce  
18      future groundwater pumping that we've asked  
19      for.

20      Q.       Do you think somebody did at one point  
21      when this document was authored?

22      A.       I guess I would hope the State of  
23      Nebraska does.

24      Q.       Okay.

25

1 (Exhibit No. 36 marked for  
2 identification.)

3 Q. (By Mr. Wilmoth) I want to talk to you a  
4 little bit about this concept of curtailing  
5 natural flow and requiring bypasses of water.  
6 Is that an element of the IMPs, as you  
7 understand them?

8 A. Yes. The IMPs have a notification in  
9 them that they could curtail surface water use  
10 and bypass all natural flow.

11 Q. And does the Bureau have a problem with  
12 that concept?

13 A. We are concerned about that, that  
14 concept, yes.

15 Q. What's the nature of the concern?

16 A. From a historical point of view, we've  
17 been able to store surface water, for example,  
18 from January through May until we start  
19 irrigating. And with the inability to store  
20 surface water into our reservoirs, it will  
21 reduce our supplies, not only for that current  
22 year but for future years.

23 It's the design reservoir, it's able to  
24 capture flow and use it not only in the year  
25 that it was captured but out years depending on

1       how much is captured.

2       Q.       Is this one of the cases of a  
3       distinction between impacts on your project and  
4       the compact compliance?

5       A.       I think if you were to bypass all flows,  
6       you, depending on the scenario, could possibly  
7       be in compact compliance while not allowing our  
8       projects to retain those flows for future,  
9       future use.

10      Q.       Okay.

11      A.       Which would affect the viability of our  
12      project.

13      Q.       And if I understand it, the Bureau has  
14      an -- or draws a distinction between water  
15      that's been previously stored and water that is  
16      natural flow.

17               Is it the Bureau's position that stored  
18      water cannot be called out for compact  
19      compliance?

20                       MR. DUBOIS: I'll object, it  
21      calls for a legal conclusion.

22      Q.       (By Mr. Wilmoth) Does the Bureau have a  
23      position on that? I'm not asking whether it's  
24      legally true or not. I'm just asking if the  
25      Bureau has a position about it.

1 MR. DUBOIS: You can answer  
2 that.

3 A. It's my understanding that water stored  
4 prior to a compact call would not be subject to  
5 a compact call.

6 Q. (By Mr. Wilmoth) That's the Bureau  
7 position?

8 A. That's my understanding of the current  
9 IMP language.

10 Q. Okay. So that there is two things there  
11 then. There is -- that's the Bureau's position  
12 and the IMP language is consistent with that,  
13 is that what you are suggesting?

14 A. I'm not sure quite what you said. But  
15 I'll answer it again. The Bureau of  
16 Reclamation believes that water stored prior to  
17 a compact call is not subject to that compact  
18 call and would not have to be released because  
19 of a compact call as identified in the IMP.

20 Q. So that's one of your concerns about the  
21 IMP is that it might call out stored water?

22 A. Well, currently it's my understanding  
23 that it doesn't call out, will not call out  
24 stored water. But if that's clarification that  
25 I need from the state then, yes, I would be

1 concerned if it called out -- it called out  
2 stored water.

3 Q. Okay. I just want to make sure I  
4 understand your understanding of the IMP.

5 A. Yeah.

6 Q. So this issue that's identified here in  
7 the Exhibit 37 kind of circles around this --

8 MR. DRAPER: 36.

9 Q. (By Mr. Wilmoth) -- sorry, 36, circles  
10 around this issue, is that right?

11 A. I haven't read the document yet. We've  
12 been talking.

13 Q. Go ahead.

14 A. Yes, this appears to be talking about  
15 what we were just talking about.

16 Q. And I understand the Bureau has a  
17 position that previously stored water should  
18 not be subject to a compact call. Does the  
19 Bureau have a position about natural flow and  
20 whether it is subject to a compact call?

21 A. I think that goes back to the questions  
22 that we've asked the state, is -- in a compact  
23 call year, and we've asked for clarification of  
24 this, will surface water flows be turned off  
25 first in conjunction with groundwater controls,

1 will groundwater controls be implemented to the  
2 fullest extent, and as a last resort will  
3 surface water flows be turned off?

4 And these are -- these are  
5 clarifications that I would like to better  
6 understand. For example, it's my understanding  
7 that just recently the DNR attended a meeting  
8 in the Middle Republican NRD and the word I got  
9 back before they went into executive session  
10 was that surface water controls would be  
11 implemented first.

12 Now, whether that's an accurate  
13 description of how DNR gave that or not, I  
14 don't know. But that -- that's the type of  
15 confusion that revolves in the basin about if  
16 these -- how these surface water natural flows  
17 will be implemented.

18 Q. Do you know who provided that  
19 information?

20 A. To me?

21 Q. Yeah.

22 A. Brad Edgerton attended that meeting,  
23 gave me a call after, after he attended that  
24 meeting.

25 Q. Mr. Edgerton provides you quite a bit of

1 information, doesn't he?

2 A. We work very closely with Mr. Edgerton,  
3 just like we do with all our irrigation  
4 districts.

5 Q. He helps you in formulating, in fact,  
6 your comments on the IMP, doesn't he?

7 A. I would say Mr. Edgerton helps us --  
8 helps us better understand how his district  
9 operates and works, and with his background  
10 with the State of Nebraska he's -- he's able to  
11 educate us on all sorts of topics in the basin.

12 And we try to -- we try to utilize our  
13 district members wherever we can. This is a --  
14 this is a team. We try to get information from  
15 NRDs as well to better understand how things  
16 work in the basin.

17 Q. And he assisted in formulating your IMP  
18 testimony, did he not?

19 A. I don't know.

20 Q. He actually helped write it, didn't he?

21 A. I don't know. I would think -- I don't  
22 know that.

23 Q. Can we return to one of the earlier  
24 exhibits. I have got to hunt through. It's  
25 Exhibit 31, which looks like this. On the

1 second page of that halfway down there is a  
2 bullet point that reads, bypassing water  
3 through Harlan County Lake would render the  
4 consensus plan meaningless. Do you see that?

5 A. I do.

6 Q. Would you explain to me how that is  
7 true? How does the bypassing of natural flow  
8 through Harlan County render the consensus plan  
9 meaningless?

10 A. It's my understanding as I -- and I  
11 talked about this during the first time I was  
12 deposed, that the consensus plan relies  
13 generally on an average inflow that's going to  
14 happen during the months of January through --  
15 or let me speak a little more generally.  
16 Happens prior to irrigation, an average amount  
17 of inflow that happens prior to -- before we  
18 start taking water for irrigation. And the  
19 consensus plan relies on that average.

20 And if you didn't have -- it's my  
21 understanding through the calculation that if  
22 you didn't have that water coming in, that that  
23 would change the intent and how they calculate  
24 the amount of water that's going to be  
25 available for irrigation.

1 Q. And then that would -- would that affect  
2 the division of water between KBID and NBID,  
3 for example?

4 A. The consensus plan doesn't determine the  
5 split of water between KBID and NBID. It's my  
6 understanding Reclamation, once they have a  
7 total amount of water that's available for  
8 those districts, two districts, they divide it,  
9 the total supply, that's natural flow and  
10 stored water, they divide that between the two  
11 districts based on the irrigated land.

12 Q. And so the real function of the  
13 consensus plan in terms of the Bureau's  
14 operations is to do what?

15 A. The -- it's my understanding that the  
16 consensus plan is to determine the estimated  
17 amount of water that will be available in  
18 Harlan County for irrigation supply.

19 Q. Would Mr. Swanda be an appropriate  
20 person to talk to about that further?

21 A. Marv was in charge of the group that did  
22 that calculation for a long time.

23 Q. Okay. This will be Exhibit 37.

24 (Exhibit No. 37 marked for  
25 identification.)

1 Q. (By Mr. Wilmoth) Could you have a look  
2 at this communication and tell me to the best  
3 of your recollection what this was concerning?

4 I'll direct your attention to this  
5 central paragraph in the middle of the page.

6 A. Okay.

7 Q. It seems to articulate Mr. Ryan's  
8 understanding of the surface water controls in  
9 the IMPs, is that generally correct?

10 A. I have to admit when I read this, I --  
11 they were talking about Bonny up here and then  
12 they switched to --

13 Q. Sure.

14 A. I have to admit I -- that somewhat  
15 confused me. Let me read this second paragraph  
16 again.

17 Q. Sure, sure, sure, sure.

18 A. Okay. The question again?

19 Q. Sure. Just fundamentally is that  
20 discussion consistent with your current  
21 understanding of how those controls work?

22 A. I guess to clarify, I think this does  
23 highlight how we think the surface water  
24 controls would be implemented. It doesn't,  
25 however, highlight or explain when they would

1 be implemented, how long they would be on for  
2 and when they would be turned on and off,  
3 things like that.

4 Q. Okay.

5 A. So I think there is still a lot of  
6 questions as to how -- there is more details  
7 that need to be known on how the surface water  
8 controls would be implemented.

9 Q. Okay. Let me ask you about this  
10 document which will be Exhibit 38.

11 (Exhibit No. 38 marked for  
12 identification.)

13 Q. (By Mr. Wilmoth) This document appears  
14 to transmit various questions from Frenchman  
15 Cambridge Irrigation District to you and seems  
16 to seek answers to those questions. Do you  
17 recall that transmittal?

18 A. I don't initially.

19 Q. Why don't you have a look at it for a  
20 moment.

21 A. I have looked at the document. It's --

22 Q. Is that typical of the kind of  
23 communications you get from Frenchman Cambridge  
24 Irrigation District?

25 A. I'm not sure anything is typical in the

1 Republican River Basin. I guess I didn't mean  
2 that to be funny. But I think -- I think these  
3 would be the type of questions that we would  
4 expect to see from our -- from our irrigation  
5 district, Frenchman Cambridge Irrigation  
6 District.

7 Q. And did you then -- this is the  
8 Exhibit 39. Did you then forward these  
9 questions for answer?

10 (Exhibit No. 39 marked for  
11 identification.)

12 MR. WILMOTH: Just for the  
13 record, Jim, I don't think that's a privileged  
14 communication. But if you think so, now is  
15 probably the time to tell me.

16 MR. DUBOIS: I don't think it is  
17 because this one was not to solicitor's office  
18 or to me. So I don't recall this -- this one  
19 doesn't look familiar as one that I pulled, but  
20 I'll look real quick.

21 MR. WILMOTH: Okay.

22 Q. (By Mr. Wilmoth) My principal question,  
23 Mr. Thompson, is what is the relationship  
24 between those two documents? There seems to be  
25 some questions that are very similar and --

1       A.       Just initially looking at it, the topic  
2       is definitely similar in both -- both  
3       documents.

4       Q.       Is it common for the district to seek  
5       answers to legal questions like that?

6       A.       The district wouldn't seek legal  
7       questions to my solicitor. The district may  
8       ask me questions, but I'm the one responsible  
9       for seeking legal questions from our  
10      solicitor's office. And those, I'm not sure  
11      it's a written rule, but are required to go  
12      through the regional director before they see  
13      the solicitor's office.

14      Q.       So that memo is from you to the regional  
15      director for this purpose?

16      A.       Yeah, asking him to forward that on for  
17      legal review.

18      Q.       And let me ask you two questions in  
19      quick succession so as to not draw an  
20      objection. Do you recall if there were answers  
21      provided to those questions and, if so, whether  
22      they were made publicly available?

23                      MR. DUBOIS: You can answer both  
24      because he didn't ask you what the answers  
25      were. Actually, why don't you ask them one at

1 a time.

2 Q. (By Mr. Wilmoth) Do you recall whether  
3 any answers were provided?

4 A. I don't recall at this time if answers  
5 were provided.

6 Q. Can you tell me if you still harbor  
7 those questions? Or is that request still  
8 pending, perhaps?

9 A. I just -- that's what's kind of going  
10 through my mind. I simply can't remember if we  
11 received an answer to this. And if they -- if  
12 the request is still pending, I would be  
13 interested in the answers.

14 MR. WILMOTH: All right.  
15 Actually, why don't we take a quick break here  
16 and come back and finish up. Let's go 15  
17 minutes and then we won't have too many more  
18 questions.

19 (Recess taken at 4:39 p.m. to 4:54 p.m.)

20 Q. (By Mr. Wilmoth) Mr. Thompson, do you  
21 typically attend the RRCA annual meeting?

22 A. Yes.

23 Q. I'm going to give you Exhibit 40.

24 (Exhibit No. 40 marked for  
25 identification.)

1 Q. (By Mr. Wilmoth) Ask you to turn to page  
2 three of the document but page seven of the  
3 transcript.

4 A. Okay.

5 Q. Is that your name there on page seven?

6 A. I see it.

7 Q. Just introducing yourself, is that the  
8 point of that? Looks like everyone is going  
9 around the room saying who they are.

10 A. I would say on page seven I'm just  
11 introducing myself.

12 Q. I'd like to hand you document number  
13 41 -- excuse me, Exhibit 41. Could just take a  
14 quick look at that and see if you can identify  
15 it?

16 (Exhibit No. 41 marked for  
17 identification.)

18 A. Looks like part of the report that we  
19 submitted to the RRCA.

20 Q. (By Mr. Wilmoth) Who do you think  
21 submitted this one actually? I think this may  
22 be Director Dunnigan's testimony.

23 A. Excuse me. It doesn't say who -- oh,  
24 Nebraska's report for the Republican River  
25 Compact Administration. This is, excuse me,

1 Nebraska's report for the RRCA.

2 Q. And if you just read that first  
3 paragraph for me, you don't need to read it  
4 aloud, but just to familiarize yourself with  
5 that paragraph.

6 A. Okay.

7 Q. Now, this indicates that the State of  
8 Nebraska was in compliance with the compact in  
9 2009 and 2010 or was expected to be in 2010.  
10 Earlier we had talked about some briefing  
11 papers that suggested otherwise.

12 Is this the kind of information that you  
13 would rely on to develop an understanding of  
14 the compact compliance status among the states?

15 A. The submissions that the states make at  
16 the end of the year or at the compact annual  
17 RRCA meeting is information we would use in  
18 developing things like the briefing papers.

19 Q. Okay. You had earlier mentioned that  
20 the Bureau was concerned about a lack of  
21 clarity with regard to the IMPs. Do you recall  
22 that discussion generally?

23 A. I do.

24 Q. And I understand that you recently  
25 offered some testimony on behalf of the Bureau

1       concerning the IMP for the Tri-Basin NRD, is  
2       that right?

3       A.       I did.

4       Q.       Do you recall when that was, generally?

5       A.       Month and a half ago, roughly.

6       Q.       Prior to providing that testimony, did  
7       you review the expert report of Jim Schneider  
8       in this matter?

9       A.       I have been given different expert  
10       reports. And I believe the first time I was  
11       deposed way back in -- you know, before we went  
12       to Denver the first time, I always -- I did get  
13       confused on expert reports and the difference  
14       between expert report and testimony that might  
15       be delivered.

16       Q.       Sure.

17       A.       I can't specifically say that I reviewed  
18       Jim Schneider's expert report before working on  
19       that Tri-Basin NRD hearing.

20       Q.       Do you know whether Dr. Schneider  
21       authored a report describing the IMPs in this  
22       proceeding, an expert report in this  
23       proceeding, or have you been provided a copy of  
24       that to date?

25       A.       I remember some documents provided by

1 the State of Nebraska as it relates to the  
2 NRDs. I can't remember if Dr. Schneider's  
3 expert report was in there or not.

4 MR. WILMOTH: Okay. I think  
5 that's all we have got. Jim, do you have some?

6 MR. DUBOIS: Just a couple.

7 MR. WILMOTH: Or I guess we  
8 should ask Kansas and Colorado, too, if they  
9 have got some questions.

10 MR. DRAPER: No questions.

11 MR. WILMOTH: Autumn, do you  
12 have any questions?

13 MS. BERNHARDT: Just a few.

14 CROSS-EXAMINATION

15 BY MS. BERNHARDT:

16 Q. Mr. Thompson?

17 A. Yes.

18 Q. You had mentioned the Colorado compact  
19 compliance pipeline. Is the Bureau of Rec  
20 aware of Colorado's other compact compliance  
21 measures?

22 A. Are you referring to Colorado's decision  
23 to evacuate Bonny Dam?

24 Q. That would be one of them. Are you  
25 aware of some of the others? Or if you could

1 just kind of explain the Bureau's understanding  
2 of what's happening with Bonny Reservoir.

3 MR. DUBOIS: That's actually --  
4 this is Jim Dubois. I object to that. This  
5 seems to be beyond the scope of both the  
6 subpoena request and the direct testimony.

7 MS. BERNHARDT: I'll grant that.  
8 If I rephrase it and just say if he's aware  
9 of -- because he has talked about Colorado's  
10 compact compliance pipeline and not originally  
11 thinking that would happen. Is he just aware  
12 of any other compact compliance measures.

13 MR. DUBOIS: You can answer if  
14 you are aware of any.

15 THE WITNESS: The only other one  
16 I'm aware is what I just indicated, that the  
17 request from the State of Colorado to drain the  
18 reservoir or the conservation space within the  
19 reservoir.

20 MS. BERNHARDT: That's good  
21 enough. Thank you, sir.

22 THE WITNESS: Yep.

23 CROSS-EXAMINATION

24 BY MR. DUBOIS:

25 Q. Can you find Exhibit 35? You were asked

100

1 a series of questions regarding the second page  
2 of paragraph 35 under paragraph number one.  
3 And you were asked about the statement or the  
4 sentence in here that says, however, if  
5 Nebraska's -- if Nebraska's revised 2010 IMPs  
6 are enforced as the Nebraska DNR has recently  
7 explained these revised IMPs.

8 When did Nebraska explain -- the DNR  
9 explain the revised IMPs?

10 A. From my recollection, during our  
11 meetings that took place between Reclamation  
12 and DNR in July.

13 Q. And were those explanations in writing?

14 A. No, those were verbal explanations that  
15 we had during those meetings.

16 Q. Did you ask for confirmation of your  
17 understanding of those explanations? Did you  
18 ask for confirmation of those explanations in  
19 writing from Nebraska?

20 A. Yes.

21 Q. Did you get confirmation that your  
22 understanding based on the explanation, the  
23 verbal explanations, did you get confirmation  
24 that those understandings were correct?

25 A. We did not get written confirmation of

1       those explanations.

2       Q.       Does Reclamation know if Nebraska's  
3       revised 2000 IMPs will be enforced as  
4       Nebraska's DNR -- DNR explained the revised  
5       IMPs?

6       A.       We don't know.

7       Q.       In the same paragraph down two sentences  
8       there is a sentence that starts, the problems  
9       Reclamation has at this time are. Do you see  
10      that?

11      A.       Yes.

12      Q.       Can you read the first problem that's  
13      after paren one, close paren?

14      A.       The revised IMPs need considerable  
15      clarification.

16      Q.       Is that the clarification you requested  
17      regarding the verbal explanations of the IMPs?

18      A.       It is.

19      Q.       And you have never gotten such  
20      clarification, is that correct?

21      A.       I have not.

22                      MR. DUBOIS: Nothing further.

23                      REDIRECT EXAMINATION

24      BY MR. WILMOTH:

25      Q.       Just a couple quick follow-ups.

1 Mr. Thompson, you mention that you were not  
2 aware whether or not you attended the July 30  
3 meeting. Is that still the case?

4 A. It seems there was two meetings in July.  
5 And I went home sick in the morning from -- for  
6 one of them. And I believe it was the second  
7 one, from what I can remember.

8 Q. So you don't know what occurred at the  
9 other meeting?

10 A. My staff gave me an update of what  
11 happened at the meeting that I did not attend.

12 Q. So the explanations that referred to  
13 were partly given to your staff and not you  
14 directly?

15 A. I was not at the meeting, yes, so those  
16 explanations were given to my staff, which --

17 Q. And the -- I'm sorry, go ahead.

18 A. Which helped me write the letter for  
19 clarification to the state.

20 Q. And earlier with respect to the comments  
21 that you were just reading and Mr. Dubois was  
22 reading to you, you disclaimed any knowledge of  
23 the author of that document, is that right?

24 A. I am unaware of who authored this  
25 document, although it comes with an attachment

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1 to a message from Gordon Aycock.

2 Q. Sure. So you are not entirely clear on  
3 who knew what and when, are you?

4 A. Well, I am clear that we still had  
5 questions that we wanted clarification from the  
6 State of Nebraska and we still had those  
7 questions today.

8 Q. So whoever wrote that document had some  
9 questions?

10 A. Was looking for clarification, yes.

11 MR. WILMOTH: All right. That  
12 will be it. Thank you.

13 (Concluded at 5:09 p.m.)  
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DEPOSITION OF AARON THOMPSON

\_\_\_\_\_  
Signature of witness

STATE OF                    )  
                              : ss.  
COUNTY OF                )

Subscribed and sworn to before me this  
day of                   ,                   .

\_\_\_\_\_  
GENERAL NOTARY PUBLIC

C-E-R-T-I-F-I-C-A-T-E

STATE OF NEBRASKA                   )  
  : ss.  
COUNTY OF LANCASTER               )

I, Sheryl Teslow, General Notary Public  
in and for the State of Nebraska, do hereby  
certify that AARON THOMPSON was by me duly  
sworn to testify the truth, the whole truth and  
nothing but the truth, and that the deposition  
by him as above set forth was reduced to  
writing by me.

That the within and foregoing deposition  
was taken by me at the time and place herein  
specified and in accordance with the within  
stipulations; the reading and signing of the  
witness to his deposition having not been  
waived.

That I am not counsel, attorney, or  
relative of either party or otherwise  
interested in the event of this suit.

IN TESTIMONY WHEREOF, I have placed my  
hand and notarial seal the               day of May,  
2012.

\_\_\_\_\_  
Sheryl Teslow, RDR, CRR