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Deposition Transcript of:
Dale Book, P.E., Volume II

Date: July 30, 2013

Case: State of MT v. State of WY

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<p>No. 137, Original</p> <hr/> <p>IN THE SUPREME COURT OF THE UNITED STATES</p> <hr/> <p>STATE OF MONTANA, Plaintiff v. STATE OF WYOMING and STATE OF NORTH DAKOTA, Defendants</p> <hr/> <p>BEFORE THE HONORABLE BARTON H. THOMPSON, JR. SPECIAL MASTER</p> <hr/> <p>DEPOSITION OF DALE E. BOOK, P.E., VOLUME II July 30, 2013</p> <hr/> <p>Pursuant to Notice and the Federal Rules of Civil Procedure, the deposition of DALE E. BOOK, P.E., VOLUME II, taken by the Defendant State of Wyoming, was held at La Quinta Inn & Suites, 6801 Tower Road, Denver, Colorado 80249 on July 30, 2013 at 8:56 a.m., before Kirsten M. Thorngate, Registered Professional Reporter and Notary Public for the State of Colorado.</p>	<p>INDEX</p> <p>EXAMINATION PAGE By Mr. Draper --- By Mr. Kaste 193</p> <p>REQUESTED PORTIONS OF TESTIMONY PAGE</p> <p>Document production --- Marked at counsel's request --- Certified questions ---</p> <p>EXHIBITS MARKED PAGE 389 Deposition notice 195 390 Rebuttal Expert Report, 6/4/13 196 (Attached to original and copy transcripts, via hard copy and/or PDF as requested by counsel.)</p> <p>PREVIOUSLY MARKED PAGE PREVIOUSLY MARKED PAGE (None.)</p>
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<p style="text-align: center;">APPEARANCES</p> <p>For the Plaintiff: JOHN B. DRAPER, ESQ. Montgomery & Andrews 325 Paseo de Peralta P.O. Box 2307 Santa Fe, New Mexico 87504-2307</p> <p>For the Defendant State of Wyoming: JAMES C. KASTE, ESQ. Attorney General's Office Water & Natural Resources Division 123 Capitol Building Cheyenne, Wyoming 82002</p> <p>Also Present: None</p>	<p>1 (Whereupon, the within proceedings were taken 2 pursuant to the Federal Rules of Civil Procedure:) 3 DALE E. BOOK, P.E., 4 having been first duly sworn to state the whole truth, was 5 examined and testified as follows: 6 EXAMINATION 7 BY MR. KASTE: 8 Q Would you state your name for the record. 9 A Dale Book. 10 Q And you've been deposed in this matter before, 11 correct? 12 A Yes. 13 Q And the point of this deposition here today is 14 just to discuss the contents of your rebuttal report, and 15 I hope to focus my attention just on that report and not 16 plow any ground related to your original report. I think 17 we have that covered. Okay? 18 A Yes. 19 Q I have a copy of the deposition notice for this 20 deposition, which I'll hand you, and we're going to mark 21 later after we get a report on what number we're on. Have 22 you seen that deposition notice before? 23 A Yes, I have. 24 Q Did you bring any documents with you in response 25 to that notice?</p>

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1 at the state line using your other indicator, which was
 2 your flow rate indicator?
 3 A No, it doesn't to the nearest day. We didn't
 4 attempt to get that discrete with our analysis, and it was
 5 simply to provide a flow rate that we could compare with
 6 the state line flow to determine an indicator of when
 7 shortages began because the shortages basically occur
 8 every year. And so in my view, it's more a question of
 9 when does that shortage trigger on the hydrograph. And so
 10 the analysis was not done on a daily time stub to compare
 11 what was going on on the ground with the state line
 12 hydrograph.
 13 Q All right. What happens if in a given year the
 14 flow demand that you've calculated in May indicates that
 15 there is an inadequate amount of water flowing past the
 16 state line to meet that surface demand, let's say in May,
 17 but storage releases don't begin until June 15? Using
 18 your analysis, what does that tell you?
 19 A That would tell me that the water users in some
 20 combination are holding off their demand or that the
 21 demand on any given day is less than the calculated
 22 demand. I think those are the two I could think of.
 23 Q So do you have an opinion whether or not the
 24 demand as you've calculated by flow -- and I'm probably
 25 not saying that right -- versus the date when storage

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1 begins to be released is a more accurate indicator of
 2 demand?
 3 A If you are looking at this real time to evaluate
 4 what the condition on the ground is, I believe the
 5 reservoir operation would reflect current operations
 6 better than a calculation that was based on some average
 7 conditions.
 8 Q Okay.
 9 A If that answers your question.
 10 Q Yes. Thank you. Let's go to the next point in
 11 your summary. It's on page 2. It's Number 3. Number 3
 12 begins, "Post-1950 storage occurs in some of the Wyoming
 13 reservoirs every year. Due to the timing of the storage
 14 it would be necessary to develop an administrative plan to
 15 allow this upstream storage prior to filling the Tongue
 16 River Reservoir to prevent impacts to storage in the
 17 Tongue River Reservoir." Did I read that correctly?
 18 A Yes.
 19 Q Except I didn't abbreviate. When you say "Due to
 20 the timing of the storage," can you tell me what you mean
 21 there?
 22 A Yes. This is typical of operations of
 23 reservoirs. In general, most of the storage occurs either
 24 during the off-season or during the runoff. And the
 25 timing of that storage in Wyoming as it relates to the

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1 timing of when it's known that there's a shortage in
 2 Montana on a storage right is earlier, and because it's
 3 earlier, that is the aspect that would necessitate it an
 4 administrative land.
 5 Q So the Wyoming -- if I understand you right, the
 6 Wyoming reservoirs are filling later in the season?
 7 A Earlier in the season. All reservoirs are
 8 filling at the same time, in general. It's just that on a
 9 storage right, you will not know if you've achieved a fill
 10 or not until later in the season.
 11 Q I see. And what you're proposing is that we need
 12 to adopt a proactive plan to deal with the fact that we
 13 only get a complete picture of the filling season after
 14 the fact?
 15 A Well, that is the only way that I can see to
 16 prevent the situation where you preclude upstream storage
 17 until the downstream reservoir has completed its fill.
 18 Q You haven't developed a plan as part of your
 19 rebuttal report that has specific components, right?
 20 A Right. I have not.
 21 Q The second sentence in Section 3 says, "There are
 22 other post-1950 reservoirs in Wyoming for which records
 23 are not obtained that also have impacts on Stateline flows
 24 beyond the evaporation amounts estimated in the SWE,"
 25 which stands for Spronk Water Engineers report. Did I

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1 read that right?
 2 A Yes.
 3 Q What reservoirs are you talking about up here in
 4 the sentence?
 5 A There are several reservoirs listed in our
 6 tabulation of post-1950 reservoirs that have water rights
 7 that are used for irrigation. Some of them are
 8 significant in terms of their size, and those are water
 9 rights -- excuse me -- those are reservoirs for which we
 10 did not evaluate the storage and releases because the
 11 records were not available to us or do not exist.
 12 One that comes to mind as an example is Padlock
 13 Ranch reservoirs. Another that comes to mind is the Windy
 14 Draw Reservoir. There is another reservoir, Bear Claw
 15 Love Reservoir, I believe. Those are the examples, but
 16 they would be on the list of post-1950 storage in my
 17 report.
 18 Q So what is the import of this sentence in the
 19 course of your rebuttal report here?
 20 A That the actual impacts of the filling operations
 21 of those reservoirs and the use of water out of those
 22 reservoirs likely is more than the quantity of evaporation
 23 that I calculated.
 24 Q So you have been conservative in your estimate,
 25 and you're conveying that in this portion of your report?

