

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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IN THE SUPREME COURT OF THE UNITED STATES STATE OF MONTANA, Plaintiff v. STATE OF WYOMING and STATE OF NORTH DAKOTA, Defendants BEFORE THE HONORABLE BARTON H. THOMPSON, JR. SPECIAL MASTER DEPOSITION OF DALE E. BOOK, P.E., VOLUME II July 30, 2013	INDEX EXAMINATION By Mr. Draper By Mr. Kaste 193 REQUESTED PORTIONS OF TESTIMONY PAGE Document production Marked at counsel's request Certified questions EXHIBITS MARKED 389 Deposition notice 389 Deposition notice 390 Rebuttal Expert Report, 8/4/13 (Attached to original and copy transcripts, via hard copy and/or PDF as requested by counsel.) PREVIOUSLY MARKED PAGE (None.)
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. 191 APPEARANCES For the Plaintiff: JOHN B. DRAPER, ESQ,	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?

at the state line using your other indicator, which wasyour flow rate indicator?

A No, it doesn't to the nearest day. We didn't attempt to get that discrete with our analysis, and it was simply to provide a flow rate that we could compare with the state line flow to determine an indicator of when shortages began because the shortages basically occur every year. And so in my view, it's more a question of when does that shortage trigger on the hydrograph. And so the analysis was not done on a daily time stub to compare what was going on on the ground with the state line hydrograph.

Q All right. What happens if in a given year the flow demand that you've calculated in May indicates that there is an inadequate amount of water flowing past the state line to meet that surface demand, let's say in May, but storage releases don't begin until June 15? Using your analysis, what does that tell you?

A That would tell me that the water users in some combination are holding off their demand or that the demand on any given day is less than the calculated demand. I think those are the two I could think of.

Q So do you have an opinion whether or not the demand as you've calculated by flow — and I'm probably not saying that right — versus the date when storage

timing of when it's known that there's a shortage in Montana on a storage right is earlier, and because it's

earlier, that is the aspect that would necessitate it an administrative land.

Q So the Wyoming -- if I understand you right, the Wyoming reservoirs are filling later in the season?

A Earlier in the season. All reservoirs are filling at the same time, in general. It's just that on a storage right, you will not know if you've achieved a fill or not until later in the season.

Q I see. And what you're proposing is that we need to adopt a proactive plan to deal with the fact that we only get a complete picture of the filling season after the fact?

A Well, that is the only way that I can see to prevent the situation where you preclude upstream storage until the downstream reservoir has completed its fill.

Q You haven't developed a plan as part of your rebuttal report that has specific components, right?

A Right, I have not.

Q The second sentence in Section 3 says, "There are other post-1950 reservoirs in Wyoming for which records are not obtained that also have impacts on Stateline flows beyond the evaporation amounts estimated in the SWE," which stands for Spronk Water Engineers report. Did I

begins to be released is a more accurate indicator of

2 demand?

A If you are looking at this real time to evaluate what the condition on the ground is, I believe the reservoir operation would reflect current operations better than a calculation that was based on some average conditions.

8 Q Okay.

A If that answers your question.

Q Yes. Thank you. Let's go to the next point in your summary. It's on page 2. It's Number 3. Number 3 begins, "Post-1950 storage occurs in some of the Wyoming reservoirs every year. Due to the timing of the storage it would be necessary to develop an administrative plan to allow this upstream storage prior to filling the Tongue River Reservoir to prevent impacts to storage in the Tongue River Reservoir." Did I read that correctly?

A Yes.

Q Except I didn't abbreviate. When you say "Due to the timing of the storage," can you tell me what you mean there?

A Yes. This is typical of operations of reservoirs. In general, most of the storage occurs either during the off-season or during the runoff. And the timing of that storage in Wyoming as it relates to the

read that right?

A Yes.

Q What reservoirs are you talking about up here in the sentence?

A There are several reservoirs listed in our tabulation of post-1950 reservoirs that have water rights that are used for irrigation. Some of them are significant in terms of their size, and those are water rights -- excuse me -- those are reservoirs for which we did not evaluate the storage and releases because the records were not available to us or do not exist.

One that comes to mind as an example is Padlock Ranch reservoirs. Another that comes to mind is the Windy Draw Reservoir. There is another reservoir, Bear Claw Love Reservoir, I believe. Those are the examples, but they would be on the list of post-1950 storage in my report.

Q So what is the import of this sentence in the course of your rebuttal report here?

A That the actual impacts of the filling operations of those reservoirs and the use of water out of those reservoirs likely is more than the quantity of evaporation that I calculated.

Q So you have been conservative in your estimate, and you're conveying that in this portion of your report?

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1 2 3 4	letting me ask you a quick question about your prior report, because it does strike me as an important point that we haven't covered, and it's sort of foundational to everything else that you do. Start with that proposition,	DALE E. BOOK, P.E., VOLUME II, STATEMENT OF CHANGES State of Montana v. State of Wyoming Date: July 30, 2013 Trial: October 14, 2013 I. DALE E. BOOK, P.E., do hereby certify that I have read the foregoing transcript, and that said transcript, including any changes made below, constitute a
5	and off you go.	true, accurate, and complete transcript of my testimony.
6	MR. KASTE: And so I have no further questions	Page Line Changes Reason
7	for you, Mr. Book. We're good.	
8	THE WITNESS: Thank you.	
9	MR. DRAPER: Let's take a short break.	
10	(Break from 10:44 a.m. to 10:47 a.m.)	
11	MR. DRAPER: No further questions.	
12	(Proceedings concluded at 10:47 a.m.)	
13	* * *	
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15		
16		
17 18		**************************************
10		
20		Subscribed and sworn to before me this
21		day of,
22		WITNESS
23		Notary Public
24		Commission expires
25		Return to Coffman Reporting & Litigation Support, Inc. 1440 Blake Street, Suite 320, Denver, Colorado 80202
- Veneral Driver, Marie	251	253
	REPORTER CERTIFICATE I, KIRSTEN M. THORNGATE, Registered Professional Reporter, appointed to take the deposition of DALE E. BOOK, P.E., certify that prior to the deposition the witness was sworn by me to tell the truth; that the deposition was taken by	August 6, 2013 JOHN B. DRAPER, ESQ. Montgomery & Andrews 325 Pasco de Peralta P.O. Box 2307 Santa Fe, New Mexico 87504-2307
	me at La Quinta Inn & Suites, 6801 Tower Road, Denver, Colorado 80249 on July 30, 2013. I certify that the proceedings were reduced to typewritten form by computer-aided transcription consisting of 63 pages herein; that the foregoing is an accurate transcript of the proceedings.	Re: State of Montana v. State of Wyoming Deposition of: DALE E. BOOK, P.E., VOLUME II Date Taken: July 30, 2013 'Trial Date: October 14, 2013
	I certify that I am not related to, employed by, of counsel to any party or attorney herein, nor interested in the outcome of this litigation.	Dear Mr. Draper: Enclosed is your copy of the deposition of Mr. Book. Thurk you for officiar to bondle signetyre. After boying
į	I further certify review of the transcript was requested. Attested to by me this 6th day of August, 2013.	Thank you for offering to handle signature. After having the transcript signed and notarized with any correction sheets, if required, please return the originals to us. We will seal them for attachment to the original transcript and send copies to other counsel in this matter.
	KIRSTEN M. THORNGATE, RPR Coffman Reporting & Litigation Support, Inc. Commission expires 11/16/16	This should be accomplished no later than September 13, 2013 pursuant to the Federal Rules of Civil Procedure. Thank you for allowing us to be of service. If you need any further assistance, please contact us.

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