

Gary Fritz

Deposition Transcript

And

Deposition Exhibit 6

NO. 137, Original

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

TELEPHONIC DEPOSITION OF GARY FRITZ

Helena, Montana

April 26, 2012

8:55 - 10:28 a.m.

APPEARANCES:
MONTANA ATTORNEY GENERAL'S OFFICE
P.O. Box 201401
Helena, Montana 59620-1401
By: JENNIFER ANDERS

MONTGOMERY & ANDREWS
325 Paseo de Peralta
P.O. Box 2307
Santa Fe, New Mexico 87504-2307
By: JEFFREY J. WECHSLER

ATTORNEYS FOR THE PLAINTIFF STATE OF MONTANA.

WYOMING ATTORNEY GENERAL'S OFFICE
123 Capitol Building
Cheyenne, Wyoming 82002
By: PETER K. MICHAEL
ANDREW KUHLMANN

ATTORNEYS FOR THE DEFENDANT STATE OF WYOMING.

ALSO PRESENT: Bern Hinckley

1 BE IT REMEMBERED that on April 26, 2012, at the
2 hour of 8:55 - 10:28 a.m. of said day, at the offices of
3 the Montana Department of Justice, 215 North Sanders,
4 Helena, Montana, and before Lisa Lewis Devine, RMR, a
5 Notary Public for the State of Montana, pursuant to Notice,
6 the deposition of GARY FRITZ was taken on oral
7 interrogatories.
8
9 (Deposition Exhibit No. 6 marked for
10 identification.)
11
12 Thereupon,
13 GARY FRITZ,
14 having been first duly sworn to tell the truth, the whole
15 truth and nothing but the truth, testified upon his oath as
16 follows:
17
18 EXAMINATION BY MR. MICHAEL:
19 Q State your full name, please.
20 A Gary Fritz.
21 Q Mr. Fritz, my name's Peter Michael. I'm the
22 chief deputy attorney general for the state of Wyoming, and
23 we've introduced, I think, the other two people here, one
24 on the line, Andrew Kuhlmann, who's an assistant attorney
25 general, and then Bern Hinckley you've been introduced to,

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1 who's sitting next to me. Bern's a consulting engineer on
2 this case.
3 And we're here for the Montana v. Wyoming case,
4 United States Supreme Court case, correct?
5 A Correct.
6 Q And we sent you a notice of deposition through
7 Montana's attorneys, and in that notice it asks for any
8 files that you might have relevant to the Yellowstone River
9 Compact that would have been something you had personally
10 Was there anything that you came up with?
11 A Right. Nothing.
12 Q But we do have a lot of documents from Montana's
13 files, we've been document sharing, so we'll have some
14 stuff to show you throughout the deposition. And what my
15 plan is, we've estimated the morning, and I suspect we'll
16 be able to meet that. I'm not sure, but I think we will.
17 And the other thing that we're going to do -- one
18 thing to just be aware of is, on your answers, nodding of
19 the head or the uh-huhs don't work, so --
20 A Okay.
21 Q -- yes, no, and I'll prompt you if you forget
22 that.
23 A Thank you.
24 Q It's okay. The other thing is, just to kind to
25 alert you, a lot of -- what we've tried to do is, a lot of

1 the documents that were planned to have you look at and
2 discuss with us are on paper. So I can give you a paper
3 file. I tend to have a copy on a computer, and everybody
4 else does.

5 The one thing that we haven't done on paper is
6 the annual reports, because they're so voluminous. So I
7 think we will ask you about some of the '80s annual
8 reports, and I think '90, too, probably. So what we'll do
9 is make sure you have a computer to look at and follow
10 along with me as we ask questions about that, all right?

11 A Yes.

12 Q Let's start with some background. And I will
13 tell you this: Mr. Stultz, we spent some time with him
14 yesterday doing an exhibit, that's Exhibit 5, an
15 organizational chart, and we'll try to work from that, and
16 I think that will save us some time. I'll be asking about
17 that.

18 But let's start with your -- we've already marked
19 your resumé that you provided, it's Exhibit 6, and I'm
20 going to put that in front of you and ask you questions
21 about that.

22 Do you need a copy, Jeff, of this?

23 MR. WECHSLER: Yes, please. Thank you.

24 Q (BY MR. MICHAEL) And what I want to do here is
25 basically just set some basic time frames that we can work

1 with. Your resumé shows that you were a Water Resources
2 Division administrator for the DNRC for '79 through '97,
3 correct?

4 A Correct.

5 Q I take it that would be part of '97, correct?

6 A Correct.

7 Q And we'll -- we can look in the annual reports.
8 You were -- you became the Yellowstone River Compact
9 commissioner for Montana, were appointed to the position in
10 '79, right?

11 A To be honest, I don't remember the first year I
12 was appointed as the commissioner.

13 Q Okay. Let's --

14 A But it's --

15 Q Okay. Well, let me -- let me tell you, I'm
16 looking at the 1979 annual report, and I just looked at
17 '78. '78 shows that Orrin Ferris attended the meeting in
18 '78, but then we have a '79 annual report that shows a
19 special meeting in Billings on July 3rd of '79, and it
20 shows that you attended as Montana's commissioner. Is that

21 --

22 A Sounds reasonable.

23 Q Reasonable? George Christopoulos was there on
24 behalf of Wyoming?

25 A Right.

1 Q So we'll try to work within those dates. I guess
2 one of my questions was, this annual report -- do you
3 recall that the annual reports were given to -- actually,
4 there was a portion of those that was actually in the form
5 of a letter to the governors of the three states, Wyoming,
6 North Dakota and Montana. Do you recall that?

7 A In general, yes.

8 Q And I notice in the '79 annual report that the
9 governor was Thomas Judge. Does that make sense?

10 A Yes, it does.

11 Q And could you give me just a rundown between '79
12 and '97 which governors were in office while you were the
13 division administrator? Memory test here.

14 A Thomas Judge, let's see, Stan Stevens,
15 Judy Martz, Marc Racicot. And who's the current one?

16 Q Well --

17 A Brian Schweitzer. That's -- off the top of my
18 head, those are the ones I can recall.

19 Q Well -- sorry, go ahead. I don't want to cut you
20 off.

21 A There must be someone between Tom Judge and
22 Stan Stevens, but I don't remember that.

23 Q The order was Judge, somebody, Stevens, Racicot,
24 Martz? Is that the order?

25 A No, Judy -- yes, I think so.

1 Q When you left the administrator position in '97,
2 was Racicot the governor at that time?

3 A Correct. As far as I recall, I think so.

4 Q So Martz and Schweitzer would have been governors
5 when your successor, Jack Stultz, was division
6 administrator?

7 A Correct.

8 Q And while you were division administrator --
9 let's go to another exhibit. We'll work from this, because
10 this is Deposition Exhibit 5, and that was drawn up
11 yesterday by Jack Stultz. Of course, that applies to a
12 period after you were -- we have a date on that, in fact.
13 I asked him what the org chart looked like in May 18th of
14 2004, which would have been seven years after you left the
15 position as division administrator.

16 But, you know, he built it down from the governor
17 to various agencies -- cabinet-level agencies, and DNRC
18 being one of those, and then we worked our way down from
19 the middle column, if you'll see, from DNRC to the
20 sub-bureau -- or the bureaus within DNRC?

21 A Uh-huh. Yes.

22 Q And I wanted to ask you -- and you were
23 administrator for a much longer period of time than he was,
24 and so I know that this will vary. I suspect that there
25 may have been organizational changes, but I wondered if you

1 could generally tell me how close the organizational
2 structure was, while you were division administrator, to
3 what he wrote out for us yesterday on Exhibit 5.

4 A It had changed some over the years, but what Jack
5 did is very close to what it was at the end of when I was
6 administrator of the Water Resources Division. Very, very
7 similar.

8 Q You had a Water Rights Bureau, correct?

9 A Correct.

10 Q How about a Projects Bureau?

11 A Correct.

12 Q And did you have -- when you left, were there
13 regional offices?

14 A Yes. While I was administrator, we established
15 the regional offices.

16 Q Do you recall about when that occurred?

17 A No, I don't.

18 Q Mr. Stultz said he had been director of regional
19 offices at one point.

20 A That's correct.

21 Q That was on his resumé.

22 A Correct.

23 Q And were there regional -- he said that when the
24 regional offices were established, at the beginning that
25 started with a director of regional offices in Helena.

1 was the chief of the Water Rights Bureau for a very long
2 time. And I don't remember who was the bureau chief before
3 Larry Holman.

4 Q But there was another one that served under you?

5 A I really don't remember for sure.

6 Q Okay, is Larry Holman around somewhere?

7 A He lives in the Helena valley.

8 Q Was there a State Projects Bureau under you
9 during your tenure as administrator?

10 A Yes.

11 Q And who were the Project Bureau chiefs?

12 A When I left DNRC, Glenn McDonald was the chief of
13 the Water Projects Bureau.

14 Q Did he have a predecessor?

15 A As I recall, the predecessor was Rick Bondy.

16 Q And we'll -- I think we'll see a few documents
17 where Rick Bondy appears back in the '80s, so -- but I
18 wasn't sure of his position, and maybe it shows up in
19 there.

20 A While I was administrator, Rick held at least two
21 different positions. One was chief of the Water Projects
22 Bureau, the other was, oh, kind of an engineer overseeing
23 all of the engineering aspects in the division. So his
24 role changed slightly while I was there.

25 Q Mr. Stultz and Mr. Kerbel mentioned Lawrence

1 A Yes.

2 Q He had one predecessor and then himself; is that
3 correct?

4 A Correct.

5 Q And then after that, that position was
6 discontinued when he became director of the water division?

7 A That's correct, uh-huh.

8 Q So, I guess Mr. Stultz would have been under your
9 direct supervision for those years when he was the regional
10 office administrator, correct?

11 A Correct.

12 Q Who was the -- was there a -- or a Water Rights
13 Division the entire time that you were the division
14 administrator?

15 A There was a Water Rights Bureau.

16 Q Bureau, I'm Sorry.

17 A Yes.

18 Q Mr. Stultz told us that when he was water rights
19 -- or water resources administrator, that his Water Rights
20 Bureau chief was Terry McLaughlin. Did Terry also serve
21 under you?

22 A No.

23 Q Could you give the names, if you can recall, who
24 the Water Rights Bureau chiefs were under you.

25 A Before Terry, it was Larry Holman. Larry Holman

1 Siroky, apparently who still works as bureau chief of water
2 operations. Was he Water Operations Bureau chief under
3 you?

4 A Yes, he was, but not the entire time. I don't
5 recall what Lawrence did previous to being chief of the
6 Water Operations Bureau. But he'd been chief of the Water
7 Operations Bureau for quite some time.

8 Q We deposed Rich Moy last week, and he testified
9 that he became Water Management Bureau chief in '81 and
10 held that position all the way through the rest of your
11 tenure; is that correct?

12 A As far as I recall, that's correct.

13 Q And he said that in the '80s, he was heavily
14 involved in Yellowstone River Compact issues, doing
15 research. We went through some of the papers that he wrote
16 about compact interpretation, that sort of thing. Is that
17 correct?

18 A That's correct.

19 Q He also said that in the '90s, he had other
20 things that were more pressing and generally got away from
21 it, didn't attend many, if any, meetings of the compact
22 commission. Is that consistent with your memory?

23 A I don't recall. I don't remember chronologically
24 how Rich's involvement changed during that time.

25 Q Of course, you would have only known through '97,

1 because that's when you left the state's employ. Do you
2 recall Rich's -- was -- did he have a predecessor as chief
3 of the Water Management Bureau for the few years before
4 '81, when you were administrator?

5 A I don't have a good recall of that. As I recall,
6 that bureau may not have existed before Rich. That might
7 have been created about that same time.

8 Q Are there other bureaus that we're missing? Was
9 there any reorganization, so if we go back in time, this
10 chart doesn't exactly reflect how things worked?

11 A Again, as I recall, that -- the basic chart is
12 probably applicable through most of my tenure.

13 Q And during your entire tenure, I take it there
14 was a -- I'm trying to think of the title, but you had a
15 superior that was the head of the DNRC, correct?

16 A Correct.

17 Q What was the title of that?

18 A That would be the department director.

19 Q And who were your department directors that you
20 worked under?

21 A This does take me back, I must say.

22 Q You know the people under you better than the
23 ones above you, it sounds like.

24 A Ted Doney hired me. John Orth was director of
25 the department for a few months. Gary Weeks was the

1 Q Your resumé has four years, from '75 to '79, as
2 Water Planning Bureau chief. And I was looking at the
3 chart that Stultz wrote, and there isn't a particular
4 bureau identified as water planning. Did that morph into a
5 new name or --

6 A Morphed, correct.

7 Q Which one is that now?

8 A That morphed into the Rich Moy bureau, the water
9 -- it was water operations.

10 Q Water management?

11 A Water management, correct.

12 Q You were one step removed from the governor's
13 office as division administrator, correct?

14 A That's correct.

15 Q Did you have contact with the various governors
16 from time to time?

17 A Occasionally, and probably -- yes, occasionally.

18 Q Do you recall any direct contacts with the
19 governor -- a governor involving Yellowstone River Compact
20 Commission issues?

21 A I don't remember one way or the other.

22 Q How active were the -- by the way, is Bud Clinch
23 still alive?

24 A Yes.

25 Q And do you know where he lives?

1 director of the department for a while. Let's go backward.
2 Karen Barclay, Bud Clinch, Karen Barclay, Neil Barry, and
3 that might -- I'm losing -- I might be losing a step here,
4 but then John Orth, Ted Doney. I might be missing one or
5 two there, but...

6 Q But the bookends on the early end was Bud -- Bud
7 Clinch was on the far end, most recent, correct?

8 A Correct.

9 Q And on the -- the first was Ted Doney?

10 A Correct.

11 Q With four or five in between.

12 A Correct.

13 Q And Ted Doney, I take it -- he was an attorney,
14 correct?

15 A That's correct.

16 Q And I notice -- we were looking at documents at
17 DNRC's building -- there's a library named after him,
18 correct?

19 A That's -- that might have happened since I've
20 been there. He was a friend of mine, and he passed away,
21 and so there was probably some motivation there to remember
22 him permanently.

23 Q Is he a longtime DNRC director?

24 A He was a longtime state employee servant kind of
25 person, yeah, so...

1 A I don't. I bumped into him at the gas station,
2 oh, a few months ago -- oh, yes, I do. He also lives in
3 the Helena valley. I've been to his place.

4 Q And how about his predecessor? I forget the
5 name. It was a woman.

6 A Karen Barclay.

7 Q Do you know where she is?

8 A As far as I know, I haven't talked to Karen in
9 some time. She married the -- a judge in Billings, and as
10 far as I know, she still lives in Billings.

11 Q How about the same question for to her
12 predecessor.

13 A I don't remember. I don't know.

14 Q And you know Ted Doney's passed away.

15 A (Nods head.)

16 Q Is there anybody -- any of those others that you
17 have any idea where they are?

18 A I don't.

19 Q Have you ever given testimony on any matters
20 relating to the Yellowstone River Compact, a deposition or
21 any kind of a proceeding, court proceeding?

22 A No, not that I recall.

23 Q Just a general question about your CV that you
24 provided. Is the CV accurate?

25 A To the best of my knowledge, yes.

1 Q From '74 to '76, you were water planner with the
2 DNRC, and your CV says that you were responsible for all
3 water planning activities in the Yellowstone River basin.

4 A Correct.

5 Q Can you give me an idea -- I know it's a long
6 time ago -- some idea of kind of what that entailed, what
7 kinds of planning activities?

8 A The primary thing that I remember about that
9 period was the water reservation process, because at that
10 time Montana had a unique water rights effort called --
11 whereby government entities could apply for and receive
12 reservations for future use.

13 And the primary job I had when I was in that
14 position was coordinating that water reservation process.
15 In particular, we encouraged the conservation districts to
16 apply for those water reservations for agriculture
17 purposes. And while I was in that job, I also was one of
18 the primary authors of the environmental impact statement
19 that was written for the applications received for water
20 reservations.

21 So in terms of the priorities -- or the primary
22 things that I did when I was in that position, the water
23 reservations would have to be at the top.

24 Q And then your next job, Water Planning Bureau
25 chief, one of the elements noted on the second page of your

1 A I signed it that day, correct.

2 Q Well, I just wanted to go through a few things on
3 the first page, and then maybe to follow up with some of
4 the statistics that you included. You made some
5 observations. You were enclosing, you said, "our estimates
6 of irrigated lands, irrigation requirements, and number of
7 reservoirs in the Montana portion of the Tongue River
8 basin." That's what you said, correct?

9 A Correct.

10 Q Do you remember what the purpose of providing
11 that kind of information to Mr. Scott was?

12 A I don't remember.

13 Q And you copied it to a Wyoming -- Wyoming's
14 commissioner, Christopolos, right?

15 A Correct.

16 Q The second sentence, you said, "Since
17 adjudication is not complete in the Tongue River basin it
18 was impossible to accurately determine pre- and post-1950
19 water use and rights." And we've talked in other
20 depositions, the adjudication of the Tongue River basin is
21 getting closer to completion right now, but it was accurate
22 that it was not complete at the time, correct?

23 A I assume that's correct.

24 Q Do you recall that there had been a 1914 decree,
25 so that the rights up to 1914 had been adjudicated?

1 CV is "Complied and published irrigated acre maps for
2 Montana." What did that entail?

3 A I'm not remembering the methodology. I remember
4 Glen Smith, who was an ag-type person, was responsible for
5 that, or at least for a portion of it. And I don't
6 remember the methodology, but I remember he was trying to
7 basically compile that irrigated acreage for the state.

8 Q What was the purpose of that program, if you
9 recall?

10 A I do not recall.

11 Q Let's see North Dakota 1874. This is a 1978
12 letter, so I wouldn't ask you this question cold, okay?
13 Handing you North Dakota 1874, what is that? It's a
14 letter, but who's it from and to, and what's the date?

15 A It's a letter to Walter Scott from Gary Fritz,
16 chief of the Water Planning Bureau at the time.

17 Q So that was from you to Walter Scott, right?

18 A Correct.

19 Q And he was the federal commissioner on the
20 Yellowstone River Compact Commission at that time, wasn't
21 he?

22 A I assume so.

23 Q And you wrote the letter on April 26th, '78?

24 A Correct.

25 Q Or you signed it that day.

1 A I don't recall that. It would be my general
2 comment, as in most places in the state, there were
3 individual decrees -- water right decrees that covered
4 particular areas, even though there was not a comprehensive
5 adjudication in that basin.

6 Q Why was it impossible to accurately determine
7 pre- and post-'50 water use and rights without an
8 adjudication?

9 A Well, the purpose of the adjudication is to
10 determine what those water rights are. And in those
11 specific areas where there is an adjudication, that's been
12 adequately addressed, but until that adjudication is
13 completed, there -- it's -- the precise quantification of
14 those rights along with a priority date has not yet been
15 legally determined.

16 Q You went on to say that you did make --
17 apparently, it appears you made estimates -- and we'll take
18 a look at that in a minute -- of pre-1950 water use using
19 irrigated land acreage from water resource surveys. Would
20 those have been the county surveys that Montana had done in
21 the '40s and on up into the '60s?

22 A Correct.

23 Q How detailed were those surveys? I mean, did
24 they have survey maps you could base your estimates on?

25 A I'm struggling with my memory of those. I mean,

1 I -- I can see Glen Smith in his office with these water
2 resource surveys stacked around him, so...

3 Q I recall them being the yellow --

4 A They're different colors --

5 Q Oh, different colors.

6 A -- from what I'm remembering now. Yes. Other
7 than that, my memory of those water resource survey -- it's
8 interesting -- it's an interesting process, because I
9 haven't thought about water resource surveys for at least,
10 I don't know, 15 or 20 years.

11 Q Right.

12 A So it's a little difficult for me to remember and
13 respond to questions about those. I really don't remember
14 much about the surveys in terms of methodologies and how
15 accurate they were, those kinds of things. I just don't
16 remember.

17 Q As of '78, were some of the surveyors still alive
18 to where you could actually ask them questions: How did
19 you do this, how did you map this, how did you do that?

20 A Again, I don't remember -- the only person that I
21 associated with the surveys at this point is Glen Smith,
22 who was a colorful character.

23 Q Is he deceased?

24 A I believe so.

25 Q Do you recall -- and we'll have some more

1 documents, but just generally, do you recall that here in
2 1978, and then, of course, you got promoted the next year
3 to be the administrator, that there was an effort to start
4 figuring out under the Yellowstone River Compact how to
5 allocate water on the V(B), which would have been the
6 percentage allocations of post-'50 water?

7 A I don't remember precisely when that effort was
8 started. I remember, generally speaking, over time, of
9 course, we were interested in accomplishing that, and we
10 wanted to try to do that. I don't remember specific dates
11 about when we might have started or progressed along the
12 way.

13 Q This document we're looking at only refers to the
14 Tongue River, and I was wondering if you recall any effort
15 to do the same sort of thing on the Powder river.

16 A I don't recall.

17 Q North Dakota 2300. I'm actually giving you a
18 document that was a year earlier, so I'm out of order
19 already. I'm trying not to do that.

20 A That's okay.

21 Q I just want to make you're aware of that. This
22 isn't a trick or anything. This is some minutes of a
23 special works session of the Yellowstone River Compact
24 Commission April 18th, 1977, correct?

25 A Correct.

1 Q And it says it happened in Sheridan, Wyoming.
2 You're listed as an attendee. Do you see that?

3 A I do.

4 Q And this would have been several years before you
5 became division administrator, but you were the bureau
6 planning chief at the time, right?

7 A Correct.

8 Q I'm trying to find -- by the way, at that time
9 Orrin Ferris would have been your compact commissioner,
10 right?

11 A That's correct.

12 Q So, is it fair to say that in '77, you were
13 starting to work on some compact -- Yellowstone Compact
14 issues for Montana along with Mr. Ferris?

15 A Yes.

16 Q I noted something on the second page, which is
17 2301. You'll see a heading there. It says, "Priority
18 Dates"?

19 A Yes.

20 Q And it indicates that Mr. Ferris stated, "there
21 were no firm constraints in the law for complying with the
22 requirement to establish use of the water.
23 Administratively, the Montana Dept. of Natural Resources
24 can set limits on how soon someone has to perform before
25 that priority date is lost."

1 Not necessarily at this meeting, but in general,
2 do you recall that being the case, that Montana DNRC could
3 set limits from the time a water user in Montana submitted
4 a claim and the time they would have to put the water to
5 beneficial use in order to preserve the water right and the
6 priority date?

7 A That's been a long time ago, and the law has
8 changed over the years. I'd have to say I don't remember
9 at that point in time how that might have worked.

10 Q Just hang on to that document. I just want to
11 double-check that I've covered the -- I had one other
12 question I had, but I have to find the place to refer you
13 to. There is a discussion beginning on Page 2302 of
14 supplemental water. Do you see that heading?

15 A Yes, I do.

16 Q Do you remember what that issue was?

17 A In general, yes.

18 Q Could you tell us?

19 A Assuming that a person's water -- that they're --
20 let me back up. In general, the question of supplemental
21 water rights is whether or not the water-right holders are
22 fully utilizing the extent of their water right and whether
23 or not they could use supplemental water rights that are --
24 supplemental water that's still within the framework of
25 their existing water right.

1 Q An example I've tended to use was, a reservoir
 2 gets built and stores some water in priority upstream of
 3 the pre-1950 water right, and you have a pre-1950 water
 4 rights that's unable to irrigate, say, after a certain date
 5 with their direct flow right, because there's not enough
 6 water in the system or at least natural flow in the stream
 7 to satisfy that right.

8 Is that the kind of thing that you talked about
 9 that a reservoir could be a source of that supplementation
 10 of the lands that were irrigated under the pre-'50 right?

11 A I don't recall.

12 Q Wyoming 18645. We'll keep that one in front of
 13 you --

14 A Okay.

15 Q -- because I think it kind of connects to the
 16 next one, just start building a little bit of a chronology
 17 here.

18 There's that one. That's a letter of June 20th,
 19 1977 from Walter Scott to you and to Clem Lord of the
 20 Wyoming State Engineer's Office; correct?

21 A Correct.

22 Q And long story short, it appears that there's a
 23 work group being put together to look at compact issues,
 24 and you were to be on it.

25 A Correct.

1 A Right.

2 Q And in fact, that's happened. There's been a lot
 3 of coal production in these 35 years, correct?

4 A Yes.

5 Q And do you recall that there was concerns in the
 6 Powder River basin area, in those coal field areas, you
 7 know, on up into Decker and so forth, both states, about
 8 what's this going to do to the water supply? Is that
 9 correct?

10 A Yes.

11 Q And so you had the Yellowstone Compact in place,
 12 which, obviously, there was existing ag use in the area,
 13 right? In that basin, there was existing agricultural use?

14 A True.

15 Q And so do you recall that there was a concern now
 16 that there'd be a large increase in diversions of water
 17 that would go to post-1950 water rights for industrial
 18 development for coal, energy development?

19 A Yes.

20 Q Do you think that was kind of the instigator of
 21 this process of starting to look more closely at the
 22 compact to see if it worked -- or will work?

23 A I appreciate the leading question. I can't -- I
 24 can't confidently say one way or the other. I really don't
 25 know.

1 Q And you mentioned Rick Bondy from Montana, and
 2 there's the name, right?

3 A Correct.

4 Q And it says that the work group was assigned to
 5 discuss and attempt to resolve key issues. You've had a
 6 chance to look a little bit at that meeting minutes from
 7 the previous meeting. Can you -- does that refresh your
 8 memory about what the key issues may have been, if you
 9 remember?

10 A It's very difficult for me. I mean, yes, I was
 11 deeply involved back then. It's been a long time ago. I
 12 mean, I just don't remember the specifics of what was going
 13 on back then, let's see, 23 -- 35 years ago.

14 Q Yeah.

15 A I just don't remember.

16 Q Well, let me ask you a leading question maybe to
 17 help --

18 A Okay.

19 Q -- as we do when witnesses don't remember
 20 sometimes.

21 A That's fair.

22 Q In the late '70s, do you recall there was a lot
 23 of concern about a coal boom on its way --

24 A Right.

25 Q -- sub-bituminous Wyoming and Montana coal?

1 Q I appreciate --

2 A I just don't remember.

3 Q That's fine. I appreciate your honesty. George
 4 Christophulos has long since passed away. Some of these
 5 folks are still around, but you're still here, so we try.
 6 Okay?

7 I've got a list of documents we've dredged out of
 8 the archives in three different states about the early '80s
 9 back and forth. Let me just ask you a general question.
 10 Do you remember a concept of getting some funds from the
 11 Old West Commission to pay for some studies?

12 A I remember the Old West Commission, and we may
 13 have -- I really don't remember. I just don't remember any
 14 specifics of seeking funds from the Old West Commission.

15 Q Montana 13736.

16 A If there's kind of a stopping point at some
 17 point, I do need to take a little break.

18 Q Absolutely.

19 A Nothing urgent, but in a few minutes.

20 MR. MICHAEL: We can stop right now. Go ahead.
 21 Let's go off.

22 (Whereupon, a recess was taken at 9:42 a.m. to
 23 9:52 a.m.)

24 Q (BY MR. MICHAEL) This is Wyoming 13736. And
 25 that's a memorandum from Rich Moy to you June 1st, 1981.

1 correct?

2 A Correct.

3 Q And the -- it involves -- it says it involves the

4 administration of the Yellowstone River Compact, right?

5 A That's what it says.

6 Q And at that time, you were Montana's compact

7 commissioner.

8 A Correct.

9 Q And I wanted to just ask you about something on

10 the third page, towards the bottom, the next to the last

11 paragraph. Mr. Moy wrote to you in this memo: "I think it

12 is pretty clear that the compact commission has the power

13 to administer post 1950 rights and to protect pre 1950

14 rights as stated in Article V paragraph A."

15 Then he goes on: "This would strongly suggest to

16 me that post 1950 rights in Wyoming could be shut down to

17 satisfy pre 1950 rights in Montana. The junior pre 1950

18 rights in Wyoming could not be or it would be very

19 difficult to shut them off to protect senior pre 1950

20 rights in Montana."

21 Have I read that correctly?

22 A Yes.

23 Q The second sentence about post-'50 rights in

24 Wyoming could be shut down to satisfy pre-1950 rights in

25 Montana, during your tenure as compact commissioner for

1 stationed in Helena, correct?

2 A Yes.

3 Q Was there a time when -- well, we had -- you had

4 said earlier on the org chart that the regional offices,

5 when they were first established, there was, at the

6 beginning, a region -- a director of the regional offices

7 in Helena.

8 A Correct.

9 Q Or I should say bureau chief. Maybe it wasn't a

10 bureau. What was it called?

11 A That's a good question. It was probably regional

12 office supervisor or something like that.

13 Q And so I take it, during your entire time as

14 division administrator, there was always a step -- a person

15 between you and Keith Kerbel in the organizational chart.

16 A That's correct. To my best recollection, that's

17 correct.

18 Q Do you recall the name of the predecessor to

19 Stultz who held that position? He told us yesterday, and I

20 don't have my notes handy on that.

21 A I don't remember.

22 Q Maybe I do have my notes. Let me check. I take

23 terrible notes anyway. Sorry, I can't help you. It will

24 be in the transcript of his deposition.

25 A Uh-huh.

1 Montana and director of the Water Resources Division, did

2 you ever make a claim, call, demand on Wyoming to do just

3 that, shut down water rights in order to satisfy pre-1950

4 rights in Montana? And this would include oral or written

5 calls or demands.

6 A I don't remember one way or the other.

7 Q Do you ever remember talking to the governor of

8 Montana about doing that, about being authorized to do

9 that?

10 A I understand the question. I don't remember.

11 Q Do you remember talking to somebody within

12 Montana -- anybody within Montana State government about

13 them doing it or having done it?

14 A Sorry, I just -- I don't remember one way or the

15 other.

16 Q I take it that Keith Kerbel was a regional -- was

17 in charge of the Billings regional office for part of the

18 time that you were division administrator; is that correct?

19 A Yes.

20 Q And for part of that time, he would have been one

21 step removed from you on the organizational chart, right?

22 In other words, he had either Jack Stultz or Stultz'

23 predecessor?

24 A That's correct.

25 Q But Stultz or Stultz' predecessor would have been

1 Q Do you recall a time when you observed Mr. Kerbel

2 obtaining any kind of direct authorization from the

3 governor of Montana to do anything with regard to the

4 Yellowstone River Compact? In other words, some kind of a

5 letter or a meeting or something directed from the

6 governor's office directly to Mr. Kerbel to do something

7 with respect to the Yellowstone River Compact.

8 A Yeah, I just don't remember.

9 Q If something like that occurred, do you think in

10 the normal course of events that you would have been aware

11 of it at the time, even if you've forgotten it since?

12 A That's probably logical, yes.

13 Q Sometimes we can't remember very much about what

14 was talked about, but just let me ask you about some

15 people. Sometimes you can remember a face or a

16 personality. Do you remember working with Lou Allen --

17 he's now deceased -- from Wyoming on compact issues?

18 A I saw his name on one of the documents, and I

19 recall the name. I cannot put the face with the name. I

20 just don't remember.

21 Q When you say you saw the name on one of the

22 documents, would it be in preparation for this deposition?

23 A No, I think I saw it -- I say Lou Allen's name

24 somewhere in one of these documents, as I recall. When I

25 saw it, I thought, I don't remember that person.

1 (Indicating.)
 2 Q What did you do to prepare for this deposition,
 3 other than show up this morning?
 4 A I -- it's a very good question. I went online to
 5 the Yellowstone River Compact Commission's website. I went
 6 to the last annual meeting minutes that I attended, which
 7 was 1996. At that meeting, we adopted a conflict
 8 resolution rule that I signed and was probably instrumental
 9 in preparing, actually. I had no recollection of it.
 10 Had you asked me, "Do you remember that conflict
 11 resolution rule that you adopted in 1996 at the annual
 12 meeting?" I'd have said, "Nope." And at that time --
 13 that's -- and I also scanned through the compact, and
 14 that's my preparation for this deposition.
 15 Q And do you recall your counterpart at that time
 16 was Jeff Fassett from Wyoming?
 17 A I'm trying to remember whether it was Jeff or Pat
 18 at that time, but...
 19 Q Pat?
 20 A Tyrrell.
 21 Q Well, Pat --
 22 A That's right, it was Jeff. I remember his
 23 signature on the --
 24 Q Yeah, because Pat didn't become Wyoming's
 25 commissioner until 2002, I believe.

1 out with Mr. Hinckley. We may be close to being done, but
 2 I want to make sure I haven't missed anything.
 3 (Whereupon, a recess was taken at 10:04 a.m. to
 4 10:12 a.m.)
 5 MR. MICHAEL: Back on the record, then.
 6 I just want to follow up on a question I asked a
 7 little bit ago. We talked about the possibility that you'd
 8 met with the governor about Yellowstone Compact Commission
 9 matters, and you said you didn't recall ever doing that.
 10 Is that a fair representation?
 11 THE WITNESS: What I thought I said is, "I don't
 12 recall one way or the other," but...
 13 Q (BY MR. MICHAEL) Okay. All right. So -- and
 14 that's the genesis of my follow-up. If that had happened
 15 between 1978 and 1997, if there had been an event where
 16 Montana was asking Wyoming to curtail water users in the
 17 water year, Wyoming irrigators were going to lose the
 18 ability to use water and stop irrigating on behalf of
 19 Montana irrigators or other water users, and that was
 20 something that you had worked with the governor on, would
 21 you remember that?
 22 A One would think so. But that's why I'm sitting
 23 here trying to remember any discussions with a governor. I
 24 don't -- I just don't remember one way or the other.
 25 Q How about if the discussions were between you and

1 A Yeah.
 2 Q So their dispute resolution, working that out
 3 with Wyoming, pretty major thing, do you recall?
 4 A I don't remember.
 5 Q Oh, okay. Well, you did go to the annual reports
 6 to look at those. Is that -- well, let me just preface
 7 that question. Mr. Moy said last week he felt that when he
 8 became chief of the Water Management Bureau and then began
 9 working with you on compact issues in the '80s, that he
 10 made an effort to improve the annual reports and make sure
 11 they reflected more of what happened at the meetings and
 12 weren't just copycats of prior years. Do you recall that?
 13 A I do not.
 14 Q When you looked at the '96 report online, what,
 15 yesterday, day before, somewhere --
 16 A Last week.
 17 Q -- last week, did you have an opinion at the time
 18 when you were Montana's commissioner as to how accurate the
 19 annual reports were?
 20 A No.
 21 Q Do you recall, when those reports would be
 22 drafted and finalized, what kind of review you would give
 23 them as Montana's commissioner?
 24 A I don't remember.
 25 MR. MICHAEL: I'm going to take a minute and step

1 your boss, the head of the DNRC, on that kind of an issue,
 2 an issue of actually asking Wyoming to stop allowing some
 3 of its irrigators to keep on irrigating in summer, is that
 4 something you would remember, that conversation?
 5 A The best I can respond is in a general way, and
 6 that is that we knew there were shortages in Montana; and
 7 that, in general, we were -- we spent a lot of time trying
 8 to come to the point where we would could administer the
 9 compact and work with Wyoming in developing such a system
 10 to do that, and were never successful at that; and that we
 11 had a general feeling that Wyoming saw -- thought that it
 12 would be in their best interests not to do that; and that
 13 -- so we were pushing a rock up the hill.
 14 That's -- so that's the general feeling about how
 15 we tried -- what our views on trying to administer the
 16 compact and deal with whatever shortages there might be in
 17 Montana.
 18 Q And when you say, "we," was Dan Ashenberg, now
 19 Dan Buffalo, involved in that effort?
 20 A Yes.
 21 Q Can I have Wyoming 1125? This is a big one.
 22 This is a big document, so I hope I have my pages selected
 23 for you. It was so big, I didn't staple it, so we'll try
 24 not to lose it. You can take the clip off. I think the
 25 pages are probably paginated.

1 And that's a report -- draft report by Dan
2 Ashenberg dated November 1983, while he worked in your --
3 under your supervision, right?

4 A Correct.

5 Q And it's titled "A Cooperative Plan to Administer
6 the Yellowstone River Compact." Do you have recollections
7 of this report? And I just mean the existence of it, not
8 anything about it.

9 A Yes.

10 Q Was it important in that effort you just
11 described, to work on administrative issues with Wyoming,
12 to have Ashenberg work up a report and have a concept?

13 A I'm struggling a little with how to characterize
14 this. I mean, had you asked me: "Tell me the major
15 documents that were prepared to help you discuss the
16 Yellowstone River Compact," I would not have remembered Dan
17 Ashenberg's report.

18 Looking at it a copy of it, yeah, I remember Dan
19 worked on this and that we had discussions about this,
20 obviously, but I don't remember any of the specifics of it.
21 I don't recall how important it might have been relative to
22 other reports that we discussed in terms of how we
23 approached the compact questions.

24 Q Well, Rich Moy was a member of your group that
25 was interested in compact issues, correct?

1 interested in the whole thing, actually. Would you read
2 both paragraphs to yourself, and I'll have a few questions
3 for you. This is under the heading "Analysis of the
4 Compact," correct?

5 A Correct.

6 Q Did you -- that's a summary of his analysis. Is
7 that something you -- those observations in those two
8 paragraphs, is that something that you generally agreed
9 with at the time, do you recall?

10 A I don't recall.

11 Q When you were administrator of the Water
12 Resources Division, were you involved in discussions about
13 building projects at the state line? For example, a
14 project -- or above the state line, in fact, in Wyoming,
15 say at Moorehead or maybe on Clear Creek in Wyoming, to
16 store water for Montana use, was there any discussion of
17 those items?

18 A Now that you mention something like Moorehead,
19 for example, yes, I remember we generally had discussions
20 like that, but other than that, I really don't remember.

21 Q Do you know where Dan Buffalo lives now?

22 A I don't.

23 Q Any estimate of how old he would be?

24 A Well, he must be in his 50s.

25 Q So he was a young kid.

1 A Yes.

2 Q And Ashenberg obviously was; is that true?

3 A Sure.

4 Q Were there others that you can recall?

5 A Chuck Dalby was involved at some point, but I
6 don't recall the time period. Larry Cawlfeld was involved
7 at some point as well.

8 Q Do you --

9 A I'm trying to think of the hydrologists that
10 might have been.

11 Q Could you spell that name?

12 A C-a-w-l-f-i-e-l-d. I think he was involved. I'm
13 actually more giving you the name of the hydrologists that
14 worked in the bureau than specifically remembering whether
15 or not they were involved with compact issues.

16 Q You said you had a chance to review the compact
17 last week?

18 A I -- what I said was that I scanned the compact.

19 Q Okay. Well, I have one here that you can follow
20 if you want, but I'm more interested in what Mr. Ashenberg
21 says and see if you recall anything about this. And we're
22 just going to look at Page 1. You go through the table of
23 contents to get to Page 1 of the report. Are you there?

24 A Yes.

25 Q The paragraph I'm interested in -- well, I'm

1 A He was.

2 Q You were pretty young, too, back in 1981, right?

3 A Well, I don't remember.

4 Q That tells you it was a long time ago.

5 A Yeah.

6 Q I wish I remembered being a young kid.

7 A I know.

8 Q Let me just see, I may have a follow-up on that,
9 but probably not. Actually, let's do turn to Page 5 of
10 that report. I think that's the right page. The second
11 paragraph on that page, Mr. Ashenberg says, "This
12 management plan stresses the importance of measuring and
13 keeping accurate records of water use. Without this data
14 the Yellowstone River Compact cannot be administered.
15 Therefore, this question of determining actual water use
16 may to be the single, most critical issue to be resolved by
17 water managers in the Yellowstone River Basin today."

18 While you were director of the DNRC between,
19 what, '79 and '97, was there an effort to get measuring
20 devices in place at diversion points in Montana for purpose
21 of administering the Yellowstone River Compact?

22 A What I can remember is just, in general,
23 statewide, continuing efforts to get measuring devices in
24 place. Specific to the compact, I don't remember that we
25 made any bigger -- I don't remember -- let me back up.

1 In a general sense, yes, I remember we were
 2 always trying to put measuring devices in place. It was
 3 one of the things that we knew would be important, and we
 4 generally tried to encourage that and do that.
 5 Q But specifically connecting that thought to the
 6 Yellowstone River Compact, I take it you can't --
 7 A I don't --
 8 Q -- do that?
 9 A I don't recall, no.
 10 MR. MICHAEL: Okay, I don't have any further
 11 questions.
 12 Mr. Wechsler.
 13 MR. WECHSLER: I have no questions.
 14 MR. MICHAEL: Well, then we're done. And even
 15 though it was very short and sweet, the court reporter will
 16 have you review it to make sure her transcription is
 17 accurate.
 18 THE WITNESS: Good.
 19 MR. MICHAEL: And that will be that.
 20 WITNESS EXCUSED
 21 * * *
 22
 23
 24
 25

CERTIFICATE OF REPORTER

STATE OF MONTANA)

) ss.

County of Lewis and Clark)

I, Lisa Lewis Devine, RMR, Court Reporter and Notary Public for the State of Montana, residing in Great Falls, Montana, do hereby certify:

That I was duly authorized to and did report the deposition of GARY FRITZ in the above-entitled cause;

That the reading and signing of the deposition by the witness have been expressly reserved;

That the foregoing pages of this deposition constitute a true and accurate transcription of my stenotype notes of the testimony of said witness.

I further certify that I am not an attorney nor counsel of any of the parties, nor a relative or employee of any attorney or counsel connected with the action, nor financially interested in the action.

IN WITNESS WHEREOF, I have hereunto set my hand and seal on this the 15th day of May, 2012.

Lisa Lewis Devine

CERTIFICATE OF WITNESS
PAGE LINE CORRECTION

I hereby certify that this is a true and correct copy of my testimony, together with any changes I have made on this and any subsequent pages attached hereto.

Dated on this the ____ day of _____ 2012.

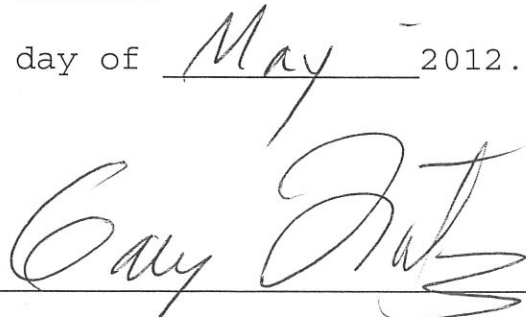
GARY FRITZ, Deponent.

CERTIFICATE OF WITNESS

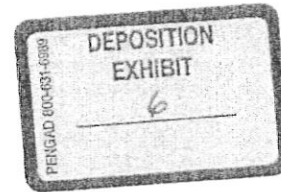
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Dated on this the 30 day of May 2012.



GARY FRITZ, Deponent.



Gary Fritz

~~115 North California Street~~ 17 Creek Crossing
Helena, MT 59601 Cascade, MT 59421
406-443-3634 406-468-9119

Experience

1995 to present Osprey Expeditions Helena, MT

Owner

- Created and grew a flyfishing guide service to one of Montana's largest.
- Promote business through national and corporate advertising.
- Quality service and client contact ensures that most clients return every year.

1979 to 1997 Montana DNRC Helena, MT

Water Resources Division Administrator

- Managed 120 employees throughout the state, including eight field offices.
- Allocated staff and resources to ensure that projects were completed on time.
- Division staff included engineers, hydrologists, geohydrologists, soil scientists, attorneys, technical writers, surveyors, GIS specialists, EIS specialists, and other earth science personnel.
- Presented division budget and projects to Montana legislators for approval and funding.
- Responsible for water rights, dam safety, water well drilling, interstate and international water allocation, water education, state-owned water projects, policy and planning, and other programs.
- Many projects I've been responsible for have involved multidisciplinary teams of earth science professionals.
- Worked regularly with representatives of diverse interests in water resource issues including state and federal regulatory agencies, private corporations and landowners, Indian Tribes, other states, agricultural entities, irrigation companies, environmental groups, Montana legislators, and Montana congressmân.

1975 to 1979 Montana DNRC Helena, MT

Water Planning Bureau Chief

- Managed 20 employees in the Water Planning Bureau.
- Allocated staff and resources to ensure that priority projects were completed on time.

- Responsible for preparation of broad-based watershed plans that were developed in cooperation with multientity, multidisciplinary teams.
- Implemented Montana's water reservation program.
- Compiled and published irrigated acre maps for Montana.
- Compiled and published river mile indices for Montana.
- Worked with an engineering and environmental consulting firm to investigate hydropower potential in the Yellowstone River Basin.
- Supervised a group of earth science professionals that provided technical assistance to the rest of the Water Resources Division.

1974 to 1976 Montana DNRC Helena, MT
Water Planner

- Responsible for all water planning activities in the Yellowstone River Basin.
- Worked with multidisciplinary team to assist negotiations with Indian Tribes.
- Prepared plans that addressed highly controversial conflicts between coal mining and power generation, agriculture and instream water users.
- Worked with Conservation Districts in the basin to develop water reservation applications.
- Responsible for preparing the EIS for water reservation applications in the Yellowstone River Basin. In preparing the EIS I worked with a multidisciplinary team of earth science professionals.

1972 to 1974 U.S. Bureau of Reclamation Durango, CO
Hydrologist

- Developed computer models for large, complex, interstate water development projects.
- Investigated local causes of Colorado River salinity.

1969 to 1972
Officer U.S. Army

- As a captain was responsible for Battalion supply and motor vehicle functions.

Education

1963 to 1968 Colorado State University Ft Collins, CO
Student

- I earned a Bachelor of Science Degree in Watershed Management.
- In the process of earning this degree I spent significant time in the geology, civil engineering, wildlife management and forestry departments.