

DISTRICT COURT
SAN JUAN COUNTY NM
FILED
2013 APR 17 AM 10:43

STATE OF NEW MEXICO
SAN JUAN COUNTY
THE ELEVENTH JUDICIAL DISTRICT COURT

STATE OF NEW MEXICO, *ex rel.* STATE ENGINEER,

Plaintiff,

vs.

THE UNITED STATES OF AMERICA, *et al.*,

Defendants.

D-1116-CV-75-184
HON. JAMES J. WECHSLER
Presiding Judge

SAN JUAN RIVER
GENERAL STREAM
ADJUDICATION

Claims of the Navajo Nation
Case No. AB-07-1

NAME OF PARTY: The Navajo Nation.

DESCRIPTIVE SUMMARY: The Navajo Nation responds to the Community Ditch Defendants' *Additional Motion to Compel Concerning NIIP-NAPI*, filed April 1, 2013.

NUMBER OF PAGES: 14, and 45 pages of exhibits.

DATE OF MAILING: April 16, 2013 via overnight delivery.

**THE NAVAJO NATION'S RESPONSE IN OPPOSITION TO
ADDITIONAL MOTION TO COMPEL CONCERNING NIIP-NAPI**

INTRODUCTION

In their *Additional Motion to Compel Concerning NIIP-NAPI* (filed Apr. 1, 2013) ("Additional Motion"), the Community Ditch Defendants continue their quest to obtain from the Navajo Nation information concerning the Navajo Agricultural Products Industry ("NAPI") and Navajo Indian Irrigation Project ("NIIP") that the Navajo Nation does not possess. This most recent chapter stems from the March 26, 2013 deposition of Lionel Haskie, the Navajo Nation's Rule 1-30(B)(6) witness as designated in *Responses and Objections of the Navajo Nation to the Marshall Parties' Additional Interrogatories on NIIP* (served Jan. 7, 2013) ("Navajo Additional Interrogatory Responses"). According to the Community Ditch Defendants, Mr. Haskie "was

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unable to answer questions about the financial performance of NIIP and NAPI.” Additional Motion at 1. Based on this false premise, the Community Ditch Defendants seek “to compel discovery concerning NIIP-NAPI or to impose appropriate sanctions” upon the Navajo Nation. *Id.* at 2.¹

The Navajo Nation strenuously opposes the *Additional Motion to Compel*. As described in greater detail below, the Motion fails to allege supportable facts entitling the Community Ditch Defendants to the relief they seek. The Court should deny the Motion and issue a protective order effectively terminating the Community Ditch Defendants’ pursuit of discovery from the Navajo Nation and the obligation of the Navajo Nation, United States, and State of New Mexico to respond to discovery from the Community Ditch Defendants. *See* Rule 1-037(A)(2) (“If the court denies the motion in whole or part, it may make such protective order as it would have been empowered to make on a motion made pursuant to Rule 1-026 NMRA.”)

A HISTORY OF THE COMMUNITY DITCH DEFENDANTS’ DISCOVERY QUEST

The prayer for relief in the Additional Motion essentially alleges that “the plaintiffs” have engaged in a pattern of “repeated failure to answer basic questions about NIIP-NAPI” since the Community Ditch Defendants filed, on May 7, 2012, their first discovery request on the subject. *Id.* at 2. Confirmation of this serious charge should exist in the ample record in this proceeding.

¹ Although the Community Ditch Defendants appear to address the Additional Motion to the Navajo Nation based upon the fact that the allegations in the Motion concern the deposition of Mr. Haskie, the Motion is actually addressed to and seeks to compel discovery from and impose sanctions upon “the plaintiffs.” Additional Motion at 1-2. The Navajo Nation would ask the Court to remind the Community Ditch Defendants that the *only* plaintiff in this *inter se* proceeding is the State of New Mexico. *See Order Striking Community Ditch Defendants’ Answer and Counterclaim* (filed Feb. 15, 2013) (“Rule 1-071.2 defines an expedited *inter se* proceeding as “a proceeding in which a water rights claim is resolved in a stream system adjudication suit conducted pursuant to Section 72-4-17 NMSA 1978 both as between the *plaintiff and the defendant and as among the defendant and other water rights claimants.*”) (Emphasis added). To the extent that the Additional Motion is directed at the United States and State of New Mexico in addition to the Navajo Nation, those parties join in this Response.

Review of that record only confirms, however, that the Community Ditch Defendants' claims of ongoing non-compliance by the Navajo Nation lack any merit at all.

We thus begin with a review of the record. On May 7, 2012, the Community Ditch Defendants served their *Joint Request for Documents and Designation of 30(B)(6) Witnesses Concerning the NIIP Project* (filed May 7, 2012) ("May 7 Joint Request"). The Navajo Nation responded to the May 7 Joint Request on August 17, 2012, see *Notice of the Navajo Nation of Response to Non-Settling Parties Requests for Discovery* (filed Aug. 17, 2012); the United States on August 17, 2012, and September 4, 2012, see *United States' Notice of Response to Discovery Requests* (filed Aug. 20, 2012) and *United States' Notice of Supplemental Response to Discovery Requests* (filed Sept. 6, 2012); and the State of New Mexico on October 16, 2012, see *Certificate of Service of State of New Mexico's Responses to Joint Request for Documents and Designation of 30(B)(6) Witnesses Concerning the NIIP Project* (filed Oct. 16, 2012). All of the Settling Parties, but the Navajo Nation and United States in particular, provided the Community Ditch Defendants with a voluminous amount of written material responsive to the discovery request. The Navajo Nation and United States additionally directed the Community Ditch Defendants to document repositories where more responsive information was available.²

² The Navajo Nation established a document repository at the Water Management Branch in Fort Defiance, Arizona. See *Notice of the Navajo Nation of Response to Non-Settling Parties Requests for Discovery* (filed Aug. 17, 2012). Counsel for the Community Ditch Defendants never visited the Navajo Nation's repository. Counsel for the San Juan Water Commission's visit to this repository was the only visit made by a non-settling party. The United States established three document repositories: a repository at the BIA NIIP Office in Farmington, and repositories at Bureau of Reclamation offices in Farmington and Durango. See *United States' Notice of Response to Discovery Requests, Attachment B — Procedures for Inspection of Materials at Regional Offices* (filed Aug. 17, 2012). No attorneys visited either of the two Bureau of Reclamation repositories, and only counsel for B Square Ranch *et al.* visited the BIA-NIIP repository in Farmington.

The Community Ditch Defendants filed, on September 27, 2012, a *Second Motion to Compel Discovery Concerning NIIP* and the Court heard the matter at a hearing on October 25, 2012.³ Shortly thereafter, the Court issued an *Order Concerning Motion to Compel Discovery Regarding NIIP* (filed Nov. 6, 2012) (“November 6 Discovery Order”). In the November 6 Discovery Order, the Court reached two conclusions, both pertinent to the current dispute. First, the Court “conclude[d] that the Navajo Nation is identifying responsive documents to address the discovery requests of the Community Ditch Defendants.” Order at 1. Second, the Court concluded that “the documents that the United States has both produced and made available for inspection adequately respond to the requests of the Community Ditch Defendants.” *Id.* at 1-2. As of November 6, then, the Court did not share the Community Ditch Defendants’ view of the Settling Parties’ efforts to comply with discovery as a “repeated failure.” Additional Motion at 2. On the contrary, the Court expressly concluded that the Navajo Nation and United States had met their obligations with regard to the Community Ditch Defendants’ discovery requests.

On November 20, 2012, the Community Ditch Defendants repeated their allegations of non-compliance by the “plaintiff settling parties” with the Court’s discovery orders. *Notice of Continuing Discovery Dispute Concerning NIIP* (filed Nov. 20, 2012) at 1. The Court heard the matter at a hearing on November 28, 2012, and issued an order two days later. *See Order Concerning the Community Ditch Parties’ Discovery Requests Regarding NIIP* (filed Nov. 30, 2012) (“November 30 Discovery Order”). Reaching no conclusions about the Settling Parties’

³ The Community Ditch Defendants initially filed, on June 29, 2012, an initial *Motion to Compel Discovery Concerning the NIIP Project*. The Court resolved that motion in orders issued in July, 2012, concerning the Settling Parties’ objections to discovery propounded earlier that year by the Community Ditch Defendants and other non-settling parties. *See Order Concerning the Objections of the Navajo Nation, United States, and State of New Mexico to Discovery Requests* (filed July 9, 2012) and *Order Concerning Objections to Discovery Requests Ruled “Overly Broad”* (filed July 24, 2012).

compliance with its previous orders, the Court, “[t]o address the Community Ditch Parties’ concerns regarding certain inquiries,” granted the Community Ditch Defendants leave to “submit to the Navajo Nation and the United States a total of ten (10) interrogatories including all discrete subparts regarding NIIP.” *Id.* at 1.⁴ In response to the November 30 Discovery Order, the Community Ditch Defendants filed *Additional Interrogatories on NIIP* (filed Dec. 4, 2012) (“December 4 Additional Interrogatories”) to which the United States and the Navajo Nation responded. *See Responses of the United States to the Marshall Interests’ Eighth Set of Discovery Requests Concerning Additional Interrogatories on NIIP* (served Jan. 4, 2013) (“U.S. Additional Interrogatory Responses”) and Navajo Additional Interrogatory Responses (served Jan. 7, 2013).

A month after receiving the responses to the interrogatories, the Community Ditch Defendants accused the Navajo Nation of failing to answer the questions contained in the *Additional Interrogatories on NIIP*. *See Notice of Impasse and Filing of Navajo Nation’s Responses and Objections to Additional Interrogatories on NIIP* (filed Feb. 12, 2013) (“Notice of Impasse”).⁵ In essence, the Notice of Impasse sought the Court’s assistance in compelling the Navajo Nation to respond “fully” to the Additional Interrogatories. The Community Ditch Defendants’ chief complaint was that the Navajo Nation relied upon Rule 1-033(E) in its Additional Interrogatory Responses, directing the Community Ditch Defendants to specific documents previously produced. *See Notice of Impasse* at 1-2. The Court heard argument on

⁴ With regard to the United States, the relief granted in the November 30 Discovery Order appears to be in conflict with the Court’s conclusion, previously reached in its November 6 Discovery Order, that “the documents that the United States has both produced and made available for inspection adequately respond to the requests of the Community Ditch Defendants.” November 6 Discovery Order at 1-2.

⁵ Because the *Notice of Impasse* was directed only at the Navajo Nation, it fairly can be inferred that the Community Ditch Defendants found the U.S. Additional Interrogatory Responses satisfactory.

the Notice of Impasse on February 21, 2013, during a telephonic discovery hearing and, in an order dated February 25, 2013, denied relief. *See Order Regarding Notice of Impasse with the Navajo Nation* (filed Feb. 25, 2013) (“February 25 Discovery Order”) at 2 (“The Community Ditch Defendants’ objections as expressed in the Notice of Impasse are overruled. The Community Ditch Defendants may seek more specific answers to their questions in depositions of potential witnesses named by the Navajo Nation. ...”).

In sum, as of February 25, within days of the conclusion of discovery,⁶ the Court had not issued a ruling validating in any respect any of the repeated allegations of the Community Ditch Defendants that the Navajo Nation had failed to comply with discovery requests regarding NAPI and NIIP. The claims in the Additional Motion, the Community Ditch Defendants’ fourth request for such a ruling, are equally lacking in merit.

ARGUMENT

THE COMMUNITY DITCH DEFENDANTS ARE NOT ENTITLED TO THE RELIEF THEY SEEK

The Community Ditch Defendants appear to assert four independent grounds in the Additional Motion in support of their request to extend their quest for additional discovery on NAPI and NIIP. The Additional Motion states:

Wherefore, the Community Ditch Defendants respectfully move the court to compel discovery concerning NIIP-NAPI or to impose appropriate sanctions for the plaintiffs’ repeated failure to answer basic questions about NIIP-NAPI. [(1)] The plaintiffs did not respond adequately to the request for documents which was first served on May 7, 2012. [(2)] They did not respond adequately to the interrogatories which were served on December 4, 2012, per the court’s instructions in an order dated November 30, 2012. [(3)] And now they have failed to answer the questions which were

⁶ The Court subsequently extended the March 1, 2013 discovery deadline until March 31, 2013, to allow the non-settling parties to take previously noticed depositions, including Mr. Haskie’s, and to access the document repositories.

supposed to be answered by their Rule 1-030(B)(6) witness at his long-awaited deposition. [(4)] Further, Community Ditch Defendants ask that they be awarded their costs and attorneys fees under Rule 1-037.⁷

Additional Motion at 2. As already should be clear from the recitation of the history of this dispute, and as further demonstrated below, the Community Ditch Defendants' accusations are without merit and they cannot demonstrated that they are entitled to the relief they seek.

A. The Settling Parties Adequately Responded to the Request for Documents Which Was Served on May 7, 2012.

This Court has ruled that the Navajo Nation and other Settling Parties adequately responded to the Community Ditch Defendants' May 7 Joint Request. *See* November 6 Discovery Order; November 30 Discovery Order; *see also supra* at 3-4. In so ruling, the Court has resolved this claim in favor of the Settling Parties and the Community Ditch Defendants are entitled to no relief on this ground.

B. The Navajo Nation and United States Adequately Responded to the Interrogatories Served on December 4, 2012.

This Court also has ruled that the Navajo Nation and United States adequately responded to the Community Ditch Defendants' December 4 Additional Interrogatories. *See* February 25 Discovery Order; *see also supra* at 5-6. In so ruling, the Court has resolved this claim in favor of

⁷ The implication of the description of the deposition as "long-awaited" suggests that the Navajo Nation was somehow recalcitrant in agreeing to the deposition or otherwise engaged in delaying tactics. As with most, if not all, of the Community Ditch Defendants' claims, the actual facts tell a different story. Counsel for the Community Ditch Defendants first scheduled Mr. Haskie's deposition for February 25, 2013, less than one week before the close of discovery and more than six months after the Navajo Nation first identified Mr. Haskie as a Rule 1-030(B)(6) witness in the *Responses of the Navajo Nation to Joint Request Concerning the NIIP Project* (served Aug. 17, 2012). The February 25 deposition date was the first scheduled for Mr. Haskie. Mr. Haskie was deposed on March 26, more than seven months after he was first identified as a Rule 1-030(B)(6) witness. Any delay of this "long-awaited deposition" was simply not attributable to the Navajo Nation or any of the Settling Parties.

the Navajo Nation and the United States and the Community Ditch Defendants are entitled to no relief on this ground.

C. Mr. Haskie Adequately Answered the Questions Posed to Him.

In its Additional Interrogatory Responses, the Navajo Nation designated Lionel Haskie, P.E., LEED AP, as its witness, pursuant to Rule 1-030(B)(6), in connection specifically with Interrogatory Nos. 1-6.⁸ Although the breadth of the questions contained in Interrogatory Nos. 1-6 was sweeping, Mr. Haskie possesses general knowledge of the subject matter and was appropriately designated under Rule 1-030(B)(6). Indeed, the 163-page deposition transcript (“Haskie Depo.”) (a copy of which is attached hereto as Exhibit A and incorporated herein by reference) stands as the clearest rebuttal to the Community Ditch Defendants’ four specific claims that Mr. Haskie was somehow an unqualified deponent.

1. Personal Knowledge and Area of Employment

The Community Ditch Defendants first complain that Mr. Haskie was unqualified to testify because he only has been employed at NAPI for three years and “[h]is personal knowledge is limited to this short period of time.” Additional Motion at 2. This unsupported claim is belied by even a cursory review of the deposition testimony, which reveals the breadth of the subject matter covered by Mr. Haskie in his answers as well as his knowledge of the history of NAPI and NIIP operations. *See, e.g.*, Haskie Depo. at 12-59 (operation and maintenance of NIIP water deliver infrastructure); 60-64, 121-26 (farm operations); and 88-96 (water).

The Community Ditch Defendants’ related claims that Mr. Haskie’s “employment is limited to the actual operation, maintenance, and repair of parts of the infrastructure for NIIP-

⁸ The Navajo Nation’s Additional Interrogatory Responses are attached in full as an exhibit to the Community Ditch Defendants’ Notice of Impasse.

NAPI” and that he “has no personal knowledge or experience about the financial performance of NIIP-NAPI” similarly fall flat. Mr. Haskie responded intelligently and in detail to numerous questions regarding the cost of operating NAPI and maintaining the NIIP infrastructure. *Id.* at 68-77, 96-106, and 127-130. The Navajo Nation is aware of no single witness employed by the Navajo Nation or United States able to answer every conceivable question posed regarding “the actual cost of building the infrastructure or the overall expenses and revenues of NIIP-NAPI.” In fact, the United States designated two Rule 1-30(B)(6) witnesses of its own in response to the December 4 Additional Interrogatories. *See* U.S. Additional Interrogatory Responses at 7 (identifying “Michael Howe, Bureau of Indian Affairs, and Douglas Dockter, Bureau of Reclamation, as potential deponents for the matters identified in these interrogatories”). Not coincidentally, Mr. Haskie identified in his testimony both the Bureaus of Indian Affairs and Reclamation, and Messrs. Howe and Dockter specifically, as more appropriate sources for much of the information sought by the Community Ditch Defendants. Haskie Depo. at 83-84 (Bureau of Reclamation); 88 (Bureau of Indian Affairs); 112 (Howe); and 115 (Dockter). Neither Mr. Howe nor Mr. Dockter were deposed.⁹

The Navajo Nation made two points in its Additional Interrogatory Responses intended to inform the Community Ditch Defendants of the limits of NAPI’s knowledge—and the knowledge of NAPI’S designated Rule 1-30(B)(6) representative—of such broad categories of financial information. First, the Nation was careful to make very clear that the scope of all of its

⁹ Counsel for the Community Ditch Defendants first approached counsel for the United States on February 10, 2013 to arrange for depositions for Mr. Howe and Mr. Dockter. On February 11, 2013, the close of discovery fast approaching, counsel for the United States proposed March 1, 2013 as an appropriate date for the depositions. Counsel for the Community Ditch Defendants did not confirm. On February 12 and again on February 20, counsel for the United States attempted to confirm the date for the depositions. Counsel for the Community Ditch Defendants never confirmed a date for the depositions and never sought to notice the depositions. *See* Exhibit B Dockter-Howe e-mails.

interrogatory answers necessarily was limited to matters revealed in the previously disclosed documents specifically referenced in the Additional Interrogatory Responses. *See, e.g.*, Navajo Additional Interrogatory Responses at 8 (Specific Objections and Response to Interrogatory No. 3) (“Specifically, information concerning ‘sources and uses of funds’ are found in two discrete sets of documents previously provided to the Marshall Parties.”). Second, in its answers to interrogatories concerning the construction of NIIP and the costs thereof, the Nation expressly stated the limits of NAPI’s knowledge. *See, e.g., id.* at 12 (Specific Objections and Response to Interrogatory No. 6, Part 1) (“... the Navajo Nation states that the construction of NIIP is not and never has been a function within the purview of NAPI...”). In sum, that the Community Ditch Defendants were unsatisfied by some of Mr. Haskie’s answers reflects their own unrealistic expectations about the information in the possession of the Navajo Nation rather than a lack of qualification on the part of Mr. Haskie.

2. *Failure to Bring Documents to the Deposition*

The Community Ditch Defendants also complain that they could not properly depose Mr. Haskie because he defied their request to bring documents with him to the deposition. *See* Additional Motion at 2 (“Although he was requested to, Mr. Haskie brought no documents with him to the deposition in Albuquerque.”). As with the Community Ditch Defendants’ other contentions, this one cannot hold up under examination of the pertinent facts. Here, those facts establish that Mr. Haskie “brought no documents with him” because all relevant documents previously had been provided.

The *Revised Notice of Deposition of Lionel Haskie* (filed Mar. 22, 2013) asks the deponent “to bring to the deposition and to provide in advance the documents listed on Exhibit A, attached hereto.” Exhibit A, in turn, describes those documents as follows:

Any materials you used or consulted in the preparation of, or referred to in the Navajo Nation's responses to Interrogatory No. 1 through 6 of the *Responses and Objections of the Navajo Nation to the Marshall Parties' Additional Interrogatories on NIIP*.

This request for documents was redundant of the Request for Production that was part of the December 4 Additional Interrogatories. *See* December 4 Additional Interrogatories at 4 ("Please produce the records which pertain to your answers to the foregoing interrogatories.") Since the documents had already been provided as part of the Navajo Nation's Additional Interrogatory Responses, there was no need for Mr. Haskie to bring such documents to the deposition, and counsel for the Community Ditch Defendants was so advised by e-mail prior to the deposition and at the deposition itself. Haskie Depo. at 11. ("... the documents that Mr. Haskie consulted with were all provided to Counsel, they were all disclosed. In the interrogatories you asked him to provide whatever documents he consulted with and those have all been provided to Counsel.") Moreover, counsel for the Navajo Nation brought electronic copies of all the documents to the deposition. *Id.* at 145 ("[E]verything that we've provided, I have with me on electronic format.")

D. Under No Circumstances Can Costs and Attorney's Fees Be Imposed Against the Navajo Nation or the United States in This Adjudication.

The Community Ditch Defendants have failed to establish any factual basis whatsoever for an award of costs and attorney's fees. But even if they were entitled to the relief sought, the Community Ditch Defendants have not, and cannot, provide any legal basis for such an award from the Navajo Nation or the United States. Like the United States, Indian tribes are sovereigns immune from lawsuits or court process in both state and federal court unless "Congress has authorized the suit or the tribe has waived its immunity." *Kiowa Tribe v. Mfg. Technologies, Inc.*, 523 U.S. 751, 754 (1998); *Gallegos v. Pueblo of Tesuque*, 2002-NMSC-012, ¶ 7, 132 N.M. 207, 46 P.3d 668, *cert. dismissed*, 536 U.S. 990 (2002).

The United States Supreme Court has held that the McCarran Amendment, 43 U.S.C. § 666, waived the sovereign immunity of the United States in state general stream adjudications for the purpose of determining the reserved water rights held by the United States on behalf of Indian tribes. *Colorado River Water Conservation District v. United States*, 424 U.S. 800 (1976). The McCarran Amendment, however, did not extend that waiver of immunity to permit the imposition of costs against the United States in general stream adjudications. See 43 U.S.C. § 666(a) (“[N]o judgment for costs shall be entered against the United States in any such suit.”) The Supreme Court has confirmed that the McCarran Amendment’s waiver of immunity does not subject the United States to costs and fees that might be imposed upon it in a general stream adjudication. See *United States v. Idaho*, 508 U.S. 1, 8-9 (1993) (“the language of the second sentence” of the McCarran Amendment is “not sufficiently specific” to constitute a waiver of sovereign immunity subjecting the United States to monetary extractions). This ruling is consistent with Supreme Court precedent that waivers of sovereign immunity must be strictly construed in the United States’ favor, and must be unequivocally expressed in statutory text. *Orff v. United States*, 545 U.S. 596, 601-02 (2005); *Blue Fox*, 525 U.S. at 261 (citing cases). There is no “implied” waiver of sovereign immunity. *Gilbert v. DaGrossa*, 756 F.2d 1455, 1458 (9th Cir. 1985). Any entity asserting a sovereign immunity waiver of the United States has the burden of establishing that such a specific waiver exists. *United States v. Park Place Assoc.*, 563 F.3d 907, 925 (9th Cir. 2009).

It follows that if costs and fees cannot be imposed on the United States in state general stream adjudications that are authorized pursuant to the McCarran Amendment, costs and fees cannot be imposed on tribes that participate in such adjudications. The Supreme Court extended its holding in *Colorado River* to find that limited waiver of sovereign immunity in the McCarran

Amendment allows Indian tribes to be joined in state court general stream adjudications, like the present action:.

[A]lthough the McCarran Amendment did not waive the sovereign immunity of Indians as *parties* to state comprehensive water adjudications, it did (as we made quite clear in *Colorado River*) waive sovereign immunity with regard to the Indian *rights* at issue in those proceedings.

Arizona v. San Carlos Apache Tribe of Arizona, 463 U.S. 545, 567, n.17 (1983) (emphasis in original). As a result of *San Carlos*, Indian tribes are treated in the same manner as the United States with respect to the adjudication of reserved rights in state general stream adjudications. By limiting any waiver of tribal sovereign immunity in general stream adjudications to the *rights* of the tribes at issue, tribes are no more susceptible to the imposition of costs than the United States. Thus, no legal basis for an award of attorney's fees and costs against the Navajo Nation and United States exists even if there were a factual basis for such an award.

CONCLUSION

For all of the reasons stated, the Court should deny the Community Ditch Defendants' *Additional Motion to Compel Concerning NIIP-NAPI*, issue a protective order effectively terminating the Community Ditch Defendants' pursuit of discovery from the Navajo Nation and the obligation of the Navajo Nation, United States, and State of New Mexico to further respond to discovery from the Community Ditch Defendants.

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Respectfully submitted this 16th day of April, 2013.

NAVAJO NATION



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CERTIFICATE OF SERVICE

I certify that on this 16th day of April, 2013, an electronic version of *The Navajo Nation's Response in Opposition to Additional Motion to Compel Concerning NIIP-NAPI* was served by electronic mail to: wnavajointerse@nmcourts.gov and aoccaj@nmcourts.gov and to the list of parties identified on the *Notice of Amended Service List* (filed Feb. 25, 2013).



Stanley M. Pollack

Exhibit A

Transcript of the deposition of Lionel Haskie

March 26, 2013

1 STATE OF NEW MEXICO
 2 COUNTY OF SAN JUAN
 3 ELEVENTH JUDICIAL DISTRICT COURT
 4 STATE OF NEW MEXICO, ex rel.
 5 THE STATE ENGINEER,
 6
 7 Plaintiff, AB-07-01
 8 Claims of Navajo Nation
 9 -vs- No. CV 75-184
 10
 11 THE UNITED STATES OF AMERICA,
 12 Et al.,
 13 Defendants.
 14
 15 DEPOSITION OF LIONEL HASKIE
 16 March 26, 2013
 17 10:06 a.m.
 18 300 Central, SW, Suite 1500 East
 19 Albuquerque, New Mexico 87102
 20
 21 PURSUANT TO THE NEW MEXICO RULES OF CIVIL
 22 PROCEDURE, this deposition was:
 23
 24 TAKEN BY: VICTOR R. MARSHALL, ESQ.
 25 ATTORNEY FOR THE COMMUNITY DITCH
 DEFENDANTS
 REPORTED BY: Amy M. Drum, RPR, NM CCR #49
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 300 Central, Southwest
 Albuquerque, New Mexico 87102

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 18 Irrigation Project
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EXHIBIT A - Transcript of Haskie Deposition

1 STATE OF NEW MEXICO
 2 COUNTY OF SAN JUAN
 3 ELEVENTH JUDICIAL DISTRICT COURT
 4 STATE OF NEW MEXICO, ex rel.
 THE STATE ENGINEER,
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 6 Plaintiff, AB-07-01
 7 Claims of Navajo Nation
 -vs- No. CV 75-184
 8
 9 THE UNITED STATES OF AMERICA,
 Et al.,
 10 Defendants.
 11
 12 DEPOSITION OF LIONEL HASKIE
 13 March 26, 2013
 10:06 a.m.
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 15
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EXHIBIT A - Transcript of Haskie Deposition

1 MR. MARSHALL: Let's go on the record and
2 get started. Let's get the appearances of Counsel who
3 are here in person and then those who are on the phone.
4 I'm Victor Marshall, counsel for the Community
5 Ditch Defendants.
6 MR. TULLY: I'm Rick Tully representing the
7 Defendants B Square Ranch, LLC, et al.
8 MR. HORNER: I'm Gary Horner in propria
9 persona.
10 MR. GOLLIS: I'm Samuel D. Gollis,
11 co-counsel for the Navajo Nation.
12 THE WITNESS: My name is Lionel Haskie,
13 witness, Navajo Nation.
14 MR. POLLACK: Stanley Pollack, attorney for
15 the Navajo Nation.
16 MS. SHEEHAN: Christina Sheehan on behalf
17 of BPH Navajo Coal Company and Enterprise Field
18 Services.
19 MR. FRYE: And I'm Paul Frye. I represent
20 the Navajo Agricultural Product Industry.
21 MR. MARSHALL: And attending by telephone
22 are?
23 MS. UMSHLER: Sue Umshler with the
24 Department of the Interior.
25 MS. SINGER: Arianne Singer, State of

1 New Mexico.
2 MR. UTTON: John Utton, State of
3 New Mexico.
4 MS. BRASWELL: Misty Braswell, State of
5 New Mexico.
6 MR. MARSHALL: Okay. Let's continue and
7 let's swear the witness.
8 LIONEL HASKIE
9 after having been duly sworn
10 under oath testified as follows:
11 EXAMINATION
12 BY MR. MARSHALL:
13 Q. Mr. Haskie, would you state your full name for
14 the record, please.
15 A. My name is Lionel Lynn Haskie.
16 Q. And "Lynn" is spelled L-Y --
17 A. N-N.
18 Q. -- N-N. Two Ns, okay.
19 And where do you live?
20 A. I live in Cedar Hills, New Mexico. Aztec,
21 New Mexico.
22 Q. Okay. And where do you work?
23 A. I work at Navajo Agricultural Products Industry,
24 Farmington, New Mexico.
25 Q. And where is that located?

1 A. It's located seven miles south on Highway 371 of
2 the -- of the City of Farmington.
3 Q. Okay. Mr. Haskie, have you ever had your
4 deposition taken before?
5 A. No.
6 Q. Okay. Well, let me explain just in general
7 terms, I'm sure your lawyers have gone over some of
8 this, but the lawyers are going to be asking you
9 questions which might or might not be used as testimony
10 in this case. You're answering under oath.
11 If at any time you don't understand the
12 question, please feel free to say so and ask for
13 clarification. If at any time you think of something
14 that you forgot to say or that you misspoke, you know,
15 didn't say it the way you wanted to, please feel free
16 to stop and make a correction, if you feel it's
17 necessary. Do you understand that?
18 A. Yes.
19 Q. Okay. Let me show you what we'll mark as
20 Exhibit 10, which is the notice of your deposition,
21 which asked you to bring with you certain documents.
22 And we'll mark this as Exhibit 11. All the others I
23 have premarked, I hope.
24 (Exhibit 11 marked for identification.)
25 Q. (By Mr. Marshall) Let me show you what I've

1 marked as Exhibit 11, which is the revised Notice of
2 Deposition of Lionel Haskie for today.
3 Turning to the back page, and I'll read it into
4 the record. The notice asked to you bring with you,
5 "1. Any materials you used or consulted in the
6 preparation of or referred to in the Navajo Nation's
7 responses to Interrogatories Number 1 through 6 of the
8 Responses of the Navajo Nation to the Marshall Parties'
9 Additional Interrogatories."
10 Now, did you bring with you any documents today?
11 A. No.
12 Q. Okay.
13 A. Except for the -- my answers to the
14 repositories.
15 Q. Okay. If you could tell me --
16 A. Or interrogatories.
17 Q. Okay. Could you tell me what document that is,
18 if you could identify its date and what its title is.
19 A. This document is Verification of the Navajo
20 Nation's Responses to Marshall Parties' Additional
21 Interrogatories on NIIP, and it has my signature and a
22 notary public signature. The next document is the
23 Responses and Objections of the Navajo Nation to the
24 Marshall Parties' Additional Interrogatories on NIIP.
25 Q. And if you could look at that document and give

1 us the approximate date, which is on the last page, I
2 think.

3 MR. POLLACK: It should be on the front
4 page.

5 Q. (By Mr. Marshall) If there's -- if there's a
6 file.

7 MR. POLLACK: Oh, I'm sorry.

8 A. There is no date on the front page. There is a
9 submittal, respectfully submitted on the 4th day of
10 January 2013.

11 Q. (By Mr. Marshall) Okay.

12 MR. POLLACK: Why don't I just hand him the
13 final that was submitted.

14 Q. (By Mr. Marshall) Okay. Do you know -- do you
15 know whether there's any difference between the draft
16 that you have in front of you and the final?

17 MR. POLLACK: Well, the final is the one
18 that he verified.

19 Q. (By Mr. Marshall) All right. Let's do this,
20 just to avoid confusion: Let me mark as Exhibit 12 the
21 documents that you brought with you, which includes
22 what may be a draft. Just put that on there, we can
23 make copies later. And let's get a paper clip. Here's
24 a clip to keep those together.

25 A. Okay.

1 (Exhibit 12 marked for identification.)

2 Q. (By Mr. Marshall) And then we'll mark as 13 the
3 document that Mr. Pollack handed you, which he
4 represents to be the final version.

5 (Exhibit 13 marked for identification.)

6 Q. (By Mr. Marshall) What documents did you
7 consult or refer to in preparing the answers to
8 interrogatories that you verified?

9 A. The annual reports that I submitted to your --
10 to Stanley Pollack's office. I can -- I can read them
11 off, if you'd like.

12 Q. Are those the O&M reports that you submit?

13 A. Yes.

14 Q. Okay. Any other documents that you consulted?

15 A. No.

16 Q. Okay.

17 MR. MARSHALL: Counsel, I'll just note an
18 objection with regard to the scarcity of documents
19 which you brought with him. I'd also note that we
20 offered to take his deposition in Farmington where more
21 documents were available. I simply note that for the
22 record now.

23 Oh, while we're on that kind of subject, I
24 think, Mr. Pollack, you wanted to make an objection
25 also.

1 MR. POLLACK: Well, yeah. First, I want to
2 note for the record that the documents that Mr. Haskie
3 consulted with were all provided to Counsel, they were
4 all disclosed. In the interrogatories you asked him to
5 provide whatever documents he consulted with and those
6 have all been provided to Counsel. First -- that would
7 be my first point.

8 My second point is the Notice of
9 Deposition did not include a subpoena duces tecum to
10 provide any documents, so I wanted to note that for the
11 record, but with respect to -- with respect to NIIP
12 documents in general and as a general objection, the
13 Navajo Indian Irrigation Project is a project that's
14 authorized under federal law. We do not believe it is
15 an appropriate topic for discovery since the Court has
16 no jurisdiction one way or the other to limit the water
17 rights for the Navajo Indian Irrigation Project as part
18 of the settlement.

19 MR. MARSHALL: Okay. Your objections are
20 noted for the record and certainly not concurred in,
21 just as my objection is not concurred in.

22 MR. POLLACK: Right.

23 MR. MARSHALL: So let's go on with the
24 deposition.

25 Q. (By Mr. Marshall) Mr. Haskie, what I'd like to

1 do is to get you to describe for the rest of us the
2 geography of NIIP and NAPI. Okay?

3 MR. MARSHALL: Oh, and for the record, let
4 me explain. For the court reporter, "NIIP" is an
5 abbreviation for Navajo Indian Irrigation Project, and
6 it's spelled all caps N-I-I-P. And "NAPI" is Navajo
7 Agriculture Products Industries.

8 THE WITNESS: Industries.

9 MR. MARSHALL: And I'm going to be
10 referring to NIIP and NAPI and NIIP-NAPI, hyphenated,
11 so you'll know what I'm referring to.

12 Q. (By Mr. Marshall) Let me hand you three maps,
13 and what I'm going to ask you to do is to go through
14 these and describe what the maps show and to mark them
15 up so we have some names on there to go with the map.
16 Map number 1 is a map which comes from a Navajo Nation
17 water strategies study which was done -- what does it
18 say?

19 A. There's no date on here.

20 Q. This was done -- this was -- it's page 65 of the
21 Water Resource Management Study for the Navajo Nation,
22 and that was done, I believe, in 2011 or '12. Do you
23 recognize the boundaries of NIIP as shown on that map?

24 A. Generally, yes.

25 Q. Okay. And what I'm going to do is -- in a

1 second is ask to you go through and sort of label like
2 the Main Canal and main gravity canal because I can't
3 really tell from looking at that. Okay?

4 Let me show you -- and then I just wanted to
5 show you Exhibit 2, and that is an aerial photo from
6 Google Earth. Do you recognize that as the area
7 occupied by NIIP?

8 A. Generally, yes.

9 Q. Okay. And Exhibit 3 comes from -- comes from
10 Google Maps, and it's a topographic map. And I'll
11 represent to you that way up here in the upper right-
12 hand corner is the corner of Navajo Reservoir. And
13 what I have tried to do, and please excuse my
14 penmanship, is mark in heavy black lines the NIIP
15 canals going over here to NAPI. Do you recognize this
16 area, generally speaking?

17 A. Yes.

18 Q. Okay. And let me show you this blob here, the
19 furthest blob to the east is supposed to be Cutter
20 Reservoir. Is that approximately were Cutter Reservoir
21 is?

22 A. Approximately, yes.

23 Q. Okay. And I'll tell you what I'd like you to
24 do, just let's go through your description as the water
25 flows, okay, starting with Navajo Reservoir. And if

1 you could refer to the maps and maybe label some of the
2 main structures as we go along so we'll have the names
3 to go with it. So let's start with Exhibit 3 up at
4 Navajo Reservoir. Could you explain to me what the
5 structures are at Navajo Reservoir that are part of
6 NIIP.

7 A. Yeah.

8 Q. And feel free to write on -- write on the map,
9 because that way when we look at it, we'll know what
10 we're looking at.

11 A. Well, the structure at Navajo Reservoir, which
12 is -- which is really -- it's difficult to read off of
13 here where the reservoir actually is, but it's called
14 the NIIP Headworks.

15 Q. All right.

16 A. Okay.

17 Q. What do the headworks consist of?

18 A. Four gates, two affixed gates and two radial
19 gates. And there's a -- an inlet structure and the
20 automations that operate the gates.

21 Q. And how do the main -- how do the radial gates
22 work? Do they turn? What do they do?

23 A. They're radial, so they -- they turn in a radial
24 manner.

25 Q. They rotate upwards in sort of like a circle?

1 A. Yeah.

2 Q. And what about the other gates, how do they
3 operate?

4 A. They operate vertically, they just -- they go up
5 and down.

6 Q. And where is the intake structure, behind the
7 gates?

8 A. Upstream of the gates.

9 Q. Upstream, okay. And what does that consist of?

10 A. It's a concrete structure. I don't know the
11 thickness of the structure. I don't know the exact
12 dimensions of it, but it's essentially a box structure
13 with a rack on top made also out of concrete, and it
14 allows water to go into the box and into the tunnel.

15 Q. Okay. So why don't you tell us how the water
16 flows and I'll try not to interrupt too much --

17 A. Okay. All right.

18 Q. -- starting with coming out of Navajo Reservoir.

19 A. Okay. There's a trashrack structure, an inlet
20 structure. Water goes inside the box and it goes down
21 a tunnel, and there are two sets of gates there. I've
22 never seen a plan view of it, so I don't know if the
23 water separates at that point, but I do know that there
24 are two entryways at that location of the gate.

25 Q. Okay.

1 A. The affixed gate that goes up and down, it
2 stabilizes the pressure of the reservoir, and you
3 stabilize it by filling two chambers that house the
4 affixed gates.

5 Q. All right.

6 A. And then once the pressure is relieved, you
7 adjust the radial gates for delivery downstream. And
8 there's two radial gates, one for each affixed gate.
9 And those two channels or tunnels converge to one. And
10 then the --

11 Q. Okay. Go ahead, yeah.

12 A. Then the system is tunneled to a -- to a
13 location -- and I'm just going to estimate.

14 Q. Yes, absolutely.

15 A. -- about two miles.

16 Q. All right.

17 A. That's Tunnel 1.

18 Q. All right.

19 A. And at two miles, there is a structure, a
20 measurement structure called a parshall flume.

21 Q. All right. Why don't you note the approximate
22 location. All right. There's Cutter Reservoir.
23 There's Navajo Reservoir. And we understand that
24 you're just putting an approximate location and label.

25 A. Parshall flume is a long rectangular structure.

1 It's an open channel, but it's rectangular in geometry
 2 and it's designed to measure the flow of water.
 3 Q. Okay.
 4 A. And that flow is measured and transmitted by
 5 radio to the Bureau of Reclamation office, the Navajo
 6 Unit, and it's also transmitted to the NAPI control
 7 center at the NAPI headquarters.
 8 Q. Okay.
 9 A. And the measurement of flow is recorded hourly
 10 by both entities.
 11 Q. After it goes through that measurement, what
 12 happens to the water?
 13 A. Oh, well, it continues -- continues downstream.
 14 It crosses Gobernador Wash through a siphon and then it
 15 enters a short length of open canal, approximately 400
 16 feet, and then it goes into Tunnel 2.
 17 Q. Okay. Now, what's a siphon?
 18 A. A siphon is a pressurized pipe that -- it's just
 19 a circular pipe and it's -- it -- we use it to cross
 20 washes and it's designed to be pressurized. The head
 21 pressure on the upstream pushes the water through to
 22 the downstream.
 23 Q. Is that the pressure of gravity at this point on
 24 this siphon?
 25 A. Yes, pressure of --

1 A. Well, it goes -- like I said, it goes through
 2 approximately 400 linear feet of open canal, concrete
 3 canal into Tunnel 2.
 4 Q. And how long is Tunnel 2 approximately?
 5 A. Approximately six miles.
 6 Q. All right.
 7 A. And that takes us about a mile-and-a-half
 8 upstream of Cutter Reservoir.
 9 Q. Okay.
 10 A. From the outlet of Tunnel 2, water is conveyed
 11 through a -- an unlined channel, and it doesn't have a
 12 specific -- any specific geometry to it. It's
 13 unlined. And that goes for about a mile-and-a-half.
 14 Q. All right.
 15 A. Approximately a mile-and-a-half into Cutter
 16 Reservoir. Then downstream of Cutter Reservoir is
 17 the --
 18 Q. What does Cutter Reservoir consist of, and what
 19 does it do?
 20 A. Cutter Reservoir is a regulating reservoir, a
 21 secondary regulating reservoir. It's used to provide
 22 the daily -- the daily to weekly uses of water
 23 downstream.
 24 Q. And what's its approximate usable storage
 25 capacity?

1 Q. Okay.
 2 A. -- head pressure. It's the weight of water.
 3 Q. Okay. What is the weight of water,
 4 approximately?
 5 A. I -- I've always used 1. It depends on the
 6 temperature, of course.
 7 Q. What measure have you used usually in your work?
 8 A. The room temperature, 76 degrees, and I've
 9 always used a factor of 1. So...
 10 Q. Okay. A factor of 1 meaning?
 11 A. That's a -- it's a unit. It's a unit -- the
 12 unit weight of water.
 13 Q. Okay. So you do it at room temperature. And so
 14 what's the approximate weight of, say, a cubic foot
 15 of --
 16 A. I don't know.
 17 Q. Okay.
 18 A. I don't know. I'd have to use my cheat sheets,
 19 and I don't have my cheat sheets here with me.
 20 Q. Let me make a note. I'm going to make a note of
 21 things that we'd appreciate getting. And I'd like to
 22 see your cheat sheets just to probably use the figures
 23 that you used.
 24 Okay. What happens -- after the siphon across
 25 Gobernador Wash, what happens to it generally?

1 A. There's -- there's several different types of
 2 usable. There's dead storage, there's full storage,
 3 and I -- it varies and I don't know.
 4 Q. Yeah, okay.
 5 A. I don't want to pick out any of those numbers
 6 that I don't know.
 7 Q. I've got some documents that describe some of
 8 this in more detail, so I wouldn't hold you to that.
 9 Okay. How is it regulated coming out of Cutter
 10 Reservoir?
 11 A. There are two -- two structures on the
 12 downstream side of Cutter Reservoir; one is the Cutter
 13 Dam; the second structure is the NIIP Main Canal inlet,
 14 and it's the Cutter headworks.
 15 Q. Okay. If you could -- if you could label that
 16 on the diagram.
 17 A. Cutter Dam. And Cutter Dam has an emergency
 18 spillway attached to it and the Main Canal inlet,
 19 Cutter headworks. And the Cutter headworks consist of
 20 one gate. I believe it's a affixed gate.
 21 Q. Okay.
 22 A. I believe it's an affixed gate.
 23 Q. Are there any measuring devices at the NIIP
 24 Headworks?
 25 A. Excuse me. The gate at Cutter Reservoir, I'd

1 like to make a change on that.
 2 Q. Sure.
 3 A. It's a radial gate.
 4 Q. Okay.
 5 A. Okay.
 6 Q. Are there any measuring devices, water measuring
 7 devices at NIIP Headworks?
 8 A. Yes. There's a pressure transducer, and the
 9 pressure transducer measures the level of the canal at
 10 that location.
 11 Q. Does that give a measurement of the flow at that
 12 point?
 13 A. I believe it does.
 14 Q. Is that transmitted or recorded anywhere?
 15 A. Yes. The data at this location is transmitted
 16 to the NAPI control center --
 17 Q. Okay.
 18 A. -- at the headworks -- or, I'm sorry, at the
 19 headquarters.
 20 Q. Okay. Then what happens to the water as it
 21 travels on down?
 22 A. Well, it --
 23 Q. And we probably don't have to go over every
 24 single one of those tunnels as it goes in and out, but
 25 you might label the major features and the major

1 Q. Okay. Are there any unlined sections of the
 2 waterway?
 3 A. Between Cutter Reservoir and 550 --
 4 Q. Yes.
 5 A. -- Highway 550?
 6 No.
 7 Q. Okay. And explain to us what happens to the
 8 water when it goes through these various siphons and
 9 approaches 550? What's the next major facility?
 10 A. We have a facility upstream of Highway 550 and
 11 it's the first lift station pumping plant.
 12 Q. All right.
 13 A. And that's the Kutz Pumping Plant.
 14 Q. That's K-U-T-Z.
 15 A. We call it a lift station because of its size.
 16 Q. Okay. I'll tell you what, let me do this: Just
 17 to speed this up, let me hand you a document that I'm
 18 referring to, which has some of the stats on these
 19 various facilities.
 20 A. Okay.
 21 Q. So -- let me see. Let me hand you Exhibit 5,
 22 which is data on the Navajo Irrigation Project, which
 23 is taken from the BOR Web site. And it's got some --
 24 got some details that I'll be asking you about, pumps
 25 and lift stations and things like that.

1 tunnels.
 2 A. Well, there's approximately one, two -- I
 3 believe there's approximately four siphons, and I'll
 4 label them.
 5 Q. Just put "S" for siphons.
 6 A. Yeah. Actually, there's five. So 1S, 2 -- and
 7 they -- and they range in sizes, and I don't know how
 8 many tunnels. The canal goes open channel --
 9 Q. Right.
 10 A. -- which is just exposed to the air and a
 11 concrete lined trapezoidal shape canal into a circular
 12 siphon, and then it goes into a tunnel. I'm not sure
 13 what the geometry of the tunnel is. It goes through a
 14 series of that to 550.
 15 Q. Okay. If you could label -- what's that first
 16 big wash where that siphon is? If you could just label
 17 that on the map. The one below --
 18 A. Below?
 19 Q. Below, yeah, this big one here.
 20 A. This is Largo.
 21 Q. Okay. If you could just mark that as Canyon
 22 Largo or whatever it is.
 23 A. Largo Canyon.
 24 The next largest canyon is Armenta. And I
 25 believe this is East Kutz Canyon.

1 A. Okay.
 2 Q. Are you familiar with the BOR Web site, which
 3 has information about NIIP on it?
 4 A. I've seen it.
 5 Q. Okay. And let me hand you Exhibit 4, which is
 6 also from the BOR Web site, which is a general
 7 description and plan with respect to NIIP. And so as
 8 we go through this, just to speed this up, I'll ask you
 9 some questions, because, for example, it's got -- let
 10 me see. Somewhere in here it's got a stat on the Kutz
 11 Pumping and Lift Station. What does that lift station
 12 consist of?
 13 A. Which lift station?
 14 Q. Kutz. Sorry, Kutz.
 15 A. Kutz. Do you want me to look through this
 16 document?
 17 Q. No, I'll find it for you. Have you labeled Kutz
 18 there?
 19 A. I have, yes.
 20 Q. Okay. Just give us sort of a verbal description
 21 of what's there.
 22 A. It's a large concrete building, and inside the
 23 building it has some electrical panels, control panels
 24 they call them, and those control panels operate
 25 motors. And then there is a forebay at the very bottom

1 level. As you walk into the lift station, you walk on
2 a -- on a garage, a bay door garbage level, and there
3 are -- there's two levels and a mezzanine in the
4 middle. And the mezzanine has the electrical motor
5 controls, some panels along the wall. And then at the
6 very bottom floor is a forebay, and the floor bay has
7 five units. And a unit consists of an electrical motor
8 and a horizontal pump.

9 Q. All right.

10 A. And of the five, two of them are small filling
11 pumps and three are larger pumps.

12 Q. And where do they pump the water?

13 A. They pump the water -- on this map, I'll just
14 put a little star --

15 Q. All right.

16 A. -- where the water approximately gets pumped
17 to. And that location is the inlet of the Coury Canal.
18 "Coury" is spelled C-O-U-R-Y. In this case, they call
19 it Coury Lateral. It is an open canal.

20 Q. Okay. If you look at Exhibit 4 on the third
21 page, it has a description of pumping plants. And the
22 first paragraph says, as you said, it has "5 electric
23 motor-driven pumps, this plant has a capacity of 200
24 cubic feet per second with a dynamic head of 365 feet.
25 It was completed in 1982."

1 What does "dynamic head" mean?

2 A. It means that -- well, there's a -- it's -- that
3 the vertical -- the difference in the vertical height
4 that water has to be pushed up.

5 Q. Okay.

6 A. And I believe the dynamic -- what they refer to
7 as a dynamic, that phrase, total dynamic --

8 Q. Head.

9 A. -- head is really the pump moving, placing
10 energy on water to lift it.

11 Q. It's my understanding that it's basically a
12 measurement of the vertical lift plus the drag in the
13 pipe that the motors have to overcome to get it up
14 there. Is that more or less correct?

15 A. Those -- those losses, those features are very
16 minor, but, yes.

17 Q. Okay. And so the vertical lift is something on
18 the order of 365 feet at that point?

19 A. Correct.

20 Q. Okay.

21 A. As it says here, "365 feet," yes.

22 Q. Okay. Where does the electricity for those
23 pumps come from?

24 A. There's a -- there's a transformer yard on the
25 south side of the -- of the pumping plant, and power

1 goes into that transformer yard from the Kutz
2 Substation.

3 Q. All right.

4 A. And the Kutz Substation is approximately a mile
5 south -- or, I'm sorry, maybe half a mile south.

6 Q. And who supplies the electricity for the Kutz
7 Lifting Station?

8 A. The electrical bills that I receive in the mail
9 to pay for this facility comes from the Western Area
10 Power Authority.

11 Q. And who are they?

12 A. They're a utility provider.

13 Q. Okay.

14 A. A power company. The bills are dated WAPA, so I
15 assume they're from WAPA.

16 Q. I've got one of your O&M reports with the
17 utility bills, and I'll get into that in more detail.
18 But basically that power -- and where does -- where
19 does that power actually physically come from? Where
20 is it generated?

21 A. I don't know. I've traced the network of high
22 lines and they're all interconnected.

23 Q. Okay.

24 A. I don't know exactly where the power comes from.

25 Q. Okay. Do you have any idea, is any power

1 supplied from that hydroelectric plant from the foot of
2 Navajo Dam, do you know?

3 A. No.

4 Q. Okay. Let's continue with the water. It gets
5 up to the top of this lift of 365 feet, and then what
6 happens to it?

7 A. It goes -- it goes into the Coury Lateral.

8 Q. Okay.

9 A. Which is roughly here.

10 Q. And then what happens to it?

11 A. Oh, this is the Coury Lateral here.

12 Q. Okay. You're now -- yeah, you're now writing on
13 Exhibit 1, which is a little clearer here. The Coury
14 Lateral is at the top of that lift?

15 A. Yes.

16 Q. Okay. And so some of the water goes, what,
17 south into the Coury Lateral?

18 A. Yes, some of the water is lifted into the Coury
19 Lateral south.

20 Q. And what's the approximate vertical lift into
21 the Coury Lateral?

22 A. As you've stated earlier --

23 Q. Let's see if I can find it here somewhere.

24 A. -- 365 feet.

25 Q. Okay. Is there an additional lift from the top

1 of the Kutz Lift into the Coury Lateral, or does it
 2 just gravity flow?
 3 A. It just gravity flows.
 4 Q. Okay. Where does the rest of the water go?
 5 A. Well, it continues down on your map, Exhibit 1,
 6 and I'll just -- I'll make a long dash as to where it
 7 goes.
 8 Q. And if you could label that, use the -- like
 9 what's the Main Canal?
 10 A. Yeah. I -- this is the Main Canal.
 11 Q. All right.
 12 A. It terminates there. And I drew -- I drew a
 13 line where it terminates.
 14 Q. Okay.
 15 A. And I'll just put "end." And at the Main
 16 Canal -- at the end of the Main Canal, the trapezoidal
 17 canal gets reduced.
 18 Q. All right.
 19 A. So it's named the Gravity Main Canal --
 20 Q. Okay.
 21 A. -- from then on.
 22 Q. And why don't you give that -- use some
 23 different dashes or something to --
 24 A. Okay.
 25 Q. -- to mark the Main Gravity Canal.

1 was completed in 2000." Does that sound about right?
 2 A. Yes.
 3 Q. Okay. Now, does all the water for NIIP go
 4 through the Kutz Plant, Kutz Pump Lift Station? In
 5 other words, if it's going to get -- if the water is
 6 going to get to NIIP up on the hill, does all of it
 7 have to go through the Kutz Pumping Plant?
 8 A. No.
 9 Q. Where else do you get it from?
 10 A. I'm sorry, can you repeat the question.
 11 Q. Yeah. What I'm trying to get at is: Before --
 12 I'm trying to figure out the branching network.
 13 A. Okay.
 14 Q. Okay. I'm trying to figure out -- let me go
 15 back. Does all the water that is -- that goes to NIIP
 16 on the other side of Highway 50, does it all have to go
 17 through the Kutz Lift Station?
 18 A. No, it doesn't.
 19 Q. Okay. Explain to me --
 20 A. The Kutz Lift Station has a turnout.
 21 Q. Okay.
 22 A. The Kutz Lift Station is offset from the Main
 23 Canal and there's a -- there's a turnout. This is too
 24 large of a scale to show it on here.
 25 Q. All right.

1 A. All right. I'll use a squiggly line.
 2 Q. All right.
 3 A. And that Gravity Main Canal ends approximately
 4 14.5 miles north of -- northwest of the end of the Main
 5 Canal. I'll label that here Gravity Main.
 6 Q. And then what happens?
 7 A. Well, there are two branches off of the Gravity
 8 Main Canal.
 9 Q. All right.
 10 A. One is the first lift station.
 11 Q. And what's the name of that lift station?
 12 A. This lift station is called the Gallegos Pumping
 13 Plant.
 14 Q. Okay.
 15 A. And that lift station lifts water, and I don't
 16 know the total dynamic head off the top of my head, I'd
 17 be guessing if I would, to the Burnham Lateral.
 18 Q. Okay.
 19 A. And the Burnham Lateral -- I'll just draw
 20 circles as to over the Burnham Lateral. And water gets
 21 lifted to the Burnham Lateral.
 22 Q. Okay. In looking back at Exhibit 4, it says
 23 that the Gallegos Pumping Plant has "8 elect
 24 motor-driven pumps, and a capacity of 880 cubic feet
 25 per second with a total dynamic head of 337 feet. It

1 A. But you have a Kutz Lift Station.
 2 Q. Okay.
 3 A. Most of -- all of the pumping plants that we
 4 have on the NIIP have a pumping plant intake.
 5 Q. Okay.
 6 A. And it's just a turnout along the Main Canal.
 7 Q. Okay.
 8 A. And you open the turnout.
 9 Q. All right.
 10 A. And water goes into either a sump or it goes
 11 directly into the line where it gets lifted. So
 12 that's --
 13 Q. Okay.
 14 A. -- that's what happened with Kutz.
 15 Q. Okay. So what happens -- what happens with
 16 the --
 17 A. The Main Canal continues to flow by Kutz Pumping
 18 Plant, and it crosses 550.
 19 Q. How does --
 20 A. And it throws by gravity.
 21 Q. Is it in a tunnel?
 22 A. It's in an open -- you drew it here. The areas
 23 that you have highlighted here in black --
 24 Q. Okay.
 25 A. -- that's an open canal --

1 Q. Okay.

2 A. -- which is exposed to the air. It's concrete

3 lined and it -- there's a slight pitch to it, so it

4 flows gravity.

5 Q. Okay. Let me understand this because I've

6 gotten out of the car and walked around and sort of

7 looked down the -- if you're at 550 and you -- or you

8 walk over east a little bit and you look down, you can

9 see the Kutz Pumping Station, which is down there by

10 the canal.

11 A. Uh-huh.

12 Q. And it's down 300 some feet, right? I mean

13 vertically, it's below you?

14 A. Vertically, it's below you, yes.

15 Q. Okay. So how does -- what happens to the water

16 that is not pumped by the Kutz Plant? Tell me where

17 that goes.

18 A. Okay. Well, right after the Kutz Pumping Plant,

19 downstream on the Main Canal there's a siphon --

20 Q. All right.

21 A. -- it's called the Kutz West Siphon.

22 Q. All right.

23 A. And, again, a siphon is a pressurized pipe that

24 goes underneath a wash, and the inlet elevation and the

25 downstream elevation are -- there's a difference

1 good.

2 A. I'll just put a big "5" on it because I can't

3 tell --

4 Q. Okay.

5 A. -- where those designations are.

6 Q. All right.

7 A. So that's Block 5.

8 Q. Okay, all right. And so which blocks does the

9 Kutz Lift Station supply?

10 A. Block 5.

11 Q. And only Block 5?

12 A. Only Block 5.

13 Q. Okay. Let's -- now, when the Main Canal or the

14 supply system crosses Highway 550, it continues to flow

15 by gravity to the end of the canal?

16 A. Yes.

17 Q. Okay.

18 A. It continues to flow by gravity, and it flows --

19 I'm looking at Exhibit 1. It flows through Blocks 1

20 and 4.

21 Q. Okay.

22 A. And I'll draw "1" here.

23 Q. And I understand this is completely schematic,

24 but I read about these blocks, and I never really have

25 any idea where they are exactly.

1 between them. So with the head pressure of the water

2 pushes the water through and it comes out and goes into

3 an open channel right upstream of Highway 550

4 approximately here. And it stays in the -- in an open

5 channel across 550.

6 Q. Okay.

7 A. And --

8 Q. And then where does it go then?

9 A. Well, it goes and it starts -- on your map here,

10 it starts here.

11 Q. Is does that water go into the Main Canal?

12 A. It is the main -- it's called the Main Canal.

13 Q. Okay.

14 A. The Main Canal is essentially the canal starting

15 at Cutter Reservoir down to the location I noted here.

16 Q. Okay.

17 A. Yeah.

18 Q. Okay. Now I'm starting to get it straight. The

19 Kutz Plant, what does it pump water for, what areas?

20 A. There's an area we call Block 5, and I can

21 roughly circle it on this sheet.

22 Q. And, in fact, that's what I'd like you to do is

23 just schematically on that aerial, if you could go

24 through and just sort of draw circles to indicate the

25 general area of the Blocks 1 through 11, that would be

1 A. The Main Canal flows through Blocks 1 and 4.

2 Q. Okay.

3 A. And it -- and this area here is designated as

4 Region 1.

5 Q. All right. And that consists of which blocks?

6 A. 5, 4, and 1.

7 Q. 5, 4, and 1, okay.

8 Okay. Why don't you go ahead and tell us about

9 the main, you know, water canals and boost stations and

10 everything.

11 A. Well, since the Main Canal diverts water to

12 these three blocks in Region 1, its shape gets

13 reduced --

14 Q. All right.

15 A. -- hence the name change.

16 Q. All right.

17 A. So the Main Canal ends approximately between

18 Region 1 and 2.

19 Q. Okay.

20 A. Okay. So as the -- the name changes from the

21 Main Canal to the Gravity Main Canal, water flows to

22 the first lift station, which is called the Gallegos

23 Pumping Plant. I labeled it here.

24 Q. Okay.

25 A. Gallegos Pumping Plant lifts water to the

1 Burnham Lateral.
 2 Q. All right.
 3 A. And there are two branches on the Burnham
 4 Lateral. There's a Burnham Lateral West Reach and
 5 there's a Burnham Lateral Reach 1.
 6 Q. All right.
 7 A. And water is delivered to Blocks 8, 9, 10, 11.
 8 Q. Why don't you just write that on the map there,
 9 just generally that the blocks are down there on the
 10 Burnham.
 11 A. (Witness complies.)
 12 Q. Okay. Are there any other main lifting stations
 13 on the Burnham Lateral?
 14 A. Future. Future lift station at the -- at the
 15 end of reach -- Burnham Lateral Reach 1, and it's
 16 called the Moncisco Pumping Plant. That lifts water to
 17 10 and 11.
 18 Q. Has that been built yet?
 19 A. No.
 20 Q. Any construction started on that?
 21 A. If you -- if you go to the end of Reach 1, there
 22 is a flat pad.
 23 Q. Okay. But other than that -- other than
 24 leveling the site, there's been no construction so far?
 25 A. No.

1 A. And then it finally serves Block 2, and this is
 2 off the Gravity -- Gravity Main Canal.
 3 Q. Okay.
 4 A. I haven't gotten to the Amarillo Canal.
 5 Q. Okay. All right.
 6 A. So Blocks 6 and 2 are served off of the Gravity
 7 Main.
 8 Q. Okay.
 9 A. And that's it.
 10 Q. No further pumping -- no further Main Canal
 11 pumping requirement?
 12 A. No main lifting stations.
 13 Q. Okay.
 14 A. There are -- there are smaller pumping plant
 15 facilities or -- yeah, pumping plant buildings, various
 16 in sizes, all along the Main Canal that serve Blocks 5,
 17 4, and 1. And then there's more pumping plants,
 18 smaller pumping plants, that serve Blocks 6, 2, and --
 19 actually, there is no pumping -- well, yes, there's one
 20 pumping plant that serves Block 2, and then the rest of
 21 2 is supplied by a gravity system.
 22 Q. What do those smaller pumping plants do?
 23 A. Well, they have -- it's a smaller sized building
 24 with some pumping units inside them, and they have a
 25 sump below and they're vertical pumps that suck the

1 Q. Okay. Now, if that's ever built, going back to
 2 Exhibit 4, it says, the "Current design estimates call
 3 for this pumping plant to have a total capacity of 440
 4 cfs and a total dynamic head of 168 feet." Do you see
 5 that on the same place that describes Kutz?
 6 A. Yes, right there.
 7 Q. Okay. And that pumping plant, if it's ever
 8 built, would be needed for what blocks?
 9 A. 10 and 11.
 10 Q. Okay.
 11 Okay. So let's go back, then, on the other
 12 branch going further down the Main Gravity Canal and
 13 tell us what happens.
 14 A. Okay. As it -- and this is another flow by. So
 15 the inlet to Gallegos Pumping Plant, it's just a
 16 forebay, it's a large turnout and as a flow by, the
 17 Gravity Main, it goes into a -- it goes into -- it goes
 18 into a couple of tunnels.
 19 Q. Okay.
 20 A. They're not very large.
 21 Q. Those are described in some of these BIA -- BOR
 22 data.
 23 A. So tunnels and siphons. And the first block,
 24 then, it begins serving is Block 6.
 25 Q. All right.

1 water out of that sump, put in a manifold, and shoot it
 2 out to the laterals.
 3 Q. Okay. But -- so basically, they're pumping --
 4 they're also pumping water uphill to get to the farm
 5 turnouts as needed?
 6 A. They're pumping water to an elevated tank.
 7 Q. All right.
 8 A. And that is to pressurize the line, the lateral
 9 system.
 10 Q. Okay.
 11 A. From the elevated tank, it provides the head
 12 pressure to pressurize that lateral.
 13 Q. And how many -- approximately, how many elevated
 14 tanks are there at NIIP-NAPI now?
 15 A. I would guess 29.
 16 Q. Approximately how high are they? What's --
 17 A. They range between 100 feet to 300 feet.
 18 Q. Okay.
 19 A. Actually, let me scratch that. They're probably
 20 around 200 and less feet.
 21 Q. Okay.
 22 A. I don't think they're 300 feet high.
 23 Q. Okay. Let's go back to the main -- the main
 24 network, and why don't you finish up describing what
 25 happens.

1 A. Okay. So the Gravity Main in the -- before
2 you -- before you -- before you get to Block 2 and
3 Block 6, the Gravity Main branches off to another
4 canal, and that canal is called the Amarillo Canal.
5 Q. Okay.
6 A. And Amarillo Canal runs for approximately 11.2
7 miles.
8 Q. All right.
9 A. And it runs west. It serves Block 7 and Block
10 3.
11 Q. Would you label that Amarillo.
12 A. I just put an "A" on there.
13 Q. Oh, okay. Got it. That's good. That's fine.
14 That's fine.
15 Does that gravity flow into the Amarillo?
16 A. Yeah, the Amarillo Canal is gravity flow.
17 Q. Okay.
18 A. And it has smaller pumping plants on the north
19 and south side of the --
20 Q. All right.
21 A. -- of the canal, and those pumping plants lift
22 water into an elevated tank.
23 Q. All right.
24 A. And pressurize the system. We have individual
25 or smaller pumping plants that have two or one unit,

1 other laterals or --
2 A. That covers the Block 7 -- the Block 7
3 deliveries.
4 Q. All right.
5 A. At the -- at the end of Amarillo Canal, we have
6 one pumping plant and one gravity filled lateral
7 system.
8 Q. All right.
9 A. That serves Block 3.
10 Q. What's that called, that lateral?
11 A. They call it the 11.12 AH Gravity.
12 Q. Okay.
13 A. It's just a network of laterals that -- that are
14 all -- that aren't pressurized by a pump.
15 Q. Okay. And then -- but there's a pump -- another
16 pumping plant?
17 A. And then there's a pumping plant upstream of
18 that inlet to the gravity lateral system, and that one
19 pumps water to Block 3.
20 Q. Okay. Let me do this: If you would -- and of
21 course now let me give this back to Mr. Tully and look
22 in my book here. If you look at Exhibit -- Exhibit 5,
23 this -- yeah, that one here. And if you would look
24 starting on page 3, it has a whole section called
25 facilities and operation. And it has a lot of data

1 they don't have elevated tanks. They -- they pull the
2 water and pressurize the lateral.
3 Q. Okay.
4 A. So Amarillo --
5 Q. Let me just ask you: Coming off these canals
6 that we've talked about, do these smaller plants, they
7 either pressurize a tank up in the air or a pipe. Is
8 that right?
9 A. Yes.
10 Q. Okay.
11 A. Yes.
12 Q. And what's the -- what's the -- what's the
13 variety in size of the various pipes?
14 A. Diameter?
15 Q. Yeah.
16 A. Well, larger pumping plants are -- have pipes
17 that -- approximately 42 inches in diameter. The lift
18 station for Gallegos Pumping Plant is approximately --
19 it has a pipe the diameter of 10-and-a-half feet.
20 Q. Okay.
21 A. And then the smaller individual pumping plants
22 have -- or we call them individual pumping plants,
23 they -- I would guess on that one, approximately 16, 12
24 inches.
25 Q. Okay. Does that cover the Main? Do we have any

1 about the canals and the booster pumping plants, and
2 that goes on. So page 3, the next page, the next page,
3 the next page it describes the Amarillo Canal, for
4 example, the Burnham West Lateral, the Coury Lateral.
5 And this is from the BOR.
6 Would you just look that over quickly and tell
7 me whether that appears to be accurate, as far as you
8 know.
9 MR. POLLACK: Excuse me. You want him to
10 note if the entire document is accurate or just --
11 MR. MARSHALL: No, no, just -- just -- I'm
12 taking it one step at a time.
13 MR. POLLACK: Okay.
14 Q. (By Mr. Marshall) Where it says, "Facilities in
15 Operation," if you just look at that section which goes
16 on for about one, two, three, four, five pages and then
17 it gets to Irrigation Distribution System. And I'll
18 ask about that in a second. But just going back,
19 looking at the Facilities in Operation, that section,
20 does that appear to you to be an accurately and more
21 detailed section of some of the facilities that you've
22 been describing?
23 A. It's detailed. I don't know how accurate it is.
24 Q. Okay. Do you have any reason to think it's not
25 accurate?

1 A. Well, there's a lot of decimals and I --
 2 Q. But other than decimals, does it appear to be,
 3 as far as you know, generally accurate?
 4 A. Generally, I recognize the structures and the
 5 station numbering.
 6 Q. Okay.
 7 A. Yes.
 8 Q. Now, let me ask you this, and this is a genuine
 9 question, this says "Facilities in Operation," and my
 10 question would be: Are there -- do you know whether
 11 there are additional facilities and operations since
 12 this document on the Web was prepared? And I'm not
 13 holding you to it, but I'm just trying to get to how
 14 current that particular section is.
 15 MR. POLLACK: Excuse me. When was the
 16 document prepared?
 17 MR. MARSHALL: Well, you see, that's a good
 18 question.
 19 Q. (By Mr. Marshall) If you look -- and you might
 20 not be able to answer. If you look on the Web, if you
 21 look on the last page, it says it was last updated May
 22 11th, 2011, but I think some of the information may go
 23 back a few years, and that's sort of why I'm asking.
 24 I'll tell you what, to save time, you might take
 25 a look at that at some point and let me know, but at

1 least as far as the facilities described there, it
 2 seems to you to be generally accurate?
 3 A. Yes, generally.
 4 Q. Okay. So what's the biggest lift station in the
 5 system?
 6 A. The Gallegos Pumping Plant.
 7 Q. Okay. All right. Now, let's go on to the next
 8 section, which is called the Irrigation Distribution
 9 System. And that -- one, two, three, four, five, goes
 10 down to pumping plants. And this goes -- this goes by
 11 block. Blocks 1 through -- see, this goes Blocks 1
 12 through 7, okay, if you just look at this.
 13 A. I'm not sure what page you're on.
 14 Q. Okay, yeah. Let's see if we can --
 15 A. Oh.
 16 Q. Let's see, if you start on page 8 of 16, if you
 17 look down in the lower left. Is there a PDF number?
 18 Okay, there isn't.
 19 A. No.
 20 MR. POLLACK: No, we don't have numbers on
 21 our pages.
 22 Q. (By Mr. Marshall) Okay. If you look at the
 23 page, the heading is "Irrigation Distribution System."
 24 A. I think that's it right there.
 25 Q. Yeah, starts right there. Okay?

1 Starting right there and let's count that as
 2 page 1, 2, 3, 4, and then 5, and then there's Block 8.
 3 And it goes on down to a new section which is called
 4 "Pumping Plants."
 5 A. Okay.
 6 Q. Okay. So if you'd look at those pages which
 7 describe the irrigation distribution system, at least
 8 through Block 8, if you would just look through that
 9 and tell me whether that appears to be generally
 10 accurate, to the best of your knowledge, in terms of
 11 the data on the plants and the pumps and the pipes.
 12 A. Yes, it appears --
 13 Q. Okay.
 14 A. -- to be accurate, to the best of my knowledge.
 15 Q. Is it your responsibility to maintain that
 16 network?
 17 A. Yes.
 18 Q. Including all of block -- including all of these
 19 blocks?
 20 A. It's my responsibility to maintain the Navajo
 21 Indian Irrigation Project in these blocks.
 22 Q. Okay. Now, let's go back for a second. Is it
 23 correct to say that the BOR constructed the NIIP
 24 infrastructure, the canals, the main canals, that sort
 25 of thing?

1 A. Yes.
 2 Q. Okay. And at some point, they turned over the
 3 operation and maintenance of parts of that
 4 infrastructure to the Navajo tribe, to NAPI. Is that
 5 correct?
 6 A. No.
 7 Q. Okay. Explain to me how -- I'm diverging for a
 8 second, but explain to me how the -- not the -- the
 9 construction of the infrastructure was done basically
 10 by the BOR over periods of time. Is that right?
 11 A. Yes.
 12 Q. Okay. And for a period of time, did they also
 13 sort of maintain and repair that structure and -- let
 14 me go back. At some point, were various parts of NIIP
 15 turned over to somebody else for operation and
 16 maintenance?
 17 A. Yes.
 18 Q. Okay. What was that sequence, roughly?
 19 A. I -- I don't know.
 20 Q. Okay.
 21 A. I don't know dates.
 22 Q. Okay. Is that -- all right. We'll come back.
 23 We'll come back to that.
 24 But at the current time, your department is
 25 responsible for the operation and maintenance of which

1 blocks?

2 A. Blocks 1 through part of 8.

3 Q. Okay. Who is responsible for the operation and

4 maintenance of the main canals that we've described

5 here, the Main Canal, the Main Gravity Canal?

6 A. Navajo Agricultural Products Industry, my

7 company.

8 Q. Okay. And when did NAPI assume responsibility,

9 if you can recall approximately, for that?

10 A. I would be guessing if I were to recall. I read

11 1985.

12 Q. Okay. Let me go back for a second. How long

13 have you worked at NIIP-NAPI?

14 A. 2010.

15 Q. Okay. All right. We'll get back to what's

16 involved in operations and maintenance. We've got your

17 report, so we'll go into it in more detail.

18 Let's go on. The next section of this document

19 is labeled "Pumping Plants," and that goes on for

20 approximately four pages. Does that appear to be a

21 generally accurate description of the various pumps,

22 large and small, that are required to operate NAPI?

23 A. Yeah, there's a -- well, there's a typo on one

24 of them.

25 Q. Okay. Where's that?

1 A. Block 2.

2 Q. All right. What's -- what's the typo?

3 A. There is no 33.3R Pumping Plant in Block 2.

4 Q. Where is it?

5 A. It is in Block 4.

6 Q. All right. Why don't you put a little notation

7 on there?

8 A. I'm sorry, it's in Block 1. Excuse me.

9 Q. Okay. Why don't you put a little notation to

10 say, "Actually in Block 1."

11 A. Yeah, it's Block 1. I don't have the list of

12 pumping plants in Block 2 and 3 here.

13 Q. Well, let's see. If you look just below Block

14 2 -- well, there's a -- this list goes Block 1, Block

15 2. You've made a correction there, right, on Block 2?

16 I'm just trying to -- it does list pumps in the various

17 blocks, doesn't it?

18 A. It does. Blocks 2 and 3 are incorrect.

19 Q. Okay. Would you have a document that would

20 show -- that would give this data correctly or more

21 accurately?

22 A. Not here with me.

23 Q. Okay.

24 A. Yes.

25 Q. I would make -- where would you go get the

1 accurate data on the pumps in the various blocks?

2 A. To get the most accurate data?

3 Q. Yeah.

4 A. The Bureau of Reclamation.

5 Q. Well, this came from them in the first place.

6 A. I understand.

7 Q. Okay. So you think there's some -- you think

8 there's some errors in this?

9 A. Yes.

10 Q. Okay. Looking generally down this list, though,

11 for the pumps that you recognize, it has a column where

12 it says, "Total dynamic head in feet." If you look at

13 that, does that generally describe the amount of lift

14 that each of those pumps has to do?

15 A. Generally --

16 Q. Yes, without going over every single one.

17 A. -- I -- I don't know.

18 Q. Okay. Now, do you have to maintain those pumps?

19 A. Yes.

20 Q. Okay. Tell us what's involved in operating and

21 maintaining. First, let's talk about the big -- the

22 lift station pumps. Tell us generally what's involved

23 and what's necessary to keep those pumps running, and

24 then we'll talk about the smaller pumps.

25 A. The large pumps we -- we have an electrical

1 component, which is subcontracted to Western Area Power

2 Authority, and it's a service maintenance agreement.

3 And they maintained the electrical system, power coming

4 into the pumping plant itself --

5 Q. All right.

6 A. -- relays, you know, all the way down to pest

7 control. So it's a maintenance contract. On the

8 inside of the pumping plant --

9 Q. Hold on for a second. Do they bill you for

10 that?

11 A. Yes.

12 Q. Okay. And do you get those bills?

13 A. I do.

14 Q. Okay. What -- what would you say those bills

15 run, ballpark, on an annual basis?

16 A. I'd be guessing, for a Kutz Pumping Plant,

17 approximately 20,000.

18 Q. Okay.

19 A. They're estimates.

20 Q. Sure, absolutely. I understand completely.

21 A. Yeah.

22 Okay. All right. So I'll start -- so that's

23 electrical --

24 Q. Okay.

25 A. -- power coming into the facility. We have

1 fences. We have to maintain the fences by making sure
 2 they -- they're upright, they're secured. There's
 3 existing signage on the fencing, we maintain that.
 4 Gate entry, we maintain the gate, the gates. Locks on
 5 the gates, and then general access around the facility.
 6 Q. Right.
 7 A. Access entry, make sure that drainage is away
 8 from the facility. We grade, we put down rock, and we
 9 conduct weed control.
 10 Q. All right.
 11 A. And then the facility itself, the structure, our
 12 maintenance includes -- there's -- there's four --
 13 there are four AC units that connect to the pumping
 14 plant.
 15 Q. All right.
 16 A. They keep it cool.
 17 Q. All right.
 18 A. We maintain the filters in the AC units and the
 19 plumbing, make sure that they're -- there's no rust.
 20 Q. All right.
 21 A. And leaks. And inside the building, the
 22 building has a vertical -- a crane, a horizontal crane.
 23 We maintain that. And then the electrical panels, the
 24 control panels. Control panels get cleaned. We clean
 25 the control panels, we check for pests, we set traps

1 A. I look at their scope of work.
 2 Q. Oh, I got you. I got you. Okay.
 3 A. So if they take it apart, it's all described.
 4 Q. All right. So that's approximately once every
 5 five years?
 6 A. Yeah.
 7 Q. Okay. What kind of routine maintenance repairs
 8 to the motors?
 9 A. Preventive maintenance --
 10 Q. Yes.
 11 A. -- includes fluid checks, we make sure that the
 12 electrical motors have oil.
 13 Q. All right.
 14 A. So we check the oil. We drain the oil. The
 15 transformers on the outside of the building, we drain
 16 the oils on that and test them annually.
 17 Q. Okay.
 18 A. Fill them back up. And then on -- on the
 19 pumping plant, the pumps, the horizontal pumps, again,
 20 they get -- they get refabricated. That's more of a --
 21 our goal is to try to stay within, you know, maybe ten
 22 years. It's ultimately depending on funding, contract
 23 funding. Again, I'm a contractor. I get paid to
 24 contract, to operate and maintain --
 25 Q. All right.

1 and so forth.
 2 Q. Right.
 3 A. And general housekeeping in the interior of the
 4 panels. Then -- and then we go down to the -- to the
 5 forebay, the gallery, the pipe gallery. We maintain
 6 motors and pumps.
 7 Q. All right.
 8 A. Motors, I believe, it's every five years we take
 9 a motor and we send it to an electrical vendor to get
 10 reconditioned and rewound.
 11 Q. All right.
 12 A. And they put that back in -- or we put --
 13 Q. So they actually take out all of those coils and
 14 put in new coils?
 15 A. They take the entire -- we just -- we just lift
 16 the motor out with the crane --
 17 Q. Okay.
 18 A. -- and we set it on one of their trucks, and
 19 they haul it off.
 20 Q. Okay.
 21 A. Again, their scope of work is all I see. I
 22 don't go to their shop. I send --
 23 Q. "I, C," what does that stand for?
 24 A. Oh, I don't -- I see.
 25 Q. Oh, oh, oh.

1 A. -- these facilities. So there's budgeting
 2 involved for me on my -- for my unit.
 3 The horizontal pumps, they get reconditioned as
 4 well, time frame is dependent on budgets.
 5 Q. What's the optimal -- if you had the budget,
 6 what's the desirable time frame for reconditioning the
 7 pumps, if you had the money?
 8 A. Well, we recondition the motors -- five years is
 9 a good time frame for motors.
 10 Q. Okay.
 11 A. For pumps, the age of these pumps, they --
 12 they've outlived their service lives.
 13 Q. All right. In fact --
 14 A. So we --
 15 Q. -- in one of your reports, you referred to some
 16 of this infrastructure as being more than 30 years old.
 17 Isn't that right?
 18 A. If you look at the dates. I'm 36 and some of
 19 these blocks have been transferred in 1976.
 20 Q. Okay.
 21 A. So, yes, they're -- they've outlived their
 22 service lives.
 23 Q. And to keep them in operation, if you had the
 24 money just to do the service, not to replace them, but
 25 if you had -- what would you think would be optimal to

1 keep those running in terms of rehabing them?
 2 A. I don't know.
 3 Q. Well, if you had the money, should they be
 4 replaced?
 5 A. Yes.
 6 Q. Okay. All right. What's involved in the
 7 day-to-day maintenance and operation of the pumps
 8 themselves? What do you have to do to them?
 9 A. The pumps have a hydraulic valve system. That
 10 hydrologic valve system has oil in it, and we check the
 11 fluids on the oil. We make sure that there is fluid
 12 there, and we drain it when the fluids get dirty.
 13 Q. Okay. Now, the Gallegos Plant, what would be an
 14 optimal rehabilitation reconditioning schedule for that
 15 plant, which is newer?
 16 A. That facility hasn't been transferred.
 17 Q. Oh, it hasn't been?
 18 A. No.
 19 Q. Okay.
 20 A. It's operated and maintained --
 21 Q. By whom?
 22 A. -- by the Bureau of Reclamation.
 23 Q. Okay. Do they charge you anything for operating
 24 and maintaining it?
 25 A. No.

1 operating and maintaining those, the BOR does?
 2 A. Yes.
 3 Q. Okay. Got you. Thank you.
 4 Give me a second here.
 5 MR. TULLY: Would this be a good time to
 6 take about a five- or a ten-minute break here?
 7 MR. MARSHALL: Sure. It would be a good
 8 idea.
 9 And what do you guys want to do? I'd like to
 10 just keep on plowing through. If you want to take a
 11 break for lunch, maybe we should keep it to like half
 12 an hour or something like that. I know you-all have to
 13 travel. So why don't we take a short break now and
 14 then you let us know what you'd like to do for lunch,
 15 if any.
 16 MR. POLLACK: Okay. We'll talk off the
 17 record.
 18 (Recess taken from 11:28 a.m. until 11:43 a.m.)
 19 Q. (By Mr. Marshall) Let's go back on the record.
 20 Mr. Haskie, could you look at Exhibit 1, which
 21 is this first map of the Navajo -- of NIIP-NAPI.
 22 MR. POLLACK: Okay. Mr. Marshall, let me
 23 just clarify here when we talk, "NIIP" is the project,
 24 "NAPI" is an enterprise. So when we're talking about
 25 the farm, we should just use the term "NIIP."

1 Q. Okay. So to the present time, NAPI is not
 2 charged for the operation and maintenance of the
 3 Gallegos Plant?
 4 A. Yes.
 5 Q. Okay. Are there any other major plants that
 6 NAPI is not charged for because somebody else is doing
 7 the operations and maintenance?
 8 A. Can you repeat that again.
 9 Q. Yeah. Okay. We had the Kutz Plant and then we
 10 had the Gallegos Plant. And the Gallegos Plant is the
 11 biggest one. Isn't that right?
 12 A. Yes.
 13 Q. Okay. Are there any other major -- actually,
 14 strike that.
 15 Are there any other pumps, pumping stations that
 16 the BOR maintains and operations and not you?
 17 A. Yes.
 18 Q. What are they?
 19 A. We have B1.0R -- I'm sorry, scratch that.
 20 B -- well, I'm going to be guessing, but I know
 21 for sure B3.1 Pumping Plant, B3.9L Pumping Plant.
 22 Q. All right.
 23 A. And there are -- there are approximately three
 24 other pumping plants that I don't know the name.
 25 Q. Okay. And so you don't bear the cost for

1 MR. MARSHALL: Well, Counselor, that may be
 2 your position. I'll get into that. I'm going to refer
 3 to it as NIIP-NAPI because it's an integrated
 4 enterprise, and I will --
 5 MR. POLLACK: Well, there is no such thing
 6 as NIIP-NAPI.
 7 MR. MARSHALL: They're so interconnected
 8 that you can't have one without the other, so your
 9 position is noted, and I will -- because I'm asking the
 10 witness about the infrastructure and the operations,
 11 which are necessary in order for NAPI to operate. So
 12 let's go on.
 13 Q. (By Mr. Marshall) Go back to Exhibit 1, which
 14 is a map of the area occupied by NIIP-NAPI. Is the
 15 NIIP project located within -- is any of the NIIP
 16 project located within the original boundaries of the
 17 Navajo Reservation going back to the 1860s, if you
 18 know?
 19 A. I don't know.
 20 Q. Okay. Do you know what the -- do you have any
 21 knowledge about the later expansions of the Navajo
 22 Reservation and whether that -- those later expansions
 23 included any part of NIIP?
 24 A. No.
 25 Q. Okay. Approximately how many miles of pipe are

1 there in the farm irrigation distribution system?
 2 A. I don't know.
 3 Q. Okay. Is it significant?
 4 A. Depends on what "significant" is.
 5 Q. Well, let's go back for a second then. Take a
 6 look at Exhibit 4, which is the BOR description.
 7 A. Okay.
 8 Q. Okay. And turn to the fourth page where is
 9 has -- where it -- under "Lateral System."
 10 A. Yes.
 11 Q. Okay. It says, "A closed pressure distribution
 12 system will consist of about 340 miles of underground
 13 pipelines. These pipelines [sic] will range from 6 to
 14 96 inches in diameter and will distribute water to the
 15 farm turnouts." Do you see that?
 16 A. Yes.
 17 Q. Okay. Does that sound generally accurate as an
 18 estimation of the total mileage of the underground
 19 pipes for the distribution system to the farms?
 20 A. Yes.
 21 Q. Okay. Now, let's go back to what happens to the
 22 water. It goes through these various canals; it then
 23 goes through the distribution pipes mostly. Is that
 24 right?
 25 A. Yes.

1 Q. Chemigation, okay. That's to put chemicals in
 2 the water?
 3 A. To put herbicides --
 4 Q. All right.
 5 A. -- in the water.
 6 Q. Okay.
 7 A. And then a center pivot. There's some --
 8 there's some valves, as well, to open and close the
 9 system and a radio transmitting unit that communicates
 10 with the control center to operate the center pivot.
 11 Q. Okay. And the typical center pivot is how long,
 12 and what acreage does it cover?
 13 A. I don't know specifically. I know there are
 14 thresholds.
 15 Q. Okay. What powers the center pivots as they go
 16 around?
 17 A. Electricity.
 18 Q. Okay. And who pays for that electricity?
 19 A. NAPI.
 20 Q. Okay. And who supplies that electricity?
 21 A. The utility company that serves the area.
 22 Q. Okay. That's not WAPA, is it?
 23 A. No.
 24 Q. Okay. And you get those electric bills?
 25 A. I do not.

1 Q. And is it gets to the farm turnouts. What does
 2 that usually consist of? Describe what happens there.
 3 A. Well, there's a -- there's a saddle, you know, T
 4 flange off of the -- off the Main Lateral. And they're
 5 typically four inches in diameter, and that pipe
 6 branches off to the delivery unit box. And that box is
 7 either above ground or below ground. There's an
 8 upstream air valve and -- with a ball valve. And then
 9 the -- there is a water meter, flow meter, and I'm
 10 talking -- I'm describing these in the box.
 11 Q. Right.
 12 A. Okay. So you have a ball valve, an air release
 13 valve, a flow meter, and then a pressure reducing
 14 valve, and then -- pressure reducing valve, then
 15 there's the last -- there's a -- it stems out of the
 16 pressure releasing valve and the pipe pretty much ends
 17 there and connects to the farm field, to the field
 18 water system.
 19 Q. And what's the most typical field water system
 20 consist of, a pivot and what else?
 21 A. Consists of pipe, they're smaller in size, a
 22 chemigation system for treatment -- I'm sorry, for
 23 hertz signs.
 24 Q. A camp -- would you say that again.
 25 A. Chemigation.

1 Q. Who does?
 2 A. Our -- just generally, our Accounting Department
 3 receives the bills.
 4 Q. Okay. Is your department responsible for the
 5 maintenance and operation of the center pivots?
 6 A. No.
 7 Q. How far does your responsibility go?
 8 A. To the Navajo Indian Irrigation Project delivery
 9 box.
 10 Q. Okay. Which is right there basically at the
 11 farm turnout?
 12 A. Yeah.
 13 Q. Okay.
 14 A. It's near -- near and about a farm field.
 15 Q. Okay. And -- okay. Who's responsible for
 16 operation and maintenance of the farm -- the field
 17 itself and the pivot?
 18 A. NAPI, another department.
 19 Q. Which department is that?
 20 A. Irrigation Department.
 21 Q. Okay. And they don't report to you?
 22 A. No.
 23 Q. Okay. About how many employees do they have, do
 24 you know?
 25 A. I don't know.

1 Q. Do they subcontract any of that work, do you
2 know?
3 A. No.
4 Q. Okay.
5 A. Well, yes.
6 Q. To whom do they -- if you know, to whom do they
7 subcontract?
8 A. I don't know.
9 Q. Okay. Let me show you Exhibit 6. And this
10 is -- you can identify that for us.
11 A. Annual Report for Operations, Maintenance &
12 Replacement, Calendar Year 2011, Navajo Indian
13 Irrigation Project.
14 Q. And is this signed by you?
15 A. Yes.
16 Q. Okay. And you recognize this report?
17 A. Yes.
18 Q. And were you responsible for preparing the
19 report and its contents?
20 A. Yes.
21 Q. Okay. How many reports of these have you
22 actually personally done?
23 A. Two.
24 Q. Okay. Let's go back for a second. I'm
25 backtracking. You said you came to NAPI in 2010?

1 science for environmental water treatment, water waste
2 treatment, some engineering economics, and then basic
3 mathematics, chemistry, physics, some general
4 electives.
5 Q. Okay. And after USC, what did you do?
6 A. I worked for Kiewit, Kiewit Construction Company
7 in Las Vegas on a water treatment facility. The River
8 Mountains Water Treatment Facility in Henderson. I
9 worked as a field engineer in the Structural Division.
10 My responsibilities were to pour concrete -- or
11 oversight of concrete and steel work, oversight of
12 carpentry, carpenters and mechanics.
13 Q. All right.
14 A. And then after one year there, I relocated back
15 to Los Angeles and I worked for a consulting firm
16 that -- by the name of PACE Engineering. They merged
17 with Hall & Foreman, Inc., and I stayed there until
18 2010.
19 Q. Okay. And what did you do there?
20 A. I designed -- I designed homes for subdivisions,
21 communities, road design -- or street design, water,
22 sewer, rough grading, a little bit of hydrology, and I
23 prepared plans. I started off as a CAD drafter in
24 surveying boundaries and tracts, tract maps, and then I
25 started doing design work.

1 A. Yes.
2 Q. Okay. Could you give us a little idea of your
3 employment experience and your education before then.
4 You know, start chronologically with high school and
5 give us some idea of what you did before coming to
6 NAPI.
7 A. I graduated high school in 1994 and I attended
8 college afterwards. I graduated from the university
9 with a bachelor's of science in environmental
10 engineering, civil engineering in 1999.
11 Q. And what high school did you graduate from?
12 A. Alexander Dawson School in Lafayette, Colorado.
13 Q. Okay.
14 A. And then I went to the University of Southern
15 California in Los Angeles. After getting out, I worked
16 at the --
17 Q. Did you receive a degree from USC?
18 A. Yes.
19 Q. In what?
20 A. Civil engineering, environmental engineering.
21 Q. Okay. A bachelor's?
22 A. A bachelor's of science.
23 Q. Okay, got it.
24 What were the main things you studied at USC?
25 A. I studied hydrology, hydraulics, microbial

1 Q. Where were most of these subdivisions?
2 A. Los Angeles County, Ventura County, San
3 Bernardino County, Riverside County, and Orange County.
4 Q. And how did you come to be hired by NAPI?
5 A. I looked in the advertisement page of the Navajo
6 Times. I went on the Web site.
7 Q. They actually had an ad?
8 A. Yes.
9 Q. Okay. All right. Have your duties changed --
10 tell me, generally speaking, what your duties have
11 been, in your own words, since you arrived at NAPI?
12 A. My duties were to train branch supervisors to
13 develop their employees, to understand the system, to
14 perform preventative maintenance, and to document
15 maintenance daily. And then my job has been to
16 organize and facilitate clear communication between
17 operators and maintenance branches.
18 Q. What month did you go to work at NAPI?
19 A. July 2010.
20 Q. Okay. Who provides the funding for you to carry
21 out your responsibilities?
22 A. I receive a paycheck from NAPI.
23 Q. Who provides the funding for the functions that
24 your department carries out in terms of operations and
25 maintenance and replacement, not just your paycheck,

1 but who provides the funding?
 2 A. The funding for the Navajo Indian Irrigation
 3 Project operation, maintenance, and replacement is
 4 operated by the Bureau of Indian Affairs through the
 5 contract that's labeled here.
 6 Q. Okay. And that's under -- we're referring to
 7 the cover page of Exhibit 6 again. It's under Public
 8 Law 93-638. Is that correct?
 9 A. Yeah.
 10 Q. And is there a specific contract number there?
 11 A. Yeah.
 12 Q. How does the contracting process work, and how
 13 is the money provided?
 14 A. The contract process is this contract
 15 CTN00X10215, it's a mature contract. It lasts five
 16 years, and it gets funded to NAPI --
 17 Q. All right.
 18 A. -- annually for scopes of work. Scope of work
 19 is defined in the contract.
 20 Q. Now, does this particular contract number
 21 include things besides operations, maintenance, and
 22 replacement, or just that?
 23 A. Just that.
 24 Q. Okay. And how is it determined how much money
 25 you're going to get for those functions in a particular

1 year?
 2 A. How is it determined? It's -- I don't know.
 3 Q. Okay.
 4 A. It's a Congressional decision. I don't know the
 5 details on that.
 6 Q. But basically, the funding -- does all of your
 7 funding come from the federal government?
 8 A. All of the funding for the Navajo Indian
 9 Irrigation Project operations and maintenance for this
 10 contract comes from the federal government.
 11 Q. Okay. Is that all of the funding that's
 12 provided to your department?
 13 A. No.
 14 Q. Okay. What other sources of funding do you
 15 have?
 16 A. I have three existing federal contracts with the
 17 Bureau of Reclamation.
 18 Q. Okay. And what are they?
 19 A. One is to operate and maintain facilities and
 20 construction status. Two is to do -- is to conduct
 21 minor construction scopes for the Bureau of
 22 Reclamation. And the third is to replace deficiency
 23 items identified in 1988. We perform that,
 24 replacements for the Bureau.
 25 Q. What's a deficiency item, and what's this

1 identification in 1988 that you're referring to?
 2 A. The -- there was a -- it's going to be a little
 3 tough for me to describe it, but the way I understand
 4 it, in my own words, is when you build a home, you have
 5 an inspector come in and identify if your home is built
 6 to spec. And if the home is not built to spec, they
 7 develop a list of corrections. And that inspection was
 8 conducted for the Navajo Indian Irrigation Project --
 9 Q. All right.
 10 A. -- in 1989.
 11 Q. Okay.
 12 A. And there was a list identified and there are
 13 items that sometimes fit within NAPI'S -- NAPI'S
 14 expertise, and so we perform the work for them as a
 15 contractor.
 16 Q. Do you have a copy of this 1989 deficiency list?
 17 A. Yes.
 18 Q. Okay. And you're still working on that list?
 19 A. I -- I only work on items that the Bureau of
 20 Reclamation requests me to work on.
 21 Q. Okay. What would be some examples of
 22 deficiencies that are identified in this list?
 23 A. Well, one item would be you take a construction
 24 pumping plant that was -- that was built and the panels
 25 have diagrams listed. It shows the network of wiring,

1 point to point identification. Well, some -- one item
 2 was that the diagrams were duplicates from other
 3 pumping plants.
 4 Q. All right.
 5 A. And so we had to remove the diagram and place a
 6 new one up.
 7 Q. All right. What are some other examples of
 8 deficiencies that were identified?
 9 A. There was a cathodic protection unit that was --
 10 that was not reinstalled. It wasn't installed. It
 11 was -- the part was it was just stored, so it's our
 12 responsibility to install and hook it up.
 13 Q. Okay. What was that cathodic protection for?
 14 A. It's for -- it's used to measure the condition
 15 of the pipe, the steel pipe pumping plant. Pumping
 16 plants have steel pipes that run approximately 300 feet
 17 from the pumping plant and they have cathodic
 18 protection connected to those steel pipes and to
 19 protect them from corrosion.
 20 Q. This is -- we're talking here about the farm
 21 irrigation distribution system?
 22 A. This is the Navajo Indian Irrigation Project I'm
 23 talking about.
 24 Q. Right, but are we talking about the main pipes
 25 at the big lift stations or the smaller pipes that go

1 off of the canals?
 2 A. The smaller pumping plant pipes.
 3 Q. Okay. How many of those pipes were missing
 4 cathodic protection, according to the list?
 5 A. I don't know.
 6 Q. Approximate. I mean, a few? Most of them?
 7 A. I'm recalling some of the deficiency line items
 8 that I remember reading.
 9 Q. Right.
 10 A. I didn't work on those projects.
 11 Q. Okay.
 12 A. And I don't know.
 13 Q. How far along is NIIP-NAPI in terms of curing
 14 all of those deficiencies?
 15 A. Well, NAPI is only authorized to perform those
 16 corrections by the Bureau of Reclamation.
 17 Q. Okay.
 18 A. They would be --
 19 Q. Now, would it be your responsibility to correct
 20 all of the deficiencies in the system for which you now
 21 have responsibility; that is, the infrastructure going
 22 all the way to the farm townships?
 23 A. My responsibility is to perform replacements or
 24 corrections by what the contract tells me to.
 25 Q. So you don't go out -- for example, if there's,

1 say, dozens of pipes that need cathodic protection, you
 2 don't go out and fix them unless BOR tells you to. Is
 3 that right?
 4 A. The Bureau of Reclamation contract specifically
 5 tells me which cathodic protection needs repair or
 6 replacement or installation.
 7 Q. Okay.
 8 A. And so I follow that as a guideline.
 9 Q. Okay. And so NAPI doesn't make that
 10 determination?
 11 A. Outside of that, this contract, CTN00X10215, has
 12 a scope for me to provide operation, maintenance, and
 13 replacement, and that includes cathodic protection.
 14 Q. Okay. Mr. Haskie, I'd ask you -- well, we'll
 15 send you a letter with this, but we'd ask you to
 16 provide us with a copy of that 1989 deficiency list.
 17 MR. POLLACK: Objection. You can -- you
 18 can ask him whatever you want, but we're not providing
 19 any more documentation.
 20 MR. MARSHALL: Well, let me make the
 21 request on the record. Now, let me just ask: Was
 22 this -- I'd request a copy of the 1985 -- 1989
 23 deficiency list and any subsequent documents that show
 24 which of these deficiencies have been solved.
 25 MR. POLLACK: Okay. We note your request.

1 MR. MARSHALL: Okay. Counselor, let me ask
 2 for the record, has this document previously been
 3 provided, to the best of your knowledge?
 4 MR. POLLACK: I don't believe so.
 5 Q. (By Mr. Marshall) Okay. Now, subsequent to
 6 1989, have any other deficiency lists been prepared?
 7 A. I don't know.
 8 Q. You don't know one way or the other?
 9 A. Huh-uh.
 10 Q. Okay. All right. Now, let's go back.
 11 MR. POLLACK: Mr. Marshall, actually, let
 12 me take that back. I'm pretty sure that if there is a
 13 deficiency list that was prepared by the Bureau, that
 14 would have been part of what the United States provided
 15 to you, but we did not provide that, the Navajo Nation
 16 did not.
 17 MR. MARSHALL: I'd ask the settling parties
 18 to either provide it to us or tell us where those
 19 documents were provided previously.
 20 Q. (By Mr. Marshall) Now, let me go on. Let's go
 21 back to -- so basically, you have four contracts that
 22 provide you with funding. Is that right?
 23 A. Yes.
 24 Q. Okay. And all of those are with the federal
 25 government?

1 A. Yes.
 2 Q. And how is the level of funding, the amount of
 3 money that they provide you, determined?
 4 A. It's not determined by NAPI.
 5 Q. That's what I'm getting at. Who in the -- it's
 6 determined by the federal government?
 7 A. Yeah.
 8 Q. Okay. Who in the federal government, if you
 9 know?
 10 A. I don't know.
 11 Q. Okay. And do they just give you -- so tell me
 12 how this typically works. They say you have X dollars
 13 for this year?
 14 A. Yes.
 15 Q. And how is that conveyed to you?
 16 A. In -- in a letter.
 17 Q. All right.
 18 A. And the Bureau of Reclamation has a -- I believe
 19 a biannual meeting to discuss achievable goals related
 20 to this correction item --
 21 Q. All right.
 22 A. -- deficiency item list. Operations and
 23 maintenance, it's -- it's a collaborative effort, and
 24 they plan that out with us for operations and
 25 maintenance of the system.

1 Q. Do you have to work with them to prioritize
2 within the amounts of money that they might make
3 available to you?
4 A. Yes.
5 Q. Okay. And since you've been there, have they
6 provided you with all the money necessary to do the
7 work that needs to be done in a broad -- strike that.
8 Let me go back for a second. We'll get to that
9 in a second. I'll go back to -- let's go back to your
10 report. Looking at Exhibit 6, you identify yourself as
11 PE. What does "PE" stand for?
12 A. Professional engineer.
13 Q. And what are the requirements for being a
14 professional engineer?
15 A. You have to have a bachelor's of science --
16 Q. All right.
17 A. -- at an accredited university and four years of
18 experience under a -- under three licensed civil
19 engineers, whatever discipline you're planning to
20 pursue the license in, and then approval from the State
21 Board of Engineers to participate in the two-day
22 examination. The examination exists of an
23 eight-hour exam. This is for the State of California.
24 Q. All right.
25 A. An eight-hour exam covering civil engineering

1 your schedule. I don't know, but I do have significant
2 amount of additional examination.
3 MR. POLLACK: Sure. I appreciate that.
4 MR. MARSHALL: Okay.
5 MR. POLLACK: I think we'll be okay.
6 MR. MARSHALL: Okay.
7 MR. TULLY: A clarification before we
8 leave. And I apologize, but I've got all these black
9 marks and scribbles and stuff. And it was for the year
10 that you got your bachelor of science degree, and I
11 never did get that. You can see all my scribbles. I
12 was trying to write it down, and then I -- when did you
13 get your bachelor's degree from USC?
14 THE WITNESS: 1999.
15 MR. TULLY: Thank you. I apologize. I
16 just wanted to clear that up. Thank you.
17 MR. MARSHALL: Okay. Let's break for
18 lunch. We'll be back at 1:15.
19 MR. POLLACK: All right.
20 (Recess taken from 12:14 p.m. until 1:21 p.m.)
21 (Ms. Sheehan and Mr. Frye left the deposition.)
22 Q. (By Mr. Marshall) Mr. Haskie, we're back on the
23 record. You're still under oath and we're just
24 continuing your deposition. Let me go back. You point
25 out basically the water distribution system. Can you

1 discipline. My discipline was in water resources.
2 Q. All right.
3 A. And then the second day is two hours of
4 surveying and two hours of seismic -- seismic
5 engineering.
6 Q. When did you take that exam?
7 A. 2007.
8 Q. Okay. Have you been licensed in California ever
9 since?
10 A. I've been licensed since 2008.
11 Q. Okay. Any other states besides California?
12 A. No.
13 Q. Okay. Let's go back to Exhibit 6. I'd like to
14 go through this.
15 MR. POLLACK: Why don't we take a break for
16 lunch before we go through the exhibit, because that's
17 probably going to take quite some time. Does that
18 sound agreeable?
19 MR. MARSHALL: Okay. Okay.
20 MR. POLLACK: And so I would propose we
21 come back in an hour. I think that's reasonable for
22 the witness.
23 MR. MARSHALL: Okay. If you want to do
24 that, I'm accommodating. I'm certainly willing to do
25 less, 30 minutes or 45 minutes, just to accommodate

1 tell us about what system there is for returning water,
2 you know, drainage canals and stuff like that that's
3 part of the infrastructure.
4 A. The NIIP -- the Navajo Indian Irrigation
5 Project, NIIP, has drainage collectors.
6 Q. Okay.
7 A. And there are drainer collectors in Block 2,
8 Block 3, and I believe Block 4.
9 Q. All right.
10 A. Drainage collectors in the event of an overflow,
11 canal overflow, these drainage collectors are, I'm
12 going to guess here, I believe they're designed for a
13 25 year flood.
14 Q. Okay.
15 A. And they convey the water down to a local wash,
16 Ojo Amarillo is one wash, Gallegos Wash is another one,
17 and there's a third wash, and I can't remember the name
18 of that.
19 Q. Is there any drainage or collector system under
20 the fields themselves?
21 A. No.
22 Q. Okay. Let me ask you: When the water is put on
23 the fields and it seeps down in the ground, it goes
24 past the root zone, are there any monitoring stations
25 that identify the direction of underground flow?

1 A. Yes.
 2 Q. And where are they?
 3 A. I don't know the locations of them.
 4 Q. Okay.
 5 A. And I don't know the number.
 6 Q. Who operates those?
 7 A. The Bureau of Indian Affairs.
 8 Q. Okay. I mean, are we talking dozens or a half
 9 dozen? Do you have any idea approximately how many
 10 there are?
 11 A. More than a dozen.
 12 Q. Okay. Up there, generally speaking, underneath
 13 the fields, what's the soil and how far down does it go
 14 before you get to bedrock?
 15 MR. MARSHALL: Hold on a second. Let's
 16 stop for a second.
 17 MS. ASHLEY LUCERO: It's the group calling
 18 in again.
 19 MR. POLLACK: Okay.
 20 MR. MARSHALL: We've started. We've
 21 probably been going for --
 22 MR. POLLACK: We're almost done.
 23 MR. MARSHALL: Yeah.
 24 MR. POLLACK: You missed it. Okay.
 25 MR. MARSHALL: I was asking Mr. Haskie,

1 what -- generally speaking, up at the fields, how much
 2 soil do you have and how far does it go before you get
 3 to bedrock.
 4 A. I don't know. I could estimate, but I don't
 5 know.
 6 Q. Okay. Is the soil up there typically sandy?
 7 A. It's a mixture.
 8 Q. Okay.
 9 A. I don't know that mixture.
 10 Q. Do you have any idea which way the underground
 11 water flows at various parts of NIIP-NAPI, the project?
 12 A. Generally, I can -- I have an idea of the
 13 general subsurface flows.
 14 Q. And what sort of direction does it go in
 15 predominantly?
 16 A. North.
 17 Q. Okay. Are there any -- what measuring stations
 18 are there for return flows, whether they're surface
 19 flows or subsurface flows?
 20 A. I believe the washes have measuring stations.
 21 Q. Okay.
 22 A. Again, I don't operate those.
 23 Q. Okay. Have you seen them?
 24 A. No.
 25 Q. Okay. Are there any measuring stations for

1 subsurface flow, as far as you know?
 2 A. Measurement only in terms of depth.
 3 Q. Okay.
 4 A. Yes, that I know of. Measurement depth of water
 5 table.
 6 Q. Okay. And where are they?
 7 A. They're located across the farm.
 8 Q. Approximately how many?
 9 A. I don't know.
 10 Q. Okay.
 11 A. I don't operate them.
 12 Q. Okay. What department operates those?
 13 A. Bureau of Indian Affairs.
 14 Q. Is that part of the farm operation, or is it
 15 some separate department?
 16 A. It's the federal government.
 17 Q. Okay. We've gone over the NIIP infrastructure,
 18 the main components of it starting at Navajo Dam. If
 19 you look at one of these documents, one of these BOR
 20 documents, in fact, it's Exhibit 4, second page, middle
 21 of the page, it says, "The total cost of Navajo Dam and
 22 the appurtenant structures was \$36,634 --
 23 \$36,634,560." Do you see that?
 24 A. This number?
 25 Q. Yes.

1 A. The 36 million?
 2 Q. Yes.
 3 A. Yes.
 4 Q. Okay. What were the costs of the other
 5 components of NIIP; that is, the canals everything past
 6 Navajo Dam, if you have any idea?
 7 A. I don't have any idea.
 8 Q. Okay. Who would have those figures, do you
 9 know?
 10 A. The Bureau of Reclamation.
 11 Q. Was there -- when the project was originally
 12 authorized, was there a -- were you aware, was there a
 13 repayment schedule for repaying the loans or the funds
 14 that were going to be advanced by the federal
 15 government?
 16 A. I don't know.
 17 Q. Okay. Does NAPI, the Navajo Nation, do they
 18 currently repay any loans for NIIP or NAPI to the
 19 United States Government to reimburse them for the cost
 20 of the infrastructure and the other functions which
 21 they have carried out?
 22 A. No.
 23 Q. They don't, okay.
 24 A. Currently?
 25 Q. Yes.

1 A. No.

2 Q. When was the last time they did, do you have any
3 idea?

4 A. No.

5 Q. All right. Let's go back to Exhibit 6. Have
6 you had a chance to look at that during lunchtime?

7 A. No.

8 Q. Okay. Let me go through it.

9 MR. MARSHALL: And, Counsel, I'll provide
10 everybody a copy of this in PDF.

11 Q. (By Mr. Marshall) And, Mr. Haskie, where it's
12 highlighted --

13 A. Yes.

14 Q. -- those are highlightings that I added. Okay?
15 They're not yours. I added them in the PDF just so it
16 would be easier to find things.

17 Now, how many of these reports have you
18 prepared?

19 A. I prepared two.

20 Q. Okay. In this report, your signature says May
21 1st, 2012. Is this the second one, the last one that
22 you prepared so far?

23 A. That I've submitted.

24 Q. Okay.

25 A. This is the second one that I've submitted --

1 Q. How?

2 A. Well, we have a technical -- we have some
3 contracting services, such as operations and
4 maintenance. I don't have to perform those duties on
5 NIIP. I could perform them on any other irrigation
6 system and get paid for it.

7 Q. Okay. Let me ask it this way: Could NAPI
8 operate without the water which is conveyed through the
9 NIIP infrastructure system?

10 A. No.

11 Q. Is that land acceptable of any kind of feasible
12 dry farming?

13 A. I don't know.

14 Q. Okay. What's the -- okay.

15 But the fact is, NAPI needs the water that NIIP
16 provides through its system in order to operate and do
17 the irrigation, right?

18 A. Yes.

19 Q. Okay. Now, let's go to the third paragraph.
20 "The NIIP is the water storage, carriage and
21 distribution system. In addition, lands, roads, and
22 utilities make up the infrastructure for the irrigation
23 project." Did NIIP provide those other infrastructure
24 items, roads, utilities, and lands?

25 A. Did NIIP provide --

1 Q. Okay.

2 A. -- to the BIA.

3 Q. And you haven't done the one -- you haven't done
4 one in 2013 yet?

5 A. I haven't done one for 2012.

6 Q. Right. So this is the last O&M report which you
7 have submitted?

8 A. Yes.

9 Q. Okay. Did you use sort of the format and some
10 of the material from earlier reports in preparing this?

11 A. Yes.

12 Q. And, in fact, if you look at the first sentence
13 in the Forward, it says that this is the -- "The fiscal
14 year 2011 report is the thirty-third in a series of
15 annual reports." Is that correct, as far as you know?

16 A. As far as I know, yes.

17 Q. Okay. And it says, "The annual reports document
18 water delivery from the Navajo Nation Irrigation
19 Project to the user, the Navajo Agricultural Products
20 Industry (NAPI). The two entities, NIIP and NAPI, have
21 separate origins but are closely integrated to achieve
22 NAPI'S mission." Is that true?

23 A. Yes.

24 Q. Can NAPI operate without NIIP?

25 A. Yes.

1 Q. Let me take that back. They didn't provide the
2 land, did they? The government, the federal government
3 somehow provided that. Isn't that right?

4 A. I don't know.

5 Q. Okay. Roads and utilities, who built those?

6 A. BIA built the roads.

7 Q. Okay.

8 A. Utilities that are specifically used to power
9 the irrigation system was built by the BIA.

10 Q. Okay. Do you maintain the -- you maintain and
11 repair the roads and the utilities, your department?

12 A. No to roads. Yes to utilities that
13 support the irrigation system.

14 Q. Okay. Who does the roads?

15 A. The BIA.

16 Q. Okay. Let's see. Let's turn over to page 6 of
17 Exhibit 6. It's page 6 numbered at the top. It says,
18 and there's a chart there, NIIP Cumulative Diversion
19 for 2011. And what's the total figure?

20 A. On page 6, the total figure, the total
21 cumulative diversion for 2011 is 217,600 acre-feet.

22 Q. Okay. And that's for the entire year through
23 the end of the irrigation season in October?

24 A. That's one calendar year.

25 Q. Okay. All right. It says that -- is this your

1 division, O&M personnel read and recorded monthly water
 2 meter readings at the individual field and delivery
 3 turnouts?
 4 A. Yes.
 5 Q. And the tabulated amount in 2011 was 217,600
 6 acre-feet. Is that correct?
 7 A. Yes.
 8 Q. And that figure comes from the tabulation of the
 9 water delivered at the individual field delivery
 10 turnouts?
 11 A. No.
 12 Q. Okay.
 13 A. That number is diversion.
 14 Q. All right. And what do -- what -- where was
 15 this diversion figure measured?
 16 A. At the parshall flume here.
 17 Q. Okay. Slightly below, right near the NIIP
 18 headgates?
 19 A. Headworks, yes.
 20 Q. Right up by Navajo Dam?
 21 A. Yes.
 22 Q. Okay. Well, explain to me what this means here,
 23 because it seems to me to say that this is a
 24 tabulation -- that 217,000 figure is a tabulation of
 25 water meter readings at the individual field delivery

1 A. Well --
 2 Q. And I've read through the report.
 3 A. Not very accurate.
 4 Q. Okay. Explain what the problems are in getting
 5 that figure accurate.
 6 A. We have a flow meter, and flow meters have --
 7 have stems and the stems get clogged with debris, and
 8 so they stop metering water. Also, some flow meters
 9 fill up with water and they don't measure properly.
 10 There's also human error. Our CMT personnel, they
 11 have -- they hand write readings, so there's human
 12 error. All of those three, we do have inaccuracies
 13 occasionally.
 14 Q. What are you trying to do to reduce those
 15 inaccuracies?
 16 A. Well, we log all meters annually into a
 17 maintenance evaluation. We do an inspection and we
 18 have a flagging system to flag meters that need to be
 19 replaced and repaired, and it's a monthly -- it's a
 20 monthly process now to reduce that.
 21 Q. How big do you think the metering inaccuracy is
 22 for the field turnouts?
 23 A. I don't know.
 24 Q. What are the carriage losses between Navajo Dam
 25 and NAPI?

1 turnouts miles down the system.
 2 A. Well, that looks like a typo.
 3 Q. So, in fact, that statement is not correct, the
 4 217,600 acre-feet figure is actually the measurement at
 5 the flume up by Navajo Dam. Is that correct?
 6 A. The 217,600 acre-foot is the measurement at the
 7 parshall flume at the Navajo Dam, yes.
 8 Q. Okay.
 9 A. And that sentence is wrong.
 10 Q. Okay.
 11 A. It says, "Refer to Figure 3-2" on the next page.
 12 Q. I see.
 13 A. That's the tabulated reading.
 14 Q. I see. Okay. Now, I'm understanding.
 15 Okay. So explain to me what the Figure 3-2
 16 represents with the total usage of 189,204.
 17 A. It -- it's what the NAPI O&M irrigation system
 18 operator CMT personnel read and recorded monthly
 19 meter water meter readings at the individual field
 20 turnouts, that's -- that's the data.
 21 Q. Okay. So that would show basically how much
 22 water is actually turned out and delivered to the
 23 fields?
 24 A. Yes.
 25 Q. Okay. Now, how accurate is that figure?

1 A. I can give you a percentage --
 2 Q. Okay.
 3 A. -- that's standard. Carriage losses between
 4 diversion to this delivery point is typically about 10
 5 percent loss.
 6 Q. Is that for this particular project?
 7 A. It's just from numbers that I've seen in our
 8 studies for this particular project, yes.
 9 Q. Okay. So it's specific -- you're not talking
 10 about projects in general, because that would vary
 11 tremendously?
 12 A. I don't look at other projects, just this
 13 project.
 14 Q. Okay. And where have you seen those numbers?
 15 A. The BIA has a consultant that goes by the name
 16 of Keller-Bliesner Engineering.
 17 Q. Okay.
 18 A. They provided those numbers.
 19 Q. Okay. Have you seen those?
 20 A. Yeah.
 21 Q. Do you have them in your records?
 22 A. Not formal.
 23 Q. Well --
 24 A. Maybe notes.
 25 Q. Okay. I'd ask for production of those records

1 relating to carriage losses.
 2 What does carriage loss -- what do the losses
 3 consist of in this particular system; that is, the NIIP
 4 system?
 5 A. Seepage, evaporation, and --
 6 Q. Spillage?
 7 A. -- minor, minor, minor leaks.
 8 Q. Okay.
 9 A. We don't -- we don't have -- we don't have
 10 many -- many spillage. A lot of it is evaporation and
 11 seepage.
 12 Q. Okay. Is any water turned out of the NIIP
 13 system below the metering point at the NIIP Headworks
 14 that is just, you know --
 15 A. Turned out?
 16 Q. Let out of the system to run back in the river,
 17 for example, or just to run off somewhere?
 18 A. No.
 19 Q. Okay.
 20 A. Not -- no for operations. If we need to dewater
 21 the system for maintenance, then, yes.
 22 Q. Okay. And how do you dewater the system for
 23 maintenance?
 24 A. One way is to pump all the water out of the
 25 canal using vertical pumps until the elevation of the

1 water in the canal is lower than the operating level of
 2 the pumps. Then we use drain valves that are placed
 3 along the canals.
 4 Q. How often do you do that, would you say, in a
 5 typical year?
 6 A. We do that annually at the end of our irrigation
 7 season.
 8 Q. Okay. Is that after you've turned off the
 9 rotors?
 10 A. The center pivots.
 11 Q. The center pivots.
 12 A. Yes.
 13 Q. At the present time, do you know of any way to
 14 accurately measure the depletion that's caused by NIIP?
 15 A. An accurate measurement, no.
 16 Q. Okay. And what would it take to get accurate
 17 measurements of NIIP depletion -- NIIP-NAPI depletion?
 18 A. Subsurface measurement device under all the
 19 acreage.
 20 Q. I was just looking at this Google Earth map, and
 21 I don't know what -- it's 30 miles east or west or
 22 something like that, approximate. I mean, it's a long
 23 way from one end of NIIP to the other, isn't it?
 24 A. It's a big farm.
 25 Q. Yeah. Okay. Do you have any idea of what kind

1 of -- how many subsurface metering points you need to
 2 have to have reliable return flow measurements?
 3 A. Typically, the theoretical calculs that we use
 4 in our practice for depletion, and that is based on how
 5 much a plant drinks.
 6 Q. Okay. But there are various formulas and there
 7 are theoretical calculations.
 8 A. Right.
 9 Q. How about actually measuring how much is going
 10 back into the river? What would you need by way of
 11 metering points to measure physical subsurface --
 12 surface and subsurface returning flow to the river?
 13 A. I don't know.
 14 Q. Okay. Have you ever studied that issue in your
 15 professional training? Like if you're really going to
 16 try to accurately measure a subsurface flow, do you
 17 need a meter every hundred meters, half mile, do you
 18 have any idea?
 19 A. I generally do, not to that extent.
 20 Q. What's your --
 21 A. Placement.
 22 Q. What's your general idea?
 23 A. To measure it at a controlled -- at a control
 24 point.
 25 Q. Okay.

1 A. A source point, or downstream of a source point.
 2 Q. Okay. Have you ever studied how much -- or this
 3 is even in the classrooms, I'm talking about -- how
 4 much -- what -- how many measuring points you would
 5 need to measure subsurface return flow over a space of,
 6 say, 30 miles?
 7 A. No.
 8 Q. Okay. Now, let's go on to page 8 of your
 9 report on electrical and gas costs. What's the
 10 electricity cost per kilowatt hour for the Gallegos
 11 Plant?
 12 A. According to this table, the Gallegos energy
 13 cost is .01219 dollars per kilowatt hour.
 14 Q. So how many cents for kilowatt hour is that?
 15 A. That's 1.29.
 16 Q. 1.1 --
 17 A. 1.219 cents.
 18 Q. Okay. 1.219 cents per kilowatt hour?
 19 A. That's correct.
 20 Q. Okay. And is it also the same for Kutz?
 21 A. Yes.
 22 Q. Who gives you this electricity that cheaply?
 23 A. Western Area Power Authority.
 24 Q. Do you have any idea where they get it?
 25 A. It's connected to the grid.

1 Q. Okay. It's kind of like the cloud.
 2 A. I don't -- I don't deal in energy.
 3 Q. Okay. Do you get electricity from anybody else
 4 besides them, besides Western Area Power
 5 Administrator -- Administration?
 6 A. The NAPI Operations and Maintenance Department
 7 gets power from Western Area Power Authority and the
 8 City of Farmington.
 9 Q. And how much do they pay the City of Farmington?
 10 A. I can't remember.
 11 Q. Do you get those bills?
 12 A. Yes. It's a very small fraction.
 13 Q. I understand, but what's the kilowatt hour
 14 charge?
 15 A. I don't know.
 16 Q. I'd make a request for -- I'd make a request for
 17 a typical bill from WAPA and a typical bill from
 18 Farmington so I can see what the kilowatt hour charges
 19 are. Is the charge from Farmington significantly
 20 greater than this?
 21 A. Than which amount?
 22 Q. Than the 1.219 cents per kilowatt hour?
 23 A. I don't know.
 24 Q. Okay. Do you know what you pay at your home for
 25 electricity?

1 Q. Okay. But this -- but basically, you're saying
 2 that this represents, in part, the fact that you've put
 3 in more acres under the irrigation, is that correct,
 4 and actually just pumping more water?
 5 A. This graph reflects -- well, this graph reflects
 6 annual usage. The rise in the graph reflects more
 7 facilities operating.
 8 Q. Okay. Now, let me go back to that for a second.
 9 Units 9 and 10, which have not yet been built -- is
 10 that correct? I'm sorry, 10 and 11, I misspoke. 10
 11 and 11 have not been built yet at all. Is that right?
 12 A. Yes.
 13 Q. Okay. Approximately how many acres would that
 14 be?
 15 A. Each block is on average 10,000 acres. So
 16 20,000 acres, approximately.
 17 Q. Okay. If those were ever completed, you'd need
 18 electricity to operate them, right?
 19 A. Yes.
 20 Q. Would your electricity bills basically go up in
 21 proportion to that additional acreage?
 22 A. It would increase.
 23 Q. Actually, wouldn't it go up faster than a
 24 straight line because this additional acreage is
 25 further away from the source at Navajo Dam?

1 A. I net meter. I don't know.
 2 Q. Really? What kind of facility do you have?
 3 A. I have a solar panel on my house.
 4 Q. This I want to know: How much do you sell it
 5 back to them for, if you're generating power?
 6 A. They don't -- the City of Farmington has -- you
 7 know, I don't know. I don't know that factor.
 8 Q. Okay.
 9 A. I don't get -- I get a bill with zero dollars.
 10 Q. Okay. All right. Let's go over to page 10
 11 where you have a graph of WAPA costs. And your
 12 description says, "The graph clearly indicates the need
 13 for additional funding to maintain the current
 14 operation of the NIIP in order to meet the demands of
 15 customers." Explain what you mean by that.
 16 A. Between 2003 and 2011, more facilities have been
 17 constructed, therefore, there's more facilities to
 18 power.
 19 Q. Okay.
 20 A. That you need more money. The utility cost has
 21 also increased. I don't know that number.
 22 Q. Okay. During this period of time, has the
 23 electricity charge price per kilowatt hour stayed the
 24 same, as far as you know?
 25 A. I don't know.

1 A. I don't know.
 2 Q. Okay. Now, where do you get the funding to pay
 3 the electric bills?
 4 A. The contract CTN00X10215 contract.
 5 Q. Okay. And how does that work?
 6 A. Well, this contract is funded to operate,
 7 maintain, and replace the Navajo Indian irrigation
 8 system.
 9 Q. Okay. And so at the beginning of the year, do
 10 the federal people say, "Here's your number, here's how
 11 much we're going to grant you for those functions for
 12 this year?"
 13 A. They grant me a dollar amount for the scope of
 14 work provided in the contract.
 15 Q. Okay. And do they vary the scope of work
 16 depending on how much money they might have available
 17 to grant you?
 18 A. No.
 19 Q. Okay. How do they come up with a number and
 20 a -- and a task that you're supposed to accomplish for
 21 that number?
 22 A. I don't know how they come up with their number.
 23 Q. Okay.
 24 A. Yeah, I don't know.
 25 Q. Okay. What's happened to the level of grant

1 money since you've been there, do you have any idea?
 2 A. Since I've been there, two years?
 3 Q. Yes.
 4 A. Stayed the same.
 5 Q. Okay. How long has it stayed the same, do you
 6 have any idea, going back?
 7 A. No. How many years, I don't know.
 8 Q. Has anybody in the federal government told you
 9 about the possible effects of the budget cuts, the
 10 sequester, that sort of thing?
 11 A. Told me what?
 12 Q. What the possible effects of that are going to
 13 be?
 14 A. No.
 15 Q. Do you have any idea how much money you're going
 16 to get in future years for these functions?
 17 A. No, I don't.
 18 Q. Okay. And that's basically dependent on the
 19 budget processes of the federal government?
 20 A. I assume.
 21 Q. Okay. Let's go to the next, Page 11. "Water
 22 delivery costs" -- this is your report. "Water
 23 delivery costs vary by location on the NIIP and are
 24 attributed to the various delivery methods used.
 25 Methods include electric driven pumps, gas driven

1 fact that stuff does wear out over time, right?
 2 A. Yes, the equipment wears out over time.
 3 Q. Okay. So you have all of those additional
 4 expenses that you don't have when you're just using
 5 gravity to convey the water?
 6 A. Correct.
 7 Q. Okay. Now, looking at these graphs here, if you
 8 take a -- if you take a peak month, say a peak
 9 irrigation month, is that usually July and August?
 10 A. Which graph are you looking at?
 11 Q. Well, you can look at several of them, but
 12 probably like at page 9, the Total Electrical Energy
 13 costs.
 14 A. Yes.
 15 Q. July and August tend to be the peaks of the
 16 irrigation season, in terms of the amount of water that
 17 you're delivering to the farms?
 18 A. Yes.
 19 Q. Okay. And so at least based on this, at this
 20 time, in a peak irrigation month, you were incurring a
 21 cost of approximately -- a little over \$250,000 a year,
 22 per month, just for electricity cost, right?
 23 A. Yes, for this year, 2011.
 24 Q. Okay. And it varies, obviously, depending on
 25 how much you deliver in that particular year, right?

1 pumps, and gravity feed. The expenses associated with
 2 electric and gas operated pumping plants are what
 3 drives O&M's cost up. Delivering water through gravity
 4 fed method is by far the lowest cost available compared
 5 to electrical and gas driven pumps." Why is that?
 6 A. There's no charge for gravity.
 7 Q. At least not yet. Give Congress a while, but
 8 okay. Yes, there's -- all right. Go ahead. I'm
 9 sorry.
 10 A. That's it.
 11 Q. Okay. And so what are the -- so what are the
 12 additional costs that you have when you're using pumps
 13 that you don't have when you're using gravity?
 14 A. Well, there's a cost to lift the water from a
 15 sump into a pipeline.
 16 Q. Okay. So you have all the cost of the pumps and
 17 the machinery themselves, right?
 18 A. The electricity used to operate those.
 19 Q. And the electricity or the natural gas to fuel
 20 the pumps, right?
 21 A. Yes.
 22 Q. And all that, repairs, maintenance, rehab, that
 23 sort of thing, correct?
 24 A. Yeah, operation, maintenance, replacement.
 25 Q. And basically, the depreciation factor. The

1 A. Yes.
 2 Q. And that cost at \$250,000 a month is at
 3 1.something cent per kilowatt hour, right?
 4 A. This graph here is plotting the data on page
 5 8 --
 6 Q. Right.
 7 A. -- Figure 4-1, and the calling for kilowatt per
 8 hour there is for 1.219 cents.
 9 Q. Right.
 10 A. Yes.
 11 Q. So what I'm saying is: If you're paying 1.2
 12 cents per kilowatt hour, your electricity bill still
 13 gets over a quarter of a million dollars a month in a
 14 peak month.
 15 A. Well, this bill of 256,000 is for this annual
 16 year.
 17 Q. Well, if you look --
 18 A. I'd have to look at 2010 and previous to answer
 19 that question.
 20 Q. Well, actually --
 21 A. I don't know.
 22 Q. Well, let's actually look at the graph -- the
 23 graph here and see if you can explain it to me. This
 24 is a monthly electricity energy cost, is it not?
 25 A. This is monthly.

1 Q. Okay. So this is, for example, in the month of
 2 February -- and that's 2011?
 3 A. February 2011.
 4 Q. -- you're electricity cost was \$4,506, right?
 5 A. Yep.
 6 Q. Because you weren't pumping --
 7 A. Yes.
 8 Q. -- you weren't pumping water uphill.
 9 Okay. So if we take the figure for July at the
 10 peak of the irrigation season in this year --
 11 A. Yes.
 12 Q. -- your electricity cost was \$256,587 and that's
 13 at 1.2 cents per kilowatt hour, right?
 14 A. Yes.
 15 Q. Okay.
 16 A. Yes.
 17 Q. Okay. Now, in addition, you have some pumps
 18 that are driven by natural gas, right?
 19 A. Yes.
 20 Q. And that's shown in Figure 4.4?
 21 A. Yes.
 22 Q. Okay. About how much of your water is delivered
 23 by natural gas pumps, do you have any idea?
 24 A. It's roughly 30,000 acre-feet.
 25 Q. And where do you get that figure from?

1 Q. Okay. Let me go through the -- your discussion
 2 of operations starting at Section 6.0 on page 12.
 3 A. Okay.
 4 Q. Now, I wouldn't go through it. I'm interested
 5 in reading all these details, and it seems to be pretty
 6 detailed. But my question would be: Based on your
 7 experience and what you've learned, would this be a
 8 fairly typical year in terms of the kinds of things you
 9 have to do to keep NIIP-NAPI running?
 10 A. It depends on what section.
 11 Q. Okay.
 12 A. Generally, yes.
 13 Q. Okay. There's always -- you always have pumps
 14 to repair, for example, breaks to -- leaks or whatever
 15 to repair. Those sorts of things, right?
 16 A. Yes.
 17 Q. Okay. High wind in April with weeds
 18 accumulating. Is weed accumulation a pretty common
 19 problem?
 20 A. Not in 2013 or 2012.
 21 Q. How come?
 22 A. But in 2011, yes.
 23 Q. Where do the weeds accumulate?
 24 A. They blow into the canal.
 25 Q. Okay. Let me ask you, just based on your own

1 A. Page 7.
 2 Q. Okay.
 3 A. And that's just an estimation.
 4 Q. Okay. And for natural gas, if you look at peak
 5 years in fiscal year 2011, it was in the neighborhood
 6 of excess of \$50,000 for the two peak months, right?
 7 A. It's in excess of \$50,000, right, yes.
 8 Q. So putting the two together, in those two peak
 9 months, you've basically got energy bills of in excess
 10 of \$300,000 a month for pumping?
 11 A. If you add 50,000 -- 54 and 150,000.
 12 Q. Right.
 13 A. Or, I'm sorry, 200-and -- I'm not sure which
 14 numbers you want me to add up.
 15 Q. All right. Well, let's -- yeah, let's just take
 16 August of fiscal year 2011. You had electrical --
 17 electricity costs of \$253,655, right?
 18 A. Okay.
 19 Q. Okay. And in that same month, you had a natural
 20 gas cost of \$50,436, right?
 21 A. Okay.
 22 Q. Okay. So you add them together, you're
 23 aggregate energy cost for that month is something a
 24 little bit in excess of 300,000. Is that right?
 25 A. Yes.

1 observation: How do the winds up at NAPI compare to
 2 the winds down in the Valley, which tends to be
 3 stronger?
 4 A. You know, I don't know. I've been in Farmington
 5 when the winds have been severe.
 6 Q. Well --
 7 A. I --
 8 Q. -- no doubt. But generally speaking, isn't it
 9 the wind speed higher up at NAPI where it's exposed?
 10 A. Yes.
 11 Q. Okay. Let me -- let me go back. Looking at
 12 this report, and I'm trying to get some idea without
 13 going into all the details of all the -- all the things
 14 you do, just describe to us what the main things you
 15 have to do is in a sort of typical year, based on your
 16 experience, the kinds of things that you normally have
 17 to do just to keep things running. And I'm trying to
 18 get ideas, you know, like specifically, repairing a
 19 pump or repairing an engine or that sort of thing.
 20 A. Do you want me to summarize this annual --
 21 Q. Not -- I mean, I read all this and I appreciate
 22 the detail, but I'm trying to get from you sort of what
 23 the most typical things are that you have to do in the
 24 course of a typical year.
 25 A. Okay. In terms of canal?

1 Q. Well, in terms of -- yeah, I'm talking about the
2 stuff that -- not just canals, but all the pumps, the
3 canals, all of the things you have to do. What are the
4 things that you tend to have to spend the most time
5 on -- time and money on?
6 A. I spend a lot of time on cleaning canals.
7 Q. Okay.
8 A. I dewater the canals every year and I remove all
9 the sediment out of the canals.
10 Q. Okay.
11 A. And I dewater all the pumping plant sumps and
12 remove all the sediment out of there, then I seal or
13 repair lining cracks, and it's typical annually. Going
14 to the facilities, I repair and recondition motors,
15 annually. I tear down pumps and have them
16 refabricated --
17 Q. All right.
18 A. -- annually. And I repair flow meters
19 annually. And I repair -- I repair valves, pressure
20 reducing valves --
21 Q. Okay.
22 A. -- annually.
23 Q. All right. What are things that need to be done
24 maybe not on an annual basis, but on a regular basis
25 every few years?

1 A. Short-term: Breaks, pipe breaks, leaking
2 valves. Long-term: Canal lining, worn down pumps.
3 Q. Okay. Have you been involved in discussions
4 about what it will take to maintain and operate
5 NIIP-NAPI over the long-term in terms of present
6 operations, repairs, or rehabilitation, that sort of
7 thing?
8 A. Have I been involved?
9 Q. In discussions with people in the federal
10 government, in NIIP-NAPI, basically with anyone about
11 what it will take to keep NIIP-NAPI operating long-
12 term?
13 A. Well, I've been involved in discussions on
14 Navajo Indian Irrigation Project operation,
15 maintenance, and replacement --
16 Q. Okay.
17 A. -- as a separate entity.
18 Q. All right.
19 A. And operations of NAPI as an enterprise, I
20 haven't -- I haven't been involved in discussions on
21 what it would take to operate, maintain NAPI.
22 Q. Okay. But in terms of NIIP, you have, right?
23 A. Yes.
24 Q. Basically, what it's going to take to maintain
25 and operate the infrastructure?

1 A. Electrical breakers have to be tested, and I
2 don't know the years on that. I know that it's not
3 annual.
4 Q. Okay. You mentioned sediment. What does
5 sediment in the system do to the system and the pumps?
6 A. Well, sediment is abrasive. It will clog flow
7 meters. It will wear down turbines in the pumps over
8 time.
9 Q. So like liquid sandpaper?
10 A. Yes.
11 Q. Where does the sediment come from at NIIP? And
12 I'm asking specifically how sedimented is the water
13 like when it comes out of Navajo Reservoir versus when
14 it gets to NIIP?
15 A. I don't know.
16 Q. Okay. Let's go to page 19. You say, "Despite
17 having to operate and maintain an infrastructure that
18 is 30 plus years old, from the pumping plants to the
19 delivery units, we accomplished our mission to continue
20 delivering water to the crops and meet the farm's goal
21 for the 2010 Irrigation Season by having a successful
22 planting and harvest season."
23 Now, what are the most critical short-term and
24 long-term problems you're facing because of the age of
25 the infrastructure of some 30-plus years?

1 A. The irrigation project, yes.
2 Q. Yes. Okay, right. And what's it going to take?
3 First of all, let me ask you: With whom have
4 you had these discussions?
5 A. With the BIA.
6 Q. Who particularly at the BIA?
7 A. The BIA has a -- has a Navajo Indian Irrigation
8 Project office in Farmington.
9 Q. All right.
10 A. And they have a program manager that works in
11 that office.
12 Q. What's his name?
13 A. He retired.
14 Q. Okay.
15 A. His name was -- or is Steven Lynch.
16 Q. Does he have a replacement?
17 A. He has a -- an acting -- well, there's an
18 individual in that office.
19 Q. Okay.
20 A. He does not carry the title as a program
21 manager. He's a civil engineer and his name is Michael
22 Howe.
23 Q. Okay. And who else have you had discussions
24 with?
25 A. That's it.

1 Q. How about within the Navajo Nation?
 2 A. What it would take to operate and maintain and
 3 replace the irrigation system?
 4 Q. What -- discussions about what it is going to
 5 take to operate the NIIP infrastructure and to keep it
 6 delivering water long-term?
 7 A. No.
 8 Q. Okay. Have you had any discussions with
 9 Keller-Bliesner people?
 10 A. Keller-Bliesner.
 11 Q. Keller-Bliesner.
 12 A. Yes.
 13 Q. Okay. And with whom have you had those
 14 discussions.
 15 A. Michael Isaacson.
 16 Q. Okay. And where is he located?
 17 A. In Farmington.
 18 Q. Okay. Is he there permanently?
 19 A. Yes.
 20 Q. Who is Keller-Bliesner?
 21 MR. POLLACK: Bliesner.
 22 MR. MARSHALL: Spelled?
 23 MR. POLLACK: B-L-I-E-S-N-E-R.
 24 Q. (By Mr. Marshall) Okay. Who are they?
 25 A. They're an engineering consulting firm.

1 repairs, concrete lining repairs, pipeline repairs,
 2 depletion, general -- general matters regarding
 3 depletion diversion.
 4 Q. Okay.
 5 A. We -- I guess, I --
 6 Q. Did you go over the deficiencies that had been
 7 identified in 1989?
 8 A. No.
 9 Q. Or any other time?
 10 A. Not with Keller-Bliesner.
 11 Q. Okay. Who have you discussed those with?
 12 A. With the -- with the other party in our
 13 contract, which is the Bureau of Reclamation.
 14 Q. Okay. And who there?
 15 A. I work with Doug Dockter.
 16 Q. How do you spell "Dockter"?
 17 A. D-O-C-K-T-E-R.
 18 Q. Okay. And what have your discussions with him
 19 been?
 20 A. Scope items on -- in the -- in the specific
 21 reclamation contract that we have with them. We have
 22 three contracts; each one of them has a scope. We talk
 23 about scope items planned for the year --
 24 Q. Okay.
 25 A. -- time, dates.

1 Q. And what sort of work do they do for NIIP-NAPI?
 2 A. They are a consultant for the BIA --
 3 Q. All right.
 4 A. -- on the Navajo Indian Irrigation Project,
 5 environmental consultation.
 6 Q. Okay.
 7 A. NAPI has a department called the Technical
 8 Services Department. They subconsult. They're
 9 subconsultants to that department.
 10 Q. Okay. Explain what you mean by that.
 11 A. We hire them to provide technical services.
 12 Q. Okay. Who ultimately pays the cost for the
 13 Keller-Bliesner people?
 14 A. They're separate contracts from separate
 15 entities.
 16 Q. Okay. But does their funding come from the
 17 federal government ultimately?
 18 A. For the BIA, the funding comes from the BIA.
 19 Q. Okay.
 20 A. From NAPI, the funding comes from NAPI --
 21 Q. Okay.
 22 A. -- not the federal government.
 23 Q. Okay. What sort of discussions did you have
 24 with Mr. Isaacson?
 25 A. Engineering -- engineering topics on lining

1 Q. Do you communicate by e-mail as well as in
 2 person?
 3 A. Yes.
 4 Q. Okay. Do you have copies of those e-mails back
 5 and forth?
 6 A. Yes.
 7 Q. Do you communicate with Keller-Bliesner by
 8 e-mail also?
 9 A. Not as -- yes.
 10 Q. Okay.
 11 A. Yes.
 12 Q. For the record, and I'll put this in a letter,
 13 I'd make a request for those e-mails. They might or
 14 might not have been produced before.
 15 Do you ask for money that you don't get
 16 sometimes?
 17 A. Actually, from whom?
 18 Q. Not under your Christmas tree.
 19 A. Who am I asking?
 20 Q. I didn't mean Santa Claus.
 21 A. Who am I asking?
 22 Q. The federal government.
 23 A. Do I ask the federal government for money?
 24 Q. In other words, saying, "I need more money so I
 25 can get this maintenance repair, rehabilitation done.

1 We've got to" -- for example, "got to get this done.
 2 We can't let it go any longer?"
 3 A. I request for funding to make repairs and
 4 replacements on the Navajo Indian Irrigation Project --
 5 Q. Okay.
 6 A. -- for this particular contract here.
 7 Q. Okay. Now, in making those requests, do you
 8 request what you think is really needed in your
 9 professional judgment to keep it running long-term, or
 10 do you request what you think you might be able to get
 11 them to give you?
 12 A. I request what is needed to replace the piece of
 13 equipment or facility. I request that amount.
 14 Q. Okay. When a particular facility or piece has
 15 basically broken down?
 16 A. Yes.
 17 Q. So it's after it's broken down, most of the
 18 time?
 19 A. Well, most of the time, we recognize the
 20 severity of a piece of equipment, and so we request in
 21 anticipation.
 22 Q. Okay. Has your department been able to do all
 23 of the reparative and preventative maintenance that you
 24 would like to do as a professional engineer to keep the
 25 facility running, or have you been limited by the

1 transferred in the calendar year 2012.
 2 Q. So those three listed there have actually all
 3 actually occurred?
 4 A. The two listed here, B2.1 -- the bullet of B2.1R
 5 Pumping Plant and Lateral.
 6 Q. Okay.
 7 A. And the bullet for transfer of Burnham Lateral,
 8 west and south reaches.
 9 Q. So the B3.1 transfer has not yet taken place?
 10 A. No.
 11 Q. And what does that consist of?
 12 A. A pumping plant with laterals.
 13 Q. And going over to the next page, as you
 14 testified before, the Gallegos pumping plant has not
 15 yet been transferred, right?
 16 A. Has not -- yes, not been transferred yet.
 17 Q. Okay. You say here on page 23, "The transfer of
 18 these facilities will require the current NAPI O&M
 19 department to increase in size in order to operate and
 20 maintain a larger facilities -- larger facility.
 21 Electrical fees will also increase in 2012 along with
 22 the facilities transfer."
 23 Do you have any idea how much the additional
 24 cost of these facilities is once you get them?
 25 A. Not specifically. I have estimated amounts.

1 available funds?
 2 A. I've been limited by the available funds.
 3 Q. Okay. And what additional problems does that
 4 create for you going forward?
 5 A. It creates a backlog of deferred maintenance.
 6 Q. Is the backlog of deferred maintenance at
 7 NIIP-NAPI growing or shrinking?
 8 A. I don't know.
 9 Q. Okay. Does somebody try to keep track of that
 10 at NIIP-NAPI or one of the government agencies?
 11 A. The Operations and Maintenance Department tries
 12 to keep track of that.
 13 Q. Okay. Let me ask you -- let's go back to your
 14 Exhibit 6. If you look at --
 15 A. Okay.
 16 Q. -- section 8 on page 23.
 17 A. Yes.
 18 Q. Has the transfer for Block 8 occurred yet?
 19 A. Partially.
 20 Q. Okay. What part?
 21 A. The 2.1R Pumping Plant and Laterals --
 22 Q. Okay.
 23 A. -- transferred January 2012.
 24 Q. All right.
 25 A. Burnham Lateral west and south reaches

1 Q. Okay. And what are your estimated amounts for
 2 the increased costs?
 3 A. I don't have that data here.
 4 Q. Okay. Ballpark. I mean, are we talking
 5 hundreds of thousands of dollars?
 6 A. Yes.
 7 Q. And, in fact -- okay. Where are you going to
 8 get that money from, do you know?
 9 A. Well, I contract the Navajo Indian Irrigation
 10 Project with the BIA.
 11 Q. Okay.
 12 A. And if the facility has been transferred to the
 13 BIA, I would request the BIA for that funding.
 14 Q. Okay. And whether you actually get it or not is
 15 ultimately up to the BIA and other people in the
 16 federal government?
 17 A. Yes.
 18 Q. Okay. Let's go to Exhibit 7. And this, I
 19 believe, is a letter that you concurred with, it was
 20 sent to Mr. Frye, about Navajo Reservoir and NIIP
 21 diversion figures.
 22 A. Yes. Can I step to the restroom?
 23 Q. Yes, absolutely. Let's take a break.
 24 A. Thanks.
 25 Q. Let's take a break right now.

1 (Recess taken from 2:28 p.m. until 2:34 p.m.)
 2 Q. (By Mr. Marshall) Let me ask you: How often
 3 are you out and about in NIIP and NAPI; that is, out in
 4 the field and looking at the infrastructure, the
 5 fields, the operation outdoors?
 6 A. I go out daily.
 7 Q. Okay. Now, let me ask you some questions -- let
 8 me ask you some questions about that. I understand
 9 that the farm operations themselves are not your
 10 responsibility. But you see those on a daily basis,
 11 don't you?
 12 A. I see them, yes.
 13 Q. Who -- as part of the farming operation, who
 14 provides the fertilizer, the herbicide, pesticides that
 15 you talked about?
 16 A. There's one -- one vendor that I know provides
 17 some.
 18 Q. And what's the name of that vendor?
 19 A. Wilbur-Ellis.
 20 Q. And what do they do?
 21 A. They provide herbicides and insecticides,
 22 pesticides.
 23 Q. Okay. Let me show you Exhibit 8, which is --
 24 this is one of the documents that Mr. Pollack produced
 25 me. It's a NAPI document. I can't remember which one

1 A. I don't know.
 2 Q. You don't know, okay.
 3 Have you ever seen anybody besides Wilbur-Ellis
 4 doing those functions?
 5 A. No.
 6 Q. Okay. Who is Wilbur-Ellis, do you have any
 7 idea?
 8 A. Wilbur-Ellis has a headquarter in San
 9 Francisco.
 10 Q. All right.
 11 A. They're a large chemical company, ag chemical
 12 company. That's all I know about them.
 13 Q. Okay. Do they have their own machinery that
 14 spreads this -- or actually let me ask you this: Is
 15 this -- is this stuff, is it spread with spreaders or
 16 does it go through the sprinklers or what, generally
 17 speaking?
 18 A. I've seen three forms of application.
 19 Q. Okay.
 20 A. One the chemigation via the sprinklers.
 21 Q. Okay.
 22 A. And then they have farm implement that, you
 23 know, applies it --
 24 Q. Okay.
 25 A. -- on the surface.

1 it is. But this is the Single Audit Report Package,
 2 May 31st, 2010 and 2009, prepared by Miller Allen, and
 3 its financial statements. And let me ask you, just
 4 generally: Do you review the financial statements and
 5 performance of NAPI?
 6 A. No.
 7 Q. Okay. Turning to page 32. Actually, make it
 8 33. Actually, make it 34, Note 12.
 9 MR. TULLY: Do you have another copy in
 10 there that's highlighted?
 11 MR. MARSHALL: I do.
 12 MR. TULLY: Maybe it will be easier to get
 13 to the right page.
 14 MR. MARSHALL: I grabbed -- I grabbed your
 15 copy.
 16 Q. (By Mr. Marshall) In Note 12 to the
 17 accountant's report, it says that Wilbur-Ellis, that's
 18 the company you mentioned, has a contract to sell and
 19 apply various agricultural chemicals, fertilizers,
 20 seeds, and micronutrients to NAPI'S fields. During the
 21 years ended May 31st, 2010 and 2009, NAPI paid
 22 \$9,523,380 and \$12,773,508 respectively to Wilbur-Ellis
 23 for their services.
 24 Now, does Wilbur-Ellis do all of the chemical,
 25 fertilizer, seed applications for NAPI or not?

1 Q. All right.
 2 A. Spreader, like you said. I don't know what the
 3 name is. And then they have an aerial application.
 4 Q. Okay. Is Wilbur-Ellis affiliated with the
 5 Navajo Nation or any other Indian tribe, to your
 6 knowledge?
 7 A. I don't know.
 8 Q. Okay. As far as you know, it's not an
 9 Indian-owned operation, for example?
 10 A. It is not.
 11 Q. Okay. Up above that on page 34, there's a
 12 reference to JBS Five Rivers Cattle Feeding, LLC. Who
 13 were they?
 14 A. A cattle feeding company.
 15 Q. Did they operate the feedlot for a while?
 16 A. Yes.
 17 Q. Where is that company from, if you know?
 18 A. I don't know. I can guess.
 19 Q. I heard they were from Argentina. Do you know
 20 anything about that? It's okay, I'm speculating.
 21 A. Yeah.
 22 Q. Let's go back, going backwards, page 33, J&M
 23 Bailing, Inc.
 24 A. 33, okay.
 25 Q. It says, "Under this agreement, Contractor,"

1 that's J&M, "will custom rake, bale, and field stack
2 18,011.8 acres of alfalfa hay." Who is -- have you
3 seen them out in the fields?
4 A. I've seen their equipment.
5 Q. Okay. What blocks is this acreage in, do you
6 know?
7 A. Yeah, Blocks --
8 MR. POLLACK: That's over here.
9 Q. (By Mr. Marshall) If you know.
10 A. Block 5, 4, 1, 2, 3, 6, 7.
11 Q. Do they do all of the alfalfa baling?
12 A. Yes.
13 Q. Okay. So wherever you happen to be doing
14 alfalfa, they'll do the baling?
15 A. Wherever NAPI has alfalfa, they do the baling.
16 Q. Okay. And that would rotate from field to field
17 sometimes?
18 A. Uh-huh.
19 Q. Okay.
20 A. Yes.
21 Q. Is J&M Baling Indian owned or operated?
22 A. I don't know.
23 Q. Do you know who they are?
24 A. Other than J&B Baling, I don't know who they
25 are.

1 Q. And that's when you get involved to contract for
2 the operations and maintenance, correct?
3 A. Correct. And the BIA contracts me to operate,
4 maintain, and replace the system.
5 Q. Okay. So basically, the operational
6 responsibilities get ultimately transferred and
7 contracted to you?
8 A. Contracted.
9 Q. Yes, contracted.
10 A. Not transferred, but contracted to me.
11 Q. But in terms of title to the property, you don't
12 know who holds title to the land and all of that, do
13 you?
14 A. Not the land; the facilities, the irrigation
15 system title holders, BIA owns the facility.
16 Q. And "BIA" being an arm of the federal
17 government?
18 A. Yes.
19 Q. Okay.
20 A. The Bureau of Indian Affairs.
21 Q. Right. Not the Navajo Nation?
22 A. Not the Navajo Nation.
23 Q. Got you. Okay. Does your department -- is it
24 insured by anybody like for Workers' Comp liability,
25 that sort of stuff?

1 Q. Okay. But you're not aware that they're some
2 Native American operation of any kind, are you?
3 A. No.
4 Q. Okay.
5 A. I don't know who owns them.
6 Q. All right. Now, let me go to page 21, and I
7 wanted to clear something up. We were talking about
8 transfers from the BOR to your responsibility. When
9 you're referring to that, you were referring to
10 transfer the operational responsibility for the
11 facilities as opposed -- let me explain -- as opposed
12 to title or ownership of the facilities themselves?
13 I'm trying to make sure that we're talking about the
14 same thing.
15 A. Ownership transfer of the Navajo Indian
16 Irrigation System is -- is a facility in construction
17 is essentially under the responsibility of the Bureau
18 of Reclamation. I don't know who holds the title.
19 Q. Okay.
20 A. The ultimate title holder is the BIA, and then
21 the Bureau of Reclamation transfers a facility from
22 conclusion status to the BIA.
23 Q. Okay.
24 A. And then they are responsible for operating and
25 maintaining the system.

1 A. I don't know.
2 Q. Have you ever dealt with the Risk Management
3 Department of Navajo Nation?
4 A. Yes.
5 Q. Okay. And what do they do?
6 A. Well, I have dealt with a Workers' Comp case --
7 Q. Okay.
8 A. -- so the answer is most likely yes, with a
9 staff member with the Operations and Maintenance
10 Department.
11 Q. Okay.
12 A. And I've dealt with Risk Management for insuring
13 vehicles --
14 Q. Okay.
15 A. -- that the Operations and Maintenance
16 Department use?
17 Q. Does your department -- do you pay any bills for
18 insurance to anybody, that you know of?
19 A. The Operations and Maintenance Department does
20 not pay insurance for -- they don't use program dollars
21 to pay for insurance.
22 Q. Okay.
23 A. Yes.
24 Q. And whatever -- is whatever insurance there is,
25 is that provided through the Risk Management

1 Department, as far as you know?
 2 A. I don't know.
 3 Q. Okay. And do you know who actually pays the
 4 expense of such insurance, if any?
 5 A. The Navajo Agricultural Products Industry
 6 Company pays for those expenses.
 7 Q. Whom do they pay, if you know?
 8 A. I don't know.
 9 Q. Okay. And do you know whether that is
 10 ultimately funded by the federal government or not?
 11 A. It is not.
 12 Q. Okay. How do you know that?
 13 A. The federal government program dollars, I manage
 14 those dollars.
 15 Q. Okay.
 16 A. And I don't see dollars from there.
 17 Q. Okay.
 18 A. Well, the more and more I think about it, I
 19 don't know.
 20 Q. Okay. Because there may be, in fact, programs
 21 that the -- grant programs that the federal government
 22 has with Window Rock for various things that you
 23 wouldn't know about. Is that right?
 24 A. I don't know.
 25 Q. Yeah. So for example, you don't know how the

1 kind, for example?
 2 A. I don't know.
 3 Q. Okay. Now, are you generally -- let's go back
 4 for a second. Are you --
 5 (Telephone rings.)
 6 MR. MARSHALL: Just leave it. It's mine.
 7 MR. POLLACK: At last it works.
 8 MR. MARSHALL: It's not smart enough to
 9 shut itself off so it will shut up.
 10 Q. (By Mr. Marshall) Are you familiar with the
 11 financial performance of the -- strike that. Let me go
 12 back. My dumb phone.
 13 Let me ask you some questions about the costs
 14 that are necessary in order to operate NAPI, including
 15 the delivery of water through the NIIP infrastructure.
 16 Okay? Do you see what I'm saying, that is, we're
 17 talking about what does it take in the real world to
 18 operate NIIP -- excuse me NAPI, which -- with the water
 19 that's conveyed by NIIP? In other words, as you've
 20 said, you've got to have the water to operate NAPI.
 21 So looking at the project and the enterprise as
 22 a whole with all the components that you need,
 23 including water, I want to ask you some questions about
 24 whether these costs are necessary, not how much they
 25 are, all right, for the infrastructure. There's a cost

1 Navajo Nation Risk Management Department is funded, do
 2 you?
 3 A. I don't.
 4 Q. Okay. But in any event, you don't pay any
 5 insurance bills that you know of?
 6 A. Yes, I don't.
 7 Q. Okay.
 8 A. I don't see -- I don't sign any insurance bills.
 9 Q. Okay. You don't pay any taxes of any kind, do
 10 you?
 11 A. I pay for taxes on operating the equipment.
 12 There's taxes on my electrical bills. I pay for taxes
 13 on the equipment when I send them to a vendor, I pay
 14 taxes on that, sales tax.
 15 Q. Okay. So you actually pay a sales tax on
 16 your -- all of your electricity bills?
 17 A. I believe there's taxes on there, yes.
 18 Q. Okay. And you pay taxes if you send something
 19 off the reservation out somewhere to be repaired, for
 20 example?
 21 A. Yes. If I send equipment to the -- off the
 22 Navajo Nation, yes, I have the sales tax that I have to
 23 pay. I believe the Navajo Nation has a sales tax, I
 24 pay that.
 25 Q. Okay. You don't pay any income taxes of any

1 of designing the infrastructure, like the NIIP
 2 infrastructure, right? Designing the canals and all
 3 that sort of stuff.
 4 A. Yes, there's a cost.
 5 Q. Right. The dam, all that stuff?
 6 A. Yes.
 7 Q. Okay. There's a necessary cost of construction,
 8 right?
 9 A. Yes.
 10 Q. Okay. There's a cost of capital involved, that
 11 is, the money, the capital cost of the money needed to
 12 finance the project, right?
 13 A. The project, Navajo Indian Irrigation Project?
 14 Q. Yes?
 15 A. Yes.
 16 Q. Okay. There's the cost of operating the NIIP
 17 infrastructure, right, that's necessary?
 18 A. Yes.
 19 Q. Maintaining it is also necessary?
 20 A. Yes.
 21 Q. Repairing it, is that necessary?
 22 A. Yes.
 23 Q. Replacement when needed?
 24 A. Yes.
 25 Q. Rehabilitation?

1 A. Yes.
 2 Q. Buying the equipment itself for NIIP, whatever
 3 it might be?
 4 A. Yes.
 5 Q. You just answered yes? Okay.
 6 A. Yes.
 7 Q. And the label involved in all of that --
 8 A. Yes.
 9 Q. -- regardless of who is -- and I'm not talking
 10 about who provides these various functions, whether
 11 it's BIA, BOR, NAPI, et cetera, but just in terms of
 12 somebody has got to do it, right?
 13 A. Yes.
 14 Q. Okay. Management and overhead is also
 15 necessary?
 16 A. Yes.
 17 Q. Okay. Insurance?
 18 A. Yes.
 19 Q. Okay. Some sort of control system?
 20 A. Control system?
 21 Q. The electronics, you know, the gates, the
 22 measurements.
 23 A. An automation system?
 24 Q. Automation and/or information.
 25 A. An information system.

1 themselves, right?
 2 A. There's some --
 3 Q. You got to buy them and then you got to maintain
 4 them and repair them?
 5 A. Oh. Yes. Yes.
 6 Q. You've got the road infrastructure which is
 7 necessary to design, build, construct, maintain, and
 8 repair, right?
 9 A. Yes.
 10 Q. Okay. Electric lines, same thing?
 11 A. Yes.
 12 Q. Gas lines, same thing?
 13 A. Natural gas lines?
 14 Q. Yes.
 15 A. Natural gas lines serving the pumping plant
 16 facilities, yes.
 17 Q. Okay. Now, in the farm operations, it's
 18 necessary to buy farm machinery, right?
 19 A. Yes.
 20 Q. Balers, combines, whatever they use?
 21 A. Yes.
 22 Q. And naturally, to maintain, repair, replace --
 23 A. Yes.
 24 Q. -- that machinery?
 25 Okay. Seed, you have to buy seed to plant the

1 Q. Okay. Is that necessary?
 2 A. Yes.
 3 Q. Okay. And some sort of control system as well,
 4 not just to have information, but I mean, like how do
 5 -- do you press a button somewhere and shut the head
 6 gates, for example?
 7 A. Yes, that's the automation system.
 8 Q. Okay. For mechanical functions?
 9 A. For mechanical functions, yeah.
 10 Q. That's in addition to gathering information
 11 about how much water there is, for example?
 12 A. Correct.
 13 Q. Okay. Just to go over, we mentioned all these,
 14 pumps, pipes, all that's necessary?
 15 A. Yes.
 16 Q. The water tanks?
 17 A. Yes.
 18 Q. Okay. Now, in terms of the farm infrastructure,
 19 you've got land; necessary, right?
 20 A. Land, yes.
 21 Q. And there is some costs of land preparation in
 22 leveling. Before you can irrigate, you've got to do
 23 some land prep, don't you?
 24 A. Yes.
 25 Q. The sprinkler system, the pivot systems

1 crops?
 2 A. Yes.
 3 Q. Fertilizers?
 4 A. Yes.
 5 Q. Okay. Do you have any idea how much
 6 fertilizer -- do you have any idea what the fertilizer
 7 bills are?
 8 A. No. I saw that -- that dollar number in there,
 9 but I don't know how it's broken out.
 10 Q. Okay. Pesticides?
 11 A. Specifically, no.
 12 Q. Okay. But they are necessary to control
 13 pests --
 14 A. Yes.
 15 Q. -- in a commercial farming operation?
 16 A. Industrial --
 17 Q. Industrial.
 18 A. -- farming operation, yes.
 19 Q. Okay. Herbicides also?
 20 A. I assume.
 21 Q. Okay. Okay. And then we've got the harvesting
 22 costs, the baling costs and all that. And someone has
 23 got to do it, whether it's under contract or otherwise,
 24 right?
 25 A. Right.

1 Q. Okay. What about the -- what about
2 merchandising and selling. Is that necessary?
3 A. Yes, it's necessary to sell a product.
4 Q. And who does that, if you know?
5 A. I'm familiar with the NAPI sales and scales
6 office, and they sell product.
7 Q. Okay. Are you familiar with NAMI, N-A-M-I?
8 A. I've -- I've heard of it.
9 Q. What do they do, if you know?
10 A. I don't know. I know -- well, I don't know.
11 Q. Okay. And then one of the inputs you have is
12 the water itself. You have to have water, and that's a
13 cost or value also. That's a necessary input, is it
14 not?
15 A. Water is a necessary input, yes.
16 Q. Okay. Now, taking into account all of those
17 costs -- take a second now, can you think of anything
18 major that I've forgotten, because I'm sure there's
19 something else that I haven't mentioned, other things
20 in terms of economic inputs, costs that you have to
21 incur that somebody has got to pay in order to keep the
22 place running?
23 A. Right.
24 Q. Can you think of anything else that I've
25 forgotten?

1 page.
2 A. Uh-huh.
3 Q. And this is a draft report, it's a long-term
4 water resource development strategy for the Navajo
5 Nation, and it was done by the Navajo Nation Department
6 of Water Resources July 2011. Turning to page 104 of
7 that report, which is the page here, Section 6.5. It
8 says, "Completing the Navajo Indian Irrigation
9 Project." Do you see that?
10 A. Yeah.
11 Q. Okay. The last sentence of the first paragraph
12 says, "The Navajo Nation, Reclamation, and the BIA have
13 a team that is developing a long range plan for NIIP."
14 Do you see that?
15 A. Yes.
16 Q. Have you been involved, at least peripherally,
17 in that long-term planning effort?
18 A. I've been -- I've been included.
19 Q. Okay. Fair enough. Now, let me read the last
20 paragraph. It says, "In 2011 Keller Bliesner and
21 Associates compiled information on the completion of
22 NIIP. Based on that compilation and assuming a \$26
23 million per year funding level, completing construction
24 will cost \$403 million, rehabilitation will cost \$125
25 million, addressing NIIP deficiencies will cost \$53

1 A. I think you got all -- yeah.
2 Q. Okay. All right. Taking into account all of
3 these costs that you've gone over as necessary --
4 A. Okay.
5 Q. -- regardless of who pays for them and whether
6 it's under contract, taking those into account, are you
7 aware of any year in which the sales generated by NAPI,
8 okay, the sales of their crops, their products was
9 greater than the sum of all those costs necessary to
10 operate NIIP-NAPI. And think about that. You know,
11 I'm trying to -- I'm talking about all of the costs
12 that are necessary, regardless of who pays them. And
13 my question generically is: Are you aware of any year
14 in which NAPI has covered -- has sales that were
15 greater than all of the costs that we've mentioned, if
16 you know?
17 A. I don't know.
18 Q. Okay. That's not your area of expertise, is it?
19 A. No, I -- my contract is here with this facility.
20 Q. Okay. And let me ask you -- never mind.
21 Hold on a second. Let me show you Exhibit 9 --
22 Exhibit 9, and I'll represent to you that this is a
23 document that I got off of the Web site from the --
24 whatever the Navajo Nation -- what's it called, Water
25 Resources Department? All right. And there's a cover

1 million, on-farm rehabilitation will cost \$14 million,
2 and new on-farm development will cost \$61.7 million."
3 Do you -- have you seen this Keller-Bliesner
4 report or compilation?
5 A. The compiled information?
6 Q. Yes.
7 A. I've seen compiled information, not specifically
8 this -- this information here.
9 Q. Did you provide -- do you know, did you provide
10 some of the information that they may have compiled to
11 come up with these numbers?
12 A. No.
13 Q. Okay. What do you know about this paragraph?
14 A. Well, the Bureau of Reclamation provides
15 estimates, and they provided Keller-Bliesner with
16 estimates on completing construction costs.
17 Q. All right.
18 A. The BIA has provided the --
19 Q. Okay. If you -- okay.
20 A. -- rehabilitation costs.
21 Q. Okay. So we're going through this and you're
22 telling me -- okay. So the number for completing
23 construction, 403 million, to your knowledge, that came
24 from?
25 A. To my knowledge, that came from the Bureau of

1 Reclamation.
 2 Q. Okay. Rehabilitation for 125 million?
 3 A. That information came from the BIA.
 4 Q. Addressing NIIP deficiencies, 53 million?
 5 A. The Bureau of Reclamation.
 6 Q. Okay. On-farm rehabilitation, 14
 7 million?
 8 A. That might be a Keller-Bliesner number.
 9 Q. Okay. And would they have gotten at least some
 10 of that information from NAPI?
 11 A. NAPI has an on-farm development department, and
 12 they may have provided that number together.
 13 Q. Okay. And new on-farm development, 61.7
 14 million.
 15 A. Again, Keller-Bliesner, they have a specialty in
 16 on-farm development. That number may have been
 17 calculated by them.
 18 Q. Okay. Do you have any responsibilities for the
 19 other Navajo irrigation projects, Hogback-Cudei, for
 20 example, or Fruitland-Cambridge?
 21 A. No.
 22 Q. Those are the ones that are down in the Valley,
 23 right?
 24 A. Yes.
 25 Q. So you don't have anything to do with those?

1 other than NIIP, such as the federal government or
 2 Navajo Nation. This includes the amount and cost of
 3 electricity for pumping water up to the project."
 4 Now, other than the documents which Mr. Pollack
 5 has provided, you didn't bring any other documents with
 6 you, did you?
 7 A. No.
 8 Q. Okay. Number 3, "All records showing the
 9 amounts of water used by the NIIP project since
 10 inception, including the amounts of water diverted,
 11 pumped, consumed, evaporated, lost or returned to the
 12 San Juan River."
 13 Now, in response to that, you have produced
 14 diversion numbers, correct?
 15 A. Yes.
 16 Q. Okay. But basically, no reliable numbers on
 17 evaporation return flow?
 18 A. No numbers.
 19 Q. Okay. Number 4, "All reports and analysis of
 20 the project since inception, such as agriculture or
 21 agronomic reports, economic performance reports,
 22 economic feasibility reports, and reports to government
 23 agencies."
 24 You've got no such documents with you, have you?
 25 A. No.

1 A. I have nothing to do with them.
 2 MR. MARSHALL: Okay. Why don't we take a
 3 break. I may be able to pass the witness fairly soon.
 4 MR. POLLACK: Sure.
 5 MR. MARSHALL: Why don't we take ten
 6 minutes. Okay?
 7 MR. POLLACK: Good.
 8 (Recess taken from 3:04 p.m. until 3:22 p.m.)
 9 Q. (By Mr. Marshall) Okay. Mr. Haskie, let's go
 10 back on the record for a second. And I'm going to the
 11 notice of your deposition and the interrogatories which
 12 you were responding to -- or the requests which you
 13 were responding to. And let me -- let me start with
 14 request number 2, which is, "All records showing costs
 15 and expenses for the NIIP project since inception which
 16 might not be fully reflected on the financial operating
 17 statements for the NIIP project, including construction
 18 costs, capital costs, interest costs, maintenance,
 19 depreciation, electricity and utility cost, and
 20 overhead, labor, and other costs."
 21 MR. POLLACK: It's this one, not that one.
 22 Q. (By Mr. Marshall) This is number 2.
 23 A. Okay.
 24 Q. Okay. "This request -- this request includes
 25 costs and expenses which might be borne by entities

1 MR. MARSHALL: Okay. Counsel, for the
 2 record, I am going to -- have made a request for this
 3 Keller-Bliesner report, and I think that clearly fits
 4 under the rubric of economic feasibility of continuing
 5 to operate and/or expand NIIP to its full capacity,
 6 NIIP-NAPI.
 7 Q. (By Mr. Marshall) Number 5 is all records
 8 showing the actual amounts of water used on the Navajo
 9 Reservation during the last 20 years," and then it goes
 10 on, "this includes the underlying records of water
 11 usages such as meter readings in addition to the
 12 reported hydrographic surveys. To the extent possible,
 13 the records should identify and separate the amounts of
 14 water used in Arizona, New Mexico, and Utah
 15 respectively."
 16 You have brought no such documents with you
 17 today. Is that correct?
 18 A. No.
 19 Q. And then in response to number 6, you were
 20 designated to respond basically with respect to
 21 NIIP-NAPI. Isn't that correct?
 22 A. I was designated to respond on questions related
 23 to the Navajo Indian Irrigation Project operations and
 24 maintenance --
 25 Q. Okay.

1 A. -- for requests number 1 through 4.
 2 Q. Okay. And request number 1 includes financial
 3 and operating statements, does it not?
 4 A. Request number 1, "All financial operating
 5 statements," yes, it says.
 6 Q. Okay. But that is not your area of expertise,
 7 is it?
 8 A. No.
 9 Q. And you're not able to testify today about what
 10 the finances of NIIP-NAPI are, are you?
 11 A. Yes, I'm not.
 12 MR. MARSHALL: Okay. Counsel, that's all I
 13 have for the moment. I'll note those objections.
 14 We're not able to get answers from this witness on many
 15 of the questions we've asked, so I'll just note that
 16 for the record and pass the witness.
 17 MR. POLLACK: I just want to make one thing
 18 clear. When I said that we didn't bring the documents
 19 because we previously provided them, everything that
 20 we've provided, I have with me on electronic format.
 21 MR. MARSHALL: But one of the points of the
 22 deposition is, of course, to ask questions that the
 23 30(b)(6) witness can answer.
 24 MR. POLLACK: Uh-huh.
 25 MR. MARSHALL: And I have attempted to ask

1 A. I'm sure the BIA has studies concerning Blocks 1
 2 through 11.
 3 MR. TULLY: Okay. I have no further
 4 questions. Thank you.
 5 MR. MARSHALL: That reminds me of
 6 something. Let me go back on the record and make a
 7 further objection. And that is, in many cases, in
 8 virtually every case, we asked -- we propounded the
 9 discovery to all three of the settling parties; that
 10 is, the Navajo Nation, which includes NAPI, the United
 11 States of America, which includes the BIA, the BOR, for
 12 example, and the State of New Mexico, which might also
 13 have records, and in most of these cases -- in many of
 14 these cases, we get a response of one kind or another
 15 maybe from one party but not from the others. So I
 16 want to note that basically the United States has been
 17 largely unresponsive to many of these questions as
 18 well, as the State has as well. And that's not
 19 Mr. Pollack's responsibility, I want to note that, but
 20 I'm simply noting the deficiencies in the discovery
 21 responses from those other parties.
 22 MR. TULLY: And I'll make a concluding
 23 comment then, and it's just a comment. And that is,
 24 and I'm sure that everybody is getting tired of me
 25 saying this, but I'm the new kid on the block. And on

1 many of those questions to get a live answer that I can
 2 follow up with respect to finances and things like
 3 that, and this witness cannot, and I understand that,
 4 answer those questions. So it's not just a question of
 5 whether the documents might or might not answer the
 6 questions, we need a live witness who can answer those
 7 questions and those topics.
 8 So that's between us lawyers, and I appreciate
 9 your testimony and thank you for coming down. I'll
 10 pass the witness subject to those continuing
 11 objections.

EXAMINATION

12
 13 BY MR. TULLY:
 14 Q. Well, I just have just a few things. This is
 15 either a clarification or a supplementation of some
 16 questions that Mr. Marshall asked.
 17 And have you had an opportunity to review any
 18 reports or studies that provide estimates of any
 19 increased costs to NIIP when Blocks 10 and 11 are
 20 completed?
 21 A. No.
 22 Q. Are you aware of whether or not there are any of
 23 those kind of reports or studies as to the additional
 24 costs that NIIP is going to have when those two blocks
 25 are completed?

1 behalf of our clients, we have been attempting to try
 2 to figure out what this whole thing is about so that we
 3 can then, on behalf of our clients, see whether or not
 4 there should be either a real strong objection to the
 5 subject settlement agreement or just be in approval to
 6 it. And what we have discovered is, as Mr. Marshall
 7 has already in more detailed explained, is we're
 8 having -- our clients and myself, we're having a
 9 problem in being able to get information in a coherent
 10 and a consistent fashion in order to then do an
 11 evaluation of the settlement agreement. And it ties in
 12 about with what Marshall was saying. And that is,
 13 we're not having -- getting information and we're not
 14 now -- and it's not your fault -- having witnesses that
 15 can provide us with sufficient information upon which
 16 to then make a determination whether to either consent
 17 or approve or ratify or do whatever we need to do with
 18 the settlement agreement or to really oppose it. Right
 19 now we're in a situation we almost have to oppose it
 20 because we're not getting enough information. That's
 21 just a comment and a statement for the record.
 22 Our clients believe that fundamental due process
 23 is not being complied with by the settling parties.
 24 This is not directed at you, it's just a statement for
 25 the record. But, again, I'm going to do the same

1 thing, Mr. Marshall.
2 Thank you for being here and thank you for
3 answering the questions and in particular you answered
4 some questions very candidly and forthright, and that
5 was great. We appreciate that. Thank you.

6 THE WITNESS: You're welcome.

7 MR. HORNER: My turn.

8 EXAMINATION

9 BY MR. HORNER:

10 Q. Okay. I have a few questions. And the first
11 one is just kind of about the structure of NAPI and
12 then kind of, in particular, how you fit into that
13 structure. And so I'm thinking maybe I could just give
14 you a black piece of paper and we could put an exhibit
15 sticker on it and you could draw out an organizational
16 tree for NAPI, you know, board and whoever comes down
17 from that and where you fit into the scheme of things
18 and just a general picture of the structural
19 organization of NAPI.

20 MR. MARSHALL: Here's an Exhibit Sticker
21 14. Stick that on there.

22 (Exhibit 14 marked for identification.)

23 THE WITNESS: Typically, it's on the end.

24 MR. POLLACK: It's not in here?

25 THE WITNESS: It's not in this one. I was

1 looking for the BIA and...

2 Q. (By Mr. Horner) Okay. Let me. I can't read it
3 from there. Okay. NAPI board at the top, and we've
4 got one CEO. And then from there you've got a COO and
5 a CFO. And under the CFO, you've got accounting and
6 sales. Under the COO, you've got 638 O&M Department.
7 That's you, I'm assuming.

8 A. Yes.

9 Q. And crops and tech services. Is that what that
10 is?

11 A. Yes, technical services.

12 Q. Okay. Safety and security. And under --

13 A. And there's some under department that I -- I --

14 Q. Okay.

15 A. There's a long list of departments that are
16 underneath the chief operation officer.

17 Q. Okay.

18 A. But that's where I fit in.

19 Q. Okay. Now, then, I don't know if we need to
20 write this down, but we probably should do it orally
21 and get it on the record. Do you know who's on the
22 NAPI board? First off, how many -- how many board
23 members -- how many board seats are there?

24 A. I believe there are five.

25 Q. Okay. And do you know the name of them?

1 A. Yes, the chair is Edward T. Begay, vice chair is
2 Alfonso Nephew, member Ervin Chavez, member -- what is
3 his name -- Lyndon -- Lyndon -- Lyndon Chee, and then
4 member Jeannie Benally.

5 Q. Okay. And who is the CEO?

6 A. Tsosie Lewis.

7 Q. And who is the COO?

8 A. Leonard Scott.

9 Q. And the CFO?

10 A. Darryl Multine.

11 Q. Okay. And then the NAPI board or the whole NAPI
12 organization -- I'm assuming the NAPI board is somehow
13 responsive to the Navajo Nation. Is that correct?

14 A. Yes.

15 Q. Okay. Maybe you could kind of elaborate, to the
16 extent that you know or understand, just how the NAPI
17 board relates or the NAPI organization relates to the
18 Navajo Nation.

19 A. The NAPI board's responsibility is to manage --
20 provide oversight of the enterprise, and the CEO is
21 responsible to manage the company. The oversight is
22 reviewed and approved by the board, and the board chair
23 communicates that on behalf of NAPI, the enterprise, to
24 the Navajo Nation government.

25 Q. (By Mr. Horner) Okay. And that would be to the

1 Navajo Nation Council or --

2 A. To the legislative branch, to the executive
3 branch, judicial branch.

4 Q. Okay. So then the -- in -- in the international
5 government or whatever, you've got the executive,
6 legislative, and judicial, so then you've got the
7 president and then you've got the agencies under him.

8 Now, is NAPI somehow considered an agency under
9 the president or -- of the Navajo Nation?

10 A. No.

11 Q. And so how does that work then?

12 A. NAPI, as I understand it, is a for-profit
13 enterprise.

14 Q. Okay.

15 A. It was created by the Navajo Nation to make a
16 profit.

17 Q. Okay. So it's basically a wholly owned
18 enterprise by the Navajo Nation?

19 A. To my knowledge, yes.

20 Q. Okay. So in the corporate world, there'd be
21 shares of stock in a corporation that somebody would
22 own all of the shares. Are there shares or something
23 in NAPI that the Navajo Nation owns?

24 A. Not to my knowledge.

25 Q. Okay. So then the business structure of NAPI,

1 then, it sounds like it's not going to be a
 2 corporation. Is that correct?
 3 A. I don't know.
 4 Q. Okay. Well, is there -- is there anything else
 5 you can tell me about how it's organized, or are we
 6 just kind of don't know at that point?
 7 A. Organized, I don't know specifically.
 8 Q. Basically, the relationship of NAPI to the
 9 Navajo Nation.
 10 A. No.
 11 Q. No, you --
 12 A. No, I don't know.
 13 Q. Okay.
 14 A. I don't know any.
 15 Q. All right. Now, then, also, some of this stuff
 16 that we've gone through today has confused me more than
 17 I thought I was going to be confused about, the
 18 relationship of NAPI to NIIP and the BIA and the Bureau
 19 and those sorts of things. And so to the extent you
 20 can, could you explain the relationship, and if you --
 21 if it would help to draw another organizational tree,
 22 you know, with respect NAPI to NIIP, or just explain
 23 how they -- you see them related.
 24 A. NAPI is a contractor hired by the Bureau of
 25 Indian Affairs specifically to operate, maintain, and

1 the Bureau because they have -- because the Bureau
 2 functions of O&M and R have not been turned over to the
 3 Navajo Nation, they still remain with the Bureau, but
 4 the Bureau contracts with NAPI pursuant to 93 -- you
 5 know 638 to do those functions.
 6 MR. HORNER: Well, first off, you say
 7 "Bureau," that's Bureau of Reclamation?
 8 MR. POLLACK: No, no, no. Bureau of Indian
 9 Affairs. Bureau of Reclamation does not do O&M on the
 10 project. They are responsible for building the
 11 project. When they built a part of the project, they
 12 turn it over to the BIA to run the project, and the
 13 BIA -- certain functions that the BIA has are
 14 contracted, certain functions, as Mr. Haskie has
 15 testified to, remain with the BIA like roads and a
 16 number of other things.
 17 MR. HORNER: Okay. But that -- that still
 18 looks to me like two separate things going on, number
 19 one is a farm operation, okay, which is --
 20 MR. POLLACK: Right.
 21 MR. HORNER: -- NAPI.
 22 MR. POLLACK: Right.
 23 MR. HORNER: And number 23, then, is -- is
 24 -- okay. I want to say the same thing I just said that
 25 you apparently said wasn't right, and that is they

1 replace the Navajo Indian Irrigation Project.
 2 Q. Okay. Now, this actually sounds like it would
 3 be a second function of NAPI where, to me, the primary
 4 function, as I understood it, would be the farm
 5 enterprise, to go out and raise crops and make money
 6 and that sort of thing. And so then subcontracting for
 7 the -- what you do, the maintenance for the project,
 8 sounds like that would actually be, well, probably left
 9 to -- better left to a separate entity, but maybe
 10 somehow -- well, apparently, it does appear to be NAPI
 11 doing it, but at the very least, it sounds like a
 12 second function of NAPI to be subcontracting for the
 13 maintenance of -- well, and, see, this gets a little
 14 confusing to me. Subcontracting for the maintenance of
 15 the NAPI project. NAPI is subcontracting with somebody
 16 else to maintain NAPI'S project.
 17 MR. HORNER: I don't even mind if you
 18 answer this one, Stanley.
 19 MR. POLLACK: NAPI is not subcontracting
 20 anything. NAPI -- you are right. You are right that
 21 NAPI is -- its primary function is to run the project.
 22 That's what they're set up for. And I think in the
 23 pleadings we filed, we cited to the code, that they're
 24 an enterprise that's set up to run the Navajo Indian
 25 Irrigation Project. They are also a contractor with

1 contract to do the operation and maintenance for the
 2 farm operation.
 3 MR. POLLACK: They do, but I think you said
 4 that they were subcontracting when they're not.
 5 Basically, let's assume -- if the project had all
 6 been -- had been completed and had been turned over to
 7 the Navajo Nation to run, NAPI would be running the
 8 project and doing all the things that Mr. Haskie is
 9 doing. Now, because the project hasn't been actually
 10 turned over to the Navajo Nation, they're contracting
 11 to do some of those functions that the BIA otherwise
 12 would have to do themselves.
 13 Q. (By Mr. Horner) Okay. Now, then -- okay. So
 14 now NAPI'S relationship to NIIP. So my understanding
 15 is NIIP is the project, right?
 16 A. Yes.
 17 MR. HORNER: And we should probably let the
 18 witness answer to the extent we can and when we have a
 19 problem, we'll go to Stanley.
 20 MR. POLLACK: I try.
 21 Q. (By Mr. Horner) But anyway so -- so anyway, the
 22 NIIP is the project and so the NIIP is -- is storing
 23 and delivering water to NAPI?
 24 A. Yes.
 25 Q. Okay. Now, then, that's -- I just realized I

1 was doing a little stumbling there confusing you. If
 2 NIIP is the project --
 3 A. Yes, NIIP is the project.
 4 Q. -- but NIIP is storing and delivering water to
 5 the project, then -- then I'm starting to stumble
 6 again.
 7 A. Okay.
 8 Q. And so --
 9 MR. POLLACK: Okay. NAPI, think of it --
 10 NIIP is the project.
 11 MR. HORNER: Okay.
 12 MR. POLLACK: Think of the project being
 13 the physical -- the physical aspects of it. Okay?
 14 NAPI is an organization. They're a farmer. NAPI is
 15 the farmer.
 16 MR. HORNER: Okay.
 17 MR. POLLACK: Just think of NAPI as the
 18 farmer.
 19 MR. HORNER: All right.
 20 MR. POLLACK: And so when you say that
 21 they're delivering water to the project, they're --
 22 they are the project and NAPI runs the project.
 23 MR. HORNER: Okay. So what we're actually
 24 looking at, then, is delivering water to -- storing and
 25 delivering water to the project is the federal

1 maintain the irrigation system.
 2 Q. Okay. Brings up another problem. There's --
 3 MR. MARSHALL: Thank you, Mr. Haskie. I
 4 think I understood that.
 5 Q. (By Mr. Horner) There's a contract between the
 6 United States and the Navajo Nation for delivery of
 7 water to the NIIP project. Okay? And there's -- well,
 8 there's actually a couple. There's an old one and then
 9 there's a brand new one that goes along with the
 10 settlement thing. And so I'm not comprehending BIA in
 11 that contract, in the loop.
 12 A. Okay.
 13 Q. BIA in that loop somehow.
 14 A. Congress authorized the Department of Interior
 15 to construct the Navajo Indian Irrigation Project.
 16 Q. Okay.
 17 A. The Bureau of Indian Affairs and the Bureau of
 18 Reclamation are both departments under the Department
 19 of Interior.
 20 Q. Right.
 21 A. So to construct a facility, the Bureau of
 22 Reclamation is responsible to build and construct a
 23 ground up irrigation system. They transfer it to the
 24 owner who would be the Bureau of Indian Affairs. When
 25 a project is completed, the Bureau of Indian Affairs

1 government?
 2 MR. POLLACK: Right.
 3 MR. HORNER: And so NIIP is the project?
 4 MR. POLLACK: Right.
 5 Q. (By Mr. Horner) And now NAPI, then, is
 6 operating the project for the Navajo Nation. Okay.
 7 Now, then, I just didn't have Navajo Nation in the
 8 scheme of things. So the relationship between NIIP and
 9 the Navajo Nation, then, is -- what's the relationship
 10 between NIIP and the Navajo Nation?
 11 A. Do you want Stanley to answer that, or do you
 12 want me to answer that?
 13 Q. If you can answer.
 14 MR. MARSHALL: Get the witness to answer
 15 sort of in real world terms what we're talking about
 16 here.
 17 Q. (By Mr. Horner) To any extent you can. Okay?
 18 A. The Public Law 87-483 states that the federal
 19 government will build an irrigation system titled the
 20 Navajo Indian Irrigation Project for the Navajo Nation.
 21 The project is in construction. It's not completed.
 22 When it's completed, the ultimate owner will be the
 23 Navajo Nation. Until it gets to its full completion,
 24 the -- it is still under ownership by the BIA. The BIA
 25 contracts NAPI to operate and maintain it, operate and

1 will transfer the project to the Navajo Nation. Now
 2 during this construction process of the Navajo Indian
 3 Irrigation Project, the operator, the beneficiary is
 4 the enterprise Navajo Agriculture Products Industry.
 5 Q. The operator, anyway?
 6 A. The operator. Now, they --
 7 Q. I shouldn't be correcting you.
 8 A. -- they have a crop -- they have a crop
 9 department that grows crops. They're the end user for
 10 water and they have the technical expertise to operate
 11 and maintain the facility. Therefore, NAPI is
 12 contracted by the BIA to operate and maintain the
 13 system.
 14 Q. Okay. But still I'm not remembering in the law
 15 82 -- or 87-483 anything that talks about the Bureau
 16 building a project within -- and BIA in the loop that's
 17 somehow going to own or operate or own in trust for, on
 18 behalf of the Navajo Nation.
 19 THE WITNESS: Stanley, you want to -- I'll
 20 defer to you on that.
 21 MR. POLLACK: You know, let me just make a
 22 general objection here because I think what's going on
 23 here is you're really asking the witness for a legal
 24 interpretation of, you know, how the Act works and --
 25 and all of that. And that's really, you know -- that's

1 beyond the scope of what the witness has said that --
 2 he's responsible for O&M operations at the NIIP
 3 project. And how the contracts work and how the law
 4 works and the -- I just think that's a legal -- that's
 5 a legal question.
 6 MR. HORNER: Well, and it may be and that's
 7 why I have no problem in passing the question to the
 8 attorney.
 9 MR. POLLACK: Well, that's --
 10 MR. HORNER: And --
 11 MR. MARSHALL: Or to some other witness who
 12 could actually answer the question. Attorneys are not
 13 supposed to answer questions.
 14 MR. HORNER: And so I'm not trying to --
 15 I'm not trying to pick on the witness. When he starts
 16 running out of, you know, his area of expertise,
 17 that's -- that's fine. But I do have some questions,
 18 and if we've got the people here in the room that can
 19 answer the questions, that would be swell just if, for
 20 no other reason than my own understanding, that's going
 21 along these lines of NIIP and how it works and NAPI
 22 and -- and the whole business.
 23 MR. MARSHALL: Why don't you note the
 24 absence of the 30(b)(6) witness in the room that could
 25 answer those questions.

1 other departments that he hadn't identified on that
 2 chart.
 3 MR. HORNER: Okay.
 4 MR. MARSHALL: Okay. Just in terms of
 5 housekeeping -- oh, next, Mr. Haskie, after you do
 6 that --
 7 MR. HORNER: And initial it, please, while
 8 you're at it.
 9 MR. MARSHALL: And could you initial
 10 Exhibits 1, 2, and 3 and give them back to us with your
 11 precious markings on them, and we'll make copies of
 12 them right now.
 13 THE WITNESS: Okay. Here you are.
 14 MR. MARSHALL: Thank you. And we'll get a
 15 couple copies of these made right here at the office.
 16 And the other exhibits, we will provide in PDF form to
 17 all of the participants. If you don't get them in a
 18 day or so --
 19 MR. POLLACK: Okay.
 20 MR. MARSHALL: -- pester me about them.
 21 Are we finished?
 22 MR. POLLACK: I hope so.
 23 MR. TULLY: Actually, I think Mr. Pollack
 24 has to decide whether he wants some questions.
 25 MR. POLLACK: No, I'm fine.

1 MR. HORNER: So noted.
 2 MR. MARSHALL: Okay.
 3 MR. POLLACK: That question was never
 4 asked. Those questions were never asked of the Navajo
 5 Nation, so we couldn't possibly be a 30(b)(6) witness
 6 for a question that was never asked.
 7 MR. HORNER: Okay. Well, anyway -- okay.
 8 So now -- okay. So basically those were kind of my
 9 concerns I think with regard to the organizational
 10 structure and the relationship between NAPI and the
 11 Navajo Nation and the NIIP and the Bureau and the
 12 BOR -- and the BIA, BOR and BIA.
 13 Let me see if I have anything else. I think
 14 that's pretty much most of what I have, so I'll pass
 15 the witness back.
 16 MR. MARSHALL: Just some housekeeping
 17 matters. Mr. Haskie, would you write on Exhibit 14
 18 something to the effect that that's not a complete
 19 chart the way you testified, just so they don't hold
 20 you to it.
 21 MR. HORNER: Was there differences in the
 22 way he testified and what he wrote down?
 23 MR. MARSHALL: No, no, not at all. It's
 24 just he said he was showing the chain of command that
 25 came down to him, and he testified that there were

1 MR. MARSHALL: Okay. Thank you very much,
 2 Mr. Haskie. And this really has been helpful. I
 3 appreciate it. You've given us some information that
 4 is very useful.
 5 THE WITNESS: You're welcome. Thank you.
 6 (The deposition concluded at 3:56 p.m.)
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1 STATE OF NEW MEXICO
 2 COUNTY OF SAN JUAN
 3 ELEVENTH JUDICIAL DISTRICT COURT
 4 STATE OF NEW MEXICO, ex rel.
 5 THE STATE ENGINEER,
 6
 7 Plaintiff, AB-07-01
 8 Claims of Navajo Nation
 9 -vs- No. CV 75-184
 10
 11 THE UNITED STATES OF AMERICA,
 12 Et al.,
 13 Defendants.

REPORTER'S CERTIFICATE

14 I, AMY M. DRUM, RPR, NM CCR #49, DO HEREBY
 15 CERTIFY that on March 26, 2013, the Deposition
 16 of LIONEL HASKIE was taken before me at the
 17 request of, and sealed original thereof retained
 18 by:

19 FOR THE COMMUNITY DITCH DEFENDANTS
 20 VICTOR R. MARSHALL & ASSOCIATES, P.C.
 21 VICTOR R. MARSHALL, ESQ.
 22 victor@vrmarshall.com
 23 12509 Oakland, NE
 24 Albuquerque, New Mexico 87122
 25 (505) 332-9400

26 I FURTHER CERTIFY that copies of this
 27 Certificate have been mailed or delivered to all
 28 Counsel, and parties to the proceedings not
 29 represented by counsel, appearing at the taking of
 30 the Deposition.

1 I FURTHER CERTIFY that examination of this
 2 transcript and signature of the witness was
 3 requested by the witness and all parties present.
 4 On _____, a letter was mailed or delivered
 5 to STANLEY POLLACK, ESQ. regarding obtaining
 6 signature of the witness, and corrections, if any,
 7 were appended to the original and each copy of the
 8 Deposition.

9 I FURTHER CERTIFY that the recoverable cost of
 10 the original and one copy of the Deposition,
 11 including exhibits, to VICTOR MARSHALL, ESQ. is
 12 \$_____.

13 I FURTHER CERTIFY that I did administer the oath
 14 to the witness herein prior to the taking of the
 15 Deposition; that I did thereafter report in
 16 stenographic shorthand the questions and answers set
 17 forth herein, and the foregoing is a true and correct
 18 transcript of the proceeding had upon the taking of
 19 this Deposition to the best of my ability.

20 I FURTHER CERTIFY that I am neither employed by
 21 nor related to nor contracted with (unless excepted
 22 by the rules) any of the parties or attorney in this
 23 case, and that I have no interest whatsoever in the
 24 final disposition of the case in any court.

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1 STATE OF NEW MEXICO -vs- THE UNITED STATES OF AMERICA, et
 2 al.

SIGNATURE/CORRECTION PAGE

3 If there are any typographical errors to your
 4 Deposition, please indicate them below.

5 PAGE LINE
 6 _____ Change to _____
 7 _____ Change to _____
 8 _____ Change to _____
 9 _____ Change to _____
 10 _____ Change to _____

11 Any other changes to your Deposition are to be
 12 listed below with a statement as to the reason
 13 for such change:

| 14 PAGE | 15 LINE | 16 CORRECTION | 17 REASON FOR CHANGE |
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| 18 | _____ | _____ | _____ |
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| 25 | _____ | _____ | _____ |

26 I, LIONEL HASKIE, do hereby certify that I have
 27 read the foregoing pages of my testimony as
 28 transcribed, and that the same is a true and correct
 29 record of the testimony given by me in this
 30 Deposition on March 26, 2013, except for the changes
 31 made.

32 _____
 33 Date Signed LIONEL HASKIE

Exhibit B

E-mail correspondence re depositions of
Michael Howe and Douglas Dockter

Stanley M. Pollack

From: Guarino, Guss (ENRD) <Guss.Guarino@usdoj.gov>
Sent: Wednesday, February 20, 2013 9:43 AM
To: Victor R. Marshall
Cc: Gehlert, David (ENRD); Umshler, Sue; John W. Utton; Singer, Arianne, OSE; Gollis Samuel (sgollis@hotmail.com); Richard Cole; Stanley M. Pollack; Adam Rankin; Rick Tully; Cassandra R. Malone; GARY RISLEY; Liz Taylor; Sheri Heying; Shirley Meridith; Jay Stein
Subject: RE: Scheduling depositions of Michael Howe (BIA) and Michael Dockter (BOR)

Victor

Sue Umshler has returned to her office and I have been in touch with her. She is also available on March 1st and will attend depositions of Messrs. Howe and Dockter on that day. Therefore, if you would like to schedule the two depositions on that day, that would be fine (I will anticipate 4-hour depositions unless you indicate a shorter time is needed).

We can hold these depositions in Albuquerque. I expect that you will schedule them back-to-back beginning in the morning and concluding at the end of the day. I will have both witnesses available for the entire day of March 1st so that we can start the second deposition as soon as the first is concluded. Once I receive your notices of deposition, I will make my travel arrangements to Albuquerque and the four of us will be ready to go whenever you would like to start on the 1st.

Regards,

Guss Guarino
Indian Resources Section
Environment and Natural Resources Division
999 18th Street, South Terrace, Suite 370
Denver, Colorado 80202
Office: 303-844-1343
Cell: 303-229-7256
Fax: 303-844-1350
E-mail: guss.guarino@usdoj.gov

The information contained in this electronic mail transmission may be attorney/client privileged and confidential. It is intended only for the use of the individual or entity named above. If the reader of this message is not the intended recipient, you are hereby notified that any dissemination, distribution or copy of this communication is strictly prohibited. If you have received this communication in error, please notify me immediately by telephone at 303-844-1343. Thank you.

From: Guarino, Guss (ENRD)
Sent: Tuesday, February 12, 2013 3:34 PM
To: Guarino, Guss (ENRD); Victor R. Marshall; Richard Cole; Stanley Pollack; Adam Rankin; Rick Tully; Cassandra R. Malone; GARY RISLEY; Liz Taylor; Sheri Heying; Shirley Meridith; Jay Stein
Cc: Gehlert, David (ENRD); Umshler, Sue; John W. Utton; Singer, Arianne, OSE; Gollis Samuel (sgollis@hotmail.com)
Subject: RE: Scheduling depositions of Michael Howe (BIA) and Michael Dockter (BOR)

Victor,

I have heard back from Mr. Howe and Dockter, they are available on March 1st – so I am holding that date. However, I need to speak with Sue Umshler about that date to make sure she can be in attendance as well – I have every expectation that she will be available on that date. Sue will be back in the office on February 19th and I will be in touch with you then on that day to give final confirmation.

Regards,

Guss Guarino
Indian Resources Section
Environment and Natural Resources Division
999 18th Street, South Terrace, Suite 370
Denver, Colorado 80202
Office: 303-844-1343
Cell: 303-229-7256
Fax: 303-844-1350
E-mail: guss.guarino@usdoj.gov

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From: Guarino, Guss (ENRD)
Sent: Monday, February 11, 2013 9:20 AM
To: 'Victor R. Marshall'; Richard Cole; Stanley Pollack; Adam Rankin; Rick Tully; Cassandra R. Malone; GARY RISLEY; Liz Taylor; Sheri Heying; Shirley Meridith; Jay Stein
Cc: Gehlert, David (ENRD); 'Umshler, Sue'; John W. Utton; Singer, Arianne, OSE; Gollis Samuel (sgollis@hotmail.com)
Subject: RE: Scheduling depositions of Michael Howe (BIA) and Michael Dockter (BOR)

Victor,

I will inquire today about the availability of Messrs. Howe and Dockter for a deposition; however, looking at the events/deposition schedule we already have in place, the only possibility for such depositions will likely be sometime on March 1st (depositions are already scheduled throughout next week and the following week in multiple cities/locations). I will be in touch when I receive further information.

Regards,

Guss Guarino
Indian Resources Section
Environment and Natural Resources Division
999 18th Street, South Terrace, Suite 370
Denver, Colorado 80202
Office: 303-844-1343
Cell: 303-229-7256
Fax: 303-844-1350
E-mail: guss.guarino@usdoj.gov

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From: Victor R. Marshall [<mailto:victor@vrmarshall.com>]

Sent: Sunday, February 10, 2013 9:02 AM

To: Guarino, Guss (ENRD); Richard Cole; Stanley Pollack; Adam Rankin; Rick Tully; Cassandra R. Malone; GARY RISLEY; Liz Taylor; Sheri Heying; Shirley Meridith; Victor Marshall; Jay Stein

Subject: Scheduling depositions of Michael Howe (BIA) and Michael Dockter (BOR)

Guss -

When can the defendants schedule the depositions of Mr. Howe and Mr. Dockter, whom you identified as 30 b 6 witnesses on NIIP ? Please suggest some dates.

We'd like to take the depos in Albuquerque. Can you arrange that?

Regards,
Victor Marshall

Stanley M. Pollack

From: Guarino, Guss (ENRD) <Guss.Guarino@usdoj.gov>
Sent: Tuesday, February 12, 2013 3:34 PM
To: Guarino, Guss (ENRD); Victor R. Marshall; Richard Cole; Stanley M. Pollack; Adam Rankin; Rick Tully; Cassandra R. Malone; GARY RISLEY; Liz Taylor; Sheri Heying; Shirley Meridith; Jay Stein
Cc: Gehlert, David (ENRD); Umshler, Sue; John W. Utton; Singer, Arianne, OSE; Gollis Samuel (sgollis@hotmail.com)
Subject: RE: Scheduling depositions of Michael Howe (BIA) and Michael Dockter (BOR)

Victor,

I have heard back from Mr. Howe and Dockter, they are available on March 1st – so I am holding that date. However, I need to speak with Sue Umshler about that date to make sure she can be in attendance as well – I have every expectation that she will be available on that date. Sue will be back in the office on February 19th and I will be in touch with you then on that day to give final confirmation.

Regards,

Guss Guarino
Indian Resources Section
Environment and Natural Resources Division
999 18th Street, South Terrace, Suite 370
Denver, Colorado 80202
Office: 303-844-1343
Cell: 303-229-7256
Fax: 303-844-1350
E-mail: guss.guarino@usdoj.gov

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From: Guarino, Guss (ENRD)
Sent: Monday, February 11, 2013 9:20 AM
To: 'Victor R. Marshall'; Richard Cole; Stanley Pollack; Adam Rankin; Rick Tully; Cassandra R. Malone; GARY RISLEY; Liz Taylor; Sheri Heying; Shirley Meridith; Jay Stein
Cc: Gehlert, David (ENRD); 'Umshler, Sue'; John W. Utton; Singer, Arianne, OSE; Gollis Samuel (sgollis@hotmail.com)
Subject: RE: Scheduling depositions of Michael Howe (BIA) and Michael Dockter (BOR)

Victor,

I will inquire today about the availability of Messrs. Howe and Dockter for a deposition; however, looking at the events/deposition schedule we already have in place, the only possibility for such depositions will likely be sometime on March 1st (depositions are already scheduled throughout next week and the following week in multiple cities/locations). I will be in touch when I receive further information.

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From: Victor R. Marshall [<mailto:victor@vrmarshall.com>]

Sent: Sunday, February 10, 2013 9:02 AM

To: Guarino, Guss (ENRD); Richard Cole; Stanley Pollack; Adam Rankin; Rick Tully; Cassandra R. Malone; GARY RISLEY; Liz Taylor; Sheri Heying; Shirley Meridith; Victor Marshall; Jay Stein

Subject: Scheduling depositions of Michael Howe (BIA) and Michael Dockter (BOR)

Guss -

When can the defendants schedule the depositions of Mr. Howe and Mr. Dockter, whom you identified as 30 b 6 witnesses on NIIP ? Please suggest some dates.

We'd like to take the depos in Albuquerque. Can you arrange that?

Regards,
Victor Marshall

Stanley M. Pollack

From: Victor R. Marshall <victor@vrmarshall.com>
Sent: Monday, February 11, 2013 9:24 AM
To: Guarino, Guss (ENRD)
Cc: Richard Cole; Stanley M. Pollack; Adam Rankin; Rick Tully; Cassandra R. Malone; GARY RISLEY; Liz Taylor; Sheri Heying; Shirley Meridith; Jay Stein; Gehlert, David (ENRD); Umshler, Sue; John W. Utton; Singer, Arianne, OSE; Gollis Samuel (sgollis@hotmail.com)
Subject: Re: Scheduling depositions of Michael Howe (BIA) and Michael Dockter (BOR)

Thanks.

On 2/11/2013 9:19 AM, Guarino, Guss (ENRD) wrote:

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Subject: Scheduling depositions of Michael Howe (BIA) and Michael Dockter (BOR)

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