

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

DISTRICT COURT
SAN JUAN COUNTY NM
FILED
2013 APR 29 AM 10:30

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

Plaintiff,

vs.

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

Defendants.

AB-07-1

Claims of Navajo Nation

No. CV 75-184

Honorable James J. Wechsler
Presiding Judge

DESCRIPTIVE SUMMARY: At his deposition on March 26, Mr. Lionel Haskie was unable to answer many questions about the topics on which he had been designated as a witness. And he brought with him no documents to consult for the answers.

NUMBER OF PAGES: 5 + 18 page exhibit

DATE OF MAILING: April 29, 2013

**COMMUNITY DITCH REPLY ON ADDITIONAL
MOTION TO COMPEL CONCERNING NIIP**

On or about April 1, 2013, the Community Ditch Defendants filed an additional motion to compel discovery concerning NIIP, based on Mr. Lionel Haskie's inability to answer questions at his deposition about the subjects on which he had been designated by the settling parties. Since the motion was filed, Mr. Haskie's deposition has been transcribed, so the Community Ditch Defendants submit herewith excerpts from that deposition, as part of their reply in support of their motion.

The purpose of Mr. Haskie's deposition was to have a live witness who can answer questions and be subject to cross examination about the topics in the joint discovery pursued

D-

by defendants concerning NIIP. First, the defendants propounded request for production of documents. The settling parties objected to these requests, delaying the process for several months until the court overruled many of their objections. The defendants then produced documents which did not provide a complete picture of the revenues and expenses of operations of NIIP-NAPI since inception. For example, the financial reports excluded most of the actual costs of building and operating NIIP. In an attempt to solve the impasse, the court ordered the defendants to propound additional interrogatories. Defendants did so, but the settling parties answered the interrogatories largely by referring back to the documents, even though the documents did not answer the questions fully. Then, the court directed the parties to proceed with Mr. Haskie's deposition, in the hope that he could answer the unresolved questions.

So, after much back and forth, Mr. Haskie was deposed on March 26, 2013 in Albuquerque. Mr. Haskie answered some questions within his area of knowledge – operations and maintenance of some of the infrastructure, particularly as regards maintenance of the hundreds of pumps and feeder lines required to operate NIIP. But Mr. Haskie was unable to answer many basic questions about the finances of NIIP-NAPI or its agricultural operations, because those are beyond his personal knowledge and the scope of his job. [The pertinent pages of the deposition are attached.]

Inter alia

1. Mr. Haskie did not bring any documents with him to his deposition (other than his draft interrogatory answers) despite being requested to do so. Haskie Dep. at 8, 10, 11.

2. The Community Ditch Defendants offered to take Mr. Haskie's deposition in Farmington so that he would have access to the documents in the so-called depositories, but the settling parties refused this offer from the Community Ditch Defendants. Haskie Dep. at 10.

3. On behalf of the Navajo Nation and the settling parties, Mr. Pollack objected to any discovery about NIIP because "the court has no jurisdiction one way or the other to limit the water rights for the Navajo Indian irrigation project as part of the settlement." [If the court lacks jurisdiction over the claimed water rights for NIIP, then it lacks jurisdiction over the subject matter and this inter se must be dismissed. Why are we wasting everyone's time? *See* Community Ditch Conditional Motion To Dismiss.]

4. Mr. Haskie has worked at NAPI only since July 2010. Haskie Dep. at 68.

5. Mr. Haskie does not know how it is decided how much money his department will receive for operations and maintenance. Haskie Dep. at 69, 70, 76, 100-01.

6. Mr. Haskie's department is still working on fixing a list of deficiencies in NIIP that were identified in 1989. Community Ditch counsel requested a copy of this list. Mr. Pollack noted the request, but the settling parties have not produced the list or pointed out where it was previously produced. Haskie Dep. at 69-77.

7. Mr. Haskie has no idea of the costs of the components of NIIP, including Navajo dam and the canals that supply NIIP. Haskie Dep. at 84.

8. Funding limitations for Mr. Haskie's department have create a backlog of deferred maintenance at NIIP-NAPI. He does not know whether the backlog is growing or shrinking. Haskie Dep. at 117-18.

9. Mr. Haskie was able to identify many of the costs that are necessary to operate NIIP-NAPI. Haskie Dep. at 131-38. However, he does not know whether NAPI has ever had a year where its sales were greater than all of its costs. Haskie Dep. at 138-47.

10. According to a 2011 compilation by Keller Bliesner and Associates, “completing construction [of NIIP] will cost \$403 million, rehabilitation will cost \$125 million, addressing NIIP deficiencies will cost \$53 million, on-farm rehabilitation will cost \$14 million, and new on-farm development will cost \$61.7 million.” Haskie Dep. 139-41, Haskie Exhibit 9.

11. Mr. Haskie is unable to testify about the finances of NIIP-NAPI. Haskie Dep. at 145.

CONCLUSION

The economic feasibility of NIIP is a central issue in this case, but all of the discovery efforts by the defendants and the court have been thwarted. Requests for production did not work. Interrogatories did not work either. And the deposition of the 30(B)(6) witness also proved futile.

The settling parties believe that they can thwart discovery with impunity, and they have managed to do so. First, the settling parties are not making a PIA claim for NIIP, so they have decided that the entire topic is out of bounds. *See* Motion for Protective Order and Response of the Navajo Nation to Motion To Compel Concerning NIIP at 7 (Oct. 16, 2012): “The Navajo Nation does not seek a water right for NIIP under a PIA theory.” *See also* State of New Mexico’s Revised Statement of Legal and Factual Bases for Settlement at 3-4 (Sept. 7, 2012): “Under the settlement, the Navajo Nation foregoes quantification based

on the practicably irrigable acreage ('PIA') standard as established in *Arizona v. California*” Second, they assert that the court has no jurisdiction over NIIP water rights. Third, they assert that the court has no jurisdiction over the Navajo Nation or the United States. Fourth, they assert that the Navajo Nation and the United States enjoy sovereign immunity against any orders of this court.

Thus far, the settling parties have effectively succeeded with all of these spurious arguments.

Respectfully submitted,

VICTOR R. MARSHALL & ASSOCIATES, P.C.

By /s/ Victor R. Marshall

Victor R. Marshall
Attorneys for San Juan Agricultural Water Users
Association; Hammond Conservancy District;
Bloomfield Irrigation District; various ditches; and
various members thereof.
12509 Oakland NE
Albuquerque, NM 87122
505-332-9400 / 505-332-3793 FAX

CERTIFICATE OF SERVICE

I hereby certify that on April 29, 2013, a true and correct copy of the foregoing was served on the parties and claimants by attaching a copy of said document to an email sent to the following list server: wnavajointerse@nmcourts.gov and to the filing list referred to in the Notice of Amended Service List filed February 25, 2013.

/s/ Victor R. Marshall

Victor R. Marshall, Esq.



IN THE MATTER OF:
STATE OF NEW MEXICO, ex rel. THE STATE ENGINEER v. THE UNITED STATES OF AMERICA, ET AL.

LIONEL HASKIE

March 26, 2013

Phone: 505-243-5691
Fax: 505-242-0313
Email: info@kendrareporting.com
Internet: www.kendrareporting.com

5

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

6

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?

7

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

8

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

9

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.

10

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.

11

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

12

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 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 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 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 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,

69

71

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 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,

70

72

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 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 tournouts?
 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 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 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 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?

81

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,

82

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

83

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.

84

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.

97

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?

98

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.

99

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?

100

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.

117

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

118

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

119

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.

120

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.

129

131

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

130

132

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?

133

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.

134

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

135

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

136

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.

137

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?

138

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

139

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

140

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

141

143

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.

142

144

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 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 whc 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.

12 EXAMINATION

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 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 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



DRAFT

**WATER RESOURCE
DEVELOPMENT STRATEGY
FOR THE NAVAJO NATION**

**NAVAJO NATION
DEPARTMENT OF WATER RESOURCES**
July 2011

EXHIBIT
9

- Put all of the municipal water supplied by the regional projects to beneficial use
- Provide for domestic and municipal needs served by local systems not connected to the proposed regional systems
- Improve water service to families not connected to water systems
- Provide infrastructure for selected agricultural uses
- Optimize water conservation and wastewater reuse. This effort will include evaluating fee structures to ensure adequate operation and maintenance.

The compiled information will enable the Navajo Nation to prioritize and sequence the proposed water projects. These assessments and the resulting appraisals will be pursued through Reclamation's existing authorization to perform general studies. The Navajo Nation will prepare a matrix that will assist in prioritizing projects based on realistic expectations for funding in the short and long term through existing agency authorities. The Navajo Nation will coordinate the resources that the agencies are able to commit. The matrix may include:

- economic benefits
- population
- susceptibility to drought
- cultural factors such as reducing off-reservation migration, resolution of social problems, increasing recreation opportunities, etc
- political factors
- potential partners, including Tribal, Federal, State and private interests
- technical Analysis addressing engineering, cost estimates and environmental considerations
- federal agency budgets and authorizations

6.5 Completing the Navajo Indian Irrigation Project

NIIP has not realized its full economic potential. The Navajo Nation has made several specific suggestions to realize NIIP's potential, including: increasing the annual construction funds to complete both the distribution systems and on-farm components in a shorter period of time, vertically integrating to increase tribal employment, and adequately funding the operation and maintenance. The Navajo Nation, Reclamation, and the BIA have a team that is developing a long range plan for NIIP.

In 2011 Keller Bliesner and Associates compiled information on the completion of NIIP. Based on that compilation and assuming a \$26 million per year funding level, completing construction will cost \$403 million, rehabilitation will cost \$125 million, addressing NIIP deficiencies will cost \$53 million, on-farm rehabilitation will cost \$14 million, and new on-farm development will cost \$61.7 million.