

INTERVIEW WITH JIM COOK  
BY GAYLE STARR

January 27, 2014

1                   MR. STARR: This interview is being conducted by  
2 the Nebraska Natural Resources Districts' Oral History  
3 Interview Project. The interviewer is Gayle Starr. The  
4 interview is being conducted on January 27, 2013, (sic) with  
5 Jim Cook at Jim Cook's home. Jim was a long-time legal  
6 counsel to the Nebraska Soil and Water Conservation  
7 Commission, Natural Resources Commission, and Department of  
8 Natural Resources, as those agencies evolved over the years.

9                   So, first of all, Jim, I'm going to ask you just  
10 to give a brief rundown of your history, I guess, you'd say.

11                  MR. COOK: Okay. My personal history?

12                  MR. STARR: Right.

13                  MR. COOK: Okay. I was born in Beatrice in 1945  
14 and went to high school there. I went to college at UNL and  
15 got a bachelor's degree in political science in 1967, which  
16 was worth virtually nothing. But I went to poli-sci with  
17 the thought of going to law school, which I did, at  
18 Nebraska. Got my juris doctor in 1970. Got married in  
19 early 1970, and knew I needed to find a job. And I  
20 interviewed a number of places, got two job offers about the  
21 same time. One was for legal counsel for the Department of  
22 Agriculture in Washington, D.C. The other one was for  
23 assistant legal counsel to the Nebraska Soil and Water  
24 Conservation Commission, which was not really something I  
25 knew anything about, but I had had some farm background and

1 the things that the Commission did had interest to me. So,  
2 I made a choice, and it was, number one, there was the  
3 appeal of staying in Lincoln, and number two, the job had  
4 appeal to me. So, I took that job and started on July 1,  
5 1970, expecting to be there two or three years. Well, I  
6 stayed 36 and a half years, so it was a good fit for me.

7 I guess I'll stop there with the background.

8 MR. STARR: Okay. When you came on in 1970, the  
9 original NRD law, 1357, hadn't been passed.

10 MR. COOK: Right.

11 MR. STARR: Hadn't been put into place and there  
12 were amendments pending or thought of and so forth, and  
13 controversy, et cetera. What was your impression of the NRD  
14 law and the whole process that was going on at that time?

15 MR. COOK: As I recall, you interviewed me for the  
16 job, or maybe after I was selected for the job, which was  
17 probably in April or May of 1970, gave me a copy of LB1357,  
18 and I had reviewed that some. You had given me some of the  
19 history of that, as well, and I was excited about it. I  
20 thought it was, you know, really a revolutionary thing for  
21 Nebraska. I didn't know much about the background, but the  
22 idea of consolidation of these many, many small districts  
23 into something larger and more powerful had a great deal of  
24 appeal to me. So, I came on with very positive thoughts  
25 about that.

1           One of the first things I had to deal with --  
2           well, not one of the first things. Actually, it's later and  
3           I think I'll hold that for later, was a lawsuit which  
4           challenged the constitutionality of that. As you mentioned,  
5           Gayle, from the time I started, which was 1970, until it  
6           went into effect two years to the day later, there were lots  
7           of proposed amendments. There were repealer attempts.  
8           There were a lot of groups that were opposed to the NRD law.  
9           Some of the soil and water conservation districts were  
10          opposed to the NRD law. And they really challenged it.  
11          There were lots of amendments considered. Some passed. As  
12          I recall, one reduced the property tax levy in half from  
13          what had originally been authorized. There were lots of  
14          arguments about boundaries for the natural resource  
15          districts. The original criteria for the boundaries was to  
16          delineate common problem areas. And that allowed the  
17          Commission, who was responsible for those, to consider a lot  
18          of things, hydrologic boundaries, groundwater issues,  
19          political issues, all kinds of things. And they ultimately  
20          came out with a map of, I think, 33 natural resources  
21          districts, I think, some of which looked a little bit  
22          strange. One of them was Adams County by itself. And my  
23          recollection is, the staff wasn't terribly excited about  
24          that, but there were political reasons for that.

25                 In the year that followed, which was probably, I

1 don't know, '71 or '72, the Legislature expressed their  
2 dislike for those boundaries as well. First, tried to  
3 delineate boundaries on their own and failed at that,  
4 realized they weren't going to be able to do that. So,  
5 instead, they changed the criteria to be mostly hydrologic  
6 boundary criteria and sent the job back to the Commission.  
7 The Commission, then, took another look at boundary issues  
8 and ultimately delineated the original 24 natural resources  
9 districts, mostly along hydrologic lines.

10 There were still some politics involved. One of  
11 those was what was called -- what became known as Tri-Basin  
12 NRD, and the politics were concerning the political  
13 significance of the Central Nebraska Public Power and  
14 Irrigation District, otherwise known as Tri-County, which  
15 had a lot of clout in the Nebraska Legislature at that time.  
16 Tri-County wanted to have a natural resource district that  
17 coincided on a boundary basis with their boundaries, which  
18 were Gosper, Phelps, Kearney, and Adams Counties. And that  
19 did not correspond to hydrologic lines. Actually, that  
20 would take chunks out of three different basins. So, the  
21 staff wasn't terribly excited about that, but that's what  
22 got adopted anyway. I'll stop there for that part, I guess.

23 MR. STARR: We may have got a little revenge by  
24 naming it Tri-Basin.

25 (Laughter.)

1           MR. COOK: Well, and I do remember discussions in  
2 staff saying, you know, we really got to show the Commission  
3 how dumb this is, so let's suggest they call it Tri-Basin,  
4 which would be very contrary to the criteria of the law.  
5 And we did, and they did, they said, okay.

6           (Laughter.)

7           We were flabbergasted by that.

8           MR. STARR: There were a whole bunch of amendments  
9 between the original passage of 1357 and the final enactment  
10 that did various things, changing -- the boundary changes,  
11 the director's per diem, what have you. How involved were  
12 you in those?

13           MR. COOK: Well, I was pretty involved. The -- as  
14 assistant counsel, Lee Orton was the other counsel there, I  
15 was -- those things occupied most of our time when the  
16 Legislature was in session. So, I was pretty involved. I  
17 have to admit, I've forgotten a lot of the details of those  
18 amendments now, or the proposed amendments, but I remember  
19 spending a lot of time, not only working with legislative  
20 stuff, but spending a lot of time going to meetings around  
21 the state where we talked about those amendments and what  
22 the impact of those would be so that the people that were  
23 going to become NRD directors would be more informed about  
24 that. But it was very time consuming. And it was very  
25 challenging, because, at least in our opinion, the people

1 that were proposing those things weren't being very truthful  
2 about what was going to be done or what the amendments would  
3 do. So, it was sometimes very frustrating. On the other  
4 hand that sometimes helped us because we would have  
5 senators, like Senator Kremer or Senator Burbach, that would  
6 come to the office and say, "Joe Blow was saying this about  
7 this bill. Is that true?" And then we'd be able to say and  
8 point out where it wasn't true, and that really eroded their  
9 credibility and helped our own, I think. In the end, we  
10 weren't -- all of the amendments that were enacted, we  
11 didn't think were positive, but the changes weren't that bad  
12 overall.

13 MR. STARR: Tax your memory a bit here. What do  
14 you think was the most significant amendment that was made  
15 from the original passage to the actual start of the NRDs?  
16 What did you see are the one or two or three most  
17 significant changes that were made?

18 MR. COOK: Well, I think the -- I probably  
19 mentioned two that come to mind for me already. One would  
20 be the boundary changes. I think that had quite an impact.  
21 We'll never know what NRDs would have been like with 33  
22 NRDs. But, if anything, I think we could have even used  
23 fewer instead of more than we ended up with.

24 The other one would be the tax change. The taxes  
25 were done in a different way then. If I recall right, the

1 tax levy -- maximum tax levy was reduced from two mills to  
2 one mill. That means different things now, but that did  
3 have some impact initially. Most of that got overcome in  
4 later years by increases of the taxing authority back up  
5 some, but it did have some limitation.

6 I don't recall if there were legislative changes  
7 in board size or things. I don't think there were, so I  
8 don't think there was too much that had much impact on the  
9 institutional structure of natural resource districts, but I  
10 may have forgotten that.

11 MR. STARR: As the districts went into effect, we  
12 had meetings around the state with each district before the  
13 actual took place and some of them were very interesting.  
14 What kind of reaction do you have to -- and I know you  
15 attended many of those, maybe even all of them. You  
16 attended a lot of them.

17 MR. COOK: Attended a lot of them, yeah. Well,  
18 there were some very frustrating areas. One was the Nemaha.  
19 The Nemaha people were fighting the NRD law probably harder  
20 than any other area in the state. And that was, at least in  
21 part, because they had so many existing directors. I don't  
22 remember the numbers, but dozens of watershed conservancy  
23 districts as well as five or six SWCDs and some others, so  
24 they were looking at 100-and-some directors, I think,  
25 quote/unquote, losing their job and having that job taken by

1 a smaller number of natural resource district directors. I  
2 think the Nemaha folks refused to meet until just very  
3 shortly before July 1, '72. I think maybe we had one or two  
4 meetings with them before. And they had a lot to do. So,  
5 that was pretty challenging.

6 MR. STARR: More than anybody else.

7 MR. COOK: Yeah, more than anybody else. The  
8 transfers that occurred, that's something I was very  
9 involved in was getting the properties transferred from the  
10 previous districts that were going to be merged into the  
11 natural resources districts. I worked a lot on the  
12 paperwork for that.

13 I also remember going to some meetings of what  
14 were to be the new boards, shortly before July 1, '72, and  
15 being frustrated at times with the decisions they were  
16 making and the pettiness with which they were making them,  
17 because they might -- or the small-mindedness might be a  
18 better word, but there would be lengthy arguments over the  
19 quality of the paper they were going to acquire, for  
20 example. I thought there were more important things to deal  
21 with than that. But they somehow all managed to get  
22 functioning and actually -- I mentioned the Nemaha before.  
23 Once the Nemaha decided they were going to have to do it,  
24 they cracked down and did a reasonable job getting started.

25 MR. STARR: As you mentioned earlier, there was a

1       lawsuit. Can you talk a little bit about how that proceeded  
2       and your involvement in the lawsuit?

3               MR. COOK: Yeah, I will forever remember that, and  
4       I think anybody involved will. A coalition of folks from  
5       Nemaha, I'm going to say, maybe Seward County, a couple of  
6       other places, funded a lawsuit challenging the  
7       constitutionality of the NRD law. What made it difficult  
8       was the lawsuit wasn't filed until sometime in June of '72,  
9       less than a month before the law was to take effect. The  
10      counsel for the plaintiffs was, I believe, Herman Ginsburg,  
11      who was a Lincoln lawyer, very well-known Lincoln lawyer,  
12      but had no real experience in natural resources law that I  
13      was aware of. Herman was a constitutional lawyer, however,  
14      so he knew where to find all the arguments in the  
15      Constitution that he might possibly use to challenge the NRD  
16      law, and he found a bunch of them. So, he had a lawsuit  
17      that challenged the constitutionality on probably eight or  
18      ten different grounds. As I said, that was in, I'm going to  
19      say, like, mid-June. I will always remember a meeting we  
20      had in chambers with Judge Hastings, who later became Chief  
21      Justice of the Nebraska Supreme Court, before, you know, one  
22      of the initial court actions on that, where he said to us,  
23      as defendants, and I'm going to say this was a Thursday, I'm  
24      not absolutely sure about that, but "You need to get your  
25      response in, brief in by next Tuesday." Okay, well, I knew

1 it was going to be a long weekend, and it was. One of the  
2 things I had resisted as an employee was using a dictaphone.  
3 I'd been encouraged to do that, but I was long-handing  
4 everything that I wrote. I just was a little intimidated by  
5 a dictaphone. So, I knew I wasn't going to be able to  
6 long-hand any parts of the brief in response to that  
7 lawsuit, so I had to learn on the fly that weekend to use a  
8 dictaphone. And I spent, virtually all weekend in the  
9 Supreme Court Library. I was given a key to use the Supreme  
10 Court Library all weekend, and I spent almost all weekend  
11 there researching the issues that had been raised by the  
12 Ginsburg plea and drafting a response.

13 Lee Orton also, of course, worked on that over the  
14 weekend. We took our dictation material to -- I think  
15 Marsha Dormer (phonetic) did most of the dictation at that  
16 time. And we took it to her on Monday morning and said, "We  
17 have to have this brief in tomorrow." And Marsha was a  
18 great typist, and she managed to knock out a very good draft  
19 that day, as I recall, and we got it -- it wasn't a perfect  
20 brief in by any means, but we managed to get it in on  
21 Tuesday. And the good thing was, in the end, we prevailed  
22 in resisting a restraining order and resisting an injunction  
23 on the law going into effect on July 1<sup>st</sup>, so it did actually  
24 start and we continued to proceed to get things rolling as  
25 best we could at the time.

1           MR. STARR: Who was the Attorney General and did  
2 you get any help from the Attorney General's Office?

3           MR. COOK: The Attorney General was Douglas. No,  
4 that may not be right. I don't recall who the Attorney  
5 General was. The Attorney General's rep that worked with us  
6 was Ralph Gillan, G-i-l-l-a-n. And we did not get much of  
7 the labor from Ralph. It was basically, he said, "This is  
8 you guys' agency, you go prepare the brief." He represented  
9 us in court, but we did all the paperwork to get -- to  
10 muster the defense. And he seemed to be satisfied with what  
11 we did there. I, frankly, disagreed with him at a later  
12 time over the appeal that was taken to the findings of the  
13 Court later. And the only thing we ultimately ended up  
14 losing in that case was the Court saying that the  
15 Legislature could not dictate that university staff people  
16 were to be members of the Natural Resources Commission.  
17 They said that was an unauthorized appointment by the  
18 Legislature where it's the governor's job to make  
19 appointments. I had felt all along we should argue that all  
20 the Legislature is doing is assigning new responsibilities  
21 to university personnel, but Ralph didn't think that was a  
22 viable argument. I still think it might have prevailed. It  
23 didn't make a big difference. It mean that people like  
24 Vince Reeson (phonetic) and whoever was head of the  
25 agriculture at that -- East Campus a that time, you know,

1 were no longer official members of the Commission, but still  
2 served as advisors. It didn't make a lot of difference.

3 MR. STARR: No. Then, as it eventually got  
4 appealed to the State Supreme Court and the Supreme Court  
5 ruled to go ahead.

6 MR. COOK: No change at all in the NRD law itself.  
7 That Commission membership issue was the only casualty of  
8 the case.

9 MR. STARR: And as things went along, after '72,  
10 how did you see the managers that they had hired, and the  
11 managers that were already on board, the new directors, how  
12 did you see them performing in their newly assigned roles?

13 MR. COOK: Generally, pretty well. You know,  
14 there was pretty -- it was a steep curve for everybody to  
15 learn, but a lot of those folks came on with some  
16 experience. Some of them had been managers of one of the  
17 organizations that merged. Ron Bishop, Dick Beran, Steve  
18 Oltmans, as I recall. I'm probably missing some. Ron  
19 Soseck (phonetic) had worked for us and had that kind of  
20 background.

21 MR. STARR: Ron Fleecs.

22 MR. COOK: Ron Fleecs had worked for us, that's  
23 right. So, there was some knowledge there. And I think the  
24 fact that they did a pretty good job was evidenced by the  
25 fact that most of them stayed around a long time. We didn't

1 have much turnover in natural resource districts at all.

2 MR. STARR: Some of them are still there.

3 MR. COOK: That's right. There was -- I'll be  
4 very frank. There was one that shocked me a lot, and that  
5 was -- and we talked earlier about the meetings right before  
6 July 1, '72. I happened to go to one that -- at the Lower  
7 Platte North NRD, and probably in May or June of 1972, and  
8 they made two decisions that night that just blew me away,  
9 because I thought they were very inappropriate, frankly.  
10 One of them was to put the office in David City, which was  
11 right on the border of the NRD and not centrally located at  
12 all. The other one was to hire Al Smith as the manager. Al  
13 had been a rather rabble-rousing board member, as I recall,  
14 on the Bellwood Watershed Board, and if we were going to end  
15 up with some fiery manager activity, it was going to come  
16 from Al, which proved to be largely true. So, that was one  
17 that I was extremely surprised at and I think most other  
18 people were, too. And as Al proceeded, he did some good  
19 things and some not-so-good things. I saw him at Ron  
20 Bishop's funeral just earlier this week, as a matter of  
21 fact, which surprised me a lot. He's still going.

22 Thinking to others, there were -- you know, there  
23 were certainly -- you could begin to see a pattern in  
24 districts that were progressive and wanted to get on with it  
25 and get stuff done versus those that were lagging back a

1 little bit. Sometimes that was the board that held folks  
2 back. Sometimes it was the manager not being quite  
3 assertive enough, but, you know, in general, I thought the  
4 progress was fairly positive.

5 MR. STARR: And as things went on after '72, there  
6 were -- almost every legislative session there was some bill  
7 to change something to add new responsibilities, to change  
8 per diem rates, what have you. And I think in most cases, I  
9 don't know that you were involved in drafting many of those,  
10 but you were certainly involved in knowing about them. What  
11 do you see as the important ones that happened over the  
12 years?

13 MR. COOK: I was probably involved in drafting  
14 most of the ones that came from the NRD community as opposed  
15 to those that were coming from outside, obviously. I would  
16 say the most important overall would be getting the  
17 districts really involved in groundwater management. There  
18 were a few paragraphs in the original law that said that  
19 NRDs would manage groundwater. My recollection is, from a  
20 quantity standpoint only, I don't think there was mention of  
21 quality, but it wasn't -- the language that was there was  
22 not detailed well enough for anybody to really sit down and  
23 say, okay, we're going to build a groundwater management  
24 program with that. It just was sort of an outline of what  
25 should be done. So, there was, starting in about 1974,

1       there began to be a lot of discussion about whether and to  
2       what extent NRDs ought to be involved in groundwater  
3       management. We already have some groundwater conservation  
4       districts in the Upper Big Blue area and some in the Upper  
5       Republican area. But they didn't have much authority and we  
6       couldn't see that they were going to get a whole lot done,  
7       frankly. There were a couple of years spent with the  
8       Legislature and looking for options for groundwater  
9       management. And ultimately, a bill was passed in 1975,  
10      which gave NRDs the authority to establish, with State  
11      approval, groundwater control areas where they could manage  
12      groundwater declines. That evolved over the years, with  
13      several major changes, to where we are today. But I think  
14      that's -- if you look at where districts are now and what  
15      they do now, some of them spend most of their time on  
16      groundwater issues, and that really was not part of the  
17      initial charge.

18                I'd have to think about other things that were  
19      major changes.

20                MR. STARR: Let's stay with groundwater a bit.  
21      Now there's the management areas and a whole bunch of  
22      changes in how we -- districts in the state manage  
23      groundwater. And I know some of this has happened since  
24      you've retired, but how do you see that process working or  
25      not working very well?

1           MR. COOK: I think what the law kind of lays out  
2 as what the districts should be doing is about right. You  
3 know, I think it's basically saying to the districts, we  
4 expect you -- we think you're the right entity to do this,  
5 and there's a number of reasons for that, and we expect you  
6 to do it well. What I have observed over the years is  
7 there's a little bit of a -- two, kind of, jurisdictional  
8 arguments. One of them is surface water versus groundwater.  
9 And NRDs, historically, maybe a little less now, but more so  
10 early, saw themselves as kind of defenders of groundwater  
11 users. And that sometimes put them at odds with surface  
12 water users. And that sort of evolved into the other  
13 jurisdictional thing, which was, okay, NRDs will do  
14 groundwater. State of Nebraska, through what's now DNR,  
15 will do surface water. So, you got some conflicts there  
16 that, in my view, took too long to resolve. I think some  
17 NRDs drug their feet too long on trying to deal with the  
18 groundwater/surface water conflict. But again, I think,  
19 what I know now, I think that's improving. I think  
20 districts, the ones that really need to, are taking on the  
21 challenge a little bit better. It's not been necessarily  
22 because of their willingness to do it. They've been forced  
23 by compact lawsuits, et cetera, to take those things on, but  
24 they're doing it.

25           MR. STARR: Based on some of the things, at least

1 I've heard and read in the paper and so forth, is that some  
2 of the surface water districts and users feel that the State  
3 and the laws have favored groundwater users at the expense  
4 of surface water users. Do you see that or how do you see  
5 that?

6 MR. COOK: I think it's true, but I don't know  
7 what the options are. I think that's almost a natural  
8 occurrence, and here's why. A lot of people said you ought  
9 to manage groundwater the same as you do surface water, and  
10 Colorado, more than any other state has probably tried to do  
11 that. But, they -- I mean, people think they have, but in a  
12 way they have not. And the problem is that groundwater and  
13 surface water are different. You can make a decision about  
14 surface water today and see the impacts of that tomorrow.  
15 You make a decision about groundwater today, you may not see  
16 the impact of that decision for five, 10, 15, 20 years just  
17 because of the hydrologic nature of those two different  
18 resources. So, when you are faced with, okay, we have to do  
19 something now that gets us out of a jam, say, the Republican  
20 River Compact issue, for example, you have to find something  
21 that will actually get you out of the jam. And if the  
22 problem is you're going to violate the Compact this year,  
23 the solution is not reduce groundwater pumping 10 miles away  
24 from the river. It isn't going to help. It'll help -- it  
25 might help 10 years from now, but it won't help this year.

1       So, you have to find things that will actually allow you to  
2       accomplish the task. By the nature of surface water, that  
3       ends up, sometimes putting the surface water users on the  
4       line as having to sacrifice.

5               The other people that are starting to fall into  
6       that category are folks that have groundwater wells and the  
7       alluvial aquifer, which act almost like a surface water  
8       diversion. So, they tend to get treated a little bit the  
9       same way. I don't know that there's an alternative way of  
10      actually doing -- of taking those actions. I think those  
11      are the kind of things that have to be done. What I think  
12      is missing is some way to introduce some equity into those  
13      kind of actions. When I say "equity," to me that would mean  
14      everybody who's irrigating, using water, pays into a fund,  
15      which is used when needed to compensate folks who have to  
16      sacrifice at the time sacrifice is needed. And with, at  
17      least in theory, making the table level for everybody.  
18      We're doing a little bit of that, but probably still fall  
19      short in many ways. And money always gets in the way.

20                   (Laughter.)

21               MR. STARR: It's always the bottom line, isn't it?

22               MR. COOK: Right.

23               MR. STARR: Many states, maybe in all states but  
24      Nebraska, have most of the control at the State level as  
25      opposed to the local level. I'm sure there are exceptions,

1 but in Nebraska, we kind of split it between the State  
2 having the surface water and locals having groundwater,  
3 although there are interactions, of course. Was that a  
4 mistake or was that a good decision or --

5 MR. COOK: I still don't know. I don't think I  
6 ever will.

7 (Laughter.)

8 Most states, maybe, as you said, all states but  
9 Nebraska, fail to have a strong institutional structure like  
10 natural resources districts. So, you really didn't have the  
11 choice there, saying we've got a viable enough local entity  
12 to manage this groundwater, which I see as more  
13 appropriately managed at the local level than surface water.  
14 The problem is, how do you bridge that gap between what use  
15 of groundwater does to surface water with those kind of  
16 issues. I don't think other states -- they didn't have the  
17 starting point that we had that could -- that you could rely  
18 on a local government to do that. But it does create  
19 problems, I think. I think more recent legislation that's  
20 passed has tried to find a balance between those, so they've  
21 tried to say, "Okay, when we get to these areas that state  
22 law triggers some action, then the decision-making about  
23 what to do is going to be combined between the districts and  
24 the State." And, for example, districts have to come up  
25 with a plan, but the State has to approve the plan.

1           I don't think that's reached its full potential  
2           yet. I think there's still some need there, because I think  
3           it's -- I think there is still a bit of this, "We're NRDs.  
4           We're looking out for the groundwater users." The State's  
5           saying, "We're looking out for the surface water users," and  
6           there's still conflict between those. I don't know of any  
7           perfect system to deal with that. I don't believe that  
8           undoing what we did with natural resources districts to put  
9           more authority back in the State would be the right thing to  
10          do, so I think that what we'd have to do is find a way to  
11          balance them. You know, I think progress is being made in  
12          that area, but I don't think we're quite there, yet.

13                 MR. STARR: The Republican Basin probably brought  
14                 this to a head as much as anywhere where there is --  
15                 continues to be a conflict between the groundwater users and  
16                 the surface water users. And the pressure from the Kansas  
17                 lawsuit brought that to bear and I know you were involved in  
18                 that early on, and maybe lesser later on, but what is your  
19                 view of what happened there and what's still happening  
20                 there?

21                 MR. COOK: The Kansas case is extremely  
22                 interesting. Part of it goes back to the Compact that we  
23                 signed with Kansas and Colorado in 1943, which was sort of  
24                 forced on us by the federal government saying, you folks  
25                 want money for irrigation and flood control projects out

1       there, you're going to have to get your act together among  
2       you before we'll do that. And so, the Compact was developed  
3       and signed in, as I said, '43. It probably did a pretty  
4       good job of allocating resources at the time knowing what  
5       people knew at the time. What nobody knew at the time was  
6       how much development of groundwater was going to occur. And  
7       that Compact failed to address that head on. What it said  
8       was, each state gets its share of the virgin water supply.  
9       Then it said, the virgin water supply is what would be there  
10      but for the activities of man. For decades, Nebraska  
11      argued, it doesn't say groundwater anywhere, so the  
12      activities of man means surface water activities of man.  
13      So, we count against our use what we draw out of the  
14      streams, but not what we take out of the groundwater.  
15      Colorado was kind of on the same side, because they were  
16      faced with the same thing. But Kansas, on the other hand,  
17      who was bearing the brunt of the depletions to the steams  
18      because of groundwater developments said, no, that's not  
19      true. Activities of man, obviously, very naturally include  
20      groundwater use. And while the Compact folks didn't  
21      understand all of that at the time, it's a reality of today  
22      and we have to consider it in our allocations. Those of us  
23      that were involved, it seemed where those arguments had led  
24      in other compact cases across the country, and the Nebraska  
25      argument had always lost. There was no reason to believe

1 that it was going to win in this case. Even though the  
2 language of the Compact was different, there just was no  
3 scientific argument for the position Nebraska was taking. A  
4 lot of argument about the details of how it should be  
5 applied, you know, how much impact is there? When does that  
6 impact occur? No real argument about whether the impact --  
7 whether there is an impact and whether it ought to be  
8 considered. So, those of us who, frankly, were on the  
9 negotiating team for that, felt early on that we were going  
10 to lose on that. Tried not to show that at meetings, but,  
11 you know, that was our gut feeling. I remember we did show  
12 that in meetings with the governor and attorney general.  
13 Johanns was the governor at the time and Stenberg was the  
14 attorney general. And I recall one meeting, in particular,  
15 where I think it was Roger Patterson, Ann Bleed, and myself  
16 were with them and saying -- the lawsuit had been filed,  
17 saying, "We need to stop developing new wells in the  
18 Republican River Basin. This is going to come back to bite  
19 us." We need a moratorium on new wells down there. And the  
20 response from Stenberg was, "No, that would look like our  
21 case is weak, and we don't want to send that signal to the  
22 Court." Well -- and Johanns agreed with that. So, we got  
23 no moratorium. That really did come back to bite us later,  
24 because we had probably thousands of wells drilled in the  
25 Republican Basin between that time, which was the mid-1990s,

1       until things really reached a head. So, that definitely was  
2       a problem that I think we could have done a better job early  
3       on, and we could have saved some of the agony that's being  
4       experienced right now with that Compact.

5               MR. STARR: Bringing that up to date, there's been  
6       a -- I'm not sure I've got the details right, well, I know I  
7       don't. There's been some kind of a master's decision here  
8       recently that, just reading the paper, looked like  
9       it -- Nebraska came off pretty good. If that's adopted and  
10      finalized, what's going to -- what do you see happening out  
11      there? It seems to me that it's going to say to the  
12      groundwater irrigators, we don't need to do anything.

13             MR. COOK: I don't think that'll be the ultimate  
14      response, but -- and I have not read the master's opinion,  
15      but here's what I do know about it. And it's real  
16      interesting. The day that that came -- the day after that  
17      came out, we take both the Lincoln and the Omaha newspapers.  
18      The Lincoln newspaper put a very positive spin on that. The  
19      Omaha newspaper did not put such a positive spin on it. And  
20      they had interviewed the folks in Kansas who said, "We like  
21      the opinion, as well." And here's the issue that is  
22      involved with that. Apparently, the master recommended very  
23      small amount of compensation for whatever time period  
24      the -- was involved in this latest suit. A few million  
25      dollars, as I recall. But, also went on to say, but

1       there -- but we should also recognize some damages on the  
2       theory of what's called unjust enrichment. Unjust  
3       enrichment is to say -- well, let me describe this. It  
4       would say to Kansas, you can claim damages on two different  
5       bases. One, the actual damage that your people suffered as  
6       a result of Nebraska's overuse, or two, the amount of  
7       benefit Nebraska gets out of its overuse. And that part  
8       would be called unjust enrichment. The theory being that  
9       you shouldn't place an incentive in penalties for somebody  
10      to violate. So, if some -- if Nebraska would say, "Okay, if  
11      we violate the Compact, it will cost us \$4 million. But  
12      we'll benefit \$10 million." What's the incentive? Well,  
13      the incentive is to violate. So, the argument is,  
14      (indiscernible) penalize folks based on unjust enrichment  
15      and see if that acts as a disincentive, instead. The Court  
16      did not recommend much money for that this time either, but  
17      it was that part of the decision that my understanding is  
18      the Kansas folks were fairly optimistic about, because while  
19      it may not mean much for them this year, it may present more  
20      potential for damages in the future (indiscernible).

21               MR. STARR: One of the other things that you were  
22      heavily involved in, Jim, and more toward the end of your  
23      career, was the cooperative agreement on the Platte River,  
24      which was still in the process when you retired. What did  
25      you see happening there and who were the players and what

1 were the arguments and what happened there?

2 MR. COOK: How many days is this interview  
3 supposed to be?

4 (Laughter.)

5 MR. STARR: Until my batteries run out.

6 MR. COOK: Okay. Well, yeah, I spent -- the last  
7 13 years of my career, I spent a lot of time on that. I  
8 actually got -- actually, longer than that. I got -- Ben  
9 Nelson was a classmate of mine in law school, and when Ben  
10 was governor, he drug me into the relicensing of Lake  
11 McConaughy, which started in the early 1980s and put me in  
12 the position of saying, "Would you work with those folks and  
13 see if we can get some" -- because we had all kinds of  
14 disagreement in the state. You know, Nebraska's the  
15 microcosm of the nation in terms of splits over environment  
16 and development and endangered species, et cetera. And he  
17 said, "Would you work on that?" So, I spent a number of  
18 years working with the relicensing process on McConaughy,  
19 including, we hired the formal facilitator and a number of  
20 other things. Twice, actually, we had facilitators. And  
21 that ultimately evolved into, the mid-'90s, this decision by  
22 Nebraska, Colorado, and Wyoming, to try to get together,  
23 pull the relicensing folks into it as well, and pull the  
24 environmental community into it as well, try to get together  
25 and work out some sort of consensus over how to deal with

1 endangered species issues on the Platte, because they were  
2 the elephant in the room for a lot of things. Two Forks  
3 Project in Colorado, for example, had been rejected at least  
4 in part because of endangered species issues in Nebraska,  
5 which just irked the Colorado folks tremendously. But, I  
6 remember getting a call in the fall of '93, actually, from a  
7 guy in Colorado, saying, "Would you participate in a meeting  
8 where we sit down and try and discuss all this." I said,  
9 "Sure." I happened to be on crutches at the time, because  
10 I'd torn an Achilles tendon, so it was interesting to fly,  
11 but I got there. And that, you know, that started with a  
12 very small group, six, eight, ten people, as I recall. We  
13 would often be at the airport or somewhere very nearby, and  
14 over time, that began to grow, or by the early 2000s, we  
15 were probably 50 people attending those meetings, 25 of them  
16 sitting around the table, the rest of them poking their  
17 colleagues in the back when something said at the table  
18 isn't right.

19 And to back up just a little bit, the Fish and  
20 Wildlife Service was involved, and they didn't really want  
21 to deal with this endangered species issue head on either,  
22 in a regulatory manner. They could just see a real train  
23 wreck if they had to say on relicensing McConaughy or on  
24 some other major water project, you can't do that because of  
25 the impacts on endangered species. So, they were very

1 committed to trying to work something out as well.

2 We spent -- we started in '94, early '94, and  
3 probably met every month or so. And all we were able to do  
4 in three years was negotiate a -- I want to say, four-page  
5 memorandum of agreement that said, we're going to keep  
6 meeting. And that was signed on, I think, July 1<sup>st</sup>, 1997.  
7 It also outlined some other things. It said, as kind of a  
8 baseline, July 1<sup>st</sup>, 1997, as this is what we're going to  
9 work with. And if we have depletions, new depletions, after  
10 that, we're going to have to deal with those, kind of thing.  
11 And the expectation was that we'd spend the next year, or  
12 maybe two years, developing a final agreement with a lot of  
13 detail about a program, a collaborative program that would  
14 address the endangered species issues, allow the McConaughy  
15 project to get relicensed and allow other stuff to go  
16 forward, as long as we were doing what we said we would do.

17 That two years took ten. And I went to -- for a  
18 while, we were meeting somewhat alternately at Nebraska,  
19 Colorado, or Wyoming. If it was Colorado or Wyoming, we'd  
20 fly to Colorado and drive to Wyoming. But, after a while,  
21 it became apparent that, from a travel standpoint, the only  
22 place to meet was Denver. We could fly in in the morning,  
23 have an all-day meeting, and fly out that night or at worst,  
24 have a two-day meeting, but airline schedule was such that  
25 it could work for everybody, so we ended up going to Denver

1 almost all the time, and typically, about once a month for  
2 ten years. And there were lots of frustrations in that  
3 process. I was just frustrated by ten years. That seemed  
4 to me like, number one, we were spending a tremendous amount  
5 of resources in that negotiation process. Number two, we  
6 weren't getting answers for the water users about what  
7 ultimately was needed. Number three, we weren't doing  
8 anything for the species. We were just going to meetings.  
9 So, it was very frustrating to me. And the other thing was,  
10 in our case, is every year went by, our obligation was to  
11 not allow any new depletions after July 1, 1997. Now, we  
12 were in the midst of a groundwater development boom, and  
13 knowing this just fueled that. I know we had even more  
14 wells drilled in Nebraska than we would have otherwise but  
15 for that. But, I also knew that we weren't sure there was  
16 ever going to be a program, an endangered species program,  
17 so we couldn't -- we weren't going to be able to get NRDs or  
18 anybody else to say, stop the development now. It just  
19 wasn't going to happen, because it wasn't, at that point,  
20 enough incentive to do that. So, you know, the longer it  
21 went, the bigger problem it was for us.

22 We did finally arrive at some agreement around the  
23 table. That was in late 2006. Every state, including ours,  
24 had a number of meetings with constituents, and I remember  
25 going and presenting at -- I'm going to say four or five

1 meetings. Governor Heineman came to more than one of those,  
2 as I recall. And the response from folks was mixed, of  
3 course. There were some who were dead set against doing  
4 anything for endangered species, and some dead set against  
5 doing what we were proposing for species, and others who  
6 said, we got to do something here and get it done.

7 Ultimately, all three governors signed the agreement in  
8 2007, late 2006, actually. And the program started in 2007  
9 and is continuing today. I had the opportunity earlier in  
10 the week to talk to folks about how it's going. And  
11 response is somewhat mixed, but it's still going, so that's  
12 the positive.

13 MR. STARR: How active were the NRDs in this  
14 process? Or how active and cooperative?

15 MR. COOK: It varied a lot. It varied a lot from  
16 not only by district, but in time. Early on, the NRDs  
17 weren't very involved except that we would meet with them.  
18 The involvement was most direct in coming up with a new  
19 depletion plan for Nebraska. How are we going to get  
20 ourselves back to July 1, '97? How are we going to deal  
21 with the new depletions that are coming on now? And I  
22 actually chaired a group that met again about monthly,  
23 usually in Kearney, to address that. And all of the NRDs in  
24 the Platte Basin down to Columbus were involved in that and  
25 were almost always represented at those meetings. That

1       wasn't much easier than the three-state process. I think we  
2       probably met for five or six years. And I would go back and  
3       draft something that seemed to respond to what we were doing  
4       and take it back, and we'd argue about that. So, it was not  
5       an easy process for them. So, all the NRDs were very much  
6       involved in that element of it. In the bigger element  
7       of -- or aspect of the three-state negotiations, not so  
8       much. Central Platte NRD was at quite a few of those. Twin  
9       Platte NRD was at quite a few of those. North Platte, South  
10      Platte, Tri-Basin, not too often. Their involvement was  
11      mostly through the depletion plan process.

12               MR. STARR: What about the elephant in the room,  
13      Central?

14               MR. COOK: Well, Central Nebraska Public Power and  
15      Irrigation District?

16               MR. STARR: Right.

17               MR. COOK: They weren't the only elephant. NPPD  
18      was another one. So, the interesting thing about Central  
19      and NPPD was, while they had very common goals, they  
20      couldn't often agree on things. It was a little bit --  
21      there was always a little bit of a side issue going on that.  
22      Although, they would always end up friends at the end of the  
23      day. So, that was a good thing. But Central had a  
24      legitimate -- I mean, they were scared to death, because the  
25      relicensing of McConaughy was on the line here. When they

1 got their new license in '97, it was on the condition that  
2 this program, which was outlined in this '97 MOA would  
3 actually get implemented. So, if that didn't get  
4 implemented, they were going back to a jeopardy opinion from  
5 Fish and Wildlife Service and they were going to be faced  
6 with Fish and Wildlife Service-mandated modifications to how  
7 they operated to keep their project going. So, they had a  
8 whole lot at stake.

9 What NPPD had at stake was some, for them,  
10 relatively minor hydropower in the Platte River, plus the  
11 power that they bought from Central, because at the time,  
12 they bought all of Central's power. But for NPPD, it was  
13 something like 10 percent of their power supply, I think, so  
14 not quite as big. But they were very, very much involved.

15 Central, in my opinion, early on handled their  
16 relicensing process very poorly. The sort of took the  
17 attitude that this endangered species stuff is just a bunch  
18 of bunk and we're going to fight it and we'll win, because  
19 we always win. And that was, in part, due to staff they had  
20 at the time. It was also, in part, due to counsel they had  
21 at the time. They had Washington, D.C., counsel that  
22 were -- let's say they were doing okay fighting this. That,  
23 in my opinion, was not helpful. It created a pretty  
24 negative attitude towards them by, especially by the Fish  
25 and Wildlife Service. Over time, with changes at Central

1 and the realities of what was coming out of the Federal  
2 Energy Regulatory Commission, that changed. They still were  
3 difficult to deal with. They had a legal counsel that came  
4 to most of these meetings, had not been one of the original  
5 legal counsel, but a lady who represented them and she was a  
6 good lawyer, which doesn't necessarily mean a good  
7 negotiator. So, that, at times, created some additional  
8 emotional conflict, in my view, that wouldn't always have  
9 had to be there. But in the end, Central has had to swallow  
10 quite a bit for this. It has changed their operation and  
11 there are times when they really worry about the water  
12 supply, at least in part because of the decisions that were  
13 made here. But they've also made adjustments in the way  
14 they operate to save water, a great deal over what they used  
15 to do. That's helped them.

16 MR. STARR: Was there ever any threat or interest  
17 on the part of Central saying, we just forget this license?  
18 We'll just stop generating power at McConaughy. Because  
19 that wasn't originally in McConaughy. They added that at  
20 some point.

21 MR. COOK: It was, but they could not seriously  
22 ever say that. The reason is that 80 percent of their  
23 revenue come from power generation, only 20 percent from  
24 irrigation.

25 MR. STARR: Did that license affect their other

1 generations at Brady and Jeffrey and so forth?

2 MR. COOK: Yeah, it's all part of the same system.  
3 Kingsley and all of those smaller hydro plants are all part  
4 of the same system under the same license. So, they were  
5 really looking at, you know, they would sometimes make some  
6 threats like that, but it was not credible, because they  
7 couldn't afford -- they wouldn't be able to afford to  
8 maintain the irrigation project if they didn't have the  
9 power revenues. There were times when NPPD threatened to  
10 say, "Oh, we can do without you guys." And they probably  
11 could have, but that didn't come to fruition, either.

12 MR. STARR: The NRDs have been in effect now for,  
13 what, 40, 41, 42 years, whatever it is. And what's your  
14 view of where they're at now in this 40-year progression?  
15 Is it going the right direction in your view or veered off  
16 in some ways?

17 MR. COOK: That's a great question, Gayle. I  
18 think, in general, it's gone well. Again, there were  
19 variations, but I still think there are districts that are  
20 performing better than others. In large part, that's  
21 because they had to. They had more difficulties to deal  
22 with and they had to grow up to deal with those. But I  
23 think, in general, they're doing what they need to do. One  
24 of the -- I see the consequence of the whole structure of  
25 this kind of keeps coming around and around and around. And

1       it happened again this year. There was a special task force  
2       determined by the Legislature to, if I understand the  
3       charge, the charge was to -- I think there are like 40-some  
4       members on this, was to spend -- to figure out in about  
5       seven months what Nebraska ought to do with its water and  
6       how to pay for that. We, because of how old I am, and you  
7       too, we have been through a number of those same efforts  
8       before, starting with when we came to work with State Water  
9       Plan, which was a multi-year, multi-million-dollar attempt  
10      to do the same thing with a staff of -- when I started with  
11      the Commission, the Commission had 60-some people, and a  
12      large number of them were devoted to working on the State  
13      Water Plan, which basically that's what it was supposed to  
14      do was say, okay, what do we need to do with our water and  
15      how do we -- not so much how we pay for it. It was just,  
16      what do we need to do? We'll figure out how to pay for it  
17      later. That State Water Planning process got caught up in  
18      the societal changes about development versus environment,  
19      in part, because when it started, the attitude was the same  
20      one as held by the Bureau of Reclamation and the Corps of  
21      Engineers, is whatever water problem we have, we can build  
22      something to solve it, you know, brick and mortar stuff.  
23      Brick and mortar, through the '70s, was losing support and  
24      management through environmental values were gaining  
25      support. So, it kind of got caught up in that and never

1 really got done. But attempts to do somewhat the same  
2 thing, but labeled differently, occurred a number of times  
3 after that. And this latest 2013 iteration was just another  
4 attempt at that, I think.

5 One of the consequences I see of natural resources  
6 districts, and I don't say this to suggest that they were  
7 there for the wrong thing to do, but when districts were  
8 created, that substantially diluted the power at the State  
9 level. We decentralized power a lot when it comes to water.  
10 And it goes back to your question earlier about groundwater  
11 and surface water. We have these powerful districts that  
12 have the ability to deal with groundwater, but it's -- but  
13 you don't have a central figure anymore who can say, you  
14 know, this is the way we're going to do it. Some might call  
15 that dictatorship, I suppose it could be. But I think  
16 there's some value in having some authority, in the case of  
17 water, probably the State level, that says, this is what we  
18 need to do, and have the clout to get it done. I see that  
19 missing in Nebraska now, at least in part, because of the  
20 strength of natural resource districts. Again, I don't  
21 think that's -- in my view, that would not be reason to undo  
22 those. I think there's more good than bad that comes out of  
23 that, but I do think that's a consequence.

24 MR. STARR: There's been certainly at the level of  
25 the Department of Natural Resources, there's been a changing

1 of the guard, so to speak, and a changing of emphasis. In  
2 the NRDs, there's also a changing of the guard when a whole  
3 bunch of employees, managers, who were there at the  
4 beginning or there shortly after the beginning are retiring,  
5 moving on, or whatever. How do you see this for good or  
6 bad?

7 MR. COOK: I don't know enough about what the NRDs  
8 are doing now to know how they're changing. As we mentioned  
9 earlier, I think it's pretty astounding that as many of the  
10 original managers stayed around as they did. I think that  
11 reflects pretty good choices at the time. But, there  
12 are -- NRDs ought to be able to attract very quality people  
13 now for employee jobs, because they have a history. They're  
14 not a -- they're a certainty now in terms of what they do.  
15 And they have the capability to be good employers. So, I  
16 think it should be all right. I don't -- and at the State  
17 level, they can't be as good, because we're gone.

18 (Laughter.)

19 MR. STARR: Got that right.

20 MR. COOK: That's about (indiscernible). They  
21 have to be missing us, for crying out loud.

22 MR. STARR: Absolutely. I guess I've about run  
23 out of places to go, Jim. Is there any other things that  
24 you'd like to add or say at this point?

25 MR. COOK: Boy, Gayle, I don't think so. Nothing

1 comes to mind right now, anyway. As you say, usually people  
2 think of a lot of stuff later. I've enjoyed.

3 MR. STARR: I certainly thank you for  
4 participating, Jim.

5 MR. COOK: Thank you, Gayle.

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