

NRD ORAL HISTORY PROJECT

Interview of Mike Jess by
Jim Barr

October 13, 2014

1 PROCEEDINGS, October 13, 2014:

2 MR. BARR: This is Jim Barr. It's October 13th,
3 2014. I'm in Lincoln talking with Mike Jess.

4 Mike, would you give us a little background on
5 yourself, and how you ended up being involved in natural
6 resources?

7 MR. JESS: Sure. I -- this is Mike Jess. I grew
8 up in Nebraska in a -- just north of David City on a farm, a
9 dry land farm. During the 1950s, it was very dry. We
10 didn't have a crop for two years running. And I remember my
11 first experience with irrigation -- with water, generally,
12 was in those years when we explored the idea of drilling a
13 well on some property we had to the east of David City. We
14 ultimately decided not to do that. And I'm saying we. It
15 was actually my parents.

16 MR. BARR: Sure.

17 MR. JESS: Decided not to do that. They thought
18 it was going to be very expensive. The interesting thing,
19 as I look back on it, their view of irrigation at that time
20 was that it would be used only in a very dry year, only when
21 necessary. And that the pipe and everything would just
22 remain in the shed except for a dry summer. They looked at
23 it more as insurance than part of the actual production.

24 At any rate, I then went on to the university,
25 after graduating from David City High School, in civil

1 engineering. And it was only through the happenstance of a
2 summer job that I became interested in water resources. I
3 worked for the -- it was then called the Department of Water
4 Resources in the mid-60s as a summer job. And discovered I
5 had a very passionate interest about water resources, and
6 kind of adjusted my class schedules after that. And then
7 went to grad school in the late 60s majoring in civil
8 engineering with water resources being the topic.

9 During the course of the grad school was when I
10 first started to hear about natural resource districts. I
11 was working at the Conservation and Survey Division on my
12 thesis work. And Vince Dreesen, of course, was the director
13 at that time. He was, I'm sure, involved in the legislative
14 proposals. And I remember he started sharing with me and a
15 couple of the other staff people at the survey division some
16 maps that were being prepared showing the natural resource
17 district boundaries, or the proposed boundaries at that
18 time. And I don't remember the number of districts that
19 there were. But as people working at the survey division,
20 we tended to -- the work we were doing was generally along
21 county lines. And so we looked at the maps and saw that
22 they, in many places, were largely based on watershed
23 boundaries. And, I suppose, just out of selfish
24 inconvenience, thought, "Well, they ought to just be on the
25 county boundaries. It would make our analysis a whole lot

1 simpler and -- than what was proposed." And as it turns
2 out, 50-some years later, I guess, why, there's a mixture of
3 each. Some of the district boundaries do parallel the
4 watersheds, and others more along the counties. But at
5 that -- in 1970, after I had -- a short while after I'd
6 gotten a master's degree, I was -- I went into the military
7 in the Army and spent five years outside of Nebraska. When
8 I returned in October of 1995, the NRDs had already been
9 created --

10 MR. BARR: '75.

11 MR. JESS: -- or '75, yeah. They'd already been
12 created. And I suppose all of them had a general manager by
13 that time. And in October of '75 when I returned to
14 Nebraska, it was just a few months after LB 577 had been
15 enacted which was the -- really one of the first
16 authorizations of management responsibilities by the
17 legislature to natural resource districts for groundwater
18 regulations. And we, at the Department, talked about that
19 quite a bit.

20 And it wasn't very long afterwards until the first
21 request came in from the North Platte Natural Resource
22 District to consider designating that the -- originally they
23 were called control areas. And little -- procedure was a
24 little different in those days a -- the Department of Water
25 Resources had a much larger role in things than it does

1 today. And natural resource districts under the original LB
2 577 requested the Department to do an investigation and to
3 designate a groundwater control area.

4 So, we did the first one in the North Platte
5 Natural Resource District. I did the hearings for that at
6 the -- after that invitation came. Did the analysis. And
7 concluded that the area proposed by the North Platte NRD
8 didn't really measure up or qualify for designation. And so
9 the -- my recommendation to the director of the Department
10 was to turn down the request. It was an interesting
11 experience. The formal review of the information, and all
12 that. Listening to all of the witnesses. But then the -- I
13 guess you'd say behind the scenes was equal interesting in
14 that, as it turned out, the directors of the North Platte
15 NRD didn't really want to see the control area designated.
16 And fairly quite freely admitted to me that they extended
17 the invitation because they didn't want to confront their
18 own residents, and say to them they didn't want to do this.
19 And so it was, I guess, in their way of handling the
20 responsibilities, simply easier to let the State turn them
21 down. And they would then not a -- sort of have the guilt
22 on their hands, I guess.

23 We had then, as time went along, there were other
24 invitations from different natural resource districts to
25 designate control areas. The first one that was designated

1 was the Upper Republican Natural Resource District. And
2 they were very much wholeheartedly behind the invitation
3 there to create the control area. But really, the only
4 difference in points of view that I recall at the time, were
5 -- pertained to a small portion of the natural resource
6 district -- the Upper Republican Natural Resource District,
7 which lies south of the Republican River. I was real
8 hesitant, and virtually unwilling, to include that as part
9 of the control area for the simple reason that there's no
10 groundwater in that area. It's an area of high
11 bedrock -- only a few windmills and house wells down there.
12 The Ogallala Aquifer is absent in that area. It was, again,
13 behind the scenes to realize the reaction that the elected
14 board members had to all that. They didn't want to see it
15 omitted as part of the groundwater control area. And the
16 reasons varied somewhat. I suppose, in the minds of
17 several, it was creating sort of a sub-district within the
18 bigger district, and would present problems in trying to
19 explain why the rules were different on one side of the
20 river than they would be on the other. One of the board
21 members at the time was pretty free in admitting they'd like
22 to see that area included because it meant some additional
23 ad valorem tax revenues that they would not be able to
24 assess if the area was left out of the control area.

25 We went on and the Upper Big Blue was probably the

1 next one, I think. A large area that was designated a
2 groundwater control area. The designation wasn't a problem
3 there that I encountered. What was interesting was the
4 political backlash, I think, against the elected board
5 members after the control area was designated was pretty
6 substantial. And the Upper Big Blue Board members found
7 themselves really slowing down their schedule for
8 activities, I think, in not imposing requirements for meters
9 and other restrictions that they might have done had they
10 not had the push back from -- kind of from the Henderson
11 area, I think, is where that came from.

12 Little Blue was another one that was created.
13 They -- there it was, again, interesting, I think, the
14 experience to see the board members, once we had designated
15 the control area, got a lot of push back as well, and I
16 think much of that was coming from the Adams County area.
17 Really resented the imposition of controls. The groundwater
18 control area was in place for probably six or eight years
19 when we got a request to unhitch, and basically cease the
20 designation of a control area. We had a lengthy hearing and
21 ultimately ended up with a lot of discussions of the board
22 members about why they had -- were doing a 180-degree turn.
23 And it was a little like -- little reminiscent of the Upper
24 Big Blue in that there was a lot of political opposition
25 they were feeling. It was apparently intense. Some of the

1 board members saying that there had been letter-writing
2 campaigns, don't patronize my business unless I change my
3 mind on this, and they were clearly intimidated. We did
4 then, ultimately, abolish the groundwater control area in
5 the Little Blue Natural Resource District. Subsequent to
6 that, they reimposed a control area again, now called a
7 management area. It's kind of gone back and forth in the
8 Little Blue area -- Little NRD -- I suppose just reflecting
9 the political mood at various points in time.

10 Several other invitations to create natural -- or
11 create -- in those days called the groundwater control
12 areas, they were turned down. What I guess I saw subsequent
13 to all that was a gradual movement of the natural resource
14 districts to assert greater autonomy and control over the
15 designation of the areas that would be under the regulation
16 of the districts with kind of an eye to get the Department
17 of Water Resources out of it. Not only did the Department
18 have the authority to designate, any rules or regulations
19 that the boards devised had to be approved and I rejected
20 several of those. Again, couple of times, sort of the
21 quiet, behind-the-scenes meeting, the board members were
22 saying, "We hope you do reject these things. We've adopted
23 them because we don't want to tell our constituents that
24 they're nuts."

25 But at any rate, natural resource districts began

1 combining their efforts to lobby the legislature to remove
2 some of the authorities that the Department had and replace
3 them with their own.

4 MR. BARR: Could you review a little bit the
5 process that was involved in the designation, and what a
6 designation meant?

7 MR. JESS: Yeah. The invitation from the natural
8 resource districts was always to create a control area. It
9 was always in the form of a formal resolution requesting the
10 State, the Department of Water Resources, to begin a process
11 which called for a public hearing. When I did all of these,
12 I would generally sit down with the general manager and say,
13 "All right we have your invitation. This is a formal
14 process, and we'll treat it like a trial. And there are
15 certain duties and obligations that people have. Me, to
16 hold a fair trial and allow input by affected individuals.
17 But the natural resource district, you've got some
18 obligation to explain what you want geographically,
19 hydrologically, and what has prompted you to submit this
20 request."

21 And that was the part, at least for the North
22 Platte NRD and the Lower Platte South Natural Resource
23 District, which was quite shocking. They didn't realize
24 that they were going to have to stand up and be counted.
25 And I recall vividly, I think his name was Walt Retzlaff

1 (phonetic), the general -- or the president of the Lower
2 Platte NRD Board deeply resented having to do that. He
3 really didn't think that was something he should do. And he
4 wanted -- he was forthright saying, "I want you to take the
5 heat for it and not me." And I got -- I can't recall the
6 names of the people in Scottsbluff, but similar --

7 MR. BARR: Yeah.

8 MR. JESS: -- kind of reaction.

9 Any rate, once all of this evidence, as it's
10 called, was put together, then it was up to the Department
11 to review it, make a preliminary determination, share that
12 with the board and the management of the natural resource
13 district that was affected, take into account further input
14 that they might have, and then ultimately render a final
15 determination.

16 MR. BARR: Were there automatic regulations for
17 restrictions if they were designated or was that part of the
18 process?

19 MR. JESS: That -- the regulations was the
20 subsequent part of the process. Once the area was
21 designated geographically and stratigraphically, identifying
22 the aquifers that would be involved, then it was incumbent
23 upon the boards to devise the rules and regulations. And we
24 saw, in the instance of the Upper Republican Natural
25 Resource District, some fairly sophisticated regulations

1 that showed evidence of paying close attention to the
2 groundwater modeling that had been done. As they began
3 identifying some of the townships where the groundwater
4 (indiscernible) was more significant and applying
5 regulations that probably were more severe or more
6 restrictive there in those townships than elsewhere.

7 MR. BARR: Did they --

8 MR. JESS: Those regulations were drafted by the
9 districts. They had a whole set of requirements,
10 administrative requirements for hearings; input from
11 citizens; and ultimately, by board action, approve them to
12 be submitted to the State for ultimate approval.

13 And most times they did get approved. But there
14 were a few times, particularly with the Upper Republican,
15 the manager was telling me, he says, "We know you can't
16 approve these, but the local politics said we had to adopt
17 them. So we want you to turn them down. Then we can look
18 people in the eye and say, 'You can't do these things.'"

19 MR. BARR: Yeah.

20 MR. JESS: And I guess that's where -- you know I
21 was talking before they -- maybe they -- they got tired of
22 that and said, "Let's just take the Department out of it."

23 MR. BARR: Was that done legislatively then?

24 MR. JESS: Yes, it was.

25 MR. BARR: Roughly when was that, approximately?

1 MR. JESS: That would've been done in the mid to
2 late 80s.

3 MR. BARR: Okay.

4 MR. JESS: Most of the -- well, the three
5 groundwater control areas that were designated by the State
6 were done in the late 70s and early 80s. All of the rest of
7 the area designations that has been adopted afterwards are
8 now called management areas. And even what were once called
9 control areas are now called management areas.

10 MR. BARR: Just a side issue, when did the
11 Department of Water Resources merge into the Natural
12 Resource Department occur?

13 MR. JESS: Yeah, I think that -- it was after I
14 left State government. I believe --

15 MR. BARR: Oh, it was that recent.

16 MR. JESS: -- it was in 2003 --

17 MR. BARR: Okay, okay. I couldn't remember when
18 that was. In this process, we've used interchangeably water
19 resources --

20 MR. JESS: Yeah.

21 MR. BARR: -- and natural resources.

22 MR. JESS: -- well it's -- it creates a lot of
23 confusion.

24 MR. BARR: Yeah.

25 MR. JESS: The original LB 577 had the Department

1 of Water Resources being the decision-maker with an
2 obligation for input from the Conservation and Survey
3 Division and the Natural Resources Commission. It wasn't
4 until later, of course, that the Natural Resource Commission
5 and the Department of Water Resources were merged together,
6 and, really then, made that an unnecessary step.

7 MR. BARR: In your term in the Department of Water
8 Resources, you dealt with a fair amount of interstate
9 issues.

10 MR. JESS: Yeah, I did.

11 MR. BARR: You want to talk a little bit about
12 those -- the North Platte and the Republican, particularly,
13 and then the Blues if you want to?

14 MR. JESS: Yeah. I was the director from June of
15 '81 until January of 1999. And there was a lot of
16 interstate activity at that time. And it fell into my lap
17 because of -- the director of water resources was, by
18 statute, was the person designated to handle all of those
19 things. We continued to have -- all of the compacts that
20 exist today existed throughout my tenure.

21 The South Platte Compact is one of those that is
22 pretty much self-executing. And we didn't ever have much
23 contention with Colorado over it. What bit of tension there
24 was in the South Platte pertained to the Two Forks Reservoir
25 that was proposed by Denver. The State of Colorado was

1 never as vocal about that as the Denver Water Board was. At
2 the -- and so that -- I guess, as they go, that would not
3 rank up there high on the list.

4 The North Platte River is -- its supplies of water
5 are allocated by U.S. Supreme Court decree. And in the
6 early 80s, mid-80s, the State of Wyoming was making various
7 assertions to build reservoirs on some of the tributaries of
8 the North Platte. And then took the position that the
9 Pathfinder Irrigation District in Nebraska could not fill
10 Lake Alice and Lake Minatare, as the district had done for
11 over 70 years at that point. And they actually brought a
12 lawsuit to enjoin Pathfinder Irrigation District from doing
13 that. That came -- that was sort of the straw that
14 overloaded the camel. By that time, Nebraska had done a lot
15 of investigation in Wyoming. Had concluded that there was a
16 lot of water consumption by irrigation, and by some of the
17 municipalities, that was not permitted by the Supreme Court
18 in 1945. And so we moved to reopen the case. And spent,
19 well, the rest of my tenure -- we -- the case was reopened
20 in October of '86. Ultimately, we had several court rulings
21 favorable to Nebraska. But the outstanding issues that
22 remained when I left office in 1999 got resolved, then, by
23 stipulation and agreement in 2003.

24 The Blue River, the Big Blue River and Little Blue
25 River -- a fairly good relationship, I would say, between

1 Kansas and Nebraska there. There were a couple years when
2 things got very dry, particularly in the Little Blue portion
3 of that watershed, that we did do some regulation in
4 Nebraska in an attempt to cause the flow of the Little Blue
5 River at the state line to increase. Each time that was
6 almost at the tail end of the irrigation season, late August
7 into September. And, I suppose, we were kind of saved
8 because it started raining. And whether our regulation
9 indeed did a -- caused the river to flow more was never
10 really determined.

11 We did find ourselves in the 80s looking at the
12 Big Blue River itself, in that the compact provisions there
13 call for the regulation of groundwater wells within a
14 certain distance of the river itself. We commissioned a
15 study to determine if the regulation of wells in that
16 stretch would affect the flow of the river and if it would
17 affect the flow of the river where there times delays,
18 trying to use that research as a guide to any regulations
19 that we might later impose. We -- the research showed us
20 that, yes, indeed there are some wells there that do effect
21 the flow of the river, but trying to regulate them -- the
22 time delay in imposing a regulation and expecting to see an
23 effect on the river would fall outside of the five-month
24 period in which the flows to Kansas are to be assured. I
25 think we felt fairly good about that from -- selfishly in

1 Nebraska. But also felt fairly good because Kansas
2 appreciated the situation, and accepted the study for what
3 it was. And gave us assurance that they didn't expect that
4 we would try to regulate wells, at least irrigation wells,
5 to benefit Kansas.

6 That's a river basin with a compact that also has
7 water quality issues attached to it. When I left office,
8 there was still a lot of research being done, mostly through
9 the University of Nebraska, for -- aimed at atrazine and
10 other chemicals that find their way into the water flowing
11 into Kansas. And I, quite frankly, don't know what the
12 outcome of any of that was.

13 About two and a half years before I left office,
14 Kansas sued Nebraska in regard to compliance with the
15 Republican River Compact. They included Kansas (sic) in
16 their lawsuit as well as a defendant. And that litigation,
17 of course, still is continuing on. Prior to the lawsuit
18 actually being filed by Kansas, we -- our relationship with
19 Kansas was good enough that we knew that they were likely to
20 file a lawsuit. And so we asked to -- if they would be
21 interested in trying to resolve our differences before going
22 to the step of filing a lawsuit. And we met for about 18
23 months. And a lot of confidential discussions -- largely,
24 as I recall, at the Kansas City airport, as that was a
25 convenient location, and kind of a neutral --

1 MR. BARR: Sure.

2 MR. JESS: -- place. We did come up with a
3 proposal, each side, that we thought we could agree to. And
4 we went to -- respectively back to our constituencies.
5 Kansas encountered some resistance, but was able to get from
6 constituents in Kansas that, reluctantly, this would be
7 okay. We took the proposal to people in Nebraska, we
8 basically got kicked in the pants. Said we were way too
9 generous, and shouldn't agree to that. And so when we met
10 the next time with Kansas, we knew that was going to be the
11 last meeting because it was already a stretch for Kansas,
12 and to expect them to make additional concessions was not
13 going to play out. Ironically, what I see being offered now
14 is about what we had in the --

15 MR. BARR: What was the --

16 MR. JESS: -- proposal that we took to
17 constituents in Nebraska.

18 MR. BARR: What was the major sources of concerns
19 or entities that were particularly concerned with the -- may
20 have not wanted to go along with that?

21 MR. JESS: Well, we were conceding that
22 groundwater was part of the compact. And at that juncture,
23 nearly everybody in the Republican River Basin wanted to
24 deny that. And that was beyond just people in the
25 Republican -- even the State's legal position initially

1 after Kansas filed was the compact did not include
2 groundwater. I think all of us that were involved in
3 negotiations, we'd read the Pecos River litigation. We knew
4 what we should logically expect from the court. Even though
5 the language wasn't explicit and the justices are not
6 hydrologists, they still understood that there was going to
7 be some impact and that it had to -- groundwater had to be
8 made part of the --

9 MR. BARR: In this negotiations between Nebraska
10 and Kansas, how much was involved with the respective
11 departments of water resources, and how much involved was
12 the attorney general and other entities?

13 MR. JESS: Yeah. The negotiators were from the
14 two water agencies, the water agencies in each state. In
15 our case, we had one of the -- we asked Terry Woollen --

16 MR. BARR: Yeah.

17 MR. JESS: -- who was an elected board member of
18 the Lower Platte -- or the Lower Republican Natural Resource
19 District to be a member of the negotiating team. He agreed.
20 And I don't think he ever missed a meeting. Jim Cook was
21 with the Natural Resources Commission. And the other two
22 members were Ann Bleed and myself.

23 MR. BARR: Well, you've all been interviewed.

24 MR. JESS: Right. We did not include anybody from
25 the attorney general's office. And I don't remember that we

1 sought input from the attorney general's office. We
2 periodically briefed them in what we were doing and saying.
3 But, first, Mr. Spire and, then, Don Stenberg were very
4 attentive, but were not attempting to interject direction or
5 that sort of thing. And I can't speak for what was going on
6 in Kansas.

7 MR. BARR: Yeah.

8 MR. JESS: There were -- their negotiating team
9 did not include somebody like Terry Woollen. All of their
10 members were State employees.

11 MR. BARR: Any --

12 MR. JESS: The other thing I guess I remember,
13 you're talking about maybe going back a little bit, not the
14 interstate stuff, but through the 80s and into the early
15 90s, when it came to water, many of the natural resource
16 districts were at odds with one another. Particularly those
17 in the Platte watershed. It started, I think, with the
18 Little Blue Natural Resource District proposing the
19 Catherland Project and ran into fierce opposition from
20 Central Platte Natural Resources District, Twin Platte, and
21 Lower Platte North. A series of several lengthy and, I'm
22 sure, very costly hearings before the Department of Water
23 Resources -- district -- Department of Water Resources --
24 over the water rights. The Little Blue case, there were
25 four different rulings. I made three of them. They were

1 always appealed. And the Supreme Court was highly involved
2 in all of those, basically sending them back to the
3 Department for further review.

4 There was Central Platte Natural Resource District
5 had its own very ambitious project, the Twin -- Twin --

6 MR. BARR: Yeah. It was the --

7 MR. JESS: I can't recall.

8 MR. BARR: -- Mid State Light.

9 MR. JESS: Yeah. It was Mid State Light.

10 MR. BARR: I can't think of the name either.

11 MR. JESS: And they ran into opposition --

12 MR. BARR: Yeah.

13 MR. JESS: -- from Lower Platte North.

14 The Twin Platte Natural Resource District proposed
15 resurrecting the -- its project was the Perkins Canal, which
16 was referenced in the South Platte Compact. They
17 encountered opposition.

18 And the small irrigation districts in the
19 Republican River watershed proposed taking water out of the
20 Platte. And that generated a lot of opposition.

21 So there was a period of about a decade when many
22 of the natural resource districts were at odds with one
23 another. They don't seem to be so much anymore. And
24 the -- for all of them at the time, if the enemy was not
25 somebody taking their water out of the river to a different

1 watershed, the equally fierce common enemy was the
2 endangered species. And they were very resistant to making
3 any concessions or even recognition that Nebraska had an
4 Endangered Species Act and would have to comply with these
5 provisions.

6 MR. BARR: Was the Department involved in the
7 relicensing of -- the FERC relicensing of McConaughy?

8 MR. JESS: We were. We met a lot of times with
9 the two irrigation districts, Central and Nebraska Public
10 Power District, the license holders at that time.

11 MR. BARR: Oh.

12 MR. JESS: And, from time to time, tried to
13 arbitrate some agreement between them and the Whooping Crane
14 Habitat Maintenance Trust, Audubon, and the -- generally the
15 environmental groups. And I think it was -- it finally came
16 during the Nelson administration -- the irrigation districts
17 by that time had spent 30 or 40 million dollars. The
18 governor's office, the governor, he wanted to be more
19 involved. Previously, we'd try to get people together. But
20 we weren't as assertive as we turned out to be. So, we
21 began making suggestions of things, maybe, you could -- ones
22 I could do to get the support of the other and vice versa.
23 And, I believe, it was Ann Bleed that initially came up with
24 the idea of carving off a portion of Lake McConaughy for
25 what's now called an environmental account. We pitched that

1 several times. And I remember, to NPPD and to the Central
2 management and then to the board members, and, I think, it
3 was finally the board members that had gone to -- I suppose
4 after paying so much money -- kind of coming to their
5 senses, and realize there's gotta be a better way. So, it
6 began getting some traction in the 90s. And I recall
7 testifying in front of the FERC several times in Washington
8 and, you know, writing lots of letters and overseeing a
9 bunch of analysis, and that sort of thing.

10 I talked about -- didn't talk about the Missouri
11 River yet.

12 MR. BARR: Okay, yeah.

13 MR. JESS: I kind of took a diversion here.

14 MR. BARR: That's right. That's another one.

15 MR. JESS: I was around at the time when -- the
16 drought of the early 90s under the management of the Corps
17 of Engineers. The Corps continued to release water out of
18 the upper basin reservoirs. And if you listen to North
19 Dakota, South Dakota, and Montana, it was all for
20 irrigation. Of course, if you sit in Nebraska, you realize
21 we get a lot of hydro-power from all of that. And
22 to -- what little navigation there was at the time pretty
23 much terminated at Blair, once in awhile at Sioux City. But
24 we did benefit from it. And the other thing that was made
25 clear to me was the needs for water flowing in the Missouri

1 River at navigation levels to adequately cool the condensers
2 at the power plants operated by OPPD and NPPD.

3 Environmental interests were very minor. I just
4 found I couldn't get much reaction from environmental groups
5 about the Missouri River. They -- there were only a couple
6 of pleasure boat harbors along the river, and those folks
7 didn't seem to be particularly concerned about the Corps of
8 Engineers' management. So, we found ourselves in Nebraska,
9 unlike the Dakotas and Montana and unlike Missouri and
10 Kansas, we were sort of in the middle. Things looked okay
11 with the way the Missouri River was being managed by the
12 Corps of Engineers. Nonetheless, there was a commitment by
13 the Corps to review its master manual. And I suppose that
14 must have been around '88 or nine or somewhere -- it was
15 during the Orr administration. And that undertaking
16 was -- became a life of its own. I think it went for a
17 dozen years or so. Was very much involved in all the
18 iterations of the master manual review as a member of the
19 Missouri River Basin Association. I was the Nebraska
20 representative and drug a lot of our staff members into all
21 of that analysis as well. Took a lot of time. And, of
22 course, not only the analysis, but trying to ensure people
23 in Nebraska understood what was going on. It was one of
24 those things -- drug out for so long that it was easy for
25 people to kind of lose track. That's just the way

1 government works, unfortunately.

2 MR. BARR: There was a fair amount of disagreement
3 between the upper basin states and the lower at some points
4 during that process.

5 MR. JESS: Yeah. And there still remains a lot --

6 MR. BARR: Yeah.

7 MR. JESS: -- of tension. And it's an interesting
8 thing. I think it's peculiar with large public works
9 projects, they are authorized and built for something that
10 gets forgotten.

11 MR. BARR: Yeah.

12 MR. JESS: And --

13 MR. BARR: Sometimes change --

14 MR. JESS: -- in the Dakotas --

15 MR. BARR: -- and some of the uses change too.

16 MR. JESS: Yeah. In the Dakotas, the recreation
17 industry that built up around the two reservoirs, Oahe
18 and --

19 MR. BARR: Yeah.

20 MR. JESS: -- the upstream one --

21 MR. BARR: I can't remember what's up there.

22 MR. JESS: -- is substantial in terms of the
23 economy of those states. It meant nothing in 1944 when
24 Pick-Sloan was adopted. And it didn't mean much when the
25 dams were built in the 50s and 60s, but it does today. And

1 it's easy, I think, for many of us to look at the
2 navigations and, boy, that's just never panned out.
3 Admittedly, it's important to Missouri, but not so much to
4 the rest of us. And I think the forgotten part in Nebraska
5 is the value of the very low cost hydroelectric energy.
6 When we mention that, people will say, "Oh, what is it even
7 for?" And, of course, it's so virtually at cost to State
8 government, the university, and to the public entities in
9 our state. If it weren't there, they're still going to use
10 the electric power. It would cost a whole lot more to those
11 of us who are taxpayers. So it takes a bit of explanation
12 for people to kind of comprehend all of that.

13 MR. BARR: It was never a part of the original to
14 have the flows in Missouri as the augmentation for the
15 Mississippi.

16 MR. JESS: No.

17 MR. BARR: That has -- that became an issue at
18 certain points.

19 MR. JESS: It did. Particularly when the barge
20 industry began asserting itself by filing legal briefs and
21 what not. It got people's attention. And they started to
22 read the language of the Pick-Sloan Plan, and they didn't
23 see that. And legally I don't know how that's --

24 MR. BARR: Yeah, that's --

25 MR. JESS: -- supposed to be interpreted, but --

1 MR. BARR: It's been a background issue.

2 MR. JESS: Yeah.

3 MR. BARR: But I'm not sure, technically, they've
4 got much to stand on, but --

5 MR. JESS: And I don't doubt that the large dams
6 and the levies and what not have had a great deal of benefit
7 to Nebraska for -- in terms of flood control. The flood
8 four years ago was substantial in our state, but not what it
9 could have been were it not for the public works that's been
10 put in place.

11 MR. BARR: Great deal of that flood came below the
12 dams.

13 MR. JESS: It came -- yeah.

14 MR. BARR: Downstream of the dams.

15 MR. JESS: Really a freaky set of circumstances
16 occurred in the watershed and then after the Rocky Mountain
17 snow melt had all come. I think, in Missouri, the flood
18 control has been disappointing to a number of the ag
19 producers in the valley adjacent.

20 MR. BARR: Yeah.

21 MR. JESS: They find that, although they may be on
22 the land side of the levy, they still got a lot of water
23 sitting on their fields. And they question the -- whether
24 the flood control was what the Corps tells them it is.

25 MR. BARR: Any other major issues you'd like to

1 comment on or reflect upon or NRDs?

2 MR. JESS: Well, I think that the natural resource
3 districts now are a lot more united among themselves. It
4 seems to me, at least in the area of water resources, that
5 they are trying to get themselves in a stronger position for
6 dictating water policy. It's creating a lot of tensions
7 with irrigation districts -- public power and irrigation
8 districts, and those entities who naturally look at the
9 State as the regulatory authority and not the local boards
10 of the natural resource districts. I think what you see in
11 the Platte and the Republican, particularly, point out some
12 of the shortcomings of the resource districts. The -- maybe
13 the Republican is the easy one to understand. The
14 river -- the same river flowing through three districts.
15 And it's turning out it's difficult for elected board
16 members in one district to manage themselves to benefit
17 citizens in a different district.

18 MR. BARR: Yeah.

19 MR. JESS: And I think that is -- that was one of
20 the things that people early on said could be a shortcoming
21 with creating natural resource districts. And the other
22 thing is what I saw in my tenure early on, people don't like
23 to regulate themselves. And they don't want to necessarily
24 stand up and be counted. It's sometimes difficult when
25 expectations are unrealistic. I think that they'll do that.

1 MR. BARR: If it were under State regulation, what
2 kind of manpower implications or financial implications
3 would that have in the state?

4 MR. JESS: Well the State would have to have a lot
5 more manpower. But I guess there would -- if the State were
6 in charge, there wouldn't be natural resource districts.

7 MR. BARR: Yeah.

8 MR. JESS: So maybe -- to a certain extent, it's a
9 wash. The people employed doing this stuff, instead of
10 being in Alma, Imperial, and Curtis, would be somewhere
11 else.

12 MR. BARR: How much has the difference between the
13 appropriation system of the surface water and the
14 correlative rights, I guess it is, on the groundwater, two
15 separate philosophies to some extent, how much has that
16 contributed to the difficulties here in Nebraska?

17 MR. JESS: Well, I think that's part of the issue
18 there. I -- when I used to do classes (indiscernible), I
19 tried to get my students to -- that's one of the more
20 apparent things. It's a completely different system for
21 managing scarce resources. The other clear distinction is a
22 central figure, pointed authority versus locally elected
23 authorities, and in the case of natural resources, 23
24 different ones --

25 MR. BARR: Yes.

1 MR. JESS: -- was always the frustration I heard
2 from many of the well drillers when it came to getting
3 permits to drill wells. They would like to have gone just
4 to one place.

5 MR. BARR: Yeah.

6 MR. JESS: Instead, they had to first determine
7 where they were going to be constructing a well and then
8 find what the rules and regulations and the forms and all
9 that were. And it was kind of a -- it was a sort of a
10 nuisance, I think, in their view.

11 MR. BARR: What's the difference in ownership
12 implications between appropriation ownership of water
13 between appropriations, (indiscernible)?

14 MR. JESS: Well, the ownership of the water is
15 established by the Nebraska laws. And then that body of
16 laws says the water itself belongs to the public.

17 MR. BARR: In both ground and surface?

18 MR. JESS: Yes. There's a lot of people don't
19 want to believe that. And I've stood in front of groups
20 enough times to know that that's kind of fighting words to
21 some people. But that is the body of law in Nebraska. And
22 it's, perhaps, a little easier for people to understand it
23 when it comes to water running in a river than when it is
24 the water that's underneath the land that they own. Some
25 other differences with -- that occur with groundwater versus

1 surface water -- most of the groundwater, of course, has
2 been developed by individuals financing their own wells and
3 their own center-pivots and distribution systems. And, as
4 a result, they can turn on the well whenever they want. Use
5 as much as they want. They are not really accountable to
6 sharing with somebody else. An irrigation district is
7 different. Oftentimes, it is a district that they have to
8 share and the water in a canal, may not everybody be able to
9 use the water the same day or at will. They have to
10 schedule the water. They collectively indebted themselves
11 to pay the federal treasury for constructing this project
12 they have. They've got a --

13 MR. BARR: And in some cases are required to pay
14 whether there's water or --

15 MR. JESS: Yeah. Pay whether there's water there
16 or not. So there's some fundamental differences there that
17 go beyond just first in time, first in right versus
18 correlative rights. And it's difficult for many people
19 to -- that haven't experienced it, to realize what -- how
20 profound that is.

21 MR. BARR: I may have gotten a little away from
22 natural resources.

23 MR. JESS: Yeah, sure.

24 MR. BARR: A --

25 MR. JESS: Well, but if it's in --

1 MR. BARR: Yeah, it's related.

2 MR. JESS: -- because you find --

3 MR. BARR: And I guess that's the thing.

4 It's -- they've evolved into a different type of entity
5 because the original was to combine the existing
6 conservation districts and --

7 MR. JESS: Right.

8 MR. BARR: -- flood control, and some of that
9 other -- drainage, and some other things. And then the
10 State water plan helped bring the ideas together to --

11 MR. JESS: Right.

12 MR. BARR: -- form the natural resource districts.
13 But one of the things left out of the State water plan was
14 anything about groundwater.

15 MR. JESS: Yeah.

16 MR. BARR: And that's developed over time and been
17 assigned to the NRDs so --

18 MR. JESS: And I think that's one of the
19 criticisms that, well, a number of us have had, is that
20 that's where we really needed planning.

21 MR. BARR: Yeah.

22 MR. JESS: And the planning was not there. And it
23 took place by chance and by circumstance and probably not
24 the ideal way to do it. The outcome has not been as you
25 might hope. I remember, early on, trying to foresee how

1 this was going to play out. And we had an interesting
2 discussion. I know Vince Dreesen was there. And I think
3 Warren White might have --

4 MR. BARR: Okay, yeah.

5 MR. JESS: -- been there as well. And he said to
6 avoid all this that we could see coming, which has played
7 out, why didn't they create a law that would say, if the
8 groundwater is part of the surface water, it's all got to be
9 regulated first in time, first in right? These very remote
10 areas that it's not connected, --

11 MR. BARR: It was never really --

12 MR. JESS: -- let the natural resource districts
13 handle that because they're going to look at it more
14 provincially.

15 MR. BARR: It was never really in the discussion
16 of the State water plan. It simplified the State water
17 plan's construction greatly by leaving it out, --

18 MR. JESS: Yeah, yeah.

19 MR. BARR: -- unfortunately.

20 MR. JESS: And that's now what's the problem.

21 MR. BARR: And I think another --

22 MR. JESS: Takes root of the other --

23 MR. BARR: -- problem with the planning, too much
24 was emphasized on a final written plan. When, in reality,
25 planning involves continuous process.

1 MR. JESS: Yeah.

2 MR. BARR: And that is --

3 MR. JESS: But I remember people reacting, and
4 asking, "Well, God, isn't it ever going to get done? This
5 is a perpetual."

6 MR. BARR: But that really is what it is.

7 MR. JESS: It is. I know.

8 MR. BARR: And --

9 MR. JESS: But you got the push back from the --

10 MR. BARR: Yeah. And I know there was resistance.

11 MR. JESS: Yeah.

12 MR. BARR: So, anyhow. Well, at this point, I
13 guess, do you have anything you'd like to comment on,
14 reflect upon, anything? I'm glad to --

15 MR. JESS: Yeah. No, I think, this will be -- I'm
16 curious to read what you got.

17 MR. BARR: I went through one of these too,
18 and -- yeah, it's interesting.

19 Well, thank you very much --

20 MR. JESS: All right, yeah.

21 MR. BARR: -- for doing this.

22 MR. JESS: Good enough.

23

24

25