

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 1st, 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 1st, 1997.
7 It also outlined some other things. It said, as kind of a
8 baseline, July 1st, 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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