

EXHIBIT A

The Hearing on the Methodology Order Transcript
May 24, 2010

BEFORE THE DEPARTMENT OF WATER RESOURCES
OF THE STATE OF IDAHO

IN THE MATTER OF DISTRIBUTION OF)
WATER TO VARIOUS WATER RIGHTS)
HELD BY OR FOR THE BENEFIT OF A &)
B IRRIGATION DISTRICT, AMERICAN) THE HEARING ON THE
FALLS RESERVOIR DISTRICT #2,) METHODOLOGY ORDER
BURLEY IRRIGATION DISTRICT,)
MILNER IRRIGATION DISTRICT,)
MINIDOKA IRRIGATION DISTRICT,)
NORTH SIDE CANAL COMPANY, AND)
TWIN FALLS CANAL COMPANY.)
_____)

THE HEARING ON THE METHODOLOGY ORDER

May 24, 2010

REPORTED BY:

COLLEEN P. KLINE, CSR No. 345

Notary Public

1 THE HEARING ON THE METHODOLOGY ORDER
 2 was taken BEFORE THE HEARING OFFICER GARY
 3 SPACKMAN, Director of the Idaho Department of
 4 Water Resources, at the offices of Idaho
 5 Department of Water Resources, located at 322 E.
 6 Front Street, Boise, Idaho, commencing at 9:00
 7 a.m., on May 24, 2010, before Colleen P. Kline,
 8 Certified Shorthand Reporter and Notary Public
 9 within and for the State of Idaho, in the
 10 above-entitled matter.

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1 THE HEARING OFFICER: The time is right
2 for us to begin the hearing in one of three
3 hearings this morning.

4 But before we do that, do the
5 parties -- well, let's first of all, take a roll
6 call.

7 And maybe, I'll rely on you,
8 Mr. Bromley, for this to some degree. Do we have
9 the parties who are participants in these
10 hearings today? I'm looking at a certificate of
11 service, and maybe I should go through the
12 parties, and have them introduce themselves for
13 the record at this point. And then let's see
14 what we have left.

15 Mr. Bromley?

16 MR. BROMLEY: Present.

17 THE HEARING OFFICER: Why don't you
18 just state your name, and who you are here
19 representing.

20 MR. BROMLEY: Chris M. Bromley on
21 behalf of the Department of Water Resources.

22 MR. THOMPSON: Travis Thompson, Barker,
23 Rosholt, Simpson, for A & B, Burley, Milner
24 Irrigation Districts, Twin Falls, North Side
25 Canal Companies.

1 initiated in 2005. They were also a party before
2 the court. The Bureau of Reclamation has not
3 participated in the depositions. I don't believe
4 that the Bureau of Reclamation has filed a
5 petition for reconsideration, but I could be
6 mistaken.

7 THE HEARING OFFICER: I don't recall if
8 they did.

9 MS. KLAHN: I believe, Your Honor, the
10 Bureau of Reclamation submitted a pleading
11 yesterday that they will not be participating in
12 the hearings today. So I got an email from
13 Kathleen's assistant yesterday. It was a
14 pleading, though.

15 MR. BROMLEY: Thanks, Ms. Klahn. I
16 didn't see that.

17 MS. McHUGH: It actually was filed late
18 last week. It was served on me late last week by
19 email.

20 MR. BROMLEY: I didn't get it.

21 THE HEARING OFFICER: I don't recall
22 having seen a document.

23 MR. FLETCHER: Yes, it states that they
24 would not participate in the 2008 issue, or the
25 As Applied Steps 3 and 4 issues. It does not

1 MR. SIMPSON: John Simpson assisting
2 Mr. Thompson.

3 MR. ARKOOSH: Tom Arkoosh, Capital Law
4 Group, for American Falls Reservoir District #2.

5 MR. FLETCHER: Kent Fletcher, Minidoka
6 Irrigation District.

7 MR. BUDGE: Randy Budge on behalf of
8 the Idaho Ground Water Appropriators, Inc., and
9 the Ground Water User members.

10 MS. McHUGH: Candice McHugh assisting
11 Mr. Budge.

12 MS. KLAHN: Sarah Klahn on behalf of
13 the City of Pocatello.

14 MR. SULLIVAN: Greg Sullivan with
15 Spronk .

16 MS. PEMBERTON: Mitra Pemberton, the
17 City of Pocatello.

18 THE HEARING OFFICER: And there are
19 some others who we have been mailing to,
20 Mr. Bromley. And I notice that the U.S. Bureau
21 of Reclamation or Department of Interior has at
22 least been served, but is that just as a matter
23 of courtesy?

24 MR. BROMLEY: Your Honor, the Bureau of
25 Reclamation was a party to this case when it was

1 address the mitigation hearing.

2 THE HEARING OFFICER: So when we reach
3 that stage, we'll ask the question again about
4 their participation.

5 All right. Let me look down through
6 the rest of the list. I also see that Mike
7 Creamer and Jeff Fereday were served. And I
8 think they were representing a group of producers
9 as I recall; is that correct, or Dairymen?

10 MR. BROMLEY: Idaho Dairymen's
11 Association.

12 THE HEARING OFFICER: Yes. And we
13 haven't seen any activity from that group in this
14 proceeding that I'm aware of.

15 MR. BROMLEY: That's correct. And they
16 haven't been active, Hearing Officer, for many
17 years.

18 THE HEARING OFFICER: Okay. All right.
19 That completes the list. Thanks for your help
20 and introductions this morning.

21 Okay. I issued three orders on Friday,
22 and I'm sorry for the timing. I thought it would
23 be helpful to layout some at least boundaries for
24 the parties to initiate a discussion this
25 morning.

1 I intended by the orders to set some
2 boundaries as to the scope of this hearing. I
3 know there is disagreement regarding the scope of
4 the hearing. And I received this morning a
5 document from the Ground Water Users -- let me
6 just refer to it -- and from the City of
7 Pocatello.

8 And the document is titled,
9 "Pocatello's and Ground Water Users' Pre-Hearing
10 Brief." And it takes issue with the limitations
11 that were set forth in the orders that were
12 issued.

13 Do the parties want to discuss that
14 particular subject at this point?

15 THE HEARING OFFICER: Mr. Budge?
16 Ms. McHugh?

17 MS. KLAHN: Mr. Budge passed the buck
18 to me this morning, Your Honor. And I'll just
19 give it a quick summary, since it was filed this
20 morning.

21 Our concerns with the scope of the
22 hearing, quite frankly, are that this
23 arose -- the only reason we're here is because
24 Judge Melanson issued a limited remand to the
25 Department for the purpose of allowing the

1 planning to file. We will file a reply in that,
2 obviously, and ask him to rule.

3 So we don't even know yet whether Judge
4 Melanson is favorably disposed to allow
5 augmentation in the record. So again, we find
6 ourselves between the rock and hard place of
7 being at a hearing that may last for a couple of
8 hours. Judge Melanson may say, yes, you need to
9 augment the record. And you've done a little bit
10 of it today, perhaps haven't gotten into it
11 fully.

12 And so we're concerned about that, the
13 issue of agency discretion, and whether
14 it's -- the order is consistent with the agency's
15 discretion. And we're further interested
16 in -- well, we're further concerned about issues
17 of due process in that we need a meaningful
18 opportunity to be heard.

19 Certainly, this is a timely hearing in
20 the sense that it's happening very quickly. But
21 timely isn't the entire scope of what a reviewing
22 corp would look at.

23 And I would also mention that through
24 the confusion at the Minidoka County District
25 Court, I finally received a copy of the A & B

1 development of an order that was to be based on
2 the record below, laying out the methodology for
3 determining injury.

4 It's our contention that the
5 Methodology Order is not based on the record
6 below. And our concern is that without the
7 opportunity to put on evidence about that, the
8 issue is mooted or waived as things go forward,
9 we're limited to trying to show the District
10 Court and the Supreme Court through exhaustive
11 references to the record, the inconsistencies
12 between the Methodology Order issued April 7th,
13 and what was done at trial in this matter in
14 2008.

15 So we find ourselves between a rock and
16 a hard place. Because the most efficient way to
17 develop that theme, I think, is through
18 testimony. And I believe IGWA -- that's why IGWA
19 joined our brief. I think they agreed.

20 We've also moved for the right to
21 augment the record. We've made that motion to
22 Judge Melanson. I apologize. I think it was the
23 week before last that Mr. Bromley responded. I
24 don't think the time is right for responses, but
25 I don't know if our other opposing counsel is

1 order on Thursday. And that seems to throw a
2 whole different monkey wrench into this
3 particular -- if I can mix metaphors -- into this
4 particular mess.

5 And so the question arises of really
6 what we can accomplish here today that's going to
7 be useful moving forward. And that's the purpose
8 of the brief. And that pretty much summarizes
9 what's ended. I'll stand for any questions.

10 THE HEARING OFFICER: Okay. Further
11 argument, Mr. Budge, Ms. McHugh?

12 MR. BUDGE: Yes, Your Honor, thanks.
13 It seems to me like if we're going to proceed
14 forward, we should address the Methodology Order,
15 and the Applied Order as a single proceeding, so
16 that we have a full record on appeal.

17 It seems that the process has been laid
18 out. And the limitation that the Director has
19 put on the evidence in both proceedings, which is
20 something I would like to address separately.

21 But it seems like we have a disconnect
22 between the two orders. And I guess I would
23 liken it to constructing a car, but never going
24 out and putting gas in it to see if it will run.
25 Perhaps developing a computer, but not putting

1 any software in it and see if it gets any result.
 2 We have a history in this case of the
 3 Director developing methodologies based upon
 4 populating those methodologies and theories, if
 5 you will, with actual data and actual facts,
 6 which is what we did in a rather extensive
 7 record. Then we have a full record to take up on
 8 review. Not only do we have a method, but what
 9 was the result of that method going to be?

10 And we all kind of remember the issue
 11 of the AFRD2 case, when the Supreme Court,
 12 understandably, had struggles in trying to
 13 determine the constitutionality of those rules on
 14 the face, without an opportunity to see how they
 15 are going to apply. They are going to get that
 16 opportunity now.

17 But it would seem to me that there is a
 18 question on what -- and I can appreciate the
 19 Director's dilemma -- but there is a question on
 20 what did the district court want done, and how
 21 far are you to go in looking at the method, and
 22 then trying to see what the results of the method
 23 are when we apply it with some actual data for
 24 this particular year; particularly, since we have
 25 2008 data now into play, and we have a 2010 year?

1 bunch of filings in here. When you look at the
 2 petitions for rehearing and some of the
 3 affidavits, it's not real easy to draw a bright
 4 line between what applies to the Methodology
 5 Order, and what applies to the other one.

6 So that would be my suggestion on that
 7 point, that we not constrict the record, and that
 8 we combine both proceedings. And then come up
 9 with one record, and send it all back up to
 10 Melanson, and let him sort that issue out.

11 If we don't do that, we're going to
 12 have a lot of wrangling today over what evidence
 13 should come into the record. And I think we will
 14 be forced to create our record anyway. If the
 15 objections are sustained, for example, that you
 16 are going beyond what the Hearing Officer
 17 intended should come in to analyze the 2008 data.
 18 I guess there is two ways to look at it.

19 One way to view it is, you can only
 20 look at the data itself, and decide if the data
 21 is valid, if there is errors in it. Or you can
 22 go a broader interpretation of that order that
 23 says information that would contest or rebut the
 24 2008 data, would kind of seem to indicate that we
 25 have broader sideboards, that we should be able

1 And it would seem like rather than
 2 narrow and restrain the record, and give rise to
 3 due process arguments, give rise to potential
 4 remand again to Judge Melanson, who hadn't yet
 5 decided on this augmentation, why not error on
 6 the side of having an open process with a
 7 complete record? Then it can all go up to Judge
 8 Melanson, both issues pertaining to the
 9 Methodology Order, as well as the As Applied
 10 Order, and he can sort it out.

11 So it would almost be no harm no foul
 12 to make a complete record, combine both
 13 proceedings, and both orders, and let it all go
 14 up. And then Judge Melanson can decide, yeah, I
 15 want to look at the whole thing. Go ahead and
 16 present your arguments, and we'll get one final
 17 decision, or you could decide, oh, you went
 18 farther, Director, than you needed to go. So I
 19 am going to narrow the scope down, and ignore all
 20 of this other stuff.

21 And that's the main concern that we've
 22 got, is that we have an attempt to divorce and
 23 separate two orders that are inextricably tied
 24 together, married, if you will; one with the
 25 method, and one with the facts. And we have a

1 to make arguments why we shouldn't use 2008 data
 2 at all. Whether it's better methods to look at
 3 going into the broader scope of the Methodology
 4 Order. I'm not sure what your ruling is going to
 5 be on it.

6 But should you rule that we have a very
 7 narrow order, interpretation of your limiting
 8 order. We can only look at the data itself to
 9 see what's wrong with it. And then necessarily
 10 going through the course from both of us and make
 11 an offer of proof, go ahead and put on the
 12 testimony that we would hope to do anyway.

13 So that when it goes up on appeal,
 14 we're able to then tell Judge Melanson, the
 15 Director erred by not giving us a full process
 16 here. Here's the evidence that we've put in
 17 under an offer of proof. And look at that, and
 18 determine whether there was an error or not.

19 I'm just thinking we can avoid all of
 20 that, getting all the information in the record,
 21 combining the proceedings, putting on what we
 22 want to create our record. Let it all go up to
 23 Melanson, and he can then sort out what he wanted
 24 to do, or he didn't want to do.

25 THE HEARING OFFICER: Okay. All right.

1 Thank you.
 2 Surface Water Coalition arguments,
 3 rebuttal arguments?
 4 MR. ARKOOSH: If -- we just got this
 5 brief this morning, and we do have some views
 6 that if we could have about three minutes to meet
 7 together, to see that our views are conforming
 8 and responsive to this brief, it would be helpful
 9 to us. We'll step out in the hall for a second.
 10 THE HEARING OFFICER: That's fine.
 11 Let's recess for five minutes.
 12 (A recess was had.)
 13 THE HEARING OFFICER: Okay. We've
 14 reconvened after a recess.
 15 The Surface Water Coalition, and their
 16 spokesperson, or someone who wishes to go first?
 17 Mr. Arkoosh?
 18 MR. ARKOOSH: Thank you, Mr. Director.
 19 Our overall conclusion is that the Director
 20 should proceed as you have ordered.
 21 We addressed this issue in front of
 22 Judge Melanson at the status conference when he
 23 remanded to create one order. And it was our
 24 conclusion, although we felt differently, that
 25 the Judge had sent this back to develop the

1 are things in Step 3 that are not going to be
 2 litigated this year that were set in the
 3 Methodology Order. But given the circumstance
 4 you found yourself in, I'm not really sure that
 5 any of that can be fixed.
 6 Now, if you overlay all of that with
 7 the A & B case, and the fact that there seems to
 8 be a change back to the initial position that one
 9 starts with the water right, and moves forward
 10 from that. The direction you had earlier on the
 11 Methodology Order may or may not be sustained in
 12 the ongoing appeal, when we match up the two
 13 bifurcated orders.
 14 So our interest is allow people a
 15 hearing on matters that weren't in the record
 16 that haven't been heard, which does not include
 17 the Methodology Order, and let's get this to the
 18 district court as quickly as we can, and find out
 19 what the real rules are.
 20 THE HEARING OFFICER: Others that might
 21 want to be speak?
 22 Mr. Fletcher?
 23 MR. FLETCHER: That was our consensus.
 24 THE HEARING OFFICER: Mr. Thompson?
 25 MR. THOMPSON: I have nothing.

1 methodology.
 2 And the AFRD case directs the
 3 Department how on a year-to-year basis, you deal
 4 with the new year. As best you can do, I think
 5 you have coalesced those two directions by
 6 creating a new case, allowing people input on
 7 matters that aren't in the record as applied.
 8 And underlying all of that, developing a
 9 methodology that wasn't done when this order was
 10 bifurcated, and sent in part up to the district
 11 court on appeal.
 12 Now, having said that, of course, that
 13 just applies to the other side. We certainly
 14 have a lot of issues in the Methodology Order, as
 15 you know. We think there has been quite a bit of
 16 breach in the membrane.
 17 There are some things that the
 18 Methodology Order said we would do, and it turns
 19 out that we are doing something else in the As
 20 Applied Order based upon the conditions of the
 21 year. We recognize that.
 22 We see things that were litigated in
 23 the Methodology Order that are for this year
 24 only, but otherwise in future years, would be
 25 adaptive. Step 3 is a perfect example. There

1 THE HEARING OFFICER: Okay.
 2 Mr. Simpson?
 3 MR. SIMPSON: No, sir.
 4 THE HEARING OFFICER: Okay. Thank you.
 5 I appreciate the arguments on both sides. And I
 6 think all of them are cogent arguments.
 7 And the concern I have with the
 8 broadening that you are suggesting, Mr. Budge,
 9 and Ms. Klahn, really goes back to my
 10 understanding of the limited remand from Judge
 11 Melanson.
 12 And as I understood that remand, the
 13 Department was to develop a methodology, and
 14 issue an order based on the record. And I
 15 understand there are arguments that perhaps in
 16 the order, the Methodology Order is not based on
 17 the record.
 18 Certainly in the development of that
 19 Methodology Order, and our looking at the
 20 information that was available to us, current
 21 information, we looked at 2008. The 2008 data
 22 was not available at the time that the original
 23 hearing was held. It was -- the hearing was held
 24 simultaneous with the gathering of that data or
 25 its development.

1 And the Department and the Director
2 feels a duty, based on the orders of the Court,
3 to use the best and most current information
4 available to it. So as we develop the
5 Methodology Order, we recognize that the 2008
6 data was not in the record.

7 And honestly, asked ourselves the
8 question, of whether it was even necessary to
9 hold a hearing to use that data, given that it
10 was -- it was dated, and simply is developed and
11 derived year by year. And the Court has an
12 expectation of the Department using the most
13 current information.

14 So the intent of the Department,
15 regardless of the arguments posed by Ms. Klahn
16 and Mr. Budge, was to issue an order based on the
17 record. It may not be based on the methods
18 that -- methods that were proposed or the
19 processes that were proposed by the parties in
20 the hearing itself. But the intent of the
21 Department was to issue the order based on the
22 record with the addition of the 2008 water data.

23 And I recognize, Mr. Budge, that there
24 is a possibility that Judge Melanson might say,
25 well, if you were holding a hearing, then perhaps

1 hearing.

2 And just as a follow-up, Mr. Budge. I
3 don't intend to allow offers of proof that will
4 go on for hours, and enlarging the record in that
5 manner. And I recognize there is some risks in
6 not allowing evidence into the record. That risk
7 being that the matter could be remanded to the
8 Department for the taking of additional evidence.

9 But again, based on my understanding of
10 the nature of the remand from Judge Melanson, I
11 want to remain within that remand as much as I
12 can. Because I think his sending it back to the
13 Department was intended to allow the Department
14 to develop the order and the methodology as much
15 as possible within the information now contained
16 in the record.

17 I might also add that, Ms. Klahn,
18 Mr. Budge, the argument about whether an order is
19 based on the record or not based on the record,
20 is a classic subject for appeal anyway. And
21 certainly, any subjects or any portions of that
22 order that you feel are not within the record,
23 can be argued outside of an evidentiary hearing.
24 It certainly can be argued as part of the
25 petitions for reconsideration. It certainly can

1 you should have expanded the hearing to include
2 lots and lots of other -- the exploration of lots
3 and lots of other subjects related to the
4 Methodology Order, and the taking of additional
5 evidence.

6 And I see that beyond the scope of his
7 directive to the Department. And I guess as the
8 Director, I will proceed cautiously, and try to
9 stay within what we were asked to do.

10 Frankly, I feel some discomfort holding
11 a hearing to even include the 2008 information,
12 but we wanted to give the parties an opportunity
13 to at least look at the data, to probe it, and to
14 determine whether it was accurate and reliable.

15 And so because that was the reason for
16 this hearing, I will limit the testimony very
17 narrowly to that subject. So the only questions
18 that will be asked -- the evidence will come in.
19 Mr. Bromley will present it. And then there will
20 be an opportunity for the parties to probe that
21 particular information, either with the
22 Department witness that presents it, or through
23 their own witnesses to question it's reliability,
24 and whether it can be used, and can be part of
25 the record. So that's the limited scope of the

1 be argued on appeal.

2 But the mere fact that the parties
3 raise the issue of whether an order is within the
4 record or outside the record, doesn't necessarily
5 give rise to the right for further evidentiary
6 hearings on that. And so I think for that
7 additional reason, I would not allow more
8 evidence to come in.

9 It is the Department's intention to
10 issue the Methodology Order as a final order, an
11 amended final order following this hearing in
12 considering the petitions for reconsideration,
13 based on the record with the inclusion of the
14 2008 data, unless the 2008 data is found to be
15 not accurate and unreliable.

16 Okay. Further questions?

17 MR. BUDGE: Your Honor, I have one
18 question that provides that -- from what I
19 understand your comment is then that, the
20 petitions for reconsideration and the issues
21 raised in those then will be decided, I suppose,
22 as questions of law as a part of the Methodology
23 Order without any more evidence?

24 THE HEARING OFFICER: That's correct.

25 MR. BUDGE: That's fine. I have two

1 issues relating to that. One, is so I suppose
2 then, the Hearing Officer is going to take a
3 rather narrow view of those orders that limit
4 what we can address.

5 And so on the order limiting the scope
6 for the Methodology Order, it says, limited to
7 information that would contest or rebut the 2008
8 data. You are interpreting that to mean, we can
9 only challenge and question the numbers
10 themselves, not go beyond that in whether the
11 data ought to be used at all, and whether other
12 methodologies should be considered?

13 THE HEARING OFFICER: That's correct.

14 MR. BUDGE: Okay. That gives rise to
15 one issue then --

16 THE HEARING OFFICER: Okay.

17 MR. BUDGE: -- relative to the 2008
18 data, which created somewhat of a problem to us.
19 And we've addressed it in our May 12th request
20 for supplemental information. And we had in
21 paragraph 3, specifically of that request, had
22 asked the Department to provide all of that 2008
23 data. And the problem was, is the Department's
24 spreadsheets, where the calculations were being
25 made, had screened out 2006 and 2008 data.

1 And the only other one is we had
2 affidavits filed in the As Applied proceeding of
3 Dr. Brendecke and Tim Deeg, that are addressing
4 issues that relate to both orders.

5 And the reason that it was done that
6 way is, because the As Applied Order relates to
7 Steps 3 and 4 of the Methodology Order. So there
8 is that prior connection to, and we would like to
9 have those affidavits made part of the record in
10 the methodology proceeding.

11 Even if the Director says, I won't
12 consider all or parts of them, because they are
13 beyond the scope, we would like to have them made
14 part of the record, which certainly will then
15 make it unnecessary for us to have to do an offer
16 of proof that goes into all that other stuff.

17 THE HEARING OFFICER: Mr. Arkoosh?

18 MR. ARKOOSH: Let me address that in
19 reverse order. And maybe I can -- by the time I
20 get to the first point, we'll have a little bit
21 more information on it.

22 The second point, the time to make the
23 offer of proof, that those affidavits be part of
24 the Methodology Order, is the time necessary to
25 state that. And we can probably -- I will take

1 Now, I don't know that there is any
2 errors with the number itself. But when the
3 hearing is going to be limited to the integrity,
4 if you will, of the 2006, 2008 data -- 2008, I
5 suppose, it's incumbent that we have an
6 opportunity to see that underlying data that the
7 Department was then using to make its calculation
8 in order to test the integrity or validity of
9 that data.

10 And that information was screened out,
11 and still has not been supplied to us, it puts us
12 in an even smaller box than we have been by way
13 of the order that's there. We're saying you can
14 only look at the data to see if it's good, or
15 valid, or has flaws. But we aren't going to let
16 you look at all of our calculations that were on
17 the spreadsheet, because that information is
18 blacked out.

19 So I guess how do we have due process,
20 and a full opportunity to scrutinize data when
21 the Department has not made all of that available
22 to look at to know there is a problem with it?
23 But certainly, cast doubt on the transparency and
24 integrity of the proceeding. That was the one
25 issue.

1 that as an offer of proof that --

2 I don't know how the Director will take
3 it. But again, we would object to it, because if
4 we can pack that record now, that's precisely
5 what we're not supposed to be doing. And then
6 however you want to handle that, you can make a
7 determination.

8 Regarding the first question of whether
9 the '08 data is in the spreadsheets, I think
10 Mr. Weaver can probably address that better than
11 anybody. But we understand that it is.

12 THE HEARING OFFICER: Well, I hate to
13 do it again. But, you know, it was my
14 understanding that the information was submitted.
15 Mr. Budge, this is the first I've heard, at
16 least, that there was some deficiency in that
17 submittal.

18 And I guess I would like to take
19 another recess, and have the folks get together,
20 and see what's out there and what's not. It
21 would have seemed to me that in that -- that
22 deficiency could have or should have been
23 identified to the Department before this hearing,
24 Mr. Budge.

25 MS. MCHUGH: We did.

1 THE HEARING OFFICER: And that the
2 parties could have identified it prior to this
3 time. But nonetheless, I want all to have an
4 opportunity to look at it.

5 MR. BUDGE: If I could approach, I
6 think I can -- let me provide.

7 MR. BROMLEY: Mr. Budge, if we could go
8 off the record quickly?

9 THE HEARING OFFICER: Yes, we can --

10 MR. BROMLEY: We can clear this up
11 pretty easily.

12 THE HEARING OFFICER: Let's go off the
13 record.

14 (Discussion held off the record.)

15 THE HEARING OFFICER: Where are we at
16 in the discussion, Mr. Budge?

17 MR. BUDGE: Mr. Spackman, we were under
18 the impression in looking at the data, that the
19 calculations of reasonable in-season demand for
20 the base years of 2006, 2008 have not been
21 provided to us, because they were blacked out.
22 And Mr. Weaver explained during the break, that
23 that calculation is not made.

24 So we thought the calculation was made,
25 and not provided. But he described that all the

1 the Hearing Officer can subsequently determine, I
2 suppose, what aspects he considered to be beyond
3 the scope, and not considered. And that
4 similarly would be an offer of proof along the
5 same lines of the two affidavits we would like to
6 have in the record.

7 MR. THOMPSON: Well --

8 THE HEARING OFFICER: I don't know
9 that --

10 Go ahead. Who wants to speak?

11 MR. THOMPSON: Yes.

12 THE HEARING OFFICER: Mr. Thompson.

13 MR. THOMPSON: This is Travis Thompson.

14 Just a point on the affidavits and the
15 deposition, if there is anything that doesn't go
16 to the reliability or the accuracy of the 2008
17 data, it shouldn't be in the record of this
18 proceeding. And the As Applied Order is a
19 different proceeding.

20 What Mr. Budge has asked for, I think
21 is improper given the record in front of the
22 district court that's been set. The fact that
23 we're just going to supplement the '08 data to
24 include into it affidavits, depositions, that go
25 to anything but the '08 data, shouldn't go in

1 raw data was, in fact, provided, and the
2 Department didn't make the calculation.

3 So I think we can address the issue
4 with Mr. Weaver on cross-examination.

5 THE HEARING OFFICER: Okay. All right.
6 Very good. And with respect to your other
7 expressed concern regarding the affidavits that
8 were filed. I think I'll wait to rule on that
9 particular issue. And let's wait and see where
10 the evidence goes.

11 MR. BUDGE: Okay. That's fine.

12 THE HEARING OFFICER: If that's okay,
13 Mr. Budge?

14 MR. BUDGE: As long as we're at that
15 same issue. The similar issue would be the
16 affidavit of Mr. Weaver, himself. He was
17 deposed -- excuse me, not affidavit -- the
18 deposition of Mr. Weaver was taken for purposes
19 of both orders.

20 And I think there are going to be
21 matters in there that may not be relevant to one
22 or the other proceedings given the scope of the
23 orders that have been entered into each.

24 And we would also request that that
25 deposition be made part of the record. And then

1 that record.

2 THE HEARING OFFICER: Okay. Well,
3 let's talk about the depositions specifically. I
4 have never viewed depositions as being
5 appropriately brought into the record, unless the
6 parties all agreed that it would replace the
7 testimony of a party, or that, you know, it be
8 substituted as pre-filed written testimony.

9 And my understanding of a deposition,
10 Mr. Budge, is that it's part of discovery. And
11 the intention of it is to explore and find
12 relevant testimony, or questions that might lead
13 to relevant testimony. And consequently, I think
14 there is a lot that might be in the deposition
15 that's not relevant to the scope of this hearing
16 today.

17 So I'll deny the motion for receiving
18 the deposition into evidence. If there are
19 particular parts of that deposition, either for
20 the Methodology Order or the As Applied Order
21 that you want to explore with Mr. Weaver, he
22 probably doesn't like me, but he'll be on the
23 stand available for questioning.

24 The other issue, I guess I'll just
25 address, that's come up again, and I'm sorry. I

1 didn't address it as part of my initial response,
 2 Mr. Budge.
 3 But you had argued that the methodology
 4 order in the As Applied Order ought to be merged
 5 together and combined as a single unit, so that
 6 there would be context in the review process.
 7 And honestly, I think that contextual
 8 assistance for a reviewing court would be very
 9 valuable. Unfortunately, I don't think I'm in a
 10 position right now to bring the two together,
 11 because they are on separate tracks.
 12 And Judge Melanson did not remand to
 13 me, in his limited remand, for me to include the
 14 2008 -- I'm sorry -- the 2010 application of the
 15 Methodology Order. And I view each of those to
 16 be separate in nature, because each year has to
 17 be addressed separate.
 18 Now, if there is a way for the parties
 19 to -- and I think it is up to the parties and the
 20 court to bring those together. There may be some
 21 opportunity out there. And I think we discussed
 22 the possibility of merging the two together. But
 23 I think that's something that the parties need to
 24 take up before the court, not before the
 25 Department.

1 related to the information. Okay?
 2 Other questions about procedure before
 3 we forge ahead?
 4 Okay. Mr. Weaver, if you'll come
 5 forward, please.
 6 MAT WEAVER,
 7 first duly sworn to tell the truth relating to
 8 said cause, testified as follows:
 9 THE HEARING OFFICER: And remember your
 10 first and last name, because you'll be asked.
 11 Mr. Bromley?
 12 MR. BROMLEY: Thank you, Hearing
 13 Officer.
 14 DIRECT EXAMINATION
 15 QUESTIONS BY MR. BROMLEY:
 16 Q. For the record, Chris Bromley on behalf
 17 of the Department of Water Resources.
 18 Mr. Weaver, would you please state and
 19 spell your name for the record.
 20 A. Mathew, M-a-t-h-e-w, Donald,
 21 D-o-n-a-l-d, Weaver, W-e-a-v-e-r.
 22 Q. And, Mr. Weaver, would you please
 23 generally describe your educational experience?
 24 A. I have a bachelor's of science in civil
 25 engineering, and I'm currently pursuing a master

1 I don't see that I have the ability to
 2 bring the two together right now. Because I
 3 think it would unduly delay the Methodology
 4 Order, and the opportunity for the Methodology
 5 Order to go up.
 6 The As Applied Order has not run its
 7 course. I mean, there is an As Applied Order out
 8 there. But certainly, it hasn't run the entire
 9 irrigation season. So I think it's up to the
 10 parties to determine whether in this entire
 11 process and in the appellate process, whether it
 12 would be advantageous, along with the court, to
 13 put the two together.
 14 Okay. Other issues people want to
 15 raise?
 16 Okay. As far as procedure, to bring
 17 the 2008 data into the record, I've asked Chris
 18 Bromley, Deputy Attorney General, to work with
 19 Mat Weaver in presenting that information. And
 20 then following the presentation of the data, then
 21 I'll allow all the parties to question Mr. Weaver
 22 on cross-examination.
 23 And then following the presentation of
 24 the data, then each of the parties will have the
 25 opportunity to present their own testimony

1 of science in hydrologic sciences.
 2 Q. And your bachelor of science, where did
 3 you obtain that degree from?
 4 A. Montana State University.
 5 Q. And master's?
 6 A. Boise State University.
 7 Q. Mr. Weaver, could you please generally
 8 describe your work background as it relates to
 9 what you are doing today?
 10 A. I graduated in 1997. And from 1997 to
 11 2007, I practiced civil engineering in the states
 12 of Texas and Idaho. And during that time, I
 13 practiced on a variety of water engineering
 14 projects. Following 2007, I was a research
 15 assistant at Boise State University for a year.
 16 And following that, I worked with the
 17 Department as a -- I guess, you could say -- a
 18 technical resource for the water allocations
 19 Bureau.
 20 Q. What's your position today?
 21 A. Staff engineer.
 22 Q. How long have you held that position?
 23 A. Going on two-and-a-half years.
 24 MR. BROMLEY: If I could approach?
 25 THE HEARING OFFICER: Sure.

1 (Exhibit 1 marked.)
 2 Q. (BY MR. BROMLEY) Okay. Mr. Weaver,
 3 I'm handing you what I've marked as IDWR Exhibit
 4 No. 1. Would you please identify Exhibit 1?
 5 A. This is the Methodology Order. It was
 6 developed over the course of the winter and the
 7 spring, and released, I believe, on April 7th.
 8 Q. Are you familiar with the Methodology
 9 Order?
 10 A. Yes, I am.
 11 Q. Would you please turn to page 7 of the
 12 Methodology Order?
 13 A. (Witness complying.)
 14 Q. And read Footnote 4?
 15 A. "The record established at hearing was
 16 current through the year 2007. Since that time,
 17 Water District 01 has finalized its accounting
 18 for the 2008 irrigation season; thereby making
 19 the use of 2008 data appropriate. Water District
 20 01 has not yet finalized its accounting for the
 21 2009 water irrigation season. For purposes of
 22 this order, the Director will specifically denote
 23 instances in which he uses 2008 data."
 24 Q. Mr. Weaver, I think you mentioned this
 25 order was issued in April. I was curious if you

1 A. Yes, it's a place on-line where the
 2 parties could go and download the information.
 3 Q. Mr. Weaver, I'm going to hand you what
 4 I will mark as IDWR Exhibit 2.
 5 (Exhibit 2 marked.)
 6 Q. (BY MR. BROMLEY) Would you please
 7 identify that exhibit?
 8 A. This exhibit is a CD that I prepared
 9 that was available via the FTP server.
 10 Q. And I think you said you prepared it?
 11 A. Yes.
 12 Q. So I assume then that you are familiar
 13 with the data in Exhibit 2?
 14 A. That's correct.
 15 Q. To the best of your knowledge, does
 16 Exhibit 2 consist of the data that was provided
 17 to the parties that you've just mentioned via the
 18 FTP server?
 19 A. Yes, it does.
 20 Q. To the best of your knowledge, does
 21 Exhibit 2 contain the data relied upon by the
 22 Department in the Methodology Order?
 23 A. Yes, it does.
 24 Q. Does Exhibit 2 contain the updated 2008
 25 information?

1 are aware, as of today, if Water District 1 has
 2 finalized its accounting data for 2009?
 3 A. I'm not aware of that.
 4 Q. Mr. Weaver, the Footnote 4 makes
 5 reference to data that was updated. I was
 6 wondering if you could generally describe the
 7 type of data that was updated?
 8 A. The data that was updated included:
 9 Climate data, such as precipitation; temperature;
 10 and growing degree days. It included
 11 evapotranspiration data, and it included
 12 diversion data.
 13 Q. And is it your understanding that the
 14 updates were made were to underlying data that
 15 were already in the record?
 16 A. Yeah, to amend existing data.
 17 Q. To update it with the '08 data?
 18 A. Yes.
 19 Q. Are you aware, Mr. Weaver, if the
 20 Department provided this information to the
 21 parties?
 22 A. Yes, we did. We provided it via FTP
 23 server to the parties.
 24 Q. And that's via the Department's
 25 computer system; is that what the FTP server is?

1 A. Yes.
 2 Q. Mr. Weaver, we had a discussion with
 3 Mr. Budge prior to the beginning of your
 4 testimony. Were you present for that discussion?
 5 A. I was.
 6 Q. Is it your understanding, again, that
 7 all raw data for 2006, 2008, and all other years
 8 that are on that disk, were provided to the
 9 parties?
 10 A. That's true, I believe that.
 11 Q. Mr. Weaver, I have up here on the
 12 screen -- and I will apologize to the parties,
 13 the Department did not have an opportunity to
 14 print this information on paper. The Department
 15 would certainly print this information on paper
 16 to make it part of the record that we need to
 17 move forward.
 18 But, Mr. Weaver, if you can please look
 19 on the screen. These are the files that makeup
 20 Exhibit 2; is that your understanding?
 21 A. It is, yes.
 22 Q. And "AgriMet ET Data," what is that?
 23 A. That's the file that houses all the raw
 24 data that was downloaded from the Bureau of
 25 Reclamation's AgriMet site, I guess, which has ET

1 data for the Twin Falls and the Rupert AgriMet
2 stations.

3 Q. And the "Crop Area Data"?

4 A. That's the file that has all the raw
5 data from NASS, which I believe stands for the
6 Natural Agriculture Statistic Service. And that
7 data basically allowed us to come up with crop
8 distributions to understand what the specific
9 crop area acreages were for the different
10 counties.

11 Q. "DS & RISD Calculator"?

12 A. So that's the spreadsheet that brings
13 all of the raw data together in its finalized
14 form, and actually runs through the calculations
15 of reasonable in-season demand and demand
16 shortfall for a series of example years.

17 Q. And does this DS & RISD Calculator,
18 does it do calculations for 2006 and 2008?

19 A. It does not.

20 Q. And why is that, Mr. Weaver?

21 A. We just did not feel that it was
22 appropriate, or I don't -- I shouldn't say, we
23 didn't feel it was appropriate. We just didn't
24 consider the need to run reasonable in-season
25 demand calculations for the years that we

1 A. Certainly.

2 Q. "Heise Natural Flow 1990 to 2008"?

3 A. Yes, that's a pretty descriptive title
4 there. That's just the diversion -- or the -- it
5 is what it is, the Heise natural flow data from
6 1990 to 2008.

7 Q. The "Methodology Outline," that's a
8 Word document?

9 A. It is. That's a document that I
10 prepared, and Liz Cresto also assisted in, that
11 we gave to a number of other people on staff to
12 do a peer review of our methodology. And the
13 intent of that document was that it would be
14 detailed enough that they could go through, get
15 the same numbers that we got, make the same
16 calculations that we made, and arrive at the same
17 end result.

18 Q. "Reservoir Percent Fill"?

19 A. That's a document that summarizes the
20 percent of fill for each of the entities in each
21 of the reservoirs for specific water rights.

22 Q. "Shortfall Timeline"?

23 A. That's a spreadsheet that was used to
24 derive one of the attachments in the Methodology
25 Order.

1 selected as a baseline year. We never explored
2 it. We simply just did not address it.

3 Q. Is there a reason why it wouldn't have
4 been addressed?

5 A. Well, I think initially, when we had a
6 single baseline year, we felt that it would be
7 pretty heavily biased to run a reasonable
8 in-season demand calculation from the same year
9 for which you selected your baseline. Or when it
10 got expanded, to be an average of 2006 and 2008,
11 I just don't remember ever revisiting the matter.

12 Q. Biased how?

13 A. I never did explore it, and run the
14 calculations. So I can't say. It just seemed on
15 the surface, there wasn't much use in running the
16 calculations to determine what the historical
17 diversion would be, when you are relying on that
18 year for the diversion.

19 Q. But again, all of the raw data for 2006
20 and 2008 is included in the data submittal on the
21 FTP site, which is now in IDWR Exhibit 2?

22 A. That's correct.

23 Q. And would it be your understanding,
24 that anyone with your engineering background
25 would be able to make those calculations?

1 Q. "SWC Diversions '90 through '08"?

2 A. That's the diversion records from 1990
3 to 2008 for each one of the individual Surface
4 Water Coalition members.

5 Q. "SWC Carryover, 1990 through 2008"?

6 A. That's the calculated carryover volumes
7 for each of the Surface Water Coalition members
8 for each of those years.

9 Q. "Total NF Versus Total DIV"?

10 A. Off the top of my head, I can't
11 remember what that spreadsheet addresses.

12 Q. Should I open it up, maybe that will
13 refresh your memory?

14 A. Can you click on the first half?

15 Q. (Mr. Bromley complying.)

16 A. I think this is just -- I'm not
17 familiar with this spreadsheet. I have not used
18 it, and I did not prepare it. I think it's just
19 a summary of the total diversions for Water
20 District 01, so that you can look at -- well, you
21 can look at hydrographs like this, and pick
22 analog years for assisting and predicting the
23 forecast supply in-season.

24 Q. Do you know who would have prepared
25 this?

1 A. Liz Cresto.
 2 Q. So if there were any specific questions
 3 then --
 4 A. She would be the best person to answer
 5 them.
 6 Q. I understand.
 7 MR. BROMLEY: I have nothing further,
 8 Mr. Weaver.
 9 THE HEARING OFFICER: Okay. Thank you.
 10 We haven't established an order of
 11 cross-examination. But I guess based on the
 12 structure here, it seems to me that Ground Water
 13 Users, City of Pocatello ought to proceed first,
 14 and then the Surface Water Coalition. Is that an
 15 acceptable order? Mr. Budge, Ms. Klahn, members
 16 of the Surface Water Coalition?
 17 Okay. Who wants to lead out?
 18 MR. BUDGE: Ms. Klahn will proceed, and
 19 then Candice McHugh will follow-up for the Ground
 20 Water Users.
 21 THE HEARING OFFICER: Thank you.
 22 Ms. Klahn?
 23 MS. KLAHN: Thank you.
 24 ///
 25 ///

1 A. That's correct.
 2 Q. And did you actually obtain that
 3 Department data set for precipitation, for
 4 example, from the record of the Surface Water
 5 Coalition and add to that?
 6 A. I believe so.
 7 Q. Don't you know?
 8 A. Off the top of my head, I don't have
 9 instant recall of that. In some instances, we
 10 couldn't reproduce the data from the record that
 11 had been handed down to us by people prior. And
 12 so we went with the numbers that we could get
 13 from the sources that were identified.
 14 In some instances, we were able to
 15 completely reproduce what was in the record. So
 16 it was simply amending to that, the 2008 data. I
 17 don't remember specifically for what data what
 18 process was used.
 19 Q. Is it your testimony that the various
 20 categories of 2008 data that you used in this
 21 matter were the same categories of data that were
 22 in the record prior to your beginning on this
 23 project?
 24 A. Can you repeat that one more time,
 25 please?

1 CROSS-EXAMINATION
 2 QUESTIONS BY MS. KLAHN:
 3 Q. Good morning, Mat. I'm Sarah Klahn.
 4 I'm here for the City of Pocatello.
 5 I wanted to ask you a couple of
 6 questions about the information Mr. Bromley went
 7 over with you.
 8 Do you have Exhibit 1 there?
 9 A. Yes, I do.
 10 Q. And in the course of discussing Exhibit
 11 1, Mr. Bromley asked you if 2008 data were used
 12 in the development of that; is that right?
 13 A. That's correct.
 14 Q. And I believe you listed a number of
 15 different kinds of 2008 data that you used. Do
 16 you recall that?
 17 A. I do.
 18 Q. Could you list those again, because I
 19 don't have the transcript in front of me. And
 20 you said, diversions, ET, precipitation. What
 21 else?
 22 A. Temperature and growing days.
 23 Q. And it's your testimony that these
 24 could be described as updates to underlying data;
 25 is that correct?

1 MS. KLAHN: Colleen, could you read it
 2 back?
 3 (The reporter read back the requested
 4 testimony.)
 5 THE WITNESS: I believe that's the
 6 case.
 7 Q. (BY MS. KLAHN) So you can't sit here
 8 today, and tell us what data you had when you
 9 started this, that you added the 2008 data to?
 10 A. Well, I guess I can. We had, as an
 11 example, a data set of ET that we added to. We
 12 had a data set of diversions which we added to.
 13 But there is an example of where there were
 14 slight differences in some of the diversions that
 15 we could not reproduce.
 16 And so we went with data that we could
 17 get from the water right accounting data in place
 18 of numbers for, say, as an example, I believe one
 19 is the North Side, Gooding crosscut diversion.
 20 The data that was in the record had not been
 21 corrected by one-and-a-half percent to represent
 22 the distance from the actual diversion of the
 23 river and the measuring point. So I believe
 24 that's one example where we updated with data.
 25 Q. So that would be an example of a change

1 to the data you used that was not previously in
2 the record; is that correct?

3 A. Yes. So the data category was in error
4 ET, but we updated the value with numbers we
5 could get.

6 Q. I think you may have misspoken. Did
7 you mean diversions?

8 A. I'm sorry. Diversions.

9 MR. FLETCHER: Excuse me, one second.
10 I just need to clarify. I know this is confusing
11 the way it is --

12 I thought the scope of this hearing was
13 limited to whether or not the 2008 data he used
14 was accurate? And if we're getting into why did
15 you use 2008 data, or what aspects of the 2008
16 data you used, and those things, I think that's
17 reserved for the next -- the Steps 3 and 4, the
18 application of Steps 3 and 4 hearing.

19 I'm just trying to clarify what the
20 purpose of the hearing is. I thought it was just
21 simply, as you pointed out at the very beginning,
22 is the 2008 data that was used accurate.

23 THE HEARING OFFICER: Well, that --

24 MR. FLETCHER: And these lines of
25 inquiry, I think can be opened up later in the

1 analysis of the RISD -- I'm just going to use the
2 initials, because I never remember what they
3 stand for -- RISD plus DS for 2006 and 2008. Do
4 you recall that testimony?

5 A. I do.

6 Q. And in order to understand your
7 statement, I want to ask you a few foundational
8 questions related to your experience. What kind
9 of training do you have in statistics,
10 Mr. Weaver?

11 A. I've taken several statistic courses in
12 undergraduate and my graduate studies.

13 Q. Have you done any ground water
14 modeling, Mr. Weaver?

15 A. Not outside of school.

16 Q. In school you ran a model?

17 A. Yes.

18 Q. Which one?

19 A. MODFLOW.

20 Q. Are you familiar with the term
21 "verification" as it's used for modeling?

22 A. For validation?

23 Q. Yes.

24 A. Yes.

25 Q. And would you agree, that if you had an

1 subsequent hearings that were supposed to happen
2 this proceeding. But I don't think they are
3 appropriate in this hearing if we're just dealing
4 with 2008 data.

5 THE HEARING OFFICER: So your statement
6 is a re-characterization of the -- or an accurate
7 statement of what I said, Mr. Fletcher. I'm not
8 sure I understand what it is that Ms. Klahn is
9 exploring with Mr. Weaver right now. And I
10 suspect that at least to some degree, these
11 questions are preliminary.

12 So at least right now, I'll overrule
13 the objection, but -- and I'll watch the
14 questioning as it proceeds. Ms. Klahn,
15 Mr. Fletcher.

16 Go ahead, Ms. Klahn.

17 MS. KLAHN: Okay. Thank you.

18 Q. (BY MS. KLAHN) So you actually changed
19 some of the data prior to 2008, by adding back in
20 one-and-a-half percent to reflect the distance
21 from the river to the measuring point in the
22 crosscut; is that right?

23 A. That's right.

24 Q. Okay. Mr. Weaver, you've testified
25 about the -- you didn't see a need to do an

1 average of two years that you thought was
2 representative, it would be a good validation to
3 run that in the context of this RISD plus DS to
4 see whether it validated the selection of these
5 two years?

6 MR. THOMPSON: I'll object to that line
7 of questioning.

8 THE HEARING OFFICER: Sustained. I
9 think this goes beyond whether the 2008 date is
10 accurate and reliable or not, Ms. Klahn.
11 Sustained.

12 MR. ARKOOSH: For the record, while
13 we're interrupted, Mr. Hearing Officer, I move to
14 strike the two questions regarding the change in
15 historical data as beyond the scope as well. I
16 think the initial figure, which is preliminary,
17 but it turns out, it was the purpose of the
18 questions.

19 THE HEARING OFFICER: Well --

20 MS. KLAHN: Just for my purposes, are
21 those questions proper in the subsequent hearing,
22 either set of questions? I mean, we just had a
23 recess in order to discuss the RISD verification
24 issue. So I'm curious about whether we'll be
25 foreclosed from questioning the witness about

1 that at any point?
2 THE HEARING OFFICER: I think there
3 will be an opportunity, at least a broader
4 opportunity in the second, in the As Applied
5 hearing for exploration.

6 With respect to the motion to strike,
7 I'll overrule that motion. I guess one of the
8 issues that I want to try to address is whether
9 we're consistently staying within the record.

10 And consequently, I don't want to
11 expand the examination significantly in that
12 area. As I explained before, this is a matter
13 that can be argued by the parties. And I termed
14 it a classic subject for appeal. But
15 nonetheless, I want to stay within the record
16 that was available, plus adding in the 2008.

17 Ms. Klahn?

18 MS. KLAHN: Well, then let me ask a
19 preliminary question then, Your Honor, because I
20 am pretty sure that this will draw an objection
21 from my good friends across the room.

22 All of my cross-examination questions
23 have begun by establishing the foundation that
24 Mr. Bromley asked about a particular area.
25 However, Mr. Bromley's questions were not limited

1 from the record. Thank you.

2 MR. ARKOOSH: For the record,
3 Mr. Hearing Officer, either Exhibit 1, nor
4 Exhibit 2 were admitted yet.

5 THE HEARING OFFICER: I recognize that.
6 There has not been a motion.

7 CROSS-EXAMINATION
8 QUESTIONS BY MS. McHUGH:

9 Q. My name is Candice McHugh, and I
10 represent IGWA and the ground water users. I
11 just have a couple of questions just to make sure
12 that I was clear as to what information you
13 updated with 2008 data.

14 And Ms. Klahn got into, I think, you
15 said the climate data, and temperature, and
16 growing days; is that correct?

17 A. Yes.

18 Q. Evapotranspiration?

19 A. Yes.

20 Q. And diversions?

21 A. Yes.

22 Q. Did you also update the data on
23 reservoir evaporation?

24 A. I believe so, yes.

25 Q. And is that contained in one of those

1 to whether the 2008 data was accurate.

2 Mr. Bromley's examination could more
3 broadly be characterized as sort of an
4 introductory way of putting Mr. Weaver on for
5 purposes of both hearings.

6 And this is precisely the due process
7 objecting that we have, is this kind of slicing
8 and dicing of issues, so that things can't be
9 dealt with in a logical fashion.

10 I would like to ask Mr. Bromley about
11 the methodology outline, which is contained on
12 the screen that Mr. Bromley went through with
13 Mr. Weaver. I think I said Mr. Bromley. I meant
14 to say, I want to ask Mr. Weaver about it.

15 I would submit -- I would admit, the
16 methodology outline doesn't have anything to do
17 with veracity of the 2008 data.

18 THE HEARING OFFICER: Okay. Perhaps we
19 should remove it from the record, Ms. Klahn?

20 MS. KLAHN: Okay. I would suggest that
21 then. I think Mr. Bromley's examination was far
22 broader than the veracity of the 2008 data. And
23 with that, I will reserve the remainder of my
24 questions for the As Applied hearing.

25 THE HEARING OFFICER: Let's remove it

1 spreadsheets or --

2 A. I believe the reservoir percent fill
3 spreadsheet has that data.

4 Q. Did you update the data for diversions
5 for hydropower use for any of the Surface Water
6 Coalition entities?

7 MR. THOMPSON: I'll object to that
8 question. I don't think that data set was
9 involved in the hearing, the diversions made for
10 hydropower use. There is no call on the
11 hydropower right in this case.

12 THE HEARING OFFICER: Overruled. I'll
13 let him answer the question.

14 THE WITNESS: The raw diversion data
15 was adjusted. In one of the adjustments, we've
16 used to get at -- well, let me back up.

17 It was adjusted because we wanted to
18 get into volume of water that represented
19 exclusively water that was put towards the
20 development of crops. So we made two adjustments
21 to get at that. One of the adjustments was for
22 recharge. And the other one was for wheeled
23 water diverted on behalf of another entity. So
24 if -- what you said the hydropower diversions
25 cannot be characterized as either of those two,

1 then we didn't address it.
 2 Q. (BY MS. McHUGH) And where did you get
 3 the updated 2008 data to take out to adjust the
 4 raw data for recharge? Who gave you that
 5 information?
 6 A. That's an answer that Ms. Cresto could
 7 best answer. I'm not sure.
 8 Q. Okay. Are those adjustments reflected
 9 in any of those documents on the screen there?
 10 A. They are.
 11 Q. And which document?
 12 A. The demand shortfall and reasonable
 13 in-season demand calculator document.
 14 Q. And in those documents, do they
 15 actually specifically say what was taken out for
 16 the adjustments?
 17 A. I believe they do, yes.
 18 Q. For the wheeled water, who gave you the
 19 data for the 2008 water that was wheeled by the
 20 Surface Water Coalition?
 21 A. I'm not sure.
 22 Q. Do any of those documents up on the
 23 screen contain the 2008 water for the wheeled
 24 water for the Surface Water Coalition entities?
 25 A. They do.

1 A. So we got the diversion data from the
 2 water rights accounting, and we came up with the
 3 volumes of water for each entity for each month
 4 that represented each of those two factors. And
 5 we subtracted the adjustments from the data for
 6 diversions from the water rights accounting to
 7 come up with the diversions that were used in the
 8 calculations. And that's summarized on a tab in
 9 the spreadsheet that I've been referring to DS &
 10 RISD Calculator.
 11 Q. The information regarding the
 12 diversions from these Surface Water Coalition
 13 entities, was that taken from the water rights
 14 accounting data from the prior record, or was
 15 that updated information as well?
 16 A. So specifically for 2008, the water
 17 rights accounting software had not been updated,
 18 and was not a part of the previous record. Does
 19 that answer your question?
 20 Q. In part. And so then is your answer
 21 that you used the water rights accounting data
 22 that was already in the prior proceeding, and you
 23 just updated the 2008 data?
 24 A. So we inherited a document that had the
 25 diversions for each of the entities that had been

1 Q. And which one is that?
 2 A. The one I just referenced, the demand
 3 shortfall and reasonable in-season demand
 4 calculator.
 5 Q. But you are not sure where you got the
 6 data?
 7 A. Well, I know that I got it from Liz.
 8 I'm not sure what the underlying source of that
 9 data was.
 10 Q. Now, is this -- my understanding is
 11 that that is what is related to your adjustment
 12 for the one percent conveyance adjustment. Am I
 13 on the right track there?
 14 A. No.
 15 Q. Can you explain that then?
 16 A. Explain what exactly?
 17 Q. Ms. Klahn was asking you about the one
 18 percent adjustment that you made. Is that -- are
 19 you tracking?
 20 A. I'm not. The one percent adjustment to
 21 what?
 22 Q. Okay. Never mind. Okay.
 23 When you made your adjustments for the
 24 recharge and wheeled water, how did you remove
 25 those amounts of water?

1 constructed from the water rights accounting
 2 software. And I went through, and did my own
 3 downloading of that data, and compared entity by
 4 entity, month by month to the data that was in
 5 the record. And we found some discrepancies.
 6 And those are the ones that I've
 7 alluded to, and we corrected those to where we
 8 discovered them. And I believe, it amounted to
 9 one-and-a-half percent on a certain diversion.
 10 Now, on North Side it's not the total
 11 of one-and-a-half percent, because they have
 12 multiple diversions. I believe the other entity
 13 was AFRD2. So where that discrepancy existed, we
 14 identified it, and we went with the data that we
 15 felt comfortable -- which I believe does not
 16 exactly match the data that was presented to the
 17 Director -- or at the hearing.
 18 Q. The inherited document that you just
 19 referred to, do you know whether it was part of
 20 the prior proceeding?
 21 A. It was certainly used in prior orders.
 22 Q. So is your answer, no?
 23 A. I guess my answer is, I don't know.
 24 Q. When you were updating the raw
 25 diversion data from the Surface Water Coalition

1 for 2008, did you make an adjustment for any
2 water that was released for flow augmentation?

3 A. I'm not sure what that term means,
4 "flow augmentation." Can you --

5 Q. Are you aware that water is released
6 from the Upper Snake River reservoirs for fish
7 flush or through the Bureau? Do you have any --

8 A. I am aware of that.

9 Q. Okay. And I'm referring to that flow
10 augmentation water.

11 A. Okay.

12 Q. Did you make any adjustments or
13 corrections to the 2008 data to adjust for that
14 for release of the flow augmentation water, if
15 any?

16 A. I'm not aware of how we adjusted that.

17 Q. Did you make any adjustments in the
18 2008 data for water that was leased by any of the
19 Surface Water Coalition entities to other users?

20 A. I'm not aware if we addressed that.

21 Q. I just want to clarify if I understand
22 how you removed the information. Did you remove
23 it on a monthly basis, or on an aggregate over
24 the season?

25 A. I don't recall off the top of my head.

1 And I don't honestly remember where that fell
2 out.

3 Q. (BY MS. McHUGH) Did you ask Twin Falls
4 Canal Company for that information?

5 A. Not that I'm aware of.

6 Q. Did you update the 2008 data or
7 information for the amount of acres that were
8 being irrigated within any of the Surface Water
9 Coalition entities' delivery boundaries?

10 A. So the total irrigated acre value that
11 was used in the calculations came directly out of
12 the hearing record.

13 Q. So you did not update it for 2008
14 information?

15 A. That's correct, not the irrigated area.

16 Q. Did you adjust the 2008 data to account
17 for what the Minidoka return flow credit was for
18 that year?

19 A. Not that I'm aware of.

20 Q. My recollection is that there were two
21 sets of irrigated acreage data in the record that
22 came out of the 2008 hearing. Do you know what
23 set of data you used to determine acreage?

24 A. I don't recall off the top of my head
25 what values we used. I believe it's well

1 We could open up the spreadsheet and determine
2 that. I thought it was monthly, but it's an easy
3 answer if we open up the document.

4 Q. I'm fine with it. You are wanting him
5 to open up the DS & RISD Calculator?

6 A. Yes.

7 (Mr. Bromley complying.)

8 THE WITNESS: In the second tab is
9 labeled "Demand." So it looks like it's monthly.

10 Q. (BY MS. McHUGH) Okay. In updating
11 your data, updating your information for the 2008
12 year, did you make any adjustments, or did you
13 review whether Twin Falls Canal Company delivered
14 five-eighths or three-quarters of an inch that
15 year?

16 MR. THOMPSON: I'll object.

17 THE WITNESS: I don't --

18 THE HEARING OFFICER: Just a minute.

19 Overruled.

20 Mr. Weaver, go ahead and answer the
21 question.

22 THE WITNESS: I don't recall that we
23 evaluated that year on that basis. We did have
24 some discussion of whether it was five-eighths of
25 an inch or three-quarters of an inch that year.

1 detailed and referenced in the documents that
2 were provided. As I recall, a number of them
3 were based off the Director's report. But some
4 of them had been modified based on findings in
5 the record. I don't have much more recollection
6 than that.

7 Q. Are you aware of the mitigation plan
8 submitted by the Southwest Irrigation District?

9 A. I guess I'm aware of it, yes.

10 Q. Okay. Are you aware of the sources of
11 water that are set forth in the Southwest
12 Irrigation District mitigation plan?

13 A. I'm not --

14 MR. THOMPSON: Objection to the
15 question. The Southwest Irrigation District is
16 not a part of this proceeding.

17 THE HEARING OFFICER: Explain the
18 relevance.

19 MS. McHUGH: I want to ask whether -- I
20 just want to lay a foundation on whether any
21 adjustments to the updated 2008 data was
22 considered at least through the water to the
23 Southwest Irrigation District. Because in
24 Southwest Irrigation District mitigation plan
25 sets for the Twin Falls Canal Company, Burley

1 Irrigation District as sources of leased water
2 for their plan. And I believe they leased water
3 in 2008. I'm just asking him if -- I'm just
4 laying that foundation.

5 MR. FLETCHER: That question has been
6 asked and answered, so I would object on those
7 grounds as well. And he has already answered
8 that there was no adjustment for leases according
9 to his testimony.

10 MR. THOMPSON: Yes, and I --

11 THE HEARING OFFICER: Well, and I guess
12 the other question I have, Ms. McHugh, is what
13 mitigation plan are you referring to?

14 MS. McHUGH: The Southwest Irrigation
15 District mitigation plan, and all I am aware of
16 actually, that was filed with the Blue Lakes
17 order.

18 THE HEARING OFFICER: So it wasn't
19 filed for this particular manner anyway; correct?

20 MS. McHUGH: Right. But it includes
21 the entities that are claiming shortage that
22 their leases. And I thought it might help
23 refresh his memory, if he didn't remember if
24 there was any adjustments to leases, since they
25 are specifically set out in that plan.

1 what's marked as Exhibit 100. This is the
2 document that we had passed out previously to all
3 the parties. I believe it's a partial printout
4 of this spreadsheet that is titled "DS & RISD
5 Calculator." Does that comport with
6 your -- would you agree with that?

7 A. I do, yes. It's one of the tasks.

8 Q. Okay. And this is just a follow-up on
9 some questions Ms. Klahn had asked. If you look
10 to the very back page of that.

11 A. (Witness complying.)

12 Q. I'll represent to you that this
13 spreadsheet has in it a file that says, "Read
14 Me." Do you recall that?

15 A. Yes.

16 Q. And this is the text that is associated
17 with the "Read Me" file. Does that look like
18 it's accurate?

19 A. I think so, yes.

20 MS. McHUGH: I would request Exhibit
21 100 be admitted with the back page, because I
22 believe the DS & RISD Calculator in the
23 spreadsheet itself, that the comment isn't
24 necessarily present unless you click on it. So I
25 wanted to have this admitted for that purpose.

1 THE HEARING OFFICER: Objection
2 sustained.

3 MS. McHUGH: Okay.

4 Q. (BY MS. McHUGH) I'm going to go back
5 to the adjustments that you stated you made for
6 the wheeled water that -- where the Surface Water
7 Coalition's entities were wheeling water for
8 another entity.

9 Are the adjustments you made for
10 wheeled water part of your application of Steps 3
11 and 4, or part of the Methodology Order?

12 A. Step 3 relies on our baseline year
13 diversion to calculate demand shortfall. And we
14 adjusted the diversions in our baseline year
15 based on wheeled water and in-season recharge.

16 Q. So in other words, the answer to my
17 question is: The adjustments that you made for
18 wheeled water are part of the application of
19 Steps 3 and 4; is that fair?

20 A. I think that's fair.

21 MS. McHUGH: May I approach the
22 witness?

23 THE HEARING OFFICER: Sure.
24 (Exhibit 100 marked.)

25 Q. (BY MS. McHUGH) I'm going to hand you

1 So that the comments are actually included.

2 THE HEARING OFFICER: Any objections?

3 MR. ARKOOSH: There was a previous
4 objection to comments on methodology that wasn't
5 data, which was sustained, actually removed from
6 the record. The objection was by, I think,
7 Pocatello. I don't recall.

8 MS. KLAHN: I haven't made any
9 objections.

10 MS. McHUGH: If you look at the
11 comment, this specifically refers to the 2006,
12 2008 data, and that the calculation for the
13 baseline years using the 2008, 2006 data average
14 wasn't done. This just gives context to the
15 questions that were asked. And I think it just
16 makes it so that the actual spreadsheet is
17 complete in the record.

18 MR. ARKOOSH: I don't object for that
19 purpose. As to the purpose so far as it reflects
20 on other years, I would object.

21 THE HEARING OFFICER: The document is
22 received into evidence.

23 (Exhibit 100 admitted into evidence.)

24 Q. (BY MS. McHUGH) Mr. Weaver, could you
25 look at Exhibit 1, which is the Methodology

1 Order?

2 A. (Witness complying.)

3 Q. And could you turn to the location in
4 the Methodology Order where it says that
5 adjustments, such as wheeled water, recharge
6 water, that kind of thing, where that will be
7 made, where that's called for?

8 A. I'm on page 16, paragraph 43. It says,
9 "Raw monthly diversion values will then be
10 adjusted to remove any water diversions that
11 could be identified not directly support the
12 beneficial use of crop development within the
13 irrigation entity. Examples of adjustments
14 include the removal of diversions associated with
15 in-season recharge, and diversion of irrigation
16 water on behalf of another irrigation entity."

17 Q. And the only adjustments or updates to
18 the 2008 data that you made actually were
19 adjusted to the two examples, but not to the
20 other categories that I just questioned you
21 about; correct?

22 A. That's right.

23 MS. McHUGH: I don't have anything
24 further.

25 THE HEARING OFFICER: Okay. Thank you,

1 have not yet been offered.

2 MR. BROMLEY: Right. And now that
3 we're done with questioning, I would move to
4 admit Exhibit 1, which is the Methodology Order.

5 And then as for Exhibit 2, we had a
6 discussion about the Word document methodology
7 outline, that that would be removed. And I do
8 have questions about whether or not there is
9 anything else that ought to then be removed from
10 what we identified as Exhibit 2?

11 THE HEARING OFFICER: Well --

12 MR. BROMLEY: And maybe that's best
13 done off the record, and we'll come back on
14 before the other proceeding.

15 THE HEARING OFFICER: Why don't we take
16 a brief recess of about 10 minutes, and have a
17 brief discussion with the parties, and then come
18 back. And let's identify what needs to be
19 removed, or should remain, or should not remain
20 as part of Exhibit 2.

21 We'll take ten minutes. Thanks.

22 (Witness excused.)

23 (A recess was had.)

24 THE HEARING OFFICER: Let's go back on
25 the record.

1 Ms. McHugh.

2 Okay. Cross-examination, what order do
3 we want to go in? Surface Water Coalition, any
4 preference?

5 MR. FLETCHER: I'm a little hesitant.
6 The question I have deals with this baseline data
7 that they keep asking about, which really has
8 nothing to do with the 2008 issue. I guess I
9 have a problem. So I don't have any questions.

10 THE HEARING OFFICER: Okay,
11 Mr. Arkoosh?

12 MR. ARKOOSH: I have no
13 cross-examination.

14 THE HEARING OFFICER: Okay.

15 MR. SIMPSON: Can we have just a
16 moment?

17 THE HEARING OFFICER: Yes.
18 (Pause in the proceeding.)

19 MR. SIMPSON: No questions.

20 THE HEARING OFFICER: Okay.

21 Mr. Bromley?

22 MR. BROMLEY: I have nothing further,
23 Your Honor.

24 THE HEARING OFFICER: And I will remind
25 you that the two documents that have been marked,

1 Mr. Bromley?

2 MR. BROMLEY: Mr. Hearing Officer, it's
3 my understanding based on the discussion that
4 we've just had off the record, is what we will do
5 with Exhibit 2, is we will remove the Word
6 document methodology outline. And then all the
7 other Excel documents will remain in the exhibit.

8 The Department will prepare an amended
9 Exhibit 2 for the record that has all the
10 information, other than the methodology outline
11 word documents.

12 In talking with the parties, the
13 parties are fine with the idea of simply having
14 it as a disk as opposed to paper. The difficulty
15 in printing these Excel spreadsheets would be
16 getting the paper properly paginated, getting the
17 data properly paginated, so it would be in a
18 readable document. And the parties are okay with
19 the idea of just having this simply as a disk.

20 So the Department will prepare a disk
21 that removes the methodology outline document,
22 and that would then be Exhibit 2.

23 THE HEARING OFFICER: So you are
24 offering Exhibit 2 into evidence with the stated
25 amendments?

1 MR. BROMLEY: Yes, sir.
 2 THE HEARING OFFICER: Okay. Any
 3 objection from the parties?
 4 MS. McHUGH: No objection.
 5 MS. KLAHN: No.
 6 THE HEARING OFFICER: Thanks to
 7 everyone for your help in working through the
 8 changes in Exhibit No. 2. That's received into
 9 evidence.
 10 (Exhibits 1 and 2 admitted into
 11 evidence.)
 12 THE HEARING OFFICER: And where do we
 13 want to go here now, Mr. Bromley, with respect
 14 to --
 15 MR. BROMLEY: Mr. Hearing Officer, it's
 16 my understanding that the Ground Water Users
 17 and/or the City of Pocatello have some interest
 18 in a few questions with Ms. Elizabeth Weaver.
 19 MS. McHUGH: Cresto, Elizabeth Cresto.
 20 MR. BROMLEY: I'm sorry. You guys
 21 aren't married now? I could have sworn you guys
 22 got married at some point. No.
 23 Liz Cresto, and I would just simply
 24 provide her background information, and to use
 25 Mr. Budge's phrase, tender her for

1 cross-examination.
 2 THE HEARING OFFICER: Do we want to do
 3 that right now then? So you've finished with
 4 your presentation of evidence?
 5 MR. BROMLEY: That's correct.
 6 THE HEARING OFFICER: Okay. So at this
 7 juncture then, I would turn to the Ground Water
 8 Users, City of Pocatello, and ask you to call
 9 your witnesses in the order that you choose to
 10 proceed.
 11 Ms. Klahn, do you want to follow, or,
 12 Mr. Budge, Ms. McHugh, in the same order that we
 13 had previously?
 14 MS. KLAHN: We can keep the same order.
 15 But the City of Pocatello does not have any
 16 witnesses to call for the 2008 hearing.
 17 THE HEARING OFFICER: All right. Thank
 18 you.
 19 Ms. McHugh?
 20 MS. McHUGH: Yes, and the Ground Water
 21 Users would call Liz Cresto.
 22 THE HEARING OFFICER: Okay.
 23 Ms. Cresto, if you would come forward, please.
 24 ///
 25 ///

1 ELIZABETH CRESTO,
 2 first duly sworn to tell the truth relating to
 3 said cause, testified as follows:
 4 THE HEARING OFFICER: Ms. McHugh.
 5 DIRECT EXAMINATION
 6 QUESTIONS BY MS. McHUGH:
 7 Q. Good morning, Liz. My name is Candice
 8 McHugh. I represent the ground water districts.
 9 Is it all right if I call you Liz?
 10 A. Yes.
 11 Q. Could you briefly state what your
 12 background is and your position with the
 13 Department?
 14 THE HEARING OFFICER: Why don't we get
 15 her name for the record.
 16 THE WITNESS: My name is Elizabeth,
 17 E-l-i-z-a-b-e-t-h, Ann, A-n-n, Cresto,
 18 C-r-e-s-t-o.
 19 THE HEARING OFFICER: Okay. Thank you.
 20 Proceed, Ms. McHugh.
 21 Q. (BY MS. McHUGH) Could I get your
 22 general background, and your current position
 23 with the Department?
 24 A. I have a bachelor's of science degree
 25 from Virginia Tech University, and I have a

1 master's of science in hydrology from the
 2 University of Arizona.
 3 I started working here soon after grad
 4 school in 2004. And I started as a hydrologist
 5 in the planning section. In 2005, I moved over
 6 into the hydrology section, and have been then
 7 working as a hydrologist. My primary focus has
 8 been on surface water, and on the water rights
 9 accounting programs.
 10 Q. And do you work with Mr. Weaver?
 11 A. Yes.
 12 Q. Do you supervise Mr. Weaver?
 13 A. No.
 14 Q. You are colleagues?
 15 A. Coworkers, yes.
 16 Q. Okay. Are you familiar with the
 17 information and data in the Excel spreadsheets on
 18 Exhibit 2?
 19 A. Yes.
 20 Q. Just a preliminary question that I
 21 wanted to ask you, and I may have misheard
 22 Mr. Weaver speak. But currently is the
 23 Department updating its Water District 1
 24 accounting software?
 25 A. They are, but it's not being used.

1 Q. It's not?
 2 A. No.
 3 Q. Were you part of the peer review
 4 process that Mr. Weaver -- were you here for
 5 Mr. Weaver's testimony?
 6 A. Yes.
 7 Q. Were you one of the people who was part
 8 of the peer review process that he spoke to
 9 earlier?
 10 A. Yes.
 11 Q. Now, I understand that the Department
 12 used some updated 2008 data in the Methodology
 13 Order?
 14 A. Correct.
 15 Q. As part of that, did you, or do you
 16 know of anyone at the Department, that adjusted
 17 the 2008 data that was used to take out reservoir
 18 evaporation?
 19 A. That's in the reservoir percent fill.
 20 Q. Spreadsheet?
 21 A. Spreadsheet.
 22 Q. And if we were to open that reservoir
 23 percent spreadsheet, would you be able to explain
 24 to us how you took that evaporation out?
 25 A. I think it comes straight from the

1 A. I think that's just the sum of the
 2 evaporation taken out from each reservoir from
 3 the storage reports, and it matches what's in the
 4 storage report as to the total evaporation for
 5 each year. So it's based on the entire Upper
 6 Snake system, that number.
 7 Q. Okay. I guess what I'm just trying to
 8 understand for our purposes, is my understanding
 9 is that the Department's position is that
 10 evaporation from the storage reservoirs is taken
 11 out, or that's the intention, to be taken out.
 12 But we're having a tough time connecting how that
 13 happened. So I'm trying to ask you --
 14 A. Where that is.
 15 Q. Where that is. How we could figure
 16 that out.
 17 A. You know, it would really be in
 18 the -- I'm trying to think. Try going to the
 19 calcs. Can you scroll the other direction?
 20 I think it's in that yield, because
 21 that's how much they were allocated each year.
 22 So, you know, it's just taken straight from the
 23 storage reports, how much that they have
 24 available at the beginning of the season.
 25 Q. So you --

1 storage reports.
 2 Q. Okay. Could we open that spreadsheet?
 3 (Mr. Bromley complying.)
 4 Q. (BY MS. McHUGH) And this spreadsheet
 5 is titled "Reservoir Percent Fill." And can you
 6 tell me what data is in this spreadsheet?
 7 A. Go to "P Avail," the one spreadsheet to
 8 the left. So can you scroll all the way to the
 9 left.
 10 So this comes from the first page on
 11 the storage report, and column A is actually the
 12 year. I don't think the column is wide enough to
 13 see it right there, but -- so it has each
 14 reservoirs. So that's B through I is the fill.
 15 The yield comes right out of that first page of
 16 the storage report.
 17 And then keep scrolling back over. And
 18 then we have a percent available, and the total
 19 evaporation summarized. So it comes straight
 20 from the storage report.
 21 Q. Okay. And just so I'm understanding
 22 how the 2008 data was adjusted to take out
 23 evaporation. Would you have taken out Column B,
 24 which is titled "Total Evaporation," or can you
 25 explain that?

1 A. And that's a function of how much
 2 evaporation was taken out in the storage reports.
 3 Q. So you didn't actually do a calculation
 4 to take out evaporation? Your assumption was
 5 that it was already taken out of the storage
 6 reports?
 7 A. Yes, it's already in the data in the
 8 storage program. So that's -- you know, I don't
 9 have to do a calculation, because Water District
 10 01 does it through their accounting process. So
 11 you just take that -- their data.
 12 Q. And is that considered raw data, or is
 13 that considered adjusted raw data?
 14 A. I'm not sure.
 15 Q. Okay.
 16 A. I mean, it's the data source.
 17 Q. So in order for to us figure out how
 18 evaporation was taken out, it's not necessarily
 19 accurate to look at the raw data? There is some
 20 adjustments that you use based on the storage
 21 report?
 22 A. No, I would say, I used the storage
 23 report values. That was my source, data source.
 24 Q. Okay.
 25 A. I did not contradict what they said

1 there.
 2 Q. Okay. And can you tell me the
 3 difference between the fill and yield? And I
 4 think that was on the "P Avail" tab on the
 5 bottom.
 6 A. You want fill and yield. I'm trying to
 7 not misspeak. Okay. I think the fill is the
 8 total reservoir fill, and then the yield is less
 9 evaporation.
 10 Q. And who and where at District 1 makes
 11 the calculation that would take out the
 12 evaporation?
 13 A. I'm assuming it would be Tony
 14 Olenichak, and that was in the storage reports.
 15 Q. And was Mr. Olenichak part of that peer
 16 review within the Department?
 17 A. He was definitely consulted, but I
 18 don't think he was consulted on this matter.
 19 MS. McHUGH: Okay. We can leave that
 20 spreadsheet. The next document on Exhibit 2 I
 21 would like to just ask her a couple of questions
 22 on, was the crop data spreadsheet. I'm just
 23 wanting to understand a couple numbers there.
 24 If you could scroll over to the right,
 25 Chris.

1 overruled right now. Let's see where the
 2 question goes. I'm uncertain where we're headed.
 3 Q. (BY MS. McHUGH) So it looks like this
 4 information was possibly updated by a B. Kramber
 5 on January 13th, 2010?
 6 A. Correct.
 7 Q. So is he the person that gets to tell
 8 us what those acreage totals might mean?
 9 A. I believe Mat Weaver worked closely
 10 with Bill, and has a better knowledge of his
 11 background of this data.
 12 Q. Are you familiar with the water right
 13 for Twin Falls Canal Company?
 14 MR. THOMPSON: Objection; relevance in
 15 this proceeding.
 16 THE HEARING OFFICER: Yes. What's the
 17 purpose of the inquiry, Ms. McHugh?
 18 MS. McHUGH: Well, my understanding is
 19 that the Department uses, or provided this
 20 information for the record for the Methodology
 21 Order that contains irrigated acres per
 22 irrigation district or canal company. And I'm
 23 trying to explore how it relates, if at all, to
 24 the water right to each of the irrigation
 25 districts to how it was updated or not, so we

1 (Mr. Bromley complying.)
 2 Q. (BY MS. McHUGH) If you look at Table 2
 3 there, Liz. Are you familiar with this
 4 spreadsheet?
 5 A. I am.
 6 Q. It says, "Irrigation district breakdown
 7 of surface water irrigated area per county." And
 8 if you look at Twin Falls Canal Company, and you
 9 scroll over. Underneath there, you see a number
 10 of acres, and it says, "281,445 acres." What's
 11 your understanding of what that number
 12 represents?
 13 A. I'm not really sure. I did not develop
 14 this spreadsheet, and I'm not as familiar with
 15 this set of data. I would have to refer back to
 16 the title at the head of the table.
 17 MS. McHUGH: And then if you make it a
 18 little bit over to the left, Chris.
 19 (Mr. Bromley complying.)
 20 Q. (BY MS. McHUGH) Do you see the
 21 footnote there? Does that help at all?
 22 MR. ARKOOSH: Well, I would object on
 23 lack of foundation. She's indicated she's not
 24 the person who knows about this.
 25 THE HEARING OFFICER: At least

1 could make that.
 2 MR. THOMPSON: I believe Mr. Weaver
 3 already testified to that question, Your Honor.
 4 THE HEARING OFFICER: Okay. I'll
 5 overrule. If there is some possibility of
 6 relating the water rights to this particular
 7 data, if that's for your inquiry, Ms. McHugh.
 8 Overruled.
 9 Ms. Cresto, do you recall the question?
 10 THE WITNESS: Could you repeat it?
 11 Q. (BY MS. McHUGH) Are you familiar with
 12 the water right for Twin Falls Canal Company?
 13 A. Yes.
 14 Q. Do you know how many acres there are?
 15 A. I'm not that familiar, so, no.
 16 Q. All right. And do you know how this
 17 data in this spreadsheet was used in the
 18 Methodology Order, or was intended to be used?
 19 A. It would be used as a part of the crop
 20 water need. You need to know how many irrigated
 21 acres. There are mid season updates of those.
 22 MS. McHUGH: Okay. I don't have
 23 anything further. Thank you.
 24 THE HEARING OFFICER: Okay. Surface
 25 Water Coalition questions for Ms. Cresto?

1 MR. ARKOOSH: No questions, I don't
 2 believe.
 3 THE HEARING OFFICER: Okay.
 4 Mr. Thompson?
 5 MR. THOMPSON: I don't think so.
 6 THE HEARING OFFICER: Okay. Thank you,
 7 Ms. Cresto.
 8 (Witness excused.)
 9 THE HEARING OFFICER: Okay. The next
 10 witness, the City of Pocatello or Ground Water
 11 Users?
 12 MR. BUDGE: We would call Dr. Brendecke
 13 to be sworn.
 14 Can we take a five minute break and
 15 proceed with this witness, please?
 16 THE HEARING OFFICER: Yes.
 17 (A recess was had.)
 18 THE HEARING OFFICER: We're recording
 19 again. And Dr. Brendecke has come forward. And
 20 if you raise your right hand, please.
 21 CHARLES BRENDECKE, Ph.D.,
 22 first duly sworn to tell the truth relating to
 23 said cause, testified as follows:
 24 THE HEARING OFFICER: Mr. Budge?
 25 DIRECT EXAMINATION

1 engineering from the University of Colorado, and
 2 a master's degree in civil engineering, master of
 3 science in civil engineering from Stanford
 4 University, and a Doctor of philosophy degree in
 5 civil engineering from Stanford University.
 6 Q. Dr. Brendecke, have you previously
 7 filed an affidavit with the Department in the
 8 matter of the Surface Water Coalition call that's
 9 sets forth in greater detail your professional
 10 experience?
 11 A. Yes, I did.
 12 Q. Have you had an opportunity to review
 13 the recent Methodology Order in this proceeding,
 14 Exhibit 1 --
 15 A. Yes.
 16 Q. -- as well as the subsequent As Applied
 17 Order?
 18 A. Yes, I did.
 19 Q. And did you participate in the
 20 preparation of the Ground Water Users' petition
 21 for reconsiderations, and the supplements and
 22 amendments to that document?
 23 A. Yes, I did.
 24 Q. Have you had an opportunity to examine
 25 the 2008 data, which is at issue in these

1 QUESTIONS BY MR. BUDGE:
 2 Q. Thank you. Dr. Brendecke, state your
 3 full name, and business address for the record.
 4 A. My name is Charles M. Brendecke,
 5 B-r-e-n-d-e-c-k-e. My business address is 1002
 6 Walnut Street, Suite 200, Boulder, Colorado
 7 80302.
 8 Q. And you are appearing as a witness on
 9 behalf of the Idaho Ground Water Appropriators
 10 and the Ground Water Districts?
 11 A. Yes, I am.
 12 Q. And you have also testified on their
 13 behalf in other proceedings before the
 14 Department, including the delivery calls of the
 15 Clear Springs, and Blue Lakes, and the Thousand
 16 Springs area, as well as in the Surface Water
 17 Coalition proceeding?
 18 A. Yes, I did.
 19 Q. And are you the lead technical
 20 consultant for IGWA and the Ground Water
 21 Districts?
 22 A. That's correct.
 23 Q. Would you just briefly summarize your
 24 educational background?
 25 A. I have a bachelor of science in civil

1 proceedings?
 2 A. Yes.
 3 Q. Do you have any comments or issues with
 4 respect to the use of the 2008 data?
 5 A. I have some concerns about adjustments
 6 that were made to the data in the calculations.
 7 Q. As far as the raw data itself, do you
 8 have any reason to question the raw data?
 9 A. I don't have reason to question the
 10 underlying raw data, no.
 11 Q. Do you have in front of you still
 12 Exhibit 1, which is the Methodology Order?
 13 A. I do.
 14 Q. Would you please turn to page 16,
 15 Finding of Fact 43?
 16 A. (Witness complying.)
 17 Q. In that particular finding, it starts
 18 out with the question that, monthly irrigation
 19 entity diversions would be obtained from Water
 20 District 01's diversion records.
 21 And it then goes on to say, "Raw
 22 monthly diversion values will then be adjusted to
 23 remove any water diversions that can be
 24 identified to not directly support the beneficial
 25 use of crop development within the irrigation

1 entity."
 2 What's your general understanding of
 3 the purpose of such an adjustment?
 4 MR. THOMPSON: I guess I'll object to
 5 the question. I think the scope of the hearing
 6 is whether the 2008 data was reliable or
 7 accurate, what the adjustments were made, and why
 8 they were made. And I think that goes beyond the
 9 scope of the testimony of the witness.
 10 THE HEARING OFFICER: Overruled at this
 11 point, because I think the question is
 12 preliminary. I want to know whether there were
 13 adjustments to the 2008 data. So I think that's
 14 possibly where the question is headed.
 15 Mr. Budge or Mr. Brendecke?
 16 Q. (BY MR. BUDGE) Would you like me to
 17 repeat that question?
 18 A. Yes.
 19 Q. The language here in Finding of Fact 43
 20 indicates that there will be some adjustments to
 21 the raw monthly diversion value. And it says,
 22 quote, "to remove any water diversions that can
 23 be identified to not directly support the
 24 beneficial use of crop development within the
 25 irrigation entity."

1 limited to the '08 numbers, or is this as to the
 2 methodology in general?
 3 I'm going to object to the question as
 4 ambiguous. It could have relevance to the
 5 Methodology Order. It could be limited to the
 6 '08 hearing.
 7 MR. BUDGE: We're relating to
 8 adjustments to the 2008 data Mr. Weaver said he
 9 did and did not make. And I intend to ask this
 10 witness further about those same things he did,
 11 whether he agrees or disagrees.
 12 THE HEARING OFFICER: Overruled.
 13 Q. (BY MR. BUDGE) The question then is:
 14 Mr. Weaver had testified about the hydropower
 15 adjustments. In other words, he testified that
 16 if an entity, such as Twin Falls Canal Company
 17 were diverting water, for example, early in the
 18 irrigation season, or late in the irrigation
 19 season beyond what was needed to raise crops,
 20 that would require -- or would it require some
 21 type of an adjustment if we're going to comply
 22 with of Finding 43, that says, let's separate out
 23 water that goes for crop production and water for
 24 some other purpose?
 25 A. Yes, I believe it should.

1 And I'm not asking you to give a legal
 2 interpretation of the order. Just what is your
 3 understanding of the nature and purpose of the
 4 adjustments that would have to be made to the raw
 5 diversion data?
 6 A. I believe the reason for making
 7 adjustments is so that the diversion that is used
 8 for determining shortages, the diversion, the
 9 baseline, for example, most accurately just
 10 reflects water that was diverted for crop needs
 11 and not for other purposes.
 12 Q. Were you present during the hearing
 13 earlier today when Mr. Mat Weaver testified
 14 regarding various adjustments that he did and did
 15 not make under this Finding of Fact 43?
 16 A. Yes.
 17 Q. And I wanted to ask you some questions
 18 regarding his testimony in those specific
 19 adjustments. First of all, if I correctly recall
 20 his testimony, he did not make any adjustments
 21 for hydropower production diversions that may
 22 have been made by a Surface Water Coalition
 23 entity. Do you recall that testimony?
 24 MR. ARKOOSH: For the record, is this
 25 limited -- may I inquire, Mr. Director, is this

1 MR. THOMPSON: Your Honor, I'll lodge
 2 an objection. Again, I think the question of
 3 whether this adjustment was or wasn't made, we
 4 don't need Dr. Brendecke to testify to that.
 5 Mr. Weaver already answered that question this
 6 morning. This is simply testimony in an attempt
 7 to get into evidence the facts of finding.
 8 THE HEARING OFFICER: Okay. Overruled.
 9 I'll allow some more preliminary examination
 10 exploration on this subject.
 11 MR. ARKOOSH: As long as you are
 12 interrupted, Mr. Director, I would object that
 13 we're not reflecting the record accurately. But
 14 that's for you to decide ultimately. But that
 15 would be my objection.
 16 THE HEARING OFFICER: Okay. Thanks.
 17 Overruled.
 18 Mr. Budge?
 19 Q. (BY MR. BUDGE) You can go ahead and
 20 answer the question, which is whether you believe
 21 the adjustments should be made for water diverted
 22 for hydropower purposes?
 23 MR. ARKOOSH: I'll object. I would
 24 lodge the same objection. That's not as of the
 25 '08 year. That's whether there should be

1 adjustments made.

2 MR. BUDGE: All of the questions are
3 made for purposes of the 2008 data. And I'll
4 include that in my question. If I don't, that's
5 what I would propose.

6 THE HEARING OFFICER: Thank you.
7 Proceed.

8 THE WITNESS: I believe that
9 adjustments should be made to remove diversions
10 that might have been made for hydropower
11 purposes, because they were not serving crop
12 needs.

13 Q. (BY MR. BUDGE) For purposes of the
14 2008 data, which you examined, do you believe
15 that adjustments should be made for water that
16 would be wasted or passed through the system in
17 excess of what would be necessary for crop
18 development within the individual entity?

19 A. I think that's what this finding calls
20 for. It calls for a determination of what's
21 being diverted for crop needs. If there is water
22 diverted that should be adjusted out.

23 Q. Was that an adjustment that was not
24 made?

25 A. It doesn't appear to have been -- or no

1 will, or the cat let out of the bag, when
2 Mr. Weaver was allowed to put in Exhibit 2 with
3 all of this data and information. And then he
4 proceeded to testify about some adjustments he
5 made, and some adjustments he didn't make. And
6 some he could explain how he made, and some he
7 could not.

8 So once the Department's own witness
9 testified without objection about adjustments
10 made or not made, it would seem that this
11 witness, our witness should be able to say, I
12 agree with an adjustment or disagree.

13 THE HEARING OFFICER: And if there are
14 adjustments that have been made to the 2008 data
15 beyond the raw data, then I think those areas of
16 examination exploration are legitimate,
17 acceptable.

18 MR. ARKOOSH: For the record,
19 Mr. Director, all of those questions were asked
20 by the other party. Now, we may not have
21 objected to it, but they are not developing a
22 record on the basis of what the adverse party
23 brought into this hearing.

24 They were allowed to probably go beyond
25 where they should have gone with the questions to

1 adjustments from Twin Falls or AFRD.

2 THE HEARING OFFICER: And, Mr. Budge,
3 if the nature of these questions is -- by
4 Mr. Brendecke -- if the questions are, and the
5 answers are, that there needs to be an adjustment
6 in the data? The data that was presented was raw
7 data, and did not intend, at least in my opinion,
8 to go beyond that raw data.

9 Now, if Mr. Weaver or Mr. Brendecke
10 wants to show that there were adjustments made in
11 that data that were incorrect, and that the data
12 is not reliable as raw data, then I think this
13 line of questioning is legitimate.

14 But if the questions are, and the
15 answers are intended to show that that data needs
16 to be adjusted somehow in the presentation of the
17 raw data, I think that goes beyond what was
18 intended to bring into the record with respect to
19 2008 data.

20 So if your questions continue along the
21 line that they presently are headed, I will start
22 to limit the scope of the questions.

23 MR. BUDGE: To that extent, we would
24 like to make an offer of proof on these. And the
25 difficulty is, is the door was opened, if you

1 Mr. Weaver. But that is not a foundation to
2 bootstrap it into more questions regarding
3 methodology to Dr. Brendecke.

4 MR. THOMPSON: Mr. Director, I guess
5 whether adjustments were made, why they were
6 made, why some weren't made, all go to
7 methodology, not to the reliability or accuracy
8 of the 2008 raw data.

9 THE HEARING OFFICER: Well,
10 Mr. Arkoosh, I appreciate your careful argument,
11 and yours as well, Mr. Thompson. But if there is
12 inaccuracy or unreliability in the 2008 data that
13 was presented, regardless of what source that
14 adjustment has been identified, or that
15 inaccuracy, then I will explore those particular
16 issues here in this hearing.

17 Okay. Mr. Budge, go forward. Thanks.

18 Q. (BY MR. BUDGE) Dr. Brendecke, were you
19 able to determine, in examining the diversion
20 data for 2008 for Twin Falls Canal Company,
21 whether that was determined based upon a delivery
22 rate of five-eighths inches per acre or
23 three-fourths inch per acre?

24 A. No.

25 Q. And do you think that information

1 should be disclosed and accounted for in the 2008
2 data?

3 MR. THOMPSON: The same objection, Your
4 Honor.

5 THE HEARING OFFICER: Sustained. It
6 doesn't go to the question of accuracy of the
7 data.

8 Q. (BY MR. BUDGE) Were you here during
9 the testimony of Mr. Weaver regarding the
10 evaporation adjustment, or I think that was maybe
11 Ms. Cresto?

12 A. Yes.

13 Q. In examining the 2008 data, were you
14 able to determine the manner in which the
15 adjustment for evaporation was calculated?

16 A. It appeared that the data was used from
17 the Water District 1 storage account report, net
18 of evaporation.

19 Q. What is the effect of the evaporation
20 adjustment?

21 MR. ARKOOSH: Objection. It does not
22 go to the accuracy or reliability of the
23 information.

24 THE HEARING OFFICER: That's a
25 preliminary question. Overruled.

1 Mr. Brendecke.

2 THE WITNESS: The effect of evaporation
3 adjustment is to reduce the amount of storage
4 available to space holders. And ultimately, then
5 reduces the supply that's used in the shortfall
6 calculation.

7 Q. (BY MR. BUDGE) And would that then in
8 turn -- as the 2008 data was then used to make
9 the calculation, does that in turn increase the
10 Mitigation Obligation of the Ground Water Users?

11 A. It would increase the mitigation.

12 Q. Would the effect of that make the
13 Ground Water Users responsible for evaporation on
14 the Surface Water Coalition reservoir storage?

15 MR. ARKOOSH: Same objection.

16 MR. FLETCHER: Also line of inquiry, it
17 has nothing to do with the data.

18 THE HEARING OFFICER: Sustained.

19 Q. (BY MR. BUDGE) Have you made an
20 attempt to compare the 2008 data as it was used
21 to determine the average headgate diversion with
22 the diversion requirement presented by the
23 Surface Water Coalition in the record in this
24 case?

25 MR. ARKOOSH: Objection.

1 MR. FLETCHER: Objection, Your Honor.
2 It's way beyond the scope of the 2008 data.

3 THE HEARING OFFICER: Sustained.

4 MR. BUDGE: Your Honor, I would like to
5 proceed at this point and make an offer of proof
6 on some other issues that based on the Court's
7 rulings and the limitation order, we haven't been
8 able to go into. And those will address the
9 issues that you sustained objection on, the use
10 of the --

11 MR. SIMPSON: I've got --

12 MR. BUDGE: Excuse me. If I can
13 finish, Counsel.

14 And that would include the issues of
15 the propriety of using the 2008 data, would show
16 that the use of the 2008 data, and averaging
17 method in the Methodology Order, in fact, results
18 in a reasonable in-season demand for the Surface
19 Water Coalition that is in excess of what they
20 requested in their experts' testimony in this
21 case previously if it were all accepted.

22 We have an exhibit to demonstrate that.
23 We also have an exhibit to demonstrate a
24 calculation of evaporation that we think should
25 be added back into the storage supply, that

1 consequently would reduce the Mitigation
2 Obligation of the Ground Water Users. And we
3 have further testimony on various problems with
4 the methodology that confuses 2008 data.

5 Now, it would probably take 20 minutes
6 or so for that offer of proof. That's why I
7 describe what it entails. And I appreciate your
8 earlier statement that we can't go on for hours.
9 But I think it would be of some importance to
10 establish the record.

11 THE HEARING OFFICER: Okay. Well,
12 Mr. Budge, I'm not going there. And I'm holding
13 firm to my previous ruling. So the scope of this
14 hearing was to determine whether -- the accuracy,
15 and the validity, and the reliability of the 2008
16 data that was being added to the record. And --

17 MR. BUDGE: If I could have just a
18 moment?

19 THE HEARING OFFICER: Okay.
20 (Discussion held off the record.)

21 Q. (BY MR. BUDGE) The Finding 43 that
22 requires an adjustment for water not used for
23 crop development -- I have a question that I want
24 to ask you.

25 Are you familiar with the mitigation

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1 plan that was filed by Southwest Irrigation
 2 District as a part of the Blue Lakes proceedings?
 3 A. Generally.
 4 Q. And do you recall the identified source
 5 of water that Southwest Irrigation Company
 6 indicated that it was utilizing for purposes of
 7 the mitigation plan to Blue Lakes?
 8 MR. THOMPSON: I'll lodge an objection
 9 here; relevance. If Mr. Budge wants to litigate
 10 the Southwest Irrigation District mitigation
 11 plan --
 12 MR. BUDGE: It's a foundation question.
 13 MR. THOMPSON: It has nothing to do
 14 with the 2008 raw data --
 15 THE HEARING OFFICER: Overruled. But
 16 you may only get one more question here,
 17 Mr. Budge.
 18 Q. (BY MR. BUDGE) And what was your
 19 understanding of the source of the water that was
 20 reflected in the Southwest Irrigation District
 21 mitigation plan to Blue Lakes?
 22 MR. ARKOOSH: I'm going to object to
 23 foundation.
 24 MR. FLETCHER: That's nothing to do
 25 with the 2008 raw data that's been provided,

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1 which I believe is the order of the scope of this
 2 hearing.
 3 MR. BUDGE: Can I be heard on this,
 4 Your Honor?
 5 THE HEARING OFFICER: Sure.
 6 MR. BUDGE: We have 2008, we have a
 7 mitigation plan from Southwest Irrigation
 8 District that says their source of supply is Twin
 9 Falls Canal Company. Now, if Twin Falls is
 10 leasing water out to another entity for the
 11 purposes of a mitigation plan, it's quite obvious
 12 that an adjustment should be made. And we should
 13 be able to ask this witness if he can identify if
 14 an adjustment was made, and the propriety of such
 15 an adjustment.
 16 Under the very Finding 43 here that we
 17 are talking about what adjustments should be made
 18 to 2008 data. We have the Department's witnesses
 19 say, here is some we made. Here is some we
 20 didn't. Some involved data of the record, and
 21 some involved data that we manipulated. So we've
 22 established quite a record about making some
 23 adjustments.
 24 And conceptually, if an adjustment was
 25 not made on something, it would seem that our

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1 witness should be able to testify why it was
 2 relevant in looking at the 2008 data under the
 3 directive provided in 43, that we shouldn't make
 4 any adjustment that doesn't result through
 5 irrigation needs, and have testimony on whether
 6 that adjustment is proper or not.
 7 THE HEARING OFFICER: Okay. Mr. --
 8 MR. THOMPSON: Can I ask one question
 9 on what Southwest plan --
 10 MR. BUDGE: And one other point, could
 11 we maybe have one or two spokesmen. I can
 12 appreciate a few objections, but we seem to be
 13 getting three and four objections up and down and
 14 up and down on the same issue. Maybe we could
 15 have one spokesman from the coalition.
 16 THE HEARING OFFICER: Well, I think
 17 each of them independently represent a client,
 18 and have the right, and should have the
 19 opportunity to object.
 20 Now, if I was listening to objections
 21 from Mr. Simpson, Mr. Thompson, jointly then I
 22 might quiet Mr. Simpson immediately.
 23 MR. SIMPSON: Further?
 24 THE HEARING OFFICER: And make him
 25 remove his tie as well, but...

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1 MR. THOMPSON: I just have a question
 2 in aid of his objection.
 3 THE HEARING OFFICER: Yes,
 4 Mr. Thompson.
 5 MR. THOMPSON: What mitigation plan are
 6 you referring to of the Southwest Irrigation
 7 District? What year in the file?
 8 MR. BUDGE: What was filed?
 9 MR. THOMPSON: What plan? What
 10 mitigation plan? I don't know what you are
 11 talking about.
 12 MR. BUDGE: What was filed? This is
 13 the Southwest Irrigation District plan for Blue
 14 Lakes. It was filed. And they said the source
 15 of the water is Twin Falls Canal Company. And I
 16 called the attorney --
 17 MR. THOMPSON: The plan filed in 2009,
 18 you are offering for the purpose of 2008 data?
 19 MR. BUDGE: Yes. I think the plan was
 20 actually filed before that. But I have
 21 a -- Counsel from Southwest Irrigation District
 22 indicates that we have a lease agreement with
 23 Twin Falls to lease water from the mitigation
 24 plan. I don't know what it is, but...
 25 THE HEARING OFFICER: Okay. Let me cut

1 off the argument between counsel.
2 Mr. Budge, if Mr. Brendecke can
3 identify adjustments that he or you would deem to
4 be inappropriate that were made to the raw 2008
5 data by Mr. Weaver, and those adjustments relate
6 to Southwest Irrigation District plan, I'll let
7 you proceed with the question.

8 If your line of questions for
9 Mr. Brendecke is: We have raw data, but we think
10 that raw data should be adjusted based on
11 information that we have out there. I won't
12 allow the question to go forward. Because that
13 extends the analysis of the raw data that we're
14 intending to get into the record.

15 MR. BUDGE: Well, the objections were
16 coming before I ever got to that question.

17 THE HEARING OFFICER: Okay. So I'll
18 allow you to go forward, but there is the
19 limitation.

20 Q. (BY MR. BUDGE) Dr. Brendecke, are you
21 aware whether or not the adjustments were made to
22 the raw data for 2008 diversions based upon water
23 leased by Twin Falls Canal Company to Southwest
24 Irrigation District?

25 A. There doesn't appear to be any

1 purposes of the flow augmentation water leased by
2 the Bureau of Reclamation?

3 A. It doesn't appear there were, no.

4 Q. Are you aware of whether there were any
5 adjustments to the 2008 data for purposes of
6 acres within the Surface Water Coalition entities
7 that were hardened or non-irrigated?

8 A. It doesn't appear there were.

9 MR. BUDGE: No further questions.

10 THE HEARING OFFICER: Okay. Surface
11 Water Coalition questions?

12 MR. FLETCHER: I don't have any
13 questions.

14 THE HEARING OFFICER: Mr. Arkoosh,
15 questions?

16 MR. ARKOOSH: No, I don't have any
17 questions.

18 THE HEARING OFFICER: Thank you.
19 Mr. Thompson?

20 MR. THOMPSON: I have no questions.

21 THE HEARING OFFICER: Okay. Thank you.
22 (Mr. Brendecke excused.)

23 THE HEARING OFFICER: Other witnesses,
24 Mr. Budge?

25 MR. BUDGE: No, Your Honor.

1 adjustment.

2 MR. FLETCHER: Your Honor, I'm going to
3 object to that. There is an assumption for that
4 question. There is no foundation for that
5 question. There is nothing in the record to show
6 that Twin Falls leased water to Southwest
7 Irrigation District. So there is no foundation
8 for the question. It's assuming facts not in
9 evidence.

10 THE HEARING OFFICER: I agree. I agree
11 with you, Mr. Fletcher. Nonetheless, the
12 testimony of Dr. Brendecke establishes that there
13 was no adjustment in the data, and that it is raw
14 data. And his earlier testimony was that he saw
15 no reason why the raw data wasn't acceptable. So
16 I'll overrule the objection.

17 Mr. Budge, you know what the limitation
18 is. And let's go forward.

19 Q. (BY MR. BUDGE) Are you aware whether
20 there were any adjustments to the 2008 raw data
21 for purposes of the mitigation return flow
22 credit?

23 A. It doesn't appear there were.

24 Q. And were you aware of whether or not
25 there were any adjustments to the 2008 data for

1 THE HEARING OFFICER: Okay. Does the
2 Surface Water Coalition wish to call any
3 witnesses?

4 MR. ARKOOSH: No, Your Honor, we don't.

5 THE HEARING OFFICER: Okay.

6 MR. BROMLEY: Hearing Officer, before
7 we close the record in this proceeding, I do have
8 an updated Exhibit 2 that does not have the
9 methodology Word document. I would like to
10 substitute for the Exhibit 2 that was previously
11 offered.

12 THE HEARING OFFICER: Thank you,
13 Mr. Bromley. It speaks to the efficiency of the
14 Department that you can have that. I need to
15 call attention to those efficiencies whenever I
16 can.

17 All right. It seems to me --

18 MR. BROMLEY: Your Honor, just for
19 purposes of the clarification of the record, the
20 Exhibit 2 that I gave to the court reporter, it
21 has a blue exhibit tag on the top that says "IDWR
22 Exhibit 2," and it also has a mailing sticky on
23 it that says, "Idaho Department of Water
24 Resources Exhibit 2," just for purposes of
25 clarification. Thank you.

1 THE HEARING OFFICER: Okay. All right.
2 Anything further in this particular matter? It's
3 a timely conclusion to the hearing for the
4 Methodology Order.

5 We'll come back about 1:00 and start
6 the hearing for the As Applied. I expect a more
7 lively presentation and discussion at that time.
8 (Hearing concluded at 12:00 p.m.)

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