

BEFORE THE DEPARTMENT OF WATER RESOURCES  
OF THE STATE OF IDAHO

IN THE MATTER OF THE SECOND )  
MITIGATION PLAN FILED BY THE IDAHO ) Docket No.  
GROUND WATER APPROPRIATORS FOR THE ) CM-MP-2014-003  
DISTRIBUTION OF WATER TO WATER )  
RIGHT NOS. 36-02551 AND 36-07694 IN)  
THE NAME OF RANGEN, INC. )  
 ) VOLUME I  
"TUCKER SPRINGS" ) (Pages 1-263)  
\_\_\_\_\_ )

BEFORE

HEARING OFFICER: GARY SPACKMAN

Date: June 4, 2014 - 9:12 a.m.

Location: Idaho Department of Water Resources  
322 East Front Street  
Boise, Idaho

REPORTED BY:

JEFF LAMAR, C.S.R. No. 640

Notary Public

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1 APPEARANCES:

2

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1 I N D E X

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17

18 E X H I B I T S

19 NO.	MARKED	RECEIVED
20 1019	***	75
21 1020	***	75
22 1080	***	155
23 1100	***	82
24 1101-1105	***	99
25 1106	***	88

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1 I N D E X (Continued)

2

3 E X H I B I T S

4 NO.	MARKED	RECEIVED
5 1107	***	90
6 1108	***	90
7 1109	***	97
8 1110	***	85
9 1111	***	141
10 1113	***	94
11 1115	***	143
12 1118	***	106
13 1127	***	106
14 1128	***	106
15 1135	***	112
16 1138 - Aerial photograph	162	166
17 2021	***	222
18 2022	***	220
19 2023	***	221
20 2024	***	213
21 2026	***	211
22 2093	***	132
23		
24		
25		

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1 THE HEARING OFFICER: Okay. We are recording.  
 2 This is the time and place for hearing regarding the  
 3 second mitigation plan that was filed by the Idaho  
 4 Groundwater Appropriators, and this mitigation plan was  
 5 filed in response to a delivery call that was filed by  
 6 Rangen, Inc., and a subsequent order that was issued by  
 7 the Director that determined that there was material  
 8 injury, and that required curtailment unless mitigation  
 9 was provided.  
 10 And so this hearing is for the purpose of  
 11 considering evidence regarding a mitigation plan that  
 12 was filed by IGWA. And this is the second plan that is  
 13 being considered by the Director.  
 14 My name is Gary Spackman. I am the  
 15 Director of the Department of Water Resources. It's  
 16 about 9:15 a.m. in the morning on June 4th of 2014.  
 17 And for purposes of the record, we ought to  
 18 have the parties introduce themselves. And so let me  
 19 go from left to right or in a clockwise direction.  
 20 Almer, if you'd introduce yourself first  
 21 for the record.  
 22 MR. HUNTLEY: Almer Huntley representing Big  
 23 Bend Ditch.  
 24 MS. BRODY: Robyn Brody on behalf of Rangen.  
 25 MR. HAEMMERLE: Fritz Haemmerle, Rangen.

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1 MR. MAY: Justin May on behalf of Rangen.  
 2 MR. RANDY BUDGE: Randy Budge and TJ Budge,  
 3 Racine, Olson, Nye, Budge & Bailey, on behalf of IGWA  
 4 and the groundwater districts.  
 5 MR. SIMPSON: John Simpson on behalf of Buckeye  
 6 Farms.  
 7 THE HEARING OFFICER: And we have some parties  
 8 that are missing this morning. Salmon Falls Land &  
 9 Livestock. Now, I received a letter from Mr. Stoker --  
 10 I received a letter from Timothy Stoker -- Stover, I'm  
 11 sorry, representing Salmon Falls Land & Livestock  
 12 Company. And I don't know whether the other parties  
 13 received the letter.  
 14 But he stated that "Be advised that my  
 15 client, Salmon Falls Land & Livestock Company, has  
 16 determined that it does not wish for me to be present  
 17 as its counsel at the hearing and that Mike Henslee,  
 18 the president of Salmon Falls Land & Livestock Company,  
 19 does plan to attend all or part of said hearing," and  
 20 he states, "and does reserve the right to participate  
 21 in said hearing on behalf of Salmon Falls." So anyway,  
 22 I have a letter to that extent.  
 23 And I also don't see any representatives  
 24 from Big Bend Trout.  
 25 MR. HUNTLEY: Mr. Director.

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1 THE HEARING OFFICER: Yes.  
 2 MR. HUNTLEY: Leo Ray called me last night and  
 3 said he could not attend and asked me to sit in for  
 4 him, if you will.  
 5 THE HEARING OFFICER: Okay. The nonappearance  
 6 of these parties, particularly parties that are  
 7 corporate entities, raises some questions, at least  
 8 from my perspective. And I don't know whether we want  
 9 to procedurally go through some process to discuss  
 10 the -- whether these individuals can appear on behalf  
 11 of a corporate entity or not.  
 12 I've in the past allowed some flexibility  
 13 in that area, but there have been some recent rulings  
 14 by the Department that may restrict my ability. I  
 15 don't know.  
 16 What's the pleasure of the parties? There  
 17 is no pleasure.  
 18 MS. BRODY: Well, I guess my concern would just  
 19 be not having -- it seems to me that if there were  
 20 issues about the gentlemen being able to represent  
 21 their corporate entities is probably something that  
 22 should have been addressed from the get-go, I mean if  
 23 we're talking about attorney representation being the  
 24 issue. I think that's what you're saying, is that  
 25 there may be some rulings by the Department that if

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1 you're not a lawyer you can't represent the corporate  
 2 entity.  
 3 And I guess I'm not familiar with those  
 4 rulings, but it just strikes me that out of the box we  
 5 probably should have said something so that these folks  
 6 could have retained counsel, or at least had the option  
 7 to do that, because I don't know that the message was  
 8 delivered that you can't appear on behalf of your  
 9 corporate structure.  
 10 THE HEARING OFFICER: TJ.  
 11 MR. TJ BUDGE: I don't know if we even have to  
 12 get to that issue. Someone who doesn't appear at all  
 13 obviously can't maintain their party status in the  
 14 proceeding, or at least raise objections that they  
 15 weren't here to raise at the hearing. So that would  
 16 take care of Big Bend Trout, I believe, Mr. Ray.  
 17 As far as the Salmon Falls -- or excuse me,  
 18 the Salmon Falls -- let me clarify that. As far as  
 19 Mr. Huntley representing Mr. Ray, I don't think that's  
 20 permissible as a matter of law, aside from the issue of  
 21 corporate representatives appearing pro se on behalf of  
 22 the corporation.  
 23 THE HEARING OFFICER: Okay. Let's leave it  
 24 hanging, and we'll see what transpires as the hearing  
 25 goes forward.

1 Okay. We talked about a couple of motions  
2 that are pending before the Department. And as I  
3 represented to the Department -- or to the parties  
4 earlier, I have reviewed both of the motions, the  
5 motion came in yesterday not as carefully. But I have  
6 been through the document.

7 So what's your pleasure, Randy or TJ? Do  
8 you want to argue the motion?

9 MR. TJ BUDGE: Yeah, Mr. Director, if I may just  
10 take a few moments to address the motions. I'll  
11 address them simultaneously.

12 THE HEARING OFFICER: Okay.

13 MR. TJ BUDGE: And I ought to begin by saying it  
14 was certainly our hope -- and I probably speak for  
15 everybody here -- that we wouldn't be having this type  
16 of motion at the beginning of the hearing. This isn't  
17 something that we've done in other hearings. It's, I  
18 think, been a pretty common practice to let everything  
19 in, and especially under the compressed time frames of  
20 some of these mitigation plan hearings the parties have  
21 all been understanding of that, and we have as well.

22 Under the circumstance of this hearing,  
23 there are some unique circumstances and some  
24 extenuating circumstances that we are convinced  
25 warranted the motions in limine.

1 IGWA created a cloud-based website that all  
2 the parties were given access to and early on put on  
3 there a list of exhibits that we began numbering up  
4 front. And as we came across information we thought  
5 may be relevant at the hearing, we posted that and  
6 e-mailed the parties that that was there. And so  
7 that's been an ongoing process.

8 We've continued to add exhibits to that  
9 list up until the date of the hearing. We had  
10 depositions just Monday of this week. So it's  
11 certainly been a busy process for everybody involved,  
12 and we appreciate and respect that.

13 We did not receive from any of the  
14 protestants numbered exhibits until yesterday. Rangen  
15 had in discovery responses identified all of the  
16 exhibits from all of the prior proceedings, thousands,  
17 perhaps tens and thousands of pages of documents.

18 We don't necessarily feel it was  
19 particularly fair that we didn't know which of those  
20 documents they were going to rely on until yesterday.  
21 But we have reviewed all of the exhibits submitted by  
22 the parties, and we think we can address those in the  
23 context of the hearing. We're not asking the Director  
24 to exclude at this point any of the exhibits that have  
25 been identified by the parties.

1 First I think we need to go back to the  
2 scheduling conference in this matter when the hearing  
3 date was set in the expedited fashion. Mr. Haemmerle  
4 raised a concern, rightly so, that they did not want to  
5 be having IGWA's evidence dumped upon them at the 11th  
6 hour. Certainly appropriate concern.

7 At that time the Director set a deadline  
8 for submitting engineering reports and set the  
9 expectation that the parties are supposed to cooperate  
10 in their discovery and disclose information as promptly  
11 as practical under the circumstances.

12 We did that to the best of our ability.  
13 SPF Engineering worked overtime to get the engineer  
14 done. And on the deadline, which was the 12th, they  
15 submitted a 25-page document or so of engineering  
16 designs and plans and includes the full location of the  
17 pipeline, the point of diversion, the diversion  
18 structures, the connection to Rangen facility, and that  
19 type of detail.

20 It was a week later that they submitted a  
21 written report that addressed some of the other issues,  
22 such as water quality and some of those other -- water  
23 temperature, some of those other items that we thought  
24 were appropriate. And that was as fast as they could  
25 get that done.

1 There's a few items that we do think ought  
2 to be excluded or clarified. The first one deals with  
3 water quality and temperature. And we addressed this  
4 in our second motion in limine.

5 You know, in concept what we're trying to  
6 do is really simple. It's take water from Tucker  
7 Springs, pump it to Rangen so they can use it. The  
8 fact that Tucker Springs has been used by Fish and Game  
9 for some 60 or 70 years to raise fish tells us that  
10 that water is okay for raising fish.

11 We asked Rangen in discovery requests to  
12 confirm that the temperature at Tucker Springs was  
13 suitable and that the water quality was suitable.  
14 Their answer was that they don't know. And we can  
15 appreciate that maybe they did need to get some more  
16 information at Tucker Springs, which we eventually did  
17 provide in our engineering report.

18 We asked them to supplement their discovery  
19 responses a week ago or so and let us know, "Is this  
20 water okay? Do you see anything wrong with that?"

21 And I want to read the response that we  
22 got. This is quoted in our second motion in limine.  
23 The most critical one is after Rangen again answered  
24 they don't know if Tucker Springs is good enough, we  
25 have interrogatory No. 15, and it's on page 2. This is

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1 the same interrogatory we had asked in our first  
 2 discovery requests a month or so ago.  
 3 And the question is, "What do you contend  
 4 are the minimum and maximum water quality and water  
 5 temperature parameters necessary to raise trout in your  
 6 fish hatchery?"  
 7 We know from prior proceedings that Rangen  
 8 has been raising fish at this hatchery for 50 or 60  
 9 years; that they've got a professional researcher on  
 10 staff, and have for much or all that time; that they do  
 11 research and fish studies and fish samples.  
 12 And so in our view, and especially  
 13 consulting with our fish expert, this is an easy  
 14 question that there's no doubt in our mind they know  
 15 the answer to. If you look at their answer to this  
 16 simple question, they say, "Objection. This  
 17 interrogatory is vague and ambiguous. There are  
 18 numerous water-quality parameters, and without more  
 19 information Rangen cannot address this interrogatory."  
 20 In these same discovery requests Rangen  
 21 identifies their fish researcher, Doug Ramsey, and says  
 22 he's going to come testify that the water quality at  
 23 Tucker Springs is not suitable for Rangen. So on one  
 24 hand they're telling us "We don't know what temperature  
 25 we need. We don't know what water quality we need."

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1 On the other hand, they say, "We're going to come in  
 2 and put on evidence that Tucker Springs is not good  
 3 enough for us."  
 4 This answer to the interrogatory No. 15 is  
 5 in violation of the letter and the spirit of the rules  
 6 of evidence which govern this procedure. It's  
 7 prejudicial to IGWA to allow Rangen to come in and put  
 8 on this type of evidence after hiding the ball and  
 9 telling us they don't know what kind of water they  
 10 need. And we don't think this can be tolerated by the  
 11 Department.  
 12 And first and foremost we ask the Director  
 13 to exclude this type of evidence, exclude Rangen from  
 14 putting on this type of evidence in this proceeding.  
 15 Perhaps aggravating the frustration we've  
 16 had in getting information from Rangen is that while  
 17 they don't know what kind of water they need, they've  
 18 hired engineers to come investigate all kinds of  
 19 ancillary issues that have little or no application to  
 20 this proceeding.  
 21 One of these is Clean Water Act permitting.  
 22 On Saturday, this last Saturday, we got a report from  
 23 them, from an engineer in Colorado, who apparently is  
 24 going to come in and talk about Clean Water Act  
 25 permitting and what challenges there may be and what

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1 needs to be done.  
 2 We, of course, recognize that if we're  
 3 going to put this in we're going to have to get all  
 4 permits that are necessary. But we don't think it's  
 5 your role to decide whether Clean Water Act permit is  
 6 or is not required and whether it can or cannot be  
 7 obtained.  
 8 If we're going to allow in this proceeding  
 9 every remote issue that they want to raise, we're going  
 10 to be here a long time. They've identified 11  
 11 witnesses.  
 12 Our motion in limine asks you to exclude  
 13 evidence of permitting that may be required by other  
 14 agencies, federal or state, and simply condition your  
 15 approval, should you give it, upon getting any  
 16 necessary permits and not waste anybody's time in here  
 17 debating Clean Water Act permits.  
 18 Our third request in the second motion in  
 19 limine deals with confidential settlement  
 20 communications. Rangen has explained in its discovery  
 21 responses that it plans to argue statements made by  
 22 IGWA in a settlement letter made to the other  
 23 protestants besides Rangen that somehow Rangen got  
 24 ahold of.  
 25 They've also identified that letter in

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1 their list of exhibits. I'll say that that letter  
 2 doesn't contain much that we're particularly concerned  
 3 about. But as a matter of principle, we think it's  
 4 completely wrong to put that in their list of exhibits,  
 5 to plan to argue that, particularly when they've been  
 6 very aggressive about making sure that IGWA does not  
 7 discuss any of our settlement communications with  
 8 Rangen with others.  
 9 And so we want to make it clear up front  
 10 that there won't be any discussion of our  
 11 communications with other protestants about settling  
 12 their protests.  
 13 The third item that we'd like to discuss is  
 14 maybe more of a matter of clarification, and this deals  
 15 with injury that may result strictly from the  
 16 water-right transfer that's pending.  
 17 This came up in the pre-hearing conference,  
 18 and the Director made a ruling that under the  
 19 mitigation plan rules injury can be raised. Anybody  
 20 who wants to raise injury can raise it in this  
 21 proceeding. We understand that, and we agree with that  
 22 ruling.  
 23 There's been a little confusion, I think,  
 24 as to the effect of that ruling when it comes to injury  
 25 that's specifically related to the transfer. The

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1 letter you sent out, Director, also cited the  
 2 over-the-rim plan, which did condition approval upon  
 3 getting transfers, and reaffirmed that mitigation plans  
 4 can be approved conditional upon transfers and the  
 5 like.  
 6 We took that to mean there's a broad range  
 7 of injuries that could relate to a mitigation plan.  
 8 You know, many mitigation plans we've done don't have  
 9 any accompanying transfer or any accompanying  
 10 water-right application. I can think of our Pristine  
 11 Springs mitigation plan and our recharge mitigation  
 12 plans.  
 13 The only forum people would have to raise  
 14 an injury concern would be in the mitigation plan  
 15 proceeding. And we don't intend to exclude anybody in  
 16 this proceeding from raising injury concerns that may  
 17 not be related strictly to the transfer.  
 18 But as far as the transfer itself, our  
 19 understanding was that if the injury is just from the  
 20 transfer of water, the appropriate proceeding is in the  
 21 transfer case, and that's ongoing. So we would like  
 22 some clarification on that. We would certainly prefer  
 23 to not have to address in this proceeding injuries that  
 24 are strictly related from the transfer and then have to  
 25 address them again down the road.

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1 And then lastly, we had our first motion in  
 2 limine addressing exclusion of evidence that was not  
 3 timely disclosed. Leo Ray with Big Bend Trout did not  
 4 respond to any of IGWA's discovery requests. They have  
 5 not identified any exhibits or witnesses.  
 6 So this, I think, reaffirms that they won't  
 7 be participating in this proceeding. They certainly  
 8 aren't in a position to put on evidence.  
 9 And then also Big Bend Mining & Irrigation  
 10 has not responded to discovery requests and provided  
 11 any exhibits or witnesses, and so we anticipate that  
 12 they won't be participating.  
 13 Mr. Huntley has been to all of the  
 14 depositions. We recognize he's got an interest in this  
 15 and has been monitoring it. We assume he will be here  
 16 to monitor what's going on, among others, and perhaps  
 17 ask questions of the witnesses called by others. But  
 18 our understanding is that he won't be putting on any  
 19 evidence of his own. We wanted to confirm that up  
 20 front.  
 21 THE HEARING OFFICER: Okay. Thank you,  
 22 Mr. Budge.  
 23 Response? Ms. Brody.  
 24 MS. BRODY: Thank you, Director Spackman.  
 25 When we sat in your conference room on

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1 April 30th and discussed all of the scheduling  
 2 challenges that this case presented, there was a  
 3 recognition, I think, by the Director that we were  
 4 going to have to be flexible because we had 30 days  
 5 basically to get an entire case ready for trial.  
 6 The deadline was set in terms of when IGWA  
 7 would disclose its engineering reports, and the reality  
 8 is those disclosures weren't made. We got some  
 9 drawings and some diagrams and photographs and that  
 10 type of thing on the 12th, but we got a 95-page report  
 11 a week later.  
 12 So on May 19th we finally had the 95-page  
 13 report that we needed to provide to the folks, the  
 14 experts, the engineering experts, the permitting  
 15 experts, Doug Ramsey, the fish expert, to talk about  
 16 and to really analyze what this plan is and what it  
 17 means to Rangen and to other water users.  
 18 So when we talk about discovery answers  
 19 that were answered on May 30th, what we're talking  
 20 about is an 11-day window to take that report, to  
 21 conduct discovery, and then to try to get some  
 22 discovery answers out to IGWA. We had 11 days to  
 23 accomplish that.  
 24 We didn't take Joe Chapman's deposition --  
 25 and Joe is the Idaho Fish and Game representative.

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1 He's the manager of that facility. And he's the  
 2 manager who really understands the challenges that that  
 3 facility has.  
 4 IGWA takes the position, well, the Idaho  
 5 Fish and Game has been raising fish at that facility  
 6 for the past 60 years so it must be good enough to  
 7 raise fish.  
 8 I think the reality is when Mr. Chapman  
 9 sits in that chair and you take a look at the strategic  
 10 plan that Idaho Fish and Game has provided, that  
 11 facility has serious problems raising fish because of  
 12 water.  
 13 When you get into questions about what are  
 14 the maximum and minimum parameters that Rangen needs to  
 15 raise fish at its facility, it becomes a real  
 16 interesting question. Are we talking about diseases?  
 17 Are we talking about pathogens? Are we talking about  
 18 viruses? because we've got a whole host of those, some  
 19 of which are maybe okay or maybe can be dealt with, but  
 20 others -- you're going to hear about a disease called  
 21 PKD, which, quite frankly, the existence of it at all  
 22 is not acceptable, not in any limit.  
 23 Are we talking about those things, or are  
 24 we talking about, for example, the parameters that are  
 25 set forth in this water-quality report that Joe Chapman

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1 provided on the 28th, which was seven days ago, that  
 2 analyzed for everything from acetone to nitrates,  
 3 dissolved oxygen?  
 4 So when you ask a question "What are the  
 5 maximum and minimum parameters that Rangen needs?"  
 6 you've got to tell us, what do you want to know. Be  
 7 more specific. What do you want us to analyze?  
 8 Rangen is not trying to hide the ball. The  
 9 reality is we didn't have all of the information we  
 10 need. We still don't have the information that's  
 11 totally necessary to answer whether this water is safe  
 12 to be delivered to the Rangen facility. And you're  
 13 going to hear that.  
 14 The answers that Rangen gave are  
 15 reasonable, they're accurate. And I think even if you  
 16 ask Joe Chapman today, he will tell you that there are  
 17 pending tests that not even Fish and Game has the  
 18 results of trying to figure out the PKD problem that  
 19 that facility has. And it's showing up not just in  
 20 Riley Creek, but in Tucker Springs. If you transport  
 21 that water over to Rangen, Rangen's going to have a big  
 22 problem that it doesn't have right now.  
 23 Rangen's answers were fair, they were  
 24 reasonable. And if -- the remedy isn't just exclude  
 25 the evidence, don't shut down Rangen's case, don't

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1 allow water that's not of acceptable quality to be  
 2 pumped over the rim to Rangen. That's not the answer.  
 3 If they want some kind of remedy here,  
 4 we'll make Mr. Ramsey available. We did that plenty in  
 5 the last delivery call. If you want to take a  
 6 deposition of him, we'll make him available after  
 7 hours, in the morning, whatever it is that you want to  
 8 do that you don't think you've got adequate information  
 9 about what Mr. Ramsey has to say.  
 10 The reality is I recall very specifically  
 11 in the last hearing when Greg Sullivan was analyzing  
 12 the issue of the error related to how we calculate the  
 13 accrual to the Curren Tunnel versus the talus slope, I  
 14 remember him going home, doing calculations, coming  
 15 back the next day and presenting everybody with a  
 16 report. And that's what we did.  
 17 Why? Because that's the reality of how  
 18 this job gets done. We're not in federal court where  
 19 we have 18 months to litigate everything. We got one  
 20 month to get it done. We were fair, we were  
 21 reasonable, we were responsive trying to meet  
 22 deadlines, their requests, that we augment discovery  
 23 answers by Friday. I sat up until 11:50 at night  
 24 Friday night getting those discovery answers done.  
 25 Mr. DeLaughter, he's the permit expert. We

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1 knew out of the box that there were going to be  
 2 environmental concerns. I don't know scientists. I'm  
 3 new to the water world. But, you know, just the minute  
 4 that you hear the idea of taking 10 cfs of water from  
 5 one drainage basin, putting it in a pipe and sticking  
 6 it over in another drainage basin to go down another  
 7 waterway, even my naive, novice mind understood that  
 8 there were going to be permit issues, that there were  
 9 going to be EPA issues, environmental-quality issues.  
 10 So we identified out of the box a  
 11 compliance expert, because we figured when we got that  
 12 95-page report that there was going to be a section in  
 13 the report addressing those issues. And we wanted  
 14 somebody on board to help us analyze it.  
 15 And the reality was when we looked at the  
 16 report none of it had been taken into consideration.  
 17 There's a discussion about highway permits and needing  
 18 to drill a hole under the highway. But the big one,  
 19 the big elephant in the room, all the environmental  
 20 concerns wasn't addressed at all.  
 21 So again, we got the report on the 19th,  
 22 and by the 28th we provided Mr. DeLaughter's analysis.  
 23 We turned it around that fast in order to provide IGWA  
 24 with information. Not -- Mr. DeLaughter's analysis,  
 25 frankly, it's awesome. It's two pages of bullet points

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1 that I am sure that an engineer as sophisticated as Bob  
 2 Hardgrove understands and gets.  
 3 They've known about him from the beginning  
 4 because we knew we were going to need him to analyze  
 5 these issues. They have never requested to take  
 6 Mr. DeLaughter's deposition. They have his written  
 7 report. It's two pages. It's not hard to understand.  
 8 It's not a basis for precluding this man from  
 9 testifying about very important issues that impact the  
 10 timing of this project.  
 11 Because one of the things that you're going  
 12 to hear, Director, is that IGWA told its engineers that  
 13 the delivery date for water is April 1 of 2015. That's  
 14 the delivery date that IGWA gave the engineers.  
 15 And our point is number one -- and this is  
 16 a side matter -- what about 2014 mitigation  
 17 obligations? But beyond that, you haven't taken into  
 18 consideration these other EPA issues, and that's going  
 19 to extend your time frame even much longer than what  
 20 you already predicted.  
 21 With respect to the letter that IGWA sent  
 22 out to the other protestants, I recognize that the top  
 23 of the letter says it was protected by Rule 408. But  
 24 when you read the letter, it's not an offer of  
 25 compromise. Rule 408 explains what it protects, and it

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1 protects evidence of furnishing a valuable  
 2 consideration in compromising or attempting to  
 3 compromise a claim.  
 4 If you read the letter, it's not about  
 5 compromising the claim. It's -- the letter, from a  
 6 content perspective, is exactly what IGWA presented out  
 7 of the box at the status conference, which is you  
 8 protestants can go over here to the transfer proceeding  
 9 and claim injury because that's where this issue is  
 10 better addressed.  
 11 MR. TJ BUDGE: Objection. Mr. Director, given  
 12 that I just asked that this letter remain confidential  
 13 and Mrs. Brody is quoting from the letter, I think we  
 14 ought to be permitted to put into evidence our  
 15 discussions with Rangen regarding settlement.  
 16 She's going to get up here and quote  
 17 evidence that under Idaho Rules of Evidence are  
 18 confidential, clearly and unequivocally, then let us  
 19 put on evidence of our discussions with Rangen  
 20 regarding settlement. This is absolutely inappropriate  
 21 and unprofessional.  
 22 THE HEARING OFFICER: Okay. Well, let's stay  
 23 out of the content of the letter itself. I have not  
 24 seen the letter. I didn't even know whether it would  
 25 be offered as evidence today, because the only

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1 reference that I had was a discussion of the letter in  
 2 the interrogatory. So let's avoid a reference to the  
 3 content of the letter itself, Ms. Brody.  
 4 MR. TJ BUDGE: And could I move to have her  
 5 representations concerning the letter stricken from the  
 6 record?  
 7 THE HEARING OFFICER: No. In fact, I guess I  
 8 didn't even derive from the discussion that there was  
 9 anything significant that was quoted from the letter  
 10 itself. So I'll leave it in the record.  
 11 But, Ms. Brody, let's not go through the  
 12 content.  
 13 And I'll just tell everybody that I'll  
 14 review the letter itself and make the determination.  
 15 MS. BRODY: Well, let me provide one other item  
 16 of information, and that is the last sentence of  
 17 Rule 408. This rule does not require exclusion if the  
 18 evidence is offered for another purpose. Because  
 19 remember what Rule 408 protects is evidence of valuable  
 20 consideration being offered to compromise, and it's not  
 21 admissible to prove liability for.  
 22 In other words, Rangen isn't looking to  
 23 this letter to prove injury. It isn't looking to use  
 24 it as an admission from IGWA that there's injury to  
 25 other users. Not at all. That's not what we're

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1 interested in.  
 2 What we're interested in is the fact that  
 3 IGWA doesn't intend to move forward with this project.  
 4 We've spent the last 30 days litigating and spending  
 5 Rangen's 50-, 60-, \$100,000, whatever it is, a huge  
 6 amount of money litigating a project that IGWA doesn't  
 7 intend to go forward with. And that's why we want the  
 8 letter.  
 9 And what the rule says is "This rule does  
 10 not require exclusion if the evidence is offered for  
 11 another purpose, such as proving bias or prejudice of a  
 12 witness, negating a contention of undue delay, or  
 13 proving an effort to obstruct a criminal investigation  
 14 or prosecution." It's got nothing to do with injury,  
 15 but everything with respect to the fact that this plan,  
 16 it's just a farce.  
 17 THE HEARING OFFICER: Has the letter been marked  
 18 or premarked as an exhibit, Ms. Brody?  
 19 MS. BRODY: It has.  
 20 THE HEARING OFFICER: And what's the number?  
 21 MR. MAY: 2087.  
 22 MS. BRODY: 2087.  
 23 With respect to the injury issue, I think  
 24 we've briefed that, so I'll just leave that alone. The  
 25 bottom line is I don't think there's any basis for

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1 granting IGWA the type of relief that it's requesting.  
 2 There isn't any evidence that should be excluded. They  
 3 haven't been prejudiced.  
 4 If there's a particular piece of evidence  
 5 that somehow they contend that they've been prejudiced  
 6 thereby, raise the objection at the time it's presented  
 7 and do it that way, but not out of the box like this.  
 8 Thank you.  
 9 THE HEARING OFFICER: Okay. I'll give the other  
 10 parties an opportunity.  
 11 Mr. Budge, Mr. Simpson, do you wish to  
 12 respond?  
 13 MR. SIMPSON: Thank you, Mr. Hearing Officer.  
 14 Buckeye filed a response to IGWA's first  
 15 motion in limine. And a quick review of their second  
 16 motion, it appears like those issues are not pertinent  
 17 for Buckeye to respond to. Buckeye would simply at  
 18 this point rely upon its briefing that it's filed in  
 19 order to move this issue forward, and hopefully move  
 20 the hearing forward.  
 21 So we'd just stand on our brief that we  
 22 filed in response to the original motion in limine.  
 23 THE HEARING OFFICER: Okay. Mr. Huntley,  
 24 response?  
 25 MR. HUNTLEY: I have no comment.

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1 THE HEARING OFFICER: Mr. Budge?  
 2 MR. TJ BUDGE: Just real briefly. And I'll take  
 3 the three issues in reverse order.  
 4 Concerning the confidentiality of the  
 5 letter, I appreciate Ms. Brody's novel reading of the  
 6 rules of evidence. And we'll gladly jump on board with  
 7 those. We've had a number of settlement discussions  
 8 and offers with Rangen. They don't relate to the  
 9 mitigation we're providing in this case. The  
 10 determination of material injury has already been made.  
 11 They're not prejudicial to that case.  
 12 So her having now quoted and misrepresented  
 13 our letter in a significant way, we'll be putting on  
 14 evidence for a purpose other than establishing  
 15 liability, as she characterized it. And we can address  
 16 that when that comes up.  
 17 Concerning Mr. DeLaughter, if you want to  
 18 make a decision concerning whether a 404 permit's  
 19 required and granted in this proceeding and take that  
 20 upon yourself, then we will provide evidence from our  
 21 engineer.  
 22 We think that is going to add time that's  
 23 unnecessary in this proceeding. And that's really what  
 24 it comes down to. Not when he gave us his report,  
 25 which was Saturday, but whether this proceeding is the

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1 appropriate place to decide whether a 404 permit's  
 2 required.  
 3 And then lastly, on the water quality, the  
 4 idea that they have to know what Tucker Springs water  
 5 requires before they can decide what quality they need  
 6 makes no sense at all. They know what quality they  
 7 need. We assume they do. They've got researchers, and  
 8 they have for decades.  
 9 We provided to Rangen our own fish expert  
 10 report. And he said, "This is the water quality that's  
 11 required for trout. This is the dissolved oxygen  
 12 parameter. This is the pH parameter. And Tucker  
 13 Springs meets that parameter."  
 14 So what we asked Rangen, "Okay, if you  
 15 disagree with other experts and if you think you need  
 16 higher quality water or a different temperature than  
 17 every other fish hatchery, explain why. Answer:  
 18 None." They don't know what they need.  
 19 So I don't know how they can come in here  
 20 and say "We don't know what water quality we need" and  
 21 then put on evidence that Tucker Springs is not good  
 22 enough for them. And that's what it boils down to.  
 23 It's not timing. It's nothing of the nature. It's can  
 24 they hide that ball and then come out and use it to our  
 25 disadvantage?

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1 THE HEARING OFFICER: Okay. At the outset I  
 2 don't intend to rule, at least immediately, on the  
 3 motions in limine. Although as I look through the  
 4 first motion in limine, I'll tell you, Randy and TJ,  
 5 the motion, in my opinion, lacked enough detail for me  
 6 to really react and rule on a specific factual matter  
 7 or a factual subject that I could exclude because it  
 8 was so general in nature.  
 9 And so my inclination in reading that  
 10 particular motion was to deny it just on the basis that  
 11 it really didn't give me the factual detail that I  
 12 needed to effectively say this -- this evidence or this  
 13 body of evidence related to these facts should be  
 14 prohibited from being presented at the hearing itself.  
 15 And I will tell you that with respect to  
 16 the issue of injury that -- and, TJ, you stated this  
 17 yourself, that the Director had in the past ruled and  
 18 referred to the conjunctive management rules that  
 19 require that the Director consider injury in its review  
 20 of -- or in his review of the mitigation plan.  
 21 Now, the distinction, I guess, I draw is  
 22 that the issue of injury and the presentation of  
 23 evidence doesn't -- in a mitigation hearing does not  
 24 need to rise to the level of proof that would be  
 25 required in a transfer proceeding. And I don't want to

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1 mischaracterize that standard, other than to say that  
 2 the issue, in my opinion, should be is there a  
 3 reasonable possibility that -- or is there a way in  
 4 which the mitigation plan can be implemented so that it  
 5 does not cause injury to other water users or IGWA in  
 6 general.  
 7 So when I started my narrative here, I said  
 8 that I would not rule on the issues. But at least with  
 9 respect to injury, the Director has a responsibility to  
 10 consider injury as part of the mitigation hearing, and  
 11 I will consider injury and take evidence related to  
 12 that subject.  
 13 Now, I think in that particular motion  
 14 there was also an argument that Rangen should not be  
 15 able to present evidence on behalf of other individuals  
 16 or entities that might be injured. You didn't talk  
 17 about that particular subject, at least directly,  
 18 although indirectly I think you did, TJ.  
 19 And my response is that the Director's  
 20 responsibility is much broader than in a court of law.  
 21 The Director has a responsibility to review the issue  
 22 of injury. And I can't just exclude those kinds of  
 23 issues from an evidentiary presentation.  
 24 So to the extent that Rangen wants to call  
 25 witnesses who are water users and could be injured by

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1 the mitigation plan, I will allow it. I'll allow it  
2 into evidence.  
3 Now, let's go to IGWA's second -- excuse  
4 me, IGWA's corrected second motion in limine. This  
5 particular motion raised some specific subjects.  
6 As I reviewed the first of these, "Water  
7 quality or temperature necessary to raise trout at the  
8 Rangen fish hatchery," and I read the answers to the  
9 interrogatories, in particular the answer to  
10 interrogatory No. 15 -- and, Ms. Brody, I disagree with  
11 your characterization.  
12 The interrogatory says, "What do you  
13 contend are the minimum and maximum water quality and  
14 water temperature parameters necessary to raise trout  
15 in the fish hatchery?" And I'm disappointed that the  
16 answer is "This interrogatory is vague and ambiguous.  
17 There are numerous water quality parameters."  
18 There was no attempt at all to answer this  
19 question. And I'm disappointed. It seems to me that  
20 Rangen could have attempted, with some qualification,  
21 to respond to this interrogatory. Nonetheless, I'm not  
22 inclined, at least at this point, to totally exclude  
23 any evidence regarding water temperature or -- let me  
24 look again, water temperature and water quality because  
25 these are central and significant concerns.

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1 So I'll attempt to address these issues as  
2 we work through the hearing, Mr. Budge. I don't want  
3 to exclude in some blanket ruling the presentation of  
4 evidence on this subject. But Rangen had a  
5 responsibility to attempt to respond to this particular  
6 interrogatory, and I'm disappointed.  
7 The information about permitting that may  
8 be required by other state and federal agencies, I want  
9 to look at this a little more closely, but -- and the  
10 timing, so I won't rule directly on this particular  
11 issue right now, and I'm assuming that the issue won't  
12 arise until Rangen starts its presentation of evidence.  
13 My sense is that some preliminary  
14 presentation is probably admissible, but I don't -- I  
15 don't know how much detail we need on the subject. So  
16 I'm not willing to rule on it right now, and it may be  
17 something that I'll handle as we go along. But some  
18 presentation is appropriate.  
19 With respect to confidential settlement  
20 communications, if the letter referred to is being  
21 offered as an exhibit, and Ms. Brody said that it's  
22 been marked, I will review the contents of the letter  
23 and compare it to the requirements of the rule. And  
24 I'm assuming, again, that this particular letter won't  
25 be offered as evidence until we proceed in a good way

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1 into the hearing itself.  
2 And so I'll respond to this particular  
3 request for a motion in limine and for exclusion  
4 tomorrow morning. I don't think we'll be there by  
5 then, will we? Anybody?  
6 Okay. Have we talked about all of the  
7 issues raised in the motions in limine?  
8 Okay. Other matters we need to talk about?  
9 Are we ready to proceed?  
10 Randy or TJ, who's examining?  
11 MR. HAEMMERLE: Director, I think we had talked  
12 about some openings.  
13 THE HEARING OFFICER: Oh, I am sorry. I  
14 overlooked your request for opening statements.  
15 Mr. Budge.  
16 MR. RANDY BUDGE: Thank you.  
17 THE HEARING OFFICER: And how do we want to do  
18 this? Single statement?  
19 MR. RANDY BUDGE: Pardon?  
20 THE HEARING OFFICER: You make a single opening  
21 statement?  
22 MR. RANDY BUDGE: Just be an opening statement.  
23 THE HEARING OFFICER: And then -- okay. And  
24 I'll allow all the parties an opportunity.  
25 Mr. Budge.

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1 MR. RANDY BUDGE: Director, I'm going to be very  
2 candid and blunt in our open statement.  
3 And first I want to make it clear that the  
4 districts and IGWA have in the past, and will continue  
5 now in the future, to pursue every reasonable and  
6 feasible opportunity to meet our mitigation obligation  
7 to Rangen.  
8 Unfortunately, as we have seen, and we  
9 expect to continue to see, Rangen is never going to be  
10 reasonable nor cooperative nor accept any mitigation  
11 plan.  
12 Let's be clear and make no mistake about  
13 what Rangen's objectives are. They're not about  
14 finding solutions. They're not about building any  
15 bridges. They're instead only about building barriers  
16 and doing everything in the power of them and their  
17 three law firms that they've employed to obstruct every  
18 mitigation effort of the groundwater districts.  
19 They're also pursuing every effort to  
20 undermine the Thousand Springs settlement framework.  
21 It's a bit ironic from our perspective that Rangen on  
22 the one hand sits here and cries "I'm dying of thirst  
23 and lack of water," yet every glass that's handed to  
24 them are knocked onto the ground.  
25 Rangen's only strategy has been, and we

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1 expect to continue to be, is curtailment of groundwater  
 2 pumpers, the only thing they find acceptable. That's  
 3 evidenced by their refusal to accept any plan that's  
 4 offered. It's evidenced by the fact that Rangen offers  
 5 nothing positive or constructive that they would find  
 6 acceptable. It's evidenced by their continuing effort  
 7 to undermine the Thousand Springs settlement framework  
 8 proposed by the State. And most recently, last week it  
 9 was evidenced by the fact that Rangen walked into the  
 10 SRBA court and filed ex parte a writ of mandate trying  
 11 to lift this Director's stay order.

12 And what's really repulsive and telling  
 13 about what Rangen and their counsels approach is is the  
 14 fact that they gave no notice to the Department and no  
 15 notice to us, as opposing counsel, despite that we've  
 16 been embroiled in this matter with them for well in  
 17 excess of a year.

18 And in fact, last week, on four of the five  
 19 days last week, Tuesday through Friday, counsel was  
 20 sitting across the table from us during depositions and  
 21 said not one word that they were going to jump in  
 22 ex parte and seek a writ of mandate. It's indicative  
 23 of what we're dealing with.

24 Rangen has only got one goal here, and  
 25 there's no doubt about it. They're looking for a huge

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1 windfall and a huge buyout. This case is mostly about  
 2 greed. It's about extraction of an exorbitant payout.  
 3 Let there be no question at all. The curtailment order  
 4 is being used as their tool, and it's being used as  
 5 their fuel.

6 Now, I wanted to talk a little bit about  
 7 the settlement framework. Somehow Rangen thinks it is  
 8 wrong for the State, the Water Resource Board, the  
 9 governor, the legislature, the groundwater users to try  
 10 to solve problems. They think there's some coercion  
 11 there, and that's going to be much about their case  
 12 today.

13 IGWA remains committed to the goals of the  
 14 framework. We're going to do our part. The State  
 15 stepped up and appropriated \$27 1/2 million to begin to  
 16 solve a problem which the State created. They asked  
 17 the groundwater users to step up and be part of the  
 18 solution. We've done so. We continue to do so.

19 This second mitigation plan was filed  
 20 specifically and immediately in response to the  
 21 framework. As soon as we saw it, one of the items  
 22 said, "Deliver 10 second-feet from Tucker to the head  
 23 of Billingsley Creek." We prepared, engineered, and  
 24 filed our plan immediately based on that.

25 We have also filed last week a third

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1 mitigation plan and requested that it be published and  
 2 processed on an expedited basis, because it provides  
 3 even more alternatives that may satisfy this problem.  
 4 As a courtesy, so we wouldn't have more ongoing  
 5 complaints of surprise, that plan was served on all  
 6 parties to this proceeding.

7 IGWA's goal remains to pursue every  
 8 reasonable mitigation plan. We intend to secure  
 9 approval of plans. Once approved, we're going to  
 10 investigate feasibility. And when we determine the  
 11 best ones to install or the most feasible, we will fund  
 12 it, and we will proceed without delay to construct it.  
 13 And it is true, our deadline that we are trying to meet  
 14 is have something in place no later than April 1st next  
 15 year before the irrigation season.

16 If we can complete it before then, which we  
 17 may be, depending on what plans are pursued, we will do  
 18 so. But it's difficult to proceed fast when you have a  
 19 party on the other side that has nothing but an  
 20 obstructionist attitude.

21 It's going to be up to the Director to  
 22 provide some guidance on how the process is moved  
 23 forward, notwithstanding the opposition that we see  
 24 from Rangen that is mostly frivolous in many respects,  
 25 and certainly costly to both of the parties.

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1 I want to talk a little bit about the  
 2 second mitigation plan, this Tucker Springs project.  
 3 You have before us the report of Bob Hardgrove. The  
 4 initial report was attached to the mitigation plan  
 5 filed back on March 10th. No big surprise.  
 6 Engineering's been ongoing.

7 This project has been engineered to a  
 8 60 percent on average completion level. It is not  
 9 complex. It is not rocket science. It is simple  
 10 pump-and-pipeline technology.

11 We have demonstrated that there is an  
 12 adequate supply of reliable power there from Idaho  
 13 Power. Perfect? Nothing is perfect. We have also  
 14 designed in a backup power supply in the way of a  
 15 generator with automatic mechanisms to kick on if  
 16 there's a failure.

17 We've also indicated as an alternative  
 18 insurance is available to insure fish loss, like any  
 19 other crop loss. And we will put on evidence of that.  
 20 And not only can we provide it, Rangen itself provides  
 21 it. In its contract to Idaho Power, it has to provide  
 22 insurance for fish loss. And that is because nothing  
 23 is perfect in raising fish or any other crop. There  
 24 are certain risks involved. The question is what risks  
 25 are reasonable and what are unreasonable.

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1 We have all of the easements in place  
 2 through the Candy property, through the Morris  
 3 property, off of the Fish and Game property, farther  
 4 along by far than they were on the over-the-rim plan.  
 5 You'll hear testimony from our fisheries  
 6 expert, Tom Rogers. Rogers is a fisheries biologist.  
 7 He's retired after many years from Fish and Game. He's  
 8 designed, he's managed, he's constructed fish  
 9 hatcheries. He was the manager of the Fish and Game  
 10 fisheries program for many, many years here in Idaho.  
 11 And he's going to conclude that water quality and  
 12 temperature is virtually identical at Tucker Springs as  
 13 it is at Rangen, and it is suitable for raising rainbow  
 14 trout.  
 15 It should be obvious that we shouldn't have  
 16 to have an expert here to tell us that. The anecdotal  
 17 evidence is pretty compelling. Rangen's been raising  
 18 fish for 50 years, 60 years. The Fish and Game  
 19 hatchery has been raising fish successfully for 50 or  
 20 60 years.  
 21 I want to comment on the transfer  
 22 application. The transfer application need not even be  
 23 filed under the standard of the over-the-rim plan. In  
 24 fact, it's been previously filed, publication begins  
 25 this week, and we believe that that's the proper

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1 proceeding to address the impacts to other protestants,  
 2 the water users that may rely upon Riley Creek and also  
 3 Tucker Springs. And we fully intend to address their  
 4 concerns in that particular proceeding.  
 5 We do not plan on addressing them in any  
 6 kind of detail in this proceeding. We're not prepared  
 7 to do so, nor are we required to do so, based upon this  
 8 Director's ruling. However, I will say we have already  
 9 met with the folks on Riley Creek.  
 10 Recently we have authorized and directed  
 11 our engineers, SPF, to meet with Buckeye's engineer, to  
 12 meet with Fish and Game's engineer. I think the  
 13 State's engineer was part of that meeting. And we've  
 14 authorized and directed them to proceed and come back  
 15 with projects to try to identify what do we need to do  
 16 to implement the settlement term sheet on Riley Creek  
 17 in a timely fashion. When those proposals are brought  
 18 forward, we fully anticipate to file additional  
 19 mitigation plans to address those.  
 20 I want to talk briefly on this Director's  
 21 final order issued in 2011 approving the over-the-rim  
 22 plan to Snake River Farms. As the Director has  
 23 indicated earlier, that sets the standard that we  
 24 should be looking at today in addressing our second  
 25 mitigation plan.

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1 That order made it very clear that  
 2 conditional approval is appropriate. In that instance  
 3 the Director specifically stated it can be conditional  
 4 upon easements. In that case we didn't have hardly any  
 5 easements in place. In this case we have them all in  
 6 place. It can be conditional on the transfer  
 7 application.  
 8 In the Snake River Farms matter we hadn't  
 9 even filed the transfer application. We have filed one  
 10 here. This one is relatively simple. It only entails  
 11 moving the place of use.  
 12 The one in the over-the-rim plan that  
 13 hadn't even been filed was certainly going to be  
 14 complex. We had multiple water rights and multiple  
 15 wells. We were changing from groundwater to spring  
 16 water. We were changing from an irrigation use  
 17 seasonally to a year-round fish propagation use.  
 18 Notwithstanding, it was approved subject to that  
 19 condition.  
 20 It was also approved subject to whatever  
 21 permits were necessary, whether it be building permits,  
 22 Clean Water Act, or the like. But what's really  
 23 important about this Director's order in that case is  
 24 when do we have to do those things.  
 25 The order made it very clear what the

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1 standard is, that once the approval of the plan is  
 2 given here, the ball is going to shift into Rangen's  
 3 court. They're going to have to come out of the dark  
 4 and be a player in this game which they've been so far  
 5 wanting to simply prevent from ever happening.  
 6 They will have to do two things: They're  
 7 going to have to answer, "Will you or will you not  
 8 accept the pipeline water?" And two, they're going to  
 9 have to answer, "Will you give permission to go on your  
 10 land to construct the facility, provide access so it  
 11 can be done?"  
 12 All this has to be done before work  
 13 required to go forward with the transfer, before we're  
 14 required to actually buy and pay for the easements.  
 15 Right now we have options to acquire them and before we  
 16 have to pursue any other expensive Clean Water Act  
 17 applications.  
 18 One thing I would like to comment on that  
 19 we've clearly learned from the discovery in this case  
 20 on what we can expect to hear from Rangen, and perhaps  
 21 more importantly what we can expect not to hear from  
 22 Rangen in this case.  
 23 You're not going to hear anything about how  
 24 to get water to Rangen. You are not going to hear how  
 25 the conceptual design can be improved as it moves from

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1 a 60 percent level to 100 percent level, because all  
 2 you're going to hear is the things that are wrong with  
 3 it.  
 4 As we know from Dr. Brockway's deposition,  
 5 when he made his comments on areas of concern -- and  
 6 there really weren't very many, when we said "What  
 7 would you do different as we proceed with final design  
 8 to make this better for Rangen?" he said, "That is not  
 9 my job. I'm only hired here to find fault. Not to  
 10 make any positive comments." And he will be testifying  
 11 to that effect when you hear from him.  
 12 You're not going to see any credible  
 13 evidence to refute the groundwater districts' evidence  
 14 that the water quality and temperature is nearly  
 15 identical at Tucker Springs as it is at Rangen, and  
 16 that it's suitable to raise fish.  
 17 The Director's already reviewed and  
 18 commented on Rangen's responses to 6, 7, and 15. That  
 19 should make a pretty clear picture about the  
 20 hide-the-ball game that we're dealing with.  
 21 Doesn't it seem a little bit incredible  
 22 that someone who prides itself as being a research  
 23 facility and raising fish for 50 years cannot answer a  
 24 simple question on what are the parameters of  
 25 temperature and water quality unique? "We don't know."

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1 So despite that they don't know what they  
 2 need, they want to spend their time focusing on some  
 3 illusory problem that they perceive that exists at  
 4 Tucker Springs.  
 5 What's interesting is they say temperature  
 6 and water quality they don't know. Their own contract  
 7 with Idaho Power specifies nothing about temperature or  
 8 water quality. It only specifies the density of the  
 9 fish that are needed. And that density is very, very  
 10 low.  
 11 It simply says, "We've got to meet fish  
 12 that will survive in American Falls Reservoir." Not  
 13 much of a water temperature or quality standard there.  
 14 What I can assure you you're going to see  
 15 from Rangen, you're going to see a sideshow. You're  
 16 going to see a number of specious arguments. You're  
 17 going to see a lot of red herrings that they'd like you  
 18 to run up some blind alleys.  
 19 They're more worried about snails in Riley  
 20 Creek. They're more worried about Clean Water Act  
 21 permitting. They're more worried about injury to water  
 22 rights. They're not providing anything of concern, and  
 23 they're not going to talk about getting water to  
 24 Rangen, because that's not their objective and not  
 25 their goal.

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1 What is incredible is the show they're  
 2 going to try to make about injury resulting from  
 3 alleged fish kills at Hagerman State Hatchery. My  
 4 heaven's, the world -- and Tom Rogers will tell you  
 5 about -- is full of stories about fish. Fish die.  
 6 They get diseases. It is a product of raising fish,  
 7 like any other crop or any other livestock.  
 8 What is completely amazing is they're going  
 9 to make their case based on a bunch of newspaper  
 10 articles that they went and did a Google search to find  
 11 all these articles where there might have been a fish  
 12 kill related to a power failure.  
 13 And when you look at those articles --  
 14 first of all, they're all entirely inadmissible  
 15 hearsay. There isn't anything in one article that  
 16 finds the design of the facility anywhere close to what  
 17 we see here. Most of them didn't even have a backup  
 18 pump. One of them was a hurricane-related failure.  
 19 You know, it's amazing what they're doing  
 20 to -- and their case that somehow because there is some  
 21 disease in fish at the Hagerman State Hatchery has no  
 22 nexus at all or no tie-in to the water coming out at  
 23 Tucker Springs.  
 24 The hatchery expert that they deposed --  
 25 and, you know, Counsel complained about his report

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1 coming in late. They're the ones that deposed him and  
 2 got the report, not us. He only talked about water  
 3 from Riley Creek being a problem.  
 4 Riley Creek runs for miles. It picks up  
 5 the effluent out of the National Hatchery. And the  
 6 hatchery problem that he noted, they had some disease,  
 7 he expressed concern because they mix Riley Creek water  
 8 in.  
 9 Obviously, that has nothing to do with what  
 10 we're proposing here to take the clear, cold water from  
 11 Tucker Springs and move it over. We're not suggesting  
 12 we take any Riley Creek water. So there's really no  
 13 combination.  
 14 And the fact that they want to pursue that  
 15 kind of a project gives you some idea where we are.  
 16 There isn't any question, Director, that we have an  
 17 approvable plan based upon the standard set forth in  
 18 your order in your over-the-rim plan to Snake River  
 19 Farms.  
 20 The plan meets the standards set out there.  
 21 It meets conjunctive management Rule 43 of timely  
 22 providing a sufficient quantity of water to Rangen.  
 23 The 60 percent design is way farther along than existed  
 24 in that case. We have our easements in place which  
 25 were not in case there, and we already filed our

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1 transfer application, which is being published. And  
 2 it's much simpler and much farther along.  
 3       It certainly is appropriate to approve it  
 4 conditionally upon the transfer application being  
 5 approved and upon other permits that are acquired, upon  
 6 completion of the final engineering design.  
 7       But before we have to do any of those  
 8 things under the standards set forth in your order,  
 9 Rangen is going to have to answer the question: "Will  
 10 we take the water, and will we allow access for  
 11 construction?" That's fundamental.  
 12       The Director has provided guidance. This  
 13 Director has provided leadership. And it sent a clear  
 14 message to Clear Springs when it approved the  
 15 over-the-rim plan in 2011 in your final order. And the  
 16 message that you sent out was threefold.  
 17       First of all, you sent a message that  
 18 reasonable mitigation plans that provide water in the  
 19 right quantity and timely are going to be approved.  
 20       The second message you gave that a senior  
 21 spring water right cannot be used to curtail every  
 22 junior groundwater right in an unreasonable manner that  
 23 holds them hostage to extract an unconscionable  
 24 penalty.  
 25       The third message you gave is you struck a

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1 balance, as the law requires, an appropriate balance  
 2 between the prior-appropriation doctrine and the  
 3 Groundwater Act that says we're going to have full  
 4 economic development and maximum beneficial use.  
 5       And we recognize this Director did not  
 6 create that conflict by the legislature and the  
 7 development, but the Director did strike an appropriate  
 8 balance. And I think more importantly, you provided a  
 9 path forward.  
 10       And what was the result of that path  
 11 forward? The result of that path forward is that we've  
 12 been able to resolve the most significantly difficult  
 13 water calls in the history of this state. We were able  
 14 to, because of that guidance and leadership, resolve  
 15 the calls with Clear Springs Food, with Blue Lakes  
 16 Trout, with SeaPac, with Jones, with Rim View, and with  
 17 Clear Lake. All have been resolved. And those were  
 18 significant problems.  
 19       Clear Lakes Hatchery alone was a thousand  
 20 second-feet of water. The Hardy facilities were over  
 21 450 second-feet of water that had been protected.  
 22       Here we're dealing with something entirely  
 23 different. So I think the leadership shown in those  
 24 cases that resulted in a solution is going to be  
 25 appropriate here. We simply are basically grateful to

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1 the leadership shown in that case that enabled a path  
 2 forward to solution, and we simply ask here to have the  
 3 Director show the same leadership, approve the second  
 4 mitigation plan, send a message to Rangen that  
 5 obstructionist attitudes cannot always last, and give  
 6 us an opportunity to build bridges either around or  
 7 over the top of Rangen's objection.  
 8       This is not going to be the end of the  
 9 problems, but we see it as the beginning of the end of  
 10 the solutions to all remaining problems, which are  
 11 those in the Hagerman Valley. The State has stepped up  
 12 and done its part to solve the long-term problem that  
 13 will work. And I can assure you the groundwater  
 14 districts, we are going to step up and do our part.  
 15       We simply ask that this Director do the  
 16 same now as he's done in the past, give us an  
 17 opportunity to fix this problem here and in the other  
 18 mitigation plans that are going to be coming down the  
 19 road by approving this plan. There will be others to  
 20 follow to fix the problem.  
 21       Thank you.  
 22       THE HEARING OFFICER: Mr. Budge, I just have a  
 23 couple of questions.  
 24       You referred to a Thousand Springs  
 25 settlement framework.

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1       MR. RANDY BUDGE: Yeah.  
 2       THE HEARING OFFICER: And I thought initially  
 3 that maybe you were talking about some previous  
 4 settlement to delivery calls or something else in the  
 5 entire Thousand Springs complex. And then you referred  
 6 later to a term sheet.  
 7       Are you referring to some sort of --  
 8       MR. RANDY BUDGE: No, the Thousand Springs  
 9 settlement framework is the one that's been proposed in  
 10 the state since the first of this year in response to  
 11 the Rangen call, which is the reason we filed this  
 12 second plan.  
 13       The other resolution was once -- back in  
 14 the Snake River Farms call, once the Director issued  
 15 its final order and approved that over-the-rim  
 16 mitigation plan, the Director sent a message, that  
 17 solutions are going to be approved that provide water.  
 18       And when that plan was approved, the  
 19 Director will recall Clear Springs said "We don't want  
 20 the water. We aren't going to give you access."  
 21       And that basically, the approval of that  
 22 plan, set the table for all of the settlements of the  
 23 resolution of those major delivery calls by way of  
 24 settlement agreements with all those parties who were  
 25 willing to sit down and cooperate and settle the

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1 problem.  
 2 I can assure you we will never see that  
 3 from Rangen. Rangen will never accept any plan that's  
 4 offered. Rangen is going to obstruct everything all  
 5 the way.  
 6 So it's going to be up to this Director to  
 7 show the same guidance and leadership you did in Snake  
 8 River Farms' case, and basically the heritage is going  
 9 to be the long-term solution, because we're committed  
 10 to doing that.  
 11 THE HEARING OFFICER: But when you referred to  
 12 the Thousand Springs settlement framework and some term  
 13 sheet, you're talking about some plan that's been, I  
 14 guess, proposed, and I don't -- maybe there's some  
 15 implementation that's happened.  
 16 But for addressing larger water concerns in  
 17 the Hagerman Valley; is that correct?  
 18 MR. RANDY BUDGE: Correct, yeah.  
 19 THE HEARING OFFICER: Okay.  
 20 MR. RANDY BUDGE: And that is an exhibit in this  
 21 case, and you'll hear testimony about it. That is the  
 22 Thousand Springs settlement framework that was  
 23 developed at the request of the governor and at the  
 24 request of the legislators, Speaker Bedke. Rangen was  
 25 in the room on some of those meetings, as were we, that

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1 they gave direction to come up with the Thousand  
 2 Springs settlement framework.  
 3 So the Department -- and I think that's why  
 4 they called the Department witnesses. They want Mat  
 5 Weaver and they want Tim Luke, who has no part of it,  
 6 but Brian Patton did. Mat Weaver had a part of it, and  
 7 that's why they've listed them as witnesses. They  
 8 developed a settlement framework that was taken back to  
 9 Speaker Bedke. Clive Strong had a hand in the writing  
 10 of it, I understand from the depositions.  
 11 They presented a framework to Rangen, to  
 12 us, to all the water users in the Hagerman Valley. The  
 13 State did their part, appropriated the money to do the  
 14 managed recharge. We are doing our part by fixing  
 15 issues below the rim.  
 16 Rangen is doing their usual part, and that  
 17 is obstructing and trying to undermine all of those  
 18 efforts. That's what I was referring to.  
 19 THE HEARING OFFICER: And I was just unfamiliar  
 20 with the title. I knew there was something happening  
 21 in the background, but I just didn't know what it was  
 22 you were referring to. And I'm sorry that I maybe  
 23 prompted a discussion of a lot of detail that maybe was  
 24 not necessary. I just didn't know what it was.  
 25 Okay. Mr. Haemmerle.

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1 MR. HAEMMERLE: Director, I think I'm glad that  
 2 Mr. Budge took this opportunity to vent his  
 3 frustrations with this entire process because, frankly,  
 4 we have frustrations as well.  
 5 Our biggest frustration, I guess, Director,  
 6 is that we keep coming before you in all these  
 7 administrative processes for the approval of plans that  
 8 are never going to be built.  
 9 Now, what IGWA is here to do, Director, is  
 10 they're here to have a mitigation plan approved and say  
 11 "There, Director, see, we can have a plan approved."  
 12 "What do you think, Rangen?"  
 13 What we think is that IGWA has gone around  
 14 with respect to the Tucker Springs plan and advised the  
 15 whole world that they have no intent of developing this  
 16 plan. None. If there's no intent to develop this plan  
 17 and get Rangen any actual water, then this whole  
 18 process is frankly a farce. That's what it is.  
 19 That's our frustration, Director, is that  
 20 we keep slopping things up against the wall. IGWA  
 21 keeps doing that. And the reason they're doing that is  
 22 they want you to issue stay after stay after stay  
 23 without the delivery of one drop of water that  
 24 satisfies your call -- that satisfies the order on our  
 25 call.

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1 I'll go back and explain to you how the  
 2 Tucker Springs plan was developed. Now, Mr. Budge says  
 3 that there was a Thousand Springs settlement term  
 4 sheet, and indeed there was, and that how Rangen is  
 5 undermining that whole term sheet.  
 6 Well, really, Director, here's what  
 7 happened. There's parties in the State of Idaho that  
 8 are invited to events, and there's parties who aren't.  
 9 IGWA always gets the invitation to the important  
 10 parties and the inside track to what the State of Idaho  
 11 is up to, what they're doing, what they're involved  
 12 with.  
 13 And guess what? Rangen doesn't get the  
 14 same invitations. These protestants don't get the same  
 15 invitations. What happened was after you issued your  
 16 order on our water call, what happened was that there  
 17 was frustration with the powers to be in the State of  
 18 Idaho. The attorney general, namely Clive Strong, the  
 19 State legislature, namely Speaker Bedke, the governor's  
 20 office, and your own people, Director, your Assistant  
 21 Director, Mr. Weaver, and others developed what's  
 22 called the Thousand Springs settlement term sheet.  
 23 We weren't a party to that term sheet. The  
 24 protestants weren't a party to that term sheet. Water  
 25 users in Hagerman weren't a party to the development of

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1 that term sheet. IGWA was.  
 2 The term sheet was developed. IGWA gets  
 3 invited over to meet with the inside group, Mr. Strong,  
 4 Mr. Bedke, the governor, and your people. IGWA was  
 5 invited over to these very offices, IDWR, on or about  
 6 March 5th, and they were handed this settlement term  
 7 sheet, which contained the so-called Tucker Springs to  
 8 Billingsley Creek direct flow.  
 9 Now, what's interesting is, what you're  
 10 going to discover is that the Tucker Springs wasn't  
 11 even IGWA's idea. It wasn't something they came up  
 12 with. It's what the State of Idaho came up with. It's  
 13 what IDWR mapped out. They had Tucker Springs on maps  
 14 and things before IGWA, I suspect, even knew about it.  
 15 Now, what happened then was IGWA, not  
 16 having any concept of the Tucker Springs plan  
 17 themselves, and to satisfy, I suppose, the State of  
 18 Idaho, filed the Tucker Springs plan. They hired  
 19 engineers to develop engineering for the plan. And  
 20 what they discovered was a lot of things.  
 21 Now, what you'll find out is it's not  
 22 simply enough to create a pipeline from Rangen -- or  
 23 from Tucker Springs to the Rangen facility. There's a  
 24 lot more involved.  
 25 Part of this deal is that you'll discover

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1 that there's a letter of intent between IGWA and Fish  
 2 and Game. And part of that deal was to improve the  
 3 Aqua Life facility so Fish and Game can use that  
 4 facility, water can then be transferred from Tucker  
 5 Springs to Rangen.  
 6 Well, what you're going to find out is that  
 7 improvement of the Aqua Life facility is really  
 8 expensive. You're going to find out it's about  
 9 \$7.5 million. You're going to find out that the  
 10 pipeline itself is a couple million dollars. That's a  
 11 pretty expensive project.  
 12 Now, given that expense, what IGWA has done  
 13 is go around and tell the world, "No, we don't want to  
 14 move forward with this plan." They're going to keep  
 15 filing other mitigation plans, and we're going to have  
 16 hearings on those plans. And every single plan will  
 17 just be slopped up there for you to look at, approve a  
 18 plan and say "There, Rangen, you're made whole."  
 19 Well, guess what? We're not.  
 20 And it's real hard for us to sit up here  
 21 and say, "You know, Mr. Budge, we'll take that water  
 22 when you have no intent on the planet to actually  
 23 develop the plan."  
 24 What they want you to do is approve a plan  
 25 and say, "There. There you go," when they themselves

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1 have absolutely zero intent to develop it.  
 2 In that respect, since there's no intent,  
 3 Director, this plan is completely illusory, it's a  
 4 farce, and this particular hearing is a farce in and of  
 5 itself.  
 6 Now, if we have to go back and address the  
 7 specifics of the plan, which we will do, the first flaw  
 8 of this plan is the injury to other users.  
 9 The State of Idaho, and I suppose IGWA,  
 10 thinks it's a grand idea in the settlement term sheet,  
 11 Director, to take water out of some Hagerman sources  
 12 that are short, to move water out of this source and  
 13 give it to that source.  
 14 You know, that will never work because  
 15 Hagerman is overappropriated. Everyone in Hagerman is  
 16 short. If you take water out of this source, you make  
 17 that source more short, only to satisfy some other  
 18 user. That's a real bad idea.  
 19 You're going to hear Frank Erwin testify  
 20 about the difficulties that he's had administering the  
 21 water coming out of the Tucker Springs, the fact that  
 22 he's had to schedule meetings to have people verbally  
 23 agree to use water in a certain way, only so that they  
 24 can use water.  
 25 Nobody's using their full water right

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1 because they can't. Why? Because the source is short.  
 2 If you take water out of that short source, it's going  
 3 to become more short.  
 4 Even the Department of Fish and Game,  
 5 Director, will come in here and testify that although  
 6 somehow they're a party to this agreement, they don't  
 7 think it's a good idea.  
 8 Why? Because they've had a history of  
 9 experience in the Tucker Springs area. They know the  
 10 difficulties of the delivery of water there. They  
 11 themselves have been concerned about the habitat in  
 12 Riley Creek, and that's why they filed a protest to a  
 13 water right given to the Buckeye. They were concerned  
 14 about habitat. There were concerned about flows.  
 15 And what you're going to do, I suppose, is  
 16 just make those flows worse. And guess what, Director?  
 17 The flows aren't getting any better year in and year  
 18 out, because they keep pumping and nobody curtails  
 19 them. That's why the situation is the way it is.  
 20 The second major flaw is that the Fish and  
 21 Game facility has diseases. They have diseases that we  
 22 don't. They have limitations on where they can place  
 23 their fish. We don't.  
 24 There's problems in Tucker Springs. Fish  
 25 and Game's going to come in here and testify to those

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1 problems. They're going to testify as to a host of  
 2 diseases that we don't have. And they're going to  
 3 testify the difficulty in eradicating those diseases  
 4 and finding out the sources of them. They don't know.  
 5       So it seems like a bad idea for us to  
 6 accept water which contains diseases we don't have when  
 7 there are no answers where those diseases come from.  
 8 They don't have any answers to that question.  
 9       The third set of flaws, I suppose, is  
 10 injury to the minimum stream flows I cited. You're --  
 11 we're going to talk about reliability issues, because  
 12 systems fail. They do. And when they fail, we get  
 13 injured.  
 14       Probably one of the most important set of  
 15 fatal flaws is that this thing isn't going to be built  
 16 this year. No way, no how. The reason is it's  
 17 expensive. IGWA doesn't want to build this expensive  
 18 facility.  
 19       What they want to do is keep filing  
 20 mitigation plans that can be approved but never  
 21 implemented. That's not mitigation for an actual  
 22 injury. That's simply continuing injury. That's their  
 23 plan. That's what they want to do. And I think  
 24 Mr. Budge has told some people that very fact.  
 25       They haven't even started to finance this

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1 project. They haven't even started the whole process  
 2 of going through the 404 process. And the reason we're  
 3 going to call our witness is just to say how long that  
 4 process takes.  
 5       They haven't looked at the 303 issues with  
 6 respect to the TMDLs that exist on Riley Creek. What's  
 7 the effect of those? I'm sure the EPA and Idaho DEQ  
 8 would be interested in knowing that you're taking water  
 9 out that would dilute phosphorus and suspended solids.  
 10 That's important to them, I'm sure.  
 11       They've told their own engineers not to  
 12 start this thing until -- or have it finished until  
 13 April 1. You'll see the timeline contained in the SPF  
 14 report. They have no intent, frankly, of building out  
 15 this thing this year. And really, they have no intent  
 16 of ever delivering water from the Tucker Springs  
 17 source, ever, because it costs too much money.  
 18       So it's really hard for us, Mr. Budge, to  
 19 respond to you in any meaningful way about whether we  
 20 would take water or not when they're not serious about  
 21 delivering it.  
 22       And so we keep up the facade, the mockery  
 23 of conjunctive management. Some day, some way, we're  
 24 all going to have to understand that it's real. People  
 25 spend this kind of money, they expect that this whole

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1 process actually works.  
 2       Thank you, Director.  
 3       THE HEARING OFFICER: Thank you, Mr. Haemmerle.  
 4       Mr. Simpson.  
 5       MR. SIMPSON: Good morning, Mr. Director. John  
 6 Simpson appearing on behalf of Buckeye Farms.  
 7       I'll be brief. Our issue here today is  
 8 with respect to the second mitigation plan, would that  
 9 plan injure Buckeye Farms' water rights that it has in  
 10 Riley Creek that divert into the Hunt Ditch. That's  
 11 why we're here.  
 12       We think the evidence that -- regarding  
 13 water flows and testimony will show that there's  
 14 serious questions about whether implementation of that  
 15 plan would. There may be times where high flows are  
 16 available for which Buckeye's junior rights would not  
 17 be impaired, but in general, implementation of this  
 18 plan, without further mitigation with respect to water  
 19 quantity, would in fact deplete flows from existing  
 20 property rights that Buckeye has.  
 21       From our overview of the proceedings to  
 22 date, I don't think there's any dispute as to the  
 23 water-flow data. We don't think that there's any  
 24 dispute that from a quantity standpoint, looking at  
 25 quantity alone at this point. I'll leave it to others

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1 to argue and present testimony as to water quality if  
 2 that's allowed. From a water quantity standpoint, I  
 3 don't think any of the parties here dispute what the  
 4 data will show on Riley Creek.  
 5       If the parties had all stipulated to that  
 6 data and stipulated to the fact that the data shows  
 7 that Buckeye Farms' water rights are impacted, will be  
 8 impacted, and without mitigation to those impacts  
 9 there's issues with respect to protecting Buckeye  
 10 Farms' water right.  
 11       And reducing injury or eliminating injury  
 12 from that second plan, Buckeye could step aside and  
 13 simply monitor like some of the other water-right  
 14 holders have.  
 15       The question still exists, though, without  
 16 those stipulations, without that recognition, what's  
 17 going to happen with respect to this plan? That's why  
 18 we're here. We'd like to step aside, but we think that  
 19 the evidence we'll produce, we think the evidence  
 20 that -- as others have reflected on, that the  
 21 watermaster, Frank Erwin, will testify to, and what  
 22 those water rights that Buckeye has, how that impacts  
 23 those water rights needs to be presented to the Hearing  
 24 Officer.  
 25       Thank you.

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1 THE HEARING OFFICER: Thank you, Mr. Simpson.  
 2 Mr. Huntley.  
 3 MR. HUNTLEY: No comment right now.  
 4 THE HEARING OFFICER: Okay. Well, it's about  
 5 10:30. Let's take a break for ten minutes and come  
 6 back and start in on the presentation of evidence.  
 7 Mr. Budge? Others? Thanks.  
 8 (Recess.)  
 9 THE HEARING OFFICER: We're on the record.  
 10 So, Mr. Budge, you may call your first  
 11 witness.  
 12 MR. RANDY BUDGE: Thank you, Director.  
 13 We call Lynn Carlquist to be sworn as our  
 14 first witness.  
 15 THE HEARING OFFICER: Mr. Carlquist, if you'll  
 16 stand and raise your right hand, please.  
 17  
 18 RICHARD LYNN CARLQUIST,  
 19 having been called as a witness by IGWA and duly sworn  
 20 to tell the truth relating to said cause, testified as  
 21 follows:  
 22  
 23 THE HEARING OFFICER: Thank you. Please be  
 24 seated.  
 25 Mr. Budge.

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1 DIRECT EXAMINATION  
 2 BY MR. RANDY BUDGE:  
 3 Q. Would you state your name and address for  
 4 the record, please.  
 5 A. Richard Lynn Carlquist. 1092 South 2500  
 6 East, Hazelton, 83335.  
 7 Q. And you're a farmer in the Magic Valley  
 8 area?  
 9 A. Yes.  
 10 Q. You're also a member of North Snake  
 11 Groundwater District?  
 12 A. Yes.  
 13 Q. You currently serve as the chairman?  
 14 A. Yes.  
 15 Q. How long have you served in that capacity?  
 16 A. I've served as chairman for about ten  
 17 years.  
 18 Q. Have you previously provided testimony on  
 19 behalf of North Snake Groundwater District as well as  
 20 IGWA in other delivery calls to prior spring users or  
 21 the Surface Water Coalition through A & B and even in  
 22 this Rangen case?  
 23 A. Yes, I have.  
 24 Q. Are you here to testify in support of  
 25 IGWA's second mitigation plan?

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1 A. Yes.  
 2 Q. And are you here as a representative of  
 3 your district, North Snake, but also other districts  
 4 and IGWA?  
 5 A. Yes.  
 6 Q. And what other districts are you here for?  
 7 A. Magic Valley Groundwater District and  
 8 Southwest Irrigation District.  
 9 Q. Just as a matter of background and for the  
 10 record -- and I apologize that some of this duplicates  
 11 records and testimony you've given in those other  
 12 cases, but this being a separate record and separate  
 13 proceeding, I'm going to have to ask you some of the  
 14 same questions again.  
 15 Can you just tell us when North Snake  
 16 Groundwater District was formed approximately and what  
 17 the purpose and function of the District is.  
 18 A. To begin with, North Snake Groundwater  
 19 District was a volunteer organization that was formed  
 20 when the Musser call became a headline event.  
 21 Legislation was subsequently passed allowing the  
 22 formation of groundwater districts. And I think around  
 23 1997 was when the formal formation of North Snake  
 24 Groundwater District took place.  
 25 Q. Can you tell us approximately how many

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1 irrigated acres are in Magic Valley Groundwater  
 2 District and Southwest and in North Snake?  
 3 A. There's about 97-, 98,000 irrigated acres  
 4 in North Snake Groundwater District. There's around  
 5 125-, 130,000 in Magic Valley Groundwater District.  
 6 And I don't know quite the numbers in Southwest, but  
 7 it's around 100-some-thousand.  
 8 Q. Approximately how many groundwater wells  
 9 are located in your district?  
 10 A. I think there's about 450 wells in our  
 11 district.  
 12 Q. And do you have that knowledge for the  
 13 other districts?  
 14 A. I don't.  
 15 Q. Is all of the land within your district  
 16 subject to the trim line that was established in this  
 17 call proceeding that's commonly referred to as the  
 18 Great Rift trim line?  
 19 A. Yes.  
 20 Q. And what about Magic Valley Groundwater  
 21 District?  
 22 A. I believe all of Magic Valley Groundwater  
 23 District is.  
 24 Q. And is all or part of Southwest Irrigation  
 25 District within that trim line?

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1 A. For the most part, most of Southwest is,  
2 but not all.  
3 Q. To your knowledge, are there any other  
4 groundwater districts that are within that trim line?  
5 A. Not that I know of.  
6 Q. What about Carey Valley Groundwater  
7 District?  
8 A. I don't know for sure, but I don't think  
9 they're in it.  
10 Q. Are North Snake, Magic Valley, and  
11 Southwest all part of the entity called IGWA, formally  
12 known as Idaho Ground Water Appropriators, Inc.?  
13 A. Yes, they are.  
14 Q. And do you know when IGWA was formed,  
15 approximately?  
16 A. Oh, I don't know a date that I can  
17 remember. North Snake didn't belong to IGWA in its  
18 beginnings. We joined later.  
19 Q. What's the purpose of IGWA and how does it  
20 work with the groundwater districts?  
21 A. IGWA is the overall organization that kind  
22 of gives direction to all of the groundwater districts  
23 in their various areas pertaining to the overall  
24 mitigation aspects and legal representation for the  
25 legal problems that we might have.

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1 Q. Would it be accurate to --  
2 A. They also help to -- for example, in the  
3 area where we do provide water for mitigation or for  
4 conversions that we have done, IGWA is the entity that  
5 helps to provide those leases and get them in place.  
6 Q. Would it be accurate to say that IGWA's  
7 primary goal and responsibility is to help all of its  
8 groundwater districts manage mitigation obligations?  
9 A. Yes.  
10 Q. And to your knowledge, do those mitigation  
11 obligations arise out of the conjunctive management  
12 rules?  
13 A. Yes.  
14 Q. And were you here during the opening  
15 arguments of Mr. Haemmerle?  
16 A. Yes.  
17 Q. Mr. Haemmerle made the statement that the  
18 conjunctive management rules are illusory and a farce.  
19 Have you found that to be the case in your  
20 involvement as the chairman of North Snake and as a  
21 member of IGWA?  
22 A. No. Because of those conjunctive  
23 management rules, IGWA and the groundwater districts  
24 have provided a lot of various mitigation plans and  
25 have followed through on those plans over the years.

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1 Q. And if those conjunctive management rules  
2 that Mr. Haemmerle suggests are illusory and a farce  
3 result --  
4 MR. HAEMMERLE: I'm going to object to the  
5 characterization of my opening statement. I don't  
6 think I referred to the conjunctive management rules --  
7 MR. RANDY BUDGE: I'll rephrase the question.  
8 MR. HAEMMERLE: -- as illusory or a farce.  
9 THE HEARING OFFICER: Thank you, Mr. Budge.  
10 MR. RANDY BUDGE: I'll rephrase the question.  
11 Q. I guess the evidence will prove whether  
12 Mr. Haemmerle's opening statements are accurate, as  
13 well as mine. Let me rephrase that question,  
14 Mr. Carlquist.  
15 Has -- can you tell us an approximate  
16 amount of money that has been spent by IGWA and the  
17 groundwater districts to meet its mitigation  
18 obligations over the last decade?  
19 A. I haven't totaled up a total. But just in  
20 a rough figure, I know that we spent somewhere in the  
21 neighborhood of \$60 million, both in mitigation efforts  
22 for 120 obligations and 130 obligations.  
23 Q. So in your opinion, have the districts  
24 shown the financial ability to fund large mitigation  
25 projects of the type that you've described?

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1 A. We have done in the past.  
2 Q. In your opinion, do the districts have the  
3 financial ability to fund this second mitigation  
4 obligation if it's approved by the Director?  
5 A. We will fund it, yes.  
6 Q. Are you familiar with the districts' -- or  
7 excuse me, the Director's curtailment order issued in  
8 this proceeding on January 29th, 2014, that established  
9 the mitigation obligation to Rangen?  
10 A. Yes.  
11 Q. If that curtailment order were implemented,  
12 would that affect your water rights personally as well  
13 as all of those groundwater members within your  
14 districts?  
15 A. Yes. I have one water right that was  
16 affected by that order, and many within our district  
17 are affected by that order.  
18 Q. Can you tell us approximately how many  
19 municipalities are within your district that would be  
20 subject to that curtailment order?  
21 A. Within just North Snake Groundwater  
22 District or within all of the three?  
23 Q. Within all of the three Exhibits that are  
24 subject to the order.  
25 A. Within the three districts in the order, I

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1 think there's 22 cities. Some are impacted greater  
 2 than others. But almost all of those cities have some  
 3 impact.  
 4 Q. And are there dairies within the  
 5 curtailment area that you're familiar with?  
 6 A. Yes.  
 7 Q. And approximately what percent of the  
 8 dairies would be impacted by a curtailment order?  
 9 A. Well, most dairies have two different types  
 10 of water rights. They have water rights for their  
 11 agricultural ground that are impacted. Many of those  
 12 rights are impacted. But a large percentage of their  
 13 commercial rights that they use for their milking  
 14 barns' facilities are impacted by that order.  
 15 Q. Are you familiar with the districts and  
 16 IGWA's over-the-rim mitigation plan filed in 2009 to  
 17 Snake River Farms, as well as the Director's final  
 18 order approving it, which was in 2011?  
 19 A. Yes.  
 20 Q. Could you please look at Exhibit 1019.  
 21 A. Okay.  
 22 Q. Do you recognize that as IGWA's mitigation  
 23 plan to Snake River Farm that's commonly known as the  
 24 over-the-rim plan?  
 25 A. Yes, it is.

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1 Q. Would you also look at Exhibit 1020.  
 2 And tell me if you recognize that as the  
 3 final order approving the over-the-rim plan to Snake  
 4 River Farms that's signed by Director Spackman and  
 5 dated March 11th of 2011.  
 6 A. Yes, it is.  
 7 MR. RANDY BUDGE: We'd offer Exhibits 1019 and  
 8 1020.  
 9 MR. HAEMMERLE: No objection.  
 10 MR. SIMPSON: No objection.  
 11 THE HEARING OFFICER: Mr. Simpson?  
 12 Q. (BY MR. RANDY BUDGE): If you'd look,  
 13 Mr. Carlquist, on Exhibit 1020 --  
 14 THE HEARING OFFICER: Just a minute.  
 15 Mr. Huntley, do you have any objection to  
 16 the admission of the document?  
 17 MR. HUNTLEY: No.  
 18 THE HEARING OFFICER: Exhibits 1019 and 1020 are  
 19 received into evidence. Thanks.  
 20 (Exhibits 1019 and 1020 received.)  
 21 Q. (BY MR. RANDY BUDGE): Mr. Carlquist, on  
 22 Exhibit 1020, the final order, would you please turn to  
 23 page 7 of that order.  
 24 A. Okay.  
 25 Q. And does that page have paragraphs 8, 9,

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1 and 10 numbered on it?  
 2 A. Yes.  
 3 Q. Have you reviewed that order recently to  
 4 acquaint yourself with those particular paragraphs?  
 5 A. I did. I looked at it.  
 6 Q. You'll note there in those particular  
 7 paragraphs, 8, 9, and 10, and specifically in 10, it  
 8 discusses that Clear Springs had to "...state in  
 9 writing whether it will accept the water delivered  
 10 through the over-the-rim plan before the groundwater  
 11 districts need to take any further action, which is  
 12 filing transfers, seeking easements, and finished  
 13 plans."  
 14 A. Yes.  
 15 Q. Do you recall that part of the order?  
 16 A. I do, yes.  
 17 Q. At the time this order was issued approving  
 18 the over-the-rim plan, had IGWA filed the transfer  
 19 application on the water rights?  
 20 A. I don't remember for sure. But I don't  
 21 think it was filed at that time.  
 22 Q. It was not filed at the time the plan was  
 23 filed in 2009?  
 24 A. Well, yeah, in 2009. Now, when the plan  
 25 was approved, I'm not sure if it had been filed at that

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1 particular time. But when the plan was submitted, it  
 2 hadn't been -- for review it hadn't been transferred.  
 3 Q. At the time the plan was filed in 2009, did  
 4 IGWA have in place all of the easements necessary to  
 5 implement the plan?  
 6 A. Not all of them. We had an option on the  
 7 main easement down the canyon rim, that we just had an  
 8 option on it.  
 9 Q. Is it your understanding that to move  
 10 forward in that over-the-rim plan the transfer  
 11 application would be necessary?  
 12 A. Yes, it would.  
 13 Q. And do you understand what would have to  
 14 happen in the transfer application under that Snake  
 15 River Farms plan, what was being changed?  
 16 A. There would be a change in the place of use  
 17 and the type of use. It would go from an agricultural  
 18 use that generally is eight to nine months to a  
 19 year-round use in a different location.  
 20 Q. If you look in paragraph 10 -- this was the  
 21 Director's approval order -- states that -- this is in  
 22 line 5, No. 10, "The written acceptance/rejection must  
 23 state whether Clear Springs will accept the piped  
 24 groundwater and whether Clear Springs will allow  
 25 construction on its land related to the placement of

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1 delivery pipe."  
 2 Do you see that language?  
 3 A. Yes.  
 4 Q. Are those the types of conditions that IGWA  
 5 is requesting in this particular proceeding?  
 6 A. Yes. I believe we will need to have that  
 7 in place before we'll spend the monies to build the  
 8 project. It will have to be acceptable to them.  
 9 Q. And did Clear Springs ultimately indicate  
 10 they would not accept the water?  
 11 A. Yes, they did.  
 12 Q. And at that point had construction already  
 13 begun?  
 14 A. Some of the construction had begun, yes.  
 15 Q. And did the project ever get built?  
 16 A. No, not in total.  
 17 Q. And did the curtailment order, to your  
 18 knowledge, get suspended as a result?  
 19 A. I believe it did.  
 20 Q. Are you familiar with the settlement of the  
 21 Clear Springs call and the Blue Lakes call that  
 22 resulted after this over-the-rim plan occurred?  
 23 A. Yes, I'm familiar with it.  
 24 Q. What impact do you believe the Director's  
 25 order of approval in 2011 had on the resolution that

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1 was reached subsequently between the districts and  
 2 those calling parties, Blue Lakes and Clear Springs?  
 3 MR. HAEMMERLE: Objection. Relevance.  
 4 THE HEARING OFFICER: Mr. Budge.  
 5 MR. RANDY BUDGE: It's all relevant to the  
 6 particular order that's been established as the  
 7 standard here. This is -- the whole thing that's  
 8 relevant here is coming up with a mitigation plan  
 9 acceptable to Rangen.  
 10 And Rangen has opposed every effort. We're  
 11 entitled to show that the path forward involves whether  
 12 or not this particular settlement plan will result in  
 13 the delivery of water, timely and quantity, or some  
 14 other resolution.  
 15 MR. HAEMMERLE: Can I respond to that, Director?  
 16 THE HEARING OFFICER: No.  
 17 Sustained, Mr. Budge.  
 18 MR. RANDY BUDGE: Sustained?  
 19 THE HEARING OFFICER: Sustain the objection.  
 20 Q. (BY MR. RANDY BUDGE): Mr. Carlquist, would  
 21 you turn, please, to Exhibit 1100.  
 22 A. Okay.  
 23 Q. Is that entitled "IGWA's Second Mitigation  
 24 Plan and Request for Hearing"?  
 25 A. It is.

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1 Q. And was that plan prepared and filed by  
 2 your counsel at the request of the districts and IGWA?  
 3 A. Yes.  
 4 Q. Can you tell me, when did you first learn  
 5 of the concept that's become known as the Tucker  
 6 Springs plan that is the subject of the second  
 7 mitigation plan and involves a transport of water from  
 8 Tucker Springs to Rangen's facility at the head of  
 9 Billingsley Creek?  
 10 A. We came to Boise after the order had been  
 11 filed for a meeting in the governor's office. I  
 12 believe it was the second of such meetings that I was  
 13 at. The governor himself was not at this particular  
 14 meeting.  
 15 But an overall concept of how to solve some  
 16 of these problems was discussed in this meeting where  
 17 water users and legislators and representatives from  
 18 the governor's office and Department of Water personnel  
 19 were there.  
 20 And following that, we went -- came over  
 21 here to the Department of Water Resources and were  
 22 given an outline that was called the Thousand Springs  
 23 Hagerman or something settlement that outlined some  
 24 options to help find conclusions to water problems in  
 25 the Hagerman Valley. And one of those was entitled

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1 Tucker Springs pump-up to pump 10 cfs from Tucker  
 2 Springs to Billingsley Creek.  
 3 Q. Just so we have a clear record on the  
 4 chronology, the curtailment order that was issued  
 5 January 31st, 2014, the meeting you're referring to in  
 6 the governor's office was sometime after that?  
 7 A. Yes.  
 8 Q. So that would have been in February?  
 9 A. I believe it was in February.  
 10 Q. And was Rangen present at that meeting that  
 11 you were at the governor's office?  
 12 A. I think they were present at that meeting.  
 13 Q. And so it would have been sometime after  
 14 that that this settlement framework came to your  
 15 attention?  
 16 A. Yes.  
 17 Q. And if you'll look at the date on your  
 18 exhibit in front of you, Exhibit 1100, the second  
 19 mitigation plan, you'll see that it was filed  
 20 March 10th of 2014.  
 21 A. Yes.  
 22 Q. So is it your testimony, then, that this  
 23 Thousand Springs settlement framework would have come  
 24 to your attention sometime after the meeting with the  
 25 governor and before the mitigation plan filed

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1 March 10th?  
 2 A. That's correct.  
 3 Q. Can you look and turn to Exhibit 1110,  
 4 please.  
 5 A. Okay.  
 6 MR. RANDY BUDGE: And we'd offer Exhibit 1100,  
 7 the second mitigation plan.  
 8 MR. HAEMMERLE: No objection.  
 9 MR. HUNTLEY: No objection.  
 10 THE HEARING OFFICER: Mr. Simpson?  
 11 MR. SIMPSON: No.  
 12 THE HEARING OFFICER: The document marked as  
 13 Exhibit 1100 -- 1100; is that correct? -- yes, is  
 14 received into evidence.  
 15 (Exhibit 1100 received.)  
 16 Q. (BY MR. RANDY BUDGE): Do you have in front  
 17 of you Exhibit 1110 that's entitled "Thousand Spring  
 18 Water Supply Settlement Framework"?  
 19 A. Yes.  
 20 Q. There's a date in the top right corner  
 21 that's been penned in there 4/17 of '14.  
 22 Do you see that date?  
 23 A. Yes.  
 24 Q. Do you know where that date came from?  
 25 A. I believe that was a date that you wrote on

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1 there at one point in time.  
 2 Q. That wouldn't be the date that you  
 3 received --  
 4 A. No.  
 5 Q. -- the settlement framework?  
 6 A. No, it wasn't.  
 7 MR. RANDY BUDGE: For the record, I'd ask that  
 8 the date that's shown on the top right of that exhibit  
 9 be stricken. And I'll represent as an officer of the  
 10 court that that was in fact handwritten on there by me  
 11 at the time I printed off the computer in preparation  
 12 for a meeting with the IGWA board. It does not  
 13 represent the date that it was received.  
 14 And to avoid confusion with the testimony  
 15 of Mr. Carlquist that places the date sometime in  
 16 February to March 10th, I'd ask that that be stricken  
 17 off the exhibit.  
 18 MR. HAEMMERLE: No objection.  
 19 MR. SIMPSON: No objection.  
 20 THE HEARING OFFICER: It is your exhibit,  
 21 Mr. Budge.  
 22 Mr. Huntley?  
 23 It's stricken.  
 24 Q. (BY MR. RANDY BUDGE): Mr. Carlquist, do  
 25 you have a pen there? Would you simply strike through

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1 the date and write "stricken" on there, please.  
 2 A. I don't have a pen.  
 3 MR. RANDY BUDGE: We'd offer Exhibit 1110.  
 4 MR. HAEMMERLE: Director, I'm only going to  
 5 object based on foundation because I don't think  
 6 there's testimony about when Mr. Carlquist received  
 7 this document or how he received this document.  
 8 Q. (BY MR. RANDY BUDGE): You recognize this  
 9 is the document that you received sometime after the  
 10 meeting with the governor in February and before the  
 11 mitigation plan was filed on March 10th?  
 12 A. That's correct. It was received here.  
 13 Q. And do you recall the exact date?  
 14 A. I don't recall the exact date, but it was  
 15 when we met here in the Director's conference room.  
 16 Q. And who would you have received it from?  
 17 Do you remember?  
 18 A. There were a number of people present at  
 19 that time, and it was handed out. I don't remember for  
 20 sure who passed it out. It was Brian Patton or Clive  
 21 Strong or one of those individuals who was at that  
 22 meeting. It was given to us.  
 23 Q. This was at a subsequent meeting with  
 24 Speaker Bedke?  
 25 A. Yes.

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1 Q. And it was passed out in the room, and it  
 2 came to your attention then?  
 3 A. Yes.  
 4 MR. RANDY BUDGE: We'd then offer Exhibit 1110.  
 5 MR. HAEMMERLE: No objection.  
 6 THE HEARING OFFICER: Mr. Haemmerle?  
 7 Mr. Simpson?  
 8 MR. SIMPSON: No objection.  
 9 THE HEARING OFFICER: Mr. Huntley?  
 10 MR. HUNTLEY: No objection.  
 11 THE HEARING OFFICER: The document marked as  
 12 1110 is received into evidence.  
 13 (Exhibit 1110 received.)  
 14 Q. (BY MR. RANDY BUDGE): On that Exhibit 1110  
 15 in front of you, Mr. Carlquist, if you would look down  
 16 under Roman numeral II, B1.  
 17 A. Yes.  
 18 Q. It says there, quote, "Direct delivery of  
 19 10 cfs of water from Tucker Springs to Billingsley  
 20 Creek."  
 21 Is that the language that prompted IGWA to  
 22 proceed to file the second mitigation plan?  
 23 A. Yes, I believe that was the main impetus.  
 24 The fact that it's very difficult to make water come  
 25 out of a particular spring, and we just didn't feel

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1 like curtailing as many acres as it would take to  
 2 provide that water based on the order. So we were  
 3 looking at other alternatives. And this was at the  
 4 time the alternative that looked like we would  
 5 investigate, so we began initial work to have it  
 6 engineered to see what it would take to do that.  
 7 Q. To your knowledge, do you know who prepared  
 8 or drafted the settlement framework --  
 9 A. I do not know.  
 10 Q. -- Exhibit 1110?  
 11 A. I don't now.  
 12 Q. Do you know whether IGWA had any  
 13 involvement in the drafting of it?  
 14 A. None that I know of.  
 15 Q. Did the IGWA board commit to the objectives  
 16 of the framework that are set forth in Roman numeral I?  
 17 A. Yes, we did.  
 18 Q. And did the districts and the IGWA board  
 19 direct its attorneys and engineers to proceed to  
 20 develop the second mitigation plan?  
 21 A. Yes, we did.  
 22 Q. Did you authorize the work that would be  
 23 necessary to proceed with the development and  
 24 implementation of the plan?  
 25 A. Yes, we did.

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1 Q. Could you turn, please, to Exhibit 1106 and  
 2 identify that, if you would.  
 3 A. It's a letter of intent that was signed  
 4 between the Idaho Groundwater Appropriators and the  
 5 Idaho Fish and Game and the Idaho Water Resource Board.  
 6 Q. And do you recognize the signature on  
 7 behalf of Idaho Groundwater Appropriators?  
 8 A. Yes, I do.  
 9 Q. Whose signature is that?  
 10 A. Mr. Timothy Deeg, who's the president of  
 11 Idaho Groundwater Appropriators.  
 12 Q. He would be authorized to sign?  
 13 A. Yes.  
 14 Q. And the date on that was May 1st, 2014; is  
 15 that correct?  
 16 A. Yes.  
 17 Q. Do you know who prepared the letter of  
 18 intent?  
 19 A. I believe that your firm prepared the  
 20 letter of intent.  
 21 Q. Do you know what was involved -- who else  
 22 would have been involved in that, whether attorneys or  
 23 Fish and Game and IDW -- Idaho Water Resource Board  
 24 would have been involved?  
 25 A. They were involved.

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1 Q. You were not involved in any of the  
 2 negotiations or discussions directly?  
 3 A. No.  
 4 MR. RANDY BUDGE: We'd offer in evidence the  
 5 letter of intent, Exhibit 1106.  
 6 MR. HAEMMERLE: No objection.  
 7 MR. SIMPSON: No objection.  
 8 MR. HUNTLEY: No objection.  
 9 THE HEARING OFFICER: Mr. Huntley?  
 10 The document marked as Exhibit 1106 is  
 11 received into evidence.  
 12 (Exhibit 1106 received.)  
 13 Q. (BY MR. RANDY BUDGE): Please turn to  
 14 Exhibit 1111.  
 15 A. Okay.  
 16 Q. Is that exhibit in front of you identified  
 17 as "IGWA's Second Mitigation Plan, Tucker Springs  
 18 Project Report," dated May 19th, 2014?  
 19 A. Yes, it is.  
 20 Q. Did IGWA and the groundwater districts  
 21 employ SPF Engineering to do this conceptual design for  
 22 the Tucker Springs project?  
 23 A. Yes, we did.  
 24 Q. And did you authorize and direct them to do  
 25 other work on the project?

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1 A. Yes.  
 2 Q. Have the districts approved the project as  
 3 set forth in the SPF report?  
 4 A. Yes, we have.  
 5 Q. The report is described on its face as a  
 6 60 percent design concept.  
 7 Did the districts want to proceed with  
 8 further design until the plan is approved by the  
 9 Director?  
 10 A. No, we don't.  
 11 Q. And why is that?  
 12 A. Well, we think it's designed far enough  
 13 along for the Director to be able to approve it based  
 14 on the engineering that has been done to see that it's  
 15 feasible and that it will work. And so we don't think  
 16 it needs to be engineered beyond this to get approval  
 17 as a mitigation plan.  
 18 Q. Are you aware that some of the downstream  
 19 users on -- excuse me. Strike that.  
 20 Did the districts in IGWA authorize work to  
 21 secure the necessary easements for the pipeline project  
 22 if it were approved?  
 23 A. Yes, we've done that.  
 24 Q. Can you please turn to Exhibits 1107 and  
 25 1108 that are entitled "Option Agreements." 1107 is an

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1 option agreement with Howard "Butch" Morris and Rhonda  
 2 K. Morris, and 1108 is an identical agreement with  
 3 Walter W. and Margaret O'Neal Candy.  
 4 A. Yes.  
 5 Q. Do you recognize those as option agreements  
 6 pertaining to easements through the respective  
 7 properties of Morris and Candy?  
 8 A. They are.  
 9 MR. RANDY BUDGE: We would offer Exhibits 1107  
 10 and 1108.  
 11 MR. HAEMMERLE: No objection.  
 12 MR. SIMPSON: No objection.  
 13 MR. HUNTLEY: No objection.  
 14 THE HEARING OFFICER: Mr. Huntley?  
 15 The documents marked as Exhibits 1107 and  
 16 1108 are received into evidence.  
 17 (Exhibits 1107 and 1108 received.)  
 18 Q. (BY MR. RANDY BUDGE): Is it your  
 19 understanding that the Hagerman Highway District also  
 20 would issue the necessary permits for that portion of  
 21 the pipeline that would go down the highway  
 22 right-of-way?  
 23 A. My understanding is we've had some  
 24 tentative verbal approval that we could get a  
 25 right-of-way along their roadway.

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1 Q. To your knowledge, has Rangen agreed to  
 2 provide access to its property for construction of the  
 3 pipes and valves and other works that would be  
 4 necessary to construct the project?  
 5 A. Not to my knowledge.  
 6 Q. As you reviewed the SPF Engineering plan,  
 7 are you aware that it proposes to construct an  
 8 alternate supply of power as a backup to the source  
 9 from Idaho Power?  
 10 A. Yes, I am.  
 11 Q. Have you investigated the availability of  
 12 insurance as an alternate backup to the power supply  
 13 from Idaho Power?  
 14 A. Yes, we have.  
 15 Q. Could you turn to Exhibit 1113.  
 16 Is that exhibit in front of you a letter  
 17 from Baker Insurance Agency, dated May 12th, 2014?  
 18 A. Yes, it is.  
 19 Q. And who is Baker Insurance Agency?  
 20 A. The agent we used to get insurance for our  
 21 groundwater district is Ms. Baker, that we get our  
 22 insurance through ICRMP. And we asked her what the  
 23 possibility would be of getting insurance for the  
 24 production losses in the event we had this project  
 25 approved. And this letter is what she gave to us.

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1 Q. The letter was sought to obtain  
 2 confirmation that insurance would be available if it  
 3 were requested?  
 4 A. Yes.  
 5 Q. Have you done anything further to  
 6 investigate the cost or any of the terms of the  
 7 insurance?  
 8 A. No, have not.  
 9 MR. RANDY BUDGE: We'd offer Exhibit 1113.  
 10 THE HEARING OFFICER: Mr. Haemmerle?  
 11 MR. HAEMMERLE: I'm going to object only on  
 12 foundation, Director. I don't think there's been any  
 13 testimony on what information they provided to their  
 14 insurance agency to get any kind of commitment.  
 15 THE HEARING OFFICER: Mr. Budge, any response?  
 16 MR. RANDY BUDGE: I can lay additional  
 17 foundation.  
 18 Q. The letter states in the second line that  
 19 "This letter is to inform you that there are several  
 20 companies with liability policy that would provide  
 21 coverage for adequate -- or for aquaculture production  
 22 losses in the event of failure of the pump to provide  
 23 the agreed-upon quantity of water to Rangen, Inc."  
 24 Did you provide -- what kind of information  
 25 did you provide when you asked them to get you a

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1 letter?  
 2 A. Just the broad overview of some of the  
 3 initial engineering that had been done by SPF, that we  
 4 were going to pump this water from position A to  
 5 position B, and we wanted to know if we could have  
 6 coverage in case there was a failure that we couldn't  
 7 overcome.  
 8 MR. RANDY BUDGE: We'd offer 1113.  
 9 THE HEARING OFFICER: Mr. Haemmerle?  
 10 MR. HAEMMERLE: One question in aid of  
 11 objection.  
 12 THE HEARING OFFICER: Okay.  
 13  
 14 VOIR DIRE EXAMINATION  
 15 BY MR. HAEMMERLE:  
 16 Q. Mr. Carlquist, did you have any discussions  
 17 with Rangen or anyone else about what size of losses  
 18 could be expected if there was a failure?  
 19 A. Not to my knowledge.  
 20 MR. HAEMMERLE: Thank you.  
 21 With that, Director, I would object and let  
 22 it stand at that.  
 23 THE HEARING OFFICER: Okay. Mr. Simpson?  
 24 MR. SIMPSON: No objection.  
 25 THE HEARING OFFICER: Mr. Huntley?

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1 MR. HUNTLEY: No objection.  
 2 THE HEARING OFFICER: The document marked as  
 3 1113 is received into evidence over objection.  
 4 (Exhibit 1113 received.)  
 5  
 6 FURTHER DIRECT EXAMINATION  
 7 BY MR. RANDY BUDGE:  
 8 Q. Please turn back to Exhibit 1109.  
 9 Is this identified as an application for  
 10 permit?  
 11 A. Yes.  
 12 Q. Just one second. I'm showing that to be --  
 13 is this an application for permit, or is it an  
 14 application for transfer?  
 15 A. This is an application for permit.  
 16 MR. MAY: Randy, I don't want to interrupt you,  
 17 but in your initial marked documents there was an error  
 18 on 1109, and it was corrected later with some stuff.  
 19 So I'm just telling you.  
 20 MR. RANDY BUDGE: Let's go off the record for a  
 21 second.  
 22 THE HEARING OFFICER: Do you want to go off the  
 23 record?  
 24 MR. TJ BUDGE: Yes.  
 25 THE HEARING OFFICER: Let's go off for a minute,

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1 Jeff.  
 2 (Recess.)  
 3 THE HEARING OFFICER: We're recording again.  
 4 Mr. Budge.  
 5 MR. RANDY BUDGE: Yes, we just note that copy in  
 6 the binder is not the right copy. And with the help of  
 7 Mr. Simpson, we have a copy of the application for  
 8 transfer. We just propose to put a sticker on it,  
 9 Exhibit 1109, to expedite the testimony, and then  
 10 during the break we'll substitute a copy and get an  
 11 electronic copy that's the right one.  
 12 THE HEARING OFFICER: Okay. Everybody have a  
 13 copy of this document? I assume the parties have a  
 14 copy of the document that we're referring to.  
 15 Oh, and it's up, Justin.  
 16 MR. MAY: And the one that I've got there is  
 17 correct, because it was corrected later. The one that  
 18 I downloaded is the right one.  
 19 THE HEARING OFFICER: Okay.  
 20 MR. MAY: So it was corrected in the file.  
 21 THE HEARING OFFICER: Thank you.  
 22 THE WITNESS: Your binder is still wrong,  
 23 Director.  
 24 THE HEARING OFFICER: Yeah.  
 25 MR. RANDY BUDGE: So for the record,

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1 Exhibit 1109 that would be in the hard copy binders is  
 2 a copy of an application for transfer that's in error.  
 3 And I'm going to guess that the electronic copy that  
 4 was served on all the parties several days ago was the  
 5 same.  
 6 It was correct?  
 7 MR. MAY: It's been corrected.  
 8 MR. RANDY BUDGE: Oh, it's correct. Okay.  
 9 MR. MAY: That's why I have the proper -- the  
 10 one that's up there is right.  
 11 MR. RANDY BUDGE: So we simply need to get the  
 12 hard copy corrected, and we'll make a copy and  
 13 substitute it during a break.  
 14 THE HEARING OFFICER: Great.  
 15 MR. RANDY BUDGE: Thank you.  
 16 Q. Mr. Carlquist, do you recognize  
 17 Exhibit 1109 as an application for transfer?  
 18 A. Yes.  
 19 Q. And to your knowledge, has that been filed  
 20 with the Idaho Department of Water Resources, Southern  
 21 Region office?  
 22 A. Yes, it has.  
 23 Q. And to your knowledge, is this in the  
 24 process of being published, which is supposed to start  
 25 this week?

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1 A. That's my understanding, yes.  
 2 MR. RANDY BUDGE: We'd offer Exhibit 1109.  
 3 MR. HAEMMERLE: No objection.  
 4 THE HEARING OFFICER: Mr. Haemmerle?  
 5 Mr. Simpson?  
 6 MR. SIMPSON: No objection.  
 7 THE HEARING OFFICER: Mr. Huntley?  
 8 MR. HUNTLEY: No objection.  
 9 THE HEARING OFFICER: The document marked as  
 10 Exhibit 1109 is received into evidence.  
 11 (Exhibit 1109 received.)  
 12 Q. (BY MR. RANDY BUDGE): Mr. Carlquist, would  
 13 you turn to Exhibits 1101 through 1104.  
 14 Are you aware of certain protests that were  
 15 filed to the transfer application?  
 16 A. Yes, I am.  
 17 Q. Excuse me. Certain protests to the  
 18 mitigation plan that were filed, as evidenced by  
 19 Exhibits 1101, which is Rangen; 1102, which is Buckeye;  
 20 1103 is Leo Ray on behalf of Big Bend Trout, Inc.; and  
 21 1104 is Big Bend Irrigation & Mining.  
 22 A. Yes.  
 23 Q. And while we're there, one more is -- 1105  
 24 is a protest filed by Salmon Falls Land & Livestock.  
 25 A. Yes.

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1 Q. Were you aware that those protestants had  
2 filed protests in this mitigation proceeding?  
3 A. Yes, I am.  
4 Q. Do the districts plan to address those  
5 protests in this proceeding or as a part of the  
6 transfer application?  
7 A. Well, we assumed we would try and do it in  
8 the transfer application process. Overall, I think it  
9 was part of that Thousand Springs term sheet, you know,  
10 that it would be some other problems in the Hagerman  
11 Valley that would have to be resolved, either because  
12 of this transfer or because of other things. That's  
13 part of the ongoing process there.  
14 Q. Have the districts already started to  
15 undertake action to address the protestants of those  
16 who have water rights below -- at Tucker Springs and  
17 below on Riley Creek that may be injured?  
18 A. There have been discussions with some of  
19 them, yes.  
20 Q. And what has been authorized as far as work  
21 that you've directed through your engineers to address  
22 those concerns?  
23 A. Do some preliminary engineering work to see  
24 what it would take to get some water from other sources  
25 there, either pumped up from the river or from one of

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1 the other sources down there.  
2 MR. RANDY BUDGE: We'd offer Exhibits 1102  
3 through 1105, the protests of Buckeye, Big Bend Trout,  
4 Big Bend Irrigation Company, and Salmon Falls Land &  
5 Livestock.  
6 MR. HAEMMERLE: Director, I think the exhibits  
7 that were testified to are Exhibits 1101 through 1104.  
8 THE WITNESS: 1105 I believe was one too.  
9 MR. RANDY BUDGE: He was testifying about 1102  
10 through 1105.  
11 MR. TJ BUDGE: 1101, I think is...  
12 MR. RANDY BUDGE: Do you want us to offer yours  
13 too? We didn't offer Rangen, but we can.  
14 MR. HAEMMERLE: Why don't you do that.  
15 MR. RANDY BUDGE: We'd offer, then, all of those  
16 protests, Exhibits 1101 would be Rangen, besides the  
17 1102, -3, -4, and -5, the others mentioned.  
18 MR. HAEMMERLE: No objection.  
19 THE HEARING OFFICER: Mr. Simpson?  
20 MR. SIMPSON: No objection.  
21 THE HEARING OFFICER: Mr. Huntley?  
22 MR. HUNTLEY: No objection.  
23 THE HEARING OFFICER: Documents marked as  
24 Exhibit 1101 through 1105 are received into evidence.  
25 (Exhibits 1101 through 1105 received.)

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1 Q. (BY MR. RANDY BUDGE): And do you know  
2 which engineers have met to date trying to address  
3 these other water concerns on Tucker Springs and Riley?  
4 A. Well, I believe our SPF engineers have met,  
5 and I'm not sure. One of -- Buckeye's engineer, I  
6 believe it was Shaw, has met. I don't know any others  
7 besides that right now.  
8 Q. Do you know if the Fish and Game engineer  
9 has been involved in that meeting?  
10 A. I believe I was told they were, yes.  
11 Q. And any engineers from the Department?  
12 A. I don't know that.  
13 Q. Is it the District's request that this  
14 mitigation plan be approved subject to approval of the  
15 transfer application?  
16 A. Yes, that's what we'd like.  
17 Q. I may have already asked you this, but I'm  
18 not sure. Let me refer again.  
19 In the Snake River Farms over-the-rim plan,  
20 the order we discussed earlier, Exhibit 1110, the  
21 districts were not required to proceed with the  
22 conditions, being getting the permits, getting the  
23 transfer, getting the final easements, until Snake  
24 River Farms had agreed to accept the water from the  
25 pipe and allow access for construction.

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1 Are those the same conditions that you  
2 would ask be applied in this case?  
3 A. Yes.  
4 Q. If Rangen meets all of its conditions --  
5 let's assume it was approved subject to these same  
6 conditions, if Rangen agreed that it would accept the  
7 water and it would allow access for construction, will  
8 the districts proceed to build this project?  
9 A. We will.  
10 Q. Would you first consider any other  
11 projects?  
12 A. In preparing this particular mitigation  
13 plan, one or two other things have come to light, and  
14 it's been filed in a third mitigation plan. One being  
15 to pump the water from Aqua Life directly up to Rangen,  
16 rather than from Tucker Springs. It will be included  
17 in the third mitigation plan.  
18 We think that would be maybe a better  
19 option and may be cheaper. But whichever plan is  
20 approved and -- we will build it. We will have to  
21 build it.  
22 Q. Are there aspects of this Tucker Springs  
23 project that are of concern to the districts?  
24 A. Well, there's always the concern of having  
25 to expend fairly large amounts of money for a project.

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1 But we'll do what has to be done to prevent curtailment  
 2 of 150,000 acres on top of the spring -- or on top of  
 3 the rim.  
 4 Q. And are there concerns about getting the  
 5 transfer approved and satisfying some of the injuries  
 6 downstream on Riley Creek?  
 7 A. I think the transfer can be approved. And  
 8 I'm not sure what it will take to satisfy any injuries  
 9 down below. But as part of that Thousand Springs  
 10 settlement plan, we think there are some ways they can  
 11 be solved.  
 12 Q. Would proceeding with this particular plan  
 13 be dependent upon what the conditions are that are  
 14 imposed by the Director?  
 15 A. Well, I'm sure they would be.  
 16 Q. Would it also depend upon what other  
 17 mitigation plans might be approved?  
 18 A. Yes.  
 19 Q. Would it be the districts' plans to  
 20 evaluate the costs and feasibility of all alternatives?  
 21 A. Yes.  
 22 Q. Is it the districts' goal to have something  
 23 in place prior to next year's irrigation season?  
 24 A. I don't think we could do it sooner than  
 25 that, but that's what we want to do is have this in

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1 place.  
 2 Q. Would it be accurate to say the districts  
 3 will proceed as fast as they can to build whatever  
 4 project is approved and determined most feasible?  
 5 A. Yes.  
 6 Q. Could you turn to Exhibit 1118.  
 7 Do you recognize that as Rangen's responses  
 8 to IGWA's first set of discovery?  
 9 A. Yes.  
 10 Q. And have you reviewed those responses?  
 11 A. I have.  
 12 Q. Turn also, if you would, to Exhibit 1127.  
 13 Do you recognize that as a document  
 14 entitled "Rangen's Responses to IGWA's Second Set of  
 15 Discovery"?  
 16 A. No. My 1127, is that what you said?  
 17 MR. TJ BUDGE: Yeah.  
 18 THE WITNESS: That's -- I've got water rights  
 19 diverted from Billingsley Creek and the tributaries.  
 20 MR. RANDY BUDGE: Mr. Director, can I approach?  
 21 THE HEARING OFFICER: Yes.  
 22 MR. RANDY BUDGE: Okay. We will correct the  
 23 order in this notebook and what the Director has on the  
 24 originals. We have -- 1127 should be Rangen's  
 25 responses to second set of discovery.

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1 Do you have that?  
 2 THE HEARING OFFICER: My binder shows a caption  
 3 on the document "Rangen, Inc.'s Responses to IGWA's  
 4 Second Set of Discovery" under the tab 1127.  
 5 MR. RANDY BUDGE: Okay. That's correct. The  
 6 order is off on this one.  
 7 And then 1129 is Rangen's Supplemental  
 8 Responses to IGWA's First Set of Discovery?  
 9 MR. SIMPSON: That's our 1128, is what I have  
 10 that one for.  
 11 THE HEARING OFFICER: Yeah, 1129 is captioned  
 12 "IGWA's First Set of Discovery Requests to All  
 13 Protestants."  
 14 MR. RANDY BUDGE: Okay.  
 15 THE WITNESS: That's 1130 in this one.  
 16 MR. RANDY BUDGE: Well, we have one exhibit out  
 17 of order in this copy binder. It's correct in the  
 18 original.  
 19 Q. So on the original 1127 is Rangen's  
 20 Responses to IGWA's Second Set of Interrogatories.  
 21 Have you had a chance to look at that  
 22 previously?  
 23 A. Yes, I looked at it.  
 24 Q. And if you turn to Exhibit 1129, it's  
 25 entitled "Rangen's Supplemental Responses to IGWA's

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1 First Set of Interrogatories."  
 2 A. Yes.  
 3 Q. Have you had a chance to review that?  
 4 A. I did.  
 5 MR. HAEMMERLE: Counsel, hang on just so I  
 6 can -- you referred to 1129 as Rangen's supplemental  
 7 response.  
 8 Is that 1128 or 1129?  
 9 MR. RANDY BUDGE: Should be 1128.  
 10 MR. HAEMMERLE: Which exhibits are you --  
 11 MR. RANDY BUDGE: They're correct on the  
 12 original and they're correct on my copy, but they're  
 13 off on the witness' copy. And we'll correct those at  
 14 the break.  
 15 MR. MAY: So are they correct in the --  
 16 MR. HAEMMERLE: No, that's fine, Randy. I'm  
 17 just trying to understand which ones were what.  
 18 Are you --  
 19 MR. RANDY BUDGE: 1118 and 1127 and 1128.  
 20 MR. HAEMMERLE: Okay. 1128 is Rangen's  
 21 supplemental response.  
 22 MR. RANDY BUDGE: We'd offer the Exhibits 1118,  
 23 1127, and 1128, which are the three Rangen discovery  
 24 responses.  
 25 THE HEARING OFFICER: Mr. Haemmerle?

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1 MR. HAEMMERLE: No objection.  
 2 MR. RANDY BUDGE: I would note for the record  
 3 that the copies that have been provided are unsigned  
 4 because we did not receive a signed copy from Rangen  
 5 until yesterday, without an opportunity to copy those  
 6 or provide electronic copies. So we'd ask that Rangen  
 7 provide signed copies to us so we'll provide them and  
 8 substitute them later.  
 9 MS. BRODY: I did provide signed copies  
 10 yesterday. But I'm happy to give everybody a hard set.  
 11 MR. HAEMMERLE: No objection.  
 12 THE HEARING OFFICER: Mr. Simpson?  
 13 MR. SIMPSON: No objection.  
 14 MR. HUNTLEY: No objection.  
 15 THE HEARING OFFICER: Mr. Huntley?  
 16 The documents that have been marked as  
 17 Exhibits 1118, 1127 and 1128 are received into  
 18 evidence.  
 19 (Exhibits 1118, 1127, and 1128 received.)  
 20 MR. RANDY BUDGE: And we'll work with Rangen's  
 21 counsel to get a signed copy in the record properly.  
 22 Just so there's no misunderstanding,  
 23 Counsel, from my review, there were not any changes  
 24 from the unsigned copy provided Saturday, May 31st, to  
 25 the signed copy that we received yesterday; correct?

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1 MS. BRODY: That's correct.  
 2 Q. (BY MR. RANDY BUDGE): Mr. Carlquist,  
 3 having reviewed Rangen's responses to IGWA's discovery  
 4 requests, do you have comments you wish to make?  
 5 MR. HAEMMERLE: Objection.  
 6 Is there a question out there?  
 7 MR. RANDY BUDGE: Yes.  
 8 MR. HAEMMERLE: What's the question?  
 9 Q. (BY MR. RANDY BUDGE): Is there a comment  
 10 you would like to make?  
 11 MR. HAEMMERLE: Objection. There's no question  
 12 pending.  
 13 MR. RANDY BUDGE: That was a question.  
 14 MR. HAEMMERLE: Irrelevant, foundation.  
 15 THE HEARING OFFICER: Overruled, at least for  
 16 now.  
 17 Any other -- well, no. Go ahead,  
 18 Mr. Budge.  
 19 Q. (BY MR. RANDY BUDGE): What comments would  
 20 you like to make on any of those specific interrogatory  
 21 responses?  
 22 A. Well, I don't know, as I make one on any  
 23 specific question that was asked of them, but none of  
 24 the responses seem to be helpful to finding a solution  
 25 to any of the problems that may or may not exist in

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1 doing this Tucker Springs pump-up project.  
 2 Q. Was it a surprise to you to learn that  
 3 Rangen does not know the parameters of water quality  
 4 and temperature necessary to raise fish at its  
 5 facility?  
 6 MR. HAEMMERLE: Objection. Your Honor,  
 7 relevance from this particular witness. This is just  
 8 meant to badger, I think, more than anything.  
 9 I mean what does it matter what  
 10 Mr. Carlquist thinks of that response?  
 11 THE HEARING OFFICER: Overruled.  
 12 Mr. Carlquist.  
 13 THE WITNESS: I was a little surprised that they  
 14 didn't give an answer to that. It seemed a very  
 15 straightforward question, which they sidestepped when I  
 16 read the responses to the questions that were given to  
 17 them.  
 18 Q. (BY MR. RANDY BUDGE): Could you turn to  
 19 Exhibit 1135.  
 20 Is that document in front of you entitled  
 21 "Agreement Between Idaho Power Company and Rangen" --  
 22 A. Yes, it is.  
 23 Q. -- "Aquaculture Research Center"?  
 24 A. Yes, it is.  
 25 Q. And did you have an opportunity to review

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1 that document produced by Rangen in preparing for your  
 2 testimony?  
 3 A. Yes, I just read through it quickly.  
 4 Q. And did you also have an opportunity to  
 5 review the attachment at the end, which appears to be a  
 6 certificate of insurance?  
 7 A. Yes. The agreement says they would provide  
 8 insurance as part of raising fish for the Idaho Fish  
 9 and Game.  
 10 Q. Were you able from your review of this  
 11 document to identify anything in the contract  
 12 indicating that there were water-quality standards or  
 13 temperature standards?  
 14 MS. BRODY: Director Spackman, I don't mean to  
 15 interrupt here, but I do have to because this  
 16 particular agreement and the testimony that we're about  
 17 to get into is protected by a confidentiality order.  
 18 This document was produced in connection  
 19 with the delivery call, which is why IGWA has access to  
 20 it. IGWA knows it was produced pursuant to the  
 21 confidentiality agreement. I know there's one person  
 22 who hasn't signed that confidentiality agreement. We  
 23 just need to make sure that we're honoring it.  
 24 MR. RANDY BUDGE: We understood all the  
 25 confidential information has been redacted. And we do

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1 have a -- if it's not been redacted -- that was what I  
 2 understood from counsel, that it was redacted. There's  
 3 many pages that are redacted. That was supposed to be  
 4 confidential.  
 5 MS. BRODY: The only thing that was redacted  
 6 from it was financial information. And in terms of our  
 7 agreement with Idaho Power, after the hearing on the  
 8 delivery call, because of the issues -- because of its  
 9 cumbersome nature, I reached out to Idaho Power and  
 10 asked for some exceptions regarding how we treat the  
 11 document.  
 12 Our agreement with Idaho Power is that this  
 13 document right here, that it remain under seal, that it  
 14 is not a public document. And even though the  
 15 financial information has been redacted, it is not a  
 16 public document.  
 17 We are allowed to talk about flow indices,  
 18 pounds of fish, those kinds of things without having to  
 19 redact the information. But if we're getting into the  
 20 terms of the contract, which is what you're into, it's  
 21 all confidential.  
 22 MR. RANDY BUDGE: We're happy to put it in under  
 23 whatever protective seal is needed. It's been offered  
 24 to show a couple things: The density of fish that are  
 25 being planted, that there are no water or temperature

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1 quality standards; and that Rangen itself has been able  
 2 to -- has been required by Idaho Power to provide  
 3 insurance on the fish itself, indicating that there  
 4 must be some risks of production and performance at  
 5 Rangen, the same things that they are going to try to  
 6 raise at Tucker.  
 7 But we're happy to submit it under seal. I  
 8 think all parties in the room have signed a protective  
 9 order, except perhaps Mr. Simpson, and I'm sure he  
 10 would be willing to sign.  
 11 MS. BRODY: He's signed. He has signed.  
 12 THE HEARING OFFICER: Let's go off the record  
 13 and talk about the confidentiality agreement and see if  
 14 there's a way to facilitate this.  
 15 (Recess.)  
 16 MR. RANDY BUDGE: We would offer Exhibit 1135  
 17 subject to the protective order between Rangen and  
 18 Idaho Power and have the exhibit admitted under seal.  
 19 THE HEARING OFFICER: Okay. You probably need  
 20 to restate what you're saying, because Jeff was in the  
 21 middle of restoring the record.  
 22 MR. RANDY BUDGE: Excuse me. Okay. Back on the  
 23 record.  
 24 THE HEARING OFFICER: Yes.  
 25 MR. RANDY BUDGE: We would offer Exhibit 1135,

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1 the agreement between Idaho Power and Rangen  
 2 Aquaculture Research Center under seal and subject to  
 3 the protective order that exists between Rangen and  
 4 Idaho Power, as Counsel has described.  
 5 MS. BRODY: My only addition is that the  
 6 protective order is beyond just an agreement between  
 7 Rangen and Idaho Power. It's an agreement that other  
 8 people have signed and have stipulated to be bound by.  
 9 THE HEARING OFFICER: With that qualification,  
 10 Mr. Budge, any other objection to receiving the  
 11 document into evidence?  
 12 MR. RANDY BUDGE: No further questions for  
 13 Mr. Carlquist.  
 14 THE HEARING OFFICER: Mr. Simpson?  
 15 MR. SIMPSON: No objection.  
 16 THE HEARING OFFICER: Mr. Huntley?  
 17 MR. HUNTLEY: No.  
 18 THE HEARING OFFICER: Okay. Document marked as  
 19 Exhibit 1135 is received into evidence, with the caveat  
 20 that we have at least one person in the room who has  
 21 not yet signed the agreement, at least that's what I  
 22 understood, and that you would provide that signed  
 23 document, Mr. Budge, following the lunch recess.  
 24 (Exhibit 1135 received.)  
 25 THE HEARING OFFICER: Okay. Thank you.

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1 Mr. Budge, Mr. Randy Budge, do you have  
 2 more questions?  
 3 MR. RANDY BUDGE: No further questions.  
 4 THE HEARING OFFICER: Okay. So you're finished  
 5 with Mr. Carlquist?  
 6 MR. RANDY BUDGE: No further questions. We are  
 7 through with Mr. Carlquist. He's available for  
 8 cross-examination, provided it can be accomplished  
 9 before noon.  
 10 THE HEARING OFFICER: Okay. Should we start in  
 11 on cross-examination?  
 12 MR. HAEMMERLE: You know, I think I could be  
 13 done with Lynn in probably 45 minutes or -- you know,  
 14 so if you want to keep doing, I'm willing to do that.  
 15 Or if we want to have lunch, I'm certainly willing to  
 16 do that as well.  
 17 THE HEARING OFFICER: What's the desire of the  
 18 parties?  
 19 MR. SIMPSON: Lunch.  
 20 THE HEARING OFFICER: Lunch? You want lunch?  
 21 MR. RANDY BUDGE: You vote for lunch? Lunch is  
 22 fine.  
 23 MR. HAEMMERLE: Lunch is fine, then.  
 24 THE HEARING OFFICER: All right. Let's take  
 25 lunch and come back at 1:00.

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1 (Lunch recess.)  
 2 THE HEARING OFFICER: We're back on the record  
 3 after the lunch recess.  
 4 Mr. Haemmerle, cross-examination.  
 5  
 6 CROSS-EXAMINATION  
 7 BY MR. HAEMMERLE:  
 8 Q. You ready to go, Lynn?  
 9 A. I'm ready.  
 10 Q. All right. Lynn, you got your stopwatch on  
 11 me; right? 45 minutes we're stopping.  
 12 A. Well, we won't hold you to that.  
 13 Q. Lynn, you and I discussed a lot about the  
 14 Tucker Springs project during your deposition.  
 15 Do you recall that?  
 16 A. Yes.  
 17 Q. Now, I want to kind of get a timeline down  
 18 about when you first understood of this so-called  
 19 Tucker Springs concept and how that came to be.  
 20 Okay?  
 21 A. Okay.  
 22 Q. You recall that the Director issued his  
 23 curtailment order on or about I think it was  
 24 January 29th of this year, 2014?  
 25 A. Yes.

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1 Q. Lynn, after that curtailment order was  
 2 issued or the order on our water call, IGWA had several  
 3 meetings with the State of Idaho; correct?  
 4 A. No. I -- I think there was a meeting with  
 5 the governor, who there weren't any board members at  
 6 that meeting. And then following that meeting there  
 7 was another meeting in the governor's office where I  
 8 was at and other members of the groundwater boards were  
 9 present at that particular meeting.  
 10 Q. Okay. Let's just stop there.  
 11 You had at least two meetings in the  
 12 governor's office; correct?  
 13 A. Not me. I had just one.  
 14 Q. Okay. When you say there was two meetings,  
 15 were there other IGWA members at both meetings?  
 16 A. I think our counsel was at the first  
 17 meeting. And from IGWA, I don't think anyone else was  
 18 there.  
 19 Q. Okay. And at one of those meetings you  
 20 recall, in fact, Wayne Courtney and I being at one of  
 21 those meetings; correct?  
 22 A. That's the one I was at, as I remember.  
 23 Q. Okay. Now, tell me after -- do you know  
 24 when that meeting happened about?  
 25 A. It was in February, is what I remember.

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1 Q. Okay. Now, after those several meetings  
 2 how was it that you became aware of the Thousand  
 3 Springs settlement framework, which is Exhibit 1110?  
 4 A. I believe, following that second meeting in  
 5 the governor's office, we came over to Idaho Water  
 6 Resource building here and we met in the conference  
 7 room for the Director. And it was there where the  
 8 outline was first -- where I saw the outline first  
 9 presented.  
 10 Q. And I think what you told me last time we  
 11 had a chance to talk about this, Lynn, was that prior  
 12 to actually attending that meeting you knew that the  
 13 State of Idaho was going to present some doable  
 14 framework for the groundwater districts; correct?  
 15 A. Well, they had been working on the Hagerman  
 16 situation or the Hagerman area down there, and they had  
 17 some ideas they were going to present to us.  
 18 Q. Okay.  
 19 A. And I knew the legislature had been working  
 20 in the session on getting some funds appropriated that  
 21 could go towards water recharge and other water  
 22 problems.  
 23 Q. All right. So you were called down here to  
 24 the Department of Water Resource building?  
 25 A. Well, when you say "called," I was in

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1 attendance at a meeting. I wasn't particularly --  
 2 myself I wasn't called, but I was at a meeting here in  
 3 this building, yes.  
 4 Q. Okay. Lynn, can you tell me, as brief as  
 5 you can, how you came to that meeting or how you came  
 6 to know of the meeting.  
 7 A. I'm assuming it was through our counsel. I  
 8 don't remember who first notified me that we were  
 9 having that meeting.  
 10 Q. Okay. And when you say "that meeting,"  
 11 that's a meeting that occurred on or about March 5th,  
 12 2014?  
 13 A. I don't have an exact date, but it was  
 14 sometime like that, yes. It was after that second  
 15 meeting here with -- that you were in attendance at in  
 16 Boise, the governor's office.  
 17 Q. Okay. And this meeting at the Department  
 18 of Water Resources happened shortly before IGWA filed  
 19 what's called the Tucker Springs mitigation plan?  
 20 A. Well, it -- I couldn't give you the time  
 21 frame of how much time prior to filing of that plan.  
 22 But it was prior to it, yes.  
 23 Q. Okay.  
 24 A. We had not investigated the Tucker Springs  
 25 pump-up to provide the water prior to that.

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1 Q. All right. Now, I think what you told me  
 2 the last time we had a chance to talk about this was  
 3 that prior to the meeting with the Department of Water  
 4 Resources the Tucker Springs mitigation plan or concept  
 5 wasn't even on your screen, was it?  
 6 A. Not that I remember.  
 7 Q. Okay. That's something that was suggested  
 8 to you by the State of Idaho, and you -- once it was  
 9 suggested to you, you decided to file a mitigation  
 10 project?  
 11 A. Well, we looked at it to see if it might  
 12 work to provide the mitigation that we needed, and  
 13 decided we would proceed with looking at it, yes.  
 14 Q. Okay. Do you recall who was at that  
 15 particular meeting that IGWA attended at the Department  
 16 of Water Resources?  
 17 A. We had members from the three groundwater  
 18 districts, board members, that were there. I believe  
 19 our counsel was there. Mr. Clive Strong was there.  
 20 Mr. Mat Weaver was there. There was some other -- I  
 21 think Brian Patton was there. There was some members  
 22 of the legislature and Water Resource Board there.  
 23 Q. Do you recall if Speaker Bedke was there?  
 24 A. I think he was.  
 25 Q. Okay. There was no members of Rangen in

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1 attendance at that meeting; correct?  
 2 A. Not that I know.  
 3 Q. Do you know if there were other surface  
 4 water users in the Hagerman Valley who were present at  
 5 that March 5th meeting?  
 6 A. Not -- not here at the Water Resource Board  
 7 that I know of, that I remember.  
 8 Q. Okay. Justin, if we can pull up IGWA  
 9 Exhibit 1110.  
 10 Lynn, if you can get IGWA 1110 in front of  
 11 you.  
 12 A. Okay.  
 13 Q. I think you testified on direct that this  
 14 is the so-called Thousand Springs settlement framework  
 15 that was presented to you by officials of the State of  
 16 Idaho.  
 17 A. Yes.  
 18 Q. Did -- to the best of your knowledge, did  
 19 IGWA have any involvement in the preparation of this  
 20 particular settlement framework?  
 21 A. None that I know of.  
 22 Q. Do you recall if Rangen had any  
 23 participation in this particular framework?  
 24 A. None that I know of.  
 25 Q. And likewise, do you know if any surface

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1 water users in the Hagerman Valley had any  
 2 participation in this framework?  
 3 A. Not that I know of.  
 4 Q. Can you describe for me briefly how this  
 5 kind of -- during this meeting how this settlement  
 6 framework was presented to you.  
 7 A. Well, the outline was passed out, and  
 8 talked about some of the existing problems that are in  
 9 the Hagerman Valley, and talked about how the State was  
 10 working towards getting an above-the-rim recharge  
 11 program in place, and wanted to see if the groundwater  
 12 users would be willing to try and implement some of  
 13 these outlines, some of the various measures that were  
 14 outlined to help solve the problem down in the Hagerman  
 15 Valley.  
 16 Q. Justin, if you can pull up C at the very  
 17 top there.  
 18 Lynn, I've highlighted part C of the  
 19 objectives of the settlement framework that reads --  
 20 one of the objectives is, quote, "Provide safe harbor  
 21 for junior groundwater users from delivery calls."  
 22 Do you see that?  
 23 A. Yes.  
 24 Q. This notion of providing safe harbor for  
 25 junior groundwater users from delivery calls, that was

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1 not in fact your idea, was it?  
 2 A. We didn't put it into this document at that  
 3 time, no. But it's something that we were concerned  
 4 about, yes.  
 5 Q. Right. It's something that would be  
 6 advantageous to you; correct?  
 7 A. Absolutely.  
 8 Q. Yeah. But I understand that concept of  
 9 safe harbor didn't come from you?  
 10 A. No.  
 11 Q. And it didn't come from any of the other  
 12 groundwater districts, did it?  
 13 A. Well --  
 14 MR. RANDY BUDGE: I'm going to object to how far  
 15 we go into this line of questioning as to an overall  
 16 concept of the basis upon which we've pursued the  
 17 Tucker Springs plan. That was the only questions that  
 18 were asked of this witness. So it's beyond the scope  
 19 of direct. And I don't think we're here to debate the  
 20 merits or seek approval of the second -- of the  
 21 Thousand Springs settlement framework, only this second  
 22 mitigation plan.  
 23 And we may as well decide it now, because  
 24 Rangen obviously has listed the Department witnesses  
 25 and others, wanting to spend a lot of time delving into

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1 this framework, as they did in their depositions and  
 2 questions of Department witnesses. I don't think it  
 3 has any relevancy here.  
 4 I can appreciate Rangen may feel that they  
 5 were not part of the party. And, you know, you can be  
 6 invited and choose to attend or not, but I don't think  
 7 it's relevant to the second mitigation plan.  
 8 MR. HAEMMERLE: Can I respond to that?  
 9 THE HEARING OFFICER: Sure.  
 10 MR. HAEMMERLE: You know, Director, it was  
 11 Mr. Budge himself during his opening -- so-called  
 12 opening statement that accused Rangen of wanting to  
 13 destroy the settlement framework, and he discussed on  
 14 and on about the settlement framework in his opening.  
 15 The settlement framework is very important  
 16 because I think it goes to a couple things. One, it  
 17 goes to whether IGWA in fact has the intent to pursue  
 18 it, because it's not their plan, number one. And  
 19 number two, you know, some of these concepts are quite  
 20 troubling when we have the State of Idaho creating safe  
 21 harbors from delivery calls. At least we want it on  
 22 the record how it came out. I'm willing to move on and  
 23 move this process forward.  
 24 THE HEARING OFFICER: Okay. Overruled as for  
 25 now.

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1 Mr. Haemmerle.  
 2 MR. HAEMMERLE: Thank you.  
 3 Q. Lynn, again, my sole question is, that  
 4 concept didn't come from the groundwater users, did it?  
 5 A. No, other than in our discussions with the  
 6 Department, in any mitigation plan we have to have some  
 7 safe harbor for the mitigation that we're providing.  
 8 It has to be able to give us a protection from the  
 9 calls or from the order, or it doesn't do us any good  
 10 to spend the money to provide the mitigation.  
 11 Q. Was it your awareness that the settlement  
 12 framework was simply in response to Rangen or kind of  
 13 to solve the whole Hagerman problem?  
 14 A. I don't know what brought about the  
 15 development of the framework, but one of the -- one of  
 16 the solutions -- and it was to help solve the Rangen  
 17 mitigation.  
 18 Q. And by the caption of the document, I  
 19 assume it was to provide a global settlement of the  
 20 Thousand Springs water situation; correct?  
 21 A. Yes. And it basically deals with the  
 22 Rangen area of the Thousand Springs, I believe. And in  
 23 looking at it, it talks about -- I don't know if it  
 24 mentions Rangen, but it talks about all of the  
 25 different areas in the Hagerman Valley that are having

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1 water issues.  
 2 Q. Right. I appreciate that. Now, once this  
 3 was presented to you, one of the items -- if you could  
 4 focus in, Justin, on part 2, B1.  
 5 Lynn, do you see under Exhibit 1110 part B1  
 6 says "Direct delivery of 10 cfs of water from Tucker  
 7 Springs to Billingsley Creek"? Do you see that?  
 8 A. Yes.  
 9 Q. Okay. Again, you testified that prior to  
 10 seeing this particular settlement framework that  
 11 so-called plan to pump water from Tucker Springs to  
 12 Billingsley Creek was not on your horizon; correct?  
 13 A. That's correct.  
 14 Q. Okay. The idea for the Tucker Springs  
 15 pipeline stemmed from this settlement framework  
 16 contained in 1110; correct?  
 17 A. Yes.  
 18 Q. It's after seeing the settlement framework  
 19 that IGWA in fact filed the second mitigation plan;  
 20 correct?  
 21 A. Well, we investigated it on our own to see  
 22 what it would take to do that and whether it would work  
 23 a little bit. And yes, then we filed the plan and  
 24 began doing the preliminary engineering.  
 25 Q. Justin, if you could pull up IGWA 1106.

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1 Lynn, tell me when you're there on IGWA  
 2 1106.  
 3 A. Okay.  
 4 Q. Lynn, IGWA 1106 is captioned "Letter of  
 5 Intent"; correct?  
 6 A. Yes.  
 7 Q. And on the last page of that you see that's  
 8 an agreement between IGWA.  
 9 Is that Mr. Deeg's signature on the last  
 10 page?  
 11 A. Yes.  
 12 Q. Who is Mr. Deeg?  
 13 A. He's the president of IGWA.  
 14 Q. And likewise, there's a signature for the  
 15 Idaho Department of Fish and Game; correct?  
 16 A. Yes.  
 17 Q. And finally, there's a signature for the  
 18 Idaho Water Board; correct?  
 19 A. Yes.  
 20 Q. So to make the Tucker Springs project work,  
 21 you had to execute this letter of intent; correct?  
 22 A. Well, we had to find out if we could get  
 23 access to the 10 cfs of water from Tucker Springs.  
 24 Q. Right. And the 10 cfs of water that you're  
 25 talking about is owned under a water right by the

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1 Department of Fish and Game; correct?  
 2 A. Yes.  
 3 Q. So the deal is kind of complicated. In  
 4 order to get that water, this agreement says you have  
 5 to improve what's known as the Aqua Life facility.  
 6 That's part of the deal; correct?  
 7 A. That's part of the deal.  
 8 Q. And the reason for that is if Fish and Game  
 9 doesn't have the water they thought they had for their  
 10 existing facility, they need to grow fish in another  
 11 facility; correct?  
 12 A. That's correct.  
 13 Q. And that other facility is the Aqua Life  
 14 facility?  
 15 A. Yes.  
 16 Q. So the nature of this deal, in summary, is  
 17 that Fish and Game will give you the water; correct?  
 18 A. We filed for a transfer, yes, from Fish and  
 19 Game.  
 20 Q. Okay. You improve the so-called Aqua Life  
 21 facility; correct?  
 22 A. Yes.  
 23 Q. And then the State Water Board will then  
 24 transfer ownership of that Aqua Life facility to Fish  
 25 and Game; correct?

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1 A. Well, I haven't seen anything where they  
 2 said they would transfer ownership of Aqua Life to  
 3 them. But I'm not sure how that will take place.  
 4 Q. Okay.  
 5 A. But Idaho Water Resource Board, my  
 6 understanding, the ownership has been transferred to  
 7 them. It was owned by the Parks and Recreation  
 8 Department or something at one time.  
 9 Q. But to make the whole thing work, there's a  
 10 lot of moving parts?  
 11 A. Yes.  
 12 Q. It's not just building a pipeline from  
 13 Tucker Springs to Rangen; correct?  
 14 A. That's correct.  
 15 Q. All right. Now, during your deposition I'm  
 16 not sure you had hard costs down, but I think you  
 17 estimated the cost of the pipe itself of being 1 to  
 18 \$2 million; correct?  
 19 A. From Tucker Springs to Rangen?  
 20 Q. Right.  
 21 A. Yes.  
 22 Q. And --  
 23 A. That's the pipe and the pumps and  
 24 everything that's involved with it, I believe.  
 25 Q. Okay. I think that was a rough estimate at

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1 the time I took your deposition a couple weeks ago;  
 2 correct?  
 3 A. Yes.  
 4 Q. Since your deposition have you been able to  
 5 ascertain any hard values of what that pipe or pump  
 6 would cost?  
 7 A. I haven't.  
 8 Q. Okay. So you've only got a 60 percent  
 9 engineering plan, to be sure, you haven't put anything  
 10 out to bid?  
 11 A. No.  
 12 Q. Okay. The second part of the plan is the  
 13 improvements made to the Aqua Life facility.  
 14 A. Yes.  
 15 Q. I think the last time -- I think the last  
 16 time we talked you didn't have an estimate for that,  
 17 did you?  
 18 A. I didn't.  
 19 Q. Do you have an estimate today for that?  
 20 A. No.  
 21 Q. Do you have any plans available, what  
 22 you're going to do to the Aqua Life facility to improve  
 23 it?  
 24 A. No, we haven't got any engineering plans  
 25 done on that yet.

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1 Q. Okay. I think you did state that -- during  
 2 your deposition that you thought the Department of Fish  
 3 and Game might have numbers for what those construction  
 4 costs might be.  
 5 A. Well, I think they've looked at it and have  
 6 an idea of what they might envision taking place.  
 7 Q. Okay.  
 8 A. But, you know, it's to be negotiated as to  
 9 what will take place with that facility. So that  
 10 hasn't taken place yet.  
 11 Q. Right. So you haven't negotiated what's to  
 12 take place?  
 13 A. No.  
 14 Q. Does the number 7.6 million ring a bell  
 15 with you at all about the improvements that Fish and  
 16 Game is seeking at that facility?  
 17 A. I heard you say that number this morning,  
 18 so...  
 19 Q. Okay. Why don't you pull up -- if the  
 20 witness can be shown Rangen 2093. 2093.  
 21 A. Is that over in one of these?  
 22 MR. HAEMMERLE: Help Lynn find a hard copy of  
 23 that.  
 24 MR. MAY: It will be in the third one.  
 25 THE WITNESS: Right here.

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1 Q. (BY MR. HAEMMERLE): Lynn, since you don't  
2 have any hard costs of what the costs might be to  
3 improve the Aqua Life facility, at least at this point  
4 in time would you rely on some estimates prepared by  
5 the Department of Fish and Game?  
6 A. Well, I would look at them. I don't know  
7 whether I would rely on them.  
8 Q. Okay. Can I ask you to look at  
9 Exhibit 2093.  
10 A. I have it.  
11 Q. Do you see the second page of that where it  
12 says "Estimated cost of site improvement to Aqua Life  
13 facility"?  
14 A. Yes.  
15 Q. Do you see the estimated costs for  
16 improving the Aqua Life facility?  
17 A. Yes.  
18 Q. Do you see that figure of \$7.6 million?  
19 A. Yes.  
20 MR. RANDY BUDGE: I'm going to object to the  
21 questioning from an exhibit that's not yet in evidence,  
22 and there's no foundation that this witness has seen  
23 that or knows anything about it.  
24 MR. HAEMMERLE: Okay.  
25 THE HEARING OFFICER: Mr. Haemmerle.

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1 MR. HAEMMERLE: Fair enough. I'll pursue a  
2 foundational line of questions.  
3 Q. Lynn, do you see the author of  
4 Exhibit 2093?  
5 A. Yes.  
6 Q. Does that appear to be an e-mail from the  
7 Department of Fish and Game?  
8 A. Yes.  
9 Q. Does that appear to provide an estimate of  
10 costs for improvements to Aqua Life facility, dated on  
11 or about April 7th, 2014?  
12 A. Yes.  
13 MR. HAEMMERLE: Mr. Director, at this point in  
14 time I'd offer Exhibit 2093.  
15 THE HEARING OFFICER: Mr. Budge?  
16 MR. RANDY BUDGE: Objection. No foundation.  
17 This witness hasn't identified it. He says he's never  
18 seen it before, never heard a number until today's  
19 proceeding.  
20 THE HEARING OFFICER: Okay. Let's go off the  
21 record for just a minute.  
22 (Discussion.)  
23 THE HEARING OFFICER: So the document marked as  
24 Exhibit 2093 has been offered. It's been objected to  
25 by Mr. Budge for lack of foundation.

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1 Any other objections? Mr. Simpson?  
2 MR. SIMPSON: No.  
3 THE HEARING OFFICER: Mr. Huntley?  
4 MR. HUNTLEY: No.  
5 THE HEARING OFFICER: Okay. Mr. Budge, your  
6 arguments are correct, but I have no reason to doubt  
7 the veracity of this document and what it intends to  
8 present. And so as a result, I'll allow it into  
9 evidence.  
10 And if you can somehow show me that this  
11 e-mail was sent to you along with the spreadsheet is  
12 either not accurate or there's some problem with it,  
13 I'll reconsider. But right now it's received into  
14 evidence.  
15 (Exhibit 2093 received.)  
16 THE HEARING OFFICER: Mr. Haemmerle.  
17 MR. RANDY BUDGE: If counsel needs that to ask  
18 questions about going ahead with the project --  
19 MR. HAEMMERLE: I do.  
20 MR. RANDY BUDGE: -- I think the witness is  
21 here. We might as well let him go ahead with him.  
22 THE HEARING OFFICER: Sure.  
23 MR. RANDY BUDGE: Just some estimate that came  
24 from Fish and Game if he's trying to use that to pin  
25 down a specific cost, got the wrong guy.

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1 THE HEARING OFFICER: Noted.  
2 MR. HAEMMERLE: Thank you.  
3 MR. RANDY BUDGE: So if you want to admit it for  
4 purposes of cross-examination if the Director deems it  
5 relevant, that's fine with me.  
6 THE HEARING OFFICER: It's received into  
7 evidence.  
8 Mr. Haemmerle.  
9 MR. HAEMMERLE: Thank you.  
10 Q. So, Lynn, it's fair to say no one from your  
11 organization has spec'd out the cost of the Aqua Life  
12 facility; correct?  
13 A. No, we have not. And just looking at this  
14 briefly, it's just a comparison between a facility that  
15 they had, and then he's just trying to say, well, if we  
16 built this one, we're going to compare what it would  
17 take to build this one based on what that one was. So  
18 I don't know how good of an estimate that might be,  
19 but...  
20 Q. Fair enough. But you haven't even begun  
21 negotiations with the Department --  
22 A. No.  
23 Q. -- of Fish and Game about the Aqua Life  
24 facility?  
25 A. No, we have not. And there's more water in

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1 Aqua Life than we're taking from Tucker Springs. So  
 2 I'm not sure how those negotiations will go, so...  
 3 Q. You just don't know because they haven't  
 4 occurred; correct?  
 5 A. No, they have not occurred yet. But we've  
 6 agreed that that would be part of the negotiations.  
 7 Q. Now, based on numbers that are at least out  
 8 there in kind of a rough manner -- because I guess  
 9 we're dealing with rough parameters.  
 10 By the way, Lynn, are you familiar with the  
 11 operating costs of this pipeline?  
 12 A. Well, there will be maintenance costs and  
 13 power costs involved with operating the pump-back --  
 14 the pump-up pipeline.  
 15 Q. I think you had mentioned during your  
 16 deposition, I think, the annual cost of that was around  
 17 \$250,000?  
 18 A. That's an estimate we've looked at just  
 19 based on what power costs would be.  
 20 Q. Okay. And at this point in time is it fair  
 21 to say from your standpoint that's a rough estimate?  
 22 A. That's rough.  
 23 Q. Okay. Every estimate you have is either  
 24 nonexistent or rough?  
 25 A. That's correct.

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1 Q. Okay. So it would be roughly true to say  
 2 this project's going to cost in the neighborhood of  
 3 \$10 million?  
 4 A. That's possible, yes.  
 5 Q. Okay. And I think what you testified to is  
 6 that this wasn't necessarily your idea; correct?  
 7 A. No.  
 8 Q. And in fact, IGWA has had planned and --  
 9 evidently has planned for a long time other mitigation  
 10 plans; correct?  
 11 A. Now, I'm not following that for -- not  
 12 until the Department issued their new order on Rangen.  
 13 We hadn't planned on any mitigation down there.  
 14 Q. Fair enough. So you filed your first  
 15 mitigation plan; correct?  
 16 A. For the Hagerman?  
 17 Q. Right.  
 18 A. Yes.  
 19 Q. And you'll admit with me that you didn't  
 20 provide enough water or IGWA didn't provide enough  
 21 water for the first year under that mitigation plan;  
 22 correct?  
 23 A. That was the order the Director issued,  
 24 yes.  
 25 Q. You were short; correct?

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1 A. Yes.  
 2 Q. Okay. So then came the Tucker Springs  
 3 project, which is the idea of the State of Idaho;  
 4 correct?  
 5 A. Well, it's the plan that we're putting  
 6 together, yes.  
 7 Q. Right. And then you have other -- you  
 8 filed another mitigation plan recently; correct?  
 9 A. That's correct.  
 10 Q. And I take it you have other mitigation  
 11 plans even after that that you're ready to file;  
 12 correct?  
 13 A. Well, not that I'm aware of right now.  
 14 That's not unusual. Back in 2009 on the other one when  
 15 we were mitigating for Snake River Farms, that was the  
 16 third mitigation plan that was accepted then.  
 17 Q. And what you want to do in a nutshell --  
 18 and I think you were perfectly candid on your direct --  
 19 you want to see which mitigation plans get accepted by  
 20 the Department.  
 21 That's a true statement; correct?  
 22 A. Well, we have to find one that the  
 23 Department will accept. And if there's more than one  
 24 that they will accept, we'll take the one with the  
 25 least amount of cost.

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1 Q. Right. So you want to see -- you're going  
 2 to defer and wait and see what happens with the next  
 3 mitigation plan before you elect even to move forward  
 4 with the Tucker Springs pipe; correct?  
 5 A. Most likely that's what will happen.  
 6 Q. Okay. And as you sit here today, you know,  
 7 that's just been advertised.  
 8 That mitigation plan's probably going to be  
 9 decided months from now; correct?  
 10 A. It could be.  
 11 Q. All right. And I think you were truthful,  
 12 Lynn, on your direct when you said there's probably not  
 13 going to be a plan you're going to move forward with  
 14 until next year at the earliest; correct?  
 15 A. Well, ideally we want to have something in  
 16 place by next year.  
 17 Q. Okay. And that's your goal; correct?  
 18 A. That's the goal.  
 19 Q. Right. Now, I think we were talking  
 20 briefly about the transfer and some of the work that  
 21 you're trying to do with the protestants.  
 22 Do you recall your testimony?  
 23 A. Yes.  
 24 Q. I think you stated that there's discussions  
 25 happening right now between IGWA and various surface

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1 water users in Tucker Springs and Riley Creek; correct?  
 2 A. That's correct.  
 3 Q. And you do recognize that people who take  
 4 water out of Tucker Springs and Riley Creek are short  
 5 of water; right?  
 6 A. That's my understanding.  
 7 Q. Okay. And so part of the deal is what  
 8 you're trying to do is have this plan approved where  
 9 you're going to move water out of Tucker Springs to a  
 10 different source, i.e., Billingsley Creek; correct?  
 11 A. Yes.  
 12 Q. Yes?  
 13 A. Yes.  
 14 Q. And in turn, to satisfy the other users who  
 15 might be injured by that, you're going to get water  
 16 from some other source and pump it into Riley Creek or  
 17 Tucker Springs and whoever is short of water as a  
 18 result of this delivery; correct?  
 19 A. That's one of the plans discussed. If you  
 20 look at the overall Thousand Springs settlement term  
 21 sheet, there were other things involved in that term  
 22 sheet besides the Tucker Springs pump-up. And that  
 23 would be part of those other projects.  
 24 Q. And I can appreciate, Lynn, the fact that  
 25 you didn't actually craft that settlement term sheet.

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1 But the idea is to move water around from  
 2 one source to another?  
 3 A. That's correct.  
 4 Q. We remove the source out of Tucker Springs  
 5 and make that even shorter, and then go find some water  
 6 from some other source and pump it into Riley Creek to  
 7 make up for the shortage you created?  
 8 A. That's part of the plan.  
 9 MR. HAEMMERLE: Thanks, Lynn. I have no further  
 10 questions. Appreciate it.  
 11 THE WITNESS: Okay.  
 12 MR. HAEMMERLE: Thank you.  
 13 THE HEARING OFFICER: Mr. Simpson, any  
 14 questions?  
 15 MR. SIMPSON: Yes, just a couple.  
 16  
 17 CROSS-EXAMINATION  
 18 BY MR. SIMPSON:  
 19 Q. Hi, Mr. Carlquist. My name is John  
 20 Simpson, and I represent Buckeye Farms. And just with  
 21 respect to I believe it's Exhibit 1110, which is the  
 22 Thousand Springs Water Supply Settlement Framework, I  
 23 think you've testified on that today; correct?  
 24 A. Yes.  
 25 Q. And, Mr. Carlquist, I think on direct

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1 testimony from your counsel you acknowledge that IGWA  
 2 has basically agreed to the objectives of -- under  
 3 Roman numeral I?  
 4 A. Yes.  
 5 Q. And generally speaking, has IGWA confirmed  
 6 its support of the objectives contained under Roman  
 7 numeral No. II?  
 8 A. Yes, I believe we have.  
 9 MR. SIMPSON: That's all the questions I have.  
 10 Thank you.  
 11 THE HEARING OFFICER: Okay. Mr. Huntley,  
 12 questions?  
 13 MR. HUNTLEY: I have none.  
 14 THE HEARING OFFICER: Okay. Redirect,  
 15 Mr. Budge?  
 16 MR. RANDY BUDGE: No questions.  
 17 THE HEARING OFFICER: Okay. Thank you,  
 18 Mr. Carlquist.  
 19 I have one cleanup question, Mr. Budge.  
 20 There's one exhibit that Mr. Carlquist testified about  
 21 that's not yet been offered. And perhaps that was by  
 22 design. It was the SPF Engineering report. And I  
 23 wondered if perhaps you might be offering it through  
 24 another witness.  
 25 MR. RANDY BUDGE: We could have offered that

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1 through Mr. Carlquist. But since it's Mr. Hardgrove's  
 2 report, he's going to testify next, we'll let him offer  
 3 it.  
 4 THE HEARING OFFICER: Okay.  
 5 MR. HAEMMERLE: We don't have any objection to  
 6 that, Randy.  
 7 MR. RANDY BUDGE: Then we will offer it.  
 8 THE HEARING OFFICER: Okay. And that was  
 9 Exhibit -- I'll have to look back at my notes.  
 10 MR. MAY: 1111, Director.  
 11 MR. TJ BUDGE: 1111.  
 12 THE HEARING OFFICER: Okay. 1111. So any other  
 13 objection to its admission?  
 14 Mr. Simpson?  
 15 MR. SIMPSON: No objection.  
 16 MR. HUNTLEY: No.  
 17 THE HEARING OFFICER: Mr. Huntley did not  
 18 object.  
 19 So the document marked as Exhibit 1111 is  
 20 received into evidence.  
 21 (Exhibit 1111 received.)  
 22 THE HEARING OFFICER: Mr. Budge, next witness.  
 23 MR. TJ BUDGE: IGWA would call Bob Hardgrove.  
 24 THE HEARING OFFICER: Okay. Thank you, TJ.  
 25 Mr. Hardgrove, if you'd come forward,

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1 please. Raise your right hand.  
2  
3                   **ROBERT HARDGROVE,**  
4 having been called as a witness by IGWA and duly sworn  
5 to tell the truth relating to said cause, testified as  
6 follows:  
7  
8           **THE HEARING OFFICER:** Thank you. Please be  
9 seated.  
10           Mr. Budge, you may examine your witness.  
11  
12                   **DIRECT EXAMINATION**  
13 **BY MR. TJ BUDGE:**  
14           Q. Thanks, Bob, for being here today.  
15           Would you mind by -- starting by stating  
16 your name and business address for the record.  
17           A. Robert Hardgrove. 300 East Mallard Drive,  
18 Suite 350, Boise, Idaho 83706. SPF Water Engineering.  
19           Q. And you're testifying on behalf of the  
20 Idaho Groundwater Appropriators today?  
21           A. Yes.  
22           Q. What's your position with SPF Engineering?  
23           A. I'm a principal engineer slash manager.  
24           Q. And your area of expertise?  
25           A. General civil engineering, utility

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1 infrastructure, pipelines, pumping stations.  
2           Q. Do you have any professional licenses or  
3 registrations?  
4           A. I'm a licensed professional engineer in  
5 Idaho, Utah, Nevada, and Montana.  
6           Q. Would you please turn to Exhibit 1115 in  
7 front of you.  
8           Do you recognize that document?  
9           A. Yes.  
10           Q. Is that a current copy of your curriculum  
11 vitae?  
12           A. Yes.  
13           **MR. TJ BUDGE:** I'd offer Exhibit 1115 into  
14 evidence.  
15           **MR. MAY:** No objection, Director.  
16           **MR. SIMPSON:** No objection.  
17           **THE HEARING OFFICER:** Okay. Document marked as  
18 Exhibit 1115 is received into evidence.  
19           (Exhibit 1115 received.)  
20           Q. (BY MR. TJ BUDGE): Mr. Hardgrove, what  
21 were you asked to do by IGWA in this proceeding?  
22           A. I was asked to design a pump station and  
23 pipeline to take water from Tucker Springs and tie it  
24 into the Rangen facility into their existing 14-inch  
25 pipe site.

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1           Q. We previously had admitted into evidence  
2 Exhibit 1111, which is a report with SPF Engineering's  
3 label on it.  
4           Is that your report prepared in this  
5 matter?  
6           A. Yes.  
7           Q. And that's your engineering stamp on the  
8 front?  
9           A. Yes.  
10           Q. Before I get into the details of your  
11 report, I want to ask you some background just about  
12 your experience designing water projects.  
13           What portion of your engineering work  
14 involves water-related projects?  
15           A. It ranges. It's probably between 50 and  
16 90 percent of the work I do.  
17           Q. Can you briefly just describe generally the  
18 types of projects you often engage in.  
19           A. On a frequent basis we're dealing with all  
20 sorts of pipeline projects, both clean water and  
21 wastewater, pump stations, lift stations, site civil,  
22 grading.  
23           Q. Does your work commonly involve systems to  
24 pump and pipe water from one location to another?  
25           A. Yes.

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1           Q. Can you just generally explain what  
2 other -- where else SPF Engineering has developed these  
3 types of pump-and-pipe systems?  
4           A. Well, we've completed water projects  
5 throughout most of the Western states. We worked for  
6 clients locally here -- or have worked for them. For  
7 MidAmerican Energy, Micron Technology, Simplot,  
8 Department of -- or Idaho National Guard, private  
9 development clients, agricultural clients.  
10           Q. Okay. So projects of this nature are  
11 something you engage in frequently as an engineer?  
12           A. Yes.  
13           Q. Does SPF Engineering have any experience  
14 with fish hatcheries?  
15           A. We have worked at hatcheries. We've --  
16 we've in the recent past worked for Lahontan National  
17 Fish Hatchery in Nevada, Sawtooth Fish Hatchery in  
18 Stanley, Springfield in the American Falls area, to  
19 name a few. And then in addition to that, we  
20 technically worked on the Snake River Farms facility  
21 for the over-the-rim plan too.  
22           Q. Okay. Let's turn now to the Tucker Springs  
23 project.  
24           How did your assignment from IGWA come  
25 about to undertake that project?

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1 A. I met with Randy Budge March 21st, and that  
 2 was our first discussion on the project. And that was  
 3 basically our kickoff that day.  
 4 Q. Did you review any documents to aid in your  
 5 development of that project?  
 6 A. The main document we had as a discussion  
 7 tool that day was to have an overall site plan of  
 8 Hagerman Valley -- I believe it was created by IDWR --  
 9 that showed two preliminary alignments from Tucker  
 10 Springs up to Rangen.  
 11 Q. Did you make any site visits as you were  
 12 doing the engineering work for this project?  
 13 A. I've been on site twice, yes.  
 14 Q. And did anyone else from SPF make site  
 15 visits to aid in this project?  
 16 A. Yes. Jason Thompson in our office has made  
 17 three site visits. Scott King accompanied on one of  
 18 those trips just because he had other business in the  
 19 area. And then we had a subcontract surveyor, Quadrant  
 20 Consulting, also on site to do the topographical  
 21 survey.  
 22 Q. And were these folks just providing support  
 23 for your engineering work that you were ultimately  
 24 responsible for?  
 25 A. Yeah, all the work was either done by me or

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1 under my direct supervision.  
 2 Q. Okay. Did you or anyone else with SPF  
 3 speak to others outside of SPF in conjunction with  
 4 doing this project?  
 5 A. I -- yeah, SPF has spoken with several  
 6 folks: Joe Chapman with Fish and Game, Butch Morris,  
 7 the Hagerman Highway District. We spoke with pump and  
 8 pipe vendors, horizontal directional drilling  
 9 contractors, Idaho Power Company. There has been  
 10 several as an office that we've spoken with. That's  
 11 probably the majority of them, yes.  
 12 Q. Okay. Let's go ahead and turn to your  
 13 engineering report.  
 14 Do you have that in front of you?  
 15 A. I do.  
 16 Q. It was discussed earlier that these  
 17 represent approximately 60 percent level of engineering  
 18 work.  
 19 Could you explain what that means.  
 20 A. So the design drawings, is that what you're  
 21 referring to?  
 22 Q. I'm looking at 1111, which is your stamped  
 23 report.  
 24 A. My report.  
 25 Q. And I believe the design drawings are

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1 attached to that as appendices; is that right?  
 2 A. Yes, they're in -- they're attached as  
 3 Appendix 1, I believe.  
 4 Q. So when you -- the 60 percent number, does  
 5 that refer to the design drawings that are Appendix A?  
 6 A. Yes.  
 7 Q. And am I correct in understanding that that  
 8 means this engineering is well on its way, but it's not  
 9 100 percent complete at this stage?  
 10 A. Yeah, the 60 percent is what I'm calling  
 11 it. It's kind of an average for the overall set. Some  
 12 sheets are well beyond 60 percent. Some sheets aren't  
 13 quite 60 percent. But overall it's an average of about  
 14 60 percent, yeah.  
 15 Q. And at the 60 percent level, are you  
 16 comfortable testifying as to the feasibility of  
 17 constructing and operating this project?  
 18 A. Yes.  
 19 Q. Did you participate in the engineering work  
 20 that SPF Water Engineering did for the Snake River  
 21 Farms over-the-rim plan?  
 22 A. Yes.  
 23 Q. How does the engineering -- the level of  
 24 engineering work you've done in this plan compare to  
 25 the engineering that had been done in the over-the-rim

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1 plan at the time that was approved?  
 2 A. This engineering design product is a little  
 3 bit more developed than the over-the-rim plan product.  
 4 Q. Okay. What I'd like to do next is just  
 5 walk through the written portion of your report at the  
 6 front of that Exhibit --  
 7 A. Okay.  
 8 Q. -- 1111 and have you explain the different  
 9 components of the written report, and we'll then move  
 10 on to the design drawings after that. In the -- on  
 11 page 1 you do give a summary, which I think has been  
 12 fairly explained by Mr. Carlquist and others in this  
 13 proceeding.  
 14 I'm not going to ask you to repeat that  
 15 there, other than to have you confirm that essentially  
 16 this pumps up to 10 second-feet from Tucker Springs and  
 17 pipes it to Rangen; is that right?  
 18 A. Correct.  
 19 Q. When we deposed Dr. Brockway, he in his  
 20 deposition explained that this was not rocket science  
 21 engineering, but common run-of-the-mill engineering, I  
 22 think he called it.  
 23 Is that something you would agree with?  
 24 A. Well, I wouldn't like to call it that,  
 25 actually. I'd like to think it -- I would say it was

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1 fairly straightforward, and we didn't come across any  
 2 engineering challenges that weren't easily dealt with,  
 3 no.  
 4 Q. Okay. Let me next have you explain --  
 5 And Justin, will you pull up Exhibit 1084.  
 6 THE HEARING OFFICER: What's the number,  
 7 Mr. Budge?  
 8 MR. TJ BUDGE: He's pulled up 1084, which is  
 9 zoomed in too far. Let's do this.  
 10 Q. Let's have you turn to page 3 of your  
 11 report. You'll see there...  
 12 Do you have that in front of you, Figure 3  
 13 in your report?  
 14 A. I do.  
 15 Q. Why don't you first just explain the  
 16 location of Tucker Springs relative to the Rangen fish  
 17 hatchery.  
 18 A. It's -- by a direct alignment, it's  
 19 probably 1.3 miles away from each other. And over --  
 20 Figure 3? Just a minute. Figure 1 on page 3, is that  
 21 what you're --  
 22 Q. Figure 1 on page 3.  
 23 A. Yeah. And on this figure, which you guys  
 24 can't see, we show two alignments. We show one  
 25 alignment, we call it the Musser alignment, and one

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1 alignment we call it the Morris alignment.  
 2 Q. I see --  
 3 A. Go ahead.  
 4 Q. Go ahead.  
 5 A. These are relatively the same alignment --  
 6 roughly the same alignments that were initially  
 7 presented to us.  
 8 Q. And if I look on the left side of Figure 3,  
 9 I see a little yellow pin marked "Point of Diversion."  
 10 That's Tucker Springs; right?  
 11 A. Yes.  
 12 Q. And then on the upper right-hand corner of  
 13 Figure 1 there's another yellow pin marked "Point of  
 14 Discharge."  
 15 That's the Rangen facility?  
 16 A. Yes.  
 17 Q. And you've testified they're roughly a mile  
 18 or a little over a mile apart the way the crow flies?  
 19 A. About 1.3 miles, I believe.  
 20 Q. Okay. Can you explain why there's two  
 21 different alignments on Figure 3.  
 22 A. Yes. Again, these were -- these fairly  
 23 closely resemble the two alignments that were  
 24 originally provided to me. The Musser alignment is a  
 25 shorter alignment. And shorter usually is better in

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1 the cost of putting and installing pipelines. The  
 2 Morris alignment's a longer alignment.  
 3 The reason why there's two different  
 4 alignments is two different property owners. We were  
 5 originally, I think, preferring the Musser alignment  
 6 because it was shorter. The Morris alignment is the  
 7 alignment we ultimately designed and what's included in  
 8 the 60 percent drawing set. And that's because the  
 9 Morris -- Mr. Morris, I think, was willing to enter  
 10 into an easement discussion with IGWA. I don't believe  
 11 Mr. Musser was as cooperative.  
 12 Q. Okay. So when we go through the plan  
 13 drawings later on, those are drawings that follow  
 14 what's marked as the Morris alignment on Figure 1?  
 15 A. Yes, roughly. This, again, is a high-level  
 16 Google Earth drawing. But it closely resembles that  
 17 alignment.  
 18 Q. Okay. Let's turn back to the first page of  
 19 your report. Section 2 discusses water rights.  
 20 Could you explain which water rights are  
 21 involved in this piping project.  
 22 A. From a real high level, as you can see  
 23 there's only two paragraphs here. The water right that  
 24 is included in the whole scheme of the letter of intent  
 25 that you guys discussed earlier was this 36-2055 water

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1 right. Fish and Game has that water right. It's to  
 2 divert -- their water right on paper says to divert up  
 3 to 64 cfs.  
 4 Q. So the piping project would take a portion  
 5 of Fish and Game's 64 second-foot water right?  
 6 A. That's correct. It can take up to 10 cfs.  
 7 Q. Have you reviewed any water delivery  
 8 records to the Fish and Game from Upper Tucker Springs  
 9 to see if there's even water available in Upper Tucker  
 10 Springs to move 10 second-feet to Rangen?  
 11 A. I have.  
 12 Q. Is that reflected on Figure 4 on page 7 of  
 13 your report?  
 14 A. It is.  
 15 Q. Why don't you do go ahead and explain what  
 16 Figure 4 shows.  
 17 A. Figure 4 is a graph. The data points for  
 18 this graph was taken off Department of Water Resources  
 19 website for the Department of Fish and Game's large  
 20 pipe that comes out of Upper Tucker Springs. So this  
 21 is a graph of the flows that were recorded there.  
 22 The average for that October 2010 to  
 23 December 2013 is approximately 43 cfs is what they've  
 24 been taking out of Upper Tucker Springs through their  
 25 large pipe.

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1 Q. Okay. So am I understanding correctly that  
 2 this graph shows that there's actually been diverted  
 3 into the Fish and Game's large pipe between 40 and  
 4 50 cfs over the last three years?  
 5 A. Yeah. Approximately 43, yes.  
 6 Q. Roughly. And then so --  
 7 A. There's a few of these -- there's a few  
 8 that dip below 40, but yeah.  
 9 Q. Okay. And then so this Tucker Springs  
 10 project will take up to a 10 second-foot portion of  
 11 that water and convey that to Rangen; is that right?  
 12 A. Yes.  
 13 Q. Keep your finger on your report and turn,  
 14 please, to Exhibit 1080.  
 15 You mentioned that you had gained the data  
 16 shown in Figure 4, the underlying data, from Department  
 17 of Water Resources; is that right?  
 18 A. Yes.  
 19 Q. Is Exhibit 1080 the data on which Figure 4  
 20 is based?  
 21 A. Figure -- Exhibit 1080 shows both the small  
 22 pipe and large pipe flows and their combined flow rate.  
 23 We took a similar data, but just with the large pipe  
 24 flows that -- these appear to be the same, same looking  
 25 information.

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1 Q. Okay. So the graph in your report as  
 2 Figure 4, that's a reflection of the large pipe data  
 3 shown on Exhibit 1080; is that right?  
 4 A. It appears to be, yes.  
 5 MR. TJ BUDGE: I would offer Exhibit 1080.  
 6 MR. MAY: No objection.  
 7 THE HEARING OFFICER: Okay. Mr. Simpson?  
 8 MR. SIMPSON: No objection.  
 9 THE HEARING OFFICER: Mr. Huntley? Any  
 10 objection, Mr. Huntley?  
 11 MR. HUNTLEY: No, sir.  
 12 THE HEARING OFFICER: Okay. The document marked  
 13 as Exhibit 1080 is received into evidence.  
 14 (Exhibit 1080 received.)  
 15 Q. (BY MR. TJ BUDGE): And just to make it  
 16 clear for the record, this Figure 4 does show that the  
 17 up to 10 second-feet is available at the source  
 18 year-round from Tucker Springs; correct?  
 19 A. Yeah, from that -- from that lower pool  
 20 where the large pipe diverts out of Tucker Springs it  
 21 shows it's available, yes.  
 22 Q. Okay. Thanks.  
 23 Let's turn back to page 1 of your report  
 24 and move on to section 3, which is titled "Water  
 25 Quality."

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1 Can you explain what SPF Engineering did to  
 2 analyze water quality in conjunction with this project.  
 3 A. Yes. One of the site visits that Jason  
 4 Thompson from our office made, he visited both the Fish  
 5 and Game site and the Rangen site and used a pH meter,  
 6 a conductivity meter, and a dissolved oxygen meter to  
 7 measure those three parameters in different areas at  
 8 the two locations, different water locations at the two  
 9 sites.  
 10 Table 1 in this section is a summary of  
 11 the -- of the recorded data he took from that site  
 12 visit. It describes the location he was at and which  
 13 site he was at.  
 14 Q. Okay. So if I understood you correctly, on  
 15 May 7th; is that right?  
 16 A. Yes.  
 17 Q. On May 7th of this year, Jason Thompson  
 18 visited Rangen and did some water-quality tests and  
 19 then Tucker Springs the same day and did some  
 20 water-quality tests; is that correct?  
 21 A. It is.  
 22 Q. And Table 1 shown on page 2 of your report  
 23 compares his measurements at the various Rangen and  
 24 Tucker Springs locations?  
 25 A. Yes.

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1 Q. And I understand from reading your report  
 2 that you're not rendering an opinion on the suitability  
 3 of Tucker Springs water to raise fish, you're just  
 4 providing the comparative data?  
 5 A. Correct.  
 6 Q. And explain then what Table 2 shows.  
 7 A. Table 2 is during in the same trip. Those  
 8 three instruments also can read temperature. So I just  
 9 broke out that data into a separate table. And Table 2  
 10 reflects the temperature readings by each instrument at  
 11 those same locations.  
 12 It also represents what we're calling a  
 13 corrected temperature. We calibrated each instrument  
 14 with a mercury thermometer back in the office after the  
 15 fact so we could have a common calibrated temperature  
 16 for each instrument.  
 17 Q. Okay. So let me make sure I understand  
 18 this correctly. On Table 2, the pH meter, which is the  
 19 first column, it has the temperature and then the  
 20 corrected temperature.  
 21 So for example, the upstream farmers' box  
 22 temperature measurement, the instrument showed a  
 23 14.8-degree Celsius measurement, and then you corrected  
 24 that at the office and converted that to a corrected  
 25 temperature of 15.7 degrees Celsius; is that right?

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1 A. That's correct.

2 Q. Okay. Could I also have you explain back

3 on Table 1 the different water-quality categories. I

4 see there's pH and then a number of others to the

5 right.

6 Would you please just explain what those

7 acronyms reflect.

8 A. Yeah, the pH is the pH of the water. And

9 these -- they're roughly in the 7.28 to 7.52 level at

10 Rangen, and 7.71 is what we recorded at Tucker Springs.

11 Q. And I don't need you to read the numbers,

12 but if you'll just explain what pH is and then EC and

13 SC and DO.

14 A. Okay. PH is basically if -- is the

15 measurement of how acidic or basic the water is. The

16 conductivity meter is -- it's used -- you can generally

17 tell if there's total dissolved solids and such with

18 how conductive the water is. So it has two different

19 readings here.

20 And the DO meter, the dissolved oxygen, is

21 measuring how much per milligrams per liter dissolved

22 oxygen is in the water and the percent saturation.

23 Q. Okay. And then you mentioned if that -- if

24 necessary, you could add oxygen to the water through

25 aeration.

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1 Could you explain how that might be done.

2 A. Well, we'd deliver the water. If

3 additional oxygen was necessary, the water -- the

4 oxygen can be added by different means. You could have

5 cascading water. You could have a degassing or

6 aeration structure water runs through, columns that

7 could add -- could increase this dissolved oxygen

8 number if it was necessary.

9 Q. And at this stage of your engineering, you

10 haven't incorporated an oxygenation or aeration

11 structure.

12 Is that something that could be

13 incorporated if necessary?

14 A. Yes.

15 Q. At what point would you make the decision

16 whether you needed to add aeration or not?

17 A. Well, that could be -- that can come from

18 different -- a few different ways. IGWA's fish expert

19 could state it's necessary. It could be a condition of

20 approval as part of these proceedings. The water could

21 be measured at the other end, and it could be

22 determined at that point that it's necessary also. But

23 at this point in time it's assumed that it isn't

24 necessary.

25 Q. Okay. So that's something that does not

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1 appear necessary at this time, but if it was deemed

2 necessary in the future could be incorporated into the

3 pipe system; is that correct?

4 A. Yes.

5 Q. Okay. Let's go ahead and turn over to

6 page 3, which is the project design. We already

7 discussed the two different pipeline alignments, the

8 Musser alignment and the Morris alignment. Let's flip

9 over to page 5. You mentioned Highway District

10 approval.

11 And is that because the Morris alignment

12 pipe is located within the highway right-of-way for

13 some portion of the project?

14 A. We actually are just crossing the

15 right-of-way in two locations. We're not running

16 parallel within the right-of-way. So in two locations

17 we do cross it. And we discussed the projects with the

18 Hagerman Highway District superintendent, walked him in

19 the field, he reviewed the drawings. He presented

20 those two crossings to the Highway District's board.

21 And we received a preliminary approval via

22 e-mail that says that everything looked okay and at

23 time of construction the successful contractor will be

24 responsible for pulling the actual permit and paying

25 any fees necessary at that time. We did incorporate

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1 some of their input in the design to make sure it met

2 their standards as well.

3 Q. Do you anticipate any trouble with the

4 contractor getting those permits if this project is

5 actually constructed?

6 A. I do not. That was the nature of their

7 approval.

8 Q. Okay. And you have provided a copy of

9 their approval in Appendix D, it looks like.

10 You were here when Mr. Carlquist testified

11 that option agreements have been secured from the other

12 landowners, Morris and Candy.

13 Does that take care of all of the easements

14 necessary to install this pipe?

15 A. You cross the State of Idaho, you cross the

16 Hagerman Highway District, Mr. Morris, Mr. Candy, and

17 then Rangen property. Those are the different

18 properties, so yes.

19 Q. Okay. Let's discuss next part 4.2, the

20 spring intake design.

21 A. Okay.

22 Q. And I'm going to have Justin pull up an

23 aerial photograph that you provided this morning to

24 help aid in your discussion of the location of the

25 various facilities. Justin, we marked that as

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1 Exhibit 1138.  
 2 You don't have a hard copy in front of you,  
 3 but it's going to be published to the screen. And we  
 4 will e-mail all of the parties a hard copy tonight and  
 5 provide a copy to the Department.  
 6 In fact, let's go ahead and mark this one  
 7 hard copy that we do have for the record.  
 8 (Exhibit 1138 marked.)  
 9 MR. TJ BUDGE: May I approach the witness,  
 10 Mr. Director?  
 11 THE HEARING OFFICER: Yes.  
 12 Q. (BY MR. TJ BUDGE): Bob, I'm handing you  
 13 Exhibit 1138, and it's also reflected on the screen for  
 14 all to see.  
 15 This is an aerial photograph you brought  
 16 with you and made some annotations on; is that correct?  
 17 A. Yes.  
 18 Q. Why don't you -- before we get into  
 19 discussing the intake for the Tucker Springs project,  
 20 why don't you point out the major features on that  
 21 photograph. And I'm going to get you a laser pointer  
 22 so everyone can follow along.  
 23 A. Thank you. That would be helpful.  
 24 So as you stated, this is basically to help  
 25 explain where we're at. At my deposition we spent

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1 quite a bit of time -- and we didn't have a drawing  
 2 that showed the whole area, and we spent quite a bit of  
 3 time trying to explain to everybody what was going on,  
 4 so this is hopefully helpful.  
 5 So this whole area is considered Upper  
 6 Tucker Springs. But one of the critical pieces here  
 7 that I think people are getting confused about, or  
 8 seems to be getting confused about, is there's an upper  
 9 pool right here (indicating) that's let's say  
 10 approximately 10 feet higher than this lower pool down  
 11 here (indicating). Again, it's all considered Upper  
 12 Tucker Springs.  
 13 This upper pool is where Big Bend Ditch,  
 14 right in here (indicating), they divert. They have  
 15 their weir there and they divert their water there.  
 16 This right here (indicating) is the Idaho Power  
 17 pipeline that comes out of the hill. It's where they  
 18 start.  
 19 And then Fish and Game also has a  
 20 collection box over here (indicating). I think there's  
 21 a pipe that comes from here to this collection box,  
 22 plus a collection from other water. And that's the  
 23 beginning of their small pipe, comes from that upper  
 24 area and it runs down the facility. So all that up  
 25 there is -- we're not touching any of that. That was

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1 an initial request from Fish and Game and Big Bend to  
 2 stay out of the upper pool.  
 3 So down in this lower pool, the only  
 4 diversion I'm aware of down here is Fish and Game's  
 5 large pipe. The diversion box is right down here in  
 6 the corner (indicating).  
 7 Right over here, I'll call it a concrete  
 8 diversion dam or structure there, it's been built up to  
 9 pool up this water. And it's fairly historical. And  
 10 this is where the large -- I believe it's a 42-inch  
 11 pipe. It's where all the water is collected and it's  
 12 piped down towards the bottom down towards the facility  
 13 also.  
 14 So this lower pool is -- at different times  
 15 of the year you may be able to see the water or not see  
 16 the water. It was a pool that's been filled in with  
 17 small basalt boulders or cobble, however you want to  
 18 call it. My assumption is that's to help make it more  
 19 biosecure. It doesn't attract the birds and such. So  
 20 there's water amongst those rocks at all times. It's a  
 21 pool. And this is just where they currently -- down  
 22 here where they currently take the water out.  
 23 Our plan is to -- currently is to set  
 24 another spring collection box, somewhat similar to what  
 25 Fish and Game has with some modifications, just

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1 upgradient from them, not far, and collect water at  
 2 that location.  
 3 And then our pump station, there's a tree  
 4 here. You can't -- it looks smaller because of the  
 5 tree, but our pump station generally sits in this  
 6 little area right over here (indicating). So you'd  
 7 have water coming from that intake box through a pipe  
 8 over to a large wet well right now is the concept for  
 9 the design. And that's where a pump station would sit.  
 10 So that kind of gets everybody's bearings  
 11 with when I talk about the upper pool or lower pool,  
 12 and how this lower pool doesn't appear, in my opinion,  
 13 to have any direct connection to what's going on at  
 14 this upper pool.  
 15 Q. Just a few follow-up questions. You  
 16 pointed out the Idaho Power pipe.  
 17 Where do they divert water into that pipe?  
 18 A. It's coming out -- it's coming right out of  
 19 the side of the hill, out of that cliff. Evidently  
 20 they need every foot of head they can get to get this  
 21 diverted siphon over to where they use it. And so they  
 22 don't draw to the pool. They actually -- that pipe  
 23 skims across the top of the water into the side of the  
 24 cliff.  
 25 Q. So it's at an elevation above the upper

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1 pool?  
 2 A. Yes.  
 3 Q. And then your collection box that's marked  
 4 with the green square, that collects water by gravity?  
 5 A. Yes.  
 6 MR. TJ BUDGE: I would move to admit  
 7 Exhibit 1138.  
 8 MR. MAY: No objection.  
 9 THE HEARING OFFICER: Mr. Simpson?  
 10 MR. SIMPSON: No objection.  
 11 THE HEARING OFFICER: Mr. Huntley, any  
 12 objection?  
 13 MR. HUNTLEY: No.  
 14 THE HEARING OFFICER: Okay. The document that's  
 15 marked as Exhibit 1138 is received into evidence.  
 16 (Exhibit 1138 received.)  
 17 Q. (BY MR. TJ BUDGE): Bob, do you still have  
 18 in front of you your report, Exhibit 1111?  
 19 A. Yes.  
 20 Q. Figure 2 shows a picture of the approximate  
 21 location of the new collection box.  
 22 A. Okay.  
 23 Q. Can you describe where that picture was  
 24 taken and what direction it's looking using  
 25 Exhibit 1138?

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1 A. Yes. You can see this is an aluminum -- a  
 2 gated aluminum pipe that Fish and Game must have had  
 3 sitting around that they installed recently so  
 4 that's -- and my picture on Figure 2 we're probably  
 5 standing about right here (indicating) looking back  
 6 towards Fish and Game's current collection box. So  
 7 it's looking from the upper end to the downstream end.  
 8 And you can use this aluminum pipe to kind of get your  
 9 bearings, because we're standing almost on top of it.  
 10 Q. Earlier when we looked at the water  
 11 diversion data for the Upper Tucker Springs, there was  
 12 the data from what's called the large pipe that was in  
 13 that 40 second-foot range.  
 14 Does that reflect water diverted into the  
 15 Fish and Game collection box that's adjacent to the  
 16 proposed Tucker Springs project collection box marked  
 17 in green on Exhibit 1138?  
 18 A. Yes, that graph that shows the approximate  
 19 40 cfs, all that water is collected right here, and the  
 20 measuring device is just downstream a short distance.  
 21 Q. And that's how. Okay. And that's how your  
 22 collection box, then, will pick up a portion of that  
 23 40 second-feet that would otherwise go to Fish and  
 24 Game?  
 25 A. Yes, it will draw from the same pool.

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1 Q. Okay. Let's go ahead and turn in your  
 2 report to one of your diagrams in Appendix A. And it's  
 3 got a label C-103. I think this might be the best time  
 4 to discuss what that shows.  
 5 A. Drawing sheet C-103?  
 6 Q. Maybe that's not the one. Excuse me. It's  
 7 C-102.  
 8 A. Okay.  
 9 Q. Why don't you explain what's depicted on  
 10 C-102.  
 11 A. It's a plan and profile drawing. It's the  
 12 beginning of the alignment. On this sheet you can see  
 13 the location of the spring box and the location -- the  
 14 plan view of where the pump station is.  
 15 The profile of this sheet basically is the  
 16 pressurized system outside of the pump station. So  
 17 it's the beginning of the pipe and it's showing it  
 18 going upslope.  
 19 Q. On the left side of that aerial image if  
 20 I'm looking at it, you can see the same pipe that you  
 21 had pointed out earlier --  
 22 A. Uh-huh.  
 23 Q. -- is that right?  
 24 And then the square is the collection box  
 25 that you've designed for this project; is that right?

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1 A. Yes. Approximate location of the  
 2 collection box, yes.  
 3 Q. And the black line heading to the right,  
 4 which I guess is in kind of a southerly direction, that  
 5 is the pipe that would take water to -- ultimately to  
 6 Rangen?  
 7 A. Yes.  
 8 Q. And on this drawing C-102, there's a white  
 9 square superimposed over the pipe that says "Zero plus  
 10 87 C-101." And next to that there's a circle. A  
 11 little difficult to see, but there's a circle on the  
 12 pipe.  
 13 Can you explain what that is.  
 14 A. Oh, that circle is representing the wet  
 15 well.  
 16 Q. Okay. And if we turn one page previously  
 17 to C-101, why don't you explain what's depicted on that  
 18 diagram.  
 19 A. So this is -- this is basically a blowup of  
 20 the gravity portion coming from the spring box plan and  
 21 profile to the wet well. And the profile kind of shows  
 22 the -- well, it does show the spring intake that -- the  
 23 assumed low water surface and the wet well, proposed  
 24 wet well at this time. And then it does show a pump  
 25 and pipe to kind of give an idea of how the mechanical

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1 might look.  
 2 Q. Okay. If we look at the bottom portion of  
 3 C-101, it has a profile view of the -- is that the  
 4 collection box on the left?  
 5 A. Yes.  
 6 Q. And then there's a gravity flow pipe over  
 7 to the wet well?  
 8 A. Yes.  
 9 Q. So am I correct in understanding that there  
 10 won't be a pump placed in Upper Tucker Springs itself,  
 11 it will be placed some distance away from the springs?  
 12 A. Yes.  
 13 Q. So water will gravity-flow out of the  
 14 spring to a wet well, to a pump that's not in the  
 15 spring itself?  
 16 A. Correct.  
 17 Q. And that pump will then push water up the  
 18 pipe to Rangen; is that right?  
 19 A. Yes.  
 20 Q. Okay. That's helpful. Thank you.  
 21 Let's go back to the written portion of  
 22 your report. And Figure 3, which is on page 7, is  
 23 identified as the spring collection box detail.  
 24 Am I correct in understanding that's the  
 25 gravity collection box that would be placed in the

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1 lower pond next to the Fish and Game collection box?  
 2 A. Yes. This is just a figure taken out of a  
 3 drawing, drawings themselves, some detail.  
 4 Q. Okay. Let's go ahead and turn to the next  
 5 page, page 8, and discuss the pump station design.  
 6 Why don't you go ahead and just explain the  
 7 pump station you've designed for this project.  
 8 A. All right. As of right now we're  
 9 contemplating a skid-mounted packaged pump station  
 10 within the -- the delivered pump station would include  
 11 the pumps -- included in the packaged pump station  
 12 would be the pumps, the mechanical piping, valves, flow  
 13 meter. It would come with a zone control panel with  
 14 variable frequency drives. And we would supply a  
 15 generator adjacent to the pump station enclosure.  
 16 We're anticipating using three pumps, a  
 17 total of three pumps, each of them 200-horsepower, each  
 18 of them with a VFD.  
 19 At the -- pumping the full amount from  
 20 Tucker Springs to Rangen will require using two of the  
 21 pumps. So we have one pump, a redundant pump, always  
 22 there, so we could either maintain it or -- and/or if  
 23 something was to -- if one pump needed to come down,  
 24 the other one could start automatically.  
 25 The wet well currently is an 8 foot

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1 diameter, 20 foot deep precast concrete wet well is the  
 2 anticipated design at this time. It will be fed from a  
 3 24-inch scrappy (phonetic) pipe, which we just  
 4 discussed, from the collection box.  
 5 We are anticipating using HDPE, or  
 6 high-density polyethylene piping, for the whole  
 7 alignment from the pump station up to Rangen to where  
 8 we'll do the tie in. We're using a 24-inch ductal iron  
 9 pipe size, HTP pipe. This is fairly thick walled, so  
 10 the lower portion of the pipe where we have a higher  
 11 pressure, the ID is almost 21 inches, and the upper  
 12 portion where we have a little lower pressure it's  
 13 about 22 1/2 inches for the ID. But it is considered a  
 14 24-inch pipe.  
 15 We have the pump station at the lower end  
 16 where we're pumping from, that assumed lower water  
 17 elevation's at 2,948 feet. Our maximum pipe elevation  
 18 is about halfway through the alignment. It's at  
 19 3,138 feet. And then we start going downhill to Rangen  
 20 from that point.  
 21 Q. Let me follow up and ask you a few  
 22 questions. You explained that the pumps have VFDs.  
 23 What are those?  
 24 A. Variable frequency drives. We're going to  
 25 set this up so the VFDs control the speed of the pumps

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1 based off of flow, because that's what is being  
 2 discussed today, is delivering a constant flow to  
 3 Rangen.  
 4 So the pump stations -- the pumps will have  
 5 the ability to speed up or slow down to maintain that  
 6 flow. If anything along the alignment or at the other  
 7 end valves were open or closed, or other delivery  
 8 schemes were adjusted, the pumps will speed up or slow  
 9 down based on the different pressure that they saw.  
 10 So the VFDs are used in there so you don't  
 11 have to manually control valves and such to control the  
 12 flow. We can automatically maintain that flow.  
 13 Q. And can the system be set up to pump  
 14 different rates? Meaning can it pump less than  
 15 10 second-feet?  
 16 A. Yes.  
 17 Q. So if IGWA has a mitigation credit from  
 18 other activities that means it only has to deliver, for  
 19 example, 6 second-feet to Rangen, then the system can  
 20 be set to deliver 6 second-feet instead of  
 21 10 second-feet?  
 22 A. Yes.  
 23 Q. It states in here that the pump station  
 24 will be enclosed and heated and ventilated.  
 25 What's the purpose of that?

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1 A. The pump station will be enclosed and  
 2 lockable so it's more secure. And that's stated on --  
 3 it will be ventilated -- the overall pump station will  
 4 be ventilated to keep the temperature down. The  
 5 control panel will more than likely be cooled  
 6 specifically for the VFDs and such to keep them --  
 7 their temperature down.  
 8 It will be heated so in the winter months  
 9 it maintains -- it's warm enough so nothing freezes in  
 10 there. So it's set up so it can handle the elements  
 11 year round.  
 12 It's insulated, so it also helps with sound  
 13 attenuation, the enclosure is.  
 14 And from a security standpoint, if  
 15 necessary the area could be fenced off as well to  
 16 encompass the pump station, transformer, and generator,  
 17 if necessary, to help with the physical security.  
 18 Q. Is power available at the pump site?  
 19 A. It is. It is. It's a good site in that  
 20 manner. There is an Idaho Power distribution line that  
 21 generally runs over the top of this area. We had  
 22 discussions with Idaho Power that verified that the  
 23 line can supply 600 horsepower worth of power, because  
 24 you have to start a third pump before you bring a pump  
 25 down. It can supply 600 horsepower worth of power.

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1 The existing lines don't have to be  
 2 upgraded to do so. It's just a matter of adding the  
 3 transformer and feeding it from those overhead lines.  
 4 Q. Okay. And then if there's a power outage,  
 5 explain how the backup power source functions.  
 6 A. So the diesel power standby generator with  
 7 an automatic transfer switch. If the utility power  
 8 goes out, the generator automatically starts and  
 9 transfers on its own. And generators can typically  
 10 start within seconds.  
 11 And the VFDs would then slowly ramp the  
 12 water flow back up and get things pumping to Rangen  
 13 again if the power was to go out.  
 14 Q. So there would be a period of time when  
 15 there's not water being pushed through the pipe during  
 16 a power outage?  
 17 A. Yes. If the power is out, the pumps stop.  
 18 No water is flowing.  
 19 Q. How long would it take for the backup to  
 20 get going and start pumping again?  
 21 A. It will depend on how slow we ramp the VFDs  
 22 up. But I'd say it's within a couple minutes, two to  
 23 three minutes probably if we ramp them up fairly slow  
 24 so we don't get -- introduce surge issues into the  
 25 pipeline.

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1 Q. And what if a pump fails, how does the  
 2 backup kick in there?  
 3 A. If a pump fails, the other pump would  
 4 automatically start through the control system.  
 5 Q. Are these types of redundancies built into  
 6 other pump-and-pipe systems that you've designed?  
 7 A. Yes. And reliability redundancy are  
 8 required in many of our projects. Not all of them, but  
 9 many of them. Municipal systems require standby  
 10 generators typically and other small public water  
 11 systems.  
 12 The redundant pumps are used in areas where  
 13 they don't have other facilities that can kick in.  
 14 Some clients have systems where they always have  
 15 redundancy right there. Semiconductor industry does it  
 16 quite often. Hospitals have a lot of redundancy built  
 17 in in their power systems and such. So it's fairly  
 18 common to have both a redundant pump and a standby  
 19 generator in the systems.  
 20 Q. So I understand even with all the  
 21 redundancies back in there, there's of course the risk  
 22 of some complete system failure. Rangen's discussed  
 23 that a lot in your deposition.  
 24 And from a practical standpoint, how  
 25 significant is that risk? And I'm not asking you for a

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1 particular number. But what's the likelihood of really  
 2 having everything fail and none of the backups work?  
 3 A. I don't know how to put a number on that,  
 4 but it doesn't happen very often. Acts of God do  
 5 happen. Things can happen in that nature. But it  
 6 typically does not happen to where it's a complete  
 7 failure. We usually have a power outage we have  
 8 covered or a pump or a VFD that would go out, and we  
 9 have a redundant pump and VFD in that situation. It  
 10 can happen. I just don't have a good feel for how  
 11 often it might happen. It's not very often, though.  
 12 Q. Yeah. Fair enough. Your report does say  
 13 the pump station will be biologically and physically  
 14 secure. I get the "physically secure" part. You  
 15 talked about the housing and lockable.  
 16 What do you mean by being biologically  
 17 secure?  
 18 A. Once it leaves the spring collection box,  
 19 it's basically in a pipe that's buried and/or in piping  
 20 that's within that enclosure from point A all the way  
 21 up to Rangen where it's delivered. So it's not  
 22 accessible by outside influences.  
 23 Q. Okay. Good. Let's go ahead and turn to  
 24 section 4.4. And I think you may have covered this.  
 25 This discusses pipeline design, and you explained the

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1 type of pipe you're using. It states in there that a  
 2 minimum of 3 feet of cover is required.  
 3 Does this mean that this pipe is buried  
 4 during the length between Tucker and Rangen?  
 5 A. Yeah, it's buried the entire length.  
 6 Q. Let's move to page 11 of your report where  
 7 it discusses the Rangen tie-in. So we're on the  
 8 upstream end of pipe where we're going to connect to  
 9 the Rangen facility. And if you turn to page 12,  
 10 you've got a figure that depicts your tie-in at Rangen.  
 11 Will you go ahead and explain how the pipe  
 12 from Tucker Springs will connect to Rangen's water  
 13 delivery system.  
 14 A. Yeah. So as of right now, we've been  
 15 instructed to tie into the 14-inch pipe that's  
 16 physically located on Rangen's property between their  
 17 small raceway and their hatchery house. Jason Thompson  
 18 met with Joy Kinyon on site to discuss the approximate  
 19 location of the pipeline and kind of how that might  
 20 work.  
 21 And so based off those conversations and  
 22 such we were able to come up with this detail. What  
 23 this detail is showing is we're cutting in a T into the  
 24 existing line, delivering our water into the existing  
 25 14-inch pipe through a T.

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1 On the downstream side of the small -- I'll  
 2 call it the small raceway side leg of the T there will  
 3 be a control valve, which can be used to regulate the  
 4 amount of flow that goes into the small raceway.  
 5 If for some reason Rangen did not want or  
 6 could not take all that flow, they could throttle that  
 7 valve back, and the difference of the flow will go up  
 8 the 14-inch pipe to the Rangen box where it can spill  
 9 over and be used by other means. The --  
 10 Q. Let me interrupt you real quick.  
 11 So the 14-inch pipe you're talking about,  
 12 in the prior hearing we had some good maps of this. I  
 13 perhaps should have reproduced one of them. But all of  
 14 us are familiar in here that water comes out of the  
 15 Curren Tunnel and is collected into a concrete box  
 16 called the Rangen box and there's a large steel pipe  
 17 that comes out of the Rangen box on the talus slope  
 18 above their facility.  
 19 Is that the 14-inch pipe you're referring  
 20 to?  
 21 A. So the -- I believe that's -- right now the  
 22 Curren Tunnel comes out, goes into the farmers' box,  
 23 and then the flow is piped from the farmers' box down  
 24 to the Rangen box, open to atmosphere, and then there  
 25 is the beginning of this 14-inch pipe we're talking

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1 about starts from that point at the Rangen box and  
 2 comes down to the small raceways in that 14-inch steel  
 3 pipe, yes.  
 4 Q. Got it. And you were explaining that you  
 5 could pump water up the pipe to the Rangen box.  
 6 Why would you not just deliver all of the  
 7 water to the small raceways?  
 8 A. That would be the preference. We were told  
 9 by Joy that he wasn't sure if the pipeline between the  
 10 small raceway and the large raceway could receive up to  
 11 10 cfs. I believe historically it has been able to,  
 12 but he didn't know if it still could. I don't know if  
 13 that's because he feels the pipe has been silted in or  
 14 some other means.  
 15 But he said it may not be able to take the  
 16 full 10 cfs through the small raceway to the large  
 17 raceways. If it can, then that water can be delivered  
 18 through that method, and it does not have to go up to  
 19 the Rangen box.  
 20 Q. Okay. Good. Let's now turn to the last  
 21 page of your written report and look at the project  
 22 schedule. There was discussion earlier about the  
 23 Groundwater District's goal being to have a mitigation  
 24 system in place by April 1st of next year.  
 25 Can this project realistically be

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1 constructed by then?  
 2 A. Yes.  
 3 Q. Have you built in any cushion to account  
 4 for delays that could occur in permitting or the  
 5 water-right transfer or getting a decision from this  
 6 proceeding?  
 7 A. There is some lag in the schedule. The  
 8 majority of it right now, as the schedule's rolled up,  
 9 is in that project construction line. This current  
 10 schedule has the bulk of construction basically  
 11 wrapping up in January, but then there's the seeding  
 12 and the vegetation that needs to be -- area needs to be  
 13 revegetated. And so that usually happens in the March  
 14 time frame.  
 15 But with this current schedule there is  
 16 some lag in the construction side right now, and that's  
 17 without getting more aggressive than my assumptions I  
 18 already made is.  
 19 Q. So if there were no speed bumps from here  
 20 on out, could you get it done before April 1st?  
 21 A. Yes.  
 22 Q. A week before? A month before? I mean  
 23 tell us what's realistic best-case scenario.  
 24 A. If we did not see any delays, either with  
 25 my assumption on when the Director's going to approve

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1 this or with permitting items that have been brought up  
 2 previously today, if there weren't anything to delay  
 3 the start of the construction, then water could be  
 4 ready to deliver as soon as January.  
 5 Q. Okay. Let's go ahead and just quickly go  
 6 through the design set which begins at Appendix A.  
 7 Some of these we've looked at. Others I think we just  
 8 ought to point out what you've got in here for the  
 9 record and those who may be less familiar with this.  
 10 The first design drawing you have is labeled G-001.  
 11 That looks like just a broad overview of  
 12 where the pipe's going from Tucker Springs to Rangen.  
 13 A. It's the cover sheet that goes to it.  
 14 Q. And what is the next page, G-2?  
 15 A. Next page is our -- is where we've listed  
 16 our design criteria and assumptions and our general  
 17 notes, some pipeline construction notes and erosion and  
 18 sediment control notes.  
 19 Q. If you'll turn the next page to G-3, what  
 20 does that contain?  
 21 A. It's a process flow diagram. It basically  
 22 shows more like a cartoon of the different elements in  
 23 the system: valves, flow meters, pumps, and such.  
 24 Q. Okay. And G-4?  
 25 A. G-4 is in some respects, from an

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1 engineering perspective, the most important sheet in  
 2 the drawing. It's the hydraulic profile.  
 3 Q. So the graph on the bottom of that is  
 4 showing the elevation of the system from Tucker Springs  
 5 to the discharge point at Rangen; is that right?  
 6 A. Yeah. So you can see what the ground is  
 7 doing. You can see we have a high point in the middle.  
 8 And the dark line above that is basically the -- we can  
 9 call it the pressure in the pipe, as you're going up  
 10 and over the hill.  
 11 And one thing we didn't talk about at the  
 12 tie-in location is we're going to put a  
 13 pressure-sustaining valve in a precast vault there.  
 14 And a pressure-sustaining valve allows you to maintain  
 15 a full pipe upstream of it and a certain pressure  
 16 upstream of that valve. That way you have the ability  
 17 to pump over your high point. If you didn't have that,  
 18 you may not have enough lift.  
 19 And it also makes it so if you -- the pipe  
 20 is always full. If -- during static and full flow  
 21 conditions it will maintain that static pressure -- or  
 22 that pressure above it so you don't ever get a  
 23 partially full pipe or any kind of vacuum condition  
 24 downstream to protect the pipe.  
 25 Q. Okay. Good. The next diagram, G-5, what's

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1 that show?  
 2 A. That's just a map of -- it shows you where  
 3 in the alignment the next sheet C-102 to C-10- -- 14  
 4 is, C-114. And those sheets, C-102 through C-114, are  
 5 plans and profiles of the overall pipe alignment.  
 6 Q. Okay. So if we were to go to any of those  
 7 C sheets, we could look to the plan and profile for  
 8 that particular segment of the pipe?  
 9 A. Correct.  
 10 Q. I'm not going to walk through all of those.  
 11 I think that's self-explanatory.  
 12 A. Okay.  
 13 Q. Let's turn to the next section of  
 14 engineering drawings. M-101 it appears to be.  
 15 A. Yeah, these are pump station notes specific  
 16 to the pump station we're currently looking at. It  
 17 defines all the different ins and outs of what we're  
 18 looking for, requirements.  
 19 Q. Turn to the next page, M-102.  
 20 A. This is a plan view of a skid-mounted  
 21 packaged pump station and equipment schedule denoted to  
 22 the plan view. So you can see the three pumps, you can  
 23 see the discharge piping manifold, the flow meter, and  
 24 an isolation valve. In addition you can see the pump  
 25 control panel, which would house the VFDs and the PLC,

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1 the programmable logic controller.  
 2 And it also shows a concrete pad that the  
 3 enclosure sets on. And you can see the wet well kind  
 4 of underneath it that the enclosure will set over, too,  
 5 also.  
 6 Q. Okay. And M-201, is that the wet well?  
 7 A. This is a profile of the plan view we were  
 8 just looking at. It shows the wet well pumps sitting  
 9 in the wet well. Shows the discharge piping flow meter  
 10 again. And this one you can see the pressure relief  
 11 valve really well. And then it also has another cut  
 12 section through it looking from the discharge manifold  
 13 back towards the pumps too.  
 14 Q. Okay. And then if we turn to M-501, the  
 15 following page.  
 16 A. So here we get into details. We have some  
 17 standard details here. A couple different air valve  
 18 details. Air valves are important on these systems  
 19 to -- a couple different reasons. When you're filling  
 20 or draining a pipe, you need to protect it from --  
 21 release air and let air in respectively.  
 22 Then also these will, if you have any air  
 23 in the system, the high points and stuff, it will help  
 24 burp the air out and remove any air from the system if  
 25 it happened to be in there.

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1 It also shows typical trench detail. This  
 2 detail, it shows the general trenching through areas  
 3 that aren't roadways. It talks about the roadway  
 4 crossings and also talks about where we have crossings  
 5 with the center pivot wheels to beef up those areas  
 6 with the amount of cover to protect the pipeline from  
 7 the pivot wheels. So it kind of defines those  
 8 different areas. And this cross section was reviewed,  
 9 and we incorporated comments from the Hagerman Highway  
 10 District.  
 11 Q. Great. Thank you.  
 12 A. We have a drain detail and then just a  
 13 standard thrust block detail on this sheet.  
 14 Q. Okay. And the next sheet M-502, is that  
 15 the intake structure?  
 16 A. Yeah, this is another detail sheet. It  
 17 shows the spring collection box, which was in the  
 18 report we talked about. It also shows a tie-in detail,  
 19 which is also in the report that we talked about, and  
 20 then notes associated with it.  
 21 Q. Okay. That takes care of the design plans.  
 22 Let's just finish out your report looking through the  
 23 appendix -- remaining appendices.  
 24 Appendix B is the water right transfer  
 25 application that was admitted into evidence earlier; is

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1 that right?  
 2 A. Yes.  
 3 Q. Appendix C, could you explain what that is.  
 4 A. Let me find it. Okay. Appendix C is the  
 5 temperature analysis that AMEC did. This analysis was  
 6 just done to determine how much the water temperature  
 7 might increase when being pumped 1.78 miles from the  
 8 Tucker Springs up to Rangen.  
 9 Q. And if I look at the second page, it's got  
 10 the results showing that pumping water from Tucker  
 11 Springs to Rangen is estimated to increase water  
 12 temperature by only .2 degrees Fahrenheit; is that  
 13 right?  
 14 A. Yes.  
 15 Q. Okay. And then Appendix D is the approval  
 16 from the Hagerman Highway District you mentioned  
 17 previously?  
 18 A. Yes.  
 19 Q. And then it looks like Appendix E is the  
 20 letter of intent that was admitted into evidence  
 21 previously?  
 22 A. Yes.  
 23 MR. TJ BUDGE: Director, since we didn't have a  
 24 ruling excluding evidence concerning permitting, I  
 25 think what we'll do is offer a small amount of evidence

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1 as to what's been done and is anticipated as far as  
 2 permitting, recognizing that it may prove to have been  
 3 unnecessary.  
 4 Is that fair enough?  
 5 THE HEARING OFFICER: Sure.  
 6 Q. (BY MR. TJ BUDGE): Mr. Hardgrove, have you  
 7 done any analysis of permitting requirements necessary  
 8 to install this project?  
 9 A. Very limited amount.  
 10 Q. What permits do you expect will be  
 11 required?  
 12 A. I suspect there could be a local  
 13 county-type permit to construct the project, call it a  
 14 building permit or something. I'm not for sure there  
 15 will be one, but there typically is in many areas.  
 16 It's possible that we'd need a 404 permit  
 17 to install the intake box within the lower pool that we  
 18 showed up on the screen. And the 404 permit in that  
 19 area, if you didn't have any hurdles, that's usually a  
 20 45 to 60-day process using the national permit and  
 21 such.  
 22 If there was a threatened or endangered  
 23 species in that area that was there, it could extend  
 24 that length to a longer period.  
 25 Q. Okay.

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1 A. I haven't looked at anything else beyond  
 2 that.  
 3 Q. Is 404 permitting something that is  
 4 commonly required for projects that SPF's involved  
 5 with?  
 6 A. Yes.  
 7 Q. You mentioned that it could take 45 to 60  
 8 days to get a 404 permit.  
 9 Is there time within your schedule to go  
 10 through that process and still be able to complete it  
 11 by April 1st?  
 12 A. There is. There is, yes.  
 13 Q. And if it became a problem to get a 404  
 14 permit, are there ways around it?  
 15 A. If the 404 permitting became too onerous  
 16 there is an option. A potential option would be to tie  
 17 a T into the Fish and Game's 42-inch pipe versus  
 18 installing the intake structure and tie directly into  
 19 the pipe, and then we could avoid doing any work within  
 20 that lower pool.  
 21 Q. Okay. So potentially we could avoid the  
 22 whole process by tying directly into the existing Fish  
 23 and Game pipe; is that right?  
 24 A. And ensuring that you didn't impact any  
 25 wetlands anywhere else. And as of right now, the

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1 general pipeline alignment isn't going to impact any  
 2 wetlands, that I'm aware of.  
 3 Q. Okay. Let's also have a brief discussion  
 4 about injury to other water rights, recognizing the  
 5 arguments have been made that these are most  
 6 appropriate for a transfer proceeding.  
 7 Have you done any work to evaluate injury  
 8 to other water rights?  
 9 A. Well, most of my time has been spent on  
 10 doing the design. That's consumed most all my time  
 11 through the middle -- into the early end of May. Since  
 12 then I have participated in discussions, mainly focused  
 13 at the Buckeye discussions.  
 14 I held one meeting here at IDWR that had  
 15 Fish and Game, Buckeye, and IDWR folks in. I've held  
 16 one meeting after that time with Dave Shaw. He's the  
 17 consultant for Buckeye. I had one meeting since then  
 18 with him, and we're -- we've started the process of  
 19 looking at options and working on ways to mitigate  
 20 Buckeye's concerns.  
 21 Q. Based on the review you've done so far, do  
 22 you anticipate that the withdrawal of 10 second-feet  
 23 from Tucker Springs could have an impact on Buckeye  
 24 Farms?  
 25 A. It could, yes.

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1 Q. And do you believe there are ways to  
 2 mitigate that impact?  
 3 A. Yeah, I believe there are.  
 4 Q. Is this something you've been working with  
 5 Dave Shaw to further along?  
 6 A. Yeah, we just started that process. There  
 7 isn't any -- I don't think we have anything on the  
 8 table right now that we both will agree on or both say  
 9 that it has been well vetted.  
 10 Q. Okay. Let's just quickly go through the  
 11 other protests. There's a protest by Big Bend Trout.  
 12 Are you familiar with their diversion from  
 13 Tucker Springs?  
 14 A. I could tell you what I believe I know. I  
 15 believe they're taking water out of Lower Tucker  
 16 Springs, which is not Upper Tucker Springs. And I  
 17 believe they come out of Lower Tucker Springs. So I'm  
 18 not aware of how this diversion out of the lower pool  
 19 directly affects them.  
 20 Q. Okay. So when you reference Lower Tucker  
 21 Springs, you're not referring to any of the water  
 22 bodies on Exhibit 1138 that we had discussed  
 23 previously?  
 24 A. That's correct.  
 25 Q. Where is Lower Tucker Springs located

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1 relative --  
 2 A. It's off this picture down in this area  
 3 somewhere (indicating). But I believe it feeds into  
 4 their facility before it then goes into Big Bend's  
 5 irrigation ditches facility.  
 6 Q. Okay. So based on your limited analysis to  
 7 date, your understanding is that Big Bend wouldn't be  
 8 harmed by the Tucker Springs project?  
 9 A. The Big Bend Trout?  
 10 Q. Big Bend Trout.  
 11 MR. MAY: Objection. It's leading and there's a  
 12 lack of foundation.  
 13 THE HEARING OFFICER: Mr. Budge.  
 14 MR. TJ BUDGE: I'll add some foundation.  
 15 THE HEARING OFFICER: Okay.  
 16 Q. (BY MR. TJ BUDGE): Does the water that  
 17 Fish and Game has historically diverted from the lower  
 18 pond in Upper Tucker Springs, does that discharge into  
 19 Lower Tucker Springs after being used by the Fish and  
 20 Game hatchery?  
 21 A. I don't believe so.  
 22 Q. So by taking a 10 second-foot portion of  
 23 the Fish and Game water, do you anticipate any impact  
 24 on water flows at Lower Tucker Springs?  
 25 A. I don't believe so.

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1 MR. MAY: Objection. Lack of foundation.  
 2 THE HEARING OFFICER: Overruled.  
 3 THE WITNESS: I don't believe it will have an  
 4 impact.  
 5 Q. (BY MR. TJ BUDGE): Okay. Let me ask also  
 6 about Big Bend Mining & Irrigation Company.  
 7 Are you familiar with their diversion  
 8 point?  
 9 A. I am.  
 10 Q. Where do they divert their water rights?  
 11 A. I believe the bulk of it comes out the  
 12 upper pool we discussed up on the screen a little while  
 13 ago. And they take the bulk of their rights from  
 14 there. And then I do believe they get the flows that  
 15 come out of the Idaho Trout -- or the Big Bend Trout  
 16 facility during the irrigation season. So I think  
 17 those are their two sources from Lower Tucker Springs.  
 18 The upper pool at Upper Tucker Springs and the Lower  
 19 Tucker Springs.  
 20 Q. Okay. And I think you explained this  
 21 previously, but I want to make clear, your  
 22 understanding is that the diversion point from the  
 23 lower pool at Upper Tucker Springs is separate from the  
 24 Upper Tucker Springs pool, which is at a higher  
 25 elevation; is that right?

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1 A. Yes.

2 Q. So it's your understanding, based on the

3 analysis you've done to date, that the diversion of

4 water from the lower pool at Upper Tucker Springs won't

5 affect any of the diversions from the upper pool?

6 MR. MAY: Objection. Again, it's leading and

7 there's clear lack of foundation.

8 THE HEARING OFFICER: Well, it is somewhat

9 leading. But I need a little bit of leading just to

10 explain where we're at in terms of the upper upper, or

11 the lower upper or the lower. And so maybe I can just

12 get you to back up a little bit, TJ, and talk about

13 that.

14 MR. TJ BUDGE: You bet.

15 THE HEARING OFFICER: Thank you.

16 MR. TJ BUDGE: Justin, can you pull up

17 Exhibit 1138.

18 THE WITNESS: That would be helpful. Thanks.

19 Q. (BY MR. TJ BUDGE): Bob, you've still got

20 the pointer. Why don't you point to the upper pool at

21 Upper Tucker Springs.

22 A. Here's the upper pool (indicating).

23 Q. And then point again to the lower pool at

24 Upper Tucker Springs.

25 A. This blue down here (indicating) is

Page 195

1 approximately the boundary of the lower pool.

2 Q. And you testified that you don't believe

3 diversions from the lower pool affect the water in the

4 upper pool.

5 A. I don't believe the Idaho Fish and Game

6 diversion right now is -- has a nexus to that pool.

7 Q. And does Big Bend Irrigation divert from

8 the lower pool?

9 A. No. Big Bend Irrigation diverts from the

10 upper pool about where the pointer is pointing right

11 there (indicating).

12 Q. Okay. So in light of that testimony, just

13 to summarize what you've explained, since Big Bend

14 diverts from the upper pool, and you don't believe

15 diversions from the lower pool affect the upper pool,

16 your expectation is that the Tucker Springs project

17 won't injure Big Bend's diversion?

18 MR. MAY: Objection. It's leading again, and

19 there's still a lack of foundation.

20 THE HEARING OFFICER: Well, with respect to

21 foundation, I don't have a problem. I don't have a

22 problem with the nature of the question except that it

23 characterizes it as injury, which probably is a legal

24 conclusion, Mr. Budge.

25 MR. TJ BUDGE: Let me rephrase that.

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1 Q. Do you believe the diversion of water from

2 the collection box you proposed at Lower Tucker Springs

3 will reduce the water supply available to Big Bend from

4 the upper pond at Upper Tucker Springs?

5 A. I do not believe it will.

6 MR. TJ BUDGE: Did I say "Lower Tucker Springs"?

7 MR. MAY: Yeah.

8 Q. (BY MR. TJ BUDGE): Let me clarify that.

9 Do you believe the diversion of water from

10 the collection box that's part of the Tucker Springs

11 project that we're discussing which comes out of the

12 lower pool at Upper Tucker Springs, do you believe that

13 will impact the supply of water available to Big Bend

14 Irrigation or others who divert from the upper pool at

15 Upper Tucker Springs?

16 MR. MAY: I renew my foundation objection.

17 THE HEARING OFFICER: Overruled.

18 THE WITNESS: I do not believe there will be an

19 impact.

20 Q. (BY MR. TJ BUDGE): And let's just turn

21 quickly to Salmon Falls Land & Livestock.

22 Are you familiar with their water

23 diversion?

24 A. I really am not. The limited I have is I

25 believe they divert out of Riley Creek. But I'm not

Page 197

1 very familiar with their diversion.

2 Q. And I assume this and the other protests

3 we've discussed, you'll continue to analyze impacts in

4 conjunction with the water right transfer --

5 A. Yes.

6 Q. -- that's pending?

7 A. Yes.

8 MR. TJ BUDGE: I don't have any further

9 questions.

10 THE HEARING OFFICER: Okay. Do we want to break

11 midafternoon, Mr. May, and come back?

12 MR. MAY: Sure.

13 THE HEARING OFFICER: We're about halfway

14 through.

15 How long do we want?

16 MR. MAY: I would say ten minutes is fine.

17 THE HEARING OFFICER: Okay. Let's come back at

18 three o'clock. Thanks.

19 (Recess.)

20 THE HEARING OFFICER: We're recording.

21 And it's your turn to cross-examine,

22 Mr. May.

23 MR. MAY: Thank you, Director.

24 ///

25 ///

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1 CROSS-EXAMINATION  
 2 BY MR. MAY:  
 3 Q. Bob, Justin May, as you know from when we  
 4 met for your deposition. I represent Rangen in this  
 5 matter. Good afternoon.  
 6 You gave some testimony with regard to  
 7 Figure 4 in your report, which is Exhibit 111 (sic),  
 8 page 7. And I've got it pulled up here on the screen.  
 9 A. Yes.  
 10 Q. As I understand it, this figure is intended  
 11 to represent the amount of water flowing in the large  
 12 pipe.  
 13 Is that correct?  
 14 A. Yes.  
 15 Q. Have you -- this figure just reflects the  
 16 amount of water physically flowing in that pipe;  
 17 correct?  
 18 A. Yes.  
 19 Q. It doesn't have anything to do with what  
 20 other water rights might be downstream or might be  
 21 affected from taking 10 cfs out of this pipe; correct?  
 22 A. Right. This is the amount of water that is  
 23 in the large pipe -- flowing through the large pipe  
 24 from the lower pool of Upper Tucker Springs.  
 25 Q. As I understand it, you in your career have

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1 constructed approximately four pipelines related to  
 2 fish facilities.  
 3 Is that correct?  
 4 A. Constructed? Maybe even fewer than that as  
 5 far as...  
 6 Q. And "constructed" was probably the wrong  
 7 word.  
 8 You've participated in the design of four  
 9 pipelines; correct?  
 10 A. Water systems and pipeline design for up to  
 11 four hatcheries, yes.  
 12 Q. Okay. Have any of those pipelines actually  
 13 been constructed?  
 14 A. Yes.  
 15 Q. How many?  
 16 A. One of them have.  
 17 Q. One of them.  
 18 A. Yeah.  
 19 Q. What kind of a pipeline system was that  
 20 that was constructed?  
 21 A. It was a lot shorter distance. It was from  
 22 a well into existing hatcheries on the supply line.  
 23 Q. Have you constructed any other pipelines  
 24 that involved springs and the kind of distances that  
 25 we're talking here going to Rangen's facility?

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1 A. That's a good question. We have done some  
 2 spring intake work. I have done some spring intake  
 3 work, but none of them with long-distant pipe.  
 4 Q. And none related to fish facilities;  
 5 correct?  
 6 A. Yeah, correct.  
 7 Q. You're aware, are you not, that the flow at  
 8 the Rangen -- at the Curren Tunnel at the Rangen  
 9 facility is somewhere around 1 cfs currently?  
 10 A. I'm not aware of that as of right now, no.  
 11 Q. Okay. If in fact that's true and the flow  
 12 at the Rangen facility is around 1, something certainly  
 13 less than 2 cfs currently, if you were to pump 9 cfs or  
 14 9.1 cfs to the Rangen facility, as it stands right now  
 15 approximately 90 percent of the water that Rangen would  
 16 have available to it would come from this pipeline;  
 17 correct?  
 18 A. If the only water they were getting is the  
 19 9 cfs, yes, that would be correct.  
 20 Q. Have you participated in any other  
 21 facilities, any other fish facilities where you were  
 22 pumping 90 percent of their supply?  
 23 A. No.  
 24 Q. In terms of the design that you created  
 25 for -- that is in your report, Exhibit 111, you have

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1 built in a couple of things dealing with reliability of  
 2 the system; correct?  
 3 A. Yes.  
 4 Q. And as I understand it, the way that you  
 5 have -- excuse me. First of all, could you describe  
 6 why reliability of the system is important.  
 7 A. My direction was to deliver up to 10 cfs,  
 8 9.1 cfs, to the Rangen facility 24/7, 365 days a year,  
 9 so therefore reliability is important in order to  
 10 accomplish that.  
 11 Q. And Rangen raises fish with the water;  
 12 correct?  
 13 A. That's my understanding.  
 14 Q. What happens to the fish that Rangen raises  
 15 if they go without water?  
 16 A. If they go without water for a long enough  
 17 period of time, I assume they would die.  
 18 Q. Okay. Do you know what time frame that  
 19 would be?  
 20 A. I do not.  
 21 Q. Have you had made any effort or do you have  
 22 any instructions with regard to what that time frame  
 23 would be?  
 24 A. That probably depends on the circumstances,  
 25 but I have not made any estimates or anything of how

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1 long that would be.  
 2 Q. The designs that you created for this  
 3 pipeline, did you have any goal in mind with regard to  
 4 particular reliability?  
 5 A. My design is based off what I believe is a  
 6 very reliable system like we would do similar to a  
 7 municipal system. So that's what I've targeted.  
 8 Q. But you don't have any -- as I understand  
 9 it, you haven't done any kind of analysis to determine  
 10 how reliable the system is.  
 11 A. No.  
 12 THE HEARING OFFICER: Okay. Mr. Hardgrove,  
 13 would you speak up just a little louder so that  
 14 everybody can hear. It seems to me Jeff is struggling  
 15 a little bit and some of the rest of us on the  
 16 periphery.  
 17 THE WITNESS: Just kick me if I..  
 18 THE HEARING OFFICER: Okay. Thanks.  
 19 Q. (BY MR. MAY): It's my understanding that  
 20 the power system that you have proposed contains a  
 21 backup generator.  
 22 A. Yes.  
 23 Q. Backup generators can fail; correct?  
 24 A. They are a mechanical piece of equipment,  
 25 so yes, they can fail.

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1 Q. How frequently do they fail?  
 2 A. I don't know.  
 3 Q. Have you made any attempt to determine  
 4 that?  
 5 A. How frequently they fail? I have not made  
 6 a specific attempt to determine that, no.  
 7 Q. Have you proposed any particular kind of  
 8 backup generator for this design?  
 9 A. Well, as of right now, the specific  
 10 generator has not been specified on here. But what  
 11 we're basing it on is a name brand like Kohler, a  
 12 Cat-type generator, industrial quality that would be  
 13 used at the facilities like I mentioned earlier,  
 14 semiconductor facilities or hospitals and such that are  
 15 very reliable.  
 16 Q. And have you used any of those backup  
 17 generators with a fish facility?  
 18 A. Never with a fish facility, no.  
 19 Q. There is already a power line that goes to  
 20 where you are proposing to put the pumps; correct?  
 21 A. It goes over the top of the area, yes.  
 22 Q. Have you talked with Idaho Power about the  
 23 reliability of that particular line?  
 24 A. Not specific in the sense where I know how  
 25 often power outages occur and such. There were general

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1 discussions with Joe Chapman of Fish and Game that said  
 2 they rarely see power outages. But I have not had that  
 3 conversation with Idaho Power to say -- to determine  
 4 how often power outages occur.  
 5 Q. Did Joe mention that they have had power  
 6 outages?  
 7 A. Yes.  
 8 Q. So they do occur in that particular line?  
 9 A. Yes.  
 10 Q. You just don't know how frequently?  
 11 A. Correct.  
 12 Q. Did you have any discussions with Joe about  
 13 how long they last when they do occur?  
 14 A. Not that I recall.  
 15 Q. You have not built anything into your  
 16 design, as I understand it, with regard to what happens  
 17 if something were to go wrong with the generator?  
 18 A. There's alarms and such on the generator.  
 19 The generator is designed to automatically start -- you  
 20 can schedule it for a weekly or biweekly or monthly  
 21 basis. And if it does not start on those -- it would  
 22 start -- not under load, it would start to just keep it  
 23 fresh so it could start when needed.  
 24 If any of those -- during any of those  
 25 events it does not start, you get an alarm sent,

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1 remotely sent, so you'd know that there was a problem.  
 2 If the generator didn't start under a real condition,  
 3 you'd also be given an alarm, several alarms, that the  
 4 system did not start.  
 5 So if the generator didn't start for some  
 6 reason, you would get an alarm, whether it was under a  
 7 power outage condition or under a designed startup of  
 8 the generator.  
 9 Q. And who would be monitoring those alarms?  
 10 A. The actual person or persons has not been  
 11 determined, as far as I know. I have the -- one of the  
 12 pump station vendors that the current design is kind of  
 13 focused on, they do supply a remote monitoring  
 14 capability to existing pumping systems here in town.  
 15 They can monitor alarms on others' behalfs and perform  
 16 O&M maintenance, if necessary.  
 17 Q. And is any of that included in the design  
 18 that you've provided?  
 19 A. Yes. All the remote monitoring is included  
 20 in the design currently, yes.  
 21 Q. Okay. Where is that included in the  
 22 design.  
 23 A. It's in the notes on the design.  
 24 Q. Okay.  
 25 A. And in the report it talks about it.

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1 Q. Mr. Budge mentioned what would happen if  
2 everything failed in the system.  
3 What would you deem to be everything  
4 failing in the system?  
5 A. Well, I'm not sure what that would  
6 specifically mean. But if some reason the pumps  
7 weren't running, that could mean it's failed, if the  
8 pumps are not running for some reason.  
9 Q. Well, and I guess the reason for question  
10 is you had responded that it would be unlikely for  
11 everything to fail at the same time.  
12 A. Yes.  
13 Q. In this particular system it's not really  
14 necessary for everything to fail at the same time, is  
15 it?  
16 A. In what way? It's not necessary for what  
17 to occur?  
18 Q. It's not necessary for everything, meaning  
19 you don't have to have pumps failing at the same time  
20 as power is failing? Just having a power outage would  
21 be enough, would it not?  
22 A. Potentially. If you had a power outage and  
23 the generator didn't start, then that would be enough  
24 to make it so the system could not deliver water.  
25 Q. So any failure of those systems would cause

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1 it not to be able to pump, correct, of the power  
2 system?  
3 A. If the backup generator did not start and  
4 there was a power outage, when there was a power outage  
5 then the pumps would not run.  
6 Is that what you're asking?  
7 Q. Yes.  
8 A. Okay.  
9 Q. Would you look at Exhibit 2026 for me,  
10 please.  
11 Do you recognize Exhibit 2026? And I've  
12 got it pulled up here on the screen.  
13 A. Yes.  
14 Q. And is this a draft memorandum that was  
15 prepared by your office?  
16 A. Yes.  
17 Q. Dated March 31st, 2014?  
18 A. Yes.  
19 Q. And that was prepared with regard to this  
20 Tucker Springs project; correct?  
21 A. Yes.  
22 MR. MAY: I'd move for the admission of  
23 Exhibit 2026.  
24 MR. TJ BUDGE: Objection. Relevance.  
25 MR. MAY: This is a draft memorandum that is

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1 related to the project that was prepared in this case,  
2 and it shows the development of this system.  
3 THE HEARING OFFICER: Why don't you lay a little  
4 foundation, Mr. May.  
5 MR. MAY: Sure.  
6 Q. Could you tell me who prepared this  
7 memorandum.  
8 A. Jason Thompson.  
9 Q. And what was the memorandum based upon?  
10 How did he create the memorandum?  
11 A. I don't have it in front of me. I don't  
12 remember all the words. I believe this was just laying  
13 out the initial concept as we knew it at that time.  
14 Q. So you first learned about this Tucker  
15 Springs project when?  
16 A. March 21st.  
17 Q. And that was from a meeting with Randy  
18 Budge?  
19 A. Yes.  
20 Q. And then based upon that conversation or  
21 meeting with Mr. Budge, you then -- Mr. Thompson went  
22 and did some investigation?  
23 A. We both -- we both did investigation. We  
24 were working -- both working on the project, yes.  
25 Q. Okay. And that investigation involved

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1 what?  
2 A. I'm not sure if it was before or after this  
3 date, but we did a desktop design, you know, used  
4 Google Earth and such, and then also did a field  
5 site -- our first site visit sometime towards the end  
6 of March or first of April.  
7 Q. Okay. And then based upon that field  
8 visit, you prepared this memorandum for Mr. Budge?  
9 A. You'd have to go down to the first  
10 paragraph so I can get the timing of it, somewhere  
11 where it talks about dates. Maybe the next paragraph.  
12 What I don't recall is if this memorandum  
13 was created before we did our site visit or after we  
14 did our site visit. I don't recall that.  
15 Q. Okay. What would help you make that  
16 decision?  
17 A. Oh, this may help. Let me just see.  
18 Q. Oh, I apologize. I thought you had that  
19 sitting there in front of you already, Bob.  
20 A. No, I was depending on what you were  
21 showing me. Just give me a minute, please.  
22 Yes, so Jason and I visited the site on  
23 March 26th. And we walked the alignments and drove the  
24 alignments. We spent time with Joe Chapman. That's  
25 when I first met him. We spent time with Butch Morris

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1 looking at the different alignments from point A to B.  
 2 We did not have access to Rangen's property  
 3 during that initial visit. And this memo is basically  
 4 describing as of March 31st the alignments and some  
 5 other initial and basic design criteria at that time,  
 6 which continue to be refined and modified as we  
 7 developed our 60 percent design.  
 8 Q. So this documents what -- the information  
 9 that you had following that particular visit; correct?  
 10 A. Yeah. Following that visit and where we  
 11 were at with where we were heading on the design, yes.  
 12 MR. MAY: Director, I would move again for the  
 13 admission of Exhibit 2026.  
 14 THE HEARING OFFICER: Mr. Budge?  
 15 MR. TJ BUDGE: Yeah, I'd renew the objection.  
 16 We do have a final report that's engineering stamped  
 17 that describes the project we're proposing. If there's  
 18 some part of this that he thinks contradicts or  
 19 undermines the engineering, the final report, he could  
 20 ask and we could discuss. But just the relevance of a  
 21 draft, there's no relevance of a draft unless he's  
 22 trying to use that to undermine some aspect of his  
 23 other report. And there's been no questioning along  
 24 that line.  
 25 THE HEARING OFFICER: Well, there may be value

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1 in exploring the evolution of the final report.  
 2 Overruled.  
 3 MR. TJ BUDGE: Director, may I propose that he  
 4 make that exploration before the draft is put into  
 5 evidence?  
 6 THE HEARING OFFICER: I don't see any reason to  
 7 do it, Mr. Budge. Overruled.  
 8 The document marked as Exhibit 2026 is  
 9 received into evidence.  
 10 (Exhibit 2026 received.)  
 11 Q. (BY MR. MAY): Mr. Hardgrove, after  
 12 preparing this memorandum, I understand that you then  
 13 visited the area once again to do some further  
 14 investigation.  
 15 A. I was on site this March 26th site visit.  
 16 And the only other time I was in the area was during --  
 17 I believe it was April 16th when the tour for the  
 18 Hagerman tour happened. That's the other time I was on  
 19 site.  
 20 Q. I understand that after preparing the  
 21 March 31st memorandum your office also prepared a  
 22 memorandum dated April 3rd --  
 23 A. Yes.  
 24 Q. -- which I'm showing you as Exhibit 2024.  
 25 A. Yes.

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1 Q. Could you tell me what this document is.  
 2 A. 2024? So this was after a site visit that  
 3 I didn't make, but Jason met. He went on site with the  
 4 surveyors to show them the alignments that they were to  
 5 survey. And that was the first time we were granted  
 6 approval to be on Rangen's property. And they did  
 7 topographical surveying of the area, kind of small  
 8 raceways upgradient, more or less, and a few other  
 9 spots they shot to get the topographical information  
 10 necessary from point A to B to start to plan a  
 11 profile-type design.  
 12 Q. And this memorandum, Exhibit 2024,  
 13 documents that investigation?  
 14 A. Yeah, it documents what happened with the  
 15 topo and kind of how the facilities at Rangen worked  
 16 per Jason's site visit, as he saw it that day.  
 17 MR. MAY: Director, I would move for the  
 18 admission of Exhibit 2024.  
 19 THE HEARING OFFICER: Mr. Budge?  
 20 MR. TJ BUDGE: Make the same objection to  
 21 relevance. I still don't know what is material about  
 22 the prior draft. There's been no discussion of  
 23 anything that appears to have any bearing on it. But  
 24 for the record make the same relevancy objection.  
 25 THE HEARING OFFICER: Okay. Overruled.

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1 I didn't ask during the last presentation,  
 2 Mr. Simpson?  
 3 MR. SIMPSON: No objection.  
 4 THE HEARING OFFICER: Mr. Huntley?  
 5 MR. HUNTLEY: No.  
 6 THE HEARING OFFICER: Okay. It's received into  
 7 evidence.  
 8 (Exhibit 2024 received.)  
 9 Q. (BY MR. MAY): Would you look for me at  
 10 Exhibit 111, which is your report, page 13.  
 11 THE HEARING OFFICER: Now, what report are we  
 12 looking at? Now we're looking at --  
 13 MR. MAY: Exhibit 111 -- or excuse me, 1111.  
 14 THE HEARING OFFICER: 1111.  
 15 Q. (BY MR. MAY): Page 13 and the figure  
 16 regarding the project schedule. It is my understanding  
 17 you mentioned here in the first paragraph under project  
 18 schedule that this proposed schedule in Figure 7  
 19 identifies the major tasks and their time frames to  
 20 meet the April 1st, 2015 deadline.  
 21 A. Yes.  
 22 Q. Who gave you an April 1st, 2015 deadline?  
 23 A. I believe that's the deadline I took out of  
 24 a conversation with Randy Budge.  
 25 Q. In other words, you were told to have the

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1 project ready to go on April 1st, 2015?  
 2 A. My direction was water could be delivered  
 3 on or before that date, yes.  
 4 Q. And in fact, your proposed timeline now, as  
 5 I understand it, would have -- can't see that very  
 6 well -- would have water delivered by March 13th;  
 7 correct?  
 8 A. No. That just shows project construction.  
 9 Q. So project construction is completed by  
 10 March 13th, 2015?  
 11 A. Per this schedule, yes.  
 12 Q. Okay. When would you be able to deliver  
 13 water?  
 14 A. Per this schedule -- this is the summary  
 15 schedule. Per this schedule, it was mid-Januaryish,  
 16 and then there was a couple months' lag there for the  
 17 seeding and revegetation of the areas. Couldn't do  
 18 that until after the ground is not frozen.  
 19 Q. Okay. I'm sorry. I misunderstood. So  
 20 you're saying that water would be delivered when?  
 21 A. Water could be delivered as soon as  
 22 mid-January, per the way the schedule was built.  
 23 Q. Okay. Where is that in the schedule?  
 24 A. It's -- these are roll-up ID numbers. Do  
 25 you see?

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1 Q. Uh-huh.  
 2 A. The item 49, it's a roll-up task. So  
 3 there's several tasks underneath that to build up that  
 4 summary task.  
 5 Q. Okay. So 49, which is project construction  
 6 lasting til March 13th, 2015, you're saying that is the  
 7 completion of putting in some vegetation?  
 8 A. Yeah. To finalize the project, you have to  
 9 have your slopes revegetated and stabilized and such.  
 10 So there's -- that work can't happen until Marchish  
 11 usually so you can get your seeds to germinate and  
 12 such. Usually we'd seed it later in the year.  
 13 The last task on this -- as the schedule is  
 14 built right now, the last task is the revegetation task  
 15 and the seeding task, which doesn't occur until this  
 16 middle of March time frame.  
 17 Q. Under this schedule as it's proposed, water  
 18 would not -- there would be no water delivered to  
 19 Rangen this year; correct?  
 20 A. The way this schedule is currently drafted,  
 21 there would not be water delivered in 2014.  
 22 Q. And you have not been asked to deliver any  
 23 water in 2014?  
 24 A. No.  
 25 Q. And in fact, you were asked to deliver

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1 water April 1st, 2015?  
 2 A. Well, personally I don't know that I was  
 3 asked. I was told that was what the schedule was.  
 4 Q. That was told that's what the goal was, was  
 5 April 1st, 2015?  
 6 A. I believe so, yes.  
 7 Q. In this schedule have you built -- you  
 8 haven't built in any time for the transfer application,  
 9 have you?  
 10 A. It is not in here as of right now, no.  
 11 Q. Okay. Do you have any idea of how long the  
 12 transfer application would take?  
 13 A. I have not focused on the transfer  
 14 application.  
 15 Q. And your understanding is you would not  
 16 begin construction until after the transfer application  
 17 was completed?  
 18 A. That's not necessarily my understanding. I  
 19 believe you couldn't deliver water until the transfer  
 20 application was completed.  
 21 Q. Okay. Were you here for Mr. Carlquist's  
 22 testimony?  
 23 A. Yes.  
 24 Q. And did you understand his testimony to be  
 25 that none of this would start until after the transfer

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1 application was completed?  
 2 A. I didn't -- I don't recall him specifically  
 3 saying that. But he did have some conditions before.  
 4 I believe he said something about this being approved.  
 5 I don't recall that part.  
 6 Q. Were you here for the testimony from  
 7 Mr. Carlquist related to the Aqua Life facility?  
 8 A. Yes.  
 9 Q. And the Aqua Life facility being a  
 10 precondition for this project?  
 11 A. A precondition? Could you explain that.  
 12 Q. In other words, they aren't able to obtain  
 13 this water until after the Aqua Life -- or at least  
 14 it's contingent upon the Aqua Life facility; correct?  
 15 MR. TJ BUDGE: Objection. Foundation.  
 16 MR. RANDY BUDGE: I'm going to object to that  
 17 question.  
 18 THE WITNESS: I don't think that --  
 19 MR. RANDY BUDGE: Mischaracterizes the letter of  
 20 intent and it also mischaracterizes the testimony of  
 21 Mr. Carlquist. The letter of intent speaks for itself.  
 22 Q. (BY MR. MAY): Does this particular  
 23 schedule build into it any time for any negotiations or  
 24 construction of improvements to the Aqua Life facility?  
 25 A. This schedule is specific to Tucker Springs

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1 and is not -- I wasn't involved and am not involved  
 2 currently with any of the Aqua Life negotiations or  
 3 construction schedules. I'm not aware that that being  
 4 constructed up front is a requirement of this. That, I  
 5 don't know.  
 6 Q. And this particular time frame does not  
 7 take into account any of the other mitigation plans  
 8 that Mr. Carlquist indicated would need to be evaluated  
 9 before Tucker Springs would start; correct?  
 10 A. No. This project schedule is a design and  
 11 construction schedule based on the day I created it for  
 12 Tucker Springs.  
 13 Q. In your report you have some water-quality  
 14 data that is set out. And I understand that the source  
 15 of that water-quality data was in part analysis that  
 16 was done at the Hagerman fish facility by Idaho Fish  
 17 and Game.  
 18 Is that correct?  
 19 A. Those are documents that Idaho Fish and  
 20 Game shared with us, but they're just -- they're  
 21 mentioned in my report, but I didn't base anything off  
 22 of them.  
 23 Q. Okay. You do -- you include some  
 24 water-quality data -- or excuse me, some mention of  
 25 water-quality data at the Hagerman fish facility in

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1 your report, do you not?  
 2 A. Yes. I mention this report in my report,  
 3 yes.  
 4 Q. Okay. This particular report was provided  
 5 to you by whom?  
 6 A. Joe Chapman at Idaho Fish and Game.  
 7 Q. Okay. Do you know -- you recognize this  
 8 report, do you not?  
 9 A. Yes.  
 10 Q. What date was the water testing done that  
 11 is represented in this report?  
 12 A. I'm not sure which one --  
 13 Q. It's 2022, if you need to look at it closer  
 14 in your book.  
 15 A. One of them was in 2008; one of them was in  
 16 2013.  
 17 Q. And I've highlighted the top of this, if  
 18 that helps.  
 19 A. This one here appears to be in the April --  
 20 March or April time frame of 2008, I believe.  
 21 Q. Okay. And this represents water-quality  
 22 data from Tucker Springs; correct?  
 23 A. Yes. Let's see what it says. Collected  
 24 3/3/08, Tucker Springs. Source was Tucker Springs, is  
 25 what it says at the top.

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1 MR. MAY: Director, I'd move for the admission  
 2 of Exhibit 2022.  
 3 MR. TJ BUDGE: No objection.  
 4 MR. SIMPSON: No objection.  
 5 THE HEARING OFFICER: Mr. Simpson?  
 6 Mr. Huntley?  
 7 MR. HUNTLEY: No. No objection.  
 8 THE HEARING OFFICER: The document marked as  
 9 Exhibit 2022 is received into evidence.  
 10 (Exhibit 2022 received.)  
 11 Q. (BY MR. MAY): I'd like to have you look  
 12 also at Exhibit 2023.  
 13 A. Okay.  
 14 Q. I believe you also mentioned some  
 15 water-quality samples that were taken in 2013 in your  
 16 report.  
 17 A. Yes.  
 18 Q. Exhibit 2023, is that the report that you  
 19 received from Joe Chapman at Fish and Game with regard  
 20 to the 2013 water-quality testing?  
 21 A. Yes.  
 22 MR. MAY: Director, I would move for the  
 23 admission of Exhibit 2023.  
 24 MR. TJ BUDGE: No objection.  
 25 MR. SIMPSON: No objection.

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1 MR. HUNTLEY: No objection.  
 2 THE HEARING OFFICER: Okay. The document marked  
 3 as Exhibit 2023 is received into evidence.  
 4 (Exhibit 2023 received.)  
 5 Q. (BY MR. MAY): Other than Exhibits 2022 and  
 6 2023, were you provided any other water-quality data at  
 7 Tucker Springs?  
 8 A. No.  
 9 Q. I understand that you, meaning SPF, did  
 10 your own -- some sampling of your own of water quality  
 11 of both Tucker Springs as well as the Rangen facility;  
 12 correct?  
 13 A. We didn't do any sampling. We did some  
 14 measurements.  
 15 Q. Okay.  
 16 A. We didn't take any samples.  
 17 Q. And those measurements are summarized in  
 18 the table that you went through with Mr. Budge in  
 19 your -- in your direct testimony; correct?  
 20 A. Yes.  
 21 Q. I'll show you Exhibit 2021.  
 22 Do you recognize Exhibit 2021? You can  
 23 look in your book if you need to.  
 24 A. Yes.  
 25 Q. And what does 2021 represent?

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1 A. 2021 is several pages of an Excel  
 2 spreadsheet. It's different tabs in an Excel  
 3 spreadsheet. And within this is Table 1 and Table 2  
 4 within my report were created with that data.  
 5 Basically it's a compilation of the data, the field  
 6 measurement data that you just asked me about. And of  
 7 that -- those are broken into two tables, one for  
 8 water-quality field data and one for the temperature  
 9 readings.  
 10 Q. So the data that is on Exhibit 2021 is the  
 11 data that you used for creating the tables that are in  
 12 your report?  
 13 A. Yes.  
 14 MR. MAY: Director, I'd move for the admission  
 15 of 2021.  
 16 THE HEARING OFFICER: Mr. Budge?  
 17 MR. TJ BUDGE: No objection.  
 18 THE HEARING OFFICER: Mr. Simpson?  
 19 MR. SIMPSON: No objection.  
 20 THE HEARING OFFICER: Mr. Huntley?  
 21 MR. HUNTLEY: No objection.  
 22 THE HEARING OFFICER: Document marked as  
 23 Exhibit 2021 is received into evidence.  
 24 (Exhibit 2021 received.)  
 25 Q. (BY MR. MAY): With regard to the

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1 temperature measurements that are represented on  
 2 Exhibit 2021, I understand that there was some  
 3 calibration that was done in order to calibrate the  
 4 temperatures that you received.  
 5 Correct?  
 6 A. Yes.  
 7 Q. How was that calibration done?  
 8 A. With a mercury thermometer.  
 9 Q. And that was done after you -- after you  
 10 returned back to your office?  
 11 A. Yes.  
 12 Q. I understand from your deposition that you  
 13 don't know whether any similar calibration was done  
 14 with regard to any of the other testing that was done  
 15 other than temperature?  
 16 A. There was not any done.  
 17 Q. And I also understand that you have no  
 18 opinion about whether or not the water quality in  
 19 Tucker Springs would cause Rangen any issues in its  
 20 facility.  
 21 Correct?  
 22 A. That's correct.  
 23 Q. Other than the two water-quality reports  
 24 that you got and Exhibit 2021, are you aware of any  
 25 other water-quality testing that was done on Tucker

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1 Springs or at the Rangen facility?  
 2 A. I am not aware.  
 3 Q. Did you perform any testing on the water  
 4 for any kind of diseases?  
 5 A. No.  
 6 Q. For any kind of fish diseases that might be  
 7 present?  
 8 A. No.  
 9 Q. Any kind of parasites?  
 10 A. No.  
 11 Q. Any bacteria?  
 12 A. No.  
 13 Q. Did you do any kind of testing for any kind  
 14 of other organisms that might be in the water that  
 15 might affect Rangen's ability to use the water to raise  
 16 fish?  
 17 A. No.  
 18 Q. I'd like you to look at Exhibit 1111 again,  
 19 which is your report. And it's the 23rd page of that  
 20 report, which is the C-101.  
 21 A. Okay.  
 22 Q. I understand that this represents in some  
 23 fashion the intake of the facility; correct?  
 24 A. Yes.  
 25 Q. And this is the intake that is located in

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1 Upper Tucker Spring?  
 2 A. The lower pool of Upper Tucker Springs.  
 3 Q. The lower pool of Upper Tucker Springs.  
 4 A. Yes.  
 5 Q. If I understood you correctly at your  
 6 deposition, this design that you've got here of the  
 7 intake structure is one of the portions of this plan  
 8 that is less than 60 percent complete?  
 9 A. That's correct.  
 10 Q. You have not done any kind of hydraulic  
 11 analysis or testing to determine whether taking water  
 12 from the lower pool of Upper Tucker Springs would have  
 13 any effect on other water levels, have you?  
 14 A. In physical testing or --  
 15 Q. Yes.  
 16 A. No, I haven't.  
 17 Q. Have you done any other kind of testing?  
 18 A. No. I've just looked at the amount of  
 19 water currently being discharged from there, and we  
 20 were going to take 10 of that. So that's basically the  
 21 limit of it, yes.  
 22 Q. So the only thing that you've done is  
 23 you've looked at the large pipeline and the amount of  
 24 flow in the large pipeline?  
 25 A. Yes.

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1 Q. And said "We're going to take 10 cfs of  
2 that"?

3 A. Yes.

4 Q. You mentioned that -- and maybe this is not  
5 correct, but I thought I heard you say today that the  
6 lower and the upper pool of Upper Tucker Springs do not  
7 appear connected.

8 Did I misunderstand that?

9 A. No, I may have said that.

10 Q. Okay. And what is that based on?

11 A. As of right now, there appears to be no  
12 physical connection you can see between the two. The  
13 pool -- there's a pool up above, there's a pool down  
14 below. And there's diversions out of the top pool, and  
15 there's a diversion out of the lower pool.

16 If -- the lower pool appears to be getting  
17 a relatively consistent amount of water separate from  
18 whatever may be fluctuating at the upper pool. Just --  
19 so I don't see any direct hydraulic connection, but it  
20 doesn't -- physically see, I don't see one.

21 Q. Okay. And you're basing that, as I'm  
22 understanding you, simply on the amount of flow that's  
23 in the large pipe?

24 A. I'm not sure that's correct. I'm basing  
25 that on the fact that I physically don't see a

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1 hydraulic connection between the two.

2 Q. Okay. But you haven't done any  
3 investigation to see whether in fact there is one?

4 A. I have not.

5 Q. Have you done any investigation to see  
6 whether there is any connection between the lower pool  
7 of Upper Tucker Springs and Lower Tucker Springs?

8 A. I have not.

9 Q. I'd like you to look at Exhibit 1138, which  
10 is the -- kind of the overhead view that you have  
11 created.

12 A. Okay.

13 Q. As I understand it -- and I'm going to blow  
14 up a little area here -- this area that I've  
15 highlighted is where you are proposing to put the new  
16 collection box.

17 Correct?

18 A. Yes.

19 Q. And that is within the blue area that  
20 you've denoted there that I'm kind of circling here,  
21 that is the lower pool of Upper Tucker Springs?

22 A. Yes.

23 Q. And it's just above where the large  
24 collection box is for the State hatchery?

25 A. The collection box for the large pipe.

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1 Q. For the large pipe?

2 A. Yes.

3 Q. Okay. That area -- I'm going to show you  
4 what we've marked as Exhibit 2033. And this is the  
5 11th in a series of pictures related to Upper Tucker  
6 Springs.

7 Do you recognize this area?

8 A. This is above the lower pool. That on the  
9 left is, I believe -- this pipe here (indicating) comes  
10 from the upper pool. Next to this box is where the  
11 small pipe begins for Fish and Game.

12 Q. I'm going to try and get these up here  
13 together.

14 So if we're looking at this --

15 A. It's right here (indicating).

16 Q. -- the area represented by that picture --

17 A. It's right here (indicating).

18 Q. Right. So it shows a little portion of  
19 that house; correct?

20 A. Of that house, yes.

21 Q. Yeah. So we're looking which way towards  
22 the house?

23 A. We're looking kind of from this side to  
24 this side (indicating). You see that pipe that comes  
25 through there (indicating).

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1 Q. Okay. So that's looking at that pipe that  
2 goes down, and the place where the collection box you  
3 were proposing, if we're looking at that picture, would  
4 be off to the right; correct?

5 A. It would be off to the right. You cannot  
6 see it in that photo.

7 Q. Okay. On the right up there on the screen,  
8 I have brought up another picture.

9 Do you recognize that picture --

10 A. It looks like --

11 Q. -- on the right-hand side?

12 A. It looks like you're standing over here  
13 more in this area where I have my red dot kind of  
14 looking down towards the lower pool, it appears. Hard  
15 to tell.

16 THE HEARING OFFICER: Mr. May, as the witness  
17 testifies --

18 MR. MAY: Yeah.

19 THE HEARING OFFICER: -- the identifiers of  
20 "this way" or "that way" --

21 MR. MAY: Yeah, I'm sorry.

22 THE HEARING OFFICER: -- don't help the record.

23 Q. (BY MR. MAY): On the right hand side we've  
24 got a picture that is the 16th page of Exhibit 2033.

25 A. 2033?

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1 Q. Uh-huh.  
 2 A. I think I'm there.  
 3 Q. Okay.  
 4 A. It looks somewhat similar.  
 5 Q. On the 16th page?  
 6 A. They're not numbered so...  
 7 Okay. What's the question?  
 8 Q. On Exhibit 2033, that 16th page of it, do  
 9 you know what that structure is in the lower left-hand  
 10 corner of that picture?  
 11 A. Are you talking about the wood structure  
 12 right here (indicating)?  
 13 Q. Yes. No, below that. The cement one.  
 14 A. Below that, right --  
 15 Q. Lower down on the left, yes.  
 16 A. This (indicating)?  
 17 Q. Yes.  
 18 A. I believe that's the structure where the --  
 19 where the small Idaho Fish and Game pipe begins.  
 20 Q. So that's the structure for the beginning  
 21 of the small pipeline?  
 22 A. I believe so, yes.  
 23 Q. Okay. And that pipeline, that structure  
 24 that we can see in the lower left-hand corner of that,  
 25 that is a cover over the intake to the small pipeline;

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1 correct?  
 2 A. I think it's a confluence of a couple of  
 3 things. I think you have a pipe coming from the upper  
 4 pool into there, and then also I think there's some  
 5 collection facilities above it, and they kind of come  
 6 together there and then go into one pipe.  
 7 Q. So there is a cover over that small pipe,  
 8 correct, where that small pipeline comes in?  
 9 A. Yeah. I don't think you can see it. I  
 10 think it is covered.  
 11 Q. And that's a portion of it down on the  
 12 lower left-hand side?  
 13 A. Well, that's a concrete block, yes.  
 14 Q. This is the 18th page of Exhibit 2033.  
 15 A. Okay.  
 16 Q. Do you recognize that?  
 17 A. I'm trying to get my bearings.  
 18 Q. Would it help if I represented to you that  
 19 that's looking down towards the large --  
 20 A. Okay. Yeah, that would help. I believe,  
 21 then -- question back to you.  
 22 Q. Okay.  
 23 A. This is the aluminum type pipe, then,  
 24 that's coming through there. Okay. Yes.  
 25 Q. So where on this picture would the intake

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1 structure that you are proposing for the Rangen  
 2 pipeline be located?  
 3 A. It would be somewhere in this area over  
 4 here (indicating) down towards the end of that aluminum  
 5 pipe.  
 6 Q. Towards the lower part of that bush there?  
 7 A. Well, kind of be on the other side of the  
 8 bush somewhat. This aluminum pipe's going into the  
 9 discharge, into the box for the large pipe. It would  
 10 just be up to this side of where the picture was taken  
 11 from of that spot a short distance.  
 12 Q. And the open rocks there that we can see,  
 13 the -- are you proposing any kind of a cover structure  
 14 for that open series of rocks like there is over the  
 15 small pipeline?  
 16 A. All this pool (indicating)?  
 17 Q. Yes.  
 18 A. No.  
 19 Q. Have you been asked to provide something  
 20 like that?  
 21 A. No.  
 22 Q. Would that be possible?  
 23 A. Build a cover over this? Well, I'd have to  
 24 say I suppose -- I believe it would be possible, yes.  
 25 Q. But you're not proposing any kind of

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1 structure like that?  
 2 A. No.  
 3 Q. And I notice in that particular picture  
 4 there there's some standing -- some standing water in  
 5 that, which I guess would be the lower pool of Upper  
 6 Tucker Springs.  
 7 A. Yes.  
 8 Q. Are you aware of whether or not there's at  
 9 times water flowing through and over those rocks in the  
 10 lower pool of Upper Tucker Springs?  
 11 A. It shows it in this picture.  
 12 Q. Okay. Do you know how often that occurs?  
 13 A. Well, I believe there's water always  
 14 flowing through these rocks. Sometimes you cannot see  
 15 it above the rocks, but they're always flowing between  
 16 the rocks in the box down below.  
 17 Q. And that's the water that you were  
 18 proposing to capture and collect and transport to  
 19 Rangen?  
 20 A. Yes.  
 21 Q. Are you aware of whether or not there are  
 22 perforated pipes below those rocks right now?  
 23 A. I'm not aware. But Joe Chapman said there  
 24 may be some in there. He doesn't know that they  
 25 provide them any benefit as of right now because he

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1 doesn't -- he's never seen them from his tenure there.  
 2 He was telling me when the rocks were put in here he  
 3 doesn't know if those were still functioning or not.  
 4 But I did hear that there could be some perforated  
 5 pipes that lead into that box, but I didn't see any  
 6 evidence of it.  
 7 Q. And do you have any proposal for how to  
 8 deal with those perforated pipes that are there? Or  
 9 will that have any impact on your design?  
 10 A. I don't believe it will have any impact  
 11 with where we're at, because we are sticking over to  
 12 the edge over here (indicating). But we have not done  
 13 any excavation in this area (indicating) obviously to  
 14 see. I don't know.  
 15 Q. You just don't know yet?  
 16 A. No.  
 17 Q. And do you know -- and you don't know how  
 18 those perforated pipes are related to the water that's  
 19 flowing in the large pipeline?  
 20 A. I do not know if they exist. I do not know  
 21 if they contribute to it. I do not know any of that.  
 22 Q. You mentioned with Mr. Budge biologic  
 23 security.  
 24 What do you mean by "biological security"?  
 25 A. That was in relation to where the water was

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1 in the pipe and wasn't accessible from outside  
 2 influences.  
 3 Q. And that's once the water gets into the  
 4 pipe; correct?  
 5 A. Yes.  
 6 Q. Have you done anything in your design to  
 7 deal with potential biological security before the  
 8 water gets into the pipe?  
 9 A. I have not.  
 10 Q. And the water is going to flow through this  
 11 area that we can see depicted on Exhibit 2033-018?  
 12 A. Yes. Sometimes this would be -- per Joe  
 13 Chapman, this would be a high-flow scenario where you  
 14 could see the water above the rocks. A lot of times  
 15 it's a little bit below that level.  
 16 Q. Are you aware -- you're aware of the  
 17 concept of air entrainment in a pipe; correct?  
 18 A. Yes.  
 19 Q. And that that can cause gas  
 20 supersaturation?  
 21 A. I've heard that, yes.  
 22 Q. Okay. Do you have any experience dealing  
 23 with gas supersaturation in a pipe system?  
 24 A. Dealing with it in what manner?  
 25 Q. Dealing with the effects of it for fish.

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1 A. So trying to mitigate it before it goes  
 2 into a fish hatchery?  
 3 Q. Yes.  
 4 A. I personally have not done that. But I've  
 5 worked around many hatcheries that have degassing  
 6 aeration type structures that could mitigate that  
 7 concern.  
 8 Q. Have you done anything in this  
 9 particular -- the design of this system to prevent air  
 10 entrainment?  
 11 A. We have a closed system. So if everything  
 12 worked well, you would not get much air into the  
 13 system, if any. You can get air into pump systems. So  
 14 I couldn't say you would not get any air in there that  
 15 would be compressed and entrained in the system.  
 16 Q. And if the air did get entrained in this  
 17 system, that would cause gas supersaturation?  
 18 A. It could.  
 19 Q. Back to the connection to Rangen's  
 20 facility. As I understand it, you are proposing to  
 21 connect into Rangen's facility in the existing 14-inch  
 22 pipe that goes from the Rangen box into the small  
 23 raceways.  
 24 Correct?  
 25 A. Currently, yes.

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1 Q. And the water that went into that pipeline  
 2 could go one of two ways: It could go either down into  
 3 the small raceways, or it can go up to the Rangen pipe?  
 4 A. And/or.  
 5 Q. And/or. So it could go both directions or  
 6 one?  
 7 A. Yes.  
 8 Q. Any water that didn't get used in or put  
 9 into the small raceways, the only direction for it to  
 10 go would be up to the Rangen box?  
 11 A. That is correct.  
 12 Q. Water in such a situation, if we're in a  
 13 situation where water is going up that pipeline to the  
 14 Rangen box, no water could be going down the pipeline,  
 15 of course.  
 16 A. That's correct.  
 17 Q. It can only travel in one direction.  
 18 A. Yes.  
 19 Q. So in that situation no water from the  
 20 Curren Tunnel would be able to enter Rangen's facility  
 21 through that pipeline; correct?  
 22 A. It would not be able to enter that  
 23 pipeline. Curren Tunnel water may be able to enter the  
 24 facility, but not in that pipeline.  
 25 Q. Okay. And the Curren Tunnel water, if it

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1 were not able to go into that pipeline, where would it  
 2 go?  
 3 A. If the Curren Tunnel water that goes from  
 4 the farmers' box down to the Rangen box, if it could  
 5 not enter that, it would currently spill over the box  
 6 and go into Billingsley Creek.  
 7 Q. So it would go down the talus slope, what  
 8 we've called talus slope in prior proceedings, and into  
 9 Billingsley Creek?  
 10 A. Yes.  
 11 Q. And the only way that Rangen would be able  
 12 to take that water would be through the Bridge  
 13 Diversion that goes into the large raceways?  
 14 A. Just like they currently do, yes.  
 15 Q. And that would be the same situation with  
 16 any water that flowed up that 14-inch pipeline into the  
 17 Rangen box and spilled out onto the talus slope?  
 18 A. Yes.  
 19 Q. So any water that Rangen did not utilize or  
 20 could not utilize in the small raceways would be  
 21 spilled onto the talus slope along with all of the  
 22 water that they would have gotten out of the Curren  
 23 Tunnel?  
 24 A. Yes.  
 25 Q. You mentioned that you have recently done

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1 some -- or thought a little bit about what permits  
 2 might be required, and you had a brief conversation  
 3 with Mr. Budge.  
 4 Do you recall that?  
 5 A. Yes.  
 6 Q. And you mentioned local or county permits  
 7 that would be building permits?  
 8 A. Something like that, yes. I used that  
 9 terminology.  
 10 Q. And you also mentioned a 404 permit?  
 11 A. Uh-huh.  
 12 Q. Okay. Have you looked at any other permits  
 13 that might be required or any other environmental  
 14 regulations that might affect your ability to take  
 15 water from the Tucker Springs and move it into a  
 16 different drainage into Billingsley Creek?  
 17 A. I have not investigated that, no.  
 18 Q. Any type of regulations that might deal  
 19 with the lack of water downstream, such as a TMDL?  
 20 A. I have not investigated that.  
 21 Q. You haven't made any investigation of that  
 22 at all?  
 23 A. I haven't talked to anybody about it.  
 24 Q. Have you done any investigation at all to  
 25 see if there are any endangered species or any other

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1 kind of impact that might result on wildlife  
 2 downstream?  
 3 A. I'm not aware of any endangered species in  
 4 Upper Tucker Springs. I am aware there's been some  
 5 snails that have been found in other areas of the  
 6 Hagerman Valley. But I'm not aware of any in the Upper  
 7 Tucker Springs reach.  
 8 Q. And the existence of such a thing could  
 9 potentially delay the project beyond the time frame  
 10 that you've got in your report?  
 11 A. It could lengthen -- it could lengthen the  
 12 permitting process. And it doesn't have to delay  
 13 construction, other than potentially the spring box.  
 14 That would be at the will of IGWA whether or not they  
 15 wanted to construct before those permits were obtained.  
 16 Q. Are there any types of permits that are  
 17 necessary to allow you to put the generators in the  
 18 location that you're putting them there?  
 19 A. You need an electrical permit to perform  
 20 electrical work.  
 21 Q. Okay. How about the existence of the  
 22 diesel generator in that location near the water  
 23 source?  
 24 A. Any permits necessary for that?  
 25 Q. Yes.

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1 A. I'm not aware of any.  
 2 Q. Have you done any analysis to see whether  
 3 that's an appropriate place to put that or what kind of  
 4 safeguards would need to be in place?  
 5 A. You'd probably have a secondary containment  
 6 scenario there in case there was some kind of spill.  
 7 But otherwise I'm not aware of any permits that would  
 8 prevent it from going there.  
 9 Q. Going back to our discussion with regard to  
 10 the talus slope and the water that would spill into  
 11 the -- out of the Rangen box.  
 12 A. Yes.  
 13 Q. If Rangen were not allowed to use its  
 14 Bridge Diversion there, any water that was piped up  
 15 into the Rangen box, Rangen would not be able to use,  
 16 would it?  
 17 A. I think that's what you said, yes. I  
 18 believe based on what you said that probably would be  
 19 the case. If they could not divert it down there, then  
 20 they wouldn't be able to utilize that, yes.  
 21 Q. And --  
 22 THE HEARING OFFICER: Could I ask you again to  
 23 speak up, Mr. Hardgrove.  
 24 THE WITNESS: Sorry. Sorry.  
 25 THE HEARING OFFICER: Thank you.

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1 THE WITNESS: Did you get that, Jeff, what I  
2 said?  
3 THE COURT REPORTER: Yeah.  
4 Q. (BY MR. MAY): And not only would they be  
5 unable to use that water that went in that direction,  
6 they would also be unable to use any water coming out  
7 of the Curren Tunnel?  
8 A. In the 14-inch pipe. They get Curren  
9 Tunnel water through another pipe too, so...  
10 Q. Any water that comes out of the farmers'  
11 box into the --  
12 A. Yes.  
13 MR. MAY: That's all that I've got, Director.  
14 THE HEARING OFFICER: Okay. Mr. Simpson,  
15 questions?  
16 MR. SIMPSON: Yes, a few.  
17  
18 CROSS-EXAMINATION  
19 BY MR. SIMPSON:  
20 Q. Good afternoon, Mr. Hardgrove.  
21 A. Good afternoon.  
22 Q. Do you recall earlier today you were asked  
23 on direct testimony whether or not you had began  
24 looking at the impact of the second mitigation plan on  
25 Buckeye Farms' water rights?

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1 A. Yes, I recall being asked that.  
2 Q. And is it your testimony that the Upper  
3 Tucker Springs plan, the second mitigation plan, would  
4 reduce the water available to Buckeye and, through its  
5 rights, reduce the amount of water it could divert?  
6 A. Did you ask -- excuse me. Did you ask if I  
7 said that or did you --  
8 Q. I asked if that was your testimony earlier  
9 today.  
10 A. I don't believe that was my direct  
11 testimony. I don't think I was asked that exact  
12 question.  
13 Q. Okay. Let me ask you, then, is it your  
14 testimony, as you sit here today, that based upon your  
15 analysis that you've completed to date, that the Upper  
16 Tucker Springs plan, the second mitigation plan, would  
17 reduce the amount of water available to Buckeye Farms  
18 to exercise through its water rights on Riley Creek?  
19 A. I would state there's a chance there could  
20 be 10 cfs -- a 10 cfs reduction at Riley Creek, which  
21 then could impact Buckeye. I don't know if it would  
22 have a direct impact completely on them.  
23 Q. Well, based upon your review to date, if  
24 that 10 cfs reduction occurred, would it reduce the  
25 amount of water available for exercise to Buckeye Farms

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1 through its water rights?  
2 A. It would reduce the amount of water in  
3 Riley Creek.  
4 Q. Okay. And if that water is reduced in  
5 Riley Creek, if Buckeye Farms has the juniormost right  
6 in Riley Creek at that point of diversion downstream  
7 from Upper Tucker Springs in the Riley Creek drainage,  
8 would it reduce the amount of water available to  
9 Buckeye Farms?  
10 A. Yes.  
11 Q. And based upon your review to date, do you  
12 have any reason, as you sit here today, to believe that  
13 Buckeye would not divert that water should it be  
14 available?  
15 A. I do not have any reason to believe they  
16 would not divert that water.  
17 Q. If you have available to you -- I just want  
18 to maybe explore what information you may have had a  
19 chance to look at to date.  
20 Do you have Exhibit 1125 in that notebook?  
21 A. I believe so. Yes.  
22 Q. Can you identify Exhibit 1125.  
23 A. It says, "Water rights diverted from Riley  
24 Creek and its tributaries."  
25 Q. Okay. As you sit here today, have you had

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1 a chance to look at that exhibit, or prior to coming  
2 here today?  
3 A. Let me look real quick.  
4 Q. Sure. Take your time.  
5 A. I have seen -- I have reviewed these  
6 attachments to it, yes.  
7 Q. Okay. So you've had a chance to review  
8 this document prior to giving your testimony today?  
9 A. I don't believe I reviewed the whole  
10 document -- read the whole document, but I have  
11 reviewed these -- some of these graphs and -- that  
12 Department of Water Resources, I believe, created.  
13 Q. Okay.  
14 A. I have reviewed those.  
15 Q. Well, then, take a moment and, if you  
16 would, go back to I guess it would be the graph  
17 associated with the Hunt Ditch. The pages are not  
18 numbered. I apologize for that.  
19 A. I'll find it.  
20 Q. But find your way through the document back  
21 to the Hunt Ditch and the water rights diverted at the  
22 Hunt Ditch from Riley Creek.  
23 A. Okay. I'm there.  
24 Q. You got it?  
25 A. Yeah.

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1 Q. Good work. So have you had a chance to  
2 look at this map or this picture with a graph overlaid  
3 over the top regarding the Hunt Ditch diversions and  
4 the explanation of water rights associated with the  
5 Hunt Ditch and diversions out of Riley Creek?  
6 A. I have had -- I have reviewed this briefly.  
7 Q. Okay. And then --  
8 A. It's been awhile.  
9 Q. -- with respect to the table that's  
10 associated with the Hunt Ditch, do you see that on the  
11 next page?  
12 A. Yes.  
13 Q. And you've had a chance to review those  
14 water rights on that table?  
15 A. Yes.  
16 Q. Okay. Is it fair to say that a number of  
17 those rights are rights that are owned by Buckeye  
18 Farms?  
19 A. It appears five of them are, yes.  
20 Q. Okay. And if you review that table and  
21 look at the priority dates associated with that table,  
22 is the juniormost right identified a right that belongs  
23 to Buckeye Farms?  
24 A. Appears you have a 1998 right, which would  
25 be junior.

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1 Q. Okay. So this -- this Hunt Ditch depiction  
2 that's part of Exhibit 1125, is that part of the basis  
3 for which you identify that Buckeye Farms would divert  
4 that -- at least a portion if not all that 10 cfs if it  
5 wasn't diverted through the second mitigation plan?  
6 A. I'm sorry, John. Could you repeat that,  
7 please.  
8 Q. Well, you identified that you have reviewed  
9 at least portions of Exhibit 1125, and in particular  
10 you've reviewed the table and the graph associated with  
11 the Hunt Ditch; correct?  
12 A. Yes.  
13 Q. Okay. And therefore is that information  
14 part of the information that you've relied upon in  
15 providing your testimony here today?  
16 A. In relation to my comments that I have been  
17 working with Buckeye Farms, that this is some of the  
18 stuff I reviewed with Dave Shaw, yes.  
19 Q. Right. And if there were reductions in  
20 Riley Creek --  
21 A. Yes.  
22 Q. -- from the implementation of the second  
23 mitigation plan, where those reductions would occur  
24 relative to diversions on the Hunt Ditch?  
25 A. It appears you have the junior water right,

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1 and if there was not enough water in Riley Creek you  
2 would not be able to divert your water.  
3 Q. Okay. Do you have -- as you sit here  
4 today, do you have information as to who prepared  
5 Exhibit 1125?  
6 A. I believe it came from Department of Water  
7 Resources.  
8 Q. Okay. Have you reviewed any other  
9 information relative to the Hunt Ditch diversions and  
10 water flows in Riley Creek in the area of the Hunt  
11 Ditch diversions?  
12 A. Mr. Shaw and I did have discussions about  
13 the Hunt Ditch in that area. And he had some -- a map  
14 of the area.  
15 Q. I'd ask you to turn to Exhibit 1136, if you  
16 would.  
17 A. Okay.  
18 Q. And if you would turn back -- well, to the  
19 seventh page of Exhibit 1136.  
20 A. Okay. I'm there.  
21 Q. Is this part of the information you've had  
22 a chance to review?  
23 A. This specific table does not look familiar  
24 to me, no.  
25 Q. Okay. How about the next couple pages with

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1 respect to Buckeye Farms' Riley Creek staff gauge  
2 reporting?  
3 A. I don't recall relying on these for any  
4 conversation.  
5 Q. Or that Mr. Shaw has or has not --  
6 A. He may have --  
7 Q. -- discussed this?  
8 A. -- had them in our conversations. I just  
9 don't remember them. They don't make an impression on  
10 my memory.  
11 Q. To date, then, have you had a chance to  
12 review any other flow data and compare that flow data  
13 in Riley Creek to water rights in the lower half of  
14 Riley Creek?  
15 A. My review and such of those type of  
16 documents have been limited to the one meeting with  
17 Dave Shaw after the IDWR meeting, we went through  
18 several documents and spent some time on it. Some of  
19 them he brought, some of them I brought. But we did  
20 talk about Riley Creek in relation to the Hunt Ditch.  
21 MR. SIMPSON: That's all the questions I have.  
22 Thank you.  
23 THE WITNESS: Okay.  
24 THE HEARING OFFICER: Mr. Huntley, questions?  
25 MR. HUNTLEY: I have a few questions and also a

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1 clarification, if I could.  
 2 THE HEARING OFFICER: Okay. Well, the  
 3 clarification is something that you can -- if you can  
 4 extract that clarification in the form of a question --  
 5 MR. HUNTLEY: I'll try.  
 6 THE HEARING OFFICER: -- of Mr. Hardgrove, then  
 7 he can clarify. Otherwise, you'll have an opportunity  
 8 to testify yourself. So your turn's coming. But your  
 9 job now is to ask questions of Mr. Hardgrove.  
 10 MR. HUNTLEY: Okay.  
 11 THE HEARING OFFICER: Okay. Thank you.  
 12 MR. HUNTLEY: Thank you.  
 13  
 14 CROSS-EXAMINATION  
 15 BY MR. HUNTLEY:  
 16 Q. You're aware of what the water rights of  
 17 the fish hatchery are, Hagerman Fish Hatchery? You've  
 18 read them?  
 19 A. I have not read the actual rights. I have  
 20 seen a tabular form of the rights.  
 21 Q. Okay. Do you know what the total cfs is  
 22 that they have?  
 23 A. Not with all the combined rights. I do  
 24 know the water right 36-2055 has a decreed right of  
 25 64 cfs.

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1 Q. Uh-huh. There's another one has 20 cfs.  
 2 THE HEARING OFFICER: Okay. Now you're  
 3 testifying.  
 4 MR. HUNTLEY: I'm sorry.  
 5 THE HEARING OFFICER: You need to ask questions.  
 6 Q. (BY MR. HUNTLEY): Of the total cfs they  
 7 have that comes down from the upper spring -- upper  
 8 pool and lower spring part, with that total you're only  
 9 getting, according to your chart, 40 cfs in the big  
 10 pipe, roughly?  
 11 A. So that total is the 40 cfs in the big  
 12 pipe. It does not include any flows they're getting  
 13 out of the small pipe or the upper pool.  
 14 Q. Okay. Do you know where the small pipe  
 15 goes?  
 16 A. Do I know where it goes?  
 17 Q. Yeah.  
 18 A. It also goes to the hatchery. They use it  
 19 for areas -- it sits up higher in elevation. They're  
 20 not specific to what areas, but they use it for areas  
 21 where they can force out water to those areas due to  
 22 the -- the extra head they have. With the lower pipe,  
 23 the big pipe, they can get those flows through.  
 24 Q. With that total of those two pipes, do you  
 25 know what the total cfs is that they're running the

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1 hatchery with now?  
 2 A. I have seen the graph. And I have seen a  
 3 graph that has -- and the data that we previously went  
 4 over, it talked the large pipe, small pipe, and  
 5 combined. So those would be those totals. I'm not  
 6 aware of what that number is.  
 7 Q. If you take that number which you're  
 8 unaware of, take 10 cfs from it, we're getting down to  
 9 a figure.  
 10 Are they going to be able to operate that  
 11 hatchery with that number?  
 12 A. I do not know what their abilities to  
 13 operate the hatchery is or is not.  
 14 Q. Okay. Have you had any conversations with  
 15 anybody at Fish and Game or any other source of where  
 16 they might make up this 10 cfs to keep that hatchery  
 17 running at the rate it's running now?  
 18 A. My conversation has been limited to Joe  
 19 Chapman. I don't believe -- from my understanding with  
 20 the letter of intent, that they're trying to make up  
 21 that 10 cfs, I believe, is part of the letter of intent  
 22 to mitigate that 10 cfs through the Aqua Life portion  
 23 of the project.  
 24 Q. Okay. Have you seen any geological report  
 25 that describes any relationship between the upper pool

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1 and the lower spring?  
 2 A. The lower spring or the lower pool there?  
 3 Q. The lower pool and the upper pool.  
 4 A. I have not seen a geological report, no.  
 5 Q. Okay. On the -- you've never seen anything  
 6 that had any relationship with the lower spring --  
 7 A. No.  
 8 Q. -- versus the lower pool?  
 9 A. No.  
 10 Q. On your pump plan you show -- you have a  
 11 lower water cutoff on that plan. It's M-201.  
 12 A. What is it?  
 13 Q. M-201.  
 14 A. All right. Okay. I'm on M-201.  
 15 Q. Okay. The level -- on the upper level you  
 16 have an elevation, which I can't quite read, but it  
 17 evidently is the same level as the water level in the  
 18 lower spring pools, if you will, coming into your  
 19 intake box.  
 20 A. That elevation you can't read it says "Low  
 21 water-surface elevation, elevation 2948."  
 22 Q. 2948?  
 23 A. Yes.  
 24 Q. Okay. That's going to be the level coming  
 25 into your box. You're saying box.

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1 That water will fluctuate, that level's  
 2 going to fluctuate?  
 3 A. Yes. So that level there is anticipated to  
 4 be an assumed low water surface elevation based on  
 5 input from Fish and Game. So that's shown to be a  
 6 worst-case scenario, so to speak.  
 7 Q. That upper line is?  
 8 A. Yes.  
 9 Q. Okay. That's not the static level, if you  
 10 will, of the box. The box will fluctuate. The water  
 11 level in the box will fluctuate.  
 12 A. This is the static water level of the pool,  
 13 but the assumed low level.  
 14 Q. At the lowest level.  
 15 A. So from this point it will just go up from  
 16 there.  
 17 Q. Okay. At the low level the pump is down at  
 18 that lower -- it shows it on the bell of the pump down  
 19 below?  
 20 A. Yes. There's an assumed -- just showing  
 21 that we're going to have a low water shutoff in there.  
 22 Q. Okay. That will shut the pump down?  
 23 A. That elevation isn't locked. It will shut  
 24 the pump off if there wasn't water available.  
 25 Q. If the water got that low for some reason,

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1 you would be pulling water through that box, through  
 2 the intake box?  
 3 A. Still would be a gravity flow.  
 4 Q. It would still be a gravity flow?  
 5 A. Yes.  
 6 Q. All right. We're vitally concerned about  
 7 any disturbance of the upper pool, as you know.  
 8 A. I understand.  
 9 Q. Okay. We just don't want to see something  
 10 happen to that.  
 11 A. Understood.  
 12 MR. HUNTLEY: Okay. I guess that's all I have  
 13 for now.  
 14 THE HEARING OFFICER: Okay. Thank you,  
 15 Mr. Huntley.  
 16 Redirect, Mr. Budge?  
 17 MR. TJ BUDGE: I have a little bit. This was  
 18 the time we had designated for Justin to go to his  
 19 graduation, so I don't know if you want to try to  
 20 squeeze it in.  
 21 MR. MAY: Do you have a little bit of redirect?  
 22 MR. TJ BUDGE: Five minutes, probably.  
 23 MR. MAY: Let's do it.  
 24 MR. TJ BUDGE: Okay.  
 25 MR. MAY: Can I ask a question before you start?

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1 just to clear up some exhibits that I had.  
 2 MR. TJ BUDGE: That would be fine.  
 3 MR. MAY: Did I offer 2021? because I have that  
 4 I did and it was admitted, but I hope I didn't imagine  
 5 it. I did and it was admitted; correct?  
 6 MR. BAXTER: Yes, I have it as admitted.  
 7 MR. MAY: Okay. Thanks, TJ.  
 8 THE HEARING OFFICER: Okay. Mr. Budge.  
 9  
 10 REDIRECT EXAMINATION  
 11 BY MR. TJ BUDGE:  
 12 Q. Bob, I'll try and make this quick. I just  
 13 want to touchup on some of the questions that were  
 14 asked by the other attorneys.  
 15 First regarding the Buckeye, I just want to  
 16 clarify that you've been instructed to work with Dave  
 17 Shaw to identify ways to mitigate any impact there may  
 18 be to Buckeye or others from Tucker Springs or other  
 19 Hagerman settlement projects; is that right?  
 20 A. Yes. Overall, yes.  
 21 Q. And you understand those impacts to Buckeye  
 22 would need to be resolved prior to the water right  
 23 transfer being approved in conjunction with the Tucker  
 24 Springs project?  
 25 A. The portion tied to the Tucker Springs

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1 project, yes.  
 2 Q. Okay. Let's turn to the discussion you had  
 3 about backup generators with Justin May.  
 4 Did I understand your testimony correctly  
 5 that you've designed an industrial-level generator  
 6 that's similar to those used in hospitals?  
 7 A. Hospitals, semiconductor, yes. Yes.  
 8 Q. So that's what a hospital would rely on in  
 9 case of a power outage to maintain the equipment that  
 10 keeps humans alive?  
 11 A. Generally speaking, yes.  
 12 Q. Concerning the schedule, the April 1  
 13 deadline, am I understanding your testimony correctly  
 14 that you were asked to design and engineer a system  
 15 that hopefully could be implemented on or before  
 16 April 1st?  
 17 A. 2015, yes.  
 18 Q. Okay. So potentially earlier --  
 19 A. Yes.  
 20 Q. -- but hopefully no later?  
 21 A. Yes.  
 22 Q. Let's turn to the discussion about the  
 23 connection between the upper pond and the lower pond at  
 24 Upper Tucker Springs.  
 25 And just to clarify, the Fish and Game's

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1 currently taking roughly 40 second-feet out by gravity  
 2 flow?  
 3 A. Yes.  
 4 Q. And if the Tucker Springs project is put in  
 5 place, it would take 10 of those 40 second-feet?  
 6 A. Yes.  
 7 Q. There would still be 40 second-feet coming  
 8 out by gravity flow, 10 to Rangen and 30 to Fish and  
 9 Game?  
 10 A. Yes.  
 11 Q. Let me ask you about air entrainment and  
 12 degassing.  
 13 Are there structures or other ways of  
 14 installing an aeration or degassing facility at Rangen  
 15 if that proves necessary?  
 16 A. Yes.  
 17 Q. What options are available?  
 18 A. If it's just to get dissolved oxygen into  
 19 it, then you can use cascading of water if you needed  
 20 to strip out things that the -- a degassing structure  
 21 might be needed where you have actually fans and such  
 22 or just an aeration packed column type structure might  
 23 it be used. These are structures that could be placed  
 24 at the end of the pipe.  
 25 Q. And this is something that would be

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1 evaluated once it's installed and you determine whether  
 2 any gas saturation is actually occurring; is that  
 3 right?  
 4 A. That is one way it could happen if it  
 5 weren't directed to -- before that, yes.  
 6 Q. Okay. Concerning the 10 second-feet that  
 7 could be pumped to Rangen, there is this discussion  
 8 about the part going up to the Rangen box and part  
 9 going to the small raceways.  
 10 If the small raceways are capable of taking  
 11 the full 10 second-feet, I assume it would be delivered  
 12 through the small raceways?  
 13 A. That would be my preference. However,  
 14 that, at that point, would be up to Rangen how they  
 15 took that water by controlling of the valve.  
 16 Q. Okay. So it's designed to give Rangen some  
 17 flexibility to decide where they want to send it?  
 18 A. Yes.  
 19 Q. Rangen's raised a number of critiques of  
 20 the engineering design.  
 21 Has their expert, Dr. Brockway, or anyone  
 22 else at Rangen given you any suggestions as to how you  
 23 might resolve concerns that they've got?  
 24 A. Directly?  
 25 Q. Yes.

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1 A. I have not spoken with anybody from Rangen.  
 2 Q. Will the final engineering process provide  
 3 an opportunity to make modifications to the pipe system  
 4 if Rangen has desires that could be incorporated?  
 5 A. Oh, yes. Yes.  
 6 Q. And then lastly, there was a question about  
 7 permitting and the like.  
 8 Is that something that would also be  
 9 undertaken in conjunction with the completion of the  
 10 engineering work, with the final engineering design?  
 11 A. Yeah, we'd run that in a parallel process.  
 12 MR. TJ BUDGE: Okay. No further questions.  
 13 THE HEARING OFFICER: Okay. Mr. -- must be at  
 14 the end of the day. Mr. May, questions?  
 15 MR. MAY: No questions. Thank you, Director.  
 16 THE HEARING OFFICER: Okay. Mr. Simpson,  
 17 questions?  
 18 MR. SIMPSON: Just one follow-up.  
 19  
 20 RE-CROSS-EXAMINATION  
 21 BY MR. SIMPSON:  
 22 Q. Mr. Hardgrove, if the second mitigation  
 23 plan is implemented, will it reduce the amount of water  
 24 available at the Hunt Ditch for diversion?  
 25 A. It will reduce the amount of water in Riley

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1 Creek, which would mean that there's less water for the  
 2 Hunt Ditch to be able to divert.  
 3 MR. SIMPSON: Thank you.  
 4 THE HEARING OFFICER: Mr. Huntley, further  
 5 questions?  
 6 MR. HUNTLEY: No questions.  
 7 THE HEARING OFFICER: Thank you, Mr. Hardgrove.  
 8 I'm glad to have finished your examination today.  
 9 Okay. I think we're done for today. Shall  
 10 we discuss start time for tomorrow?  
 11 Mr. Budge.  
 12 MR. TJ BUDGE: We only have one more witness for  
 13 our direct case.  
 14 THE HEARING OFFICER: Okay.  
 15 MR. TJ BUDGE: And that's Tom Rogers, who we  
 16 don't expect to take too terribly long. I don't know  
 17 who Rangen has lined up for tomorrow.  
 18 MR. HAEMMERLE: Let's see, Chapman, Frank Erwin,  
 19 and Dan DeLaughter.  
 20 MR. TJ BUDGE: We can start whenever you'd like.  
 21 What's your fancy?  
 22 MR. HAEMMERLE: Huh?  
 23 MR. TJ BUDGE: When would you like to start  
 24 tomorrow?  
 25 MR. HAEMMERLE: How long do you think Tom's

1 going to take?  
 2 MR. TJ BUDGE: Direct? 20 minutes.  
 3 MR. HAEMMERLE: What's that?  
 4 MR. TJ BUDGE: 20 minutes, 30 minutes on direct.  
 5 Not very long. 45. I don't know.  
 6 MR. HAEMMERLE: Oh, yeah, Doug Ramsey. We got  
 7 Doug Ramsey too.  
 8 MR. MAY: We got Doug Ramsey too.  
 9 THE HEARING OFFICER: Let's start at 8:30 and be  
 10 optimistic about finishing tomorrow.  
 11 Agreeable with everybody?  
 12 MR. TJ BUDGE: That would be fine.  
 13 THE HEARING OFFICER: Okay. We'll see you at  
 14 8:30 tomorrow. Thank you.  
 15 (Hearing adjourned at 4:31 p.m.)  
 16 -oOo-

1 **REPORTER'S CERTIFICATE**

2 I, JEFF LaMAR, CSR No. 640, Certified Shorthand  
3 Reporter, certify:

4 That the foregoing proceedings were taken before  
5 me at the time and place therein set forth, at which  
6 time the witness was put under oath by me.

7 That the testimony and all objections made were  
8 recorded stenographically by me and transcribed by me  
9 or under my direction.

10 That the foregoing is a true and correct record  
11 of all testimony given, to the best of my ability.

12 I further certify that I am not a relative or  
13 employee of any attorney or party, nor am I financially  
14 interested in the action.

15 IN WITNESS WHEREOF, I set my hand and seal this  
16 11th day of June, 2014.

17  
18  
19  
20  
21  


22 **JEFF LaMAR, CSR NO. 640**  
23 **Notary Public**  
24 **Eagle, Idaho 83616**

25 My commission expires December 30, 2017

	<b>accompanied (1)</b> 146:17	<b>additional (3)</b> 43:18;92:16;159:3	16:14;35:8
<b>\$</b>	<b>accompanying (2)</b> 18:9,9	<b>address (18)</b> 10:10,11;12:22;14:19;18:23, 25:30;15:35;1;43:1,3,19;60:6; 67:3;98:4,15,21;100:2;142:16	<b>Agency (3)</b> 91:17,19;92:14
<b>\$10 (1)</b> 135:3	<b>accomplish (2)</b> 20:23;201:10	<b>addressed (5)</b> 8:22;11:21;13:3;24:20;26:10	<b>agent (1)</b> 91:20
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<b>\$7.5 (1)</b> 59:9	<b>accused (1)</b> 122:12	<b>administering (1)</b> 60:20	<b>agreed (5)</b> 91:1;100:24;101:6;134:6; 140:2
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