

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 II
 "TUCKER SPRINGS") (Pages 264-561)
 _____)

BEFORE

HEARING OFFICER: GARY SPACKMAN

Date: June 5, 2014 - 8:36 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

Page 265

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Page 266

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Page 267

I N D E X

1

2

3 **W I T N E S S E S**

4 TESTIMONY OF THOMAS L. ROGERS PAGE

5 Direct Examination by Mr. TJ Budge 270

6 Cross-Examination by Mr. May 299

7 Redirect Examination by Mr. TJ Budge 310

8 Examination by The Hearing Officer 313

9 Further Redirect Examination by Mr. TJ Budge 314

10 Further Cross-Examination by Mr. May 315

11 TESTIMONY OF JOE CHAPMAN

12 Direct Examination by Mr. May 317

13 Cross-Examination by Mr. TJ Budge 355

14 Redirect Examination by Mr. May 362

15 Recross-Examination by Mr. TJ Budge 363

16 Recross-Examination by Mr. Huntley 364

17 Further Redirect Examination by Mr. May 367

18 Further Recross-Examination by Mr. TJ Budge 368

19 TESTIMONY OF FRANK CLARENCE ERWIN

20 Direct Examination by Mr. Haemmerle 378

21 Cross-Examination by Mr. Randy Budge 404

22 Redirect Examination by Mr. Haemmerle 416

23 Recross-Examination by Mr. Randy Budge 421

24 TESTIMONY OF MATHEW DONALD WEAVER

25 Direct Examination by Mr. Haemmerle 423

Page 268

I N D E X (Continued)

1

2

3 **W I T N E S S E S**

4 TESTIMONY OF MATHEW DONALD WEAVER PAGE

5 Cross-Examination by Mr. Randy Budge 442

6 Redirect Examination by Mr. Haemmerle 447

7 TESTIMONY OF DOUG RAMSEY

8 Direct Examination by Mr. May 450

9 Voir Dire Examination by Mr. TJ Budge 474

10 Further Direct Examination by Mr. May 474

11 Cross-Examination by Mr. TJ Budge 485

12 Redirect Examination by Mr. May 501

13 Recross-Examination by Mr. TJ Budge 503

14 Examination by The Hearing Officer 504

15 TESTIMONY OF DANIEL DeLAUGHTER

16 Direct Examination by Mr. Haemmerle 508

17 Voir Dire Examination by Mr. TJ Budge 515

18 Further Direct Examination by Mr. Haemmerle 517

19 Voir Dire Examination by Mr. TJ Budge 527

20 Further Direct Examination by Mr. Haemmerle 528

21 Cross-Examination by Mr. TJ Budge 534

22 TESTIMONY OF ALMER HUNTLEY, JR.

23 Direct Testimony by Mr. Huntley 543

24 TESTIMONY OF MICHAEL JAMES HENSLEE

25 Direct Testimony by Mr. Henslee 546

Page 269

I N D E X (Continued)

E X H I B I T S

NO.	MARKED	RECEIVED
5	***	272
6	***	382
7	***	382
8	***	376
9	***	376
10	***	347
11	***	333
12	***	347
13	***	338
14	***	354
15	***	376
16	***	510
17	***	534
18	***	524
19	***	520
20	***	519
21	***	519
22	***	451
23	***	376
24	***	547

Page 270

1 THE HEARING OFFICER: We're recording again.
 2 This is a continuation of the contested case hearing
 3 for IGWA's mitigation -- or second mitigation plan.
 4 And today is June 5th. It's about 8:35 in the morning.
 5 And, Mr. Budge, as I recall, you were ready
 6 to call another witness this morning.
 7 MR. TJ BUDGE: We are. We'll call Tom Rogers.
 8 THE HEARING OFFICER: Okay. Mr. Rogers, if
 9 you'll come forward, please. Raise your right hand.
 10
 11 THOMAS L. ROGERS,
 12 having been called as a witness by IGWA and duly sworn
 13 to tell the truth relating to said cause, testified as
 14 follows:
 15
 16 THE HEARING OFFICER: Thank you. Please be
 17 seated.
 18 TJ.
 19
 20 DIRECT EXAMINATION
 21 BY MR. TJ BUDGE:
 22 Q. Tom, thanks for being here today.
 23 Would you please start by stating your name
 24 and address for the record.
 25 A. Thomas L. Rogers. 2700 North Esquire

Page 271

1 Drive, Boise, Idaho.
 2 Q. You're testifying on behalf of IGWA today?
 3 A. Yes.
 4 Q. You also testified in the delivery call
 5 proceeding involving the Rangen case; is that right?
 6 A. That's correct.
 7 Q. And in that case you testified regarding
 8 aquaculture type matters; is that correct?
 9 A. Yes.
 10 Q. Please explain your area of fish expertise.
 11 A. I worked for Idaho Fish and Game for 37
 12 years. My background is in fisheries resources. I've
 13 got a bachelor's from the University of Idaho in
 14 forestry under fishery resources.
 15 I worked for Fish and Game as -- in
 16 management and hatchery design and also fish culture
 17 for 15 years in the field and 24 years in the
 18 headquarters office where I supervised anadromous
 19 hatcheries.
 20 Q. Justin, could you pull up Exhibit 1116,
 21 please.
 22 Tom, we've pulled up on the screen
 23 Exhibit 1116. It looks like your resumé or CV.
 24 Is that right?
 25 A. Yes.

Page 272

1 Q. Is this a current copy of your resumé?
 2 A. Yes.
 3 MR. TJ BUDGE: Offer Exhibit 1116.
 4 MR. MAY: No objection.
 5 MR. SIMPSON: No objection.
 6 MR. HUNTLEY: No objection.
 7 THE HEARING OFFICER: Thank you.
 8 The document that's been marked as
 9 Exhibit 1116 is received into evidence.
 10 (Exhibit 1116 received.)
 11 Q. (BY MR. TJ BUDGE): Tom, which Idaho State
 12 Fish and Game hatcheries did you work at during your
 13 employment with the Department?
 14 A. I started working at Hagerman State
 15 Hatchery, went to Grace Hatchery, went to Rapid River
 16 Hatchery, Sawtooth Hatchery, and then to headquarters
 17 office. I also worked at Moab Hatchery as a biological
 18 aide and Hayden Creek Hatchery as a biological aide.
 19 Q. And you mentioned that you supervised the
 20 anadromous hatcheries.
 21 Which hatcheries were those?
 22 A. Those were all the salmon and steelhead
 23 hatcheries in the state, starting at Clearwater
 24 Hatchery, Rapid River Hatchery, Oxbow Hatchery,
 25 Rapid -- I said Rapid River. We had McCall Hatchery,

Page 273

1 Sawtooth Hatchery, Pahsimeroi Hatchery, Magic Valley
 2 Hatchery, and Eagle Hatchery.
 3 Q. And you mentioned that you were in that for
 4 24 years?
 5 A. Yes.
 6 Q. You also explained in your resumé that you
 7 have on the ground experience in design and
 8 construction.
 9 Could you explain further what experience
 10 that includes.
 11 A. I was on a couple of design teams. One of
 12 them for Pahsimeroi Hatchery, also for Sawtooth
 13 Hatchery. I was at -- the manager of Sawtooth Hatchery
 14 through the entire construction period, and also worked
 15 with construction on Clearwater Hatchery.
 16 Q. Good. And why don't you tell us what you
 17 were asked to do by IGWA in this case.
 18 A. My task here was to look over the SPF
 19 Engineering design of the Tucker Springs water pump
 20 system to Rangen's to see if it was feasible.
 21 Q. Okay. Before I ask you details about the
 22 Tucker Springs hatchery, I want to ask you about some
 23 of your experience with the Fish and Game hatcheries
 24 that you just testified about.
 25 Do any of the Fish and Game hatcheries use

Page 274

1 pumps to supply water to their raceways?
 2 A. Yes, eight of the hatcheries actually
 3 either partially or fully use pumps to pump water to
 4 their fish.
 5 Q. Okay. Which hatcheries are those?
 6 A. Well, Cabinet Gorge Hatchery is 100 percent
 7 pumped, and that's up in north Idaho. Sawtooth
 8 Hatchery uses partially pumped water, especially for
 9 incubation and early rearing. Oxbow Hatchery uses
 10 100 percent pumped water from either the river or
 11 wells. Pahsimeroi Hatchery uses partially pumped
 12 waters, either gravity flow and pumps. All of their
 13 inside rearing is pumped water, and early incubation.
 14 Springfield Hatchery is 100 percent pumped,
 15 which is an endangered species hatchery for sockeye
 16 salmon. And they're pumping artesian wells, which
 17 doesn't produce enough artesian to cover the entire
 18 production, so they pump those wells. Nampa Hatchery
 19 also pumps water out of artesian wells. Eagle Hatchery
 20 pumps artesian wells as well.
 21 Q. Some of these, I think, were on the list of
 22 hatcheries that you supervised.
 23 A. Yes.
 24 Q. And let me see if I remembered correctly.
 25 You just testified that the Sawtooth Hatchery uses

Page 275

1 pumps.
 2 That's one you supervised?
 3 A. Right.
 4 Q. You mentioned that you supervised the Eagle
 5 Hatchery, which also uses pumps; is that right?
 6 A. Yes.
 7 Q. Any of the others that you mentioned have
 8 pumps, were those hatcheries that you supervised?
 9 A. Pahsimeroi.
 10 Q. Pahsimeroi.
 11 A. And Oxbow.
 12 Q. And Oxbow. Okay. Let me ask you a few
 13 more questions about some of those hatcheries. The
 14 Eagle Hatchery, I think you testified they use
 15 100 percent pumped water.
 16 Do you know how many wells?
 17 A. I think they have three wells, pump about,
 18 I think, 6 cfs of water.
 19 Q. Okay. What about the Sawtooth Hatchery?
 20 A. The Sawtooth Hatchery has four wells.
 21 They're used for different -- actually, they have more
 22 than that, but some of the wells are just used to
 23 de-ice in the winter since they're at 6500 feet in
 24 elevation. They require a lot of thermal help during
 25 the wintertimes.

Page 276

1 But all of their pumped water -- most of
 2 their pumped water goes to the inside rearing, early
 3 rearing and incubation system. They also have a new
 4 well that they put into raceways and/or large raceways
 5 for the holding ponds for the large salmon to help
 6 temper that water in the summer, to cool it down. So
 7 they do extensive pumping there up to about a half a
 8 mile.
 9 Q. Okay. What do you mean they pump up to
 10 about half a mile?
 11 A. Some of their pumps are that far away.
 12 Q. Okay. Okay. And then the Oxbow Hatchery,
 13 how much of their water is pumped?
 14 A. 100 percent. They have two pumps out in
 15 the Snake River. One is always a standby. And then
 16 the other one pumps about 17 cfs of water to their
 17 adult ponds. They also have two wells that they use
 18 for early incubation and early rearing. One of them
 19 pumps 120 gallons per minute, the other one up to about
 20 450 gallons per minute.
 21 Q. Okay. And tell me what you know, more
 22 about the Pahsimeroi pumping system.
 23 A. Pahsimeroi has several wells as well to --
 24 all of their indoor rearing and incubation is done with
 25 groundwater, well water, and then their backup is, of

Page 277

1 course, gravity flow from the river for their large
 2 ponds. But their entire inside rearing is well water.
 3 Q. Okay. And then you mentioned the Nampa
 4 facility also uses pumps?
 5 A. Yes. That's artesian wells, but they still
 6 pump them because they just don't get sufficient flow
 7 from those artesian flows to cover the production. So
 8 they assist with pumps.
 9 Q. And what portion of the water at Nampa is
 10 pumped, well water?
 11 A. I think it's about 100 percent usually.
 12 Q. Do you know how many pumps they have or how
 13 much water they pump through that hatchery?
 14 A. You know, I don't know offhand.
 15 Q. And Cabinet Gorge?
 16 A. Cabinet Gorge is 100 percent pumped water
 17 as well. It is -- and I'm not sure how many wells and
 18 what the capacity of those wells is.
 19 Q. And then lastly, the last one I had here
 20 was the Springfield Hatchery.
 21 A. Yes. Again, pumped artesian. And that's
 22 their newest hatchery. They raise sockeye there. And
 23 so it's quite critical that those don't fail due to the
 24 fact that those are endangered species.
 25 Q. Okay. Do these pumping systems at Fish and

Page 278

1 Game hatcheries, do they have backup pumps?
 2 A. They have -- some are backup pumps. Most
 3 of them just have multiple pumps, where they can depend
 4 on one pump or another and they just change valves.
 5 Most of them have a generator backup.
 6 Sawtooth, for instance, is kind of the end
 7 of electrical grid so frequent power outages are
 8 encountered up there, so their generator gets exercised
 9 quite often.
 10 Q. So when they had power outages at the
 11 Sawtooth Hatchery or others, what would happen in terms
 12 of the operation of the hatchery and the fish in the
 13 raceways?
 14 A. Generally there was an alarm that went off
 15 immediately if we lost power. The electrical generator
 16 would automatically start. The automatic transfer
 17 switch would transfer over to generator and go on
 18 generator power.
 19 During that time, which is usually just
 20 less than a minute up to several minutes, the water in
 21 the raceways would maintain themselves because they've
 22 got either damboards or standpipes to keep water from
 23 running out of the raceways until the new electrical
 24 system kicked in and start the pumps again.
 25 Q. Okay. So during the period that the pump

Page 279

1 was down because of a power outage or pump failure,
 2 water wouldn't be coming in from the pumps, but the
 3 water that was in the raceway would stay there, it
 4 wouldn't just drain out and --
 5 A. Right.
 6 Q. -- leave the fish high and dry?
 7 A. Correct.
 8 Q. And did you ever have pumps fail at any of
 9 these facilities?
 10 A. We've had pump failures, yes.
 11 Q. And what happens when a pump goes down?
 12 A. Either switch to a different pump. We
 13 even -- at Sawtooth we had extra pumps sitting on the
 14 shelf just in case we had an outage, and we could
 15 always fall back on our spare pumps or another well to
 16 cover the fish while we replaced the engine or whatever
 17 that went out.
 18 Q. Okay. So during your years at least as
 19 supervisor, the 24 years, if any of those hatcheries
 20 had a fish loss event because of a pump failure or a
 21 power outage, is that something that you would have
 22 been aware of?
 23 A. Yes. Yeah. There's -- anytime we have a
 24 fish loss, there had to be a report about what happened
 25 and how many fish and so on et cetera, and that always

Page 280

1 came across my desk.
 2 Q. And did the Fish and Game ever suffer fish
 3 loss from a pump failure or power outage during your
 4 tenure?
 5 A. Not that I recall as a pump failure. We've
 6 lost fish, but it generally has been gravity flow where
 7 something got shut off, plugged up, iced, iced up, that
 8 sort of thing. I don't recall any pump failures of
 9 such killing fish.
 10 Q. Okay. Good. Let me ask you about the SPF
 11 Engineering design for the Tucker Springs project. You
 12 have in your IGWA exhibits binder in front of you
 13 Exhibit 1111. Why don't you open that up.
 14 A. Yes.
 15 Q. Do you recognize this as the engineering
 16 report prepared by SPF Water Engineering?
 17 A. Yes, I do.
 18 Q. Have you reviewed this?
 19 A. Yes, I have.
 20 Q. And were you here yesterday when Bob
 21 Hardgrove explained the contents of that report in this
 22 proceeding?
 23 A. Yes.
 24 Q. Before I ask you about the specific pump
 25 and pipe system designed by SPF Engineering, I want to

Page 281

1 ask if you're familiar with the Rangen fish hatchery at
 2 all.
 3 A. Yes. I've visited the site several times.
 4 I also worked there for a couple weeks.
 5 Q. And I understand that you reviewed quite a
 6 number of records that Rangen had produced in its
 7 delivery call proceeding; is that right?
 8 A. Yes, I have. Yes.
 9 Q. Are you familiar with the Hagerman State
 10 Hatchery?
 11 A. Yes. I also worked there for about three
 12 years.
 13 Q. Okay. Why don't you just briefly in your
 14 own words, based on your review of the SPF report and
 15 having heard Mr. Hardgrove's testimony, just explain
 16 your understanding at a general level of how the Tucker
 17 Springs project is designed to work.
 18 A. The way I understand it is that they're
 19 going to capture up to 10 cfs of water through a pump
 20 system at the Lower Tucker -- lower upper -- upper
 21 lower spring and pump that water approximately
 22 1.7 miles, 1.8 miles to Rangen's, where it will be
 23 utilized in their 14-inch intake pipe to their small
 24 raceways.
 25 Q. And you understand from the report and

Page 282

1 Mr. Hardgrove's testimony yesterday that they've got a
 2 pump station that's designed with three pumps?
 3 A. Yes.
 4 Q. One of which is a backup pump, it's
 5 enclosed in a pump house that would be locked and
 6 secured?
 7 A. Right.
 8 Q. You understand they have an
 9 industrial-level backup generator planned for the pump
 10 station as well?
 11 A. Yes.
 12 Q. And in terms of reliability, how does this
 13 compare with the pumping systems at the Fish and Game
 14 hatcheries that you're familiar with?
 15 A. Sounds very similar. I would say that it
 16 equals or exceeds that of Fish and Game programs.
 17 Q. Okay. And you explained that in the Fish
 18 and Game facilities that if a pump went down or there
 19 was a power failure, during that period when water
 20 wasn't flowing through the pipe or into the raceways
 21 they would continue to have water in them until
 22 water -- until the pumps came back on.
 23 Based on your experience at the Rangen
 24 hatchery, is that also what happened in their raceways
 25 if water stopped coming in from Tucker Springs?

Page 283

1 A. Yes, I think that's fair to say. Of
 2 course, it depends on how long -- how well the
 3 damboards are sealed up and that sort of thing, how
 4 well the raceways hold up for water.
 5 Q. Assuming the raceways at Rangen still have
 6 water in them, how long could the fish survive in those
 7 raceways during an outage or temporary stall of the
 8 Tucker Springs project?
 9 A. Well, my experience reading the reports,
 10 that Rangen's been raising fish at fairly low
 11 densities. So I would guess they would last 10 to 30
 12 minutes without any water introduction before they
 13 would start having some severe problems.
 14 Q. Okay. So do you have an opinion as to
 15 whether the pump system designed by SPF Engineering is
 16 a reasonable way to supply water to Rangen to raise
 17 fish?
 18 A. Yes, I think it's reasonable. We use a lot
 19 of pumps throughout the state and throughout the United
 20 States, as far as that goes. Gravity flow water is
 21 getting harder to come by, and more and more systems
 22 are being pumped now.
 23 Q. Okay. Let me ask you a little bit about
 24 the piping system, and you explained that you
 25 understood the water from Tucker Springs would be piped

Page 284

1 roughly 1.8 miles to Rangen.
 2 Did any of the Fish and Game hatcheries use
 3 pipes to transport water to or from or within the
 4 hatchery?
 5 A. Yeah, we have one hatchery that pipes water
 6 1.7 miles from Dworshak Dam to Clearwater Hatchery. A
 7 little different situation. They're not pumping,
 8 they're using the head of the dam as their pressure.
 9 They actually have to relieve the pressure with a hydro
 10 system halfway down -- a third of the way down the
 11 system. And then that's -- that's two pipes actually.
 12 Multiple temperatures, that sort of thing. It's quite
 13 a complicated system.
 14 Q. Any other Fish and Game hatcheries use
 15 pipes to convey water any considerable distance? And
 16 I --
 17 A. Sawtooth was about a half a mile probably.
 18 Some of their wells are at the intake, which are used
 19 for just de-icing, but then there's another well about
 20 halfway to the hatchery that's probably a half a mile
 21 of piping to get to the incubators.
 22 Q. Any others?
 23 A. Most of them are fairly close.
 24 Q. And I assume most hatcheries have small
 25 pipes just between raceways and things of that nature?

Page 285

1 A. Right. Magic Valley is probably another
2 one that has the longest piping. It actually pipes
3 across the Snake River. Collects at a spring, goes
4 under the river, and then goes on to the hatchery.
5 Q. Did you ever have any fish loss at Fish and
6 Game as a result of failure of one of these piping
7 systems you just described?
8 A. I don't recall a pipe failure.
9 Q. So do you have an opinion as to whether the
10 pipe system designed by SPF Engineering is a reasonable
11 way to supply water to the Rangen hatchery to raise
12 fish?
13 A. Seems reasonable to me, yes.
14 Q. Let me ask you a little bit about water
15 quality.
16 Did the Fish and Game do any water-quality
17 measurements or testing at its hatcheries?
18 A. Yes.
19 Q. What type of testing do they do?
20 A. Generally it's potable water testing. And
21 we also test for heavy metals and that sort of thing
22 periodically: DO testing, pH, that sort of thing.
23 Q. Justin, will you please pull up
24 Exhibits 2022 and 2023.
25 Tom, you can look at these on the screen or

Page 286

1 you can pull up the Rangen exhibit binder. We're
2 looking at Exhibits 2022 and 2023. You'll recall these
3 were brought up during Mr. Hardgrove's testimony
4 yesterday. And my understanding is these are
5 water-quality analysis from the Hagerman Hatchery of
6 water at Tucker Springs.
7 Have you seen these documents before?
8 A. Yes, I have.
9 Q. When you explained that the Fish and Game
10 does drinking water analyses or -- is it this type of
11 testing that you're referring to, or something else?
12 A. Well, this could have been drinking water,
13 but it's probably just a periodic check to see what the
14 production water is looking like and if there's any
15 changes from one period to the next. This is, I
16 believe, just production water.
17 Q. Okay. And are these the types of elements
18 that were tested in the Fish and Game hatcheries?
19 A. Yes.
20 Q. So are you familiar with these types of
21 water tests? I understand they may look different
22 from --
23 A. Yes.
24 Q. -- different testing agencies.
25 And is this something that you would review

Page 287

1 when these tests were done in the Fish and Game
2 hatcheries?
3 A. Generally those came across my desk, yes.
4 So I would just be looking for anything that was out of
5 a normal range.
6 Q. So you can look at -- based on your
7 experience at Fish and Game, you can look at these
8 types of water samples and determine whether there's
9 something that might be harmful to raising fish?
10 A. That is correct.
11 Q. Have you reviewed the water samples for
12 Tucker Springs that are shown on these exhibits?
13 A. Yes.
14 Q. Is there anything on those exhibits that
15 indicate to you a problem with the water that would
16 make it unsuitable for raising fish?
17 A. No.
18 Q. Did you also review the water
19 measurements -- water-quality measurements taken by SPF
20 Engineering that are contained in their report,
21 Exhibit 1111?
22 A. Yes.
23 Q. Why don't you open that up.
24 And, Justin, if you could pull up on the
25 screen Figure 1, Figure 2.

Page 288

1 Tom, we've got on the screen and you've got
2 in front of you Table 1 from Exhibit 1111. You'll
3 remember Bob Hardgrove explaining these are some field
4 measurements taken by SPF Water Engineering, both at
5 Tucker Springs and at Rangen. And the top section of
6 that table has a number of categories. The first is
7 the pH level at Rangen. It looks like it's in the
8 range of 7.28 to 7.52.
9 Is there any problem with that pH level as
10 far as raising fish at Rangen?
11 A. No.
12 Q. And then you compare that to Tucker
13 Springs, which had a slightly higher pH at 7.71, does
14 that 7.71 figure give you any concerns as far as the
15 ability to raise fish in that water?
16 A. No, it's well within range.
17 Q. And the next column, which is EC, I think
18 that's electrical conductivity.
19 Is that right?
20 A. Yes.
21 Q. Is that something -- a measurement you're
22 also familiar with?
23 A. Not as much. But we usually use
24 alkalinity.
25 Q. Explain what you mean by that.

Page 289

1 A. Well, I think conductivity is just a matter
2 of how much mineral there is in the water as well.
3 Q. Okay.
4 A. And so generally we don't use that as a
5 rule.
6 Q. Okay.
7 A. But it's -- you know, from what I see, it's
8 not an issue.
9 Q. Okay. And then the third column, "SC," I
10 don't remember what "SC" stand for.
11 Are you familiar with that?
12 A. Not right offhand.
13 Q. And then the next column is "DO." I
14 understand that as dissolved oxygen.
15 A. Right.
16 Q. You'll see that the test that SPF took at
17 Rangen had dissolved oxygen levels between 8.3 and 8.6.
18 Is that suitable for raising trout?
19 A. Yes.
20 Q. And what about the 8.0 figure at Tucker
21 Springs, is that also suitable for raising trout?
22 A. Yeah. Like it says there, it's 89 percent
23 saturation, but it's suitable for raising trout, yes.
24 Q. What's the range for dissolved oxygen
25 necessary to raise trout?

Page 290

1 A. Generally, 6.5 to 9, somewhere in there.
2 Anything above 5 is acceptable, but 5 is marginal.
3 Q. Okay. And is 9 complete saturation?
4 A. At this site, yes, probably so.
5 Q. Okay. So fair to say that the -- is the
6 8.0 level near saturation?
7 A. It's 89 percent, according to their meter,
8 yeah.
9 Q. Okay. And then it's your opinion that
10 the -- based on the measurements that SPF took, they
11 don't indicate anything that would prevent the use of
12 Tucker Springs water to raise fish?
13 A. No.
14 Q. Justin, will you please highlight Figure 2
15 on that same page of Exhibit 1111.
16 Tom, have you reviewed the temperature
17 measurements that SPF Engineering took on that same day
18 at Rangen and at Hagerman shown in Table 2, it looks
19 like?
20 A. Yes, I have.
21 Q. And what's the acceptable range of water
22 temperature for raising trout in the industry?
23 A. 45 to say 65.
24 Q. And I'm having a little bit of --
25 A. That's degrees Fahrenheit.

Page 291

1 Q. -- a tough time. I haven't made those
2 conversions. I don't know if you have made those
3 conversions from Celsius to Fahrenheit or --
4 A. Oh, I'm sorry. Yeah, I should have done
5 that. But I haven't done it. But this is well within
6 that range.
7 Q. Okay. So do you have an opinion as to
8 whether the temperature of the water at Tucker Springs
9 is suitable for raising fish at Rangen?
10 A. Yeah, I believe it's very suitable.
11 Q. And raising trout specifically?
12 A. Yes.
13 Q. Did you review any other water-quality data
14 for Rangen besides the SPF measurements and then the
15 water analyses that Fish and Game provided from 2008
16 and 2013?
17 A. Yes, I've seen other water-quality
18 analysis.
19 Q. What other water quality data have you
20 seen?
21 A. Well, mainly heavy metals and that sort of
22 thing, things that you would look for normally in an
23 assay of water to see if it's suitable.
24 Q. Let me clarify my question. So other than
25 the water-quality measurements reported by SPF

Page 292

1 Engineering and in the Fish and Game analyses, has
2 Rangen provided any water-quality data that you've
3 reviewed for its facility?
4 A. Just -- yes. Through a previous case here,
5 yes.
6 Q. Okay. You're referring to the documents
7 that Rangen produced in the delivery call proceeding?
8 A. Correct.
9 Q. Did you review those again as you prepared
10 for your testimony here?
11 A. Yes, I did.
12 Q. And was there anything in the documents
13 produced by Rangen that would indicate unsuitability of
14 the water there for raising trout?
15 A. No.
16 Q. Are you aware of anything at Rangen that
17 would require special water quality or temperature for
18 raising trout?
19 A. Not that I'm aware of, no.
20 Q. Are you familiar with how Rangen uses its
21 facility and what purpose it raises trout presently?
22 A. Yes. It raises fish for an Idaho Power
23 contract, as well as the fish market.
24 Q. Have you reviewed the Idaho Power contract
25 that Idaho Power operates under?

Page 293

1 A. Yes.
 2 Q. Justin, would you please pull up
 3 Exhibit 1135.
 4 And, Tom, if you'd like to turn to that in
 5 the book. After the last page of the contract, there's
 6 an Exhibit A that's labeled "Scope of Services." And
 7 I'd like you to turn there. I think it's Appendix A.
 8 MR. MAY: Do we have new people here that
 9 haven't signed?
 10 MR. HAEMMERLE: We do.
 11 MR. TJ BUDGE: So can we go off the record just
 12 for just a moment, Director?
 13 THE HEARING OFFICER: Yes.
 14 (Discussion.)
 15 THE HEARING OFFICER: We're recording again.
 16 Q. (BY MR. TJ BUDGE): Have you found
 17 Exhibit 1135, Mr. Rogers?
 18 A. Yes.
 19 Q. And have you been able to locate
 20 Appendix A, the scope of services --
 21 A. Yes.
 22 Q. -- portion of that contract?
 23 A. Yes, I have.
 24 Q. Do you see the second paragraph of
 25 Appendix A?

Page 294

1 A. Yes.
 2 Q. If you'd look at the bottom portion of that
 3 paragraph, it explains that the contractor, who in this
 4 case is Rangen, will produce fish that have a
 5 reasonable expectation of survival upon release into
 6 American Falls Reservoir.
 7 A. Yes.
 8 Q. Is it your understanding that the fish
 9 Rangen raises for Idaho Power are released into
 10 American Falls Reservoir for conservation purposes?
 11 A. That's true.
 12 Q. If water from Tucker Springs was
 13 transported to Rangen to raise fish, do you have an
 14 opinion as to whether -- to raise trout, whether those
 15 trout would have a reasonable expectation of survival
 16 upon release into American Falls Reservoir?
 17 A. I would think so.
 18 Q. I'd offer Exhibit 113- -- I think this
 19 is -- is it in evidence? Strike that.
 20 Let me ask you just a few questions.
 21 Director, I'm going to go out and let the
 22 others know they can come in. We're done with the
 23 Idaho Power contract.
 24 THE HEARING OFFICER: Okay.
 25 Q. (BY MR. TJ BUDGE): Tom, we know from the

Page 295

1 opening statement and from deposition Rangen's trying
 2 to make a -- build a big case on the issue of fish
 3 disease at the Hagerman State Hatchery. And I want to
 4 ask you a few questions about fish disease.
 5 Did the Fish and Game hatcheries ever
 6 experience disease in its -- the fish it raised?
 7 A. Yes. I don't think there's probably a
 8 hatchery that hasn't had some kind of an episode.
 9 Q. So it's not uncommon for fish hatcheries to
 10 have fish disease in their hatcheries from time to
 11 time?
 12 A. No. When you're doing intensive culture of
 13 animal culture like fish, you're going to run into it.
 14 Q. And how are diseases typically discovered?
 15 A. Generally through either behavior of the
 16 fish or pathological checks. Most of our hatcheries
 17 have a monthly pathology check on fish and how they're
 18 doing.
 19 Q. Does Fish and Game, when you were there, do
 20 they take regular measurements of the water column to
 21 try to detect disease in the water itself?
 22 A. No. That's pretty tough to do.
 23 Q. And when a disease is discovered, explain
 24 what you do to treat the disease.
 25 A. Well, depending on the disease. Could be

Page 296

1 bacterial, could be environmental, could be viral.
 2 Viral diseases you can't do a whole lot with. What you
 3 can do is go through the epizootic and end up with
 4 survivors.
 5 Environmental diseases might be
 6 overcrowding, lack of water, lack of oxygen, that sort
 7 of thing. So you try to change that environment. Add
 8 more water, add more oxygen, add more flow, increase
 9 the rearing space.
 10 And then if you have a bacterial infection,
 11 then you can -- some of those can be treated with
 12 antibiotics and so forth.
 13 Q. It sounds fairly analogous to humans, we
 14 contact illnesses.
 15 A. Very similar. We vaccinate fish just like
 16 people get vaccinated for viruses. So that's the only
 17 tool we have for viruses, is to vaccinate fish previous
 18 to an outbreak.
 19 Q. Would it be fair to say that treating for
 20 illness is kind of a fact of life for raising fish in a
 21 hatchery?
 22 A. Yes. That's generally a concern at every
 23 one of the hatcheries.
 24 Q. Based on the records you reviewed from
 25 Rangen and your experience there, do you know if they

Page 297

1 ever experienced disease in their raceways?
 2 A. Yes, I think I've run across some of their
 3 chemical usage for prevention and to treat diseases
 4 there.
 5 Q. So would it be normal for the Hagerman
 6 State Hatchery to experience disease as well?
 7 A. Yes.
 8 Q. Is that something you have any experience
 9 or understanding of?
 10 A. Yes. I've worked there for three years.
 11 Of course we have a whole lot of avian intrusion there.
 12 A lot of birds. And when I was working there we didn't
 13 even have netting over the raceways yet. Now they have
 14 netting, but the fish are still exposed to avian
 15 predators. They're exposed to droppings coming into
 16 the -- as birds fly over. There's mammals in the water
 17 supply, especially at Riley Creek. But as long as you
 18 can keep the critters out of the water, generally you
 19 can do pretty well.
 20 Q. And the raceways at Rangen are also open to
 21 birds flying over and the like; is that right?
 22 A. Yes. They're screened, but they're still
 23 open.
 24 Q. Okay. Mr. Chapman, who we're going to hear
 25 about later, you'll recall explaining in his deposition

Page 298

1 that the use of Riley Creek water at the Hagerman State
 2 Hatchery adds an element of challenge to taking care of
 3 the fish there.
 4 Could you explain the effects and use of
 5 Riley Creek water on the fish?
 6 A. Well, Riley Creek water runs through
 7 basically an open stream for a mile or two before it
 8 gets to the hatchery. It also receives the effluent
 9 from the Hagerman National Fish Hatchery, which raise
 10 both rainbow and steelhead. So any pathogens they may
 11 have may end up in Riley Creek.
 12 I think generally they try to keep the
 13 fish -- or raise the fish on Tucker Springs water first
 14 at an early stage when the fish are most vulnerable to
 15 disease. When they finally build up somewhat of a
 16 resistance to whatever pathogens might be found, then
 17 they move them over to Riley Creek water.
 18 Q. Is that because the --
 19 A. They've got a better resistance.
 20 Q. And that's because the Tucker Springs water
 21 is a cleaner water supply than --
 22 A. Much cleaner water supply, yes.
 23 Q. When we were talking about this hearing,
 24 you explained that the Tucker Springs water raises
 25 better fish.

Page 299

1 Is that -- explain what you mean by that.
 2 A. That's what I mean. It's just healthier.
 3 The fish are going to grow about the same generally,
 4 but the disease issues are much less with Tucker
 5 Springs.
 6 Q. Okay. So just to clarify and complete your
 7 testimony, you're not aware of any problems that would
 8 make Tucker Springs water unsuitable for raising trout
 9 at Rangen?
 10 A. No.
 11 Q. And it's your opinion that Tucker Springs
 12 water quality and temperature are suitable for raising
 13 trout at Rangen?
 14 A. Yes.
 15 MR. TJ BUDGE: I have no further questions.
 16 THE HEARING OFFICER: Okay, Mr. Budge.
 17 Mr. May, are you examining?
 18 MR. MAY: Yes, Director.
 19 THE HEARING OFFICER: Okay.
 20
 21 CROSS-EXAMINATION
 22 BY MR. MAY:
 23 Q. Morning, Tom.
 24 A. Good morning.
 25 Q. As you know, I'm Justin May, and I

Page 300

1 represent Rangen.
 2 I'd like to start off with looking at some
 3 of your testimony regarding the design of the pipeline
 4 and some of the facilities that you've worked at.
 5 A. Uh-huh.
 6 Q. When you were talking about 100 percent
 7 pumped water, are you referring to 100 percent pumped
 8 from wells? Were all of those wells that you were
 9 dealing with?
 10 A. No, some of them are river water source.
 11 Q. Okay. So you described some of them where
 12 they had a pump in the Snake River that they would pump
 13 into the facility.
 14 A. Correct.
 15 Q. In the facilities that you've worked in
 16 that you're familiar with that had the 100 percent
 17 water -- or 100 percent pumped water or some kind of
 18 fraction of that, are these all state or government
 19 facilities?
 20 A. Yes.
 21 Q. None of the ones that you've worked at or
 22 had experience with were commercial facilities?
 23 A. No.
 24 Q. You did have outages with the facilities
 25 that you were dealing with, did you not?

Page 301

1 A. Yes, we did.
 2 Q. And you did -- you indicated that you had
 3 some fish die as a result of those outages?
 4 A. No. Most of our fish mortality has been
 5 from gravity-flow sources where the intake got plugged
 6 up or trucks -- transportation mortality from oxygen
 7 malfunctioning in a truck.
 8 Or probably the largest fish loss that I
 9 recall during my career was during an icing event where
 10 a pond of fish was pretty much wiped out with the
 11 intake being iced up and water --
 12 Q. Fish die for lots of reasons?
 13 A. Yes, they do.
 14 Q. And one of those reasons is when the system
 15 that supplies them water fails?
 16 A. Yes.
 17 Q. And you had some system failures that
 18 happened to be from gravity-fed pipes and that resulted
 19 in fish dying?
 20 A. Yes.
 21 Q. The pumps and generators for the facilities
 22 that you were talking about, are those -- are the pumps
 23 themselves generally on site or within the control of
 24 the facility?
 25 A. Some yes, some no.

Page 302

1 Q. Okay. Generally, however, they're under
 2 control, are they not?
 3 A. Right.
 4 Q. The facility has the ability to -- to go
 5 and fix them?
 6 A. Yes, they're alarmed, they're available for
 7 maintenance, that sort of thing.
 8 Q. You mentioned that if the pumps fail the
 9 raceway's not going to drain; correct?
 10 A. It's going to drain very slowly, if at all.
 11 Q. Right. In other words, it's not a
 12 situation where the pump fails and there's no longer
 13 any water in the raceway?
 14 A. Right.
 15 Q. And the reason for that is because in order
 16 to operate the facility you've got to have check-boards
 17 at the end that control the flow through the raceways?
 18 A. Correct.
 19 Q. They will eventually drain?
 20 A. They could, yes.
 21 Q. Long before that, however, the fish are
 22 likely to die if there's no flow; correct?
 23 A. If they get lack of oxygen, yes.
 24 Q. And you, as I understand, indicated that
 25 they're going to have a lack of oxygen, which is going

Page 303

1 to start causing fish death within 10 to 30 minutes?
 2 A. Possibly. It depends on how many fish and
 3 what the loadings are.
 4 Q. But it's not going to be a lot longer?
 5 A. It could be up to an hour. You know, it
 6 just depends.
 7 Q. And during that time period in addition to
 8 the fish that you're going to lose, you're also going
 9 to have fish that are going to be stressed?
 10 A. Yes.
 11 Q. And you may have some mortality after the
 12 fact from fish that are more susceptible to disease and
 13 those kinds of things?
 14 A. That is correct.
 15 Q. You reviewed a number of water-quality
 16 testing, and it looks like we've still got Figure 1
 17 from Exhibit 111 (sic), which is the SPF water report,
 18 up here on the screen. Could you switch to that as
 19 well. Or could you take a look at that if you can't
 20 see it.
 21 A. Yeah.
 22 Q. Figure 1 -- or excuse me, Table 1 in
 23 Exhibit 111 sets out the water-quality field data. And
 24 you went through this with Mr. Budge. And I want to
 25 look particularly at the center column under the

Page 304

1 conductivity meter.
 2 A. Uh-huh.
 3 Q. You talked a little bit about the EC and
 4 the SC measurements. I got the sense from your
 5 testimony that those are not measurements that you
 6 typically rely upon.
 7 A. That's true.
 8 Q. So the existence of particular numbers for
 9 EC or SC in this table doesn't really tell you very
 10 much about the quality of the water?
 11 A. It tells me that it's probably somewhere in
 12 the middle as far as hard water goes, and that's --
 13 most of those springs down there carry that type of
 14 analysis, yes.
 15 Q. And that doesn't give you very much
 16 information with regard to managing a hatchery or
 17 raising fish?
 18 A. It shows me that fish can be reared in that
 19 water.
 20 Q. I didn't notice anything in any of these
 21 tables or any of the water-quality analysis that you
 22 indicated that you reviewed that had any information
 23 with regard to disease.
 24 A. From the water?
 25 Q. Yeah.

Page 305

1 A. No.
 2 Q. You're not aware of any testing that's been
 3 done to determine whether there's bacteria in the
 4 water?
 5 A. No, not that I'm aware of.
 6 Q. And none for viruses?
 7 A. No.
 8 Q. Parasites?
 9 A. No.
 10 Q. No testing at all with regard to the
 11 presence of disease in the water-quality testing
 12 analysis that you did?
 13 A. Correct. I mentioned before that it's very
 14 difficult to pull disease from water columns.
 15 Q. Right. It's a tough thing to test for?
 16 A. Yes.
 17 Q. So even if we went down there and tested,
 18 we wouldn't be able to know?
 19 A. Generally what you have to do is challenge
 20 with the fish. You have a challenge test with fish.
 21 Q. And by "challenge," you mean we test it on
 22 the fish?
 23 A. Right.
 24 Q. So we just put it in there and figure --
 25 and figure out what happens?

Page 306

1 A. Right.
 2 Q. When they die, they die?
 3 A. If they come down with anything or if they
 4 pick up anything.
 5 Q. You went through some dissolved oxygen
 6 measurements, and I'm not sure -- I apologize, I don't
 7 have it right here in front of me, but you talked about
 8 a number of 8.0 for the dissolved oxygen.
 9 A. Right.
 10 Q. And you indicated that that was acceptable
 11 for raising fish.
 12 A. Yes.
 13 Q. And the range for raising fish is somewhere
 14 between saturation of 9 down to 6, maybe as low as 5;
 15 correct?
 16 A. Right.
 17 Q. That's the range at which they can live.
 18 With the hatchery, when you're putting
 19 water into a hatchery, the dissolved oxygen gets used
 20 as it flows through the hatchery; right?
 21 A. Correct.
 22 Q. So when you are talking about the water
 23 that you want to have for a hatchery, we're not just
 24 concerned with the level of which they can survive, we
 25 want to have as much water as we can so that we can

Page 307

1 raise as many fish as possible; correct?
 2 A. Right.
 3 Q. So if we start at 8.0 and it gets used up
 4 as it gets through the raceways, we're going to get to
 5 5 or 6 quicker; correct?
 6 A. Correct.
 7 Q. We're not going to be able to raise as many
 8 fish?
 9 A. Right.
 10 Q. So if you were to look at the type of water
 11 that you would have at a hatchery, you would want to
 12 have that water at saturation as close to 9.0 as you
 13 can get it; correct?
 14 A. Yes.
 15 Q. You worked at the hatchery and you
 16 indicated that you are familiar with -- and when I say
 17 "the hatchery," the Hagerman State Fish Hatchery, and
 18 you indicated that you are familiar with some of its
 19 disease history; correct?
 20 A. Yes.
 21 Q. You also indicated that you are somewhat
 22 familiar with some diseases that Rangen has had at its
 23 hatchery?
 24 A. Yes.
 25 Q. And disease, in general, is a fairly common

Page 308

1 occurrence at -- when you're dealing with fish that are
 2 being raised in a hatchery?
 3 A. That's correct.
 4 Q. And while they're normal, however, you
 5 don't want to purposefully introduce diseases into your
 6 hatchery, do you?
 7 A. Trying to avoid diseases.
 8 Q. And you mentioned that there may be no
 9 treatment for some of the diseases.
 10 One of the ways that you can prevent the
 11 diseases is just not get them into your hatchery in the
 12 first place; correct?
 13 A. Correct. That's most desirable.
 14 Q. Are you familiar with PKD?
 15 A. Yes.
 16 Q. What is PKD?
 17 A. Proliferative kidney disease. Just a bacterial
 18 infection.
 19 Q. And it causes death in fish?
 20 A. Yes, it can.
 21 Q. Are you aware that the Hagerman State Fish
 22 Hatchery has had PKD?
 23 A. Yes.
 24 Q. Are you aware that they've had it in Tucker
 25 Springs?

Page 309

1 A. They've had it in Tucker Springs water,
 2 yes. May not necessarily be from the springs.
 3 Q. But they have had more of an issue
 4 recently, you understand, with PKD in Tucker Springs?
 5 A. I'm not real familiar with their recent
 6 disease history.
 7 Q. In Mr. Budge's opening and a couple of
 8 times it's been suggested that the problems with this
 9 facility are related to the Riley -- or with diseases
 10 in this facility is related to Riley Creek instead of
 11 Tucker Springs.
 12 Are you aware that there actually are
 13 diseases in Tucker Springs?
 14 A. Most of the diseases probably are. Yeah,
 15 most of the diseases are probably from Riley Creek, I'm
 16 guessing.
 17 Q. But it's not limited to Riley Creek?
 18 A. I'm sure that fish in Tucker Springs has
 19 also broken with disease. But the source may be
 20 unknown.
 21 Q. Have you done any kind of investigation to
 22 find out whether there is in fact a difference between
 23 those, whether there is PKD in Tucker Springs?
 24 A. No.
 25 Q. Do you know what the link is between PKD

Page 310

1 and bryozoans?
 2 A. No.
 3 Q. And so you're not familiar with whether or
 4 not the Hagerman State Fish Hatchery has done anything
 5 with regard to bryozoans in Tucker Springs?
 6 A. Not familiar.
 7 MR. MAY: That's all that I've got.
 8 THE HEARING OFFICER: Mr. Simpson?
 9 MR. SIMPSON: No questions.
 10 THE HEARING OFFICER: Mr. Huntley, questions?
 11 MR. HUNTLEY: No.
 12 THE HEARING OFFICER: Redirect, TJ?
 13
 14 REDIRECT EXAMINATION
 15 BY MR. TJ BUDGE:
 16 Q. I just have a few questions, Tom.
 17 A. Uh-huh.
 18 Q. There was some discussion about the
 19 difficulty of testing for diseases in the water itself,
 20 and you explained that you'd have to challenge that
 21 with fish. And I want to make sure I understood that.
 22 Mr. May, if I understood, his explanation was that
 23 you'd have to put fish in the water up in Tucker
 24 Springs to find out if there were -- was disease in the
 25 water there.

Page 311

1 A. You would probably have to, yes, isolate it
 2 as much as you could to see if there was a disease
 3 transference, you know, above there. Because disease
 4 could be picked up anywhere along the system, or once
 5 they're in the raceways. It could be bird issues. It
 6 could be raceways themselves could be affected.
 7 There's a number of places that you can pick up
 8 disease.
 9 Q. And Mr. May --
 10 A. So the higher in the system, the better off
 11 you are as far as challenging fish to disease.
 12 Q. Got it. And Mr. May talked about one
 13 potential disease, which is PKD.
 14 You testified earlier that some of the
 15 hatcheries that Fish and Game operates are 100 percent
 16 groundwater, which I presume is a very clean water
 17 source?
 18 A. Yes.
 19 Q. And even in those hatcheries they
 20 experience disease periodically?
 21 A. Yes.
 22 Q. I believe you also explained earlier that
 23 you're not aware of any evidence of disease in Tucker
 24 Springs itself, even though there has been disease
 25 periodically down in the raceways?

Page 312

1 MR. MAY: Objection. I think it misstates the
 2 testimony.
 3 THE WITNESS: That is correct.
 4 THE HEARING OFFICER: Overruled.
 5 Q. (BY MR. TJ BUDGE): And then lastly,
 6 Mr. May talked to you about the reduction in dissolved
 7 oxygen that occurs as water moves from raceway to
 8 raceway.
 9 You were here yesterday when Bob Hardgrove
 10 explained, and it's in his report, that you can aerate
 11 water between raceways or as it enters if needed?
 12 A. Yes.
 13 Q. If the water transported to Tucker Springs
 14 has a DO level of 8.0 when it arrives, would that
 15 require aeration before entering the small raceways?
 16 A. Not necessarily. It would be better if it
 17 was fully saturated so they could be -- that could be
 18 easily done through a packed column or something to
 19 help aerate it.
 20 Q. So you're not recommending that be
 21 required, but it could be done if it was deemed
 22 necessary?
 23 A. Yes.
 24 MR. TJ BUDGE: I have no further questions.
 25 THE HEARING OFFICER: Okay. Mr. May?

Page 313

1 MR. MAY: Nothing.
 2 THE HEARING OFFICER: All right. I just have a
 3 couple of follow-up questions, Mr. Rogers.
 4
 5 EXAMINATION
 6 BY THE HEARING OFFICER:
 7 Q. Will you again tell me what "P" in PKD
 8 stands for?
 9 A. Prolific.
 10 Q. Okay. I didn't pick it up. Thank you.
 11 And the other question I have relates to
 12 dissolved oxygen. If one water source has less
 13 dissolved oxygen than another water source, given the
 14 same quantity of water delivered, theoretically you'd
 15 be able to raise less fish with the water with a lesser
 16 dissolved oxygen content?
 17 A. That's correct.
 18 Q. And could you also deliver additional water
 19 at a lower dissolved oxygen content to make up the
 20 difference --
 21 A. Yes.
 22 Q. -- and raise more fish?
 23 Okay. Thank you.
 24 Okay. Based on my inquiry, any follow-ups?
 25 Mr. Budge.

Page 314

1 MR. TJ BUDGE: Just one.
 2
 3 FURTHER REDIRECT EXAMINATION
 4 BY MR. TJ BUDGE:
 5 Q. The dialogue you had with the Director,
 6 does that correlate with your testimony that Rangen
 7 presently has a real low density in the fish it raises
 8 for Idaho Power?
 9 A. Does that correlate with it? Yes, it -- in
 10 a way, if the water delivered -- is the way I
 11 understood the Director -- was 8.0, water normally
 12 would be coming in at 8.6, you could raise more fish in
 13 the 8.6 than you could the 8.0.
 14 The chances are if you ran that through say
 15 a packed column, you would be equal. You would
 16 probably bring it up to a -- close to the 8.6, since
 17 this was probably only about 89 percent saturation.
 18 Probably the reason for that is it hasn't had an
 19 opportunity to aerate itself.
 20 I suspect that at Hagerman when they check
 21 their DOs at their headrace after that has gone through
 22 the pond, been collected and transported to the
 23 hatchery, it's probably fully saturated again, which is
 24 probably close to 8.5 to 9.0.
 25 Q. And let me ask it this way, and this gets

Page 315

1 back to the delivery call hearing where we talked a lot
 2 about fish density. And you explained then, as I
 3 understood it -- and you'll have to correct me, but
 4 that under the Idaho Power contract Rangen is required
 5 to raise fewer fish per square foot or per cubic foot
 6 of water than what would happen in a commercial raceway
 7 like Clear Springs or something like that.
 8 A. Yes.
 9 Q. Okay. So to raise the fish at those lower
 10 densities would not require the same degree of oxygen
 11 saturation as --
 12 A. The oxygen would not be utilized as quickly
 13 as if at full loadings at a commercial hatchery.
 14 MR. TJ BUDGE: Okay. That's all I have.
 15 THE HEARING OFFICER: Okay. Follow-up, Mr. May?
 16 MR. MAY: Just one follow-up.
 17
 18 CROSS-EXAMINATION
 19 BY MR. MAY:
 20 Q. All things being equal, in other words,
 21 your density level, your flow level, you can raise more
 22 fish if you've got a higher dissolved oxygen content;
 23 correct?
 24 A. Generally, yes.
 25 MR. MAY: That's all I've got.

Page 316

1 THE HEARING OFFICER: Okay. Thank you,
 2 Mr. Rogers.
 3 Other witnesses?
 4 MR. TJ BUDGE: None for IGWA.
 5 THE HEARING OFFICER: Okay. All right. Shall
 6 we take a break, or is there a -- do you want to push
 7 on?
 8 MR. MAY: Probably take a break to figure out
 9 who's here and what we want to do.
 10 THE HEARING OFFICER: Okay. Let's take ten
 11 minutes.
 12 (Recess.)
 13 THE HEARING OFFICER: We're back recording after
 14 an early morning break.
 15 And Rangen's turn to begin presenting
 16 evidence.
 17 Justin.
 18 MR. MAY: Director, Rangen would call Joe
 19 Chapman.
 20 THE HEARING OFFICER: Mr. Chapman, if you'll
 21 come forward. Please raise your right hand.
 22 ///
 23 ///
 24 ///
 25 ///

Page 317

1 JOE CHAPMAN,
2 having been called as a witness by Rangen, Inc., and
3 duly sworn to tell the truth relating to said cause,
4 testified as follows:
5
6 THE HEARING OFFICER: Thank you. Please be
7 seated.
8 And you may examine, Mr. May.
9 MR. MAY: Thank you, Director.
10
11 DIRECT EXAMINATION
12 BY MR. MAY:
13 Q. Mr. Chapman, could you please state your
14 name and spell it.
15 A. Joe Chapman, J-o-e, C-h-a-p-m-a-n.
16 Q. Where are you employed?
17 A. At the Hagerman State Fish Hatchery with
18 Idaho Department of Fish and Game.
19 Q. How long have you been employed there?
20 A. At that facility, 20 years.
21 Q. And during that time have you had the same
22 position?
23 A. That is correct.
24 Q. And what is your job title or position?
25 A. I am the hatchery manager.

Page 318

1 Q. And you've been the hatchery manager there
2 you said for 20 years?
3 A. That's correct.
4 Q. What does that job entail? What are your
5 job duties?
6 A. To -- our objectives are to raise fish for
7 the sportsmen of Idaho.
8 Q. And you are responsible for accomplishing
9 those objectives for the facility?
10 A. That is correct.
11 Q. In order to accomplish those objectives,
12 what is it that you do specifically as hatchery
13 manager?
14 A. Basically, everything that entails rearing
15 of fish, monitoring of fish, working with fish health,
16 along with evaluations for the employees, safety,
17 monitoring budgets, everything that you normally have
18 at a hatchery.
19 Q. I'd like to start off and have you kind of
20 describe for us how water flows into and through your
21 facility. And in order to do that, I've got an exhibit
22 that I've shown up here on the screen that was used in
23 Mr. Hardgrove's deposition earlier. I understand it to
24 be an overview of the Tucker Springs area. You have a
25 copy of it either in the binders or it may be that big

Page 319

1 exhibit right next to you there. This is Exhibit 1138.
2 Do you recognize that?
3 A. Yes, I do.
4 MR. MAY: Okay. Can I approach the witness,
5 Director?
6 THE HEARING OFFICER: Yes.
7 Q. (BY MR. MAY): What I'd like to start off
8 with is have you point out some of the kind of
9 components of your delivery system into the hatchery,
10 starting with I understand that there's a small
11 collection box or upper collection box.
12 Could you show us where that is located on
13 this map.
14 A. Yes. Our upper election box is located
15 right in here (indicating).
16 Q. And is there some kind of an arrow or
17 something marking where that's located?
18 A. Yes. Right here (indicating).
19 Q. Okay. And what does that label next to it
20 say?
21 A. "Idaho Fish and Game collection box to
22 small pipe."
23 Q. So where that arrow indicating "Idaho Fish
24 and Game collection box to small pipe" is located, you
25 have what I'm calling the small collection box.

Page 320

1 Is that what you call it?
2 A. That is correct. It's the upper collection
3 box for Upper Tucker Springs, and it delivers water
4 through our small pipeline.
5 Q. That collection box that delivers water
6 into the small pipeline, I understand that that is
7 covered in some fashion.
8 A. That is correct.
9 Q. How is it covered?
10 A. It's a concrete structure with wood
11 planking on the top.
12 Q. And that is covered for what reason?
13 A. Keep out any kind of avian predators or
14 just exclude animals.
15 Q. And you exclude animals for what reason?
16 A. Potential of transfer of diseases, also
17 plugging up the intake pipes.
18 Q. And I understand that you've had some
19 problem --
20 A. We have.
21 Q. -- with animals clogging up the pipes.
22 A. Yes, we have.
23 Q. That small pipeline, where does that go in
24 the hatchery?
25 A. It delivers water to our hatchery building

Page 321

1 and our nursery raceways.
 2 Q. And if I kind of zoom out here, is there a
 3 way that you could show us up here where that goes?
 4 A. Yes. It follows this road all the way down
 5 and delivers water down below into our west side of the
 6 hatchery.
 7 Q. And that west side of the hatchery, what is
 8 located there? What parts of the facility does it
 9 deliver water to?
 10 A. We have a hatchery building with 28 nursery
 11 raceways. We also have a nursery area with 18
 12 additional hatchery raceways.
 13 Q. What stage of the life cycle of fish do you
 14 raise in those raceways and hatch?
 15 A. In the hatchery building we get our eggs as
 16 eyed eggs, raise them to about 1 1/2 inches long, move
 17 them out into the nursery raceways. And then from
 18 those 18 raceways they get moved out into the large
 19 Tucker Springs raceways. And from there they go over
 20 to the Riley Creek raceways, if needed.
 21 Q. And the only water that goes into those
 22 areas is from the small pipeline in that upper small
 23 collection box; right?
 24 A. Yes.
 25 Q. And that's where the most sensitive fish

Page 322

1 that you've got are located?
 2 A. Correct.
 3 Q. Okay. Looking back at this, I understand
 4 that you also get water from a large pipeline.
 5 A. That is correct.
 6 Q. Okay. And is that noted on this map?
 7 A. Yes, it is. I got to -- so here's the
 8 intake box (indicating). We have four perforated
 9 2-foot diameter collection pipes that are located right
 10 into that lower area of the upper springs that collects
 11 water to flow into the large pipeline that supplies the
 12 first 16 raceways.
 13 Q. Okay. And I'm sorry. I might have screwed
 14 you up by blowing this up here.
 15 So the collection box to the large raceways
 16 is noted on there, and that's in the correct location?
 17 A. Correct.
 18 Q. All right. I'm sorry. Where are the
 19 perforated pipes that you were talking about?
 20 A. From my understanding -- I wasn't there
 21 when they were put in, but they are delivered right up
 22 through here into this upper area (indicating). And
 23 then they collect water and transfer it down into our
 24 large pipeline.
 25 Q. And that area is the one that's outlined in

Page 323

1 blue there?
 2 A. That is correct.
 3 Q. And I believe some previous witnesses have
 4 referred to that as the lower pool of Upper Tucker
 5 Springs.
 6 A. Yes.
 7 Q. And those four perforated pipes deliver
 8 water, then, into your large collection box?
 9 A. Yes.
 10 Q. From that large collection box, the water
 11 flows through what you've called the large pipeline?
 12 A. The large pipeline, correct.
 13 Q. And where does that go?
 14 A. That delivers water to our first 16
 15 raceways, the large raceways.
 16 Q. You also indicated that you get some water
 17 from Riley Creek.
 18 A. That is correct.
 19 Q. Where does the water from Riley Creek go?
 20 A. It's delivered to our -- from raceways 17
 21 through 24, the next eight raceways.
 22 Q. And that water does not go into the Tucker
 23 Springs raceways?
 24 A. That is correct.
 25 Q. However, you do, as I understand, have some

Page 324

1 water that flows from the large Tucker Springs raceways
 2 into the Riley Creek raceways?
 3 A. That is not correct.
 4 Q. Okay. Water from Tucker Springs does not
 5 get into the Riley Creek raceways at all?
 6 A. It does not get into the Riley Creek
 7 raceways at all.
 8 Q. You transfer the fish, not the water?
 9 A. We transfer the fish, not the water.
 10 Q. We have a set of pictures that we went
 11 through during your deposition and we've marked as
 12 Exhibit 2033. And you should have a copy of those in
 13 the binders in front of you, and I've also pulled up
 14 the first page of that up here on the screen. I'm
 15 hoping that you can just walk us through again what
 16 parts of the facility these relate to. I've got on the
 17 screen the first page of Exhibit 2033.
 18 This first picture, what does that depict?
 19 A. That is the origin of the Big Bend Ditch
 20 and our upper spring.
 21 Q. And that kind of green gate structure
 22 there, what is that?
 23 A. That is a jump screen to keep fish from
 24 entering into that pool.
 25 Q. So as we're looking at this picture, if we

Page 325

1 were to go down to the lower left of this picture,
 2 what's down to the lower left?
 3 A. That is -- the water flows over a weir and
 4 goes in and joins the Lower Tucker Springs water and
 5 goes through the Big Bend Ditch and delivers water
 6 there.
 7 Q. So that fish screen is keeping fish from
 8 going from the left of that picture, lower left, to the
 9 upper right?
 10 A. That's correct.
 11 Q. And the upper right is going towards Upper
 12 Tucker Springs?
 13 A. The upper right portion of the picture, the
 14 water actually flows from this way, comes down this way
 15 and out (indicating).
 16 Q. And what is that red pipe that's located
 17 there?
 18 A. That is just a transfer of water for Idaho
 19 Power and I think Henslee Hatchery across the road,
 20 Highway 30.
 21 Q. So we've heard some testimony, I believe
 22 from Mr. Hardgrove, about an Idaho Power water right.
 23 That's where they get their water from that
 24 red pipe there?
 25 A. That is my understanding.

Page 326

1 Q. If we look at the second page of
 2 Exhibit 2033, could you tell me what that's a picture
 3 of.
 4 A. Again, that's the same pipe.
 5 Q. That's just another view of that same red
 6 pipe going to Idaho Power?
 7 A. That is correct. I think they also have a
 8 flow measuring device here (indicating).
 9 Q. We've got picture No. 3 here.
 10 Does that show you anything?
 11 A. I'm thinking that individual is standing on
 12 the pipe.
 13 Q. Okay. Picture No. 4 in 2033, what is that
 14 a picture of?
 15 A. Again, an individual standing on the pipe
 16 coming out of another source of the water back --
 17 there's another little springs that arise back in here
 18 (indicating).
 19 Q. Right above where the red pipe is depicted?
 20 A. Correct.
 21 Q. And to the right of that picture, again,
 22 that's where Upper Tucker Springs comes out of the --
 23 A. That's correct.
 24 Q. And picture No. 5, is that, again, another
 25 picture of that red pipe going to Idaho Power?

Page 327

1 A. Yes, as you can see where it goes up into
 2 the rocks for collection.
 3 Q. Picture No. 6, what is that?
 4 A. Again, that's the source of Big Bend Ditch.
 5 The water arises right around the corner, it flows
 6 through here and back toward the green screen that we
 7 just looked at.
 8 Q. And so that's Upper Tucker Springs?
 9 A. That would be Upper Tucker Springs.
 10 Q. Picture No. 7?
 11 A. That is a supplementation line that was
 12 installed to get water out of the springs and deliver
 13 it into the collection box for the small pipeline.
 14 Q. So the water that's going there in that
 15 pipeline makes its way into the covered small
 16 collection box and then into the small pipe?
 17 A. That is correct.
 18 Q. The next picture, No. 8, is that just
 19 another picture of that pipeline?
 20 A. That is correct.
 21 Q. And No. 9, is that also just another
 22 picture of that pipeline?
 23 A. That is correct.
 24 Q. What is picture No. 10 in Exhibit 233?
 25 A. Again, it's an extension of that

Page 328

1 supplementation line showing where it's delivering
 2 water into the upper control box that delivers water to
 3 the small pipeline.
 4 Q. So that structure that you're pointing
 5 there in the middle of the picture that that pipe goes
 6 into, that's the upper collection box?
 7 A. That's for the small pipeline, correct.
 8 Q. That pipe that's depicted there, the brown
 9 pipe, which way does that flow?
 10 A. Water flows this way (indicating) and then
 11 into the collection box.
 12 Q. So it's flowing from the lower right-hand
 13 corner up towards the upper left and into the upper
 14 collection box?
 15 A. Yes, this way (indicating).
 16 Q. What is picture No. 11?
 17 A. Again, same thing.
 18 Q. That's a picture of that same upper
 19 collection box?
 20 A. That's correct.
 21 Q. And picture No. 12, is that just a closer
 22 shot of that?
 23 A. That's a closer shot of the upper
 24 collection box.
 25 Q. Picture No. 13 is just a picture of the

Page 329

1 house or the sheds?
 2 A. That is an old domestic pump structure that
 3 was involved in our domestic water.
 4 Q. What does picture No. 14 show?
 5 A. I believe -- I believe that is -- I can't
 6 tell how big that line is. If it's the 6-inch line,
 7 that would be a photo of some water that we -- when we
 8 removed the domestic well pump, there was still some
 9 water coming out of there. We captured that water and
 10 delivered it into the supplementation line that goes
 11 into that small line, is what I suspect that is.
 12 Q. Okay. And picture 15?
 13 A. And yes, I confirm that is correct. That,
 14 again, is showing that line going into our
 15 supplementation line, again delivering water into the
 16 upper control box.
 17 Q. What is picture No. 16?
 18 A. This shows an option that we have to
 19 deliver water. If we do not have need in the small
 20 pipeline, then we can take damboards out or boards out
 21 of this structure right here, and that water flows over
 22 and down into the large collection area for the large
 23 pipeline.
 24 Q. So water that you're not using in the upper
 25 collection box flows through the rocks to the lower

Page 330

1 collection box?
 2 A. That is correct.
 3 Q. Picture No. 17?
 4 A. Again, same picture.
 5 Q. Same picture, just larger.
 6 What does picture No. 18 show?
 7 A. This is a shot of the lower collection area
 8 of Upper Tucker Springs. This is all the collection
 9 area with the four perforated pipes. Delivers water
 10 down into this point right here (indicating), which is
 11 the origin of the large pipeline for those first 16
 12 raceways. It also shows the dam back behind here that
 13 stops all the water or collects all the water.
 14 Q. So that pipe that's going through there,
 15 that pipe is going towards the large collection box?
 16 A. That is correct. This is a supplementation
 17 pipe as well that delivers water into the large control
 18 box.
 19 Q. And so the large collection box is just off
 20 the screen kind of above where that pipeline goes just
 21 behind the bush?
 22 A. Correct.
 23 Q. What is picture 19?
 24 A. This shows our large collection box, a
 25 close-up. Again, the supplementation line dropping

Page 331

1 water into the large collection box. This is a photo
 2 of the old dam before it blew out, 1996. And then we
 3 have since moved a concrete dam behind this more
 4 permanent.
 5 Q. So that's the actual lower collection box
 6 that takes the water into the large pipeline?
 7 A. That is correct.
 8 Q. And so the area that's depicted on this
 9 picture would -- the picture that we looked at
 10 previously, it would be kind of behind that bush;
 11 correct?
 12 A. That is correct.
 13 Q. And that -- in this picture that area is
 14 covered with water; correct?
 15 A. That is correct.
 16 Q. Is it always?
 17 A. No, it is not.
 18 Q. In fact, I believe when I visited there it
 19 was just -- it was just rocky.
 20 Is it sometimes just rocks with the water I
 21 guess flowing underneath the rocks?
 22 A. That is correct.
 23 Q. When does it flood? When does it become
 24 covered with water?
 25 A. It varies, depending on seasonality. We

Page 332

1 haven't really addressed that. I know most of last
 2 winter it had water over the top. This spring, about
 3 three weeks ago, four weeks ago that water dropped.
 4 Q. And I understand from a conversation that
 5 you and I had when we were standing there that you
 6 don't know of any particular trigger or anything that
 7 you can link whether or not it's covered with water?
 8 A. That is correct. I'm not sure if it's our
 9 hatchery operations or something to do with the
 10 aquifer. I don't know.
 11 Q. The next picture, picture No. 20?
 12 A. That is a staff gauge used to measure the
 13 water going over a Cippoletti weir into the Big Bend
 14 Ditch.
 15 Q. And No. 21?
 16 A. Again, a close-up of the jump screen at
 17 that Cippoletti weir.
 18 Q. So again, that jump screen or what we've
 19 called a fish screen would be keeping fish from going
 20 from the left of that into the right side?
 21 A. Yes.
 22 MR. MAY: Director, I'd move for admission of
 23 Exhibit 2033.
 24 MR. TJ BUDGE: No objection.
 25 THE HEARING OFFICER: Mr. Simpson?

Page 333

1 MR. SIMPSON: No objection.
 2 THE HEARING OFFICER: Mr. Huntley, any
 3 objection?
 4 MR. HUNTLEY: No.
 5 THE HEARING OFFICER: Document marked as
 6 Exhibit 2033 is received into evidence.
 7 (Exhibit 2033 received.)
 8 Q. (BY MR. MAY): Joe, I understand that you
 9 are familiar with gas or nitrogen supersaturation.
 10 A. Slightly.
 11 Q. Do you have any problems with that in the
 12 Hagerman Fish Hatchery?
 13 A. We did have. We have solved that. We had
 14 an overflow gas release tube at the intake of the small
 15 pipeline about 6-foot down to remove a lot of the air.
 16 What we found is that gas was being entrained into the
 17 water at that point and we were having supersaturation
 18 issues. So we capped that and stopped that issue.
 19 Q. And that was as the result of some kind of
 20 an issue that you had in an air valve in the pipe?
 21 A. That is a result of some issues we had with
 22 fish health down below.
 23 Q. Excuse me. The air entrainment itself was
 24 caused by an issue with the valve; correct?
 25 A. With the cap, correct, with the pipe.

Page 334

1 Q. And what kind of problems did that cause
 2 with your fish?
 3 A. Gas bubble disease, embolisms on the gills,
 4 those typical things you see when you have high
 5 nitrogen supersaturation.
 6 Q. And it's been described to me at some point
 7 as something like the bends in fish.
 8 Is that correct?
 9 A. That's correct.
 10 Q. And that's caused by the air getting pulled
 11 into the pipe and then the gas, including the nitrogen,
 12 gets supersaturated in the water; correct?
 13 A. That is my understanding.
 14 Q. Have you had that anywhere else in your
 15 facility other than with that air valve?
 16 A. Not to my knowledge.
 17 Q. It's my understanding from your deposition
 18 that the water rights that your facility has out of
 19 Tucker Springs are not currently being filled.
 20 Is that correct?
 21 A. That is correct.
 22 Q. And they're not being filled because the
 23 water in Tucker Springs is too low?
 24 A. That is correct.
 25 Q. I understand also that in -- that that low

Page 335

1 flow has been going on for a while.
 2 A. That is correct.
 3 Q. In fact, in 1995, or around then, you made
 4 some changes to the facility to address the lower
 5 flows?
 6 A. That is correct.
 7 Q. What changes did you make?
 8 A. We didn't have enough water to raise fish
 9 in the lower three sections of the hatchery on large 1
 10 through 16, so we filled those in.
 11 Q. And that also involved some kind of changes
 12 to the facility itself to move the water around; is
 13 that correct?
 14 A. That is correct. We installed pipelines to
 15 convey the water from the tailrace to the settling
 16 pond.
 17 Q. And if 10 cfs of water was taken out of
 18 Upper Tucker Springs, you would be even shorter of
 19 water; correct?
 20 A. That is correct.
 21 Q. I understood from your deposition that that
 22 may affect your ability to comply with your TMDL for
 23 the hatchery.
 24 A. It very well could, if we maintained the
 25 same production.

Page 336

1 Q. And you indicated that one of your jobs was
 2 to accomplish the direct -- the objectives of the
 3 Department; correct?
 4 A. That's correct.
 5 Q. And one of those objectives was the
 6 stocking of fish for sportsmen?
 7 A. That is correct.
 8 Q. Would the taking of 10 cfs out of this
 9 facility affect your ability to do that?
 10 A. It would.
 11 Q. Would you be able to meet your Department's
 12 objectives if 10 cfs of water was taken out of the
 13 facility?
 14 A. We would have to transfer fish earlier over
 15 to Riley Creek. We may be able to do it, but there may
 16 be more risk involved by putting them on Riley Creek
 17 water.
 18 Q. And I understand from your deposition that
 19 you were not consulted about this plan before it was
 20 proposed.
 21 A. Plan, which --
 22 Q. The Tucker Springs plan that we're here
 23 talking about to transfer water from Upper Tucker
 24 Springs to Rangen's facility.
 25 A. We had a meeting with our fisheries bureau

Page 337

1 at our work plan meeting and fisheries, I think in
 2 March, where that was brought up.
 3 Q. Okay. And during your deposition did you
 4 not recall that particular meeting?
 5 A. I did not recall that.
 6 Q. What happened at that meeting? What was
 7 presented to you?
 8 A. The issue was presented that we may be
 9 taking 10 cfs of water from Upper Tucker Springs to
 10 solve a shortage at Rangen's.
 11 Q. And I understand from your deposition that
 12 you are not in favor of doing that; correct?
 13 A. I am not in favor of losing 10 cfs of
 14 water.
 15 Q. You should have there in front of you in
 16 those books Exhibit 2041. I've also showed it up here
 17 on the screen. If you can see it well enough up here,
 18 I can zoom in on part of it if you need me to.
 19 A. Okay.
 20 Q. Do you recognize Exhibit 2041?
 21 A. I do.
 22 Q. And what is Exhibit 2041?
 23 A. That was a dissolved oxygen monitoring
 24 event conducted by Doug Ramsey from Rangen's to measure
 25 our oxygen levels.

Page 338

1 Q. Can you tell when this was done?
 2 A. 12/20 of 2000.
 3 Q. And this was to measure dissolved oxygen
 4 levels at the hatchery.
 5 Do you know where the testing was done?
 6 A. I think it was listed there, but I
 7 cannot --
 8 Q. Would it help if I zoom in right here?
 9 A. Yes. Very nice.
 10 So it was on the inflow of raceway No. 14.
 11 Q. And also, if I'm reading that right,
 12 effluent?
 13 A. From the full flow setting pond, correct.
 14 MR. MAY: I'd move for the admission of 2041.
 15 THE HEARING OFFICER: Mr. Budge?
 16 MR. TJ BUDGE: No objection.
 17 MR. HUNTLEY: No objection.
 18 MR. SIMPSON: No objection.
 19 THE HEARING OFFICER: Okay. Document marked as
 20 Exhibit 2041 is received into evidence.
 21 (Exhibit 2041 received.)
 22 Q. (BY MR. MAY): I'm going to show you here
 23 also what's been marked as 2042. And you can either
 24 look at it here or it's in the book in front of you.
 25 Do you recognize this?

Page 339

1 A. I do.
 2 Q. What is this document?
 3 A. That is a dissolved oxygen measurement
 4 taken on 5/27 by our fish culturist, Daniel Anta.
 5 Q. And that was 5/27/2014?
 6 A. That is correct.
 7 Q. Where was -- I notice at the top there
 8 there's a marking that says "7.6 ppm."
 9 Where was that measurement taken?
 10 A. I consulted with Dan, and he said that it
 11 was about 5 feet above that green jump screen in the
 12 Big Bend Ditch.
 13 Q. That green fish jump screen?
 14 A. Jump screen, correct.
 15 Q. There's one that's noted there, "Large
 16 line, 8.1 ppm."
 17 Where was that taken?
 18 A. That was taken right at the -- where the
 19 water goes into the collection box of the large
 20 pipeline.
 21 Q. And there's another note there, is that
 22 "L5" or "LS"? I can't read it.
 23 A. It would be L5. And that was right where
 24 the water comes out of the discharge tube right at
 25 large 5 at the head end of the raceway.

Page 340

1 Q. And large 5 just refers to some --
 2 A. Raceway.
 3 Q. -- raceway?
 4 I understand that the Hagerman State Fish
 5 Hatchery is located next to a wildlife area of some
 6 sort.
 7 A. That is correct. There's 880 acres of
 8 wildlife management area surrounding us.
 9 Q. And where is that located in relation to
 10 the hatchery?
 11 A. It surrounds us.
 12 Q. On all sides?
 13 A. On all sides.
 14 Q. And there's lots of ducks and birds and
 15 other animals in that wildlife area?
 16 A. That is correct.
 17 Q. Do those cause you issues with your
 18 particular hatchery?
 19 A. Yes, they do.
 20 Q. What do you do in order to try and deal
 21 with those issues?
 22 A. We have completed an enclosure around the
 23 whole facility and have 2-inch chicken wire to keep out
 24 the birds. We've also installed what I call scare
 25 balls -- round, red balls -- at a couple points to move

Page 341

1 the ducks and geese around the hatchery when they fly
2 off the pond.
3 Q. And have you installed or needed to install
4 any of those balls up in Tucker Springs?
5 A. We did. We installed two there as well.
6 Q. In order to keep the ducks out of that
7 area?
8 A. That is correct.
9 Q. You mentioned that you have an enclosure
10 around the facility.
11 That enclosure does not include Tucker
12 Springs, does it?
13 A. We have an enclosure over the Tucker
14 Springs raceways, the small pipeline, as well as the
15 large pipeline raceways, enclosure.
16 Q. And my question is actually related to the
17 springs themselves, the source of the water, as opposed
18 to the Tucker Springs raceways.
19 A. Correct. We have no enclosure over that.
20 Q. I understand that like all fish hatcheries
21 you have some issues with diseases.
22 Is that correct?
23 A. That is correct.
24 Q. What kind of diseases do you have in your
25 hatchery?

Page 342

1 A. We have viral diseases, IHN; bacterial
2 diseases, furunculosis, bacterial or proliferative
3 kidney disease. We have cold-water bacterial disease.
4 Let's see. Aeromonas. Those are the ones I can
5 recall.
6 We have also have parasites.
7 Ichthyophthirius and gyrodactilus as far as parasites,
8 and ichthyobodo.
9 Q. And I'm showing up here on the screen --
10 and again, you have a copy there in front of you -- of
11 what we've marked as Exhibit 2031.
12 Do you recognize this document?
13 A. I do.
14 Q. And what is this document?
15 A. This is a fish health summary report of
16 Hagerman State Fish Hatchery from January 1st of 2004
17 to, it looks like, May 28th, I'm assuming, '14. I'm
18 not sure. I can't see that last letter.
19 Q. I think you can't see it because I don't
20 think it's on there.
21 A. Yeah.
22 Q. I looked for that too. It's your
23 understanding that this goes through approximately what
24 date?
25 A. May 28th of this year.

Page 343

1 Q. This year. What data was used in order to
2 compile this report?
3 A. Let me back up. I'm thinking that may be
4 2013. I'm not sure. I'd have to check with our
5 pathologist.
6 Q. It's either May of 2013 or May of 2014?
7 A. Correct.
8 Q. What data was used to compile this report?
9 A. Data -- when our fish pathologist comes
10 down to do an analysis of our fish, we call our
11 pathologist when we have disease problems, any issues.
12 He comes down, makes a confirmation of that disease,
13 and we proceed to either treat; or if it's like virus,
14 there's no treatment. Usually those -- that's what's
15 indicated there.
16 Q. I understand that you have disease problems
17 throughout your hatchery, correct, in both the hatch
18 house and the nursery raceways, as well as the Tucker
19 Springs raceways and the Riley Creek raceways?
20 Correct?
21 A. We do have diseases, but they are more
22 limited in the hatch house. We only have usually
23 ichthyobodo, which is a parasite, and cold-water
24 bacteria in the hatchery building. I've been there 20
25 years, and we've never confirmed IHN there.

Page 344

1 Q. And that hatch house is fed solely from the
2 small pipeline?
3 A. That's correct.
4 Q. And solely from the small, covered box?
5 A. That's correct.
6 Q. You do have issues in your Tucker Springs,
7 the large outside raceways, however; correct?
8 A. That is correct.
9 Q. And those are the raceways that are fed by
10 the large collection box?
11 A. That is correct.
12 Q. What issues do you have in the large
13 raceways, the Tucker Springs raceways?
14 A. Again, the disease I mentioned before, IHN,
15 bacterial diseases, and parasites.
16 Q. And one of those diseases would be what
17 we've called PKD?
18 A. That is correct.
19 Q. What is PKD?
20 A. Proliferative kidney disease.
21 Q. There's been some suggestion that the
22 diseases are either limited to or somehow associated
23 with the Riley Creek water.
24 That's not entirely correct, is it?
25 A. That is not correct.

Page 345

1 Q. You do in fact have diseases from the
 2 Tucker Springs water?
 3 A. That is correct.
 4 Q. I'd like to look at page 25 of
 5 Exhibit 2031. On the second entry here, I'd like you
 6 to look at the second entry on page 25. There's kind
 7 of a comments section there.
 8 Can you see when this entry was created?
 9 A. It looks like January 28th.
 10 Q. Okay. And could you read for me what that
 11 comments section says with that particular entry.
 12 A. "I sampled kidneys from five moribund fish
 13 at the bottom screen and from five healthy fish at the
 14 top of the raceway. PCR positive results for
 15 tetracapsuloides (proliferative kidney disease) were
 16 equal (four and four) from each group. The condition
 17 has become progressively worse in Tucker Springs over
 18 the last few years. It may require modifications to
 19 the spring head box and disinfection of the pipeline to
 20 remedy."
 21 Q. And if we look throughout this report,
 22 there are various other indications of PKD; correct?
 23 A. That is correct.
 24 Q. I note here there is a -- and I'm going to
 25 look at, again, this second entry here. There is a

Page 346

1 column with an entry that says "Tucker Springs,"
 2 question mark, and then "True."
 3 A. Correct.
 4 Q. That indicates that this was in Tucker
 5 Springs raceways?
 6 A. That is correct.
 7 Q. And in fact, I believe, at least as far as
 8 I've seen, all of the entries that are in this
 9 particular report have "Tucker Springs? True."
 10 A. He did a sort for Tucker Springs
 11 specifically.
 12 Q. So in fact this particular report only
 13 deals with diseases that you've had issues in the
 14 Tucker Springs raceways?
 15 A. That is my understanding, correct.
 16 MR. MAY: Director, I'd move for the admission
 17 of Exhibit 2031.
 18 MR. TJ BUDGE: No objection.
 19 THE HEARING OFFICER: Mr. Budge?
 20 Mr. Simpson?
 21 MR. SIMPSON: No objection.
 22 THE HEARING OFFICER: Mr. Huntley?
 23 MR. HUNTLEY: No objection.
 24 THE HEARING OFFICER: Document marked as
 25 Exhibit 2031 is received into evidence.

Page 347

1 (Exhibit 2031 received.)
 2 Q. (BY MR. MAY): I'm showing on the screen
 3 here what's been marked as Exhibit 2040.
 4 Do you recognize this document?
 5 A. I do.
 6 Q. And what is this document?
 7 A. It is a summary of the water delivery
 8 changes made to address water quality and disease
 9 problems.
 10 Q. And who created this?
 11 A. I did.
 12 MR. MAY: Okay. Director, I'd move for
 13 admission of Exhibit 2040.
 14 THE HEARING OFFICER: Mr. Budge?
 15 MR. TJ BUDGE: No objection.
 16 THE HEARING OFFICER: Mr. Simpson?
 17 MR. SIMPSON: No objection.
 18 THE HEARING OFFICER: Mr. Huntley?
 19 MR. HUNTLEY: No.
 20 THE HEARING OFFICER: The document marked as
 21 Exhibit 2040 is received into evidence.
 22 (Exhibit 2040 received.)
 23 Q. (BY MR. MAY): I call your attention to the
 24 paragraph that is the last paragraph of the first kind
 25 of section of this. It's right above the words "Other"

Page 348

1 and then "Date unknown."
 2 Could you look at that paragraph and tell
 3 me what that paragraph says.
 4 A. Would you like me to read it?
 5 Q. Sure.
 6 A. "In 2013 we chlorinated the small Tucker
 7 Springs pipeline. We installed jump protection on the
 8 outlet pipes, installed overflow tarp at Tucker Springs
 9 dam to prevent erosion, installed scare balls at the
 10 intake, added salt at intake rocks to kill bryozoans.
 11 We don't have confirmation from bryozoan samples taken
 12 at the springs. Positive confirmation of PKD in fish
 13 in raceways from small and large pipeline. We removed
 14 a beaver and flow meter from the supplementation line."
 15 Q. Focusing on the part of that that says
 16 "Added salt at intake rocks to kill bryozoans," first
 17 of all, what do you mean by "intake rocks"?
 18 A. That area that we noted before our upper
 19 collection, the lower end of the Upper Tucker Springs
 20 collection pool.
 21 Q. What we've been calling the lower
 22 collection box that goes to the large pipeline?
 23 A. Correct.
 24 Q. And that area of rocks, that's the area of
 25 rocks that's sometimes submerged and sometimes not?

Page 349

1 A. That is correct.
 2 Q. Why did you add salt on -- in that area?
 3 A. We suspected that there may be bryozoans on
 4 the rocks. Again, we had never seen them. I don't
 5 know what they look like. Our pathologist came out and
 6 took samples that we sent to Boise State for
 7 confirmation. We have not gotten anything back from
 8 them yet.
 9 So it was basically a prophylactic measure
 10 just in case there were bryozoans up there that we
 11 could possibly kill them.
 12 Q. So you've done -- you've had a test done
 13 for the bryozoans, but you don't have the results yet?
 14 A. That is correct.
 15 Q. What is the link between the bryozoans and
 16 PKD?
 17 A. They are the intermediate host for the
 18 parasite.
 19 Q. So you are salting for bryozoans in -- near
 20 the lower collection box in order to try and deal with
 21 your PKD problem?
 22 A. Like I say, we don't have confirmation of
 23 that. It was a prophylactic measure just in case.
 24 Whether it was effective or not, I have no idea.
 25 Q. Right. But again, that's the reason why

Page 350

1 you're doing it, because you believe that that could be
 2 the issue that's causing your PKD?
 3 A. We suspect that could be the issue.
 4 Q. I'd like you to look at Exhibit 2032.
 5 Do you recognize Exhibit 2032?
 6 A. You handed that to me last week, and I have
 7 not had a chance to look at it.
 8 Q. Okay. Have you read through it at all?
 9 A. I have not.
 10 Q. Do you have an understanding of what it is?
 11 A. Just from the title.
 12 Q. Okay. And what is it?
 13 A. It's a "Strategic Plan for Maintenance and
 14 Reconstruction of Idaho Department of Fish and Game
 15 Resident Fish Hatcheries."
 16 Q. I'd like to focus on a paragraph here, the
 17 last paragraph --
 18 MR. RANDY BUDGE: Is this in evidence?
 19 Q. (BY MR. MAY): -- of page 4 on this
 20 exhibit, of the fourth page of Exhibit 2032, the last
 21 paragraph there.
 22 Can you read that paragraph for me.
 23 MR. TJ BUDGE: Objection, Director. This
 24 document has not been admitted into evidence and
 25 there's obviously no foundation for it. Until it's

Page 351

1 admitted, it shouldn't be testified to, the contents.
 2 THE HEARING OFFICER: Mr. May.
 3 MR. MAY: Director, first, it hasn't been
 4 offered yet. The question of whether we will or not, I
 5 haven't raised yet. I'd like to ask him his opinion
 6 about the statement that's here and whether or not he
 7 agrees that there's an issue.
 8 THE HEARING OFFICER: We aren't digging into the
 9 document itself without foundation, Mr. May.
 10 MR. MAY: Well, Director, this was produced at
 11 Mr. Chapman's deposition to us as a document that was
 12 being provided to us by Idaho Fish and Game in response
 13 to our discovery requests. I think it's appropriate
 14 that I can go through with him concerns that they've
 15 got at the facility and some of the restrictions that
 16 they've got. I can do it separately, but it makes more
 17 sense to ask it out of this particular document.
 18 THE HEARING OFFICER: Well, I have a couple
 19 concerns, Mr. May. One of them is the document has a
 20 "Draft" water mark across the front of it. So I don't
 21 even know whether it's a final document or not. If it
 22 were a document that you could establish is published
 23 and held in Fish and Game in the normal course of their
 24 operation, even though Mr. Chapman isn't acquainted
 25 with the document, knows nothing about it, I might be

Page 352

1 willing to let it in. But I'm not even sure whether
 2 this is a document that's being used by Fish and Game
 3 at all. So at least right now I don't want to let it
 4 in.
 5 MR. MAY: Well, we can get at it a different
 6 way, Director, the same thing.
 7 THE HEARING OFFICER: Thank you.
 8 Q. (BY MR. MAY): The paragraph that I was
 9 referring to there was talking about some potential
 10 restrictions upon where fish from the Hagerman State
 11 Fish Hatchery might be stocked.
 12 Are you aware of any such restrictions?
 13 A. I am.
 14 Q. And what are those restrictions?
 15 A. We cannot stock fish that have had IHN into
 16 noninfected waters that have not been stocked before.
 17 We are limited to areas in the state where we can stock
 18 our fish.
 19 Q. Okay. And what areas are those that you're
 20 limited to?
 21 A. Oh, it's throughout the state. There's
 22 certain drainage. It's the Ellis drainage limited.
 23 But we stock fish all the way up north of Moscow,
 24 Idaho, south, east, west throughout the state. But
 25 there are certain ranges that do not have -- where we

Page 353

1 have not historically stocked IHN fish or fish with
 2 New Zealand mud snails that we cannot stock.
 3 Q. Have you made or are you aware of any
 4 recommendation for the area that is surrounding those
 5 rocks in the lower pool of Upper Tucker Springs to be
 6 enclosed in some fashion?
 7 A. I have suggested it to our manager that we
 8 enclose that upper springs. Right now it's budgetary
 9 issues that prevent us from doing so.
 10 Q. And why are you recommending that that be
 11 enclosed?
 12 A. Good hatchery protocol involves covering
 13 the springs so no animals can get in.
 14 Q. And the only reason that you haven't done
 15 it right now, as far as you're concerned, is a lack of
 16 money?
 17 A. That is correct.
 18 MR. MAY: Thank you. That's all I've got.
 19 THE HEARING OFFICER: Okay.
 20 MR. MAY: Oh, one second.
 21 I apologize. It's just been pointed out
 22 that I did not offer Exhibit 2042.
 23 Is that right, Garrick?
 24 THE HEARING OFFICER: My notes show that there
 25 was one of those exhibits that had not been offered.

Page 354

1 Let me just look.
 2 Yes, 2042 is not offered.
 3 MR. MAY: Director, I'd like to offer
 4 Exhibit 2042, which is the dissolved oxygen readings
 5 from February 27th.
 6 THE HEARING OFFICER: Okay. Mr. Budge?
 7 MR. TJ BUDGE: Could you pull it up, please?
 8 MR. MAY: Sure.
 9 MR. TJ BUDGE: No objection.
 10 THE HEARING OFFICER: Mr. Simpson?
 11 MR. SIMPSON: No objection.
 12 THE HEARING OFFICER: Mr. Huntley, any
 13 objection?
 14 MR. HUNTLEY: No.
 15 THE HEARING OFFICER: Okay. The document marked
 16 as Exhibit 2042 is received into evidence.
 17 (Exhibit 2042 received.)
 18 THE HEARING OFFICER: Thank you for the cleanup,
 19 Mr. May.
 20 TJ or Randy, cross-examination?
 21 MR. TJ BUDGE: Yeah.
 22 Justin, could you pull up Exhibit 2013 and
 23 go to page 19.
 24 THE HEARING OFFICER: Which exhibit, Mr. Budge?
 25 ///

Page 355

1 CROSS-EXAMINATION
 2 BY MR TJ BUDGE:
 3 Q. Mr. Chapman, we're going to have you turn
 4 to Exhibit 2013. That's the series of photographs that
 5 we went through earlier.
 6 MR. MAY: It's 2033.
 7 Q. (BY MR. TJ BUDGE): 2033. I apologize.
 8 Page 19. You know what may be even easier is if you
 9 turn in the other exhibit book of IGWA's exhibits and
 10 turn to Exhibit 1111. That's the SPF Engineering
 11 report. This was, I'll represent to you, a photograph
 12 taken by Bob Hardgrove or one of his associates at SPF
 13 Engineering. You'll see it's got labels on it of the
 14 Fish and Game collection box.
 15 Do you recognize the area depicted in that
 16 photograph?
 17 A. I do.
 18 Q. And that collection facility identified as
 19 the IDFG collection box, is that what you've been
 20 referring to today as the large collection box?
 21 A. That's correct.
 22 Q. And we reviewed some photographs of water
 23 in the area where we see these white rocks. And -- but
 24 I understand your testimony correctly that the Upper
 25 Tucker Springs is dammed to pool water in that

Page 356

1 location.
 2 A. That's correct.
 3 Q. And the pooling of water allows the surface
 4 water in that area to seep into some perforated pipes
 5 that are buried?
 6 A. That's correct.
 7 Q. And also allows water to flow by surface,
 8 flow directly into the collection box; is that right?
 9 A. That's correct.
 10 Q. And then you testified that one way to
 11 improve the security of this area, what the engineer
 12 referred to as biosecurity, but one way to keep animals
 13 out would be to enclose this some way to prevent
 14 rodents and the like from getting in?
 15 A. That's correct.
 16 Q. Do you think that would maybe improve
 17 the -- or decrease the likelihood of disease getting
 18 into this water supply?
 19 A. It very well could.
 20 Q. Okay. But it's not something that Fish and
 21 Game has done historically.
 22 Have there been coverings in past years?
 23 A. We have actually right about where the
 24 second arrow is -- in fact I'll point it out here --
 25 we've taken some vinyl lining and installed it right in

Page 357

1 through here in the past just to keep sunlight down and
 2 prevent a lot of growth in snail with the potential of
 3 New Zealand mud snails getting up there. And we've
 4 never seen New Zealand mud snails up there, but it was
 5 just, again, a prophylactic measure that we took. But
 6 that's the only enclosure we've ever done.
 7 Q. Okay. Fair enough. You mentioned that at
 8 one time you had an issue with nitrogen supersaturation
 9 that resulted from air entrainment. And I wasn't clear
 10 where that air entrainment occurred.
 11 Could you explain that to me again.
 12 A. Yes. On the entrance to the small pipeline
 13 about probably 8 feet to 10 feet down on that line, we
 14 have a tube, about a probably 4-inch diameter tube,
 15 that allows air to go from the pipeline and escape. We
 16 did not realize it was pulling it down.
 17 Q. I see. So this was something that didn't
 18 happen with the large pipe down here, but with the
 19 small pipe that is up higher?
 20 A. That's correct.
 21 Q. And you were able to correct that problem?
 22 A. Yes, we did.
 23 Q. There was some mention of TMDLs. And if
 24 you had less water to run through the raceways there
 25 there would be, I guess, less dilution of the load

Page 358

1 that's there?
 2 A. That's correct.
 3 Q. You'd also be raising fewer fish, I take
 4 it?
 5 A. That is probably correct also.
 6 Q. Okay. Which would reduce the load?
 7 A. That is correct.
 8 Q. So you're not in a position to opine one
 9 way or the other whether that would impair your ability
 10 to meet your TMDL requirement?
 11 A. If we had to maintain production at current
 12 levels, it would. If we could reduce production, we
 13 don't know.
 14 Q. And you testified at your deposition that
 15 you could reduce production if you could offset it
 16 somewhere else by maybe picking up production at a
 17 different facility?
 18 A. That is correct.
 19 Q. And is it your understanding that part of
 20 the arrangement between IGWA and Fish and Game is that
 21 if this project is approved and is constructed that
 22 loss production at this hatchery will in fact be offset
 23 at another hatchery?
 24 A. That is my understanding.
 25 Q. Okay. You expressed concern if you did

Page 359

1 lose water of having to move fish to the Riley Creek
 2 raceways sooner.
 3 Is that because the Riley Creek water is of
 4 lower quality than the Tucker Springs water?
 5 A. That is because we would be maxed out on
 6 our densities and flows in the Tucker Springs, and we
 7 would just have to move them over where we have
 8 available water and decrease densities and loadings in
 9 those Tucker Springs raceways.
 10 Q. Okay. And the Riley Creek water is lower
 11 quality than Tucker Springs water?
 12 A. It is at certain times of the year. It
 13 also has fish in the water source, and it was suggested
 14 earlier anything that the Hagerman National Hatchery
 15 has as far as diseases could be transported down to our
 16 facility.
 17 Q. And that's why you use only Tucker Springs
 18 water in your rearing and hatching house?
 19 A. That's correct.
 20 Q. You testified about the number of diseases
 21 that you've experienced over the years in the Fish and
 22 Game hatchery. We heard that probably all hatcheries
 23 experience disease from time to time.
 24 I assume that's something you'd agree with?
 25 A. I would.

Page 360

1 Q. And it's a normal practice of hatchery
 2 management to treat for those diseases and respond to
 3 them?
 4 A. That is correct.
 5 Q. You mentioned that there's certain
 6 limitations on fish with certain diseases that you can
 7 stock in certain waterways; is that right?
 8 A. Yes.
 9 Q. But generally speaking, you are able to
 10 stock the fish that you rear in waterways throughout
 11 the state?
 12 A. Correct, in certain waters.
 13 Q. Any fish that didn't have IHN or the mud
 14 snail could be stocked in any water throughout the
 15 state?
 16 A. I'm not certain of that. We have not done
 17 that. We have fish that have not had IHN that we still
 18 did not want to assume that they were going to be free
 19 of those diseases when we stock them. So again, kind
 20 of the safety precaution, we have not done that.
 21 Q. How many fish do you stock annually from
 22 the Hagerman State Hatchery?
 23 A. It varies. Four years ago it was about
 24 800,000 catchables and 2 to 3 million fingerlings.
 25 Right now we're at about 565,000 catchables and 1 to

Page 361

1 2 million fingerlings.
 2 Q. Okay. And these are fish that you're
 3 stocking for sportsmen to catch?
 4 A. That is correct.
 5 Q. So despite the diseases you've experienced,
 6 and you've been able to treat those, at least to the
 7 extent to enable you to put them out for sportsmen to
 8 catch in Idaho's waterways?
 9 A. That is correct.
 10 Q. How long has the Hagerman State Hatchery
 11 been producing fish for sportsmen?
 12 A. I want to say 1948, something around there.
 13 Q. And the fish that are raised today, those
 14 are going to be planted for sportsmen to catch?
 15 A. That's correct.
 16 MR. TJ BUDGE: I don't have any further
 17 questions. Thank you.
 18 THE HEARING OFFICER: Mr. Simpson?
 19 MR. SIMPSON: No questions.
 20 THE HEARING OFFICER: Mr. Huntley?
 21 MR. HUNTLEY: No questions.
 22 THE HEARING OFFICER: Redirect, Mr. May?
 23 ///
 24 ///
 25 ///

Page 362

1 REDIRECT EXAMINATION
 2 BY MR. MAY:
 3 Q. You mentioned in response to some of
 4 Mr. Budge's questions that all hatcheries have
 5 diseases; correct?
 6 A. Yes. And I should clarify that. Most
 7 hatcheries have diseases.
 8 Q. And you treat them as best you can?
 9 A. That is correct.
 10 Q. One of the ways that you treat them is not
 11 to get them in the first place; correct?
 12 A. That is correct.
 13 Q. So one of the primary preventative measures
 14 for diseases in your hatchery is to keep them out of
 15 your hatchery?
 16 A. That is correct.
 17 Q. And in fact, one of the issues that you
 18 have with Riley Creek is the fact that, as you just
 19 said, you get whatever's in the Hagerman National Fish
 20 Hatchery because that's second-use water from them;
 21 correct?
 22 A. That is correct, the potential exists to
 23 get that disease.
 24 Q. And that's because the diseases are making
 25 their way into your facility through the water that's

Page 363

1 coming out of the National Fish Hatchery?
 2 A. That's what we suspect.
 3 MR. MAY: That's all I've got.
 4 THE HEARING OFFICER: Recross, Mr. Budge?
 5 MR. TJ BUDGE: Just a few.
 6
 7 RECROSS-EXAMINATION
 8 BY MR. TJ BUDGE:
 9 Q. You're not aware of any disease that's been
 10 found in the water source right at the collection box
 11 for the upper pipe?
 12 A. We have not found --
 13 MR. MAY: Beyond the scope of direct --
 14 MR. TJ BUDGE: He was just asking about disease.
 15 MR. MAY: -- or scope of cross.
 16 THE HEARING OFFICER: Overruled. It's close
 17 enough.
 18 Q. (BY MR. TJ BUDGE): You can go ahead and
 19 answer.
 20 A. We have not found any diseases up in the
 21 water source itself.
 22 Q. So to your knowledge, there's nothing that
 23 would prevent this source of water from being used to
 24 raise fish at Rangen's facility either?
 25 A. That is correct.

Page 364

1 MR. TJ BUDGE: Nothing further.
 2 THE HEARING OFFICER: Okay. Any questions,
 3 Mr. Simpson?
 4 MR. SIMPSON: No questions.
 5 THE HEARING OFFICER: Mr. Huntley?
 6 MR. HUNTLEY: I have a couple.
 7
 8 RECROSS-EXAMINATION
 9 BY MR. HUNTLEY:
 10 Q. During the, say, from February through May,
 11 because of the shortage of water that you have, do you
 12 receive water from the Big Bend Ditch?
 13 A. Yes, we do.
 14 Q. Approximately how many cfs?
 15 A. It varies. This year I think we had 4
 16 additional cfs that the Big Bend Ditch delivered to us.
 17 Q. And that is delivered during the three or
 18 four months before Big Bend irrigates, uses it for
 19 irrigation --
 20 A. That's correct.
 21 Q. -- as to supplement your supply to raise
 22 the fish --
 23 A. That is correct.
 24 Q. -- before they go out to the ponds and
 25 streams?

Page 365

1 A. That is correct, during your heightened
2 production months.
3 MR. HUNTLEY: No other questions.
4 THE HEARING OFFICER: Okay.
5 MR. TJ BUDGE: Director.
6 MR. MAY: Can I have a couple of follow-up after
7 Mr. Budge's?
8 MR. TJ BUDGE: You can go first. You might
9 answer them.
10 MR. MAY: I probably won't because I think you
11 responded to him, but I can go in whatever order you
12 want.
13 THE HEARING OFFICER: I guess I was ready to say
14 we're done.
15 What's the reason for the follow-up?
16 MR. TJ BUDGE: We just wanted to follow up on
17 the Big Bend Ditch questions.
18 THE HEARING OFFICER: Oh.
19 MR. MAY: I wanted to follow up on Mr. Budge's.
20 THE HEARING OFFICER: So we're reopening all of
21 the examination now? My take was, Mr. May, that
22 Mr. Budge's question was not outside the scope. We
23 were talking about diseases again.
24 MR. TJ BUDGE: Oh, no. I think there was just a
25 question to follow up on Mr. Huntley's questions about

Page 366

1 the Big Bend Ditch.
2 THE HEARING OFFICER: No, Mr. May wants to delve
3 into now your questions that were asked as well.
4 MR. TJ BUDGE: Oh.
5 THE HEARING OFFICER: I don't want any more
6 examination. I think we have enough from Mr. Chapman.
7 Thank you, Mr. May.
8 Mr. Chapman, you're finished.
9 MR. MAY: Your Honor -- or, Director, I guess
10 Mr. Budge was allowed to ask a question about testing
11 that was done in Upper Tucker Springs which was clearly
12 beyond what we were talking about. And I guess I think
13 I would like the chance to ask a couple of questions
14 with regard to that testimony.
15 THE HEARING OFFICER: I don't know. What's the
16 pleasure of the parties? I don't want to be an
17 obstructionist.
18 MR. MAY: And I don't want to be difficult
19 either, Director. But it raises some questions.
20 THE HEARING OFFICER: All right. Let's get it
21 in. About five to ten minutes.
22 MR. MAY: I don't have that long.
23 THE HEARING OFFICER: Mr. May.
24 ///
25 ///

Page 367

1 FURTHER REDIRECT EXAMINATION
2 BY MR. MAY:
3 Q. Mr. Chapman, you responded that you're not
4 aware of any particular disease in the Tucker Springs
5 than that lower pool.
6 Are you aware of any tests that have been
7 done?
8 A. I am not, that I can recall.
9 Q. You're not aware of any testing, positive
10 or negative, for those diseases other than the bryozoan
11 tests that we talked about; correct?
12 A. That's correct.
13 Q. And you don't have the results of that
14 test?
15 A. That is correct.
16 MR. MAY: That's all that I've got, Director.
17 Thank you.
18 THE HEARING OFFICER: Mr. Budge --
19 MR. TJ BUDGE: Nothing further.
20 THE HEARING OFFICER: -- questions about the Big
21 Bend?
22 MR. TJ BUDGE: Maybe for my own curiosity.
23 ///
24 ///
25 ///

Page 368

1 FURTHER RECROSS-EXAMINATION
2 BY MR. TJ BUDGE:
3 Q. Mr. Chapman, could you -- where does the
4 water from Big Bend Ditch come that you're using? You
5 may have explained it in those photographs, but I
6 didn't make that connection there.
7 A. Yes. And it wasn't really clear. On one
8 of the photographs, if you recall that jump screen,
9 above that about probably 20 feet we have installed a
10 gate and a supplemental pipe that will deliver water
11 down to our large springs only.
12 There's another supplementation line that
13 actually comes up in the springs and delivers that we
14 showed that delivers water into the small pipeline.
15 Q. And so when I was talking to you, we were
16 looking at a photograph in the SPF report.
17 Is this pipe shown in Figure 2 the one
18 you're referring to?
19 A. That's correct.
20 Q. Okay. So the -- your upper -- your lower
21 pond collection box for the upper pipe, it gets water
22 from this pond here and it also can get the Big Bend
23 water from the upper pond?
24 A. That's correct.
25 MR. TJ BUDGE: Nothing further.

Page 369

1 THE HEARING OFFICER: The only other subject
 2 that piques my interest is whether there's a water
 3 right for that early diversion, but I don't want to ask
 4 any questions. Thank you, Mr. Chapman.
 5 Okay. I would like to take a brief break
 6 again because I have a couple of orders related to
 7 motions in limine that I need to sign and distribute to
 8 the parties. So let's come back about 11:00, if we
 9 can. Thanks.
 10 (Recess.)
 11 (Mr. Henslee joins the proceedings.)
 12 THE HEARING OFFICER: Okay. We're on the record
 13 again after a late-morning recess.
 14 And I recognize with the help of
 15 Mr. Huntley that Mr. Henslee, Mike Henslee, of
 16 Salmon -- let's see, is it Salmon Falls or Salmon
 17 River?
 18 MR. HENSLEE: Salmon Falls Land & Livestock.
 19 THE HEARING OFFICER: Okay. Salmon Falls Land &
 20 Livestock.
 21 Mr. Henslee, thanks for coming today.
 22 And the parties have agreed that he can
 23 participate as a party in this matter. Coming late I
 24 am -- and particularly because he's representing a
 25 corporate entity, I'll allow him to participate.

Page 370

1 But the participation will be limited to
 2 the witnesses that are called, Mr. Henslee, and your
 3 own testimony.
 4 Then we have a couple of stipulations that
 5 I anticipate will be read into the record.
 6 And I'm also anticipating, since you're at
 7 the roster or the pulpit or whatever it is you want to
 8 preach from, Mr. Simpson, that you're presenting today
 9 those stipulations, or at least one.
 10 MR. SIMPSON: Yeah, I won't preach. I'll leave
 11 that to others.
 12 THE HEARING OFFICER: Okay.
 13 MR. SIMPSON: But I will make a statement.
 14 THE HEARING OFFICER: Okay. All right. Thank
 15 you. Mr. Simpson, go ahead.
 16 MR. SIMPSON: Thank you, Mr. Hearing Officer.
 17 John Simpson again for Buckeye Farms.
 18 And I would like to read into the record a
 19 proposed stipulation between Buckeye Farms and IGWA
 20 regarding certain matters with respect to their water
 21 rights. And so I'll do so, and then look for counsel
 22 for IGWA to acknowledge their agreement with that. And
 23 I'll give them an opportunity, since we only have one
 24 copy, maybe we'll share it as I read through it. Maybe
 25 that's a better way to go about it.

Page 371

1 As between the stipulation between Buckeye
 2 Farms and IGWA, we would note the following have been
 3 stipulated to.
 4 First, the parties would stipulate to the
 5 admission of Buckeye Exhibits 4000 through 4005.
 6 Second, the parties, that is IGWA and
 7 Buckeye Farms, would stipulate that based upon
 8 historical flows in Riley Creek and diversion records,
 9 as depicted in Exhibit 4005, the second mitigation
 10 plan, if developed, will in fact reduce flows available
 11 to Buckeye's Hunt Ditch water rights identified in
 12 Exhibits 4000 through 4004 at some times during the
 13 year or years.
 14 Third, stipulate that such reductions would
 15 have to be mitigated prior to the development of the
 16 second mitigation plan, if approved.
 17 And fourth, that based upon Exhibit 4005
 18 the parties do not dispute that Buckeye has and would
 19 put water provided at the Buckeye Ditch diversion under
 20 existing flows or a mitigation plan to beneficial use
 21 during times of need.
 22 That's what's been proposed. Buckeye would
 23 accept those terms, as I've recited them into the
 24 record. And I would then turn it to Mr. Budge.
 25 MR. RANDY BUDGE: IGWA would so stipulate and

Page 372

1 agree with Buckeye.
 2 THE HEARING OFFICER: Okay. Comments, Mr. May?
 3 MR. MAY: Your Honor, we have discussed this as
 4 well, and we agree to the stipulation with one
 5 reservation with regard to the third portion of it.
 6 The stipulation which reads, "Stipulate
 7 that such reductions would have to be mitigated prior
 8 to the development of the second mitigation plan." And
 9 the qualification there being that Rangen reserves the
 10 right to continue to object to the approval of a
 11 mitigation plan prior to dealing with those issues of
 12 injury.
 13 But with that qualification, we agree to
 14 the admission of the exhibits and the rest of the
 15 stipulation.
 16 THE HEARING OFFICER: Okay. What I hear you
 17 saying, Mr. May, is that you don't want this
 18 stipulation to somehow compromise your ability to
 19 challenge the mitigation plan that's now before the
 20 Director and the Department.
 21 Is that what I'm hearing?
 22 MR. MAY: Exactly.
 23 THE HEARING OFFICER: Okay.
 24 MR. MAY: We don't want to waive any arguments
 25 by this, but we agree to the admission of the exhibits.

Page 373

1 We agree to the stipulation that they're short.
 2 THE HEARING OFFICER: Okay. And I don't see
 3 that the parties would have -- take issue with the
 4 particular reservation that you've placed.
 5 Mr. Simpson?
 6 MR. SIMPSON: No, your Honor, other than I
 7 probably won't leave immediately. But if I could be
 8 excused, perhaps at the lunch break, I would appreciate
 9 that.
 10 THE HEARING OFFICER: Sure.
 11 MR. SIMPSON: Other than I might not provide
 12 that beverage.
 13 MR. RANDY BUDGE: We intended that as part of
 14 the stipulation.
 15 THE HEARING OFFICER: As long as all conditions
 16 precedent are satisfied. Okay.
 17 MR. MAY: Director.
 18 THE HEARING OFFICER: Yes, Mr. May.
 19 MR. MAY: We have also got a stipulation between
 20 IGWA and Rangen with regard to the admission of
 21 exhibits, as well as a stipulation with regard to the
 22 calling of Dr. Brockway.
 23 We have agreed to the admission of the
 24 following exhibits: 2016, 2017, 2047, 2048, and 2049.
 25 And based upon that stipulation, Rangen

Page 374

1 then can agree to avoid calling Dr. Brockway, so we
 2 won't need to call him.
 3 THE HEARING OFFICER: Can you just summarize for
 4 me what these exhibits are, Mr. May.
 5 MR. MAY: Sure. But I'll have to get some notes
 6 to do that. I don't...
 7 THE HEARING OFFICER: I just want to know what
 8 the exhibits are for my own benefit --
 9 MR. MAY: Sure.
 10 THE HEARING OFFICER: -- so that I can go back
 11 and look at them.
 12 MR. MAY: Yeah. And I just grabbed the list.
 13 THE HEARING OFFICER: Okay. Thank you.
 14 MR. MAY: Exhibit 2016 is the settlement
 15 agreement of the Idaho Fish and Game protest to Buckeye
 16 Farms' water rights 3687 dash 85.
 17 The 2017 is the Idaho Fish and Game's
 18 protest to that same water right.
 19 24- -- 2047 is an analysis that was
 20 prepared by Dr. Brockway. And.
 21 THE HEARING OFFICER: Of?
 22 MR. MAY: Of water rights.
 23 THE HEARING OFFICER: On Tucker Springs and
 24 Riley Creek?
 25 MR. MAY: Yes.

Page 375

1 THE HEARING OFFICER: Okay.
 2 MR. MAY: And 2048 and 2049 are separate
 3 spreadsheets related to water rights on Riley Creek and
 4 Tucker Springs.
 5 THE HEARING OFFICER: Okay.
 6 MR. HAEMMERLE: Director, can we have a
 7 two-minute break?
 8 THE HEARING OFFICER: Sure. That would be fine.
 9 I mean let's go off the record.
 10 (Recess.)
 11 THE HEARING OFFICER: Mr. May.
 12 MR. MAY: With the stipulation to the admission
 13 of those exhibits, we can then avoid calling
 14 Dr. Brockway.
 15 THE HEARING OFFICER: Okay. And this is all --
 16 MR. MAY: I guess we need to discuss with Randy
 17 that I've correctly --
 18 MR. RANDY BUDGE: We accept that.
 19 MR. MAY: -- correctly set that out.
 20 THE HEARING OFFICER: Okay. Mr. Budge.
 21 MR. RANDY BUDGE: Okay. Are we back on?
 22 THE HEARING OFFICER: We are back on the record.
 23 MR. RANDY BUDGE: IGWA would accept Rangen's
 24 offer that Dr. Brockway not testify and to the
 25 admission of Exhibits -- the four listed 2016, 2047,

Page 376

1 2048, and 2049.
 2 MR. MAY: Did we get 2017?
 3 MR. RANDY BUDGE: And 2017. Excuse me. Yeah.
 4 THE HEARING OFFICER: Okay. They're received
 5 into evidence.
 6 (Exhibits 2016, 2017, and 2047-2049
 7 received.)
 8 THE HEARING OFFICER: We want some
 9 clarification, I guess, Mr. Simpson, on the stipulation
 10 of exhibits that were stipulated to, because as I heard
 11 the presentation what we referred to was 4000 and 4005,
 12 but then there was a later reference to 4000 through
 13 4005. And so I'm --
 14 MR. SIMPSON: Yes, Mr. Director. The
 15 stipulation between IGWA and Buckeye Farms are for
 16 Exhibits 4000, 4001, 4002, 4003, 4004, and 4005.
 17 THE HEARING OFFICER: Okay. Great. And they're
 18 received into evidence.
 19 (Exhibits 4000-4005 received.)
 20 THE HEARING OFFICER: Because you've reduced it
 21 to writing, is it possible that you can submit it in
 22 some form to the Director into the record?
 23 MR. RANDY BUDGE: That's correct.
 24 MR. SIMPSON: Okay. Yeah.
 25 THE HEARING OFFICER: Okay. And everybody has a

Page 377

1 copy of the orders now regarding the motions in limine.
 2 And there's one restriction, as I understand it, that
 3 came out of the motion. And it was related to the
 4 admission of the letter that was discussed that was
 5 distributed to the parties sent by IGWA to the other
 6 parties/protestants in the matter.
 7 So the Director won't receive the letter
 8 into evidence, based on my review of the letter.
 9 And are there questions? I suppose we
 10 could talk about it. I don't intend to change the
 11 ruling.
 12 Are we ready for the next witness,
 13 Mr. Haemmerle?
 14 MR. HAEMMERLE: We are, Director. Rangen would
 15 call Frank Erwin.
 16 THE HEARING OFFICER: Okay. Mr. Erwin, come
 17 forward, please. Raise your right hand.
 18
 19 FRANK CLARENCE ERWIN,
 20 having been called as a witness by Rangen, Inc., and
 21 duly sworn to tell the truth relating to said cause,
 22 testified as follows:
 23
 24 THE HEARING OFFICER: Thank you, Frank. Have a
 25 seat.

Page 378

1 Mr. Haemmerle.
 2
 3 DIRECT EXAMINATION
 4 BY MR. HAEMMERLE:
 5 Q. Good morning, Mr. Erwin.
 6 A. Good morning.
 7 Q. Frank, please state your full name,
 8 spelling your last name for the record.
 9 A. Frank Clarence Erwin, E-r-w-i-n.
 10 Q. Frank, as we go through this today, I've
 11 provided you a laser pointer up there. And the top
 12 button is the pointer. It's that thing that looks like
 13 a pen that's right in front of you. It's right in
 14 front of you, Frank.
 15 See that thing?
 16 A. Oh, this.
 17 Q. Thanks.
 18 Frank, would you please state what your
 19 occupation is.
 20 A. I'm the watermaster for Water District 36A.
 21 Q. And, Frank, how long have you been the
 22 watermaster for 36A?
 23 A. Since 1994.
 24 Q. And who do you report to as the
 25 watermaster?

Page 379

1 A. I report to the Department of Water
 2 Resources and to the board, the elected board of the
 3 Water District.
 4 Q. And what are your duties as watermaster for
 5 36A?
 6 A. My duties are to administer and deliver the
 7 water that's available to the water rights within the
 8 District.
 9 Q. Does your -- does 36A essentially cover the
 10 Hagerman Valley?
 11 A. 36A is all the tributaries into and from
 12 Billingsley Creek and Riley Creek. So yes, it
 13 generally covers the entire Hagerman Valley.
 14 Q. Okay. You in fact administer water coming
 15 out of Tucker Springs and Riley Creek?
 16 A. Yes, I do.
 17 Q. Frank, Justin has pulled up Exhibit 1138.
 18 Do you generally recognize the area that's
 19 depicted in Exhibit 1138?
 20 A. Yes, I do.
 21 Q. Is that the Upper Tucker Springs and the
 22 lower Upper Tucker Springs area?
 23 A. Let me ask you this: Do you have a
 24 photograph I could look at here on the table? I'm not
 25 able to see it well enough to...

Page 380

1 Yes, it is. I agree.
 2 Q. Frank, the last time you testified, I think
 3 you came here with a book for Billingsley Creek area.
 4 Do you recall that?
 5 A. Yes, sir.
 6 Q. Do you have a similar book for the Tucker
 7 Springs/Riley Creek source?
 8 A. Yes, I do.
 9 Q. Justin, can you pull up Exhibit 2006.
 10 Frank, we've pulled up Exhibit 2006A.
 11 Do you recognize that document?
 12 A. Yes, I do.
 13 Q. Is that the cover sheet for what we call
 14 your book for the Riley Creek/Tucker Springs complex?
 15 A. Yes, it is.
 16 Q. Frank, we've marked your book
 17 Exhibits 2006A through I -- H. I'm sorry. Frank, I'll
 18 represent to you that we have marked your so-called
 19 book for the Riley Creek/Tucker Springs complex as
 20 Exhibits 2006A through I. And you brought that with
 21 you during your deposition.
 22 Do you remember that?
 23 A. Yes, I did.
 24 Q. We had that whole book copied.
 25 Do you recall that?

Page 381

1 A. Yes, sir.
 2 MR. HAEMMERLE: At this point in time, Director,
 3 I'd offer Exhibit 2006A through I.
 4 MR. RANDY BUDGE: Counsel, we have no objection
 5 to those exhibits. I think maybe to expedite matters,
 6 I assume that you want to use for this witness
 7 Exhibits 2000A (sic) through I and all the way through
 8 2014, various water right records.
 9 MR. HAEMMERLE: That is correct.
 10 MR. RANDY BUDGE: We would just stipulate to the
 11 admission of all of those so we can --
 12 MR. HAEMMERLE: Actually, Counsel, that's
 13 probably -- yeah, 2014.
 14 So, Director, with that, we would offer
 15 2006A through I, as well as 2007 through 2014.
 16 THE HEARING OFFICER: Okay. Mr. Simpson, any
 17 objection?
 18 MR. SIMPSON: None.
 19 THE HEARING OFFICER: Mr. Huntley, any
 20 objection?
 21 MR. HUNTLEY: None.
 22 THE HEARING OFFICER: Mr. Henslee, any
 23 objection?
 24 MR. HENSLEE: None.
 25 THE HEARING OFFICER: Okay. The documents

Page 382

1 marked as Exhibits 2006A through 2006I and 2007 through
 2 2014 are received into evidence.
 3 (Exhibits 2006A-2006I and 2007-2014
 4 received.)
 5 Q. (BY MR. HAEMMERLE): Frank, I've pulled up
 6 Exhibit 1138, and you should have a photograph before
 7 you. We're going to talk about various diversions
 8 throughout your testimony. One of the diversions I
 9 want to talk about is the Big Bend Ditch Upper Tucker
 10 Springs diversion.
 11 A. Yes, sir.
 12 Q. Is that depicted in Exhibit 1138?
 13 A. Yes, sir.
 14 Q. Is that diversion generally located in that
 15 area that I have a laser pointer to?
 16 A. Yes, it is.
 17 Q. There's also something called the Idaho
 18 Power Upper Tucker Springs diversion.
 19 Are you aware of where that's located?
 20 A. Yes, I am.
 21 Q. Is that located in approximately that
 22 position there that I've pointed out?
 23 A. It's that pipeline, yes, sir.
 24 Q. There are other diversions for the Idaho
 25 Fish and Game facility, what you call the small pipe

Page 383

1 and the large pipe?
 2 A. Yes, sir.
 3 Q. If you could, Frank, with your laser
 4 pointer kind of show where each one of those diversions
 5 are located. It's the top button.
 6 A. That would be the small pipe (indicating)
 7 right in that area, and the large pipe is down in this
 8 area here (indicating).
 9 Q. And you keep flow records or flow records
 10 are kept for each and every one of those diversions;
 11 correct?
 12 A. Yes, they are.
 13 Q. If we could pull up Exhibit 2008.
 14 Frank, you should have a book of exhibits
 15 in front of you. The first one we're pulling up
 16 Exhibit 2008.
 17 (Mr. Simpson leaves the proceedings.)
 18 Q. (BY MR. HAEMMERLE): Do you see that
 19 document, Frank?
 20 A. Yes, sir.
 21 Q. What does 2008 purport to be?
 22 A. That is the annual summary for the Water
 23 District that is submitted to the Department on an
 24 annual basis, and it is for the Big Bend Ditch Upper
 25 Tucker diversion.

Page 384

1 Q. Who keeps these particular measurements or
 2 who takes these particular measurements?
 3 A. These measurements are taken weekly by a
 4 designated individual by the Big Bend Ditch Company.
 5 These particular readings were probably taken by Leo
 6 Ray or they may have been taken by Bud Huntley or a
 7 representative of the ditch company.
 8 Q. And Exhibit 8 (sic), Frank, is a summary of
 9 water flows for the Big Bend Ditch diversion for the
 10 year 2013?
 11 A. Yes, it is.
 12 Q. Frank, do you know the authorized -- what
 13 the authorized diversion is, total diversion is for the
 14 Big Bend Ditch upper springs?
 15 A. For Upper Tucker the authorized diversion
 16 would be 20 cubic foot per second.
 17 Q. In reviewing Exhibit 2008, is there any
 18 time at all during 2013 that the Big Bend Ditch is able
 19 to realize 20 cfs of water?
 20 A. No.
 21 Q. And do you know what the reason for that
 22 is?
 23 A. I would say at this point in time the Big
 24 Bend Ditch was able to manage with less than their
 25 20 feet per second water right out of Upper Tucker and

Page 385

1 allow that water to be used by either the Fish and Game
 2 or downstream users. I would go so far as to say that
 3 they are able to accomplish this because of
 4 conservation methods that they have accomplished on
 5 their delivery system.
 6 Q. Is it a fair statement, Frank, to say that
 7 the reason that the Big Bend Ditch diversion is not
 8 able to realize 20 cfs of water is because there's
 9 insufficient flows from the Tucker Springs complex?
 10 A. At times, yes.
 11 Q. And again, there's not a single day in 2013
 12 where the Big Bend Ditch is able to realize or did
 13 realize 20 cfs of water; correct?
 14 A. That's true.
 15 Q. Frank, the next one I'd like to pull up or
 16 have you pull up in front of you is Exhibit 2009.
 17 Do you see that document?
 18 A. Yes, sir.
 19 Q. Again, is this the reported flows for the
 20 Idaho Power Ditch diversion?
 21 A. Yes, it is.
 22 Q. Do you know what the allowable or diversion
 23 rate is for this particular diversion?
 24 A. I can't recall exactly off the top of my
 25 head, but I'm thinking it's 10.3-something.

Page 386

1 Q. Does 11.87 ring a bell?
 2 A. Closer, yes.
 3 Q. Okay. I think that's what you testified
 4 during your deposition.
 5 Do you recall that?
 6 A. No. But whatever I said, I would have had
 7 it memorized for that deposition, yes.
 8 Q. Okay. Do you believe the allowable
 9 diversion rate for this pipeline is 11.87 cfs of water?
 10 A. Yes, sir.
 11 Q. How are these particular flows reported in
 12 Exhibit 2009?
 13 A. These flows are accumulated through a data
 14 logger and a meter that Idaho Power maintains on that
 15 pipeline.
 16 Q. Okay. And then Idaho Power in turn reports
 17 those to you or the Department of Water Resources, and
 18 Exhibit 2009 is a summary of flows for the year 2013?
 19 A. Yes, sir.
 20 Q. Again, Frank, in reviewing Exhibit 2009, is
 21 there a single day where the flows in that pipeline
 22 were 11.87 cfs of water?
 23 A. No, sir.
 24 Q. Do you know a reason for that?
 25 A. The spring flows are diminished in that

Page 387

1 particular point of diversion, and that's all the water
 2 that's available -- is what's reported, I should say.
 3 The 11.87 is not available, so they are not able to
 4 divert it.
 5 Q. The next document, Frank, that you showed
 6 us during your deposition was Exhibit 2010.
 7 Can you pull that up.
 8 Do you recognize that document?
 9 A. Yes, sir.
 10 Q. And what is Exhibit 2010?
 11 A. That's the annual summary for the Idaho
 12 Department of Fish and Game, Upper Tucker, small pipe
 13 diversion.
 14 Q. I think when you testified at your
 15 deposition you explained that the water rights for the
 16 Idaho Fish and Game facility can be diverted either out
 17 of the small pipe or the large pipe; correct?
 18 A. Yes, sir.
 19 Q. Okay. So Exhibit 2010 are the reported
 20 flows for the Idaho Fish and Game facility out of the
 21 small pipe for the year 2013; correct?
 22 A. Yes, sir.
 23 Q. At the same time, Frank, why don't you pull
 24 up 2011.
 25 Do you have that in front of you, Frank?

Page 388

1 A. Yes, sir.
 2 Q. Okay. 2011 are the reported flows for the
 3 Idaho Fish and Game facility for the large pipe for the
 4 year 2013?
 5 A. Yes, sir.
 6 Q. And again, the Fish and Game water rights
 7 can be delivered either out of the small pipe or the
 8 large pipe; correct?
 9 A. Yes, sir, or a combination of both of them.
 10 Q. Do you know what the total allowable or
 11 adjudicated flows for the Fish and Game facility are?
 12 A. If I remember right, it's 84 cubic foot per
 13 second.
 14 Q. All right. And I think you then testified
 15 that you believed it was either 84 or 87 if you
 16 included the 3 cfs that the Big Bend delivers.
 17 A. Yes, sir.
 18 Q. Okay. So the total allowable flow would
 19 either be 84 or 87; correct?
 20 A. Yes, sir.
 21 Q. Justin, why don't you pull up the first
 22 line on Exhibit 2010.
 23 Frank, I had Justin pull up the reported
 24 flows for the first day of each month for June through
 25 November.

Page 389

1 Do you see that?

2 A. Yes, sir.

3 Q. The reported flows seem to dip greatly in

4 August through October, in fact through November.

5 Do you know why that is?

6 A. I think it's because of the way the

7 hatchery manager manages the water flows. I don't know

8 exactly the reason why it goes down as low as it does,

9 but I think it's because they have very -- or a lesser

10 demand for water in that particular pipe system.

11 Q. Okay. If you look across the first Day One

12 for each month, it appears that the highest flow

13 achieved in 2013 was 7.56 cfs of water in March.

14 Do you see that?

15 A. Yes, sir.

16 Q. Justin, let's focus on 2011 for a second,

17 Frank.

18 Frank, I had Justin pull up the flows for

19 months of May through December on the large pipe.

20 Do you see that?

21 A. Yes, sir.

22 Q. And it appears that for Day One for each

23 month the highest flow rate appears to be 47.4.

24 Do you see that in October?

25 A. Yes, sir.

Page 390

1 Q. So if you look at Exhibits 2010 and 2011,

2 it appears, Frank, that the Department -- or the

3 Department of Fish and Game achieves about a high 40s

4 of their total allowed flows; is that a fair statement?

5 A. Yes, it is.

6 Q. So they achieve flow rates somewhere in the

7 neighborhood of 48 cfs out of a possible 84 cfs?

8 A. Yes, sir.

9 Q. Do you know why that is?

10 A. That's all the water that's available in

11 the spring source.

12 Q. So it's fair to say that for every single

13 diversion out of the Upper Tucker Springs complex or

14 the lower upper springs complex there's not a single

15 water right that is able to divert at the adjudicated

16 rate; is that a true statement?

17 A. That's a true statement, yes, sir.

18 Q. And your testimony is that you believe

19 that's true simply because there's not enough water?

20 A. Yes, sir.

21 Q. Frank, you've been the watermaster for 36A

22 since 1996; correct?

23 A. Yes, sir.

24 Q. Could you estimate or tell me or testify

25 today how much you've seen flows in 36A, Billingsley

Page 391

1 Creek, Tucker Springs, et cetera, decline year in and

2 year out -- or since 1996.

3 A. I haven't compiled the data to explicitly

4 define a percentage or a quantity for today. I could

5 make the statement in fairness that they have declined.

6 I couldn't say how much today. I don't know.

7 Q. I think at your deposition you ventured an

8 amount of about 25 percent.

9 A. That's very likely, yes, sir.

10 Q. Is that a fair percentage?

11 A. Yes, it is.

12 Q. Frank, I'm showing you what's been

13 marked -- and, Justin, if you could pull it up --

14 Exhibit 2012.

15 Frank, do you recognize Exhibit 2012?

16 A. Yes, I do.

17 Q. What does Exhibit 2012 represent?

18 A. That represents readings that I took on all

19 the diversions from the Upper Tucker complex and the

20 e-mail from Michele, which has the recorded diversion

21 on the big and the small pipe on the 14th, which was

22 the same day that I took the readings on the weirs and

23 the meter for the Idaho Power Pipe Ditch.

24 It is a specific measurement at one day at

25 one point in time to show the total flow of that Upper

Page 392

1 Tucker complex. On that particular day adding all the

2 different diversions together, total flow out of the

3 Upper Tucker complex would have been 74.95 cubic foot

4 per second.

5 Q. And can you tell me what the total

6 adjudicated or allowable flows are, or have you done

7 that math?

8 A. I haven't done that math.

9 Q. But you testified to what those flows were

10 just now; correct?

11 A. Yes. Yes. I'd have to add them up.

12 Q. Frank, there's kind of a table in the lower

13 left-hand portion of Exhibit 2012.

14 Do you know what that table represents or

15 what those numbers mean?

16 A. On the lower left on the same page there?

17 Q. Correct.

18 A. Those are readings that the gauge on the

19 pipes take at 15-minute intervals. So the Department

20 has those readings signaled, I believe, directly to

21 Twin Falls. So the Department of Water Resources has

22 those measurements every 15 minutes on the pipeline.

23 Q. So the numbers in that table are readings

24 from the data loggers for the large and small pipe?

25 A. Yes, they are, uh-huh.

Page 393

1 Q. Obviously the column -- the middle column
2 would be the results of the large pipe; correct?
3 A. Yes, sir, uh-huh.
4 Q. And the smaller numbers would be the
5 results from the small pipe?
6 A. Yes, sir.
7 Q. And did you have these numbers prepared so
8 you would have full knowledge of what those readings
9 were for your deposition that we took a couple weeks
10 ago?
11 A. Yes, sir.
12 Q. Frank, if we can have you look at what's
13 been marked as Exhibit 2013.
14 Do you recognize that document?
15 A. Yes, sir.
16 Q. What is this -- what is this document and
17 why did you prepare it?
18 A. I prepared this document to present at a
19 meeting with the interested parties, basically Leo Ray,
20 the Department of Fish and Game, the Big Bend Ditch,
21 to -- and this meeting took place approximately three
22 years ago last January.
23 It was to be able to discuss agreements as
24 to how to manage what water was available in the Upper
25 Tucker complex to try to satisfy everyone's needs

Page 394

1 that -- to the best of the ability of what water we had
2 to work with.
3 Q. Okay. I think, Frank, the last time you
4 testified here involved Billingsley Creek, and you
5 stated that you had discussions with Billingsley Creek
6 people about trying to get along the best they can;
7 correct?
8 A. Yes, sir.
9 Q. Okay. So this was a similar meeting for
10 Riley Creek users?
11 A. Yes, it was.
12 Q. All right. And the goal is a couple
13 things.
14 The first goal is an acknowledgment by
15 everyone that nobody's getting their full adjudicated
16 water right; correct?
17 A. Yes, sir. That was the purpose of the
18 chart, was to inform everyone of everyone else's water
19 rights, their decreed diversion volumes, and the
20 priority dates so that everyone understood where they
21 ranked in -- within the order of priority and delivery.
22 Q. All right. And you do this for each of the
23 source complexes that you are the watermaster for;
24 correct?
25 A. Yes.

Page 395

1 Q. And the idea is to get the people who are
2 all short of water to somehow cooperate and get
3 whatever water they can; correct?
4 A. Yes.
5 Q. Okay.
6 A. I would phrase it this way: We try to make
7 the most beneficial use of what's available.
8 Q. All right. Now, since the flows have been
9 declining, you testified you thought those were about
10 25 percent since the time you started?
11 A. Yes, sir.
12 Q. Has it been more difficult to get everyone
13 to agree to cooperate, given the shortages and
14 declining water rates?
15 A. Yes, sir.
16 Q. Have you issued any curtailment orders in
17 36A?
18 A. Yes, sir.
19 Q. When did you issue your first curtailment
20 order?
21 A. The order was actually mailed yesterday.
22 Q. And that was for which water source?
23 A. That was for a water source Billingsley
24 Creek.
25 Q. Is that the first curtailment order that

Page 396

1 you've issued in the whole time you've been the
2 watermaster?
3 A. Yes, it is.
4 Q. Have you had any discussions with your
5 water board this year about the continuing problem of
6 water shortages in the Hagerman Valley?
7 A. Yes, I have.
8 Q. What has your board directed you to do?
9 MR. RANDY BUDGE: I'm going to object just on
10 the basis of relevancy on how far we're going into what
11 boards may or may not do on administration of water on
12 various sources.
13 Is that relevant to this proceeding?
14 MR. HAEMMERLE: I'll tell you why it's relevant,
15 Director, if I can speak.
16 THE HEARING OFFICER: Okay.
17 MR. HAEMMERLE: It's clear that what IGWA is
18 relying upon is the ability, I think, of Mr. Erwin and
19 the people in the Hagerman Valley to continue to
20 cooperate in times of shortages to get along so that
21 they can move water from source to source.
22 Frank's going to testify that his water
23 board has directed him to start issuing water rights in
24 priority because it's become so difficult.
25 So I think it goes directly to the issue of

Page 397

1 whether we can/should transfer water from one source to
 2 another.
 3 THE HEARING OFFICER: I'll allow further
 4 exploration. Objection overruled.
 5 Mr. Haemmerle.
 6 Q. (BY MR. HAEMMERLE): Going backwards again,
 7 Frank, since we were interrupted in our discussion,
 8 historically you've been able to have people cooperate
 9 to achieve water when nobody's getting their full
 10 adjudicated rate; correct?
 11 A. That's correct.
 12 Q. And your board has been aware of your
 13 position and your efforts; correct?
 14 A. Yes, they are.
 15 Q. Has the board given you different direction
 16 this year?
 17 A. They -- at the board meeting in December
 18 last year prior to our annual meeting for this year the
 19 comment was made by one of the board of directors of
 20 Water District 36A that they thought the watermaster
 21 should begin to perform a priority list on the
 22 particular irrigation diversions within the District,
 23 especially on the Billingsley Creek side.
 24 At the time I talked him out of doing it
 25 this year and allowing me this year to accomplish that.

Page 398

1 It's something that takes quite a while to set and go
 2 through all the water rights to determine actually
 3 what's in priority and what is not. It's very
 4 complicated and it's very time-consuming.
 5 And so I actually got him stalled off until
 6 this coming winter. I'll have to prepare, especially
 7 on the major diversions, a list of priorities and
 8 determine who's in and who's not, I guess.
 9 Q. Okay. Essentially your board has directed
 10 you to enforce the prior-appropriation doctrine;
 11 correct?
 12 A. Yes, they have.
 13 Q. In times of shortages your board has
 14 ordered you to start curtailing people who are out of
 15 priority; correct?
 16 A. Yes, sir.
 17 Q. And that similar model is used everywhere
 18 throughout the state; correct?
 19 A. Yes, it is.
 20 Q. Justin, if you could pull up Exhibit 1110.
 21 Frank, can you see Exhibit 1110 in front of
 22 you?
 23 A. Yes, sir.
 24 Q. Do you know what Exhibit 1110 is?
 25 A. It's a proposal presented by Speaker Bedke,

Page 399

1 if I remember right.
 2 Q. I just want to ask you a few questions
 3 about this, Frank.
 4 Were you consulted in the preparation of
 5 this document, Exhibit 1110, entitled "Thousand Springs
 6 Water Supply Settlement Framework"?
 7 A. Not this specific document, no.
 8 Q. This document has some interesting aspects
 9 to it, particularly under the "Objectives" provision.
 10 Do you see that?
 11 A. Yes, sir.
 12 Q. Do you see objective C, "Provide safe
 13 harbor for junior groundwater users from delivery
 14 calls"?
 15 A. Yes, sir.
 16 Q. Do you think that's a good idea?
 17 A. No, sir.
 18 Q. And again, I think we discussed the
 19 concept, and you've testified to, that every source
 20 that you administer is short of water; correct?
 21 A. Yes, it is.
 22 Q. Do you believe it's a good idea to move
 23 water from one source that doesn't have all their water
 24 to another source?
 25 A. No. I don't believe it's a good idea, no.

Page 400

1 Q. I assume that would highly complicate your
 2 watermaster duties.
 3 A. I think it would make the deliveries more
 4 difficult.
 5 Q. If you took 10 cfs of water out of Tucker
 6 Springs, would that make your administration of water
 7 within the Tucker Springs/Riley Creek complex more
 8 difficult?
 9 A. Yes, it would.
 10 Q. And again, if your board has directed you
 11 to administer water rights under the
 12 prior-appropriation doctrine, some people are going to
 13 lose out and be curtailed; correct?
 14 A. Yes, they are.
 15 MR. RANDY BUDGE: I'm going to object to the
 16 leading nature. I've been pretty liberal in expediting
 17 it, but it's pretty clear that Counsel is the one
 18 testifying here.
 19 THE HEARING OFFICER: Sustained.
 20 Q. (BY MR. HAEMMERLE): Frank, do you have
 21 Exhibit 2014 in front of you?
 22 A. Yes, sir.
 23 Q. Frank, do you see that Exhibit 2014 is a
 24 water right for Buckeye Farms under water right
 25 No. 36-8785?

Page 401

1 A. Yes, sir.

2 Q. Are you familiar with whether or not there

3 were any protests to this water right when this water

4 right was being permitted?

5 MR. RANDY BUDGE: I'm going to object to this

6 line of questioning. He's going to use this witness to

7 testify about injuries to Buckeye Farm with whom we had

8 a stipulation regarding their water rights. I'm

9 particularly concerned about Mr. Simpson, who I believe

10 had the expectation that we would not be going into

11 things regarding the Buckeye's right based on the

12 stipulation.

13 THE HEARING OFFICER: Mr. Haemmerle?

14 MR. HAEMMERLE: Director, in connection with the

15 permitting of Exhibit 36-8785, this water right was

16 protested by the Idaho Department of Fish and Game, and

17 the documents are of record for that protest.

18 So it's not particularly about injury for

19 Buckeye. It's to explore the reason that the Fish and

20 Game made that protest. And they made that protest

21 because they were concerned about aquatic life habitat

22 and those kinds of things. I'm just asking Mr. Erwin

23 if he's aware of these documents.

24 THE HEARING OFFICER: My concern in listening to

25 the objection is that there was a stipulation for

Page 402

1 admission of exhibits, and I asked for an explanation

2 what they were, asked for that explanation from

3 Mr. May. And I haven't looked at those exhibits, but

4 at least two of those, I'm assuming, are a protest of

5 this Buckeye water-right application, which would have

6 been 2017, and then 2016 is a settlement agreement with

7 Buckeye.

8 And everybody stipulated to those documents

9 coming in, as well as, I suppose, 2014, which was the

10 representation of the final water right.

11 So, Mr. Budge, it appears to me that we've

12 already stipulated to have documents in the record that

13 explain the history of what's happened with this water

14 right, and I don't know how we go back and say I

15 prevent Mr. Haemmerle from asking questions about the

16 documents that have been stipulated to be admitted into

17 the record.

18 MR. RANDY BUDGE: I think the documents speak

19 for themselves. And unless there's some foundation

20 laid that Mr. Erwin was at any of those protest

21 hearings or knows the genesis of the settlement with

22 Idaho Power or with Fish and Game, which I believe in

23 his deposition he said he didn't know and wasn't a

24 participant, I'll make my objection on foundation.

25 THE HEARING OFFICER: Overruled for now.

Page 403

1 Mr. Haemmerle, if you can lay the proper

2 foundation.

3 MR. HAEMMERLE: Frankly, Director, since these

4 are part of the record, and I think you now understand

5 the purpose for these documents, I'm sure you'll review

6 them when you make your decision for these water

7 rights.

8 THE HEARING OFFICER: Okay. You don't wish to

9 pursue this line of questioning with Mr. Erwin any

10 further?

11 MR. HAEMMERLE: No.

12 THE HEARING OFFICER: Thank you.

13 MR. HAEMMERLE: Thank you, Frank.

14 THE HEARING OFFICER: That's the end of his

15 testimony, direct testimony?

16 MR. HAEMMERLE: It is.

17 THE HEARING OFFICER: Do you want to break for

18 lunch, or do you want to cross-examine, Mr. Budge?

19 Either way.

20 MR. RANDY BUDGE: I'll be a little while. Not

21 too long, but it is after 12:00 so it probably would be

22 a good time to break.

23 THE HEARING OFFICER: Okay. Let's break for

24 lunch.

25 What time do you want to come back? Ten

Page 404

1 after?

2 MR. HAEMMERLE: Yeah.

3 THE HEARING OFFICER: Ten after the hour.

4 Thanks.

5 (Lunch recess.)

6 THE HEARING OFFICER: We're recording after the

7 lunch recess.

8 And my understanding, you've finished with

9 Mr. Erwin --

10 MR. HAEMMERLE: I am, Director.

11 THE HEARING OFFICER: -- Mr. Haemmerle.

12 TJ or Randy?

13 MR. RANDY BUDGE: Thank you.

14 THE HEARING OFFICER: Randy, you're

15 cross-examining.

16

17 CROSS-EXAMINATION

18 BY MR. RANDY BUDGE:

19 Q. Good afternoon, Mr. Erwin.

20 Frank, if my memory is correct, you began

21 as watermaster in about 1996?

22 A. Yes, sir.

23 Q. And would the testimony that you gave

24 earlier today be based upon the knowledge you gained of

25 water delivery and use after 1996?

Page 405

1 A. Yes, sir.
 2 Q. Is it accurate to say that you would not
 3 have any personal knowledge of water diversion,
 4 deliveries, and use on Tucker Springs or on Riley Creek
 5 prior to 1996?
 6 A. Yes, sir.
 7 Q. And is it also correct to say that you
 8 haven't gone back and tried to analyze what any of the
 9 historic deliveries have been prior to the time you
 10 became watermaster?
 11 A. That's correct.
 12 Q. And if you could look, please, Frank, at
 13 Exhibit 2013.
 14 And if I recall your testimony correct,
 15 Frank, Exhibit 2013 was one that you prepared just to
 16 put a list of the water rights on Upper and Lower
 17 Tucker Springs by right number and priority?
 18 A. Yes, sir.
 19 Q. And when I look at that list under the
 20 diversion rate, is that number the decreed quantity?
 21 A. In most cases, yes.
 22 Q. Okay. So that isn't some kind of an
 23 average of what they've historically diverted and used?
 24 A. No. No. That's the quantity on the
 25 partial decree.

Page 406

1 Q. Okay. And so is my understanding correct
 2 that the quantity on a water right that you administer
 3 is the authorized maximum that's available if the water
 4 is available to divert and if it can be applied by the
 5 water right holder to beneficial use?
 6 A. Yes, sir.
 7 Q. And you wouldn't know whether any of those
 8 authorized maximum quantities on those rights that are
 9 shown in Exhibit 2013 have ever been supplied during
 10 the periods prior to the time you were -- became
 11 watermaster in 1996?
 12 A. I wouldn't have that information, no.
 13 Q. Okay. And as I look at 2013, some of those
 14 water rights divert from Upper Tucker Springs, the
 15 upper pond; correct?
 16 A. Yes, sir.
 17 Q. And would you agree that to the extent the
 18 transfer here is approved and water was moved from the
 19 lower pond at Upper Tucker that would not affect any of
 20 the rights that divert from the upper pond at Upper
 21 Tucker?
 22 A. Yes.
 23 Q. You agree it wouldn't -- you agree that the
 24 diversion of the 10 second-feet from the lower pond
 25 wouldn't affect any of the water rights that divert

Page 407

1 from the upper pond?
 2 A. Yes.
 3 Q. And would you also agree that it wouldn't
 4 affect any of those water rights shown on Exhibit 2013
 5 that are already senior to the Fish and Game rights?
 6 A. Yes.
 7 Q. So when I look at 2013, the Fish and Game
 8 right being transferred, right 2055, 10 second-feet of
 9 that with a priority date of 1947, is it correct to say
 10 that all rights senior to that reflected on
 11 Exhibit 2013 would not be adversely affected by the
 12 10 second-foot transfer?
 13 A. Yes.
 14 Q. And would you also agree that at least
 15 based on the period that you've been watermaster
 16 there's always been at least 10 second-feet available
 17 under the Fish and Game water right 2055?
 18 A. Yes, there has.
 19 Q. I wanted to just clarify one question that
 20 Mr. Haemmerle asked you. He asked you first whether or
 21 not you had compiled any data to determine what
 22 percentage of declines may have been experienced in
 23 Tucker Springs since 1996 while you have been there.
 24 And your first answer, if I remember, was that you
 25 hadn't done any type of calculation and you didn't

Page 408

1 know. And then he pressed you a little further with a
 2 leading question asking you about perhaps the
 3 percentage was 25. And you said that was about right.
 4 A. Yes, sir.
 5 Q. So is that basically just an estimate on
 6 your part?
 7 A. Yes, it is.
 8 Q. Okay.
 9 A. On the Riley Creek drainage, yes.
 10 Q. And I just wanted to clarify, because in
 11 the record we have one answer that's saying you
 12 wouldn't know what the decline was and the other one
 13 was you estimate it may be 25 percent.
 14 A. Yes, it would be an estimate.
 15 Q. Okay. And that would be your best estimate
 16 as watermaster on the overall decline from that spring
 17 source?
 18 A. Yes.
 19 Q. Now, you mentioned that you had issued
 20 yesterday a curtailment order on Billingsley Creek;
 21 correct?
 22 A. Yes, sir.
 23 Q. Is it accurate to say that during the
 24 period you've been the watermaster there has never been
 25 administration on Tucker Springs? By "administration"

Page 409

1 maybe I should say there's never been a curtailment of
 2 water on Tucker Springs.
 3 A. There's -- I have not issued any
 4 curtailment on Tucker Springs.
 5 Q. Okay. And is it true you haven't issued
 6 any curtailments on Riley Creek either?
 7 A. That's true.
 8 Q. You talked about this board meeting in
 9 December 2013.
 10 And was this your Water District 36A board?
 11 A. Yes, it is, sir.
 12 Q. And does Rangen or one of its
 13 representatives participate in those board meetings?
 14 A. Did who, sir?
 15 Q. Was Rangen or one of their employees or
 16 representatives present at that meeting?
 17 A. No, sir.
 18 Q. And have they ever contacted you or anyone
 19 from Rangen advocating that you should start to curtail
 20 junior water rights?
 21 A. No, sir.
 22 Q. Counsel asked you about whether you'd been
 23 consulted on the what's called the Thousand Springs
 24 Water Supply Settlement Framework, Exhibit 1110.
 25 Do you remember those questions?

Page 410

1 A. Yes, sir.
 2 Q. And I think you said you hadn't been asked
 3 about it before it was laid out and you hadn't had a
 4 hand in the preparation of it.
 5 A. Not on that specific agreement, no.
 6 Q. Okay. Were you present at a meeting that
 7 happened last April or May with the water users in
 8 Hagerman Valley where Speaker Bedke presented that
 9 settlement framework?
 10 A. Yes, I was.
 11 Q. And was Rangen present at that meeting?
 12 A. I believe Wayne Courtney was present.
 13 Q. Okay. And is it correct that the
 14 groundwater users, none of the IGWA representatives or
 15 their counsel and none of their district members were
 16 present; correct?
 17 A. I don't know for sure. I don't remember
 18 everybody that was there. But I don't know. But I
 19 don't believe so.
 20 Q. Were you aware that they were asked not to
 21 participate in the meeting, IGWA and the groundwater
 22 districts?
 23 A. No, I wasn't.
 24 Q. Counsel asked you if moving 10 second-feet
 25 out of the Riley Creek drainage would cause some harm

Page 411

1 there, and I think you said it would, it wouldn't be a
 2 good idea.
 3 Would you agree that adding water to
 4 Billingsley Creek would help satisfy some of the
 5 shortfalls on Billingsley Creek?
 6 A. Yes, it would.
 7 Q. There were some questions about -- well, I
 8 want to go back, if I could, to that settlement
 9 framework, Exhibit 1110, and just ask you a few
 10 questions on that, if I may.
 11 Do you have that available?
 12 A. Yes, sir.
 13 Q. You're quicker than me.
 14 Counsel asked you about one of the
 15 objections that you didn't agree with, and I think it
 16 was 1C about the providing a safe harbor.
 17 A. Yes, sir.
 18 Q. Is the reason that you have trouble with
 19 the safe harbor is because you felt the amount of water
 20 that should be added into Billingsley Creek is more
 21 than the 25 second-feet that's suggested in this
 22 settlement term sheet?
 23 A. I believe it is, sir, yes.
 24 Q. And is that the only concern you had about
 25 the 25 second-feet? The only concern that you had

Page 412

1 about the safe harbor is you didn't feel the
 2 25 second-feet that's proposed to be added to
 3 Billingsley Creek was adequate?
 4 A. That's a part of it, sir. I believe, due
 5 to the fact that the springs are still declining, that
 6 maybe today a set volume would be adequate, but ten
 7 years down the road if the springs keep declining then
 8 it may be necessary to require more water to offset the
 9 losses.
 10 Q. When you look in that settlement framework
 11 down under part Roman numeral II B, which is the
 12 sentence that says, quote, "Enhance flows in Billingsly
 13 Creek by 25 second-feet," is that 25 second-foot number
 14 something that came from you to Speaker Bedke or
 15 whoever prepared this?
 16 A. To my knowledge, that number came from a
 17 meeting with the governor's staff in January, I
 18 believe, at the capitol. And I believe the gentleman
 19 that mentioned that number was Mr. John Simpson.
 20 Q. Okay. And were you at one or two meetings
 21 with the governor's office earlier this year?
 22 A. Just the one meeting, sir.
 23 Q. Was that the meeting that Mr. Courtney was
 24 present on behalf of Rangen?
 25 A. I believe he was, sir.

Page 413

1 Q. And was his attorneys present,
2 Mr. Haemmerle as well?
3 A. I think so.
4 Q. And were you present at any other
5 subsequent meetings with Speaker Bedke where this
6 settlement framework was discussed?
7 A. No, sir.
8 Q. Let's look at the other objectives that
9 Rangen's attorney didn't ask you about just to make
10 sure whether we understand whether you as watermaster
11 think they're a good idea or not a good idea.
12 Objective 1A says, quote, "Maintain spring flows at
13 levels sufficient to sustain Swan Falls minimum flows."
14 Do you think that is a good thing, a good
15 objective?
16 A. I think so.
17 Q. Let's look at B. B says, "Mitigate for
18 material injury to senior spring water rights caused by
19 diversion under junior groundwater rights."
20 Would you agree that that's a good thing, a
21 good objective?
22 A. Yes, it is.
23 Q. And let's look at D, "Minimize economic
24 impact on individual water users and the state economy
25 arising from water supply shortages."

Page 414

1 Would you agree also that that is a good
2 thing and a good objective?
3 A. Yes, sir.
4 Q. And the last one, 1E, "To develop adaptive
5 management plan to respond to changes in the ESPA water
6 supply."
7 Would you also agree as watermaster that's
8 a good thing and a good objective?
9 A. I believe so.
10 Q. To your knowledge, does Rangen own any
11 water rights in Tucker Springs or on Riley Creek?
12 A. Not to my knowledge, I don't believe they
13 do.
14 Q. And to your knowledge, does Rangen own any
15 water rights downstream below their hatchery on
16 Billingsley Creek?
17 A. I don't believe they do.
18 Q. And to your knowledge, does Rangen own
19 water rights in any other partnership or corporation or
20 entity that might have a water right in Tucker Springs
21 or on Riley Creek?
22 A. Not that I'm aware of.
23 Q. Some exhibits were put in by Buckeye, and I
24 just wanted to clarify one thing with you. We've got
25 some information, and I think it was from your

Page 415

1 deposition and maybe it was from the Department, but we
2 got some indication with respect to efforts to deal
3 with water shortages downstream on Riley Creek that if
4 there was sufficient mitigation water provided to take
5 care of the Buckeye that would pretty much take care of
6 everybody else who would get return flows downstream
7 from them.
8 Do you agree with that statement as a
9 general concept? Do you want me to rephrase that?
10 A. Yes, sir.
11 Q. Okay. There's been some talk that Buckeye
12 would be one water right holder that might get injured
13 and would have to take care of if we took water out of
14 Tucker Springs.
15 A. Yes, sir.
16 Q. And would you agree that if we were able to
17 take care of the Buckeye that that would pretty much
18 take care of all the other rights on Riley Creek, or
19 you're just not sure?
20 A. Well, it -- it may take care of the
21 particular rights on Riley Creek, but I don't know that
22 it would take care of the shortages at the Tucker
23 Springs complex.
24 MR. RANDY BUDGE: Okay. No further questions.
25 Thank you, Frank.

Page 416

1 THE HEARING OFFICER: Okay. Just a minute.
2 Let's run through the other folks.
3 MR. HAEMMERLE: Sorry, Director.
4 THE HEARING OFFICER: Let's see. Simpson's
5 gone.
6 Mr. Huntley?
7 MR. HUNTLEY: No questions.
8 THE HEARING OFFICER: Mr. Henslee, questions?
9 MR. HENSLEE: No questions.
10 THE HEARING OFFICER: All right. Now you can
11 circle the chair and make it to the rostrum.
12
13 REDIRECT EXAMINATION
14 BY MR. HAEMMERLE:
15 Q. Good afternoon, Frank.
16 A. Yes.
17 Q. Frank, you just testified that you believe
18 that resolving Buckeye's problem wouldn't necessarily
19 resolve the problem in Tucker Springs.
20 Is that your testimony?
21 A. Yes, sir.
22 MR. RANDY BUDGE: I object to that. You
23 mischaracterized. He said he didn't know.
24 Q. (BY MR. HAEMMERLE): Do you have
25 Exhibit 2013 in front of you?

Page 417

1 A. Yes, sir.
 2 Q. Frank, I think you testified on direct that
 3 Exhibit 2013 was prepared for a meeting of users who
 4 were concerned about getting their water.
 5 Do you remember that testimony?
 6 A. Yes, sir.
 7 Q. Do you remember which users particularly
 8 called for this meeting?
 9 A. I believe it was the Big Bend Ditch, the
 10 Department of Fish and Game, and I believe Leo Ray was
 11 involved in the meeting.
 12 Q. In other words, specifically, the users
 13 that were complaining about not getting their full
 14 adjudicated rights were users from the Upper Tucker
 15 Springs complex; is that a fair statement?
 16 A. Yes, sir.
 17 Q. Now, counsel for IGWA would have, I guess,
 18 all of us believe that everyone in Hagerman is fat,
 19 dumb, and happy about not getting their adjudicated
 20 rights.
 21 Would you generally say that's true or not
 22 true?
 23 A. I wouldn't say that's true. I'd say it's
 24 false.
 25 Q. You testified that everyone is generally

Page 418

1 short of water; is that a fair statement?
 2 A. Yes.
 3 Q. And I think you testified that you spend a
 4 lot of your time meeting with various users and the
 5 source's Billingsley Creek people, Riley Creek people
 6 to try to get them to get along with shortages; is that
 7 a true statement?
 8 A. Yes, sir.
 9 Q. Is that absolutely ongoing from year to
 10 year?
 11 A. Generally, yes.
 12 Q. Now, counsel for IGWA asked you the
 13 question if you know whether people are -- want to
 14 fulfill their full extent of their water rights.
 15 I take it the fact that they raise concerns
 16 with you about these shortages all the time is some
 17 signal that they want to use their water rights; is
 18 that a fair statement?
 19 A. Yes.
 20 Q. And in fact, for example, on Billingsley
 21 Creek you issued your first curtailment because I take
 22 it a senior wanted to use their full extent of their
 23 water right; correct?
 24 A. They would like to use the full extent. By
 25 the curtailment I will not be able to deliver the full

Page 419

1 extent. But they would like to use it, yes. But
 2 they're not going to get it either, just from the -- in
 3 other words, the amount of water I'm curtailing is not
 4 going to provide 100 percent of the water rights that
 5 are short.
 6 Q. So essentially, despite your best efforts
 7 in District 36A there are users down there that are
 8 just fed up with the situation?
 9 A. Yes.
 10 Q. Now, counsel for IGWA talked to you about
 11 Exhibit 1110, 1110, which is the settlement framework.
 12 A. Yes.
 13 Q. He went through the various objectives that
 14 you, I think other than the safe harbor, stated that
 15 those are decent objectives; correct?
 16 A. Yes.
 17 Q. To accomplish any one of those objectives,
 18 I think you testified on direct that it's a bad idea to
 19 move water from one source to satisfy another source
 20 when both sources are short; correct?
 21 A. Yes, sir.
 22 Q. Now, do you understand what IGWA's plan is
 23 with respect to Riley Creek? Do you know the full
 24 extent of what their idea is?
 25 A. I think I do.

Page 420

1 Q. They want to take 10 cfs out of Upper
 2 Tucker Springs, out of the Riley Creek source; correct?
 3 A. Yes, sir.
 4 Q. So to fix that what they want to do is pump
 5 water from yet another source back into Riley Creek.
 6 Do you think that's a good idea?
 7 A. I'm not aware of that proposal to pump
 8 water back to Riley Creek, so I don't know.
 9 Q. Is this shell game for moving water from
 10 one water source in Hagerman to another a good idea, in
 11 your mind?
 12 MR. RANDY BUDGE: Object to the form of the
 13 question. Leading.
 14 THE HEARING OFFICER: Sustained.
 15 Q. (BY MR. HAEMMERLE): Is moving water from
 16 one source to another source in Hagerman to satisfy
 17 people without water a good idea?
 18 MR. RANDY BUDGE: Asked and answered.
 19 Objection.
 20 THE HEARING OFFICER: Sustained.
 21 Q. (BY MR. HAEMMERLE): Mr. Budge asked you a
 22 question of whether diversions from the Lower Tucker
 23 Springs source have any effect on diversions from the
 24 Upper Tucker Springs source.
 25 Do you recall Mr. Budge's question? I'll

Page 421

1 strike it.
 2 Mr. Budge asked you whether diversions from
 3 the lower source affect diversions from the upper
 4 source.
 5 Do you recall that?
 6 A. Of the two different spring complexes, or
 7 from the upper or and lower pool?
 8 Q. The upper and lower pool.
 9 A. Yes, sir.
 10 Q. Okay. And you said you didn't know of any
 11 effect of diversions from the lower pool to the upper
 12 pool?
 13 A. Not at this point in time, no.
 14 Q. Okay. You haven't done any hydrologic
 15 studies of those connections to see if there's any
 16 particular --
 17 A. No, I haven't.
 18 Q. -- effect?
 19 Thank you, Frank. No further questions.
 20 THE HEARING OFFICER: Recross, Mr. Budge?
 21 MR. RANDY BUDGE: Just two quick follow-ups.
 22
 23 RE CROSS-EXAMINATION
 24 BY MR. RANDY BUDGE:
 25 Q. You indicated that the water users on Riley

Page 422

1 Creek have generally got along over the years.
 2 Would it be accurate to say that by them
 3 getting along and sharing water for the most part
 4 they've always been able to get their crops raised?
 5 A. Yes, sir.
 6 Q. And you mentioned -- we had some
 7 discussion, just so the record's clear, on the one
 8 curtailment you did on Billingsley Creek.
 9 What was the priority date of the right
 10 curtailed?
 11 A. If I remember right, it was 1979.
 12 MR. RANDY BUDGE: Thank you very much, Frank.
 13 No further questions.
 14 THE HEARING OFFICER: Okay. Mr. Huntley, any
 15 questions?
 16 MR. HUNTLEY: No questions.
 17 THE HEARING OFFICER: Mr. Henslee?
 18 MR. HENSLEE: No questions.
 19 THE HEARING OFFICER: Okay. Thank you,
 20 Mr. Erwin.
 21 Next witness.
 22 MR. HAEMMERLE: Rangen will call Mat Weaver.
 23 THE HEARING OFFICER: Mr. Weaver, come forward,
 24 please. Raise your right hand.
 25 ///

Page 423

1 MATHEW DONALD WEAVER,
 2 having been called as a witness by Rangen, Inc., and
 3 duly sworn to tell the truth relating to said cause,
 4 testified as follows:
 5
 6 THE HEARING OFFICER: Thank you. Please be
 7 seated.
 8
 9 DIRECT EXAMINATION
 10 BY MR. HAEMMERLE:
 11 Q. Please state your full name, spelling your
 12 last name for the record.
 13 A. Mathew Donald Weaver, W-e-a-v-e-r.
 14 Q. What is your current occupation?
 15 A. I'm the Deputy Director of the Department
 16 of Water Resources.
 17 Q. And, Mr. Weaver, what are your duties as
 18 Deputy Director?
 19 A. I directly oversee the technical services
 20 bureau at the Department, the water compliance bureau
 21 at the Department, its informational technology
 22 section, and its purchasing section.
 23 Q. How long have you been employed as the
 24 Deputy Director?
 25 A. A little over a year.

Page 424

1 Q. Were you employed by the Department of
 2 Water Resources before that?
 3 A. I was.
 4 Q. Mr. Weaver, if you could just quickly kind
 5 of run through the jobs and duties you've had with the
 6 Department of Water Resources.
 7 A. I started as a staff engineer in the water
 8 rights section. I moved up to a technical engineer
 9 level two position, at which point I started to have
 10 duties that were across the Department, working in
 11 technical services, with planning, with water
 12 compliance, and with water rights.
 13 Q. When did you first start working for the
 14 Department of Water Resources?
 15 A. I think going on seven years ago.
 16 Q. Did you have any significant jobs before
 17 that?
 18 A. I did. I was a private engineering
 19 consultant for about ten years prior to that.
 20 Q. Okay. Who was that with?
 21 A. I worked with a number of firms. Most
 22 recently W&H Pacific here in Boise.
 23 Q. Mr. Weaver, in connection with your duty as
 24 Deputy Director, you've become familiar with Rangen's
 25 water call?

Page 425

1 A. I have.
 2 Q. In various capacities, I'm sure.
 3 If you could get Exhibit 1110 in front of
 4 you.
 5 A. Okay.
 6 Q. I'm showing you what's been marked as 1110.
 7 And that has been admitted, a document entitled
 8 "Thousand Springs Water Supply Settlement Framework."
 9 Do you see that?
 10 A. I do.
 11 Q. Were you involved in or do you have
 12 knowledge of how this particular settlement framework
 13 came about?
 14 A. I do.
 15 Q. Can you describe from the very, I guess,
 16 inception of how this water plan was derived or
 17 created.
 18 A. So in the beginning of February I was asked
 19 to report to a group of legislators at the statehouse
 20 on the Rangen delivery call. Several days after that
 21 initial meeting the governor's office hosted what I
 22 would call a collaboration meeting amongst all the
 23 parties to, one, educate on the Rangen delivery call
 24 and to look for solutions to the Rangen delivery call.
 25 In attendance at that meeting was staff by

Page 426

1 the governor, a number of legislators, myself
 2 representing the Department, Rangen was there, IGWA was
 3 there, I believe John Simpson was there, and probably
 4 several other people that I'm not recalling.
 5 Coming out of that meeting I would say was
 6 the discussion that led to the early versions of this
 7 water supply settlement framework that's admitted here
 8 as an exhibit.
 9 Q. Okay. I want to kind of talk about those
 10 first few meetings. And I'll get through this as quick
 11 as possible.
 12 Who summoned you to the state legislature
 13 to discuss this matter?
 14 A. I don't recall who specifically summoned me
 15 to that first initial meeting.
 16 Q. Could it have been Speaker Bedke?
 17 A. It could have been.
 18 Q. Was the purpose of that meeting to discuss
 19 generally the so-called, I guess, Rangen water call or
 20 globally the Thousand Springs problem, the Hagerman
 21 problem?
 22 A. It was more to educate on the actual
 23 delivery call and the order that had recently been
 24 issued by the Department.
 25 Q. From what I've gleaned throughout this

Page 427

1 matter is in fact that there were a couple meetings at
 2 the governor's office.
 3 Could that be true?
 4 A. That's true.
 5 Q. Was there a meeting before -- you described
 6 a meeting that occurred where Rangen representatives
 7 were in attendance.
 8 Do you recall that?
 9 A. Uh-huh.
 10 Q. I think that was on a Wednesday, if I'm not
 11 mistaken.
 12 A. I wouldn't know the date.
 13 Q. Something. Was there a meeting at the
 14 governor's office before that?
 15 A. I don't believe so.
 16 Q. Was there a meeting at the governor's
 17 office after that?
 18 A. There was.
 19 Q. And what time frame would that have been?
 20 A. Maybe within four to seven days after that
 21 meeting in the -- the first meeting at the governor's
 22 office.
 23 Q. And who was in attendance at that meeting?
 24 A. Well, I know Steven Goodson was with the
 25 governor's staff, and I believe David Hensley was, and

Page 428

1 then myself and one other or two other employees from
 2 the Department.
 3 Q. Were there any representatives of IGWA
 4 there?
 5 A. I don't think so.
 6 Q. Was Clive Strong there?
 7 A. I don't think so.
 8 Q. Okay. Could you then go forward with me on
 9 how this particular document, 1110, was created.
 10 A. Well, at that point, as I recall, there was
 11 an effort coming both out of the governor's office and
 12 from the legislative side on moving forward to try and
 13 find a resolution to the Rangen delivery call.
 14 And so there was maybe some competing
 15 documentation out there on a framework. And I know
 16 that one came out of the governor's office, and I'm not
 17 sure if the legislature side ever actually presented a
 18 document.
 19 Now, I don't know who in the governor's
 20 office, you know, prepared that initial document. I do
 21 know that when I received a copy of it, I got it via
 22 Clive Strong.
 23 Q. Okay.
 24 A. And so that would have been several weeks
 25 after that initial meeting with governor staff and the

Page 429

1 legislators and the parties.
 2 Q. Now, ultimately this document was created;
 3 correct?
 4 A. Correct.
 5 Q. Who actually crafted or typed Exhibit --
 6 well, not typed, but who actually created the document
 7 itself, 1110?
 8 A. I would have to say I don't know who was
 9 the original author of it.
 10 Q. Did you collaborate with Clive Strong on
 11 this document?
 12 A. I did.
 13 Q. Okay. And who else did you collaborate
 14 with in the creation of 1110?
 15 A. When it got to the point to where I was
 16 actively editing and reviewing the document, it was
 17 Clive Strong, myself, and then our bureau chief of
 18 planning, Brian Patton.
 19 Q. Okay. Anyone else?
 20 A. I don't recall anyone else.
 21 Q. You said by the time you were editing,
 22 Was there a version of this that was
 23 created before you started to edit and those kinds of
 24 things?
 25 A. I think there was. As I recall, there was

Page 430

1 a very early version of this that came out of the
 2 governor's office.
 3 Q. Okay. So the people who created it would
 4 have been you, Brian Patton, who works with the
 5 Department of Water Resources; correct?
 6 A. That's correct.
 7 Q. Clive Strong?
 8 A. That's correct.
 9 Q. At some point when you had a form ready
 10 that -- did you collaborate with anyone else?
 11 A. Collaborate in the sense of creating it and
 12 adding elements to it? No.
 13 Q. You didn't in fact collaborate with any
 14 IGWA members on the creation of this settlement
 15 framework, did you?
 16 A. That's correct.
 17 Q. Do you recall who came up with -- if you
 18 look at the objective provision No. C where it says the
 19 safe harbor provision.
 20 Do you see that?
 21 A. I see that objective.
 22 Q. Who came up with that idea?
 23 A. I believe that that was an element in the
 24 framework that was already there when I received it to
 25 do a review and provide edits. So I don't know.

Page 431

1 Q. So I take it in fact since it's in this
 2 document the goal of this settlement framework is to, I
 3 guess, provide some sort of final resolution or
 4 solution to the Hagerman problem?
 5 A. That's correct. I don't know about final,
 6 but I do know that there were legislators that said
 7 that they wanted to find a solution to this for a
 8 generation.
 9 Q. And those same legislators, I take it,
 10 would have said they don't want any delivery calls
 11 against groundwater pumpers in the ESPA?
 12 A. I don't think they ever said it that way.
 13 Q. But they wanted the safe harbor provision,
 14 because that didn't come from you?
 15 A. Well, I think what we all wanted when we
 16 were crafting this was a collaboration of projects
 17 above the rim, which is an element of this, and that
 18 would go to aquifer enhancement projects, elements
 19 below the rim that would go to infrastructure
 20 improvements and providing water where there was a
 21 shortage.
 22 And in those ways you would be looking to
 23 solve in the near term water shortage supplies and in
 24 the long term, through the aquifer enhancement
 25 projects, address the diminishment in the spring flows.

Page 432

1 And then if you could accomplish those two
 2 things, then to get the participation of the
 3 groundwater users you would need some type of safe
 4 harbor so that they could participate and not fear that
 5 they would have to, I guess in my words, devote a lot
 6 of resources and finances to responding to delivery
 7 calls.
 8 Q. Okay. But my question to you, Mr. Weaver,
 9 is, you didn't place that "safe harbor" language in
 10 this document; true?
 11 A. True.
 12 Q. Okay. That came from other people, and the
 13 only other people that collaborated on this was the
 14 assistant attorney general, Mr. Strong, and other
 15 people in your Department; correct? Yes?
 16 A. And as I indicated, the initial document
 17 came out of the governor's office. So whether that
 18 "safe harbor" came out of that location or got added
 19 later, I don't know.
 20 Q. Okay. It came out of either the governor's
 21 office, the legislature, or the attorney general's
 22 office? It didn't come from you, did it?
 23 A. That's correct.
 24 Q. It didn't come from IGWA either, did it?
 25 A. That's correct.

Page 433

1 Q. Okay. That was a political resolution to
2 the problem; correct?
3 A. I guess you could say that.
4 Q. At some point you met with members of IGWA
5 regarding the settlement plan, IGWA 1110; correct?
6 A. Correct.
7 Q. Do you know approximately when that would
8 have been?
9 A. I think it would have been in March,
10 perhaps the first half of March.
11 Q. Does March 5th sound about right?
12 A. That could have been the day.
13 Q. All right. Do you recall how that meeting
14 was arranged?
15 A. I don't.
16 Q. Okay. Someone from -- either you or
17 Mr. Strong, someone from the State of Idaho arranged to
18 meet IGWA in this particular building; correct?
19 A. That's correct.
20 Q. Okay. How that mechanically happened, you
21 don't know; is that a fair statement?
22 A. I don't recall.
23 Q. All right. What was the purpose of that
24 meeting, or who attended that meeting?
25 A. As I recall, there was three people in

Page 434

1 attendance: myself, Clive Strong, and Randy Budge.
2 Q. Okay. And at that meeting you handed
3 Mr. Budge this proposed settlement framework?
4 A. That's true.
5 Q. Okay. And I take it at the time that you
6 handed this settlement framework to Mr. Budge, you
7 thought it was in a form that could be disseminated out
8 to the public; correct?
9 A. No. I think at that point we weren't quite
10 ready to disseminate it out to the public. That came
11 later.
12 Q. Okay. But you did disseminate it to IGWA;
13 correct?
14 A. We did.
15 Q. For what purpose?
16 A. I guess to get some feedback on whether
17 this was something that they thought was a feasible way
18 to move forward.
19 Q. Okay. So for the final solution of the
20 Hagerman problem, the first party that you contacted
21 was IGWA; correct?
22 A. Well, certainly the legislature had been
23 involved, the governor's office had been involved,
24 State representatives -- or State staff had been
25 involved, and then IGWA was potentially the first

Page 435

1 person that we went out to outside of those entities.
2 Q. You didn't -- nobody contacted Rangen
3 regarding this final settlement, did they?
4 A. Well, I didn't contact Rangen.
5 Q. Okay. And you didn't contact any of the
6 surface water users in Hagerman Valley, did you?
7 A. Well, actually, John Simpson, representing
8 Buckeye Farms, had been involved in one or two of those
9 meetings with the legislature that would have predated
10 when we handed this to IGWA. So in that sense there
11 was one water user in the Hagerman area that had been
12 present.
13 Q. There were one or two meetings with the
14 legislature regarding this settlement framework?
15 A. Yes. Two meetings -- at least two meetings
16 with Speaker Bedke in his office regarding this term
17 sheet.
18 Q. Okay. Were there any members of IGWA at
19 those meetings?
20 A. Yes. I believe -- actually, I believe
21 Randy Budge was at the second one there. So I'm not
22 sure if the second meeting came after the March 5th
23 date or before. I guess it probably would have come
24 after.
25 Q. Okay. Fair enough.

Page 436

1 A. So the first one in the speaker's office
2 IGWA was not in attendance.
3 Q. I'm mixing up my political branches.
4 We talked about the meetings at the
5 governor's office; correct?
6 A. Uh-huh.
7 Q. There was separate meetings at the
8 legislative offices?
9 A. There were subsequent -- two subsequent
10 meetings at Speaker Bedke's office.
11 Q. Nobody from Rangen was in attendance at
12 those meetings?
13 A. I don't think so.
14 Q. Okay. No surface water users were present
15 at that meeting?
16 A. Well, I guess I would say Buckeye Farms had
17 a representative at those meetings.
18 Q. Okay. And you recall Mr. Budge being
19 present at one of those meetings?
20 A. He was at the second one.
21 Q. Do you know why Rangen wasn't in attendance
22 at any of these meetings?
23 A. From my perspective, this had kicked off
24 I'll say when we met with governor staff in early
25 February. And the participation in developing the term

Page 437

1 sheet and moving forward with it came out of that
 2 initial meeting. And Rangen participated in the first
 3 meeting, did not participate in subsequent meetings. I
 4 never understood that to be from lack of invitation. I
 5 understood that to be from lack of interest in
 6 participating.
 7 Q. Do you have any information, firsthand
 8 knowledge, of any invitations that were sent out to
 9 Rangen to attend these meetings?
 10 A. I don't.
 11 Q. So you have no knowledge of whether we were
 12 invited or not, do you?
 13 A. I don't.
 14 Q. Was there anyone else in the legislative
 15 branch, other than Speaker Bedke, who was instrumental
 16 in the preparation or during these meetings?
 17 A. Certainly there were several other
 18 legislators that attended those meetings. Whether they
 19 were at every meeting, I don't recall. Mike Moyle I
 20 know was at several of those meetings.
 21 Q. Were those representatives from the
 22 affected parts of the Director's order?
 23 A. Well, certainly Mike's not. I guess I
 24 would have to go back and think about who attended
 25 which meetings.

Page 438

1 Q. Okay. Mat, I'm just going to kind of wrap
 2 this up, then.
 3 Going back to the March 5th meeting, there
 4 was a meeting called in the Department of Water
 5 Resources by somebody. You attended, Clive Strong
 6 attended, and Randy Budge attended?
 7 A. Correct.
 8 Q. And this settlement framework was handed
 9 out; correct?
 10 A. Correct.
 11 Q. Were there any directions given by you or
 12 Mr. Strong that IGWA should or could move forward with
 13 this so-called Tucker Springs to Billingsley Creek
 14 possibility?
 15 A. Direction that they should?
 16 Q. Yeah.
 17 A. No. I mean it's an element on the term
 18 sheet. It was an element that we identified that could
 19 provide 10 cfs of water to Billingsley Creek. The goal
 20 really is to get 25 cfs at the head of Billingsley
 21 Creek to address water shortages. This was one
 22 possible source of water to meet that 25 cfs need.
 23 I don't remember any directive to IGWA
 24 saying go forth and build this pipeline coming out of
 25 that meeting, if that's what you're asking.

Page 439

1 Q. Okay. But to be sure, I think IGWA has
 2 said -- and there are people who have testified have
 3 said this Tucker Springs idea was not their idea.
 4 Do you recall that testimony?
 5 A. I don't.
 6 Q. Okay. You weren't here during Lynn
 7 Carlquist's testimony?
 8 A. Part of it.
 9 Q. He said that's true, so...
 10 A. Okay.
 11 Q. How long was this -- did this meeting last?
 12 A. Well, I would say 30 to 45 minutes.
 13 Q. Okay. IGWA was handed 1110.
 14 What was the rest of that meeting like?
 15 Just tell me, you know, what happened during the
 16 meeting.
 17 A. Well, I -- I guess we must have just gone
 18 through the elements of the term sheet, and then I do
 19 remember that there was some discussion on the Tucker
 20 pipeline, a piece of it. And what -- I guess what that
 21 would look like, what the Tucker pipeline would look
 22 like if that was how they were going to choose to move
 23 forward.
 24 Q. We do know that there was a letter of
 25 intent that was obtained for the Tucker Springs pipe

Page 440

1 that involved Fish and Game and the Idaho Water Board.
 2 Are you aware of that letter of intent?
 3 A. I am aware of that letter.
 4 Q. Are you aware of all the moving parts for
 5 the Tucker Springs pipeline?
 6 A. I'm not sure what you mean by "moving
 7 parts."
 8 Q. Well, it involves -- part of the parts are
 9 that the Water Board will give the Aqua Life facility
 10 to Fish and Game.
 11 Are you aware of that?
 12 A. I am.
 13 Q. Okay. Were you involved in any way in that
 14 concept or brokering that deal or being involved in
 15 that deal in any way?
 16 A. I was not involved in brokering that deal.
 17 Q. Do you know if anyone -- do you know if
 18 Clive Strong was?
 19 A. I believe he was.
 20 Q. Okay. Mat, are you or Clive Strong in any
 21 way involved in evaluation of this particular
 22 mitigation plan, IGWA's second mitigation plan?
 23 A. I am not. I don't believe that Clive is.
 24 Q. I take it that the Director and his staff
 25 is involved in this?

Page 441

1 A. That's correct.
 2 Q. Do you know if Brian Patton is involved in
 3 the review?
 4 A. I don't believe he is.
 5 Q. Okay. After the March 5th meeting, did you
 6 have any other meetings with Mr. Budge or any members
 7 of IGWA?
 8 A. Yes, we have.
 9 Q. How many meetings have you had?
 10 A. I would say two to three subsequent
 11 meetings.
 12 Q. Who attended those meetings? And generally
 13 tell me when those meetings occurred.
 14 A. Those meetings would have been in late
 15 April and May. The most recent one was perhaps two
 16 weeks ago. The focus of that was the Buckeye Farms
 17 piece of the below-the-rim projects.
 18 So we've had at least two coordination
 19 meetings with IGWA's representatives, with Buckeye's
 20 representatives, and with Department representatives,
 21 and with Fish and Game, with the last one where we
 22 discussed possible engineering improvements and water
 23 right development that would get an alternative water
 24 supply to the Buckeye Farms so that they would no
 25 longer be relying on Billingsley Creek water

Page 442

1 diversions.
 2 Q. Okay. You're involved in getting Buckeye
 3 Farms water from some other source so they're not
 4 injured because of this particular plan; correct?
 5 A. Yeah, that...
 6 Q. Is that a "yes"?
 7 A. Yes.
 8 Q. Was Clive Strong in attendance at any of
 9 these meetings?
 10 A. Yes, he was.
 11 Q. At all the meetings?
 12 A. I don't recall if he was at all of them.
 13 MR. HAEMMERLE: Thank you, Mat. No further
 14 questions.
 15 THE HEARING OFFICER: Randy, are you
 16 cross-examining?
 17 MR. RANDY BUDGE: Thank you, please.
 18
 19 CROSS-EXAMINATION
 20 BY MR. RANDY BUDGE:
 21 Q. Good afternoon, Mat.
 22 Mat, Rangen has suggested that it's somehow
 23 a problem or wrong for the governor's office, the
 24 legislature, the attorney general's office to undertake
 25 efforts to solve water conflicts in the state.

Page 443

1 Do you see anything wrong with any of those
 2 bodies -- the governor's office, the legislature, the
 3 attorney general's office -- being involved in trying
 4 to solve water problems of the State?
 5 A. I don't.
 6 Q. And hasn't that had a long history, for
 7 example, going back to the Swan Falls settlement
 8 agreement was an effort involving the governor's
 9 office, the legislature, the attorney general's office,
 10 to try to solve a water problem?
 11 A. I would agree.
 12 Q. On the meeting you discussed on or about
 13 March 5th regarding this settlement term sheet, I have
 14 some notes and recollection that there were a number of
 15 other people that attended that meeting.
 16 Is it possible that there were a number of
 17 legislators there, such as Speaker Bedke, Senator Bair,
 18 Senator Gibbs, and Senator Moyle at that meeting?
 19 A. I guess it's possible.
 20 Q. And is it possible also that there were
 21 representatives from the Buckeye, Mr. Simpson, and
 22 representatives from the Idaho Water Resource Board
 23 also at that meeting?
 24 A. I guess it's possible. Although the
 25 meeting that I'm recollecting I don't believe had that

Page 444

1 many participants.
 2 Q. Do you recall that the term sheet was taken
 3 out and presented to the Hagerman water users at a
 4 meeting in Hagerman the evening of April 15th?
 5 A. I recall that meeting.
 6 Q. And is it accurate to say that IGWA was
 7 specifically not invited to that meeting?
 8 A. That's true.
 9 Q. And I think you're aware that the following
 10 day there was a tour of the whole Hagerman area on
 11 April 16th; correct?
 12 A. Correct.
 13 Q. And that tour was basically open to a
 14 number of folks?
 15 A. It was.
 16 Q. And it was participated in by a large
 17 number of users from the Hagerman area; correct?
 18 A. There were water users from the Hagerman
 19 area participating, yes.
 20 Q. And those water users included
 21 representatives of Rangen, Mr. Courtney and others?
 22 A. Well, I certainly know that they
 23 participated in the stop at Rangen's facilities. I
 24 don't recall if they were participating in the
 25 remainder of the tour.

Page 445

1 Q. And is it accurate to say there was a
2 representative from the governor's office, Mr. Goodson,
3 there?
4 A. That's true.
5 Q. And is it also true there were a number of
6 representatives from the Idaho Water Resource Board
7 there, Chairman Chase and Mr. Stevenson and perhaps
8 others?
9 A. True.
10 Q. And were there a large number of
11 legislators participating in that meeting?
12 A. There were.
13 Q. Looking at the term sheet, Mat, there are
14 basically a couple of components. Roman numeral III
15 talks about a managed recharge program. And I think
16 you're aware that the State passed legislation to
17 appropriate something like \$27 1/2 million to fulfill
18 that part of the project.
19 A. I'm not sure about your number, but they
20 did appropriate millions of dollars.
21 Q. And on part II, "Immediate water supply
22 measures," was it contemplated by the framework, based
23 on your understanding and the various meetings between
24 the legislators and others, that the groundwater users
25 would have to step up and pay the cost of those

Page 446

1 intermediate water supply measures that are in Roman
2 numeral II, that's what was being asked?
3 A. That is what was being asked.
4 Q. Is there anything in this term sheet that
5 required Rangen to spend money or participate
6 financially or with engineering or in any other way
7 with accomplishing any of the objectives of this
8 framework?
9 A. There was not.
10 Q. So if Rangen was not being asked to spend
11 any money or participate, would it not -- would you
12 agree it doesn't seem very unusual that they would have
13 to be involved in the drafting of a settlement
14 framework that didn't impose any responsibilities or
15 duties or obligations on them?
16 A. Could you rephrase -- could you ask that
17 again?
18 Q. Yeah, that was a poor question. Let me
19 rephrase that.
20 Since Rangen didn't have any obligations
21 under the settlement term sheet, would you agree that
22 that's probably why they would not have been asked to
23 participate in the drafting of it?
24 A. Well, from my perspective, they weren't
25 asked to participate in the drafting of it because it

Page 447

1 was my understanding they chose not to participate
2 after the initial meetings.
3 MR. RANDY BUDGE: No further questions. Thank
4 you.
5 THE HEARING OFFICER: Okay. Questions,
6 Mr. Huntley?
7 MR. HUNTLEY: No.
8 THE HEARING OFFICER: Mr. Henslee?
9 MR. HENSLEE: No, sir.
10 THE HEARING OFFICER: Okay. Recross?
11
12 REDIRECT EXAMINATION
13 BY MR. HAEMMERLE:
14 Q. Mr. Weaver, what gives you the idea or the
15 basis that you believe Rangen wasn't interested in
16 attending any of these meetings?
17 A. What gives me that idea is in the initial
18 kickoff meeting Rangen was in attendance. And when we
19 scheduled subsequent follow-up meetings, which I did
20 not personally schedule those meetings, and I did not
21 personally issue invitations to Rangen, but it was my
22 understanding, based on conversations with other
23 people, that that invitation had been extended and that
24 there hadn't been interest in participation.
25 Q. Who were these other people that you talked

Page 448

1 to that thought invitations were extended to Rangen?
2 Because I'll tell you there weren't.
3 A. The other people that we were working with
4 at the time.
5 Q. That would have been IGWA members?
6 A. No. That would have been the legislators
7 that I was working with, staff at the governor's
8 office, and Clive Strong.
9 Q. That's who that came from?
10 A. It was in our discussions that left me with
11 that understanding.
12 Q. Now, to be sure, nobody else was invited to
13 that party, no other surface water users from Rangen
14 were there, except the Buckeye; correct?
15 A. That's my recollection, yes.
16 Q. Now, Mr. Budge says that since IGWA was
17 purporting to pay for all these things, why invite
18 anyone else. That's his questioning to you.
19 Don't you think that other users in
20 Hagerman would be interested in a settlement that
21 provided groundwater pumpers safe harbor?
22 A. I do think they would be interested in
23 that.
24 Q. Yet you're not aware of any other Rangen
25 surface water user that had any input in this

Page 449

1 settlement framework?
 2 A. I wouldn't consider this to be a final
 3 document. And taking this out and disseminating this
 4 information to the water users in Hagerman was
 5 initiated the evening of April 14th or 15th.
 6 I have been in discussion with water users
 7 since then on what would be the next steps of going out
 8 to water users, which entities we could work through in
 9 the Hagerman area so that we could take the elements of
 10 this to a larger audience and get feedback on it.
 11 Q. Okay. I want the record to be clear that
 12 you're not personally aware of any invitations that
 13 were sent to Rangen to any of these meetings?
 14 A. After that initial one, that's correct.
 15 MR. HAEMMERLE: Thank you.
 16 THE HEARING OFFICER: Let me properly
 17 characterize this now.
 18 Recross, Mr. Budge?
 19 MR. RANDY BUDGE: No questions. Thank you.
 20 THE HEARING OFFICER: Okay. Any additional
 21 questions, Mr. Huntley?
 22 MR. HUNTLEY: No.
 23 THE HEARING OFFICER: Mr. Henslee?
 24 MR. HENSLEE: No, sir.
 25 THE HEARING OFFICER: Thank you, Mr. Weaver.

Page 450

1 Next witness on behalf of Rangen? Mr. May?
 2 MR. MAY: Director, we'll call Doug Ramsey.
 3 THE HEARING OFFICER: Mr. Ramsey, if you'll come
 4 forward, please. Raise your right hand.
 5
 6 DOUG RAMSEY,
 7 having been called as a witness by Rangen, Inc., and
 8 duly sworn to tell the truth relating to said cause,
 9 testified as follows:
 10
 11 THE HEARING OFFICER: Please be seated.
 12 Mr. May.
 13 MR. MAY: Thank you, Director.
 14
 15 DIRECT EXAMINATION
 16 BY MR. MAY:
 17 Q. Good afternoon, Doug.
 18 A. Hello.
 19 Q. Could you please state and spell your name.
 20 A. My name is Doug Ramsey, R-a-m-s-e-y.
 21 Q. Doug, where are you employed?
 22 A. I'm employed at Rangen.
 23 Q. Okay. And how long have you been employed
 24 at Rangen?
 25 A. 27 years.

Page 451

1 Q. So you started in, I believe, 1987?
 2 A. That's correct.
 3 Q. Just one moment. I have the wrong number
 4 written down. I have it backwards. Doug, I'm going to
 5 show you what has been marked as Exhibit -- can you
 6 look in your book at Exhibit 2057. Or excuse me, 2075.
 7 I did that again.
 8 Do you recognize Exhibit 2075?
 9 A. Yes, I do.
 10 Q. And what is Exhibit 2075?
 11 A. It's my curriculum vitae, my resumé.
 12 Q. And is this a current copy of your
 13 curriculum vitae?
 14 A. Yes, it is.
 15 MR. MAY: Director, I would move for the
 16 admission of Exhibit 2075.
 17 MR. TJ BUDGE: No objection.
 18 THE HEARING OFFICER: Thank you.
 19 Mr. Huntley, any objection?
 20 MR. HUNTLEY: No objection.
 21 THE HEARING OFFICER: Mr. Henslee?
 22 MR. HENSLEE: No objection.
 23 THE HEARING OFFICER: Document marked as
 24 Exhibit 2075 is received into evidence.
 25 (Exhibit 2075 received.)

Page 452

1 Q. (BY MR. MAY): Doug, could you tell me a
 2 little bit about your education.
 3 A. Yes. I received a bachelor's in
 4 conservation with an aquatic option at Idaho State
 5 University, and then went on to get my master's in
 6 microbiology from the same institution.
 7 Q. And do you currently hold any
 8 certifications?
 9 A. Yes, I do. I'm certified as a fish health
 10 inspector through American Fishery Society, fish health
 11 section.
 12 Q. And what does a certification as a
 13 certified fish health inspector mean? What does that
 14 allow you to do?
 15 A. Well, it means that I've gone through the
 16 coursework and experience to be able to examine fish
 17 and go through the various tests that are required in
 18 order to isolate various pathogens in those fish, offer
 19 information on the prevention of fish diseases and
 20 control of them.
 21 Q. What is your position at Rangen?
 22 A. I'm research scientist.
 23 Q. What does a research scientist for Rangen
 24 do? What is your position? Or what does your duty
 25 entail?

Page 453

1 A. At the laboratory, our research center, I
 2 perform fish disease diagnostics. I also perform
 3 water-quality testing doing various chemical tests on
 4 water samples from primarily hatchery discharges. And
 5 I also provide work in doing fish disease and nutrition
 6 research there at the facility.
 7 Q. You mentioned that you do some fish disease
 8 diagnostics?
 9 A. Yes.
 10 Q. Do you do that for Rangen's hatchery?
 11 A. Yes, I do.
 12 Q. Do you also do that for others?
 13 A. Yes. I will provide that service for
 14 primarily fish feed customers, but also those that are
 15 not our customers.
 16 Q. And in addition to the fish disease
 17 diagnostics, do you also do other things out of the
 18 research hatchery for others, other than Rangen?
 19 A. Yes. Yes. We perform water-quality
 20 testing for quite a number of fish hatcheries in the
 21 area. Those water tests include various parameters,
 22 testing for solids and several nutrients that are
 23 required through the NPDES permit that the farmers have
 24 to operate under.
 25 Q. When you're performing those duties and the

Page 454

1 fish disease diagnostics, how do you get the samples to
 2 you? Who brings them to you?
 3 A. Typically, the farmer will bring both fish
 4 and water samples to the laboratory.
 5 Q. And who around the valley does bring those
 6 fish and those samples to you for testing?
 7 A. It can be a fish feed customer, anywhere
 8 from the Twin Falls area down to Strike Reservoir area
 9 where other hatcheries are located. There's also --
 10 well, that can be in the form of private facilities as
 11 well as state and federally run facilities.
 12 Q. So do you do disease and diagnostic work
 13 for government facilities, such as state and federal
 14 facilities?
 15 A. Yes, I have done that.
 16 Q. Have you done work in the past, for
 17 instance, for the Hagerman State Fish Hatchery that's
 18 located near Tucker Springs that we've been talking
 19 about in this case?
 20 A. Yes, I have.
 21 Q. In the 27 years that you've been employed
 22 by Rangen, have you become familiar with the issues
 23 that Rangen has related to the availability of water?
 24 A. Yes, I have.
 25 Q. And generally, Rangen's supply of water,

Page 455

1 how has that been trending?
 2 A. It's been going down steadily.
 3 Q. And would having more water in your
 4 facility make your job easier?
 5 A. Certainly.
 6 Q. And would you like to have more water in
 7 the facility?
 8 A. Yes. It would certainly make doing
 9 research much more effective, be able to have
 10 replication in our feeding trials.
 11 Q. You may have heard several times during the
 12 testimony today that all fish hatcheries, or at least
 13 most, have some kind of disease problems; correct?
 14 A. Yes.
 15 Q. Does Rangen have issues -- or has Rangen
 16 had issues in the past with diseases in its fish
 17 facility?
 18 A. Yes, it has.
 19 Q. Okay. Could you kind of describe for me,
 20 since you've been there, what kind of diseases you've
 21 had issues with in the Rangen facility.
 22 A. Yes. I know that prior to me working at
 23 the hatchery in the laboratory there was a particular
 24 virus called IPN virus, which was causing fairly high
 25 mortality in the hatchery. That was occurring in the

Page 456

1 '70s, for the most part.
 2 As we entered the '80s -- and I didn't
 3 start with the company until '87, but I know that
 4 through the '80s IPN virus seemed to start leaving or
 5 becoming less and less of a problem for some reason.
 6 And in its place IHN virus seemed to be coming more and
 7 more of a problem on the facility.
 8 Q. So with regard to the IPN issues that
 9 Rangen was experiencing in the '70s, is that no longer
 10 an issue in the facility?
 11 A. No, it is not.
 12 Q. And the IHN, you said?
 13 A. Yes.
 14 Q. What is IHN?
 15 A. It stands for infectious hematopoietic
 16 necrosis virus.
 17 Q. And you started having those issues in the
 18 late 1980s, you said?
 19 A. It probably started earlier than that, but
 20 in the '80s.
 21 Q. And do you continue to have problems with
 22 IHN in the facility?
 23 A. We have on fairly rare occasions now seen
 24 that problem in the fish.
 25 Q. Okay. And why don't you have problems with

Page 457

1 IHN, at least as much anymore, in the facility?
 2 A. Well, I believe that there's a number of
 3 reasons. One, for instance, is the use of demand
 4 feeders. Those were developed to replace the normal
 5 method of blowing feed into the raceway all at once for
 6 each feeding, which caused a lot of stress on the fish,
 7 a lot of competition among the population in order to
 8 get the feed. And I think that was a big problem for
 9 them in terms of stressing them out and eliciting
 10 disease problems.
 11 The company, Rangen, has also developed
 12 improved feeds through the years, one of which is an
 13 extruded feed that is much more digestible and
 14 provides, we feel, a better form of nutrition for the
 15 fish.
 16 We've also covered the raceways with bird
 17 netting to eliminate that possibility. With birds
 18 being a vector for these types of pathogens, it was, I
 19 think, a good move to start covering our place and
 20 getting rid of that particular variable in trying to
 21 control diseases as well.
 22 Q. So as it stands today, is IHN a big issue
 23 in the Rangen hatchery?
 24 A. It really is not at this point.
 25 Q. You have a pretty good handle on it?

Page 458

1 A. Yes, I believe we do.
 2 Q. Are there other issues that you do have
 3 other than IPN and IHN in the hatchery?
 4 A. Yeah. We don't have an issue with IPN
 5 anymore. But yeah, cold-water bacteria is another one
 6 that's causing mortality at our place.
 7 Q. Okay. What do you do with regard to
 8 cold-water disease? And do you have a good handle on
 9 that like you do with the IHN?
 10 A. Not so much. I would say that probably
 11 cold water is our number one problem there in the
 12 hatchery. We do have an approved medicated product
 13 that has been approved by FDA for food fish, which is
 14 very effective in controlling that particular pathogen.
 15 Q. Okay. Do you have any problems with other
 16 diseases in the hatchery?
 17 A. We do, but they're pretty minor in the big
 18 picture. We do have bacterial gill disease, which can
 19 take a number of fish at times, and it does depend on
 20 water flows and densities in those ponds.
 21 As far as mortality goes, there's really
 22 not much other problems on the facility that actually
 23 kills fish.
 24 Q. Other than what you mentioned, the IHN and
 25 the cold-water disease?

Page 459

1 A. Correct.
 2 Q. Do you have any problems with parasites?
 3 A. We do not. In my work with fish from our
 4 facility, I do see parasites on the fish. They are all
 5 external parasites and typically have a very low or no
 6 impact on the fish because they're in such low numbers.
 7 Normally the parasites will just be found
 8 there in very few numbers, and there's no effect on the
 9 fish itself with that. But they have that ability to
 10 continue to colonize a fish in those low numbers and
 11 remain on the facility.
 12 Q. So those are the external parasites?
 13 A. Correct.
 14 Q. And you don't have any particular issues
 15 with mortality from the external parasites; correct?
 16 A. No, we do not.
 17 Q. Your initial answer to that question was
 18 that you don't have parasites.
 19 Were you referring to a different type of
 20 parasites, other than the external?
 21 A. Yes. We don't have internal parasites. A
 22 number of organisms do infect fish internally,
 23 parasites in particular, that can cause mortality in
 24 fish, but we have not seen that at our facility.
 25 Q. And in particular, we'll talk a little bit

Page 460

1 later about what's been referred to today as PKD.
 2 Is that a parasite?
 3 A. Yes, it is.
 4 Q. And do you have any issues with PKD in the
 5 Rangen facility?
 6 A. We have not isolated that parasite in our
 7 fish.
 8 Q. Are you familiar with the disease history
 9 in the Hagerman State Fish Hatchery?
 10 A. Somewhat, yes.
 11 Q. Okay. How did you become familiar with
 12 that?
 13 A. I have done fish disease diagnostics for
 14 that facility through the years. And then I also was
 15 shown a summary sheet for various pathogens that have
 16 been isolated from that facility. It's been listed I
 17 believe here as one of the exhibits.
 18 Q. I'm going to bring up here on the screen --
 19 and you can look at in your book if you'd look like --
 20 Exhibit 2031.
 21 Is that the document that you're talking
 22 about?
 23 A. Yes, it is.
 24 Q. So you have had a chance to review this
 25 document?

Page 461

1 A. Yes.

2 Q. Any other way that you became familiar with

3 the diseases that might be experienced in the Hagerman

4 State Fish Hatchery?

5 A. There's been various meetings conducted in

6 the industry for disease control, one of them being

7 cold-water bacteria. And certainly the State has been

8 involved with those discussions.

9 Q. So based upon that knowledge that you have,

10 what kind of issues do you understand the Hagerman

11 State Fish Hatchery has with diseases?

12 A. They have --

13 Q. Or excuse me, I guess I should clarify the

14 question.

15 What kind of issues have they had? Just

16 kind of go through like we did with Rangen.

17 A. Okay. At Hagerman State I know that

18 they've had IHN virus as one of the significant

19 problems there at the facility. They have been dealing

20 with proliferative kidney disease, or PKD, on the

21 facility as well. And also one of the cases that I've

22 been involved with was with the external parasite

23 called ich, short for a long scientific term.

24 Q. Okay. And is ich something that you have a

25 significant issue with at the Rangen facility?

Page 462

1 A. No, it's not a problem. I do see it

2 occasionally on fish that I'm examining. But it's in

3 such low numbers there's no effect on the fish.

4 Q. And you mentioned that they have issues

5 with IHN?

6 A. Yes.

7 Q. Do those issues continue now today?

8 A. Yes, they do.

9 Q. What kind of -- what is the significance of

10 the issues with IHN that they've got?

11 A. It's typically a problem in smaller fish or

12 younger fish, which can result in very high mortality.

13 I don't know exactly what the mortality is for those

14 epizootics at Hagerman State Hatchery. But there are

15 plenty of fish that do die from that disease. And then

16 there can be longer term problems with the survivors in

17 terms of skeletal deformities.

18 Q. And you mentioned that IHN was something

19 that you have a fairly good handle on at the Rangen

20 hatchery?

21 A. Yes, it appears that we do.

22 Q. Is -- well, let me ask this: What causes

23 IHN? Is it caused by a bacteria or a parasite or a

24 virus? What causes it?

25 A. It's a viral disease.

Page 463

1 Q. Is that virus something that could be

2 transmitted in the water, for instance, if water was

3 transferred to the Rangen facility?

4 A. Yes, contaminated water would carry virus

5 and allow for infection of fish downstream.

6 Q. And are you concerned that that IHN could

7 cause problems with a disease that you have some

8 control over now?

9 A. Yes. There are -- besides just having more

10 virus coming onto our place, there's also this problem

11 with strain differences. Now, I don't know if the

12 strain that Hagerman State is dealing with is different

13 from ours, but there can be differences in virulence or

14 the ability to cause disease, given various differences

15 in the strains of the virus that we're talking about.

16 Q. And do you know whether the Hagerman State

17 Fish Hatchery has adopted similar methods of

18 controlling the IHN that you've been using in the

19 Rangen facility?

20 A. Yes.

21 MR. TJ BUDGE: Objection. Foundation.

22 THE HEARING OFFICER: Overruled.

23 Q. (BY MR. MAY): Sorry. What was the answer?

24 A. Yes, I believe that they've used a number

25 of methods that we have used in terms of trying to

Page 464

1 control that particular disease.

2 Q. And yet they're still experiencing problems

3 with it?

4 A. Yes.

5 Q. Does the Hagerman State Fish Hatchery have

6 cold-water disease?

7 A. Yes.

8 Q. Do you have any concerns with the fact that

9 the Hagerman State Fish Hatchery has experienced

10 cold-water disease when considering that the water from

11 their facility may be pumped up into yours?

12 A. Yes. Again, we have cold-water on our

13 place, but increasing the pathogen load into our

14 facility simply causes the possibility of increased

15 problems in our facility. And also the differences in

16 strain may also come into effect also in terms of

17 virulence.

18 Q. What is furunculosis?

19 A. Furunculosis is a disease caused by a

20 bacteria.

21 Q. And does Rangen have any issues with

22 furunculosis?

23 A. That's another one that had been a problem

24 even before my time. I have -- I really can't remember

25 the last time that I isolated furunculosis. It may

Page 465

1 have been never. I'm not sure about that. But it
 2 would have been a lot of years ago.
 3 But again, these changes in our management
 4 strategies, I believe, have helped to reduce that to a
 5 nonissue.
 6 Q. Do you know whether the Hagerman State Fish
 7 Hatchery has furunculosis in raceways that are served
 8 by Tucker Springs?
 9 A. Yes, they do.
 10 Q. And that's one of the things if we were to
 11 look through Exhibit 2031, there are instances of that
 12 noted in there?
 13 A. Yes.
 14 Q. Just to clarify, the issues that we've been
 15 talking about with IHN, with the cold-water disease,
 16 when we're referring to issues in the Hagerman State
 17 Hatchery, are you referring to issues in raceways that
 18 are served by Tucker Springs?
 19 A. Yes.
 20 Q. You mentioned PKD.
 21 What is PKD?
 22 A. PKD is a disease caused by a myxozoan
 23 parasite. It primarily infects salmonid fish. It's a
 24 pathogen that causes high mortality at times.
 25 Q. And by "salmonid fish," is that -- are the

Page 466

1 trout that you raise at Rangen's hatchery salmonid
 2 fish?
 3 A. Yes, they are.
 4 Q. And are the trout that are raised at the
 5 Hagerman State Fish Hatchery similar to the trout that
 6 you raise at your hatchery?
 7 A. Yes.
 8 Q. And in fact, I understand that they may get
 9 some of their eggs from the same place that you do.
 10 Correct?
 11 A. That's correct.
 12 Q. How is PKD spread?
 13 A. The infective agent of that particular
 14 parasite is transmitted from the intermediate host,
 15 which is a bryozoan, through the water to susceptible
 16 fish.
 17 Q. The bryozoans, you mentioned it's an
 18 intermediate host.
 19 What does that mean?
 20 A. It's a host that is just simply part of the
 21 life cycle, as fish are as well.
 22 Q. Okay. And those bryozoans, what are
 23 bryozoans?
 24 A. I don't know a lot about those, except that
 25 they are an invertebrate organism in the aquatic

Page 467

1 habitats. It seems to be, for the most part, in fairly
 2 clean spring water environments.
 3 Q. And are you concerned about the bryozoans
 4 and/or the PKD moving from the Tucker Springs up to the
 5 Rangen facility?
 6 A. Yes, I'm concerned about both.
 7 Q. And you don't have PKD in your hatchery
 8 right now?
 9 A. We have never had that isolated from our
 10 fish.
 11 Q. What happens once the PKD and/or the
 12 bryozoans get established at Rangen's facility?
 13 A. If the bryozoans become established in our
 14 system, then that presents the potential for that
 15 particular pathogen to be basically there from that
 16 point on. It would be very difficult to eliminate it
 17 from the system.
 18 If it was just the parasite itself coming
 19 through the water supply, then we would simply have
 20 potentially epizootics in our populations as time went
 21 on and would have dead fish as a result.
 22 Q. And once it got established, it might be
 23 difficult to remove; correct?
 24 A. Yes.
 25 Q. I understand that -- or maybe I should say,

Page 468

1 do you understand that the pipeline that is being
 2 proposed to put water into the Rangen facility ties
 3 into the 14-inch pipe that goes to the small raceways?
 4 A. Yes.
 5 Q. And you also understand that the pipe --
 6 the intake for that pipeline is located in the lower
 7 pool of Upper Tucker Springs, kind of in that rocky
 8 area; correct?
 9 A. Yes, I understand that.
 10 Q. Now, in the Hagerman State Fish Hatchery,
 11 do you understand that that lower pool typically feeds
 12 their large raceways?
 13 A. Correct.
 14 Q. Does it cause you any concerns that the
 15 water that would be coming from that rocky area would
 16 go into your small raceways?
 17 A. Yes, it does.
 18 Q. And why is that?
 19 A. Well, first of all, that water would be
 20 going over nearly naive fish. We have a water supply
 21 that is basically specific pathogen free coming from
 22 the tunnel. And for the most part, that is a closed
 23 system supplying the small raceways. And so those fish
 24 are not as immunocompetent to be able to resist various
 25 pathogens.

Page 469

1 And with the water coming from that Tucker
 2 Spring area, there is definitely concern that those
 3 pathogens that potentially are in that water source
 4 would be going over fish that are not totally developed
 5 in terms of their immune system.
 6 Q. And you used the word "naive."
 7 What did you mean by the word "naive"?
 8 A. "Naive" being these fish have not been
 9 exposed to the various pathogens that we're talking
 10 about.
 11 Q. What kinds of things are you concerned
 12 about in -- happening in that rocky area that might get
 13 washed into the collection box?
 14 A. Well, from looking at the facility and
 15 where this is going to happen, it's basically a
 16 sinkhole, it looks like to me. And so there's drainage
 17 off the rocks and down into the water supply where this
 18 collection box would be located.
 19 And with that, I just have serious concerns
 20 about any number of pathogens that would be deposited
 21 there from vectors, for instance, fish-eating birds,
 22 mammals, those kinds of things where the pathogens
 23 would be sitting on the rocks.
 24 If the water is not over the rocks at that
 25 point, they could be basically just increasing in

Page 470

1 numbers to a point where when you have a rain event or
 2 there would be water flushing all of those off the
 3 rocks and down into the water table below and
 4 eventually being collected into that box, and finally
 5 pumped to our hatchery.
 6 Q. And do you have an understanding that the
 7 Hagerman fish hatchery has had to do some things to try
 8 and keep birds and fish out of some of those areas?
 9 A. Yes.
 10 Q. What kinds of things have they done?
 11 A. Well, evidently there are fish in the Big
 12 Bend Ditch, for instance, that they have tried to keep
 13 those fish out of their water supply by setting up a
 14 screen, which precludes them from being able to jump up
 15 into that area.
 16 They also have used some large balls
 17 suspended high in order to try and scare various birds
 18 from flying overhead. It's quite a flyway for
 19 migratory birds. And with all those birds going over
 20 that area, the definite possibility of duck waste, for
 21 instance, landing on those rock areas and contaminating
 22 basically the area.
 23 Q. And so despite those efforts that they've
 24 made with the fish screens and the duck balls, do you
 25 still have -- the scare balls, do you still have

Page 471

1 concerns with water coming from an area that is around
 2 those exposed rocks?
 3 A. Yes. It's simply open to that kind of
 4 contamination.
 5 Q. Does part of your -- did part of your
 6 training or your experience deal with how to control
 7 these diseases in fish?
 8 A. Yes.
 9 Q. And how do you go about controlling
 10 diseases in fish?
 11 A. The number one method of controlling
 12 diseases in fish is to avoid having the pathogen that
 13 causes the disease from getting on your facility in the
 14 first place.
 15 From there you provide good nutrition to
 16 the fish, as good as water quality as possible,
 17 maintain the rearing units as clean as possible,
 18 reducing stressors during handling as much as you can,
 19 all those things to provide the fish with as healthy an
 20 environment as possible.
 21 Q. And one of those things might be some kind
 22 of medication potentially?
 23 A. Yes. Yes, in controlling. Certainly there
 24 are some approved products for food-fish use, and at
 25 times we have to rely on those to treat diseases in the

Page 472

1 fish.
 2 Q. Which types of diseases do you have some
 3 success with medication?
 4 A. Primarily, antibiotic. There's several
 5 that are approved for food fish. One in particular for
 6 cold-water that we have used on the place is called
 7 Aquaflor. It's a florfenicol product that's effective.
 8 Q. And is there an approved drug for PKD?
 9 A. No, there's not.
 10 Q. Are you aware of any way to cure that once
 11 the fish get it?
 12 A. No.
 13 Q. I understand that Rangen raises some fish
 14 under a contract with Idaho Power.
 15 Is that correct?
 16 A. That's correct.
 17 Q. What happens to those fish? Where do they
 18 go?
 19 A. Those fish are planted either in the
 20 American Falls Reservoir or through the mid-Snake from
 21 Centennial Park down to Strike Reservoir.
 22 Q. Do you also have other contracts or do you
 23 sell live fish to other people for implanting or
 24 stocking in ponds?
 25 A. We do. On occasion we will sell a small

Page 473

1 number of fish for private pond use.
 2 Q. And where do you sell those? Where do
 3 those fish end up?
 4 A. One place has been in the Boise area at
 5 times. There are others, but I don't remember exactly
 6 where they are.
 7 Q. And you also, as I understand, sell some
 8 fish for commercial purposes?
 9 A. Correct.
 10 Q. And what happens to those fish?
 11 A. Those fish are live-hauled to the
 12 processing plant near Filer.
 13 Q. Were you here today when Mr. Chapman was
 14 testifying and indicated there might be some
 15 restrictions that they had on where they could place
 16 their fish out of the Hagerman State Fish Hatchery?
 17 A. Yes.
 18 Q. Would potential restrictions on where you
 19 could place fish also cause difficulties for Rangen if
 20 those were to occur there?
 21 MR. TJ BUDGE: Objection. Speculation.
 22 THE HEARING OFFICER: Overruled.
 23 MR. TJ BUDGE: Director, may I inquire of the
 24 witness in aid of objection?
 25 THE HEARING OFFICER: Sure.

Page 474

1 VOIR DIRE EXAMINATION
 2 BY MR. TJ BUDGE:
 3 Q. Mr. Ramsey --
 4 A. Yes.
 5 Q. -- you're not employed by the Department of
 6 Fish and Game?
 7 A. No, I'm not.
 8 Q. Do you know the waterways that have fish
 9 stocking restrictions for the Fish and Game?
 10 A. No, I'm not -- I don't have that
 11 information.
 12 MR. TJ BUDGE: I'd renew my objection. He
 13 doesn't know what waterways they would be precluded
 14 from stocking fish in, so who's to say whether it would
 15 have any impact on Rangen's operations.
 16 THE HEARING OFFICER: Sustained. You'll need to
 17 lay some foundation, Mr. May.
 18
 19 FURTHER DIRECT EXAMINATION
 20 BY MR. MAY:
 21 Q. Let's talk a little bit about what you know
 22 about other parts of the water quality of the water
 23 coming -- or water in Tucker Springs. We've already
 24 talked about some of the potential diseases and
 25 parasites.

Page 475

1 Have you seen documents or a few documents
 2 representing water tests that were done at the Tucker
 3 Springs facility?
 4 A. Yes, I have.
 5 Q. How many documents have you seen that -- in
 6 other words, how many tests have you seen that show the
 7 water quality in Tucker Springs?
 8 A. I'd say several. Of course, I saw the
 9 report that I produced for Fish and Game.
 10 Q. And that was the dissolved oxygen document,
 11 which I believe was -- let me check my mail real quick.
 12 Is that this document, Exhibit 2041?
 13 A. Yes, that's the one.
 14 Q. Okay. And have you also seen Exhibit 2042
 15 with regard to dissolved oxygen?
 16 A. Yes.
 17 Q. Okay. Have you seen other dissolved oxygen
 18 measurements in Tucker Springs?
 19 A. Yes.
 20 Q. Okay. And do you recall where those
 21 measurements were? Were they part of the report that
 22 was provided by SPF?
 23 A. Yes, that's it.
 24 Q. Have you seen dissolved oxygen
 25 measurements, other than these two documents and the

Page 476

1 report from SPF?
 2 A. No.
 3 Q. What is the significance of dissolved
 4 oxygen when it comes to raising fish?
 5 A. Well, it's a required component for fish.
 6 It has to be in the water for them to live. They use
 7 that with -- for respiration and various metabolic
 8 functions.
 9 Q. And as I understand it from previous
 10 testimony, fully-saturated water at the altitude of
 11 your hatchery is approximately 9 parts per million.
 12 A. That's correct.
 13 Q. And is that what you're shooting for for --
 14 is that kind of your goal for what you would like to
 15 have with the water?
 16 A. Yes.
 17 Q. You can raise fish in less water than 9
 18 parts per million; correct?
 19 A. In less oxygen.
 20 Q. Excuse me, yes. 9 parts per million of
 21 oxygen.
 22 A. Yes.
 23 Q. What's generally the range that you can
 24 raise fish in for oxygen?
 25 A. It's typically from about 6 parts per

Page 477

1 million on up to saturation.
 2 Q. And Mr. Rogers testified that there might
 3 be -- you might be able to raise fish as low as 5
 4 potentially.
 5 A. That's correct.
 6 Q. Would you agree with that?
 7 A. Yes.
 8 Q. Mr. Rogers also indicated that -- or agreed
 9 that as the water flowed through the facility the
 10 dissolved oxygen went down; correct?
 11 A. Yes.
 12 Q. So it's my understanding that the dissolved
 13 oxygen records that we've got for Tucker Springs
 14 indicate that the dissolved oxygen is somewhere in the
 15 range of 8.
 16 Is that your understanding?
 17 A. Yes.
 18 Q. You can raise fish in dissolved oxygen with
 19 8 parts per million; correct?
 20 A. Yes, you can.
 21 Q. And there are ways to raise the dissolved
 22 oxygen level in the water; correct?
 23 A. Yes, there are.
 24 Q. Does the level of dissolved oxygen of
 25 around say 8 parts per million in the water in Tucker

Page 478

1 Springs cause any issues for you?
 2 A. Only in that there's a certain amount of
 3 oxygen at 8 parts per million, which raises a certain
 4 number of fish. At 9 parts per million you can raise
 5 more fish.
 6 Q. And so the 8 would be an issue for you
 7 because you could raise less fish; correct?
 8 A. Correct.
 9 Q. But it's my understanding that there are
 10 systems that could be put in place to raise it to 9.
 11 A. Yes.
 12 Q. Are you familiar generally with the
 13 water-quality measurements that were taken regarding
 14 the temperature of the water in Tucker Springs?
 15 A. Yes.
 16 Q. You've had a chance to review those?
 17 A. Yes.
 18 Q. Do you have any issues with the temperature
 19 of the water coming out of Tucker Springs and being
 20 delivered to Rangen?
 21 A. I notice the temperature was maybe a degree
 22 higher. No, I really don't have a problem with that.
 23 Q. Other than the issues with pathogens and
 24 diseases that we've talked about, are you aware of
 25 other water-quality issues based on the tests that

Page 479

1 you've seen so far with regard to the Tucker Springs
 2 water?
 3 A. Well, the issue of gas supersaturation is
 4 one that I would definitely be concerned about with
 5 that type of system.
 6 Q. Okay. And we can talk about that in just a
 7 second.
 8 Other than the potential for gas
 9 supersaturation, are there other issues related to
 10 contaminants in the testing that you've seen done at
 11 Tucker Springs?
 12 A. Other than the pathogens and lower
 13 dissolved oxygen, no.
 14 Q. What is the issue that you have with the
 15 dissolved -- or excuse me, the nitrogen supersaturation
 16 that you mentioned?
 17 A. Whenever you have water that's put under
 18 pressure during pumping, for instance, the possibility
 19 exists where air getting entrained into that water can
 20 cause higher levels of dissolved gases in it, and that
 21 would occur through pumping and increased pressure.
 22 And once that water went out onto fish, the
 23 gases would come out of solution through the gills as
 24 the fish take in those gases. And that can cause
 25 basically an embolism with bubbles forming in the blood

Page 480

1 vessels.
 2 Q. And is that what Mr. Rogers described as
 3 the gas bubble disease?
 4 A. Correct.
 5 Q. With the pumping system that IGWA's
 6 proposing to install in Tucker Springs, do you have
 7 concerns with regard to the reliability of that system?
 8 A. Yes.
 9 Q. Okay. And what would happen if the pumps
 10 were to shut off and water was no longer flowing into
 11 the facility? You heard Mr. Rogers testify that the
 12 fish would start to die in as little as maybe 10 to 30
 13 minutes.
 14 Do you agree with that?
 15 A. I definitely agree with that.
 16 Q. And if they did not die, what -- even for
 17 the fish that didn't die, what complications could
 18 arise from that?
 19 A. Well, that oxygen deprivation that the fish
 20 would experience would cause various changes in the
 21 fish, various metabolic changes in the fish that would
 22 cause stress within them. And these stressors can
 23 definitely be a long-term effect on the fish, where
 24 there would be potential for infectious diseases to
 25 come in and cause epizootics in the population. There

Page 481

1 could be impaired growth as a result of the stressors.
 2 Q. And I would understand that that's a
 3 problem with the fish that you're producing.
 4 Does that also cause any problems with the
 5 research that you conduct?
 6 A. Definitely, yeah. There would be that
 7 variable that during a feeding trial would make it more
 8 difficult to draw any conclusions from the research.
 9 Q. Why would it make it more difficult to draw
 10 conclusions from your research?
 11 A. It's just another variable that
 12 basically -- if we have certain results and we're
 13 trying to figure out why, we would not be able to
 14 discount that as a reason for the unusual results.
 15 Q. Do you understand the term "biosecurity"?
 16 A. Yes.
 17 Q. What does that mean to you?
 18 A. Biosecurity is a management strategy that
 19 attempts to exclude any contaminants getting into your
 20 facility, that being both in the form of pathogens as
 21 well as human intervention.
 22 Q. And your setup at Rangen, could you talk me
 23 through kind of what you have there that enables you to
 24 control biosecurity at the Rangen facility.
 25 A. Yes. We are situated at the headwaters of

Page 482

1 Billingsley Creek. And the water source is about a
 2 quarter of a mile from the public roadway that goes
 3 past the hatchery. And so we have that distance as
 4 kind of a buffer zone, which helps to maintain control
 5 and security for people getting into the place.
 6 We also have the rim just above the spring
 7 source, which also is basically a barrier, and along
 8 with private property on top of the rim allows for us
 9 to have a pretty secure system where we're located.
 10 Q. Is the property easy to access?
 11 A. Well, it's easy to access if a person is
 12 driving in on the roadway. But that course is
 13 monitored with hatchery workers there every day.
 14 Q. Where is the source of the water located in
 15 terms of, for instance, your lab and where people are
 16 working?
 17 A. It's directly above the laboratory and
 18 where much of the fish culture activities take place
 19 with the small raceways and the hatch house. So it's a
 20 direct line of sight from those places.
 21 Q. How is the water taken from the Curren
 22 Tunnel itself? How do you get the water from the
 23 Curren Tunnel into your hatch house, for instance?
 24 A. Comes out of the tunnel and is conveyed
 25 down to a concrete head box below the tunnel a short

Page 483

1 distance. And from there the water is piped directly
 2 to the small raceways.
 3 Q. How is the Tucker Springs area different
 4 from that, as you understand, from the Rangen facility?
 5 A. The water at our facility comes directly
 6 out of the ground under a closed system inside the
 7 tunnel. Whereas Tucker Springs is an open area,
 8 basically a sinkhole of sorts, where this water is
 9 coming up from the ground, but is open to
 10 contamination.
 11 Q. And how about access to the area where the
 12 lower pool is by, for instance, people?
 13 A. There's a very short distance from the
 14 public highway that travels right past that spring
 15 area, which would allow easy access for someone to go
 16 down into that area.
 17 Q. Is there any control on people entering
 18 that area?
 19 A. Well, that area is out of sight from most
 20 all of the fish culture activities that the State
 21 Hatchery conducts. So there would be very little
 22 monitoring, I would think, in that area and fairly easy
 23 access for someone to go right down in there.
 24 Q. We've talked mostly about, you know,
 25 natural things, like fish getting into the system or

Page 484

1 ducks.
 2 Is it possible for someone to purposefully
 3 cause you issues at the intake for that pipeline?
 4 A. Yes.
 5 Q. How difficult would that be?
 6 A. It would be, in my estimation, easy to do.
 7 I have been involved with investigating fish-kills in
 8 the past, and it does not take much. A few jugs of
 9 bleach poured into an intake, and you have fish stacked
 10 up on the screens that have to be removed.
 11 Q. You mentioned earlier that you would like
 12 to have more water at the facility.
 13 A. Yes.
 14 Q. And you've reviewed this proposal to bring
 15 water to the Rangen facility up to 10 cfs.
 16 A. Yes.
 17 Q. After you've reviewed it and looked at the
 18 risks with the diseases that you've talked about, is
 19 this mitigation plan something that you believe is a
 20 good idea to get water to Rangen?
 21 A. It's tempting to say yes, that this is a
 22 way for Rangen to get more water to our place.
 23 Especially with the low flows that we're seeing coming
 24 out of the tunnel that feeds the small raceways, that
 25 would be an improvement for our facility, in terms of

Page 485

1 more water.
 2 But I really am convinced that the risks
 3 are too high, that there would be opportunity for any
 4 number of pathogens to be brought into the facility,
 5 and not only affect our operations, but those
 6 downstream in Billingsley Creek.
 7 MR. MAY: I think that's all I've got.
 8 THE HEARING OFFICER: Okay. Thank you, Mr. May.
 9 Do we want to start cross-examination?
 10 MR. TJ BUDGE: I'd like to get my notes in
 11 order, and I think that will make us move along better
 12 when we're done.
 13 THE HEARING OFFICER: Okay. Let's come back at
 14 ten after 3:00.
 15 (Recess.)
 16 THE HEARING OFFICER: Back on.
 17 Cross-examination, TJ.
 18
 19 CROSS-EXAMINATION
 20 BY MR. TJ BUDGE:
 21 Q. Mr. Ramsey, you'll have to bear with me.
 22 My notes are a little bit in disorder, but I'm going to
 23 do my best.
 24 Early in your testimony you had shown on
 25 the screen your curriculum vitae. And I understood

Page 486

1 from that you've been employed by Rangen for 27 years.
 2 Is that right?
 3 A. That's correct.
 4 Q. You've got master's degrees in microbiology
 5 and chemistry?
 6 A. Biochemistry, yes.
 7 Q. Biochemistry, okay. And a significant part
 8 of your work is water-quality testing, not only for
 9 Rangen, but for others as well?
 10 A. Yes.
 11 Q. Can you tell me what the suitable range of
 12 temperature is for raising rainbow trout.
 13 A. That would be anywhere from mid-40s up to
 14 about 62 degrees for continuous exposure.
 15 Q. Okay. And is this something you've
 16 understood for many years?
 17 A. Yes.
 18 Q. And you also testified that the acceptable
 19 range for dissolved oxygen is 5 or 6 to 9 parts per
 20 million; is that right?
 21 A. That's correct.
 22 Q. And this is something you've understood for
 23 many years as well?
 24 A. Yes.
 25 Q. Justin, would you please pull up

Page 487

1 Exhibit 1111.
 2 And you can use the book in front of you or
 3 either look at the version on the projector.
 4 And turn to Table 1, which has the
 5 water-quality data measurements from SPF Water
 6 Engineering. Right there. Can you zoom in on Table 1,
 7 please, the top table.
 8 Have you seen this table before,
 9 Mr. Ramsey?
 10 A. Yes, I have.
 11 Q. You may remember, then, the right column
 12 has some dissolved oxygen measurements taken at Rangen
 13 and at Tucker Springs, I believe it was May 7th. Yeah,
 14 I can see that there.
 15 And you'll see that measurements they took
 16 that day reflected between 8.3 and 8.6 DO; is that
 17 right?
 18 A. At the Rangen hatchery, yes.
 19 Q. At the Rangen hatchery. Is that pretty
 20 consistent with the dissolved oxygen you've noticed in
 21 the water flowing through your hatchery?
 22 A. No. No. It's somewhat lower than what I
 23 normally measure.
 24 Q. Okay. What measurements do you typically
 25 measure?

Page 488

1 A. For the incoming water it's typically right
 2 at 9 parts per million.
 3 Q. And is that measured up at the tunnel?
 4 A. No. It's typically at the bridge where the
 5 diversion occurs.
 6 Q. At the Bridge Diversion. Okay. So if this
 7 was measured at a different location, that may account
 8 for the difference?
 9 A. It could.
 10 Q. And then you'll see that the Tucker Springs
 11 measurement, on that day anyways, was 8 parts per
 12 million.
 13 Do you see that?
 14 A. Yes.
 15 Q. You testified that it's preferable to have
 16 a DO level near saturation when it enters the raceways.
 17 A. Yes.
 18 Q. And I also understand from prior
 19 proceedings that -- and prior testimony in this
 20 proceeding that Rangen continues to raise fish for
 21 Idaho Power under a contract to provide fish for
 22 American Falls.
 23 A. That's correct.
 24 Q. And is it true that that contract requires
 25 relatively low density in the raceways?

Page 489

1 A. The densities are limited to a .3 density
2 index.
3 Q. And that's much lower than what you'd see
4 at a commercial hatchery like Clear Springs; is that
5 right?
6 A. It is lower, yes.
7 Q. So wouldn't you agree, then, that if water
8 was entering your facility with a DO of 8.0 that it
9 would remain above that 5 or 6 parts per million level
10 by the time it exited your raceways?
11 A. I can't say that for sure.
12 Q. You don't know how much oxygen is absorbed
13 as water flows through Rangen's raceways?
14 A. Well, yes, I do. But with variables in
15 terms of loading densities at the lower end of the
16 place, that may not be enough.
17 Q. Okay. So that's something maybe you'd have
18 to measure to verify?
19 A. Correct.
20 Q. And you did testify that if it became
21 necessary to add oxygen that could be done with various
22 aeration devices.
23 A. It is technically possible.
24 Q. Okay. There was some discussion about the
25 effect of pump failure on fish in your raceways.

Page 490

1 And I think you've testified that if there
2 was no incoming water for 20 or 30 minutes that you
3 thought there may be long-term stress on the fish.
4 A. Yes, if not total death --
5 Q. Okay.
6 A. -- for that period of time.
7 Q. And you understand that if there was a pump
8 failure in the Tucker Springs pumping-and-pipe project
9 due to a pump failure or power outage that there would
10 likely only be a break in flow for one to two minutes?
11 A. I missed the first part of your question.
12 Q. I could rephrase the question.
13 If the small raceways are receiving water
14 from Tucker Springs and that pump system stops working
15 for one to two minutes, you understand that during that
16 period of time you would continue to receive water from
17 the Curren Tunnel that would flow by gravity into the
18 small raceways; is that right?
19 A. Yes. Yes.
20 Q. So there would continue to be new
21 oxygenated water coming into the small raceways, just
22 in a smaller quantity?
23 A. Correct.
24 Q. And you would agree that not having that
25 water from Tucker Springs for one or two or three

Page 491

1 minutes is not going to cause any long-term harm to the
2 fish that are in those raceways?
3 A. Not in the small raceways, most likely.
4 Q. Okay. Let me ask you -- and just make sure
5 I understand some of the diseases that you've had at
6 the Rangen hatchery.
7 You explained that you have had IPN, IHN,
8 cold-water disease, bacterial -- I didn't catch the
9 other part of that disease.
10 A. Cold-water bacteria.
11 Q. Is that the disease? Okay. I had notes
12 bacterial nill (phonetic) disease. Something like
13 that.
14 A. Proliferative kidney disease.
15 Q. No, I must have misheard. Gill. Bacterial
16 gill disease.
17 A. Bacterial gill disease, yes.
18 Q. And ich.
19 A. Yes.
20 Q. And all of those are capable of actually
21 killing fish?
22 A. Yes.
23 Q. And you've been successful in treating for
24 those diseases, it sounds like?
25 A. For the most part, yes.

Page 492

1 Q. You understand that dealing with diseases
2 is a fact of life for anybody that operates a fish
3 hatchery in the Hagerman area?
4 A. Yes.
5 Q. You're not aware of any facilities down
6 there that don't experience disease periodically?
7 A. No.
8 Q. There's also, I presume, other diseases and
9 illnesses that may not be capable of killing fish but
10 that you have experienced periodically in your
11 facility?
12 A. Yes.
13 Q. You explained that in the testing you do
14 for other fish farmers they bring with you both an
15 infected fish and a water sample; is that right?
16 A. No. Sorry if I made that hard to
17 understand. It's either water or fish that they're
18 bringing in. Yes, they will bring the fish in the
19 water, but that only allows them to remain alive until
20 I see them there at the laboratory.
21 Q. Understood. You testified that you have
22 not isolated PKD on fish in Rangen's facility?
23 A. Yes.
24 Q. Have you tested for PKD?
25 A. I have looked at fish a number of times for

Page 493

1 that particular pathogen.
 2 Q. And how do you do that?
 3 A. It's typically a necropsy where the fish
 4 are opened up, body cavity is exposed, and the kidneys
 5 are taken out of the fish, and an imprint of those
 6 kidneys placed on a glass slide and stained, and then
 7 examined microscopically for the organism.
 8 Q. Okay. How often do you test for PKD at the
 9 Rangen facility?
 10 A. I would see it in most cases that I do
 11 there, because the kidneys are also used a lot for
 12 checking for bacteria, and also for virus as well.
 13 Q. Okay. How often do you do the test when
 14 you do this open cavity test you're discussing?
 15 A. For the most part, every time that I have
 16 fish come into the laboratory I do that particular
 17 test.
 18 Q. Okay. Actually the fish that Rangen raises
 19 at its facility?
 20 A. Yes.
 21 Q. How often do you test those fish?
 22 A. It's basically when we have elevated
 23 mortalities when I'm checking those fish. So it could
 24 be several times in a month or less often.
 25 Q. Okay. So if you start having problems with

Page 494

1 fish, fish dying, then you go test to try to find out
 2 the cause of the test?
 3 A. Yes.
 4 Q. The cause of the mortality. I apologize.
 5 A. Correct. Correct.
 6 Q. All right. I appreciate that. And do you
 7 test the water column in the Rangen facility for PKD?
 8 A. No, I do not.
 9 Q. Is that something you could do?
 10 A. No.
 11 Q. So to find out if there's PKD, you'd have
 12 to test the fish that are growing in the whatever
 13 raceway you're having the problems in?
 14 A. Yes.
 15 Q. And you understand that at the Hagerman
 16 State Hatchery they've had PKD in some of their
 17 raceways?
 18 A. Yes.
 19 Q. That PKD could be transmitted between fish
 20 in those raceways?
 21 A. Yes.
 22 Q. And for that PKD to get into Tucker
 23 Springs, a fish would have to exit the raceways, swim
 24 up the large pipe and into the rocks to get into that
 25 area, or it would have to be introduced in some other

Page 495

1 way; is that right?
 2 A. Yeah, such as a vector.
 3 Q. Like a bird or something like that?
 4 A. Yes. As long as the intermediate host is
 5 in that spring source, there could definitely be
 6 infection coming from that.
 7 Q. Okay. So a bird could fly over and
 8 defecate and land in the upper springs?
 9 A. That's a possibility, yes.
 10 Q. Okay. And the same thing could happen at
 11 Rangen; right?
 12 A. Yes.
 13 Q. Justin, would you pull up Exhibit 2024.
 14 And let's scroll down to the second or third page.
 15 There's a few photographs. Right there. Please zoom
 16 in to photograph 1.
 17 Mr. Ramsey, do you recognize the photograph
 18 that's projected on the screen? It's photo 1 from
 19 Exhibit 2024.
 20 A. Yes.
 21 Q. Is that what's commonly known as the
 22 farmers' box near the Curren Tunnel?
 23 A. Yes.
 24 Q. So my understanding, and having been there,
 25 is water comes out of the Curren Tunnel, it daylight,

Page 496

1 flows a short distance where it can be -- where it's
 2 collected in the farmers' box, and then can be piped
 3 either to some irrigated farmland south of Rangen or
 4 piped down lower to what's called the Rangen box; is
 5 that right?
 6 A. Yes, that's true.
 7 Q. So at this point there's no netting or
 8 screening or anything of the water that Rangen uses in
 9 its facility?
 10 A. Down to that point, no.
 11 Q. All right. And there is a screen on the
 12 face of the Curren Tunnel; right?
 13 A. Yes.
 14 Q. And I understand that's at least in part to
 15 keep rodents out of the tunnel.
 16 A. Yes.
 17 Q. And rock chucks and other critters up
 18 there, I presume?
 19 A. Yes, there are.
 20 Q. And from this point down, Justin, if you'll
 21 scroll down to the next picture. Okay.
 22 This is also part of the farmers' box where
 23 those two white pipes lead to the Rangen box; is that
 24 right?
 25 A. Yes.

Page 497

1 Q. So this is near the box we were just
2 looking at in Figure 1?
3 A. Yes.
4 Q. Okay. Justin, please scroll down to
5 photo 3.
6 And is this a photograph of the Rangen
7 collection box?
8 A. Yes, it is.
9 Q. And it's water from this box that feeds the
10 14-inch pipe that transports water to the small
11 raceways; is that right?
12 A. Yes.
13 Q. This is an open water source at this
14 location as well?
15 A. Yes.
16 Q. It's not been screened off by Rangen?
17 A. No.
18 Q. And, Justin, if you'll scroll down to photo
19 No. 8.
20 Next we've got highlighted here photo No. 8
21 from Exhibit 2024.
22 Is that on the right side of that the --
23 what's called the Bridge Diversion that takes water
24 into Rangen's large raceways and CTR raceways?
25 A. That's correct.

Page 498

1 Q. And this diverts water in Billingsley Creek
2 that flows down upstream of this location?
3 A. Yes.
4 Q. And Billingsley Creek is not screened or
5 covered or anything like that either, is it?
6 A. No, it's not.
7 Q. You raised a concern about during a rain
8 event getting runoff or other contaminants into the
9 lower pond at Upper Tucker Springs where we're
10 proposing to divert water to Rangen.
11 During a rain event you would agree that
12 there's a large capture basin, if you will, where water
13 would run off and flow into Billingsley Creek in this
14 location?
15 A. Yeah, there is an area that allows for
16 that.
17 Q. And it would flow over rocks and through
18 bushes and animal habitat in that area along the talus
19 slope and that area above Rangen; right?
20 A. Correct.
21 Q. And Rangen's not done anything to prevent
22 the types of contaminants that might get into
23 Billingsley Creek from running through its raceways
24 either, has it?
25 A. Only at the tunnel.

Page 499

1 Q. Concerning water quality, just to go back
2 on the issue of disease -- and we understand there's a
3 number of diseases, and that's kind of a fact of life.
4 You explained to identify PKD we'd have to
5 either open a fish that's been living in that water,
6 you also testified that Fish and Game is having a test
7 done on the water to see if it carries a PKD host, is
8 that right, the bryozoan or something like that?
9 A. Yes.
10 Q. And when that test comes back, then we'll
11 know at least if that carrier is contained in the lower
12 pond at Upper Tucker Springs?
13 A. Only for the samples that were taken.
14 Q. And if that test proves negative, then,
15 we'll at least know that that carrier is not located at
16 the water source.
17 A. Was there a question in there?
18 Q. Is that right?
19 A. No, it's not. Because, like I said, the
20 samples are the only part that's been tested. I have
21 no information on exactly how that was done, how
22 exhaustive that sampling was done.
23 Q. Okay. So perhaps there hasn't been
24 exhaustive sampling of the lower pond at Upper Tucker
25 Springs, but there's certainly been no more testing of

Page 500

1 that at Rangen of its water supply either?
2 A. That's correct. We don't have the parasite
3 in our system.
4 Q. At least not one that you've detected?
5 A. Correct.
6 Q. So it's fair to say that as far as you know
7 there's no evidence of PKD in the lower pool at Upper
8 Tucker Springs?
9 A. There is evidence because it's a problem in
10 the hatchery, and we don't know where the source is
11 coming from.
12 Q. Okay. So there's PKD in raceways?
13 A. Yes.
14 Q. But you understand that the source of that
15 may be fish in the raceways and not the springs that
16 are at Upper Tucker Springs?
17 A. Yes, that's a possibility.
18 Q. One moment.
19 Is it true, Mr. Ramsey, that Rangen has not
20 made any recommendations to IGWA on ways to improve its
21 delivery system from Tucker Springs to address
22 biosecurity concerns that you raised earlier?
23 A. I have no information about that.
24 Q. And would you agree that if Rangen made
25 those types of recommendations, that potentially could

Page 501

1 be incorporated into the final engineering for the
 2 project?
 3 A. I suppose so.
 4 MR. TJ BUDGE: Okay. I have no further
 5 questions and appreciate your time.
 6 MR. HUNTLEY: No questions.
 7 THE HEARING OFFICER: Cross-examination,
 8 Mr. Huntley?
 9 Mr. Henslee, cross-examination?
 10 MR. HENSLEE: None.
 11 THE HEARING OFFICER: Redirect, Mr. May?
 12
 13 REDIRECT EXAMINATION
 14 BY MR. MAY:
 15 Q. Doug, I was a little bit confused by the
 16 discussion about it being necessary for a fish to swim
 17 up the large pipeline in order to get PKD into the
 18 lower pool of Upper Tucker Springs.
 19 Is that what you testified to with
 20 Mr. Budge, that you'd need a fish to swim up the large
 21 pipeline in order to get PKD into Upper Tucker Springs?
 22 A. No, that's not what I meant.
 23 Q. Okay. Maybe I just misunderstood.
 24 What's the source of -- or the potential
 25 source of PKD in Upper Tucker Springs?

Page 502

1 A. Well, the potential source could be animals
 2 coming into that area and depositing contagium in the
 3 area where it could then be allowed to go on down
 4 through the system and into the raceways.
 5 Q. And what's the link with the bryozoans?
 6 A. Well, the bryozoans would allow for
 7 amplification of that pathogen as being the
 8 intermediate host. The pathogen would be increased in
 9 numbers in that spring source. And then as the
 10 bryozoans shed those infective particles they would go
 11 downstream on into the raceways.
 12 Q. Okay. And so they would go on downstream
 13 on into the raceways in the Hagerman State Fish
 14 Hatchery, and if this pipeline were ever produced also
 15 downstream of the pipeline and into Rangen's facility?
 16 A. Correct.
 17 Q. And potentially the bryozoans themselves
 18 could go to Rangen's facility?
 19 A. Yes.
 20 Q. Despite your current testing the Rangen
 21 facility does not have PKD at this time; correct?
 22 A. That's correct.
 23 Q. And the Hagerman State Fish Hatchery does?
 24 A. Yes.
 25 Q. And they have it in their Tucker Springs

Page 503

1 raceways?
 2 A. Yes.
 3 Q. And they are concerned about it coming from
 4 the lower pool of Upper Tucker Springs?
 5 A. Evidently.
 6 Q. And you're concerned about that as well in
 7 getting into the Rangen facility; correct?
 8 A. That's right.
 9 MR. MAY: That's all that I've got.
 10 THE HEARING OFFICER: Recross, Mr. Budge?
 11 MR. TJ BUDGE: Just a couple questions.
 12
 13 RECROSS-EXAMINATION
 14 BY MR. TJ BUDGE:
 15 Q. So, Mr. Ramsey, your concern about animals
 16 introducing, whether it's PKD or other bacteria or
 17 viruses in Upper Tucker Springs, that could be resolved
 18 by perhaps fencing them out or screening them or
 19 otherwise covering the source; is that right?
 20 A. Yes, as far as new pathogens. If those are
 21 already established in there, then it would take
 22 something more than covering it up. You would have to
 23 eliminate the -- you know, the vectors or the
 24 intermediate host, any of those critters that could be
 25 in there already.

Page 504

1 MR. TJ BUDGE: Yeah, fair enough. That's all I
 2 have.
 3 THE HEARING OFFICER: Okay. Any recross,
 4 Mr. Huntley?
 5 MR. HUNTLEY: Nothing.
 6 THE HEARING OFFICER: Mr. Henslee?
 7 MR. HENSLEE: No.
 8 THE HEARING OFFICER: Mr. Ramsey, I have a
 9 couple of questions for you.
 10 THE WITNESS: Sure.
 11
 12 EXAMINATION
 13 BY THE HEARING OFFICER:
 14 Q. I am not a chemist. When I tried to be, I
 15 broke a lot of beakers and pipettes and other glass
 16 objects. But I have noticed in what I've seen in the
 17 evidence that there are units that are being
 18 interchanged, at least I think loosely interchanged,
 19 because at times we're referring to milligrams per
 20 liter, at times we're referring to parts per million.
 21 So can you distinguish those for me, or are
 22 they one and the same?
 23 A. Those two, parts per million and milligrams
 24 per liter, are the same.
 25 Q. Okay. I actually had looked at some

Page 505

1 literature during one previous hearing, and I wasn't
2 able to reconcile the two.
3 Okay. I want to ask you just a couple of
4 questions about your understanding of where the genesis
5 of flows in the Curren Tunnel are.
6 How would you characterize that beginning
7 or genesis? Where do those flows derive from?
8 A. Well, I understand they are part of the
9 Snake River Plain Aquifer and that there's several
10 drainages east basically and a little north of the area
11 out by the INEL where the water from these three
12 drainages percolates down through the basalt layers
13 creating the aquifer.
14 And that aquifer then -- water travels
15 basically parallelling the river, the Snake River, to a
16 point, and then finally busts out of the springs down
17 in the Hagerman Valley area, one of which is a tunnel.
18 Q. Okay. And so let's talk about Tucker
19 Springs and the genesis or the beginning. And I
20 hesitate to call it a source because it has some --
21 it's a term of art.
22 But do you contend that the water that's
23 derived at Tucker Springs is different than water at
24 the Curren Tunnel, as far as its initial -- where that
25 water originates from?

Page 506

1 A. Only in the -- with respect to the numbers
2 that have been generated on the tests that have been
3 run. The dissolved oxygen, for instance. I don't know
4 why the difference in about a 1 part per million
5 concentration between those two places.
6 I would have expected that to be similar
7 water, though, part of the Snake River Plain Aquifer.
8 Q. But the Tucker Springs receive their water
9 from upwelling of groundwater in some way or discharge
10 of groundwater --
11 A. Yes.
12 Q. -- to the springs; right?
13 And in that way it's similar to Curren
14 Tunnel; correct?
15 A. Yes.
16 Q. And you referred to Tucker Springs or the
17 Lower Tucker -- the lower pond of Upper Tucker Springs
18 as a sump. And so I guess I want to know what you mean
19 by "a sump."
20 A. Okay. I think I used the term "sink."
21 Q. Okay.
22 A. But anyway, I only used that term because
23 the topography of the area appears that water would
24 drain towards -- any surface water that hit the ground
25 in the form of rain or whatever would naturally drain

Page 507

1 to that collection box area that's being proposed. But
2 the water that flows through those rocks that would
3 fill the collection box is, I would think, most likely
4 part of the aquifer water.
5 Q. And so do you think there's a way in which
6 a collection box could be constructed at Tucker Springs
7 to capture just the groundwater that's emitting, just
8 as it emits at Curren Tunnel?
9 A. Oh, I'm sure there is a way. It would have
10 to be up near the collection -- collection box for the
11 nursery raceways and the hatch house that Hagerman
12 State uses. That water, as far as I can tell, is
13 coming right out of the basalt formation right there.
14 And if there was a way to somehow create, you know, a
15 collection box closer to that source, there would be
16 much less contamination possibilities.
17 THE HEARING OFFICER: Okay. All right. I have
18 no further questions.
19 Further questions either direct or
20 cross-examination?
21 Thank you, Mr. Ramsey.
22 THE WITNESS: You're welcome.
23 THE HEARING OFFICER: Next witness, Rangen?
24 MR. HAEMMERLE: Rangen will call Dan DeLaughter.
25 THE HEARING OFFICER: Mr. DeLaughter, come

Page 508

1 forward, please. Raise your right hand.
2
3 DANIEL DeLAUGHTER,
4 having been called as a witness by Rangen, Inc., and
5 duly sworn to tell the truth relating to said cause,
6 testified as follows:
7
8 THE HEARING OFFICER: Thank you. Please be
9 seated.
10 Mr. Haemmerle.
11 MR. HAEMMERLE: Thank you, Mr. Director.
12
13 DIRECT EXAMINATION
14 BY MR. HAEMMERLE:
15 Q. Dan, please state your full name, spelling
16 your last name for the record.
17 A. Daniel DeLaughter, last name
18 D-e-L-a-u-g-h-t-e-r.
19 Q. Dan, what is your current occupation?
20 A. I'm a water resource engineer at Leonard
21 Rice Engineers.
22 Q. And in that capacity just describe some of
23 the things you do.
24 A. Typically, it will range from water-quality
25 regulatory work, environmental permitting, water

Page 509

1 rights, water resources planning, those sorts of
 2 projects.
 3 Q. Okay. So within Leonard Rice Engineers one
 4 of your duties is to evaluate whether certain permits
 5 are needed for projects for Leonard Rice Engineers?
 6 A. Correct.
 7 Q. Now, for this particular task, Mr. -- or,
 8 Dan, you've been asked to evaluate the Tucker Springs
 9 project and see whatever permits might apply; correct?
 10 A. More leaning toward federal permits, yes.
 11 Q. Okay. And in that context --
 12 If he can be shown 2052.
 13 Dan, do you have 2052 in front of you?
 14 A. Yep.
 15 Q. Dan, what is 2052?
 16 A. That is my resumé.
 17 Q. Okay. That's your CV?
 18 A. My CV, yes.
 19 Q. Without going through that entire thing,
 20 Dan, can you just summarize and tell me a little bit
 21 about your educational experience and professional
 22 experience.
 23 A. Yeah. I have a bachelor's and a master's
 24 in civil engineering. The bachelor's was at Union
 25 College in New York and the master's was from Colorado

Page 510

1 State University. I have been working with Leonard
 2 Rice Engineers for approximately 7 1/2 years. I'm
 3 currently a senior project engineer at Leonard Rice.
 4 MR. HAEMMERLE: Okay. Mr. Director, I'll offer
 5 Exhibit 2053.
 6 MR. TJ BUDGE: No objection.
 7 MR. MAY: 2052.
 8 MR. HAEMMERLE: I'm sorry, 2052. Thank you.
 9 Q. (BY MR. HAEMMERLE): Dan, if we can pull
 10 up --
 11 THE HEARING OFFICER: Just a minute. I show
 12 2052 --
 13 MR. HAEMMERLE: 2052.
 14 THE HEARING OFFICER: Okay. So no objections?
 15 Document marked as Exhibit 2052 is received
 16 into evidence.
 17 (Exhibit 2052 received.)
 18 Q. (BY MR. HAEMMERLE): Dan, you drafted a
 19 report for this matter; correct?
 20 A. Yes, sort of a bullet list.
 21 Q. Kind of a bullet point list?
 22 A. Yeah.
 23 Q. If you could pull up Exhibit 2053.
 24 A. Yes.
 25 Q. 2053 is essentially, I think, a two or

Page 511

1 three-page document kind of with bullet points on the
 2 permitting process for the Tucker Springs project?
 3 A. Correct.
 4 Q. Dan, if you could -- I'm going to discuss
 5 with you 404 permitting process.
 6 Okay?
 7 A. Sure.
 8 Q. When -- what is a 404 permit?
 9 A. A 404 permit, it's required for discharge
 10 of dredge or fill material to waters of the United
 11 States. And so that would include, you know,
 12 construction projects or temporary construction impacts
 13 within streams and wetlands or, in this case, springs.
 14 Q. Have you reviewed in this particular case
 15 the location of the proposed diversion for the Tucker
 16 Springs box near the Tucker Springs complex?
 17 A. In a general sense, I've reviewed the SPF
 18 report and several photos of the site.
 19 Q. You've reviewed the photographs that have
 20 been introduced in this case as well?
 21 A. Yes.
 22 Q. Do you believe it is possible or likely
 23 that a 404 permit would be required for this project?
 24 A. I believe it would, at least for the inlet
 25 structure and likely the pipeline or a portion of the

Page 512

1 pipeline, and potentially the outfall structure as
 2 well, if there were modifications to an existing
 3 outfall that would be affecting waters of the U.S.
 4 Q. Okay. So transporting water from one
 5 source to the other source may involve the requirement
 6 for a 404 permit?
 7 A. Yes.
 8 Q. Dan, what I'm going to do now is kind of go
 9 through the process of obtaining a 404 permit.
 10 Okay?
 11 A. Sure.
 12 Q. Typically, is it true that the first thing
 13 a person in your position might do is to see if a
 14 nationwide permit might apply?
 15 A. Yes, those are sort of the most streamlined
 16 approach. So you probably would want to look at what
 17 those are and see if any apply to your project.
 18 Q. Okay. Dan, in kind of a truncated sense,
 19 what is a nationwide permit?
 20 A. Essentially it's more of a streamlined
 21 process. It's put out by the Army Corps of Engineers,
 22 and they apply to certain specific types of projects
 23 with size limitations and disturbance limitations, and
 24 then each permit essentially will include a list of
 25 conditions which would have to be met in order for that

Page 513

1 particular permit to apply to your project.
 2 Q. Okay. Is it fair to say that one proposing
 3 work within the waters of the United States or wetlands
 4 hopes a nationwide permit would apply?
 5 A. I would agree with that.
 6 Q. Okay. Have you examined the potential
 7 nationwide permits that might apply to this particular
 8 project?
 9 A. Yes, I reviewed the list. The ones I had
 10 identified that could potentially apply would be
 11 nationwide permit 7, which includes outfalls and
 12 associated intake structures, and then No. 12, which is
 13 for utility lines.
 14 Q. Okay. If you could look at Exhibit 2064
 15 and 2065.
 16 A. I don't think my notebook goes up that
 17 high. Oh, here we go.
 18 Q. Okay.
 19 A. Okay.
 20 Q. Dan, Exhibit 2064 and 2065 are the two
 21 nationwide permits that you believe might apply to this
 22 project?
 23 A. Yes.
 24 Q. Let's deal with 2064 first.
 25 What is 2064?

Page 514

1 A. That's the permit for outfall structures
 2 and maintenance.
 3 Q. Okay. And Exhibit 2065 is what?
 4 A. The one for utility lines.
 5 Q. Now, again, each one of these nationwide
 6 permits has certain conditions that apply to each
 7 particular permit; correct?
 8 A. Correct.
 9 Q. Okay. Have you examined the type of
 10 conditions that apply to 2064 and 2065?
 11 A. Yes. And many of the conditions are the
 12 same across all the permits. There are, you know, I
 13 think over 30 conditions in each one of these permits.
 14 Q. Okay.
 15 A. Things like checking for endangered species
 16 that may be present, checking for historical places.
 17 If there are wetlands impacts, those would have to be
 18 mitigated if they're above a tenth of an acre.
 19 And then in addition to that, these permits
 20 have to essentially be certified by the State, and so
 21 the State can implement conditions on the use of these
 22 permits as well.
 23 Q. Okay. So there's an -- in addition to the
 24 conditions on the nationwide permit, there is a State
 25 review as well?

Page 515

1 A. The State reviews the nationwide permits as
 2 a process of its certification of them.
 3 Q. Have you reviewed both to see if either one
 4 of these -- well, you testified that it's possible that
 5 either one of these permits would apply.
 6 Do you have any conclusion about whether
 7 either one of these permits in fact would apply?
 8 MR. TJ BUDGE: Objection. Foundation.
 9 THE HEARING OFFICER: I think there's
 10 sufficient. Overruled.
 11 MR. TJ BUDGE: Director, may I inquire of the
 12 witness in aid of objection?
 13 THE HEARING OFFICER: Yes.
 14
 15 VOIR DIRE EXAMINATION
 16 BY MR. TJ BUDGE:
 17 Q. Mr. DeLaughter, have you ever visited the
 18 Hagerman State Hatchery?
 19 A. No, I have not.
 20 Q. Have you visited the Rangen fish hatchery?
 21 A. No.
 22 Q. You're making your analysis based on I
 23 guess what you'd call a desktop review of the SPF
 24 report?
 25 A. And information from Rangen, yes.

Page 516

1 Q. Have you ever applied for a 404 permit in
 2 Idaho before?
 3 A. No.
 4 Q. Anywhere within the Walla Walla District of
 5 the United States Army Corps of Engineers?
 6 A. No.
 7 Q. Have you discussed this project with any
 8 members of the Corps of Engineers in Idaho or the
 9 Walla Walla District?
 10 A. Yes, I did make a phone call to a Mr. James
 11 Joyner in the Twin Falls regulatory office.
 12 Q. And is your opinion based on a
 13 recommendation that he made to you?
 14 A. We had some general discussions about time
 15 frames for a project of this nature.
 16 Q. Okay. Did he tell you whether either of
 17 these nationwide permits would apply?
 18 A. I didn't ask him about the nationwide
 19 permits.
 20 MR. TJ BUDGE: Director, I would renew the
 21 objection. The witness is being asked to render an
 22 opinion having done very little background or talked to
 23 the permitting agency and with no experience in this
 24 state to begin with.
 25 MR. HAEMMERLE: I can expand on that, Director.

Page 517

1 Mr. DeLaughter is not -- his testimony
 2 doesn't go to whether these permits in fact apply or
 3 not. He's here to describe generally the process of
 4 404 review, the time frames involved, and I think
 5 ultimately his testimony goes to whether or not this
 6 project can be built this year and some of the
 7 complexities involved. I don't think he's going to
 8 offer a conclusive opinion about whether permits can or
 9 cannot be obtained.
 10 THE HEARING OFFICER: Overruled.
 11
 12 FURTHER DIRECT EXAMINATION
 13 BY MR. HAEMMERLE:
 14 Q. Thank you, Dan.
 15 Is it possible that neither one of these
 16 two permits would apply to the work proposed by IGWA
 17 for Tucker Springs?
 18 A. It is possible, based on the conditions.
 19 The number -- the permit No. 12, when the State
 20 conducted its certification of the nationwide permits
 21 for utility lines, it specifically said that nationwide
 22 permits do not apply for projects that drain waters of
 23 the United States.
 24 Q. Okay. And that's Exhibit 2065, which was
 25 your Exhibit 12?

Page 518

1 A. Correct.
 2 Q. And what about the outfall permit, 2064?
 3 A. The outfall permit, I believe, you know,
 4 looking at some of the conditions, it appears that due
 5 to the Endangered Species Act and water-quality
 6 considerations that this nationwide permit also might
 7 not apply.
 8 Q. Okay. Going through the process then, Dan,
 9 if a nationwide permit doesn't apply, is it true, then,
 10 a person would have to obtain an individual permit for
 11 that work?
 12 A. That's correct.
 13 Q. Have you evaluated the time frames in
 14 obtaining an individual permit?
 15 A. Based on my discussion with Mr. Joyner, the
 16 Corps' goal is a 120-day review period. But if there
 17 are complications, that could take longer.
 18 Q. Okay. How long could it take?
 19 A. We didn't -- he didn't specify that.
 20 Q. Okay. Have you likewise examined what
 21 possible -- how long State reviews might last?
 22 A. Yes, I have. The State has a 401
 23 certification guidance document, which has a timeline.
 24 Their stated goal is 60-day review, on top of that
 25 there's a 35-day appeal period. And the State may

Page 519

1 request up to a year to complete its review.
 2 MR. HAEMMERLE: Okay. If you could -- or before
 3 I move on to the next exhibit, Director, I'd offer
 4 Exhibits 2064 and Exhibit 2065.
 5 MR. TJ BUDGE: No objection.
 6 THE HEARING OFFICER: Mr. Budge?
 7 Mr. Huntley?
 8 MR. HUNTLEY: No objection.
 9 THE HEARING OFFICER: Mr. Henslee?
 10 MR. HENSLEE: None.
 11 THE HEARING OFFICER: Okay. Documents marked as
 12 Exhibits 2064 and 2065 are received into evidence.
 13 (Exhibits 2064 and 2065 received.)
 14 Q. (BY MR. HAEMMERLE): Dan, I think the
 15 document you were referring to might be Exhibit 2062.
 16 If you could get that in front of you.
 17 A. That is the 401 certification guidance.
 18 Q. Okay. And where did you obtain
 19 Exhibit 2062?
 20 A. This is linked on the Department of
 21 Environmental Quality's website.
 22 Q. Okay. And I think towards the last pages
 23 of Exhibit 2062 there's kind of a flow chart of the
 24 process that describes the timeline?
 25 A. Correct.

Page 520

1 Q. That's the timeline you testified to 60-day
 2 with a 35-day appeal period?
 3 A. Correct.
 4 Q. Okay. And again, that time frame could
 5 last longer, depending on whether there's complicating
 6 factors?
 7 A. Yes.
 8 MR. HAEMMERLE: Director, I'd offer
 9 Exhibit 2062.
 10 THE HEARING OFFICER: Mr. Budge?
 11 MR. TJ BUDGE: No objection.
 12 THE HEARING OFFICER: Mr. Huntley?
 13 MR. HUNTLEY: No objection.
 14 THE HEARING OFFICER: Mr. Henslee?
 15 MR. HENSLEE: No objection.
 16 THE HEARING OFFICER: Document marked as
 17 Exhibit 2062 is received into evidence.
 18 (Exhibit 2062 received.)
 19 Q. (BY MR. HAEMMERLE): Dan, we've talked
 20 about general time frames.
 21 Are there certain complicating factors that
 22 could expand those time frames out?
 23 A. There are, particularly what we've
 24 identified for this project would be Endangered Species
 25 Act concerns and water-quality concerns due to the

Page 521

1 TMDLs.
 2 Q. Okay. Are there other things that might
 3 complicate it as well beyond TMDLs or endangered
 4 species?
 5 A. There are consultations required with other
 6 federal agencies, such as of the historic places, which
 7 I believe is an Idaho State agency that -- so not a
 8 federal consultation. A State consultation on historic
 9 places.
 10 Q. Okay. Have you identified through your
 11 review any TMDLs for Riley Creek?
 12 A. I have.
 13 Q. If I could direct your attention to
 14 Exhibit 2058.
 15 A. That one, I don't see.
 16 Q. I think it could be in that book right
 17 there.
 18 Do you have Exhibit 2058 in front of you?
 19 A. Yes.
 20 Q. What is Exhibit 2058?
 21 A. This is the Upper Snake Rock TMDL
 22 modification.
 23 Q. Okay. And included -- as I understand
 24 them, Dan, the way TMDLs work, there's a stream
 25 segment -- regarding the Snake River there would be a

Page 522

1 stream segment for the Upper Snake Rock TMDL and then
 2 TMDLs for impaired streams that come into that
 3 particular segment.
 4 A. Correct, for -- sort of for each portion of
 5 the segment.
 6 Q. Okay. Is there -- again, within
 7 Exhibit 2058 is there a TMDL for Riley Creek?
 8 A. Yes, there is.
 9 Q. And what page would that be located on?
 10 A. I believe it starts on page 64.
 11 Q. Dan, when are TMDLs required?
 12 A. TMDLs are required after a stream has been
 13 identified as impaired for a particular pollutant.
 14 Q. And there are several things that could be
 15 categorized as impairment.
 16 That would be either phosphorus or
 17 suspended solids?
 18 A. On this -- on the Riley Creek TMDL, those
 19 are the two pollutants that the stream was impaired for
 20 and the TMDL was completed for.
 21 Q. Okay. And I take it the computation for
 22 impairment for either suspended solids or phosphorus
 23 involves flow rate; correct?
 24 A. It does.
 25 Q. So if you change the flow rate, you're

Page 523

1 going to necessarily then change the equation for
 2 either suspended solids or phosphorus; correct?
 3 A. That's right.
 4 Q. Are there various levels of designations
 5 for impairment?
 6 A. Yes, there are. And that may be state
 7 dependent. And so it's basically usually a high,
 8 medium, and low.
 9 Q. Okay. And with respect to Riley Creek,
 10 Riley Creek is impaired for what reason?
 11 A. Total suspended solids and total
 12 phosphorus.
 13 Q. Okay. With respect to 404 permits, what
 14 happens when a TMDL is identified?
 15 A. So for 404 process, one of the State's
 16 requirements is to certify through the 401
 17 certification process that water-quality standards will
 18 be protected. And so the State would have to assess
 19 whether the TMDL would be protected.
 20 And the State in this case in its
 21 authorization of the nationwide permits also had
 22 mentioned total suspended solids as a concern for
 23 authorizing nationwide permits.
 24 Q. And how long could that process be for
 25 review of TMDLs in the 404 process?

Page 524

1 A. Well, if the -- if the TMDL actually had to
 2 be recalculated, I could think that would take, you
 3 know, up to a year or more.
 4 Q. Okay. And is it possible that in that
 5 review process a 404 permit could be denied?
 6 A. If the TMDL could not be completed and
 7 water-quality standards couldn't be protected.
 8 Q. Dan, another complicating factor --
 9 I would offer at this time point, Director,
 10 Exhibit 2058.
 11 THE HEARING OFFICER: Mr. Budge?
 12 MR. TJ BUDGE: No objection.
 13 THE HEARING OFFICER: Mr. Huntley?
 14 MR. HUNTLEY: No objection.
 15 THE HEARING OFFICER: Mr. Henslee?
 16 MR. HENSLEE: No objection.
 17 THE HEARING OFFICER: Document marked as
 18 Exhibit 2058 is received into evidence.
 19 (Exhibit 2058 received.)
 20 Q. (BY MR. HAEMMERLE): Dan, another
 21 complicating factor you identified is or concerns
 22 endangered species; is that true?
 23 A. Correct.
 24 Q. In your review of this matter, have you
 25 identified any endangered species for Riley Creek or

Page 525

1 Tucker Springs?
 2 A. Yes. There was a population of Bliss
 3 Rapids snails identified in Riley Creek.
 4 Q. Okay. If you could pull up Exhibit 2070.
 5 Dan, a person in your position that's
 6 reviewing for 404 permits, I mean how do you go through
 7 that process of seeing if any endangered species are
 8 out there that you need to worry about?
 9 A. You'd start off going to the Fish and
 10 Wildlife website. And they typically will have a
 11 listing by county for the species that are present or
 12 expected to be present there. And they'll also have
 13 mapping of any critical habitats.
 14 And then, you know, you want to look at the
 15 actual species descriptions to see where they actually
 16 occur, as well as any follow-up reports that may be
 17 available for the specific species.
 18 Q. Okay. So through that process you
 19 identified the Bliss Rapids snail as a threatened
 20 species?
 21 A. Correct.
 22 Q. Okay. It's true in the Endangered Species
 23 Act that there are different levels of endangerment or
 24 being threatened? Is that true?
 25 A. Yes, there's threatened and endangered

Page 526

1 designation.
 2 Q. Okay. Through either designation, you're
 3 under the Endangered Species Act; correct?
 4 A. Correct.
 5 Q. Does Exhibit 2070 again mention the
 6 presence of Bliss Rapids snails within Riley Creek?
 7 A. 20- -- yes.
 8 Q. Now, when was the Bliss Rapids snail
 9 identified under the Endangered Species Act?
 10 A. I believe it was originally listed in 1992.
 11 Q. Are you aware of whether there's been any
 12 State actions to try to remove the endangered species
 13 designations for the Hagerman Valley?
 14 A. Yes. I don't know the exact year, but I
 15 think around 2007/2008 there was a petition by the
 16 governor and Idaho Power to remove the species.
 17 Q. Okay. Were they successful?
 18 A. No. During the five-year review, which was
 19 completed in 2009, it was determined that that request
 20 was unwarranted.
 21 MR. HAEMMERLE: Okay. Mr. Director, I'm going
 22 to offer Exhibit 2070.
 23 MR. TJ BUDGE: Objection. I'll object on the
 24 grounds of relevance. He's discussed generally that
 25 there's a threatened species involving a snail. We

Page 527

1 don't know if it's in Riley Creek, Tucker Springs, what
 2 bearing it has on the facts of this case.
 3 MR. HAEMMERLE: Actually, Counsel, I asked the
 4 witness if Riley Creek was identified within
 5 Exhibit 2070, he says it was.
 6 MR. TJ BUDGE: I thought that was a prior
 7 exhibit.
 8 MR. RANDY BUDGE: So did I.
 9 THE WITNESS: It's in 2070.
 10 THE HEARING OFFICER: That's my recollection of
 11 the testimony.
 12 MR. TJ BUDGE: Okay. May I just ask the witness
 13 to clarify?
 14 THE HEARING OFFICER: Yes.
 15
 16 VOIR DIRE EXAMINATION
 17 BY MR. TJ BUDGE:
 18 Q. Mr. DeLaughter, can you confirm that
 19 Exhibit 2070, this draft report, identifies Riley Creek
 20 as a Bliss Rapids snail habitat?
 21 A. Yes.
 22 Q. And do you know which portion of Riley
 23 Creek is included?
 24 A. I do not.
 25 Q. Do you know if it's upstream or downstream

Page 528

1 from the Tucker Springs injection site?
 2 A. No, I don't.
 3 Q. And this report is identified as a draft.
 4 Is this -- do you know if this is a final
 5 report that's currently being relied upon by U.S. Fish
 6 and Wildlife Service?
 7 A. I believe there was a 1995 report that had
 8 originally listed Riley Creek as well. And I believe
 9 the 2009 five-year review also lists Riley Creek.
 10 MR. TJ BUDGE: Director, just to renew my
 11 objection, it is denominated a draft report. I don't
 12 see any stamps or anything designating this as
 13 something that's currently relied upon or approved by
 14 U.S. Fish and Wildlife Service. And I don't know where
 15 this snail habitat is, and Riley Creek is kind of a
 16 lengthy creek.
 17 THE HEARING OFFICER: Mr. Haemmerle.
 18
 19 FURTHER DIRECT EXAMINATION
 20 BY MR. HAEMMERLE:
 21 Q. Pending final approval of draft reports,
 22 Dan, is it common for agencies to issue drafts pending
 23 final resolution?
 24 A. Yes. I mean this was available from a
 25 quick search. And I was able to obtain this, and I

Page 529

1 think the history shows that this information was
 2 available.
 3 Q. And again, you've seen final draft -- prior
 4 final drafts listing the Bliss Rapids snails as an
 5 endangered species -- or a threatened species and its
 6 presence located in Riley Creek?
 7 A. Yes.
 8 MR. HAEMMERLE: I'd offer Exhibit 2070. Again,
 9 Director, this is the purpose of identifying potential
 10 problems that could lengthen out this whole process.
 11 THE WITNESS: The 19- -- sorry.
 12 THE HEARING OFFICER: How long is this document?
 13 I don't have it in front of me.
 14 MR. TJ BUDGE: The .pdf is 69 pages.
 15 THE HEARING OFFICER: I just struggle with
 16 dealing with a document like this of that length. I
 17 have the testimony in the record that this particular
 18 threatened species is -- at least lives in the Riley
 19 Creek drainage, and this seems to me to be a report
 20 that's of significant length that really doesn't add
 21 anything to the testimony.
 22 So I won't take it into the record, but I
 23 will accept the testimony, Mr. Haemmerle.
 24 MR. HAEMMERLE: Thank you.
 25 Q. And you've seen final reports, too, Dan,

Page 530

1 regarding the Bliss Rapids snail; is that true?
 2 A. Yes. Our -- I believe the 1995 report is
 3 part of the exhibit list.
 4 Q. Okay. Dan, in these reports on the Bliss
 5 Rapids snail, has Fish and Wildlife Service identified
 6 any particular recovery measures for these threatened
 7 species?
 8 A. They have.
 9 Q. And what are some of those recovery
 10 measures?
 11 A. They would include preventing further
 12 diversion of surface flows in the Snake River Basin,
 13 protecting cold-water spring habitats, and protecting
 14 water quality.
 15 Q. Okay. So with the presence of an
 16 endangered species, what effect does that have on the
 17 404 review process?
 18 A. Essentially, through the federal
 19 consultation there would be consultation with the Fish
 20 and Wildlife Service. And that could range from
 21 informal to a formal consultation if there's a threat
 22 to the species.
 23 Q. Is there a typically -- is there any kind
 24 of length of time for that consultation period?
 25 A. If there's a full formal consultation, it's

Page 531

1 typically a 90-day review with then a 45-day period for
 2 the Fish and Wildlife Service to write their biological
 3 opinion. And then they would bump that back to the
 4 Corps, who would then have to deal with the outcome of
 5 that.
 6 Q. Is it possible that with the presence of an
 7 endangered species that a 404 permit may not be
 8 granted?
 9 A. It is possible if no alternative can be
 10 developed or mitigation measures be provided to protect
 11 the species.
 12 Q. I think there was testimony from the SPF
 13 expert that he opined that you can start construction
 14 before obtaining a 404 permit.
 15 Do you agree with that statement?
 16 A. Not to the extent that the waters would be
 17 impacted.
 18 Q. Okay. There was also some testimony -- so
 19 from your testimony, then, if you did work in the
 20 waterway itself or the wetland, you would need a 404
 21 permit; correct?
 22 A. Yes.
 23 Q. If you went ahead with work in a waterway
 24 or a wetland without a 404 permit, there are very
 25 significant fines; correct?

Page 532

1 A. Yeah. It's in the tens of thousands of
 2 dollars a day.
 3 Q. Now, SPF also, Dan, opined that you could
 4 just bypass the process by T'ing into an existing type
 5 pipe.
 6 Do you recall that?
 7 A. Yes.
 8 Q. Do you agree that they could tie into an
 9 existing pipe without obtaining a 404 permit?
 10 A. I think it would be very difficult, due to
 11 the fact that you'd have to have your equipment in
 12 there. So you'd at least probably have temporary
 13 construction impacts, as well as any -- you know, if
 14 there are any supports required within the creek or
 15 adjacent wetlands.
 16 Q. So these 404 permits apply to construction
 17 within waterways and/or permanent structures; correct?
 18 MR. TJ BUDGE: Objection. Are you testifying?
 19 MR. HAEMMERLE: I'm asking a question, Counsel.
 20 MR. TJ BUDGE: Leading question.
 21 MR. HAEMMERLE: I'm asking a question.
 22 THE HEARING OFFICER: I'll allow the question to
 23 stand. It is somewhat leading, but...
 24 THE WITNESS: Correct.
 25 Q. (BY MR. HAEMMERLE): Dan, are there --

Page 533

1 we've talked about the complicating factors of -- well,
 2 we've talked about 404 permits.
 3 Are there any other federal permits that
 4 might apply to this type of work?
 5 A. There could possibly be an NPDES permit
 6 for -- basically a general construction permit if
 7 there's dewatering involved with the project, that
 8 could be possible for the pipeline as that's
 9 constructed.
 10 Q. And these NPDES permits, to be fair, are
 11 easier to obtain generally than 404 permits?
 12 A. I would say, yes.
 13 Q. Okay.
 14 A. That particular NPDES permit.
 15 Q. Dan, the opinions that you've given here
 16 are outlined in your report in Exhibit 2053?
 17 A. Is that the same exhibit I was looking at
 18 before?
 19 Q. That's one of the first ones that I had you
 20 identify.
 21 A. Yes.
 22 MR. HAEMMERLE: Mr. Director, I'd offer
 23 Exhibit 2053.
 24 MR. TJ BUDGE: Director, I'd renew the objection
 25 on foundation. Earlier I objected to him rendering

Page 534

1 opinions that are contained in this report on the basis
 2 that he was not qualified. Mr. Haemmerle assured me
 3 that he was not going to render opinions, he was simply
 4 going to discuss the process of getting permits. And
 5 now here we are seeking to admit his unfounded opinions
 6 into evidence.
 7 THE HEARING OFFICER: Okay. Any other
 8 objections?
 9 MR. HUNTLEY: No.
 10 THE HEARING OFFICER: Okay. Objection
 11 overruled.
 12 Document marked as Exhibit 2053 is received
 13 into evidence.
 14 (Exhibit 2053 received.)
 15 MR. HAEMMERLE: Thank you, Mr. Director. No
 16 further questions.
 17 THE HEARING OFFICER: Okay. Cross-examination,
 18 Randy or TJ?
 19 MR. TJ BUDGE: Yeah.
 20
 21 CROSS-EXAMINATION
 22 BY MR. TJ BUDGE:
 23 Q. Thank you, Mr. DeLaughter.
 24 I noticed from your CV that it showed that
 25 you're a licensed engineer in Colorado.

Page 535

1 Are you a licensed engineer in Idaho as
 2 well?
 3 A. I'm not. I have the -- there's a national
 4 registration, which my understanding has comity if I
 5 actually apply for that. And I believe Idaho accepts
 6 that.
 7 Q. Okay. Let me ask you about the 404 permit
 8 requirement. You had some testimony that it could take
 9 120 days to get a permit.
 10 Am I correct in understanding that's for an
 11 individual permit?
 12 A. Correct, that's the goal for an individual
 13 permit.
 14 Q. And if you qualify for a nationwide permit,
 15 that's an expedited process that's faster?
 16 A. Yes.
 17 Q. Would you agree that getting a 404 permit
 18 for small water right diversions is routine?
 19 A. Fairly.
 20 Q. And they typically qualify for a nationwide
 21 permit?
 22 A. I wouldn't agree with that.
 23 Q. Would you be surprised if the timeline for
 24 getting a nationwide permit in Idaho is in the 45 to
 25 60-day range typically?

Page 536

1 A. No.
 2 Q. Do you have -- did Mr. Joyner advise you
 3 that it takes longer than that to get a nationwide
 4 permit in Idaho?
 5 A. He advised me about 60 days for a
 6 nationwide permit.
 7 Q. Okay. You testified earlier that you've
 8 not visited the Tucker Springs, the Rangen hatchery,
 9 Riley Creek, or done any investigations through the
 10 Corps of Engineers, other than talking to the gentleman
 11 you mentioned at the Corps of Engineers, James Joyner,
 12 I believe is his name, and then proceeded to testify
 13 that potentially this project would not qualify for a
 14 404 permit.
 15 So would you agree that your testimony in
 16 that regard is speculation that potentially a
 17 nationwide permit may not be obtained?
 18 A. I did review the conditions of both of
 19 these permits, as well as the DEQ's certification
 20 conditions. And these are federal permits which have
 21 similar conditions, you know, across the country.
 22 Q. So your testimony that potentially this
 23 project would not qualify for a nationwide permit,
 24 that's speculation on your part; correct?
 25 A. I wouldn't agree with that.

Page 537

1 Q. So are you offering an opinion here today
2 that this project will not qualify for a 404 permit?
3 A. I'm saying that I don't think it's likely.
4 Q. So you're offering an opinion that you
5 don't think it's likely that it will qualify for a 404
6 permit?
7 A. Yes.
8 Q. And that's based on a desktop review of the
9 SPF report, a discussion with James Joyner about
10 timelines, and your conversations, that's the sole
11 basis for that testimony; is that correct?
12 A. No. As I said, I also reviewed the
13 conditions of the nationwide permits and the 401
14 certification conditions.
15 Q. Okay. You testified that if -- did I
16 understand your testimony correctly that if instead of
17 installing an intake structure in Upper Tucker Springs,
18 instead a -- the pipe from Tucker Springs to Rangen was
19 connected to an existing aboveground pipe, is it your
20 testimony that that would still require a 404 permit?
21 A. If there were -- if there was heavy
22 equipment involved with the construction, if there was
23 concrete that had to be poured in the spring bed or,
24 you know, structures or fills within that spring area
25 or adjacent wetlands, then that would be required.

Page 538

1 Q. Okay. So the gravamen is whether there
2 would be a discharge into the waters of the U.S., which
3 would really mean disturbance of the ground surface
4 within the high-water mark; is that right?
5 A. Or adjacent wetlands.
6 Q. Or adjacent wetlands. And so if a
7 connection could be made to the pipe without disturbing
8 land within the high-water mark or adjacent wetlands,
9 you would agree, then, a 404 permit would not be
10 required?
11 A. It's a possibility if the construction
12 could be done without any fill material being
13 discharged into that water.
14 Q. Okay. So if it could be done without
15 discharging fill within the high-water mark or adjacent
16 wetlands, you would agree that a 404 permit is not
17 likely required?
18 A. Probably.
19 Q. Concerning the TMDLs in Riley Creek, do you
20 know if the TMDL requirement is currently being
21 exceeded?
22 A. I do not. I know that at least for total
23 suspended solids, in the most recent State report, the
24 305B report, which is an assessment of the waters, I
25 believe it was still listed as impaired for total

Page 539

1 suspended solids.
2 Q. Okay. And I take it you're not familiar
3 with the quality of the water that discharges from the
4 Hagerman State Hatchery at Tucker Springs?
5 A. Not particularly.
6 Q. So you don't know what effect on Riley
7 Creek reducing that flow by 10 second-feet would have
8 on the TMDLs in Riley Creek; is that right?
9 A. Not entirely. The effect on the TMDLs
10 would be that that facility is essentially authorized a
11 load, not a concentration. And that would be a
12 permitted condition. And so to the extent that flow is
13 reduced in Riley Creek as a whole, that load allocation
14 could be no longer applicable.
15 Q. I see. And I apologize for using the wrong
16 terminology.
17 But you don't know what effect on the load
18 taking 10 second-feet out of Tucker Springs would have;
19 is that correct?
20 A. Correct.
21 Q. And you don't know what effect that would
22 have on operation at the Fish and Game hatchery either?
23 A. Correct.
24 Q. Concerning the discussion about snails and
25 the Endangered Species Act, you testified that you've

Page 540

1 seen other reports identifying the Bliss Rapids snail
2 in Riley Creek.
3 Did I understand that correctly?
4 A. Yes.
5 Q. What other reports, besides the one that
6 Mr. Haemmerle had put up on the screen, are you
7 referring to?
8 A. I -- I believe it was mentioned in a 1995
9 report. I don't know for sure about that. The --
10 there was a 2009 five-year update report, which I'm
11 fairly certain as Riley Creek mentioned.
12 Q. Okay. That's not a report that you brought
13 with you to this proceeding?
14 A. No, it's not.
15 Q. That 2009 report, you mentioned that would
16 be more recent than the draft report that was put on
17 the screen?
18 A. Yes.
19 MR. TJ BUDGE: I don't have any further
20 questions.
21 THE HEARING OFFICER: Cross-examination,
22 Mr. Huntley? Mr. Huntley?
23 MR. HUNTLEY: No.
24 THE HEARING OFFICER: Cross-examination?
25 MR. HUNTLEY: No.

Page 541

1 THE HEARING OFFICER: Mr. Henslee?
 2 MR. HENSLEE: None.
 3 THE HEARING OFFICER: Okay. Redirect?
 4 MR. HAEMMERLE: We're done.
 5 THE HEARING OFFICER: Okay. Thank you,
 6 Mr. DeLaughter.
 7 THE WITNESS: Thank you.
 8 THE HEARING OFFICER: Next witness, Rangen?
 9 MR. HAEMMERLE: Could we take a brief break,
 10 Director?
 11 THE HEARING OFFICER: Yeah. How long? Ten
 12 minutes?
 13 MR. HAEMMERLE: I don't know. Five minutes or
 14 so. Ten minutes.
 15 THE HEARING OFFICER: Let's come back at 4:30.
 16 Am I reading the clocks? Or is it 4:30 already?
 17 MS. BRODY: It's 4:25.
 18 MR. BAXTER: 4:30 already.
 19 MR. TJ BUDGE: 4:30.
 20 MR. RANDY BUDGE: 4:30 already? I think I did
 21 that one time before. Let's come back in ten.
 22 (Recess.)
 23 THE HEARING OFFICER: We're back on the record
 24 after a late-afternoon break.
 25 And Rangen, Mr. Haemmerle, you were

Page 542

1 presenting testimony.
 2 Other witnesses?
 3 MR. HAEMMERLE: Thank you, Director. Rangen has
 4 no further witnesses. Rangen rests.
 5 THE HEARING OFFICER: Okay. All right. Thank
 6 you.
 7 And at this point, Mr. Huntley, if you'd
 8 like to make a statement, as we discussed, you may come
 9 forward and sit here in the witness chair.
 10 MR. HUNTLEY: Where do you want me? In here?
 11 THE HEARING OFFICER: Yeah. I need to swear you
 12 in. Raise your right hand, please.
 13
 14 ALMER HUNTLEY, JR.,
 15 having been called as a witness by Big Bend Irrigation
 16 & Mining Co., Ltd., and duly sworn to tell the truth
 17 relating to said cause, testified as follows:
 18
 19 THE HEARING OFFICER: Thank you. Please be
 20 seated. And you may narrate your statement.
 21 THE WITNESS: Okay.
 22 THE HEARING OFFICER: You'll be subject to
 23 examination by the parties.
 24 THE WITNESS: Okay.
 25 ///

Page 543

1 DIRECT TESTIMONY
 2 BY MR. HUNTLEY:
 3 THE WITNESS: I'll try and make this brief. Big
 4 Bend has 20 cfs water right in the Upper Tucker Spring.
 5 We believe that why this spring was targeted by people
 6 for the pumping activity to take water over to Rangen
 7 is that, number one, it's probably the lowest spring in
 8 the valley in elevation that is being actively used for
 9 agricultural purposes and other purposes, including
 10 fish raising.
 11 The spring, up until the last few years,
 12 has had relatively little problem with the pumping
 13 activity and other activities that have affected the
 14 other springs. In the last couple of years we're
 15 starting to see that water come down.
 16 And as of this spring -- I've been keeping
 17 the records for Frank Erwin, and in February when we in
 18 past years have had 20 cfs going over our weir, we're
 19 only seeing 18.5 cfs going over our weir. It is now
 20 down to 17.9 as of last week coming over the weir.
 21 So we are starting to see the effects of
 22 the pumping. We understand from, I think it's IDWR
 23 figures, that the aquifer is being overpumped by
 24 200,000 acre-feet a year. And that's not sustainable,
 25 and that's going to affect our spring and everybody

Page 544

1 else's spring as we go along.
 2 Secondly, a comment was made today about
 3 moving the intake box for this proposed pumping over to
 4 Rangen up to near the source of the upper spring, lower
 5 pool, if you will.
 6 We're very much against that. Down where
 7 it is, it will probably be okay. But if you pull that
 8 box up underneath our pool, the construction
 9 activities, vibration and so forth could easily mess up
 10 that pool, lower the water table, or maybe even destroy
 11 that pool. And we would be out the water coming in
 12 there.
 13 As it looks to us, the pool is here
 14 (indicating), the other -- the lower spring comes out
 15 under here (indicating), and if you start disturbing
 16 that, this upper pool could possibly drop (indicating).
 17 It is not sitting on rock, I don't believe. It's
 18 sitting on some kind of soil. And I think that would be
 19 a disaster for us.
 20 The other aspect is is that while all this
 21 is going on, we see nothing happening up on top to
 22 conserve water or to slow down some of the activities
 23 up there. We see new land being developed and being
 24 pumped on, new pivots going up. Maybe some of these
 25 are replacement pivots. I don't know. But we just

Page 545

1 feel that in another ten years probably our spring will
2 be dry too.
3 And that's what I have to say.
4 THE HEARING OFFICER: Okay. Thank you,
5 Mr. Huntley.
6 Randy or TJ, questions for Mr. Huntley?
7 MR. TJ BUDGE: None here.
8 THE HEARING OFFICER: Rangen, questions?
9 MR. HAEMMERLE: None, Mr. Director.
10 THE HEARING OFFICER: Okay. Mr. Henslee, any
11 questions?
12 MR. HENSLEE: None.
13 THE HEARING OFFICER: Okay. Thank you,
14 Mr. Huntley.
15 THE WITNESS: Thank you.
16 THE HEARING OFFICER: Mr. Henslee, do you wish
17 to come forward and make a statement?
18 Raise your right hand.
19
20 MICHAEL JAMES HENSLEE,
21 having been called as a witness by Salmon Falls Land &
22 Livestock Co. and duly sworn to tell the truth relating
23 to said cause, testified as follows:
24
25 THE HEARING OFFICER: Thanks. Please be seated.

Page 546

1 You may narrate your testimony.
2
3 DIRECT TESTIMONY
4 BY MR. HENSLEE:
5 THE WITNESS: Hello. My name is Michael James
6 Hensley, vice president of Salmon Falls Land &
7 Livestock in Hagerman.
8 I was just here today to reiterate. We do
9 have Exhibit No. 7000, which is our water right
10 36-2046, which is a Riley Creek source water right.
11 And we felt that it would be in jeopardy or perhaps
12 lose that water if this second mitigation plan did go
13 through with the moving of the 10 cfs.
14 So anyway, I was just here to protect that
15 water right. And I agree with Mr. Huntley that other
16 testimony about moving -- maybe moving that Tucker
17 Springs diversion proposed to a different location, I
18 definitely agree that should not be done. That could
19 be a detriment to my other water rights out of Upper
20 Tucker Springs.
21 So that's all I have to say.
22 THE HEARING OFFICER: Okay. Thank you,
23 Mr. Henslee.
24 Randy or TJ, any questions?
25 MR. TJ BUDGE: Just a clarification. You

Page 547

1 referenced Exhibit 7000.
2 Is it 7000?
3 THE WITNESS: Yes.
4 MR. TJ BUDGE: I wanted to clarify if he's
5 wanting to make that part of the record. We ought to
6 make that clear.
7 THE WITNESS: Yes, I would like to. Thank you.
8 THE HEARING OFFICER: This is an exhibit -- I
9 suppose 7000 is numbered for Henslee --
10 MR. TJ BUDGE: That's correct.
11 THE HEARING OFFICER: -- Land & Livestock?
12 And what is the document?
13 THE WITNESS: It's the water right document.
14 THE HEARING OFFICER: Okay. Other parties have
15 a copy of this? Any objection to admission of --
16 MR. HAEMMERLE: No objection from Rangen.
17 MR. HUNTLEY: No objection.
18 MR. TJ BUDGE: No.
19 THE HEARING OFFICER: Okay. Document marked as
20 Exhibit 7000 is received into evidence.
21 (Exhibit 7000 received.)
22 THE HEARING OFFICER: Any other questions for
23 Mr. Henslee?
24 MR. HAEMMERLE: None from Rangen.
25 THE HEARING OFFICER: Okay. Mr. Huntley, any

Page 548

1 questions?
2 MR. HUNTLEY: No.
3 THE HEARING OFFICER: Okay. Thank you,
4 Mr. Henslee.
5 THE WITNESS: Thank you.
6 THE HEARING OFFICER: Any rebuttal testimony?
7 MR. RANDY BUDGE: None.
8 THE HEARING OFFICER: Okay. All right. That
9 concludes the testimony and taking of evidence. We've
10 reconciled the exhibits so that we know what's in and
11 what's not.
12 The parties are satisfied?
13 Okay. I'll grant the parties a short
14 period of time for closing arguments.
15 Mr. Budge.
16 MR. RANDY BUDGE: Thank you. Thank you,
17 Director.
18 I realize this is brief, and I'll try to be
19 brief. I'll go back in summary fashion to what we said
20 we would do in our opening case and what we expected
21 Rangen to do and not to do in their opening case,
22 because there was a stark difference between what we
23 said this was about and what Rangen counsel said it was
24 all about. And I think the evidence proves who's right
25 and who's wrong.

Page 549

1 But aside from that, one thing we have
 2 confirmed, as we stated at the beginning, is that
 3 Rangen's only strategy and only interest is curtailing
 4 groundwater users.
 5 I'd like to comment on the Thousand Springs
 6 settlement agreement that seems to have received an
 7 inordinate amount of attention. Rangen somehow seems
 8 that it's not proper for the governor or the
 9 legislature or the Department or the AG's office to be
 10 involved in trying to solve water problems.
 11 We feel it is proper. We heard the
 12 testimony from Mr. Carlquist that the groundwater users
 13 are committed to solving problems and moving forward in
 14 that way. We have committed to the second plan if it
 15 is approved, the conditions are met, and we're
 16 committed to look at all other alternatives. We're not
 17 backing away.
 18 It's unfortunate that Rangen seems to have
 19 its feelings hurt because they felt that they were not
 20 at some of those meetings. They clearly were at a
 21 meeting with the governor. They've been at meetings
 22 with Speaker Bedke. They were at meetings with the
 23 Hagerman users that we were excluded from. It's
 24 unfortunate that they feel bad and their feelings are
 25 hurt.

Page 550

1 But what is pretty clear is that they have
 2 an option, as we do, and that is to be part of the
 3 solution or to remain part of the problem. The
 4 groundwater users have chosen and are committed to be
 5 part of the solution. Rangen continues to be the
 6 problem.
 7 If they wanted water, all they had to do
 8 was come and ask and work for us on a multitude of
 9 projects that will get them there. But they have no
 10 interest. They're only objective is curtailment, and
 11 it's pretty clear that it's going to be up to the
 12 Director to show us the path forward.
 13 It's real interesting, when we went into
 14 this we expected to hear from Dr. Brockway, but his --
 15 we know from his deposition he had no positive comments
 16 to make on our engineering plan done by SPF.
 17 MR. HAEMMERLE: Objection.
 18 MR. RANDY BUDGE: So we have no credible
 19 evidence.
 20 THE HEARING OFFICER: Okay. Just a minute.
 21 What's the nature of the objection?
 22 MR. HAEMMERLE: There's no evidence in the
 23 record.
 24 MR. RANDY BUDGE: Exactly what I'm saying.
 25 MR. HAEMMERLE: He's testifying to what occurred

Page 551

1 at a deposition.
 2 THE HEARING OFFICER: Yeah. Why, Mr. Budge?
 3 MR. RANDY BUDGE: It's just argument here.
 4 THE HEARING OFFICER: Well, I understand.
 5 MR. RANDY BUDGE: I'm not testifying about
 6 Brockway. I'm talking about what we didn't hear from
 7 him.
 8 THE HEARING OFFICER: Okay. Well, you got about
 9 two minutes left.
 10 MR. RANDY BUDGE: All right. We have an expert
 11 report from SPF that's entirely un rebutted that
 12 describes the project. It's not complex. It's simple
 13 pump-and-pipe engineering. There's an adequate supply
 14 of power.
 15 The evidence is undisputed that the backup
 16 system is industrial grade, same as used at Micron,
 17 same as used at hospitals, provides a reliable source.
 18 Tom Rogers' testimony has been corroborated
 19 by Joe Chapman on the water issues. Both said that the
 20 water quality and the water temperature is suitable for
 21 raising trout at Tucker Springs' supply. That's
 22 un rebutted.
 23 There's no evidence of any disease at
 24 Tucker Springs. There's speculation about diseases
 25 that exist in hatcheries might somehow get there. We

Page 552

1 do know with certainty, though, that even from their
 2 own witness, Mr. Ramsey, that all hatcheries have
 3 disease. That's a natural part of the hatcheries.
 4 They've been able to take care of it. The fact that
 5 both hatcheries have raised fish successfully and
 6 continuously for 60 years is pretty good indication we
 7 have a suitable supply.
 8 I will say this case has really pointed out
 9 a few things that we did not hear from Rangen. We
 10 indicated that they would create a side show and a
 11 diversion and create red herrings and not talk at all
 12 about how to deliver water. We know with certainty
 13 that they had an opportunity. They didn't put on their
 14 expert witness. They didn't put on Courtney.
 15 That indicates two things. There is
 16 absolutely nothing wrong with the engineering design,
 17 and they put on -- have not been able to offer one
 18 comment on how it can be improved. If there was some
 19 problem, you would think Rangen would step forward and
 20 identify it so when we go forward with further
 21 engineering we can incorporate it. They chose not to.
 22 To get some idea of Rangen's attitude and
 23 their approach, one only need to look at their answer
 24 to the discovery request when we clearly asked them
 25 "What are the parameters of quality and temperature for

Page 553

1 raising fish?" they filed interrogatory answers on
 2 Monday and said "We don't know."
 3 And they put on their own expert employee
 4 of 27 years, Mr. Ramsey, and he testified that he's
 5 known for a long time what the water parameters are.
 6 And he gave us those temperature parameters. So it's
 7 pretty disingenuous and indicative of what we're
 8 dealing with here with Rangen.
 9 In sum, Mr. Director, it's pretty clear
 10 that we've met all the standards under Rule 43 of the
 11 conjunctive management rules. We have met all of the
 12 standards set down by this Director in the final order
 13 in 2011 in the over-the-rim plan.
 14 It should be approved conditional upon the
 15 transfer application and the other permits that are
 16 required and conditional upon final engineering.
 17 At that point in time the order should
 18 similarly say Rangen has to agree first, before we go
 19 to any more trouble and expense, one, that they will
 20 accept the water and, two, that they will allow access
 21 for construction.
 22 It's pretty compelling that they did not
 23 put on any company witnesses that could answer those
 24 two questions or what the company policy is. So it's
 25 going to be up to the Director to basically show the

Page 554

1 leadership and the path forward.
 2 And the path forward is either going to be
 3 curtailment and continuation of the problem or giving
 4 the groundwater districts an opportunity to mitigate,
 5 and that's essentially all we ask for. Give us that
 6 opportunity to mitigate. We're going to proceed
 7 forward with the second plan if it's feasible. The
 8 publication begins this week on our third plan.
 9 And we are going to continue our efforts
 10 that we've started that you heard about in this case to
 11 engineer other solutions to the other water-right
 12 holders.
 13 Mr. Henslee, Salmon Falls are here. It's
 14 interesting that none of them are complaining about
 15 their water rights. Only Rangen is complaining about
 16 them for them.
 17 So with that, we simply ask approval, thank
 18 the Director for patience at this late hour, and
 19 conclude.
 20 THE HEARING OFFICER: Mr. Haemmerle, I assume
 21 you want to take some time.
 22 MR. HAEMMERLE: Thank you, Mr. Director.
 23 I'll start off with Mr. Budge's factual
 24 statement that IGWA intends to proceed with the second
 25 plan. As I stated during the opening, I stated that

Page 555

1 that is a completely illusory plan and they have no
 2 intent of moving forward with that. And I think
 3 Mr. Carlquist testified that they're not going to move
 4 forward with this plan.
 5 They're going to put up another plan, see
 6 if that gets approved by the Department. And then if
 7 that gets approved, their intent is to pick one, the
 8 cheapest one. That's the testimony. There's no
 9 testimony that they intend to move forward with this
 10 second plan. It's simply too expensive, and
 11 Mr. Carlquist testified to that.
 12 As we went in -- over the fatal flaws, I
 13 said there was two serious fatal flaws to this plan.
 14 One was the injury issue, and that's undeniable. If we
 15 remove water from the Tucker Springs source, Director,
 16 you're just creating a further problem in that source.
 17 And that's true anywhere in Hagerman because it's all
 18 overappropriated.
 19 So IGWA says that we sit here in a cavalier
 20 fashion. They're the ones who are cavalier. Because
 21 you know what? As Hagerman goes down everywhere, our
 22 springs, everyone else's springs, what do they do?
 23 Nothing. Because they know they have the political
 24 power to bully around the State of Idaho, and we know
 25 conjunctive management won't ever occur, and they know

Page 556

1 it too.
 2 They want to keep putting plans up there
 3 one after the other. Every one of them is illusory.
 4 There's no intent for them to produce any one of these.
 5 That's what's happening in Hagerman on the injury
 6 issue.
 7 The second fatal flaw is I think also
 8 undeniable, that there are diseases that exist in this
 9 source. Doug Ramsey testified to these diseases,
 10 Mr. Chapman testified to these diseases.
 11 The testimony -- the true testimony on PKD
 12 is it exists. And Mr. Chapman said he didn't know
 13 where it was coming from, but it exists.
 14 And what they've tried to do is they've
 15 looked at the spring source, that's a possibility.
 16 Possibilities in the raceways. There's a lot of
 17 possibilities. But the point is that disease exists in
 18 this source. It does not exist in Rangen. Flat out
 19 true. And that's the state of the facts.
 20 The other issues I think that are important
 21 from the fourth fatal flaw analysis is that this
 22 thing's not going to be built this year, Director.
 23 It's just not. There's not a shred of testimony that
 24 this plan, the third plan, or whatever plan they want
 25 to throw up on the wall is going to provide us the rest

Page 557

1 of the water that you said IGWA needed to produce to us
 2 under your curtailment order.
 3 Where is the testimony that this thing's
 4 going to be done this year? because there isn't. They
 5 can have a plan approved, but the true fact is they
 6 told their own engineer to have it ready April 1st of
 7 2015. Not in 2014. Where is the rest of the water?
 8 Where is the water you ordered them to provide?
 9 It ain't happening this year. We know
 10 that. That's true.
 11 So with that, Director, finally as to our
 12 hurt feelings, you know what? It's pretty hard to be
 13 left out of the political process. It's pretty hard to
 14 watch your opponent have complete access and watch us
 15 and everyone else in Hagerman have none. That's a
 16 pretty hard pill to swallow.
 17 As a politician myself, you know, I'm,
 18 frankly, appalled by that. Are my feelings hurt? Yes.
 19 Because as a citizen we know you have special access
 20 that we don't. And in a fair society, that's a
 21 problem.
 22 So yes, Mr. Budge, our feelings are hurt.
 23 THE HEARING OFFICER: Okay. Anything further,
 24 Mr. Huntley or Mr. Henslee?
 25 MR. HENSLEE: None.

Page 558

1 THE HEARING OFFICER: All right.
 2 MR. RANDY BUDGE: Just two housekeeping items.
 3 MR. TJ BUDGE: Go ahead.
 4 MR. RANDY BUDGE: One is I'm not sure the --
 5 Rangen was going to substitute signed Exhibits 1118,
 6 1127 and 1128 for the record. I'm not sure that's
 7 happened.
 8 MS. BRODY: I didn't get copies. I'll deliver
 9 them to Garrick. I did deliver them to you, but I
 10 didn't deliver them to Garrick.
 11 MR. RANDY BUDGE: That's fine.
 12 THE HEARING OFFICER: Okay.
 13 MR. RANDY BUDGE: I just wanted to confirm on
 14 that.
 15 We'll get the stipulation to Buckeye back.
 16 And then off the record I wanted to, since
 17 we have the parties here, discuss the scheduling on the
 18 third mitigation plan.
 19 MR. HAEMMERLE: Has it been published?
 20 MR. RANDY BUDGE: Yes.
 21 MR. TJ BUDGE: Published next week.
 22 THE HEARING OFFICER: Okay.
 23 MR. RANDY BUDGE: It's sent for publication.
 24 THE HEARING OFFICER: I don't need to be a part
 25 of that discussion, at least right now, until the

Page 559

1 publication is complete. I don't know whether you want
 2 me to be a part of that discussion, but --
 3 MR. RANDY BUDGE: Just off the record I want to
 4 have just a discussion for scheduling.
 5 THE HEARING OFFICER: Okay. Let's finish this
 6 particular part of the proceeding, and then to the
 7 extent people want to talk about it, that's fine.
 8 Okay. At this point thanks to the parties
 9 for your participation and for your assistance and in
 10 particular, Justin, thanks again for your contributions
 11 on the technology side, which I think helps all of us
 12 in projecting the exhibits on the screen so that
 13 everybody can look at them and we don't have to fumble
 14 through so much paper.
 15 So with that, the record will close, except
 16 for the additions, the signed copies that will come in,
 17 a copy of the stipulation will be distributed to the
 18 parties. And I will work diligently on a decision that
 19 will come out in a few days to -- a week to ten days.
 20 That's the time frame I'm thinking of. I really want
 21 it out in a hurry, so --
 22 MS. BRODY: Director, I think Mr. Huntley wanted
 23 to say something.
 24 THE HEARING OFFICER: Oh, Mr. Huntley.
 25 MR. HUNTLEY: Yeah. I just wanted to add one

Page 560

1 thing, if I could, on these figures I gave you.
 2 On our reading in the upper springs .76,
 3 which is 17.93 cfs, of that, 17 belongs to the fish
 4 hatchery, Hagerman Fish Hatchery, we transport for
 5 them.
 6 THE HEARING OFFICER: Okay. It's coming back to
 7 the question I wanted to ask, didn't want to go there.
 8 Thank you, Mr. Huntley.
 9 Okay. With that, the record will close.
 10 Thanks again for your participation.
 11 Thanks to the court reporter as well, Jeff.
 12 Have a good evening.
 13 (Hearing concluded at 5:12 p.m.)
 14 -oOo-
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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 16th 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

	445:1	270:24;335:4;347:8;431:25; 438:21;500:21	360:19;365:23;369:6,13; 370:17;385:11,19;386:20; 388:6;397:6;399:18;400:10; 446:17;451:7;464:12;465:3; 514:5;520:4;522:6;526:5; 529:3,8;559:10;560:10
\$	achieve (2) 390:6;397:9	addressed (1) 332:1	against (2) 431:11;544:6
\$27 (1) 445:17	achieved (1) 389:13	adds (1) 298:2	agencies (3) 286:24;521:6;528:22
/	achieves (1) 390:3	adequate (3) 412:3,6;551:13	agency (2) 516:23;521:7
/// (15) 316:22,23,24,25;354:25; 361:23,24,25;366:24,25; 367:23,24,25;422:25;542:25	acknowledge (1) 370:22	adjacent (6) 532:15;537:25;538:5,6,8,15	agent (1) 466:13
A	acknowledgment (1) 394:14	adjudicated (7) 388:11;390:15;392:6; 394:15;397:10;417:14,19	ago (8) 332:3,3;360:23;393:10,22; 424:15;441:16;465:2
ability (10) 288:15;302:4;335:22;336:9; 358:9;372:18;394:1;396:18; 459:9;463:14	acquire (1) 351:24	administer (5) 379:6,14;399:20;400:11; 406:2	agree (43) 359:24;372:1,4,13,25;373:1; 374:1;380:1;395:13;406:17,23, 23;407:3,14;411:3,15;413:20; 414:1,7;415:8,16;443:11; 446:12,21;477:6;480:14,15; 489:7;490:24;498:11;500:24; 513:5;531:15;532:8;535:17,22; 536:15,25;538:9,16;546:15,18; 553:18
able (32) 293:19;305:18;307:7; 313:15;336:11,15;357:21; 360:9;361:6;379:25;384:18,24; 385:3,8,12;387:3;390:15; 393:23;397:8;415:16;418:25; 422:4;452:16;455:9;468:24; 470:14;477:3;481:13;505:2; 528:25;552:4,17	acre (1) 514:18	admission (16) 332:22;338:14;346:16; 347:13;371:5;372:14,25; 373:20,23;375:12,25;377:4; 381:11;402:1;451:16;547:15	agreed (3) 369:22;373:23;477:8
above (13) 290:2;311:3;326:19;330:20; 339:11;347:25;368:9;431:17; 482:6,17;489:9;498:19;514:18	acre-feet (1) 543:24	admit (1) 534:5	agreement (6) 370:22;374:15;402:6;410:5; 443:8;549:6
aboveground (1) 537:19	acres (1) 340:7	admitted (5) 350:24;351:1;402:16;425:7; 426:7	agreements (1) 393:23
absolutely (2) 418:9;552:16	across (10) 280:1;285:3;287:3;297:2; 325:19;351:20;389:11;424:10; 514:12;536:21	adopted (1) 463:17	agrees (1) 351:7
absorbed (1) 489:12	Act (6) 518:5;520:25;525:23;526:3, 9;539:25	adult (1) 276:17	agricultural (1) 543:9
accept (5) 371:23;375:18,23;529:23; 553:20	actions (1) 526:12	adversely (1) 407:11	AG's (1) 549:9
acceptable (4) 290:2,21;306:10;486:18	actively (2) 429:16;543:8	advise (1) 536:2	ahead (4) 363:18;370:15;531:23;558:3
accepts (1) 535:5	activities (5) 482:18;483:20;543:13;544:9, 22	advised (1) 536:5	aid (2) 473:24;515:12
access (8) 482:10,11;483:11,15,23; 553:20;557:14,19	activity (2) 543:6,13	advocating (1) 409:19	aide (2) 272:18,18
accomplish (6) 318:11;336:2;385:3;397:25; 419:17;432:1	actual (3) 331:5;426:22;525:15	aerate (3) 312:10,19;314:19	ain't (1) 557:9
accomplished (1) 385:4	actually (27) 274:2;275:21;284:9,11; 285:2;309:12;325:14;341:16; 356:23;368:13;381:12;395:21; 398:2,5;428:17;429:5,6;435:7, 20;458:22;491:20;493:18; 504:25;524:1;525:15;527:3; 535:5	aeration (2) 312:15;489:22	air (9) 333:15,20,23;334:10,15; 357:9,10,15;479:19
accomplishing (2) 318:8;446:7	adaptive (1) 414:4	Aeromonas (1) 342:4	alarm (1) 278:14
according (1) 290:7	Add (8) 296:7,8,8;349:2;392:11; 489:21;529:20;559:25	affect (8) 335:22;336:9;406:19,25; 407:4;421:3;485:5;543:25	alarmed (1) 302:6
account (1) 488:7	added (5) 348:10,16;411:20;412:2; 432:18	affected (4) 311:6;407:11;437:22;543:13	alive (1) 492:19
accumulated (1) 386:13	adding (3) 392:1;411:3;430:12	affecting (1) 512:3	alkalinity (1) 288:24
accurate (5) 405:2;408:23;422:2;444:6;	addition (4) 303:7;453:16;514:19,23	afternoon (4) 404:19;416:15;442:21; 450:17	allocation (1) 539:13
	additional (4) 313:18;321:12;364:16; 449:20	again (52) 270:1;277:21;278:24;292:9; 293:15;313:7;314:23;324:15; 326:4,15,21,24;327:4,25; 328:17;329:14,15;330:4,25; 332:16,18;342:10;344:14; 345:25;349:4,25;357:5,11;	allow (9) 369:25;385:1;397:3;452:14;

<p>463:5;483:15;502:6;532:22; 553:20 allowable (5) 385:22;386:8;388:10,18; 392:6 allowed (3) 366:10;390:4;502:3 allowing (1) 397:25 allows (6) 356:3,7;357:15;482:8; 492:19;498:15 ALMER (2) 268:22;542:14 along (11) 311:4;318:16;394:6;396:20; 418:6;422:1,3;482:7;485:11; 498:18;544:1 alternative (2) 441:23;531:9 alternatives (1) 549:16 Although (1) 443:24 altitude (1) 476:10 always (6) 276:15;279:15,25;331:16; 407:16;422:4 American (6) 294:6,10,16;452:10;472:20; 488:22 among (1) 457:7 amongst (1) 425:22 amount (5) 391:8;411:19;419:3;478:2; 549:7 amplification (1) 502:7 anadromous (2) 271:18;272:20 analogous (1) 296:13 analyses (3) 286:10;291:15;292:1 analysis (9) 286:5;291:18;304:14,21; 305:12;343:10;374:19;515:22; 556:21 analyze (1) 405:8 and/or (4) 276:4;467:4,11;532:17 animal (2) 295:13;498:18 animals (8) 320:14,15,21;340:15;353:13; 356:12;502:1;503:15 annual (4) 383:22,24;387:11;397:18 annually (1)</p>	<p>360:21 answered (1) 420:18 Anta (1) 339:4 antibiotic (1) 472:4 antibiotics (1) 296:12 anticipate (1) 370:5 anticipating (1) 370:6 anymore (2) 457:1;458:5 anyways (1) 488:11 apologize (5) 306:6;353:21;355:7;494:4; 539:15 appalled (1) 557:18 appeal (2) 518:25;520:2 appears (8) 389:12,22,23;390:2;402:11; 462:21;506:23;518:4 Appendix (3) 293:7,20,25 applicable (1) 539:14 application (2) 402:5;553:15 applied (2) 406:4;516:1 apply (22) 509:9;512:14,17,22;513:1,4, 7,10,21;514:6,10;515:5,7; 516:17;517:2,16,22;518:7,9; 532:16;533:4;535:5 appreciate (3) 373:8;494:6;501:5 approach (3) 319:4;512:16;552:23 appropriate (3) 351:13;445:17,20 approval (3) 372:10;528:21;554:17 approved (14) 358:21;371:16;406:18; 458:12,13;471:24;472:5,8; 528:13;549:15;553:14;555:6,7; 557:5 approximately (8) 281:21;342:23;364:14; 382:21;393:21;433:7;476:11; 510:2 April (6) 410:7;441:15;444:4,11; 449:5;557:6 Aqua (1) 440:9 aquaculture (1)</p>	<p>271:8 Aquaflor (1) 472:7 aquatic (3) 401:21;452:4;466:25 aquifer (9) 332:10;431:18,24;505:9,13, 14;506:7;507:4;543:23 area (67) 271:10;318:24;321:11; 322:10,22,25;329:22;330:7,9; 331:8,13;340:5,8,15;341:7; 348:18,24,24;349:2;353:4; 355:15,23;356:4,11;379:18,22; 380:3;382:15;383:7,8;435:11; 444:10,17,19;449:9;453:21; 454:8,8;468:8,15;469:2,12; 470:15,20,22;471:1;473:4; 483:3,7,11,15,16,18,19,22; 492:3;494:25;498:15,18,19; 502:2,3;505:10,17;506:23; 507:1;537:24 areas (5) 321:22;352:17,19;470:8,21 argument (1) 551:3 arguments (2) 372:24;548:14 arise (2) 326:17;480:18 arises (1) 327:5 arising (1) 413:25 Army (2) 512:21;516:5 around (12) 327:5;335:3,12;340:22; 341:1,10;361:12;454:5;471:1; 477:25;526:15;555:24 arranged (2) 433:14,17 arrangement (1) 358:20 arrives (1) 312:14 arrow (3) 319:16,23;356:24 art (1) 505:21 artesian (7) 274:16,17,19,20;277:5,7,21 aside (1) 549:1 aspect (1) 544:20 aspects (1) 399:8 assay (1) 291:23 assess (1) 523:18 assessment (1)</p>	<p>538:24 assist (1) 277:8 assistance (1) 559:9 assistant (1) 432:14 associated (2) 344:22;513:12 associates (1) 355:12 assume (6) 284:24;359:24;360:18; 381:6;400:1;554:20 Assuming (3) 283:5;342:17;402:4 assured (1) 534:2 attempts (1) 481:19 attend (1) 437:9 attendance (9) 425:25;427:7,23;434:1; 436:2,11,21;442:8;447:18 attended (8) 433:24;437:18,24;438:5,6,6; 441:12;443:15 attending (1) 447:16 attention (3) 347:23;521:13;549:7 attitude (1) 552:22 attorney (6) 413:9;432:14,21;442:24; 443:3,9 attorneys (1) 413:1 audience (1) 449:10 August (1) 389:4 author (1) 429:9 authorization (1) 523:21 authorized (6) 384:12,13,15;406:3,8;539:10 authorizing (1) 523:23 automatic (1) 278:16 automatically (1) 278:16 availability (1) 454:23 available (16) 302:6;359:8;371:10;379:7; 387:2,3;390:10;393:24;395:7; 406:3,4;407:16;411:11;525:17; 528:24;529:2 average (1)</p>
--	--	---	--

<p>405:23 avian (3) 297:11,14;320:13 avoid (4) 308:7;374:1;375:13;471:12 aware (34) 279:22;292:16,19;299:7; 305:2,5;308:21,24;309:12; 311:23;352:12;353:3;363:9; 367:4,6,9;382:19;397:12; 401:23;410:20;414:22;420:7; 440:2,3,4,11;444:9;445:16; 448:24;449:12;472:10;478:24; 492:5;526:11 away (2) 276:11;549:17</p>	<p>517:18;518:15;537:8 basically (22) 298:7;318:14;349:9;393:19; 408:5;444:13;445:14;467:15; 468:21;469:15,25;470:22; 479:25;481:12;482:7;483:8; 493:22;505:10,15;523:7;533:6; 553:25 basin (2) 498:12;530:12 basis (5) 383:24;396:10;447:15; 534:1;537:11 BAXTER (1) 541:18 beakers (1) 504:15 bear (1) 485:21 bearing (1) 527:2 beaver (1) 348:14 became (4) 405:10;406:10;461:2;489:20 become (7) 331:23;345:17;396:24; 424:24;454:22;460:11;467:13 becoming (1) 456:5 bed (1) 537:23 Bedke (9) 398:25;410:8;412:14;413:5; 426:16;435:16;437:15;443:17; 549:22 Bedke's (1) 436:10 began (1) 404:20 begin (3) 316:15;397:21;516:24 beginning (4) 425:18;505:6,19;549:2 begins (1) 554:8 behalf (3) 271:2;412:24;450:1 behavior (1) 295:15 behind (4) 330:12,21;331:3,10 bell (1) 386:1 belongs (1) 560:3 below (6) 321:5;333:22;414:15; 431:19;470:3;482:25 below-the-rim (1) 441:17 Bend (28) 324:19;325:5;327:4;332:13;</p>	<p>339:12;364:12,16,18;365:17; 366:1;367:21;368:4,22;382:9; 383:24;384:4,9,14,18,24;385:7, 12;388:16;393:20;417:9; 470:12;542:15;543:4 bends (1) 334:7 beneficial (3) 371:20;395:7;406:5 benefit (1) 374:8 besides (3) 291:14;463:9;540:5 best (6) 362:8;394:1,6;408:15;419:6; 485:23 better (7) 298:19,25;311:10;312:16; 370:25;457:14;485:11 beverage (1) 373:12 Beyond (3) 363:13;366:12;521:3 big (35) 295:2;318:25;324:19;325:5; 327:4;329:6;332:13;339:12; 364:12,16,18;365:17;366:1; 367:20;368:4,22;382:9;383:24; 384:4,9,14,18,23;385:7,12; 388:16;391:21;393:20;417:9; 457:8,22;458:17;470:11; 542:15;543:3 Billingsley (26) 379:12;380:3;390:25;394:4, 5;395:23;397:23;408:20;411:4, 5,20;412:3;414:16;418:5,20; 422:8;438:13,19,20;441:25; 482:1;485:6;498:1,4,13,23 Billingsly (1) 412:12 binder (2) 280:12;286:1 binders (2) 318:25;324:13 Biochemistry (2) 486:6,7 biological (3) 272:17,18;531:2 biosecurity (5) 356:12;481:15,18,24;500:22 bird (4) 311:5;457:16;495:3,7 birds (11) 297:12,16,21;340:14,24; 457:17;469:21;470:8,17,19,19 bit (10) 283:23;285:14;290:24; 304:3;452:2;459:25;474:21; 485:22;501:15;509:20 bleach (1) 484:9 blew (1) 331:2</p>	<p>Bliss (9) 525:2,19;526:6,8;527:20; 529:4;530:1,4;540:1 blood (1) 479:25 blowing (2) 322:14;457:5 blue (1) 323:1 board (19) 379:2,2;396:5,8,23;397:12, 15,17,19;398:9,13;400:10; 409:8,10,13;440:1,9;443:22; 445:6 boards (2) 329:20;396:11 Bob (4) 280:20;288:3;312:9;355:12 bodies (1) 443:2 body (1) 493:4 Boise (4) 271:1;349:6;424:22;473:4 book (14) 293:5;338:24;355:9;380:3,6, 14,16,19,24;383:14;451:6; 460:19;487:2;521:16 books (1) 337:16 both (14) 288:4;298:10;343:17;388:9; 419:20;428:11;454:3;467:6; 481:20;492:14;515:3;536:18; 551:19;552:5 bottom (2) 294:2;345:13 box (62) 319:11,11,14,21,24,25;320:3, 5;321:23;322:8,15;323:8,10; 327:13,16;328:2,6,11,14,19,24; 329:16,25;330:1,15,18,19,24; 331:1,5;339:19;344:4,10; 345:19;348:22;349:20;355:14, 19,20;356:8;363:10;368:21; 469:13,18;470:4;482:25; 495:22;496:2,4,22,23;497:1,7, 9;507:1,3,6,10,15;511:16; 544:3,8 branch (1) 437:15 branches (1) 436:3 break (12) 316:6,8,14;369:5;373:8; 375:7;403:17,22,23;490:10; 541:9,24 Brian (3) 429:18;430:4;441:2 bridge (3) 488:4,6;497:23 brief (5) 369:5;541:9;543:3;548:18,19</p>
B			
<p>bachelor's (4) 271:13;452:3;509:23,24 back (35) 279:15;282:22;315:1; 316:13;322:3;326:16,17;327:6; 330:12;343:3;349:7;369:8; 374:10;375:21,22;402:14; 403:25;405:8;411:8;420:5,8; 437:24;438:3;443:7;485:13,16; 499:1,10;531:3;541:15,21,23; 548:19;558:15;560:6 background (2) 271:12;516:22 backing (1) 549:17 backup (7) 276:25;278:1,2,5;282:4,9; 551:15 backwards (2) 397:6;451:4 bacteria (9) 305:3;343:24;458:5;461:7; 462:23;464:20;491:10;493:12; 503:16 bacterial (12) 296:1,10;308:17;342:1,2,3; 344:15;458:18;491:8,12,15,17 bad (2) 419:18;549:24 Bair (1) 443:17 balls (7) 340:25,25;341:4;348:9; 470:16,24,25 barrier (1) 482:7 basalt (2) 505:12;507:13 based (22) 281:14;282:23;287:6; 290:10;296:24;313:24;371:7, 17;373:25;377:8;401:11; 404:24;407:15;445:22;447:22; 461:9;478:25;515:22;516:12;</p>	<p>517:18;518:15;537:8 basically (22) 298:7;318:14;349:9;393:19; 408:5;444:13;445:14;467:15; 468:21;469:15,25;470:22; 479:25;481:12;482:7;483:8; 493:22;505:10,15;523:7;533:6; 553:25 basin (2) 498:12;530:12 basis (5) 383:24;396:10;447:15; 534:1;537:11 BAXTER (1) 541:18 beakers (1) 504:15 bear (1) 485:21 bearing (1) 527:2 beaver (1) 348:14 became (4) 405:10;406:10;461:2;489:20 become (7) 331:23;345:17;396:24; 424:24;454:22;460:11;467:13 becoming (1) 456:5 bed (1) 537:23 Bedke (9) 398:25;410:8;412:14;413:5; 426:16;435:16;437:15;443:17; 549:22 Bedke's (1) 436:10 began (1) 404:20 begin (3) 316:15;397:21;516:24 beginning (4) 425:18;505:6,19;549:2 begins (1) 554:8 behalf (3) 271:2;412:24;450:1 behavior (1) 295:15 behind (4) 330:12,21;331:3,10 bell (1) 386:1 belongs (1) 560:3 below (6) 321:5;333:22;414:15; 431:19;470:3;482:25 below-the-rim (1) 441:17 Bend (28) 324:19;325:5;327:4;332:13;</p>	<p>339:12;364:12,16,18;365:17; 366:1;367:21;368:4,22;382:9; 383:24;384:4,9,14,18,24;385:7, 12;388:16;393:20;417:9; 470:12;542:15;543:4 bends (1) 334:7 beneficial (3) 371:20;395:7;406:5 benefit (1) 374:8 besides (3) 291:14;463:9;540:5 best (6) 362:8;394:1,6;408:15;419:6; 485:23 better (7) 298:19,25;311:10;312:16; 370:25;457:14;485:11 beverage (1) 373:12 Beyond (3) 363:13;366:12;521:3 big (35) 295:2;318:25;324:19;325:5; 327:4;329:6;332:13;339:12; 364:12,16,18;365:17;366:1; 367:20;368:4,22;382:9;383:24; 384:4,9,14,18,23;385:7,12; 388:16;391:21;393:20;417:9; 457:8,22;458:17;470:11; 542:15;543:3 Billingsley (26) 379:12;380:3;390:25;394:4, 5;395:23;397:23;408:20;411:4, 5,20;412:3;414:16;418:5,20; 422:8;438:13,19,20;441:25; 482:1;485:6;498:1,4,13,23 Billingsly (1) 412:12 binder (2) 280:12;286:1 binders (2) 318:25;324:13 Biochemistry (2) 486:6,7 biological (3) 272:17,18;531:2 biosecurity (5) 356:12;481:15,18,24;500:22 bird (4) 311:5;457:16;495:3,7 birds (11) 297:12,16,21;340:14,24; 457:17;469:21;470:8,17,19,19 bit (10) 283:23;285:14;290:24; 304:3;452:2;459:25;474:21; 485:22;501:15;509:20 bleach (1) 484:9 blew (1) 331:2</p>	<p>Bliss (9) 525:2,19;526:6,8;527:20; 529:4;530:1,4;540:1 blood (1) 479:25 blowing (2) 322:14;457:5 blue (1) 323:1 board (19) 379:2,2;396:5,8,23;397:12, 15,17,19;398:9,13;400:10; 409:8,10,13;440:1,9;443:22; 445:6 boards (2) 329:20;396:11 Bob (4) 280:20;288:3;312:9;355:12 bodies (1) 443:2 body (1) 493:4 Boise (4) 271:1;349:6;424:22;473:4 book (14) 293:5;338:24;355:9;380:3,6, 14,16,19,24;383:14;451:6; 460:19;487:2;521:16 books (1) 337:16 both (14) 288:4;298:10;343:17;388:9; 419:20;428:11;454:3;467:6; 481:20;492:14;515:3;536:18; 551:19;552:5 bottom (2) 294:2;345:13 box (62) 319:11,11,14,21,24,25;320:3, 5;321:23;322:8,15;323:8,10; 327:13,16;328:2,6,11,14,19,24; 329:16,25;330:1,15,18,19,24; 331:1,5;339:19;344:4,10; 345:19;348:22;349:20;355:14, 19,20;356:8;363:10;368:21; 469:13,18;470:4;482:25; 495:22;496:2,4,22,23;497:1,7, 9;507:1,3,6,10,15;511:16; 544:3,8 branch (1) 437:15 branches (1) 436:3 break (12) 316:6,8,14;369:5;373:8; 375:7;403:17,22,23;490:10; 541:9,24 Brian (3) 429:18;430:4;441:2 bridge (3) 488:4,6;497:23 brief (5) 369:5;541:9;543:3;548:18,19</p>

<p>briefly (1) 281:13</p> <p>bring (7) 314:16;454:3,5;460:18; 484:14;492:14,18</p> <p>bringing (1) 492:18</p> <p>brings (1) 454:2</p> <p>Brockway (7) 373:22;374:1,20;375:14,24; 550:14;551:6</p> <p>BRODY (3) 541:17;558:8;559:22</p> <p>broke (1) 504:15</p> <p>broken (1) 309:19</p> <p>brokering (2) 440:14,16</p> <p>brought (5) 286:3;337:2;380:20;485:4; 540:12</p> <p>brown (1) 328:8</p> <p>bryozoan (4) 348:11;367:10;466:15;499:8</p> <p>bryozoans (19) 310:1,5;348:10,16;349:3,10, 13,15,19;466:17,22,23;467:3, 12,13;502:5,6,10,17</p> <p>bubble (2) 334:3;480:3</p> <p>bubbles (1) 479:25</p> <p>Buckeye (28) 370:17,19;371:1,5,7,18,19, 22;372:1;374:15;376:15; 400:24;401:7,19;402:5,7; 414:23;415:5,11,17;435:8; 436:16;441:16,24;442:2; 443:21;448:14;558:15</p> <p>Buckeye's (4) 371:11;401:11;416:18; 441:19</p> <p>Bud (1) 384:6</p> <p>Budge (167) 268:5,9,11,13,17,19,21; 270:5,7,21;272:3,11;293:11,16; 294:25;299:15,16;303:24; 310:15;312:5,24;313:25;314:1, 4;315:14;316:4;332:24;338:15, 16;346:18,19;347:14,15; 350:18,23;354:6,7,9,21,24; 355:2,7;361:16;363:4,5,8,14, 18;364:1;365:5,8,16,24;366:4, 10;367:18,19,22;368:2,25; 371:24,25;373:13;375:18,20, 21,23;376:3,23;381:4,10; 396:9;400:15;401:5;402:11,18; 403:18,20;404:13,18;415:24; 416:22;420:12,18,21;421:2,20,</p>	<p>21,24;422:12;434:1,3,6; 435:21;436:18;438:6;441:6; 442:17,20;447:3;448:16; 449:18,19;451:17;463:21; 473:21,23;474:2,12;485:10,20; 501:4,20;503:10,11,14;504:1; 510:6;515:8,11,16;516:20; 519:5,6;520:10,11;524:11,12; 526:23;527:6,8,12,17;528:10; 529:14;532:18,20;533:24; 534:19,22;540:19;541:19,20; 545:7;546:25;547:4,10,18; 548:7,15,16;550:18,24;551:2,3, 5,10;557:22;558:2,3,4,11,13, 20,21,23;559:3</p> <p>Budge's (7) 309:7;362:4;365:7,19,22; 420:25;554:23</p> <p>budgetary (1) 353:8</p> <p>budgets (1) 318:17</p> <p>buffer (1) 482:4</p> <p>build (3) 295:2;298:15;438:24</p> <p>building (5) 320:25;321:10,15;343:24; 433:18</p> <p>built (2) 517:6;556:22</p> <p>bullet (3) 510:20,21;511:1</p> <p>bully (1) 555:24</p> <p>bump (1) 531:3</p> <p>bureau (4) 336:25;423:20,20;429:17</p> <p>buried (1) 356:5</p> <p>bush (2) 330:21;331:10</p> <p>bushes (1) 498:18</p> <p>busts (1) 505:16</p> <p>button (2) 378:12;383:5</p> <p>bypass (1) 532:4</p>	<p>425:20,22,23,24;426:19,23; 428:13;450:2;505:20;507:24; 515:23;516:10</p> <p>called (21) 270:12;317:2;323:11; 332:19;344:17;370:2;377:20; 382:17;409:23;417:8;423:2; 438:4;450:7;455:24;461:23; 472:6;496:4;497:23;508:4; 542:15;545:21</p> <p>calling (5) 319:25;348:21;373:22; 374:1;375:13</p> <p>calls (3) 399:14;431:10;432:7</p> <p>came (21) 280:1;282:22;287:3;349:5; 377:3;380:3;412:14,16;425:13; 428:16;430:1,17,22;432:12,17, 18,20;434:10;435:22;437:1; 448:9</p> <p>can (113) 278:3;285:25;286:1;287:6,7; 293:11;294:22;296:3,11,11; 297:18,19;304:18;306:17,24, 25,25;307:13;308:10,20;311:7; 312:10;315:21;319:4;324:15; 327:1;329:20;332:7;337:17,18; 338:1,23;342:4;345:8;350:22; 351:14,16;352:5,17;353:13; 360:6;362:8;363:18;365:6,8, 11;367:8;368:22;369:9,22; 374:1,3,10;375:6,13;376:21; 380:9;381:11;387:7,16;388:7; 392:5;393:12;394:6;395:3; 396:15,21;398:21;403:1;406:4; 416:10;425:15;451:5;454:7,10; 458:18;459:23;460:19;462:12, 16;463:13;471:18;476:17,23; 477:18,20;478:4;479:6,19,24; 480:22;486:11;487:2,6,14; 496:1,2;504:21;507:12;509:12, 20;510:9;514:21;516:25;517:6, 8;527:18;531:9,13;552:18,21; 557:5;559:13</p> <p>can/should (1) 397:1</p> <p>cap (1) 333:25</p> <p>capable (2) 491:20;492:9</p> <p>capacities (1) 425:2</p> <p>capacity (2) 277:18;508:22</p> <p>capitol (1) 412:18</p> <p>capped (1) 333:18</p> <p>capture (3) 281:19;498:12;507:7</p> <p>captured (1) 329:9</p>	<p>care (9) 298:2;415:5,5,13,17,18,20, 22;552:4</p> <p>career (1) 301:9</p> <p>Carlquist (3) 549:12;555:3,11</p> <p>Carlquist's (1) 439:7</p> <p>carrier (2) 499:11,15</p> <p>carries (1) 499:7</p> <p>carry (2) 304:13;463:4</p> <p>case (20) 270:2;271:5,7;273:17; 279:14;292:4;294:4;295:2; 349:10,23;454:19;511:13,14, 20;523:20;527:2;548:20,21; 552:8;554:10</p> <p>cases (3) 405:21;461:21;493:10</p> <p>catch (4) 361:3,8,14;491:8</p> <p>catchables (2) 360:24,25</p> <p>categories (1) 288:6</p> <p>categorized (1) 522:15</p> <p>cause (27) 270:13;317:3;334:1;340:17; 377:21;410:25;423:3;450:8; 459:23;463:7,14;468:14; 473:19;478:1;479:20,24; 480:20,22,25;481:4;484:3; 491:1;494:2,4;508:5;542:17; 545:23</p> <p>caused (7) 333:24;334:10;413:18; 457:6;462:23;464:19;465:22</p> <p>causes (6) 308:19;462:22,24;464:14; 465:24;471:13</p> <p>causing (4) 303:1;350:2;455:24;458:6</p> <p>cavalier (2) 555:19,20</p> <p>cavity (2) 493:4,14</p> <p>Celsius (1) 291:3</p> <p>Centennial (1) 472:21</p> <p>center (2) 303:25;453:1</p> <p>certain (17) 352:22,25;359:12;360:5,6,7, 12,16;370:20;478:2,3;481:12; 509:4;512:22;514:6;520:21; 540:11</p> <p>certainly (9)</p>
<p>C</p> <p>Cabinet (3) 274:6;277:15,16</p> <p>calculation (1) 407:25</p> <p>call (29) 270:6,7;271:4;281:7;292:7; 315:1;316:18;320:1;340:24; 343:10;347:23;374:2;377:15; 380:13;382:25;422:22;424:25;</p>			

<p>434:22;437:17,23;444:22; 455:5,8;461:7;471:23;499:25</p> <p>certainty (2) 552:1,12</p> <p>certification (8) 452:12;515:2;517:20; 518:23;519:17;523:17;536:19; 537:14</p> <p>certifications (1) 452:8</p> <p>certified (3) 452:9,13;514:20</p> <p>certify (1) 523:16</p> <p>cetera (2) 279:25;391:1</p> <p>cfs (30) 275:18;276:16;281:19; 335:17;336:8,12;337:9,13; 364:14,16;384:19;385:8,13; 386:9,22;388:16;389:13;390:7, 7;400:5;420:1;438:19,20,22; 484:15;543:4,18,19;546:13; 560:3</p> <p>chair (2) 416:11;542:9</p> <p>Chairman (1) 445:7</p> <p>challenge (6) 298:2;305:19,20,21;310:20; 372:19</p> <p>challenging (1) 311:11</p> <p>chance (4) 350:7;366:13;460:24;478:16</p> <p>chances (1) 314:14</p> <p>change (5) 278:4;296:7;377:10;522:25; 523:1</p> <p>changes (9) 286:15;335:4,7,11;347:8; 414:5;465:3;480:20,21</p> <p>Chapman (17) 297:24;316:19,20;317:1,13, 15;351:24;355:3;366:6,8; 367:3;368:3;369:4;473:13; 551:19;556:10,12</p> <p>C-h-a-p-m-a-n (1) 317:15</p> <p>Chapman's (1) 351:11</p> <p>characterize (2) 449:17;505:6</p> <p>chart (2) 394:18;519:23</p> <p>Chase (1) 445:7</p> <p>cheapest (1) 555:8</p> <p>check (5) 286:13;295:17;314:20; 343:4;475:11</p>	<p>check-boards (1) 302:16</p> <p>checking (4) 493:12,23;514:15,16</p> <p>checks (1) 295:16</p> <p>chemical (2) 297:3;453:3</p> <p>chemist (1) 504:14</p> <p>chemistry (1) 486:5</p> <p>chicken (1) 340:23</p> <p>chief (1) 429:17</p> <p>chlorinated (1) 348:6</p> <p>choose (1) 439:22</p> <p>chose (2) 447:1;552:21</p> <p>chosen (1) 550:4</p> <p>chucks (1) 496:17</p> <p>Cippolletti (2) 332:13,17</p> <p>circle (1) 416:11</p> <p>citizen (1) 557:19</p> <p>civil (1) 509:24</p> <p>CLARENCE (2) 377:19;378:9</p> <p>clarification (2) 376:9;546:25</p> <p>clarify (10) 291:24;299:6;362:6;407:19; 408:10;414:24;461:13;465:14; 527:13;547:4</p> <p>clean (3) 311:16;467:2;471:17</p> <p>cleaner (2) 298:21,22</p> <p>cleanup (1) 354:18</p> <p>Clear (12) 315:7;357:9;368:7;396:17; 400:17;422:7;449:11;489:4; 547:6;550:1,11;553:9</p> <p>clearly (3) 366:11;549:20;552:24</p> <p>Clearwater (3) 272:23;273:15;284:6</p> <p>Clive (12) 428:6,22;429:10,17;430:7; 434:1;438:5;440:18,20,23; 442:8;448:8</p> <p>clocks (1) 541:16</p> <p>clogging (1) 320:21</p>	<p>close (7) 284:23;307:12;314:16,24; 363:16;559:15;560:9</p> <p>closed (2) 468:22;483:6</p> <p>closer (4) 328:21,23;386:2;507:15</p> <p>close-up (2) 330:25;332:16</p> <p>closing (1) 548:14</p> <p>Co (2) 542:16;545:22</p> <p>cold (1) 458:11</p> <p>cold-water (14) 342:3;343:23;458:5,8,25; 461:7;464:6,10,12;465:15; 472:6;491:8,10;530:13</p> <p>collaborate (5) 429:10,13;430:10,11,13</p> <p>collaborated (1) 432:13</p> <p>collaboration (2) 425:22;431:16</p> <p>collect (1) 322:23</p> <p>collected (3) 314:22;470:4;496:2</p> <p>collection (52) 319:11,11,21,24,25;320:2,5; 321:23;322:9,15;323:8,10; 327:2,13,16;328:6,11,14,19,24; 329:22,25;330:1,7,8,15,19,24; 331:1,5;339:19;344:10;348:19, 20,22;349:20;355:14,18,19,20; 356:8;363:10;368:21;469:13, 18;497:7;507:1,3,6,10,10,15</p> <p>Collects (3) 285:3;322:10;330:13</p> <p>College (1) 509:25</p> <p>colonize (1) 459:10</p> <p>Colorado (2) 509:25;534:25</p> <p>column (12) 288:17;289:9,13;295:20; 303:25;312:18;314:15;346:1; 393:1,1;487:11;494:7</p> <p>columns (1) 305:14</p> <p>combination (1) 388:9</p> <p>coming (36) 279:2;282:25;297:15; 314:12;326:16;329:9;363:1; 369:21,23;379:14;398:6;402:9; 426:5;428:11;438:24;456:6; 463:10;467:18;468:15,21; 469:1;471:1;474:23;478:19; 483:9;484:23;490:21;495:6;</p>	<p>500:11;502:2;503:3;507:13; 543:20;544:11;556:13;560:6</p> <p>comity (1) 535:4</p> <p>comment (4) 397:19;544:2;549:5;552:18</p> <p>comments (4) 345:7,11;372:2;550:15</p> <p>commercial (5) 300:22;315:6,13;473:8;489:4</p> <p>committed (4) 549:13,14,16;550:4</p> <p>common (2) 307:25;528:22</p> <p>commonly (1) 495:21</p> <p>Company (6) 384:4,7;456:3;457:11; 553:23,24</p> <p>compare (2) 282:13;288:12</p> <p>compelling (1) 553:22</p> <p>competing (1) 428:14</p> <p>competition (1) 457:7</p> <p>compile (2) 343:2,8</p> <p>compiled (2) 391:3;407:21</p> <p>complaining (3) 417:13;554:14,15</p> <p>complete (5) 290:3;299:6;519:1;557:14; 559:1</p> <p>completed (4) 340:22;522:20;524:6;526:19</p> <p>completely (1) 555:1</p> <p>complex (14) 380:14,19;385:9;390:13,14; 391:19;392:1,3;393:25;400:7; 415:23;417:15;511:16;551:12</p> <p>complexes (2) 394:23;421:6</p> <p>complexities (1) 517:7</p> <p>compliance (2) 423:20;424:12</p> <p>complicate (2) 400:1;521:3</p> <p>complicated (2) 284:13;398:4</p> <p>complicating (5) 520:5,21;524:8,21;533:1</p> <p>complications (2) 480:17;518:17</p> <p>comply (1) 335:22</p> <p>component (1) 476:5</p> <p>components (2)</p>
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<p>319:9;445:14 compromise (1) 372:18 computation (1) 522:21 concentration (2) 506:5;539:11 concept (3) 399:19;415:9;440:14 concern (9) 296:22;358:25;401:24; 411:24,25;469:2;498:7;503:15; 523:22 concerned (12) 306:24;353:15;401:9,21; 417:4;463:6;467:3,6;469:11; 479:4;503:3,6 Concerning (3) 499:1;538:19;539:24 concerns (13) 288:14;351:14,19;418:15; 464:8;468:14;469:19;471:1; 480:7;500:22;520:25,25; 524:21 conclude (1) 554:19 concluded (1) 560:13 concludes (1) 548:9 conclusion (1) 515:6 conclusions (2) 481:8,10 conclusive (1) 517:8 concrete (4) 320:10;331:3;482:25;537:23 condition (2) 345:16;539:12 conditional (2) 553:14,16 conditions (16) 373:15;512:25;514:6,10,11, 13,21,24;517:18;518:4;536:18, 20,21;537:13,14;549:15 conduct (1) 481:5 conducted (3) 337:24;461:5;517:20 conductivity (3) 288:18;289:1;304:1 conducts (1) 483:21 confirm (3) 329:13;527:18;558:13 confirmation (5) 343:12;348:11,12;349:7,22 confirmed (2) 343:25;549:2 conflicts (1) 442:25 confused (1)</p>	<p>501:15 conjunctive (2) 553:11;555:25 connected (1) 537:19 connection (4) 368:6;401:14;424:23;538:7 connections (1) 421:15 conservation (3) 294:10;385:4;452:4 conserve (1) 544:22 consider (1) 449:2 considerable (1) 284:15 considerations (1) 518:6 considering (1) 464:10 consistent (1) 487:20 constructed (3) 358:21;507:6;533:9 construction (13) 273:8,14,15;511:12,12; 531:13;532:13,16;533:6; 537:22;538:11;544:8;553:21 consultant (1) 424:19 consultation (7) 521:8,8;530:19,19,21,24,25 consultations (1) 521:5 consulted (4) 336:19;339:10;399:4;409:23 contact (3) 296:14;435:4,5 contacted (3) 409:18;434:20;435:2 contagium (1) 502:2 contained (3) 287:20;499:11;534:1 contaminants (4) 479:10;481:19;498:8,22 contaminated (1) 463:4 contaminating (1) 470:21 contamination (3) 471:4;483:10;507:16 contemplated (1) 445:22 contend (1) 505:22 content (3) 313:16,19;315:22 contents (2) 280:21;351:1 contested (1) 270:2</p>	<p>context (1) 509:11 continuation (2) 270:2;554:3 continue (9) 282:21;372:10;396:19; 456:21;459:10;462:7;490:16, 20;554:9 Continued (1) 268:1 continues (2) 488:20;550:5 continuing (1) 396:5 continuous (1) 486:14 continuously (1) 552:6 contract (9) 292:23,24;293:5,22;294:23; 315:4;472:14;488:21,24 contractor (1) 294:3 contracts (1) 472:22 contributions (1) 559:10 control (15) 301:23;302:2,17;328:2; 329:16;330:17;452:20;457:21; 461:6;463:8;464:1;471:6; 481:24;482:4;483:17 controlling (5) 458:14;463:18;471:9,11,23 conversation (1) 332:4 conversations (2) 447:22;537:10 conversions (2) 291:2,3 convey (2) 284:15;335:15 conveyed (1) 482:24 convinced (1) 485:2 cool (1) 276:6 cooperate (4) 395:2,13;396:20;397:8 coordination (1) 441:18 copied (1) 380:24 copies (2) 558:8;559:16 copy (10) 272:1;318:25;324:12; 342:10;370:24;377:1;428:21; 451:12;547:15;559:17 corner (2) 327:5;328:13 corporate (1)</p>	<p>369:25 corporation (1) 414:19 Corps (6) 512:21;516:5,8;531:4; 536:10,11 Corps' (1) 518:16 correctly (6) 274:24;355:24;375:17,19; 537:16;540:3 correlate (2) 314:6,9 corroborated (1) 551:18 cost (1) 445:25 counsel (14) 370:21;381:4,12;400:17; 409:22;410:15,24;411:14; 417:17;418:12;419:10;527:3; 532:19;548:23 country (1) 536:21 county (1) 525:11 couple (19) 273:11;281:4;309:7;313:3; 340:25;351:18;364:6;365:6; 366:13;369:6;370:4;393:9; 394:12;427:1;445:14;503:11; 504:9;505:3;543:14 course (6) 277:1;283:2;297:11;351:23; 475:8;482:12 coursework (1) 452:16 court (1) 560:11 Courtney (4) 410:12;412:23;444:21; 552:14 cover (5) 274:17;277:7;279:16;379:9; 380:13 covered (10) 320:7,9,12;327:15;331:14, 24;332:7;344:4;457:16;498:5 covering (4) 353:12;457:19;503:19,22 coverings (1) 356:22 covers (1) 379:13 crafted (1) 429:5 crafting (1) 431:16 create (3) 507:14;552:10,11 created (8) 345:8;347:10;425:17;428:9; 429:2,6,23;430:3</p>
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<p>creating (3) 430:11;505:13;555:16</p> <p>creation (2) 429:14;430:14</p> <p>credible (1) 550:18</p> <p>Creek (101) 272:18;297:17;298:1,5,6,11, 17;309:10,15,17;321:20; 323:17,19;324:2,5,6;336:15,16; 343:19;344:23;359:1,3,10; 362:18;371:8;374:24;375:3; 379:12,12,15;380:3,7;391:1; 394:4,5,10;395:24;397:23; 400:7;405:4;408:9,20;409:6; 410:25;411:4,5,20;412:3,13; 414:11,16,21;415:3,18,21; 418:5,5,21;419:23;420:2,5,8; 422:1,8;438:13,19,21;441:25; 482:1;485:6;498:1,4,13,23; 521:11;522:7,18;523:9,10; 524:25;525:3;526:6;527:1,4, 19,23;528:8,9,15,16;529:6,19; 532:14;536:9;538:19;539:7,8, 13;540:2,11;546:10</p> <p>Creek/Tucker (2) 380:14,19</p> <p>critical (2) 277:23;525:13</p> <p>critters (3) 297:18;496:17;503:24</p> <p>crops (1) 422:4</p> <p>cross (1) 363:15</p> <p>Cross-Examination (19) 268:5,11,21;299:21;315:18; 354:20;355:1;404:17;442:19; 485:9,17,19;501:7,9;507:20; 534:17,21;540:21,24</p> <p>cross-examine (1) 403:18</p> <p>cross-examining (2) 404:15;442:16</p> <p>CTR (1) 497:24</p> <p>cubic (4) 315:5;384:16;388:12;392:3</p> <p>culture (5) 271:16;295:12,13;482:18; 483:20</p> <p>culturist (1) 339:4</p> <p>cure (1) 472:10</p> <p>curiosity (1) 367:22</p> <p>Curren (10) 482:21,23;490:17;495:22,25; 496:12;505:5,24;506:13;507:8</p> <p>current (6) 272:1;358:11;423:14; 451:12;502:20;508:19</p>	<p>currently (6) 334:19;452:7;510:3;528:5, 13;538:20</p> <p>curriculum (3) 451:11,13;485:25</p> <p>curtail (1) 409:19</p> <p>curtailed (2) 400:13;422:10</p> <p>curtailing (3) 398:14;419:3;549:3</p> <p>curtailment (12) 395:16,19,25;408:20;409:1, 4;418:21,25;422:8;550:10; 554:3;557:2</p> <p>curtailments (1) 409:6</p> <p>customer (1) 454:7</p> <p>customers (2) 453:14,15</p> <p>CV (4) 271:23;509:17,18;534:24</p> <p>cycle (2) 321:13;466:21</p>	<p>495:25</p> <p>days (6) 425:20;427:20;535:9;536:5; 559:19,19</p> <p>dead (1) 467:21</p> <p>deal (9) 340:20;349:20;415:2;440:14, 15,16;471:6;513:24;531:4</p> <p>dealing (9) 300:9,25;308:1;372:11; 461:19;463:12;492:1;529:16; 553:8</p> <p>deals (1) 346:13</p> <p>death (3) 303:1;308:19;490:4</p> <p>December (3) 389:19;397:17;409:9</p> <p>decent (1) 419:15</p> <p>decision (2) 403:6;559:18</p> <p>decline (3) 391:1;408:12,16</p> <p>declined (1) 391:5</p> <p>declines (1) 407:22</p> <p>declining (4) 395:9,14;412:5,7</p> <p>decrease (2) 356:17;359:8</p> <p>decree (1) 405:25</p> <p>decreed (2) 394:19;405:20</p> <p>deemed (1) 312:21</p> <p>defecate (1) 495:8</p> <p>define (1) 391:4</p> <p>definite (1) 470:20</p> <p>definitely (7) 469:2;479:4;480:15,23; 481:6;495:5;546:18</p> <p>deformities (1) 462:17</p> <p>degree (2) 315:10;478:21</p> <p>degrees (3) 290:25;486:4,14</p> <p>de-ice (1) 275:23</p> <p>de-icing (1) 284:19</p> <p>DeLAUGHTER (10) 268:15;507:24,25;508:3,17; 515:17;517:1;527:18;534:23; 541:6</p> <p>D-e-L-a-u-g-h-t-e-r (1)</p>	<p>508:18</p> <p>deliver (12) 313:18;321:9;323:7;327:12; 329:19;368:10;379:6;418:25; 552:12;558:8,9,10</p> <p>delivered (9) 313:14;314:10;322:21; 323:20;329:10;364:16,17; 388:7;478:20</p> <p>deliveries (3) 400:3;405:4,9</p> <p>delivering (2) 328:1;329:15</p> <p>delivers (12) 320:3,5,25;321:5;323:14; 325:5;328:2,3;330:9,17;368:13, 14;388:16</p> <p>delivery (18) 271:4;281:7;292:7;315:1; 319:9;347:7;385:5;394:21; 399:13;404:25;425:20,23,24; 426:23;428:13;431:10;432:6; 500:21</p> <p>delve (1) 366:2</p> <p>demand (2) 389:10;457:3</p> <p>denied (1) 524:5</p> <p>denominated (1) 528:11</p> <p>densities (7) 283:11;315:10;359:6,8; 458:20;489:1,15</p> <p>density (5) 314:7;315:2,21;488:25;489:1</p> <p>Department (35) 272:13;317:18;336:3; 350:14;372:20;379:1;383:23; 386:17;387:12;390:2,3;392:19, 21;393:20;401:16;415:1; 417:10;423:15,20,21;424:1,6, 10,14;426:2,24;428:2;430:5; 432:15;438:4;441:20;474:5; 519:20;549:9;555:6</p> <p>Department's (1) 336:11</p> <p>depend (2) 278:3;458:19</p> <p>dependent (1) 523:7</p> <p>depending (3) 295:25;331:25;520:5</p> <p>depends (3) 283:2;303:2,6</p> <p>depict (1) 324:18</p> <p>depicted (7) 326:19;328:8;331:8;355:15; 371:9;379:19;382:12</p> <p>deposited (1) 469:20</p> <p>depositing (1)</p>
D			
<p>Dam (6) 284:6,8;330:12;331:2,3; 348:9</p> <p>damboards (3) 278:22;283:3;329:20</p> <p>dammed (1) 355:25</p> <p>Dan (29) 339:10;507:24;508:15,19; 509:8,13,15,20;510:9,18;511:4; 512:8,18;513:20;517:14;518:8; 519:14;520:19;521:24;522:11; 524:8,20;525:5;528:22;529:25; 530:4;532:3,25;533:15</p> <p>DANIEL (4) 268:15;339:4;508:3,17</p> <p>dash (1) 374:16</p> <p>data (12) 291:13,19;292:2;303:23; 343:1,8,9;386:13;391:3; 392:24;407:21;487:5</p> <p>date (6) 342:24;348:1;407:9;422:9; 427:12;435:23</p> <p>dates (1) 394:20</p> <p>David (1) 427:25</p> <p>day (15) 290:17;385:11;386:21; 388:24;389:11,22;391:22,24; 392:1;433:12;444:10;482:13; 487:16;488:11;532:2</p> <p>daylights (1)</p>			

<p>502:2 deposition (22) 295:1;297:25;318:23; 324:11;334:17;335:21;336:18; 337:3,11;351:11;358:14; 380:21;386:4,7;387:6,15; 391:7;393:9;402:23;415:1; 550:15;551:1 deprivation (1) 480:19 Deputy (4) 423:15,18,24;424:24 DEQ's (1) 536:19 derive (1) 505:7 derived (2) 425:16;505:23 describe (5) 318:20;425:15;455:19; 508:22;517:3 described (5) 285:7;300:11;334:6;427:5; 480:2 describes (2) 519:24;551:12 descriptions (1) 525:15 design (7) 271:16;273:7,11,19;280:11; 300:3;552:16 designed (1) 384:4 designating (1) 528:12 designation (2) 526:1,2 designations (2) 523:4;526:13 designed (5) 280:25;281:17;282:2; 283:15;285:10 desirable (1) 308:13 desk (2) 280:1;287:3 desktop (2) 515:23;537:8 despite (4) 361:5;419:6;470:23;502:20 destroy (1) 544:10 details (1) 273:21 detect (1) 295:21 detected (1) 500:4 determine (5) 287:8;305:3;398:2,8;407:21 determined (1) 526:19 detriment (1)</p>	<p>546:19 develop (1) 414:4 developed (6) 371:10;457:4,11;469:4; 531:10;544:23 developing (1) 436:25 development (3) 371:15;372:8;441:23 device (1) 326:8 devices (1) 489:22 devote (1) 432:5 dewatering (1) 533:7 diagnostic (1) 454:12 diagnostics (5) 453:2,8,17;454:1;460:13 dialogue (1) 314:5 diameter (2) 322:9;357:14 die (9) 301:3,12;302:22;306:2,2; 462:15;480:12,16,17 difference (5) 309:22;313:20;488:8;506:4; 548:22 differences (4) 463:11,13,14;464:15 different (17) 275:21;279:12;284:7;286:21, 24;352:5;358:17;392:2;397:15; 421:6;459:19;463:12;483:3; 488:7;505:23;525:23;546:17 difficult (12) 305:14;366:18;395:12; 396:24;400:4,8;467:16,23; 481:8,9;484:5;532:10 difficulties (1) 473:19 difficulty (1) 310:19 digestible (1) 457:13 digging (1) 351:8 diligently (1) 559:18 dilution (1) 357:25 diminished (1) 386:25 diminishment (1) 431:25 dip (1) 389:3 Dire (6) 268:9,17,19;474:1;515:15;</p>	<p>527:16 Direct (26) 268:8,10,16,18,20,23,25; 270:20;317:11;336:2;363:13; 378:3;403:15;417:2;419:18; 423:9;450:15;474:19;482:20; 507:19;508:13;517:12;521:13; 528:19;543:1;546:3 directed (4) 396:8,23;398:9;400:10 direction (2) 397:15;438:15 directions (1) 438:11 directive (1) 438:23 directly (7) 356:8;392:20;396:25; 423:19;482:17;483:1,5 Director (71) 293:12;294:21;299:18;314:5, 11;316:18;317:9;319:5;332:22; 346:16;347:12;350:23;351:3, 10;352:6;354:3;365:5;366:9, 19;367:16;372:20;373:17; 375:6;376:14,22;377:7,14; 381:2,14;396:15;401:14;403:3; 404:10;416:3;423:15,18,24; 424:24;440:24;450:2,13; 451:15;473:23;508:11;510:4; 515:11;516:20,25;519:3;520:8; 524:9;526:21;528:10;529:9; 533:22,24;534:15;541:10; 542:3;545:9;548:17;550:12; 553:9,12,25;554:18,22;555:15; 556:22;557:11;559:22 directors (1) 397:19 Director's (1) 437:22 disaster (1) 544:19 discharge (4) 339:24;506:9;511:9;538:2 discharged (1) 538:13 discharges (2) 453:4;539:3 discharging (1) 538:15 discount (1) 481:14 discovered (2) 295:14,23 discovery (2) 351:13;552:24 discuss (7) 375:16;393:23;426:13,18; 511:4;534:4;558:17 discussed (9) 372:3;377:4;399:18;413:6; 441:22;443:12;516:7;526:24; 542:8</p>	<p>discussing (1) 493:14 Discussion (15) 293:14;310:18;397:7;422:7; 426:6;439:19;449:6;489:24; 501:16;518:15;537:9;539:24; 558:25;559:2,4 discussions (5) 394:5;396:4;448:10;461:8; 516:14 disease (85) 295:3,4,6,10,21,23,24,25; 297:1,6;298:15;299:4;303:12; 304:23;305:11,14;307:19,25; 308:17;309:6,19;310:24;311:2, 3,8,11,13,20,23,24;334:3; 342:3,3;343:11,12,16;344:14, 20;345:15;347:8;356:17; 359:23;362:23;363:9,14;367:4; 453:2,5,7,16;454:1,12;455:13; 457:10;458:8,18,25;460:8,13; 461:6,20;462:15,25;463:7,14; 464:1,6,10,19;465:15,22; 471:13;480:3;491:8,9,11,12,14, 16,17;492:6;499:2;551:23; 552:3;556:17 diseases (63) 295:14;296:2,5;297:3; 307:22;308:5,7,9,11;309:9,13, 14,15;310:19;320:16;341:21, 24;342:1,2;343:21;344:15,16, 22;345:1;346:13;359:15,20; 360:2,6,19;361:5;362:5,7,14, 24;363:20;365:23;367:10; 452:19;455:16,20;457:21; 458:16;461:3,11;471:7,10,12, 25;472:2;474:24;478:24; 480:24;484:18;491:5,24;492:1, 8;499:3;551:24;556:8,9,10 disinfection (1) 345:19 disingenuous (1) 553:7 disorder (1) 485:22 dispute (1) 371:18 disseminate (2) 434:10,12 disseminated (1) 434:7 disseminating (1) 449:3 dissolved (34) 289:14,17,24;306:5,8,19; 312:6;313:12,13,16,19;315:22; 337:23;338:3;339:3;354:4; 475:10,15,17,24;476:3;477:10, 12,14,18,21,24;479:13,15,20; 486:19;487:12,20;506:3 distance (5) 284:15;482:3;483:1,13;496:1 distinguish (1)</p>
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<p>504:21 distribute (1) 369:7 distributed (2) 377:5;559:17 District (11) 378:20;379:3,8;383:23; 397:20,22;409:10;410:15; 419:7;516:4,9 districts (2) 410:22;554:4 disturbance (2) 512:23;538:3 disturbing (2) 538:7;544:15 Ditch (27) 324:19;325:5;327:4;332:14; 339:12;364:12,16;365:17; 366:1;368:4;371:11,19;382:9; 383:24;384:4,7,9,14,18,24; 385:7,12,20;391:23;393:20; 417:9;470:12 diversion (32) 369:3;371:8,19;382:10,14, 18;383:25;384:9,13,13,15; 385:7,20,22,23;386:9;387:1,13; 390:13;391:20;394:19;405:3, 20;406:24;413:19;488:5,6; 497:23;511:15;530:12;546:17; 552:11 divisions (16) 382:7,8,24;383:4,10;391:19; 392:2;397:22;398:7;420:22,23; 421:2,3,11;442:1;535:18 divert (7) 387:4;390:15;406:4,14,20, 25;498:10 diverted (2) 387:16;405:23 diverts (1) 498:1 doctrine (2) 398:10;400:12 document (60) 272:8;333:5;338:19;339:2; 342:12,14;346:24;347:4,6,20; 350:24;351:9,11,17,19,21,22, 25;352:2;354:15;380:11; 383:19;385:17;387:5,8;393:14, 16,18;399:5,7,8;425:7;428:9, 18,20;429:2,6,11,16;431:2; 432:10,16;449:3;451:23; 460:21,25;475:10,12;510:15; 511:1;518:23;519:15;520:16; 524:17;529:12,16;534:12; 547:12,13,19 documentation (1) 428:15 documents (16) 286:7;292:6,12;381:25; 401:17,23;402:8,12,16,18; 403:5;475:1,1,5,25;519:11 dollars (2)</p>	<p>445:20;532:2 domestic (3) 329:2,3,8 DONALD (3) 268:4;423:1,13 done (46) 276:24;287:1;291:4,5; 294:22;305:3;309:21;310:4; 312:18,21;338:1,5;349:12,12; 353:14;356:21;357:6;360:16, 20;365:14;366:11;367:7;392:6, 8;407:25;421:14;454:15,16; 460:13;470:10;475:2;479:10; 485:12;489:21;498:21;499:7, 21,22;516:22;536:9;538:12,14; 541:4;546:18;550:16;557:4 DOs (1) 314:21 DOUG (11) 268:7;337:24;450:2,6,17,20, 21;451:4;452:1;501:15;556:9 down (62) 276:6;279:1,11;282:18; 284:10,10;304:13;305:17; 306:3,14;311:25;321:4,5; 322:23;325:1,2,14;329:22; 330:10;333:15,22;343:10,12; 357:1,13,16,18;359:15;368:11; 383:7;389:8;412:7,11;419:7; 451:4;454:8;455:2;469:17; 470:3;472:21;477:10;482:25; 483:16,23;492:5;495:14;496:4, 10,20,21;497:4,18;498:2; 502:3;505:12,16;543:15,20; 544:6,22;553:12;555:21 downstream (10) 385:2;414:15;415:3,6;463:5; 485:6;502:11,12,15;527:25 Dr (6) 373:22;374:1,20;375:14,24; 550:14 Draft (7) 351:20;527:19;528:3,11,21; 529:3;540:16 drafted (1) 510:18 drafting (3) 446:13,23,25 drafts (2) 528:22;529:4 drain (7) 279:4;302:9,10,19;506:24, 25;517:22 drainage (6) 352:22,22;408:9;410:25; 469:16;529:19 drainages (2) 505:10,12 draw (2) 481:8,9 dredge (1) 511:10 drinking (2)</p>	<p>286:10,12 Drive (1) 271:1 driving (1) 482:12 drop (1) 544:16 dropped (1) 332:3 dropping (1) 330:25 droppings (1) 297:15 drug (1) 472:8 dry (2) 279:6;545:2 duck (2) 470:20,24 ducks (4) 340:14;341:1,6;484:1 due (6) 277:23;412:4;490:9;518:4; 520:25;532:10 duly (8) 270:12;317:3;377:21;423:3; 450:8;508:5;542:16;545:22 dumb (1) 417:19 during (39) 272:12;275:24;278:19,25; 279:18;280:3;282:19;283:7; 286:3;301:9,9;303:7;317:21; 324:11;337:3;364:10,17;365:1; 371:12,21;380:21;384:18; 386:4;387:6;406:9;408:23; 437:16;439:6,15;455:11; 471:18;479:18;481:7;490:15; 498:7,11;505:1;526:18;554:25 duties (10) 318:5;379:4,6;400:2;423:17; 424:5,10;446:15;453:25;509:4 duty (2) 424:23;452:24 Dworshak (1) 284:6 dying (2) 301:19;494:1</p>	<p>355:8;455:4;533:11 easily (2) 312:18;544:9 east (2) 352:24;505:10 easy (5) 482:10,11;483:15,22;484:6 EC (3) 288:17;304:3,9 economic (1) 413:23 economy (1) 413:24 edit (1) 429:23 editing (2) 429:16,21 edits (1) 430:25 educate (2) 425:23;426:22 education (1) 452:2 educational (1) 509:21 effect (13) 420:23;421:11,18;459:8; 462:3;464:16;480:23;489:25; 530:16;539:6,9,17,21 effective (4) 349:24;455:9;458:14;472:7 effects (2) 298:4;543:21 effluent (2) 298:8;338:12 effort (2) 428:11;443:8 efforts (6) 397:13;415:2;419:6;442:25; 470:23;554:9 eggs (3) 321:15,16;466:9 eight (2) 274:2;323:21 either (43) 274:3,10,12;278:22;279:12; 295:15;318:25;338:23;343:6, 13;344:22;363:24;366:19; 385:1;387:16;388:7,15,19; 403:19;409:6;419:2;432:20,24; 433:16;472:19;487:3;492:17; 496:3;498:5,24;499:5;500:1; 507:19;515:3,5,7;516:16; 522:16,22;523:2;526:2;539:22; 554:2 elected (1) 379:2 election (1) 319:14 electrical (4) 278:7,15,23;288:18 element (5) 298:2;430:23;431:17;438:17,</p>
E			
<p>Eagle (4) 273:2;274:19;275:4,14 earlier (13) 311:14,22;318:23;336:14; 355:5;359:14;404:24;412:21; 456:19;484:11;500:22;533:25; 536:7 early (12) 274:9,13;276:2,18,18; 298:14;316:14;369:3;426:6; 430:1;436:24;485:24 easier (3)</p>			

<p>18 elements (5) 286:17;430:12;431:18; 439:18;449:9 elevated (1) 493:22 elevation (2) 275:24;543:8 eliciting (1) 457:9 eliminate (3) 457:17;467:16;503:23 Ellis (1) 352:22 else (12) 286:11;334:14;358:16; 415:6;429:13,19,20;430:10; 437:14;448:12,18;557:15 else's (3) 394:18;544:1;555:22 e-mail (1) 391:20 embolism (1) 479:25 embolisms (1) 334:3 emits (1) 507:8 emitting (1) 507:7 employed (10) 317:16,19;423:23;424:1; 450:21,22,23;454:21;474:5; 486:1 employee (1) 553:3 employees (3) 318:16;409:15;428:1 employment (1) 272:13 enable (1) 361:7 enables (1) 481:23 enclose (2) 353:8;356:13 enclosed (3) 282:5;353:6,11 enclosure (7) 340:22;341:9,11,13,15,19; 357:6 encountered (1) 278:8 end (9) 278:6;296:3;298:11;302:17; 339:25;348:19;403:14;473:3; 489:15 endangered (18) 274:15;277:24;514:15; 518:5;520:24;521:3;524:22,25; 525:7,22,25;526:3,9,12;529:5; 530:16;531:7;539:25 endangerment (1)</p>	<p>525:23 enforce (1) 398:10 engine (1) 279:16 engineer (9) 356:11;424:7,8;508:20; 510:3;534:25;535:1;554:11; 557:6 Engineering (24) 273:19;280:11,15,16,25; 283:15;285:10;287:20;288:4; 290:17;292:1;355:10,13; 424:18;441:22;446:6;487:6; 501:1;509:24;550:16;551:13; 552:16,21;553:16 Engineers (9) 508:21;509:3,5;510:2; 512:21;516:5,8;536:10,11 Enhance (1) 412:12 enhancement (2) 431:18,24 enough (11) 274:17;335:8;337:17;357:7; 363:17;366:6;379:25;390:19; 435:25;489:16;504:1 entail (2) 318:4;452:25 entails (1) 318:14 entered (1) 456:2 entering (4) 312:15;324:24;483:17;489:8 enters (2) 312:11;488:16 entire (5) 273:14;274:17;277:2; 379:13;509:19 entirely (3) 344:24;539:9;551:11 entities (2) 435:1;449:8 entitled (2) 399:5;425:7 entity (2) 369:25;414:20 entrained (2) 333:16;479:19 entrainment (3) 333:23;357:9,10 entrance (1) 357:12 entries (1) 346:8 entry (6) 345:5,6,8,11,25;346:1 environment (2) 296:7;471:20 environmental (4) 296:1,5;508:25;519:21 environments (1)</p>	<p>467:2 episode (1) 295:8 epizootic (1) 296:3 epizootics (3) 462:14;467:20;480:25 equal (3) 314:15;315:20;345:16 equals (1) 282:16 equation (1) 523:1 equipment (2) 532:11;537:22 erosion (1) 348:9 Erwin (13) 377:15,16,19;378:5,9; 396:18;401:22;402:20;403:9; 404:9,19;422:20;543:17 E-r-w-i-n (1) 378:9 escape (1) 357:15 ESPA (2) 414:5;431:11 especially (5) 274:8;297:17;397:23;398:6; 484:23 Esquire (1) 270:25 essentially (10) 379:9;398:9;419:6;510:25; 512:20,24;514:20;530:18; 539:10;554:5 establish (1) 351:22 established (4) 467:12,13,22;503:21 estimate (5) 390:24;408:5,13,14,15 estimation (1) 484:6 et (2) 279:25;391:1 evaluate (2) 509:4,8 evaluated (1) 518:13 evaluation (1) 440:21 evaluations (1) 318:16 even (14) 279:13;297:13;305:17; 311:19,24;335:18;351:21,24; 352:1;355:8;464:24;480:16; 544:10;552:1 evening (3) 444:4;449:5;560:12 event (6) 279:20;301:9;337:24;470:1;</p>	<p>498:8,11 eventually (2) 302:19;470:4 everybody (6) 376:25;402:8;410:18;415:6; 543:25;559:13 everyone (9) 394:15,18,18,20;395:12; 417:18,25;555:22;557:15 everyone's (1) 393:25 everywhere (2) 398:17;555:21 evidence (32) 272:9;294:19;311:23; 316:16;333:6;338:20;346:25; 347:21;350:18,24;354:16; 376:5,18;377:8;382:2;451:24; 500:7,9;504:17;510:16;519:12; 520:17;524:18;534:6,13; 547:20;548:9,24;550:19,22; 551:15,23 evidently (2) 470:11;503:5 exact (1) 526:14 Exactly (7) 372:22;385:24;389:8; 462:13;473:5;499:21;550:24 Examination (35) 268:6,8,9,10,12,14,16,17,18, 19,20;270:20;310:14;313:5; 314:3;317:11;362:1;365:21; 366:6;367:1;378:3;416:13; 423:9;447:12;450:15;474:1,19; 501:13;504:12;508:13;515:15; 517:12;527:16;528:19;542:23 examine (2) 317:8;452:16 examined (4) 493:7;513:6;514:9;518:20 examining (2) 299:17;462:2 example (2) 418:20;443:7 exceeded (1) 538:21 exceeds (1) 282:16 except (3) 448:14;466:24;559:15 exclude (3) 320:14,15;481:19 excluded (1) 549:23 excuse (7) 303:22;333:23;376:3;451:6; 461:13;476:20;479:15 excused (1) 373:8 exercised (1) 278:8 exhaustive (2)</p>
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<p>499:22,24 Exhibit (157) 271:20,23;272:3,9,10; 280:13;286:1;287:21;288:2; 290:15;293:3,6,17;294:18; 303:17,23;318:21;319:1,1; 324:12,17;326:2;327:24; 332:23;333:6,7;337:16,20,22; 338:20,21;342:11;345:5; 346:17,25;347:1,3,13,21,22; 350:4,5,20,20;353:22;354:4,16, 17,22,24;355:4,9,10;371:9,17; 374:14;379:17,19;380:9,10; 381:3;382:6,12;383:13,16; 384:8,17;385:16;386:12,18,20; 387:6,10,19;388:22;391:14,15, 17;392:13;393:13;398:20,21, 24;399:5;400:21,23;401:15; 405:13,15;406:9;407:4,11; 409:24;411:9;416:25;417:3; 419:11;425:3;426:8;429:5; 451:5,6,8,10,16,24,25;460:20; 465:11;475:12,14;487:1; 495:13,19;497:21;510:5,15,17, 23;513:14,20;514:3;517:24,25; 519:3,4,15,19,23;520:9,17,18; 521:14,18,20;522:7;524:10,18, 19;525:4;526:5,22;527:5,7,19; 529:8;530:3;533:16,17,23; 534:12,14;546:9;547:1,8,20,21 exhibits (39) 280:12;285:24;286:2;287:12, 14;353:25;355:9;371:5,12; 372:14,25;373:21,24;374:4,8; 375:13,25;376:6,10,16,19; 380:17,20;381:5,7;382:1,3; 383:14;390:1;402:1,3;414:23; 460:17;519:4,12,13;548:10; 558:5;559:12 exist (3) 551:25;556:8,18 existence (1) 304:8 existing (5) 371:20;512:2;532:4,9;537:19 exists (5) 362:22;479:19;556:12,13,17 exit (1) 494:23 exited (1) 489:10 expand (2) 516:25;520:22 expectation (3) 294:5,15;401:10 expected (4) 506:6;525:12;548:20;550:14 expedite (1) 381:5 expedited (1) 535:15 expediting (1) 400:16</p>	<p>expense (1) 553:19 expensive (1) 555:10 experience (20) 273:7,9,23;282:23;283:9; 287:7;295:6;296:25;297:6,8; 300:22;311:20;359:23;452:16; 471:6;480:20;492:6;509:21,22; 516:23 experienced (7) 297:1;359:21;361:5;407:22; 461:3;464:9;492:10 experiencing (2) 456:9;464:2 expert (4) 531:13;551:10;552:14;553:3 expertise (1) 271:10 explain (9) 271:10;273:9;281:15; 288:25;295:23;298:4;299:1; 357:11;402:13 explained (15) 273:6;280:21;282:17; 283:24;286:9;298:24;310:20; 311:22;312:10;315:2;368:5; 387:15;491:7;492:13;499:4 explaining (2) 288:3;297:25 explains (1) 294:3 explanation (3) 310:22;402:1,2 explicitly (1) 391:3 exploration (1) 397:4 explore (1) 401:19 exposed (5) 297:14,15;469:9;471:2;493:4 exposure (1) 486:14 expressed (1) 358:25 extended (2) 447:23;448:1 extension (1) 327:25 extensive (1) 276:7 extent (10) 361:7;406:17;418:14,22,24; 419:1,24;531:16;539:12;559:7 external (5) 459:5,12,15,20;461:22 extra (1) 279:13 extruded (1) 457:13 eyed (1) 321:16</p>	<p style="text-align: center;">F</p> <p>face (1) 496:12 facilities (14) 279:9;282:18;300:4,15,19, 22,24;301:21;444:23;454:10, 11,13,14;492:5 facility (87) 277:4;292:3,21;300:13; 301:24;302:4,16;309:9,10; 317:20;318:9,21;321:8;324:16; 334:15,18;335:4,12;336:9,13, 24;340:23;341:10;351:15; 355:18;358:17;359:16;362:25; 363:24;382:25;387:16,20; 388:3,11;440:9;453:6;455:4,7, 17,21;456:7,10,22;457:1; 458:22;459:4,11,24;460:5,14, 16;461:19,21,25;463:3,19; 464:11,14,15;467:5,12;468:2; 469:14;471:13;475:3;477:9; 480:11;481:20,24;483:4,5; 484:12,15,25;485:4;489:8; 492:11,22;493:9,19;494:7; 496:9;502:15,18,21;503:7; 539:10 fact (31) 277:24;296:20;303:12; 309:22;331:18;335:3;345:1; 346:7,12;356:24;358:22; 362:17,18;371:10;379:14; 389:4;412:5;418:15,20;427:1; 430:13;431:1;464:8;466:8; 492:2;499:3;515:7;517:2; 532:11;552:4;557:5 factor (2) 524:8,21 factors (3) 520:6,21;533:1 facts (2) 527:2;556:19 factual (1) 554:23 Fahrenheit (2) 290:25;291:3 fail (3) 277:23;279:8;302:8 fails (2) 301:15;302:12 failure (10) 279:1,20;280:3,5;282:19; 285:6,8;489:25;490:8,9 failures (3) 279:10;280:8;301:17 fair (18) 283:1;290:5;296:19;357:7; 385:6;390:4,12;391:10;417:15; 418:1,18;433:21;435:25;500:6; 504:1;513:2;533:10;557:20 fairly (11) 283:10;284:23;296:13;</p>	<p>307:25;455:24;456:23;462:19; 467:1;483:22;535:19;540:11 fairness (1) 391:5 fall (1) 279:15 Falls (16) 294:6,10,16;369:16,18,19; 392:21;413:13;443:7;454:8; 472:20;488:22;516:11;545:21; 546:6;554:13 false (1) 417:24 familiar (24) 281:1,9;282:14;286:20; 288:22;289:11;292:20;300:16; 307:16,18,22;308:14;309:5; 310:3,6;333:9;401:2;424:24; 454:22;460:8,11;461:2;478:12; 539:2 far (18) 276:11;283:20;288:10,14; 304:12;311:11;342:7;346:7; 353:15;359:15;385:2;396:10; 458:21;479:1;500:6;503:20; 505:24;507:12 Farm (1) 401:7 farmer (1) 454:3 farmers (2) 453:23;492:14 farmers' (3) 495:22;496:2,22 farmland (1) 496:3 Farms (11) 370:17,19;371:2,7;376:15; 400:24;435:8;436:16;441:16, 24;442:3 Farms' (1) 374:16 fashion (4) 320:7;353:6;548:19;555:20 faster (1) 535:15 fat (1) 417:18 fatal (4) 555:12,13;556:7,21 favor (2) 337:12,13 FDA (1) 458:13 fear (1) 432:4 feasible (3) 273:20;434:17;554:7 February (5) 354:5;364:10;425:18; 436:25;543:17 fed (3) 344:1,9;419:8</p>
---	--	---	---

<p>federal (7) 454:13;509:10;521:6,8; 530:18;533:3;536:20</p> <p>federally (1) 454:11</p> <p>feed (5) 453:14;454:7;457:5,8,13</p> <p>feedback (2) 434:16;449:10</p> <p>feeders (1) 457:4</p> <p>feeding (3) 455:10;457:6;481:7</p> <p>feeds (4) 457:12;468:11;484:24;497:9</p> <p>feel (5) 412:1;457:14;545:1;549:11, 24</p> <p>feelings (5) 549:19,24;557:12,18,22</p> <p>feet (6) 275:23;339:11;357:13,13; 368:9;384:25</p> <p>felt (3) 411:19;546:11;549:19</p> <p>fencing (1) 503:18</p> <p>few (16) 275:12;294:20;295:4; 310:16;345:18;363:5;399:2; 411:9;426:10;459:8;475:1; 484:8;495:15;543:11;552:9; 559:19</p> <p>fewer (2) 315:5;358:3</p> <p>field (3) 271:17;288:3;303:23</p> <p>Figure (13) 287:25,25;288:14;289:20; 290:14;303:16,22;305:24,25; 316:8;368:17;481:13;497:2</p> <p>figures (2) 543:23;560:1</p> <p>filed (1) 553:1</p> <p>Filer (1) 473:12</p> <p>fill (4) 507:3;511:10;538:12,15</p> <p>filled (3) 334:19,22;335:10</p> <p>fills (1) 537:24</p> <p>final (16) 351:21;402:10;431:3,5; 434:19;435:3;449:2;501:1; 528:4,21,23;529:3,4,25;553:12, 16</p> <p>finally (4) 298:15;470:4;505:16;557:11</p> <p>finances (1) 432:6</p> <p>financially (1)</p>	<p>446:6</p> <p>find (6) 309:22;310:24;428:13; 431:7;494:1,11</p> <p>fine (3) 375:8;558:11;559:7</p> <p>finer (1) 531:25</p> <p>fingerlings (2) 360:24;361:1</p> <p>finish (1) 559:5</p> <p>finished (2) 366:8;404:8</p> <p>firms (1) 424:21</p> <p>first (41) 288:6;298:13;308:12; 322:12;323:14;324:14,17,18; 330:11;347:24;348:16;351:3; 362:11;365:8;371:4;383:15; 388:21,24;389:11;394:14; 395:19,25;407:20,24;418:21; 424:13;426:10,15;427:21; 433:10;434:20,25;436:1;437:2; 468:19;471:14;490:11;512:12; 513:24;533:19;553:18</p> <p>firsthand (1) 437:7</p> <p>fish (355) 271:10,11,15,16;272:12; 273:23,25;274:4;277:25; 278:12;279:6,16,20,24,25; 280:2,2,6,9;281:1;282:13,16, 17;283:6,10,17;284:2,14;285:5, 5,12,16;286:9,18;287:1,7,9,16; 288:10,15;290:12;291:9,15; 292:1,22,23;294:4,8,13;295:2, 4,5,6,9,10,13,16,17,19;296:15, 17,20;297:14;298:3,5,9,13,13, 14,25;299:3;301:3,4,8,10,12, 19;302:21;303:1,2,8,9,12; 304:17,18;305:20,20,22; 306:11,13;307:1,8,17;308:1,19, 21;309:18;310:4,21,23;311:11, 15;313:15,22;314:7,12;315:2,5, 9,22;317:17,18;318:6,15,15,15; 319:21,23;321:13,25;324:8,9, 23;325:7,7;332:19,19;333:12, 22;334:2,7;335:8;336:6,14; 339:4,13;340:4;341:20;342:15, 16;343:9,10;345:12,13;348:12; 350:14,15;351:12,23;352:2,10, 11,15,18,23;353:1,1;355:14; 356:20;358:3,20;359:1,13,21; 360:6,10,13,17,21;361:2,11,13; 362:19;363:1,24;364:22; 374:15,17;382:25;385:1; 387:12,16,20;388:3,6,11;390:3; 393:20;401:16,19;402:22; 407:5,7,17;417:10;440:1,10; 441:21;452:9,10,13,16,18,19; 453:2,5,7,14,16,20;454:1,3,6,7,</p>	<p>17;455:12,16;456:24;457:6,15; 458:13,19,23;459:3,4,6,9,10,22, 24;460:7,9,13;461:4,11;462:2, 3,11,12,15;463:5,17;464:5,9; 465:6,23,25;466:2,5,16,21; 467:10,21;468:10,20,23;469:4, 8;470:7,8,11,13,24;471:7,10, 12,16,19;472:1,5,11,13,17,19, 23;473:1,3,8,10,11,16,16,19; 474:6,8,9,14;475:9;476:4,5,17, 24;477:3,18;478:4,5,7;479:22, 24;480:12,17,19,21,21,23; 481:3;482:18;483:20,25;484:9; 488:20,21;489:25;490:3;491:2, 21;492:2,9,14,15,17,18,22,25; 493:3,5,16,18,21,23;494:1,1,12, 19,23;499:5,6;500:15;501:16, 20;502:13,23;515:20;525:9; 528:5,14;530:5,19;531:2; 539:22;543:10;552:5;553:1; 560:3,4</p> <p>fish-eating (1) 469:21</p> <p>fisheries (3) 271:12;336:25;337:1</p> <p>fishery (2) 271:14;452:10</p> <p>fish-kills (1) 484:7</p> <p>five (4) 345:12,13;366:21;541:13</p> <p>five-year (3) 526:18;528:9;540:10</p> <p>fix (2) 302:5;420:4</p> <p>Flat (1) 556:18</p> <p>flaw (2) 556:7,21</p> <p>flaws (2) 555:12,13</p> <p>flood (1) 331:23</p> <p>florfenicol (1) 472:7</p> <p>flow (34) 274:12;277:1,6;280:6; 283:20;296:8;302:17,22; 315:21;322:11;326:8;328:9; 335:1;338:13;348:14;356:7,8; 383:9,9;388:18;389:12,23; 390:6;391:25;392:2;490:10,17; 498:13,17;519:23;522:23,25; 539:7,12</p> <p>flowed (1) 477:9</p> <p>flowing (5) 282:20;328:12;331:21; 480:10;487:21</p> <p>flows (50) 277:7;306:20;318:20; 323:11;324:1;325:3,14;327:5; 328:10;329:21,25;335:5;359:6;</p>	<p>371:8,10,20;384:9;385:9,19; 386:11,13,18,21,25;387:20; 388:2,11,24;389:3,7,18;390:4, 25;392:6,9;395:8;412:12; 413:12,13;415:6;431:25; 458:20;484:23;489:13;496:1; 498:2;505:5,7;507:2;530:12</p> <p>flushing (1) 470:2</p> <p>fly (3) 297:16;341:1;495:7</p> <p>flying (2) 297:21;470:18</p> <p>flyway (1) 470:18</p> <p>focus (3) 350:16;389:16;441:16</p> <p>Focusing (1) 348:15</p> <p>folks (2) 416:2;444:14</p> <p>follow (3) 365:16,19,25</p> <p>following (3) 371:2;373:24;444:9</p> <p>follows (9) 270:14;317:4;321:4;377:22; 423:4;450:9;508:6;542:17; 545:23</p> <p>follow-up (7) 313:3;315:15,16;365:6,15; 447:19;525:16</p> <p>follow-ups (2) 313:24;421:21</p> <p>food (2) 458:13;472:5</p> <p>food-fish (1) 471:24</p> <p>foot (5) 315:5,5;384:16;388:12;392:3</p> <p>forestry (1) 271:14</p> <p>form (8) 376:22;420:12;430:9;434:7; 454:10;457:14;481:20;506:25</p> <p>formal (2) 530:21,25</p> <p>formation (1) 507:13</p> <p>forming (1) 479:25</p> <p>forth (3) 296:12;438:24;544:9</p> <p>forward (24) 270:9;316:21;377:17; 422:23;428:8,12;434:18;437:1; 438:12;439:23;450:4;508:1; 542:9;545:17;549:13;550:12; 552:19,20;554:1,2,7;555:2,4,9</p> <p>found (7) 293:16;298:16;333:16; 363:10,12,20;459:7</p> <p>foundation (9)</p>
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<p>350:25;351:9;402:19,24; 403:2;463:21;474:17;515:8; 533:25 four (11) 275:20;322:8;323:7;330:9; 332:3;345:16,16;360:23; 364:18;375:25;427:20 fourth (3) 350:20;371:17;556:21 fraction (1) 300:18 frame (3) 427:19;520:4;559:20 frames (5) 516:15;517:4;518:13;520:20, 22 Framework (22) 399:6;409:24;410:9;411:9; 412:10;413:6;419:11;425:8,12; 426:7;428:15;430:15,24;431:2; 434:3,6;435:14;438:8;445:22; 446:8,14;449:1 Frank (52) 377:15,19,24;378:7,9,10,14, 18,21;379:17;380:2,10,16,17; 382:5;383:3,14,19;384:8,12; 385:6,15;386:20;387:5,23,25; 388:23;389:17,18;390:2,21; 391:12,15;392:12;393:12; 394:3;397:7;398:21;399:3; 400:20,23;403:13;404:20; 405:12,15;415:25;416:15,17; 417:2;421:19;422:12;543:17 Frankly (2) 403:3;557:18 Frank's (1) 396:22 free (2) 360:18;468:21 frequent (1) 278:7 front (22) 280:12;288:2;306:7;324:13; 337:15;338:24;342:10;351:20; 378:13,14;383:15;385:16; 387:25;398:21;400:21;416:25; 425:3;487:2;509:13;519:16; 521:18;529:13 fulfill (2) 418:14;445:17 full (15) 315:13;338:13;378:7;393:8; 394:15;397:9;417:13;418:14, 22,24,25;419:23;423:11; 508:15;530:25 fully (3) 274:3;312:17;314:23 fully-saturated (1) 476:10 fumble (1) 559:13 functions (1) 476:8</p>	<p>Further (34) 268:10,18,20;273:9;299:15; 312:24;314:3;361:16;364:1; 367:1,19;368:1,25;397:3; 403:10;408:1;415:24;421:19; 422:13;442:13;447:3;474:19; 501:4;507:18,19;517:12; 528:19;530:11;534:16;540:19; 542:4;552:20;555:16;557:23 furunculosis (6) 342:2;464:18,19,22,25;465:7 G gained (1) 404:24 gallons (2) 276:19,20 Game (61) 271:11,15;272:12;273:23,25; 278:1;280:2;282:13,16,18; 284:2,14;285:6,16;286:9,18; 287:1,7;291:15;292:1;295:5, 19;311:15;317:18;319:21,24; 350:14;351:12,23;352:2; 355:14;356:21;358:20;359:22; 374:15;382:25;385:1;387:12, 16,20;388:3,6,11;390:3; 393:20;401:16,20;402:22; 407:5,7,17;417:10;420:9; 440:1,10;441:21;474:6,9; 475:9;499:6;539:22 Game's (1) 374:17 Garrick (3) 353:23;558:9,10 gas (8) 333:9,14,16;334:3,11;479:3, 8;480:3 gases (3) 479:20,23,24 gate (2) 324:21;368:10 gauge (2) 332:12;392:18 gave (3) 404:23;553:6;560:1 geese (1) 341:1 general (8) 281:16;307:25;415:9; 432:14;511:17;516:14;520:20; 533:6 Generally (31) 278:14;280:6;285:20;287:3; 289:4;290:1;295:15;296:22; 297:18;298:12;299:3;301:23; 302:1;305:19;315:24;360:9; 379:13,18;382:14;417:21,25; 418:11;422:1;426:19;441:12; 454:25;476:23;478:12;517:3; 526:24;533:11 general's (4)</p>	<p>432:21;442:24;443:3,9 generated (1) 506:2 generation (1) 431:8 generator (6) 278:5,8,15,17,18;282:9 generators (1) 301:21 genesis (4) 402:21;505:4,7,19 gentleman (2) 412:18;536:10 gets (10) 278:8;298:8;306:19;307:3,4; 314:25;334:12;368:21;555:6,7 Gibbs (1) 443:18 gill (4) 458:18;491:15,16,17 gills (2) 334:3;479:23 given (6) 313:13;395:13;397:15; 438:11;463:14;533:15 gives (2) 447:14,17 giving (1) 554:3 glass (2) 493:6;504:15 gleaned (1) 426:25 globally (1) 426:20 goal (8) 394:12,14;431:2;438:19; 476:14;518:16,24;535:12 goes (25) 276:2;279:11;283:20;285:3, 4;304:12;321:3,21;325:4,5; 327:1;328:5;329:10;330:20; 339:19;342:23;348:22;389:8; 396:25;458:21;468:3;482:2; 513:16;517:5;555:21 Good (37) 273:16;280:10;299:24; 353:12;378:5,6;399:16,22,25; 403:22;404:19;411:2;413:11, 11,14,14,20,21;414:1,2,8,8; 416:15;420:6,10,17;442:21; 450:17;457:19,25;458:8; 462:19;471:15,16;484:20; 552:6;560:12 Goodson (2) 427:24;445:2 Gorge (3) 274:6;277:15,16 government (2) 300:18;454:13 governor (6) 426:1;428:25;436:24; 526:16;549:8,21</p>	<p>governor's (21) 412:17,21;425:21;427:2,14, 16,21,25;428:11,16,19;430:2; 432:17,20;434:23;436:5; 442:23;443:2,8;445:2;448:7 grabbed (1) 374:12 Grace (1) 272:15 grade (1) 551:16 grant (1) 548:13 granted (1) 531:8 gravamen (1) 538:1 gravity (5) 274:12;277:1;280:6;283:20; 490:17 gravity-fed (1) 301:18 gravity-flow (1) 301:5 Great (1) 376:17 greatly (1) 389:3 green (4) 324:21;327:6;339:11,13 grid (1) 278:7 ground (5) 273:7;483:6,9;506:24;538:3 grounds (1) 526:24 groundwater (17) 276:25;311:16;399:13; 410:14,21;413:19;431:11; 432:3;445:24;448:21;506:9,10; 507:7;549:4,12;550:4;554:4 group (2) 345:16;425:19 grow (1) 299:3 growing (1) 494:12 growth (2) 357:2;481:1 guess (26) 283:11;331:21;357:25; 365:13;366:9,12;375:16;376:9; 398:8;417:17;425:15;426:19; 431:3;432:5;433:3;434:16; 435:23;436:16;437:23;439:17, 20;443:19,24;461:13;506:18; 515:23 guessing (1) 309:16 guidance (2) 518:23;519:17 gyrodactilus (1) 342:7</p>
---	---	--	--

<p style="text-align: center;">H</p> <p>habitat (4) 401:21;498:18;527:20; 528:15</p> <p>habitats (3) 467:1;525:13;530:13</p> <p>Haemmerle (87) 268:6,16,18,20;293:10; 375:6;377:13,14;378:1,4; 381:2,9,12;382:5;383:18; 396:14,17;397:5,6;400:20; 401:13,14;402:15;403:1,3,11, 13,16;404:2,10,11;407:20; 413:2;416:3,14,24;420:15,21; 422:22;423:10;442:13;447:13; 449:15;507:24;508:10,11,14; 510:4,8,9,13,18;516:25;517:13; 519:2,14;520:8,19;524:20; 526:21;527:3;528:17,20;529:8, 23,24;532:19,21,25;533:22; 534:2,15;540:6;541:4,9,13,25; 542:3;545:9;547:16,24;550:17, 22,25;554:20,22;558:19</p> <p>Hagerman (74) 272:14;281:9;286:5;290:18; 295:3;297:5;298:1,9;307:17; 308:21;310:4;314:20;317:17; 333:12;340:4;342:16;352:10; 359:14;360:22;361:10;362:19; 379:10,13;396:6,19;410:8; 417:18;420:10,16;426:20; 431:4;434:20;435:6,11;444:3, 4,10,17,18;448:20;449:4,9; 454:17;460:9;461:3,10,17; 462:14;463:12,16;464:5,9; 465:6,16;466:5;468:10;470:7; 473:16;492:3;494:15;502:13, 23;505:17;507:11;515:18; 526:13;539:4;546:7;549:23; 555:17,21;556:5;557:15;560:4</p> <p>half (5) 276:7,10;284:17,20;433:10</p> <p>halfway (2) 284:10,20</p> <p>hand (9) 270:9;316:21;377:17;410:4; 422:24;450:4;508:1;542:12; 545:18</p> <p>handed (6) 350:6;434:2,6;435:10;438:8; 439:13</p> <p>handle (3) 457:25;458:8;462:19</p> <p>handling (1) 471:18</p> <p>happen (6) 278:11;315:6;357:18; 469:15;480:9;495:10</p> <p>happened (9) 279:24;282:24;301:18; 337:6;402:13;410:7;433:20;</p>	<p>439:15;558:7</p> <p>happening (4) 469:12;544:21;556:5;557:9</p> <p>happens (6) 279:11;305:25;467:11; 472:17;473:10;523:14</p> <p>happy (1) 417:19</p> <p>harbor (11) 399:13;411:16,19;412:1; 419:14;430:19;431:13;432:4,9, 18;448:21</p> <p>hard (5) 304:12;492:16;557:12,13,16</p> <p>harder (1) 283:21</p> <p>Hardgrove (5) 280:21;288:3;312:9;325:22; 355:12</p> <p>Hardgrove's (4) 281:15;282:1;286:3;318:23</p> <p>harm (2) 410:25;491:1</p> <p>harmful (1) 287:9</p> <p>hatch (7) 321:14;343:17,22;344:1; 482:19,23;507:11</p> <p>hatcheries (40) 271:19;272:12,20,21,23; 273:23,25;274:2,5,22;275:8,13; 278:1;279:19;282:14;284:2,14, 24;285:17;286:18;287:2;295:5, 9,10,16;296:23;311:15,19; 341:20;350:15;359:22;362:4,7; 453:20;454:9;455:12;551:25; 552:2,3,5</p> <p>hatchery (164) 271:16;272:15,15,16,16,17, 18,24,24,24,25;273:1,1,2,2,12, 13,13,15,22;274:6,8,9,11,14,15, 18,19,25;275:5,14,19,20; 276:12;277:13,20,22;278:11, 12;281:1,10;282:24;284:4,5,6, 20;285:4,11;286:5;295:3,8; 296:21;297:6;298:2,8,9; 304:16;306:18,19,20,23; 307:11,15,17,17,23;308:2,6,11, 22;310:4;314:23;315:13; 317:17,25;318:1,12,18;319:9; 320:24,25;321:6,7,10,12,15; 325:19;332:9;333:12;335:9,23; 338:4;340:5,10,18;341:1,25; 342:16;343:17,24;352:11; 353:12;358:22,23;359:14,22; 360:1,22;361:10;362:14,15,20; 363:1;389:7;414:15;453:4,10, 18;454:17;455:23,25;457:23; 458:3,12,16;460:9;461:4,11; 462:14,20;463:17;464:5,9; 465:7,17;466:1,5,6;467:7; 468:10;470:5,7;473:16;476:11; 482:3,13;483:21;487:18,19,21;</p>	<p>489:4;491:6;492:3;494:16; 500:10;502:14,23;515:18,20; 536:8;539:4,22;560:4,4</p> <p>hatching (1) 359:18</p> <p>Hayden (1) 272:18</p> <p>head (6) 284:8;339:25;345:19; 385:25;438:20;482:25</p> <p>headquarters (2) 271:18;272:16</p> <p>headrace (1) 314:21</p> <p>headwaters (1) 481:25</p> <p>health (6) 318:15;333:22;342:15;452:9, 10,13</p> <p>healthier (1) 299:2</p> <p>healthy (2) 345:13;471:19</p> <p>hear (5) 297:24;372:16;550:14; 551:6;552:9</p> <p>heard (8) 281:15;325:21;359:22; 376:10;455:11;480:11;549:11; 554:10</p> <p>Hearing (235) 268:14;270:1,2,8,16;272:7; 293:13,15;294:24;298:23; 299:16,19;310:8,10,12;312:4, 25;313:2,6;315:1,15;316:1,5, 10,13,20;317:6;319:6;332:25; 333:2,5;338:15,19;346:19,22, 24;347:14,16,18,20;351:2,8,18; 352:7;353:19,24;354:6,10,12, 15,18,24;361:18,20,22;363:4, 16;364:2,5;365:4,13,18,20; 366:2,5,15,20,23;367:18,20; 369:1,12,19;370:12,14,16; 372:2,16,21,23;373:2,10,15,18; 374:3,7,10,13,21,23;375:1,5,8, 11,15,20,22;376:4,8,17,20,25; 377:16,24;381:16,19,22,25; 396:16;397:3;400:19;401:13, 24;402:25;403:8,12,14,17,23; 404:3,6,11,14;416:1,4,8,10; 420:14,20;421:20;422:14,17, 19,23;423:6;442:15;447:5,8, 10;449:16,20,23,25;450:3,11; 451:18,21,23;463:22;473:22, 25;474:16;485:8,13,16;501:7, 11;503:10;504:3,6,8,13;505:1; 507:17,23,25;508:8;510:11,14; 515:9,13;517:10;519:6,9,11; 520:10,12,14,16;524:11,13,15, 17;527:10,14;528:17;529:12, 15;532:22;534:7,10,17;540:21, 24;541:1,3,5,8,11,15,23;542:5, 11,19,22;545:4,8,10,13,16,25;</p>	<p>546:22;547:8,11,14,19,22,25; 548:3,6,8;550:20;551:2,4,8; 554:20;557:23;558:1,12,22,24; 559:5,24;560:6,13</p> <p>hearings (1) 402:21</p> <p>heavy (3) 285:21;291:21;537:21</p> <p>heightened (1) 365:1</p> <p>held (1) 351:23</p> <p>Hello (2) 450:18;546:5</p> <p>help (6) 275:24;276:5;312:19;338:8; 369:14;411:4</p> <p>helped (1) 465:4</p> <p>helps (2) 482:4;559:11</p> <p>hematopoietic (1) 456:15</p> <p>HENSLEE (45) 268:24,25;325:19;369:11,15, 15,18,21;370:2;381:22,24; 416:8,9;422:17,18;447:8,9; 449:23,24;451:21,22;501:9,10; 504:6,7;519:9,10;520:14,15; 524:15,16;541:1,2;545:10,12, 16,20;546:4,23;547:9,23; 548:4;554:13;557:24,25</p> <p>Hensley (2) 427:25;546:6</p> <p>here's (1) 322:7</p> <p>herrings (1) 552:11</p> <p>hesitate (1) 505:20</p> <p>high (10) 279:6;334:4;390:3;455:24; 462:12;465:24;470:17;485:3; 513:17;523:7</p> <p>higher (6) 288:13;311:10;315:22; 357:19;478:22;479:20</p> <p>highest (2) 389:12,23</p> <p>highlight (1) 290:14</p> <p>highlighted (1) 497:20</p> <p>highly (1) 400:1</p> <p>high-water (3) 538:4,8,15</p> <p>Highway (2) 325:20;483:14</p> <p>historic (3) 405:9;521:6,8</p> <p>historical (2) 371:8;514:16</p>
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<p>historically (4) 353:1;356:21;397:8;405:23</p> <p>history (6) 307:19;309:6;402:13;443:6; 460:8;529:1</p> <p>hit (1) 506:24</p> <p>hold (2) 283:4;452:7</p> <p>holder (2) 406:5;415:12</p> <p>holders (1) 554:12</p> <p>holding (1) 276:5</p> <p>Honor (3) 366:9;372:3;373:6</p> <p>hopes (1) 513:4</p> <p>hoping (1) 324:15</p> <p>hospitals (1) 551:17</p> <p>host (8) 349:17;466:14,18,20;495:4; 499:7;502:8;503:24</p> <p>hosted (1) 425:21</p> <p>hour (3) 303:5;404:3;554:18</p> <p>house (9) 282:5;329:1;343:18,22; 344:1;359:18;482:19,23; 507:11</p> <p>housekeeping (1) 558:2</p> <p>human (1) 481:21</p> <p>humans (1) 296:13</p> <p>Hunt (1) 371:11</p> <p>HUNTLEY (65) 268:22,23;272:6;310:10,11; 333:2,4;338:17;346:22,23; 347:18,19;354:12,14;361:20, 21;364:5,6,9;365:3;369:15; 381:19,21;384:6;416:6,7; 422:14,16;447:6,7;449:21,22; 451:19,20;501:6,8;504:4,5; 519:7,8;520:12,13;524:13,14; 534:9;540:22,22,23,25;542:7, 10,14;543:2;545:5,6,14; 546:15;547:17,25;548:2; 557:24;559:22,24,25;560:8</p> <p>Huntley's (1) 365:25</p> <p>hurry (1) 559:21</p> <p>hurt (5) 549:19,25;557:12,18,22</p> <p>hydro (1) 284:9</p>	<p>hydrologic (1) 421:14</p> <p style="text-align: center;">I</p> <p>iced (3) 280:7,7;301:11</p> <p>ich (3) 461:23,24;491:18</p> <p>ichthyobodo (2) 342:8;343:23</p> <p>Ichthyophthirius (1) 342:7</p> <p>icing (1) 301:9</p> <p>Idaho (53) 271:1,11,13;272:11;274:7; 292:22,24,25;294:9,23;314:8; 315:4;317:18;318:7;319:21,23; 325:18,22;326:6,25;350:14; 351:12;352:24;374:15,17; 382:17,24;385:20;386:14,16; 387:11,16,20;388:3;391:23; 401:16;402:22;433:17;440:1; 443:22;445:6;452:4;472:14; 488:21;516:2,8;521:7;526:16; 535:1,5,24;536:4;555:24</p> <p>Idaho's (1) 361:8</p> <p>idea (20) 349:24;395:1;399:16,22,25; 411:2;413:11,11;419:18,24; 420:6,10,17;430:22;439:3,3; 447:14,17;484:20;552:22</p> <p>identified (16) 355:18;371:11;438:18; 513:10;520:24;521:10;522:13; 523:14;524:21,25;525:3,19; 526:9;527:4;528:3;530:5</p> <p>identifies (1) 527:19</p> <p>identify (3) 499:4;533:20;552:20</p> <p>identifying (2) 529:9;540:1</p> <p>IDFG (1) 355:19</p> <p>IDWR (1) 543:22</p> <p>IGWA (47) 270:12;271:2;273:17; 280:12;316:4;358:20;370:19, 22;371:2,6,25;373:20;375:23; 376:15;377:5;396:17;410:14, 21;417:17;418:12;419:10; 426:2;428:3;430:14;432:24; 433:4,5,18;434:12,21,25; 435:10,18;436:2;438:12,23; 439:1,13;441:7;444:6;448:5, 16;500:20;517:16;554:24; 555:19;557:1</p> <p>IGWA's (6) 270:3;355:9;419:22;440:22;</p>	<p>441:19;480:5</p> <p>IHN (25) 342:1;343:25;344:14; 352:15;353:1;360:13,17;456:6, 12,14,22;457:1,22;458:3,9,24; 461:18;462:5,10,18,23;463:6, 18;465:15;491:7</p> <p>II (3) 412:11;445:21;446:2</p> <p>III (1) 445:14</p> <p>illness (1) 296:20</p> <p>illnesses (2) 296:14;492:9</p> <p>illusory (2) 555:1;556:3</p> <p>Immediate (1) 445:21</p> <p>immediately (2) 278:15;373:7</p> <p>immune (1) 469:5</p> <p>immunocompetent (1) 468:24</p> <p>impact (3) 413:24;459:6;474:15</p> <p>impacted (1) 531:17</p> <p>impacts (3) 511:12;514:17;532:13</p> <p>impair (1) 358:9</p> <p>impaired (6) 481:1;522:2,13,19;523:10; 538:25</p> <p>impairment (3) 522:15,22;523:5</p> <p>implanting (1) 472:23</p> <p>implement (1) 514:21</p> <p>important (1) 556:20</p> <p>impose (1) 446:14</p> <p>imprint (1) 493:5</p> <p>improve (3) 356:11,16;500:20</p> <p>improved (2) 457:12;552:18</p> <p>improvement (1) 484:25</p> <p>improvements (2) 431:20;441:22</p> <p>Inc (5) 317:2;377:20;423:2;450:7; 508:4</p> <p>inception (1) 425:16</p> <p>inches (1) 321:16</p>	<p>include (5) 341:11;453:21;511:11; 512:24;530:11</p> <p>included (4) 388:16;444:20;521:23; 527:23</p> <p>includes (2) 273:10;513:11</p> <p>including (2) 334:11;543:9</p> <p>incoming (2) 488:1;490:2</p> <p>incorporate (1) 552:21</p> <p>incorporated (1) 501:1</p> <p>increase (1) 296:8</p> <p>increased (3) 464:14;479:21;502:8</p> <p>increasing (2) 464:13;469:25</p> <p>incubation (5) 274:9,13;276:3,18,24</p> <p>incubators (1) 284:21</p> <p>index (1) 489:2</p> <p>indicate (4) 287:15;290:11;292:13; 477:14</p> <p>indicated (15) 301:2;302:24;304:22; 306:10;307:16,18,21;323:16; 336:1;343:15;421:25;432:16; 473:14;477:8;552:10</p> <p>indicates (2) 346:4;552:15</p> <p>indicating (16) 319:15,18,23;322:8,22; 325:15;326:8,18;328:10,15; 330:10;383:6,8;544:14,15,16</p> <p>indication (2) 415:2;552:6</p> <p>indications (1) 345:22</p> <p>indicative (1) 553:7</p> <p>individual (8) 326:11,15;384:4;413:24; 518:10,14;535:11,12</p> <p>indoor (1) 276:24</p> <p>industrial (1) 551:16</p> <p>industrial-level (1) 282:9</p> <p>industry (2) 290:22;461:6</p> <p>INEL (1) 505:11</p> <p>infect (1) 459:22</p>
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<p>infected (1) 492:15</p> <p>infection (4) 296:10;308:18;463:5;495:6</p> <p>infectious (2) 456:15;480:24</p> <p>infective (2) 466:13;502:10</p> <p>infects (1) 465:23</p> <p>inflow (1) 338:10</p> <p>inform (1) 394:18</p> <p>informal (1) 530:21</p> <p>information (12) 304:16,22;406:12;414:25; 437:7;449:4;452:19;474:11; 499:21;500:23;515:25;529:1</p> <p>informational (1) 423:21</p> <p>infrastructure (1) 431:19</p> <p>initial (11) 425:21;426:15;428:20,25; 432:16;437:2;447:2,17;449:14; 459:17;505:24</p> <p>initiated (1) 449:5</p> <p>injection (1) 528:1</p> <p>injured (2) 415:12;442:4</p> <p>injuries (1) 401:7</p> <p>injury (5) 372:12;401:18;413:18; 555:14;556:5</p> <p>inlet (1) 511:24</p> <p>inordinate (1) 549:7</p> <p>input (1) 448:25</p> <p>inquire (2) 473:23;515:11</p> <p>inquiry (1) 313:24</p> <p>inside (4) 274:13;276:2;277:2;483:6</p> <p>inspector (2) 452:10,13</p> <p>install (2) 341:3;480:6</p> <p>installed (10) 327:12;335:14;340:24;341:3, 5;348:7,8,9;356:25;368:9</p> <p>installing (1) 537:17</p> <p>instance (12) 278:6;454:17;457:3;463:2; 469:21;470:12,21;479:18;</p>	<p>482:15,23;483:12;506:3</p> <p>instances (1) 465:11</p> <p>instead (3) 309:10;537:16,18</p> <p>institution (1) 452:6</p> <p>instrumental (1) 437:15</p> <p>insufficient (1) 385:9</p> <p>intake (17) 281:23;284:18;301:5,11; 320:17;322:8;333:14;348:10, 10,16,17;468:6;484:3,9; 513:12;537:17;544:3</p> <p>intend (2) 377:10;555:9</p> <p>intended (1) 373:13</p> <p>intends (1) 554:24</p> <p>intensive (1) 295:12</p> <p>intent (5) 439:25;440:2;555:2,7;556:4</p> <p>interchanged (2) 504:18,18</p> <p>interest (5) 369:2;437:5;447:24;549:3; 550:10</p> <p>interested (4) 393:19;447:15;448:20,22</p> <p>interesting (3) 399:8;550:13;554:14</p> <p>intermediate (7) 349:17;446:1;466:14,18; 495:4;502:8;503:24</p> <p>internal (1) 459:21</p> <p>internally (1) 459:22</p> <p>interrogatory (1) 553:1</p> <p>interrupted (1) 397:7</p> <p>intervals (1) 392:19</p> <p>intervention (1) 481:21</p> <p>into (134) 272:9;276:4;282:20;294:5,9, 16;295:13;297:15;300:13; 306:19;308:5,11;318:20;319:9; 320:6;321:5,17,18,21;322:10, 11,22,23;323:8,22;324:2,5,6, 24;327:1,13,15,16;328:2,6,11, 13;329:10,11,14,15,22;330:10, 17;331:1,6;332:13,20;333:6, 16;334:11;338:20;339:19; 346:25;347:21;350:24;351:8; 352:15;354:16;356:4,8,18; 362:25;366:3;368:14;370:5,18;</p>	<p>371:23;376:5,18,22;377:8; 379:11;382:2;396:10;401:10; 402:16;411:20;420:5;451:24; 457:5;464:11,13,16;468:2,3,16; 469:13,17;470:3,4,15;479:19; 480:10;481:19;482:5,23; 483:16,25;484:9;485:4;490:17, 21;493:16;494:22,24,24; 497:24;498:8,13,22;501:1,17, 21;502:2,4,11,13,15;503:7; 510:16;519:12;520:17;522:2; 524:18;529:22;532:4,8;534:6, 13;538:2,13;547:20;550:13</p> <p>introduce (1) 308:5</p> <p>introduced (2) 494:25;511:20</p> <p>introducing (1) 503:16</p> <p>introduction (1) 283:12</p> <p>intrusion (1) 297:11</p> <p>invertebrate (1) 466:25</p> <p>investigating (1) 484:7</p> <p>investigation (1) 309:21</p> <p>investigations (1) 536:9</p> <p>invitation (2) 437:4;447:23</p> <p>invitations (4) 437:8;447:21;448:1;449:12</p> <p>invite (1) 448:17</p> <p>invited (3) 437:12;444:7;448:12</p> <p>involve (1) 512:5</p> <p>involved (28) 329:3;335:11;336:16;394:4; 417:11;425:11;434:23,23,25; 435:8;440:1,13,14,16,21,25; 441:2;442:2;443:3;446:13; 461:8,22;484:7;517:4,7;533:7; 537:22;549:10</p> <p>involves (3) 353:12;440:8;522:23</p> <p>involving (3) 271:5;443:8;526:25</p> <p>IPN (6) 455:24;456:4,8;458:3,4; 491:7</p> <p>irrigated (1) 496:3</p> <p>irrigates (1) 364:18</p> <p>irrigation (3) 364:19;397:22;542:15</p> <p>isolate (2) 311:1;452:18</p>	<p>isolated (5) 460:6,16;464:25;467:9; 492:22</p> <p>issue (26) 289:8;295:2;309:3;333:18, 20,24;337:8;350:2,3;351:7; 357:8;373:3;395:19;396:25; 447:21;456:10;457:22;458:4; 461:25;478:6;479:3,14;499:2; 528:22;555:14;556:6</p> <p>issued (7) 395:16;396:1;408:19;409:3, 5;418:21;426:24</p> <p>issues (40) 299:4;311:5;333:18,21; 340:17,21;341:21;343:11; 344:6,12;346:13;353:9;362:17; 372:11;454:22;455:15,16,21; 456:8,17;458:2;459:14;460:4; 461:10,15;462:4,7,10;464:21; 465:14,16,17;478:1,18,23,25; 479:9;484:3;551:19;556:20</p> <p>issuing (1) 396:23</p> <p>items (1) 558:2</p>
J			
<p>JAMES (6) 268:24;516:10;536:11; 537:9;545:20;546:5</p> <p>January (4) 342:16;345:9;393:22;412:17</p> <p>Jeff (1) 560:11</p> <p>jeopardy (1) 546:11</p> <p>job (4) 317:24;318:4,5;455:4</p> <p>jobs (3) 336:1;424:5,16</p> <p>Joe (5) 316:18;317:1,15;333:8; 551:19</p> <p>J-o-e (1) 317:15</p> <p>John (4) 370:17;412:19;426:3;435:7</p> <p>joins (2) 325:4;369:11</p> <p>Joyner (5) 516:11;518:15;536:2,11; 537:9</p> <p>JR (2) 268:22;542:14</p> <p>jugs (1) 484:8</p> <p>jump (9) 324:23;332:16,18;339:11,13, 14;348:7;368:8;470:14</p> <p>June (2) 270:4;388:24</p>			

<p>junior (3) 399:13;409:20;413:19</p> <p>Justin (22) 271:20;285:23;287:24; 290:14;293:2;299:25;316:17; 354:22;379:17;380:9;388:21, 23;389:16,18;391:13;398:20; 486:25;495:13;496:20;497:4, 18;559:10</p>	<p style="text-align: center;">L</p>	<p>297:25;376:12;432:19; 434:11;460:1</p>	<p>313:15;389:9</p>
<p style="text-align: center;">K</p>		<p>L5 (2) 339:22,23</p> <p>lab (1) 482:15</p> <p>label (1) 319:19</p> <p>labeled (1) 293:6</p> <p>labels (1) 355:13</p> <p>laboratory (6) 453:1;454:4;455:23;482:17; 492:20;493:16</p> <p>lack (7) 296:6,6;302:23,25;353:15; 437:4,5</p> <p>laid (2) 402:20;410:3</p> <p>Land (8) 369:18,19;495:8;538:8; 544:23;545:21;546:6;547:11</p> <p>landing (1) 470:21</p> <p>language (1) 432:9</p> <p>large (54) 276:4,5;277:1;321:18;322:4, 11,15,24;323:8,10,11,12,15; 324:1;329:22,22;330:11,15,17, 19,24;331:1,6;335:9;339:15,19, 25;340:1;341:15;344:7,10,12; 348:13,22;355:20;357:18; 368:11;383:1,7;387:17;388:3, 8;389:19;392:24;393:2;444:16; 445:10;468:12;470:16;494:24; 497:24;498:12;501:17,20</p> <p>larger (2) 330:5;449:10</p> <p>largest (1) 301:8</p> <p>laser (3) 378:11;382:15;383:3</p> <p>last (29) 277:19;283:11;293:5;332:1; 342:18;345:18;347:24;350:6, 17,20;378:8;380:2;393:22; 394:3;397:18;410:7;414:4; 423:12;439:11;441:21;464:25; 508:16,17;518:21;519:22; 520:5;543:11,14,20</p> <p>lastly (2) 277:19;312:5</p> <p>late (4) 369:23;441:14;456:18; 554:18</p> <p>late-afternoon (1) 541:24</p> <p>late-morning (1) 369:13</p> <p>later (5)</p>	<p>lay (2) 403:1;474:17</p> <p>layers (1) 505:12</p> <p>lead (1) 496:23</p> <p>leadership (1) 554:1</p> <p>leading (5) 400:16;408:2;420:13;532:20, 23</p> <p>leaning (1) 509:10</p> <p>least (22) 279:18;346:7;352:3;361:6; 370:9;402:4;407:14,16;435:15; 441:18;455:12;457:1;496:14; 499:11,15;500:4;504:18; 511:24;529:18;532:12;538:22; 558:25</p> <p>leave (3) 279:6;370:10;373:7</p> <p>leaves (1) 383:17</p> <p>leaving (1) 456:4</p> <p>led (1) 426:6</p> <p>left (10) 325:1,2,8,8;328:13;332:20; 392:16;448:10;551:9;557:13</p> <p>left-hand (1) 392:13</p> <p>legislation (1) 445:16</p> <p>legislative (3) 428:12;436:8;437:14</p> <p>legislators (10) 425:19;426:1;429:1;431:6,9; 437:18;443:17;445:11,24; 448:6</p> <p>legislature (10) 426:12;428:17;432:21; 434:22;435:9,14;442:24;443:2, 9;549:9</p> <p>length (3) 529:16,20;530:24</p> <p>lengthen (1) 529:10</p> <p>lengthy (1) 528:16</p> <p>Leo (3) 384:5;393:19;417:10</p> <p>Leonard (5) 508:20;509:3,5;510:1,3</p> <p>less (14) 278:20;299:4;313:12,15; 357:24,25;384:24;456:5,5; 476:17,19;478:7;493:24; 507:16</p> <p>lesser (2)</p>

<p>505:1 little (20) 283:23;284:7;285:14; 290:24;304:3;326:17;403:20; 408:1;423:25;452:2;459:25; 474:21;480:12;483:21;485:22; 501:15;505:10;509:20;516:22; 543:12 live (3) 306:17;472:23;476:6 live-hauled (1) 473:11 lives (1) 529:18 Livestock (5) 369:18,20;545:22;546:7; 547:11 living (1) 499:5 load (6) 357:25;358:6;464:13;539:11, 13,17 loading (1) 489:15 loadings (3) 303:3;315:13;359:8 locate (1) 293:19 located (23) 319:12,14,17,24;321:8; 322:1,9;325:16;340:5,9; 382:14,19,21;383:5;454:9,18; 468:6;469:18;482:9,14;499:15; 522:9;529:6 location (9) 322:16;356:1;432:18;488:7; 497:14;498:2,14;511:15; 546:17 locked (1) 282:5 logger (1) 386:14 loggers (1) 392:24 long (24) 283:2,6;297:17;302:21; 317:19;321:16;361:10;366:22; 373:15;378:21;403:21;423:23; 431:24;439:11;443:6;450:23; 461:23;495:4;518:18,21; 523:24;529:12;541:11;553:5 longer (10) 302:12;303:4;441:25;456:9; 462:16;480:10;518:17;520:5; 536:3;539:14 longest (1) 285:2 long-term (3) 480:23;490:3;491:1 look (50) 273:18;285:25;286:21;287:6, 7;291:22;294:2;303:19,25; 307:10;326:1;338:24;345:4,6,</p>	<p>21,25;348:2;349:5;350:4,7; 354:1;370:21;374:11;379:24; 389:11;390:1;393:12;405:12, 19;406:13;407:7;412:10;413:8, 17,23;425:24;430:18;439:21, 21;451:6;460:19,19;465:11; 487:3;512:16;513:14;525:14; 549:16;552:23;559:13 looked (8) 327:7;331:9;342:22;402:3; 484:17;492:25;504:25;556:15 looking (13) 286:2,14;287:4;300:2;322:3; 324:25;368:16;431:22;445:13; 469:14;497:2;518:4;533:17 looks (9) 271:23;288:7;290:18; 303:16;342:17;345:9;378:12; 469:16;544:13 loosely (1) 504:18 lose (4) 303:8;359:1;400:13;546:12 losing (1) 337:13 loss (6) 279:20,24;280:3;285:5; 301:8;358:22 losses (1) 412:9 lost (2) 278:15;280:6 lot (18) 275:24;283:18;296:2;297:11, 12;303:4;315:1;333:15;357:2; 418:4;432:5;457:6,7;465:2; 466:24;493:11;504:15;556:16 lots (2) 301:12;340:14 low (14) 283:10;306:14;314:7;334:23, 25;389:8;459:5,6,10;462:3; 477:3;484:23;488:25;523:8 lower (57) 281:20,20,21;313:19;315:9; 322:10;323:4;325:1,2,4,8; 328:12;329:25;330:7;331:5; 335:4,9;348:19,21;349:20; 353:5;359:4,10;367:5;368:20; 379:22;390:14;392:12,16; 405:16;406:19,24;420:22; 421:3,7,8,11;468:6,11;479:12; 483:12;487:22;489:3,6,15; 496:4;498:9;499:11,24;500:7; 501:18;503:4;506:17,17;544:4, 10,14 lowest (1) 543:7 LS (1) 339:22 Ltd (1) 542:16 lunch (5)</p>	<p>373:8;403:18,24;404:5,7 Lynn (1) 439:6 M Magic (2) 273:1;285:1 mail (1) 475:11 mailed (1) 395:21 mainly (1) 291:21 maintain (5) 278:21;358:11;413:12; 471:17;482:4 maintained (1) 335:24 maintains (1) 386:14 maintenance (3) 302:7;350:13;514:2 major (1) 398:7 makes (3) 327:15;343:12;351:16 making (2) 362:24;515:22 malfunctioning (1) 301:7 mammals (2) 297:16;469:22 manage (2) 384:24;393:24 managed (1) 445:15 management (8) 271:16;340:8;360:2;414:5; 465:3;481:18;553:11;555:25 manager (6) 273:13;317:25;318:1,13; 353:7;389:7 manages (1) 389:7 managing (1) 304:16 many (16) 275:16;277:12,17;279:25; 303:2;307:1,7;360:21;364:14; 441:9;444:1;475:5,6;486:16, 23;514:11 map (2) 319:13;322:6 mapping (1) 525:13 March (9) 337:2;389:13;433:9,10,11; 435:22;438:3;441:5;443:13 marginal (1) 290:2 mark (5) 346:2;351:20;538:4,8,15</p>	<p>marked (24) 272:8;324:11;333:5;338:19, 23;342:11;346:24;347:3,20; 354:15;380:16,18;382:1; 391:13;393:13;425:6;451:5,23; 510:15;519:11;520:16;524:17; 534:12;547:19 market (1) 292:23 marking (2) 319:17;339:8 master's (4) 452:5;486:4;509:23,25 Mat (7) 422:22;438:1;440:20;442:13, 21,22;445:13 material (3) 413:18;511:10;538:12 math (2) 392:7,8 MATHEW (3) 268:4;423:1,13 matter (7) 289:1;369:23;377:6;426:13; 427:1;510:19;524:24 matters (3) 271:8;370:20;381:5 maxed (1) 359:5 maximum (2) 406:3,8 May (164) 268:8,10,12;272:4;286:21; 293:8;298:10,11;299:17,18,22, 25;303:11;308:8;309:2,19; 310:7,22;311:9,12;312:1,6,25; 313:1;315:15,16,19,25;316:8, 18;317:8,8,9,12;318:25;319:4, 7;332:22;333:8;335:22;336:15, 15;337:8;338:14,22;342:17,25; 343:3,6,6;345:18;346:16; 347:2,12,23;349:3;350:19; 351:2,3,9,10,19;352:5,8; 353:18,20;354:3,8,19;355:6,8; 361:22;362:2;363:3,13,15; 364:10;365:6,10,19,21;366:2,7, 9,18,22,23;367:2,16;368:5; 372:2,3,17,22,24;373:17,18,19; 374:4,5,9,12,14,22,25;375:2,11, 12,16,19;376:2;384:6;389:19; 396:11,11;402:3;407:22; 408:13;410:7;411:10;412:8; 415:20;441:15;450:1,2,12,13, 16;451:15;452:1;455:11; 463:23;464:11,16,25;466:8; 473:23;474:17,20;485:7,8; 487:11,13;488:7;489:16;490:3; 492:9;500:15;501:11,14;503:9; 510:7;512:5;514:16;515:11; 518:25;523:6;525:16;527:12; 531:7;536:17;542:8,20;546:1 maybe (20) 306:14;356:16;358:16;</p>
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<p>367:22;370:24,24;381:5;409:1; 412:6;415:1;427:20;428:14; 467:25;478:21;480:12;489:17; 501:23;544:10,24;546:16</p> <p>McCall (1) 272:25</p> <p>mean (18) 276:9;288:25;299:1,2; 305:21;348:17;375:9;392:15; 438:17;440:6;452:13;466:19; 469:7;481:17;506:18;525:6; 528:24;538:3</p> <p>means (1) 452:15</p> <p>meant (1) 501:22</p> <p>measure (9) 332:12;337:24;338:3;349:9, 23;357:5;487:23,25;489:18</p> <p>measured (2) 488:3,7</p> <p>measurement (5) 288:21;339:3,9;391:24; 488:11</p> <p>measurements (24) 285:17;287:19,19;288:4; 290:10,17;291:14,25;295:20; 304:4,5;306:6;384:1,2,3; 392:22;475:18,21,25;478:13; 487:5,12,15,24</p> <p>measures (6) 362:13;445:22;446:1;530:6, 10;531:10</p> <p>measuring (1) 326:8</p> <p>mechanically (1) 433:20</p> <p>medicated (1) 458:12</p> <p>medication (2) 471:22;472:3</p> <p>medium (1) 523:8</p> <p>meet (4) 336:11;358:10;433:18; 438:22</p> <p>meeting (62) 336:25;337:1,4,6;393:19,21; 394:9;397:17,18;409:8,16; 410:6,11,21;412:17,22,23; 417:3,8,11;418:4;425:21,22,25; 426:5,15,18;427:5,6,13,16,21, 21,23;428:25;433:13,24,24; 434:2;435:22;436:15;437:2,3, 19;438:3,4,25;439:11,14,16; 441:5;443:12,15,18,23,25; 444:4,5,7;445:11;447:18; 549:21</p> <p>meetings (42) 409:13;412:20;413:5; 426:10;427:1;435:9,13,15,15, 19;436:4,7,10,12,17,19,22; 437:3,9,16,18,20,25;441:6,9,11,</p>	<p>12,13,14,19;442:9,11;445:23; 447:2,16,19,20;449:13;461:5; 549:20,21,22</p> <p>members (7) 410:15;430:14;433:4; 435:18;441:6;448:5;516:8</p> <p>memorized (1) 386:7</p> <p>memory (1) 404:20</p> <p>mention (2) 357:23;526:5</p> <p>mentioned (29) 272:19;273:3;275:4,7;277:3; 302:8;305:13;308:8;341:9; 344:14;357:7;360:5;362:3; 408:19;412:19;422:6;453:7; 458:24;462:4,18;465:20; 466:17;479:16;484:11;523:22; 536:11;540:8,11,15</p> <p>mess (1) 544:9</p> <p>met (6) 433:4;436:24;512:25; 549:15;553:10,11</p> <p>metabolic (2) 476:7;480:21</p> <p>metals (2) 285:21;291:21</p> <p>meter (5) 290:7;304:1;348:14;386:14; 391:23</p> <p>method (2) 457:5;471:11</p> <p>methods (3) 385:4;463:17,25</p> <p>MICHAEL (3) 268:24;545:20;546:5</p> <p>Michele (1) 391:20</p> <p>microbiology (2) 452:6;486:4</p> <p>Micron (1) 551:16</p> <p>microscopically (1) 493:7</p> <p>mid-40s (1) 486:13</p> <p>middle (3) 304:12;328:5;393:1</p> <p>mid-Snake (1) 472:20</p> <p>might (29) 287:9;296:5;298:16;322:13; 351:25;352:11;365:8;373:11; 414:20;415:12;461:3;467:22; 469:12;471:21;473:14;477:2,3; 498:22;509:9;512:13,14;513:7, 21;518:6,21;519:15;521:2; 533:4;551:25</p> <p>migratory (1) 470:19</p> <p>Mike (2)</p>	<p>369:15;437:19</p> <p>Mike's (1) 437:23</p> <p>mile (6) 276:8,10;284:17,20;298:7; 482:2</p> <p>miles (4) 281:22,22;284:1,6</p> <p>milligrams (2) 504:19,23</p> <p>million (18) 360:24;361:1;445:17;476:11, 18,20;477:1,19,25;478:3,4; 486:20;488:2,12;489:9;504:20, 23;506:4</p> <p>millions (1) 445:20</p> <p>mind (1) 420:11</p> <p>mineral (1) 289:2</p> <p>Minimize (1) 413:23</p> <p>minimum (1) 413:13</p> <p>Mining (1) 542:16</p> <p>minor (1) 458:17</p> <p>minute (6) 276:19,20;278:20;416:1; 510:11;550:20</p> <p>minutes (16) 278:20;283:12;303:1; 316:11;366:21;392:22;439:12; 480:13;490:2,10,15;491:1; 541:12,13,14;551:9</p> <p>mischaracterized (1) 416:23</p> <p>misheard (1) 491:15</p> <p>missed (1) 490:11</p> <p>misstates (1) 312:1</p> <p>mistaken (1) 427:11</p> <p>misunderstood (1) 501:23</p> <p>Mitigate (3) 413:17;554:4,6</p> <p>mitigated (3) 371:15;372:7;514:18</p> <p>mitigation (15) 270:3,3;371:9,16,20;372:8, 11,19;415:4;440:22,22;484:19; 531:10;546:12;558:18</p> <p>mixing (1) 436:3</p> <p>Moab (1) 272:17</p> <p>model (1) 398:17</p>	<p>modification (1) 521:22</p> <p>modifications (2) 345:18;512:2</p> <p>moment (3) 293:12;451:3;500:18</p> <p>Monday (1) 553:2</p> <p>money (3) 353:16;446:5,11</p> <p>monitored (1) 482:13</p> <p>monitoring (4) 318:15,17;337:23;483:22</p> <p>month (4) 388:24;389:12,23;493:24</p> <p>monthly (1) 295:17</p> <p>months (3) 364:18;365:2;389:19</p> <p>more (44) 275:13,21;276:21;283:21,21; 296:8,8,8;303:12;309:3; 313:22;314:12;315:21;331:3; 336:16;343:21;351:16;366:5; 395:12;400:3,7;411:20;412:8; 426:22;455:3,6,9;456:6,7; 457:13;463:9;478:5;481:7,9; 484:12,22;485:1;499:25; 503:22;509:10;512:20;524:3; 540:16;553:19</p> <p>moribund (1) 345:12</p> <p>morning (7) 270:4,6;299:23,24;316:14; 378:5,6</p> <p>mortalities (1) 493:23</p> <p>mortality (12) 301:4,6;303:11;455:25; 458:6,21;459:15,23;462:12,13; 465:24;494:4</p> <p>Moscow (1) 352:23</p> <p>most (32) 276:1;278:2,5;284:23,24; 295:16;298:14;301:4;304:13; 308:13;309:14,15;321:25; 332:1;362:6;395:7;405:21; 422:3;424:21;441:15;455:13; 456:1;467:1;468:22;483:19; 491:3,25;493:10,15;507:3; 512:15;538:23</p> <p>mostly (1) 483:24</p> <p>motion (1) 377:3</p> <p>motions (2) 369:7;377:1</p> <p>move (22) 298:17;321:16;332:22; 335:12;338:14;340:25;346:16; 347:12;359:1,7;396:21;399:22;</p>
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<p>419:19;434:18;438:12;439:22; 451:15;457:19;485:11;519:3; 555:3,9 moved (4) 321:18;331:3;406:18;424:8 moves (1) 312:7 moving (14) 410:24;420:9,15;428:12; 437:1;440:4,6;467:4;544:3; 546:13,16,16;549:13;555:2 Moyle (2) 437:19;443:18 much (29) 276:13;277:13;288:23; 289:2;298:22;299:4;301:10; 304:10,15;306:25;311:2; 390:25;391:6;415:5,17;422:12; 455:9;457:1,13;458:10,22; 471:18;482:18;484:8;489:3,12; 507:16;544:6;559:14 mud (4) 353:2;357:3,4;360:13 multiple (2) 278:3;284:12 multitude (1) 550:8 must (2) 439:17;491:15 myself (5) 426:1;428:1;429:17;434:1; 557:17 myxozoan (1) 465:22</p>	<p>near (11) 290:6;349:19;431:23; 454:18;473:12;488:16;495:22; 497:1;507:10;511:16;544:4 nearly (1) 468:20 necessarily (4) 309:2;312:16;416:18;523:1 necessary (5) 289:25;312:22;412:8; 489:21;501:16 necropsy (1) 493:3 necrosis (1) 456:16 need (15) 329:19;337:18;369:7; 371:21;374:2;375:16;432:3; 438:22;474:16;501:20;525:8; 531:20;542:11;552:23;558:24 needed (5) 312:11;321:20;341:3;509:5; 557:1 needs (1) 393:25 negative (2) 367:10;499:14 neighborhood (1) 390:7 neither (1) 517:15 netting (4) 297:13,14;457:17;496:7 new (11) 276:3;278:23;293:8;353:2; 357:3,4;490:20;503:20;509:25; 544:23,24 newest (1) 277:22 next (21) 286:15;288:17;289:13;319:1, 19;323:21;327:18;332:11; 340:5;377:12;385:15;387:5; 422:21;449:7;450:1;496:21; 497:20;507:23;519:3;541:8; 558:21 nice (1) 338:9 nill (1) 491:12 nitrogen (5) 333:9;334:5,11;357:8;479:15 nobody (3) 435:2;436:11;448:12 nobody's (2) 394:15;397:9 None (19) 300:21;305:6;316:4;381:18, 21,24;410:14,15;501:10; 519:10;541:2;545:7,9,12; 547:24;548:7;554:14;557:15, 25 noninfected (1)</p>	<p>352:16 nonissue (1) 465:5 normal (6) 287:5;297:5;308:4;351:23; 360:1;457:4 normally (5) 291:22;314:11;318:17; 459:7;487:23 North (4) 270:25;274:7;352:23;505:10 note (3) 339:21;345:24;371:2 notebook (1) 513:16 noted (5) 322:6,16;339:15;348:18; 465:12 notes (6) 353:24;374:5;443:14;485:10, 22;491:11 notice (3) 304:20;339:7;478:21 noticed (3) 487:20;504:16;534:24 November (2) 388:25;389:4 NPDES (4) 453:23;533:5,10,14 number (36) 281:6;288:6;303:15;306:8; 311:7;359:20;405:17,20; 412:13,16,19;424:21;426:1; 443:14,16;444:14,17;445:5,10, 19;451:3;453:20;457:2;458:11, 19;459:22;463:24;469:20; 471:11;473:1;478:4;485:4; 492:25;499:3;517:19;543:7 numbered (1) 547:9 numbers (12) 304:8;392:15,23;393:4,7; 459:6,8,10;462:3;470:1;502:9; 506:1 numeral (3) 412:11;445:14;446:2 nursery (6) 321:1,10,11,17;343:18; 507:11 nutrients (1) 453:22 nutrition (3) 453:5;457:14;471:15</p>	<p>333:1,3;338:16,17,18;346:18, 21,23;347:15,17;350:23;354:9, 11,13;381:4,17,20,23;397:4; 401:25;402:24;420:19;451:17, 19,20,22;463:21;473:21,24; 474:12;510:6;515:8,12;516:21; 519:5,8;520:11,13,15;524:12, 14,16;526:23;528:11;532:18; 533:24;534:10;547:15,16,17; 550:17,21 objections (3) 411:15;510:14;534:8 objective (9) 399:12;413:12,15,21;414:2, 8;430:18,21;550:10 objectives (12) 318:6,9,11;336:2,5,12;399:9; 413:8;419:13,15,17;446:7 objects (1) 504:16 obligations (2) 446:15,20 obstructionist (1) 366:17 obtain (4) 518:10;519:18;528:25; 533:11 obtained (3) 439:25;517:9;536:17 obtaining (4) 512:9;518:14;531:14;532:9 obviously (2) 350:25;393:1 occasion (1) 472:25 occasionally (1) 462:2 occasions (1) 456:23 occupation (3) 378:19;423:14;508:19 occur (4) 473:20;479:21;525:16; 555:25 occurred (4) 357:10;427:6;441:13;550:25 occurrence (1) 308:1 occurring (1) 455:25 occurs (2) 312:7;488:5 October (2) 389:4,24 off (22) 278:14;280:7;293:11;300:2; 311:10;318:19;319:7;330:19; 341:2;375:9;385:24;398:5; 436:23;469:17;470:2;480:10; 497:16;498:13;525:9;554:23; 558:16;559:3 Offer (17) 272:3;294:18;353:22;354:3;</p>
N			
<p>naive (4) 468:20;469:6,7,8 name (13) 270:23;317:14;378:7,8; 423:11,12;450:19,20;508:15, 16,17;536:12;546:5 Nampa (3) 274:18;277:3,9 narrate (2) 542:20;546:1 National (5) 298:9;359:14;362:19;363:1; 535:3 nationwide (25) 512:14,19;513:4,7,11,21; 514:5,24;515:1;516:17,18; 517:20,21;518:6,9;523:21,23; 535:14,20,24;536:3,6,17,23; 537:13 natural (2) 483:25;552:3 naturally (1) 506:25 nature (4) 284:25;400:16;516:15; 550:21</p>	<p>new (11) 276:3;278:23;293:8;353:2; 357:3,4;490:20;503:20;509:25; 544:23,24 newest (1) 277:22 next (21) 286:15;288:17;289:13;319:1, 19;323:21;327:18;332:11; 340:5;377:12;385:15;387:5; 422:21;449:7;450:1;496:21; 497:20;507:23;519:3;541:8; 558:21 nice (1) 338:9 nill (1) 491:12 nitrogen (5) 333:9;334:5,11;357:8;479:15 nobody (3) 435:2;436:11;448:12 nobody's (2) 394:15;397:9 None (19) 300:21;305:6;316:4;381:18, 21,24;410:14,15;501:10; 519:10;541:2;545:7,9,12; 547:24;548:7;554:14;557:15, 25 noninfected (1)</p>	<p>O</p>	<p>object (7) 372:10;396:9;400:15;401:5; 416:22;420:12;526:23 objected (1) 533:25 objection (57) 272:4,5,6;312:1;332:24;</p>

<p>375:24;381:3,14;452:18;510:4; 517:8;519:3;520:8;524:9; 526:22;529:8;533:22;552:17 offered (3) 351:4;353:25;354:2 offering (2) 537:1,4 offhand (2) 277:14;289:12 office (30) 271:18;272:17;412:21; 425:21;427:2,14,17,22;428:11, 16,20;430:2;432:17,21,22; 434:23;435:16;436:1,5,10; 442:23,24;443:2,3,9,9;445:2; 448:8;516:11;549:9 Officer (229) 268:14;270:1,8,16;272:7; 293:13,15;294:24;299:16,19; 310:8,10,12;312:4,25;313:2,6; 315:15;316:1,5,10,13,20;317:6; 319:6;332:25;333:2,5;338:15, 19;346:19,22,24;347:14,16,18, 20;351:2,8,18;352:7;353:19, 24;354:6,10,12,15,18,24; 361:18,20,22;363:4,16;364:2,5; 365:4,13,18,20;366:2,5,15,20, 23;367:18,20;369:1,12,19; 370:12,14,16;372:2,16,23; 373:2,10,15,18;374:3,7,10,13, 21,23;375:1,5,8,11,15,20,22; 376:4,8,17,20,25;377:16,24; 381:16,19,22,25;396:16;397:3; 400:19;401:13,24;402:25; 403:8,12,14,17,23;404:3,6,11, 14;416:1,4,8,10;420:14,20; 421:20;422:14,17,19,23;423:6; 442:15;447:5,8,10;449:16,20, 23,25;450:3,11;451:18,21,23; 463:22;473:22,25;474:16; 485:8,13,16;501:7,11;503:10; 504:3,6,8,13;507:17,23,25; 508:8;510:11,14;515:9,13; 517:10;519:6,9,11;520:10,12, 14,16;524:11,13,15,17;527:10, 14;528:17;529:12,15;532:22; 534:7,10,17;540:21,24;541:1,3, 5,8,11,15,23;542:5,11,19,22; 545:4,8,10,13,16,25;546:22; 547:8,11,14,19,22,25;548:3,6, 8;550:20;551:2,4,8;554:20; 557:23;558:1,12,22,24;559:5, 24;560:6 offices (1) 436:8 offset (3) 358:15,22;412:8 often (5) 278:9;493:8,13,21,24 old (2) 329:2;331:2 once (6) 311:4;457:5;467:11,22;</p>	<p>472:10;479:22 One (139) 273:11;275:2;276:15,16,18, 19;277:19;278:4;282:4;284:5; 285:2,6;286:15;296:23;301:14; 308:10;311:12;313:12;314:1; 315:16;322:25;336:1,5;339:15; 344:16;351:19;353:20,25; 355:12;356:10,12;357:8;358:8; 362:10,13,17;368:7,17;370:9, 23;372:4;377:2;382:8;383:4, 10,15;385:15;389:11,22; 391:24,25;397:1,19;399:23; 400:17;405:15;407:19;408:11, 12;409:12,15;411:14;412:20, 22;414:4,24;415:12;419:17,19; 420:10,16;422:7;425:23;428:1, 16;435:8,11,13,21;436:1,19,20; 438:21;441:15,21;449:14; 451:3;457:3,12;458:5,11; 460:17;461:6,18,21;464:23; 465:10;471:11,21;472:5;473:4; 475:13;479:4;490:10,15,25; 500:4,18;504:22;505:1,17; 509:3;512:4;513:2;514:4,5,13; 515:3,5,7;517:15;521:15; 523:15;533:19;540:5;541:21; 543:7;549:1;552:17,23;553:19; 555:7,8,14;556:3,3,4;558:4; 559:25 ones (5) 300:21;342:4;513:9;533:19; 555:20 ongoing (1) 418:9 only (30) 296:16;314:17;321:21; 343:22;346:12;353:14;357:6; 359:17;368:11;369:1;370:23; 411:24,25;432:13;478:2;485:5; 486:8;490:10;492:19;498:25; 499:13,20;506:1,22;543:19; 549:3,3;550:10;552:23;554:15 onto (2) 463:10;479:22 oOo- (1) 560:14 open (12) 280:13;287:23;297:20,23; 298:7;444:13;471:3;483:7,9; 493:14;497:13;499:5 opened (1) 493:4 opening (5) 295:1;309:7;548:20,21; 554:25 operate (2) 302:16;453:24 operates (3) 292:25;311:15;492:2 operation (3) 278:12;351:24;539:22 operations (3)</p>	<p>332:9;474:15;485:5 opine (1) 358:8 opined (2) 531:13;532:3 opinion (13) 283:14;285:9;290:9;291:7; 294:14;299:11;351:5;516:12, 22;517:8;531:3;537:1,4 opinions (4) 533:15;534:1,3,5 opponent (1) 557:14 opportunity (6) 314:19;370:23;485:3; 552:13;554:4,6 opposed (1) 341:17 option (3) 329:18;452:4;550:2 order (25) 302:15;318:11,21;340:20; 341:6;343:1;349:20;365:11; 394:21;395:20,21,25;408:20; 426:23;437:22;452:18;457:7; 470:17;485:11;501:17,21; 512:25;553:12,17;557:2 ordered (2) 398:14;557:8 orders (3) 369:6;377:1;395:16 organism (2) 466:25;493:7 organisms (1) 459:22 origin (2) 324:19;330:11 original (1) 429:9 originally (2) 526:10;528:8 originates (1) 505:25 others (12) 275:7;278:11;284:22; 294:22;370:11;444:21;445:8, 24;453:12,18;473:5;486:9 otherwise (1) 503:19 ought (1) 547:5 ours (1) 463:13 out (118) 274:19;276:14;278:23;279:4, 17;287:4;294:21;297:18; 301:10;303:23;305:25;309:22; 310:24;316:8;319:8;320:13; 321:2,17,18;325:15;326:16,22; 327:12;329:9,20,20;331:2; 334:18;335:17;336:8,12; 339:24;340:23;341:6;349:5; 351:17;353:21;356:13,24;</p>	<p>359:5;361:7;362:14;363:1; 364:24;375:19;377:3;379:15; 382:22;384:25;387:16,20; 388:7;390:7,13;391:2;392:2; 397:24;398:14;400:5,13;410:3, 25;415:13;420:1,2;426:5; 428:11,15,16;430:1;432:17,18, 20;434:7,10;435:1;437:1,8; 438:9,24;444:3;449:3,7; 453:17;457:9;470:8,13;473:16; 478:19;479:22,23;481:13; 482:24;483:6,19;484:24;493:5; 494:1,11;495:25;496:15; 503:18;505:11,16;507:13; 512:21;520:22;525:8;529:10; 539:18;544:11,14;546:19; 552:8;556:18;557:13;559:19, 21 outage (6) 279:1,14,21;280:3;283:7; 490:9 outages (4) 278:7,10;300:24;301:3 outbreak (1) 296:18 outcome (1) 531:4 outfall (5) 512:1,3;514:1;518:2,3 outfalls (1) 513:11 outlet (1) 348:8 outlined (2) 322:25;533:16 outside (3) 344:7;365:22;435:1 over (33) 273:18;278:17;297:13,16,21; 298:17;321:19;325:3;329:21; 332:2,13;336:14;341:13,19; 345:17;359:7,21;422:1;423:25; 463:8;468:20;469:4,24;470:19; 495:7;498:17;514:13;543:6,18, 19,20;544:3;555:12 overall (1) 408:16 overappropriated (1) 555:18 overcrowding (1) 296:6 overflow (2) 333:14;348:8 overhead (1) 470:18 overpumped (1) 543:23 Overruled (9) 312:4;363:16;397:4;402:25; 463:22;473:22;515:10;517:10; 534:11 oversee (1) 423:19</p>
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<p>over-the-rim (1) 553:13</p> <p>overview (1) 318:24</p> <p>own (10) 281:14;367:22;370:3;374:8; 414:10,14,18;552:2;553:3; 557:6</p> <p>Oxbow (5) 272:24;274:9;275:11,12; 276:12</p> <p>oxygen (47) 289:14,17,24;296:6,8;301:6; 302:23,25;306:5,8,19;312:7; 313:12,13,16,19;315:10,12,22; 337:23,25;338:3;339:3;354:4; 475:10,15,17,24;476:4,19,21, 24;477:10,13,14,18,22,24; 478:3;479:13;480:19;486:19; 487:12,20;489:12,21;506:3</p> <p>oxygenated (1) 490:21</p>	<p>491:9,25;493:15;496:14,22; 499:20;505:8;506:4,7;507:4; 530:3;536:24;547:5;550:2,3,5; 552:3;558:24;559:2,6</p> <p>partial (1) 405:25</p> <p>partially (3) 274:3,8,11</p> <p>participant (1) 402:24</p> <p>participants (1) 444:1</p> <p>participate (11) 369:23,25;409:13;410:21; 432:4;437:3;446:5,11,23,25; 447:1</p> <p>participated (3) 437:2;444:16,23</p> <p>participating (4) 437:6;444:19,24;445:11</p> <p>participation (6) 370:1;432:2;436:25;447:24; 559:9;560:10</p> <p>particles (1) 502:10</p> <p>particular (50) 304:8;332:6;337:4;340:18; 345:11;346:9,12;351:17;367:4; 373:4;384:1,2,5;385:23; 386:11;387:1;389:10;392:1; 397:22;415:21;421:16;425:12; 428:9;433:18;440:21;442:4; 455:23;457:20;458:14;459:14, 23,25;464:1;466:13;467:15; 472:5;493:1,16;509:7;511:14; 513:1,7;514:7;522:3,13; 529:17;530:6;533:14;559:6,10</p> <p>particularly (8) 303:25;369:24;399:9;401:9, 18;417:7;520:23;539:5</p> <p>parties (18) 366:16;369:8,22;371:4,6,18; 373:3;377:5;393:19;425:23; 429:1;542:23;547:14;548:12, 13;558:17;559:8,18</p> <p>parties/protestants (1) 377:6</p> <p>partnership (1) 414:19</p> <p>parts (21) 321:8;324:16;437:22;440:4, 7,8;474:22;476:11,18,20,25; 477:19,25;478:3,4;486:19; 488:2,11;489:9;504:20,23</p> <p>party (3) 369:23;434:20;448:13</p> <p>passed (1) 445:16</p> <p>past (8) 356:22;357:1;454:16; 455:16;482:3;483:14;484:8; 543:18</p> <p>path (3)</p>	<p>550:12;554:1,2</p> <p>pathogen (9) 458:14;464:13;465:24; 467:15;468:21;471:12;493:1; 502:7,8</p> <p>pathogens (15) 298:10,16;452:18;457:18; 460:15;468:25;469:3,9,20,22; 478:23;479:12;481:20;485:4; 503:20</p> <p>pathological (1) 295:16</p> <p>pathologist (4) 343:5,9,11;349:5</p> <p>pathology (1) 295:17</p> <p>patience (1) 554:18</p> <p>Patton (3) 429:18;430:4;441:2</p> <p>pay (2) 445:25;448:17</p> <p>PCR (1) 345:14</p> <p>pdf (1) 529:14</p> <p>pen (1) 378:13</p> <p>Pending (2) 528:21,22</p> <p>people (30) 293:8;296:16;394:6;395:1; 396:19;397:8;398:14;400:12; 418:5,5,13;420:17;426:4; 430:3;432:12,13,15;433:25; 439:2;443:15;447:23,25;448:3; 472:23;482:5,15;483:12,17; 543:5;559:7</p> <p>per (25) 276:19,20;315:5,5;384:16, 25;388:12;392:4;476:11,18,20, 25;477:19,25;478:3,4;486:19; 488:2,11;489:9;504:19,20,23, 24;506:4</p> <p>percent (19) 274:6,10,14;275:15;276:14; 277:11,16;289:22;290:7;300:6, 7,16,17;311:15;314:17;391:8; 395:10;408:13;419:4</p> <p>percentage (4) 391:4,10;407:22;408:3</p> <p>percolates (1) 505:12</p> <p>perforated (5) 322:8,19;323:7;330:9;356:4</p> <p>perform (4) 397:21;453:2,2,19</p> <p>performing (1) 453:25</p> <p>perhaps (8) 373:8;408:2;433:10;441:15; 445:7;499:23;503:18;546:11</p> <p>period (15)</p>	<p>273:14;278:25;282:19; 286:15;303:7;407:15;408:24; 490:6,16;518:16,25;520:2; 530:24;531:1;548:14</p> <p>periodic (1) 286:13</p> <p>periodically (5) 285:22;311:20,25;492:6,10</p> <p>periods (1) 406:10</p> <p>permanent (2) 331:4;532:17</p> <p>permit (50) 453:23;511:8,9,23;512:6,9, 14,19,24;513:1,4,11;514:1,7, 24;516:1;517:19;518:2,3,6,9, 10,14;524:5;531:7,14,21,24; 532:9;533:5,6,14;535:7,9,11, 13,14,17,21,24;536:4,6,14,17, 23;537:2,6,20;538:9,16</p> <p>permits (34) 509:4,9,10;513:7,21;514:6, 12,13,19,22;515:1,5,7;516:17, 19;517:2,8,16,20,22;523:13,21, 23;525:6;532:16;533:2,3,10, 11;534:4;536:19,20;537:13; 553:15</p> <p>permitted (2) 401:4;539:12</p> <p>permitting (5) 401:15;508:25;511:2,5; 516:23</p> <p>person (5) 435:1;482:11;512:13; 518:10;525:5</p> <p>personal (1) 405:3</p> <p>personally (3) 447:20,21;449:12</p> <p>perspective (2) 436:23;446:24</p> <p>petition (1) 526:15</p> <p>pH (4) 285:22;288:7,9,13</p> <p>phone (1) 516:10</p> <p>phonetic (1) 491:12</p> <p>phosphorus (4) 522:16,22;523:2,12</p> <p>photo (6) 329:7;331:1;495:18;497:5, 18,20</p> <p>photograph (8) 355:11,16;368:16;379:24; 382:6;495:16,17;497:6</p> <p>photographs (6) 355:4,22;368:5,8;495:15; 511:19</p> <p>photos (1) 511:18</p> <p>phrase (1)</p>
P			
<p>Pacific (1) 424:22</p> <p>packed (2) 312:18;314:15</p> <p>PAGE (16) 268:4;290:15;293:5;324:14, 17;326:1;345:4,6;350:19,20; 354:23;355:8;392:16;495:14; 522:9,10</p> <p>pages (2) 519:22;529:14</p> <p>Pahsimeroi (7) 273:1,12;274:11;275:9,10; 276:22,23</p> <p>paper (1) 559:14</p> <p>paragraph (11) 293:24;294:3;347:24,24; 348:2,3;350:16,17,21,22;352:8</p> <p>parallelling (1) 505:15</p> <p>parameters (4) 453:21;552:25;553:5,6</p> <p>parasite (10) 343:23;349:18;460:2,6; 461:22;462:23;465:23;466:14; 467:18;500:2</p> <p>Parasites (15) 305:8;342:6,7;344:15;459:2, 4,5,7,12,15,18,20,21,23;474:25</p> <p>Park (1) 472:21</p> <p>part (42) 337:18;348:15;358:19; 373:13;403:4;408:6;412:4,11; 422:3;439:8;440:8;445:18,21; 456:1;466:20;467:1;468:22; 471:5,5;475:21;486:7;490:11;</p>			

<p>395:6 pick (4) 306:4;311:7;313:10;555:7 picked (1) 311:4 picking (1) 358:16 picture (39) 324:18,25;325:1,8,13;326:2, 9,13,14,21,24,25;327:3,10,18, 19,22,24;328:5,16,18,21,25,25; 329:4,12,17;330:3,4,5,6,23; 331:9,9,13;332:11,11;458:18; 496:21 pictures (1) 324:10 piece (2) 439:20;441:17 pill (1) 557:16 pipe (59) 280:25;281:23;282:20;285:8, 10;319:22,24;325:16,24;326:4, 6,12,15,19,25;327:16;328:5,8, 9;330:14,15,17;333:20,25; 334:11;357:18,19;363:11; 368:10,17,21;382:25;383:1,6,7; 387:12,17,17,21;388:3,7,8; 389:10,19;391:21,23;392:24; 393:2,5;439:25;468:3,5; 494:24;497:10;532:5,9;537:18, 19;538:7 piped (4) 283:25;483:1;496:2,4 pipeline (52) 300:3;320:4,6,23;321:22; 322:4,11,24;323:11,12;327:13, 15,19,22;328:3,7;329:20,23; 330:11,20;331:6;333:15; 339:20;341:14,15;344:2; 345:19;348:7,13,22;357:12,15; 368:14;382:23;386:9,15,21; 392:22;438:24;439:20,21; 440:5;468:1,6;484:3;501:17, 21;502:14,15;511:25;512:1; 533:8 pipelines (1) 335:14 pipes (17) 284:3,5,11,15,25;285:2; 301:18;320:17,21;322:9,19; 323:7;330:9;348:8;356:4; 392:19;496:23 pipettes (1) 504:15 pipng (4) 283:24;284:21;285:2,6 piques (1) 369:2 pivots (2) 544:24,25 PKD (44) 308:14,16,22;309:4,23,25;</p>	<p>311:13;313:7;344:17,19; 345:22;348:12;349:16,21; 350:2;460:1,4;461:20;465:20, 21,22;466:12;467:4,7,11; 472:8;492:22,24;493:8;494:7, 11,16,19,22;499:4,7;500:7,12; 501:17,21,25;502:21;503:16; 556:11 place (20) 308:12;362:11;393:21; 432:9;456:6;457:19;458:6; 463:10;464:13;466:9;471:14; 472:6;473:4,15,19;478:10; 482:5,18;484:22;489:16 placed (2) 373:4;493:6 places (6) 311:7;482:20;506:5;514:16; 521:6,9 Plain (2) 505:9;506:7 plan (37) 270:3;336:19,21,22;337:1; 350:13;371:10,16,20;372:8,11, 19;414:5;419:22;425:16;433:5; 440:22,22;442:4;484:19; 546:12;549:14;550:16;553:13; 554:7,8,25;555:1,4,5,10,13; 556:24,24,24;557:5;558:18 planking (1) 320:11 planned (1) 282:9 planning (3) 424:11;429:18;509:1 plans (1) 556:2 plant (1) 473:12 planted (2) 361:14;472:19 please (33) 270:9,16,23;271:10,21; 285:23;290:14;293:2;316:21; 317:6,13;354:7;377:17;378:7, 18;405:12;422:24;423:6,11; 442:17;450:4,11,19;486:25; 487:7;495:15;497:4;508:1,8, 15;542:12,19;545:25 pleasure (1) 366:16 plenty (1) 462:15 plugged (2) 280:7;301:5 plugging (1) 320:17 pm (1) 560:13 point (30) 319:8;330:10;333:17;334:6; 356:24;381:2;384:23;387:1; 391:25;421:13;424:9;428:10;</p>	<p>429:15;430:9;433:4;434:9; 457:24;467:16;469:25;470:1; 496:7,10,20;505:16;510:21; 524:9;542:7;553:17;556:17; 559:8 pointed (3) 353:21;382:22;552:8 pointer (4) 378:11,12;382:15;383:4 pointing (1) 328:4 points (2) 340:25;511:1 policy (1) 553:24 political (4) 433:1;436:3;555:23;557:13 politician (1) 557:17 pollutant (1) 522:13 pollutants (1) 522:19 pond (18) 301:10;314:22;335:16; 338:13;341:2;368:21,22,23; 406:15,19,20,24;407:1;473:1; 498:9;499:12,24;506:17 ponds (6) 276:5,17;277:2;364:24; 458:20;472:24 pool (22) 323:4;324:24;348:20;353:5; 355:25;367:5;421:7,8,11,12; 468:7,11;483:12;500:7;501:18; 503:4;544:5,8,10,11,13,16 pooling (1) 356:3 poor (1) 446:18 population (3) 457:7;480:25;525:2 populations (1) 467:20 portion (9) 277:9;293:22;294:2;325:13; 372:5;392:13;511:25;522:4; 527:22 position (10) 317:22,24;358:8;382:22; 397:13;424:9;452:21,24; 512:13;525:5 positive (4) 345:14;348:12;367:9;550:15 possibilities (3) 507:16;556:16,17 possibility (9) 438:14;457:17;464:14; 470:20;479:18;495:9;500:17; 538:11;556:15 possible (24) 307:1;376:21;390:7;426:11; 438:22;441:22;443:16,19,20,</p>	<p>24;471:16,17,20;484:2;489:23; 511:22;515:4;517:15,18; 518:21;524:4;531:6,9;533:8 Possibly (4) 303:2;349:11;533:5;544:16 potable (1) 285:20 potential (14) 311:13;320:16;352:9;357:2; 362:22;467:14;473:18;474:24; 479:8;480:24;501:24;502:1; 513:6;529:9 potentially (12) 434:25;467:20;469:3; 471:22;477:4;500:25;502:17; 512:1;513:10;536:13,16,22 poured (2) 484:9;537:23 power (31) 278:7,10,15,18;279:1,21; 280:3;282:19;292:22,24,25; 294:9,23;314:8;315:4;325:19, 22;326:6,25;382:18;385:20; 386:14,16;391:23;402:22; 472:14;488:21;490:9;526:16; 551:14;555:24 ppm (2) 339:8,16 practice (1) 360:1 preach (2) 370:8,10 precaution (1) 360:20 precedent (1) 373:16 precluded (1) 474:13 precludes (1) 470:14 predated (1) 435:9 predators (2) 297:15;320:13 preferable (1) 488:15 preparation (3) 399:4;410:4;437:16 prepare (2) 393:17;398:6 prepared (9) 280:16;292:9;374:20;393:7, 18;405:15;412:15;417:3; 428:20 presence (5) 305:11;526:6;529:6;530:15; 531:6 present (15) 393:18;409:16;410:6,11,12, 16;412:24;413:1,4;435:12; 436:14,19;514:16;525:11,12 presentation (1) 376:11</p>
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<p>presented (6) 337:7,8;398:25;410:8; 428:17;444:3</p> <p>presenting (3) 316:15;370:8;542:1</p> <p>presently (2) 292:21;314:7</p> <p>presents (1) 467:14</p> <p>president (1) 546:6</p> <p>pressed (1) 408:1</p> <p>pressure (4) 284:8,9;479:18,21</p> <p>presume (3) 311:16;492:8;496:18</p> <p>pretty (20) 295:22;297:19;301:10; 400:16,17;415:5,17;457:25; 458:17;482:9;487:19;550:1,11; 552:6;553:7,9,22;557:12,13,16</p> <p>prevent (9) 290:11;308:10;348:9;353:9; 356:13;357:2;363:23;402:15; 498:21</p> <p>preventative (1) 362:13</p> <p>preventing (1) 530:11</p> <p>prevention (2) 297:3;452:19</p> <p>previous (5) 292:4;296:17;323:3;476:9; 505:1</p> <p>previously (1) 331:10</p> <p>primarily (4) 453:4,14;465:23;472:4</p> <p>primary (1) 362:13</p> <p>prior (13) 371:15;372:7,11;397:18; 405:5,9;406:10;424:19;455:22; 488:18,19;527:6;529:3</p> <p>prior-appropriation (2) 398:10;400:12</p> <p>priorities (1) 398:7</p> <p>priority (9) 394:20,21;396:24;397:21; 398:3,15;405:17;407:9;422:9</p> <p>private (4) 424:18;454:10;473:1;482:8</p> <p>probably (38) 284:17,20;285:1;286:13; 290:4;295:7;301:8;304:11; 309:14,15;311:1;314:16,17,18, 23,24;316:8;357:13,14;358:5; 359:22;365:10;368:9;373:7; 381:13;384:5;403:21;426:3; 435:23;446:22;456:19;458:10; 512:16;532:12;538:18;543:7;</p>	<p>544:7;545:1</p> <p>problem (34) 287:15;288:9;320:19; 349:21;357:21;396:5;416:18, 19;426:20,21;431:4;433:2; 434:20;442:23;443:10;456:5,7, 24;457:8;458:11;462:1,11; 463:10;464:23;478:22;481:3; 500:9;543:12;550:3,6;552:19; 554:3;555:16;557:21</p> <p>problems (27) 283:13;299:7;309:8;333:11; 334:1;343:11,16;347:9;443:4; 455:13;456:21,25;457:10; 458:15,22;459:2;461:19; 462:16;463:7;464:2,15;481:4; 493:25;494:13;529:10;549:10, 13</p> <p>proceed (3) 343:13;554:6,24</p> <p>proceeded (1) 536:12</p> <p>proceeding (8) 271:5;280:22;281:7;292:7; 396:13;488:20;540:13;559:6</p> <p>proceedings (3) 369:11;383:17;488:19</p> <p>process (21) 511:2,5;512:9,21;515:2; 517:3;518:8;519:24;523:15,17, 24,25;524:5;525:7,18;529:10; 530:17;532:4;534:4;535:15; 557:13</p> <p>processing (1) 473:12</p> <p>produce (4) 274:17;294:4;556:4;557:1</p> <p>produced (6) 281:6;292:7,13;351:10; 475:9;502:14</p> <p>producing (2) 361:11;481:3</p> <p>product (2) 458:12;472:7</p> <p>production (11) 274:18;277:7;286:14,16; 335:25;358:11,12,15,16,22; 365:2</p> <p>products (1) 471:24</p> <p>professional (1) 509:21</p> <p>program (1) 445:15</p> <p>programs (1) 282:16</p> <p>progressively (1) 345:17</p> <p>project (24) 280:11;281:17;283:8; 358:21;445:18;490:8;501:2; 509:9;510:3;511:2,23;512:17; 513:1,8,22;516:7,15;517:6;</p>	<p>520:24;533:7;536:13,23;537:2; 551:12</p> <p>projected (1) 495:18</p> <p>projecting (1) 559:12</p> <p>projector (1) 487:3</p> <p>projects (10) 431:16,18,25;441:17;509:2, 5;511:12;512:22;517:22;550:9</p> <p>proliferative (5) 342:2;344:20;345:15; 461:20;491:14</p> <p>Prolific (2) 308:17;313:9</p> <p>proper (3) 403:1;549:8,11</p> <p>properly (1) 449:16</p> <p>property (2) 482:8,10</p> <p>prophylactic (3) 349:9,23;357:5</p> <p>proposal (3) 398:25;420:7;484:14</p> <p>proposed (11) 336:20;370:19;371:22; 412:2;434:3;468:2;507:1; 511:15;517:16;544:3;546:17</p> <p>proposing (3) 480:6;498:10;513:2</p> <p>protect (2) 531:10;546:14</p> <p>protected (3) 523:18,19;524:7</p> <p>protecting (2) 530:13,13</p> <p>protection (1) 348:7</p> <p>protest (7) 374:15,18;401:17,20,20; 402:4,20</p> <p>protested (1) 401:16</p> <p>protests (1) 401:3</p> <p>protocol (1) 353:12</p> <p>proves (2) 499:14;548:24</p> <p>provide (13) 373:11;399:12;419:4; 430:25;431:3;438:19;453:5,13; 471:15,19;488:21;556:25; 557:8</p> <p>provided (9) 291:15;292:2;351:12; 371:19;378:11;415:4;448:21; 475:22;531:10</p> <p>provides (2) 457:14;551:17</p> <p>providing (2)</p>	<p>411:16;431:20</p> <p>provision (4) 399:9;430:18,19;431:13</p> <p>public (4) 434:8,10;482:2;483:14</p> <p>publication (3) 554:8;558:23;559:1</p> <p>published (3) 351:22;558:19,21</p> <p>pull (25) 271:20;285:23;286:1; 287:24;293:2;305:14;354:7,22; 380:9;383:13;385:15,16;387:7, 23;388:21,23;389:18;391:13; 398:20;486:25;495:13;510:9, 23;525:4;544:7</p> <p>pulled (6) 271:22;324:13;334:10; 379:17;380:10;382:5</p> <p>pulling (2) 357:16;383:15</p> <p>pulpit (1) 370:7</p> <p>pump (37) 273:19;274:3,18;275:17; 276:9;277:6,13;278:4,25; 279:1,10,11,12,20;280:3,5,8, 24;281:19,21;282:2,4,5,9,18; 283:15;300:12,12;302:12; 329:2,8;420:4,7;489:25;490:7, 9,14</p> <p>pump-and-pipe (1) 551:13</p> <p>pumped (20) 274:7,8,10,11,13,14;275:15; 276:1,2,13;277:10,16,21; 283:22;300:7,7,17;464:11; 470:5;544:24</p> <p>pumpers (2) 431:11;448:21</p> <p>pumping (13) 274:16;276:7,22;277:25; 282:13;284:7;479:18,21;480:5; 543:6,12,22;544:3</p> <p>pumping-and-pipe (1) 490:8</p> <p>pumps (30) 274:1,3,12,19,20;275:1,5,8; 276:11,14,16,19;277:4,8,12; 278:1,2,3,24;279:2,8,13,15; 282:2,22;283:19;301:21,22; 302:8;480:9</p> <p>purchasing (1) 423:22</p> <p>purport (1) 383:21</p> <p>purporting (1) 448:17</p> <p>purpose (7) 292:21;394:17;403:5; 426:18;433:23;434:15;529:9</p> <p>purposefully (2) 308:5;484:2</p>
---	---	---	--

<p>purposes (4) 294:10;473:8;543:9,9</p> <p>pursue (1) 403:9</p> <p>push (1) 316:6</p> <p>put (20) 276:4;305:24;310:23; 322:21;361:7;371:19;405:16; 414:23;468:2;478:10;479:17; 512:21;540:6,16;552:13,14,17; 553:3,23;555:5</p> <p>putting (3) 306:18;336:16;556:2</p>	<p>321:1,11,12,14,17,18,19,20; 322:12,15;323:15,15,20,21,23; 324:1,2,5,7;330:12;341:14,15, 18;343:18,19,19;344:7,9,13,13; 346:5,14;348:13;357:24;359:2, 9;457:16;465:7,17;468:3,12,16, 23;482:19;483:2;484:24; 488:16,25;489:10,13,25; 490:13,18,21;491:2,3;494:17, 20,23;497:11,24,24;498:23; 500:12,15;502:4,11,13;503:1; 507:11;556:16</p> <p>raceway's (1) 302:9</p> <p>rain (4) 470:1;498:7,11;506:25</p> <p>rainbow (2) 298:10;486:12</p> <p>Raise (44) 270:9;277:22;283:16; 285:11;288:15;289:25;290:12; 294:13,14;298:9,13;307:1,7; 313:15,22;314:12;315:5,9,21; 316:21;318:6;321:14,16;335:8; 363:24;364:21;377:17;418:15; 422:24;450:4;466:1,6;476:17, 24;477:3,18,21;478:4,7,10; 488:20;508:1;542:12;545:18</p> <p>raised (9) 295:6;308:2;351:5;361:13; 422:4;466:4;498:7;500:22; 552:5</p> <p>raises (9) 292:21,22;294:9;298:24; 314:7;366:19;472:13;478:3; 493:18</p> <p>raising (24) 283:10;287:9,16;288:10; 289:18,21,23;290:22;291:9,11; 292:14,18;296:20;299:8,12; 304:17;306:11,13;358:3;476:4; 486:12;543:10;551:21;553:1</p> <p>RAMSEY (17) 268:7;337:24;450:2,3,6,20; 474:3;485:21;487:9;495:17; 500:19;503:15;504:8;507:21; 552:2;553:4;556:9</p> <p>R-a-m-s-e-y (1) 450:20</p> <p>ran (1) 314:14</p> <p>Randy (56) 268:5;350:18;354:20; 371:25;373:13;375:16,18,21, 23;376:3,23;381:4,10;396:9; 400:15;401:5;402:18;403:20; 404:12,13,14,18;415:24; 416:22;420:12,18;421:21,24; 422:12;434:1;435:21;438:6; 442:15,17,20;447:3;449:19; 527:8;534:18;541:20;545:6; 546:24;548:7,16;550:18,24; 551:3,5,10;558:2,4,11,13,20,</p>	<p>23;559:3</p> <p>range (15) 287:5;288:8,16;289:24; 290:21;291:6;306:13,17; 476:23;477:15;486:11,19; 508:24;530:20;535:25</p> <p>Rangen (159) 271:5;281:1,6;282:23;283:5, 16;284:1;285:11;286:1;288:5, 7,10;289:17;290:18;291:9,14; 292:2,7,13,16,20;294:4,9,13; 296:25;297:20;299:9,13;300:1; 307:22;314:6;315:4;316:18; 317:2;372:9;373:20,25;377:14, 20;409:12,15,19;410:11; 412:24;414:10,14,18;422:22; 423:2;425:20,23,24;426:2,19; 427:6;428:13;435:2,4;436:11, 21;437:2,9;442:22;444:21; 446:5,10,20;447:15,18,21; 448:1,13,24;449:13;450:1,7,22, 24;452:21,23;453:18;454:22, 23;455:15,15,21;456:9;457:11, 23;460:5;461:16,25;462:19; 463:3,19;464:21;467:5;468:2; 472:13;473:19;478:20;481:22, 24;483:4;484:15,20,22;486:1, 9;487:12,18,19;488:20;491:6; 493:9,18;494:7;495:11;496:3, 4,8,23;497:6,16;498:10,19; 500:1,19,24;502:20;503:7; 507:23,24;508:4;515:20,25; 536:8;537:18;541:8,25;542:3, 4;543:6;544:4;545:8;547:16, 24;548:21,23;549:7,18;550:5; 552:9,19;553:8,18;554:15; 556:18;558:5</p> <p>Rangen's (26) 273:20;281:22;283:10; 295:1;316:15;336:24;337:10, 24;363:24;375:23;413:9; 424:24;444:23;453:10;454:25; 466:1;467:12;474:15;489:13; 492:22;497:24;498:21;502:15, 18;549:3;552:22</p> <p>ranges (1) 352:25</p> <p>ranked (1) 394:21</p> <p>Rapid (4) 272:15,24,25,25</p> <p>Rapids (9) 525:3,19;526:6,8;527:20; 529:4;530:1,5;540:1</p> <p>rare (1) 456:23</p> <p>rate (8) 385:23;386:9;389:23; 390:16;397:10;405:20;522:23, 25</p> <p>rates (2) 390:6;395:14</p> <p>Ray (3)</p>	<p>384:6;393:19;417:10</p> <p>read (8) 339:22;345:10;348:4;350:8, 22;370:5,18,24</p> <p>reading (4) 283:9;338:11;541:16;560:2</p> <p>readings (8) 354:4;384:5;391:18,22; 392:18,20,23;393:8</p> <p>reads (1) 372:6</p> <p>ready (6) 270:5;365:13;377:12;430:9; 434:10;557:6</p> <p>real (4) 309:5;314:7;475:11;550:13</p> <p>realize (6) 357:16;384:19;385:8,12,13; 548:18</p> <p>really (13) 304:9;332:1;368:7;438:20; 457:24;458:21;464:24;478:22; 485:2;529:20;538:3;552:8; 559:20</p> <p>rear (1) 360:10</p> <p>reared (1) 304:18</p> <p>rearing (11) 274:9,13;276:2,3,18,24; 277:2;296:9;318:14;359:18; 471:17</p> <p>reason (16) 302:15;314:18;320:12,15; 349:25;353:14;365:15;384:21; 385:7;386:24;389:8;401:19; 411:18;456:5;481:14;523:10</p> <p>reasonable (6) 283:16,18;285:10,13;294:5, 15</p> <p>reasons (3) 301:12,14;457:3</p> <p>rebuttal (1) 548:6</p> <p>recalculated (1) 524:2</p> <p>recall (37) 270:5;280:5,8;285:8;286:2; 297:25;301:9;337:4,5;342:5; 367:8;368:8;380:4,25;385:24; 386:5;405:14;420:25;421:5; 426:14;427:8;428:10;429:20, 25;430:17;433:13,22,25; 436:18;437:19;439:4;442:12; 444:2,5,24;475:20;532:6</p> <p>recalling (1) 426:4</p> <p>receive (4) 364:12;377:7;490:16;506:8</p> <p>received (36) 272:9,10;333:6,7;338:20,21; 346:25;347:1,21,22;354:16,17; 376:4,7,18,19;382:2,4;428:21;</p>
<p style="text-align: center;">Q</p>			
<p>qualification (2) 372:9,13</p> <p>qualified (1) 534:2</p> <p>qualify (6) 535:14,20;536:13,23;537:2,5</p> <p>qualified (1) 291:19</p> <p>quality (15) 285:15;292:17;299:12; 304:10;347:8;359:4,11;471:16; 474:22;475:7;499:1;530:14; 539:3;551:20;552:25</p> <p>Quality's (1) 519:21</p> <p>quantities (1) 406:8</p> <p>quantity (6) 313:14;391:4;405:20,24; 406:2;490:22</p> <p>quarter (1) 482:2</p> <p>quick (4) 421:21;426:10;475:11; 528:25</p> <p>quicker (2) 307:5;411:13</p> <p>quickly (2) 315:12;424:4</p> <p>quite (8) 277:23;278:9;281:5;284:12; 398:1;434:9;453:20;470:18</p> <p>quote (2) 412:12;413:12</p>			
<p style="text-align: center;">R</p>			
<p>raceway (12) 279:3;302:13;312:7,8;315:6; 338:10;339:25;340:2,3;345:14; 457:5;494:13</p> <p>raceways (94) 274:1;276:4,4;278:13,21,23; 281:24;282:20,24;283:4,5,7; 284:25;297:1,13,20;302:17; 307:4;311:5,6,25;312:11,15;</p>	<p>268:5;350:18;354:20; 371:25;373:13;375:16,18,21, 23;376:3,23;381:4,10;396:9; 400:15;401:5;402:18;403:20; 404:12,13,14,18;415:24; 416:22;420:12,18;421:21,24; 422:12;434:1;435:21;438:6; 442:15,17,20;447:3;449:19; 527:8;534:18;541:20;545:6; 546:24;548:7,16;550:18,24; 551:3,5,10;558:2,4,11,13,20,</p>		

<p>430:24;451:24,25;452:3; 510:15,17;519:12,13;520:17, 18;524:18,19;534:12,14; 547:20,21;549:6</p> <p>receives (1) 298:8</p> <p>receiving (1) 490:13</p> <p>recent (4) 309:5;441:15;538:23;540:16</p> <p>recently (3) 309:4;424:22;426:23</p> <p>Recess (8) 316:12;369:10,13;375:10; 404:5,7;485:15;541:22</p> <p>recharge (1) 445:15</p> <p>recited (1) 371:23</p> <p>recognize (16) 280:15;319:2;337:20; 338:25;342:12;347:4;350:5; 355:15;369:14;379:18;380:11; 387:8;391:15;393:14;451:8; 495:17</p> <p>recollecting (1) 443:25</p> <p>recollection (3) 443:14;448:15;527:10</p> <p>recommendation (2) 353:4;516:13</p> <p>recommendations (2) 500:20,25</p> <p>recommending (2) 312:20;353:10</p> <p>reconcile (1) 505:2</p> <p>reconciled (1) 548:10</p> <p>Reconstruction (1) 350:14</p> <p>record (28) 270:24;293:11;369:12;370:5, 18;371:24;375:9,22;376:22; 378:8;401:17;402:12,17;403:4; 408:11;423:12;449:11;508:16; 529:17,22;541:23;547:5; 550:23;558:6,16;559:3,15; 560:9</p> <p>recorded (1) 391:20</p> <p>recording (4) 270:1;293:15;316:13;404:6</p> <p>records (8) 281:6;296:24;371:8;381:8; 383:9,9;477:13;543:17</p> <p>record's (1) 422:7</p> <p>recovery (2) 530:6,9</p> <p>Recross (6) 363:4;421:20;447:10; 449:18;503:10;504:3</p>	<p>Recross-Examination (6) 268:13;363:7;364:8;368:1; 421:23;503:13</p> <p>red (7) 325:16,24;326:5,19,25; 340:25;552:11</p> <p>Redirect (13) 268:6,12;310:12,14;314:3; 361:22;362:1;367:1;416:13; 447:12;501:11,13;541:3</p> <p>reduce (5) 358:6,12,15;371:10;465:4</p> <p>reduced (2) 376:20;539:13</p> <p>reducing (2) 471:18;539:7</p> <p>reduction (1) 312:6</p> <p>reductions (2) 371:14;372:7</p> <p>reference (1) 376:12</p> <p>referenced (1) 547:1</p> <p>referred (5) 323:4;356:12;376:11;460:1; 506:16</p> <p>referring (13) 286:11;292:6;300:7;352:9; 355:20;368:18;459:19;465:16, 17;504:19,20;519:15;540:7</p> <p>refers (1) 340:1</p> <p>reflected (2) 407:10;487:16</p> <p>regard (14) 304:16,23;305:10;310:5; 366:14;372:5;373:20,21;456:8; 458:7;475:15;479:1;480:7; 536:16</p> <p>regarding (14) 271:7;300:3;370:20;377:1; 401:8,11;433:5;435:3,14,16; 443:13;478:13;521:25;530:1</p> <p>registration (1) 535:4</p> <p>regular (1) 295:20</p> <p>regulatory (2) 508:25;516:11</p> <p>reiterate (1) 546:8</p> <p>relate (1) 324:16</p> <p>related (8) 309:9,10;341:16;369:6; 375:3;377:3;454:23;479:9</p> <p>relates (1) 313:11</p> <p>relating (8) 270:13;317:3;377:21;423:3; 450:8;508:5;542:17;545:22</p> <p>relation (1)</p>	<p>340:9</p> <p>relatively (2) 488:25;543:12</p> <p>release (3) 294:5,16;333:14</p> <p>released (1) 294:9</p> <p>relevance (1) 526:24</p> <p>relevancy (1) 396:10</p> <p>relevant (2) 396:13,14</p> <p>reliability (2) 282:12;480:7</p> <p>reliable (1) 551:17</p> <p>relied (2) 528:5,13</p> <p>relieve (1) 284:9</p> <p>rely (2) 304:6;471:25</p> <p>relying (2) 396:18;441:25</p> <p>remain (4) 459:11;489:9;492:19;550:3</p> <p>remainder (1) 444:25</p> <p>remedy (1) 345:20</p> <p>remember (16) 288:3;289:10;380:22; 388:12;399:1;407:24;409:25; 410:17;417:5,7;422:11;438:23; 439:19;464:24;473:5;487:11</p> <p>remembered (1) 274:24</p> <p>remove (5) 333:15;467:23;526:12,16; 555:15</p> <p>removed (3) 329:8;348:13;484:10</p> <p>render (2) 516:21;534:3</p> <p>rendering (1) 533:25</p> <p>renew (4) 474:12;516:20;528:10; 533:24</p> <p>reopening (1) 365:20</p> <p>rephrase (4) 415:9;446:16,19;490:12</p> <p>replace (1) 457:4</p> <p>replaced (1) 279:16</p> <p>replacement (1) 544:25</p> <p>replication (1) 455:10</p> <p>report (43)</p>	<p>279:24;280:16,21;281:14,25; 287:20;303:17;312:10;342:15; 343:2,8;345:21;346:9,12; 355:11;368:16;378:24;379:1; 425:19;475:9,21;476:1;510:19; 511:18;515:24;527:19;528:3,5, 7,11;529:19;530:2;533:16; 534:1;537:9;538:23,24;540:9, 10,12,15,16;551:11</p> <p>reported (8) 291:25;385:19;386:11;387:2, 19;388:2,23;389:3</p> <p>reporter (1) 560:11</p> <p>reports (8) 283:9;386:16;525:16; 528:21;529:25;530:4;540:1,5</p> <p>represent (4) 300:1;355:11;380:18;391:17</p> <p>representation (1) 402:10</p> <p>representative (3) 384:7;436:17;445:2</p> <p>representatives (14) 409:13,16;410:14;427:6; 428:3;434:24;437:21;441:19, 20,20;443:21,22;444:21;445:6</p> <p>representing (4) 369:24;426:2;435:7;475:2</p> <p>represents (2) 391:18;392:14</p> <p>request (3) 519:1;526:19;552:24</p> <p>requests (1) 351:13</p> <p>require (7) 275:24;292:17;312:15; 315:10;345:18;412:8;537:20</p> <p>required (16) 312:21;315:4;446:5;452:17; 453:23;476:5;511:9,23;521:5; 522:11,12;532:14;537:25; 538:10,17;553:16</p> <p>requirement (4) 358:10;512:5;535:8;538:20</p> <p>requirements (1) 523:16</p> <p>requires (1) 488:24</p> <p>research (9) 452:22,23;453:1,6,18;455:9; 481:5,8,10</p> <p>reservation (2) 372:5;373:4</p> <p>reserves (1) 372:9</p> <p>Reservoir (6) 294:6,10,16;454:8;472:20,21</p> <p>Resident (1) 350:15</p> <p>resist (1) 468:24</p> <p>resistance (2)</p>
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<p>298:16,19 resolution (4) 428:13;431:3;433:1;528:23 resolve (1) 416:19 resolved (1) 503:17 resolving (1) 416:18 Resource (3) 443:22;445:6;508:20 resources (13) 271:12,14;379:2;386:17; 392:21;423:16;424:2,6,14; 430:5;432:6;438:5;509:1 respect (6) 370:20;415:2;419:23;506:1; 523:9,13 respiration (1) 476:7 respond (2) 360:2;414:5 responded (2) 365:11;367:3 responding (1) 432:6 response (2) 351:12;362:3 responsibilities (1) 446:14 responsible (1) 318:8 rest (4) 372:14;439:14;556:25;557:7 restriction (1) 377:2 restrictions (7) 351:15;352:10,12,14;473:15, 18;474:9 rests (1) 542:4 result (7) 285:6;301:3;333:19,21; 462:12;467:21;481:1 resulted (2) 301:18;357:9 results (7) 345:14;349:13;367:13;393:2, 5;481:12,14 resumé (5) 271:23;272:1;273:6;451:11; 509:16 return (1) 415:6 review (27) 281:14;286:25;287:18; 291:13;292:9;377:8;403:5; 430:25;441:3;460:24;478:16; 514:25;515:23;517:4;518:16, 24;519:1;521:11;523:25;524:5, 24;526:18;528:9;530:17;531:1; 536:18;537:8 reviewed (18)</p>	<p>280:18;281:5;287:11; 290:16;292:3,24;296:24; 303:15;304:22;355:22;484:14, 17;511:14,17,19;513:9;515:3; 537:12 reviewing (4) 384:17;386:20;429:16;525:6 reviews (2) 515:1;518:21 Rice (5) 508:21;509:3,5;510:2,3 rid (1) 457:20 right (158) 270:9;271:5,24;275:3,5; 279:5;281:7;282:7;285:1; 288:19;289:12,15;297:21; 302:3,11,14;305:15,23;306:1,7, 9,16,20;307:2,9;313:2;316:5, 21;319:1,15,18;321:23;322:9, 18,21;325:9,11,13,22;326:19, 21;327:5;329:21;330:10; 332:20;338:8,11;339:18,23,24; 347:25;349:25;352:3;353:8,15, 23;356:8,23,25;360:7,25; 363:10;366:20;369:3;370:14; 372:10;374:18;377:17;378:13, 13;381:8;383:7;384:25;388:12, 14;390:15;394:12,16,22;395:8; 399:1;400:24,24;401:3,4,11,15; 402:10,14;405:17;406:2,5; 407:8,8,17;408:3;414:20; 415:12;416:10;418:23;422:9, 11,24;433:11,13,23;441:23; 450:4;467:8;483:14,23;486:2, 20;487:6,11,17;488:1;489:5; 490:18;492:15;494:6;495:1,11, 15;496:5,11,12,24;497:11,22; 498:19;499:8,18;503:8,19; 506:12;507:13,13,17;508:1; 521:16;523:3;535:18;538:4; 539:8;542:5,12;543:4;545:18; 546:9,10,15;547:13;548:8,24; 551:10;558:1,25 right-hand (1) 328:12 rights (41) 334:18;370:21;371:11; 374:16,22;375:3;379:7;387:15; 388:6;394:19;396:23;398:2; 400:11;401:8;403:7;405:16; 406:8,14,20,25;407:4,5,10; 409:20;413:18,19;414:11,15, 19;415:18,21;417:14,20; 418:14,17;419:4;424:8,12; 509:1;546:19;554:15 Riley (72) 297:17;298:1,5,6,11,17; 309:9,10,15,17;321:20;323:17, 19;324:2,5,6;336:15,16; 343:19;344:23;359:1,3,10; 362:18;371:8;374:24;375:3; 379:12,15;380:14,19;394:10;</p>	<p>405:4;408:9;409:6;410:25; 414:11,21;415:3,18,21;418:5; 419:23;420:2,5,8;421:25; 521:11;522:7,18;523:9,10; 524:25;525:3;526:6;527:1,4, 19,22;528:8,9,15;529:6,18; 536:9;538:19;539:6,8,13; 540:2,11;546:10 rim (4) 431:17,19;482:6,8 ring (1) 386:1 risk (1) 336:16 risks (2) 484:18;485:2 River (17) 272:15,24,25;274:10;276:15; 277:1;285:3,4;300:10,12; 369:17;505:9,15,15;506:7; 521:25;530:12 road (3) 321:4;325:19;412:7 roadway (2) 482:2,12 rock (5) 470:21;496:17;521:21; 522:1;544:17 rocks (20) 327:2;329:25;331:20,21; 348:10,16,17,24,25;349:4; 353:5;355:23;469:17,23,24; 470:3;471:2;494:24;498:17; 507:2 rocky (4) 331:19;468:7,15;469:12 rodents (2) 356:14;496:15 Rogers (11) 270:7,8,11,25;293:17;313:3; 316:2;477:2,8;480:2,11 Rogers' (1) 551:18 Roman (3) 412:11;445:14;446:1 roster (1) 370:7 rostrum (1) 416:11 roughly (1) 284:1 round (1) 340:25 routine (1) 535:18 rule (2) 289:5;553:10 rules (1) 553:11 ruling (1) 377:11 run (8) 295:13;297:2;357:24;416:2;</p>	<p>424:5;454:11;498:13;506:3 running (2) 278:23;498:23 runoff (1) 498:8 runs (1) 298:6</p> <hr/> <p style="text-align: center;">S</p> <hr/> <p>safe (11) 399:12;411:16,19;412:1; 419:14;430:19;431:13;432:3,9, 18;448:21 safety (2) 318:16;360:20 salmon (11) 272:22;274:16;276:5;369:16, 16,16,18,19;545:21;546:6; 554:13 salmonid (3) 465:23,25;466:1 salt (3) 348:10,16;349:2 salting (1) 349:19 same (28) 290:15,17;299:3;313:14; 315:10;317:21;326:4,5;328:17, 18;330:4,5;335:25;352:6; 374:18;387:23;391:22;392:16; 431:9;452:6;466:9;495:10; 504:22,24;514:12;533:17; 551:16,17 sample (1) 492:15 sampled (1) 345:12 samples (10) 287:8,11;348:11;349:6; 453:4;454:1,4,6;499:13,20 sampling (2) 499:22,24 satisfied (2) 373:16;548:12 satisfy (4) 393:25;411:4;419:19;420:16 saturated (2) 312:17;314:23 saturation (9) 289:23;290:3,6;306:14; 307:12;314:17;315:11;477:1; 488:16 saw (1) 475:8 Sawtooth (12) 272:16;273:1,12,13;274:7, 25;275:19,20;278:6,11;279:13; 284:17 saying (5) 372:17;408:11;438:24; 537:3;550:24 SC (4)</p>
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<p>289:9,10;304:4,9 scare (4) 340:24;348:9;470:17,25 schedule (1) 447:20 scheduled (1) 447:19 scheduling (2) 558:17;559:4 scientific (1) 461:23 scientist (2) 452:22,23 Scope (5) 293:6,20;363:13,15;365:22 screen (31) 271:22;285:25;287:25; 288:1;303:18;318:22;324:14, 17,23;325:7;327:6;330:20; 332:16,18,19;337:17;339:11, 13,14;342:9;345:13;347:2; 368:8;460:18;470:14;485:25; 495:18;496:11;540:6,17; 559:12 screened (3) 297:22;497:16;498:4 screening (2) 496:8;503:18 screens (2) 470:24;484:10 screwed (1) 322:13 scroll (4) 495:14;496:21;497:4,18 sealed (1) 283:3 search (1) 528:25 seasonality (1) 331:25 seat (1) 377:25 seated (7) 270:17;317:7;423:7;450:11; 508:9;542:20;545:25 second (29) 270:3;293:24;326:1;345:5,6, 25;353:20;356:24;371:6,9,16; 372:8;384:16,25;388:13; 389:16;392:4;435:21,22; 436:20;440:22;479:7;495:14; 546:12;549:14;554:7,24; 555:10;556:7 second-feet (10) 406:24;407:8,16;410:24; 411:21,25;412:2,13;539:7,18 second-foot (2) 407:12;412:13 Secondly (1) 544:2 second-use (1) 362:20 section (8)</p>	<p>288:5;345:7,11;347:25; 423:22,22;424:8;452:11 sections (1) 335:9 secure (1) 482:9 secured (1) 282:6 security (2) 356:11;482:5 seeing (3) 484:23;525:7;543:19 seeking (1) 534:5 seem (2) 389:3;446:12 seemed (2) 456:4,6 Seems (6) 285:13;467:1;529:19;549:6, 7,18 seep (1) 356:4 segment (4) 521:25;522:1,3,5 sell (4) 472:23,25;473:2,7 Senator (3) 443:17,18,18 senior (5) 407:5,10;413:18;418:22; 510:3 sense (6) 304:4;351:17;430:11; 435:10;511:17;512:18 sensitive (1) 321:25 sent (5) 349:6;377:5;437:8;449:13; 558:23 sentence (1) 412:12 separate (2) 375:2;436:7 separately (1) 351:16 series (1) 355:4 serious (2) 469:19;555:13 served (2) 465:7,18 service (6) 453:13;528:6,14;530:5,20; 531:2 Services (4) 293:6,20;423:19;424:11 set (5) 324:10;375:19;398:1;412:6; 553:12 sets (1) 303:23 setting (2)</p>	<p>338:13;470:13 settlement (29) 374:14;399:6;402:6,21; 409:24;410:9;411:8,22;412:10; 413:6;419:11;425:8,12;426:7; 430:14;431:2;433:5;434:3,6; 435:3,14;438:8;443:7,13; 446:13,21;448:20;449:1;549:6 settling (1) 335:15 setup (1) 481:22 seven (2) 424:15;427:20 several (16) 276:23;278:20;281:3; 425:20;426:4;428:24;437:17, 20;453:22;455:11;472:4;475:8; 493:24;505:9;511:18;522:14 severe (1) 283:13 Shall (1) 316:5 share (1) 370:24 sharing (1) 422:3 shed (1) 502:10 sheds (1) 329:1 sheet (12) 380:13;411:22;435:17; 437:1;438:18;439:18;443:13; 444:2;445:13;446:4,21;460:15 shelf (1) 279:14 shell (1) 420:9 shooting (1) 476:13 short (11) 373:1;395:2;399:20;418:1; 419:5,20;461:23;482:25; 483:13;496:1;548:13 shortage (4) 337:10;364:11;431:21,23 shortages (10) 395:13;396:6,20;398:13; 413:25;415:3,22;418:6,16; 438:21 shorter (1) 335:18 shortfalls (1) 411:5 shot (3) 328:22,23;330:7 show (15) 319:12;321:3;326:10;329:4; 330:6;338:22;353:24;383:4; 391:25;451:5;475:6;510:11; 550:12;552:10;553:25 showed (4)</p>	<p>337:16;368:14;387:5;534:24 showing (6) 328:1;329:14;342:9;347:2; 391:12;425:6 shown (9) 287:12;290:18;318:22; 368:17;406:9;407:4;460:15; 485:24;509:12 shows (5) 304:18;329:18;330:12,24; 529:1 shred (1) 556:23 shut (2) 280:7;480:10 sic (3) 303:17;381:7;384:8 side (9) 321:5,7;332:20;397:23; 428:12,17;497:22;552:10; 559:11 sides (2) 340:12,13 sight (2) 482:20;483:19 sign (1) 369:7 signal (1) 418:17 signaled (1) 392:20 signed (3) 293:9;558:5;559:16 significance (2) 462:9;476:3 significant (6) 424:16;461:18,25;486:7; 529:20;531:25 similar (10) 282:15;296:15;380:6;394:9; 398:17;463:17;466:5;506:6,13; 536:21 similarly (1) 553:18 simple (1) 551:12 simply (8) 390:19;464:14;466:20; 467:19;471:3;534:3;554:17; 555:10 SIMPSON (36) 272:5;310:8,9;332:25;333:1; 338:18;346:20,21;347:16,17; 354:10,11;361:18,19;364:3,4; 370:8,10,13,15,16,17;373:5,6, 11;376:9,14,24;381:16,18; 383:17;401:9;412:19;426:3; 435:7;443:21 Simpson's (1) 416:4 single (4) 385:11;386:21;390:12,14 sink (1)</p>
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<p>506:20 sinkhole (2) 469:16;483:8 sit (2) 542:9;555:19 site (5) 281:3;290:4;301:23;511:18; 528:1 siting (1) 544:18 sitting (3) 279:13;469:23;544:17 situated (1) 481:25 situation (3) 284:7;302:12;419:8 size (1) 512:23 skeletal (1) 462:17 slide (1) 493:6 slightly (2) 288:13;333:10 slope (1) 498:19 slow (1) 544:22 slowly (1) 302:10 small (50) 281:23;284:24;312:15; 319:10,22,24,25;320:4,6,23; 321:22,22;327:13,15,16;328:3, 7;329:11,19;333:14;341:14; 344:2,4;348:6,13;357:12,19; 368:14;382:25;383:6;387:12, 17,21;388:7;391:21;392:24; 393:5;468:3,16,23;472:25; 482:19;483:2;484:24;490:13, 18,21;491:3;497:10;535:18 smaller (3) 393:4;462:11;490:22 snail (10) 357:2;360:14;525:19;526:8, 25;527:20;528:15;530:1,5; 540:1 snails (7) 353:2;357:3,4;525:3;526:6; 529:4;539:24 Snake (10) 276:15;285:3;300:12;505:9, 15;506:7;521:21,25;522:1; 530:12 so-called (3) 380:18;426:19;438:13 Society (2) 452:10;557:20 sockeye (2) 274:15;277:22 soil (1) 544:18 sole (1)</p>	<p>537:10 solely (2) 344:1,4 solids (8) 453:22;522:17,22;523:2,11, 22;538:23;539:1 solution (6) 431:4,7;434:19;479:23; 550:3,5 solutions (2) 425:24;554:11 solve (6) 337:10;431:23;442:25;443:4, 10;549:10 solved (1) 333:13 solving (1) 549:13 somebody (1) 438:5 somehow (7) 344:22;372:18;395:2; 442:22;507:14;549:7;551:25 Someone (5) 433:16,17;483:15,23;484:2 sometimes (3) 331:20;348:25,25 somewhat (5) 298:15;307:21;460:10; 487:22;532:23 somewhere (6) 290:1;304:11;306:13; 358:16;390:6;477:14 sooner (1) 359:2 sorry (9) 291:4;322:13,18;380:17; 416:3;463:23;492:16;510:8; 529:11 sort (14) 280:8;283:3;284:12;285:21, 22;291:21;296:6;302:7;340:6; 346:10;431:3;510:20;512:15; 522:4 sorts (2) 483:8;509:1 sound (1) 433:11 Sounds (3) 282:15;296:13;491:24 source (63) 300:10;309:19;311:17; 313:12,13;326:16;327:4; 341:17;359:13;363:10,21,23; 380:7;390:11;394:23;395:22, 23;396:21,21;397:1;399:19,23, 24;408:17;419:19,19;420:2,5, 10,16,16,23,24;421:3,4;438:22; 442:3;469:3;482:1,7,14;495:5; 497:13;499:16;500:10,14; 501:24,25;502:1,9;503:19; 505:20;507:15;512:5,5;544:4; 546:10;551:17;555:15,16;</p>	<p>556:9,15,18 sources (3) 301:5;396:12;419:20 source's (1) 418:5 south (2) 352:24;496:3 space (1) 296:9 spare (1) 279:15 speak (2) 396:15;402:18 Speaker (10) 398:25;410:8;412:14;413:5; 426:16;435:16;436:10;437:15; 443:17;549:22 speaker's (1) 436:1 speaking (1) 360:9 special (2) 292:17;557:19 species (28) 274:15;277:24;514:15; 518:5;520:24;521:4;524:22,25; 525:7,11,15,17,20,22;526:3,9, 12,16,25;529:5,5,18;530:7,16, 22;531:7,11;539:25 specific (7) 280:24;391:24;399:7;410:5; 468:21;512:22;525:17 specifically (7) 291:11;318:12;346:11; 417:12;426:14;444:7;517:21 specify (1) 518:19 Speculation (4) 473:21;536:16,24;551:24 spell (2) 317:14;450:19 spelling (3) 378:8;423:11;508:15 spend (3) 418:3;446:5,10 SPF (28) 273:18;280:10,16,25;281:14; 283:15;285:10;287:19;288:4; 289:16;290:10,17;291:14,25; 303:17;355:10,12;368:16; 475:22;476:1;487:5;511:17; 515:23;531:12;532:3;537:9; 550:16;551:11 sportsmen (6) 318:7;336:6;361:3,7,11,14 spread (1) 466:12 spreadsheets (1) 375:3 spring (32) 281:21;285:3;324:20;332:2; 345:19;386:25;390:11;408:16; 413:12,18;421:6;431:25;467:2;</p>	<p>469:2;482:6;483:14;495:5; 502:9;530:13;537:23,24;543:4, 5,7,11,16,25;544:1,4,14;545:1; 556:15 Springfield (2) 274:14;277:20 Springs (200) 273:19,22;280:11;281:17; 282:25;283:8,25;286:6;287:12; 288:5,13;289:21;290:12;291:8; 294:12;298:13,20,24;299:5,8, 11;304:13;308:25;309:1,2,4,11, 13,18,23;310:5,24;311:24; 312:13;315:7;318:24;320:3; 321:19;322:10;323:5,23;324:1, 4;325:4,12;326:17,22;327:8,9, 12;330:8;334:19,23;335:18; 336:22,24;337:9;341:4,12,14, 17,18;343:19;344:6,13;345:2, 17;346:1,5,9,10,14;348:7,8,12, 19;353:5,8,13;355:25;359:4,6, 9,11,17;366:11;367:4;368:11, 13;374:23;375:4;379:15,21,22; 380:14,19;382:10,18;384:14; 385:9;390:13,14;391:1;399:5; 400:6;405:4,17;406:14;407:23; 408:25;409:2,4,23;412:5,7; 414:11,20;415:14,23;416:19; 417:15;420:2,23,24;425:8; 426:20;438:13;439:3,25;440:5; 454:18;465:8,18;467:4;468:7; 474:23;475:3,7,18;477:13; 478:1,14,19;479:1,11;480:6; 483:3,7;487:13;488:10;489:4; 490:8,14,25;494:23;495:8; 498:9;499:12,25;500:8,15,16, 21;501:18,21,25;502:25;503:4, 17;505:16,19,23;506:8,12,16, 17;507:6;509:8;511:2,13,16, 16;517:17;525:1;527:1;528:1; 536:8;537:17,18;539:4,18; 543:14;546:17,20;549:5; 551:24;555:15,22,22;560:2 Springs' (1) 551:21 Springs/Riley (2) 380:7;400:7 square (1) 315:5 stacked (1) 484:9 staff (10) 332:12;412:17;424:7; 425:25;427:25;428:25;434:24; 436:24;440:24;448:7 stage (2) 298:14;321:13 stained (1) 493:6 stall (1) 283:7 stalled (1) 398:5</p>
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<p>stamps (1) 528:12</p> <p>stand (2) 289:10;532:23</p> <p>standards (4) 523:17;524:7;553:10,12</p> <p>standby (1) 276:15</p> <p>standing (3) 326:11,15;332:5</p> <p>standpipes (1) 278:22</p> <p>stands (3) 313:8;456:15;457:22</p> <p>stark (1) 548:22</p> <p>start (23) 270:23;278:16,24;283:13; 300:2;303:1;307:3;318:19; 319:7;396:23;398:14;409:19; 424:13;456:3,4;457:19;480:12; 485:9;493:25;525:9;531:13; 544:15;554:23</p> <p>started (9) 272:14;395:10;424:7,9; 429:23;451:1;456:17,19; 554:10</p> <p>starting (4) 272:23;319:10;543:15,21</p> <p>starts (1) 522:10</p> <p>State (84) 272:11,14,23;281:9;283:19; 295:3;297:6;298:1;300:18; 307:17;308:21;310:4;317:13, 17;340:4;342:16;349:6;352:10, 17,21,24;360:11,15,22;361:10; 378:7,18;398:18;413:24; 423:11;426:12;433:17;434:24, 24;442:25;443:4;445:16; 450:19;452:4;454:11,13,17; 460:9;461:4,7,11,17;462:14; 463:12,16;464:5,9;465:6,16; 466:5;468:10;473:16;483:20; 494:16;502:13,23;507:12; 508:15;510:1;514:20,21,24; 515:1,18;516:24;517:19; 518:21,22,25;521:7,8;523:6,18, 20;526:12;538:23;539:4; 555:24;556:19</p> <p>stated (6) 394:5;419:14;518:24;549:2; 554:25,25</p> <p>statehouse (1) 425:19</p> <p>statement (19) 295:1;351:6;370:13;385:6; 390:4,16,17;391:5;415:8; 417:15;418:1,7,18;433:21; 531:15;542:8,20;545:17; 554:24</p> <p>States (5) 283:20;511:11;513:3;516:5;</p>	<p>517:23</p> <p>State's (1) 523:15</p> <p>stating (1) 270:23</p> <p>station (2) 282:2,10</p> <p>stay (1) 279:3</p> <p>steadily (1) 455:2</p> <p>steelhead (2) 272:22;298:10</p> <p>step (2) 445:25;552:19</p> <p>steps (1) 449:7</p> <p>Steven (1) 427:24</p> <p>Stevenson (1) 445:7</p> <p>still (13) 277:5;283:5;297:14,22; 303:16;329:8;360:17;412:5; 464:2;470:25,25;537:20; 538:25</p> <p>stipulate (6) 371:4,7,14,25;372:6;381:10</p> <p>stipulated (5) 371:3;376:10;402:8,12,16</p> <p>stipulation (19) 370:19;371:1;372:4,6,15,18; 373:1,14,19,21,25;375:12; 376:9,15;401:8,12,25;558:15; 559:17</p> <p>stipulations (2) 370:4,9</p> <p>stock (8) 352:15,17,23;353:2;360:7, 10,19,21</p> <p>stocked (4) 352:11,16;353:1;360:14</p> <p>stocking (5) 336:6;361:3;472:24;474:9,14</p> <p>stop (1) 444:23</p> <p>stopped (2) 282:25;333:18</p> <p>stops (2) 330:13;490:14</p> <p>strain (3) 463:11,12;464:16</p> <p>strains (1) 463:15</p> <p>Strategic (1) 350:13</p> <p>strategies (1) 465:4</p> <p>strategy (2) 481:18;549:3</p> <p>stream (5) 298:7;521:24;522:1,12,19</p> <p>streamlined (2)</p>	<p>512:15,20</p> <p>streams (3) 364:25;511:13;522:2</p> <p>stress (3) 457:6;480:22;490:3</p> <p>stressed (1) 303:9</p> <p>stressing (1) 457:9</p> <p>stressors (3) 471:18;480:22;481:1</p> <p>Strike (4) 294:19;421:1;454:8;472:21</p> <p>Strong (14) 428:6,22;429:10,17;430:7; 432:14;433:17;434:1;438:5,12; 440:18,20;442:8;448:8</p> <p>structure (8) 320:10;324:21;328:4;329:2, 21;511:25;512:1;537:17</p> <p>structures (4) 513:12;514:1;532:17;537:24</p> <p>struggle (1) 529:15</p> <p>studies (1) 421:15</p> <p>subject (2) 369:1;542:22</p> <p>submerged (1) 348:25</p> <p>submit (1) 376:21</p> <p>submitted (1) 383:23</p> <p>subsequent (6) 413:5;436:9,9;437:3;441:10; 447:19</p> <p>substitute (1) 558:5</p> <p>success (1) 472:3</p> <p>successful (2) 491:23;526:17</p> <p>successfully (1) 552:5</p> <p>suffer (1) 280:2</p> <p>sufficient (4) 277:6;413:13;415:4;515:10</p> <p>suggested (5) 309:8;353:7;359:13;411:21; 442:22</p> <p>suggestion (1) 344:21</p> <p>suitable (10) 289:18,21,23;291:9,10,23; 299:12;486:11;551:20;552:7</p> <p>sum (1) 553:9</p> <p>summarize (2) 374:3;509:20</p> <p>summary (8) 342:15;347:7;383:22;384:8;</p>	<p>386:18;387:11;460:15;548:19</p> <p>summer (1) 276:6</p> <p>summoned (2) 426:12,14</p> <p>sump (2) 506:18,19</p> <p>sunlight (1) 357:1</p> <p>supersaturated (1) 334:12</p> <p>supersaturation (7) 333:9,17;334:5;357:8;479:3, 9,15</p> <p>supervised (6) 271:18;272:19;274:22;275:2, 4,8</p> <p>supervisor (1) 279:19</p> <p>supplement (1) 364:21</p> <p>supplemental (1) 368:10</p> <p>supplementation (8) 327:11;328:1;329:10,15; 330:16,25;348:14;368:12</p> <p>supplied (1) 406:9</p> <p>supplies (3) 301:15;322:11;431:23</p> <p>supply (26) 274:1;283:16;285:11; 297:17;298:21,22;356:18; 364:21;399:6;409:24;413:25; 414:6;425:8;426:7;441:24; 445:21;446:1;454:25;467:19; 468:20;469:17;470:13;500:1; 551:13,21;552:7</p> <p>supplying (1) 468:23</p> <p>supports (1) 532:14</p> <p>suppose (4) 377:9;402:9;501:3;547:9</p> <p>sure (36) 277:17;306:6;309:18; 310:21;332:8;342:18;343:4; 348:5;352:1,3;354:8;373:10; 374:5,9;375:8;403:5;410:17; 413:10;415:19;425:2;428:17; 435:22;439:1;440:6;445:19; 448:12;465:1;473:25;489:11; 491:4;504:10;507:9;511:7; 512:11;540:9;558:4,6</p> <p>surface (9) 356:3,7;435:6;436:14; 448:13,25;506:24;530:12; 538:3</p> <p>surprised (1) 535:23</p> <p>surrounding (2) 340:8;353:4</p> <p>surrounds (1)</p>
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<p>340:11 survival (2) 294:5,15 survive (2) 283:6;306:24 survivors (2) 296:4;462:16 susceptible (2) 303:12;466:15 suspect (4) 314:20;329:11;350:3;363:2 suspected (1) 349:3 suspended (8) 470:17;522:17,22;523:2,11, 22;538:23;539:1 sustain (1) 413:13 sustainable (1) 543:24 Sustained (4) 400:19;420:14,20;474:16 swallow (1) 557:16 Swan (2) 413:13;443:7 swear (1) 542:11 swim (3) 494:23;501:16,20 switch (3) 278:17;279:12;303:18 sworn (8) 270:12;317:3;377:21;423:3; 450:8;508:5;542:16;545:22 system (34) 273:20;276:3,22;278:24; 280:25;281:20;283:15,24; 284:10,11,13;285:10;301:14, 17;311:4,10;319:9;385:5; 389:10;467:14,17;468:23; 469:5;479:5;480:5,7;482:9; 483:6,25;490:14;500:3,21; 502:4;551:16 systems (5) 277:25;282:13;283:21; 285:7;478:10</p>	<p>304:3;306:7;311:12;312:6; 315:1;367:11;397:24;409:8; 419:10;436:4;447:25;474:24; 478:24;483:24;484:18;516:22; 520:19;533:1,2 talking (17) 298:23;300:6;301:22; 306:22;322:19;336:23;352:9; 365:23;366:12;368:15;454:18; 460:21;463:15;465:15;469:9; 536:10;551:6 talks (1) 445:15 talus (1) 498:18 targeted (1) 543:5 tarp (1) 348:8 task (2) 273:18;509:7 teams (1) 273:11 technical (3) 423:19;424:8,11 technically (1) 489:23 technology (2) 423:21;559:11 tells (1) 304:11 temper (1) 276:6 temperature (12) 290:16,22;291:8;292:17; 299:12;478:14,18,21;486:12; 551:20;552:25;553:6 temperatures (1) 284:12 temporary (3) 283:7;511:12;532:12 tempting (1) 484:21 ten (12) 316:10;366:21;403:25; 404:3;412:6;424:19;485:14; 541:11,14,21;545:1;559:19 tens (1) 532:1 tenth (1) 514:18 tenure (1) 280:4 term (18) 411:22;431:23,24;435:16; 436:25;438:17;439:18;443:13; 444:2;445:13;446:4,21;461:23; 462:16;481:15;505:21;506:20, 22 terminology (1) 539:16 terms (11) 278:11;282:12;371:23;</p>	<p>457:9;462:17;463:25;464:16; 469:5;482:15;484:25;489:15 test (19) 285:21;289:16;305:15,20,21; 349:12;367:14;493:8,13,14,17, 21;494:1,2,7,12;499:6,10,14 tested (4) 286:18;305:17;492:24; 499:20 testified (49) 270:13;271:4,7;273:24; 274:25;275:14;311:14;317:4; 351:1;356:10;358:14;359:20; 377:22;380:2;386:3;387:14; 388:14;392:9;394:4;395:9; 399:19;416:17;417:2,25;418:3; 419:18;423:4;439:2;450:9; 477:2;486:18;488:15;490:1; 492:21;499:6;501:19;508:6; 515:4;520:1;536:7;537:15; 539:25;542:17;545:23;553:4; 555:3,11;556:9,10 testify (7) 375:24;390:24;396:22; 401:7;480:11;489:20;536:12 testifying (6) 271:2;400:18;473:14; 532:18;550:25;551:5 TESTIMONY (64) 268:4,7,15,22,23,24,25; 281:15;282:1;286:3;292:10; 299:7;300:3;304:5;312:2; 314:6;325:21;355:24;366:14; 370:3;382:8;390:18;403:15,15; 404:23;405:14;416:20;417:5; 439:4,7;455:12;476:10;485:24; 488:19;517:1,5;527:11;529:17, 21,23;531:12,18,19;535:8; 536:15,22;537:11,16,20;542:1; 543:1;546:1,3,16;548:6,9; 549:12;551:18;555:8,9;556:11, 11,23;557:3 testing (23) 285:17,19,20,22;286:11,24; 303:16;305:2,10,11;310:19; 338:5;366:10;367:9;453:3,20, 22;454:6;479:10;486:8;492:13; 499:25;502:20 tests (11) 286:21;287:1;367:6,11; 452:17;453:3,21;475:2,6; 478:25;506:2 tetracapsuloides (1) 345:15 thanks (10) 270:22;369:9,21;378:17; 404:4;545:25;559:8,10;560:10, 11 theoretically (1) 313:14 thermal (1) 275:24 thing's (2)</p>	<p>556:22;557:3 thinking (4) 326:11;343:3;385:25;559:20 third (8) 284:10;289:9;371:14;372:5; 495:14;554:8;556:24;558:18 THOMAS (2) 270:11,25 though (4) 311:24;351:24;506:7;552:1 thought (7) 395:9;397:20;434:7,17; 448:1;490:3;527:6 Thousand (5) 399:5;409:23;425:8;426:20; 549:5 thousands (1) 532:1 threat (1) 530:21 threatened (7) 525:19,24,25;526:25;529:5, 18;530:6 three (12) 275:17;281:11;282:2; 297:10;332:3;335:9;364:17; 393:21;433:25;441:10;490:25; 505:11 three-page (1) 511:1 throughout (11) 283:19,19;343:17;345:21; 352:21,24;360:10,14;382:8; 398:18;426:25 throw (1) 556:25 tie (1) 532:8 ties (1) 468:2 time-consuming (1) 398:4 timeline (4) 518:23;519:24;520:1;535:23 timelines (1) 537:10 times (17) 281:3;309:8;359:12;371:12, 21;385:10;396:20;398:13; 455:11;458:19;465:24;471:25; 473:5;492:25;493:24;504:19, 20 T'ing (1) 532:4 title (2) 317:24;350:11 TJ (94) 268:9,11,13,17,19,21;270:7, 18,21;272:3,11;293:11,16; 294:25;299:15;310:12,15; 312:5,24;314:1,4;315:14; 316:4;332:24;338:16;346:18; 347:15;350:23;354:7,9,20,21;</p>
<p style="text-align: center;">T</p> <p>Table (15) 288:2,6;290:18;303:22; 304:9;379:24;392:12,14,23; 470:3;487:4,6,7,8;544:10 tables (1) 304:21 tailrace (1) 335:15 talk (12) 377:10;382:7,9;415:11; 426:9;459:25;474:21;479:6; 481:22;505:18;552:11;559:7 talked (19)</p>	<p>tens (1) 532:1 tenth (1) 514:18 tenure (1) 280:4 term (18) 411:22;431:23,24;435:16; 436:25;438:17;439:18;443:13; 444:2;445:13;446:4,21;461:23; 462:16;481:15;505:21;506:20, 22 terminology (1) 539:16 terms (11) 278:11;282:12;371:23;</p>	<p>tests (11) 286:21;287:1;367:6,11; 452:17;453:3,21;475:2,6; 478:25;506:2 tetracapsuloides (1) 345:15 thanks (10) 270:22;369:9,21;378:17; 404:4;545:25;559:8,10;560:10, 11 theoretically (1) 313:14 thermal (1) 275:24 thing's (2)</p>	<p>times (17) 281:3;309:8;359:12;371:12, 21;385:10;396:20;398:13; 455:11;458:19;465:24;471:25; 473:5;492:25;493:24;504:19, 20 T'ing (1) 532:4 title (2) 317:24;350:11 TJ (94) 268:9,11,13,17,19,21;270:7, 18,21;272:3,11;293:11,16; 294:25;299:15;310:12,15; 312:5,24;314:1,4;315:14; 316:4;332:24;338:16;346:18; 347:15;350:23;354:7,9,20,21;</p>

<p>355:2,7;361:16;363:5,8,14,18; 364:1;365:5,8,16,24;366:4; 367:19,22;368:2,25;404:12; 451:17;463:21;473:21,23; 474:2,12;485:10,17,20;501:4; 503:11,14;504:1;510:6;515:8, 11,16;516:20;519:5;520:11; 524:12;526:23;527:6,12,17; 528:10;529:14;532:18,20; 533:24;534:18,19,22;540:19; 541:19;545:6,7;546:24,25; 547:4,10,18;558:3,21</p> <p>TMDL (12) 335:22;358:10;521:21;522:1, 7,18,20;523:14,19;524:1,6; 538:20</p> <p>TMDLs (12) 357:23;521:1,3,11,24;522:2, 11,12;523:25;538:19;539:8,9</p> <p>today (21) 270:4,22;271:2;355:20; 361:13;369:21;370:8;378:10; 390:25;391:4,6;404:24;412:6; 455:12;457:22;460:1;462:7; 473:13;537:1;544:2;546:8</p> <p>together (1) 392:2</p> <p>told (1) 557:6</p> <p>Tom (12) 270:7,22;271:22;272:11; 285:25;288:1;290:16;293:4; 294:25;299:23;310:16;551:18</p> <p>took (12) 289:16;290:10,17;349:6; 357:5;391:18,22;393:9,21; 400:5;415:13;487:15</p> <p>tool (1) 296:17</p> <p>top (12) 288:5;320:11;332:2;339:7; 345:14;378:11;383:5;385:24; 482:8;487:7;518:24;544:21</p> <p>topography (1) 506:23</p> <p>total (13) 384:13;388:10,18;390:4; 391:25;392:2,5;490:4;523:11, 11,22;538:22,25</p> <p>totally (1) 469:4</p> <p>tough (3) 291:1;295:22;305:15</p> <p>tour (3) 444:10,13,25</p> <p>toward (2) 327:6;509:10</p> <p>towards (5) 325:11;328:13;330:15; 506:24;519:22</p> <p>training (1) 471:6</p> <p>transfer (13)</p>	<p>278:16,17;320:16;322:23; 324:8,9;325:18;336:14,23; 397:1;406:18;407:12;553:15</p> <p>transference (1) 311:3</p> <p>transferred (2) 407:8;463:3</p> <p>transmitted (3) 463:2;466:14;494:19</p> <p>transport (2) 284:3;560:4</p> <p>transportation (1) 301:6</p> <p>transported (4) 294:13;312:13;314:22; 359:15</p> <p>transporting (1) 512:4</p> <p>transports (1) 497:10</p> <p>travels (2) 483:14;505:14</p> <p>treat (8) 295:24;297:3;343:13;360:2; 361:6;362:8,10;471:25</p> <p>treated (1) 296:11</p> <p>treating (2) 296:19;491:23</p> <p>treatment (2) 308:9;343:14</p> <p>trending (1) 455:1</p> <p>trial (1) 481:7</p> <p>trials (1) 455:10</p> <p>tributaries (1) 379:11</p> <p>tried (4) 405:8;470:12;504:14;556:14</p> <p>trigger (1) 332:6</p> <p>trouble (2) 411:18;553:19</p> <p>trout (18) 289:18,21,23,25;290:22; 291:11;292:14,18,21;294:14, 15;299:8,13;466:1,4,5;486:12; 551:21</p> <p>truck (1) 301:7</p> <p>trucks (1) 301:6</p> <p>true (38) 294:11;304:7;346:2,9; 385:14;390:16,17,19;409:5,7; 417:21,22,23;418:7;427:3,4; 432:10,11;434:4;439:9;444:8; 445:4,5,9;488:24;496:6; 500:19;512:12;518:9;524:22; 525:22,24;530:1;555:17; 556:11,19;557:5,10</p>	<p>truncated (1) 512:18</p> <p>truth (8) 270:13;317:3;377:21;423:3; 450:8;508:5;542:16;545:22</p> <p>try (16) 295:21;296:7;298:12; 340:20;349:20;393:25;395:6; 418:6;428:12;443:10;470:7,17; 494:1;526:12;543:3;548:18</p> <p>trying (8) 295:1;308:7;394:6;443:3; 457:20;463:25;481:13;549:10</p> <p>tube (4) 333:14;339:24;357:14,14</p> <p>Tucker (186) 273:19,22;280:11;281:16,20; 282:25;283:8,25;286:6;287:12; 288:5,12;289:20;290:12;291:8; 294:12;298:13,20,24;299:4,8, 11;308:24;309:1,4,11,13,18,23; 310:5,23;311:23;312:13; 318:24;320:3;321:19;323:4,22; 324:1,4;325:4,12;326:22; 327:8,9;330:8;334:19,23; 335:18;336:22,23;337:9;341:4, 11,13,18;343:18;344:6,13; 345:2,17;346:1,4,9,10,14; 348:6,8,19;353:5;355:25; 359:4,6,9,11,17;366:11;367:4; 374:23;375:4;379:15,21,22; 380:6;382:9,18;383:25;384:15, 25;385:9;387:12;390:13;391:1, 19;392:1,3;393:25;400:5,7; 405:4,17;406:14,19,21;407:23; 408:25;409:2,4;414:11,20; 415:14,22;416:19;417:14; 420:2,22,24;438:13;439:3,19, 21,25;440:5;454:18;465:8,18; 467:4;468:7;469:1;474:23; 475:2,7,18;477:13,25;478:14, 19;479:1,11;480:6;483:3,7; 487:13;488:10;490:8,14,25; 494:22;498:9;499:12,24;500:8, 16,21;501:18,21,25;502:25; 503:4,17;505:18,23;506:8,16, 17,17;507:6;509:8;511:2,15, 16;517:17;525:1;527:1;528:1; 536:8;537:17,18;539:4,18; 543:4;546:16,20;551:21,24; 555:15</p> <p>tunnel (19) 468:22;482:22,23,24,25; 483:7;484:24;488:3;490:17; 495:22,25;496:12,15;498:25; 505:5,17,24;506:14;507:8</p> <p>turn (9) 293:4,7;316:15;355:3,9,10; 371:24;386:16;487:4</p> <p>Twin (3) 392:21;454:8;516:11</p> <p>two (38) 276:14,17;284:11;298:7;</p>	<p>341:5;402:4;412:20;421:6,21; 424:9;428:1;432:1;435:8,13, 15,15;436:9;441:10,15,18; 475:25;490:10,15,25;496:23; 504:23;505:2;506:5;510:25; 513:20;517:16;522:19;551:9; 552:15;553:20,24;555:13; 558:2</p> <p>two-minute (1) 375:7</p> <p>type (12) 271:8;285:19;286:10; 304:13;307:10;407:25;432:3; 459:19;479:5;514:9;532:4; 533:4</p> <p>typed (2) 429:5,6</p> <p>types (8) 286:17,20;287:8;457:18; 472:2;498:22;500:25;512:22</p> <p>typical (1) 334:4</p> <p>typically (18) 295:14;304:6;454:3;459:5; 462:11;468:11;476:25;487:24; 488:1,4;493:3;508:24;512:12; 525:10;530:23;531:1;535:20, 25</p>
U			
			<p>ultimately (2) 429:2;517:5</p> <p>uncommon (1) 295:9</p> <p>undeniable (2) 555:14;556:8</p> <p>under (25) 271:14;285:4;292:25;302:1; 303:25;315:4;371:19;399:9; 400:11,24;405:19;407:17; 412:11;413:19;446:21;453:24; 472:14;479:17;483:6;488:21; 526:3,9;544:15;553:10;557:2</p> <p>underneath (2) 331:21;544:8</p> <p>understood (13) 283:25;310:21,22;314:11; 315:3;335:21;394:20;437:4,5; 485:25;486:16,22;492:21</p> <p>undertake (1) 442:24</p> <p>undisputed (1) 551:15</p> <p>unfortunate (2) 549:18,24</p> <p>unfounded (1) 534:5</p> <p>Union (1) 509:24</p> <p>United (5) 283:19;511:10;513:3;516:5; 517:23</p>

<p>units (2) 471:17;504:17</p> <p>University (3) 271:13;452:5;510:1</p> <p>unknown (2) 309:20;348:1</p> <p>unless (1) 402:19</p> <p>unrebutted (2) 551:11,22</p> <p>unsuitability (1) 292:13</p> <p>unsuitable (2) 287:16;299:8</p> <p>unusual (2) 446:12;481:14</p> <p>unwarranted (1) 526:20</p> <p>up (129) 271:20,22;274:7;276:7,9,19; 278:8,20;280:7,7,13;281:19; 283:3,4;285:23;286:1,3; 287:23,24;293:2;296:3;298:11, 15;301:6,11;303:5,18;306:4; 307:3;310:23;311:4,7;313:10, 19;314:16;318:22;320:17,21; 321:3;322:14,14,21;324:13,14; 327:1;328:13;337:2,16,17; 341:4;342:9;343:3;349:10; 352:23;354:7,22;357:3,4,19; 358:16;363:20;365:16,19,25; 368:13;378:11;379:17;380:9, 10;382:5;383:13,15;385:15,16; 387:7,24;388:21,23;389:18; 391:13;392:11;398:20;419:8; 424:8;430:17,22;436:3;438:2; 445:25;460:18;464:11;467:4; 470:13,14;473:3;477:1;483:9; 484:10,15;486:13,25;488:3; 493:4;494:24;495:13;496:17; 501:17,20;503:22;507:10; 510:10,23;513:16;519:1;524:3; 525:4;540:6;543:11;544:4,8,9, 21,23,24;550:11;553:25;555:5; 556:2,25</p> <p>update (1) 540:10</p> <p>upon (14) 294:5,16;304:6;352:10; 371:7,17;373:25;396:18; 404:24;461:9;528:5,13;553:14, 16</p> <p>upper (90) 281:20,20;319:11,14;320:2, 3;321:22;322:10,22;323:4; 324:20;325:9,11,11,13;326:22; 327:8,9;328:2,6,13,13,18,23; 329:16,24;330:8;335:18; 336:23;337:9;348:18,19;353:5, 8;355:24;363:11;366:11; 368:20,21,23;379:21,22;382:9, 18;383:24;384:14,15,25; 387:12;390:13,14;391:19,25;</p>	<p>392:3;393:24;405:16;406:14, 15,19,20,20;407:1;417:14; 420:1,24;421:3,7,8,11;468:7; 495:8;498:9;499:12,24;500:7, 16;501:18,21,25;503:4,17; 506:17;521:21;522:1;537:17; 543:4;544:4,16;546:19;560:2</p> <p>upstream (2) 498:2;527:25</p> <p>upwelling (1) 506:9</p> <p>usage (1) 297:3</p> <p>use (30) 273:25;274:3;275:14; 276:17;283:18;284:2,14; 288:23;289:4;290:11;298:1,4; 359:17;371:20;381:6;395:7; 401:6;404:25;405:4;406:5; 418:17,22,24;419:1;457:3; 471:24;473:1;476:6;487:2; 514:21</p> <p>used (25) 275:21,22;284:18;306:19; 307:3;318:22;332:12;343:1,8; 352:2;363:23;385:1;398:17; 405:23;463:24,25;469:6; 470:16;472:6;493:11;506:20, 22;543:8;551:16,17</p> <p>user (2) 435:11;448:25</p> <p>users (30) 385:2;394:10;399:13;410:7, 14;413:24;417:3,7,12,14; 418:4;419:7;421:25;432:3; 435:6;436:14;444:3,17,18,20; 445:24;448:13,19;449:4,6,8; 549:4,12,23;550:4</p> <p>uses (10) 274:8,9,11,25;275:5;277:4; 292:20;364:18;496:8;507:12</p> <p>using (5) 284:8;329:24;368:4;463:18; 539:15</p> <p>usually (6) 277:11;278:19;288:23; 343:14,22;523:7</p> <p>utility (3) 513:13;514:4;517:21</p> <p>utilized (2) 281:23;315:12</p>	<p>333:20,24;334:15</p> <p>valves (1) 278:4</p> <p>variable (3) 457:20;481:7,11</p> <p>variables (1) 489:14</p> <p>varies (3) 331:25;360:23;364:15</p> <p>various (23) 345:22;381:8;382:7;396:12; 418:4;419:13;425:2;445:23; 452:17,18;453:3,21;460:15; 461:5;463:14;468:24;469:9; 470:17;476:7;480:20,21; 489:21;523:4</p> <p>vector (2) 457:18;495:2</p> <p>vectors (2) 469:21;503:23</p> <p>ventured (1) 391:7</p> <p>verify (1) 489:18</p> <p>version (3) 429:22;430:1;487:3</p> <p>versions (1) 426:6</p> <p>vessels (1) 480:1</p> <p>via (1) 428:21</p> <p>vibration (1) 544:9</p> <p>vice (1) 546:6</p> <p>view (1) 326:5</p> <p>vinyl (1) 356:25</p> <p>viral (4) 296:1,2;342:1;462:25</p> <p>virulence (2) 463:13;464:17</p> <p>virus (13) 343:13;455:24,24;456:4,6, 16;461:18;462:24;463:1,4,10, 15;493:12</p> <p>viruses (4) 296:16,17;305:6;503:17</p> <p>visited (5) 281:3;331:18;515:17,20; 536:8</p> <p>vitae (3) 451:11,13;485:25</p> <p>Voir (6) 268:9,17,19;474:1;515:15; 527:16</p> <p>volume (1) 412:6</p> <p>volumes (1) 394:19</p> <p>vulnerable (1)</p>	<p>298:14</p> <p style="text-align: center;">W</p> <p>W&H (1) 424:22</p> <p>waive (1) 372:24</p> <p>walk (1) 324:15</p> <p>wall (1) 556:25</p> <p>Walla (4) 516:4,4,9,9</p> <p>wants (1) 366:2</p> <p>washed (1) 469:13</p> <p>waste (1) 470:20</p> <p>watch (2) 557:14,14</p> <p>water (516) 273:19;274:1,3,8,10,13,19; 275:15,18;276:1,2,6,13,16,25; 277:2,9,10,13,16;278:20,22; 279:2,3;280:16;281:19,21; 282:19,21,22,25;283:4,6,12,16, 20,25;284:3,5,15;285:11,14,20; 286:6,10,12,14,16,21;287:8,11, 15,18;288:4,15;289:2;290:12, 21;291:8,15,19,23;292:14,17; 294:12;295:20,21;296:6,8; 297:16,18;298:1,5,6,13,17,20, 21,22,24;299:8,12;300:7,10,17, 17;301:11,15;302:13;303:17; 304:10,12,19,24;305:4,14; 306:19,22,25;307:10,12;309:1; 310:19,23,25;311:16;312:7,11, 13;313:12,13,14,15,18;314:10, 11;315:6;318:20;320:3,5,25; 321:5,9,21;322:4,11,23;323:8, 10,14,16,19,22;324:1,4,8,9; 325:3,4,5,14,18,22,23;326:16; 327:5,12,14;328:2,2,10;329:3, 7,9,9,15,19,21,24;330:9,13,13, 17;331:1,6,14,20,24;332:2,3,7, 13;333:17;334:12,18,23;335:8, 12,15,17,19;336:12,17,23; 337:9,14;339:19,24;341:17; 344:23;345:2;347:7,8;351:20; 355:22,25;356:3,4,7,18;357:24; 359:1,3,4,8,10,11,13,18; 360:14;362:20,25;363:10,21, 23;364:11,12;368:4,10,14,21, 23;369:2;370:20;371:11,19; 374:16,18,22;375:3;378:20; 379:1,3,7,7,14;381:8;383:22; 384:9,19,25;385:1,8,13;386:9, 17,22;387:1,15;388:6;389:7,10, 13;390:10,15,19;392:21; 393:24;394:1,16,18;395:2,3,14, 22,23;396:5,6,11,21,22,23;</p>
--	---	---	--

<p>397:1,9,20;398:2;399:6,20,23,23;400:5,6,11,24,24;401:3,3,8,15;402:10,13;403:6;404:25;405:3,16;406:2,3,5,14,18,25;407:4,17;409:2,10,20,24;410:7;411:3,19;412:8;413:18,24,25;414:5,11,15,19,20;415:3,4,12,13;417:4;418:1,14,17,23;419:3,4,19;420:5,8,9,10,15,17;421:25;422:3;423:16,20;424:2,6,7,11,12,14,25;425:8,16;426:7,19;430:5;431:20,23;435:6,11;436:14;438:4,19,21,22;440:1,9;441:22,23,25;442:3,25;443:4,10,22;444:3,18,20;445:6,21;446:1;448:13,25;449:4,6,8;453:4,21;454:4,23,25;455:3,6;458:11,20;463:2,2,4;464:10;466:15;467:2,19;468:2,15,19,20;469:1,3,17,24;470:2,3,13;471:1,16;474:22,22,23;475:2,7;476:6,10,15,17;477:9,22,25;478:14,19;479:2,17,19,22;480:10;482:1,14,21,22;483:1,5,8;484:12,15,20,22;485:1;487:5,21;488:1;489:7,13;490:2,13,16,21,25;492:15,17,19;494:7;495:25;496:8;497:9,10,13,23;498:1,10,12;499:1,5,7,16;500:1;505:11,14,22,23,25;506:7,8,23,24;507:2,4,12;508:20,25;509:1;512:4;530:14;535:18;538:13;539:3;543:4,6,15;544:10,11,22;546:9,10,12,15,19;547:13;549:10;550:7;551:19,20,20;552:12;553:5,20;554:15;555:15;557:1,7,8</p> <p>watermaster (17) 378:20,22,25;379:4;390:21;394:23;396:2;397:20;400:2;404:21;405:10;406:11;407:15;408:16,24;413:10;414:7</p> <p>water-quality (22) 285:16;286:5;287:19;291:13,17,25;292:2;303:15,23;304:21;305:11;453:3,19;478:13,25;486:8;487:5;508:24;518:5;520:25;523:17;524:7</p> <p>water-right (2) 402:5;554:11</p> <p>waters (10) 274:12;352:16;360:12;511:10;512:3;513:3;517:22;531:16;538:2,24</p> <p>waterway (2) 531:20,23</p> <p>waterways (6) 360:7,10;361:8;474:8,13;532:17</p> <p>way (44) 281:18;283:16;284:10;285:11;314:10,10,25;321:3,4;</p>	<p>325:14,14;327:15;328:9,10,15;352:6,23;356:10,12,13;358:9;362:25;370:25;381:7;389:6;395:6;403:19;431:12;434:17;440:13,15,21;446:6;461:2;472:10;484:22;495:1;506:9,13;507:5,9,14;521:24;549:14</p> <p>Wayne (1) 410:12</p> <p>ways (5) 308:10;362:10;431:22;477:21;500:20</p> <p>WEAVER (11) 268:4;422:22,23;423:1,13,17;424:4,23;432:8;447:14;449:25</p> <p>W-e-a-v-e-r (1) 423:13</p> <p>website (2) 519:21;525:10</p> <p>Wednesday (1) 427:10</p> <p>week (5) 350:6;543:20;554:8;558:21;559:19</p> <p>weekly (1) 384:3</p> <p>weeks (6) 281:4;332:3,3;393:9;428:24;441:16</p> <p>weir (6) 325:3;332:13,17;543:18,19,20</p> <p>weirs (1) 391:22</p> <p>welcome (1) 507:22</p> <p>wells (17) 274:11,16,18,19,20;275:16,17,20,22;276:17,23;277:5,17,18;284:18;300:8,8</p> <p>weren't (4) 434:9;439:6;446:24;448:2</p> <p>west (3) 321:5,7;352:24</p> <p>wetland (2) 531:20,24</p> <p>wetlands (9) 511:13;513:3;514:17;532:15;537:25;538:5,6,8,16</p> <p>whatever's (1) 362:19</p> <p>What's (28) 289:24;290:21;325:2;338:23;343:14;347:3;365:15;366:15;371:22;387:2;391:12;393:12;395:7;398:3;402:13;409:23;425:6;460:1;476:23;495:21;496:4;497:23;501:24;502:5;548:10,11;550:21;556:5</p> <p>Whenever (1) 479:17</p> <p>Whereas (1)</p>	<p>483:7</p> <p>white (2) 355:23;496:23</p> <p>whole (8) 296:2;297:11;340:23;380:24;396:1;444:10;529:10;539:13</p> <p>who's (6) 316:9;398:8,8;474:14;548:24,25</p> <p>wildlife (9) 340:5,8,15;525:10;528:6,14;530:5,20;531:2</p> <p>willing (1) 352:1</p> <p>winter (3) 275:23;332:2;398:6</p> <p>wintertimes (1) 275:25</p> <p>wiped (1) 301:10</p> <p>wire (1) 340:23</p> <p>wish (2) 403:8;545:16</p> <p>within (24) 284:3;288:16;291:5;301:23;303:1;379:7;394:21;397:22;400:7;427:20;480:22;509:3;511:13;513:3;516:4;522:6;526:6;527:4;532:14,17;537:24;538:4,8,15</p> <p>without (9) 283:12;351:9;420:17;509:19;531:24;532:9;538:7,12,14</p> <p>witness (41) 270:6,12;312:3;317:2;319:4;377:12,20;381:6;401:6;422:21;423:2;450:1,7;473:24;504:10;507:22,23;508:4;515:12;516:21;527:4,9,12;529:11;532:24;541:7,8;542:9,15,21,24;543:3;545:15,21;546:5;547:3,7,13;548:5;552:2,14</p> <p>witnesses (6) 316:3;323:3;370:2;542:2,4;553:23</p> <p>wood (1) 320:10</p> <p>word (2) 469:6,7</p> <p>words (8) 281:14;302:11;315:20;347:25;417:12;419:3;432:5;475:6</p> <p>work (20) 272:12;281:17;337:1;394:2;449:8;453:5;454:12,16;459:3;486:8;508:25;513:3;517:16;518:11;521:24;531:19,23;533:4;550:8;559:18</p> <p>worked (12)</p>	<p>271:11,15;272:17;273:14;281:4,11;297:10;300:4,15,21;307:15;424:21</p> <p>workers (1) 482:13</p> <p>working (11) 272:14;297:12;318:15;424:10,13;448:3,7;455:22;482:16;490:14;510:1</p> <p>works (1) 430:4</p> <p>worry (1) 525:8</p> <p>worse (1) 345:17</p> <p>wrap (1) 438:1</p> <p>write (1) 531:2</p> <p>writing (1) 376:21</p> <p>written (1) 451:4</p> <p>wrong (6) 442:23;443:1;451:3;539:15;548:25;552:16</p> <hr/> <p style="text-align: center;">Y</p> <hr/> <p>year (29) 342:25;343:1;359:12;364:15;371:13;384:10;386:18;387:21;388:4;391:1,2;396:5;397:16,18,18,25,25;412:21;418:9,10;423:25;517:6;519:1;524:3;526:14;543:24;556:22;557:4,9</p> <p>years (36) 271:12,17,17;273:4;279:18,19;281:12;297:10;317:20;318:2;343:25;345:18;356:22;359:21;360:23;371:13;393:22;412:7;422:1;424:15,19;450:25;454:21;457:12;460:14;465:2;486:1,16,23;510:2;543:11,14,18;545:1;552:6;553:4</p> <p>Yep (1) 509:14</p> <p>yesterday (6) 280:20;282:1;286:4;312:9;395:21;408:20</p> <p>York (1) 509:25</p> <p>younger (1) 462:12</p> <hr/> <p style="text-align: center;">Z</p> <hr/> <p>Zealand (3) 353:2;357:3,4</p> <p>zone (1) 482:4</p> <p>zoom (5)</p>
--	--	--	---

321:2;337:18;338:8;487:6; 495:15	120 (2) 276:19;535:9	342:16;557:6	373:24;374:17;376:2,3,6; 402:6
1	120-day (1) 518:16	2	2022 (2) 285:24;286:2
1 (14) 287:25;288:2;303:16,22,22; 321:16;335:9;360:25;487:4,6; 495:16,18;497:2;506:4	13 (1) 328:25	2 (6) 287:25;290:14,18;360:24; 361:1;368:17	2023 (2) 285:24;286:2
1.7 (2) 281:22;284:6	14 (3) 329:4;338:10;342:17	20 (13) 317:20;318:2;332:11; 343:24;368:9;384:16,19,25; 385:8,13;490:2;543:4,18	2024 (3) 495:13,19;497:21
1.8 (2) 281:22;284:1	14-inch (3) 281:23;468:3;497:10	20- (1) 526:7	2031 (7) 342:11;345:5;346:17,25; 347:1;460:20;465:11
1/2 (3) 321:16;445:17;510:2	14th (2) 391:21;449:5	200,000 (1) 543:24	2032 (3) 350:4,5,20
10 (23) 281:19;283:11;303:1; 327:24;335:17;336:8,12;337:9; 13;357:13;400:5;406:24;407:8; 12,16;410:24;420:1;438:19; 480:12;484:15;539:7,18; 546:13	15 (3) 271:17;329:12;392:22	2000 (1) 338:2	2033 (9) 324:12,17;326:2,13;332:23; 333:6,7;355:6,7
10.3-something (1) 385:25	15-minute (1) 392:19	2000A (1) 381:7	2040 (4) 347:3,13,21,22
100 (13) 274:6,10,14;275:15;276:14; 277:11,16;300:6,7,16,17; 311:15;419:4	15th (2) 444:4;449:5	2004 (1) 342:16	2041 (7) 337:16,20,22;338:14,20,21; 475:12
11 (1) 328:16	16 (5) 322:12;323:14;329:17; 330:11;335:10	2006 (1) 380:9	2042 (7) 338:23;353:22;354:2,4,16, 17;475:14
11.87 (4) 386:1,9,22;387:3	16th (1) 444:11	2006A (6) 380:10,17,20;381:3,15;382:1	2047 (3) 373:24;374:19;375:25
11:00 (1) 369:8	17 (4) 276:16;323:20;330:3;560:3	2006A-2006I (1) 382:3	2047-2049 (1) 376:6
111 (2) 303:17,23	17.9 (1) 543:20	2006I (1) 382:1	2048 (3) 373:24;375:2;376:1
1110 (15) 398:20,21,24;399:5;409:24; 411:9;419:11,11;425:3,6; 428:9;429:7,14;433:5;439:13	17.93 (1) 560:3	2007 (2) 381:15;382:1	2049 (3) 373:24;375:2;376:1
1111 (6) 280:13;287:21;288:2; 290:15;355:10;487:1	18 (3) 321:11,18;330:6	2007/2008 (1) 526:15	2052 (9) 509:12,13,15;510:7,8,12,13, 15,17
1116 (5) 271:20,23;272:3,9,10	18.5 (1) 543:19	2007-2014 (1) 382:3	2053 (7) 510:5,23,25;533:16,23; 534:12,14
1118 (1) 558:5	19 (3) 330:23;354:23;355:8	2008 (5) 291:15;383:13,16,21;384:17	2055 (2) 407:8,17
1127 (1) 558:6	19- (1) 529:11	2009 (8) 385:16;386:12,18,20;526:19; 528:9;540:10,15	2057 (1) 451:6
1128 (1) 558:6	1947 (1) 407:9	2010 (5) 387:6,10,19;388:22;390:1	2058 (7) 521:14,18,20;522:7;524:10, 18,19
113- (1) 294:18	1948 (1) 361:12	2011 (5) 387:24;388:2;389:16;390:1; 553:13	2062 (6) 519:15,19,23;520:9,17,18
1135 (2) 293:3,17	1979 (1) 422:11	2012 (4) 391:14,15,17;392:13	2064 (9) 513:14,20,24,25;514:10; 518:2;519:4,12,13
1138 (5) 319:1;379:17,19;382:6,12	1980s (1) 456:18	2013 (24) 291:16;343:4,6;348:6; 354:22;355:4;384:10,18; 385:11;386:18;387:21;388:4; 389:13;393:13;405:13,15; 406:9,13;407:4,7,11;409:9; 416:25;417:3	2065 (8) 513:15,20;514:3,10;517:24; 519:4,12,13
12 (4) 328:21;513:12;517:19,25	1987 (1) 451:1	2014 (9) 343:6;381:8,13,15;382:2; 400:21,23;402:9;557:7	2070 (7) 525:4;526:5,22;527:5,9,19; 529:8
12/20 (1) 338:2	1992 (1) 526:10	2015 (1) 557:7	2075 (6) 451:6,8,10,16,24,25
12:00 (1) 403:21	1994 (1) 378:23	2016 (5) 373:24;374:14;375:25; 376:6;402:6	21 (1) 332:15
	1995 (4) 335:3;528:7;530:2;540:8	2017 (6)	233 (1) 327:24
	1996 (8) 331:2;390:22;391:2;404:21, 25;405:5;406:11;407:23		24 (4)
	1A (1) 413:12		
	1C (1) 411:16		
	1E (1) 414:4		
	1st (2)		

271:17;273:4;279:19;323:21 24- (1) 374:19 25 (13) 345:4,6;391:8;395:10;408:3, 13;411:21,25;412:2,13,13; 438:20,22 27 (4) 450:25;454:21;486:1;553:4 2700 (1) 270:25 27th (1) 354:5 28 (1) 321:10 28th (3) 342:17,25;345:9 2-foot (1) 322:9 2-inch (1) 340:23	4002 (1) 376:16 4003 (1) 376:16 4004 (2) 371:12;376:16 4005 (6) 371:5,9,17;376:11,13,16 401 (4) 518:22;519:17;523:16; 537:13 404 (30) 511:5,8,9,23;512:6,9;516:1; 517:4;523:13,15,25;524:5; 525:6;530:17;531:7,14,20,24; 532:9,16;533:2,11;535:7,17; 536:14;537:2,5,20;538:9,16 40s (1) 390:3 43 (1) 553:10 442 (1) 268:5 447 (1) 268:6 45 (3) 290:23;439:12;535:24 450 (2) 268:8;276:20 45-day (1) 531:1 47.4 (1) 389:23 474 (2) 268:9,10 48 (1) 390:7 485 (1) 268:11 4-inch (1) 357:14	268:17 517 (1) 268:18 527 (1) 268:19 528 (1) 268:20 534 (1) 268:21 543 (1) 268:23 546 (1) 268:25 565,000 (1) 360:25 5th (6) 270:4;433:11;435:22;438:3; 441:5;443:13	74.95 (1) 392:3 76 (1) 560:2 7th (1) 487:13
3		6	8
3 (5) 326:9;360:24;388:16;489:1; 497:5 3:00 (1) 485:14 30 (7) 283:11;303:1;325:20; 439:12;480:12;490:2;514:13 305B (1) 538:24 35-day (2) 518:25;520:2 36-2046 (1) 546:10 3687 (1) 374:16 36-8785 (2) 400:25;401:15 36A (11) 378:20,22;379:5,9,11; 390:21,25;395:17;397:20; 409:10;419:7 37 (1) 271:11	442 (1) 268:5 447 (1) 268:6 45 (3) 290:23;439:12;535:24 450 (2) 268:8;276:20 45-day (1) 531:1 47.4 (1) 389:23 474 (2) 268:9,10 48 (1) 390:7 485 (1) 268:11 4-inch (1) 357:14	6 (7) 275:18;306:14;307:5;327:3; 476:25;486:19;489:9 6.5 (1) 290:1 60 (2) 536:5;552:6 60-day (3) 518:24;520:1;535:25 62 (1) 486:14 64 (1) 522:10 65 (1) 290:23 6500 (1) 275:23 69 (1) 529:14 6-foot (1) 333:15 6-inch (1) 329:6	8 (11) 327:18;357:13;384:8;477:15, 19,25;478:3,6;488:11;497:19, 20 8.0 (8) 289:20;290:6;306:8;307:3; 312:14;314:11,13;489:8 8.1 (1) 339:16 8.3 (2) 289:17;487:16 8.5 (1) 314:24 8.6 (5) 289:17;314:12,13,16;487:16 8:35 (1) 270:4 800,000 (1) 360:24 80s (3) 456:2,4,20 84 (4) 388:12,15,19;390:7 85 (1) 374:16 87 (3) 388:15,19;456:3 880 (1) 340:7 89 (3) 289:22;290:7;314:17
4	5	7	9
4 (3) 326:13;350:19;364:15 4:25 (1) 541:17 4:30 (5) 541:15,16,18,19,20 4000 (5) 371:5,12;376:11,12,16 4000-4005 (1) 376:19 4001 (1) 376:16	5 (11) 290:2,2;306:14;307:5; 326:24;339:11,25;340:1;477:3; 486:19;489:9 5/27 (1) 339:4 5/27/2014 (1) 339:5 5:12 (1) 560:13 501 (1) 268:12 503 (1) 268:13 504 (1) 268:14 508 (1) 268:16 515 (1)	7 (3) 327:10;510:2;513:11 7.28 (1) 288:8 7.52 (1) 288:8 7.56 (1) 389:13 7.6 (1) 339:8 7.71 (2) 288:13,14 7000 (6) 546:9;547:1,2,9,20,21 70s (2) 456:1,9	9 (11) 290:1,3;306:14;327:21; 476:11,17,20;478:4,10;486:19; 488:2 9.0 (2) 307:12;314:24 90-day (1) 531:1