

A P P E A R A N C E S

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*Appearing January 30, 2008
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Deposition of Jerrold D. Gregg, Volumes I and II

A P P E A R A N C E S
(continued)

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*Appearing January 31, 2008

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Exhibit No. Page Marked
(Exhibit Nos. 1 through 22 were previously marked for identification during the course of the Deposition of Mary Mellema, Volumes I and II, and are incorporated herein by reference.)

* * *

Exhibit No. 23	7
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Deposition of Jerrold D. Gregg, Volumes I and II

1 THIS DEPOSITION was taken on behalf of Pioneer
2 Irrigation District and Settlers Irrigation District on
3 Wednesday, the 30th day of January 2008, at the offices
4 of Moffatt, Thomas, Barrett, Rock & Fields, Chartered,
5 101 South Capitol Boulevard, 10th Floor, Boise, Idaho
6 83702, before Lori A. Pulsifer, Court Reporter and Notary
7 Public within and for the State of Idaho, to be used in
8 an action pending in the District Court of the Fifth
9 Judicial District of the State of Idaho, in and for the
10 County of Twin Falls, said cause being Subcase No.

11 63-3618 (Lucky Peak Reservoir) in said court.

12 The following testimony was adduced, to wit:

13 (Exhibit Nos. 1 through 22, inclusive, were
14 previously marked for identification by the court
15 reporter and are incorporated herein by reference.)

16 * * *

17 JERROLD D. GREGG,

18 having been first duly sworn, testified as follows:

19 MR. CAMPBELL: Just as a preliminary matter, we
20 talked off the record -- we are now on the record --
21 concerning a security letter as it relates to some of
22 the documents that the Bureau has made available to us;
23 is that correct?

24 MR. GEHLERT: In particular, the Water Control
25 Manual which I believe is Exhibit 16.

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1 THE WITNESS: I will give you the letter, in
2 the sense that it's a sensitive document and that we
3 would need to be notified before any information was
4 released to the public out of the document.

5 MR. CAMPBELL: So this --

6 THE WITNESS: The enclosure --

7 MR. CAMPBELL: Excuse me. Go ahead.

8 THE WITNESS: The enclosure goes on the front
9 of the document, just to let the folks know that it is a
10 sensitive document.

11 MR. CAMPBELL: Why don't we get a copy of this
12 made so we can make it an exhibit to the deposition?

13 Let's go off the record, please.

14 (Exhibit No. 23 was marked for identification.)

15

16

EXAMINATION

17 BY MR. CAMPBELL:

18 Q. Mr. Gregg, I am handing you what has been
19 marked as Exhibit No. 23. You described a letter which
20 you were handing to me. Is that the letter that you
21 described previously?

22 A. That's correct.

23 MR. CAMPBELL: Let me read it, since it is
24 addressed to me. Not having been here this morning, I
25 don't know if this was discussed at all.

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1 Has the Water Control Manual for 1985, Exhibit
2 No. 16, been made available in copies to any other
3 counsel?

4 MR. GEHLERT: The flood control -- the curves,
5 themselves, were provided. They were marked as another
6 exhibit this morning.

7 MR. CAMPBELL: Are they subject to the same
8 restrictions as this correspondence?

9 THE WITNESS: Normally, our security officer
10 does the review and decides what is restricted and
11 what's not. My assumption is they probably would not
12 be, but I'm not the one that would make that
13 determination. We can check on that.

14 MR. CAMPBELL: I just want to make sure that
15 the other counsel are informed as to the status of their
16 documents, Mr. Gehlert. If you can clarify that, that
17 would be helpful.

18 MR. GEHLERT: Sure. It is my understanding
19 that they are not subject to that, but I will confirm
20 that.

21 MR. CAMPBELL: And you will communicate that to
22 other counsel, as well?

23 MR. GEHLERT: Certainly.

24 MR. CAMPBELL: Thank you.

25 MR. GEHLERT: Sure.

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1 BY MR. CAMPBELL:

2 Q. Thank you, Mr. Gregg. Now, moving forward,
3 Mr. Gregg, I would like you to look at what has been
4 marked as Exhibit No. 17. Tell me after you have had a
5 chance to look through that document.

6 A. Okay.

7 Q. Have you ever seen a copy of that document
8 previously, Mr. Gregg?

9 A. I believe I have seen it earlier.

10 Q. Before I go into specific questions about that
11 document, Exhibit No. 17, I want to sort of back-track a
12 little bit. We got a little bit off of the normal
13 procedure. First of all, have you ever had your
14 deposition taken before?

15 A. Yes, I have.

16 Q. How many times?

17 A. To my knowledge -- in my career? Are you
18 talking about in my career?

19 Q. Just in your lifetime.

20 A. In my lifetime? Well, in my career, I think,
21 probably three to four times. The most recent one was
22 about three years ago.

23 Q. Are you familiar with the procedures?

24 A. Yes, generally. Generally.

25 Q. Let me just refresh you a little bit. I will
Deposition of Jerrold D. Gregg, Volumes I and II

1 be asking you questions which you need to answer
2 verbally. Do you understand that?

3 A. Yes.

4 Q. Also, if I ask a question that you do not
5 understand, please ask me to clarify it. Do you
6 understand that?

7 A. Yes.

8 Q. If you do not ask me to clarify the question, I
9 will I assume that you understood the question. Is that
10 okay?

11 A. Yes. I understand.

12 Q. All right.

13 A. I do have somewhat of a hearing loss.
14 Sometimes I catch parts of sentences; and I may have to
15 re-ask you, based on that.

16 Q. That's fine. That's fine. I have a soft voice
17 today because of whatever -- I don't know. Maybe it is
18 the dog that my wife keeps at home. I don't know. So
19 we will just try to keep working through those issues.
20 Okay?

21 A. All right.

22 Q. Now, you understand that you are under oath?

23 A. Yes.

24 Q. That means that your answers have to be
25 truthful, to the best of your knowledge?

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1 A. Yes.

2 Q. Do you understand that?

3 A. Yes. I understand.

4 Q. Also, it is easier for people, particularly
5 since we both know each other and we have dealt with
6 each other over several years, to sort of have a
7 conversational process in a deposition; but that makes
8 it really hard for the court reporter.

9 So in the context of when I ask a question,
10 please wait a moment to make sure that I have finished
11 the question because it makes it harder for her to
12 really get a correct record. Do you understand that?

13 A. Yes. I understand that.

14 Q. If you have any physical needs, if you need to
15 use the restroom or you need another drink of water or
16 you just want to take a break and talk to Mr. Gehlert,
17 all you have to do is tell me that you would like to
18 take a break. Do you understand that?

19 A. Yes.

20 Q. Obviously, you know, if Mr. Gehlert objects,
21 which he may do to some of my questions -- that is his
22 right -- unless he instructs you not to answer the
23 question, you should go ahead and answer the question
24 after the objection. Do you understand that?

25 A. Yes. I understand that.

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1 Q. Do you have any questions about the process?

2 A. No, I do not.

3 Q. Good. Now, going back to Exhibit No. 17, if
4 you would, sir, that exhibit requests that the United
5 States designate a person as the so-called Rule 30(b)(6)
6 deponent. My understanding is that you have been
7 designated as that individual; is that correct?

8 A. I would have to ask my counsel that because I
9 don't understand what the term is.

10 Q. You are the person who is appearing here today,
11 and you have seen Exhibit No. 17 previously; is that
12 correct?

13 A. Yes. That's correct.

14 MR. GEHLERT: Just for clarification, Jerry
15 will be speaking on behalf of the United States on the
16 subject matters that you have asked to inquire into.

17 MR. CAMPBELL: Thank you very much, counsel.

18 Q. Now, with regard to Exhibit No. 17, Mr. Gregg,
19 it requests that you bring documentation with you, if
20 you have any, that pertain to the subject matter that is
21 described in Exhibit No. 17. Did you bring any
22 documents with you?

23 A. Yes, I did.

24 Q. Where are they?

25 A. They are here in this box.

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1 Q. Are those documents which can be reviewed by
2 me?

3 A. Yes.

4 MR. CAMPBELL: Why don't we go off the record
5 just a moment?

6 (An off-the-record discussion was held.)

7 BY MR. CAMPBELL:

8 Q. Mr. Gregg, we are back on the record. With
9 regard to Exhibit No. 17, as we have examined, you have
10 produced two sets of a series of documents for our
11 examination; is that correct?

12 A. That's correct.

13 Q. I don't know if we will have time today to ask
14 you specific questions concerning these documents, but I
15 appreciate your providing them. To the extent that we
16 do have time, we may ask you some questions about them.

17 For the purposes of Exhibit No. 17, are these
18 all of the documents and data, information, that you
19 were able to locate as the representative at the Bureau
20 of Reclamation concerning the contractual circumstances
21 for the three reservoirs on the Boise River?

22 A. They are the documents that I have in my
23 possession that relate to that. That's correct.

24 Q. You, personally?

25 A. My office, the Snake River Area Office.

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1 Q. Are you aware of any other documents that
2 pertain to the contractual arrangements among the water
3 users, the Corps of Engineers, and the Bureau of
4 Reclamation, apart from the documents that you provided
5 to me just a few minutes ago?

6 A. The only other documents that I would be aware
7 of -- prior to any of the repayment contracts being
8 signed, there would be correspondence between the water
9 users and Reclamation and then internal documents,
10 internal letters.

11 Q. Internal to the Bureau of Reclamation?

12 A. Internal to the Bureau.

13 Q. Where would those documents be housed?

14 A. Those would be in our Regional Office, in the
15 Contracts Section.

16 Q. Who would be the custodian of those
17 documents?

18 A. Mr. Ryan Patterson's group. He is Head of
19 Contracts and Repayment.

20 Q. And are those documents items that you could
21 obtain if you requested them of Mr. Patterson?

22 A. I would assume so.

23 MR. CAMPBELL: We would like to have those
24 produced in due course.

25 MR. GEHLERT: Okay.

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1 MR. CAMPBELL: Is there a problem with that?

2 MR. GEHLERT: I will reserve the right to
3 object after I think about it and have a chance to look
4 at them, but I do not anticipate that that will be a
5 problem.

6 BY MR. CAMPBELL:

7 Q. Mr. Gregg, in addition to the documents you
8 identified in Mr. Patterson's office, the Regional
9 Office of the Bureau, are you aware of any other
10 documents or any other information pertaining to the
11 operation of the Boise reservoirs in other offices of
12 the Bureau of Reclamation, such as the Denver Document
13 Repository or in the Washington, DC, office?

14 A. I guess I need a little bit of clarification
15 because I thought the question was replying to the
16 repayment contracts. Now, when you say "operations,"
17 that is quite a bit different. So we are talking about
18 two different things.

19 So are we talking about documents relating to
20 the repayment contracts or are we talking about
21 documents that relate to operation of the reservoir
22 system?

23 Q. Well, I think we are talking about both because
24 the 30(b)(6) Deposition Notice requests that you bring
25 all documents in your care, custody, possession, or
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1 control relating to this action, meaning this lawsuit.
2 So that is much more broad than just the specific
3 contracts.

4 A. Okay.

5 Q. As a consequence, if you misunderstood it to
6 mean just as it relates to the individual contracts,
7 then I think that was incorrect, from my standpoint.

8 A. That was my understanding.

9 Q. All right. Well, that is fine. We can pursue
10 that later on through your counsel and through
11 subsequent follow-up. So I am not upset at all. I just
12 want to make sure that that is the understanding.

13 A. Okay.

14 Q. Now, Mr. Gregg, as it relates to this
15 particular deposition, I would like to go through some
16 preliminary matters with you. Can you tell me, just
17 generally, your education from high school on, in terms
18 of colleges you attended and degrees you received?

19 A. Okay. I have a Bachelor of Science in
20 Agricultural Engineering from South Dakota State
21 University. I have about thirty graduate credits from
22 Colorado State University and the University of Wyoming
23 in Engineering Management.

24 Q. And what is your employment history from the
25 time you graduated from college?

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1 A. I spent two and a half years in the United
2 States Army, located here in the United States, both on
3 the East Coast and in Colorado. After getting out of
4 the Army as a Commissioned Officer, I started with the
5 Bureau of Reclamation.

6 I worked for the Bureau of Reclamation in South
7 Dakota, North Dakota, Wyoming, New Mexico; and then I
8 transferred here in December of 1987 -- to Boise.

9 Q. And when did you start working for the Bureau
10 of Reclamation? I just need the year. I don't need the
11 exact --

12 A. 1975.

13 Q. And can you describe, generally, the different
14 positions you have held for the Bureau, up to and
15 including the present position?

16 A. Sure. My first position was a drainage
17 engineer on the Owyhee Project in South Dakota,
18 designing underground drainage systems.

19 In North Dakota, I was in the O&M Section,
20 responsible for inspecting reservoirs, doing water
21 operations.

22 In Wyoming, I was Chief of the Water Operations
23 Branch for the North Platte Project which works under
24 the North Platte River System.

25 In New Mexico, I was Head of a Consolidated O&M
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1 Branch. The Rio Grande is one of the few rivers where
2 Reclamation has responsibility in the river corridor,
3 itself. So I was head of the maintenance section there.

4 And in December of 1987, I took the position of
5 Project Superintendent for the Central Snake Project
6 Office, which were the Reclamation Projects --
7 Southwestern Idaho, Eastern Oregon.

8 In 1994, in the reorganization
9 Reclamation-wide, that office was combined with the
10 Minidoka Project Office in Burley. So I was made Area
11 Manager for the Snake River Area Office.

12 Q. Now, in terms of Area Manager, can you describe
13 for me what region of Bureau projects that
14 encompasses?

15 A. It includes all twelve Reclamation projects on
16 the Snake River, from the uppermost project being the
17 Palisades Project in Southeastern Idaho and all the way
18 to the Lewiston Orchards Project in Northern Idaho.
19 It's all of the twelve Reclamation projects on the Snake
20 River or its tributaries.

21 Q. Now, can you tell me, geographically, where
22 that terminates, in terms of -- the Reclamation projects
23 do not exist past a certain point on the Snake River?

24 A. Lewiston, Idaho.

25 Q. Lewiston. And that would include any
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1 tributaries to the Snake River from Oregon up to that
2 point?

3 A. Correct. I mean, we have projects on some of
4 the tributaries in Eastern Oregon.

5 Q. Thank you. In terms of your present duties,
6 have they remained, basically, the same since 1994?

7 A. Pretty much.

8 Q. Can you describe for me, generally, what those
9 duties entail?

10 A. Our office is directly responsible for 27 dams.
11 We operate -- Reclamation operates -- ten of those.
12 Seventeen have been transferred to irrigation districts
13 to operate and maintain, but we still retain title. So
14 we have oversight responsibilities.

15 We operate and maintain five power plants, a
16 control center. We have contracts with approximately
17 ninety irrigation districts and canal companies on the
18 Snake River and its tributaries. So we serve water to
19 about 1.2 million acres.

20 MR. CAMPBELL: Paul, just for our convenience,
21 if you don't mind, if you are going to be typing and
22 taking notes, put your phone on mute, please.

23 MR. ARRINGTON: Here I am muting it when I
24 don't need to and not muting it when I need to. I
25 apologize. Thank you.

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1 MR. CAMPBELL: Thank you.

2 MR. ARRINGTON: It's gone. I'm out.

3 BY MR. CAMPBELL:

4 Q. From the standpoint of your supervisory role,
5 how many employees do you supervise?

6 A. About 150.

7 Q. And in terms of your day-to-day functions, can
8 you give me a typical day in the life of Jerry Gregg, as
9 the Area Manager? Is that the correct title, "Area
10 Manager"?

11 A. "Area Manager" is correct. I am certainly
12 responsible for -- I have budget and finance
13 responsibilities. Like I said, I have operational and
14 maintenance oversight on the reserve facilities that we
15 operate and maintain.

16 Q. What do you mean by "reserve facilities"? I am
17 sorry for the interruption.

18 A. Those are the facilities that Reclamation
19 actually operates and maintains, like Anderson Ranch
20 Dam.

21 At the power plant, it's our employees that are
22 there that turn the valves, that start the power plant,
23 et cetera, versus Owyhee Reservoir where we have
24 transferred O&M responsibilities to the Owyhee
25 Irrigation District or Lake Lowell that the Board of
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1 Control operates and maintains.

2 Q. Okay.

3 A. So reserve facilities are the ones where
4 Reclamation employees are actually at the facility
5 operating and maintaining the facility.

6 Q. I see. I sort of cut you off. Is there
7 anything --

8 A. I spend a lot of time in endangered species
9 activities and producing biological assessments, bi-ops,
10 and so on.

11 Q. Negotiations?

12 A. Negotiations, yes. Yes.

13 Q. With respect to your duties when you first came
14 to Idaho for the Bureau of Reclamation in 1987, did
15 those duties include any oversight or management of the
16 Bureau of Reclamation's functions with respect to the
17 Boise River Reservoirs and Dams?

18 A. Yes. As Project Superintendent, I was
19 responsible for the Boise Project, which is on the Boise
20 River and the Payette. We have facilities in both
21 Basins.

22 Q. Well, this particular action, as you are aware,
23 involves only the Boise River. So I am going to
24 restrict my continuing questions to that aspect of the
25 Boise Project. So do you understand?

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1 A. That's correct.

2 Q. In terms of the operations of the three
3 reservoirs and dams on the Boise River -- Anderson
4 Ranch, Arrowrock, and Lucky Peak -- can you tell me when
5 you first became familiar enough with those operations
6 to understand the contractual obligations that the
7 Bureau of Reclamation had with the various irrigation
8 entities in the Boise River Valley?

9 A. I'm certainly not an expert. I came here in
10 December of '87; and, certainly, my first probably
11 several years were a learning experience. 1988 was a
12 drought year but, essentially, 1988 and 1989.

13 Q. And in terms of the number of irrigation
14 entities that have contractual relationships with the
15 Bureau of Reclamation for any of the three Boise River
16 Reservoirs, can you give me a number of how many
17 irrigation entities have contracts of varying sorts?

18 A. They are in the exhibits. May I look at the
19 exhibits?

20 Q. Sure.

21 A. They are in the first page of this exhibit,
22 right here. Would you like me to count them?

23 Q. That was the question.

24 A. Okay. If I count correctly, there are 26 that
25 have repayment contracts in either the Anderson,

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1 Arrowrock, or Lucky Peak irrigation contracts. Then we
2 have one, two, three which I would call M&I contracts
3 out of Anderson -- Anderson and Lucky Peak.

4 Q. By M --

5 A. No. I -- correct.

6 Q. Excuse me.

7 A. There are three that are M&I contracts, or
8 irrigation service contracts to municipal entities, out
9 of the three -- Anderson and Lucky Peak.

10 Q. And that is "M" as in "magic" and "I" as in
11 "industrial;" is that right?

12 A. Two of them are M&I contracts, which is
13 municipal and industrial, out of Anderson Ranch. And
14 one is United Water for urban irrigation.

15 Q. And in terms of the number of irrigation and
16 other entities that have contractual relationships with
17 the Bureau of Reclamation, have you had occasion to
18 review any of the contracts involving any of those
19 entities during the course of your employment since 1987
20 with the Bureau?

21 A. I have reviewed some of them but not all of
22 them.

23 Q. All right. Well, as you are probably aware,
24 this particular proceeding deals with the contracts, at
25 least from my standpoint, of Pioneer and Settlers

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1 Irrigation Districts relating to the three reservoirs on
2 the Boise River.

3 Have you, in the past, ever reviewed any of the
4 contracts that those two Irrigation Districts have with
5 the Bureau of Reclamation?

6 A. I have reviewed some of their contracts.

7 Q. Which ones? Do you recall?

8 A. The Anderson Ranch contract, the Anderson Ranch
9 repayment storage contract, the 1954 contract that
10 incorporates flood control, the water service contracts,
11 and then, of course, the new repayment contracts out of
12 Lucky Peak.

13 Q. And have you reviewed any of the contracts
14 involving Arrowrock?

15 A. A long time ago. It's been quite sometime
16 since I have read some of the Arrowrock contracts.

17 Q. I would like to have you turn your attention
18 to Exhibit No. 3 which I will dig out here, hopefully.
19 Here we go. Mr. Gregg, I am handing you what has been
20 marked as Exhibit No. 3.

21 Would you please, generally, review that? You
22 don't need to read each word at each point in time
23 because, if I ask you any question concerning specific
24 language, I will have you read that language at that
25 time.

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1 A. Okay.

2 Q. Do you recognize Exhibit No. 3?

3 A. Yes.

4 Q. Can you tell me if you can identify what that
5 document is?

6 A. It's a Memorandum of Agreement between the
7 Corps of Engineers and the Bureau of Reclamation,
8 essentially outlining the boundaries of our joint
9 operation of the three reservoirs for flood control and
10 irrigation.

11 Q. The three reservoirs on the Boise River?

12 A. Right. The three reservoirs on the main stem
13 of the Boise River.

14 Q. Are there other --

15 A. Lake Lowell is upstream storage.

16 Q. Of course, there is some storage behind
17 Diversion Dam; is that correct?

18 A. We don't have storage right there, but there is
19 some storage during the irrigation season.

20 Q. Incidental?

21 A. Incidental storage.

22 Q. With respect to Exhibit No. 3, Mr. Gregg, have
23 you -- I think you answered this, but I just want to
24 make sure that I recall the answer correctly. Have you
25 had occasion to review Exhibit No. 3 prior to this
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1 deposition today?

2 A. No, I have not.

3 Q. You have never reviewed --

4 A. I have reviewed it before. Prior? Okay.

5 Q. That is what I am saying.

6 A. I'm sorry. I didn't understand your question.

7 Q. That is fine. Can you tell me whether or not
8 you are familiar with what the terms of Exhibit No. 3
9 contain -- excuse me -- "are" not "contain." Do you
10 know the terms? Are you conversant with what is
11 contained in Exhibit No. 3?

12 A. I would say, from a layman's standpoint. I am
13 certainly not an expert on it, though.

14 Q. From your standpoint as Area Manager,
15 currently, and your prior position as Snake River
16 Projects Manager --

17 A. Project Superintendent.

18 Q. Project Superintendent. I am sorry. Thank you
19 for correcting me. Were you involved in considering the
20 provisions of Exhibit 3 at any point in time?

21 A. Well, a good portion of this document has been
22 replaced by the Water Control Manual. So most of the --
23 at least the hydrologic information, from my
24 understanding, that is contained in here was replaced in
25 the '85 Water Control Manual. That's what that second
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1 MOU states. So, you know, basically, I relied more on
2 the '85 Water Control Manual than this document.

3 Q. And in terms of the 1985 Water Control Manual,
4 is that, generally, Exhibit No. 16?

5 A. Correct.

6 Q. And if you would like to review that, feel
7 free, before you say that this is the document. I am
8 not trying to fool you. I just want to make sure that
9 you have the chance to look at the document before you
10 say, yes, this is it.

11 A. This is not part of the document.

12 Q. And you are talking about the first four
13 pages?

14 MR. GEHLERT: Can we go off the record for a
15 second, Scott?

16 MR. CAMPBELL: Yes.

17 (An off-the-record discussion was held.)

18 BY MR. CAMPBELL:

19 Q. Mr. Gregg, I think you mentioned that there
20 were some pages that were not part of the Water Control
21 Manual; is that correct?

22 A. That's correct.

23 Q. Can you estimate the number of pages at the
24 front of the document that are not, in your mind, part
25 of the Manual?

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1 A. It's about six or seven pages that are not part
2 of the Water Control Manual.

3 Q. What is the first page, from your standpoint,
4 that is part of the Water Control Manual? What is the
5 title at the top of it?

6 A. Revisions that were done in November of 1993.

7 Q. What does the exact caption say at the top?

8 A. "Water Control Manual Revisions for Boise River
9 Reservoirs."

10 Q. Thank you. Now, sir, as I recall your
11 testimony, you indicated that, when you came on board
12 for the Snake River Project as the Snake River
13 Project --

14 A. Central Snake.

15 Q. I am sorry. It is too complicated for me. I'm
16 not bright enough to grasp those terms. When you first
17 started working for the Bureau of Reclamation in 1987 in
18 Idaho, your view was that the 1985 Water Control Manual
19 was really the controlling document for operation of the
20 three Boise River on-stream reservoirs; is that correct?

21 A. It was one of the -- it was one of the
22 documents.

23 Q. What other documents did you rely upon to make
24 your determinations with regard to those reservoir
25 operations?

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1 A. Well, the repayment contracts between the
2 contractors and the United States.

3 Q. Okay.

4 A. The 1954 Act and the planning report attached
5 to it.

6 Q. You say, the 1954 Act?

7 A. Right. That's one of the exhibits that
8 authorized Reclamation and the Corps to operate as one
9 system.

10 Q. And anything else?

11 A. The authorization for the projects which are
12 very --

13 Q. What do you mean by --

14 A. The Congressional authorizations for, like, the
15 Boise Project which are fairly old but still in play.

16 Q. And what do you mean by "authorizations"
17 exactly? What does that term mean, to you?

18 A. Well, the Reclamation projects are authorized
19 one at a time by -- like, the Boise Project was
20 authorized by a Secretarial Order in, I believe, 1905.
21 Then the Boise Project was added on to from time to
22 time, some by Secretarial Order, some by Presidential
23 Order, and then some by Congress.

24 Q. So they are different documents or different
25 documentation of what the authority for the Project

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1 would be in a particular circumstance?

2 A. To construct different features of the
3 Project.

4 Q. So it varies, depending upon the history of a
5 particular feature?

6 A. That's correct.

7 Q. All right. In terms of the authorizations that
8 you were referring to, does that apply to all of the
9 authorizations for all of the facilities for Anderson
10 Ranch, Arrowrock, and Lucky Peak?

11 A. Specifically, the ones I reviewed were Anderson
12 Ranch and Arrowrock but not Lucky Peak since it was
13 authorized by the Corps of Engineers.

14 Q. Lucky Peak was authorized by the Corps of
15 Engineers?

16 A. Yes. It's not a Reclamation facility.

17 Q. I am confused by that last response and I don't
18 want to --

19 A. I mean, authorized by Congress but built by the
20 Corps of Engineers.

21 Q. Thank you for clarifying that. With respect to
22 the reservoir operations of the Boise River on-stream
23 reservoirs -- you answered this, but I want to give you
24 another opportunity to answer -- what role or what
25 significance did you attribute to Exhibit No. 3, as it

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1 relates to the operations?

2 A. Well, like I said, to me, it set the boundaries
3 of the joint operation because in 1953 and 1954, the
4 three reservoirs were incorporated into one system to be
5 operated as one system primarily for irrigation, flood
6 control, power to Anderson Ranch. So this set the
7 boundaries of that concept.

8 Q. And I would like to explore that term just a
9 little bit more. What do you mean exactly by
10 "boundaries"? Can you define that a little bit more for
11 me?

12 A. Well, the general operating parameters.

13 Q. And in terms of the provisions of Exhibit 3,
14 did you ever consider those provisions to be controlling
15 over any of the other documents that you described as
16 items that you referred to with respect to the reservoir
17 operations on the Boise River?

18 A. That's really a legal question that I wouldn't
19 be qualified to answer.

20 Q. Let me ask a different question. You
21 mentioned, as I recall, that the Water Control Manual of
22 1985 was the basic document you used; is that correct?

23 A. What I said was that '85 -- most of the
24 provisions of the '53 MOU was incorporated into the
25 Water Control Manual in 1985. Some of the '53 MOU is

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1 still in place.

2 A lot of it was incorporated and expanded on in
3 the 1985 Water Control Manual that sets the parameters
4 of how we operate for flood control, a list of repayment
5 contracts that were done up to that time. It has the
6 flood control rule curves. I believe that's what I
7 stated -- or tried to state.

8 Q. And you referred to the 1953 Memorandum of
9 Agreement. That's Exhibit No. 3; correct?

10 A. Correct.

11 Q. Now, in terms of that last statement, as it
12 relates to incorporation of some or most of the terms of
13 Exhibit 3 into Exhibit No. 16, which is the Water
14 Control Manual, how are you familiar with that process
15 having been completed, that is, that transfer, that move
16 of provisions of Exhibit 3 into Exhibit No. 16?

17 A. Well, it's stated in the 1985 MOU, if I may
18 refer to that exhibit.

19 MR. CAMPBELL: Sure. Let's go ahead and mark
20 it since you would like to refer to it.

21 (Exhibit No. 24 was marked for identification.)

22 THE WITNESS: Paragraph (f) at the end of the
23 document states -- and I'll read it, if that's okay --
24 "All terms and provisions of the Memorandum of Agreement
25 dated 20 November 1953," which is Exhibit 3, "not

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1 inconsistent with this Memorandum of Understanding and
2 the Water Control Manual shall remain in full force and
3 effect."

4 So my understanding of that is any terms that
5 are not inconsistent with the new terms in the Water
6 Control Manual are still in effect. Those that were
7 replaced are inconsistent and no longer apply.

8 BY MR. CAMPBELL:

9 Q. Now, let me rephrase that because I think you
10 said it two different ways. I just want to make sure
11 that I understand exactly what you said.

12 Based upon Exhibit 24, Paragraph (f) on Sheet
13 3, your view is that, to the extent that the Water
14 Control Manual, Exhibit No. 16, is inconsistent with
15 Exhibit No. 3, the Water Control Manual governs?

16 A. Correct.

17 Q. Thank you. Now, in terms of the process for
18 the preparation and adoption of the Water Control
19 Manual, Exhibit No. 16, you were not involved in that,
20 were you?

21 A. That's correct. I was not.

22 Q. Do you know when that process occurred?

23 A. Generally, it occurred after the 1974 flood on
24 the Boise River. So it was after 1974 and, of course,
25 prior to 1985. I believe that the State of Idaho, the
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1 Bureau, the Corps, and the water users spent about four
2 years developing the new Water Control Manual.

3 Q. You mentioned the water users. Do you know
4 specifically who the water users were?

5 A. No.

6 Q. And what do you base that statement upon that
7 the State of Idaho and the Corps and the water users and
8 the Bureau of Reclamation worked on this process for
9 four years?

10 A. There is actually a 1974 report that was
11 written that led up to the Water Control Manual. So it,
12 generally, very briefly, talks about the process -- not
13 in a lot of detail. The other information I just heard
14 second-hand, so I don't know how reliable it is.

15 Q. Second-hand from individuals at the Bureau?

16 A. At the Bureau and the State.

17 Q. And "the State" being what exactly?

18 A. The Water Resource Department.

19 Q. Do you recall specific individuals that you
20 heard these comments from?

21 A. No, I don't.

22 Q. In terms of the process for the adoption of the
23 Water Control Manual, do any of the documents that you
24 brought today, apart from Exhibit No. 25, relate to that
25 process?

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1 A. No, I don't believe they do.

2 Q. Do you know, personally, if there are
3 documents, correspondence, or information, in written or
4 electronic form, that relates to that process of the
5 adoption of the 1985 Water Control Manual?

6 A. No, I don't. The Corps of Engineers, of
7 course, was the lead agency. I don't know if they would
8 have it in our files. Our filing system -- of course, a
9 lot of those memos have been purged from the files. We
10 have record retention policies. So I would say most of
11 them are gone now.

12 Q. Now, what do you base that upon?

13 A. Based that upon?

14 Q. Yes. You said that you would think that most
15 of those documents were purged from your files. What do
16 you base that upon? You say there is a document
17 retention policy?

18 A. We were not the lead agency. It's not like a
19 repayment contract which we have to keep permanently.
20 Unless some designation was made to keep a memo or a
21 letter, normally, after so many years, they are purged
22 from our files.

23 Q. How many years?

24 A. I don't know.

25 Q. Who would know that in your agency?

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1 A. It would be somebody in the Regional Office
2 that's responsible in the Property Section.

3 Q. And what is the Property Section?

4 A. There was --

5 Q. Is that the same as the Repayment Section?

6 A. No, it's not.

7 Q. So do you know who is in charge of the Property
8 Section?

9 A. I know who is in charge of the property but not
10 necessarily the records.

11 Q. Who is that?

12 A. Bruce Cassidy is the Manager of the Property
13 Section. After so many years, letters are either purged
14 or, if they have certain significance, they are sent to
15 the Archives.

16 Q. The Archives are where?

17 A. Some in Denver, some in -- the Bureau's
18 Archives are in Denver. The National Archives are in
19 Washington, DC.

20 Q. And if anyone would know if there are documents
21 that pertain to the adoption of the Water Control
22 Manual, Exhibit No. 16, Mr. Cassidy would be the best
23 source, as it relates to the Bureau of Reclamation?

24 A. Yes. There is a process to get copies of those
25 records, if they are available.

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1 Q. And you did not have any discussion with
2 Mr. Cassidy concerning any of those documents --

3 A. No.

4 Q. -- before you came here today --

5 A. No.

6 Q. -- did you?

7 A. No, I didn't.

8 Q. Wait until I finish, please.

9 A. Okay. I'm sorry.

10 MR. CAMPBELL: It's better for Lori.

11 And we would request any documents that pertain
12 to that process that Mr. Gregg has described concerning
13 the adoption of the Water Control Manual of 1985.

14 THE WITNESS: Like I said, again, the Corps of
15 Engineers was the lead agency.

16 MR. CAMPBELL: I am not saying that they
17 weren't, Mr. Gregg.

18 MR. GEHLERT: We will check with Mr. Cassidy
19 and see what's available here.

20 MR. CAMPBELL: Thank you.

21 MR. GEHLERT: If they have been sent to the
22 Denver Archives Center, they are public documents.
23 Anyone is welcome to go in there and root through them
24 and find them, as they see fit.

25 MR. CAMPBELL: That is fine, just as long as we
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1 know where they are.

2 Q. In terms of the information that you personally
3 have about the process of the adoption of the Water
4 Control Manual of 1985, do you know anyone with the
5 Bureau of Reclamation that actually participated in that
6 process?

7 A. I think everybody that participated is now
8 retired.

9 Q. That is fine. I don't care if they are
10 retired.

11 A. Dan Yribar, who was Head of Water Operations at
12 the time, may have participated.

13 Q. How do you spell his last name?

14 A. Y-r-i-b-a-r.

15 Q. What was his title?

16 A. I believe, at the time, it was Chief of Water
17 Operations Branch.

18 Q. For the Regional Office?

19 A. For the Regional Office.

20 Q. Anyone else that you think may have
21 participated, in terms of the Bureau of Reclamation?

22 A. The past Planning Officer may have, Mr.
23 Vinsonhaler.

24 Q. Pardon me?

25 A. Mr. Vinsonhaler.

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1 Q. Is that the last name?

2 A. Yes. I'm not sure I can spell that.

3 Q. V-i-n-s-o-n-h-a-l-e-r; right?

4 A. That's as good as I can --

5 Q. That's close enough. Okay. And he is the
6 Planning Director?

7 A. He was the Planning Chief at that time.

8 Q. Is that Planning Section or how do you say --

9 A. It was the Planning Division at that time.

10 Q. Planning Division Chief. Okay. Anyone else
11 that you can think of?

12 A. Not that I -- a lot of those folks retired
13 before I came here.

14 Q. The name that I have seen is Ron Golus. Do you
15 know if he participated?

16 A. He participated in the Power Modification
17 Studies. I'm not sure he participated in developing the
18 Water Control Manual. He was in Planning at the time.
19 He worked for Mr. Vinsonhaler at the time.

20 Q. Anyone else that you can think of?

21 A. Max Van den Berg may have. I'm not sure. The
22 other person that would have been involved is deceased
23 at this time.

24 Q. Who is that?

25 A. That was Joe Wensman.

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1 Q. Joe Wensman?

2 A. Uh-huh.

3 Q. W-i-n --

4 A. W-e-n-s-m-a-n, Wensman.

5 Q. What about John Keyes?

6 A. I believe this was developed -- it was,
7 essentially, done by the time Mr. Keyes came here. He
8 came here in, I believe, 1984. So it was probably
9 pretty close to being done by the time he came here.

10 Q. All right. What was Mr. Wensman's --

11 A. You know, my predecessor, Bob Brown, would have
12 been involved; but he is also deceased.

13 Q. How about Neil Stessman?

14 A. Neil would have come here about the time it was
15 being completed, too. Neil came in eighty -- he became
16 Project Superintendent in 1984. He was Head of Water
17 and Land. He may have been. He may have been.

18 Q. Do you know if he is still with the Bureau?

19 A. He is retired.

20 Q. Do you know what Mr. Wensman's position was?

21 A. He was a Water Operations Specialist within the
22 Water Operations Branch.

23 Q. Is that the Area Office or the Regional
24 Office?

25 A. Regional Office. He was in the Regional
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1 Office.

2 Q. Based upon the second-hand descriptions that
3 you received about the process of development of Exhibit
4 No. 16 -- you were not there; I understand that. Based
5 upon what you have been told or what you have gleaned,
6 do you know what the process actually was, in terms of
7 the meetings, the studies, or anything along those
8 lines?

9 A. The part I do have some knowledge on is I know
10 there was an extensive look at developing new flood
11 control rule curves because, prior to that, Reclamation
12 had operated on more of a fill-and-spill-type operation.

13 In 1974, we almost lost control of the River.
14 We had to sandbag the emergency spillway at Lucky Peak.
15 So the Governor issued a Proclamation saying we are not
16 going to do that anymore. That's when the process
17 started.

18 I know there was a lot of technical work done
19 on redoing the flood control and the irrigation field
20 criteria in the Water Control Manual. How that was
21 done, I don't know. That was the gist of it.

22 Q. Actually, I can confirm that you did sandbag
23 the spillway in 1974 because I was living here.

24 A. Did the National Guard help do that? That's
25 the story I heard.

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1 Q. I can't answer the question.

2 A. Okay.

3 Q. In terms of Exhibit No. 25, Mr. Gregg --

4 MR. GEHLERT: Just for clarification, I think
5 it is Exhibit No. 24.

6 MR. CAMPBELL: I am sorry. Thank you. I
7 appreciate that, counsel.

8 MR. GEHLERT: You are welcome.

9 BY MR. CAMPBELL:

10 Q. In terms of Exhibit No. 24, any prior reference
11 in which I may have misspoken and called it "Exhibit 25"
12 should have been "Exhibit 24." Mr. Gregg, can you tell
13 me how you acquired a copy of this document, since you
14 brought it with you today?

15 A. It is included in our Water Control Manual in
16 my office.

17 Q. So this is actually part of the Water Control
18 Manual; is that correct?

19 A. The Water Control Manual is part of this
20 document, the way this is written.

21 Q. All right. Very well. I appreciate that
22 clarification. And can you tell me who L. W. Lloyd
23 was -- or is?

24 A. He was the Regional Director at the time, in
25 1985.

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1 Q. And George Robertson was the Brigadier General
2 of the Army Corps of Engineers; is that correct?

3 A. That's what the document says.

4 Q. If you know --

5 A. I don't know.

6 Q. Thank you. Mr. Gregg, I would like you to look
7 at Exhibit No. 3 again, if you would, please. In terms
8 of the language of Exhibit No. 3, I would like you to
9 direct your attention to page 2, the first full
10 paragraph. If you would, read that first full paragraph
11 on page 2 to yourself.

12 A. Starting with "Whereas"?

13 Q. "Whereas." You don't need to read it outloud.
14 It is fairly lengthy. I just want you to tell me when
15 you have finished reading it so I can ask you some
16 questions about it.

17 A. Okay.

18 MR. GEHLERT: Scott, before we begin this line
19 of inquiry, if I can just note for the record, Jerry
20 will give you his interpretation of what that means; but
21 it, obviously, includes an element of law and would be
22 subject to review and confirmation by appropriate legal
23 authorities.

24 MR. CAMPBELL: I understand.

25 MR. GEHLERT: Okay.

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1 BY MR. CAMPBELL:

2 Q. Have you read the paragraph, Mr. Gregg?

3 A. Yes, I have.

4 Q. From the standpoint of your position since 1987
5 as the employee of the Bureau of Reclamation who has
6 authority over the operations of the three reservoirs on
7 the Boise River, in conjunction with the Water Control
8 Manual and Exhibit No. 3, I would like to ask you what
9 your view of the phrase -- that is, what meaning you
10 attributed to the phrase -- at the end of that paragraph
11 that says, "...local interests concerned with flood
12 control and the use of irrigation water..."

13 A. My layman's interpretation of this paragraph is
14 talking about -- essentially, what this is talking about
15 is incorporation of the three reservoirs to operate as
16 one system for flood control and irrigation.

17 I think the last part of that sentence talks
18 about working with those that were concerned with flood
19 control because this followed the 1943 flood through
20 Boise which generated the interest to get the facility
21 built.

22 Of course, we had repayment contract folks in
23 the Arrowrock and Anderson for strictly irrigation. So
24 I think this is recognizing that you are going to have
25 to combine those -- if we do have a joint operation, you

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1 are going to have to combine those interests.

2 Q. Just so I understand what I think I heard you
3 say, the local interests that were concerned with flood
4 control on the use of irrigation water could have been
5 two different sets of local interests? Is that what you
6 are saying?

7 A. Some of them could have been different sets of
8 interests. Some of them may have been the same.

9 Q. And the interests that relate to the use of
10 irrigation water, based upon what I heard you say, would
11 be the entities that had irrigation storage contracts
12 with the Bureau of Reclamation in Anderson Ranch
13 Reservoir and Arrowrock Reservoir; is that correct?

14 A. And Lake Lowell.

15 Q. And Lake Lowell?

16 A. And Lake Lowell.

17 Q. What about those entities that had natural flow
18 water rights? Would they be included within that
19 description, as far as you are concerned?

20 A. Well, most of the folks -- I don't know if
21 there are any natural flow users outside of the folks
22 that have repayment contracts for storage. So I don't
23 know the answer to that.

24 Q. All right. Mr. Gregg, have you ever had
25 occasion to examine any of the historic documents, other
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1 than those that you have brought with you, as it relates
2 to the factual circumstances surrounding the negotiation
3 and execution of Exhibit 3?

4 A. The only thing that I have had available to me
5 that I have read is the one exhibit, the 1953 Planning
6 Report that was sent to Congress, as a back-up document,
7 back-up information to get the 1954 Act passed.

8 MR. CAMPBELL: Let's go off the record for just
9 a minute. Let me get that.

10 (Recess.)

11 (Exhibit No. 25 was marked for identification.)

12 BY MR. CAMPBELL:

13 Q. Mr. Gregg, I have had Exhibit No. 25 handed to
14 you. Can you please tell me if you can identify that
15 document?

16 A. Actually, the front part of the document is a
17 Congressional Act dated August 24, 1954.

18 Q. And the rest of the document?

19 A. The rest of the document is a Planning Report,
20 essentially, laying out revised allocation of costs for
21 features on the Payette Division and the Arrowrock
22 Division of the Boise Project.

23 Q. And this is a document you brought with you
24 today; is that correct?

25 A. That's correct.

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1 Q. And this is the document you referenced in your
2 prior testimony about the Planning Report for the Lucky
3 Peak, Arrowrock, and Anderson Revised Operations; is
4 that correct?

5 A. This Planning Report was put together to go to
6 Congress to give us authority to operate the three
7 reservoirs as one system and, also, for Congress to
8 write off some of the irrigators' debts for flood
9 control.

10 Q. We are talking about Anderson Ranch?

11 A. And Arrowrock.

12 Q. And Arrowrock, okay. And in this document,
13 Exhibit No. 25, the Act of Congress is the first page.
14 Is that the Congressional Act that was adopted as a
15 consequence in part of this Planning Report, as you
16 called it?

17 A. Yes.

18 Q. So, actually, the first page is something that
19 was generated by Congress through their process after
20 the remaining pages were submitted to them; is that
21 correct?

22 A. That's correct.

23 Q. All right. Turn back to Exhibit No. 24, if you
24 would, sir. There is something I just noticed about
25 this exhibit. Would you turn to the second page? It is

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1 called Sheet 2, C-1.

2 A. Second page, C-1? Okay.

3 Q. It says "Sheet 2" on the right-hand side.

4 A. Okay.

5 Q. Would you please read that last paragraph to
6 yourself? Tell me when you have finished reading that
7 last paragraph on Sheet 2.

8 I see you noticing the same thing I noticed,
9 Mr. Gregg; that is, I noticed that the last paragraph
10 ends mid sentence and the next page does not contain any
11 continuation of that sentence. Is that correct?

12 A. Well, these are photocopies of the original
13 document. On the photocopy, that is correct.

14 Q. Do you know of any other version of this
15 document that might contain all of that sentence that we
16 identified on Sheet 2, Subsection (e)?

17 A. I presume both the Corps and our Regional
18 Office have an original -- or the Corps of Engineers has
19 the original.

20 MR. GEHLERT: We are happy to find that. I
21 would have picked that up if I would have noticed that.

22 MR. CAMPBELL: I understand. I understand. It
23 would be nice to have the rest of the story, as it were.

24 Q. Mr. Gregg, you can put that document aside.
25 Now, in terms of Exhibit No. 3 -- if you could, turn
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1 your attention to that again -- it is the 1953 MOA.
2 Page 2 we were looking at before. Now, from page 2, I
3 would like you to go to page 3 of that document. Are
4 you there, sir?

5 A. Uh-huh.

6 Q. Would you please review and read to yourself,
7 not outloud, the first full paragraph of page 3 of
8 Exhibit No. 3?

9 MR. GEHLERT: While he is doing that, I will
10 note for the record the same objection that I noted
11 earlier.

12 MR. CAMPBELL: That is fine.

13 THE WITNESS: Uh-huh.

14 BY MR. CAMPBELL:

15 Q. You have finished reading that first paragraph
16 on page 3 of Exhibit 3?

17 A. Uh-huh.

18 Q. Is that a yes?

19 A. Yes.

20 Q. I am sorry. We do need to make sure it is a
21 word that can be transcribed properly.

22 In terms of the reference in that paragraph
23 to -- and this is the fourth line down from the top, on
24 the right-hand side -- it says, "...and various water
25 users' organizations serving lands in the Boise

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1 Valley..." Do you see that phrase?

2 A. Yes.

3 Q. From your standpoint as the Area Manager and
4 your prior position as the Snake River Project
5 Superintendent --

6 A. Central Snake.

7 Q. Central Snake Project Superintendent?

8 A. Yes.

9 MR. GEHLERT: Why don't we just say, "In your
10 prior job"?

11 MR. CAMPBELL: That probably is better.

12 Q. What is your interpretation of that phrase,
13 "...various water users' organizations serving lands in
14 the Boise Valley...?"

15 A. My assumption is that it's referring to the
16 irrigation districts and the canal companies that divert
17 from the Boise River.

18 Q. Would that category of entities include Pioneer
19 Irrigation District and Settlers Irrigation District?

20 A. Yes.

21 Q. Further down, at the end of that paragraph, it
22 states -- well, I am sorry. It's more in the middle of
23 the paragraph. I will count the lines down. Five lines
24 down, to the right, it starts, "...and there are other
25 existing rights..." Do you see that phrase on the

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1 right-hand side of the page, five lines down?

2 A. Uh-huh.

3 Q. If you would, just read that phrase all the way
4 to the end of that first paragraph outloud, please.

5 A. "...and there are other existing rights in and
6 to the use of waters of the Boise River, both stored and
7 natural flow, which waters are in part diverted and
8 distributed through the transferred works of the Boise
9 Project being operated and maintained by the Boise
10 Project Board of Control and in part by means of other
11 works being operated and maintained by other water
12 users' organizations; and..."

13 Q. Thank you very much, Mr. Gregg. You are a very
14 good reader. The South Dakota schools were very
15 effective. In terms of that phraseology, I would like
16 to ask you what your understanding is of the phrase,
17 "...in part by means of other works being operated and
18 maintained by other water users' organizations ..."
19 What does that phrase refer to?

20 A. Those would be facilities, canals, laterals
21 that were not built by Reclamation, built by the canal
22 company, or the irrigation district that had the
23 diversion rights.

24 Q. Thank you. In terms of page 3, the last
25 paragraph -- if you would, just read that last paragraph

Deposition of Jerrold D. Gregg, Volumes I and II

1 to yourself so I can ask you some questions about the
2 language there. Tell me when you have read it.

3 A. Yes.

4 Q. In terms of the first portion of that
5 paragraph, it says, "Whereas, to comply with the
6 above-quoted Congressional declaration of operational
7 policy in regard to Lucky Peak and Arrowrock Dams..."
8 Do you see that?

9 A. Yes.

10 Q. Do you have an understanding of what that
11 phrase refers to?

12 A. I'm not real clear what it refers to.

13 Q. And then it says, "...to achieve the greatest
14 multiple-purpose use of the combined total usable flood
15 control and irrigation storage of 983,000 acre-feet of
16 water in all three reservoirs, a coordinated plan of
17 operation is necessary for this reservoir system on the
18 Boise River..." et cetera, et cetera.

19 Do you have an understanding of what the terms
20 "a coordinated plan of operation" means?

21 A. Yes.

22 Q. And what would your understanding be, as it
23 relates to this document?

24 A. It's, essentially, jointly operating the system
25 for both flood control and irrigation versus Reclamation
Deposition of Jerrold D. Gregg, Volumes I and II

1 operating Anderson and Arrowrock almost entirely for
2 irrigation.

3 There was a small amount of flood control in
4 Anderson Ranch. The Corps operating Lucky Peak just for
5 flood control -- you could get additional benefits by
6 operating the facilities as one system.

7 Q. And that is what this coordinated plan of
8 operation is referring to, as far as you are
9 interpreting it?

10 A. That's my understanding.

11 Q. All right. Thank you. Turn to page 4 of the
12 same exhibit, please. If you would, read the first full
13 paragraph and tell me when you have finished it. Read
14 it to yourself.

15 A. Yes. I have read it.

16 Q. Now, the first and second lines of that
17 paragraph refer to "successful operation of this
18 coordinated irrigation and flood control plan". Do you
19 see that? Do you see that phrase?

20 A. Yes. Yes.

21 Q. Now, is that phrase different than the phrase
22 we just talked about on page 3, "a coordinated plan of
23 operation," in your mind?

24 A. No. They are one in the same. That is my
25 understanding.

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1 Q. And then the first paragraph says, at the end
2 of Line 2, quote, "This coordinated irrigation and flood
3 control plan will call for the cooperation and
4 assumption of responsibilities by the two Departments
5 and the water users having storage rights in the
6 reservoir system, and that there is need for a policy of
7 mutual coordination, information, and assistance in its
8 performance," end quote. Did I quote that correctly?

9 A. Yes.

10 Q. In terms of your understanding, can you tell me
11 what your understanding of the phrase "the water users
12 having storage rights in the reservoir system" means?

13 A. That was the irrigation districts or canal
14 companies that had storage rights or storage contracts
15 with Reclamation and Arrowrock and Anderson Ranch
16 Reservoirs.

17 Q. To your knowledge, would that include Pioneer
18 Irrigation District and Settlers Irrigation District?

19 A. Yes.

20 Q. And can you tell me whether or not you are
21 aware of a written, quote, "policy of mutual
22 coordination, information, and assistance in its
23 performance"?

24 A. My assumption is that that's this document, the
25 1953 MOU. That's what this is talking about.

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1 Q. Do you know of any other written documents that
2 relate to this language that I just read?

3 A. No, I don't.

4 Q. Do you know, from a standpoint of the history
5 of your involvement with the operation of the three
6 reservoirs on the Boise River, how -- excuse me -- not
7 how -- if this language that says "a policy of mutual
8 coordination, information, and assistance in its
9 performance," end quote, has been carried out?

10 A. Could you repeat the question?

11 Q. Sure. I will try to. Do you know, from the
12 standpoint of your involvement since 1987 in the
13 operation of the three reservoirs on the Boise River,
14 whether or not the, quote, "policy of mutual
15 coordination, information, and assistance in its
16 performance," end quote, has been implemented or carried
17 out by the Bureau of Reclamation?

18 A. Yes. The Bureau and the Corps jointly managed
19 the reservoir system, as outlined in the 1985 Water
20 Control Manual.

21 Q. Is there anything else that institutes this
22 phrase, as far as your actual knowledge in the last
23 twenty years that you have been in charge of the
24 Bureau's function of the reservoirs?

25 A. Not that I'm aware of.

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1 Q. On page 4 still, Paragraph 2, starting with,
2 "The plan of operation," if you would, read that.

3 A. Just to back up to your previous question, the
4 1944 Flood Control Act that gives Reclamation the
5 authority to contract irrigation storage out of a Corps
6 facility probably would fit within the guidelines time.

7 Q. Thank you. Turn to Paragraph 2 on page 4 of
8 Exhibit 3, if you would, please. Please read that and
9 tell me when you have finished reading.

10 A. Yes. I have read it.

11 Q. Mr. Gregg, we have talked about this
12 so-called -- first, on page 3, it is called "coordinated
13 plan of operation." Then on page 4, it is called
14 "coordinated irrigation and flood control plan." You
15 said those two phrases are, basically, the same thing.
16 Do you recall that statement?

17 A. Yes.

18 Q. And then it is called, in Paragraph 2 on page
19 4, "the plan of operation." So it is yet a third term.
20 Now, from your standpoint and your understanding, is
21 that the same plan as the other two references?

22 A. I'm not real sure.

23 Q. Okay.

24 A. In Paragraph 2, on page 4, I believe it is
25 specifically talking about the criteria that follow

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1 that's during the flood control season, probably
2 November until flood control is over. It's not talking
3 about the main part of the irrigation season, which is
4 July until the end of the season.

5 Q. That is fine. In terms of the rest of that
6 sentence in Paragraph No. 2 on page 4 of Exhibit 3, can
7 you tell me your understanding, given that answer, of
8 the remaining portion of the phrase that says "...of the
9 respective general operating plans of the parties
10 hereto..."?

11 A. I'm not real sure. I'd probably need a
12 contract specialist to take a look at that. I think
13 what this is saying is that this will go into effect
14 when we actually start operating Lucky Peak Reservoir.
15 This agreement was signed prior to Lucky Peak being
16 completed.

17 Q. Okay.

18 A. So if I understand this, from a layman's
19 standpoint, I think this says that this would go into
20 effect once you actually, physically start operating
21 Lucky Peak Reservoir.

22 Q. I appreciate that. Are you aware of what the
23 respective general operating plans of the Bureau of
24 Reclamation and the Corps of Engineers are, as it
25 relates to this document, Exhibit 3?

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1 A. My assumption is that this is talking about
2 any operating criteria that the Bureau of Reclamation
3 may have had for Anderson Ranch and Arrowrock, such as
4 is contained in the 1943 storage contracts, talking
5 about operations in the flood control at that time.

6 Q. I appreciate that. So is it correct for me to
7 state that, as far as your knowledge is concerned on
8 behalf of the Bureau of Reclamation, there is no
9 document that you are aware of that is described as the
10 general operating plans, or the general operating plan,
11 for operation of the three reservoirs on the Boise
12 River?

13 A. Not to my knowledge.

14 Q. Thank you. Turn to page 5 of Exhibit 3, if you
15 would, please.

16 A. Yes.

17 Q. Actually, you will have to start on page 4. It
18 is numbered Paragraph 3. I would like you to read
19 numbered Paragraph 3 and tell me when you have finished
20 reading that. It goes on to page 5.

21 A. Yes.

22 Q. Now, on page 5, I would like to ask you a
23 couple of questions, if I may. It talks about the
24 operation of the three reservoirs on page 4 and it talks
25 about the total volume of storage available -- or total

Deposition of Jerrold D. Gregg, Volumes I and II

1 capacity, it says, in acre-feet.

2 And then on the top of page 5, it is referring
3 to this total capacity. It says, quote, "...will be
4 operated primarily in the interests of irrigation and
5 flood control and secondarily in the interests of power,
6 as governed by forecast of run-off." Did I read that
7 portion correctly?

8 A. Yes.

9 Q. From the standpoint of your responsibilities
10 over the last twenty years for the Bureau of
11 Reclamation, how do you interpret that language?

12 A. My understanding, from a layman's perspective,
13 is that, essentially, we are using the same space for
14 irrigation store and flood control. So it's saying we
15 will use forecasts and flood control rule curves to
16 determine when we release water for flood control.

17 Then after that part of the season is over, we
18 will refill that space for irrigation storage. So we
19 are using the same space for two different purposes.

20 Q. I am not trying to quibble with you, Mr. Gregg.
21 I just want to understand your answer. Can you tell me
22 what part of that phrase that I read at the top of page
23 5 of Exhibit 3 talks about rule curves?

24 A. It doesn't mention rule curves here. It
25 mentions run-off forecasts.

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1 Q. What is a run-off forecast as it relates to
2 this document? Do you know?

3 A. A run-off forecast is -- both Reclamation and
4 the Corps of Engineers, starting in January, prepare
5 run-off forecasts. So they are mathematical projections
6 based on what the snow pack is at that time.

7 Let's say, January 1st, what the snow pack is,
8 and then assuming either normal or above-normal or
9 below-normal precip in July, then it's a forecast of
10 what the run-off is going to be, and then operational
11 decisions are made on those forecasts.

12 Q. Based upon your knowledge -- I am not asking
13 you to speculate. Based upon your knowledge, when this
14 document, Exhibit 3, was prepared, was that the
15 procedure that the Bureau and the Corps of Engineers
16 used at that time?

17 A. It's much different today, I believe. It's
18 much more sophisticated today, of course, with computers
19 and more data, than it was back then. It's similar.

20 Q. The concept is, basically, the same?

21 A. The concept is, basically, the same.

22 Q. All right. Further down in that paragraph, on
23 page 5 of Exhibit 3, in Subsection (c), it talks about
24 96,000 acre-feet at Anderson Ranch and 26,000 acre-feet
25 in Lucky Peak being reserved for dead storage and

Deposition of Jerrold D. Gregg, Volumes I and II

1 maintenance of minimum power head.

2 Then it says, quote, "...maintenance of
3 permanent pools for the preservation and propagation of
4 fish and wildlife and for silt control," end quote. Did
5 I read that correctly?

6 A. That's correct.

7 Q. From your perspective as the Bureau of
8 Reclamation person in charge of the -- in ultimate
9 charge of the reservoir operations for the Bureau of
10 Reclamation, what does the phrase "maintenance of
11 permanent pools for the preservation and propagation of
12 fish and wildlife" mean?

13 A. When we went to Congress to authorize the
14 project, there was a small amount of benefit given to
15 having a small dead pool in the reservoir -- I believe
16 it was 29,000 acre-feet -- for fisheries and then, also,
17 the cumulation of silt.

18 Q. Now, did you say "reservoir" or "reservoirs"?

19 A. "Reservoir." I am talking about Anderson
20 Ranch.

21 Q. Okay.

22 A. And then Lucky Peak does also have -- I believe
23 it's an active space, 26,000.

24 Q. All right. And then the last sentence of that
25 paragraph states, quote, "The above designated 983,000

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1 acre-feet or any part thereof in storage at the end of
2 each flood season will be primarily considered as
3 available for irrigation except as such amount must be
4 reduced by evacuation requirements for flood control,"
5 end quote. Did I read that correctly?

6 A. Yes.

7 Q. From the standpoint of your position as the
8 person with the Bureau of Reclamation in charge of
9 operation of the Bureau reservoirs on the Boise River
10 and the irrigation function on Lucky Peak Reservoir,
11 what is your understanding of that particular phrase
12 that I just read to you?

13 A. My understanding is, essentially, it's
14 recognizing that all of the space, the 983,000, could be
15 used for flood control. Again, a large amount of that
16 space had been contracted for irrigation.

17 So at the end of the flood control season, the
18 space would be refilled and the water use for
19 irrigation. The last part of the sentence, I believe,
20 refers that -- you may not totally refill the system.

21 Q. From your standpoint, this phrase only pertains
22 to space in the reservoir system on the Boise River that
23 is under contract through the Bureau of Reclamation?

24 A. No. I think the 983,000 is all of the
25 contracted and uncontracted space.

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1 Q. Thank you. On page 5, at the bottom, Mr.
2 Gregg, would you read that last paragraph, continuing on
3 to page 6?

4 A. Yes. I have read it.

5 Q. Thank you. Now, as it relates to that
6 paragraph, Mr. Gregg, it talks about an agreement of the
7 Chief of Engineers, the Commissioner of Reclamation, and
8 the watermaster.

9 Can you tell me what your understanding is of
10 the reference to the term "the watermaster" on page 5,
11 Paragraph 5, and what that refers to?

12 A. The Boise River Watermaster, District 63
13 Watermaster, selected by the water users.

14 Q. And it continues to talk about agreement among
15 those three individuals concerning acceptable methods of
16 forecasting seasonal run-off volumes for the Boise River
17 above Diversion Dam; is that correct?

18 A. Correct.

19 Q. And it indicates that this forecasting process
20 will "...determine the volume of run-off that may be
21 expected in the drainage area tributary to the Boise
22 River above Diversion Dam;" is that right?

23 A. Correct.

24 Q. And then any differences in those forecast
25 amounts have to be reconciled to arrive at a common

Deposition of Jerrold D. Gregg, Volumes I and II

1 forecast within 48 hours after the basic data for
2 forecasts are available. Is that a correct paraphrasing
3 of that phrase?

4 A. That's what the sentence says.

5 Q. From your knowledge in your position at the
6 Bureau of Reclamation since 1987, do you know if any of
7 these procedures described in Paragraph 5 involving the
8 Commissioner of Reclamation, the Chief of Engineers, and
9 the watermaster actually were performed?

10 A. Well, first of all, this may be one of the
11 sections that was replaced in the '85 Water Control
12 Manual.

13 Q. I understand that.

14 A. But there is a procedure that we do do joint
15 forecasting. We do forecasts of the Boise River -- the
16 Corps of Engineers does -- and those are reconciled into
17 a coordinated forecast.

18 Q. My question, though, is: Before this document,
19 Exhibit No. 3, was modified -- and I don't care which
20 phrase you use -- incorporated into, supplanted,
21 whatever phrase is appropriate, by the 1985 Water
22 Control Manual -- do you know if the procedures
23 described in Paragraph 5 on pages 5 and 6 that we have
24 been talking about were ever instituted by the three
25 individuals described in the paragraph?

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1 A. I have second-hand knowledge that there were
2 coordinated forecasts, but I don't know what procedure
3 was followed.

4 Q. Do you see the remaining portion of that
5 paragraph, starting with the phrase, "To facilitate
6 forecasting of run-off..."

7 A. Yes.

8 Q. It talks about, "...mutually satisfactory
9 arrangements will be made among the Chief of Engineers,
10 the Commissioner of Reclamation, and the State of Idaho,
11 after consultation with the interested water users'
12 organizations to expand the existing hydrologic
13 network..." et cetera, et cetera, et cetera. Did I read
14 that quoted provision correctly?

15 A. Correct.

16 Q. What I want to know, Mr. Gregg, is: From your
17 knowledge in the last twenty years in your position for
18 the Bureau of Reclamation and in your position as the
19 designated 30(b)(6) deponent, do you know whether or not
20 the Bureau of Reclamation, under the language that I
21 just quoted from Paragraph 5 of Exhibit 3 -- did the
22 Bureau of Reclamation ever conduct consultation with,
23 quote, "the interested water users' organizations"?

24 A. Well, this paragraph is talking about expanding
25 the hydrologic network, which I assume is the river
Deposition of Jerrold D. Gregg, Volumes I and II

1 gauging stations; the snow-pack-measuring stations, or
2 the snow tail sites; the stations, what we call the
3 hydromet, where we use satellites to uplink our storage
4 contents of our reservoirs.

5 When I came on board, that had already been
6 done. Those systems were in place. I don't know what
7 the consultation process was.

8 Q. So is your answer that you do not know if there
9 was any consultation with the water users' interests?
10 Is that your answer?

11 A. That's correct. Prior to 1987, I do not know.

12 Q. And, again, we have talked about this phrase,
13 "the interested water users' organizations." What does
14 that phrase mean, to you?

15 A. My assumption is that those are the water
16 organizations that had repayment contracts with the
17 United States, because they would pay part of the costs.

18 Q. And repayment contracts regarding the reservoir
19 space in the three reservoirs on the Boise River; is
20 that correct?

21 A. At this time, it was only two reservoirs
22 because we hadn't contracted any water at Lucky Peak in
23 1953.

24 Q. So Anderson Ranch and Arrowrock?

25 A. Yes.

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1 Q. Thank you, Mr. Gregg. I know this is going to
2 take some time. It might be best if we went off the
3 record after I ask the question. But I would like you
4 to read Section 6 of Exhibit No. 3 that goes on for --
5 gosh -- it goes on and on and on and on and on until
6 page 13, at the top. Do you see what I am referring to?

7 A. Yes.

8 MR. CAMPBELL: Let's go off the record and let
9 you do that.

10 (Recess.)

11 MR. CAMPBELL: I will make a note on the record
12 that we are convening at 9:30 tomorrow morning for the
13 continuation of Jerry Gregg's deposition, and we will
14 try to adjourn at approximately 4:30 this afternoon.

15 Q. Mr. Gregg, have you had a chance to review the
16 portions of Exhibit 3 which I asked you to review?

17 A. Yes, I have.

18 Q. And I am not going to go into great detail;
19 but, Mr. Gregg, this section of Exhibit 3 appears to
20 describe an operating plan or a flood control operating
21 plan or something along those lines. Is that an
22 accurate characterization of that portion of Exhibit 3?

23 A. I would say it's flood control operating
24 criteria.

25 Q. And from your knowledge, based upon your
Deposition of Jerrold D. Gregg, Volumes I and II

1 experience since 1987 on the Boise River Reservoir
2 System, do you know if this set of procedures was
3 followed before the 1985 Water Control Manual was
4 adopted?

5 A. No, I do not know.

6 Q. Do you know -- well, let me ask you this
7 question. Are you familiar with the procedures set
8 forth in the 1985 Water Control Manual as it relates to
9 flood control operations of the three reservoirs on the
10 Boise River?

11 A. I am familiar with the general operations. I
12 am certainly not an expert on flood control curves and
13 how they are developed.

14 Q. Are you familiar, generally, with what is
15 contained, as far as procedures and steps described in
16 the 1985 Water Control Manual, Exhibit No. 16?

17 A. Yes. But it's been a long time. It's been a
18 while since I have read the whole document.

19 Q. I sympathize with that. Can you tell me if you
20 know how the provisions of the 1985 Water Control Manual
21 differ, as contrasted with the provisions of Section 6
22 of Exhibit 3?

23 A. No, I can't.

24 Q. You have no understanding at all how they may
25 differ?

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1 A. The only thing I know is we start
2 forecasting -- well, this one says January 1st.
3 Generally, from a layman's standpoint, I believe the new
4 rule curves start us operating a lot sooner than these
5 criteria would have, as the criteria --

6 Q. Are these -- excuse me. I'm sorry.

7 A. By the criteria in this 1953 MOU.

8 Q. That is Exhibit 3?

9 A. Exhibit 3.

10 Q. By "the criteria," you mean the language
11 contained in Section 6 of the document?

12 A. Correct.

13 Q. Mr. Gregg, if you would, turn to page 9 of
14 Exhibit 3, please. Under Subsection (d), if you would,
15 please, read the first full sentence of that section
16 outloud.

17 A. "The evacuation of the active capacity in the
18 reservoirs will be made in the following order: First,
19 from Lucky Peak; second, from Arrowrock; and, last, from
20 Anderson Ranch."

21 Q. Do you know what the term "evacuation of the
22 active capacity in the reservoirs" means?

23 A. We mean releasing the water stored in the
24 active capacity below Lucky Peak Reservoir.

25 Q. And is this phrase tied to the process for
Deposition of Jerrold D. Gregg, Volumes I and II

1 emptying water from the reservoirs for flood control
2 space purposes?

3 A. That's my understanding. That's what this
4 phrase referred to.

5 Q. And can you tell me if the operation of the
6 reservoirs for flood control specified in the 1985 Water
7 Control Manual provides for the same order of evacuation
8 of the three reservoirs?

9 A. No. I believe it's different.

10 Q. Do you know how it is different?

11 A. The evacuation, depending upon the forecast,
12 may be -- you may be evacuating water from two or all
13 three at the same time, depending on the year.

14 Q. So from your understanding of the 1985 Water
15 Control Manual, Exhibit No. 16, the procedure followed
16 in at least the first sentence of Subsection (d) on page
17 9 of Exhibit 3 is not followed; is that correct?

18 A. That's correct. That's correct.

19 Q. Thank you. And if you would, turn to page 10
20 of Exhibit 3, please. I am counting from the top line,
21 one, two, three, four, five, six, seven, eight, nine --
22 the tenth line down from the top. It starts with the
23 word, "Filling."

24 A. Uh-huh.

25 Q. And I quote, "Filling of the three reservoirs
Deposition of Jerrold D. Gregg, Volumes I and II

1 will follow..." I'm sorry. You gave a non-specific
2 verbal response.

3 A. Oh, yes.

4 Q. So you are where I am? Okay.

5 "Filling of the three reservoirs will follow
6 the reverse of the evacuation schedule to the extent
7 that water is available at each of the respective
8 sites." Did I read that correctly?

9 A. Yes.

10 Q. And by "evacuation schedule," can you tell me
11 if that refers to the portion of Subsection (d) that we
12 talked about on page 9 of Exhibit 3?

13 A. That's my assumption.

14 Q. And do you know if this particular procedure is
15 currently followed by the Bureau of Reclamation and the
16 Corps of Engineers, as described in the 1985 Water
17 Control Manual?

18 A. No. The 1985 Water Control Manual has a
19 different refill schedule.

20 Q. Do you know what that is?

21 A. Again, it's depending on the run-off and the
22 forecast. You may be filling all three reservoirs at
23 the same time. The '85 Control Manual allocates,
24 depending upon the year, a certain percentage of flood
25 control space to be in various reservoirs.

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1 Lucky Peak is the last reservoir to be filled.
2 You don't follow this exact schedule of filling this
3 reservoir and then the next reservoir. Sometimes we are
4 filling all three at the same time.

5 Q. Just to follow up on that, does the 1985 Water
6 Control Manual then provide for some set of criteria
7 that would allow multiple variations in how the
8 reservoirs are refilled? Is that correct?

9 A. It does provide some criteria, but it also
10 gives a flexibility for the Corps of Engineers and the
11 Bureau to make decisions depending upon how the run-off
12 is coming off. You cannot predict every certain
13 situation.

14 Q. Oh, I understand that.

15 A. So it gives general criteria and then gives us
16 some operational flexibility to make decisions.

17 Q. I appreciate that. Is there anything in the
18 1985 Water Control Manual that specifically requires the
19 Bureau and the Corps of Engineers to refill any of the
20 three Boise River Reservoirs in a particular order each
21 year?

22 A. There is criteria that reserves 60,000 in Lucky
23 Peak to be the last to fill, and that's as you are
24 nearing peak storage. Depending upon the weather, you
25 can have, you know, some bumps in the river.

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1 So there was 60,000 acre-feet set aside in
2 Lucky Peak to be the last to fill in the system. Other
3 than that, I would have to go back and review the Water
4 Control Manual and see.

5 Q. Right as you sit here today, you do not recall
6 any other specific limitation on any of the reservoirs,
7 as far as refill, except for that 60,000 acre-feet?

8 A. Except in evacuating water and making a
9 forecast. You always try to keep your water highest in
10 the system. So we don't release water out of Anderson.
11 That would be -- we make sure that we can try to refill
12 that, you always try to keep your water as high in the
13 system as you can.

14 Q. I understand. With regard to the 60,000
15 acre-feet that you talked about, is that part of the
16 so-called in-stream-flow water, or space, in Lucky Peak?

17 A. Streamflow Maintenance Account, yes.

18 Q. That is what you call it?

19 A. Streamflow Maintenance Account.

20 Q. All right. Continuing on after the sentence
21 that I quoted to you about filling the three reservoirs,
22 on page 10 of Exhibit 3, I would like to read the rest
23 of that paragraph to you.

24 I quote, "In the event Anderson Ranch or
25 Arrowrock Reservoirs are not filled by reason of having

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1 evacuated water for flood control, storage in Lucky Peak
2 will be considered as belonging to Arrowrock and
3 Anderson Ranch storage rights to the extent of the space
4 thus remaining unfilled at the end of the storage season
5 but not to exceed the amount evacuated for flood
6 control," period, end quote. Did I read that phrase
7 correctly?

8 A. Yes.

9 Q. Have you any kind of understanding of what that
10 particular phrase means in the context of operation of
11 the Boise River Reservoirs?

12 A. Yes.

13 Q. What is your understanding?

14 A. That means, during the flood control
15 operations, after the season is over, the flood control
16 season, if we have made releases such that the
17 contracted storage space in Anderson and Arrowrock has
18 not filled, that portion that has not filled due to
19 flood control, that water is then made up from Lucky
20 Peak Reservoir.

21 Q. Based upon your knowledge of the 1985 Water
22 Control Manual, is that provision of Exhibit 3 that we
23 just talked about included within the 1985 Water Control
24 Manual?

25 A. I'm not sure.

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1 Q. Based upon your operational experience over the
2 last twenty years for the Bureau of Reclamation, do you
3 have an understanding as to whether or not this
4 particular concept set forth on page 10 of Exhibit 3
5 relating to refill of space in Arrowrock and Anderson
6 and flood control adjustments -- do you know if that has
7 actually been done by the Bureau of Reclamation over the
8 past twenty years?

9 A. Yes, it has.

10 Q. And what is your understanding in that regard
11 based upon?

12 A. It's based on the provisions in the 1954
13 contracts between Reclamation and the Arrowrock and
14 Anderson space holders.

15 Q. Well, since you made reference to that, let's
16 go ahead and turn our attention to that document. This
17 is Exhibit 4. I will, hopefully, get the right one.

18 Mr. Gregg, I am handing you what has been
19 marked as Exhibit 4. If you could, just review that
20 document, generally, to familiarize yourself. You do
21 not need to read each word.

22 A. Yes.

23 Q. You have done that?

24 A. Yes.

25 Q. All right. Can you tell me what the document
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1 is, please?

2 A. It's a contract between -- it's a supplemental
3 contract between Reclamation and -- well, this contract
4 is with Pioneer Irrigation District.

5 Q. Is that one of the 1954 contracts that you were
6 describing just previously in your testimony?

7 A. Yes.

8 Q. Turn your attention to Exhibit No. 5, if you
9 would, please. This is this document. If you would, do
10 the same thing there. Review that, just generally, and
11 tell me if you can identify that.

12 A. Yes.

13 Q. Now, what is that, sir?

14 A. That's the 1954 Supplemental Contract between
15 the United States and Settlers Irrigation District.

16 Q. And in terms of the adjustment that you were
17 talking about that has been done by the Bureau of
18 Reclamation and, at certain times, during the course of
19 your twenty years in your positions with the Bureau of
20 Reclamation in Idaho, can you tell me what provisions of
21 either one of those contracts you are referring to when
22 you describe in your testimony the adjustment that is
23 reflected or required by those contracts?

24 A. In Exhibit 4, it's Article 7, page 4.

25 Q. And is there any particular portion of that or
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1 the entire Section 7?

2 A. It's the entire Section 7.

3 Q. In terms of Section 7 in Exhibits 4 and 5, I
4 assume the same provision is in both documents; is that
5 correct?

6 A. It appears to be the same.

7 Q. In the context of your statement that this
8 provision has been implemented -- I am paraphrasing. If
9 I am mistaken about what you have said, please correct
10 me. I am trying to get there, not having a photographic
11 memory like, probably, your counsel has.

12 In terms of the adjustment for irrigation
13 storage contracts in Arrowrock and Anderson Ranch
14 Reservoir that have been made by the Bureau of
15 Reclamation as a result of the flood control operations
16 that you have described, documented by Paragraph 7 in
17 Exhibits 4 and 5, can you tell me whether or not the
18 Bureau has followed the procedures set forth in
19 Paragraph 7 of Exhibits 4 and 5 -- is that what you are
20 saying -- over the last twenty years, in certain
21 instances where the circumstances have dictated that
22 being necessary?

23 A. Yes, we have.

24 Q. So the provisions of Paragraph 7 is what the
25 Bureau has followed? Is that your testimony?

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1 A. Except for the last paragraph -- well, except
2 for the last paragraph. There isn't a separate meeting,
3 but we do do the accounting and make the changes. We
4 have done the crediting, to my knowledge, four times
5 since I've been --

6 Q. What do you mean by "the last paragraph"? I am
7 not following you, sir.

8 A. "Determinations under this article shall be by
9 a committee..."

10 Q. Is that on page 5?

11 A. Yes.

12 Q. And is that nine lines from the top?

13 A. Correct.

14 Q. And going to the end of the paragraph? Is that
15 what you are telling me? From "Determinations" to the
16 end of the paragraph is the portion of Paragraph 7 that
17 has not been implemented?

18 A. I wouldn't say it hasn't been implemented, but
19 the procedures are a little more expansive than is laid
20 out here.

21 Q. What do you mean by "a little bit more
22 expansive"?

23 A. Well, understand that the watermaster would be
24 the first that does the water accounting, does the
25 actual measurement on the river, the gauges, puts that

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1 information into the Idaho Department of Water
2 Resources' accounting model and runs that, I believe, on
3 a weekly basis during the irrigation season and would be
4 the first one to know if this has occurred, if we have
5 released water and we have not refilled Arrowrock and
6 Anderson due to flood control. That would be
7 immediately after flood control operations.

8 Q. Okay.

9 A. So what has happened, at least since I have
10 been Project Superintendent or Area Manager, is the
11 watermaster has contacted myself, the State.

12 And if you do follow Sections (a) and (b) and
13 there is water that is to be credited to Arrowrock and
14 Anderson, we have done that prior to the water accruing
15 to the Lucky Peak Storage Account.

16 At the end of the season, the watermaster
17 prepares all of the water records for the Boise River.
18 It's presented to the Advisory Board, which I am a
19 member of and which the other members of the Committee
20 are members of.

21 That information is then accepted or not. Then
22 it goes to the annual meeting and is presented to all of
23 the water users. Essentially, the credit is given right
24 during the middle of the irrigation season.

25 If you follow this, the water users wouldn't

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1 get their credit until the end of the year. That is one
2 interpretation of this. It's not a well-written
3 section, in my humble opinion.

4 Q. Clients should never criticize their lawyers
5 like that, Mr. Gregg.

6 A. Mr. Gehlert didn't write this section, I'm
7 pretty sure.

8 Q. I am sure he didn't. Thank you for that
9 clarification. With respect to the process that you
10 have described, as to the adjustment by the Watermaster
11 and the Advisory Board and all of the rest of that, is
12 that the procedure that has been used in certain years
13 since you came on board in 1987 on the Boise River
14 System?

15 A. Well, I have been a member of the Advisory
16 Board since 1988. The watermaster has, every year,
17 presented the water records.

18 Q. I am not talking about that. I am talking
19 about the adjustment because there has been a shortfall
20 due to flood control operations.

21 A. Well, the adjustment, since I have been Project
22 Superintendent or Area Manager, has been done right
23 after flood control.

24 Q. Okay.

25 A. The actual adjustment of the records has been
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1 done at that time. Those records are then accepted or
2 not accepted by the Advisory Board.

3 Q. Okay.

4 A. But the actual accounting adjustment is done
5 during the irrigation season.

6 Q. I understand that. What I am trying to sort of
7 confirm is that there have been no other kinds of
8 procedures that relate to the adjustment for flood
9 control impacts to storage accounts, as long as you have
10 been in your positions in Idaho for the Bureau of
11 Reclamation?

12 A. Not that apply to this section.

13 Q. All right. That is what I am asking about.

14 A. Yes.

15 Q. So in terms of the last -- I guess it is the
16 last sentence of Section 7 of Exhibits 4 and 5, talking
17 about the determinations by a committee, State
18 Watermaster, a representative of the water users --

19 A. No. It's two members of the Board of Control.

20 Q. Excuse me. Where are you reading that, sir?

21 A. It says, "...a representative of the water
22 users selected by the Boise Project Board of Control."
23 I'm sorry. It's only one representative.

24 Q. That is why I am confused. You said two
25 representatives of --

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1 A. I'm sorry. Yes.

2 Q. "...and the officer of the United States in
3 charge of the Boise Project..." Would that be you,
4 sir?

5 A. That would be my position.

6 Q. And the determination that is referred to
7 relates to the calculations under (a) and (b) of
8 Paragraph 7; is that right?

9 A. Correct.

10 Q. And it says, so far as practicable, those
11 determinations by this Committee "...shall be made
12 thirty days of the end of the storage season involved;"
13 is that correct?

14 A. That's correct.

15 Q. Is it correct that, as far as you are aware, as
16 the representative of the Bureau of Reclamation, this
17 procedure and these calculations under this procedure
18 have never been performed?

19 A. I wouldn't characterize it that way. I would
20 say that the procedures are, for practical reasons, more
21 expansive than if you read the small paragraph here.

22 Q. I understand that. That is not what I am
23 asking though. Let me try to be more precise. Okay. I
24 am not talking about the procedures that you have
25 followed and personally observed from 1987 until the
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1 present. I am not talking about that at all. I am
2 talking about before the 1985 Water Control Manual was
3 adopted.

4 To your knowledge, as the 30(b)(6)
5 representative of the Bureau of Reclamation, do you know
6 if the procedures that are described in the last
7 sentence of Paragraph 7 of Exhibits 4 and 5 have ever
8 been followed the way they are written in the
9 documents?

10 A. Prior to 1985? No. I mean, prior to the Water
11 Control Manual being adopted, no. I have no knowledge
12 of that.

13 MR. GEHLERT: If I could ask the reporter, you
14 did get the last part of his answer, that he had no
15 knowledge of that?

16 THE COURT REPORTER: Yes.

17 BY MR. CAMPBELL:

18 Q. Would you like to say it again, Mr. Gregg?

19 MR. GEHLERT: I just wanted to clarify that he
20 was answering that he had no knowledge to answer your
21 question.

22 MR. CAMPBELL: I understand.

23 Q. Do you know of anyone else who would have
24 knowledge of that particular question -- with the Bureau
25 of Reclamation?

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1 A. Neil Stessman was Project Superintendent from
2 mid 1984 until 1987. If this criteria would have been
3 met during that time period, I assume he would have been
4 involved. Both Project Superintendents prior to Neil
5 Stessman are deceased. I don't know of anybody else.

6 Q. Before you came to the deposition today, did
7 you talk with anyone concerning any documentation that
8 might exist in correspondence files or historical
9 documents that would relate to the procedures set forth
10 in Paragraph 7 of Exhibit Nos. 4 and 5?

11 A. No, I do not.

12 Q. Do you know anyone with the Bureau of
13 Reclamation who would be able to provide input with
14 respect to whether or not there are any documents
15 relating to Paragraph 7 of Exhibits 4 and 5?

16 A. The only information I know of may be in the
17 contract files with the 1954 contracts. If there are
18 any memos, that's the only place I would know of besides
19 the Archives.

20 Q. Is that Mr. Patterson, Ryan Patterson, again,
21 who is in charge of that particular section of the
22 Bureau?

23 A. Those files? That's correct.

24 Q. Those are in the Regional Office; is that
25 correct?

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1 A. Correct.

2 MR. CAMPBELL: Counsel, will we be allowed to
3 have access to those files?

4 MR. GEHLERT: I believe so. Let me
5 coordinate that.

6 MR. CAMPBELL: Just let us know.

7 Q. Mr. Gregg, in terms of the document that is
8 part of Exhibits 4 -- or, actually, documents that are
9 part of Exhibits 4 and 5, it appears to me that there is
10 an Exhibit A on both Exhibit 4 and 5?

11 A. Yes.

12 Q. Is that correct?

13 A. That is correct.

14 Q. And can you identify that particular Exhibit A
15 to both Exhibits 4 and 5 for me, please?

16 A. Exhibit A in both Exhibits 4 and 5 is the
17 November 20, 1953, MOA between the Bureau of Reclamation
18 and the Corps of Engineers.

19 Q. That is the same document that we talked about
20 in your prior testimony; is that correct?

21 A. That's correct.

22 Q. And that document has been --

23 MR. GEHLERT: It's 3, Exhibit No. 3.

24 MR. CAMPBELL: Thank you, counsel.

25 THE WITNESS: Exhibit 3.

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1 MR. GEHLERT: Just trying to be helpful.

2 BY MR. CAMPBELL:

3 Q. Do you have an understanding as to how the
4 attachment, Exhibit A, interrelates or is connected to
5 Exhibits 4 and 5?

6 A. I would have to look at the contract to see how
7 it's referenced.

8 MR. CAMPBELL: Well, go ahead and take that
9 time. We will go off the record.

10 (Recess.)

11 MR. CAMPBELL: Back on the record, please. Mr.
12 Gregg, would you like the court reporter to read back
13 the last question?

14 THE WITNESS: Yes.

15 (The previous question was read back by the
16 court reporter.)

17 THE WITNESS: The exhibit is mentioned in
18 Article 6 of Exhibit 5 which talks about the Flood
19 Operating Plan.

20 BY MR. CAMPBELL:

21 Q. And what about Exhibit 4?

22 A. It is also in Article 6.

23 Q. Of Exhibit 4?

24 A. Of Exhibit 4.

25 Q. Thank you. And what about on page 4 of both
Deposition of Jerrold D. Gregg, Volumes I and II

1 exhibits, Paragraph 7 that we talked about previously?

2 A. Yes. It's mentioned in Article 7 of Exhibits 4
3 and 5.

4 Q. And that is, Exhibit A is mentioned; is that
5 right?

6 A. Exhibit A. That is correct.

7 Q. What about on page 5, Paragraph 8 of Exhibit 4
8 and 5?

9 A. Yes. It's mentioned in Article 8 of both
10 Exhibits 4 and 5.

11 Q. Thank you. Mr. Gregg, have you had occasion,
12 except -- I think you answered this question. I am not
13 trying to trick you.

14 I just want to make sure that I got everything
15 that you are aware of concerning the factual
16 circumstances of the negotiation of Exhibit No. 3, which
17 is now A to Exhibits 4 and 5, and Exhibits 4 and 5, the
18 history of how these documents came to be signed by the
19 various parties.

20 I think you said the only thing that you are
21 aware of is Exhibit 24? I think it is 24; correct?

22 MR. GEHLERT: 25.

23 BY MR. CAMPBELL.

24 Q. 25?

25 A. Except for what is in the exhibits, themselves?
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1 Q. Yes, yes.

2 A. That's the only document I am aware of on the
3 history.

4 Q. And in terms --

5 A. And the 1974 report that led up to the Water
6 Control Manual.

7 Q. Well, that confuses me. What my question was
8 directed towards is the factual circumstances of the
9 negotiation and execution of Exhibits 3, 4, and 5.

10 A. Okay. In relationship to your question on the
11 negotiation and the factual information on the -- as you
12 phrased it, no.

13 Q. "No," what?

14 A. No, I don't have any additional information or
15 knowledge of that process that you are talking about.

16 Q. Except for Exhibit 25?

17 A. Except for Exhibit 25.

18 Q. And we went through this before, but there may
19 be other documents in the contract division under the
20 control of Mr. Ryan Patterson or there may be documents
21 in the Denver Archives or the Washington, DC, Archives;
22 is that correct?

23 A. That's correct.

24 Q. You don't know of those, though?

25 A. No, I do not. I have never seen them.

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1 Q. Turn your attention to Exhibit No. 25, again,
2 Mr. Gregg, if you would, please.

3 A. Yes.

4 Q. On page 4 of that exhibit -- if you would, look
5 at that page. At the end of the first paragraph, it
6 appears that there is some underscoring of the last two
7 sentences. Do you see that?

8 A. In the first paragraph?

9 Q. Yes.

10 A. Yes. I see that.

11 Q. Do you know who provided that underlining?

12 A. No. This is a Xerox of a copy of a document
13 that was in my files.

14 Q. Have you discussed the underscored language
15 with anyone prior to today's deposition?

16 A. No. All of the people that were here at this
17 time are dead.

18 Q. Well, not all of them.

19 A. Well, I was three in 1953. So --

20 Q. Well, I wouldn't want to debate that. Mr.
21 Gregg, turn your attention to Exhibit 24 again, please.

22 A. 24 or 25?

23 Q. 24, this Memorandum of Understanding.

24 MR. GEHLERT: Do you want to use this one,
25 Jerry? That's the reporter's official copy.

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1 BY MR. CAMPBELL:

2 Q. Again, looking at this document, can you tell
3 me whether or not the Bureau of Reclamation made any
4 effort to distribute this particular document to the
5 irrigation water contractors with space in Arrowrock,
6 Anderson Ranch, or Lucky Peak Reservoirs?

7 A. I have no knowledge, one way or the other.

8 Q. Mr. Gregg, you were describing the 60,000
9 acre-feet of water in Lucky Peak Reservoir that is last
10 to fill. Do you recall that testimony?

11 A. Yes.

12 Q. And I think you -- well, I will just ask you
13 this. What did you describe that 60,000 acre-feet as
14 being represented of, in terms of a water right?

15 A. I didn't represent it as a water right. I said
16 it had come from uncontracted space that has been used
17 for streamflow maintenance.

18 Q. That is what I thought you said. I am glad you
19 corrected me. I just misspoke. In that regard, I would
20 like you to look at -- I will get there. Are you doing
21 okay?

22 A. Yes.

23 Q. Look at Exhibit 11, if you would, please. Tell
24 me if you can identify that document.

25 A. I believe it's the Water Right License for
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1 Lucky Peak Reservoir, but I don't see the Reservoir's
2 name anywhere on the license. I believe it's the
3 license for Lucky Peak Reservoir, the Water Right
4 License.

5 Q. Have you ever seen this document before?

6 A. Yes.

7 Q. And what leads you to believe that it is the
8 license? I am not trying to trick you. I just want to
9 know why you think it is the license for Lucky Peak
10 Reservoir.

11 A. The second page mentions Lucky Peak Reservoir.

12 Q. In terms of the first page of Exhibit 11, can
13 you tell me what your understanding is of the terms
14 "streamflow maintenance storage" and "streamflow
15 maintenance from storage"?

16 MR. GEHLERT: Scott, before Jerry answers, I
17 would just renew the objection I made about interpreting
18 documents.

19 MR. CAMPBELL: I understand.

20 MR. GEHLERT: Just to refresh the record.
21 Go ahead, Jerry.

22 THE WITNESS: My understanding -- and I'm not a
23 water rights expert -- is you are talking about the
24 portion of the Reservoir where water is stored in an
25 uncontracted space and later released for streamflow

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1 maintenance.

2 BY MR. CAMPBELL:

3 Q. And the number on the license corresponding
4 with those two descriptions is 152,300 AF; is that
5 right?

6 A. "AF" stands for acre-feet. That's correct.

7 Q. And the 60,000 acre-feet of last-to-fill space
8 that you were talking about, can you tell me if that
9 60,000 acre-feet pertains to any of the streamflow
10 maintenance storage that is described on Exhibit 11?

11 A. Yes. It would be part of the 152,300
12 acre-feet.

13 Q. The way I understood your testimony previously
14 about the adjustment that is made by the Bureau for any
15 shortfall in the irrigation storage accounts for
16 Arrowrock and Anderson Ranch -- the way I understood
17 it -- and correct me if I am not saying this right.

18 The way I understood it, you suggested that the
19 60,000 acre-feet that is last to fill is part of the
20 water that is transferred over or adjusted to the
21 irrigation storage accounts that did not fill; is that
22 right?

23 A. The first 60,000 acre-feet are deficit; that
24 would be correct. If the deficit was greater than that,
25 then it would come from other parts of the reservoir.

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1 Q. And so that is 60,000 acre-feet that is part of
2 the streamflow maintenance?

3 A. Correct.

4 Q. Now, if the deficit from flood control
5 operations is greater than 60,000 acre-feet when this
6 adjustment is made, where does that additional increment
7 of water come from out of Lucky Peak?

8 A. My personal belief --

9 Q. I am asking you, based upon your position as
10 the Bureau's man in charge of the reservoirs.

11 A. I believe the contracting officer would have
12 discretion between the contracted and uncontracted
13 space.

14 Q. And why do you say that?

15 A. It's just my interpretation of the contracts.

16 Q. And the contract --

17 A. Why I say that is the deficit was 264,200. The
18 whole active capacity of Lucky Peak -- part of that
19 would be contracted water.

20 Q. Okay.

21 A. The contracts do not -- the '54 contracts do
22 not specify whether it's contracted or uncontracted. It
23 just says "Lucky Peak."

24 Q. And in terms of that view that you just
25 articulated, what do you mean by "contracted versus

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1 uncontracted space"? I think that is what you said,
2 "contracted versus uncontracted space;" is that right?

3 A. In Lucky Peak Reservoir --

4 Q. Is that right?

5 A. That's correct. In Lucky Peak Reservoir,
6 Reclamation has contracted for 71,018 acre-feet of
7 active capacity to various irrigation districts, for
8 irrigation use.

9 Q. And what about the uncontracted space? How
10 much is that?

11 A. The uncontracted is 111,950 acre-feet.

12 Q. That is uncontracted?

13 A. Correct.

14 Q. Well --

15 A. I'm sorry. I'm sorry. I'm sorry. Let me --
16 there's 152,300 acre-feet that's uncontracted that is
17 used for streamflow maintenance. There is 40,932
18 acre-feet that Reclamation re-acquired for flow
19 augmentation purposes that's uncontracted. So it's the
20 152,300 plus the 40,932. I believe those numbers are
21 correct.

22 Q. We won't hold you to the exact, final
23 acre-foot; but those are pretty good estimates. So if
24 we total the two together, by my very rudimentary math
25 addition skills, that is 192,632 acre-feet, those two

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1 amounts together?

2 A. Correct.

3 Q. And then the balance -- and that is all
4 uncontracted space?

5 A. Correct.

6 Q. And then the balance of approximately
7 seventy-one thousand --

8 A. -- eighteen.

9 Q. -- eighteen is contracted space with irrigation
10 entities?

11 A. That's correct. Irrigation entities and United
12 Water has one small contract.

13 Q. Right. So back to your prior testimony, if the
14 shortfall in the irrigation accounts in Arrowrock and
15 Anderson Ranch exceed the 60,000 acre-feet that is the
16 so-called last to fill in Lucky Peak, you, as the
17 operating officer for the Bureau of Reclamation, would
18 have the discretion to determine if some or all of that
19 additional shortfall water is provided from uncontracted
20 or contracted space in Lucky Peak?

21 A. I would clarify that to the point that, if you
22 look at the 2005 repayment contracts that were just
23 negotiated, it says that the contracted and the
24 uncontracted would be treated proportionately and would
25 be on an equal priority. One interpretation would be

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1 that it would be a proportional basis between the
2 contracted and uncontracted.

3 Q. Okay.

4 A. The final decision is really a legal question.
5 That's my interpretation.

6 Q. That is what I am asking for is your
7 interpretation.

8 A. That's my interpretation.

9 Q. And with respect to that quantity of additional
10 shortfall beyond 60,000 acre-feet, if it goes beyond
11 60,000 acre-feet that you have to make up for Anderson
12 and Arrowrock, if it comes out of contracted and
13 uncontracted, what happens to the streamflow maintenance
14 account and the 40,932 acre-feet that the Bureau of
15 Reclamation re-acquired the contract rights for? Could
16 they be impacted?

17 A. The 40,932 I don't believe would because the
18 Boise Water Bank Rule says water taken out of the Basin
19 for flow augmentation is last to fill. So if you get in
20 that situation, 40,932 would, essentially, be in the
21 same space as the 60,000.

22 You wouldn't fill that space. Then 20,000
23 would come out of the streamflow maintenance. After
24 that, in my view, it would be what is left of the
25 streamflow maintenance account and the contracted water.

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1 Q. I am not following part of what you said.
2 20,000 would come out of streamflow maintenance?

3 A. Yes, if the deficit was larger than 40,932.

4 Q. Oh, I see. I see what you are saying. And is
5 that set forth in the 1985 Water Control Manual?

6 A. No. The water taken out of the Basin, whether
7 it is contracted or uncontracted, becomes last to fill,
8 according to the Water Bank Rules. To mesh those two,
9 that's how I believe it would happen.

10 Q. Has that ever happened, in your term, in the
11 twenty years at the Bureau of Reclamation in Idaho?

12 A. I don't believe so because the only time we
13 exceeded the 60,000 was in 1989, and we were not
14 providing flow-augmentation. I believe ever since 1991
15 when we started providing flow -- well, on the Boise, it
16 was later than that. Providing flow augmentation, the
17 deficit has not been that large.

18 Q. With respect to the inclusion of the 40,932
19 acre-feet as last to fill, how is that space or that
20 water related to flood control operations?

21 A. It's treated just like other space on the
22 reservoir for flood control. It can be evacuated for
23 flood control.

24 Q. That is not my question. Well, maybe I should
25 ask another question first. Does the Bureau of

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1 Reclamation utilize the 40,932 acre-feet if it fills
2 every year?

3 A. If it fills. Ever since we have been under the
4 last two Biological Opinions, yes, we have used it for
5 flow augmentation.

6 Q. So if you have it or the amount that you have
7 accrued in Arrowrock -- excuse me -- in Lucky Peak for
8 flow augmentation, the total is 40,932 acre-feet. If
9 you have got any portion of that or if you have got all
10 of it, you use all of it every year; is that right?

11 A. Correct, since we have re-acquired it for flow
12 augmentation.

13 Q. I understand. I understand. So am I correct,
14 then, when the flood control operation season starts
15 in -- when does it start? January?

16 A. November.

17 Q. November?

18 A. November.

19 Q. November when?

20 A. November 1.

21 Q. November 1?

22 A. We have a wintertime space requirement.

23 Q. Is that set forth in the flood control --
24 excuse me -- the Water Control Manual?

25 A. Yes. One of the floods we try to protect
Deposition of Jerrold D. Gregg, Volumes I and II

1 against is the December or January rain and snow event.

2 Q. Sure. And that is smart. But when you start
3 your flood control operations November 1st, the 40,932
4 acre-feet, if you had it all, has already been
5 evacuated; correct?

6 A. That's correct.

7 Q. So explain to me how that water that has
8 already been evacuated is related to flood control
9 operations in the Boise River Reservoir System.

10 A. Essentially, it's providing flood control space
11 because you have already evacuated it. You are not
12 carrying over storage water. So you have 40,932
13 acre-feet of storage space available to fill during the
14 flood control season.

15 Q. Is that specified in the 1985 Water Control
16 Manual, though?

17 A. It doesn't talk about flow augmentation because
18 that wasn't -- we didn't have flow augmentation
19 requirements under the Endangered Species Act at that
20 time.

21 Q. Right.

22 A. It does talk about flood control space
23 requirements.

24 Q. So if I understand it correctly, you are saying
25 that any space that is evacuated as of November 1st is

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1 space that is allocated to flood control space?

2 A. Sure. Your irrigation districts that use
3 storage water during the previous irrigation season --
4 their space is available for flood control.

5 Q. If they have used it?

6 A. If they've used it. If they haven't used -- it
7 can be evacuated.

8 Q. Right. Within certain parameters?

9 A. Right. Any vacant space does provide flood
10 control benefits.

11 Q. Right. I understand that. But the 40,932
12 acre-feet that is released for flow augmentation
13 purposes is not specifically called out in the 1985
14 Water Control Manual, is it?

15 A. No.

16 Q. All right. If the Bureau of Reclamation has to
17 utilize water from the so-called -- well, on the
18 license, it is called "streamflow maintenance storage;"
19 that is what it says on Exhibit 11. To make up the
20 shortfall in Anderson and Arrowrock, how is that done?
21 You described a process where the watermaster makes some
22 kind of adjustments? Is that how it is done?

23 A. Well, I think, on the record, I already
24 explained the process but, again --

25 MR. GEHLERT: Jerry, if you would like her to
Deposition of Jerrold D. Gregg, Volumes I and II

1 read what you said earlier to refresh your memory, feel
2 free to ask her.

3 THE WITNESS: If you will go ahead and --

4 MR. CAMPBELL: It is going to be way back
5 there.

6 THE WITNESS: I can explain it again, if you
7 you would like, but --

8 BY MR. CAMPBELL:

9 Q. You do not need to explain -- excuse me. I'm
10 sorry. Mr. Gregg, I am not asking you to explain the
11 whole process again. I understand you did that once.

12 What I want to know specifically is just one
13 portion of it. If there is a shortfall and the
14 shortfall has to be made up out of the streamflow
15 maintenance storage --

16 A. Yes.

17 Q. -- do you know how the watermaster makes that
18 adjustment?

19 A. The watermaster -- yes. Once the watermaster
20 has identified the shortage, he then contacts
21 Reclamation to say, "Where should we transfer the water
22 from?"

23 Essentially, before final accrual is made to
24 the reservoir, that decision is made by Reclamation, not
25 the watermaster.

Deposition of Jerrold D. Gregg, Volumes I and II

1 Q. And is that decision made by you or someone
2 else with Reclamation?

3 A. It's made by me.

4 Q. Have you made that decision more than one
5 time?

6 A. To my knowledge, the records indicate four
7 times.

8 Q. And you were consulted by the watermaster in
9 each instance; is that right?

10 A. Yes. I have consulted internally with other
11 Reclamation folks, but the final decision has been made
12 by me.

13 Q. That is helpful. Thank you. And then how do
14 you communicate that decision to the watermaster?

15 A. It's been by phone.

16 Q. By telephone?

17 A. Or meetings or face-to-face meetings.

18 Q. Do you keep any records of that communication?

19 A. I have not.

20 Q. Do you know if the watermaster keeps any
21 records of that communication?

22 A. I don't know if he has or not.

23 Q. All right.

24 A. But the actual changes in water accounts is in
25 his records.

Deposition of Jerrold D. Gregg, Volumes I and II

1 Q. Okay.

2 A. That is indicated in his records.

3 Q. I understand that. Turn to page 2 of Exhibit
4 No. 11, if you would, sir. Do you have that page?

5 A. Yes.

6 Q. I would like you to read outloud, if you would,
7 the paragraph that is denominated 2, under the caption
8 "Conditions of Approval."

9 A. "The Bureau of Reclamation and Idaho Department
10 of Fish and Game shall provide joint written
11 instructions to the Department, for conveyance to the
12 watermaster, regarding release of the Lucky Peak
13 streamflow maintenance storage water."

14 Q. Are you familiar with that language? Have you
15 read it before?

16 A. I believe I read it when the license first came
17 out.

18 Q. Is that procedure followed by the Bureau of
19 Reclamation?

20 A. We have not provided joint written
21 instructions. We have -- we consult with Idaho Fish and
22 Game and the Department in the fall before we make our
23 decision on what the releases are.

24 Q. How do you consult? Describe the process for
25 me.

Deposition of Jerrold D. Gregg, Volumes I and II

1 A. Usually a meeting or via telephone, depending
2 upon the year.

3 Q. Who is the meeting with, besides the Bureau of
4 Reclamation and Fish and Game?

5 A. Usually, it's with the Bureau and the Fish and
6 Game and we consult with the watermaster as to what the
7 releases are going to be.

8 Q. And do you personally participate in those
9 meetings?

10 A. I have, in several, if it's an especially dry
11 year and we are going to go below the 240 cfs. If it's
12 a normal year, a good year, and we have enough in our
13 account to maintain the 240, no, I have not.

14 Q. What do you mean by "240 cfs"? What are you
15 identifying when you say "240 cfs"?

16 A. In good years, when we have enough storage
17 water, that's the goal that the Idaho Fish and Game
18 would like us to meet. In the early part of the season,
19 it's 240 cfs.

20 Q. What do you mean by "the early part of the
21 season"?

22 A. At the end of the irrigation season until
23 spring. That's based on fishery studies they conducted
24 in the '90s.

25 Q. And can you give me some more specific
 Deposition of Jerrold D. Gregg, Volumes I and II

1 parameters? When you say "the end of the irrigation
2 season," what time frame? What month?

3 A. Well, it's, essentially, when the irrigation
4 demand drops below that number. It may be mid October.
5 A dry year may start as early as October 1st and the
6 irrigation districts have shut off.

7 So there's no call for natural flow or storage
8 water in the lower river. So that's when the streamflow
9 maintenance season starts.

10 Q. Okay.

11 A. Most years, it's mid October. Some years, dry
12 years, start as early as the first of October.

13 Q. And is that process of consulting with the
14 Idaho Department of Fish and Game -- who initiates that
15 process each year?

16 A. It's usually my Water Operations Staff.

17 Q. And who are they?

18 A. Brian Sauer is the Head of Water Operations in
19 my office.

20 Q. Anyone else?

21 A. No.

22 Q. And do you know who he communicates with at the
23 Department of Fish and Game?

24 A. It's the District Office in Nampa. It's one of
25 their fishery biologists. I'm not sure of the person's

Deposition of Jerrold D. Gregg, Volumes I and II

1 name. They have changed several times.

2 Q. Brian Sauer would know, though?

3 A. Yes.

4 Q. Do you know if there is any documentation that
5 the Bureau of Reclamation retains concerning those
6 decisions each year?

7 A. Not in recent years that I'm aware of.

8 Q. What do you mean by "recent years"?

9 A. I believe, way back in 1992, when we were going
10 to drop below 100 cfs, we put out some press releases;
11 and they may be available.

12 Q. Do you know if the Bureau of Reclamation has
13 any correspondence at all concerning this process that
14 is described in Condition No. 2 on page 2 of Exhibit No.
15 11?

16 A. No, I'm not. This is a condition that was
17 placed in the license by the Director. It was not in
18 the permit. I don't believe it was in the prior permit.

19 Q. And with respect to conveying the instructions
20 to the Department, as described in the Condition of
21 Approval No. 2, how is that done?

22 A. Well, essentially, after we have met or
23 discussed with Idaho Fish and Game what the release
24 should be, then we have usually called the watermaster
25 and said, "This is the release that we would like to

Deposition of Jerrold D. Gregg, Volumes I and II

1 set."

2 He is the one, then, that makes the calls to
3 the Corps of Engineers to release that amount of water.

4 Q. During that process, do you provide for a time
5 period when the releases are a certain quantity?

6 A. Yes.

7 Q. And is that decision re-evaluated at any point
8 in time during the period that the water is released for
9 those streamflow purposes?

10 A. Yes.

11 Q. Tell me how that happens.

12 A. Well, if it's in a good year or an
13 above-average year and you are required to make flood
14 control releases, of course, then, flood control
15 releases would supersede this release.

16 Then, of course, the streamflow maintenance
17 account is not debited any amount of water for
18 streamflow maintenance, the water in the river, or flood
19 control releases.

20 If we don't have enough water to maintain the
21 release we are making, such as in 1982, we have had to
22 reduce the releases mid season.

23 But most years, it's either set at 240 or 150;
24 and then that release is maintained until the irrigation
25 season or flood control releases start up.

Deposition of Jerrold D. Gregg, Volumes I and II

1 Q. In terms of the flood control releases you just
2 described, who makes those determinations?

3 A. Well, the Corps of Engineers and the Bureau of
4 Reclamation coordinate, as laid out in the 1985 Flood
5 Control Manual. The final decision, of course, is with
6 the Corps of Engineers during the flood control season.

7 Q. And in terms of the communications with the
8 Department of Water Resources, as it relates to the
9 decision to release certain amounts during certain
10 periods for the streamflow maintenance, can you tell me
11 how that information is communicated to the Department
12 of Water Resources?

13 A. It's discussed at the monthly -- I'm not sure
14 what they call those meetings when the Department hosts
15 the meetings on water operations. I can't think of the
16 name.

17 Q. Do you attend those meetings?

18 A. Brian Sauer does. Of course, once we notify
19 the watermaster, he is also required to report
20 information to the Department. We have not provided
21 written instructions, though.

22 MR. CAMPBELL: I think we should stop now. It
23 is almost 4:30.

24 (The deposition, Volume I, stood in recess at
25 4:28 p.m.)

Deposition of Jerrold D. Gregg, Volumes I and II

1 THIS DEPOSITION, VOLUME II, was taken on behalf of
2 Pioneer Irrigation District and Settlers Irrigation
3 District on Thursday, the 31st day of January 2008, at
4 the offices of Moffatt, Thomas, Barrett, Rock & Fields,
5 Chartered, 101 South Capitol Boulevard, 10th Floor,
6 Boise, Idaho 83702, before Lori A. Pulsifer, Court
7 Reporter and Notary Public within and for the State of
8 Idaho, to be used in an action pending in the District
9 Court of the Fifth Judicial District of the State of
10 Idaho, in and for the County of Twin Falls, said cause
11 being Subcase No. 63-3618 (Lucky Peak Reservoir) in said
12 court.

13 The following testimony was adduced, to wit:

14 * * *

15 JERROLD D. GREGG,

16 having been recalled, previously sworn, testified
17 further, as follows:

18
19 FURTHER EXAMINATION

20 BY MR. CAMPBELL:

21 Q. Mr. Gregg, you are still under oath for
22 purposes of this deposition. Do you understand that?

23 A. Yes.

24 Q. Just so we have --

25 A. Before we get started, I would like to go back
Deposition of Jerrold D. Gregg, Volumes I and II

1 and address one thing I don't think I was real -- two
2 things that I was real precise on in my testimony
3 yesterday.

4 Q. Darn. No, I'm not going to let you go back on
5 that. Whatever. What is it?

6 A. We were discussing the accounting. To my
7 knowledge, when we are in a -- I talked about the 60,000
8 being last to fill in Lucky Peak out of the streamflow
9 maintenance account.

10 I think I misspoke and said that water accrued
11 to that and then if we were in a situation where we had
12 to move water to the Anderson and Arrowrock accounts --
13 actually, what happens is water just does not accrue to
14 that space, which then forces the other accounts to fill
15 first.

16 So that sixty -- if I understand how the
17 accounting model works, the 60,000 is the last to accrue
18 any water, if that makes sense.

19 Q. Okay.

20 A. I think I misspoke or gave the impression that
21 water would have went in the 60,000 and then moved out
22 if we owed water under the '54 contract. What actually
23 happens is -- water just does not accrue to that 60,000
24 until all of the other space fills.

25 Q. And does that apply, also, to the space, or the
Deposition of Jerrold D. Gregg, Volumes I and II

1 deficit, if there is more than 60,000 acre-feet that
2 needs to be made up in -- for the Anderson and Arrowrock
3 accounts?

4 A. As I indicated yesterday, water, maybe, would
5 be temporarily held. And then at the time the
6 watermaster notifies Reclamation that we have to do
7 something according to the '54 contract, then the final
8 accruals would be made.

9 Q. Well, now, I am a little bit confused, Mr.
10 Gregg. You said that the 60,000 acre-feet would not
11 accrue?

12 A. It's the last to accrue any water.

13 Q. But there could be a situation, from what I
14 understand, where the last 60,000 acre-feet accrues
15 maybe 20,000 acre-feet as part of the refill process.
16 Is that possible?

17 A. That's possible. It would be the last space to
18 fill in the system.

19 Q. And in that situation, then, when the
20 adjustment is made by the watermaster -- and that is
21 made when?

22 A. Usually, after the maximum storage.

23 Q. And when, typically, is that?

24 A. You know, it could be from the June-to-July
25 period.

Deposition of Jerrold D. Gregg, Volumes I and II

1 Q. So at that point in time, in this hypothetical,
2 the 20,000 of the 60,000 last to fill has actually
3 accrued storage?

4 A. Actually, no. In that situation, if the
5 adjustment is in the 20,000 acre-foot range, as you
6 have in your hypothetical, it just would not have
7 accrued to the in-stream-flow account.

8 It would have accrued to the Arrowrock and
9 Anderson accounts first. So it would have filled those
10 accounts before you accrued any water in that space.

11 Q. But that does not happen, in terms of that
12 adjustment, until the watermaster makes their
13 recalculation; correct?

14 A. Well, the 60,000, it is my understanding, is
15 hard-wired into the accounting model.

16 Q. What do you mean by "hard-wired"?

17 A. It's a provision in the accounting model. I'm
18 not an expert on that. But as you run the model, it
19 will ask you, you know, about the last 60,000. So you
20 say "yes" or "no," and then it accrues according to the
21 correct scenario.

22 Q. And --

23 A. So that part is done automatically.

24 Q. And who runs the accounting model that you are
25 talking about?

Deposition of Jerrold D. Gregg, Volumes I and II

1 A. The watermaster inputs the data. The model is
2 run by the State, the Idaho Department of Water
3 Resources.

4 Q. Do you know who?

5 A. Today, it's a lady by the name of Liz Cresto.
6 She's fairly new. I think she's been there a year.

7 Q. How do you spell her last name?

8 A. I believe it's Cresto, C-r-e-s-t-o.

9 Q. Have you met her?

10 A. Yes, I have.

11 Q. And is that process, that adjustment process,
12 done every year at the end of the maximum storage
13 accrual?

14 A. Well, in --

15 Q. I may have used the wrong term.

16 A. In high run-off years, certainly, that's the --
17 it's the last to fill. It fills. Some years it may not
18 fill.

19 The intent was, in the Water Control Manual,
20 that that space was reserved for -- as you are almost
21 filling the reservoir system, you don't know if there's
22 maybe a little bit of snow or you may have some real hot
23 weather, a couple 100-degree days, and you have some
24 space to take care of that so you don't have a surge
25 down the Boise River.

 Deposition of Jerrold D. Gregg, Volumes I and II

1 Q. My question is: The adjustment process that
2 you are talking about happens every year at a certain
3 point in time during the spring-to-summer period; is
4 that right?

5 A. When you say "the adjustment" --

6 Q. The Department of Water Resources accounting
7 model run that you talked about --

8 A. Uh-huh.

9 Q. -- happens every year sometime during the late
10 spring to early summer; is that correct?

11 A. Well --

12 Q. I'm trying to understand it. You tell me.

13 A. The accounting model is used by the watermaster
14 in the State and is run, once the irrigation season
15 starts, through the season.

16 Q. This adjustment that you mentioned -- that is
17 what I am asking about, the adjustment as to whether or
18 not there is a shortfall in the irrigation storage
19 accounts in Arrowrock and Anderson.

20 You said that adjustment is done, I think you
21 said, at the maximum refill point or something?

22 A. Maximum storage.

23 Q. And when does that typically occur? That is
24 what I am asking.

25 A. Sometime between June and July. In a drought
Deposition of Jerrold D. Gregg, Volumes I and II

1 year, of course, it may be in April or May.

2 Q. Sure.

3 A. Those years we don't fill.

4 Q. Okay.

5 A. And if the provisions of the '54 contract kick
6 into effect and the difference is less than 60,000, it
7 happens automatically.

8 The adjustment is made automatically because
9 that becomes part of the 60,000 that doesn't fill. If
10 it's beyond that, then that's when the Water Master
11 would contact the Bureau of Reclamation.

12 Q. And --

13 A. And we --

14 Q. Go ahead. I'm sorry.

15 A. And then we would have to make the
16 adjustments.

17 Q. That is the decision process that you undertake
18 to say where the water is coming from, in terms of
19 proportionality and accounts and all of the rest of
20 it?

21 A. That's correct.

22 Q. So in that scenario -- that has occurred in the
23 twenty years you have been in Idaho; correct?

24 A. Yes.

25 Q. In that scenario, where has the water come
Deposition of Jerrold D. Gregg, Volumes I and II

1 from? Which different account allocations?

2 A. Three out of the four years that I'm aware of
3 that it's happened has been out of the 60,000 outlined
4 in the contract. In 1989, I believe there was some out
5 of the contracted space and some out of the
6 uncontracted; but I don't know the exact numbers.

7 Q. By the uncontracted space, you mean the
8 streamflow maintenance space; is that right?

9 A. Yes.

10 Q. At that point in time, that water was, then, in
11 the accounting process, credited to the unfilled space
12 in Arrowrock and Anderson Ranch; is that right?

13 A. There was X amount of water that was credited
14 to those space owners. That's correct.

15 Q. Right. From the streamflow maintenance
16 account?

17 A. Yes. Well, in '89 --

18 Q. Plus the storage accounts in Lucky Peak?

19 A. In '89. That's correct.

20 Q. All right.

21 A. Not on the other three years.

22 Q. I understand. And if that scenario were to
23 occur again, similar to '89 or worse than '89, would
24 that be the same type of process that the Bureau would
25 undertake and that you, if you are in that position,

Deposition of Jerrold D. Gregg, Volumes I and II

1 would have to make the decision about?

2 A. Like I said in my previous testimony, I think
3 Reclamation has some discretion; and I think we would
4 have to sit down and make that decision based on the
5 conditions at hand.

6 Q. Can you tell me what your --

7 A. It --

8 Q. Go ahead.

9 A. Go ahead and ask the question.

10 Q. Can you tell me what that discretion that you
11 have described is based upon?

12 A. My interpretation of the repayment contracts in
13 Lucky Peak says the space will be treated
14 proportionately and that the uncontracted has the same
15 rights as the contracted.

16 So I think that gives the contracting officer
17 discretion to -- one alternative is to divvy up the
18 shortage proportionately between the contracted and the
19 uncontracted.

20 I believe the contracting officer would have
21 the discretion of saying it solely comes out of the
22 uncontracted.

23 Q. Is there any other -- I mean, we sort of got
24 way beyond what your clarification was.

25 A. Right. One other thing. I talked about the
Deposition of Jerrold D. Gregg, Volumes I and II

1 monthly meetings where the water managers get together
2 and discuss forecasts and operation; that's called the
3 Water Supply Meeting. That's it.

4 MR. GEHLERT: Scott, I was going to remind you
5 that I have to break, probably, in five or so minutes to
6 take that call in Colorado.

7 MR. CAMPBELL: I understand. Why don't we do
8 this? Instead of me getting into another line of
9 inquiry, let's discuss the concerns I have about the
10 documents that I requested yesterday --

11 MR. GEHLERT: Sure.

12 MR. CAMPBELL: -- and the ability to obtain
13 those documents at some point, depending upon what your
14 position is, and the need to continue Jerry's deposition
15 until after I have gotten the documents so that I can
16 ask him follow-up questions, as appropriate.

17 Now, is that something that we are going to
18 have any disagreement about?

19 MR. GEHLERT: Well, I haven't been able to find
20 out anything more about the documents and whether there
21 even are documents in Ryan Patterson's office. We will
22 check and find out if there are. If there are, we will
23 make them available to you.

24 I don't know to what extent you talked with
25 Tara; but in the context of my discussion with her in
Deposition of Jerrold D. Gregg, Volumes I and II

1 Mary Mellema's deposition, we had an agreement that we
2 would, essentially, defer this process until after the
3 summary judgment briefing was completed and then talk
4 about --

5 MR. CAMPBELL: That's fine.

6 MR. GEHLERT: -- when there would be
7 continuances and what would be appropriate at sometime
8 after that.

9 I reminded her that both I and Jerry have six
10 trials coming up, I think, a week or so after the
11 summary judgment on these critically-important
12 wastewater issues. Bryce has some involvement in some
13 of those, as well. Realistically, it probably will be
14 March before we can even think about that.

15 MR. CAMPBELL: Well, I don't have a problem, as
16 long as the schedule which the SRBA Court has imposed
17 upon us will allow sufficient time to continue the
18 deposition of Mr. Gregg after the documents have been
19 made available to me.

20 I am going to reserve that right. We do not
21 need to address that at this point in time, as to a
22 specific date; but I am reserving the right to continue
23 his deposition after I see if there are additional
24 documents. That is what I want to state on the record.

25 MR. GEHLERT: I appreciate your doing that.

Deposition of Jerrold D. Gregg, Volumes I and II

1 And I am committing that we will -- you know, if there
2 are records -- if there are records, we will provide
3 them.

4 That's as far as I am willing to commit right
5 now. We can just talk about it. You can look at the
6 documents, and we can talk about where we want to go
7 after that.

8 MR. CAMPBELL: Thanks. Why don't we go off the
9 record for the status conference you have?

10 MR. GEHLERT: Thanks. I appreciate that.

11 (Recess.)

12 (Exhibit No. 26 was marked for identification.)

13 BY MR. CAMPBELL:

14 Q. We are back on the record. Mr. Gregg, you are
15 still under oath. Do you understand that?

16 A. Yes.

17 Q. I would like to hand you what has been marked
18 as Exhibit No. 26. If you can, look at that document
19 and tell me if you can identify it, please.

20 A. From looking at the document, I can't be
21 100-percent sure because I don't have a copy of the
22 cover letter; but I assume this was Reclamation's filing
23 in the SRBA for the Lucky Peak Water Right.

24 Q. How do you make that assumption?

25 A. Just looking at the date and the address is the
Deposition of Jerrold D. Gregg, Volumes I and II

1 Department of Interior.

2 Q. And it says, "Bureau of Reclamation;"
3 correct?

4 A. Yes. It says, "Bureau of Reclamation, PN
5 Region."

6 Q. And does it refer to Lucky Peak Dam?

7 A. Yes, it does.

8 Q. Mr. Gregg, did you have any involvement in the
9 preparation of the Notice of Claim to Water Right filed
10 by the Bureau of Reclamation that is represented by
11 Exhibit No. 26?

12 A. If my memory serves me -- it's been a very long
13 time ago -- I believe these were put together by our
14 Regional Office and Solicitor's Office and filed.

15 Q. Your answer is that you did not have any
16 participation?

17 A. Not that I can remember. That was filed
18 shortly after I -- a year after I got here.

19 Q. And with respect to the items listed under
20 Paragraph 6 of Exhibit 26, on the first page, it says,
21 "Purposes;" and then it lists various descriptions. Do
22 you see that portion of the exhibit?

23 A. Yes.

24 Q. Can you tell me your understanding of the
25 description of "Min. Instream Flow Stor" and "Min. Ins.

Deposition of Jerrold D. Gregg, Volumes I and II

1 Flow from Stor" means?

2 A. I believe it means the ability to store up to
3 152,300 acre-feet for streamflow maintenance from the
4 first of the year until the end of any given year and
5 then the ability to remove the same amount from storage
6 for streamflow maintenance.

7 Q. By "removed," you mean released from the
8 reservoir?

9 A. Correct.

10 Q. And any releases from the reservoir -- where
11 does that water go, that is, from Lucky Peak? When
12 releases for instream flow use are made, where does the
13 water go?

14 A. It's, essentially, released below the reservoir
15 and travels through the Lower Boise to the Snake River.

16 Q. The Lower Boise River; is that correct?

17 A. That's correct.

18 Q. And Lucky Peak Reservoir is a reservoir built
19 in the Boise River; is that correct?

20 A. That's correct.

21 Q. It stores water that accrues from various
22 portions of the Boise River System; is that correct?

23 A. Correct.

24 Q. Mr. Gregg, were you involved in any
25 conversations that you can recall with any other

Deposition of Jerrold D. Gregg, Volumes I and II

1 individuals in the Bureau of Reclamation concerning the
2 Amendment of Water Permit for the right denominated
3 A63-03618, the Lucky Peak Water Right?

4 A. I don't remember when that change was made.

5 Q. Okay.

6 A. I was -- yeah. I don't remember when that
7 change was made.

8 Q. Were you involved in any conversations with any
9 Bureau of Reclamation employees at any point in time in
10 your career as to that change of the water right to
11 apportion it for in-stream-flow purposes?

12 A. I have heard second-hand conversations of when
13 the streamflow maintenance was -- when the process
14 occurred, which was in the mid '80s, before I came here.

15 Q. And with whom were those conversations?

16 A. With Mr. Ron Golus who used to work in my
17 office.

18 Q. Do you recall the circumstances of the
19 conversations?

20 A. Just that the issue came up in the Power Mod
21 Studies. The Power Mod Studies is where the streamflow
22 maintenance is -- any official document I have ever
23 seen -- that's the first place I have ever seen it is in
24 the 1982 Power Modification Studies that Reclamation
25 completed on the Boise and the Payette.

Deposition of Jerrold D. Gregg, Volumes I and II

1 Q. And those documents were not brought with you
2 today, were they?

3 A. No, they were the not.

4 MR. CAMPBELL: Can we obtain copies of those
5 documents?

6 MR. GEHLERT: Yes. I believe at least some of
7 them were attached to our brief. That may be all of
8 them, but I will confirm that.

9 BY MR. CAMPBELL:

10 Q. All right. 1982 Power Modification Studies; is
11 that correct?

12 A. I believe, between 1981 and 1984. There were
13 several drafts put out in that study.

14 Q. And was anyone else present when you had these
15 conversations, or this conversation, with Mr. Golus?

16 A. No.

17 Q. Were there more than one conversation?

18 A. Oh, over the years, probably several.

19 Q. And do you recall the substance of the other
20 conversations, what you talked about, what the issue was
21 concerning, you know, the modification of the permit?

22 A. Basically, the conversation was how the issue
23 arose, which the streamflow maintenance issue -- I don't
24 know if that was the only time or the first time, but it
25 arose during the public meetings when the Bureau of

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1 Reclamation was doing the Power Mod Studies.

2 During that process, Reclamation made the
3 administrative decision to assign 102,000 to streamflow
4 maintenance; and that is in the document.

5 Q. In the Power Modification Study document?

6 A. Correct.

7 Q. And did Mr. Golus explain to you what the
8 public meeting process was?

9 A. Just that there were public meetings being held
10 here in Boise. He didn't go into any extent beyond
11 that.

12 Q. Did he indicate to you how the notification
13 went out to anyone about the public meetings?

14 A. No, he did not.

15 Q. Did he indicate to you whether or not notice
16 concerning these public meetings specifically went to
17 either Pioneer or Settlers Irrigation District?

18 A. No, he did not. Mr. Golus, I don't believe,
19 was responsible for the meetings. He did participate,
20 but I don't believe he was responsible for setting up
21 and conducting the meetings.

22 Q. I am glad you clarified that. I was not
23 implying he was.

24 A. No.

25 Q. Do you know who was with the Bureau of
Deposition of Jerrold D. Gregg, Volumes I and II

1 Reclamation?

2 A. No, I do not.

3 Q. Do you know what kind of function that it would
4 be described as? Is that a planning function? An
5 operations function? I mean, you have got different
6 divisions and bureaus within the Bureau.

7 I am trying to find out what part of your
8 organization would have been responsible for that
9 particular process.

10 A. My assumption -- and I am making an
11 assumption -- is that that would have been led by our
12 Planning Division and, probably, the Power Operation
13 Branch at the time.

14 Q. And the Power Operation Branch is within the
15 Planning Division?

16 A. No. It was separate. At that time, it was
17 with what was called the Water and Lands Division.
18 There's been several reorganizations since then. Those
19 organizations don't exist anymore.

20 My assumption is the studies were led by the
21 Planning Division, with assistance. Because they were
22 looking for additional hydropower generation, the Power
23 O&M Branch was involved. Again, that was almost ten
24 years before I came here.

25 Q. And in terms of the process that Mr. Golus
Deposition of Jerrold D. Gregg, Volumes I and II

1 described, public meetings, was that the process that
2 has been -- well, strike that. Let me start again. We
3 can pull out the document, if counsel would like to.

4 I want to represent to you, Mr. Gregg, that the
5 Bureau of Reclamation, in its briefing, has suggested or
6 stated that there was a broad study group for the
7 preparation of the 1985 Water Control Manual.

8 My question is: From your standpoint, was the
9 planning and public meeting process that you described
10 in your conversations with Mr. Golus -- was that process
11 the broad study group that produced the 1985 Water
12 Control Manual; or was there a separate process for the
13 1985 Water Control Manual, as far as you know?

14 A. I do not have direct knowledge. My assumption
15 was they would not be the same groups of -- some of the
16 technical experts would be the same. The Water Control
17 Manual probably was led by our Water Operations folks,
18 from Reclamation now, and the same for the Corps.

19 Q. And during that period of time --

20 A. Because there were two -- go ahead.

21 Q. No. I am sorry. Go ahead.

22 A. Just two different goals. I mean, two
23 different initiatives, two different goals.

24 MR. CAMPBELL: I see.

25 MR. GEHLERT: Scott, can we have a moment?

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1 MR. CAMPBELL: Sure.

2 (Recess.)

3 BY MR. CAMPBELL:

4 Q. Are we okay now?

5 A. Yes.

6 Q. Do you want to clarify anything or add anything
7 to your testimony?

8 A. Just that I, you know, have no direct knowledge
9 of, you know, either one of those processes since I was
10 not here.

11 Q. I understand that. You made that pretty clear
12 to me that this is based upon conversations from other
13 people who might have been involved in some of the
14 process. So that's fine.

15 In terms of the sequence of events, based upon
16 your knowledge either from conversations or looking at
17 documents, do you know when the Water Control Manual of
18 1985 was developed? That is, what time frame? Over
19 what period of time was it developed?

20 A. I know when it was completed. I'm not sure
21 when it was started. I have no direct knowledge of when
22 it was started.

23 Q. When was it completed?

24 A. In 1985, when it was adopted.

25 Q. And that would be reflected on Exhibit No. 24;
Deposition of Jerrold D. Gregg, Volumes I and II

1 is that correct?

2 A. Yes.

3 Q. Mr. Gregg, I believe you stated yesterday -- I
4 am not trying to mischaracterize what you said, so this
5 is just based upon my recollection.

6 I believe you stated that the Water Control
7 Manual, Exhibit No. 16, is the set of procedures which
8 govern the operations of the Boise River Reservoirs
9 during flood control season; is that correct?

10 A. It's not the only document, but it's primarily
11 the controlling document during flood control season.

12 Q. And what other document are you referring to
13 besides Exhibit No. 16?

14 A. As pointed out in the MOU -- both MOUs -- of
15 course, it recognizes the repayment contracts
16 Reclamation has with storage users, our Congressional
17 authorizations.

18 Q. And to the extent that the 1985 Water Control
19 Manual has no conflict with it, then, also, exhibit -- I
20 think it is Exhibit 3 -- excuse me and I will identify
21 it -- Exhibit No. 3, the 1953 Memorandum of Agreement
22 between the Bureau of Reclamation and the Army Corps of
23 Engineers?

24 A. And the 1985 MOU.

25 Q. Right. But you said this document, Exhibit No.
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1 24, which is the 1985 MOU --

2 A. Yes.

3 Q. -- is the Water Control Manual with all of the
4 attachments. I mean, that is the way I understood your
5 testimony yesterday.

6 A. That's correct.

7 Q. So in terms of the regulation of the Boise
8 River, what is the primary document that the Bureau of
9 Reclamation follows and considers to be binding as it
10 relates to day-to-day operations?

11 A. Again, the operation is a joint operation. The
12 Corps of Engineers has primary jurisdiction under flood
13 control. It would be the 1985 Water Control Manual.

14 Q. And that is Exhibit No. 16; correct?

15 A. Correct.

16 Q. Now, I would like to you take Exhibit No. 16,
17 if you would, sir, and just generally look at it to
18 familiarize yourself with it so that I can ask you some
19 questions concerning that.

20 We already talked yesterday about the first
21 seven or eight pages. Please tell me when you have had
22 a chance to look at it.

23 MR. GEHLERT: It's a pretty long document. Why
24 don't we give him a few minutes? We can go off the
25 record for a second.

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1 MR. CAMPBELL: That would be great.

2 (Recess.)

3 BY MR. CAMPBELL:

4 Q. Mr. Gregg, let's go back on the record. Have
5 you had a chance to generally review Exhibit No. 16, Mr.
6 Gregg?

7 A. Yes.

8 Q. Can you confirm, generally, with a few
9 exceptions of insert documents that do not belong, that
10 this is, in fact, the 1985 Water Control Manual?

11 A. I would also note that there are several
12 insertions, plus some personal notes in some of the
13 pages that are not part of the document.

14 Q. Otherwise, the document is, basically, the
15 correct document; is that right?

16 A. Yes.

17 Q. In that regard, I want to ask you a number of
18 questions concerning some of the provisions. First of
19 all, I would like you to turn to the page that has been
20 denominated, at the bottom, 1-1, if you could.

21 MR. GEHLERT: Scott, before you ask your
22 questions, I will just interject the same objection --
23 or the same statement I made yesterday about the
24 interpretation of the document including legal issues.
25 Jerry will talk about his interpretation of the

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1 documents.

2 MR. CAMPBELL: Sure. That is fine. I
3 understand.

4 Q. Do you have page 1-1?

5 A. Yes.

6 Q. Mr. Gregg, in the middle paragraph of page 1-1,
7 under the general caption that says "Authorization" --
8 actually, it says at the top, "Introduction," and then a
9 sub-caption says "Authorization."

10 In the second full paragraph, there is a
11 reference to a document called, quote -- and I quote --
12 "A report to the Governor entitled 'Review of Boise
13 River Flood Control Management' was completed in
14 November 1974 by the Department of Water Resources."

15 It goes on to say, quote, "This report
16 contained several major recommendations, with the
17 primary one being that a new Reservoir Regulation Manual
18 should be prepared with an appropriate supporting
19 agreement," period, end quote. Did I read that
20 correctly?

21 A. Yes.

22 Q. And I cannot recall from your testimony
23 yesterday, but I think you said that you were aware of a
24 1974 report that dealt with the Boise River flooding
25 issues; is that correct?

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1 A. Yes. My office has a copy of the 1974 report.
2 I don't know if the exact date is this one, but we do
3 have it.

4 MR. CAMPBELL: Would we be able to obtain a
5 copy of that document?

6 MR. GEHLERT: I think so.

7 THE WITNESS: Yes.

8 BY MR. CAMPBELL:

9 Q. Thank you. Turn to page 1-3, if you would,
10 sir. Do you have that page?

11 A. Yes.

12 Q. In Paragraph 1-06, captioned "Revisions to this
13 Manual," I would like you to review the first full
14 paragraph and the second paragraph under that
15 sub-caption, continuing on to page 1-4.

16 You do not need to read it outloud. Please
17 read it to yourself so I can ask you some questions
18 concerning it. Have you done that, sir?

19 A. Yes.

20 Q. Thank you. In terms of those two paragraphs,
21 the first paragraph generally describes the Memorandum
22 of Agreement between the Department of the Army and the
23 Department of the Interior for flood control operation
24 of the Boise River Reservoirs dated 20 November 1953.
25 That would be Exhibit 3 that you have looked at

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1 previously, would it not?

2 A. Yes.

3 Q. And further on, it talks about, in the second
4 paragraph, some need to change the operating criteria
5 because of changed conditions, technology, et cetera.

6 And then the second paragraph refers to the
7 Memorandum of Understanding shown in Exhibit C of this
8 manual, which I would like you to identify, if you can,
9 sir. It is clear in the back. It has page -- it says
10 "Exhibit C" at the top and refers to Memorandum --

11 MR. GEHLERT: Excuse me. I was just commenting
12 that this copy is missing part of the last sentence.

13 MR. CAMPBELL: I understand.

14 THE WITNESS: This copy does not say "Exhibit
15 C," but the pages are numbered C-1.

16 BY MR. CAMPBELL:

17 Q. Mr. Gregg, I am not referring to that document,
18 however. My copy of the Water Control Manual has a
19 cover sheet that says "Exhibit C" and has a "Memorandum
20 of Understanding" reference. I will show it to you so
21 you can see what I am referring to. Do you have that
22 document now?

23 A. Yes, I do.

24 Q. And is that Exhibit C document the same as,
25 generally -- the actual parties may be -- well, they
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1 would be the same. Is that document the same as Exhibit
2 3 that you have identified previously?

3 MR. GEHLERT: Let's take a look at Exhibit 3.

4 THE WITNESS: In this copy, it's called
5 "Appendix-B."

6 BY MR. CAMPBELL:

7 Q. I understand.

8 A. It's the same as Exhibit 3.

9 Q. I understand. Just so we are clear, in the
10 Water Control Manual of 1985, which has been labeled
11 Exhibit 16 and that you are looking at, on page 1-3,
12 there is a reference to "Memorandum of Understanding
13 shown in Exhibit C of this Manual."

14 And that is what I am asking you to look at.
15 Exhibit C of the Manual, which is Exhibit 16, appears to
16 be the same document as Exhibit 3 that we identified
17 previously.

18 A. No. I don't believe that's correct.

19 Q. How is that incorrect?

20 A. I think Appendix-B is the 1953 MOU which is
21 Exhibit 3. Exhibit C is the 1985 MOU that follows that.

22 MR. GEHLERT: Can we have a second to clarify?
23 The way the document is organized doesn't make sense.
24 Well, this cover says what is labeled as Appendix-B is
25 addressed as Exhibit C.

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1 THE WITNESS: I understand that. But at the
2 top it says "Appendix-B" and "B-1" and then the pages.

3 BY MR. CAMPBELL:

4 Q. Let me try to clarify this just a little bit
5 more. The page that you are looking at in Exhibit 16,
6 the cover page, says "Exhibit C." It is a gray page?

7 A. Right.

8 Q. It has "Exhibit C" in block letters,
9 underscored. There is no page number on the document,
10 but it says "Exhibit C." Then it says, below "Exhibit
11 C," in block letters, "Memorandum of Understanding;" is
12 that correct?

13 A. Correct.

14 Q. And then the next page says, at the top, in
15 block letters, "Appendix-B;" correct?

16 A. Correct.

17 Q. All right.

18 MR. GEHLERT: Scott, can we talk just for a
19 second off the record?

20 MR. CAMPBELL: Sure.

21 (An off-the-record discussion was held.)

22 BY MR. CAMPBELL:

23 Q. Mr. Gregg, I am trying to find Exhibit C, what
24 you understand to be Exhibit C, referred to on page 1-3
25 of Exhibit 16. We have had a discussion off the record.

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1 You, I believe, have identified a document as Exhibit C;
2 is that correct?

3 A. That's correct.

4 Q. And can you describe the caption of the
5 document and the bottom letter and number designations
6 of the document on the first page for me?

7 A. "Memorandum of Understanding for Confirmation,
8 Ratification, and Adoption of the Water Control Manual;
9 Boise River Reservoirs; Boise River, Idaho." The bottom
10 of the page starts with C-1.

11 Q. And that document is found where in Exhibit 16?
12 Is it in the front? Is it in the middle?

13 A. It's in the very back.

14 Q. All right. Now, let's turn back to page 1-3.
15 We are not going to go through each page; don't worry
16 about that. That would take too long, and I have no
17 interest in doing that.

18 However, I want to understand that second
19 paragraph under Section 1-06 concerning revisions to the
20 Agreement of 1953. That last paragraph on 1-3, again,
21 says -- and I paraphrase -- since the operating criteria
22 and procedures in -- I am not paraphrasing, actually.

23 Quote, "Since the operating criteria and
24 procedures in the Agreement..." I will stop right
25 there. What is your understanding of the reference to
Deposition of Jerrold D. Gregg, Volumes I and II

1 "the Agreement"?

2 A. My belief is that refers to the prior paragraph
3 which talks about the November 1953 Agreement.

4 Q. And then continuing on, the sentence says,
5 quote, "...did not reflect current conditions, needs,
6 and technology, the Bureau, Corps, and State of Idaho
7 jointly agree to revision of operating criteria and
8 procedures in the Agreement through the Memorandum of
9 Understanding shown in Exhibit C of this Manual," end
10 quote.

11 Now, my question is -- I have a couple of
12 questions. "The Bureau" refers to the Bureau of
13 Reclamation; is that correct?

14 A. Correct.

15 Q. "Corps" refers to the Corps of Engineers;
16 correct?

17 A. Correct.

18 Q. And "State of Idaho" refers to the State of
19 Idaho; correct?

20 A. Correct.

21 Q. Now, I am confused by that statement because,
22 in Exhibit C to Exhibit 16, I do not see any signature
23 line for the State of Idaho. Am I missing something,
24 sir?

25 A. The nineteen-fifty -- the 1985 MOU does not
Deposition of Jerrold D. Gregg, Volumes I and II

1 contain a signature by the State of Idaho. If that was
2 your question --

3 Q. That was my question. All right. Do you know
4 why that is?

5 A. Generally, an MOU is an agreement between
6 governmental agencies. So I'm not sure how the State of
7 Idaho agreed. I have no knowledge of the process.

8 Q. Well, would you agree with me that the
9 statement that I just read to you from the last
10 paragraph suggests that the Memorandum of Understanding
11 was the procedure for the Agreement among the Bureau,
12 the Corps, and the State of Idaho?

13 MR. GEHLERT: Can you rephrase the question?

14 BY MR. CAMPBELL:

15 Q. Sure. I will start it again. Mr. Gregg, do
16 you agree that the first sentence of the last paragraph
17 on page 1-3 suggests that the State of Idaho, the Bureau
18 of Reclamation, and the Corps of Engineers agreed to
19 revising the operating criteria and procedures in the
20 1953 Agreement, which you talked about, through use of
21 the Memorandum of Understanding that you identified as
22 Exhibit C? Do you agree that is what that is saying?

23 A. My interpretation is the three parties agreed
24 to the revision of the 1953 MOA and the flood control
25 criteria. How that was completed or the process is not

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1 quite clear to me here.

2 Q. All right. Now, the reference in the next
3 sentence says, quote, "The Memorandum of Understanding
4 is a supplement to the Agreement, which does not change
5 its terms, but rather incorporates a new operating
6 agreement under Article 7 of the 20 November 1953
7 agreement," end quote. Did I read that correctly?

8 A. Yes.

9 Q. Can you tell me what the reference to
10 "Memorandum of Understanding" refers to?

11 A. The Memorandum of Understanding is Exhibit C.

12 Q. And then what does the term -- and this is
13 capitalized; the first letter is capitalized -- quote,
14 "the Agreement," end quote. What does "the Agreement"
15 refer to?

16 A. My assumption is it's referring to the prior
17 paragraph which talks about the 1953 MOA, Memorandum of
18 Agreement.

19 Q. And then it goes on to say, "...which does not
20 change its terms..." What does the reference to "its
21 terms" refer to, from your understanding?

22 A. It's terms of the Memorandum of Understanding.

23 Q. I want you to read the sentence again and make
24 sure that you are comfortable with that response.

25 A. Well, I'm not a contract expert. So I'm not
Deposition of Jerrold D. Gregg, Volumes I and II

1 sure if it's talking about individual terms or
2 paragraphs.

3 Q. Well, that is fine. If that is your answer,
4 that's fine. And then the language says, quote,
5 "...which does not change its terms, but rather
6 incorporates a new operating agreement under Article 7
7 of the 20 November 1983 agreement," end quote?

8 MR. GEHLERT: Jerry, before you answer -- and I
9 will allow him to answer -- I will just interject an
10 objection on the basis that the MOU, itself, is the best
11 evidence of the terms of what it does or does not do.
12 Subject to that, I will allow Jerry to answer the
13 question.

14 BY MR. CAMPBELL:

15 Q. Go ahead.

16 A. Could you ask the question again?

17 MR. CAMPBELL: Why don't you read it back?
18 That would be easier for all of us, I think.

19 (Whereupon, the pending question was read back
20 by the court reporter.)

21 THE WITNESS: Could you read it one more time,
22 please?

23 (Whereupon, the pending question was read back
24 by the court reporter.)

25 THE WITNESS: That's what this paragraph in the
Deposition of Jerrold D. Gregg, Volumes I and II

1 Water Control Manual says.

2 BY MR. CAMPBELL:

3 Q. So I want to understand that particular
4 language and how you interpret it. That sentence that
5 we have been talking about that starts with, "The
6 Memorandum of Understanding..." and ends with "...the 20
7 November 1953 agreement," on page 1-3 of Exhibit 16 --
8 is that saying, as far as you interpret it, that the
9 Memorandum of Understanding, which is Exhibit C, the
10 1985 document that the Bureau and the Corps signed to,
11 basically, agree to the 1985 Water Control Manual, which
12 is this Exhibit 16 -- is that document deemed to be a
13 supplement to the 1953 Agreement, which is Exhibit 3?
14 That is the first question. Is that what that language
15 says?

16 MR. GEHLERT: Again, this is subject to the
17 same action objection.

18 You can answer, Jerry.

19 THE WITNESS: You are really asking me a legal
20 question. I believe the 1985 MOU is much more precise
21 in its language. This is really a legal question of
22 what replaces what in the two agreements.

23 BY MR. CAMPBELL:

24 Q. Well, no. I am asking you if you have an
25 understanding of the term "Memorandum of Understanding"

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1 and the term "Agreement."

2 You already identified that "Memorandum of
3 Understanding," as far as you are concerned, refers to
4 Exhibit C to Exhibit 16; is that right?

5 A. Correct.

6 Q. Now, the term "the Agreement," in the first
7 part of that sentence that we have been talking about,
8 you testified, from your understanding, refers to the
9 November 20, 1953, Memorandum of Agreement, which is
10 Exhibit 3; correct?

11 A. Correct.

12 Q. So I am not asking you for a legal conclusion.
13 I just want to make sure that these references are to
14 the documents that you previously identified.

15 A. That's correct.

16 Q. All right. And the rest of the sentence talks
17 in terms of the Memorandum of Understanding. The way I
18 read it, it says it does not change the terms of the
19 1953 Agreement but, rather, incorporates a new operating
20 agreement under Article 7 of the 20 November 1953
21 agreement. That is the way I interpret that.

22 Now, am I interpreting that sentence
23 incorrectly, Mr. Gregg, from your standpoint?

24 A. I don't -- I don't know. I honestly don't
25 know.

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1 Q. How do you interpret that sentence? What does
2 that sentence mean, to you?

3 A. To me, it means the terms have been replaced by
4 the new MOU, the terms of the new MOU, which is the
5 Water Control Manual.

6 Q. The terms --

7 A. Certain terms of the 1953 MOA were replaced.

8 Q. Well, let's turn to Exhibit 3, if we could.
9 Keep that 1-3 open, if you would, please. Do you have
10 Exhibit 3, Mr. Gregg?

11 MR. GEHLERT: Are you talking about Deposition
12 Exhibit 3 or are you talking --

13 MR. CAMPBELL: Yes. I am talking about
14 Deposition Exhibit 3.

15 THE WITNESS: Yes.

16 BY MR. CAMPBELL:

17 Q. Now, again, this has been identified by you and
18 by others as a copy of the 1953 Memorandum of Agreement
19 between the Department of the Army and the Department of
20 the Interior for Flood Control Operation of Boise River
21 Reservoirs, Idaho?

22 A. Correct.

23 Q. Now, page 1-3 of Exhibit 16 that we have just
24 been talking about refers to Article 7 of the 20
25 November 1953 Agreement. I would like for you to turn
Deposition of Jerrold D. Gregg, Volumes I and II

1 in Exhibit 3 to Article 7.

2 Go ahead and read through that so you are
3 familiar with it before I ask you a question. Tell me
4 when you have finished reading it. Okay?

5 A. Yes. I have read it.

6 Q. Now, with regard to the language of Article 7
7 in Exhibit 3, I have a question that pertains to the
8 1985 Water Control Manual, Exhibit 16, and the language
9 that we have just been talking about.

10 So you are going to need to look at both
11 documents, page 1-3 on 16 and I think it is page 13 on
12 Exhibit 3. Do you have both of those references?

13 A. Yes.

14 Q. Now, I am not trying to mischaracterize what
15 you said, Mr. Gregg. If I state it incorrectly, just
16 make it right and correct me. Okay?

17 MR. GEHLERT: Jerry, if it would be helpful to
18 have the reporter read back at any time, feel free to do
19 that.

20 BY MR. CAMPBELL:

21 Q. What I understood you to say about the last
22 full sentence on page 1-3 of Exhibit 16 -- Exhibit 16,
23 again, is the Water Control Manual, 1-3.

24 A. Correct.

25 Q. What I recall or what I heard -- it may be
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1 incorrectly, but what I recall you saying is that the
2 way you interpret that last sentence, the MOU,
3 Memorandum of Understanding, which is Exhibit C to the
4 Water Control Manual of 1985 referenced on page 1-3 of
5 Exhibit 16 -- that that document, basically, replaced
6 the 1953 MOU. Now, is that correct?

7 A. That's not quite precise.

8 Q. Correct me.

9 A. What I testified previously is Article (f) of
10 the 1985 MOU states -- and I will read it -- "All terms
11 and provisions of the Memorandum of Agreement dated 20
12 November 1953 not inconsistent with this Memorandum of
13 Understanding and the Water Control Manual shall remain
14 in full force and effect."

15 So those that were inconsistent have been
16 replaced; others still are in effect.

17 Q. I see. And I appreciate that clarification.
18 From the standpoint of the sentence on 1-3 that we are
19 talking about in Exhibit 16, I would like you to look at
20 that sentence.

21 A. Yes. I have looked at the bottom of Paragraph
22 1-3.

23 Q. Now, in terms of what that sentence says, the
24 Memorandum of Understanding that you just made reference
25 to, the 1985 Memorandum of Understanding, according to
 Deposition of Jerrold D. Gregg, Volumes I and II

1 this language, is a supplement to the November 1953
2 Agreement, which is Exhibit 3.

3 According to this language on 1-3, the 1985
4 Memorandum of Understanding does not change the terms of
5 the November 1953 Agreement.

6 Instead, it incorporates a new operating
7 agreement under Article 7 of the 20 November 1953
8 Agreement. That is what the language says.

9 Now, if this language is incorrect, I want you
10 to tell me as it relates to your interpretation of
11 Article (f) of the 1985 Memorandum of Understanding.

12 A. Again, I can give you a layman's interpretation
13 of it. To me, that's a legal question.

14 Q. I understand. I am asking for your
15 interpretation, as the Officer of the Bureau of
16 Reclamation who is in charge of supervising the
17 administration of the Boise River Reservoirs and in
18 charge of supervising the employees of the Bureau that
19 make the decisions pursuant to this Exhibit 16.

20 I am asking for you, as a non-lawyer, to tell
21 me what this means in the context of your prior
22 testimony about Subsection (f) of the 1985 Memorandum of
23 Understanding.

24 A. My understanding -- my interpretation would be
25 that Article 6 of the 1953 Agreement, which are the
Deposition of Jerrold D. Gregg, Volumes I and II

1 flood control requirements, would be replaced by the new
2 flood control curves and operating parameters in the
3 1985 Water Control Manual.

4 Q. That is the way you interpret the language on
5 page 1-3?

6 A. Right. I don't know if there are other
7 articles that were replaced either but --

8 Q. Well, I appreciate that. That is helpful.
9 Now, in terms of the provisions of Exhibit 3, Article 7,
10 that is referenced on 1-3 of Exhibit 16, I want to ask
11 you whether or not any of the modifications to the
12 operating procedures that are set forth in Exhibit 16
13 that are identified on page 1-3 have any effect upon any
14 of the storage rights in Arrowrock or Anderson Ranch
15 Dam?

16 A. Can you ask the question again?

17 MR. CAMPBELL: Why don't you read it back?

18 (Whereupon, the pending question was read back
19 by the court reporter.)

20 MR. GEHLERT: Before you answer, Scott, can you
21 identify those modifications, at least in some general
22 way? I have a hard time following the question.

23 MR. CAMPBELL: Sure. I am sorry.

24 Q. Mr. Gregg, in your prior response, I think you
25 said your interpretation of the language on page 1-3 is
Deposition of Jerrold D. Gregg, Volumes I and II

1 that the operating criteria contained in Paragraph 6 of
2 Exhibit 3 were supplanted or changed or totally thrown
3 out for the 1985 Water Control Manual which is Exhibit
4 16; is that correct? Is that what you meant?

5 A. Correct. Correct.

6 Q. So given the fact that the 1985 Water Control
7 Manual replaced all of the provisions in Paragraph 6,
8 which goes on for several pages, my question is: Did
9 those changes in 1985 have any impact at all, positive
10 or negative, upon the storage rights that had been
11 operated pursuant to the 1953 Agreement that was
12 modified by the 1985 Water Control Manual? And if you
13 need to look at Paragraph 6 to answer the question --

14 A. No. I understand.

15 Q. Do you understand the question?

16 A. I understand the question.

17 Q. Okay.

18 A. The change --

19 MR. GEHLERT: Actually, can we talk for a
20 second? I'm not sure I do. I want to know what Jerry
21 thinks he is going to answer.

22 MR. CAMPBELL: Okay.

23 (Recess.)

24 BY MR. CAMPBELL:

25 Q. We are back on the record. Mr. Gregg, you had
Deposition of Jerrold D. Gregg, Volumes I and II

1 a conversation with your counsel. I understand that you
2 want me to clarify the question or you want me to ask it
3 again or --

4 A. Yes.

5 Q. Do you want me to ask a different question so
6 you don't have to answer the one that I presented to
7 you?

8 A. If you could, restate it.

9 Q. Maybe I should break it down into certain
10 parts. My understanding of your testimony was that you
11 interpret the last paragraph on page 1-3 of Exhibit 16
12 to mean that the provisions of Section 6 of Exhibit 3
13 were replaced by Exhibit 16?

14 A. Yes.

15 Q. Is that correct?

16 A. That's what I stated previously.

17 Q. Is that still your testimony?

18 A. Yes.

19 Q. So we have got that established. Okay. Now,
20 the next part of the question is: Do you have an
21 understanding of what the provisions of Section 6 of
22 Exhibit 3 meant, in terms of Boise River Reservoir
23 operations?

24 A. I have not ever -- I never went to Section 6
25 and tried to recreate what those provisions mean, since
Deposition of Jerrold D. Gregg, Volumes I and II

1 they are not in effect. So --

2 Q. Have you ever reviewed the provisions of
3 Section 6?

4 A. I briefly read them.

5 Q. So what is your statement based upon, then,
6 that the 1985 Water Control Manual, Exhibit 16, replaces
7 Section 6 of Exhibit 3?

8 A. Section 6 of the 1953 Agreement was the first
9 attempt at flood operating criteria and rudimentary
10 flood control rule curves.

11 After the 1974 incident, of course, the 1985
12 Water Control Manual was developed, which was a newer,
13 more improved version and, as the article states, based
14 on technology and the ability to use computers, et
15 cetera.

16 Q. But from your standpoint, am I correct in
17 stating that you have not made a comparison of the
18 provisions of Section 6 of Exhibit 3 with the operating
19 criteria for the reservoirs set forth in Exhibit 16?

20 A. Correct.

21 Q. Do you know if anyone with the Bureau of
22 Reclamation, prior to the adoption of Exhibit 16,
23 conducted any evaluation of the impacts to storage
24 rights in Anderson Ranch and Arrowrock Dam which might
25 occur because the operating criteria in Section 6 of

Deposition of Jerrold D. Gregg, Volumes I and II

1 Exhibit 3 were going to be replaced by the operating
2 criteria in Exhibit 16, the 1985 Water Control Manual?

3 A. When you say "storage rights," are you talking
4 about water rights or storage space?

5 Q. I am talking about water accruing to storage in
6 Anderson Ranch and Arrowrock Reservoirs, under contract
7 between the Bureau of Reclamation and the irrigation
8 entities that have the rights to that water that accrues
9 in that space.

10 A. As I stated previously, I was not here at the
11 time; and I am not aware of what processes or analyses
12 were done.

13 Q. So you do not know --

14 A. Correct.

15 Q. -- if anyone conducted that evaluation?

16 A. I do not know.

17 Q. Do you know if anyone would know more than you
18 as to whether or not that evaluation was conducted?

19 A. As I stated previously, those folks are either
20 retired or deceased. I testified to that earlier.

21 Q. So am I correct in understanding that the
22 answer is, no, there is no one else with the Bureau of
23 Reclamation, currently employed, who would be better
24 postured, in a better position, to know if that
25 evaluation was conducted before the 1985 Water Control

Deposition of Jerrold D. Gregg, Volumes I and II

1 Manual was adopted?

2 A. To my knowledge, that's correct.

3 Q. Mr. Gregg, I apologize if I am asking a
4 question that is similar to what I asked yesterday. If
5 you will indulge me, turn to page 13 of Exhibit 3,
6 please.

7 MR. GEHLERT: Deposition Exhibit 3?

8 MR. CAMPBELL: Yes. I am sorry. Deposition
9 Exhibit 3, page 13.

10 Q. That should have Section 7; is that correct?

11 A. That's correct.

12 Q. Again, I think you have reviewed that provision
13 before; is that correct?

14 A. Correct.

15 Q. And there is a reference at the end of that
16 Paragraph, Section 7, to "...concurrence of all entities
17 having rights in the reservoir system and Lake Lowell."
18 Do you see that reference at the end of the paragraph?

19 A. Yes.

20 Q. From your understanding, what does the
21 reference "entities having rights in the reservoir
22 system and Lake Lowell" mean?

23 A. Those would be the contractors, irrigation
24 companies, and districts that have repayment contracts
25 in Arrowrock, Anderson, and Lake Lowell.

Deposition of Jerrold D. Gregg, Volumes I and II

1 Q. Would that group of entities include Pioneer
2 and Settlers Irrigation Districts?

3 A. Yes.

4 Q. Do you know, from your information, whether or
5 not the Bureau of Reclamation provided any notice to
6 either Pioneer or Settlers Irrigation District about the
7 process that was engaged in to develop and adopt the
8 1985 Water Control Manual, Exhibit 16?

9 A. No. I have no knowledge.

10 Q. Do you know if Pioneer or Settlers Irrigation
11 Districts, or their representatives, actually
12 participated in the process for the development of
13 Exhibit 16, the 1985 Water Control Manual?

14 A. I have no knowledge of that.

15 Q. Do you have any knowledge of whether or not the
16 Bureau of Reclamation obtained the concurrence of
17 Pioneer or Settlers Irrigation District with regard to
18 the adoption of the 1985 Water Control Manual, Exhibit
19 16?

20 A. I have no knowledge.

21 Q. Do you know anyone with the Bureau of
22 Reclamation who would have that knowledge?

23 A. I have no direct knowledge of who that would
24 be.

25 Q. You mentioned some of the folks previously --
Deposition of Jerrold D. Gregg, Volumes I and II

1 Mr. Golus; Mr. Vinsonhaler; Mr. Van den Berg;
2 Mr. Stessman; Mr. Wensman, who I believe is deceased;
3 and Mr. Yribar?

4 A. Yribar.

5 Q. Are those individuals who might have the
6 knowledge that I am seeking with regard to that
7 particular issue that we have been talking about, as to
8 the consent or the concurrence of Pioneer and Settlers
9 Irrigation Districts to the adoption of the Water
10 Control Manual of 1985?

11 A. I would be speculating, but Mr. Vinsonhaler and
12 Mr. Van den Berg and Mr. Stessman may.

13 Q. Not Mr. Golus?

14 A. In his position at the time, I would believe
15 not; but I don't know for sure.

16 MR. CAMPBELL: Why don't we go ahead and break
17 right now for lunch? Let's reconvene at 1:00, if that's
18 okay.

19 (Lunch recess.)

20 MR. CAMPBELL: Would you read back the last
21 question and answer, please?

22 (Whereupon, the previous question and answer
23 were read back by the court reporter.)

24 BY MR. CAMPBELL:

25 Q. Mr. Gregg, if you would, turn to page 1-4 in
Deposition of Jerrold D. Gregg, Volumes I and II

1 Exhibit No. 16. Do you have it there, sir?

2 A. Yes.

3 Q. If you would, read the paragraph at the top of
4 that page, please, to yourself. Tell me when you have
5 finished.

6 MR. GEHLERT: You might want to start with
7 the --

8 THE WITNESS: Yes.

9 BY MR. CAMPBELL:

10 Q. Can you tell me whether or not the Bureau of
11 Reclamation has made any revisions to the 1985 Water
12 Control Manual since its adoption?

13 A. Revisions are made by the Corps of Engineers.
14 This is a Corps of Engineers document.

15 Q. Does the Bureau of Reclamation have any input
16 to those revisions?

17 A. Yes.

18 Q. Describe to me how that occurs.

19 A. To the best of my knowledge, because that's
20 being handled by our Regional Office -- but if the
21 revisions affect our reservoirs or operations that
22 affect our reservoirs, we have been consulted prior to
23 the revision being made.

24 Q. By "we," who do you mean?

25 A. The Bureau of Reclamation.

Deposition of Jerrold D. Gregg, Volumes I and II

1 Q. And who specifically? What individuals have
2 been involved in that process?

3 A. I believe most of them would be the Water
4 Operations Group within the Regional Office.

5 Q. And could I have the name of the individual who
6 is in charge of that group?

7 A. Pat McGrane.

8 Q. How long has he been in that position? Do you
9 know?

10 A. I believe, since the late -- mid to -- late
11 '90s, I believe.

12 Q. And that is a male; is that correct?

13 A. Yes.

14 Q. Tell me the extent of your involvement in
15 communications with respect to that process. Have there
16 been any changes to the Water Control Manual? Have you
17 been involved in it at all?

18 A. In the front of the Manual, which was revised
19 in November 1993, we were asked for some information,
20 which is a Communications Directory. I am not aware
21 of -- I was not involved in any other changes that I can
22 remember.

23 Q. Are you aware of whether or not any other
24 revisions to the 1985 Water Control Manual which have
25 occurred since its adoption in 1985 followed the

Deposition of Jerrold D. Gregg, Volumes I and II

1 procedures set forth in Article 7 of the 20 November
2 1953 Agreement?

3 A. I don't have any knowledge to that effect.

4 Q. Who in the Bureau of Reclamation would have the
5 most reliable knowledge with respect to whether or not
6 those procedures in Article 7 of the 20 November 1953
7 Agreement were followed by the Bureau?

8 A. I would need to know which changes you are
9 talking about and when they occurred.

10 Q. I am talking about any of the changes since
11 1985. Would Pat McGrane be the person that is most
12 knowledgeable about whether or not those procedures were
13 followed?

14 A. I'm not sure because I notice, in the document,
15 some of the changes were made in 1988, 1992. Those
16 folks are no longer with the Bureau -- that would have
17 been in the Region at the time.

18 Q. Who are those individuals?

19 A. Again, Dan Yribar was Head of Operations at the
20 time.

21 Q. And who else?

22 A. Either Mr. Stessman or Mr. Van den Berg who was
23 Head of Water and Land at that time.

24 Q. At which time?

25 A. 1988 to 1992.

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1 Q. All right. Do you know if the Bureau of
2 Reclamation has any documentation of correspondence --
3 excuse me -- any documentation of communications between
4 the Bureau of Reclamation and the Corps of Engineers
5 with respect to the revisions which have occurred to the
6 1985 Water Control Manual?

7 A. I have no knowledge to that effect.

8 Q. And if there were documents that reflected
9 those communications or information that exchanged
10 between the Corps of Engineers and the Bureau of
11 Reclamation concerning that particular process, who
12 would be most likely to have that information or know
13 where that information is?

14 A. If the information hasn't been archived, it
15 would be in the Central Files of our Regional Office.

16 Q. And who is in charge of the Central Files of
17 the Regional Office?

18 A. Mr. Cassidy is.

19 Q. Excuse me?

20 A. Mr. Cassidy.

21 Q. What is his first name?

22 A. Bruce.

23 MR. CAMPBELL: We would like to have documents
24 that relate to any changes to the 1985 Water Control
25 Manual, in terms of documentation of communications.

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1 Can that information be made available to us?

2 MR. GEHLERT: We will look into it and get back
3 to you.

4 MR. CAMPBELL: Thank you.

5 Q. Mr. Gregg, turn to page 2-1, if you would,
6 please.

7 A. Yes.

8 Q. That is Exhibit 16. I am sorry. The document,
9 at the bottom -- that page appears to have some
10 handwritten notations. Do you see those handwritten
11 notations?

12 A. Yes.

13 Q. Do you know who made those handwritten
14 notations?

15 A. No, I do not.

16 Q. Are those handwritten notations part of the
17 official Water Control Manual of 1985?

18 A. No.

19 Q. From your standpoint as Area Manager -- is that
20 your title? I am sorry.

21 A. Yes, it is.

22 Q. Would you consider those handwritten notations
23 to be anything that is binding on the Bureau of
24 Reclamation, in terms of the Water Control Manual?

25 A. Could you repeat the question?

Deposition of Jerrold D. Gregg, Volumes I and II

1 Q. I will ask it a different way. Are those
2 handwritten notations part of the official Water Control
3 Manual of 1985?

4 A. No, they are not.

5 Q. So they do not have any regulatory power, then,
6 in terms of your reservoir operations?

7 MR. GEHLERT: Jerry, let's talk for just a
8 second. Excuse us.

9 (Recess.)

10 BY MR. CAMPBELL:

11 Q. Are you ready to proceed?

12 A. Yes.

13 Q. Can you answer the question, please?

14 A. My understanding of the handwritten notes on
15 page 2-1 of Exhibit 16 is of an administration decision
16 made by Reclamation to maintain certain minimum flows
17 and cease the peaking operations that used to occur at
18 Anderson Ranch Reservoir.

19 And that was an administrative decision, and
20 it's reflected in a memo that's in an earlier part of
21 the document. So it was an administrative decision by
22 Reclamation at the time.

23 I'm not sure -- I do not know, without going
24 through the whole document, whether that is reflected in
25 the Water Control Manual or not.

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1 Q. Whether what is reflected in the Water Control
2 Manual?

3 A. This decision on the minimum flow from Anderson
4 Ranch.

5 Q. Well, but --

6 A. That's what the handwritten note refers to.

7 Q. But does that change your testimony that the
8 handwritten note is officially part of the Water Control
9 Manual of 1985?

10 A. Just because it's handwritten, no, it does not
11 make it part of the Water Control Manual. What I am
12 saying is this same information may be further in the
13 document. I don't know for sure.

14 Q. That is fine. I am not asking that.

15 A. All right.

16 Q. If that is the case, that is fine. I just want
17 to establish that you do not make revisions to this 1985
18 Water Control Manual by handwritten notes by someone and
19 you don't even know who made the notes?

20 A. Correct.

21 Q. All right. You made reference to another
22 document at the beginning of the Manual. What is the
23 title of that document, Mr. Gregg?

24 A. This is included in the exhibit, but it's not
25 part of the Water Control Manual. It is a memorandum
Deposition of Jerrold D. Gregg, Volumes I and II

1 from the Planning Officer to the Project Superintendent
2 dated March 5, 1981.

3 Q. And what is the subject of that document?

4 A. River flow releases below Anderson Ranch Dam.

5 Q. Have you ever seen that particular document
6 before?

7 A. Yes, I have.

8 Q. And what do you consider the meaning of this
9 particular document to be? What does it do? What
10 impact does it have, in terms of minimum streamflows?

11 A. It's an Administrative Decision by Reclamation
12 to set certain minimum flows in the Boise River during
13 non-flood control periods or periods when we're not
14 releasing water for irrigation demand.

15 It was for fisheries and, also, to have a base
16 load of power generation and to discontinue the practice
17 of peak loading.

18 Q. And this document is not part of the Water
19 Control Manual of 1985; is that right?

20 A. No, it is not. It is part of our proposed
21 actions in our biological assessment.

22 Q. In terms of implementation of this, the policy
23 reflected in this March 5, 1981, memorandum, has the
24 Bureau of Reclamation followed this policy with respect
25 to the operation of Anderson Ranch Reservoir?

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1 A. To a large extent, we have. There have been
2 some drought years where the requirement to go to 600
3 cfs by April 1st would have caused us to lose storage
4 out of the system.

5 So we have received a variance from Idaho Fish
6 and Game. There are some years, because of drought
7 conditions, we have started the 300 cfs release earlier.
8 Other than that, yes, this is our operating criteria.

9 Q. And is it still in effect today?

10 A. Yes. Yes, it is.

11 Q. And you mentioned a variance from Idaho Fish
12 and Game. What do you mean by that?

13 A. Well, we consult -- since it's -- "variance"
14 may not be the precise word. We consulted with Idaho
15 Fish and Game since these flows were set for fish
16 propagation. So we consulted with them and tried to
17 mitigate the adverse effects to rainbow trout, to
18 spawning.

19 Q. Did the Bureau of Reclamation pursue any
20 amendments of its water rights, or any water rights, for
21 Anderson Ranch Reservoir to implement this policy that
22 is reflected in the 1981 Memorandum?

23 A. I have no knowledge to that effect.

24 Q. So you do not know if it was done or not?

25 A. I don't know if it was required. I don't know
Deposition of Jerrold D. Gregg, Volumes I and II

1 if it was done. I have no knowledge of that.

2 Q. And do you know if there was any consultation
3 with -- or has there been any consultation with any of
4 the entities having storage rights in Anderson Ranch
5 Reservoir concerning this set of criteria or procedures
6 that is set forth in the 1981 Memorandum?

7 A. Of course, I wasn't here when the 1981 Memo was
8 put out. I don't know if there was consultation or not.
9 I believe, though, that this procedure is within the
10 confines of the 1943 storage contracts with the space
11 holders that allow us to release storage water from
12 Anderson Ranch as long as we can restore it in
13 Arrowrock. So I don't believe that this criteria is
14 outside of those provisions.

15 Q. I appreciate that answer, Mr. Gregg; but
16 perhaps I did not make the question very clear. My
17 question was: To your knowledge, since you have been in
18 charge of the Boise River Reservoir operations since
19 1987, has there been any consultation with any of the
20 irrigation contract holders with space in Anderson Ranch
21 Reservoir concerning this March 1981 Memorandum and the
22 procedures set forth in that?

23 A. To my knowledge, the last time we had to make a
24 change in this criteria, yes, we did consult with
25 several of the irrigation districts. I cannot remember

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1 which ones or all of them. I know we met with the Board
2 of Control and the watermaster.

3 Q. What do you mean by a change in the procedures?
4 Are you talking about the 1981 Memorandum?

5 A. Correct.

6 Q. Do you recall when this change occurred?

7 A. It was a drought year. We wanted to delay
8 going from the 300 cfs to the 600 cfs because it looked
9 like it may jeopardize some of the storage in the
10 system. We may not be able to hold it in the lower
11 system.

12 So we consulted with Idaho Fish and Game, some
13 of the contractors; and we did delay that, I believe, by
14 ten or fifteen days that year.

15 Q. Do you recall if you consulted with all of the
16 entities having irrigation storage contracts in Anderson
17 Ranch Reservoir?

18 A. No, I do not.

19 Q. By your answer, do you recall that you did not
20 consult with all of them or what?

21 A. We consulted with some of them. I don't
22 believe we consulted with all of them, but I can't
23 remember.

24 Q. Have you consulted with any of the irrigation
25 entities with storage contracts in Anderson Ranch

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1 Reservoir, except for that one time concerning the
2 Memorandum of March 1981?

3 A. Can you ask that again?

4 Q. Sure. You mentioned the one time. I think you
5 said 1989. Isn't that the year you chose?

6 A. No. I didn't say what year it was.

7 Q. I am sorry. I apologize. You mentioned one
8 particular year when there was a drought, and you
9 consulted with Idaho Fish and Game to get a variance.
10 You said that you consulted with some of the irrigation
11 contractors?

12 A. Correct.

13 Q. Was there any other instance where you
14 consulted any irrigation contractors in Anderson Ranch
15 Reservoir concerning this March 1981 Memorandum?

16 A. I just don't remember. I don't have any
17 knowledge. I know my Head of Water Operations discussed
18 it with the watermaster and Idaho Fish and Game. But
19 whether other contractors were consulted, I do not know.

20 Q. I am not talking about just that one instance.

21 A. Correct.

22 Q. I am talking about any other instance.

23 A. Right. I just don't remember who we consulted
24 with. I know we consulted with the watermaster and
25 Idaho Fish and Game.

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1 Q. And who would be the individual with your Water
2 Operations Division, or Group, that might have had some
3 consultations?

4 A. For the last several years, it would have been
5 Brian Sauer, who is Head of Water Operations. Prior to
6 that, it was Rick Wells, who is retired.

7 Q. Is there anyone else with the Bureau of
8 Reclamation that might have had consultations with the
9 irrigation entities having storage space in Anderson
10 Ranch Reservoir --

11 A. No.

12 Q. -- concerning this memo?

13 A. No, I don't believe so. Not in the instances
14 that I'm talking about.

15 Q. I am not talking about just the instance that
16 you described. I am talking about any consultations
17 during the time that you have been Area Manager --

18 A. Right.

19 Q. -- or Central Snake Projects Superintendent.
20 Did I get that right?

21 A. Correct.

22 Q. Oh, good. I am proud of myself. In any of
23 those years, were there any other consultations
24 concerning the 1981 Memo -- with the irrigation
25 entities?

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1 A. It would have been done by staff from my
2 office. So --

3 Q. So either Mr. Brian Sauer --

4 A. Or myself or Mr. Rick Wells.

5 Q. All right. And you only recall that one time
6 that you described?

7 A. No. There's been several times.

8 Q. Tell me about that.

9 A. There has been one or two times, I believe --
10 I'm going from memory -- in the spring and a couple of
11 times in the fall.

12 Q. And did they all involve adjustments of the
13 flow regime that is described in the 1981 Memorandum?

14 A. Not the flow levels. The timing of when the
15 changes were made.

16 Q. As reflected in the 1981 Memorandum?

17 A. Correct.

18 Q. All right. And do you know if those other
19 instances of consultation --

20 A. Consultation?

21 Q. Excuse me. You can correct the word choice, if
22 you like, after I finish the question. Do you know if
23 those other instances of consultation with irrigation
24 entities involved all of the contract holders in
25 Anderson Ranch Reservoir?

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1 A. I just don't remember.

2 Q. Would it be likely that you
3 actually contacted -- that the Bureau actually contacted
4 all of the contract holders to have these kinds of
5 discussions?

6 A. It probably would have been unlikely that we
7 would have contacted some of the very small contractors.
8 A lot of these changes were discussed in public
9 meetings, but it would have been unlikely that we called
10 all of the small contractors.

11 Q. Well, now, I am definitely curious because you
12 said these changes would have been discussed in public
13 meetings. How were they public meetings?

14 A. Well, any meetings where we made presentations
15 on our water operations, such as I mentioned, the
16 monthly water supply forecast meetings that the State
17 holds. You know, if they were timely at the time, we
18 would have said, "We are making this change."

19 Q. But they --

20 A. There wouldn't have been a specific meeting
21 called to announce this change.

22 Q. I see. That is what I am trying to determine.

23 A. Right.

24 Q. There would not have been any special notice
25 sent out to any of the irrigation contractors concerning
Deposition of Jerrold D. Gregg, Volumes I and II

1 the changes in operation as to the 1981 Memorandum?

2 A. No.

3 Q. Mr. Gregg, in order to speed things along, I do
4 not want to have to ask you about every handwritten
5 notation in this document.

6 Is it correct that, as far as you are
7 concerned, as the Bureau of Reclamation official in
8 charge of Boise River Reservoir operations for the
9 Bureau's functions, that any handwritten notations in
10 Exhibit 16 would not be part of the official 1985 Water
11 Control Manual?

12 A. The official part of the Water Control Manual
13 is labeled and the pages are numbered. So those
14 additions that are not labeled or numbered -- the
15 handwritten notes are not part of the Manual.

16 Q. So the handwritten notes on those pages that
17 are labeled and numbered are not part of the Manual; is
18 that correct?

19 A. The ones I have reviewed -- yes, that's true --
20 are not part of the official Manual. They are notes.

21 Q. Well, let me ask it this way. Would there be
22 any handwritten notes that you, as the Area Manager,
23 would consider to be official modifications of the
24 actual typed text of the Water Control Manual of 1985?

25 A. This is a Corps of Engineers Manual done
Deposition of Jerrold D. Gregg, Volumes I and II

1 according to their procedures. So only if the Corps had
2 said, "These are an official part of the document."

3 Q. So --

4 A. But my understanding is that there are none
5 that I'm aware of.

6 Q. So do you have an understanding as to whether
7 or not the Corps has ever adopted changes to the 1985
8 Water Control Manual by handwritten notes?

9 A. Not to my knowledge.

10 Q. And would they have been able to do something
11 like that without your knowledge, in the last twenty
12 years?

13 A. I assume they would have notified us.

14 Q. Well, why don't you tell me how the
15 notification procedure takes place as it relates to the
16 Corps of Engineers changing the 1995 Water Control
17 Manual? Do you know how that works?

18 A. I am not familiar with their procedures.
19 From --

20 Q. I am talking about as to them notifying the
21 Bureau of Reclamation.

22 A. The changes -- the revisions that I've seen
23 have been, I assume, made by official memorandum from
24 their office to our Regional Office. Then they are
25 incorporated in the Water Control Manual.

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1 These are controlled documents. There are so
2 many of them. The Corps knows who has them. So they
3 are sent to each holder of the document.

4 Q. I see. Do you know if they replace entire
5 pages? Do they add inserts, such as these pink pages in
6 the front? Are you familiar with that process?

7 A. It can be both.

8 Q. It can be both?

9 A. Yes.

10 Q. Turn your attention to page 7-1, if you would,
11 please, of Exhibit 16. To your knowledge, Mr. Gregg --
12 and you can take as much time as you want to read it --
13 has the first Paragraph 7-02 with the caption
14 "Authorized Reservoir Uses" been changed by the
15 handwritten notes that are shown on the right-hand side
16 of that paragraph?

17 A. Could you ask the question again?

18 Q. Sure. The first paragraph under Section 7-02
19 that has the sub-caption "Authorized Reservoir Uses" --
20 that first paragraph, apparently, has some handwritten
21 notes on the right-hand side of the first paragraph,
22 about half-way down. Do you see the handwritten
23 notes?

24 A. Yes, I do.

25 Q. Is it your understanding that the handwritten
Deposition of Jerrold D. Gregg, Volumes I and II

1 notes on the right-hand side of that paragraph are part
2 of the official 1985 Water Control Manual?

3 A. No. They are handwritten notes that somebody
4 has added.

5 Q. So they are not part of the official Manual; is
6 that correct?

7 A. That's correct.

8 Q. And if the official Manual had been changed,
9 would the printed material in the first full paragraph
10 of Section 7-02 read the way it does today?

11 A. No, it would not.

12 Q. As far as you are concerned, that first
13 paragraph, 7-02, is still the official 1985 Water
14 Control Manual; is that correct?

15 A. Yes.

16 Q. In the last sentence of that first paragraph,
17 it talks about the Bureau of Reclamation being in the
18 process of amending and finalizing Lucky Peak Lake
19 storage permit by designating -- and I quote --
20 "...102,300 acre-feet of non-contracted space for
21 streamflow maintenance and municipal and industrial
22 uses," end quote.

23 Can you tell me whether the municipal and
24 industrial uses were part of the permit amendment
25 process undertaken by the Bureau of Reclamation for

Deposition of Jerrold D. Gregg, Volumes I and II

1 Lucky Peak storage rights?

2 A. I would have to review the Water Right -- the
3 Water Right License.

4 Q. Well, we have that document. I believe it is
5 over here.

6 MR. FARRIS: 11.

7 BY MR. CAMPBELL:

8 Q. Thank you. It is Deposition Exhibit No. 11.

9 A. And I would also like to look at the permit
10 application.

11 Q. And, you know, if you brought those documents
12 with you --

13 A. I did not.

14 Q. Well, we will have to review that at a
15 different time when we continue the deposition. If you
16 would like to get Deposition Exhibit No. 11 now --

17 A. Is 11 right there?

18 MR. CAMPBELL: No. This is 26.

19 Counsel, I would like to request a copy of the
20 permit application that Mr. Gregg has identified that he
21 wants to review so that I know that I have the same
22 document that he feels is relevant or significant for
23 him to answer the question.

24 MR. GEHLERT: Certainly. I believe that you do
25 already have it. I think it was in --

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1 MR. CAMPBELL: I believe I do, too, but I want
2 to make sure that it is --

3 MR. GEHLERT: I will confirm it's the same one.

4 MR. CAMPBELL: -- the same one he is
5 identifying.

6 Can you answer the question, Mr. Gregg?

7 THE WITNESS: Can you repeat the question,
8 again?

9 MR. CAMPBELL: Go ahead and read it back.

10 (Whereupon, the previous question found on page
11 174, line 16, through page 175, line 1, was read back by
12 the court reporter.)

13 THE WITNESS: Without seeing the permit
14 application, I am not sure I can totally answer the
15 question but the license -- 152,300 is for streamflow
16 maintenance.

17 I believe -- it's speculation on my part that
18 what is being described in the Water Control Manual as
19 one of the purposes listed in the permit was for water
20 quality purposes and aesthetics. It was not intended
21 for M&I contracting.

22 BY MR. CAMPBELL:

23 Q. And you pointed to Exhibit 16 when you
24 mentioned that?

25 A. Yes, sir.

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1 Q. Are you talking about the language of the last
2 sentence in the first paragraph?

3 A. Yes.

4 Q. 7-02?

5 A. Yes.

6 Q. Thank you very much. Mr. Gregg, do you know
7 when the Bureau of Reclamation obtained the approval of
8 the Department of Water Resources to amend the water
9 permit for Lucky Peak Reservoir to include the
10 additional 102,300 acre-feet for in-stream-flow use?

11 A. No, I do not.

12 Q. Based upon the language of the first paragraph,
13 7-02, on page 7-1 of Exhibit 16, it states, "The Bureau
14 of Reclamation is in the process of amending and
15 finalizing the Lucky Peak storage permit by designating
16 102,300 acre-feet of non-contracted space for streamflow
17 maintenance and municipal and industrial uses."

18 My assumption is -- and I am asking you if this
19 is a correct assumption, based upon what I am reading
20 here -- at the time this 1985 Water Control Manual was
21 enacted and adopted, in fact, the storage permit had not
22 been amended for that additional streamflow maintenance.

23 Is that a safe assumption, given the language
24 of Section 7-02 on page 7-1 of Exhibit 16?

25 MR. GEHLERT: Scott, can I ask you to clarify
Deposition of Jerrold D. Gregg, Volumes I and II

1 whether you are asking whether it had been amended, in
2 the sense that we had applied to have the permit
3 amended, or whether the Department of Water Resources
4 had made a decision on our application?

5 MR. CAMPBELL: Fine. That is an appropriate
6 clarification.

7 Q. Whether the Department of Water Resources had
8 actually made a decision approving the requested
9 amendment of the permit at the time the 1985 Water
10 Control Manual was adopted as reflected, particularly in
11 view of the language of 7-02?

12 A. Reading the plain language, it says that the
13 Bureau is in the process. So I would assume that
14 Reclamation had made an application to amend the permit,
15 and it was not complete at the time the Manual was
16 written.

17 Q. Written or adopted?

18 A. Adopted.

19 Q. From what you testified earlier, it took some
20 time to write the Manual?

21 A. Yes.

22 Q. Thank you. Can you explain to me, Mr. Gregg,
23 the understanding you have as it relates to the language
24 of 7-03 on page 7-2 of Exhibit 16, particularly with
25 respect to the 102,300 acre-feet for streamflow

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1 maintenance and municipal and industrial uses? My
2 question is to the point of whether or not that language
3 is in conflict with the language in 7-02.

4 MR. GEHLERT: I will just note the objection I
5 have made before about these questions requiring legal
6 interpretation of the documents. I understand you are
7 asking Jerry for his opinion, and I will allow him to
8 offer that.

9 MR. CAMPBELL: I am asking for his opinion as
10 the Area Manager of the Bureau of Reclamation, the
11 person that has been designated by the Bureau as the
12 person that is most knowledgeable about operations of
13 the Boise River Reservoirs.

14 THE WITNESS: Would you ask the question again?

15 BY MR. CAMPBELL:

16 Q. Sure. I will make it very short. In your
17 mind, is there a conflict between the language of 7-03
18 on page 7-2 and the language of Paragraph 7-02 on page
19 7-1 of Exhibit 16?

20 A. There's some language in 7-03 that I don't
21 understand and I would need a contract interpretation
22 for it because the language appears to place streamflow
23 maintenance as a primary purpose and on the same plane
24 as irrigation and flood control.

25 Q. And why is that confusing to you?

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1 A. That's not my understanding of how the rest of
2 the document is written.

3 Q. And can you tell me what your understanding of
4 the term "primary use" would be, as it relates to this
5 1985 Water Control Manual?

6 A. Well, that's what I would need somebody like a
7 contract -- some expert in how this document was put
8 together. To me, I'm thinking -- or I'm talking about
9 authorized uses of the various projects. This seems to
10 talk about, primarily, how the water is used. To me,
11 those are two different things.

12 Q. All right.

13 A. To me, the second time I read it, it seems to
14 indicate, like I said, how the water is used and not the
15 authorized purpose of it.

16 Q. And, again, I know you testified about this;
17 but so it is in the context of your testimony now, the
18 authorized purpose of the water is what exactly? Is
19 that the purpose that is authorized pursuant to
20 Congressional action? Is that what you are talking
21 about?

22 MR. GEHLERT: Authorized purpose of the water
23 or the reservoir?

24 MR. CAMPBELL: I think he said, "water."

25 THE WITNESS: I guess I was talking about

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1 authorized -- I guess I'm getting a little confused,
2 myself.

3 BY MR. CAMPBELL:

4 Q. I don't want you to. Take your time, Mr.
5 Gregg. If you are talking about the authorized purpose
6 of the reservoir, that is fine. I just need to confirm
7 that.

8 A. That was the context that I was speaking of.

9 Q. And by "authorized purpose," are you referring
10 to the purposes for the reservoir authorized by
11 Congressional action?

12 A. Yes.

13 Q. Are there any other authorizations that you
14 would be referring to when you say "authorized purpose"
15 or "purposes"?

16 A. Well, certainly, the contracts that we have
17 discussed earlier in my testimony.

18 Q. I am not asking about the contracts.

19 A. Okay.

20 Q. Are there any other authorized purposes, as it
21 relates to your understanding of how Reclamation
22 functions and operates the reservoirs?

23 MR. GEHLERT: Jerry, why don't you ask to have
24 your testimony read back from yesterday? You identified
25 several sources of authorization. You can ask for that.

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1 MR. CAMPBELL: We can go off the record.

2 (Whereupon, the proceedings found at page 28,
3 line 23, through page 29, line 23, were read back by the
4 court reporter for counsel during the recess.)

5 (Recess.)

6 MR. CAMPBELL: We identified some of your prior
7 testimony while you were gone, and I think you have
8 already answered the question. If you would like us to
9 have the court reporter read it, that is fine.

10 MR. GEHLERT: No. I just wanted to make -- he
11 had been more expansive previously, and I wanted to make
12 sure the record reflected that.

13 MR. CAMPBELL: So I don't need an additional
14 record on that, Mr. Gregg. Thank you.

15 THE WITNESS: Well, I think I would like to
16 rephrase the last part of my statement again to reflect
17 my earlier testimony. What I was stating is all of the
18 space in Lucky Peak is subject to flood control.

19 I mean, we can evacuate all of the space, both
20 contracted and non-contracted, for flood control. When
21 you refill the reservoir, both the contracted and the
22 non-contracted, which includes streamflow maintenance,
23 it is on an equal footing.

24 Within the streamflow maintenance account, that
25 portion of the reservoir, the use of that water would be

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1 the primary purpose of that. So that's how we interpret
2 this paragraph.

3 BY MR. CAMPBELL:

4 Q. Do you have an understanding of the effect of
5 water permits in Idaho?

6 A. I am not a water rights specialist.

7 Q. I won't go into that, then. We will argue that
8 part in court. Turn your attention, now, to page 7-8 of
9 Exhibit 16, please. Do you have that page, 7-8?

10 A. Yes.

11 Q. Can you tell me if you can explain what that
12 page is, generally? I am not asking you to explain all
13 of the details because there are lots of numbers and
14 lots of abbreviations, et cetera. But do you know what
15 that page is supposed to represent?

16 A. I believe so. I'm not an expert on this part
17 of the document; but if you go to 7-5, it states, from
18 January 1 through March 1 -- it describes how the flood
19 control space would be calculated. I believe that's
20 what 7-8 portrays is some of the calculations.

21 Q. I see. Okay. Thank you. Back-tracking just a
22 bit, there is an area that I wanted to ask you a
23 question on, 7-3. If you would, go back to that page of
24 the exhibit. Okay. Are you there, sir?

25 A. Yes.

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1 Q. In the first full paragraph on page 7-3 of the
2 exhibit, would you read that paragraph to yourself and
3 tell me when you have finished reading the paragraph?

4 A. 7-05.

5 Q. No, no. On page 7-3, the first full paragraph.

6 MR. GEHLERT: "Optimum Irrigation Use"?

7 MR. CAMPBELL: Yes, "Optimum Irrigation Use."

8 THE WITNESS: Yes. I have read it.

9 BY MR. CAMPBELL:

10 Q. Mr. Gregg, can you tell me, particularly
11 focusing upon the last sentence of that paragraph, what
12 your understanding is of the phrase "maintenance of
13 minimum fish and wildlife and water quality flows"?
14 What does that refer to?

15 A. It's what we call streamflow maintenance. That
16 is what this is.

17 Q. And can --

18 A. My --

19 Q. Go ahead.

20 A. My understanding of -- how this paragraph is
21 written is talking about releases during the
22 non-irrigation season, as the paragraph says, for fish
23 and wildlife and water quality flows.

24 Q. Can you tell me how "...refill for irrigation,"
25 which is referred to in that last sentence, "directly

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1 conflicts with the maintenance of minimum fish and
2 wildlife and water quality flows"?

3 A. Well, the paragraph is titled "Use Conflicts."
4 So the paragraph is explaining that, if you run the
5 reservoir strictly for flood control or strictly for
6 irrigation, what the effects are. So it's describing
7 how the -- you know, the balance between those different
8 uses.

9 In the context of this paragraph, it's saying,
10 if you maximize storage for one use, it may reduce the
11 use -- the other uses.

12 Q. I understand that, generally, and that makes
13 sense to me. But what I am asking from you,
14 specifically, is: Based upon your experience over the
15 last twenty years, your knowledge of how the reservoir
16 system on the Boise River works and your familiarity
17 with this Water Control Manual, how would refill for
18 irrigation in the system directly conflict with
19 maintenance of minimum fish and wildlife and water
20 quality flows? That is what I am asking. Or is that
21 statement totally incorrect?

22 A. No. To me, it's inferring that the other
23 reservoirs -- which Anderson and Arrowrock are
24 predominantly storage for irrigation and Lake Lowell has
25 a senior water right to Lucky Peak. By storing water

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1 for irrigation, it does -- it could, in some years,
2 reduce the refill probability of the uncontracted space
3 that was preserved for streamflow maintenance.

4 Q. Thank you. That is what I thought it meant,
5 too.

6 Turn to page 7-15, if you would, please, Mr.
7 Gregg, of Exhibit 16. If you would, start reading, just
8 to yourself, at the bottom of page 7-15, the phrase that
9 starts, "The final 60,000 acre-feet..." and continue on
10 over to the middle of page 7-16 where the last phrase is
11 "...Boise River stream maintenance flows." Do you see
12 that phrase?

13 A. Yes.

14 Q. If you would, read those provisions for me,
15 sir, first, before I ask you some questions.

16 A. Yes.

17 Q. Again, I would like to ask you concerning the
18 references in that portion of the Water Control Manual
19 of 1985, dealing with the language which I will quote in
20 the middle of the top portion of the paragraph on page
21 7-16.

22 "The Bureau of Reclamation has the temporary
23 State permit for Lucky Peak Lake storage and will be
24 finalizing the permit by requesting that the Lucky Peak
25 Lake non-contracted space be assigned as follows:

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1 "1. 13,950 acre-feet of water volume between
2 pool elevations 3055 to 3060 for exclusive flood
3 control.

4 "2. 102,300 acre-feet for stream maintenance
5 flows and municipal and industrial uses."

6 Mr. Gregg, we discussed this reference to
7 stream maintenance flows and municipal and industrial
8 uses earlier in the Water Control Manual of 1985. Is
9 your answer with respect to what that phrase means any
10 different in the context of this reference?

11 A. No, it is not.

12 Q. Thank you. Then I see the next page is a
13 non-numbered page titled, at the top, "Computation
14 Sheet." Do you see that document?

15 A. Yes.

16 Q. What is your understanding of the status of
17 this particular document as it relates to being an
18 official part of the 1985 Water Control Manual?

19 A. It's somebody's handwritten notes.

20 Q. Is it an official part of the Manual?

21 A. No.

22 Q. And turn to page 7-23 of Exhibit 16. At the
23 top, it is identified as Section 7-06, "Irrigation Water
24 Supply Plan"?

25 A. Yes.

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1 Q. There are certain handwritten notes at the
2 bottom of that page. Mr. Gregg, are those notes,
3 handwritten notes, part of the official 1985 Water
4 Control Manual?

5 A. No.

6 Q. And turning to -- do you need to take a break,
7 or are you okay?

8 A. No. I'm okay.

9 Q. Turn to page 7-30, if you would, sir, of
10 Exhibit 16. Again, if you would, look at the bottom
11 paragraph on 7-30 and read over to the end of the second
12 paragraph on page 7-31, just before the section that
13 says "7-11." If you could, read that section. Tell me
14 when you have finished.

15 A. Yes.

16 Q. Mr. Gregg, the language that I asked you to
17 read talks about a number of things; but it does
18 describe the phrase "primary use." It talks about the
19 "...50,000 acre-foot space allocation for Idaho Fish and
20 Game Department as required by the current Lucky Peak
21 storage permit."

22 Then it says, quote, "This allocation is a
23 primary use within Lucky Peak and is equal to flood
24 control and irrigation."

25 Then it goes on to say, "The purpose of this
Deposition of Jerrold D. Gregg, Volumes I and II

1 space allocation is to provide minimum fish and wildlife
2 streamflows below Lucky Peak Dam during the
3 non-irrigation season," end quote.

4 And it goes on, but that is the portion I want
5 to ask you about. Mr. Gregg, can you tell me what is
6 meant, from your standpoint and your understanding, by
7 the term "allocation"?

8 A. My understanding of the words "space
9 allocation" is talking about the uncontracted water
10 space with its water storer. So it's talking about a
11 50,000 acre-foot space within the reservoir that was
12 included on the original -- or was included on the
13 permit for streamflow maintenance.

14 Q. The term -- and I am not trying to confuse you
15 or trick you. Again, do you have an understanding of
16 what the term "primary use" means?

17 A. It would be the same as my previous testimony.

18 Q. And --

19 A. I want --

20 Q. Go ahead. I'm sorry.

21 A. I want to go back to "space allocation."
22 Reclamation uses the word "active capacity," 50,000
23 acre-feet of active capacity.

24 Q. Really, this is sort of a Corps of Engineers
25 term?

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1 A. I would presume so.

2 Q. All right. Thank you for for that
3 clarification.

4 Then on the next page, 7-31, at the top, in the
5 middle of that first paragraph, it states, quote, "The
6 actual release pattern is to be established by the
7 Director of the Idaho Fish and Game Department; however,
8 since an additional 102,300 acre-feet of space in Lucky
9 Peak is used for stream maintenance flows along with the
10 Idaho Department of Fish and Game space, the release
11 from the Fish and Game space could vary from a minimum
12 of about 70 cfs to larger releases," end quote.

13 Can you tell me, Mr. Gregg, how the Bureau of
14 Reclamation and the Corps of Engineers provide for
15 communications with the Director of the Idaho Fish and
16 Game Department on these actual release patterns
17 described in this Manual?

18 A. Well, I can't, on this paragraph, because this
19 was written prior to my becoming Project Superintendent.

20 Q. Right. And after you became Project
21 Superintendent, you have been involved in that process;
22 correct?

23 A. Correct. And that's --

24 Q. That is what I am asking about.

25 A. -- after the 102,300 were added. As I
Deposition of Jerrold D. Gregg, Volumes I and II

1 testified earlier, we consult with Idaho Fish and Game
2 in the fall, prior to making the releases.

3 Q. Idaho Fish and Game -- the Director of Idaho
4 Fish and Game Department is?

5 A. Not the Director. One of his representatives.

6 Q. One of his representatives. Who makes the
7 final decision with regard to how much water is released
8 from the streamflow maintenance account?

9 A. Reclamation does.

10 Q. In your experience in the last twenty years,
11 have you or has Reclamation, the Bureau of Reclamation,
12 made a decision contrary to what the Department of Fish
13 and Game has suggested or requested?

14 A. There have been some drought years where Idaho
15 Fish and Game biologists would have liked the higher
16 flows, and then we have declined to release those flows
17 because we just felt it would jeopardize the flows down
18 the road.

19 We didn't have enough carry-over storage to
20 maintain the higher flows. And after a lot of
21 discussion, we have come to an agreement on that.

22 Q. Have there ever been instances where irrigation
23 water has been used to supplement the quantity of
24 minimum streamflow water that has been available for
25 release?

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1 A. Yes. 1992.

2 Q. Were you involved in that?

3 A. Yes, I was.

4 Q. Can you tell me how?

5 A. It was 1992. We had had several drought years
6 back to back, very low carry-over. That was a fairly
7 extreme year, as far as drought.

8 As we progressed through the irrigation season,
9 it had become apparent that we would not be able to even
10 maintain the 80 cfs the following winter, which would
11 have had pretty severe impacts on the fisheries and the
12 water quality.

13 So the Boise Board of Control lent 10,000
14 acre-feet to the streamflow maintenance. We used it to
15 maintain 80 or above, and then we repaid it in
16 subsequent years.

17 (Whereupon, Ms. Lorna Jorgensen exited the
18 deposition conference room.)

19 BY MR. CAMPBELL:

20 Q. That was water that had been stored under the
21 irrigation storage base in the Boise Project Board of
22 Control?

23 A. Yes.

24 Q. The next paragraph on page 7-31 talks about
25 Anderson Ranch. And it says, quote, "At Anderson Ranch,
Deposition of Jerrold D. Gregg, Volumes I and II

1 the Bureau of Reclamation has a verbal agreement with
2 the Idaho Fish and Game Department to maintain minimum
3 releases from Anderson Ranch Dam of 300 cfs during the
4 non-irrigation season and 600 cfs during the irrigation
5 season," period. Did I read that correctly?

6 A. Yes.

7 Q. In terms of that sentence, can you describe for
8 me what this verbal agreement is between the Bureau of
9 Reclamation and the Idaho Fish and Game Department?

10 A. This was before my time, so I have no direct
11 knowledge. My presumption is that -- and I'm not aware
12 of any written --

13 Q. But I am asking you for your own personal
14 experience with --

15 A. I have none on this.

16 Q. Excuse me?

17 A. I do not have any knowledge of a verbal
18 agreement.

19 Q. So the reference here on page 7-31 is talking
20 about a verbal agreement which you have no knowledge
21 about?

22 A. My knowledge is -- of course, I testified
23 earlier on the 1981 Memo. We have operated according to
24 that Memo. That's been the instructions to my office.

25 Q. So to the extent that the 1981 Memo conflicts
Deposition of Jerrold D. Gregg, Volumes I and II

1 with this language on page 7-31, the 1981 Memo takes
2 precedence or it controls; is that correct?

3 A. I would say the 1981 Memo is more precise.
4 This is written in general terms.

5 Q. Well, okay. Let me ask the question again. My
6 question was: Does the 1981 Memo supersede or take
7 precedence over the language that we have been talking
8 about on page 7-31 concerning this verbal agreement?

9 A. I would say, yes.

10 Q. Mr. Gregg, I would like you to turn to page
11 7-33. If you would, take the time to read the language
12 on 7-33, particularly focusing on the last portion, the
13 last eight lines of that paragraph. Read the whole
14 thing, but I am going to ask you about the last eight
15 lines. Have you done that, sir?

16 A. Yes, I have.

17 Q. Concerning the last eight lines, starting with
18 the word "During" -- do you see where I am referring?

19 A. Yes.

20 Q. In terms of that portion of page 7-33, can you
21 tell me whether or not the provisions of the last eight
22 lines of that page have ever been implemented during
23 your twenty years in Idaho with the Bureau of
24 Reclamation?

25 A. I need to refer to Paragraph 7-11.

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1 MR. CAMPBELL: Sure. Go ahead.

2 MR. GEHLERT: Scott, after he is done with
3 that, if you could, clarify which provisions of those
4 eight lines you are --

5 MR. CAMPBELL: Sure. That is fine. I will
6 just read through them individually.

7 THE WITNESS: I have read the article.

8 BY MR. CAMPBELL:

9 Q. So my question is: In your experience in the
10 last twenty years in Idaho with the Bureau, have the
11 procedures in the last eight lines that deal with,
12 quote, "...any deviations from the minimum flow
13 requirements because of drought conditions and municipal
14 water supply shortages..." and those provisions that
15 describe, quote -- it says, actually, "...shortages will
16 be coordinated by the Bureau of Reclamation with the
17 Idaho Department of Water Resources, Idaho Department of
18 Fish and Game, Corps of Engineers, and other affected
19 parties."

20 That is what I am talking about. Have those
21 provisions ever been used, as far as your experience is
22 concerned, in the last twenty years?

23 A. My presumption is we are talking about a
24 drought contingency plan, perhaps, and drought
25 conditions. We are speaking -- when the flows would be

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1 below 150 cfs -- and at the time the Manual was written,
2 that was the desired flow -- then there would be
3 special -- describe some coordination requirements.

4 Without going back and looking at all of the
5 records, I know, in 1992, we were in that situation and
6 we did coordinate with the watermaster, the Corps of
7 Engineers and, I believe, others.

8 Q. Were there any documents that reflected those
9 coordinations?

10 A. I would have to look in my office files. I'm
11 not aware of any.

12 Q. There may be documents that relate to that
13 coordination? Is that a fair statement?

14 A. There may be. I know there were several
15 meetings.

16 MR. CAMPBELL: We would request copies of any
17 documentation that reflects that set of meetings.

18 MR. GEHLERT: And we will respond.

19 MR. CAMPBELL: Thank you.

20 Q. Mr. Gregg, in terms of this same language, can
21 you describe to me how the minimum flow requirements
22 would be affected by drought conditions and municipal
23 water supply shortages?

24 A. I am not sure what the context of that sentence
25 means.

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1 Q. So in terms of municipal water supply
2 shortages, do you have any understanding of what that
3 refers to?

4 A. No, I do not.

5 Q. And in terms of the phrase at the end of the
6 paragraph that says, quote, "and other affected
7 parties," end quote, what is your understanding of that
8 phrase?

9 A. It could be, certainly, the cities, the
10 counties, flood -- it wouldn't be the flood control
11 districts. It certainly would be the cities, the
12 counties, and the Lower Boise.

13 Q. What about the irrigation entities?

14 A. I'm not sure how they would be affected by
15 reducing the in-stream-flow releases. If they were
16 somehow affected, I guess there is a slight possibility.
17 I don't understand how.

18 Q. I am just asking. And then turning to the next
19 page, it has no number at the bottom. It is
20 handwritten. Is that page part of the official 1985
21 Water Control Manual?

22 A. No.

23 Q. Mr. Gregg, I am sure you will be happy to know
24 I think I am finished with the 1985 Water Control
25 Manual. I know I am happy to say that. Excuse my

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1 reach.

2 A. Sure.

3 Q. Mr. Gregg, do you intend to give any testimony
4 as an expert witness if this matter goes to trial?

5 MR. GEHLERT: Do you want to talk for a second?

6 THE WITNESS: Yes.

7 (Recess.)

8 BY MR. CAMPBELL:

9 Q. Are you ready to go back on?

10 A. Yes.

11 Q. Can you answer the question, please?

12 A. I have not been asked by my attorney; but if I
13 am, I would be available to testify.

14 Q. As an expert?

15 A. I would defer to my attorney as to which
16 category I would be testifying to.

17 Q. So at this point in time, you do not know if
18 you are going to be testifying as a non-expert or as an
19 expert; is that correct?

20 A. That's correct.

21 Q. Well, if you are identified as a witness, if we
22 proceed to trial, we will have to take your deposition
23 again, just to let you know that. Do you understand?

24 A. Yes.

25 Q. Good. Mr. Gregg, I would like to hand you what
Deposition of Jerrold D. Gregg, Volumes I and II

1 has been marked as Deposition Exhibit No. 18. After you
2 have had a chance to look at that document -- if you
3 want to, you can read the whole thing, if you feel that
4 is necessary. After you are sufficiently familiar with
5 it to tell me if you can identify it, then please
6 respond.

7 A. Do you want me to read the whole document or
8 just identify what the document is?

9 Q. If you feel you have to read the whole document
10 to identify whether or not you have seen it before, then
11 go ahead and do so. I will be asking you if you have
12 ever seen the document before, so that will be the
13 question.

14 Why don't we go ahead and go off the record
15 until you have finished?

16 A. Okay.

17 (Recess.)

18 BY MR. CAMPBELL:

19 Q. Have you reviewed the document?

20 A. Yes.

21 Q. Exhibit No. 18?

22 A. Yes, I have.

23 Q. Thank you. Can you identify the document?

24 A. I believe, from the heading, that it's a memo,
25 a memorandum, from the Boise Field Solicitor to the
Deposition of Jerrold D. Gregg, Volumes I and II

1 Regional Planning Officer.

2 Q. Have you ever seen the document before?

3 A. I may have, a long time ago. I don't remember
4 it.

5 Q. Okay.

6 A. I may have.

7 Q. Can you tell me, Mr. Gregg, what the procedure
8 for the Bureau of Reclamation is that would generate a
9 document like this from the Field Solicitor?

10 A. My presumption --

11 Q. In terms of the Bureau and what the Bureau does
12 to generate some kind of response as is reflected on
13 Exhibit No. 18 -- I am talking about currently. I am
14 not talking about back in 1976. I am talking about
15 currently.

16 Do you have a procedure? Does the Bureau have
17 a procedure which would generate some kind of response
18 letter or memo like Exhibit No. 18?

19 A. There is a procedure for corresponding -- or
20 writing official correspondence to the Field Solicitor
21 in the Region.

22 Q. And what is that procedure?

23 A. It's, generally, as in this memo, a -- well,
24 today, my understanding -- and we would need the Field
25 Solicitor to answer that correctly. If Reclamation has

Deposition of Jerrold D. Gregg, Volumes I and II

1 a certain question, they would write a formal memo to
2 the Field Solicitor's Office.

3 Q. That is the procedure today?

4 A. Yes.

5 Q. And who has authority to make those official,
6 written requests or memos to the Field Solicitor's
7 Office, in terms of the Bureau of Reclamation?

8 A. Currently, for official requests to the Field
9 Solicitor's Office, they have to be okayed --
10 policy-wise, they have to be okayed by the Regional
11 Director.

12 Q. Currently?

13 A. Currently.

14 Q. Has that been the case during your entire
15 twenty years with the Bureau in Idaho?

16 A. About eight, nine years ago the policy was
17 updated. I'm not sure -- the policy was unclear prior
18 to that. I'm not sure what it was exactly.

19 Q. Are there any documents which reflect the
20 official procedure of the Bureau of Reclamation in
21 requesting written responses from the Field Solicitor?

22 A. In the mid '90s, there was a policy signed by
23 the Regional Director. I'm not sure if that's still
24 available. There was a policy memo by the Regional
25 Director.

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1 MR. CAMPBELL: We would like to obtain a copy
2 of that. I assume your response is the same? You will
3 look into it and see if we can get a copy?

4 MR. GEHLERT: Yes.

5 BY MR. CAMPBELL:

6 Q. All right. Mr. Gregg, have you ever requested
7 a written response from the Field Solicitor's Office
8 dealing with an issue that you had to handle for the
9 Bureau of Reclamation?

10 A. Yes, I have.

11 Q. Has it just been once, or has it been more than
12 once?

13 A. I think I'm not quite sure of the context of
14 your question. The Solicitor's Office are our
15 attorneys. We sometimes, on issues, have daily
16 conversations with them.

17 Q. I appreciate that. I am talking about formal,
18 written requests for responses of the nature of Exhibit
19 18.

20 A. During my tenure, there has been several
21 instances; and they have been policy. Like I said, it
22 was put out in, I believe, the mid '90s. I may have the
23 date wrong. It's for my office to go to the Regional
24 Office, and then they make the request of the
25 Solicitor's Office; and that has been followed.

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1 Q. And after that process is utilized by the
2 Bureau of Reclamation, does the request typically
3 generate a response from the Field Solicitor's Office?

4 A. I can't say that it does all the time. I can't
5 say that every time it generates a written response.

6 Q. Would you say, typically, they respond in some
7 fashion, either in writing or orally?

8 A. Yes.

9 Q. And in your experience, in the last twenty
10 years in Idaho for the Bureau of Reclamation, have you
11 or the Regional Office, as a result of your request,
12 received written responses from the Field Solicitor's
13 Office of the nature or similar to Exhibit 18?

14 A. I'm not sure I have ever generated one in this
15 vein. Most of mine, I believe, have been over land
16 issues or contract interpretation on the Payette, if I
17 remember right.

18 Q. Well, I am not talking about the subject matter
19 of Exhibit 18.

20 A. Right.

21 Q. I am talking about the process.

22 A. Okay.

23 Q. And my question is: Have you ever gotten a
24 written response from the Field Solicitor's Office in
25 response to a request that you generated through the
Deposition of Jerrold D. Gregg, Volumes I and II

1 Regional Office to the Field Solicitor?

2 A. There may have been one or two quite sometime
3 ago.

4 Q. And what significance, in your mind, do those
5 written responses have? I will give you --

6 A. From a layman's standpoint -- and I'm not an
7 attorney -- we were asking for, essentially, advice,
8 sometimes legal, sometimes research.

9 Q. Okay.

10 A. Sometimes specialty advice.

11 Q. All right. Let me ask this question: Have
12 you, in your twenty years with the Bureau of Reclamation
13 in Idaho, ever sought a written response or a request to
14 the Field Solicitor's office on an issue of day-to-day,
15 typical, operational issues?

16 A. Could you repeat that again, please?

17 Q. Sure. What I am asking -- I will ask it a
18 different way. During your twenty years with the Bureau
19 in Idaho, have you ever asked for an opinion or a
20 request from the Field Solicitor on day-to-day issues
21 that are not significant?

22 A. Are you asking about a formal opinion?

23 Q. Yes.

24 A. Not usually on day-to-day issues.

25 Q. What type of issues have you requested formal
Deposition of Jerrold D. Gregg, Volumes I and II

1 opinions on?

2 A. If I remember right, a couple of them were land
3 issues. One was a contract interpretation.

4 Q. And what did you consider to be the
5 significance of their responses?

6 MR. GEHLERT: Before you answer, Jerry, we have
7 addressed the effect of this memo in our brief. It's a
8 matter of law. I will let Jerry testify as to his
9 understanding. I just want to make it clear that it's a
10 legal issue, and it will be addressed accordingly.

11 MR. CAMPBELL: I am not asking about Exhibit
12 No. 18. I am asking about his requests to the Field
13 Solicitor's Office.

14 MR. GEHLERT: I understand that, Scott. I am
15 just saying that as a general -- the effect of a memo
16 from the Field Solicitor has been addressed.

17 MR. CAMPBELL: I understand. I understand. I
18 am just asking his view, what he considers to be the
19 impact or the effect or the relevance.

20 Q. Why is it important? Is it important to you to
21 get an answer? And if you do, if it is in writing from
22 the Field Solicitor's office, you know, do you just
23 throw it away? I mean, what do you do with it?

24 A. Well, as I said, it may be legal advice. It
25 may be a contract interpretation. It may be some type
Deposition of Jerrold D. Gregg, Volumes I and II

1 of research.

2 Q. Let's run through those three. How about legal
3 advice? Is that important to you?

4 A. Yes, it's important.

5 Q. And how about contract interpretation? Is that
6 important to you?

7 A. Yes, it's important.

8 Q. And the other item was operational -- or
9 research?

10 A. Research.

11 Q. Would their response be important to you?

12 A. Yes.

13 Q. So are there any other categories that you
14 would include, as far as categories of responses from
15 the Field Solicitor's Office -- in writing?

16 A. There's a -- the Solicitor's Office is required
17 to sign off or do legal review on a lot of the legal
18 instruments such as repayment contracts, easements, et
19 cetera -- land exchanges. So they do the legal review,
20 and then actually sign off on those documents.

21 Q. Is that legal review important to you with your
22 duties with the Bureau?

23 A. Yes.

24 Q. Why is it important?

25 A. Well, they are our attorneys.

Deposition of Jerrold D. Gregg, Volumes I and II

1 Q. Does the Bureau of Reclamation consult with any
2 other attorneys besides the Field Solicitor's office?

3 A. Depending on the situation, the Department of
4 Justice, the U.S. Attorney's Office.

5 Q. And can you tell me what the discrepancy
6 between the Field -- excuse me. Strike that.

7 Can you tell me the circumstances where you
8 would direct your attention, as far as inquiries, to the
9 Field Solicitor's office, as opposed to the U.S.
10 Attorney's Office or the Department of Justice? Is
11 there a break-down? Is there a categorization? I mean,
12 how does that work?

13 A. From a layman -- and I don't want to speak --

14 Q. I am just asking for your understanding, Mr.
15 Gregg.

16 A. Litigation for the U.S. Government is handled
17 by the Department of Justice.

18 Q. And what about the U.S. Attorney's Office?

19 A. Again, they may assist us in some legal issues.
20 We have, on some complicated water right acquisitions
21 for flow augmentation, consulted with the Department of
22 Justice before the documents were finalized.

23 Q. And what about the Field Solicitor's Office, in
24 terms of -- do they handle the litigation, too? Why
25 would you go to -- why wouldn't you go to the Field

Deposition of Jerrold D. Gregg, Volumes I and II

1 Solicitor's Office if you have a litigation matter?

2 A. They are responsible for the Department of
3 Interior, providing the legal briefs, background
4 information, advising the client, which is Reclamation.

5 Q. But is it fair to say that the Field
6 Solicitor's Office does not represent the Bureau of
7 Reclamation in litigation matters? Is that correct?

8 A. It is actually -- as far as the courtroom
9 proceedings, that is correct, in my understanding.

10 MR. CAMPBELL: That is all I am asking for.
11 Is it time we quit.

12 MR. GEHLERT: If it's a good time for you.

13 MR. CAMPBELL: I would like to get one more
14 document and just have you identify it.

15 MR. GEHLERT: That would be fine.

16 BY MR. CAMPBELL:

17 Q. Mr. Gregg, if you would, look at Exhibit No.
18 19. Tell me if you can identify the document.

19 A. Yes.

20 Q. What is the document?

21 A. It's a letter from Scott Campbell, representing
22 the Pioneer and Settlers Districts, requesting
23 additional Lucky Peak storage water, if any become
24 available, during the Lucky Peak contract renewal
25 process.

Deposition of Jerrold D. Gregg, Volumes I and II

1 Q. And do you recall if you responded to that
2 correspondence?

3 A. I'm not sure if we did, in writing. I believe,
4 during the process, we were advised that you could renew
5 for your contract amount but not for additional water.
6 Additional water would be a new application and outside
7 of that process.

8 Q. Would you be able to check your files to see if
9 you have a written response to Exhibit No. 19?

10 A. Yes.

11 MR. CAMPBELL: If you do have anything that
12 responds to that in writing, I would like a copy of
13 it.

14 MR. GEHLERT: Understood.

15 MR. CAMPBELL: Thank you. Let's go off the
16 record. Before we do, we discussed previously the need
17 to continue this deposition after documents which we
18 have requested are made available to us, if they exist,
19 and if the United States makes them available to us; but
20 that will be part of a discussion after the summary
21 judgment briefing is completed.

22 MR. GEHLERT: Yes.

23 (The deposition, Volume II, stood in recess at
24 3:23 p.m.)

25 (Signature requested.)

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I, LORI A. PULSIFER, Certified Shorthand Reporter, do hereby certify that:

The foregoing proceedings were taken before me, at which time the witness was placed under oath;

The testimony and all objections made were recorded stenographically by me and were thereafter transcribed by me;

The foregoing is a true and correct record to the best of my skill and ability; and

Pursuant to request, notification was provided that the deposition is available for review and signature; and

I am not a relative or an employee of any attorney, nor am I financially interested in the action.

I have hereunto set my hand and seal this 11th day of February 2008.

LORI A. PULSIFER, CSR, RDR, CRR
Certified Shorthand Reporter
Idaho Certificate 354

Deposition of Jerrold D. Gregg, Volumes I and II