Before the Idaho Water Resource Board

of the State of Idaho

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Meeting No. 7-09

April 30, 2009, 10:00 a.m.

before The Idaho Water Resource Board

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Bob Graham
Charles "Chuck" Cuddy
Leonard Beck
Roger W. Chase
Vince Alberdi
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MS. McGOURTY: Mr. Beck.

MR. BECK: Here.

MS. McGOURTY: Mr. Chamberlain.

MR. CHAMBERLAIN: Here.

MS. McGOURTY: Mr. Graham.

MR. GRAHAM: Here.

MS. McGOURTY: Mr. Rigby.

MR. RIGBY: Here.

MS. McGOURTY: Chairman Uhling, not yet.

Seven present.

THE CHAIRMAN: Is there any public comment?

Anyone that's not going to be on the agenda that would like to address the Board at this time?

Yes, sir. Please come forward.

MR. HAZEN: My name is Bill Hazen. I work with the Idaho Water Alliance. I work with the Idaho Water Alliance. I don't know when the proper place to address the Board is, but this is the time, I guess right now. It's a public comment. And I'm as public as it gets.

I visited with Vince Alberdi the other day regarding what is the proper format. And so I'll just try to bring you up to date.

The Idaho Water Alliance, of course, works with aquifer recharge issues in the Magic Valley, primarily, but also all over the state. They've been quite active in the last few months trying to get some things going. And it's all because of Board Member Leonard Beck. A couple of years ago we met with him and he said -- you know, we asked him, Leonard, is the Board going to really get active and actually find and develop some of these recharge sites? And he said, hmm, probably not. So what are you going to do? And he said, we'll just come to a super plan. And so that's what we've kind of done.

The Board, as you know, has a water right on the Little Wood, Big Wood for 800 CFS. We've only really got one spot that we can use that water in. And it's felt locally that if we can figure out some kind of a way to get water out of the Little Wood River at Dietrich -- or excuse me, Richfield going towards Dietrich. What we're talking about, gentlemen, is Silver Creek water. That's what the Little Wood is in the fall and wintertime is Silver Creek water, probably our premier Trout stream in the country. So currently, a group, including the Magic Valley Groundwater District, the Lower Snake River Aquifer Recharge District and the Idaho Water Alliance, each ponied up some dollars to drill
1 some exploratory test holes along the Dietrich canal. We dug three of them two weeks ago.
2 Eaton's drilled those. IDWR geologist Lynn Campbell was there to make sure that we had the good well logs that we need to make these kind of decisions. Monday, two of them went up there and videoed those holes to see if, in fact, we had enough cracks and fractures and cinders and stuff like that in order to proceed. And on two of the three, we will be taking water -- potable water up good well logs that we need to see what kind of water will go down. And once we've done that, we'll make some kind of a decision as to where to go.
3 Gooding, Lincoln and Jerome counties are all interested as counties of trying to see if they can help in providing the infrastructure to perpetuate and get some recharge going. So we're trying to get some of this stuff put together so that we can maybe include some bore holes or some more, actually, injection wells that the counties would fund.
4 I do encourage you, as you talk about the implementation of the CAMP plan, to recognize the extreme need to have grunts on the ground to see these things are done. We can have committee meetings; we can have all kinds of things. But unless you actually formulate and decide how you're going to get those plans in effect, and those people that are on the ground tell you where the good spots are, who's the people that are players, how we can get this done, it will never happen. So please, please consider the grunt end of the deal when we get down to actually getting implementation plans done.
5 Thank you.
6 THE CHAIRMAN: Thank you for your comments.
7 Any other public comments?
8 Idaho Power Swan Falls Settlement Agreement.
9 HAL ANDERSON: Mr. Chairman, members of the Board, first of all, I want to make sure that everybody has the documents that we have included for your consideration here. You should first have a copy of a resolution. It says, "In the Matter of a Memorandum of Agreement Regarding the Implementation of Managed Recharge Under the Eastern Snake Plain Aquifer Management Plan and State Law." So you should have the resolution, that is the resolution for the Board's consideration today.
10 You should also have a Framework Reaffirming Agreement, which I will discuss in more detail in a moment. And then the final step would be...
THE CHAIRMAN: Mr. Chase.

MR. CHASE: You know, Mr. Chairman --

 MR. STRONG: Mr. Chairman, members of the Board, which having said that, I've laid out the framework. I don't intend to revisit the framework. Instead, I'll now focus primarily on the Memorandum of Agreement to which the Board is being asked to consider approval.

THE MEMORANDUM OF AGREEMENT

16 The Memorandum of Agreement is -- its important to set out what it does and what it doesn't do. The Memorandum of Agreement is intended to reflect understandings between the State and Idaho Power Company with respect to how we would move forward -- we the State would move forward with managed recharge.

22 As I've previously advised the Board, under the Swan Falls -- proposed Swan Falls settlement, if it's implemented, there would be an acknowledgment from the company that the issue of how managed recharge is conducted is a state policy issue. And what this Memorandum of Agreement attempts to do is to reflect the fact that, between the power company and the State, that there needs to be some dialogue that goes back and forth on these particular issues. Not that the company has a right to control the state process, but it's reaffirmation of its rights to participate like other users in decisions that are made through the State process, and also reaffirmation of the fact that we do have a contract with the company that reflects an understanding with regard to minimum flows that would be established at the Murphy Gauge and at the Milner Gauge. And that, as the State moves forward with its management actions, those actions can have implications of -- in terms of the implementation of that underlying Swan Falls Agreement that we are committing ourselves under this MOA to have a dialogue on those issues short of going forward with litigation.

23 Now, nothing in the Memorandum of Agreement would preclude or change any parties' position, either the Board or the company's right to seek
judicial relief. It's simply an expression of the
goodwill and intent that we should attempt to
dialogue on those issues before we have to resort
to litigation.

Having said that, the Memorandum of
Agreement has certain whereas clauses. Those
whereas clauses, if you go back and follow the
pedigree of them, can be traced back to the
original Swan Falls Agreement, to the Swan Falls
framework, which was the conceptual structure for
the Swan Falls Agreement that was entered into
back in 1984, and then provisions of the State
water plan that were amended by this Board back in
1985 to reflect the Swan Falls Agreement.

Just I'm going to note issues as we go
along. One concern has been expressed by some of
the party participants in the litigation is the the
fact that this -- these whereas only reference,
primarily, the recharge issue, and concern that,
by not referencing other provisions of the
original Swan Falls Agreement, that somehow those
have a lesser standing. And I'd represent to the
Board that that is not the intent. In fact, among
the documents I've provided to you is a joint
statement from the Idaho Power Company and the
State of Idaho that goes into this issue in more
depth.

But basically, the reason these provisions
were called out was we were trying to put the
framework of how this relates back to the Swan
Falls -- the original Swan Falls Agreement, how
this is consistent with those original
understandings and intent. And it is not intended
to reflect any change in terms of State policy, or
the agreements that were reached in the context of
the original Swan Falls Agreement. In fact, in
the framework, we have an express provision that
reaffirms all aspects of the original Swan Falls
Agreement.

Turning from the whereas clauses to the
therefore clauses, which are the critical ones,
let's walk through those. Paragraph No. 1 on page
2 is a codification of what I just expressed to
you, the idea that we, as a State, and Idaho Power
Company, entered into an agreement back in
'S84. We're reaffirming that agreement, and recommitting
ourselves to work cooperatively to implement the
principles of the Swan Falls Agreement, not to
change them, but to implement them. And from a
fundamental public policy standpoint, it makes

Upper Snake River Basin. And it's an
acknowledgment that, if we, as a state, choose to
change that policy in the future, that that would
constitute a requirement to go back through and
amend the State water plan pursuant to state law.

So again, it's just a reflection of an
understanding that that's what CAMP means. And
that's the process that we would use to change
those targets.

Paragraph 3 deals with ESPA CAMP 1 phase-in.
One of the kind of important issues in terms of
management of the waters of Snake River is to
recognize that -- and something we haven't done as
adequately as we should have in the past is that
one action affects other rights in the river. And
so, to extent that we implement recharge in the
pursuant to the CAMP process, that will
necessarily mean that the waters that flow down
through the Snake River above Milner, for example,
will be altered, depending upon where we do that
recharge. The return flows from that recharge
will impact flows in various segments or reaches
of the river. And in particular, it could affect
the flows that currently unregulated flows that go
over the Milner Dam, and are available pursuant to
1 the Swan Falls Agreement for use for hydropower generation at those facilities.
2 And again in the Swan Falls Agreement, it's the State's -- State has the authority to use
3 those waters above Milner, and to use them in a way for recharge without violating the Swan Falls Agreement. But as a consequence of that, if we take water out during certain times of the year immediately above Milner, that means, in terms of meeting the 3900 CFS -- 3900 CFS flow in the irrigation season, or 5600 CFS flow in the winter season, that we have to be cognizant that that action could impact what happens at those reaches.
4 And so what we're expressing here is an understanding that we're all going to be committed to moving forward with phase 1. The company has fully expressed its support for moving forward with phase 1. But it wants to be able to participate in how we implement that to try to minimize those impacts, and to avoid future potential conflicts between us.
5 And so, from that perspective, there's an understanding that, as the Board moves forward, we're going to look at that hundred thousand acre foot target for the first ten-year period. We recognize that adaptive management needs to be a part of the CAMP process. And so built into this is the notion that during that ten-year period, we're not going to go more than 75,000 acre feet above the hundred thousand acre foot target without coming back to the Board and going through a process and evaluating the consequences of that decision. Again, it's your decision to make. It's a process paragraph that we have there. Paragraph 4 is the recognition, No. 1, that by entering into this agreement, the company is not waiving any of its rights to participate pursuant to state law as any other citizen would by entering into this agreement, the company is not waiving any of its rights to participate pursuant to state law as any other citizen would
6 of managed recharge, that that somehow makes the regulatory relief from the implications or impacts of managed recharge have on generation of hydropower at those facilities below the Milner Dam. It also recognizes that the Board will work with the company to sit down and to work through those issues, to receive information from the company, and to try to make -- use that information in a meaningful way to make better decisions in terms of water management.
7 Oftentimes, the major problem we've had with water management in the Snake River basin is that we move forward independently of one another without taking into account the implications from a particular decision, and then we revisit those problems in subsequent litigation or conflicts that arise. And the idea here is that, rather than allow issues to build, let's talk about them up front. Let's work through them in a constructive way.
8 Paragraph 5 is one that bears a significant amount of description for the reason that there is a concern that, by having the Board and the Governor work in good faith and cooperate with the company and support the company's attempt to get regulatory relief from the implications or impacts of managed recharge, that somehow makes the Board or the Governor an institutional adversary of the other water users in the basin, particularly the groundwater users. And that's been a concern from Mr. Rigby's clients, from Idaho groundwater users, and from the City of Pocatello. And first, I describe what the understanding is between the State and Idaho Power Company, and then how we have attempted to remedy or reconcile those concerns with the other affected water users.
9 When this provision was being developed, the concern from the company's perspective, and from my opinion rightfully so, was that, okay, if we as a company are going to agree that the State could move forward and make decisions about managed recharge, that if you make those decisions, you ought to own the decision you made. In other words, if our decision is we want to use water above Milner, and that's going to impact flows below Milner, and the ability to make energy from that water, that we ought to acknowledge that we're making that decision, and what the consequences of that decision are. And that was all that was really intended. Because, oftentimes in these battles, you get into them, what happens is we make a decision, and then when someone seeks relief, then they're viewed as a culprit for that particular problem.
10 And what this is intended to do is to simply have us acknowledge as a government what the consequences of our decisions are. It's not intended to have the Board or the Governor be in a position of being an advocate for a particular proposal for the PUC. It's not intended to
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| deprive the PUC of it's authority to make decisions about the adequacy of the requests being made of the PUC, nor is it intended to have the Governor or the Board take a position with regard to that specific request. It's simply an acknowledgment that we will recognize, based on our own independent determinations what we think the impact of the decisions we're making are so that that can be part of the public record. The concern is focused on the word support and the view that that could be interpreted more broadly. And in response to that, in conversations with various counsel and with others that are concerned, the State and Idaho Power Company put together a joint summary of this particular MOA and the framework, and expressly addressed this issue, and I would represent reflect with comments I just made to you that this is intended to simply be an acknowledgment by the State of the consequences of its decisions as opposed to taking a particular position before the PUC. As the legislation was moving forward through the legislature, that concern continued to resonate, and as a consequence, we received the letter that I've provided to each of you, and I would ask be made part of the record for Mr. Randy Budge, that on behalf of the water users who express their concerns over this particular provision and the legislation. Now, in addition to his letter, you will see in the materials I provided, and I ask to be made part of the record as well, a response that our office, the Office of the Attorney General prepared in conjunction with the Governor's office to reflect our understanding of this provision as well as others. And it's about a 19-page letter. And it has that statement of concern attached to it as well. MR. RIGBY: Excuse me, Mr. Strong, that's the April 13th? MR. STRONG: That's correct. So what we're proposing is to have those issues made part of the record. We have -- in order to also give the other parties a comfort level that, in fact, the representations that I am making to you today, and that I am assuming Mr. Tucker will make to you as well, are reflected in the resolution for approval of the MOA. And hopefully, with that, we'll address at least the concerns of some of the groundwater users. I'll let them speak from their own perspective. But my understanding, at least from Mr. Budge on that, on behalf of his clients, making these a part of the record, along with the resolution, would adequately address their concerns about the interpretation of this particular paragraph. Paragraph 6 is one that -- from the -- from your perspective and Governor's perspective is an important one. It's an acknowledgement both by the company and the State that managed recharge is fundamentally a public policy issue that needs to be decided pursuant to state law. It's not a matter of contract. It's a matter of state law. And so as a matter of state law, it's subject to change or modification in the future based upon the policy directions that you or the legislature adopt. And then finally, paragraph 7. Paragraph 7 is an acknowledgment to the company that, by entering into this MOA, and entering into the general agreement, that they do have the right, pursuant to state law, to continue to participate, and that neither the Swan Falls Agreement nor this MOA or the reaffirmation agreement precludes them from exercising those rights that are available pursuant to state law to express their views and concerns with regard to managed recharge. So Mr. Chairman, members of the Board, in summary, what we're bringing to you today, in my opinion, is a Memorandum of Agreement that reflects a process for coordination, cooperation between the company, between the State on managed recharge. It's not intended to create a new forum, but instead, it's intended to reflect understandings that will allow us to move forward, implement the policies of the State of Idaho with regard to managed recharge in terms of CAMP. It will allow the company to exercise its right in the public forum with everyone else. And so with that, Mr. Chairman, I would stand for questions. THE CHAIRMAN: Any questions of Mr. Strong? MR. BECK: Mr. Chairman? THE CHAIRMAN: Mr. Beck. MR. BECK: Thank you, Mr. Chairman. Mr. Strong, from this memorandum, it appears that there is a tremendous -- or I shouldn't say tremendous, but a concern for the decrease of flows because of recharge. Certainly on the other...
hand, there has to be an approach, or an effort to notice that the recharge would be to increase the aquifer levels, which would greatly reduce deep well pumping. And in those levels being raised, it might also cause more flow in the river. Are we -- I'm more concerned about the negatives versus the positive what a recharge would look on. Mr. STRONG: Mr. Chairman, Mr. Beck, perhaps in my presentation, I was too -- too much pointing on the downside, because that's the concerns that have been expressed. But the reality is you're correct. Recharge has both positives and negatives. And to the extent that recharge may not be going over Milner, it's certainly augmenting the aquifer. It provides a more stable supply, and it will help in those springs. And so it's a balancing act we're going to go through on recharge. I think really that's been kind of the heart of debate on recharge over the last few years is everybody is looking at it from the worst case scenario. I think the reality, and what the future will show us is that recharge is a tool, not the only tool, but a tool that can be used in conjunction with other tools to try to bring the aquifer back into balance.

And I think that's reflected in your CAMP proposal. And I think as we go forward and implement it, it's going to be incumbent upon us to document what are the consequences of the decision we make. And it may be that we find more benefits than we do negatives. But from a company standpoint, they're concerned about the negatives because that impacts their ability to generate. From a positive standpoint, having enhanced spring flows is going to enhance their ability to generate with a more reliable flow, below Thousand Springs. And I think it's that realization -- and I'll allow Mr. Tucker to speak to that -- but I think it's that realization that recharge isn't something you can view as either a positive or a negative. It's got a balance. And we need to consider that as we implement it and do it in a way that's most effective to optimizing the resources. THE CHAIRMAN: Thank you.

Anything else Mr. Beck? Anyone else? Questions of Mr. Strong? What?

MR. RIGBY: Mr. Chairman and Mr. Strong, I don't want to get out of order here. Just that, as I indicated before, for me to proceed, the only condition that I really have is the confirmation by Idaho Power of documents that they haven't heretofore already executed, one of which is the April 13, 2009 letter. Obviously, not having executed, my understanding is Idaho Power is prepared to confirm your response in that letter. And I guess that's what I'm saying. I don't want to push this out of order. I know that Idaho Power will be before the pulpit -- or the stand -- you tell us -- go back to my church days here -- and address this. But I just want to make sure that's still on the Board.

MR. STRONG: Mr. Chairman, members of the Board, it would be my recommendation to you that not only do we hear from Idaho Power Company, but we hear from other water users. Though, I have presented to you here what I believe to be the benefits of moving forward with this, not everyone. shares those views. And I think it's important in making public policy decisions that everyone has an opportunity so that you have the information necessary to make an informed decision. And so from that perspective, I would encourage you to invite, not only Idaho Power Company, but other participants here in the group that may have other concerns or issues they'd like to have addressed.

THE CHAIRMAN: Thank you, Mr. Strong.

Any other questions of Mr. Strong? Clive, thank you.

Mr. Tucker, I see you just itching to get to the pulpit.

MR. TUCKER: Mr. Chairman, thank you. No, I wasn't really itching to get up here, but I suspect that I perhaps should.

THE CHAIRMAN: We appreciate it.

MR. TUCKER: I do not have any prepared remarks today. I suspect that I might be on the agenda, so I do have a few things to say. First of all, let me confirm what Mr. Strong said. Mr. Strong and I have appeared in various forums over the last month or so, including the legislature on several occasions before various committees. And the representations from Mr. Strong on the general outline of the agreement, the framework, the MOA is correct. We
certainly generally confirm and participated in the summary that was done. And I confirmed the letter that he sent. The letter that he sent, the September 13th letter or the April 13th letter, generally concur with that letter. No problems with the letter.

What I want to do this morning is talk a little bit broader than perhaps what this MOA talks about. It's focused obviously on recharge. But one of the first things that, when we sat down with the State to talk about trying to resolve the Swan Falls litigation, we agreed upon was a litigation was not an appropriate forum to really resolve complex public policy issues. We've been in litigation with the State for several years on issues that really we're not going to get to the bottom line. And the bottom line being how do we take care of the Snake River Plain Aquifer? How do we implement CAMP and look at recharge in the same context as all the other water management tools we have. What benefits will it bring. What attributes does it have that might foster some public policy debates about how much we should use recharge and where we should use it. That's what this agreement really does and sets the stage for. Sets the stage for Idaho Power Company to be a partner with the State in the context of the CAMP and water management processes.

Now, there's various other partners in that process. Some of them are in the room. There are other potential partners that we haven't even talked to yet in the context of CAMP. But we think it's recognized under CAMP that there has to be a leadership role from the State of Idaho. And frankly, this Board is going to have to take the leadership role in that context. To really direct CAMP, and direct these measures forward, and make sound public policy choices as to what measures are in the best interests of the State of Idaho, the Snake River, and the Eastern Snake Plain Aquifer.

It was a hot button issue because of what occurred two or three or four, five years ago, 2006. We all remember House Bill 800? The acrimony that came out of that debate, that fight, if you will, which really blossomed into this litigation. But as we went through that litigation, we found that the end result was not really going to resolve some of the issues that had been plaguing the State of Idaho over the last several decades? Litigation wasn't going to solve that. So we agreed upon that, and we agreed to move forward.

Now recharge, in that litigation, was a hot button issue. It was a hot button issue because of what occurred two or three or four, five years ago, 2006. We all remember House Bill 800? The acrimony that came out of that debate, that fight, if you will, which really blossomed into this litigation. But as we went through that litigation, we found that the end result was not really going to resolve some of the issues that had been plaguing the State of Idaho over the last several decades? Litigation wasn't going to solve that. So we agreed upon that, and we agreed to move forward.

What this framework does, and these documents do is put Idaho Power in a position where we can come before this Board, and we can present our information, our data, our science, and be involved in this process so that this Board can make those sound public policy choices that need to be made. This is going to be a long process. This first phase is expected to take ten years. I may not be around for the end of that. Though, it's got to start in a rational, reasonable way with leadership from the State, and leadership from this Board. And we, through this agreement, are taking the position we want to be part of that. We want to be an active member, an active participant in that. And that's what the agreement kind of clears the way for. It gets rid of the litigation, and hopefully puts us in a place where we'll be an active partner with the State in moving forward on these issues.

As Clive, recharge is a fundamental tool of water management. It was recognized as a fundamental tool back in 1984, when the original framework was signed for Idaho Power and the State. The problem was no one knew how it was going to be implemented or what it was going to do. So as a consequence -- Clive is right -- it became somewhat of a boogy man, if you will, in the context of -- at least in the company's perspective early on, how big was this going to be? What impact it was going to have. Mr. Beck makes a very good point, though. As you start to look at recharge, you can see pluses and minuses on both sides. So in that context, we felt we've got to move forward in a cooperative manner under the CAMP and look at recharge in the same context as all the other water management tools we have. What benefits will it bring. What attributes does it have that might foster some public policy debates about how much we should use recharge and where we should use it. That's what this agreement really does and sets the stage for. Sets the stage for Idaho Power Company to be a partner with the State in the context of the CAMP and water management processes.

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1 to worry about boots on the ground, or grunts on
2 the ground. I agree. We need to worry about how
3 we're going to implement these various measures.
4 But they have to be implemented. And I think this
5 whole context of what we put together under the
6 legislation is they should be implemented under
7 the CAMP process. And there's a lot of work to be
8 done that -- I just saw Mr. Barch come in --
9 there's a lot of work to be done in the context of
10 setting up the implementation committee, how that
11 committee's going to consider measures to move
12 forward with, how its a going to bring those
13 measures to this Board to get approved, and how
14 this whole process is going to work. A lot of
15 details to be worked out. We'd like to be a
16 partner in helping to work out the little details.
17 So with that, I'll answer questions if you
18 have specific questions about that. I just want
19 to give a little bit broader context.
20 THE CHAIRMAN: I believe that the fear of
21 the unknown is what is holding all of us back. It
22 is too bad that we can't look into a crystal ball
23 and see ten years from now how worthwhile these
24 decisions we're making today are going to be.
25 Are there any questions for Mr. Tucker?

1 Mr. Cuddy?
2 MR. CUDDY: Thank you, Mr. Chairman.
3 I take it from this, you and Clive both
4 believe that with the MOU and the April 13th
5 letter being an integral part of it, that it still
6 leaves you the latitude to move up and down the
7 necessary process that may occur in the Snake
8 River Plain to properly manage it without
9 restriction?
10 MR. TUCKER: Mr. Cuddy, Mr. Chairman, when
11 you say you, Mr. Cuddy, I don't want to -- I don't
12 want to answer that in the context of Idaho Power,
13 because Idaho Power obviously is not the water
14 manager up and down the Snake River. It wants to
15 be a participant in those water management
16 decisions. This sets the framework for Idaho
17 Power along with other interested parties to
18 participate in that.
19 MR. CUDDY: Well, that's what I mean. And I
20 see it, with this, you become a part of the
21 management process.
22 MR. TUCKER: That's our hope. And again,
23 not to raise our level. I don't want to give
24 people paranoia to think that Idaho Power is
25 stepping out and has some super priority

1 someplace, because we don't. But we are -- as
2 with any other citizen, we have -- we have the
3 ability and the opportunity to come before this
4 Board and talk about the measures that are going
5 to be put in place, and how those measures should
6 best address all of the various issues this Board
7 should be concerned with with respect to water
8 management.
9 THE CHAIRMAN: Any other questions?
10 Mr. -- Mr. Rigby.
11 MR. RIGBY: Mr. Chairman.
12 MR. CHAIRMAN: I knew that.
13 MR. RIGBY: I'm sorry.
14 Mr. Tucker -- and again, this is the
15 attorney in me, but I just need to ask this
16 question.
17 In response to the April 13th, 2009 letter,
18 I heard you say general agreement. I guess I
19 would ask you, is there anything specific in that
20 letter -- I'm assuming you've read it numerous
21 times. Is there anything specific in that letter
22 that you have any problem with?
23 And again, I don't want to beat a dead
24 horse, but I want you to understand that I'm
25 concerned about my position on this Board. And

1 the only -- in voting on this, the only way I can
2 is a clear agreement of Idaho Power to that
3 response, because I believe that response
4 addresses the concerns of my particular clients in
5 a -- obviously, there were many other concerns.
6 But having gone through the litigation and dealt
7 with the minutia of certain terms, that's why I'm
8 beating this dead horse. And I apologize, but I
9 guess I really don't apologize. I need to have a
10 response to that.
11 MR. TUCKER: Mr. Rigby, Mr. Chairman, I'm
12 only smiling, Mr. Rigby, because it is the
13 attorney in you, and it's cross-examination. And
14 if I had my counsel here, he might object.
15 But Mr. Rigby, Mr. Chairman, Board Members,
16 we have no problems with the representations in
17 that September 13th letter. I use the word
18 generally only because I'm an attorney also.
19 Okay? But we've been through the letter. We've
20 talked to Mr. Strong about it I've talked to
21 Mr. Budge about it. I haven't talked with you
22 about it. I apologize for that. Certainly
23 willing to do that. We've offered to go and sit
24 down with groundwater users boards, which I think
25 we're going to do in the next month or two months,
and talk about not only the settlement, but the whole process of moving forward with CAMP, and try to get kind of an understanding, relationship, and so we can, you know, communicate better. Be happy to do that with your clients also.

MR. RIGBY: Mr. Chairman?

THE CHAIRMAN: Yes, Mr. Rigby.

MR. RIGBY: Mr. Tucker, we would really appreciate that. I think that would be very helpful. And you and I have had this discussion about meeting with my particular groups in the past. I think it would be very, very worthwhile.

MR. TUCKER: Be happy to do that.

MR. RIGBY: Thank you. I will no longer cross-examine.

MR. TUCKER: Thank you. May I step down now?

THE CHAIRMAN: Just one second, Mr. Tucker.

Are there any other questions by other Board Members of Mr. Tucker?

Hearing none, thank you, Mr. Tucker.

MR. TUCKER: Thank you, Mr. Chairman.

Thank you.

THE CHAIRMAN: Who else would like to weigh in on the Memorandum of Agreement?

MS. McHUGH: Thank you, Mr. Chairman. My name's Candice McHugh. I represent the Idaho Groundwater Appropriators. And we're here today to just, I guess, confirm some of the documents that Clive -- or Mr. Strong has put into the record.

I understand you have Mr. Budge's April 9th letter that set forth some concerns not only about the Memorandum of Agreement, but also about the framework. We're here today, I understand, for the Board to discuss the Memorandum of Agreement. And specifically in that letter, we had a concern with paragraph 5. I understand the Board is going to be adopting a resolution that will address our concerns about that paragraph. Mr. Strong's already gone over that. So as far as the Memorandum of Agreement goes, at this time, the Groundwater Appropriators are satisfied, provided the resolution is adopted.

There are some other background information I think is important to put on the record. The settlement came about because of litigation before the SRBA District Court. The parties briefed the matter on summary judgment. And at the request of Idaho Power and the State of Idaho, the order that

the Court was almost -- was ready to issue was put on hold. And that's currently the status. All the argument and briefing has been done. And the Court has held back its order on summary judgment. And then this settlement occurred.

It's important to know, and I know Mr. Strong did say, that the other parties have not agreed to the settlement entirely. We still have some concerns about the framework and other issues relating to the settlement, and haven't made a decision on whether or not we will agree with the settlement ultimately that's before this -- of the litigation that's pending in the SRBA District Court. That's why we wanted to make sure that our April 9th letter that discusses those questions and some of the things involved is in the record as well as Mr. Strong's April 13th response, which now Idaho Power has joined in, from my understanding of the dialogue between Mr. Rigby and Mr. Tucker.

But I did want to just make that clear that there is still pending litigation. And we haven't made a decision entirely on the resolution of litigation. But as far as the Memorandum of Agreement that you guys are to act on today, the resolution accomplishes -- or addresses our issues.

And with that, I would stand for any questions.

THE CHAIRMAN: Thank you, Miss McHugh.

Any questions of the Board Members for Ms. McHugh?

MR. GRAHAM: I'd like to ask Clive a question on paragraph 5 on page 3. (Unintelligible). The way I understand -- understood you commenting on that seems to differ with the word and support on that second line.

THE CHAIRMAN: Thank you, Mr. Graham.

MR. GRAHAM: I'd like to ask Clive a question on paragraph 5 on page 3. (Unintelligible). The way I understand -- understood you commenting on that seems to differ with the word and support on that second line.

THE way I'm reading paragraph 5 is that the Governor and/or the Board will support Idaho Power in any proceedings. When you talked about that particular paragraph, it sounded like there was a hedge on and support.

MR. STRONG: Mr. Chairman, Mr. Graham, no, there's not a hedge on the word support. It's any time you use words, they're not like a mathematical equation. They can be interpreted differently. And that's what the real issue has
1 So these three paragraphs are intended to
2 confirm the representations that I have made to
3 you about the meaning of that particular
4 provision, and will be part of the history of this
5 particular agreement if it is approved by the
6 Board.

7 Now, let's -- what we're really dealing with
8 here -- and I think Mr. Tucker is correct -- that
9 we have a relationship, one that is kind of like a
10 family relationship, where issues of trust have
11 arisen over time, and there's concerns about
12 making sure that we all have the same
13 understanding so we don't get into other
14 litigation down the road. And so that's why these
15 provisions are here, and rightly so.
16
17 The water users that have been before you
18 have expressed concern. Want to make sure that
19 there's that understanding so that we don't
20 unnecessarily or inadvertently cause conflict down
21 the road in terms of if implementation goes
22 forward. What we really need to do, and what I
23 think Mr. Tucker's point was well made this
24 morning, is when you get into these issues of
25 trust, you've got to start somewhere. And this is
26 what this is intended to do. It's intended to be

13 And so what we're really trying to do with
14 this MOA is to reflect that understanding. We're
15 going to try to find that cooperative relationship
16 that has existed in the past, restore ourselves
17 back to that. At the end of the day, this MOA is
18 merely the statement of intent between Idaho Power
19 Company and the State. We cannot, as a matter of
20 state law, and the company recognizes this, we
21 cannot, matters of state law, bind the Board to a
22 particular position, we can't bind the Governor to
23 a particular position. As a government, you have
24 a right to make those decisions. There may be
25 another Governor that comes down the road that has
1 a different point of view. But what this is
2 intended to do is to the extent of showing the
3 goodwill, good faith effort to try to reconstruct
4 that constructive relationship that will lead us
5 to a more effective water management process in
6 the future.
7 MR. GRAHAM: Does Mr. Tucker agree with
8 that?
9 THE CHAIRMAN: Go ahead, Mr. Tucker.
10 MR. TUCKER: Mr. Chairman, Mr. Graham, yes,
11 I agree with that. And just to put this, maybe,
12 you know, again, in context, you know, I think we
13 realize, given what's happened over the last three
14 or four or five years with CAMP, that we -- you
15 know, we're in a zero sum game here. You know,
16 which means, if you take water from one place --
17 one place -- Clive said this earlier -- and you
18 put it someplace else, it impacts various things.
19 When we started again, the discussions with the
20 Governor's office and the AG's office, all we
21 asked in the context of this provision was that
22 if, again, the public policy choice is made to
23 move water from one part, one place to another
24 place that has impacts upon hydrogeneration, let
25 the state acknowledge that they made that public

1 policy choice with knowledge of what it was going
2 to do.
3 You know, Idaho Power Company's not the
4 enemy here. We provide energy to the State, to a
5 portion of the State. We provide energy to the
6 State. And we try to do it on a low cost basis.
7 And if public policy choices are made that impact
8 that ability, or make choices that we have to make
9 to go, either, build a new plant or something
10 else, all we ask from the State in this context is
11 that the State acknowledge, so we don't go to
12 the -- we don't go to the PUC alone. The State
13 acknowledge we made a public policy choice we
14 understand has energy ramifications. That's it.
15 You know, PUC still has jurisdiction to do
16 whatever they want to do. It's not that the
17 Governor comes in with a heavy hand and directs
18 the PUC to do something particularly with respect
19 to rates or otherwise. It's simply an
20 acknowledgment that that public policy choice was
21 made. That's all. That's really all that
22 provision does.
23 THE CHAIRMAN: Thank you, Mr. Tucker.
24 Miss Beeman.
25 MS. BEEMAN: Mr. Chairman and members of the

1 boundaries established by the litigation in the
2 '80's, and now the litigation before the SRBA
3 court with the Swan Falls matter, is that we
4 can't, in making policy decisions, escape the fact
5 that we have had 24 to 25 years of Swan Falls.
6 And unfortunately -- and this is something that
7 Pocatello will be bringing to the floor and has.
8 The litigation at the SRBA court, the framework
9 and the legislation is intended to address did not
10 include any evidence or discovery on the numbers
11 of how the Swan Falls flow has been measured, how
12 the flow at Milner Dam has been measured, and the
13 interplay of Milner and Swan Falls with the
14 operational decisions of Idaho Power.
15 I've had conversations with the Attorney
16 General's Office, because, of course, with what
17 Pocatello filed that we'll make of record today,
18 the notice that they filed, there was concern
19 about could Pocatello put something in writing to
20 express its concerns. And I said, what -- I said,
21 we probably won't, because the notice states the
22 City's general concern. But what we would like to
23 have from the State is the data that shows what
24 those Idaho Power fluctuations have been in the
25 dams between Milner Dam and Swan Falls. Because,
part of this framework -- a core part of this framework sets forth in black and white a formula about how those minimum flows are going to be measured. And we're going forward without the data of what has happened the last 24 years. That is Pocatello's concern.

And so my response to the State was, can you provide us that data? I have begun to look at it. And I have to thank Miss McHugh's firm. They've had one of their experts looking at these issues as well. And we have talked about it. But we simply don't have the data. And the thing about the certainty and the trust going forward that everybody wants to support is that we have 2 million acres of land in this state irrigated with groundwater. And we have two things that are very uncertain going forward to this framework.

One is the Department's rules of appropriation, which came out of the Swan Falls Agreement have at their very end a map, which has a line that designates if you're inside this line and the Swan Falls flows are not met, you're going to be curtailed if your priority date is junior to 1984 and 1985. We don't know if that line is going to stay the same.

I think anybody who's worked on Swan Falls you could probably ask Director Tuthill -- will tell you that's not a hydrologic line. And if, as we go forward with this framework -- and this is stated in the documents -- that there is a desire to make that more correct. Well, I don't think anybody could stand before you and say, in making that line correct, we're going to have a smaller group of groundwater users. No. If anything, that line will get larger. That's concern No. 1.

No. 2 is, if you don't have the data about what was going on at Swan Falls -- and by that, I mean -- this is an engineering term -- being able to disaggregate how much of that flow is because the variations in Idaho Power operations -- I think there are five or six dams. And most of them run at the river. How much is from Bureau of Reclamation programs, how much is from rental water, and what have we been doing in the past?

Has the determination of those minimum flows been this is what the Murphy Gauge reads. And all of the water is the same color. We count it the same. The framework that is going forward, and the legislation -- which is why Pocatello -- I know it's been signed, but 1169 makes public policy of the exhibits to the framework. Those exhibits include the decrees. The decrees have a formula. We don't know if that formula is, in fact, what the State has done for the last 24 years. And in large measure, we don't know, because we don't have the data.

That's my concern, that we're going forward with a formula that says you look at the Murphy Gauge, and you've got to know what color the water is. If it's red, we don't count it. If it's green, we do. That's the concern that Pocatello has. And the document I'm making of record is just a notice to the SRBA court that there are five parties to the litigation. Two have signed the framework, and that Pocatello joined. It initiated one of the basin-wide issues on Swan Falls for the benefit of the third party beneficiaries. The framework here that we're talking about, and the Memorandum of Agreement addressed the other piece of the Swan Falls litigation. Pocatello came into that expressly as a third party beneficiary of the Swan Falls Agreement.

And that's the capacity in which I'm speaking to all of you today on behalf of the City of Pocatello. If anyone has any questions, I'd --
1 character, but you know, when they say the first
2 thing you need to do is to kill all the attorneys?
3 You know what the context of that statement is?
4 If you want to destroy democracy, the first thing
5 you do is kill all the attorneys.
6 And I thank you gentlemen.
7 MR. RIGBY: Here, here.
8 THE CHAIRMAN: I think we all realize how
9 enjoyable it is to have attorneys in the room.
10 Is there anyone else who would like to
11 address this before the Board takes action?
12 I would entertain an acceptance of the
13 resolution before us to approve the Memorandum of
14 Agreement.
15 MR. BECK: So moved, Mr. Chairman.
16 THE CHAIRMAN: Mr. Beck has made the motion
17 to approve the Memorandum of Agreement that's
18 before us.
19 Do I hear a second?
20 MR. GRAHAM: I'll second it.
21 THE CHAIRMAN: Mr. Graham has seconded it.
22 Any discussion by the Board?
23 This is important enough, I think we need a
24 roll call vote. Miss McGourty.
25 MS. McGOURTY: Mr. Cuddy.

1 MS. McGOURTY: Bob?
2 UNIDENTIFIED SPEAKER: Bob?
3 THE CHAIRMAN: Mr. Graham, have you got a
4 phone? You didn't put it on silent.
5 I forgot how hard of hearing Mr. Graham is.
6 Mr. Strong.
7 MR. STRONG: Mr. Chairman, Members of the
8 Board, I'm not sure what I need to go back over.
9 Anyway --
10 UNIDENTIFIED SPEAKER: 'Cause we all make
11 sure it's on silent.
12 THE CHAIRMAN: Start with May 12th,
13 Mr. Strong.
14 MR. STRONG: Okay. The May 12th meeting is
15 for the purpose of addressing the issue that
16 Ms. Beeman's raised with regard to how flows are
17 measured at the Murphy Gauge. Our intent would be
18 to have the information there to go back through
19 the record and all the information that the
20 parties seek.
21 As you might suspect, any issue of this
22 complexity, with all the different issues, it's
23 not surprising that as you go forward, people want
24 to get a surety of -- that this is, in fact, what
25 it's represented to be. And that is a
I reaffirmation of Swan Falls Agreement is not an intent to change it. For example, one issue Miss Beeman raised was the issue of whether the trust water line is going to change. I can represent to you here as I did before the legislature that this agreement does not contemplate any change any change in the trust water line. It will stay where that's at. The agreement's been based upon that. Our objective from the State's perspective is to make sure that the agreement is implemented as intended back in 1984. That's not to say that we agree that all aspects of that agreement were necessarily the best decision to make at the time, but nonetheless, they do, as Miss Beeman suggests, represent what we've been doing for the past -- over 25 years. And so, as a reality, we need to make sure that we all have a clear and complete understanding of that. I was reading a letter the other day that I thought was kind of apropos where somebody said, well, we need to record this because, as time goes by, our memories fade. And I can assure you that it's happening. And hopefully this will give us an opportunity to refresh our memories.

Thank you.

THE CHAIRMAN: Clive?

MR. STRONG: They're going to be held here at the Department of Water Resources.

THE CHAIRMAN: Okay.

UNIDENTIFIED SPEAKER: What time?

MR. STRONG: 1:00 o'clock.

UNIDENTIFIED SPEAKER: 1:00 o'clock.

THE CHAIRMAN: Any other questions?

Everybody understands, then.

Mr. Anderson.

Are we done with No. 3?

MR. ANDERSON: Mr. Chairman, Members -- we're done with No. 3, yes.

Mr. Chairman, agenda item 4, at the last Water Board meeting, the Board made a decision to put the Board's Palisades storage contract water right in the water supply bank for rental for 2009. Mr. Chairman and Members of the Board, Director Tuthill had a conflict and was not able to participate in that discussion. And Director Tuthill asked for some time with the Board so he could understand and also bring some issues to the Board's consideration about the uses of those storage -- of that storage water, particularly in light of some of the negotiations that he's been involved in recently. So this is an agenda item that Director Tuthill has requested.

THE CHAIRMAN: Director Tuthill, please.

DIRECTOR TUTHILL: Thank you, Mr. Chairman.

And I'm very pleased that the Board does have 5,000 acre feet of storage in Palisades. I think it gives the state a great capability in addressing water needs. Of course, as soon as that water is acquired, many possible uses come up. It is my understanding that the Board has assigned this water to the rental pool for this year.

I did want to address one issue that has come up as a potential use for this water and as a primary use. And that is to assist with the State meeting its obligation for minimum in-stream flows at Swan Falls. And in line with the issue that Ms. Beeman raised as far as computations and flows at Swan Falls, we do recognize that on occasion, we have come very close to not meeting that minimum stream flow. It's 3900 cubic feet per second in the summer, 5600 cubic feet per second in the winter. So far, to my knowledge, there has not been even one day when that flow has not been met. For a time, it appeared that there was one day when it was not met, but the record was subsequently corrected. So that date does not reflect that the flow was not met.

However, in the future, there would possibly be times when the flow would not be met. It is an obligation of the State. And one potential use that's been discussed of the 5,000 acre feet of storage in Palisades is to augment the flow to ensure that that minimum flow is met. So I did want to bring that before the Board. It appears that, for this year, we're probably okay. It's -- at this point, the forecast for minimum flows in the Mid Snake would describe that we won't be violating that minimum flow this summer.

But I would ask that the Board consider putting a caveat on the water that's put in the rental pool, that if it appears that water is going to be needed to augment the minimum flow over Swan Falls, that that water be available to be withdrawn by the Board for that purpose. So I put that out as a request for consideration by the Board for that purpose which is very important.
It's been discussed various times. And had I been here for the year-end discussion, I would have mentioned that.

THE CHAIRMAN: What's the pleasure of the Board?

Mr. Rigby?

MR. RIGBY: Mr. Chairman, Mr. Director, obviously, we recognize -- or at least I certainly recognize that as being one of the potentials.

And, in fact, even the Idaho groundwater, they were also not present at the very time and have asked -- request that we do something with this water and may it help them.

I think, at least in my voting the way we did, the reason for it was just for this year only. In other words, recognizing that until we get a handle on what's happened with CAMP, with everything else, that all of these are potential.

And obviously, that is an extremely important one.

You can recognize, at least from my past, how important I'd want -- I want to make -- as you, I would want to ensure that that is met.

Having said that, I didn't -- I certainly didn't vote with the idea that this is going to be what we're going to do for the future. That, in essence, during this year, we get a handle on it, we get an understanding of what the possibilities are, that the legislation hadn't yet passed, all of those things. But for the future, that may very well be something I would support. But I didn't think it was necessary this year. That's why I voted the way at least I did at the times I thought we won't need it this year. But certainly in the future, that's a very good idea of maybe, one of the arguments.

The only problem is that creates for someone that is -- if we were to lease it to them, not firm water. So those are the kind of issues. But I just felt like for this year and voting the way I did, that we're okay for this year. Let's get a handle on it. Then the next year, we go into something that may very well require that.

THE CHAIRMAN: With the water supply that we've got this year, I don't really see any reason to put the caveat in there for that. But I sure think it's something we want to entertain for the future.

Any other comments by any other Board Members?

Mr. Tominaga.

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MR. TOMINAGA: Mr. Chairman, members of the Board, when EGWA came and approached the Board to try and lease the water for this year, we were with the understanding that that caveat would be included in our rental, because we know that there are higher uses of the water that needs to be done. And our membership would be very amenable to trying to work some -- some kind of language out that would allow for that caveat. But we also know that we probably won't pay a premium for that water every year either, because it's not always going to be available. So there's a tradeoff.

But that's -- we were always under the understanding that that -- that water would have that caveat in it.

THE CHAIRMAN: Thank you, Mr. Tominaga.

Any other comments?

DIRECTOR TUTHILL: Thank you, Mr. Chairman.

And the second issue related to the 5,000 acre feet, relates to some of the discussions that have been taking place involving the Fort Hall Agreement. As you all are aware, we have been, over the past about three or four years, been discussing the Fort Hall water rights, and their water rights related to the other water uses in the Blackfoot River Basin in an attempt to negotiate solutions to objections that the Fort Hall -- the Shoshone Bannock tribes filed to the Basin 27, Blackfoot River Basin water rights.

Part of the discussion has involved the 1990 Fort Hall agreement, which provided that the uses of water from the Blackfoot River would be superior to the uses by the -- of the tribe. Effectively, grandfathering in the existing uses on the Blackfoot River on what's called the north side, the nontribal lands that divert from the Blackfoot River. The placeholder that was placed in the agreement was 45,000 acre feet as an estimate of the amount of water that was diverted by the Blackfoot users with words in the agreement stating that, if it turns out after adjudication that the amount diverted is in excess of 45,000, there would be an equitable adjustment to the agreement.

So we've discussed considerably what that equitable -- how much that equitable adjustment should be, or whether -- and how this would be enacted. The tribes have wanted to solve this issue along with the other adjudication issues at the same time, recognizing that the equitable...
adjustment is not, per se, an SRBA issue. It's related to the agreement. But that's been discussed along with the other SRBA issues.

In a meeting last month with the parties involved in Pocatello, we were looking at potential resolutions for this equitable adjustment. And at this point, it appears that, through proper management in Water District 27, the amount of water, on average, diverted will likely be about 50,000 acre feet. Some 5,000 acre feet more than the placeholder in the agreement.

So the discussion has revolved around how to find We recognize that we're installing measuring devices, and there's a water measurement plan, and now a water management plan that's been drafted for the Blackfoot River. So we're moving toward better management. And we'll, over time, have a better understanding of how much water really is diverted, recognizing that this particular water district, historically, has not been one where good water measurements were taken.

In coming up with this agreement, where we're at right now is that the parties are willing to accept, I believe, this agreement on an eight-year basis while we add measuring devices and improve the measuring systems. If there is some equitable adjustment during that eight-year period, the concept would be, after eight years, to take another look at the actual diversions, and make a more long-term solution. So, you know, it's my understanding that if we were to find 5,000 acre feet per year for the next eight years, we could find a resolution to this issue that's on -- before we right now, and resolve the adjudication issues for the most part in the Blackfoot River Basin.

In the context of this negotiation, one suggestion that came up is potentially to use the Board's 5,000 acre feet. It happens to be the same number by chance, totally by chance. But people are aware that the Board has acquired this water. And I made one proposal for consideration, stating that I certainly don't have authority to do anything with the Board's water right. That's up to the Board. But I suggested that one possible resolution for this next eight years might be that, to the extent that the Board would decide to put the water in the rental pool, as with this year, and to the extent that the Board didn't need the water for another use, for example, to provide for minimum flows over Swan Falls, and to the extent that, perhaps, the United States would pay for the water, and to the extent that the committee of nine would put this as part of their procedures, rental pool procedures, perhaps this would be a source in some years for the 5,000 acre feet.

When I made that suggestion, immediately the United States said they weren't going to pay for the water. Immediately, the tribes said they needed the water every year, not just when it's available. So that suggestion didn't take root. But I did want to describe to the Board the nature of that conversation, the basis of it, the fact that I did mention this as part of a possible solution, not speaking for the Board, but recognizing that, to the extent that the Board would decide to put the water in the rental pool, I recognize that this Board would have an interest in helping to find a resolution to the tribal issue, that this might be a possibility. So I don't have anything to bring before you today. You might hear about the discussion of the
18 meals have got here. And I know that Jonathan is
11 We're going to go ahead and break for lunch. Our
10 meeting back to order for about two minutes.
16 reconvene the meeting.
13 going to be lengthy enough that we're not going
to wait to take our meal. So let's break for lunch
at about a quarter after 12:00. And then we'll
22 increase the aquifer levels, the spring and reach
23 levels, distribute that equally or geographically
24 across the ESPA, and set in motion the
25 institutional confidence with this long-term plan

1 adoption of House Bill 264 is that we're in the
2 question -- we're in the place of how do we go
3 about implementing the plan. And so, how do we
4 establish a solid foundation for the work that's
5 based on good science, that's consistent, that's
6 coordinated, and while at the same time is not
7 being rigid. And so the challenge about getting
8 and moving forward now is about how do we go about
9 developing these implementation plans; how do we
10 go about operationalizing with enough specificity
11 to ensure success for what -- the good work that's
12 been done in the ESPA plan. So that's a bit of
13 the background there.
14 As you'll remember, as you all know, the
15 overall long-term goal is a 600,000 acre foot
16 water budget change, 20-year time frame, $600
17 million cost, $30 million annually, and where we
18 spent the bulk of the time was on phase 1, which
19 is that one to ten years with a hydrologic target
20 of 2 to 300,000 acre foot change, water budget
21 change, actions that what we're trying to do is

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<td>7 CAMP implementation committee. And we're going to</td>
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<td>16 you've provided as a board in terms of educating a</td>
<td>16 the advisory committee into those tasks that I've</td>
<td>16 and with others, that the implementation committee</td>
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<td>17 broader range of interests than had previously</td>
<td>17 just outlined. My thought here is that previous</td>
<td>17 could meet on a quarterly basis. Based on</td>
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<td>18 been done, how do we both develop and fund a broad</td>
<td>18 advisory members and alternates who are willing</td>
<td>18 discussions, it's unlikely that that's going to be</td>
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<td>19 water education and outreach effort, management</td>
<td>19 and are able would be -- comprise the</td>
<td>19 enough time to help to -- to provide that policy</td>
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<td>20 and flexibility, as well as the downstream</td>
<td>20 implementation committee. If they're unable to</td>
<td>20 guidance. And so, what I was thinking was that we</td>
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<td>21 transfer policy. And those are the plan -- the</td>
<td>21 serve, then you would identify a replacement</td>
<td>21 would start with a bi-monthly meeting, and</td>
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<td>22 highlights. And I guess I should say that I'm</td>
<td>22 through a solicitation process, and we'd have the</td>
<td>22 potentially then afterwards, less frequently.</td>
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<td>23 staying at a pretty high level in terms of where</td>
<td>23 similar number of broadly represented interest</td>
<td>23 We'd establish a consistent schedule. And one</td>
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<td>24 we are, and including the -- my ideas around the</td>
<td>24 groups. You've made this investment in terms of</td>
<td>24 suggestion was to do that to make sure that the</td>
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<td>25 implementation committee. And we can get into</td>
<td>25 education. The sense of broad buy-in to the plan</td>
<td>25 implementation committee meets prior -- to</td>
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19 (Pages 73 to 76)
coordinate, basically, with the Board schedule, so that there would be timely updates to you about the deliberations and the progress of the advisory committee. 

Now, what I've heard is concerns that the existing advisory committee, and if we have the implementation committee be a mirror image of that is too large and unwieldy. And I would agree with that in terms of developing proposals, specific proposals, ideas. And that's why we're suggesting a working -- a working group structure. Now, the working groups would be -- their purpose would be to develop those specific plan, recommendations and proposals for the implementation committee review, refinement and adoption. These would be truly working groups in the sense that we'd be looking for resources and assets that would help us to develop the implementation plans around recharge or the funding collection mechanisms. 

And this would be -- they would include committee members, but it would also be broad enough to include those specific resources and bring those resources to bear in order to bring solidly based, informed and technically sound proposals to the group.

The -- each implementation committee member would have a choice in participating in up to two working groups. Assignments would be made based on interests and expertise. I've spoken with Mr. Anderson about the fact that each -- that the Board staff will be assigned to each working group. The working groups can also, as I've already mentioned, include other staff resources as necessary.

The funding committee working group is the exception to this. And what we're thinking is that the funding working group be comprised only of those representatives of interest groups that have phase 1 funding participation targets. So the -- the working groups themselves -- and I'll go into which ones they are in a moment -- would be open to -- except for the funding working group that would be brought -- and again, the funding working group, and that key issue of developing the agreement on the collection mechanism would be made up of those who have funding participation targets. We'd meet on -- the working groups would meet monthly and on an as-needed basis. And the idea is that, in addition to in-person meetings, that we'd use the use of teleconferencing and/or web conferencing to help to -- both to manage the budget as well as to manage people's lives.

The working groups include funding. And so these recommendations from the funding working group need to be developed in rapid order. So that's the collection mechanism for the phase one commitments. And that would be in conjunction with the interim legislative committee as well as the Board and the Governor's office, proactive pursuit of the additional resources for the plan as well. So it's how do we expand the pie here? How do we pursue those?

And then you'll see the other working groups are those -- are those -- are the key elements that have been outlined in the plan, groundwater, surface water, conversions, manage and incidental recharge, demand reduction, weather modification. What will be needed in order to make these working groups successful is consistency, a structure, and some consistent -- and the consistency about both the work products and the parameters and the side boards upon which they are working.

And so, the overall work plan -- and if I'm moving too quickly, please stop me -- is to, in about a month or two, adopt operating protocols, approve the work plan, and develop -- and develop these working groups into groups that are actually functioning, that will produce a product at the -- along the way. So the working groups will then work with proposals and plan recommendations. Some of these are going to be on a faster time frame than others. But estimated two to six months. The integration of the working group proposals and recommendations, an estimate of two to four months. And again these are not -- it's not sequential. There will be interaction and there will be work and interaction between the working groups and this larger implementation committee. Again, the idea is that the implementation committee, that broad-based group that would sort of look to refine, to adopt and to make recommendations to you through the support of this.

So my questions to you are what modifications, changes do you suggest regarding the implementation committee purpose, function and composition, the work plan modifications, additions or areas of emphasis do you suggest? And then the final question to you is about after a year -- and although I recognize this is not a
Meeting number 7-09
4/30/2009

1 year project. This is a long-term proposal. But
2 what we're looking to do in this first year is to
3 set a solid foundation for the implementation over
4 time here. How would you define success after one
5 year? What are the kinds of things that, when I'm
6 standing here a year from now, you want to say,
7 this is what was accomplished or you'd like to see
8 done.
9 So let's start with the first question,
10 Mr. Chairman, Members of the Board, unless there
11 are other things about ideas or questions about
12 the implementation committee purpose, function and
13 composition.
14 THE CHAIRMAN: Mr. Rigby.
15 MR. RIGBY: Mr. Chairman, you know, it's
16 interesting -- not on the committee, and it would
17 be nice to hear from committee members, especially
18 that are here on the Board first, and others that
19 are in the room. But it's kind of interesting.
20 As you know, when we first set this up, we thought
21 that the Board would be -- I mean, the committee
22 would be unwieldy if we had more than 15, 17,
23 whatever. Then all of a sudden it doubled because
24 the committee itself would find the alternates.
25 And then, you add to that the agencies. And they

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Page 84

1 allowed them the same participation.
2 It's interesting and some of the comments
3 I've heard back is that we need to reduce it, but
4 don't reduce me. And it's one of those -- which
5 is typical. And I don't fault that at all. I can
6 totally appreciate that. I do think that one
7 thing is -- ought to maybe be reconsidered, from
8 what I'm hearing from them. And that is their own
9 protocols, or their own rules that allow first for
10 the committee -- and if we're talking about the
11 alternates as well -- for them to really be the
12 ones that are actively involved.
13 And agencies -- I know I'm going to get in
14 trouble with my agency friends, but don't have
15 them equal in the sense of participation. I guess
16 if I heard one complaint, it was maybe there was a
17 little too much -- I don't want to say domination,
18 but a little too much participation by agencies
19 when maybe it kept it off track of some of the
20 other areas that the committee wanted to go. I
21 just throw that out as what I have heard.
22 MR. BARCH: Yeah.
23 MR. RIGBY: I do agree that the only -- if
24 you're going to continue that way with the whole
25 committee, and the alternates -- and again, I

1 don't know how you would reduce it, because it
2 would be that same problem, that same dichotomy --
3 is the working groups. And that is truly the
4 answer to this is having the working groups,
5 because just as before, that's what got this thing
6 turned around. And I like your idea of having
7 only two, because, again, there are those who
8 would want to be on every working group. So there
9 again, it becomes too large.
10 MR. BARCH: Right.
11 MR. RIGBY: So I guess what I'm saying is
12 that I -- the only thing I'm seeing there -- and
13 I've kind of already gone over this, so I kind of
14 knew where you were coming from. The only thing I
15 see there that I think I would recommend to the
16 committee or maybe the Board has to do it so that
17 the committee doesn't get in trouble with
18 themselves and those that are participating, is
19 requiring it to go back to just the committee and
20 alternates as the acting participants, and having
21 the others be there for their purposes and their
22 call.
23 UNIDENTIFIED SPEAKER: All of them?
24 MR. RIGBY: Alternates and active. I --
25 okay. Again, my thoughts, and just what I've

21 (Pages 81 to 84)

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www.etucker.net
make the decisions necessary. It's got one real big plus. We don't have a lot of money, but we got a good water year.

MR. BARCH: That's true.

MR. ALBERDI: And we've all been through these good water years when the water year slips by, and then the next year isn't quite as good. So I'm thinking that we talked on Mr. Rogers web hit, but we talked a lot about the low-lying fruit. And I think the momentum we've got in that group has to continue for this to be a success. And we need to identify the low-lying fruit. And I see that, when you look at the number of things we can do, realistically, the working committees can come up with some programs relatively easy because there aren't that many things we're going to do.

MR. BARCH: Right.

MR. ALBERDI: And the detriment that we could create by being very careful here is not come up with some plans that we can do with the limited amount of money, if the Board puts the money in that we may be able to. Because, I'm with Jonathan that we need to have some successes, because a ten-year period, we need to kick that thing off. And I had the same comments on my telephone. We don't want too many people on this group, because we want to be nimble. We want to be able to make decisions. But I want to be included.

MR. BARCH: Yeah.

MR. ALBERDI: So the thought process that I've gone through is that if you're paying, you're inclusive. If you're putting dollars into the pot, then you've got to have a representative. So anybody, whether it's groundwater, surface water, the power company, the cities, the well drillers, those folks -- I don't know about the well drillers, because they're not putting anything in there, I guess. But they were, but now they're not.

UNIDENTIFIED SPEAKER: We can ask them.

MR. ALBERDI: Those people that are paying have to have the representation. And the working groups -- I don't think the working groups need to have a lot of time, 'cause we -- we've beat this horse to death. We kind of know what the alternatives are, what we can do, what we can't do. We've got a water year here -- and the thing about water, it's inversely related -- the quantity of water is inversely related to the price. The more water you've got available, the less money -- the less it costs for that incremental amount. Next year, if we go too slow, we may not have as much water, and the director knows it's worth a lot more. So we got those challenges here that, without a lot, we may be able to do something.

THE CHAIRMAN: Mr. Chase, would you like to weigh in?

MR. CHASE: Well, I agree with Vince that we need to find successes right off. It's amazing the group got where it got. And I think if we don't have successes, it will unravel pretty rapidly.

I never looked at the group as too burdensome. I think it kind of separated itself that those who didn't show up didn't show up. And I don't know if they'd still want to stay on, but you know, I thought we made pretty good progress. So I don't know who we would eliminate, because I -- you know, I haven't had a lot of calls on this, but anybody that's called me wants to stay on the Board. So I think that becomes a problem when you start eliminating.

But to me, the two most important factors are that you've got to do it this year. You need to start collecting the money. And I agree with Vince that, if you're paying money, you're going to want to sit at the table. I was pretty up front about that, that it's kind of hard to be at the table if you're not participating. That's part of the problem.

That's probably a pretty narrow view from my perspective. That's why the City stepped up and wanted to make sure we were paying, though, quite frankly. It was so that we couldn't be removed from the table.
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<td>1</td>
<td>So you know, I don't know if you could make</td>
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<td>make -- because I was an alternate, but I probably</td>
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<td>that a caveat.</td>
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<td>spoke more on behalf of the cities than the</td>
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<td>THE CHAIRMAN: Well, it's the Board's choice</td>
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<td>others. But I tend to talk too much at times too,</td>
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<td>who's going to be on there.</td>
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<td>MR. CHASE: Yeah. And as far as agencies, I</td>
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<td>THE CHAIRMAN: All right. Mr. Jonathan.</td>
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<td>guess what agencies are we going to eliminate?</td>
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<td>MR. BARCH: Well, I think there are a number</td>
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<td>of ways that -- let's start with the agency</td>
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<td>mean, I -- You know, to me, you need to have fish</td>
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<td>and game at the table on this, because those are</td>
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<td>protocols which govern the advisory committee was</td>
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<td>issues we have to deal with in DEQ's.</td>
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<td>So when I'm sitting there, I'm trying to</td>
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<td>And we're going to need to readopt them and make</td>
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<td>modifications. Can call out specifically about</td>
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<td>there's only one group I could see that we could</td>
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<td>the participation of representatives, alternates</td>
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<td>and agencies, and whether that specifically is</td>
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<td>that actually was IACI wasn't there very often.</td>
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<td>about that the agencies aren't at the table, and</td>
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<td>But I don't know if you can eliminate IACI.</td>
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<td>relatives or families, and resources.</td>
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<td>MR. RIGBY: Mr. Chairman, maybe we need to</td>
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<td>something that you can -- you can decide.</td>
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<td>18</td>
<td>clarify what I said about that (unintelligible).</td>
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<td>I think in terms of the -- so I think the</td>
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<td>THE CHAIRMAN: Mr. Rigby, go ahead.</td>
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<td>operating protocols is where -- where, with your</td>
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<td>MR. RIGBY: Mr. Chase -- Mr. Chairman and</td>
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<td>guidance, we establish -- establish, basically,</td>
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<td>21</td>
<td>Mr. Chase, I did not mean in any way to eliminate</td>
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<td>those ground rules. I think, coming to the issue</td>
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<td>the agencies. What I talked -- what I was</td>
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<td>of composition, recognizing that there are -- that</td>
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<td>referring to was the acting participation as any</td>
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<td>there are interest groups that are going -- that</td>
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<td>other member: In other words, just as we</td>
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<td>have phase 1 funding participation targets, my</td>
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<td>attempted to -- as we worked through this with the</td>
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<td>suggestion, or my proposal here was that they be</td>
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<td>26</td>
<td>Board, I, as chairman, attempted to allow Board</td>
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<td>absolutely right. Most of those agencies, in the</td>
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<td>end, you will need to have their objectives.</td>
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<td>UNIDENTIFIED SPEAKER: Mr. Chairman?</td>
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<td>THE CHAIRMAN: Trevor.</td>
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<td>UNIDENTIFIED SPEAKER: I think the agencies</td>
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<td>are very important to keep that momentum going,</td>
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<td>because any time people are eliminated, you get</td>
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<td>that fallout. But that doesn't mean that they</td>
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<td>have to have a voting right either. They can be</td>
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<td>ex officio members and be involved in the process.</td>
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<td>MR. CHASE: And Mr. Chairman, if I may</td>
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<td>THE CHAIRMAN: Well, it's the Board's choice</td>
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<td>don't get into trying to reconstitute the entire</td>
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<td>implementation -- entire advisory committee. So</td>
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<td>that was my attempt to say how do we recognize the</td>
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<td>role that funding -- funding -- certain</td>
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<td>stakeholders have in terms of the funding</td>
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<td>participation targets, while at the same time as</td>
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<td>creating and building on what we've done before.</td>
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<td>And I -- I tend to agree with Mayor Chase</td>
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<td>that I think that, in fact, that this -- this</td>
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<td>is -- this was a successful group. That this was</td>
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<td>a group that, from when I started, when you hired</td>
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<td>me on here, people said you won't be able to get</td>
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<td>anything done on this issue or with this group.</td>
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<td>And I think that they've proven you wrong. Where</td>
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<td>I come from, if it's not broken, or it's not -- it</td>
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<td>ain't broke in Pennsylvania where I'm from, you</td>
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<td>don't fix it. And so the idea is how do we build</td>
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<td>on that success and that momentum while making</td>
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<td>adjustments for more efficient -- and that's</td>
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<td>really where the working groups come into play,</td>
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<td>which is smaller groups, really task-oriented,</td>
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<td>less -- more frequency than the implementation</td>
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<td>committee itself. But not to -- not on the</td>
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MR. GRAHAM: I think that makes a lot of thinking.

MR. BARCH: Right. So there's -- let's talk about the funding piece -- the funding mechanism -- funding working group, which --

MR. GRAHAM: That would make me -- seems to me that would make sense, your recommendation that those that are obtained be that group.

MR. BARCH: Right. So there would be seven.

So there would be a representative from irrigated agriculture -- probably eight. So groundwater and surface water, Idaho Power, municipal, spring users, industrial and commercial users, as well as the State. In addition -- so those would be the core folks. And then we're going to need economists. We're going to need folks to -- resources to basically develop realistic viable options so that we're -- that things that are actually going to be able -- to be able to implement those. But that's -- that's my vision. And that's a small -- small group that can be charged with developing a proposal.

And I think this is -- this is the time where -- well, I'll just back up. Sometime -- and a little bit of diversion, but -- is that we were
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1 able to make some substantive recommendations in this plan. Other things, we outlined the process for. This is the time now, and this committee and these groups to actually to start -- to gnaw on and develop actual -- the substantive solutions to how we're going to go about implementing this. These are going to be tough decisions to be made. And I think that's where my job, as I understand it, is to do -- is to drive them, and drive these groups to making those tough decisions on the parts where we couldn't get there as part of the plan. So the short answer --

MR. GRAHAM: Operational people.

MR. BARCH: Yeah.

MR. GRAHAM: Would the same number seven be your target for the second group? I assume that, in the funding group, that seven would be the voters. And the other individuals that you mentioned would be resource advisors being seven.

UNIDENTIFIED SPEAKER: Probably be eight, because --

MR. BARCH: Probably eight. Seven or eight.

And then, let me just clarify. My proposal to you is not to vote. It's to use an interest-based process. You're the ones who are actually going to be making the decision. So what these folks are going to do is develop ideas, proposals, and try to get to a -- as close a consensus as they can on how we go about forward. If they can't do that, of course -- of course, the decision's always in your hands. But if they can't do that, what we'll do is to summarize the areas of agreement or disagreement, and then that will be an informed way upon which you, as the Board, can make choices about which direction or not, but that it's not a 50 plus 1 type, or even a super majority.

MR. GRAHAM: Do the working groups make their recommendations to the implementation group, or to the Board.

MR. BARCH: To the implementation committee --

MR. GRAHAM: And then they get --

MR. BARCH: So you get one.

UNIDENTIFIED SPEAKER: And they kind of piece it all together.

MR. BARCH: And they look at the program as a whole, right? So you know, the recharge working group may have some -- there will be influences on, you know, the conversions, the recharge, the demand reduction. And the implementation committee is meant to -- that's who you'll get your -- the recommendations from, not from the working groups.

THE CHAIRMAN: Mr. Cuddy.

MR. CUDDY: Thank you, Mr. Chairman. Jonathan, I guess what I think I'm hearing is that agencies that financially contribute or individuals should be the formation of this committee. Agencies or whomever that do not financially contribute to it would only be in an advisory capacity, and that you'll feel pretty confident that you can put together a seven-member group that can come forward with some proposals.

MR. BARCH: So everything in terms of this committee, whether the implementation committee or working group, are all advisory. Right? They're advisory to you. Right? So -- and what I'm suggesting is that whether or not an interest group has a direct funding participation target in phase I, that if they are part of -- if that interest group was part of the advisory committee, they become part of the implementation committee.

And that the one group that's different is the funding group, which is made up only of those who have funding participation targets, as well as the resources to help to support that.

That's -- that's the recommendation that I'm making. I'm not making the distinction outside of that funding working group about who pays or who doesn't. Because, I think it's in -- you've created a broadly represented -- representative advisory committee. There's value in that. There's power in that. And there's a -- and that it was -- it wasn't necessarily always pretty.

And I know from direct experience that it wasn't necessarily easy. But it was effective in terms of creating a broadly-based and supported plan.

And I think that's what you're going to need as we move forward as well, which is implementation plans that have broad support from a policy level that are supported by good, sound science, and that have a -- and that have the backing of a broad range of folks. So just for clarification about my proposal.

THE CHAIRMAN: Mr. Beck.

MR. BECK: Thank you, Mr. Chairman. Jonathan, I guess just a couple of comments.

One is the funding group eight, I really struggle with that, but I don't know how to get past that.

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And that is, for irrigated ag to provide over a third of the funding, with two representatives, where other entities are not providing anywhere near the funding, still have an equal vote, I struggle with that. And then we throw in the State with their funding with one vote, then maybe that’s fair. But I just struggle with that ratio there.

The second is we keep talking about the advisory group and the amount of effort that went forth, and that positive (unintelligible) in that advisory group, we need not lose sense -- or lose the focus that there was a smaller group that kept CAMP process going.

MR. BARCH: Mm-hmm.

MR. BECK: And for us to say that the advisory group comes back as a whole because of the effort that they put forth, we’re really cutting those -- that smaller numbered group down and not giving them the credit to keep the CAMP going. And so we need to keep focused, but we need men of census building -- or I shouldn’t say men, but men and women of consensus building efforts that have a vision of where this thing’s going, instead of now letting the advisory group come back together, and then having individual items of importance on their plate wanting to bring forth and stop this process of any momentum.

MR. BARCH: Yeah, I think those are -- Mr. Chairman and Mr. Beck, I think those are good comments. I think that as a precondition for being on whatever the composition of this group is there has to be a commitment to figuring out the how. It's not about -- again, it's not about whether we're going to do something, or even what we're going to do. I think those have been established in the framework and in the plan. The composition of folks on there has to be -- there has to be a commitment to figuring out and there could be a wide range of different ways in which we move forward on the how question, about how we go about implementing the plan. But I think that's got an A as a precondition for anybody to serve in this capacity.

In terms of the funding participants and the ratio of their votes, I think that matters a lot. If you have a voting process, not a consensus process upon which we'll -- because, you are the decision-makers. And you'll continue to be the decision-makers. What you need -- what you would need for is full agreement or broadly-based agreement on the direction. Absent that -- because, even if this group voted and it was unanimous, that -- it's still --

MR. BECK: Still on our shoulders.

MR. BARCH: It's still the Board's decision.

MR. BECK: Right.

MR. BARCH: But so -- but absent that, what you need is solid information about, and understanding about the interests, the concerns and the needs, and the areas of diversion, B points, and the why behind it, and the areas of agreement and the reasons why behind it which will give you a basis, a solid foundation for making ESPA plan decisions. And so that's -- that's the one thing.

And then, I think you're absolutely right that there was a smaller group of stakeholders that met and helped to break the deadlock, if you will, or to make some substantial and substantive progress in this. And I don't think that that is a group that is -- that group can still be -- can still be convened. I think that's on a -- my vision would be that we would use that group, if needed, on an as-needed basis to help to break some deadlocks and to move the process forward if it needs be. But there's value in the transparency and the broadly represented as well.

But -- so I think that's still an option. And I think your point is that credit should be given to that group, and that's true. They helped to really to move this thing forward. So I think that it's possible that we can still do that in this -- in this -- and it is probably the you know, what I tried to do when we were pulling together that small group. I think everybody agreed that what we needed to do was to bring that small group together. And what we did is we talked -- we talked about it as part of the Board. We talked about it as part of the committee. And so that even though that was a smaller group there, it was an attempt to be as transparent as possible. And then, of course, we brought those recommendations back to the full group.

So I think it's possible and it's envisioned within this process to have a smaller set of folks. I've even debated about whether that should be a formal group. Should that be an executive committee? Should that be an advisory committee? It seems to me that we -- the Tucker & Associates, 605 W. Fort St., Boise ID

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<td>1 option -- where I came down was that we used those</td>
<td>1 So I would envision this to be a group</td>
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<td>2 on an as-needed basis, and that we don't</td>
<td>2 that's the major group that we had set up with sub</td>
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<td>3 necessarily call that out in a formal, formal way.</td>
<td>3 groups needed -- as needed. And keep the focus on</td>
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<td>4 But this, again, is your -- is your process.</td>
<td>4 what we've already done. Don't re-invent</td>
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<td>5 THE CHAIRMAN: Mr. Chase.</td>
<td>5 anything.</td>
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<td>6 MR. CHASE: Thank you, Mr. Chairman.</td>
<td>6 MR. BARCH: And Mr. Chairman and Mr. Chase,</td>
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<td>7 Jonathan, as I understand, just from the</td>
<td>7 I think that the groups that we at least envision</td>
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<td>8 conversation going on here today, we had the</td>
<td>8 now are those major categories that have been</td>
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<td>9 regular large committee, then that committee would</td>
<td>9 outlined in the plan. And again, I want to come</td>
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<td>10 have the discretion -- not necessarily there would</td>
<td>10 back to what I said to Mr. Beck, which is that</td>
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<td>11 be two committees, that there may be a finance</td>
<td>11 this is a -- this is not re-opening what we're</td>
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<td>12 committee, there may be an implementation</td>
<td>12 going to do, or even including the participation</td>
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<td>13 committee, there may be an executive committee.</td>
<td>13 targets. It's about how to go about -- how are we</td>
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<td>14 But is what you're seeking to have that discretion</td>
<td>14 going to go about collecting those funding</td>
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<td>15 of that Board, as we have before, as committees</td>
<td>15 contributions that have been established and are</td>
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<td>16 are needed, we set them up. And to me, that made</td>
<td>16 now a part of law.</td>
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<td>17 a lot of sense, instead of restricting them to</td>
<td>17 So it's a -- again, it's not a -- we</td>
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<td>18 just a couple, because you don't know what's going</td>
<td>18 don't -- I think it's an important screen not to</td>
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<td>19 to happen.</td>
<td>19 have people on this committee that aren't</td>
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<td>20 The second thing, on the side of the money</td>
<td>20 believers in figuring out, and problem solvers in</td>
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<td>21 issue -- which was a tough issue. A lot of people</td>
<td>21 terms of figuring out how we go about doing or</td>
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<td>22 had to really bite down hard to swallow with what</td>
<td>22 wanting to reopen things. Because, what I see is</td>
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<td>23 happened with the money. But I think two things</td>
<td>23 this is a stake in the ground. The framework was</td>
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<td>24 happened. For instance, the City's perspective,</td>
<td>24 the first stake in the ground, a milestone, if you</td>
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<td>25 we put in more than we used. Now, there are a</td>
<td>25 will. And the ESPA plan is the next one. And now</td>
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<td>1 a couple of reasons for that. One was because we</td>
<td>1 getting implementation plans, the specific ones is</td>
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<td>2 think in the future, we may use more as cities.</td>
<td>2 the next one: And we're marching the ball toward</td>
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<td>3 Second, there's probably different value in water</td>
<td>3 that water budget change that that's been</td>
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<td>4 for cities than there was elsewhere, so we felt it</td>
<td>4 envisioned and it's desired for all of the reasons</td>
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<td>5 was worth our effort to get it going to come up</td>
<td>5 that we've -- that we've articulated. So --</td>
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<td>6 with a larger portion than anyone else, because we</td>
<td>6 THE CHAIRMAN: Mr. Shannon, please.</td>
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<td>7 could see the benefits.</td>
<td>7 MR. SHANNON: Thank you, Mr. Chairman.</td>
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<td>8 But my caution would be there is once you</td>
<td>8 If I can just make one recommendation. As</td>
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<td>9 start going down that trying to divide the money</td>
<td>9 we thought about this and thought about the</td>
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<td>10 up any different, the payment thing, I think, is</td>
<td>10 deliberations that the Board's going to have on</td>
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<td>11 going to be very difficult, because it was hard</td>
<td>11 it, I think you probably need one other working</td>
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<td>12 enough to get where we were. And I'm worried if</td>
<td>12 group. And it's to address maybe the most thorny</td>
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<td>13 you go back and open that, you may lose something</td>
<td>13 subject other than funding. That came up in</td>
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<td>14 there.</td>
<td>14 the -- in the CAMP process. And that is a group</td>
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<td>15 The second side of that, the same thing</td>
<td>15 to sit down and think about recommending to the</td>
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<td>16 would be a caution I'd give this group would be</td>
<td>16 Board what the criteria would be as you look at</td>
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<td>17 that there are also people wanting credits for</td>
<td>17 projects. What criteria would the Board use as</td>
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<td>18 stuff and so forth. And I think the more you try</td>
<td>18 their ranking or selecting projects.</td>
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<td>19 to broaden out what we settle, the bigger chance</td>
<td>19 I can tell you from sitting in the</td>
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<td>20 that this group has to fall apart. So the other</td>
<td>20 Governor's office and seeing the thousand requests</td>
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<td>21 thing I would hope that we would do is to kind of</td>
<td>21 come in for stimulus dollars that totalled</td>
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<td>22 keep the mission to what we would find in our</td>
<td>22 6 billion when we had 44 million that was</td>
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<td>23 original agreement, and don't go back and reopen</td>
<td>23 available, that I guarantee you, as soon as we're</td>
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<td>24 issues. Because, I think once you do this, we</td>
<td>24 ready to start receiving proposals, we are going</td>
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<td>25 will fall apart very rapidly.</td>
<td>25 to receive an unbelievable number, and a myriad of</td>
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ideas. And I think there would be a great deal of
value in having a small working group that would
think through and struggle with what type of
criteria that they feel, is the word I'll use, and
then bring those recommendations to you folks to
struggle with as well --

UNIDENTIFIED SPEAKER: What will give the
State of Idaho the most bang for their buck.

MR. SHANNON: Yes, sir.

THE CHAIRMAN: Thank you, Mr. Shannon.

Jonathan.

MR. BARCH: Mr. Chairman and members of the
Board, as we typically do, we have ESPA advisory
committee members here and others. And I guess it
might be a good time for them to weigh in on --

THE CHAIRMAN: We would love to hear from

them.

MR. BARCH: -- on the perspectives, so I'll
step to the side here.

THE CHAIRMAN: Who's first?

MR. GIBSON: I guess I'll go first. I
didn't intend coming here to speak. I come here
for another reason. But while I'm here, I thought
of a couple of things. One of them, I'd agree
with you, it's very important that we move fast on
this. I mean, we've got some momentum going.

Even though it's been nice to have a few months
without meetings, it's -- we need to get going.
And I think one of the important reasons is
there's some government money out there right now.
For example, if you want-- you know, Mr. Alberdi
spoke of the low-hanging fruit. You know, there's
some government money out there to maybe help fund
some conversions. And construction costs of some
of these conversions right now are as low as
they've been in years. And so there are some real
opportunities now to go forward. And I guess
that's one of the things I'd say.

And the other one -- and it comes back to
what Mr. Hazen said when he was here. You know,
this is a big project, and we're going to have to
have some staff. And I hate to ever say this, but
I -- you know, I don't want to say another
bureaucracy, but we're going to have to have a
level of staff. And there's going to have to be
people that are going to be able to work on this
full time with a lot of -- with some resources
behind them. Because, you know, we know as a
committee, we go out there, and we've got the view
at 30,000 feet, and we think this is -- you know,
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1. Once we beat up on him enough.
2. Thank you, Mr. Chairman.
3. THE CHAIRMAN: Thank you, Mr. Tucker.
4. Anyone else?
5. Randy McMillan. Mr. McMillan, please.
6. MR. McMILLAN: Well, Mr. Chairman and
7. Members of the Board, I think Jonathan has really
8. captured the best approach. And that is to have
9. the flexibility for him, as the facilitator, to
10. make decisions whether or not we need a small
11. group or a large group or -- it's kind of the idea
12. of the plan itself is adaptive management. And
13. what Jonathan's proposed here with the working
14. groups, and perhaps with the core group, is to be
15. able to make that decision that we need to move to
16. the core group to resolve some issues. So I'm in
17. favor of what Jonathan's proposed.
18. I think it's really critical that we keep
19. this process moving forward. And we don't need to
20. get bogged down, in my view, in the composition of
21. the implementation -- yeah, the implementation of
22. the committee itself very much, because I think
23. that the intensity of the meetings will probably
24. ultimately limit the number that are really able
25. to participate. It's -- at the same time, it's

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1. really critical to keep this open, the whole
2. process open, keep -- make sure that people in the
3. public feel like they can come to the meeting and
4. offer their ideas. And we really need to look
5. long term. If we start to close down on
6. participation, then when we get to phase 2 of the
7. plan, if we ever get there, the public's going to
8. be -- they may be very jaundiced about trying to
9. do that, if they haven't felt welcome in this
10. process.
11. So -- so I -- I'm in favor of what Jonathan
12. has proposed here. And I think that as long as we
13. can keep some flexibility and nimbleness in
14. deciding how to proceed, we'll get through it.
15. And as Jonathan said and others, we have a lot of
16. hard work to do here, and some difficult decisions
17. to make. So I think that we need to make sure
18. that people like Mr. Hazen feel welcome to
19. participate. They do offer some real expertise
20. that all of us could, perhaps, profit from.
21. So thank you.
22. THE CHAIRMAN: Thank you, Mr. McMillan.
23. Mr. Tominaga.
24. MR. TOMINAGA: Mr. Chairman.
25. THE CHAIRMAN: Best for last.

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1. MR. TOMINAGA: Best for last.
2. We provided some comments. And I don't know
3. if the Board had received them or not. But we can
4. live with Jonathan's proposal, I believe. There
5. are some things that came up that Jerry -- we had
6. some problems with CAMP in the state legislature.
7. One of them was is folks in the Upper Snake that
8. believe that the group did not address incidental
9. recharge. And we almost didn't get it out of
10. committee because of that. And so we need to make
11. sure that we address the incidental recharge
12. issue, because it's going to come back.
13. And I agree with Jerry's recommendation that
14. not only the participating members, but the
15. alternates should be able to come in and
16. participate in any of the working groups. I think
17. that will make sure that you get full
18. participation from everyone that's involved. They
19. might have a different point of view than that
20. member. But at least they're not excluded from
21. participating. And then that way, everybody
22. that's involved, we can point to those
23. individuals, saying they were appointed to that
24. group. It was up to them not to come and
25. participate, or not be involved with that

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1. particular working group. And I think that will
2. solve some of the issues, because the impression
3. that was given at the state legislature was that
4. the group from the Upper Snake was not actively
5. participating, or were not part of the
6. implementation group. They were. But nobody at
7. the state legislature knew that. And that's what
8. they preyed upon.
9. The other thing they preyed upon, and it's
10. something that Jerry tried to address a little
11. bit, was that, with a large number of working
12. folks, Fish and Game, US Fish and Wildlife, Bureau
13. of Reclamation, that group again pointed to that
14. group and said, these were the folks that led this
15. group, not the participants, which was not --
16. again, not true. But again, when you have
17. somebody that's sitting down with those state
18. representatives that are from Northern Idaho, from
19. Southwestern Idaho, they don't know. And we had a
20. lot of problems trying to convince those folks
21. that they were a minor player. They were there
22. because of their jurisdictional abilities over the
23. water management or Fish and Wildlife issues that
24. were associated with water management.
25. And again, you have representatives that are
very distrustful of State and Federal agencies. And Mayor Chase knows that very well, especially in our state legislature. And Representative Cuddy, he knows -- he also knows that too, that they preyed upon those fears. And that's why we had a hard time getting that bill out of committee because they preyed upon those fears. How do you get rid of those? Well, I think the way Jonathan has set this up, it's inclusive, but yet, hopefully the major decisions and implementation will avoid that. And by having more participation, will do that. But again, one of the issues that need to be -- need to be addressed will be the incidental recharge.

Also, the legislative interim committee is one that needs to be addressed too. The members of the Interim Natural Resource Committee believe that they're -- they are going to play a major role with the implementation committee. And so that needs to have some kind of connection also, because members of that committee that I visited with believe that they are -- they believe that being on that committee, they will have a major role in this process. So that also has to be addressed.

So, yeah, you guys got your work cut out for you. And the groundwater users will be there to make sure this process hopefully is very successful.

THE CHAIRMAN: Thank you, Mr. Tominaga.

Jonathan?

MR. BARCH: Mr. Chairman and Members of the Board, what I was -- the direction that I'm looking for from you is to, say, to extend the invitation to those existing advisory committee members to become part of the implementation committee. And for those who are unable or unwilling to continue with that commitment, to then there would be a -- to solicit some nominations.

THE CHAIRMAN: Or a decision made whether they're necessary.

MR. BARCH: Or decision --

THE CHAIRMAN: That position is necessary.

MR. BARCH: Yeah, right, right.

So that -- I mean, basically, in terms of the overall approach about how the implementation committee, the purpose, the working group, and how they would -- how -- groups and how they would function, I'm looking for some direction from you in terms of -- and Mr. Anderson and Patsy -- I'm not sure -- I don't think we need to vote, but I do -- I may be wrong about that, but --

MR. BARCH: But we need some kind of indication that we're on the right track --

UNIDENTIFIED SPEAKER: Confirmation.

MR. BARCH: -- here, and that we should proceed with -- and the plan would be that late May, early June, we get -- we get started with first implementation committee meeting. We get and the plan is then to get them in terms of adopt that operating protocols, get a work plan, develop the structure around the working groups. And I've deliberately left some of this at a 30,000 foot level in part because I think it's important for the committee to weigh in and have ownership about the specific task -- tasks and those kinds of things. But I'm looking for you for direction and getting started with this late May.

THE CHAIRMAN: Is there anybody on the Board that has a problem with what Jonathan has proposed?

Do we have any additions to what he's proposed?

MR. CHASE: Mr. Chairman?

THE CHAIRMAN: Mr. Chase.

MR. CHASE: One -- thank you, Mr. Chairman.

One question I'd have, Jonathan, the staffing issue within the plan itself, there wasn't money set aside for staffing. Would you come back with a recommendation early on to tell us what type of staffing is involved? Would that be one of the first tasks, I would assume?

MR. BARCH: So building on -- so building on kind of the -- some of the comments, which is, well, nobody wants a bureaucracy that -- the type of change that we're talking about, these are major projects, and that there are going to need to be resources that are identified. And I believe that that would be a product of the working groups, which include -- so how -- getting as specific as we can in terms of the nuts and bolts, which is, not only what are we going to do, and when we're going to do those, and -- but who's going to do those, and with what resources. I think that's -- that's part of what would come out of this, and whether that's in the -- you know, in the first two months, or in the second -- you know, the next four months, when that --
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1 comes up.
2 To me it seems like you need to know what
3 we're going to be doing, and how we're going to be
4 doing that. So the scale to the targets that have
5 been identified and the hydrologic targets that
6 have been identified in the phase 1 plan before,
7 then, you can get into it. So it seems -- but,
8 you know, that could be an accelerated item,
9 Mr. Chairman and Mr. Chase.

10 THE CHAIRMAN: Mr. Rigby.
11 MR. RIGBY: Mr. Chairman, without putting
12 you on the spot, Mr. Director and Hal, do you want
13 to at least address that particular issue? In
14 other words, what do you perceive as your -- you
15 and your staff's availability? And is this
16 perceived need truly necessary?
17 In other words, if we're -- if you felt like
18 all along you were going to handle it in the first
19 place, maybe we need to at least present that to
20 them. If you felt like, yeah, it would be nice to
21 have the extra staff, which I think it would be,
22 but I'd like to hear from you.

23 THE CHAIRMAN: Mr. Tuthill.
24 DIRECTOR TUTHILL: Thank you, Mr. Chairman
25 Mr. Rigby, when we received the funding

1 allocation for the $20 million over the course of
2 several years to be used at a rate of about $3
3 million per year for the aquifer planning fund, we
4 received three staff positions to go along with
5 that. So basically, one staff position per
6 million dollars per year.
7 MR. RIGBY: Out of that money?
8 DIRECTOR TUTHILL: Out of that money, yes.
9 And the funding came from the aquifer money. And
10 also along with that came authorization for three
11 new positions. That's challenging as it is to
12 have -- because, with those positions, we're
13 contracting and doing a variety of things. But I
14 would see that as a minimum of one person per
15 million dollars per year.
16 What we're finding right now, as you know,
17 with our 11. million percent reduction, plus 5
18 percent reduction in salary, we'll be undergoing,
19 for the first time in my 33-year career,
20 reductions in force. We had one fellow that was
21 reduced in force 25 years ago. This coming month
22 we'll have another process for that. Some of the
23 staff reductions that we've already are in the
24 planning bureau. Right now, Brian is short three
25 people in his bureau. So we are very, very short

1 on staff. We are facing 7 to $10 million per year
2 through this planning project.
3 I appreciated the comments of Mr. Stevenson
4 on the need for staffing effort. My expectation
5 is that we will be identifying need for staffing
6 effort. We don't have it now in the department.
7 And this 7 to $10 million per year is going to
8 have to partly be dedicated towards staffing
9 effort. So I appreciate the comments. It's very
10 true that we are strapped right now, and do not
11 have excess staff to support this project.
13 MR. BARCH: So it sounds to me like this is
14 actually one of the -- you know, in terms of I
15 have a list of issues, substantive issues --
16 THE CHAIRMAN: Is this one of the issues
17 that we have to cover?
18 MR. BARCH: We've been talking a lot about
19 process. This is going to be one of the
20 additional -- not an additional one, but one that
21 maybe has more of an emphasis, and it could be an
22 earlier emphasis about how is it that we can
23 balance these two things. One is a really strong
24 desire on stakeholder's part to have an efficient
25 and lean and nonbureaucratic approach, and at the

1 same time, about being able to have the
2 organization to really -- to create the -- keep
3 coming back to this -- the foundation for being
4 able to implement this over a period of time. And
5 I think that's going to be -- that's going to be
6 one of the issues that we're -- that you're going
7 to need policy direction from this -- from the
8 implementation committee on. So --
9 THE CHAIRMAN: Mr. Graham.
10 MR. GRAHAM: Mr. Chairman, in order to move
11 things on, I hope, I understood your presentation
12 to say that the staffing issue was going to be one
13 of the first chores of the working groups. If --
14 rather than have to settle the staffing issue
15 today, it looks like we would first want the input
16 from --
17 MR. BARCH: From the implementation
18 committee.
19 MR. GRAHAM: From the working groups.
20 MR. BARCH: I think that's right.
21 THE CHAIRMAN: Okay. Do you want to move on
22 to the last point that you have, and what factors?
23 MR. BARCH: Yeah.
24 MR. CHASE: Mr. Chairman?
25 THE CHAIRMAN: Sure, Mr. Chase.
Mr. Chase, Members of the Board:

HAL ANDERSON: Mr. Chairman, Members of the Board, we have one other housekeeping item on that. But before we go there, you should have a -- you should have a resolution. It says a resolution to authorize a funding commitment.

THE CHAIRMAN: It's in the blue folder.

HAL ANDERSON: Yes. But I'd like -- I will say that I'll be working with Mr. Barch between now and the Water Board meeting on May 8th, and we will probably come back with some more specifics on the implementation committee to make sure that all that is approved, embedded by the Board. And we'll be working hard over the next month with the Governor's office, and with the advisory committee and others to make sure that we get this advisory committee up and figure out who's -- who's in and who's not. And we can bring all that before the Board on the May 8th.

THE CHAIRMAN: Our May meeting.

UNIDENTIFIED SPEAKER: Yeah.

THE CHAIRMAN: I would entertain a motion for the resolution to go forward.

MR. CHASE: So moved.

MR. RIGBY: Second.

Roll call vote.

Ms. McGourty: Mr. Cuddy.

MR. CUDDY: Aye.

Ms. McGourty: Mr. Alberdi.

MR. ALBERDI: Aye.

Ms. McGourty: Mr. Chase.

MR. CHASE: Aye.

MR. GRAHAM: I think another thing would be, going back to some of the distinctives, probably, and some others and you have made that we need to get some results soon. And a year from now, we would like to see some of those results, productive results.

Mr. Barch: Okay.

THE CHAIRMAN: Other comments?

THE CHAIRMAN: I think the main thing that all of us are looking forward is suggestions as to how we're going to raise the monies necessary to get the staffing, to provide the monies for recharge, to build new dams and everything else that we need to do. I think that would be one of the main things we have to look at as we move forward.

Mr. Barch: Okay.

THE CHAIRMAN: Mr. Graham.

MR. GRAHAM: I think another thing would be, going back to some of the distinctives, probably, and some others and you have made that we need to get some results soon. And a year from now, we would like to see some of those results, productive results.

Mr. Barch: So to make it concrete, then, maybe it's a -- maybe it's a project that you can actually physically visit that will demonstrate that on the ground. Okay?

Mr. Graham: Mm-hmm.

THE CHAIRMAN: Other comments?

THE CHAIRMAN: I think you've got your marching orders.

Mr. Barch: Thank you very much,
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<td>1 from Mr. Brian Patton. And Mr. Patton will lead that discussion.  &lt;br&gt;2 (Unintelligible).  &lt;br&gt;3 THE CHAIRMAN: Mr. Patton, go ahead.  &lt;br&gt;4 MR. PATTON: Mr. Chairman, Members of the Board, the North Snake and Magic Valley Groundwater Districts are jointly requesting a $500,000 loan to construct a pipeline project to satisfy their mitigation responsibility to the Snake River Farm Facility, which is owned by Clear Springs Foods. In response to a delivery call made by Clear Springs Foods for that facility, in 2005, Director Dreher issued an order requiring that their pumping causes on the senior surface users within these two districts for the impact mitigation by the junior priority groundwater flows utilized by Clear Springs Foods at this facility. After determined accounting for the mitigation provided by the districts through CREP and conversion projects, IDWR determined that the districts have to provide 1.99 CFS to -- at the Snake River Farm headgate. If this is not be carried through, that could affect up to 41,000 acres of land served by groundwater within these two districts. The district submitted a plan to construct this project to deliver this water, which was found acceptable by Director Tuthill by order he issued on March 26th, 2009. As per that order, the project must be completed by June 2nd, 2009, or the districts owe a $10,000 per day penalty. The project the districts are proposing to construct consists of taking several wells located above the rim above the Snake River Farm Facility that are currently used to deliver irrigation water to about a thousand acres, and then no longer delivering irrigation water, but instead, delivering that water from those wells into a pipeline system that would carry it over the right to Snake River Farm. The -- and again, those wells would no longer be used for irrigation. So those lands would no longer be served by groundwater. This project has been estimated by the district's engineering consultants to cost around $500,000. This Board has made several prior loans to both North Snake and Magic Valley as shown there on page 2 of the memorandum, starting back in 2003.</td>
<td>1 with a $300,000 loan for the similar Sandy Pipeline Project, all the way through until last year with the Board loaned them $10 million for their participation in the Pristine Springs Project. A number of other mitigation projects and other things along the way. All loans have been repaid either on time or ahead of schedule. In looking at the effect that this loan would have on the actual assessment rates, we can't do that yet 'cause there's still some things in play in regard to the $10 million note regarding how much some other districts such as Southwest are going to pick up. But in running through the numbers, the $500,000 -- this $500,000 loan, if it's approved at 5 and a half percent for 10 years would result in a $66,000 per year repayment to the Board, which, spread out over the 220,000 acres encompassed in these two districts results in about 30 cents per acre per year for the cost of the loan. If the Board chose to follow its precedent of loaning the money at 4 percent to the groundwater districts, that would result in an annual payment of about $61,600 a year, and then would result in about 28 cents per acre per year cost for the loan.</td>
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the water swap, essentially, is what it is. And then, so that's -- and in the long term, that's not a -- I mean, even in tough years, we can find 3500. 35,000 is harder. We've been down that road before.

THE CHAIRMAN: Mr. Cuddy.

MR. CUDDY: What's the added -- is there an added expense to this water exchange, then?

DEAN: Well, we have the cost of lifting water, about -- I think about 80 feet. And then we'll have the cost of, you know, maintenance. And you know, those are costs. And as pumpers, we're all aware of -- that's kind of the business we're in. And so we're aware of those costs and what those operating costs would be and what's required.

MR. CUDDY: But that takes care of the problem of like water for like water.

DEAN: Right.

MR. CUDDY: You're not getting the surface water --

DEAN: Well, there's still some questions on that. But that's -- I mean, it's essentially -- the wells are within a half mile of the spring source. So we assume that --

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1 MR. GRAHAM: Do we have the money?
2 MR. PATTON: Yes, sir. Yes, you do.
3 MR. GRAHAM: Don't have the sheet show (unintelligible).
4 MR. PATTON: I'm aware. We were trying to -- trying to be sensitive to the concerns about too large of e-mails being sent out prior to the meeting.
5 THE BOARD does have the funds. It would actually have to be, however, a combination of funds from the Eastern Snake Plain sub account and the May account. But that's -- that's a bookkeeping item that we can handle in-house.
6 Would like to note we do have representatives of the two districts here today.
7 THE CHAIRMAN: Let's hear from them.
8 UNIDENTIFIED SPEAKER: I think Brian pretty much said kind of what our story is here. Is there any -- first off, is there any questions that we have?
9 UNIDENTIFIED SPEAKER: Do you see a 5 and a half percent being an encumbrance on the trial voter at 2 cents a break.
10 UNIDENTIFIED SPEAKER: Probably not. I mean, it's -- it's a number we always -- you know, that we have come in, the more we've got to loan.
11 UNIDENTIFIED SPEAKER: Right. And we understand that. We -- you know, we're -- at some point, we'll probably have to borrow more money, you're exactly right. But I don't see that as a real issue.
12 THE CHAIRMAN: Any questions by the Board Members?
13 Mr. Cuddy.
14 MR. CUDDY: Thank you, Mr. Chairman.
15 If I understand correctly, then, no one this year will suffer crop damage because of this movement of this water over the hill?
16 DEAN: That's correct. That's if we get, you know, getting everything in place. We've got the water lined up for the replacement water. I mean, with this year, that's not been a problem.
17 And it essentially takes about 3500 acre feet of water to supply those conversions to, you know, do

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1 we would prefer -- we would always prefer cheaper.
2 UNIDENTIFIED SPEAKER: I prefer that, but somewhere down the road you'd like to borrow some more money, and --
3 UNIDENTIFIED SPEAKER: Right, right.
4 UNIDENTIFIED SPEAKER: -- the more money that we have come in, the more we've got to loan.
5 UNIDENTIFIED SPEAKER: Right. And we understand that. We -- you know, we're -- at some point, we'll probably have to borrow more money, you're exactly right. But I don't see that as a real issue.
6 THE CHAIRMAN: Any questions by the Board?
7 Members?
8 Mr. Cuddy.
9 MR. CUDDY: Thank you, Mr. Chairman.
10 If I understand correctly, then, no one this year will suffer crop damage because of this movement of this water over the hill?
11 DEAN: That's correct. That's if we get, you know, getting everything in place. We've got the water lined up for the replacement water. I mean, with this year, that's not been a problem.
12 And it essentially takes about 3500 acre feet of water to supply those conversions to, you know, do

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1 MR. CUDDY: So you assume the quality will be --
2 DEAN: We assume the quality's -- I mean, if it's not -- if it's different water, we'd sure like to know that.
3 THE CHAIRMAN: Mr. Graham.
4 MR. GRAHAM: Can you make the -- do you plan on making that June date? Can you get this done by --
5 DEAN: Well, we've been involved in some negotiations for some other alternatives. But, you know, we've got the engineering work going forward, the engineering -- we haven't started the construction of this portion of it, but we've got engineering -- engineering people on (unintelligible).
6 MR. GRAHAM: Are you anticipating having to pay that fine, then?
7 DEAN: Not at this point, but --
8 MR. GRAHAM: And then there's no term on this suggested --
9 MR. PATTON: Mr. Chairman and Mr. Graham,
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<td>1 again, that would, I think be the Board's discretion, but --</td>
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<td>2 MR. GRAHAM: What do they want?</td>
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<td>3 THE CHAIRMAN: Ten years.</td>
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<td>4 MR. PATTON: I would throw out ten years as a starting point.</td>
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<td>5 THE CHAIRMAN: Yes, sir.</td>
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<td>6 MR. CARLQUIST: Mr. Chairman, I'm Lynn Carlquist that determined the North Snake Groundwater District. And the reason we need the loan is we had a short period of time to accomplish this work. And the conversion part of the process is already probably 90 percent done. All that work is done. But the project of getting the pipeline actually over the rim is not yet underway. All the engineering has been done in terms of getting -- the easement -- most of the easements have been obtained. And most of the engineering work has been done. But as Dean said, there has been some negotiations ongoing between the parties at a different arrangement. But we don't yet have anything in place, so we still feel like we need have this loan done. The groundwater districts did not have enough available money to finance this thing all by ourselves. Our ability to raise money through our assessments is about a year and a half process out. And I think a ten-year loan would be nice, 'cause then we could spread the cost out a little more over a period of time. But we could even do it at less time, I think, if we had to. It's just the amount that we have to assess our membership.</td>
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<td>7 THE CHAIRMAN: As we look back at the history, though, of the groundwater users, almost all of your loans have been paid off --</td>
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<td>8 MR. CARLQUIST: Yes.</td>
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<td>9 THE CHAIRMAN: Far quicker than what they were supposed to.</td>
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<td>10 MR. CARLQUIST: Well, I think --</td>
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<td>11 THE CHAIRMAN: So I really don't have a concern.</td>
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<td>12 MR. CARLQUIST: -- quicker or within the time limits that was assessed on them. Now, of course, we've had -- the two loans that our district has outstanding now, one was for the participation -- the groundwater districts were with the implementation of the CREP. And I don't remember Magic Valley's, but our share of that is about $75,000 that we have set up be paid over 10 years. And of course, the big one is the Pristine Springs loan that you loaned us to purchase the 10 CFS, if that's the Pristine Springs.</td>
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<td>13 MR. ALBERDI: And that's covered with the 500,000.</td>
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<td>14 DEAN: That would be the initial. You know, obviously, to scale up would be -- we'd have more things we'd have to do with the system. But we -- you know, that's what our initial engineering work is that it would be -- you know, it's kind of lucky right now we're finding that contractors right now are quite easy to come by. And they're being quite competitive in what they will bid for work. And plastic prices, which were the pipe, would be -- they're at probably a ten-year low. So I mean --</td>
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<td>15 THE CHAIRMAN: Best time to do a project.</td>
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<td>16 DEAN: Yeah, this -- and you know, just like I said in the CAMP proposal too, I mean, there's some -- there are some real opportunities now people that want to do work, so that's what we found.</td>
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<td>17 THE CHAIRMAN: Mr. Graham.</td>
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<td>18 MR. GRAHAM: And you could handle the 5 percent?</td>
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<td>19 DEAN: Yeah.</td>
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<td>20 MR. GRAHAM: Mr. Chairman, I'd make a motion that we approve the resolution and fill in the blanks at 5 percent for ten years.</td>
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<td>21 THE CHAIRMAN: Motion is made for 5 percent and ten years on the resolution before us. Do I hear a second?</td>
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<td>22 MR. BECK: Second it.</td>
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<td>23 THE CHAIRMAN: Mr. Beck has seconded it.</td>
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Any discussion?

MR. BECK: Mr. Chairman?

THE CHAIRMAN: Mr. Beck.

MR. BECK: I didn't know if Mr. Graham's motion was intended to cut off discussion, or if he had other interests.

MR. GRAHAM: I'm very anxious to get into this ethics subject.

MR. BECK: Excited or not, I'll take time to ask some questions.

THE CHAIRMAN: Please do, Mr. Beck.

MR. BECK: Thank you, Mr. Chairman.

Dean, and perhaps -- Snake River Farms, have they bought off agreeable to what you're proposing?

DEAN: Snake River Farms is here, but there's been a motion filed that opposes this. You know, to stop the construction of the pipeline. So there is some issues. We have -- we have our plan approved by the director. And that's, at this point, the one we really have -- he seems to be the most important one to approve.

MR. ALBERDI: I've got three or four questions.

THE CHAIRMAN: Go ahead, Mr. Alberdi, here.

UNIDENTIFIED SPEAKER: Who does it go to?

MR. ALBERDI: So the ground that's going to be, I guess, converted to -- from deep well to what, other deep well?

DEAN: Surface water.

MR. ALBERDI: And how far away are you from the surface water that you apply to those lands?

DEAN: There's a what -- lateral is that.

MR. ALBERDI: So the ground that's going to be, I guess, converted to -- from deep well to what, other deep well?

DEAN: Surface water.

MR. ALBERDI: And how far away are you from the surface water that you apply to those lands?

DEAN: There's a what -- lateral is that.

UNIDENTIFIED SPEAKER: The S Cooley --

DEAN: The S Cooley.

UNIDENTIFIED SPEAKER: -- goes right through the -- and it's Northside (Unintelligible) Company has approved transporting the water, delivering the water to these sites and or helping to find canal shares that we can use to deliver the water.

MR. ALBERDI: Okay. And then, over on the paragraph that's numbered 5.0 financial analysis, you mentioned that you're in negotiations with the Carey Valley groundwater districts and the Southwest Irrigation Districts for the participation in Pristine Springs.

DEAN: Mm-hmm.

MR. ALBERDI: Is that for their participation for mitigation efforts or --

DEAN: Yes. What it is is there's -- we did the purchase because of the time frame, the two largest players in the Pristine purchase were Magic Valley and North Snake. And this was to solve -- they call it Blue Lakes. And Blue Lakes, for us, was really the bigger issue. I mean, the Blue Lakes call, for example, this only affects about 15 -- well, between 10 and 15 percent of Magic Valley Groundwater District. But we have to go forward and protect our -- but it had a far reaching effect.

And because of the way the time frame came together, the two groundwater districts took on the loan. There was some obligations that come from southwest. There's some folks in Water District 140 outside of irrigation district. There's some folks at Carey. There's a couple of -- at Arco -- even as far away as Arco that had obligations in the Blue Lakes call. And the difficulty was is trying to figure out who owned what. And that's what we're in the process of doing right now. The department -- Al Wiley's done some analysis. And we're in the process of meeting with him in determining truing up on figuring out who owes what on the Blue Lakes.

MR. ALBERDI: So one last question, Mr. Chairman, if I could.

THE CHAIRMAN: Mm-hmm.

MR. ALBERDI: So if those negotiation with those two entities do not come forward, does that leave you with extra mitigation water for future use or --

DEAN: No, it's -- I think the negotiations with those entities will come forward. It will mean -- it's going to be a matter of internally between how to move mitigation credits around.

But I don't know. There may be at some point some excess water. Right now there's excess water in -- we're over mitigated on Blue Lakes to the tune -- I think of about 2 CFS because of our conversion credit. And so we've got -- it's the Blue Lakes, and it's not the Snake River Farm. So we're over mitigated one spot, undermitigated in another. But that's how life works, so --

THE CHAIRMAN: Any other questions?

MR. CHASE: Thank you, Mr. Chairman.

DEAN, I want to understand this penalty.

This $10,000 a day. So if you're not done in,
what, 32 days, you're going to get fined $10,000 a day?

DEAN: Yeah. But I think the director has the ability, if we're making progress, to waive that. I'm not going to --

MR. CHASE: Well that's kind of, I guess, where my question's going, because if you're five days late, you're into this a hundred thousand dollars, which, I just want it make sure you get the money to pay that, I guess is my question.

UNIDENTIFIED SPEAKER: It's actually $50,000.

UNIDENTIFIED SPEAKER: 50,000 a day.

MR. CHASE: Oh, sorry.

UNIDENTIFIED SPEAKER: For five days, yeah.

UNIDENTIFIED SPEAKER: That was the Board's take on that, right?

UNIDENTIFIED SPEAKER: Yeah, don't --

UNIDENTIFIED SPEAKER: We get half: They get half.

MR. CHASE: But 50,000, I mean, I just hope that you understand that. I guess that concerns me because that could add up real fast. Unless they do construction faster in the Magic Valley than they do in Pocatello.

THE CHAIRMAN: It would add up faster if they don't do anything, if they don't even start the construction.

MR. CHASE: Yeah.

MR. CHASE: Okay.

UNIDENTIFIED SPEAKER: So --

THE CHAIRMAN: Any other comments, questions?

Patsy, roll call vote, please.

MR. SIMPSON: Mr. Chairman, if I could comment.

THE CHAIRMAN: Mr. Simpson.

MR. SIMPSON: Thank you.

MR. CHAIRMAN, John Simpson representing Clear Springs.

THE CHAIRMAN: Yes.

MR. SIMPSON: And Mr. Beck did ask a question how Snake River Farms feels about the -- this proposed mitigation. And I would comment that, first of all, in response to what Mr. Patton said, it's replacement water. It's not mitigation water. The rules are very clear that there's mitigation plans under the Conjunctive Management Rules Wilson. This has been identified as replacement water under a replacement water plan that's been approved by the director. And that issue is on appeal to the District Court right now. We had arguments this week on it.

And I'm not going to go into that issue. But what I did want the Board to know is that Clear Springs did file a motion this week to stay construction of this project, that it would accept for 2009 the conversions that Mr. Patton represented, and the groundwater district represented as identified as adequate mitigation for 2009. Because, we have concerns over whether or not the project should be built, how it should be built, whether it is adequate water. Or someone on the Board asked the question is this like water? Well, there's no data to identify whether it is like water in similar quality to the water coming out of the springs or not. There isn't the data. The data that they have is a distance away.

So until those issues are resolved, until we have an opportunity to go through a hearing, a mitigation hearing that's been at least noticed up and protested and has yet to be scheduled, we have concerns about whether the project should go forward. In light of that, we felt like it's the best use of everybody's time and money not to build the project, not to be exposed to, quote, penalties if those penalties are real, that jeopardize whether or not the groundwater districts are able to satisfy the replacement plan obligation, whether Clear Springs, Snake River Farms gets adequate water. Not just quantity, but quality. And instead, let's proceed through this in a logical manner. Let's go to hearing. Let's identify whether this is the right type of mitigation that we should be proceeding with.

Instead of racing to the finish line, if you will, based upon a plan that was filed a month and a half ago, approved a month ago, and is set to be completed or the time deadline for completion is June 1st. So in light of that, what we've offered up -- Clear Springs has offered up is a window, if you will, to accept the conversions, which, as they expressed, are 90 to 95 percent complete for this year. And let's go through a logical process to determine whether this over the rim, with a pipe being built over the rim delivering water down to an aquaculture facility
is proper mitigation.

In light of that motion, if they would accept that motion to stay, the Board wouldn't have to determine whether or not it has funds in one account or another account to loan to the groundwater districts. That could be put off for another day. That could realistically be put off to determine after we determine whether it's an appropriate mitigation plan instead of using our replacement plan concept, whether the project should go forward.

So I am not going to weigh in any further on Clear Springs' positions on the elements of the project, but simply we presented in a motion to the director the opportunity to set this program aside for a period of time and proceed in a logical manner.

Thank you for that.

THE CHAIRMAN: Thank you, Mr. Simpson.

DIRECTOR TUTHILL: Thank you, Mr. Chairman.

DIRECTOR TUTHILL: Thank you, Mr. Chairman. To respond to Mr. Simpson, I did receive the motion. And this motion to which he refers is Clear Springs Foods' motion for a partial stay of the groundwater districts did file both the Water Board's going to expect payment on this big note from last year this fall, so we need to get this one -- have this one available. So --

THE CHAIRMAN: Thank you, Mr. Stevenson.

UNIDENTIFIED SPEAKER: Mr. Chairman, I might make a comment.

There is a little bit of a problem with the time frame because we've been in negotiations with representatives from Clear Springs the last two weeks. We initially tried to work out a
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1 stipulated agreement between the groundwater
2 districts and Clear Springs Foods. And we weren't
3 able to reach an agreement that each side felt
4 like they could sign. And so, just late last
5 week, this motion, which the director has referred
6 to, Mr. Simpson referred to has been filed with
7 the department. In the last two weeks, everything
8 has kind of been put on hold in terms -- all the
9 engineering work has been done. And the
10 easement -- most of the easements have been
11 signed, and that's all been done. But we have not
12 started construction, which would have happened
13 before now, because we've been trying to see if we
14 could reach either a stipulated agreement, or see
15 where we'll go with this motion that's been filed.
16 Mr. Tuthill said that he would not have a status
17 hearing on that until next week. And I don't want
18 to start digging the project until we know where
19 we have to be.
20 Now, representatives from Clear Springs
21 Foods said that they would indicate to the
22 department that they would give us more time
23 beyond the June 1st because we have kind of put
24 this thing on hold now for two weeks. So I think
25 we're going to have to work. If the project does,

MR. SIMPSON: The conversions don't satisfy
the mitigation obligation. Clear Springs doesn't
feel as though the number that's been identified
in the order that we're working with as of today
is the correct number. That's part of what the
appeal process is. As a part of the orders that
were issued by the department, final order, which
references the hearing officer's order, it
identified that additional work needed to be done
on better quantifying the relationship between
what appears in a spring versus what appears in
the reach gained as a result of the groundwater
model.

Clear Springs has done some of that work.

The modeling committee is looking at some of that
work. So, for example, we may have an obligation
today that looks like it's 2 CFS. Once we've
refined that work, it may be 1 CFS, or it may be
12 CFS. If it's 12 CFS and we've built this
over-the-rim project, then it's just phase 1 of an
over-the-rim project that has to be expanded six.

1 in fact, end up going forward, it will be
2 difficult for us now to meet the over-the-rim
3 portion of the project in -- by June 1st, because
4 we've been on hold now for over two weeks. Now,
5 they finished up the engineering work that they
6 have done and so forth. But the engineers we've
7 been working with, and the contractors were all
8 ready to go. But we told them hold up and let's
9 see what happens here.
10 So that's where we're at in terms of that
11 time frame.
12 THE CHAIRMAN: Thank you.
13 Gentlemen, we have a motion before us.
14 Patsy, would you call the roll, please.
15 MS. McGOURTY: Mr. Cuddy.
16 UNIDENTIFIED SPEAKER: Mr. Chairman, are you
17 saying that the discussions are ended? Or do we
18 have an opportunity for further discussion?
19 THE CHAIRMAN: Would you like to have
20 another -- some more discussion?
21 UNIDENTIFIED SPEAKER: I would.
22 THE CHAIRMAN: Okay. Please.
23 UNIDENTIFIED SPEAKER: And this question is
24 for Mr. Simpson.
25 So your willingness to stay, are you

times or so. Is that the best use of our money?
Likewise, we haven't -- we, Clear Springs,
hasn't had an opportunity to present to a hearing
officer whether we are in favor of the
over-the-rim project or not. It's being imposed
upon us against our will. We came to the director
at his suggestion in March, and we voiced our
concerns over this over-the-rim project, whether
it was the right quantity, quality, whether from a
business perspective, that was good for Clear
Springs to accept water through a pipeline that's
piped over the rim down to them from a quality
business perspective. But it's being imposed upon
us.

In lieu of having it imposed upon us, we're
saying we're willing to accept the conversions
which allow the water coming through the aquifer
to continue to come through the aquifer and just
be discharged out of the springs, whatever amount
that is that isn't pumped out that comes out of
that spring that satisfies Snake River Farms,
they're willing to accept this year, because they
feel so strongly that they're being denied due
process, being denied the opportunity to have a
hearing on the plan as to the adequacies of the

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1 plan. They're just simply willing to back away
2 and say, it is what it is. But let's not move
3 forward in a manner in which might waste folks'
4 money. The dollar's being spent on a project
5 which we may find out to be inadequate.
6 Further, I mean, let's be honest. Let's
7 stand here and say groundwater district's spent
8 half a million dollars to build this project
9 pursuant to the director's order. That's as Brian
10 Patton said. We determined that that's a good
11 project, that's adequate. What's the likelihood
12 of Clear Springs getting a fair and open hearing
13 on the adequacy of the plan after it's built? In
14 our view, that's a good question to ask. We
15 haven't got a good answer to it yet.
16 So that's our position.
17 THE CHAIRMAN: Mr. Rigby.
18 MR. RIGBY: Mr. Chairman, I guess my conce
19 is that I think it's a slippery slope for us to be
20 caught up and involved in litigations as a board.
21 By that I'm saying, I don't proceed, and I will
22 not be bullied based upon the arguments of whether
23 or not -- all of which are good arguments on both
24 sides -- whether or not one should prevail or
25 otherwise. In other words, I don't view us as the

1 judge here or the director. That's for a whole
2 different forum, a whole different body to deal.
3 I view our vote here as a water user asking
4 for a loan, and using our general criteria, do
5 they qualify. Whether or not they perceive,
6 especially with the arguments that have been made
7 here -- all of which are good arguments -- is up
8 to them. And if it's a waste of their money, then
9 we have to look to their ability to repay. Is it
10 a worthy project in and of itself under the
11 general criteria outside of the litigation? Yes.
12 Does that mean they should go ahead with it? I
13 don't think we should go there.
14 THE CHAIRMAN: I agree with you, Mr. Rigby.
15 And that's the reason I'm calling for the motion
16 is the fact that they have come here in good faith
17 asking for a loan, and we're basing this loan on
18 their criteria. What takes place outside of this
19 room, we have no control over. And we have no say
20 in it.
21 If there's no more discussion --
22 MR. GRAHAM: Mr. Chairman?
23 THE CHAIRMAN: Mr. Graham.
24 MR. GRAHAM: Mr. Stevenson --
25 THE CHAIRMAN: No, Mr. Cuddy, Mr. Graham.
Mr. Chairman, our CREP loan that was approved by the Board that's similar to that, the number of acres that signed into CREP wasn't as large as anticipated, and that loan was not fully used.

THE CHAIRMAN: Right.

Mr. Cuddy.

MR. CUDDY: Thank you, Mr. Chairman.

Brian, if we approve this loan today, when does the interest rate start on it.

MR. PATTON: Mr. Chairman, Mr. Cuddy, what happens on a normal loan that the Board approves is disbursements from the loan are made based upon the needs of the construction project. Okay. So we make construction progress payments as the project proceeds. Given the time frame, it will probably all happen in one lump sum here. Normally, the interest kicks in on the amount that's outstanding. Okay. So on a $500,000 loan, if they borrow half as a construction installment, then they're paying interest on half of that for that period of time until more is disbursed, and so on.

MR. CUDDY: Starting with the time they got the money?

MR. PATTON: Starting with the day they get the money; that's correct.

MR. CUDDY: The time we pass the motion.

MR. PATTON: That's correct. In fact, there have been loans that you have approved that have never been drawn.

UNIDENTIFIED SPEAKER: I think that's what Mr. Cuddy's question.

MR. PATTON: Right. And my expectation is that if an agreement is reached or the director does stay his order, then the groundwater districts would probably not draw the loan, and it becomes a moot issue.

THE CHAIRMAN: Anybody else want to say anything?

UNIDENTIFIED SPEAKER: Well, Mr. Alberdi, and then I'm next.

THE CHAIRMAN: Mr. Alberdi.

MR. ALBERDI: Mr. Chairman, I always like to do business as a good businessman. And if there was a cloud over an issue, I'm new to both. I don't know how to proceed with this. But it seems like there should be a mechanism from here -- I realize it may not be our -- in our best interest.

And I don't know who our attorney is, whether Clive's around or not --

THE CHAIRMAN: He's right over there.

MR. ALBERDI: Clive, some counsel for the Board? I have a difficult time approving something that's got so many issues, question marks on it.

MR. STRONG: Mr. Chairman, members of the Board, I think the advice that you were receiving from Mr. Rigby's the correct advice. The question you have before you is, in any of these kind of controversies, there's going to be issues about who's right or who's wrong. Those need to be decided in the administrative forum. And they will. I mean, the director's going to make his independent determination. And we can't -- we can't influence that.

I think the decision that's before you today is you have an application before you. Does the application comply with your requirements. And in your judgment, if it does, are they able to repay the loan? And if they do, that's the decision that's before you. And these other decisions have to be handled in the forum in which they're appropriately addressed.

MR. ALBERDI: One follow-up -- not for you, Clive, but for Brian.

If we make this $500,000 loan, how much money have we got left to loan?

MR. PATTON: Yes, sir. Mr. Chairman, Mr. Alberdi, based on the fact that you allocated a hundred thousand dollars to continue with CDR's contract, if you move forward and allocate this $500,000 loan, that leaves you with, as of today, about $150,000 available. That does not count first, that does not count interest hydropower revenues or payment streams coming back in over the next several months. That would be a snapshot as of today. May, you know, you have a hundred thousand dollars in repayment coming in in May, 150 coming in in June, et cetera.

(Unintelligible).

THE CHAIRMAN: Mr. Beck.

MR. BECK: I had heard the comment replacement. Is this replacement water or mitigation water?

UNIDENTIFIED SPEAKER: Mr. Chairman, I'd defer to the director for that.

THE CHAIRMAN: Mr. Tuthill.
DIRECTOR TUTHILL: Mr. Chairman, this is replacement water.

THE CHAIRMAN: All right. Then we need to change mitigation in the third paragraph, "whereas, the Idaho Water Resource funds would be used to construct a replacement project consisting of a pipeline to deliver groundwater to the Snake River."

UNIDENTIFIED SPEAKER: Mr. Chairman, I'd encourage us to add the word replacement water project.

THE CHAIRMAN: So noted.

Would the maker of that motion be acceptable to that change?

UNIDENTIFIED SPEAKER: Yeah, whatever it takes to make that change.

THE CHAIRMAN: Okay. We've moved first and a second.

UNIDENTIFIED SPEAKER: I will second it, yes.

THE CHAIRMAN: Patsy, roll call vote, please, before anybody else speaks.

MR. CUDDY: Aye.

MR. GRAM: Aye.

MS. McGOURTY: Mr. Cuddy.

MR. CUDDY: Aye.

MS. McGOURTY: Mr. Chamberlain.

MR. CHAMBERLAIN: Aye.

MS. McGOURTY: Mr. Graham.

MR. GRAHAM: Aye.

MS. McGOURTY: Mr. Rigby.

MR. RIGBY: Aye.

MS. McGOURTY: Seven aye's. Motion passed.

THE CHAIRMAN: Motion passes.

And then we will get into the moment that we've just all been waiting so wonderfully bored.

UNIDENTIFIED SPEAKER: We're out of here (Unintelligible).

THE CHAIRMAN: The meeting's back in session.

The next part of this meeting does not need to be recorded, so I would request an official close of the open meeting.

Entertain a motion?

UNIDENTIFIED SPEAKER: I move that we

THE CHAIRMAN: Adjourn?

UNIDENTIFIED SPEAKER: Adjourn, and nothing was accomplished.

THE CHAIRMAN: Do I hear a second?

MR. BECK?

Anyone opposed?

Meeting's adjourned. Thank you, Patsy.

(End of audio recording of proceeding.)

REPORTER'S CERTIFICATE

I, Debora Ann Kreidler, Certified Shorthand Reporter, State of Idaho, hereby certify:

That I am the reporter who transcribed the audio recording of proceedings had in the above-entitled action in machine shorthand and thereafter the same was reduced into typewriting under my direct supervision; and

That the foregoing transcript contains a full, true, and accurate record of the audio recording of the proceedings had in the above-entitled action and the foregoing cause, which was heard at Boise, Idaho.

IN WITNESS WHEREOF, I have hereunto set my hand June 5, 2009.

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That I am the reporter who transcribed the proceedings had in the above-entitled action in machine shorthand and thereafter the same was reduced into typewriting under my direct supervision; and

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