Before the Idaho Water Resource Board of the State of Idaho

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DEPARTMENT OF WATER RESOURCES

REPORTER'S TRANSCRIPT OF AUDIO RECORDING OF PROCEEDINGS

Meeting No. 7-09

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

before The Idaho Water Resource Board

Gary M. Chamberlain
Bob Graham
Charles "Chuck" Cuddy
Leonard Beck
Roger W. Chase
Vince Alberdi
Jerry R. Rigby

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1 MS. McGOURTY: April 30, meeting 07.

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1 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.

10 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, at 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 county.

22 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...
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some exploratory test holes along the Dietrich canal. We dug three of them two weeks ago.
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 those 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
there in BLM trucks 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.

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.

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.

Thank you.

THE CHAIRMAN: Thank you for your comments. Any other public comment?

Idaho Power Swan Falls Settlement Agreement.

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.

You should also have a Framework Reaffirming Document, but rather lays forward a suite of measures that, if taken, would ultimately constitute the settlement. And those suite of measures are, one, signing reaffirmation framework, which was done. Second was passage of three pieces of legislation, one dealing with the Board's review of managed recharge projects in excess of 10,000 acre feet on an average annual basis. The second modification of 42-234 and 42-4201A to remove the 1984 amendments and reflect the fact that managed recharge is an appropriate state tool to move forward with. And then finally, implementation of legislation that would reaffirm the same protections to Idaho Power Company that are received under the original Swan Falls Agreement in terms of PUC consideration of whether entry into the Swan Falls Agreement itself constitutes something that's contrary to the public interest.

Those three measures were signed last Friday by the Governor. And so the remaining steps that need to be taken, one is the Board and the Governor's approval of the Memorandum of Agreement, which I will discuss in more detail in a moment. And then the final step would be

The Board has been briefed by Mr. Clive Strong, who's been negotiating on behalf of the Board and the State with the -- with the Idaho Power Company on this -- on this agreement. And given that, Mr. Chairman, I would like to turn the time over to Mr. Strong and let him go through the details of the agreement for the Board and provide opportunity for the Board to ask any questions they might have.

THE CHAIRMAN: Mr. Strong, please.

MR. STRONG: Mr. Chairman, members of the Board, what we're here today to do is to address the -- one of the conditions for the implementation of the Swan Falls reaffirmation framework.

As you recall, the framework reaffirming the Swan Falls Agreement itself is not a settlement

the Swan Falls Settlement Agreement. That is the agreement that was signed between the attorney general, the Governor, and Idaho Power that was the framework associated with this agreement that the State and Idaho Power has reached, which calls for this Memorandum of Agreement. Mr. Chairman, that has -- which is the subject of our discussion primarily today.

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1 submission of the proposed form of final decrees
2 to the SRBA District Court for approval.
3 If those remaining two actions occur, then
4 as between the company and the State of Idaho,
5 that would constitute a resolution of the action
6 brought by Idaho Power Company challenging the
7 Swan Falls -- the State's implementation of the
8 Swan Falls Agreement. I emphasize that's an
9 agreement between the State and Idaho Power
10 Company, because other water users may have
11 different opinions or interests in this matter.
12 And they certainly have their right to participate
13 in each of these forums, and to make their views
14 known on the adequacy of the settlement.
15 MR. CHASE: You know, Mr. Chairman --
16 THE CHAIRMAN: Mr. Chase.
17 MR. CHASE: I might note too, you know, I
18 probably have a conflict of interest on this
19 subject. And so, I'm going to listen to the
20 debate, but I probably won't be able to vote on
21 this one.
22 THE CHAIRMAN: Thank you for your --
23 MR. CHASE: I've talked to attorneys about
24 that, and that's what they told me I should
25 probably do.

1 THE CHAIRMAN: Thank you for your candor,
2 Mr. Chase.
3 MR. CHASE: Okay.
4 MR. RIGBY: Well, Mr. Chairman, while we're
5 on that subject, obviously, I'm one of the counsel
6 that represents the Upper Snake River users. And
7 we were party participants in the actual hearings
8 themselves. And although I've not spoken to
9 Mr. Strong, I know that today I've been
10 participating because I've not felt that conflict.
11 But if -- if anyone is concerned of this, or if
12 Mr. Strong, on behalf of the State is, then I will
13 need to withhold as well.
14 THE CHAIRMAN: Okay.
15 MR. STRONG: Mr. Chairman, members of the
16 Board, from a conflict standpoint, if you're
17 adverse -- if your clients are adverse to the
18 State, then that would be a provision that would
19 require disqualification. My understanding,
20 though, is that your clients have indicated that
21 they are supporting of the agreement. If that's
22 the event, then I would say conflict them in. It
23 depends upon where you're at with your clients.
24 MR. RIGBY: And Mr. Chairman, Mr. Strong,
25 obviously, the -- we've had a lot of dialogue just

1 in a last little while, both your office, mine and
2 other counsel that are representing the
3 independent, I guess, party participants.
4 Obviously, with the condition that Idaho Power
5 confirmed the letter of -- that you'll be
6 discussing, then I can represent to this Board and
7 to you that we are in agreement.
8 THE CHAIRMAN: Thank you, Mr. Rigby.
9 Mr. Strong.
10 MR. STRONG: Mr. Chairman, members of the
11 Board, which having said that, I've laid out the
12 framework. I don't intend to revisit the
13 framework. Instead, I'll now focus primarily on
14 the Memorandum of Agreement to which the Board is
15 being asked to consider approval.
16 The Memorandum of Agreement is -- it's
17 important to set out what it does and what it
18 doesn't do. The Memorandum of Agreement is
19 intended to reflect understandings between the
20 State and Idaho Power Company with respect to how
21 we would move forward -- we the State would move
22 forward with managed recharge.
23 As I've previously advised the Board, under
24 the Swan Falls -- proposed Swan Falls settlement,
25 if it's implemented, there would be an

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judicial relief. It's simply an expression of the
goodwill and intent that we should attempt to
discourse 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
fact that this -- these whereas clauses 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
9 to reflect any change in terms of State policy, or
10 the agreements that were reached in the context of
11 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 '84.

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

1 sense that, when you have a contractor, when you
2 have an agreement with a party, that you sit down
3 and you try to work cooperatively through those
4 issues. And that's what paragraph 1 attempts to
recognize.

Paragraph 2 is an understanding about the
ESPA CAMP process, which I should mention for the
purposes of the record that the CAMP legislation
was approved and signed into law by the Governor.

And under CAMP, as you're -- as this Board is well
aware, it provides for a managed recharge of up to
two thousand acre feet of recharge on the average
annual basis in the first ten-year period.

And so what we're reflecting here is that
the State water plan represents, as a matter of
law, what the State's policy is with regard to
recharge at this time. Doesn't mean that it can't
be changed in the future. In fact, the framework
makes clear that it can. But as it's presently
implemented, that provision of State law in CAMP
reflects what our recharge policy would be in the

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
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1 the Swan Falls Agreement for use for hydropower
generation at those facilities.
2 And again in the Swan Falls Agreement, it's
3 the State's -- State has the authority to use
4 those waters above Milner, and to use them in a
5 way for recharge without violating the Swan Falls
6 Agreement. But as a consequence of that, if we
7 take water out during certain times of the year
8 immediately above Milner, that means, in terms of
9 meeting the 3900 CFS -- 3900 CFS flow in the
10 irrigation season, or 5600 CFS flow in the winter
11 season, that we have to be cognizant that that
12 action could impact what happens at those reaches.
13 And so what we're expressing here is an
14 understanding that we're all going to be committed
15 to moving forward with phase 1. The company has
16 fully expressed its support for moving forward
17 with phase 1. But it wants to be able to
18 participate in how we implement that to try to
19 minimize those impacts, and to avoid future
20 potential conflicts between us.
21 And so, from that perspective, there's an
22 understanding that, as the Board moves forward,
23 we're going to look at that hundred thousand acre
24 foot target for the first ten-year period. We
25 recognize that adaptive management needs to be a
2 part of the CAMP process. And so built into this
3 is the notion that during that ten-year period,
4 we're not going to go more than 75,000 acre feet
5 above the hundred thousand acre foot target
6 without coming back to the Board and going through
7 a process and evaluating the consequences of that
8 decision. Again, it's your decision to make.
9 It's a process paragraph that we have there.
10 Paragraph 4 is the recognition, No. 1, that
11 by entering into this agreement, the company is
12 not waiving any of its rights to participate
13 pursuant to state law as any other citizen would
14 to come before the Board or to come before the
15 legislature and to express its views with regard
16 to managed recharge and what implications it may
17 have on generation of hydropower at those
18 facilities below the Milner Dam. It also
19 recognizes that the Board will work with the
20 company to sit down and to work through those
21 issues, to receive information from the company,
22 and to try to make -- use that information in a
23 meaningful way to make better decisions in terms
24 of water management.
25 Offentimes, the major problem we've had with

1 water management in the Snake River basin is that
2 we move forward independently of one another
3 without taking into account the implications from
4 a particular decision, and then we revisit those
5 problems in subsequent litigation or conflicts
6 that arise. And the idea here is that, rather
7 than allow issues to build, let's talk about them
8 up front. Let's work through them in a
9 constructive way.
10 Paragraph 5 is one that bears a significant
11 amount of description for the reason that there is
12 a concern that, by having the Board and the
13 Governor work in good faith and cooperate with the
14 company and support the company's attempt to get
15 regulatory relief from the implications or impacts
16 of managed recharge, that somehow makes the
17 Board or the Governor an institutional adversary
18 of the other water users in the basin,
19 particularly the groundwater users. And that's
20 been a concern from Mr. Rigby's clients, from
21 Idaho groundwater users, and from the City of
22 Pocatello. And first, I describe what the
23 understanding is between the State and Idaho Power
24 Company, and then how we have attempted to remedy
25 or reconcile those concerns with the other

1 affected water users.
2 When this provision was being developed, the
3 concern from the company's perspective, and from
4 my opinion rightfully so, was that, okay, if we as
5 a company are going to agree that the State could
6 move forward and make decisions about managed
7 recharge, that if you make those decisions, you
8 ought to own the decision you made. In other
9 words, if our decision is we want to use water
10 above Milner, and that's going to impact flows
11 below Milner, and the ability to make energy from
12 that water, that we ought to acknowledge that
13 we're making that decision, and what the
14 consequences of that decision are. And that was
15 all that was really intended. Because, oftentimes
16 in these battles, you get into them, what happens
17 is we make a decision, and then when someone seeks
18 relief, then they're viewed as a culprit for that
19 particular problem.
20 And what this is intended to do is to simply
21 have us acknowledge as a government what the
22 consequences of our decisions are. It's not
23 intended to have the Board or the Governor be in a
24 position of being an advocate for a particular
25 proposal for the PUC. It's not intended to
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<tr>
<td>1 deprive the PUC of its authority to make</td>
<td>1 concerns of some of the groundwater users. I'll</td>
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<td>2 decisions about the adequacy of the requests being</td>
<td>2 let them speak from their own perspective. But my</td>
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<td>3 made of the PUC, nor is it intended to have the</td>
<td>3 understanding, at least from Mr. Budge on that, on</td>
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<td>4 Governor or the Board take a position with regard</td>
<td>4 behalf of his clients, making these a part of the</td>
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<td>5 to that specific request. It's simply an</td>
<td>5 record, along with the resolution, would</td>
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<td>6 acknowledgment that we will recognize, based on</td>
<td>6 adequately address their concerns about the</td>
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<td>7 our own independent determinations what we think</td>
<td>7 interpretation of this particular paragraph.</td>
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<td>8 the impact of the decisions we're making are so</td>
<td>8 Paragraph 6 is one that -- from the -- from</td>
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<td>9 that that can be part of the public record.</td>
<td>9 your perspective and Governor's perspective is an</td>
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<td>10 The concern is focused on the word support</td>
<td>10 important one. It's an acknowledgement both by</td>
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<td>11 and the view that that could be interpreted more</td>
<td>11 the company and the State that managed recharge is</td>
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<td>12 broadly. And in response to that, in</td>
<td>12 fundamentally a public policy issue that needs to</td>
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<td>13 conversations with various counsel and with others</td>
<td>13 be decided pursuant to state law. It's not a</td>
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<td>14 that are concerned, the State and Idaho Power</td>
<td>14 matter of contract. It's a matter of state law.</td>
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<td>15 Company put together a joint summary of this</td>
<td>15 And so as a matter of state law, it's subject to</td>
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<td>16 particular MOA and the framework, and expressly</td>
<td>16 change or modification in the future based upon</td>
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<td>17 addressed this issue, and I would represent</td>
<td>17 the policy directions that you or the legislature</td>
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<td>18 reflect with comments I just made to you that this</td>
<td>18 adopt.</td>
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<td>19 is intended to simply be an acknowledgment by the</td>
<td>19 And then finally, paragraph 7. Paragraph 7</td>
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<td>20 State of the consequences of its decisions as</td>
<td>20 is an acknowledgment to the company that, by</td>
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<td>21 opposed to taking a particular position before the</td>
<td>21 entering into this MOA, and entering into the</td>
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<td>22 PUC.</td>
<td>22 general agreement, that they do have the right,</td>
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<td>23 As the legislation was moving forward</td>
<td>23 pursuant to state law, to continue to participate,</td>
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<td>24 through the legislature, that concern continued to</td>
<td>24 and that neither the Swan Falls Agreement nor this</td>
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<td>25 resonate, and as a consequence, we received the</td>
<td>25 MOA or the reaffirmation agreement precludes them</td>
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<td>1 letter that I've provided to each of you, and I</td>
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<td>2 would ask be made part of the record for Mr. Randy</td>
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<td>3 Budge, that on behalf of the water users who</td>
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<td>4 express their concerns over this particular</td>
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<td>5 provision and the legislation.</td>
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<td>6 Now, in addition to his letter, you will see</td>
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<td>7 in the materials I provided, and I ask to be made</td>
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<td>8 part of the record as well, a response that our</td>
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<td>9 office, the Office of the Attorney General</td>
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<td>10 prepared in conjunction with the Governor's office</td>
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<td>11 to reflect our understanding of this provision as</td>
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<td>12 well as others. And it's about a 19-page letter.</td>
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<td>13 And it has that statement of concern attached to</td>
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<td>14 it as well.</td>
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<td>15 MR. RIGBY: Excuse me, Mr. Strong, that's the April 13th?</td>
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<td>16 MR. STRONG: That's correct.</td>
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<td>17 MR. STRONG: That's correct.</td>
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<td>18 So what we're proposing is to have those</td>
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<td>19 issues made part of the record. We have -- in</td>
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<td>20 order to also give the other parties a comfort</td>
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<td>21 level that, in fact, the representations that I am</td>
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<td>22 making to you today, and that I am assuming</td>
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<td>23 Mr. Tucker will make to you as well, are reflected</td>
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<td>24 in the resolution for approval of the MOA. And</td>
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<td>25 hopefully, with that, we'll address at least the</td>
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1 hand, there has to be an approach, or an effort to  
2 notice that the recharge would be to increase the  
3 aquifer levels, which would greatly reduce deep  
4 well pumping. And in those levels being raised,  
5 it might also cause more flow in the river.  
6 Are we -- I'm more concerned about the  
7 negativism versus the positive what a recharge  
8 would look on it.  
9 MR. STRONG: Mr. Chairman, Mr. Beck, perhaps  
10 in my presentation, I was too -- too much pointing  
11 on the downside, because that's the concerns that  
12 have been expressed. But the reality is you're  
13 correct. Recharge has both positives and  
14 negatives. And to the extent that recharge may  
15 not be going over Milner, it's certainly  
16 augmenting the aquifer. It provides a more stable  
17 supply, and it will help in those springs. And so  
18 it's a balancing act we're going to go through on  
19 recharge.  
20 I think really what's been kind of the heart  
21 of debate on recharge over the last few years is  
22 everybody is looking at it from the worst case  
23 scenario. I think the reality, and what the  
24 future will show us is that recharge is a tool,  
25 not the only tool, but a tool that can be used in  

1 conjunction with other tools to try to bring the  
2 aquifer back into balance.  
3 And I think that's reflected in your CAMP  
4 proposal. And I think as we go forward and  
5 implement it, it's going to be incumbent upon us  
6 to document what are the consequences of the  
7 decision we make. And it may be that we find more  
8 benefits than we do negatives. But from a company  
9 standpoint, they're concerned about the negatives  
10 because that impacts their ability to generate.  
11 From a positive standpoint, having enhanced  
12 spring flows is going to enhance their ability to  
13 generate with a more reliable flow, below Thousand  
14 Springs. And I think it's that realization -- and  
15 I'll allow Mr. Tucker to speak to that -- but I  
16 think it's that realization that recharge isn't  
17 something you can view as either a positive or a  
18 negative. It's got a balance. And we need to  
19 consider that as we implement it and do it in a  
20 way that's most effective to optimizing the  
21 resources.  
22 THE CHAIRMAN: Thank you.  
23 Anything else Mr. Beck?  
24 Anyone else? Questions of Mr. Strong?  
25 What?
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1 certainly generally confirm and participated in
2 the summary that was done. And I confirmed the
3 letter that he sent. The letter that he sent, the
4 September 13th letter or the April 13th letter,
5 generally concur with that letter. No problems
6 with the letter.
7 What I want to do this morning is talk a
8 little bit broader than perhaps what this MOA
9 talks about. It's focused obviously on recharge.
10 But one of the first things that, when we sat down
11 with the State to talk about trying to resolve the
12 Swan Falls litigation, we agreed upon was a
13 litigation was not an appropriate forum to really
14 resolve complex public policy issues. We've been
15 in litigation with the State for several years on
16 issues that really we're not going to get to the
17 bottom line. And the bottom line being how do we
18 take care of the Snake River Plain Aquifer? How
19 do we implement CAMP? And how do we go forward to
20 see if we can't resolve some of the issues that
21 have been plaguing the State of Idaho over the
22 last several decades? Litigation wasn't going to
23 solve that. So we agreed upon that, and we agreed
24 to move forward.
25 Now recharge, in that litigation, was a hot

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1 context, we felt we've got to more forward in a
2 cooperative manner under the CAMP and look at
3 recharge in the same context as all the other
4 water management tools we have. What benefits
5 will it bring. What attributes does it have that
6 might foster some public policy debates about how
7 much we should use recharge and where we should
8 use it. That's what this agreement really does
9 and sets the stage for. Sets the stage for Idaho
10 Power Company to be a partner with the State in
11 the context of the CAMP and water management
12 processes.
13 Now, there's various other partners in that
14 process. Some of them are in the room. There are
15 other potential partners that we haven't even
16 talked to yet in the context of CAMP. But we
17 think it's recognized under CAMP that there has to
18 be a leadership role from the State of Idaho. And
19 frankly, this Board is going to have to take the
20 leadership role in that context. To really direct
21 CAMP, and direct these measures forward, and make
22 sound public policy choices as to what measures
23 are in the best interests of the State of Idaho,
24 the Snake River, and the Eastern Snake Plain
25 Aquifer.

1 button issue. It was a hot button issue because
2 of what occurred two or three or four, five years
3 ago, 2006. We all remember House Bill 800? The
4 acrimony that came out of that debate, that fight,
5 if you will, which really blossomed into this
6 litigation. But as we went through that
7 litigation, we found that the end result was not
8 really going to even resolve that issue, because
9 we knew -- Idaho Power knew, and I think the State
10 knew that, in the context of the CAMP process, we
11 were going to proceed with some recharge.
12 As Clive, recharge is a fundamental tool of
13 water management. It was recognized as a
14 fundamental tool back in 1984, when the original
15 framework was signed for Idaho Power and the
16 State. The problem was no one knew how it was
17 going to be implemented or what it was going to
18 do. So as a consequence -- Clive is right -- it
19 became somewhat of a boogy man, if you will, in
20 the context of -- at least in the company's
21 perspective early on, how big was this going to
22 be? What impact it was going to have.
23 Mr. Beck makes a very good point, though.
24 As you start to look at recharge, you can see
25 pluses and minuses on both sides. So in that

8 (Pages 29 to 32)
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<td>1. to worry about boots on the ground, or grants on the ground. I agree. We need to worry about how we're going to implement these various measures. But they have to be implemented. And I think this whole context of what we put together under the legislation is they should be implemented under the CAMP process. And there's a lot of work to be done that -- I just saw Mr. Barch come in -- there's a lot of work to be done in the context of setting up the implementation committee, how that committee's going to consider measures to move forward with, how its a going to bring those measures to this Board to get approved, and how this whole process is going to work. A lot of details to be worked out. We'd like to be a partner in helping to work out the little details. So with that, I'll answer questions if you have specific questions about that. I just want to give a little bit broader context. THE CHAIRMAN: I believe that the fear of the unknown is what is holding all of us back. It is too bad that we can't look into a crystal ball and see ten years from now how worthwhile these decisions we're making today are going to be. Are there any questions for Mr. Tucker?</td>
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<td>1. someplace, because we don't. But we are -- as with any other citizen, we have -- we have the ability and the opportunity to come before this Board and talk about the measures that are going to be put in place, and how those measures should best address all of the various issues this Board should be concerned with with respect to water management. THE CHAIRMAN: Any other questions?</td>
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<td>1. 1. Mr. Tucker -- and again, this is the attorney in me, but I just need to ask this question. In response to the April 13th, 2009 letter, I heard you say general agreement. I guess I would ask you, is there anything specific in that letter -- I'm assuming you've read it numerous times. Is there anything specific in that letter that you have any problem with? And again, I don't want to beat a dead horse, but I want you to understand that I'm concerned about my position on this Board. And</td>
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<td>1. 1. the only -- in voting on this, the only way I can response, because I believe that response addresses the concerns of my particular clients in a -- obviously, there were many other concerns. But having gone through the litigation and dealt with the minutia of certain terms, that's why I'm beating this dead horse. And I apologize, but I guess I really don't apologize. I need to have a response to that.</td>
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<td>1. 1. Mr. Tucker.</td>
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<td>1. Mr. Tucker: Mr. Cuddy, Mr. Chairman, when you say you, Mr. Cuddy, I don't want to -- I don't want to answer that in the context of Idaho Power, because Idaho Power obviously is not the water manager up and down the Snake River. It wants to be a participant in those water management decisions. This sets the framework for Idaho Power along with other interested parties to participate in that. Mr. Cuddy: Well, that's what I mean. And I see it, with this, you become a part of the management process. Mr. Tucker: That's our hope. And again, not to raise our level. I don't want to give people paranoia to think that Idaho Power is stepping out and has some super priority interest.</td>
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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: Thank you. I will no longer cross-examine.

MR. RIGBY: 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.

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?

MS. McHUGH: Thank you.

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 then, "whereas, nothing in this memorandum's intended to divest or interfere with Public Utilities Commission's authority to independently evaluate the effects of managed recharge and hydropower generation to pass the -- or the appropriateness of any requests by Idaho Power Company to address any such effects."

2 So again --

3 MR. GRAHAM: What paragraph are you reading from on the resolution?

4 MR. STRONG: It's the second page of your resolution.

5 HAL ANDERSON: The second whereas on that page starts -- second and third.

6 MR. GRAHAM: Oh, okay. Thank you.

7 MR. STRONG: And then the third one is intended to address the concern about what the State would do in those proceedings. And it says, "whereas, the memorandum does not require the Board to take any affirmative position on whether a specific request by the Idaho Power Company seeking relief for the alleged effects of managed recharge is appropriate or necessary, or on how any resolving rate impact should be allocated."

8 So these three paragraphs are intended to confirm the representations that I have made to you about the meaning of that particular provision, and will be part of the history of this particular agreement if it is approved by the Board.

9 Now, let's -- what we're really dealing with here -- and I think Mr. Tucker is correct -- that we have a relationship, one that is kind of like a family relationship, where issues of trust have arisen over time, and there's concerns about making sure that we all have the same understanding so we don't get into other litigation down the road. And so that's why these provisions are here, and rightly so.

10 The water users that have been before you have expressed concern. Want to make sure that there's that understanding so that we don't unnecessarily or inadvertently cause conflict down the road in terms of if implementation goes forward. What we really need to do, and what I think Mr. Tucker's point was well made this morning, is when you get into these issues of trust, you've got to start somewhere. And this is what this is intended to do. It's intended to be an agreement that starts us down the road to where, rather than viewing ourselves as adversaries, we're going to try to view ourselves as people who have interests that sometimes conflict, and sometimes converge. And so, try to manage those in a way that avoids the necessary -- the conflict that we've had in the past. And obviously, because of the trust issues, it's difficult to get there. But at the beginning of the process, if you don't make some representation, if you're going to go down that process, you never get there anyway.

11 And so what we're really trying to do with this MOA is to reflect that understanding. We're going to try to find that cooperative relationship that has existed in the past, restore ourselves back to that. At the end of the day, this MOA is merely the statement of intent between Idaho Power Company and the State. We cannot, as a matter of state law, and the company recognizes this, we cannot, matters of state law, bind the Board to a particular position, we can't bind the Governor to a particular position. As a government, you have a right to make those decisions. There may be another Governor that comes down the road that has
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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 hydrogenation, 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

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1. Board, I'm Jo Beeman of Beeman & Associates. And
2. I represent the City of Pocatello in the two Swan
3. Falls matters at the SRBA court. As part of the
4. record today, Candice McHugh provided the April
5. 9th letter from the groundwater users. I wanted
6. to ask if that letter had the attachment, which I
7. believe is an order -- there was an attachment to
8. that letter that was an order.
9. MS. McHUGH: No.
10. I have copies with me today -- to include in the
11. record for the Board's consideration of the
12. Memorandum of Agreement is a notice that the City
13. of Pocatello filed in the Swan Falls litigation.
14. And in addition, in that notice is a reference to
15. the subtext of what we've been talking about this
16. morning, the third party beneficiaries of the Swan
17. Falls Agreement. And in the litigation,
18. Miss McHugh and Mr. Rigby represent the
19. groundwater users. And Pocatello is a
20. representative the face of the municipal water
21. users who are groundwater users in the state.
22. And in the context of the state policy, and
23. what the interface we have here between these
24. extremely important policy decisions, and the

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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,
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1 part of this framework -- a core part of this  
2 framework sets forth in black and white a formula  
3 about how those minimum flows are going to be  
4 measured. And we're going forward without the  
5 data of what has happened the last 24 years. That  
6 is Pocatello's concern.  
7 And so my response to the State was, can you  
8 provide us that data? I have begun to look at it.  
9 And I have to thank Miss McHugh's firm. They've  
10 had one of their experts looking at these issues  
11 as well. And we have talked about it. But we  
12 simply don't have the data. And the thing about  
13 the certainty and the trust going forward that  
14 everybody wants to support is that we have  
15 2 million acres of land in this state irrigated  
16 with groundwater. And we have two things that are  
17 very uncertain going forward to this framework.  
18 One is the Department's rules of appropriation,  
19 which came out of the Swan Falls Agreement have at  
20 their very end a map, which has a line that  
21 designates if you're inside this line and the Swan  
22 Falls flows are not met, you're going to be  
23 curtailed if your priority date is junior to 1984  
24 and 1985. We don't know if that line is going to  
25 stay the same.

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1 I think anybody who's worked on Swan  
2 Falls -- you could probably ask Director  
3 Tuthill -- will tell you that's not a hydrologic  
4 line. And if, as we go forward with this  
5 framework -- and this is stated in the  
6 documents -- that there is a desire to make that  
7 more correct. Well, I don't think anybody could  
8 stand before you and say, in making that line  
9 correct, we're going to have a smaller group of  
10 groundwater users. No. If anything, that line  
11 will get larger. That's concern No. 1.  
12 No. 2 is, if you don't have the data about  
13 what was going on at Swan Falls -- and by that, I  
14 mean -- this is an engineering term -- being able  
15 to disaggregate how much of that flow is because  
16 the variations in Idaho Power operations -- I  
17 think there are five or six dams. And most of  
18 them run at the river. How much is from Bureau of  
19 Reclamation programs, how much is from rental  
20 water, and what have we been doing in the past?  
21 Has the determination of those minimum flows been  
22 this is what the Murphy Gauge reads. And all of  
23 the water is the same color. We count it the  
24 same. The framework that is going forward, and  
25 the legislation -- which is why Pocatello -- I

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1 know it's been signed, but 1169 makes public  
2 policy of the exhibits to the framework. Those  
3 exhibits include the decrees. The decrees have a  
4 formula. We don't know if that formula is, in  
5 fact, what the State has done for the last 24  
6 years. And in large measure, we don't know,  
7 because we don't have the data.  
8 That's my concern, that we're going forward  
9 with a formula that says you look at the Murphy  
10 Gauge, and you've got to know what color the water  
11 is. If it's red, we don't count it. If it's  
12 green, we do. That's the concern that Pocatello  
13 has. And the document I'm making of record is  
14 just a notice to the SRBA court that there are  
15 five parties to the litigation. Two have signed  
16 the framework, and that Pocatello joined. It  
17 initiated one of the basin-wide issues on Swan  
18 Falls for the benefit of the third party  
19 beneficiaries. The framework here that we're  
20 talking about, and the Memorandum of Agreement  
21 addressed the piece of the Swan Falls  
22 litigation. Pocatello came into that expressly as  
23 a third party beneficiary of the Swan Falls  
24 Agreement.

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1 And that's the capacity in which I'm  
2 speaking to all of you today on behalf of the City  
3 of Pocatello. If anyone has any questions, I'd --  
4 THE CHAIRMAN: Any questions of Miss Beeman?  
5 MR. RIGBY: Mr. Chairman, I don't have any  
6 questions. I just want the record to be clear,  
7 Miss Beeman said that my group, and I want to make  
8 sure maybe there is a confusion. My group in the  
9 litigation were groundwater users. In fact, they  
10 were not. They are two from each of my -- what I  
11 call my three regions as representative clients,  
12 irrigation companies and canal companies, each of  
13 whom, however, do have, within their membership,  
14 certain groundwater users. But the actual  
15 entities themselves entities are surface water  
16 users. I just wanted to make that --  
17 MS. BEEMAN: Mr. Chairman -- Mr. Rigby,  
18 excuse me.  
19 MR. RIGBY: No, that's fine. I just want to  
20 make sure --  
21 MS. BEEMAN: I appreciate your correcting  
22 the record.  
23 THE CHAIRMAN: The attorney in all of us.  
24 Any other questions of Miss Beeman?  
25 MS. BEEMAN: This is maybe a little out of
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 MR. CUDDY: Aye.
2 MS. McGOURTY: Mr. Alberdi.
3 MR. ALBERDI: Aye.
4 MS. McGOURTY: Mr. Chase.
5 MR. CHASE: I'm going to abstain.
6 MS. McGOURTY: Okay. Mr. Beck.
7 MR. BECK: Aye.
8 MS. McGOURTY: Mr. Chamberlain.
9 MR. CHAMBERLAIN: Aye.
10 MS. McGOURTY: Mr. Graham.
11 MR. GRAHAM: Aye.
12 MS. McGOURTY: Mr. Rigby.
13 MR. RIGBY: Aye.
14 MS. McGOURTY: Chairman Uhling is absent.
15 So we have six ayes.
16 THE CHAIRMAN: Six aye's and one abstain?
17 MS. McGOURTY: One abstain, one absent.
18 THE CHAIRMAN: One absent.
19 Motion passes. The resolution passes,
20 excuse me.
21 Mr. Strong.
22 MR. STRONG: Mr. Chairman, if I can make one
23 remark, we -- with this, I want to re-emphasize
24 there's still the issue of working out decrees.
25 And from the State's perspective, we're committed
26 to working with the parties to get that
27 accomplished. And I would announce now -- I'll
28 send out an e-mail later -- but I'll announce now
29 that last night I met with the director. And we
30 have set up two meetings, two workshops. One will
31 be on May 6th. The purpose of the May 6th meeting
32 will be to share information with regard to the
33 number of water rights that the Department has
34 concluded would enjoy the benefit of the
35 subordination and those that would be deemed to be
36 diverting from trust water.
37 The next workshop would be on May 12th. And
38 both of these are in the afternoon at 1:00
39 o'clock. The May 12th workshop, will focus on the
40 issue that Miss Beeman has raised about --
41 UNIDENTIFIED SPEAKER: Phone is ringing.
42 MR. STRONG: -- how we measure flows at the
43 Murphy Gauge. And so hopefully we'll be getting
44 that information out --
45 MS. McGOURTY: Is that Bob's phone?
46 UNIDENTIFIED SPEAKER: I don't know. It's
47 in the bag here. It's Bob's.
48 MS. McGOURTY: Bob --
49 UNIDENTIFIED SPEAKER: Could someone find
50 their phone?

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<td>1. reaffirmation of Swan Falls Agreement is not an intent to change it. For example, one issue</td>
<td>1. 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.</td>
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<td>2. 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 has been based upon that.</td>
<td>6. THE CHAIRMAN: Director Tuthill, please. 7. DIRECTOR TUTHILL: Thank you, Mr. Chairman. 8. And I’m very pleased that the Board does have 9. 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.</td>
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<td>9. 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.</td>
<td>10. 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.</td>
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<td>11. As we have come very close to not meeting that minimum stream flow, it's important that we consider the uses of this water.</td>
<td>12. It's my understanding that the Board has assigned this water to the rental pool for this year. The purpose of this water is to augment the minimum flow to Palisades. We need to ensure that this minimum flow is met. So I want to bring this 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 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.</td>
</tr>
<tr>
<td>13. 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.</td>
<td>14. 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.</td>
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<td>15. As we have come very close to not meeting that minimum stream flow, it's important that we consider the uses of this water.</td>
<td>16. It's my understanding that the Board has assigned this water to the rental pool for this year. The purpose of this water is to augment the minimum flow to Palisades. We need to ensure that this minimum flow is met. So I want to bring this 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 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.</td>
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<tr>
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It's been discussed various times. And I didn't vote with the idea that this is going to be firm water. So those are the kind of issues. 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 a 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.
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 5,000 acre feet per year to add to the tribal right as the equitable adjustment.

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 us 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, and recognizing 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
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<tr>
<td>1 is now, I think, up to speed in being represented.</td>
<td>1 presentation regarding ideas for your</td>
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<tr>
<td>2 Obviously, the tribe is represented. The Feds are</td>
<td>2 consideration in regards to how we -- how we get</td>
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<td>3 represented. I guess the one that is missing</td>
<td>3 started with the tasks that are outlined in House</td>
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<td>4 right now in an apparent position, although the</td>
<td>4 Bill 264 and the ESPA plan. And to do that, do a</td>
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<td>5 director is certainly there, but without the, I</td>
<td>5 little background what the components of the plan</td>
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<td>6 guess, confirmed authority to act and work on</td>
<td>6 are. So the draft implementation committee</td>
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<td>7 behalf of the Board, we may want to do that, or at</td>
<td>7 purpose, function and composition, including the</td>
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<td>8 least consider it. That would be my suggestion.</td>
<td>8 idea, the concept of working groups, I want to</td>
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<td>9 THE CHAIRMAN: What's the pleasure of the</td>
<td>9 re-emphasize here that this is just a starting</td>
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<td>10 Board?</td>
<td>10 point for discussion. And for your discussion, to</td>
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<td>11 Mr. Tuthill, would you be willing to report</td>
<td>11 talk a bit about the work plan, along with some</td>
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<td>12 back to us?</td>
<td>12 time frames, and then get some direction from you</td>
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<td>13 I am very appreciative of the report that</td>
<td>13 as the Board.</td>
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<td>14 you just gave.</td>
<td>14 Background, where we started from was when I</td>
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<td>15 Mr. Tuthill, would you be willing to report</td>
<td>15 was -- when I was originally hired, it was a</td>
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<td>16 back to us?</td>
<td>16 question about whether we're going to do anything</td>
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<td>17 I am very appreciative of the report that</td>
<td>17 different in terms of managing this resource. And</td>
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<td>18 you just gave. It goes a long ways towards</td>
<td>18 that was -- we crossed that bridge when we did the</td>
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<td>19 different in terms of managing this resource. And</td>
<td>19 framework. And we convened -- you convened the</td>
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<td>20 you just gave. It goes a long ways towards</td>
<td>20 advisory committee. And that advisory committee</td>
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<td>21 different in terms of managing this resource. And</td>
<td>21 was trying to figure out what to do in terms of</td>
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<td>22 you just gave. It goes a long ways towards</td>
<td>22 how -- what to do to manage the resources, the</td>
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<td>23 different in terms of managing this resource. And</td>
<td>23 measures, the locations, the principles, including</td>
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<td>24 you just gave. It goes a long ways towards</td>
<td>24 the principles around funding.</td>
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<td>25 different in terms of managing this resource. And</td>
<td>25 It seems to me where we are now with the</td>
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<tr>
<td>1 THE CHAIRMAN: It's a Palisades storage.</td>
<td>1 adoption of House Bill 264 is that we're in the</td>
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<td>2 MR. ANDERSON: Members of the Board,</td>
<td>2 question -- we're in the place of how do we go</td>
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<td>3 Mr. Jonathan Barch is here. The next agenda item</td>
<td>3 about implementing the plan. And so, how do we</td>
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<td>4 is the ESPA CAMP implementation. I would suggest</td>
<td>4 establish a solid foundation for the work that's</td>
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<td>5 we take a five-minute break while we get him set</td>
<td>5 based on good science, that's consistent, that's</td>
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<td>6 up. He's going to be presenting with power point</td>
<td>6 coordinated, and while at the same time is not</td>
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<tr>
<td>7 presentation.</td>
<td>7 being rigid. And so the challenge about getting</td>
</tr>
<tr>
<td>8 (Break taken.)</td>
<td>8 and moving forward now is about how do we go about</td>
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<tr>
<td>9 THE CHAIRMAN: We're going to bring this</td>
<td>9 developing these implementation plans; how do we</td>
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<td>10 meeting back to order for about two minutes.</td>
<td>10 go about operationalizing with enough specificity</td>
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<tr>
<td>11 We're going to go ahead and break for lunch. Our</td>
<td>11 to ensure success for what -- the good work that's</td>
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<td>12 meals have got here. And I know that Jonathan is</td>
<td>12 been done in the ESPA plan. So that's a bit of</td>
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<td>13 going to be lengthy enough that we're not going to</td>
<td>13 the background there.</td>
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<tr>
<td>14 wait to take our meal. So let's break for lunch</td>
<td>14 As you'll remember, as you all know, the</td>
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<tr>
<td>15 until about a quarter after 12:00. And then we'll</td>
<td>15 overall long-term goal is a 600,000 acre foot</td>
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<td>16 reconvene the meeting.</td>
<td>16 water budget change, 20-year time frame, $600</td>
</tr>
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<td>17 (Lunch break taken.)</td>
<td>17 million cost, $30 million annually, and where we</td>
</tr>
<tr>
<td>18 THE CHAIRMAN: Gentlemen, let's go.</td>
<td>18 spent the bulk of the time was on phase 1, which</td>
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<td>19 Let the record show that meeting No. 7-09</td>
<td>19 is that one to ten years with a hydrologic target</td>
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<td>20 has been reconvened at 12:15. And we are at</td>
<td>20 of 2 to 300,000 acre foot change, water budget</td>
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<td>21 agenda item No. 5, ESPA CAMP implementation.</td>
<td>21 change, actions that we're trying to do is</td>
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<tr>
<td>22 Jonathan Barch.</td>
<td>22 increase the aquifer levels, the spring and reach</td>
</tr>
<tr>
<td>23 MR. BARCH: Mr. Chairman, Members of the</td>
<td>23 levels, distribute that equally, or geographically</td>
</tr>
<tr>
<td>24 Board, it's a pleasure to be here with you. My</td>
<td>24 across the ESPA, and set in motion the</td>
</tr>
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<td>25 intent would be to walk through a power point</td>
<td>25 institutional confidence with this long-term plan</td>
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18 (Pages 69 to 72)
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1. implementation.
2. The actions there, you've seen surface --
3. groundwater, surface water conversions,
4. management, and incidental aquifer recharge,
5. demand reduction, pilot weather modification, as
6. well as other additional actions, including the
7. CAMP implementation committee. And we're going to
8. be talking specifically about that. Continuing to
9. integrate environmental considerations. The
10. clearing house, evaluate options to implement that
11. flexible market-based approach to connecting
12. willing participants in this, in the water
13. management projects.
14. Outreach and education. So outside of the
15. outstanding work that -- and leadership that
16. you've provided as a board in terms of educating a
17. broader range of interests than had previously
18. been done, how do we both develop and fund a broad
19. water education and outreach effort, management
20. and flexibility, as well as the downstream
21. transfer policy. And those are the plan -- the
22. highlights. And I guess I should say that I'm
23. staying at a pretty high level in terms of where
24. we are, and including the -- my ideas around the
25. implementation committee. And we can get into

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1. more specifics later.
2. So my draft purpose and function for this
3. implementation committee, which again, I just want
4. to overemphasize that this is an idea -- these are
5. ideas as to -- but consistent with the plan is to
6. develop consensus recommendations to you all. The
7. Board, of course, remains, and is the
8. decision-maker on the ESPA planned projects, which
9. is the phase 1 funding collection mechanisms.
10. That's top of the list in terms of identifying,
11. and the task that's going to be on a fast track in
12. terms of needing to have something done earlier in
13. this 12-month process that we're talking about.
14. Implementation criteria, plans and
15. priorities, early action projects. My
16. indications, and I think -- and I'd like some
17. feedback from you all later -- is that it's great
18. to have plans, criteria, protocols. And within
19. the next 12 months, we're going to need some
20. successes. We're going to need some actions on
21. the ground to demonstrate that and to build that
22. overall confidence. And so then there's the
23. foundation for -- for the plan of implementation
24. that's strategically coordinated, consistent and
25. transparent, similar to the process that you've

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1. employed for the last number of years that has
2. resulted in the ESPA plan.
3. Again, the draft tasks are similar.
4. Collection mechanisms, criteria and priority,
5. goals and implementation plans, analysis and
6. incorporation of work group proposals. And I'll
7. talk about what I'm thinking about with the
8. working groups. Ensuring implementation,
9. coordination, consistency, monitoring and
10. reporting, and then any necessary legislation, if
11. any, to go about implementing the plan.
12. So here's where I'll stop for a moment and
13. talk about the who. My vision -- or my thought is
14. that what is needed is a swift, easy and smooth
15. transition from the good work that's been done on
16. the advisory committee into those tasks that I've
17. just outlined. My thought here is that previous
18. advisory members and alternates who are willing
19. and are able would be -- comprise the
20. implementation committee. If they're unable to
21. serve, then you would identify a replacement
22. through a solicitation process, and we'd have the
23. similar number of broadly represented interest
24. groups. You've made this investment in terms of
25. education. The sense of broad buy-in to the plan

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1. I think is going to be as important, if not more
2. important as we have had water users and others
3. contributing financially to the plan. That we
4. would have agency participants continue to be --
5. to have an active role in committee deliberations.
6. Ultimate decisions, obviously, will be made
7. by the Board. What you're looking for from this
8. group, as I understand it, is a consensus
9. recommendation by implementation committee
10. members. So when we are making decisions on
11. the -- on recommendations, it's not the alternates
12. or the agency participants, but it's those key
13. representatives, similar to the advisory
14. committee. That we would meet--- originally I had
15. thought -- and my discussions with Mr. Anderson
16. and with others, that the implementation committee
17. could meet on a quarterly basis. Based on
18. discussions, it's unlikely that that's going to be
19. enough time to help to -- to provide that policy
20. guidance. And so, what I was thinking was that we
21. would start with a bi-monthly meeting, and
22. potentially then afterwards, less frequently.
23. We'd establish a consistent schedule. And one
24. suggestion was to do that to make sure that the
25. implementation committee meets prior -- to

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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 I 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 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

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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

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

heard, and especially those who were alternates,
2 Again, we were trying to make the committee so it
3 wasn't too large to begin with. So we named the
4 alternates. But as a practical matter, in almost
5 every case, that alternate represents a group or a
6 contingency that the main one does not. And if
7 you now limit that -- and again, I want to hear
8 from you guys. But if you limit that to only the
9 active -- or the main one and not the alternate,
10 I'm afraid you'll have some major push back.
11 THE CHAIRMAN: Mr. Alberdi.
12 MR. ALBERDI: Mr. Chairman, Jonathan, you
13 know, when you look at the surface water group,
14 the whole surface water area, I think one of the
15 reasons that the success was -- the success that
16 we had was that we had folks from the upper valley
17 as well as from the lower valley that had an
18 opportunity to come together. And I think,
19 whether it's groundwater or it's surface water,
20 that we have to have representatives, one from up
21 valley and one from down valley. Because, if we
22 take that as a group and say, well, we're going to
23 do surface as one, we're going to do groundwater
24 as one, but then you have to find balance of how
25 many can we have and still move and operate and

21 (Pages 81 to 84)

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1. 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.

2. MR. BARCH: That's true.

3. 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.

4. 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.

5. 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.

6. MR. BARCH: Right.

7. 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. So I'm not thinking we need a lot of people. 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.

8. MR. BARCH: Yeah.

9. 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.

10. UNIDENTIFIED SPEAKER: We can ask them --

11. 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...

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1. 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.

2. MR. BARCH: That's true. minus money minus money minus money.

3. MR. ALBERDI: And we've all been through this good water year. And I think if we don't have successes, it will unravel pretty rapidly.

4. 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 this, but anybody that's called me wants to stay on the Board. So I think that becomes a problem.

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

6. 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.

7. 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. So I'm not thinking we need a lot of people. 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.

8. MR. BARCH: Right.

9. 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. So I'm not thinking we need a lot of people. 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.

10. MR. BARCH: Yeah.

11. 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.

12. UNIDENTIFIED SPEAKER: We can ask them --

13. 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...

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1. when you start eliminating.

2. 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 on that -- that group.

3. And there is low -- there's low-hanging fruit out there that's very easily.

4. THE CHAIRMAN: So can we take a good look at the makeup of the committee and eliminate some people just on the basis that they're not paying anything into the advancement of it?

5. MR. CHASE: Well, you know, I argued that argument when the well drillers -- I said, if you're not paying, I don't see why you can 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.

6. 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.
1 So you know, I don't know if you could make
2 that a caveat.
3 THE CHAIRMAN: Well, it's the Board's choice
4 who's going to be on there.
5 MR. CHASE: Yeah. And as far as agencies, I
6 guess what agencies are we going to eliminate? I
7 mean, I -- You know, to me, you need to have fish
8 and game at the table on this, because those are
9 issues we have to deal with in DEQ's.
10 So when I'm sitting there, I'm trying to --
11 there's only one group I could see that we could
12 eliminate. And I -- that didn't come a lot. And
13 that actually was IACI wasn't there very often.
14 But I don't know if you can eliminate IACI.
15 MR. RIGBY: Mr. Chairman, maybe we need to
16 clarify what I said about that (unintelligible).
17 THE CHAIRMAN: Mr. Rigby, go ahead.
18 MR. RIGBY: Mr. Chase -- Mr. Chairman and
19 Mr. Chase, I did not mean in any way to eliminate
20 the agencies. What I talked -- what I was
21 referring to was the acting participation as any
22 other member. In other words, just as we
23 attempted to -- as we worked through this with the
24 Board, I, as chairman, attempted to allow Board
25 Members to have the first go around. Once the

1 Board had exhausted its questions, then I
2 generally resorted to you in the back and other
3 members. That's all I'm saying is that, as I saw
4 the group, and the complaint I've heard, is that
5 an agent -- one agent -- the agency member that
6 wanted to dominate or to deal with it had as much
7 right to participate as anyone else during that
8 initial go around. That's all I was suggesting.
9 Not that we eliminate them. No. You're
10 absolutely right. Most of those agencies, in the
11 end, you will need to have their objectives.
12 That's not what I inferred at all, or meant to say
13 at all.
14 UNIDENTIFIED SPEAKER: Mr. Chairman?
15 THE CHAIRMAN: Trevor.
16 UNIDENTIFIED SPEAKER: I think the agencies
17 are very important to keep that momentum going,
18 because any time people are eliminated, you get
19 that fallout. But that doesn't mean that they
20 have to have a voting right either. They can be
21 ex officio members and be involved in the process.
22 But when it comes to making the decisions in
23 voting, then I think it's -- goes back to the
24 paying members, or the voting members.
25 MR. CHASE: And Mr. Chairman, if I may

1 make -- because I was an alternate, but I probably
2 spoke more on behalf of the cities than the
3 others. But I tend to talk too much at times too,
4 I admit.
5 THE CHAIRMAN: All right. Mr. Jonathan.
6 MR. BARCH: Well, I think there are a number
7 of ways that -- let's start with the agency
8 participation. I think that the operating
9 protocols which govern the advisory committee was
10 the first decision the advisory committee made.
11 And we're going to need to readopt them and make
12 modifications. Can call out specifically about
13 the participation of representatives, alternates
14 and agencies, and whether that specifically is
15 about that the agencies aren't at the table, and
16 are only called upon as a resource. That's
17 something that you can -- you can decide.
18 I think in terms of the -- so I think the
19 operating protocols is where -- where, with your
20 guidance, we establish -- establish, basically,
21 those ground rules. I think, coming to the issue
22 of composition, recognizing that there are -- that
23 there are interest groups that are going -- that
24 have phase I funding participation targets, my
25 suggestion, or my proposal here was that they be

1 the only ones to be part of that funding working
2 group, that that's them. But that on a whole, we
3 don't get into trying to reconstitute the entire
4 implementation -- entire advisory committee. So
5 that was my attempt to say how do we recognize the
6 role that funding -- funding -- certain
7 stakeholders have in terms of the funding
8 participation targets, while at the same time as
9 creating and building on what we've done before.
10 And I -- I tend to agree with Mayor Chase
11 that I think that, in fact, that this -- this
12 is -- this was a successful group. That this was
13 a group that, from when I started, when you hired
14 me on here, people said you won't be able to get
15 anything done on this issue or with this group.
16 And I think that they've proven you wrong. Where
17 I come from, if it's not broken, or it's not -- it
18 ain't broke in Pennsylvania where I'm from, you
19 don't fix it. And so the idea is how do we build
20 on that success and that momentum while making
21 adjustments for more efficient -- and that's
22 really where the working groups come into play,
23 which is smaller groups, really task-oriented,
24 less -- more frequency than the implementation
25 committee itself. But not to -- not on the
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<td>1 implementation committee to start to take away names or interest groups because I think what it does is it will detract from the difficult work that you have in front of us in terms of a very short period of time. And I think many -- Mr. Chairman, Members of the Board, you remember how we convened advisory committee. And that was not necessarily the easiest process in the world. My hope would be that we use the energy, the time, and the focus that we have amongst the advisory committee members to get started with doing the work. And so that's kind of my interest -- overall interest is getting on with the tough work in front of us versus get bogged down in who's in and who's out, and why am I out, and why are they -- other folks not out. So -- but at the same time, recognizing that the funding -- those who are contributing financially have a different role in particular as it comes to the funding collection mechanism, and that funding working group. So that's just so we're clear about kind of where -- what I'm thinking.</td>
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<td>1 For those who are unwilling or unable to continue to serve, that they -- that there be a nomination for just those -- those categories. It limits your decision-making to versus the whole thing. We keep the same interest groups there. And then in terms of the working group, that there's likely to be more interest in certain working groups than others. But those have to be small. They have to be focused. And there has to be the kind of expertise so that we can actually develop viable work plans that give us that consistent view across about how we're going to implement this. That, including the monitoring and developing those types of protocols, that we're able to really start with that, that foundation. I think this is a real important year in terms of setting -- setting the overall program up for success. And we're going to need resources outside of those who can provide policy direction. So I'm hoping I'm being clear about what I'm thinking. And again, I want to qualify all that with this is your process and your decision. I'm just providing some input.</td>
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<td>MR. GRAHAM: I think that makes a lot of sense that funding group would be the people that are paying. But you must have some idea, Jonathan, on target numbers for the implementation committee and the two working groups.</td>
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<td>MR. BARCH: For the two working groups?</td>
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<td>MR. GRAHAM: How many members on each group?</td>
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<td>MR. BARCH: Right. So there's -- let's talk about the funding piece -- the funding mechanism -- funding working group, which --</td>
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<td>MR. GRAHAM: That would make me -- seems to me that would make sense, your recommendation that those that are obtained be that group.</td>
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<td>MR. BARCH: Well --</td>
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<td>MR. GRAHAM: Total advisory group?</td>
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<td>MR. BARCH: That's what I'm suggesting, which is that the advisory committee be reconstituted in almost a mirror image, with some exceptions, that become the implementation committee. They don't meet as frequently. Their role is continued to be more of an oversight, again. And that the real question about how -- how to go implement the plan, from a technical perspective, from an economic perspective, is done in those working groups. And they're fed back to -- the options in the proposals are fed back to that for their policy -- the overall policy direction, because I think that's where that can serve you well. So that -- the implementation committee I would say is 16 members, plus their alternates.</td>
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<td>MR. BARCH: Right. So there would be seven.</td>
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<td>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...</td>
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MR. BARCH: Well, the second phase is to -- 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
And that is, for irrigated ag to provide over a third of the funding, and 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 the CAMP process going.

---

I hope 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 I told -- 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
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1 option -- where I came down was that we used those
2 on an as-needed basis, and that we don't
3 necessarily call that out in a formal, formal way.
4 But this, again, is your -- is your process.
5 THE CHAIRMAN: Mr. Chase.
6 MR. CHASE: Thank you, Mr. Chairman.
7 Jonathan, as I understand, just from the
8 conversation going on here today, we had the
9 regular large committee, then that committee would
10 have the discretion -- not necessarily there would
11 be two committees, that there may be a finance
12 committee, there may be an implementation
13 committee, there may be an executive committee.
14 But is what you're seeking to have that discretion
15 of that Board, as we have before, as committees
16 are needed, we set them up. And to me, that made
17 a lot of sense, instead of restricting them to
18 just a couple, because you don't know what's going
19 to happen.
20 The second thing, on the side of the money
21 issue -- which was a tough issue. A lot of people
22 had to really bite down hard to swallow with what
23 happened with the money. But I think two things
24 happened. For instance, the City's perspective,
25 we put in more than we used. Now, there are a

1 getting implementation plans, the specific ones is
2 the next one. And we're marching the ball toward
3 that water budget change that that's been
4 envisioned and it's desired for all of the reasons
5 that we've -- that we've articulated. So --
6 THE CHAIRMAN: Mr. Shannon, please.
7 MR. SHANNON: Thank you, Mr. Chairman.
8 If I can just make one recommendation. As
9 we thought about this and thought about the
10 deliberations that the Board's going to have on
11 it, I think you probably need one other working
12 group. And it's to address maybe the most thorny
13 subject other than funding. That came up in
14 the -- in the CAMP process. And that is a group
15 to sit down and think about recommending to the
16 Board what the criteria would be as you look at
17 projects. What criteria would the Board use as
18 their ranking or selecting projects.
19 I can tell you from sitting in the
20 Governor's office and seeing the thousand requests
21 come in for stimulus dollars that totalled
22 6 billion when we had 44 million that was
23 available, that I guarantee you, as soon as we're
24 ready to start receiving proposals, we are going
25 to receive an unbelievable number, and a myriad of

27 (Pages 105 to 108)
We like these ideas, but when it comes down to all the work on the ground, you know, the committee isn't going to be able to do it. We're going to have to have, you know, some real competent staff. And we've got some good people that have shepherded us along with Brian and a lot of really good people from the department. But you know, this is a -- this is going to be a big job.

And I guess that's all I have to say, if anybody has any questions.

The Chairman: Thank you, Mr. Gibson.

The Chairman: Thank you, Mr. Shannon.

Mr. Barch: I am kind of at a loss for words.

Mr. Chairman, Members of the Board, I struggle a little bit. I had a discussion with Jonathan the other day. And my first reaction, when thinking about this implementation committee, was probably like a lot of people. Keep it small and keep it nimble so it can act fast, and get the job -- get things moving rather quickly. But then when you listen to what has been discussed today, and some of Jonathan's considerations, I can see it's -- it's going to be difficult. You certainly can't exclude people from this process. There was enough interest, as we saw over the months, from people that came to those meetings, that at the very least, I would expect, even if you had a relatively small committee, you'd still have a lot of people in the room. And it would be difficult to exclude them.

So I don't -- I mean, Jonathan's ideas here, I think deserve consideration. It sounds like some of these ideas 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, it's going to be difficult. You certainly can't exclude people from this process. There was enough interest, as we saw over the months, from people that came to those meetings, that at the very least, I would expect, even if you had a relatively small committee, you'd still have a lot of people in the room. And it would be difficult to exclude them.

So I don't -- I mean, Jonathan's ideas here, I think deserve consideration. It sounds like it's workable. Jonathan and I have talked a little bit. I think the first thing that an implementation committee needs to do is develop structure and protocols so that, even if you do have 16 or 32 people in the room, you've got -- you know, as this Board knows, you've got to conduct business. You've got to move forward with business. And that's going to be the first thing that that committee probably has to do. And it's a little more difficult when you have that many more people. But nonetheless, as Mr. Chase says, we did it before, we can probably do it again.

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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 Southern 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 was I -- 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
community. 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 --
UNIDENTIFIED SPEAKER: No.
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
going to get 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?
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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

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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 had already are in the
24. planning bureau. Right now, Brian is short three
25. people in his bureau. So we are very, very short

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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

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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: One quick question before you move off of that. And I guess from my perspective -- and I may be way out of line on this -- I believe you've got to look to find the staffing within the money that the group itself produces. I think to go try to find new found money is going to be very difficult.

MR. BARCH: Mm-hmm.

To the seven -- Mr. Chairman, Mr. Chase, the seven to, you know, to whatever million dollars a year, that there's a portion of that that your suggestion would be that it's a portion of that would be helping to administer this. And I think that's -- I think that's useful input.

THE CHAIRMAN: Definitely.

MR. BARCH: So what are you going to define as -- what are the kinds of things you want to see at the end of the -- end of the year, recognizing this is -- you know, decades long piece. And what we're trying to do is in this first year is get a really solid foundation, the protocols, the -- so that -- not saying it's going to run itself, but that we have a much clearer direction about how we're going to move forward.

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?

MR. BARCH: Okay.

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

MR. BARCH: Thank you very much,
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1 from Mr. Brian Patton. And Mr. Patton will lead
2 that discussion.
3 (Unintelligible).
4 THE CHAIRMAN: Mr. Patton, go ahead.
5 MR. PATTON: Mr. Chairman, Members of the
6 Board, the North Snake and Magic Valley
7 Groundwater Districts are jointly requesting a
8 $500,000 loan to construct a pipeline project to
9 satisfy their mitigation responsibility to the
10 Snake River Farm Facility, which is owned by Clear
11 Springs Foods. In response to a delivery call
12 made by Clear Springs Foods for that facility, in
13 2005, Director Dreher issued an order requiring
14 mitigation by the junior priority groundwater
15 users within these two districts for the impact
16 that their pumping causes on the senior surface
17 flows utilized by Clear Springs Foods at this
18 facility.
19 After determined accounting for the
20 mitigation provided by the districts through CREP
21 and conversion projects, IDWR determined that the
22 districts have to provide 1.99 CFS to -- at the
23 Snake River Farm headgate. If this is not
24 provided, and a curtailment order actually has to
25 be carried through, that could affect up to 41,000

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1 acres of land served by groundwater within these
2 two districts.
3 The district submitted a plan to construct
4 this project to deliver this water, which was
5 found acceptable by Director Tuthill by order he
6 issued on March 26th, 2009. As per that order, the
7 project must be completed by June 2nd, 2009,
8 or the districts owe a $10,000 per day penalty.
9 The project the districts are proposing to
10 construct consists of taking several wells located
11 above the rim above the Snake River Farm Facility,
12 that are currently used to deliver irrigation
13 water to about a thousand acres, and then no
14 longer delivering irrigation water, but instead,
15 delivering that water from those wells into a
16 pipeline system that would carry it over the rim
17 right to Snake River Farm.
18 The -- and again, those wells would no
19 longer be used for irrigation. So those lands
20 would no longer be served by groundwater. This
21 project has been estimated by the district's
22 engineering consultants to cost around $500,000.
23 This Board has made several prior loans to both
24 North Snake and Magic Valley as shown there on
25 page 2 of the memorandum, starting back in 2003

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1 with a $300,000 loan for the similar Sandy
2 Pipeline Project, all the way through until last
3 year with the Board loaned them $10 million for
4 their participation in the Pristine Springs
5 Project. A number of other mitigation projects
6 and other things along the way. All loans have
7 been repaid either on time or ahead of schedule.
8 In looking at the effect that this loan
9 would have on the actual assessment rates, we
10 can't do that yet 'cause there's still some things
11 in play in regard to the $10 million note
12 regarding how much some other districts such as
13 Southwest are going to pick up. But in running
14 through the numbers, the 500,000 -- this $500,000
15 loan, if it's approved at 5 and a half percent for
16 10 years would result in a $66,000 per year
17 repayment to the Board, which, spread out over the
18 220,000 acres encompassed in these two districts
19 results in about 30 cents per acre per year for
20 the cost of the loan. If the Board chose to
21 follow its precedent of loaning the money at 4
22 percent to the groundwater districts, that would
23 result in an annual payment of about $61,600 a
24 year, and then would result in about 28 cents per
25 acre per year cost for the loan.

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1 UNIDENTIFIED SPEAKER: So only about two
2 cents difference --
3 MR. PATTON: Two cents difference --
4 UNIDENTIFIED SPEAKER: -- in the cost per
5 year.
6 MR. PATTON: -- that's correct. That's
7 correct.
8 In conclusion, this is a -- this is a
9 project that is necessary for the groundwater
10 districts in order to meet the mitigation
11 requirements that are required of them. The
12 project has been found acceptable by the director
13 as an acceptable means of meeting the mitigation
14 requirements. These two districts have an
15 excellent prior repayment history in past
16 operations with the Board. And for that reason,
17 the staff recommends that you go ahead and
18 authorize this $500,000 loan to the districts
19 jointly.
20 MR. GRAHAM: At what percent?
21 MR. PATTON: Mr. Chairman, Mr. Graham,
22 that's at the Board's discretion. If the Board
23 follows its prior precedent, it would be 4
24 percent. There's no reason that the Board would
25 have to continue with that precedent, however.
MR. GRAHAM: Do we have the money?

MR. PATTON: Yes, sir. Yes, you do.

MR. GRAHAM: Don't have the sheet show (unintelligible).

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.

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.

Would like to note we do have representatives of the two districts here today.

THE CHAIRMAN: Let's hear from them.

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?

UNIDENTIFIED SPEAKER: Do you see a 5 and a half percent being an encumbrance on the trial voter at 2 cents a break.

UNIDENTIFIED SPEAKER: Probably not. I mean, it's -- it's a number we always -- you know, we would prefer -- we would always prefer cheaper.

UNIDENTIFIED SPEAKER: I understand that, but somewhere down the road you'd like to borrow some more money, and --

UNIDENTIFIED SPEAKER: Right, right.

UNIDENTIFIED SPEAKER: -- the more money that we have come in, the more we've got to loan.

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.

THE CHAIRMAN: Any questions by the Board Members?

Mr. Cuddy.

MR. CUDDY: Thank you, Mr. Chairman.

If I understand correctly, then, no one this year will suffer crop damage because of this movement of this water over the hill?

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.

And it essentially takes about 3500 acre feet of water to supply those conversions to, you know, do 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 --

MR. CUDDY: So you assume the quality will be --

DEAN: We assume the quality's -- I mean, if it's not -- if it's different water, we'd sure like to know that.

THE CHAIRMAN: Mr. Graham.

MR. GRAHAM: Can you make the -- do you plan on making that June date? Can you get this done?

DEAN: Right.

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

DEAN: Well, we've been involved in some negotiations that --

MR. GRAHAM: For the penalty?

DEAN: No -- well, on the -- 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).

MR. GRAHAM: Are you anticipating having to pay that fine, then?

DEAN: Not at this point, but --

MR. GRAHAM: And then there's no term on this suggested --

MR. PATTON: Mr. Chairman and Mr. Graham,
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1 again, that would, I think be the Board's 
2 discretion, but -- 
3 MR. GRAHAM: What do they want? 
4 THE CHAIRMAN: Ten years. 
5 MR. PATTON: I would throw out ten years as 
6 a starting point. 
7 THE CHAIRMAN: Yes, sir. 
8 MR. CARLQUIST: Mr. Chairman, I'm Lynn 
9 Carlquist that determined the North Snake 
10 Groundwater District. And the reason we need the 
11 loan is we had a short period of time to 
12 accomplish this work. And the conversion part of 
13 the process is already probably 90 percent done. 
14 All that work is done. But the project of getting 
15 the pipeline actually over the rim is not yet 
16 underway. All the engineering has been done in 
17 terms of getting -- the easement -- most of the 
18 easements have been obtained. And most of the 
19 engineering work has been done. But as Dean said, 
20 there has been some negotiations ongoing between 
21 the parties at a different arrangement. But we 
22 don't yet have anything in place, so we still feel 
23 like we need have this loan done. 
24 The groundwater districts did not have 
25 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. 
THE CHAIRMAN: As we look back at the 
history, though, of the groundwater users, almost 
all of your loans have been paid off -- 
MR. CARLQUIST: Yes. 
THE CHAIRMAN: Far quicker than what they 
were supposed to. 
MR. CARLQUIST: Well, I think -- 
THE CHAIRMAN: So I really don't have a 
concern. 
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. 
THE CHAIRMAN: Mr. Alberdi, did you have -- 
MR. ALBERDI: Yeah, Mr. Chairman, Dean, with 
regards to the project that you're doing, is there 
any contingency in the event that you need to 
provide Clear Springs more water, is this a 
standalone project, or can it be expanded? 
DEAN: It can be scaled. 
MR. ALBERDI: It can be scaled? 
DEAN: I mean, we're obviously looking -- in 
the design, we're looking -- we're looking at the 
size of the pipe. I mean, for example, eight-inch 
pipe would provide the CFS very easily. But you 
know, right now we're oversizing things that would 
take more -- we're designing -- and with our 
engineering people, we're designing bigger. You 
know, it's scalable is what I guess what I'm 
saying. 
MR. ALBERDI: And that's covered with the 
500,000. 
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 -- 
THE CHAIRMAN: Best time to do a project. 
DEAN: Yeah, this -- and you know, just like 
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. 
THE CHAIRMAN: Mr. Graham. 
MR. GRAHAM: And you could handle the 5 
percent? 
DEAN: Yeah. 
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. 
THE CHAIRMAN: Motion is made for 5 percent 
and ten years on the resolution before us. 
Do I hear a second? 
MR. BECK: Second it. 
THE CHAIRMAN: Mr. Beck has seconded it.
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<td>1. Any discussion?</td>
<td>1. participation for mitigation efforts or --</td>
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<tr>
<td>2. MR. BECK: Mr. Chairman?</td>
<td>2. DEAN: Yes. What it is is there's -- we did</td>
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<td>3. THE CHAIRMAN: Mr. Beck.</td>
<td>3. the purchase because of the time frame, the two</td>
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<td>4. MR. BECK: I didn't know if Mr. Graham's</td>
<td>4. largest players in the Pristine purchase were</td>
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<td>motion was intended to cut off discussion, or if</td>
<td>5. Magic Valley and North Snake. And this was to</td>
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<td>he had other interests.</td>
<td>6. solve -- they call it Blue Lakes. And Blue Lakes,</td>
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<td>7. MR. GRAHAM: I'm very anxious to get into</td>
<td>7. for us, was really the bigger issue. I mean, the</td>
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<td>this ethics subject.</td>
<td>8. Blue Lakes call, for example, this only affects</td>
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<td>9. MR. BECK: Excited or not, I'll take time to</td>
<td>9. about 15 -- well, between 10 and 15 percent of</td>
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<td>ask some questions.</td>
<td>10. Magic Valley Groundwater District. But we have to</td>
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<td>11. THE CHAIRMAN: Please do, Mr. Beck.</td>
<td>11. go forward and protect our -- but it had a far</td>
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<td>12. MR. BECK: Thank you, Mr. Chairman.</td>
<td>12. reaching effect.</td>
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<td>13. Dean, and perhaps -- Snake River Farms, have</td>
<td>13. And because of the way the time frame came</td>
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<td>they bought off agreeable to what you're proposing?</td>
<td>14. together, the two groundwater districts took on</td>
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<td>14. Is there anybody here from the Snake River Farms?</td>
<td>15. the loan. There was some obligations that come</td>
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<td>15. DEAN: Snake River Farms is here, but</td>
<td>16. from southwest. There's some folks in Water</td>
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<td>there's been a motion filed that opposes this.</td>
<td>17. District 140 outside of irrigation district.</td>
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<td>16. You know, to stop the construction of the pipeline.</td>
<td>18. There's some folks at Carey. There's a couple</td>
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<td>17. So there is some issues. We have -- we have our plan approved by the director. And</td>
<td></td>
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<td>18. that's, at this point, the one we really have --</td>
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<td>19. he seems to be the most important one to approve</td>
<td>19. of -- at Arco -- even as far away as Arco that had</td>
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<td>20. MR. ALBERDI: I've got three or four</td>
<td>20. obligations in the Blue Lakes call. And the</td>
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<td>21. questions.</td>
<td>21. difficulty was is trying to figure out who owed</td>
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<td>22. THE CHAIRMAN: Go ahead, Mr. Alberdi, here.</td>
<td>22. what. And that's what we're in the process of</td>
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<td>23. UNIDENTIFIED SPEAKER: Who does it go to?</td>
<td>23. doing right now. The department -- Al Wiley's</td>
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<td>24. MR. ALBERDI: So the ground that's going to</td>
<td>24. done some analysis. And we're in the process of</td>
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<td>25. be, I guess, converted to -- from deep well to</td>
<td>25. meeting with him in determining truing up on</td>
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<td>27. DEAN: Surface water.</td>
<td>27. MR. ALBERDI: So one last question,</td>
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<td>28. MR. ALBERDI: And how far away are you from</td>
<td>28. Mr. Chairman, if I could.</td>
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<td>29. the surface water that you apply to those lands?</td>
<td>29. THE CHAIRMAN: Mm-hmm.</td>
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<td>30. DEAN: There's a what -- lateral is that.</td>
<td>30. MR. ALBERDI: So if those negotiation with</td>
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<td>31. UNIDENTIFIED SPEAKER: The S Cooley --</td>
<td>31. those two entities do not come forward, does that</td>
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<td>32. DEAN: The S Cooley.</td>
<td>32. leave you with extra mitigation water for future</td>
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<tr>
<td>33. UNIDENTIFIED SPEAKER: -- goes right through</td>
<td>33. use or --</td>
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<tr>
<td>34. the -- and it's Northside (Unintelligible) Company has approved transporting the water, delivering</td>
<td></td>
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<td>35. the water to those sites and or helping to find canal shares that we can use to deliver the water.</td>
<td></td>
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<td>36. MR. ALBERDI: Okay. And then, over on the paragraph that's numbered 5.0 financial analysis,</td>
<td></td>
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<td>37. you mentioned that you're in negotiations with the Carey Valley groundwater districts and the</td>
<td></td>
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<td>38. Southwest Irrigation Districts for the participation in Pristine Springs.</td>
<td></td>
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<td>39. DEAN: Mm-hmm.</td>
<td>40. THE CHAIRMAN: Any other questions?</td>
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<td>40. MR. ALBERDI: Is that for their</td>
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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.

UNIDENTIFIED SPEAKER: 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 Patsy, roll call vote, please. J.O 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 plan, 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: 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 implementation of directors March 26, 2009 order approving groundwater district's replacement water plan for 2009. This was filed earlier this week.

And it is true that there is a proposal by Clear Springs. This motion does request a status conference to be set. Normally, the process that we use is to hear from the other side before taking immediate action. My expectation is to conduct a status conference next week on this motion to see how the other side feels about this proposal. And it is possible that this stay will occur. I can't say whether it will or not. I can say that I'm very serious about the June 1st, 2009 date for implementation of this replacement water. And as Mr. Simpson suggests, this is a replacement plan compared with a mitigation plan.

The groundwater districts did file both jointly a replacement plan and simultaneously a mitigation plan that has been advertised. So we're moving forward with the process on these plans. In my view, if the process is stayed, then perhaps a loan won't be required. If, on the other hand, it is not stayed, there is only about a month of time for this project to be completed.

Now, I have required a weekly status update since the order was issued on March 26th. Those have been timely filed. My assessment is that the groundwater districts have been moving forward appropriately to install this water. Why the urgency? The reason is because the alternative to this plan is curtailment. The alternative to providing replacement water is curtailing. And the groundwater districts proposed this plan as an alternative to curtailment. That has been accepted.

So this replacement plan for 2009 has been accepted. But with this short time frame, our engineering staff evaluated the proposal and determined that it could be built in 49 days, if there were urgency. My expectation is still what contractors are doing. It's not that big a project, that it is feasible to construct this by June 1st. I'm expecting that it will be. If both sides agree, or, depending on the outcome of the status conference next week, I'll consider the proposal. But right today, I'm expecting that water will be delivered in accordance to the plan proposed by the groundwater districts by June 1st.

THE CHAIRMAN: Thank you, Mr. Tuthill.

Mr. Stevenson, do you have anything else to say?

MR. STEVENSON: Yeah. I believe as they comment, Lynn, feel the need to chime in.

You know, what the director says, you know, if we don't -- if it comes to the point we don't need to build a pipeline, you know, we won't wore borrow money. Even though we are farmers, and we love to borrow money, that's what we do, but we -- we won't -- if we don't have to, you know, encumber our districts for this debt, if it does become necessary -- not necessary that we build the pipeline, we won't do it. But we need to have the money available if things go in a position we can't fill ourselves in a spot that -- I assume 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
1. stipulated agreement between the groundwater districts and Clear Springs Foods. And we weren't able to reach an agreement that each side felt like they could sign. And so, just last week, this motion, which the director has referred to, Mr. Simpson referred to has been filed with the department. In the last two weeks, everything has kind of been put on hold in terms -- all the engineering work has been done. And the easement -- most of the easements have been signed, and that's all been done. But we have not started construction, which would have happened before now, because we've been trying to see if we could reach either a stipulated agreement, or see where we'll go with this motion that's been filed. Mr. Tuthill said that he would not have a status hearing on that until next week. And I don't want to start digging the project until we know where we have to be. Now, representatives from Clear Springs Foods said that they would indicate to the department that they would give us more time beyond the June 1st because we have kind of put this thing on hold now for two weeks. So I think we're going to have to work. If the project does, thinking, then, that the conversions will handle the mitigation? Or you're just not in favor of the supply of water that would be pumped through the pipeline?

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 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 concern
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

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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.

Mr. Cuddy. If we approve this loan today, when does the interest rate start on it?

We make construction progress payments as the project proceeds. Given the time frame, most of 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.

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 made.

appropriately addressed.

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.

THE CHAIRMAN: Mr. Tuthill.
1 DIRECTOR TUTHILL: Mr. Chairman, this is replacement water.
2
3 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."
4
5 UNIDENTIFIED SPEAKER: Mr. Chairman, I encourage us to add the word replacement water project.
6
7 THE CHAIRMAN: So noted.
8
9 UNIDENTIFIED SPEAKER: Mr. Chairman, I'd encourage us to add the word replacement water project.
10
11 TO THAT CHANGE?
12
13 UNIDENTIFIED SPEAKER: Yeah, whatever it takes to make that change.
14
15 THE CHAIRMAN: Okay. We've moved first. And a second.
16
17 UNIDENTIFIED SPEAKER: I will second it, yes.
18
19 THE CHAIRMAN: Patsy, roll call vote, please, before anybody else speaks.
20
21 MS. McGOURTY: Mr. Cuddy.
22 MR. CUDDY: Aye.
23
24 MS. McGOURTY: Mr. Alberdi.
25 MR. ALBERDI: Aye.

1 REPORTER'S CERTIFICATE
2 I, Debora Ann Kreidler, Certified Shorthand Reporter, State of Idaho, hereby certify:
3 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
4 That the foregoing transcript contains a full, true, and accurate record of the audio recording of the proceedings had in the above and foregoing cause, which was heard at Boise, Idaho.
5 IN WITNESS WHEREOF, I have hereunto set my hand June 5, 2009.
6
7 Debora Ann Kreidler, CSR No. 754

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I, Debora Ann Kreidler, Court Reporter Pro Tempore, County of Ada, State of Idaho, hereby certify:

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

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

IN WITNESS WHEREOF, I have hereunto set my hand this 8th of June, 2009.

Debora Ann Kreidler, Court Reporter Pro Tempore
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