

Roger D. Ling, ISB #1018
Attorney at Law
P.O. Box 396
Rupert, Idaho 83350
Telephon: (208) 436-4717
Facsimile: (208) 436-6804

John K. Simpson, ISB #4242
Travis L. Thompson, ISB #6168
Paul L. Arrington, ISB #7198
BARKER ROSHOLT & SIMPSON LLP
113 Main Avenue West, Ste. 303
P.O. Box 485
Boise, ID 83303
Telephone: (208) 733-0485
Facsimile: (208) 735-2444

Attorneys for Petitioner:
A&B IRRIGATION DISTRICT

**BEFORE THE DEPARTMENT OF WATER RESOURCES
OF THE STATE OF IDAHO**

IN THE MATTER OF THE PETITION)	DOCKET NO. 37-03-11-1
FOR DELIVERY CALL OF A & B)	
IRRIGATION DISTRICT FOR THE)	AFFIDAVIT OF PAUL L. ARRINGTON
DELIVERY OF GROUND WATER AND)	
FOR THE CREATION OF A GROUND)	
WATER MANAGEMENT AREA)	
_____)	

STATE OF IDAHO)
) ss.
County of Twin Falls)

Paul L. Arrington, being first duly sworn upon oath, hereby deposes and says:

1. I am a duly licensed attorney representing A&B Irrigation District in the above-captioned matter.

2. I am over the age of 18 and have knowledge of the documents and legal proceedings pertinent to this matter.

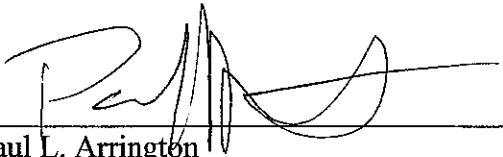
3. A true and correct copy of excerpts from the transcript of the deposition of Timothy J. Luke, dated May 6, 2008, is attached hereto as Exhibit A.

4. A true and correct copy of excerpts from the transcript of the deposition of Sean Vincent, dated June 5, 2008, is attached hereto as Exhibit B.

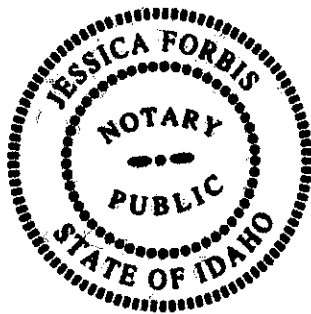
5. A true and correct copy of excerpts from the transcript of the deposition of Anthony Morse, dated May 15, 2008, is attached hereto as Exhibit C.

Dated this 22 day of October, 2008.

BARKER ROSHOLT & SIMPSON LLP


Paul L. Arrington
Attorney for A&B Irrigation District

SUBSCRIBED AND SWORN to before me this 22 day of October, 2008.



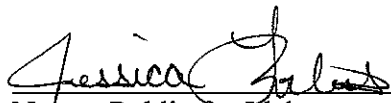

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Exhibit A

LUKE DEPOSITION

Tr. at p. 42, Ins. 14-25

Tr. at p. 43, Ins. 1-3

Tr. at p. 43, Ins. 4-25

Tr. at p. 44, Ins. 1-25

Tr. at p. 45, Ins. 1-10

Tr. at p. 45, Ins. 11-25

Tr. at p. 46, Ins. 1-7

Tr. at p. 57, Ins. 16-25

Tr. at p. 58, Ins. 1-3

Tr. at p. 77, Ins. 13-23

Tr. at p. 77, Ins. 24-25

Tr. at p. 78, Ins. 1-17

BEFORE THE DEPARTMENT OF WATER RESOURCES
OF THE STATE OF IDAHO

IN THE MATTER OF THE)
PETITION FOR DELIVERY CALL)
OF A&B IRRIGATION DISTRICT)
FOR THE DELIVERY OF GROUND)
WATER AND FOR THE CREATION)
OF A GROUND WATER)
MANAGEMENT AREA)
_____)

COPY

Docket No. 37-03-11-1

DEPOSITION OF TIMOTHY JAMES LUKE

MAY 6, 2008

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1 that they provided in their petition and their
2 motion to proceed, both documents?

3 A. Yes. At the time they were submitted
4 and probably beyond, yes.

5 Q. Did you read the findings that were
6 contained in the order that was prepared by other
7 people within the Department? The January 29 order.

8 A. Yes.

9 Q. Did you generally agree with those
10 provisions?

11 A. Yes.

12 Q. The director noted in his order that the
13 petition of A & B --

14 MR. BROMLEY: Roger, where are you in the
15 order?

16 MR. LING: It's in the findings of fact. I'd
17 have to go to the order. Well, let's first find out
18 if he can recall. And if not, I -- it's -- the
19 quote, I believe it's order pages 1 and 2, finding
20 of fact 1.

21 Q. "We noted that the petition stated that
22 due to diversions from the ESPA by junior priority
23 ground water users, A & B is suffering material
24 injury as a result of the lowering of the ground
25 water pumping level within the ESPA by an average of

1 20 feet since 1959, with some areas of the aquifer
2 lowered in excess of 40 feet since 1959, reducing
3 the diversion of A & B to 974 cfs."

4 Do you agree that there's evidence in
5 the Department to support that allegation contained
6 in A & B's petition?

7 A. Yes, there's evidence supporting the
8 ground water levels have declined.

9 Q. And do you have any objection to the
10 finding or the allegation by A & B that the
11 diversions of A & B have been reduced to 974 cfs?

12 A. I had found that there was evidence that
13 they were diverting around 970, 974 cfs, yes.

14 Q. Were you aware when you prepared your
15 report that the 177 wells referred to in A & B's
16 decree are 177 mostly independent diversion points
17 that serve specific lands under that particular well
18 and is not an interconnected system?

19 A. Yes, I was aware of that.

20 Q. How did you become aware of that?

21 A. I became aware of that mainly, I think,
22 in just working with the measurement district
23 initially and, you know, back in the '94/'95 time
24 frame that that's how the system was.

25 And as we got the measurement reports,

1 you know, I had looked at those measurement reports
2 in all of the wells and the various uses from those
3 wells. So --

4 Q. But notwithstanding that knowledge, you
5 still throughout the preparations that you made for
6 this order of January 29, you looked at the total
7 annual diversions of the project rather than the
8 total annual diversions of each particular well and
9 the land served by that well, did you not?

10 A. Well, I think the findings of the order
11 shows that. But in review of the data, no, I looked
12 at -- I looked at diversions from individual wells
13 because that's what the information --

14 Q. But you don't include it in your report,
15 do you?

16 A. Not specifically. I think there was one
17 reference to that here somewhere.

18 Q. Don't you think that was -- that's more
19 relevant than what is going on on an annual average
20 for all wells?

21 A. I thought the delivery call was on the
22 water right.

23 Q. It is on the water right.

24 A. Okay.

25 Q. And the water right has 177 points of

1 diversion --

2 A. Correct.

3 Q. -- does it not?

4 A. It does.

5 Q. And those 177 points of diversion, if
6 there's an interference with any one of those
7 diversions, if they're not interconnected, affects
8 the ability to get the water to which they're
9 entitled out of that water right, doesn't it?

10 A. Uh-huh. Well, we looked -- I
11 specifically looked at what was presented to us, the
12 diversions from the individual wells, what was
13 alleged as being short. So I did look at individual
14 systems.

15 The shortages were based on this
16 delivery of three-quarters of an inch per acre,
17 which A & B says they're not meeting. And these
18 are -- and they identified the wells over different
19 years that were not capable of meeting that
20 requirement.

21 One of the things we discovered in
22 review of this is that that three-quarters of an
23 inch per acre is based on, I think, what they call
24 the system acreage; in other words, the acreage
25 associated with that well or well system as

1 determined originally by the Bureau of Reclamation
2 as to what was irrigable lands.

3 What we found is that irrigable lands
4 are not necessarily what's irrigated. But the
5 calculation was based on irrigable lands, as
6 determined by the Bureau back early in the
7 development of the project.

8 So it was very difficult for us to do an
9 analysis of individual systems because that number
10 acreage system is not necessarily what's irrigated.

11 Q. And how did you determine that the
12 irrigable acres was not the acres being irrigated?

13 A. Well, through communication with
14 Mr. Temple, through review of the -- one of the
15 items that the Department had requested was
16 place-of-use information for these well systems.

17 And what we got in return was two GIS
18 files showing a place of use in the A & B and also
19 the lands that were short at the time the motion to
20 proceed was filed. And we had a lot of questions
21 about those .shp files. And that prompted a meeting
22 with Mr. Temple and some of his staff. And at least
23 that's when I discovered that the irrigable acreage
24 is not necessarily the lands that are irrigated by
25 those wells.

1 Q. Who prepared the .shp files? Do you
2 know?

3 A. Mr. Temple said that the Department did,
4 but --

5 Q. You didn't have any personal knowledge
6 of that?

7 A. I did not, no.

8 Q. Are you --

9 A. But we did ask for that -- we did ask
10 for the place-of-use information, and that is what
11 we got from the district.

12 Q. Are you familiar at all with the
13 irrigable lands and how they were determined within
14 A & B?

15 A. I'm familiar with the irrigable land
16 classification. How they were determined? No.

17 Q. Okay. Have you ever looked at what they
18 call a "hard sheet"? And in fact, you were shown a
19 copy of that hard sheet in your recent tour of A & B
20 Irrigation District for the first time. And do you
21 remember Dan Temple showing you that hard sheet of
22 one farm?

23 A. That was a map?

24 Q. Yes.

25 A. Uh-huh, correct.

1 Q. And that's a survey. And in that
2 survey, the Bureau, when they developed the project,
3 took a farm unit, which may have a regular shape,
4 and then they measured the actual acres that they
5 felt were irrigable within that. And as a result,
6 you have a jigsaw puzzle. You have a small field
7 that's irrigable, and next to it is nonirrigable,
8 and another one irrigable.

9 Did you ever see that before the tour?

10 A. That particular kind of sheet?

11 Q. That type of hard sheet or map of the
12 irrigable lands within a farm unit.

13 A. That was prepared by the Bureau? No, I
14 haven't.

15 Q. And so you were making an assumption
16 that somehow they are not irrigating the lands that
17 are described as irrigable in that original land
18 inclusion and the surveys and the hard sheets that
19 were created by the Bureau when the project was
20 made?

21 A. Might have to replay that. I didn't --
22 I don't think I made that assumption, no.

23 Can you restate the question?

24 MR. LING: Can you read it back.

25 (The record was read as follows:

1 "QUESTION: And so you were making an
2 assumption that somehow they are not
3 irrigating the lands that are described as
4 irrigable in that original land inclusion and
5 the surveys and the hard sheets that were
6 created by the Bureau when the project was
7 made?"

8 THE WITNESS: No, I didn't make that
9 assumption.

10 Q. (BY MR. LING): What did you rely upon
11 to make the statement today that you found out that
12 some of the irrigable land was not irrigated and
13 some of the land being irrigated was classified as
14 nonirrigable?

15 A. The statements from Mr. Temple.

16 Q. And what did he exactly say, as the best
17 of your recollection?

18 A. And from the .shp files that --

19 Q. No, wait just a minute. I asked you
20 first of all, what did Mr. Temple say, as best you
21 recall?

22 A. That there are instances of some
23 nonirrigable lands being irrigated by A & B.

24 Q. Okay.

25 A. Well, wait a minute. Where we started

1 can provide every single acre, notwithstanding the
2 fact that these conditions are constantly going on
3 and on?

4 MS. McHUGH: Objection. Form.

5 Q. (BY MR. LING): Answer if you can.

6 A. That's my understanding, yes.

7 Q. And in -- and we'll get to it later, but
8 you have made reference to the fact that the
9 aquifer -- or the ground water tables have not
10 affected diversion rates that much within certain
11 periods of time.

12 Do you recall making that conclusion?

13 A. Where is that?

14 Q. I can get to it. Perhaps I can get
15 right to it. I'm jumping around a bit.

16 Well, in finding 64, you didn't
17 recognize it, but you have today that the 177 wells
18 aren't interconnected so you can't average
19 diversions and have a real picture of what either
20 the district is able to divert and deliver, can you?
21 Because they are not interconnected, each system has
22 to stand on its own; do you agree with that?

23 A. Well, each system is on its own,
24 correct.

25 Q. Are you saying that you believe that

1 that's an unreasonable method of diversion of
2 delivery of water?

3 A. No, I don't think it's unreasonable.

4 Q. Okay. Well, maybe I'll defer to that
5 until I come to it in my notes, rather than try to
6 go through it, because it's in one of your findings
7 about the very small reduction in diversion rate
8 that has occurred.

9 Well, I think go to -- go to
10 paragraph 60. And this was not particularly your
11 paragraph, but it was taken from your findings and
12 it talks about "The diversion's to 974 cfs, and it
13 is now down to only 970. So it indicates a decline
14 of only 4 cfs."

15 Do you concur with that statement?

16 A. Yes.

17 Q. And then in order to agree to that
18 statement, you have ignored, have you not, that over
19 \$2 million has been spent by A & B Irrigation
20 District to maintain a delivery of up to 1100 cfs?

21 A. I know that money was expended to
22 maintain diversion rates, yes.

23 Q. Well, did you investigate to determine
24 how much was spent?

25 A. I believe cost information was submitted

1 to the Department shortly before we --

2 Q. Did you --

3 A. I didn't look at cost data. Others did.

4 Q. Did you determine what had to be done in
5 order to maintain a water supply?

6 A. I realize costs were expended in
7 deepening wells and pumps.

8 Q. You don't know what they were doing,
9 though? Were they deepening wells? Do you
10 remember?

11 A. Yes, I remember reading that they were
12 deepening wells.

13 Q. And as a result you change horsepower
14 and you change bowls?

15 A. Correct.

16 Q. So if you do enough of that and you
17 spend enough money, your diversion rate hopefully
18 would never drop below 1100 cfs if you maintain that
19 every single pump was retrofitted to make sure that
20 it still pumped, if the water was there, the amount
21 which it was originally entitled to pump, wouldn't
22 it?

23 A. Sure. It's ongoing maintenance and
24 operation of the system.

25 Q. So the comparison of some years of when

1 you're saying the amount that they were able to
2 divert is almost minimal and so how could they have
3 been damaged disregards the efforts they had to do
4 to make sure that it was a very minimum reduction in
5 diversion, doesn't it?

6 A. I don't know. I think there's findings
7 later in here about the cost and -- that those
8 weren't necessarily unreasonable. I mean, I've been
9 in a lot of places in the state where people have
10 taken similar actions. I mean, it's -- you've got
11 maintenance on ditches and canals and you've got
12 maintenance in operation of wells, and deepening and
13 replacing pumps and redoing worn impellers is part
14 of doing business.

15 So the cost factor -- the cost issue, I
16 don't -- again, I didn't look at it, but I don't
17 believe it was totally ignored. This is just a
18 fact. That's all it is.

19 Q. In your responsibility for water
20 distribution, do you approach the delivery of water
21 in a critical ground water area differently than you
22 do in the Eastern Snake Plain Aquifer that has not
23 been designated critical ground water area?

24 MR. MERRILL: Objection. Foundation.

25 THE WITNESS: At this point in time, I'm only

1 this, are you, that because the transfer ensures
2 that the 1100 cfs can be taken from all diversion
3 points up to a cumulative 1100 cfs that there's any
4 method by which you can get 1100 cfs from half the
5 wells? It's not meant to indicate that, is it?

6 A. From the water right transfer, no.

7 Q. Okay. Just changes that the 1100 cfs
8 applies to all points of diversion so that you
9 can -- so long as you haven't gone over 1100 cfs, it
10 doesn't make any difference which well you divert it
11 from?

12 A. That's correct.

13 Q. As a practical matter -- and now that
14 you've seen the project, which was made after you
15 made your report, do you recognize it as being
16 possible to take water from the east end, one of the
17 wells, and deliver it to the west end? Well,
18 possible financially. Impractical should be the
19 better word.

20 MS. McHUGH: Objection. Foundation.

21 THE WITNESS: There would certainly be a cost
22 involved in doing something like that. And it may
23 not be practical, depending on what the costs were.

24 Q. (BY MR. LING): And then in 35, we've
25 kind of covered this again. But again, you

1 indicated that A & B provided this information,
2 which includes records of total annual ground water
3 volume pumped but don't mention that the information
4 you provided also shows records by which you
5 determined the total amount of water pumped from
6 each well for the acres served.

7 That also was in that information, was
8 it not?

9 A. Yes. There was that system acreage.

10 Q. Why didn't you include it in the report,
11 include it in the order?

12 A. Why didn't I include reference to the
13 system acreage?

14 Q. Individual system acres and the
15 diversion rate by each individual well, right.

16 A. I don't know. I thought there was a
17 reference to system acreage in here somewhere.

18 Q. And for clarification, we're talking
19 about "system" would be each well has its own
20 system, its an independent system? Is that what you
21 mean by "system"? In other words, you have one well
22 in section 6 of whatever township, range.

23 A. Yeah.

24 Q. And it pumps 5 cfs, which is 250 inches,
25 and it irrigates 260 acres and those acres are

1 identified. That's a system.

2 Is that what you understand the
3 system --

4 A. I don't know how many acres it actually
5 irrigates. But A & B defines what they call system
6 acreage, I believe. It's the -- again, it's from
7 the Bureau of Reclamation determination of, I
8 believe, the irrigable acres.

9 Q. But when we talk about a system, we're
10 talking about that well and the acres which are
11 entitled to receive water from that well?

12 A. That would be -- yes, that's how I could
13 look at it.

14 Q. Okay. You indicate in 35 that there
15 also were records that include ground water pumped
16 by month.

17 But that was not included, either, in
18 the report, was it?

19 A. I think there are references in here as
20 to, you know, the high and the low flow volumes or
21 rates of diversions. So those would have been based
22 on monthly records.

23 Q. But if those records are in here -- and
24 we'll let you perhaps see if you can find them and
25 then we'll refer to them later. At the break maybe

1 you want to take a look at that.

2 But the question is, is in your classes
3 and your experience with the Department and the
4 permitting and distribution, do you recognize that
5 daily requirements of a farmer in irrigating his
6 crop are important?

7 A. Sure.

8 Q. And if, in fact, you have events which
9 require crops to be irrigated in a high-temperature
10 period which may cover a week, it's essential that
11 everybody that has crops will probably want to have
12 water during that week?

13 A. Uh-huh.

14 Q. So when you talk about monthly
15 diversions, it really doesn't mean anything, does
16 it, because you don't know whether it rained for the
17 first ten days and then you had unusual hot weather
18 for ten days and then it rained for another ten
19 days. So you're only irrigating one-third of the
20 month, but you would have the highest diversion
21 rates that you possibly could have in those ten
22 days. You don't show that anywhere.

23 A. Well, I think what is in the order is
24 references to these high and low-flow diversion
25 rates. And my understanding is the low is the

EXHIBIT B

VINCENT DEPOSITION

Tr. at p. 80, Ins. 15-24

Tr. at p. 81, Ins. 7-16

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OF THE STATE OF IDAHO

IN THE MATTER OF THE)
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OF A&B IRRIGATION DISTRICT)
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WATER AND FOR THE CREATION)
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MANAGEMENT AREA)
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COPY

Docket No. 37-03-11-1

VOLUME I

DEPOSITION OF SEAN VINCENT

JUNE 5, 2008

REPORTED BY:

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

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1 individual townships and what the trends were in
2 those townships.

3 Q. Let's jump to 63.

4 Did you review A & B's partial decree
5 for its water right 36-2080?

6 A. I did not.

7 Q. Why didn't you?

8 A. I was focused on the hydrogeologic
9 setting and issues of well design and well
10 construction, as I mentioned earlier. And the
11 information that I came upon was not -- was not in
12 the partial decree.

13 Q. So are you familiar with the rate of
14 delivery when there's a diversion of 1100 cfs as
15 allowed by their water right?

16 A. Yeah. When we spoke with Dan Temple on
17 January 4, I think he indicated it was .88 miner's
18 inch.

19 MR. THOMPSON: I'll mark this.

20 (Exhibit 46 marked.)

21 Q. (BY MR. THOMPSON): Do you recognize
22 this exhibit, Mr. Vincent?

23 A. Yes. Those are my notes from our
24 January 4th meeting with Dan Temple.

25 Q. And did you identify a rate of delivery

1 in your notes here --

2 A. Yes.

3 Q. -- when the district delivered 1100 cfs?

4 A. Yes, it looks like I recorded that Dan
5 was indicating that they historically diverted
6 1100 cfs, which is 0.88 inch, miner's inch.

7 Q. That's my question. If a water right,
8 if a decree allows more than .75 miner's inch and
9 that amount can be diverted and beneficially used,
10 isn't that the, quote, "maximum rate of delivery"?

11 A. Well, water rights are a little bit out
12 of my realm. That is the maximum, but it's not a
13 guaranteed entitlement.

14 Q. So this last sentence in 63 where you
15 state that .75 represents the maximum rate of
16 delivery, if that's not identified by the water
17 right, that's -- that conclusion could change?

18 A. It appears to be a system constraint,
19 rather than a water right constraint.

20 Q. So it's not your opinion that A & B's
21 only entitled to .75 miner's inch per acre?

22 A. No.

23 Q. I guess did you review the pumping
24 records -- or let's talk about this statement here.
25 I have a question about your notes. Look in the

1 middle there. It says, "Tim Luke."

2 I guess could you just read that for me,
3 identify that?

4 A. Yeah. I apologize. I wasn't
5 anticipating that anyone would have to read these
6 except for myself.

7 It says, "Tim Luke said that Virgil
8 Temple said can only deliver 0.75 inch so could not
9 have delivered 0.88 inch equals 1100 cfs." That was
10 the question that Tim asked.

11 And the response was that -- from Dan --
12 1,095 or 1,098 -- basically Dan said, "We did
13 deliver 1100 cfs."

14 Q. So what was Tim referring to there? Did
15 he say?

16 A. I think apparently -- I don't know.

17 Q. Okay. I guess you talked about you
18 looked at the definite plan report a little bit.

19 Did you review the peak capacity design
20 factors in that report? Do you recall?

21 A. I didn't.

22 Q. But you reviewed the pumping records?

23 A. In the definite plan report?

24 Q. A & B's pumping records, the documents
25 they provided.

1 A. The definite plan was 1955; right?

2 Q. Right.

3 A. Okay.

4 Q. But apart from that, you reviewed
5 pumping records provided by A & B?

6 A. I did review some of the data. It
7 wasn't my main focus.

8 Q. Okay.

9 A. That, again, was Tim Luke's scope.

10 Q. You didn't look to compare the actual
11 design and size of the wells, whether or not they
12 exceeded that peak capacity from that definite plan
13 report?

14 A. No, I didn't.

15 Q. Let's look at paragraph 64.

16 We'll mark this.

17 (Exhibit 47 marked.)

18 Q. (BY MR. THOMPSON): Do you recognize
19 Exhibit 47, Mr. Vincent?

20 A. Yes.

21 Q. Can you identify it?

22 A. It looks to be a page out of the
23 Hydrology Appendix, the 1985 Hydrology Appendix.
24 That's page 43.

25 Q. I guess is it your understanding that

1 the current total water supply of A & B that's
2 diverted at a maximum rate of 970 cfs can be
3 delivered equally to all those acres appurtenant to
4 that water right?

5 A. Can you -- I'm sorry. Can you repeat
6 that?

7 Q. Yeah. Is it your understanding that the
8 current total water supply for A & B at its maximum
9 diversion rate of 970 cfs, whether or not that can
10 be delivered equally to all 62,000 acres under its
11 water right?

12 A. I doubt it.

13 Q. Are you aware that the irrigation system
14 under that water right was acquired and is
15 represented by 177 separate irrigation systems?

16 A. Approximately 177 wells, yes.

17 Q. And you're aware of the diversion rate
18 per acre A & B's entitled to under its water right.
19 It's stated on your notes.

20 And you understand that to be .88
21 miner's inch per acre?

22 A. Yeah. It's -- it's one water right for
23 1100 cfs for 62,000-some-odd acres -- 604.3 acres.

24 Q. In paragraph 64, what do you mean by
25 that quoted quote "stated farm delivery capacity"?

1 A. I'm referring to the Bureau of
2 Reclamation reference to the letter.

3 Q. And is that reflected in this page 43?

4 A. Yes.

5 Q. I guess what's the basis besides that
6 that you have to conclude that .75 miner's inch per
7 acre is a farm delivery capacity of A & B for those
8 acres under its water right?

9 A. It's really independent of the water
10 right. It appears to be a system constraint based
11 on this paragraph.

12 Q. Did you try and verify that statement,
13 do any investigations of the actual delivery system
14 at A & B?

15 A. I did not.

16 Q. Why not?

17 A. I had no reason to doubt the veracity of
18 the statement.

19 Q. You accepted what was stated in this
20 planning study without trying to determine the
21 information that was supporting it?

22 A. It indicates that the district stated
23 that they can't support a peak net farm delivery in
24 excess of that amount. I have no reason to suspect
25 that that's not true.

1 Q. But you went back and looked at some of
2 the district's annual pump reports, information they
3 provided?

4 A. Uh-huh.

5 Q. Let's turn to Exhibit 36 in that binder.

6 A. Exhibit 36.

7 Q. Do you recognize this document,
8 Mr. Vincent?

9 A. It looks to be a spreadsheet. It's
10 labeled "A & B Irrigation District, 2006 Annual Pump
11 Report System Performance During Peak Period."

12 Q. And I guess looking down at this column
13 "Criteria Available per Acre at Turnout," doesn't
14 this record, I guess, reveal that A & B has the
15 physical ability -- farm delivery capacity to
16 deliver more than .75 miner's inch per acre to
17 various wells?

18 A. I don't know what this means. I don't
19 know what "criteria available per acre" means. I
20 don't know whether that is water that actually went
21 through the turnout or whether that's just water
22 that could -- that is available that's perhaps in
23 excess of three-quarters inch. I don't know what it
24 means.

25 Q. Okay. How far -- did you go back and

1 look at any other reports over time, look at those
2 prior years?

3 A. Annual pump reports?

4 Q. Yes.

5 A. Yeah. As I stated previously, I just
6 looked at the 2007 pump report. And I don't know
7 that I looked at this spreadsheet. There's another
8 spreadsheet -- or sheet within the overall worksheet
9 that I looked at dealing with well construction.

10 Q. Well, looking at this spreadsheet, over
11 at the far left side, we've got I think the fourth
12 column, "Inches Required to Deliver .75 Inch Per
13 Acre at Turnout."

14 A. Yeah.

15 Q. And then we've got two columns over,
16 "Inches Available at Turnout."

17 A. Yeah.

18 Q. Would you recognize that to be the water
19 available at the farm delivery point?

20 A. It would appear that is the case, yes.

21 Q. And I think the criteria is just taking
22 those inches available at the turnout and dividing
23 it by the current allotment acres.

24 A. Okay.

25 Q. So I'm just -- I don't know if you

EXHIBIT C

MORSE DEPOSITION

Tr. at p. 40, Ins. 13-25

Tr. at p. 41, Ins. 1-7

Tr. at p. 41, Ins. 20-25

Tr. at p. 42, Ins. 21-25

Tr. at p. 43, Ins. 1-12

BEFORE THE DEPARTMENT OF WATER RESOURCES
OF THE STATE OF IDAHO

IN THE MATTER OF THE)
PETITION FOR DELIVERY CALL)
OF A&B IRRIGATION DISTRICT)
FOR THE DELIVERY OF GROUND)
WATER AND FOR THE CREATION)
OF A GROUND WATER)
MANAGEMENT AREA)
_____)

COPY

Docket No. 37-03-11-1

DEPOSITION OF ANTHONY MORSE

MAY 15, 2008

REPORTED BY:

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

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1 Q. So you reported to Rick, gave your work
2 you were doing, and apparently Tim had some work and
3 Rick put that together.

4 Do you know how that all occurred?

5 A. I don't know -- I don't know who Tim
6 gave what he did to. It may have been Rick
7 Raymondi, but I don't know.

8 Q. Okay. Let's look at paragraph 70. And
9 I think I identified this this morning. This is
10 Exhibit 24.

11 Do you recognize that map?

12 A. Well, I recognize it to be the outline
13 of the A & B Irrigation District. I don't know who
14 made the map. And the polygons, as nearly as I can
15 tell, are the Item G polygons. But as I say, I've
16 never seen this particular map before.

17 Q. Okay. If that was included in part of
18 the information supplied by the district, you hadn't
19 looked at that?

20 A. It was in what form?

21 Q. Part of the information they supplied on
22 the CD, if that was in there, that was something you
23 didn't see or you didn't review?

24 A. Well, I -- no, I have never seen this
25 particular map before. If this was built from the

1 data that they supplied, then I've seen the data,
2 but this particular map I've never seen before.

3 Q. Okay. Do these polygons, the colored
4 areas on this map in the A & B Irrigation District
5 boundary, look similar to the polygons, the 160
6 Item G lands you're referencing in paragraph 70?

7 A. They do.

8 Q. Do you think they could be the same?

9 A. It's entirely possible.

10 Q. Okay. Well, I'll represent that this
11 .pdf map was included on that Item G part, and I
12 don't know if the individual .shp files were sent --
13 I think they were sent separately. You may have
14 just reviewed those and not this actual map.

15 A. Okay.

16 Q. But this was included in that part.
17 And do you understand what these
18 represent, I guess, looking at the information you
19 did? Assuming this is the same.

20 A. If these are the Item G polygons, I
21 believe I do. I didn't look at any of the .pdf
22 files because .pdf files are static things and
23 you -- it -- it requires a certain amount of effort
24 in order to look at them with other data in GIS.

25 And if this had been a .pdf file of the

1 Item G lands, I wouldn't have bothered with the .pdf
2 file. I would have gone directly to the .shp file.

3 Q. Okay. Since we can't do that here,
4 unless we want to inconvenience some other employee,
5 do you understand what these individual .shp files
6 represent, those 160 polygons you're referencing in
7 paragraph 70?

8 A. If these are the ones in the Item G --
9 from paragraph (g) in Exhibit 26, then, yeah, I do
10 understand what they are.

11 Q. What do you understand them to be?

12 A. I understand them to be tracts that the
13 A & B Irrigation District feels did not get -- or
14 did not get enough water in 2006.

15 Q. And that's, I guess, represented on that
16 map, the caption? Does that confirm your
17 understanding?

18 A. Wells that are under .75?

19 Q. Yes.

20 A. I assume that's .75 inches?

21 Q. Miner's inch, I believe.

22 A. "Wells and lands served by these
23 wells" -- okay. I don't -- I don't think in terms
24 of miner's inches myself. So I --

25 Q. Well, the .shp files that were produced

1 as part of the response to the information request
2 that you reviewed, and if they're similar to these
3 on this exhibit, the Item G lands, did you
4 understand how those maps were created, how those
5 .shp files were created? Was it explained to you
6 what those represented?

7 A. I have -- I have no idea how they were
8 created. All I know really is what I read in here
9 and what we discussed in the Department. My
10 understanding is that these are tracts that the
11 A & B Irrigation District feels were water-short in
12 2006.

13 Q. Did you ever recognize that this was not
14 the actual place of use of A & B irrigated lands
15 within those tracts, that it was a gross area
16 identified in that tract?

17 A. No.

18 Q. You didn't understand that?

19 A. Not if I understand what you're saying
20 now. My understanding was that it's the polygon,
21 that was the area that was water-short.

22 Q. You thought everything inside the
23 boundary of each of these polygons was irrigated
24 acreage served by A & B, that it wasn't just a gross
25 area?

1 A. I'm sorry. Would you say that again?
 2 Q. Did you understand that these polygons
 3 didn't represent the actual irrigated place of use
 4 from A & B within those tracts, that they were a
 5 gross area shape?
 6 A. No. My understanding was that those
 7 polygons were the area that were water-short.
 8 Q. That every acre in that polygon was
 9 irrigated by A & B?
 10 A. I believe that's what I understood, yes.
 11 Q. And what did you do with those -- the
 12 polygon map .shp files identified in paragraph 70?
 13 A. I looked at them on top of NAIP --
 14 that's National Agricultural Inventory Program --
 15 photography from 2006.
 16 Q. Is that reflected on the next page at
 17 figure 6?
 18 A. Yes.
 19 Q. Is that what you did?
 20 So after you did that, after you
 21 overlaid that -- those polygons on that imagery, did
 22 you review each of those polygons to see what was
 23 going on inside them?
 24 A. Well, yes.
 25 Q. And after you did that review, did you

1 still think that every acre within those polygons
 2 was being irrigated by A & B?
 3 A. Oh, no. No. I mean, you can plainly
 4 see that there is land within it that's not
 5 irrigated at all.
 6 Q. Yeah. And I guess did you have any
 7 question at that point? Were you confused that
 8 maybe this -- these polygons, these .shp files
 9 didn't represent actual total irrigated acres by
 10 A & B within those polygons?
 11 A. Oh, I -- I mean, if the land is -- if
 12 there's range land within a particular polygon, then
 13 that's land that's not farmed. Well, okay, that's
 14 fine. And it never occurred to me that whatever the
 15 issue was would apply to nonirrigated land, although
 16 that's -- that's a minimum.
 17 I guess my -- in looking at this, I
 18 would say, "Okay. The land that's irrigated is the
 19 land that's not being -- that doesn't get enough
 20 water."
 21 Q. And that's -- did you do any type of
 22 review to try and identify those lands within the
 23 polygons that were actually irrigated compared to
 24 those that were not being irrigated?
 25 A. I'm not entirely sure I understand your

1 question. I mean, I just -- I -- I was not looking
 2 at trying to discriminate irrigated land from
 3 nonirrigated land within each polygon.
 4 Q. But your review revealed that?
 5 A. Well, I mean, you certainly could see
 6 it.
 7 Q. But that didn't raise any issues for you
 8 to reevaluate taking those gross areas of those
 9 polygons as being the total area served by A & B?
 10 A. Well, I don't recall that I made a
 11 determination about the number of acres within each
 12 polygon that were irrigated or not irrigated.
 13 Q. So after you overlaid this imagery --
 14 after you overlaid the polygon .shp files on the
 15 2006 imagery, you created some files like this
 16 figure 6 for every one of those polygons?
 17 A. No. No, not for every one of them.
 18 Certainly the -- in figure 6, what confused me was
 19 how a center pivot could be essentially bisected and
 20 half of the pivot be in a water-short polygon and
 21 half of the pivot not be in a water-short polygon.
 22 I mean, that just reflected my understanding of the
 23 whole issue, which was --
 24 Q. But this figure reproduced in the order,
 25 you had all those polygons for all the other -- you

1 had this overlay completed for all 160, and you
 2 reviewed it?
 3 A. Yes.
 4 Q. Where is that information?
 5 A. It's in my computer.
 6 MR. THOMPSON: Has that been produced, Chris?
 7 MR. BROMLEY: I don't know, Travis.
 8 MR. THOMPSON: I think that's something we'd
 9 like. If this work had been done for all 160, I'd
 10 like a copy of that.
 11 THE WITNESS: Well, I'm not sure I fully
 12 understand what you mean by "this work." I mean,
 13 it's just a matter of displaying the .shp file --
 14 the Item G .shp file --
 15 Q. (BY MR. THOMPSON): Right.
 16 A. -- on top of the NAIP photography, and
 17 then just looking at it.
 18 Q. And you reviewed all 160; correct?
 19 A. Yes. Yes.
 20 Q. Why didn't you create similar figures
 21 for all 160 like you did for figure 6?
 22 A. Well, I could have, I suppose. But this
 23 particular figure serves to illustrate one thing
 24 that confused me, and I could have added many more,
 25 but, you know, after -- what? -- the fifth, the