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Attorneys for Rangen, Inc.

RECEIVED
FEB 19 2014
DEPARTMENT OF
WATER RESOURCES

BEFORE THE DEPARTMENT OF WATER RESOURCES
OF THE STATE OF IDAHO

IN THE MATTER OF THE PETITION
FOR DELIVERY CALL OF RANGEN,
INC.'S WATER RIGHT NOS. 36-02551 &
36-07694

(RANGEN, INC.)

Docket No. CM-DC-2011-004

**AFFIDAVIT OF J. JUSTIN MAY IN
OPPOSITION TO THE IDAHO
CITIES' PETITION FOR LIMITED
INTERVENTION AND IN
OPPOSITION TO IGWA'S
PETITION TO STAY
CURTAILMENT**

STATE OF IDAHO)
) ss.
County of Ada)

J. Justin may, being first duly sworn upon oath, deposes and says:

AFFIDAVIT OF J. JUSTIN MAY IN OPPOSITION TO THE IDAHO CITIES' PETITION FOR
LIMITED INTERVENTION AND IN OPPOSITION TO IGWA'S PETITION TO STAY
CURTAILMENT - 1

1. I am an attorney licensed to practice law in the State of Idaho.
2. I have been retained to represent Rangen, Inc. in connection with this matter.
3. These matters are based on my personal knowledge.
4. Attached hereto as Exhibit 1 is a true and correct copy of two pages from a website operated by Idaho Water Policy, Inc. and the Executive Director of Idaho Groundwater Appropriators, Inc., Lynn Tominaga, as it existed on February 19, 2014.
5. Attached hereto as Exhibit 2 is a true and correct copy of a memorandum from IGWA dated July 16, 2010 that I obtained from the IDWR website.
6. Attached hereto as Exhibit 3 is a true and correct copy of a transcript of a status conference hearing that took place on May 24, 2012 in the matter.


FURTHER YOUR AFFIANT SAYETH NOT.



J. Justin May

Subscribed and sworn to before me this 19 day of February, 2014.





Notary Public for Idaho
Residing at BOISE
My Commission Expires: 6/26/2014

CERTIFICATE OF SERVICE

The undersigned, a resident attorney of the State of Idaho, hereby certifies that on the 19th day of February, 2014, he caused a true and correct copy of the foregoing document to be served upon the following as indicated:

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J. Justin May

AFFIDAVIT OF J. JUSTIN MAY IN OPPOSITION TO THE IDAHO CITIES' PETITION FOR
LIMITED INTERVENTION AND IN OPPOSITION TO IGWA'S PETITION TO STAY
CURTAILMENT - 5

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about us

Idaho Water Policy Group, Inc. is a natural resource consulting firm specializing in water and energy policy. Our clients include Idaho Ground Water Appropriators, Inc. and Idaho Irrigation Pumpers Association, Inc.

Idaho Ground Water Appropriators, Inc. promotes the interests of Idaho's agricultural, industrial and municipal ground water users and encourages the fair, equitable and efficient use of our state's ground water resources for the economic benefit of all Idahoans.

Idaho Irrigation Pumpers Association, Inc. is a non-profit organization committed to ensuring "a reliable power supply at a reasonable cost" for Idaho's irrigators.

Working together **Idaho Water Policy Group**, **Idaho Ground Water Appropriators** and **Idaho Irrigation Pumpers** represent a dynamic and integral cross section of irrigated agriculture.

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IGWA

Idaho Ground Water Appropriators represents agricultural, industrial and municipal ground water users across southeastern Idaho. Since organizing in 1994, IGWA has taken a strong, active leadership role in developing fair and equitable ground water policy and administration in Idaho.

Our mission is to represent the interests of Idaho's ground water users and promote the efficient use and economic development of water resources.

IGWA's members include the state's 7 ground water districts, industrial users and cities. All together IGWA represents over 850,000 acres of agricultural land and 120,00 residential and business customers.

With an estimated 95% of Idaho's drinking water coming from ground water sources, the efficient use and economic development of this resource is increasingly important. As the state grows, IGWA intends to play an increasingly vital role in the development of state water policy and welcomes the membership of newly formed ground water districts along with other industries and municipalities who share our mission and goals.

Lynn Tominaga is executive director of Idaho Ground Water Appropriators, Inc.

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Madison GWD
Magic Valley GWD
North Snake GWD
South West ID
Clark Jefferson GWD
Goose Creek ID
Fremont Madison ID

City Members:

City of American Falls
City of Blackfoot
City of Chubbuck
City of Heyburn
City of Jerome
City of Paul

City of Rupert

Business Members:

Busch Agricultural
Jerome Cheese
United Water of Idaho

MEMO

To: Rathdrum Comprehensive Aquifer Management Plan Advisory Committee

From: Lynn Tominaga/Executive Director

Date: July 16, 2010

Subject: Public Comments on Rathdrum Prairie CAMP

The Idaho Groundwater Appropriators (IGWA) is a statewide association of ground water users comprised of nine ground water districts, three irrigation districts, and numerous municipals, commercial and industrial ground water users. Idaho Groundwater Appropriators members irrigate over one million acres of agricultural land and our members include municipal water suppliers that provide water to over 100,000 businesses and households.

IGWA offers the following comments intending that they will help the committee to produce an efficient and effective comprehensive aquifer management plan. IGWA suggests the committee should consider how and to what extent policies for maximum beneficial use and full economic development will guide water management on the Rathdrum Prairie aquifer. The optimum use management should maximize the range of existing and future beneficial uses that can be supported by the available supply.

Optimum Use Management: Optimum use management employs the most cost effective strategies to support existing beneficial uses. CAMP should provide local, state, and federal policy makers with the most flexibility to adapt measures to currently unforeseeable structural changes in water uses and needs.

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EXHIBIT

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Existing and Future Uses. Optimum use management allows for improving existing water distribution system and providing exchanges for substituted water supplies can be viewed as more cost effective than curtailment or litigation. Thus, it is of utmost importance to support existing beneficial uses, drinking water, and water quality issues which are important in protecting existing and potential future uses.

Rathdrum Prairie Conclusions. With respect to the Rathdrum prairie aquifer, it is our belief this plan will address a misconception that withdrawals from Idaho ground water dramatically affect the aquifer or spring discharges on the Washington State side. The committee has heard current information and ground water modeling which shows that even with doubling of the population and consumptive uses on the Idaho side of the aquifer that water usage or impacts to the Spokane River on the Washington side has little or no impact on quantity. The Idaho groundwater model predicts less than 31 the cubic feet per second of impact to the Spokane River after 50 years in the state of Washington. This does not mean that this usage should be ignored but that Idaho's planning effort and state water plan for the Rathdrum prairie aquifer must show a concerted effort to mitigate consumptive use impacts. This will show the state of Washington that Idaho is serious about managing its water supply. This will provide the necessary documentation and show any court or potential litigation that Idaho's planning policy and implementation will address Idaho's impacts on the state of Washington.

Reasonably Anticipated Future Needs. I would suggest that the advisory committee further explore the use of Idaho Code 42-222 sometimes call the "Growing Communities Doctrine" or "Reasonably Anticipated Future Needs," as a means of protecting future water demands. While this might entail more expense in developing a planning horizon, it can be used a defense against out of state appropriation by showing the need and planning for water use over an extended time period. The biggest obstacle will be political subdivisions (such as cities, irrigation districts, aquifer protection district, state agencies, counties and others) and developers working together in each other's impact areas to develop a regional planning horizon. If communities can work together and thus prevent legal battles over who has control in their jurisdiction then it will speed up implementing the planning horizon.

Efficiency Improvements. IGWA would like to see additional or more specific efficiency improvements whether it be infrastructure, water conservation, or different water uses or supplies which might include water substitution, or reuse or reclaimed water as a new source of supply. This will be a giant undertaking for any one entity because it involves the cooperation of multiply units of government, tribes, and even the state of Washington. It would need the financial resources from federal, private, and public sectors to accomplish this task.

Institutional Constraints. Institutional constraints exist that will need to be reviewed and addressed as "one way or another" in any management scenario. The way we define problems often limits the way we think about solving them. There are no magic bullet answers to complex water management problems. A comprehensive solution will involve many measures implemented in different locations over different time scales.

Adaptive Management. This CAMP, for the next 50 years, needs to be done as an adaptive management plan which should suggest policies or a check list of items which could be accomplished in ten years. This will allow the document to change or be modified depending on the policies which are or are not being accomplished; and be able to identify other policies which are working and those that need to be modified or changed. After phase I, the plan needs to be evaluated and reassessed to see if the goals have been met or if they need to be changed based on economic conditions, funding, unforeseen conditions, or if the goals have changed for the aquifer. Phase I should identify those policies and how do you accomplish them. The committee would need to meet once or twice a year to see whether progress has been made on those policies and suggest actions to be accomplished.

Potential Solutions. Some potential solutions could be: 1) Building a series of small reservoirs in the basin to catch present snowpack or rain fall which then could be released during critical times for flow augmentation. This could relieve low flow conditions during critical times (in conjunction with releases from Post Falls Dam) but these small reservoirs could improve fish and wildlife habitat in those basins. 2) The city of Spokane could move its production Wells further from the river. Moving those diversion points could impact or spread the impact over time limiting the peak diversion during this critical time. 3) Releasing water from the Post Falls Dam could satisfy the depletion amount but limited research suggests that releases from the lake and limitation of AVISTA's Post Falls FERC license could cause problems because of flow restrictions or high water temperatures which might create bigger problems. 4) Artificial recharge with river water during periods when flows exceed minimum flow levels which could use the Spokane Valley Rathdrum aquifer as an underground reservoir which would increase base flows in the river during critical summer months. 5) Pumping water from Pend Oreille Lake and supply water to new uses as a source of water within the basin.

Informal Agreements. It is IGWA's last suggestion that the committee recommend informal agreements between the two states and the tribes which would explore a less formal approach to water allocation based on Memorandums of Understanding (MOU) and other mechanisms which are simpler, more flexible, more efficient, more incremental, and more of an adaptive management approach than a legal or congressionally passed act activities. The biggest drawback to informal agreements is that they do not have the regulatory force of law behind them. It is only if the state or local units of government who can enforce the informal agreements through state law or ordinances. This is an advantage or disadvantage depending on which side of the issue you are on in terms of trying to enforce the agreement.

Potential State Legislation. State action that could be taken to protect Idaho water from out of state appropriation could entail passing state law which 1) the state law regulates evenhandedly with only "incidental" effects on interstate commerce, 2) the statute serves a legitimate local purpose such as water conservation, water quality, land use purposes, maximum optimum use and economic benefits, and if so, 3) whether alternate source of water has been identified or not by the state seeking appropriation of water from Idaho. Does it have an alternative supplies or means which could supply its own needs?

Idaho Groundwater Appropriators was formed in 1994 in large part to provide a common voice for Idaho ground water users before state agencies, Idaho state legislature, Governor's office, and Idaho's Congressional Delegation. Since 1994, IGWA has represented or provided technical and legal assistance to its members in department negotiated rulemaking and several landmark cases before the Idaho Supreme Court.

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BEFORE THE DEPARTMENT OF WATER RESOURCES
OF THE STATE OF IDAHO

* * * * *

IN THE MATTER OF DISTRIBUTION }
OF WATER TO WATER RIGHT NOS. }
36-02551 and 36-07694 } CM-DC 2011-004
 }
(RANGEN , INC.) }
_____ _)

REPORTER'S TRANSCRIPT
OF RECORDED HEARING

DATE: May 24, 2012

LOCATION: Idaho Department of Water Resources
 322 East Front Street,
 Boise, Idaho.

Before Interim Director Gary Spackman

Transcribed by:
Maureen Newton, CSR #321
P.O. Box 132
Heyburn, ID 83336



TRANSCRIPT OF PROCEEDINGS

May 24, 2012

MR. SPACKMAN: Okay, we are gathered in the conference room at the Idaho Department of Water Resources and the regular crowd is here, but let's hear who's on the telephone first.

MR. RANGEN: Chris Rangen from Rangen, Inc.

MR. SPACKMAN: Thank you. Anybody else?

MR. BRENDHECKE: Chuck Brendhecke from AMEC.

MR. SPACKMAN: Thanks.

MS. KLAHN: White and Jankowski for the City of Pocatello.

MR. SPACKMAN: Thank you, Sarah. No Randy Budge today? Well, let's go around the table again. And if we get you a seating chart, everybody's in the same place, but they'll have to say their names again.

I'm Gary Spackman, Water Resources.

Fritz?

MR. HAMMERLE: Fritz Hammerle for Rangen.

MS. BRODY: Robyn Brody for Rangen.

MR. RAYMONDI: Rick Raymondi, IDWR.

MS. SUKOW: Jennifer Sukow, IDWR.

MR. WILLIAMS: Ray Williams, IDWR.

MR. BAXTER: I'm Garrick Baxter, IDWR.

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schedule and haven't come up with a mutually agreeable schedule.

MR. SPACKMAN: Okay. And Gary worked on one for me and so he's kind of got one that follows what we had agreed to in timing for a hearing for SeaPac.

MS. McHUGH: That's kind of what we used.

MR. SPACKMAN: Kind of the same timeline. I don't know whether you want to talk about that now. Maybe we out to delve into where we're at and I think that may give us a little better direction.

MR. HAMMERLE: I think the schedule might be a good place to start.

MR. SPACKMAN: Do you think? Okay.

MR. HAMMERLE: Yeah. I think we can probably agree to discovery cutoffs, expert reports, those kinds of things if we can just get a hearing date.

MS. McHUGH: Exactly. I think that is the bottom-line difference. We are about three months off on a hearing start date.

MR. HAMMERLE: We had proposed to IGWA a January hearing date and I think you were --

MS. McHUGH: May 1st.

MR. HAMMERLE: May. So I think we're at logger heads and can't agree to the hearing date. So if we can get a hearing date I think we can come up with an agreeable

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MS. McHUGH: Candace McHugh for IGWA and the Ground Water Districts.

MS. RUSHING: Emalee Rushing, IDWR.

MR. KINYON: Joy Kinyon with Rangen.

MR. COURTNEY: Wayne Courtney for Rangen.

MR. SPACKMAN: Thanks everyone. And I know Rick RaymondI was in here and he walked out -- oh, wait a minute, you changed sides on me.

MR. HAMMERLE: That's confusing everybody, Rick.

MR. SPACKMAN: I said everybody was in their assigned seats and I was looking over here and not --

A VOICE: It's my fault. I sat on this side.

MR. SPACKMAN: All right. Sorry, Rick. I looked over here and I thought, where is Rick?

MR. HAMMERLE: My day is just going to be confused.

MR. SPACKMAN: I'll be disoriented as well. I may head out to Jerome right after this meeting and turn right.

Okay, a couple of things: I know last time we talked about possibly discussing a hearing schedule. And I don't want to jump on that necessarily at the outset, but as just a subject, I think we ought to talk about it.

Candace, I think you had talked with the parties.

MS. McHUGH: And we have. We have discussed a

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schedule.

MR. SPACKMAN: That's interesting because neither one of you are in here (inaudible) enough of an expedited schedule for my liking. We were thinking November or December. And, Candace, for your benefit we were thinking the week just before Christmas.

MS. McHUGH: Of course you were.

MR. HAMMERLE: Now you're starting to think like other district judges in Idaho.

MS. McHUGH: So they're hoping eventually I'll make Christmas cookies or something.

MR. SPACKMAN: I think Candace has been in the middle of contested case hearings that falls just before Christmas, what --

MS. McHUGH: For three years in a row.

MR. SPACKMAN: Three years in a row.

MS. McHUGH: And I was told, What does it matter, you just show up on Christmas Eve. I'm, like, the rest of you might.

MR. SPACKMAN: No, we were thinking the first week of December. And part of the reason I press (inaudible) I was suggesting October or November. We have an obligation to hold a hearing expeditiously in these matters and get things out once we're ready to go. But, you know, if you want to talk about January, that's fine.

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1 I'd like to have an order placed before the beginning of
2 the next irrigation season.
3 So I think May is too late for me, Candace.
4 MS. McHUGH: And if you would indulge me as to
5 what we were thinking, just for my benefit and maybe this
6 would help for some of the other parties.
7 Rangen made the delivery call in December and at
8 that point we came to the conclusion that it didn't make
9 sense to go forward under the old model and there was a
10 conclusion that we needed to proceed with the new model.
11 My proposal of a May 1st hearing date is actually
12 less than a year from the time we have all of the
13 production tools that are in the new model available to
14 Chuck. I originally thought, you know, a late winter/early
15 spring hearing was probably going to be doable, and then
16 talking to Chuck and the kind of effort that needs to
17 happen on running the model and then getting that
18 information to our other experts to use that information to
19 then be able to construct expert reports, it just was too
20 quick.
21 The proposal was basically in July. The model
22 will be done and in less than 30 days Chuck would have his
23 original expert report done. I mean, I think that's
24 pushing it. And based on the party's agreement in
25 December, you know, in good faith we decided not to pursue

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1 all the production tools in place to work with that and
2 work with our other model people. It's less than a year
3 from our site visit. And the fact is, is that's I think a
4 reasonable schedule.
5 Pushing it I think is prejudicial to the
6 Groundwater Users and will essentially not allow us to put
7 together the kind of case to present you with information
8 you need to look at all of the different policy as well as
9 technical information. This is not just a case of, you
10 know, the model and what it says, et cetera. There's also
11 other considerations, and that stuff I think we should be
12 fairly able to discover and our experts should be fairly
13 able to conclude and share that information.
14 And then also built into this, the other cases
15 that we've tried took much longer from the time the first
16 order was issued. Not when the delivery call was issued,
17 but the first order was issued, and the hearing, and we
18 were already starting out with data from the department.
19 The department had done a lot of information and discovery
20 and we were reacting to information that was already there.
21 Now we are actually creating it. And so I think it's more
22 reasonable to have a hearing that gives us the time we need
23 and it's based really on looking from July to when the
24 first expert report could reasonably be done.

25 And I think that's the area where the change was.

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1 the case aggressively, kind of seeing where the model was,
2 to make sure that it was in fact going to stay on track.
3 Since the last status conference when we realized the model
4 was on track and we were going to have it in July the
5 parties exchanged hearing schedules. You know, we talked
6 about a site visit. We have it tentatively scheduled for
7 the middle of June.

8 But the reality is, is Rangen's case and IGWAs
9 cases are very different, and the preparation time, the
10 fact of the matter is, is going to be different. We have
11 to defend the call. We have to look at the trim line. We
12 have to come up with ways to, you know, express the trim
13 line both from a technical potential or some other basis
14 for the trim line. We also need to be able to inspect
15 their facilities, understand their water use, look at their
16 diversion structures, understand the spring discharge, all
17 of the information of which Rangen has at its disposal and
18 we have to discover and then incorporate into all of these
19 different expert reports.

20 Their case kind of rises and falls on the fact
21 that they don't have their claim of not enough water and
22 that the model answers all their questions. The defense
23 requires more work, frankly, and we just weren't able to
24 come up with a way to do that so quickly from July on. The
25 main hearing date is ten months after the time Chuck has

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1 I think they proposed a month later and we proposed about
2 three months later. And then when I looked at the
3 schedule, basically I understand the director has a
4 two-week hearing that I'm actually involved in in April,
5 starting April 15th, so that took the month of April kind
6 of out of the equation. So that month, in part the reason
7 the schedule starts in May, three months later, is because
8 we have an April challenge from the director's schedule to
9 not have it start in April.

10 But anyway, you know, the solutions and the
11 timing of what the Ground Water District's pumping may or
12 may not effect the sprinklers at Rangen didn't happen
13 immediately and any curtailment isn't going to give them
14 water immediately.

15 That's not to discount the fact that you don't
16 want to go through another irrigation season, I understand
17 that. But I want the director to know that my picking of
18 the May 1st hearing date didn't have to do with the fact
19 that it makes another by on the irrigation season. I just
20 really think it's based on the timing of when we have the
21 tools available to us. And Chuck can certainly weigh in on
22 that, but we really did give it some consideration on when
23 we could get our first expert reports reasonably and fairly
24 filed after we got the information we needed. So I would
25 ask for a longer hearing date -- for a hearing date later.

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1 MR. HAMMERLE: Director, first and foremost we
2 think we can actually live with your date of December. Our
3 experts have been working I think within the committee.
4 We've been working on validation, calibration,
5 uncertainties, and these aren't secrets. Hopefully IGWA's
6 experts are working within the committee, can anticipate
7 what the committee's doing and exactly what the issues are.
8 This is frankly the first time I've heard about a trim line
9 from IGWA.

10 You told Robyn in confidence or not in confidence
11 that you were going to do that. We understood you were
12 going to do that. We think you have plenty of time within
13 the committee to propose that, at least anticipate it
14 within your own experts what that might be. So, you know,
15 if you want to move, director, with the December date, we
16 think we can accommodate that. Our experts are prepared.
17 We've been working on these issues and we should be able to
18 go on your deadline. So if that's the date that you want,
19 director, then that's the date we'll live with.

20 MR. SPACKMAN: I think in listening to Candace:
21 Candace, you pointed out some compelling reasons why maybe
22 there ought to be additional time, so I'm willing to move
23 back to a January or 1st of February hearing date. End of
24 January, 1st of February. When you were you proposing?

25 MR. HAMMERLE: We had actually proposed

10

1 January 28th.

2 MR. SPACKMAN: I'm willing to go to there. But
3 to have sufficient time to issue an order by the 1st of
4 April, which to me is drop-dead time for issuance of an
5 order for the irrigation season, I think any later than
6 that, and that's consistent with the other orders that were
7 issued, I need to hold a hearing at the end of January or
8 first of February. What day is the 28th?

9 MS. BRODY: It's a Monday.

10 MR. SPACKMAN: So I guess I'm willing to move off
11 of the earlier date, move into January, but I don't see a
12 way. And under the schedule we have outlined, Candace,
13 that would give your expert not one month, but about three
14 to prepare, and all the experts to prepare their original
15 reports, looking at the SeaPac order that was issued. So
16 they'd have 90 days, plus the time starting right now to
17 prepare.

18 And we can listen to Rick and what he has to say,
19 but my guess is, because I haven't heard noise, is we're
20 moving forward within the next couple months and we'll be
21 ready to go. That's my guess. So I think the parties can
22 gear up and start preparing.

23 And I guess the other point that I'll make here
24 is -- and I haven't gone back and read it for quite
25 awhile -- but my understanding of the court orders that

11

1 have been issued is that the courts have said that the
2 director has the responsibility to afford the parties a
3 hearing, (inaudible) the director needs to expedite that
4 hearing and that the director can't delay. And I think
5 there was some dissatisfaction expressed with the time
6 frames within which the hearings were held and orders were
7 timely issued. And I want to be sensitive and be timely.
8 Sounds to me like January 28th is a good day. How long do
9 we need to reserve?

10 MS. McHUGH: If I understood the director's
11 comments from earlier this year, you were anticipating all
12 life witness testimony, correct? Is that a correct
13 assumption?

14 MR. SPACKMAN: Well, I'm happy to receive
15 testimony as has been received previously, if that's the
16 preference of the parties. Go ahead.

17 MR. HAMMERLE: Do you want to adopt somewhat of a
18 contested case rules, where if the parties agree they can
19 submit things as -- I forget what those are called --
20 they're in the contested rules -- statements -- kind of
21 affidavits, for lack of a better word, with the parties
22 agreeing?

23 MR. BAXTER: Pre-filed testimony?

24 MS. McHUGH: That's what we've done in the past
25 cases and it's taken to -- I guess the reason I ask the

12

1 question is, the pre file -- with pre-filed testimony and
2 cross examination only it's taken 18 days roughly. You
3 know, 12 to 18 days in the past hearings. A few more
4 parties. So that's why I was asking the question if we
5 were going to do only a live direct examination and also
6 cross examination, I think, you know, it would be a solid
7 two weeks, I think a good ten days of hearing time, if not
8 more. That's why I was asking the question.

9 MR. SPACKMAN: 18 days (inaudible).

10 MS. McHUGH: It was 18 days of actual hearing
11 time. I believe it was 18 days for the Thousand Springs
12 hearing.

13 MS. KLAHN: This is Sarah Klahn. Candace, I
14 think that 18 days was the Surface Water Coalition where we
15 didn't really have fully pre filed testimony.

16 MS. McHUGH: Okay, that could be.

17 MS. KLAHN: Or was it A&B? It was the one where
18 we didn't have fully pre filed testimony.

19 MS. McHUGH: Okay. So I'm just saying that
20 that's a consideration when you look at this, as far as if
21 we do all examination orally.

22 MR. HAMMERLE: I think pre filed with the
23 opportunity to cross-examine would be, you know --

24 MS. McHUGH: (Inaudible).

25 MS. KLAHN: It's more efficient.

13

1 MR. SPACKMAN: Well as I said, that's not a
2 process that I'm very familiar with. I think it poses a
3 great burden on the hearing officer to be prepared to read
4 and understand the testimony ahead of time, and also it
5 doesn't give the hearing officer the same opportunity to
6 judge the demeanor of the witness. But I think
7 (inaudible).

8 MS. McHUGH: We did that in large part for two
9 reasons at the prior hearings. Because the hearing officer
10 in that case preferred written testimony. That's how he
11 processed information. And so not only was it proposed
12 because it was efficient, but that's also what the hearing
13 officer preferred, because that's how he processed
14 information that way. I'm certainly not necessarily
15 opposed to oral testimony, and I do think pre filed would
16 be more efficient, but to the extent the hearing officer
17 needs information, I guess I feel like it's more important
18 that the information is conveyed in a manner that is
19 persuasive or effective for the hearing officer.

20 MR. SPACKMAN: I don't want to close the door.

21 MR. HAMMERLE: I have a suggestion. You know, we
22 came in here today without a hearing date. We have a
23 hearing date. What I'd propose is after today that we get
24 together and come up with a schedule and at the very next
25 meeting we can see if we can hammer out procedure, that

14

1 maybe, director, you might be comfortable with. Maybe
2 we'll propose it and at the very next hearing you can tell
3 us what you want to do.

4 MR. SPACKMAN: Okay. Well, rather than give
5 exact dates, these are the kinds of timelines I guess that
6 will oversee that order. And they were shorter than what
7 we're talking about, but at least right now, given the
8 hearing date, it looks to me like we could start discovery
9 anytime that the parties want.

10 MS. McHUGH: And we kind of agreed to that, yeah.

11 MR. SPACKMAN: If you want an order issued that
12 authorizes discovery, and our rules call for it. It says
13 the parties can engage in discovery upon agreement. But
14 I'm willing to issue that order.

15 MS. BRODY: I think it should be ordered.

16 MS. McHUGH: I due, too. And that's the reason,
17 really, frankly, I haven't done written discovery, because
18 I was kind of making sure we had an order authorizing it.
19 An oral order works, but a written order is fine, too.

20 MR. SPACKMAN: Then we could set a deadline for
21 disclosure of expert witnesses. I think the parties know
22 who those are right now, I guess.

23 MS. BRODY: I don't see any need for that
24 deadline. We've already disclosed all of our experts in
25 our call documents. I guess if you guys want to disclose

15

1 who yours are, but I mean --

2 MR. HAMMERLE: I think there should be
3 disclosure.

4
5 People talking simultaneously.

6
7 MR. HAMMERLE: I'd certainly like to have a
8 written response of who those experts are.

9 MR. SPACKMAN: Here's the reason I always like to
10 have it happen early: Because in my opinion, particularly
11 where we have experts and there's a lot of technical
12 testimony to come in, I think there's great value in
13 depositions and deposing those witnesses, and the earlier
14 you know who they are then the easier it is to track them,
15 like in the reports. So within a couple weeks or a month I
16 think it goes on to be disclosed.

17 Then it looks like from about mid July, July 1st
18 to mid July, we'll have these meetings and say, Okay, looks
19 like we're ready to go with the model. That's where I
20 think we're headed. Rick's nodding his head.

21 So then it looks like about three months for the
22 initial expert report and then another month for rebuttal
23 expert reports and then the department will submit its
24 report about a month later.

25 MS. McHUGH: Say that one more time.

16

1 MR. SPACKMAN: The parties will have about three
2 months to prepare the initial expert reports; then about
3 another month for rebuttal reports from the experts; then
4 the department will have another month to submit its expert
5 report. Then the other deadlines we can work through, but
6 that's kind of the rough schedule.

7 MS. McHUGH: The one comment I might make is I
8 think it would be helpful to have the parties be able to
9 react to the department's report. So I would suggest that
10 we would put the department's -- I guess I feel like there
11 needs to be an opportunity to react to the department's
12 report. So I'm not sure how to do that. Or is that
13 something we could do?

14 MR. BAXTER: (Inaudible) SeaPac an order, then
15 give the parties an opportunity to reply to the
16 department --

17 MS. McHUGH: Submit the expert report's rebuttal
18 to the department's memo and then we have some sort of a
19 reply to the memo. So a surrebuttal kind of, maybe, sort
20 of.

21 MR. BAXTER: Yeah. And I do have copies of the
22 SeaPac order, just (inaudible) copy of it on the way out
23 the door to see what we did there.

24 MR. SPACKMAN: That's right. There is
25 (inaudible).

17

1 MS. McHUGH: That's what I recall kind of, too,
2 but I wasn't sure since (inaudible).

3 MR. HAMMERLE: Director, how do you anticipate
4 the parties seeking information from the department? I
5 know, Candace, you've sent a written request for certain
6 information.

7 MS. McHUGH: And then I think Robyn has, too.

8 MR. HAMMERLE: I think that process works well,
9 but it can get out of hand. So I don't know how -- you
10 know -- if there's any kind of formal process that you want
11 to engage seeking information from the department.

12 MR. SPACKMAN: Well, one of the things that I
13 don't like to have coming in, and we end up spending a
14 whole bunch of time scouring e-mails and everything else,
15 is public records requests. And I know it's part of the
16 law, but I'm wondering if there's some process similar to
17 this I-84 corridor process that we -- or a whole bunch of
18 applications where we set up some sort of electronic note
19 out there, internet note, where we just post information.

20 You know, it seems to me a public records request
21 is usually something that people file with us when they're
22 looking for secretive documents that they might not find
23 otherwise. And if you think we have some of those, I
24 suppose you can file it anytime, but it would be a lot
25 easier for us if we were just routinely posting things and

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1 going to make it available.

2 MR. SPACKMAN: What I'm suggesting is let's place
3 it electronically in a central location out there.

4 MR. BAXTER: So you want me to have him scan it
5 all in and --

6 MR. SPACKMAN: I thought it was already in
7 electronic format.

8 MR. BAXTER: Tim has a lot of files related to
9 the Rangen facility that is just paper records of data
10 collected. I think some of it might have been transferred
11 in. I don't know if all of it has, though.

12 MS. McHUGH: Would you be open to allowing us to
13 take it off so I could have a document management company
14 prepare it? I'm just -- I'm not saying I necessarily want
15 to. I want to look at the data first. But if it's
16 information we think we want, I mean --

17 MR. BAXTER: Mostly I think if it was information
18 the parties felt was important, we would do it. I think a
19 lot of it is Tim thinks that the parties are going to look
20 at this and go -- for whatever reason he's indicated to me
21 he thought it wasn't all that valuable to the parties. So
22 maybe we can make that compromise: That we'll give you
23 everything we have electronically, and there's some paper
24 documents, say, that we don't have it in electronic format,
25 but you want them converted to electronic format, we can do

20

1 then everybody had an opportunity to access that if there
2 were something else out there.

3 MR. BAXTER: My one comment to that would be that
4 we do have a lot of records that are not -- a lot of data
5 that would be very difficult for us to collect and scan.
6 We were in response to the records request -- and I
7 distinguish between a records request and a contested
8 proceeding versus a public records request outside of a
9 contested proceeding -- the department has -- I was going
10 to suggest we talk about the records request we did
11 receive. The department is in the process of collecting
12 all that information. Where we can put it in electronic
13 format and put it on a dvd to share it, we are doing that.
14 But Tim Luke has identified that he filed files of data
15 that would be very difficult for us to turn around and
16 scan. We're going to make it available to the parties for
17 them to come in and inspect, and if they want to copy it,
18 great. We think most of it is probably not going to be
19 that interesting to the parties. And so there's going to
20 be a combination I think of electronic information and
21 other information that isn't in electronic format but could
22 be transferred. I guess if you wanted Tim's staff to
23 undertake that job of scanning it all in, that would be
24 great, but Tim has indicated to me he sees that it's
25 probably of little value to the parties. But, again, we're

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1 those. And if you find that they're of little value, we
2 just don't undertake that effort. Does that sound fair?

3 MR. HAMMERLE: Yeah. I think through the SRBA
4 process you guys have gotten to a point where you're pretty
5 good at allowing parties to access data without overtly
6 formal requests, written requests, those kinds of things in
7 the form of what would be an interrogatory. I'm sure you
8 don't want those. I don't know if you do or don't. I
9 would say not. So maybe we could within the next month
10 work with some kind of formal or informal way of accessing
11 information with Garrick and maybe he could help us come up
12 with some sort of process that works well for you.

13 MR. BAXTER: I think the first step, let's get
14 the -- I think it was records requests responded to, which
15 of course we're going to open all the information up to all
16 the parties.

17 And, Robyn, have you submit a records request as
18 well?

19 MS. BRODY: Yeah. It's just one. It's asking
20 for the files on the Musser call.

21 MR. BAXTER: Did that go to Victoria?

22 MS. McHUGH: We just received it yesterday. And
23 I just sent a letter saying whatever she says, I want, too.

24 MR. HAMMERLE: And that's a good idea. Anything
25 they want, we want; and anything we want, I'm sure they

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1 want, so we might as well just give two copies of each.
 2 MR. BAXTER: And I agree that it doesn't make
 3 sense to respond to one person and then get the request
 4 later from the other side. We're going to put everything
 5 out there and make it all available.
 6 MS. BRODY: And I guess from my perspective,
 7 thinking about documents or data or whatever that may not
 8 be easily reproduced, maybe the thing to do is to say,
 9 Look, on such and such a date you can come up here and so
 10 and so will show you what it is, and invite everybody and
 11 we'll come and see if there's something that we want. I
 12 mean, that's a reasonable process to me. And I think the
 13 department sets the date and we'll just figure out how to
 14 get somebody here.
 15 MR. SPACKMAN: Okay. Sounds good to me. So
 16 you'll work with Garrick?
 17 MR. HAMMERLE: Actually I think the department
 18 had become very good at providing information in cases. At
 19 least that's been my SRBA experience.
 20 MR. SPACKMAN: We want to try to accommodate.
 21 MR. BAXTER: Just so the parties know, we have
 22 pulled all the files that Candace has identified in her
 23 records request and checked on line and what is on line is
 24 the same thing as in the paper copies already. Now we're
 25 out collecting other data sets. I think at some point Tim

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1 in the past we've been able to basically say, you know, I
 2 called Garrick and I said, Chuck wants to talk to so and so
 3 about this information because he's not sure what it says.
 4 Can we just let the two of them talk? A lot of times what
 5 ends up happening is our experts and your expert and the
 6 person in the department have a conversation about what
 7 they're looking at, to make sure everybody knows what
 8 they're looking at, and then they go back and deal with it
 9 and we're not involved in the process at all. It just
 10 experts talking to each other to figure out and make sure
 11 what they're looking at is -- everybody understands what
 12 they see.
 13 MR. HAMMERLE: We'll have to think about that
 14 one. Sounds reasonable at the front end.
 15 MR. BAXTER: What was happening is, for example,
 16 we were getting e-mail requests and IDWR folks would
 17 respond to that e-mail request, but we'd send the response
 18 out to everybody. So I think not only were some verbal
 19 conversations happening, we were also -- my preference
 20 would be kind of through e-mail because it documents the
 21 response and then we provide that same information to
 22 everybody so everybody's on the same page. I think --
 23 MS. McHUGH: I guess my point is that that's kind
 24 of worked in the past. It's not been a problem. So I just
 25 wanted to throw that out as another thought.

24

1 Luke and his group did a lot of measurement work out at
 2 Rangen, and so what we're trying to do now is collect some
 3 of that stuff that's not normally in the paper files.
 4 MR. HAMMERLE: I think, director, you should
 5 appoint, like, a front man. Like, this is the person to
 6 seek information from from the department, so you know
 7 we're not scouring your offices for people, making it
 8 probably more difficult for you.
 9 MR. SPACKMAN: Isn't that why Ray's here today?
 10 MR. HAMMERLE: It's best if you have a lawyer and
 11 a --
 12 MR. BAXTER: Exactly. Why don't they come to me
 13 and then Ray and I are going to work together. He's
 14 actually doing the collection for the department for
 15 Candice's request.
 16 MR. SPACKMAN: I figured, as the discussion was
 17 going on --
 18
 19 Voices talking simultaneously.
 20
 21 MR. BAXTER: So, if we could funnel those in to
 22 me and then Ray and I -- cc to Ray if you would, and then
 23 he and I will work together to make sure it all gets taken
 24 care of.
 25 MS. McHUGH: And as far as asking data questions,

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1 And the second other thing I wanted to ask is, I
 2 assume there's an anticipation that we will be able to ask
 3 the personnel at the department who prepared the memo,
 4 either through deposition, you know, any questions that we
 5 have on the memo to understand it; is that anticipated?
 6 MR. HAMMERLE: Sounds real logical.
 7 MR. SPACKMAN: The department's staff is
 8 available to be deposed?
 9 MS. McHUGH: Yes.
 10 MR. SPACKMAN: Sure.
 11 MS. McHUGH: Okay.
 12 MR. HAMMERLE: I think, Candace, your question
 13 was we make sure there's a name identified with a memo so,
 14 again, we don't have to scour around of who did that.
 15 MS. McHUGH: And because in my opinion this is an
 16 expedited schedule, and I know we will disagree on that,
 17 but we might want to start blocking out some dates for
 18 these different depositions, even if we don't know exact
 19 names of people. So that way we can make sure we have the
 20 calendar set, because I think that's helpful.
 21 MR. HAMMERLE: Good idea.
 22 MR. SPACKMAN: Okay. All right. Shall we go to
 23 a review of the model? Where it's at? Rick?
 24 MR. RAYMONDI: I'll start with the Gantt chart,
 25 and it's changed quite a bit, but I think the last copy

25

1 MR. HAMMERLE: I guess we have some questions
2 regarding, I guess, the process from here to the end date.
3 Looks like we're moving on to where we're satisfied with
4 the calibration and validation, which gets us to the big
5 gorilla, and that's uncertainty.
6 So we understand that the department has hired a
7 statistician and within this process we can only speculate
8 why. We've been looking at statistical approaches to
9 uncertainty ourselves, so if you guys have hired a
10 statistician it would be helpful, I guess, for us to know
11 what is the task of your statistician and what is the scope
12 of work and sort of what's the end game of hiring a
13 statistician. And if you are and the statistician is going
14 to evaluate this, it would certainly be helpful to have
15 that available at the next meeting so people know what's
16 going on. Because we've been looking at this approach
17 ourselves, so --
18 MR. RAYMONDI: So when you express the results
19 from calibration, validation and uncertainty, there tends
20 to be a lot of statistics on how you express it in
21 different graphs and charts and so forth. So during the
22 last meeting -- this would have been April 24th --
23
24 Voices talking simultaneously.
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1 also would be helpful that if she is going to -- I know
2 it's probably a short timeframe for her, too, but to have
3 some kind of idea available before that meeting of what she
4 might talk about, and it would be very helpful I think to
5 actually have her there at the meeting.
6 MR. RAYMONDI: Okay. We have a conference call
7 with her on, it's either this week or next, but I'll bring
8 these issues up with her and get her ready for that. I
9 think she's available for the June 22nd meeting because we
10 did talk about that possibility. But I can't say for sure.
11 If not, we'll have a Plan B how to get information to you.
12 MR. HAMMERLE: And I predict all of her work is
13 going to relate to the issue of uncertainty? How that
14 might be handled?
15 MR. RAYMONDI: I actually thought it was more
16 validation than --
17 MS. SUKOW: Actually I thought it was more the
18 calibration. So the committee had some interest in
19 presenting statistics on how well the model matches the
20 time series for the calibration data. My understanding is
21 that was the primary focus of it. They wanted to be sure
22 that the statistics that were chosen were statistically
23 valid. So I don't think it involved an uncertainty
24 analysis at all. It's for the statistics that will go in
25 the final report on the model calibration.

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1 MR. RAYMONDI: -- or April 16th, a recommendation
2 was given that we consider hiring a statistician. And, you
3 know, it kind of took me by surprise, but they recommended
4 that. And the reason being that none of us modelers or
5 hydrologists are true statisticians and maybe there's ways
6 that we should be expressing the results that would be more
7 meaningful than, you know, the charts that Allan's prepared
8 and the graphs and so forth. And all of these are
9 time-series-type-flows-with time, or whatever. Water
10 levels with time. And so we asked a statistician, she
11 works for the University of Idaho at the Idaho Falls
12 branch, and her name is Max? I can't remember her name
13 right now. Her first name is Max. But she works next to
14 Gary Johnson, she's a professor, and she sent us her resume
15 and thought that she could help us look at this. So it's
16 just a small contract, but we were thinking of maybe having
17 her available for the June 22nd meeting and have her
18 present her approach or what she's found at this point.
19 MR. HAMMERLE: Is she going to issue any -- well,
20 going backwards, is there any kind of written scope of work
21 or task statement that you've asked her to do that might be
22 available to all of us?
23 MR. RAYMONDI: Yeah. She has a contract, so I
24 can extract the scope of work from that and get it to you.
25 MR. HAMMERLE: That would be helpful. I think it

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1 MR. BROCKWAY: Hey, Rick, this is Chuck Brockway.
2 As I remember it, the justification for suggesting that
3 maybe some outside referee or statistician take a look at
4 the procedure was that I think the committee felt that we
5 needed that in order to defend the model, if you will,
6 against possible future questions.
7 And in addition to maybe get some input on the
8 type of statistical output or data that should be put in.
9 Now, Maxine's primary expertise in statistics is use of
10 uncertainty analysis in risk management. And I would guess
11 that maybe she's going to offer some suggestions on that.
12 I don't know because I haven't seen her contract or the
13 scope. So that was my understanding of why the committee
14 made the suggestion that you consider some outside
15 statistician's help.
16 MR. RAYMONDI: I may have confused it a bit. I
17 think her primary focus is going to be the calibration and
18 some of the validation, rather than uncertainty, even
19 though that may be her expertise. But I worked this out
20 with Allan and I'll go back and get that scope of work.
21 But I don't think it discusses uncertainty in her contract.
22 MR. BROCKWAY: Okay.
23 MR. RAYMONDI: But --
24 MR. BRENDENCKE: This is Chuck Brendencke. My
25 recollection was that the main focus was on what are the

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1 ways to best express the calibration results using a
2 statistical pool.

3 MR. RAYMONDI: And that's what I remember mainly,
4 Chuck. You know, I think we were in the middle of showing
5 the validation data when this came up, so it might have
6 been somewhat tainted, but I think it's mostly calibration.

7 MR. HAMMERLE: Rick, I guess that brings us to
8 some points we raised I think at our February meeting about
9 uncertainty and what the objective criteria might be for
10 the department's consideration of objective factors that
11 you're going to look at with respect to any questions on
12 uncertainty. I don't know if you have that, director, or
13 if that's something you're just going to allow us to fight
14 about or if the department has its own views on it. I
15 don't know.

16 MR. RAYMONDI: Well, the summary tables that we
17 provide the committee at every meeting since we've started
18 running these uncertainty analyses have the range results
19 for the high-stress impact and the low-stress impact and
20 then I think compared to the calibrated impact? And so
21 that's as far as we've gone to discuss the results at this
22 point. So that could be something we could tackle at the
23 next meeting.

24 MR. HAMMERLE: Because I think where you might be
25 going is you're hiring a statistician to tell you a range

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1 validation. And then uncertainty, it seems everyone's sort
2 of dancing around the campfire on that one.

3 MS. McHUGH: I guess it was my understanding that
4 the first time we really get the department's reaction on
5 any of that and how it is applied in this case is going to
6 be at its memo. I mean, if it's a different timeframe or
7 if you're asking for them to provide something earlier,
8 then I think that just needs a request. But I think that's
9 the difference in this process compared to prior processes.
10 That's just the way it is, I guess.

11 MR. HAMMERLE: It looks like the department is
12 moving on those issues of uncertainty, and I think it would
13 be at least somewhat of a good idea to at least get some of
14 these issues out before the committee, while the committee
15 is active, while you're having meetings. It seems logical
16 to me.

17 MR. BAXTER: But haven't they done that through
18 the white papers on predictive uncertainty?

19 MR. HAMMERLE: They have. I guess the question
20 is, you know, you're working sort of on your own, looking
21 at all these issues yourself, so I don't know if you're
22 going to have any opinion on uncertainty before the model
23 rolls out.

24 And, Candace, your question, you know, I
25 understood that to be true before, but I don't know if the

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1 on your validation and calibration runs, so, you know,
2 you're discussing ranges, you've been looking at ranges,
3 and the question is what are you going to do with it.

4 MR. RAYMONDI: Well, I think calibration and
5 validation give us the confidence that we have a good
6 model, and I think they're a separate issue in this
7 uncertainty. But how that ties in, you know, we haven't
8 had these discussions yet.

9 MR. HAMMERLE: Okay. This isn't a deposition or
10 anything. I'm just trying to -- if that's going to be
11 discussed, vetted, processed by maybe the department before
12 the next meeting, and if so then how are we all going to
13 know about it?

14 MR. SPACKMAN: What will be discussed or vetted,
15 Fritz?

16 MR. HAMMERLE: Issues --

17 MR. SPACKMAN: You mean a statistical analysis --

18 MR. HAMMERLE: Yeah.

19 MR. SPACKMAN: -- this being done? I don't even
20 have a notion (Inaudible) your question. I mean, that's
21 how infant this is.

22 MR. HAMMERLE: I probably asked a bad question.
23 But again it comes down to, I think there's three factors:
24 Calibration, validation, uncertainty. Looks like
25 everyone's moving pretty well through calibration and

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1 department's changed their position, whether you're going
2 to have some kind of decision on uncertainty, or at least a
3 way that you're looking at it.

4 MR. SPACKMAN: Let me try to be a layman and
5 figure out a way into this and answer your question, Fritz.
6 My understanding of the uncertainty analysis is that we
7 were going through that, stressing the model, right?
8 Correct? At particular targeted locations. And then
9 trying to determine what the change might be that's caused
10 by those stresses. Is that --

11 MR. BAXTER: That's a good explanation.

12 MR. SPACKMAN: And I thought the reason that we
13 were going through it as much as anything was to try to
14 find if there were -- by doing this uncertainty analysis,
15 whether there was certain information that maybe we didn't
16 have that would show up as being a critical piece of
17 information. And I know we talked about one of those
18 being, you know, what was it? Underflow information? Not
19 underflow, but transmissivity information at the American
20 Falls area or something. I don't know. But one of those
21 runs pointed out that there was a gap in data or
22 information that we had. And, you know, I thought that was
23 the purpose of the uncertainty analysis right now.

24 And, you know, I know internally we talked a
25 little bit about what's the relationship of uncertainty and

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1 the uncertainty analysis to the entire uncertainty of the
2 model. But those things have been so formative in there --
3 not even formative, just brushing up against it, that I
4 don't anticipate any kind of determination in that realm,
5 Fritz, prior to starting the hearing. I don't see it.

6 Did I misstate it Garrick or Rick?

7 MR. BAXTER: No. I think it's fair to say that
8 there's been initial indications on uncertainty in the
9 white papers, but beyond that for the committee to use to
10 have discussions, but as a formal ruling, I think Candace
11 is correct that it's kind of up to the parties to say how
12 uncertainty should be considered by the director and the
13 department, and probably offer some thoughts on what has
14 been said by the parties. If they say that it's a good
15 idea or something to come out in the director's report,
16 then the director ultimately has to make the decision on
17 how to address the uncertainty issue.

18 MR. RAYMONDI: One other piece of clarification.
19 The intention with Maxine was to have her assist us on the
20 statistics so we could defend our model in the final report
21 better with diagrams or other statistics that are
22 meaningful, that someone who is a statistician might look
23 at -- if we hadn't hired her, might look at what we had
24 presented and said, you know, they should have looked at
25 this other factor.

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1 MR. HAMMERLE: Fair enough.

2 MR. RAYMONDI: This is kind of due diligence, to
3 make sure that we've done a thorough job on statistics and
4 defending the results.

5 MR. SPACKMAN: But, Rick, you'll talk to her and
6 see if she's available and we'll have an open discussion
7 about where she's headed with it? I'm assuming she would
8 be happy to talk about it.

9 MR. RAYMONDI: I'll e-mail her today and ask her
10 to save that date.

11 MR. SPACKMAN: Do you want to go through the
12 punch list quickly, Rick?

13 MR. RAYMONDI: So I've combined/assembled the
14 validation data that's been performed validation. They
15 were separate before, but since that task is pretty much
16 complete, it's all one there.

17 The other thing -- and what I've done is broken
18 out the June 15th training down towards the bottom and
19 that's -- we provided the consultants and committee members
20 on procedures for simulating the curtailment. And there
21 was a lot of questions in our last meeting about that and
22 since then we've created an agenda and sent it out to the
23 committee.

24 But Jennifer's here today to answer questions on
25 that. There's quite a bit in there. It's something that

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1 didn't exist when we had our last meeting, so I wasn't able
2 to really give you a good idea what would be in it.

3 MS. SUKOW: And there's a lot of excruciating
4 detail in this agenda that I normally wouldn't put in an
5 agenda because of the questions and concerns about what
6 we're going to cover, but in general what we're doing here
7 is we're in the process of finalizing some modeling tools
8 and this will be a training to provide the tools to
9 consultants and committee members that are interested in
10 using them that will allow them to process data for
11 curtailment scenarios.

12 When I run through examples of the training I'm
13 going to use examples that are from that comparison with
14 the ESPAM 1.1 curtailment scenario that we talked about
15 earlier, so we'll be just running examples for generic
16 dates that cover the whole area. We are going to be
17 discussing whether or not --

18 MS. McHUGH: With a 1966 priority date?

19 MS. SUKOW: We are going to be discussing whether
20 or not a trim line would or should be applied and these
21 tools can be used with a area (???) Lands file that is the
22 entire model area or is clipped to any area somebody wants.
23 If somebody wants to take a input file and clip it to a
24 specific area, ground water district or water district,
25 whatever kind of area, they can do that and still use these

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1 same tools. So the tools won't change regardless of
2 whatever policy decision is ultimately made on an area of
3 curtailment. The tools will be the same, you just change
4 the input file.

5 And also another question we had was about the
6 model output and individual springs versus river reaches
7 that the springs are in. The model can produce output for
8 both. We're going to have tools that will allow people to
9 pull data both by an individual spring and aggregated by
10 reach. We aren't going to discuss what will be used or how
11 that data, that output, would be interpreted. That's up, I
12 think, to the -- that's open for discussion with your
13 experts. But this is just giving them the computer files
14 and the modeling tools to be able to run these scenarios.

15 If there's any specific questions you have about
16 what we're going to cover -- and we have sent this agenda
17 out to the committee. I think I got questions from one
18 person that we've responded to.

19 MR. RAYMONDI: So the next deliverable that the
20 committee would get, I think, will get the draft
21 comparison, version one -- (inaudible) -- well, whenever
22 there's a new uncertainty run result we send that out, but
23 I think the big deliverable will be this.

24 MR. SPACKMAN: Any questions?

25 MR. HAMMERLE: Can the lawyers show up at this if

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1 that you had said our meeting -- the next meeting was
2 June 21st. It's the 22nd.
3 Then the big change is in the model validation
4 area. And we've posted runs about a month ago from both
5 validation runs, so remember we talked about we were
6 validating to 2009 and 2010? We are also doing what we
7 call a back cast, validating to turn of the century data,
8 1902 data. It was in a report that we had prepared by the
9 USGS. So we completed both of those validation runs and
10 we're sufficiently satisfied with the results that we took
11 off all those, I call them do loops, that were on the
12 chart, so that if you saw something in validation, we might
13 want to go back and recalibrate the model and then use the
14 recalibrated model and do uncertainty runs and back into
15 the validation runs, et cetera. All of that we are
16 sufficiently satisfied that the model's validated that
17 we -- we're not anticipating any further recalibration. So
18 kind of made the chart a lot more simpler.

19 MR. SPACKMAN: What's the status of the back
20 cast?

21 MR. RAYMONDI: We have the results. I'll let
22 Jennifer talk about this. My feeling is that, you know,
23 it's not a beautiful or elegant validation, just because
24 there's not a lot of data from back then, but we're
25 sufficiently satisfied with what results we've got that it

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1 of the 64 that we would be completing, that would bring us
2 up to the next meeting in June, and we're following that.
3 I don't think there are any big surprises, but, you know,
4 it's more information that helps us kind of understand
5 where we might prioritize additional data collection or
6 things that we might address in future models, but there's
7 no huge surprises there.

8 So the next -- moving down again next to
9 comparison with the new model with the current model.
10 There's a comparison analysis underway that Jennifer is
11 doing that.

12 Maybe this is a good time for you to discuss
13 that.

14 MS. SUKOW: I'm working on it in conjunction with
15 preparing the training and hopefully we'll have the results
16 written up in the next couple of weeks and we'll present
17 them to the committee on the June 22nd meeting.

18 MR. RAYMONDI: And for clarification, this
19 comparison is the --

20 MS. SUKOW: Did you want me to talk about what
21 we're doing there? When ESPAM 1.1 was completed IWRI did
22 what they called a curtailment scenario where they
23 simulated a curtailment of all the groundwater use junior
24 to five different dates across the entire plain. No trim
25 line, no area of common groundwater, just what was within

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1 doesn't look bad.

2 So, Jennifer, maybe you could add anything to
3 that?

4 MS. SUKOW: No, I think the status on that is
5 Allan's posted it and he didn't present that to the
6 committee yet, so that will be presented to the committee
7 in the June meeting. But it has been posted for them to
8 look at. And given the data we have from that era, the
9 results are surprisingly good and there's certainly nothing
10 in it that invalidates (Inaudible).

11 MR. RAYMONDI: So this is all our own
12 interpretation. It hasn't been discussed with the
13 committee.

14 The 2009 - 2010 validation, we had I think some
15 preliminary results last time and we discussed it with the
16 committee, and the committee's comments were we wished we
17 had a longer validation period, you know, more years to let
18 the model -- see how the model would predict and match the
19 data that wasn't in the calibration runs, but we didn't, we
20 had what we had, and it looked pretty reasonable. And,
21 again, we don't think that the results invalidate the
22 model. It remains validated.

23 So the next -- moving down the Gantt chart, we're
24 up to 21 completed uncertainty runs. The committee
25 prioritized what runs to complete. They gave us an order

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1 the model boundary. And we're rerunning that with the
2 ESPAM 2 data and we're going to present the differences.
3 It's not really a check on ESPAM 2 as much as it is to
4 provide the information on the differences between the two
5 versions (Inaudible).

6 MR. RAYMONDI: There was a work plan that was
7 prepared to kind of give the committee an indication of
8 what we were going to do for that, and there was actually a
9 pretty good discussion on what our approach was the last
10 meeting. I actually was just going through the meeting
11 notes yesterday and am writing up a draft to the committee
12 to review, but there's quite a bit of discussion on what we
13 intend to do there. So I think that's all that we have on
14 the Gantt chart.

15 There's a few more things to discuss on what we
16 call the punch list. That's kind of becoming a summary of
17 what to do.

18 MR. SPACKMAN: I like the Gantt chart, frankly,
19 because all the arrows are to the right and down, which
20 means we're approaching the finish line (Inaudible).

21 MR. RAYMONDI: I guess there's a little bit of
22 engineer in me, even though I'm not an engineer.
23 Everything's right justified and the lines are straight.

24 MR. SPACKMAN: That's right. No french curve in
25 this at all.

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1 they just sit there and be quiet and nonobtrusive
2 (inaudible) okay.
3 MR. SPACKMAN: Wasn't there a test at the end?
4 MS. SUKOW: There's no snoring allowed, though.
5
6 Voices talking simultaneously.
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8 MR. SPACKMAN: You want to show that you passed
9 the class.
10 MR. HAMMERLE: If it's multiple choice I'll give
11 it a go.
12
13 Voices talking simultaneously.
14
15 MR. SPACKMAN: All right, anything else we need
16 to talk about?
17 MR. BAXTER: Director Spackman, we did receive a
18 petition from Pocatello yesterday, it looks like it was
19 sent to Victoria, so I think that's -- Pocatello has moved
20 to be designated as a respondent or in the alternative to
21 intervene in the Rangen proceeding. So I don't know if --
22 I think under the rules the parties have seven days to file
23 any challenge to it, or are you willing to stipulate to
24 that at this point and we can just issue an order?
25 MR. HAMMERLE: You know, Garrick, I don't want to

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1 MR. HAMMERLE: That's what we're asking.
2 MS. BRODY: Yeah, especially because -- and I
3 appreciate the director's comments this morning that you
4 were looking at an April 1 drop-dead date, but it's one of
5 those things that, depending upon when orders get issued
6 you hate to bump up against arguments like, well, we're not
7 prepared for this, we haven't taken this into
8 consideration. And so I guess from our perspective it's
9 good to let everybody know that this is out there.
10 MR. SPACKMAN: My inclination is that we place
11 that burden upon Candace. She's representing those folks,
12 the groundwater users and they should, I guess, have the
13 ability to anticipate the possibility of curtailment. As
14 we go through I'm not sure I want to be issuing a notice
15 ahead of some decision. I think that's a little difficult.
16 When the notices were issued I think they were issued after
17 Carl Dreyer's initial orders, and so it was based on an
18 order that had been issued, an evaluation of where we were
19 at from the standpoint of storage in the system or, you
20 know, what was predicted as a water year, and those were
21 sent out as a result. But I think we're premature
22 (inaudible).
23 MS. McHUGH: Just for the record, we aren't
24 planning to send out any notices.
25 MR. HAMMERLE: You've got a lot of confidence.

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1 be problematic, but I think that just came through -- when
2 was that? Yesterday? We'd just like to look at it.
3 MR. BAXTER: Sure. Okay.
4 MR. SPACKMAN: Okay. Thanks everybody.
5 MR. HAMMERLE: Director, there was one more issue
6 since we're moving on a fairly rapid timeframe, which
7 brings us up to notices of curtailment. I don't know if
8 you want to go there yet, or -- Notices of possible
9 curtailment?
10 MR. SPACKMAN: What is it that you're asking
11 about?
12 MR. HAMMERLE: Maybe Robyn can articulate it
13 better.
14 MS. BRODY: Do you think you will issue them in
15 advance? I mean, with the January hearing date will you
16 issue them sometime prior to that, just to let the farmers
17 know that the call's out there and that it's an issue?
18 MR. SPACKMAN: Well, you know, we've issued some
19 of those in the past. We didn't issue them last year.
20 MS. McHUGH: Well, I think the Supreme Court said
21 specifically you can't have curtailment orders before the
22 hearing. You're saying just a fy?
23 MS. BRODY: Well, a notice of possible
24 curtailment.
25 Voices talking simultaneously.

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1 That's good.
2 MS. McHUGH: I'll represent the IGWA ground water
3 appropriators and the board, but we're not going to send
4 out notices to individual groundwater users.
5 MR. SPACKMAN: I guess when I said what I did I
6 think everybody -- we can joke. I think it's important we
7 have a collegial relationship here, but the sobriety of
8 what we're involved in, I think everybody knows -- the
9 groundwater users probably know that better than they once
10 did. And so we're talking about an April 1st order
11 issuance and I think everybody needs to be looking at this
12 and saying it's a possibility. Okay. Anything else?
13 Thanks to everybody.
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1 REPORTER'S CERTIFICATE.

2
3
4 STATE OF IDAHO)
5)
6 COUNTY OF MINIDOKA)

7
8 I, MAUREEN NEWTON, Official Court Reporter and
9 Notary Public, in and for the Fifth Judicial District of
10 Minidoka County, Idaho, do hereby certify that the above
11 and foregoing typewritten pages contain a true and correct
12 transcription of recorded proceedings to the best of my
13 abilities, taken upon the occasion set forth in the caption
14 hereof, as reduced by means of computer-aided transcription
15 by me or under my direction.

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17 Witness my hand, this the 28th day of May, 2012.

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22 MAUREEN NEWTON, CSR #321
23 Court Reporter and Notary Public
24 For the State of Idaho
25 My commission expires 9-10-2012.