BEFORE DEPARTMENT OF WATER RESOURCES

STATE OF IDAHO

Docket No. CM-MP-2009-004

AFFIDAVIT OF CANDICE MCHUGH IN SUPPORT OF PRE-HEARING BRIEF

(Over-the-Rim Mitigation Plan)

IN THE MATTER OF DISTRIBUTION OF WATER TO WATER RIGHT NOS. 36-4013A, 36-4103B and 36-7148 (Snake River Farm)

IN THE MATTER OF THE THIRD MITIGATION PLAN (OVER-THE-RIM) OF THE NORTH SNAKE AND MAGIC VALLEY GROUND WATER DISTRICTS TO PROVIDE REPLACEMENT WATER FOR CLEAR SPRINGS SNAKE RIVER FARM

(Water District Nos. 130 and 140)

CANDICE M. MCHUGH, being first duly sworn under oath deposes and states as follows:

1. That I am now and was at all times mentioned herein a duly-licensed and practicing attorney at law in good standing under the laws of the State of Idaho, holding Idaho State Bar License No. 5908, and member of the law firm of Racine, Olson, Nye, Budge &
Bailey, Chartered, Pocatello, Idaho, attorneys of record for the Ground Water Districts.

2. I am familiar with the Orders, pleadings, and depositions taken in the above captioned matter.

3. To the best of my knowledge, information and belief, Exhibit No. 2027 attached hereto contains true and correct copies of the deposition pages referenced in the Ground Water Districts Pre-Hearing Brief and Response to Motion to Dismiss.

4. Exhibit 2028 is a true and correct transcription of a portion of the audio from the November 24, 2009 scheduling conference In the Matter of North Snake and Magic Valley Ground Water Irrigation Districts’ 2009 Joint Mitigation Plan to Compensate Blue Lakes Trout Farm, Inc., IDWR Docket No. CM-MP-2009-01.

FURTHER YOUR AFFIANT SAYETH NAUGHT.

DATED this 1st day of December, 2009.

RACINE, OLSON, NYE, BUDGE & BAILEY, CHARTERED

Candice M. McHugh

SUBSCRIBED AND SWORN TO before me this 1st day of December, 2009.

MARY TADDICKEN
NOTARY PUBLIC
STATE OF IDAHO

Mary Taddicken
NOTARY PUBLIC FOR IDAHO,
Residing at Boise.
My Commission Expires 9-12-13

AFFIDAVIT OF CANDICE MCHUGH IN SUPPORT OF PRE-HEARING BRIEF - Page 2
CERTIFICATE OF MAILING

I hereby certify that on this 1st day of December, 2009, the foregoing, was served by email to those with emails and by U.S. Mail postage prepaid to the following:

Signature of person mailing form

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BEFORE THE DEPARTMENT OF WATER RESOURCES
OF THE STATE OF IDAHO

IN THE MATTER OF DISTRIBUTION OF 
WATER TO WATER RIGHTS 
NOS. 36-04013A, 36-04013B, AND 
36-07148 
(SNAKE RIVER FARM) 
(Water District Nos. 130 and 140)) 
Third Mitigation Plan 

DEPOSITION OF TIMOTHY JAMES LUKE 

NOVEMBER 16, 2009 

REPORTED BY: 
JEFF LaMAR, C.S.R. No. 640 
Notary Public

Luke, Timothy James
Q. And in your view, would that transfer and the approval of that transfer be necessary in order to determine the validity of their mitigation plan?

A. Well, mitigation plan? There's a separate hearing process, of course, for the mitigation plan. So if the question is -- I don't think the transfer on itself would dictate the validity of the mitigation plan.

Q. So if the transfer injures other water rights which are not mitigated through either the transfer or the mitigation plan, would the mitigation plan be approvable?

MR. BROMLEY: Calls for a legal conclusion.

Q. (BY MR. SIMPSON): Answer if you can.

A. Well, I think that would be an issue, yes.

Q. And, Mr. Luke, are you familiar with the conjunctive management rules, generally?

A. Yes.

Q. Okay. I'm going to hand you a copy of Rule 43 and draw your attention to 43.03, which identifies the factors to be considered in approval of a mitigation plan and give you an
ground water counsel and suggested that they file a water right transfer application sooner rather than later?

A. Yeah, I think it makes sense to view the transfer with the mitigation plan.

Q. That both the transfer and the mitigation plan be considered at the same time?

A. Yeah, that -- I mean there's a timing issue there. I think the transfer -- when they filed the original over-the-rim plan, they indicated a transfer would be filed. And of course, the two-year stay came, so that likely put a perhaps -- put that in the background, I guess, at best.

So -- but we had expected a transfer to be filed all along. So the question had come up, I think sometime in September, had we received the transfer. And we hadn't, so we reminded them of the need to do that.

But I think there's a lot of reasons, you know, for further delay. It is another process that has to be done, but it makes sense to look at them together.

Alternatively, they could -- and I think this is something they probably ought to do
as well, is make application to at least those
rights to the water supply bank, and perhaps rent
them out just as a plan B or a precaution. That
was identified, I believe, in Director Tuthill's
approval of the original plan, at least as a
replacement plan before a hearing would be held.

Q. Has the Department completed an
analysis of the injury question as to the injury
that would result from the transfer?

A. No.

Q. So the Department hasn't looked or ran
the model or did any type of an analysis which
would consider the effects of the movement of
water and the change in the nature of use, period
of use as to either the Snake River Farms water
rights or any other water rights in that reach?

A. Not that I'm aware of.

Q. Okay. Mr. Luke, could the mitigation
plan be constructed without an approvable plan?

A. No, I don't -- I guess it could be,
but it would be foolish.

Q. Okay. Could water be delivered
pursuant to the plan without an approved transfer?

A. I think it could be, but there would
have to at least be an approved water supply bank,
acceptable parameter to rear fish at Clear Springs?

A. Correct.

Q. Do the conjunctive management rules require that an approved transfer first be done before a mitigation plan or a concept of a mitigation plan could be approved?

A. Not specifically, but it -- as I pointed out earlier, there are similar criteria.

Q. And isn't it true that the transfer would be required to actually deliver the water to Clear Springs --

A. I guess --

Q. -- as part of an implementation of an approved mitigation plan?

A. It would.

Q. Okay. So the mitigation plan could itself be approved, and then the actual delivery of water under it may have to require additional steps or additional implementation, such as actual construction and an approved transfer in this case?

A. Yes.

Q. Now, I think you looked at Appendix 5 of Exhibit 31, which is the transfer processing
Snake River Farm OTR

Yenter, Cindy

11/16/2009

Full-size Transcript

Prepared by:

Becky
Racine Olson Nye Budge & Bailey, Chtd

Tuesday, December 01, 2009
BEFORE THE DEPARTMENT OF WATER RESOURCES
OF THE STATE OF IDAHO

IN THE MATTER OF DISTRIBUTION OF
WATER TO WATER RIGHTS
NOS. 36-04013A, 36-04013B, AND
36-07148
(SNAKE RIVER FARM)
(Water District Nos. 130 and 140)

Third Mitigation Plan

VIDEOCONFERENCE DEPOSITION OF CINDY YENTER

NOVEMBER 16, 2009

REPORTED BY:
JEFF LaMAR, C.S.R. No. 640
Notary Public

Yenter, Cindy
given time.

Q. Okay.

A. That is really what my understanding was.

Q. Okay. And depending on the water quality that the different ground water wells may produce because of the time the over-the-rim plan was filed, was it your understanding that the ground water districts over-the-rim plan may need to have a different combination of wells, depending on what the water-quality testings have shown?

A. Yes, I was generally aware of that fact.

Q. Okay. So at this point, until the over-the-rim mitigation plan, first of all, is considered as a viable option for mitigating Snake River Farms and until it's known what parameters may need to be met as far as water quality or reliability of the delivery system, filing a final transfer to capture that could be considered premature?

MR. SIMPSON: Objection. Speculation, foundation.

Q. (BY MS. McHUGH): You can answer if
Snake River Farm OTR

MacMillan, Ph.D., John Randolph - Vol. II

11/11/2009

Full-size Transcript

Prepared by:

Becky
Racine Olson Nye Budge & Bailey, Chtd

Tuesday, December 01, 2009
A. That's correct. That's correct.

Q. Okay. Has there been any studies or empirical data that support this concern that you've expressed and Mr. Cope expressed yesterday that somehow Clear Springs' product marketability would be jeopardized?

A. No, there's not been any studies. That kind of quantitative study is -- you have to do it after the fact. And so what -- we have to make the judgment, Mr. Cope has to make the judgment whether or not -- and our marketing people would have to make the judgment what would be the actual implications of that.

Q. Would you have any different opinion than was expressed by Mr. Cope as to whether or not Clear Springs would accept water from the plan if it were approved and constructed? If I recall his testimony, he suggested that would have to be a decision made at a later date.

A. That's the current state of our discussions, that's correct. So I agree with Mr. Cope.

Q. Okay.

A. We obviously would prefer that you do not build that pipeline because we're opposed to
it. And the reason we are in the current conditioned stay, if you'll recall in a different proceeding, is that we think that there are better ways to address things than in the OTR and in the current process we're in.

Q. So Clear Springs obtained that stay order I believe of May 15th, 2009, and I believe it's Clear Springs' position that that stay order remains in effect for a two-year period?

A. That's correct.

Q. And is it your view, I believe consistent with what Mr. Cope testified, that if the plan were approved, that before any capital expenditures were made -- I think that's how he characterized it -- it would be appropriate to have further dialogue on other solutions?

A. That's correct.

Q. Do you have any specific proposals -- I know your testimony and Mr. Cope's suggested that there were other proposals that should be pursued by the ground water districts short of curtailment.

Do you have any elaboration or information you could provide on what other proposals would be acceptable to Clear Springs in...
BEFORE THE DEPARTMENT OF WATER RESOURCES
OF THE STATE OF IDAHO

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(SNAKE RIVER FARM)
(Water District Nos. 130 and 140))
Third Mitigation Plan

DEPOSITION OF LARRY W. COPE
NOVEMBER 10, 2009

REPORTED BY:
JEFF LaMAR, C.S.R. No. 640
Notary Public
all have to live with the order until it's
changed?

   A. I agree the reason we're here today is
   the mitigation plan. And I understand that.

   Q. So as I understand your testimony, the
   obligation that we're here dealing with, which is
   the ground water's desire to use this plan to
   provide additional water, and that amount would be
   3 second-feet for a period of time until the
   shortfalls are made up, and then whatever
   remaining obligation is ongoing under the current
   orders.

          My understanding is correct on that?

   A. That's my understanding of what the
   mitigation plan is, yes.

   Q. And so if the additional 3 second-feet
   of water is supplied pursuant to this plan, it, in
   fact, would be utilized to grow more fish;
   correct?

   A. If -- I guess it remains to be seen if
   that's where the order -- if the order is issued
   to that.

   Q. Yeah, correct. But assuming that the
   over-the-rim plan were approved and the facilities
   constructed and additional 3 second-feet of water
were delivered to the Snake River Farms facility, that water could be used to grow fish?

A. That probably could be used to grow fish, I believe, that internally we will have to make an assessment on a risk/value basis if we should do that --

Q. Okay.

A. -- because of our image of our products.

Q. And I think you said earlier that the amount of water equates to a level of fish production, which equates to a level of profit that could be achieved by Clear Springs with the additional water?

A. That's correct. There's a definite relationship between water flows and the success of our business.

Q. And if the ground water districts were to replace the fish that couldn't be produced by acquiring them from another supplier, as you do now with Sea-Pac or with Blue Lakes, would that not make Clear Springs whole?

A. It really doesn't, because it's what we're talking about is what the impact on the value of our business. And if our business -- if
water proposed on a reliable basis?

A. Over time if it did.

Q. So the actual operation will give us a better gauge as to whether or not, one, the system will function, and two, whether the water quality will be equal to or not equal to the existing supply, and number three, whether or not the additional water could be used in the same manner to grow commercial rainbow trout that Clear Springs now does?

A. That if it's proven over the long term? I don't know how I could disagree with that if it's proven that it does.

Q. Okay.

A. The question is whether it can be proven and as to whether it's sustainable to continue pumping by the ground water pumpers.

Q. You indicated earlier that Clear Springs has not yet made a decision whether they would accept that delivery if it were approved and were constructed.

If the director were to approve the plan, would you think it would be likely or reasonable to give some indication of whether the water would be accepted by Clear Springs before
the ground water districts went to the cost of
construction?

A. Actually, I would want to have a
complete discussion before -- before the
investment was ever made.

Q. Okay. On page 6, line 219, you made a
suggestion there that there was going to be
blasting that would injure the fish. And I don't
recall anything in the plan suggesting that any
blasting would be done at any location.

And I was wondering what you base that
concern on?

A. I used the term "comma, and perhaps
blasting" in my testimony here.

Q. All right.

A. Because I think it's perhaps just
knowing the geology, knowing what we know about
the work we've done around there, there's -- you
hit really hard rock underneath that ground most
places where you excavate.

It seems to me, based on our
experience, it's a bigger task than backhoe work.

So whether it be blasting or perhaps using
jackhammers, that's where my concern lies in
getting a trench around there.
BEFORE THE DEPARTMENT OF WATER RESOURCES
OF THE STATE OF IDAHO

IN THE MATTER OF DISTRIBUTION OF }
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(SNAKE RIVER FARM) } CM-MP-2009-004
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Third Mitigation Plan }

__________________________

DEPOSITION OF LARRY W. COPE

NOVEMBER 10, 2009

REPORTED BY:
JEFF LaMAR, C.S.R. No. 640
Notary Public
Q. Okay. And then do you do the processing of it in the United States?
A. They do all of the processing.
Q. They do everything?
A. And they do all of the packaging.
Q. So you're basically doing the marketing?
A. Well, we buy the product. We're the customer. We own the product. And that product goes through private-label channels.
Q. What's the source of water that the Chilean company uses?
A. They have a -- it's a very pristine water. They're located up in southern Chile nestled up against the Andes Mountains, and there's nothing really essentially between their operations and the runoff out of the Andes. Very pristine water that they utilize in the rivers.
They don't have the benefit that we have in the type of water. Their culture has to be different because they have different water temperatures seasonally with it, and they have different flows as well. But they're very hands-on in what they do, and they're successful at what they do.
Q. So you've been to that facility, then?

A. Many times.

Q. And when you say they utilize rivers, explain what you mean. Are fish grown in the rivers?

A. No. No. They divert the water up close to the Andes Mountains when it comes out, and there's no -- there's not any type of usage of that water between them and the runoff coming out of the Andes. They divert the water out of the river and then into their farms.

Q. So similar raceway-type growth operation?

A. Very similar culture practices as what we utilize.

Q. And rather than having spring water, they divert out of the river?

A. They do.

Q. Okay. Are there other users in that river of that water source?

A. Not above them.

Q. And then what portion of your rainbow trout sales come from product produced in Chile?

A. Well, between Chile and Argentina, just -- I don't have the precise number, but a bit
more than 10 percent of our total sales. And
that's one way we've been able to expand our
topline business in recent years.

Q. And describe your Chilean partner.
A. They're two individuals, two families.
It's a private company. There's entrepreneurial
partners. Native Chileans, just a family
business.

Q. And they're also raising rainbow
trout?
A. Yes.

Q. And what's their water source?
A. The Chilean?
Q. Yes.
A. I thought that is what we just went
through.

Q. Or excuse me. The Argentine. We've
moved to the Argentine on the two owners.
A. I'm sorry. The Argentines, similar
practice to them. The water source comes out of
the Andes, only the other side of the Andes.

Q. The water source, I assume, is a
spring at some point.

How far downriver, how many miles of
river are there between the place where the water
originates and it's actually diverted out of the river? Do you know?

A. I'm not sure I really know. It is not a great distance.

Q. "Great" meaning a few hundred feet or a few miles?

A. Oh, no, a few miles. But if you've ever been to that part of the world, you don't build everywhere there. A lot of that world is straight up and down. So it's --

Q. We'd be talking a few miles?

A. -- first access, yeah.

Q. Okay. And what are the names of the companies for the Chilean partner and the Argentine partner?

A. It's a Spanish name. I'd have to get it to you later. I don't have it in front of me.

Q. Is it a corporate name or --

A. It is, uh-huh. It's a family corporation, yeah.

Q. And then did I understand you to say that the 10 percent or so of rainbow trout that come from these two foreign partners are not labeled and sold as a part of Clear Springs' other products, but they're a different label?
A. It's in the Sysco label.

Q. Okay. Is any of it sold under the Clear Springs label?

A. A small amount would be.

Q. That's the specialty product?

A. The frozen products.

Q. Does Clear Springs have other fish products besides rainbow trout?

A. We do in our specialty products plant. We source mahi mahi. We have a retail mahi mahi product.

Q. And what's the source of those products?

A. It -- the source of those products are Peru, Ecuador, Panama for sourcing.

Q. Are they farmed products or wild products?

A. No, wild. Mahi mahi is a wild-caught product.

Q. So mahi mahi, and I saw a product called Splash or something like that?

A. Splash is a brand name.

Q. Okay.

A. It's a retail brand name that we have, yes.

Cope, Larry W.
Q. What else besides mahi mahi?
A. Nothing in the market right now. One that we're working with is a new product called swai, s-w-a-i, I believe.

Q. I saw that. Is that a type of fish?
A. It is.

Q. Where is that grown?
A. Vietnam.

Q. Is that one of those products in the Mekong River that's in the cages?
A. Uh-huh.

Q. And what percent of your sales would be represented by these mahi mahi sales and this swai product?
A. At this time very, very small. Very small.

Q. Okay. And again, you purchase from foreign suppliers, and then distribute and sell in the U.S.?
A. Well, those products we purchase the raw material, either directly from those companies or through traders.

Q. Okay.
A. Fish and seafood business globally is a very dynamic business, a lot of product moving.
BEFORE THE DEPARTMENT OF WATER RESOURCES
OF THE STATE OF IDAHO

IN THE MATTER OF DISTRIBUTION OF)
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Third Mitigation Plan )

DEPOSITION OF LARRY W. COPE
NOVEMBER 10, 2009

REPORTED BY:
JEFF LaMAR, C.S.R. No. 640
Notary Public

Cope, Larry W.
A. Well, I think the threshold is 10 parts per million, my understanding.

Q. The drinking water threshold?

A. Yes, uh-huh.

Q. Okay. When I looked at Dr. MacMillan's testimony on page 31, he testified concerning nitrate levels that are in the Clear Springs water supply. And he stated at RD3 sample site the nitrates ranged from 9.8 to 16.9, which was higher than either of the wells. He also testified that the nitrates at the visiting center was 18.0 milligrams per liter.

So would you consider that water that Clear Springs is utilizing to be contaminated and polluted?

A. Well, I would consider it the same as the other water. And it's a concern that we have that we're working on. It's a small portion.

There seems to be, my understanding, some specific spring that's bringing that water to us. And they're doing a study to determine what that is. And it's a concern to our company.

Q. Now, I can appreciate it's a concern. But your testimony, and Dr. MacMillan's, characterizes the water that would be delivered
pursuant to the plan to be polluted and
contaminated based on two of the --

What have we got, nine wells?

MS. McHUGH: Seven.

MR. SIMPSON: Seven.

Q. (BY MR. BUDGE): -- two of the seven
wells being contaminated by nitrates being above
10 milligrams per liter.

So I guess my question again is, if
the water described in Dr. MacMillan's testimony
on page 31 shows that Clear Springs is currently
using water at levels that are even higher than
the two worst wells, would you characterize that
water supply that Clear Springs uses also as being
polluted and contaminated?

A. Well, you would have to characterize
it in the same manner as the other wells, yes.

Q. Okay.

A. But to receive more of that water is
not acceptable.

Q. With respect to those identified
sources that exceed the 10 milligrams per liter
standard, has Clear Springs discontinued use of
those sources by reason of the elevated nitrate
levels?
A. Not to my knowledge. And I'm not -- I don't believe it's actually possible to do that.

Q. To your knowledge, has there been any fish loss as a result of that use by Clear Springs of water with elevated nitrate levels?
A. To my knowledge, no.

Q. And exactly what is being undertaken to deal with that problem? You mentioned you're consulting with DEQ. Is there any active effort undertaken by Clear Springs to identify the source and remove it or eliminate it?
A. I'd defer that to Dr. MacMillan again.

Q. Okay.
A. That's a project he's working on and engaged in.

Q. Let's go to page 6 of your testimony, if we could. Towards the bottom of page 6 on lines 233 through 236, you make the statement, "The well water in the pipeline being proposed for mitigation of the Snake River Farm is water that would most likely be the same water that would naturally discharge through the Clear Lake Springs complex."

And then on the next page, page 7, lines 252 through 253, you make basically the same
statement, saying, quote, "This pumped water is
the same water that contributes to the continued
depletion of the spring flows in the total Clear
Lakes Spring."

So are you agreeing, Larry, then, that
the water pumped through the over-the-rim plan is
the same water that emanates from the springs
which supplies Clear Springs?

A. Oh, most likely it would be, yes.

Q. Okay. And so would you also consider
that water to be pristine, by your definition?

A. Well, when you look at the total
spring flow, that's the way I would consider it.

Q. It would still be pristine spring
water?

A. Yes.

Q. And so to that extent, if it were
delivered, it could raise the same fish of the
same size and the same quality and the same health
as the water emanating from the springs?

A. That water would, yes.

Q. Okay. So the primary concern that
seems to be expressed in your testimony and
Dr. MacMillan's is the adverse impact it may have
on your marketing plan where you rely largely upon

Cope, Larry W.
looking at, only RD3 has three tests taken over this three-year period -- or excuse me, four tests taken over this three-year period that would exceed the 10 milligram per liter drinking-water standard. And I understood -- and maybe I was wrong. I understood you to say maybe yesterday, or certainly Larry Cope did, that it would only be considered polluted by him if you exceeded the drinking-water standard of 10.

So are you considering water at the Clear Springs facility now, based on these samples, to be polluted or contaminated, other than those four samples that were taken at RD3?

A. Yes. Pollution occurs, according to state law, state regulations, if you exceed the background level of the concentrations in ground water, you are polluting the water. There's pollution.

The way the Safe Drinking Water Act works, they do identify a maximum contaminant level of 10 milligrams per liter nitrate-nitrogen. And the way the -- but that doesn't mean it's not polluted until you get to 10.

Q. Would DEQ look at this sample and say there is any risk or concern for people who are
Snake River Farm OTR

MacMillan, Ph.D., John Randolph Vol I

11/10/2009

Full-size Transcript

Prepared by:

Becky
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Tuesday, December 01, 2009
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__________________________ ) VOLUME I
(Pages 1-62)

DEPOSITION OF JOHN RANDOLPH MacMILLAN, PH.D.

NOVEMBER 10, 2009

REPORTED BY:
JEFF LaMAR, C.S.R. No. 640
Notary Public

MacMillan, Ph.D., John Randolph Vol I
to identify biological mechanisms for that endocrine disruption.

Q. When you say the in vitro phase, what do you mean? What phase?

A. Lab bench, dealing with cells in tissue culture.

Q. So the in vitro phase in your operation would be at the Soda Springs food facility?

A. No. These are -- no. The in vitro studies would be done by other scientists in the world looking at the biological, the biochemical, and genetic effects of changing, of affecting proteins in cell membranes that might affect.

Q. With all of that --

A. Yeah.

Q. -- scientific background, back to the original question, which was, in your opinion, is there a nitrate level in the water at which you believe there will be a negative effect on Clear Springs' ability to raise commercial rainbow trout at the Snake River Farms facility?

A. I believe there is a nitrate level that eventually could be identified that would not be inimical to our research, our brood stock, and
our production system. But that has not happened yet. We do not know.

Q. So your answer is you do not really know?

A. That's correct.

Q. And do you have an opinion of your own as an expert in this area whether or not the drinking-water-quality standard of 10 milligrams per liter is safe or unsafe for your rainbow trout production?

A. Historically, I think the concentrations of nitrate that Clear Springs has received in the water, in the spring water, those have been acceptable for our system.

Whether the increased levels we're seeing now are bad, we don't know. We have instituted what we can, projects, to try to identify the source of the nitrate-nitrogen and -- and are trying to encourage scientists with far greater expertise and facility than we have to investigate what impact 10 milligrams per liter or 15 or 20 or more milligrams per liter nitrate-nitrogen might have on the entire life cycle of the rainbow trout.

Q. I don't mean to delve too deeply into
A. Yes, it does not confirm that rainbow trout, early life stages, can tolerate 100 milligrams per liter.

Q. On page 34, lines 978 through 980, you state, "The water temperature measured at the well sites at the Fred Nihart Fountain is all consistent with the water temperature delivered to the Clear Springs Foods Snake River Farm complex."

A. Correct.

Q. So are you basically stating there that based on those measurements water temperature is no longer an issue?

A. No. All I said was that they are consistent. If through to the OTR project water temperature is altered -- and I'm not equipped to make that kind of analysis or prediction, but if it were, then temperature could still be an issue.

But based on this, water temperature in the ground water wells is essentially the same as the temperature of the spring water that we receive.

Q. According to the analysis by Dr. Brendecke -- and I appreciate you may not have read that -- he analyzed the effect of pumping the water. And his testimony, if I recall it
correctly, concluded that if the water was pumped
from a number of the wells, the overall
temperature would decline minus .3/10ths of a
degree Fahrenheit, and I believe he concluded that
if there was a single consolidated well, which was
part of the proposal --
   A. No. 4.
   Q. Yes.
   -- the overall decline would be a
minus .1/10th of a degree Fahrenheit.
Would that reduction in temperature of
a tenth to a third of a degree Fahrenheit have any
concern upon your ability to use the water at the
facility?
   A. No.
   Q. Okay.
   A. Thank you for not smiling when you
were saying that.
   Q. Would it even be detectable?
   A. If it is -- well, we could detect it.
We would not detect it impacting production or
research or the brood -- selective breeding
program.
   Q. Is there temperature variation from
year to year or seasonally or by site at any of
EXHIBIT 2028


Audio beginning at 40:33 – Director Spackman states: “Candice, I would not expect a mitigation plan hearing would include or would bring in with it separate applications for transfer it seems to me that those would be separate, separately considered by the Department and I don’t know if any of those would be pending.”