

Attachment 2

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)
_____)

COPY

) Docket No.
) CM-MP-2009-004

) VOLUME II
(Pages 73-169)

CONTINUED DEPOSITION OF
CHARLES E. BROCKWAY, P.E., PH.D.
NOVEMBER 13, 2009

REPORTED BY:

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1 MR. SIMPSON: I have a few.

2

3 EXAMINATION

4 BY MR. SIMPSON:

5 Q. Doctor, before you leave Exhibit 38,
6 I'd refer you to page 8 of that document.

7 And would you agree with me that some
8 of the concerns that were raised was the fact that
9 the Rathdrum Prairie Aquifer is the sole source or
10 principal source of drinking water?

11 A. That's paragraph --

12 Q. Paragraph 23.

13 A. 23. It is, yes.

14 Q. So there was at least some factual
15 evidence in that case that this was a primary or
16 sole source for drinking water for that area
17 they're relying upon, that Rathdrum Prairie?

18 A. Yes.

19 Q. And is that also the case in the ESPA?

20 A. It would be the case there, yes.

21 Q. Okay. And so at least factually
22 there's similarities between the circumstances
23 that existed on the Rathdrum Prairie Aquifer and
24 the ESPA?

25 A. Well, I felt that there were, yes.

1 Q. All right. Now, I'd like to quickly
2 go back and ask you a couple questions.

3 First, Doctor, there were some
4 questions about your understanding of what I'll
5 call phase one of this hearing and phase two of
6 the hearing; that is, phase one deals with the
7 approvability of the over-the-rim project.

8 Do you have that understanding?

9 A. Yes.

10 Q. Okay. And that would include looking
11 at the mechanics, if you will, of the project and
12 the movement of water from the wells that have
13 been identified, to pumping out of either those
14 wells or a different well and using that water in
15 a different manner; correct?

16 A. Well, I think phase one dealt
17 primarily with the hydraulics of the system.

18 Q. The hydraulics --

19 A. Getting it out of the ground and
20 putting it over the rim.

21 Q. Right. Okay. And in your view,
22 would, as you described, getting it out of the
23 ground and putting it over the rim, be a part of
24 the phase one analysis that you completed?

25 A. I did look at the hydraulic design

1 data that was furnished by SPF --

2 Q. Okay.

3 A. -- and Mr. Brendecke.

4 Q. Right. In your view, would the
5 transfer of water, that is, change in the water
6 from its historical point of diversion and place
7 of use and period of use to the proposed new point
8 of diversion, place of use, period of use, type of
9 use, be an integral part of the phase one analysis
10 that you completed?

11 A. Well, I -- yes. If I were doing it,
12 that would be my first concern, what would be
13 securing a water supply.

14 Q. Right.

15 A. And in my opinion, I would have to
16 file a transfer.

17 Q. And so a part of determining the
18 validity of the mitigation plan, in your view,
19 would be determining whether there was an
20 approvable transfer of the water rights?

21 A. I felt that there would, yes.

22 Q. In your view, Dr. Brockway, would
23 consideration of the transfer of the water rights,
24 should that consideration be done at the same time
25 that we're considering phase one of the mitigation

1 plan, that is, the mechanics?

2 MS. McHUGH: I'll object that it's a legal
3 conclusion.

4 THE WITNESS: Well, I think it's a -- I
5 think it's a design conclusion.

6 Q. (BY MR. SIMPSON): Okay.

7 A. To me, it would do very little good to
8 go through a full design of the hydraulics of the
9 system without knowing how much water you're
10 really going to get through the transfer or if
11 there were some problems with that. So I would
12 say it's an integral part of the first phase.

13 Q. Okay. And at the beginning of your
14 deposition, counsel asked you a number of
15 questions regarding reports and documents you
16 referenced in your report that you submitted in
17 this matter.

18 Do you recall that line of
19 questioning?

20 A. Yes.

21 Q. Okay. And with respect to those
22 reports that you cited in your report you
23 submitted in this matter, do you have an
24 understanding that those reports cited and
25 referenced were reports that had been previously

1 submitted in these proceedings, that is, in the
2 proceedings regarding the delivery call filed by
3 Clear Springs on the Snake River Farms facility?

4 A. Yes, we went through these
5 machinations first on a different mitigation plan.
6 And I wrote a report for that.

7 Q. Right. And that would be Exhibit 32;
8 correct?

9 A. Yeah, November 21, 2008.

10 Q. That would be Exhibit 32.

11 And then subsequent to that you
12 drafted and submitted Exhibit 33 filed on
13 February 17th, 2009, in response to a mitigation
14 plan filed in the Snake River Farms proceedings on
15 the delivery call; correct?

16 A. Yes.

17 Q. And as a part of that document and
18 that report, you had the opportunity to assist
19 Mr. Koreny in the generation of Exhibit 34?

20 A. I -- well, it was a mutual thing.

21 Q. Okay.

22 A. I assisted him, and he helped me.

23 Q. Okay. And in response to the expert
24 report filed by Dr. Brendecke in this matter that
25 you reviewed in generating your rebuttal report,

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1 which is Exhibit 31, you reviewed the
2 documentation provided by Dr. Brendecke, did you
3 not?

4 A. I did.

5 Q. Okay. And did Dr. Brendecke have as
6 exhibits to his report a proposed transfer, if you
7 recall?

8 A. He did.

9 Q. Okay. And did Dr. Brendecke have
10 statements in his report generally describing the
11 limitations of the ground water model in the
12 vicinity of the wells that were being proposed for
13 use in a mitigation plan?

14 A. He did remark to that effect.

15 Q. Okay. And based upon Dr. Brendecke's
16 statements in his report and his concern over the
17 use of the model, did you refer and rely upon
18 these exhibits which have been cited as references
19 to your report, Exhibit 31, that is, the other
20 Exhibit 32, Exhibit 33, Exhibit 34, Exhibit 35?

21 A. Yes, I did.

22 Q. And so --

23 A. I will say that Dr. Brendecke in his
24 report cited some of what he thought were
25 shortcomings of the model application in this

1 area. But he went ahead and used the transfer
2 spreadsheet based on the model and provided a
3 graphical output of the impact at his deposition.

4 Q. Okay. All right. So with respect to
5 these exhibits -- 32, 33, 34, 35 -- that have been
6 previously identified that are cited or referenced
7 in your report, is it your opinion that that
8 information was pertinent to your review of
9 Dr. Brendecke's report and his analysis in order
10 to determine the validity of the assertions made
11 in his report and your work with respect to
12 analysis of the transfer or the proposed transfer,
13 I would say?

14 A. Yes. In fact, he included data in his
15 report that we utilized in the analysis of the
16 impacts. So yes, we used them all.

17 Q. Okay. And would you agree that
18 there's some matters contained in these exhibits
19 that would also be relevant to what we'll call
20 phase two of this mitigation hearing if it's held,
21 that is, the determination of the quantity and
22 other factors raised in the protest by Clear
23 Springs Foods?

24 A. All of the reports contain some
25 information relative to what you're calling phase

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1 two. And that's the efficacy of how you use the
2 model and -- and -- well, primarily how you use or
3 don't use the model in determining injury or
4 mitigation.

5 Q. Okay. But would you agree that
6 there's certain facts or certain conclusions and
7 opinions cited in these Exhibits 32, 33, 34, and
8 35 for which you deemed appropriate to review in
9 association with the generation of your report in
10 phase one of this hearing process?

11 A. Yes.

12 Q. One last question, Dr. Brendecke:
13 Just as a point of clarification, with respect to
14 the Snake River Farms spring-flow data that you
15 have available to you, to the best of your
16 understanding, is that information that you
17 acquired from either Cindy Yenter, the watermaster
18 for Water District 130, or the Department?

19 A. I -- one or the other.

20 Q. Okay.

21 A. But I have been privy to Snake River
22 Farm's data for many years.

23 Q. But to the best of your understanding,
24 the data that you have regarding Snake River
25 Farm's flow data, discharge data, has generally