

## Attachment 3

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 ) Docket No.  
(SNAKE RIVER FARM) ) CM-MP-2009-004  
(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

THE DEPOSITION OF LARRY W. COPE, was taken on behalf of North Snake Ground Water District and Magic Valley Ground Water District, at the offices of Barker, Rosholt & Simpson, 1010 West Jefferson Street, Suite 102, Boise, Idaho, commencing at 8:41 a.m. on November 10, 2009, before Jeff LaMar, Certified Shorthand Reporter and Notary Public within and for the State of Idaho, in the above-entitled matter.

#### APPEARANCES:

For Clear Springs Foods, Inc.:

BARKER, ROSHALT & SIMPSON LLP

BY MR. JOHN K. SIMPSON

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P.O. Box 2139

Boise, Idaho 83701-2139

For North Snake Ground Water District and Magic Valley Ground Water District:

RACINE, OLSON, NYE, BUDGE & BAILEY, CHTD.

BY MR. RANDALL C. BUDGE

MS. CANDICE M. McHUGH

101 Capitol Boulevard, Suite 208

Boise, Idaho 83702

Also Present:

John Randolph MacMillan, TJ Budge

LARRY W. COPE,  
first duly sworn to tell the truth relating to said cause, testified as follows:

MR. BUDGE: Just for the record, would the record reflect that this is the time and the place for the deposition duces tecum of Larry W. Cope in the matter as reflected in the deposition notice pertaining to the over-the-rim delivery plan of the ground water districts and the mitigation plan to the Clear Springs Foods, Inc., water rights at Snake River Farms. And those water rights are 36-4103A, 36-4103B, and 36-7148.

Present we have the witness, Mr. Larry W. Cope; his attorney, John Simpson; also Randy MacMillan, Clear Springs; myself, Randy Budge; and Candice McHugh on behalf of the ground water districts.

#### EXAMINATION

BY MR. BUDGE:

Q. Mr. Cope, would you state your name and business address for the record, please.

A. Yes. Larry W. Cope. And the business address is P.O. Box 712, Buhl, Idaho 83316.

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Q. Thank you.

Mr. Cope, we've become well acquainted.

Do you have a preference whether I refer to you as "Mr. Cope" or "Larry"?

A. Larry is fine.

Q. Okay. And reading the testimony, you did file some direct or rebuttal testimony in this matter.

I don't see a cover sheet or a date, but the testimony consists of pages 1 through 8; is that correct?

A. Yes.

Q. And then I believe you also did not have any exhibits to that testimony?

A. The only exhibit, I think, is an aerial photo of the three facilities --

Q. Okay.

A. -- marking the various farms to the Clear Lake Springs complex.

Q. And I don't believe that has an exhibit number, but that was the only exhibit that was attached to your testimony?

A. That's correct, yes.

Q. Have you had your deposition taken

1 previously?

2 A. In this matter?

3 Q. In any matter.

4 A. I don't recall having a deposition  
5 taken. I've testified at various hearings and  
6 that type of thing.

7 Q. So this would be your first actual  
8 deposition, as far as you know?

9 A. I think so, yes.

10 Q. I'm sure Mr. Simpson gave you some  
11 direction on it, but just as a matter of  
12 introductory matters, of course during the course  
13 of the deposition, if there's any reason you want  
14 to take a break for personal reasons or to visit  
15 with Mr. Simpson, just indicate and feel free to  
16 do so.

17 A. Okay. Thank you.

18 Q. And the reporter will admonish us both  
19 if we talk at the same time. And so I'll try not  
20 to interrupt you, and please try not to interrupt  
21 me. And if you don't understand a question, don't  
22 hesitate to ask me to rephrase it.

23 A. Understand.

24 Q. And he also will have some difficulty  
25 if we don't answer audibly. So some questions can

1 A. Right.

2 Q. And as I read your testimony, you have  
3 a pretty extensive history working with Clear  
4 Springs Foods, Inc.

5 You started as general manager some 36  
6 years ago in 1973?

7 A. That's correct.

8 Q. And then you became the president and  
9 CEO some 27 years ago in 1982?

10 A. That's correct.

11 Q. And then the role of chairman was  
12 added in 2000.

13 I assume that had something to do with  
14 the employee stock transaction that you testified  
15 about in your testimony?

16 A. That's correct. When the ownership  
17 changed, then I also assumed the role of chairman.

18 Q. And when you refer to "chairman,"  
19 would that be chairman of the board of directors?

20 A. That's correct, yes.

21 Q. And then you're also a member of the  
22 board, then?

23 A. I am, yes.

24 Q. There was a deposition duces tecum  
25 notice that was served as a part of your

1 easily be answered with a nod yes or no, but he'll  
2 require an audible response.

3 A. Understand.

4 Q. From the review of your testimony,  
5 it's my understanding that you were a 1966  
6 graduate of the College of Idaho and that you hold  
7 degrees in business administration and finance?

8 A. That's correct, yes.

9 Q. And would that be the extent of your  
10 formal education?

11 A. Well, I -- not totally. I did attend  
12 graduate school, completed all my classes. I  
13 believe that was 1967. I'm still working on my  
14 thesis.

15 Q. Oh, to obtain a doctorate degree?

16 A. No, for the master's. No, I just  
17 didn't complete the master's program. Completed  
18 the classwork.

19 Q. And would that be an M.B.A.?

20 A. Yes.

21 Q. And from what university?

22 A. The University of Idaho.

23 Q. Okay.

24 A. Better than 40 years ago, so...

25 Q. Admirable you're still working on it.

1 deposition.

2 Did you have an opportunity to review  
3 that?

4 A. I did.

5 Q. And have those documents been supplied  
6 as part of your deposition?

7 A. The only document that I have is my  
8 testimony.

9 Q. Okay. So with respect to the items  
10 listed in that deposition notice, is it the intent  
11 of Clear Springs not to produce or to produce  
12 those requested documents?

13 A. Well, our intent will be to produce  
14 anything relevant to this situation.

15 Q. Okay. Let me ask you about those.

16 What do you deem to be relevant and  
17 when do you intend to produce those?

18 A. Well, in my view, is what is relevant  
19 is this particular case of the over-the-rim  
20 project and how that impacts our company and how  
21 it impacts the image of our brand, our products.  
22 Those are the relevant issues.

23 Q. Okay. And what documents do you  
24 believe of those -- and if you'd like, let me give  
25 you a copy of that deposition notice so we can

1 inquire about it.

2 So for the record, nothing's been  
3 produced for purposes of this deposition?

4 MR. SIMPSON: Counsel, if I may?

5 MR. BUDGE: Certainly.

6 MR. SIMPSON: First of all, a duces tecum  
7 on a party is not the proper production of records  
8 pursuant to the rule. You can make a request for  
9 production to a party to a matter. And so we  
10 don't deem a duces tecum in this matter proper  
11 procedure.

12 MR. BUDGE: So is it your position, then,  
13 that the president and CEO and chairman of the  
14 board is not able to respond to a duces tecum  
15 request of the company?

16 MR. SIMPSON: No, that's not what I said.  
17 What I said was that the rules for procedure  
18 identify the proper procedure for requesting  
19 production of documents from a party. And that's  
20 through Rule 30(4).

21 Q. (BY MR. BUDGE): Let's go through this  
22 deposition notice, Larry. You have a copy there.  
23 The first item that was requested on No. 1 was  
24 various documents and data used in connection with  
25 the preparation of your testimony, including

1 anything that you relied on in filing this  
2 testimony.

3 So is it your testimony that no  
4 documents were relied upon you in the preparation  
5 of your testimony?

6 A. That's correct. Actually, that  
7 testimony is from my knowledge and my memory.

8 Q. So --

9 A. There's not any real, hardcore data in  
10 that testimony that I recall.

11 Q. So when you testified, for example, of  
12 the dates of the various property acquisitions of  
13 the company that you testified to on page 2, the  
14 dates of Box Canyon acquisition and the various  
15 other construction projects referred to on page 2,  
16 all of that is from memory, not from review of any  
17 documents or records?

18 A. I think that generally from memory.  
19 It's possible that we had kind of a historical  
20 record that I just referred to to make sure I was  
21 accurate in it. But just -- I think you're  
22 referring to my testimony where I speak toward the  
23 development of the company and the timing of  
24 various significant steps that the company made  
25 during that time. And of course, I was very

1 involved during that period of time. For the most  
2 part, that's all in my memory bank.

3 Q. So information that you have on page 3  
4 regarding the payroll of the company, the  
5 projected revenue for the year, the current value  
6 of the employee ownership interest, all of that  
7 information was based upon your personal  
8 knowledge, not based upon any records of the  
9 company that you reviewed?

10 A. Well, it's my personal knowledge of  
11 what those records are. But I live very close to  
12 those --

13 Q. Sure.

14 A. -- those numbers, so I'm very aware of  
15 what they are.

16 Q. And I suppose that knowledge would be  
17 obtained based on your review of sales and profits  
18 and inventory records and financial statements  
19 that the company generates on a regular basis?

20 A. Over time, yes.

21 Q. And you review those carefully, and  
22 that's how you developed your memory?

23 A. Right.

24 Q. So to that extent, you would have  
25 relied on those documents in coming up with that

1 financial testimony you presented; correct?

2 A. Yes. I think there's nothing very  
3 specific in those topline numbers, that type of  
4 thing, which any CEO would have knowledge of what  
5 that is at any given time, I believe.

6 Q. Part of the information, then, that we  
7 did request on that particular issue was tax  
8 returns and financial sheets and balance  
9 statements. That was item 4.

10 So to the extent that you relied on  
11 those but are not producing these documents, is it  
12 your position those are not relevant?

13 A. I didn't rely on any tax information.

14 MR. SIMPSON: And, Counsel, that's been  
15 addressed in the prior hearing that we had on this  
16 matter.

17 Q. (BY MR. BUDGE): Just so the record's  
18 clear, then, with respect to all of the documents  
19 that were requested to be produced in this list,  
20 item 1 I just reviewed, 2, "...documents, data,  
21 studies, information and reports that support  
22 Clear Springs' position that Clear Springs'  
23 rainbow trout are grown only in fresh, pure,  
24 pristine water that flows from the Snake River  
25 Canyon," no documents were relied upon that relate

1 to that.

2 A. Just my knowledge of what our  
3 operations are and where those fish come from.

4 Q. But there are no Clear Springs  
5 documents that relate directly or indirectly to  
6 the assertion that only fresh, pure, pristine  
7 water is used to grow rainbow trout?

8 A. Well, one can refer back to our water  
9 rights, the pertinent water rights we're talking  
10 about.

11 Q. And item 3 was documents you reviewed  
12 in the preparation for the deposition.

13 I understand you didn't review any  
14 other than some of your general knowledge that  
15 we've discussed before?

16 A. That's correct, yes.

17 Q. Item 4 requested federal and state tax  
18 returns for a five-year period, including  
19 financial statements and balance sheets.

20 I suppose that Clear Springs has all  
21 of those documents?

22 A. We do, yes.

23 Q. And is it your position that none of  
24 that financial information is relevant to the  
25 testimony that you presented?

1 A. That's my position, yes.

2 Q. Okay. And on item 5 requested  
3 documents, data, information relating to fish  
4 production, sales, expenses, profit margin, and  
5 profitability of Clear Springs Foods on a  
6 consolidated basis and separately for Snake River  
7 Farms.

8 Is it your testimony that none of that  
9 sales, production, and the like data is relevant?

10 A. That's correct.

11 Q. And all that information is part of  
12 the Clear Springs records?

13 A. It is, yes.

14 Q. Okay. And you had testimony, you as  
15 well as Dr. MacMillan, about the impacts of this  
16 plan on revenues, on sales, on profit margins, and  
17 profitability.

18 So you provided testimony on all of  
19 these items; is that correct?

20 MR. SIMPSON: Well, Counsel, if you could  
21 point to his testimony so that he can --

22 MR. BUDGE: I'll do that as I go through  
23 it.

24 Q. You can answer that if you're able to.

25 You provided testimony relative to the

1 value of the company; correct?

2 A. Of what impacts to the value of the  
3 company, yes.

4 Q. And I believe you provided testimony  
5 regarding what impact you perceived that the plan  
6 might have on the sales of the company; correct?

7 A. That's correct, yes.

8 Q. And also on the revenues of the  
9 company?

10 A. Yes.

11 Q. Okay. Item 6 requested documents,  
12 data, and information relating to the value of  
13 Clear Springs Foods. And you provided testimony  
14 on pages 3 and 4 and 7 about the value of the  
15 company.

16 What is the source of the information  
17 that you relied upon to derive the estimates of  
18 value that you testified to?

19 A. Well, I think the only value I gave on  
20 the company in my testimony was just I think I  
21 referred to the purchase price by the employee  
22 stock ownership trust back in August of 2000. And  
23 that was a \$30 million purchase.

24 Q. On page 3, line 97, you do indicate  
25 that the value of the employee ownership is about

1 \$30 million?

2 A. That's correct, yes. That's the value  
3 in the trust. Well, the value in the -- I don't  
4 have my testimony in front of me, but I referred  
5 to the total value, I believe, of the two trusts  
6 that are employee owned, and that's  
7 approximately -- approximately \$30 million today.

8 Q. And are there records or information,  
9 appraisals of the like that you relied upon in  
10 coming to that statement in your testimony of  
11 value of \$30 million?

12 A. Well, that's the net asset value of  
13 the two trusts. I'm very familiar with that. We  
14 just completed a banquet with our employees where  
15 I made a presentation of what that value is for  
16 them.

17 Q. And so you relied on some records of  
18 the company to come up with the value of  
19 \$30 million?

20 A. The records of the trusts.

21 Q. The records of the trusts?

22 A. That's the value in the trusts, yes.

23 Q. So you would have relied on those  
24 trust records in deriving the \$30 million number  
25 that's in your testimony?

1 A. That's correct, yes.  
2 MR. BUDGE: Well, let's go ahead and make  
3 an exhibit. I think the next one is 19 of the  
4 exhibit notice.

5 (Exhibit 19 marked.)

6 Q. (BY MR. BUDGE): I have a number of  
7 questions, Larry, for you and for Randy MacMillan  
8 that pertain to some discrepancies in your  
9 testimony on numbers, which I'll get to later.  
10 For example, you made a statement in your  
11 testimony that the projected sales, I think, were  
12 \$50 million. And I think there was a place -- I'm  
13 referring to page 3, line 97 --

14 And, Counsel, could you provide  
15 Mr. Cope with a copy of his testimony, because  
16 I've got a number of questions. It certainly  
17 would be better if he could look at it, rather  
18 than just what I have.

19 For example, on page 3, lines 97 and  
20 98, you made the statement that "Projected revenue  
21 for the current year is approximately  
22 \$56 million."

23 And when I reviewed Mr. MacMillan's  
24 testimony, he said the current revenue for this  
25 year is \$50 million, and he was projecting that

1 2010 would be 56 million.

2 So would you agree that it would be  
3 helpful to you and Mr. MacMillan to be able to  
4 look at those documents in order to reconcile what  
5 either is a typographical error or  
6 misunderstanding between you as to what the actual  
7 revenue is this year versus projected revenue?

8 A. Well, from the comments you made, I  
9 don't see where there was an inconsistency. The  
10 revenue for the year is approximately 50 million.  
11 The projected revenue for this coming year, our  
12 fiscal year, is 56 million.

13 Q. Well, at that same place on page 3,  
14 line 98, when you were saying that the 2009 value  
15 of the trust interest was 30 million,  
16 Mr. MacMillan's testimony on page 16 said the  
17 value was 34 million.

18 So I guess my question is, is how am I  
19 to substantiate, based on records of the company,  
20 the differences between Mr. MacMillan's testimony  
21 and yours if the records that you relied upon in  
22 developing your respective testimonies aren't  
23 available?

24 A. Okay.

25 Q. You say that's not relevant?

1 A. Well, the 30 million isn't an exact  
2 number on mine. You have to understand that it is  
3 approximately that, and it is approximately that.

4 Q. Okay.

5 A. And there could perhaps be some  
6 inconsistency -- I don't know how relevant that  
7 is -- but in the amount in the trust. It's  
8 approximately \$30 million in the two trusts.

9 Q. Okay. Well, on that point, again,  
10 looking at page 3, lines 96 through 98 of your  
11 testimony, you say, "The current value of the  
12 employee ownership interest in Clear Springs'  
13 trust as of August 31, 2009, was approximately  
14 \$30 million."

15 Okay?

16 A. Yes.

17 Q. And when I read Mr. MacMillan's  
18 testimony on page 3, lines 423 through 424, he  
19 says, "The employee owners have a beneficial  
20 interest of approximately \$34 million in the Clear  
21 Springs Food 401K and employee ownership trust."

22 So I guess my question is, are there  
23 documentation that you relied upon in deriving at  
24 your value of \$30 million?

25 A. Well, I believe that it's the total of

1 the two trusts. So my memory is approximately  
2 that. I'm not sure where that inconsistency does  
3 come from --

4 Q. Okay.

5 A. -- between what Randy has in his  
6 report and what my -- I believe it is  
7 approximately \$30 million.

8 Q. Okay. That would be a current number?

9 A. Uh-huh. I don't know if a few million  
10 one way or the other makes a difference. It's a  
11 significant ownership investment.

12 Q. And would the company or the trust  
13 have records that one could examine to reconcile  
14 the discrepancy between what your testimony might  
15 say and what Mr. MacMillan's might say?

16 A. Well, we could confirm the exact  
17 amount, if that's what you would need.

18 Q. And still you contend that those  
19 records would not be relevant for purposes of this  
20 issue as it's addressed in your testimony?

21 A. I really don't think -- in my view, it  
22 is not relevant to what this issue's about.

23 Q. Well, is the testimony concerning what  
24 the trust's interest relevant at all to the  
25 over-the-rim delivery plan of water?

1 A. I think it's relevant in the fact that  
2 there's very substantial value owned by the Clear  
3 Springs employees that's at stake. That's why  
4 it's relevant. Whether that's a number  
5 \$30 million or a little more or a little less. I  
6 don't know where it is. But there's approximately  
7 \$30 million of employee ownership value in our  
8 company that's at stake.

9 Q. And so it's relevant to the extent  
10 that your later testimony and some of  
11 Mr. MacMillan's expresses concern that that value  
12 might be jeopardized by this delivery of well  
13 water to the extent that it could impact your  
14 marketing of the products?

15 A. That's basically what my testimony is  
16 communicating.

17 Q. Okay. Are there any publications or  
18 papers that you have written relevant to any of  
19 the issues in your testimony, the operation of the  
20 business, the production of fish, sales, revenues,  
21 marketing that you have authored yourself? Have  
22 you produced any publications or articles?

23 A. Not any publications.

24 Q. And do you consider your testimony  
25 presented here one of a fact witness based on your

1 A. No.

2 Q. And any expertise in chemistry?

3 A. None.

4 Q. None in water-quality issues?

5 A. Well, no expertise in it, other than  
6 the knowledge and the awareness that it's a very  
7 important part of our business, obviously.

8 Q. And I suppose you'd have some  
9 expertise in the area of aquaculture as it relates  
10 to aquaculture of the business?

11 A. 36 years' experience, yes.

12 Q. But aquaculture insofar as the biology  
13 of the fish and use of drugs and vaccines and  
14 antibiotics, all of that would be within the  
15 purview of the testimony of Dr. MacMillan?

16 A. Well, it would. My knowledge goes to  
17 the extent of the awareness of the importance and  
18 the importance of living up with what the various  
19 requirements are on usage of any kind of  
20 compounds, chemicals or therapeutants, that kind  
21 of thing, working with the staff over the years.

22 My responsibility obviously involves  
23 compliance with those rules. But I have to be  
24 assured that we are in compliance with various  
25 regulations. The specifics on how you get there,

1 knowledge and experience as an officer and  
2 manager, or are you attempting to give expert  
3 testimony in some particular area?

4 A. I'm not attempting to give expert  
5 witness in any particular area, other than my 36  
6 years' experience with the company and with the  
7 industry.

8 Q. Okay. So would you describe -- and  
9 don't let me put incorrect words in your mouth,  
10 but your area of expertise would be based upon  
11 your long-term knowledge and experience of the  
12 operation of the business of Clear Springs Foods,  
13 the operational aspects and the marketing aspect?

14 A. That's correct, and working with our  
15 staff over the years that have more specific  
16 knowledge in any given area than what I would.

17 Q. So you're not purporting to have  
18 expertise or giving expert testimony with respect  
19 to the geology of the area?

20 A. No.

21 Q. And the hydrology of the area?

22 A. I rely on others for that knowledge.

23 Q. Okay. And you wouldn't claim to have  
24 any expertise in well drilling or in construction  
25 engineering or design?

1 I have a staff of people to conduct that work.

2 Q. And what would be the primary areas of  
3 regulation that you manage insofar as the  
4 compliance with regulations that you described?

5 A. Well, the primary, I think there's two  
6 areas, you know, if you want kind of the overview  
7 at 30,000 feet where I sit, is I recognize our  
8 company has to always be in compliance with all  
9 food-safety regulations and all environmental  
10 regulations. Those are probably the two key areas  
11 on the technical side of our business that's  
12 important to us.

13 Q. And the food-safety regulations derive  
14 out of the fact that you produce a food product  
15 that's sold for human consumption?

16 A. That's correct, yes.

17 Q. And the environmental regulations  
18 would relate primarily to the water that is  
19 discharged from the fish production operation into  
20 the Snake River and also the disposition of the  
21 waste products from the fish themselves?

22 A. The fish farming operation is part of  
23 it, and our processing plants as well.

24 Q. Okay. Do you consider yourself an  
25 expert in the area of as an economist or as an



1 appraisal of businesses or real estate?

2 A. Well, I don't consider myself an  
3 expert as far as going out and conducting work for  
4 others. But I have had 36 years' experience in  
5 the business. So I'm quite knowledgeable of it.  
6 But I never portrayed myself and I never had a  
7 reason to portray myself as being an expert in any  
8 of that area.

9 Q. But you have some knowledge of the  
10 value of the fish business derived out of your  
11 general knowledge of the business, I suppose, and  
12 also the fact that Clear Springs has made a number  
13 of acquisitions over the years?

14 A. Yes, as a business person, I'm exposed  
15 to that --

16 Q. Okay.

17 A. -- and I've dealt with those issues.

18 Q. The reason I asked those questions is  
19 we had deadlines in this proceeding for filing  
20 expert testimony and also for lay testimony, and  
21 yours was filed on the October date for expert  
22 testimony, so I wanted to make sure I knew what  
23 part you considered was fact testimony based on  
24 your knowledge and experience and what part you  
25 considered to be acting as an expert for Clear

1 Springs.

2 Just some general questions about  
3 Clear Springs as a corporate structure: Is it an  
4 Idaho corporation?

5 A. It is, yes.

6 Q. And I assume it would be a for-profit  
7 corporation?

8 A. It's a for-profit corporation, yes.

9 Q. Okay. And you indicated on page 2 of  
10 your testimony that in August of 2000, following  
11 34 years of successful growth, the original  
12 investor sold the company to the Clear Springs  
13 employees stock ownership trust?

14 A. That's correct, yes.

15 Q. And you refer to that, the acronym, as  
16 an ESOT?

17 A. Well, the trust is an ESOT, more  
18 commonly E-S-O-P, known in the business community  
19 as an ESOP company. Big companies such as WinCo  
20 here in Boise. It's an employee-owned company.

21 Q. And that essentially means the  
22 employees of the company are the shareholders that  
23 own it?

24 A. Technically, the trust itself is the  
25 shareholder.

1 Q. Okay.

2 A. The employees have a beneficial  
3 interest in that trust.

4 Q. And does the trust operate the  
5 retirement plan of the employees?

6 A. Well, the trust is the -- is the  
7 dollars and the plan itself that overfaces the  
8 trust determines the values of distribution to the  
9 employee owners.

10 Q. Okay. And when you describe 34 years  
11 of successful growth, just give me just a capsule  
12 summary of what you base that statement on. What  
13 was the cause of the growth? I assume some of it  
14 was acquisition, some was expansion, some of it  
15 was new products.

16 A. Well --

17 Q. Just give me a little bit of a  
18 description of successful growth. I guess from  
19 where they started in 1966, what happened after  
20 that?

21 A. Well, it was over a period of time.  
22 It was the original filing for the water rights at  
23 the various locations, which I think I set kind of  
24 the timeline when all of this did occur, proving  
25 up on the licenses of those water rights, and our

1 core business is product produced from the water  
2 available under those water rights.

3 Our business is totally a food  
4 business. The rainbow trout products move out  
5 into the market, both to retail and food service  
6 accounts throughout North America.

7 And the growth of the company came  
8 from a combination of a number of things. We're  
9 very much a vertically-integrated company, in that  
10 we take control of our product, we like to say,  
11 from the farm -- actually, from the egg to the  
12 marketplace, throughout the system.

13 And we've just overlapped another -- a  
14 number of areas of strength to build our business  
15 over time and to build our brand out there. Our  
16 growth primarily has come from the water filings  
17 that we have. We had one acquisition -- actually,  
18 two acquisitions.

19 We had acquired the Caribou Trout  
20 Farms in Soda Springs and rebuilt that into our  
21 brood station, part of our vertical integration to  
22 have control of our seed stock that we relied  
23 upon -- rely upon for our production. That was an  
24 acquisition. We purchased actually the farm and  
25 then rebuilt it to a state-of-the-art brood

1 operation over in Soda Springs.

2 Q. Uh-huh.

3 A. The other acquisition would be the  
4 Thousand Springs Trout Farms in April of 1981.  
5 And that is what is today known as our Snake River  
6 Farm.

7 And we acquired that company from a  
8 company in New Jersey, Inmont Corporation, which  
9 they had owned Thousand Springs Trout Farms as  
10 totally unrelated to their core business. And  
11 they placed it up for sale, and we acquired it.

12 Q. Okay.

13 A. So our growth has primarily been  
14 internal.

15 Q. So when you made acquisition of the  
16 water rights like the Soda Springs facility, for  
17 example, the Snake River Farms, you were acquiring  
18 water rights in relationship to physical  
19 facilities on the ground, real estate and  
20 equipment as well, that enabled you then to expand  
21 your fish production?

22 A. That's correct.

23 Q. Okay. And over this period of time  
24 that you described, this 34-year period, has  
25 productivity of the amount of fish that get

1 produced per gallon of water or cfs of water,  
2 however you measure it, has that changed  
3 significantly over time?

4 A. It has changed.

5 Q. Not unlike other farm products that  
6 fish have got to where they grow bigger faster?

7 A. Most agricultural-based businesses,  
8 productivity has gone up over the years.

9 Q. And this vertical integration that you  
10 described, controlling the product from egg to  
11 market, is that somewhat unique in the commercial  
12 rainbow trout business in Idaho?

13 A. I think it's unique for Clear Springs  
14 in that we are more vertically integrated than  
15 anyone else.

16 Q. And you indicated that enabled  
17 efficiencies to overlap.

18 Were you basically describing there  
19 that you have economies that result from being  
20 able to control your product from beginning to  
21 end?

22 A. Yeah, the -- I think the foundation  
23 for the movement there is that it's always been  
24 our belief that we had to have some control over  
25 every area of our business that would control our

1 destiny as a company. And that's why we  
2 overlapped. We manufacture our own food. We have  
3 a research center. We have our brood station.  
4 And it's the full package with our company. We're  
5 not relying on third parties for very important  
6 parts of our production.

7 Q. And so in addition to control, would I  
8 be correct to assume that that results in certain  
9 economies as well?

10 A. It does.

11 Q. And so would you consider Clear  
12 Springs to be a least-cost producer of commercial  
13 rainbow trout in Idaho?

14 A. We believe we are.

15 Q. And is that attributed to your ability  
16 to grow to be the largest producers?

17 A. I think it's attributable to the  
18 people that we have in place that we have brought  
19 into our company and how we manage the business.

20 Q. Okay. So important assets, then, I  
21 guess, are the water itself and the facilities?

22 A. The water is the resource. The  
23 facility is the man- -- the facilities and the  
24 management by the people, combined with the  
25 resource creates the growth, creates the value.

1 Q. And I suppose technology as well?

2 A. And technology.

3 Q. And then would you consider Clear  
4 Springs to be the world's leader in research and  
5 development?

6 A. I don't know if it's the world leader.  
7 We are a world leader. And certainly in private  
8 aquaculture, I think that we're recognized as  
9 being very much a leader in freshwater rainbow  
10 trout production.

11 Q. Would it be accurate to say that all  
12 of those factors -- the water rights, the  
13 facilities, the people, the technology, the  
14 vertical integration from egg to market -- all  
15 combined to make Clear Springs the least-cost  
16 producer?

17 A. Well, all combined, yes. But without  
18 the resource, nothing moves forward.

19 Q. Were you one of the original owners or  
20 investors in Clear Springs?

21 A. No. The company was actually formed  
22 in 1966. And I came in in 1973.

23 Q. Okay. And did you have an ownership  
24 interest at the time of the sale to the trust in  
25 August of 2000?

1 A. I did.

2 Q. What was your percent ownership  
3 interest at that time?

4 A. Approximately 10 percent.

5 Q. And so that ownership interest that  
6 you one time had, you now no longer have an  
7 ownership interest?

8 A. That's correct, I don't.

9 Q. But you would have some interest as an  
10 employee in the ESOP?

11 A. I'm not -- technically, I am not a  
12 participant in the ESOP because I was a selling  
13 shareholder. And under ERISA regulations, it  
14 precludes a seller of the entity to be -- to  
15 participate in the ESOP trust moving forward.

16 Q. Was the \$30 million number that you  
17 provided at the time of the sale in 2000, was that  
18 the actual value of the business for purposes of  
19 that sale from the original owners to the ESOP?

20 A. It was.

21 Q. Was that established by appraisal or  
22 just an agreed number?

23 A. It was established -- it was necessary  
24 for us at the time to actually place the company  
25 on the market to determine a value for our

1 shareholders so they would know that they received  
2 a fair value. And frankly, the employees had to  
3 compete in the marketplace to purchase the  
4 company.

5 Q. Okay.

6 A. That \$30 million was at a parody of  
7 companies that had an expression of interest in  
8 moving forward toward a transaction. And that's  
9 how it was arrived at.

10 Q. So that was, according to your  
11 testimony, really an arm's length transaction,  
12 then, established between the prior owners and the  
13 employees?

14 A. As a matter of fact, under ERISA  
15 regulations, it has to be very much an arm's  
16 length transaction, and you have to really leave  
17 tracks to demonstrate that the employees are  
18 paying a fair value for the company.

19 Q. On page 3 -- and I apologize if I  
20 asked you this same question a little bit earlier,  
21 but on page 3, lines 96 and 97, you state that the  
22 current value as of August 31, 2009, was  
23 approximately \$30 million.

24 Are you basically testifying there's  
25 been no change in the value since 2000, or are you

1 simply trying to reflect that's what it's carried  
2 on the books at?

3 A. No, nothing is carried on the Clear  
4 Springs' books with respect to the value. That's  
5 the value of the two trusts that the employees  
6 own, the asset value. And that is different than  
7 the value of the business.

8 An independent evaluator has to value  
9 our business annually for the ESOP trust. And  
10 that accumulation comes from those values. Now,  
11 the true value of the business is something  
12 different than that, because it is my own opinion  
13 that the value of the business, if it were to be  
14 sold today, would be substantially higher because  
15 you would have a different type of a purchaser  
16 than what the evaluator would look at. You would  
17 have a strategic purchaser look at the business  
18 and value it on that basis.

19 Q. Okay.

20 A. And that creates a totally different  
21 value.

22 Q. So there's some type of a person that  
23 evaluates the company on an annual basis for  
24 purposes of the value of the trust interests, and  
25 he's the one that determines the \$30 million

1 figure?

2 A. The evaluation company does, that's  
3 correct.

4 Q. Okay.

5 A. They value the company.

6 Q. So that number that you had in your  
7 testimony was derived, then, from whatever number  
8 that appraiser or person came up with?

9 A. Yeah, keep in mind that's also the  
10 401K trust as well. The employees' 401K, as well  
11 as the ESOP, combination of the two.

12 Q. Maybe you could help me out by  
13 describing the two trusts.

14 A. Okay. Well, the 401K trust is a trust  
15 like, perhaps you have it in your own firm, where  
16 you defer a certain part of your income into the  
17 401K trust.

18 Q. A regular, conventional retirement  
19 401K?

20 A. Yes.

21 Q. Okay.

22 A. In addition to that we have the  
23 employee stock ownership trust, of which the  
24 employees participate. And participation there  
25 is -- the value is arrived at what the value of

1 the business is moving forward as you pay down  
2 that \$30 million worth of debt.

3 Because, see, the way that company was  
4 purchased by the employees, is we went out and we  
5 borrowed \$30 million, the company did. The  
6 company put that \$30 million in the ESOP trust,  
7 and the ESOP trust acquired the shares of the  
8 existing shareholders.

9 Q. Okay.

10 A. This is all under ERISA regulations,  
11 how the transaction occurs.

12 So as we move forward and we continue  
13 to grow the business and the company continues to  
14 prosper and is able to pay down that debt through  
15 the trust, the employees receive the value of it.  
16 They are, in fact, the owners of the company  
17 through their trust.

18 Q. And then does the 401K trust then does  
19 not own any stock in --

20 A. That's correct, it does not.

21 Q. -- Clear Springs?

22 I appreciate that clarification.

23 A. Okay.

24 Q. I think the two trusts had me lost.

25 A. It is a bit confusing.

1 Q. You made the comment that the  
2 \$30 million value for purposes of the trust,  
3 employee trust, would be substantially less than  
4 what you perceived the fair-market value of the  
5 company to be?

6 A. That's correct.

7 Q. And would that difference between the  
8 two be what you'd consider to be growth in value  
9 from the original sale in 2000 to what it might be  
10 worth today?

11 A. The difference in what I believe the  
12 market value of the business is if it were to be  
13 sold compared to the \$30 million value? Is that  
14 what you're asking me?

15 Q. Yes. Maybe let me clarify.

16 A. Okay.

17 Q. In 2000 when the sale was made to the  
18 trust, the business was placed on the market, I  
19 understand, and so that sale value of 30 million  
20 to the trust would have represented what you  
21 considered to be fair-market value in 2000;  
22 correct?

23 A. That's what the transaction trustee  
24 arrived at was the fair value. And that's what  
25 the transaction was, was \$30 million, at that

1 time.

2 Q. And today you believe the fair-market  
3 value to be substantially higher.

4 Would that be based upon your personal  
5 knowledge and experience, or is it based upon any  
6 recent appraisal you obtained?

7 A. No, it's not based on a recent  
8 appraisal. But it's based on my knowledge in the  
9 industry that what I believe if we were to place  
10 the company for sale today, you would -- it has  
11 all the potential of selling the company for  
12 substantially more than \$30 million today.

13 Q. Okay. Do you have a rough estimate  
14 what you believe the value of the company is today  
15 if it were to be sold?

16 A. Well, of course, you never know until  
17 you have a willing buyer that you're talking to.  
18 But I believe it's probably 50 percent higher --

19 Q. Okay.

20 A. -- than the \$30 million. That would  
21 be my -- if you asked my opinion --

22 Q. Sure.

23 A. -- that's my opinion.

24 Q. Larry, turning back to the bottom of  
25 page 2, you went through a description of the

1 various history of the company insofar as  
2 acquisition of other facilities. You describe the  
3 acquisition of Box Canyon in 1972, and  
4 construction of the farm in '73, building a  
5 processing plant in '74, and so on and so forth.

6 I didn't see anything that had  
7 occurred after the sale to the trust in 2000,  
8 except you mentioned in the last two lines,  
9 lines 78 and 79 on page 2 that the company had  
10 made some substantial investments in freezing and  
11 processing equipment and cutting equipment?

12 A. Uh-huh, yes.

13 Q. So the growth in value that you think  
14 the company might be worth maybe 50 percent higher  
15 today than it was in 2000 would be attributable to  
16 what? What's occurred from 2000 to now, just  
17 generally, that would cause you to believe the  
18 value has gone up?

19 A. Well, the -- the growth of our  
20 business over that period of time. We've  
21 continued to grow our business. The profitability  
22 of our business over the period of time. We, like  
23 most companies, we have had great success in  
24 building our business. And over time from year to  
25 year that pattern obviously changes.

1 For instance, we, like everyone else  
2 in the last two years, we see what we call a lot  
3 of headwinds with the economy in our business. We  
4 still remain a prosperous company, but in the  
5 environment we're in, we don't do as well as in  
6 good environments.

7 But our positions out there, how we've  
8 created the markets for our products, created more  
9 value out of the products that we produce, both  
10 food service and retail, we just have continued to  
11 broaden our footprint in the marketplace. And  
12 that is where the value is coming from.

13 Q. And would it be accurate to say that  
14 that growth in value from 2000 to 2009 that you  
15 described happened despite the fact that,  
16 according to your testimony and Dr. MacMillan's,  
17 there has been declines in the water available  
18 under your rights at Snake River Farms and other  
19 facilities by reason of what we all know is  
20 occurring on the aquifer certainly during that  
21 drought period from 2000 to 2005?

22 A. Well, it's true that we have been able  
23 to create that value because we brought in more  
24 productivity into our company during that period  
25 of time through our farming operations, through

1 our processing. It's a number of things, the  
2 creation of our products, the type of products we  
3 have out there, that creates more value.

4 And it is true that we have been -- we  
5 have become more efficient and have more  
6 productivity against the declining resource.  
7 Unfortunately, it has been against the declining  
8 resource, because other water users have not had a  
9 declining resource and can enjoy the full benefit  
10 of their productivity.

11 Q. Uh-huh.

12 A. We have not had that advantage.

13 Q. So are you basically saying in this  
14 time frame we're discussing that you've been able  
15 to produce more fish with less water due to  
16 efficiencies growing, or are you making outside  
17 acquisitions of fish or other businesses, or  
18 just --

19 A. Well, actually, our overall production  
20 stream during that period of time has not  
21 increased very much. We've been able to produce  
22 pretty much the same amount year in and year out  
23 out of our farms. It's just that we're creating  
24 more value on what we're producing, through the  
25 product lines that we have and through the

1 marketplace.

2 Q. Okay. Does Clear Springs have  
3 ownership interest in other entities?

4 A. No.

5 Q. And in some of the documents that  
6 Clear Springs presented here, either in one of the  
7 exhibits or it may have been from your website,  
8 there's discussion of Chilean and Argentine  
9 partners.

10 A. Uh-huh.

11 Q. And maybe you can describe who they  
12 are and what they do and why they're your  
13 partners.

14 A. Okay. Well, partners with respect to  
15 not an equity ownership or not an ownership type  
16 of partnership.

17 Q. Okay.

18 A. Approximately -- I believe  
19 approximately six years ago, six, seven years ago,  
20 and actually well before that, we always had an  
21 interest in our business and our industry as what  
22 are the real competitive factors. At one time you  
23 looked domestically. We no longer look  
24 domestically anymore. You look globally, because  
25 our products don't seem to see national borders.

1 It's very much a global market out there that we  
2 compete against.

3 So we were looking for the ability to  
4 grow our business. And what we did, we have made  
5 arrangements with one entrepreneurial company in  
6 Chile that supplies product for us. They do in  
7 Chile similar to what we do here.

8 And we import product from Chile. And  
9 that serves primarily our private-label business  
10 and products that go into our specialty products  
11 plant. And it's all frozen. Nothing fresh.

12 But when we refer to partnership, it's  
13 like a joint alliance between two parties that we  
14 assist them in developing their business through  
15 technology exchange, that type of thing, and we  
16 provide a market for their products.

17 So what they produce, we have the  
18 exclusive rights in the U.S. to market those  
19 products. That's essentially what it is. It's  
20 not an ownership situation.

21 Q. Okay. So this arrangement with the  
22 Chilean partners is with one company.

23 And what type of product do they  
24 produce?

25 A. Rainbow trout.

1 Q. Okay. And then do you do the  
2 processing of it in the United States?

3 A. They do all of the processing.

4 Q. They do everything?

5 A. And they do all of the packaging.

6 Q. So you're basically doing the  
7 marketing?

8 A. Well, we buy the product. We're the  
9 customer. We own the product. And that product  
10 goes through private-label channels.

11 Q. What's the source of water that the  
12 Chilean company uses?

13 A. They have a -- it's a very pristine  
14 water. They're located up in southern Chile  
15 nestled up against the Andes Mountains, and  
16 there's nothing really essentially between their  
17 operations and the runoff out of the Andes. Very  
18 pristine water that they utilize in the rivers.

19 They don't have the benefit that we  
20 have in the type of water. Their culture has to  
21 be different because they have different water  
22 temperatures seasonally with it, and they have  
23 different flows as well. But they're very  
24 hands-on in what they do, and they're successful  
25 at what they do.

1 Q. So you've been to that facility, then?

2 A. Many times.

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

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

12 Q. So similar raceway-type growth  
13 operation?

14 A. Very similar culture practices as what  
15 we utilize.

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

18 A. They do.

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

21 A. Not above them.

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

24 A. Well, between Chile and Argentina,  
25 just -- I don't have the precise number, but a bit

1 more than 10 percent of our total sales. And  
2 that's one way we've been able to expand our  
3 topline business in recent years.

4 Q. And describe your Chilean partner.

5 A. They're two individuals, two families.  
6 It's a private company. There's entrepreneurial  
7 partners. Native Chileans, just a family  
8 business.

9 Q. And they're also raising rainbow  
10 trout?

11 A. Yes.

12 Q. And what's their water source?

13 A. The Chilean?

14 Q. Yes.

15 A. I thought that is what we just went  
16 through.

17 Q. Or excuse me. The Argentine. We've  
18 moved to the Argentine on the two owners.

19 A. I'm sorry. The Argentines, similar  
20 practice to them. The water source comes out of  
21 the Andes, only the other side of the Andes.

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

24 How far downriver, how many miles of  
25 river are there between the place where the water

1 originates and it's actually diverted out of the  
2 river? Do you know?

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

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

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

11 Q. We'd be talking a few miles?

12 A. -- first access, yeah.

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

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

18 Q. Is it a corporate name or --

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

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

1 A. The Chilean product goes primarily to  
2 private-label business that we do as well. For  
3 instance, Sysco Foods is a major food service  
4 distributor. They do all of our Sysco product.

5 The Argentinian --

6 Q. Sysco is just a distributing company?

7 A. It's a major North American  
8 distribution company, all frozen, frozen product.  
9 Only frozen.

10 And the Argentinian product is  
11 dedicated toward or specialty products plant where  
12 we take that product and we add value to it.

13 Q. And are those sold under the Clear  
14 Springs label?

15 A. They are, yes, as well as other  
16 species in that operation.

17 Q. So to sum up the product supplied by  
18 these two foreign partners, it would be roughly  
19 10 percent of your sales come from their sources,  
20 and they're all distributed and sold in the United  
21 States under the Clear Springs labels?

22 A. Well, not under the Clear Springs  
23 label. The biggest part of it goes into the Sysco  
24 label.

25 Q. Okay. So Sysco is not --

1 A. It's in the Sysco label.

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

4 A. A small amount would be.

5 Q. That's the specialty product?

6 A. The frozen products.

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

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

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

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

16 Q. Are they farmed products or wild  
17 products?

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

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

22 A. Splash is a brand name.

23 Q. Okay.

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

1 Q. What else besides mahi mahi?

2 A. Nothing in the market right now. One  
3 that we're working with is a new product called  
4 swai, s-w-a-i, I believe.

5 Q. I saw that. Is that a type of fish?

6 A. It is.

7 Q. Where is that grown?

8 A. Vietnam.

9 Q. Is that one of those products in the  
10 Mekong River that's in the cages?

11 A. Uh-huh.

12 Q. And what percent of your sales would  
13 be represented by these mahi mahi sales and this  
14 swai product?

15 A. At this time very, very small. Very  
16 small.

17 Q. Okay. And again, you purchase from  
18 foreign suppliers, and then distribute and sell in  
19 the U.S.?

20 A. Well, those products we purchase the  
21 raw material, either directly from those companies  
22 or through traders.

23 Q. Okay.

24 A. Fish and seafood business globally is  
25 a very dynamic business, a lot of product moving.

1 But we purchase through them. We bring in the raw  
2 product --

3 Q. Uh-huh.

4 A. -- in our specialty products plant,  
5 then we value -- what we call value add those  
6 products. They'll have various types of coatings  
7 and that type of thing. And they go out to the  
8 retail -- primarily to the retail markets.

9 Q. And is that swai -- is that the  
10 correct pronunciation?

11 A. It is, yes.

12 Q. Is that sold under the Clear Springs  
13 label as a specialty product?

14 A. It hasn't been marketed at this time.  
15 It's one we're looking at currently.

16 Q. Okay.

17 A. It's becoming very popular globally  
18 now, particularly in Europe.

19 Q. With these foreign purchases -- and  
20 let's maybe back up and start with the Chilean  
21 product -- do they have inspections that go on  
22 within the facility that you oversee or manage  
23 with respect to quality to meet food-product  
24 requirements in the U.S.?

25 A. They have to meet very high quality

1 standards. We have our own internal QA people  
2 that they work with, as well as we have what is  
3 called third-party audits. They're really  
4 required by our customers.

5 So those are independent companies,  
6 and that is their business, would be going out and  
7 inspecting food manufacturing facilities. And  
8 they're graded. So they have to meet the  
9 criteria.

10 Q. That's established pursuant to the  
11 contractual relationships that you have with them  
12 that mandate that these foreign suppliers meet  
13 your internal specifications, which in turn comply  
14 with the U.S. FDA food requirements?

15 A. Yes. We have our own internal  
16 standards that they must meet. Our customers have  
17 their internal standards, which we have to comply  
18 with. And further, I might add, that any product,  
19 efficiency food coming in outside of our borders  
20 brought in, has to be -- come from an  
21 FDA-registered food facility to be imported, be  
22 cleared through customs.

23 Q. On those Chilean and Argentine  
24 production facilities, do you do water-quality  
25 sampling of the water that comes into their

1 facilities?

2 A. They do.

3 Q. And that's, again, part of your  
4 contractual relationship?

5 A. Part of their QA program that they  
6 work actually with our people on, uh-huh.

7 Q. And how does that water quality  
8 compare with the water quality at your Clear  
9 Springs operation?

10 A. I can't speak towards that, but I'm  
11 not aware that there's any issues at all.

12 Q. Do you know what those standards are  
13 compared to the water quality at Clear Springs?

14 A. I'm not the person to ask that  
15 question.

16 Q. Would that be for Mr. MacMillan?

17 A. Yes.

18 Q. Okay. I assume that you're  
19 compensated as a salaried employee?

20 A. That's correct, I am.

21 Q. And do you have any stock options?

22 A. We have no stock options in our  
23 company.

24 Q. And you don't participate in the ESOP  
25 program?

1 A. I do not participate in the ESOP  
2 trust. But I do have a deferred compensation plan  
3 that tends to kind of mirror the ESOP trust, as  
4 part of my long-term compensation plan.

5 Q. Okay. You don't have  
6 performance-based compensation that would apply to  
7 you personally or other key employees?

8 A. Well, we do, like most companies.  
9 Performance based generally means your job. But  
10 people from time to time are rewarded for certain  
11 achievements. And that's very common in our  
12 business, as it is most.

13 Q. Consistent with all employees from top  
14 to bottom they have some compensation provisions  
15 that are performance based? Is that what you're  
16 saying?

17 A. Of our management team, yes.

18 Q. Okay. Your testimony on page 2 at the  
19 bottom that we reviewed earlier reviews these  
20 basic acquisitions and changes in the company  
21 business.

22 Is this history all part of the  
23 factors that have caused the growth in your  
24 business over the years that we described earlier?

25 A. Well, this history brought in the

1 facilities to produce the products for our growth,  
2 yes.

3 Q. Is Clear Springs currently pursuing  
4 additional acquisitions of facilities in the  
5 Thousand Springs area to increase your production  
6 capabilities?

7 A. We do not have any as far as -- no,  
8 not in -- nothing in Idaho, frankly. No  
9 acquisitions either.

10 Q. And Clear Springs, I think you said  
11 earlier, was the least-cost producer. I believe  
12 you're also the largest commercial trout producer  
13 in Idaho, as well as the United States?

14 A. We are. I think it was your words  
15 that we were the least. I said I hoped that we  
16 were, but I don't really know what the others do.  
17 But I suspect we are the least cost.

18 Q. But of the commercial trout produced  
19 in Idaho, Clear Springs produces about 60 percent?

20 A. I think that's probably correct.

21 Q. Has that market share been increasing  
22 over the years, as far as you know?

23 A. Well, that's a share of the Idaho  
24 industry.

25 Q. Correct.



1 A. Which is different than the market  
2 share.  
3 Q. I understand. Let's start with the  
4 Idaho share.  
5 A. Okay. In Idaho. I don't know if it's  
6 really been decreasing. It -- maybe it's  
7 decreasing not because we're producing more.  
8 Others might be producing less, which would drive  
9 up our percentage. In other words, it's possible  
10 there's a contraction in the industry.  
11 Q. Why is that the case in Idaho?  
12 A. Because people are not receiving their  
13 full water rights.  
14 Q. And what do you base that statement  
15 on? Just your general knowledge of what people  
16 have told you?  
17 A. My knowledge of the Clear Lake  
18 complex, I think you're aware that Idaho Trout  
19 Company, the Hardy operation actually has asked  
20 for administration on their water rights.  
21 But one only has to drive by their  
22 facility, and there's a total block of ponds that  
23 are dry, that the water is not available to them,  
24 and not many years ago was fully operating.  
25 Q. Okay.

1 A. That's how I base that comment.  
2 Q. Okay.  
3 A. So it's obvious to me when I see that  
4 there's probably less production.  
5 Q. It's not based on any knowledge you  
6 have of their actual production records or  
7 financial statements?  
8 A. No, that's correct.  
9 Q. Just seeing that there's less water in  
10 some of the raceways?  
11 A. It's my observation, yes.  
12 Q. On the Hardy operation, what facility  
13 were you observing some of the raceways? Was that  
14 at their Clear Lake facility?  
15 A. Their Clear Lake Farm, yes.  
16 Q. And are part of those dried up  
17 raceways attributable to the litigation that Clear  
18 Springs had with them over the use of the water  
19 from the Clear Springs source?  
20 A. Well, it's attributable to the lower  
21 water flows.  
22 Q. Okay.  
23 A. The senior water -- we're the senior  
24 user between the two of us. And to fulfill our  
25 water rights --

1 Q. In other words --  
2 A. -- there's not adequate water to  
3 fulfill their water right.  
4 Q. There was some litigation between Blue  
5 Lakes and Clear Springs over the right to use that  
6 particular source; is that correct?  
7 A. Well, the litigation was over -- once  
8 the adjudication courts issued the partial decree  
9 of the water rights, then it was clarified what  
10 the true water rights were. And we requested our  
11 full water rights at that time.  
12 Q. And Clear Springs then had the senior  
13 right and was able to make a call on the supply at  
14 the loss or expense of the party facility --  
15 A. That's correct.  
16 Q. -- at Clear Lake?  
17 A. Yes.  
18 Q. Okay. You made a statement a bit  
19 earlier suggesting that the overall trout  
20 production of others was contracting in Idaho.  
21 And during the same period I think you indicated  
22 earlier that Clear Springs production has remained  
23 pretty much constant.  
24 What do you attribute the difference  
25 between Clear Springs being able to maintain a

1 constant production over the past few years while  
2 other producers of rainbow trout in the same area  
3 are contracting?  
4 A. You know, I think I indicated I  
5 suspect it's contracting, and I gave the example  
6 of the Clear Lake Farm next to us.  
7 Q. Uh-huh.  
8 A. So I suspect it is indeed contracting  
9 if you look at the overall production.  
10 Now, to respond to your question as to  
11 how -- why we would be able to sustain our levels  
12 of production without, at the same time, falling  
13 back. And when you look at our water rights, we  
14 have two major producers, our Clear Lake Farm and  
15 our Box Canyon Farm.  
16 The Box Canyon Farm has a water right  
17 of 300 cubic feet per second of water, and our  
18 Clear Lake Farm has the first right on the Clear  
19 Lakes Spring of 200 cubic feet per second.  
20 We have been receiving our full water  
21 rights up to date. But both of those facilities  
22 are in jeopardy of going below their water rights  
23 today. So that's a big part of our production.  
24 And we received our full rights over time there.  
25 Looking forward, it is not encouraging

1 to us. Our Snake River Farm, which is at issue  
2 here, the water has been declining. And our  
3 Crystal Springs Farm, which we also have a call  
4 in, the water has been declining.

5 Now, the offset to be able to sustain  
6 our production level is probably just the  
7 productivity that we have been able to get more --  
8 more production per cubic foot of water than what  
9 historically we were able to on those others.  
10 That has to be the only reason why we've been able  
11 to sustain that. But it's very difficult for us.

12 We -- our operations live on the edge  
13 with the resource to keep producing what we've  
14 been producing. We absolutely live right on the  
15 edge with that water, right on the threshold is  
16 where we can be. We cannot produce more than we  
17 are producing currently.

18 And if we don't see changes in the  
19 spring flows, our production will begin to go  
20 down, because we can't sustain through  
21 productivity increases forever.

22 Q. So if -- and this is an issue of  
23 debate in other proceedings, whether the aquifer  
24 is stabilized or going down or going up, but if  
25 the aquifer level and the discharge of water

1 available to your production facilities remain the  
2 same, would you anticipate that the level of  
3 productivity would remain constant at your  
4 facilities in the future?

5 A. Well, as I think about that, I think  
6 there would be a major challenge of it being able  
7 to remain the same, because we will not -- at best  
8 it would remain the same. We would not be able to  
9 improve it. But most of the what you would call  
10 the big bites in productivity gains are behind us.

11 And as the springs continue to  
12 decline, we will not be able to offset that with  
13 productivity gains in the future, I don't think,  
14 and our production will continue to go down.

15 Q. Some of the literature produced in  
16 this proceeding suggests that productivity is  
17 related significantly towards the oxygenation of  
18 the water supply?

19 A. Well, I'm not a technical person. But  
20 I know oxygen is indeed a limiting factor, one  
21 limiting factor in our production. But I can't  
22 really speak to the technical side of that.

23 Q. But generally you'd agree with that  
24 concept that oxygenation is a factor in how much  
25 fish you can produce?

1 A. It is a factor.

2 Q. Do you measure productivity per gallon  
3 or per cfs for your internal recordkeeping?

4 A. Well, one index we look at is, yeah,  
5 production per cubic foot of --

6 Q. Is that usually in pounds of fish?

7 A. Pardon me? Yes.

8 Q. Is that typically in pounds of fish  
9 per cubic foot per second of water?

10 A. Yes.

11 Q. And that's the number that has been  
12 going up over time due to efficiencies, genetic  
13 modification of fish, and a number of factors?

14 A. Yeah. Feed, genetics, the stocks you  
15 have, practices. I mean there's a number of  
16 different areas. We're not different than most  
17 other businesses. You always strive for  
18 excellence.

19 Q. Some of the literature indicates that  
20 in a serial reuse facility such as Snake River  
21 Farms and your other operations that things can be  
22 done in the way of improvements and devices and  
23 the like to improve the oxygenation as the water  
24 flows from raceway to raceway serially.

25 Has Clear Springs undertaken any

1 modification or improvements of that serial reuse  
2 facility in order to enhance oxygenation from  
3 raceway to raceway that you know of from the time  
4 these facilities were constructed?

5 A. Well, I -- you know, I think oxygen is  
6 clearly an index that our fish cultures are  
7 looking at all the time, and they measure that.

8 As to whether we have changed anything  
9 from that over time, they have looked at different  
10 things, but nothing has ever surfaced that's  
11 practical for us to use.

12 Q. Some of the literature suggests there  
13 are many different options that can be pursued  
14 from a technological standpoint in order to  
15 enhance oxygenation in water supplies in serial  
16 facilities such as Clear Springs.

17 Are you aware of those technologies?

18 A. Well, I'm aware of technologies that  
19 are out there. I -- over 36 years, I've seen a  
20 number of things. But I must tell you, so often  
21 it comes from research scientists in the lab.

22 As a practical matter out in the real  
23 world, in the production environment, when  
24 attempts have been made to do that, it's not  
25 sustainable on a for-profit basis.

1 You know, a scientist could raise a  
2 fish most places. But to do it in a production  
3 environment on a for-profit basis, I've never seen  
4 anything that ever really showed promise that it  
5 could be successful.

6 Q. Some literature that I've reviewed --  
7 and I believe this may have been the University of  
8 Idaho publication on production levels in Idaho,  
9 and I may be wrong on that. But there's some  
10 literature that suggested that in the area of  
11 Thousand Springs and your facilities the  
12 production levels were in the range of  
13 7500 gallons of water were used for each pound of  
14 fish produced.

15 Would that be approximately an  
16 accurate statement that you know of?

17 A. I have no idea.

18 Q. Okay. And those suggestions were that  
19 certain things could be done with oxygen and  
20 otherwise to substantially improve that production  
21 efficiency level.

22 Do you know of that?

23 A. Well, again, I think that goes back to  
24 what I just explained, some of the research  
25 scientists. There are ways you can do things.

1 But in the true production environment  
2 out there, in a for-profit situation where you  
3 had -- you have to be a low-cost producer, what  
4 works in a lab will not work in practice. And I  
5 suspect that's probably an indication.

6 MR. SIMPSON: Why don't we take a break.  
7 We've been going an hour and a half.

8 MR. BUDGE: Sure. Good idea.

9 (Recess.)

10 Q. (BY MR. BUDGE): Some of the exhibits,  
11 Larry, that were presented in this case by Clear  
12 Springs had to do with marketing of rainbow trout  
13 and concerns that the company may have that  
14 marketing efforts may be impaired or jeopardized  
15 if well water is introduced into the system.

16 Are you generally familiar with that?

17 A. I am, yes.

18 Q. And some of that marketing material  
19 addressed various factors that seemed to be  
20 important to consumers in choosing to buy rainbow  
21 trout.

22 Is pricing of rainbow trout one of the  
23 primary factors? As compared to other seafood, is  
24 that a primary factor that would cause a consumer  
25 to choose rainbow trout?

1 A. It would be one of the factors.

2 Q. Would that be what you'd consider a  
3 major factor?

4 A. Well, it's -- it's major. Price is  
5 one part of it. Perceived value is probably the  
6 important part.

7 Q. It really also makes the statement  
8 that, it says, "The real test is taste."

9 So would taste or quality also be a  
10 significant factor?

11 A. It would be.

12 Q. And I suppose part of taste relates to  
13 quality of the product and freshness of the  
14 product?

15 A. That would be correct.

16 Q. And would the cost of competitive  
17 products also be a factor influencing whether or  
18 not a consumer chooses rainbow trout?

19 A. It always is, yes.

20 Q. And what are the major competitive  
21 products in the fish or seafood industry?

22 A. Well, I think in my testimony I  
23 indicated we compete against perhaps as many as 50  
24 different finfish species out there, if you go  
25 through the list.

1 And when you look at the fish and  
2 seafood market, it actually will vary from region  
3 to region because you'll have many products that  
4 will be regional fish that you compete against.  
5 We'd be competing against something different in  
6 the Southeast than what we would in the West or in  
7 New England, as an example. So it's a very  
8 dynamic industry, very competitive, easy entry to  
9 suppliers in primarily retail.

10 There's two segments we look at: The  
11 retail market and the food service market, which  
12 is business that goes ultimately to restaurants.

13 Q. What percent of your revenues would be  
14 attributable to what you call the retail market?  
15 And I assume that is retail sales of rainbow  
16 trout?

17 A. That's correct. That would go to  
18 retail outlets, yes.

19 And the percent of that? Roughly --  
20 currently our company, and historically our  
21 company has been -- historically within the last  
22 15 years skewed much stronger toward the food  
23 service or the restaurant side. And perhaps as  
24 much as 70 percent of our business has been to the  
25 restaurants. 30 percent to retail. That is

1 currently changing and getting a broader footprint  
2 in the market and expanding our retail side of the  
3 business.

4 Q. And of those retail sales and food  
5 service sales, what percent of those would you  
6 consider to be products that are branded by Clear  
7 Springs or sold under your label or one of your  
8 many labels? Would that be all or some portion?

9 A. I believe that would be approximately  
10 85 percent would be in our brand, in the Clear  
11 Springs brand.

12 Q. And those would all be trout? Would  
13 that include the mahi mahi and --

14 A. The mahi mahi is the only one  
15 currently being sold that's a species other than  
16 rainbow trout. And that is such an insignificant  
17 amount, it's --

18 Q. So the brand of products would be  
19 basically, other than the mahi mahi, would be both  
20 the retail sales of trout as well as what you call  
21 the food service or restaurant sales?

22 A. That's correct, yes.

23 Q. Okay. And are there any unbranded  
24 products at all that are sold?

25 A. Well, if you look at the biggest --

1 the largest part of our business is our fresh  
2 refrigerated --

3 Q. Okay.

4 A. -- product produced in Idaho out of  
5 our facilities that are packaged in our cutting  
6 plant, distributed on our equipment, and it's  
7 never frozen. A large part of that goes out  
8 branded to food service. Some of that product  
9 goes out to various retailers throughout the U.S.

10 Q. Okay.

11 A. But that product would end up being in  
12 a fresh fish cabinet that our brand necessarily  
13 wouldn't follow that part. That's a smaller part  
14 of our fresh business.

15 Q. Okay.

16 A. The rest would all be branded.

17 Q. Okay. Well, when I go into an  
18 Albertsons and Fred Meyer's or Costco and look in  
19 the seafood market, typically see fresh rainbow  
20 trout, salmon, tilapia, catfish would be the most  
21 common, at least that I've observed in this area,  
22 and in looking at those, it appears that on a  
23 per-pound basis almost always trout is at the low  
24 end of the pricing scale.

25 Would that generally be correct, that

1 the marketing strategy must price trout somewhat  
2 less than those other products in order to be  
3 competitive?

4 A. Well, I believe that depends on the  
5 market that you're looking at and the suppliers  
6 into those markets. We have our product in the  
7 retail chains. It's fresh refrigerated in the  
8 cabinets, not a big part of our business, but I  
9 don't know if it necessarily would be the lower,  
10 but probably midrange, in that cabinet, because  
11 you have some very, very expensive seafood items  
12 in those cabinets.

13 Depending, again, on the chain that --  
14 the retail chain that you're in and you're looking  
15 at in that cabinet, they all tend to be -- they  
16 skew that cabinet to the demographics of their  
17 customers. And that would be from region to  
18 region. Actually, from store to store within a  
19 chain would be different.

20 Q. So when you compete against that many  
21 products, 50 that you described, which surprised  
22 me there were that many, but when you compete  
23 against that many, price becomes a pretty  
24 significant factor in placing your trout product  
25 into that competitive market?

1 A. Price isn't the real driver in fish  
2 and seafood. It's -- frankly, it's perceived  
3 value.

4 Q. Okay.

5 A. That's the -- in my view, that's what  
6 determines the purchase.

7 Q. Okay. How is value determined? Part  
8 of it is price and part of it is what do you get  
9 for the price?

10 A. Well, value is determined in the  
11 person's mind. With us, with our products is the  
12 consistency of our products, the quality, the  
13 taste, the flavor, the image that we have out  
14 there. All of those things work toward in  
15 determining the value in the consumer's mind.

16 Q. And if all of those things are high --  
17 consistency, quality, image, value -- why are your  
18 products, according to your own testimony, tend to  
19 be priced midrange, at least the ones I've  
20 observed in those various markets seemed to be  
21 bottom of the range? Why would that be the case?

22 A. Well, I don't think you will find by  
23 any means that our products out there, for  
24 instance, in the food service market, is midrange  
25 where we do 70 percent of our business. We are,

1 in fact, one of the more expensive finfish items  
2 in the food service markets, compared to other  
3 species.

4 Q. Some of the information that Clear  
5 Springs produced has indicated that you were  
6 producing somewhere around 20 million pounds a  
7 year?

8 A. Out of Idaho, yes.

9 Q. That would be an Idaho number?

10 A. Yes.

11 Q. And is that a relatively steady  
12 production number?

13 A. It's been relatively steady I believe  
14 over the last five years or so, maybe a bit longer  
15 than that. Year in and year out, it has not  
16 changed very much.

17 Q. How does that compare with the  
18 production level in 1966 when the company started?

19 A. Well, started with 1 pound --

20 Q. 1 pound?

21 A. -- in 1966, so I don't know how to  
22 respond to that.

23 Q. I didn't know when they first started  
24 business and acquired the facility what type of  
25 growth we would be looking at.

1 A. Well, it was a typical  
2 entrepreneurial, startup business. It started  
3 with a very small base, and then grew from there.

4 Q. And what causes production to vary  
5 annually? You seem to indicate that your  
6 production is pretty steady the last five-plus  
7 years. What are causes that create variation in  
8 production levels? Is the market a factor?

9 A. The only time the market's ever been a  
10 factor with Clear Springs, since I've been there,  
11 of what we produced would have been about the 2003  
12 year. And that was following the aftermath of the  
13 9/11, September 11th, incident, and we all know  
14 what happened with the economy at that time.

15 We, in fact, did reduce our production  
16 at that time 10 percent, simply because the market  
17 wasn't there for us. That's the only -- I believe  
18 the only time in the history that I can recall we  
19 ever reduced production because the market  
20 couldn't accommodate our product.

21 Q. Would it be accurate to say that the  
22 fact that you had relatively steady production  
23 over the last five years indicates that you're  
24 able to produce at maximum capacity and sell all  
25 of that production?

1 A. Could you --

2 Q. That's a bad question.

3 Are you producing at maximum capacity?

4 A. I would say we're producing at maximum  
5 capacity with the water we have available today.

6 Q. Okay. And you're able to sell all  
7 that you produce?

8 A. That's correct.

9 Q. So your production doesn't really  
10 change to meet market demand year to year or  
11 seasonally?

12 A. Well, the market itself changes a bit  
13 seasonally, but on an annual basis, what we  
14 produce is needed in the market. As a matter of  
15 fact, we reach out for our secondary suppliers to  
16 assist us.

17 Q. We had a discussion earlier over the  
18 sales revenue discussed on page 3 of your  
19 testimony where you quote projected revenue for  
20 the current year is approximately \$56 million.  
21 And I know Dr. MacMillan in his testimony had said  
22 that number was \$50 million this year, and he  
23 projected \$56 million.

24 Whatever that correct number is, be it  
25 50 million or \$56 million, would that revenue

1 number be also approximately steady over the past  
2 five years when your production level was steady,  
3 or have your revenues been going up or down?

4 A. Okay. Well, first to respond to your  
5 question with respect to the inconsistency, I  
6 mentioned before, I'm not sure there is an  
7 inconsistency. I'd have to look at  
8 Dr. MacMillan's testimony.

9 But one number is what our sales have  
10 been. The other number is our projected sales for  
11 this coming year, and there is a difference. For  
12 instance, we typically operate at about  
13 \$50 million in revenue. But our projected this  
14 year is for 56 million for this year. There's a  
15 difference between actual and projected.

16 Q. Uh-huh.

17 A. And the second part of your question,  
18 again, then, was?

19 Q. Is that revenue number steady or going  
20 up or down?

21 A. Well, over time our revenue number has  
22 continued to increase. And up until the last  
23 year, most people in the food industry will have  
24 an advance in pricing on an annual basis to  
25 accommodate for additional costs coming into the

1 business.

2 So we have been able to grow the top  
3 line of the sales number to -- merely just to  
4 cover our additional cost on an annual basis.

5 The other area that we've been very  
6 successful at is changing our project mix to more  
7 higher value-added products so we can create more  
8 sales returns per pound of fish produced out of  
9 the farm.

10 Q. And I suppose the addition of the  
11 Andean and Chilean partners also adds to that  
12 revenue growth?

13 A. To the revenue growth, yes.

14 Q. And when did they become partners?

15 A. I believe it's been -- I think we've  
16 completed our sixth year, six years with them,  
17 with the Chileans.

18 Q. Okay. Referring to the Soda Springs  
19 brood station, I think that's known as Caribou  
20 Trout Farm?

21 A. It was at the time we purchased it.  
22 We just call it our Soda Springs brood station  
23 internally.

24 Q. And that was acquired in 1985?

25 A. I believe that was the date, yes.

1 Q. What's the source of the water for  
2 that facility?

3 A. It's a springs right on the south side  
4 of the city of Soda Springs.

5 Q. That would not be an East Snake Plain  
6 Aquifer source? A different spring source?

7 A. I don't know if that's within the ESPA  
8 or not. I don't think it is.

9 Q. When I looked at that video,  
10 Exhibit 3, on the Soda Springs source, it appeared  
11 that the water was being aerated over some  
12 structure.

13 Is there aeration as a part of that  
14 facility?

15 A. There is on that facility.

16 Q. And is that to add oxygen to the  
17 water?

18 A. It is, and it's to break up the water.  
19 There's one spring that -- where we just -- we  
20 just break up the water. There's not a lot of  
21 water there. We have -- we hold a pretty good  
22 biomass of brood fish in there.

23 And those are -- that is the seed  
24 stock for our future production. So we take very  
25 special care in that particular operation.

1 Q. And does that aeration facility, is  
2 that something that you similarly have at your Box  
3 Canyon or Snake River Farm --

4 A. No.

5 Q. -- production?

6 A. No.

7 Q. Okay. How does that aeration work?  
8 It appeared that there must be some pumping going  
9 on to cause the water to raise to higher levels.

10 A. I'm not the one really to respond to  
11 that. I'm just not that knowledgeable.

12 Q. Do 100 percent of your egg production  
13 come from that Soda Springs facility?

14 A. It doesn't. The greatest portion of  
15 our egg come from there. We -- we also have eggs  
16 produced at our Snake River site at our research  
17 station.

18 Q. Do you buy eggs from other sources?

19 A. And we do.

20 Q. What percent is bought from other  
21 sources?

22 A. I don't have the percentage with me  
23 here. It's a small percent of the total usage.  
24 But we still rely on external sources of eggs.

25 Q. And where are those eggs produced?

1 A. In -- that would be in western  
2 Washington.

3 Q. And what would be the source of water  
4 for those?

5 A. I've never been over there, but I  
6 believe it's spring water.

7 Q. In addition to Snake River Farms,  
8 which is your farming or production location, I  
9 think you mentioned you have a farm at Box Canyon  
10 and you also have a Clear Lake Farm and a Crystal  
11 Springs Farm?

12 A. That's correct, yes.

13 Q. It would be four locations where fish  
14 are raised that you call a farm?

15 A. Yes.

16 Q. And then there was mention of some  
17 other sites that are leased called West Briggs and  
18 Briggs East?

19 A. Yes.

20 Q. And what are those facilities and  
21 where are they located?

22 A. They're located just to the west of  
23 our processing plant, and the source of the water  
24 is at Briggs Springs.

25 Q. Is that all on the south rim of the --

1 A. It is. It's within perhaps a mile and  
2 a half of our Clear Lake facility.  
3 Q. That would be downstream?  
4 A. Yes.  
5 Q. How long have you had those facilities  
6 under lease?  
7 A. I don't have the date with me, but  
8 probably six, seven years.  
9 Q. Okay. And the source of the water  
10 supply for those facilities would also be springs?  
11 A. That's correct, yes.  
12 Q. Okay. Dr. MacMillan's testimony  
13 indicated -- I believe this was on page 21,  
14 line 579 -- that Snake River Farms is about  
15 15 percent of the production of your own farms.  
16 A. I don't --  
17 Q. Does that number sound about right to  
18 you?  
19 A. I don't have that number in front of  
20 me, but I'd assume that would be about correct,  
21 yes.  
22 Q. And what percent would be the lease  
23 from Briggs West and Briggs East? Do you know,  
24 approximately?  
25 A. Perhaps -- probably maybe 4 percent, 4

1 to 5 percent.  
2 Q. Relatively small?  
3 A. Yes.  
4 Q. Do you buy fish to raise from others?  
5 A. We do.  
6 Q. What are the sources --  
7 A. To raise?  
8 Q. To raise in these farms.  
9 A. No. No, we do not buy fish to raise.  
10 Q. Okay. Do you buy fish to process?  
11 A. We do.  
12 Q. So as to those that are raised in  
13 these farms that we've described, 100 percent of  
14 the fish come from Clear Springs operations?  
15 A. The -- could you repeat it?  
16 Q. Yes. The fish that are raised in  
17 these farming operations we've been describing,  
18 Snake River Farm and the others, are those all  
19 supplied by Clear Springs as a part of your  
20 vertical integration you've described?  
21 A. They are, yes.  
22 Q. And do you provide fish for others to  
23 raise?  
24 A. We do not.  
25 Q. And do you do 100 percent of your own

1 processing?  
2 A. We do.  
3 Q. And do you do processing for others as  
4 well?  
5 A. No.  
6 Q. Okay. Okay. Describe to me the  
7 sources of fish that you buy from other people to  
8 raise in your farms. Who do you buy from?  
9 A. We purchase some fish from the Idaho  
10 Trout Company --  
11 Q. Okay.  
12 A. -- which would be the Hardy operation.  
13 And those fish come from their Clear Lake Farm or  
14 their Blue Lake Farm.  
15 Q. Any other suppliers?  
16 A. No.  
17 Q. Is that --  
18 A. Occasionally there would be perhaps a  
19 spot purchase from a company called Sea-Pac. That  
20 would come from their Magic Springs Farm.  
21 Q. And how long has that been going on  
22 that you've been buying fish from other producers?  
23 A. Well, with the arrangement with the  
24 Hardy operation, perhaps three years.  
25 Q. Okay. And Sea-Pac?

1 A. Probably perhaps the same time, but we  
2 haven't purchased any for quite a period of time  
3 from them.  
4 Q. Okay. What are the circumstances that  
5 give rise to your interest in buying fish from  
6 others to raise in your farms and their  
7 willingness to sell?  
8 A. From our standpoint -- I can't speak  
9 for their willingness.  
10 Q. Sure.  
11 A. But from our standpoint, I think they  
12 understand that if they ever have product  
13 available that meets our quality standards, which  
14 we're very familiar with what they do in those  
15 areas, that we are kind of a willing buyer because  
16 we want the production.  
17 Q. And you have excess capacity in your  
18 raceways based on your water supply --  
19 A. No.  
20 Q. -- to be able to buy fish from others?  
21 A. No. The product doesn't come to our  
22 raceways. It would go directly to our processing  
23 plants.  
24 Q. Okay.  
25 A. That would be product available for

1 pack.

2 Q. I see. So as to those fish that are  
3 raised in the farms themselves, is that  
4 100 percent Clear Springs?

5 A. It is, yes.

6 Q. Okay. And I think you said you don't  
7 buy fish from others that are processed through  
8 your facilities?

9 A. We don't buy any prepackaged product  
10 or anything like that from others, outside of our  
11 South American partners.

12 Q. When you acquire fish from Idaho Trout  
13 or Sea-Pac for processing, are you purchasing the  
14 fish and then you process it and sell it under  
15 your label?

16 A. That's correct. We buy the fish  
17 swimming. It's delivered to our plant.

18 Q. So in the literature produced when  
19 Clear Springs states "We have total vertical  
20 integration," that wouldn't apply to the extent  
21 that you buy eggs from a third party, and it  
22 wouldn't apply to the extent that you buy fish  
23 from a third party; correct?

24 A. Well, I think when we refer to total  
25 integration within our own operation, we're

1 self-sustaining within our own operations. We  
2 perhaps could be on the eggs if we elected to be  
3 totally self-sustaining.

4 But part of our reason for purchasing  
5 from an outside third party on our egg source is,  
6 frankly, perhaps kind of a safety measure on our  
7 part, that if something were to ever happen to our  
8 own brood station --

9 Q. I see.

10 A. -- that we've got on ongoing supplier  
11 that we could move to.

12 Q. Somewhat of a risk management?

13 A. It's a business decision. But when we  
14 speak of vertically integrated, we are pretty much  
15 with our company self-sustaining with all  
16 operations. I guess our criteria from very early  
17 on, since I joined the company, is we made a  
18 decision that as much as we could possibly control  
19 those areas that can set the course of our  
20 business or determine our success or failure, we  
21 wanted to have control of it internally. So  
22 that's been our -- generally our practice over the  
23 years.

24 Q. Thank you.

25 With regard to the Box Canyon

1 facility, is that your largest farm?

2 A. It is, yes.

3 Q. And about what percent is that?

4 A. 40 percent, roughly.

5 Q. 40 percent of the total farm  
6 production?

7 A. Actually, a little better than 40.

8 Q. When I looked at the water rights on  
9 Box Canyon, it identified the source as Box Canyon  
10 Creek.

11 A. That's correct.

12 Q. And is that south of the Snake River?

13 A. That is north of the Snake River.

14 Q. North of the Snake River?

15 A. Actually, at that area of the river,  
16 the river actually runs north and south, if you  
17 look at a map. So it's kind of confusing. But it  
18 would be what we would normally think of as on the  
19 north -- on the north side, as opposed to the  
20 south side.

21 Q. Is it on the same side of the river as  
22 your Clear Springs facility, or the opposite?

23 A. No, the opposite.

24 Q. The opposite?

25 A. Yes.

1 Q. Okay. Obviously my directions were  
2 mixed up.

3 So the river in that area runs north  
4 and south?

5 A. It actually does turn north and south  
6 right through there. Few people recognize it when  
7 they visit it.

8 Q. With respect to Box Canyon Creek,  
9 then, this is a source that's on the opposite side  
10 of the river from the Clear Springs?

11 A. That's correct.

12 Q. And then the water is transported via  
13 pipe underneath the river to the facilities?

14 A. Three 48-inch pipe, that's correct.

15 Q. And the production all occurs on the  
16 Clear Springs side of the river?

17 A. Yeah, the south side. Or one way to  
18 look at it is the diversion is made in Gooding  
19 County, and the use is in Twin Falls County.

20 Q. How is the water transported through  
21 the pipeline? Is that gravity flow or pumped?

22 A. Gravity flow.

23 Q. Okay. What type of pipe is used?

24 A. It's 48-inch steel pipe. And it's the  
25 same -- it's actually the same pipe that was put



1 in the Alaskan pipeline, because that was the time  
2 it was acquired, when they were constructing that.

3 Q. Okay. Experienced any difficulty with  
4 contaminants or pollutants by reason of the use of  
5 that metal pipe?

6 A. No.

7 Q. Okay. And so the water source for  
8 that Box Canyon facility, which is Box Canyon  
9 Creek shown on the right, is not a spring  
10 emanating from the Eastern Snake Plain Aquifer --

11 A. No, it is.

12 Q. -- springs that serve the other site?

13 A. It is. It's, from our diversion  
14 point, the water upwells in Box Canyon and starts  
15 the first -- the first pool starts perhaps not  
16 further than a half mile up above our diversion  
17 point.

18 Q. So how did you go about determining  
19 that the East Snake Plain Aquifer was the source?

20 A. Well, I assume it's the spring flows  
21 on the north side.

22 Q. Okay. So it rises on the opposite  
23 river from all of the other springs that you  
24 utilize?

25 A. No. It's the same side as the other

1 springs.

2 MR. BUDGE: Okay. Let's go off the record.  
3 (Discussion.)

4 Q. (BY MR. BUDGE): Okay. I apologize  
5 for the confusion on Box Canyon facility and Box  
6 Canyon Creek. And let me clarify what you've  
7 explained off the record, if I can.

8 The Box Canyon Farm facility is on the  
9 opposite side of the river from the Clear Springs  
10 facilities?

11 A. Yes.

12 Q. But the source of water is on the same  
13 side as the Clear Lakes facilities?

14 A. Yes.

15 Q. Same side of the river?

16 A. Yes.

17 Q. And it's located, I think you said,  
18 approximately a mile and a half downstream?

19 A. No. The Box Canyon Farm, probably  
20 5 miles down from Clear Lake, if you look at a  
21 map.

22 Q. Okay. And the source of water on the  
23 water right is Box Canyon Creek, which is on the  
24 same side of the river as the Clear Springs  
25 facilities, and it is then piped underneath the

1 river to the Box Canyon Farm, which is on the  
2 opposite side?

3 A. Yes.

4 Q. With respect to Box Canyon Creek, what  
5 is the origin of the flow and how far does that  
6 creek run before it goes into the pipes under the  
7 river to the Box Canyon Farm?

8 A. Well, the origin is the water upwells  
9 in the bottom of Box Canyon. Box Canyon is indeed  
10 a box canyon. It -- from our diversion point, it  
11 goes up perhaps a half a mile, maybe  
12 three-quarters of a mile. I don't have the exact  
13 distance, and the water just upwells in the bottom  
14 of the canyon.

15 And it upwells pretty much all the way  
16 down that canyon, it appears to me. You see water  
17 upwelling. And it passes a USGS weir, and then we  
18 divert the water maybe a third of a mile below  
19 that weir.

20 And we divert it into a flume that  
21 transports the water toward the mouth of the  
22 canyon. And then the water drops into three  
23 48-inch steel pipe, is passed underneath the  
24 river, and upwells at our Box Canyon Farm. Our  
25 water right is 300 cubic feet per second.

1 Q. And I understand that you get your  
2 full water right at the Box Canyon Farm facility?

3 A. Well, I suppose the answer to that is  
4 in the affirmative. But that is all we were  
5 getting last summer. It was less than 1 cfs being  
6 bypassed.

7 Q. Okay.

8 A. When that facility was first  
9 constructed, we would bypass as much as 150 cfs of  
10 water. So the flow was approximately 450 cfs at  
11 that time.

12 Q. Okay. Is that Box Canyon water source  
13 from Box Canyon Creek treated or aerated?

14 A. It's fully oxygenated when we receive  
15 it. To my understanding, all the springs are with  
16 us.

17 Q. And that's by reason of the springs,  
18 once they emanate from the aquifer being exposed  
19 to the atmosphere and as they travel they become  
20 oxygenated?

21 A. I'm not the one to respond to that  
22 question.

23 Q. Okay.

24 A. My understanding, it's fully  
25 oxygenated when we receive it.

1 Q. And once the water is put into the  
2 pipe, what's the distance involved under the river  
3 to where you take it out at the Snake River Farm  
4 facility?

5 A. Perhaps -- eighth of a mile, perhaps.

6 Q. And the length of the flume?

7 A. I believe it's 1200 feet.

8 Q. Okay.

9 A. And that's an open canal, actually.

10 Q. When I looked at the topographical  
11 maps, there was some indication that there may be  
12 some agricultural runoff that could enter Box  
13 Canyon Creek.

14 Are you aware of any agricultural or  
15 other runoff that enters Box Canyon Creek?

16 A. I'm not aware of any. I've been  
17 there. I haven't been there in recent years. But  
18 it's been awhile since I've gone around the  
19 canyon. But I don't recall any agricultural  
20 runoff water that goes into Box Canyon.

21 Q. Does that water quality get tested  
22 going into the Box Canyon facility?

23 A. Well, it would be tested to the extent  
24 we test all of our water in all of our facilities.  
25 And I -- I would not be able to respond

1 specifically as to what's done there.

2 Q. Those are questions that should go to  
3 Dr. MacMillan?

4 A. That's correct.

5 Q. At one time there were some concerns  
6 raised early on in this proceeding by Clear  
7 Springs with regard to water temperature from the  
8 water that would be supplied from the wells. And  
9 as I reviewed Dr. MacMillan's testimony, my  
10 understanding was that water-temperature concerns  
11 were no longer an objection of Clear Springs.

12 Do you know if that's correct or not?

13 A. Well, water temperature is always a  
14 concern of ours.

15 Q. Based upon the data that was supplied  
16 by the ground water district concerning the  
17 temperature of the water in the wells and the  
18 impact of transporting it through the pipeline  
19 system to Clear Springs, are there any remaining  
20 temperature objections that Clear Springs has?

21 A. You'd have to direct that to  
22 Dr. MacMillan.

23 Q. Okay. Are there any differences in  
24 how trout are raised at Box Canyon versus Snake  
25 River Farms or other facilities?

1 A. With respect to just general culture  
2 practices?

3 Q. Yes.

4 A. Not really.

5 Q. And they aren't distinguished for  
6 purposes of processing or marketing?

7 A. No.

8 Q. Approximately what is the period of  
9 time involved in the growth of a trout from the  
10 egg stage through the point at which they're  
11 processed and sent to market?

12 A. I think generally it would vary  
13 depending on the -- on what market it's going to,  
14 what product line it's going to. But a good  
15 probably timeline would be 12 to 14 months  
16 generally would be from egg to harvest, we would  
17 look at.

18 Q. And once they're in the farm  
19 facilities, the timeline would be somewhat  
20 shorter? I think your material indicated maybe  
21 eight months from the time the fish are in the  
22 farm until they go to market?

23 A. I'm a little confused. The 12 to 14  
24 months is actually from --

25 Q. From egg to market?

1 A. Yes.

2 Q. Okay. And then from the time the fish  
3 are put into the farm, like Snake River Farm,  
4 until market, that's around eight months?

5 A. Well, they would be in the farm. But  
6 they would be in the nursery for probably 120  
7 days, 100 -- I'm not sure. You'd have to ask  
8 Dr. MacMillan that.

9 Q. Okay.

10 A. But they're in the nursery on the  
11 farm. And then they are -- they're placed on the  
12 outside ponds once they get to growth rate.

13 Q. Okay. And do you vary or alter feed  
14 supply in order to change the growth rate of the  
15 fish?

16 A. Well, our objective is always have the  
17 best food available to the fish. We do not in any  
18 way alter our diets to, for instance, slow down  
19 fish or increase them. If there's a way to  
20 increase them, that's what we'd be feeding.

21 Q. You don't vary that during the year in  
22 order to speed up or slow down the production of  
23 trout in order to meet market conditions?

24 A. No.

25 Q. Just as fast as possible?

1 A. Yes.

2 Q. Okay. Would you know the amount of  
3 fish in pounds that are typically raised per  
4 gallon or per cubic foot per second?

5 A. In what location?

6 Q. Well, at the Snake River Farms. Some  
7 of your information suggested that I read it was  
8 around 7500 gallons per pound, and I think you  
9 earlier indicated that, well, we know what we  
10 raise per cfs of water.

11 A. Yeah, that's typically -- in fish  
12 farming that would be a gauge that any fish farmer  
13 would use, is production per cfs of water.

14 Q. Okay. I'm trying to understand what  
15 1 cfs means to Clear Springs in the way of fish  
16 production at Snake River Farms.

17 A. Well, roughly we would raise at the  
18 Snake River Farm approximately 30,000 pounds per  
19 cfs of water.

20 Q. Okay.

21 A. I think that would be in the range.

22 Q. And has that production per cfs  
23 changed over the years, to your knowledge?

24 A. I think it's been -- for the last, you  
25 know, five to seven years, it's probably been

1 pretty much stable. It's changed as we have made  
2 improvements in our stocks and in our nutrition,  
3 that type of thing. That's how we've made our  
4 gains against a declining resource.

5 Q. What factors does Clear Springs have  
6 that limit their productivity at their existing  
7 facilities, Box Canyon and Snake River Farms and  
8 Clear Lakes?

9 A. What limits the productivity?

10 Q. What are your limiting factors?

11 A. Water. Water flows.

12 Q. Is that the only one, or primary?

13 A. Well, the quality of water. It's not  
14 just the flow, but it's the quality of water.

15 Q. Is there anything about the water  
16 being received now, the quality of that water that  
17 limits your production?

18 A. Not that I could speak toward today,  
19 no.

20 Q. And are there any limitations relative  
21 to the effluent discharge in the Snake River, the  
22 TMDLs or other environmental issues, that limit  
23 what you can do at this point?

24 A. No, that's not the limiting factor.

25 It's -- it certainly is a factor, that we have to

1 stay within the environmental guidelines that we  
2 have. But we manage that through our food and our  
3 practices in culture.

4 Q. So if the aquifer goes up and the  
5 amount of water available to produce trout  
6 increases, you would be able to continue to comply  
7 with whatever environmental requirements apply to  
8 your discharge in order to --

9 A. I don't see any reason why we would  
10 not be able to.

11 Q. And do you consider the amount of  
12 oxygen in your water supply to be a limiting  
13 factor?

14 A. Over the years, that's always been an  
15 issue, is the oxygen levels with our farms, yes.

16 Q. And the Clear Springs -- this may be a  
17 repeat of what I asked you before. But I got the  
18 impression from your earlier testimony that Clear  
19 Springs has not done anything over time to  
20 increase the dissolved oxygen level in those  
21 serial reuse raceways?

22 A. No, that's not true at all. We have  
23 done -- I think we're probably state of the art  
24 for a production environment, different measures  
25 we've made. Probably Dr. MacMillan would be in a

1 better position to respond to that question than  
2 what I can.

3 Q. Okay. But it's your understanding  
4 there have been some changes in your facilities at  
5 the farms in order to increase or improve oxygen  
6 levels?

7 A. Over time, absolutely.

8 Q. Okay. And you don't have anything in  
9 mind with respect to particular facilities that  
10 have been constructed, no aeration goes on other  
11 than natural flow from pond to pond?

12 A. Well, and dropping the water and  
13 breaking the water up and -- those measures are  
14 taken, yes.

15 Q. And those are things that  
16 Dr. MacMillan could explain?

17 A. Yes.

18 MR. BUDGE: Okay. Off the record just a  
19 minute and mark a couple exhibits.

20 (Recess.)

21 (Exhibits 20 through 22 marked.)

22 Q. (BY MR. BUDGE): You commented earlier  
23 that the production was about 30,000 per cfs.

24 And I assume that would be per year?

25 A. Annually, yes.

1 Q. Okay.

2 A. Approximately it's someplace in that  
3 range.

4 Q. Okay. Let me hand you Exhibit 20.  
5 This is just for your convenient reference to help  
6 me get a better understanding of the water rights  
7 at the various facilities. And based on your  
8 earlier testimony, and Dr. MacMillan also  
9 testified on these water rights to some extent on  
10 page 21 of his testimony, that the Box Canyon  
11 facility we've been discussing, which is at the  
12 bottom of page 20, is about 300 cfs.

13 And my understanding is from  
14 Dr. MacMillan's testimony, and yours earlier  
15 today, that you receive that full right without  
16 variation or with little variation?

17 A. Well, up to this point in time, it is  
18 true we've received the full right. But last  
19 summer we were within less than 1 cubic feet of  
20 not receiving our full right.

21 Q. Okay.

22 A. That's the Box Canyon license you're  
23 referring to; am I correct?

24 Q. Yes.

25 A. Yeah.

1 Q. Then in the middle part of Exhibit 20,  
2 we have the rights that are shown of record  
3 associated with the Snake River Farms facility?

4 A. Yes.

5 Q. And the total of those rights, if the  
6 math is correct from other exhibits, is about  
7 117.67 cfs?

8 A. This is in the middle of the page?

9 Q. Yes.

10 A. I'm not sure what this document -- it  
11 includes the 200 cfs, which is to the Clear  
12 Springs Clear Lake Farm, not the Snake River Farm.

13 MR. SIMPSON: Counsel, which water  
14 rights -- maybe if you could identify the water  
15 rights in the box that says "Snake River Farms,  
16 Buhl to Thousand Springs."

17 Q. (BY MR. BUDGE): And to make this  
18 easier, let me hand you the next exhibit --

19 A. Okay.

20 Q. -- to do just what Mr. Simpson  
21 suggested. I'm handing you Exhibit 21.

22 And I think you'll recognize this as a  
23 letter that you sent under the date of May 2nd,  
24 2005, which initiated the Clear Springs delivery  
25 call?

1 A. Yes.

2 Q. And attached to that you provided a  
3 graph that identifies the Snake River Farm water  
4 flow, and there are a number of water rights  
5 listed there. And that total right is shown to be  
6 117.67 cfs?

7 A. Okay.

8 Q. So is the total right at Snake River  
9 Farm the 117.67, as far as you know?

10 A. Yes.

11 Q. And then this bar graph was submitted  
12 to depict the fact that there's a shortfall in  
13 that particular right over that period of time  
14 shown there, 1988 through 2005?

15 A. Yes.

16 Q. And it also reflects some fluctuations  
17 indicating that there's some seasonal variations  
18 in that right?

19 A. That's correct, yes.

20 Q. Now, with respect to going back to  
21 that Exhibit 20, the Crystal Springs operation has  
22 some water rights shown on the top which total  
23 500 cfs?

24 A. Yes.

25 Q. And there was some testimony of

1 Dr. MacMillan of a 335.1 cfs flow at Crystal  
2 Springs.

3 Can you just tell me what is the flow  
4 that you're using at the Crystal Springs Farm?

5 A. Well, the -- I might -- to clarify  
6 that, the partial decree for Crystal Springs with  
7 these two water permits is 335.

8 Q. Okay.

9 A. This was the initial filing.

10 Q. So it's the 335 cfs?

11 A. 335 is the partial decree, yes, for  
12 Crystal Springs.

13 Q. I see.

14 A. And we're -- I don't have it in front  
15 of me right now, but we're receiving roughly about  
16 225. We have a shortfall of 100 cfs against our  
17 water right, approximately that.

18 Q. Okay. And then the other facility is  
19 what you call Clear Lake Farm?

20 A. Yes.

21 Q. And the partial decrees there are  
22 about 251 --

23 A. That's correct.

24 Q. -- cfs?

25 And I think you've been receiving

1 about 200 cfs?  
 2 A. That's correct.  
 3 Q. So you're roughly --  
 4 A. The 51 falls behind the Hardy  
 5 operations permit. So they have the first  
 6 100 feet, we have the next 200 feet, then I  
 7 believe they have 75, and then we have 51. And  
 8 currently they are not receiving -- it's just a  
 9 very small part of their 75 cfs.  
 10 Q. Okay. If my math is correct in adding  
 11 those up based on what the rights are, the partial  
 12 decrees, they come to a little over a thousand  
 13 cfs, 1004.32? Does that sound about right?  
 14 A. With the Clear Springs water rights?  
 15 Q. Yes.  
 16 A. Sounds within range, yes.  
 17 Q. And then the shortfall on those, based  
 18 on your testimony, would be roughly -- and I know  
 19 this is just a general number, you're about 50  
 20 short at Clear Lakes and about 100 short at  
 21 Crystal Springs?  
 22 A. Yes.  
 23 Q. And then there's some shortfall at  
 24 Snake River Farms as well?  
 25 A. Approximately 40.

1 Q. 40?  
 2 A. Uh-huh.  
 3 Q. Okay. So the shortfall on all of  
 4 those is somewhere in the range of 190?  
 5 A. That's correct. It's close to  
 6 200 cubic feet per second.  
 7 Q. And the only right, then, that we've  
 8 excluded from that discussion would be the rights  
 9 at Soda Springs brood station?  
 10 A. (No audible response.)  
 11 Q. You have to say verbally.  
 12 A. Yes.  
 13 Q. And then the rights from the  
 14 properties that were leased from Briggs that we  
 15 discussed earlier?  
 16 A. That is not our water right. That's  
 17 the lessor's.  
 18 But there's also a water right that  
 19 supplies water to our processing plant.  
 20 Q. Okay.  
 21 A. And that's 10 cfs in total, 2 of which  
 22 is for industrial, 8 is for fish propagation.  
 23 Q. And what is that right that you just  
 24 described, the 10 cfs?  
 25 A. That's at our cutting plant, our

1 processing plant, which is located at -- on the  
 2 Clear Lake complex where these facilities are --  
 3 Q. Okay.  
 4 A. -- there's a separate water right for  
 5 our processing plant usage.  
 6 Q. Okay.  
 7 A. And that water right is 10 cfs in  
 8 total, 2 of which is for commercial use.  
 9 Q. Does that water right have as its  
 10 source ground water or --  
 11 A. Same source.  
 12 Q. Eastern Snake Plain Aquifer?  
 13 A. Yes.  
 14 Q. Okay.  
 15 A. And it currently flows not much more  
 16 than 5 cfs.  
 17 Q. Okay. So generally, in round figures,  
 18 as to those production rights at the farms of a  
 19 little over a thousand, you're short a couple  
 20 hundred cfs, so you're producing with roughly  
 21 800 cfs?  
 22 A. That's correct, short 25 percent in  
 23 total. And that shortage, being short 25 percent,  
 24 includes the Box Canyon and the Clear Lake Farm,  
 25 of which are for the first level they're receiving

1 their full rights, except Clear Lake, which was  
 2 receiving its first 200 but does not receive its  
 3 51 cfs.  
 4 Q. And those numbers we've been  
 5 describing as to shortfall are the approximate  
 6 current numbers?  
 7 A. I think that's -- yeah, we're very  
 8 close range there to where we are today, yes.  
 9 Q. So the source of water for Snake River  
 10 Farms, which is at issue in this case, is shared  
 11 by other water users; is that correct?  
 12 A. The source of the water?  
 13 Q. Yeah. There are other water right  
 14 holders.  
 15 Clear Lake Country Club also has water  
 16 from the same source as --  
 17 A. They do. They have a small water  
 18 right.  
 19 Q. And they actually take their water  
 20 right from the pipeline that is at the head of the  
 21 raceways at Snake River Farm?  
 22 A. I'm not real sure where they take it,  
 23 but it's -- I think that's potable water, and I  
 24 think it is at the front of the facility.  
 25 Q. Okay. That's something maybe I ought

1 to confirm with Dr. MacMillan?  
 2 A. Yes, I...  
 3 Q. And then Clear Lake Ranch PUD, is that  
 4 the subdivision that's --  
 5 A. It is.  
 6 Q. -- in the vicinity?  
 7 Do they also take from the same  
 8 spring?  
 9 A. They do.  
 10 Q. And how do they have the water  
 11 delivered to their facilities?  
 12 A. I believe they receive that water at  
 13 the end of our -- what we call our head canal  
 14 where we take our delivery water.  
 15 Q. Same point that you take water out of  
 16 your canal and put it into the pipeline, same head  
 17 box?  
 18 A. It would be clear at the end of the  
 19 Snake River system in what the head canal -- the  
 20 canal that feeds the farm itself. They would  
 21 receive their water at the end of that head ditch.  
 22 Q. And they take it at that point into a  
 23 pipe?  
 24 A. Yes, they take it. They pump it.  
 25 Q. Is there a well water right on the

1 Clear Springs property?  
 2 A. There is.  
 3 Q. And what's that well used for?  
 4 A. Well, on the Clear Springs property?  
 5 On our -- at our processing plant.  
 6 Q. That's the only well that you have is  
 7 the processing plant?  
 8 A. Well, we have -- we do have a -- we  
 9 have a well at our Snake River Farm and research  
 10 station. And that's primarily for -- those wells  
 11 are primarily domestic potable water for employees  
 12 and for the buildings there.  
 13 Q. And where does the water from those  
 14 wells discharge? How is it used once it leaves  
 15 those facilities?  
 16 A. That would be -- they're just domestic  
 17 wells. It would be through a septic system.  
 18 Q. Okay. Not used in any of the fish  
 19 production purposes?  
 20 A. No.  
 21 Q. Looking at that map that was attached  
 22 to your testimony -- let me see if I can find a  
 23 better map.  
 24 Let's mark this map as Exhibit 23.  
 25 (Exhibit 23 marked.)

1 Q. (BY MR. BUDGE): Looking at  
 2 Exhibit 23, which I think you'll recognize is an  
 3 aerial view of the Clear Springs facilities which  
 4 shows the Snake River and the farmland above the  
 5 rim.  
 6 Do you recognize that?  
 7 A. I do, yes.  
 8 Q. And can you identify on that map where  
 9 the springs arise that supply Snake River Farms?  
 10 And maybe you could mark those by small circles.  
 11 And just for the record, about how  
 12 many different spring outlets are there?  
 13 A. Well, it's -- it just emerges all  
 14 along the rim there for maybe 2-, 300 yards.  
 15 Q. What was the distance?  
 16 A. Maybe, 2- to 300 yards.  
 17 Q. Yards?  
 18 A. Uh-huh.  
 19 Q. Okay. So it would be multiple springs  
 20 over that period emanate?  
 21 A. Yes.  
 22 Q. And do they end up in, you described,  
 23 an open ditch?  
 24 A. They end up to -- we take it -- I  
 25 think there's probably been previous testimony.

1 And Dr. MacMillan was much closer to this than I  
 2 am.  
 3 Q. Okay.  
 4 A. But a portion of that water goes into  
 5 our research complex and then comes back in  
 6 another tube and goes on down to the Snake River  
 7 Farm. And then there's a freshwater tube.  
 8 There's two tubes, pipes --  
 9 Q. Before you get into your facility, I  
 10 was just trying to identify, where do the springs  
 11 come out of the canyon, the canyon wall, if you  
 12 could maybe put some small circles?  
 13 A. I could kind of give you the distance  
 14 in the area, because on this map to identify  
 15 specifics, I --  
 16 Q. Too small of a map?  
 17 A. -- couldn't possibly do it.  
 18 Yes. But I'll give you some range  
 19 here.  
 20 Probably from there to probably about  
 21 right here (indicating). These two red marks  
 22 would be -- we would be capturing the spring flows  
 23 someplace between those two red marks.  
 24 Q. And then are they captured into an  
 25 open ditch between those two red marks?

1 A. Primarily into pipes coming in that  
2 transports it. And then from there they go into  
3 an area where they go through two tubes. A  
4 portion of it goes to the Snake River Farm.

5 Q. Okay.

6 A. A portion to the research center.

7 Q. So over that 2- or 300-yard area, the  
8 springs discharge from the canyon wall, some go  
9 into pipes, and some go into an open ditch.

10 How are we transported to the place  
11 where they are taken into the pipes that go  
12 throughout the various facilities?

13 A. They're piped into kind of a manifold  
14 area, and a part of it goes directly from the  
15 spring across to the research facility.

16 Q. Okay.

17 A. And then there's a collector box that  
18 a lot of the water goes to, and that goes into two  
19 steel pipes that take it over to the Snake River  
20 Farm.

21 Q. So the area from where the springs  
22 emanate out of the canyon wall until it enters a  
23 pipe at the collection box would be an open area,  
24 would it be a ditch or a canal or a stream?

25 A. It's pipe.

1 Q. All pipe?

2 A. Enclosed pipe.

3 Q. Enclosed pipe?

4 A. Uh-huh.

5 Q. And how does it get into the pipe? Is  
6 it a perforated pipe or --

7 A. I think right where the springs emerge  
8 from the canyon, it's just captured right there  
9 and kind of sealed off at that point. That's my  
10 recollection.

11 Q. Okay. And in that vicinity does Clear  
12 Springs have -- is it fenced off or covered or  
13 enclosed to protect the quality of the water from  
14 pollutants or --

15 A. It's not fenced off, that area.

16 Q. It's an open area?

17 A. Right along the road, yes.

18 Q. And as a part of your operation to  
19 protect that area from the risks of pollution or  
20 contaminants, is there anything that is done  
21 affirmatively by Clear Springs to protect the  
22 area?

23 A. Well, people on the premises all the  
24 time. And, you know, normal surveillance, that  
25 type of thing, would be the measures taken.

1 Q. Just employees that watch out for it?

2 A. Yes.

3 Q. There isn't any structures or things  
4 of that nature to protect the open area?

5 A. No.

6 Q. And when you marked the lines on  
7 Exhibit 23, it seemed to be right across the -- is  
8 that the access roadway that fronts the north side  
9 of the Clear Springs facilities?

10 A. Yes.

11 Q. And that's the public road?

12 A. It is. That goes back to our  
13 facilities and to the Clear Lake Country Club.

14 Q. Are the springs above or below the  
15 road?

16 A. I believe the springs were collecting  
17 here, were coming out or merging below the road.

18 Q. Larry, if we could, let's turn to  
19 page 4 of your testimony. And under No. 2, I  
20 think starting at about lines 133 to 134, you make  
21 this statement: "We continue to see the resource  
22 diminish with nearly yearly reductions in spring  
23 flows from the East Snake Plain Aquifer."

24 Can you explain what you mean when you  
25 say "yearly reductions"? What time period are you

1 looking at?

2 A. Well, I think if anyone goes back and  
3 looks at the historical hydrographs, it will go up  
4 and down periodically. But the long-term trend --

5 Q. Long term, okay.

6 A. -- is we continue to see a reduction  
7 in the spring flows. And it never recaptures what  
8 it loses for any sustainable period.

9 Q. Okay. So when you said "yearly  
10 reductions," you're looking at a long-term trend?

11 A. Yes.

12 Q. Okay. And your Exhibit 21, the graph  
13 at least is reflecting a portion of that trend  
14 that you refer to in that 1988 to 2005 period?

15 A. Yes, the one line clearly indicates  
16 what the trend line is.

17 Q. Okay. What's happened to the flow  
18 levels on those Snake River Farms water rights  
19 since 2005? Do you know?

20 A. They've continued to reduce.

21 Q. Let me hand you what we've marked as  
22 Exhibit 22. And take a moment to familiarize  
23 yourself with that. If you look at the  
24 bottom-left corner, you'll see that those are  
25 discharge records from Snake River Farms for

1 various calendar years.

2 And so on the first page, we have  
3 2004, and the second page is 2005, the third is  
4 2006, 2007 is a partial year, and 2008 would be  
5 the full year. And looking at 2004 and 2005, it  
6 seems to be some minor reduction, as is shown on  
7 the graph that you submitted, Exhibit 21. Not too  
8 much change in 2006. And then you see levels in  
9 2007 and 2008 that are all at increasing levels.  
10 Take what time you need to study it.

11 But I guess my question would be,  
12 would you agree that the flows seem to be at  
13 higher levels in 2008 and 2009 from what they were  
14 in the previous couple of years?

15 MR. SIMPSON: We don't have 2009; correct?  
16 Just 2008?

17 MR. BUDGE: Excuse me.

18 Q. 2008 and 2007 seem to be reflecting  
19 some increases in flows from the prior period  
20 shown on Exhibit 22, the years 2004, 2005, and  
21 2006?

22 MR. SIMPSON: And for 2007, Counsel, we  
23 just have the three-month period?

24 MR. BUDGE: Correct.

25 MR. SIMPSON: Okay. Let's just go off the

1 record for a moment just to give him enough time  
2 to fully analyze. There's a lot of data there.

3 MR. BUDGE: Sure.

4 (Recess.)

5 Q. (BY MR. BUDGE): That exhibit that we  
6 were referring to, Exhibit 22, seems to indicate  
7 that the flow levels at the Snake River Farms  
8 site, based on these records, have rebounded and  
9 are on the increase in 2007 and 2008 from what  
10 they were in previous years.

11 Would that be consistent with your  
12 knowledge or understanding?

13 A. Well, from time to time, you know,  
14 given if you go back and look at the -- you look  
15 at the charts, the hydro record, from time to time  
16 you will see it come up. But it's not  
17 sustainable.

18 And if I look at this, there has not  
19 been, indeed, a great deal of change. I assume  
20 what I'm looking at would be our water flows that  
21 would have been submitted to the Department.

22 Is that --

23 Q. Yes.

24 A. Yes, that's what I thought it was.

25 Q. And they're on the Department's

1 website that I think is on the bottom. It may  
2 have been cut off here.

3 A. And looking at these three years, I  
4 see -- I'm looking -- just very difficult with a  
5 busy chart like this to --

6 Q. I can appreciate that.

7 A. -- in just a few minutes. For  
8 instance, the one thing I always look at is the  
9 minimum flow, because the extent of our capacity  
10 is what the minimum flow is in any given year,  
11 because that's where we have to -- that's where we  
12 have to set the levels of our production.

13 It does little good for us to have  
14 more water in certain times of the year but have a  
15 low point, because you can never get to the low  
16 point.

17 I've always kind of looked at that  
18 like similar to being a crop farmer. You have all  
19 your water except for three weeks in July. So  
20 what is your yield going to be? We're really no  
21 different than that in what we do.

22 So let's just look at the month of May  
23 as primarily you have a minimum, in this case here  
24 in the month of May of 2004, of 85.7.

25 Q. And actually, just to help you out,

1 Larry, the very bottom of each page has the mean  
2 and minimum and maximum --

3 A. Yes.

4 Q. -- so that enables you to --

5 A. That's actually what I'm looking at  
6 here.

7 Q. Okay.

8 A. I'm looking at the minimum flow. And  
9 I just picked out one month, because I can't scale  
10 across. Okay. The 2005 year was 84.8. The 2006  
11 year was 80.7. Again, I'm looking at the May  
12 minimums.

13 Q. Okay.

14 A. And we don't have it -- we don't have  
15 that number for 2007 for some reason. And 200- --  
16 2008 the minimum, then, is 84.

17 So I guess a judgment just on that,  
18 I'm just sure what that tells us. I would agree  
19 there's not a significant movement downward.  
20 There's certainly not any improvement during that  
21 period either. And it's kind of a quick look and  
22 narrow focus of that. I guess that would be my  
23 kind of quick assessment here looking at this.

24 Q. Okay. And the concern you expressed  
25 in your testimony about the continued decline is



1 based upon looking at a number of years long term  
2 that show a trend of decline, and you're concerned  
3 that that trend may continue as opposed to level  
4 or improve?

5 A. Yeah, clearly we're not seeing  
6 anything that improves the trend. And I measure  
7 it based on my 36 years with the business where we  
8 filed for the water, we received our water rights,  
9 we made our investment, put our capital at risk  
10 for the business, and today when you look at our  
11 overall operations, we have two facilities: One  
12 being the Snake River Farm, that's well below its  
13 rights in operations; the other one is our Crystal  
14 Springs Farm, well below our water rights.

15 And we have our Clear Lake Farm that's  
16 receiving its 200, but it was -- but there was  
17 only 206 available last summer on that. And then  
18 our Box Canyon Farm that dropped within less than  
19 1 cfs last summer.

20 And with our business, water, as I  
21 indicated in my testimony, translates into our  
22 production potential, our sales, our markets, our  
23 profits, and our value. And I guess that's why  
24 we're here today. It's substantial. Being down  
25 20 percent is substantial to our company.

1 Q. Yeah, and we're not here in this  
2 proceeding to debate or dispute whether that  
3 injury occurred or how big it is or how little it  
4 is. It's simply a mitigation plan to comply with  
5 the director's order that basically said ground  
6 water users are short 2 second-feet. I think you  
7 understand that.

8 A. I do understand that.

9 Q. Okay. So with respect to this  
10 shortfall at Snake River Farms where the ground  
11 water users' obligation is, according to the  
12 director's order that's still being litigated,  
13 about 2.67 cfs, part of which is being made up by  
14 CREP and conversions.

15 But there's still somewhere around a  
16 2 second-foot shortfall, which this plan is  
17 proposing to address, that order represents, as I  
18 understand your testimony, a relatively small  
19 percentage of the overall supply that has dropped  
20 that facility over the last several years;  
21 correct?

22 A. The number that the director -- that  
23 the Department has come up with is a relatively  
24 small part of the shortfall.

25 Q. Correct. And I believe your

1 understanding of the order -- well, strike that.

2 As I read the order, it essentially  
3 said here are the calculations made by the  
4 director as to what ground water users are  
5 responsible for, which is the 2.67 cfs shortfall.  
6 And the order basically said we're not  
7 responsible -- "we" meaning ground water users,  
8 don't have responsibility for declines in Clear  
9 Springs flows that are attributable to changed  
10 irrigation practices over the years or drought.

11 Is that generally your understanding  
12 of the order?

13 A. That's my understanding.

14 Q. Okay. So we're not in a position  
15 of -- "we," meaning ground water users, are not in  
16 a position of having a legal obligation under the  
17 current order of making up declines that naturally  
18 occurred on the spring flows due to other factors,  
19 other than pumping?

20 A. Well, at this point in time, I guess  
21 that's where we are because that's the  
22 Department's number. With my experience in this  
23 business over 36 years, it's very difficult for me  
24 to accept that that is an accurate number when we  
25 have a million acres of

1 ground-water-pumped-irrigation-property above us,  
2 and the impact on this water right is only the  
3 2.7. Logic tells me that -- I struggle with that  
4 because it's just --

5 Q. I can appreciate that.

6 A. It does not appear that it tracks. I  
7 think I compare this with -- when I have people  
8 give me reports and I have reams of paper and  
9 forecasts and everything goes out to the eighth  
10 decimal point, and I always tell them, "Once you  
11 completed all this and you have all your hours in,  
12 you have to look at this and say 'Does this all  
13 make sense?'"

14 In this case I think the Department  
15 forgot and the hydrologists forgot to take that  
16 last step, because it doesn't make sense.

17 Q. Yeah, and that's the reason, I  
18 suppose, that Clear Springs has chose to challenge  
19 and appeal the hearing officer's decision and the  
20 director's decision and now the Court's decision  
21 until that issue's finally resolved?

22 A. That's right. That's why we're here.

23 Q. And I can appreciate that.

24 A. That's correct, yes.

25 Q. But you'll agree in the meantime we

1 all have to live with the order until it's  
2 changed?

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

5 Q. So as I understand your testimony, the  
6 obligation that we're here dealing with, which is  
7 the ground water's desire to use this plan to  
8 provide additional water, and that amount would be  
9 3 second-feet for a period of time until the  
10 shortfalls are made up, and then whatever  
11 remaining obligation is ongoing under the current  
12 orders.

13 My understanding is correct on that?

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

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

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

23 Q. Yeah, correct. But assuming that the  
24 over-the-rim plan were approved and the facilities  
25 constructed and additional 3 second-feet of water

1 were delivered to the Snake River Farms facility,  
2 that water could be used to grow fish?

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

7 Q. Okay.

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

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

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

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

23 A. It really doesn't, because it's what  
24 we're talking about is what the impact on the  
25 value of our business. And if our business -- if

1 the State of Idaho is going to prevent our  
2 business to go in and be sustainable only by  
3 Band-Aids, the future value of Clear Springs will  
4 immediately be diminished and declined because of  
5 sustainability into the future.

6 Q. And so that underscores, does it not,  
7 the reason why Clear Springs opposes any  
8 mitigation plan that would replace fish from the  
9 same source, such as Blue Lakes or Sea-Pac;  
10 correct? That's one of the reasons you opposed  
11 any mitigation effort that would supply fish that  
12 was proposed?

13 A. It's simply not sustainable for our  
14 business. It's not who we are and it's not our  
15 image.

16 Q. Right. And providing the lost profits  
17 would not make Clear Springs whole; in other  
18 words, replacing the lost profits associated with  
19 the 30,000 pounds of fish that could be produced  
20 per additional cfs?

21 A. Well, this mitigation plan does not  
22 make Clear Springs whole. Let me put it that way,  
23 if it were to go through. Absolutely does not.

24 Now, perhaps in the eyes of the  
25 Department and the State, it would. But it does

1 not. You take away from us the future  
2 sustainability and the image of our company --

3 Q. Okay.

4 A. -- once you make that step.

5 Q. So what would satisfy Clear Springs  
6 for the ground water districts to supply or  
7 provide in response to the director's order that  
8 says we're interfering with 2.67 cfs of Clear  
9 Springs water supply? In other words, replacing  
10 the fish is not acceptable, replacing the lost  
11 profits is not acceptable, this plan to replace  
12 the water with what you characterize as the same  
13 water is not acceptable, is curtailment the only  
14 option acceptable to Clear Springs?

15 A. Not at all. We have never had  
16 anything brought to us that -- it seems to me  
17 curtailment would be the last resort under State  
18 law.

19 Q. Okay.

20 A. But there are other measures that have  
21 never been brought before us.

22 Q. Okay. I'd like to explore those.  
23 Every plan proposed by the ground water districts  
24 has been opposed by Clear Springs. During the  
25 summer of 2009, a late-season recharge proposal

1 was opposed by Clear Springs. We now have a  
2 mitigation plan seeking approval of credit for  
3 conversion acres for CREP and for recharge.

4 Is Clear Springs expected to oppose  
5 those efforts as well?

6 A. Well, we've been proponents of CREP.

7 And the other one was?

8 Q. Conversion acres, converting ground  
9 water to surface water.

10 A. We've absolutely been proponents of  
11 that.

12 Q. And what about recharge efforts?

13 A. Recharge, we have never opposed that.  
14 We support that.

15 Q. So will Clear Springs then be  
16 supporting the mitigation plan proposal that the  
17 ground water districts have submitted recently  
18 that seeks director's approval to continue to do  
19 recharge, conversions, and CREP?

20 MR. SIMPSON: Counsel, if you have a copy  
21 of it, perhaps -- if he hasn't seen it, maybe he  
22 needs to have an opportunity to look at it.

23 Q. (BY MR. BUDGE): Have you not seen it?

24 A. No, I have not.

25 Q. Okay. If there's a plan, do you have

1 we are engaged and involved in working towards  
2 that.

3 Q. Okay.

4 A. Those are all positive measures that  
5 we're supportive of.

6 Q. Now, I'd certainly agree with that.  
7 And certainly the ground water districts are  
8 supporting CAMP and participating, and we'd be the  
9 major funding source.

10 But back to the difficulty the ground  
11 water districts find themselves in, and us in  
12 trying to represent them as counsel, is that every  
13 proposal that has been generated, includes  
14 drilling wells below the rim, leasing the fish and  
15 game right, compensating with money, replacing  
16 fish, now a direct delivery of water over the rim,  
17 which your own testimony said is the same water,  
18 all of those receive opposition, your testimony  
19 and Dr. MacMillan's suggests that there are other  
20 things we should be doing.

21 And I would just like to know what is  
22 it that we could or should do that would provide  
23 satisfaction to Clear Springs?

24 A. Well, if you look at the mitigation  
25 plan that we're looking at right now, it doesn't

1 opposition to the concept of mitigation plans that  
2 provide for the use of CREP programs?

3 A. We don't -- it seems to me that we are  
4 supportive of a number of different measures that  
5 will work to mitigate, CREP being one of them.  
6 Following land, let the market itself reduce the  
7 demand above us. We have never seen any presented  
8 to us. It doesn't -- it seems to me there are  
9 measures that can be taken well short of just  
10 curtailment.

11 Q. Explain what those measures are that  
12 you would -- let me strike that question.

13 Has Clear Springs ever come up with a  
14 proposal on its own and suggested to the ground  
15 water districts "In lieu of curtailment, here's  
16 what we would like you to do"?

17 A. We've just through discussions -- I  
18 guess, through that. But no, not a formal plan,  
19 because, you know, it's really the duty of the  
20 junior water user to present a mitigation plan  
21 that is acceptable to us.

22 Now, we can have conversations and,  
23 you know, we've been heavily engaged in the CAMP  
24 process that was adopted by our legislature this  
25 last year. We're supportive of that process. And

1 take us anyplace toward any long-term solution.  
2 It's nothing more than a Band-Aid, because you're  
3 utilizing the same water that only would emerge in  
4 our farms anyway. There's no new water.

5 And we're seeing our Clear Lake Farm  
6 now, you know, in another -- perhaps another year  
7 we're going to be talking about we're not  
8 receiving our water right there. You have the  
9 Clear Lake Farm. There's no improvement at the  
10 Snake River Farm. You're taking the water that  
11 ultimately would be emerging in the Clear Lake  
12 complex.

13 Q. I saw that --

14 A. There's no new water.

15 Q. Excuse me. I thought in your  
16 testimony -- and I wanted to inquire of that. The  
17 plan as we proposed is simply to take water that  
18 was previously used for irrigation purposes, which  
19 would not have reached your farm, quit irrigating  
20 with that ground water, and deliver that same  
21 water to Clear Springs.

22 So I have some difficulty  
23 understanding your testimony that says we're  
24 simply taking water that would have been there  
25 anyway.

1 A. Okay.

2 Q. Do you understand?

3 A. I do. And I understand where we're  
4 missing it. Let's take it to the next step, then.

5 That water, true, is being pumped  
6 today for irrigation purposes. It's being pumped  
7 from a declining resource, based on our spring  
8 flows. And that specific water now is being  
9 directed strictly to our Snake Farm to satisfy our  
10 Snake River Farm requirement. In the meantime,  
11 nothing has been done on the aquifer to change the  
12 total output.

13 So now we still have our Clear Lake  
14 Farm sitting there, and we have the Hardy facility  
15 between us in that same complex. And those water  
16 flows are going down. So there's not -- is all  
17 we're doing is putting a Band-Aid if you accept  
18 that mitigation amount on the Clear Lake Snake  
19 River Farm. That's all we're doing.

20 Q. I guess --

21 A. So to me, I can't -- I have a hard  
22 time following the logic. It's to satisfy one  
23 specific -- it's a Band-Aid, and it's not  
24 sustainable.

25 Q. Well, the director, his orders

1 with a plan to reduce the demand, particularly  
2 immediately above our operations. And that could  
3 be done through market measures, buy/sell  
4 arrangements with the pumpers themselves, to  
5 reduce -- to reduce the demand on the aquifer. We  
6 have not seen anything like that come to us.

7 Q. Well, that is essentially, according  
8 to the director's order, curtailing roughly  
9 70,000 acres to come up with the 2.67 cfs.

10 A. But I don't know if the works have  
11 been really done to target it and to do those  
12 types of things. I think that is -- and I'm not a  
13 hydrologist. But they look at -- they look at the  
14 region, they look at the priority dates on the  
15 water, and they look at the broad picture.

16 I'm just suggesting more can be done  
17 on the part of the ground water users. And we  
18 would be supportive of other measures being  
19 brought to us.

20 Q. I appreciate that. Well, and I  
21 suppose the bottom line, then, is if the director  
22 approves this plan as being advocated over Clear  
23 Springs' objections and the facilities are built  
24 and ready to deliver water to Clear Springs, will  
25 Clear Springs accept the water, given the

1 basically make it pretty clear, that the CREP  
2 acreage is insufficient, recharge is insufficient.  
3 There's nothing we can do, short of massive  
4 curtailment, to increase the discharge to that  
5 reach.

6 And so my questions were everything  
7 we've tried, you oppose. What is it you suggest  
8 we do to provide that additional 2 second-feet  
9 that we are currently short, other than  
10 curtailment?

11 A. Well, if you -- you listed out the  
12 mitigation plans you brought to us. None of those  
13 are acceptable. They're not acceptable for very  
14 good reasons.

15 Q. I understand that.

16 A. And we've been through that.

17 And we're not sitting back and saying  
18 the only solution here is curtailment, because  
19 what the real solution is is really probably  
20 reduce the demand on the aquifer and support it in  
21 other measures we can, through recharge measures  
22 and a long-term CAMP program, those types of  
23 things. We're proponents of that.

24 But above us, is what would be helpful  
25 if the ground water users themselves would come up

1 objections that have been presented?

2 A. I think we have much more to learn  
3 before I can answer that question.

4 Q. Pardon?

5 A. We have much more to learn before I  
6 can answer that question.

7 Q. Well, let's trudge forward here.  
8 There was some discussion in Clear Springs'  
9 testimony about the concern over contaminants.

10 Is the concern over contaminant in the  
11 water supply itself as it presently exists, or is  
12 the concern you're referring to when you talk of  
13 contaminants or pollutants something up on the  
14 surface area of the land?

15 A. One of the concerns we have, we do  
16 have some concern on the water we're receiving  
17 today and what is occurring above us. I think  
18 we've went through that. I personally have  
19 concerns about specific wells, if in fact there  
20 are true indicators that those wells have real  
21 contaminants.

22 Q. You're referring to wells 2 and 4?

23 A. I think that's what they are.

24 Q. The two that had the higher nitrate  
25 levels?

1 A. Yeah. I personally have -- excuse me.  
2 I personally have some concerns about receiving  
3 any water into our system from a known  
4 contaminated well.

5 Q. I'll come back to that in a moment.

6 Assuming 2 and 4, the wells that have  
7 the higher nitrate level, were not utilized, all  
8 of the other wells appear to be the identical same  
9 water that Clear Springs has, according to  
10 samples, is there any concern about contamination  
11 once that water is put into a pipeline system for  
12 delivery? Is there anything about the pipeline  
13 system delivery itself that causes you concerns  
14 about contaminants?

15 A. I can't speak toward the contaminants  
16 in the pipeline myself. I don't have the  
17 expertise to speak about that.

18 Q. Okay.

19 A. I can only speak about the image it  
20 presents to us.

21 Q. Okay. When I look at Dr. MacMillan's  
22 Exhibit 9, it basically shows a number of  
23 pipelines going in all directions throughout the  
24 Clear Springs facility. And we can look at that  
25 if you want to.

1 Are there contamination issues that  
2 you have relative to the simple use of a pipeline?

3 A. Not that I'm aware of in what we're  
4 operating. They're all close range, fairly close  
5 range.

6 Q. And I believe all of your pipelines  
7 rely on gravity flow without any pumping?

8 A. That's correct.

9 Q. Okay. Look at your testimony on  
10 page 6, if you would, please. Down in the middle  
11 of the page on lines 222 through 224, you make the  
12 statement, that "Placing an underground water  
13 pipeline across the property restricts the use of  
14 the property for future development."

15 Now, if you'd look at Exhibit 23, it  
16 shows the pipeline through the property in blue.

17 Is that the concern that you're  
18 talking about?

19 A. It is, yes.

20 Q. And are you aware that that location  
21 of the pipeline is where Dr. MacMillan directed  
22 the ground water districts' engineers that were on  
23 site to construct the pipe?

24 A. Well, if there were to be one across  
25 our property, that would be the best location for

1 it.

2 Q. Is there any reason the pipeline has  
3 to go through that property?

4 A. Through our property?

5 Q. Yeah. If you're trying to get water  
6 to the spring intake, the line could go down the  
7 highway right-of-way, I suppose?

8 A. It could go. If there's going to be  
9 one, it would be better for that to go down the  
10 highway and not across our property.

11 Q. Okay. And is there any reason the  
12 water couldn't be delivered directly to the head  
13 of the Snake River Farm raceways to be used there  
14 for production purposes?

15 A. I believe it's where we would want the  
16 water is at the collector box where all the water  
17 arrives at.

18 Q. So it would thus be blended with all  
19 other water?

20 A. Yeah. And we can distribute it where  
21 we want within the system.

22 Q. So this pipeline located through the  
23 Clear Springs property, the route that was  
24 established here as directed by Dr. MacMillan, is  
25 where you would want it if it had to go through

1 your property?

2 A. Well, if it had to go through our  
3 property, that's where we ended, that would be the  
4 likely plan for it to go. I have two concerns.

5 First of all, I think it indeed, in a  
6 way, constrains the development of our property  
7 down the road, because not knowing what we will do  
8 over the next 20, 25 years. And I frankly have  
9 personally, my experience being in this business  
10 for so many years, the animal we raise is a very  
11 sensitive animal. And I have real concerns about  
12 any major construction going on around those  
13 facilities that would impact the biomass, the  
14 inventory of our swimming fish.

15 Q. And during the other construction that  
16 you've described over the years in your testimony,  
17 has that caused any problem with fish production?

18 A. It's always been a concern. And I  
19 don't recall any major problem. But it's always  
20 been a concern, anytime you have any type of  
21 construction. Most of our construction has  
22 occurred when the facilities are empty.

23 And here there's sensitivity in that  
24 we have our research station and we have early  
25 life style -- or life size fish in the research

1 station as well as our hatchery and our nursery at  
2 the Snake River Farm.

3 And what I do know is fish are very  
4 sensitive at that life stage. So that's a concern  
5 I have with construction. And that -- we're  
6 familiar with what's under the ground there. And  
7 it's -- it's -- it's probably not work that's  
8 being done with a backhoe. There's some big rock  
9 and stuff in that region in that area that we're  
10 aware of. So it could even incur blasting.  
11 That's a concern I have.

12 Q. You have a concern. But based on past  
13 construction efforts, has there ever been a time  
14 that fish production was adversely affected by the  
15 construction on the facilities that you know of?

16 A. No, not that I'm aware of. But we've  
17 never had any construction in this close of range  
18 to a facility that I recall. Because, for  
19 instance, this trench goes right around the border  
20 of that block, and right by the research station  
21 and the nursery, it's very close proximity.

22 Q. Looking at Exhibit 9 of  
23 Dr. MacMillan's testimony, which you have here in  
24 front of you, it identifies the location of all  
25 the lines. And it appears that there's a

1 multitude of pipes and lines throughout the  
2 property.

3 And I would suppose that if one more  
4 pipe was going to cause you some difficulty with  
5 future construction, so would all of the other  
6 pipes that are all underground?

7 A. Well, that's an issue of new  
8 construction coming in. There is a lot going on  
9 under the ground here that could be disruptive to  
10 those facilities --

11 Q. Correct.

12 A. -- during any construction phase.

13 Q. But to avoid that, then, a preferable  
14 solution, from your perspective, would be to run  
15 the line down some other location?

16 A. At the end of the day --

17 MR. SIMPSON: Before we go on, let's go off  
18 the record just for a moment.

19 (Recess.)

20 Q. (BY MR. BUDGE): Let's go on to some  
21 other issues. And if there's some of these that  
22 you feel is preferable to defer to Dr. MacMillan,  
23 that's fine. As I looked at his testimony, he  
24 stated on page 34 that "The temperatures at the  
25 well site is consistent with the water temperature

1 delivered to Snake River Farm."

2 So I gather the temperature was no  
3 longer an issue based on the data that had been  
4 observed from the well samples; is that your  
5 understanding?

6 A. I guess you'd have to ask  
7 Dr. MacMillan that.

8 Q. Okay. And there was also testimony  
9 from him indicating that no pesticides had been  
10 detected in any of the well samples.

11 So I would assume that that would no  
12 longer be an issue?

13 A. I would assume that also. But you  
14 should ask that question to Dr. MacMillan.

15 Q. Are you familiar with the  
16 water-quality testing done by Clear Springs on the  
17 intake of the water into the Snake River Farm  
18 facility?

19 A. Well, I'm familiar to the extent that  
20 we do water-quality testing.

21 Q. Okay. Do you know where the testing  
22 is done?

23 A. I do not.

24 Q. Or how often?

25 A. I do not.

1 Q. Do you know when that testing began?

2 A. I don't recall. It's -- I mean  
3 historically it seems like we have been testing  
4 our water. I'd have to, again, defer to  
5 Dr. MacMillan. He's probably more knowledgeable  
6 of that.

7 Q. Okay. Those would all be matters that  
8 Dr. MacMillan could --

9 A. Yes.

10 Q. -- better address?

11 Do you know if there's been a change  
12 in the water quality over time based on the  
13 sampling that's been done?

14 A. Well, I am aware that there has been a  
15 general uptick in recent years that have  
16 nitrates-nitrite loads in it, and we've had  
17 conversation about that. And we have some concern  
18 as to where that's leading us.

19 Q. Is Clear Springs taking any  
20 affirmative action to identify that source or  
21 attempt to correct the increase in nitrates?

22 A. The answer could be, again, best  
23 answered by Dr. MacMillan. But I know there's a  
24 dialogue between Clear Springs and DEQ regarding  
25 the issue.

1 Q. Okay. Your testimony on page 3, and  
2 also I noted on the Clear Springs website, is a  
3 statement that describes the springs as, quote,  
4 "the world's most pristine water"?

5 A. Uh-huh.

6 Q. And is that based upon the observation  
7 of the results of the water-quality sampling, or  
8 is that based on something else that is --

9 A. Well, I think it's based on, you know,  
10 the image of pristine water over the years. And  
11 it's a marketing term used specifically to go  
12 back. But it is indeed a pristine water when you  
13 compare that to most water available, freshwater  
14 in the world.

15 Q. Is that generally because the water  
16 meets drinking quality standards?

17 A. Yes.

18 Q. There's some testimony that you  
19 presented, and also Dr. MacMillan presented,  
20 suggesting your belief that the water that would  
21 be delivered from the wells was polluted was used,  
22 and I think the word "contaminated" was used.

23 Was that terminology used with  
24 reference to the nitrate levels that were in  
25 wells 2 and 4?

1 A. It was referring to wells 2 and 4 --

2 Q. Okay.

3 A. -- in my testimony.

4 Q. And only referring to the nitrate  
5 level?

6 A. That's the only knowledge I have,  
7 yeah.

8 Q. Is there any other chemical that  
9 you're referring to when you suggest that the  
10 water delivered would be polluted or contaminated?

11 A. No. You'd have to defer to  
12 Dr. MacMillan. The report I got back, there were  
13 problems in those two wells, and that's what I  
14 referred to was those problems.

15 Q. So should any questions relative to  
16 whether a certain level of nitrates would be  
17 adverse to your ability to produce rainbow trout,  
18 would that be better addressed to Dr. MacMillan?

19 A. Absolutely.

20 Q. Okay. When I look at the nitrate  
21 levels in wells 2 and 4, they're slightly above  
22 the 10 milligrams per liter.

23 And is that the elevated number that  
24 you rely upon in asserting that that is polluted  
25 or contaminated water?

1 A. Well, I think the threshold is 10  
2 parts per million, my understanding.

3 Q. The drinking water threshold?

4 A. Yes, uh-huh.

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

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

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

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

23 Q. Now, I can appreciate it's a concern.  
24 But your testimony, and Dr. MacMillan's,  
25 characterizes the water that would be delivered

1 pursuant to the plan to be polluted and  
2 contaminated based on two of the --

3 What have we got, nine wells?

4 MS. McHUGH: Seven.

5 MR. SIMPSON: Seven.

6 Q. (BY MR. BUDGE): -- two of the seven  
7 wells being contaminated by nitrates being above  
8 10 milligrams per liter.

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

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

18 Q. Okay.

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

21 Q. With respect to those identified  
22 sources that exceed the 10 milligrams per liter  
23 standard, has Clear Springs discontinued use of  
24 those sources by reason of the elevated nitrate  
25 levels?

1 A. Not to my knowledge. And I'm not -- I  
2 don't believe it's actually possible to do that.

3 Q. To your knowledge, has there been any  
4 fish loss as a result of that use by Clear Springs  
5 of water with elevated nitrate levels?

6 A. To my knowledge, no.

7 Q. And exactly what is being undertaken  
8 to deal with that problem? You mentioned you're  
9 consulting with DEQ. Is there any active effort  
10 undertaken by Clear Springs to identify the source  
11 and remove it or eliminate it?

12 A. I'd defer that to Dr. MacMillan again.

13 Q. Okay.

14 A. That's a project he's working on and  
15 engaged in.

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

24 And then on the next page, page 7,  
25 lines 252 through 253, you make basically the same

1 statement, saying, quote, "This pumped water is  
2 the same water that contributes to the continued  
3 depletion of the spring flows in the total Clear  
4 Lakes Spring."

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

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

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

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

14 Q. It would still be pristine spring  
15 water?

16 A. Yes.

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

21 A. That water would, yes.

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

1 a contention that this is pure spring water and if  
2 the water is pumped from the aquifer it will now  
3 be a well and you somehow won't be able to market  
4 the same way?

5 A. Well, there is a difference. We  
6 represent the water we use is spring water. And  
7 once you begin to pump it and pipe it to our  
8 facility, we could no longer make that statement  
9 in our marketing program for the image.

10 Q. And apparently it doesn't cause you  
11 any problem to make the statement that you use  
12 spring water when in fact 40 percent of your  
13 capacity from the Box Canyon Farm is really from a  
14 creek?

15 A. No, that's not true. It's spring  
16 water. It emerges just above into the -- and we  
17 capture it as it's coming through. But it -- Box  
18 Canyon is a very well protected canyon. It goes a  
19 very short distance. Some of that water upwells  
20 immediately at our diversion, and it goes on up  
21 the canyon a ways. But it's absolutely spring  
22 water that we are capturing and using.

23 Q. And when you testified just a moment  
24 ago and in your testimony that the water that  
25 would be used in the over-the-rim plan is the same

1 water as comes from the spring, what precludes  
2 Clear Springs from continuing the same marketing  
3 plan it has now? If the water is the same, comes  
4 from the same aquifer, the identical source, what  
5 is it that precludes you from continuing with your  
6 existing marketing plan, if anything?

7 A. Well, I guess integrity in our  
8 marketing, because in fact it's water being  
9 lifted, pumped, piped to our facilities, as  
10 opposed to natural, free-flowing spring water.  
11 And that's been our mantra and our strength and  
12 our brand for many, many years. We built our  
13 business around that.

14 Q. Okay.

15 A. And then more than the difference in  
16 the characteristic of the water, it's the image  
17 itself. And the image has great value to us. We  
18 have visitations almost weekly from people coming  
19 in and visiting us and --

20 Q. I can appreciate the marketing plan is  
21 this spin that you put on things. But it seems  
22 like it's a bit overpromoted here in this  
23 testimony, compared to what I see when I look at  
24 your website and read all of your materials.

25 So the belief that you could not



1 continue to market that way would simply be a  
2 business decision, not something in any rule or  
3 regulation or procedure that would mandate that  
4 you couldn't market the way you do now if you had  
5 the same water that was pumped to you rather than  
6 flowed to you by gravity? It's simply a business  
7 decision?

8 A. Well, I don't know if it's a business  
9 decision or a business of integrity, because it is  
10 not natural-flowing spring water once we make that  
11 cut.

12 Q. I can appreciate it's a business  
13 decision.

14 But there's nothing in any rule or  
15 regulation or law that would say you couldn't  
16 continue the same marketing and advertising  
17 program you have now?

18 A. I suppose you could do it. But when  
19 you look at our values, we will not make a  
20 statement that isn't accurate.

21 Q. Okay.

22 A. And it's not really a spin. The image  
23 is an investment over many years of practices that  
24 has great value to our company.

25 Q. So as you begin marketing product

1 obtained from your Argentine and Chilean sources,  
2 did you make changes in your marketing plan?

3 A. Well, they take a different product  
4 line. Our -- the core business for Clear Springs  
5 is fresh, refrigerated products. That's  
6 70 percent of our business. That product is all  
7 produced in our Clear Springs Farms, as well as  
8 what we would source from the Hardy operation,  
9 which has very similar farms as we have.

10 We make that representation to our  
11 customers, to our chain restaurants. We have  
12 visitations by those people; they see our  
13 operations, they see what we're doing. And it's a  
14 point of differentiation that we have from other  
15 producers in fish and seafood.

16 And in today's world food safety,  
17 quality, sustainability, environmental issues, all  
18 play very important roles as to who you do  
19 business with.

20 Q. So your concern is that that would be  
21 misrepresenting something to your customers?

22 A. Yes.

23 Q. But it's not a concern that you're  
24 misrepresenting to your customers when you  
25 advertise and tout your company as one that is

1 totally integrated?

2 A. Well, we are totally integrated.

3 Q. And doesn't integration give the  
4 consumer the impression that you don't buy eggs or  
5 fish from other sources to process?

6 A. Well, I guess the question what total  
7 is -- we supplement that. But we are a  
8 vertically-integrated company. There's no  
9 question about that. There's just a very piece, a  
10 very small portion of our business that would come  
11 from the outside.

12 That message out there is to let our  
13 customers know that we are not really relying on  
14 third parties for sustainability in our business.  
15 We have control of that. And for food safety  
16 reasons, we have control of our operations.

17 Q. And so the little bit you get with  
18 Hardy wouldn't cause you concern because that's a  
19 small percentage of the fish?

20 A. It doesn't, because I still really  
21 kind of consider that as -- you can be vertically  
22 integrated and still buy from the outside. That  
23 doesn't preclude you from being a  
24 vertically-integrated operation. That's what we  
25 are.

1 Q. If you look at it from a production  
2 standpoint, it would be 800 cfs of flow that you  
3 now have for production, the 2 to 3 -- 3 short  
4 term and 2 long term -- that the ground water  
5 users would have to supply would be about a  
6 quarter of 1 percent of your production capacity.

7 And that quarter of 1 percent would  
8 cause you grave concern that you could no longer  
9 market that you produce trout from the same  
10 pristine water?

11 A. I think we would have to address the  
12 issue that -- when we've reached that all of our  
13 fish are raised from spring water. It does  
14 present an issue for us.

15 And the other thing you have to keep  
16 in mind, this is the initial step. The first step  
17 is a remedy, which I've called a Band-Aid. What's  
18 next for us? Where are we going to be led over  
19 the next 10, 15, 20 years with this resource?  
20 That's what we're dealing with today.

21 MR. BUDGE: John, could you let Larry look  
22 at your copy of JRM Exhibit 5.

23 Off the record for a second.

24 (Discussion.)

25 Q. (BY MR. BUDGE): Referring you to JRM

1 Exhibit 5, I understand this exhibit was presented  
2 to provide information regarding your marketing  
3 and advertising of products?

4 A. Well, it's an educational piece that  
5 we would use with existing and prospective  
6 customers.

7 Q. Okay.

8 A. It's fairly old.

9 Q. This is part of a PowerPoint  
10 presentation, I assume?

11 A. This actually arrived well before  
12 PowerPoint existed.

13 Q. Okay. But basically part of your  
14 marketing --

15 A. It is.

16 Q. -- plan?

17 A. Uh-huh.

18 Q. If you'd turn to the first full page  
19 after the picture on the front.

20 A. Okay.

21 Q. This is under the caption that says  
22 "The most perfect spot on earth." And in the note  
23 there it says, quote, "In the Pioneer Mountains of  
24 central Idaho, a little east of Sun Valley," it  
25 goes on to say, "the water comes" -- basically,

1 "The heavy winter snows seep into the volcanic  
2 rock to form a huge underground reservoir. A  
3 hundred miles to the south, the water comes  
4 gushing out of the walls of the Snake River Canyon  
5 constantly delivering more than a million gallons  
6 per minute of oxygen-rich, crystal-clear,  
7 58-degree water."

8 Are you suggesting here to your  
9 customers that all of the water from your springs  
10 come out of the Pioneer Mountains of central  
11 Idaho?

12 A. Well, I think this is a -- clearly  
13 a -- you know, as to whether it comes out of  
14 Pioneer Mountains, a portion of it comes from  
15 there. But it's to describe the aquifer. I mean  
16 you could go into -- the purpose here isn't really  
17 to describe the Snake Plain Aquifer.

18 It's to describe it's ground water  
19 coming out of the mountains, coming across the  
20 basalt, and we utilize that water. That's the  
21 message.

22 Q. In this proceeding and prior  
23 proceedings, your expert, Dr. Brockway, and I  
24 think other experts in some of the exhibits, had a  
25 number -- I don't remember exactly, but it was

1 between 8 and 12 million acre-feet of water come  
2 into and out of the aquifer on an annual basis.  
3 And I don't ever recall seeing any information  
4 indicating that any significant amount ever came  
5 from the Pioneers east of Sun Valley.

6 I'm wondering, what was the basis of  
7 that advertising statement being made?

8 A. This particular piece -- and frankly,  
9 I haven't read this in a while -- was developed  
10 probably in the early 1980s.

11 Q. It's been used since 1980s?

12 A. It's a long-lasting piece just for  
13 product education as to what we do, because the  
14 first question from a prospective customer, "How  
15 do you raise these things? What do you do?" This  
16 is a piece that a salesperson would use.

17 Q. And to the extent that Clear Springs  
18 has been representing since the 1980s that all of  
19 its water comes from the Pioneer Mountains to its  
20 customers, that wouldn't be particularly accurate,  
21 would it?

22 A. Well, I guess that would be correct,  
23 it wouldn't be completely accurate. But I don't  
24 think this is really the real message. It's --  
25 the writer of this selected the Pioneer Mountains

1 because the northern perimeter is where water  
2 emerges and goes into it.

3 Q. Well, it's a good marketing spin,  
4 because most people know where Sun Valley is?

5 A. Uh-huh. You can call it a spin if  
6 you'd like, but it's not totally inaccurate  
7 either.

8 Q. I suppose you're aware that a much,  
9 much, much greater proportion of the water that  
10 emanates the springs resulted from water diverted  
11 out of the Snake River through irrigation  
12 facilities and onto farmlands and ultimately ended  
13 up in the aquifer through incidental recharge?

14 A. We know that today, yes.

15 Q. There's also a statement here  
16 suggesting the water coming out of the springs is  
17 oxygen rich.

18 Doesn't the oxygenation occur as the  
19 water proceeds to flow over the rocks and in the  
20 area where it's exposed to oxygen?

21 A. I don't believe that's correct. But  
22 you'll have to ask Dr. MacMillan.

23 Q. Okay.

24 A. It's my understanding it's fully  
25 saturated when it emerges, yes.

1 Q. When it comes out?

2 A. Yes.

3 Q. Okay. Some of your testimony would  
4 give me reason to believe that you're not very  
5 optimistic about the future of your business due  
6 to what you believe is going to be a continuing  
7 decline in the aquifer?

8 A. Well, I haven't been given any reason  
9 to be optimistic so far. The CAMP process is very  
10 encouraging. But until the State of Idaho gets on  
11 board, if you look at directionally where we're  
12 going, I have major concern about the value of our  
13 business moving on out over the next 20 years.

14 If I see the resource, I look back,  
15 and the resource we had available when I joined  
16 the company 36 years ago compared to today, the  
17 two facilities that we have on -- currently have  
18 asked for administration on, Snake River being  
19 one, is operating at roughly 70 percent of its  
20 water right. And when I joined the company, the  
21 water was there.

22 And our Crystal Springs Farm was  
23 operating on less than 70 percent of its water  
24 right. So after being in this business for 36  
25 years and being involved in the growth, the

1 development, a very viable business in  
2 southwestern Idaho, and I look at that and I have  
3 to ask myself "The person that takes the next  
4 watch here, where are they going to be over the  
5 next 25, 30 years?"

6 And directionally where we're going,  
7 our company will fail, because it -- you don't  
8 fail when you get the last cfs of water. You fail  
9 well in front of that. And that's a concern.  
10 It's a major concern. And a legitimate concern  
11 that we have.

12 Where we are today impacts the value  
13 of our business beyond what we're producing today,  
14 because anyone that would look at our business for  
15 our employees with an interest in acquiring it  
16 only has to become engaged in due diligence as to  
17 where the resource is going and what the future  
18 looks like.

19 As soon as that happens, the value of  
20 our business would immediately be discounted, and  
21 discounted substantially. That's my concern. I  
22 look at it as a business person. And what we're  
23 seeing, it's not sustainable for us to continue  
24 into the future, unless we see constructive  
25 measures being made. But it's not just Clear

1 Springs. It's all of us, including your clients.

2 Q. I'm appreciative of --

3 A. They need to be looking at it in the  
4 same manner.

5 Q. And I'm appreciative of your concern.

6 Well, on that same Exhibit 5 that we  
7 were looking at, if you'd turn over to page 4.

8 A. The last page?

9 MR. SIMPSON: Yeah.

10 Q. (BY MR. BUDGE): Yes. In the middle  
11 there is a section under "Planning for the  
12 future." And it, of course, talks about the  
13 company's business, and concludes by saying "And  
14 new discoveries promise an even brighter future."

15 And again, this is an advertising  
16 brochure that puts a spin on your business  
17 considerably different than what you've just  
18 described; would you agree?

19 A. Well, is -- what I might comment here  
20 is we're reading copy that I think is probably --  
21 it's my job to review our copy. The young man on  
22 the cover is a grandfather today, if that gives  
23 you -- it's like 20 years old.

24 So at that time clearly we were  
25 looking at opportunities. And frankly, we have

1 executed on those opportunities from where we've  
2 taken the company. We do still see opportunities  
3 in our business.

4 But our water resource is failing us.  
5 Our core business is clearly our rainbow trout  
6 production in Idaho, and it's a function of the  
7 water available to us.

8 Q. I don't question that. The concern I  
9 have about your testimony is that the attempt to  
10 assert in your testimony and Dr. MacMillan's that  
11 delivering the same water from the same source by  
12 a well to raise the same fish of the same size and  
13 the same quality is going to somehow disrupt your  
14 marketing and company value, which both of you  
15 suggest in your testimony.

16 And when I look at your advertising  
17 brochure, which I think admittedly puts some  
18 marketing spin on the source of the water on the  
19 future, why would you have a reason to think that  
20 this advertising brochure, or any advertisement  
21 you have, would somehow have to change if somehow  
22 a quarter of 1 percent of your production came  
23 from the same water that arrived via being pumped  
24 out of the aquifer versus through the springs?

25 A. Well, as I mentioned before, I think

1 we would have to readdress the issue whereby we  
2 represent our fresh products coming out of Idaho  
3 are all raised in just natural spring water. We  
4 would have to readdress that.

5 What we do, incidentally, is not  
6 really a spin. This particular piece that you're  
7 looking at is a bit dated, but it's pretty darn  
8 accurate. And it tells a story of what we do.

9 As to whether the Pioneer Mountains  
10 are representative of the total picture or not,  
11 probably not. But I don't think that's the point  
12 of the piece.

13 Q. And on the bottom of that same page  
14 under the topic header -- this is still the last  
15 page of Exhibit 5 -- it says, "Six important  
16 reasons to feature Clear Springs' Idaho rainbow  
17 trout."

18 And when you say "reasons to feature  
19 the trout," does that mean reasons to buy trout?

20 A. Well --

21 Q. Or --

22 A. This would be directed to a restaurant  
23 operator.

24 Q. Okay.

25 A. Reasons why he would put it on the --

1 he or she would put it on the menu.

2 Q. Okay.

3 A. That's the point.

4 Q. And there are six reasons listed  
5 there. First one is the "Trout is healthy and a  
6 popular menu item." The second one is "It's  
7 almost universally unaided awareness."

8 I guess that means people know what  
9 trout are?

10 A. That's a positive for our product in  
11 the marketplace.

12 Q. And the third one says "The modern  
13 aquaculture provides consistent quality,  
14 year-round supply, and stable pricing."

15 A. Uh-huh.

16 Q. And the fourth one is the "Total  
17 vertical integration means complete control of the  
18 product, assuring you the highest standard of  
19 quality and consistency."

20 A. Uh-huh.

21 Q. And the fifth one is "Clear Springs  
22 packs under full USD" -- probably USDA?

23 A. Department of Commerce.

24 Q. -- "Department of Commerce inspection  
25 to guarantee quality." And the last one is "Clear

1 Springs is the world's largest producer and  
2 marketer of rainbow trout."

3 So would those be considered to be the  
4 six fundamental marketing reasons for featuring  
5 rainbow trout today?

6 A. Well, I think they still stand. They  
7 still stand today, uh-huh.

8 Q. Well, there's no mention here of  
9 pristine spring water among these six most  
10 important reasons.

11 So could one possibly conclude from  
12 that that pristine springs water is a reason, but  
13 not necessarily the only reason or most important  
14 reason?

15 A. No, I think it's a very important  
16 reason. That discussion is with people with the  
17 water. The supply of the water is ongoing with  
18 our people in describing our operations, and  
19 through our videos and particularly through  
20 customer visits.

21 Q. On page 4 of your testimony, lines 141  
22 to 145, you make the statement, "This situation  
23 places the value and long-term future of the  
24 company in jeopardy and will have a substantial  
25 negative impact to the employee owners of the

1 company."

2 Explain what you mean when you make  
3 that statement. And what's the basis for that  
4 statement?

5 A. Well, perhaps the best way to respond  
6 to that is just maybe draw a scenario of what  
7 could occur.

8 We're operating a business as a  
9 declining resource. We've been involved in  
10 extensive litigation now for going on ten years.  
11 Our company is well-known out there. We have  
12 people, frankly, that would like to own our  
13 company, other companies, interest, inquirers.

14 Our company is not for sale. But  
15 should we decide to sell our company -- and I  
16 mentioned earlier in my testimony, I believe, the  
17 market value of our business is 50 percent over  
18 the \$30 million, or roughly \$45 million is what I  
19 would consider a market value of our business out  
20 there in today's world as a food company.

21 Now, on this scenario a company comes  
22 to us and says "We have an interest."

23 And we agree to pursue the  
24 transaction. We reach an agreement in principle,  
25 which typically is what happens. That locks up,

1 neither side talks to anyone else, and let's move  
2 forward.

3 The minute we would step into due  
4 diligence, which you would have extensive due  
5 diligence on a company of our size, and people  
6 come in and they start looking at where we have  
7 been with respect to our resource, and they  
8 calculate looking down the road what this would  
9 mean if they owned the business, we would not be  
10 talking about \$45 million. It would be  
11 substantially discounted, simply because our  
12 resource, in their eyes, would be under jeopardy  
13 and perhaps is not sustainable. And it might even  
14 be to the point where you would close off where  
15 they would not have an interest.

16 But it clearly impacts the value of  
17 our business. And few people understand that.  
18 But that is a very important relationship to our  
19 employees.

20 Q. Okay. So that statement was made in  
21 the context of the overall diminished supply of  
22 water over time?

23 A. The value of the business. Not what  
24 we're producing, not what we're earning, but the  
25 value looking forward. If you take a snapshot

1 today of what we're doing, I think the value is  
2 \$45 million.

3 But once you enter due diligence, it's  
4 something less than that. That number only goes  
5 one way, in my view.

6 Q. I understand. So that jeopardy --

7 A. That was my point.

8 Q. So you were looking at the long-term  
9 value as a result of a declining water resource  
10 overall?

11 A. Yes.

12 Q. You weren't making that statement to  
13 say that if you have an over-the-rim delivery of  
14 2 second-feet it's going to jeopardize your  
15 business?

16 A. No, that's separate from that. I'm  
17 looking at the broader picture of the resource  
18 itself, unless we can turn the corner.

19 Q. Okay. But the main reason that Clear  
20 Springs is opposing this over-the-rim plan  
21 primarily has to do with the fact the water would  
22 be delivered via a well, as opposed to the rest of  
23 your water that comes from a spring?

24 A. From my standpoint, that would  
25 probably be the -- the largest issue with me on

1 it. Second to that is this does not take us  
2 anyplace close to any solution.

3 And from Day One, going back to 2000,  
4 our position has always been that whatever's done  
5 has to benefit the health of the aquifer. This  
6 brings nothing to the health of the aquifer.

7 Q. Okay. You also talked about on page 4  
8 this market that you compete within that I think  
9 you described as being very competitive?

10 A. That's correct.

11 Q. And is that very competitive with  
12 respect to other trout producers in Idaho and in  
13 the United States as well as foreign producers?

14 A. We don't -- we don't view trout as  
15 being our primary competitor. We really look at  
16 the overall fish and seafood category. The reason  
17 for that is that, again, about 70 percent of our  
18 business is food service business.

19 And if you look at a normal menu,  
20 there will be three or four, typically on a casual  
21 dining on up through white tablecloth -- that's  
22 where we do business. On their menu, three or  
23 four fish and seafood items on that menu. It's  
24 very competitive to be one of those three or four.

25 So our message over the years is we

1 speak -- spend really for the size of our company  
2 an incredible amount in marketing dollars out  
3 there. And we focus on the chef, because they're  
4 the decision-maker.

5 We want that chef to select rainbow  
6 trout as being one of his or her choice on the  
7 menu. That's our competition. So our competition  
8 is everything in that section of the menu. That's  
9 how we view the business.

10 Q. Okay. And is there competition in  
11 that industry growing from these low-cost foreign  
12 suppliers?

13 A. Definitely. We compete in -- really  
14 in a global market.

15 Q. Okay.

16 A. 80 percent of the consumption in this  
17 country today comes from offshore with fish and  
18 seafood products.

19 MR. BUDGE: Well, if you don't mind, maybe  
20 can go off the record.

21 (Lunch recess.)

22 Q. (BY MR. BUDGE): Larry, on the bottom  
23 of page 6 and the top of page 7, you raised this  
24 complaint or concern of Clear Springs that the  
25 seven wells will continue to deplete the water

1 source, and it's the same water that contributes  
2 to the continued depletion of the spring flows at  
3 Clear Lake.

4 And when I look at the Ground Water  
5 Districts' Exhibit 2401, which was attached to the  
6 testimony of Dr. Brendecke, it shows the seven  
7 wells and who the property owners are, and I think  
8 there's a total of 25 different water rights that  
9 have been leased up, taken out of production,  
10 converted to surface water, and thus made  
11 available for the over-the-rim supply.

12 And so prior to this year when those  
13 water rights were converted over, the quantity of  
14 water available is 15.79 cfs total and some  
15 4216 acre-feet. So as a result of the conversion,  
16 the ground water districts have taken all that out  
17 of irrigation, yet only 3 initially, and longer  
18 term something less, around 2, would be delivered  
19 to Clear Springs.

20 And that would seem to indicate a  
21 benefit to Clear Springs in itself because water  
22 that historically had been depleted from the  
23 aquifer is no longer, since that land is converted  
24 to sprinkler irrigation, number one. And then  
25 point two, although we have 15.79 cfs leased and

1 taken out of production, only a small portion of  
2 that, 2 to 3 cfs would actually be delivered over  
3 the rim. And that would seem to be contrary to  
4 your concern we're going to have an adverse effect  
5 on the spring flows as a result.

6 Do you stand by your testimony that  
7 the conversion will result in a greater  
8 diminishment of the flows of the spring than would  
9 have occurred previously when all those wells were  
10 being used for irrigation?

11 A. Well, if I understand that mitigation  
12 plan correctly, it might be that they're setting  
13 aside those water rights to be available for our  
14 mitigation.

15 Q. Right.

16 A. But my understanding is there's  
17 someplace between 2 to 3 cfs that would be piped  
18 down the pipeline. And they have a network of  
19 seven wells to receive -- to get that 2 to 3, but  
20 they can do that in any combination they want and  
21 still use the water.

22 Q. Okay. So you were thinking -- excuse  
23 me.

24 A. Yeah. And my understanding is it's  
25 not that they're not using 15, it's that out of

1 all those wells, they will send 2 to 3 cfs water  
2 down to the Snake River Farm.

3 But they still have the availability  
4 to change different wells to get the 2 to 3 cfs to  
5 us, and they could still use their well water  
6 above that 2 to 3 cfs.

7 Q. Okay.

8 A. That's my understanding.

9 Q. Okay. That was my question.

10 A. Okay.

11 Q. So you were assuming that whatever  
12 they don't use for the over-the-rim would still be  
13 used for irrigation?

14 A. Yes, that's my understanding that's  
15 what the plan is.

16 Q. Okay. And if the plan was not that --  
17 and I'll represent to you that all of the water  
18 rights have been leased up, converted to surface  
19 water, and cannot be used for anything other than  
20 to deliver the 2 or 3 second-feet over the rim,  
21 would that address the concern that you raise here  
22 on the bottom of page 6 and the top of page 7?

23 A. Well, if in fact you're saying that  
24 they would not utilize 15 cfs of ground water  
25 pumping --

1 Q. Yes.

2 A. -- deliver 2 to 3 to us, and out of  
3 those seven wells only use 2 to 3 cfs --

4 Q. Correct.

5 A. -- it would appear to me that it would  
6 be different than my understanding of what it is.

7 Q. Okay.

8 A. But that's my understanding. I don't  
9 know what the mitigation plan speaks to in that.

10 Q. Would you agree with me that the best  
11 indicator of the suitability of this mitigation  
12 plan would be the plan functioning and operating  
13 over time?

14 A. That the best would be --

15 Q. Yes. Let me phrase it differently.

16 The ground water districts suggest  
17 that this plan will work and provide a suitable  
18 replacement water supply to raise rainbow trout  
19 the same way you do. Clear Springs challenges  
20 that and says "No, we don't think that's going to  
21 work for our needs."

22 And my question was simply, would you  
23 agree that if the system were up and operating and  
24 delivering water, we would know over time whether  
25 it has the ability to deliver the quantity of

1 water proposed on a reliable basis?

2 A. Over time if it did.

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

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

14 Q. Okay.

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

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

22 If the director were to approve the  
23 plan, would you think it would be likely or  
24 reasonable to give some indication of whether the  
25 water would be accepted by Clear Springs before

1 Q. And that would be on that trench that  
2 we reviewed on Exhibit 23 that went around and  
3 through the facilities?

4 A. That's correct.

5 Q. And would those concerns be eliminated  
6 if that pipe was located down the right-of-way or  
7 somewhere outside of the facilities?

8 A. I think we -- excuse me. I think we'd  
9 still have a concern about construction around,  
10 you know, in the immediate area of the farm. We  
11 would have concerns, and the research center.  
12 Anyplace that you do any type of excavation along  
13 that canyon rim requires pretty heavy work.

14 Q. And in conjunction with the  
15 construction of the other facilities and pipes on  
16 the property already shown on Exhibit 9 that we've  
17 since updated, was any blasting done or heavy  
18 jackhammer work done to remove rocks in order to  
19 install any of the pipelines or other buildings or  
20 improvements that were there?

21 A. Most of the Snake River Farm  
22 construction was built on fill that was brought in  
23 at the time, as opposed to excavation for the pond  
24 level, the way I recall where we reconstructed it.

25 And then of course the new canals and

1 the ground water districts went to the cost of  
2 construction?

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

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

11 And I was wondering what you base that  
12 concern on?

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

15 Q. All right.

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

21 It seems to me, based on our  
22 experience, it's a bigger task than backhoe work.  
23 So whether it be blasting or perhaps using  
24 jackhammers, that's where my concern lies in  
25 getting a trench around there.

1 the lines going in, at that time the farm itself  
2 didn't exist because we were building the farm  
3 during that construction phase.

4 Q. So most of what we see on that  
5 Exhibit 9 to Dr. MacMillan's testimony was part of  
6 the original construction?

7 A. When the Snake River raceways were  
8 constructed. And right during that period of  
9 time, from about 1982, I believe, through '85,  
10 someplace in that area is when all of this  
11 occurred, including the research center, Snake  
12 River Farms, and the hatchery building.

13 Q. Looking at your testimony on page 2,  
14 it looks like the research center was constructed  
15 and staffed '85 to '88, the cutting plant in '91.

16 Those construction works didn't cause  
17 any problem with fish production insofar as  
18 blasting or excavation?

19 A. Well, in those earlier years, we  
20 didn't have the scale of the farm operations in  
21 the early years that we do today.

22 Q. And if the fish are in the raceway,  
23 what is it about the construction that adversely  
24 affects them? Is that something that  
25 Dr. MacMillan should respond to?

1 A. Well, I think Dr. MacMillan can  
2 respond to it in a much more technical way. I  
3 guess it's what I'm suggesting with my experience  
4 in the business, over time I have a real  
5 sensitivity to anything major going on around  
6 those facilities. We have a lot of fish in early  
7 life stage. And anything that can impact the  
8 health of the fish is concerning to me.

9 Q. It's not something you've experienced  
10 in the past, but it's something you might be  
11 concerned about as a risk in the future?

12 A. That's correct.

13 Q. Okay. Also on page 6 you express  
14 concern that the plan relies on degassification.

15 What's your understanding of  
16 degassification?

17 A. Well, the degassification is really  
18 when there's a supersaturation of primarily  
19 nitrogen into the water. You get that from  
20 vortex, from a pipeline. Just, again, I'm  
21 certainly not an expert on the specifics, but I  
22 know in fish culture, gas in the water can be very  
23 lethal, particularly at the early life stages to  
24 fish, but even through the production stage of the  
25 fish.

1 And that facility would always have to  
2 be at all times functioning properly, because if  
3 there was something that occurred where it didn't  
4 function even for a short period of time, it's my  
5 understanding those fish would -- through the  
6 supersaturation would pick up those gas, and it  
7 could be lethal to them.

8 Q. So your concern is not over the fact  
9 that there will be degassification of the water to  
10 make sure there isn't nitrogen as a result of the  
11 pipeline delivery, your concern is that the  
12 degassification equipment didn't function  
13 properly?

14 A. Yeah. My concern is is if it went for  
15 a period of time and it wouldn't -- my  
16 understanding is not too long of a period of time,  
17 say overnight or something like that, if for some  
18 reason it malfunctioned, behind that facility we  
19 have our R&D facility, our Snake River Farm  
20 nursery and hatchery, all early life stage fish,  
21 our seed stock for our brood operations. And  
22 that's a concern I have is that it raises the risk  
23 to us and our operations. Whereas today we don't  
24 have those risks with the spring water we're  
25 receiving.

1 Q. You stated earlier that an acceptable  
2 mitigation plan for Clear Springs would be one  
3 that buys down water rights close to the rim.

4 Do you recall that?

5 A. That's one of the acceptable  
6 approaches that we would entertain, yes.

7 Q. And do you have any kind of an idea,  
8 based on any either thought that you have of your  
9 own or some analysis that's been done, as to what  
10 might be entailed in that, how many water rights,  
11 how many acres involved, location, or any of the  
12 details?

13 A. I do not have that available today.  
14 It's something that would --

15 Q. Is that something that an analysis has  
16 been made on by Dr. Brockway?

17 A. Well, I believe there's probably been  
18 different analysis made over time, different  
19 looks. But I'm not aware of anything specifically  
20 that could be --

21 Q. Are you familiar with the agreement  
22 that was entered into between Clear Springs and  
23 the Dairymen to eliminate their risk of  
24 curtailment, at least with respect to the water  
25 that was delivered to the cows for stock water?

1 A. Yes, I am.

2 Q. Where do those water rights divert,  
3 generally?

4 A. Well, I'm not familiar as to where  
5 they really are. But it's a number of the dairies  
6 above us, that they have agreed to mitigate for  
7 the water that they have -- that they consume, and  
8 replace the water primarily through purchasing  
9 water through the water pool and recharge.

10 Q. And would it surprise you to learn  
11 that those dairies divert in an area close to the  
12 rim?

13 A. Would it surprise me? Wouldn't  
14 surprise me. We have dairies close to us.

15 Q. Have you or has anyone at Clear  
16 Springs had any discussion with any of the  
17 representatives of North Side Canal Company  
18 regarding the use of their system for the delivery  
19 of conversion water for the benefit of the ground  
20 water districts?

21 A. To my knowledge, we haven't had any  
22 direct discussions.

23 Q. You mentioned that you were supportive  
24 of CAMP efforts.

25 Would you be supportive of the ground



1 water districts obtaining mitigation credit for  
2 CAMP activities to the extent that the ground  
3 water districts fund those in whole or in part?

4 A. I believe that in some way it has to  
5 be treated separately. I think the CAMP process  
6 is a process of all water users joining together.  
7 But it -- in addition, the CAMP process seems to  
8 me is a very long-term effort to -- to restore the  
9 health of the aquifer.

10 Q. Uh-huh.

11 A. And we want to be a participant in  
12 that. We will be a constructive part of that.  
13 And I think all the water users should do so,  
14 which I believe people have pretty well stepped up  
15 for that. So we view that as being very positive.

16 But CAMP alone does not satisfy our  
17 needs for more immediate mitigation, because the  
18 results of CAMP might very well be 15, 20 years  
19 out with that. Our company just simply cannot sit  
20 back and wait 15, 20 years.

21 Q. So if the ground water users were to  
22 separately fund projects through CAMP in addition  
23 to the funding by the global group, would Clear  
24 Springs be opposed to them receiving mitigation  
25 credit if the director were to determine that

1 those activities would provide a benefit to the  
2 Buhl to Thousand Springs reach where you're  
3 located?

4 A. If it was clear that it brought  
5 benefit to us and it was a form of mitigation, if  
6 they encompassed that with the CAMP program and it  
7 was separate from the normal allocation that they  
8 would normally do, I -- I think that's something  
9 we would entertain.

10 Q. Did you have an opportunity to read  
11 the mitigation proposal that was suggested in  
12 Dr. Brockway's testimony that involved pumping  
13 water back up out of Clear Lake onto the irrigated  
14 land above the rim, instead of the other way  
15 around?

16 A. The reverse pipeline?

17 Q. Reverse pipeline.

18 A. As far as reading it, no.  
19 Conceptually in the discussion, I'm aware of that,  
20 as to what that is.

21 Q. Where does that idea come from?

22 A. I have no idea. But I think it's  
23 certainly an idea worthy of pursuing, not only by  
24 us, but by the ground water pumpers.

25 Q. Okay. If I understand Dr. Brockway's

1 proposal, he was basically saying instead of  
2 pumping 2 or 3 second-feet out of the wells and  
3 over the rim, instead pump 2 to 3 second-feet back  
4 up for conversion water? Was that your  
5 understanding?

6 A. Well, I don't know if -- he's probably  
7 addressing this specific mitigation, but for a  
8 long-term solution, we should be talking about a  
9 far greater amount than 2 to 3 second-feet of  
10 water to be taken rather than pumped from the  
11 aquifer to be lifted back up, and you would just  
12 measure the difference in that lift from what the  
13 pumpers are using today.

14 Q. And if that were done, would you still  
15 consider it to be the proper tool for the director  
16 to rely upon the models that he does now to  
17 determine the benefit to the reach derived from  
18 pumping water back up on the rim, as Dr. Brockway  
19 proposes?

20 A. Well, rely on the model, which is the  
21 best science, which is --

22 Q. To evaluate it?

23 A. Which is a work-in-process model, I  
24 believe. But that's probably the best -- the best  
25 gauge to determine the benefits of it, yes.

1 Q. And what other water rights might be  
2 impacted if the ground water districts were to  
3 pump -- let's say it took 100 second-feet of water  
4 to accomplish that, based on the model, what other  
5 water rights that you're aware of would be  
6 impacted if a volume that's relatively large were  
7 to be pumped from Clear Lakes back up above the  
8 rim to supply the conversion acres?

9 A. Well, I think anyone that is below the  
10 rim within that range, the range of the Clear Lake  
11 complex, would benefit from that. The opportunity  
12 goes well beyond just the Clear Springs complex.

13 We have yet to deal with the Crystal  
14 Springs Farm where there's a shortfall. If that  
15 concept is good, you could look at that going  
16 right up the rim to the Crystal Springs complex,  
17 to Blue Lakes complex.

18 Q. If we did --

19 A. It's certainly worthy of a study and  
20 determine feasibility. It's far greater than  
21 what -- in my view, than what this proceeding is  
22 with our 2 to 3 cfs. It's an opportunity for  
23 working toward a real solution.

24 Q. Just doing some quick math, we have  
25 roughly a thousand acres that has been converted

1 up there. And if you assumed the usual duty of  
2 water of about 1 second-foot per 50 acres, that  
3 means we would need to pump up approximately  
4 20 second-feet of water to supply sufficient  
5 irrigation water from Clear Lake to those  
6 converted acres.

7 If we were to pump 20 second-feet out  
8 of Clear Lake, would the downstream users that  
9 would be adversely affected be Idaho Power, or  
10 anyone else that you can think of that would  
11 complain that the ground water districts have  
12 taken water that should have been coming to the  
13 river for their benefit?

14 A. Well, not -- I'm not sure of the math.  
15 And Idaho Power would have to be a part of the  
16 arrangement in some way if we were to move forward  
17 on this.

18 Q. Insofar as any detailed discussion of  
19 that proposal with Idaho Power or others, I assume  
20 that's not happened?

21 A. Not by me, it hasn't.

22 Q. Okay.

23 A. Perhaps by others it has.

24 Q. Okay. So was this an idea that was  
25 first hatched by Dr. Brockway for purposes of his

1 rebuttal testimony?

2 A. I don't know that that was  
3 Dr. Brockway's idea, someone else's idea. My only  
4 knowledge is that was brought up as an issue on  
5 this.

6 Q. Your first knowledge of that idea,  
7 though, was in conjunction with that testimony  
8 that was prepared and filed recently?

9 A. Correct.

10 Q. Not a long term --

11 A. My knowledge doesn't go beyond that.

12 MR. BUDGE: Okay. Let's go off the record  
13 just a minute.

14 (Discussion.)

15 MR. SIMPSON: We can go back on the record.

# EXAMINATION

18 BY MR. SIMPSON:

19 Q. Larry, just as a follow-up to one of  
20 the questions or a series of questions asked by  
21 Mr. Budge, he was having you look at Exhibit 23,  
22 which has an outline of the proposed pipeline  
23 through the Clear Springs property.

24 Do you recall that --

25 A. I do.

1 Q. -- line of questioning?

2 And he referred to that layout as one  
3 that was identified I believe by Dr. MacMillan, or  
4 Dr. MacMillan had some say in where that pipeline  
5 should go.

6 Do you recall that testimony?

7 A. I do recall the testimony.

8 Q. Okay. Did you have a chance to just  
9 ask Dr. MacMillan regarding his involvement of the  
10 placement of that pipeline?

11 A. Yes. I don't remember the specific  
12 language on the question, but I think in the  
13 question, Randy, that he asked me, said that --  
14 Randy Budge, that is, that Randy MacMillan had --  
15 that the pipeline was placed where Randy MacMillan  
16 said should be or agreed to it.

17 My discussion with Randy MacMillan was  
18 he never ever agreed to where the pipeline would  
19 go, as a matter of fact, disagreed that the  
20 pipeline should come onto our property.

21 Q. Okay.

22 A. So it's just the way the question was  
23 asked, how I responded. I had no knowledge of  
24 what that conversation was, but just as a  
25 clarification on that.

1 MR. SIMPSON: All right. That's all I  
2 have.

3 MR. BUDGE: Okay.

4 (Deposition concluded at 3:21 p.m.)  
5 (Signature requested.)

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