Attachment 4

### Page 1

### 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 ) \_\_\_\_\_\_\_) VOLUME I (Pages 1-62)

## DEPOSITION OF JOHN RANDOLPH MacMILLAN, PH.D. NOVEMBER 10, 2009

REPORTED BY:

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

Notary Public

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		TESTIMONY OF JOHN RANDOLPH MacMILLAN, PH.D. PAGE
	4	Examination by Mr. Budge 9
•	5	
	6	EXHIBITS
November 10, 2009, before Jeff LaMar, Certified	7	24 - Notice of Taking Deposition Duces 5
Shorthand Reporter and Notary Public within and	8	Tecum of John R. MacMillan
for the State of Idaho, in the above-entitled	9	
matter.	10	
APPEARANCES:	11	
For Clear Springs Foods, Inc.:	12	
BARKER, ROSHALT & SIMPSON LLP	13	
BY MR. JOHN K. SIMPSON	14	
1010 West Jefferson Street, Suite 102	15	
P.O. Box 2139	16	
Boise, Idaho 83701-2139	17	
For North Snake Ground Water District and Magic	18	
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•	.20	
	21	
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///	25	
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APPEARANCES (Continued)		(Exhibit 24 marked.)
Alter Diversity		
		JOHN RANDOLPH MacMILLAN, PH.D.,
· ·		first duly sworn to tell the truth relating to
1 JBudge		said cause, testified as follows:
		MR. BUDGE: Just for the record, before we
		proceed with the deposition of Dr. MacMillan,
		Mr. Simpson and I had a discussion off the record
		relative to Exhibit 19, the notice of taking
· ·	· ·	deposition duces tecum pertaining to Larry W. Cope
		regarding whether or not those documents, which
		exist or are available which were not produced for
		purposes of the deposition would be produced if an
		IRCP Rule 34 motion to compel were filed.
	1	And as I understand it, Mr. Simpson,
		it's your position that under no circumstances
		short of an order from the hearing officer will
		any of the records requested in Mr. Cope's
	1	deposition notice be produced?
	21	MR. SIMPSON: Well, Counsel, as you went
	1	through the Notice of Deposition with Mr. Cope,
	23	and went through your list of six items, my
	24 25	recollection is that Mr. Cope answered, number one, that he didn't have any documents or data
	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 1010 West Jefferson Street, Suite 102 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	THE DEPOSITION OF JOHN RANDOLPH MacMILLAN,       1         PH.D., was taken on behalf of North Snake Ground       2         Water District and Magic Valley Ground Water       3         District, at the offices of Barker, Rosholt &       4         Simpson, 1010 West Jefferson Street, Suite 102,       5         Boise, Idaho, commencing at 3:36 p.m. on       6         November 10, 2009, before Jeff LaMar, Certified       7         Shorthand Reporter and Notary Public within and       6         for the State of Idaho, in the above-entitled       9         matter.       10         APPEARANCES:       11         For Clear Springs Foods, Inc.:       12         BARKER, ROSHALT & SIMPSON LLP       13         BY MR, JOHN K. SIMPSON       14         1010 West Jefferson Street, Suite 102       15         P.O. Box 2139       16         Boise, Idaho 83701-2139       17         For North Snake Ground Water District:       19         RACINE, OLSON, NYE, BUDGE & BAILEY, CHTD.       20         BY MR, RANDALL C, BUDGE       23         Boise, Idaho 83702       24         ///       25         Page 3       2         APPEARANCES (Continued)       1         1       2

2 (Pages 2 to 5)

	Page 6		Page 8	3
1	relied upon	1	what my perception of your request is. And when I	
2	MR. BUDGE: I'm not here to	2	see it in writing, then I can respond to it.	
3	MR. SIMPSON: I understand that. But you	3	MR. BUDGE: Well, it is in writing on	
4	had your opportunity to put it on the record, so	4	Exhibit 19.	
5	so do I.	5	MR. SIMPSON: As a duces tecum, which	
6	And that you went through the	6	MR. BUDGE: That's right. Assuming that	
7	questions with him. And as he answered those	7	exact same information is requested in a motion to	
8	questions, he answered them in regards to the	8	compel, will it be produced, or not? That was a	
9	documents he had reviewed and relied upon.	9	rather simple question.	
10	MR. BUDGE: I think his testimony is in the	10	MR. SIMPSON: Well, file it and find out.	
11	record.	11	MR. BUDGE: The answer you gave me verbally	
12	MR. SIMPSON: Right.	12	in the hall was "No, we will not produce it." And	
13	And that with respect to a party, the	13	on the record I wanted to simply document that so	
14	normal course of manner if you have a request for	14	we could proceed accordingly.	
15	production is to go through Rule 34, and there is	15	Are you not willing to give me an	
16	no duces tecum per se for a party to a proceeding,	16	answer on the record that you did informally?	
17	and instead you go through the formal discovery	17	MR. SIMPSON: Outside in the hall I said	
18	process under Rule 34 for a request for production	18	there was two bases for it not producing those	
19	of documents.	19	records: One is procedural, and the second was	
20	MR. BUDGE: My question was simply if we	20	that we didn't believe those documents were	
21	filed a Rule 34 request for production that would	21	relevant to Mr. Cope's testimony.	
22	satisfy your interpretation of the rules and	22	And whether I meant all of those	
23	correct the procedural defect that you see, my	23	documents or not, I would simply rely upon his	
24	question was simply whether or not Clear Springs	24	testimony that he provided earlier in response to	
25	will continue to refuse to produce any of the	25	your questions on each of the items 1 through 6.	
	Page 7		Page S	9
1	documents requested.	1	And I further would rely upon the previous rulings	
2	And my understanding was off the	2	by the hearing officer in this matter regarding	
3	record that you said "We will not produce any	3	the scope of discovery vis-à-vis tax returns.	
4	records. You will need to file your motion to	4	MR. BUDGE: You mean in the other	
5	compel and obtain an order from the hearing	5	proceeding that's on appeal in the court?	
6	officer."	6	MR. SIMPSON: It's the same proceeding.	
7	So is that your position, or not?	7	All this is based on the delivery call.	
8	MR. SIMPSON: Well, you can file your	8	MR. BUDGE: But am I correct to interpret	
9	motion to compel, and you can file your motion for	9	that response as a no, you will not produce any of	
10	request for production of documents, and we'll	10	the documents requested?	
11	respond accordingly. And how we respond	11	MR. SIMPSON: I think, in part, my response	
12	MR. BUDGE: That's what I plan to do.	12	is based upon that there aren't any documents	
13	MR. SIMPSON: Sure.	13	pursuant to your request on several of those	
14	MR. BUDGE: I was just asking if you were	14	items.	
15	willing to informally produce the documents	15	MR. BUDGE: Well, we'll move on. I'll	
16	requested. And if the answer is no, we'll file a	16	accept that as a no.	
17	motion to compel. And I wanted to make clear on	17	-	
18	the record that you are refusing to produce any of	18	EXAMINATION	
19	the documents here, even if we were to file a	19	BY MR. BUDGE:	
20	Rule 34 request for production of documents?	20	Q. Mr. MacMillan, just for the record,	
21	MR. SIMPSON: Well	21	would you give us your name and business address.	
22	MR. BUDGE: I think that's pretty much a	22	A. John Randolph MacMillan. And it's	
22	vos or no onewar. And the anguar you gave me in	22	Clear Springs Ecods DO Doy 712 Publ Idaho	

yes-or-no answer. And the answer you gave me in 23 24 the hall is "No, we will not produce." MR. SIMPSON: And my answer can be based on 25

3 (Pages 6 to 9)

Clear Springs Foods, P.O. Box 712, Buhl, Idaho

Q. Do you have a preference whether I

M & M COURT REPORTING SERVICE, INC.

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83316.

(208) 345-8800 (fax)

1       refer to you as "Dr. MacMillan" or "Mr. MacMillan"       1       the notice of taking deposition duces tecum that I         2       or       3       A. Randy.         3       A. Randy.       3       A. Randy.         4       Q "John" or "Randy"?       A. Yes.         6       Confused.       Q. Between you and I?       A. No. But in response to that, there         8       A. Correct.       9       Q. Okay. I assume you've had your       9         9       Q. Okay. I assume you've had your       9       and will review in preparation for this         11       A. Never have.       10       they soure present during the deposition         12       Q. You were present during the deposition       ad will review in preparation for this         13       ad certainly apply to you. if you want to take       11       Irveiwed yesterday this morning. Sorry. And         14       A. Yes.       11       investigation would be required for the ground       WIDES permits.         15       are proposing to pump through a pipe and deliver       aborak for any reason or have any questions, this polluted, I felt a         16       wat to us, water that is polluted, I felt a       series of questions, or in discovery, so to speak, in investigation.         11       Have you given sworn testimony in any       1		Page 10	1	Page 12
2       or -       2       think now has been marked as Exhibit 24?         3       A. Randy, "       A. Randy, "       A. Randy, "         5       A. Randy, "is fine, as long as we don't get confused.       A. Randy is fine, as long as we don't get confused.       A. Randy, "is fine, as long as we don't get confused.         7       Q. Between you and I?       A. No. But in response to that request that you brough a present during the deposition taken before?       D. Okay. I assume you've had your         10       deposition taken before?       10       deposition taken before?         11       A. Newer have.       10       deposition in taken before?         12       Q. You were present during the deposition       11       Irviewed yesterday - his morning. Sory. And         12       A. Yes.       11       Irviewed yesterday - his morning. Sory. And         13       A. Yes.       12       that was a question wild be appropriate to see if an         14       A. Yes.       17       series of questions, or in discovery, so to speak, it investigation would be appropriate to see if an         19       abs have to be audible so the reporter can pick in the section with year to as a breif or review of 40 CFR 121, I believe, part - or it's         21       Itage of the 2005 water       23       24       either 121 or 122. And I have no conclusions as a         23	1	-	1	
3       A. Randy.       3       A. Yes.         4       Q "John" or "Randy"?       3       A. Yes.         6       confused.       Q. Are there any of the documents that         7       Q. Between you and I?       5       would be response to that, there         8       A. Correct.       9       O. May. I assume you've had your       6         10       deposition taken before?       10       deposition." There is an additional document that         12       Q. You were present during the deposition       10       deposition." There is an additional document that         13       of Mr. Cope carlier this moming?       11       In review of pregond water districts         14       A. Yes.       11       Inverside to indicate. And your anny questions, and requirements for NPD/25 permits.         14       abreak for any reason or have any questions, and to take       15       reprosing to pump through a pipe and deliver         19       also have to be audible so the reporter can pick       19       NPDES permit would be required for the ground         21       Thew you given sworn testimony in any       22       11       In westigation would be appropriate to see if an         19       NPDES permit would be required for the ground       22       review of 040 CFR 121, 1 believe, part – or it's		•		
4       Q "John" or "Randy"?       4       Q. Are there any of the document that would be responsive to that request that you brought with you today?         7       Q. Between you and I?       would be responsive to that request that you brought with you today?         8       A. Correct.       9       Q. Okay. I assume you've had your       9         9       Q. Okay. I assume you've had your       9       and milera, tiern II., "All document you reviewed and will review in preparation for this         10       deposition taken before?       10       deposition." There is an additional document that         11       A. Never have.       11       I reviewed yesterday this morning.       Sorry. And         12       Q. You were present during the deposition       11       I reviewed yesterday this morning.       Sorry. And         14       A. Yes.       14       Given that the ground water districts are proposing to pump through a pipe and deliver         19       also have to be audible so the reporter can pick       18       investigation would be appropriate to see if an         19       have you given sworn testimony in any       11       I investigation would be appropriate to see if an         19       have was the areing in front of a participated on behalf of Clear Springs Food,       12       That was simply a review - a brief review of 40 CFR 121, I believe, part - or it's			1	
5       Å. Randy is fine, as long as we don't get confused.       5       would be responsive to that request that you brought with you today?         7       Q. Between you and I?       6       brought with you today?         8       A. Correct.       9       O. Okay. I assume you've had your         10       deposition taken before?       10       deposition taken before?         11       A. Never have.       10       deposition.'' There is an additional document that         12       Q. You were present during the deposition       12       that was a question with regard to NPDES permits.         13       of Mr. Cope carlier this moming?       13       and requirements for NPDES permits.       14         14       A. Yes.       17       extendary appe and deliver       4         15       Q. And the same comments made to him       15       extendary appe and deliver         14       a break for any reason or have any questions,       17       extendary appe and deliver         16       would certainly apply to you, if you want to take       17       series of questions, or in discovery, so to speak,         17       a break for any reason or have any questions,       17       That was conducted at about 2:30 this         18       don't hestiate to indicate. And your answers will       18       inc.'s business? </td <td></td> <td></td> <td></td> <td></td>				
6       confused.       6       brought with you today?         7       Q. Between you and I?       8       A. Correct.         9       Q. Okay. I assume you've had your       9       an item, item 11, "All document bat itere         9       Q. Okay. I assume you've had your       9       an item, item 11, "All document that         11       A. Neer have.       10       deposition. "There is an additional document that         12       Q. You were present during the deposition       11       requirements for NPDES permits.         14       A. Yes.       11       Given that the ground water districts         16       would certainly apply to you, if you want to take       16       requerements for NPDES permits.         16       would certainly apply to you, if you want to take       16       series of questions, or in discovery, so to speak,         17       a break for any reason or have any questions,       17       series of questions, or in discovery, so to speak,         18       mostigation would be appropriate to sei f an       NPDES permits.         21       Have you given swom testimony in any       21       That was a during the point of a springs food,         22       Inc.'s business?       23       review of 40 CFR 121, I beliew, part - or it's         22       A. Yes.       24				
7       Q. Berkeen you and I?       7       Å. No. But in response to that, there         8       A. Correct.       9       Q. Okay. I assume you've had your         10       deposition taken before?       10         11       A. Never have.       10         12       Q. You were present during the deposition       10         13       of Mr. Cope earlier this moming?       10         14       A. Yes.       11         15       Q. And the same comments made to him       12         16       would certarialy apply to you, if you want to take       16         17       a break for any reason or have any questions,       17         18       abreak for any reason or have any questions,       17         19       abreak for any reason or have any questions,       17         10       them up,       18       investigation would be appropriate to see if an         10       heav you given sworn testimony in any       11       That wes conducted at about 2:30 this         12       That was anducted at about 2:30 this       morning. And it was simply a review - a brief         11       review of 40 CFR 121, 1 believe, part - or it's       cither 12 or 122. And I have no conclusions.         12       Q. And that as that testimony.       25       A	1			
8       A. Correct.       8       was an item, item 11, "All documents you reviewed         9       Q. Okay. I assume you've had your       9       and will review in preparation for this         11       A. Never have.       10       deposition.       11         12       Q. You were present during the deposition       13       and will review in preparation for this         13       of Mr. Cope earlier this morning?       11       I reviewed yesterday this morning. Sorry. And         14       A. Yes.       14       Given that the ground water districts         16       would certainly apply to you, if you want to take       16       would it was a nitem, item 11, "All was a questions.         16       would certainly apply to you, if you want to take       16       would itertaints to indicate. And your answers will         19       also have to be audible so the reporter can pick       10       NPDES permit would be appropriate to see if an         19       nixestigation would be appropriate to a botat.       11       That was a questions, in mid second at about 2:30 this         20       inc.'s business?       23       review of 40 CFR 121, 1 believe, part or it's a         21       Have you given sworn testimony?       24       either 121 or 122. And I have no conclusions.         21       A. There mas a hearing in front of				
9       Q. Okay, I assume you've had your       9       and will review in preparation for this         10       deposition taken before?       10         11       A. Never have.       11         12       Q. You were present during the deposition       11         13       of Mr. Cope earlier this moming?       13         14       A. Yes.       14         15       Q. And the same comments made to him       14         16       would certainly apply to you, if you want to take       16         17       a break for any reason or have any questions,       17         18       don't hesitate to indicate. And your answers will       19         19       NPDES permits       are proposing to pump fhrough a pipe and deliver         20       them up.       10       investigation would be appropriate to see if an         11       Inc's business?       10       That was conducted at about 2:30 this         21       Have you given sworn testimony?       22       review of settine 12 or 122. And I have no conclusions as a         25       Q. And what was that testimony?       24       review of settine 12 or 122. And I have no conclusions.         24       edivery order, there was a hearing in front of       3       A. Thave no conclusions.         3 <td></td> <td></td> <td></td> <td></td>				
10       deposition taken before?       10       deposition." There is an additional document that         11       A. Never have.       11       Irreviewed yesterday – this morning. Sorry. And         13       of Mr. Cope earlier this morning?       13         14       A. Yes.       14         15       Q. And the same comments made to him       15         16       would certainly apply to you, if you want to take       17         17       a break for any reason or have any questions,       17         18       don't hesitate to indicate. And your answers will       18         19       also have to be audible so the reporter can pick       19         10       Have you given sworn testimony in any       10         11       Have you given sworn testimony?       20         24       A. Yes.       21         25       Q. And what was that testimony?       22         26       Q. That would be administrative, in the administrative hearing?       23         25       Q. In any litigation court case have you       10         26       Q. Nat would be administrative, in the administrative proceeding?       10         3       A. Stes.       24         4       A. Yes.       29       Q. In any litigation court case have				
11       A. Never have.       11       I reviewed yesterday – this morning. Sorry. And         12       0. You were present during the deposition       12       that was a question with regard to NPDES permits         14       A. Yes.       14       that was a question with regard to NPDES permits.         15       Q. And the same comments made to him       15       Given that the ground water districts         19       abcak for any reason or have any questions,       14       a break for any reason or have any questions,       16         19       also have to be audibles ot the reporter can pick       17       investigation would be appropriate to see if an         10       Have you given sworn testimony in any       18       investigation would be appropriate to see if an         21       Have you given sworn testimony in any       11       That was conducted at about 2:30 this         22       Inc's business?       24       cither 121 or 122. And I have no conclusions as a         25       Q. And what was that testimony?       24       Q. So what was the result of that         1       A. In the appeal of the 2005 water       1       Q. So what was the result of that         1       participated on behaf of Clear Springs and       7       A. Thave no conclusions.         9       Q. In any litigation court case have you       7<				
12       Q. You were present during the deposition       12       that was a question with regard to NPDES permits.         13       of Mr. Cope earlier this morning?       a       Given that the ground water districts         14       A. Yes.       14       Given that the ground water districts         15       Q. And the same comments made to him       15       Given that the ground water districts         16       would certainly apply to you, if you want to take       16       water to us, water that is polluted, I felt a         19       also have to be audible so the reporter can pick       17       series of questions, or in discovery, so to speak, investigation would be appropriate to see if an         19       also have to be audible so the reporter can pick       18       investigation would be appropriate to see if an         12       Have you given sworn testimony in any       21       That was conducted at about 2:30 this         21       Itage that the symmetry       22       That was conducted at about 2:30 this         23       Inc.'s business?       23       That was conclusions.         24       A. Yes.       24       A. Yes.       25         25       Q. And what was that testimony.       25       A. In the appeal of the 2005 water       1         2       Q. You havent reached a conclusions.       Q. You				
13       of Mr. Cope earlier this morning?       13       and requirements for NPDEs permits.         14       A. Yes.       Given that the ground water districts         15       Q. And the same comments made to him       15         16       would certainly apply to you, if you want to take       16         17       a break for any reason or have any questions,       17         18       don't hesitate to indicate. And your answers will       18         19       also have to be audible so the reporter can pick       19         10       them up.       20         21       Have you given sworn testimony in any       21         22       Inc.'s business?       23         3       no. Subsiness?       23         24       A. Yes.       24         25       Q. And what was that testimony?       24         3       Justice Schroeder. And at that time I       24         4       provided testimony, sworn testimony.       25         6       Q. That would be administrative, in the       3         7       provided testimony, sworn testimony?       3         11       A. No.       14       investigation?         12       Q. That would be admininstrative, in the       3				
14       A. Ýes.       14       Given that the ground water districts         15       Q. And the same comments made to him       15       are proposing to pump through a pipe and deliver         17       a break for any reason or have any questions,       16       investigation would be appropriate to see if an         18       don't hesitate to indicate. And your answers will       18       investigation would be appropriate to see if an         19       also have to be audible so the reporter can pick       19       NPDES permit would be appropriate to see if an         20       them up.       11       That was conducted at about 2:30 this         21       Inc.'s business?       21       That was conducted at about 2:30 this         23       Inc.'s business?       22       review of 40 CFR 121, 1 believe, part or ifs         24       A. Yes.       23       review of 40 CFR 121, 1 believe, part or ifs         25       Q. And what was that testimony?       25       result of that investigation.         24       elivery order, there was a hearing in front of       3       A. I have no conclusions.         3       A. Yes.       2       A. I have no conclusions.       4         4       Q. So what was the result of that       investigation.       10         10       provided testimony				
15       Q. And the same comments made to him       15       are proposing to pump through a pipe and deliver         16       would certainly apply to you, if you want to take       16       water to us, water that is polluted, if felt a         18       don't hesitate to indicate. And your answers will       16       series of questions, or in discovery, so to speak,         19       also have to be audible so the reporter can pick       19       NPDES permit would be required for the ground         21       Have you given sworn testimony in any       21       That was conducted at about 2:30 this         22       Itigation pertaining to Clear Springs Food,       23       review of 40 CFR 121, I belivee, part - or it's         24       A. Yes.       24       either 121 or 122. And I have no conclusions as a         25       Q. And what was that testimony?       25       result of that investigation.         25       Parge 11       Parge 11       Parge 13         1       A. In the appeal of the 2005 water       1       Q. So what was the result of that         3       justice Schroeder. And at that time I       3       A. Ihave no conclusions.         4       Q. That would be administrative, in the       3       A. Ihave no conclusions.         3       A. Yes.       Q. Nat would be admin strative proceeding?       A. No. It's - i				
16       would certainly apply to you, if you want to take       16       water to us, water that is polluted, I felt a         17       a break for any reason or have any questions,       17       series of questions, or in discovery, so to speak,         19       also have to be audible so the reporter can pick       19       investigation would be apporpriate to see if an         20       them up.       19       NPDES permit would be required for the ground         21       Have you given sworn testimony in any       11       That was conducted at about 2:30 this         22       Inc.'s business?       23       review of 40 CFR 121, 1 believe, part - or it's         23       Q. And what was that testimony?       25       result of that investigation.         24       A. Yes.       24       Page 11       Page 11         24       A. Yes.       25       result of that investigation.       Page 13         3       Justice Schroeder. And at that time I       3       4       Q. You haven't reached a conclusion?         3       A. No.       16       and in this case you would be       appoint source. And in this case you would be         3       Justice Schroeder would have been the first syoun       10       And so the next question would be         4       Q. Okay.       A. No. I have given sworn testimony<				
17       a break for any reason or have any questions,       17       series of questions, or in discovery, so to speak,         18       don't hesitate to indicate. And your answers will       18       investigation would be appropriate to see if an         19       also have to be audible so the reporter can pick       19       investigation would be required for the ground         20       them up.       20       water districts to do that.         21       Have you given sworn testimony in any       21       That was conducted at about 2:30 this         22       Inc.'s business?       23       review of 40 CFR 121, I believe, part or it's         24       A. Yes.       24       either 121 or 122. And I have no conclusions as a         25       Q. And what was that testimony?       25       result of that investigation.         24       A. In the appeal of the 2005 water       1       Q. So what was the result of that         2       delivery order, there was a hearing in front of       3       J. Investigation?       A. I have no conclusions.         4       q. You haven't reached a conclusion?       5       A. No. I's it's very conceivable         6       Q. That would be administrative, in the       3       A. I have no conclusions.         9       Q. In any litigation court case have you       you deliver water throug		•	1	
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4 (Pages 10 to 13)

	Page 14		Page 16
1	Q in addition to	1	have, certainly to my knowledge.
2	Did you bring some documents with you	2	Q. And No. 3?
3	that you did review?	3	A. I think that's all been produced as
4	A. Other than my expert report. And the	4	well. And part of this, of course, would be
5	other reports that I've reviewed, I made those	5	relative to the administrative hearing we had on
6	available on Friday.	6	the appeal of the 2005 water delivery order in
7	Q. Okay.	7	front of Justice Schroeder.
8	A. Those were on off-flavor stuff,	8.	Q. Okay. And item No. 4, I know there's
9	biofilms, and geosmin and methylisolorneo,	9	some marketing information that you made exhibits
10	g-e-o-s-m-i-n, and methyl, m-e-t-h-y-l, iso,	10	of.
11	i-s-o, l, l, borneo, b-o-r-n-e-o. Those are two	11	Is there other marketing information
12	fairly prevalent, common products of algae and	12	that Clear Springs has available that has not been
13	bacteria that can taint water and taint fish	13	produced?
14	flesh. So those were documents that I provided	14	A. Boy, I'm not in the marketing part of
15	Friday afternoon.	15	Clear Springs, so I can't say that everything has
16	But I believe I also provided the	16	been produced. I can say that we did rely on
17	document that recently published by the	17	legal counsel to answer these questions of these.
18	Monterey Bay Aquarium and right now the name of	18	Q. It also requests information regarding
19	that document escapes me, but that was the	19	information on share of the market, sales, profit,
20	document that established that rainbow trout were	20	revenue, income, expenses, annual fish production
21	best of the best in terms of environmental	21	records.
22	properties and nutrition.	22	I assume those records exist?
23	Q. Did you go through the other items	23	A. They do exist.
24 25	that were requested? Let's just go one at a time	24 25	Q. And I don't believe any of those have
25	down those items requested in the deposition	2.5	been produced?
	Page 15		Page 17
			idge if
1	notice. Tell me first whether or not the	1	A. That's correct.
2	notice. Tell me first whether or not the requested item exists or not, and if it does	2	<ul><li>A. That's correct.</li><li>Q. Okay. And is it the intent to produce</li></ul>
2 3	notice. Tell me first whether or not the requested item exists or not, and if it does exist, whether or not it will be produced.	23	<ul><li>A. That's correct.</li><li>Q. Okay. And is it the intent to produce those, or not?</li></ul>
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5 (Pages 14 to 17)

	Page 18		Page 20
1	of the water rights at the Snake River Farm	1	that work.
2	facility?	2	Q. So
3	A. Not that I am familiar with.	3	A. And you have his expert report
4	Q. So none exist, as far as you know?	4	already.
5	A. As far as I know. I've never seen	5	Q. So when you referred to "other
6	anything relative to Snake River Farm.	6	experts," it would simply be Dr. Brockway?
7	Q. And as far as No. 7, records and data	7	A. I would have to get refreshed
8	relating to effluent and influent water quality,	8	memorywise as to whether or not people like
9	quantity, and temperature?	9	Mr. Shaw, David Shaw, or others have done that
10	A. We have provided all of that	10	kind of work.
11	information. That is part of the public record	11	Q. And 9 requests various documents,
12	with regard to the EPA and NPDES permitting, and	12	publications, and literature that was referenced
13	that information is provided by way of the	13	in your testimony on pages 36 and 37.
14	discharge monitoring reports.	14	Do you believe that's all been
15	Q. So everything we have relative to	15	produced?
16	influent water has been made available? You seem	16	A. That has, with some additional ones.
17	to distinguish between what's part of the public	17	And historically or traditionally for scientists,
18	record that's been reported. Are there other	18	when somebody requests that kind of information or
19	records that are not reported?	19	literature, it's customary to write "with
20	A. Yes, there are. And we provided the	20	compliments." And I neglected to do that. So if
21	information on nitrate/nitrite nitrogen, and	21	you'd like that, I can certainly do that.
22	temperature, influent water temperature. And that	22	Q. So explain exactly how we should do
23	was part of the records we provided during	23	that.
24	discovery.	24	A. Well, you can bring them in or, you
25	Q. On item No. 8, is there any such	25	know, print them off, and I'll put "With
-	Dere 10		David 01
	Page 19		Page 21
1	-	1	
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6 (Pages 18 to 21)

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	have been covered. I think we've covered	1	would be pumped from the wells that would
2	previously 8, which was water quality and	2 3	contradict the testing done by the ground water
3	temperature data, which you indicated had been	4	users, ground water districts' experts indicating there were none?
4	supplied.		
5	And does the information produced	56	A. I do not have any information that
6 7	A. The temperature data at the spring sources?	7	would suggest that the testing that was done by your experts, by ground water districts' experts,
8	been supplied.	8	would was adequate to resolve the issue about
9	Q. Am I correct to assume from your	.9	whether pesticides are present.
10	testimony on I believe it was page 34 that	10	In my testimony I do state that there
	temperature is no longer an issue with respect to	11	are there are herbicides and pesticides that
12	water from the proposed wells, based on the	12	then that are used in Idaho that have the
13	information that has been provided?	13	potential to be in that those ground water
$14^{10}$	A. No, that would be an incorrect	$14^{10}$	in that ground water, and then provided reference
15	assumption.	15	to the Idaho State Department of Agriculture
16	Q. Okay.	16	surveys that they do, and identified some of the
17	A. And the reason for that is in my	17	herbicides that have been found in ground water.
18	testimony I state that the temperatures are the	18	Additionally, the additionally, the
19	same, or something to that effect.	19	testing that has been done by the ground water
20	Q. Yes.	20	districts is restricted to just one or one and
21	A. That doesn't mean that in the delivery	21	a part of a month.
22	process the temperature would be altered. And	22	From a year-round supply standpoint,
23	I've not done an analysis. I think Dr. Brockway	23	that's not rigorous enough. That is inadequate,
24	is doing that kind of analysis.	24	in my judgment.
25	Q. So you're saying temperature may still	25	Q. And is the testing for pesticides
·	Page 23		Page 25
1	be an issue to Clear Springs?		
			ourrently a part of the water quality testing
		$\begin{vmatrix} 1 \\ 2 \end{vmatrix}$	currently a part of the water-quality testing
2	A. Could be.	2	program that Clear Springs does on the inflow to
2 3	<ul><li>A. Could be.</li><li>Q. On page 34 of your testimony, you say,</li></ul>	2 3	program that Clear Springs does on the inflow to Snake River Farms?
2 3 4	<ul><li>A. Could be.</li><li>Q. On page 34 of your testimony, you say,</li><li>"Water temperature measured at the well sites and</li></ul>	2 3 4	program that Clear Springs does on the inflow to Snake River Farms? A. Clear Springs currently tests the
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7 (Pages 22 to 25)

<ol> <li>you would have your own testing of the water</li> <li>supply for pesticides?</li> <li>A. Until the until the recent increase</li> <li>in nitrate/nitrite nitrogen was detected at Clear</li> <li>Springs Snake River Farm, we had high confidence</li> <li>that there were that there was sufficient</li> <li>oversight by the State and that the testing we had</li> <li>done over the previous 15 years or so of water was</li> <li>indicative of no contamination.</li> <li>With the elevation in nitrate, that's</li> <li>With the elevation in nitrate, that's</li> <li>Changed. And so we will have to start testing for</li> </ol>	
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11 changed. And so we will have to start testing for 11 and food company.	
12 those pesticides and herbicides. And as you know, 12 Q. Okay. Let's go to item 13. And that	
13 that is a very expensive proposition. 13 relates to the position asserted by Clear Springs	
14 Q. Okay. Back to the request for 14 in your testimony and Mr. Cope's that fish are	
15 production of documents that we were reviewing. 15 only grown in fresh, pure, pristine water that	
16 And we're looking at item 12. And the request for 16 flows from the canyon.	
17 production No. 9 requested "Records of fish 17 And I believe you'll recall Mr. Cope's	
18 disease, incidents, and pathology records for the 18 testimony that his definition of "pristine" was	
19 Snake River Farm facilities and other facilities 19 essentially that the water met water-quality	
20 that have been identified as production 20 standards for drinking water?	
21 facilities, including the date of the incident, 21 A. I recall that testimony.	
22 the cause of the incidents, the response, the 22 Q. Would that be consistent with your	
23 treatment method, number of fish lost or 23 definition of what constitutes fresh, pure,	
24 destroyed, and future corrective action developed 24 pristine water?	
25 as a result of the incident." 25 A. Well, that is a good a good marker.	
Page 27 Page	29
1 Do such records exist? 1 It is not the only marker that I would use as a	
2     A. We do have records. Many of those     2     scientist.	
3 have been provided to you earlier in our previous 3 Q. Are there documents that exist	
4 hearing. Certainly there are new fish diseases 4 referring back to this item 13. Are there	
5 and the in our view, the request was redundant. 5 documents that exist that would represent some	
6 Q. You've made reference to production in 6 type of a chemical analysis of water that was us	d
7 the previous hearing. 7 by Clear Springs as a basis for making the	
8 Are you simply referring to your 8 assertion in marketing material that this is,	
9 memory of what was produced in that earlier 9 quote, "pure, pristine water"?	
10 proceeding in 2007? 10 A. I cannot attest to what was used	
11 A. That's correct. 11 what documents, if any, were used in marketing	
12 Q. Okay. 12 material. I can attest to the studies that we	
13 A. But I know for a fact that we did 13 have done, the data of which has been provided	to
14 provide the disease information with in an 14 the ground water districts, with regard to	
15 active commercial fish farm, disease is an 15 nitrate/nitrite nitrogen, the historic	
16 ever-present event, daily we do deal with disease, 16 concentrations of those of that chemical and	
17 and we deal with treatments. 17 the temperature data and the total phosphorus	
18So it really becomes very, very18data.	
19 redundant and inconsequential. The question ought 19 Q. Thank you.	·
20 to be, has anything changed diseasewise? 20 Your testimony describes the areas of	
2.1 Q. And has there been any change that 2.1 expertise on page 3, that you're an expert in	
22 you're aware of? 22 aquaculture science, fish pathology, health	
A. Yes. Disease has gone down because 23 management, minor animal species drug approv	al,
24 we've instituted the use of a vaccine. 24 environmental regulation, seafood quality	
25     Q. On request No. 11, "Produce documents     25     assurance, and aquaculture public policy?	

8 (Pages 26 to 29)

	Page 30		Page 32
1	A. That's correct.	1	A. I did hold a it's not a license.
2	Q. And that would be the parameters or	2	It was a certification as a fish pathologist.
3	sideboards, if you would, of your areas of	3	Q. Any expertise or training in the field
4	expertise? Are there others missed?	4	of chemistry?
5	A. Well, there probably are definitely	5	A. I've had training in chemistry by way
6	other areas missed.	6	of an EPA training-ship at Michigan State
7	Would you like to hear them?	7	University.
8	Q. Well, let's just inquire this way:	8	Q. Do you claim to have expertise based
9	Your formal educational background I gleaned from	9	upon formal education or based upon job or work
10	your testimony was you have a master of science	10	experience in the field of chemistry or chemical
11	degree from Michigan State and a doctor of	11	analysis?
12	philosophy from the University of Washington?	12	A. Yes.
13	A. That's correct.	13	Q. Describe that area of expertise and
14	Q. Okay. Have you had any teaching	14	what you claim it's based upon.
15	positions at any college or university?	15	A. Throughout my research career I have
16	A. Yes.	16	looked at the interaction of water quality and
17	Q. What are those?	17	fish physiology, fish pathology. During the
18	A. I was an associate professor of	18	course of that research, I and my graduate
19	veterinarian and aquatic animal medicine at	19	students spent considerable effort to examine the
20	Mississippi State University.	20	water quality present in catfish ponds and other
21	Q. And when was that?	21	types of aquaculture environments.
22	A. Approximate dates would be 1985 to	22	Some of the research that we did
23	1990. And I would just refer you to my CV for the	23	involved the impact of the the interaction of
24	exact dates of that time.	24	various environmental conditions, such as
25	Q. The details of that were attached as	25	temperature and nitrate/nitrite nitrogen, and in a
	Page 31		Page 33
1	an exhibit, I believe?	1	condition called winter kill with channel catfish.
2	A. That's correct.	2	So and then through education at
3	Q. Okay. Anything regarding your	3	Michigan State University, I had courses in
4	publications or educational training that would	4	limnology and chemical limnology, and developed
5	not be reflected in your CV that's attached as	5	some degree of expertise because of that. I do
6	Exhibit 1?	6	not claim to be, for consulting purposes, a
7	A. I don't think so.	7	chemical engineer or chemist.
8	Q. Okay. You don't claim to have any	8	Q. What about as an economist?
9	expertise in the area of geology?	9	A. No, I'm not an economist.
10	A. No.	10	Q. Do you claim to have any expertise as
11	Q. What about hydrology?	11	an appraiser in property valuation, business
12	A. Only what I've learned being in the	12	valuation?
13	water wars.	13	A. No. No.
14	Q. Well drilling expertise?	14	Q. The current position you hold, I
15	A. No.	15	believe, according to your testimony, is vice
16	Q. Any expertise in the area of	16	president of research and environmental affairs
17	construction or construction design?	17	for Clear Springs?
18	A. No.	18	A. That's correct.
19	Q. Any expertise in the engineering	19	Q. And how long have you held that
20	field?	20	position?
21 22	A. No.	21 22	A. You could refer to the CV. But I think about 1007 108 100 compating like that
22	Q. Do you hold any professional licenses?	22	think about 1997, '98, '99, something like that. It's not something I think about very often, so I
23 24	A. As a professional engineer or a lawyer	24	don't know the specific date.
25	or Q. Of any type?	25	Q. Feel free to refer to that if you

9 (Pages 30 to 33)

	Page 34		Page 36
1	desire. I didn't pick up the date, but I may have	1	eggs, the early life stage of rainbow trout.
2	missed it.	2	Q. I've seen some of that literature.
3	A. Yeah, it would be in the front.	3	Aside from that literature, based upon
4	What's that? 1989. 1998.	4	your own personal study, analysis, or experience,
5	Q. 1998 to present.	5	is there a level at which you believe nitrates
6	During the course of your attendance	6	would have an adverse effect on Clear Springs'
7	of the deposition of Mr. Cope earlier today, was	7	ability to produce marketable commercial rainbow
8	there anything in his answers that you would	8	trout at that facility?
9	disagree with or would cause you to pause?	9	A. The answer is yes. And but it's
10	A. My recollection is that I would	10	not by way of research that I've conducted. The
11	elaborate further, but not cause me to pause.	11	problem the problem is from a scientific
12	Q. Okay.	12	standpoint, the evidence that nitrate-nitrogen is
13	A. But I would like if I'm held to	13	an endocrine disrupter is very new science.
14	that standard, Randy, I would like to review that	14	So scientists, in general, have not
15	testimony.	15	had opportunity to look to see what the impact is
16	Q. Okay. There are a number of areas he	16	on animals, in general, as a result of exposure to
17	deferred to you, which I'll inquire of later.	17	nitrate or nitrate-nitrogen.
18	A. Okay.	18	Q. Okay.
19	Q. And if there was something that	19	A. The scientific evidence that is
20	generally jumped out with you as something that	20	published to date in peer-review journals
21	you starkly and clearly disagreed with, I wanted	21	indicates that virtually all animals will be
22	to identify it.	22	susceptible to disruption of their hormone system,
23	A. Well, the issue of the quality of	23	the endocrine system, following exposure to
24	water that is proposed to be delivered to Clear	24	nitrate-nitrogen, whether it's in the diet, being
25	Springs by the over-the-rim pipeline, I do take	25	drunk, or consumed by way of drinking, or whether
	Page 35		Page 37
1	issue that nitrate is a toxin and it is a	1	it's in water that fish, for example, would be
2	toxin, and that it is an endocrine disrupter. I	2	exposed to, is not clear. Those are just it's
3	don't believe Mr. Cope identified that as a	3	an emerging area of scientific endeavor.
4	concern.	4	There are some there are three
5	Q. And we'll get into this in greater	5	publications that I referenced in my expert report
6	detail later, but just so I have an understanding	6	that may be all that's out there in the scientific
7	going into that line of questioning, when I	7	literature with regard to that issue.
8	addressed the nitrate issue with Larry Cope, he	8	One of those studies indicates that
9	was generally of the opinion that the	9	nitrate-nitrogen affects the steroid hormones of
10	water-quality standard above which there would be	10	sturgeon. One of them is a Ph.D. dissertation
11	an area of concern would be the 10 milligrams per	11	that was published in August of 2009. And that
12	liter.	12	scientist studied the impact of nitrate-nitrogen
13	Would that also be your understanding?	13	on daphnia.
14	A. No.	14	Q. On what?
15	Q. And so that is the level at which	15	A. D-a-p-h-n-i-a, daphnia. It's an
16	drinking water standards would be exceeded?	16	invertebrate.
17	A. That is the maximum contaminant level	17	Q. Okay.
18	for drinking water, that's correct.	18	A. The earliest work that I could find
19	Q. And based upon your study or analysis,	19	was published, I believe, in 2005, which primarily
20	is there a level at which you believe nitrates	20	looked at alligators and changes in sex ratios in
21	adversely affect your fish production operation at	21	alligators as a consequence of exposure to
22	Snake River Farms?	22	nitrate-nitrogen in some lakes in Florida.
23	A. Scientific literature does identify	23	There have been some biochemical
24	nitrate-nitrogen concentrations less than	24	studies or not biochemical studies, but cell
	10 milligrams per liter that are toxic to the	25	biology studies, so in vitro studies, that start
25	To minigrams per mer mat are toxic to the	1-0	bloidgy studies, so in vitro studies, that start

10 (Pages 34 to 37)

1       to identify biological mechanisms for that         2       endocrine disruption.         3       Q. When you say the in vitro phase, what         4       do you mean? What phase?         5       A. Lab bench, dealing with cells in         1       tissue culture.         9       operation would be at the Soda Springs food         9       facility?         0       A. No. These are – no. The in vitro         11       studies would be done by other scientists in the         world looking at the biological, the biochemical,       and genetic effects of changing, of affecting         12       world looking at the biological, the biochemical,         13       A. Yeah.         14       original question, which was, in your opinion, is         16       A. Yeah.         17       Q. And sour reascenterial rainbow trout         18       original question, which was, in your opinion, is         19       there a nitrate level in the water at which you         10       these any there are anitrate level         11       our production system. But that has not happened         yet. We do not know.       Q. And do you have an opinion of your own         13       Q. So your answer is you do not really         14       more que		Page 38		Page 40
2       endocrine disruption.       2       we have some actual records to look at         3       Q. When you say the in vitro phase; my our       A. Lab bench, dealing with cells in       A. Well, heck.         4       Go you mean? What phase?       A. Lab bench, dealing with cells in       A. Well, heck.         6       A. Lab bench, dealing with cells in       G. In your testimony on page 31, let's       Iook at that quickly, if we could.         9       operation would be dat the Soda Springs food       A. No. These are - no. The in vitro       A. Well, heck.         10       A. No. These are - no. The in vitro       and genetic effects of changing, of affecting       and yenety your system.       about 8X2, you discuss some nitrate levels in         14       proteins in cell membranes that might affect.       initrates. we did do some phosphorus sampling.       initrates. we did do some phosphorus.         15       O. With all of that -       A. Helieve there will be a negative effect on Clear       A. Helieve there will a negative effect on Clear         12       springs ability to raise commercial minbow trout       A. Helieve there is a nitrate level       A. Helieve there is a nitrate level         14       that eventually could be identified that would not       2007.       A. Well, heck.         2       our groduction system. But that has not happened       Yein that's refered to as SR1. That is where wate gose into the	1	· · · ·	1	-
3Q. When you say the in vitro phase, what do you mean? What phase?3A. Well, heck.4Q. In your testimony on page 31, let's5A. Lab bench, dealing with cells in tissue culture.06So the in vitro phase in your09portation would be at the Soda Springs food facility?010A. No. These are - no. The in vitro 1111studies would be done by other scientists in the world looking at the biological, the biochemical, and genetic effects of changing, of affecting proteins in cell membranes that might affect.013and genetic effects of changing, of affecting proteins in cell membranes that might affect.1014original question, which was, in your opinion, is there a nitrate level in the water at which you 201015original question, which was, in your opinion, is that eventually could be identified that would not 211815now rescarch, our brood stock, and1716A. That's correct.1017Q. And do you have an opinion of your rockuction?2018nutrake water goes into that eventually could be identified that would not production?1016A. That's correct.1017Q. So your answer is you do not really the row?2018our production?2119A. That's correct.2010Q. And do you have an opinion of your row as an expert in this area whether or not the rockuction?2119A. Historically. I think the concentratio				
4       do you mean? What phase?       4       Q. In your testimony on page 31, let's         5       A. Lab bench, dealing with cells in       itsue culture.       0. In your testimony on page 31, let's         7       Q. So the in vitro phase in your       0. In your testimony on page 31, let's       10ka that quickly, if we could.         9       facility?       Q. Yes. Starting at lines 877 through       about 82, you discuss some nitrate levels in         11       studies would be done by other scientists in the       world looking at the biological, the biochemical,       more detailed sampling to determine if particular         12       world looking at the biological, the biochemical,       more detailed sampling to determine if particular         14       original question, which was, in your opinion, is       nitrates, or were you looking for other chemicals         15       O. With all of that       A. Weare exclusively looking at         16       A. Yeah.       A. House rescare, or brood tock, and         17       Q. Fade so-       Q. And so -         18       our production system. But that has not happened       yet. We do not know.         19       point that's referred to as SR1. That is where we         10       ur production?       A. Weare you looking for oin strutted         11       A. That's correct.       Q. So your answer is you do not real				
5A. Lab bench, dealing with cells in tissue culture.5look at that quickly, if we'oud' A. Let me find that. Page 31?7Q. So the in vitro phase in your operation would be at the Soda Springs food facility?A. Net the Soda Springs food about 882, you discuss some intrate levels in or cent sampling. And starting up on line 874, you state, that "in 2007 Clear Springs Food instituted more detailed sampling to determine if particular springs feeding the complex had higher concentrations than others."13and genetic effects of changing, of affecting approteins in cell merbinanes that might affect.14A. Yeah.17Q. With all of that thera anitrate level18original question, which was, in your opinion, is there anitrate level in the water at which you at the Snake River Farms facility?20believe there will be a negative effect on Clear type during a line source of the sintrate level21Q. And you say more detailed sampling in a nutrate level in which you at the Snake River Farms facility?23A. Ibelieve there is a nitrate level24that ventually could be identified that would not to the inimical to our research, our brood stock, and3Q. So your answer is you do not really know?4And were you know, those carly permits, received in the water, in the spring water, now cobad, we don't know.5A. That's correct.6Q. And doy you have an opinion of your own as an expert in this area Mether or not the perduction?7A. Historically, I think the concentations of nitrue that Clear Springs has received in the water, in the spri				
6       A. Let me find that. Page 31?         7       Q. So the in vitro phase in your         8       operation would be at the Soda Springs food         9       facility?         10       A. No. These are - no. The in vitro         11       studies would be done by other scientists in the         12       word looking at the biological, the biochemical,         13       and genetic effects of changing, of affecting         14       proteins in cell membranes that might affect.         15       Q. With all of that -         16       A. Yeah.         17       Q scientific background, back to the         18       original question, which was, in your opinion, is         19       there a nitrate level in the water at which you         20       beliew there will be a negative effect on Clear         21       springs' ability to raise commercial rainbow trout         23       A. Ibelieve there is a nitrate level         14       that eventually could be identified that would not         22       We do not know.         23       A. That's correct.         24       yet. We do not know.         25       A. Historically, I think the         26       cour production system. But that has not happened				
7Q. So the in vitro phase in your7Q. Yes. Starting at lunes 877 through about 882, you discuss some nitrate levels in facility?8facility?about 882, you discuss some nitrate levels in recent sampling. And starting up on line 874, you state, that "In 2007 Clear Springs Food instituted world looking at the biological, the biochemical, and genetic effects of changing, of affecting proteins in cell membranes that might affect.913and genetic effects of changing, of affecting proteins in cell membranes that might affect.1114original question, which was, in your opinion, is there a nitrate level in the water at which you the a nitrate level in the water at which you the a nitrate level in the water at which you the a nitrate level in the water at which you the snake fliver Farms facility?A. Ne were exclusively looking at nitrates. We did do some phosphorus sampling. A. Total phosphorus.20be inimical to our research, our brood stock, and yet. We do not know.21Q. And you say more detailed sampling in 2223A. That's correct.24What was the sampling that occurred thave historically that's where water goes into the shake fiver or not the drinking-water-quality standard of 10 milligrams per liter is safe or nuase for your rainbow trout124No the water, in the spring water, those have be an acceptable for our system.135A. That's correct.94A. Historically, Ithink the concentrations of nitrate that Clear Springs has received in the water, in the spring water, those have bee an acceptable for our system.15A. That's correct, instituted what				
8operation would be at the Soda Springs food facility?abouk 82, you discus some nitrate levels in recent sampling. And starting up on line 874, you recent sampling collecting.1world looking at the biological, the biochemical, and genetic effects of changing, of affecting up totins in cell membranes that might affect.more detailed sampling collisively for nitrates, or were you looking of other chemicals as well?13and genetic effects of changing, of affecting up totins in cell membranes that might affect.now recent sampling exclusively for nitrates, or were you looking of other chemicals as well?14proteins in cell membranes that might affect.now recent sampling exclusively for nitrates, or were you looking at nitrates. We did do some phosphorus sampling.15our production system. But that has not happened yet. We do not know.Page 3914our productiori system. But that has not happened yet. We do not know.Page 4115our productiori system. But that has not happened yet. We do not know.Page 4116our productiori system.Page 4117A. That's correct.G18nour production?Page 4119where weare, nour that into a year?10production?11A. That's correct.G12O. Soy our answer is you do not really tharwey been acceptable for our				
9       facility?       9       recent sampling. And starting up on line 874, you         10       A. No. These are – no. The in vitro       10         11       studies would be done by other scientists in the       10         12       world looking at the biological, the biochemical,       11         13       and genetic effects of changing, of affecting       11         14       proteins in cell membranes that might affect.       12         15       Q. With all of that –       16         16       A. Yeah.       16         17       Q. – scientific background, back to the       16         18       original question, which was, in your opinion, is       16         18       original question, which was, in your opinion, is       17         21       Q. And so -       20         22       A. Ibelieve there will be a negative effect on Clear       210         23       A. Ibelieve there is a nitrate level       24         4       that eventually could be identified that would not       24         7       Q. So your answer is you do not really       A. Well, we have a compliance sample         7       A. That's correct.       2       A. Well, we have a compliance sampling of nitrate and         3       and genetic affecting				
10       A. No. These are - no. The in vitro       10       state; that "in 2007 Clear Springs Food instituted         11       studies would be done by other scientists in the       10       more detailed sampling to determine if particular         13       and genetic effects of changing, of affecting       proteins in cell membranes that might affect.       11       more detailed sampling to determine if particular         13       and genetic effects of changing, of affecting       nore detailed sampling to determine if particular         14       A. Yeah.       14       And were you sampling exclusively for         16       A. Yeah.       17       A. We ever exclusively looking at         17       Q scientific background, back to the       17       A. We at the water at which you       19         10       believe there will be a negative effect on Clear       20       A. Total phosphorus.       21         21       springs 'ability to raise commercial rainbow trout       21       Q. And so -       22       We taw as the sampling that occurred         24       that eventually could be identified that would not       22       23       What was the sampling tast occurred         24       wour production system. But that has not happend       25       A. We don to know.       25       A. Well, we have a compliance sampling         24	1			
11       studies would be done by other scientists in the       11       more detailed sampling to determine if particular         12       world looking at the biological, the biochemical,       and genetic effects of changing, of affecting       12         14       proteins in cell membranes that might affect.       13       concentrations than others."         15       Q. With all of that       15       And were you sampling exclusively for         16       A. Yeah.       16       as well?         17       Q scientific background, back to the       17       A. We were exclusively looking at         18       original question, which was, in your opinion, is       18         19       there a nitrate level in the water at which you       19         20       A. I believe there is a nitrate level       20         21       act the Snake River Farms facility?       21         22       A. I believe there is a nitrate level       22         24       that eventually could be identified that would not       24         25       A. Well, we have a compliance sampling       2007.         26       A. That's correct.       24         6       Q. And do you have an opinion of your own       3         7       A. Historically, I think the       1				
12       world looking at the biological, the biochemical,       12       springs feeding the complex had higher         13       and genet effects of changing, of affecting       received in cell membranes that might affect.       14         15       Q. With all of that       15       A. Were you sampling exclusively for         16       A. Yeah.       16       as well?         17       Q scientific background, back to the       17       A. We were exclusively looking at         18       original question, which was, in your opinion, is       18         19       there a nitrate level in the water at which you       19         2       A. I believe there will be a negative effect on Clear       20         21       Springs' ability to raise commercial rainbow trout       21         22       A. I believe there is a nitrate level       21         24       that eventually could be identified that would not       25         25       be inimical to our research, our brood stock, and       25         3       Q. Soy your answer is you do not really       yoint that's referred to as SR1. That is where we are goes into         3       A. That's correct.       6         6       A. That's correct.       6         7       A. Historicially, I think the       7				
13       and genetic effects of changing, of affecting       13       concentrations than others."         14       proteins in cell membranes that might affect.       14       And were you sampling exclusively for         15       Q. With all of that       15         16       A. Yeah.       16         17       Q				
14       proteins in cell membranes that might affect.       14       And were you sampling exclusively for nitrates, or were you looking for other chemicals as well?         15       Q. With all of that -       15         16       A. Yeah.       16         17       Qscientific background, back to the       17         18       original question, which was, in your opinion, is       18         19       there a nitrate level in the water at which you       19         20       believe there will be a negative effect on Clear       20         21       Springs' ability to raise commercial rainbow trout       21       Q. And so         22       A. I believe there is a nitrate level       2007.         23       A. I believe there is a nitrate level       21       Q. And you say more detailed sampling in         24       that eventually could be identified that would not       24       prior to 2007?         25       A. That's correct.       Q. And do you have an opinion of your own       7         3       A. That's correct.       Q. So when did the sampling at SR1 begin         6       A. That's correct.       9       Q. Okay. Can you put that into a year?         11       A. Historically, I think the       10       7         12       coucentrations of nintrate t				
15       Q. With all of that       15       intrates, or were you looking for other chemicals as well?         16       A. Yeah.       16       as well?         17       Q				
16       A. Yeah.       16       as well?         17       Q scientific background, back to the       17       A. We were exclusively looking at         18       original question, which was, in your opinion, is       17       A. We were exclusively looking at         19       there a nitrate level in the water at which you       19       A. We were exclusively looking at         20       Spring? ability to raise commercial rainbow trout       20       A. Total phosphorus.         21       at the Snake River Farms facility?       20       A. Total phosphorus.         22       A. I believe there is a nitrate level       2007.       A. Total phosphorus.         23       that eventually could be identified that would not       24         24       that eventually could be identified that would not       25         29       Veage 39       Page 41         10       our production system. But that has not happened       1         4       know?       So your answer is you do not really       1         4       know?       So when did the sampling for nitrate and       5         5       A. That's correct.       6       Q. And do you have an opinion of your own       6         6       Q. And do you have an opinion of your own       6       A. That's been there s		1 0		
17       Q scientific background, back to the       17       A. We were exclusively looking at         18       original question, which was, in your opinion, is       18         19       there an intrate level in the water at which you       20         20       believe there will be a negative effect on Clear       20         21       Springs' ability to raise commercial rainbow trout       21         22       A. I believe there is a nitrate level       21         23       A. I believe there is a nitrate level       21         24       that eventually could be identified that would not       24         25       be inimical to our research, our brood stock, and       25         26       Page 39       Page 41         27       point that's referred to as SR1. That is where we         28       yet. We do not know.       2         3       Q. So your answer is you do not really       3         4       know?       3       co. So when did the sampling at SR1 begin         5       A. Historically, I think the       1       A. Historically, I think the         12       concentrations of nitrate that Clear Springs has       10       Q. Okay. Can you put that into a year?         13       received in the water, in the spring water, those       10		•		
18       original question, which was, in your opinion, is       18       nitrates. We did do some phosphorus sampling.         19       there a nitrate level in the water at which you       Q. And so         20       believe there will be a negative effect on Clear       Q. And you say more detailed sampling in         21       Springs' ability to raise commercial rainbow trout       Q. And you say more detailed sampling in         22       at the Snake River Farms facility?       Q. And you say more detailed sampling in         23       A. I believe there is a nitrate level       2007.         24       that eventually could be identified that would not       24         25       be inimical to our research, our brood stock, and       25       A. Well, we have a compliance sample         10       our production system. But that has not happened       25       A. Well, we have a compliance sampling for nitrate and         2       yet. We do not know.       3       point that's referred to as SR1. That is where we         3       Q. So your answer is you do not really       4       have historically - that's where water goes into         4       that's referred to as SR1. That is where we       have have field the sampling at SR1 begin       7         6       A. That's correct.       Q. So your answer is you do not really       7       A. That's correct.       6 <td></td> <td></td> <td>17</td> <td>A. We were exclusively looking at</td>			17	A. We were exclusively looking at
19       there a nitrate level in the water at which you       19       Q. And so         20       believe there will be a negative effect on Clear       20       A. Total phosphorus.         21       Springs' ability to raise commercial rainbow trout       20       A. Total phosphorus.         21       A. Tobelieve there is a nitrate level       20       A. Total phosphorus.         23       A. Tobelieve there is a nitrate level       2007.         24       that eventually could be identified that would not       20         25       be inimical to our research, our brood stock, and       2007.         26       Our production system. But that has not happened       20         27       A. That's correct.       20         3       Q. So your answer is you do not really       3         4       know?       4         5       A. That's correct.       6         6       Q. And doy un have an opinion of your own       3         7       for water quality?       8         8       arctificinal point of sampling at SR1 begin       6         9       NPDES permiting.       9         9       NPDES permiting.       10         10       production?       10       10         11			18	
20       believe there will be a negative effect on Clear       20       A. Total phosphorus.         21       Springs' ability to raise commercial rainbow trout       21       Q. And you say more detailed sampling in         22       at the Snake River Farms facility?       21       Q. And you say more detailed sampling in         23       A. I believe there is a nitrate level       23       What was the sampling that occurred         24       that eventually could be identified that would not       24       prior to 2007?         25       A. That's correct.       25       A. That's where water goes into         3       Q. So your answer is you do not really       know?       1         4       know?       1       point that's referred to as SR1. That is where we         5       A. That's correct.       0. So when did the sampling at SR1 begin         6       Q. And do you have an opinion of your own       3         7       as an expert in this area whether or not the       5         8       drinking-water, uality standard of 10 milligrams       9         9       Parter is safe or unsafe for your rainbow trout       9         10       production?       A. Hat's referred to as SR1. That is where wee         11       A. That's been there since the time of       NPDES permiting. <td></td> <td></td> <td>19</td> <td></td>			19	
21Springs' ability to raise commercial rainbow trout at the Snake River Farms facility?21Q. And you say more detailed sampling in 2007.23A. I believe there is a nitrate level 24 that eventually could be identified that would not be inimical to our research, our brood stock, and21What was the sampling that occurred prior to 2007?25be inimical to our research, our brood stock, and24What was the sampling that occurred prior to 2007?26Page 39Page 411our production system. But that has not happened yet. We do not know.1point that's referred to as SR1. That is where we have historically that's where water goes into the Snake River Farm itself. So that's been our traditional point of sampling for nitrate and stuff.3Q. So your answer is you do not really know?3the Snake River Farm itself. So that's been our traditional point of sampling or nitrate and stuff.4A. That's correct.0O. So when did the sampling at SR1 begin for water quality?5A. That's correct.0Q. Okay. Can you put that into a year?10production?10Q. Okay. Can you put that into a year?11A. Historically, I think the concentrations of nitrate that Clear Springs has1212whether the increased levels we're instituted what we can, projects, to try to identify the source of the nitrate-nitrogen and is stude what we can, projects, to try to intrate hat rung to encourage scientists with far greater expertise and facility than we have to investigate what impact 10 milligrams per liter2215 </td <td></td> <td></td> <td>20</td> <td></td>			20	
22       at the Snake River Farms facility?       22       2007.         23       A. I believe there is a nitrate level       23       What was the sampling that occurred         24       that eventually could be identified that would not       24       prior to 2007?         25       be inimical to our research, our brood stock, and       25       A. Well, we have a compliance sample         24       1       our production system. But that has not happened       25       A. Well, we have a compliance sample         26       Q. So your answer is you do not really       4       point that's referred to as SR1. That is where we         3       Q. So your answer is you do not really       3       the Snake River Farm itself. So that's been our         4       know?       4       traditional point of sampling for nitrate and       stuff.         6       Q. And do you have an opinion of your own       as an expert in this area whether or not the       7         7       A. That's correct.       0       O. So when did the sampling at SR1 begin         7       A. That's correct.       0       O. Okay. Can you put that into a year?         11       A. Historically, I think the       10       10         12       mistaken as to you know, those early permits,       NPDES permits, I'm not conversant in. Certainly	21		21	
24       that eventually could be identified that would not       24       prior to 2007?         25       be inimical to our research, our brood stock, and       25       A. Well, we have a compliance sample         Page 39       Page 41         1       our production system. But that has not happened       point that's referred to as SR1. That is where we         2       yet. We do not know.       2         3       Q. So your answer is you do not really       3         4       know?       4         5       A. That's correct.       5         6       Q. And do you have an opinion of your own as an expert in this area whether or not the       5         7       as an expert in this area whether or not the       5         8       drinking-water-quality standard of 10 milligrams       9         9       per liter is safe or unsafe for your rainbow trout       9         10       production?       Q. Okay. Can you put that into a year?         11       A. Historically, I think the       11         12       mistaken as to you know, those early permits, 13       13         13       received in the water, in the spring water, those       14         14       on the current NPDES permit, SR1 is well       14         15       Whether the i	22		22	2007.
25be inimical to our research, our brood stock, and25A. Well, we have a compliance samplePage 39Page 41our production system. But that has not happened1yet. We do not know.2Jour production system. But that has not happened1yet. We do not know.2Jour Production system. But that has not happened1per liter is softer or unsafe for your rainbow trout3production?2A. Historically, I think the1concentrations of nitrate that Clear Springs has1A. Historically, I think the1concentrations of nitrate that Clear Springs has1Muther the increased levels we're1whether the increased levels we're1instituted what we can, projects, to try to1and are trying to encourage scientists with far19and are trying to encourage scientists w	23	A. I believe there is a nitrate level	23	What was the sampling that occurred
Page 39Page 411our production system. But that has not happened1point that's referred to as SR1. That is where we2yet. We do not know.1point that's referred to as SR1. That is where we3Q. So your answer is you do not really1have historically that's where water goes into4know?1the Snake River Farm itself. So that's been our5A. That's correct.6Q. So when did the sampling for nitrate and6Q. And do you have an opinion of your own7as an expert in this area whether or not the7as an expert in this area whether or not the7for water quality?8drinking-water-quality standard of 10 milligrams9NPDES permitting.9production?10NPDES permitting.10production?10NPDES permitting.11A. Historically, I think the1212concentrations of nitrate that Clear Springs has1313received in the water, in the spring water, those1314have been acceptable for our system.1415Whether the increased levels we're1316seeing now are bad, we don't know. We have1617identify the source of the nitrate-nitrogen and1819and are trying to encourage scientists with far1920greater expertise and facility than we have to102115 or 20 or more milligrams per liter212215 or 20 or more milligrams per liter21<	24	that eventually could be identified that would not	24	prior to 2007?
1our production system. But that has not happened yet. We do not know.1point that's referred to as SR1. That is where we have historically that's where water goes into3Q. So your answer is you do not really know?3is point that's referred to as SR1. That is where we have historically that's where water goes into4know?3that's correct.6Q. And do you have an opinion of your own as an expert in this area whether or not the drinking-water-quality standard of 10 milligrams per liter is safe or unsafe for your rainbow trout production?6Q. So when did the sampling at SR1 begin for water quality?10production?10NPDES permitting. Q. Okay. Can you put that into a year? A. Historically, I think the concentrations of nitrate that Clear Springs has received in the water, in the spring water, those have been acceptable for our system.10Q. Okay. Can you put that into a year? A. 1974, perhaps. I could very well be mistaken as to you know, those early permits, NPDES permits, I'm not conversant in. Certainly on the current NPDES permit, SR1 is well identified, as are sample points. So much of the nitrate data that we have relative to the Snake River Farm is associated with that sample site. Q. Okay. And that's right at the intake where it goes into the pipes?20rest 20A. No. That is at the discharge from the pipes to well, no, it's not on that. Discharge to it's fresh use water that is that enters into the farm at one of the raceways. Q. Do you have a map that would show	25	be inimical to our research, our brood stock, and	25	A. Well, we have a compliance sample
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11 (Pages 38 to 41)

	Page 42		Page 44
1	sampling sites on it?	1	more detailed sampling?
2	A. Yes, I think we did provide that to	2	A. That's correct.
3	you. Do I have it? I don't think I have it.	3	Q. And where were the additional samples
4	MR. BUDGE: Let's go off the record.	4	taken? What was the frequency of those?
5	(Discussion.)	5	A. Well, the data has been provided to
6	MR. BUDGE: Let's go back on the record.	6	you that identifies the frequency, and as well as
7	Q. Randy, we were referring to your	7	I believe we provided yes, we have a picture, I
8	Exhibit 9, which is the Snake River Farm complex	8	believe, that shows the sites that we've been
9	map or schematic. And I think you were	9	sampling.
10	identifying this historic sample point that you	10	Q. And how many of those additional data
11	call SR1.	11	points are there?
12	And the point where the samples were	12	A. Well, they've evolved over time.
13	taken were approximately where the fresh line	13	Okay? So the number has increased. And I'd have
14	discharges into the SRF raceway?	14	to go through and count how many sample sites
15	A. Correct.	15	there are. But it's all the increased detail
16	Q. And how often were samples taken at	16	study is within the Snake River Farm spring
17	that site?	17	complex.
18	A. Monthly.	18	So we do sample things like there's
19	Q. Whatever that early date was in '74 or	19	below the Fred Nihart Fountain, for example,
20	wherever, it would be monthly samples?	20	there's a box on the south side of the road, we
21	A. Well, again, I don't know that we were	21	do where water is coming into our facility. We
22	sampling nitrate in 1974.	22	sample that site, for example. And that's
23	Q. Okay.	23	yeah, that would be Expert Report 8, Exhibit 8
24	A. I don't know at all. I do know in our	24	Q. Okay.
25	database we do have records from 1999, I	25	A identifies the sample sites. Yeah,
	Page 43		Page 45
1	believe that information was provided to you	1	I think that's it. And it looks pretty dark on
2	believe that information was provided to you that identifies probably almost every month.	12	I think that's it. And it looks pretty dark on your version here.
2 3	believe that information was provided to you that identifies probably almost every month. I know this year some samples were	1 2 3	I think that's it. And it looks pretty dark on your version here. Q. Is that the map you were referring to?
2 3 4	believe that information was provided to you that identifies probably almost every month. I know this year some samples were discarded prior to analysis one month. And that	1 2 3 4	I think that's it. And it looks pretty dark on your version here. Q. Is that the map you were referring to? A. Yes.
2 3 4 5	believe that information was provided to you that identifies probably almost every month. I know this year some samples were discarded prior to analysis one month. And that was noted on the on the report. But I believe	1 2 3 4 5	I think that's it. And it looks pretty dark on your version here. Q. Is that the map you were referring to? A. Yes. Q. No wonder I couldn't figure those out.
2 3 4 5 6	believe that information was provided to you that identifies probably almost every month. I know this year some samples were discarded prior to analysis one month. And that was noted on the on the report. But I believe it is once a month that we do sample that.	1 2 3 4 5 6	<ul> <li>I think that's it. And it looks pretty dark on your version here.</li> <li>Q. Is that the map you were referring to?</li> <li>A. Yes.</li> <li>Q. No wonder I couldn't figure those out.</li> <li>A. So we have "VC" is visitor center. We</li> </ul>
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$\begin{array}{c} 2\\ 3\\ 4\\ 5\\ 6\\ 7\\ 8\\ 9\\ 10\\ 11\\ 13\\ 14\\ 15\\ 16\\ 17\\ 18\\ 9\\ 20\\ 22\\ 23\\ \end{array}$	<ul> <li>believe that information was provided to you that identifies probably almost every month. <ul> <li>I know this year some samples were</li> <li>discarded prior to analysis one month. And that was noted on the on the report. But I believe it is once a month that we do sample that.</li> <li>And then so, Mr. Budge, to go on with what is there, we became concerned that nitrate-nitrogen was increasing at SR1. And we started to ask ourselves, "Well, where is this coming from?"</li> <li>And that's when we instituted the more detailed sampling of the Snake River Farms spring complex. And you end up with the results that are high numbers, from our perspective, that are identified in the testimony here.</li> <li>Q. Okay. What caused you to have the concern that the nitrate levels were increasing?</li> <li>A. The concentration was increasing.</li> <li>Q. At what location? In the fish?</li> <li>A. SR1.</li> <li>Q. Okay.</li> <li>A. So it's in the water.</li> </ul> </li> </ul>	$ \begin{array}{c} 1\\2\\3\\4\\5\\6\\7\\8\\9\\10\\11\\23\\14\\15\\16\\17\\18\\9\\21\\22\\23\end{array} $	I think that's it. And it looks pretty dark on your version here. Q. Is that the map you were referring to? A. Yes. Q. No wonder I couldn't figure those out. A. So we have "VC" is visitor center. We have 3B, 3A, and 3. RD3. RD3 is it all right to take this out, or not? MR. SIMPSON: Sure. THE WITNESS: RD3 is this site right here. And these are approximates because it's really it's down in this area (indicating). 2A, 2, 1, and then the fountain. Not the Fred Nihart. This is really on collected on this side of the road. And so those are our sites. And there was a legend provided as well, the next page no oh, yeah, you got it. So those are the sample sites that we've been following for really the past two or so years and getting and IDEQ, Idaho Department of Environmental Quality, they have instituted similar studies, although not as intensively
$\begin{array}{c} 2\\ 3\\ 4\\ 5\\ 6\\ 7\\ 8\\ 9\\ 10\\ 11\\ 13\\ 14\\ 15\\ 16\\ 17\\ 18\\ 9\\ 20\\ 22\\ 22\\ 22\\ \end{array}$	<ul> <li>believe that information was provided to you that identifies probably almost every month. <ul> <li>I know this year some samples were</li> <li>discarded prior to analysis one month. And that was noted on the on the report. But I believe it is once a month that we do sample that.</li> <li>And then so, Mr. Budge, to go on with what is there, we became concerned that nitrate-nitrogen was increasing at SR1. And we started to ask ourselves, "Well, where is this coming from?"</li> <li>And that's when we instituted the more detailed sampling of the Snake River Farms spring complex. And you end up with the results that are high numbers, from our perspective, that are identified in the testimony here.</li> <li>Q. Okay. What caused you to have the concern that the nitrate levels were increasing?</li> <li>A. The concentration was increasing.</li> <li>Q. At what location? In the fish?</li> <li>A. SR1.</li> <li>Q. Okay.</li> </ul> </li> </ul>	$ \begin{array}{c} 1\\2\\3\\4\\5\\6\\7\\8\\9\\10\\11\\2\\13\\14\\15\\16\\17\\18\\9\\20\\21\\22\end{array} $	I think that's it. And it looks pretty dark on your version here. Q. Is that the map you were referring to? A. Yes. Q. No wonder I couldn't figure those out. A. So we have "VC" is visitor center. We have 3B, 3A, and 3. RD3. RD3 is it all right to take this out, or not? MR. SIMPSON: Sure. THE WITNESS: RD3 is this site right here. And these are approximates because it's really it's down in this area (indicating). 2A, 2, 1, and then the fountain. Not the Fred Nihart. This is really on collected on this side of the road. And so those are our sites. And there was a legend provided as well, the next page no oh, yeah, you got it. So those are the sample sites that we've been following for really the past two or so years and getting and IDEQ, Idaho Department of Environmental Quality, they have instituted

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12 (Pages 42 to 45)

	Page 46		Page 48
	1 And ultimately if you can identify	1	Q. That would have been on October 7th of
	2 that, the expectation would be that you would	2	2008?
	3 institute something that would stop that from	3	A. Is that what the okay. It should
	4 happening, because, again, those concentrations	4	be the next page. Should be the next page back.
	<ul> <li>appenning, because, again, those concentrations</li> <li>exceed the ground water rule for the State and</li> </ul>	5	So what so what column should we be looking at?
	•	6	RD3. October 7th. Okay. 13.14.
	<ul> <li>6 Safe Drinking Water Act requirements.</li> <li>7 MR. BUDGE: Could we be provided a copy of</li> </ul>		Q. And your testimony didn't make
		8	reference to Exhibit 8.
	<ul> <li>this, John? Can you make a color copy of this?</li> <li>MR. SIMPSON: Yeah, let's go off the record</li> </ul>	9	But Exhibit 8 would be the source of
.	· •	10	the information for that testimony regarding the
	•	11	concentration levels?
		12	
	× •	13	A. No, it does refer to Expert Report
	13 looked at that, and I didn't see anything.		Exhibit 8 up here (indicating). You'll see
	14 (Recess.)	14 15	line 876.
	Q. (BY MR. BUDGE): So, Randy, back again		Q. Okay. Yeah. In looking at that same
	where we started on your testimony on page 31	16	graph, Exhibit 8, it appears that all of those
	discussing the sample site of RD3, and you talk	17	test locations, with the exception of RD3, are
	about had the highest concentration of 9.8	18	well below the 10 milligram per liter level; is
	milligrams per liter. And then you say that site	19	that correct?
	peaked in 2008 at 13.14 milligrams per liter, and	20	A. They are below the 10 milligram per
	then in October of '09 was 16.9 milligrams per	21	liter, yes.
	22 liter.	22	Q. And do you have explanation for the
	And then you go on to say that "The	23	variations that seem to occur from month to month
	24 concentration in the spring water feeding the	24	and from year to year, even though they're
Ľ	visitors center was 18.0 milligrams per liter."	25	relatively slight, other than for RD3?
	Page 47		Page 49
	1 What is the site number for the spring	1	A. Do I have explanation for why there's
	2 water feeding the visitor center that was 18?	2	slight variation in the concentrations detected?
	3 A. VC.	3	Q. Yes. One month there will be a 2 and
	4 Q. And when I look back at Exhibit 8,	4	the next month there might be a 5.
	5 which now identifies those sampling sites, the	5	Would that be
	6 second page, is my understanding correct that the	6	A. That would be cause for alarm. If it
	7 top of the second page is the site identification	7	varies from 2 to 2 1/2 or 1 to 2 1/2, we wouldn't
	8 number or letter?	8	be concerned about that because, you know, there's
	9 A. Yes.	9	vagaries of analytical testing, and there's
1	Q. And then in the bottom of the page	10	certainly there can be minor events, I suppose,
	1 would be the monthly sampling which began	11	in the ground water supply that could account for
	January 15th of 2007 and continues through it	12	that limited variation.
	.3 looks like September 3rd of 2009?	13	If, though, you go from 2 to 5 to 10,
	A. (No audible response.)	14	that is indicative of something significant going
	5 Q. Okay. Help me correlate, if you	15	on, in my judgment.
	6 could. You said a sample site of RD3 had a	16	Q. And the levels shown in RD3,
	7 nitrate level of 9.8. And at that time I think	17	particularly those cited in page 31 of your
	you were assumingly referring to 2007. And I	18	testimony, are all higher than what are even in
	9 couldn't see anything at okay.	19	the highest wells, 2 and 4; correct?
	20 So you're referring to the	20	A. That is well 2 and 4? On
2	October 15th, 2007 level for the reach 9.8?	21	October 2009, that is correct. In 2008, at 13.14,
	A. Well, the report states in 200	22	that would not be correct.
2			
	23 <b>2007.</b>	23	Q. If one were to eliminate wells 2 and 4
	Q. It said in 2008 RD3 peaked at 13.14?	24	and simply supply from the other wells, all would

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13 (Pages 46 to 49)

	Page 50		Page 52
1	within the same basic range of the other four test	1	A. What we do about it is a question that
2	sites: correct?	2	we are debating internally.
3	A. If you were if you made the	3	Q. And let's say that the over-the-rim
4	assumption that it didn't change at the other	4	delivery system was operational and water was
5	wells, and we don't have any way to judge that	5	being delivered from any combination of wells that
6	because any scientific way to judge that	6	was well within the standard you found to be
7	because samplings only occurred in September and	7	acceptable, within drinking-water standard of
8	October of this year of those wells.	8	10
9	Q. All right. Are these elevated nitrate	9	A. I didn't say that.
10	levels at site RD3 shown in Exhibit 8 and	10	Q. I'm saying that as an assumption.
11	discussed on page 31 of your testimony? The	11	A. All right.
$12^{11}$	levels that range from 9 to 18, those that are	$12^{11}$	Q. If the well delivery system was
13	above the drinking-water standard of 10, do you	13	
	• • •	$13 \\ 14$	operational and, of course, was being regularly
14	consider that to be polluted and contaminated		tested similar to your other sites being tested
15	water?	15	for nitrate and was well within the range of the
16	A. Yes.	16	nitrates of other water supplied and under your 10
17	Q. And so that water is still being	17	criteria, would that cause any concern to Clear
18	delivered to the facilities now and used in that	18	Springs? In other words, Mr. Cope says we're
19	polluted or contaminated state?	19	delivering the same water and it's obvious it's
20	A. That's correct.	20	the same water. So if the same water is coming,
21	Q. And does the fact that that water	21	is that going to cause you concern over nitrates?
22	supply is blended with all of the other sources,	22	A. Well, I do disagree with Mr. Cope on
23	which would lower the average obviously well below	23	that, that comment.
24	10, eliminate any concern that you put the fish in	24	Q. Okay.
25	any jeopardy?	25	A. It's certainly not the same water.
	Page 51		Page 53
	Lugo Ji		Faye 55
4	-	1	
1	A. No, I would not eliminate the concern.	1	All we can say is is what is the
2	<ul><li>A. No, I would not eliminate the concern.</li><li>Q. Okay.</li></ul>	2	All we can say is is what is the chemical makeup of the water. The chemical makeup
2 3	<ul><li>A. No, I would not eliminate the concern.</li><li>Q. Okay.</li><li>A. And the reason for that is that</li></ul>	2 3	All we can say is is what is the chemical makeup of the water. The chemical makeup of the water, several of the wells that you have
2 3 4	<ul><li>A. No, I would not eliminate the concern.</li><li>Q. Okay.</li><li>A. And the reason for that is that</li><li>water well, number one, the concentrations</li></ul>	2 3 4	All we can say is is what is the chemical makeup of the water. The chemical makeup of the water, several of the wells that you have selected have nitrate-nitrogen concentrations that
2 3 4 5	<ul> <li>A. No, I would not eliminate the concern.</li> <li>Q. Okay.</li> <li>A. And the reason for that is that</li> <li>water well, number one, the concentrations</li> <li>are appear to be increasing annually. And we</li> </ul>	2 3 4 5	All we can say is is what is the chemical makeup of the water. The chemical makeup of the water, several of the wells that you have selected have nitrate-nitrogen concentrations that are well within the range that Clear Springs has
2 3 4 5 6	<ul> <li>A. No, I would not eliminate the concern.</li> <li>Q. Okay.</li> <li>A. And the reason for that is that</li> <li>water well, number one, the concentrations are appear to be increasing annually. And we don't know why. So our level of risk is</li> </ul>	2 3 4 5 6	All we can say is is what is the chemical makeup of the water. The chemical makeup of the water, several of the wells that you have selected have nitrate-nitrogen concentrations that are well within the range that Clear Springs has historically received. Two of them are not.
2 3 4 5 <u>6</u> 7	<ul> <li>A. No, I would not eliminate the concern.</li> <li>Q. Okay.</li> <li>A. And the reason for that is that</li> <li>water well, number one, the concentrations are appear to be increasing annually. And we don't know why. So our level of risk is increasing as a consequence.</li> </ul>	2 3 4 5 6 7	All we can say is is what is the chemical makeup of the water. The chemical makeup of the water, several of the wells that you have selected have nitrate-nitrogen concentrations that are well within the range that Clear Springs has historically received. Two of them are not. Q. Uh-huh.
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14 (Pages 50 to 53)

	Page 54		Page 56
1	Q. And your proposal would be out of	1	A. Well, no, I we may have some
2	concern that even blending the RD3 source with the	2	capability at this particular site to do that. It
3	other waters would still pose risk to the fish	3	appears that RD3 our belief is, an unconfirmed
4	propagation in the Snake River Farm facility?	4	belief, that RD3 water is coming out at a higher
5	A. The Snake River brood stock and the	5	elevation than some of the other sites.
6	research program.	6	Q. Okay.
7	Q. And what about in the farm production	7	A. So if that's the case, conceivably you
8	itself?	8	could divert that water someplace else. But
9	A. In the farm production itself. If it	9	whether that is possible engineeringwise, we don't
10	affects the Snake River brood, then there's no	10	know.
11	reason to believe it would not affect if it is	11	Q. I understand.
12	an endocrine disrupter, that it would not affect	12	MR. BUDGE: Okay. Let's break for the day.
13	fish performance on the farms as well.	13	It's five o'clock.
14	Q. Would you agree that one difference	14	(Discussion.)
15	between the water supplied from the springs and	15	MR. BUDGE: Just one other question and,
16	the water supplied from the wells is that you	16	then we'll break for the day. I apologize.
17	would have control over that supply, in the sense	17	Q. Back on the discovery requests. We
18	that if there was an elevated level detected in	18	had requested on request for production 14 "All
19	the wells, you could either alter the wells to	19	documents that support Clear Springs' objections
20	eliminate the high nitrate delivery or you could	20	to the mitigation plan and related applications."
21	shut it off altogether, whereas	21	And if I understand it from reading
22	A. No, I haven't considered that as	22	your testimony, as well as Mr. Cope's, part of
23	something. We don't have control over the wells.	23	your objection focused upon the image, the effect
24	Q. You would have control over those if	24	on the business, the marketing if you had to use
25	they were delivering the water, you could always	25	well water as opposed to full spring water;
	Page 55		Page 57
1	-	1	Page 57 correct?
1 2	Page 55 say "Shut it off"? A. Is that, Mr. Budge, sort of like	1	
	say "Shut it off"?		correct?
2	say "Shut it off"? A. Is that, Mr. Budge, sort of like	2	correct? A. Right.
2 3	say "Shut it off"? A. Is that, Mr. Budge, sort of like agreeing to convert so many acres of land and it	2 3	correct? A. Right. Q. And we had a request for production on
2 3 4 5 6	say "Shut it off"? A. Is that, Mr. Budge, sort of like agreeing to convert so many acres of land and it doesn't happen? And we don't have high confidence that way, that if we were to make a request like that, that that would happen.	2 3 4 5 6	correct? A. Right. Q. And we had a request for production on that that has not been fully responded to. I think you indicated there was some marketing information that you were not fully
2 3 4 5 6 7	<ul> <li>say "Shut it off"?</li> <li>A. Is that, Mr. Budge, sort of like</li> <li>agreeing to convert so many acres of land and it</li> <li>doesn't happen? And we don't have high confidence</li> <li>that way, that if we were to make a request like</li> <li>that, that that would happen.</li> <li>Q. You don't envision that Clear Springs</li> </ul>	2 3 4 5	correct? A. Right. Q. And we had a request for production on that that has not been fully responded to. I think you indicated there was some marketing information that you were not fully familiar with that has not been produced?
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15 (Pages 54 to 57)

	Page 58		Page 60
1	A. That's right.	1	haven't been produced under objection?
		2	A. That's correct.
2	Q. Are there any advertising brochures or	3	
	media that relate to that branding, the image, the		MR. BUDGE: Okay. Let's resume tomorrow
	marketing, other than what you've identified in	4 5	morning.
5	exhibits?	5	(Deposition adjourned at 5:02 p.m.)
6	A. I do I'm not aware of anything else	7	(Signature requested.) -oOo-
8	that refers to the use of pure spring water ideal for growing rainbow trout.	8	-000-
9		0 9	
10	Q. Okay.	10	
11	A. We do have trade journal pictures,	11	
$12^{11}$	advertisements, that show a chef or two. And	12	
13	they're against with the backdrop of the Snake	13	
$14^{13}$	River Canyon, perhaps some springs there. I don't I'm not conversant in that. We have	14	
15	that. But that's	$14 \\ 15$	
$16^{15}$		$16^{13}$	
17	Q. In my earlier inquiry with Larry Cope	17	
18	on this issue concerning some of the values that were in the testimony, the value of the company,	18	
19	the current sales, the projected future sales,	$10 \\ 19$	
20	would that all be information that would be based	20	
21		20	
22	upon the company records?	22	
23	<ul><li>A. Could you repeat the question?</li><li>Q. In other words, you had testimony here</li></ul>	22	
24	regarding the value of the company. You had	24	
25	testimony regarding the sales revenues this year	25	
25	testimony regarding the sales revenues this year	2.5	······································
	Page 59		
1	that were projected and next year's that were		
2	projected. Your testimony was slightly different		
3	than Mr. Cope.		
4	Was your testimony based upon	1	
5	financial records of the company?		
6	A. No. My my testimony is general		
7	knowledge about what		
8	Q. What's the source of your general		
9	knowledge of company value or company revenues,		
10	sales revenues?		
11	A. Well, I attend Clear Springs board		
12	meetings.		
13	Q. And would it be records that are		
14	provided at Clear Springs board meetings?		
15	A. There would be a record of the an		
16	annual budget that would show a projected		
17	expectation for for sales.	1	
18	Q. And so that would be the source of the		
19	knowledge that you have that you then relayed and		
20	included in your testimony?		
21	A. Ultimately.		
22	Q. So company records are the source of		
23	that information, then?		
24	A. That's correct.		
25	Q. But those are part of the records that		
			16 (Pages 58 to 60)

16 (Pages 58 to 60)

Page 63

### 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	)	
	)	VOLUME II
		(Pages 63-181)

# CONTINUED DEPOSITION OF JOHN RANDOLPH MacMILLAN, PH.D. NOVEMBER 11, 2009

REPORTED BY:

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

Notary Public

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6	Suite 102, Boise, Idaho, commencing at 8:42 a.m.	6	EXHIBITS
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8	Shorthand Reporter and Notary Public within and	8	26 - Nitrate/Nitrite Nitrogen Data on 97
9	for the State of Idaho, in the above-entitled	9	Spring Water at Snake River Farm
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12	APPEARANCES:	12	and Fry to Nitrate Exposure article
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21	RACINE, OLSON, NYE, BUDGE & BAILEY, CHTD.	22	
22 23	BY MR. RANDALL C. BUDGE MS. CANDICE M. McHUGH	22	
23	101 Capitol Boulevard, Suite 208	24	
25	Boise, Idaho 83702	25	
	·	20	
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1	APPEARANCES (Continued)	1	(Exhibit 25 marked.)
2		2	
3	Also Present:	3	JOHN RANDOLPH MacMILLAN, PH.D.,
4	TJ Budge	4	having been previously sworn to tell the truth
5	Charles E. Brockway	5	relating to said cause, testified as follows:
6		6	-
7		7	EXAMINATION
8		8	BY MR. BUDGE:
9		9	Q. Good morning.
10		10	A. Good morning.
11		11	Q. Dr. MacMillan, yesterday we had had
12		12	some discussion regarding your expert report,
13		13	Exhibit 8.
14		14	And the first page of that was an
15		15	aerial photograph of the Snake River Farm facility
16		16	on which you had identified various sites where
17		17	water sampling had been taken?
18		18	A. Yes.
19		19	Q. And I believe the second page of that
20		20	exhibit and third page that we also discussed had
21		21	a coding system that identified each of those
22		22	sites by number or letter and also the results by
23		23	site of the samples taken reflecting nitrate
24		24	levels over this sampling period of January 15th,
25	and Photos and a support and a support for a demonstration for the product of the subport for a sub-sub-subport product of the subport of the subport of the subport of the subport of the	25	2007, through September 3rd, 2009?
			2 (Pages 64 to 67)

	rage oo		rage 70
11	A. Yes.	1	those approximate locations.
2	Q. Okay. We also had some discussions	2	Q. And when I look at Exhibit 8 that
3	regarding your Exhibit 9. Exhibit 9 consists of a	3	identifies those nine sample sites, there is a
4	number of pages that describe where the water goes	4	shorter period of data relating to sites RD3A,
5	in various lines and where measurements were taken	5	RD3B, and VC, which are only tested for the period
6		6	
	at the Snake River Farm facility.	7	January 7th of 2009 through May 6th, 2009?
7	And the last page of that is a		A. Right.
8	schematic, not to scale, but a schematic that	8	Q. And then that sampling did not
9	shows the entire Snake River complex; correct?	9	continue on subsequent to that date?
10	A. Correct.	10	A. That's correct.
11	Q. And am I correct to understand that	11	Q. Can you just give me an explanation on
12	Exhibit 9, the text part, the first looks like	12	that?
13	five pages, references various structures,	13	A. Well, that area is covered by weeds
14	pipelines, and other facilities identified on that	14	and stinging nettles, and so access to the point
15	schematic?	15	was not available. Now that DEQ actually, DEQ
16	A. That's correct.	16	is coming in to sample those sites next week. And
17	Q. And so the numbers that are shown on	17	they requested specifically that we make sure that
18	the schematic, the last page of Exhibit 9, tie	18	the weeds are cleared away so they can gain access
19	into the description that you provided in the	19	to them.
20	preceding pages?	20	And the visitor's center let's see.
21	A. That's correct.	21	We started I can't see the date. But that's
22	Q. Okay. And looking at that Exhibit 9,	22	what? January of '09? This is an evolving
23	the last page, the schematic, which you have in	23	process for us to try to identify where the
24	front of you, which we've identified as Deposition	24	likely which springs that feed that complex are
25	Exhibit No. 25.	25	most likely to be the major contributor. And if
			Dava 71
	Page 69		Page 71
1	And can you confirm Exhibit 25 is a	1	we can identify that, then maybe we can do
2	copy of the same schematic that's the last page of	2	something to divert that water away from our
3	Exhibit 9?	3	operations.
4	A. It is a copy that's been adjusted or	4	Q. Okay. Going down looking at
5	amended to reflect the approximate location of our	5	Exhibit 25, sample site SR1, which you identified
6	additional nitrate-nitrogen sampling.	6	to be at the head of the SRF raceway?
7	Q. And would you just go ahead and	7	A. Correct.
8	describe the handwriting that you have added on	8	Q. Would that be located on the fresh
9	Exhibit 25, which would be new or additional to	9	line?
10	what one would see examining Exhibit 9. And the	10	A. That is the fresh line.
11	confusion would be your testimony Exhibit 9, and	11	Q. And so if one traces the fresh line
12	we're referring to Deposition Exhibit 25.	12	back, the source of the fresh line would be
13	A. In deposition No. 25, I've located the	13	identified as spring No. 3?
14	approximate approximate locations of the	14	A. No.
15	additional nitrate-nitrogen sampling that we	15	Q. Or No. 3?
16	instituted attempting to identify particular	16	A. No.
17	springs or spring areas that might be most	17	Q. What is
18	contributory to the elevated nitrate-nitrogen	18	A. The spring the springs all are
19	concentrations that we see that we have seen in	19	combined together into our collector. The cobble
20	SR1.	20	on the map is cobble that rock that we put down
21	So all of those sites that were in SRM	21	over a screen to try to prevent breaches in
22	(sic) expert report Exhibit 9, I believe 8 or	22	security. So it's an attempt to cover it up and
23	9, where we identify those concentrations at all	23	make it less desirable for people to interfere
24	those sites, these circled sites on Exhibit	24	with our water.
25	Deposition Exhibit 25 are intended to represent	25	So you can't see how all of this water

3 (Pages 68 to 71)

	Page 72		Page 74
1	comes together, then, because it's covered up.	1	the month, still at monthly intervals, though.
2	But it's when you go to the site, you can see a		Q. Okay. So just so I understand, maybe
3	few spots where water flow is coming out.	3	we should back up and start with the springs
4	The RD3 site is that there's a	4	themselves. I was of the impression that there
5	particular pipe that you can access up above much	5	were a number of springs that emanated over a
6	of the rest of the bank there or the structures	6	distance I think you described as
7	there. And that that's there's a pipe there	7	A. 300 yards or so.
8	that you can see.	8	Q 300 yards.
9	Q. Okay. Looking at this Exhibit 5, in	9	A. That's right.
10	the top-left corner there are a number of straight	10	Q. Larry Cope described it similarly.
$10 \\ 11$	lines that come from what's identified as	11	And I understood that that water then emanated out
$12^{11}$	"spring," and then there's a line, a black line,	12	of the springs, entered into some ditch or canal,
$13^{12}$	that has a No. 1 on it, one that has a No. 2, a	13	and then went into a collection pipe and was
$14^{13}$		14	districted out through your facilities.
$14 \\ 15$	No. 3, a No. 4.	$15^{14}$	And Larry Cope gave me the impression
$15 \\ 16$	Those are not identifying pipelines?	16	
17	A. Well, no, they could be. 1, for	17	when I inquired of him, and it could well be
	example, is a pipeline, I believe, that feeds the	18	confusion on my part, that there were separate
18 19	country club and the homeowners' association	$10 \\ 19$	lines, pipelines, into different spring sources. And this Exhibit 25 at least seemed to indicate
	there.	20	that those various lines that are identified in
20	Q. And No. 2?	1	
21	A. And if you refer to the description,	21	black might be separate pipeline.
22	okay and I don't know what exhibit this is,	22 23	But you're indicating no, that
23	but		A. Well, I believe 1 No. 1, without
24	Q. That would be your Exhibit 8.	24 25	the circle, is a pipeline.
25	A. Refer to that.	25	Q. Okay.
	Page 73		Page 75
1	Q. Excuse me. Exhibit 9.	1	A. And that goes to the country club and
2	A. Okay. So Exhibit 9 describes those	2	homeowners' association.
3	those sites. What's and I apologize, Randy,	3	Q. Okay. What about No. 2?
4	that we have we have similar numbers for our	4	
			A. And then 3.
5	for Exhibit 9, and then similar numbers for	5	Q. Or excuse me. Go ahead. 3.
5 6	for Exhibit 9, and then similar numbers for Exhibit must be 8. And so it does get	5 6	
			Q. Or excuse me. Go ahead. 3.
6	Exhibit must be 8. And so it does get	6	Q. Or excuse me. Go ahead. 3. A. 2, 2 is a separate line as well. It goes to the much of the raceways we have at the research station.
6 7	Exhibit must be 8. And so it does get confusing.	6 7	<ul><li>Q. Or excuse me. Go ahead. 3.</li><li>A. 2, 2 is a separate line as well. It goes to the much of the raceways we have at the</li></ul>
6 7 8	Exhibit must be 8. And so it does get confusing. Now that we've put on Exhibit 25,	6 7 8	<ul> <li>Q. Or excuse me. Go ahead. 3.</li> <li>A. 2, 2 is a separate line as well. It goes to the much of the raceways we have at the research station.</li> <li>Q. Okay.</li> <li>A. Okay.</li> </ul>
6 7 8 9 10 11	Exhibit must be 8. And so it does get confusing. Now that we've put on Exhibit 25, we've put all those numbers together, I tried to	6 7 8 9 10 11	<ul> <li>Q. Or excuse me. Go ahead. 3.</li> <li>A. 2, 2 is a separate line as well. It goes to the much of the raceways we have at the research station.</li> <li>Q. Okay.</li> <li>A. Okay.</li> <li>Q. So that is a line from a specific</li> </ul>
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6 7 8 9 10 11 12 13	Exhibit must be 8. And so it does get confusing. Now that we've put on Exhibit 25, we've put all those numbers together, I tried to separate those out with the circle. Those circled ones are the ones that we sample for the extra nitrate. And then SR1, as you do your due	6 7 9 10 11 12 13	<ul> <li>Q. Or excuse me. Go ahead. 3.</li> <li>A. 2, 2 is a separate line as well. It goes to the much of the raceways we have at the research station.</li> <li>Q. Okay.</li> <li>A. Okay.</li> <li>Q. So that is a line from a specific spring outlet or collection point?</li> <li>A. Collection point.</li> </ul>
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4 (Pages 72 to 75)

	Page 76		Page 78
1	And if the people who had constructed	1	A. It's unnumbered.
2	this farm, if they had done it and with and	2	Q. Okay.
3	left us with a record, we would know exactly how	3	A. When the people made this diagram,
4	all that works, but we don't. We don't have that	4	they were they were their task was to give a
5	kind of information.	5	general schematic of the pipes, some of the pipes
6	Q. So on No. 1, the pipe that goes to the	6	that we have, that we know about, and then
7	country club	7	describe how we measure the water going through
8	A. Uh-huh.	8	the system.
9	Q there would be no nitrate sampling	9	Their interest in this design in
10	site on that line?	10	putting this map together was not to specifically
11	A. Well, we have an approximate site.	11	identify pipes or specifically identify sites
12	RFS site. RFS site, we have a there's a	12	where we might sample water. So we've tried to
13	blue yeah, there's a blue line.	13	adapt this schematic to that.
14	Q. Let me clarify. When you said "RFS,"	14	Q. Okay. So some instances the black
15	you were meaning site FS?	15	line numbered represents a pipe, in some instances
16	A. Yes. I was going to say yeah, site	16	it simply represents a direction of water flow?
17	FS.	17	A. That's correct.
18	Q. Site FS. Go ahead.	18	Q. Okay. Let's take them one at a time.
19	A. That is below where I believe your	19	And I think we've already discussed No. 1 goes to
20	expert sampled you sampled the Fred Nihart	20	the country club, and that's a pipe.
21	pipe. There's a spigot there that comes out. And	21	Is No. 2 a pipeline or simply a
22	I believe that's where you sampled.	22	direction of flow?
23	Well, below that on the other side of	23	A. Well, I would really need to refer to
24	the road from where the spigot comes out is a box	24	our to this document (indicating) to be sure,
25	that it's a locked box. And we take that water	25	because now you've gotten me confused.
	Page 77		Page 79
1	to deliver to our research building.	1	Q. Okay. Refer to your Exhibit A. And I
2	Q. And	2	read through that and thought I understood it
3	A. And there's a blue line.	3	until you described that some lines were not pipes
4	Q. There's the blue line.	4	and some were. So that is why I think we need
5	And is that a pipeline?	5	some clarification. And I'm looking at the first
6	A. That is a pipe.	6	page of your what says "JMR Expert Report,
7	Q. And that is line numbered 4?	7	Exhibit 9."
8	A. 4, that's correct.	8	A. JRM.
9	Q. Okay.	9	Q. "JRM Expert Report, Exhibit 9." And
10	A. Well, I don't think that's line 4.	10	then down the heading "Where does the water go?"
11	That's just another pipe that we we deliver	11	And we discussed No. 1 is the black line that goes
12	to specifically to the research building,	12	to the golf course and housing development.
13		13	A. Okay.
14	drinking.	14	Q. And then I think you identify there
15	Q. Excuse me for interrupting.	15	approximately 1.5 cfs?
16	A. Yeah.	16	A. That's correct.
17	Q. So it's not the blue line that's	17	Q. The next one down is No. 2
18	identified by the No. 4 that goes to the research	18	A. That's correct.
19		19	Q which goes to the Snake River brood
2 0 <sup>°</sup>	0	20	raceway and spawn building?
21	No. 4 with the arrow.	21	A. That's correct.
22	The blue line, where it says from	22	Q. And you're saying No. 2 is not a pipe?
23	drinking fountain to research building, that blue	23	A. Well, it is a pipe. That's what they
24	line	24	say here, it is a pipe.
25	Q. That's unnumbered, then?	25	Q. 1 is a pipe. 2 is a pipe. And let's
			5 (Pages 76 to 79)

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	Page 80		Page 82
	1 go to No. 3.	1	highlighted in yellow everything around the word
	A. 3 they say is a pipe, but that's not	2	"Cobble" in the top-left corner of Exhibit 25 that
	3 exactly correct, because we have a big collector	3	is surrounded by the broken line.
	4 box. And you've been there. You've seen it. And	4	And that would be what you call a
	5 you can see all this water being collected into a	5	collection area?
	6 cement flume, and then that gets distributed to	6	A. Right. But it's not that's right.
	<ul> <li>the Snake River Farm raceways.</li> </ul>	7	Q. And if this over-the-rim plan were to
	8 So approximately the pipe numbered 3,	8	be approved, is that collection area where the
		9	water from the wells would
1	9 but there's more than just pipe No. 3 delivering	10	A. That's right.
	•	11	•
1	v	12	Q end up? A. That's right.
1		13	
1		$13 \\ 14$	Q. And that would be your desire?
1	0	$14 \\ 15$	A. That's right. That's what our water
1			right is. So that's where it would have to be.
1		16	Q. And referring to the next page as you
1	÷.	17	continue on on your Exhibit 9 with the text
1		18	description under the topic "Reuse water line,"
1		19	you describe in the second sentence that "All the
2	•	20	water that runs through the SRB raceway," which is
2		21	line No. 2, "and from the spawn building is
2	• •	22	collected into the reuse pipe and is sent to"
2	<b>U</b>	23	A. Snake River Farms.
2		24	Q "SRF."
2	5 building or into the SRF raceway?	25	That would be SRF raceway?
	Page 81		Page 83
	2	1	
	-	1	-
	A. Into the SRF raceways.	1	A. That's right.
	<ol> <li>A. Into the SRF raceways.</li> <li>Q. And then in your testimony you have</li> </ol>	2	<ul><li>A. That's right.</li><li>Q. And when you refer to the word "spawn</li></ul>
	<ul> <li>A. Into the SRF raceways.</li> <li>Q. And then in your testimony you have</li> <li>some description we'll go into later of what those</li> </ul>	2 3	<ul><li>A. That's right.</li><li>Q. And when you refer to the word "spawn building" here, would that be the building</li></ul>
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	Page 84		Page 86
1	Q. Okay.	1	Q. Okay.
2	A. The spring flow has been consistent.	2	A. We check the water flow weekly.
3	We've always had water coming through the system.	3	Whether we are hitting the water flow, doing the
4	The water tower No. 5 is where we fill	4	measurement at the same time as the golf course is
5	up we have water going in there. That's where	5	pulling their water, can't tell you.
6	we fill up water into the hauling tanks for fish	6	Q. Now, if we turn to the recent test
7	so we can back up a truck to that with a big tank		sites that are identified here.
8	on it and put water in it. That is first-use	8	SR1 that I think you described was on
9	water. Okay?	9	the fresh line only; correct?
10	Then we have a we do have lawns, so	10	A. SR1 is just the fresh line.
11	we irrigate the lawns. That is sprinkler box 18,	11	Q. And with respect to the water that
$12^{11}$	which is located okay. Thank you. So that's	12	
$12 \\ 13$		13	goes to the SRF raceway that you characterize as
$13 \\ 14$	coming off the this diagram would show that	$14^{13}$	reuse coming from the SRB raceway, is there any
$14 \\ 15$	that's coming off the fresh line. So then also	15	water-quality sampling or testing done on that?
$15 \\ 16$	off the fresh line, water is delivered to the	16	A. Not at this point to SRB raceways.
	hatchery building.		Q. And with respect to the reuse water
17	And then 22 off the fresh line is	17	that goes from the hatchery building at point 19
18	where the golf course receives water and pumps to	18	into the SRF raceway, is there any water-quality
19	their system.	19	testing done on that water?
20	Q. I believe that was the question that	20	A. I don't see point 19, but no, there's
21	Larry Cope referred to you yesterday.	21	not any.
22	A. Okay.	22	Q. (Indicating.)
23	Q. So that golf course line comes off of	23	A. Okay. That's from the hatch house,
24	the fresh line and then goes on to supply the golf	24	the hatchery building to the SRF raceways.
25	course?	25	Q. Yes.
	Page 85		Page 87
1	A. That's right.	1	A. No, there's not.
2	Q. And is that used for irrigation water	2	Q. And what goes on in those two
3	by them?	3	facilities that would have an impact on the
4	A. That's my understanding. They pump	4	quality of water going into those raceways?
5	that water. And I think that, you know, early on	5	A. Well, at both the SRB raceway, the
6	in our efforts to find a suitable mitigation plan,	6	Snake River brood raceways, we have primarily
7	that could have been what caused some confusion	7	brood stock there. These are our selectively bred
8	for your folks because you thought maybe we were	8	brood stocks, and they're part of our selective
9	pumping water. But that's not our pump. That's	9	breeding program, as well as those circulars that
10	the golf course's pump.	10	says "Brood Circulars," those are all part of
11	Q. And they have a well right there in	11	that.
12	that same location as No. 22?	12	But those raceways are about the third
13	A. Could be. I don't know what they have	13	the normal size of a farm raceway. And we do fish
$14^{10}$	there.	$14^{10}$	culture research; we do nutrition research in
15	Q. Okay. And to the extent of what they	15	those raceways. So it's a combination of things
$16^{10}$	take at No. 22, I believe they would only irrigate	16	happening in the SRB raceways.
17		17	The hatchery building is where we have
1 '		1 - 1	
18	during the summer golf season and at night, I believe?	18	our eggs and early life stage
18 19	believe?	18 19	our eggs and early life stage. O Those would be eggs that came from
19	believe? A. I don't know. They certainly irrigate	19	Q. Those would be eggs that came from
19 20	believe? A. I don't know. They certainly irrigate at times during the day because I see it.	19 20	Q. Those would be eggs that came from Soda Springs?
19 20 21	<ul><li>believe?</li><li>A. I don't know. They certainly irrigate</li><li>at times during the day because I see it.</li><li>Q. The fluctuation at 22, when they have</li></ul>	19 20 21	<ul><li>Q. Those would be eggs that came from</li><li>Soda Springs?</li><li>A. Or from the Snake River brood</li></ul>
19 20 21 22	<ul><li>believe?</li><li>A. I don't know. They certainly irrigate at times during the day because I see it.</li><li>Q. The fluctuation at 22, when they have water that turns on and off, does that cause any</li></ul>	19 20 21 22	<ul><li>Q. Those would be eggs that came from</li><li>Soda Springs?</li><li>A. Or from the Snake River brood</li><li>operation. And so those are that's what goes</li></ul>
19 20 21 22 23	<ul><li>believe?</li><li>A. I don't know. They certainly irrigate at times during the day because I see it.</li><li>Q. The fluctuation at 22, when they have water that turns on and off, does that cause any fluctuation that has any adverse impact on your</li></ul>	19 20 21 22 23	<ul><li>Q. Those would be eggs that came from</li><li>Soda Springs?</li><li>A. Or from the Snake River brood</li><li>operation. And so those are that's what goes</li><li>on there. And the fish are respiring and pooping</li></ul>
19 20 21 22	<ul><li>believe?</li><li>A. I don't know. They certainly irrigate at times during the day because I see it.</li><li>Q. The fluctuation at 22, when they have water that turns on and off, does that cause any</li></ul>	19 20 21 22	<ul><li>Q. Those would be eggs that came from</li><li>Soda Springs?</li><li>A. Or from the Snake River brood</li><li>operation. And so those are that's what goes</li></ul>

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	Page 88		Page 90
1	But there's still waste products that	1	the springs. So we're going to have to put in
2	get into the water. And so that's why we call	2	more effort, more research effort, to try to
3	that the reuse line. So we don't want the reuse	3	identify and determine whether or not it's
4	water to go into the hatchery building where the	4	possible to deflect that water away from not only
5	most sensitive life stages are.	5	the fresh line but the reuse line too.
6	Q. Would I be correct to assume that	6	At this point, as we talked about
7	water going into the brood stock raceways, the	7	yesterday, we don't know, but there is great
8	research building, and the hatchery building are	8	suspicion, that nitrate-nitrogen is an endocrine
9	of a greater concern with respect to water quality	9	disrupter. And that changes the entire long-term
10	than what ends up in the SRF raceway?	10	history of production or the process of raising
11	A. Greater concern?	11	these fish and doing the research and doing the
12	Q. In other words, it's okay to use reuse	12	brood stock selection.
13	water in the SRF raceway, but would you use reuse	13	And just because the way those
14	water in the hatchery building or in your brood	14	disrupters work, you just need a little bit. So
15	stock area?	15	that's what the scientific literature says. We
16	A. Well, we would prefer to have	16	don't know what the concentration is you need for
17	first-use water all the time, but we don't. And	17	nitrate. But scientific literature talks very
18	so to try to maximize the use of the water, we've	18	extensively about how endocrine disrupters can
19	speciated it the way we have.	19	affect all of us, including fish, at very low
20	Clearly for research and brood stock	20	levels.
21	and hatch early life stages, which are most	21	And so we're going, "Here we've got
22	sensitive to changes in water quality or to bad	22	the selective breeding program. We've got early
23	water quality or relatively good water quality,	23	life stages, which we know are more sensitive to
24	the physiology is more sensitive. You do want to	24	things. What are we going to do with this
25	use the better of the water if you have that	25	nitrate?" So it's a challenge.
	Page 89		Page 91
1	-	1.	
1 2	choice.	1 2	Q. At this point you don't know that
3	Q. On the top-left corner of Exhibit 25 where you've identified the location of the	3	there's any problem or effect on your operation, but you're concerned that there may be if the
4		4	nitrate levels increase, or do you have concerns
5	various sample sites, FS, 1, 2A, 3, 3A, 3B, and VC, those all appear to be located in an elevation	5	at existing levels?
6	above the collection area?	6	A. At existing levels.
7	A. That's well, all the water is above		Q. And the one test site that has the
8	the collection area.	8	elevated levels is the one that's VC?
9	Q. Okay.	9	A. No. 3, RD3 has elevated
10	A. But including all the 3As, 3, and the	10	concentration. All of the 3's have elevated
11	VC.	11	concentrations.
12	Q. And how and why were those various	12	Q. Okay.
13	sites selected?	13	A. Now, I think, you know and I'd have
$14^{10}$	A. Well, we had, for the most part, good	14	to look at the data there, but 2 RD2 has what
15	access to it. It's coming from instead of from	15	we would call elevated nitrate compared to the
16	the left of the cobble, it comes from the right of	16	history.
17	the cobble. So that led us to think, well, maybe	17	Q. Let's look at your Exhibit 8 on that
18	it is a different I mean there is some	18	point. I thought yesterday we had identified as
19	difference in where the water is coming from.	19	RD3 is the only one that has had any exceedance of
20	•	20	10, the drinking-water standard?
1	And our enorts now to try to try		
21	And our efforts now to try to try to differentiate the source of the water the	21	A. Right. But we're not just concerned
21 22	to differentiate the source of the water the		A. Right. But we're not just concerned about the drinking-water standard. We're talking
22	to differentiate the source of the water the different sources of water, that's what we've come	22	about the drinking-water standard. We're talking
	to differentiate the source of the water the different sources of water, that's what we've come up with today.		about the drinking-water standard. We're talking about the elevation from our historic 2 to 3,
22 23	to differentiate the source of the water the different sources of water, that's what we've come	22 23	about the drinking-water standard. We're talking

8 (Pages 88 to 91)

1When I say 4 or 5's, I'm referring to milligrams2per liter of nitrate-nitrogen. And so that's3that's a concern.4We've had it looks like almost a57 milligram per liter at 2A or is that RD2?6That would be RD2. And so, you know, the7messiness of this at this point is we don't we8don't have a good way to to differentiate all9the springs that feed into that complex. And so10this this is our early attempt at trying to do11that.12And RD2, while it's a stable point, we13always go back to that point to measure, we14don't we don't know where that water is coming15from.16So and the same thing, you go back17to RD1 or even the what we call the FS spring,18there is multiple water waters going to that19or springs going to that spot too.20So it is a complicated thing that21Q. And on that point, when I look at this22Q. And on that point, when I look at this23that sorting.24Q. And on that point, when I look at this25page 2 of Exhibit 8 of your testimony we're25Q. And I may have missed this in your	into eptic t, n, and hat it ne itable who action rlier nitrates d upon a les,
2       per liter of nitrate-nitrogen. And so that s       2       samples?         3       that's a concern.       3       A. They would look at 5, DEQ gets into         4       We've had it looks like almost a       4       motion to do something about try to do         5       7 milligram per liter at 2A or is that RD2?       5       something to change practices or if it's a septic         6       That would be RD2. And so, you know, the       6       something to change practices or if it's a septic         7       messiness of this at this point is we don't we       8       don't have a good way to to differentiate all         9       that.       7       because they know that 10 is even worse.       9         10       this this is our early attempt at trying to do       10       they have don't have agood way to to differentiate all         9       0. And RD2, while it's a stable point, we       11       A. 10 is the 10.01 is going to be the         11       that.       11       A. 10 is the 10.01 is going to be the         12       And RD2, while it's a stable point, we       13       Q. Anything under that would be suitable         13       always go back to that point to measure, we       13       Gon't we don't know where that water is coming       for drinking water?         14       form.	into eptic t, n, and hat it ne itable who action rlier nitrates d upon a les,
3that's a concern.3A. They would look at 5, DEQ gets into motion to do something about try to do something to change practices or if it's a septic system leaking, whatever, try to identify it, because they know that 5 is contamination, and they know that 5 is contamination, and they know that 10 is even worse.9the springs that feed into that complex. And so this this is our early attempt at trying to do that.9Q. And what point would they say that it shouldn't be used for drinking water?11that.10is the 10.01 is going to be the limit for drinking water.13always go back to that point to measure, we don't we don't know where that water is coming from.14A. 10 is the 10.01 is going to be the limit for drinking water.14don't we don't know where that water is coming from.14For drinking water.15from.15A. That well, that's depends on who you ask. If you ask EPA, they won't take action uutil 10.18there is multiple water waters going to that or springs going to that spot too.19With respect to your comment earlier that these testings gave you concern that nitrates were on the increase, do you do that based upon a comparison of what you see in your samples, just in the pretty early stages of trying to do 2121Exhibit 8, after January of 2007 with some baseline established prior to 2007?24Q. And on that point, when I look at this 25page 93Page11looking at, only RD3 has three tests taken over1report.	eptic t, n, and hat it ne itable who action rlier nitrates d upon a les,
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<ul> <li>18 there is multiple water waters going to that</li> <li>19 or springs going to that spot too.</li> <li>20 So it is a complicated thing that</li> <li>21 we're trying to sort through. And we're really</li> <li>22 just in the pretty early stages of trying to do</li> <li>23 that sorting.</li> <li>24 Q. And on that point, when I look at this</li> <li>25 page 2 of Exhibit 8 of your testimony we're</li> <li>26 Page 93</li> <li>1 looking at, only RD3 has three tests taken over</li> <li>18 Q. With respect to your comment earlier</li> <li>18 there is multiple water waters going to that</li> <li>18 Q. With respect to your comment earlier</li> <li>19 that these testings gave you concern that nitrates</li> <li>20 we're on the increase, do you do that based upon a</li> <li>21 comparison of what you see in your samples,</li> <li>22 Exhibit 8, after January of 2007 with some</li> <li>23 baseline established prior to 2007?</li> <li>24 Q. And on that point, when I look at this</li> <li>25 page 2 of Exhibit 8 of your testimony we're</li> <li>25 Page 93</li> <li>26 Page 93</li> <li>27 Page 93</li> <li>28 Page</li> </ul>	nitrates 1 upon a les,
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20So it is a complicated thing that20were on the increase, do you do that based upon a21we're trying to sort through. And we're really21comparison of what you see in your samples,22just in the pretty early stages of trying to do22Exhibit 8, after January of 2007 with some23that sorting.23baseline established prior to 2007?24Q. And on that point, when I look at this24A. That's correct.25page 2 of Exhibit 8 of your testimony we're25Q. And I may have missed this in yourPage 931looking at, only RD3 has three tests taken over1report.	l upon a les,
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23       that sorting.       23       baseline established prior to 2007?         24       Q. And on that point, when I look at this       24       A. That's correct.         25       page 2 of Exhibit 8 of your testimony we're       25       Q. And I may have missed this in your         Page 93         1       looking at, only RD3 has three tests taken over       1       report.	e
24       Q. And on that point, when I look at this       24       A. That's correct.         25       page 2 of Exhibit 8 of your testimony we're       25       Q. And I may have missed this in your         Page 93         1       looking at, only RD3 has three tests taken over       1       report.	-
25       page 2 of Exhibit 8 of your testimony we're       25       Q. And I may have missed this in your         Page 93         1       looking at, only RD3 has three tests taken over       1       report.	
Page 93 Page 1 looking at, only RD3 has three tests taken over 1 report.	
1 looking at, only RD3 has three tests taken over 1 report.	our
	Page 95
3 taken over this three-year period that would 3 reflected in your testimony that would lead to	
4 exceed the 10 milligram per liter drinking-water 4 that conclusion?	
5 standard. And I understood and maybe I was 5 A. In our material provided to you I	- I
6 wrong. I understood you to say maybe yesterday, 6 don't know that I put it in the report itself.	
7 or certainly Larry Cope did, that it would only be 7 But we provided to you from 1999 until current,	
8 considered polluted by him if you exceeded the 8 approximately current, what those levels were.	
9 drinking-water standard of 10. 9 Q. Okay. So you looked at the others	
10 So are you considering water at the 10 over the period 1999 up until 2007?	
11 Clear Springs facility now, based on these 11 A. Uh-huh.	
12 samples, to be polluted or contaminated, other 12 Q. And based on a comparison of the '99	
13 than those four samples that were taken at RD3? 13 to 2007 and 2007 on it gave you concern?	e '99
14 A. Yes. Pollution occurs, according to 14 A. That's right. The other the other	
15 state law, state regulations, if you exceed the 15 what I did put in the report was reference to	?
16 background level of the concentrations in ground 16 IDEQ's two reports on on their investigations	er
17 water, you are polluting the water. There's 17 of nitrate levels in Thousand Springs area.	er to
18 pollution. 18 And in those two reports they the	er to ations
19The way the Safe Drinking Water Act19first report they identify some increase in	er to ations
20 works, they do identify a maximum contaminant 20 concentrations. And then in the second report	er to ations
21 level of 10 milligrams per liter nitrate-nitrogen. 21 they're unsure. And that's now they're	er to ations 
22 And the way the but that doesn't mean it's not 22 concerned again, and have been since 2007.	er to ations 
	er to ations  e eport )7.
23 polluted until you get to 10. 23 MR. BUDGE: Let's go off the record just a	er to ations  e eport )7.
	er to ations  e eport )7.

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9 (Pages 92 to 95)

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	Page 96		Page 98
1	(Mr. Brockway joins the proceedings.)	1	entitled "Nitrate/Nitrate Nitrogen Data on Spring
2	Q. (BY MR. BUDGE): Dr. MacMillan, we	2	Water at Snake River Farm."
3	were discussing the sampling prior to 2007 of	3	And is that the document that you
4	nitrates that began in 1999?	4	referred to in your testimony that reflected the
5	A. Yes.	5	data from monthly sampling at sample point SR1
6	Q. And would that have been the first	6	covering the period January 1999 through August of
7		7	2007?
	water-quality sampling for nitrates that was done at the Snake Biyor Forms facility influent water?		
8	at the Snake River Farms facility, influent water?	8	A. That's the one, although the title is
9	A. Well, there was earlier data. I know	9	"Nitrate-Nitrite Nitrogen Data."
10	that Dr. Brockway even did some studies looking at	10	Q. Thank you.
11	the Snake River itself. He may have sampled	11	And would that Exhibit 26 represent
12	those. I don't know.	12	the database of information on nitrates that you
13	And it's possible that in the NPDES	13	were referring to when you compared it to the
14	permits of those days, we sampled nitrate. I	14	information depicted in your Exhibit 8, testimony
15	don't recall for sure. In our database 1999 is	15	Exhibit 8, which led you to conclude that there
16	what we have, is where we start.	16	was some increases of concern?
17	Q. Okay. And that was a sample that was	17	A. That's correct.
18	taken only at SR1?	18	Q. And those increases would seem to be
19	A. For the Snake River Farm complex,	19	relatively minor at that SR1 site over that time
20	right.	20	period?
21	Q. And were those monthly samples?	21	A. On Exhibit 26, the increases, whether
22	A. Those were monthly samples.	22	minor or not, we'd have to look at the biological
23	Q. And were the results of those samples	23	impact of that. But in we had raised
24	run by an external lab or internally?	24	there's other data besides this that you have as
25	A. Internally.	25	well that would indicate we started sampling in
	Page 97		Page 99
	-		
1	Q. Okay.	1	that spring complex other than just SR1 to try to
2	<ul><li>Q. Okay.</li><li>A. Using QA/QC procedures and EPA</li></ul>	2	that spring complex other than just SR1 to try to track the nitrate-nitrogen concentrations. So
2 3	Q. Okay. A. Using QA/QC procedures and EPA methods.	2 3	that spring complex other than just SR1 to try to track the nitrate-nitrogen concentrations. So that started in and we have that January of
2 3 4	<ul> <li>Q. Okay.</li> <li>A. Using QA/QC procedures and EPA methods.</li> <li>Q. And that's the database that you think</li> </ul>	2 3 4	that spring complex other than just SR1 to try to track the nitrate-nitrogen concentrations. So that started in and we have that January of 2007. We also have SR1, sample
2 3 4 5	<ul> <li>Q. Okay.</li> <li>A. Using QA/QC procedures and EPA methods.</li> <li>Q. And that's the database that you think was produced just in the last several days?</li> </ul>	2 3 4 5	that spring complex other than just SR1 to try to track the nitrate-nitrogen concentrations. So that started in and we have that January of 2007. We also have SR1, sample Q. You're referring to
2 3 4	<ul> <li>Q. Okay.</li> <li>A. Using QA/QC procedures and EPA methods.</li> <li>Q. And that's the database that you think</li> </ul>	2 3 4	that spring complex other than just SR1 to try to track the nitrate-nitrogen concentrations. So that started in and we have that January of 2007. We also have SR1, sample Q. You're referring to A. Exhibit
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$\begin{array}{c} 2\\ 3\\ 4\\ 5\\ 6\\ 7\\ 8\\ 9\\ 10\\ 112\\ 13\\ 14\\ 15\\ 16\\ 17\\ 18\\ 9\\ 21\\ 22\\ 23\\ \end{array}$	<ul> <li>Q. Okay.</li> <li>A. Using QA/QC procedures and EPA methods.</li> <li>Q. And that's the database that you think was produced just in the last several days?</li> <li>A. No. I think that was provided earlier than just the last few days.</li> <li>Q. Earlier in this particular proceeding</li> <li>A. Yes.</li> <li>Q or one of the prior proceedings?</li> <li>A. This proceeding.</li> <li>Q. We'll continue on, see if we can locate that.</li> <li>A. You know, if I have it in my car, if you want to just</li> <li>MR. SIMPSON: Cut to the chase? THE WITNESS: Yeah.</li> <li>MS. McHUGH: That would be great.</li> <li>MR. BUDGE: Let's take a break and go do it.</li> <li>(Recess.)</li> <li>(Exhibit 26 marked.)</li> </ul>	$     \begin{array}{c}       2 \\       3 \\       4 \\       5 \\       6 \\       7 \\       8 \\       9 \\       112 \\       13 \\       15 \\       17 \\       19 \\       21 \\       22 \\       23 \\     \end{array} $	that spring complex other than just SR1 to try to track the nitrate-nitrogen concentrations. So that started in and we have that January of 2007. We also have SR1, sample Q. You're referring to A. Exhibit Q the second page of your testimony, Exhibit 8? A. Correct. Q. So that's the other sampling you were referring to? A. That's correct. And that's why I said earlier on, you will notice for example let's see. We could even look at January 15th, 2007, at SR1, we had 3.42 milligrams per liter of nitrate-nitrogen. We go to January '02 I mean '07, we have at SR1 we have 3.67. I would say it's a minor variation between 3.67 and 3.42. It's not a minor variation when you go from, say, a 1 part per million, 1 milligram per liter change. Q. What is the detection error when the samples are run?

10 (Pages 96 to 99)

	Page 100		Page 102
1	to it's much less. I'm thinking that it's	1	Q now that this is identified as a
2	.005, but I'd have to look at the method itself in	2	concern?
3	our lab to measure that.	3	A. Yes. And the difficulty is that if
4	Q. When you look at all the data on	4	this is an not "if." It is an endocrine
5	Exhibit 26, which was the 1999 to 2007 sampling	5	disrupter. The disrupters can be life stage
6	period, and compare that with the same data for	6	the disruption can be life-stage dependent. You
7	SR1 on the period going forward from 2007 to 2009,	7	know, I'm certainly not an expert on endocrine
8	which is your Deposition Exhibit 26, there's a lot	8	disrupters. I'm just repeating what the
9	of numbers there to compare.	9	scientific literature says.
10	Have you done any other statistical	10	And so, you know, whether we can we
11	analysis or graphing to determine exactly what the	11	can try to do those kind of studies. But if it
12	percent of change might have been?	12	affects brood stock, and apparently it can affect
13	A. No. I think you have you're	13	even the germ line okay? so the DNA of the
14	referring to some graphs. That certainly depicts	14	animals, that becomes very, very difficult to do
15	fairly well the increase that we've observed,	15	those studies. I don't know if we're equipped to
16	particularly in the months of August, September,	16	do that.
17	November, that time frame, in the last two or	17	So at this point that's where we are.
18	three years.	18	We're trying to get some universities to take a
19	You know, we could certainly go back	19	look at that. But so far we've not been
20	in time and, you know, take the you could even	20	successful.
21	take the average for each year, just as one	21	Q. So as a scientist and expert, would it
22	approach, and see how that's changed.	22	be accurate to say the nitrate levels that you
23	DEQ has done some analyses, and that's	23	currently have at your facilities is currently a
24	their technical publications 14 and 27, I think.	24	level of concern that you're watching?
25	Those were referred to in my report. And they've	25	A. Well, it's an area of concern that
	Page 101		Page 103
1	done some statistical analyses.	1	we're investigating.
2	Q. On these particular samples?	2	Q. Correct. You don't have any data or
3	A. Yes. Well, on their whole database,	3	information or studies internally or seen data
4	Thousand Springs. And part of that data includes	4	externally that would indicate the levels of
5	this data.	5	nitrates that are currently at the facility
6	Q. Is that something that was produced as	6	springs, those that are under 10, would cause any
7	well, the DEQ technical paper you referred to?	7	difficulties or problems with respect to ability
8	A. It was cited. It's available on their	8	to raise commercial rainbow trout?
9	website.	9	A. Yes, there is a scientific publication
10	Q. Okay. Not part of what was produced	10	that identifies nitrate-nitrogen at levels of 2 to
11	here?	11	6 or 7 as being lethal to rainbow trout eggs.
12	A. No.	12	Q. Is that the one that was cited in your
13	Q. So insofar as any internal statistical	13	testimony?
14	analysis of this data, that hasn't been done by	14	A. That's correct. That's correct.
15	Clear Springs?	15	Q. And what about some of those other
16	A. No.	16	studies that suggest that levels of up to 57
17	Q. Does Clear Springs have any empirical	17	continue to be safe?
18	data or any studies or analysis underway that	18	A. I'm not sure which studies you're
19	would attempt to determine the impact on the	19	referring to.
20	certain nitrate levels on the fish that you raise	20	Q. Well, one of those that was cited, I
21	there at Snake River Farms?	21	think you produced, was the Hamlin report?
22	A. No.	22	A. Did they look at rainbow trout?
23	Q. Is that something that you anticipate	23	Q. No. This says, "A nitrate
24	undertaking	24	concentration of 57 milligrams per liter was chose
25	A. Yes.	25	as an upper limit in this study, because this is
			11 (Pages 100 to 103)

	Page 104		Page 106
1	the maximum concentration deemed safe." And they	1	Deposition Exhibit 27.
2	also looked at a lower concentration and say, "The	2	(Exhibit 27 marked.)
3	lower concentration of 11.5 milligrams per liter	3	MR. BUDGE: We also discussed the Hamlin
4	of nitrate was chosen as the lower limit as it was	4	study entitled "Aquaculture."
5	considered extremely safe, yet realistically	5	And let's mark that as Exhibit 28.
6	achievable under normal aquaculture practices."	6	(Exhibit 28 marked.)
7	This is one of your	7	MR. BUDGE: So for the record, we have
8	A. I'm familiar with that.	8	marked as Deposition Exhibit 27 the Kincheloe
9	Q articles that was cited in your	9	paper referred to on page 29, line 839 through 841
10	testimony, I believe?	10	of the MacMillan testimony. And there is some
11	A. It was. And I would just offer that	11	highlighted information located on pages 576 and
$12^{11}$	that's not rainbow trout. It's not the early life	12	578 of that document, which have been added by us
13	stage of the trout. So it's not germane, other	13	and were not part of the copy of that document
$14^{13}$	than to identify that in those particular	$14^{13}$	provided by Dr. MacMillan.
15	experimental conditions the nitrate-nitrogen	$15^{14}$	Also, Exhibit 28, which is the Hamlin
$16^{13}$	appeared to have some adverse effect to the	16	"Aquaculture" article that was referenced on
$10 \\ 17$		17	lines 855 through 856 of Dr. MacMillan's
18	sturgeon. And it's clear that and I did, I	18	testimony, and it also has some highlighting in
19	think, address this in my report that it is clear	19	yellow on some pages that was added by us.
20	that species vary in their sensitivity and life	20	Q. Looking back at our Exhibit 25, that's
21	stage too. Nitrate/nitrite nitrogen and to we	21	Deposition Exhibit 25, the Snake River Farms
22	know that's probably true for endocrine disruption	22	complex schematic, the ten sampling sites that are
23	as well.	23	identified there, do you know what percent of the
23	Q. Refer to your testimony if you need	24	water intake to the facility would be represented
24	to. Identify the study in your testimony you're	25	by those?
2.5	to. Identify the study in your testimony you're	2.5	by mose:
	Dere 10E		Daga 107
	Page 105		Page 107
1	referring to which suggested that 2 to 6 milligram	1	A. Do not. We would like to be able to
2	referring to which suggested that 2 to 6 milligram level.	2	A. Do not. We would like to be able to do that, certainly. But there's not a you
2 3	referring to which suggested that 2 to 6 milligram level. A. That would be Kincheloe, et al.	2 3	A. Do not. We would like to be able to do that, certainly. But there's not a you know, it's a messy, messy area in terms of its
2 3 4	referring to which suggested that 2 to 6 milligram level. A. That would be Kincheloe, et al. Q. Can you identify where that's referred	2 3 4	A. Do not. We would like to be able to do that, certainly. But there's not a you know, it's a messy, messy area in terms of its geography. So you can't get measurements of that
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2 3 4 5 6	referring to which suggested that 2 to 6 milligram level. A. That would be Kincheloe, et al. Q. Can you identify where that's referred to in your testimony? Is it this one? A. That's correct.	2 3 4 5 6	<ul><li>A. Do not. We would like to be able to do that, certainly. But there's not a you know, it's a messy, messy area in terms of its geography. So you can't get measurements of that one.</li><li>Q. And when we have looked at the total</li></ul>
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12 (Pages 104 to 107)

	Page 108		Page 110
1	in through these various spring sources into the	1	A. Correct.
2	facility that we've been discussing more	2	Q. And what's identified as the hatchery
3	specifically?	3	building, that would be the SR1 site would be most
4	A. In this time frame, that's correct.	4	indicative of the quality there?
5	Q. Okay. Looking at that same	5	A. Correct.
6	Exhibit 25, is the SR1 measurement indicative of	6	Q. Okay. And so when we look at the
7	the water quality used in the hatchery building?	7	quality sites for 3, 3A, 3B, and VC, do they all
8	A. SR1 would be indicative of that.	8	flow into that collection area that's been
9	That's the fresh water.	9	identified?
10	Q. Okay. And the yellow stars that are	10	A. That's our thinking, that it does.
11	located on Exhibit 25 on the top-right corner, one	11	And that's why SR1 our thinking is that SR1 has
12	on the fresh line and one on the reuse line that	12	been increasing in nitrate because the spring flow
13	are labeled "Flow meter access," would that be the	13	is coming the primary sources of contaminated
14	location at which water-quantity measurements are	14	water are from the 3A or 3, 3A, 3B spring area.
15	taken and reported?	15	Q. In your testimony you also had raised
16	A. The primary locations, that's correct.	16	some concern over the nitrate testing and
17	Q. And the other locations would be	17	reporting that was done?
18	A. Well, we have some smaller uses, like	18	A. Yes.
19 20	the research building, sprinkler. Those are all identified in I think it's Exhibit 8 or 9.	19	Q. And would those concerns be satisfied
20	Q. The location marked "FS"	20 21	if a statement were provided from the lab
22	A. Uh-huh.	22	confirming what methods were utilized? A. Yeah, I think the concern well,
23	Q I think did you say earlier that	23	there were two concerns that I identified. One,
24	was located below that Fred Nihart pipe?	24	it was a reference to just nitrate, rather than
25	A. That's correct.	25	nitrate-nitrogen. And that it's a minor point.
	Page 109		Page 111
1	O How for below?	1	I think in a later desumant in
1	Q. How far below? A Probably my guess would be 10 feet	1	I think in a later document, in Mr. Eldridge's supplemental testimony or direct
2	A. Probably my guess would be 10 feet.	2	Mr. Eldridge's supplemental testimony or direct
2 3	<ul><li>A. Probably my guess would be 10 feet.</li><li>Q. Okay. And</li></ul>	2 3	Mr. Eldridge's supplemental testimony or direct testimony, whatever you call it, some he did
2 3 4	<ul> <li>A. Probably my guess would be 10 feet.</li> <li>Q. Okay. And</li> <li>A. 10, 15 feet.</li> </ul>	2 3 4	Mr. Eldridge's supplemental testimony or direct testimony, whatever you call it, some he did start referring to the measurements that I
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2 3 4 5 6	<ul> <li>A. Probably my guess would be 10 feet.</li> <li>Q. Okay. And</li> <li>A. 10, 15 feet.</li> <li>Q. Is that location from the FS site,</li> <li>does that water go to the research building?</li> </ul>	2 3 4 5 6	Mr. Eldridge's supplemental testimony or direct testimony, whatever you call it, some he did start referring to the measurements that I assume ESC were making was nitrate-nitrogen. There's a difference between nitrate
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2 3 4 5 6 7 8 9 10 11 23 4 5 6 7 8 9 10 11 23 14 5 6 7 8 9 10 11 23 4 5 6 7 8 9 10 11 23 4 5 6 7 8 9 10 11 23 14 5 6 7 8 9 10 11 23 14 5 6 7 8 9 10 11 23 14 5 6 7 8 9 10 11 23 14 5 6 7 8 9 10 11 23 14 5 16 7 8 9 10 11 23 14 5 16 7 8 9 10 11 23 14 5 16 7 8 9 10 11 23 14 5 16 7 8 9 10 11 23 14 5 16 7 8 9 10 11 23 14 15 16 17 10 10 10 10 10 10 10 10 10 10 10 10 10	<ul> <li>A. Probably my guess would be 10 feet.</li> <li>Q. Okay. And</li> <li>A. 10, 15 feet.</li> <li>Q. Is that location from the FS site,</li> <li>does that water go to the research building?</li> <li>A. It does. That's our drinking water.</li> <li>Q. It doesn't go to the research</li> <li>building?</li> <li>A. It does go to the research building.</li> <li>Q. Drinking water of the research</li> <li>building?</li> <li>A. Yeah.</li> <li>Q. And is that site below the road?</li> <li>A. Yes.</li> <li>Q. Okay. And is it in a locked box area?</li> <li>A. There is a lockbox there.</li> <li>Q. Okay. So for purposes of the brood</li> <li>circulars that are identified here on the top-left</li> <li>corner of Exhibit 25, what measurement point would</li> <li>be indicative of the water quality in that area?</li> <li>A. SR1 is the most representative that we</li> </ul>	$\begin{array}{c} 2\\ 3\\ 4\\ 5\\ 6\\ 7\\ 8\\ 9\\ 10\\ 112\\ 13\\ 14\\ 15\\ 16\\ 17\\ 19\\ 20\\ 22\\ 23\end{array}$	<ul> <li>Mr. Eldridge's supplemental testimony or direct testimony, whatever you call it, some he did start referring to the measurements that I assume ESC were making was nitrate-nitrogen. There's a difference between nitrate and nitrate-nitrogen. And so many places, for consistency, used the nitrate-nitrogen. The other question was in your ESC lab reports you identified a method, and I couldn't find what that method was. So my assumption is that it's probably a valid method, but I could not verify that because they just didn't identify what the method was. Well, they put a number to it, but it was not listed in EPA's list of approved methods. So a simple statement that says what it is, you know, would allow verification that it was as an accurate method.</li> <li>Q. That would be a statement that would need to come from the lab that did the testing? A. Yeah, they would be the ones that you'd ask for that.</li> </ul>

13 (Pages 108 to 111)

	Tage IIZ		Lage 114
	1 then we'll come back to a few of the issues that	1	reduces fish adaptability and ability to withstand
	2 Larry Cope put on your plate if we miss any of	2	additional stress, increases susceptibility to
	3 them in the process.	3	disease, both infectious and noninfectious, and
	4 The first question I have has to do	4	reduces fish performance capacity." Arguably,
	5 with an attachment to your expert report as	5	endocrine disrupters could do something like that.
	6 Exhibit 2.	6	Q. Okay. So that would be an issue that
	7 As I review that and understand your	7	is relevant to this proceeding?
	8 testimony, I believe that was a report that you	8	A. Yes.
	<ul><li>9 had filed in conjunction with one of the prior</li></ul>	9	Q. Okay.
1	0 mitigation plans?	10	A. "Stress shifts the bioenergetic flow
	A. That's correct. Well, yes, I think	11	of feed resources, energy, and protein away from
	2 so. Yes.	12	somatic growth toward maintenance of"
	3 Q. And your intent here is to present	13	THE COURT REPORTER: I need you to read
	4 that entire report in this case as an exhibit to	$14^{13}$	that a little slower.
	5 the testimony that you filed?	$15^{14}$	THE WITNESS: What?
	6 A. That was correct.	$16^{13}$	
		17	Q. (BY MR. BUDGE): Maybe we could refer to that as the issue that is summarized on
		18	
	0.	$10 \\ 19$	lines 104 through 106 located on page 4 of the JRM
•	1	20	expert report, Exhibit 2.
		20	Okay?
			A. Okay. 107, line 107 through 110 would
	2 Well, December 3rd?	22	be a factor. Line 111 would be. Potentially
	3 Q. Yes.	23	line 112.
	<ul> <li>4 A. Okay.</li> <li>5 Q. Looking at that exhibit, and given its</li> </ul>	24 25	And then line 114 through 116 would not be an element because that was directly
F	5 Q. Looking at that exhibit, and given its	2.5	not be all element because that was directly
	Page 113		Page 115
	1 length, some 83 pages, I'm not going to wade	1	focused on the proposed recirculation of effluent
	2 through the entire document, but	2	water.
	3 A. Thank you.	3	And potentially 117 through 119 could
	4 Q but on page 3 and continuing on to	4	be issues. And those that I've identified could
	5 page 4 you summarize the opinions that you	5	be issues because of nitrate nitrate-nitrogen,
	6 express, and then you later go into those opinions	6	for example, endocrine disruption, for example,
	7 in some considerable detail.	7	and in the construction of the pipeline, if it
	8 If you would look at page 3 of that	8	were to go near the raceways, that could create
	9 exhibit where you summarize your opinions, it	9	stress on the fish.
1	0 appeared that a number of those would relate to	10	Q. Thank you.
	1 opinions that were specific to that mitigation	11	So summing up on that Exhibit 2, the
	2 plan that involved recirculation of water and	12	opinions expressed in the matter beginning on
1	3 other things	13	page 3, lines 87 through 100, you would
	4 A. Yes.	14	acknowledge are not relevant
	5 Q that would not seem to be material	15	A. Well
11	6 to this plan?	16	Q and also the opinions associated
	7 A. That's correct.	17	with the summary on lines 114 through 116 are not
	8 Q. And so if you could go through those	18	relevant, and all of the rest of those that you've
1  1			
1  1	9 opinions that are shown there on 3 and 4, and	19	identified, which are basically lines 101 through
1 1 1	<ul> <li>9 opinions that are shown there on 3 and 4, and</li> <li>0 perhaps identify which ones there you consider to</li> </ul>		•
1 1 1 2	1	19	identified, which are basically lines 101 through
1 1 2 2 2	<ul> <li>perhaps identify which ones there you consider to</li> <li>be of relevance to the issues that we have</li> <li>presented on the over-the-rim plan.</li> </ul>	19 20 21 22	identified, which are basically lines 101 through 113, and also lines 117 through 119, either are
1 1 2 2 2	<ul> <li>perhaps identify which ones there you consider to</li> <li>be of relevance to the issues that we have</li> </ul>	19 20 21	identified, which are basically lines 101 through 113, and also lines 117 through 119, either are considered relevant by you or arguably relevant?
1 1 2 2 2 2	<ul> <li>perhaps identify which ones there you consider to</li> <li>be of relevance to the issues that we have</li> <li>presented on the over-the-rim plan.</li> </ul>	19 20 21 22	<ul><li>identified, which are basically lines 101 through 113, and also lines 117 through 119, either are considered relevant by you or arguably relevant?</li><li>A. Well, the earlier ones on page 3,</li></ul>
1 1 2 2 2 2 2	<ul> <li>perhaps identify which ones there you consider to</li> <li>be of relevance to the issues that we have</li> <li>presented on the over-the-rim plan.</li> <li>A. Okay. On line 101</li> </ul>	19 20 21 22 23	<ul> <li>identified, which are basically lines 101 through 113, and also lines 117 through 119, either are considered relevant by you or arguably relevant?</li> <li>A. Well, the earlier ones on page 3, line 87 through 100, are potentially relevant</li> </ul>

14 (Pages 112 to 115)

	Page 116		Page 118
1	And under those circumstances various	1	line that the plan also "would not be
2	elements in the over-the-rim project could be	2	consistent with Clear Springs Foods' decreed water
3	relevant to those issues identified as opinions in	3	rights that identify spring water as the source."
4	this matter.	4	That wouldn't be accurate relative to
5	So for example, "Rainbow trout are	5	the Box Canyon right that identifies Box Canyon
6	complex, physiologically integrated vertebrate	6	Creek as the source; correct?
7	animals." That is relevant because they are	7	A. That's correct. But it would be
8	it's a statement that they are vertebrates, and	8	accurate for the Snake River Farm.
9	they are subject to endocrine disrupters such as	9	Q. And you go on to talk about there
10	nitrate-nitrogen.	10	would be a damage to the physical property of
$11^{10}$	Q. Okay. Thank you.	11	Clear Springs and a taking of the property.
$12^{11}$	Going back through your testimony, I	12	Are you referring to that pipeline
$12 \\ 13$	just have a number of questions that I think we	13	layout that would go through the property that was
$14^{13}$	can walk through from front to back.	$14^{13}$	depicted in Exhibit 2205?
15	Beginning on page 5	15	A. That's correct.
16	MR. SIMPSON: Excuse me. That's not this	16	Q. And that layout was basically where
17	exhibit, but on his main testimony?	17	you directed the ground water districts to put the
18	MR. BUDGE: Correct, yes. On his original	18	pipe if it had to go on your property, which you
$10 \\ 19$	JRM expert report.	19	don't agree to?
20	Q. You make the statement that the plan	20	A. No, that's incorrect. I did not
21	would be inconsistent with former	21	direct Mr. Eldridge to do that. What I he said
22	Director Dreher's requirement that the mitigation	22	when we met that he would prefer to put it the way
23	be "in time, in place, and in kind." You put in	23	that you described.
24	bold the words "in kind."	24	And I said, "No, that is not
24	So if the water is the same water,	25	acceptable to us."
ļ			
	Page 117		Page 119
1	according to Dr. Brockway's testimony and	1	And that's why we objected to any
2	Mr. Cope's testimony, are we not delivering water	2	survey of that property at first.
3	in kind?	3	Q. Did you or someone at Clear Springs
4	A. Well, I don't know what Dr. Brockway's	4	give direction if the pipe were to go through your
5	testimony is. Larry Cope's testimony is it's not	5	property where it would go, that it would have to
6	the same water because it's not spring water.	6	avoid the landscaped areas, the raceways, and the
7	Chemically, it could be. It's certainly very	7	like?
8	similar to the water that can be delivered to the	8	A. Not that had any authority. If they
9	Snake River Farm.	9	did, they didn't have authority to say so.
10	Q. So when you say it's not in kind,	10	Q. So if the pipe were located somewhere
11	meaning because the water came from the well	11	outside of your property, such as down the
12	source versus a spring source?	12	highway, would that alleviate these concerns that
13	A. That's correct.	13	you describe here, that there would be a taking of
14	Q. And "in place" would be because the	14	property and
15	facilities are not yet in place and delivering?	15	A. That's correct.
16	Is that what you'd be referring to?	16	Q. Okay.
17	A. I was referring to Director Dreher's	17 18	A. And I believe Mr. Cope testified to that as well, in essence.
10			THAT AS WELL IT ESSENCE.
18	comment. "In place," yeah, it needs to be at		•
19	comment. "In place," yeah, it needs to be at the where our spring diversions are.	19	Q. That's my recollection. I was simply
19 20	comment. "In place," yeah, it needs to be at the where our spring diversions are. And "in time," that's fairly	19 20	Q. That's my recollection. I was simply trying to identify if you had a different view of
19 20 21	comment. "In place," yeah, it needs to be at the where our spring diversions are. And "in time," that's fairly explanatory, I guess. But that would mean that	19 20 21	Q. That's my recollection. I was simply trying to identify if you had a different view of that than Mr. Cope expressed.
19 20 21 22	comment. "In place," yeah, it needs to be at the where our spring diversions are. And "in time," that's fairly explanatory, I guess. But that would mean that the mitigation should be provided in time.	19 20 21 22	Q. That's my recollection. I was simply trying to identify if you had a different view of that than Mr. Cope expressed. On page 7, lines 131 through 133, you
19 20 21 22 23	<ul> <li>comment. "In place," yeah, it needs to be at the where our spring diversions are. And "in time," that's fairly</li> <li>explanatory, I guess. But that would mean that the mitigation should be provided in time.</li> <li>Q. Okay. On the top of the next page, 6,</li> </ul>	19 20 21 22 23	Q. That's my recollection. I was simply trying to identify if you had a different view of that than Mr. Cope expressed. On page 7, lines 131 through 133, you make the statement, "The Ground Water Districts'
19 20 21 22	comment. "In place," yeah, it needs to be at the where our spring diversions are. And "in time," that's fairly explanatory, I guess. But that would mean that the mitigation should be provided in time.	19 20 21 22	Q. That's my recollection. I was simply trying to identify if you had a different view of that than Mr. Cope expressed. On page 7, lines 131 through 133, you

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15 (Pages 116 to 119)

	Page 120		Page 122
1	· · · ·	1	
	spring complex."	1 2	Q. Continuing on page 7, on lines 131
2	That seemed to be in conflict with	3	through 133, and again on 136 through 138 in your
3	Mr. Cope's testimony on page 6 and 7 and		testimony, Dr. MacMillan, you find fault with the
4	Dr. Brockway's testimony on page 7 of his	4 5	plan claiming it doesn't deliver, quote, "usable
5	testimony that indicated that it was the same	6	water" and that several wells are contaminated.
6	water.	7	Would those concerns relate primarily to the nitrate levels in wells 2 and 4?
7	So is your complaint based on the fact	8	
8 9	that the water is being delivered again by well	9	A. From a chemical standpoint it relates
10	versus by spring? A. Well, there's two two issues there.	10	to that issue in 2 and 4. It's not spring water, though.
11	One is that it's not spring water. Number two,	11	Q. Correct. And so recognizing that
$12^{11}$	the data that you have provided is only based on	12	there's an overall fundamental objection to any
$12 \\ 13$	one month, basically, of data collection. That	13	nonspring water delivered by the wells that you
$13 \\ 14$	hardly is provides any rigor to an analysis of	$14^{13}$	expressed and so has Mr. Cope repeatedly
$14 \\ 15$	what water would be delivered throughout the year.	$14 \\ 15$	yesterday, from a chemical standpoint if wells 2
16	So from a scientific standpoint, it fails in that	16	and 4 were eliminated from the mix, it would
17	respect.	17	address the concerns you express here that the
18	Q. At the time you wrote this testimony,	18	water is unusable or contaminated?
19	had you seen the supplemental testimony of	19	A. Well, Mr. Budge, eliminating well 2
20	Mr. Eldridge where he did the chemical analysis?	20	and 4 would be helpful. What we don't do not
21	A. Had not seen that.	21	have is a long term-history of water-chemical
22	Q. I correct that. I think I said	22	history from the other wells, and certainly not
23	Eldridge. Mr. Scanlan.	23	for well 2 and 4.
24	A. I have seen Mr. Scanlan's.	24	And I know in I think in
25	Q. And do you have any reason to question	25	Mr. Eldridge's supplemental testimony he got into
	Page 121		Page 123
1	the conclusions in that chemical analysis that	1	looking at some other wells outside the area, or
2	chemically the water is basically the same?	2	outside that well field as you guys call it, and
3	A. Well, as far as his analysis could go,	3	that's not germane, from my perspective, because
4	I had no reason to question the validity of his	4	it doesn't it's not a long-term history of
5	analysis.	5	those wells, and they're far removed.
6	Q. Okay. And just for the record, I	6	Clearly, just looking at your own
	believe we're both discussing Deposition		the ground water districts' data, there are
8	Exhibit 13, if you want to check that. And that	8	differences close by amongst wells. So that
9	is the same as was presented by Terry Scanlan in	9	remains a concern at this point, that we don't
10	his supplemental direct testimony dated	10	have the rigor of analysis of data collection
11	October 21, 2009, as an attached exhibit, which I	11	that you know, and it's very similar to, you
12	don't see was numbered. Excuse me. It was	12	know, Clear Springs collected the data from 1999
13	numbered as Exhibit 2024.	13	until present on nitrate at SR1. That's the kind
14	A. Well, then, Mr. Scanlan's in	14 15	of data that you need to make an informed decision
15 16	Exhibit No. 13, Mr. Scanlan's technical memorandum	$15 \\ 16$	about about that water quality from a chemical
1017	to Mr. Eldridge, he does, in his table, identify significant differences in nitrate-nitrogen at	10	standpoint. Q. And the only way one might obtain a
18	well No. 2 and well No. 4.	18	greater database is to operate for a while and to
19	Q. Uh-huh.	19	take additional samples?
20	MR. SIMPSON: Counsel, let's take a break	20	A. No. The only way to really do it is
21	for a minute and use the restroom, and maybe	21	to have been collecting that data all along. But
22	knowing Dr. MacMillan, maybe he does too.	22	you're now asking us to accept additional risk
23	MR. BUDGE: Okay.	23	with your mitigation plan. And that's
24	(Recess.)	24	Q. But we can't go back and re-create
25	MR. BUDGE: Back on the record.	25	data
120	WIN, DUDUE, DACK OF THE RECORD.	40	uala

16 (Pages 120 to 123)

	Page 124		Page 126
1	A. You cannot.	1	program at our wells.
2	Q in previous years; right?	2	Q. Wouldn't you think there would be a
3	A. That's right.	3	similar ongoing monitoring program with water you
4	Q. So all we can do is go forward with	4	receive from the over-the-rim plan if it were
5	what we have.	5	approved and constructed?
6	But wouldn't you agree that the risk	6	A. Why would we be responsible for that?
7	can be mitigated by having the ability to shut off	7	Q. I didn't say responsible. I said
8	any delivery from the plan in the event there	8	wouldn't you expect to have one for Clear Springs
9	becomes a delivery of nitrates, or any other	9	to protect the integrity of your water supply from
10	chemical for that matter, that exceeds the	10	potential risks?
11	water-quality levels that you have from your other	11	A. We would expect, in this type of plan,
12	sources?	12	that the districts would have to sample the water
13	A. No, I don't agree with that. And the	13	and report timely to us.
14	reason is once you've introduced a chemical,	14	Q. Okay. That's what I meant. So
15.	depending on the chemical, you can have	15	wouldn't that give you ample opportunity to detect
16	catastrophic effects on the fish. It could	16	any problem and give you an opportunity to say
17	contaminate the fish flesh. So no, that's not	17	"This water is different than ours. The nitrate
18	that's not an acceptable thing.	18	levels have increased. We're not willing to
19	Q. Well, let's be realistic here. You	19	accept it"?
20	have a drinking-water standard of 10 milligrams of	20	A. That's feasible. We'd have to think
21	nitrate per liter. If you eliminate wells 2 and 4	21	about how that would work. But that's feasible.
22	you're not anywhere close to that limit, and	22	It seems feasible on the first blush.
23	you're basically nearly a mirror image of the	23	Q. On lines 148 and 149 of page 7, you
24	quality of water, as far as nitrates go, that is	24	make the statement that the plan will adversely
25	currently being received. And whether you	25	impact nearby Clear Springs' supplies.
	Page 125		Page 127
1	disagree or not, chemically, the water, according	1	Is that an opinion you're rendering
2	to Mr. Cope and Mr. Brockway, both have filed	2	based on something that Dr. Brockway told you as
3	testimony in this case that the water is the same	3	your hydrologist?
4	water, other than for the fact that one comes from	4	A. That is an opinion based on my
5	the well and one comes from the springs.	5	knowledge, not as an expert hydrologist, but of
6	So if there were an ongoing change in	6	the spring complex there and the proximity of
7	either the water that you receive at Clear Springs	7	those wells to our facilities downstream from
8	or what's being delivered from the same source by	8	that.
9	the ground water districts, you would have ample	9	And so it's based on the thinking that
10	advance time to observe those changes over time,	10	current use of those wells is damaging the water
11	would you not, and be able to make appropriate	11	flow to the spring river or Clear Lake spring
12	changes? You can't control your source, but you	12	complex. So that's an assumption on my part.
13	can control the well delivery source?	13	Q. And is the assumption you're making
14	A. If there is a monitoring program in	14	that supports this conclusion based on the same
15	place, you could probably identify changes in the	15	assumption that Mr. Cope was making yesterday that
16	chemistry at those other wells in a timely way.	16	to the extent these wells, which total 15.79 cfs,
17	That is very feasible.	17	were not being delivered to Clear Springs, they
18	Q. But don't you have excuse me.	18	would continue to be pumped for irrigation
19	A. Whether you can do that, whether the	19	purposes?
20	ground water districts would do that is another	20	A. Could you repeat that?
	question.	21	Q. Yeah, let me re-ask that in a better
21		22	way.
22	Q. Don't you anticipate an ongoing		
22 23	monitoring program on your spring sources, as you	23	Prior to the implementation of the
22			Prior to the implementation of the plan, the wells associated with the plan, before they were converted to surface water, totaled

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	rage 120		Idge 150
1	15.79 cfs; correct?	1	knowing anything about if your fish products are
2	A. (No audible response.)	2	genetically modified or if they're selectively
3	Q. And after they were converted, those	3	breeded or if they use antibiotics, but it doesn't
4	wells will no longer be pumped and only 2 to	4	apply to the other food industry?
5	3 second-feet will be delivered over the rim.	5	A. It's a general statement that for
6	So the testimony that we've submitted	6	example, the ploidy, p-l-o-i-d-y, the number of
7	through Dr. Brendecke is that there will actually	7	duplications of chromosomes, most people don't
. 8	be a benefit to these springs because you're	8	know that wheat is has multiple sets of the
9	delivering less water from the wells at 2 to	9	same chromosome.
10	3 second-feet than you historically were pumping	10	If you try to do that with fish,
11	for irrigation purposes, the 15.79 cfs?	11	consumers are many consumers are concerned
12	A. Well, I have not read	12	about that. The GMOs of tomatoes are now pretty
13	Mr. Brendecke's Dr. Brendecke's report, so I	13	well accepted by many consumers.
14	don't know what he has said.	14	To have a genetically-modified
15	I think I know that many of those	15	organism, a genetically-modified trout by way of
16	the question is whether how much water are	16	manipulation of the chromosomes, artificial
17	those wells currently using. And they have water	17	manipulation of the chromosomes, that's that's
18	rights for 15 or so cfs. Is that how much water	18	not acceptable to domestic consumers.
19	they are currently using? And I don't know the	19	And there is indeed a significant
20	answer to that.	20	fight to block that from happening in the United
21	Q. That's addressed in his testimony.	21	States. With the use of antibiotics, the salmon
22	And he concludes that the amount delivered over	22	industry, the wild salmon industry uses the claim
23	the rim on an acre-foot basis, a volumetric basis,	23	that farm fish "Avoid farm salmon avoid
24	would be less than was historically used. And so	24	drugs. Don't eat farm salmon." That's their
25	given that fact, it doesn't make any common sense	25	campaign.
	Page 129		Page 131
1	that there could be any adverse effect on other	1	So that's the basis for that those
2	springs, as you suggest here.	2	comments there. But you don't see that by and
3	And so my question was, on what do you	3	large with terrestrial animals that are used for
4	base this statement on?	4	human consumption or plants. Antibiotics, for
5	A. Well, I base my statement on what I	5	example, are used in orchards, on apples. You
6	said earlier. And perhaps I should read	6	don't see the use of antibiotics as an issue.
7	Mr. Brendecke's report and Mr. Brockway's	7	Q. So Clear Springs uses selective
8	report rebuttal report to that. Dr. Brockway's	8	breeding?
9	certainly our expert on that issue.	9	A. Yes.
10	Q. You're not claiming to have any	10	Q. And you use genetically-modified fish?
11	A. No.	11	A. No.
12	Q expertise for purposes of that	12	Q. Do you use vaccines?
13	statement?	13	A. Yes.
14	A. No.	14	Q. Do you use antibiotics?
15	Q. Moving on to page 9 of your testimony	15	A. Yes.
16	at the top, lines 194 through 199, you make the	16	Q. And so you're saying consumers have
17	statement there that "Traditional row crop and	17	concerns about the use of those if they're going
18	terrestrial animal farming with its use of	18	to consume fish
19	pesticides, herbicides, antibiotics," so on and so	19	A. Yes.
20	forth, "selective breeding, genetic modification,	20	Q but they don't have concerns about
21	are of little concern to the consumer, but these	21	that if they consume other grown crops or animals?
22	are significant concerns for the consumer of	22	A. What they're concerned about if
23	seafood."	23	there's an appropriate regulatory system in place
24 25	So are you essentially saying that	24	and the ability of a company such as Clear Springs
1 4 1 1 .	seafood consumers are pretty concerned about	25	to demonstrate to them, to the buyers, that the

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18 (Pages 128 to 131)

	Page 132		Page 134
1	the consumables, consumed fish, are free of	1	So that's our challenge. And that's
2	antibiotics.	2	the purpose for those different comments there.
3	Q. So when you make, then, the comment	3	That's the purpose for including that analysis
4	here that these things are, quote, "a significant	4	that I refer to Kirkley, et al., and Anderson and
5	concern for consumers of seafood," that seems to	5	Shamshak.
6	suggest that consumers of seafood are pretty	6	Q. Further down on page 10 at lines 240
7	knowledgeable and pretty particular?	7	through 241 you make the statement, "A poorly
8	A. Some consumers of seafood certainly	8	educated or misunderstood consumer appears to be
9	are.	9	fertile ground for accepting additional
10	Q. And then I turn to the very next page	10	misinformation."
11	of your testimony on page 10, at lines 223 to 224,	11	So is it your belief that if 2 to
12	you seem to make a contradictory statement when	12	3 second-feet of the water from the East Snake
13	you say "The lack of consumer knowledge regarding	13	Plain Aquifer is delivered via a well, that that
14	food preparation, handling, nutritional value	14	would somehow mandate that Clear Springs change
15	characteristics, origin, food safety, and species	15	its marketing proposal that all of the fish are
16	is believed to be considerable."	16	produced from pristine spring water?
17	And then you go on two sentences	17	A. As Mr. Cope said, there's an ethical
18	following on lines 227 and 228, and you continue	18	issue involved. We are very we try to be very
19	to elaborate, and it says "They," referring to	19	cautious about fraudulent claims, but it's
20	your consumers, "have little knowledge about where	20	imperfect.
21	seafood comes from. It's how it's grown."	21	When we do go to we do give lots of
22	It seemed to me that that was some	22	tours around the Snake River Farm complex. We
23	indication you don't have a very sophisticated or	23	would have a pipeline coming out of the ground
24	knowledgeable or concerned consumer, which is	24	someplace with a degassing tower. That will be
25	exactly the opposite of what you describe on the	25	hard for us to explain what that's all about and
	Page 133		Page 135
1	previous page.	1	be honest about it. So that's a concern.
2	Could you reconcile that	2	And I see you turning to our water
3	inconsistency?	3	technology and people. You need to understand,
4	A. I wouldn't I don't agree it's	4	Mr. Budge, that that was written back in the
5	inconsistent.	5	mid-'80s or so. And just as Mr. Cope was
6	Q. My perception.	6	quizzical about what your concern was, I am too.
7	A. Yes, it is your perception. It's a	7	It's not just the Pioneer Mountains.
8	multidimensional entity out there in terms of	8	We know that. We also know that the aquifer, the
9	global seafood consumption. And there are	9	ESPA itself, is not endless. We didn't know that
10	consumers who are well informed, there are	10	in 1985. We didn't know it very well, anyway.
11	consumers who aren't as well informed. By and	11	Q. Well, it's pretty common for
12	large, consumers are not well informed about	12	businesses to put the most favorable spin they can
		1	
		13	
13	seafood.	13 14	on their products for marketing purposes that may
13 14	seafood. The assumption, the consequence is	13 14 15	
13 14 15	seafood.	14	on their products for marketing purposes that may not be entirely accurate
13 14	seafood. The assumption, the consequence is they assume that seafood is very safe to eat, that it is wild seafood.	14 15	on their products for marketing purposes that may not be entirely accurate A. Factual. Q correct?
13 14 15 16	seafood. The assumption, the consequence is they assume that seafood is very safe to eat, that it is wild seafood. Now, you have the farm seafood	14 15 16	on their products for marketing purposes that may not be entirely accurate A. Factual.
13 14 15 16 17	seafood. The assumption, the consequence is they assume that seafood is very safe to eat, that it is wild seafood.	14 15 16 17	on their products for marketing purposes that may not be entirely accurate A. Factual. Q correct? It seems to be consistent with your
13 14 15 16 17 18	seafood. The assumption, the consequence is they assume that seafood is very safe to eat, that it is wild seafood. Now, you have the farm seafood industry coming into play over the past 30, 40	14 15 16 17 18	on their products for marketing purposes that may not be entirely accurate A. Factual. Q correct? It seems to be consistent with your statement. I wonder if there was a tie-in when
13 14 15 16 17 18 19	seafood. The assumption, the consequence is they assume that seafood is very safe to eat, that it is wild seafood. Now, you have the farm seafood industry coming into play over the past 30, 40 years, and we have to be able to demonstrate if	14 15 16 17 18 19	on their products for marketing purposes that may not be entirely accurate A. Factual. Q correct? It seems to be consistent with your statement. I wonder if there was a tie-in when you made the statement that we have poorly
13 14 15 16 17 18 19 20	seafood. The assumption, the consequence is they assume that seafood is very safe to eat, that it is wild seafood. Now, you have the farm seafood industry coming into play over the past 30, 40 years, and we have to be able to demonstrate if you're going to be a company like the food company	14 15 16 17 18 19 20	on their products for marketing purposes that may not be entirely accurate A. Factual. Q correct? It seems to be consistent with your statement. I wonder if there was a tie-in when you made the statement that we have poorly educated and misinformed consumers that are
13 14 15 16 17 18 19 20 21	seafood. The assumption, the consequence is they assume that seafood is very safe to eat, that it is wild seafood. Now, you have the farm seafood industry coming into play over the past 30, 40 years, and we have to be able to demonstrate if you're going to be a company like the food company like Clear Springs Foods, you have to be able to	14 15 16 17 18 19 20 21	on their products for marketing purposes that may not be entirely accurate A. Factual. Q correct? It seems to be consistent with your statement. I wonder if there was a tie-in when you made the statement that we have poorly educated and misinformed consumers that are fertile ground for additional misinformation
13 14 15 16 17 18 19 20 21 22	seafood. The assumption, the consequence is they assume that seafood is very safe to eat, that it is wild seafood. Now, you have the farm seafood industry coming into play over the past 30, 40 years, and we have to be able to demonstrate if you're going to be a company like the food company like Clear Springs Foods, you have to be able to demonstrate by multiple dimensions, multiple ways,	14 15 16 17 18 19 20 21 22 23 24	on their products for marketing purposes that may not be entirely accurate A. Factual. Q correct? It seems to be consistent with your statement. I wonder if there was a tie-in when you made the statement that we have poorly educated and misinformed consumers that are fertile ground for additional misinformation that A. Well, you have to be careful about taking things out of context. That whole section
13 14 15 16 17 18 19 20 21 22 23	seafood. The assumption, the consequence is they assume that seafood is very safe to eat, that it is wild seafood. Now, you have the farm seafood industry coming into play over the past 30, 40 years, and we have to be able to demonstrate if you're going to be a company like the food company like Clear Springs Foods, you have to be able to demonstrate by multiple dimensions, multiple ways, that the farmed rainbow trout that you've grown	14 15 16 17 18 19 20 21 22 23	on their products for marketing purposes that may not be entirely accurate A. Factual. Q correct? It seems to be consistent with your statement. I wonder if there was a tie-in when you made the statement that we have poorly educated and misinformed consumers that are fertile ground for additional misinformation that A. Well, you have to be careful about

19 (Pages 132 to 135)

		Page 136		Page 138
	1	the challenges Clear Springs, and companies like	1	A. It did. It caused us to look at
	2	Clear Springs Foods, has out in the marketplace.	2	different customers and try to secure those
	3	And that's what our sales and marketing people	3	different customers as a consequence.
	4	have to deal with.	4	Q. It didn't cause you to change
	5	So if we weaken the image, if we	5	Exhibit 5. That foreign purchase has been in
	6	weaken that cachet that we have associated with	6	place for a few years now.
	7	the use of spring water and the purity of that	7	A. Well, Exhibit 5 has been around for a
	8	water or the quality of the fish or the food	8	long time. How much it's used, I cannot I
	9	safety parts of the fish or how they're grown or	9	don't know if it's even used now.
1	10	the service that we provide, if we weaken those	10	Q. The video that was provided didn't
	11	things, then we have potential to weaken the image	11	seem to suggest there was any change or indication
	12	of Clear Springs and diminish our sales.	12	that had been made pertaining to foreign partners?
	L3	Q. On the next page, 11, on lines 258 to	13	A. That's right. And that video, how
	L4	259, you make the statement that "The OTR project	14	often that's used, I don't know. I don't know
	15	proposes to strip Clear Springs Food of this	15	that it's used very much, if at all.
	16	critical point of differentiation and diminish its	16	Those exhibits were intended to
	L7	marketing success."	17	provide examples throughout our history of how we
	L 8	Don't you really think that overstates	18	have emphasized the use of spring water in our
	L 9	the case a bit? I mean do you really believe that	19	marketing efforts.
	20	the delivery of the same water through the well is	20	So you have two heads? Is that better
	21	going to somehow strip Clear Springs of its	21	than one? Is that how that works, Candice?
	22	ability to market its product the way you have	22	Q. Are you suggesting that the video and
	23	been?	23	the marketing material is relevant in this case or
2	24	A. Well, I asked that question of our	24	not relevant?
2	25	marketing people, and they said yes, it would,	25	A. It's relevant because it provides
		Page 137		Page 139
			1	-
	1	sales and marketing people.		historical evidence of how Clear Springs has
	2	Q. And so you think that you would have	2	created its image, its signature in the
	3	to change your marketing approach if this plan	34	marketplace as a premier supplier of farm-raised rainbow trout.
	4 5	were approved? A. That's what I'm being told.	5	
	6	Q. Well, do you believe that personally?	6	Q. On page 14, on line 355, you indicate here "there's no fluctuation in optimal growing
	7	A. I'm not a sales and marketing person.	7	conditions for the farmed rainbow trout."
	8	As a scientist, I try to be very, very objective	8	Are you referring to temperature or
	9	and very honest about things.	9	water quality or water volume, or all of those
1	.0	Q. Well, when you began a few years ago	10	things?
	.1	purchasing and marketing rainbow trout from your	$11^{10}$	A. Well, the primary emphasis there is on
	.2	Argentine and Chilean partners from a water source	12	temperature.
	.3	out of a river, that didn't result in any adverse	13	Q. Okay.
	4	effect on your marketing plan or change in any of	14	A. Temperature affects feeding rates and
	.5	your materials, did it?	15	feed conversions. The chemistry, if it
	.6	A. Well, it did have an adverse effect.	16	fluctuates, on a seasonal basis, depending on what
	.7	We cannot sell foreign-born product we have to	17	chemical parameter changes, that could be a
	.8	provide on our labels country of origin and method	18	problem for us.
	9	of production, whether it's wild capture or farm	19	Historically with the spring water, we
	20	raised. We have to do that. And so a number of	20	haven't seen that that kind of fluctuation.
	21	our customers will not accept the Argentine or the	21	The changes going on now with the nitrate-nitrogen
	22	Chilean product.	22	at the Snake River Farm, and to some extent at the
	23	Q. And my question was, did that cause	23	Crystal Springs, one of the Crystal Springs
	24	you to change any aspect of any of your marketing	24	springs, that is of growing concern. That is a
	25	plans?	25	concern. We've talked about that. But in this
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20 (Pages 136 to 139)

1 2	$D_{2} \sim 140$		Page 142
2	Page 140		· · · · · · · · · · · · · · · · · · ·
	case the particular focus is on temperature, yes.	1	A. That's correct. That's correct.
	Q. Optimal growing conditions, don't they	2	Q. Okay. Has there been any studies or
3	include temperature, water quality, water	3	empirical data that support this concern that
4	quantity, oxygenation?	4	you've expressed and Mr. Cope expressed yesterday
5	A. Yes.	5	that somehow Clear Springs' product marketability
6	Q. Aren't all of those factors of optimal	6	would be jeopardized?
7	growing conditions?	7	A. No, there's not been any studies.
8.	A. Yes.	8	That kind of quantitative study is you have to
9	Q. When here you said there was no	9.	do it after the fact. And so what we have to
10	fluctuation, you were only talking about	10	make the judgment, Mr. Cope has to make the
11	temperature?	11	judgment whether or not and our marketing
12	A. In the spring water that's supplied to	12	people would have to make the judgment what would
13	us, as a general statement. And a good example is	13	be the actual implications of that.
14	Box Canyon.	14	Q. Would you have any different opinion
15	Q. So do these seasonal fluctuations that	15	than was expressed by Mr. Cope as to whether or
16	occur in the quantities, do they have any	16	not Clear Springs would accept water from the plan
17	disruption of your ideal growing conditions?	17	if it were approved and constructed? If I recall
18	A. Well, they do in that we have to plan	18	his testimony, he suggested that would have to be
19	for the low water. That determines the maximum	19	a decision made at a later date.
20	amount of fish that we could put in there. And	20	A. That's the current state of our
21	that's a judgment call that we have to make every	21	discussions, that's correct. So I agree with
22	year.	22	Mr. Cope.
23	Q. Dr. Brendecke's testimony, which I	23	Q. Okay.
24	understand you may not have read, came to the	24	A. We obviously would prefer that you do
25	conclusion that the over-the-rim plan would,	25	not build that pipeline because we're opposed to
	Page 141		Page 143
1	because water is being pumped on a year-round	1	it. And the reason we are in the current
2	basis, help to level out those fluctuations and	2	conditioned stay, if you'll recall in a different
3	arguably reduce the lows in the summer period when		conditioned stay, if you'll recail in a different
Ĩ		3	proceeding, is that we think that there are better
4	you now experience them, but increase the lows in	4	
		4 5	proceeding, is that we think that there are better ways to address things than in the OTR and in the current process we're in.
4	you now experience them, but increase the lows in	4	proceeding, is that we think that there are better ways to address things than in the OTR and in the
4 5 6 7	you now experience them, but increase the lows in the winter period. Would that be a benefit or a burden to Clear Springs' operation if that were true?	4 5	proceeding, is that we think that there are better ways to address things than in the OTR and in the current process we're in. Q. So Clear Springs obtained that stay order I believe of May 15th, 2009, and I believe
4 5 6 7 8	you now experience them, but increase the lows in the winter period. Would that be a benefit or a burden to Clear Springs' operation if that were true? A. If that were true, and it had no other	4 5 6 7 8	proceeding, is that we think that there are better ways to address things than in the OTR and in the current process we're in. Q. So Clear Springs obtained that stay order I believe of May 15th, 2009, and I believe it's Clear Springs' position that that stay order
4 5 7 8 9	<ul> <li>you now experience them, but increase the lows in the winter period.</li> <li>Would that be a benefit or a burden to</li> <li>Clear Springs' operation if that were true?</li> <li>A. If that were true, and it had no other impacts in the Clear Lakes spring complex or</li> </ul>	4 5 6 7 8 9	proceeding, is that we think that there are better ways to address things than in the OTR and in the current process we're in. Q. So Clear Springs obtained that stay order I believe of May 15th, 2009, and I believe it's Clear Springs' position that that stay order remains in effect for a two-year period?
4 5 7 8 9 10	<ul> <li>you now experience them, but increase the lows in the winter period.</li> <li>Would that be a benefit or a burden to</li> <li>Clear Springs' operation if that were true?</li> <li>A. If that were true, and it had no other impacts in the Clear Lakes spring complex or</li> <li>Crystal Springs or Box Canyon, that would be</li> </ul>	4 5 7 8 9 10	<ul> <li>proceeding, is that we think that there are better ways to address things than in the OTR and in the current process we're in.</li> <li>Q. So Clear Springs obtained that stay order I believe of May 15th, 2009, and I believe it's Clear Springs' position that that stay order remains in effect for a two-year period?</li> <li>A. That's correct.</li> </ul>
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4 5 6 7 8 9 10 11 12	<ul> <li>you now experience them, but increase the lows in the winter period.</li> <li>Would that be a benefit or a burden to</li> <li>Clear Springs' operation if that were true?</li> <li>A. If that were true, and it had no other impacts in the Clear Lakes spring complex or</li> <li>Crystal Springs or Box Canyon, that would be great. If we can if we can stabilize those flows and have them year-round, that's a benefit.</li> </ul>	4 5 6 7 8 9 10 11 12	<ul> <li>proceeding, is that we think that there are better ways to address things than in the OTR and in the current process we're in.</li> <li>Q. So Clear Springs obtained that stay order I believe of May 15th, 2009, and I believe it's Clear Springs' position that that stay order remains in effect for a two-year period?</li> <li>A. That's correct.</li> <li>Q. And is it your view, I believe consistent with what Mr. Cope testified, that if</li> </ul>
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21 (Pages 140 to 143)

	Page 144		Page 146
1	lieu of this delivery plan that would either	1	financially in supporting that because that would
2	satisfy the current order that we're living with	2	be a way to address waste load allocations.
3	or give Clear Springs reason to waive compliance	3	Let's suppose we can develop the
4	of that order?	4	technology to increase production and it exceeds
5	A. Well, yes, I do. And there is several	5	our ability to offset that increased production
6	things that the ground water districts have not	6	and have phosphorus limitations, then, that would
7	considered or put forward if they've considered	7	be impossible for us to address.
8	them.	8	If we were to take the effluent water
9	And first of all, the type of crops	9	and pump it up, that would be helpful to Clear
10	that are grown could be altered so that they're	10	Springs, and we would want to participate that
11	less water intensive.	11	way. So those are the thoughts that we have.
12	You could consider rotational	12	Q. Thank you.
$13^{12}$	fallowing. I think Mr. Cope mentioned that.	13	Turning to page 16 of your testimony,
$14^{10}$	You could consider an across-the-board	14	on lines 417 and 418 is the statement that "Clear
15	reduction of some volume of ground water pumped	15	Foods also imports other seafood to create
16	for all water all ground water pumpers, say	16	value-added products, such as various Splash
17	10 percent. And I don't have any clue whether	17	items."
18	that would be sufficient to properly mitigate for	18	Is that the mahi mahi product that was
19	Clear Springs.	19	referred to by Mr. Cope yesterday?
20	And then I think you had raised the	20	A. Part of it is.
21	question, and I think you brought it up from	21	Q. Are there other imported products?
22	Dr. Brockway's expert report, which I don't	22	A. The Argentine product goes into
23	know I haven't read Dr. Brockway's final	23	Splash. So it's different than our core fresh
24	report, so I don't know all the details there,	24	fish business with those imported products.
25	but if there are any details, but the thought	25	Q. Argentine and Chilean are still trout
	Page 145		
			Page 147
1	there is to try to put that the when the water	1	products?
2	there is to try to put that the when the water has the best value to a particular type of	2	products? A. That's correct. They come in as
2 3	there is to try to put that the when the water has the best value to a particular type of operation, such as aquaculture, so basically your	2 3	products? A. That's correct. They come in as frozen filets.
2 3 4	there is to try to put that the when the water has the best value to a particular type of operation, such as aquaculture, so basically your first-use water, let aquaculture use that first,	2 3 4	products? A. That's correct. They come in as frozen filets. Q. Okay.
2 3 4 5	there is to try to put that the when the water has the best value to a particular type of operation, such as aquaculture, so basically your first-use water, let aquaculture use that first, and then take that water and pump it up for other	2 3 4 5	products? A. That's correct. They come in as frozen filets. Q. Okay. A. And then we are looking I think
2 3 4 5 6	there is to try to put that the when the water has the best value to a particular type of operation, such as aquaculture, so basically your first-use water, let aquaculture use that first, and then take that water and pump it up for other uses such as irrigation agriculture where the	2 3 4 5 6	products? A. That's correct. They come in as frozen filets. Q. Okay. A. And then we are looking I think Mr. Cope referred to swai. That's another item
2 3 4 5 6 7	there is to try to put that the when the water has the best value to a particular type of operation, such as aquaculture, so basically your first-use water, let aquaculture use that first, and then take that water and pump it up for other uses such as irrigation agriculture where the chemical quality of the water is not nearly as	2 3 4 5 6 7	<ul> <li>products?</li> <li>A. That's correct. They come in as</li> <li>frozen filets.</li> <li>Q. Okay.</li> <li>A. And then we are looking I think</li> <li>Mr. Cope referred to swai. That's another item</li> <li>that we would be importing for that Splash in our</li> </ul>
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22 (Pages 144 to 147)

	Page 148		Page 150
1	Q. Mr. Cope says on page 3, line 96 of	1	A. I'm sure we do have financial records.
2	his testimony, "The projected revenue for the	2	We're a large food company, a midsize food
3	current year is approximately \$56 million."	3	company, and so we would want good records.
4	A. Right.	4	Q. On page 19, lines 508 through 510, you
5	Q. And you say, "Annual gross product	5	state that "Clear Springs Foods does not know what
6	sales for fiscal year 2009 were close to	6	pesticides or herbicides would be delivered in the
7	50 million and are projected to be 56 million in	7	ground water."
8	2010."	8	Do you test for any herbicides or
9	A. We're in our fiscal year 2010 as we	9	pesticides in any of your water-quality testing?
10	speak.	10	A. Not now. We did for a number of years
11	Q. Okay.	11	from about 1989 to 2000 or so, 2001. And at that
12	A. So the projections	12	time the water we could not detect any
13	Q. When he refers to "the current year,"	13	pesticides. So we elected to just test the fish
14	you're suggesting he's not referring to 2009, but	14	and the feed for pesticides.
15	fiscal year 2010?	15	With the appearance of and the
16	A. That's right.	16	or two reasons for that, for stopping that
17	Q. And that would thus be consistent with	17	testing: One was we weren't finding anything, and
18	your projection in 2010 of 56 million?	18	we had pretty good confidence that between the
19	$\hat{A}$ . And that's a general number that, as I	19	Department of Water Resources and the Idaho State
20	think I mentioned, maybe we were off record, I'm	20	Department of Agriculture and the ground water
21	not sure, the number that I I put in here is a	21	protection plans that are out there with the
22	number that is generally available to us by way of	22	State, that if they detected something they
23	a board meeting or to the employees.	23	would they would let us know.
24	Q. Also Mr. Cope on the very next	24	Well, it turns out they did detect
25	sentence says that "The current value of the	25	things, but they didn't let us know. So that's a
	Page 149		Page 151
1	employee ownership in the trust as of August 31.	1	concern to us.
1	employee ownership in the trust as of August 31, 2009. was approximately 30 million."	1	concern to us. But the other part is that with the
2	2009, was approximately 30 million."	1 2 3	But the other part is that with the
2 3	2009, was approximately 30 million." And on page 16, line 423 of your	2	
2 3 4	2009, was approximately 30 million." And on page 16, line 423 of your testimony, you state that the "employee owners	2 3	But the other part is that with the nitrates that we picked up, we will have to start testing.
2 3	2009, was approximately 30 million." And on page 16, line 423 of your	2 3 4	But the other part is that with the nitrates that we picked up, we will have to start testing. Q. Okay. But from the testing that was
2 3 4 5	2009, was approximately 30 million." And on page 16, line 423 of your testimony, you state that the "employee owners have a beneficial interest of approximately \$34 million in the trust."	2 3 4 5	But the other part is that with the nitrates that we picked up, we will have to start testing. Q. Okay. But from the testing that was done from '89 to 2001 and from the ongoing testing
2 3 4 5 6	2009, was approximately 30 million." And on page 16, line 423 of your testimony, you state that the "employee owners have a beneficial interest of approximately	2 3 4 5	But the other part is that with the nitrates that we picked up, we will have to start testing. Q. Okay. But from the testing that was
2 3 4 5 6 7	2009, was approximately 30 million." And on page 16, line 423 of your testimony, you state that the "employee owners have a beneficial interest of approximately \$34 million in the trust." Do you have an explanation for which	2 3 4 5 6 7	But the other part is that with the nitrates that we picked up, we will have to start testing. Q. Okay. But from the testing that was done from '89 to 2001 and from the ongoing testing you do on your fish products, is it accurate to
2 3 4 5 6 7 8	2009, was approximately 30 million." And on page 16, line 423 of your testimony, you state that the "employee owners have a beneficial interest of approximately \$34 million in the trust." Do you have an explanation for which number would be correct?	2 3 4 5 6 7 8	But the other part is that with the nitrates that we picked up, we will have to start testing. Q. Okay. But from the testing that was done from '89 to 2001 and from the ongoing testing you do on your fish products, is it accurate to say there has not been any detection of pesticides
2 3 4 5 6 7 8 9 10 11	2009, was approximately 30 million." And on page 16, line 423 of your testimony, you state that the "employee owners have a beneficial interest of approximately \$34 million in the trust." Do you have an explanation for which number would be correct? A. Well, again, these are general numbers	2 3 4 5 6 7 8 9 10 11	But the other part is that with the nitrates that we picked up, we will have to start testing. Q. Okay. But from the testing that was done from '89 to 2001 and from the ongoing testing you do on your fish products, is it accurate to say there has not been any detection of pesticides to date?
2 3 4 5 6 7 8 9 10 11 12	2009, was approximately 30 million." And on page 16, line 423 of your testimony, you state that the "employee owners have a beneficial interest of approximately \$34 million in the trust." Do you have an explanation for which number would be correct? A. Well, again, these are general numbers that, you know, we don't these are from memory.	2 3 4 5 6 7 8 9 10 11 12	But the other part is that with the nitrates that we picked up, we will have to start testing. Q. Okay. But from the testing that was done from '89 to 2001 and from the ongoing testing you do on your fish products, is it accurate to say there has not been any detection of pesticides to date? A. There have been no detection of the organochlorine hydrocarbon type pesticides to date.
2 3 4 5 6 7 8 9 10 11	2009, was approximately 30 million." And on page 16, line 423 of your testimony, you state that the "employee owners have a beneficial interest of approximately \$34 million in the trust." Do you have an explanation for which number would be correct? A. Well, again, these are general numbers that, you know, we don't these are from memory. I don't have any I didn't refer to any documents or anything like that to try to be precise. So it's in that range.	2 3 4 5 6 7 8 9 10 11	But the other part is that with the nitrates that we picked up, we will have to start testing. Q. Okay. But from the testing that was done from '89 to 2001 and from the ongoing testing you do on your fish products, is it accurate to say there has not been any detection of pesticides to date? A. There have been no detection of the organochlorine hydrocarbon type pesticides to date. Q. And do you see anything in the
2 3 4 5 6 7 8 9 10 11 12 13 14	<ul> <li>2009, was approximately 30 million." And on page 16, line 423 of your testimony, you state that the "employee owners have a beneficial interest of approximately \$34 million in the trust." Do you have an explanation for which number would be correct? A. Well, again, these are general numbers that, you know, we don't these are from memory. I don't have any I didn't refer to any documents or anything like that to try to be precise. So it's in that range. Q. You certainly have no documents</li> </ul>	2 3 4 5 6 7 8 9 10 11 12 13 14	But the other part is that with the nitrates that we picked up, we will have to start testing. Q. Okay. But from the testing that was done from '89 to 2001 and from the ongoing testing you do on your fish products, is it accurate to say there has not been any detection of pesticides to date? A. There have been no detection of the organochlorine hydrocarbon type pesticides to date. Q. And do you see anything in the chemical testing done by the ground water
2 3 4 5 6 7 8 9 10 11 12 13 14 15	<ul> <li>2009, was approximately 30 million." And on page 16, line 423 of your testimony, you state that the "employee owners have a beneficial interest of approximately \$34 million in the trust." Do you have an explanation for which number would be correct? A. Well, again, these are general numbers that, you know, we don't these are from memory. I don't have any I didn't refer to any documents or anything like that to try to be precise. So it's in that range. Q. You certainly have no documents produced to enable us to confirm which number</li> </ul>	2 3 4 5 6 7 8 9 10 11 12 13 14 15	But the other part is that with the nitrates that we picked up, we will have to start testing. Q. Okay. But from the testing that was done from '89 to 2001 and from the ongoing testing you do on your fish products, is it accurate to say there has not been any detection of pesticides to date? A. There have been no detection of the organochlorine hydrocarbon type pesticides to date. Q. And do you see anything in the chemical testing done by the ground water districts that would indicate any pesticides?
2 3 4 5 6 7 8 9 10 11 12 13 14 15 16	<ul> <li>2009, was approximately 30 million." And on page 16, line 423 of your testimony, you state that the "employee owners have a beneficial interest of approximately \$34 million in the trust." Do you have an explanation for which number would be correct? A. Well, again, these are general numbers that, you know, we don't these are from memory. I don't have any I didn't refer to any documents or anything like that to try to be precise. So it's in that range. Q. You certainly have no documents produced to enable us to confirm which number might be correct?</li> </ul>	2 3 4 5 6 7 8 9 10 11 12 13 14 15 16	But the other part is that with the nitrates that we picked up, we will have to start testing. Q. Okay. But from the testing that was done from '89 to 2001 and from the ongoing testing you do on your fish products, is it accurate to say there has not been any detection of pesticides to date? A. There have been no detection of the organochlorine hydrocarbon type pesticides to date. Q. And do you see anything in the chemical testing done by the ground water districts that would indicate any pesticides? A. The data that's been provided is very
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$\begin{array}{c} 2\\ 3\\ 4\\ 5\\ 6\\ 7\\ 8\\ 9\\ 10\\ 11\\ 12\\ 13\\ 14\\ 15\\ 16\\ 17\\ 18\\ 19\\ \end{array}$	<ul> <li>2009, was approximately 30 million." And on page 16, line 423 of your testimony, you state that the "employee owners have a beneficial interest of approximately \$34 million in the trust." Do you have an explanation for which number would be correct? A. Well, again, these are general numbers that, you know, we don't these are from memory. I don't have any I didn't refer to any documents or anything like that to try to be precise. So it's in that range.</li> <li>Q. You certainly have no documents produced to enable us to confirm which number might be correct? A. That's correct.</li> <li>Q. The source of information that apparently you have in your mind and Mr. Cope had</li> </ul>	2 3 4 5 6 7 8 9 10 112 13 14 15 17 18 19 12 13 14 15 17 18 12 13 14 15 17 18 12 13 14 15 17 18 12 13 14 15 17 18 19 12 13 14 15 16 17 18 19 12 13 14 15 16 17 18 19 19 19 19 19 19 19 19 19 19 112	But the other part is that with the nitrates that we picked up, we will have to start testing. Q. Okay. But from the testing that was done from '89 to 2001 and from the ongoing testing you do on your fish products, is it accurate to say there has not been any detection of pesticides to date? A. There have been no detection of the organochlorine hydrocarbon type pesticides to date. Q. And do you see anything in the chemical testing done by the ground water districts that would indicate any pesticides? A. The data that's been provided is very short term, and you've only looked at pesticides that for the most part that are no longer used in Idaho. The pesticides, in particular the
$\begin{array}{c} 2\\ 3\\ 4\\ 5\\ 6\\ 7\\ 8\\ 9\\ 10\\ 11\\ 12\\ 13\\ 14\\ 15\\ 16\\ 17\\ 18\\ 19\\ 20\\ \end{array}$	<ul> <li>2009, was approximately 30 million." And on page 16, line 423 of your testimony, you state that the "employee owners have a beneficial interest of approximately \$34 million in the trust." Do you have an explanation for which number would be correct? A. Well, again, these are general numbers that, you know, we don't these are from memory. I don't have any I didn't refer to any documents or anything like that to try to be precise. So it's in that range.</li> <li>Q. You certainly have no documents produced to enable us to confirm which number might be correct? A. That's correct.</li> <li>Q. The source of information that apparently you have in your mind and Mr. Cope had in his mind must have been based upon your review</li> </ul>	2 3 4 5 6 7 8 9 101 12 13 145 17 189 20	But the other part is that with the nitrates that we picked up, we will have to start testing. Q. Okay. But from the testing that was done from '89 to 2001 and from the ongoing testing you do on your fish products, is it accurate to say there has not been any detection of pesticides to date? A. There have been no detection of the organochlorine hydrocarbon type pesticides to date. Q. And do you see anything in the chemical testing done by the ground water districts that would indicate any pesticides? A. The data that's been provided is very short term, and you've only looked at pesticides that for the most part that are no longer used in Idaho. The pesticides, in particular the herbicides, have not been looked at in your
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$\begin{array}{c} 2\\ 3\\ 4\\ 5\\ 6\\ 7\\ 8\\ 9\\ 10\\ 11\\ 13\\ 14\\ 15\\ 16\\ 17\\ 18\\ 9\\ 20\\ 22\\ 23\\ 24\\ \end{array}$	<ul> <li>2009, was approximately 30 million." And on page 16, line 423 of your testimony, you state that the "employee owners have a beneficial interest of approximately \$34 million in the trust." Do you have an explanation for which number would be correct? A. Well, again, these are general numbers that, you know, we don't these are from memory. I don't have any I didn't refer to any documents or anything like that to try to be precise. So it's in that range.</li> <li>Q. You certainly have no documents produced to enable us to confirm which number might be correct? A. That's correct.</li> <li>Q. The source of information that apparently you have in your mind and Mr. Cope had in his mind must have been based upon your review of some financial records of the company? A. Not not in my case. In my case it was what I've heard through conversation at Clear Springs Foods.</li> </ul>	$     \begin{array}{c}       2 \\       3 \\       4 \\       5 \\       6 \\       7 \\       8 \\       9 \\       10 \\       11 \\       12 \\       14 \\       15 \\       17 \\       19 \\       21 \\       23 \\       24 \\       \end{array} $	But the other part is that with the nitrates that we picked up, we will have to start testing. Q. Okay. But from the testing that was done from '89 to 2001 and from the ongoing testing you do on your fish products, is it accurate to say there has not been any detection of pesticides to date? A. There have been no detection of the organochlorine hydrocarbon type pesticides to date. Q. And do you see anything in the chemical testing done by the ground water districts that would indicate any pesticides? A. The data that's been provided is very short term, and you've only looked at pesticides that for the most part that are no longer used in Idaho. The pesticides, in particular the herbicides, have not been looked at in your testing. They have been looked at with the Idaho State Department of Agriculture in their monitoring, and they have detected, in particular,
2 3 4 5 6 7 8 9 10 11 23 14 15 16 7 8 9 20 21 22 23	<ul> <li>2009, was approximately 30 million." And on page 16, line 423 of your testimony, you state that the "employee owners have a beneficial interest of approximately \$34 million in the trust." Do you have an explanation for which number would be correct? A. Well, again, these are general numbers that, you know, we don't these are from memory. I don't have any I didn't refer to any documents or anything like that to try to be precise. So it's in that range. Q. You certainly have no documents produced to enable us to confirm which number might be correct? A. That's correct. Q. The source of information that apparently you have in your mind and Mr. Cope had in his mind must have been based upon your review of some financial records of the company? A. Not not in my case. In my case it was what I've heard through conversation at Clear</li> </ul>	$     \begin{array}{c}       2 \\       3 \\       4 \\       5 \\       6 \\       7 \\       8 \\       9 \\       10 \\       112 \\       13 \\       14 \\       15 \\       17 \\       19 \\       21 \\       22 \\       23 \\       \end{array} $	But the other part is that with the nitrates that we picked up, we will have to start testing. Q. Okay. But from the testing that was done from '89 to 2001 and from the ongoing testing you do on your fish products, is it accurate to say there has not been any detection of pesticides to date? A. There have been no detection of the organochlorine hydrocarbon type pesticides to date. Q. And do you see anything in the chemical testing done by the ground water districts that would indicate any pesticides? A. The data that's been provided is very short term, and you've only looked at pesticides that for the most part that are no longer used in Idaho. The pesticides, in particular the herbicides, have not been looked at in your testing. They have been looked at with the Idaho State Department of Agriculture in their

23 (Pages 148 to 151)

	Page 152		Page 154
1	Q. In	1	attempting to create some kind of an inference
2	A in some of those wells.	2	that there may be a pesticide problem out there.
3	Q. In the wells that we have identified	3	And so my question was simply to inquire further
4	as part of the over-the-rim plan?	4	as to that inference that you want to create here
5	A. I'm unable to compare your wells with	5	in your testimony, whether it's based upon any
6	their wells. I don't have that knowledge about	6	scientific data or studies that you've seen on
7	how to cross-reference those.	7	these particular wells.
. 8	Q. Okay. You say you don't know. But do	8	And your answer, I understand, is no?
9	you have any knowledge or any evidence that you've	9	A. We're not trying to create an
10	seen to suggest there are any pesticides or	10	inference, other than we don't know.
11	herbicides of any type in the East Snake Plain	11	Q. Okay. On page 22, lines 608 through
12	Aquifer source that supplies the over-the-rim	12	610, you discuss the reuse of water
13	wells or the Clear Springs spring outlets?	13	A. Uh-huh.
14	A. There have been pesticides detected in	14	Q to the outdoor raceway.
15	areas above the Snake River Farm in Jerome,	15	And if my math is correct, at least
16	various townships there.	16	based on the numbers you provided here, roughly
17	Q. I was referring to the water, not	17	about 41 percent of the water coming into that
18	obviously there's a lot of pesticides	18	grow-out raceway is reuse and about 59 percent
19	A. In the water, in the ground water	19	would be fresh water?
20	they've sampled, and I've provided that reference	20	A. Sounds reasonable.
21	site in my report did not include specifics in	21	Q. And if I understand correctly, there
22	my report, because I'm I don't I can't tell	22	isn't water-quality testing that goes on with
23	you where those are, other than section section,	23	respect to the reuse water that goes into that
24	that kind of stuff, so	24	raceway?
25	Q. Okay. Maybe I didn't ask my question	25	A. That's correct.
	Page 153		Page 155
1	very precisely. But what I was intending to ask	1	Q. Okay. Over on page 27 of your
2	is if you have seen any evidence of the detection	2	testimony, on lines 766 through 770, I think this
3	of pesticides or herbicides in any of the well	3	is the nitrate testing concern that you raised
4	water proposed for the over-the-rim delivery or in	4	earlier and some kind of substantiation or
5	any of the water in the aquifer that is discharged	5	confirmation concerning how the testing was done
6	as a part of the Clear Springs source?	6	from the lab would address that concern?
7	A. Well, we've not detected pesticides in	6 7	from the lab would address that concern? A. That's correct. While the other part,
7 8	A. Well, we've not detected pesticides in the spring water delivered to Snake River Farm.	6 7 8	from the lab would address that concern? A. That's correct. While the other part, though, was and I think this and I'm not
7 8 9	<ul><li>A. Well, we've not detected pesticides in the spring water delivered to Snake River Farm. Q. Okay.</li></ul>	6 7 8 9	from the lab would address that concern? A. That's correct. While the other part, though, was and I think this and I'm not sure if this is in this part or not, but for the
7 8 9 10	<ul><li>A. Well, we've not detected pesticides in the spring water delivered to Snake River Farm.</li><li>Q. Okay.</li><li>A. But that doesn't mean that water that</li></ul>	6 7 8 9 10	from the lab would address that concern? A. That's correct. While the other part, though, was and I think this and I'm not sure if this is in this part or not, but for the phosphorus testing that you had done, ESC
7 8 9 10 11	<ul> <li>A. Well, we've not detected pesticides in the spring water delivered to Snake River Farm.</li> <li>Q. Okay.</li> <li>A. But that doesn't mean that water that would impact the wells that you propose to use or</li> </ul>	6 7 8 9 10 11	from the lab would address that concern? A. That's correct. While the other part, though, was and I think this and I'm not sure if this is in this part or not, but for the phosphorus testing that you had done, ESC Laboratories used a different methodology
7 8 9 10 11 12	<ul> <li>A. Well, we've not detected pesticides in the spring water delivered to Snake River Farm.</li> <li>Q. Okay.</li> <li>A. But that doesn't mean that water that would impact the wells that you propose to use or in the surrounding area would not have pesticides.</li> </ul>	6 7 9 10 11 12	from the lab would address that concern? A. That's correct. While the other part, though, was and I think this and I'm not sure if this is in this part or not, but for the phosphorus testing that you had done, ESC Laboratories used a different methodology apparently a different methodology than what we're
7 9 10 11 12 13	<ul> <li>A. Well, we've not detected pesticides in the spring water delivered to Snake River Farm.</li> <li>Q. Okay.</li> <li>A. But that doesn't mean that water that would impact the wells that you propose to use or in the surrounding area would not have pesticides.</li> <li>Q. Again, my question was we can</li> </ul>	6 7 9 10 11 12 13	from the lab would address that concern? A. That's correct. While the other part, though, was and I think this and I'm not sure if this is in this part or not, but for the phosphorus testing that you had done, ESC Laboratories used a different methodology apparently a different methodology than what we're required to use in our NPDES permit monitoring.
7 8 9 10 11 12 13 14	<ul> <li>A. Well, we've not detected pesticides in the spring water delivered to Snake River Farm.</li> <li>Q. Okay.</li> <li>A. But that doesn't mean that water that would impact the wells that you propose to use or in the surrounding area would not have pesticides.</li> <li>Q. Again, my question was we can speculate all you want. But I wanted to ask</li> </ul>	6 7 9 10 11 12 13 14	from the lab would address that concern? A. That's correct. While the other part, though, was and I think this and I'm not sure if this is in this part or not, but for the phosphorus testing that you had done, ESC Laboratories used a different methodology apparently a different methodology than what we're required to use in our NPDES permit monitoring. So the phosphorus numbers might be a
7 8 9 10 11 12 13 14 15	<ul> <li>A. Well, we've not detected pesticides in the spring water delivered to Snake River Farm.</li> <li>Q. Okay.</li> <li>A. But that doesn't mean that water that would impact the wells that you propose to use or in the surrounding area would not have pesticides.</li> <li>Q. Again, my question was we can speculate all you want. But I wanted to ask specifically if you're aware of any information or</li> </ul>	6 7 9 10 11 12 13 14 15	from the lab would address that concern? A. That's correct. While the other part, though, was and I think this and I'm not sure if this is in this part or not, but for the phosphorus testing that you had done, ESC Laboratories used a different methodology apparently a different methodology than what we're required to use in our NPDES permit monitoring. So the phosphorus numbers might be a bit different as a consequence. And they could be
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7 8 9 10 11 12 13 14 15 16 17 18 19	<ul> <li>A. Well, we've not detected pesticides in the spring water delivered to Snake River Farm.</li> <li>Q. Okay.</li> <li>A. But that doesn't mean that water that would impact the wells that you propose to use or in the surrounding area would not have pesticides.</li> <li>Q. Again, my question was we can speculate all you want. But I wanted to ask specifically if you're aware of any information or data indicating there are pesticides or herbicides in any of the spring water, which you say no. And I also asked, or in the wells?</li> <li>A. No. There's no data that we've seen</li> </ul>		from the lab would address that concern? A. That's correct. While the other part, though, was and I think this and I'm not sure if this is in this part or not, but for the phosphorus testing that you had done, ESC Laboratories used a different methodology apparently a different methodology than what we're required to use in our NPDES permit monitoring. So the phosphorus numbers might be a bit different as a consequence. And they could be the same. But we don't know because I think the ESC method that was used, there's no digestion involved with the water sampling. So you would not necessarily recover all of the phosphorus that
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1	Page 156		Page 158
	was used in the nitrate-nitrogen analysis. And	1	and/or thrive up to 100 milligrams per liter of
2	it's too late now, unless they've archived the	2	nitrate. And you continue on line 835 and state,
3	samples but that would be too late anyway,	3	"I am unable to confirm the legitimacy of the
4	because the shelf life of those samples would be	4	reference," referring to that Wedemeyer reference.
5	expired.	5	A. Wedemeyer.
6	But for the phosphorus, the	6	Q. Wedemeyer. Do you disagree with their
7	methodology used was not thorough enough to to	7	statement that rainbow can tolerate up to
8	provide a value for what the real total phosphorus	8	100 milligrams per liter?
9	is in the well water. It's the phosphorus test	9	A. Yes.
10	that ESC used is an EPA-approved method. It's	10	Q. And your basis for that would be what?
11	just not as sensitive as what we use for spring	11	A. Kincheloe.
12	water or effluent water.	12	Q. And
13	Q. On the bottom of page 24 when you	13	A. And now the endocrine disruption
14	discuss the	14	properties apparent disruption properties of
15	A. 24?	15	nitrate.
16	Q. Excuse me, on the bottom of page 27,	16	Q. Okay. I thought you said earlier you
17	beginning at line 778.	17	didn't profess to be an expert on endocrine
18	A. Yes.	18	interruption and just had a concern about the
19	Q. "Water from well 2 and 4 are	19	impact of higher levels?
20	contaminated."	20	A. Well, I think I'm a well-equipped
21	Is the basis of that statement based	21	biologist, and so when the scientific literature
22	only upon the nitrate	22	starts to indicate that nitrate-nitrogen is an
23	A. Yes.	23	endocrine disrupter for all vertebrate animals,
24	Q levels?	24	and perhaps invertebrates as well, that's an
25	A. Well, it's also based on the	25	indication that it's that it's a problem.
	Page 157		Page 159
1	phosphorus levels. The ground water shouldn't	1	Q. Would eggs in juveniles tend to be
2	have phosphorus in it. Shouldn't have maybe more		
		2	more sensitive than adults to elevated nitrate
3	than .02 to .03 milligrams per liter phosphorus.	3	levels?
4	than .02 to .03 milligrams per liter phosphorus. But those wells, and I believe one	3 4	levels? A. Yes.
4 5	than .02 to .03 milligrams per liter phosphorus. But those wells, and I believe one other well, had higher concentrations of	3 4 5	levels? A. Yes. Q. When you say you're unable to confirm
4 5 6	than .02 to .03 milligrams per liter phosphorus. But those wells, and I believe one other well, had higher concentrations of phosphorus. But and that other well, I think I	3 4	levels? A. Yes. Q. When you say you're unable to confirm the legitimacy of the reference, what do you mean
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4 5 6 7 8 9 10 11 12 13 14 15 16 17 18 9 20 21 22 23	<ul> <li>than .02 to .03 milligrams per liter phosphorus. But those wells, and I believe one</li> <li>other well, had higher concentrations of</li> <li>phosphorus. But and that other well, I think I</li> <li>referred to it in the report is that well 8? I</li> <li>think something like that.</li> <li>Q. So if those two wells were eliminated,</li> <li>would you agree that the water from the other</li> <li>wells would be consistent with the chemical nature</li> <li>of water historically received at Clear Springs</li> <li>Foods?</li> <li>A. Yes. And that should be buffered,</li> <li>again, with the problem we have with the data not</li> <li>being rigorous enough.</li> <li>Q. On the testing that Clear Springs has</li> <li>been doing since 2007, the more rigorous testing,</li> <li>do you test for phosphorus?</li> <li>A. We do. And that data was provided to</li> <li>you.</li> <li>Q. Turning to page 29, beginning at</li> <li>line 830 and continuing on through 836, you</li> </ul>	$\begin{array}{c} 3\\ 4\\ 5\\ 6\\ 7\\ 8\\ 9\\ 10\\ 11\\ 13\\ 14\\ 15\\ 16\\ 17\\ 18\\ 9\\ 21\\ 22\\ 23\end{array}$	<ul> <li>levels?</li> <li>A. Yes.</li> <li>Q. When you say you're unable to confirm the legitimacy of the reference, what do you mean by that?</li> <li>A. Well, I looked at the publication, the book.</li> <li>Q. Okay.</li> <li>A. And it all cites from the index that referred to nitrate. And the comments in those chapters are nonspecific. They just say fish can tolerate nitrate.</li> <li>Q. So when you suggested it was not legitimate, just meaning you couldn't confirm that that particular reference. It's a legitimate reference.</li> <li>Q. You say it doesn't support their conclusion that 100 milliliters would not cause a problem?</li> </ul>
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25 (Pages 156 to 159)

	Page 160		Page 162
1	A. Yes, it does not confirm that rainbow	1	those testing areas?
2	trout, early life stages, can tolerate	2	A. No. There's the water we receive,
3	100 milligrams per liter.	. 3	as best we can tell, does not fluctuate. Now,
4	Q. On page 34, lines 978 through 980, you	4	going out of the farms, it does fluctuate. And
5	state, "The water temperature measured at the well	5	during the summer, it's a little bit warmer.
6	sites at the Fred Nihart Fountain is all	6	During the winter, it's a little bit colder.
7	consistent with the water temperature delivered to	7	But not the spring sources
8	the Clear Springs Foods Snake River Farm complex."	8	themselves, there does not seem to be any
9	A. Correct.	9	temperature variation that is of any concern to
10	Q. So are you basically stating there	10	us, anyway. And that's one of the things, as
11	that based on those measurements water temperature	11	we've talked about in this deposition, that's
12	is no longer an issue?	12	really what distinguishes the rainbow trout
13	A. No. All I said was that they are	13	produced in the Snake River area from other areas,
14	consistent. If through to the OTR project water	14	including our Argentine and Chilean suppliers.
15	temperature is altered and I'm not equipped to	15	There, the water temperature, the
16	make that kind of analysis or prediction, but if	16	river water temperature, probably does fluctuate.
17	it were, then temperature could still be an issue.	17	I don't know that for a fact. I haven't been
18	But based on this, water temperature	18	there, and I don't have that data.
19	in the ground water wells is essentially the same	19	But in many other places where rainbow
20	as the temperature of the spring water that we	20	trout are grown in the United States, there is
21	receive.	21	significant temperature fluctuation. And that
22	Q. According to the analysis by	22	affects growth rates. It affects survivability of
23	Dr. Brendecke and I appreciate you may not have	23	the fish.
24	read that he analyzed the effect of pumping the	24	Q. On page 35, lines 1006 through 1008,
25	water. And his testimony, if I recall it	25	you indicate the Clear Springs proposes the
	Page 161		Page 163
1	correctly, concluded that if the water was pumped	1	location of the degassing chamber.
2	from a number of the wells, the overall	2	A. No. "The ground water districts
3	temperature would decline minus .3/10ths of a	3	propose to place the degassing chamber at the
4	degree Fahrenheit, and I believe he concluded that	4	northwest corner. Clear Springs opposes this
5	if there was a single consolidated well, which was	5	location."
6	part of the proposal	6	Q. Okay. That's what I said. You oppose
7	A. No. 4.	7	the location of the
8	Q. Yes.	8	A. I'm sorry. I thought you said we
9	the overall decline would be a	9	proposed the location.
11 0			
10	minus .1/10th of a degree Fahrenheit.	10	Q. No.
11	Would that reduction in temperature of	11	Q. No. A. But we oppose it.
11 12	Would that reduction in temperature of a tenth to a third of a degree Fahrenheit have any	11 12	<ul><li>Q. No.</li><li>A. But we oppose it.</li><li>Q. So you recognize you need it.</li></ul>
11 12 13	Would that reduction in temperature of a tenth to a third of a degree Fahrenheit have any concern upon your ability to use the water at the	11 12 13	<ul><li>Q. No.</li><li>A. But we oppose it.</li><li>Q. So you recognize you need it.</li><li>What is a degassing chamber?</li></ul>
11 12 13 14	Would that reduction in temperature of a tenth to a third of a degree Fahrenheit have any concern upon your ability to use the water at the facility?	11 12 13 14	<ul> <li>Q. No.</li> <li>A. But we oppose it.</li> <li>Q. So you recognize you need it. What is a degassing chamber?</li> <li>A. Well, that's what the chamber is that,</li> </ul>
11 12 13 14 15	Would that reduction in temperature of a tenth to a third of a degree Fahrenheit have any concern upon your ability to use the water at the facility? A. No.	11 12 13 14 15	<ul> <li>Q. No.</li> <li>A. But we oppose it.</li> <li>Q. So you recognize you need it. What is a degassing chamber?</li> <li>A. Well, that's what the chamber is that,</li> <li>I believe, Mr. Eldridge and has proposed to</li> </ul>
11 12 13 14 15 16	Would that reduction in temperature of a tenth to a third of a degree Fahrenheit have any concern upon your ability to use the water at the facility? A. No. Q. Okay.	11 12 13 14 15 16	<ul> <li>Q. No.</li> <li>A. But we oppose it.</li> <li>Q. So you recognize you need it. What is a degassing chamber?</li> <li>A. Well, that's what the chamber is that,</li> <li>I believe, Mr. Eldridge and has proposed to construct at that location.</li> </ul>
11 12 13 14 15 16 17	Would that reduction in temperature of a tenth to a third of a degree Fahrenheit have any concern upon your ability to use the water at the facility? A. No. Q. Okay. A. Thank you for not smiling when you	11 12 13 14 15 16 17	<ul> <li>Q. No.</li> <li>A. But we oppose it.</li> <li>Q. So you recognize you need it. What is a degassing chamber?</li> <li>A. Well, that's what the chamber is that,</li> <li>I believe, Mr. Eldridge and has proposed to construct at that location.</li> <li>Q. And you're suggesting you need one,</li> </ul>
11 12 13 14 15 16 17 18	Would that reduction in temperature of a tenth to a third of a degree Fahrenheit have any concern upon your ability to use the water at the facility? A. No. Q. Okay. A. Thank you for not smiling when you were saying that.	11 12 13 14 15 16 17 18	<ul> <li>Q. No.</li> <li>A. But we oppose it.</li> <li>Q. So you recognize you need it. What is a degassing chamber?</li> <li>A. Well, that's what the chamber is that,</li> <li>I believe, Mr. Eldridge and has proposed to construct at that location.</li> <li>Q. And you're suggesting you need one,</li> <li>just at a different location?</li> </ul>
11 12 13 14 15 16 17 18 19	Would that reduction in temperature of a tenth to a third of a degree Fahrenheit have any concern upon your ability to use the water at the facility? A. No. Q. Okay. A. Thank you for not smiling when you were saying that. Q. Would it even be detectable?	11 12 13 14 15 16 17 18 19	<ul> <li>Q. No.</li> <li>A. But we oppose it.</li> <li>Q. So you recognize you need it. What is a degassing chamber?</li> <li>A. Well, that's what the chamber is that,</li> <li>I believe, Mr. Eldridge and has proposed to construct at that location.</li> <li>Q. And you're suggesting you need one,</li> <li>just at a different location?</li> <li>A. Right.</li> </ul>
11 12 13 14 15 16 17 18 19 20	Would that reduction in temperature of a tenth to a third of a degree Fahrenheit have any concern upon your ability to use the water at the facility? A. No. Q. Okay. A. Thank you for not smiling when you were saying that. Q. Would it even be detectable? A. If it is well, we could detect it.	11 12 13 14 15 16 17 18 19 20	<ul> <li>Q. No.</li> <li>A. But we oppose it.</li> <li>Q. So you recognize you need it. What is a degassing chamber?</li> <li>A. Well, that's what the chamber is that,</li> <li>I believe, Mr. Eldridge and has proposed to construct at that location.</li> <li>Q. And you're suggesting you need one,</li> <li>just at a different location?</li> <li>A. Right.</li> <li>Q. Would a location across the road be</li> </ul>
11 12 13 14 15 16 17 18 19 20 21	Would that reduction in temperature of a tenth to a third of a degree Fahrenheit have any concern upon your ability to use the water at the facility? A. No. Q. Okay. A. Thank you for not smiling when you were saying that. Q. Would it even be detectable? A. If it is well, we could detect it. We would not detect it impacting production or	11 12 13 14 15 16 17 18 19 20 21	<ul> <li>Q. No.</li> <li>A. But we oppose it.</li> <li>Q. So you recognize you need it. What is a degassing chamber?</li> <li>A. Well, that's what the chamber is that,</li> <li>I believe, Mr. Eldridge and has proposed to construct at that location.</li> <li>Q. And you're suggesting you need one,</li> <li>just at a different location?</li> <li>A. Right.</li> <li>Q. Would a location across the road be suitable?</li> </ul>
11 12 13 14 15 16 17 18 19 20 21 22	Would that reduction in temperature of a tenth to a third of a degree Fahrenheit have any concern upon your ability to use the water at the facility? A. No. Q. Okay. A. Thank you for not smiling when you were saying that. Q. Would it even be detectable? A. If it is well, we could detect it. We would not detect it impacting production or research or the brood selective breeding	11 12 13 14 15 16 17 18 19 20 21 22	<ul> <li>Q. No.</li> <li>A. But we oppose it.</li> <li>Q. So you recognize you need it. What is a degassing chamber?</li> <li>A. Well, that's what the chamber is that,</li> <li>I believe, Mr. Eldridge and has proposed to construct at that location.</li> <li>Q. And you're suggesting you need one,</li> <li>just at a different location?</li> <li>A. Right.</li> <li>Q. Would a location across the road be suitable?</li> <li>A. Well, no. We're opposed to the</li> </ul>
11 12 13 14 15 16 17 18 19 20 21 22 23	Would that reduction in temperature of a tenth to a third of a degree Fahrenheit have any concern upon your ability to use the water at the facility? A. No. Q. Okay. A. Thank you for not smiling when you were saying that. Q. Would it even be detectable? A. If it is well, we could detect it. We would not detect it impacting production or research or the brood selective breeding program.	11 12 13 14 15 16 17 18 19 20 21 22 23	<ul> <li>Q. No.</li> <li>A. But we oppose it.</li> <li>Q. So you recognize you need it. What is a degassing chamber?</li> <li>A. Well, that's what the chamber is that,</li> <li>I believe, Mr. Eldridge and has proposed to construct at that location.</li> <li>Q. And you're suggesting you need one,</li> <li>just at a different location?</li> <li>A. Right.</li> <li>Q. Would a location across the road be suitable?</li> <li>A. Well, no. We're opposed to the over-the-rim project, so it would not be suitable.</li> </ul>
11 12 13 14 15 16 17 18 19 20 21 22	Would that reduction in temperature of a tenth to a third of a degree Fahrenheit have any concern upon your ability to use the water at the facility? A. No. Q. Okay. A. Thank you for not smiling when you were saying that. Q. Would it even be detectable? A. If it is well, we could detect it. We would not detect it impacting production or research or the brood selective breeding	11 12 13 14 15 16 17 18 19 20 21 22	<ul> <li>Q. No.</li> <li>A. But we oppose it.</li> <li>Q. So you recognize you need it. What is a degassing chamber?</li> <li>A. Well, that's what the chamber is that,</li> <li>I believe, Mr. Eldridge and has proposed to construct at that location.</li> <li>Q. And you're suggesting you need one,</li> <li>just at a different location?</li> <li>A. Right.</li> <li>Q. Would a location across the road be suitable?</li> <li>A. Well, no. We're opposed to the</li> </ul>

26 (Pages 160 to 163)

			Barra 100
	Page 164		Page 166
1	is the bottom line.	1	Q. Carrying capacity for fish in your
2	Q. You wouldn't want to have control of	2	raceway would be a factor of a number of things, I
3	it?	3	suppose water supply and flow rate would be one
4	A. No.	4	factor.
5	Q. Okay. On the bottom of that same	5	And would dissolved oxygen level also
6	page, 35, you seem to be expressing on lines 1023	6	be a factor?
7	through 1025 a concern about colonization of	7	A. Yes.
8 -	bacteria on the inner surface of a pipeline?	8	Q. And I suppose temperature is a factor?
9	A. Yes.	9	A. Yes.
10	Q. Has that been a problem with any of	10	Q. Fish size?
11	the existing piping utilized at Clear Springs?	11	A. Yes.
12	A. Not to our knowledge.	12	Q. And pH?
13	Q. And wouldn't such a concern be reduced	13	A. PH, yes.
14	even further by use of the plastic pipe proposed	14	Q. Any other things that come to mind?
15	by the districts as opposed to the steel pipe?	15	A. Carbon dioxide, ammonia, un-ionized
16	A. I'm not equipped I don't know. We	16	ammonia. Those are the things that come to mind
17	do know that off-flavor can be a significant	17	immediately. I think in my first report it
18	problem. In the channel catfish industry, for	18	identified a number of things that and I think
19	example, in the deep South of the U.S. has a	19	all those were included. I'm not sure if there
20	significant problem with off-flavor in their fish.	20	was anything else.
21	And I just raise this as a question.	21	Q. There may be others?
22	And I know I shared some of our literature that	22	A. Yeah.
23	I've seen on biofilm information in pipes and	23	Q. Normally you evaluate productivity in
24	off-flavor stuff. But I have no knowledge that	24	terms of pounds of fish per cfs of water flow?
25	the pipeline would be any more or less likely to	25	A. Correct.
<u> </u>			
	Page 165		Page 167
1	be colonized.	1	Q. That 30,000 pounds of fish per cfs per
2	Q. Not something you've discussed with	2	year which Mr. Cope provided would be a rounded
3	Dr. Brockway yet?	3	figure that's relatively constant?
4	A. No.	4	A. Yes. It doesn't you know, the
5	MR. BUDGE: Let's go off the record.	5	times we can do even better than that. I think
6	(Lunch recess.)	6	we've had times where it has been 35,000 pounds
7	Q. (BY MR. BUDGE): Dr. MacMillan,	7	per cfs. But as an average, 30- sounds sounds
8	approximately what's the flow-through time of	8	probably about right.
9	water from the intake to discharge from the Snake	9	Q. And would that be a factor of how much
10	River Farm facility?	10	feed the fish are given?
11	A. 100 to 120. I know it's something	11	A. Partly.
12	like that. Generally about 20 minutes per	12	Q. Okay. Is feed the largest variable
13	raceway.	13	cost of production?
14	Q. And would that be the same answer to	14	A. It is.
15	the question of how long would it take to drain	15	Q. Do you know approximately what percent
16	the facilities if the water was shut off all	16	that would be?
17	together, it would be roughly 120 minutes, 100 to	17	A. Well, I think the rule of thumb is 50,
18	120 minutes?	18	55 percent. But I don't I don't see the the
19	A. That seems logical.	19	operating statements on that to know.
20	Q. And then would my understanding be	20	Q. My understanding, there isn't any
21	correct that all of the uses by Clear Springs at	21	treatment of the water within the Clear Springs
22	Snake River Farms would be considered	22	facility?
23	nonconsumptive, except for the evaporation that	23	A. There's no well, it depends on what
24	might be associated?	24	you mean "treatment." We do have settling basins,
2.5	A. I think that's correct.	25	quiescent zones at the end of each raceway. And
69908383		1. N 1. N 10	
			27 (Pages 164 to 167)

1that captures a good bit of the solids that settle1least cost, because those kinds of num2out. There's no chemical treatment or filtration,2collected by any agencies that I know	Page 170
2 out. There's no chemical treatment or filtration, 2 collected by any agencies that I know	bers are not
3 anything like that that would be associated with 3 we would like to think, because we th	
4 recirculating aquaculture, for example. 4 very good at producing rainbow trout,	
5 Q. And with feed being the largest 5 figured it out, how to do it.	
6 variable cost of production, do you have an 6 And I think he mentioned in hi	is
7 estimate of the cost of production per pound? 7 testimony that he thinks that he'd lil	
8 A. I do not. My role at Clear Springs is 8 think we are the least cost. But we ha	
9 different than operations. I don't know. 9 to quantitate that.	ve no way
10 Q. You probably wouldn't know the sales 10 MR. BUDGE: Let's mark that as	29
11 price per pound on average? 11 (Exhibit 29 marked.)	<i>27</i> <b>.</b>
12 A. Only no. That is so variable 12 Q. (BY MR. BUDGE): I have a	few
13 because it depends on the market, the style of 13 questions regarding some information	
14 fish. And you should have asked Mr. Cope that if 14 Exhibit 29 that's entitled "A Profile of	
15You really needed that. But I bet even he15Aquaculture of Trout in the United St	
1616I suppose you've probably seer	
17 Q. I think you testified obviously that 17 before?	i uns
	Como
19business challenge going forward?19Q. On page 25 they talked about20A. Yes.20drought losses that occurred in 2002 compared in 2002 compar	
	i previous
	an tha
24A. It is. It is. Not only imported24Do you have any explanation of25products, but domestically-raised products can25differences between the trout operation	
2.5 products, but domestically-raised products call 2.5 differences between the front operation	
Page 169	Page 171
1 you can raise trout cheaper than Clear Springs 1 and Utah that would explain that?	
2 does. And they're out in the market. 2 A. I don't have any specific inform	mation,
3 And our marketing people, salespeople 3 but I would imagine that the source of y	
4 tell me that while there is cheaper product out 4 factor, reliability of the water being del	
5 there, they still have a hard time competing with 5 but I don't know on what basis they t	hey came
6 us because price isn't the only consideration in 6 up with these numbers or anything like	
7 the marketplace. 7 Q. On page	
8 And that gets back to why the image of 8 A. And drought, incidentally, cou	ıld also
9 Clear Springs, our cachet, so to speak, our 9 be manifested in elevated water temper	
10 perception out there is so important for Clear 10 these facilities, which would make, you	
11 Springs to protect. We do demand, we command 11 the viability of the trout very difficult in	
12 probably the higher prices out there for our 12 temperature got too high.	
13 products of rainbow trout. 13 Q. Does your production go up or	r down
14 And so so that's the dynamic that 14 much in these years of severe drought w	
15 we deal with. Not only is there there is some 15 good water year? Do you notice much	
	U D' J
16 import of rainbow trout into the United States. 16 to year?	have to
16import of rainbow trout into the United States.16to year?17There's some production in aside from Idaho,17A. Well, again, we have to we limit	
16import of rainbow trout into the United States.16to year?17There's some production in aside from Idaho,17A. Well, again, we have to we into a state of the s	oing to be,
16import of rainbow trout into the United States.16to year?17There's some production in aside from Idaho,17A. Well, again, we have to we implication in aside from Idaho,18out you know, that we're competing against as18predict what our low water flows are get19well for rainbow trout.19and base our stocking on that basis. And	oing to be,
<ul> <li>16 import of rainbow trout into the United States.</li> <li>17 There's some production in aside from Idaho,</li> <li>18 out you know, that we're competing against as</li> <li>19 well for rainbow trout.</li> <li>20 Q. I rather had the impression from</li> <li>16 to year?</li> <li>17 A. Well, again, we have to we in the impression from</li> <li>18 predict what our low water flows are get and base our stocking on that basis. And 20 Mr. Cope spoke to that as well.</li> </ul>	oing to be, nd I think
<ul> <li>16 import of rainbow trout into the United States.</li> <li>17 There's some production in aside from Idaho,</li> <li>18 out you know, that we're competing against as</li> <li>19 well for rainbow trout.</li> <li>20 Q. I rather had the impression from</li> <li>16 to year?</li> <li>17 A. Well, again, we have to we</li> <li>18 predict what our low water flows are ge</li> <li>19 and base our stocking on that basis. And</li> <li>20 Mr. Cope spoke to that as well.</li> </ul>	oing to be, nd I think ne way
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28 (Pages 168 to 171)

	Page 172		Page 174
1	So so that's good. But we also don't see the	1	contaminant and/or disease of each of these
2	impact of improved water conditions for that same	2	levels?
3	length of time.	3	A. The disease, we have a biosecurity
4	Q. At the bottom of page 28, this paper	4	program in place and continue to revise that as
5	makes a comment that "38 percent of all trout	5	disease health management is not an exact science.
6	producers in the region pump at least part of	6	So we continue to try new things.
7	their water and 19 percent pump all of their water	7	I think I mentioned yesterday we have
8	used."	8	a vaccine that appears to have been fairly
9	A. I	9	effective at reducing some mortality. And that's
10	Q. Would that indicate that pumping alone	10	a vaccine that we've produced, invented and
11	is not necessarily an impediment to raising trout?	11	produced. So that's a very active program.
12	A. Pumping alone is not an impediment to	12	Our monitoring program for pesticides,
13	raising trout, that's true. It is an impediment	13	for example, now has shifted just to the finished
14	to Clear Springs because of all the reasons we've	14	product and the feed, because our history with the
15	been talking about.	15	water-quality aspects of pesticides is that there
16	Q. Okay. But not the fact that the water	16	aren't any pesticides in the spring water that we
17	goes through some pump mechanism that causes the	17	were looking at.
18	impediment?	18	Again, because of the nitrate
19	A. No. And just the question to ask	19	presence, we just you have to wonder if
20	and, you know, I don't know if this publication	20	because there's clearly contamination of that
21	addresses the issue, but how do you sell the fish?	21	water with nitrates, is there anything else with
22	Are you a generic producer, or are you a branded	22	it?
23	premier producer? That's at play. That's an	23	And periodically in the ISDA data on
24	issue at play here.	24	ground water quality, they do identify pesticides,
25	And, you know, my experience with the	25	in particular the herbicides, as being present.
	Page 173		Page 175
1	U.S. trout farmers is that you pump water for	1 1	
		1	So so no, we're there's a really
2	awhile, but unless you can command an elevated	2	good chance we're going to have to increase our
2 3	awhile, but unless you can command an elevated price for that product and it's typically	2 3	good chance we're going to have to increase our scrutiny of the water, but also the fish, for some
2 3 4	awhile, but unless you can command an elevated price for that product and it's typically probably the small family farm that might try to	2 3 4	good chance we're going to have to increase our scrutiny of the water, but also the fish, for some of these other pesticides that apparently are
2 3 4 5	awhile, but unless you can command an elevated price for that product and it's typically probably the small family farm that might try to do that. Unless you can command a high price, you	2 3 4 5	good chance we're going to have to increase our scrutiny of the water, but also the fish, for some of these other pesticides that apparently are occurring in the ground water. Even if we don't
2 3 4 5 6	awhile, but unless you can command an elevated price for that product and it's typically probably the small family farm that might try to do that. Unless you can command a high price, you can't continually pump water. And that's the	2 3 4 5 6	good chance we're going to have to increase our scrutiny of the water, but also the fish, for some of these other pesticides that apparently are occurring in the ground water. Even if we don't identify it in the spring water, we still are
2 3 4 5 6 7	awhile, but unless you can command an elevated price for that product and it's typically probably the small family farm that might try to do that. Unless you can command a high price, you can't continually pump water. And that's the challenge.	2 3 4 5 6 7	good chance we're going to have to increase our scrutiny of the water, but also the fish, for some of these other pesticides that apparently are occurring in the ground water. Even if we don't identify it in the spring water, we still are obligated to test for them.
2 3 4 5 6 7 8	awhile, but unless you can command an elevated price for that product and it's typically probably the small family farm that might try to do that. Unless you can command a high price, you can't continually pump water. And that's the challenge. So then you're competing with the	2 3 4 5 6 7 8	good chance we're going to have to increase our scrutiny of the water, but also the fish, for some of these other pesticides that apparently are occurring in the ground water. Even if we don't identify it in the spring water, we still are obligated to test for them. So we haven't but we haven't
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	Page 176		Page 178
1	the Department of Water Resources has data" on and	.1	any changes in the mechanics or facilities or
2	on. You can select wells that have really good	2	operation to increase the dissolved oxygen levels,
3	data, or you can select wells that maybe don't	3	or are they pretty much the same as they were when
4	have as good of data to create your argument.	4	they were built?
5	And so that's the one of the	5	A. Well, I cannot address how they were
6	problems with the OTR is that we don't have a long	6	when they were built. We did go through a period
7	history of information.	7	of time looking at different ways to increase the
8	Q. Give me just a moment, and I'll see if	8	oxygen as it the water goes from one raceway to
9	there are any issues that Mr. Cope referred to you	9	the next. So right at that weir, so to speak,
10	that we haven't covered.	10	that drop off, we've looked at different brush
11	A. So I assume we're done with this one?	11	devices and ways to splash the water so that you
12	Q. Yes.	12	can decrease the size of water droplets of
13	On the Box Canyon Creek source that	13	water to have oxygen diffuse in.
14	supplies Box Canyon, Mr. Cope was unaware of any	14	And we have landed on a place that
15	concern about ag runoff into that creek.	15	seems to work. We can put about 1 roughly
16	Are you aware of any ag runoff	16	speaking, 1 part per million, 1 milligram per
17	concerns about that?	17	liter of oxygen between each drop of water, you
18	A. I'm not aware of any ag runoff. We do	18	know, from one elevation to the next elevation.
19	monitor the influent quality for nitrate-nitrite	19	Q. So that's some changes that have been
20	and for total phosphorus. And we've not seen any	20	done?
21	real change in nitrate-nitrite, and the phosphorus	21	A. While I've been there, that's what
22	has stayed very constant over the period of time	22	we've done. Whether that was so yes.
23	that we've been looking at it.	23	MR. BUDGE: That's all I have. Thank you
24 25	So we don't have any evidence that there's contamination or there's ag runoff into	24 25	very much. THE WITNESS: Are you sure?
2.5		2.5	· · · · · · · · · · · · · · · · · · ·
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1	that Box Canyon Creek, which again, we believe is	1	MR. BUDGE: Off the record.
2	spring flow.	2	(Deposition concluded at 1:48 p.m.)
3	Q. Mr. Cope also deferred to you on this	3	(Signature requested.)
4	discussion about oxygen. And I think you	4	-000-
5	testified that oxygen levels is a major factor in	5	
6	production.	6	
7	Are there ways to increase the	1 '	
8	efficiency of the use of the water by increasing	8	
9 10	oxygen levels?	9 10	
11	A. There are ways to increase the amount of oxygen. Whether you can do it economically is	11	
12	a question. Clear Springs has over the years put	12	
13	in a lot of research effort into using low-head	13	
$14^{13}$	oxygenators and things like that to see if we	$14^{13}$	
15	could materially impact the amount of oxygen in	15	
16	later-use raceways. And we could increase it, but	16	
17	not economically.	17	
18			
4	O. Okav.	178	
19	Q. Okay. A. So that's you know, one of the	18 19	
19 20	A. So that's you know, one of the	1	
		19	
20	A. So that's you know, one of the things you learn fairly quickly in the aquaculture	19 20	
20 21	A. So that's you know, one of the things you learn fairly quickly in the aquaculture business, at least if you're a scientist, and that	19 20 21	
20 21 22 23 24	<ul> <li>A. So that's you know, one of the things you learn fairly quickly in the aquaculture business, at least if you're a scientist, and that is that there's lots of engineering things that you can do, but you can't afford to do them.</li> <li>Q. Since those raceway facilities were</li> </ul>	19 20 21 22 23 24	
20 21 22 23	A. So that's you know, one of the things you learn fairly quickly in the aquaculture business, at least if you're a scientist, and that is that there's lots of engineering things that you can do, but you can't afford to do them.	19 20 21 22 23	

30 (Pages 176 to 179)