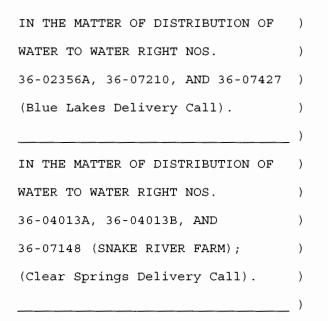
EXHIBIT B

BEFORE THE DEPARTMENT OF WATER RESOURCES

OF THE STATE OF IDAHO



CONTINUED DEPOSITION OF KARL J. DREHER, P.E.

Volume II, Pages 158 - 404

November 1, 2007

REPORTED BY:

COLLEEN P. KLINE, CSR No. 345

Notary Public

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1	APPEARANCES (CONTINUED):	1	(Exhibits 78 through 82 marked.)
2	For Rangen, Inc.:	2	KARL J. DREHER, P.E., VOL. II,
3	May, Sudweeks & Browning	3	previously first duly sworn to tell the truth
4	BY MR. J. DEE MAY	4	relating to said cause, testified as follows:
5	1419 W. Washington	5	EXAMINATION
6	P.O. Box 6091	6	QUESTIONS BY MR. STEENSON:
7	Boise, Idaho 83707	7	Q. Good morning.
8	For Idaho Ground Water Appropriators, Inc.:	8	A. Good morning.
9	RACINE, OLSON, NYE, BUDGE & BAILEY	9	Q. Okay. We're back on the record. My
10	BY MR. THOMAS J. BUDGE BY MS. CANDICE M. McHUGH	10	name is Dan Steenson. I represent Blue Lakes Trout Farm in this matter. Karl, you remain
11 12	101 South Capitol Boulevard, Suite 208	12	under oath.
13	Boise, Idaho 83702	13	Karl, could you turn in deposition
14	For the Blue Lakes Trout Farm:	14	exhibit books to Exhibit No. 4.
15	Ringert Clark, Chartered	15	A. (Witness complying.)
16	BY MR, DANIEL V. STEENSON	16	Q. Do you recall the process by which the
17	455 S. 3rd Street	17	Department obtained authority for and from the
18	P.O. Box 2773	18	SRBA Court to proceed with interim administration
19	Boise, Idaho 83701-2773	19	and form Water District 130 and other water
20	20150, Iduito 05701-2775	20	districts?
21		21	A. Certainly, I recall generally the
22		22	process. I don't know whether I recall all the
23		23	specific steps and the timeline.
24		24	Q. Do you recall the State of Idaho filing
25		25	a motion with the SRBA District Court seeking
P*4524	a o 2 sent manageren an transministration de la construction de la construction de monte a ser mart a sentembra Notes	Proceeding and	
			2 (Pages 159 to 162

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1	authority	1	water districts and the distribution of water
2	A. Yes.	2	thereunder will occur in accordance with the
3	Q from the court to conduct interim	3	normal administrative mechanism created by
4	administration?	4	Chapter 6, Title 42, Idaho Code."
5	A. Yes.	5	Can you describe what is meant by the
6	Q. And this Exhibit 4 titled "Motion For	6	normal administrative mechanism that is described
7	Order of Interim Administration and Motion for	7	in Title 42 of the Idaho Code?
8	Order for Order Expediting Hearing." I'll	8	A. Well, this is a reference to, you know,
9	represent to you that the State describes the	9	the whole process that's outlined for the
10	process that it has envisioned for interim	10	creation and the operation of water districts
11	administration.	11	pursuant to Chapter 6. I mean, the normal
12	I would like you to turn, please, to	12	administrative process is outlined in Chapter 6.
13	page No. 7 actually, page No. 6, and read the	13	Q. Okay. And could you summarize for us
14	text under the heading Roman numeral II at page	14	then, in your view, how water rights are normally
15	number 6 through to the next section. And I	15	administered in the water districts?
16	don't mean read into the record. Read to	16	A. Well, water districts have watermasters
17	yourself.	17	that function under the supervision of the
18	A. Okay. What I'm looking at here,	18	director of the Department of Water Resources.
19	Exhibit 4, it says, "Motion for Order of Interim	19	And certainly, the director can delegate that
20	Administration," and there is no page 6. So I'm	20	authority to regional managers and such.
21	not sure I'm looking at the right thing. There	21	But the water districts or the
22	is a brief in support	22	watermasters distribute water among rights in
23	Q. I'm sorry. Turn to the "Brief in	23	accordance with the instructions and the rules
24	Support." You are right.	24	and that are issued by the director of the
25	A. (Witness complying.) All right.	25	Department or its designee.
	Page 164		Page 166
1	Q. The brief was covered by the motion in	1	Q. Okay. So normally, if a call or a
2	the exhibit.	2	request for delivery of water comes to a
3	A. Okay. And what part now do you want me	3	watermaster, what would a watermaster normally do
4	to read?	4	as the next step?
5	Q. Turn to page 6, and under the heading	5	A. It depends on whether there has been a
6	Roman numeral II, read that section to yourself	6	process established for administering those water
7	clear to the next page, Roman numeral III to the	7	rights. And certainly, in a surface water
8	next section.	8	stream, generally that administration has
9	A. (Witness reading.) Okay.	9	occurred for some length of time, and the process
10	Q. Are you in agreement with the process	10	is pretty mechanistic.
11	that's described in that section heading with	11	Q. Can you describe it for me?
12	respect to the anticipated administration of	12	A. Well, if there is a senior right that's
13	water rights?	13	not being filled, and as we talked about
14	A. Well, the process for administering	14	yesterday, the senior is in a position of
15	water rights is not dealt with in this section.	15	diverting his whatever part of the right is
16	It just talks about before you can administer,	16	not being filled, if he's in a position of
17	you have to have an accurate list.	17	diverting that water and applying it to
18	Q. And are you in agreement that the	18	beneficial use, then the watermaster would
19	partial decrees that are discussed in that	19	curtail a junior to supply that water.
20	section represent an adequate list for the water	20	Q. And is that, though abbreviated, a
21	rights for purposes of interim administration?	21	complete summary of what the administrative
22	A. Yes. Ω At the end of that section heading	22	process would be A. No.
23	Q. At the end of that section heading,	t	
24 25	there is a sentence that reads, "Upon entry of an order for interim administration, the creation of	24	Q in terms of a surface water district?
L23	oruct for micrim auministration, the creation of	25	
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ſ		Page 167		Page 169
	1	A. No, that's not complete.	1	Q. Yes. In other words, from one day to
	2	Q. What's missing?	2	the next?
	3	A. Well, the watermaster would typically	3	A. That's correct.
	4	make these distributions, or change the	4	Q. Not necessarily during the course of a
	5	distribution on a daily basis, and would go back	5	single day?
	6	the following day to reassess whether the senior	6	A. That's correct.
	7	was getting the water needed, or whether he was	7	Q. And with respect to the water rights
	8	getting too much.	8	that watermasters administer in their normal
	9	Often when these changes are made, in	9	process, they are represented, are they not, by
	10	some instances more water gets distributed to the	10	decrees, licenses, and permits?
1	11	senior than they are entitled to. So the	11	A. Yes.
I	12	watermaster makes adjustments, typically, on a	12	Q. And in the normal administrative
	13	daily basis until the proper distribution is	13	process, what does the watermaster do, if
	14	obtained.	14	anything, to determine the amount of water that a
	15	Often, though not always, the	15	calling senior is entitled to based on a decree,
	16	watermaster presumes that the water provided to	16	a license, or a permit?
	17	the senior will be beneficial use, and may or may	17	A. Well, because the investigation often
	18	not conduct an investigation. Certainly has the	18	has been made in the past as to how much water a
	19	authority to conduct that kind of investigation,	19	senior needs, typically, the watermaster presumes
	20	but often it's presumed, because the	20	that the quantity that's been licensed or decreed
	21	investigation has been conducted in some manner	21	is the quantity that's needed, but not always.
	22	in the past.	22	Q. Okay. So is it accurate to say that
	23	Q. And is the watermaster required to	23	the watermaster does not question the amount of
	24	adjust headgates, because flows vary from day to	24	water stated in a decree or a license in terms of
Ļ	25	day, week to week, and so forth?	25	its statement of the entitlement of the water
		Page 168		Page 170
	1	A. Only in part. Because not only do the	1	user to water presuming that the water user
	2	flows vary, but as the adjustments are	2	needs, or can put the water to beneficial use?
	3	made and it depends on the location, of	3	A. No, I don't think that's true. I mean,
1	4	course but there can be some length of time	4	the watermaster doesn't question the quantity
	5	needed for the changes to sort of stabilize. But	5	that has been decreed as the maximum amount
	6	during the daily process, there can be variations	6	that's authorized to be diverted. But the
	7	in flow as well.	17	watermaster could question whether that amount is
	8	Q. So I take it, specifically, in a	8	needed.
	9	surface water system, there can be di-yearly	9	Q. And what kinds of investigations or
	10	channels in flow; is that correct?	10	queries might the watermaster make to determine
	11	A. That's correct.	11	whether or not the water is needed?
	12	Q. And monthly changes in flow as well; is	12	A. Well, I mean, it's a very fact specific situation. And as Lindicated often the
	13	that correct?	13	situation. And as I indicated, often the
	14	A. That's correct.	14	watermaster presumes that the full quantity is
1	15	Q. And I take it that the frequency with	15 16	needed, but not necessarily. You know, in Water District 36 A, as an example, the watermaster
		which the watermaster would adjust shance		DISTICT NO A. AS AN EXAMPLE. THE WATCHNASTER
	16 17	which the watermaster would adjust, change		-
	17	headgates would depend on the variations in flow;	17	could question whether a surface water right was
	17 18	headgates would depend on the variations in flow; and assuming, of course, that the calling senior	17 18	could question whether a surface water right was fully needed by someone diverting from a spring
	17 18 19	headgates would depend on the variations in flow; and assuming, of course, that the calling senior continues to need the water that they called for;	17 18 19	could question whether a surface water right was fully needed by someone diverting from a spring before a junior would be curtailed.
	17 18 19 20	headgates would depend on the variations in flow; and assuming, of course, that the calling senior continues to need the water that they called for; is that correct?	17 18 19 20	could question whether a surface water right was fully needed by someone diverting from a spring before a junior would be curtailed. But, again, I think the typical
	17 18 19 20 21	headgates would depend on the variations in flow; and assuming, of course, that the calling senior continues to need the water that they called for; is that correct? A. Not entirely. I mean, the variations	17 18 19 20 21	could question whether a surface water right was fully needed by someone diverting from a spring before a junior would be curtailed. But, again, I think the typical operation in the surface water system is
	17 18 19 20 21 22	headgates would depend on the variations in flow; and assuming, of course, that the calling senior continues to need the water that they called for; is that correct? A. Not entirely. I mean, the variations in flow during a daily period are such that they	17 18 19 20 21 22	could question whether a surface water right was fully needed by someone diverting from a spring before a junior would be curtailed. But, again, I think the typical operation in the surface water system is that unless there is some reason to question
	17 18 19 20 21 22 23	headgates would depend on the variations in flow; and assuming, of course, that the calling senior continues to need the water that they called for; is that correct? A. Not entirely. I mean, the variations in flow during a daily period are such that they are generally not large enough that would warrant	17 18 19 20 21 22 23	could question whether a surface water right was fully needed by someone diverting from a spring before a junior would be curtailed. But, again, I think the typical operation in the surface water system is that unless there is some reason to question how much is needed, the watermaster would presume
	17 18 19 20 21 22	headgates would depend on the variations in flow; and assuming, of course, that the calling senior continues to need the water that they called for; is that correct? A. Not entirely. I mean, the variations in flow during a daily period are such that they	17 18 19 20 21 22	could question whether a surface water right was fully needed by someone diverting from a spring before a junior would be curtailed. But, again, I think the typical operation in the surface water system is that unless there is some reason to question

4 (Pages 167 to 170)

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1 A. Yes. 2 Would involve, would it not, a consideration of 3 the uses authorized by theright; isn't that 4 correct? 4 Correct? 5 A. Certainly. 6 Q. In other words, for irrigation the 7 question would be: You're calling for water. 8 A. Certainly. 9 felds that you infact, going to apply the water to 9 felds that you intend or need to irrigate? 10 Q. What clse might it include? 12 A. Well, some of the systems have multiple 13 we have canals that also have hydropower 16 inquiry as to what purposes. 17 diverted? Is it to irrigate fields? And if the 12 guest isst needed for irrigation, it still may 19 be authorized to be divermaster of Water that 12 Q. Let's take aquaculture, for example. I 13 you instructed the water master of vater this been 14 Q. And do you recall the distribution of 15 A. Yes. 2 Q. Sure. Is that because there is an 24 Q. And do you recall the di		Page 171		 Page 173
2 Q. And so far as you know, it's ongoing 3 the use as authorized by the right; isn't that 2 Q. And so far as you know, it's ongoing 3 the use as authorized by the right; isn't that 2 today; correct? 4 A. Certainly. 5 supposed to1 don't recall if it was on a 7 uses, for example. So in some instances, I mean, as monthy basis or what time period, but the 12 A. Well, some of the systems have multiple 13 beneficial use, vary depending upon the source of 13 the determination fhat the water will be put to 14 beneficial use, vary depending upon the source of 14 we have canals that also have hydropover 16 inquiry as to what purpose is the water being 12 16 inquiry as to what purpose is the water being 16 administration. If water rights Meen 12 Q. Let's take aquaculture, for example. I 2 administration of the water master of o tome, you know, 13 totereficial use, Vary depending upon the source of supply vary instructed the watermaster of o water statement from Clear 3 14 130 to feficial use, lawed for a statement from Clear Q. And in that case,? 4	1	Ω Now the determination of the need	1	A Yes
3the use as authorized by the right; isn't that3today: correct?4Correct. And the watermaster is5A. Certainly.6Q. In other words, for irrigation the7question would be: You're calling for water.8Are you, in fact, going to apply the water to9Fields that you intend on need to irrigate?10A. Could include that, yes.11Q. Nhat else might it include?12A. Well, some of the systems have multiple13uses, for example. So in some instances, I mean,14we have canals that also have hydropower15facilities on them. And so there could be an16inquiry as to what purpose is the water being17diverted? Is it to irrigate fields? And if the18water isn't needed for inydropower19be authorized to be diverted for hydropower20purposes.21Q. Let's take aquaculture, for example. I22assume you recall the distribution of water that23you instructoff the water master of Water District2413 to effectuate as between Clear Lakes and25Clear Springs Foods facility?26A. Yes.27129And do you recall the determination of30in that case?31in that case?42Q. And do that occur to your satisfaction32Q. And did that occur to your satisfaction33in that case?34A. Yes.35Q. And did	1		1	
4 A. Correct. And the watermaster is 5 A. Cartainly. 6 Q. In other words, for irrigation the 7 question would be: You're calling for water. 7 A. Correct. And the watermaster is in 7 auss, for anythe. Water to 9 fields that you intend or need to irrigate? 10 A. Could include that, yes. 11 Q. What else might it include? 12 A. Well, some of the systems have multiple 13 uses, for example. So in some instances, I mean, 14 we have canals that also have hydropower 15 facilities on them. And so there could be an 16 inquiry as to what purpose is the water being 17 diverted? Is it to irrigation, it still may 19 be authorized to be diverted for hydropower 12 assume you recall the distribution of water that 13 the distribution of hydropower 14 130 to effectuate as between Clear Lakes and 20 And doy on recall the determination of 3 need that your instructions finected the 4 A. Yes. 2 A. Yes.			1	
5 A. Certainly. 5 supposed to - I don't recall if it was on a 6 Q. In other words, for irrigation the monthly basis or what time period, but the 7 we have you, in fact, going to apply the water to have a need for the water, it was on a 6 A. Could include that, yes. 1 Q. What else might it include? have a need for the water is, in fact, being 13 uses, for example. So in some instances, I mean, have a need for the water is, in fact, being 14 we have canals that also have hydropower 14 beneficial use, vary depending upon the source of 15 facilities on them. And so there could be an 16 administration. If water rights had been 19 be authorized to be diverted for hydropower 16 administred for long periods of time, you know, 11 be test stake aquaculture, for example. I 21 adwhether the water is being put to beneficial 12 assume you recall the distribution of water that 21 Q. Sure. Is that because there is an 12 Q. And do you recall the determination of ace 22 14 A. Yes. 1 A. Well, initially, when the call was 24 understanding within the 13			1	
6 Q. In other words, for irrigation the for monthly basis or what time period, but the 7 question wordd be: You're calling for water. for monthly basis or what time period, but the 7 question wordd be: You're calling for water. for monthly basis or what time period, but the 9 for example. So in some instances, I mean, for monthly basis or what time period, but the 12 A. Well, some of the systems have multiple low enamester in that case, because both parises 13 uses, for example. So in some instances, I mean, for for intigation, it still may 14 we have canals that also have hydropower for for largely it it pending upon the source of 16 inquiry as to what purpose is the water being for for largely it it pending upon the source of 18 water isn't needed for irrigation, it still may for administration. If water rights had been 12 Q. Let's take aquaculture, for example. I administration. If water rights had been 21 Q. Let's take aquaculture, for example. I administration the water is bene forcial 23 you instructed the distribution of for for upperiods of time, you know, 24 udertermination of need that your instructions directed the watermaster to conduct in that case? <td>1</td> <td></td> <td></td> <td></td>	1			
7 question would be: You're calling for water. 7 watermaster in that case, be order 8 Are you, in fact, going to apply the water to offield sthat you intend or need to irrigate? 8 have a need for the water, the watermaster is to 9 Fields that you intend or need to irrigate? 10 A. Could include that, yes. 11 beneficially used. 12 A. Well, some of the systems have multiple 11 beneficial use, vary depending upon the source of 13 uses, for example. So in some instances, I mean, 14 beneficial use, vary depending upon the source of 14 inquiry as to what purpose is the water being 16 A. Not so much depending upon the source of 15 facilities on them. And so there could be an 16 A. Not so much depending upon the source of 16 inquiry as to what purpose is the water height 16 A. Not so much depending upon the source of 17 diverted for hydropower 19 administreted for long periods of time, you know, 10 purposes. 21 A. Not so much depending upon the source of 12 you instructed the watermaster of Water District 14 13 13 the distribution of water that 23 Q. Sure. Is that			1	
8 Are you, in fact, going to apply the water to 9 fields that you intend or need to irrigate? 9 A. Could include that, yes. 9 confirm that the water is, in fact, being 11 Q. What else might it include? 10 confirm that the water is, in fact, being 12 A. Well, some of the systems have multiple 12 Q. Now, does the determination of need, or 14 we have canals that also have hydropower 14 the determination that the water will be put to 14 we have canals that also have hydropower 14 the determination of need, or 16 inquiry as to what purpose is the water being 16 A. Not so much depending upon the source of 18 water isn't needed for irrigation, it still may 18 administration. If water rights had been 19 be authorized to be diverted for hydropower 19 administration. If water rights had been 19 up urstare fields? And if the 18 administration. If water rights made less inquiry as to the need, 21 Q. Let's take aquaculture, for example, I 1 administration. If water rights mater being put to beneficial 22 water asen the your instructions directed the 4 understanding within the Department of the <td></td> <td></td> <td>i</td> <td>•</td>			i	•
9 fields that you intend or need to irrigate? 9 continuously, or on a periodic basis continuously 10 A. Could include that, yes. 10 continuously, or on a periodic basis continuously 11 Denotity of the systems have multiple 11 beneficial used. 12 A. Well, some of the systems have multiple 11 beneficial use, vary depending upon the source of 15 facilities on them. And so there could be an 13 the determination that the water will be put to 14 we have canals that also have hydropower 14 beneficial use, vary depending upon the source of 15 facilities on them. And so there could be an 15 sup instructed the water being 16 inquiry as to what purposes. A. Not so much depending upon the source of 17 diverted? Is it to irrigation, it is that and the water water is being put to beneficial 2 administration. If water rights have not be and iministration of 12 you instructed the watermaster of Vater District 2 2 Q. Sure. Is that because there is an 14 A. Yes. 1 A. Well, initially, when the call was 2 3 Is int that case, the order 15 g. And din that case, the order 10 <td></td> <td></td> <td>1</td> <td></td>			1	
10A. Could include that, yes.110confirm that the water is, in fact, being11Q. What else might it include?11beneficially used.12A. Well, some of the systems have multiple11beneficially used.13uses, for example. So in some instances, I mean,11beneficial use, vary depending upon the source of14beneficial use, vary depending upon the source of12A. Not so much depending upon the source of15facilities on them. And so there could be an16inquiry as to what purpose is the water being1716diverted for irrigate fields? And if the17o supply.It depends on the history of18water isn't needed for irrigate fields? And if the18administered for long periods of time, you know,19be authorized to be diverted for hydropower19administered for long periods of time, you know,20Let's take aquaculture, for example. I2323you instructed the watermaster of Water District241024130 to effectuate as between Clear Lakes and24Q. Sure. Is that because there is an25A. Yes.21A. Well, there is an understanding that22A. Well, there is an understanding that32A. Well, intially, when the call was4Watermaster to conduct in that case?35A. Well, intially, when the call was44Weat master to go out and confirm that the water15n. Ares.116in th	1			
11Q. What else might it include?11beneficially used.12A. Well, some of the systems have multiple13uses, for example. So in some instances, I mean,14we have canals that also have hydropower15facilities on them. And so there could be an16inquiry as to what purpose is the water being17diverted? Is it to irrigate fields? And if the18water isn't needed for irrigation, it still may19be authorized to be diverted for hydropower20purposes.21assume you recall the distribution of water that23you instructed the watermaster of Water District24130 to effectuate as between Clear Lakes and25Clear Springs Foods facility?26Fage 172227Page 17228Page 17229Page 1741A. Yes.20And do you recall the determination of3need that your instructions directed the4watermaster to go out and confirm that the water4Well, initially, when the call was6first made, I asked for a statement from Clear7Springs that the water was needed and would be9up after the distribution was made. Lasked the9up after the distribution was made. La			Į.	
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^{5 (}Pages 171 to 174)

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1	A. No, both ground water rights and the	1	
2	senior rights.	2	Q. And at that page, beginning at the second line, there is a statement, "The Rules do
3	Q. But by "more extensive," you don't mean	3	not permit the Director to look behind the
4	that the nature of the inquiry would change?	4	decree, they simply require as part of the
5	It's still an inquiry into how the water is used,	5	administration of the rights to determine whether
6	and will the water be applied to the use as	6	the water being called for is presently needed to
7	authorized by the right; correct?	7	achieve the beneficial uses for which the senior
8	A. Right. And as time passes, and there	8	water right was established. If so, the full
9	is more experience with the administration,	9	right is delivered. If not, then only that
10	presumably the inquiry would lessen just as it	10	amount of water presently needed under the senior
11	has in the administration of surface water	11	water right is delivered."
12	rights.	12	And, obviously, in this case, the
13	Q. And I would like you to turn to the	13	reference to "the Rules" is the Conjunctive
14	newly marked deposition Exhibit No. 78. And this	14	Management Rules; do you agree with that
15	document is entitled, "Defendants' Memorandum in	15	statement?
16	Response to Motions for Summary Judgment." It's	16	A. Yes.
17	filed in the district court proceeding that	17	Q. And I take it really, the singular
18	resulted from a complaint filed by American Falls	18	issue for the watermaster when reading a decreed
19	Reservoir District No. 2, and others, against the	19	right and determining how much water to deliver
20	Department and yourself. I assume you recall	20	in terms of the uses, whether the water is needed
21	this matter?	21	and will be put to beneficial use; is that
22	A. Yes.	22	correct?
23	Q. And if you turn to page 67 where there	23	A. That's correct.
24	are signatures of Counsel, I take it that those	24	Q. Now, beyond that, as you discussed
25	persons, Phillip Rassier, Candice McHugh, and	25	yesterday, the rules identified factors for
	Page 176		Page 178
1	Michael Orr, were counsel representing you and	1	determining material injury. And among those
2	the Department at the time of this filing of this	2	rules, there was indication that the watermaster
3	memorandum, Deposition Exhibit No. 78?	3	needs to determine the amount of water available
4	A. That's correct.	4	at the source of supply; correct?
5	Q. Are you familiar with the course of	5	A. Yes.
6	proceedings in that case?	6	Q. And that would be part of the normal
7	A. Yes.		administrative process, whether a surface water
8	Q. Would it be fair to say that the	8	district or on a ground water district, that is
9	memoranda and other pleadings filed on your	9	for the watermaster to measure the flow, and
10	behalf in this case represent the views of yourself and the Department, at least at the time	10	determine the amount of water that is available; correct?
11 12	of the filing?	12	A. That's correct.
13	A. I would have to say that's correct, at	13	Q. And then after conducting the
$113 \\ 14$	least in a general sense. And most likely in the	14	determination, and whatever investigation is
15	most specific sense, but I don't exactly know	15	necessary to establish need, the watermaster's
16	what issue you are wanting to probe.	16	next step then, as you described it, would be to
17	Q. Well, we'll get there. Bear with me	17	curtail juniors diverting water from
18	just a moment here.	18	hydraulically-connected water sources within the
19	MR. STEENSON: Let's go off the record	19	water district; isn't that correct?
20	for a moment here.	20	A. That's correct.
21	(Discussion held off the record.)	21	Q. Now, yesterday there was discussion of
22	MR. STEENSON: Back on the record.	22	your May 19th, 2005 order issued in response to
23	Q. (BY MR. STEENSON) Could you turn to	23	the Blue Lakes call. And that order is in
24	page 35 of Exhibit No. 78.	24	Deposition Exhibit No. 11, and I would like to
25	A. (Witness complying.)	25	turn your attention to that exhibit at this time.
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	Page 179		Page 181
1	A. Before you ask your next question, in	1	by paragraph 34, I take it that what you did to
2	your prior question, you didn't talk about	2	confirm the water rights, was to look at the
3	whether or not mitigation was being provided.	3	partial decrees for Blue Lakes' three water
4	And that's part of the normal administration as	4	rights; am I correct?
5	well.	5	A. That's correct.
6	Q. Sure.	6	Q. And do you agree that the water rights
7	A. The junior can continue and is not	7	are the partial decrees are conclusive as to
8	curtailed if, in fact, the out-of-priority	8	the nature and extent of the water rights
9	depletions are mitigated, whether it's a surface	9	described in the elements therein?
10	water source or a ground water source.	10	A. Yes.
11	Q. Sure. Now, as I recall the discussion	11	Q. Okay. Then under the next section
12	yesterday, you said that you endeavored in	12	heading in this order, at page 10, the section
13	issuing these orders to follow the rules very	13	heading entitled, "Authorized Diversion Rate For
14	carefully in responses to this Blue Lakes water	14	Water Rights Nos. 36-02356A, 36-07210, and
15	delivery call and others that were filed	15	36-07427," and it lists the water rights there.
16	contemporaneously; is that correct?	16	The discussion that you give there under that
17	A. The rules and statutes, and to the	17	heading, is it based on one or more of the
18	extent there were issues that hadn't been	18	Conjunctive Management Rules?
19	addressed in the rules or the statutes, that we	19	A. I can't say it's based on a specific
20	would apply case law. But we did do it very	20	rule. But I can say that it's not outside of the
21	carefully. And we did it the same in all the	21	provisions of the Conjunctive Management Rules.
22	calls that were made.	22	Q. Okay. Could you turn to, I think, it's
23	Q. Okay. And if you could turn to page 8	23	Deposition Exhibit No. 37, a copy of the
24	of Exhibit No. 11, looking at the section	24	Conjunctive Management Rules. And identify for
25	heading, it looks like after background	25	me which, if any, portions of the rules pertain
	Page 180		Page 182
1	discussion at pages 1 through 7, your first step	1	to this discussion, beginning at page 10 of
2	was to examine and discuss the delivery call that	2	Exhibit No. 11?
3	was made and the water rights; correct?	3	A. Again, I'm not saying that there is a
4	A. Correct.	4	specific rule that I followed in doing that
5	Q. And is that investigation and	5	analysis. But the analysis is not outside of the
6	examination covered by some portion of the rules?	6 7	rules. O Do you mean it's within the mlas?
7	A. I'm not following?	8	Q. Do you mean, it's within the rules?A. Well, the rules provide they provide
8	Q. You refer, for example, in paragraph 35 to Rule 10.04.	9	a number of specific factors that are looked at.
10	A. Yes.	10	But, you know, they also, in general, frame out
11	Q. This discussion and this analysis that	11	how ground water is going to be administered.
12	you conducted under the section heading at page	12	And this investigation is not outside of the
13	8, is it pursuant to certain portions of the	13	constraints provided by the rules.
14	Conjunctive Management Rules that you can refer	14	Q. Which factor of constraint provided by
15	me to, other than Rule 10.04?	15	the rules pertains to this analysis?
16	A. I'm not sure what matter of the	16	A. Well, this analysis goes to was done
17	investigation that you are concerned about? I	17	trying to describe what the quantity element of
18	mean, certainly, beyond the Conjunctive	18	the decreed right what that meant. It was, in
19	Management Rules, I mean, the watermaster is not	19	fact, a maximum authorized rate of diversion.
20	going to distribute water to a water right that	20	And the difference the reason for
21		21	the analysis is that the difference is that
	is not there, for example. So, you know, it's a	{	
22	normal part of the normal process of	22	these, the sources of supply for these rights,
22 23	normal part of the normal process of administration is confirming what rights exist to	22 23	these, the sources of supply for these rights, does vary significantly seasonally. And that was
22	normal part of the normal process of	22	these, the sources of supply for these rights,

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1	analysis of what the quantity element means.	1	right users who don't have storage, they would
2	Q. Okay. So I take it then that under	2	follow the administrative process that you
3	this heading, none of the discussion pertains to	3	describe? That is, consult the water right,
4	a consideration of the quantity of water that	4	evaluate need, and then proceed with
5	Blue Lakes needs, or would put to beneficial use;	5	administration; right?
6	is that correct?	6	A. Correct.
7	In other words, this isn't an analysis	7	Q. And in the normal administrative
8	of need for water under this section?	8	process that I just described, they would not
9	A. And the section that you are referring	9	conduct an analysis of flow variation in order to
10	to is Findings 45 through 51?	10	determine how much water to deliver; would they?
11	Q. Correct.	11	A. They could.
12	A. Yeah, this does not relate necessarily	12	Q. Okay. And that would be then only to
13	to how much water is needed by Blue Lakes, or how	13	the extent of determining what water is available
14	much they would put to beneficial use. This	14	at the time of the call; correct?
15	analysis goes to under what conditions can they	15	A. Correct.
16	call for the distribution of water to their	16	Q. And it wouldn't be for the purpose of
17	rights.	17	determining what the water right, quote/unquote,
18	Q. Now, is this then outside the normal	18	"means"?
19	administrative process that you describe, whereby	19	A. What the water right needs?
20	watermasters look at the water rights represented	20	Q. Means.
21	by decrees, licenses or permits, and then make	21	A. Means?
22	the determination of need, or the extent to which	22	Q. Yes.
23	the user will put the water to beneficial use?	23	A. I'm not sure I understand your
24	And then based upon that determination, then	24	question.
25	administer junior ground water rights as	25	Q. Okay. Fair enough. This discussion
	Page 184		Page 186
1	warranted in the decree, license or permits	1	that we've been talking about at pages 10 through
2	allowed?	2	11 paragraphs 45 through 51, again, first of all,
3	A. The principles are the same. It's not	3	does not pertain to an analysis of need, or the
4	outside the principles, but there are some	4	extent to which the calling senior will put the
5	differences. Here you've got a source of supply	5	water to beneficial use if it's delivered?
6	that has significant variations. And unlike	6	A. That's right.
7	other surface water rights held by canal	7	Q. As you describe, it pertains then only
8	companies, for example, they don't have storage	8	to determining what the quantity element of a
9	that they can rely on to make-up for the	9	water right, as you described, means?
10	variations.	10	A. Of these particular rights to I
11	So in a surface water right stream with	11	shouldn't say, "these particular rights," because
12	water rights typically held by canal companies,	12	it applies to these particular rights. It
13	as variations occur that would diminish the water	13	applies to all the other rights, in my view, that
14	that can be diverted by the canal company, the	14	rely on these highly variable spring flows for
	quantity remains the same, except it becomes	15	the source of their supply.
15		116	Q. Would this analysis apply only to
16	storage water. Here that option doesn't exist.	16	
16 17	storage water. Here that option doesn't exist. Q. Are you aware of canal companies in the	17	variable spring flows, or would it apply to any
16 17 18	storage water. Here that option doesn't exist. Q. Are you aware of canal companies in the Boise Valley, for example, and elsewhere, that	17 18	variable spring flows, or would it apply to any variable flow in the state of Idaho?
16 17 18 19	storage water. Here that option doesn't exist. Q. Are you aware of canal companies in the Boise Valley, for example, and elsewhere, that other surface water right users don't have	17 18 19	variable spring flows, or would it apply to any variable flow in the state of Idaho? A. Well, certainly, the principle here
16 17 18 19 20	storage water. Here that option doesn't exist. Q. Are you aware of canal companies in the Boise Valley, for example, and elsewhere, that other surface water right users don't have storage and rely entirely on natural flow;	17 18 19 20	variable spring flows, or would it apply to any variable flow in the state of Idaho?A. Well, certainly, the principle here does not single out spring flows. But this
16 17 18 19 20 21	storage water. Here that option doesn't exist. Q. Are you aware of canal companies in the Boise Valley, for example, and elsewhere, that other surface water right users don't have storage and rely entirely on natural flow; correct?	17 18 19 20 21	variable spring flows, or would it apply to anyvariable flow in the state of Idaho?A. Well, certainly, the principle heredoes not single out spring flows. But thissituation is somewhat unique. Where springs vary
16 17 18 19 20 21 22	storage water. Here that option doesn't exist. Q. Are you aware of canal companies in the Boise Valley, for example, and elsewhere, that other surface water right users don't have storage and rely entirely on natural flow; correct? A. There are some, sure.	17 18 19 20 21 22	 variable spring flows, or would it apply to any variable flow in the state of Idaho? A. Well, certainly, the principle here does not single out spring flows. But this situation is somewhat unique. Where springs vary like this, the uses, they are not all
16 17 18 19 20 21 22 23	 storage water. Here that option doesn't exist. Q. Are you aware of canal companies in the Boise Valley, for example, and elsewhere, that other surface water right users don't have storage and rely entirely on natural flow; correct? A. There are some, sure. Q. And the watermaster in a surface water 	17 18 19 20 21 22 23	 variable spring flows, or would it apply to any variable flow in the state of Idaho? A. Well, certainly, the principle here does not single out spring flows. But this situation is somewhat unique. Where springs vary like this, the uses, they are not all non-consumptive. There is some irrigation uses,
16 17 18 19 20 21 22 23 24	 storage water. Here that option doesn't exist. Q. Are you aware of canal companies in the Boise Valley, for example, and elsewhere, that other surface water right users don't have storage and rely entirely on natural flow; correct? A. There are some, sure. Q. And the watermaster in a surface water right district administering water rights to 	17 18 19 20 21 22 23 24	 variable spring flows, or would it apply to any variable flow in the state of Idaho? A. Well, certainly, the principle here does not single out spring flows. But this situation is somewhat unique. Where springs vary like this, the uses, they are not all non-consumptive. There is some irrigation uses, of course. But generally, the uses are
16 17 18 19 20 21 22 23	 storage water. Here that option doesn't exist. Q. Are you aware of canal companies in the Boise Valley, for example, and elsewhere, that other surface water right users don't have storage and rely entirely on natural flow; correct? A. There are some, sure. Q. And the watermaster in a surface water 	17 18 19 20 21 22 23	 variable spring flows, or would it apply to any variable flow in the state of Idaho? A. Well, certainly, the principle here does not single out spring flows. But this situation is somewhat unique. Where springs vary like this, the uses, they are not all non-consumptive. There is some irrigation uses,

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		1	
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1	with the variation in place. The variation	1	which, to your knowledge, the Department has
2	existed when the rights were established.	2	engaged in an analysis of seasonal variation to
3	Q. Now, in surface water system, flows	3	determine what a water right means in response to
4	vary seasonally; do they not?	4	a call for water?
5	A. They do.	5	A. I don't know whether it's the first or
6	Q. And they vary both as a result of	6	not. But what I'm trying to
7	natural causes and human causes by way of	7	Q. No, I'm asking about your knowledge.
8	diverting water and so forth?	8	To your knowledge?
9	A. They do.	9	A. To my knowledge?
10	Q. So the same statement that you made	10	Q. Yes. This was the first time this was
11	with respect to these rights being established in	11	done?
12	the context of variable flows would apply to	12	A. I don't have any knowledge that it's
13	virtually any water right in the state of Idaho;	13	the first time or not the first time. I mean,
14	isn't that correct?	14	certainly, in the situations of administration
15	A. Certainly.	15	that I faced during my tenure here, this is the
16	Q. Now, in the normal administrative	16	first time we had to go through this kind of
17	process, prior to the issuance of this order,	17	analysis.
18	have you ever instructed a watermaster to conduct	18	Q. So it's the first time, as far as you
19	this type of analysis to determine what the water	19	know, this analysis was done in response to a
20	right means?	20	water delivery call?
21	A. Well, again, in the you know, and I	21	A. But the reason is because the rights
22	agree that there are exceptions to this. But in	22	for which curtailment or administration were
23	most instances many instances, if not most	23	sought were from a different source. That was
24	instances, a typical surface water right holder	24	the reason.
25	will have storage that compensates for the	25	Q. And why does that reason support? Why
	Page 188		Page 190
1			
1 1	variability. So as the seasonal variation occurs	1	does the fact that the junior water rights here
1	variability. So as the seasonal variation occurs and flows diminish, they begin using storage	12	does the fact that the junior water rights here were from ground water, support an analysis of
2	and flows diminish, they begin using storage	2	were from ground water, support an analysis of
	and flows diminish, they begin using storage water as opposed to natural flow.	1	were from ground water, support an analysis of the variability of flows in order to determine
2 3 4	and flows diminish, they begin using storagewater as opposed to natural flow.Q. Well, what if you don't have storage,	2 3	were from ground water, support an analysis of the variability of flows in order to determine what Blue Lakes' water rights, as you say, mean?
2 3 4 5	and flows diminish, they begin using storagewater as opposed to natural flow.Q. Well, what if you don't have storage,then what?	2 3 4	were from ground water, support an analysis of the variability of flows in order to determine what Blue Lakes' water rights, as you say, mean? In order to interpret the I take it let me
2 3 4	and flows diminish, they begin using storagewater as opposed to natural flow.Q. Well, what if you don't have storage,then what?A. Well, then well, I'm not sure which	2 3 4 5	were from ground water, support an analysis of the variability of flows in order to determine what Blue Lakes' water rights, as you say, mean? In order to interpret the I take it let me go at it this way.
2 3 4 5	 and flows diminish, they begin using storage water as opposed to natural flow. Q. Well, what if you don't have storage, then what? A. Well, then well, I'm not sure which junior rights you are referring to. But one of 	2 3 4 5 6	were from ground water, support an analysis of the variability of flows in order to determine what Blue Lakes' water rights, as you say, mean? In order to interpret the I take it let me
2 3 4 5 6 7	and flows diminish, they begin using storagewater as opposed to natural flow.Q. Well, what if you don't have storage,then what?A. Well, then well, I'm not sure which	2 3 4 5 6 7	were from ground water, support an analysis of the variability of flows in order to determine what Blue Lakes' water rights, as you say, mean? In order to interpret the I take it let me go at it this way. If I understand what you are doing in
2 3 4 5 6 7 8	 and flows diminish, they begin using storage water as opposed to natural flow. Q. Well, what if you don't have storage, then what? A. Well, then well, I'm not sure which junior rights you are referring to. But one of the differences here is that at least as I 	2 3 4 5 6 7 8	 were from ground water, support an analysis of the variability of flows in order to determine what Blue Lakes' water rights, as you say, mean? In order to interpret the I take it let me go at it this way. If I understand what you are doing in this section of the order is, you were
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2 3 4 5 6 7 8 9 10 11 12 13 14	 and flows diminish, they begin using storage water as opposed to natural flow. Q. Well, what if you don't have storage, then what? A. Well, then well, I'm not sure which junior rights you are referring to. But one of the differences here is that at least as I understand the situation that you are trying to describe you have senior and junior surface water rights that are diverting from the same source. And it seems like you are trying to make that analogous to the junior and the senior rights that are diverting from 	2 3 4 5 6 7 8 9 10 11 12 13 14	 were from ground water, support an analysis of the variability of flows in order to determine what Blue Lakes' water rights, as you say, mean? In order to interpret the I take it let me go at it this way. If I understand what you are doing in this section of the order is, you were interpreting the quantity element of Blue Lakes' water rights; correct? A. No, it's not that simple. It's not just interpreting the quantity. It's interpreting a quantity for the purposes of administering junior-priority ground water rights that you are diverting from a different source. Q. Now, would this analysis be performed
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2 3 4 5 6 7 8 9 10 11 12 13 14 15 16 17 18 19 20	 and flows diminish, they begin using storage water as opposed to natural flow. Q. Well, what if you don't have storage, then what? A. Well, then well, I'm not sure which junior rights you are referring to. But one of the differences here is that at least as I understand the situation that you are trying to describe you have senior and junior surface water rights that are diverting from the same source. And it seems like you are trying to make that analogous to the junior and the senior rights that are diverting from hydraulically-connected sources, but different sources, and they are not the same. Q. No, I'm not trying to describe the situation. I'm trying to understand the analysis you are applying here, and how it applies to water rights in the state of Idaho. So let me 	2 3 4 5 6 7 8 9 10 11 12 13 14 15 16 17 18 19 20	 were from ground water, support an analysis of the variability of flows in order to determine what Blue Lakes' water rights, as you say, mean? In order to interpret the I take it let me go at it this way. If I understand what you are doing in this section of the order is, you were interpreting the quantity element of Blue Lakes' water rights; correct? A. No, it's not that simple. It's not just interpreting the quantity. It's interpreting a quantity for the purposes of administering junior-priority ground water rights that you are diverting from a different source. Q. Now, would this analysis be performed outside the context of administration in order to determine the nature and extent of the water right? A. I'm not sure I understand the question, what you mean. Q. Okay. Is the situation where Blue
2 3 4 5 6 7 8 9 10 11 12 13 14 15 16 17 18 19 20 21	 and flows diminish, they begin using storage water as opposed to natural flow. Q. Well, what if you don't have storage, then what? A. Well, then well, I'm not sure which junior rights you are referring to. But one of the differences here is that at least as I understand the situation that you are trying to describe you have senior and junior surface water rights that are diverting from the same source. And it seems like you are trying to make that analogous to the junior and the senior rights that are diverting from hydraulically-connected sources, but different sources, and they are not the same. Q. No, I'm not trying to describe the situation. I'm trying to understand the analysis you are applying here, and how it applies to water rights in the state of Idaho. So let me ask the question this way: 	2 3 4 5 6 7 8 9 10 11 12 13 14 15 16 17 18 19 20 21	 were from ground water, support an analysis of the variability of flows in order to determine what Blue Lakes' water rights, as you say, mean? In order to interpret the I take it let me go at it this way. If I understand what you are doing in this section of the order is, you were interpreting the quantity element of Blue Lakes' water rights; correct? A. No, it's not that simple. It's not just interpreting the quantity. It's interpreting a quantity for the purposes of administering junior-priority ground water rights that you are diverting from a different source. Q. Now, would this analysis be performed outside the context of administration in order to determine the nature and extent of the water right? A. I'm not sure I understand the question, what you mean. Q. Okay. Is the situation where Blue Lakes calls for delivery of water, the only
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2 3 4 5 6 7 8 9 10 11 12 13 14 15 16 17 18 19 20 21 22 23	 and flows diminish, they begin using storage water as opposed to natural flow. Q. Well, what if you don't have storage, then what? A. Well, then well, I'm not sure which junior rights you are referring to. But one of the differences here is that at least as I understand the situation that you are trying to describe you have senior and junior surface water rights that are diverting from the same source. And it seems like you are trying to make that analogous to the junior and the senior rights that are diverting from hydraulically-connected sources, but different sources, and they are not the same. Q. No, I'm not trying to describe the situation. I'm trying to understand the analysis you are applying here, and how it applies to water rights in the state of Idaho. So let me ask the question this way: 	2 3 4 5 6 7 8 9 10 11 12 13 14 15 16 17 18 19 20 21 22 23	 were from ground water, support an analysis of the variability of flows in order to determine what Blue Lakes' water rights, as you say, mean? In order to interpret the I take it let me go at it this way. If I understand what you are doing in this section of the order is, you were interpreting the quantity element of Blue Lakes' water rights; correct? A. No, it's not that simple. It's not just interpreting the quantity. It's interpreting a quantity for the purposes of administering junior-priority ground water rights that you are diverting from a different source. Q. Now, would this analysis be performed outside the context of administration in order to determine the nature and extent of the water right? A. I'm not sure I understand the question, what you mean. Q. Okay. Is the situation where Blue Lakes calls for delivery of water, the only

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	Page 191		Page 193
1	A. Well, we're ships passing in the night,	1	A. It's qualified. It says, in close
2	I guess. Because what this situation were if	2	proximity to individual springs, which is just
3	you had a junior right and a senior right	3	what I described. If you have a ground water
4	diverting from the same spring source, then these	4	diversion in close proximity to the spring, it
5	variations are you know, you administer the	5	could affect the timing.
6	two rights as the flows go up and as the flows go	6	Q. Right. And in paragraph 46, you
7	down.	7	clearly describe that you clearly reference,
8	But here, when you are seeking the	8	"overall variations between years in the
9	administration of junior-priority ground water,	9	discharge of springs in the Thousand Springs area
10	the ground water didn't cause the variation. And	10	result from differences between the amounts of
11	so it's important you know, what I'm trying to	11	ground water depletions and recharge to the ESPA
12	say is, you simply don't curtail junior rights,	12	above the springs"; correct?
13	because there is a variation in the source of	13	A. Correct.
14	supply.	14	Q. So clearly, you are acknowledging that
15	Q. Okay. When you say, "the ground water	15	ground water depletions have an effect on the
16	didn't cause the variation," Blue Lakes' springs	16	variability of spring flows; correct?
17	discharged from the Eastern Snake Plain Aquifer;	17	A. They can have.
18	don't they?	18	Q. And they do, don't they?
19	A. Yes.	19	A. It depends on where the ground water
20	Q. So the variability in Blue Lakes'	20	depletion has occurred.
21	springs, and consequently, in Alpheus Creek is	21	Q. Okay. Let's talk about Blue Lakes, the
22	necessarily a consequence of variability in the	22	springs that Blue Lakes relies upon. Do you have
23	flow of water from the aquifer; isn't that	23	an opinion as to whether or not ground water
24	correct?	24	depletions affect the variability of the
25	A. Yes.	25	discharge of Blue Lakes from the north rim of the
	Dago 192	1	
	Page 192		Page 194
1	Q. So any factor that would cause the	1	Canyon?
2	Q. So any factor that would cause the water level in the aquifer to vary, would be a	1 2	Canyon? A. If they are in close proximity.
	Q. So any factor that would cause the water level in the aquifer to vary, would be a cause of the variation of Alpheus Creek; isn't		Canyon? A. If they are in close proximity. Q. Did you make a determination of whether
2 3 4	Q. So any factor that would cause the water level in the aquifer to vary, would be a cause of the variation of Alpheus Creek; isn't that correct?	2 3 4	Canyon? A. If they are in close proximity. Q. Did you make a determination of whether or not there are any ground water withdrawals
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2 3 4 5 6	Q. So any factor that would cause the water level in the aquifer to vary, would be a cause of the variation of Alpheus Creek; isn't that correct?A. State that again.Q. Okay. Any factor, whether it's ground	2 3 4	Canyon? A. If they are in close proximity. Q. Did you make a determination of whether or not there are any ground water withdrawals that are in close proximity? A. Well, there are some in reasonably
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2 3 4 5 6 7 8 9 10 11 12 13 14 15 16 17 18 19 20 21	 Q. So any factor that would cause the water level in the aquifer to vary, would be a cause of the variation of Alpheus Creek; isn't that correct? A. State that again. Q. Okay. Any factor, whether it's ground water diversions or canal seepage that would affect the level of the aquifer would affect the discharge of the springs; correct? A. Not necessarily in the same way. Q. Okay. What do you mean by that? A. Well, you know, if you had a ground water diversion immediately above the source of springs for Alpheus Creek, the pattern of that ground water diversion could have some affect on the pattern of spring discharge. But if you are a ground water right that's further removed, the further back you go in general, the less the pattern of ground water diversions has an effect on the pattern of spring discharge. Q. Okay. At page 10, in paragraph 47, in 	2 3 4 5 6 7 8 9 10 11 12 13 14 15 16 17 18 19 20 21	 Canyon? A. If they are in close proximity. Q. Did you make a determination of whether or not there are any ground water withdrawals that are in close proximity? A. Well, there are some in reasonably close proximity, but they are not all in close proximity. Q. So at least some ground water withdrawals are affecting the variability of Blue Lakes' springs flows; correct? A. To some extent. However, when you look at least at the history of variability that we have, it is not clear that the appropriation of ground water in close proximity of springs is the major factor relating to the variability. It has some effect. But the effect may be small compared to the other factors that effect variability. Q. Such as canal seepage? A. Sure. Q. And are there any others that you had mentioned in terms of factors that affect the
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	Page 195		
	-		Page 197
1	from the aquifer?	1	indication that the ground water depletions were
2	A. Well, it's incidental recharge from	2	exacerbating the already occurring variability or
3	surface water irrigation, not just the incidental	3	not. And I could not identify, at least I could
4	recharge from canal seepage. It's the bigger	4	not identify any significant indication or trace
5	amount of incidental recharge from surface water	5	that ground water depletions were causing were
6	irrigation.	6	the significant cause, or were contributing in a
7	And if you look at the you know, to	7	significant way to the already existing seasonal
8	get a sense as to the relative magnitude of these	8	variability.
9	things, you know, Finding of Fact No. 3, does	9	Q. Okay. And then let me follow-up on
10	give some average annual amounts for these	10	your answer, your prior answer.
11	various factors. And, you know, you see that the	11	Did you subsequently, to the issuance
12	incidental recharge from surface water irrigation	12	of the May 19th, 2005 order, obtain additional
13	is generally about 3.4 million acre-feet across	13	information to then form the understanding of
14	the whole Eastern Snake Plain Aquifer.	14	your variability?
15	Precipitation is 2.2 million acre-feet. And	15	A. Well, we continued to look at measured
16	those to together is 5.6 million acre-feet, which	16	spring discharge, you know, to see if there were
17	is more than twice the depletions from ground	17	any changes that should be reflected in
18	water irrigation.	18	subsequent administration. And so, I mean, yeah,
19	Now, that's in general across the whole	19	we looked at measurements, spring discharge
20	plain. But the point is that the variability is	20	measurements subsequent to the order, but still
21	reasonably the result primarily the result of	21	could not identify any variation that we could
22	other factors besides ground water depletions.	22	contribute to ground water depletions.
23	Q. And how do you know that?	23	Q. And turning to page 11, paragraph 49.
24	A. Just because of the magnitude of the	24	A. You know, significant variations
25	numbers.	25	attribute to ground water depletions, obviously,
	Page 196		Page 198
1	Q. In the order in paragraph 48, you state	1	they have an effect.
2	that the interactions between factors that affect	2	Q. Obviously, ground water depletions have
3	variability in spring flow are not presently	3	an effect on spring flows; correct?
4	quantifiable; correct?	4	A. Sure. But the effect is not so large
5	A. Only in general.	5	that you ignore the variability that's always
6	Q. But at the time of the order, you	6	existed, and simply look at curtailing
7	didn't have information in order to quantify the	7	junior-priority ground water rights, because the
8	factors that affect variability; correct?	8	spring flow is diminishing due to seasonal
9	A. No. Generally they can be quantified.	9	variability.
10	How they interrelate then is much more difficult.	10	Q. But at any point along the variable
11	Q. So how they interrelate could not be	11	flow curve, if you will, ground water pumping is
12	determined at the time of the order?	12	affecting the quantity of the discharge; correct,
13	A. Not in a quantified way. In a	13	at a spring flow?
14	qualitative way, I think we can have some	14	A. It depends on where the ground water
15	discussion.	15	depletion is, whether it has an effect or not.
16	Q. Tell me what you can tell me as of the	16	Q. Okay. Then at page 11, paragraph 49.
17	time of the order, describe for me the extent to	17	A. Okay.
18	which you were able to qualitatively	18	Q. I take it from that paragraph that you,
19	quantify quantitatively qualify the factors	19	as of the time of the order, did not have any
20	that interact and affect variability of the	20	information from which you could determine what
21	spring flows that come from the Eastern Snake	21	the inter-year variations of the Blue Lakes'
22	Plain Aquifer.	22	springs were at the time Blue Lakes' water rights
23	A. Well, in terms of ground water	23	were appropriated; is that correct?
24	depletions, we looked or I looked at the	24	A. No, that's not correct. We couldn't
25	available measurements to see if there was any	25	specifically quantify a portion of the variation
21.21	sen linnalisensin and hellinger all specified traditions for all all the second for all and the second for a s		11 (Pages 195 to 198)

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	Page 199		Page 201
1	was due to ground water. We can quantify the	1	communication there. But I know that I've seen a
2	variation. You can do that just simply by	2	number of instances of such communication for the
3	looking at the measured discharge. You can	3	permitting and licensing of rights that were
4	quantify how the springs are varied.	4	discharged from springs.
5	Q. Let's look at this last sentence. It	5	Q. Just because somebody else may have
6	says, "There are no known measurements, nor any	6	done it, doesn't mean you can impute it to the
7	other means, for reasonably determining the	7	owners of Blue Lakes at the time; can you?
8	intra-year variations in the discharges from	8	A. No, of course not.
9	springs comprising the source for these water	9	Q. So you are not doing that here; are
10	rights on the dates of appropriation for these	10	you?
11	water rights."	11	A. No. But I am suggesting that there is
12	A. Okay.	12	no reason to believe that the licensing for these
13	Q. I don't see any qualified reference	13	rights was done differently than any other right.
14	there.	14	Q. There is just no reason to know one way
15	A. I misspoke. What this statement refers	15	or the other is there, Karl?
16	to is, there was no quantification of the	16	A. I would have to go back and look at the
17	variation at the time that these rights were	17	file then to see what kind of communication was
18	established. The variations that we have that we	18	or was not occurring. You know, from my
19	can quantify, begin with when measurements began	19	perspective the point the issue that's at
20	being submitted to the Department.	20	stake here is without ground water depletions,
21	But having said that, these rights,	21	the springs are going to have annual variations
22	like many of the other spring rights, the field	22	with or without ground water depletions.
23	examination for beneficial use was intentionally	23	And if these spring rights are going to
24	made during the seasonal maximum discharge of the	24	be administered in as simplistic fashion whereby
25	springs.	25	juniors are not allowed to divert any time that
	Page 200		Page 202
1			
1	Q. How do you know that?	1	the quantity is not being met, then ground
2	A. Because of the dates when the field	1 2	water I mean, if knowing what we know today,
1	A. Because of the dates when the field inspection		water I mean, if knowing what we know today, then under that kind of a system, you would never
2 3 4	A. Because of the dates when the field inspectionQ. How do you know it was intentional?	2 3 4	water I mean, if knowing what we know today, then under that kind of a system, you would never allow ground water appropriations to occur,
2 3 4 5	 A. Because of the dates when the field inspection Q. How do you know it was intentional? A. I don't I don't recall for these 	2 3 4 5	water I mean, if knowing what we know today, then under that kind of a system, you would never allow ground water appropriations to occur, because there are already times when the maximum
2 3 4 5 6	 A. Because of the dates when the field inspection Q. How do you know it was intentional? A. I don't I don't recall for these particular whether it was these particular 	2 3 4	water I mean, if knowing what we know today, then under that kind of a system, you would never allow ground water appropriations to occur, because there are already times when the maximum authorized amount for diversion isn't being met,
2 3 4 5 6 7	 A. Because of the dates when the field inspection Q. How do you know it was intentional? A. I don't I don't recall for these particular whether it was these particular rights or not. But there are a number of spring 	2 3 4 5 6 7	water I mean, if knowing what we know today, then under that kind of a system, you would never allow ground water appropriations to occur, because there are already times when the maximum authorized amount for diversion isn't being met, even without any ground water diversions.
2 3 4 5 6 7 8	 A. Because of the dates when the field inspection Q. How do you know it was intentional? A. I don't I don't recall for these particular whether it was these particular rights or not. But there are a number of spring rights, where there is correspondence in the 	2 3 4 5 6 7 8	 water I mean, if knowing what we know today, then under that kind of a system, you would never allow ground water appropriations to occur, because there are already times when the maximum authorized amount for diversion isn't being met, even without any ground water diversions. Q. And your statement pertains to
2 3 4 5 6 7 8 9	 A. Because of the dates when the field inspection Q. How do you know it was intentional? A. I don't I don't recall for these particular whether it was these particular rights or not. But there are a number of spring rights, where there is correspondence in the water right file, where the applicant was 	2 3 4 5 6 7 8 9	 water I mean, if knowing what we know today, then under that kind of a system, you would never allow ground water appropriations to occur, because there are already times when the maximum authorized amount for diversion isn't being met, even without any ground water diversions. Q. And your statement pertains to administration. It doesn't pertain to the
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2 3 4 5 6 7 8 9 10 11	 A. Because of the dates when the field inspection Q. How do you know it was intentional? A. I don't I don't recall for these particular whether it was these particular rights or not. But there are a number of spring rights, where there is correspondence in the water right file, where the applicant was requesting that the field the beneficial use field exam be made at a particular point in time 	2 3 4 5 6 7 8 9 10 11	 water I mean, if knowing what we know today, then under that kind of a system, you would never allow ground water appropriations to occur, because there are already times when the maximum authorized amount for diversion isn't being met, even without any ground water diversions. Q. And your statement pertains to administration. It doesn't pertain to the meaning, or the nature, or extent of Blue Lakes' water right; does it?
2 3 4 5 6 7 8 9 10 11 12	 A. Because of the dates when the field inspection Q. How do you know it was intentional? A. I don't I don't recall for these particular whether it was these particular rights or not. But there are a number of spring rights, where there is correspondence in the water right file, where the applicant was requesting that the field the beneficial use field exam be made at a particular point in time when the springs were near their maximum point of 	2 3 4 5 6 7 8 9 10 11 12	 water I mean, if knowing what we know today, then under that kind of a system, you would never allow ground water appropriations to occur, because there are already times when the maximum authorized amount for diversion isn't being met, even without any ground water diversions. Q. And your statement pertains to administration. It doesn't pertain to the meaning, or the nature, or extent of Blue Lakes' water right; does it? A. No, I think it has some applicability
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2 3 4 5 6 7 8 9 10 11 12 13 14 15 16 17 18 19 20	 A. Because of the dates when the field inspection Q. How do you know it was intentional? A. I don't I don't recall for these particular whether it was these particular rights or not. But there are a number of spring rights, where there is correspondence in the water right file, where the applicant was requesting that the field the beneficial use field exam be made at a particular point in time when the springs were near their maximum point of discharge. Q. Okay. But you did review, as you indicated in this order, that you reviewed the files that the Department had pertaining to the license and permitting, and licensing of the Blue Lakes rights; correct? A. That's correct. Q. Okay. Did you see any such letter that 	2 3 4 5 6 7 8 9 10 11 12 13 14 15 16 17 18 19 20	 water I mean, if knowing what we know today, then under that kind of a system, you would never allow ground water appropriations to occur, because there are already times when the maximum authorized amount for diversion isn't being met, even without any ground water diversions. Q. And your statement pertains to administration. It doesn't pertain to the meaning, or the nature, or extent of Blue Lakes' water right; does it? A. No, I think it has some applicability there. But the quantity element is the maximum amount authorized to be diverted when it's available. Q. And so in your view in this case, was it necessary for you to consider the variability that you did in order to understand then the nature and extent of Blue Lakes' water right? A. Understand the nature and extent? Yes.
2 3 4 5 6 7 8 9 10 11 12 13 14 15 16 17 18 19 20 21	 A. Because of the dates when the field inspection Q. How do you know it was intentional? A. I don't I don't recall for these particular whether it was these particular rights or not. But there are a number of spring rights, where there is correspondence in the water right file, where the applicant was requesting that the field the beneficial use field exam be made at a particular point in time when the springs were near their maximum point of discharge. Q. Okay. But you did review, as you indicated in this order, that you reviewed the files that the Department had pertaining to the license and permitting, and licensing of the Blue Lakes rights; correct? A. That's correct. Q. Okay. Did you see any such letter that indicated that the owners of the Blue Lakes 	2 3 4 5 6 7 8 9 10 11 12 13 14 15 16 17 18 19 20 21	 water I mean, if knowing what we know today, then under that kind of a system, you would never allow ground water appropriations to occur, because there are already times when the maximum authorized amount for diversion isn't being met, even without any ground water diversions. Q. And your statement pertains to administration. It doesn't pertain to the meaning, or the nature, or extent of Blue Lakes' water right; does it? A. No, I think it has some applicability there. But the quantity element is the maximum amount authorized to be diverted when it's available. Q. And so in your view in this case, was it necessary for you to consider the variability that you did in order to understand then the nature and extent of Blue Lakes' water right? A. Understand the nature and extent? Yes. Q. Do you know what
2 3 4 5 6 7 8 9 10 11 12 13 14 15 16 17 18 19 20 21 22	 A. Because of the dates when the field inspection Q. How do you know it was intentional? A. I don't I don't recall for these particular whether it was these particular rights or not. But there are a number of spring rights, where there is correspondence in the water right file, where the applicant was requesting that the field the beneficial use field exam be made at a particular point in time when the springs were near their maximum point of discharge. Q. Okay. But you did review, as you indicated in this order, that you reviewed the files that the Department had pertaining to the license and permitting, and licensing of the Blue Lakes rights; correct? A. That's correct. Q. Okay. Did you see any such letter that indicated that the owners of the Blue Lakes facility at the time were making the kind of 	2 3 4 5 6 7 8 9 10 11 12 13 14 15 16 17 18 19 20 21 22	 water I mean, if knowing what we know today, then under that kind of a system, you would never allow ground water appropriations to occur, because there are already times when the maximum authorized amount for diversion isn't being met, even without any ground water diversions. Q. And your statement pertains to administration. It doesn't pertain to the meaning, or the nature, or extent of Blue Lakes' water right; does it? A. No, I think it has some applicability there. But the quantity element is the maximum amount authorized to be diverted when it's available. Q. And so in your view in this case, was it necessary for you to consider the variability that you did in order to understand then the nature and extent of Blue Lakes' water right? A. Understand the nature and extent? Yes. Q. Do you know what A. Sure.
2 3 4 5 6 7 8 9 10 11 12 13 14 15 16 17 18 19 20 21 22 23	 A. Because of the dates when the field inspection Q. How do you know it was intentional? A. I don't I don't recall for these particular whether it was these particular rights or not. But there are a number of spring rights, where there is correspondence in the water right file, where the applicant was requesting that the field the beneficial use field exam be made at a particular point in time when the springs were near their maximum point of discharge. Q. Okay. But you did review, as you indicated in this order, that you reviewed the files that the Department had pertaining to the license and permitting, and licensing of the Blue Lakes rights; correct? A. That's correct. Q. Okay. Did you see any such letter that indicated that the owners of the Blue Lakes facility at the time were making the kind of request you just described? 	2 3 4 5 6 7 8 9 10 11 12 13 14 15 16 17 18 19 20 21 22 23	 water I mean, if knowing what we know today, then under that kind of a system, you would never allow ground water appropriations to occur, because there are already times when the maximum authorized amount for diversion isn't being met, even without any ground water diversions. Q. And your statement pertains to administration. It doesn't pertain to the meaning, or the nature, or extent of Blue Lakes' water right; does it? A. No, I think it has some applicability there. But the quantity element is the maximum amount authorized to be diverted when it's available. Q. And so in your view in this case, was it necessary for you to consider the variability that you did in order to understand then the nature and extent of Blue Lakes' water right? A. Understand the nature and extent? Yes. Q. Do you know what A. Sure. Q. Okay. So if this consideration of
2 3 4 5 6 7 8 9 10 11 12 13 14 15 16 17 18 19 20 21 22 23 24	 A. Because of the dates when the field inspection Q. How do you know it was intentional? A. I don't I don't recall for these particular whether it was these particular rights or not. But there are a number of spring rights, where there is correspondence in the water right file, where the applicant was requesting that the field the beneficial use field exam be made at a particular point in time when the springs were near their maximum point of discharge. Q. Okay. But you did review, as you indicated in this order, that you reviewed the files that the Department had pertaining to the license and permitting, and licensing of the Blue Lakes rights; correct? A. That's correct. Q. Okay. Did you see any such letter that indicated that the owners of the Blue Lakes facility at the time were making the kind of 	2 3 4 5 6 7 8 9 10 11 12 13 14 15 16 17 18 19 20 21 22	 water I mean, if knowing what we know today, then under that kind of a system, you would never allow ground water appropriations to occur, because there are already times when the maximum authorized amount for diversion isn't being met, even without any ground water diversions. Q. And your statement pertains to administration. It doesn't pertain to the meaning, or the nature, or extent of Blue Lakes' water right; does it? A. No, I think it has some applicability there. But the quantity element is the maximum amount authorized to be diverted when it's available. Q. And so in your view in this case, was it necessary for you to consider the variability that you did in order to understand then the nature and extent of Blue Lakes' water right? A. Understand the nature and extent? Yes. Q. Do you know what A. Sure.

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	Page 203		Page 205
1	right, why wasn't it addressed in the	1	water rights?
2	adjudication?	2	A. I'm not sure I understand the question.
3	A. Well, I'll answer that first, and then	3	Q. Okay. You explained the basis for
4	I'll try to backup again. But the quantity	4	considering seasonal variability as Blue Lakes
5	element in the adjudication simply is the maximum	5	making a call for delivery of water from a
6	amount authorized to be diverted. And for spring	6	hydraulically connected ground water source;
7	rights, or any other surface water right, or	7	correct?
8	ground water rights, for that matter, the	8	A. Yes.
9	quantity element does not define the seasonal	9	Q. If Blue Lakes hadn't made the call, and
10	variability, whether it's a seasonal variability,	10	just an ordinary day in the water district when
11	seasonal variability in spring discharge,	11	Blue Lakes was diverting water, would the
12	seasonal variability in stream flows, seasonal	12	watermaster or you feel it necessary to consider
13	variability in ground water levels. It's not	13	seasonal variation to determine if Blue Lakes was
14	addressed, and not specifically defined by the	14	diverting the amount of water that they were
15	quantity element, because the quantity element is	15	entitled to divert?
16	the maximum amount that can be diverted. It's	16	A. Only if Blue Lakes was seeking to
17	not a constant quantity entitlement. That's not	17	divert more water than the maximum amount they
18	what it is.	18	were authorized to divert. It's not happening
19	Q. If I understood your testimony, you	19	right now, of course. But it's possible for the
20	felt the need to go back in time and ascertain to	20	spring discharge to exceed the quantity element.
21	the extent you could, the seasonal variability in	21	And we have instances where spring
22	Blue Lakes flows in order to determine what	22	users at times have diverted the water that was
23	quantity of water they were entitled to under	23	there, even when it exceeded the quantity
24	their water right; isn't that correct?	24	element.
25	A. Only not what quantity not	25	Q. That can happen with anyone?
	Page 204		Page 206
1	what the maximum quantity they were	1	A. Sure, of course.
2	authorized. I mean, that's settled by the	2	A. Sure, of course.Q. It's not unique to spring water users?
2 3	authorized. I mean, that's settled by the decree. The maximum amount that they are	2 3	A. Sure, of course.Q. It's not unique to spring water users?A. That's absolutely correct.
2 3 4	authorized. I mean, that's settled by the decree. The maximum amount that they are authorized to divert is settled by the decree.	2 3 4	A. Sure, of course.Q. It's not unique to spring water users?A. That's absolutely correct.Q. Could you turn to Deposition Exhibit
2 3 4 5	authorized. I mean, that's settled by the decree. The maximum amount that they are authorized to divert is settled by the decree. However, as I've said before, Blue Lakes was	2 3 4 5	 A. Sure, of course. Q. It's not unique to spring water users? A. That's absolutely correct. Q. Could you turn to Deposition Exhibit No. 2, please.
2 3 4 5 6	authorized. I mean, that's settled by the decree. The maximum amount that they are authorized to divert is settled by the decree. However, as I've said before, Blue Lakes was seeking the administration of junior-priority	2 3 4 5 6	 A. Sure, of course. Q. It's not unique to spring water users? A. That's absolutely correct. Q. Could you turn to Deposition Exhibit No. 2, please. A. (Witness complying.)
2 3 4 5 6 7	authorized. I mean, that's settled by the decree. The maximum amount that they are authorized to divert is settled by the decree. However, as I've said before, Blue Lakes was seeking the administration of junior-priority ground water rights diverting from a	2 3 4 5 6 7	 A. Sure, of course. Q. It's not unique to spring water users? A. That's absolutely correct. Q. Could you turn to Deposition Exhibit No. 2, please. A. (Witness complying.) Q. And look at the decrees for Blue Lakes'
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2 3 4 5 6 7 8 9 10 11 12 13 14 15 16 17 18 19 20 21 22	 authorized. I mean, that's settled by the decree. The maximum amount that they are authorized to divert is settled by the decree. However, as I've said before, Blue Lakes was seeking the administration of junior-priority ground water rights diverting from a hydraulically-connected source, but not the same source. Q. Is the quantity element of the decree different, or interpreted differently by the Department when administration is sought, as opposed to when administration is not sought? A. Well, the only reason for the Department to investigate the quantity element is when administration is occurring, or alternatively, I suppose, if the transfer is filed. Q. Okay. That really wasn't my question. My question is: Does the Department view the quantity element differently in the context of the right to divert water without curtailing junior ground water rights, as opposed to the right to divert water when administration 	2 3 4 5 6 7 8 9 10 11 12 13 14 15 16 17 18 9 20 21 22 23 24	 A. Sure, of course. Q. It's not unique to spring water users? A. That's absolutely correct. Q. Could you turn to Deposition Exhibit No. 2, please. A. (Witness complying.) Q. And look at the decrees for Blue Lakes' water rights, and specifically at the quantity element. A. (Witness complying.) Okay. Q. Now, each of these decrees under the quantity element has a diversion rate; correct? A. Yes. Q. It also has an annual volume expressed in acre-feet per year; correct? A. Yes. Q. Now, I'll represent to you and I didn't bring my calculator. Maybe we can get one but I looked at the analysis that was done by the Department to derive the annual volume, and they use the factor of they rounded the conversion factor of 1.9834 to 1.98 to convert this rate to the number of acre-feet per day, and then multiplied that number by 365 to derive the
2 3 4 5 6 7 8 9 10 11 12 13 14 15 16 17 18 9 20 21 22 23	 authorized. I mean, that's settled by the decree. The maximum amount that they are authorized to divert is settled by the decree. However, as I've said before, Blue Lakes was seeking the administration of junior-priority ground water rights diverting from a hydraulically-connected source, but not the same source. Q. Is the quantity element of the decree different, or interpreted differently by the Department when administration is sought, as opposed to when administration is not sought? A. Well, the only reason for the Department to investigate the quantity element is when administration is occurring, or alternatively, I suppose, if the transfer is filed. Q. Okay. That really wasn't my question. My question is: Does the Department view the quantity element differently in the context of the right to divert water without curtailing junior ground water rights, as opposed 	2 3 4 5 6 7 8 9 10 11 12 13 14 15 16 17 18 19 20 21 22 23	 A. Sure, of course. Q. It's not unique to spring water users? A. That's absolutely correct. Q. Could you turn to Deposition Exhibit No. 2, please. A. (Witness complying.) Q. And look at the decrees for Blue Lakes' water rights, and specifically at the quantity element. A. (Witness complying.) Okay. Q. Now, each of these decrees under the quantity element has a diversion rate; correct? A. Yes. Q. It also has an annual volume expressed in acre-feet per year; correct? A. Yes. Q. Now, I'll represent to you and I didn't bring my calculator. Maybe we can get one but I looked at the analysis that was done by the Department to derive the annual volume, and they use the factor of they rounded the conversion factor of 1.9834 to 1.98 to convert this rate to the number of acre-feet per day, and

13 (Pages 203 to 206)

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	Page 207		Page 209
1	So given that representation, do you	1	source and a ground water source.
2	recognize that the annual volume here represents	2	Q. Okay. Can you explain that complexity
3	a diversion of 45 cfs, 24 hours a day, 365 days a	3	to me?
4	year?	4	A. Well, it has to do with the it's
5	A. It's certainly the magnitude of the	5	fully described in the orders. It has to do with
6	numbers are consistent with what you described	6	the effects of ground water depletions on the
7	Q. In other words	7	hydraulically-connected surface water sources,
8	A but, again	8	which are much different than the effects of
9	Q. In other words, if you took 45 cfs, and	9	tributary sources on another surface water
10	multiplied it by 1.98, and multiplied it by 365,	10	stream.
11	you would get 32,521.5?	11	Q. Now, turning back to Deposition Exhibit
12	A. Which, again, is the maximum volume	12	No. 11, to page 13, under paragraph 60.
13	authorized to be diverted if it's there.	13	A. (Witness complying.)
14	Q. But it's authorized to be diverted	14	Q. Do you recall these data as data that
15	A. If it's there.	15	were collected by Tim Luke at your request?
16	Q. We're going to confuse the court	16	A. Yes.
17	reporter if we keep interrupting each other.	17	Q. Now, in reviewing this diversion data,
18	A. All right.	18	did you take the time to compute the annual
19	Q. It's the amount of water that's	19	volume that was being delivered to Blue Lakes as
20	authorized to be diverted 24 hours a day, 365	20	a result of the flows that you referenced in this
21	days a year; isn't that correct?	21	table?
22	A. If, in fact, it's there.	22	A. No.
23	Q. And if it's not there, what amount is	23	Q. Now, given your discussion in paragraph
24	Blue Lakes entitled to under, for example,	23	60 of the data in the table, and your statements
25	36-07210?	25	in paragraph 64, that Blue Lakes' 1971 priority
25	50-07210?	25	In paragraph 64, that Blue Lakes 1971 phonty
	Page 208		Dama 010
			Page 210
1	A. They are entitled to divert what's	1	water right is being filled by the 2004 flows.
2	A. They are entitled to divert what's there when they are in priority.	1 2	water right is being filled by the 2004 flows. Does that mean that for purposes of
	A. They are entitled to divert what's there when they are in priority.Q. Okay. So does "in priority" mean when	l .	water right is being filled by the 2004 flows. Does that mean that for purposes of administration, these flow rates that you
2 3 4	A. They are entitled to divert what's there when they are in priority.Q. Okay. So does "in priority" mean when a junior ground water rights are curtailed?	2	water right is being filled by the 2004 flows. Does that mean that for purposes of administration, these flow rates that you reference in the table for 2004, are the flow
2 3	A. They are entitled to divert what's there when they are in priority.Q. Okay. So does "in priority" mean when a junior ground water rights are curtailed? What do you mean "in priority"?	2 3	water right is being filled by the 2004 flows. Does that mean that for purposes of administration, these flow rates that you reference in the table for 2004, are the flow rates that Blue Lakes is entitled to under its
2 3 4	 A. They are entitled to divert what's there when they are in priority. Q. Okay. So does "in priority" mean when a junior ground water rights are curtailed? What do you mean "in priority"? A. Well, generally, it's in priority from 	2 3 4	water right is being filled by the 2004 flows. Does that mean that for purposes of administration, these flow rates that you reference in the table for 2004, are the flow rates that Blue Lakes is entitled to under its 1971 water right for purposes of administration?
2 3 4 5	 A. They are entitled to divert what's there when they are in priority. Q. Okay. So does "in priority" mean when a junior ground water rights are curtailed? What do you mean "in priority"? A. Well, generally, it's in priority from the same source. And it gets, again, more 	2 3 4 5	water right is being filled by the 2004 flows. Does that mean that for purposes of administration, these flow rates that you reference in the table for 2004, are the flow rates that Blue Lakes is entitled to under its 1971 water right for purposes of administration? A. I had to re-read Finding 64. Restate
2 3 4 5 6	 A. They are entitled to divert what's there when they are in priority. Q. Okay. So does "in priority" mean when a junior ground water rights are curtailed? What do you mean "in priority"? A. Well, generally, it's in priority from the same source. And it gets, again, more complicated when you move from administering 	2 3 4 5 6	 water right is being filled by the 2004 flows. Does that mean that for purposes of administration, these flow rates that you reference in the table for 2004, are the flow rates that Blue Lakes is entitled to under its 1971 water right for purposes of administration? A. I had to re-read Finding 64. Restate the question now for me, please.
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2 3 4 5 6 7 8	 A. They are entitled to divert what's there when they are in priority. Q. Okay. So does "in priority" mean when a junior ground water rights are curtailed? What do you mean "in priority"? A. Well, generally, it's in priority from the same source. And it gets, again, more complicated when you move from administering water rights in the same source to administering water rights between sources that are 	2 3 4 5 6 7 8	 water right is being filled by the 2004 flows. Does that mean that for purposes of administration, these flow rates that you reference in the table for 2004, are the flow rates that Blue Lakes is entitled to under its 1971 water right for purposes of administration? A. I had to re-read Finding 64. Restate the question now for me, please. Q. Okay. Is the upshot of Finding 64 that the daily inflows listed in the table in
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2 3 4 5 6 7 8 9 10 11 12	 A. They are entitled to divert what's there when they are in priority. Q. Okay. So does "in priority" mean when a junior ground water rights are curtailed? What do you mean "in priority"? A. Well, generally, it's in priority from the same source. And it gets, again, more complicated when you move from administering water rights in the same source to administering water rights between sources that are hydraulically-connected, but not the same source. Q. Why is that, again? 	2 3 4 5 6 7 8 9 10 11 12	 water right is being filled by the 2004 flows. Does that mean that for purposes of administration, these flow rates that you reference in the table for 2004, are the flow rates that Blue Lakes is entitled to under its 1971 water right for purposes of administration? A. I had to re-read Finding 64. Restate the question now for me, please. Q. Okay. Is the upshot of Finding 64 that the daily inflows listed in the table in paragraph 60 for 2004, the date the flows that Blue Lakes' 1971 priority water right entitled it
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2 3 4 5 6 7 8 9 10 11 12 13 14 15 16 17 18 9 20 21 22 23	 A. They are entitled to divert what's there when they are in priority. Q. Okay. So does "in priority" mean when a junior ground water rights are curtailed? What do you mean "in priority"? A. Well, generally, it's in priority from the same source. And it gets, again, more complicated when you move from administering water rights in the same source to administering water rights between sources that are hydraulically-connected, but not the same source. Q. Why is that, again? A. Why is it more complicated? Q. Why is it more complicated? Let's take a tributary stream and tributary surface water right source. Is the situation more complicated just because you look upstream to administer water rights from any connected source, or is it just because here in this circumstance, we're looking upstream to curtail ground water rights? A. When you are administering between tributaries, it gets more complex. But generally, in surface water systems, 	2 3 4 5 6 7 8 9 10 11 12 13 14 15 16 17 18 19 20 21 22 23	 water right is being filled by the 2004 flows. Does that mean that for purposes of administration, these flow rates that you reference in the table for 2004, are the flow rates that Blue Lakes is entitled to under its 1971 water right for purposes of administration? A. I had to re-read Finding 64. Restate the question now for me, please. Q. Okay. Is the upshot of Finding 64 that the daily inflows listed in the table in paragraph 60 for 2004, the date the flows that Blue Lakes' 1971 priority water right entitled it to receive for purposes of administration of hydraulically-connected junior rights? A. Well, again, I've said it before, that these seasonal variations exist with or without ground water diversions. And if you were to interpret the quantity element of the right as being the maximum amount that Blue Lakes is entitled to, then you would never have allowed any ground water development, because Blue Lakes' right already wouldn't have been filled during some time of the year. And under that theory,

14 (Pages 207 to 210)

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1	Page 211		Page 213
1	incorrectly?	1	water that's available. It doesn't define the
	A. No, the right was not licensed	2	amount of water that Blue Lakes is entitled to.
3	incorrectly. The right was licensed at the	3	Q. Okay. You say that the amount of water
4	quantity, which was the maximum amount that they	4	available is sufficient to fill Blue Lakes' water
5	were entitled to divert if the water was there.	5	right?
6	Q. And the value of the water right really	6	A. At the seasonal maximum.
7	is determined, and the rubber hits the road, if	7	Q. Okay. And what months of the year in
8	you will, in times of administration; isn't that	8	the table are you referring to?
9	correct? What a water right means is really put	9	A. Well, it appears that the seasonal
10	to the test when the water user who owns the	10	maximum generally occurs in October or November.
11	water right calls for distribution of water?	11	Q. Okay. So does that then mean that the
12	A. Well, the value of a water right really	12	water supply, the quantity of water available at
13	is inherent in the priority date in the	13	the source of the water right, that is water
14	authorization to make beneficial use. The	14	right 36-07210, is insufficient to fill the right
15	administration doesn't increase or shouldn't	15	the rest of the year?
16	decrease the value of a water right.	16	A. It's insufficient to provide that
17	Q. Shouldn't; right? The administration	17	quantity during the other times of the year, or
18	should not decrease the value of a water right;	18	can be.
19	should it?	19	Q. So the water right isn't being filled
20	A. That's correct.	20	10 months of the year; correct?
21	Q. Now, in this table, you reference	21	A. With or without ground water
22	"Maximum Daily Flow, Average Daily Flows, Minimum	22	depletions, it's the same result.
23	Daily Flow." In paragraph 64, your conclusion	23	Q. The answer to my question is, "yes";
24	takes into account the variations that have	24	isn't that correct? The water right is not being
25		25	filled, according to this data that you include
	Page 212	- 1	Page 214
1	Which of these flows, maximum, average,	1	in paragraph 60, 10 of the 12 months of the year;
2	or daily, are you relying on in drawing the	23	correct?
34	conclusion that you drew in 64? Is it the	ſ	A. I wouldn't characterize it that way, that it's not being filled.
5	maximum, the average, or the minimum? A. I have to reread it again. (Witness	4	Q. How would you characterize it?
	e .	6	A. I would characterize it that the
1 6	reading.) Well, it says it in the finding itself. Reading the last portion of the finding,	0	A. I would characterize it that the
6	IISCH. INCAULING THE TASE DOLLIOH OF THE HIMLING.		quantity of water available during 10 months of
7		9	quantity of water available during 10 months of
7 8	"The quantity of water available," et cetera, "is	8	the year is less than the maximum quantity
7 8 9	"The quantity of water available," et cetera, "is currently sufficient to fill this right at the	9	the year is less than the maximum quantity authorized to be diverted.
7 8 9 10	"The quantity of water available," et cetera, "is currently sufficient to fill this right at the authorized diversion rate of 45 cfs when the	9 10	the year is less than the maximum quantity authorized to be diverted. Q. And therefore, the water right is not
7 8 9 10 11	"The quantity of water available," et cetera, "is currently sufficient to fill this right at the authorized diversion rate of 45 cfs when the inflows in Alpheus Creek are at seasonal highs."	9 10 11	the year is less than the maximum quantity authorized to be diverted. Q. And therefore, the water right is not being filled; correct?
7 8 9 10 11 12	"The quantity of water available," et cetera, "is currently sufficient to fill this right at the authorized diversion rate of 45 cfs when the inflows in Alpheus Creek are at seasonal highs." Q. Okay. And are those seasonal highs	9 10 11 12	the year is less than the maximum quantity authorized to be diverted. Q. And therefore, the water right is not being filled; correct? A. Well, but the implication, when you add
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7 8 9 10 11 12 13 14 15 16 17 18 19 20 21 22	 "The quantity of water available," et cetera, "is currently sufficient to fill this right at the authorized diversion rate of 45 cfs when the inflows in Alpheus Creek are at seasonal highs." Q. Okay. And are those seasonal highs represented in the table? A. Yes, they are. Q. Okay. Which numbers are they represented by? A. The seasonal highs are reflected in both in all three, the maximum, average and minimum daily flows. Q. Okay. So to define the amount of water right water that Blue Lakes is entitled to for purposes of administration during any given 	9 10 11 12 13 14 15 16 17 18 19 20 21 22	 the year is less than the maximum quantity authorized to be diverted. Q. And therefore, the water right is not being filled; correct? A. Well, but the implication, when you add that additional characterization, is it's not being filled because of junior-priority diversions. That's the implication. And I'm saying that the quantity of water is less than the maximum amount authorized to be diverted because of variations, over which the junior-priority ground water users aren't causing. Q. Now, junior-priority ground water diversions have both short-term and long-term
7 8 9 10 11 12 13 14 15 16 17 18 19 20 21 22 23	 "The quantity of water available," et cetera, "is currently sufficient to fill this right at the authorized diversion rate of 45 cfs when the inflows in Alpheus Creek are at seasonal highs." Q. Okay. And are those seasonal highs represented in the table? A. Yes, they are. Q. Okay. Which numbers are they represented by? A. The seasonal highs are reflected in both in all three, the maximum, average and minimum daily flows. Q. Okay. So to define the amount of water right water that Blue Lakes is entitled to for purposes of administration during any given month, which of these columns do I look at; the 	9 10 11 12 13 14 15 16 17 18 19 20 21 22 23	the year is less than the maximum quantity authorized to be diverted. Q. And therefore, the water right is not being filled; correct? A. Well, but the implication, when you add that additional characterization, is it's not being filled because of junior-priority diversions. That's the implication. And I'm saying that the quantity of water is less than the maximum amount authorized to be diverted because of variations, over which the junior-priority ground water users aren't causing. Q. Now, junior-priority ground water diversions have both short-term and long-term effects on the Eastern Snake Plain Aquifer; don't
7 8 9 10 11 12 13 14 15 16 17 18 19 20 21 22	"The quantity of water available," et cetera, "is currently sufficient to fill this right at the authorized diversion rate of 45 cfs when the inflows in Alpheus Creek are at seasonal highs." Q. Okay. And are those seasonal highs represented in the table? A. Yes, they are. Q. Okay. Which numbers are they represented by? A. The seasonal highs are reflected in both in all three, the maximum, average and minimum daily flows. Q. Okay. So to define the amount of water right water that Blue Lakes is entitled to for purposes of administration during any given	9 10 11 12 13 14 15 16 17 18 19 20 21 22	 the year is less than the maximum quantity authorized to be diverted. Q. And therefore, the water right is not being filled; correct? A. Well, but the implication, when you add that additional characterization, is it's not being filled because of junior-priority diversions. That's the implication. And I'm saying that the quantity of water is less than the maximum amount authorized to be diverted because of variations, over which the junior-priority ground water users aren't causing. Q. Now, junior-priority ground water diversions have both short-term and long-term

15 (Pages 211 to 214)

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	Page 215		Page 217
1	Q. And you've described those yesterday as	1	that correct?
2	transient and steady state?	2	A. For the most part, but not necessarily
3	A. Correct.	3	entirely.
4	Q. And you've also said that over time,	4	Q. So that trend that you show in spring
5	the effect of a ground water diversion is fully	5	discharge also reflects the overall trend in
6	expressed in spring flows. It's just a question	6	aquifer levels in the Eastern Snake Plain;
7	of how much time it takes?	7	correct?
8	A. I'll call it the average of the effect	8	A. With the qualification, overall. There
9	reaches steady state. But there still can	9	are locations probably where ground water levels
10	be even at steady state, there can be some	10	have not decreased in a similar fashion, and
11	seasonal variation around the steady state	11	there may, in fact, be several locations where
12	average.	12	they have increased.
13	Q. Okay. So ground water pumping	13	Q. Sure. But you included the attachment
14	generally in long term has the effect of lowering	14	to portray the overall situation; correct?
15	the level of the aquifer, if the depletion by	15	A. Yes, of spring discharge.
16	ground water pumping is not compensated my	16	Q. And spring discharges overall affected
17	term, if you will, probably not technically	17	by the Eastern Snake Plain overall?
18	accurate but compensated for by seepage and	18	A. But, again, it's not everywhere. It's
19	other inputs of water to the aquifer; isn't that	19 20	overall.
20	correct?	21	Q. Okay. So then, overall, pumping by
22	A. When a significant amount of ground water withdrawals and I guess we could argue	22	ground water users affects spring discharges at any time of the year, any and every time of the
23	about what "significant" means. When a	23	year overall?
24	significant amount of ground water withdrawals	24	A. Well, they can affect it at any time of
25	and associated depletions occurs, there is a	25	the year.
		2.5	
	Page 216	1	Dago 219
	Page 216		Page 218
1	lowering, if you will, of ground water levels	1	Q. Do you have any opinion as to whether
2	lowering, if you will, of ground water levels until steady state conditions are reached. At	2	Q. Do you have any opinion as to whether or not that is occurring in the Eastern Snake
2 3	lowering, if you will, of ground water levels until steady state conditions are reached. At which point, the ground water levels no longer	2 3	Q. Do you have any opinion as to whether or not that is occurring in the Eastern Snake Plain Aquifer?
2 3 4	lowering, if you will, of ground water levels until steady state conditions are reached. At which point, the ground water levels no longer recede.	2 3 4	Q. Do you have any opinion as to whether or not that is occurring in the Eastern SnakePlain Aquifer?A. Well, it certainly occurs at some
2 3 4 5	lowering, if you will, of ground water levels until steady state conditions are reached. At which point, the ground water levels no longer recede. Q. In your order documents your view that	2 3 4 5	Q. Do you have any opinion as to whether or not that is occurring in the Eastern SnakePlain Aquifer?A. Well, it certainly occurs at some locations.
2 3 4 5 6	lowering, if you will, of ground water levels until steady state conditions are reached. At which point, the ground water levels no longer recede. Q. In your order documents your view that the aquifer has generally been declining in	2 3 4	Q. Do you have any opinion as to whether or not that is occurring in the Eastern Snake Plain Aquifer?A. Well, it certainly occurs at some locations.Q. Do you have an opinion as to whether
2 3 4 5 6 7	lowering, if you will, of ground water levels until steady state conditions are reached. At which point, the ground water levels no longer recede. Q. In your order documents your view that the aquifer has generally been declining in overall level, if you will, again my	2 3 4 5 6 7	 Q. Do you have any opinion as to whether or not that is occurring in the Eastern Snake Plain Aquifer? A. Well, it certainly occurs at some locations. Q. Do you have an opinion as to whether it's occurring at the location of Blue Lakes'
2 3 4 5 6 7 8	lowering, if you will, of ground water levels until steady state conditions are reached. At which point, the ground water levels no longer recede. Q. In your order documents your view that the aquifer has generally been declining in overall level, if you will, again my terminology	2 3 4 5 6 7 8	 Q. Do you have any opinion as to whether or not that is occurring in the Eastern Snake Plain Aquifer? A. Well, it certainly occurs at some locations. Q. Do you have an opinion as to whether it's occurring at the location of Blue Lakes' springs?
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2 3 4 5 6 7 8 9 10 11 12 13 14 15 16 17 18 19 20 21	 lowering, if you will, of ground water levels until steady state conditions are reached. At which point, the ground water levels no longer recede. Q. In your order documents your view that the aquifer has generally been declining in overall level, if you will, again my terminology A. Yes. Q lay talk terminology since the middle part of the last century? A. That's generally, I agree with that statement. Q. As represented by the I don't remember what attachment, maybe Attachment C, to this and other orders to include that aquifer levels increased from around 1900 to a peak of around 1950, and have been declining since that time; right? A. I believe that's Attachment A on most of these orders, and it's not ground water levels 	2 3 4 5 6 7 8 9 10 11 12 13 14 15 16 17 18 19 20 21 1	 Q. Do you have any opinion as to whether or not that is occurring in the Eastern Snake Plain Aquifer? A. Well, it certainly occurs at some locations. Q. Do you have an opinion as to whether it's occurring at the location of Blue Lakes' springs? A. Now, are we speaking of depletions? Are we speaking of variability? What is it that is occurring? Q. Decline in the aquifer resulting in a decline in trend of spring flows since the middle part of the last century. A. Yes. Q. Is that occurring? Has that been expressed in Blue Lakes' springs, in your opinion? A. I would have to look back at the and I don't have the attachment in this exhibit (indicating).
2 3 4 5 6 7 8 9 10 11 12 13 14 15 16 17 18 19 20 21 22	 lowering, if you will, of ground water levels until steady state conditions are reached. At which point, the ground water levels no longer recede. Q. In your order documents your view that the aquifer has generally been declining in overall level, if you will, again my terminology A. Yes. Q lay talk terminology since the middle part of the last century? A. That's generally, I agree with that statement. Q. As represented by the I don't remember what attachment, maybe Attachment C, to this and other orders to include that aquifer levels increased from around 1900 to a peak of around 1950, and have been declining since that time; right? A. I believe that's Attachment A on most of these orders, and it's not ground water levels that are portrayed. It's spring discharges 	2 3 4 5 6 7 8 9 10 11 12 13 14 15 16 17 18 9 20 21 22	 Q. Do you have any opinion as to whether or not that is occurring in the Eastern Snake Plain Aquifer? A. Well, it certainly occurs at some locations. Q. Do you have an opinion as to whether it's occurring at the location of Blue Lakes' springs? A. Now, are we speaking of depletions? Are we speaking of variability? What is it that is occurring? Q. Decline in the aquifer resulting in a decline in trend of spring flows since the middle part of the last century. A. Yes. Q. Is that occurring? Has that been expressed in Blue Lakes' springs, in your opinion? A. I would have to look back at the and I don't have the attachment in this exhibit (indicating). Looking at Attachment C to the order,
2 3 4 5 6 7 8 9 10 11 12 13 14 15 16 17 18 19 20 21 22 23	 lowering, if you will, of ground water levels until steady state conditions are reached. At which point, the ground water levels no longer recede. Q. In your order documents your view that the aquifer has generally been declining in overall level, if you will, again my terminology A. Yes. Q lay talk terminology since the middle part of the last century? A. That's generally, I agree with that statement. Q. As represented by the I don't remember what attachment, maybe Attachment C, to this and other orders to include that aquifer levels increased from around 1900 to a peak of around 1950, and have been declining since that time; right? A. I believe that's Attachment A on most of these orders, and it's not ground water levels that are portrayed. It's spring discharges that's portrayed. 	2 3 4 5 6 7 8 9 10 11 12 13 14 15 16 17 18 9 20 21 22 23	 Q. Do you have any opinion as to whether or not that is occurring in the Eastern Snake Plain Aquifer? A. Well, it certainly occurs at some locations. Q. Do you have an opinion as to whether it's occurring at the location of Blue Lakes' springs? A. Now, are we speaking of depletions? Are we speaking of variability? What is it that is occurring? Q. Decline in the aquifer resulting in a decline in trend of spring flows since the middle part of the last century. A. Yes. Q. Is that occurring? Has that been expressed in Blue Lakes' springs, in your opinion? A. I would have to look back at the and I don't have the attachment C to the order, which shows the total diversions from Alpheus

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1	Page 219		Page 221
1	Attachment A.	1	be the maximum volume that Blue Lakes could
2	Q. There is a decline; correct?	2	divert if the water was there.
3	A. It depends on what period of time you	3	Q. And that's stated in Exhibit 82;
4	look at. It appears that if you look overall	4	correct?
5	from when data became available and consistently	5	A. I didn't do the math. I am taking your
6	beginning in about March of 1995 through	6	word that and I looked back in the order to
7	September '04, there has been some decline. But,	7	compare your priority dates and numbers with what
8	again, if you look at the time period from the	8	was in the order, and I don't have the annual
9	abnormally high values shown in 2001, it makes	9	volumes in the order.
10	the decline look more significant since 2001.	10	Q. Okay. They are in Deposition Exhibit
11	But when you look overall from 1995 to	11	No. 2, if you want to turn to that, at least for
12	2004, there is some decline apparent, but it	12	water right 7210 and 7427.
13	would appear to be less in magnitude than the	13	A. (Witness complying.) Okay. I'm not
14	overall decline reflected in Attachment A.	14	seeing the volume for right 36-2365A.
15	Q. And how would you describe the overall	15	Q. That's not there.
16	magnitude? You say the decline at Blue Lakes'	16	A. Okay.
17	springs was less than the magnitude of the	17	Q. I'm just asking you whether you'll
18	overall decline? Can you quantify that	18	suspend your disbelief
19	comparison for me?	19	A. I don't have any disbelief.
20	A. Well, I'm using your characterization	20	Q and accept that they are accurately
21	of the decline, the general decline shown in	21	represented.
22	Attachment A since 1950.	22	Now, what I did here in the first page
23	Q. All right. And I would like you to	23	is to in the first column under "Average Daily
24	turn to what's been newly marked as Deposition	24	Flows," simply list the average daily flows for
25	Exhibit No. 82. And I'm going to represent to	25	the years 1995 and 1996 and for the year 2004,
	Page 220		Page 222
1	you that these are tables in the draft that I	1	that you listed in paragraph 60 of the May 19th,
2	prepared based on your table in paragraph 60 at	2	2005 order.
3	page 13 and 14 of the May 19th, 2005 order.	3	And what I did was I multiplied those
4	A. To table where? Excuse me.	4	numbers by 1.98 to derive the average daily
5	Q. I prepared Deposition Exhibit No. 82	5	volume under each year. And then I multiplied
6	based on the table in paragraph 60 of your May	-	
		6	those numbers by the number of days in the month
7		6 7	
7	19th, 2005 order.		those numbers by the number of days in the month to derive monthly volumes, and then by addition to derive the total volumes of water represented
1		7	to derive monthly volumes, and then by addition
8	19th, 2005 order. A. Okay.	7 8	to derive monthly volumes, and then by addition to derive the total volumes of water represented
8 9	19th, 2005 order.A. Okay.Q. Okay. And I'll walk you through this	7 8 9	to derive monthly volumes, and then by addition to derive the total volumes of water represented by those numbers for each year. And that is for
8 9 10	19th, 2005 order.A. Okay.Q. Okay. And I'll walk you through this exhibit, and ask you some questions about it.	7 8 9 10	to derive monthly volumes, and then by addition to derive the total volumes of water represented by those numbers for each year. And that is for 1995 to 1996, the available flow provided Blue
8 9 10 11	19th, 2005 order.A. Okay.Q. Okay. And I'll walk you through this exhibit, and ask you some questions about it.This is Exhibit 82.	7 8 9 10 11	to derive monthly volumes, and then by addition to derive the total volumes of water represented by those numbers for each year. And that is for 1995 to 1996, the available flow provided Blue Lakes 107,198 acre-feet and 2004 provide 95,538 acre-feet. Now, again, without asking you to
8 9 10 11 12	19th, 2005 order.A. Okay.Q. Okay. And I'll walk you through this exhibit, and ask you some questions about it.This is Exhibit 82.You recognize the summary of the water	7 8 9 10 11 12	to derive monthly volumes, and then by addition to derive the total volumes of water represented by those numbers for each year. And that is for 1995 to 1996, the available flow provided Blue Lakes 107,198 acre-feet and 2004 provide 95,538 acre-feet.
8 9 10 11 12 13	 19th, 2005 order. A. Okay. Q. Okay. And I'll walk you through this exhibit, and ask you some questions about it. This is Exhibit 82. You recognize the summary of the water rights at the first page at the top to be an accurate summary of Blue Lakes' water rights; is that correct? 	7 8 9 10 11 12 13	to derive monthly volumes, and then by addition to derive the total volumes of water represented by those numbers for each year. And that is for 1995 to 1996, the available flow provided Blue Lakes 107,198 acre-feet and 2004 provide 95,538 acre-feet. Now, again, without asking you to accept my math, you would recognize, wouldn't you, that the volumes of water available to Blue
8 9 10 11 12 13 14	 19th, 2005 order. A. Okay. Q. Okay. And I'll walk you through this exhibit, and ask you some questions about it. This is Exhibit 82. You recognize the summary of the water rights at the first page at the top to be an accurate summary of Blue Lakes' water rights; is that correct? A. Without a calculator, I can't check the 	7 8 9 10 11 12 13 14	to derive monthly volumes, and then by addition to derive the total volumes of water represented by those numbers for each year. And that is for 1995 to 1996, the available flow provided Blue Lakes 107,198 acre-feet and 2004 provide 95,538 acre-feet. Now, again, without asking you to accept my math, you would recognize, wouldn't you, that the volumes of water available to Blue Lakes in 1995 and 1996 and 2004, are
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8 9 10 11 12 13 14 15 16 17 18 19 20 21	 19th, 2005 order. A. Okay. Q. Okay. And I'll walk you through this exhibit, and ask you some questions about it. This is Exhibit 82. You recognize the summary of the water rights at the first page at the top to be an accurate summary of Blue Lakes' water rights; is that correct? A. Without a calculator, I can't check the volume numbers. But other than the volume, the summary, in terms of the number and the priority rate and rate of diversion, it appears to be correct. Q. So assuming I did the math correctly, 	7 8 9 10 11 12 13 14 15 16 17 18 19 20 21	to derive monthly volumes, and then by addition to derive the total volumes of water represented by those numbers for each year. And that is for 1995 to 1996, the available flow provided Blue Lakes 107,198 acre-feet and 2004 provide 95,538 acre-feet. Now, again, without asking you to accept my math, you would recognize, wouldn't you, that the volumes of water available to Blue Lakes in 1995 and 1996 and 2004, are substantially less than the volumes of water stated in their decrees? A. Well, they are substantially less than the maximum volume authorized to be diverted. But that maximum volume authorized to be diverted
8 9 10 11 12 13 14 15 16 17 18 19 20 21 22	 19th, 2005 order. A. Okay. Q. Okay. And I'll walk you through this exhibit, and ask you some questions about it. This is Exhibit 82. You recognize the summary of the water rights at the first page at the top to be an accurate summary of Blue Lakes' water rights; is that correct? A. Without a calculator, I can't check the volume numbers. But other than the volume, the summary, in terms of the number and the priority rate and rate of diversion, it appears to be correct. Q. So assuming I did the math correctly, and the aggregate volume of Blue Lakes' water 	7 8 9 10 11 12 13 14 15 16 17 18 19 20 21 22	to derive monthly volumes, and then by addition to derive the total volumes of water represented by those numbers for each year. And that is for 1995 to 1996, the available flow provided Blue Lakes 107,198 acre-feet and 2004 provide 95,538 acre-feet. Now, again, without asking you to accept my math, you would recognize, wouldn't you, that the volumes of water available to Blue Lakes in 1995 and 1996 and 2004, are substantially less than the volumes of water stated in their decrees? A. Well, they are substantially less than the maximum volume authorized to be diverted. But that maximum volume authorized to be diverted is a hypothetical number, that assumes that the
8 9 10 11 12 13 14 15 16 17 18 19 20 21 22 23	 19th, 2005 order. A. Okay. Q. Okay. And I'll walk you through this exhibit, and ask you some questions about it. This is Exhibit 82. You recognize the summary of the water rights at the first page at the top to be an accurate summary of Blue Lakes' water rights; is that correct? A. Without a calculator, I can't check the volume numbers. But other than the volume, the summary, in terms of the number and the priority rate and rate of diversion, it appears to be correct. Q. So assuming I did the math correctly, and the aggregate volume of Blue Lakes' water rights as stated in their decrees is 142,415.24 	7 8 9 10 11 12 13 14 15 16 17 18 19 20 21 22 23	to derive monthly volumes, and then by addition to derive the total volumes of water represented by those numbers for each year. And that is for 1995 to 1996, the available flow provided Blue Lakes 107,198 acre-feet and 2004 provide 95,538 acre-feet. Now, again, without asking you to accept my math, you would recognize, wouldn't you, that the volumes of water available to Blue Lakes in 1995 and 1996 and 2004, are substantially less than the volumes of water stated in their decrees? A. Well, they are substantially less than the maximum volume authorized to be diverted. But that maximum volume authorized to be diverted is a hypothetical number, that assumes that the discharge at those rates would be constant, which
8 9 10 11 12 13 14 15 16 17 18 19 20 21 22 23 24	 19th, 2005 order. A. Okay. Q. Okay. And I'll walk you through this exhibit, and ask you some questions about it. This is Exhibit 82. You recognize the summary of the water rights at the first page at the top to be an accurate summary of Blue Lakes' water rights; is that correct? A. Without a calculator, I can't check the volume numbers. But other than the volume, the summary, in terms of the number and the priority rate and rate of diversion, it appears to be correct. Q. So assuming I did the math correctly, and the aggregate volume of Blue Lakes' water rights as stated in their decrees is 142,415.24 acre-feet, thereabouts? 	7 8 9 10 11 12 13 14 15 16 17 18 19 20 21 22 23 24	to derive monthly volumes, and then by addition to derive the total volumes of water represented by those numbers for each year. And that is for 1995 to 1996, the available flow provided Blue Lakes 107,198 acre-feet and 2004 provide 95,538 acre-feet. Now, again, without asking you to accept my math, you would recognize, wouldn't you, that the volumes of water available to Blue Lakes in 1995 and 1996 and 2004, are substantially less than the volumes of water stated in their decrees? A. Well, they are substantially less than the maximum volume authorized to be diverted. But that maximum volume authorized to be diverted is a hypothetical number, that assumes that the discharge at those rates would be constant, which it's not.
8 9 10 11 12 13 14 15 16 17 18 19 20 21 22 23	 19th, 2005 order. A. Okay. Q. Okay. And I'll walk you through this exhibit, and ask you some questions about it. This is Exhibit 82. You recognize the summary of the water rights at the first page at the top to be an accurate summary of Blue Lakes' water rights; is that correct? A. Without a calculator, I can't check the volume numbers. But other than the volume, the summary, in terms of the number and the priority rate and rate of diversion, it appears to be correct. Q. So assuming I did the math correctly, and the aggregate volume of Blue Lakes' water rights as stated in their decrees is 142,415.24 	7 8 9 10 11 12 13 14 15 16 17 18 19 20 21 22 23	to derive monthly volumes, and then by addition to derive the total volumes of water represented by those numbers for each year. And that is for 1995 to 1996, the available flow provided Blue Lakes 107,198 acre-feet and 2004 provide 95,538 acre-feet. Now, again, without asking you to accept my math, you would recognize, wouldn't you, that the volumes of water available to Blue Lakes in 1995 and 1996 and 2004, are substantially less than the volumes of water stated in their decrees? A. Well, they are substantially less than the maximum volume authorized to be diverted. But that maximum volume authorized to be diverted is a hypothetical number, that assumes that the discharge at those rates would be constant, which

17 (Pages 219 to 222)

	Deres 222		
	Page 223		Page 225
1	quantity element in the decrees are hypothetical	1	made? It was one you received from Blue Lakes?
2	numbers?	2	A. Well, I don't recall if it's one I
3	A. No, they are calculated, just as you	3	received directly from Blue Lakes, or this is a
4	described earlier. They are based upon the rate,	4	result of calculations made by Tim Luke.
5	times the conversion factor of 1.98, whatever it	5	Q. Okay.
6	is, times 365 days a year. Assuming that that	6	A. Because what we received from Blue
7	discharge would be available 24 hours a day, 365	7	Lakes, I believe, was the average daily flows.
8	days a year, which it's not.	8	Q. Okay. So certainly the average daily
9	Q. And do you believe the decrees are	9	flow on a monthly basis has declined during the
10	binding upon the Department of Water Resources in	10	ten years prior to 2004?
11	their administration of water rights?	11	A. Well, I mean, we're looking at two
12	A. Certainly.	12	years. And I agree with you that I mean,
13	Q. Now, the graph I prepared then is then	13	assuming that these plots are accurate, and I
14	based on the flow rates you included in paragraph	14	don't dispute that you would plot them
15	No. 60. And you can check the plots to verify	15	inaccurate. I mean, I don't think you would do
16	that I have correctly placed them in this graph	16	it inaccurately.
17	from the average daily flow column that you	17	So all you can say, I think, is that
18	reported in paragraph 60.	18	the average daily flows on a monthly basis in
19	And I would like to see if you concur	19	2004, are less than the average daily flows on a
20	with me in a few observations about these flows	20	monthly basis than what is shown for 1995, 1996.
21	based on this table. One is that the pattern of	21	MR. STEENSON: Okay. I want to mark a
22	variability during the 1995, 1996 time frame and	22	new exhibit, please.
23	the 2004 time frame is similar, seasonally	23	(Exhibit 83 marked.)
24	similar?	24	Q. (BY MR. STEENSON) Okay. Do you
25	A. There is some differences, but the	25	recognize Deposition Exhibit No. 83 to be a field
	Page 224	[Page 226
	-		
1	overall shape, I suppose, is similar. But, for	1	examination performed for Water Right 36-7210?
2	example, if you look at the 1995, 1996	2	A. Well, this appears to be the field
3	distribution, it would appear that the	3	exam, but often I don't remember if this was
4	decline the seasonal decline from April	4	the case with Blue Lakes or not there was
5	through oh, it looks like July, is less steep	5	often a staff memorandum that was prepared to
6	than the seasonal decline in 2004.	6	evaluate the field exam, and so I don't know if
7	Q. Sure. And then would you also concur	7	this if I I don't know that this is the
8	with me, that it's clear that the overall flows,	8	complete documentation of the field exam or not,
9	the annual flows at Alpheus Creek have declined	9	but it certainly appears to be part of it.
10	from 1995, 1996 to 2004?	10	Q. Okay. And I'm going to hand you what
11	A. Remind me, again, what are you plotting	11	I'll represent to you is a copy of the related
12	here? Is it the maximum, the average, or the	12	documents that I downloaded off the Department's
13	minimum?	13	website related to 36-7210. You know how when
14	Q. The average.	14	you go on the website, you can click on
15	A. Well, it certainly appears that the	15	different
16	average flow in 2004 is generally less than the	16	A. Sure.
17	average flow in 1995 and 1996.	17	Q. Tell me if there is additional
18	Q. And with respect to average flow, do	18	documentation than what I'm handing you that you
19	you recall how you calculated average season flow	19	think would be part of the field exam?
20	on a monthly basis?	20	A. Well, initially, it appears that the
21	A. I would assume that for that given	21	document titled, "Blue Lakes Trout Farm
22	month, they would take the average daily flow for	22	Calibration of Staff Gage" would be related as
23	each of the days during that month, and then	23	part of the field exam.
24	divide it by the number of days by the month.	24	Q. Let's pull it out and add to it the
25	Q. This wasn't a calculation that you	25	exhibit.
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	Page 227		Page 229
1	A. (Witness complying.)	1	A. I can't tell that they've subtracted
2	Q. Is there any other document that you	2	the amount for Pristine Springs out of this. So
3	think	3	I would not say right now that 190.4 was the
4	A. I'm still looking. Well, there is an	4	amount available to Blue Lakes.
5	additional letter that's related to this	5	Q. Okay. But it would be perhaps more
6	calibration of the staff gage that I don't know	6	correct to say, that 190.4 cfs was the flow of
7	if it I mean, it's part of the same thing.	7	water available at the point of diversion,
8	Q. Is it relevant to you to the field	8	whether it was for Blue Lakes whether it was
9	exam?	9	shared with Pristine Springs or not?
10	A. It certainly may, because it explains	10	A. That's what this would appear to
11	some differences in measurements over time.	11	indicate, yes.
12	Q. Okay. Let's include that with the	12	Q. And, again, you reviewed this field
13	exhibit as well.	13	exam when you prepared the May 19th, 2005 order;
14	A. But what I'm not seeing in here is any	14	correct?
15	sort of a staff evaluation of the field exam, and	15	A. Well, to the extent this well, if
16	I can't tell you if such a document exists in the	16	this was in the water right file, I would have
17	water right file or not, but it may.	17	looked at this, along with other documents that
18	Q. Okay. Now, looking at the field exam	18	may not be here today that may be pertinent.
19	in Exhibit No. 83. Karl, clear over here	19	Q. Okay. Then looking back to my graph in
20	(indicating).	20	Exhibit No. 82. If you were to if you are
21	A. (Witness complying.) Okay.	21	able to, to plot that data point for 1977. Could
22	Q. The second page, it's a single page at	22	you plot it for me? I'll give you a blue pen, if
23	the top, has the statement, "Date of exam, March	23	you would like.
24	1, 1977." Do you see that?	24	A. (Witness complying.) Okay.
25	A. I see that.	25	Q. Okay. I'm encouraged by that, because
	Page 228		Page 230
1	Q. Do you recognize this to be a standard	1	I put it in the same place. So I must be doing
2	form that the Department has used in the past for	2	something right.
3	field examiners to report their findings from the	3	A. Okay. We've simply put a quantity and
4	field exam?	4	a time. That's all that we've done.
5	A. You know, it looks to be the form that	5	Q. Okay. And then could you then write,
6	was used at the time. I can't tell you if that	6	as I'm going to do here, "3-1-77" next to that
7	same form is used or not. So I don't know that I	7	point, so we have a time frame for it?
8	would call it a standard form. But it appears to	8	A. (Witness complying.) Okay.
9	be the form that was used at the time.	9	Q. Okay. So clearly March 1, 1977 was at
10	Q. At the time?	10	or closer to the time of the appropriation of the
11	A. Correct.	11	water right well, it's closer to the time of
12	Q. Now, under the heading, "Measurement	12	the appropriation of the water right than in
13	Calculation," do you see the report of a	13	1995, 1996, or the 2004 date; isn't that correct?
14	measurement of 190.4 cfs?	14	A. Yes, that's correct.
15	A. Yes.	15	Q. The time of the appropriation is 1971.
16	Q. Okay. That would indicate then, that	16	And 1977 being six years later; correct?
17 18	at the time of the field exam in March of 1977, there was available for diversion by Blue Lakes	17	A. Correct. That appears to be, yes.Q. And at the time, as I understand your
19	190.4 cfs; isn't that correct?	19	discussion of the May 19, 2005 order and from
20	A. I don't know. This would appear to say	20	other statements you've made, by the time we get
21	that I don't know if this is the amount that	21	to the '70s, when these aquaculture and spring
22	was divertable by Blue Lakes, or the amount that	22	water rights were being appropriated, we were at
23	was divertable by Blue Lakes in combination	23	the peak, or making our way toward the decline of
24	with is it, Pristine Springs?	24	the overall level of the aquifer from the highs
25	Q. Sure.	25	that you had depicted in the middle part of the
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			19 (Pages 227 to 230)

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1 century around the '50s? 2 A. I'm not sure I understand the question. 3 But before we go on, I want to make clear that 4 this point of 1904, from the information you've MR. RASSIER: I think Chris went to see 6 given me, I can't determine whether that is the Short circuit this by asking you to look at 7 Pointie Springs. Q. (BY MR. STEENSON) And maybe I can 9 Q. Sue. O. My understanding of Deposition Exhibit 10 A. And the reason for the significance of O. My understanding of Deposition Exhibit 11 that is that, these other lines that you've drawn In received, either from the Department or 11 received, either from the Department or I downloaded from the Department or I downloaded from the Department or 10 available to Blue Lakes, do not include the Pristine Springs diversions. I understand that these miscellanous 11 the they on'r represent the Pristine I downloaded from the Department S Page 232 2 ch, Kal. O. Do you recognize these measurements? 2 ch, Wein the water and the tweet of the starts Do you recognize these measurements? 2 ch, Wein '', an', the synthe and the '', si		Page 231		Page 233
2 A. Tm not sure 1 understand the question. 2 MR. RASSIER: 1 think Chris went to see 3 But before we go on, 1 ways to make clear that 4 10 4 this point of 190.4, from the information you've 5 if it's available. 1 5 given me, 1 can't determine whether it in the water rainable to Blue Lakes, or whether it 1 1 1 7 includes the amount that would have been diverted 6 New for the significance of 7 A. (Witness complying.) 9 Q. Sure. 9 No. 80, and Tl' represent to you that the 10 on this schibit representing the average daily 11 12 downloaded from the Department's website. 13 and 2004, chose are flows that were strictly 13 10 indiversions. 14 between - comparing them between 1995 and 1996 14 indiversions. 17 order, again, 1 mean, the May 19th, 2005 13 Parsite Springs. 10 a. (New 187 2. A. (Ney 2005 14 the order; right? A. (Ney appear to be what 1 was to see 20 Q. Yeah. It's the sentence that starts 20 Syner offer tagaragn 195, and 1996 plots; 21	1	century around the '50s?	1	going to get it here quickly.
3 But before we go on, I want to make clear that 3 if it's available. 4 this point of 1904, from the information you've 4 Q. (BY MR. STEENSON) And maybe I can short circuit this by asking you to look at 5 given me, I can't determine whether that is the 5 bottom the information you've 6 water available to Blue Lakes, or whether it 6 Deposition Exhibit No. 80. 7 A. And the reason for the significance of 10 highlights are in the electronic file that 1 10 A. And the reason for the significance of 10 highlights are in the electronic file that 1 11 that is that, these other lines that you've drawn 11 received, either from the Department or 12 on this exhibit representing the average daily 13 numderstand that these miscellaneous 14 deviatible to Blue Lakes, do not include the 15 your order at paragraph No. S8 at page 12. And 17 pristine Springs diversions, you would add 25 cfs to each data 20 Q. Yeah. It's the sentence that starts 12 out, the 2004, and 1955, and 1965 plots; 21 out, The USGS." 22 cfs. but if's on that order. Yes. 23 Q. Doyu recognize these measurements? <tr< td=""><td>2</td><td></td><td>2</td><td></td></tr<>	2		2	
4 his point of 190.4, from the information yove 4 Q. (BY MR. STEENSON). And maybe I can 5 given me, I can't determine whether that is the 5 6 water available to Blue Lakes, or whether it 6 7 includes the amount that would have been diverted 8 8 Q. Sure. 9 9 Q. Sure. 9 10 A. And the reason for the significance of 11 11 that is that, these other lines that you've drawn 11 12 on this exhibit representing the average for the month, 10 14 between - comparing them between 1995 and 1996 14 15 and 2004, those are flows that were strictly 13 I understand that these miscellaneous 14 between - comparing them between 1995 and 1996 14 measurements to be those that you referenced in 19 that they don't represent the Pristine 19 A. It's S8? 20 Q. Yeah. It's the sentence that starts 21 out, "The USGS." 2 A. Okay. 2 A. They appear to be what I was 25 right? A. Yes. 2 A. Okay. 2 Page 234 <td>3</td> <td></td> <td>3</td> <td></td>	3		3	
5 given me, I can't determine whether that is the 5 short circuit this by asking you to look ai 6 water available to Blue Lakes, or whether it 5 between - comparing s. 9 Q. Sure. 7 A. (Witness complying.) 10 A. And the reason for the significance of 10 highlights are in the electronic file that I 11 that is that, these other lines that you've drawn 11 received, either from the Department or 12 downloaded from the Department or 12 downloaded from the Department or 13 numberstand that these miscellaneous 14 measurements to be those that you referenced in 14 available to Blue Lakes, do not include the 15 and 2004, those are flows that were strictly 15 16 available to Blue Lakes, do not include the 15 your order a paragraph No. S8 at page I2. And 17 pristine 2004, those are flows that were strictly 16 by "order", again, mean, the May 19th, 2005 18 D. So then Take it that to the extent 19 A. It's S8 You have to go 19 that they don't represent the Pristine 10 O. Yeah. It's the sentence that starts 20 O. Store, I	4		4	Q. (BY MR. STEENSON) And maybe I can
6 water available to Blue Lakes, or whether it 7 A. (Witness complying.) 8 to Pristine Springs. 7 A. (Witness complying.) 9 Q. Sure. 9 Q. My understanding of Deposition Exhibit 9 Q. Sure. 9 No. 80, and III represent to you that the 10 nth is that, these other lines that you've drawn 11 received, either from the Department or 11 that is that, these other lines that you've drawn 11 received, either from the Department or 11 that is stat, these other lines that you we drawn 11 received, either from the Department or 12 downshate to Blue Lakes, do not include the 15 your order at paragraph No. 58 at page 12. And 16 available to Blue Lakes, do not include the 16 by "order," again, I mean, the May 19th, 2005 17 Pristine Springs. 10 order, page 12, paragraph S8. You have to go 18 back one, Karl. 19 A. It's the sentence that starts 20 Q. So then I take it that to the extent 19 A. It's S8? 21 corter. I don't know if it's exactly 2 A. Okay. 22 Sc. Sc. buit's on that or	5		5	
7 A. Well, if we have the entirety of the work of the order; right? 7 A. Well, if we have the entirety of the work work work work work work work work			6	
8 to Pristine Springs. 9 Q. My understanding of Deposition Exhibit 9 Q. Sure. 9 No. 80, and 111 represent to you that the 11 that is that, these other lines that you've frawn 10 highlights are in the electronic file that 1 12 on this exhibit representing the average daily 12 downloaded from the Department or 13 flows for the months, average for the month, 14 thetween - comparing them between 1995 and 1996 14 between - comparing them between 1995 and 1996 14 measurements to be those that you referenced in 14 available to Blue Lakes, do not include the 16 by "order," again, I mean, the May 19th, 2005 17 Pristine Springs diversions. 10 has accounce of the starts 20 Q. So then I take it that to the extent 18 back one, Karl. 19 that they don't represent the Pristine 19 A. It's 58? 21 point in the 2004, and 1995, and 1996 plots; 21 Q. Veak. It's the sentence that starts 22 S. Sure. It's the amount you mentioned in 25 referencing. But, when you had me a 25 Page 232 Page 234 1 document out of context	7		7	
9 Q. Sure. 9 No. 80, and TII represent to you that the 10 A. And the reason for the significance of 10 highlights are in the electronic file that I 11 that is that, these other lines that you've drawn 10 highlights are in the electronic file that I 12 on this exhibit representing the momth, 11 received, either from the Department or 12 on this exhibit representing the momth, 14 between - comparing them between 1995 and 1996 14 between - comparing them between 1995 and 1996 13 Iunderstand that these miscellaneous 14 between - comparing them between 1995 and 1996 15 your order at paragraph No. 58 at page 12. And 16 by 'order,'' again, I mean, the May 19th, 2005 1 order, right ? 20 diversions, you would add 25 cfs to each data 19 A. It's 58? 21 out represent to by onset that starts 21 0. Veal. It's the sentence that starts 21 out, 'The USGS.'' 22 A. Okay. 23 A. Correct. I don't know if it's exactly 23 Q. Doy urecognize these measurements? 24 A. Yes. 3 Q. Now, I want to turn then, your 4	8	to Pristine Springs.	8	
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25 IS. If it's in the State archives, you are not 25 A. Un, okay. (Witness complying.) All	2 3 4 5 6 7 8 9 10 11 12 13 14 15 16 17 18 19 20 21 22 23	 the order; right? A. Yes. Q. Now, I want to turn then, your attention then to Deposition Exhibit No. 81. A. But I'm wondering, Dan, before we go on, for completeness, if we shouldn't also note, in addition to the date, that the quantity includes the diversion to Pristine Springs? Q. Does the field exam say that? A. No. Q. So we don't know one way or the other? It may, or it may not? A. I think we know. Q. How do you know that? A. Well, if we have the entirety of the water right file here, I think we could show that it does include it. Because in the beginning, when these measurements were submitted, they weren't separated out. They were combined. And I think I could demonstrate that with the water right file, but I don't have it. Q. Okay. We can certainly get it here; couldn't we? 	2 3 4 5 6 7 8 9 10 11 12 13 14 15 16 17 18 19 20 21 22 23	 document out of context in terms of the rest of the file, I can't tell you with certainty that this is the document. Q. Could you look through the document and A. Well, like I say, it appears to be what I was referencing. Q. It's just you don't recall for sure; is that A. Well, no. Actually, it looks similar. But I don't know if there were other parts to this document that were in the water rights file that, you know, I just can't tell. It appears to be what I was referencing. Q. Okay. Fair enough. Then if we go back in the document to the very last page, where the structure of the Blue Lakes system was drawn, and there is a legal description of the location. And then immediately in the preceding paragraph, we see dates in the 1950s and discharge measurements; do you see that? A. I'm looking at the last page. Is that what I'm supposed to be looking at?
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20 (Pages 231 to 234)

1 2 3 4	Q. Certainly, from Deposition Exhibit No. 80, we can see higher flow measurements recorded during the '50s than were recorded
3	
	recorded during the '50s than were recorded
4	recorded during the 50s than were recorded
1	during the '60s. And consequently, similarly
5	higher flow measurements recorded in the '60s
6	than were recorded in the '70s. And a
7	continuation of the similar trend as you proceed
8	through the decades toward the current for the
9	most recent measurements in early 2000; right?
10	A. Well, I don't I mean, I'm looking at
11	these numbers. I haven't plotted them out. It
1	appears that during each year, that there were
1	measurements made generally when the springs were
1	at their minimal discharge, and measurements made
1	generally when the springs were at the maximum
1	discharge.
	And, you know, I think you could reach
1	the conclusion that it looks like there has been
1	a general decline. But, you know, I would have
1	to really see what the magnitude of the decline
1	has been. You would have to plot these out.
1	Q. And you didn't do that when you issued
1	this order on May 19th, 2005? A. No.
1	Q. Why not? Wouldn't that be important to
25	
	Page 238
-	have done?
1	A. Well, that's in part essentially,
1	that's what I I didn't plot them out, but, essentially, I reached the conclusion that the
	water availability is less in 2004 than it was in
	1980.
7	Q. Okay. So certainly then, these numbers
8	in paragraph 60 are not indicative of flows
9	existing at the time of appropriation; are they?
10	A. No.
11	Q. They are much lower; aren't they?
12	A. They are lower. You know, I mean,
13	again, if I look at November of 2004, the flows
14	available in November of 2004 were 153.85 cfs,
15	and comparing that to the flows available in
16	November of 1980, which was 184.7 cfs, it appears
17	that they are lower. I don't dispute that.
18	Q. Okay. And the measurements from 1980,
19	is that contained in Deposition Exhibit No. 80?
20	A. Well, I believe it is, although there
21	is a discrepancy of one day. There is a
22	measurement that is reported on November 6th,
23	1980, indicating that the diversion to the
	$\mathbf{D}_{1} = \mathbf{D}_{1}^{2} + \mathbf{D}_{2}^{2} + \mathbf{D}_{2}$
24 25	Perrine Ditch was measured at 210.1 cfs, and in Finding 58, I refer to a measurement of 210 cfs
	$\begin{array}{c} 8\\ 9\\ 10\\ 11\\ 12\\ 13\\ 14\\ 15\\ 16\\ 17\\ 18\\ 9\\ 21\\ 22\\ 23\\ 4\\ 25\\ 1\\ 2\\ 3\\ 4\\ 5\\ 6\\ 7\\ 8\\ 9\\ 10\\ 11\\ 23\\ 14\\ 5\\ 16\\ 18\\ 9\\ 20\\ 1\end{array}$

	Page 239		Page 241
1	on November 5th, 1980. Oh, excuse me. Wait a	1	Q. Yes. And I've spoken with Tim Luke
2	second.	2	about this information, and he indicates that he
3	It appears that the date has been	3	doesn't know. Is there anyone else within the
4	incorrectly stated in Exhibits 58 and 59 by five	4	Department?
5	days.	5	A. No.
6	Q. What should the date be, then?	6	Q. Okay. And by 1980, is that a time
7	A. Well, and I'm not sure. I talk about a	7	frame when the levels of the aquifer are in a
8	measurement made on November 5th in Finding 58.	8	stage of decline from the historic highs that you
9	And when I look at Exhibit 80, I see a	9	described from the 1950s?
10	measurement made on November 6th of 1980 of	10	A. Well, the accumulative spring discharge
11	210.1. But in the last sentence of Finding 58	11	from the Thousand Springs Reach, as shown on
12	and then continuing into Finding 59, I refer to a	12	Attachment A by 1980, were less than they were in
13	date of November 10th, which appears to be a	13	the 1950s.
14	misstatement. It should be presumably November	14	Q. Okay. So then with respect to seasonal
15	5th or November 6th. But I don't know that it's	15	variations, I've asked you to look at Exhibit
16	substantial in terms of looking to see whether	16	No. 81. And from the data that is shown there,
17	there has been a decline or not.	17	and I will represent to you that this was
18	Q. Okay. So you think the measurement in	18	provided by the Department as one of the
19	Exhibit 80 that you may be referencing is a 1996	19	documents that was relied upon in the issuance of
20	measurement?	20	the May 19th, 2005 order. Do you recognize this
21	A. It appears that it may be, yes.	21	document?
22	Q. Okay.	22	A. Well, it appears to be the document
23	A. Because the quantity measured of 210.1	23	that I relied on in preparing Attachment C to the
24	is essentially what I refer to as the 210 cfs in	24	order.
25	Finding 58 on November 5th.	25	Q. Okay. So while the level of the peaks
	Page 240		Page 242
1	Q. Are you sure of that, or do you think	1	and the valleys may change, the pattern of
2	there was perhaps some other measurement that you	2	variation from year to year is a similar pattern;
3	relied upon from November 6th, 1980?	3	is it not?
4	A. I don't know, because I don't have the	4	A. It appears to be, yes.
5	entire water right file. I can't go back and see	5	Q. Okay. And with respect to Exhibit
6	all the documents that I would have looked at.	6	No. 80, when you observed that some of the
7	Q. And with respect to this document, do	7	measurements were taken at seasonal lows, what
8	you see any indication that water was being	8	months of the year were you referring to? Were
9	diverted to Pristine or its predecessor?	9	you referring to the March measurements at the
10	A. Well, in Finding 58, I said it's	10	seasonal low periods?
11	assuming Pristine Springs. I don't know that you	11	A. Not necessarily the absolute low
12	can make that determination from this document.	12	periods, but generally near the seasonal lows,
13	So I made an assumption that it was.	13	the March numbers.
14	Q. Why did you make that assumption?	14	Q. And is it your opinion then that the
15	A. Well, I must have made the assumption,	15	seasonal highs generally, over time, at least
16	because I thought it was reasonably supportable.	16	back at least during the period of these
17	Q. But you don't know?	17	measurements in Exhibit No. 80, occurred in the
18	A. I would have to go back through the	18	October, November time frame?
19	entire file and recreate the rationale for this	19	A. Yes.
20	finding.	20	Q. Okay.
21	Q. We may need you to do that, because the	21	A. And the seasonal lows occur,
22	Department has indicated that you are the only	22	apparently, in the March, April time frame.
23	person who can speak to the substantive finding	23	Q. Okay. Then it's absolutely the case, is it not, that the measurement for field
24 25	in this order. And nobody else can A. Well, I wrote the order, so	24	inspections for Blue Lakes Water Right 36-7210
20	A. Weil, I while the older, 50		hispections for Dire Lares in all fright 50-7210
			22 (Pages 239 to 242)

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1	taken in March of 1977, was not taken at a	1	1977 when this measurement was made, there was a
2	seasonal high period, as you had previously	2	period of time where it looked like there was
3	assumed?	3	an I'll call it transitional stability, and
4	A. I'm not sure I assumed anything about	4	then the declines began to occur again.
5	the March 1st, 1977 number.	5	So I don't know at what point you are
6	Q. Well, previously, you testified that	6	trying to get to, quite honestly.
7	you assumed that the Blue Lakes, like others,	7	Q. Just for the annual variation of flow
8	were intentionally having field examiners come	8	from January through December
9	out at seasonal high flows to establish as great	9	A. Yes.
10	a quantity for the water right as possible.	10	Q as you've attempted to depict in
11	That's what you said; right?	11	your order of paragraph 60. Again, given that
12	A. I had said, in general. And then we	12	the annual pattern of flow has been fairly
13	talked about we had an exchange, and I	13	relatively consistent; right?
14	concluded there was no basis for me knowing	14	A. Yes.
15	whether that was intentional on Blue Lakes' part	15	Q. Then the March 1st, 1977 measurement
16	or not.	16	would have been taken at a time during 1977 when
17	Q. Now, based on the field exam, we now	17	the flows were on their way towards a low from a
18	know that it was not the case, that the	18	high period?
19	measurement occurred at the seasonal high period	19	A. For the annual variation?
20	of the flow in 1977; correct?	20	Q. For the annual variation.
21	A. That's what it appears to be.	21	A. Yes, that's correct.
22	Q. Okay.	22	Q. Okay. So then looking at my diagram,
23	A. The measurement date that is there, and	23	if you were trying to infer flows in 1977 to get
24	that would have been not during the time period	24	some kind of a general idea of what the annual
25	when the springs normally would be at their	25	variation would be, you would take the flow
	Page 244		Page 246
1	maximum.	1	pattern like what we see in '95 and '96 and 2004,
2	Q. So in 1977, the maximum flow would have	2	and lift it up, wouldn't you, up to this higher
3	been something higher than 124 cfs?	3	point in 1977? So that you would see an annual
4	A. Presumably, that's correct.	4	flow pattern, like what we see in the other
5	Q. And then as we can see from my drawing	5	years, but including this March 1, 1977
6	in Exhibit No. 82, the springs at that time in	6	measurement; isn't that correct?
7	1977 would be on the decline in their seasonal	7	A. Almost. I think you would have to do
8	flow pattern; right?	8	that. You would have to subtract the 25 cfs from
. 9	A. Which exhibit are you referring to?	9	the March 1st, 1977 measurement.
10	Q. On Exhibit 82, my drawing of the third	10	Q. Okay. Now, even subtracting the 25
11	page.	11	cfs, the annual flow pattern existing then in
12	A. Okay.	12	1977, and certainly then, of course, in 1971,
13	Q. So the part of my question was that	13	when the water right was applied for, would be
14	given the seasonal pattern of flow that has been	14	much higher than the combined decreed diversion
15	occurring over the many last decades, that	15	rates for Blue Lakes' first priority water right,
16	measurement at the time of the field exam was	16	and its second priority right 7210, than what I
17	taken at a time when the springs were in a	17	plotted there at 170 cfs; isn't that right?
18	declining annual trend; is that right?	18	A. I'm sorry. You are going to have to
19	A. I'm not sure what you are basing that	19	state that again.
20	on. Again, I will go back to Attachment A, which	20	Q. Let me walk it in steps then. Looking
21	shows the accumulative spring discharge, and, you	21	at the graph, there is a straight line there at
22	know, if you look across the period from the	22	about 145 cfs where I referenced the priority
23	1950s through 2004, there overall has been a	23	water right 02356A?
24	decline.	24	A. Yes.
25	When you look in the time period around	25	Q. And its second priority water right
21 22 23 24	shows the accumulative spring discharge, and, you know, if you look across the period from the 1950s through 2004, there overall has been a decline.	21 22 23 24	at the graph, there is a straight line there at about 145 cfs where I referenced the priority water right 02356A? A. Yes.

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2 3 4 d 5 is 6 7 8 p 9 g 10 d 11 d	 A. Yes. Q. And that correctly reflects that the lecree identifies the diversion rate of 145 cfs; sn't that correct? A. Yes. Q. Okay. Now, given the annual flow pattern that would have existed in 1977, and given the March 1st, 1977 measurements, and even leducting the 25 cfs from that Pristine may have 	1 2 3 4 5 6 7 8	A. Which is 190. And if you subtract off the 25, that would be 165 cfs. And if you compare that to 134 cfs, 134 is less.Q. Yes. Again, if you assume that the 190.4 measurement reflects diversion by Pristine as well?
3 4 d 5 is 6 7 8 p 9 g 10 d 11 d	 Q. And that correctly reflects that the lecree identifies the diversion rate of 145 cfs; sn't that correct? A. Yes. Q. Okay. Now, given the annual flow pattern that would have existed in 1977, and given the March 1st, 1977 measurements, and even 	3 4 5 6 7	the 25, that would be 165 cfs. And if you compare that to 134 cfs, 134 is less. Q. Yes. Again, if you assume that the 190.4 measurement reflects diversion by Pristine as well?
4 d 5 is 6 7 8 p 9 g 10 d 11 d	lecree identifies the diversion rate of 145 cfs;sn't that correct?A. Yes.Q. Okay. Now, given the annual flowpattern that would have existed in 1977, andgiven the March 1st, 1977 measurements, and even	4 5 6 7	Q. Yes. Again, if you assume that the 190.4 measurement reflects diversion by Pristine as well?
5 is 6 7 8 p 9 g 10 d 11 d	lecree identifies the diversion rate of 145 cfs;sn't that correct?A. Yes.Q. Okay. Now, given the annual flowpattern that would have existed in 1977, andgiven the March 1st, 1977 measurements, and even	5 6 7	190.4 measurement reflects diversion by Pristine as well?
6 7 8 p 9 g 10 d 11 d	 A. Yes. Q. Okay. Now, given the annual flow battern that would have existed in 1977, and given the March 1st, 1977 measurements, and even 	6 7	as well?
7 8 p 9 g 10 d 11 d	Q. Okay. Now, given the annual flow pattern that would have existed in 1977, and given the March 1st, 1977 measurements, and even	7	
8 p 9 g 10 d 11 d	battern that would have existed in 1977, and given the March 1st, 1977 measurements, and even		
9 g 10 d 11 d	given the March 1st, 1977 measurements, and even	8	A. Right, and that's the assumption I made
10 d 11 d			in Finding 58.
11 d	leducting the 25 cfs from that Pristine may have	9	Q. Okay. So then, certainly, that
		10	measurement from March of 2004 is not indicative
112 h	liverted, the annual flow pattern certainly would	11	of the water that was available to Blue Lakes at
	have not dipped below this combined amount of 145	12	the time of appropriation; correct?
	efs; would it?	13	A. I think that's correct.
14	A. I don't think that you can make that	14	Q. Okay. Doesn't it also follow that
	conclusion based upon one point.	15	these flows from 2004 in the table are not
16	Q. Okay. How many points do you think you	16	indicative of the flows that were available
	need? Given your prior testimony that the annual	17	during the course of the year in 1977 or 1971?
	low pattern is consistent through the years.	18	A. Likely not. But we don't have the
19	A. Well, but remember, you know, we	19	actual measurements. We didn't get actual
	compared the annual flow pattern for 1995 and	20	measurements on an average daily basis for the
	996, and compare that with 2004, I noted that	21	months until 1995.
	here were differences.	22	Q. Right. But one of the actual
23	Q. Okay.	23	measurements that we have that was the basis for
24	A. Even though there is kind of a general	24	the licensing of the water right, was from March
25 p	battern that appears similar. So I don't think	25	of 1977, and shows flows are way higher; correct?
	Page 248		Page 250
1 y	ou can say, you can from one point determine	1	A. Well, it shows if you assume that it
2 v	what the pattern was or was not in 1977.	2	includes the 25 cfs being diverted to Pristine,
3	Q. Sure. And looking back to your table	3	it would be 165 cfs available in March, which is,
4 in	n paragraph 60, and looking at your March 19th,	4	you know, it's hard telling. That was March 1st.
5 2	2005 order, the average daily flow, your report	5	So I don't you know, there is not much
6 tl	here for the month of March in 2004 is 134 cfs;	6	difference between February 2004 and March 2004,
7 c	correct?	7	it's about 134.
8	A. Correct.	8	So that would indicate that making the
9	Q. That certainly is not indicative of the	9	assumption that 25 cfs was being diverted to
	quantity of water available to Blue Lakes to	10	Pristine, then there would have been in 1977,
1	livert in March of 1977 based on the field exam;	11	assuming the measurements are compatible, which
	ight?	12	that's another assumption here. I don't know for
13	A. Yeah, probably not. Yeah.	13	certain that the measurements that were being
14	Q. Is there any doubt that it's not	14	taken and reported in Exhibit 80, in fact, use
	ndicative?	15	the same methodology at the same locations as the
16	A. Well, I mean	16	measurements that have been reported since 1995.
17	Q. Is there any doubt that it's actually	17	I don't know that.
	6 approximately, 56 cfs less than the flow	18	Q. That's a problem inherent upon going
	hat was available to Blue Lakes as documented by	19	back to data that's 30 years old, and trying to
	he field exam in 1977, when the appropriation	20	interpret it; correct?
	vas verified by the Department?	21	A. Yes. Sure, that's true.
22	A. Well, there is no question that 134 is	22	Q. One of the reasons to recognize the
	ess than I'm not sure what number you want to	23	decrees as they are stated, because you were not
1	compare it with?	24	there when the water was appropriated in the
25	Q. The March 1, 1977 figure.	25	first place; correct?

24 (Pages 247 to 250)

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1A. Well, I've never said that we are going 2 to look to the maximum quantity that's authorized 3 to be diverted as stated in the decree. That we're going to look that we're going to do 5 anything different than that. That is, and has 6 been, the maximum quantity that can be diverted. 71A. No.2Q. Then why do you say that the water right is being filled in those months, when substantially less than 45 cfs is available for 5 that right?2Q. Then why do you say that the water right is being filled in those months, when substantially less than 45 cfs is available for that right?8this March 1, 1977 measurement, how much water is B Bue Lakes entitled to for purpose of curtailing 10 hydraulically-connected junior water rights?3A. I didn't say the 45 cfs is available for that right?1A. At what? What date?145S that anount for bue Lakes?1A. Of March of the year.13aying the water right was appropriated, there 14 was enough water in March to deliver the full 451452G. But the water right that we're actually 21G. Su the water right that we're actually 227112A. Yeah.21Q. Okay. So isn't Bue Lakes entitled to, 222121A. Uh-hub.2Page 2521Fage 25211Fage 2521Fage 2522221Fage 25222221D. Shi't the time; right? 3A. Yes, I agree with that. Potentially, 33333A.		Page 251		Page 25
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14 Q. So when we look at paragraph 64 of your 14 the months? Show me what the annual variation	12		12	
	1		1	
115 order you say you are taking into account 15 was in 1977			1	
	15		15	was in 1977.
16variations in spring flows that have existed16Q. Well, did the Department collect data	1		1	
17since the date of appropriation to conclude that17to make those determinations back in 1977?	1		1	
18 the amount of water available to Blue Lakes in 18 A. No.			•	
192004 was adequate to fill its 45 cfs right.19Q. It doesn't exist then; right?	19	· · ·	\$	
	1	•	j –	•
	20	•	1	
	21	the seasonal highs.	1	
	21 22	e	1 / 3	the registrature in 1994.
24Lakes is not entitled to 45 crs through the24Q. Sure. So are you imposing now a25months of January through September?25standard that didn't exist at the time the water	21 22 23	Q. So is it your conclusion that Blue	1	
25 months of January unough September ? [25 standard that druit t exist at the time the water	21 22 23 24	Q. So is it your conclusion that Blue Lakes is not entitled to 45 cfs through the	24	Q. Sure. So are you imposing now a

25 (Pages 251 to 254)

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	Page 255		Page 257
1		1	A. I don't know that I inferred it was
1	rights were appropriated?	2	less at the time of appropriation.
2	A. No. Even in my initial response to Blue Lakes when the delivery call was made was,	3	Q. Then how can you say that the water
3	give us all the measurements that you think you	4	supply in 2004, when it's adequate only two
4	have that would be pertinent to making the	5	months during the year, to deliver the full right
6	factual determination.	6	is sufficient to fill the right?
7	Q. And they are reported to the Department	7	A. At the time that Alpheus Creek is at
8	on a regular basis; are they not?	8	the seasonal high. I've never said anything
9	A. But we've only got them in since 1995.	9	different.
10	Q. And you are aware that there are USGS	10	Q. Does the water right entitle the user
11	day stations at the Blue Lakes springs at Alpheus	11	to delivery of the water only when the flows are
12	Creek where data has been collected all the way	12	at seasonal high?
13	back to the 1950s; correct?	13	A. If the water is available you could
14	A. During one or two months of the year.	14^{-2}	divert the quantity other than the seasonal high.
15	Q. So you have the data that was	15	Q. Okay. And if curtailment of junior
16	collected?	16	water rights is required to deliver the water, is
17	A. Only during one or two months during	17	the entitlement only to the water when it's at
18	the year. I don't know if they collect data	18	seasonal highs?
19	during the other months or not?	19	A. I don't think I've ever said that.
20	Q. Right.	20	Q. Okay. So what is the import? What is
21	A. We used what we had.	21	the reason for you to make reference to seasonal
22	Q. Okay. So you are willing to assume	22	highs here, such that the end result is that Blue
23	that Pristine was diverting water when you have	23	Lakes will get delivery of its 45 cfs by
24	no basis for knowing that one way or the other;	24	administration only during two months of a
25	correct?	25	12-month period of the year?
	Dago 256		
1	Page 256		Page 258
1	-	1	
1	A. Well, the basis for making the	1 2	A. Well, even if you make the supposition
2	A. Well, the basis for making the assumption is that the measurements were	1 2 3	A. Well, even if you make the supposition that 7210 may have been filled for more than two
2 3	A. Well, the basis for making the assumption is that the measurements were generally reported combined in that.	2 3	A. Well, even if you make the supposition that 7210 may have been filled for more than two months of the year at the time of appropriation,
2 3 4	A. Well, the basis for making the assumption is that the measurements were generally reported combined in that.Q. How do you know that? Where does it	2	A. Well, even if you make the supposition that 7210 may have been filled for more than two months of the year at the time of appropriation, I mean, what about 7427? I mean, it seems like
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2 3 4	 A. Well, the basis for making the assumption is that the measurements were generally reported combined in that. Q. How do you know that? Where does it say that the Pristine's diversion is A. It doesn't. 	2 3 4 5	A. Well, even if you make the supposition that 7210 may have been filled for more than two months of the year at the time of appropriation, I mean, what about 7427? I mean, it seems like the path that you are on is saying that Blue Lakes is entitled to 145 cfs year round, even
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2 3 4 5 6 7 8 9 10 11 12 13 14 15 16 17 18 19 20 21 22 23	 A. Well, the basis for making the assumption is that the measurements were generally reported combined in that. Q. How do you know that? Where does it say that the Pristine's diversion is A. It doesn't. Q. Okay. A. But we know later in time than this that they were combined, and it wasn't until 1995 that they began to be separated. Q. Okay. So you have no basis for inferring that water supply in any time of the year, when Blue Lakes water right was appropriated, was less than necessary to deliver 45 cfs; do you? A. During any time of what year? Q. At the time of appropriation this is a phrase you use in your order. You use the phrase "time of appropriation"? A. Yes. Q. So at the time of appropriation, you have no basis for inferring that there was less than that the water supply was less than 	2 3 4 5 6 7 8 9 10 11 12 13 14 15 16 17 18 19 20 21 22 23	 A. Well, even if you make the supposition that 7210 may have been filled for more than two months of the year at the time of appropriation, I mean, what about 7427? I mean, it seems like the path that you are on is saying that Blue Lakes is entitled to 145 cfs year round, even though it never existed year round. Q. How do you know that it never existed year round? A. Well Q. On what basis do you draw that conclusion? You have said A. Even Q. You have said that you don't have a full set of data from the water source at the time of appropriation; correct? A. Right. I think I said, "even if it's not available." Q. Okay. And the data point that we had looked at that was the basis for licensing the water right that wasn't at seasonal highs, show that adequate water was available during the time of appropriation of this water; correct?

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1	supports the contrary conclusion that the water	1	the time of appropriation; correct?
2	supply was adequate at 1977 or 1971 to supply	2	A. Well, it shows that at one point in
3	this water right?	3	time.
4	A. I disagree with that conclusion.	4	Q. Okay. And don't your decisions have to
5	Q. On the basis of what data?	5	be based on the information you have, rather than
6	A. One point. You can't make that	6	on negative inferences from information you don't
7	conclusion on one point, one measurement.	7	have?
8	Q. Are you making that conclusion on the	8	A. It's not based on negative inferences
9	2004 flow data?	9	from information we don't have.
10	A. Making what conclusion?	10	Q. So you have no basis to infer in 1977,
11	Q. Are you drawing the conclusion that the	11	that there was not adequate water to supply the
12	water supply was inadequate at the time of	12	45 cfs right at any time during
13	appropriation based on the 2004 flow data?	13	A. I didn't make that kind of inference.
14	A. No.	14	Q. And you can't; can you?
15	Q. Are you doing it on the basis of the	15	A. Nor did I.
16	1995 and 1996 data?	16	MR. RASSIER: Do you want to take a
17	A. No.	17	break now, Karl? It's 11:00.
18	Q. On what basis are you drawing your	18	THE WITNESS: It's 11:00?
19	conclusion?	19	MR. RASSIER: Yeah.
20	A. I'm not drawing the conclusion.	20	THE WITNESS: Sure.
21	Q. Okay. Then you have to take the decree	21	MR. STEENSON: Okay. We can take a
22	to mean what it says; don't you? That Blue Lakes	22	break.
23	is entitled to 45 cfs 24/7, 365; don't you?	23	(A recess was had.)
24	A. If it's there, they can divert it.	24	MR. STEENSON: Okay. Back on the
25	Q. And if	25	record.
	Page 260		Page 262
1	A. But you are saying, they are entitled	1	Q. (BY MR. STEENSON) I want to conclude
2	to it. And the quantity is the maximum	2	on this issue. I think you understand its
3	authorized rate. It's not an entitlement.	3	significance, Karl, because it appears to me, and
4	Q. So what duty is imposed on the	4	it appears to Blue Lakes, that as a result of
5	Department then to administer junior rights in	5	this finding, its 45 cfs right entitles it to
6	order to deliver the water represented by the	6	priority distribution of no more than the flows
7	decree?	7	that are referenced in paragraph 60; is that
8	A. Well, I mean, if curtailing or	8	correct?
9	administering junior-priority rights will result	9	A. I don't think that's correct. You keep
10	in a meaningful quantity of water to the senior,	10	talking about what Blue Lakes is entitled to.
11	then the Department has an obligation to	11	And that is not what the quantity element of a
12	administer those rights. And that's exactly what	12	water right is. Ω What is a water right? Is a water
13	we were attempting to do.	13	Q. What is a water right? Is a water
14	Q. And that proposition doesn't have	14	right an entitlement or not? A. It's an authorization to use water for
15	anything to do with seasonal irrigation; does it? A. Oh, yes, it does. Because you don't	16	a defined beneficial use.
16		17	Q. It's a right?
17 18	administer junior rights in an attempt to deliver water that wouldn't have been there anyway.	18	A. Sure, it's a real right, a real
19	Q. But you don't know what water would	19	property right.
20	have been there any way in 1977; do you?	20	Q. It authorizes or entitles the person to
21	A. We don't have as much data from that	21	use to divert water from a source within the
22	time period as we do now.	22	state of Idaho for the beneficial use stated
23	Q. But the field exam we looked at shows	23	therein; correct?
24	that there was substantially more water than	24	A. Yes, up to that amount. The water was
25	would be necessary to fill that 45 cfs right at	25	defined around a beneficial use, not the
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			27 (Pages 259 to 262)

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		-	
1	quantity.	1	Q. Okay. Let's just talk about March of
2	Q. Okay. But irrespective of that	2	the year. March of 2004, Blue Lakes is receiving
3	discussion of what a "right" means. The question	3	134 cfs, according to your table, on an average
4	is: What amount of water if Blue Lakes is	4	basis. Do you see that?
5	receiving 134.9 cfs average during the month of	5	A. Mm-hmm.
6	February, it's not receiving the decreed amount;	6	Q. Okay. Is that amount of water adequate
7	correct?	7	to fill its water right, its two water rights,
8	A. Correct.	8	the first priority and the second priority water
9	Q. What amount is it entitled to? What	9	rights in March, 134.07 cfs?
10 11	amount can it call for under the 45 cfs right in,	11	A. It's less than the let's see. Yeah, it's less than the sum of the first two rights,
12	let's pick March, of the year?	12	which is about 145 cfs. So this is less.
13	A. Well, as we've spent the last hour or more debating back and forth, it is not as simple	13	Q. So why isn't it the case then, that
14	as you want to make it. It's more complex than	14	based on March 2004, 134 cfs, that junior water
15	just, we're not getting this quantity; therefore,	15	rights are subject to curtailment to the extent
16		16	that they are affecting adversely affecting
17	you curtail the junior.	17	the flow of water to Blue Lakes' point of
18	It is not that simple. Because of the fact that the juniors are diverting from a	18	diversion in March of the year?
19	different source, not the same source.	19	A. Well, if the junior right is adversely
20	Hydraulically connected, yes. The stream	20	affecting the quantity of water that otherwise
21	variation is of a different character than the	21	would be available to the senior, and that
22	variation is of a unreferr character than the variation in normal stream flows. I mean, stream	22	quantity is within the maximum amount authorized,
23	flows go up and down, certainly.	23	they are entitled to seek administration. I've
24	As these fish propagation rights and	24	never said they weren't.
25	I'm generalizing now, as they were appropriated,	25	Q. Okay. So then why do you not apply the
	Page 264		Page 266
1	you know, certainly, some of the earlier rights	1	1971 priority water right here to the
2	were filled all the time. And as rights were	2	administration call provided in this order? Why
3	added at facilities, at some point, rights	3	do you essentially take it off the table, say
4	weren't filled all the time because of the	4	it's being filled, and say that only Blue Lakes'
5	variation. And that variation existed at the	5	third priority water right will be recognized for
6	time the rights were appropriated. It exists	6	purposes of administering junior ground water
7	today. And it has to be it is an aspect of	7	rights?
8	how these rights are administered.	8	A. That's the determination that we made
9	Q. So if Blue Lakes under its first two	9	at the time, is that the 1971 right was being
10	rights is entitled to 145 cfs, or its rights say	10	filled when Alpheus Creek was at its seasonal
11	that much, and in March, it's receiving 134, is	11	highs. But clearly the third right was not,
12	it short? Is it in a position to call for the	12	clearly.
13	Department to exercise its responsibility to	13	Q. I understand the determination that you
14	administer water rights, or not?	14	make. But is it your position that the second
15	A. A right holder can always request	15	priority right is being strike that question.
16	administration. I mean, that's part and parcel	16	You recognize that aquaculture
17 18	of what you can do. But I guess I'm trying to	17	facilities operate by diverting year round to raise fish?
19	come at it a little differently. A senior right holder is not entitled	19	A. They divert water year round to raise
20	to seek the curtailment of junior-priority rights	20	fish. Most divert more water at times of the
20	unless that curtailment of junior-priority rights	20	year than others, because the water is not
22		22	available.
23	meaningful supply of water for the senior.	22	Q. Okay. And you realize that the
24	That's a general principle that applies in ground water systems, in surface water systems, and	24	lifecycle of fish, and requirements of the fish
24	that's the principle we're trying to apply.	24	is such that they require constant flows of water
13000	and s the principle were trying to appry.		is over that they require constant flows of water
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1	throughout their lifecycle?	1	seasonal variation, and then conclude that there
2	A. I'm not a fish person. So I know fish	2	was sufficient water to fill that right at the
3	need water, but that's about the extent of, you	3	time of appropriation. We don't know.
4	know, what I know. I'm not a fish propagator.	4	Q. You know
5	That's not my knowledge basis.	5	A. We know that the seasonal variation
6	Q. So you don't know how aquaculture	6	existed at the time of appropriation. We know it
7	facilities beneficially use water?	7	exists today. We know that the first right
8	A. Well, in general, you know, I	8	wasn't being injured. We know that the third one
9	can't I know that the facilities use variable	9	was.
10	amounts of water during the year, and that they	10	Q. Looking back at Exhibit 80. If you can
11	adjust their operations accordingly.	11	turn to the page where there are the measurements
12	Q. I'm going to conclude here, you would	12	of 1977.
13	be happy to hear, on this point. But I just want	13	A. (Witness complying.)
14	to make sure I have this right.	14	Q. Do you see that there is an October
15	Based on your observation of seasonal	15	measurement there, and a March measurement there
16	variability and flows during the '96 time frame	16	in 1977?
17	and the 2004 time frame, you've determined that	17	A. Yes.
18	the seasonal variability existed at the time of	18	Q. Do you see the March 3rd, 1977
19	appropriation; correct?	19	measurement to the Perrine Ditch is 205 cfs?
20	A. Correct.	20	A. Yes.
21	Q. Okay. And you've determined that that	21	Q. And that measurement was taken two days
22	seasonal variability was such that Blue Lakes' 45	22	after the Department's field inspection
23	cfs right is satisfied on an annual basis by	23	measurement; is that correct?
24	seasonal maximum flows that are sufficient to	24	A. It appears that it was, yes.
25	deliver 45 cfs; correct?	25	Q. That's 15 cfs more than the 190 that
	Page 268		Page 270
	5		
1	A. I'd state it differently.	1	the Department measured; correct?
2	A. I'd state it differently.Q. Okay.	2	the Department measured; correct? A. Apparently.
2 3	A. I'd state it differently.Q. Okay.A. I would try to reach some mutual	2 3	the Department measured; correct?A. Apparently.Q. Wouldn't that indicate that the 190.4
2 3 4	A. I'd state it differently.Q. Okay.A. I would try to reach some mutual understanding here. When looking at these first	2 3 4	the Department measured; correct?A. Apparently.Q. Wouldn't that indicate that the 190.4cfs measurement represents the amount of water
2 3 4 5	 A. I'd state it differently. Q. Okay. A. I would try to reach some mutual understanding here. When looking at these first two rights or, no, all three rights, looking 	2 3 4 5	the Department measured; correct?A. Apparently.Q. Wouldn't that indicate that the 190.4cfs measurement represents the amount of water that Blue Lakes was diverting, and does not
2 3 4 5 6	 A. I'd state it differently. Q. Okay. A. I would try to reach some mutual understanding here. When looking at these first two rights or, no, all three rights, looking at all three of Blue Lakes' rights, it was clear 	2 3 4 5 6	the Department measured; correct?A. Apparently.Q. Wouldn't that indicate that the 190.4cfs measurement represents the amount of waterthat Blue Lakes was diverting, and does notinclude the amount of water that was going to
2 3 4 5 6 7	 A. I'd state it differently. Q. Okay. A. I would try to reach some mutual understanding here. When looking at these first two rights or, no, all three rights, looking at all three of Blue Lakes' rights, it was clear that the first one was not being injured. Okay? 	2 3 4 5 6 7	the Department measured; correct?A. Apparently.Q. Wouldn't that indicate that the 190.4cfs measurement represents the amount of water that Blue Lakes was diverting, and does not include the amount of water that was going to Pristine's predecessors?
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2 3 4 5 6 7 8 9 10	 A. I'd state it differently. Q. Okay. A. I would try to reach some mutual understanding here. When looking at these first two rights or, no, all three rights, looking at all three of Blue Lakes' rights, it was clear that the first one was not being injured. Okay? It wasn't clear that the second one was being injured. But it was clear that the third one was being injured, because of the seasonal 	2 3 4 5 6 7 8 9 10	 the Department measured; correct? A. Apparently. Q. Wouldn't that indicate that the 190.4 cfs measurement represents the amount of water that Blue Lakes was diverting, and does not include the amount of water that was going to Pristine's predecessors? A. No, I don't think it says that. I don't think you can determine that. Q. Do you think the diversions of the
2 3 4 5 6 7 8 9 10 11	 A. I'd state it differently. Q. Okay. A. I would try to reach some mutual understanding here. When looking at these first two rights or, no, all three rights, looking at all three of Blue Lakes' rights, it was clear that the first one was not being injured. Okay? It wasn't clear that the second one was being injured. But it was clear that the third one was being injured, because of the seasonal variability. That's really the determination 	2 3 4 5 6 7 8 9 10 11	 the Department measured; correct? A. Apparently. Q. Wouldn't that indicate that the 190.4 cfs measurement represents the amount of water that Blue Lakes was diverting, and does not include the amount of water that was going to Pristine's predecessors? A. No, I don't think it says that. I don't think you can determine that. Q. Do you think the diversions of the Perrine Ditch increased by 15 cfs over the course
2 3 4 5 6 7 8 9 10 11 12	 A. I'd state it differently. Q. Okay. A. I would try to reach some mutual understanding here. When looking at these first two rights or, no, all three rights, looking at all three of Blue Lakes' rights, it was clear that the first one was not being injured. Okay? It wasn't clear that the second one was being injured. But it was clear that the third one was being injured, because of the seasonal variability. That's really the determination that's made here. The third one is being 	2 3 4 5 6 7 8 9 10 11 12	 the Department measured; correct? A. Apparently. Q. Wouldn't that indicate that the 190.4 cfs measurement represents the amount of water that Blue Lakes was diverting, and does not include the amount of water that was going to Pristine's predecessors? A. No, I don't think it says that. I don't think you can determine that. Q. Do you think the diversions of the Perrine Ditch increased by 15 cfs over the course of two days?
2 3 4 5 6 7 8 9 10 11 12 13	 A. I'd state it differently. Q. Okay. A. I would try to reach some mutual understanding here. When looking at these first two rights or, no, all three rights, looking at all three of Blue Lakes' rights, it was clear that the first one was not being injured. Okay? It wasn't clear that the second one was being injured. But it was clear that the third one was being injured, because of the seasonal variability. That's really the determination that's made here. The third one is being injured. The first one isn't. It's not clear 	2 3 4 5 6 7 8 9 10 11 12 13	 the Department measured; correct? A. Apparently. Q. Wouldn't that indicate that the 190.4 cfs measurement represents the amount of water that Blue Lakes was diverting, and does not include the amount of water that was going to Pristine's predecessors? A. No, I don't think it says that. I don't think you can determine that. Q. Do you think the diversions of the Perrine Ditch increased by 15 cfs over the course of two days? A. No. All I'm saying is, these
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1	A. It just shows that it's difficult to	1	A. Correct.
2	infer much of anything from these early	2	Q of the water right, and to make a
3	measurements, other than what the numbers mean	3	recommendation to the SRBA
4	themselves. If these numbers are intended to	4	A. That's right.
5	represent seasonal variation, I guess that's what	5	Q that was based on the
6	you are trying to imply from this, then the	6	A. That's right.
7	October '77 measurement in October is out of	7	Q. And that would include a determination
8	phase with the March measurement. There is	8	if there has been a forfeiture
9	something inconsistent here. And yet you want to	9	A. No.
10	infer consistency from something that is	10	Q or substantial change in the use of
11	inconsistent.	11	the water right after the time of licensure, so
12	Q. These are the measurements that you	12	that the water right would be recommended for
13	relied upon	13	less than the to the court for less than the
14	A. I looked at one point in time to see	14	usually established amount; isn't that correct?
15	what the maximum amount of water had been	15	A. No, that isn't correct.
16	diverted. You know, I was looking to see if Blue	16	Q. So
17	Lakes diverted the maximum amount that it was	17	A. In the instances where rights have been
18	entitled to, and it had.	18	licensed prior to the adjudication, the
19	Q. Why were you doing that?	19	recommendation was for the licensed amount.
20	A. To confirm that it was making full	20	Q. Okay. So you didn't do investigations
21	beneficial use of the quantity that it was	21	with respect to the licensed water rights?
22	authorized to divert.	22	A. Not if it had been licensed. We didn't
23	Q. Wasn't that done in the adjudication?	23	do any further investigation beyond the time that
24	A. No, the adjudication determined what	24	the license was issued.
25	was the maximum amount that was authorized.	25	Q. Was the choice that you and the
	Page 272	<u> </u>	Page 274
1	Q. Determined the maximum, confirmed the	1	Department made with respect to how you were
1 2	beneficial use; did it not?	2	going to meet your statutory duties; correct?
3	A. Yeah umm	3	A. That's correct.
4	Q. Isn't that what the adjudication is	4	Q. Okay. And so nonetheless, however, you
5	for?	5	met the statutory requirement to investigate the
6	A. Well, the adjudication defines the	6	nature and extent of beneficial use of each water
7	beneficial use that can be made, and then the	7	right, your recommendations would be in accorded
8	elements are the constraints to the use of water	8	a prima fascia weight? They are presumed to be
9	for that beneficial use, and the quantity	9	accurate, unless someone could produce contrary
10	is element is one of those elements that	10	evidence; correct?
11	constrains how much water can be diverted for the	11	A. Right.
12	defined beneficial use.	12	Q. And unless that occurred, and the court
13	Q. And licenses are issued based on actual	13	decided otherwise, the water right was decreed so
14	beneficial use?	14	that it represented each of the elements
15	A. Sure. But we know as time goes on,	15	consistent with its historical beneficial use;
16	that in some cases I'm not saying the case of	16	correct?
17	Blue Lakes. But for some reason, whatever	17	A. Correct.
18	reason, people reduce the amount of beneficial	18	Q. Now, here, this issue is different than
19	use they are making, and they consequently use	19	seasonal variation. You are looking at as you
20	less water.	20	say in paragraph 59, you look back in time and it
	Q. Then one of the tasks assigned to	21	shows 1980 to find a diversion rate that as you
121		1	say, is the maximum amount of water known to have
21		22	
22	yourself, when you were working for the	22	•
22 23	yourself, when you were working for the Department, by statute was to do an investigation	23	been diverted from Alpheus Creek.
22 23 24	yourself, when you were working for the	1	•

	Page 275		Page 277
1	the Blue Lakes' water rights, the aggregate	1	Q. Because of your determination back in
2	amount of 197.06; right?	2	paragraph 59 of page 13, that 184.7 cfs is the
3	A. No, that is not what we're doing.	3	maximum amount known to be diverted by Blue
4	Q. In paragraph 59 isn't 184.7 different	4	Lakes?
5	than 197.06?	5	A. That's correct.
6	A. Sure. But the 197.06 is the decreed	6	Q. So you are determining how much of the
7	amount. That's the maximum amount that Blue	7	right you are going to recognize for purposes of
8	Lakes is authorized to divert.	8	administering junior ground water rights
9	Q. Why did you conduct this investigation	9	A. No.
10	to determine the maximum amount of water known to	10	Q to be 183 cfs?
11	be diverted?	11	A. No. We're saying that Blue Lakes is
12	A. Well, there is a difference between the	12	entitled to curtailment of junior-priority rights
13	maximum amount that a right holder can divert,	13	to provide the 183 cfs.
14	and the amount that he might divert. This was	14	Q. And why not 197.06?
15	simply a picture of how much was diverted at one	15	A. Why not the 197?
16	point in time subsequent to the right being	16	Q. Yes.
17	appropriated.	17	A. Well, in part I mean, part of it had
18	Q. What's the purpose of this number in	18	been subordinated. We're not going to curtail
19	the order?	19	junior-priority well, maybe the current person
20	A. It was simply one aspect of how the	20	would. I wasn't willing to curtail
21	right had historically been used. It's just one	21	junior-priority rights to provide water for a
22	aspect of it.	22	portion of a right that had been subordinated.
23	Q. And then in the order you conclude that	23	Q. Okay. How much had been subordinated?
24 25	184.7 cfs, and page 27, paragraph 31, you conclude that for purposes of administration 183	24	A. It's the one point, whatever, cfs.Q. That was subordinated to whom?
25		25	
	Page 276		Page 278
1	cfs is based on this prior determination you made	1	A. It was the country club. It was the
2	of the historical	2	nighttime irrigation.
3	A. Which one?	3	Q. So that was an agreement by Blue Lakes
4	Q. Paragraph 31 at page 27.	4	that it would not call for curtailment of the
5	A. Okay.	5	country club's water right to the extent of one
6	Q. You are making a determination of	67	point cfs? A. And you probably will disagree with
	material injury there; aren't you? You say down in the paragraph, "Material injury will cease	8	this principle. But a right holder doesn't have
8 9	when." And it goes on, and it says, "seasonal	9	the right to select who he's going to curtail. I
10	maximum reaches 183 cfs."	10	mean, you can't selectively subordinate.
11	So there you are saying that the full	11	Q. Why not?
12	extent of Blue Lakes' injury is relieved, is	12	A. Because it puts more of the burden on
13	satisfied when Blue Lakes receives 183 cfs, and	13	the juniors.
14	that's less than the decreed amount?	14	Q. You mean, I can't as a water user agree
15	A. Correct. And all that this is saying	15	for whatever reason, maybe Phil pays me a whole
16	is that; whereas, Blue Lakes is authorized to	16	bunch of money, to say, leave my water right
17	divert up to the maximum amount of the water	17	alone when it comes to curtailment to deliver
18	right for the various reasons, which you are free	18	water to you. I say, "Okay."
19	to disagree with, obviously, but for the	19	A. Of course you can.
20	rationale laid out here, we were only going to	20	Q. I can make that individual agreement
21	curtail junior-priority ground water use to	21	with Phil?
22	provide the 183 cfs.	22	A. Of course, you can.
23	Q. Why?	23	Q. And you are saying that affects whether
24	A. For the various reasons that are laid	24	John's water right is going to be curtailed to
25	out.	25	deliver my water
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1	A. No.	1	administration?
2	Q that agreement with Phil?	2	A. No, it's not that we weren't willing to
3	A. It could. I mean, here's the	3	recognize it. We recognized the quantity as the
4	situation, I guess, you've got right holder A	4	maximum amount to be diverted. Fine.
5	with the senior-priority diverting from the	5	Q. But for purposes of administering
6	source, right holder B junior-priority, the same	6	A. No, for seeking the curtailment of
7	source. Right holder A's right isn't being	7	juniors.
8	filled. Let's say, it's 10 cfs, that it's short	8	Q. However you want to put it.
9	10 cfs, and the 10 cfs could be diverted and	9	A. Yeah, I determined that it wasn't
10	beneficially used.	10	appropriate to curtail juniors for a quantity
11	Right holder B, the junior, is	11	that had not been diverted.
12	diverting 10 cfs. And but for a subordination	12	Q. And that is on the basis of this
13	agreement, right holder B would be curtailed.	13	finding in paragraph 59?
14	But right holder A has said, okay. I'll agree to	14	A. Not only that. I mean, go to your own
15	an exchange for whatever consideration not to	15	information from 19 what was it 77
16	seek your curtailment. Instead I'm going to go	16	Q. Uh-huh.
17	to right holders C, D, E, and so on. We're going	17	A where you pointed to 190 cfs. I
18	to curtail them to, so I get my 10 cfs.	18	still think it's the right assumption, if you
19	Q. What's wrong with that?	19	will, or the reasonable assumption is to assume
20	A. You can't do that.	20	that Pristine Springs' 25 cfs is included in the
21	Q. What statute, or case, or rule	21	that 190. And if that's the case, then the
22	A. Because	22	amount Blue Lakes was diverting was 165 cfs.
23	Q or rule provides the principle that	23	Q. So was it licensed incorrectly?
24	you just enunciated?	24	A. It was licensed the way it was
25	A. It's not in the rules. It's not in the	25	licensed. And, you know, whether it's incorrect
	Page 280		Page 282
			ruge 201
1	statutes. It is a principle of administering	1	or not, that's the license.
1 2	statutes. It is a principle of administering water under the prior appropriation system.	1 2	or not, that's the license. Q. The conclusion from your observations
1	statutes. It is a principle of administering water under the prior appropriation system. Q. What		or not, that's the license. Q. The conclusion from your observations is that it was licensed incorrectly; right?
2 3 4	statutes. It is a principle of administering water under the prior appropriation system.Q. WhatA. You can't impermissibly shift the	2 3 4	or not, that's the license. Q. The conclusion from your observations is that it was licensed incorrectly; right? A. I didn't say that. I just said it was
2 3 4 5	 statutes. It is a principle of administering water under the prior appropriation system. Q. What A. You can't impermissibly shift the burden to juniors that otherwise wouldn't have 	2 3 4 5	or not, that's the license. Q. The conclusion from your observations is that it was licensed incorrectly; right? A. I didn't say that. I just said it was licensed the way it was licensed.
2 3 4 5 6	 statutes. It is a principle of administering water under the prior appropriation system. Q. What A. You can't impermissibly shift the burden to juniors that otherwise wouldn't have been curtailed, but for your subordination. 	2 3 4 5 6	or not, that's the license. Q. The conclusion from your observations is that it was licensed incorrectly; right? A. I didn't say that. I just said it was licensed the way it was licensed. Q. Do you believe the licensed amount was
2 3 4 5 6 7	 statutes. It is a principle of administering water under the prior appropriation system. Q. What A. You can't impermissibly shift the burden to juniors that otherwise wouldn't have been curtailed, but for your subordination. Q. From what case do you get that 	2 3 4 5 6 7	or not, that's the license. Q. The conclusion from your observations is that it was licensed incorrectly; right? A. I didn't say that. I just said it was licensed the way it was licensed. Q. Do you believe the licensed amount was correct.
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2 3 4 5 6 7 8 9 10 11 12 13 14 15 16 17 18 19 20	 statutes. It is a principle of administering water under the prior appropriation system. Q. What A. You can't impermissibly shift the burden to juniors that otherwise wouldn't have been curtailed, but for your subordination. Q. From what case do you get that principle? A. Oh, I think there is case law. I can't recall right off the top of my head what case I would point to. But I think there is case law on that. Q. There is no statute that A. No, there is no statute. Q. And there is no statute. Q. And there is no rule that supports that principle? A. Not that I'm aware of. Q. Okay. So notwithstanding that theory, that covers 1.3 cfs. A. Uh-huh. Q. Still 183 is 14.06 cfs less than the 	2 3 4 5 6 7 8 9 10 11 12 13 14 15 16 17 18 19 20	or not, that's the license. Q. The conclusion from your observations is that it was licensed incorrectly; right? A. I didn't say that. I just said it was licensed the way it was licensed. Q. Do you believe the licensed amount was correct. A. I don't know. It was licensed the way it was licensed. Q. The aggregate licensed amount was 197.06 cfs; correct? A. They were licensed the way they were licensed. And in other rights that we've investigated, we know that there have been licensing errors. Q. So this is a licensing error? A. I didn't reach that conclusion. Q. But you A. I just said, I can't tell you why it
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2 3 4 5 6 7 8 9 10 11 12 13 14 15 16 17 18 19 20 21 22	 statutes. It is a principle of administering water under the prior appropriation system. Q. What A. You can't impermissibly shift the burden to juniors that otherwise wouldn't have been curtailed, but for your subordination. Q. From what case do you get that principle? A. Oh, I think there is case law. I can't recall right off the top of my head what case I would point to. But I think there is case law on that. Q. There is no statute that A. No, there is no statute. Q. And there is no rule that supports that principle? A. Not that I'm aware of. Q. Okay. So notwithstanding that theory, that covers 1.3 cfs. A. Uh-huh. Q. Still 183 is 14.06 cfs less than the decreed amounts of Blue Lakes' water rights. So 	2 3 4 5 6 7 8 9 10 11 12 13 14 15 16 17 18 19 20 21 22	or not, that's the license. Q. The conclusion from your observations is that it was licensed incorrectly; right? A. I didn't say that. I just said it was licensed the way it was licensed. Q. Do you believe the licensed amount was correct. A. I don't know. It was licensed the way it was licensed. Q. The aggregate licensed amount was 197.06 cfs; correct? A. They were licensed the way they were licensed. And in other rights that we've investigated, we know that there have been licensing errors. Q. So this is a licensing error? A. I didn't reach that conclusion. Q. But you A. I just said, I can't tell you why it was licensed at that amount. Q. But you don't think A. But it was licensed at that amount.
2 3 4 5 6 7 8 9 10 11 12 13 14 15 16 17 18 19 20 21 22 23	 statutes. It is a principle of administering water under the prior appropriation system. Q. What A. You can't impermissibly shift the burden to juniors that otherwise wouldn't have been curtailed, but for your subordination. Q. From what case do you get that principle? A. Oh, I think there is case law. I can't recall right off the top of my head what case I would point to. But I think there is case law on that. Q. There is no statute that A. No, there is no statute. Q. And there is no rule that supports that principle? A. Not that I'm aware of. Q. Okay. So notwithstanding that theory, that covers 1.3 cfs. A. Uh-huh. Q. Still 183 is 14.06 cfs less than the decreed amounts of Blue Lakes' water rights. So what is the basis for the remainder of the water 	2 3 4 5 6 7 8 9 10 11 12 13 14 15 16 17 18 19 20 21 22 23	or not, that's the license. Q. The conclusion from your observations is that it was licensed incorrectly; right? A. I didn't say that. I just said it was licensed the way it was licensed. Q. Do you believe the licensed amount was correct. A. I don't know. It was licensed the way it was licensed. Q. The aggregate licensed amount was 197.06 cfs; correct? A. They were licensed the way they were licensed. And in other rights that we've investigated, we know that there have been licensing errors. Q. So this is a licensing error? A. I didn't reach that conclusion. Q. But you A. I just said, I can't tell you why it was licensed at that amount. Q. But you don't think A. But it was licensed at that amount. That was the basis for our recommendation to the

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 authorized to divert, period to dive Q. It's not the maximum amou authorized to call for; was it, under version of findings? A. In my view, to seek curtailr 	int that's	1 2	Page 285 Q. Okay. So your conclusion is, the Department's obligation to respond to the Blue
2 Q. It's not the maximum amou 3 authorized to call for; was it, under 4 version of findings?	int that's		
3 authorized to call for; was it, under4 version of findings?	· · · · · · · · · · · · · · · · · · ·	-	
4 version of findings?		3	Lakes call to curtail junior ground water holders
	your	4	extends only to 183 cfs, because of your finding
A , μ μ ν	nent	5	that Blue Lakes hasn't used more than that in the
6 That's correct.	nem.	6	past, and subordinated 1.3 cfs to the Country
7 Q. So its priority does not appl	×7	7	Club; is that correct?
8 A. Sure, its priority applies.	ly	8	A. That's correct.
	100 m m0	9	Q. Okay. Are you familiar with the
9 Q there is a difference betw	1	9 10	reconstruction of American Falls Reservoir in
10 The effect of priority is as against of 11 upper against a purpose of priority is a second priority is a second priority of the purpose of priority is a second priority of the purpose		11	1977?
11 users; correct? The purpose of price		12	
12 distributing water in times of short	age, conect?		A. Generally.
13 A. Correct.	a' maionity	13	Q. Do you know that that occurred in the fall of 1977?
14 Q. So the import of Blue Lake		14	
15 is the extent to which it will be rec		15	A. I don't know when it occurred. I know
16 times of shortage by the Department	nt for purposes	16	it occurred in about that time frame.
17 of delivering water; correct?		17	Q. So that may have affected the October
18 A. We're not talking about the		18	1977 measurement?
19 We're talking about the quantity as	sociated with	19	A. It may have, or it may not have. I
20 the priority.		20	don't know. Lots of things could have affected
21 Q. But what you are saying is,		21	that October 1977 measurement.
22 only administer Blue Lakes' priorit		22	Q. Just like Pristine's predecessor may or
23 junior ground water right users to t	the extent of	23	may not be diverting water it was entitled to;
24 184.7 cfs; correct?		24	correct?
A. Actually, to the extent of 18	83 cfs.	25	A. Well, we believe it was.
	Page 284		Page 286
1 Q. Correct. So you have dedu		1	Q. And the same kind of bare assumption
2 decreed amount of the water right	that you will	2	without any supporting information?
3 recognize for purposes of administ	ering Blue	3	A. I disagree with that. I've reached
4 Lakes' priority has against junior g	round water	4	that conclusion based upon the entirety of what
5 rights?		5	was in the water rights file.
6 A. That's your characterization		6	Q. Okay. And, again, this October 1977
7 not mine. My characterization is, i		7	measurement shows that there was still a
8 appropriate to seek the curtailment	of junior	8	sufficient amount of water being diverted into
9 rights in distributing water in an ar	nount that	9	the Perrine Ditch in October of 1977 to deliver
10 has not been previously diverted to	beneficial	10	the full 45 cfs to the second priority of Blue
11 use.		11	Lakes right; isn't that correct?
12 Q. So the difference between t	he way I put	12	A. That would appear to be correct.
13 it, and the way you just put it, is yo		13	Q. So from the two data points that you
14 saying that Blue Lakes isn't entitle		14	have from different seasons of the year for 1977,
15 call for enforcement of its priority		15	showing that there was adequate water to fill the
16 junior ground water owners for any	y more than 183	16	full decrees of the licensed amount of that water
17 cfs?		17	right; correct?
18 A. Again, that's your character		18	A. At two points in time, that's correct.
19 not mine. Blue Lakes is entitled to	make a call	19	Q. Now
20 any time that it believes junior-price	ority rights	20	A. Or I should say, it appears to be
21 are interfering with its senior right.		21	correct at two points in time.
22 Q. So then the real issue is wh	ether it's	22	Q. Okay. Now, with respect to the Eastern
		23	Snake Plain Aquifer, in your experience has the
23 the Department's responsibility to	respond to the		Shake I fam Aquiter, in your experience has the
	respond to the	24	Department ever distinguished between natural and

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1 purposes of administration? 1 Q. Do you recall being the Hearing Officer 2 A. No. for that hearing? A. Sure, I was, but that doesn't mean I 3 asternant taw sed by natural flow A. For that mean sectors of it. Q. On you recall being the Hearing Officer 9 A. Wel, it matters, but it's still G. The itst asking it you recall it? A. It ceall the hearing. 1 Q. And still subject to priority G. And for those purposes, it doesn't A. Sure. It was haven the water came from in terms 16 of the Department ingible It is asking it you recall it? A. It can matter. I'll give you another 17 responsibilities of the law? It or meant at the time? It is asking it you recall it? 16 atternative comportation: It or meant at the time? It is asking it you recall it? 16 atter and of the bearing. It is asking it you recall it? It is asking it you recall it? 17 A. Net. Q. And for those purposes, it doesn't It is asking it you recall it statement the it is it is wate water it an matter. I'll give you another It is asking it you recall it is attement the it is it or water at the time? 18 A. It can matter. I'll give you another It is asporepriator can - under It is		Page 287		Page 289
2 A. No. 2 for that hearing? 3 Q. Okay, In other words, once the water 4 is in the aquifer for purposes of distribution, 5 it doesn't matter where it came from, whether it 6 6 came from seeping through a canal, or seeping 7 7 through a stream that was fed by natural flow 9 A. Necl, It matters, but it's still 10 subject to appropriaton. 9 Q. Okay. And do you recall a statement 11 0. And still subject to priority 12 A. Sure. 12 distribution, correct? 10 alternative to curatilment, the curtailment has 11 0. And for those purposes, it doesn't 14 0. Chay. Suppose. Toy have a significant 13 A. Sure. 12 A. Yes. 14 or meant at leaver reason, chooses not 10 the canal owner, for w hatever reason, chooses not 15 equivalent effect of curtailment. 2 an equital mut of mainingful water supply to the 23 beneficial use, an appropriator can under 14 A. That's another way to put it, yes. 2 and I think it's important when that water as water is there, whether it is hree by 14 <td< td=""><td>1</td><td>purposes of administration?</td><td>1</td><td>Q. Do you recall being the Hearing Officer</td></td<>	1	purposes of administration?	1	Q. Do you recall being the Hearing Officer
3 Q. Okay. In other words, once the water 3 A. Sure, Twas, but that doesn't mean I 4 is in the aquifer for purposes of distribution, 5 Q. Okay. And do you recall it? 6 came from seeping through a canal, or seeping 7 Q. Okay. And do you recall a statement 8 from the mountains; correct? 9 A. Well, it matters, but it's still 10 subject to appropriation. 10 alternative to curtailment, the curtailment has 11 Q. And for those purposes, it doesn't 12 A. Sure. 13 A. Sure. 13 Q. Can you explain what you mean by that, 14 or mean at the time? 12 A. Yes. 15 really matter where the water came from in terms 16 TA, you know, to the extent curtailment would 17 responsibilities of the law? 13 Q. Can you explain what you mean by that, 19 example, I suppose. If you have a significant 10 that out-of-priority depletion is going to be 10 anount of feakage from a canal that can be and 10 that out-of-priority depletion is going to be 11 the canal the timic?			2	
4 is in the aquifer for purposes of distribution, 4 remember aspects of it. 5 it doesn't matter where it came from, whether it 5 Q. I'm just asking if you recall it? 6 A. Irecall the hearing. 7 Q. Okay. And do you recall a statement 7 by and a stream that was fed by natural flow 9 9 A. Well, it matters, but it's still 10 subject to appropriation. 10 alternative to curaliment, the curtailment has 11 Q. And still subject to priority 11 to be as real as curtailment, the curtailment has 12 distribution, correct? 12 A. Yes. 13 A. Sure. 13 Q. Can you explain what you mean by that, 14 or mean actink the thew? 14 or mean actink the time? 16 of the Department inplementing its 17 rooduce a meaningful amount of water to the 19 example, I suppose. If you have a significant 19 that cut-of-priority dipetion is going to be 21 to capture that leakage and apply it to 22 anount of meaningful water supply to the 23 beneficial use, an appropriate that water as waste 24 Q. In other words, it has to have an		Q. Okay. In other words, once the water	3	
5 i. Can get a start where it came from, whether it came from seeping through a starau that was fed by natural flow for the mountains; correct? 5 Q. I'm just asking if you recall it? 6 A. Irecall the hearing. 7 Q. Okay. And do you recall it? 7 Q. Okay. And do you recall it? 8 8 from the mountains; correct? 9 9 10 subject to appropriation. 10 alternative to curtailment, the curtailment has 11 Q. And for those purposes, it doesn't 12 A. Sure. 13 A. Sure. 13 Q. Can you explain what you mean by that, 14 or meant at the time? 14 or meant at the time? 15 really matter where the water came from in terms 16 That, you hava significant 10 aumount of leakage from a canal that can be - and 17 the canal owner, for whatever reason, chooses not 12 the canal owner, for whatever reason, chooses not 12 an capual amount of meaningful amount of water to the 13 appropriation is made to recognize what the 20 on other words, it has to have an 25 water. Page 280 1 A. That's another way top ut it, yes.	4		4	remember aspects of it.
6 came from seeping through a canal, or seeping 6 A. I recall the hearing. 7 through a stream that was fed by natural flow 7 Q. Okay. And do you recall a statement 8 from the mountains; correct? 9 view, mitigation that is offered as an 10 subject to priority 11 10 alternative to curtailment, the curtailment has 11 Q. And still subject to priority 12 A. Yes. 13 A. Sure. 12 A. Yes. 14 Q. And for those purposes, it doesn't 14 or meant at the time? 16 of the Department implementing its 15 That, you know, to the extent curtailment would 17 responsibilities of the law? 16 That, you know, to the extent curtailment would 18 A. It can matter. Fli give you another 18 holder of a senior right that's being injured, if 19 example, I suppose. If you have a significant 10 mitigated such that the out-of-priority diversion 21 to capter that leakage and apply it to 22 an equal amount of meaningflu water supply to the 23 beneficial use, an appropriator can under 24 Q. Okay. Now, in your order on page 28. <td>5</td> <td></td> <td>5</td> <td></td>	5		5	
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21 the canal owner, for whatever reason, chooses not 21 can continue, then the mitigation has to produce 22 to capture that leakage and apply it to an equal amount of meaningful water supply to the 23 beneficial use, an appropriator can under an equal amount of meaningful water supply to the 24 Idaho law can appropriator can under 24 Q. In other words, it has to have an 25 water. 24 Q. In other words, it has to have an 26 Page 288 Page 290 1 And I think it's important when that appropriation is made to recognize what the 2 Q. Okay. Now, in your order on page 28, 3 source of that water is, it's waste water. And 1 A. That's another way to put it, yes. 2 3 administered. Because in this hypothetical as I understand it, in addition to identifying 4 curtailment as an outcome, you offer three 5 water right seek the curtailment of 7 On page 28, under paragraph 1, in the 8 midle of the paragraph. There is a sentence 9 water right seek the curtailment of 1 A. Yes. 2 G. Hou such rights." 10 junior-priority rights? Generally, no, unless 1	19	example, I suppose. If you have a significant	19	that out-of-priority depletion is going to be
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24Idaho law can appropriate that water as waste 2524Q. In other words, it has to have an equivalent effect of curtailment?25Page 288Page 2901And I think it's important when that a propriation is made to recognize what the 3 source of that water is, it's waste water. 4 it can affect how the right is subsequently 5 administered. Because in this hypothetical example, the canal company repairs whatever was 7 contributing to the leakage, and the waste water 8 is no longer there. Can the holder of that waste 9 water right seek the curtailment of 10 junior-priority rights? Generally, no, unless 11 they are from the same source of waste water. 121A. That's another way to put it, yes. 22Q. Okay. Now, in your order on page 28, a as I understand it, in addition to identifying 4 curtailment as an outcome, you offer three 510 junior-priority rights? Generally, no, unless 11 they are from the same source of waste water. 121A. Stree.0Nust submit a plan or plans 1013 whatever water is there, whether it's there by rights?13A. Yes.12ESPA under such rights."14Q. You distribute in accordance with priority?14Q. Okay.14Q. Okay.15number 1. Now, does that mean offset the entirety of consumptive use of water under the identified ground water rights, whatever they 132Q. Okay.15now by: one consumptive use of water under the identified ground water rights, whatever they 1414A. Yes.14Q. Now, with regard to mitigation, during 2116A. Yes.15q. Now, sigiven for it	22	to capture that leakage and apply it to	22	an equal amount of meaningful water supply to the
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	2 3 4 5 6 7 8 9 10 11 12 13 14 15 16 17 18 19 20 21	And I think it's important when that appropriation is made to recognize what the source of that water is, it's waste water. And it can affect how the right is subsequently administered. Because in this hypothetical example, the canal company repairs whatever was contributing to the leakage, and the waste water is no longer there. Can the holder of that waste water right seek the curtailment of junior-priority rights? Generally, no, unless they are from the same source of waste water. Q. But as between two appropriators, whatever water is there, whether it's there by waste or some other means, priority distribution applies? A. Certainly. Q. You distribute in accordance with priority? A. Sure. Q. Now, with regard to mitigation, during the hearing last year, it was petitioned for reconsideration for the extent of the credit that	2 3 4 5 6 7 8 9 10 11 12 13 14 15 16 17 18 19 20 21 22	 A. That's another way to put it, yes. Q. Okay. Now, in your order on page 28, as I understand it, in addition to identifying curtailment as an outcome, you offer three mitigation alternatives. And I want to confirm that with you. On page 28, under paragraph 1, in the middle of the paragraph. There is a sentence that in part reads, "Must submit a plan or plans to the Director to provide mitigation by offsetting the entirety of the depletions for the ESPA under such rights." A. Yes. Q. I'll call that mitigation alternative number 1. Now, does that mean offset the entirety of consumptive use of water under the identified ground water rights, whatever they are? A. Yes. Q. Okay. A. Another way to look at it is, you completely mitigate the depletions of the
A. Well, in general, I don't. 25 That's what that phrase meant.	2 3 4 5 6 7 8 9 10 11 12 13 14 15 16 17 18 9 20 21 22	And I think it's important when that appropriation is made to recognize what the source of that water is, it's waste water. And it can affect how the right is subsequently administered. Because in this hypothetical example, the canal company repairs whatever was contributing to the leakage, and the waste water is no longer there. Can the holder of that waste water right seek the curtailment of junior-priority rights? Generally, no, unless they are from the same source of waste water. Q. But as between two appropriators, whatever water is there, whether it's there by waste or some other means, priority distribution applies? A. Certainly. Q. You distribute in accordance with priority? A. Sure. Q. Now, with regard to mitigation, during the hearing last year, it was petitioned for reconsideration for the extent of the credit that it was given for its '05 mitigation. Do you	2 3 4 5 6 7 8 9 10 11 12 13 14 15 16 17 18 19 20 21 22 23	 A. That's another way to put it, yes. Q. Okay. Now, in your order on page 28, as I understand it, in addition to identifying curtailment as an outcome, you offer three mitigation alternatives. And I want to confirm that with you. On page 28, under paragraph 1, in the middle of the paragraph. There is a sentence that in part reads, "Must submit a plan or plans to the Director to provide mitigation by offsetting the entirety of the depletions for the ESPA under such rights." A. Yes. Q. I'll call that mitigation alternative number 1. Now, does that mean offset the entirety of consumptive use of water under the identified ground water rights, whatever they are? A. Yes. Q. Okay. A. Another way to look at it is, you completely mitigate the depletions of the aquifer. It's a pretty high standard, but you
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34 (Pages 287 to 290)

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	Page 291		Page 293
1	Q. And did you have any ideas about how	1	You know, in an effort to keep this as
2	that would be implemented? How it would be met?	2	straightforward as we could, given the myriad of
3	A. I did not.	3	complexities, the assumption essentially was made
4	Q. And with respect to the second method,	4	that if the effects were equivalent at steady
5	as I understand it, it was deliver a specific	5	state, they essentially would be equivalent
6	quantity of water to Blue Lakes' headgate?	6	during the transient conditions prior to steady
7	A. Correct.	7	state.
8	Q. Is that correct?	8	Q. Okay. So the mitigation provided in
9	A. Correct.	9	2005, for example, 10 cfs, that was evaluated at
10	Q. Based on your 20 percent assessment	10	steady state; correct?
11	that the Blue Lakes' springs flow and the Alpheus	11	A. Right.
12	Creek flow would have been 20 percent of the	12	Q. So each of the year's mitigation was to
13	reach of what it was; correct?	13	be evaluated at steady state?
14	A. Correct.	14	A. Correct.
15	Q. And the third method was to mitigate,	15	Q. Okay. And then similarly, performance
16	basically, to the reach, and do that over	16	after the fact was evaluated at steady state
17	time up to, in this reach, up to 51 cfs?	17	using the model?
18	A. Correct.	18	A. Correct.
19	Q. And the standard that you mentioned	19	Q. Now, I would like you to turn to
20	before of certainty applies to any one of these	20	Exhibit 35. I know you weren't involved in
21	mitigation alternatives; is that correct?	21	preparing this order, because it was issued this
22	A. Correct.	22	year. I want to ask you a question, and see if
23	Q. And is it your view that the ground	23	you can answer based on what your testimony and
24	water users met their obligation in 2005?	24	your involvement in mitigation prior
25	A. What they proposed, when they proposed	25	A. I have to tell you, I've never seen
	Page 292		Page 294
1	it, you know, what we finally and I don't	1	this, of course.
1 2	-	1 2	
	it, you know, what we finally and I don't remember exactly what we finally approved. But what we finally approved would have been based	Į.	this, of course.
2	it, you know, what we finally and I don't remember exactly what we finally approved. But what we finally approved would have been based upon a determination that we expected it would	2	this, of course.Q. You've never seen it?A. No.Q. Well, maybe it's better that I just ask
2 3 4 5	it, you know, what we finally and I don't remember exactly what we finally approved. But what we finally approved would have been based upon a determination that we expected it would provide the equivalent amount of water to	2 3	this, of course.Q. You've never seen it?A. No.Q. Well, maybe it's better that I just ask you this: The water that would result from a
2 3 4 5 6	it, you know, what we finally and I don't remember exactly what we finally approved. But what we finally approved would have been based upon a determination that we expected it would provide the equivalent amount of water to curtailment.	2 3 4 5 6	this, of course.Q. You've never seen it?A. No.Q. Well, maybe it's better that I just ask you this: The water that would result from a mitigation activity in a year at steady state, as
2 3 4 5 6 7	it, you know, what we finally and I don't remember exactly what we finally approved. But what we finally approved would have been based upon a determination that we expected it would provide the equivalent amount of water to curtailment. Q. And in the after-the-fact accounting,	2 3 4 5 6 7	 this, of course. Q. You've never seen it? A. No. Q. Well, maybe it's better that I just ask you this: The water that would result from a mitigation activity in a year at steady state, as you discussed, would be evaluated over the course
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<u> </u>	Page 295		Page 297
1		1	
1	question. But is it inappropriate to do it on		discharge with when the pumps went on. And as I
2	the year-by-year basis? Not necessarily. What I did is Llocked at mitigation at standy state	2	recall, we could not detect any pattern in any
3	did is I looked at mitigation at steady state,	4	spring complex.
4	under the assumption that each and every year up to stoody state, would assentially be acquivalent		But, you know, there were, not
5	to steady state, would essentially be equivalent to curtailment.	5	surprisingly, right holders that did not allow us to put on hour meters. As I recall, there were
6 7	Q. Okay. So	7	some that didn't allow it. And we perhaps could
1		8	have found some statutory basis for mandating it.
8	A. But that doesn't mean that you couldn't craft a mitigation a different type of	9	But we didn't I don't recall that we pursued
10	mitigation on a year-by-year basis through time,	10	it. So we put the hour meters on the pumps where
11	address the amount of that particular year.	11	we could.
12	Q. So the obligation for 2007, for	12	Q. And finally, there has been a
13	example, you know from your prior order is 30 cfs	13	characterization of your May 19th, 2005 orders as
14	for the reach that Blue Lakes is in; correct?	14	emergency orders. Is there a statutory or
15	A. I believe that's correct, yes.	15	regulatory provision for the issuance of
16	Q. So for whatever was to be proposed for	16	emergency orders by the Department that you know
17	2007, would have to produce either at steady	17	of?
18	state, or during whatever time frame is desired,	18	A. I believe so. I'd have to look at the
19	30 cfs to the reach; isn't that correct?	19	order to see what we cited. You know, I believe
20	A. Well, under my order, it would have had	20	that the applicable statutory provision is Idaho
21	to produce 30 cfs at steady state conditions	21	Code 67-5247.
22	under the order that I issued.	22	Q. Is that referenced in your order?
23	Q. Now, have you heard the anecdotal	23	A. Yes, it is.
24	evidence the term was used the springs'	24	Q. At what paragraph?
25	users that I have heard springs' users give	25	A. Page 31, the top of the page.
	Page 296		Page 298
	-		
1	that they observed their springs to decline from	1	Q. Okay. And the order in any case was, I
2	the beginning of when the irrigation season	2	take it, within the process provided by the
3	starts to occur when the pumps go on?	3	Conjunctive Management Rules; is that correct?
4	A. I believe I've heard that assertion,	4	A. As I understood the rules, that is
5	yes.	5	correct.
6	Q. During your time with the Department,	6	Q. Okay. So if it wasn't an emergency
7	have you or the Department done anything to	1	in terms of your application of the Conjunctive
8	follow-up and investigate those reports further?	8	Management Rules; was it?
9	A. We have.	9	A. I'm not sure I understand your
10	Q. Okay. And what did you do?	10	question. I mean, the emergency was, we were at
11	A. Oh, boy. It was a study that, I	11	the beginning of the irrigation season. The
12	believe it was Tim Luke, that we asked to have done. I think it was Tim Luke. If it wasn't	12 13	senior right holders needed some certainty as to what was going to happen. The junior right
13		1	
14 15	Tim, it was somebody in his section.	14 15	holders needed certainty as to what was going to happen. That was the emergency.
16	But essentially what we did, or what I	16	Q. So it was an emergency only in terms of
1	asked him to do was to install hour meters on the	17	timing? In other words, in the normal
17 18	pumps, which would then record the time, the	18	administrative process, as you've described it,
19	specific time that those pumps went on, and then state the specific time when the pumps went off.	19	watermasters administer water rights according to
20	And then the evaluation that was to be	20	the decrees, licenses, permits without the
20	conducted to see if we could detect or discern	21	director issuing an order; isn't that correct?
22	any correlation between when the pumps went on,	22	A. Not in all cases.
23	as documented by the hour meters and measured	23	Q. But normally?
23	spring discharged, to se whether there was any	24	A. No.
	correlation in the diminishment of spring	25	Q. Was it normal for you, while you worked
1074	contention in the diministricit of spring	THE STREET	
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	Page 299		rage sor
1	for the Department, to issue orders before leases	1	looked at, flow data, Department files,
2	go, for example, administer water rights in the	2	information available to you. At the time, you
3	Boise?	3	completed those investigations, did you believe
4	A. Not in the Boise not generally,	4	you had sufficient information and data to make
5	not in the Boise. But in Big Lost, we generally	5	the determinations you made in the orders?
6	issued an order every year instructing the	6	A. I'm trying to think of how best to
7	watermaster how to determine and apply the Futile	7	characterize it. Did we have all the information
8	Call Doctrine. And it was done by order. And it	8	we would have liked? No. Did we feel that we
9	was most every not absolutely every year, but	9	were required to take action based upon the
10	most every year we did that.	10	information we had? Yes. I suppose whether it's
11	Q. And you didn't issue an order in the	11	sufficient is up for debate.
12	Clear Lakes versus Crystal Springs situation; did	12	Q. Well, once you received the information
13	you? At least issue instructions	13	that you had, and you conducted your
14	A. No instructions.	14	investigation of the Department files, did you
15	Q an order that was subject to itself	15	then go back and request additional information
16	appealed by its terms?	16	from Clear Springs?
17	A. Sure, it was subject to appeal.	17	A. In all instances, the first response to
18	Q. In fact, you were very careful in those	18	the delivery call was to request information from
19	instructions to notify the parties that they were	19	the right holder making the delivery call. So I
20	instructions related to the watermaster and not	20	don't know at what point did we go back at is
21	an order?	21	later point in time and ask for more information?
22	A. Sure. But those instructions still	22	The request for information was ongoing.
23	represented a determination, that if an entity	23	And, you know, any Department staff,
24	disagreed with that determination, they were	24	senior right holder, Clear Springs, or ground
25	entitled to a hearing pursuant to Idaho Code.	25	water folks affected by the order, they were all
		1	
	Page 300		Page 302
1		1	
1	Q. And do the Conjunctive Management Rules	1	free to give us additional information at any
2	Q. And do the Conjunctive Management Rules specifically provide the issuance of an order	2	free to give us additional information at any time that would be pertinent. And, in fact, if
2 3	Q. And do the Conjunctive Management Rules specifically provide the issuance of an order before water rights are administered under its	2 3	free to give us additional information at any time that would be pertinent. And, in fact, if that information was supplied and warranted
2 3 4	Q. And do the Conjunctive Management Rules specifically provide the issuance of an order before water rights are administered under its provisions?	2	free to give us additional information at any time that would be pertinent. And, in fact, if that information was supplied and warranted amending the order, we would have amended the
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accurately re-characterized it.		
	1	that's true. And there are other places, you
Q. Generally.	2	could have a cell where there might be two
A. But I remember the testimony.	3	observation points. I don't know.
	4	Q. But the distribution of well data and
	5	measuring points from well data, and geological
	6	information from wells likely was greater in
	7	cells abutting the Snake River than it was in the
	8	middle of the aquifer; wouldn't that be true?
• •	9	A. I don't know that I would agree with
may give you a better estimation?	10	that in terms of the "abutting" thing. I mean,
A. A better estimation of what?	11	there was more well information, meaning ground
Q. Of the results from a model run.	12	water level information, in groupings of cells
A. Well, the results of a model run are	13	where there was intense ground water irrigation.
generally better when they are across a sequence	14	And where there was no ground water
of cells, that's correct, rather than from an	15	irrigation, which exists in large parts of
individual cell. That is correct.	16	the across large parts of the aquifer system,
Q. And is that in part, because there are	17	there would have been few observation points.
1		But they wouldn't those cells the groupings
	19	of cells that would have the largest number of
		observation points, wouldn't have necessarily had
		to abut and deliver for ground water levels.
		Now, for spring discharge, and you only
		have spring discharge where there are springs
		that discharge, and that could only exist in the
	25	cells in the spring reaches.
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And so that representation is better	1	Q. Do you recall your testimony yesterday
		when you were asked a question regarding the
		source of water to satisfy the Swan Falls
		minimums of 3,900 and 5,600?
		A. I don't recall the question about the
	6	source. I recall the discussion about the Swan
-	0	Falls agreement and the 3,900 and 5,600.
-		Q. Well, what would be the sources of water to satisfy the Swan Falls minimums?
1		A. Okay. I guess we did talk about
		source, as I recall. It would be spring
		discharge, primarily, with some added component
		from return flows downstream of the springs.
		Q. And in addition to those two sources
1		you identified, would flows that pass Milner also
	16	be a component of water to satisfy 3,900 or
	17	5,600?
•	18	A. In some cases, yes. In other cases,
looking at data points being ground water wells	19	no.
and the observations there, geologically and	20	Q. Explain that, please.
water flow data, than a data point or excuse	21	A. Well, the largest flows well, I
me the cell in the middle of the aquifer where	22	shouldn't even put it that way.
you may have only one piece of well data?	23	During the irrigation season, the
A. Well, there are places in the middle of	24 25	largest flow is past Milner. Presently, I believe, are derived from flow augmentation
the aquifer where there is no well data. I mean,		
	 Q. The general testimony? A. Yes. Uh-huh. Q. All right. And is that because in a particular cell, that, obviously, the data points that you have may be limited, so in terms of looking at more than one cell across a reach, it may give you a better estimation? A. A better estimation of what? Q. Of the results from a model run. A. Well, the results of a model run are generally better when they are across a sequence of cells, that's correct, rather than from an individual cell. That is correct. Q. And is that in part, because there are more data points to review to look at in terms of that model run? A. Well, I suppose in part, but that's not the primary reason. The primary reason is because of the basic assumption where we're representing a nonhomogenous material within a cell, essentially, a homogenous material within that cell. Page 304 And so that representation is better across a range of cells, rather than in an individual cell basis. In a particular cell, you may or may not have an observation point. It's likely you would, but you may not have. Q. For example, in those cells along the river, the likelihood is that there were more data points than there were in cells that were in place in the middle of the aquifer, for example; wouldn't that be true? A. Not necessarily. You know, an example, you only have a discrete number of stream gaging stations from which the reach gains were computed. And an individual cell in the river may or may not have the stream gaging station. Q. But a cell, which contained the Canyon wall and back into the aquifer, for example, likely would have more data points if you are looking at data points there, geologically and water flow data, than a data point - or excuse me the cell in the middle of the aquifer where you may have only one piece of well data? 	Q. The general testimony? 4 A. Yes. Uh-huh. 5 Q. All right. And is that because in a particular cell, that, obviously, the data points 7 that you have may be limited, so in terms of looking at more than one cell across a reach, it 9 9 may give you a better estimation? 10 A. A better estimation of what? 11 Q. Of the results from a model run. 12 A. Well, the results of a model run are generally better when they are across a sequence of cells, that's correct, rather than from an 15 11 individual cell. That is correct. 16 Q. And is that in part, because there are 17 19 A. Well, I suppose in part, but that's not 18 20 the primary reason. The primary reason is 21 22 because of the basic assumption where we're 22 22 representing a nonhomogenous material within a 23 21 cell, essentially, a homogenous material within 12 24 that cell. 25 Page 304 3 Mad so that representation is better across a range of cells, rather than in an 2 3 individual cell basis. In a particular cell, you 3 3 may or may not have an observation point. It's 4 4

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	Page 307		Page 309
1		1	that the method that we're currently "we," the
		2	USGS is currently applying to determine these
		3	cumulative spring discharges is either the same,
4		4	or at least compatible with the methods that were
5	• • •	5	employed earlier for these 4,200 cubic feet per
6		6	second.
-		7	And as I recall, essentially, the
6		8	method consists of discrete measurements at a
		9	number of springs, but not all springs. And then
1		10	a weighting factor is applied to the measured
1		11	springs to calculate an estimated cumulative
1	•	12	discharge.
1		13	I mean, it's not done just at one
1		14	springs. You have a whole series of springs, a
1		15	whole series of weighted factors. And the
1	•	16	combination of measured discharge and weighting
1		17	factors at all the measured springs results in
	•	18	this calculation.
1		19	For various reasons, the springs that
2	ę .	20	are used as the discrete points of measurement
2		21	have changed with time, but so have the weighting
2	č . č .	22	factors. But as I recall, the conclusion that
2		23	Bill came to was that the methodology was
2		24	consistent and compatible.
2		25	Q. But did Bill ever go back and actually
-			
	Page 308	-	Page 310
	again, you have the Bureau of Reclamation renting	1	verify the basis for the 4,200 cfs number, or the
2	again, you have the Bureau of Reclamation renting natural flow derived from the nondiversion of	2	verify the basis for the 4,200 cfs number, or the accuracy of that number itself?
14 11	again, you have the Bureau of Reclamation renting natural flow derived from the nondiversion of Bell Rapids. And that amount that they rent is	2 3	verify the basis for the 4,200 cfs number, or the accuracy of that number itself? A. I believe he recalculated the number
	again, you have the Bureau of Reclamation renting natural flow derived from the nondiversion of Bell Rapids. And that amount that they rent is added to the Swan Falls minimums.	2 3 4	verify the basis for the 4,200 cfs number, or the accuracy of that number itself? A. I believe he recalculated the number and got you know, was very close. His
	 again, you have the Bureau of Reclamation renting natural flow derived from the nondiversion of Bell Rapids. And that amount that they rent is added to the Swan Falls minimums. Q. Okay. On Exhibit 61, which is the 	2 3 4 5	verify the basis for the 4,200 cfs number, or the accuracy of that number itself? A. I believe he recalculated the number and got you know, was very close. His recalculation of it was very close to it.
	 again, you have the Bureau of Reclamation renting natural flow derived from the nondiversion of Bell Rapids. And that amount that they rent is added to the Swan Falls minimums. Q. Okay. On Exhibit 61, which is the Clear Springs order. Karl, looking back at 	2 3 4 5 6	 verify the basis for the 4,200 cfs number, or the accuracy of that number itself? A. I believe he recalculated the number and got you know, was very close. His recalculation of it was very close to it. Q. But he used the same methodology, and
	 again, you have the Bureau of Reclamation renting natural flow derived from the nondiversion of Bell Rapids. And that amount that they rent is added to the Swan Falls minimums. Q. Okay. On Exhibit 61, which is the Clear Springs order. Karl, looking back at Attachment A, would you refer to extensively, and 	2 3 4 5 6 7	 verify the basis for the 4,200 cfs number, or the accuracy of that number itself? A. I believe he recalculated the number and got you know, was very close. His recalculation of it was very close to it. Q. But he used the same methodology, and the same assumptions that were present for the
	 again, you have the Bureau of Reclamation renting natural flow derived from the nondiversion of Bell Rapids. And that amount that they rent is added to the Swan Falls minimums. Q. Okay. On Exhibit 61, which is the Clear Springs order. Karl, looking back at Attachment A, would you refer to extensively, and I believe Attachment A is the same attachment for 	2 3 4 5 6 7 8	 verify the basis for the 4,200 cfs number, or the accuracy of that number itself? A. I believe he recalculated the number and got you know, was very close. His recalculation of it was very close to it. Q. But he used the same methodology, and the same assumptions that were present for the individuals who originally made those?
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	 again, you have the Bureau of Reclamation renting natural flow derived from the nondiversion of Bell Rapids. And that amount that they rent is added to the Swan Falls minimums. Q. Okay. On Exhibit 61, which is the Clear Springs order. Karl, looking back at Attachment A, would you refer to extensively, and I believe Attachment A is the same attachment for either the Blue Lakes order or the Clear Springs order, and we'll call it the Snake River Farms at 	2 3 4 5 6 7 8 9 10	 verify the basis for the 4,200 cfs number, or the accuracy of that number itself? A. I believe he recalculated the number and got you know, was very close. His recalculation of it was very close to it. Q. But he used the same methodology, and the same assumptions that were present for the individuals who originally made those? A. As best as we could, yes. Q. Right. But did it independently
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	 again, you have the Bureau of Reclamation renting natural flow derived from the nondiversion of Bell Rapids. And that amount that they rent is added to the Swan Falls minimums. Q. Okay. On Exhibit 61, which is the Clear Springs order. Karl, looking back at Attachment A, would you refer to extensively, and I believe Attachment A is the same attachment for either the Blue Lakes order or the Clear Springs order, and we'll call it the Snake River Farms at this point? A. Correct. Q. And that, again, is a graphical depiction of the annual spring discharge in the 	2 3 4 5 6 7 8 9 10 11 12 13 14	 verify the basis for the 4,200 cfs number, or the accuracy of that number itself? A. I believe he recalculated the number and got you know, was very close. His recalculation of it was very close to it. Q. But he used the same methodology, and the same assumptions that were present for the individuals who originally made those? A. As best as we could, yes. Q. Right. But did it independently determine whether that methodology was or was not accurate based upon all the data that might have been available at the time, including but not limited to, irrigation deliveries on the North
	 again, you have the Bureau of Reclamation renting natural flow derived from the nondiversion of Bell Rapids. And that amount that they rent is added to the Swan Falls minimums. Q. Okay. On Exhibit 61, which is the Clear Springs order. Karl, looking back at Attachment A, would you refer to extensively, and I believe Attachment A is the same attachment for either the Blue Lakes order or the Clear Springs order, and we'll call it the Snake River Farms at this point? A. Correct. Q. And that, again, is a graphical depiction of the annual spring discharge in the Snake River and Thousand Springs area. 	2 3 4 5 6 7 8 9 10 11 12 13 14 15	 verify the basis for the 4,200 cfs number, or the accuracy of that number itself? A. I believe he recalculated the number and got you know, was very close. His recalculation of it was very close to it. Q. But he used the same methodology, and the same assumptions that were present for the individuals who originally made those? A. As best as we could, yes. Q. Right. But did it independently determine whether that methodology was or was not accurate based upon all the data that might have been available at the time, including but not limited to, irrigation deliveries on the North Side system, or on the North Side of the spring
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	 again, you have the Bureau of Reclamation renting natural flow derived from the nondiversion of Bell Rapids. And that amount that they rent is added to the Swan Falls minimums. Q. Okay. On Exhibit 61, which is the Clear Springs order. Karl, looking back at Attachment A, would you refer to extensively, and I believe Attachment A is the same attachment for either the Blue Lakes order or the Clear Springs order, and we'll call it the Snake River Farms at this point? A. Correct. Q. And that, again, is a graphical depiction of the annual spring discharge in the Snake River and Thousand Springs area. A. Correct. Q. Yesterday, the questions in your testimony regarding the flows going from 	2 3 4 5 6 7 8 9 10 11 12 13 14 15 16 17 18	 verify the basis for the 4,200 cfs number, or the accuracy of that number itself? A. I believe he recalculated the number and got you know, was very close. His recalculation of it was very close to it. Q. But he used the same methodology, and the same assumptions that were present for the individuals who originally made those? A. As best as we could, yes. Q. Right. But did it independently determine whether that methodology was or was not accurate based upon all the data that might have been available at the time, including but not limited to, irrigation deliveries on the North Side system, or on the North Side of the spring reaches? A. I won't say that he didn't independently verify the adequacy of it. But
	 again, you have the Bureau of Reclamation renting natural flow derived from the nondiversion of Bell Rapids. And that amount that they rent is added to the Swan Falls minimums. Q. Okay. On Exhibit 61, which is the Clear Springs order. Karl, looking back at Attachment A, would you refer to extensively, and I believe Attachment A is the same attachment for either the Blue Lakes order or the Clear Springs order, and we'll call it the Snake River Farms at this point? A. Correct. Q. And that, again, is a graphical depiction of the annual spring discharge in the Snake River and Thousand Springs area. A. Correct. Q. Yesterday, the questions in your testimony regarding the flows going from approximately 4,200 cfs up to about 6,800 cfs. 	2 3 4 5 6 7 8 9 10 11 12 13 14 15 16 17 18 19	 verify the basis for the 4,200 cfs number, or the accuracy of that number itself? A. I believe he recalculated the number and got you know, was very close. His recalculation of it was very close to it. Q. But he used the same methodology, and the same assumptions that were present for the individuals who originally made those? A. As best as we could, yes. Q. Right. But did it independently determine whether that methodology was or was not accurate based upon all the data that might have been available at the time, including but not limited to, irrigation deliveries on the North Side system, or on the North Side of the spring reaches? A. I won't say that he didn't independently verify the adequacy of it. But that wasn't the focus. The focus I mean, it
	 again, you have the Bureau of Reclamation renting natural flow derived from the nondiversion of Bell Rapids. And that amount that they rent is added to the Swan Falls minimums. Q. Okay. On Exhibit 61, which is the Clear Springs order. Karl, looking back at Attachment A, would you refer to extensively, and I believe Attachment A is the same attachment for either the Blue Lakes order or the Clear Springs order, and we'll call it the Snake River Farms at this point? A. Correct. Q. And that, again, is a graphical depiction of the annual spring discharge in the Snake River and Thousand Springs area. A. Correct. Q. Yesterday, the questions in your testimony regarding the flows going from approximately 4,200 cfs up to about 6,800 cfs. With respect to that 4,200 cfs number that's 	2 3 4 5 6 7 8 9 10 11 12 13 14 15 16 17 18 19 20	 verify the basis for the 4,200 cfs number, or the accuracy of that number itself? A. I believe he recalculated the number and got you know, was very close. His recalculation of it was very close to it. Q. But he used the same methodology, and the same assumptions that were present for the individuals who originally made those? A. As best as we could, yes. Q. Right. But did it independently determine whether that methodology was or was not accurate based upon all the data that might have been available at the time, including but not limited to, irrigation deliveries on the North Side system, or on the North Side of the spring reaches? A. I won't say that he didn't independently verify the adequacy of it. But that wasn't the focus. The focus I mean, it was a USGS technique methodology. We accepted it
	 again, you have the Bureau of Reclamation renting natural flow derived from the nondiversion of Bell Rapids. And that amount that they rent is added to the Swan Falls minimums. Q. Okay. On Exhibit 61, which is the Clear Springs order. Karl, looking back at Attachment A, would you refer to extensively, and I believe Attachment A is the same attachment for either the Blue Lakes order or the Clear Springs order, and we'll call it the Snake River Farms at this point? A. Correct. Q. And that, again, is a graphical depiction of the annual spring discharge in the Snake River and Thousand Springs area. A. Correct. Q. Yesterday, the questions in your testimony regarding the flows going from approximately 4,200 cfs up to about 6,800 cfs. With respect to that 4,200 cfs number that's identified in this graph, did you undertake any 	2 3 4 5 6 7 8 9 10 11 12 13 14 15 16 17 18 19 20 21	 verify the basis for the 4,200 cfs number, or the accuracy of that number itself? A. I believe he recalculated the number and got you know, was very close. His recalculation of it was very close to it. Q. But he used the same methodology, and the same assumptions that were present for the individuals who originally made those? A. As best as we could, yes. Q. Right. But did it independently determine whether that methodology was or was not accurate based upon all the data that might have been available at the time, including but not limited to, irrigation deliveries on the North Side system, or on the North Side of the spring reaches? A. I won't say that he didn't independently verify the adequacy of it. But that wasn't the focus. The focus I mean, it was a USGS technique methodology. We accepted it as being valid. And our question was more to the
	 again, you have the Bureau of Reclamation renting natural flow derived from the nondiversion of Bell Rapids. And that amount that they rent is added to the Swan Falls minimums. Q. Okay. On Exhibit 61, which is the Clear Springs order. Karl, looking back at Attachment A, would you refer to extensively, and I believe Attachment A is the same attachment for either the Blue Lakes order or the Clear Springs order, and we'll call it the Snake River Farms at this point? A. Correct. Q. And that, again, is a graphical depiction of the annual spring discharge in the Snake River and Thousand Springs area. A. Correct. Q. Yesterday, the questions in your testimony regarding the flows going from approximately 4,200 cfs up to about 6,800 cfs. With respect to that 4,200 cfs number that's identified in this graph, did you undertake any independent analysis to verify that number? 	2 3 4 5 6 7 8 9 10 11 12 13 14 15 16 17 18 19 20 21 22	 verify the basis for the 4,200 cfs number, or the accuracy of that number itself? A. I believe he recalculated the number and got you know, was very close. His recalculation of it was very close to it. Q. But he used the same methodology, and the same assumptions that were present for the individuals who originally made those? A. As best as we could, yes. Q. Right. But did it independently determine whether that methodology was or was not accurate based upon all the data that might have been available at the time, including but not limited to, irrigation deliveries on the North Side system, or on the North Side of the spring reaches? A. I won't say that he didn't independently verify the adequacy of it. But that wasn't the focus. The focus I mean, it was a USGS technique methodology. We accepted it as being valid. And our question was more to the fact, has it been consistently applied through
	 again, you have the Bureau of Reclamation renting natural flow derived from the nondiversion of Bell Rapids. And that amount that they rent is added to the Swan Falls minimums. Q. Okay. On Exhibit 61, which is the Clear Springs order. Karl, looking back at Attachment A, would you refer to extensively, and I believe Attachment A is the same attachment for either the Blue Lakes order or the Clear Springs order, and we'll call it the Snake River Farms at this point? A. Correct. Q. And that, again, is a graphical depiction of the annual spring discharge in the Snake River and Thousand Springs area. A. Correct. Q. Yesterday, the questions in your testimony regarding the flows going from approximately 4,200 cfs up to about 6,800 cfs. With respect to that 4,200 cfs number that's identified in this graph, did you undertake any independent analysis to verify that number? A. I, myself, did not perform any such 	2 3 4 5 6 7 8 9 10 11 12 13 14 15 16 17 18 9 20 21 22 23	 verify the basis for the 4,200 cfs number, or the accuracy of that number itself? A. I believe he recalculated the number and got you know, was very close. His recalculation of it was very close to it. Q. But he used the same methodology, and the same assumptions that were present for the individuals who originally made those? A. As best as we could, yes. Q. Right. But did it independently determine whether that methodology was or was not accurate based upon all the data that might have been available at the time, including but not limited to, irrigation deliveries on the North Side system, or on the North Side of the spring reaches? A. I won't say that he didn't independently verify the adequacy of it. But that wasn't the focus. The focus I mean, it was a USGS technique methodology. We accepted it as being valid. And our question was more to the fact, has it been consistently applied through time, and could we, in fact, go back and
	 again, you have the Bureau of Reclamation renting natural flow derived from the nondiversion of Bell Rapids. And that amount that they rent is added to the Swan Falls minimums. Q. Okay. On Exhibit 61, which is the Clear Springs order. Karl, looking back at Attachment A, would you refer to extensively, and I believe Attachment A is the same attachment for either the Blue Lakes order or the Clear Springs order, and we'll call it the Snake River Farms at this point? A. Correct. Q. And that, again, is a graphical depiction of the annual spring discharge in the Snake River and Thousand Springs area. A. Correct. Q. Yesterday, the questions in your testimony regarding the flows going from approximately 4,200 cfs up to about 6,800 cfs. With respect to that 4,200 cfs number that's identified in this graph, did you undertake any independent analysis to verify that number? A. I, myself, did not perform any such analysis. But on several occasions, I asked Bill 	2 3 4 5 6 7 8 9 10 11 12 13 14 15 16 17 18 19 20 21 22	 verify the basis for the 4,200 cfs number, or the accuracy of that number itself? A. I believe he recalculated the number and got you know, was very close. His recalculation of it was very close to it. Q. But he used the same methodology, and the same assumptions that were present for the individuals who originally made those? A. As best as we could, yes. Q. Right. But did it independently determine whether that methodology was or was not accurate based upon all the data that might have been available at the time, including but not limited to, irrigation deliveries on the North Side system, or on the North Side of the spring reaches? A. I won't say that he didn't independently verify the adequacy of it. But that wasn't the focus. The focus I mean, it was a USGS technique methodology. We accepted it as being valid. And our question was more to the fact, has it been consistently applied through

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	Page 311		Page 313
1	reconstruct it. Not maybe exactly, but	1	Swan Falls is an issue that's been raised to the
2	essentially, we could. It was reconstructible.	2	extent to the delivery call in Thousand Springs
3	Q. Do you recall in your testimony	3	reach.
4	yesterday you were asked a series of questions	4	MR. RASSIER: Okay. Well, I would like
5	regarding the winter water savings agreements,	5	you to keep that in mind, it's 130.
6	and the water associated with winter water	6	MR. SIMPSON: I want to get done, too.
7	savings?	7	Q. (BY MR. SIMPSON) With respect to that
8	A. Yes.	8	year-round diversion, generally speaking, if a
9	Q. And generally, is it your understanding	9	canal system was open year round, and water was
10	that that winter water savings water was water	10	being diverted year round, the losses associated
11	that various canals above Milner diverted year	11	with diversions into the canal system would take
12	round into their canal systems for stock water	12	that into account; would they not?
13	employed by water purposes?	13	That is, the canals wouldn't, as they
14	A. Yes.	14	are done now, have a charging period at the
15	Q. And would it also be true that their	15	beginning of the irrigation season where losses
16	irrigation deliveries during the irrigation	16	are greater than they are during normal delivery
17	season exceeded what water they continued to	17	season?
18	divert during the non-irrigation for that stock	18	A. That's correct. However, I would
19	water employed by water purposes?	19	estimate that the total losses over a year, over
20	A. Certainly.	20	the entire year from a canal like North Side,
21	Q. And so likewise, those winter water	21	would be greater when the canal was used year
22	diversions would have simply been diversions into	22	round, than it is presently, when it's only used,
23	the canal systems and not application onto the	23	say, six months. Even though the initial losses
24	land?	24	during charging prior to six months of the usage
25	A. That's generally my understanding. But	25	would be greater than the losses later in time.
	Page 312		Page 314
1	I suspect I don't have any proof but, I	1	But if you look at the total losses
2	mean, I would suspect that there may have been	2	over the entire year, I would suspect that they
3	some early I'll call it early season	3	were larger when the canals were used year round
4	irrigation prior to the authorized season of use.	4	than they are now in total.
5	And likewise, there probably was some late season	5	Q. And any net increase in loss as a
6	irrigation occurring after the authorized season	6	result of year-round diversions as compared to
7	of use.	7	how practices are presently, wouldn't you agree,
8	Q. But generally speaking, that water that	8	that you would have to subtract out that
9	was diverted for winter water would have remained	9	additional loss that occurs during the charging
10	in the canal system, but for some early or late	10	period for irrigation presently; would you not?
11	irrigation needs?	11	A. Subtract it from what?
12	A. I believe that's the case, yes.	12	Q. Well, the net, the net change in
13	MR. RASSIER: Now, John, this	13	losses?
14	deposition was noticed up for 130 calls; right?	14	A. I don't know that you would subtract it
15	And it seems like some of the areas you are going	15	out. I mean, the additional losses that occur
16	into may not be relevant to the 130 calls.	16	during the charging of the canal, I would say,
17	MR. SIMPSON: Well, Phil, Mr. Budge did	17	would count towards what I have characterized as
18	ask questions about this. And primarily, on this	18	the total losses during the year.
19	subject, at least it's related to seepage into	19	Q. Okay. And the loss associated with
20	the aquifer, and associated changes in aquifer	20	charging in today's practices, was not present
21		1	
1	reach.		•
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	•		
25	water to meet the Swan Falls minimums. And that	25	of losses would be, because of the ice jambs that
21 22 23 24 25	levels with respect to the Thousand Springs reach. Yesterday, in addition, Mr. Budge did ask questions about Swan Falls, and sources of water to meet the Swan Falls minimums. And that	21 22 23 24 25	during the period when there was winter water savings diversions; is that not true? A. I would say, that's generally true. But what I don't know, John, is what the effect of losses would be, because of the ice jambs that 40 (Pages 311 to 31

Page 315		Page 317
	-	
I've heard Ted Diehl talk about. You know, you	1	A. That's certainly a reasonable
hear stories about people going out with dynamite	2	conclusion.
to blow the ice jambs up. I don't know what that	3	Q. Which would have resulted in additional
		irrigation losses associated with the delivery of
		that water?
		A. I don't know that. And here is why:
		You know, I know that North Side charges a fixed
		amount of canal loss per share delivered. But
5		physically, the losses associated with between
		running the canal at 95 percent, or let's say, 90
		percent capacity versus 100 percent capacity, I
		don't know that the losses associated with that
		last ten percent are proportional to the losses
		associated with the first 90 percent.
		So it depends upon how this additional
		storage water is delivered. Is it delivered on
		top of the natural flow? I mean, North Side is
		predominately storage, of course.
0 11 0		But how much additional storage is
		delivered by North Side and when, I think, is
		what you would have to look at. Because if it
		was just put on top of what was already there
-		during the same time, it may not have a
		proportionately greater amount of loss.
A. I don't know what you mean by	25	On the other hand, if it extended the
Page 316		Page 318
better. But certainly their storage supply was	1	season during which the canal is operated, that
firmer because of the diversion into storage of	2	could increase the overall losses.
	3	Q. Either way, it would have increased the
•	4	losses? It's just a matter of how much?
	5	A. Correct.
	6	Q. Because every acre foot diverted there
in Palisades as a result of the winter water	7	has some loss associated with it?
savings?	8	A. I agree.
•	9	Q. Okay. With respect to surface water
supply, because they agreed to the winter water	10	administration, how are the calibrated river
	11	gages utilized?
		A. Well, I suppose they are utilized in a
		couple of different ways. I mean, they can be
	14	utilized to calculate reach gains, which are then
	15	distributed as natural flow. They can also be
		utilized to track how much of the flow is natural
÷.	17	flow versus storage releases. And then thirdly,
		they are used well, it's sort of related to
e ,		the natural flow. I mean, that is what is
		distributed by priority to the right holders. So
		I've already addressed that.
		They are also used to do a mass balance
		from the beginning of the river down to Milner
ę .	24	for the purpose of accounting for water use. So
systems; would it not have?	25	natural flow distribution, storage, and
	 better. But certainly their storage supply was firmer because of the diversion into storage of water that otherwise would have been used for year-round stock water and domestic uses. Q. And additional water supply? In the case of North Side, did they not procure a supply in Palisades as a result of the winter water savings? A. Did they incur an additional water supply, because they agreed to the winter water savings? I would say, that is true, because they wouldn't have gotten the contract in Palisades without it. Q. Right. So, for example, if North Side Canal Company, assuming they, as a result of the Palisades contracts, obtained 115,000 acre-feet of additional storage in Palisades with a winter water savings priority. That made available to them additional storage supplies that they did not have then prior to Palisades? A. I agree. Q. So that in most cases, it would have provided them additional water to be delivered in the irrigation season through their canal 	If the canal below an ice jamb went dry for some period of time because of an ice jamb, presumably there would be some recharging, perhaps, of that de-watered segment. But whether that would be more or less than if the ice jamb hadn't occurred, or how it compares to today, we don't I don't have that.9 10 11Q. It's difficult to quantify? A. Yeah, it's difficult to quantify, I believe.11 12 14 14 14 15 16 17 17 18 18 19 19 10 10 1113 13 16 11 13 14 15 16 17 17 10 10 11 13 15 16 16 17 17 11 14 15 16 17 17 11 11 13 15 16 17 17 11 14 15 16 17 17 11 14 15 16 17 17 11 14 15 16 17 17 11 16 16 17 17 11 16 17 11 16 17 11 16 17 17 11 16 17 11 16 17 11 16 17 11 16 17 11 16 17 11 16 17 11 16 17 11 16 17 11 16 17 16 17 17 16 17 16 17 17 16 17 16 17 17 16 17 16 17 17 16 17 16 17 17 16 17 16 17 17 16 17 17 16 17 17 16 17 17 16 17 17 16 17 17 16 17 17 16 17 16 17 17 16 17 16 17 16 17 16 17 17 16 17 16 17 17 16 17 16 17 16 17 16 17 17 16 17 16 16 17 17 16 17 16 17 17 16 17 17 16 17 16 17 17 17 16 16 17 17 16 16 17 17 17 16 16 17 17 16 17 16 16 17 17 17 16

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$\begin{array}{c}1\\2&3\\4&5\\6&7\\8&9\\10\\11\\2&13\\14\\15&16\\7\\18&9\\22\\22\\22\end{array}$	situation where we would say, the 10 cfs was not certain. And therefore, the call was futile and we allowed the juniors to divert 100 cfs. So, essentially, we've clipped the junior use in this hypothetical to ten percent. But, in fact, that is a procedure that we do employ, at least in the Big Lost River in dealing with futile calls, which purely was essentially a surface water determination. Q. And within Water District 01, once that water is in the river, once whether the source is from snow pack melt, or from reach gains, we'll say, above Blackfoot, once that water is in the river, it's administered by the gage reads A. It is. Q to be delivered to the surface water user A. It is. Q is it not? A. It is.
2 3 4 5 6 7 8 9 10 11 2 13 14 15 16 7 18 9 20 2	 certain. And therefore, the call was futile and we allowed the juniors to divert 100 cfs. So, essentially, we've clipped the junior use in this hypothetical to ten percent. But, in fact, that is a procedure that we do employ, at least in the Big Lost River in dealing with futile calls, which purely was essentially a surface water determination. Q. And within Water District 01, once that water is in the river, once whether the source is from snow pack melt, or from reach gains, we'll say, above Blackfoot, once that water is in the river, it's administered by the gage reads A. It is. Q to be delivered to the surface water user A. It is. Q is it not?
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15 16 17 18 19 20 21	 the river, it's administered by the gage reads A. It is. Q to be delivered to the surface water user A. It is. Q is it not?
16 17 18 19 20 21	 A. It is. Q to be delivered to the surface water user A. It is. Q is it not?
17 18 19 20 21	user A. It is. Q is it not?
18 19 20 21	user A. It is. Q is it not?
19 20 21	Q is it not?
19 20 21	Q is it not?
21	
	A. It is.
22	Q. So there is no reduction or uncertainty
	placed upon that delivery to a surface water
23	user?
24	A. There hasn't been, but I would not be
25	surprised to see the issue raised someday when a
	Page 322
1	
	junior faces curtailment. You know, again, I'll go back to
	not yesterday's discussion on this. But in
	Water District 01, since you've used that as an
	example, you've got something that's available
	that's not available to the spring users. It's
	not available to the ground water folks,
8	generally, in that storage. And storage can
9	cover a multitude of errors.
10	Q. Yesterday you discussed the application
11	of a ten percent clip that is basically the line
12	by which if someone was outside of that ten
13	percent line, they were not subject to
14	administration?
15	A. For a particular call. But you know,
16	sometimes some of those people that were outside
17	the line for one call were not outside the line
18	for another.
19	Q. I agree that there could be overlapping
20	lines or intersecting lines with respect to that
21	ten percent line.
22	Would you agree, though, that if you
23	added up those rights that were outside of a line
24	for a particular call, it could amount to a
25	substantial amount of depletions being caused
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		Page 323		Page 325
	1	upon the source that is the aquifer?	1	be otherwise subject to curtailment.
	2	A. I haven't done the calculations, so I	2	MS. McHUGH: There is
	3	don't know. But remember that at least in terms	3	THE WITNESS: And I'm having a hard
	4	of administering a delivery call, the issue isn't	4	time finding it.
	5	depletions to the aquifer. The issue is	5	MS. McHUGH: Is it perhaps around 96 of
	6	depletions to the hydraulically connected reach	6	the Clear Springs order?
I	7	where the injury has occurred.	7	THE WITNESS: Yes, Candice is correct.
	8	Q. But to the aquifer, there may be some	8	In Finding 96, it's very specific. "Based on the
	9	substantial depletions to the aquifer as a result	9	Department's water rights database and
1	10	of the junior ground water pumping that's	10	simulations using Version 1.1 of the Department's
	11	occurring outside of that ten percent clip line?	11	water model for the ESPA," et cetera, "the
	12	A. I don't know. We never I don't	12	diversion and consumptive use of ground water
	13	recall if we ever made the determination.	13	under water rights having priority dates later
	14	Q. You just never looked to see the	14	than the priority dates for Water Right Nos.
	15	number	15	36-7083 and 36-7568 in Water District 120, and
	16	A. Right.	16	which have steady state conditions reduce spring
	17	Q or the volume of rights of the	17	discharge in the Devil's Washbowl to Buhl Gage
	18	depletions occurring upon rights that were	18	spring reach by more than ten percent of the
1	19	outside of those lines?	19	amount of depletion."
	20	A. Not directly. Although, you know, I	20	So the clip was applied to the
	21	believe that there were some model simulations	21	simulated curtailment in 120.
	22	done early on with the clip and without the clip.	22	Q. So, in essence, Water District 120
	23	But the purpose wasn't to see how much depletion	23	ground water rights were found to be outside of
	24	of the aquifer was being excluded with the clip.	24	the clip line?
	25	The purpose was to see what kind of difference	25	A. Correct.
		Page 324		Page 326
	1	did it make in terms of the	1	Q. Would you acknowledge that the ground
	2	hydraulically-connected reach where injury is	2	water rights within Water District 120 represent
	3	occurring.	3	a substantial depletion to the aquifer?
I	4	Q. Okay. Depletion to the	4	
	5		т	A. To the aquifer, but not necessarily to
		hydraulically-connected reach?	5	the hydraulically-connected spring reach and the
	6	hydraulically-connected reach? A. Yes.		the hydraulically-connected spring reach and the spring reaches in the Thousand Springs area. The
	6 7	hydraulically-connected reach?A. Yes.Q. And with respect to the reach that is	5 6 7	the hydraulically-connected spring reach and the spring reaches in the Thousand Springs area. The depletions from ground water diversion and use in
	6 7 8	hydraulically-connected reach?A. Yes.Q. And with respect to the reach that is subject to the delivery calls that you've been	5 6 7 8	the hydraulically-connected spring reach and the spring reaches in the Thousand Springs area. The depletions from ground water diversion and use in 120 occur mainly to the hydraulically-connected
	6 7 8 9	hydraulically-connected reach?A. Yes.Q. And with respect to the reach that is subject to the delivery calls that you've been testifying to here, were the ground water rights	5 6 7 8 9	the hydraulically-connected spring reach and the spring reaches in the Thousand Springs area. The depletions from ground water diversion and use in 120 occur mainly to the hydraulically-connected reaches of the Snake River above Blackfoot or
	6 7 8 9 10	hydraulically-connected reach?A. Yes.Q. And with respect to the reach that is subject to the delivery calls that you've been testifying to here, were the ground water rights associated with Water District 120 within or	5 6 7 8 9 10	the hydraulically-connected spring reach and the spring reaches in the Thousand Springs area. The depletions from ground water diversion and use in 120 occur mainly to the hydraulically-connected reaches of the Snake River above Blackfoot or not Blackfoot, but above, essentially, Neeley.
	6 7 8 9 10 11	 hydraulically-connected reach? A. Yes. Q. And with respect to the reach that is subject to the delivery calls that you've been testifying to here, were the ground water rights associated with Water District 120 within or outside the ten percent line? 	5 6 7 8 9 10 11	the hydraulically-connected spring reach and the spring reaches in the Thousand Springs area. The depletions from ground water diversion and use in 120 occur mainly to the hydraulically-connected reaches of the Snake River above Blackfoot or not Blackfoot, but above, essentially, Neeley. Q. Yesterday, do you recall your testimony
	6 7 9 10 11	 hydraulically-connected reach? A. Yes. Q. And with respect to the reach that is subject to the delivery calls that you've been testifying to here, were the ground water rights associated with Water District 120 within or outside the ten percent line? A. I'll have to look. I don't remember 	5 6 7 8 9 10 11 12	the hydraulically-connected spring reach and the spring reaches in the Thousand Springs area. The depletions from ground water diversion and use in 120 occur mainly to the hydraulically-connected reaches of the Snake River above Blackfoot or not Blackfoot, but above, essentially, Neeley. Q. Yesterday, do you recall your testimony regarding your justification under the
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	6 7 9 10 11 12 13 14	 hydraulically-connected reach? A. Yes. Q. And with respect to the reach that is subject to the delivery calls that you've been testifying to here, were the ground water rights associated with Water District 120 within or outside the ten percent line? A. I'll have to look. I don't remember offhand. Let me look at the order, the Blue Lakes order. I don't know, John, can you help me 	5 6 7 8 9 10 11 12 13 14	the hydraulically-connected spring reach and the spring reaches in the Thousand Springs area. The depletions from ground water diversion and use in 120 occur mainly to the hydraulically-connected reaches of the Snake River above Blackfoot or not Blackfoot, but above, essentially, Neeley. Q. Yesterday, do you recall your testimony regarding your justification under the Conjunctive Management Rules 40.01.A regarding phased-in curtailment?
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	6 7 9 10 11 12 13 14 15 16 17 18 19	 hydraulically-connected reach? A. Yes. Q. And with respect to the reach that is subject to the delivery calls that you've been testifying to here, were the ground water rights associated with Water District 120 within or outside the ten percent line? A. I'll have to look. I don't remember offhand. Let me look at the order, the Blue Lakes order. I don't know, John, can you help me with finding where that's dealt with? Q. Well, the closest I could probably come, Karl, would be at the bottom of page 38 of the Clear Springs order. It cites on page 38, it says, "It is further ordered that no additional 	5 6 7 8 9 10 11 12 13 14 15 16 17 18 19	the hydraulically-connected spring reach and the spring reaches in the Thousand Springs area. The depletions from ground water diversion and use in 120 occur mainly to the hydraulically-connected reaches of the Snake River above Blackfoot or not Blackfoot, but above, essentially, Neeley. Q. Yesterday, do you recall your testimony regarding your justification under the Conjunctive Management Rules 40.01.A regarding phased-in curtailment? A. Yes. Q. And would it be accurate to state that in your view, the phased-in curtailment in this case was justified given the requirement of providing notice to water rights and water right
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	6 7 8 9 10 11 12 13 14 15 16 17 18 19 20 21 22 23	hydraulically-connected reach? A. Yes. Q. And with respect to the reach that is subject to the delivery calls that you've been testifying to here, were the ground water rights associated with Water District 120 within or outside the ten percent line? A. I'll have to look. I don't remember offhand. Let me look at the order, the Blue Lakes order. I don't know, John, can you help me with finding where that's dealt with? Q. Well, the closest I could probably come, Karl, would be at the bottom of page 38 of the Clear Springs order. It cites on page 38, it says, "It is further ordered that no additional curtailment of a diversion and use of ground water under water rights within Water District 130." So your order did not describe, at	5 6 7 8 9 10 11 12 13 14 15 16 17 18 19 20 21 22 23	the hydraulically-connected spring reach and the spring reaches in the Thousand Springs area. The depletions from ground water diversion and use in 120 occur mainly to the hydraulically-connected reaches of the Snake River above Blackfoot or not Blackfoot, but above, essentially, Neeley. Q. Yesterday, do you recall your testimony regarding your justification under the Conjunctive Management Rules 40.01.A regarding phased-in curtailment? A. Yes. Q. And would it be accurate to state that in your view, the phased-in curtailment in this case was justified given the requirement of providing notice to water rights and water right holders of the potential curtailment of their rights if mitigation was not provided? A. I may not have understood the question, but I'll try to answer it the way I understood

	Page 327		Page 329
1	in Rule 40 whatever the number is is to	1	director's responsibility to just simply go out
2	provide an orderly transition on an economic	2	and begin curtailing rights, because the senior
3	basis. I never viewed it as being used to	3	might not have sufficient water for his needs. I
4	provide notice of potential curtailment. I	4	think he has to call for it.
5	didn't view it that way. The notice for	5	Q. Certainly. But at least,
6	potential curtailment was to be provided, and I	6	initially but once you make an injury
7	think was provided, directly by the watermaster	7	determination, do you believe you have the
8	through letters that were sent to individual	8	authority not to remedy that fully intended
9	right holders.	9	injury?
10	Q. So it was purely an economic issue with	10	A. Well, when you look at the entirety of
11	respect to those rights that might be subject to	11	the body of law, including the rules, that
12	curtailment if mitigation was provided?	12	authority was conferred through the rules and
13	A. That's my view. And, of course, it's	13	through their confirmation of the legislature.
14	provision rules. It was not a provision that I	14	So I think I could answer at this time
15	used absent some basis in rule. It was	15	the opposite way saying that, given that the
16	discretionary. And even though it was	16	rules were confirmed by the legislature, didn't I
17	discretionary, and I could have chosen not to	17	have a responsibility to consider phasing in
18	phase-in curtailment, I chose to phase-in	18	curtailment, even recognizing that there could be
19	curtailment initially with the plan had I been	19	some incremental additional injury incurred by
20	allowed to see this through of working towards	20	the senior?
21	administration without the phasing.	21	Q. Incremental injury that was not being
22	But in the initial application of this,	22	remedied by your actions?
23	I thought it was appropriate given it was	23	A. That's correct.
24	provided for in the rule. But we were from my	24	Q. But for the rule, this particular rule,
25	perspective, had I been here, we were clearly	25	would it be your view that you have the duty to
	Page 328		Page 330
1	headed towards a more I'll call it perfunctory	1	remedy such an injury once you make that finding?
2	system of administration more similar to what	2	A. Again, I'll answer it differently than
3	occurs currently in surface water systems only.	3	you asked it. But for this rule, did I think the
4	Q. Would you agree that once you found	4	authority existed to phase-in curtailment, and
5	material injury, and then chose to phase-in	5	the answer is, no.
6	curtailment to alleviate that injury, the senior	6	Q. In your implementation of this rule
7	was still incurring injury during that phased-in	1	consistent with your duties to deliver water by
8	period?	8	priority, did you give consideration to the
9 10	A. Potentially, yes. On the assumption that the shortages that the senior was	9 10	potential that there could be phased-in curtailment along with other measures that would
11	experiencing were going to continue. The senior	11	result in the senior being fully mitigated?
12	was incurring an incremental amount of injury,	12	A. I don't know what those other measures
13	because the curtailment of mitigation was	13	would be. You know, the Department's authority
14	phased-in, not applied immediately. And I agree	14	extends only to the distribution of water, or
15	there was some incremental amount of injury that	15	approval, administration, whatever you want to
16	occurred.	16	call it, of mitigation plans that provide like
17	Q. Generally, do you understand that once	17	amounts of water in kind, in place, in time.
18	you find injury that it's your job to deliver	18	So I don't know what other things could
19	water to alleviate that injury to protect the	19	have been done. I mean, can a senior accept
20	senior water right holder?	20	out-of-kind mitigation for injury? Yes. Can the
21	A. I believe the senior has to make the	21	Department require out-of-kind mitigation for
22	call, has to make the delivery call. And, again,	22	injury? I don't think so. Can the Department
23	that has become pretty perfunctory in long	23	administer out-of-kind mitigation if it's
	administered basins like the Boise River and the	24	accepted by the senior? Yes.
24 25	Snake River. So I don't believe that it's the	25	So back to the phased-in curtailment.

44 (Pages 327 to 330)

1 If I believe that the person in the position that 1 '98 through 2000, where it appears that this 2 I was in can only deal with water, and you are spins discharge stabilized. Before then, again, 3 in zOot, additional decline is being evident. 4 you can compensate with water for water that 5 so other types of mitigation were not 6 Q. So other types of mitigation were not 7 A. I didn't find any authority to require 9 other kinds of mitigation. 9 other kinds of mitigation. 11 provided to you, and obviously, those that are 12 atrachments that you attach to that order 13 atrachments that you attach to that order 14 regarding water flows, does that data give you 15 anatural event would a cose that data give you 16 would likely occur in the future, which would 17 back River Farms facility or the Crystal Springs 18 that doesn't give any indication that a 11 atural event will occur, nor does if give any 16 Q. So from a qualitative standpoint, if we 18 that doesn't give any 19		Page 331		Page 333
2 Iwas in can only deal with water, and you are phasing in mitigation. 2 spring discharge stabilized. Before then, again, in 2001, additional decline is being evident. 4 you can compensate with water for water that is in being provided. A. I didtional decline is being evident. 5 Q. So ther types of mitigation were not ocher kinds of mitigation. Fefets of ground water depletions that are further removed from the spring area, just as those take time to manifest themselves, so would incident recharge associated with an abundant water supply take time. 9 other kinds of mitigation. Feftets of ground water depletions that are further removed from the spring area, just as those take time to manifest themselves, so would incident recharge associated with an abundant water supply take time. 11 provided to you, and obviously, those that are ind an atocher a natural event sany indication as to whether a natural event is any indication as to whether a natural event indication that a natural event would likely occur in the future, which would indication that a natural event will occur. no does it give any indication that a natural event will occur. 10 O. So from a qualitative standpoint, if we indication that a natural event would not cocur. 18 snake River Farms, facility or the Crystal Springs is have avent will occur. 20 A. Mm-hmm. 21 Q. Well, let's just use on the Snake River is available springs discharge. 20 A. Mm-hmm. 22 Q. Well, let's you look at what was hope wing it the y	1	If I believe that the person in the position that	1	'98 through 2000 where it appears that this
3 phasing in mitigation, Imean, I don't know how, you come compensate with water for water that is in 2001, additional decline is being evident. 4 An diver, you know, just as the 5 isn't being provided. 6 Q. So otherwise types of mitigation were not composited by you whon you applied this rule? 7 A. I didn't find any authority to require other kinds of mitigation. 9 O. With respect to the data that was 10 10 Q. With respect to the data that was 11 11 provided to you, and obviously, those that are 14 12 described in the Clear Springs order, and the 13 13 attachments that you attach to that order 14 14 regarding water flows, does that data give you 15 15 any indication as to whether a natural event will occur, nor does it give any 16 19 facility? 20 A. It deesn't give any indication that a natural event will occur, nor does it give any 1 21 natural event will occur, nor does it give any 1 22 indication flat anatural event wouldn't occur. 23 But it would have to be a prety extraordinary 2 24 event to completely make-up the shortfall in 2005 another stabilizing event to 2007 event was a fairly good year. 3 <t< td=""><td></td><td></td><td></td><td></td></t<>				
4 And given, you know, just a the 5 isn't being provided. 6 Q. So other types of mitigation were not 7 contemplated by you when you applied this rule? 8 A. I dich'n find any authority to require 9 other kinds of mitigation. 9 O. With respect to the data that was 10 O. With respect to the data that was 11 provided to you, and obviously, those that are 12 described in the Clear Springs order, and the 13 attachments that you attach to that order 14 regarding water flows, does that data give you 14 regarding water flows, does that data give you 14 have been the result of the abundant water year 15 natural event will occur, nor does it give any 19 facility? 10 A. It doesn't give any indication that a 11 autalable springs discharge. 12 expect would be another year like 1997, wata we might 19 occur? 10 A. It doesn't give any indication that a 11 autalable springs discharge. 12 A. It doesn't give any indication that				
5 isn't being provided. 5 effects of ground water depletions that are 6 Q. So other types of mitigation were not 6 further removed from the spring area, just as 7 A. I didn't find any authority to require 6 further removed from the spring area, just as 8 A. I didn't find any authority to require 6 further removed from the spring area, just as 9 Other tinds of mitigation. 9 water depletions that are 10 Q. With respect to the data that was 10 Made second that and that are 11 provided to you, and obviously, those that are 11 mean, this is qualitative assessment, I think you 12 car- one reasonable conclusion would be that 13 attachments that you attach to that order 14 have been the result of the abundant water year 14 regarding water flows, does that data give you 15 in 1997. 16 15 facility or the Crystal Springs 16 Q. So form a qualitative standpoint, if we 16 spring break water facility or the Crystal Springs 12 Q. But it would not lead one to the 17 natural event wouldn't occur. 12 Q. So form a qualitative standpoint, if				
6 Q. So other types of mitigation were not 6 further removed from the spring area, just as 7 contemplated by you when you applied this rule? 8 A. I didn't find any authority to require 9 other kinds of mitigation. 1 those take time to manifest themselves, so would 9 other kinds of mitigation. 1 those take time to manifest themselves, so would 9 other kinds of mitigation. water supply take time. 10 Q. With respect to the data that was mean, this is qualitative assessment, I think you 13 attachments that you attach to that order 11 mean, this is qualitative assessment, I think you 14 regarding water flows, does that data give you 14 the stabilization you saw, 1998 through 2000, may 14 regarding water flows, does that data give you 14 have been the result of the abundant water year 16 would likely occur in the future, which would 16 Q. So from a qualitative standpoint, if we 18 snake River Farms facility or the Crystal Spring. 2 conclusion that the flows available for Snake 21 natural event would have to be a pretty extraordinary 2 A. Mm-Imm. 22 occure?			1	
7 contemplated by you when you applied this rule? 7 those take time to manifest themselves, so would 8 A. I didn't find any authority to require 9 water supply take time. 9 Oke Yinthe States and States a			_	
8 A. I didn't find any authority to require 9 9 other kinds of mitigation. 9 9 9 10 Q. With respect to the data that was 9 0 And so I think what you are seeing I 11 provided to you, and obviously, those that are 10 And so I think what you are seeing I 11 mean, this is qualitative assessment, I think you 13 attachments that you attach to that order 12 can - one reasonable conclusion would be that 14 regarding water flows, does that data give you 14 the stabilization assessment, I think you 14 regarding water flows, does that data give you 14 the stabilization you saw, 1998 through 2000, may 14 regarding water flows, does that data give you 15 in 1997. 15 statchment Scility or the Crystal Springs 16 Q. So from a qualitative assessment, I think you 15 natural event will occur, nor does it give any 16 A. Mm-hmm. 21 A. It would have to be a pretty extraordinary 20 A. Mm-hmm. 22 conclusion that a 21 Q. But it would not ead one to the 23 available springs discharge. 25 A. Correct. <			1	
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12 described in the Clear Springs order, and the 12 can - one reasonable conclusion would be that 13 attachments that you attach to that order 13 the stabilization you saw, 1998 through 2000, may 14 negating water flows, does that data give you 14 have been the result of the abundant water year 15 any indication as to whether a natural event 16 Q. So from a qualitative standpoint, if we 16 would likely occur in the future, which would 16 Q. So from a qualitative standpoint, if we 17 had in 2008 another year like 1997, what we might 18 expect would be another stabilizing event to 19 facility? 20 A. Moh-mmn. 21 Q. But it would have to be a pretty extraordinary 21 abuit would have to be a pretty extraordinary 22 Conclusion that anaturel event would in cocur. 23 24 event to completely make-up the shortfall in 24 right - 25 A. Correct. 23 River Farms scalable for Snake 25 A. Stree, 97 was a party good year. 3 Q. So hence it would be difficult to 3 A. Yes. 1 Image a proty good year. 4 6				
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18 Snake River Farms facility or the Crystal Springs 18 expect would be another stabilizing event to 19 facility? 1 8 expect would be another stabilizing event to 19 facility? 2 16 16 20 A. It doesn't give any indication that a 1 0 Num-hmm. 21 indication that a natural event wouldn't occur. 2 0 A. Mm-hmm. 21 D. But it would not lead one to the 22 conclusion that the flows available for Snake 23 But it would meet their decreed water 24 right 25 available spring discharge. 25 A. Correct. 26 Q. Well, let's just use on the Snake River 1 Q of approximately 117 cfs? 2 Farms, Attachment C to your order on Exhibit 61. 2 A. That's correct. 4 Q. Just looking at that graph of the data 5 more than sinply stabilize the flows that are 5 that you produced as a part of your order, would 6 available to them? 7 suppose as fairly good year? 7 A. That's correct. That's why the order 8 for Clear Springs and Blue L			1	
19 facility? 19 occur? 20 A. It doesn't give any indication that a natural event will occur, nor does it give any indication that a natural event wouldn't occur. 20 A. Mm-hmm. 23 But it would have to be a pretty extraordinary event to completely make-up the shortfall in 22 conclusion that the flows available for Snake 23 24 event to completely make-up the shortfall in 25 available springs discharge. 26 A. Correct. 25 Page 332 Page 334 1 Q. Well, let's just use on the Snake River 1 Q of approximately 117 cfs? 2 A. That's correct. 3 Q. So hence it would be difficult to 4 Q. Just looking at that graph of the data 4 envision a water year, which would do something 5 that you produced as a part of your order, would 5 more than simply stabilize the flows that are 6 available to them? 7 A. That's correct. 1 9 Q. And in looking at this graph, based 9 9 structured to require essentially ongoing 11 represent to you was a substantially 1 I mean, there was a provision that, 12 yeshypothetically things could change. But if				
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	2 3 4 5 6 7 8 9 10 11 12 13 14 15 16 17 18 19 20 21 22	 Q. Well, let's just use on the Snake River Farms, Attachment C to your order on Exhibit 61. A. (Witness complying.) All right. Q. Just looking at that graph of the data that you produced as a part of your order, would it be fair to recognize that the 1997, '98 water supply year was a fairly good year? A. Sure, '97 was a pretty good year. Q. And in looking at this graph, based upon that water supply year 1997, which I'll represent to you was a substantially above-average water year. A. Yes. Q. Can you identify in this graph the response in these spring flows to that good water year? A. Oh, only in a qualitative sense, I suppose. But if you look at what was happening up until 1997, generally the peak discharge was progressively getting lower and lower for the most part. And as was there are some exceptions, for the most part. As was there 	2 3 4 5 6 7 8 9 10 11 12 13 14 15 16 17 18 19 20 21 22	 Q of approximately 117 cfs? A. That's correct. Q. So hence it would be difficult to envision a water year, which would do something more than simply stabilize the flows that are available to them? A. That's correct. That's why the order for Clear Springs and Blue Lakes both was structured to require essentially ongoing curtailment or mitigation from here on out. I mean, there was a provision that, yes, hypothetically things could change. But if they don't, you are looking at ongoing curtailment for mitigation, period. Q. And based upon the data that we just looked at, it would, again, be difficult to envision what the change that would occur that would result in the delivery of their water but for curtailment of junior? A. Agreed. Q. Again, referring to that exhibit, would the variability of the peaks and valleys be as
25 there is a period of time after 1997, say, from 25 know. Because we don't you know, the same	2 3 4 5 6 7 8 9 10 11 12 13 14 15 16 17 18 19 20 21 22 23	 Q. Well, let's just use on the Snake River Farms, Attachment C to your order on Exhibit 61. A. (Witness complying.) All right. Q. Just looking at that graph of the data that you produced as a part of your order, would it be fair to recognize that the 1997, '98 water supply year was a fairly good year? A. Sure, '97 was a pretty good year. Q. And in looking at this graph, based upon that water supply year 1997, which I'll represent to you was a substantially above-average water year. A. Yes. Q. Can you identify in this graph the response in these spring flows to that good water year? A. Oh, only in a qualitative sense, I suppose. But if you look at what was happening up until 1997, generally the peak discharge was progressively getting lower and lower for the most part. And as was there are some exceptions, for the most part. As was there is some exceptions, but for the most part, as was 	2 3 4 5 6 7 8 9 10 11 12 13 14 15 16 17 18 20 21 22 23	 Q of approximately 117 cfs? A. That's correct. Q. So hence it would be difficult to envision a water year, which would do something more than simply stabilize the flows that are available to them? A. That's correct. That's why the order for Clear Springs and Blue Lakes both was structured to require essentially ongoing curtailment or mitigation from here on out. I mean, there was a provision that, yes, hypothetically things could change. But if they don't, you are looking at ongoing curtailment for mitigation, period. Q. And based upon the data that we just looked at, it would, again, be difficult to envision what the change that would occur that would result in the delivery of their water but for curtailment of junior? A. Agreed. Q. Again, referring to that exhibit, would the variability of the peaks and valleys be as great if there was no ground water pumping?
	2 3 4 5 6 7 8 9 10 11 12 13 14 15 16 17 18 9 20 21 22 23 24	 Q. Well, let's just use on the Snake River Farms, Attachment C to your order on Exhibit 61. A. (Witness complying.) All right. Q. Just looking at that graph of the data that you produced as a part of your order, would it be fair to recognize that the 1997, '98 water supply year was a fairly good year? A. Sure, '97 was a pretty good year. Q. And in looking at this graph, based upon that water supply year 1997, which I'll represent to you was a substantially above-average water year. A. Yes. Q. Can you identify in this graph the response in these spring flows to that good water year? A. Oh, only in a qualitative sense, I suppose. But if you look at what was happening up until 1997, generally the peak discharge was progressively getting lower and lower for the most part. And as was there are some exceptions, for the most part. As was there is some exceptions, but for the most part, as was the low point in the spring discharge. But then 	2 3 4 5 6 7 8 9 10 11 12 13 14 15 16 17 18 9 20 21 22 23 24	 Q of approximately 117 cfs? A. That's correct. Q. So hence it would be difficult to envision a water year, which would do something more than simply stabilize the flows that are available to them? A. That's correct. That's why the order for Clear Springs and Blue Lakes both was structured to require essentially ongoing curtailment or mitigation from here on out. I mean, there was a provision that, yes, hypothetically things could change. But if they don't, you are looking at ongoing curtailment for mitigation, period. Q. And based upon the data that we just looked at, it would, again, be difficult to envision what the change that would occur that would result in the delivery of their water but for curtailment of junior? A. Agreed. Q. Again, referring to that exhibit, would the variability of the peaks and valleys be as great if there was no ground water pumping? A. I think I would have to say, I don't

45 (Pages 331 to 334)

1	Page 335		Page 337
	problems that we discussed or debated during	1	Q. But from that standpoint, those
2	questioning from Mr. Steenson, the information	2	Department employees would have been the ones
3	simply doesn't exist to quantify the variability	3	with the most understanding or the greatest
4	prior at least I'm not aware that it	4	understanding or experience regarding what Mr.
5	exists to quantify the variability prior to a	5	Higginson intended?
6	substantial amount of ground water being	6	A. I believe so.
7	developed.	7	Q. Yesterday, do you recall your testimony
8	Q. But we know that ground water pumping	8	regarding the issue of reasonable diversions, and
9	does impact the flows available to Snake River	9	that testimony regarding the investigation by the
10	Farms, for example?	10	Department at your direction with respect to the
11	A. It does.	11	Crystal Springs facility and the Snake River
12	Q. Karl, when you first came to the	12	Farms facility?
13	Department in the mid 1990s, and yesterday you	13	A. Yes.
14	testified regarding your commencing a review of	14	Q. And you asked or requested that Brian
15	the Conjunctive Management Rules. Did you rely	15	Patton and Cindy Yenter go out and physically
16	upon anyone within the Department to provide you	16	investigate those diversion structures and the
17	insight on how those rules were not implemented,	17	surrounding facilities associated with Crystal
18	but drafted and adopted in the sense of what the	18	Springs and Snake River?
19	Department intended or would intend if	19	A. Correct. And as well as to identify
20	implementing those rules?	20	any alternatives that they saw that could provide
21	A. Yes, I had discussions along those	21	additional water to the facility.
22	lines with Mr. Rassier and Norm Young at the	22	Q. And that was part of the investigation
23	time.	23	the Department did, along with your investigation
24	Q. So those would have been, essentially,	24	regarding the feasibility of horizontal or
25	the individuals that you would have relied upon	25	vertical wells in the geological structures
	Page 336		Page 338
1	of gaining an understanding of how the rules	1	associated with the areas around those
2	would be implemented?	2	facilities?
23	would be implemented? A. No, because neither of those	2	facilities?
3	A. No, because neither of those		facilities? A. No. The consideration of what would
1	A. No, because neither of those individuals had ever been confronted with	3	facilities?
3 4	A. No, because neither of those individuals had ever been confronted with actually implementing the rules.	3 4	facilities? A. No. The consideration of what would happen with horizontal wells was made, I'll say, several years because I don't recall the exact
3 4 5	A. No, because neither of thoseindividuals had ever been confronted withactually implementing the rules.Q. But they were involved in the	3 4 5	facilities? A. No. The consideration of what would happen with horizontal wells was made, I'll say,
3 4 5 6	A. No, because neither of thoseindividuals had ever been confronted withactually implementing the rules.Q. But they were involved in therule-making process, and the drafting of the	3 4 5	facilities? A. No. The consideration of what would happen with horizontal wells was made, I'll say, several years because I don't recall the exact number but several years in advance of the
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3 4 5 6 7 8	 A. No, because neither of those individuals had ever been confronted with actually implementing the rules. Q. But they were involved in the rule-making process, and the drafting of the rules, and the language that was the language 	3 4 5 6 7 8	facilities? A. No. The consideration of what would happen with horizontal wells was made, I'll say, several years because I don't recall the exact number but several years in advance of the delivery calls being made. In fact, that consideration was done
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3 4 5 6 7 8 9 10 11 12 13 14	 A. No, because neither of those individuals had ever been confronted with actually implementing the rules. Q. But they were involved in the rule-making process, and the drafting of the rules, and the language that was the language that was inserted into the rules in terms of the intentions regarding that wording? A. Yeah, I don't know. Because when I asked the question, I remember this asking, because I asked the question to Norm Young, to John Rosholt, and to Jeff Fereday. But in particular Norm Young, I was interested in, you know, what kind of involvement did he have and 	3 4 5 6 7 8 9 10 11 12 13 14	 facilities? A. No. The consideration of what would happen with horizontal wells was made, I'll say, several years because I don't recall the exact number but several years in advance of the delivery calls being made. In fact, that consideration was done during the time period under which we were attempting to negotiate resolution under the interim stipulated agreement, that's the time frame that we looked at the horizontal wells. Q. In the 2001, 2003 period? A. Yes. Q. That investigation, that background information was information you considered during
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1 A. Yes. 2 Q. With respect to Snake River Farms, I 3 believe MS. Yenter or Mr. Patton found that the 4 diversion box associated with Snake River Farms, I 5 facility was in some what disrepair. Do you 6 recall that finding? 7 A. I do. 8 Q. And do you also recall that Clear 9 prist fixed that diversion box? 10 A. I do, and they fixed it rather quickly, 11 at recall. 12 Q. To the satisfaction of the Department; 13 correct? 14 A. Correct. 15 Q. With respect to Crystal Springs, the 16 investigation by Mr. Patton and MS. Yenter 17 identified that there was the potential for 18 contemplated in netware use, would have 19 delivery system; is that correct? 10 A. Nat reccall, Lancicpated that Clear 2 A. No tnecessarily. 2 G. Cear Springs. 2 Q. Clear Springs. 2 Q. Clear Springs. 3 Q. Clear Springs.		Page 339		Page 341
2 Q. With respect to Snake River Farms, 1 2 to accessibility to water? 3 A. Ido. 3 A. Fado, and the ying approaches that perhaps would 6 recall that finding? A. Ido. 7 A. Ido. 9 Springs fixed that diversion box? Q. That one party would ty to institute an action to condenn nother property onverts? 9 Springs fixed that diversion box? Q. That one party would ty to institute 12 Q. To the satisfaction of the Department; 13 13 correct? A. Ido, and they fixed in there quickly, 14 A. Correct. 12 contemplated or necessarily in this case, because 14 A. Correct. 12 contemplated or necessarily in this case, because 16 investigation by Mr. Patton and Ms. Yenter 16 and I think, access to it was grantable. if not 16 G. Ystal Springs to extend their corneyance and 19 contemplate in future use, would have 12 Q. And by dentifying that issue in the 2 Q. Not necessarily. 13 A. Isago set to sould the firm to might not shart of the fassibitity study, did you 14 A. Ne re	1	A. Yes.	1	that you provided, would trespass be a limitation
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25 adding to access property under the condition [25 situation, if the depth to ground water is 100	2 3 4 5 6 7 8 9 10 11 12 13 14 15 16 17 18 19 20 21 22 23	 Springs? Q. Clear Springs. A. As I recall, I anticipated that Clear Springs would perform some sort of a feasibility assessment, and that they might or might not share that information with the Department. But presumably if it was feasible, that they would implement that to gain the water that they claimed they needed. Q. And in that feasibility study, did you contemplate that they would determine whether or not they could gain access to cross private property to gain access to additional flows? A. As I recall, it was not private property. It was property owned by the State of Idaho, and that there was a statutory provision for access, as I recall. Q. And if that property was subject to a lease to another entity, another party, would that preclude access? A. Not necessarily, because I don't believe that the lease would be in compliance with that statute if it was an exclusive. 	2 3 4 5 6 7 8 9 10 11 12 13 14 15 16 17 18 19 20 21 22 23	 Q. In your view, when does water that seeps into the ground become subject to appropriation? A. When it's no longer in the control of the right holder that appropriated the water in the first place. Q. When it drops below the root zone? A. No, I wouldn't I would say, when it's no longer in their control, and that may be above or below the root zone. Q. How does water remain in one's control when it drops below the root zone? A. If it drops below the root zone, and it hasn't intermingled with the underlying ground water, it's potentially capture-able through, I'll say, a system of drains, or potentially a well. It could be I would say, it remains under their control, until it's commingled with the public supply, and that applies both in a ground water sense and a surface water sense, in my view. Q. Okay. So then what does "commingle" mean?
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1	feet, the water that's migrating towards the	1	they lose 900 cfs. I'll make it extreme. And
2	public ground water supply, in my view, wouldn't	2	they continue to deliver the 100 cfs beyond the
3	be deemed to be commingled with the public supply	3	location where the significant loss occurs. I
4	until it reached 100 feet.	4	think it would be wasteful for that canal to
5	Q. So once it connects with or interacts	5	continue to operate in that setting to deliver
6	with the public supply?	6	100 cfs.
7	A. Yes.	7	So can canal losses be wasteful? Yes.
8	Q. Is water that is not diverted and	8	Are they necessarily wasteful? No.
9	beneficially used, is it water that's wasted?	9	Q. With respect to the work done on the
10	A. Not necessarily.	10	model, the re-calibration of the model, and then
11	Q. Is there the opposite of beneficial use	11	the modeling scenarios that were run, were those
12	waste in terms of a diversion?	12	scenarios that were run, were they done in
13	A. I hadn't thought of it in those terms	13	anticipation of administration?
14	before. Let's see. The opposite of beneficial	14	A. Prepares early on. If you'll recall
15	use waste? I'm going to say, not necessarily.	15	during that time period, and this would have been
16	And the reason I say that is, I think you could	16	prior to the delivery calls being made, there
17	construct a situation where you could divert	17	were some specific scenarios that were outlined
18	water that would be nonuse, but it wouldn't	18	in collaboration with the technical advisory
19	necessarily be waste.	19	committee that had been formed looking at
20	Q. Operational losses	20	curtailment scenarios back to certain priorities,
21	A. No.	21	and what would happen, what would the response in
22	Q for example?	22	the aquifer and the river be under those various
23	A. No, I'm thinking of actually I mean,	23	scenarios.
24	it's been since been resolved through	24	And so by that point in time, we were
25	adjustments of law in Colorado. But the issue	25	beginning to look to use the model for
	Page 344		Page 346
1	was, could initially a city was diverting	1	administration purposes.
2	water for non-consumptive recreational use, and	2	Q. Right.
3	the diversions were occurring whether there was	3	A. But consistent with what I said
4	or wasn't recreational use.	4	yesterday, from the very beginning of the
5	So there is a situation where there is	5	reformulation, re-calibration, at least part of
6	nonuse. Was it waste? I don't think so. It was	6	my intent was to develop a tool that I could use
7	perhaps an unauthorized diversion, but it wasn't	7	for administrative purposes, not if it became
8	waste, because the water was not consumed. It	8	necessary, but when it became necessary.
9	was returned to the source before it affected the	9	Q. So the curtailment scenarios, and even
10	source or any subsequent junior. So, I mean, I	10	to some respect the straw man scenario, and the
11	think it comes down to a fact specific basis.	11	various scenarios that were run that associate
12	Now, operational losses, are those	12	with the straw man scenario, all those scenarios
13	wastes? If they are necessary to incur to	13	that were done in connection with the IWRRI group
14	deliver the water that's beneficially used for	14	in the modeling committee, were done in
15	irrigation, in my view, that's not waste.	15	anticipation of looking at potential
16	Q. So the water that seeps into the ground	16	administrative actions that might take place?
17	as a result of the conveyance and application of	17	A. Or management actions. It was really a
18	water to beneficial use on the lands, is that	18	set of scenarios that were aimed towards the
19	waste, or is that operational losses?	19	administration. They were a set of scenarios
20	A. It's generally not waste, but	20	that were aimed towards trying to identify better
21	hypothetical, where it could be waste. Let's say	21	opportunities for management.
22	that you've got a canal that has a capacity of, I	22	Q. Management/mitigation opportunities?
23	don't know, a thousand cfs for round numbers.	23	A. Not necessarily mitigation. You know,
24	And it crosses a fault zone or other zone that	24	at that point in time, there was considerable
25	has a high permeability. And of that 1,000 cfs,	25	discussion underway with legislators and others
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		1	
1	about what the state might be able to do to avert	1	below A & B were a result of A & B's pumping or
2	the type of crisis or conflict that we currently	2	the result of pumping by others?
3	find ourselves in.	3	A. Well, it wasn't just that. That
4	Q. So with respect to the A & B scenario,	4	certainly was a central aspect. But, I mean, we
5	was that an administrative scenario that was run?	5	were trying to better understand why ground water
6	A. No, it was not. That scenario is, I	6	levels below A & B were declining to the extent
7	guess, a little different than the administrative		the model would help us do that.
8	scenario or the management scenario. You know,	8	Q. Karl, in your view, does this phased-in
9	we knew, obviously, the ground water levels below	9	curtailment progressive mitigation satisfy the
10	A & B were followed. We knew. There is no	10	requirements of mitigation in time and quantity
11	question about that. But we didn't necessarily	11	and place?
12	understand why.	12	A. Well, that's the measure as to whether
13	We didn't know if it was the extensive	13	it's acceptable. But it is phased-in, so it does
14	use of ground water by A & B itself, or if it was	14	not address the incremental injury that we talked
15	the use of ground water in surrounding areas.	15	about earlier. And certainly, there was
16	And so that scenario was run as an initial step	16	incremental injury that is not being mitigated
17	in beginning that investigation and that	17	through phased-in mitigation.
18	consideration.	18	Q. When you use the phrase
19	Q. And so is that scenario sufficient to	19	"insignificant," as it relates to insignificant
20	be utilized in the context towards the next steps	20	effects on the water available discharging into
21	for administration?	21	certain spring reach ten percent clip, for
22	A. I don't know that I'm in a position to	22	example what criteria did you use to define
23	answer that.	23	"insignificant"? Was that the amount of water
24	MR. RASSIER: I think this is an area	24	that was available to water users within that
25	isn't it, John, that's going beyond what Karl was	25	particular reach?
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	1490 510		ruge 550
1	noticed up for? It's certainly beyond what Randy	1	A. It was. And I can't recall. I would
1 2	noticed up for? It's certainly beyond what Randy ventured into.	1 2	A. It was. And I can't recall. I would have to look back at the scenarios. But it
	noticed up for? It's certainly beyond what Randy ventured into. MR. SIMPSON: Well, it's a discovery		A. It was. And I can't recall. I would have to look back at the scenarios. But it strikes me that in some of these instances, you
2 3 4	noticed up for? It's certainly beyond what Randy ventured into. MR. SIMPSON: Well, it's a discovery deposition. It's not cross-examination of what	2	A. It was. And I can't recall. I would have to look back at the scenarios. But it strikes me that in some of these instances, you know, the model might predict an increased reach
2 3 4 5	noticed up for? It's certainly beyond what Randy ventured into. MR. SIMPSON: Well, it's a discovery deposition. It's not cross-examination of what Randy went into.	2 3	A. It was. And I can't recall. I would have to look back at the scenarios. But it strikes me that in some of these instances, you know, the model might predict an increased reach gain of one-tenth of a cfs in a spring reach
2 3 4 5 6	noticed up for? It's certainly beyond what Randy ventured into. MR. SIMPSON: Well, it's a discovery deposition. It's not cross-examination of what Randy went into. MR. RASSIER: It's in spring calls.	2 3 4	A. It was. And I can't recall. I would have to look back at the scenarios. But it strikes me that in some of these instances, you know, the model might predict an increased reach gain of one-tenth of a cfs in a spring reach that's being shared by a number of very large
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1 wh	no had previously acquired a water right, have	1	Department does not have the authority to go
	e right to divert that water?	2	behind a decree; is that a correct statement?
3	A. Up to the maximum amount authorized	3	A. Correct.
1	der their water right, yes.	4	Q. Okay. I believe that Rangen's Second
5	Q. Would they have preference by priority	5	Amended Order has been marked as Exhibit No. 79.
	er that water over a subsequent diverter or a	6	And I wonder if you could access that.
	bsequent right?	7	A. (Witness complying.) Okay.
8	A. Diverting from the same source, yes.	8	Q. And if you could turn to page 14 of
9	Q. How about diverting from a different	9	that second amended order, paragraph 62. I'll
	urce, but a source that is hydraulically-	10	indicate to you in that paragraph, as you can
	nnected?	11^{-0}	see, that Rangen has Water Right No. 36-07694.
12	A. That gets more complex. And I would	12	Would you agree that it was licensed on September
	ve to say that, I don't know that there is a	13	19th, 1985 with an authorized diversion rate as
	an answer. You know, in general, if additional	14	26 cfs?
	ater comes available in the source, the existing	15	A. As far as I know, that's correct.
	the have the preference in accordance with	16	Q. Okay. And in this second amended
	eir priority to divert and apply that water to	17	order, there is a reference in paragraph 63 that
	neficial use up to the limits of their water	18	based on available records, there was not water
19 rig		19	available for the appropriation at the time or
20	Q. So if that additional water was not	20	subsequent to the date of the appropriation for
1	ailable because of a junior's diversion of that	21	that particular water right.
	ater in the source or connected sources, that	22	Can you tell me what available records
•	nior should be administered; correct?	23	that decision was based on? What you are
23 Jul 24	A. State that one again.	24	referring to in paragraph 63?
25	Q. So if that water is not available in	25	A. This would have been records in two
	Page 352		Page 354
		-	
	her the source or connected sources, and it	1	sources. The earliest records would have been in
1	ould otherwise be available to that senior,	2	the water rights file. And, again, I don't have
1	ould the juniors be administered?	3	that, so I can't show you exactly what's there.
4	A. If the senior is in the position of	4	But that file is available, and it does have what
	eding the water and needing to apply it to	5	records are available from the early time
	neficial use, generally, the answer to that	6	periods.
1	build be, yes.	7	And then the second set of records is
8	MR. SIMPSON: That's all the questions	8	similar to what we've been looking at for Blue
1	ave. Thank you, Karl.	9	Lakes and Clear Springs, you know, that beginning
10	MR. MAY: Could we take a break for	10	in 1995, I believe Rangen, along with the other
~	st a moment? Would that be all right?	11 12	spring users began reporting regularly their diversions of water to the Department
12	THE WITNESS: Sure.		diversions of water to the Department. And so I couldn't find any record from
1	(A rooose ives had)		
13	(A recess was had.)	13	•
13 14	MR. MAY: If we could go on the record,	14	any time period that there ever was that quantity
13 14 15 ple	MR. MAY: If we could go on the record, ease.	14 15	any time period that there ever was that quantity of water available for diversion. And, in fact,
13 14 15 ple 16	MR. MAY: If we could go on the record, ease. EXAMINATION	14 15 16	any time period that there ever was that quantity of water available for diversion. And, in fact, did find
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13 14 15 ple 16 17 QU 18 19 the 20 hav 21 act 22 ask 23 24	MR. MAY: If we could go on the record, ease. EXAMINATION UESTIONS BY MR. MAY: Q. Mr. Dreher, my name is J. Dee May for e record. And I represent Rangen, Inc. We ve been allowed to intervene in this particular tion. I have just a few questions, if I might k.	14 15 16 17 18 19 20 21 22	 any time period that there ever was that quantity of water available for diversion. And, in fact, did find Q. Did you find any records that it was not available? A. Yes. Q. And what were those? A. Well, it was the estimate of the watermaster. That the water was I don't

	Page 355		Page 357
		-	
1	that the watermaster put in there.	1	or was it strictly your decision alone?
2	Q. And that's it? That's the only that	2	A. You know, I certainly sought, I'll say,
3	one time, that one note from Mr. Lemmon?	3	reaction to that proposed determination. But the
4	A. No, that note is what the license is	4	determination was mine. It was mine alone.
5	based on. It's based upon predicted spring	5	Q. Can you explain, reaction from whom;
6	discharges that were predicted five years in	6	anybody?
7	advance before the permit was applied for.	7	A. Well, I mean, I consulted with Phil.
8	Q. Was that licensed water right later	8	And I was trying to think who I think Norm had
9	decreed in the SRBA?	9	retired by then. He must have. Because I
10	A. Yes, it was.	10	questioned him later about why he signed the
11	Q. If you would look, again, at paragraph	11	license, Norm Young did. And I questioned him,
12	63, there is a sentence that indicates,	12	why did you sign the license? Again, from my
13	"Nonetheless, since the SRBA District Court	13	perspective, I understand your client doesn't
14	decreed the water right, Rangen may be entitled	14	share that perspective. I didn't it wasn't
15	to divert water under this water right when such	15	clear to me why he would sign a license based on
16	water is physically available. However, because	16	a predicted quantity of water that wasn't
17	the water is not available to appropriate on the	17	actually measured as being available, diverted,
18	date of the appropriation, Rangen may not be	18	and applied to beneficial use.
19	entitled to have a delivery call."	19	Q. What did he say?
20	Can you tell me why that was even	20	A. He had no answer. He said, I can't
21	important if, in fact, the Department does not	21	explain.
22	have the authority to go behind the decree?	22	Q. Was Rangen's Second Amended Order one
23	A. It probably wasn't that important in	23	of the emergency orders that we've been talking
24	terms of this particular order, but it was	24	about here? Was it done on an emergency basis
25	included to identify a potential legal issue, not	25	like Blue Lakes and Clear Springs?
	Page 356		Page 358
1	so much identify for the benefit of the	1	A. It was not. And the reason it wasn't
2	Department, but for the benefit of Rangen, and	2	is because there was no action I mean, it
3	the ground water users that may have to resolve	3	didn't contemplate any action that would benefit
4	this someday.	4	Rangen, or perhaps be detrimental to the holders
5	And that's why it's all qualified.	5	of junior rights. So I didn't see the need for
6	This says, you know, Rangen may be entitled to	6	the emergency basis.
7	divert water under this right. I think as long	7	Q. If I could just talk about the modeling
8	as the decree is in place, you do have the right	8	for just a moment. If I understood correctly,
9	to divert water under the right.	9	your testimony was that there was some speed
10	I mean, this is very unusual how this	10	involved in getting the modeling put together for
11	all happened. And given the way it happened, I	11	use with these orders; is that true?
12	think the Department and I may be wrong, which	12	A. Well, we'd been at the model
13	is fine. I've been wrong before but my view	13	development for, gosh, I don't remember.
$13 \\ 14$	is that the Department had some discretion in how	14	Certainly, two years. And probably more like
15	to administer that right, or administer rights	15	three years by this point in time. And I could
$15 \\ 16$	that were junior in priority to that decree.	16	see this all coming. I could see it was headed
17	Q. Now, I know that you signed the order,	17	right at me. So, yeah, I was very interested in
18	Rangen's Second Amended Order that we're	18	bringing the model development to a reasonable
$10 \\ 19$	referring to. And in that order, the	19	conclusion. But, you know, having said that,
20	determination was that Rangen's call was futile?	20	you've got to be right. I mean, the model had to
20	A. Correct.	21	be as right as we could make it.
21		22	Q. If you had more time, would it have
21	O Was that determination yours?		
22	Q. Was that determination yours?		
22 23	A. Yes, it was.	23	been more accurate?
22			

51 (Pages 355 to 358)

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1	assumptions. You can increase the amount of data	1	to be all that significant. But there is room
2	you've got to calibrate to. You can maybe get	2	for disagreement.
3	data that represent different conditions that you	3	MR. MAY: I don't have any other
4	can calibrate to. So, I mean, you can always	4	questions. Thank you.
5	improve a model with more information. And more	5	MS. McHUGH: Can we go off the record?
6	information usually requires more time.	6	(Discussion held off the record.)
7	But, I mean, having said that, this is	7	EXAMINATION
8	one of the best ground water models probably,	8	QUESTIONS BY MS. McHUGH:
9	the best ground water model I've been exposed to.	9	Q. I just had a couple of follow-up
10	Q. Did anybody on the committee or on your	10	questions.
11	staff indicate, we need to slow down? We need to	11	A. Okay.
12	slow this down, so that we can make this more	12	Q. Do you know of any changes in the North
13	accurate?	13	Side Canal Company that may have affected seepage
14	A. No. In fact, the contrary, there were	14	from the canal as it relates to maybe spring
15	people on the committee that said, we've been at	15	users?
16	this long enough, it's time that we begin to do	16	A. Yes and no. I don't recall what order
17 18	something about the problem. O So it was you that tried to slow it	17	it's in. But, you know, I did talk with Ted Diehl off and on over the years about what North
19	Q. So it was you that tried to slow it down then, or	19	Side was doing in terms of canal repairs and
20	A. No, I wouldn't say I tried to slow it	20	reducing leakage. And there was a period of time
21	down. I mean, I was interested in bringing it to	21	that they were particularly more aggressive in
22	completion. But I did not exert any, you know,	22	terms of trying to repair problem areas in the
23	top down pressure to get it done. You know, I	23	canal to reduce the amount of loss.
24	continued to participate. I continued to	24	And I mean to the point to where at one
25	encourage progress. But I didn't say, look,	25	juncture, I don't remember what the time period
	Page 360		Page 362
1	you've got until this date, and then we're going	1	was. But essentially, Ted Diehl expressed the
1 2	to go with it. We never did that.	2	belief that the actions in repairing the North
3	Q. The conclusion being in this order that	3	Side Canal reduced the water that was available
4	if all the wells were shut down, that the	4	to Munser and resulted in the Munser call. You
5	Thousand Springs to Malad Gorge Reach would only	5	know, I wasn't here then. I have no way of
6	get a five cfs increase?	6	knowing whether that's an accurate representation
7	A. Yes.	7	or not. But it is a representation that he made
8	Q. Was there ever any investigation done	8	at one point.
9	or research done to see how that five cfs would	9	In one of these orders, I made an
10	have impacted Rangen's facility and their ability	10	attempt to see if there was any correlation
11	to operate at a profit?	11	between the specific dates, at least in terms of
12	A. I don't remember what other diversions	12	years, that Ted Diehl identified as making
13	are in that reach. I don't recall that	13	significant repairs, and whether that correlated
14	Rangen I mean, my recollection is that Rangen	14	with any reduction in spring discharge. And, you
15	was not the only diversion. So unless Rangen	15	know, I don't recall if there was any I don't
16	made some agreement with other people not to	16	think there was any strong correlation, but there
17	divert the increased water supply available, Rangen would have gotten a very small portion of	17	was possibly is correlation. But that's as much as I recall about that.
18 19	that.	19	Q. And do you recall that it's in the
20	And, you know, we wouldn't that	20	orders, or it was just done as part of the
21	doesn't we normally would not look at the	21	analysis leading up to the orders?
22	financial aspects of whether that would really	22	A. No, I maybe my recollection is
23	make a difference. We stick to the water issues.	23	flawed. It could be. But I thought I put it in
24	And that five cfs spread among the reach and the	24	there, because I just almost can picture the
25		25	finding in my mind that set forth the dates
77 20%		02W39'0'3	

1 and but I don't remember anything more than 2 hat. C. It your order, is there any expectation 4 of when the water curtailed will appear in any Specific reach? 6 A. Yes. In these orders dealing with the 7 delivery calls from the spring users, we don't 8 But certainly the model simulations that were 9 But certainly the model simulations that were 9 subject of this current effort, but 1 believe 10 percent of this current effort, but 1 believe 11 feast would have involved transient results that 12 benefits that would occure. 13 year during the curtailment up to steady 14 that in the Surface Water Coalition order, there 15 benefits that would occure. 12 Do you know, generally, what the 13 generally guintor or generally sensor? 24 A. I don't recall what 25 specific question and had a – I don't recall what 26 A. I don't recall what 27 A. I don't creall what as 28 A. I don't recall what 29 A. I don't recall what		Page 363		Page 365
2 hat. Q. I trimk you testified earlier oday 3 Q. In your order, is there any expectation of when the water cutailed will appear in any specific reach? 2 Q. I trimk you testified earlier oday 4 of when the water cutailed will appear in any specific reach? 3 that a 90-percent conveyance loss would be considered wasteful, or you would consider it wasteful. Am I characterizing that correctly? 6 A. Yes. In these orders dealing with the roduld have involved transient results that would indicate how much water would accrue each is more of a description about the transient is object of this current effort, but I believe it man, it just depends on the facts that follow. 17 the subject of this current effort, but I believe it main the Surface Water Coalition order, there is more of a description about the transient is object of this current effort, but I believe it to the springs? But again, usually ou have to make it just depends on the facts that follow. 17 Do you know, generally, what the it springs? O hoy ou know, generally, what identified the band, the priority band of the most significant numbers of wells above the springs. And I just don't recall what identified the band, the priority band of the springs. And I just don't recall what this. 1 6 Q. And you don't recall what was it most significant numbers of wells above the springs. And I just don't recall what that is. 1 1 6 Q. And you don't recall what is. 2 1 1 1	1		1	
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4 of when the water curtailed will appear in any 5 5 specific reach? 6 6 A. Yes. In these orders dealing with the 7 7 delivery calls from the spring users, we don't 5 8 talk about the transient conditions directly. 6 9 But certainly the model simulations that were 9 10 used to simulate curtailment, uso to fhem at 10 11 least would have involved transient results that 10 12 would indicate how much water would accrue each 11 13 year during the curtailment up to steady 12 14 to mean of a description about the transient 13 15 However, and I know if's not the 16 16 is more of a description about the transient 16 19 benefits that would occur. 17 7 20 Q. Do you know, generally, what the 17 7 21 the springs? 20 A. If did at one time. I don't recall what 24 those are morandum. It probably wasn't a 20 A. If what? 24 the springs making the call.			1	
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25 was out of curiosity more than anything, as I [25 seniors. I think some, and probably I would be	2 3 4 5 6 7 8 9 10 11 12 13 14 15 16 17 18 19 20 21 22 23	 if it was a memorandum. It probably wasn't a memorandum. I got some documentation that identified the band, the priority band of the most significant numbers of wells above the springs. And I just don't recall what that is. Q. And you don't recall if they were generally junior or generally senior? A. I don't. I can't Q. And do you remember the person A. Senior to what; to the users? Q. To the springs making the call. A. I don't recall. Q. Do you remember the person that you asked to provide that documentation? A. It may have been Jeff Peppersack. And if not him, his predecessor, who I don't remember his name. Q. You would believe it still exists somewhere potentially, even though it was just A. Potentially, but I don't know, because it was never I don't think it was ever formalized into a memorandum that would have been 	2 3 4 5 6 7 8 9 10 11 12 13 14 15 16 17 18 9 20 21 22 23	 the junior call for the continuation of the less efficient method? A. Okay. What's confusing me there is the term "runoff." Normally I think of runoff as being snow melt. Q. Return flow. A. Return flow. Okay. Now, restate the question using "return flow." Q. Okay. If a junior relied upon the return flow that occurred prior to the improved deficiency, could they call for the less efficient method to continue? A. No. Q. Is there a parameter when looking at futile call, for example, where you would determine that the resources are being wasted if the delivery call was enforced? It's not the best question, but I think you get my meaning. A. Well, I'll go back to the example I used in somewhat hypothetical in a real setting. The Big Lost example where the juniors upstream could divert 100 cfs. And if they were curtailed
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1	Page 367		Page 369
	included, would tend to view enforcing that	1	released past Milner would be added to the Swan
2	delivery call a waste of the resource given that	2	Falls minimum.
3	90 percent of the water available and, again,	3	And the reason for that, is the
4	these are not hard numbers, they are fact	4	provision in the Swan Falls Agreement that
5	specific but 90 percent of the water that was	5	specifically identifies that any actions that
6	available wasn't used, and it was lost to the	6	Idaho Power undertakes to improve flows, are not
7	underlying aquifer system, and not re-diverted to	7	to be counted towards meeting the minimum flows.
8	wells or anything else for beneficial use.	8	And initially, when we started this,
9	So, you know, that wouldn't does it	9	when we had to make the determination of whether
10	rise to the level of waste? Maybe not. But it	10	the flow augmentation releases made by the Bureau
11	certainly would not be an optimal use of the	11	were in addition to the Swan Falls minimum, or
12	resource, which is one of the principles in the	12	whether they could be accounted for as meeting
13	prior appropriation system that we had.	13	the Swan Falls minimum. There was an agreement
14	Q. And is optimal use also a consideration	14	between the Bureau and Idaho Power for power
15	in the conjunctive administration between the	15	generation and shaping of Hells Canyon.
16	surface water and ground water users?	16	So we made that determination based on
17	A. Yes, it is.	17	that agreement. I don't know if any such
18	MS. McHUGH: Nothing further. Thank	18	agreement exists today. And if those flow
19	you.	19	augmentation releases continue to be whether
20	MR. RASSIER: I have just one question.	20	or not they are deemed to be actions of Idaho
21	EXAMINATION	21	Power that will be in addition to the Swan Falls
22	QUESTIONS BY MR. RASSIER:	22	minimum. I just don't know.
23	Q. Karl, you've been asked a lot of	23	But that's one area where things could
24	questions over the last two days and given a lot	24	have changed. And what the Department is doing
25	of responses. Are there any of your responses	25	in terms of accounting for those flows, and
	Page 368		Page 370
1	that you would like to clarify or change that you	1	whether they do or don't contribute to meeting
2	thought about?	2	the Swan Falls minimum, that's one area that
3	A. Well, I guess you always think further	3	possibly has changed.
4	about these things. But, of course, I've thought	4	Q. Are there any other areas?
5	quite long and hard for many years leading up to	5	A. You know, I guess if everybody started
6	all this.	6	over and asked their questions, I may answer them
7	But, you know, since even though	7	differently, but I would hope they wouldn't be
8	I've only been gone just slightly less than a	8	too different. So I can't think of anything.
	year, you know, things change. And, you know, I	9	MR. RASSIER: Thank you.
9	have not been involved, at least to date, in any	10	MD STEENSON: Wall given that I
9 10	•	1 - 0	MR. STEENSON: Well, given that, I
10 11	of the current deliberations regarding the Swan	11	think I'll start over.
10 11 12	of the current deliberations regarding the Swan Falls Agreement in light of Idaho Power's action	11 12	think I'll start over. FURTHER EXAMINATION
10 11 12 13	of the current deliberations regarding the Swan Falls Agreement in light of Idaho Power's action filing.	11 12 13	think I'll start over. FURTHER EXAMINATION QUESTIONS BY MR. STEENSON:
10 11 12 13 14	of the current deliberations regarding the Swan Falls Agreement in light of Idaho Power's action filing. And, you know, perhaps I should clarify	11 12 13 14	think I'll start over. FURTHER EXAMINATION QUESTIONS BY MR. STEENSON: Q. Karl, I just want to say for the
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	Page 371		Page 373
1	Parker versus Valentine? Are you familiar with	1	and asked for them to concur or not.
2	that case?	2	You know, in these kinds of positions,
3	A. Yes, I'm familiar with that. And in	3	you just don't put the Governor in a situation
4	part, it relates to that. But it's not in my	4	where he could be wrong. So likely, you know, on
5	view, that's not something that the Department	5	something like this, I would have put it out
6	has the authority to require. All we can do is	6	there as my position as the director of the
7	administer the water the best I mean, it's	7	Department. And then if there was criticism of
8	hard enough to do a good job at that for heaven's	8	it, the criticism would fall where it should, on
9	sake.	9	me.
10	But to the extent that parties reach	10	Q. As in this case, as a spokesman for the
11	agreement that certain actions will be taken as	11	Department of Water Resources? You are not
12	mitigation, and that certain other parties will	12	expressing your personal view on this matter?
13	pay for those actions, I think the Department can	13	A. No, it's not necessarily my personal
14	administer those agreements. And, in fact, is in	14	view. It was my view as Director of Water
15	a position of requiring curtailment in the event	15	Resources.
16	that those actions are not followed through on.	16	Q. And do you recall how this issue of the
17	Q. And could you turn to Exhibit No. 50.	17	Swan Falls Agreement was considered by the
18	A. (Witness complying.)	18	interim legislative committee that summer, the
19	Q. Are you familiar with that document?	19	same summer when this letter was written?
20	A. I must be. I signed it. But I'm	20	A. You know, what I remember from that
21	having to read through it quickly to catch the	21	summer was, I remember the interim committee
22	context. (Witness reading.)	22	taking it up, and I remember them convening a
23	Okay. I'm generally remembering this	23	panel of what was it Bob Bruce, and Jim
24	now.	24	Jones, and someone else I don't recall the
25	Q. Okay. Do you recall if you prepared	25	name offhand that had been involved in the
	Page 372		Page 374
1	Page 372	1	Page 374 Swan Falls Agreement
1	this by yourself, or whether you had assistance?	1	Swan Falls Agreement.
2	this by yourself, or whether you had assistance? A. I would have had some legal help on	2	Swan Falls Agreement. Q. Do you recall Tom Nelson's
2 3	this by yourself, or whether you had assistance? A. I would have had some legal help on this.	2 3	Swan Falls Agreement. Q. Do you recall Tom Nelson's presentation
2 3 4	this by yourself, or whether you had assistance?A. I would have had some legal help on this.Q. Do you recall from whom?	2 3 4	Swan Falls Agreement. Q. Do you recall Tom Nelson's presentation A. Yes, Tom Nelson.
2 3 4 5	this by yourself, or whether you had assistance?A. I would have had some legal help onthis.Q. Do you recall from whom?A. Well, certainly, would have input and	2 3 4 5	Swan Falls Agreement. Q. Do you recall Tom Nelson's presentation A. Yes, Tom Nelson. Q to the committee?
2 3 4 5 6	this by yourself, or whether you had assistance?A. I would have had some legal help onthis.Q. Do you recall from whom?A. Well, certainly, would have input andassistance from Phil. And I don't recall	2 3 4	 Swan Falls Agreement. Q. Do you recall Tom Nelson's presentation A. Yes, Tom Nelson. Q to the committee? A. I vaguely do, but maybe more of it will
2 3 4 5 6 7	this by yourself, or whether you had assistance?A. I would have had some legal help on this.Q. Do you recall from whom?A. Well, certainly, would have input and assistance from Phil. And I don't recall specifically, but undoubtedly, this sort of thing	2 3 4 5 6 7	 Swan Falls Agreement. Q. Do you recall Tom Nelson's presentation A. Yes, Tom Nelson. Q to the committee? A. I vaguely do, but maybe more of it will come back.
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2 3 4 5 6 7 8 9 10 11 12 13 14 15 16 17 18 9 20 21 22	 this by yourself, or whether you had assistance? A. I would have had some legal help on this. Q. Do you recall from whom? A. Well, certainly, would have input and assistance from Phil. And I don't recall specifically, but undoubtedly, this sort of thing would have at least been reviewed by Clive Strong. Q. And do you recall that you prepared this, at least in part, in response to Deposition Exhibit No. 51? A. Yes. Q. Okay. And the analysis and the opinions expressed in the letter, would you say that they represent your individual view, or the Department of Water Resources' views, or the views of the State of Idaho, with the executive branch? A. I would say that they represent my views at the time as the director of the Department of Water Resources, and certainly, 	2 3 4 5 6 7 8 9 10 11 12 13 14 15 16 17 18 19 20 21 22	 Swan Falls Agreement. Q. Do you recall Tom Nelson's presentation A. Yes, Tom Nelson. Q to the committee? A. I vaguely do, but maybe more of it will come back. Q. And do you recall that after Tom Nelson's presentation to the committee, the committee didn't take up this question of the impact of Swan Falls on Conjunctive Management Rules? A. That's my recollection. Q. On page 2 of this letter, in the last paragraph. In the mix of it are the following words, "Given the specificity with which the agreement was drafted, it is logical to conclude that the parties would have expressly included a provision stating that other surface water rights from the spring sources were also being subordinated by the agreement, this
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1	Page 375		Page 377
1	Do you recall that aspect of this	1	from Spronk Engineers, representing the ground
2	letter?	2	water interests.
3	A. Well, I'm reading it again now, and I	3	And from the very beginning, he always
4	vaguely recall it, yes.	4	wanted me to write a document defining how the
5	Q. In other words, the conclusion there is	5	model would be used. And I never would do that.
6	that the Swan Falls Agreement of subordination	6	My response was always: I want the flexibility
7	affects only applied to those who were party	7	to be able to use the model in any manner, and
8	to the agreement?	8	for any purpose for which it's deemed to be
9	A. I want to read the context of the	9	appropriate.
10	paragraph. (Witness reading.)	10	The reason I did that is, because had I
11	Okay. Now, could you restate what you	11	identified a particular set of purposes and
12	asked me?	12	let's say had I identified specifically
13	Q. Yes. Is the basic opinion being	13	administration of junior rights as being the
14	expressed here, that Swan Falls agreements	14	primary purpose of the model, I think that
15	subordination could not affect a nonparty to the	15	committee would still be meeting today trying to
16	agreement?	16	formulate the model.
17	A. I don't know that it goes that broad.	17	Because in my view, the ground water
18	You know, the State has some ability, it seems to	18	folks would have done everything they could have
19	me, to condition or affect certain aspects of the	19	to have delayed you know, and I don't mean
20	rights of entities that were not party to the	20	this critically. I mean, in their own interests,
21	agreement.	21	they would have, I think, sought the completion
22	Now, having said that, that, you	22	of the model such that there wouldn't be a basis
23	know that may cause issues, such as along the	23	for administration.
24	lines of regulatory takings to arise. Now, I'm	24	And, you know, I know that some I've
25	not saying this goes that far. But just to say	25	read the arguments to some extent, that some
	Page 376		Page 378
1	that it has no effect on parties, on entities	1	would say that the model isn't good enough
1 2	that it has no effect on parties, on entities that were not part of the agreement, I think	1 2	to for administration; therefore, you have the
]	to for administration; therefore, you have the decrees that say the sources are
2	that were not part of the agreement, I think that's probably too far the other way. Q. In any case, you have no reason to	2	to for administration; therefore, you have the decrees that say the sources are hydraulically-connected. That's sufficient. You
2 3 4 5	that were not part of the agreement, I think that's probably too far the other way.	2 3	to for administration; therefore, you have the decrees that say the sources are hydraulically-connected. That's sufficient. You know the priority dates. You administer all the
2 3 4 5 6	that were not part of the agreement, I thinkthat's probably too far the other way.Q. In any case, you have no reason tomodify the analysis concluded in this letter thatyou	2 3 4 5 6	to for administration; therefore, you have the decrees that say the sources are hydraulically-connected. That's sufficient. You know the priority dates. You administer all the rights as if they are from the same source.
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2 3 4 5 6 7 8 9 10 11 12 13 14 15 16 17 18 19 20 21 22	 that were not part of the agreement, I think that's probably too far the other way. Q. In any case, you have no reason to modify the analysis concluded in this letter that you A. Well, that was my I have not done any further analysis since that time. I mean, I have no reason I don't know anything different today that would cause me to modify that. Q. Okay. A. It doesn't mean that others might not seek to modify it or render it moot. Q. Okay. And with respect to the model that you mentioned, people on the committee of the model. The model was being developed, was it not, with the understanding that it would be used as a management tool; is it not? A. No. Q. What was the purpose that the people on the committee understood or agreed for purpose or purposes of a model? 	2 3 4 5 6 7 8 9 10 11 12 13 14 15 16 17 18 19 20 21 22	 to for administration; therefore, you have the decrees that say the sources are hydraulically-connected. That's sufficient. You know the priority dates. You administer all the rights as if they are from the same source. I think equally maybe not equally, but another likely or potential outcome of such a scenario, where you didn't have a model to use, would be a court determination that the Department does not have a sufficient basis to determine that curtailing somebody's real property rights will, in fact, be a benefit to those other real property rights that are more senior. So I maintained the most flexible approach that I could, in saying that the model could be used for anything for which it was deemed to be appropriate. And we are where we are. Q. There had nonetheless, been representations to the SRBA Court along the way,

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	Page 379		Page 381
1	model, so that it would have the ability to	1	written.
2	evaluate impacts for purposes of administration;	2	And essentially, what I did by issuing
3	isn't that right?	3	the orders in response to the delivery calls, is
4	A. That's correct. That is correct.	4	I essentially said, in this instance, the State
5	Q. And the purpose of the connected	5	has the burden to make the initial determination
6	sources general provisions was to establish the	6	of injury, not the senior. The seniors shouldn't
7	hydraulic connection between the aquifer and the	7	have to make it. He's got the senior right. And
8	springs. So that legal determination, that	8	the junior maybe shouldn't have to prove the
9	determination having coming come out of the SRBA	9	negative to start with. You know, I mean, the
10	would provide a basis for administration by the	10	State has the responsibility of protecting the
11	Department; is that correct?	11	senior rights when calls for water distributions
12	A. In part. You said to "define the	12	are made. And the State's also the entity that
13	hydraulic connection." I wouldn't say it that	13	authorizes the junior-priority appropriations.
14	way. I would say, the purpose was to identify	14	So, you know, my view now, and at the
15	that there was a connection. And I believe that	15	time that I wrote the orders is, that the State
16	from my view, the SRBA Court left the	16	ought to take the initial burden. And then if
17	determination of the extent of the connection,	17	either or both sides disagree with the
18	and the character of the connection, I believe	18	determinations that are made, then either or both
19	they left that to the discretion of the director	19	sides have the burden to rebut what was done.
20	of the Department.	20	I think that's what we're where
21	Q. Sure. And I don't have this as an	21	we're at today. Which is a little different than
22	exhibit. But since we're on this topic, I'm	22	the process I had in mind at the time I did this.
23	going to show you an August 15th, 2000 document	23	You are right, I mean, at the time that I did
24	called Director's Response to Opening the base	24	this, I was thinking of kind of a different
25	submitted in Basin 5 case.	25	approach having to use rebuttable, presumptive
	Page 380		Page 382
1	A. Okay.	1	depletions. Nobody liked that. I you know,
2	Q. And as you recall at that time, there	2	the ground water folks certainly didn't like it,
3	was an effort to develop more comprehensive water	3	and I don't think the surface water
4	management rules, and that effort was not	4	folks apparently, must have not thought it
5	ultimately seen to a conclusion. So in this	5	went far enough.
6	document where you describe using response zones	6	And the whole issue of trying to
7	to create or establish presumptive depletions in	1	negotiate comprehensive management rules is, you
8	the rules would not apply, of course, without	8	know and again, this is not criticism, but there was positioning and advocating going on
10	anything happening; right? A. Yes.	10	from the get go. And it seemed like the more we
11	Q. If I ask you to look at this discussion	11	attempted to come together, the farther apart we
12	under "Injury," on pages 10 to 14. And tell me	12	got. And it just didn't appear that there was a
13	if it doesn't basically describe the approach	13	broad enough will to work together to come up
14	that you've taken in the administration of the	14	with a set of rules that everybody would accept.
15	call that was made.	15	It's almost like entities didn't want
16	A. (Witness reading.) How far did you	16	to give up a position, until they knew whether
17	want me to read?	17	they had to give it up or not. And so it just in
18	Q. Just that section.	18	that climate, it was not possible to have
19	A. Just down to "Conclusion"?	19	achieved it. We turned our attention to other
20	Q. Yes.	20	aspects of preparing to deal with the problem:
21	A. Okay. You know, certain aspects of	21	Focusing on the reformulated re-calibrated ground
22	this discussion in this document, in general are	22	water model; getting about the business of
23	along the lines that we employ, but not all	23	creating water districts; making sure that the
1	•	10.	
24 24 25	aspects. For example, my thinking regarding burden of proof has evolved since this was	24 25	adjudication was moving forward towards completion.

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1	So I don't know I mean, in general,	1	Q. And there has come to be over the years
2	maybe parts of this are certainly consistent with	2	now, as it has been explained to the House and
3	what we've done. But I don't know that that	3	Senate committees and probably an expectation
4	outlines the approach that I took. You know,	4	within the state government, that the model would
5	Doug Grants' article is cited in here, and I	5	be used for administration; is that fair?
	certainly read that. I thought he did a good	6	A. I think that's fair. You know,
6		7	I it's not in response to a question that you
7	job from my perspective, he did a good job of		
8	identifying the areas that we were headed into.	8	asked. But I would offer that, you know, I can't recall the specific cite. There is a recent
9	Q. And so those rules weren't written to	9	•
10	themselves, establish a rebuttable presumptions	10	court case out of Colorado, where the court
11	that you did as you advised the court and parties	11	determined that the state engineer was correct in
12	in Basin No. 5 to proceed to use the model to	12	relying on a ground water model to make a
13	make determinations about, as you described here,	13	determination in the validity of the model, the
14	the extent of the connection?	14	adequacy of the calibration were all issues in
15	A. I did.	15	that litigation.
16	Q. Okay. And Doug Grants, as summarized	16	And the court, as I recall, found that
17	by you here, that if there were no clear	17	the state engineer was within his discretion to
18	hydraulic connection, then the burden would be on	18	use the model. And, in fact, it was not only the
19	the senior to establish the existing. But in the	19	best information available, but the only
20	adjudication, that hydraulic connection would be	20	information available that the state engineer had
21	established by the connected sources general	21	to use.
22	provision?	22	And in looking at that decision in the
23	A. But not the extent of it.	23	exhibits that were the evidence that was
24	Q. And not the extent. So that was as	24	presented regarding the calibration, it wasn't
25	Judge Burdick then Judge Burdick wrote in his	25	nearly as well calibrated as what we're using
	Page 384		Page 386
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1	_	1	
1	Basin Wide 5 and that would be attached in the	1	here.
2	Basin Wide 5 and that would be attached in the Department, the abilities to do the technical	2	here. Q. And certainly models that are complex
2 3	Basin Wide 5 and that would be attached in the Department, the abilities to do the technical work to establish the extent of the connection;	2 3	here. Q. And certainly models that are complex and require a number of assumptions or inputs of
2 3 4	Basin Wide 5 and that would be attached in the Department, the abilities to do the technical work to establish the extent of the connection; correct?	2 3 4	here. Q. And certainly models that are complex and require a number of assumptions or inputs of information, have been used in the water quality
2 3 4 5	Basin Wide 5 and that would be attached in the Department, the abilities to do the technical work to establish the extent of the connection; correct? A. I think that's correct, yes.	2 3 4 5	here. Q. And certainly models that are complex and require a number of assumptions or inputs of information, have been used in the water quality context for many years to manage water quality in
2 3 4 5 6	Basin Wide 5 and that would be attached in the Department, the abilities to do the technical work to establish the extent of the connection; correct?A. I think that's correct, yes.Q. Okay. Now, with respect to the model,	2 3 4 5 6	here. Q. And certainly models that are complex and require a number of assumptions or inputs of information, have been used in the water quality context for many years to manage water quality in the State of Idaho. And as you mentioned, the
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1 2 3 4	Rio Grande at Alamosa; is what the court says? THE WITNESS: Well, it's a decision	1	Q. Okay.
2 3 4			\mathbf{O} . Okay.
3 4	THE WITNESS. WER, It's a decision	2	A. And, again, that begins to show how
4	that has come out in the past year. It's fairly	3	complex this becomes. It just isn't simple that
- I	recent.	4	ground water levels go down, and spring discharge
5	MR. BROMLEY: Colorado Supreme Court?	5	go down. I mean, it looks like it ought to be,
6	THE WITNESS: No, district court.	6	but it isn't. Ground water levels could stay up
7	Q. (BY MR. STEENSON) Now, the model is	7	generally.
8	not required for us to know that the Eastern	8	And if you increase the gradient so
9	Snake Plain Aquifer is hydraulically-connected to	9	that there is less remaining elevation head at
10	the Thousand Springs, including the springs at	10	the springs, that's going to reduce spring
11	Blue Lakes Farms and leased water right?	11	discharge, even though the overall ground water
12	A. Well	12	levels may not have declined.
13	Q. I mean, just as a matter of fact, not	13	Q. Okay. With respect to your order page
14	as to the extent of the connection. Just the	14	2
15	extent there is a connection.	15	A. I don't remember what exhibit that was.
16	A. Well, the court has I mean, the	16	Q. It's Exhibit No. 11.
17	decrees have this provision that says there is.	17	A. (Witness complying.)
18	So as a matter of law, there is a hydraulic	18	Q. I'll read you the statement, and tell
19	connection.	19	me if you continue to agree with it. "With
20	Q. But even without the decrees, we can	20	parallel appropriations of ground water which
21	ascertain as a hydrologic fact, that the ESPA is	21	dramatically increased beginning in about 1950,
22	connected to the springs without needing to	22	ground water levels across the ESPA have
23	employ the model?	23	responded by declining in most locations that
24	A. Well, I wouldn't say, as a hydrologic	24	were level at preexisting conditions, exacerbated
25	fact. But as a fact, it's connected. But that	25	by the worst consecutive period of drought years
	Page 388		Page 390
1	doesn't replace the need to determine the extent.	1	on record for the Upper Snake River Basin. As a
2	Because I'll continue to assert, based upon the	2	result, spring discharges in the Thousand Springs
3	results from the model, that not all ground water	3	area have correspondingly declined based on the
4	diversions affect spring discharge.	4	USGS data, and is also shown on Attachment A."
5	Q. Sure. My next step or my next	5	Now, I know you discuss a lot of other
6	question was going to be a little different than	6	factors that affect these issues. But I assume
7	what you anticipated. But the next matter of	7	that you don't have any reason to modify that
8	that doesn't necessarily require employing a	8	observation?
9	model, is the understanding that activities that	9	A. No, but it's you know, when you
10	cause a water table to decline, will also cause	10	write something like this, you hope people don't
11 12	connected springs to decline as a general matter?	11 12	read it and say, it is just that, and just that alone.
13	A. I'm not sure I would say that that's necessarily true. It depends on what you mean by	13	Q. You didn't integrate that in the
14^{13}	"decline."	14^{13}	question?
15	Q. Let me ask the question this way,	15	A. No, I'm trying to clarify. I agree
16	because I'm short of time. Activities that	16	with the statement as written as a summary, or
17	affect aquifer levels affect connected springs?	17	kind of overall description of what's occurred.
18	A. Well, but it's not just what I'm	18	Q. That's all I'm asking. And then beyond
19	trying to get at, it's not just the levels. It's	19	that you use the model and whatever other tools
20	the grading. There is a fairly well, there is	20	and information you have available to you, to
21	a gradient in the ground water levels right above	21	further ascertain the relationship, to the extent
22	the springs. I mean, it's caused by the spring	22	you can, between seepage, recharge, pumping and
23	discharge, and in part, themselves. So it isn't	23	spring flows and spring water rights. That's
24	just the levels. It's also things that can	24	been the approach you've taken?
25	affect the gradient to influence discharge.	25	A. That's correct.

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1	Q. Now, the Blue Lakes' water rights	1	rights, just because that quantity is not always
2	having been established in the '70s, after the	2	available. That's what this finding is getting
3	peak in the incidental recharge to the aquifer,	3	at anyway.
4	is it possible that curtailing junior ground	4	Q. Okay. So is Blue Lakes then entitled
5	water rights, that, by definition, didn't exist	5	to a water supply as it existed at the time of
6	at the time of Blue Lakes' appropriation, could	6	appropriation?
7	enhance conditions beyond or better than those	7	A. No, I don't think so. And here's why:
8	that existed on the date of Blue Lakes	8	The water supply that was available at the time
9	appropriation?	9	of appropriation was in large part the result of
10		10	third parties, over which the State has no
	A. Just curtailing ground water rights?	11	control, nor do you.
11	Q. Yes.	12	
12	A. Okay. So the question is: Could just	1	And I've said publicly before, that if
13	curtailing ground water rights enhance the water	13	an error has been made by the State in allowing
14	availability at the springs beyond the time of	14	the appropriation of unappropriated water, it was
15	the appropriations of the early '70s?	15	not correctly characterizing the nature of that
16	Q. Right.	16	unappropriated water. That remains my position.
17	A. No. I would say, no.	17	So I don't think there is an
18	Q. Okay. Then looking at your order of	18	entitlement. I mean, the conditions were what
19	May 19th, 2005, again, Exhibit 11, page 11,	19	the conditions were when Blue Lakes appropriated
20	paragraph 50. And there is the statement that,	20	the water, and they are not necessarily entitled
21	we've gone over, past midway in the paragraph.	21	to an improvement of those conditions through
22	"Blue Lakes Trout is not entitled to a water	22	curtailment of junior rights. But you
23	supply that is enhanced beyond the conditions	23	can't it doesn't go the other way.
24	that exist at the time such rights were	24	Q. Okay. So I take it that the
25	established."	25	maximum that the decree defines, in your view, is
	Page 392		Page 394
1	Is the converse of that, Blue Lakes is	1	further defined by the conditions that existed at
2	entitled to a water supply that reflects	2	the time of the appropriation; is that correct?
3	conditions that existed at the time the rights	3	A. In part, I think that's correct.
4	were established?	4	Q. And that would then mean, in the
	A. Well, this relates to what Blue Lakes	5	context that we're discussing here, the seasonal
5		6	variation of flow that existed at the time of the
6	has a right to demand through curtailment. And, you know, what this finding was getting at, is	7	appropriation; is that correct?
7			
8	we've talked extensively not in obviously, not	8	A. That's correct.
9	in agreement about the seasonal variation in	9	Q. Okay. And that, as we've discussed
10	the spring discharge.	10	those flows that existed at the time of the
11	That seasonal variation exists today.	11	appropriation, are whatever they were, less than
12	It existed when the rights were appropriated,	12	the flows that existed in 2004; correct?
13	although we can't quantify the extent of the	13	A. Correct. But the but, again, some
14	variation, because we don't have the sufficient	14	magnitude of seasonal variation, probably not too
15	data to do it. But we know that at the time the	15	much unlike what exists today, existed at the
16	rights were appropriated, irrigation using	16	time of the appropriation.
17	surface water supply was done seasonally. That's	17	Q. Sure. Then is the effect of the order,
18	the overriding factor in the seasonal variation	18	where you conclude that Blue Lakes' water rights
19	in this observed spring discharge.	19	are satisfied with the flows that were present in
20	And so what this finding is trying to	20	2004, is the effect of that to limit Blue Lakes'
21	get at is that, although Blue Lakes has a right	21	water rights for purposes of administration to
22	to divert water up to the maximum authorized	22	the water supply that existed in 2004?
23	amount when it's available, it doesn't have the	23	A. No.
24	right to seek it doesn't automatically have	24	Q. Does it end up having the effect that
25	the right to seek curtailment of junior-priority	25	Blue Lakes is not entitled to a water supply
356.5	สารราชสุดสมชนที่ "ซอ" สุดที่สุดที่สุดสุด แต่จะสารสารราชสารสารราชการกับเมืองสารสารทำให้เสียงการเรื่องสารสารสารส สารราชสุดสารสาร	1 4 6 6 6 6 6	60 (Pages 391 to 394)
			00 (rayes 391 CO 394)

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	Page 395		Page 397
1	enhanced beyond the conditions that existed in	1	MS. McHUGH: We have it in on our disk,
2	2004?	2	the Blue Lakes, Thousand Springs.
3	A. No. Although I qualify the word	3	MR. STEENSON: Did you get a different
4	"entitlement." Again, when I say, no, I mean I'm	4	disk than I did?
5	referring to what I'm trying to define the	5	MS. McHUGH: Maybe.
6	term "entitlement," as authorization to divert.	6	MR. RASSIER: You got the same disk.
7	Q. Okay. So if I replaced in my prior	7	Q. (BY MR. STEENSON) At Blue Lakes, are
8	questions the word "entitlement" with the phrase	8	you aware that Blue Lakes' springs is up-gradient
9	"authorized to divert," would you have agreed	9	and separated by some distance from Alpheus Creek
10	with those statements in the prior questions?	10	where Blue Lakes
11	A. I don't know. I would have to go back	11	A. Yes.
12	to those prior questions. But at least in this	12	Q. Okay. So is any consideration made of
13	particular one	13	the fact that Blue Lakes would have no ownership
14	Q. Let me try it the way you would like me	14	interest in the springs to try to improve them,
15	to ask it then.	15	or through wells in the location where they
16	Does the order have the effect of	16	surfaced?
17	limiting the amount of water that Blue Lakes is	17	A. I'd have to look at the memo. But I
18	authorized to divert, or received by way of	18	don't think any of those types of activities were
19	curtailment, to the flows under its second	19 20	even suggested, because of the fact that Blue Lakes diverts out of Alpheus Creek, not directly
20	priority water right, to the flows existing in 2004?	20	from the springs. And the springs are on
21 22	A. No.	22	different property than is owned by Blue Lakes.
23	Q. Why not? It seems like it does to me.	23	Q. And does your May 19th, 2005 order
24	Because you are saying that the water right was	24	reflect acknowledgment that Blue Lakes diverts
25	satisfied in paragraph 64 by the flows existing	25	from Alpheus Creek, and not from springs?
	Page 396		Page 398
1	in 2004.	1	A. It diverts the order reflects that
2	A. Well, again, I'll go back to how	2	Blue Lakes diverts from Alpheus Creek, which is
3	I and I apologize for repeating it, but I	3	supplied by spring discharge.
4	would answer it the same way. What this		• O And spring discharges come from ESDA:
	finding this series of findings does 62 64	4	Q. And spring discharges come from ESPA;
5	finding this series of findings does, 63, 64	5	correct?
6	and 65, clearly the first right is not being	5 6	correct? A. Correct.
6 7	and 65, clearly the first right is not being injured, clearly the third right is. And it's	5 6 7	correct? A. Correct. Q. And some of that water from the ESPA
6 7 8	and 65, clearly the first right is not being injured, clearly the third right is. And it's not clear that the second right is.	5 6 7 8	correct? A. Correct. Q. And some of that water from the ESPA came from above ground sometime in history?
6 7 8 9	and 65, clearly the first right is not being injured, clearly the third right is. And it's not clear that the second right is. Q. Now, with respect to the investigation	5 6 7 8 9	correct? A. Correct. Q. And some of that water from the ESPA came from above ground sometime in history? A. Correct.
6 7 8 9 10	and 65, clearly the first right is not being injured, clearly the third right is. And it's not clear that the second right is.Q. Now, with respect to the investigation done by Cindy Yenter and Brian Patton at Clear	5 6 7 8 9 10	correct? A. Correct. Q. And some of that water from the ESPA came from above ground sometime in history? A. Correct. Q. And before that, who knows?
6 7 8 9 10 11	 and 65, clearly the first right is not being injured, clearly the third right is. And it's not clear that the second right is. Q. Now, with respect to the investigation done by Cindy Yenter and Brian Patton at Clear Springs that you discussed with John a little bit 	5 6 7 8 9 10 11	correct? A. Correct. Q. And some of that water from the ESPA came from above ground sometime in history? A. Correct. Q. And before that, who knows? A. Correct.
6 7 8 9 10 11 12	 and 65, clearly the first right is not being injured, clearly the third right is. And it's not clear that the second right is. Q. Now, with respect to the investigation done by Cindy Yenter and Brian Patton at Clear Springs that you discussed with John a little bit ago, did they conduct the same kind of 	5 6 7 8 9 10	 correct? A. Correct. Q. And some of that water from the ESPA came from above ground sometime in history? A. Correct. Q. And before that, who knows? A. Correct. Q. And along the course of this process of
6 7 8 9 10 11 12 13	 and 65, clearly the first right is not being injured, clearly the third right is. And it's not clear that the second right is. Q. Now, with respect to the investigation done by Cindy Yenter and Brian Patton at Clear Springs that you discussed with John a little bit 	5 6 7 8 9 10 11 12	 correct? A. Correct. Q. And some of that water from the ESPA came from above ground sometime in history? A. Correct. Q. And before that, who knows? A. Correct. Q. And along the course of this process of conductive administration, and all the work
6 7 8 9 10 11 12	 and 65, clearly the first right is not being injured, clearly the third right is. And it's not clear that the second right is. Q. Now, with respect to the investigation done by Cindy Yenter and Brian Patton at Clear Springs that you discussed with John a little bit ago, did they conduct the same kind of investigation at the Blue Lakes? A. Yes. 	5 6 7 8 9 10 11 12 13	 correct? A. Correct. Q. And some of that water from the ESPA came from above ground sometime in history? A. Correct. Q. And before that, who knows? A. Correct. Q. And along the course of this process of conductive administration, and all the work you've done, has there been discussion of concern
6 7 8 9 10 11 12 13 14	 and 65, clearly the first right is not being injured, clearly the third right is. And it's not clear that the second right is. Q. Now, with respect to the investigation done by Cindy Yenter and Brian Patton at Clear Springs that you discussed with John a little bit ago, did they conduct the same kind of investigation at the Blue Lakes? A. Yes. Q. So they would have been seeking the 	5 6 7 8 9 10 11 12 13 14	 correct? A. Correct. Q. And some of that water from the ESPA came from above ground sometime in history? A. Correct. Q. And before that, who knows? A. Correct. Q. And along the course of this process of conductive administration, and all the work
6 7 8 9 10 11 12 13 14 15	 and 65, clearly the first right is not being injured, clearly the third right is. And it's not clear that the second right is. Q. Now, with respect to the investigation done by Cindy Yenter and Brian Patton at Clear Springs that you discussed with John a little bit ago, did they conduct the same kind of investigation at the Blue Lakes? A. Yes. 	5 6 7 8 9 10 11 12 13 14 15	 correct? A. Correct. Q. And some of that water from the ESPA came from above ground sometime in history? A. Correct. Q. And before that, who knows? A. Correct. Q. And along the course of this process of conductive administration, and all the work you've done, has there been discussion of concern about the Thousand Springs, what's happening to
6 7 8 9 10 11 12 13 14 15 16	 and 65, clearly the first right is not being injured, clearly the third right is. And it's not clear that the second right is. Q. Now, with respect to the investigation done by Cindy Yenter and Brian Patton at Clear Springs that you discussed with John a little bit ago, did they conduct the same kind of investigation at the Blue Lakes? A. Yes. Q. So they would have been seeking the same information and asking the same questions, 	5 6 7 8 9 10 11 12 13 14 15 16	 correct? A. Correct. Q. And some of that water from the ESPA came from above ground sometime in history? A. Correct. Q. And before that, who knows? A. Correct. Q. And along the course of this process of conductive administration, and all the work you've done, has there been discussion of concern about the Thousand Springs, what's happening to the Thousand Springs as the ESPA declines as a
6 7 8 9 10 11 12 13 14 15 16 17	 and 65, clearly the first right is not being injured, clearly the third right is. And it's not clear that the second right is. Q. Now, with respect to the investigation done by Cindy Yenter and Brian Patton at Clear Springs that you discussed with John a little bit ago, did they conduct the same kind of investigation at the Blue Lakes? A. Yes. Q. So they would have been seeking the same information and asking the same questions, basically, at Blue Lakes? 	5 6 7 8 9 10 11 12 13 14 15 16 17	 correct? A. Correct. Q. And some of that water from the ESPA came from above ground sometime in history? A. Correct. Q. And before that, who knows? A. Correct. Q. And along the course of this process of conductive administration, and all the work you've done, has there been discussion of concern about the Thousand Springs, what's happening to the Thousand Springs as the ESPA declines as a loss of a state resource, not as any particular
6 7 8 9 10 11 12 13 14 15 16 17 18	 and 65, clearly the first right is not being injured, clearly the third right is. And it's not clear that the second right is. Q. Now, with respect to the investigation done by Cindy Yenter and Brian Patton at Clear Springs that you discussed with John a little bit ago, did they conduct the same kind of investigation at the Blue Lakes? A. Yes. Q. So they would have been seeking the same information and asking the same questions, basically, at Blue Lakes? A. Yes. A. Yes. And in all cases, Blue Lakes, 	5 6 7 8 9 10 11 12 13 14 15 16 17 18	 correct? A. Correct. Q. And some of that water from the ESPA came from above ground sometime in history? A. Correct. Q. And before that, who knows? A. Correct. Q. And along the course of this process of conductive administration, and all the work you've done, has there been discussion of concern about the Thousand Springs, what's happening to the Thousand Springs as the ESPA declines as a loss of a state resource, not as any particular individual water right, that Thousand Springs is a State concern? A. Yes.
6 7 8 9 10 11 12 13 14 15 16 17 18 19	 and 65, clearly the first right is not being injured, clearly the third right is. And it's not clear that the second right is. Q. Now, with respect to the investigation done by Cindy Yenter and Brian Patton at Clear Springs that you discussed with John a little bit ago, did they conduct the same kind of investigation at the Blue Lakes? A. Yes. Q. So they would have been seeking the same information and asking the same questions, basically, at Blue Lakes? A. Yes. And in all cases, Blue Lakes, Clear Springs, Rangen, there is a memorandum to 	5 6 7 8 9 10 11 12 13 14 15 16 17 18 19 20 21	 correct? A. Correct. Q. And some of that water from the ESPA came from above ground sometime in history? A. Correct. Q. And before that, who knows? A. Correct. Q. And along the course of this process of conductive administration, and all the work you've done, has there been discussion of concern about the Thousand Springs, what's happening to the Thousand Springs as the ESPA declines as a loss of a state resource, not as any particular individual water right, that Thousand Springs is a State concern? A. Yes. Q. Summarize that discussion for me.
6 7 8 9 10 11 12 13 14 15 16 17 18 19 20 21 22	 and 65, clearly the first right is not being injured, clearly the third right is. And it's not clear that the second right is. Q. Now, with respect to the investigation done by Cindy Yenter and Brian Patton at Clear Springs that you discussed with John a little bit ago, did they conduct the same kind of investigation at the Blue Lakes? A. Yes. Q. So they would have been seeking the same information and asking the same questions, basically, at Blue Lakes? A. Yes. And in all cases, Blue Lakes, Clear Springs, Rangen, there is a memorandum to me that they prepared documenting the investigation, and their findings, and their recommendations. 	5 6 7 8 9 10 11 12 13 14 15 16 17 18 19 20 21 22	 correct? A. Correct. Q. And some of that water from the ESPA came from above ground sometime in history? A. Correct. Q. And before that, who knows? A. Correct. Q. And along the course of this process of conductive administration, and all the work you've done, has there been discussion of concern about the Thousand Springs, what's happening to the Thousand Springs as the ESPA declines as a loss of a state resource, not as any particular individual water right, that Thousand Springs is a State concern? A. Yes. Q. Summarize that discussion for me. A. Well, it's not like there was a single
6 7 8 9 10 11 12 13 14 15 16 17 18 9 20 21 22 23	 and 65, clearly the first right is not being injured, clearly the third right is. And it's not clear that the second right is. Q. Now, with respect to the investigation done by Cindy Yenter and Brian Patton at Clear Springs that you discussed with John a little bit ago, did they conduct the same kind of investigation at the Blue Lakes? A. Yes. Q. So they would have been seeking the same information and asking the same questions, basically, at Blue Lakes? A. Yes. And in all cases, Blue Lakes, Clear Springs, Rangen, there is a memorandum to me that they prepared documenting the investigation, and their findings, and their recommendations. MR. STEENSON: Is that memorandum a 	5 6 7 8 9 10 11 12 13 14 15 16 17 18 19 20 21 22 23	 correct? A. Correct. Q. And some of that water from the ESPA came from above ground sometime in history? A. Correct. Q. And before that, who knows? A. Correct. Q. And along the course of this process of conductive administration, and all the work you've done, has there been discussion of concern about the Thousand Springs, what's happening to the Thousand Springs as the ESPA declines as a loss of a state resource, not as any particular individual water right, that Thousand Springs is a State concern? A. Yes. Q. Summarize that discussion for me. A. Well, it's not like there was a single discussion. It's been a topic that's been in the
6 7 8 9 10 11 12 13 14 15 16 17 18 19 20 21 22 23 24	 and 65, clearly the first right is not being injured, clearly the third right is. And it's not clear that the second right is. Q. Now, with respect to the investigation done by Cindy Yenter and Brian Patton at Clear Springs that you discussed with John a little bit ago, did they conduct the same kind of investigation at the Blue Lakes? A. Yes. Q. So they would have been seeking the same information and asking the same questions, basically, at Blue Lakes? A. Yes. And in all cases, Blue Lakes, Clear Springs, Rangen, there is a memorandum to me that they prepared documenting the investigation, and their findings, and their recommendations. MR. STEENSON: Is that memorandum a part of the record; do you know, Phil? 	5 6 7 8 9 10 11 12 13 14 15 16 17 18 19 20 21 22 23 24	 correct? A. Correct. Q. And some of that water from the ESPA came from above ground sometime in history? A. Correct. Q. And before that, who knows? A. Correct. Q. And along the course of this process of conductive administration, and all the work you've done, has there been discussion of concern about the Thousand Springs, what's happening to the Thousand Springs as the ESPA declines as a loss of a state resource, not as any particular individual water right, that Thousand Springs is a State concern? A. Yes. Q. Summarize that discussion for me. A. Well, it's not like there was a single discussions from the beginning.
6 7 8 9 10 11 12 13 14 15 16 17 18 19 20 21 22 23	 and 65, clearly the first right is not being injured, clearly the third right is. And it's not clear that the second right is. Q. Now, with respect to the investigation done by Cindy Yenter and Brian Patton at Clear Springs that you discussed with John a little bit ago, did they conduct the same kind of investigation at the Blue Lakes? A. Yes. Q. So they would have been seeking the same information and asking the same questions, basically, at Blue Lakes? A. Yes. And in all cases, Blue Lakes, Clear Springs, Rangen, there is a memorandum to me that they prepared documenting the investigation, and their findings, and their recommendations. MR. STEENSON: Is that memorandum a 	5 6 7 8 9 10 11 12 13 14 15 16 17 18 19 20 21 22 23	 correct? A. Correct. Q. And some of that water from the ESPA came from above ground sometime in history? A. Correct. Q. And before that, who knows? A. Correct. Q. And along the course of this process of conductive administration, and all the work you've done, has there been discussion of concern about the Thousand Springs, what's happening to the Thousand Springs as the ESPA declines as a loss of a state resource, not as any particular individual water right, that Thousand Springs is a State concern? A. Yes. Q. Summarize that discussion for me. A. Well, it's not like there was a single discussion. It's been a topic that's been in the

61 (Pages 395 to 398)

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Page 399		Page 401
summarize the concern, rather than the discussion	1	measurements of and it was a comprehensive
you had?	2	effort to measure the discharge from all the
A. Well, the concern is, I think simply	3	discrete springs that they flow.
that you know, it's not simple. But the	4	In the spring reach that we define, and
concern is that the springs have provided all	5	in which the Blue Lakes all right there is
sorts of opportunities for people to use and	6	the springs supplying Alpheus Creek in the reach
enjoy. And whether those uses are economic,	7	in which those springs lie, those springs account
	8	for 20 percent of the measured discharge. So the
	9	assumption is that 20 percent of any improvement
		is estimated to accrue to Blue Lakes.
	1	MS. McHUGH: Thank you.
		(Deposition concluded at 2:53 p.m.)
		(Signature requested.)
e ,	[
	1	
	22	
	23	
reflected in the discussion or discussions in the	24	
concern you've just described, is a factor to be	25	
Page 400		Page 402
considered in the optimum development of the	1	CERTIFICATE OF WITNESS
	2	I, KARL J. DREHER, P.E., VOL. II, being
A. Yes.	3	first duly sworn, depose and say:
MR. STEENSON: Thank you, Karl. I	4	That I am the witness named in the foregoing
appreciate it. I know you have to go. And I'm	5	deposition, Volume II, consisting of pages 158
done.	6	through 402; that I have read said deposition and
-	7	know the contents thereof; that the questions
	8	contained therein were propounded to me; and that
		the answers contained therein are true and
		correct, except for any changes that I may have
		listed on the Change Sheet attached hereto:
		DATED this day of, 200
1 2		KARL J. DREHER, P.E., VOL. II
ONCHARGE TO THE SDITTLY THAT SUDDITES BILLE LAKES		KANL J. DILLIER, F.E., VUL. II
	116	
or the spring that supplies Clear Springs, how	16 17	SUBSCRIBED AND SWORN to before me this
or the spring that supplies Clear Springs, how much increase they will see as a result?	17	SUBSCRIBED AND SWORN to before me this
or the spring that supplies Clear Springs, how much increase they will see as a result? A. Well, you can do as I did in the order,	17 18	SUBSCRIBED AND SWORN to before me this day of, 200
or the spring that supplies Clear Springs, how much increase they will see as a result? A. Well, you can do as I did in the order, and estimate the increase that's likely based	17 18 19	
or the spring that supplies Clear Springs, how much increase they will see as a result? A. Well, you can do as I did in the order, and estimate the increase that's likely based upon the increase that occurs to the spring	17 18 19 20	day of, 200
or the spring that supplies Clear Springs, how much increase they will see as a result? A. Well, you can do as I did in the order, and estimate the increase that's likely based upon the increase that occurs to the spring reach, and the proportion that a particular	17 18 19	
or the spring that supplies Clear Springs, how much increase they will see as a result? A. Well, you can do as I did in the order, and estimate the increase that's likely based upon the increase that occurs to the spring	17 18 19 20 21	day of, 200
or the spring that supplies Clear Springs, how much increase they will see as a result? A. Well, you can do as I did in the order, and estimate the increase that's likely based upon the increase that occurs to the spring reach, and the proportion that a particular spring contributed historically to the discharge	17 18 19 20 21 22	day of, 200
	summarize the concern, rather than the discussion you had? A. Well, the concern is, I think simply that you know, it's not simple. But the concern is that the springs have provided all sorts of opportunities for people to use and enjoy. And whether those uses are economic, whether they are aesthetic, whether they are recreational, and we're struggling to maintain that. But it's worth maintaining it if we can find a way to do it. I think that summarizes the discussion. And the question has always been: What can we do? How much can we do? What's it going to cost? Who pays? And how much is enough? How much of trying to get you know, it gets back to the goals and the objectives that we all struggled with on the straw man proposal. What's going to be the measure of success? Is it stabilization? Is it reversing the declines? And if so, how much. Q. Do you think the value of the springs for their aesthetic and recreational purposes, as reflected in the discussion or discussions in the concern you've just described, is a factor to be Page 400 considered in the optimum development of the Water Resources of the State? A. Yes. MR. STEENSON: Thank you, Karl. I appreciate it. I know you have to go. And I'm done. THE WITNESS: Okay. FURTHER EXAMINATION QUESTIONS BY MS. McHUGH: Q. Can I ask a point of clarification, and just one quick question? I may not have heard you on Dan's question about the model. And just ask it simply: Can the model predict with any specificity an increase in the amount of discharge to the spring that supplies Blue Lakes,	summarize the concern, rather than the discussion you had? A. Well, the concern is, I think simply that you know, it's not simple. But the concern is that the springs have provided all sorts of opportunities for people to use and enjoy. And whether those uses are economic, whether they are aesthetic, whether they are recreational, and we're struggling to maintain that. But it's worth maintaining it if we can find a way to do it. I think that summarizes the discussion. And the question has always been: What can we do? How much can we do? What's it going to cost? Who pays? And how much is enough? How much of trying to get you know, it gets back to the goals and the objectives that we all struggled with on the straw man proposal. What's going to be the measure of success? Is it stabilization? Is it reversing the declines? And if so, how much. Q. Do you think the value of the springs for their aesthetic and recreational purposes, as reflected in the discussion or discussions in the concern you've just described, is a factor to be Page 400 considered in the optimum development of the Water Resources of the State? A. Yes. MR. STEENSON: Thank you, Karl. I appreciate it. I know you have to go. And I'm done. THE WITNESS: Okay. FURTHER EXAMINATION 8 QUESTIONS BY MS. McHUGH: 9 Q. Can I ask a point of clarification, and just one quick question? I may not have heard you on Dan's question about the model. And just ask it simply: Can the model predict with any specificity an increase in the amount of discharge to the spring that supplies Blue Lakes, 15

	Page 403	
1	ERRATA SHEET FOR KARL J. DREHER, P.E., VOL. II	
	Page Line Reason for Change	
3	Reads Should Read	
4	Page Line Reason for Change	
5	ReadsShould Read	
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	Page Line Reason for Change Reads	
8 9	ReadsShould Read	
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16 17	Page Line Reason for Change	
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20	Page Line Reason for Change Reads Should Read	
21	Should Read	
22	Page Line Reason for Change Reads	
23	Should Read	
24 25	You may use another sheet if you need more room. WITNESS SIGNATURE	
	Page 404	
1	REPORTER'S CERTIFICATE	
2	I, COLLEEN P. KLINE, CSR No. 345, Certified	
3	Shorthand Reporter, certify:	
4	That the foregoing proceedings were taken	
5	before me at the time and place therein set	
6	forth, at which time the witness was put under	
7	oath by me;	
8	That the testimony and all objections made	
9	were recorded stenographically by me and	
10 11	transcribed by me or under my direction; That the foregoing is a true and correct	
12	record of all testimony given, to the best of my	
13	ability;	
14	I further certify that I am not a relative	
15	or employee of any attorney or party, nor am I	
16	financially interested in the action.	
17	IN WITNESS WHEREOF, I set my hand and seal	
18	this 8th day of November, 2007.	
19		
20	COLLEEN D VI NE CSD	
21 22	COLLEEN P. KLINE, CSR Notary Public	
23	P.O. Box 2636	
24	Boise, Idaho 83701-2636	
25	My commission expires September 17, 2011	
93040	ELERAN BERADALA ALTAR PERDEUTAAN MANTAPARTIKA DATA LAMAT KUTUK ULU TAUTUK DE ATAR TAUTUK ULU.	63 (Pages 403 to 404)

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