



BEFORE THE DEPARTMENT OF WATER RESOURCES
OF THE STATE OF IDAHO

IN THE MATTER OF BASIN 37) DOCKET No.
ADMINISTRATIVE PROCEEDING) AA-WRA-2021-001
_____)

VOLUME III
(Pages 413-750)

BEFORE

HEARING OFFICER: GARY SPACKMAN

Date: June 9, 2021 - 9:08 a.m.

Location: Idaho Department of Water Resources
322 East Front Street
Boise, Idaho

REPORTED BY:

BEVERLY A. BENJAMIN, CSR 710

Notary Public

1 APPEARANCES:

2
3 For the South Valley Ground Water District:

4 BARKER ROSHOLT & SIMPSON, LLP

5 BY MR. ALBERT P. BARKER

6 MR. TRAVIS L. THOMPSON

7 163 Second Avenue West

8 Post Office Box 2139

9 Twin Falls, Idaho 83301

10 apb@idahowaters.com

11 tlt@idahowaters.com

12 For Galena Ground Water District:

13 LAWSON LASKI CLARK, PLLC

14 BY MR. JAMES R. LASKI

15 MS. HEATHER E. O'LEARY

16 Post Office Box 3310

17 Ketchum, Idaho 83340-3310

18 jrl@lawsonlaski.com

19 heo@lawsonlaski.com

20 For Big Wood Canal Company:

21 FLETCHER LAW OFFICE

22 BY MR. W. KENT FLETCHER

23 Post Office Box 248

24 Burley, Idaho 83318

25 wkf@pmt.org

1 APPEARANCES (Continued):

2
3 For Big Wood and Little Wood Water Users Association:

4 RIGBY, ANDRUS & RIGBY, CHARTERED

5 BY MR. JERRY R. RIGBY

6 MR. CHASE T. HENDRICKS

7 25 North Second East

8 Rexburg, Idaho 83440

9 irigbv@rex-law.com

10 chendricks@rex-law.com

11 For Idaho Department of Fish and Game:

12 OFFICE OF ATTORNEY GENERAL

13 BY MS. ANN VONDE

14 Post Office Box 83720

15 Boise, Idaho 83720-0010

16 ann.vonde@ag.idaho.gov

17 For Sun Valley Company:

18 MCHUGH BROMLEY, PLLC

19 BY MR. CHRIS M. BROMLEY

20 MS. CANDICE M. MCHUGH

21 380 S. 4th Street, Suite 103

22 Boise, Idaho 83702

23 cbromley@mchughbromley.com

24 cmchugh@mchughbromley.com

25 ///

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15
16
17
18
19
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23
24
25

APPEARANCES (Continued):

For City of Hailey:

GIVENS PURSLEY LLP
BY MR. MICHAEL P. LAWRENCE
601 West Bannock Street
Boise, Idaho 83702
mpl@givenspursley.com

For Idaho Power Company:

BARKER, ROSHOLT & SIMPSON LLP
BY MR. JOHN K. SIMPSON
1010 West Jefferson, Suite 102
Post Office Box 2139
Boise, Idaho 83701-2139
jks@idahowaters.com

For Idaho Department of Water Resources:

OFFICE OF ATTORNEY GENERAL
IDAHO DEPARTMENT OF WATER RESOURCES
BY MS. MEGHAN CARTER
MR. GARRICK BAXTER
322 East Front Street
Boise, Idaho 83720
meghan.carter@idwr.idaho.gov
garrick.baxter@idwr.idaho.gov

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23
24
25

APPEARANCES (Continued):

For City of Ketchum:

WHITE, PETERSON, GIGRAY & NICHOLS, P.A.

BY MR. BRIAN T. O'BANNON

5700 East Franklin Road, Suite 200

Nampa, Idaho 83687-7901

bobannon@whitepeterson.com

For Sun Valley Water and Sewer District, Eccles Window
Rock Ranch LLC, and Picabo Livestock, Inc.:

ROBERTSON & SLETTE PLLC

BY MR. J. EVAN ROBERTSON

Post Office Box 1906

Twin Falls, Idaho 83303

erobertson@rsidaholaw.com

Also Present:

Megan Jenkins, IDWR Staff

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1 THE HEARING OFFICER: We are on the record.

2 We have a new court reporter. I think Beverly
3 has probably introduced herself to everyone. Welcome.
4 I hope you find this to be interesting.

5 Okay. We recessed yesterday afternoon and
6 allowed people some time to talk. Do I need to ask for
7 any kind of update or do we just launch?

8 MR. RIGBY: Well, Mr. Director, I just want to
9 say, we do appreciate that time and we recognize it was
10 many giving up their time for us to attempt to resolve
11 this and it was done in good faith. We spent many
12 hours, but we have not come to a conclusion yet. For
13 that reason, we cannot hold this up any further;
14 therefore, we suggest we proceed.

15 THE HEARING OFFICER: Is there a need for more
16 time for discussions?

17 MR. RIGBY: I don't believe so at this moment.
18 There would have to be something that occurs that has
19 not yet occurred. Until that happens, we wouldn't be
20 able to go anywhere. If that happens, perhaps we could
21 take a break.

22 THE HEARING OFFICER: Okay. All right. Thank
23 you.

24 Any other statements? Certainly I don't need
25 or want to know the details of negotiations, but thanks

1 for the update.

2 So given that statement then, this is day 3,
3 and the date is June 9, 2021. We will continue with the
4 testimony then today in this contested matter. I think
5 we are at a juncture now, either Mr. Rigby or
6 Mr. Fletcher, where you in group 1 would start calling
7 witnesses.

8 MR. RIGBY: That's correct.

9 THE HEARING OFFICER: So --

10 MS. CARTER: Director --

11 MR. RIGBY: I understand -- go ahead.

12 MS. CARTER: One matter before we get started.
13 I have a corrected memo for Jennifer Sukow, and
14 circulated it to the parties yesterday. Let me know
15 when you want me to bring her up to get it admitted into
16 the record.

17 THE HEARING OFFICER: Have the parties had
18 time to review this document? I'm assuming it's a
19 corrected document that replaces the table that was
20 incorrect in the first document that was received into
21 evidence.

22 MS. CARTER: Yes.

23 THE HEARING OFFICER: So how do you want to
24 approach this? Do we want to move to substitute this
25 exhibit or withdraw the old exhibit, substitute this one

1 in?

2 MS. CARTER: Yes. I would like to just
3 substitute this so that the record is not confused.

4 THE HEARING OFFICER: Any objection from the
5 parties?

6 Okay. The new document that is marked -- and
7 is it Exhibit 3 still? Is that the correct number?

8 MS. CARTER: Yes -- no, it's Exhibit 2.

9 THE HEARING OFFICER: So the document that was
10 marked as Exhibit 2 previously is withdrawn, and the
11 document that Ms. Carter has distributed to the parties
12 and has been reviewed will be substituted in place. It
13 will still be numbered as IDWR Exhibit 2; is that
14 correct, Ms. Carter?

15 MS. CARTER: Yes.

16 THE HEARING OFFICER: Thank you.

17 (Corrected copy of IDWR Exhibit 2 received.)

18 MR. BROMLEY: Can we get an electronic copy of
19 that?

20 MS. CARTER: Yes, I'll send that out.

21 THE HEARING OFFICER: Any other preliminary
22 matters?

23 MR. FLETCHER: Mr. Director, I sent out an
24 email this morning. We had sent out a proposed list of
25 order of our witnesses to the opposing counsel so they

1 would have some knowledge. Because of the changes
2 resulting from yesterday's schedule, we're going to be
3 calling Carl Pendleton probably right after lunch. For
4 those that may not have received the email, I just
5 wanted to make sure they're aware of that.

6 THE HEARING OFFICER: Thank you, Mr. Fletcher.

7 Mr. Rigby, before we start, I think there's
8 been some confusion, and I'm not sure the reason for it,
9 but there were a number of individuals who filed with
10 the Department a notice of intent to participate, and
11 then I think they were consolidated under your
12 representation. I think there has been a little
13 confusion about which of those parties or people you're
14 representing.

15 Could you just read for the record before we
16 start who you are representing today.

17 MR. RIGBY: Absolutely.

18 THE HEARING OFFICER: Thank you.

19 MR. RIGBY: To begin with, there were other
20 parties -- well, let me read these and then I'll explain
21 that there are three parties that will not be
22 participating today, although they are still parties,
23 and move to the third party that we discussed the other
24 day.

25 The ones that are in I guess classification 1

1 are Fred Brossy of Barbara Farms, Rod Hubsmith, John
2 Arkoosh, Alton -- I'm saying it wrong -- it's Huyser, of
3 Big Wood Farms, Carl Legg, Chuck Newell, Don Taber.
4 Those are the farmer parties that we represent.

5 THE HEARING OFFICER: Okay. And then the
6 other three you also represent them but only as group 3
7 participants?

8 MR. RIGBY: Correct. That's Nick Westendorf,
9 Sabala Farms, Mr. Sabala, and David Hults.

10 THE HEARING OFFICER: Thank you, Mr. Rigby.
11 Okay. If we don't have anything else to
12 present this morning as a preliminary matter, Mr. Rigby,
13 you may call your first witness.

14 MR. RIGBY: Very good. We would call -- oh,
15 preliminarily, because of the large exhibit binder that
16 I'm using, is it okay that I sit here? I do have the
17 mic here. I've asked whether or not my voice is loud
18 enough to be carried. Is there a problem? The problem
19 with that is that it's so small.

20 THE HEARING OFFICER: I'm okay with your being
21 seated.

22 MR. RIGBY: As our first witness we would call
23 Fred Brossy, please.

24 THE HEARING OFFICER: Mr. Brossy, if you'd
25 come forward, please.

1 FREDERIC A. BROSSY, III,
2 having been called as a witness by the Big Wood &
3 Little Wood Water Users Association and first duly
4 sworn, testified as follows:

5

6 DIRECT EXAMINATION

7 BY MR. RIGBY:

8 Q. Good morning, Fred.

9 A. Good morning, Counsel.

10 Q. Would you please state your full name and
11 current address for the record.

12 A. My name is Frederic A. Brossy, III, and I
13 reside at -- which address do you want; physical or
14 mailing?

15 Q. Let's go physical.

16 A. 365 Bryant Road, Shoshone, Idaho 83352.

17 Q. Are you a party to this proceeding?

18 A. Yes, I am.

19 Q. Do you own some entities that are actually the
20 farming entities from which you'll be testifying?

21 A. Yes, I do.

22 Q. Would you name those entities, please.

23 A. The entity that owns the land and the water is
24 Barbara Farms, LLC, and the entity of which I am the
25 managing member and the entity which farms the land is

1 Ernie's Organics, LLC, of which I'm also a managing
2 member.

3 Q. What's your current occupation?

4 A. Farmer.

5 Q. Would you mind briefly giving the history of
6 your education.

7 A. Well, I got a bachelor's degree in
8 agroecology, and I've been farming for about 50 years
9 now.

10 Q. So if I were to ask you your work experience
11 then other than farming for 50 years, anything else?

12 A. Well, I did a lot of stuff before that but I
13 don't remember.

14 Q. Okay. Let's talk about your farming
15 experience on the lands that are I guess subject to this
16 particular proceeding.

17 A. I've managed Barbara Farms since 1983;
18 initially for 20 years for the previous owner, and since
19 2005, my wife and I purchased it and I manage it as the
20 owner.

21 Q. Are you a member of what is known as Big Wood
22 & Little Wood Water Users Association?

23 A. Yes, I am.

24 Q. Just to make it clear, we won't have every
25 witness testify to this, but would you explain what that

1 association is basically all about.

2 A. Yes. In 2014, after the short water year of
3 2013, where we found it difficult to find substitute
4 water when decrees were curtailed, those of us in that
5 association along the Little Wood River formed that
6 association to be able to rent water as a block from
7 Eastern Idaho, and then be able to share it amongst
8 ourselves so that we would have an adequate water
9 supply.

10 Q. So the association itself owns no water as
11 such; correct?

12 A. Excuse me, may I correct that, Counsel? I
13 confused the two groups. That Big & Little Wood River
14 Water Users is an association that was formed to make
15 the first delivery call 2015. The one I just referred
16 to is another association that was formed to rent water.
17 I apologize.

18 Q. Okay. So this association, is it correct to
19 say, that it's just an association of you individual
20 parties and farmers in a way to get together and have
21 one voice?

22 A. That is correct.

23 Q. So it doesn't own any water.

24 A. That is correct.

25 Q. It's not a party to this action other than

1 it's being used as the name of which to signify that the
2 individual parties are members of that organization. Is
3 that a good way to say it?

4 A. That is correct.

5 Q. Very good.

6 Are you, in filing this, being a party of this
7 action, are you familiar with the description of what
8 they call the Bellevue Triangle?

9 A. Yes, I am.

10 Q. As far as the Director's order and requirement
11 that this be members that are out of the Little Wood and
12 the Silver Creek drainage area, are you one of those?
13 Do you divert from the Little Wood/Silver Spring [sic]
14 drainage?

15 A. Yes, I do divert out of Silver Creek/Little
16 Wood River.

17 Q. In front of you are the exhibits for everyone
18 but if we open it up to what we have named as Barbara
19 Exhibits, can you see that the tab is Barbara and then
20 it goes Exhibit 1, 2, 3, and so on?

21 A. Yes.

22 Q. Would you turn to Exhibit 2, please. It would
23 be Barbara Exhibit 2.

24 A. Yes.

25 Q. And what is that?

1 A. That is a water right report, which I presume
2 was issued at the end of the Snake River Basin
3 Adjudication to describe water rights that we own at
4 Barbara Farms.

5 Q. And I believe it purports to be Water Right
6 37-59D; is that correct?

7 A. That is the first one, yes.

8 Q. Of the priority date of what?

9 A. 5/27/1899.

10 Q. For the amount of how many cfs?

11 A. .38 cfs.

12 Q. Is this your water right?

13 A. Yes, it is.

14 Q. By "yours," when I say "yours," I'm referring
15 to you and/or your entity Barbara Farms; is that
16 correct?

17 A. That is correct.

18 Q. Where do you actually divert this water right
19 from?

20 A. This water right is diverted from the
21 four points of diversion located throughout our farm.

22 Q. And for lack of better words, this water right
23 has been referred to as the Cottonwood right; is that
24 correct?

25 A. That is correct.

1 Q. I think it's already been explained in
2 previous testimony as to what the Cottonwood right is.
3 I don't think I need to get into that.

4 But as far as your particular location of the
5 diversion of that right, is that represented by Exhibit
6 No. 3, it would be Barbara Exhibit 3?

7 A. Yes, I believe that would be the yellow shape
8 there would be our property.

9 Q. The reason for the multiple diversions is that
10 this is, because it's the Cottonwood right, it's a
11 rediversion right, that's why there's several
12 diversions. Is that your understanding?

13 A. That is correct.

14 Q. Thank you.

15 For the purposes of this particular hearing
16 and any claims that you would be making as to the impact
17 to this, is this water right significantly involved or
18 not significantly involved?

19 A. From my perspective, no.

20 Q. So although you own this right, it's not
21 significant to this particular proceeding right now.

22 A. That is correct.

23 MR. RIGBY: I'd move for the admission of
24 Barbara Exhibit 2 and 3, only to show the water rights
25 as we go through them.

1 THE HEARING OFFICER: Any objection to
2 admission of this document?

3 MR. BROMLEY: Objection for the record,
4 Director. And I don't have exhibit numbers on the
5 electronic copies that were given to me, but Water Right
6 37-59D is a source of Big Wood River. Mr. Brossy was
7 testifying about Little Wood rights, and the four
8 corners of the decree in plain language and source says
9 Big Wood River, which is not Little Wood or Silver
10 Creek. So I would object to admission of this document
11 other than it is what it is. But it's not within the
12 scope of your proceeding.

13 THE HEARING OFFICER: Any other objections?

14 MR. THOMPSON: I'll join in that for the same
15 purpose.

16 THE HEARING OFFICER: I will overrule the
17 objection, but also state that the significance of these
18 exhibits are I guess diminished because they are
19 outside, as Mr. Brossy has stated, outside the scope of
20 and the boundaries of this hearing, except that they do
21 at least describe, as best as I can determine, the total
22 water supply on this particular farm. So at least for
23 that purpose I'll let it come in.

24 So Exhibits 2 and -- did you just move for 2
25 or --

1 MR. RIGBY: 2 and 3.

2 THE HEARING OFFICER: -- they are received
3 into evidence with the qualifications I've stated.

4 (Barbara Exhibits 2 and 3 received.)

5 MR. RIGBY: Mr. Director, for the future of
6 the other witnesses, some of which also own these
7 rights, and I know we're starting with Mr. Brossy who
8 was cutting the first swath at this, it would be the
9 same issue. We're only doing it for exactly what you
10 indicated, which is the total water supply, not
11 representing that any of these rights are to be used for
12 the purpose of this hearing and showing any injury.

13 THE HEARING OFFICER: Okay.

14 MR. BROMLEY: Mr. Rigby, by "these rights,"
15 you mean 37-59 with suffixes, just so that we're clear?

16 MR. RIGBY: What are known as the Cottonwood
17 rights.

18 MR. BROMLEY: My understanding of those is
19 they're numbered 37-59 with an alpha suffix.

20 MR. RIGBY: Without looking at all of those, I
21 can't say you're right. You probably are, but I'll look
22 at those as we go through them.

23 But my point is, is that any Cottonwood rights
24 would have the same issue of starting in Big Wood, going
25 through the slough, and then coming into the Little

1 Wood.

2 MR. BROMLEY: Okay.

3 MR. RIGBY: For this hearing today, we're not
4 purporting, other than to show what the Director
5 indicated, the total water supply.

6 MR. BROMLEY: Thank you.

7 MR. THOMPSON: I'll stipulate that for all
8 those rights. All the Cottonwood rights of any
9 witnesses, I'll stipulate to that same purpose.

10 MR. RIGBY: So that's why I've got that one as
11 No. 1 because I wanted to make sure we got through that
12 issue.

13 Q. (BY MR. RIGBY) I'd have you refer then to the
14 Barbara Exhibit No. 4 and explain what that is, Fred.

15 A. That's Water Right 37-344A, and that has a
16 priority date of 4/6/1883, for a diversion rate of 4
17 cfs.

18 Q. And again, is this owned by Barbara Farms?

19 A. Yes, it is.

20 Q. If you'll refer to Barbara No. 5, what does
21 that purport to be?

22 A. Exhibit 5 is a shapefile issued by or prepared
23 by the Department of Water Resources to described the
24 allowed places of use for that water right.

25 Q. In your opinion, does that accurately describe

1 the places of use of Water Right 344A?

2 A. Yes, it does.

3 Q. And as well as the points of diversion?

4 A. Yes, that is correct as well.

5 Q. Just for the Director's sake in making sure he
6 understands what appears to be a stream or river running
7 through there, would you identify that?

8 A. That is called the Little Wood River.

9 Q. You are downstream, if you will, of the
10 Triangle?

11 A. Yes, we are.

12 Q. Very good.

13 MR. RIGBY: I move for admission of Barbara
14 Exhibit 4 and 5, Mr. Director.

15 THE HEARING OFFICER: Any objection to the
16 admission of these documents?

17 Hearing none, the documents marked as Barbara
18 Exhibit 4 and 5 are received into evidence.

19 (Barbara Exhibits 4 and 5 received.)

20 Q. (BY MR. RIGBY) Fred, would you turn to
21 Barbara Exhibit No. 6, please.

22 A. Yes.

23 Q. What is that?

24 A. That is Water Right Report for Water Right
25 37-973, which is a 2 cfs diversion for the Little Wood

1 River, also a priority date of 4/1/1884, also owned by
2 Barbara Farms, LLC.

3 Q. Barbara Exhibit No. 7 appears to be place of
4 use which is identical to No. 5; is that correct?

5 A. That is correct.

6 Q. So these water rights are used, both water
7 rights are used on the identical lands, are they?

8 A. That is correct.

9 MR. RIGBY: I'd move for the admission of
10 Barbara Exhibits 6 and 7, Mr. Director.

11 THE HEARING OFFICER: Any objection to the
12 admission of these documents?

13 Hearing none, the documents marked as
14 Exhibit 6 and 7 are received into evidence.

15 (Barbara Exhibits 6 and 7 received.)

16 Q. (BY MR. RIGBY) Fred, I'm going to ask you the
17 familiarity you might have with the diversion of these
18 water rights. And the question I am asking you is: How
19 long have you been working with these particular water
20 rights and diverting them on the lands of the exhibits?

21 A. Since the 1984 irrigation season.

22 Q. At that time you did not own the land;
23 correct?

24 A. That is correct; I managed it for the previous
25 owner.

1 Q. Have there been any significant changes in
2 place of use of those lands since you first worked with
3 these water rights?

4 A. I would characterize that as not significant.
5 There have been a few acres here and there that have
6 changed due to pivot installations. And I would qualify
7 that with saying that when I took over that farm there
8 were only 280 acres actually irrigated at that time.
9 Now we're pushing 300 just due to changes here and
10 there. But the water rights were allowed for 300 acres.

11 Q. Do you have any supplemental water, especially
12 let's talk about, first of all, through an exchange
13 agreement, what they call the 161 condition?

14 A. No, I do not have the 161 exchange water.

15 Q. Do you lease any supplemental water?

16 A. For the 2021 irrigation season I have rented
17 from the City of Shoshone 100 shares of AFRD #2 water.
18 So you could characterize that as supplemental water for
19 this season only.

20 Q. What was your reasoning for leasing this water
21 this year?

22 A. Well, we leased it last year to utilize
23 amongst any users on the river who were short. I didn't
24 actually use it myself last year. Then it was offered
25 to us again and I didn't hesitate because in January it

1 was already looking a little bit scary so...

2 Q. Do your water rights that you have indicated
3 here sufficiently water your lands in a normal snowpack
4 season?

5 A. Yes.

6 Q. This particular year without the supplemental
7 rights would your water rights sufficiently water your
8 lands?

9 A. No.

10 Q. Let's talk about the crops that you're growing
11 on your lands. What are you growing this particular
12 year?

13 A. I have 21 acres of organic processing
14 potatoes, 65 acres of organic garden bean seed, 20 acres
15 of organic pinto beans, 60 acres of barley, 75 acres of
16 alfalfa, and various other small acreages of seed crops.

17 Q. Due to the decision to rent supplemental water
18 this year, did you change what you otherwise would have
19 planted for this season?

20 A. Well, we elected to grow barley rather than
21 corn because finishing corn is sketchy. We also cut
22 back our dry bean acreage from our normal dry bean
23 acreage.

24 Q. Even with your supplemental water that you
25 rented, knowing the use of water for your land, are you

1 confident that you will have sufficient water to fully
2 irrigate your crops?

3 A. No. We're in the process of trying to secure
4 water from District 1 to make up for the shortfalls in
5 decreed water.

6 Q. These shortfalls, in your opinion, will they
7 be injurious to the full growth of your crops?

8 A. Yes, they will, especially if we can't find
9 any more supplemental, any more water to get by with.

10 Q. In your experience, numerous years of working
11 on these lands, have you seen any historical changes in
12 the available flows in the Lost River [sic] under your
13 water rights?

14 A. Yes, we have.

15 Q. Describe what you have seen personally.

16 A. Increasingly we are unable to utilize all our
17 water rights year in, year out because there have been
18 more years of curtailment, or priority cut I guess is
19 the correct term. And we since 2013 have leased
20 seasonal water I guess in six of those years, six of the
21 years since 2013 to make up for that.

22 Q. Have you attempted to change watering
23 practices to conserve water?

24 A. Definitely so. We started in 1984 with all
25 open ditch irrigation, gradually installing sprinklers

1 and gated pipe to make it more efficient, and then
2 starting in 1998 installing pivots. Just last night at
3 dark we just finished firing up an emergency pipeline to
4 replace 2,100 feet of ditch from our headgate to some of
5 our irrigated lands. We're continually trying to make
6 it better.

7 Q. So as far as loss is concerned, how would you
8 categorize your loss of water now compared to what you
9 had before? "Loss" meaning not getting to the actual
10 plant.

11 A. Could you rephrase the question, Counsel.

12 Q. My question is, that from diverting from the
13 river to the plant there's obviously some seepage that
14 occurs in ditches and otherwise. My question to you is:
15 What have you done to -- and you've testified a little
16 bit as to what you've done to make sure that you're not
17 having the loss. Can you categorize what kind of loss
18 you believe you are now having from the diversion of the
19 river to the plant?

20 A. Well, it's the loss is decreasing as we install
21 more efficient systems but I would have a hard time
22 categorizing that with a number. I'm hoping that this
23 pipeline we just got going will significantly reduce the
24 amount of water that those lands that it serves require
25 but it remains to be seen. We'll have to work with it

1 for a few weeks, if we have the water to do that, and
2 see what the flows are versus what they've been.

3 Q. Now, you're involved in this matter. Are you
4 taking the position that the lower stream flows in the
5 Little Wood are a result of any pumping upstream?

6 A. Yes. Yes, I am.

7 Q. Clearly there are other reasons for reduced
8 flows, i.e., the weather, as you indicated, looking at
9 it this spring; correct?

10 A. That is correct.

11 Q. You can't do anything about the weather. The
12 question is, and I guess are you here because you're
13 asking for a curtailment of lands within the Triangle?

14 A. Yes.

15 May I clarify that, Counsel?

16 Q. Certainly.

17 A. I would add to that, curtailment of rights
18 junior to our rights.

19 Q. So are you asking then that the administration
20 of this be done in priority regardless of surface or
21 groundwater?

22 A. That is correct.

23 Q. Now, you're no hydrologist; correct?

24 A. That is also correct.

25 Q. Why do you believe that the pumping in the

1 Triangle impacts the flows that pass your place, and
2 therefore, affect your priorities?

3 A. Well, over all the years I've been on that
4 particular farm, we've seen from time to time when pumps
5 have been shut off, surface flows in Silver Creek have
6 come back quite rapidly. So we know there's a
7 connection. You don't need to be a hydrologist to know
8 that.

9 I would also add that I farmed in the Triangle
10 when I was a young man, and I saw the other end of this
11 situation. So I have firsthand experience with that as
12 well.

13 Q. So how soon thereafter when wells are shut off
14 in the Triangle do you see it, noticeably see an
15 increase in flows in the Lemhi [sic]?

16 A. In the Little Wood River.

17 Q. I'm sorry.

18 MR. THOMPSON: We'll stipulate it happened in
19 the Lemhi. (Laughter.)

20 MR. RIGBY: That's what I get for being in too
21 many basins.

22 Q. (BY MR. RIGBY) In the Little Wood. Sorry.

23 A. Well, I can't specifically pin that down to
24 exactly how many days, but within days we have seen
25 folks come back, particularly last August, there was an

1 incident where that occurred.

2 Q. What do you mean? What occurred?

3 A. Well, that flow at Station 10 on the Little
4 Wood above Richfield was down to 7 feet. The
5 watermaster was quite alarmed and he was able to get a
6 few wells voluntarily shut off, and within a week the
7 flow in the river was back to I believe 35 or 40 cfs.

8 Q. You were personally involved with that and saw
9 that occur?

10 A. Well, I was communicating with the
11 watermaster. He was keeping me apprised of what was
12 going on.

13 Q. Is it a fact that you and others on the Little
14 Wood, your diversions are controlled by the watermaster;
15 is that correct?

16 A. That is correct.

17 Q. That would be Kevin Lakey?

18 A. That is correct.

19 Q. Do you believe that in any way you are
20 overwatering your plants, or in essence what is known as
21 wasting water?

22 A. I do not believe that.

23 Q. Have you attempted to determine what injuries
24 you are sustaining to your crops?

25 A. Well, several weeks ago in preparation for

1 this proceeding, we attempted to analyze what the lack
2 of decreed water would do to what crops, and I have
3 submitted that as a --

4 Q. An exhibit?

5 A. A projection of injury, which I hope is in
6 here.

7 Q. Yes. So if you'll turn to Barbara Exhibit 1,
8 please. Was this sheet produced by you or at least in
9 connection with the data you provided?

10 A. Yes, it was.

11 Q. Without getting into too much detail but
12 obviously making certain that it's understood what
13 you're attempting to do, why don't you start with the
14 first line and explain what each of the numbers are and
15 where you obtained those numbers, please.

16 A. Okay. If I may I'd like to preface this with,
17 we started with the fullest of our crops, then we looked
18 at what water we knew we had available, i.e., 66 inches
19 of American Falls District #2, that we rented from the
20 City of Shoshone. And it was clear to us with the value
21 of the processing potatoes and the garden seed beans, it
22 made sense to prioritize the irrigation of those. So we
23 calculated that that 66 inches would water the potatoes
24 and a portion of the garden bean seed acreage. So we
25 dropped them off the list. So this is the crops that we

1 project to be short based on the only water being
2 available, that would be that 66 inches.

3 Q. Let me stop you there. Since you've created
4 this chart, have the conditions actually gotten better
5 or worse on the Lemhi?

6 A. You better be careful, Counsel, it's the
7 Little Wood.

8 Q. On the Little Wood.

9 A. I actually think they have gotten a hair
10 better because today I believe is the 9th of June and I
11 do not think that 4/1/84 will go off until tomorrow. It
12 survived June 5th. That was partly because there was a
13 rain event and Magic Reservoir shut off for a week, and
14 that changed the dynamic on the Little Wood River.
15 However, I still anticipate, per our conversation with
16 the watermaster this morning, that the 4/6/83 could be
17 off as early as the 15th of June. So I think the
18 situation is ostensibly the same as I projected here.

19 Q. So continuing on then, that's the crops you
20 have discussed.

21 A. Okay. So what I listed were the crops that
22 I'm growing, the acreage of those crops. I projected
23 the days of water needed per last irrigation, projected
24 cutoff date per Kevin Lakey as of I believe it was 5/21
25 when we got this information to prepare this, calculated

1 days of shortfall, put in yield targets based on our
2 contracts for these crops.

3 Q. Let me stop you there. How accurate is that
4 target? By that I'm asking: Do you have historical
5 contracts that would indicate that you have met those
6 targets?

7 A. I have been doing this for a long time and I
8 have lots of contract information. I don't always meet
9 the target but I'm counting on meeting it if at all
10 possible.

11 Q. So when you don't meet it, is it close or is
12 this typically high?

13 A. No, this is a reasonable target. I would
14 suggest that in farming nothing is ever right on the
15 money so...

16 Q. Understood.

17 Okay. Continue on.

18 A. So that was how I came up with the projected
19 loss. And then I just did the value of the crop based
20 on the loss yield. And in the case of new seeding
21 alfalfa that we would like to plant in August, there's
22 some loss carryforward into 2022 as well.

23 Q. Explain that. Why is that? So in other
24 words, you have a column, the second-to-the-last column
25 would be your projected loss for 2021 and then you have

1 in your last column a projected loss for 2022.

2 A. That is correct.

3 Q. So explain your 2022.

4 A. If we can't plant those acreages of alfalfa
5 this season, get them established so they're ready for a
6 full season of harvest in '22, we'll lose a couple
7 cuttings' worth of harvest while we're establishing it
8 next spring. That's what that's for.

9 Q. That would be the same for your winter wheat?

10 A. Well, the winter wheat actually --

11 Q. Would still be seeding new alfalfa.

12 A. Yes, that's the intention, behind the barley
13 and the winter wheat.

14 Q. And again, the last column, which is the
15 organic green crop, again, seeding alfalfa?

16 A. Yeah. It's the same scenario, yes.

17 Q. So it purports to say on your Barbara
18 Exhibit 1 that you would project your projected revenue
19 loss for 2021 as being \$222,000; is that correct?

20 A. That is correct, because we considered the
21 purchase of extra water to be an injury as well.

22 Q. Have you obtained that water yet?

23 A. Yeah, we're about to start using it.

24 Q. I shouldn't say "obtained." Actually diverted
25 the water yet.

1 A. I don't believe we've needed to divert it. I
2 think we've been staying within our 300 inches of
3 decrees thus far. But as I say, I believe that changes
4 either in the morning or the next day.

5 Q. So with your supplemental or what water you've
6 been able to acquire by lease, did I understand your
7 testimony to say that you're still looking for extra
8 because you don't believe this will be sufficient?

9 A. That is correct. We are trying to make sure
10 we can replace a portion of the decrees with Snake River
11 water from District 1. That's our intention.

12 MR. RIGBY: Just a moment.

13 I have no further questions.

14 THE HEARING OFFICER: Thank you, Mr. Rigby.

15 Mr. Fletcher, do you have questions?

16 MR. RIGBY: Okay. Thank you. Yes. I would
17 move for the admission of Barbara Exhibit 1 as testified
18 to by Mr. Brossy.

19 THE HEARING OFFICER: Any objection to the
20 admission of this document?

21 Hearing none, the document marked as Barbara
22 Exhibit 1 is received into evidence.

23 (Barbara Exhibit 1 received.)

24 THE HEARING OFFICER: Thank you, Mr. Rigby.

25 Mr. Fletcher.

1 DIRECT EXAMINATION

2 QUESTIONS BY MR. FLETCHER:

3 Q. I just wanted to touch base on this rental
4 water. The water you rented is, you said you rented it
5 from Shoshone, the City of Shoshone?

6 A. Yes, I did.

7 Q. And it cost you \$3,300 to rent that?

8 A. For the season, yes.

9 Q. For this year?

10 A. Yes.

11 Q. That's an additional cost to your operation;
12 correct?

13 A. Yes, it is.

14 Q. If you're able to acquire additional water
15 that you've been looking at, have you been quoted a
16 potential price for that water?

17 A. Yes. We have looked at, as I mentioned,
18 trying to replace all told about two-thirds of our
19 water. So we would be replacing the 400 inches of '83
20 less 66 we've already obtained from AFRD #2, and that
21 has been quoted to us delivered with the wheeling fees,
22 et cetera, at about \$75 an acre-foot. And we are
23 looking to purchase 400 acre-feet if we can get it.

24 And as I say, that's not full replacement.
25 It's just to do a better job of making some of these

1 crops happen. We also are hoping to get some AFRD water
2 from a neighbor to finish the season because that 400
3 acre-feet won't last through -- that will only get us
4 through July; it won't get us into August.

5 Q. So if you were able to rent additional water,
6 that would be an additional cost to your operation;
7 correct?

8 A. Yes, it would; a significant cost.

9 Q. The reason you're renting this water is
10 because your 1883 and 1884 priority rights in the Little
11 Wood are being curtailed within the next week?

12 A. The '84s within this week and the '83s next
13 week, as far as I know.

14 MR. FLETCHER: Thank you. I have no further
15 questions.

16 THE HEARING OFFICER: Thank you, Mr. Fletcher.
17 Mr. Barker or Mr. Thompson.

18

19 CROSS-EXAMINATION

20 BY MR. THOMPSON:

21 Q. Good morning, Mr. Brossy.

22 A. How are you, Mr. Thompson?

23 Q. Travis Thompson for the South Valley Ground
24 Water District.

25 I don't know why Jerry chose you first. Are

1 you first string or the first wave of infantry for this
2 matter?

3 So going back to your questioning with Mr. --
4 MR. RIGBY: He asked the same question,
5 Counsel.

6 THE WITNESS: I pointed out that B is after A
7 but Arkooshes didn't go first.

8 Q. (BY MR. THOMPSON) Going back to your
9 questioning with Mr. Rigby. It's true that you are
10 requesting conjunctive administration of junior
11 groundwater rights this year?

12 A. No. We're requesting administration of water
13 within Basin 37 in priority. I believe there's a
14 distinction.

15 Q. Okay. But you recall our deposition a couple
16 weeks ago; is that correct?

17 A. I do recall our deposition a couple weeks ago.
18 And I did not, at that time, understand the distinction
19 between those two phrases.

20 Q. Okay. So you are or are not requesting
21 conjunctive administration?

22 A. I am not requesting conjunctive administration
23 at this time.

24 Q. That's a little different than your answer you
25 gave a couple weeks ago. Would you agree?

1 A. I just admitted that. I now understand more
2 fully the terminology.

3 Q. So as far as surface water right
4 administration, that's happened on your farm ever since
5 you started in 1983?

6 A. That's correct.

7 Q. You haven't had to request that specifically,
8 have you?

9 A. No. And I might add, we shouldn't have to
10 request it of any water right.

11 Q. You are claiming injury or adverse effect to
12 your senior rights caused by junior groundwater pumping;
13 is that true?

14 A. Yes, I am.

15 Q. But you have not identified which specific
16 groundwater rights are causing that injury. Do you
17 agree?

18 A. No, I have not.

19 Q. Your Exhibit 1 which you were just talking
20 about, that's an estimate of your potential injury to
21 your farming operations this year?

22 A. Yes, it is.

23 Q. But you have not identified how much of that
24 injury is due to groundwater pumping alone. Do you
25 agree?

1 A. That's true.

2 Q. We talked about different water conditions.

3 You agree that water conditions vary year to year?

4 A. Yes, I do.

5 Q. And that shortfalls to a water supply are a
6 year-by-year evaluation?

7 A. Yes.

8 Q. Have you made cropping decisions based upon
9 anticipated low water supplies?

10 A. Yes. As I pointed out in earlier questioning,
11 we chose not to grow corn or as many acres of beans
12 based on potentially shorter water season.

13 Q. That decision was made last winter?

14 A. It was made during the course of the winter,
15 yes.

16 Q. As far as your method of your irrigation, you
17 have all sprinklers and pivots; is that correct?

18 A. No. We have I believe approximately 75 acres
19 of surface irrigation.

20 Q. That's the gated pipe?

21 A. Yes, sir.

22 Q. Thank you.

23 Your water from the river is all diverted into
24 pipelines?

25 A. It is as of last night at dark.

1 Q. You talked about your potential losses. You
2 don't have any conveyance losses from the river to the
3 point of application?

4 A. Hopefully not. Historically yes.

5 Q. Would you agree that your only loss in your
6 operation is from the spill out of your pivot ponds?
7 Water that is not used directly on the crop?

8 A. No, I don't think I would agree with that
9 because I think there are other unknown advance losses
10 that I can't explain. Nobody has been able to explain
11 them to me.

12 Q. But the one you can explain are those spills
13 out of those ponds; is that correct?

14 A. That is correct.

15 Q. That water goes back into the Little Wood
16 River?

17 A. Yes, it does.

18 Q. But it's not measured?

19 A. No, it's not measured.

20 Q. So you don't have a good estimate of what
21 those losses might be on an annual basis?

22 A. I really don't. There's no way to measure
23 them.

24 Q. As far as your crop water need, you have not
25 come up with a total annual volume for crop; is that

1 correct?

2 A. Per crop or per farm? Or I'm not clear.

3 Q. I would say for your whole farm.

4 A. No, I have not.

5 Q. Can you help me understand your crop table a
6 little bit more on Exhibit 1. I have a specific
7 question as to Water Right 37-973. Do you see that
8 column, those rows?

9 A. Yes, I do.

10 Q. Does that table mean that you are only using
11 that Water Right 37-973 on the, I count 88 acres of
12 alfalfa green chop, rye green chop?

13 A. No, that is not exactly what we intended in
14 this table. What we were trying to show was that
15 because that water right will be cut before the '83
16 water, that would be the crop that would be sacrificed
17 first.

18 Q. So from the point that the '84 right is
19 curtailed, you don't anticipate using your '83 water on
20 that crop the rest of the year?

21 A. Probably not because it's not going to last
22 much longer.

23 Q. So is it probably not or you won't?

24 A. I would stick with probably not. If there was
25 an opportunity because we were wet on something else and

1 there was a day or two we could water hay, we would sure
2 try.

3 Q. You talked about other potential rentals if
4 you were able to secure additional rental water. Would
5 that be a circumstance when that '83 water might be used
6 on that crop?

7 A. Well, I would characterize it as we don't
8 anticipate getting this rental water before the '84 is
9 off. So if we have the rental water in time to replace
10 the '83 we'll be lucky. So I don't think that's exactly
11 accurate.

12 Q. So the priority did not get curtailed on
13 June 5th; is that correct?

14 A. Of the 4/1/84?

15 Q. Yes.

16 A. That is correct.

17 Q. So would that change the days of supply
18 shortfall in that other column?

19 A. Yes, it would change them, the amount of days
20 between June 5th and whenever that priority is cut in
21 the next several days.

22 Q. Up to this point, have you diverted the '83
23 right onto those acres?

24 A. Well, that's not an answerable question. We
25 divert water as needed at whatever diversion serves

1 whatever crop as it's needed. So there's no distinction
2 between '83 and '84 until the '84 is gone.

3 Q. That helps. I just wanted to confirm that you
4 don't have a dedicated point of delivery from the river
5 for your '84 right, it's all combined; is that correct?

6 A. That is correct.

7 Q. So the remaining acres identified under your
8 '83 right, that's about 280 acres; is that correct? If
9 you subtract the 88 acres we were just talking about.
10 Or 270, it's in that neighborhood.

11 A. I don't make that distinction so I don't know
12 how to answer that question.

13 Q. Looking down at the columns that you discussed
14 about the rented water from Shoshone, the AFRD #2 water,
15 did you use any of that Little Wood water on those
16 acres?

17 A. Again, the question doesn't really make sense
18 to me. But we combine all the water we have available
19 to get the job done as it's in priority. When it's cut,
20 then we reduce acres accordingly per crop needs, crop
21 value, et cetera.

22 Q. So maybe I'll ask it a different way. Have
23 you used any of that AFRD #2 water yet?

24 A. I don't believe I have. I believe I've stayed
25 within my 300 inches of decreed water thus far but I

1 don't know that for sure because I haven't checked with
2 the watermaster.

3 Q. Have you requested that delivery?

4 A. No, I have not.

5 Q. But at least through today your '84 and '83
6 water rights have been on, they've been delivered to all
7 acres in this table?

8 A. That is correct.

9 Q. The AFRD #2 water that you rented from the
10 City of Shoshone, you expect to receive that water
11 through the end of the irrigation season?

12 A. Yes, I do.

13 Q. That would be the September 15th day?

14 A. That or longer if AFRD delivers further into
15 the season.

16 Q. You made that decision to rent that water back
17 in January; is that correct?

18 A. I believe that is correct.

19 Q. If we can turn to your water rights, maybe
20 just Exhibit 4. Do you have that in front of you?

21 A. Yes, I do.

22 MR. BROMLEY: Counsel, what water right number
23 is that?

24 MR. THOMPSON: That's 37-344A.

25 MR. BROMLEY: Thank you.

1 Q. (BY MR. THOMPSON) Mr. Brossy, could you turn
2 to the second page of that exhibit, I think it's a list
3 of conditions. Can you read Condition No. 5.

4 A. It says: "This right is limited to the
5 irrigation of 295 acres within the place of use
6 described above in a single irrigation season."

7 Q. I've got a different condition.

8 A. You wanted Exhibit 4, Water Right 37-423?

9 Q. I'm sorry, I think that's a different batch of
10 exhibits.

11 MR. THOMPSON: Can I approach for a second?

12 THE HEARING OFFICER: Sure.

13 MR. THOMPSON: I'll let Jerry figure it out.

14 THE WITNESS: We had it right a little while
15 ago.

16 THE HEARING OFFICER: I thought these were
17 color coded but they're not.

18 THE WITNESS: I found it.

19 THE HEARING OFFICER: How come his are green
20 and mine are yellow?

21 MR. RIGBY: Talk to Chase.

22 THE WITNESS: So you want me to read Condition
23 5?

24 Q. (BY MR. THOMPSON) I think that's correct, on
25 the second page.

1 A. The "Use of this right is combined with water
2 from Big Wood Canal Company"? That one?

3 Q. Yes. So you have shares in the Big Wood Canal
4 Company; is that correct?

5 A. That is correct.

6 Q. How much water do you receive?

7 A. I have 200 shares, which per our contract with
8 a former owner of this land, amounts to 314 acre-feet.

9 Q. Have you diverted any of that water this year?

10 A. I do not believe we have needed any of that
11 water. I have, however, offered it to other water users
12 on the river when their rights were cut in the last
13 week.

14 Q. Who did you offer that to?

15 A. I offered it to the Arkooshes, Charles Newell,
16 and Alton Huyser.

17 Q. Do you know if they called for that water?

18 A. You would have to ask the watermaster.

19 Q. So as far as your farm, your total supplies
20 this year, at least authorized to be used on your
21 property, you had your Little Wood rights; correct?

22 A. Thus far, yes.

23 Q. And Big Wood Canal Company shares; correct?

24 A. Until -- thus far, yes.

25 Q. And the Cottonwood right we discussed earlier

1 that Mr. Rigby addressed; is that correct?

2 A. I really don't know if that was ever even on
3 it, to be honest with you.

4 Q. So at least as you understand it, no water
5 applied to your farm from your Big Wood sources this
6 year; would that be true?

7 A. As far as I know, yes.

8 Q. Was the Cottonwood right delivered to any
9 other users, to your knowledge?

10 A. As I say, I do not know if the Cottonwood
11 right was in priority this year; so I can't answer that.

12 Q. As far as your specific Cottonwood right, did
13 you offer to let that right be used by others?

14 A. No.

15 Q. You've identified on your table, Exhibit 1 --
16 if you want to turn back to that. Do you have that, the
17 predicted injury table in front of you?

18 A. Yes, I do.

19 Q. So can you just describe, you have the yield
20 target that I believe were identified with contracts; is
21 that correct?

22 A. That is correct.

23 Q. Those contracts were not produced as part of
24 our deposition. Do you agree with that?

25 A. That is correct.

1 Q. Can you just describe how you've identified
2 your projected 2021 yield loss.

3 A. Well, the targets you see under the column
4 Yield Target through the malt barley line are contracted
5 amounts, and the projected loss is based on our
6 anticipated difference in yield if we can't irrigate
7 those crops to maturity.

8 Q. This estimate appears to be a total loss for
9 certain crops but then it appears to be 50 percent for
10 some; is that true?

11 A. Yes. And I believe it's been eons, it feels,
12 since I did this, that the 50 percent is based on the
13 fact that we anticipated being able to cut 2 tons of
14 hay, even with a curtailment, because we've already cut
15 one and the other one is coming. The others are based
16 on the fact that we don't expect, without enough water,
17 we don't expect to mature the crop.

18 Q. Did you perform those calculations? Are those
19 your numbers?

20 A. Yes.

21 Q. What was the basis for that, I'll call it
22 50 percent?

23 A. Well, I took the average green chop tonnage
24 produced on the third and fourth cutting last year and
25 considered them to be a loss for this year.

1 Q. Comparing prior years from when you've made
2 four cuttings as opposed to two; would that be correct?

3 A. That is correct.

4 Q. The Projected Cutoff Date, that was an
5 estimate provided by the watermaster, Kevin Lakey?

6 A. That is correct.

7 Q. The 1884 water right did not get curtailed on
8 June 5th; is that true?

9 A. That is correct. Thank goodness.

10 Q. The latest projection for the 1883 is still
11 June 15, is that your understanding?

12 A. I actually don't have an update on that. I
13 heard that 9/1/83 would be off on Monday; so I am
14 anticipating that one follows.

15 Q. You had a little discussion with Mr. Rigby
16 about your understanding of groundwater use in the
17 Triangle, flows in Silver Creek, and it's your
18 contention that they have an effect; is that correct?

19 A. That they have in fact?

20 Q. That they do have an effect on Silver Creek
21 flows.

22 A. Yes, they do. That is my impression.

23 Q. If groundwater rights are curtailed on July 1,
24 will your 1884 water right priority be restored this
25 season?

1 A. I think it will.

2 Q. What's the basis for that?

3 A. My understanding is that a curtailment in the
4 Triangle would yield enough water to refill that water
5 right.

6 Q. What's the basis for enough water? What's
7 your estimate?

8 A. Well, there needs to be a certain amount of
9 flow at Station 10 above Richfield for that right to be
10 good.

11 Q. Do you know how much that is?

12 A. I believe it's in the neighborhood of 35 cfs.

13 Q. For your 1884 water?

14 A. For the '84, for everything senior and the
15 '84s to remain in priority, I believe that's true. I
16 believe that's the need.

17 Q. Would the watermaster records, as far as the
18 list of rights in priority and quantities, determine
19 that amount?

20 A. Yes.

21 Q. How about as far as timing, do you know if
22 that timing would come back in time to benefit your '84
23 right?

24 A. Well, if there was curtailment July 1 and we
25 saw water within a week, very definitely.

1 Q. As far as your 1883 water right, if that's cut
2 off on June 15th, what happens to your crops?

3 A. Well, if we can't secure more water from
4 District 1, we take our remaining rented water and water
5 garden bean seed and potatoes and take a loss on
6 everything else.

7 Q. So if you're unable to rent water, your garden
8 seed beans, if they're cut off on June 15th, total loss?

9 A. The acreage that can't be covered by the
10 66 inches of AFRD #2 water.

11 Q. How about the pinto beans?

12 A. As well.

13 Q. And your purple barley?

14 A. There might be something that could be green
15 chop there but I doubt it will mature. It's not that
16 far along.

17 Q. How about the malt barley?

18 A. Same thing.

19 Q. And the no-till pinto beans?

20 A. We wouldn't even do anything with that project
21 if there's no water.

22 Q. So if junior groundwater rights are curtailed
23 on July 1st, will your water right, your 1883 water
24 right, come back in time to save those crops?

25 A. I believe so. It would be -- it would be in

1 priority before the '84.

2 Q. As far as timing, if that water came back mid
3 to late July, would that be sufficient time?

4 A. Well, my understanding is if there were
5 curtailment on July 1st, the water would recover, flows
6 in Silver Creek would recover before late July. It
7 would recover within a week or so of the curtailments.

8 Q. Who supplied that information?

9 A. Well, I don't know exactly. We've had
10 numerous conversations about this amongst ourselves. So
11 exactly where that information would be attributed to I
12 can't say.

13 Q. Have you reviewed the Department's memos in
14 this case?

15 A. I have not reviewed the Department's memos
16 completely.

17 Q. I'll represent to you I believe Jennifer
18 Sukow's memo does a modeling analysis of curtailment by
19 certain days and projected quantities. Would you agree
20 with that?

21 A. I've heard that.

22 Q. Any reason to disagree with that estimate of
23 timing and quantity?

24 A. Not that I know of, no.

25 Q. So as far as quantity, if what Ms. Sukow

1 predicts through the model prediction, whatever water
2 shows up, however that quantity fills priorities, you
3 would agree that would be the best information for you?

4 A. Well, I believe right now since groundwater is
5 still a mystery to everybody, that's the best
6 information we have to date.

7 Q. Going back to those crops, the garden seed
8 beans, pinto beans, purple barley, malt barley, no-till
9 pinto beans, what benefit to those crops will occur if
10 water shows up in August?

11 A. Well, those crops that have already failed due
12 to lack of water in July would be nothing. But for
13 example, our ability to plant new seeding alfalfa would
14 be back on the table if we had August water.

15 Q. If the water predicted to show up from
16 curtailment, would you agree that there will be some
17 loss at the Highway 93 crossing?

18 A. No, I'm not going to agree to that.

19 Q. Are you aware of some estimated losses at that
20 location?

21 A. I've heard lots of figures bandied about.

22 Q. Do you have any reason to dispute those
23 estimates made by the watermaster or others?

24 A. Well, they're flow dependent. There's
25 different losses depending on different river levels.

1 And I think it's mostly hearsay at this point.

2 Q. As far as curtailment of groundwater rights,
3 do you have any estimate of what water remains in the
4 aquifer for the 2021 season, if that occurs?

5 A. No.

6 Q. If there is a quantity of water, and I'll
7 represent the Department's estimate is 67 percent, would
8 you agree that would not show up in the July to
9 September time frame in Silver Creek?

10 A. I do not know.

11 Q. Have your 1883 water rights been curtailed
12 before?

13 A. I believe they were curtailed in 1994 but I
14 honestly can't recall. And they may have been curtailed
15 another couple times in the years I've been managing.

16 Q. How about the 1884 water right?

17 A. Yes.

18 Q. And sometimes in July. Would that be fair?

19 A. It was curtailed in July of 2013, I remember
20 that distinctly. But rarely in July; it used to run
21 into August before curtailment.

22 Q. I'd like to go back to your questioning with
23 Mr. Rigby about last August. Do you recall that?

24 A. Yes.

25 Q. And I think we talked about that in your

1 deposition.

2 A. Yes, we did.

3 Q. Would you agree that the calls that were made
4 or the pleading by the watermaster to put water back
5 into Silver Creek, do you agree that was a combination
6 of surface water and groundwater?

7 A. Yes, I would. But I'd also refer to his
8 communication with me that a portion of it could not be
9 explained by surface water; it had to be groundwater.

10 Q. So the flows that you witnessed come back up
11 would have been a result of both surface diversions and
12 groundwater diversions shutting off?

13 A. Yes, that's correct.

14 Q. So you don't have a calculation as to what
15 that percentage would be?

16 A. No, but I believe that he said that between 10
17 and 15 cfs of that return or that increased flow could
18 only be attributed to groundwater.

19 Q. It would be a question for the watermaster?

20 A. Yes, it would.

21 Q. As far as witnessing what is occurring in the
22 Little Wood River, at your diversion is there always
23 water flowing by; is that true?

24 A. Yes, there is, because the Snake River from
25 American Falls Reservoir District is conveyed through

1 the middle of our farm.

2 Q. So that water is going past your farm during
3 the entire irrigation season?

4 A. Yes, it is.

5 Q. So are you able to I guess evaluate impacts of
6 groundwater at that location?

7 A. No.

8 MR. THOMPSON: That's all the questions I
9 have.

10 THE HEARING OFFICER: Thank you, Mr. Thompson.
11 Mr. Laski or Ms. O'Leary, questions?

12 MR. LASKI: None.

13 THE HEARING OFFICER: Group 3. Mr. Bromley.

14

15 CROSS-EXAMINATION

16 BY MR. BROMLEY:

17 Q. Hi, Mr. Brossy.

18 A. Hi, Mr. Bromley.

19 Q. First of all, Chris Bromley on behalf of Sun
20 Valley Company. Just a couple questions.

21 I think if I heard you correctly, you said
22 groundwater is still a bit of a mystery.

23 A. I think it is.

24 Q. So then in your opinion, does it make sense to
25 curtail juniors when it's mysterious if it will make it

1 downstream to you?

2 A. No, I would like to qualify that. It's a
3 mystery because we will never know exactly what's going
4 on under there but we've seen evidence that curtailment
5 makes a difference.

6 Q. What evidence is that?

7 A. Well, I would offer the response to
8 Mr. Thompson's last question about what happened last
9 August on Silver Creek in communications with the
10 watermaster.

11 Q. Would you agree that the model curtailment
12 runs, they've got to make it past Station 10; correct?
13 I heard you mention water needs to go past Station 10.

14 A. That is correct.

15 Q. Are there losses from the Triangle to
16 Station 10 and past Station 10?

17 A. I'm sure there are.

18 Q. Mr. Brossy, listening to Mr. Thompson, he
19 asked you if you were requesting conjunctive
20 administration. I was at your deposition and heard that
21 you said you were. So you changed your testimony today
22 on that point. The question I have for you is: Are you
23 changing your testimony from your deposition where you
24 said you weren't seeking administration outside of the
25 Bellevue Triangle or are you still requesting

1 administration only within the Triangle?

2 A. My testimony is based on the Director's order
3 of this proceedings, which is at this point in time
4 limited to the Triangle.

5 Q. Thank you.

6 Mr. Brossy, do you know your typical water
7 delivery per acre?

8 A. I do not.

9 Q. Can you venture a guess?

10 A. I would venture a guess that it's close to
11 6 cfs times the irrigation season divided by the acres,
12 because we are almost always utilizing all of our water
13 right.

14 Q. In your deposition testimony you said it was
15 around 5 acre-feet per acre. Does that sound about
16 right?

17 A. That was completely a guess on my part.

18 Q. Sitting here today, do you think it's more or
19 do you think it's less?

20 A. I think historically it's been that. I'm
21 hoping that going forward it will be able to be reduced
22 by the pipeline we've just installed. I think that I'm
23 confident and counting on that to make a big difference.

24 Q. So up until today then it was 5 acre-feet per
25 acre?

1 A. As a guess, but yes.

2 Q. Mr. Brossy, do you know historically in the
3 1900s time frame how many cuttings of alfalfa farmers
4 were getting on your farm or in your area?

5 A. No, I don't.

6 MR. BROMLEY: Nothing further. Thank you.

7 THE HEARING OFFICER: Thank you, Mr. Bromley.

8 Okay. Others in group 3, Mr. Simpson.

9 Let's see, Mr. Robertson?

10 MR. ROBERTSON: I do not.

11 THE HEARING OFFICER: Is Mr. O'Bannon with us
12 here today? Questions?

13 MR. O'BANNON: No questions.

14 Redirect, Mr. Rigby.

15 MR. RIGBY: I think my questions would be what
16 Mr. Foster will be asking so I'll allow him to --

17 MR. FLETCHER: Mr. Fletcher.

18 MR. RIGBY: Mr. Fletcher. Oh my God.

19 MR. FLETCHER: You need some sleep.

20 THE HEARING OFFICER: Coming to a basin near
21 you. Mr. Fletcher is in the big loss whether he wants
22 to be or not.

23 MR. RIGBY: So I do not have any.

24 ///

25 ///

1 REDIRECT EXAMINATION

2 BY MR. FLETCHER:

3 Q. I just wanted to clarify something. You
4 stated you own 200 shares of Big Wood Canal Company
5 water; correct?

6 A. That is correct.

7 Q. And early in the season this year I think you
8 testified you didn't need them because your priorities
9 were on and you were able to fulfill your water needs
10 early in the season with your water supply.

11 A. That is correct.

12 Q. Your natural flow supply; correct?

13 A. That is correct.

14 Q. So you offered those to some neighbors in case
15 they needed it; correct?

16 A. That is correct.

17 Q. Is the Big Wood Canal Company water supply
18 going to be reliable for you later this year?

19 A. No.

20 Q. Why is it not going to be reliable?

21 A. Well, that water is not delivered or not
22 available to us after Magic Reservoir ceases delivery.

23 Q. Do you have any idea of when Magic Reservoir
24 is going to cease delivery this year?

25 A. I heard yesterday it will be tonight or

1 tomorrow.

2 Q. So within the next few days the Big Wood water
3 would not be available to you or your neighbors or
4 anyone else.

5 A. That is correct.

6 MR. FLETCHER: Thank you. I have no further
7 questions.

8 THE HEARING OFFICER: Thank you.

9 Recross based on the redirect? Mr. Thompson?

10 MR. THOMPSON: None.

11 THE HEARING OFFICER: Mr. Bromley?

12 MR. BROMLEY: No.

13 THE HEARING OFFICER: Anybody else?

14 Mr. Laski?

15 MR. LASKI: No.

16 THE HEARING OFFICER: Thank you, Mr. Brossy.

17 Let's take a break for 10 minutes.

18 (Recess.)

19 THE HEARING OFFICER: We're back on the record
20 after a short morning recess.

21 I want to tell everybody after listening to
22 both the direct examination and the cross-examination of
23 the last witness, I am left with the impression of
24 greater urgency in this matter, and am telling
25 everybody, putting them on notice right now that we will

1 go late tonight. I want to finish testimony as quickly
2 as we can because it appears to me there's an urgent
3 need for me to resolve this matter.

4 So plan to stay maybe until 9:00 tonight.
5 We'll start early tomorrow and we will go late tomorrow.
6 Let's see, though, we can't -- yes, we can. Late
7 tomorrow, late Friday, and Saturday.

8 Okay.

9 MR. RIGBY: Mr. Director, based upon that, I
10 need to make sure the rest of our witnesses are coming
11 today. We were not anticipating -- perfect.

12 THE HEARING OFFICER: Okay. Mr. Rigby, next
13 witness.

14 MR. RIGBY: Yes, Mr. Director. We would call
15 Mr. Hubsmith to the stand.

16 THE HEARING OFFICER: Mr. Hubsmith, come
17 forward.

18 RODNEY F. HUBSMITH,
19 having been called as a witness by the Big Wood &
20 Little Wood Water Users Association and first duly
21 sworn, testified as follows:

22
23 DIRECT EXAMINATION

24 BY MR. RIGBY:

25 Q. Good morning.

1 A. Good morning.

2 Q. How are you doing?

3 A. Good.

4 Q. Just what you want to be doing; right?

5 A. Absolutely. I don't have nothing else to do.

6 Q. Please state your name and current address.

7 A. My name is Rodney F. Hubsmith, I live at 1073
8 East Highway 26, Richfield, Idaho.

9 Q. Are you a party in this proceeding?

10 A. Yes.

11 Q. You were here during the exam of Fred just a
12 moment ago?

13 A. Yes, I was.

14 Q. Rather than get into the association, that is
15 the Big Wood, Little Wood Water Users Associations in
16 detail, do you agree with his testimony as to what that
17 association is all about?

18 A. Yes.

19 Q. Are you a member of it?

20 A. Yes, I am.

21 Q. What's your occupation, Rodney?

22 A. I consider myself a farmer-rancher at this
23 juncture. I was a previous dairyman.

24 Q. Previous dairy?

25 A. Yes, I had a dairy operation up until 2014.

1 Q. So let's talk about your previous life, so to
2 speak. What's your education?

3 A. I have limited college. I enlisted in the US
4 Air Force, I spent 4 1/2 years in different locations.
5 I was discharged in 1980. I shortly thereafter bought
6 my first farm, which is the farm with the decreed
7 rights.

8 Q. As a member of the association -- well, let's
9 just go right to your water rights. If you'll look at
10 the Exhibit No. 2 under, it would be entitled Hubsmith
11 Exhibit 2, please. Do you see that?

12 A. I have it, sir.

13 Q. What is that?

14 A. That is a Idaho Department of Water Resources
15 Water Right Report.

16 Q. Is that Water Right No. 37-472?

17 A. That is my decreed right, sir.

18 Q. Is that the number?

19 A. Yes.

20 Q. What is the priority date on that?

21 A. It would be 04/01. It's April 1st of 1884 is
22 how I refer to it.

23 Q. For how many cfs?

24 A. 1.2 cfs.

25 Q. Where do you divert this water right? From

1 which source do you divert the water right?

2 A. I divert it out of the Little Wood River
3 approximately 1 mile west of Richfield.

4 Q. If you'll refer to Hubsmith Exhibit 3, please.
5 It's the next tab. Does that depict the place of use of
6 this water right?

7 A. That does depict the place of use of this
8 water right.

9 Q. As far as the points of diversion, it appears
10 to be one point of diversion; is that correct?

11 A. That is correct.

12 Q. So Water Right 472 has one point of diversion
13 that's upstream of the place of use and depicted up on
14 that map?

15 A. Yes.

16 Q. The water itself -- I'm sorry, did I ask you,
17 the source is the -- and I want to make sure I get this
18 right -- the Little Wood?

19 A. Little Wood River.

20 Q. From that point of diversion to the place of
21 use, how does it get there?

22 A. I installed a pipeline system to -- and it was
23 installed in two phases before 2010. At that point I
24 was still surface irrigating. After 2010, I added to
25 the pipeline to bring to a pivot/hand line irrigation

1 system, pressurized irrigation system.

2 Q. That is for the entire place of use?

3 A. That would not be the entire place of use. On
4 the south, looking on this map, if you could depict
5 where the river is, then acres to the south would be --
6 I deliver to them acres via pipeline from my pivot
7 system, it crosses the river via pipe and then I go open
8 ditch surface irrigating to them.

9 Q. So pipeline to pressurized system above the
10 river and open source below the river?

11 A. South of the river.

12 Q. South of the river. Very good.

13 A. Pipeline to the acres south of the river also.

14 Q. So the pipeline is from the north of the river
15 to the acres on the south and then it's irrigated by --

16 A. Yes, surface irrigation.

17 Q. -- flood, surface irrigation?

18 A. Flood irrigation.

19 Q. What other water rights, if any, do you have
20 on this place of use?

21 A. I have no water rights for this acreage
22 depicted on this map other than the decreed right shown.

23 Q. So do you have any supplemental rights?

24 A. No, I do not.

25 Q. Do you have any exchange agreement, what they

1 call the 161 condition exchange agreement?

2 A. No, I do not.

3 Q. Do you lease any supplemental water?

4 A. No, I do not.

5 Q. Have you attempted to lease any supplemental
6 water this year?

7 A. No.

8 Q. As far as this particular year is concerned,
9 what are you growing on the place of use? And start
10 with the north and then go to the south.

11 A. For this particular year, I have Timothy
12 grass, alfalfa-hay on approximately slightly over
13 35 acres, and then I have a 5-acre piece on the north
14 side of the river that I currently have an alfalfa-grass
15 mix in. I kind of classified it as mostly the same
16 value because of forage hay. And then south of the
17 river I have permanent pasture grazing.

18 Q. You said you're a rancher. Is that the reason
19 for growing the crops that you grow mainly?

20 A. Yes.

21 Could I clarify that just a little bit?

22 Q. Certainly.

23 A. Through years of experience with some drought
24 involved, I have previously had corn and alfalfa on
25 this, the ground north of the river. And when you seed

1 an alfalfa field and you get a decent stand, then you
2 have a drought the next year, you generally have a poor
3 stand from there on. So with Timothy grass, if you add
4 water to Timothy grass it responds very quickly back.
5 And so at this point, I have chosen to take that
6 direction for a while to see if it better matches my
7 situation with some short water years.

8 Q. So let's talk about your situation. Are you
9 receiving your full water supply pursuant to your
10 decreed right?

11 A. When my decree is not cut I receive my full
12 water supply.

13 Q. Is it sufficient to water the crops on this
14 place of use?

15 A. Yes, it is.

16 Q. Is it sufficient to water the, for example,
17 even the additional crops that you're talking about,
18 corn?

19 A. Yes, it is.

20 Q. This particular year do you anticipate having
21 your full water supply?

22 A. No. I believe I will -- probably if I wasn't
23 at this hearing today the watermaster probably would
24 have made a curtailment on my right, from listening to
25 people out in the hallway and stuff like that.

1 Q. So you anticipate that your water right will
2 be cut?

3 A. Yes.

4 Q. And therefore, from here forward, what source
5 of water do you have to water your alfalfa and your
6 pasture land?

7 A. My grass-alfalfa and my Timothy, I will have
8 no source.

9 Q. So how will you water the other place of use
10 for your alfalfa?

11 A. It won't be watered if I have a priority cut.
12 Is that the question you're asking?

13 Q. Yes, it is. I'm sorry if I'm not making
14 myself clear.

15 These lands, let's talk about how long you've
16 been on these lands.

17 A. I bought this particular farm I believe in
18 '81, February of '81 I think we closed the paperwork on
19 it. I was there somewhat before that on this particular
20 piece of ground. I purchased this place from my
21 grandfather; so I have a lifetime of history on this
22 piece, on this place.

23 Q. Have you done anything during that period of
24 time to improve the efficiency of the watering of these
25 lands?

1 A. As I stated, I started installing the pipeline
2 approximately half a mile, thinking that if I eliminated
3 that open ditch, being quite slow, that I'd have more
4 water to irrigate with; it worked. And then in 2010, I
5 thought, you know, I need to go pressurized system to
6 become more efficient even than that. So then I spent a
7 considerable amount of money to install this pressurized
8 irrigation system. And when I say "considerable
9 amount," when you put pivots on such a small acreage as
10 this, long and narrow, it becomes very considerable.

11 Q. Expensive per acre.

12 A. Per acre.

13 Q. Understood.

14 Did you feel like you needed to do that?

15 A. I felt like I had to; I was just trying to
16 survive.

17 Q. Has that only become necessary in recent years
18 or should you have done that -- or were the flows
19 sufficient before and not sufficient now, requiring you
20 to do that?

21 A. Well, I'm just going to give you the situation
22 since I've owned the farm. Soon after I bought the
23 farm, I had some pretty good years where my priority
24 decreed water wasn't cut, and then especially in the
25 '90s it become quite regular that my priority decreed

1 was cut. Then you start looking on how to become more
2 efficient, not only for growing crops but irrigation.

3 Q. The location of your farm, as I understand it,
4 is close to what they call Station 10; is that correct?

5 A. Yes. It's approximately 2 miles from
6 Station 10.

7 Q. Are you familiar with Station 10?

8 A. Very familiar with Station 10.

9 Q. Do you visit it or are you present at
10 Station 10 often?

11 A. Previous years my uncle owned the land where
12 Station 10 was, and I just know where Station 10 is and
13 been there many, many times.

14 Q. During the depositions issues came up as to
15 Station 10's, for lack of better words, leaking or waste
16 or insufficient, that kind of language. Are you
17 familiar with that which has been argued against
18 Station 10?

19 A. Yes, I am.

20 Q. So what's your analysis of Station 10?

21 A. My analysis of Station 10 and how it's
22 measured, Station 10 would be very accurate. It would
23 correspond if you measured it any other way.

24 Q. So in your history and work in this particular
25 reach of the river, have you seen a leveling off of the

1 decline of the levels during the years or is it
2 increasingly lower? Of course, each year is different,
3 recognizing that.

4 A. Yes. If you group a bunch of years together
5 it's increasingly lower.

6 Q. So if you do not have enough water, and
7 apparently if it's shut off you won't, what do you
8 anticipate doing in an attempt to save any crop you can?

9 A. You're not going to save it in my case.

10 Q. What does that do for future years?

11 A. That is why Timothy got planted, grasses got
12 planted on this place. Future years, there will be a
13 dispersal of a stock cow herd this year. There isn't
14 much I can do. I have significant acres under the Big
15 Wood Canal Company right that they're shutting off their
16 water tomorrow.

17 Q. In fact, that was the subject of the last
18 witness. So even though you own the canal company
19 water, is it your testimony that your understanding will
20 be that you will not be able to divert it after
21 tomorrow?

22 A. No, it won't be diverted. There will be no
23 water.

24 Q. So again, not to beat a dead horse, there will
25 be no water for your place of use once your water right

1 is curtailed.

2 A. The only water I could possibly use from this
3 for this acreage has to come down the Little Wood River
4 via Silver Creek via the Triangle. It comes out of the
5 Triangle.

6 Q. Now, you're part of the Association's I guess
7 joint effort to ask that the curtailment of the
8 groundwater users up in the Triangle; is that correct?

9 A. Yes.

10 Q. Do you believe that the reduced water supply
11 to you is in part due to the pumping in the Triangle?

12 A. Yes.

13 Q. What do you -- again, I'll ask the same
14 question, you're not a hydrologist. What, if any,
15 evidence do you have personally that makes you believe
16 that pumping in the Triangle does impact the flow of the
17 Little Wood past your place of use?

18 A. Well, previous to pumping, my grandfather
19 owned this place approximately 40 years. When I bought
20 the place, he goes, You have the best water right in
21 Richfield. That was previous to pumping and then I
22 started -- I bought it, I started getting curtailed.

23 And then I got involved and there was science,
24 as you stated, I'm not a scientist, that I've listened
25 to and the modeling and everything else. But with me

1 being where I'm at, I wake up every morning and look at
2 the river. It's no further away from me to the back
3 wall. My living room looks directly at it. And I see
4 what the flows is, and especially with Magic or the Big
5 Wood Canal Company rights being -- Big Wood Canal
6 Company not running, there's no manipulation of any
7 source; it's Station 10 and then it's to my place. So
8 there's no manipulation of added water or anything else.

9 So then I know what I'm looking, and I'm
10 looking at what's at Station 10. And after 40 years of
11 living at that location, I look out my window and say,
12 Station 10's at 18 cfs. I look on a computer, it's an
13 automated station from the last 2 years, I'm close. I'm
14 not off very far. Now, when flows are significantly
15 above that, you don't guess as close. But when we're in
16 some low, low flows, it's not hard to guess cfs of water
17 when you've seen it year after year.

18 Q. So a question as to, again, your experience
19 and your knowledge living next to Station 10 and
20 familiarity with it, when the pumps or certain pumps are
21 turned off in the Triangle, do you see, do you
22 personally see an increase in flows in the Little Wood?

23 A. Let's not -- can I kind of rephrase your
24 question?

25 Q. For example, when pumps are turned off in the

1 Triangle because of, let's say, a cutting of hay. Are
2 you personally familiar enough to know that when those
3 are turned off, that there is an increase in flows past
4 your point of diversion?

5 A. I believe I am. I believe that if -- I live
6 about 20 miles from the Wood River Triangle. If there's
7 a significant weather event that might happen in the
8 Triangle, as there was a couple weeks ago when we
9 received a half inch of rain, you know the irrigation is
10 going to be shut off up there. I don't know whether
11 it's -- it's pretty much all irrigation when you're
12 overwatering or the river significantly comes up.

13 There's an event that happens nearly yearly
14 that I would like to touch upon just a tiny bit.

15 Q. Again, I'm trying to find out whether or not
16 you see any change in the flows when wells are turned
17 off in the Triangle.

18 A. Yes.

19 Q. How immediate is that change in flows?

20 A. Well --

21 Q. Or does it depend.

22 A. It could be a few days.

23 Q. So a few days, not weeks?

24 A. Not weeks.

25 Q. How do you know that that change in flow or

1 increase in flow is due to the wells?

2 A. Well, I'm familiar enough with the system, I
3 know that the decrees that come across out of the Big
4 Wood and the 45 canal is not being utilized as heavy as
5 it was, so that turns on the wells when they don't have
6 their surface decreed water up in the Wood River
7 Triangle. So I do know that that's when the wells are
8 pumping. And that's what I wanted to touch on.

9 Q. Okay. So have you attempted to determine the
10 injuries that you anticipate for the 2021 year?

11 A. Yes.

12 Q. I'd have you look at Hubsmith Exhibit No. 1,
13 please. I would ask you if the numbers and the crops
14 and the columns basically that are presented here, do
15 those come from you?

16 A. You're going to have to give me just a second.

17 Q. Understood. No problem.

18 A. I looked at that and it happened to be the
19 Brossy. I don't want to explain that.

20 MR. RIGBY: May I?

21 THE HEARING OFFICER: Yes.

22 Q. (BY MR. RIGBY) So again I'll ask you, the
23 information contained in the various columns, was that
24 information, not only Crop but Projected Cutoff Date,
25 Yield Target, so on and so forth, was that information

1 you supplied?

2 A. That is information I supplied.

3 Q. So therefore, you're familiar with these
4 numbers?

5 A. Yes.

6 Q. So again, if you wouldn't mind, addressing the
7 crops that you somewhat testified to here, and then
8 we'll get into, for example -- in fact, let me just ask
9 you this: So as far as the crops are concerned, you've
10 testified as to the Timothy grass, the pasture, and the
11 feeder calves. The feeder calves you haven't testified
12 to yet. Is that water for them to drink?

13 A. No, that is forage for them to eat.

14 Q. Very good.

15 When you say "dispersal of half of the
16 breeding cows," explain what you mean by that.

17 A. Well, I broke this down to what stock cows is
18 generally ran on this place -- on my other places I have
19 more cattle -- but what I generally am able to pasture
20 on this place. So my calculation of shutoff was going
21 to be June 15th. Make sure I'm right on that.

22 Q. That's what it indicates on the projected
23 cutoff date.

24 A. So I'm actually going to lose my water, from
25 what I understand, slightly before that. So that's what

1 I base this on.

2 I presently feel like I will harvest my
3 Timothy hay, and I will continue -- I will graze that
4 acreage shortly thereafter. And by approximately
5 July 1st, the grasses quit growing shortly after
6 irrigation water, so by July 1st I look for forage
7 shortfalls. And not presently having anywhere to go to
8 continue to feed these cattle, I expect to sell off
9 cattle early and calves early -- and cattle permanently,
10 we'll sell the calves early.

11 Q. Would you have intended to sell the cattle but
12 for the situation that you've testified to?

13 A. My typical situation is you continue with your
14 beef herd, your cows, and I generally sell these calves
15 off the cows at 700-plus pounds generally between early
16 November to late November.

17 Q. So by selling them early, is that why you've
18 anticipated the loss that you've calculated?

19 A. Yes.

20 Q. Because they won't have the pounds?

21 A. Yes.

22 Q. I'm supposed to be a rancher myself but I'm
23 not.

24 As far as the other crops then are concerned,
25 you testified that you had the Timothy hay, you would at

1 least harvest that, but then would there be a second
2 harvest that you're anticipating a loss on and that's
3 why you've got a projected revenue loss under Timothy
4 hay?

5 A. Yes.

6 Q. As far as cattle grazing is concerned, are you
7 anticipating that those that you do keep will have to
8 find other place and rent that? Is that what you're
9 anticipating?

10 A. Yes, or fed out of a hay stack.

11 Q. There you go. Okay.

12 So you have a projected revenue loss in these
13 calculations of \$68,100. Again, are those your numbers,
14 best of your estimation?

15 A. Them are my numbers.

16 Q. As far as your source for all of that, is that
17 just your knowledge of the going prices, your historical
18 knowledge? What is it?

19 A. Yes, that is. I don't have to elaborate on
20 that. It is from historical knowledge, from looking at
21 the livestock market reports, Twin Falls sale yard. I
22 have a hay broker for my other hay. He's communicated
23 with me what he thought forage hay was going to be worth
24 this year.

25 Q. So bottom line then, you're here, are you

1 asking the Director to administer the water rights in
2 their priority, both ground and surface?

3 A. Yes.

4 MR. RIGBY: I have no further questions.

5 THE HEARING OFFICER: Thank you, Mr. Rigby.

6 MR. RIGBY: Sorry, I need to do the exhibits,
7 Mr. Director.

8 I would move for the admission of Hubsmith 1,
9 2, 3.

10 THE HEARING OFFICER: Is there any objection
11 to the admission of these documents into the record?

12 Hearing no objections, the exhibits marked as
13 Hubsmith 1, 2, and 3 are received into evidence.

14 (Hubsmith Exhibits 1, 2, and 3 received.)

15 THE HEARING OFFICER: Thank you, Mr. Rigby.

16 Mr. Fletcher.

17 MR. FLETCHER: No questions.

18 THE HEARING OFFICER: Mr. Thompson.

19

20 CROSS-EXAMINATION

21 BY MR. THOMPSON:

22 Q. Good morning, Mr. Hubsmith.

23 A. Good morning.

24 Q. Travis Thompson for South Valley Ground Water
25 District.

1 So your last question from Mr. Rigby, I think
2 we talked about this at the deposition, you're
3 requesting conjunctive administration of Water District
4 37 this year; is that correct?

5 A. No, it's not correct.

6 Q. So what are you requesting?

7 A. I'm requesting from the Director to administer
8 water rights by senior priority doctrine.

9 Q. Both surface and groundwater?

10 A. Both surface and groundwater.

11 Q. In the history of your place on that farm,
12 have you had to request administration for your surface
13 rights as against other surface water?

14 A. Well, I don't necessarily request it. I would
15 like it every single year but I live with what the
16 watermaster says. If that's how you asked that
17 question, I live with the watermaster, he tells me when
18 I can run my right and when it's curtailed. So I abide
19 by the law.

20 Q. Kind of a matter of course as to when
21 priorities get cut, depending upon available supply?

22 A. Yes.

23 Q. But it's your understanding that hasn't
24 happened with groundwater rights together; is that
25 correct?

1 A. Yes.

2 Q. That's one of the purposes of this proceeding
3 is to bring those groundwater rights into that
4 administration?

5 A. Yes.

6 Q. And I think we talked about this --

7 A. We are talking about a 2021 year, and that's
8 why we're here for 2021, and that's what we're asking
9 for is the senior priority doctrine to be administered.

10 Q. Thank you.

11 And you are claiming that upstream groundwater
12 rights injure or adversely affect your senior water
13 right; is that true?

14 A. Yes.

15 Q. As far as specific groundwater rights, you
16 have not personally identified which groundwater rights
17 would be causing that injury; is that true?

18 A. No.

19 Q. Your sole water right, Water Right 37-472,
20 that has an April 1, 1884, priority; is that correct?

21 A. Yes.

22 Q. And that partial decree, that water right
23 authorizes the irrigation of 48.9 acres; is that true?

24 A. Yes.

25 Q. But is it true that you've irrigated up to 60

1 acres in the past?

2 A. I am close to, after the installation of this
3 sprinkler system and using the USDA map, I believe it's
4 57 acres or slightly more than 57 acres.

5 Q. Let's turn to your Exhibit 1, if you don't
6 mind.

7 A. Pardon me?

8 Q. Look at your Exhibit 1, please.

9 A. Is that the damage chart?

10 Q. Yes. View that table.

11 So maybe you can help me out on this. I see
12 Timothy grass hay 40 acres.

13 A. Yeah, I did it again.

14 Q. Sorry.

15 A. Yes. I'm on it now.

16 Q. An identified crop just below that Timothy
17 grass pasture 40 acres. Is that the same 40 acres?

18 A. It's the same 40 acres.

19 Q. Then the pasture below that, 20 acres.

20 A. Yes.

21 Q. Is that a separate 20 acres?

22 A. That is the pasture south of the river.

23 Q. And your testimony today that it's more like
24 57 acres -- or I'm sorry, would that be less than
25 20 acres?

1 A. Yes. After deposition I went home and added
2 up the number of acres on my USDA map, and that's what
3 we come up with was 57 acres.

4 Q. Would you agree that's beyond the number of
5 authorized acres on your water right?

6 A. I would agree to that's more than what's on my
7 water right, and I would caveat that to say that I
8 believe almost anybody who went to pressurized
9 irrigation and pivot irrigation, Bellevue Triangle, or
10 us guys on the river, a pivot runs in a circle so you go
11 over rock piles. I have never exceeded the volume that
12 my water right is.

13 Q. With that additional coverage the pivots allow
14 you to irrigate additional acres beyond what you were
15 originally authorized to irrigate on that farm?

16 A. Yes.

17 Q. So roughly 10 more acres based upon your USDA
18 map?

19 A. 9 or 10.

20 Q. I guess would you agree as to those acres, if
21 you don't have a water right on those acres, you don't
22 have a right to call out junior rights to deliver to
23 those acres?

24 A. Well, I would argue that point pretty
25 substantially that there's large acreages in the

1 Bellevue Triangle that have no surface rights that are
2 solely groundwater rights, from what I understand. So I
3 would ask that all lands be treated equally. There's
4 some kind of problem with that. Let's go upstream,
5 let's go downstream.

6 Q. Are you talking about lands without a water
7 right or with a water right?

8 A. I'm talking about, from what I understand from
9 everything, there's 4,000 acres in the Bellevue Triangle
10 without a surface right condition to them. And if
11 there's a curtailment, I'd expect them to be curtailed
12 along with any other acres that I'm irrigating.

13 Q. Supplemental groundwater right, is that what
14 you're referring to?

15 A. Yes.

16 Q. But as to any acres that do not have a water
17 right, are you contending that water rights with --
18 acres with a water right should be curtailed to supply
19 water to those acres?

20 A. Repeat the question.

21 Q. Just talking about these 10, 11 acres that are
22 not covered by your water right. Are you contending
23 that lands with a supplemental groundwater right should
24 be curtailed to supply water to those 10 or 11 acres?

25 A. Either I don't understand or -- I just don't.

1 I don't really understand.

2 I would say that I'm irrigating acres that are
3 less than what my water right would allow me to irrigate
4 at 57 acres. 1.2 cfs is 60 inches of water, that will
5 irrigate 57 acres.

6 Q. This column that says Needed last day of
7 irrigation, September 30th; is that correct?

8 A. Well, I would love September 30th but my water
9 right goes to October 30th. I was a little surprised
10 yesterday when my water right got pointed out that it
11 went to October 30th because I've been curtailed so many
12 times I actually thought it was September 30th.

13 Q. For the season of use?

14 A. Yes.

15 Q. You've been curtailed before September 30th in
16 the past; that's true?

17 A. Many times.

18 Q. Some years you've been off in July. Would
19 that be true?

20 A. Some years I've been off in July, and even
21 earlier.

22 Q. And some years where you've gone into
23 September, would you agree that groundwater pumping has
24 occurred in those years?

25 A. Yes.

1 Q. It's probably a year-by-year evaluation as
2 to --

3 A. It's a year-by-year evaluation.

4 Q. Does your water right get turned back on later
5 in the year?

6 A. We've had years when it's been intermittent.
7 Actually, sometimes in September I hope to be able to
8 turn back on -- sometimes it happens; sometimes it
9 hasn't -- and bring my fields back up to maybe obtain
10 some fall grazing.

11 Q. Your water right, I think we talked about this
12 at your deposition but I just want to clarify for the
13 record, it lists as combined with Big Wood Canal Company
14 water; is that correct?

15 A. Not on the acres that we've been discussing.

16 Q. Even though the water right has that condition
17 you do not have any shares on these lands; is that true?

18 A. No, I do not.

19 Q. You do not have any conveyance loss from your
20 point of diversion on the river to where you apply water
21 on the land; is that correct?

22 A. No, I do not.

23 Q. So if all groundwater rights were curtailed on
24 July 1st, would your 1884 water right last until
25 September 30th?

1 A. I would certainly expect it to but it may not.

2 Q. Would that change your Days of Supply
3 Shortfall calculation?

4 A. Your question is a little confusing. Are we
5 talking about if at this scenario we have my right being
6 cut June 15th and never coming back on? If there was
7 curtailment of the groundwater pumps, and my right come
8 back on, I have no way of knowing how long or if it will
9 be good as first season. So what are you asking?

10 Q. Well, I'm just looking at your Days of Supply
11 Shortfall, you've identified 107 based upon a June 15th
12 curtailment. It looks like you've calculated that out
13 to September 30th. I guess that's where that number
14 came from. I'm just saying, even if groundwater rights
15 are curtailed, would that 1884 water right have lasted
16 until September 30th?

17 A. I generally think it would have.

18 Q. But in some years it's been cut off earlier;
19 is that correct?

20 A. We've never had the groundwater curtailed; so
21 how do I know that?

22 Q. It's true you planted that Timothy hay this
23 year to survive a drought; is that correct?

24 A. I never planted Timothy hay this year; I
25 planted it 2 years ago to survive shortfalls of water.

1 After being -- like, I feel burnt on establishing a good
2 crop of alfalfa hay, trying to grow corn, I thought I
3 would give Timothy a try.

4 Q. You've made similar cropping decisions in the
5 past based upon available water supplies?

6 A. Yes.

7 Q. You talked about the 1990s.

8 A. Yes.

9 Q. So if your water right is curtailed June 15th
10 or perhaps earlier, based upon what you know today, what
11 will happen to your Timothy hay if water shows up again
12 late in July?

13 A. My Timothy hay will go somewhat dormant,
14 that's the advantage to that grass-forage type of
15 situation that I went to. If I add water to it, it
16 responds very quickly to an irrigation and you could
17 obtain at least grazing off of it.

18 Q. So for this particular crop it could stay off
19 without water for some time?

20 A. Yes.

21 Q. Will you make another cutting?

22 A. Not with my present curtailment date I will
23 not make another cutting.

24 Q. I guess with that happening, will you have
25 already sold certain calves by then?

1 A. I don't anticipate to having to sell these
2 calves until I lose the forage on those acres and then
3 there will be some decisions made about how I'm going to
4 go forward, whether it's through liquidation or trying
5 to secure some pasture, which is very hard in our area
6 when the entire area is water short, no water.

7 Q. Do you have any estimates on groundwater, if
8 it's curtailed, how much just stays in the aquifer?

9 A. I do not, I'm not the scientist in this.

10 Q. I guess for 2021, if I represent to you what
11 the Department has calculated, if 60 percent of that
12 water stays in the aquifer, will that be put to
13 beneficial use by anybody this year?

14 A. Not this year. Or I'm not the scientist. I'm
15 going to decline to answer that that way. I'm just
16 going to say, any water left in the aquifer will be used
17 sooner or later.

18 Q. I'd like to go back to your projected cutoff
19 dates. I guess with your familiarity with the river, is
20 it a different cut for 1884 below Milner-Gooding Canal
21 than above or is it the same?

22 A. The watermaster and -- from my understanding,
23 the watermaster observes the priority doctrine and he
24 makes the cut, first in right, first in time.

25 Q. I just had heard from Mr. Brossy that

1 projected cutoff was June 5th and your projected cutoff
2 was June 15th. I didn't know if there's different
3 locations on the river and how that gets cut.

4 A. Well, previous to the rain event and the Magic
5 shutoff and then turned back on, I believe what happens
6 here is Kevin may use a different station on the river
7 to make his priority cuts but I'm not sure, ask the
8 watermaster.

9 Q. But as for Station 10, if there's 18 cfs
10 measured at Station 10, your 1884 water right is on; is
11 that correct?

12 A. I don't think that's correct, no.

13 Q. I thought that's the testimony I heard this
14 morning.

15 A. Well, I think that's part of the if you buy
16 water to supply or someone buys water to supply the
17 rights below the Gooding-Milner confluence, he don't
18 have to supply them rights or as many, you know, 161
19 conditions and everything else. So then some of us
20 might, it might take less water at Station 10 for some
21 of these other rights to be good. But if every priority
22 is met on the river from Richfield to Gooding, I believe
23 Fred, I heard him testify that Fred thought around
24 35 feet was the magic number, and I have no reason not
25 to believe that because I think that is what we've been

1 told before.

2 Q. So your testimony of 18 cfs at Station 10 with
3 your water right being on is incorrect?

4 A. Well --

5 MR. FLETCHER: I object to that. That's not
6 what he testified to earlier. He said he could look out
7 his window and see if there was 18 cfs going by.

8 MR. THOMPSON: Let's go back, let's go back to
9 it. Let's read it.

10 (Record read back as follows: A. So then I
11 know what I'm looking, and I'm looking at
12 what's at Station 10. And after 40 years of
13 living at that location, I look out my window
14 and say, Station 10's at 18 cfs. I look on a
15 computer, it's an automated station from the
16 last 2 years, I'm close. I'm not off very
17 far. Now, when flows are significantly above
18 that, you don't guess as close. But when
19 we're in some low, low flows, it's not hard to
20 guess cfs of water when you've seen it year
21 after year.")

22 THE HEARING OFFICER: Mr. Thompson, is that
23 the portion that you were trying to repeat?

24 MR. THOMPSON: Yes, that was.

25 Q. (BY MR. THOMPSON) The way I understood that

1 testimony, if you look out the window and you see 18
2 cfs, are you close to going off?

3 MR. RIGBY: That isn't what he said.

4 THE WITNESS: That is not what I said. I said
5 that I know what Station 10 is by looking out my window
6 when flows are that low in the river. That is what my
7 testimony was.

8 Q. (BY MR. THOMPSON) So based upon your 40 years
9 of experience on that property, when that quantity is
10 measured at Station 10, are you irrigating or not?

11 A. I'm generally not. I'm never irrigating
12 generally at Station 10. But if that's the station that
13 the watermaster is using to make the cuts on the river,
14 I will not be irrigating with 18 feet at Station 10.
15 I'm pretty confident in saying that. But the
16 watermaster runs the river; I do not run the river.

17 Q. So do you know what quantity has to be at
18 Station 10 for your 1884 priority to be on?

19 A. I believe I stated that around 35 feet with
20 all the priorities that are below me on the Little Wood
21 River, if we're not renting water or there isn't some
22 deals made, it takes 35 feet to fulfill them rights
23 between Richfield and Gooding. And I again will defer
24 to the watermaster on that. I'm not the watermaster.

25 Q. I understand.

1 So if water rights on the Little Wood River
2 below the Milner-Gooding Canal are supplied by another
3 source, does that change the quantity at Station 10 for
4 your 1884 water right to be on?

5 A. It would in the situation that we discussed --
6 I'm not going to discuss the deal that was attempted to
7 be made yesterday -- but that would be the case.

8 Q. So theoretically if senior water rights, water
9 rights senior to your priority on the Little Wood below
10 the Milner-Gooding Canal are supplied by another source,
11 the water necessary to meet your priority at Station 10
12 could be less than 35 cfs; is that correct?

13 A. I'm going to just defer to the watermaster.
14 You've asked that question several times and it's a
15 little confusing what you're asking. So I will defer to
16 the watermaster how he is going to run that situation
17 and leave her like that.

18 Q. I will ask that question.

19 In your history of being on the place, has
20 your water right been on when there's less than 35 cfs
21 at Station 10, to your knowledge?

22 A. Yes.

23 Q. Do you know what the flow was?

24 A. No.

25 MR. THOMPSON: That's all the question I have.

1 THE HEARING OFFICER: Thank you, Mr. Thompson.

2 And thanks especially for a competent court
3 reporter that accurately is recording what is said
4 today.

5 Mr. Laski or Ms. O'Leary.

6 MR. LASKI: Nothing.

7 THE HEARING OFFICER: I want to apologize to
8 Ms. Vonde, and say welcome today. I missed you, as I
9 have done with Mr. Moroney. I want to assure you that
10 it's the physical location that is preventing me
11 sometimes.

12 So do you have questions, Ms. Vonde?

13 MS. VONDE: I do not.

14 THE HEARING OFFICER: I apologize again.

15 I think that's all in group 2. So let's go to
16 group 3. Mr. Bromley, Mr. Lawrence.

17

18 CROSS-EXAMINATION

19 BY MR. BROMLEY:

20 Q. Hi, Mr. Hubsmith. Chris Bromley, I have two
21 questions.

22 When do you typically turn on for the
23 irrigation season?

24 A. It depends on the year. Generally my water
25 right could be as early as April 1st. I generally on

1 most years don't start that early. This year, I started
2 around the 15th, give or take a day or two, the 15th of
3 April is when. I'm not saying it was the 15th of April,
4 the watermaster records would have that, but it was
5 close to the 15th of April.

6 Q. Other years besides this year, just ballpark,
7 when do you usually turn on?

8 A. It varies between the 1st of April and --
9 April, 1st of May, depending on my irrigation needs. If
10 the crops don't need it, I don't try to irrigate.

11 Q. Makes sense. Thank you.

12 A. You do not pay a pump bill.

13 Q. I always hear that, of course.

14 Second question, Mr. Hubsmith, is: Are you
15 asking for curtailment of groundwater rights that are
16 located outside of the Bellevue Triangle?

17 A. No, I'm not. In this particular year, no, I
18 am not.

19 MR. BROMLEY: Thank you. Nothing further.

20 THE HEARING OFFICER: Thank you, Mr. Bromley.

21 Others in group 3, Mr. Simpson?

22 MR. SIMPSON: No questions.

23 THE HEARING OFFICER: Mr. Robertson?

24 MR. ROBERTSON: None.

25 THE HEARING OFFICER: Mr. O'Bannon?

1 MR. O'BANNON: No questions.

2 THE HEARING OFFICER: Do we have anybody else?

3 I think that's everybody.

4 MR. THOMPSON: I forgot a question. Can I
5 come back?

6 THE WITNESS: Sure.

7

8 FURTHER CROSS-EXAMINATION

9 BY MR. THOMPSON:

10 Q. Sorry, Mr. Hubsmith, one more brief round of
11 inquiry.

12 You talked about you notice when pumps go off
13 in the Triangle you see increase in flows in Silver
14 Creek or Little Wood; is that correct?

15 A. I believe when pumps go off in the Bellevue
16 Triangle I see an increase in flows.

17 Q. Are you aware of surface diversions in that
18 area as well?

19 A. Yes, I am.

20 Q. Do flows in the river increase if surface
21 diversions are off for hay or different reasons?

22 A. I would suspect they do.

23 Q. So is it true that if you see increases in
24 flow during the season, it could be a combination of
25 groundwater or surface water off for hay or barley?

1 A. I would suspect that would be the case.

2 Q. Do you know the percentage or quantity that
3 that would be assigned to as far as diversions, surface
4 or ground?

5 A. I don't know the percentage, no.

6 MR. THOMPSON: That's all. Thank you.

7 THE HEARING OFFICER: Thank you.

8 Redirect, Mr. Rigby?

9 MR. RIGBY: No.

10 THE HEARING OFFICER: Mr. Fletcher?

11 MR. FLETCHER: No questions.

12 THE HEARING OFFICER: Because there is no
13 redirect, we'll finish with Mr. Hubsmith. Thank you.

14 THE WITNESS: Thank you, Director.

15 THE HEARING OFFICER: Thank you.

16 It's 10 minutes to the hour. Mr. Rigby, do
17 you want to call another witness?

18 MR. RIGBY: Mr. Director, the witness I would
19 call next is actually going to do two groups because
20 he's partners with his father, it would be John Arkoosh,
21 along with his father Bill Arkoosh. It's going to take
22 some time.

23 THE HEARING OFFICER: Okay.

24 MR. RIGBY: Therefore, I wonder if a break
25 would not be in order right now if it were a short one.

1 I can probably go ahead but...

2 THE HEARING OFFICER: Let's break for lunch
3 and come back at 1:00.

4 MR. RIGBY: Thank you.

5 (Luncheon recess.)

6 THE HEARING OFFICER: Back on the record. We
7 are recording again after the lunch break. It's
8 approximately 1:00.

9 Mr. Rigby, next witness.

10 MR. RIGBY: Mr. Director, as per this morning,
11 Mr. Fletcher asked that Carl be called out of order
12 right after lunch.

13 THE HEARING OFFICER: Thank you. I forgot.

14 Mr. Pendleton, are you here? There you are.

15 CARL PENDLETON,
16 having been called as a witness by the Big Wood Canal
17 Company and first duly sworn, testified as follows:

18

19 DIRECT EXAMINATION

20 BY MR. FLETCHER:

21 Q. Good afternoon.

22 Carl, can you state your full name, please.

23 A. Carl David Pendleton.

24 Q. What is your address?

25 A. 50 West 620 North, Shoshone, Idaho.

1 Q. What is your educational background?

2 A. I have an undergraduate in general engineering
3 and management and an MBA and studies in nuclear science
4 and engineering.

5 Q. What do you do for an occupation?

6 A. I farm and ranch.

7 Q. Where do you farm?

8 A. At the address mentioned. I'm north of
9 Shoshone.

10 Q. How many acres do you personally farm?

11 A. Our holding is 845 acres, of which we irrigate
12 about 600. In addition I rent another 160 from a
13 neighbor.

14 Q. The ground that you own, is that owned jointly
15 with your brother?

16 A. It is.

17 Q. And do you operate the entire farm yourself?

18 A. Yes.

19 Q. Do you do that under a limited liability
20 company?

21 A. I do.

22 Q. What is the name of that company?

23 A. Pendleton Custom Farming, LLC.

24 Q. Are all the water rights appurtenant to that
25 property in your name or your brother's name?

1 A. Three-quarters of the ownership of water is in
2 my name and one-quarter in his.

3 Q. As to you personally, what is your source of
4 water to your farm?

5 A. Solely from storage water in Magic Reservoir.

6 Q. When you say "solely from storage water,"
7 let's clarify that. You are a Big Wood Canal Company
8 stockholder; correct?

9 A. I am.

10 Q. Your source of water for the farm is Big Wood
11 Canal Company?

12 A. It is.

13 Q. Do you have any other source besides Big Wood
14 Canal Company?

15 A. No.

16 Q. Do you have any supplemental rights?

17 A. No.

18 Q. What type of crops do you personally grow on
19 your farm?

20 A. We are hay, I raise hay for the dairies,
21 that's the alfalfa hay. I raise oats; a lot of that is
22 for seed. I sell it as a commercial crop, but much of
23 it is used by local farmers for forage production. I
24 raise corn, corn silage, goes to the dairies. I have a
25 large pasture base and run stock cows on that pasture

1 base.

2 Q. So in addition to the crops you grow, you do
3 have cattle?

4 A. I do.

5 Q. How many cattle do you have?

6 A. I try to maintain 90 to 100 pairs.

7 Q. 90 to 100?

8 A. Yes.

9 Q. You are here today as a representative of the
10 Big Wood Canal Company; isn't that correct?

11 A. That's correct.

12 Q. Are you on the board of directors of Big Wood
13 Canal Company?

14 A. Yes.

15 Q. How long have you been on the board?

16 A. I've been on the board for 27 years beginning
17 in 1994, and I've been chairman of the board for about
18 10 years.

19 Q. Do you currently hold an office?

20 A. Yes.

21 Q. What is that?

22 A. I'm chairman of the board and president of the
23 company.

24 Q. Big Wood Canal Company is a nonprofit
25 corporation?

1 A. It is.

2 Q. What are your duties as chairman?

3 A. Normal fiduciary duties of the chairman; to
4 conduct the monthly board meetings, consult with
5 management when required, hire that manager and let them
6 function, of course listen to the stockholders.

7 Q. During an average month, do you have a lot of
8 interaction concerning the operations of Big Wood Canal
9 Company?

10 A. I do, yes.

11 Q. That's with the employees of the Big Wood
12 Canal Company?

13 A. With the manager and our management team.

14 Q. As a result of those interactions over the
15 last 20-some years, are you familiar with Big Wood Canal
16 Company's water rights?

17 A. I am.

18 Q. Are you familiar with Big Wood Canal Company's
19 operations?

20 A. Yes.

21 Q. Generally, can you describe the sources of
22 water to the Big Wood Canal Company.

23 A. Yes. We have, of course, storage rights out
24 of Magic Reservoir on the Big Wood River; we have river
25 rights on the Little Wood River that we use at

1 Richfield; we also have a contract with the American
2 Falls #2 to bring water on part of our acreage, a large
3 portion of our acreage is on the Snake River.

4 Q. Do you know how the water rights of Big Wood
5 Canal Company are classified, the type of use?

6 A. We have irrigation rights as well as stock
7 water rights and power rights off of the Little Wood,
8 and irrigation rights out on the Magic and irrigation
9 draws off of American Falls.

10 Q. And you have storage rights as well?

11 A. Yes.

12 Q. Now, for the purposes of this proceeding, the
13 issues were restricted to the Little Wood and Silver
14 Creek. So I'm going to ask you to look at Exhibit 1.
15 This would be --

16 A. In here?

17 Q. No, it's in a packet on the table there. I
18 set it there this morning. I don't know what's happened
19 to it.

20 MR. FLETCHER: May I approach?

21 THE HEARING OFFICER: Yes.

22 Q. (BY MR. FLETCHER) Right here (indicating).

23 A. Okay.

24 Q. What is Exhibit 1?

25 A. This is from Idaho Water Resources, statement

1 of our water rights.

2 Q. These are only the water rights on the Little
3 Wood River; correct?

4 A. Yes.

5 Q. When you say "our," you mean Big Wood Canal
6 Company's?

7 A. Yes, I do.

8 Q. The first page of the exhibit shows Water
9 Right No. 37-13043; correct?

10 A. That's correct.

11 Q. That is for 303.6 cfs?

12 A. Yes, it is.

13 Q. With a priority date of November 13, 1907?

14 A. Yes.

15 Q. It authorizes the irrigation of 39,683 acres;
16 correct?

17 A. It does.

18 Q. While I'm on that topic, how many acres does
19 Big Wood Canal Company supply?

20 A. Approximately 36,000 acres is what we
21 irrigate.

22 Q. So I would like you to look at the conditions
23 of the right. Under paragraph 2, it talks about the
24 digital boundary. And we'll be showing a picture of
25 that in a minute, but can you generally describe the

1 digital boundary of Big Wood Canal Company?

2 A. The rights that we own and administer are
3 within that larger boundary, called the digital
4 boundary, that we can move those acreages within.

5 Q. Do you know approximately how many acres are
6 within the greater digital boundary place of use?

7 A. Approaching that 39,000 would be our digital
8 boundary; the 39,600 that is referenced here.

9 Q. On your place of use map, though, the digital
10 boundary maintained by the Department, what does that
11 show for your digital boundary?

12 A. It is much larger because it indicates also
13 those acres that are serviced by American Falls.

14 Q. We will talk about how that works in a minute.

15 Let's look at Condition 8. It talks about the
16 various water rights numbers, and it again repeats that
17 you are authorized to irrigate 39,683 acres in
18 combination with all those rights; correct?

19 A. It does.

20 Q. In looking at No. 9, it talks about all these
21 various water rights and it says it "shall not exceed
22 the irrigation of 74,000 acres." Can you explain what
23 that means?

24 A. Those are the Carey Act acres that are
25 serviced by all of the water rights, including the

1 American Falls.

2 Q. Let's turn the page to the next water right.

3 Just to save a little bit of time, your
4 conditions on your irrigation rights are the same on
5 every irrigation right; isn't that correct?

6 A. That's correct.

7 Q. So the next water right is 37-13111. It shows
8 a priority date of December 24, 1906. It's a stock
9 water right; correct?

10 A. That's correct.

11 Q. That's 75 cfs?

12 A. Yes.

13 Q. The next water right, if you'll turn the page,
14 is 37-13112; is that correct?

15 A. Yes.

16 Q. Priority date of June 1, 1920; correct?

17 A. Correct.

18 Q. Irrigation?

19 A. Yes.

20 Q. And it's for 69.3 cfs; correct?

21 A. Yes.

22 Q. The next water right is 37-13113; correct?

23 A. Yes.

24 Q. Priority date of May 27, 1899?

25 A. Yes.

1 Q. That's for irrigation?

2 A. It is.

3 Q. That's 150 cfs?

4 A. Yes.

5 Q. Next water right is 37-13114; is that correct?

6 A. Yes.

7 Q. That has a priority date of November 6, 1905.

8 A. It is.

9 Q. For irrigation?

10 A. Yes.

11 Q. And a cfs of 87.02.

12 A. Yes, that's correct.

13 Q. The next water right is 37-21401?

14 A. Yes.

15 Q. Priority date of May 15, 1885?

16 A. Correct.

17 Q. Irrigation?

18 A. Yes.

19 Q. 5.3 cfs.

20 A. Yes.

21 Q. The next water right is 37-21402?

22 A. Yes. There is a typo there.

23 Q. What's that?

24 A. No. Go ahead. Misreading.

25 Q. We are at 37-21402; correct?

1 A. Yes, we are.

2 Q. Priority date of April 6, 1983?

3 A. Yes.

4 Q. Excuse me. That's 1883?

5 A. 1883.

6 Q. Irrigation right?

7 A. Yes.

8 Q. And cfs of 3.55.

9 A. Correct.

10 Q. The next water right is 37-21403; correct?

11 A. Yes, it is.

12 Q. It shows a priority date of April 1, 1887?

13 A. Yes.

14 Q. That's for irrigation?

15 A. Yes.

16 Q. 5.2 cfs.

17 A. That's correct.

18 Q. The next water right is 37-21404?

19 A. Yes.

20 Q. Priority date of July 1, 1896?

21 A. Correct.

22 Q. Irrigation?

23 A. Yes.

24 Q. 15.3 cfs.

25 A. That's correct.

1 Q. The last water right is 37-21405?

2 A. Yes, it is.

3 Q. And that has a priority date of April 1, 1884?

4 A. Yes, it does.

5 Q. That's for irrigation?

6 A. Yes.

7 Q. That's showing 2.63 cfs.

8 A. Yes.

9 MR. FLETCHER: I'd move for the admission of
10 Exhibit 1.

11 THE HEARING OFFICER: Any objection to the
12 admission of these documents?

13 MR. BROMLEY: A statement of clarification,
14 Mr. Fletcher. You mean Fletcher Exhibit 1?

15 MR. FLETCHER: Fletcher Exhibit 1. I followed
16 the order of the Director.

17 Fletcher Exhibit 1 is offered into evidence.

18 THE HEARING OFFICER: So the multiple
19 documents labeled as Fletcher Exhibit 1, the documents
20 are received into evidence.

21 (Fletcher Exhibit 1 received.)

22 Q. (BY MR. FLETCHER) Now, some of these rights
23 are quite junior to others; correct?

24 A. That's correct.

25 Q. In your mind, which priority dates are the

1 most reliable of those Little Wood rights?

2 A. Probably our 1883 and 1884 rights, '85
3 possibly.

4 Q. Then there's several rights that we talked
5 about that had priorities in the late 1800s and early
6 1900s; correct?

7 A. Correct.

8 Q. Are those rights curtailed almost every year?

9 A. The later rights, yes, they are.

10 Q. What is the benefit of those junior rights to
11 the canal company?

12 A. The biggest benefit is spring flows, to have
13 those large spring flows that we can -- since all of our
14 river waters are diverted at Richfield through the
15 Dietrich Canal. The Dietrich area is lower in elevation
16 and sandy soils, and the Richfield and North Shoshone
17 tracts are heavier soils.

18 By using our river rights in the spring we can
19 turn that Dietrich area on for a week, maybe 10 days,
20 before the rest of the tract comes on, and thereby that
21 preserves any storage water that we have in Magic
22 Reservoir.

23 Q. So you are able to irrigate those areas with
24 these junior rights early in the season?

25 A. We can irrigate them. It's not done on a full

1 delivery basis, there is usually not enough river water
2 to irrigate them fully as in the normal season. But it
3 does allow us to put on enough water out there that the
4 users can pass that water around and sustain their early
5 planted crops in that kind of soil.

6 Q. And that prevents the use of storage by the
7 canal company?

8 A. It does.

9 Q. During that time period?

10 A. Yes, it does.

11 Q. So when I say "your," I am referring to the
12 Big Wood Canal Company. When Big Wood Canal Company's
13 Little Wood rights are in priority, how does Big Wood
14 Canal Company take delivery of those rights?

15 A. They are entirely diverted at the Dietrich
16 Canal at Richfield.

17 Q. Are they only applied to one area of the canal
18 company?

19 A. Yes, only to that Dietrich tract.

20 Q. How many acres is the Dietrich tract?

21 A. It's about 8,200 acres that are irrigated by
22 the Magic rights. There are about 12,000 acres in that
23 area portion of which is American Falls delivery.

24 Q. So in addition to that I think you testified
25 there are a total of about 36,000 acres that are

1 irrigated by Big Wood Canal Company water.

2 Besides the Dietrich tract, where is the
3 location of the other acres?

4 A. The Richfield area, Richfield tract, is about
5 19,000 acres and North Shoshone tract is about
6 8,800 acres.

7 Q. Can you briefly explain the Big Wood Canal
8 Company delivery system, how do you deliver the water
9 when it's received.

10 A. Well, our delivery is open canals and large
11 canals to the delivery points and then laterals from
12 there and then off to individual headgates and
13 individual systems.

14 Q. How is it determined how much water a farmer
15 or a stockholder receives from Big Wood Canal Company?

16 A. Each stockholder owns a number of shares,
17 which is 5/8 of a miner's inch, and whatever their total
18 right is is what -- and they request that at a headgate,
19 or a number of headgates, and we deliver to that right
20 that is held by the stockholder.

21 Q. So if water situation is short, it looks like
22 you are going to have a low water supply, do you cut the
23 allocation per share?

24 A. We do not.

25 Q. Can you explain why you do not?

1 A. We found over the years of irrigating and
2 using our system, that our most efficient delivery is to
3 deliver 100 percent to the stockholders, try to give
4 them advanced notices to what the water supply would be,
5 and then let them determine what crops they would plant
6 based on that anticipated delivery period.

7 Q. What factors led to that determination?

8 A. Beginning in the winter, while we are watching
9 the snowpack and the accumulation and using the best
10 estimates to determine what that period might be.

11 Q. What factors led to the determination that a
12 100 percent delivery, as long as the water ran, was the
13 best way to go rather than cutting allocations?

14 A. We have tried to run our system on something
15 less than 100 percent allocation, and the system was
16 just built for that and requires considerable alteration
17 of our canal system in terms of temporary checks and
18 some of that kind of thing to raise elevations to be
19 able to service all stockholders, according to their
20 needs. We have just found that if we get to a point
21 where everybody is on, everybody is taking delivery,
22 that that is our most efficient operation.

23 Q. So based upon that delivery system, you are
24 delivering 100 percent to every stockholder as long as
25 your water is on; correct?

1 A. That's correct.

2 Q. And when you cut deliveries or curtail your
3 deliveries, all of the Big Wood supply is cut to all of
4 the stockholders simultaneously.

5 A. It is. We will deliver as long as we can
6 treat everybody equitably.

7 Q. Can you explain this year how the Big Wood
8 Canal Company has been managing its water supply?

9 A. Well, as closely as possible. We turned on as
10 late as we could, which stressed our crops a bit. And
11 we were lucky enough a couple of weeks ago to have a
12 fairly substantial rainfall and were able to shut off
13 for 8 days. And then we came back on and finished the
14 season; and, in fact, the reservoir will be exhausted
15 this evening.

16 Q. This evening.

17 A. Yes.

18 Q. So you expect that all Big Wood Canal Company
19 water supplies will be cut off as of tonight.

20 A. That's true.

21 Q. Do you work closely with the watermaster in
22 making your determinations of how the canal company
23 operates?

24 A. Our management team does. That includes
25 morning meetings between our watermaster with the Big

1 Wood Canal Company as well as Kevin Lakey to determine
2 how flows will be managed to cooperatively maximize the
3 river, not damage the river, but also fulfill the needs
4 of our stockholders.

5 Q. Is Kevin in those meetings giving Big Wood
6 Canal Company projections of priority date cutoffs and
7 things like that?

8 A. I'm sure he is, yes.

9 Q. I'd like you to turn to Exhibit 2. Can you
10 describe what Exhibit 2 is.

11 A. This is a map that shows our delivery area.
12 It includes not only that that's delivered under the
13 Magic system but also the American Falls system to the
14 lower left.

15 Q. Just to clarify, when you say delivery under
16 the Magic system, you're talking about Big Wood Canal
17 Company water; isn't that correct?

18 A. Yes. However, the entire acreage was
19 originally to be irrigated out of Magic. And so there
20 are Big Wood Canal Company acres below the American
21 Falls Canal that are irrigated by agreement from source
22 of the Snake River.

23 Q. Is that the exchange rights we've been talking
24 about?

25 A. It is referred to as the supplemental right.

1 Q. Or the supplemental right?

2 A. Yes.

3 Q. So on this map when you're talking about the
4 Little Wood rights, where are those delivered?

5 A. They are delivered at Richfield and it talks
6 about the mouth of the Jim Burns Slough and also
7 indicates Station 10 over there by that No. 10.

8 Q. So it's that area on the right side of the map
9 in the upper right-hand corner?

10 A. It is. That is the diversion point.

11 Q. And that area that's shown as a place of use
12 there, is that where the Little Wood water is delivered?

13 A. The Little Wood water is delivered there. If
14 you follow that line through the desert to directly
15 south or to the bottom of the page, you end up in the
16 Dietrich area, and that is the area that the water is
17 used in.

18 Q. It's used in the Dietrich area?

19 A. It is.

20 Q. So it's diverted at Richfield Canal and then
21 delivered to the Dietrich area.

22 A. Yes.

23 Q. So that is the lower right-hand corner of the
24 map.

25 A. It is.

1 MR. FLETCHER: I'd move for admission of
2 Exhibit 2.

3 THE HEARING OFFICER: Any objection to the
4 admission of Exhibit 2, Fletcher's Exhibit 2?

5 Hearing no objection, the document marked as
6 Fletcher Exhibit 2 is received into evidence.

7 (Fletcher Exhibit 2 received.)

8 Q. (BY MR. FLETCHER) I would ask that you look
9 at Exhibit 3. Could you describe what Exhibit 3 is?

10 A. Exhibit 3 I produced. I was actually on the
11 way to deposition, and I dropped by the office and took
12 a few readings at the river station at Hailey and the
13 corresponding readings at Station 10 at Richfield.

14 We had had that rain that I referred to
15 previously overnight on May 21st, as noted off there to
16 the side. I noted the river flows at the two locations
17 on the 22nd, the following day. We turned off our
18 reservoir that day.

19 It's interesting to note that the Hailey gage,
20 which of course is that measurement in the Big Wood at
21 Hailey and the Richfield gage at 38, and 2 days later
22 the river had actually dropped, indicating that the
23 rainfall didn't contribute to the river but the cool
24 temperatures reduced the flow, and remarkably Station 10
25 at Richfield came up to 80.

1 And then I followed the data up over the next
2 couple of days, and you can see as diversions came back
3 on, either surface or groundwater, why, Richfield then
4 dropped back even as the river started to raise again.

5 Q. So what does this information indicate to you?

6 A. Well, we have noticed, we, especially those
7 people that are on the river more so than myself, that
8 when pumps shut off up on the Bellevue Triangle, river
9 diversions maybe are reduced, why, it has a pretty
10 drastic effect and pretty quickly. This is within
11 48 hours on the flows at Richfield.

12 Q. The numbers at the top of this page, where you
13 have No. 19, is that a gage number?

14 A. That is a gage number as is No. 10.

15 Q. And No. 10 is a gage number as well?

16 A. Yes, it is.

17 Q. And you obtained this information from what
18 source?

19 A. I brought it in our Big Wood office, and it's
20 from reports either generated by Kevin Lakey,
21 watermaster, or our watermaster in the office taking his
22 measures.

23 Q. Are these the gage readings on those days?

24 A. Yes, they are.

25 Q. Are they in cfs?

1 A. They are in cfs.

2 MR. FLETCHER: I'd move for the admission of
3 Exhibit 3.

4 THE HEARING OFFICER: Any objection to the
5 admission of Fletcher Exhibit 3?

6 Document marked as Fletcher Exhibit 3 is
7 received into evidence.

8 (Fletcher Exhibit 3 received.)

9 Q. (BY MR. FLETCHER) I'd like you to look at
10 Exhibit 4.

11 A. Yes.

12 Q. What is this document?

13 A. This is a presentation that I made to the Big
14 Wood Ground Water Management Area Advisory Committee. I
15 was asked to generate a report of investments, mainly
16 investments that were made in our system to improve its
17 efficiency over the tenure of the Big Wood Canal
18 Company.

19 Q. What is the date of this document?

20 A. January 5, 2021.

21 Q. Where did you obtain the information that is
22 in this document?

23 A. From various documents, from the history of
24 our company, water management studies have been made
25 over the years as to efficiency of our company. Some of

1 the investment data was gathered from the individuals
2 that participated in improvements, pipelines, that sort
3 of thing to improve their efficiency.

4 Q. Can you summarize what this report states?

5 A. It goes back to the inception, the creation of
6 the reservoir as a means of irrigating the desert and
7 the investments that went into the system over the years
8 by the stockholders, paid entirely by the stockholders.
9 Bypass canal to bypass portions of the river that were
10 not very efficient, the construction in bringing the
11 Milner-Gooding Canal, BOR government funded but totally
12 repaid by the stockholders to the tune of 3 1/2 to
13 \$4 million I understand.

14 And then improvements that we've made as a
15 company in cooperation with our stockholders. The
16 latest one by a stockholder was a \$4 million project.
17 He put in a pipeline that pressurizes his farm and
18 allowed us to eliminate several miles of lateral and
19 eliminate that loss in our system.

20 And last year we put in about -- this is not
21 even on this list, I don't think, maybe I mentioned it,
22 but we were installing about a \$350,000 pipeline project
23 in Richfield for better efficiencies.

24 Q. Based upon your experience, is Big Wood Canal
25 Company constantly striving to improve its water

1 efficiencies and deliveries?

2 A. We are.

3 Q. In order to do so, is Big Wood Canal Company
4 expending funds?

5 A. Yes, we are.

6 Q. And some of those at least are outlined in
7 this report that you prepared?

8 A. They are.

9 Q. According to this report, Big Wood Canal
10 Company exclusively maintains 470 miles of canals and
11 laterals; isn't that correct?

12 A. Right. The entire American Falls and Big Wood
13 systems together are nearly 575 miles, of which 480-ish,
14 or whatever that number was, was the original Big Wood
15 system, of that about 280 are in the Magic area
16 delivered out of Magic Reservoir.

17 MR. FLETCHER: I'd move for the admission of
18 Fletcher Exhibit 4.

19 THE HEARING OFFICER: Any objection to
20 admission of this document?

21 Document marked Fletcher Exhibit No. 4 is
22 received into evidence.

23 (Fletcher Exhibit 4 received.)

24 Q. (BY MR. FLETCHER) So you've already mentioned
25 that the entire Big Wood Canal Company water supply will

1 be shut off tonight; correct?

2 A. Correct.

3 Q. What will be the effect on your personal
4 operation when that water supply is cut off?

5 A. I have -- instead of raising corn, I planted
6 oats for forage that we'll chop. Again, it was stressed
7 early and stressed a little bit as we extended our
8 turnoff last week. And instead of being a 30-ton-plus
9 crop of corn, it will be a struggle to be a 10-ton-per-
10 acre crop. We will get one cutting of hay instead of
11 three at least.

12 I mentioned that I try to maintain nearly 100
13 head of stock cows. Tomorrow I will consummate the deal
14 on selling the entire herd. And for the first time
15 since 1942 that my family has owned our property, they
16 will not be our cows next year running on our property.
17 So we will be in the pasture rental business rather than
18 in the cow business.

19 Now, admit to you I'm 70 years old and maybe
20 it's time to change, and it will be kind of nice to not
21 have to feed cows in the wintertime, and we'll see if I
22 can tolerate that. But it was driven, the decision was
23 driven by the lack of alternatives for pasture this
24 summer and we sold the entire cow herd.

25 Q. Mr. Pendleton, if junior groundwater pumpers

1 are curtailed this year, would Big Wood Canal Company be
2 able to take delivery of any of its Little Wood rights
3 this year?

4 A. We would not.

5 Q. Why would you not be able to?

6 A. We take the entirety of that at the Dietrich
7 Canal, as I have mentioned. In a normal delivery
8 situation this time of year we're diverting 180 to 200
9 cfs, and at this time the rights that will be in play or
10 in the near future will be not enough really to start
11 its way down the canal. And so we will leave them in
12 the river, or if some of our stockholders have an
13 opportunity along the river to rent them, they are
14 available. But they are priority rights, and if they
15 cut us deeply, as predicted by the watermaster, they
16 take the chance of renting something that will have no
17 water.

18 Q. So since curtailment will not necessarily lead
19 to greater water supplies, it may lead to these rental
20 opportunities you are talking about. Why is Big Wood
21 Canal Company participating in this proceeding?

22 A. As I mentioned before, why, the early flow
23 rights are very valuable to us; so that is something
24 that we want to pursue.

25 Jumping back, the storage rights are not part

1 of this consideration, but still if there is a lowering
2 or a discontinuing of diversions pumping in Bellevue
3 Triangle, hopefully the system will have an opportunity
4 to rejuvenate before next spring and we can have hope
5 that not as much water will be drafted from the river to
6 fill that gravel before entry at Stanton Crossing and
7 our water supply in the reservoir.

8 Q. So if curtailment occurs this year, do you
9 believe it will benefit Big Wood Canal Company next
10 year?

11 A. Only in the sense that it would help mitigate
12 the drawing down of the groundwater in the Big Wood
13 River Basin.

14 Q. What do you base that on?

15 A. Experience, I think Sukow's model runs show
16 that, and I know that our hydrologist has indicated that
17 there would be certain benefits to Big Wood Canal
18 Company.

19 MR. FLETCHER: Thank you. I have no further
20 questions.

21 THE HEARING OFFICER: Thank you, Mr. Fletcher.

22 Mr. Rigby, questions?

23 MR. RIGBY: No questions.

24 THE HEARING OFFICER: Mr. Barker or
25 Mr. Thompson? Or Ms. O'Leary?

1 MS. O'LEARY: Yes, Director.

2 THE HEARING OFFICER: Step to the podium.

3 Thank you.

4

5 CROSS-EXAMINATION

6 BY MS. O'LEARY:

7 Q. Good afternoon, Mr. Pendleton.

8 Mr. Pendleton, Mr. Fletcher asked you about
9 the Big Wood Canal Company and Little Wood River rights
10 and the priority dates of each of those rights. I
11 counted ten decreed Little Wood River rights. Is that
12 accurate?

13 A. Yes, it is, other than power rights.

14 Q. Correct, for the irrigation and stock water.
15 Thank you for the clarification.

16 A. Yes.

17 Q. I just want to touch base on the priority
18 dates on those rights. You did mention that some of
19 them were quite junior, and just starting, if I could
20 direct your attention to Exhibit 1, I think it would
21 just be easiest to just go through these and get
22 clarification on these.

23 The first right, 37-13043, has a priority date
24 of November 13, 1907; correct?

25 A. Correct.

1 Q. Would you consider that to be a junior right?

2 A. Yes.

3 Q. And would that right be delivered as a runoff
4 condition?

5 A. Yes. A normal year to runoff condition, yes.

6 Q. So would it be fair to say that the
7 shareholders of Big Wood Canal Company are not relying
8 upon this right to get them through the irrigation
9 season.

10 A. Correct.

11 Q. The next water right, Water Right 37-13111,
12 priority date December 24, 1906. Would you classify
13 that in the same manner as the prior right?

14 A. Well, I will point out that is a stock water
15 right that doesn't apply during the irrigation season,
16 but it has value in the fall of the year for us and
17 through the winter.

18 Q. Thank you.

19 The next right, Water Right 37-13112, priority
20 date June 1, 1920. Would you classify that as a junior
21 right?

22 A. Yes, it's a junior right.

23 Q. So it would be fair to say that similar to the
24 first water right that we discussed, your shareholders
25 are not relying on this particular water right for

1 irrigation purposes throughout the full irrigation
2 season.

3 A. That's correct.

4 Q. The next water right, Water Right 37-13113,
5 priority date May 27, 1899, would you classify that as a
6 junior right as well?

7 A. Yes.

8 Q. Water Right No. 37-13114, priority date
9 November 6, 1905, would that be the same classification,
10 as junior?

11 A. Yes, it would.

12 Q. Moving to the next right, Water Right No.
13 37-21401. This has a priority date of May 15, 1885, and
14 I believe your testimony was that that depends on the
15 year?

16 A. That depends on the year. Normally or
17 historically, why, yes, that would last into probably
18 midsummer.

19 Q. Then we have Water Right 37-21402, priority
20 date April 6, 1883. Did I read that right?

21 A. That's correct, yes.

22 Q. And how would you classify that right?

23 A. That is our premier right, and we would expect
24 that to stay on.

25 Q. Through the whole irrigation season?

1 A. Generally, yes.

2 Q. Did it stay on through the whole irrigation
3 season last summer?

4 A. No, it did not. Well, I'm not sure. Last
5 summer was a dry summer, but I'm not sure. That would
6 be a question for our watermaster or Mr. Lakey.

7 Q. Then we have Water Right No. 37-21403,
8 priority date April 1, 1887. How would you classify
9 that right?

10 A. In a normal year it would run midsummer.

11 Q. So would you classify that a junior, a senior?

12 A. It just would depend on the flows that year.
13 We would expect it to last a good portion of the year.

14 Q. Then Water Right 37-21404, priority date
15 July 1, 1896. How would you classify that right?

16 A. That would be close to a junior.

17 Q. And then Water Right 37-21405, priority date
18 April 1, 1884, what classification would you designate
19 to this right?

20 A. That would be one of our better rights, and we
21 would expect it to be in the mid to late summer or full
22 season.

23 Q. From what I have heard from you today, the
24 premier right, as you called it, that 1883 and then this
25 last right we discussed as 1884, those are your more

1 senior, it sounded like. The remainder of the rights
2 were junior or dependent upon the year. Would you say
3 that is a fair classification?

4 A. Yes.

5 Q. And this 1883 right only allows 3.55 cfs; is
6 that correct?

7 A. Correct.

8 Q. And the 1884 right only allows 2.61 cfs;
9 correct?

10 A. Correct.

11 Q. So the senior rights held by Big Wood Canal
12 Company only represent a very small portion of its total
13 decreed water right, would you agree?

14 A. Yes.

15 Q. Mr. Fletcher spoke to you about Big Wood Canal
16 Company's place of use for its decreed right, and it's
17 accurate to say, please correct me if I'm wrong, that
18 the land above the Milner-Gooding Canal is delivered
19 with water out of Magic Reservoir; correct?

20 A. That's correct.

21 Q. So that would include the Dietrich tract,
22 North Shoshone, and Richfield; is that right?

23 A. Correct.

24 Q. When Magic is turned off, those senior Little
25 Wood rights that we were just discussing are not turned

1 into that Dietrich Canal because they are not
2 sufficient; right?

3 A. That's correct.

4 Q. Instead that water is just left in the river;
5 right?

6 A. It is, unless it's rented, yes.

7 Q. So that would theoretically increase the
8 supply for users below the Dietrich Canal, would you
9 agree?

10 A. Yes.

11 Q. It was briefly brought up, the exchange
12 condition that we have been discussing this week, and
13 during the deposition that we had of you in Twin a week
14 ago, I believe you testified that you were familiar with
15 Mr. Luke's memorandum to the Department. Do you recall
16 that?

17 A. Yes, I do.

18 Q. We talked about the exchange condition and
19 individuals' interpretations of how that should be
20 applied; right?

21 A. We did.

22 Q. And I was reviewing that memorandum, and I can
23 provide you a copy if you would like, you're familiar
24 with Craig Hobdey; right?

25 A. Yes, I am.

1 Q. That is Big Wood Canal Company's former
2 attorney; is that correct?

3 A. That's correct.

4 Q. And in Mr. Luke's April 27, 2021, memorandum,
5 Mr. Hobdey summarized the proper application of the
6 exchange condition. Do you recall that?

7 A. Yes.

8 Q. But Mr. Luke has made us aware through his
9 memorandum and then also through his testimony today
10 that the water has not been administered as set forth or
11 as intended. Do you recall that?

12 A. I recall that line of thinking.

13 Q. When you say "thinking," does that mean you
14 disagree with that?

15 A. Well, I think when that issue was opened up,
16 there seemed to be some disparity as to how it should
17 have been done, how it had been done. And as we kind of
18 dug to the bottom of that and investigated that and
19 spoke with both Mr. Lakey and Tim Luke in our May 1st, I
20 believe it was, board meeting, it became apparent that
21 they really were on the same page and that the rights
22 are being administered correctly and have been
23 administered correctly.

24 Q. So perhaps I could have you turn to the
25 Department's Exhibit 4. It should be in that stack of

1 papers. I would like to direct you towards the end,
2 it's Attachment B, page 3.

3 A. Is it verbiage?

4 Q. Yeah, I was going to point you to some
5 particular language.

6 A. In the center of the page it's Watermaster
7 Guidance Regarding --

8 Q. Actually, in the paragraph above that. So
9 this was written --

10 A. I just wanted to make sure I was on the right
11 page.

12 Q. I appreciate that.

13 This was written by Mr. Luke and it was
14 directed to Watermaster Kevin Lakey. So it's saying:
15 "You," referring to Mr. Lakey, "reported that you make
16 no distinction between river rights with or without the
17 exchange condition when delivering water or making
18 priority cut determinations." Do you see that language?

19 MR. RIGBY: Counsel, what page is that on?

20 MS. O'LEARY: Page 3 of Attachment B.

21 THE WITNESS: Let's see if I'm in the right
22 attachment.

23 Q. (BY MS. O'LEARY) It's the paragraph above
24 that heading that you just identified.

25 A. That I just indicated?

1 Q. It's the second sentence in that paragraph.

2 A. Second sentence. So start again, please.

3 Q. Sure. "You reported that you make no
4 distinction between river rights with or without the
5 exchange condition when delivering water or making
6 priority cut determinations." Do you see that there?

7 A. Yes.

8 Q. Would you agree that that means that Mr. Lakey
9 was not administering water historically under the
10 specifics of the exchange condition?

11 A. I think what he's saying there is
12 administering the river rights, both or all based on
13 reading at Station 54 at Shoshone. So without regard of
14 whether they were above or below the Milner-Gooding
15 Canal.

16 Q. Right. And the exchange condition is
17 dependent on designated land above and below the canal;
18 correct?

19 A. But the priority cutoff is still determined
20 the same. They do not receive water below the Milner-
21 Gooding Canal if they are not entitled to it by priority
22 at Station 54.

23 Q. Well, if he's not making the distinction
24 between river rights with or without the condition, it
25 would be fair to say that he's not administering the

1 condition properly; correct? You have to make that
2 distinction to administer the condition properly.

3 A. That's not the way I understand it.

4 Q. Okay. And then this memo goes on to give
5 instructions on how to proceed moving forward; correct?

6 A. It does.

7 Q. And based on no prior distinctions being made,
8 it's now asking for distinctions to be made; correct?

9 A. Yes.

10 Q. So it's clarifying how the right should be
11 properly administered.

12 A. Yes. I would only add that, again, as we had
13 those folks in the same group, that it became more and
14 more clear that really they were on the same page and
15 they were being delivered in accordance with the
16 exchange agreement.

17 Q. What folks are you referring to?

18 A. Tim Luke and Kevin Lakey at our board meeting
19 on May 1st, Big Wood Canal Company board.

20 Q. You listened to Mr. Luke's testimony
21 yesterday; correct?

22 A. I did.

23 Q. He confirmed these instructions; correct?

24 A. Yes.

25 Q. Moving forward with administering the water

1 pursuant to the instructions in this memorandum, it's
2 likely that that administration will have some type of
3 impact; correct?

4 A. It could.

5 Q. That means that there could be an adjustment
6 of the priority cut dates; right?

7 A. That is a possibility. But again, that's why
8 we asked those two individuals to be at our board
9 meeting because we anticipated there would be some great
10 benefit to the diversions above Shoshone, above 54.

11 Q. To clarify, when you are saying those "two
12 individuals," that is Mr. Lakey and Mr. Luke; correct?

13 A. That's correct.

14 But it became apparent by the end of the
15 meeting that there was no wet water for Big Wood Canal
16 Company to anticipate delivered above that 54 gage, no
17 additional waters. That would tell me that they have
18 administered correctly, or consistently at least.

19 Q. Now, you were just mentioning gages. You
20 testified earlier that your Exhibit 3, that you created
21 this document based on some measurements that the
22 watermaster provided; correct?

23 A. Yes.

24 Q. One of these measurements is from Station 10
25 at Richfield.

1 A. It is.

2 Q. Were you present during Ms. Sukow's testimony
3 regarding measuring devices and sensors at Station 10?

4 A. I was listening on Zoom as I came to Boise,
5 yes.

6 Q. Do you recall her testifying that there were
7 concerns that there were not adequate manual
8 measurements to calibrate from that station?

9 A. Yes, I heard that comment.

10 Q. Your numbers are based on the gages from that
11 station; correct?

12 A. They are.

13 Q. So these numbers are based on uncalibrated
14 measurements, would you agree?

15 A. I would not agree with that statement. I
16 think her testimony indicated that she would like to see
17 more manual measurements to support the SCADA
18 instruments that are there and measuring other measuring
19 stations. And we find it common as you go through the
20 summer about on a monthly basis that these gage stations
21 need to be recalibrated, and that has to do with moss
22 buildup or other things in the system over the summer.

23 So it's not uncommon for there to be some
24 minor error in every season. And I think that, yes, her
25 comment is maybe true, that maybe there is reason to

1 believe on a daily basis from one month to the next
2 there may be some deviations.

3 Q. I understand there could always be more
4 measurements. But she testified that there were not
5 adequate manual measurements. So these numbers in your
6 Exhibit 3 are based on inadequate manual measurements
7 per Ms. Sukow.

8 A. They are based on the data that we use on a
9 daily basis to manage the river. You can make the same
10 argument possibly at the Hailey gage, and that's a USGS
11 gage.

12 Q. But you don't recall Ms. Sukow testifying to
13 concerns about that gage, do you?

14 A. No, she didn't.

15 Q. Now, Big Wood Canal Company is claiming injury
16 from groundwater pumpers within the Bellevue Triangle;
17 correct?

18 A. Yes.

19 Q. But you have not identified any specific
20 groundwater rights causing that alleged injury, have
21 you?

22 A. No.

23 Q. You have not specifically identified how the
24 groundwater pumpers in that Bellevue Triangle area are
25 affecting your, meaning Big Wood Canal Company's,

1 decreed rights, have you?

2 A. The company, no, but through our hydrologist
3 and those types of studies we are trying to pinpoint
4 those or have pinpointed those.

5 Q. When you mention your hydrologist, is that
6 Eric Miller?

7 A. It is.

8 Q. So you are basing the alleged injuries on Mr.
9 Miller's report?

10 A. Yes, we are.

11 Q. And that's that June 1, 2021, report?

12 A. I would assume that's correct.

13 Q. So Big Wood Canal Company hasn't made any
14 calculations on its own regarding shortfalls of water.

15 A. No.

16 Q. Or effects that groundwater pumpers within the
17 Bellevue Triangle may be having on its decreed rights;
18 correct?

19 A. No. We are depending on our hydrologist, yes.

20 Q. I believe you testified in your deposition
21 that about a quarter of your shareholders are still
22 using gravity irrigation methods; is that correct?

23 A. That is probably correct, over the entire
24 system, yes.

25 Q. Would you agree that that method of irrigation

1 is not as efficient as other methods of irrigation, such
2 as pivots?

3 A. Yes.

4 Q. I recall you testifying in your deposition
5 that Big Wood Canal Company has not made any efforts to
6 design or secure funding for a pipeline to bring water
7 from the Milner-Gooding Canal to the lands up north
8 above it.

9 A. No, that would require pumping. It's just
10 geographically impossible to deliver to North Shoshone
11 or Richfield from the river, or from the Milner-Gooding
12 Canal, as you mentioned.

13 Q. Ms. Sukow testified during her May 27, 2021,
14 deposition that the Department received letters from Big
15 Wood Canal Company informing it that the canal company
16 was planning on making a delivery call. Are you aware
17 of those letters?

18 A. Yes, they were in coordination with the Little
19 Wood-Big Wood users.

20 Q. Do you recall when these letters were sent?

21 A. I don't particular dates, but they are of
22 record.

23 Q. Were you involved in drafting those letters?

24 A. They were drafted and I read and signed, if
25 those are the letters you're referring to.

1 Q. What do the letters say?

2 A. That we were going to participate in the call,
3 and we felt as though we were injured, and that we were
4 supporting the association or the group of decreed
5 holders in the action.

6 Q. I know you said you don't specifically recall
7 the date, but would those letters have been sent within
8 the last year or two?

9 A. No. They would be previous to that, I
10 believe.

11 Q. Around 2017?

12 A. Yes, could have been.

13 Q. Was the call actually made after those letters
14 were sent?

15 A. I forget the dates, but I'm going to say that
16 yes, there was a call attempted and because of
17 technicalities was not made.

18 Q. Would that have been in 2015 or 2017?

19 A. There were two, two attempts at a call, and I
20 think, was it '15 or '17? I'm not certain, but yes, two
21 call attempts.

22 Q. You also testified in your deposition that Big
23 Wood Canal Company requested conjunctive administration
24 in Water District 37. Do you recall that?

25 A. I may have said that, but that's not what we

1 are here today about.

2 Q. That wasn't my question. My question was:
3 Did Big Wood Canal Company request conjunctive
4 administration?

5 A. We get to a legal term here, and that seems to
6 be what is being dwelled on by yourself and others. We
7 have been working with those folks, I personally for a
8 number of years, trying to come to some sort of
9 cooperative management that would allow both the pumpers
10 and the stockholders of my company to prosper and
11 survive.

12 So if the legal term is "conjunctive
13 management," we submitted an answer to a management plan
14 that was presented by the groundwater pumpers and our
15 proposal which spurred the formation of the groundwater
16 Advisory Committee. But we are really seeking in this
17 action priority administration.

18 Q. So based on your understanding of conjunctive
19 administration, Big Wood Canal Company did request such
20 administration from the Department.

21 A. In a legal sense?

22 Q. Based on your understanding.

23 A. On my understanding at the time, I probably
24 said that, yes.

25 Q. That would have been last fall?

1 A. What we submitted last fall was an answer to a
2 management plan, not a request for conjunctive
3 management. So it gets back to the legal term.

4 Q. Sure. I'm not trying to -- I just asked based
5 on your understanding whether Big Wood Canal Company had
6 requested conjunctive administration, and I was just
7 trying to get a time period for when that request was
8 made.

9 A. So I guess I don't know how to answer that,
10 depending on the legalese that was involved in the
11 documents you are referring to. We have been seeking
12 some sort of cooperative management plan, whatever form
13 that takes.

14 MS. O'LEARY: Okay. Thank you, Mr. Pendleton.
15 That's all the questions I had.

16 THE HEARING OFFICER: Thank you, Ms. O'Leary.
17 I'll circle back. Mr. Thompson, do you have
18 questions?

19 MR. THOMPSON: I have a couple.

20

21 CROSS-EXAMINATION

22 BY MR. THOMPSON:

23 Q. Hi, Mr. Pendleton. Travis Thompson for the
24 South Valley Ground Water District.

25 Can you pull up Tim Luke's memo, that IDWR

1 Exhibit 4.

2 A. Yes.

3 Q. Could you turn to page 9.

4 A. Of the original document, or the main
5 document?

6 Q. Correct.

7 A. Yes.

8 Q. Is there a Figure 3 on that memo?

9 A. Yes.

10 Q. Right above that figure Mr. Luke describes the
11 increases and the total diversions, and I think he
12 references the Big Wood Canal Company water rights. Do
13 you recognize that?

14 A. Yes.

15 Q. And it looks like junior to 1899 -- well,
16 including the 1899, that 540 cfs increase is probably
17 mostly all Big Wood Canal Company water rights; is that
18 correct?

19 A. Yes, I would think that is correct.

20 Q. Do you agree with his characterization that is
21 a high runoff water supply appropriation?

22 A. Yes.

23 Q. So my question to you is: Is there 900 cfs in
24 the Little Wood, has that water ever been diverted, all
25 of that?

1 A. All of that?

2 Q. Yes.

3 A. There probably would be isolated instances,
4 yes. Unfortunately that diversion can only handle about
5 200 cfs. So your question is a little bit null there
6 because that's the capacity of the Dietrich Canal, about
7 200 cfs.

8 Q. But when those rights are in priority in the
9 early spring, that's what supplies that canal at that
10 time.

11 A. It is. It allows us not to turn on the rest
12 of the system or supplements, reduces our draws on that
13 storage reservoir.

14 Q. How often do those rights stay on priority, I
15 guess, for the length of the irrigation season?

16 A. I don't know. Honestly, that is kind of a
17 management function, and being on the board I stepped
18 away a little bit. But it would be a question for
19 either Mr. Lakey or possibly somebody from our
20 management team.

21 Q. Could you turn back to your Exhibit 3,
22 Fletcher Exhibit 3.

23 A. Yes.

24 Q. These were your notes from gage readings, is
25 that correct, at the Hailey and then the Station 10 at

1 Richfield?

2 A. Yes.

3 Q. You stated that there was a rain event 5/21
4 and then you saw Station 10 go up; is that correct?

5 A. That's correct.

6 Q. So could part of that increase be due to the
7 rain?

8 A. It doesn't show in the river. The river
9 actually drops. You would expect the higher elevations.

10 Q. The river at the Big Wood River?

11 A. At Hailey, yes.

12 Q. How about the Little Wood?

13 A. The Little Wood you would expect to -- I would
14 not expect a lot of rainfall contribution. For one, the
15 land is dry, the deserts are dry, all of that is dry
16 through that stretch from Silver Creek to the Richfield
17 gage. There was no runoff.

18 Q. Do you have any personal knowledge of that?

19 A. No. Just in the fact that it took blacktop at
20 my place to make a puddle. The ground took it all. We
21 are talking something less than 3/4 of an inch of rain.

22 Q. Would that have shut off diversions?

23 A. It possibly could have shut down the
24 diversions. Although, just looking at the canals
25 visually, the 45 and the Baseline Canal, we went up for

1 an evening dinner, and they were still running pretty
2 darn high. So I didn't visually see it. I certainly --
3 I mean, I did visually see it in the canals, and the
4 appearance in the canals, obviously did not go to the
5 measurements to verify if they reduced their surface
6 diversions.

7 Q. How about individual surface diversions off of
8 Silver Creek or the Little Wood?

9 A. I would have no knowledge of that.

10 Q. Would you expect those to shut down during
11 that event?

12 A. It's possible that they shut them down quite
13 often in a small event. That was a relatively small
14 event. It was big for Magic because we could shut off
15 for a while. But in that small amount of rainfall in
16 that area up there, I would not expect that they changed
17 those river diversions. I could be totally wrong. That
18 is my speculation.

19 Q. But it's your testimony that the groundwater
20 pumps shut off.

21 A. That's the easiest thing to do is to flip a
22 switch. It takes some work to adjust deliveries.

23 Q. But do you have any personal knowledge of
24 pumps going off at that time?

25 A. No, I do not.

1 Q. So it would be fair to say this could be a
2 combination of surface and groundwater diversions going
3 off.

4 A. I think that is very fair, yes.

5 Q. I guess the last question, your testimony
6 about your Big Wood Canal Company water rights and your
7 own property, are you intending to offer that as
8 evidence of injury in this proceeding dealing with the
9 Little Wood?

10 A. No, because our rights -- we have many
11 stockholders; we have 1,200 stockholders. I know of
12 individuals that have some big losses, and they would
13 certainly be happy to step forward and offer those. But
14 they are not as easily isolated as those individual
15 users that you heard from this morning and those you'll
16 hear from this afternoon whose water applies to a very
17 specific piece of property based on a decreed right.

18 Q. So would you agree that injury to the Big Wood
19 Canal Company's Big Wood water rights is beyond the
20 scope of this proceeding?

21 A. Until we include storage rights, yes, that's
22 correct.

23 Q. One last question, if junior groundwater
24 rights in the Triangle are curtailed, do you agree that
25 the Big Wood Canal Company would not be able to put its

1 Little Wood rights to beneficial use if water shows up
2 for those?

3 A. Only if we rent those to one of our
4 stockholders who can access those from the river.

5 Q. Do you have a rental in place today?

6 A. We have a rental policy, and if the agreement
7 of last night would have gone forward, I had one
8 individual who wanted to rent most of our premier right,
9 the 1883 right.

10 Q. But as of today you don't have a rental; is
11 that true?

12 A. No. There is concern -- it would be a sum
13 that has to be paid regardless of whether that priority
14 stays in play or whether that priority is terminated.
15 And there is question of whether that 1883 right may be
16 cut by midsummer.

17 MR. THOMPSON: That's all the questions I
18 have.

19 THE HEARING OFFICER: Thank you, Mr. Thompson.

20 Ms. Vonde is not here and is participating as
21 I look at the screen remotely. So I think that's the
22 group 2 questioning.

23 Group 3, Mr. Bromley?

24 MR. BROMLEY: Thank you.

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CROSS-EXAMINATION

BY MR. BROMLEY:

Q. Hi, Mr. Pendleton.

A. Good afternoon.

Q. How are you?

A. Good.

Q. Thanks for being here.

I have three questions; so very brief.

First is, do you know when your Little Wood rights generally turn on at the start of a year? So let's just talk about an average year.

A. On an average year we may come on, depending on the demands of weather, latter part of April. Our normal target date is about the 1st of May. However, in relation to these decreed rights where they need those earlier out on the Dietrich tract, we may divert those in mid April.

Q. Do you know this year when those rights turned on?

A. We turned on our system about the 7th I believe, and those rights to Dietrich were probably turned on the last week of April, first of May, bought us about 10 days to a week.

Q. Thank you.

Second question is: Are you asking for

1 curtailment of groundwater pumping outside of the
2 Bellevue Triangle?

3 A. No.

4 Q. Third question: If junior groundwater users
5 are able to show they can mitigate, would you agree that
6 they ought to be able to mitigate?

7 A. I would hope so. I would hope that we can
8 come to some agreement. I've been pursuing that for
9 more than 5 years, if that answers your question.

10 Q. It does.

11 MR. BROMLEY: Thank you.

12 THE HEARING OFFICER: Thank you, Mr. Bromley.

13 Now, other questions from those in group 3. I
14 see John Simpson is not here and is participating
15 remotely.

16 Mr. Robertson, any questions?

17 MR. ROBERTSON: No questions.

18 THE HEARING OFFICER: Mr. O'Bannon?

19 MR. O'BANNON: No questions.

20 THE HEARING OFFICER: I don't think we have
21 anyone else.

22 Redirect, Mr. Fletcher.

23 MR. FLETCHER: I don't have any questions.

24 THE HEARING OFFICER: Redirect, Ms. O'Leary?

25 MS. O'LEARY: No.

1 THE HEARING OFFICER: There is no redirect.
2 Thank you, Mr. Pendleton, for your testimony.
3 And I want to personally thank Mr. Pendleton for his
4 long years of service on the canal board, and anybody
5 that serves that long and sits in that many midnight
6 meetings deserves some public recognition. Thank you.

7 THE WITNESS: Thank you.

8 THE HEARING OFFICER: I had to sit through
9 some of those meetings and they are never done until
10 midnight.

11 THE WITNESS: You didn't mention we started at
12 9:00 in the morning.

13 THE HEARING OFFICER: Yeah.

14 Mr. Rigby or Fletcher, next witness.

15 MR. RIGBY: Mr. Director, we'd call John
16 Arkoosh to the stand.

17 THE HEARING OFFICER: Mr. Arkoosh, if you'll
18 come forward, please.

19 JOHN ARKOOSH,
20 having been called as a witness by the Big Wood &
21 Little Wood Water Users Association and first duly
22 sworn, testified as follows:

23
24 THE HEARING OFFICER: Mr. Rigby, you may
25 question Mr. Arkoosh.

1 MR. RIGBY: Thank you.

2

3

DIRECT EXAMINATION

4

BY MR. RIGBY:

5

Q. Good afternoon, John.

6

A. Hi.

7

Q. Please state your full name and current

8

address for the record.

9

A. John Arkoosh, my address is 490 Ohlinger Road,

10

Shoshone, Idaho 83352.

11

Q. And you are a party to this proceeding?

12

A. Yes.

13

Q. Is it also a fact that your father is a party

14

to this proceeding?

15

A. He is.

16

Q. What is his name?

17

A. William Arkoosh.

18

Q. Do the two of you work together, I'll call it

19

a loosely knit partnership?

20

A. Yeah, we have a partnership; we own equipment

21

and cattle together. We each own our own farms and

22

operate them kind of together, sharing equipment and

23

feed.

24

Q. The reason I'm asking that is, is it your

25

intention today to cover not only the water rights on

1 your particular farm but also your father's farm?

2 A. Yes, it is.

3 Q. Is that because you have personal knowledge of
4 both farms?

5 A. Yes.

6 Q. Let's talk about how personal that knowledge
7 is. How far back do you go on those particular two
8 farms?

9 A. His two farms? Well, I was born in 1965; so
10 the one farm we owned then. And I believe he bought the
11 other one when I was 12 years old. He rented it for a
12 couple years before that.

13 Q. So do you have personal familiarity with the
14 irrigation practices on his farm as well as your farm?

15 A. Yes.

16 Q. The answer you just gave me, was that as to,
17 we'll call them your father's farm?

18 A. Yes.

19 Q. How about as far as your farm, how long have
20 you owned your farm?

21 A. I should have looked back to see for sure, but
22 I'm thinking maybe 2007 for one and 2015 for the other,
23 and both of those farms I rented at least for several
24 years. In the case of the second farm, I leased it for
25 nearly 15 years before I purchased it.

1 Q. So again, is it fair to say then you are
2 fairly comfortable with being able to address the water
3 usage on both your father's farms as well as your farms?

4 A. Yes, I think so.

5 Q. Are you a member of the Big Wood & Little Wood
6 Water Users Association?

7 A. Yes.

8 Q. Do you hold a position there?

9 A. Well, they call me chairman of the board, but
10 it's not a very big board. So that's my position there.

11 Q. You have heard the testimony of Mr. Brossy as
12 far as what the organization is all about. Do you have
13 any -- without getting into the details of it, do you
14 have anything to add to that?

15 A. No, that was an accurate description.

16 Q. All right. Let's proceed then. And if it's
17 okay, please turn to -- and maybe we need to -- is it
18 opened up to Bill's?

19 A. Yes.

20 Q. Very good. Would you turn, first of all, to
21 Bill's water rights. That would be W. Arkoosh exhibits;
22 is that correct?

23 A. Exhibit 2?

24 Q. Let's go to Exhibit 2 to begin with; that's
25 correct.

1 A. Okay.

2 Q. So as quickly as possible. Let's just go
3 through his water rights.

4 Exhibit 2 purports to be Water Right 37-59M;
5 is that correct?

6 A. Yes.

7 Q. And it's 5/27/99?

8 A. Yes.

9 Q. Priority date?

10 A. Yes.

11 Q. For 2.304 cfs irrigation?

12 A. Yes.

13 Q. And Exhibit --

14 MR. BROMLEY: Mr. Director, I'll renew my
15 objection, as you previously ruled on, but this 37-59M
16 is a Big Wood River right.

17 THE WITNESS: This is a Cottonwood right, yes.

18 Q. (BY MR. RIGBY) That's what I was going to ask
19 next.

20 A. Yes.

21 Q. So again, what we addressed in the cross -- or
22 excuse me, the direct with Mr. Brossy, do you agree that
23 this is the Cottonwood right?

24 A. Yes, it is.

25 Q. It's the same right that he was referring to.

1 A. Yes.

2 Q. Are you using this particular right in any way
3 to show injury for this particular action that is before
4 the Director?

5 A. No.

6 Q. Therefore, are you presenting it only to show
7 your full water capacity or full water rights
8 themselves?

9 A. Yes.

10 THE HEARING OFFICER: Mr. Rigby, I'm trying to
11 catch up. It's a little bit hard for me to find the
12 tabs here. Maybe everybody else is faster than I am.
13 So you are under William or W. Arkoosh.

14 MR. RIGBY: That's correct. So No. 2 and 3
15 were stickered as W. Arkoosh Exhibit 2 and W. Arkoosh
16 Exhibit 3.

17 THE HEARING OFFICER: Okay. So Mr. Bromley,
18 you objected or at least reiterated your previous
19 objection. Do you still object to this particular
20 document?

21 MR. BROMLEY: Yes, Director, I'm just renewing
22 my same objection, which you've already ruled on and Mr.
23 Rigby has explained, but I'm just renewing the same
24 objection.

25 THE HEARING OFFICER: Okay. So for purposes

1 of the record, I'll overrule the objection with the same
2 stipulation, that this particular water right is just
3 showing the total water supply but not for purposes of
4 water administration.

5 MR. RIGBY: Very good.

6 THE HEARING OFFICER: Okay.

7 Q. (BY MR. RIGBY) All right. So John, if you'll
8 move now to W. Arkoosh Exhibit No. 4, please.

9 A. Okay.

10 Q. Again, attempting to expedite, it purports to
11 state that it's Water Right 37-176, with 4/01/1890
12 priority, and 2 cfs diversion right. Is that what you
13 understand?

14 A. Yes.

15 Q. And where is -- well, let's go to W. Arkoosh
16 Exhibit 5. That purports to be the IDWR's-generated
17 mapping of place of use of that particular water right;
18 is that correct?

19 A. Yes.

20 Q. As you review that mapping, is that an
21 accurate description of the place of use of Water Right
22 37-176?

23 A. Yes.

24 Q. Explain again, as I've asked others, the river
25 or stream that appears to be meandering through that,

1 what river is that?

2 A. That is Little Wood River.

3 Q. Where particularly is this located
4 geographically? You can use maybe some of the others
5 that have testified or from station such and such. What
6 would be a good way to describe where you fit?

7 A. Well, we're just downstream probably 4 miles
8 from where the South Gooding Main Canal leaves Little
9 Wood River, and there is some, I believe, some measuring
10 stations there where those canals take off. That's
11 upstream about 4 miles. This is about 4 miles east of
12 Gooding on the Little Wood River.

13 MR. RIGBY: Very good.

14 So I would move for the admission of
15 W. Arkoosh Exhibit 4 and W. Arkoosh Exhibit 5.

16 THE HEARING OFFICER: Any objection to the
17 admission of these documents?

18 Very well. Hearing no objection, the
19 documents that are marked as W. Arkoosh Exhibit 4 and
20 Exhibit 5 are received into evidence.

21 (W. Arkoosh Exhibits 4 and 5 received.)

22 Q. (BY MR. RIGBY) If you'll turn to W. Arkoosh
23 Exhibit 6, please.

24 A. Yes.

25 Q. And again, Water Right, it purports to read

1 Water Right 37-327, with a priority date of 5/15/84,
2 diversion rate of 2.2 cfs; is that correct?

3 A. Yes.

4 Q. Again, turning to W. Arkoosh Exhibit 7, which
5 is the IDWR-generated mapping of this particular water
6 right. Does that appear to be correct?

7 A. Yes.

8 Q. As it relates to the previous water right, it
9 appears to be different lands; is that correct?

10 A. Yes.

11 Q. And where are they located one from the other,
12 generally?

13 A. This would be probably 4 miles upstream on the
14 Little Wood River.

15 Q. But again, diverting from the Little Wood
16 River.

17 A. Yes, Little Wood River runs through the
18 property.

19 Q. In relationship to the Gooding Canal?

20 A. The Gooding-Milner Canal?

21 Q. Yes.

22 A. I guess it would -- well, the Gooding-Milner
23 dumps into Little Wood at Shoshone. So I guess it's on
24 both sides of the -- that water is carried by the
25 Gooding -- yeah, it's right there.

1 Q. Very good.

2 MR. RIGBY: I would again move for the
3 admission of W. Arkoosh Exhibit 6 and W. Arkoosh
4 Exhibit 7.

5 THE HEARING OFFICER: Any objection to the
6 admission of these documents?

7 The documents marked as Exhibit 6 -- well, let
8 me back up. W. Arkoosh Exhibit 6 and 7 are received
9 into evidence.

10 (W. Arkoosh Exhibits 6 and 7 received.)

11 THE HEARING OFFICER: Mr. Rigby, I just have a
12 question of Mr. Arkoosh. I thought his last answer was
13 that this place of use is located on both sides of the
14 Milner-Gooding.

15 THE WITNESS: Well -- do you want me to answer
16 or --

17 MR. RIGBY: Yes, please do.

18 THE HEARING OFFICER: I don't understand. I
19 don't see the canal.

20 THE WITNESS: If you're talking about, the
21 Gooding-Milner Canal comes into Shoshone. Part of it is
22 diverted north of Shoshone via the North Gooding Main, I
23 believe they call it, and the rest continues down Little
24 Wood River -- dumps into Little Wood River and continues
25 down to the South Gooding Main where most of that water

1 is taken out of the river and distributed to American
2 Falls, which is downstream.

3 THE HEARING OFFICER: So this place of use is
4 located below the point of injection where Snake River
5 water is injected into the Little Wood River, this is
6 downstream.

7 THE WITNESS: Yes.

8 THE HEARING OFFICER: Okay.

9 THE WITNESS: Yes.

10 THE HEARING OFFICER: All right. I
11 misunderstood the answer.

12 THE WITNESS: I probably didn't state it very
13 clearly.

14 THE HEARING OFFICER: Thank you.

15 Q. (BY MR. RIGBY) If you'll turn to W. Arkoosh
16 Exhibit No. 8.

17 MR. THOMPSON: Just for the record, I'll
18 stipulate to the rest of your exhibits.

19 MR. RIGBY: I would love that.

20 THE HEARING OFFICER: The rest of W. Arkoosh
21 exhibits?

22 MR. FLETCHER: No objection.

23 THE HEARING OFFICER: Anybody else?

24 Thank you, Mr. Thompson. That's helpful.

25 Perhaps I should have asked if the parties

1 would stipulate to the exhibits. So based on the
2 statements here, the documents marked as W. Arkoosh
3 Exhibits 8 through 11 are received into evidence. Is
4 that the last one?

5 MR. RIGBY: It is, Mr. Director.

6 THE HEARING OFFICER: Thank you.

7 (W. Arkoosh Exhibits 8, 9, 10, 11 received.)

8 Q. (BY MR. RIGBY) So just to be clear then, the
9 two mappings that we just discussed of those first two
10 before we stipulated to the balance, were any of the
11 water rights additional lands or places of use than
12 those?

13 A. The water rights we discussed?

14 Q. Right.

15 A. No.

16 Q. So all the other water rights are additional
17 water rights for those two particular pieces of land.

18 A. Yes.

19 Q. Now, as far as W. Arkoosh's lands, does he or
20 you have any supplemental supply of water in addition to
21 the water rights you have described here?

22 A. He does have some supplemental water on what
23 we call the Leabo place, the place just east of Gooding.
24 I believe there is around 100 inches, it's about
25 two-thirds of what the decreed right is, or probably not

1 what the decreed right is if you're counting the
2 Cottonwood water. But yes, he does have about enough to
3 irrigate two-thirds of that farm with --

4 Q. Which particular farm would that be? Would it
5 be under Exhibit No. 2 or No. 4?

6 A. No. 2.

7 Q. No. 2?

8 A. The first one we talked about.

9 Q. Very good. Again, you say that 100 inches are
10 applied toward that.

11 A. Yes.

12 Q. And is that able to be applied at any time
13 throughout the season?

14 A. Just when some of your decreed water is out of
15 priority, then that supplemental water kicks in.

16 Q. As far as this particular year is concerned,
17 have you used any of the 100 inches on this land that's
18 described -- you call it the Gooding land?

19 A. We call it the Leabo place, the old guy that
20 we bought it from. But I don't know what -- yeah,
21 that's the only farm we have in Gooding County with
22 decreed rights.

23 Q. So the Gooding County place.

24 A. Yes.

25 Q. So has it been applied, your supplemental

1 water?

2 A. Yes, it has this year.

3 Q. Has it been exhausted?

4 A. No. It's still running. The supplemental
5 will run as long as American Falls is on, but we only
6 have enough to irrigate about two-thirds of that farm
7 with the American Falls water.

8 Q. Are any of these within the exchange agreement
9 of what we call the 161 Condition?

10 A. I believe it is.

11 Q. Again, would that be the Gooding place?

12 A. Yes.

13 Q. Gooding County place?

14 A. Yes. And there is -- you asked me if we had
15 additional water. There's a supplemental well on that
16 farm as well, and it's appurtenant to just that farm.

17 Q. I will get to that one in just a minute.
18 Let's stick with the AFRD water.

19 How does the relationship between the
20 supplemental supply of water under AFRD that you
21 testified to and the exchange agreement interact, if at
22 all?

23 A. Well, like I said, when the decreed right is
24 cut, the supplemental water comes into play. So it will
25 run through the season for whatever amount of

1 supplemental water you have. That place happens to be
2 covered by about two-thirds, it will irrigate about
3 two-thirds of that farm.

4 Other farms we have will irrigate less than a
5 quarter with supplemental, and then other farms have no
6 supplemental, or one other farm has no supplemental.

7 Q. No supplemental?

8 A. No supplemental. One of mine.

9 Q. We'll talk about that later. But is this
10 particular one then, you're saying about two-thirds of
11 the Gooding County one would be covered under
12 supplemental.

13 A. Yes.

14 Q. Is it, generally speaking, sufficient to grow
15 the crops that you generally grow on the Gooding County
16 property?

17 A. Not just with that one supplemental right, no.

18 Q. I understand that. I'm saying, with that
19 supplemental right -- in normal years are you able to,
20 with this supplemental right, sufficiently grow the
21 crops that you grow or intend to grow on the Gooding
22 County property?

23 A. Yes. If the water stayed in priority, yes.

24 Q. Very good.

25 What kind of crops are you growing on the

1 Gooding County property, and then we'll go to the other
2 one?

3 A. This year it's all in alfalfa.

4 Q. Is that a change or a modification, if you
5 will, from what you would normally grow on the Gooding
6 County property?

7 A. No. We generally grow hay and corn. We
8 occasionally do some small grains. But we farm and
9 ranch so we have quite a lot of cattle that we need to
10 make sure we have feed for. So our focus is on the feed
11 crops; hay and corn for silage because we background our
12 calves.

13 Q. So do these lands also support livestock?

14 A. Yes.

15 Q. Are these livestock located upon those lands?

16 A. About 5 to 6 months a year, yes.

17 Q. Is it after the crops are grown?

18 A. Yes.

19 Q. You feed the cattle on those lands?

20 A. Yes.

21 Q. Otherwise where are the cattle kept?

22 A. They go out to summer range.

23 Q. So let's talk then about the other rights that
24 you have on the Gooding County property. You indicated
25 that there is a well?

1 A. Yes, there is a supplemental well that's
2 appurtenant to that farm and another farm we have that
3 has American Falls water that was insufficient when he
4 drilled the well. He made it appurtenant to those two
5 farms.

6 Q. Do you have that water right?

7 A. Well, I don't think here, but I think --

8 Q. Or is that part of your --

9 A. No, it's part of his and I had it listed on
10 the exhibit I took to my deposition, which I saw in here
11 somewhere.

12 Q. Excuse me just a minute.

13 A. I've got it here, I believe.

14 Q. Which exhibit are you referring to?

15 A. Actually, I don't have it here because I just
16 took my water rights to my deposition. I didn't take
17 his so I don't have that water right number. I'm sorry.

18 Q. Let's talk about that water right then. It's
19 a well water right?

20 A. Yes.

21 Q. Do you know the priorities and the --

22 A. It was drilled in 1977, in March of '77, I
23 believe.

24 Q. What is the water right number, do you know?

25 A. I don't know.

1 Q. Do you know the cfs?

2 A. I think it's rated for 4.4 or 4.2, something
3 like that.

4 Q. Its authorized place of use is where again?

5 A. It's the Gooding farm and another farm that my
6 dad owns across the -- like you say, across the tracks,
7 which is supplied by American Falls water.

8 Q. So is it part of the proceeding that we have
9 before the Director today?

10 A. No.

11 Q. So how is the water from that well split, if
12 you will, between these parcels, the Gooding County
13 property and the other property that is not part of this
14 proceeding?

15 A. It's not really ever sent to the other
16 property. We have irrigation systems now and have
17 sufficient water for that property.

18 Q. So the well then would be used on this
19 particular parcel.

20 A. It's appurtenant to this Gooding property.

21 Q. So with those parcels in the Gooding County
22 property, with your water rights that we've described
23 here, and the AFRD rental of the 100 inches, and the
24 exchange agreement together with the well, what is your
25 anticipated shortfall, if any, for this particular year

1 on the Gooding County property?

2 A. I don't think I listed any shortfall, except
3 for maybe having to turn on the well and paying for the
4 power bill on that property.

5 Q. So now let's go to the other parcel of
6 property, which is the -- how do you want to describe
7 that one, which would be W. Arkoosh Exhibit -- is it
8 Franklin County?

9 A. Shoshone County. Or Lincoln County.

10 Q. I'm sorry.

11 A. Lincoln County.

12 Q. I'm still in Lemhi; so you're good.

13 THE HEARING OFFICER: No, now you're in
14 Preston.

15 Q. (BY MR. RIGBY) So just to make sure I've got
16 the two parcels then, we're talking Shoshone County?

17 A. Lincoln County.

18 Q. Lincoln County. Okay. There's a Lincoln
19 County and we've talked about the Gooding County.

20 A. Yes.

21 Q. So now we're on the Lincoln County property.

22 A. Owned by my father, yes.

23 Q. This, again, owned by your father.

24 A. Yes.

25 Q. What supplemental water right then do you have

1 or does he have on the Lincoln County property?

2 A. He's got, I believe, 30 inches or --

3 Q. Is that AFRD water as well?

4 A. I believe it's AFRD supplemental water, yes.

5 Q. And so, again, does it also have the Exchange
6 Agreement Condition 161?

7 A. These decreed rights do, yes.

8 Q. Do you know whether or not that has been
9 delivered or used thus far this year?

10 A. Yes, it has.

11 Q. And again, is it exhausted or will it be
12 exhausted only when the canal --

13 A. The supplemental portion of that right will
14 run through the summer.

15 Q. It will run through the summer.

16 THE HEARING OFFICER: I want to interject
17 right here for the benefit of the reporter.

18 So Mr. Arkoosh, you need to wait until his
19 question is --

20 THE WITNESS: I'm sorry.

21 THE HEARING OFFICER: -- and then answer
22 because she's having to try to transcribe both of you at
23 the same time.

24 THE WITNESS: I got in trouble for that at the
25 deposition.

1 THE HEARING OFFICER: And then will you also
2 speak up?

3 THE WITNESS: I will. I'm sorry.

4 THE HEARING OFFICER: Thank you.

5 Q. (BY MR. RIGBY) Okay. We're back to the
6 Lincoln County property, we are discussing the
7 supplemental rights to the Lincoln County property, and
8 you indicated there was 30 inches.

9 A. I believe so.

10 Q. The last question was: Will it continue to be
11 diverted throughout the summer?

12 A. Yes.

13 Q. So as to any deficiency that you maintain for
14 this particular year on the crops grown -- let me strike
15 that first.

16 What are the crops grown on the Lincoln County
17 property?

18 A. Alfalfa hay and silage corn.

19 Q. So the only additional crop that is grown on
20 the Lincoln County property as opposed to the Gooding
21 County property is you're also growing silage corn.

22 A. Yes.

23 Q. Is there any particular reason why you are
24 growing silage corn on the Lincoln County versus the
25 other? Is it because of a better water supply or just

1 that's your rotation?

2 A. Just our rotation.

3 Q. Very good.

4 So any additional supplemental water to the
5 Lincoln County property that we haven't discussed
6 already?

7 A. No.

8 Q. No well.

9 A. No.

10 Q. Very good.

11 Have you then, or through your dad through
12 you, made any claim that the water for this particular
13 year is insufficient for the crops that you're growing?

14 A. Yes.

15 Q. Let's turn then to your father's. It would be
16 W. Arkoosh Exhibit 1.

17 A. Okay.

18 Q. Were you involved in providing the numbers
19 that were used in creating this chart?

20 A. Yes.

21 Q. Are you familiar with the crops grown, the
22 needed days of irrigation, the yield loss that is
23 indicated here and projected revenue loss?

24 A. The one I'm looking at isn't mine.

25 MR. RIGBY: May I approach?

1 THE HEARING OFFICER: Yes.

2 THE WITNESS: Okay.

3 Q. (BY MR. RIGBY) So again, to repeat the
4 question, are you familiar with and did provide the
5 input that addresses the crops grown, number of days
6 needed to projected cutoff, yield target, yield loss,
7 et cetera, in this particular W. Arkoosh Exhibit No. 1?

8 A. Yes.

9 Q. Explain, if you would, why you believe that
10 there will still -- with the water rights you've
11 indicated, there would still be revenue loss and
12 projected yield loss for 2021?

13 A. Because on this farm, we have only got enough
14 supplemental water to irrigate a portion of it after our
15 priority cuts are made to our '84s, which has already
16 happened. I believe it happened June 2nd. And I
17 don't --

18 Q. Let me just stop you there. Sorry.

19 So are you indicating that the water rights
20 that we've discussed, except for the supplemental
21 rights, are cut for this particular piece?

22 A. Yes.

23 Q. So you're on supplemental.

24 A. Yes.

25 Q. Okay. Proceed.

1 A. And so with the amount of water we have left,
2 this shows we'll have a supply shortfall for 92 acres of
3 alfalfa for 81 days, and our average yield per acre for
4 alfalfa is 7 ton historically, and most -- not most, but
5 the first cutting is fairly heavy and the second is
6 heavy also, but we're not going to get the last two on
7 that acreage with the water we have available on this
8 farm. And so the shortfall would be a 3-ton per acre
9 shortfall. And right now the hay market, I just use
10 \$200 a ton because that's what -- I'm familiar with some
11 recent sales for that and more, and I thought that was a
12 conservative figure.

13 Q. So it could be higher.

14 A. Yeah, on the alfalfa on that farm. Yeah, it
15 could be higher because they're saying it could go to
16 250 or higher than that even, but I don't know. I do
17 know that there is hay selling now for \$200 a ton.

18 Q. So again, as far as the historical use of your
19 target, is that conservative or is that just a hope that
20 you get that much? Have you done that?

21 A. No, I think we pretty consistently get that if
22 we have a full water supply.

23 Q. Do you generally have a full water supply?

24 A. Well, increasingly we are being cut more and
25 more early, not every year, but I would say

1 progressively, over the last 25 years, the water supply
2 has gotten worse.

3 My dad said this morning that he got this farm
4 in 1958, and he never had his '84 water go off until
5 1977. And it lasted in the worst, I think one of the
6 worst water years in history it lasted until August 1st
7 that year. And it's been off in June and July several
8 years since then, and it's happening increasingly more
9 often.

10 Q. What kind of work have you done on the water
11 system in order to be more efficient in your water
12 delivery, if any?

13 A. On this particular farm?

14 Q. Correct.

15 A. I would say 17 or 18 years ago we put in a
16 pivot irrigation system. We didn't have any power on
17 this farm until late 2015. So we pumped with diesel on
18 that pivot until 2015. And then we were able to get
19 power on up the river and operate a pump. So then we
20 put in an additional -- we put the rest under pivot
21 irrigation. And it was very expensive, but we knew we
22 had to do it because we had less and less water all the
23 time.

24 Q. So is any of the farm now being flood
25 irrigated?

1 A. No.

2 Q. So it's all under pressure system.

3 A. Pressurized pipe, yes.

4 Q. Is that from the river to the plant?

5 A. Yes, from the river to the plant all in pipe.

6 MR. RIGBY: I would move for the admission of
7 W. Arkoosh Exhibit No. 1.

8 THE HEARING OFFICER: Any objection to the
9 aforementioned document?

10 MR. RIGBY: I have to make a correction.
11 Apparently there's two parts to the chart. The second
12 page, we want to make sure we cover that before I guess
13 I ask for it. There's a very small amount of the cost
14 of pumping that --

15 THE WITNESS: That was what I talked about on
16 the Gooding farm. So we have to turn on the
17 supplemental well and there will be some expense there.

18 Q. (BY MR. RIGBY) So the \$2,184 is what you
19 estimate the cost of the pumping.

20 A. Yes. I mean, last year it was quite a lot
21 higher than that. But this year, to cover that amount
22 of water to make up the shortfall on that farm would...

23 MR. RIGBY: So when I move for the admission
24 of W. Arkoosh Exhibit 1, it would include both pages.

25 THE HEARING OFFICER: Any objection to the

1 admission of these documents?

2 Hearing none, the documents -- well, there's
3 two tables that are part of W. Arkoosh Exhibit No. 1 are
4 received into evidence.

5 (W. Arkoosh Exhibit 1 received.)

6 Q. (BY MR. RIGBY) John, I'm going to wait to ask
7 you concerning your understanding and knowledge as to
8 any pumping impacting that for your particular farm so I
9 only have to ask it once.

10 A. Sure.

11 Q. So let's move now to -- so if you'll find the
12 tab that starts with J. Arkoosh, that would be just
13 after your dad's farms. Do you have that?

14 A. Yes.

15 Q. And so again, let's jump to --

16 MR. LASKI: Can we stipulate to all the water
17 right exhibits.

18 MR. RIGBY: Yes, and that's what I was going
19 to do. I'm assuming I would get the same. I just want
20 to go through the tabs to say that they are all the
21 water rights.

22 So that would be J. Arkoosh Exhibit No. 2,
23 with the accompanying water right mapping of Exhibit 3;
24 the J. Arkoosh Exhibit No. 4, with the accompanying map
25 of Exhibit 5; the J. Arkoosh Exhibit No. 6 with the

1 accompanying map of J. Arkoosh Exhibit 7; J. Arkoosh
2 Exhibit 8 with the accompanying map of J. Arkoosh
3 Exhibit 9; same thing with 10 and 11; 12 with the map of
4 13.

5 And then 14 is not there because it was
6 actually in your father's. So that's why that's not
7 there.

8 So Exhibit No. 15 and the accompanying map
9 of -- actually, we got that reversed too. 15 is the map
10 and 16 is the water right.

11 I would say that in stipulation, this
12 particular water right, which is under J. Arkoosh
13 Exhibit No. 16, is a Big Wood water right, and again we
14 are only submitting it for the purpose of the water
15 supply, not for this particular action.

16 MR. LASKI: Is Exhibit 12 also a Cottonwood
17 right?

18 MR. RIGBY: It is.

19 MR. LASKI: So same.

20 MR. RIGBY: Same stipulation. The point
21 being, if there are any Big Wood rights, it's only for
22 the purpose of showing water supply not for anything
23 else.

24 MR. LASKI: Okay.

25 Q. (BY MR. RIGBY) In fact, let me ask you, do

1 you have any Cottonwood rights?

2 A. Yes.

3 Q. Are these the two that we have addressed?

4 A. Yes.

5 Q. So again, make sure we're talking about the
6 same kind of rights, they were Cottonwood rights;
7 correct?

8 A. Yes.

9 Q. Very good.

10 All right. Well, that helps us because we
11 have now gone through those.

12 The question I would then come back to though
13 is in an attempt to determine what particular parcels so
14 we can determine crops grown on those. So if you'll
15 turn to J. Arkoosh Exhibit 3, that's mapping. I'm
16 better at reading maps than I am determining the other.

17 MR. BROMLEY: Mr. Rigby, if you could just
18 please give a water right number because the electronic
19 exhibits you gave us don't have exhibit numbers on them.

20 MR. RIGBY: Very good. 37-326.

21 MR. BROMLEY: Thank you.

22 Q. (BY MR. RIGBY) For this particular year, what
23 crops are being grown on that parcel?

24 A. Alfalfa.

25 Q. And typically speaking, what crops are grown

1 on that parcel?

2 A. Corn or alfalfa or maybe small grains.

3 Q. Is there any particular reason why corn is not
4 grown in this particular year?

5 A. Just wasn't in rotation for this farm right
6 now.

7 Q. No other reason.

8 A. No.

9 Q. Now, the next one I show as a different
10 parcel, or different lands, I believe would be showing
11 up in J. Arkoosh Exhibit 9, 37-461 water right.

12 A. Yes.

13 Q. Again, for what is being grown in 2021, what
14 do you have planted there?

15 A. Organic potatoes.

16 Q. In the past have organic potatoes been grown
17 on this particular parcel?

18 A. No.

19 Q. Is there a particular reason why you chose to
20 grow organic potatoes on this parcel this year?

21 A. Yes, there is. We generally don't rent ground
22 very often, we rarely rent ground, but this farm has
23 been gravity irrigated, the whole farm has been gravity
24 irrigated throughout history. And there were -- I don't
25 know, I tried adding it up today, but there was probably

1 over 3 miles of ditches on this farm, open ditches, and
2 it wasn't efficient to irrigate that way, and I knew we
3 had to get more efficient.

4 The other problem was we didn't have
5 sufficient power to run an irrigation system. But a new
6 technology came out in the last couple years, which I
7 learned about, and coupled with that I was able to put
8 pivot irrigation on this farm this spring. But it was a
9 very expensive system. And I knew that I had to do
10 something to help pay for it.

11 So this farm is farmed organically, and I went
12 out last fall, before I had any knowledge of what the
13 water shortage might be, and got it leased with a fellow
14 to raise these potatoes. In the lease I have got to
15 provide power and water. And so that's why we have got
16 potatoes this year. Now I'm kind of wishing we didn't.
17 I might have made a different choice had I known what
18 the water year was going to be. But the lease was made
19 last fall.

20 Q. Are there other parcels within these water
21 rights that are different than the two we've talked
22 about already?

23 A. No.

24 Q. So you've talked about the more efficient
25 water supply that you have made to -- and, again, for

1 convenience of trying to determine these two parcels,
2 how would we refer to one versus the other?

3 A. It might just be simplistic to call them by
4 what I call them. The Varin property would be the first
5 property we talked about, V-a-r-i-n. And the one we're
6 talking about now is the Ohlinger, O-h-l-i-n-g-e-r. I
7 live on the Ohlinger place.

8 Q. Very good.

9 So let's start with the Ohlinger property
10 because that's where we were discussing the current
11 situation and also the modification from the typical
12 flood irrigation to sprinkler irrigation.

13 With the flood irrigation before, what kind of
14 crops would you have grown?

15 A. We raised generally hay. When we had to
16 rotate we would plow it out and raise small grain or
17 corn, kind of depending on whatever we needed for our
18 own use and maybe what the water supply was as well.

19 Q. Are there any additional supplemental rights
20 on this parcel?

21 A. This has decreed rights. It has got two 1884
22 rights, I believe, and it has the Big Cottonwood, which
23 I know we're not talking about today. But it does have
24 46.8 inches of Carey Act water.

25 Q. Explain that.

1 A. Well, I'm not sure exactly how it works, but
2 it is dependable water. As long as American Falls is
3 running, that water will be on.

4 Q. So it's not leased water from AFRD?

5 A. No. And the water we spoke of before, none of
6 that was leased either. It was --

7 Q. It was actual ownership of inches.

8 A. Yes. Carey Act water is my water and there
9 is, I think, 46.8 inches.

10 Q. And again, how is that delivered to you?

11 A. Through the Little Wood River.

12 Q. From what source?

13 A. I believe it comes out of American Falls.

14 Q. Is it part of the Exchange Agreement 161?

15 A. I don't think it is, no. I'd have to look. I
16 don't think so.

17 Q. But it's supplemental water to you.

18 A. I don't know if it would be called
19 supplemental. It's just Carey Act water. I'm not
20 really sure how you would characterize it. But it is
21 good water, it runs through the season, if American
22 Falls is on.

23 Q. So typically it wouldn't be supplemental if
24 you can divert it at any time through the season. Is
25 that how you understand it?

1 A. Yes.

2 Q. Is that why you're saying maybe it's not
3 supplemental?

4 A. No, it's not supplemental. To my knowledge,
5 it's just a water right.

6 Q. Have you leased any additional water for this
7 particular parcel which you refer to as the Ohlinger
8 property?

9 A. We have a deal in the works right now to lease
10 an additional 200 acre-feet.

11 Q. From whom?

12 A. The same outfit that Fred talked about
13 earlier. I can't remember who it was, but it's coming
14 from -- is it Idaho Irrigation District, I think, or --
15 Fred is kind of facilitating that and putting the deal
16 together.

17 Q. Snake River rental water, is that a good way
18 to explain it?

19 A. Yes, that's what I would call it.

20 Q. Did you feel the necessity to rent that water?

21 A. Yes, we're going to need that and more. We're
22 hoping to be able to find more water.

23 Q. That's my next question. Even if you were
24 able to obtain that water, do you believe it will be
25 sufficient to properly grow and finalize the crop?

1 A. No, I don't think it will. For this farm we
2 need more water.

3 Q. The water you're talking about, as far as
4 Snake River rental water, what is that going to cost you
5 per acre?

6 A. I believe it's going to be \$75 an acre-foot.

7 Q. Does that include all the carrying costs
8 and --

9 A. I believe so.

10 Q. Again, to finalize it on the Ohlinger
11 property, even with what you have right now, are you
12 maintaining that you do not have sufficient supplies to
13 properly grow the crop to its fruition?

14 A. No, I don't think we do. I mean, you do what
15 you can to manage your water and use it where it's most
16 effective, but no, we're going to have a serious
17 shortfall this year.

18 Q. Getting back to what you've done to make it
19 more efficient, how about your diversion from the river,
20 is it pressurized from the river to the plant?

21 A. This one is not pressurized from the river
22 yet. There remains about 500 feet of open ditch from
23 the river to my pump. That was just done this year as a
24 cost savings. The whole system this year for that
25 little farm cost me \$400,000, and I was tapped out. And

1 I am hoping that in coming years I can pipe all the way
2 back to the river.

3 Q. So that is an intent for the future.

4 A. Yes. But we did eliminate probably 3 miles of
5 ditches; so I think it was overall positive. I know it
6 was; we're using a lot, lot less water.

7 Q. How many miles of ditches?

8 A. I don't know. I started adding it up and got
9 about halfway through it and I was over 2 1/2, and I
10 still had some to -- so it was a lot of -- it wasn't a
11 very efficient system before.

12 Q. Very good.

13 Let's go back to the, did you call it the
14 Varin property?

15 A. Yes.

16 Q. You say you are growing alfalfa on that
17 property?

18 A. Yes.

19 Q. How is it being watered?

20 A. Pivot irrigation and a few hand lines.

21 Q. Is there any flood irrigation on that
22 property?

23 A. No.

24 Q. From the river then is it pressurized all the
25 way through?

1 A. Yes.

2 Q. Have you had to do that lately or was it
3 always that way? Well, I can't say "always."

4 A. No. When I bought the farm it was -- there
5 was about 40 acres of wheel lines and the rest was open
6 ditches and gated pipe.

7 Q. So do you believe you're much more efficient
8 now in your watering of that property?

9 A. Yes.

10 Q. So let's talk about your water rights as they
11 stand for the Varin property. Do you believe you have
12 adequate water supply to water that crop?

13 A. No.

14 Q. Why?

15 A. Because all my rights are off there except for
16 some -- I do have some supplemental water there, and
17 I've got some 1882 water.

18 Q. I was going to get into that. So let's talk
19 about, in addition to your decreed rights, what
20 additional rights do you have? You say you have
21 supplemental water. From where?

22 A. From American Falls.

23 Q. How much?

24 A. I have to look at this -- between the
25 supplemental and just a regular certificate there is .6

1 cfs.

2 Q. .6 cfs?

3 A. Yes.

4 Q. Any other water?

5 A. There is some 1882 water that is still on.

6 Q. So when you say your decreed rights will be
7 turned off, not the 1882?

8 A. Well, I don't know. Kevin has made
9 predictions that the '83s will probably go off, and he
10 said he wouldn't guarantee that the '82s would stay on.

11 Q. For how long? Did he give you a range?

12 A. No, he wasn't sure about the '82s.

13 Q. But I mean, is it for a month, for weeks?

14 A. I think they will maybe be on another month
15 anyway.

16 Q. Okay. But again, although you have those
17 rights -- by the way, do you have any other rights? Am
18 I missing any?

19 A. No.

20 Q. So with those rights, do you believe -- I
21 think your testimony was you still believe you do not
22 have enough to go all the way through.

23 A. Yeah. The water on this farm is only
24 sufficient, after the priority cuts that we've already
25 had, is not sufficient to irrigate more than about half

1 of the acreage.

2 Q. So what do you intend to do?

3 A. Well, we're going to purchase this water from
4 Snake River, and I was able to secure a little bit of
5 water from my brother-in-law, a few shares, 21 shares, I
6 believe, and --

7 Q. Are you paying for that?

8 A. Yes.

9 Q. What are you paying for that?

10 A. Well, we haven't arrived at that yet. But I
11 told him I would --

12 Q. That's a family thing?

13 A. I told him I would pay whatever fair market
14 value was.

15 Q. Are you attempting to find additional water
16 then to be able to complete the crop?

17 A. I've talked to some neighbors that are
18 hopefully going to have maybe some water available when
19 their grain crop finishes. There is no solid
20 commitment, but they said they would help all they
21 could.

22 Q. So, again, if you will turn to this time
23 J. Arkoosh Exhibit 1. Are you able to find that? It's
24 right after your tab.

25 A. Yes.

1 Q. Again, so I don't forget this time, there are
2 two sheets; correct?

3 A. Yes.

4 Q. So are the two sheets attempting to address
5 the Varin property as well as the Ohlinger property?

6 A. Yes. I did my injury sheets to reflect the
7 water that is appurtenant to each property and what
8 would be able to be sustained with that water.

9 Q. Understood.

10 So the first sheet of J. Arkoosh Exhibit 1,
11 what property would that one be?

12 A. That is the Varin property.

13 Q. Very good.

14 Let's talk about that. Again, were you the
15 person that provided the information for the crops
16 grown, the days needed to irrigate, the target yields,
17 projected loss and cost?

18 A. Yes.

19 Q. And would you explain what the -- let's take
20 alfalfa, explain what you think as far as the yield and
21 the crop loss could be.

22 A. Well, when I did this it was with the
23 watermaster projections of certain priority cuts. I
24 believe the '85 has been off for quite a while now. And
25 so really all I have on that place now is just about a

1 half a cfs.

2 So basically it's the same as I talked about
3 before, I think we'll have about a 3-ton-per-acre
4 shortfall on that property, on --

5 Q. The Varin property.

6 A. Yes, on -- I should have brought some glasses.
7 I can't tell if that's -- I think it's 58 acres, and at
8 \$200 a ton that's \$40,800.

9 Q. Again, the basis of the value of the hay you
10 already testified to, and that would be the same here?

11 A. Yes.

12 Q. So the \$40,800 is what you would project to be
13 your loss on the Varin property this year?

14 A. Yes.

15 Q. Let's turn to the second sheet then. This
16 would be, I assume, the Ohlinger property?

17 A. Yes.

18 Q. Explain your numbers there, especially when
19 you're dealing with the organic fresh potatoes.

20 A. On these potatoes I had to rely on other folks
21 to tell me their value and approximate yields to expect.
22 This reflects, if this crop fails, what the renter, the
23 loss to the renter will be and ultimately probably the
24 loss to me, because I guaranteed him water and power.

25 So it's 350 sacks per hundredweight, and I

1 think we used a price of 15.9 cents a pound, I think is
2 what it was, which is, I think, very, very conservative
3 for this crop, and that comes out to \$605,283.

4 Q. How about the organic new seeding?

5 A. Yes. Knowing we didn't have enough water to
6 keep these potatoes alive, we didn't want to plant
7 organic new seeding and have it fail as well. So we
8 just saved the seed cost and didn't plant them, plant
9 it.

10 Generally when we plant alfalfa, we get 5 ton
11 to the acre. We'll get a good cutting of oats and
12 alfalfa, which will amount to about 4 ton or a little
13 better. It really yields well. And then we usually get
14 another good cutting that is over a ton. So I think
15 that is a reasonable yield.

16 Q. So this would show then that you're projecting
17 losses of up to \$611,000 and some change.

18 A. Yes. And again, the potato loss, I don't know
19 how you would assign that, to him or me, but ultimately
20 probably to me.

21 Q. Well, you say you guaranteed the water?

22 A. Yes.

23 Q. And if you don't have the water and the
24 potatoes fail, do you presume you could have some issues
25 there?

1 A. I presume I could.

2 Q. I don't want you to admit liability as your
3 attorney. Okay?

4 A. Yeah. But we will manage our water as best we
5 can to try to save ourselves as best we can. So, I
6 don't know.

7 Q. So last line of questioning then. You're part
8 of the organization that has asked that the curtailment
9 of the pumps in the Bellevue Triangle occur; is that
10 correct?

11 A. Yes.

12 Q. Do you believe that the pumps in the Bellevue
13 Triangle are, in fact, decreasing the flows and,
14 therefore, impacting your water rights in the Lemhi --
15 oh, my gosh, in the Little Wood?

16 A. Yes, I do believe that.

17 Q. I'm so sorry. I don't know why I've got that
18 on my brain.

19 Do you have any personal knowledge or personal
20 experience to make you believe that when pumps are
21 turned off in the Bellevue Triangle that, in fact, the
22 Little Wood actually does increase in flows?

23 A. Like everyone else that's spoken today, it's
24 been observed over the years. I rely a lot on what Rod
25 Hubsmith has told me over the years. He lives there and

1 we communicate quite often. We'll talk throughout the
2 year and we always talk about how much water is in the
3 river, and so he tells me there is quite a correlation.
4 But on top of that we have hired Eric Miller.

5 Q. So you're relying upon experts as well.

6 A. Yes. I believe Eric Miller and Jennifer's
7 testimony, and I have read part of her report. So yeah,
8 I think there is definitely a strong correlation just
9 from what I've been told and what I understand from
10 experts.

11 Q. And from your testimony, would you maintain
12 that obviously if there are additional flows in the
13 Little Wood, that your water rights would stay on
14 longer?

15 A. Yes.

16 Q. Therefore, less damage to your crops?

17 A. Yes.

18 MR. RIGBY: I have no further questions.

19 THE HEARING OFFICER: Mr. Fletcher.

20 MR. FLETCHER: I have no questions.

21 THE HEARING OFFICER: Is this an appropriate
22 time for a break or --

23 MR. RIGBY: I'm sorry, before we do, I need to
24 move for the admission of J. Arkoosh Exhibit 1, which
25 includes two sheets.

1 THE HEARING OFFICER: Any objection to the
2 admission of these documents?

3 Okay. The documents included in -- this will
4 be John Arkoosh or J. Arkoosh -- Exhibit 1 are received
5 into evidence.

6 (J. Arkoosh Exhibit 1 received.)

7 THE HEARING OFFICER: Mr. Rigby, my memory is
8 that even though there was a discussion about
9 stipulation of the admission of the other documents, I
10 don't think we actually stated that they were admitted
11 into the record.

12 MR. RIGBY: Good point, Mr. Director.

13 So, therefore, I would move, based upon the
14 stipulation that each of those that I stated and are
15 contained in the exhibit book for both W. Arkoosh as
16 well as J. Arkoosh be admitted into evidence with the
17 stipulation that any of the Cottonwood rights or the
18 Wood River rights only be for the purpose of showing
19 total water supply.

20 THE HEARING OFFICER: So referencing the
21 exhibit number themselves, they would be J. Arkoosh
22 Exhibits 2 through 17?

23 MR. LASKI: I think it would be 2 through 16,
24 and excluding 14 because there is no Exhibit 14.

25 MR. RIGBY: Correct.

1 THE HEARING OFFICER: That's correct because
2 we did not discuss 17.

3 MR. BROMLEY: My same statement as to the
4 so-called Cottonwood decreed rights that are sourced
5 from the Big Wood River.

6 THE HEARING OFFICER: So there are two of
7 those rights, as I recall, and which exhibit numbers?

8 MR. LASKI: Those are Exhibits 15 and 12.

9 THE HEARING OFFICER: Thank you, Mr. Laski,
10 for tracking.

11 MR. RIGBY: Yes, thank you.

12 THE HEARING OFFICER: So 15 we actually --

13 MR. RIGBY: Actually, it's 16 because they
14 were reversed in order.

15 MR. LASKI: 15 is the map.

16 MR. RIGBY: 15 is the map. So it would be 16
17 and 12.

18 THE HEARING OFFICER: That's the way I
19 remember the explanation.

20 So water rights that are described by Exhibits
21 12 and 16, these water rights identify the source as the
22 Big Wood River, and so the water rights identified in
23 Exhibits 12 and 16, the exhibits are admitted into
24 evidence with the recognition that the sole purpose of
25 the admission is to describe the entire water supply in

1 those lands, but not for any other purpose, Mr. Bromley.

2 MR. BROMLEY: Thank you.

3 THE HEARING OFFICER: So all of those
4 exhibits, and let me see if I can get it right again.
5 Exhibits marked as J. Arkoosh Exhibit 2 through 13; is
6 that correct?

7 MR. RIGBY: 16.

8 MR. LASKI: 16.

9 THE HEARING OFFICER: Well, but we missed --
10 The documents marked as Exhibits 2 through 13
11 and Exhibits 15 and 16 are received into evidence.

12 (J. Arkoosh Exhibits 2 through 13, 15, and
13 16 received.)

14 THE HEARING OFFICER: That completes the
15 housekeeping. Do we want a break before cross-
16 examination?

17 MR. THOMPSON: Yes, please.

18 THE HEARING OFFICER: Let's come back at 3:30.

19 (Recess taken.)

20 THE HEARING OFFICER: We are back on the
21 record after the afternoon break.

22 Mr. Laski.

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CROSS-EXAMINATION

BY MR. LASKI:

Q. Mr. Arkoosh, I'm Jim Laski. I represent the Galena Ground Water District. I believe you were deposed by my associate, Heather O'Leary.

A. Yes.

Q. I apologize in advance because I wasn't sure how we were doing you and your dad; so I'm probably a little disjointed going through this.

But first, just on a global basis, between your dad's water rights and your water rights, there are -- you testified that there is American Falls water rights, there is Carey Act water rights, and there is Cottonwood water rights that are all sort of supplemental to the main water rights; is that correct?

A. Well, some of them are supplemental rights; some are just water rights.

Q. So I guess the Carey Act right is just a regular water right.

A. I believe it is, yeah.

Q. And the American Falls are supplemental water rights?

A. No. Some American Falls rights are just water rights, and then there is American Falls supplemental water, which is supplemental to our decreed rights, and

1 we have some of those, just a little bit of American
2 Falls regular water right. I think I'm -- I mean, I'm
3 not an expert.

4 Q. We can go through that more closely. I was
5 just trying to sort of go over it quickly and maybe that
6 won't work.

7 But other than the American Falls rights, the
8 Carey Act rights, and the Cottonwood rights, which are
9 decreed, all the other decreed rights also contain a 161
10 Condition; is that correct?

11 A. I believe so. I think we went over that in
12 deposition. I think they did, yes.

13 Q. And each of those have a place, or a source
14 that is below the Milner-Gooding Canal; isn't that
15 correct? I think that's what you said on the Director's
16 questions.

17 A. On the exchange?

18 Q. Yes.

19 A. Yes, when they are in priority, I believe the
20 water comes from American Falls #2, when they are in
21 priority.

22 Q. But there has been also testimony in the
23 record that those water rights have never been delivered
24 in accordance with the exchange condition; isn't that
25 correct?

1 A. I don't know what you mean by that.

2 Q. Well, the exchange condition requires that the
3 water be delivered from American Falls, yet Mr. Luke
4 testified that there was confusion as to how the
5 delivery was to work, in that he didn't think that they
6 were delivered that way.

7 A. Well, I can tell you my understanding of it,
8 if you like.

9 Q. Sure.

10 A. When those rights are in priority, the actual
11 river water is held above the Gooding-Milner Canal and
12 delivered through the Big Wood Canal system to help
13 rights up there, and the American Falls delivers our
14 decreed rights until we have a priority cut, at which
15 point they are cut off.

16 Q. Correct. That's how they're supposed to work.
17 But I think the testimony was that that's not how they
18 have been delivered, that there was confusion as to how
19 they were delivered, and that was all --

20 A. No, as far as I know, that's how they've
21 always been delivered, going back as long as I can
22 remember. But maybe I'm wrong, but I'm pretty sure I'm
23 right.

24 Q. Could you be sure, based on how you take your
25 water out of the --

1 A. Why I say that is because I became aware of
2 this years ago, it came up in another matter, and I
3 think they've always been delivered that way, the way I
4 just described.

5 Q. So do you know why Mr. Luke issued a
6 memorandum to Mr. Lakey directing him as to how to
7 deliver that water?

8 A. No, I don't know why for sure. I think there
9 was some confusion, I think you're right about that, but
10 I don't know why Mr. Luke -- I don't know why he did
11 what he did.

12 Q. You believe it was delivered in accordance
13 with the exchange agreement.

14 A. I believe it has been and it continues to be
15 delivered in accordance with the exchange agreement, I
16 do.

17 Q. If it was not delivered in accordance with the
18 exchange agreement, you wouldn't know what impacts that
19 might have on your dates, your priority dates?

20 A. Well, I don't think it really has any impact
21 on our priority dates, because our priority dates are
22 determined to be in priority or not in priority by
23 gaging stations in Little Wood River.

24 Q. Right. So you don't know if it would impact
25 when the cut dates were for those water rights, when

1 they would be cut off.

2 A. I don't believe it really does, but I may be
3 wrong. I'm not -- I don't work for Water Resources. I
4 am just a farmer, but I may be wrong.

5 Q. With respect to the two farms that you operate
6 in your name, that's the Varin farm and the Ohlinger
7 farm?

8 A. Yes.

9 Q. So the Varin farm has .4 cfs of 1882 water?

10 A. Yes.

11 Q. And that generally runs the entire year?

12 A. It has --

13 Q. And you're not sure this year?

14 THE HEARING OFFICER: Let me just say, both of
15 you are talking over each other. The reporter has
16 glanced at me a couple of times, and I just want to
17 interject again and say: Be patient, wait until the
18 other person finishes. Thank you.

19 Sorry, Mr. Laski.

20 Q. (BY MR. LASKI) So .4 cfs and that generally
21 does not get turned off or cut.

22 A. No, it hasn't since I've been farming that
23 place, and I don't know that it -- I don't know that it
24 ever has been turned off for a priority cut. I don't
25 know that.

1 Q. And then it also has an April 1, 1885, which I
2 think you testified has already been turned off?

3 A. Yes.

4 Q. And then you have -- this is the American
5 Falls water. You have an American Falls water right for
6 .1 cfs, and then a supplemental water right for .53 cfs
7 on that.

8 A. Yes.

9 Q. How much of the acreage then with those rights
10 remain in flow all year, all season, as long as American
11 Falls --

12 A. Those three rights you just spoke of?

13 Q. Yes.

14 A. We could irrigate about half of that farm, I
15 mean, approximately half. It's just about 1 cfs total I
16 believe.

17 Q. Just about? So --

18 A. Probably a little less than half of that farm
19 actually, but anyway.

20 Q. When you calculated your damages on your
21 Exhibit 1, when you do less cuttings -- I think you said
22 you get two cuts instead of four cuts based on having
23 less water.

24 A. Yes. If that's all -- yes, if that's all the
25 water we can count on this year, we'll probably only get

1 two cuttings instead of four.

2 Q. So you don't irrigate less land -- because you
3 have water throughout the whole season.

4 A. Yes. So if I don't get any additional water
5 for that farm, then I will turn off probably half of
6 that farm. There is three pivot systems on there. I
7 would probably run the one system, that's the biggest
8 pivot, it probably covers the best ground, and the other
9 two would go dry, after the second cutting of hay or
10 after my priority cuts come and I had no more water.

11 Q. Would the one pivot then still get four
12 cuttings?

13 A. Yes, and I reflected that.

14 Q. How is that reflected?

15 A. How many acres -- I would have to find that
16 paper. I think it's like 68 acres of ground that is
17 going to be dried up and only get two cuttings, I
18 believe is what it said, is what I had.

19 Q. So the portion of land that only gets two
20 cuttings is how you base the damage number? Isn't there
21 some savings also from not irrigating with the other two
22 pivots?

23 A. Savings?

24 Q. Yes.

25 A. In what way?

1 Q. In terms of power or --

2 A. Oh, sure, if you're not pumping as much water
3 you're not burning as much power.

4 THE HEARING OFFICER: You're talking over each
5 other again.

6 THE WITNESS: Sorry.

7 There is some power savings.

8 Q. (BY MR. LASKI) And manpower as well?

9 A. Not really manpower. It's pivot irrigation.
10 So you push a button. Maybe on the harvesting, yes.
11 Okay. There you go.

12 Q. That wasn't calculated into your damage
13 analysis.

14 A. No.

15 Q. So those are gross damages as opposed to
16 damages that are net of costs.

17 A. I guess so.

18 Q. How many cuttings did you get last year?

19 A. Four on most of our ground. Some was new
20 seeding and we only got three cuttings on part of that
21 and only two on part of that because it was seeded late.

22 Q. So you testified that you were planning to
23 purchase water perhaps to cover that?

24 A. Yes, we're trying to purchase water.

25 Q. So would the cost of purchasing water to cover

1 the shortfall be less than \$40,000?

2 A. Well, to cover the whole shortfall, no, it
3 would be more than \$40,000. If I felt I could afford
4 and find the water, it would be more than \$40,000.
5 Well, for what we're trying -- okay, for that property,
6 let me think about that.

7 Yeah, it would probably be less, somewhat
8 less, depending on where you got it and what it cost.

9 Q. So I guess the damage analysis is somewhat
10 speculative based on you haven't been damaged yet so
11 you're still trying to figure it out.

12 A. No, I wouldn't say that, because if I was able
13 to find the water to have a full season on that farm, I
14 would still be out the cost of the water, while everyone
15 in the Triangle is pumping out of priority.

16 Q. Right. But what I'm saying is you're not sure
17 what that amount is. The amounts you're saying are
18 speculative.

19 A. Well, I don't think they're speculative. I
20 think that that many ton of hay is worth that much
21 money.

22 Q. So your 1885 water right, the 37-328 on that,
23 when does that typically get cut?

24 A. A lot of years it will run through the summer,
25 but it's increasingly being cut more and more often,

1 earlier and earlier. I don't know, I would have to look
2 at the watermaster's records to tell you that.

3 Q. Do you recall if it was cut last summer?

4 A. I believe it was, yes.

5 Q. So even with that water right being cut, you
6 were still able to get four cuttings of hay?

7 A. Yes, I think we were last year.

8 Q. Then if that water right was cut, then the
9 37-1127, which has a 1905 priority, that would have been
10 cut.

11 A. Yes.

12 Q. So you don't recall the date of that last year
13 the 1885 was cut?

14 A. No.

15 Q. Going to the Ohlinger farm.

16 A. Yes.

17 Q. So you said you leased it and changed the
18 water system so now it's growing organic fresh potatoes?

19 A. Yes.

20 Q. So is the lessee responsible for the potatoes?

21 A. He's responsible for the planting and
22 harvesting and cultivating and so forth. I'm
23 responsible to provide water and power, and I'm actually
24 irrigating the crop, as per the lease agreement.

25 Q. And you calculated damages based on loss off

1 the entire crop?

2 A. No, just loss of, I believe 114 acres of the
3 152 acres.

4 Q. But you're planning to purchase water to cover
5 that.

6 A. Well, I haven't been able to purchase enough
7 yet to cover that. So we're going to have to rob Peter
8 to pay Paul. If we keep the potatoes alive, we'll have
9 more loss in our hay acres.

10 Q. If you keep the potatoes alive?

11 A. If we take water away from our other crops to
12 keep the potatoes alive, we will have a bigger loss on
13 the other side of the farm. I don't know, I'm hoping
14 that the water that we're trying to purchase will get me
15 through until I can secure some water from neighbors or
16 other sources, but I don't know, it's very uncertain at
17 this point.

18 Q. Does your lease specify how damages, who bears
19 the risk for loss of the crop?

20 A. I think when I say I'll provide water and
21 power, I would suspect that the liability for crop
22 failure for lack of water would probably fall on me.

23 Q. Is there a written lease?

24 A. Yes, there is.

25 Q. But you're not sure what the terms said.

1 A. No, honestly I'm not. I'm more of a handshake
2 guy, and when I tell somebody I'm going to do something,
3 I do it to the best of my ability. So a paper lease, I
4 signed it, and I trust the fellow I deal with; so that's
5 where it's at.

6 Q. How much are you paid -- how are you paid
7 through the lease?

8 A. So much per acre.

9 Q. So is it based on yield or not?

10 A. No. Well, I shouldn't say that.

11 MS. JENKINS: I'm sorry. Can you speak up?
12 Our Zoom people are having a hard time hearing you.

13 MR. LASKI: Sorry. I thought I was speaking
14 loud.

15 THE WITNESS: It maybe is partially based on
16 yield. Like I said, it was a handshake and there is a
17 written lease. But during the handshake portion, before
18 the written lease came about, we were standing on the
19 ditch bank last fall and we agreed on a -- well, we
20 didn't agree on a price to start with. And I wanted so
21 much and he wanted to pay so much, and he said, Well, if
22 we have a good crop, we'll pay your price. So I guess
23 sort of it's based on yield, to a certain extent.

24 Q. (BY MR. LASKI) This is the first crop, the
25 first year's crop of potatoes.

1 A. Yes. On that farm, yes, probably since the
2 '50s, I don't know.

3 Q. So you have no records whatsoever as to what
4 to expect for a yield.

5 A. I have a pretty good idea of what to expect
6 there. My neighbors just up the river have a very
7 similar farm. It's right across the fence. And he was
8 able to provide me with yield expectations for potatoes
9 grown by the same grower on his place right across the
10 fence in previous years, and yields of potatoes they
11 grow themselves and prices that they both receive for
12 their potatoes.

13 Q. And does he have the same water rights you
14 have?

15 A. Pretty similar.

16 Q. This morning Mr. Brossy said that he had
17 offered to sell you water. Have you bought any water
18 from him or rent?

19 A. No. In fact, I was going to bring that up,
20 because when Jerry asked me if I procured any extra
21 water, Mr. Brossy didn't offer to sell me water. He
22 offered me the use of his water and I accepted, and for
23 the last week I've been running on his water. And it's
24 going to be shut off tomorrow, maybe tonight.

25 Q. Do you have dates as to when you need to have

1 water to finish each cutting of alfalfa?

2 A. When I need to have water?

3 Q. Well, so I guess my question is: From a
4 priority cutoff date, is there a date that you need the
5 water to run through so you get a third cutting versus a
6 second, only two cuttings, or versus a fourth? Do you
7 have those dates?

8 A. I think I put that on my sheet. I really wish
9 I would have brought some glasses. I think it was
10 September 1st on the alfalfa. Yes, I put September 1st
11 on the alfalfa.

12 Q. But that would be to get a full four cuttings.

13 A. Yes.

14 Q. Do you have a date to get three cuttings?

15 A. No, I just know that my water will be off
16 shortly after my first cutting, and I'll be lucky to get
17 it watered again enough to get a second cutting. I
18 hadn't really thought about what date I would have to
19 get through for a third cutting.

20 Q. In Tim Luke's memo he discussed for the 161
21 Condition water rights that he would need to get
22 additional information about available water supplies.
23 Have you been asked for that?

24 A. For what?

25 Q. As he --

1 A. From me, additional information?

2 Q. Has Tim Luke asked you for additional
3 information regarding water supplies as the holder of a
4 Condition 161 water right?

5 A. No, I don't believe so. I haven't talked to
6 Mr. Luke for quite some time.

7 Q. Has anybody from the Department of Water
8 Resources?

9 A. Asked me what?

10 Q. Asked you for additional information regarding
11 available water supplies.

12 A. Water supply from where?

13 Q. From anywhere.

14 A. No, I don't believe anyone from the Department
15 has.

16 Q. Have you provided the Department any
17 information?

18 A. About additional water supply?

19 Q. Yes.

20 A. No.

21 Q. Have you requested the Department to
22 administer water under conjunctive management?

23 A. No, I don't believe I have.

24 Q. Have you requested the Department to
25 administer water in any way?

1 A. Yes, I would like the Department to administer
2 the water in Water District 37, groundwater water and
3 surface water, by priority date. That's what I have
4 requested.

5 Q. Can you identify any specific water rights,
6 groundwater rights that caused injury to your water?

7 A. No.

8 Q. Do you have a specific cause for the injury to
9 your water?

10 A. A specific what?

11 Q. Do you have an opinion as to a specific cause
12 for the injury to your water?

13 A. Yes, I think the pumping in the Bellevue
14 Triangle is injuring our water rights. The groundwater
15 pumping in the Bellevue Triangle is injuring our water
16 rights.

17 Q. Is that the sole injury to your water rights?

18 A. I would say that's the main injury. I don't
19 know of any others offhand.

20 Q. So you know of no other reasons that your
21 water supply is short.

22 A. Well, yeah, I don't. I mean, there are
23 weather conditions, but that doesn't enter into it when
24 you have priority dates, that water needs to be
25 administered by priority.

1 Q. Do you have any estimates -- I know you
2 testified that you have new conveyance systems, but do
3 you have any estimates of conveyance loss between the
4 point of diversion and the application on any of your
5 systems?

6 A. No, I would say there is none on three of
7 those farms. There may be some minor ditch seepage for
8 500 feet on the other farm, as I said, I already stated.
9 I hope to remedy that in the next year or two with a
10 pipe clear to the river.

11 Q. You don't have an estimate of the amount of
12 those losses.

13 A. No, I don't. It's very minimal. Compared to
14 what it was last year, it's miniscule.

15 Q. If your groundwater rights were curtailed on
16 July 1, do you know whether your 1884 right would be
17 restored?

18 A. I believe they would.

19 Q. Why do you believe that?

20 A. I perused Jennifer Sukow's staff memo, I've
21 talked to our hydrologist, I believe that from talking
22 with experts and listening to what the IDWR staff has
23 said.

24 Q. Do you believe they would stay on through
25 September 30th?

1 A. I think there is a very good chance that they
2 would.

3 Q. That's based on your discussion with Jennifer
4 Sukow?

5 A. No, I haven't discussed anything with Jennifer
6 Sukow. I read her memo, I've talked to Eric Miller, and
7 I have lived on that river for 56 years, and I think
8 that there is very good chance we would have water if
9 the wells were shut off in the Bellevue Triangle.

10 Q. How frequently do you need to acquire
11 additional water, like you are looking for this season,
12 to complete your farming?

13 A. Increasingly more frequently.

14 Q. Can you quantify that?

15 A. I can to a certain extent. Yesterday on the
16 way up here I asked my bookkeeper, who is my sister, to
17 go through the last several years. She started in, I
18 believe, 2013 until now, and in those 8 years, 6 of
19 those years I needed to purchase water, and I spent on
20 outside water \$82,000 in 6 of those 8 years. And I
21 think water this year is costing twice as much as it did
22 in previous years, outside water is going to cost us
23 twice as much.

24 Q. So 6 of the last 8 years you purchased
25 additional water?

1 A. According to my books, and that's from the
2 checks written for water.

3 Q. \$82,000, is that a year or cumulative?

4 A. That is cumulative for 6 separate years. Some
5 years was more, some years was less. One year it was
6 \$40,000, I recall just from memory.

7 Q. Do you know what year that was?

8 A. I don't.

9 Q. Is that just for your two farms or is that for
10 your dad's as well?

11 A. That was for my farms and my dad's.

12 Q. And your dad's?

13 A. Yes.

14 Q. I want to look at your dad's rights.

15 A. Okay.

16 Q. So in your testimony you identified your
17 father's two ranches as the Gooding ranch and the
18 Lincoln County ranch?

19 A. Yes.

20 Q. And on the Gooding ranch, based on
21 supplemental or the -- well, the American Falls water
22 and the supplemental water and then the supplemental
23 decreed water, you testified that there is sufficient
24 water for the entire season.

25 A. With all the sources, yes.

1 Q. So your only cost is pumping the supplemental
2 well.

3 A. Yes, I guess some -- yes.

4 Q. And you testified that you had to pump that
5 well last year as well?

6 A. Yes, we did.

7 Q. Do you typically have to pump it every year?

8 A. Not every year. I mean, 2017 we had plenty of
9 water. There is years when there is major weather
10 events that we don't need to pump it, but increasingly
11 more often.

12 Q. But most years you do have to pump it.

13 A. I would say half the years. Probably more
14 than half anymore, it's getting to be fairly regular,
15 yes.

16 Q. For the Lincoln County farm, I think you
17 testified that you had -- well, do you know how much
18 American Falls water you have on that?

19 A. I don't think that's right in this book. I
20 believe it's 30 inches, right around 30 inches I
21 believe.

22 MR. LASKI: Is there an exhibit binder that
23 has the water right damage chart for the Bill Arkoosh?
24 Should be Bill Arkoosh No. 1.

25 MR. RIGBY: It is.

1 MR. LASKI: But he doesn't seem to have that
2 in his binder.

3 THE WITNESS: I do.

4 Q. (BY MR. LASKI) You do?

5 A. Yeah.

6 Q. Okay. So if you look at that spreadsheet, I
7 think it identifies your American Falls water.

8 A. You are right, it does there.

9 Q. So doesn't it total 45 inches of supplemental
10 water approximately?

11 A. Oh, yeah, here. Yes, you are right, it is
12 45 inches. I misspoke. That's the amount that I used
13 for the injured projection too.

14 Q. Is your injury, with respect to the alfalfa
15 again, that is based on two cuttings instead of four on
16 the entirety of the property you have planted in
17 alfalfa?

18 A. Let's see. No.

19 Yes. Yes, it is. Yes, it is.

20 Q. You use the American Falls water on different
21 land than the decreed water rights, or your dad does.

22 A. No, it's all the same land.

23 Q. Well, is it different acreage?

24 A. Yeah, we would keep it on the corn to keep the
25 corn alive because we have to have that. You can't buy

1 silage corn very far away. So we have got to keep the
2 silage corn alive. We can buy dry hay if we have to.
3 So we would sacrifice the hay before the corn.

4 Q. Can you tell me how often your dad gets four
5 cuttings of alfalfa?

6 A. Well, if he has got a full water supply, every
7 year. Unless we choose to go for more tonnage and less
8 cuttings, which you still get the same amount of tons,
9 just not as high of quality.

10 Q. So how often do you get your full water
11 supply?

12 A. Less and less often. I don't know. We were
13 curtailed early last year. This year we are already
14 off. 2020 I don't think was a spectacular year, but I
15 couldn't tell you when the priority cuts came that year
16 for sure.

17 From 2017 to '19, I think we were kind of
18 tailed up by the big winter of '17. That kind of
19 replenished the aquifer in the Wood River Valley, and
20 the residual effect of all that water flowing in there
21 that winter, it helped for a couple of years.

22 We had cattle at Magic Reservoir, and there is
23 a spring high on the hill and that spring ran, after
24 that winter it ran a lot more water for about 3 years,
25 and then it was back to where it was before.

1 Q. Did you get four cuttings last year?

2 A. On part of our ground, yes.

3 Q. I'm talking about your dad's.

4 A. My dad's?

5 Q. Yes.

6 A. Well, on part of it. Some of it was new
7 seeding, and as I explained earlier, you don't generally
8 get four cuttings -- you can't get four cuttings on new
9 seeding. If you get it in early you may get three
10 cuttings, and I believe we did get three cuttings on
11 part of that, part of it was two. We also purchased
12 outside water last year.

13 Q. At your dad's property?

14 A. Yes. Well, for all our properties combined, I
15 guess. We used it where we needed it, where we could
16 use it.

17 MR. LASKI: I think that's all the questions I
18 have.

19 THE HEARING OFFICER: Thank you, Mr. Laski.

20 Mr. Thompson, do you have questions?

21 MR. THOMPSON: Just a couple.

22

23 CROSS-EXAMINATION

24 BY MR. THOMPSON:

25 Q. Good afternoon, Mr. Arkoosh. Travis Thompson

1 for the South Valley Ground Water District.

2 I'm just going to refer generally to these
3 sheets, the Table of Projected Injury. For your
4 father's place, noted Bill Arkoosh, you have the 1884
5 right, the 1886 right, and the 1899 river right; is that
6 correct?

7 A. Yes.

8 Q. And that property you have American Falls
9 water and American Falls supplemental, those two
10 different supplies?

11 A. Yes.

12 Q. That water is projected to be used on the
13 silage corn for the rest of the year; is that correct?

14 A. Yes.

15 Q. And the second farm of your father's property
16 has an 1890 water right and a 1906 water right from the
17 Little Wood; is that correct?

18 A. Yes.

19 Q. And the supplemental supply on that farm is
20 the supplemental groundwater right?

21 A. There is an American Falls supplemental right
22 associated with that also.

23 Q. And the American Falls water, so three
24 supplemental supplies?

25 A. Yes.

1 Q. And those supplies are expected to be
2 available through the irrigation season; is that
3 correct?

4 A. Yes.

5 Q. For that alfalfa, that portion of it.

6 A. Yes.

7 Q. And then turning to your property in your
8 name, just in general, you have again that American
9 Falls water and that American Falls supplemental water,
10 a portion of it?

11 A. On my first property, yes, the Varin property.

12 Q. And then the organic potatoes that you have,
13 the field you had leased out for that purpose, that has
14 what is called CAW 13390?

15 A. That is Carey Act water, I believe.

16 Q. So that CAW stands for Carey Act water. Is
17 that your understanding?

18 A. That's my understanding, yes.

19 Q. That water is available through the irrigation
20 season.

21 A. That's my understanding. It has been in the
22 past. I assumed it would be this year.

23 Q. But only for a portion of that field; is that
24 correct?

25 A. Yes, for whatever you can irrigate with .94

1 cfs.

2 MR. THOMPSON: That's all the questions I
3 have. Thank you.

4 THE HEARING OFFICER: Thank you, Mr. Thompson.
5 I don't see any other group 2 folks here.
6 Group 3. Mr. Bromley?

7 MR. BROMLEY: Thank you.

8

9 CROSS-EXAMINATION

10 QUESTIONS BY MR. BROMLEY:

11 Q. Hi, Mr. Arkoosh, Chris Bromley. Thank you for
12 being here.

13 A. Uh-huh.

14 Q. I have two quick questions. One, when do you
15 generally turn on with your Little Wood rights?

16 A. It depends on what the crop is, I guess. But
17 I try to be on, the first week of April is nice, the
18 second week for sure. On alfalfa or maybe a grain crop,
19 might need a little shot of water, depending on the
20 year. Some years you turn on later.

21 Q. Thank you.

22 Second question. What I heard you tell
23 Mr. Laski when he was asking about administration was
24 that you were looking for administration of groundwater
25 and surface water rights within Water District 37.

1 A. Well, within the Bellevue Triangle.

2 Q. And that then was my question. I heard you
3 later seem to clarify that by saying --

4 A. Yes, within the Bellevue Triangle.

5 Q. So you are only asking for administration
6 within the Bellevue Triangle.

7 A. Yes, within the boundaries of this proceeding.

8 MR. BROMLEY: Okay. Thank you. Nothing
9 further.

10 THE HEARING OFFICER: Thank you, Mr. Bromley.

11 Other group 3 questioners? Mr. Robertson?
12 Where is he? He decided not to stay for the nightcap,
13 huh?

14 Mr. O'Bannon?

15 MR. O'BANNON: No questions.

16 THE HEARING OFFICER: Okay. Redirect I think
17 at this point.

18 MR. RIGBY: No further questions,
19 Mr. Director.

20 THE HEARING OFFICER: All right. Thank you,
21 Mr. Arkoosh.

22 THE WITNESS: You are welcome. Thank you,
23 sir.

24 THE HEARING OFFICER: Next witness.

25 MR. RIGBY: We call Alton Huyser to the stand.

1 THE HEARING OFFICER: Mr. Huyser, if you'll
2 come forward, please.

3 ALVIN HUYSER,
4 having been called as a witness by the Big Wood & Little
5 Wood Water Users Association and first duly sworn,
6 testified as follows:

7
8 THE HEARING OFFICER: I want to apologize to
9 Mr. Robertson. He just appeared again. I'm sorry to
10 have impugned his longevity or his endurance. Are you
11 leaving now?

12 MR. ROBERTSON: No.

13 MR. RIGBY: May I begin?

14 THE HEARING OFFICER: Yes. Mr. Rigby, please
15 question.

16 MR. RIGBY: Thank you, Mr. Director.

17

18 DIRECT EXAMINATION

19 BY MR. RIGBY:

20 Q. Good afternoon.

21 A. Good afternoon.

22 Q. Endurance test here.

23 A. Yep.

24 Q. Please state your full name and current
25 address for the record.

1 A. Alton Lee Huyser, A-l-t-o-n, L-e-e,
2 H-u-y-s-e-r, at 72 North Highway 75, Shoshone, Idaho.

3 Q. And are you a named party to this proceeding?

4 A. Yes, I am.

5 Q. And you have been here for some of the other
6 farming witnesses?

7 A. Yes, I've heard others, yes.

8 Q. Again, let's both be careful not to talk over
9 each other, as per the instruction of the Director.

10 What is your occupation?

11 A. I'm a farmer. I have been all my life.

12 Q. In fact, do you own a farm?

13 A. Yes, I do. I own a farm at this present
14 location, yes.

15 Q. So the issue that is before the Director, is
16 that the farm you are discussing?

17 A. Yes. This is the farm I'm discussing. It as
18 Little Wood River decreed rights. The Little Wood River
19 runs directly through the farm.

20 Q. Very good. We'll get to that.

21 Before we get there, what is your education
22 and background, as far as work experience is concerned?

23 A. I've had 2 years through college, and a lot of
24 practical experience through farming, most of it
25 unprofitable, however some of them profitable years.

1 But through the experience, mostly through farming.

2 Q. That's what keeps you coming back, right, the
3 profitable every once in a while?

4 A. Yes.

5 Q. Very good.

6 Again, are you a member of the Big Wood &
7 Little Wood Water Association?

8 A. Yes, I am.

9 Q. And joined with them for the purposes of
10 coming together for this particular proceeding?

11 A. Yes.

12 Q. All right. If you will turn then to
13 Exhibit -- it will be the Big Wood Farms.

14 By the way, let me ask you: Do you operate
15 under a different name than your personal name?

16 A. No. I operate under Big Wood Farms.

17 Q. Is that an entity or is that a DBA or --

18 A. It's a strictly entity, and so...

19 Q. By that I'm saying is it an LLC or is it just
20 the name you go -- you assume that name?

21 A. It's an LLC.

22 Q. Very good.

23 Are you the principal, one of the principals
24 in that?

25 A. Yes.

1 Q. Do you have any other entities that you
2 operate under?

3 A. No.

4 Q. The farm that we are talking about, is that
5 owned by the entity LLC?

6 A. No. The farm is owned by Alton and Paula
7 Huyser Trust.

8 Q. So the real estate itself is owned by that.
9 Is the operation of the farming done through the LLC?

10 A. That's correct.

11 Q. Very good.

12 The water rights themselves, do you know what
13 interest -- as far as the water rights themselves, how
14 are they owned?

15 A. The water rights are held by Alton and Paula
16 Huyser Trust.

17 Q. That's a revocable trust that the two of you
18 have created?

19 A. Yes.

20 Q. Very good.

21 So again, asking Counsel if we can stipulate
22 as to the water rights contained in Big Wood Farms
23 Exhibit 4, and Exhibit 5, which is the mapping of that.
24 Recognizing that, again, this is what we call the Big
25 Wood rights, with the prior stipulation.

1 And then as to Exhibit 6 and 7, which again is
2 the water right under 10561A and its resulting mapping.
3 Exhibit 8, which is 10561B and 9, which is the mapping.

4 And would that be it, those three water
5 rights, decreed?

6 A. That would be correct.

7 Q. Very good.

8 MR. RIGBY: May we stipulate, and have a
9 stipulation for that?

10 MR. THOMPSON: Yes.

11 MR. BROMLEY: Yes.

12 MR. RIGBY: Then I would offer them into
13 evidence, again, with the stipulation as to the
14 Cottonwood right.

15 THE HEARING OFFICER: Okay. So Mr. Rigby,
16 you'd move for the admission of Big Wood Farms exhibits
17 4 through 9; is that correct?

18 MR. RIGBY: It would be 4 through 9; that is
19 correct, Mr. Director.

20 THE HEARING OFFICER: And apparently the water
21 right that is represented by Exhibit 4 is a Cottonwood
22 right and lists Big Wood River as the source, or at
23 least one of the sources. Is that what you are
24 asserting, that there are two -- there is also a source
25 of Little Wood River there. Is there another one that

1 is the Cottonwood right?

2 MR. RIGBY: I don't believe so. I believe
3 it's only the one.

4 THE HEARING OFFICER: So Mr. Bromley, you
5 would renew your objection to at least the portion of
6 Right 37-59k that describes the Big Wood River as a
7 source.

8 MR. BROMLEY: That's correct. But Mr. Rigby
9 had asked about a stipulation, and I said yes. He was
10 removing 37-59k from his discussion, consistent with
11 prior stipulations, which is simply to look at total
12 water supply.

13 THE HEARING OFFICER: So you are stipulating
14 based on that explanation to the admission of Exhibit 4
15 through 9.

16 MR. BROMLEY: Correct.

17 THE HEARING OFFICER: And is there any other
18 objection to the admission of these documents?

19 Thank you. Based on no objection, Big Wood
20 Farms Exhibits 4 through 9 are received into evidence.

21 (Big Wood Farms Exhibits 4 through 9
22 received.)

23 MR. RIGBY: Very good.

24 Q. (BY MR. RIGBY) Mr. Huyser, it appears to me
25 that the two remaining water rights are for the same

1 location, as far as the geography of the area; is that
2 correct?

3 A. Yes, it is. Yes.

4 Q. So these are rights on top of one another, so
5 to speak.

6 A. Exactly.

7 Q. So we don't have to talk about two different
8 parcels, if you will, in our line of questioning; right?

9 A. That's correct. One is simply an A and one is
10 a B. So one is a 4 cubic acre, and then B is 2.2. But
11 they have exactly the same priority date.

12 Q. So it's cfs; right?

13 A. Cfs, yes. Excuse me.

14 Q. Let's talk about the acreage then itself. You
15 say the trust owns it?

16 A. Yes.

17 Q. How long has the trust owned it?

18 A. Since it was purchased back from Michelle
19 Stennett 3 years ago.

20 Q. Before that did you have any familiarity with
21 this particular parcel?

22 A. Yes. I've continued to rent it for the 10 or
23 11 years that she owned it. Prior to that, I owned it
24 and sold it to the Stennetts. So in other words, I
25 owned the farm, I sold it to Stennett and then I bought

1 it back, and that's where I am at at the present
2 situation right now.

3 Q. So it's come full circle.

4 A. Basically, yes.

5 Q. So in years then, how many years have you been
6 familiar with farming this particular parcel, whether
7 you owned it, leased it, purchased it back, otherwise?

8 A. I would say over 15 years, but closer to 20;
9 that's probably pretty close.

10 Q. So would you consider yourself familiar with
11 the farming practices and the water needs of this
12 particular parcel?

13 A. Yes.

14 Q. In addition to the water rights, the two
15 decreed water rights we are talking about for the
16 purposes of this particular hearing, do you have any
17 supplemental water in addition to this?

18 A. Yes, there is the water that was discussed
19 earlier, I can't remember what tab that is at but --

20 Q. The Cottonwood right?

21 A. Yes.

22 Q. In addition to that, are there supplemental
23 rights?

24 A. No.

25 Q. So when we talk about water rights on this

1 parcel, these two decreed water rights are it?

2 A. Yes, but there is the --

3 Q. Except for the Cottonwood.

4 A. Okay.

5 Q. I'm sorry. You are right.

6 A. There is three rights.

7 Q. There is three rights.

8 A. Yes.

9 Q. Yes. For the purpose of this particular
10 hearing, we are discussing the two rights.

11 A. Okay. Yes.

12 Q. Do you lease any additional supplemental
13 rights?

14 A. No, not this year.

15 Q. Have you in the past?

16 A. In the past I have leased additional water
17 when it became available.

18 Q. And typically speaking, what water right is
19 leasable?

20 A. Well, we were able to locate water as a
21 complete party, and went to North Snake Ground Water and
22 was able to secure water, I believe in the year 2012,
23 2013, when we had a short water year then.

24 Q. Without having a short water year, are your
25 decreed rights sufficient to grow the crops that you

1 generally grow on this parcel?

2 A. No, that would be incorrect. Normally my
3 decreed water rights are subject to run through
4 August 15th, thus the last 3 to 4 years they've been
5 shortened. Like this year, my decreed water went off on
6 June 2nd, and so it's been off since June 2nd.

7 Q. So as of right now do you have water that is
8 available to you to divert on this parcel?

9 A. No.

10 Q. So it's dry from this point forward, unless
11 something else occurs.

12 A. Unless something else occurs.

13 Q. All right. What do you have planted on the
14 parcel?

15 A. Well, presently -- I could foresee issues of
16 water shortage, and last fall I went and took one of the
17 pivots and I planted 140 acres of winter wheat because
18 it would actually take less water, and it should be able
19 to make it through a normal year.

20 The other pivot I planted spring wheat, hoping
21 we would be able to do the same thing. However, based
22 on the days of water that I need to finish the crop, I'm
23 about 30 days short on the winter wheat and -- well, 25
24 days short on the winter wheat and 35 days short on the
25 spring wheat. That's based on the analysis of what I

1 looked at and where we are at right now as far as the
2 maturity of the crop.

3 Q. We'll get into your Exhibit No. 1 in just a
4 moment. But let me ask you, are you attempting or have
5 you attempted to find additional water to lease?

6 A. We are attempting, but at this point until the
7 deal is made, you don't know if you have it. So
8 basically the answer is, we are attempting but we do not
9 have it completely available.

10 Q. Any let's talk about actually how you irrigate
11 these lands. How is it done? Is it pressurized, flood
12 irrigated, what it is?

13 A. There is two pump stations, which basically
14 allows me to pump my decreed water right and be able to
15 maximize those gallons per minute through both pump
16 stations. And when my Cottonwood water is available, it
17 allows me to pump an additional more. But the 2,800
18 gallons per minute, I used it through both pumping
19 locations. Of that, it goes into pressurized hand lines
20 but mostly in pivots.

21 I have improved water efficiency. I spent
22 \$5,000 last year improving a lower pressure, more
23 efficient irrigation system. I continue to work through
24 my pumps to have them more efficient and also change
25 nozzles as much as I can, especially pertaining to the

1 hand lines and that, but it's subject to wear and usage.

2 Q. As far as your watering to date, until your
3 water right was cut, were you able to have a full water
4 supply as required by your crops?

5 A. I would say no. Obviously, as everyone, or
6 you and other farmers would be aware, you would want to
7 maintain the moisture of the winter wheat as much as you
8 can because it would reach maturity the fastest. And so
9 obviously the spring wheat you would have to sacrifice a
10 little bit in order to -- you are going to get shrivel
11 and various others things in this grain; however, that
12 would reduce or lessen the amount of injury.

13 Q. In a normal year, when your decreed water
14 rights and obviously your earlier water rights, the
15 Cottonwood rights, are all available to you, are you
16 able to water crops sufficiently?

17 A. Yes, I would say I am able to. As I
18 indicated, the 2,800 gallon is subject to pumping my
19 decreed water right, and then based on my other pumping
20 capacity, I am able to probably pump up to 34 or 3,500
21 gallons, and that is only available when the Cottonwood
22 right is there. And that would pertain to the request
23 or the regulations of Kevin, the watermaster.

24 Q. Obviously he controls what you can divert,
25 right, based upon any decreed right that you have.

1 In your years of watering this parcel, have
2 you noticed or is there any trend that is happening with
3 the general flows in the Big Wood -- excuse me -- Little
4 Wood River?

5 A. It seems like that in the spring and in the
6 fall, when I can actually see the amount of water going
7 through my farm, there is a reduced flow. But as I just
8 stated, the American Falls does flow through my place,
9 and so -- but that's about what I can say.

10 Q. Okay. But do you have American Falls water
11 rights?

12 A. No, I do not have American Falls.

13 Q. That's what I thought you said.

14 A. Yes, that's correct. Excuse me.

15 Q. So the flows then are obviously subject to
16 also the additional water of American Falls flowing
17 past.

18 A. Exactly.

19 Q. What do you intend to do if you are not able
20 to obtain additional water for your crop now that it's
21 turned off?

22 A. Well, if you have wheat of any kind, you can't
23 make water, and so basically there is no opportunity to
24 enhance production or anything. So a timely rain,
25 however, you are not -- there is nothing else I can do.

1 Q. But you'll continue to attempt to find
2 additional water if you can.

3 A. That's correct. If I could find additional
4 water, I would water the crop, yes.

5 Q. As a result of being part of the group with
6 the Big Wood, Little Wood Water Users Association, are
7 you under the belief that others have testified that the
8 flows in the Little Wood River are a result of, at least
9 in part, to pumping in the Bellevue Triangle?

10 A. Yes, I feel they are a part of the injury,
11 that us, as senior water rights, are actually feeling.
12 So yes, I do.

13 Q. If the flows were greater right now, it's kind
14 a rhetorical question, but I assume your water rights
15 would still be on; correct?

16 A. Yes, that's correct. It would not take that
17 many more cfs in order to have my water right whole.
18 But again, that has to do with priority doctrine.

19 Q. So you say it wouldn't take much more, but as
20 far as your crops are concerned, it makes the difference
21 between them --

22 A. That's correct. If it's not available, it's
23 not available.

24 Q. So have you attempted to determine the
25 injuries to your crops for the purposes of this

1 particular hearing?

2 A. Yes, I did.

3 Q. I would have you to turn to Big Wood Farms
4 Exhibit 1, please.

5 A. Yeah, I have that.

6 MR. RIGBY: And forgive me, I'm doing too many
7 of these, but did we already stipulate to the water
8 rights themselves into evidence?

9 MR. THOMPSON: I think so.

10 THE HEARING OFFICER: We did.

11 MR. RIGBY: I just want to be sure.

12 Q. (BY MR. RIGBY) As to Big Wood Farms Exhibit
13 No. 1, were you part of and did you supply the
14 information that was used to put this chart together?

15 A. Yes. This is my information, yes.

16 Q. So could you explain basically what the intent
17 of and how you arrived at the target yields with the
18 crops that you have there, projected yield loss and
19 projected revenue losses?

20 A. Well, the first thing I might point out is, if
21 you look at this, basically you would think that my,
22 what would you call it, the 37-59 is all related to hay
23 so there will be no loss. However, in all honesty, both
24 of the rights of the 051A and B are used for both the
25 wheat, the spring wheat, and the alfalfa. And so that

1 is one thing I might point out.

2 And then also, as you would come on across
3 here, you come across the usage or a loss, it's not
4 calculated, but it has to do with the days of supply and
5 shortfall. And basically it's saying that I would need
6 to, as far as days of irrigation, July 15th for my
7 spring wheat and July 25th for my winter wheat, which
8 basically is where you would come up with 35 days or
9 45 days, and the bushels and the cost and relate down to
10 what the estimated loss is for this year.

11 Q. So how many more days from, now that you are
12 turned off, would you need your right to still be on in
13 order to avoid the loss?

14 A. Well, it's like I stated, right now if I could
15 get 30 more days I would have basically a sufficient
16 wheat crop that would be acceptable. Now, the spring
17 wheat would need a little bit more. However, 30 days
18 makes a substantial difference at this kind of point in
19 a wheat crop.

20 Q. Is it your contention that if the pumps within
21 the Triangle were curtailed that the flows would
22 increase to the point where your water right would be on
23 those 30 days?

24 A. I think based on what we've seen, as far as
25 flows and also what I have seen as far as Mr. Miller,

1 Eric Miller, and the things that I've been looking at
2 and ties to that volume, that there would be an
3 increased amount of water in Silver Creek, thus
4 increasing the amount of water down to the Little Wood.
5 And, of course, I'm one of the Little Wood users. So
6 yes, it would bring more water to myself.

7 Q. So are then you seeking that the Director
8 curtail these based upon what, the priority system?

9 A. I'm seeking that the Director would realize
10 that the wells are the major contributor, and based on
11 the priority doctrine that has to do with the surface
12 water and the Little Wood River, that he would thus be
13 able to realize the injury that is being weighed upon
14 the Little Wood water users, and be able to use his
15 power to where we could actually get some relief and
16 hopefully some water.

17 Q. So pursuant to Big Wood Farms Exhibit No. 1,
18 it estimates that you will be damaged 38,000 -- almost
19 \$39,000; is that correct?

20 A. Yes.

21 MR. RIGBY: I'd move for the admission of Big
22 Wood Farms Exhibit No. 1.

23 THE HEARING OFFICER: Any objections to the
24 admission of the referenced document?

25 Hearing none, the document marked as Big Wood

1 Farms Exhibit 1 is received into evidence.

2 (Big Wood Farms Exhibit 1 received.)

3 MR. RIGBY: I don't believe I have any further
4 questions.

5 THE HEARING OFFICER: Mr. Fletcher, any
6 questions?

7 MR. FLETCHER: No.

8 THE HEARING OFFICER: Questions for Mr. Huyser
9 from group 2? Mr. Thompson.

10

11

CROSS-EXAMINATION

12

BY MR. THOMPSON:

13

Q. Good afternoon, Mr. Huyser.

14

A. Good afternoon.

15

Q. Travis Thompson for the South Valley Ground

16

Water District.

17

I guess would you agree that the timing of

18

this proceeding with respect to your wheat crop that

19

hasn't had water for a week is a problem?

20

A. I would say yes, the timing and the use and

21

the necessity of the Director to do something is

22

extremely important.

23

Q. So is initiating administration in the middle

24

of the season a problem for your crop right now?

25

A. If administration is not administered, my crop

1 will actually be suffered is where -- so that's the
2 answer that I can give you.

3 Q. So what happens if you don't receive water
4 between June 2nd and those dates you identified?

5 A. Well, the grain continues to grow. However,
6 without adequate moisture, the part of the grain inside
7 the head begins to shrivel. And rather than have plump
8 grain that, basically I've stated here, would yield you
9 100 bushel, it would basically end you up with 70
10 bushel. So that's where you would actually lose through
11 test weight as well as yield.

12 Q. Those yield targets and projected yield
13 losses, can you just explain those columns in that
14 table?

15 A. Those are based on the County averages, as
16 well as some of the records that I have had that
17 basically comes to that point to where those are the
18 yields that -- as I said, that's just the County
19 average. Mine are really close, but that's where the
20 target -- that's where the yield as far as a target is
21 where I got it.

22 Q. Is that 100 bushels per acre? Is that what
23 that means?

24 A. Yes.

25 Q. Then you are projecting a loss of 3,500

1 bushels total?

2 A. Yes, that's right. That's 3,500 bushel on the
3 one wheat and then 3,000 bushel on another. So
4 basically you have two different layers. And again,
5 there is no -- even though there will be, there is no
6 damages that is stated in this record. It's strictly --
7 it's just strictly wheat.

8 Q. So your alfalfa hay has no projected
9 shortfall, or is that a mistake in that column?

10 A. Well, it was mostly overlooked on my part.

11 Q. Those 66 acres aren't receiving any water
12 either; is that correct?

13 A. They received water, just like the others,
14 through the spring -- or through the season up until
15 when I was curtailed.

16 Q. But no longer right now; correct?

17 A. That's correct.

18 Q. So you are claiming material injury to your
19 surface water rights caused by upstream groundwater
20 pumping; is that true?

21 A. Yes.

22 Q. But you have not identified specific water
23 rights in the Triangle that are causing that injury; is
24 that correct?

25 A. As far as jointly identifying them? Basically

1 I haven't went through and sorted every water right that
2 is proving injury. But as a whole, because they are so
3 much junior to our Little Wood River decree, I don't
4 know of one well that is junior to the Little Wood River
5 decree, which goes to 1889, unless you know of one, sir.

6 Q. No, I am not offering that.

7 So you have the two water rights to the Little
8 Wood River, that's a May 5, 1884 priority date; is that
9 correct?

10 A. Yes.

11 Q. Does that right go off before the April 1,
12 1884, priority date?

13 A. April 1st. It says 5/27. But most of the
14 time the 37-59K goes off, and then I'm able to use only
15 the 6.2 cfs after that time, which is my original decree
16 rights dated May 5, 1884.

17 Q. And if the water right list I've looked at is
18 correct, you are the only water user with that priority;
19 is that true?

20 A. I can't answer that exact, but I know that
21 these dates pertain to whether my right is curtailed or
22 whether my right is good. I don't see the book that the
23 watermaster uses, if I am one person on that May 5, '84
24 or five, but it's subject to the watermaster.

25 Q. Where does the water get measured in the

1 Little Wood that determines if your right is on or off,
2 do you know?

3 A. I should remember the number, but I can't give
4 you that exact number.

5 Q. Is it Station 54?

6 A. I know where it is, but I won't say whether
7 it's 54 or 68, that's my question.

8 Q. Do you know how much water has to be flowing
9 at that location for your right to be on?

10 A. No, I don't. I've never followed Kevin out
11 there to determine whether his correctness is right on
12 deciding that.

13 Q. So as far as curtailing junior groundwater
14 rights and whether that would supply enough water to
15 meet your water right, would the modeling information
16 and the report from Eric Miller describe that?

17 A. Could you repeat that.

18 Q. I guess you talked about with Mr. Rigby
19 whether groundwater, if that's curtailed, if that would
20 show up and supply water to your right for the rest of
21 the 2021 irrigation season. How do you know that, I
22 guess that's what I'm asking.

23 A. Well, as has been modeled by -- I can't
24 remember his name -- Mr. Miller, it basically shows that
25 there would be an increase of flow, as well as also

1 where I live right on the river and the American Falls
2 is not going through there, that there is a difference
3 of water when -- it's nice to see the white water out of
4 the Clearwater, but I do feel like that when they are
5 not running -- when they are not running that there is
6 more water going past my house, and so...

7 Q. I guess my question is whether or not there
8 will be sufficient water to satisfy your priority. Do
9 you know that?

10 A. Well, the statement I made had to do with
11 water that is way back in September. So basically I
12 believe it would, but it would be close, based on my
13 May 5, 1885, but a person wouldn't know that until you
14 try it.

15 Q. Would the information in Ms. Sukow and
16 Mr. Miller's report tell you whether or not that would
17 happen, I guess, in their predicted estimate?

18 A. I believe it would, because there is such a
19 direct correlation between the water at Silver Creek and
20 also the relationship that is the flow and the volume in
21 the Little Wood River that it is a very rapid change.

22 Q. Will curtailing junior groundwater rights on
23 July 1st help your wheat crop?

24 A. Excuse me?

25 Q. Will curtailing junior priority groundwater

1 rights on July 1st help your wheat crop?

2 A. It will help. I won't say it will completely
3 reduce the damage, but it will help.

4 Q. If that water were to come back over the
5 course of July and meets your priority?

6 A. Well, what my hope would be, and the reason
7 why most of the Little Wood users are here, that we
8 could actually get a little bit faster change or the
9 possibility to have things to where we wouldn't actually
10 have to wait that long to reduce the damage like myself
11 and others would suffer.

12 Q. I guess if this had started back in January,
13 would that have been better timing for you?

14 A. It would be a better time for everyone;
15 however, this is where we are right now.

16 Q. Certainly.

17 Will curtailing junior groundwater rights on
18 August 1st help your wheat crop?

19 A. Well, it does that, as far as hay and various
20 other things, but like the injury that I posted here,
21 the longer you wait in the year the more difficult it is
22 to actually recoup these losses.

23 Q. So will you have already harvested your wheat
24 by then regardless?

25 A. Normally we harvest the crop the 10th of

1 August, 15th of August.

2 Q. But do you turn the water off before then?

3 A. Yes.

4 Q. July 15th, July 25th?

5 A. Yes. It's just like I stated here, basically,
6 the water we would turn off would be 7/15 or 7/25.

7 Q. So curtailing groundwater rights on
8 August 1st, you wouldn't turn water on back on after
9 that point, would you?

10 A. So curtailing groundwater rights when?

11 Q. August 1st.

12 A. August 1st? Probably not that late. It's no
13 different than other crops we have. At that point
14 injury has been suffered, and that's why I think all of
15 us are here right now trying to facilitate some kind of
16 an agreement that we can get this settled without any
17 time that would be of the essence pertaining to loss.

18 Q. On that loss you have -- isn't it true you
19 have multiperil crop insurance on your property?

20 A. Yeah. Right.

21 Q. Would that cover some of that loss that you've
22 identified in your table 1?

23 A. Yes.

24 Q. Do you know how much?

25 A. Where is table 1?

1 Q. I think it's right in front of you, that page.
2 I'm sorry.

3 MR. RIGBY: Exhibit 1.

4 Q. (BY MR. THOMPSON) Exhibit 1. The page you
5 were just on, I believe, Mr. Huyser.

6 A. Here? Back here?

7 Q. No. Go back. I'm sorry. The one you just
8 turned over, I think it's that one.

9 A. Okay.

10 Q. Table of Projected Injury.

11 A. Right.

12 Q. So your policy could cover damages for some of
13 that, a portion?

14 A. Yes, that's correct. I have never -- with a
15 multiperil, multi crop, I've never actually went through
16 a drought situation, but I do have multiperil, yes.

17 Q. You have two pumping stations on the river; is
18 that correct?

19 A. Yes, I do.

20 Q. And your capacity is about 3,250 gallons; is
21 that correct?

22 A. When you look at the water rights combined,
23 they are about 2,800 gallon a minute, which equates to
24 my decreed water right. And when the other supplemental
25 right is good, yes, it's between 32 and 3,400 gallon.

1 MR. THOMPSON: That's all the questions I
2 have. Thank you.

3 THE HEARING OFFICER: Thank you, Mr. Thompson.
4 Mr. Laski or Ms. O'Leary, any questions?

5 MR. LASKI: No.

6 MS. O'LEARY: No.

7 THE HEARING OFFICER: Group 3. Mr. Bromley?

8 MR. BROMLEY: Thank you, Director.

9

10 CROSS-EXAMINATION

11 BY MR. BROMLEY:

12 Q. Mr. Huyser, hi, Chris Bromley.

13 A. Hi.

14 Q. Thanks for being here.

15 Two questions very, very quick. First is:
16 When do you usually turn on with your Little Wood
17 rights?

18 A. Normally, of course depending on crop, but
19 it's normally around the 1st of April, right in that
20 area, plus or minus, whether we have wheat, corn, or
21 alfalfa, that is a plus or minus window.

22 Q. Sure. Definitely.

23 This year when did you turn on?

24 A. I believe it was the 12th of April, is what my
25 recollection is. I know that the Cottonwood water right

1 was only on for about 6 days and then it went back off,
2 I believe. As far as my right, I think it went away
3 April 16th.

4 Q. Thank you for that.

5 Last question. So Mr. Thompson asked you a
6 question about could you identify groundwater pumping
7 wells that you were alleging cause injury to your water
8 rights, and you said you were not able to identify
9 those. Are you asking for curtailment of wells anywhere
10 outside of the Bellevue Triangle?

11 A. Based on the information that I have seen that
12 Eric has shown, I would say it is a majority of the
13 inside of the Bellevue Triangle, and that would have the
14 direct effect on the volume of water that would be
15 available in Silver Creek.

16 Q. So are you asking the Director to curtail
17 wells outside of the Bellevue Triangle?

18 A. No.

19 MR. BROMLEY: Thank you. Nothing further.

20 THE HEARING OFFICER: Thank you, Mr. Bromley.

21 Others in group 3? Mr. Robertson?

22 MR. ROBERTSON: No questions.

23 THE HEARING OFFICER: Thank you.

24 Mr. O'Bannon?

25 MR. O'BANNON: No.

1 THE HEARING OFFICER: Redirect, Mr. Rigby.

2 MR. RIGBY: No further questions.

3 THE HEARING OFFICER: With no redirect,
4 Mr. Huyser, thank you for your endurance. You are
5 excused.

6 Let's just talk about, do we have more
7 witnesses? Let's take a 10-minute break.

8 (Recess taken.)

9 THE HEARING OFFICER: Let's go back on the
10 record.

11 Mr. Rigby, next witness.

12 MR. RIGBY: Thank you. We have changed the
13 order to have Mr. Taber to go first, and I'm trying to
14 be expeditious with the time, knowing that it's after 5,
15 and he will take more time than the last two, and I
16 think we can expedite them as well.

17 So with that in mind then, please state your
18 full name and current address.

19 THE REPORTER: He wasn't sworn in yet.

20 MR. RIGBY: That's right.

21 DON TABER,
22 having been called as a witness by the Big Wood &
23 Little Wood Water Users Association and first duly
24 sworn, testified as follows:

25 ///

1 DIRECT EXAMINATION

2 BY MR. RIGBY:

3 Q. Good afternoon, Don.

4 So just to be certain, we will be addressing
5 three particular farms; is that correct?

6 A. Yes.

7 Q. One is called the -- well, I guess the Taber
8 Farm; right? That's your own farm?

9 A. The Taber Farm is the home farm, yes.

10 Q. Home Farm? Okay. And then there is the
11 7 Mile Farm and also the Ritter Farm; is that correct?

12 A. Yes.

13 Q. And those other two farms are farms that you
14 rent or lease?

15 A. Yes.

16 MR. RIGBY: With Counsel's stipulation then, I
17 would like to, with the further stipulation that any
18 Cottonwood rights be admitted only for the purpose of
19 showing the water supply, I would like to right now then
20 proceed to have Taber Exhibits No. 2 through 21, 7 Mile
21 Exhibit No. 2 through 6, and Ritter Exhibit No. 2
22 through 4 all admitted.

23 What they are, I'll represent, are water
24 rights with accompanying printed maps by IDWR. But they
25 do include at least one, if not more, Cottonwood rights,

1 but again with the stipulation, Mr. Bromley.

2 MR. BROMLEY: Thank you, Mr. Rigby. Yes, I'm
3 in agreement.

4 THE HEARING OFFICER: These are a lot of
5 documents all together. Have the parties had a chance
6 to review these documents?

7 MR. THOMPSON: Yes, Director.

8 THE HEARING OFFICER: Okay. Is there any
9 objection to their admission?

10 MR. THOMPSON: No.

11 MR. BROMLEY: No.

12 MR. LASKI: No.

13 THE HEARING OFFICER: So let me recite, if I
14 can, Mr. Rigby. You want Taber Exhibits 2 through --

15 MR. RIGBY: 21.

16 THE HEARING OFFICER: -- 21 admitted into
17 evidence. And you are excluding then -- are there some
18 additional?

19 MR. RIGBY: There are, but they are not the
20 water rights. I'm not introducing them.

21 THE HEARING OFFICER: Okay. So Taber Exhibits
22 2 through 21 are received into evidence.

23 (Taber Exhibits 2 through 21 received.)

24 THE HEARING OFFICER: 7 Mile, this would be
25 again 2 through 6 are received into evidence.

1 (7 Mile Exhibits 2 through 6 received.)

2 THE HEARING OFFICER: And Ritter 2 through 4.
3 So there are additional -- no, there are not. 2 through
4 4. Ritter Exhibits 2 through 4 are received into
5 evidence.

6 (Ritter Exhibits 2, 3, 4 received.)

7 THE HEARING OFFICER: Okay. Mr. Rigby.

8 MR. RIGBY: Thank you.

9 Q. (BY MR. RIGBY) So with that out of the way,
10 Mr. Taber, what is your occupation?

11 A. Dairy farmer.

12 Q. And where do you practice this dairy farming?

13 A. 495 East 20 North, Shoshone, Idaho.

14 Q. And as far as your dairy is concerned, how
15 many cattle do you or dairy herd -- what is the number
16 of your dairy herd?

17 A. We milk about 900 and raise all of our
18 replacements and plus all of our steers. We have a
19 feedlot that we put our steers through, they go to
20 slaughter, directly to slaughter.

21 Q. And as far as the feed required for this dairy
22 herd, is it mainly grown by you?

23 A. We farm quite a lot of land, yes. And the
24 feed is all gone by -- we use all -- we buy commodities,
25 we buy corn, but the hay and silage and everything is

1 raised on the farm, and we do sell some excess hay, not
2 this year, but we usually sell excess hay.

3 Q. And what is your background as far as
4 education and work experience?

5 A. I have a degree in ag business management from
6 Penn State University, and I've been involved in the
7 dairy industry all my life, 50 some years.

8 Q. And are you a member of the Big Wood & Little
9 Wood Water Users Association?

10 A. Yes.

11 Q. Do you join with them as a party, individual
12 party?

13 A. Yes.

14 Q. So let's first of all address what we call the
15 Taber or home place. Is that what you refer to it?

16 A. Taber place, home place, whatever.

17 Q. Let's go to, just for the purpose of looking
18 and mapping of it, if you'll pull tab 5, Taber
19 Exhibit 5, please.

20 A. Okay.

21 Q. Does that accurately describe, to best of your
22 knowledge, the home place?

23 A. Yes.

24 Q. And the water rights that are associated with
25 this have been admitted into evidence from 2 to 21.

1 Rather than go through each of those, are they stacked
2 on one another?

3 A. Yes.

4 Q. What kind of crops do you grow, generally
5 speaking, on this home place?

6 A. We grow alfalfa, we grow corn silage,
7 sometimes some grain corn, we grow malt barley, we grow
8 sugar beets, and once in a while we grow winter wheat or
9 triticale. We usually chop that off for feed.

10 Q. And this particular year what are you growing
11 on the home place?

12 A. On the home place we have got, we had
13 triticale, then we planted corn and that, and we have
14 got some winter wheat and we have got alfalfa. And
15 that's it on the home place. I said corn, didn't I?
16 Yes.

17 Q. And is there any particular reason why you are
18 growing those this year. Because of the drought that
19 others have testified to, did that make you change your
20 decision as to what you would be growing?

21 A. We changed our decision a little bit, but we
22 have to go with corn, we have to gamble. We had to
23 gamble is water going to be in the river because you
24 cannot find -- I did not have enough ground that was
25 available for corn other places. I had to put some on

1 the river.

2 Q. Is that a required product or crop?

3 A. Corn silage is required. In our area there is
4 several feedlots and there is a couple other dairies,
5 and if I don't have corn silage there, I don't know
6 where I will get it because it's all committed,
7 everybody has got it tied up.

8 Q. But for your dairy this is an essential --

9 A. I need that for the dairy, yes. I use about
10 10,000 ton of corn silage.

11 Q. Again, let me finish my question.

12 So this is a required crop for your dairy?

13 A. Yes.

14 Q. So when you say you gambled, are you concerned
15 about the water rights that exist on the home place
16 being sufficient to properly grow your crops?

17 A. Yes.

18 Q. And why are you concerned about that?

19 A. Well, because we analyzed the Big Wood
20 Canal -- or the reservoir, we knew it was going to be
21 short. We analyzed the river, we decided that that was
22 going to be short. But we just had to take a chance on
23 some water being left in the river so that we could keep
24 the corn wet.

25 Q. So you addressed another issue, which is, do

1 you have other water rights besides those that are
2 listed from 2 to 21?

3 A. Yes, I do.

4 Q. What are those rights?

5 A. I have a supplemental well that produces about
6 1,300 gallon, and I expect to use that to help cover the
7 corn and some of the alfalfa.

8 Q. What other rights do you own?

9 A. That's other than decreed rights?

10 Q. Yes. Supplemental rights.

11 A. I have no other supplemental rights.

12 Q. Have you leased water for this year?

13 A. Not on this ground.

14 Q. We're only talking about this ground.

15 A. Yeah. No.

16 Q. So other than the decreed rights which are
17 Exhibit 2 through 21, that Taber Exhibits 2 through 21,
18 and the well, you have no other rights that are on this
19 property?

20 A. No.

21 Q. You said you're concerned about having
22 sufficient water to get through the rest of the season;
23 is that correct?

24 A. Yes.

25 Q. What, if anything, are you doing or have you

1 done to shore up the ability to finish the crop?

2 A. I'm not sure what you mean by that. I mean, I
3 couldn't purchase additional water; there wasn't any to
4 purchase. All I could do is on some of my other ground
5 on the other farms, we cut back so that we could shuffle
6 our water to the corn where we had the corn planted and
7 to our other crops. But we did raise some extra grain
8 this year on some of the other farms to help with the
9 water situation.

10 Q. Is that because the grain will be off sooner?

11 A. The grain will be off, we can divert that
12 water then to the corn if the water is there.

13 Q. And although we'll get to the other locations,
14 is this the location that requires the most water, if
15 you will?

16 A. Yes.

17 Q. It's mostly because of the corn?

18 A. Mostly because it's the most acres.

19 Q. Okay. So what type of watering do you use?

20 In other words, is it pressurized, is there groundwater?

21 A. It's all pressurized; we have pivots, we have
22 a few hand lines, and wheel lines.

23 Q. So there's no flood irrigation on this?

24 A. No, no flood irrigation.

25 Q. So as far as any flood irrigation on this

1 place, your answer was?

2 A. No.

3 Q. Therefore, from the river itself -- and by the
4 way, what river is this?

5 A. Little Wood River.

6 Q. From the river itself to the plant then, is it
7 all pressurized?

8 A. Yes.

9 Q. So the pumping that occurs on this place
10 appears to be in two different locations; is that
11 correct?

12 A. Yes.

13 Q. So there's no other pumping from the river?

14 A. No.

15 Q. Where is the groundwater well located on the
16 parcel?

17 A. It's the dot that is on the eastern side, just
18 down from my pivot and from that little field, that's
19 our pumping station for the river, and the well's
20 located right there also.

21 Q. Okay. As far as the well is concerned, is it
22 limited in its diversion?

23 A. Yes.

24 Q. What's the cfs?

25 A. 3 cfs or 3.5, I'm not sure now, but it's

1 1,300 gallon.

2 Q. Does it have a particular place of use that
3 you're using it on?

4 A. It is supplemental and we're allowed to -- the
5 only place we can use it is on that eastern part of the
6 ground, because where you see that split between the
7 fields, that comes from another pumping station and we
8 can't get the well water down there.

9 Q. So by the eastern side, if we're reviewing the
10 map Taber Exhibit 5, it would be on the right side?

11 A. The right side, yes.

12 Q. So that pivot is pretty much groundwater when
13 your other rights go away?

14 A. Yes.

15 Q. So let's talk about the other rights. Again,
16 without going into them specifically or each one of
17 them, what, if any -- do you know if those rights will
18 be curtailed in the next few weeks?

19 A. I think they will be. We've been hearing
20 reports that the '84 rights will be curtailed by the
21 15th, and the '83 rights I hope will stay on. The '87
22 right is curtailed. I think they've curtailed that.

23 Q. So the '83 right is your best right?

24 A. Yes.

25 Q. You believe it will stay on?

1 A. I don't know. I'm hoping (crossing fingers).

2 Q. And if the other rights are cut, will that
3 then impact the ability to grow your crop?

4 A. Yes.

5 Q. Is the '83 right sufficient enough to cover
6 the lands of the home place?

7 A. Not my personal '83 right but the other '83
8 rights that I have control of, yes.

9 Q. So does that make it possible to continue to
10 water the home place if those rights stay on?

11 A. Only if there's water in the river.

12 Q. So what do you mean by that? Because you
13 covered that in your deposition.

14 A. If there's water in the river, I can pump it;
15 if there's no water in the river, I can't pump it.

16 Q. So has there been occasion where -- were you
17 done?

18 A. Well, I can be.

19 Because I said before, even my well, I can't
20 use that anyplace else because I can't send the water
21 down the river, it will just disappear before it gets
22 there. So same way with if I pull my rights, the '83
23 water off of like the Ritter property, maybe I can't
24 even pump the '83 water on the Ritter property if there
25 isn't any water in the river. If there's no water

1 there, you can't pump it; if there's water there, you
2 can float it and use it one place or another.

3 Q. But it requires water to be in the river
4 before you --

5 A. It requires water to be in the river.

6 Q. So are you saying even though a right may be
7 on, you're not able to pump it?

8 A. Yes.

9 Q. Has that happened?

10 A. Yes.

11 Q. Has it happened historically or more recently?

12 A. Well, more recently because the rule of thumb
13 was the 1883 water never went off. That was the best
14 water on the river. But the last couple years it's went
15 off for a certain amount of time, a short time or
16 whatever, then come back on. But yes, recently it goes
17 off more frequently than in the past.

18 Q. So as to this '83 right, is that a right that
19 even though it would be on, may not be able to be
20 pumped?

21 A. Yes.

22 Q. So again, I will wait to deal with the
23 curtailment issue and ask that all at once as to all
24 three farms.

25 So let's move on now to the second farm, which

1 is the 7 Mile. Can you find that tab?

2 A. Yes.

3 Q. Again, 7 Mile Exhibit 2 through 6 have been
4 admitted into evidence, indicating water rights on this
5 particular place. So if you will turn to, please, let's
6 turn to 7 Mile Exhibit 5, please. That is a map of your
7 Water Right 37-321, produced by IDWR. Does it
8 accurately depict the farm known as 7 Mile?

9 A. Yes.

10 Q. The water rights on that particular farm, as I
11 said, are indicated by Exhibit 2 through 6 of 7 Mile.
12 What are you growing this year on that particular
13 parcel, the 7 Mile parcel?

14 A. We have spring wheat up there and we have one
15 small field of sugar beets. I had to go with sugar
16 beets because we had to set up for last fall, I had some
17 of the chemicals and fertilizer on for it, and I had to
18 put them in. I expect I'll lose them but I had to put
19 them up there.

20 Q. So you felt like you had no choice?

21 A. I felt I had no choice, yes. We went with the
22 wheat to cut back on the water consumption there and
23 everything. We normally would have planted corn but we
24 planted wheat instead to get the water.

25 Q. So what is the anticipated cutoff, if you

1 know, of the water rights that are connected to the
2 7 Mile parcel?

3 A. I think that's anticipated that will go off by
4 the 15th of June. Or maybe it's -- I haven't been home
5 for 2 days, maybe it's already off. I haven't gotten a
6 notice on it.

7 Q. What other water rights do you have on this
8 7 Mile parcel?

9 A. With the grain going off and everything, we
10 felt that we could move some '83 water up there to just
11 water 20-some acres of beets if we had to, it wouldn't
12 take very much. And that was how we figured we would be
13 able to water the beets if there was water in the river
14 and we could pump it up there.

15 Q. But so far you're not sure you'll have the
16 water.

17 A. Not sure we'll have water. And so far we
18 haven't had to do that. So we're okay so far.

19 Q. Again, what's the early right on the 7 Mile?

20 A. 1884, I think it's like 4/25 or 4/30 or
21 something like that.

22 Q. Typically how long does that water last?

23 A. Normally it lasts most of the season. You
24 might lose it for a couple of weeks and maybe some
25 people shut off from water grain or something, a little

1 more water comes in the river and it goes back on. But
2 it's a fairly reliable right.

3 Q. This year?

4 A. Keep your fingers crossed. I don't think
5 we'll have it.

6 Q. If you don't, have you been able to acquire
7 any supplemental water for that right?

8 A. No.

9 Q. You've indicated you needed the water down on
10 the home place so it's not coming from that right.

11 A. Well, possibly, we'll stretch it as far as we
12 can. If we have to take a little bit of '83 water up
13 there, as I say, to water 20 acres, we might do that for
14 a few days, then move it back.

15 Q. What kind of irrigation system do you have on
16 the 7 Mile place?

17 A. Pivots and wheel lines.

18 Q. So is it all pressurized?

19 A. Yes, all pressure.

20 Q. Again, from the river to the crop?

21 A. Yes.

22 Q. So no other water rights. I think I already
23 asked that. That's it on this place.

24 A. Well, there's a Cottonwood right on the place.

25 Q. Okay. But again, that's not an issue right

1 now.

2 A. No.

3 Q. Let's move on then to the Ritter Farm. By the
4 way, are these farms contiguous in the sense that
5 there's no one in between those farms and you?

6 A. Yes.

7 Q. How long of a stretch would it be from stem to
8 stern on these farms if you were to stack them up?

9 A. We can control the river for 7 miles.

10 Q. Okay.

11 A. From farm to farm it would be approximately
12 5 miles but actually there's nobody else below us that
13 pumps out of the river until you get down to Shoshone
14 where American Falls and the river comes together.

15 Q. I didn't ask you, I'm trying to hurry this
16 thing, but how familiar are you with these farms? How
17 long have you been working on these farms?

18 A. Time flies but I think we've farmed them for,
19 the 7 Mile Farm we used to farm it years ago and then
20 that was sold to somebody else, and then Jeff Ward that
21 owns it now bought it, and we farmed it ever since he
22 bought it. He's the one that put the sprinkler system
23 on. The Ritter Farm, he got sick about 10 years ago,
24 and we've farmed that ever since.

25 Q. So back now on to the Ritter Farm, the water

1 rights that are included there, what's your earliest
2 water right there?

3 A. 1883.

4 Q. So that's your good water right.

5 A. Yes, that's the good water rights.

6 Q. If we go to the map that was generated, Ritter
7 Exhibit No. 4, is that an accurate depiction of the
8 Ritter parcel?

9 A. Yes.

10 Q. And it evidences or shows two points of
11 diversion; is that correct?

12 A. Yes.

13 Q. Again, what kind of an irrigation system do
14 you have there?

15 A. It's all pressurized.

16 Q. So again from river to crop?

17 A. Yes.

18 Q. Again, what are you growing on the Ritter
19 place this year?

20 A. On the Ritter place we've got alfalfa, we've
21 got a small field of sugar beets, and we've got corn,
22 corn silage.

23 Q. Are you concerned having the '83 right that
24 you will still not be able to complete the crop?

25 A. We are concerned, yes. The first thing we

1 would probably curtail is the alfalfa, try to -- if the
2 water was there that we could pump the rest of it and we
3 didn't have -- we would cut the alfalfa first.

4 Q. So therefore, how many cuttings would you
5 expect to get this year on the Ritter place?

6 A. Normally we get four cuttings. This year I'm
7 hoping we can get two. We got one cutting off. I'm
8 hoping the water will stay good long enough and we can
9 keep water there long enough we can at least get one
10 more.

11 Q. I failed to ask that same question for the
12 home place.

13 A. Same thing, yes. Where the well will reach
14 part of that, we will try to get our four cuttings of
15 hay.

16 Q. So you could get on some of the hay four
17 cuttings?

18 A. Four, we could, yes.

19 Q. As far as the 7 Mile?

20 A. We hope to keep the -- we don't have any
21 alfalfa up there. We hope to keep, if we move enough
22 water up there, to keep the sugar beets alive.

23 Q. Understood.

24 So as to these three parcels, do you have a
25 belief that the reduced water supply that could cause

1 the curtailment of your water rights is due in part to
2 the pumping of the Bellevue Triangle?

3 A. I believe that, yes.

4 Q. What's your information or what's your
5 knowledge or personal understanding as to why?

6 A. Well, first off, 2 weeks ago or 10 days ago,
7 time goes so fast, Magic Reservoir was shut off. And so
8 there's no other source of water, and they had a little,
9 there was some rain across the Bellevue Triangle up
10 there, and we didn't get hardly anything down our way.
11 I don't think we even got a mud puddle. But about a day
12 or two later the river comes up. And my thoughts on
13 that was that, Well, they must have shut down pumping up
14 there. And it's very quick that the water goes back
15 into Silver Creek, gets down the river.

16 But the river did come up. I don't know how
17 much, I didn't ask the watermaster or anything. But my
18 guys saw it and they said, Hey, the river is up.

19 Q. So in all fairness, in part it's also due to
20 the lack of diversions of surface water up above as
21 well; right?

22 A. Could be, yes. I don't know how much surface
23 water is diverted up there and I don't know how many
24 pumps.

25 Q. But historically have you in other times

1 believed that the pumps were a significant cause of the
2 reduction in flows past these three farms?

3 A. I attribute it to the pumps, I wasn't sure
4 because -- but I knew that it seemed every year the
5 river run less and less, and so it had to be something.
6 It's a small watershed, as I say, it's quick recovery.
7 The water just comes out of Silver Creek and then comes
8 right down the river. In 2 days you can see a
9 difference.

10 Q. So have you attempted to determine the
11 injuries to your crops or potential injuries to your
12 crops --

13 A. Yes, I have.

14 Q. -- in 2021?

15 A. Yes.

16 Q. So if you would please first go back to the
17 Taber or home place, that would be Taber Exhibit No. 1.
18 Don't go back too far, you'll get into somebody else's.

19 So is that entitled Taber Exhibit No. 1?

20 A. Yes.

21 Q. Very good.

22 So were you the party that presented the crop
23 information and the projected cutoff dates, days needed
24 to irrigate, the projected loss, and projected revenue
25 loss on this particular Taber Exhibit No. 1?

1 A. Yes.

2 Q. So explain it, the best you can.

3 A. Okay. What I looked at was how much water my
4 well would put out. So I tried to calculate, well, if I
5 have to give up one cutting of alfalfa or if I have to
6 give up, it will be down on the other pumping station.
7 So I just took the acres I thought would be affected and
8 I looked at my yields, I figured my corn silage normally
9 we get about 32 ton. So I priced that at \$40 a ton,
10 which is way too low. If I have to find corn silage or
11 buy it, I'm going to be paying 60 or \$70 a ton for it.

12 And I priced the hay that I thought we might
13 lose at \$135 a ton. And that's \$200 a ton now; so I was
14 way low on that. And then the barley and wheat are
15 whatever, the wheat was priced at \$7, which was what the
16 market price was the day we was working on this.

17 Q. There's one that's down at the bottom, because
18 those two projected revenue loss indicate 82,000 for the
19 alfalfa and 135 and some change for this silage corn; is
20 that correct?

21 A. Yes.

22 Q. Going down though you also had a malt barley
23 for the, it's indicated CAW.

24 A. Malt barley, yes, that's on the west end of
25 the property. Mostly we use Cottonwood water is what's

1 appropriated for that. When that isn't on, we pump that
2 out of our pumping station there off the river or we can
3 bring Magic water down, Magic Reservoir water down, to
4 reach that. And none of them are going to be available;
5 so that's why I put that in.

6 Q. So in all fairness, I guess if this is
7 Cottonwood water or if it's anything to do with the Big
8 Wood, then perhaps the malt barley is outside of the
9 issue?

10 A. It could be, yes.

11 Q. So that still would leave your 135 and some
12 change and 82,000 as far as your claimed damages; is
13 that correct?

14 A. Yes.

15 MR. RIGBY: So I would move for the admission
16 of Taber Exhibit No. 1.

17 THE HEARING OFFICER: Any objection to the
18 admission of this document?

19 MR. THOMPSON: No.

20 MR. LASKI: No.

21 MR. BROMLEY: No.

22 THE HEARING OFFICER: Document marked as Taber
23 Exhibit 1 is received into evidence.

24 (Taber Exhibit 1 received.)

25 Q. (BY MR. RIGBY) Now move, if you would,

1 please, to 7 Mile Exhibit No. 1. Again, same question:
2 Did you supply the information for this tabulation?

3 A. Yes.

4 Q. Would you please explain that one then in
5 detail.

6 A. Well, we figured if I took it as a total loss,
7 say, right today we had no more water up there, then we
8 factored the sugar beets at 40 ton per acre, which is a
9 little under my normal yield, and we factored them at, I
10 think I factored them at \$50, which is what they're
11 projecting the price will be.

12 The spring wheat, again, I factored it our
13 normal yield is 130 bushel, I think I factored that at
14 \$7 a bushel, which is, again, the going price. So
15 that's all we had up there.

16 Q. Those two equal 125, almost \$126,000.

17 A. Okay.

18 Q. So you think that is a fair estimate of the
19 losses on the 7 Mile lands?

20 A. I think it's on the low side but it's what I
21 put down.

22 MR. RIGBY: I move for the admission of 7 Mile
23 Exhibit No. 1.

24 THE HEARING OFFICER: Any objection to the
25 admission of this document?

1 MR. THOMPSON: No.

2 MR. LASKI: No.

3 MR. BROMLEY: No.

4 THE HEARING OFFICER: The document marked as
5 7 Mile Exhibit 1 is received into evidence.

6 (7 Mile Exhibit 1 received.)

7 Q. (BY MR. RIGBY) Now if you'll turn to the
8 Ritter Exhibit No. 1 under the Ritter tab, please. Do
9 you have that?

10 A. Yes.

11 Q. Again, same question: Please give us an
12 explanation as to how you came up with the calculations
13 there.

14 A. Okay. The alfalfa, if we lose the rest of
15 that, I figured that at the tonnage that was left,
16 because normally we make 6 1/2 ton, and so I figured a
17 portion of that, I think 3.5 ton is what we would be
18 losing or whatever, that was figured at, I think it was
19 figured at \$135 a ton, which is very conservative on
20 that.

21 Silage corn, if we lost all of that, if there
22 wasn't any water in the river and we couldn't pump it,
23 even though we had good rights there, that would be 32
24 ton to the acre, and I figured that at \$40.

25 And the sugar beets again were figured at \$50,

1 at 40 ton.

2 Q. Same calculation you used before?

3 A. Yes.

4 Q. So that comes up as the total of 177,600, is
5 that your testimony here?

6 A. Yes.

7 MR. RIGBY: I move for the admission of Ritter
8 Exhibit No. 1.

9 THE HEARING OFFICER: Any objection to the
10 admission of this document?

11 MR. THOMPSON: No.

12 MR. BROMLEY: No.

13 MR. LASKI: No.

14 THE HEARING OFFICER: The document marked as
15 Ritter Exhibit 1 is received into evidence.

16 (Ritter Exhibit 1 received.)

17 Q. (BY MR. RIGBY) Don, let me just ask you
18 another question. Some of the questions that have been
19 asked of others is, what if the pumpers were curtailed
20 and yet you wouldn't receive the benefit of that for
21 some time, even let's use the extreme of August, would
22 there still be a benefit, in your opinion, to the crops
23 that you are growing?

24 A. It probably would not benefit the corn because
25 it would be dead. The alfalfa would have went into

1 dormancy. If you water it in August, there's a
2 possibility you can get a cutting off of it late
3 September. It would allow us, a late water would, if we
4 disced the corn down or whatever, we raise triticale for
5 feed for the livestock, and maybe we plant triticale and
6 get it watered, so that's growing, because that's a
7 fall-planted crop that we harvest in the spring. So
8 yes, it would be, the water would be beneficial. Any
9 time you can get water is beneficial.

10 Q. So are you then seeking to have the water
11 rights in the Bellevue Triangle, that is the groundwater
12 rights, curtailed based upon the priority system of both
13 surface and ground?

14 A. Yes.

15 MR. RIGBY: I have no further questions.

16 THE HEARING OFFICER: Mr. Fletcher, questions.

17 MR. FLETCHER: No questions.

18 THE HEARING OFFICER: Mr. Thompson.

19

20

CROSS-EXAMINATION

21 BY MR. THOMPSON:

22 Q. Good afternoon, Mr. Taber. Travis Thompson
23 for the South Valley Ground Water District. Can you
24 hear me okay?

25 A. Yes.

1 Q. You talked with Mr. Rigby about you have about
2 327 acres on your home place; is that correct?

3 A. Yes.

4 Q. You have alfalfa, corn, and wheat; is that
5 true?

6 A. Yes.

7 Q. That one pivot to the far west has a mixed
8 source; is that correct?

9 A. Yes.

10 Q. Water from both the Little Wood and the Big
11 Wood River?

12 A. Yes. We own beyond -- we own a couple more
13 pivots right just west of that. So as I say, we
14 comingle that water down there. If it's 1887 water, we
15 pump. It's whatever water we have available to put down
16 there.

17 Q. So the source of that water on that pivot, you
18 have a portion of your Little Wood rights appurtenant to
19 it. What's the source for the rest of it?

20 A. Sometimes if the 1887 water is good, that's
21 what we put down there. Sometimes the Cottonwood water,
22 if that's good, we use that there. Sometimes if we have
23 Magic Reservoir water, we can water that ground with
24 that water.

25 Q. Your most senior water right is the 1883

1 priority; is that correct?

2 A. Yes.

3 Q. And you have an 1884?

4 A. Yes.

5 Q. And an 1887?

6 A. Yes.

7 Q. You've previously described your 1887 right as
8 a junior surface water right. Would that be correct?

9 A. That was, I say it was a junior right because
10 it goes off more often than the 1881 rights.

11 Q. You've described --

12 A. I mean the 1884 rights. I'm sorry.

13 Q. It will be curtailed before the 1884; correct?

14 A. Yes.

15 Q. Sometimes that's earlier in the season?

16 A. Sometimes.

17 Q. Your Cottonwood right, that has an 1899
18 priority date; is that correct?

19 A. It does, yes. In some years the Cottonwood
20 right is good because, it's my understanding, it's based
21 on the flow coming into Magic at a certain position or
22 up there at a certain station. And sometimes the 1887
23 right is off for a short time, and probably because of
24 the amount of water in the river. But anyway, it seems
25 illogical but that's the way it is. Sometimes the

1 Cottonwood right is better than the '87 and then they
2 reverse and the Cottonwood right will go off and the '87
3 right comes back on.

4 Q. Would you still describe that Cottonwood right
5 as a flood right available in times of high flow?

6 A. I think that's the way it's been described
7 over the years. Everybody's talked about it as more or
8 less a flood right. It's not one of our senior decreed
9 rights that you can count on for the whole season.

10 Q. As of your deposition on May 28th, you weren't
11 clear if you received any water under that right this
12 year; is that correct?

13 A. I do not know if I received water on that or
14 not.

15 Q. Do you know now?

16 A. I don't know.

17 Q. For your farm, you own all of the irrigated
18 land except for a small piece on BLM; is that correct?

19 A. Yes.

20 Q. Apart from your surface water rights, you do
21 have a supplemental groundwater right; is that true?

22 A. Yes.

23 Q. That water right is 37-8401. Does that sound
24 familiar?

25 A. I think so.

1 Q. That right allows you to divert and use up to
2 1,350 gallons per minute; is that correct?

3 A. Yes.

4 Q. And irrigate 248 acres?

5 A. Yes. We stretch it as far as we can possibly
6 stretch it.

7 Q. You've used the supplemental groundwater right
8 about every year; is that true?

9 A. Just about every year. Some years, if the '87
10 right stays good longer, we don't have to use it, but
11 most years we do. Maybe only for a couple weeks, maybe
12 for -- but it's turned on for a short time.

13 Q. You expect to use it this year; is that true?

14 A. Oh, yes.

15 Q. So does that cover about three-quarters of
16 your farm with that supplemental groundwater right?

17 A. Yes.

18 Q. For that area that you cannot use the
19 groundwater because some of your farm cannot deliver
20 groundwater to all of it, that's true; correct?

21 A. Yes.

22 Q. Do you anticipate moving some of your 1883
23 water to that pivot?

24 A. Yes.

25 Q. Have you done that yet?

1 A. No.

2 Q. Would that include moving some of the 1883
3 water off the Jim Ritter property?

4 A. Yes.

5 Q. Mr. Rigby went through the three properties,
6 7 Mile Ranch, the Ritter place, and your home place. Is
7 it fair to say you operate all three of those as one
8 operation?

9 A. Yes.

10 Q. Able to move water back and forth if needed?

11 A. Yes.

12 Q. Looking at your Exhibit 1 I believe for the
13 Taber exhibits, I don't know where you're at there, but
14 if you could go back to that.

15 So I'm a little confused. This is your home
16 place table; is that correct?

17 A. Yes.

18 Q. But does this table not identify your
19 supplemental groundwater right?

20 A. It does. I was looking at this too, and I
21 think what happened on this table is we included the
22 total pivot on the west end of the property that was not
23 in the drawing.

24 Q. So it's fair to say for any of the acres that
25 you are using the supplemental groundwater right on you

1 don't project a loss; is that right?

2 A. That's right.

3 Q. Which ones of this table are those?

4 A. Well, if you look there, it's so small I have
5 trouble reading it, but I think we accounted for partial
6 crops on the whole thing, and we took off a little bit
7 in case we run short of water later on, like if we
8 didn't have enough water for the alfalfa. But if I was
9 reading that right, I think we were not showing much
10 loss on part of it there at all where we could reach it
11 with the river.

12 Q. So the silage corn, is that the pivot you will
13 apply the groundwater to all season?

14 A. Yes.

15 Q. So that projected loss of 135,000, is that
16 inaccurate?

17 A. Yes.

18 Q. In looking down -- I'm sorry, I do see your
19 groundwater right now, it's down at the bottom. So you
20 have to read the top and bottom together; is that
21 correct?

22 A. Yes.

23 Q. Thank you.

24 We talked about this CAW water right. Do you
25 know what that is?

1 A. What right?

2 Q. Well, it's listed as CAW.

3 A. Carey Act.

4 Q. Carey Act. Were you here for the testimony of
5 John Arkoosh?

6 A. I could not hear him real well on that. I
7 have over the years heard people talk about Carey Act
8 water but I do not understand it. I do not know if
9 we've ever been delivered it, Carey Act water, or what
10 it is.

11 Q. Do you know if it's deliverable through the
12 whole season or not?

13 A. I have no idea.

14 Q. So it could be, as Mr. Arkoosh testified,
15 available through the end of the irrigation season?

16 A. I don't know how it would be delivered. If
17 they were going to bring it down the river, if there
18 wasn't any water in the river, you couldn't use it. I
19 mean, you couldn't go up and buy it and hope that it
20 would be delivered down the river because it probably
21 wouldn't make it.

22 Q. Could there be different types of Carey Act
23 water in this river system?

24 A. I don't know.

25 Q. As far as any projected crop loss on this

1 table, do you have crop insurance this year?

2 A. Yes, we do.

3 Q. Will that cover that loss?

4 A. On the corn our crop insurance covers
5 75 percent.

6 Q. Do you know if there has been a drought
7 declaration in your county?

8 A. I think the commissioners in Lincoln County
9 filed for it. I would assume that we received a drought
10 declaration. I know Blaine County did but I was
11 thinking, Why haven't we? But I'm not positive yet.

12 Q. If there is a drought declaration, would that
13 open up other sources of revenue -- or claims, federal,
14 state moneys? Do you know?

15 A. Well, probably what would open up is probably
16 low interest loans. But my interest rate at Farm Credit
17 is very low as it is. So I don't think a crop disaster
18 where they can say you can go into Farm Service office
19 and apply for a loan, I don't think that would help me.

20 Q. As you testified today, you believe your
21 surface water rights are being injured by junior
22 groundwater rights; is that correct?

23 A. Yes.

24 Q. Are groundwater rights within Water District
25 37, are you aware?

1 A. I'm thinking there's Water District 37 up
2 there, I don't know.

3 Q. Let's move to the Ritter Farm. You've leased
4 that property the last 10 years; is that true?

5 A. Yes.

6 Q. That has the 1883 priority water right; is
7 that correct?

8 A. Yes.

9 Q. That's Water Right 37-49?

10 A. Probably.

11 Q. That water right, I'll represent, is
12 authorized for the irrigation of 215.7 acres but you're
13 only irrigating 166; is that correct?

14 A. Yes.

15 Q. It's been that way ever since you've leased
16 the property?

17 A. Yes.

18 Q. The balance is not irrigated; is that true?

19 A. Yes.

20 Q. In the time you have farmed that property
21 you've had not much crop loss there. Would you agree
22 with that?

23 A. No.

24 Q. You wouldn't agree with that?

25 A. No. Repeat that.

1 Q. I'm sorry. You haven't had much crop loss
2 there on that property, have you, due to short water?

3 A. No. We have not had much crop loss, no.

4 Q. That's because of the priority of the water
5 right?

6 A. Yes.

7 Q. Your crops are covered by the same insurance
8 policy on this farm; is that true?

9 A. Yes.

10 Q. Like the other water rights on your home
11 place, you're claiming injury for the water right here
12 based upon junior pumping upstream?

13 A. Yes.

14 Q. Moving up the river, the 7 Mile Ranch, you've
15 leased that property from Jeff Ward since about 2008; is
16 that correct?

17 A. Yes.

18 Q. That water right -- there's a number of water
19 rights, I'm sorry. There's the Cottonwood water right,
20 I'll disregard that for now. But there's a 1884, April
21 30, 1884, water right on that property?

22 A. Yes.

23 Q. And that water right authorizes the irrigation
24 of 173 acres. Would you agree with that?

25 A. Yes.

1 Q. But you're only irrigating about 105?

2 A. Yes.

3 Q. And that's been the case ever since you leased
4 the property?

5 A. Yes.

6 Q. Mr. Ward has a hunting preserve on the
7 balance, the 50 acres or so?

8 A. Yes.

9 Q. When you took over this property there was a
10 pivot and wheel lines installed; correct?

11 A. Yes.

12 Q. Make that more efficient.

13 A. Managing the water more efficient. Managing
14 the crop, either way.

15 Q. For 2021, you have 81 acres planted in spring
16 wheat and 26 acres in sugar beets; is that true?

17 A. Yes.

18 Q. I believe you talked about this, but you may
19 be moving water from the Jim Ritter place, the 1883
20 water, out of here to the sugar beets on the 7 Mile
21 Ranch, if necessary.

22 A. Yes.

23 Q. With respect to your spring wheat, what's your
24 projected needed last day of irrigation?

25 A. I don't know what I wrote down there but I'm

1 thinking it would be at the very least the 10th to the
2 15th of July.

3 Q. What happens if you're shut off on June 11th
4 on the 1884 priority?

5 A. We would have to evaluate the wheat. You're
6 talking about the wheat?

7 Q. Yes.

8 A. We would have to evaluate the wheat, see if it
9 was going to head out and make grain or whether we'd
10 have to take it and just chop it off.

11 Q. When would you make that decision?

12 A. Well, we'd watch it and we'd have to -- I
13 don't know what exact day we'd make that decision, but
14 you look at it, you bring in a crop advisor, he looks at
15 it, and everybody puts their heads together and says,
16 Well, before it gets dried out, we better chop it so we
17 can salvage something.

18 Q. Would that be before the end of June?

19 A. Yes, it would have to be.

20 Q. So would curtailing any junior groundwater
21 rights after that point provide any benefit to that
22 crop?

23 A. Probably would not provide a benefit for the
24 wheat.

25 Q. How about the sugar beets, what happens if

1 you're cut off on the sugar beets?

2 A. There's no salvage value there at all. We
3 would have to abandon that. I don't know what the sugar
4 factory would say because we couldn't get water to it,
5 we just have to -- it would be just a total loss.

6 Q. In the two exhibits you identified needed last
7 day for sugar beets, needed last day of irrigation, and
8 one said September 20th and one said September 1st. Do
9 you know which is the correct date?

10 A. If we could harvest the sugar beets early on
11 the 1st, the sugar factory starts the very first part of
12 September, and you can dig maybe 10 percent of your crop
13 and they start, that's how they start their factory. So
14 they rotate that by the different receiving stations.
15 So maybe we would be scheduled to not dig our early
16 beets until, say, the middle of September, but with a
17 hardship we'd say, Can we dig first?

18 So then you take the water away, say, the 1st
19 September and harvest the beets, otherwise if they said,
20 No, you have to stay in line, it might be September 20th
21 or even maybe October 1st that you needed the water
22 because the late harvest of beets doesn't start until
23 like the 6th or 8th of October.

24 Q. So you could have different harvest dates for
25 these different fields; is that correct?

1 A. Yes.

2 Q. All these crops on the 7 Mile place are
3 covered by the same insurance policy as well?

4 A. Yes.

5 Q. Would that policy cover some of the projected
6 revenue losses?

7 A. I hope so.

8 Q. Do you know, you are diverting from the Little
9 Wood River below Station 10; is that correct?

10 A. Yes.

11 Q. Do you know what the flow has to be in Station
12 10 for your different priorities to be on?

13 A. I do not.

14 Q. Kevin Lakey is the best person to ask that?

15 A. Kevin Lakey would know. He talks about, the
16 only number that I have in mind is like 20 feet,
17 23 cubic feet or something to get water down to us so
18 that our '83 rights are good or whatever, but I'm not
19 sure.

20 MR. THOMPSON: Thank you.

21 THE HEARING OFFICER: Thank you, Mr. Thompson.
22 Mr. Laski?

23 MR. LASKI: Nothing.

24 THE HEARING OFFICER: Thank you.

25 Group 3.

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CROSS-EXAMINATION

BY MR. BROMLEY:

Q. Hi, Mr. Taber.

A. Hello.

Q. Chris Bromley. Two questions.

So when do you turn on your Little Wood rights on those three places that we were talking about, in an average type of year?

A. Average year, it depends on the crop and it depends on the spring. They start riding the river, what I call riding the river, checking how much flow or how much water we're using the 1st of April. And if it's a real dry spring and maybe you've just planted sugar beets or something and you need to water them to get them up, we might start watering, say, the 5th of April. If the winter wheat shows drought and it doesn't have any rain on it, we might start the 1st of April. But normally around the 15th of April we start watering a little bit, not everything, but some.

Q. Do remember this year when you turned on?

A. Not as quick as we needed to because we were trying to get other things done, but we should have been on by the 1st of April.

Q. Do you remember when you turned on?

A. I think it was around the 5th.

1 Q. Okay. Thank you.

2 Second question: In response to questions
3 from Mr. Thompson about curtailment of junior
4 groundwater rights, are you asking the Director to
5 curtail junior groundwater rights that are located
6 outside of the Bellevue Triangle?

7 A. No.

8 MR. BROMLEY: Thank you.

9 THE HEARING OFFICER: Others from group 3?

10 MR. ROBERTSON: No.

11 THE HEARING OFFICER: Mr. O'Bannon has left
12 us.

13 Okay. Redirect, Mr. Rigby.

14 MR. RIGBY: No redirect, Mr. Director.

15 THE HEARING OFFICER: Thank you, Mr. Taber,
16 for your patience in waiting.

17 Now let me inquire of THE HEARING OFFICER
18 reporter, do you need a break?

19 THE HEARING OFFICER REPORTER: That would be
20 great.

21 (Recess.)

22 THE HEARING OFFICER: We are back on the
23 record after the next-to-the-last break.

24 Mr. Legg, would you raise your right hand,
25 please.

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CARL LEGG,
having been called as a witness by the Big Wood & Little
Wood Water Users Association and first duly sworn,
testified as follows:

DIRECT EXAMINATION

BY MR. RIGBY:

Q. Good afternoon.

A. Good afternoon.

Q. Please state your full name and current
address.

A. Carl Legg, 836 East Highway 26, Richfield,
Idaho.

Q. Are you a named party in this proceeding?

A. I am.

Q. Are you also a member of the Big Wood & Little
Wood Water Users Association?

A. I am.

Q. Please explain your education and work
experience to date.

A. Well, since my mom had told me not to touch
things that's hot, it's experiential learning, six
decades of it, and I try not to get burned twice.

I own and run a business that builds pole
barns and operate 160 acres of trying to do something

1 with so...

2 Q. This 160 acres is the subject of this
3 particular proceeding, as far as you are concerned;
4 correct?

5 A. That's correct.

6 MR. RIGBY: Pursuant to stipulation of
7 counsel, I believe that Legg Exhibit 2 through 6 -- no,
8 5, excuse me. 2 through 5, I would move for the
9 admission of those exhibits. Representing that 2 and 3
10 are the irrigation rights; 4 through 6 are the stock
11 water and domestic rights.

12 THE HEARING OFFICER: Mr. Rigby, is 6 included
13 or not included?

14 MR. RIGBY: It's not included.

15 THE HEARING OFFICER: You referenced 2 through
16 6.

17 MR. RIGBY: I'll tell you why, it's because
18 there are two pages of 5 that include the domestic and
19 stock water so I was confusing myself.

20 THE HEARING OFFICER: Okay. So the
21 stipulation is, if I can recite, the documents marked as
22 Exhibits 2 through 5 you are requesting through
23 stipulation that these be received into evidence?

24 MR. RIGBY: I am, Mr. Director.

25 THE HEARING OFFICER: Any objection?

1 MR. THOMPSON: No.

2 MR. BROMLEY: No.

3 THE HEARING OFFICER: The documents marked as
4 Legg Exhibits 2 through 5 are received into evidence.

5 (Legg Exhibits 2 through 5 received.)

6 THE HEARING OFFICER: Thank you.

7 Q. (BY MR. RIGBY) Mr. Legg, how long have you
8 owned the property that is subject to the irrigation
9 right and evidenced by the picture on Legg Exhibit 3?

10 A. I've owned this property for 6 years.

11 Q. I think in your deposition you said this
12 property is kind of off the grid.

13 A. It is off the grid. There's no power
14 available to this property.

15 Q. I also understand that your intent for this
16 property is to actually conduct a bison project. Would
17 you explain.

18 A. That's correct. I fully intend on raising a
19 little herd of about 35 head of bison. I've done a
20 business model and a business case to do that. So
21 that's what our intent is.

22 Q. I'm trying to address this particular issue.
23 Are you, with your water right, it's a 1908 water right,
24 is there additional water besides the 1908 right water
25 evidenced by Legg Exhibit No. 2?

1 A. I believe it's a 1904 -- yeah, 1908. 1908 is
2 correct. And no, there's no other water right besides
3 that one.

4 Q. Do you lease water?

5 A. I do not.

6 Q. Do you have any supplemental water?

7 A. I do not.

8 Q. Therefore, with your stock water right, is
9 that what you're intending to provide for some of the
10 bison?

11 A. That would be correct.

12 Q. Again, if you'll turn to Legg Exhibit No. 1.
13 I'm trying to cut to the chase. As I understand it
14 through your deposition and otherwise, that your only
15 claim of damages is that you were not able to seed the
16 place with the kind of seed that is required to properly
17 raise buffalo; is that correct?

18 A. That's correct. So what our plan was, was to
19 plant new seed this year. So we pulled off the cattle
20 that typically graze this ground, and that was our plan.
21 But as the water became not available and that was
22 evident, we made a new plan of pushing that off another
23 year. However, if we're able to get some water in the
24 fall, then we'll try to do some fall planting and allow
25 that seed -- we won't see any growth out of it but at

1 least it will have a chance to get a start for next
2 year. Otherwise, this projection would be off a full
3 another year because we'll have to do the same thing
4 next year.

5 Q. The 3,000 you've estimated as projected loss
6 of revenue, how is that calculated?

7 A. That is just the revenue that we pulled the
8 cattle that graze this year off for this purpose. So
9 that's what the tenant paid us; so that's the value for
10 the year.

11 Q. Do you have any water right that is on at the
12 present time?

13 A. No, I do not.

14 Q. Are you, along with the others, maintaining
15 that one of the reasons why you're not able to have
16 water at this time is due to the pumping that's
17 occurring in the Bellevue Triangle?

18 A. Yes. The junior right up there pumping does
19 create a problem for our flow downstream, that's
20 correct.

21 Q. And are you relying upon any personal
22 information or just the experts that have been involved?

23 A. I'm relying on the experts that have been
24 involved plus my 6 years of watching what's going on up
25 there.

1 Q. What has that shown to you, your 6 years of
2 watching?

3 A. Silver Creek pulls down and the flow, we are
4 obviously downstream from where Silver Creek confluence
5 comes into the Little Wood, and it definitely changes.
6 The more pumping that goes on, the changes happen to it.

7 MR. RIGBY: I'd move for the admission of Legg
8 Exhibit No. 1.

9 THE HEARING OFFICER: Any objection to
10 admission of this document?

11 MR. THOMPSON: No.

12 MR. BROMLEY: No.

13 THE HEARING OFFICER: The document marked as
14 Legg Exhibit 1 is received into evidence.

15 (Legg Exhibit 1 received.)

16 Q. (BY MR. RIGBY) Mr. Legg, are you then seeking
17 to have the water rights of the surface and groundwater
18 administered by priority?

19 A. Yes, I am.

20 Q. And again, do you believe that will improve
21 your right to conduct the business that you intend to
22 conduct on this parcel?

23 A. Yes, I do.

24 Q. Do you believe this particular year that if
25 there is a curtailment it will benefit you?

1 A. Water in the river will benefit everyone
2 downstream; so yes, I believe that.

3 Q. You indicated that if there were, if the right
4 came back on, you'd be able to plant this seed even this
5 year?

6 A. That's correct. If I can get water in the
7 late fall, I would go ahead and plant, get some water on
8 it.

9 Q. But as it stands now, without a curtailment,
10 do you think that's a possibility?

11 A. No. I would not do it now.

12 MR. RIGBY: I have no further questions.

13 THE HEARING OFFICER: Thank you.

14 Mr. Thompson.

15

16

CROSS-EXAMINATION

17 BY MR. THOMPSON:

18 Q. Good evening, Mr. Legg. Travis Thompson for
19 the South Valley Ground Water District.

20 A. Good evening, sir.

21 Q. It's true you're requesting conjunctive
22 administration in Water District 37 this year; is that
23 correct?

24 A. I've looked up what conjunction is, and I
25 don't know as I have a full understanding. I haven't

1 been advised by my lawyer one way or the other. So I
2 would just say, I'm not going to answer that. How's
3 that?

4 Q. I'd like to open your deposition, give that to
5 you.

6 A. Sure.

7 Q. Enter this into the record.

8 THE HEARING OFFICER: Mr. Thompson, is this
9 for the purpose of impeachment?

10 MR. THOMPSON: There's just a few things in
11 this one.

12 THE HEARING OFFICER: I just want to know.

13 Q. (BY MR. THOMPSON) Can you please turn to page
14 12.

15 A. Absolutely.

16 Q. Could you read lines 12 through 15.

17 A. Sure.

18 Line 12, question: "Are you requesting
19 conjunctive administration of upstream junior
20 groundwater rights in Water District 37 this year?"

21 Line 15, answer: "Yes, I am. Invested a lot
22 of money, I need the water."

23 17 --

24 Q. No, I just asked for that, Mr. Legg. That's
25 fine.

1 Second question: Are you claiming upstream
2 groundwater rights injure or adversely affect your
3 surface water right; is that true?

4 A. Say that again.

5 Q. Are you claiming your surface water right is
6 injured or adversely affected by junior groundwater
7 rights?

8 A. I do. Do you want to go back to the
9 conjunctive administration piece?

10 Q. No, you read that. Thank you.

11 Do you agree you don't know which groundwater
12 rights are causing that injury?

13 A. As far as individually?

14 Q. Correct.

15 A. Collectively?

16 Q. Do you know which groundwater rights are
17 causing your alleged injury?

18 A. As an individual person that's causing my
19 injury, no, I do not.

20 Q. So you've leased your property to Harold Cook
21 for pasture in the past, haven't you? Is that true?

22 A. Yes, that's correct.

23 Q. But you're not renting it this year; is that
24 correct?

25 A. That's correct.

1 Q. He used to pay you \$3,000 a year?

2 A. That's correct.

3 Q. And you decided not to rent it this year
4 because of an agreement with NRCS for a new seed
5 planting; is that true?

6 A. That is correct.

7 Q. The NRCS recommended that you not run cattle
8 on it; is that correct?

9 A. For a year from the new planting, that's
10 correct.

11 Q. For 2021.

12 A. For the year for a new planting, that's
13 correct.

14 Q. How long would you need water to establish the
15 new seed?

16 A. I have no idea.

17 Q. It's a special grass that should take less
18 water; is that true?

19 A. It is. It's a drought-resistant grass. Bison
20 are natural herbivores and they don't require the same
21 type of products that you heard Mr. Taber testify that
22 he's raising for his dairy cattle.

23 Q. But you are irrigating the pasture for 2021?

24 A. I am not irrigating currently.

25 Q. On your water right, if you could turn to

1 Exhibit 2, that's your Water Right 37-1126?

2 A. That's correct.

3 Q. And does it have Conditions 4 and 5
4 referencing other sources of supply?

5 A. Yes, it does. Item 4 does for American Falls
6 and item 5 does for Big Wood Canal.

7 Q. If you can turn back to Exhibit 1. I think
8 that's your Table of Projected Injury. So there's a
9 Supplemental Water column. Do you know what that is?

10 A. Are you looking across the top?

11 Q. I think it's on the bottom below your Decreed
12 Water.

13 A. Okay. It's there.

14 Q. That CAW, do you know what that stands for?

15 A. I do not.

16 Q. Have you heard the term Carey Act water?

17 A. Today I have.

18 Q. Did you hear Mr. Arkoosh's testimony?

19 A. I did, and I've had some conversation about it
20 but I don't understand it. My limited understanding is
21 the Carey Act was an investment the federal government
22 made through private individuals to create the dam for
23 delivery of water.

24 Q. So did you irrigate through August last year?

25 A. I believe so, yes.

1 Q. And was that with your 1908 Little Wood right
2 or this CAW water?

3 A. I have no idea. I was told when to turn it on
4 and when it was turned off. So I don't regulate that;
5 there's a ditch rider that does that.

6 Q. Were you here for the testimony of Carl
7 Pendleton?

8 A. I was not for the whole thing.

9 Q. Can you turn to IDWR Exhibit 4, page 9,
10 please. Should be the report of Tim Luke.

11 A. I have 3, 4, 5, 2. It doesn't look like I
12 have a 4 here. Maybe I do. IDWR 4?

13 Q. Yes, page 9.

14 A. Yes. Okay. Sorry that took a minute.

15 Q. That's okay.

16 A. I'm with you.

17 Q. So I'm looking at Figure 3, Cumulative water
18 right diversion rates for irrigation uses from Little
19 Wood River & Silver Creek. Do you see that?

20 A. I do.

21 Q. Do you see the description about the Big Wood
22 Canal Company rights above that figure?

23 A. As far as the table?

24 Q. Yes.

25 A. Yes, I do.

1 Q. Would you agree the Big Wood Canal Company has
2 a 1907 priority right for 303 cfs?

3 A. I see that table connects with that.

4 Q. So would that water right have to be delivered
5 before your 1908 right could turn on?

6 A. According to this chart that would be correct.

7 Q. By priority too; correct?

8 A. Correct.

9 Q. To your knowledge, was that priority on last
10 August?

11 A. Again, I don't have any knowledge if it was or
12 if it was not.

13 Q. So how much water, according to this figure,
14 has to be in the river before your water right is turned
15 on?

16 MR. FLETCHER: I'm going to object for lack of
17 foundation. I guess that assumption is everybody is
18 diverting their right fully?

19 MR. THOMPSON: Certainly.

20 MR. FLETCHER: I'm going to object for lack of
21 foundation. If you want to lay the foundation -- I'll
22 let you rule on that.

23 THE HEARING OFFICER: Sustained.

24 Q. (BY MR. THOMPSON) According to this figure,
25 how many water rights have authorized diversion rates, I

1 guess the quantity out of yours?

2 A. As far as dates?

3 Q. Dates and quantity.

4 A. So prior to mine would be 1907, looks like 850
5 cumulative diversion rates and cfs; 1901 at 450; 1895 at
6 just under 250, I can't tell if that would be 249.5 or
7 249.8, I didn't make the chart; 1895 at again less than
8 250 but a little over 240; 1889, I would say that comes
9 in at 215; 1883, I think the lines cross somewhere
10 around 150; 1877 shows a flat line, zero.

11 Q. Do you have any knowledge of whether or not
12 curtailing junior groundwater rights would supply that
13 amount of flow in the Little Wood River?

14 A. I have no idea. I don't have a gage and I
15 don't measure the Little Wood River as far as cfs is
16 concerned.

17 Q. So as far as this year, when was your water
18 right on?

19 A. My understanding it turned on on April 15. I
20 didn't turn any pumps on until May.

21 Q. When was it curtailed?

22 A. It was curtailed earlier this month. I don't
23 know the exact date.

24 Q. So would the Water District 37 records provide
25 the best source of evidence as to when your water right

1 is on priority and when it's not?

2 A. Say that again, sir.

3 Q. Would the Water District 37 records be the
4 best source of information of when your priority is on
5 and when it's off?

6 A. I would presume so but I can't answer that
7 question with any integrity.

8 Q. Let's go back to your table 1. You have a
9 needed last day of irrigation September 30th; is that
10 correct?

11 A. That's what this chart says, that's correct.

12 Q. Do you know how many times your 1908 right has
13 lasted until September 30th?

14 A. I do not.

15 Q. How about August 31st?

16 A. I do not.

17 Q. July 31st?

18 A. I do not.

19 Q. June 30th?

20 A. I do not.

21 Q. May 31st?

22 A. I do not.

23 Q. Again, would the watermaster records be the
24 best source of information for that?

25 A. Yes, it would.

1 MR. THOMPSON: That's all the questions I
2 have. Thank you.

3 THE HEARING OFFICER: Thank you.

4 Ms. O'Leary?

5 MS. O'LEARY: Nothing, Director.

6 THE HEARING OFFICER: That's group 2.

7 Mr. Bromley, questions?

8

9

CROSS-EXAMINATION

10 BY MR. BROMLEY:

11 Q. Good evening, Mr. Legg.

12 A. Good evening.

13 Q. Chris Bromley. I have one question for you.

14 So in response to questions from Mr. Thompson
15 you said you're asking for curtailment of junior
16 groundwater rights and you weren't able to identify
17 which rights those were; is that correct?

18 A. Individually that's correct.

19 Q. Are you asking the Director to curtail junior
20 groundwater rights that are outside of the Bellevue
21 Triangle?

22 A. No, I am not.

23 MR. BROMLEY: Thank you. Nothing further.

24 THE HEARING OFFICER: Okay. I don't see any
25 of our other group 3 folks here now.

1 Redirect, Mr. Rigby.

2 MR. RIGBY: Just one.

3

4 REDIRECT EXAMINATION

5 BY MR. RIGBY:

6 Q. Mr. Legg, when you in your deposition
7 addressed the conjunctive management and then you said
8 you looked up conjunctive management, was that after
9 your deposition?

10 A. That's correct.

11 Q. So at the time of your deposition when you
12 said that were you fully advised what conjunctive
13 management may or may not have meant?

14 A. Absolutely not, I did not understand.

15 MR. RIGBY: No further questions.

16 THE HEARING OFFICER: Any more recross?

17 MR. THOMPSON: I've got one on that.

18

19 REXCROSS-EXAMINATION

20 BY MR. THOMPSON:

21 Q. Mr. Legg, what did you look up?

22 A. I looked up conjunctive management.

23 Q. Where?

24 A. I just Googled it.

25 Q. Oh, you Googled it.

1 You didn't look in the Idaho statutes or the
2 Idaho Administrative Rules?

3 A. I did not.

4 MR. THOMPSON: Okay.

5 THE HEARING OFFICER: Thank you, Mr. Legg.

6 THE WITNESS: Thank you, Mr. Director.

7 THE HEARING OFFICER: Next witness.

8 MR. RIGBY: Our last witness would be Chuck
9 Newell, please.

10 THE HEARING OFFICER: Mr. Newell, come
11 forward, please.

12 MR. RIGBY: I'm sorry, last witness today.

13 CHARLES "CHUCK" NEWELL,
14 having been called as a witness by the Big Wood & Little
15 Wood Water Users Association and first duly sworn,
16 testified as follows:

17

18 DIRECT EXAMINATION

19 BY MR. RIGBY:

20 Q. Good afternoon, Chuck.

21 A. Good evening.

22 Q. Yeah, I guess it's good evening.

23 A. Yeah.

24 Q. Please state your full name and current
25 address for the record.

1 A. Charles Newell, N-e-w-e-l-l. And I live in
2 Shoshone.

3 Q. What's your address?

4 A. 136 120 West Road.

5 Q. In Shoshone?

6 A. Yes.

7 Q. Are you a named party to this proceeding?

8 A. Yes, I am.

9 Q. Also a member of the Big Wood & Little Wood
10 Water Users Association?

11 A. Yes.

12 Q. And involved with that particular group?

13 A. Correct.

14 Q. What's your work experience and education?

15 A. I've been involved with some type of
16 agriculture since I was able to walk I guess. Dad used
17 to drag me around whenever we were going someplace. So
18 I've had my feet in the dirt for quite a while.

19 Q. Do you own land that is watered by the Little
20 Wood River?

21 A. Yes.

22 MR. RIGBY: Pursuant to the stipulation of
23 counsel, I believe that Newell Exhibit 2 through Newell
24 Exhibit 10 would address the particular water rights
25 associated with that land. And again, with the

1 condition that there is a Cottonwood right among those,
2 and with the same stipulation we previously had.

3 Therefore, pursuant to stipulation, I would
4 move for the admission of Newell Exhibit 2 through
5 Newell Exhibit 10 into the record.

6 THE HEARING OFFICER: I'm looking at the
7 reference, and it appears that the document marked as
8 Exhibit 11 is a map. You don't want to include this
9 one?

10 MR. RIGBY: I was going to but I guess we've
11 decided not to. Only reason being, Mr. Director, is
12 that there are other maps that would address this.

13 THE HEARING OFFICER: Okay. So other parties,
14 is Mr. Rigby's statement about the stipulation correct?

15 MR. THOMPSON: Yes.

16 MR. BROMLEY: Yes.

17 THE HEARING OFFICER: All right. So Exhibits
18 2 through 10 are received into evidence. These are
19 labeled Newell Exhibits 2 through 10.

20 (Newell Exhibits 2 through 10 received.)

21 Q. (BY MR. RIGBY) Mr. Newell, if you would look
22 at Newell Exhibit 5 for me, which is the map of Water
23 Right 37-432.

24 A. Yes.

25 Q. Does this map accurately depict the location

1 of your lands?

2 A. Of the irrigated land, yes.

3 Q. Good point, the irrigated lands.

4 And do you own these lands?

5 A. Yes.

6 Q. How long have you owned these lands?

7 A. I've been on the place 50 years and 2 days.

8 Actually owning those when my dad checked out,
9 why, I took over from that, and that was in 1979.

10 Q. But obviously you're very familiar with these
11 lands.

12 A. Yeah, unfortunately.

13 Q. How about the irrigation of these lands?

14 A. Yes.

15 Q. Presently how are these lands irrigated?

16 A. Combination of sprinkler and corrugates, and
17 some gated pipe.

18 Q. Therefore, from the river itself it appears as
19 though there are several points of diversion; is that
20 correct?

21 A. Yes.

22 Q. Are each of those used to help irrigate this
23 land?

24 A. Yes.

25 Q. Are they all piped or are they ditched?

1 A. Combination; part of it is piped and part of
2 it is in ditch.

3 Q. Have you in recent years done anything to be
4 more efficient in the use of your decreed water?

5 A. Yes.

6 Q. What have you done?

7 A. Have added a sprinkler system, have put in
8 some gated pipe, and redone some of the ditches, make
9 them more efficient.

10 Q. In addition to the water rights that we just
11 introduced -- in fact, let's talk about those first.
12 What's your earliest water right?

13 A. 1885, I think it's 4/15 of '85.

14 Q. So that's your earliest one?

15 A. Yes.

16 Q. And presently is that water right on?

17 A. I think that tomorrow or the next day it's
18 supposedly going off.

19 Q. The other water rights, without getting into
20 them specifically, are they on?

21 A. As far as I know.

22 Q. They're on?

23 A. Which water rights?

24 Q. I'm sorry, you talked about the earliest water
25 right.

1 A. Yes.

2 Q. I'm talking about the later water rights, are
3 they on?

4 A. No, no.

5 Q. So when this earliest water right goes off in
6 the next day or so, according to what you understand, do
7 you have any other water rights that can be used to
8 divert on this land?

9 A. No. It will be dry.

10 Q. What have you planted on this land?

11 A. We've got some grain and oats on there, and
12 that's all I planted this year.

13 Q. Why did you plant those this year?

14 A. Because there was no snow in the mountain and
15 it looked like it was going to be dry and I figured we
16 were going to be out of water.

17 Q. So typically speaking, what kind of crops do
18 you grow on these lands?

19 A. Alfalfa and irrigated pasture.

20 Q. Do you own cattle?

21 A. Yes.

22 Q. Is that the reason why you would generally
23 grow alfalfa?

24 A. Yes.

25 Q. You try to feed from your lands?

1 A. Raise all my own feed if at all possible.

2 Q. Are any of these lands in pasture land?

3 A. Yes.

4 Q. Are this irrigated?

5 A. Yes.

6 Q. Again, with the water right being cut, will
7 they now go without water?

8 A. They are kind of like the floor, they get
9 pretty dry.

10 Q. So what do you intend to do? Have you
11 attempted to obtain any additional water from any
12 source?

13 A. It's possibly in the process but nothing is
14 cut and dried yet.

15 Q. And in the process what are the kind of prices
16 you are hearing?

17 A. Very high and scary. Somewhere's it cost,
18 somewhere several thousand dollars depending on how much
19 water we will be able to get.

20 Q. Without water will any of your pastureland
21 die?

22 A. It will go to hell real fast, yes.

23 Q. Will that require reseeding?

24 A. Possibly; it depends how long the drought
25 continues or the water is not available.

1 Q. As far as the non-pastureland, the crops you
2 are growing, what do you expect to happen to those
3 crops?

4 A. The oats will probably dry up before we could
5 do too much with it, no doubt make hay out of that,
6 salvage what you can. Part of the pasture is going to
7 deteriorate. We had a new seeding of alfalfa last year,
8 that's going to suffer. So it's not a great outlook at
9 the moment.

10 Q. So because you have been on these lands for
11 quite some time, historically has it been this bleak as
12 far as the outlook is concerned?

13 A. My memory isn't that great, but I would say in
14 the last 50 years this is the worst it's been.

15 Q. And typically speaking, taking this year out
16 of it, has there been any decline, if you will, in your
17 opinion of the flows of the Lemhi -- strike that.

18 A. Of the Little Wood River.

19 Q. Of the Little Wood?

20 A. It has declined definitely.

21 Q. You have seen that?

22 A. Yes.

23 Q. And what have you personally seen or done to
24 help you make that determination or that, I guess,
25 experience?

1 A. Our dining room is right on the river, and
2 there is certain rocks on there, that when those rocks
3 are showing the water is really down. And this spring
4 there was no runoff, there was no water, or very little
5 water in the river, you could walk across that and
6 hardly get your ankles wet. In the fall, when the canal
7 water goes out, there is extremely low water.

8 Q. That's more than just this year?

9 A. Yes, over the past several years. Each year
10 it keeps going down.

11 Q. You have made a conscious recognition of that
12 trend, if you will?

13 A. Yes. I don't even have to wear glasses to see
14 that, yes.

15 Q. Do you believe that the reduction in the water
16 supply in the Little Wood is due in part to the pumping
17 in the Triangle?

18 A. That seems to be the thought, yes.

19 Q. Have you attempted to determine the injuries
20 that your crops have sustained this particular year?

21 A. Yes, I have.

22 Q. I would have you turn to Newell Exhibit No. 1,
23 please. And in this exhibit, are these numbers, as far
24 as crop acres, projected cutoff time, yield target,
25 projected yield loss and also revenue loss, were those

1 numbers that you provided?

2 A. Yes, I went through the wastebasket, found my
3 records.

4 Q. Okay. Please explain then how you came up
5 with these kind of numbers. For example, start with the
6 alfalfa hay.

7 A. We've gone ahead and mow a bale of hay, haul
8 the stuff in, you weigh a number of the bales to get an
9 average weight on there, figure how many bales you have
10 taken off the field, add that stuff up and you come up
11 with a tonnage on there. And that's where I come up
12 with those numbers.

13 Q. As far as projected target, how did you come
14 up with that? Is that your average that you would
15 expect to get on this land?

16 A. That is what we have been getting over the
17 past couple of years, yes.

18 Q. Therefore, the loss of, for example, the
19 62 tons, how did you come up with that?

20 A. I am hoping that we'll get a partial second
21 cutting, no guarantee by any means. A third cutting is
22 out of the question.

23 Q. Typically speaking, if you have your full
24 water supply, how many cuttings do you get?

25 A. I've always gotten three.

1 Q. How about with the grass hay and the grass
2 pasture; same questions?

3 A. It's basically the same thing. I've counted
4 the number of bales you take off of the different fields
5 on that, weigh it out, how many tons per acre or how
6 much have you gotten from the crop on there.

7 Q. As far as the oat hay, is that the same
8 calculation?

9 A. Yes. Last year we took off a nice batch of
10 hay and replanted and took a second batch of hay off
11 there; it came out about the same. This year we won't
12 even think about replanting. That's just going to be
13 bare ground.

14 Q. Now, one additional column you projected for
15 losses beyond 2021 of \$9,000 and also replacement
16 heifers of 26,000. So why are you needing to replace
17 heifers? Are you having to sell heifers as a result of
18 this year?

19 A. This year I had some heifers that I was using
20 as replacements for following years. I held onto those
21 as long as I thought we might get some water, it might
22 rain, something might happen, and the might didn't
23 happen, and sold the animals because of lack of feed.

24 Q. So in all fairness, you would have to at least
25 subtract from the repurchase of those the revenue you

1 received from the sale of the ones this year, would you
2 not?

3 A. Yes.

4 Q. And that's not depicted here?

5 A. No. And I don't get any calves -- if they are
6 bred, there is no calves from those animals as being a
7 replacement. So that goes into the following year,
8 which would be next year. And I am still short 13
9 animals on there that I have sold. So I'm 13 animals in
10 the hole, no matter what.

11 Q. I understand. So your claim would still be
12 that your 35,000 is legitimate.

13 A. Yes.

14 Q. So a total of 54,000, almost 55,000, is what
15 you are claiming is losses.

16 A. That is my projected guesses, yes.

17 MR. RIGBY: I'd move for the admission of
18 Newell Exhibit No. 1.

19 THE HEARING OFFICER: Any objection to
20 admission of the document?

21 MR. THOMPSON: No.

22 MR. BROMLEY: No.

23 THE HEARING OFFICER: Hearing no objection,
24 Mr. Rigby, the document marked as Newell Exhibit 1 is
25 received into evidence.

1 (Newell Exhibit 1 received.)

2 Q. (BY MR. RIGBY) And finally, are you seeking
3 to have the water rights of both surface and ground
4 administered pursuant to the their priorities?

5 A. Yes, I am.

6 Q. And you may or may not have said in your
7 deposition that you wanted them conjunctively managed.
8 Did you understand what you were saying there?

9 A. No, I didn't by any means. I asked to have it
10 clarified, and I still didn't understand. So I don't
11 even remember what I said at that time on there. I
12 would imagine it's written down. I'll no doubt be
13 reminded of it.

14 Q. But as far as you're concerned again --

15 A. It should be by priority.

16 MR. RIGBY: I have no further questions.

17 THE HEARING OFFICER: Mr. Thompson.

18

19 CROSS-EXAMINATION

20 QUESTIONS BY MR. THOMPSON:

21 Q. Good evening, Mr. Newell.

22 A. Good evening.

23 Q. Travis Thompson for South Valley Ground Water
24 District.

25 Your farm is located west of Shoshone on the

1 Little Wood River; is that correct?

2 A. Yes.

3 Q. And is that below the point where AFRD #2
4 delivers water from the Milner-Gooding Canal?

5 A. Yes.

6 Q. And when did they start delivering water into
7 the river?

8 A. Well, whenever it was that they deemed it
9 irrigation season. I don't remember what the date was
10 on that.

11 Q. Are they delivering a different amount this
12 year, do you know?

13 A. I'm not involved with American Falls. I don't
14 know.

15 Q. I am just trying to get back to your testimony
16 about the river. I thought you said you could see rocks
17 in it when it was lower. I'm just trying to see when
18 that was.

19 A. When there is a natural flow in the river,
20 that is when you see the rocks and things. When the
21 canal water comes in, then there is more water and you
22 don't see the rocks quite as well.

23 Q. So before the irrigation season when it's just
24 the natural Little Wood flowing through; is that
25 correct?

1 A. Yes.

2 Q. You irrigate approximately 77 acres on your
3 farm; is that correct?

4 A. Approximately, yes.

5 Q. And your most senior water right is an 1885
6 priority; is that true?

7 A. Yes.

8 Q. And has that water right been curtailed in
9 July some years?

10 A. Yes.

11 Q. And your second water right, 37-21135, is that
12 an enlargement water right?

13 A. Have you got the exhibit on here someplace? I
14 have to see it.

15 Q. Exhibit 10 is a copy of the decree.

16 A. Yes, that is correct on there.

17 Q. So would you agree out of your 77 acres, 23 of
18 those acres have a 1985 priority?

19 A. All the ground that is irrigated on the place
20 has historically been irrigated. And this was a time
21 the water adjudication took place that they suggested
22 that we do an enlargement just for a record on there.
23 Historically the 77 acres has been watered for, I don't
24 know how long, more than 50 years by far.

25 Q. So at least subsequent to the SRBA, these

1 23 acres would have a different priority as far as the
2 water district, do you know?

3 A. It's all 1885.

4 Q. Which is different than what is stated on this
5 water right; is that correct?

6 A. That's correct, yes.

7 Q. Do you know if junior groundwater rights are
8 curtailed whether your 1885 priority will come back on
9 this season?

10 A. That is the hope that it will, yes.

11 Q. Do you know the flow at any stations that have
12 to be in the river for your right to be on?

13 A. I'm not familiar with those. That is
14 upstream. I have nothing to do with that.

15 Q. Do you know which gage it's measured at?

16 A. I do not.

17 MR. THOMPSON: That's all the question I have.
18 Thanks.

19 THE HEARING OFFICER: Thank you, Mr. Thompson.
20 Mr. Bromley? I'm sorry. Ms. O'Leary?

21 MS. O'LEARY: Nothing from me, Mr. Director.

22 THE HEARING OFFICER: Mr. Bromley.

23 MR. BROMLEY: Thank you.

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CROSS-EXAMINATION

BY MR. BROMLEY:

Q. Good evening. It's 7:20, so hopefully we'll be able to get out of here by 7:23.

A. Sounds great.

Q. I just have two questions.

When do you usually turn on your Little Wood rights?

A. As soon as they are available.

Q. Do you recall when that was this year?

A. I don't. I think it's listed on the water right deal or someplace. It goes for whatever the irrigation season is. April 1 maybe, don't quote me, please, to whenever the water goes off. It can vary from year to year.

Q. Okay. Second question. You were asked by Mr. Rigby whether you were seeking administration of groundwater rights, you said yes, in priority. My question to you is: Are you asking for curtailment of groundwater rights that are outside of the Bellevue Triangle?

A. No, I'm not.

MR. BROMLEY: Thank you. I have nothing further. And I see it's 7:21. So I was 2 minutes faster.

1 THE WITNESS: Yeah.

2 THE HEARING OFFICER: Thank you, Mr. Bromley.

3 MR. BROMLEY: Thank you.

4 THE HEARING OFFICER: No more -- category 3?

5 Mr. Rigby.

6 MR. RIGBY: Nothing further.

7 THE HEARING OFFICER: All right. Thank you,
8 Mr. Newell, for enduring with us.

9 Is Mr. Newell the last -- yes, you are
10 excused.

11 Mr. Rigby, other witnesses tonight?

12 MR. RIGBY: No other witnesses tonight. That
13 would conclude the witnesses as to the individual farmer
14 parties. We will continue tomorrow morning with the
15 watermaster and then with our expert.

16 THE HEARING OFFICER: So we will recess now
17 and we will resume our proceeding tomorrow at 8:30.

18 Thanks everybody. See you tomorrow.

19 (Proceedings adjourned at 7:23 p.m.)

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REPORTER'S CERTIFICATE

I, BEVERLY A. BENJAMIN, CSR No. 710, Certified Shorthand Reporter, certify:

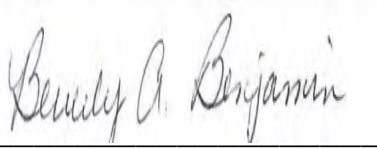
That the foregoing proceedings were taken before me at the time and place therein set forth, at which time the witness was put under oath;

That the testimony and all objections made were recorded stenographically by me and transcribed by me or under my direction;

That the foregoing is a true and correct record of all testimony given, to the best of my ability;

I further certify that I am not a relative or employee of any attorney or party, nor am I financially interested in the action.

IN WITNESS WHEREOF, I set my hand and seal this 17th day of June 2021.



BEVERLY A. BENJAMIN, CSR 710
Notary Public
P.O. Box 2636
Boise, Idaho 83701-2636

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