



BEFORE THE DEPARTMENT OF WATER RESOURCES
OF THE STATE OF IDAHO

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

VOLUME IV
(Pages 753 - 1095)

BEFORE

HEARING OFFICER: GARY SPACKMAN

Date: June 10, 2021 - 8:33 a.m.

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

REPORTED BY:

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1 P R O C E E D I N G S

2

3 HEARING OFFICER: So we are recording. This
4 is day four of a hearing for a proceeding regarding and
5 the ensuing contestant cases sprung out of the
6 proceeding for a determination of whether junior
7 groundwater rights are injuring senior water surface
8 water rights and whether they should be curtailed in the
9 Bellevue Triangle.

10 Are there preliminary matters we need to
11 discuss this morning on the record?

12 Okay. Having heard silence, Mr. Rigby or
13 Mr. Fletcher, your witness.

14 MR. RIGBY: It's Mr. Fletcher, Mr. Director.

15 MR. FLETCHER: We would call Kevin Lakey.

16 HEARING OFFICER: Kevin, the man with a
17 difficult job.

18

19 KEVIN LAKEY,
20 first duly sworn to tell the truth relating to said
21 cause, testified as follows:

22

23 HEARING OFFICER: Thank you, Kevin. Please be
24 seated.

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DIRECT EXAMINATION

QUESTIONS BY MR. FLETCHER:

Q. Good morning, Kevin.

A. Good morning.

Q. Thank you for driving here. I know it's a busy time of year for you.

Can you state your full name, please.

A. Kevin Lakey.

Q. And what is your address?

A. 1614 East 1800 South, Gooding, Idaho.

Q. What is your educational background?

A. I have a bachelor of science degree in agricultural education from the University of Idaho.

Q. What is your current occupation?

A. Watermaster for Water District 37.

Q. Prior to the time that you were watermaster, what did you do for an occupation?

A. General maintenance and ditch rider for the Big Wood Canal Company.

Q. When did you start working for Big Wood Canal Company?

A. September of '98.

Q. And how long did you work for them?

A. Until November of 2003.

Q. And what happened in November 2003?

1 A. I was hired by Water District 37 to be their
2 watermaster.

3 Q. Have you received any training in your role as
4 a watermaster?

5 A. Watermaster training from the Idaho Department
6 of Water Resources.

7 Q. Who is your employer?

8 A. Water users of Water District 37.

9 Q. Are you elected every year as watermaster?

10 A. Yes.

11 Q. Can you describe your duties as watermaster?

12 A. I oversee water delivery in the Big Wood
13 Basin, as well as administer and record the ownership of
14 water rights within Water District 37.

15 Q. And as part of that job, do you keep records
16 of diversions?

17 A. Yes, I do.

18 Q. Do you have any involvement with groundwater?

19 A. Yes, I do.

20 Q. What is that involvement?

21 A. Water District 37 monitors groundwater, as far
22 as making sure measuring devices are operating properly,
23 and then we take meter readings two to three times a
24 year, and then we totalize those readings at the end of
25 the year to see how much groundwater is pumped.

1 Q. So on the surface side, part of your duties --
2 one of your duties is to determine priorities; correct?

3 A. Correct.

4 Q. And when someone falls out of priority, what
5 do you do?

6 A. We shut them off.

7 Q. On the groundwater side, do you get involved
8 in shutting off any groundwater users?

9 A. No.

10 Q. To your knowledge, has a groundwater user ever
11 been curtailed in Basin 37?

12 A. Only if there were assessment issues. If they
13 had not paid their assessments to the water district.

14 Q. Have they ever been curtailed on a priority
15 basis?

16 A. No.

17 Q. Can you explain how you go about administering
18 the surface water rights on Silver Creek and the Little
19 Wood?

20 How do you determine priorities?

21 A. I look at the flow at Station 54 on the Little
22 Wood River and adjust accordingly.

23 Q. So can you explain that in a little bit more
24 detail. You look at the flows, and do you then do some
25 calculations?

1 A. Yeah. So let's say there would be -- pick a
2 number -- 50 cfs at Station 54, then I go down through
3 the priority list and identify what water rights can
4 still be delivered below 54 with 50 cfs.

5 If there was water or water rights junior to
6 that priority date that would be cut above 54, then I
7 would calculate how much water would be coming to 54,
8 and go back and forth on the calculation until I hit the
9 amount of water that would match priorities above 54 and
10 below 54.

11 Q. So you look at the water at 54, and then you
12 also look at supplies that may be coming to 54?

13 A. Correct.

14 Q. And then you determine your priority cuts?

15 A. Correct.

16 Q. And how do you communicate priority cuts to
17 the water users?

18 A. A variety of ways. Sometimes I call the water
19 right owners specifically or person to person and let
20 them know. Most of the time Water District 37 has three
21 other deputy positions that the watermaster would
22 contact those deputies, and the deputies would handle
23 the communication between the water district and the
24 water users.

25 Q. In general, how would you describe water

1 conditions on Silver Creek and Little Wood this year?

2 A. Through the spring, the Department of Water
3 Resources has identified what we call analog years that
4 had comparable snowpack levels, or SWSI is the term
5 sometimes used. And the Department had identified 1994,
6 2014, and possibly 2020.

7 So I looked at those years, and 2021 is lower
8 in flow at both the Sportsman's Access and Station 10
9 this year than they -- 2021 is lower than all of those
10 other analog years for the comparable dates.

11 Q. So since you've been watermaster in 2003, are
12 these the worst water-supply conditions you've seen?

13 A. Yes.

14 Q. Have you made projection cuts for this year?

15 A. Yes.

16 Q. Currently, what water right is in priority on
17 the Little Wood and Silver Creek?

18 A. May 5th of '84 is off. I'm not sure the exact
19 date that would be just senior to that. It's going to
20 be probably a 5-1 or a 4-15 of '84 that's going to be
21 senior that would still be deliverable.

22 Q. You prepared a memorandum dealing with your
23 priority cut analysis; is that correct?

24 A. Yes.

25 MR. RIGBY: And I think that's -- can you show

1 him, Chase, where that is up there? It's marked as
2 Rigby Exhibit 2, I believe.

3 MR. HENDRICKS: May I approach?

4 HEARING OFFICER: Yes.

5 Q. (BY MR. FLETCHER) You've been handed what's
6 been marked Rigby Exhibit 2.

7 Can you identify this document?

8 A. Yes.

9 Q. Is this the memorandum that I just asked you
10 about?

11 A. Yes.

12 Q. Did you prepare this memorandum?

13 A. Yes.

14 Q. Did you prepare it on or about May 29, 2021?

15 A. Yes.

16 Q. Why did you prepare this memorandum?

17 A. I was asked to estimate when water users might
18 need to curtail. If we had questions about trying to
19 find other water, they were just trying to crop plan
20 late, maybe they were going to plow something under.
21 There are a variety of reasons, but, basically, we
22 needed to kind of have a guess of what was going to
23 happen in the next -- or the upcoming growing season.

24 Q. So can you summarize the work you did in order
25 to prepare this memorandum?

1 A. So using -- so I believe the memorandum states
2 that on or around the 1st of March, the Department of
3 Water Resources came out with their first estimate of an
4 analog year. And I think that was, at the time, 2014.
5 And so I looked at what my cutoff dates were in 2014,
6 but I also looked at storage levels in Magic Reservoir.

7 And at the time, 2014 had around -- Magic
8 Reservoir, in 2014, had -- I don't remember the exact
9 number -- 30-some-thousand acre-feet more in 2014 than
10 we had currently at that time in 2021. So I took that
11 into consideration.

12 And then through the spring for March through
13 May, runoff levels never really showed up, so we knew
14 that there wasn't a lot of water left to come into
15 Magic, so we readjusted and, basically, came up with the
16 numbers that I had.

17 Q. So is it better to look at page 2 of the
18 memorandum or the tables attached to the end of the
19 memorandum to deal with the priority-cut issue?

20 A. Yeah, the tables actually show the predicted
21 dates for the priority dates -- the dates of cutoff, I'm
22 sorry.

23 Q. Excuse me. Did I let you finish that answer?

24 I'm sorry, I didn't mean to cut you off.

25 A. Well, I talked over the top of you. Sorry.

1 Q. Okay. So the first page of -- well, it's the
2 fourth page -- third page of the memorandum, I guess, is
3 titled, "Water District 37, 2017 Priority Cuts" at the
4 top?

5 A. I have -- with the memorandum I'm looking at,
6 I have tables that have been inserted into the
7 memorandum, but I don't have a title on them.

8 MR. FLETCHER: May I approach the witness?

9 HEARING OFFICER: Yes.

10 MR. THOMPSON: What page are you looking at?

11 HEARING OFFICER: At least my count, Kent,
12 that's page 4.

13 MR. FLETCHER: Oh, I miscounted, I'm sorry.
14 It is page 4.

15 Q. (BY MR. FLETCHER) So you think these tables
16 are the best to look at?

17 A. These are the predicted. That is the actual
18 that happened in 2014.

19 Q. Right. And then this?

20 A. Yeah, that's predicted.

21 Q. Okay. Well, let's just go to the table you're
22 referring to.

23 A. That's actual. That second one you showed me
24 was actually what was happening in 2021.

25 Q. Okay. We'll get into that in a minute so

1 everybody knows what we're talking about here.

2 Let's look at page 2 of your memorandum.

3 Isn't that the page that you're making reference to?

4 A. Yes.

5 Q. Can you explain what those tables show?

6 A. So the first table is predicted on May 17th
7 what I thought the priority date shutoffs would be. And
8 then on May 25th we updated that. Because of a rain
9 event and a shutoff by Magic Reservoir, it extended the
10 priority date out a little further, so we made another
11 estimation on May 25th.

12 Q. So do you believe that the second table on
13 this page is a more accurate estimate?

14 A. Yes.

15 Q. As of May 25th?

16 A. Yes.

17 Q. So let's just go through that table so
18 everyone understands it.

19 Starting at the bottom of the table, the first
20 column is entitled, "Cut Date"; is that correct?

21 A. Correct.

22 Q. And does that mean that's the date that you
23 shut off for priority?

24 A. Correct.

25 Q. And so the month shows "5," and what does that

1 mean?

2 A. In the "Cut Date" column?

3 Q. No, in the "Month" column.

4 A. Oh, that's -- so the "Month," "Day," and
5 "Year" columns are the date of the priority.

6 Q. Okay.

7 A. So that would be May 15th, 1886.

8 Q. And then the date shows -- the "Date" column
9 shows what?

10 A. The same thing.

11 Q. So if I'm reading your table right, you
12 predicted that the '86 rights were going to be cut on
13 May 27th, 2021; correct?

14 A. Correct.

15 Q. And do you know when they were actually cut?

16 A. Can I refer to the note here?

17 Q. Sure.

18 A. May 27th.

19 Q. Okay. And going forward, you're making
20 estimates of every -- of the various priority dates that
21 are set forth in this table; correct?

22 A. Correct.

23 Q. So if we go up to June 30th, 2021, on the "Cut
24 Date" -- do you see that?

25 A. Yes.

1 Q. You're predicting that you will cut those
2 rights on April -- excuse me -- you will cut the
3 April 1st, 1883, rights on June 30, 2021; correct?

4 A. Correct.

5 Q. So based upon your estimates, all of the
6 rights junior to April 1st, 1983, including that date,
7 will be cut by the end of June; correct?

8 A. April 1, 1883.

9 Q. 1883, I'm sorry.

10 A. Including, and junior will be cut on
11 June 30th, 2021, estimated.

12 Q. So based upon your projections, what
13 priorities will remain on after that date?

14 A. March 15th, 1883, up through March 29th, 1877.
15 We also have rights, what we call perpetual, that were,
16 basically, also what -- they're called saved water.
17 They're called saved water.

18 They -- the Wood River Valley has some
19 peculiarities. We have water that was developed after
20 the Frost Decree, and they received, basically, the
21 seniority senior to the most senior, if that makes any
22 sense at all.

23 Q. Do you know much more about that than what
24 you've said?

25 A. No. I know the volume -- I have the volumes

1 and the ownerships --

2 Q. Okay.

3 A. -- of delivery.

4 MR. FLETCHER: I'd move for the admission of
5 Exhibit 2.

6 HEARING OFFICER: Any objection to the
7 admission of this document?

8 MS. MCHUGH: Can I ask a question?

9 HEARING OFFICER: Sure.

10 MS. MCHUGH: Will we be able to look at the
11 notes that the witness referred to, to aid his testimony
12 relative to this document?

13 I think it might be helpful to have that
14 included since he's looking at it so the rest of us
15 could see what he's referring to. I'm not sure the
16 document is 100 percent clear in the record without his
17 notes.

18 MR. FLETCHER: Yeah, I'm not offering it.
19 You're free to do that on cross if you'd like.

20 MS. MCHUGH: Okay. Can we --

21 HEARING OFFICER: What notes are you referring
22 to?

23 MS. MCHUGH: That he just referred to that
24 helped his testimony. Because they're not part of the
25 exhibit. So I just wanted to see if we could have a

1 chance to look at them prior to cross and understand how
2 they might relate to this exhibit.

3 HEARING OFFICER: Well, is there an objection
4 to the admission of the document? The questions are
5 usually in aid of an objection.

6 MS. MCHUGH: I guess the objection is I'm not
7 sure that right at this time that the testimony relative
8 to this exhibit is complete without fully understanding
9 what the notes said that he testified to about the
10 exhibit. If we're allowed to look at the notes prior to
11 our cross, I guess, I have no objection to the entrance
12 of the exhibit. I guess that's what I was asking.

13 HEARING OFFICER: Okay. I'll overrule the
14 objection and admit the document into evidence. So the
15 document marked as Rigby Exhibit 2 is received into
16 evidence.

17 (Rigby Exhibit 2 received.)

18 HEARING OFFICER: And, Ms. McHugh, you
19 certainly can question Mr. Lakey about his notes. And I
20 don't know why they wouldn't be available to you.

21 Mr. Fletcher?

22 MR. FLETCHER: Thank you.

23 Q. (BY MR. FLETCHER) There's been a lot of
24 discussion in this hearing, Mr. Lakey, about Exchange
25 Condition 161 that's contained on some water rights in

1 the Basin.

2 Are you familiar with that condition?

3 A. Yes.

4 Q. Historically, can you describe how those
5 exchange condition water rights have been administered?

6 A. I was not aware of the exchange condition
7 formally until proceedings starting in this last six to
8 ten months that there was a formal exchange condition.
9 I was not aware of that.

10 Q. Okay. So prior to this year, you were not
11 administering the exchange condition?

12 A. Not formally, no.

13 Q. Okay. Can you describe your understanding of
14 what should be done with the water rights that have the
15 exchange condition?

16 A. Based on the priority curtailment procedures I
17 spoke about earlier at Station 54, the priority date is
18 established. Of that water that's available at
19 Station 54, we would look at total flow, then look at
20 what rights have the 160 -- or the exchange condition.

21 Once we have that amount, we can move that
22 amount back up to an old lands delivery, and the only
23 water left then to deliver below 54 would be the
24 nonexchange water rights. So that's how I understand it
25 to be delivered.

1 Q. So where will those that are in priority but
2 below the canal receive their water if they have an
3 exchange condition?

4 A. From the American Falls Reservoir, District
5 No. 2, system.

6 Q. Will those with the exchange condition receive
7 more water than they would have received from the Little
8 Wood River?

9 A. No.

10 Q. They're receiving the same amount of water
11 based upon their priority?

12 A. Yes.

13 Q. Can you give an example of how that operates?

14 A. So if the April 1 of '83 were in priority, I
15 would need 24 cfs, maybe 25 -- there's fractions -- 24
16 to 25 cfs at Station 54. Of that -- 14, I'm sorry.
17 There's 14 cfs available there. Of that 14, 15, cfs,
18 11.83 is exchange -- or is total. 11.83 is total. And
19 the 3-point -- there's 3.22 without the exchange.

20 So that would be the difference with the
21 exchange water. So whatever 11.83 minus 3.22 is
22 exchange water. And that exchange water would then be
23 moved up to old land delivery.

24 Q. And when you refer to "old land delivery," so
25 people know what you're talking about, is that ground

1 above the Milner-Gooding Canal?

2 A. Yes.

3 Q. And when you say, "be moved up there," the
4 water is left in the river so it can be diverted by
5 people located above the canal; correct?

6 A. That's not the way I understand it.

7 Q. What do you understand?

8 A. That the difference between 11.83 and 3.22 is
9 to be delivered at the Dietrich Canal to the Big Wood
10 Canal Company users.

11 Q. So it goes into the Big Wood Canal Company
12 system?

13 A. Yes.

14 Q. And is that what -- so is this exchange, as
15 you understand it, between AFRD2 and Big Wood Canal
16 Company?

17 A. That's correct.

18 Q. There's also been some discussion of
19 supplemental water, and I think there's some confusion
20 about that.

21 Do all exchange -- all water users that have
22 an exchange condition on their water right have
23 supplemental water, to your knowledge?

24 A. I believe so, yes.

25 Q. Does the fact that -- how does the exchange

1 right play into supplemental water?

2 Does it have anything to do with it as far as
3 the way it's administered?

4 A. No, they're two separate issues.

5 Q. Okay. So can you -- can you explain how you
6 administer supplemental water?

7 A. When the most junior priority decree owned by
8 a water right holder is cut, then that priority date or
9 that decree is no longer delivered, but supplemental
10 water is then delivered in place of the decree.

11 Q. And the source of that supplemental water is
12 AFRD2 storage water?

13 A. Yes.

14 Q. Now, does the amount received under an
15 exchange right -- excuse me -- under a supplemental
16 right, is that equal to the amount that would be
17 received under the priority right?

18 A. No.

19 Q. How is that amount determined?

20 A. There were contracts between those individual
21 water users and either AFRD2 or Big Wood Canal Company.
22 I'm not sure. There were contracts made in history
23 somewhere that established how much water they were to
24 get.

25 Q. And does the amount of water that any one

1 water user receives under a supplemental water right
2 vary from user to user?

3 A. Yes.

4 Q. And does the amount of the water right -- when
5 I say "water right," the natural flow right that the
6 water user has -- holds, does that have anything to do
7 with how much exchange water they receive -- how much
8 supplemental water they receive?

9 A. No.

10 Q. So the -- the right to receive supplemental
11 water stands apart from the amount on the decree on the
12 natural flow right?

13 A. Yes.

14 Q. Now, there's been some testimony that
15 variation -- I think you said it varies from farm to
16 farm; is that correct?

17 A. Yes.

18 Q. So that some farmers refer to it as
19 replacement water, the supplemental water. In some
20 cases that may be as small as 50 percent of what the
21 water right would furnish if the water right were in
22 priority; isn't that correct?

23 A. Yes.

24 Q. And in some cases that may be close to
25 100 percent; correct?

1 A. Yes.

2 Q. So when you're looking at a supplemental
3 right, do you assume that that provides a full water
4 supply to the recipient of the supplemental water?

5 A. No.

6 Q. Are you familiar with the term "adequate water
7 supply"?

8 A. Yes.

9 Q. What does that term mean to you?

10 A. Enough water for a water user to accomplish
11 his purposes, whether it's growing a crop or raising
12 fish, to make his business work in that particular
13 season.

14 Q. So in the case of an irrigation right, would
15 that include irrigation needs plus conveyance losses?

16 A. Yes.

17 Q. Have you reviewed your records to try to
18 determine years that represent an adequate water supply
19 for Silver Creek and Little Wood?

20 A. Yes.

21 Q. And what did you do to make that
22 determination?

23 A. Over the years, talking to water users,
24 getting their general feel of whether a year was
25 successful or not, and then comparing that information

1 to the water records from those particular years when
2 they said things went well.

3 Q. And did you come up with some criteria to
4 determine what would constitute an adequate water supply
5 for the Little Wood and Silver Creek?

6 A. Yeah. The criteria is whether the April 1 of
7 1884 can be delivered up to around September 1st at
8 100 percent delivery.

9 Q. Okay. Any other criteria that you looked at?

10 A. There are other criteria for the district as a
11 whole, but not for the Little Wood. The -- if the
12 4-1 -- April 1 of '84 lasts into September, Station 10
13 will discharge somewhere between 25,000 and
14 33,000 acre-feet in a year like that when April 1 of '84
15 goes. So I would guess maybe that's also a criteria,
16 that if the Station 10 could discharge that much water,
17 it would be considered adequate.

18 Q. And you said 25,000 to 33,000 acre-feet?

19 A. Yes.

20 Q. So based upon that review, did you determine
21 some years that demonstrate an adequate water supply for
22 Little Wood and Silver Creek?

23 A. Yes.

24 Q. And what years were those?

25 A. 2000, 2009, and 2010.

1 Q. Okay. And when you looked at those years,
2 what was the supply of water to Little Wood and Silver
3 Creek for the senior -- for the surface water deliveries
4 that year -- those years?

5 A. I think I need you to clarify that and be more
6 specific. What do you mean by --

7 Q. Well, did you determine how much water was
8 delivered in those years?

9 A. I looked at the priority date cutoffs in those
10 years.

11 Q. And do you know how much water was delivered
12 in those years?

13 A. To those users?

14 Q. Yes.

15 A. Yes.

16 Q. Okay. And how much water was that?

17 A. Are you -- I want to clarify. Are you talking
18 about the Silver Creek drainage as a whole or senior
19 surface water users? Or what are you looking for?

20 Q. Well, you stated that these three years you
21 determined that those are examples of an adequate water
22 supply, and you did -- did you do a calculation of how
23 much water was delivered those years to constitute an
24 adequate water supply?

25 A. Delivered to whom?

1 Q. Well, that's what I'm asking you.

2 A. I made two different calculations. I made it
3 to the senior surface water users, as well as the Basin
4 as a whole.

5 Q. Okay. So when you say "Basin as a whole," are
6 you including --

7 A. Silver Creek drainage.

8 Q. So what were those numbers?

9 A. The Silver Creek drainage, as a whole, used,
10 on average, a little over 40,000 acre-feet.

11 Q. And that's the average of those three years?

12 A. Yes.

13 Q. And when you say "used," what does that mean?

14 A. We delivered that much water to their
15 headgates.

16 Q. You delivered 40,000 acre-feet to the
17 headgates of the users?

18 A. Yeah.

19 Q. Based upon your analysis, is 40,000 acre-feet
20 of water required on an average year to constitute an
21 adequate water supply for the Little Wood and Silver
22 Creek?

23 A. I would add that in those adequate years, when
24 I say 40,000-plus was delivered to all of Silver Creek
25 drainage, there was an additional 5,000 acre-feet that

1 was dumped in out of Magic Reservoir into Silver Creek.
2 So that 40,000 would include 5,000 out of the Magic
3 system. So if Magic is running and spilling water and
4 can spill 5,000 into the Little Wood system, then I
5 would say that's adequate. But if Magic is not able to
6 spill the 5,000, then all the 40,000 has got to come out
7 of the Silver Creek drainage.

8 Q. So when you're talking about -- I guess you're
9 getting to the source of that water.

10 The source -- part of the water you're talking
11 about in your calculation includes spill from Magic
12 Reservoir --

13 A. Yes.

14 Q. -- in your numbers; correct?

15 A. Yes.

16 Q. And you said that averaged about
17 5,000 acre-feet per year?

18 A. Yes.

19 Q. So not counting the spill from Magic
20 Reservoir, 35,000 has to come from other sources;
21 correct?

22 A. Correct.

23 Q. There's been some discussion about losses,
24 conveyance losses.

25 Have you ever observed a time when losses from

1 the Bellevue Triangle to Station 10 were 100 percent
2 after accounting for surface water diversions?

3 A. No.

4 Q. Have you observed responses to water at
5 Station 10 if pumping is curtailed?

6 A. I think so, yes.

7 Q. When did you make those observations?

8 A. In August and September of 2020.

9 Q. What happened in August of 2020?

10 A. The Little Wood had reached flows around
11 8 cfs. So there was a group that I was working with
12 called a collaborative committee. It was water users
13 throughout the Basin who were trying to come up with
14 solutions, and I was involved in that.

15 So around the first week of August, those
16 flows on Little Wood got down to around 8 cfs, so I sent
17 a text to a lot of those people that I was working with
18 on that collaborative to let them know that all of the
19 work that we may have thought we were doing was still
20 not creating water in the system. So I sent a text to
21 them to let them know what the flows were.

22 And then within about five days to a week,
23 water started showing up, so I started looking at what
24 it was from or where those increases would have come
25 from, and I added up all of the senior water that was

1 still on, and then started tracking that use over the
2 next month.

3 And within about five days to a week from the
4 low point, we started getting water that I couldn't
5 describe as surface water, and so the only other source
6 would have been groundwater. And there was around
7 10 cfs, maybe a little more, that started showing up
8 that I could not account for.

9 Q. So who did you send that text to?

10 A. You want names?

11 Q. Yeah, I think that would be good.

12 A. Keri York of the Wood River Land Trust, Fred
13 Brossy, John Arkoosh, Sharon Lee, Justin Stevenson, Pat
14 Purdy. That may not have been all, but that was the
15 ones I remember.

16 Q. And that sounds like it's a combination of
17 surface water users and groundwater users?

18 A. Yes.

19 Q. And your observation and calculation showed
20 there was about 10 cfs of water that did not originate
21 from the surface; is that correct?

22 A. Correct.

23 Q. And you said that showed up within how many
24 days?

25 A. Five days was when it first started showing

1 up. Within about ten days it was up to around 10 cfs.

2 Q. And that was in August?

3 A. Yes.

4 Q. And was there any rain event during that time?

5 A. No.

6 Q. Was there anything else that occurred that
7 could account for that water, that you're aware of?

8 A. No, not that I'm aware of.

9 Q. Do you have any personal knowledge of whether
10 pumps were shut off as a result of that text?

11 A. No.

12 Q. Have you analyzed which senior priorities in
13 Little Wood and Silver Creek will benefit if junior
14 groundwater rights are curtailed in 2021?

15 A. Yes.

16 Q. Can you explain how you did that analysis?

17 A. I used numbers from Jennifer Sukow's work that
18 gave me an idea of how much water would return to Silver
19 Creek or show up in Silver Creek over certain days. So
20 using her numbers, I went back to my estimated priority
21 cut dates and said if there were certain priority cuts
22 that we're estimating, and what Jennifer was estimating
23 would be in Silver Creek more than what we had, and so I
24 made the comparison of the two, and started saying,
25 well, which priority dates might be left on.

1 Q. So do you remember what numbers you used in
2 that calculation, Jennifer's numbers?

3 A. I used -- she had a May 1 curtailment, a
4 July 1 curtailment, and an August 1 curtailment, so I
5 used all three to just see the difference.

6 Q. Well, looking at the July 1 curtailment date,
7 do you remember the numbers she showed would be coming
8 back into the system if curtailment took place?

9 A. I don't remember her exact numbers of flows,
10 no.

11 Q. And what was your conclusion in that analysis?
12 What priority dates would be restored if
13 curtailment took place on July 1?

14 A. There were varying effects on priority
15 rates -- or priority dates and the rates we would be
16 able to deliver. The September of '83 would have gotten
17 some, but not their full right. The June of '83 would
18 have gotten, I believe, all of their water. The
19 April 6th and the April 1st priorities would receive
20 water with the July 1 curtailment.

21 Q. Correct. Well, let's talk about the April 1,
22 '83 priority date.

23 When do you project that will be cut if there
24 is not curtailment?

25 A. June 30th.

1 Q. What about the April 6th, '83, right, when
2 will that be cut if there's not curtailment?

3 A. June 25th.

4 Q. When would the June '83 right be cut, if
5 there's not curtailment?

6 A. June 22nd.

7 Q. And how about the September '83?

8 A. June 20th.

9 Q. Did you review which of the surface water
10 diversions that are involved in this case would benefit
11 from that curtailment by restoring those priorities?

12 A. It would just be the April 1st and the
13 April 6th that are involved in this proceeding.

14 Q. And do you know who holds rights that have
15 those priorities?

16 A. The Ritter Farm operated by the Taber family,
17 and the Taber family's home -- what I'd call their home
18 farm -- have April 1 of '83 priority dates. And Barbara
19 Farms owns the 4-6 of '83 priority date.

20 Q. So the Barbara Farms is below the canal;
21 correct?

22 A. Correct.

23 Q. And the Taber Farm -- I think you called it
24 the Ritter Farm -- is above the canal; correct?

25 A. Both the Ritter Farm and the Taber home farm

1 are both above the Milner Canal, yes.

2 Q. And do you know how many cfs the Brossy right
3 is?

4 A. 4 cfs.

5 Q. It's 4 cfs with a priority date of April 6th,
6 1883?

7 A. Yes.

8 Q. And do you know how many cfs the Taber Farms
9 have?

10 A. The Ritter Farm is 4.2 cfs of 4-1 of '83, and
11 the Taber home farm is .3 cfs of 4-1-83.

12 Q. And based upon your analysis, those rights
13 would come back into priority if full curtailment were
14 to take place?

15 A. Yes.

16 Q. Are there any other rights that would benefit
17 from curtailment, that you're aware of?

18 A. In this proceeding or others?

19 Q. Yes -- well, let's talk about others.

20 Are there others?

21 A. No. Not with the July 1 curtailment, no. But
22 there are others within the Silver Creek drainage that
23 would come on. And that's the September and the June of
24 '83.

25 Q. And what are those rights?

1 A. The September of '83 is 20 cfs, and the June
2 of '83, I think, is 4 to 6 cfs.

3 Q. And do you know who holds those rights?

4 A. Blackburn Farms owns the June of '83, and
5 Picabo Livestock owns the September of '83.

6 Q. And does Big Wood Canal Company own any rights
7 that would benefit from curtailment?

8 A. They have a 4-6 of '83, yes, for 3.55 cfs, I
9 believe.

10 Q. And do you know the purpose of use of that
11 water right?

12 A. Most of the time we deliver that at the
13 Dietrich Canal.

14 Q. Okay. Are there other rights, stockwater
15 rights or any other rights that would benefit?

16 A. The Big Wood Canal Company has a stockwater
17 right that starts sometime late October, early November,
18 and so that is extremely contentious. There are --
19 Northside Canal Company owns a stockwater right, and Big
20 Wood Canal Company owns a stockwater right; and often,
21 in these drier years, we can't deliver the Northside
22 Canal Company right, it's junior to the Big Wood Canal
23 Company stockwater right. So if we had extra water in
24 the system, there's a possibility that the Northside
25 Canal Company right could be filled also.

1 Q. But if curtailment were to occur July 1st,
2 would that benefit Big Wood's stockwater right?

3 A. Yes, I believe it would.

4 Q. And why would that benefit that right?

5 A. That's -- it's a stockwater right we deliver
6 to Dietrich, and if -- we have enough water to deliver
7 maybe 25 cfs of that right. They would usually like to
8 take around 30 to 35. The right is for 75 cfs. I
9 just -- it would just make it easier to deliver that
10 right and not dry the whole system up in the wintertime
11 in November and December.

12 Q. So that would be a post-irrigation season
13 benefit?

14 A. Correct.

15 MR. FLETCHER: I don't have any other
16 questions. Thank you, Kevin.

17 HEARING OFFICER: Thank you, Mr. Fletcher.

18 Mr. Rigby, questions?

19
20 DIRECT EXAMINATION

21 QUESTIONS BY MR. RIGBY:

22 Q. Good morning, Kevin, Jerry Rigby. Just a
23 couple of questions in addition to those asked by
24 Mr. Fletcher. And that is: You addressed the July 1
25 curtailment and its impacts and the effects on the '83

1 rights.

2 Isn't it true that later in the season, even
3 in a normal season, rights that have been cut off can
4 come back on, and very often do --

5 A. Yes.

6 Q. -- is that correct?

7 So, therefore, isn't it logical to conclude
8 that even though you've testified as to the '83 rights
9 initially benefiting from the July 1, as we go later
10 into the season, then if there's continued curtailment,
11 that later rights, '84 and others, could also benefit
12 because they could come back on even sooner than they
13 otherwise would?

14 A. Yes.

15 Q. And then, obviously, the post-irrigation,
16 therefore, those impacts and effects that would be for
17 the next year would also benefit from --

18 MR. THOMPSON: I'll object to that question
19 and questioning anything beyond the 2021 irrigation
20 season.

21 MR. RIGBY: Well, Mr. Director, it's still a
22 benefit for the '21 season, because '21 season always
23 impacts the next season as to what is retained within
24 the watershed, and so I think it's relevant.

25 HEARING OFFICER: Objection overruled.

1 Q. (BY MR. RIGBY) So, again, as far as the
2 benefit postseason in the '21 year, would there be a
3 benefit?

4 MR. BROMLEY: Objection as to outside the
5 scope of the notice in the '21 irrigation season. I'll
6 join Mr. Thompson's objection.

7 HEARING OFFICER: Well, objection overruled.
8 Go ahead, Mr. Rigby.

9 Q. (BY MR. RIGBY) So do you understand the
10 question?

11 A. I think so, yes.

12 Q. Please answer it.

13 A. By the numbers I've seen out of the water
14 model, there is a lasting effect over two to
15 three years.

16 MR. RIGBY: I have no further questions.

17 HEARING OFFICER: Okay. Mr. Barker or
18 Mr. Thompson?

19 MR. BARKER: Thank you, Your Honor.
20

21 CROSS-EXAMINATION

22 QUESTIONS BY MR. BARKER:

23 Q. Good morning, Mr. Lakey. How are you?

24 A. Good. How are you?

25 Q. Good. I think both of us may be in danger of

1 not speaking loud enough for the court reporter and
2 everybody in the room. So I'll do my best to speak up,
3 if you would do the same, because I was having a little
4 trouble hearing you, but I will blame my hearing and not
5 your speaking. Okay?

6 A. Okay.

7 Q. Good. Wow.

8 HEARING OFFICER: I like that. Let's see if
9 counsel can keep up with you.

10 MR. BARKER: I doubt it. I doubt it, Judge.

11 Q. (BY MR. BARKER) So let me just take that last
12 question first that Mr. Rigby asked you about delayed
13 benefits to a subsequent year.

14 Is that based on your observations, or is
15 that -- I thought you said that was based upon Jennifer
16 Sukow's model runs?

17 A. I would say both.

18 Q. Okay. And so have you looked at Jennifer
19 Sukow's model runs about how long well water stays in
20 the aquifer in the event of curtailment and how much
21 water comes out during the wintertime versus how much
22 would be available for the following season?

23 A. Not exact numbers, no.

24 Q. Okay. So you just agree with the concept, but
25 you don't have any idea of what the numbers should be?

1 A. Not numbers nor timing.

2 Q. Okay. So your background is as a water
3 delivery entity, you worked for Big Wood Canal Company
4 prior to becoming the watermaster for Basin 37; is that
5 right?

6 A. Yes.

7 Q. Do you have any background in agronomics,
8 trying to understand crop needs?

9 Are you testifying as an expert here today on
10 what the needs of the crops are in Basin 37?

11 A. No.

12 Q. This memorandum that you prepared that's
13 Mr. Rigby's Exhibit 2, who asked you to prepare it?

14 A. Multiple people.

15 Q. Well, tell me their names.

16 A. Cooper Brossy, Eric Miller, Lance Strout.

17 Q. And is this prepared as part of your duties as
18 a watermaster, or was it prepared for purposes of this
19 litigation?

20 A. With Eric Miller, it was, I believe, for this
21 procedure. With Lance Strout, it was so that he and I
22 could better know whose water was what at certain times.

23 Q. Lance is who?

24 A. He is the watermaster for the Big Wood Canal
25 Company.

1 Q. And the Big Wood Canal Company is involved in
2 this proceeding as well; right?

3 A. I believe so, yes.

4 Q. And you said you were hired by the water users
5 in Basin 37?

6 A. Yes.

7 Q. And the largest water user in Basin 37 is the
8 Big Wood Canal Company?

9 A. The Big Wood Canal Company and several others,
10 yes.

11 Q. But they're the single largest one; is that
12 right?

13 A. That is correct.

14 Q. And so when you -- you were talking about
15 analog years that were identified by the Department of
16 Water Resources, '94, 2014, and 2020. And that came out
17 of what -- where did you get the information that that
18 was an analog year?

19 A. From the Department of Water Resources.

20 Q. From whom at the Department? Was this from
21 the staff memos or was this some other source that you
22 received that information?

23 A. The 1994 I did not hear until the beginning of
24 those procedures when Sean Penn mentioned it in his
25 testimony -- Sean Penn -- sorry, Sean.

1 HEARING OFFICER: That's all right. He lives
2 in the Lemhi Basin.

3 THE WITNESS: Sean Vincent used 1994 as a
4 drier year that had started to develop as an analog year
5 -- I mean, a dry analog year. I'm not sure if you're
6 asking about adequate supply years or dry years.

7 Q. (BY MR. BARKER) Well, no, I'm just first
8 talking -- you had talked about analog years, so I just
9 want to understand where you got that information from.

10 A. So adequate analog years would be --

11 Q. Yeah. No, I'll get to the adequate.

12 A. -- something I developed.

13 Q. So the analog years you were looking at is
14 what was comparable to this year's dry year?

15 A. Yeah.

16 Q. Right?

17 A. Right.

18 Q. And then have you made any further analysis of
19 what an analog year would be with additional information
20 about the flows in Silver Creek that have come out since
21 this proceeding began?

22 A. I'm not sure I understand your question, I'm
23 sorry.

24 Q. Okay. So you're aware that there were new
25 SWSI tables that came out from NRCS for the 1st of June?

1 A. Yes.

2 Q. And are you aware that those tables suggested
3 the water year was worse than it had been in the April
4 tables?

5 A. Yes.

6 Q. So have you tried to find an analog year that
7 you think compares to this year with the new SWSI
8 information?

9 A. Yes, I have.

10 Q. What would you consider that to be?

11 A. 1994.

12 Q. 1994. So that's the one you added? You
13 started off with 2014 and 2020; right?

14 A. Yes.

15 Q. And your -- I think what your testimony was is
16 this is drier than 1994?

17 A. Yes.

18 Q. And how did you use 1994, if at all, in
19 preparing this exhibit, Rigby No. 2?

20 A. I'm not sure I understand your question.
21 Could you repeat that?

22 Q. So did you use the 1994 numbers, the flow
23 data, in preparing this exhibit that you prepared for
24 Mr. Rigby?

25 A. No, I did not.

1 Q. Okay. So if I look at your table -- you've
2 got Exhibit 2 in front of you?

3 A. Yes, I do.

4 Q. I think the table is on page -- whatever it is
5 -- 3? 2? The second page of your memo.

6 What flow criteria are you using to estimate
7 the curtailment dates?

8 A. Those remain, basically, on 2014 data, based
9 on 2014 data, minus the Magic storage deficit from 2021
10 to 2014.

11 Q. But are you using these curtailment dates
12 based upon a flow measurement at a particular location?

13 A. I cross-referenced them to Station 10 and to
14 the Sportsman's Access. It's a rough estimation of what
15 was going on at the same time.

16 Q. Okay. So what flows do you -- well, let's
17 pick your table here for -- the bottom number is what
18 you think is more likely -- the bottom table, rather?

19 Is that the one you think is more likely for
20 this year?

21 A. Yes.

22 Q. So what flows do you need at Station 10 to --
23 or what flows are there at Station 10 when you curtail
24 the April 1st, '84, rights?

25 A. I do not use Station 10 as a curtailment

1 basis.

2 Q. What do you use for your curtailment basis?

3 A. Station 54.

4 Q. And then I think at some point you said that
5 you change and use Station 10 as a measuring point once
6 Magic is no longer delivering water?

7 A. No.

8 Q. You always use Station 54 no matter what?

9 A. Yes, that is correct.

10 Q. So what flows at Station 54 do you use to make
11 a determination that April 1, '84, should be curtailed?

12 A. I would need 33 cfs at Station 54 -- no,
13 24 cfs at Station 54 to deliver all rights April 1, '84,
14 and senior.

15 Q. So aren't there a bunch of rights that are up
16 above Station 54 that are April 1, '84, and senior?

17 A. Yes.

18 Q. Do you know how many cfs there is there in
19 those rights?

20 A. April 1 and senior?

21 Q. Yes.

22 A. There would be, approximately, 2 or 3 cfs of
23 April 1, '84, and then the next in line would be the
24 September of '83, and then the June of '83.

25 Q. September of '83 is --

1 A. 20.

2 Q. -- 20?

3 And then June of '83 is how much?

4 A. About 6.6. But those rights wouldn't come
5 down in a 4-1 of '84 cut. I just know they're there if
6 I do need them.

7 Q. So if you've got 54 -- excuse me -- if you've
8 got 54 cfs at Station 10 -- Station 54 -- let me try
9 again.

10 54 cfs at Station --

11 A. 24.

12 Q. 24. Okay. Sorry about that. 24 cfs at
13 Station 10. All --

14 A. 54, Station 54.

15 Q. Thank you. Okay. Let me start again.

16 If you have 24 cfs at Station 54, a number of
17 these rights on the curtailment above -- or, I'm sorry,
18 on the priorities above it that are senior to it are in
19 the river above that location?

20 A. I'm not sure which priority dates you're
21 talking about and what priority date has already been
22 curtailed. That would make a difference.

23 Q. Well, we've just curtailed April 1, '84?

24 A. Oh, I'm looking to curtail it, but I have not
25 curtailed it yet.

1 Q. No, no, no. In our hypothetical here, we've
2 just curtailed April 1, '84, because there's 24 cfs at
3 Station 54, okay? Let's assume that.

4 A. Okay.

5 Q. So 9-1-83 that's above; right? That's in
6 Silver Creek?

7 A. Above in what terms, priority date or
8 location?

9 Q. Location.

10 A. Yes, it is above.

11 Q. And the same is true of 6-14-83, those are
12 above?

13 A. Above in what?

14 Q. In location.

15 A. Yes.

16 Q. The 4-1 and 4-6s, are those all above in
17 location?

18 A. The 4-1 is above, but it's senior to 4-1 of
19 '84, so it would not be curtailed. We could --

20 Q. I'm not asking about curtailment, I'm just
21 asking about the location of these rights that are above
22 Station 54.

23 4-1 and 4-6, those are all located above?

24 A. No.

25 Q. Okay. Which rights are below?

1 A. 4-6 of '83.

2 Q. And those were the Arkoosh rights that you
3 mentioned?

4 A. Brossy.

5 Q. Brossy, sorry. And then the 4-1s, those are
6 above?

7 A. Both above and below.

8 Q. Those are the Taber rights?

9 A. Some of them are Taber, yes.

10 Q. And how much is below?

11 A. Excuse me?

12 Q. How much water is below Station 54 with the
13 4-1-83 right?

14 A. 7 or 8 maybe. It's in that neighborhood. I
15 think it's less than 10.

16 Q. And then the 1887s, those are all up in the
17 Silver Creek area?

18 A. Not all, no.

19 Q. How much of the water is up above and how much
20 is below?

21 A. Of the '87?

22 Q. Yes.

23 A. I'm not sure.

24 Q. Okay. So it sounds like most of the water
25 that is in the -- or most of the rights that are senior

1 to April 1, '84, are located above Station 54; would you
2 agree with that?

3 A. I would not say that, no.

4 Q. Okay. Well, you told me --

5 A. Wait a minute. Did you say senior to 4-1 of
6 '84?

7 Q. Yes.

8 A. Not necessarily, because there are a lot of
9 1877s and early 1883s that are below 54.

10 Q. Well, you told me 1883s were 7 to 8 cfs?

11 A. How much?

12 Q. 7 to 8; isn't that what you said?

13 A. Which '83?

14 Q. Whatever '83s you were talking about.

15 April 1, of '83 --

16 A. I would have to consult the record. I'm not
17 sure.

18 HEARING OFFICER: Just a moment. Mr. Barker
19 isn't finished with his question when you're responding,
20 Mr. Lakey. So --

21 MR. BARKER: Sorry, Mr. Lakey.

22 HEARING OFFICER: -- just be a little more
23 deliberate, please. Thanks.

24 Q. (BY MR. BARKER) Sorry, Mr. Lakey. I thought
25 you told me that there were 7 or 8 cfs of April 1, '83s,

1 that were below Station 54.

2 Did I hear that wrong? I very well could
3 have.

4 A. Restate the question, please.

5 Q. Of the April 1, 1883, priority date rights,
6 how much is above and how much is below Station 54?

7 A. Do you want exact numbers?

8 Q. Well, you seem to be doing pretty good with
9 exact numbers.

10 You can't tell me that?

11 A. No.

12 Q. You don't have any of the documents that you
13 brought with you here today --

14 A. I do here.

15 Q. -- that you can look at and tell me that?

16 A. I do not have specific current ownership names
17 to tell me which owner of a 4-1 of '83 is above or
18 below.

19 Q. I guess what I'm trying to drive at here is
20 that, how do you know that you need 24 cfs at Station 54
21 in order to deliver water rights with priorities that
22 are senior to April 1, '84, if you don't know how much
23 water is above and below Station 54?

24 A. I have a number here that's cumulative above
25 or below 54 on this list.

1 Q. Okay. So tell me what you're looking at.
2 Maybe that will help us.

3 Yeah, what is that document?

4 A. It's notes I prepared for myself for
5 questioning.

6 Q. And where did you get those notes from?
7 Where did you obtain the information in those
8 notes?

9 A. Water District 37 records.

10 MR. BARKER: You know, Your Honor, typically,
11 when a witness uses documents to refresh their
12 recollection, we're entitled to have that information
13 admitted into the record and reviewed by counsel. And I
14 would ask at this time that we have the opportunity to
15 see that document and to review it so that we can have a
16 chance to see what's in it.

17 HEARING OFFICER: Any objection, Mr. Fletcher?

18 MR. FLETCHER: No objection.

19 HEARING OFFICER: You want to mark it as an
20 exhibit or just distribute it?

21 MR. BARKER: I would like it marked as an
22 exhibit, please.

23 HEARING OFFICER: Okay.

24 MR. THOMPSON: Excuse me. Can we get a copy
25 so we can see?

1 HEARING OFFICER: Yeah, that would be fine.
2 Why don't we just recess for a minute.

3 (Break taken.)

4 HEARING OFFICER: Let's go back on the record,
5 Andrea. Thank you.

6 We're recording after a brief recess and
7 copying some materials.

8 Mr. Barker, you may continue your examination.

9 MR. BARKER: Thank you, Mr. Director.

10 (SVGWD & GGWD Exhibit 37 marked.)

11 Q. (BY MR. BARKER) Mr. Lakey, you've got two new
12 exhibits in front of you, one marked Exhibit 37 and 38.
13 There's some initials underneath it that say "SVGWD &
14 GGWD" under each one. And those are the South
15 Valley/Galena Groundwater District exhibits.

16 Can you tell me what Exhibit 37 is?

17 A. It's a list of water rights in priority date
18 order from perpetual through July 17th, 1884.

19 Q. Okay. Is there a reason you picked July 17,
20 '84, as the cutoff date?

21 A. It fit my printer and...

22 Q. And so tell me what these perpetual water
23 rights are in the Little Wood and Silver Creek.

24 A. Those are water rights in the Silver
25 Creek-Picabo area that were issued, I believe,

1 post-Frost Decree. And they were developed when those
2 water users plugged ratholes, basically, put extra water
3 into the stream that had not really been decreed in the
4 Frost Decree, and the judge issued them a priority date
5 senior to all other water rights.

6 Q. So this is the saved water rights from the
7 judicial decrees?

8 A. I'm not sure if you're talking about saved
9 water from the Big Wood, but they're like those saved
10 water rights from the Big Wood, if you are familiar with
11 those.

12 Q. Okay. Thank you. So these -- let's go
13 through your columns here. Some of them are
14 explanatory.

15 "Priority Date," "Inches," "CFS," and then
16 you've got a column that says "BWCC."

17 What does that mean?

18 A. That's water owned by the Big Wood Canal
19 Company.

20 Q. And so the owner --

21 A. But that's not all correct for the Big Wood
22 Canal Company. This is an old list.

23 Q. So this list came out of what book?

24 A. I believe it came out of an old priority book
25 that I had.

1 Q. Okay. So if you've got -- there's three
2 rights I see on this page, and a few on the others,
3 where it's in the column of Big Wood Canal Company, but
4 it's listed as -- the name is listed as the owner. For
5 example, "37-0708 Woodworth."

6 Was that the original owner, and it's now
7 owned by Big Wood? Is that what that means?

8 A. Yes.

9 Q. And so you've got two columns next to that,
10 "BELOW 10 CUT" and "ABOVE 10 CUT."

11 Tell me what those two columns mean.

12 A. They represent water that would be above 10
13 and below 10.

14 Q. Station 10 on the Little Wood?

15 A. Yes.

16 Q. Okay. And then what does "OTHER" mean?

17 A. I do not know.

18 Q. And then you've got a column that says how
19 much water is "below Station 54," "cumulative below."
20 So let's walk through those columns on the right-hand
21 side of your chart.

22 What does each one of those columns mean?

23 A. The "below Station 54" is a designation if the
24 water is below Station 54 or not. And then the "Cum
25 below 54" is just adding it up as it goes.

1 Q. And then "below 54 without 161," what does
2 that mean?

3 A. That's whether or not the right is a -- has
4 the 161 condition applied to it.

5 Q. The exchange condition --

6 A. Yes.

7 Q. -- right.

8 And then you've cumulated those without the
9 161?

10 A. I'm sorry, yeah, both those columns are
11 without.

12 Q. So if there's a 161 right where they're -- or,
13 sorry, if there's a right that's below 54 with a 161
14 condition, it would just appear blank in this?

15 A. Yeah, you'd have to do the math to back it
16 out.

17 Q. Okay. And so you were referring to this when
18 I was asking you about the number of -- the number of
19 rights above and below the Station 54 that were -- well,
20 the number of rights above and below Station 54 with
21 certain priority dates.

22 So I can just compare this list that you've
23 given me in Exhibit 37, and that would answer my
24 question of how many rights there are above and below
25 Station 54 with the 1877 priority date, for example; is

1 that right?

2 A. I think so, yes.

3 Q. So I can just -- we can do the math based on
4 this, and I don't need to have you do that on your -- in
5 front of everybody here.

6 (SVGWD & GGWD Exhibit 38 marked.)

7 Q. (BY MR. BARKER) So Exhibit 38, tell me what
8 that is.

9 A. The first page is water right owners that have
10 supplemental rights of some sort. That's on the first
11 page.

12 Q. Okay.

13 A. On the second page, those are largely water
14 rights that do not have any form of supplemental. Maybe
15 they have some Carey Act water, but not American Falls
16 supplemental. So that second page would not have any of
17 the 161 condition or the AFRD2 supplemental water. And
18 that would be the same for the third page.

19 Q. All without supplemental rights, but it
20 doesn't tell me if there is Carey Act water, or maybe it
21 does.

22 On the third page aren't there some references
23 to "CAW"?

24 A. Yeah, that's Carey Act water.

25 Q. So the third page is supposed to identify the

1 Carey Act water rights -- oh, no. All up and down the
2 second page there are references to Carey Act water?

3 A. Yes.

4 Q. And so tell me what your understanding of
5 Carey Act water is and how it affects your ability --
6 your duties to deliver water?

7 A. My understanding is that Carey Act water above
8 Station 54 is delivered out of Magic, and if it's below
9 54, it's delivered out of American Falls.

10 Q. And all of these rights in Exhibit 38, are
11 they all Little Wood or Silver Creek rights, or do they
12 include Big Wood rights -- Big Wood River rights?

13 A. The water rights with the May 27th, 1899,
14 priority date strung throughout there --

15 Q. Help me. Which page are you on?

16 A. I think they might be scattered out throughout
17 the whole exhibit, but if they have a May 27th, 1899,
18 right -- or priority date, that's that Cottonwood right
19 that's been talked about quite a bit. So that would be
20 a Big Wood source. Everything else is Little Wood.

21 Q. Okay.

22 A. I should add, these are all Little Wood
23 diversions. All of the diversions -- points of
24 diversion are on the Little Wood River.

25 Q. When you were answering some of Mr. -- sorry,

1 Kent, I was going to say Foster -- Mr. Fletcher's
2 questions, you were describing old lands delivery.

3 So tell me, again -- explain for me what an
4 old land is.

5 A. I believe that is a term that was used to
6 describe lands developed under Magic Reservoir before
7 American Falls came in, but I'm not the authority on
8 that. You'd probably need to talk to the Big Wood Canal
9 Company.

10 Q. But I think you said that the old lands above
11 the canal would be delivered this water under the
12 exchange agreement?

13 A. Yes.

14 Q. And I didn't hear everything you said about
15 the April 1 priorities. And I think we were -- on your
16 table, I think we were talking about 1883s, that you
17 need 24 to 25 cfs at Station 54.

18 Did I hear that right?

19 A. I think that number, 24, is for the 4-1 of
20 '84.

21 Q. Okay. Okay. And then, obviously, I didn't
22 hear everything, but what I didn't understand was the
23 explanation about how the exchange rights are calculated
24 in that. You talked about a number that I didn't hear,
25 11-point-something, that would tell me -- that were

1 exchange rights, and then there was a -- how that
2 affected how much water got delivered above and below
3 the canal.

4 So could you run through that again, please?

5 A. So if we go to the very last April 1 of '84
6 priority date, the owner there is labeled as "Frank R.
7 Gooding."

8 MS. MCHUGH: For record purposes, are we
9 looking at South Valley 37?

10 THE WITNESS: I'm looking at the initials --
11 Exhibit 37, South Valley/Galena 37. The second -- well,
12 it's actually, it looks like, the third page. So I'm at
13 the bottom of April 1 of '84.

14 Q. (BY MR. BARKER) I'm there.

15 A. Okay. So in the "Cum below 54," there's total
16 water rights of 24.03 cfs below 54 with an April 1, '84,
17 decree and senior.

18 Q. And then "Below 54 without 161" there's 9.22?

19 A. Correct. Yeah, out of that string of water
20 rights from 4-1-84 and senior there's 9.22 without the
21 exchange condition --

22 Q. And so the -- I'm sorry.

23 A. The difference is -- the difference between
24 the 24.03 and the 9.22 is the 161 water.

25 Q. And that's satisfied by the exchange?

1 A. Yes.

2 Q. And then you made a comment about the exchange
3 water being delivered to Big Wood Canal Company.

4 Can you explain how that works?

5 A. That would be delivery to the Dietrich Canal
6 for the Big Wood Canal Company.

7 Q. So what happens to the water that otherwise
8 would have gone to the Dietrich Canal for the Big Wood
9 when the water -- when Big Wood is no longer delivering
10 water?

11 A. I don't know that yet.

12 Q. So would it be -- would it surprise you to
13 hear that Carl Pendleton said they don't take that water
14 into the Dietrich Canal, and that --

15 A. In years --

16 Q. Go ahead.

17 A. In years past, when I was not, or maybe even
18 Carl was not, aware of the full implications of the
19 exchange, the only water that the Big Wood Canal Company
20 had left, let's say in a year like this, in a time like
21 this, would be their two decrees, possibly the April 1
22 of '84 and the 4-6 of '83 would be left now, give or
23 take. And so that's the only -- a dribble of water in
24 that canal, so they would just choose not to take it.

25 But if I were to maybe get direction from the

1 Department about -- or a clarification from -- and how,
2 let's say, that difference between the 24.03 and the
3 9.22, where it's supposed to be delivered is can the
4 exchange still go on, and American Falls would agree to
5 deliver that exchange water below 54, then I could take
6 that difference and take it back up to 11 and pair it
7 with their decrees that are left and possibly make, you
8 know, 10 to 15 to 20 cfs of delivery. And then they may
9 take that water up there at that time.

10 Q. So what did you say, "pair it with 11"?

11 What does that mean?

12 A. Pair it with the Little Wood decrees the Big
13 Wood Canal Company has that would be in priority; their
14 April 6th of '83 and their April '1 of '84 decrees, they
15 would still have that water available.

16 Q. But they don't have any water -- they don't
17 have any way to get that water to their landowners?

18 A. Well, if there was more water teamed or paired
19 or riding with that -- I think it's 7 cfs of decrees
20 that they have, their two senior rights, if they had
21 this exchange water moved up there -- if the American
22 Falls is willing to deliver that -- I don't know -- then
23 we would have, say, 18 cfs that might be delivered to
24 the Dietrich Canal that might make it to a beneficial
25 use of someone; I don't know.

1 Q. But that's never been done?

2 A. No. It's never been done, no.

3 Q. And you don't have any direction from Big Wood
4 to do that?

5 A. Right.

6 Q. And would it surprise you to hear that Carl
7 Pendleton testified that that water would otherwise be
8 available for other users in the Little Wood?

9 A. I don't know.

10 Q. Isn't that how it worked once Big Wood goes
11 off?

12 A. Yes.

13 Q. You also were asked some questions by
14 Mr. Fletcher about supplemental water rights, and you
15 mentioned some contracts, and he asked you to explain
16 what was in the contracts.

17 Have you ever seen these contracts?

18 A. No.

19 Q. So you don't really know whether -- how much
20 water is available under these contracts for anybody?

21 A. Water District 37 gets a -- what we call pink
22 slips from Big Wood Canal Company or American Falls 2
23 that has the owner name, certificate number, if it's a
24 certificate -- I don't remember whether it's a Big Wood
25 Canal Company or American Falls 2. Anyway, it has

1 ownership records on these pink slips that has an owner
2 name and a volume that is to be delivered.

3 Q. Is that the delivery that you do or that Big
4 Wood does?

5 A. That's delivery out of the river system, yes.

6 Q. So you get a direction from Big Wood that says
7 deliver "X" amount of water?

8 A. Correct.

9 Q. But you don't know the basis for what that
10 order is; right?

11 A. Never seen a contract.

12 Q. Okay. And then you were asked some questions
13 about how -- about determination of an adequate water
14 supply for the Silver Creek and Little Wood Basin.

15 Do you remember that?

16 A. Yes.

17 Q. When was it that you first undertook the task
18 to determine what an adequate water supply is?

19 A. I don't know specifically.

20 Q. Was it for this proceeding?

21 A. Yes.

22 Q. So you said you've talked to people over the
23 years to determine this. So how -- tell me how you --
24 if you did this just for this proceeding -- how talking
25 to people over the years informed your decision -- or

1 your opinion in this proceeding?

2 A. I might talk to a grower who said, "Well, we
3 had a pretty good year. We were able to make three
4 cuttings of hay," something along that line, and say,
5 okay, that was a good year. And those things are,
6 basically, mental notes, you remember what was happening
7 that year.

8 Q. Okay. And you selected 2000, 2009, and 2010,
9 based upon what information?

10 A. Then if somebody, let's say, on the Little
11 Wood could make three crops of hay, and they had an
12 April 1 of '84, that would be the only way they can make
13 that three crops of hay, I would say, okay, if you can
14 make three crops of hay and you own an April 1 of '84
15 right, it takes water up until the first week of
16 September to make a third crop of hay in Water District
17 37. So putting the two together, like the anecdotal
18 conversations with what was actually happening, as far
19 as priority dates, I came up with that criteria.

20 Q. Have you read the staff memoranda that have
21 been prepared for this case by the Department?

22 A. Not completely, no.

23 Q. Have you read the staff memo that Phil
24 Blankenau prepared?

25 A. No.

1 Q. Well, let me tell you what he said. He
2 concluded that a water year of 2013 -- which was a
3 reasonably low water year in the Basin, would you agree?

4 A. Yes.

5 Q. He said that he didn't find, by doing his ET
6 analysis, any shortfall in water supply in that year.

7 Would you disagree with Mr. Blankenau?

8 MR. RIGBY: I object. Again, Mr. Director, I
9 don't think that's exactly what he said. He indicated
10 that it didn't evidence that the ET -- the ET did not
11 evidence the supply, not that he concluded there was a
12 low supply. There is a difference.

13 HEARING OFFICER: Mr. Barker, I think at least
14 my memory is that Mr. Rigby is correct. Maybe we should
15 go directly to the exhibit -- or to the staff memo.

16 MR. BARKER: Certainly, we could do that.
17 There should be a staff -- let me help you, Kevin.
18 There's enough documents stacked up here.

19 HEARING OFFICER: Is it not there? I probably
20 have it here.

21 MR. BARKER: It should be 3; right?

22 MR. THOMPSON: Megan should have the
23 Department exhibits; right?

24 MR. BARKER: I've got 2 and 4.

25 HEARING OFFICER: I have it here.

1 MR. BARKER: Can we borrow your copy?

2 HEARING OFFICER: Yes. Yes.

3 MR. BARKER: Thank you.

4 HEARING OFFICER: Refer you to that.

5 Q. (BY MR. BARKER) So, Mr. Lakey, I've handed
6 you Exhibit -- IDWR Exhibit 3.

7 Is that the right number, 3?

8 A. Yes.

9 Q. Would you turn to the page 10. And you see
10 under "Conclusions"?

11 A. Yes.

12 Q. The last paragraph, and I'll just read this
13 aloud, "This analysis did not clearly identify water
14 shortage in Little Wood and Silver Creek area during the
15 2013 drought."

16 Did I read that right?

17 A. Yes.

18 Q. And so do you understand that what
19 Mr. Blankenau was doing was using ET analysis to make
20 that determination?

21 A. Yes, I understand that, yeah.

22 Q. Okay. And are you disagreeing with
23 Mr. Blankenau's analysis that the ET information that he
24 had for the Little Wood and Silver Creek in 2013 did not
25 clearly identify a water shortage in that year?

1 A. Well, I guess it would depend on what he's
2 considering Little Wood and Silver Creek. The
3 irrigation in the Silver Creek area, say around Picabo,
4 is groundwater supplemented, so perhaps the groundwater
5 was showing no effects of drought. I'm not sure what he
6 would be describing there.

7 Q. So you don't have -- you don't know what areas
8 he was evaluating?

9 A. No.

10 Q. And it does say "Little Wood"; correct?

11 A. Yeah.

12 Q. And so if his analysis included -- let's
13 assume for this question his analysis included the
14 entire area served by the Little Wood and Silver Creek,
15 would you disagree with that, that conclusion that he
16 drew?

17 MR. RIGBY: Again, Mr. Director, I'm going to
18 object, only that in his testimony he clearly stated
19 that it also could be because of water rendered.

20 MR. BARKER: If you want to cross-examine the
21 witness, Counsel, you can do that.

22 MR. RIGBY: I'm just saying, you're trying to
23 determine what he said, and I'm saying in his response,
24 that's what he said.

25 MR. BARKER: I am asking the question about

1 what is written in the report.

2 HEARING OFFICER: All right. Let me respond.
3 I'll overrule the objection. We read the text. But let
4 Mr. Barker pursue this line of questioning.

5 Q. (BY MR. BARKER) So anyways, my question was:
6 Do you disagree with Mr. Blankenau's conclusion about
7 the water shortage in the Little Wood or that there was
8 no -- let me try again.

9 Do you disagree with his conclusion where
10 Mr. Blankenau states the "analysis did not clearly
11 identify water shortage in the Little Wood and Silver
12 Creek area during the 2013 drought."

13 A. I don't think I can agree or disagree, because
14 I believe there would need to be -- for me to understand
15 what he's saying, I think there would need to be a
16 delineation, really, between Little Wood and Silver
17 Creek area. Because I think that irrigation is
18 different in those two areas, so I don't think I could
19 agree or disagree.

20 Q. So look at page 4 of his memo.

21 Have you got that map in front of you on
22 page 4?

23 A. Yes.

24 Q. And Mr. Blankenau identifies the area of the
25 Little Wood and Silver Creek area in red.

1 Do you see that? Do you see his legend on the
2 left-hand side?

3 A. I think so, yeah.

4 Q. And then if you look over at the map, he's got
5 areas identified in red in the fields, I suppose, below
6 Picabo and along the Little Wood. It doesn't include
7 areas in the Triangle, does it?

8 A. No.

9 Q. Does that help you understand the question?

10 A. Not really, no.

11 Q. So you can't agree or disagree with that
12 conclusion?

13 A. That is correct.

14 Q. Did you do anything to determine what crop
15 demands were in these years of 20 -- of 2000, 2009, and
16 2010?

17 A. No.

18 Q. Did you determine what the spill in Magic was
19 in those years?

20 A. Excuse me, repeat that again.

21 Q. Did you determine what the spill in Magic was
22 in those years for users on the Little Wood?

23 A. I believe I did for 2009 and 2010.

24 Q. Was there?

25 A. Was there what?

1 Q. Spill from Magic.

2 A. Yes.

3 Q. Did you compare to any of the analog years
4 that you've described whether there was adequate water
5 supplies in those years?

6 A. No.

7 Q. Mr. Fletcher asked you a question about
8 conveyance losses, and he asked you whether there was
9 ever 100 percent conveyance loss in the Little Wood.

10 Do you remember that question?

11 A. Yes.

12 Q. Have you ever done calculations to determine
13 what the losses are in the Little Wood or Silver Creek,
14 either one?

15 A. No.

16 Q. So you don't know how much they are?

17 A. No.

18 Q. So if you don't know what the conveyance
19 losses are, how do you know how to do the priority cuts?

20 A. The conveyance losses I would consider built
21 into priority cuts. They're already within the system.

22 Q. So how do you build them in?

23 A. By the amount of water that shows up at 54.

24 Q. So you just look at what's at the downstream
25 end as the basis, and you don't worry about the water

1 availability up above?

2 A. Correct.

3 Q. So you also said that you did some comparisons
4 of the amount of water that you would need to deliver
5 these various rights we talked about earlier at -- with
6 the flows at Sportsman's and at Station 10; right?

7 A. I don't understand your question.

8 Q. Okay. So you said that you make your priority
9 cuts based upon the flows at Station 54; right?

10 A. Yes.

11 Q. And that never changes?

12 A. That's correct.

13 Q. Whether Magic is delivering water or not?

14 A. Yes, that's correct.

15 Q. Okay. And I thought what you said was that
16 you also did a comparison to determine what the flows
17 would be needed at Station 10 and at Sportsman's Access
18 as a rough estimate of what water would be available at
19 those places in order to meet the April '84 delivery
20 requirements?

21 A. I thought I was talking about the Sportsman's
22 Access in 10 in a way to compare analog years -- I'll
23 say "analog" -- whether it's a dry year or a wet year, I
24 was trying to compare those flows at those stations, but
25 not developing my priority cuts, no.

1 Q. So I'm sorry if I misunderstood, but do you
2 have knowledge of what the flows you need at Station 10
3 are in order to keep the '84, April '84 rights in
4 priority?

5 A. Approximately, anywhere from 35 to 45,
6 depending on -- and that would also depend on whether
7 Magic is spilling or not. If Magic is not spilling into
8 the Little Wood, it may be higher than, say, 45; it may
9 be as high as 50, just as a general guideline.

10 Q. I'm sorry, how about the flows at Sportsman's
11 in order to keep the April of '84s on?

12 A. I believe it's probably in the neighborhood of
13 80 to 85.

14 Q. And then how about September 1, '83, rights,
15 what are the flows that you need at Station 10 to keep
16 those in priority?

17 A. I don't know.

18 Q. How about the April '80 -- sorry, how about
19 Sportsman's flows?

20 A. For?

21 Q. For the September '83 rights?

22 A. I thought that was what I was answering on the
23 80 to 85, or, no? What priority date were you asking
24 about?

25 Q. I was asking about the April '84's.

1 A. Oh, it would be slightly more than the
2 September of '83. I'm not sure how much.

3 Q. So the numbers you're talking about are
4 September '83's, 80 to 85 at Sportsman's --

5 A. Yeah.

6 Q. -- and how much at Station 10?

7 A. I'm not sure at Station 10. I'm just
8 guessing.

9 Q. And so you know that the September '83 rights
10 of 20 cfs are taken out above Sportsman's?

11 A. Yes.

12 Q. So you need --

13 A. Let me correct that.

14 Q. Go ahead.

15 A. As far as I know, the Picabo Livestock right
16 has a permissible place of use, so they have a large
17 service area for that right; and whether they move it to
18 other points above or below Sportsman's Access, I'm not
19 sure. I'm not sure exactly where their permissible
20 place of use sits in relation to the Sportsman's Access
21 gage.

22 Q. How about their point of diversions? Do you
23 know if those are above or below Sportsman's?

24 A. I couldn't say.

25 Q. So doesn't that matter, whether the

1 September '83's are taken out above or below
2 Sportsman's, in order to determine how much water you
3 need at Sportsman's to fill the rest of the rights?

4 A. I don't use Sportsman's as a point of
5 adjustment.

6 Q. But I was asking you about -- you said you
7 were asking -- sorry -- you were speaking about needing
8 80 or 85 at Sportsman's in order to make sure that the
9 September '83's remained in priority, but if the
10 September '83's are taken out above Sportsman's, does
11 that change your calculation?

12 A. The 80 to 85 is just a general kind of how we
13 do and type number, it's not a management number.

14 Q. The only management number you've got is
15 Station 54, then?

16 A. Yes.

17 Q. Mr. Fletcher asked you about some curtailment
18 pumping that took place in August and September of 2020.

19 Do you remember that testimony?

20 A. Yes.

21 Q. And you said you sent out a text on
22 August 1 --

23 A. I think it was more around August 7th, but I'm
24 not sure.

25 Q. Okay, August 7th. And you sent it out to the

1 collaborative group?

2 A. Some of them, yes.

3 Q. And then you said five to seven days later
4 water started showing up?

5 A. Yes.

6 Q. And then ten days later you had 10 cfs that
7 you couldn't account for from surface deliveries?

8 A. Yes.

9 Q. Do you know what wells were turned off?

10 A. No.

11 Q. Do you know how much water was turned off?

12 A. No. No.

13 Q. Do you know if surface water was turned off?

14 A. Yes.

15 Q. It was?

16 A. There were varying amounts of surface water.
17 I had taken that into account.

18 Q. Oh, that was taken into account in calculating
19 how much water -- additional water you got?

20 A. Yeah.

21 Q. Was the Picabo Livestock surface water turned
22 off during that period of time?

23 A. I believe so, but I'm not positive for sure
24 without going back through the records.

25 Q. So do you have some calculations to show you

1 how you came up with this 10 cfs that you couldn't
2 account for?

3 A. Yeah.

4 Q. Do you have those with you?

5 A. They were in my notebook, but I don't know
6 where that is right now; but, yeah.

7 Q. Okay. Well, it's being copied, so I'm sure
8 you'll have a chance to answer that question later.

9 So you don't know -- just to reiterate, you
10 don't know how much water, how much pumps were turned
11 off, how much water was not being diverted from the
12 pumps during that period of time?

13 A. No.

14 Q. And Mr. Fletcher asked you if there were any
15 rain events?

16 A. Yeah.

17 Q. And you said there were none?

18 A. Not that I remember, no.

19 Q. And do you know if there were any other
20 changes in temperature or conditions?

21 Was it hotter, colder, during that period of
22 time?

23 A. No, not specifically.

24 Q. And so it took at least ten days for that full
25 amount of defect to show up from the date you sent out

1 the request?

2 A. That's what it looked like, yeah.

3 Q. So the -- you did some analysis to suggest
4 that if the water that Jennifer Sukow estimated would
5 show up in the creek from her 100 percent curtailment
6 run on July 1, and you took those figures and decided
7 that that would help you return some of September '83's,
8 all of the June, and all of the April '83's?

9 A. I believe so, yeah.

10 Q. Back in priority.

11 And how did you make that determination? Is
12 this just math, you take the 20 cfs and see how much of
13 it would accrue to Station 54?

14 A. Yes.

15 Q. So how much of that 20 cfs -- or whatever her
16 estimate was -- would accrue at Station 54?

17 A. I think there was a 25 percent loss subtracted
18 from her numbers to make sure we had some seepage loss
19 in the system.

20 Q. So you took her numbers and subtracted a
21 25 percent loss?

22 A. Yeah.

23 Q. So you didn't use the full numbers?

24 A. No.

25 Q. And you found that three rights -- three

1 rights would return to priority?

2 A. Four, I believe.

3 Q. I thought -- I've got written down Ritter,
4 Taber home place, and Barbara Farms.

5 Is there another one?

6 A. Well, the September of '83 would have been
7 able to come back on a percentage, and the June of '83
8 would have been -- would also.

9 Q. Oh, I see. The Picabo and the Blackburn
10 Farms?

11 A. Yes.

12 Q. And neither Picabo Livestock or Blackburn
13 Farms is making an injury claim in this case; is that
14 right?

15 A. Not that I'm aware of.

16 Q. So one of these rights, the Barbara Farms
17 rights is below the canal; that's what you said?

18 A. Yes, that's correct.

19 Q. So did you have enough water to actually get
20 this 4 cfs down to Station 54 and into the canal and to
21 Barbara Farms?

22 A. Yes. I thought we would, yes, at the flows.

23 Q. And how do you get that additional carriage
24 water to get that all of the way to there?

25 A. The water rights senior to those would also be

1 in those flows.

2 Q. The water rights -- oh, the 1887s?

3 A. 1877s.

4 Q. Sorry, 1877. And we can look and see how much
5 of that is -- and that shows up in your table?

6 A. Excuse me?

7 Q. Your table will show us how much is above and
8 below the canal?

9 A. Yeah.

10 Q. And the same is true with the perpetual rights
11 that show us which ones are above and below the canal?

12 A. Yes.

13 Q. Did you make any effort to determine -- let me
14 lay a little foundation here.

15 Mr. Rigby said that it's possible that some of
16 the earlier curtailed rights could come back on, and you
17 said it's possible?

18 A. Yes.

19 Q. Did you do any determination --

20 A. No.

21 Q. -- of that?

22 A. [Witness shakes head.]

23 Q. And then you also talked about some of the Big
24 Wood stockwater right being -- it might be able to be
25 used after the irrigation season?

1 A. That's correct.

2 Q. And how much water, if any, would there be in
3 the river after October 1st as a result of these
4 curtailments?

5 A. I don't believe the Sukow numbers went into
6 October.

7 Q. Right. So how can you tell that there would
8 have been sufficient water for Big Wood's stockwater
9 right if you were relying on Sukow's evaluation?

10 A. I thought we were trying to go back to
11 Mr. Rigby's question about water would show up, and it
12 might mean the difference if you had Sukow's numbers.
13 I'm presuming that the numbers would still continue
14 through October, but I don't know that for sure.

15 But if there was a curtailment, and he was
16 trying to figure out would there be other possible water
17 rights, and I said it's possible. I'm not sure if
18 that's the question you're asking.

19 Q. Yeah, my question is: How do you know whether
20 or not those rights would be -- there would be
21 sufficient water to supply those rights if you don't
22 have any figures from Jennifer Sukow's model run to
23 determine that, how much water would have been in the
24 creek?

25 A. I was just under the assumption when a

1 diversion stops, that lack of diversion affects --
2 continues on through later in the season.

3 Q. Right. But you don't know how much that is --

4 A. No.

5 Q. -- or when it propagates itself or anything
6 like that?

7 A. No.

8 Q. In the binder in front of you -- it may be
9 easier if I could switch here.

10 So, Mr. Lakey, would you look at Mr. Luke's
11 staff report, IDWR Exhibit 4.

12 A. Yes.

13 Q. Okay. Would you turn to Attachment B,
14 Mr. Luke's memo to you regarding the exchange condition.

15 A. I'm sorry, I don't know how to find
16 Attachment B.

17 Q. So the page numbers aren't numbered. So go
18 towards the back of the exhibit. It's actually about
19 four or five pages from the back. There's a bunch of
20 tables, and then there's a --

21 MR. BARKER: Mr. Director, may I?

22 HEARING OFFICER: Yes.

23 THE WITNESS: I think I got it.

24 MR. BARKER: Oh, you found it.

25 Q. (BY MR. BARKER) So you've seen this

1 memorandum from Mr. Luke to you about the delivery of
2 the water rights with the exchange conditions?

3 A. Yes.

4 Q. And I think you said prior to this proceeding
5 you weren't familiar with those exchange conditions in
6 the water rights?

7 A. Yes, that's correct.

8 Q. So I want to just draw your attention to
9 page 4 of this memo, and Item No. 2. And then -- well,
10 before we get into the details, is it your intent to
11 deliver water in 2021 and future years in accordance
12 with this direction instructions to watermasters?

13 A. Yes.

14 Q. And is that -- that is different than how it's
15 been administered in the past?

16 A. Yes.

17 Q. At least as it respects the Little Wood?

18 A. Yes.

19 Q. So if you look at 2(a) on the fourth page of
20 the memo.

21 A. Yes.

22 Q. So Mr. Luke is, essentially, telling you that
23 if the Big Wood doesn't have a demand for water above
24 the canal that can be delivered to the exchange rights,
25 then you distribute that water to the next available

1 right in priority in the Little Wood?

2 A. Yes.

3 Q. And so if that -- when that occurs, when Big
4 Wood doesn't have the ability to take that water, that
5 means that there's additional water in the Little Wood
6 that's available for junior users --

7 A. You said --

8 Q. Juniors to Big Wood.

9 A. I'm sorry, go ahead.

10 Q. I'm sorry, I interrupted you. Go ahead.

11 A. I think your question is if they had no way to
12 take it, or is it they had no demand? I guess I need a
13 clarification on that.

14 Q. Well, isn't that what the direction says, "if
15 Big Wood has no demand or need for water above
16 Milner-Gooding that's deliverable, then the water shall
17 be distributed to the next available rights in
18 priority"?

19 A. So I would paraphrase to say, if Big Wood
20 Canal Company says, "No, we don't want the water," then
21 I can deliver it somewhere else.

22 Q. Right.

23 A. Correct.

24 Q. And if Big Wood Canal Company said, we want to
25 just run 6 cfs into the Dietrich Canal, even though the

1 Dietrich Canal is empty, and they couldn't get that
2 water downstream to their users, you wouldn't allow them
3 to do that, would you?

4 A. We have not in the past, no.

5 Q. Next I want you to look in the book in front
6 of you to Exhibit 9.

7 A. Is that Tab No. 9?

8 Q. Tab No. 9, yes. South Valley Groundwater
9 District/Galena Groundwater District Exhibit 9, and turn
10 over to page 27.

11 A. Okay.

12 Q. So this document has been admitted as a
13 contract with the United States regarding delivery of
14 water. And paragraph 28 has been described in previous
15 testimony as the operative exchange condition language.
16 So it starts on the bottom of page 27, goes over into
17 the next two pages.

18 HEARING OFFICER: These pages are offset by a
19 page number, Mr. Barker, as I look at it. So we've
20 got -- well, no, that's not right.

21 MR. BARKER: I don't think they are this time.

22 HEARING OFFICER: No, you're right. You're
23 correct. Sorry. They're the same. Thank you.

24 Q. (BY MR. BARKER) I may have misstated, but
25 it's the paragraph 28 I was referring to that starts on

1 page 27. If I stated that wrong, I apologize.

2 So have you read this language of the contract
3 before?

4 A. Yes, I have.

5 Q. Did you have an understanding, beyond what
6 you've got in the staff -- I'm sorry -- the instructions
7 to watermaster from Mr. Luke about how to implement this
8 language?

9 A. Repeat that question. I'm sorry.

10 Q. Let me just not repeat it, because that wasn't
11 a very good question.

12 You've read this Section 28; correct?

13 A. Yes.

14 Q. And you know that there's a provision about
15 how the water is to be exchanged between the parties to
16 this agreement; right?

17 A. Yes.

18 Q. And if you look at subpart one, is that really
19 what Mr. Luke's instructions to watermaster cover?

20 A. [Reviewing documents.]

21 Okay. Repeat your question, please.

22 Q. So subpart 1 -- (b)(1)?

23 A. Yeah.

24 Q. Is that the implementation of that section
25 that is included in your watermaster instructions?

1 A. I'm not sure.

2 Q. Okay. Do you think this says something
3 different than what Mr. Luke --

4 A. I'm not sure.

5 Q. So look at subpart two. Read that section to
6 yourself, please.

7 A. [Reviewing documents.] Okay.

8 Q. Okay.

9 A. I'll make a shot at it.

10 Q. So I'm going to expect your answer will
11 probably be the same, but --

12 A. Yep.

13 Q. -- there's some language here about pooled
14 water. Have you ever been called on to do anything with
15 pooled water?

16 A. No.

17 Q. And subsection 3, if you would read through
18 that, please.

19 A. [Reviewing documents.] Okay.

20 Q. Okay. The first question is: Do you -- have
21 you ever been called upon to implement the language of
22 subsection 3?

23 A. I believe that's comparable to the directive
24 from Tim Luke.

25 Q. Okay. And so you think subsection 3 is really

1 what is driving Tim Luke's memoranda -- or watermaster
2 instructions?

3 A. You'd have to probably ask Tim.

4 Q. Well, this talks about having a deficiency in
5 supply being made up in subsequent seasons, and I -- do
6 you see that language over on page 29?

7 A. Exactly where on page 29 are you referring?

8 Q. In subpart 3 --

9 A. Okay.

10 Q. -- starting the fifth line down.

11 A. "Until the deficiency in supply received by
12 the old lands above the canal in that season has been
13 offset in subsequent seasons."

14 Q. Right. Do you know what that means?

15 A. No.

16 Q. So I take it, then, you've never actually been
17 called upon to implement that provision?

18 A. Well, if I were to keep reading down, it has
19 something to do with if Magic were to fill in subsequent
20 years, then the current requirements would go away. So
21 if there were a pretty good year and Magic filled, then
22 this language would no longer be applicable, but I am
23 not sure.

24 Q. The next thing I would like to do is ask you
25 about a different topic, if I may.

1 Go to Jennifer Sukow's report in front of you,
2 IDWR No. 1.

3 A. I have 2, 3, and 4.

4 MR. BARKER: May I, Mr. Director?

5 HEARING OFFICER: Yes.

6 MR. THOMPSON: It should be 2, Sukow.

7 Q. (BY MR. BARKER) I'm sorry, Mr. Lakey. I gave
8 you the wrong number. It's IDWR 2, Jennifer Sukow's
9 report.

10 Have you got that in front of you now?

11 A. Yes.

12 Q. I want to ask you about her comments on
13 page 26, so if you'd turn to that page.

14 Are you there?

15 A. Not quite. So I have 24 and then a photo and
16 then an Attachment B, and then a B1 and a B2 and a B3
17 and B4, but I'm not seeing a 25 or 26.

18 MR. RIGBY: He's too far back.

19 MR. BARKER: Is that an attachment? That may
20 be earlier.

21 THE WITNESS: Okay.

22 Q. (BY MR. BARKER) Are you there?

23 A. Yes.

24 Q. 26 of the May 17th, 2021, staff memo?

25 A. Yes.

1 Q. The last paragraph, towards the bottom of that
2 page is discussing seepage losses between Sportsman's
3 Access and Station 10.

4 Do you see --

5 A. Yes.

6 Q. -- how she mentions that she's calculated
7 losses somewhere between 20 and 37 percent?

8 A. Yes.

9 Q. And you used those same percentages when you
10 did your discount of the amount of water that would make
11 it to the users when you said -- named the three water
12 users?

13 A. I think we used 25 percent.

14 Q. Just across the board?

15 A. Yes.

16 Q. So you know that she had different losses in
17 different months?

18 A. Yes.

19 Q. Is there a reason you didn't use the losses
20 per month?

21 A. Too much work.

22 Q. Jennifer says here in her staff report -- and
23 I'll read this -- "Reliable evaluation of seepage losses
24 is frustrated by measurement uncertainty at the gages,
25 the large number of diversions, the lack of

1 winter-season maintenance, and calibration of the
2 Section 10 gage."

3 Is that a fair statement in your view as the
4 watermaster?

5 A. No.

6 Q. Okay. Do you have measurement uncertainty at
7 your gages?

8 A. No.

9 Q. There's no uncertainty at all?

10 A. Oh, that's a good point. There is no perfect
11 measuring station within water delivery. Whether it's
12 USGS, Idaho Power, or Water District 37, there will
13 always be some form of error.

14 Q. Do you know what your measurement uncertainty
15 is at the Station 10 gage?

16 A. There's always some.

17 Q. Do you know what it is?

18 A. No.

19 Q. Plus or minus 10 percent?

20 A. So plus or minus 10 percent from what?

21 Q. The uncertainty about whether the water is
22 being measured accurately or not?

23 A. So Station 10 has been around for 100 years.
24 The current gage curve discharge table that we use for
25 Station 10 is based on watermaster measurements over the

1 last 26 years. Before -- the previous watermaster, Lee
2 Peterson, and myself have taken measurements there
3 periodically. Whenever -- and so that's how our gage
4 curve is built.

5 Whenever we need to make an adjustment as far
6 as priority, we measure the station at that time to make
7 sure we have an accurate measurement at that time of
8 curtailment. So I'm extremely confident in Station 10
9 flows, if that's what you're asking.

10 Q. So you measure at the time that you make --
11 you measure by hand at the time?

12 A. Yes.

13 Q. And how does your hand measurement compare to
14 the Station 10 gage measurements?

15 A. They might be off 5 percent, 5 to 10. So
16 let's say we had a -- gage stations have a staff gage in
17 them, and it's what it is. And my discharge table
18 might -- let's say a gage height of 2.0 on the gage
19 table or our discharge table for a 2.0 on the gage might
20 be -- let's pick a number -- 50 cfs. And I might go
21 there and measure 53 or 48. And it will vary depending
22 on aquatic vegetation, maybe silt movement, stuff like
23 that. So I don't know if I still understand your
24 question.

25 Q. So let's --

1 A. And that number is always a moving target. So
2 to try to describe something as plus or minus, I'm not
3 sure if we have -- we always have a moving target in
4 which to compare to.

5 Q. So has anyone at the Department of Water
6 Resources expressed frustration to you that the -- about
7 the measurement uncertainty of the gages at Silver Creek
8 and at Sportsman's Access and Station 10?

9 A. I had not heard that until Sean Vincent
10 testified to that.

11 Q. Do you know what Ms. Sukow means when she says
12 there's been a "lack of winter-season maintenance"?

13 A. Yeah. Those stations ice up, and they're
14 difficult for us to maintain.

15 Q. So what do you have to do to fix them?

16 A. Figure out how water won't freeze at 32
17 degrees, I guess.

18 Q. So what do you do in the spring, then?

19 A. Oh, we can go back out and measure once the
20 ice is out.

21 Q. So you don't really have any decent winter
22 measurements, is that what you're saying?

23 A. December, January, February are pretty
24 difficult.

25 Q. And do you know what Ms. Sukow is referring to

1 when she questions the calibration of the Station 10
2 gage?

3 A. I don't know what she's referring to, no.

4 Q. Do you calibrate your gage?

5 A. Yeah, that's what I was talking about earlier
6 in the flow measurements we take.

7 Q. And then when you do that, do you adjust the
8 staff gage?

9 A. No. We adjust what we call an offset.

10 Q. And she also says that the Department and
11 Water District 37 are working to improve operation and
12 maintenance -- future year-round operation and
13 maintenance of the gage.

14 What are they doing to improve that operation
15 and maintenance?

16 A. I think they -- well, I don't think. They
17 install their own measuring equipment -- not equipment,
18 but -- well, streamflow identification, or they're
19 installing their own equipment on Station 10. I would
20 guess that's what they're trying to do to improve the
21 accuracy, they want their own information.

22 Q. Do you provide that information, Station 10
23 gage, to the Department or USGS or anybody else?

24 A. When asked.

25 Q. And have you observed any differences in your

1 readings versus the Department's readings in their gages
2 that they're putting in?

3 A. I have not seen their data, no.

4 Q. So turn over to page 29 in the same report,
5 the same staff memo.

6 Are you there?

7 A. Yes.

8 Q. So at the top of page 29, there's a reference
9 to "Seepage losses in the vicinity of the Highway 93
10 Bridge."

11 A. Yes.

12 Q. You're familiar with that problem?

13 A. Yes.

14 Q. Do you know that -- do you know that the
15 Department has issued a notice of violation to
16 Mr. Hannifer in that area?

17 A. No, I'm not aware of that.

18 Q. Do you know that Mr. Hannifer's diverting
19 water from the creek into a pond without a water right?

20 A. I'm not sure I would call that diversion on
21 anybody's behalf.

22 Q. So is he putting it to beneficial use without
23 a water right?

24 A. I'm not aware that he's -- I don't know what
25 he's using it for.

1 Q. You know there's a big pond --

2 A. Yes.

3 Q. -- beside the creek --

4 A. Yes.

5 Q. -- that doesn't have a water right for it?

6 A. There are no water rights for ponds in that
7 area, no.

8 Q. And have you done anything to try and prevent
9 that water from being used in that pond -- prevent
10 Silver Creek water from being used in that pond?

11 A. To be fair, if I went after Mr. Hannifer, I
12 would also have to go after Simplot, and Water District
13 37 probably doesn't have the capability to do that. So
14 that's a difficult problem, as you well know, to solve.

15 Q. But it's a problem, nonetheless, in getting
16 water downstream into the Little Wood; isn't it?

17 A. Yes, it is.

18 Q. Have you measured seepage losses?

19 A. Yes.

20 Q. And Ms. Sukow reports that there have been
21 measurements between 7 and 15 cfs by the water district?

22 A. Yes.

23 Q. Is that you?

24 A. I believe The Nature Conservancy may have done
25 some, and Brockway Engineering may have done some, at

1 times.

2 Q. Have you ever measured the seepage losses at
3 that location?

4 A. Yes, I have.

5 Q. What numbers did you come up with -- well,
6 first of all, when have you done that?

7 A. We started measuring there, I don't know, two
8 or three years ago, four years ago. Over this past
9 spring when water was high, I made a measurement there
10 and found 20 cfs of loss in that stretch. I'm not sure
11 what the percentage would be. I don't remember my
12 beginning and ending flows.

13 Q. Let's look at Exhibit 12 in the book --
14 actually, let's -- there's something else I want you to
15 look at.

16 MR. BARKER: Mr. Director, I have a document
17 that you've identified as something that will be part of
18 what you would take official notice of from the black
19 books of the watermaster. And I think I'd like to mark
20 this as our next exhibit number, if I may?

21 HEARING OFFICER: Okay. At this juncture in
22 the break for marking, I want to check with the court
23 reporter. Do you need a break?

24 COURT REPORTER: I'm okay. So whatever you
25 want to do.

1 HEARING OFFICER: Anybody else? Our first
2 break was a little early. Anybody want --

3 MS. MCHUGH: It would be great to take at
4 least a five-minute break to -- it would be great to be
5 able to take a five-minute break.

6 MR. BROMLEY: We've got all of these documents
7 that are being brought in while Mr. Lakey is testifying,
8 and we're trying to make sense of what they are and what
9 they aren't. We're going to need to stamp things as
10 exhibits, so it would be helpful.

11 HEARING OFFICER: Let's take ten minutes, and
12 then we'll plan to run a little bit into the lunch hour
13 and maybe take lunch at 12:30 or so. I don't know.
14 Depending on how the testimony progresses. Let's break
15 for ten, come back at 20 after.

16 (Break taken.)

17 HEARING OFFICER: Back on the record, Andrea.
18 Thank you. Recording?

19 MS. JENKINS: Yes.

20 HEARING OFFICER: Good. There's been an
21 opportunity to exchange some of the documents.

22 Mr. Barker, further questions?

23 MR. BARKER: Thank you, Mr. Director.

24 Q. (BY MR. BARKER) Mr. Lakey, before I want to
25 ask you about those 1931 watermaster books, I want to

1 return to -- real briefly to August of last year.

2 A. Okay.

3 Q. When the -- some amount of wells may have been
4 turned off, and some surface water rights went off. I
5 think you said those were the two factors that you could
6 point to as being responsible for increase in flows at
7 Station 10?

8 A. We also receive water from Little Wood
9 Reservoir at Highway 93 Crossing, so that was added in
10 there also.

11 Q. Is that all?

12 A. Is what off?

13 Q. Is that all of the water that you got?

14 A. I'm not sure what you're questioning.

15 Q. So you said groundwater pumping curtailment?

16 A. Voluntary curtailment.

17 Q. Voluntary curtailment. The Purdy '83's going
18 off?

19 A. Oh, no, that was a misunderstanding. There
20 were a variety of water rights still on. So the '83
21 could have gone off voluntarily for harvest, the
22 September of '83 could have gone off voluntarily for
23 harvest, or any number of water rights that were still
24 on up there would be off for harvest. And so I went
25 back and looked at all of those, not just the September

1 of '83.

2 Q. And so are you aware that there was any other
3 source of water into Silver Creek at that time?

4 A. Not aware, no.

5 Q. Do you remember getting a text from Nick Purdy
6 in this time advising you that he was pumping 8 cfs from
7 his well directly into Silver Creek?

8 A. Yeah, I remember that.

9 Q. So that 8 cfs direct pumping from the Purdy
10 wells into Silver Creek is going to have a significant
11 effect downstream, isn't it?

12 A. Yeah, it would.

13 Q. And that was something that was part of what
14 showed up at Station 10, then?

15 A. It could be, yes.

16 Q. But you didn't factor that into your --

17 A. No, I did not.

18 Q. -- calculations?

19 So if you had 10 cfs of additional improvement
20 from what you thought was well curtailment that you
21 couldn't factor, and you had 8 of that coming from wells
22 that were being directly pumped into the creek, isn't
23 that the explanation for most of what you were unable to
24 determine the source for?

25 A. It could be, yes.

1 Q. Instead of groundwater curtailment.

2 (SVGWD & GGWD Exhibit 39 marked.)

3 Q. (BY MR. BARKER) Okay. Turn to this document
4 that we marked as South Valley/Galena Exhibit No. 39.

5 Is that the right number?

6 COURT REPORTER: Yes.

7 THE WITNESS: Okay, yes.

8 Q. (BY MR. BARKER) So this is a document we just
9 received the other day from the Department, and it's
10 from the 1931 black books.

11 Have you seen this before?

12 A. No.

13 Q. Are the black books in your possession as the
14 watermaster?

15 A. Yes.

16 Q. Do you, as part of your duties, occasionally
17 go back and review information about what's happened in
18 the district?

19 A. Yes.

20 Q. But you don't ever remember looking at the
21 1931 black book?

22 A. Not specifically, no.

23 Q. I want you to turn to page 7. And there's
24 some discussions of gains and losses. I don't know what
25 these stations mean.

1 Can you tell me what Stations 19 and 2 are, or
2 is that in the Big Wood side?

3 A. What page did you say?

4 Q. I'm on page 7. There's a table --

5 A. I do not see 19 or -- okay. There we go,
6 yeah. Okay. I'm on the right page.

7 Q. Yeah. So tell me what are Stations 19 and 2?

8 Does that have anything to do with Little
9 Wood, or is that Big Wood?

10 A. I think 19 -- we use No. 2 now as Stanton
11 Crossing, but I don't know if that's the same No. 2, and
12 I don't know what 19 would be.

13 Q. Okay. Just for the record, District 11-AB
14 is -- if you'd go back to the first page, sorry, this is
15 a report for District 7-AB and 11-AB.

16 Do you see that?

17 A. Yes.

18 Q. And 11-AB is the Silver Creek and Little Wood
19 Rivers?

20 A. Okay.

21 Q. Got it?

22 All right. So then I want you to return to
23 page -- oh, so, I'm sorry, 11-AB is a predecessor to
24 Basin 37 -- or Water District 37; right?

25 A. I think so, yes.

1 Q. And you've seen Water District 11-AB records
2 before as part of your duties?

3 A. Yeah.

4 Q. So under the heading "IMPROVEMENTS."

5 Do you see that?

6 A. Yes.

7 Q. Page 7. It says, "Some improvement work was
8 made on Silver Creek to decrease channel losses. This
9 work was in the nature of bank building to keep the
10 creek from overflowing its banks and the water finding
11 its way into sinkholes. The work was authorized at the
12 watermaster election in March and a committee was
13 appointed" --

14 COURT REPORTER: Can you read it just a little
15 bit slower?

16 MR. BARKER: Sorry. Sorry.

17 COURT REPORTER: Sinkholes?

18 MR. BARKER: Where are you? Sinkholes?

19 Q. (BY MR. BARKER) [As read] "The work was
20 authorized at the watermaster election in March and a
21 committee was appointed to advise the watermaster of the
22 work to be done."

23 Do you see that part?

24 A. Yes.

25 Q. Okay. So isn't it the case that as far back

1 as 1931, the water district was involved in maintaining
2 the channel banks of Silver Creek?

3 A. It appears so, yes.

4 Q. And that was intended to enhance the flows to
5 reach -- so that the flows would reach further down into
6 the Little Wood?

7 A. I'm not sure I see where you say -- where it
8 says that.

9 Q. I'm asking you if that's what you would do it
10 for if you were the watermaster?

11 A. I'm not sure.

12 Q. And you don't know why you would enhance the
13 -- build up the banks at Silver Creek to prevent stream
14 losses?

15 A. I guess it would be to help the system as a
16 whole, yeah.

17 Q. And are you aware that the water district,
18 ultimately, obtained an easement to continue this work
19 for the landowner?

20 A. Yes.

21 Q. Would you turn to page -- Exhibit 12 in the
22 book, South Valley/Galena Exhibit 12.

23 A. Yes.

24 Q. Have you seen this exhibit before?

25 A. Yes. I think so, yes.

1 Q. Is this in the records of the water district?

2 A. Yes.

3 Q. And the water district is a party to this
4 easement, is it not?

5 A. Yes.

6 Q. And if you look down to the fourth full
7 paragraph, about the fourth line -- fifth line down, it
8 describes the purpose of the easement is to build up and
9 repair the banks to prevent the channel from overflowing
10 and prevent loss of irrigation water?

11 A. Yes.

12 Q. All right. And are you aware whether or not
13 the water district carried out its obligations under
14 this easement during the -- or ever?

15 A. No, I'm not aware of any.

16 Q. Do you have any reason to believe that the
17 water district did not perform the work that's described
18 in this easement?

19 A. I have no opinion one way or the other.

20 Q. Isn't it true that the water district was
21 asked by its members to -- during your tenure -- to
22 perform some of the work under -- that's authorized by
23 this easement?

24 A. Yes.

25 Q. And were you involved in that?

1 A. Please define "that."

2 Q. The work to -- that's authorized under this
3 easement.

4 A. The watermaster previous to me lost his job, I
5 believe, basically, from work done at this site.

6 Q. Okay.

7 A. Because he didn't have the proper permits, and
8 I think he was operating based on the basis of this
9 easement alone. And he lost his job, I think, because
10 of that. So it's always been my opinion to not get
11 involved, as the watermaster, to be involved in stream
12 alteration work.

13 Q. So you've not ever attempted to get a permit
14 to carry out the obligations of this easement?

15 A. No.

16 Q. And so since your tenure, the water district
17 hasn't done anything to reconstruct, buildup, repair,
18 maintain the banks of the channel to prevent loss of
19 irrigation water by overflowing?

20 A. That is correct.

21 Q. Turn in the book to Exhibit 20.

22 A. Okay.

23 MR. BARKER: Is that -- oh, I'm sorry. I
24 would move for the admission of -- Director -- of
25 Exhibit 12, South Valley/Galena Exhibit 12.

1 HEARING OFFICER: Any objection to the
2 admission of the document marked as South Valley and
3 Galena No. 12?

4 MR. RIGBY: No.

5 HEARING OFFICER: The document marked as South
6 Valley and Galena Exhibit 12 is received into evidence.

7 (SVGWD & GGWD Exhibit 12 received.)

8 MR. BARKER: Thank you, Mr. Director.

9 Q. (BY MR. BARKER) Okay. So, Mr. Lakey, you've
10 got Exhibit 20 in front of you?

11 A. Yes.

12 Q. Okay. So tell me what Exhibit 20 is. Is this
13 a document that you prepared?

14 A. It appears so, yes.

15 Q. It appears so. Is it or is it not? Sorry.

16 A. I have made so many of these over the last six
17 months, that -- but it's got my name on it, so, yes.

18 Q. What were you attempting to explain to IDWR
19 staff in this narrative?

20 A. It looks like shortfall calculations of some
21 kind.

22 Q. Shortfall calculations for what?

23 A. For the Big Wood River Groundwater Management
24 Area Committee.

25 Q. What kind of shortfalls were you attempting to

1 calculate?

2 A. It must have been some kind of water delivery,
3 obviously.

4 Q. Well, I don't have your backup for this and
5 what was made available. It may be in here somewhere.
6 So this is for a water delivery claimed by the Big
7 Wood/Little Wood Water Users Association; isn't it?

8 A. Say that again.

9 Q. Isn't this a claim for a water delivery by the
10 Big Wood/Little Wood Water Users Association that you
11 were assisting them with?

12 A. This document?

13 Q. Isn't that part of what you're trying to do is
14 calculate shortages for that?

15 A. No. This was to be a presentation to the Big
16 Wood River Groundwater Management Area Committee, I
17 believe.

18 Q. And what was the purpose of providing shortage
19 calculations to the groundwater management committee?

20 A. Oh, to show if there were any shortfalls.

21 Q. And shortfalls in the water delivery to the
22 Big Wood/Little Wood Water Users; is that right?

23 A. I think so, yeah.

24 Q. All right. Is there anybody else that you
25 were doing shortfall calculations for?

1 A. I don't think so.

2 Q. So under 2, you have an acre limit multiplied
3 by 3.18 acre-feet per acre.

4 Do you see that?

5 A. Yes.

6 Q. Where did you come up with that figure?

7 A. The state, under -- maybe my assumption, the
8 state usually would allow 3.5 acre-feet for kind of an
9 average. I didn't think it was probably that high based
10 on some of my research, so I dropped it down a little
11 bit.

12 Q. So you think for the crops that are being
13 grown by the Big Wood Water Users -- Big Wood Little
14 Wood Water Users Association, the 3.1 acre-feet is a
15 good average crop use over a growing season?

16 A. It depends on the farm and the irrigation
17 system.

18 Q. Well, you used 3.1 per acre across all of your
19 combined irrigation -- or your area, haven't you?

20 A. On this particular calculation, yeah, I must
21 have.

22 Q. And then if I go down, you say that -- well,
23 let me back up a second.

24 What are you comparing the use against, what
25 kind of water supply?

1 A. I'm not sure.

2 Q. So as of April 22nd, you don't know what water
3 supply -- of this year, you don't know what water supply
4 forecasts you were using, if any?

5 A. April 22nd? I don't think I had made any
6 predictions by then.

7 Q. So you do a short -- if you go down to the
8 first full paragraph after all of the numbers, you say
9 that there's enough water -- you say that you were not
10 using the junior rights in a shortfall calculation.

11 Can you explain that?

12 A. It just says the junior rights were not used.

13 Q. Why did you not use the junior rights?

14 A. In some cases, depending on the farm, there
15 are other senior rights that can fill the number of
16 acres -- or the number of acres that might be on the
17 farm or the place of use.

18 Q. So this is talking about farm-by-farm
19 calculation?

20 A. I don't see that it is anywhere, per se.

21 Q. Go down to the bottom under "Follow-up." Just
22 read to yourself that last paragraph under there.

23 A. Yes. [Reviewing documents.]

24 Okay.

25 Q. You read that?

1 A. Yeah.

2 Q. So is it your -- is it your understanding that
3 the seniors rejected your proposed methodology because
4 it didn't give them the water right all of the way to
5 the very end of the season regardless of whether or not
6 it was more or less than 3.1 acre-feet per acre?

7 A. No. I believe it says because "the method
8 does not give them the full flow rate of their rights."
9 It doesn't say anything about 3.1 or the flow season.
10 It just says that the method used there didn't give them
11 a full flow rate.

12 Q. And the sentence underneath that says, "Their
13 argument is that the rights were adjudicated with a full
14 flow rate and no acre-foot limit," so there was a
15 discussion about acre-foot limits; right?

16 A. Yeah, they didn't care for the 3.1, I guess.

17 Q. Did they explain why?

18 A. No.

19 Q. Other than that they wanted their full flow
20 rights for the full season?

21 A. I guess, yes.

22 Q. Mr. Lakey, would you turn to Exhibit 5 in the
23 book, please.

24 A. Okay, I'm there.

25 Q. Have you seen this order regarding a

1 combination of some of the water districts and the
2 groundwater and surface water rights into Water District
3 37?

4 A. I believe so, yes.

5 Q. Were you at the hearings where these matters
6 were presented to the public and to the water users?

7 A. I know I was at some, but I don't remember if
8 I was at all hearings.

9 Q. Do you remember that some of the groundwater
10 users objected to being brought into the district?

11 A. Not specifically, no.

12 Q. Turn to page 6. Page 6, I'm sorry, of the
13 same exhibit.

14 A. Okay. I'm sorry, start again. Exhibit what?

15 Q. South Valley and Galena Exhibit No. 5. The
16 one you were just looking at, the order.

17 A. Okay.

18 Q. Turn to page 6.

19 A. Okay.

20 Q. And you see No. 24, the first bullet point?

21 Do you see that?

22 A. Yes.

23 Q. And so the concern of the groundwater users --
24 some of the groundwater users was there would be an
25 adversarial proceeding or adversarial positions as

1 between the surface and groundwater users within the
2 combined district?

3 A. That's what it says, yes.

4 Q. And if you go to paragraph 28 on the next
5 page, it indicates that you submitted written comments
6 in response to some of these concerns?

7 A. Yes.

8 Q. And it says, "Kevin Lakey submitted written
9 comments that addressed some of the testimony at the
10 hearing regarding concerns about consumptive
11 management."

12 A. Yes.

13 Q. Right. So do you now recall that there were
14 concerns about conjunctive management?

15 A. Must be.

16 Q. All right. And your answer to the water users
17 in your written comments was what?

18 A. "Mr. Lakey noted that water users at annual
19 water district meetings only vote on district 'budget,
20 hiring and resolutions' and not 'on how conjunctive
21 management will be enforced.'"

22 Q. Did you say anything other than that about
23 conjunctive management in your written testimony?

24 A. So the next sentence you want me to read?

25 Q. No. I'm just asking you what else you

1 remember saying about conjunctive management in your
2 testimony?

3 A. I don't remember any other testimony as far as
4 conjunctive management, no.

5 Q. Okay. Then turn to page 10. And this is Item
6 10 under the "CONCLUSIONS OF LAW" by the Department.

7 You're there?

8 A. No.

9 Q. I'm sorry, Item 16. Sorry, page 10, Item 16.

10 A. Okay. I'll be needing some help on that one.
11 Item 10, so Tab 10.

12 Q. No. No. Exhibit 5.

13 A. Okay.

14 Q. Page 10.

15 A. Page 10.

16 Q. Paragraph No. 16.

17 A. Okay.

18 Q. You're there?

19 A. I think so.

20 Q. Okay. And, again, this is a discussion of the
21 concern over conjunctive administration of groundwater
22 and surface water rights being imminent.

23 Do you see that first sentence?

24 A. Yes.

25 Q. Okay. And then the Department says that those

1 concerns are not -- if I go down to the third sentence
2 in that paragraph, I'll summarize, but the Department
3 says those concerns are not a problem in combining the
4 groundwater rights because of -- and I'll read this part
5 -- "the fact that conjunctive administration is guided
6 by separate processes outlined in the Conjunctive
7 Management Rules, CMRs, (IDAPA 37.03.11)."

8 Do you see that?

9 A. I think so, yeah.

10 Q. Did I read that correctly?

11 A. I'm not sure.

12 Q. Do you want to read it out loud, then, so that
13 we get that correctly --

14 A. Where do you want me to start?

15 Q. -- into the record?

16 A. Where do you want me to start?

17 Q. Start with the word that -- "adversarial,"
18 that whole sentence.

19 A. "Adversarial tensions between groundwater and
20 surface water users resulting from potential conjunctive
21 administration of water rights should not negatively
22 affect water district operations given the limited
23 regulatory scope of the water district and the fact that
24 conjunctive administration is guided by separate
25 processes outlined in the Conjunctive Management Rules."

1 Q. Okay. And did the Department advise the
2 groundwater users who were being brought into Water
3 District 37 that there would be other processes than the
4 conjunctive management rules that would be utilized for
5 conjunctive administration of groundwater and surface
6 water?

7 A. I can't answer. I don't know. I don't know
8 what they --

9 Q. Did you ever tell the water users that --

10 A. Did I ever tell --

11 Q. -- there would be other processes outside the
12 conjunctive management rules?

13 A. Could you repeat the question, please? I'm
14 sorry.

15 Q. So this sentence that you just read says that
16 "conjunctive administration is guided by separate
17 processes outlined in the Conjunctive Management Rules";
18 right?

19 A. That's what it says, yes.

20 Q. My question is: Did either you or the
21 Department advise the groundwater users that there was
22 going to be a different process other than the processes
23 outlined in the conjunctive management rules for
24 conjunctive administration of water rights -- of
25 groundwater and surface water rights in Basin 37 -- or

1 District 37? Sorry.

2 A. I don't know the rules of conjunctive
3 management or any other process, so I don't believe I
4 could have given testimony one way or the other. And
5 I'm not sure how the Department would have -- or what
6 the Department would have told groundwater users about
7 other processes.

8 Q. You never heard the Department advise the
9 groundwater users that there were going to be other
10 processes utilized for conjunctive administration, did
11 you?

12 A. I don't know.

13 MR. BARKER: Director, thank you. I'll stand
14 down.

15 Thank you, Kevin. You've been patient.

16 HEARING OFFICER: All right. Let me just
17 houseclean a little with you.

18 MR. BARKER: Oh, one housecleaning. I did not
19 move for the admission of Exhibit 20, and I would do
20 that.

21 HEARING OFFICER: Well, I think there are some
22 others, if I recall, but I'm not sure, so let's go back
23 through.

24 So you moved for the admission of Exhibit 20,
25 which is Kevin Lakey's one-page document that's titled,

1 "NARRATIVE." So let's talk about these one at a time.

2 Any objection to the admission of this
3 document?

4 The document that's marked as South Valley and
5 Galena Exhibit 20 is received into evidence.

6 (SVGWD & GGWD Exhibit 20 received.)

7 HEARING OFFICER: I'm not sure, Mr. Barker,
8 maybe my memory is too short. I'm not sure that you
9 ever moved for admission of South Valley/Galena 37 and
10 38. I don't know whether you were intending to offer
11 these after having questioned Mr. Lakey.

12 MR. BARKER: If I didn't, I would so move.

13 HEARING OFFICER: I'll just ask the court
14 reporter and others, those were not received into
15 evidence, were they?

16 MS. CARTER: Not according to my records.

17 HEARING OFFICER: So any objection to the
18 admission of these two documents, spreadsheets prepared
19 by Mr. Lakey?

20 MS. MCHUGH: No objection.

21 HEARING OFFICER: So the documents marked as
22 South Valley and Galena 37 and 38 are received into
23 evidence.

24 (SVGWD & GGWD Exhibits 37 and 38 received.)

25 HEARING OFFICER: Now, I can't remember,

1 honestly, did you intend or did we admit South Valley
2 and Galena Exhibit 39?

3 MS. CARTER: We did not admit it, but
4 Mr. Barker suggested that was one of the documents that
5 you had taken official notice of at the beginning. But
6 for clarity purposes...

7 MR. BARKER: I would move for the admission of
8 Exhibit No. 39, South Valley/Galena Exhibit 39.

9 HEARING OFFICER: Any objection to the
10 admission of this document?

11 All right. The document marked as South
12 Valley and Galena Exhibit No. 39 is received into
13 evidence.

14 (SVGWD & GGWD Exhibit 39 received.)

15 HEARING OFFICER: Now, am I missing any
16 others?

17 Okay. Thank you, Mr. Barker.

18 MR. BARKER: Thank you, Mr. Director.

19 Thank you, Mr. Lakey.

20 MR. THOMPSON: Al, 5.

21 MR. BARKER: What?

22 MR. THOMPSON: Exhibit 5 is the last one.

23 MS. CARTER: Exhibit 5 was already admitted.

24 MR. BARKER: It's already admitted.

25 HEARING OFFICER: Okay. Ms. O'Leary,

1 questions?

2 MS. O'LEARY: Nothing from me, Director.

3 HEARING OFFICER: Thank you. Let's see.

4 Ms. Vonde is not here. Group 3?

5 MS. MCHUGH: Yes, Mr. Director.

6 HEARING OFFICER: Ms. McHugh.

7

8

CROSS-EXAMINATION

9 QUESTIONS BY MS. MCHUGH:

10 Q. Hi, Mr. Lakey. Candice McHugh on behalf of
11 the City of Bellevue.

12 Would you agree that the senior surface water
13 rights that are in this proceeding have water rights
14 that have as their source Silver Creek?

15 A. I'm not sure exactly which water rights would
16 list that as a source, whether Little Wood or Silver
17 Creek. Some of them are different.

18 Q. Would you agree that Silver Creek is a
19 tributary to the Little Wood River?

20 A. Yes.

21 Q. Would you agree that the Little Wood River is
22 a source different than Silver Creek?

23 A. The Upper Little Wood River would be different
24 than Silver Creek, yes.

25 Q. And if a water right has as the source Little

1 Wood River, is it true that it's point of diversions
2 would divert directly out of the Little Wood River?

3 A. I believe so, yes.

4 Q. And if the source of a water right has Silver
5 Creek as its source, the points of diversions would
6 divert out of the Silver Creek channel?

7 A. I'm not sure of that. I think sometimes I've
8 seen it both ways. It wasn't always perfect, but I'm
9 not sure.

10 Q. So your testimony and understanding,
11 potentially, is that there is water rights that have the
12 source of Silver Creek that have points of diversion
13 from a source that is not the Silver Creek channel.

14 Is that what I understood you to say?

15 A. There are other water rights like Loving
16 Creek, Silver Creek. They go back and forth sometimes.
17 And I've never really looked at that specifically to
18 identify specifically whether a right is on the ground
19 delivered from...

20 Q. Do you consider the Little Wood River the same
21 source as Silver Creek?

22 A. Not the Upper Wood River -- or Little Wood
23 River, no. That's Carey. I'm not sure --

24 Q. If a water right has a source of Little Wood,
25 can they divert out of Silver Creek?

1 A. I don't think so.

2 Q. Have you ever delivered any Little Wood waters
3 out of Silver Creek?

4 A. I don't think so.

5 Q. Have you delivered any Silver Creek water out
6 of the Little Wood?

7 A. Physically, I would say so, yes.

8 Q. And did the Silver Creek water right -- would
9 that have to have a point of injection into the Little
10 Wood in order to be authorized to divert out of the
11 Little Wood?

12 A. I don't believe so, no.

13 Q. So a Silver Creek water right that has a
14 source of Silver Creek can divert out of the Little Wood
15 River; is that your testimony?

16 A. Please restate your question, please.

17 Q. I'm just talking about source here, because I
18 think there's some confusion.

19 A. There is.

20 Q. And the notice in this case specifically said
21 that it's involving the impact of groundwater pumping
22 within the Bellevue Triangle on water rights from Silver
23 Creek, so I'm trying to explore whether or not Silver
24 Creek and Little Wood River are synonymous or if they
25 are different sources.

1 So if a water right has the source of Silver
2 Creek, do you deliver it from points of diversion
3 located physically on the Little Wood River?

4 A. I still don't quite understand your question,
5 I guess, to get it exactly right.

6 Q. Okay. Is there someone besides you that would
7 be delivering or authorizing diversion of water in Basin
8 37 from a Silver Creek water right that has the source
9 of Silver Creek on it to authorize it to divert from a
10 point of diversion located on the Little Wood River?

11 Is there someone else besides you that would
12 have that information?

13 A. Perhaps the Department of Water Resources, but
14 at Water District 37, I'm the person that would say
15 whether something should be delivered, yeah.

16 Q. Do you believe that the Little Wood River is
17 the same source as the Silver Creek -- as Silver Creek?

18 A. Not the Upper Little Wood River, no.

19 Q. Because Silver Creek is actually a tributary
20 to the Little Wood; right?

21 A. Correct.

22 Q. You're familiar with Tim Luke's 4-22-2021
23 instructions to you regarding the -- what we've referred
24 to as the exchange condition?

25 A. Yes.

1 Q. Do you intend to deliver water pursuant to
2 those instructions?

3 A. Yes.

4 Q. If you could look at, I think it's South
5 Valley Exhibit 2 and South Valley Exhibit 37.

6 A. Is it in here?

7 MS. MCHUGH: Can I approach for a second?

8 HEARING OFFICER: Yes.

9 MS. MCHUGH: Oh, good gravy. No, that's not
10 it. Which ones are your exhibits?

11 MR. THOMPSON: The yellow binder. Probably
12 the one right in front of him.

13 MS. MCHUGH: The yellow binder.

14 MR. THOMPSON: Probably the one right in front
15 him.

16 MS. MCHUGH: This?

17 MR. THOMPSON: No, that's not it.

18 MS. MCHUGH: This?

19 MR. THOMPSON: Yeah.

20 HEARING OFFICER: The yellow on the front.
21 That's not yellow.

22 MS. MCHUGH: If you have it, can we find
23 Exhibit 37?

24 Q. (BY MS. MCHUGH) So Exhibit 2, from my notes,
25 that Al was questioning you on shows priority cuts.

1 So is that IDWR Exhibit 2?

2 A. I have no idea.

3 MR. FLETCHER: Exhibit 2 is the order
4 dismissing petition for administration. Oh, IDWR 2, is
5 that what you're looking for?

6 MS. MCHUGH: Maybe.

7 MR. RIGBY: Sukow's memo?

8 MR. FLETCHER: Sukow's memo?

9 MS. MCHUGH: Yeah.

10 MR. FLETCHER: It's IDWR 2.

11 THE WITNESS: Okay. I have that.

12 HEARING OFFICER: There's a lot of
13 conversation going on. The court reporter needs to try
14 to distinguish what needs to go in the record and what
15 doesn't.

16 Q. (BY MS. MCHUGH) I just wanted to clarify a
17 question that I wasn't sure I understood your answer to,
18 so we'll look at Exhibit 37.

19 If you were to look at Exhibit 37, would we be
20 able to understand the total volume of water rights that
21 are senior to April 1st, 1883, upstream from Station 54?

22 A. Possibly, yeah.

23 Q. And could you explain, by using Exhibit 37,
24 how we would come to that number?

25 A. The way I would do it is if I could actually

1 see the current owner's name and then know where they
2 live, and I would go down through that list. I don't
3 necessarily trust that below/above thing.

4 Q. So Exhibit 37 really doesn't tell us the total
5 volume that's senior to April 1st, 1883, without having
6 some information on who the owner of the individual
7 water rights are?

8 A. Yeah.

9 Q. Okay. In your answer, I think, to
10 Mr. Fletcher, you mentioned that you verify measurements
11 of groundwater users.

12 Do you recall that testimony?

13 A. Yes.

14 Q. Do you also verify measurements for surface
15 water users?

16 A. Yes.

17 Q. And do you do that on a monthly or yearly
18 basis, or how do you do that?

19 A. Deputy watermasters verify, usually, every two
20 to three days.

21 Q. That the surface water users measurement
22 device is accurate?

23 A. Oh, no. Usually if there's a problem with
24 inaccuracy, they will let me know. At the end of the
25 year, we'll try to get a letter out to the water users

1 and say they need to have that fixed or repaired.

2 Q. Okay. And do you verify the measurement of
3 groundwater users' measurement devices for their
4 accuracy as well?

5 A. Yes.

6 (BV Exhibit 1 marked.)

7 Q. (BY MS. MCHUGH) I'm going to hand you what
8 has been marked as, I call it, BV 1, Bellevue Exhibit 1.

9 Can you identify that document?

10 A. Yes.

11 Q. Would you tell me what it is?

12 A. It's a document I wrote for notes to myself
13 that would be adequate supply indicators.

14 Q. And did you go over some of this information
15 with Mr. Barker in your testimony?

16 A. Yes.

17 Q. And if you could just, like, look at it. Is
18 this the document that was from your blue notebook that
19 you brought with you today to the hearing?

20 A. The first page?

21 Q. The whole document.

22 MR. THOMPSON: What memo are you on?

23 MS. MCHUGH: This is the June 2nd, 2021, memo.

24 (Discussion held off the record.)

25 Q. (BY MS. MCHUGH) Mr. Lakey, did you have a

1 chance to look at that, and did you confirm that this is
2 a document that was from the blue book that you brought
3 today?

4 A. I'm not sure of the order it was in my blue
5 book. I'm not sure what -- I would consider this a
6 document out of my blue book, but there is information
7 in here that was in my blue book, yes.

8 Q. Okay. I gave you back your blue book; right?

9 A. Yes.

10 Q. Well, I just wanted to have you page back,
11 approximately, I think eight pages back, the top of
12 which says, "Average Acre-Foot per acre water use in
13 Adequate years."

14 Do you see that table?

15 A. Yes.

16 Q. Okay. Did you prepare that table?

17 A. Yes.

18 Q. And this -- you testified about years 2000,
19 2009, and 2010 as water years that, in your experience,
20 constituted what you call adequate water years?

21 A. Yes.

22 Q. And you calculated the amount of acre-feet per
23 acre that you would consider to be adequate for these
24 particular owners; is that what this table is showing?

25 A. This table is showing how much water was

1 delivered to those headgates in adequate years.

2 Q. So Column 3 is the amount of water that these
3 individual owners used in years that you considered
4 adequate --

5 A. Yes.

6 Q. -- that was delivered to them?

7 MS. MCHUGH: I would move for the admission of
8 Bellevue Exhibit 1.

9 HEARING OFFICER: Any objection to the
10 admission of this document?

11 The document marked as BV 1 is received into
12 evidence.

13 (BV Exhibit 1 received.)

14 Q. (BY MS. MCHUGH) If you would continue to look
15 at that same page, 8, of Bellevue Exhibit 1.

16 A. Which one is 8? Is this one page 8?

17 Q. Page 8, yeah. The table, again, that says,
18 "Average Acre-Foot."

19 Is the acre-foot per acre the amount of water
20 that was delivered to the farm headgate?

21 A. Acre-foot per acre? The amount of water
22 delivered to the headgate is the acre-foot column.
23 That's the total acre-feet volume delivered to the
24 headgate, yes.

25 Q. Is that the farm headgate, or is that a

1 different headgate?

2 A. That would be the farm headgate.

3 MS. MCHUGH: I have nothing further.

4 HEARING OFFICER: Okay. Thank you,
5 Ms. McHugh.

6 Let's see, in Group 3, you have questions as
7 well, Mr. Bromley?

8 MR. BROMLEY: I do, Director.

9 HEARING OFFICER: We'd normally combine, so I
10 didn't...

11 MR. BROMLEY: And, Director, it's a good
12 question. Because of the truncated nature of this
13 entire proceeding, Mr. Lakey had not been deposed. And
14 so, you know, Mr. Lakey has documents that came with him
15 today that nobody has seen. We're taking them up as we
16 come, and we're doing what we can to try and be as
17 thorough as possible given the truncated nature of the
18 schedule that we have.

19 HEARING OFFICER: No limitation, Mr. Bromley.
20 I just was observing the reason why I was passing over
21 you is all. So go ahead.

22 MR. BROMLEY: And thank you, Director. And I
23 appreciate that.

24 ///

25 ///

1 CROSS-EXAMINATION

2 QUESTIONS BY MR. BROMLEY:

3 Q. Mr. Lakey, hi, Chris Bromley. I'm here on
4 behalf of Sun Valley Company today.

5 You've been having back-and-forth
6 communication with the calling senior parties, is what
7 I've understood in listening to your testimony today; is
8 that right?

9 A. Yes.

10 Q. And you've had some communications with the
11 Department of Water Resources, too; is that right?

12 A. Yes.

13 Q. The question I have, Mr. Lakey, is sitting
14 here today as the watermaster for Water District 37, are
15 you asking the director for curtailment of certain
16 groundwater rights?

17 A. No.

18 Q. Exhibit 37, do you have that in front of you?

19 It's one of these spreadsheet documents.

20 A. Yes.

21 Q. And this is South Valley/Galena Exhibit 37?

22 A. Yes.

23 Q. On the last page of this document, I was
24 wondering if you could tell me, the last water right
25 that's on this list is Matt McFall 37-0461 with a

1 priority of 7-17-1884.

2 Do you see that?

3 A. Yeah.

4 Q. Is there a reason that this sheet ends at
5 7-17-1884?

6 A. That's what fit in my printer at the time on a
7 page setup command.

8 Q. Okay. I was just wondering if there was any
9 significance to not having other water rights or not?

10 A. No. These were just notes to myself,
11 remembrances.

12 Q. In some prior days, Mr. Lakey, we've talked
13 about the Cottonwood decree rights.

14 A. Yes.

15 Q. Are you familiar with them?

16 A. Yes.

17 Q. And they all have 1899 priority dates?

18 A. Yes.

19 Q. Okay. In some prior testimony -- and I'm
20 looking to see if you can clear up any confusion -- do
21 you deliver those Cottonwood decree rights as 1899, or
22 do you deliver them as senior or something different
23 than the priority date that's on the decree?

24 A. In the past, I would characterize it as the
25 words you used, "something different."

1 Q. If you could explain "something different."

2 Thank you.

3 A. When I started as a watermaster, the deputy
4 watermaster on the Big Wood River right above Magic was
5 tasked with telling the watermaster when the dam at the
6 Glendale Road or the Glendale bridge went in. And he
7 said, "You need to know that so you can administer the
8 Cottonwood rights." That was the direction I got.

9 So that was what I carried forward until the
10 last year or so when Tim Luke said, "Let's administer
11 that as if it were a Big Wood below Magic priority
12 date." And so that's what we're doing this year.

13 Q. Okay. Thank you. I'd like to talk with you
14 about losses, just to hopefully get a better
15 understanding, maybe.

16 So do you -- and let's just start at
17 Sportsman's. Do you know what the losses are between
18 Sportsman's and Station 10?

19 A. No.

20 Q. What about Station 10 to Station 54?

21 A. Not specifically, no.

22 Q. And by "not specifically," do you have a range
23 in mind between there or just no number at all?

24 A. 10 to 20 percent, depending on flows.

25 Q. Between Station 54 and Station 14?

1 A. No idea whatsoever.

2 Q. Okay. And then between Station 14 and Station
3 16?

4 A. No.

5 Q. All right. You're tasked with delivering
6 water in priority; correct?

7 A. Correct.

8 Q. Do you think it's helpful to understand what
9 the losses are in river reaches to ensure that you're
10 delivering water in priority?

11 A. No. Like I said in earlier testimony, it's
12 built into the system, whether it's on the Big Wood or
13 the Little Wood. We have an idea of how much water is
14 going to come from upstream in a curtailment, but it's
15 always different from flow to flow, so it's difficult to
16 say, okay, now on July 1st I know there will be a
17 15 percent loss on any curtailed water above Station 54.
18 I don't know that. It's just too random and variable.

19 So we make a shot at it, bring the water down.
20 If that's not perfect, we may be long, we may be short,
21 but to try to estimate the seepage losses to a number
22 perfectly would be very difficult.

23 Q. But you could -- if you had a station above
24 and a station below, you could measure water in, water
25 out?

1 A. Possibly.

2 Q. And that would probably help you, I would
3 think, in delivering water in priority so that you're
4 making sure that water isn't being wasted out the bottom
5 end of the system?

6 A. Water is wasted out the bottom of the system
7 quite a bit.

8 Q. So is there anywhere in the Little Wood system
9 below Station 10 where the river dries up?

10 A. Say that again. Below where?

11 Q. So below Station 10, we're bringing -- I'm
12 just thinking about this on the map in my head. So
13 we're coming out of Sportsman's, we're going through
14 Station 10 past Richfield and on down.

15 Is there anywhere below Station 10 where the
16 river dries up?

17 A. I believe it has at times at 54 when Magic was
18 taking more than what they were putting in at times.
19 They were trying to make adjustments within their system
20 at Richfield or Dietrich, and they will miss it, maybe
21 because of demand within their system. And then they
22 will run what we call the mouth of the Jim Byrns Slough
23 short and still be delivering their water to Dietrich.
24 So then they'll try to get that corrected. But I
25 believe there are times when because of that, Station 54

1 has gone, basically, dry.

2 Q. So then below Station 54, is there anywhere,
3 when you're delivering water in priority -- and I'm
4 thinking about senior priority dates --

5 A. Correct.

6 Q. -- so 1883 and senior -- where the river is
7 drying up below Station 54?

8 A. Is that a question?

9 Q. It is.

10 A. Please rephrase it. Thanks.

11 Q. Sure. So below Station 54, when you're
12 delivering senior priority dates, 1883 and senior, does
13 the river dry up anywhere, or is it continuing to flow
14 past Station 54?

15 A. If it's dry at 54, there would be no more flow
16 movement below 54.

17 Q. So I'm asking, below 54 when you're delivering
18 1883 water, does the river dry up anywhere below that,
19 or is it continuing to flow out the system?

20 A. I'm sorry, if it's dry at 54, there would be
21 no more flow past 54.

22 Q. I'm asking below 54. So once you're past
23 Station 54 and you're delivering 1883 water below
24 Station 54. So there's live flow coming past Station
25 54 --

1 A. Not if it's dry.

2 Q. That's not what I was saying. Let me try and
3 rephrase this.

4 There's water coming in through Station 54.

5 A. Is it dry, or is there water there?

6 Q. That's what I just said, there's water there.

7 A. Okay.

8 Q. Yeah. So water is flowing past Station 54.

9 A. Okay.

10 Q. Okay. We've gotten past the station. You're
11 delivering 1883 water below Station 54.

12 A. Correct.

13 Q. Once you've done that to your first headgate
14 after Station 54 with 1883 water, is there anywhere
15 below that where the river is then drying up, or does
16 the river continue to flow?

17 A. It continues to flow.

18 Q. So when you're delivering 1883 water past
19 Station 54, there's nowhere where the river is drying
20 up, it's continuing to flow in, and does it run out the
21 end of the system?

22 A. Yes.

23 Q. On administration, there was a statement
24 earlier, I believe it was from Mr. Luke --

25 A. Could I stop you for a second?

1 Q. Sure.

2 A. Let's go back to that last question.

3 Q. Yeah, absolutely.

4 A. If there were a priority adjustment made at
5 54, that is a zero-sum adjustment. I try to get that
6 within fractions of a cfs to get it right. The water
7 that would be leaving the bottom of the system is
8 American Falls 2/Big Wood water. So that spillage is
9 theirs. Mine is -- I try to figure that to a zero sum,
10 because my water is riding on top of their water.

11 Q. Okay. That helps. That helps me.

12 A. Okay.

13 Q. So what you're saying, then, is at 54, you're
14 zeroing out --

15 A. Yes.

16 Q. -- Little Wood rights?

17 A. Correct.

18 Q. The additional water, then, that's going out
19 the system, that's coming from -- either from Magic or
20 AFRD2 or some --

21 A. Correct.

22 Q. -- some combination?

23 A. Correct.

24 Q. Thank you. In prior testimony, we've heard
25 reference, potentially, of moving to computerized

1 accounting in Basin 37.

2 Do you understand what I mean by "computerized
3 accounting"?

4 A. I think so.

5 Q. So what we see in Water District 1 would be an
6 example, in my mind, of computerized accounting?

7 A. I'm not aware of any Water District 1
8 accounting, so I can't answer that.

9 Q. So then what do you think "computerized
10 accounting" is?

11 A. A computer will take -- maybe a computer --
12 there would be software that would be -- information
13 would be entered into the software that would make
14 calculations based on flows at whatever stations there
15 might be, and add up water or subtract water and make an
16 adjustment.

17 Q. Okay. Have you had any discussions with the
18 Department or water users about moving to a computerized
19 accounting system?

20 A. Yes.

21 Q. Who have you talked with?

22 A. Tim Luke.

23 Q. Okay. Mr. Lakey, I'd like to talk with you
24 about one of these new documents that we got, and
25 it's -- I've marked it as Sun Valley 1.

1 (SV Exhibit 1 marked.)

2 MR. BROMLEY: Director?

3 HEARING OFFICER: Oh, sorry. Thank you.

4 MR. BROMLEY: If we can just go off the record
5 quickly.

6 HEARING OFFICER: Let's go off the record.

7 (Break taken.)

8 HEARING OFFICER: Back on. We're recording
9 again?

10 MS. JENKINS: Yep.

11 HEARING OFFICER: Mr. Bromley?

12 MR. BROMLEY: Thank you.

13 Q. (BY MR. BROMLEY) And, Kevin, if you could
14 also have IDWR Exhibit 2 in front of you. I'm not sure
15 where those --

16 A. Okay.

17 Q. -- those are. That's the Jennifer Sukow memo.

18 A. Okay.

19 Q. And if you could turn to page 21 of IDWR 2,
20 and it's a table, Table 1; is that correct?

21 A. I think so, yes.

22 Q. Okay. Good. Hopefully, we're both on the
23 same page there.

24 Okay. Looking at Sun Valley Exhibit 1, my
25 understanding is this was a document that was -- that

1 you brought with you today; is that correct?

2 A. That is correct.

3 Q. So at the top here of Sun Valley 1, I see a
4 column that says [as read] "Curtailment scenario with no
5 curtailment." And I also see a column that says,
6 "Completed 6/5 with J. Sukow Stream Estimates."

7 A. That's correct.

8 Q. What are those columns, if you could just
9 please describe what you're talking about there?

10 A. The current scenario with no curtailment were
11 my estimated curtailment dates. And the second column
12 with the "J. Sukow" column heading is adding her water
13 in.

14 Q. So what I'm interested in, then, is by adding,
15 as you say, her water in, is her water what's in Table 1
16 of IDWR Exhibit 2, or is it something else?

17 A. Without seeing the documents that I used to
18 develop this, I'm not sure exactly the amounts to be
19 able to compare the two. I'm not sure.

20 Q. Actually, I should have had you on page 25,
21 Mr. Lakey, which is Table 2. And that was my mistake in
22 writing it down wrong.

23 HEARING OFFICER: And this is page 25 of IDWR
24 Exhibit 2.

25 MR. BROMLEY: That's correct, Director.

1 Q. (BY MR. BROMLEY) So IDWR Table 2, page 25 of
2 IDWR Exhibit 2, these are responses to curtailment that
3 were computed by Ms. Sukow using the model, as I
4 understand it, from her testimony.

5 In Sun Valley Exhibit 1, with the column,
6 "Completed 6/5 with J. Sukow Stream Estimates," what
7 water were you using, if it's something other than
8 Table 2, page 25?

9 A. Without seeing the backup document to this,
10 I'm not sure if I got the numbers exactly the same as
11 her numbers or what the correct percentage of loss is.
12 I was estimating percentage of loss. I think I had
13 said, in testimony from Mr. Barker, that I think I may
14 have used 25 percent seepage loss. So I can't really
15 compare the numbers from Sun Valley 1 to the Sukow
16 document.

17 Q. So then I guess I'm trying to understand what
18 you were using to compute this Column, "6/5 with
19 J. Sukow Stream Estimates"?

20 A. I can't say without my other document. I just
21 made this -- basically, the blue book as notes to myself
22 and to make sure I could at least have some kind of a
23 guess at something if I were asked. Because I would, by
24 no means, suggest that this is something that the
25 Department of Water Resources is going to take into

1 advisement or whatever. These are just numbers that I
2 was trying to make estimates of what might happen.

3 Q. As the watermaster, if water is curtailed in
4 the Bellevue Triangle, and it's water that -- let's say
5 it shows up at Sportsman's, will you be able to shepherd
6 that water down to the calling seniors?

7 A. It depends on what seniors are still on.

8 Q. So the seniors that are being represented here
9 today by Mr. Rigby, we know who they are?

10 A. Yes.

11 Q. So if that water -- let's just say it shows up
12 at Sportsman's, are you going to move that water down to
13 the calling seniors, or will you let other people divert
14 who are upstream who may also be senior to those calling
15 parties?

16 A. They would have the right to do that if
17 they're senior, yes.

18 Q. So the water, then, that flows past
19 Sportsman's that manifests from curtailment, you're not
20 going to shepherd that specific amount of water down to
21 the calling seniors, you're going to have other seniors
22 taking in priority on the way down; is that correct?

23 A. It depends on whether they're on or not. So
24 can we use an example?

25 Q. Absolutely.

1 A. If the 4-1 of '83 were the only right on,
2 there would be only the perpetuals in 1877 above
3 Sportsman's or anywhere around Sportsman's that would be
4 in priority to take that water. There would be no
5 other. So the September of '83 would be off; they would
6 not be allowed to divert. June '83 would be off; they
7 would not be allowed to divert.

8 Q. So other water users besides the water users
9 represented by Mr. Rigby, if they're senior, you would
10 turn them back on?

11 A. Yeah. That's -- I believe there was testimony
12 of that earlier, that the September of '83 and the June
13 of '83 would have some benefit from curtailment, yes.

14 Q. Even though they're not calling parties here
15 today?

16 A. That's correct.

17 Q. The last question I have, Mr. Lakey, is: Do
18 you consider how much water is being actually diverted
19 by the senior, or do you just administer to the quantity
20 that's on the decree?

21 A. I'm not sure I understand your question or the
22 difference.

23 Q. Yeah. So what I think this is getting at is
24 if the senior has a need for diversion of something less
25 than the decreed amount, do you just assume that you're

1 delivering to the decree amount, or do you say, okay,
2 I'm told that the water user needs something less than
3 the decree, and I'm going to pass the rest downstream to
4 somebody else?

5 A. In the past, we have just taken into account
6 what we're reading at one of those exhibits and saying,
7 it looks like there's 24, let's keep 24 there. Because
8 we don't necessarily know -- like I said, our deputies
9 check headgates every other day or every two or three
10 days. So we don't know exactly when that water needs to
11 be there. So in order to not short the canal company,
12 we keep that water there at all times.

13 Q. Okay. One last question, just building off of
14 that, we've heard some testimony yesterday that
15 sometimes water users have agreements that, I don't need
16 all of this, you take the rest of it.

17 Are you brought into that conversation when
18 water is being moved around between users?

19 A. When it's an emergency drought transfer or if
20 it's the canal company water, I will be brought into it,
21 yeah.

22 Q. So there may be some communication that you're
23 not aware of?

24 A. Usually not. If they're going to do it,
25 they'll let me know so that I know a particular diverter

1 is taking a neighbor's water.

2 MR. BROMLEY: Okay. Thank you. Nothing
3 further.

4 HEARING OFFICER: Thank you, Mr. Bromley.

5 MR. LAWRENCE: Mr. Director?

6 HEARING OFFICER: Yes, Mr. Lawrence.

7 MR. LAWRENCE: Just a couple of questions.
8 Thank you, Mr. Director.

9

10 CROSS-EXAMINATION

11 QUESTIONS BY MR. LAWRENCE:

12 Q. Hello, Mr. Lakey. My name is Mike Lawrence.
13 I represent the City of Hailey. Just a couple of
14 questions.

15 Do you know of any changes in how the water
16 district administers water rights comparing
17 pregroundwater pumping era to today?

18 A. Do I know of any management practice
19 differences?

20 Q. Sure.

21 A. No.

22 Q. And, however, you've testified that you
23 received instructions on how to administer the exchange
24 conditions; correct?

25 A. That is true, yes.

1 Q. And you intend to administer the exchange
2 conditions in accordance with the instructions; correct?

3 A. Yes.

4 Q. So is that an example of how future
5 administration of water rights in the Basin may differ
6 than it has historically occurred?

7 A. With the exchange conditions, yes.

8 MR. LAWRENCE: That's all I have. Thank you.

9 HEARING OFFICER: Thank you, Mr. Lawrence.

10 Mr. O'Bannon, any questions?

11 MR. O'BANNON: No, thank you.

12 HEARING OFFICER: How much redirect do we
13 have?

14 Do we want to break for lunch, or do you want
15 to try to finish?

16 MR. RIGBY: Could we break for lunch? There
17 may be just a couple of questions, but I'm unclear what
18 they might be at this point.

19 HEARING OFFICER: You want to break? That's
20 your suggestion?

21 MR. RIGBY: That's our suggestion. It will
22 not be long, very short.

23 HEARING OFFICER: All right. Let's break for
24 lunch and come back at, approximately, 1:30. Mr. Lakey,
25 I'm sorry.

1 THE WITNESS: No problem.

2 MS. CARTER: Director, just one point of
3 cleanup. Did you want your exhibit admitted?

4 MR. BROMLEY: Yeah, Chris Bromley. Back on
5 the record. The document that was marked SV 1, we'd
6 move to admit that into evidence.

7 HEARING OFFICER: Any objection to admission
8 of this document?

9 Very well, the document marked as Sun Valley
10 or SV 1 is received into evidence.

11 (SV Exhibit 1 received.)

12 HEARING OFFICER: Thank you, Meghan.

13 MR. BROMLEY: Thank you.

14 HEARING OFFICER: All right. Let's break for
15 lunch.

16 (Lunch break taken.)

17 HEARING OFFICER: All right, Andrea, we're
18 back on the record.

19 And we're recording again, Megan?

20 MS. JENKINS: Yep.

21 HEARING OFFICER: We're back after the lunch
22 recess.

23 Redirect Mr. Fletcher?

24 MR. FLETCHER: Mr. Rigby is going to handle
25 that, Your Honor.

1 HEARING OFFICER: Mr. Rigby?

2 MR. RIGBY: Thank you, Mr. Director. Just one
3 area of questioning.

4

5 REDIRECT EXAMINATION

6 QUESTIONS BY MR. RIGBY:

7 Q. Mr. Lakey, would you pull up IDWR Exhibit
8 No. 3, which I believe is Mr. Blankenau's staff memo?

9 A. Yeah. Yes.

10 Q. And turn to page 10.

11 A. Okay.

12 Q. The last paragraph, which was previously
13 discussed between Mr. Barker and, I guess, myself and
14 the Director. But let's read that last sentence again,
15 if you wouldn't mind.

16 A. "This analysis did not clearly identify water
17 shortage in the Little Wood and Silver Creek area during
18 the 2013 drought. It is possible that some fields in
19 this area were water short, but additional information
20 would be required to make conclusions about the water
21 supply of individual fields."

22 Q. So as to any additional information, that's
23 the area I want to address here, I'll represent to you
24 -- and maybe you've heard the discussion of Mr. Luke
25 that recognized there may have been additional sources

1 of water that would then not show any stress on the
2 crops from just the decreed water. And there's also
3 been some testimony, I'll represent, that in dry years
4 parties would share water, so to speak, with each other,
5 just to make sure neighbors get by.

6 Do you have any personal information,
7 especially as to the particular year 2013, that this is
8 addressing, that that, in fact, did occur?

9 A. Yes, water was rented in 2013.

10 Q. And were there -- was there sharing going on
11 as -- did you hear that testimony? Let me just ask you
12 that first.

13 You weren't here during that or online?

14 A. Yeah, I don't recall.

15 Q. Let's ask it this way: Were you aware of any
16 sharing that, then, was going on to make crops meet
17 their needs?

18 A. In 2013, there was a Little Wood River
19 Association that rented water out of Idaho Falls, I
20 believe, and brought it through Water District 1 and on
21 into the waters of Water District 37. And they rented a
22 block of water, and so each member of that association
23 spoke up for so many acre-feet, and each one of them
24 then paid their share of that block of water that they
25 got.

1 Q. And so, therefore, even though you're not an
2 expert in ET, would that help to explain this statement
3 made by Mr. Blankenau?

4 A. Oh, yes. Yeah. There would be additional
5 water that was available in 2013, yes.

6 Q. And so crops may not necessarily show the
7 stress that, apparently, ET is attempting to show?

8 A. Yeah. I would say that, yes.

9 MR. RIGBY: Okay. No further questions.

10 HEARING OFFICER: Okay. Mr. Barker?

11 MR. BARKER: Thank you, Mr. Director.

12
13 RECROSS-EXAMINATION

14 QUESTIONS BY MR. BARKER:

15 Q. Mr. Lakey, this water that was rented by the
16 association, do you know how much it was?

17 A. Not exactly, no.

18 Q. Not exactly or not even a ballpark?

19 A. I think it was 1,500 to 2,000 acre-feet,
20 somewhere in that neighborhood.

21 Q. And you have Mr. Blankenau's memo in front of
22 you?

23 A. Yes.

24 Q. Would you turn to page 4.

25 So if -- this water came from the Upper Snake,

1 is that what you said?

2 A. Yes.

3 Q. Was it delivered to lands above the canal?

4 A. No.

5 MR. BARKER: No further questions.

6 HEARING OFFICER: Okay. Any other questions?

7 Ms. O'Leary?

8 MS. O'LEARY: No, Director.

9 HEARING OFFICER: Group 3 any questions?

10 MR. BROMLEY: No.

11 HEARING OFFICER: Mr. O'Bannon has left us, I
12 think. I don't see him.

13 Okay. Thank you, Mr. Lakey.

14 THE WITNESS: Okay.

15 HEARING OFFICER: You got off easy this
16 afternoon.

17 The next witness, Group 1, Mr. Rigby or
18 Mr. Fletcher?

19 MR. RIGBY: We'd call Eric Miller.

20 HEARING OFFICER: Mr. Miller, if you'll come
21 forward, please. I'm going to make some space for
22 Mr. Miller to deposit his notebook.

23 (Discussion held off the record.)

24

25

ERIC MILLER,

1 first duly sworn to tell the truth relating to said
2 cause, testified as follows:

3 HEARING OFFICER: Thank you. Please be
4 seated.

5 Mr. Rigby?

6 MR. RIGBY: Thank you, Mr. Director.

7

8 DIRECT EXAMINATION

9 QUESTIONS BY MR. RIGBY:

10 Q. Good afternoon.

11 A. Good afternoon.

12 Q. Please state your full name and current
13 address.

14 A. My name is Eric Miller, and my current address
15 is 2202 West 8200 South Rexburg, Idaho 83440.

16 Q. And are you currently employed?

17 A. I am self-employed.

18 Q. And what's your job title?

19 A. My current job title is principal earth
20 scientist.

21 Q. And do you -- is that an entity that you
22 formed or is it a d/b/a?

23 A. It is an entity that I have formed, a d/b/a.

24 Q. And what are your current job duties?

25 A. I generally do general environmental science

1 and also groundwater modeling, in addition to that.

2 Q. And how long have you been self-employed or
3 working through that entity?

4 A. Most recently, I've been doing this
5 approximately a year and a half. But prior to that, I
6 had approximately six years of experience also doing my
7 own company through a d/b/a.

8 Q. And what was that?

9 A. That was called Equus International.

10 Q. And what was your job duties -- what were your
11 job duties under that entity?

12 A. Essentially, the same as now, general
13 environmental science.

14 Q. And more specifically, what were the types of
15 jobs you would work on through environmental science?

16 A. All sort of analysis permitting, I've done a
17 lot of permitting work, computer --

18 Q. What type of -- excuse me -- but what type of
19 permitting?

20 A. Permitting could be -- examples of that,
21 wastewater reuse permits, Army Corps joint application
22 permits, those kinds of permits are things that I would
23 typically do.

24 Q. And you said that entity was named what again?

25 A. The earlier one?

1 Q. Yes.

2 A. Equus International.

3 Q. And prior to that, were you employed by
4 anyone?

5 A. I was. I worked for 19 years at the Idaho
6 National Laboratory.

7 Q. Under which of their names or what entity?

8 A. Under a wide variety of names, which I do not
9 have. If I could refer to my resume, I could tell you,
10 but there was a variety of names.

11 Q. Well, in fact, let me just ask you: Have you
12 prepared a resume --

13 A. Yeah.

14 Q. -- of your --

15 A. I have.

16 Q. -- past employment?

17 A. I have, yes.

18 Q. We'll get to that, but it's --

19 A. Okay.

20 Q. -- right now it's marked as Exhibit No. 5. In
21 fact, it's Miller Exhibit No. 5; is that correct?

22 A. I don't know what the -- do I have that in
23 front of me?

24 Q. You do.

25 A. Let me verify.

1 Q. Refer to that at the beginning of the book. I
2 think you're the first tab or the second tab, "Miller."

3 A. Okay, I see that.

4 Q. If you'll go to Miller 5.

5 A. Yes, I am there.

6 Q. Okay. Is that the resume --

7 A. That is.

8 Q. -- of which you speak?

9 A. Yes.

10 Q. Okay. So let's continue on, though, orally
11 describing what most likely is covered in the resume
12 anyway.

13 A. Okay.

14 Q. So were you employed by GeoEngineers?

15 A. I was employed for eight years, previous to my
16 current situation, with GeoEngineers, yes.

17 Q. And, again, what were your job
18 responsibilities with GeoEngineers?

19 A. My primary -- my job title with them was
20 senior hydrogeologist. My job description was specific,
21 in this case, to groundwater modeling and related
22 surface water modeling.

23 Q. And what type of models would you, generally,
24 be dealing with?

25 A. Typically, I was generating MODFLOW

1 simulations.

2 Q. And, specifically, how would -- what type of
3 MODFLOW simulations would you deal with?

4 A. You're referring to what applications I might
5 model?

6 Q. Correct.

7 A. Okay. Typically, it was either groundwater or
8 contaminant transport, for purposes of things like water
9 delivery, capture zone analysis, dewatering analysis.
10 In the cases of contaminant transport, it was designed
11 to determine contaminant concentration and source of
12 contaminants at various locations.

13 Q. And was this done for specific clients?
14 Specific groups? What was it done for?

15 A. A variety. Some of our clients may have been
16 -- the City of Redmond was a large model we put together
17 for the City of Redmond to do capture zone analysis for
18 their municipal wells.

19 Another example would be Vulcan, which was the
20 real estate arm of Paul Allen's group in Seattle, to do
21 contaminant transport modeling for some of his
22 properties in downtown Seattle. So for that we had to
23 put together a simulation of groundwater transport and
24 contaminant transport in the downtown Seattle area.
25 Most of Seattle was included in that.

1 Q. In using MODFLOW, as you did for these
2 particular purposes, would that be similar to using
3 MODFLOW which the Department has used it in the past, to
4 your knowledge?

5 A. Very similar processes would be involved, yes,
6 in my opinion.

7 Q. Looking for maybe different outcomes?

8 A. I would not say that they're significantly
9 different. Any model is, really, designed to model
10 groundwater transport, and it can be tailored to
11 specific outcomes, but in general, they can be used to
12 model groundwater transport and, perhaps, contaminant
13 transport, if that becomes an interest.

14 Q. How many, would you estimate, various projects
15 that you worked on for this modeling?

16 A. I would say, over the eight years I was with
17 them, I probably put together and calibrated 10 to 15
18 MODFLOW simulations.

19 Q. And have you continued to keep yourself up to
20 speed or apprised as to modeling?

21 A. I have. Although I will admit, after moving
22 away from the Seattle area, I've had less customers in
23 the modeling department, but I do maintain my licenses
24 to the software to allow me to do MODFLOW simulations
25 through GMS through the Aquaveo platform, yes.

1 Q. So let's talk about --

2 COURT REPORTER: Wait, wait. Say that again,
3 through the what platform?

4 THE WITNESS: Aquaveo GMS.

5 Q. (BY MR. RIGBY) So let's talk about your
6 education and experience and licensing.

7 First of all, what is your education?

8 A. I have an undergraduate degree in chemistry, a
9 master's degree in environmental science and waste
10 management, and part of my education was a Ph.D. program
11 in vadose zone science that I did not finish the
12 dissertation on for a variety of reasons. But the
13 coursework was completed in vadose zone science for
14 Ph.D.

15 Q. Any additional education or --

16 A. You know, yearly or semi-yearly training in
17 MODFLOW could be included in that.

18 Q. Do you have any professional registrations or
19 certificates?

20 A. I do not.

21 Q. So what experience qualifies you as an expert
22 in groundwater modeling or hydrology -- hydrogeology?
23 Sorry.

24 A. Yes. Well, I would say that during my time at
25 INEL, I was tasked with supervising and reviewing

1 groundwater modeling under -- I was the cost account
2 manager for the program that developed the initial
3 groundwater model for the Snake Plain.

4 And as part of that responsibility at INEL, I
5 had to review and made comments and recommend changes to
6 that modeling effort. Of course, my eight years of
7 experience at GeoEngineers. In addition to that, I
8 currently work on doing simulations that support
9 wastewater reuse permit applications, which requires an
10 analysis of groundwater flow and contaminant transport
11 for those applications.

12 Let's see, other examples? I have some
13 written down. I'm currently involved in a project at
14 the INEL to do modeling of both chemical and
15 radionuclide transport for risk assessment analysis of
16 NRF at the Idaho National Laboratory. So those are some
17 examples of a variety of things I model and look at.

18 Q. So those that you've spoken to thus far are
19 generally groundwater; correct?

20 A. They are. That is correct.

21 Q. So what experience do you have in surface
22 water modeling?

23 A. Well, in any fraction of groundwater models
24 that you will put together, there will be the need to
25 couple those with the surface water, as was done in the

1 case of the Wood River Valley model, where you,
2 essentially, are asking questions about how surface
3 water and groundwater are interrelated.

4 So whenever you put those kinds of models
5 together, you necessarily have to deal with the surface
6 streams and surface discharges and relationships in that
7 way. So that would be an example of the experience that
8 I would have in, I would say, surface water hydrology,
9 as opposed to modeling.

10 The distinction is surface water modeling is,
11 typically, the purview of a licensed engineer that would
12 do hydraulic analysis, as opposed to surface water
13 hydrology, which is more something I have had experience
14 with.

15 Q. So do you consider yourself an expert in the
16 ability to model both surface and ground, then?

17 A. I consider myself an expert in groundwater
18 modeling and an expert in surface water hydrology, not
19 surface water modeling.

20 Q. However, as you testified, in groundwater
21 modeling it does incorporate some of the surface water;
22 is that right?

23 A. In a large fraction of models you have, you're
24 looking at situations where you want to understand the
25 relationship between surface water and groundwater, yes.

1 Q. What's your experience with evaluating water
2 rights?

3 A. Well, it was limited prior to my beginning of
4 this particular project, but that began in about, I
5 think, February of 2019. And since that time, I am
6 embarrassed to say that I've bothered the Director and
7 his staff probably three or four times a week on
8 questions of water rights, and so I've become somewhat
9 conversant in water rights through that time. So I
10 would say two years, more than two years.

11 Q. How about, then, as a result of that, your
12 experience and expertise in irrigation efficiency?

13 A. Yeah, so I deal with systems in a variety of
14 projects. Currently, I'm working with Madison County on
15 a FEMA-floodplain-related project where we have to
16 evaluate both natural streams and associate the
17 irrigation systems as they pertain to flood issues and
18 to analyze them for ways in which we can mitigate for
19 floods, through both the natural channels and the
20 irrigation and ditch systems.

21 And I'm involved in other projects in Madison
22 County dealing with their natural streamflow and
23 irrigation systems. I have dealt with various canal
24 companies in terms of joint application permits for
25 their canals. And those include Sunnydale Irrigation

1 District and Lenroot Canal Company, which I think we
2 have a current pending Army Corps permit with them.

3 Q. What about crop irrigation water requirements?

4 A. So as part of my responsibilities as a general
5 environmental scientist, I do a lot of applications for
6 wastewater reuse to Department of Environmental Quality;
7 and as part of that, we are required to deal with crops
8 in both irrigation efficiencies of crop irrigation
9 requirements. And I've had that experience for more
10 than ten years, having to both develop permit
11 application packages and also yearly reporting to
12 Department of Environmental Quality, which requires me
13 to be expert in those issues.

14 Q. Did that involve any irrigation return flows?

15 A. Yes. That's part of what one typically has to
16 do and look at when you're making application and/or the
17 yearly reporting.

18 Q. So, again, for purposes of qualifying you as
19 an expert, the question then is: What have you been
20 tasked to review for the purposes of testifying at this
21 administrative hearing?

22 A. Well, I've been tasked with reviewing all of
23 the staff memos that were produced by the Department,
24 which I believe touch upon most, if not all, of the
25 expertise that I've just articulated.

1 Q. And that would be the four that have been
2 testified to here. And were you sitting here during
3 those -- excuse me -- those witnesses' testimony?

4 A. Yes, I was.

5 Q. Very good. And have you -- are you prepared,
6 then, to testify as to the task of reviewing those?

7 What was the -- let me ask you this: What was
8 the purpose of you reviewing them?

9 By that, I'm asking, are you -- were you to
10 contest them, to refute them, to support them? What was
11 the purpose?

12 A. The purpose, in my mind, was to review them,
13 essentially, to prepare to discuss any similarities or
14 differences I might have and render an opinion thereto.

15 MR. RIGBY: Very good. So, Mr. Director, I
16 would tender this witness as an expert for the purpose
17 of this hearing as to the issues and intended testimony
18 that this witness intends to provide.

19 HEARING OFFICER: Any objection to the
20 recognition of this witness as an expert, for the
21 purposes described by Mr. Rigby?

22 MR. THOMPSON: I guess, Mr. Director, I'll
23 stipulate to Rule 600 as evidence coming in under that
24 rule.

25 MS. MCHUGH: I will -- should I object?

1 I object to Mr. Miller being an expert in
2 water rights. He said he was somewhat conversant. He
3 doesn't even consider himself an expert. So I would
4 object to any offer to give any expert opinion on water
5 rights.

6 I also heard him talk about crop irrigation
7 requirements and irrigation efficiencies; he alluded to
8 helping with permits and as a general environmental
9 scientist with DEQ. I don't think that renders him an
10 expert in irrigation -- crop irrigation requirements or
11 irrigation efficiencies without more foundation there.
12 So those are my two objections. I don't object to him
13 being offered as an expert in water.

14 HEARING OFFICER: Okay. Mr. Thompson, I don't
15 have Rule 600 in front of me. I could retrieve it. Why
16 don't you just -- how long is it?

17 MR. THOMPSON: Well, it just says you're not
18 bound by the rules of evidence. You can take any
19 evidence in the type commonly relied upon by persons in
20 the conduct of their affairs, so I think it's kind of a
21 catchall. I do have concerns, and I'll raise those in
22 cross-examination, about certain areas, and I think that
23 probably goes to the weight of the witness's testimony.

24 HEARING OFFICER: And based on Mr. Thompson's
25 statement, Ms. McHugh, I will recognize Mr. Miller as an

1 expert witness. And if you want to try to discredit his
2 qualifications in some way, you can do it on
3 cross-examination.

4 MS. MCHUGH: Thank you.

5 Q. (BY MR. RIGBY) Okay. So, Mr. Miller, again,
6 referring to Miller Exhibit No. 5, you've already
7 indicated that this is your resume?

8 A. It is.

9 MR. RIGBY: I would then move that this
10 exhibit, Miller Exhibit No. 5, be admitted.

11 HEARING OFFICER: Any objection to the
12 admission of Miller No. 5?

13 Based on no responses, the document marked as
14 Miller Exhibit No. 5 is received into evidence.

15 (Miller Exhibit 5 received.)

16 Q. (BY MR. RIGBY) So, Mr. Miller, as you
17 testified as to the tasks that you were assigned, in
18 preparing to present for those tasks, did you prepare an
19 opinion as such or a memo as such in dealing with that?

20 A. I prepared a report that discussed various
21 aspects that I felt were important after reviewing those
22 memos, yes.

23 Q. Would you look at Miller Exhibit No. 1 that,
24 again, is before you.

25 A. All right. Yes.

1 Q. And this report, would you consider, then, to
2 be your expert report?

3 A. It is, yes.

4 Q. Again, it may be a little redundant, but what
5 was your source that you, then, reviewed in order to
6 create this report?

7 A. In terms of the staff memos, are you referring
8 to?

9 Q. Let's start there.

10 A. Well, much of this -- I will say part of this
11 was based on an existing understanding of the modeling
12 that the Department has done, and also a further
13 curtailment study as part of Jennifer Sukow's staff memo
14 of 2021.

15 Q. So if you were to categorize -- before we get
16 into the details of the report, if you were to
17 categorize the areas that you focused, what would that
18 be?

19 A. I really focused on this -- in computing there
20 was three areas that I really, I think, focused on here.

21 Q. Yeah, that's what I'm asking. The three
22 areas --

23 A. Yeah.

24 Q. -- let's talk about those.

25 A. So the first one would be, essentially,

1 computing what I felt would be a depletion that would be
2 represented in the system based on the assumption of a
3 zero curtailment for 2021.

4 Q. Okay. The next one?

5 A. Essentially, doing a general computation of
6 the cutoff date for the average farmer in the Little
7 Wood River/Silver Creek drainage if no curtailment were
8 to be done. And under various scenarios if a
9 curtailment occurred.

10 Q. So either if a curtailment occurs or if there
11 is no curtailment?

12 A. Right.

13 Q. All right. And the third one?

14 A. Oh, let me review that. The last one really
15 represented a computation that represented a date upon
16 which I felt that the accrued depletions for 2021 would
17 exactly equal the possible curtailments that could occur
18 to determine that balance point. And I stated a date in
19 here in the document in that regard.

20 Q. We'll get into -- sorry. We'll get into the
21 details later.

22 A. Okay.

23 Q. Let's jump back, then, to No. 1, which is
24 computing the depletions in the system in 2021.

25 A. Right.

1 Q. Let's, again, ask you what your sources were
2 and what you reviewed before you did your computing?

3 A. Very well. So I will start by saying, I do
4 not currently have access to a MODFLOW version of the
5 Department's model. So I'm, necessarily, limited to
6 using output from that model to make any computations at
7 this point. So for this particular computation or
8 analysis, I relied upon the 2007 simulation results from
9 the Jennifer Sukow 2019 curtailment study.

10 Q. And that would be in her IDWR No. 2, I
11 believe, memo, staff memo?

12 A. I don't know what it's designated as, so I
13 can't comment to that without seeing the document.

14 Q. You'd think I'd have it down by now. Yes,
15 it's IDWR No. 2. That would be her staff memo. Is
16 that --

17 A. From 2019?

18 Q. Which included 2019, as I believe. You had
19 the 2021 and then the 2019 was attached to it.

20 A. Well, I need to be clear. My analysis for
21 this part of this was based upon only the 2019
22 curtailment memorandum.

23 Q. Very good. And what did you, then, use from
24 that 2019 that was already done by the MODFLOW that you
25 did not have?

1 A. Right. So, essentially, what I did is I
2 isolated -- the 2007 year was chosen because, in my
3 mind, represented isolation of a single year that would
4 be more advantageous for me to evaluate and base my
5 analysis on. And the day that I, essentially, pulled
6 the data directly from the IDWR's website for,
7 essentially, the responses to Big Wood and Silver Creek
8 based on her 2007 curtailment scenario.

9 Q. So did you approach it differently than she
10 did?

11 A. I did not approach it differently, but what I
12 did do that was different is, essentially, I assumed
13 that those depletions that were modeled for the
14 2007 year would be sequential and additive for a
15 three-year -- for any given three-year period, which was
16 an attempt to, essentially, use a single-year-model
17 output to somewhat informally model what would occur
18 under a multiyear pumping scenario.

19 Q. Do you believe that -- I mean, do you
20 understand that she did that analysis, or was this
21 strictly something you did in addition to her?

22 A. No. It was purely my own work and my own
23 approach.

24 Q. And what was the purpose of doing that?

25 A. Well, again, it was to try to estimate

1 multiyear pumping from a single-year event, because I
2 did not have the model.

3 Q. And why did you think that was important to do
4 a multiyear event?

5 A. Well, because according to Figure 9 of her
6 memo --

7 Q. And at what page?

8 A. Well, it's showing here on my expert report,
9 page 3, Figure 1.

10 Q. So, again, you're referring to Miller
11 Exhibit 1, and you've re-created --

12 A. Yes. Essentially, that's a reprint from Sukow
13 2019. And what, in my mind, it really represented was
14 the fact that it's any given single-year pumping results
15 and, approximately, a three-year impact to the system
16 when taken by itself.

17 Q. Well, correct me if I'm wrong, then. You say
18 that she didn't approach that. Her graph actually does
19 address the impacts for more than one --

20 A. I would grant that. She didn't --

21 Q. You're going to have to wait until I'm done --

22 A. Sorry.

23 Q. -- asking the question so we don't talk over
24 each other.

25 A. Okay.

1 Q. So isn't it true, then, that graph actually
2 does depict that?

3 A. I would -- yes, it does.

4 Q. So although the graph does, she didn't go into
5 depth, and you did; is that a fair statement?

6 A. I would characterize it differently. She has
7 the ability, with the model, to, of course, account for
8 explicitly multiyear pumping events and reporting those.
9 And so she, indeed, did that in her curtailment
10 scenarios. So all I did was take a single year and,
11 essentially, again, make the assumption that it was
12 cumulative and additive for three years.

13 Q. And, again, what conclusion did you draw from
14 that as opposed to Ms. Sukow's conclusion as to the
15 depletions?

16 A. Well, ultimately, on a -- in a total
17 volumetric basis, our numbers, actually, were very
18 similar in terms of the result.

19 Q. And what were your numbers pursuant -- and are
20 they depicted in your report?

21 A. They are. Using the approach I analyzed and
22 picking the -- and I'm referring now to Table 1 on
23 page 4.

24 Q. So, again, Miller Exhibit 1, page 4?

25 A. So these columns represent my computations

1 based on the 2007 run, assuming they were cumulative and
2 additive, and they take into account pumping from 2019,
3 2020, and 2021 to represent an impact in 2021. I
4 estimated that for the irrigation season of 2021 there
5 would be, approximately, 8,182 acre-feet of impact
6 during the irrigation season.

7 Q. And do you know what Ms. Sukow's conclusion
8 was?

9 A. She did not report that explicitly in her
10 report, to my knowledge, but I have computed, based on
11 her testimony and the support files from hers, that she,
12 essentially, computed that that value -- let me make
13 sure that I'm reporting this correctly -- the equivalent
14 value from Sukow's 2021 would be 8,861. So I
15 underestimated her value by some fraction in this case.
16 I don't have the percent in front of me.

17 Q. In your professional opinion, then, even
18 though you did it a different way, is that close enough
19 that -- I guess, is there a significant difference there
20 to be concerned about?

21 A. Not in my mind. I should note that we should
22 not expect fundamentally different answers, given that
23 my fundamental basis of the calculation was based on her
24 model, albeit, for one year. But, yeah, I do not
25 conclude that there's a significant difference in these

1 values, especially considering the uncertainty of any
2 model.

3 Q. So do you support her in her position and in
4 her conclusions?

5 A. I do.

6 Q. Is there anything else within your report --
7 expert report as to your first task, which is the
8 computation of deletion, that you need to address?

9 A. I do not believe so.

10 Q. Let's so move on to No. 2, which is the
11 computation of the farmers if no curtailment versus
12 curtailment.

13 First of all, where did you start as far as
14 your source is concerned?

15 A. Well, this computation really begins with the
16 watermaster's estimate of a day's run for each water
17 right within his district. I -- my recollection is that
18 I requested an estimate of the number of days that would
19 be run for each water right or vintage of water right,
20 class of water rights, if you will.

21 And, essentially, after receiving that, I
22 weighted those by virtue of their instantaneous
23 diversion right and then simply did a calculation that
24 said if the start date of irrigation for the district is
25 April 20th, and I took the average -- the weighted

1 average number of days and then computed a day that the
2 average farmer within the district would be,
3 essentially, cut off of water.

4 Q. So were you -- again, talking about the
5 source, did any of that source come from Ms. Sukow's
6 report?

7 A. It did not.

8 Q. So you did this for what purpose in addressing
9 the reports, as you indicated was your task?

10 A. I did this for the purpose of, essentially,
11 laying foundation, I believe, for individual claims of
12 cutoff data on average for the system and to provide
13 myself some assurance that there was actually depletion
14 in the system. So this goes to was there truly a
15 depletion that would be experienced to the users, and
16 that helped me answer that question.

17 Q. And what other sources, then, did you use?

18 I didn't want to cut you off on that if there
19 were other sources.

20 A. Other than the note -- the fact that the start
21 date was April 20th and the number of run days was
22 provided by Kevin Lakey, I do not recall any other
23 information that led me to those conclusions.

24 Q. And as you've sat through the testimony of
25 this hearing, have you heard anything that would

1 contradict or add to what source you were originally
2 using in computing these?

3 A. I have not looked at that, but, in my opinion,
4 these numbers are relatively close to what we currently
5 think are the cutoff dates for the farmers.

6 Q. And where are you looking at in your report
7 to -- as your conclusion dealing with the source that
8 you've talked about?

9 A. I will try to find that. I'm sorry, Counsel,
10 I've looked at so many documents that I'm struggling,
11 but I would refer, I suppose, to -- to get the most
12 clearest determination of one of the appendices, which I
13 can identify.

14 Appendix D of my report lists the individual
15 run dates for all of the rights involved and provides
16 the summary of those computations at the bottom or the
17 last page of that appendix and states a date of
18 June 21st, 2021, as the most likely expected end date
19 for irrigation for the class of water right holders.

20 MR. THOMPSON: What are you referring to? I'm
21 sorry.

22 Q. (BY MR. RIGBY) Let's make sure we're on the
23 same page, then.

24 You're referring to?

25 A. Appendix D of my expert report entitled,

1 "Water Rights List With May 25, 2021, Estimated 'Days
2 Run.'"

3 COURT REPORTER: And, Mr. Miller, if you could
4 slow down a little bit for me, I would appreciate it.

5 THE WITNESS: I will.

6 Q. (BY MR. RIGBY) So, again, Appendix D, as in
7 "dog"?

8 A. Yes.

9 Q. And that's, again, Miller Exhibit No. 1?

10 A. Yes.

11 Q. And the list of the various owners and water
12 rights comprise of, I think, three and a half pages; is
13 that correct?

14 A. Something to that effect.

15 Q. And the last page is what you're referring to
16 as your conclusion?

17 A. Yes.

18 Q. And when you say, "average expected end of
19 irrigation," again, define what you mean by that?

20 A. That is the day by which if no curtailment
21 were to have occurred, that these farmers would be out
22 of water, barring any supplementals from other sources,
23 private leases, or other things.

24 Q. So does that -- help me out here. Is that
25 with curtailment? Without curtailment? What is it?

1 A. That is assuming no curtailment.

2 Q. Okay. And did you, then, also address the
3 issue of with curtailment?

4 A. Not in this particular part of my analysis,
5 no.

6 Q. Have you done so?

7 A. No, I would not say that. I have done
8 computations to deal with another way of looking at
9 dates, but it had nothing to do with, essentially,
10 estimating the amount of run days, no.

11 Q. Now, you've heard testimony, even from
12 Mr. Lakey this morning, as to projected cutoff dates?

13 A. Yes.

14 Q. So your analysis was done, obviously, before
15 you heard this testimony.

16 Would that testimony then change, or how close
17 was your estimate to the -- to his projected cutoff
18 dates?

19 A. Well, again, my analysis only dealt with that
20 date with the assumption of no curtailment. So I
21 believe the testimony offered by Kevin Lakey was under
22 certain curtailment scenarios. So I don't believe we
23 have the ability to correlate those.

24 Q. So what significance does this particular task
25 have to this particular hearing, in your opinion?

1 A. In my opinion, it underscores the fact that
2 the farmers -- the holders of rights within the Little
3 Wood River/Silver Creek drainage, in general, without a
4 curtailment, will be out of water on or about June 21st
5 of this year. I think that's important to note that
6 most crops are not finished prior to that date and,
7 therefore, some impact to those crops is likely to have
8 happened.

9 Q. And was that a task assigned to you because of
10 the concern of the senior water users?

11 A. I actually assigned myself that task. It was
12 a question that I felt important to answer as an expert,
13 and I pursued that analysis.

14 Q. But isn't it a fact that they were very
15 concerned about that?

16 A. Yes. Yes, of course.

17 Q. And conversed that with you?

18 A. I would not say that we really conversed much
19 on that. I knew that they were doing it, I knew it was
20 important to them, but there was not really any request,
21 formally, from them to do that, to do my analysis.

22 Q. Okay. Anything else on your computation of
23 noncurtailment and the cutoff dates depending upon that?

24 A. No.

25 Q. So your third task, then, was again what?

1 A. It was to answer the question, really, of
2 when -- on what dates, on or about, would the
3 accumulated depletions under a no-curtailement scenario
4 equal those that could be provided as remedy under a
5 curtailment to, essentially, answer the question of when
6 do we need to have a curtailment to match those
7 depletions.

8 Q. And, again, what source did you use to begin
9 your computation of that analysis?

10 A. Well, it's fundamentally based on the same
11 sources that supply the 8,182 acre-feet from my Table 1.
12 Because that's a predominant basis in which I made that
13 computation. And other than that, I actually did the
14 calculation in several ways.

15 One is to just note that under a
16 no-curtailement scenario, the midpoint of accumulated
17 injury, which would start during the beginning of the
18 season, and the end is really the midpoint or the
19 halfway point between the full volume of curtailment.

20 In other words, if I divided 8,182 in half,
21 that that volume would, essentially, be that point at
22 which that would have occurred. But in terms of
23 reporting for this document, what I, essentially, did is
24 compared my work to the various curtailment scenarios
25 that Jennifer Sukow had outlined.

1 Q. That's what I was getting to is that you did
2 then, in fact, go back to the staff memos for purposes
3 of --

4 A. I did, to the 2021 staff memo by Jennifer
5 Sukow to do that, yes.

6 HEARING OFFICER: Mr. Miller, I want to remind
7 you that you're cutting Mr. Rigby off halfway through
8 his questions. You need to wait until he finishes his
9 question.

10 THE WITNESS: Thank you.

11 HEARING OFFICER: Thank you.

12 Q. (BY MR. RIGBY) Did you use any other staff
13 memos in your source or analysis to address this
14 particular issue?

15 A. I do not recall any.

16 Q. What modeling, then, or what kind of an
17 analysis did you run?

18 A. Well, in this particular case -- I'm going to
19 remind myself just momentarily. In summary, I think in
20 this particular case, what I essentially noted is I
21 accumulated the estimated depletions from my Table 1,
22 compared that to the benefit that would have accrued
23 under Jennifer Sukow's curtailment scenario for the
24 July 1, and equated those values and, essentially,
25 calculated the fact that on or about July the 5th of

1 2021, that the accumulated depletions that I had
2 estimated would be, approximately, equal to the benefits
3 that could be rendered to the system based on an
4 interpolation between the July 1 curtailment scenario
5 under Sukow and the August 1 curtailment under Jennifer
6 Sukow. That point, according to my calculations, was on
7 or about July the 5th.

8 Q. So, again, in your professional opinion, do
9 you believe that your analysis confirmed Ms. Sukow's
10 report?

11 Was there enough variance from that that you
12 felt it was significant?

13 A. I think what it did is verified to me that the
14 selection of a July 1st curtailment scenario was useful,
15 and -- for this because that is the date on or which I
16 computed that the depletions would, approximately, equal
17 the remedies.

18 Q. So in your professional opinion, is a July 1
19 curtailment date important?

20 A. What I would say to that is that on a July 1
21 date, that a curtailment on that would slightly provide
22 more remedy than depletions would demand, if that makes
23 sense.

24 Q. Explain that.

25 A. So in other words, the accumulated depletions

1 on or through July 1st would be slightly less than the
2 remedy that would be provided under that; and,
3 therefore, essentially, we would be getting more water
4 than the seniors needed to present equity there. So in
5 other words, a few days later is when the balance point
6 would come between cumulated depletions and remedy under
7 curtailment.

8 Q. Were you here when Mr. Vincent testified?

9 A. I was.

10 Q. And were you here when he presented what has
11 now been marked IDWR's Exhibit No. 5, which is a SWSI
12 for June 1, 2021?

13 A. I was, yes.

14 Q. And based upon his testimony, as I understand
15 it, it's because of the severe drought he conducted a
16 second SWSI or an updated SWSI due to that.

17 Is that what you understand?

18 A. My understanding is that he may have looked at
19 an updated SWSI, but did not produce that himself.

20 Q. Oh, I'm sorry, who did produce the SWSI, then?

21 A. SWSIs are produced as a product that's
22 produced by NRCS and were -- may have been requested by
23 the Department, but were not produced, necessarily, by
24 the Department, in my understanding.

25 Q. Okay, my error. But the fact of the matter is

1 it was upon his request that that June 1 SWSI was -- I
2 think that's what he testified to?

3 A. That is my understanding.

4 Q. So based upon his testimony and that SWSI that
5 was done by June 1, were you concerned, in any way, of
6 the results of that SWSI?

7 A. In general, I would say I fully supported the
8 memo that Sean Vincent produced in relation to the SWSI.
9 There is one item that I feel that should have been
10 added to that SWSI.

11 Q. And what is that?

12 A. May I refer to the document?

13 Q. Yeah.

14 A. I don't know if I have it in front of me.

15 Q. We have proposed --

16 HEARING OFFICER: You're looking for --

17 THE WITNESS: I'm actually looking for his
18 staff memo.

19 MR. RIGBY: Oh, you're looking for his staff
20 memo?

21 THE WITNESS: Yeah.

22 MR. RIGBY: IDWR No. 1. Are you looking for
23 the updated SWSI?

24 THE WITNESS: No.

25 MR. RIGBY: Okay.

1 THE WITNESS: I'm looking for his staff memo.

2 MR. RIGBY: May I?

3 HEARING OFFICER: Yes. I've got a copy.

4 THE WITNESS: I don't see it.

5 HEARING OFFICER: Here you go.

6 THE WITNESS: Thank you.

7 MR. RIGBY: Thank you, Mr. Director.

8 HEARING OFFICER: Yep.

9 Q. (BY MR. RIGBY) Okay. You're referring to
10 IDWR Exhibit No. 1, Mr. Vincent's memo; is that correct?

11 A. That is correct.

12 Q. And what is it that you are wanting to review?

13 A. Well, my only issue with this staff memo is in
14 the last paragraph of page 3 wherein Mr. Vincent reports
15 the following -- may I read?

16 Q. Please do.

17 A. "For the period of 1991 to 2020, the years
18 with the most similar total supplies to the 50th
19 exceedance forecast are" -- "for 2021 are 2004 with a
20 SWSI of negative 2.6. And 2020 with a SWSI of negative
21 2.8. Despite being a poor water year, the water volume
22 supply in 2004 at 136 KAF just exceeded the 135 KAF
23 adequate water supply.

24 Q. So what did you take issue with, if you did?

25 A. The issue that I had with this is after

1 reviewing the actual SWSI data that was used to prepare
2 the SWSI, that the 2020 date, which was one of the two
3 that Mr. Vincent had mentioned as being most similar,
4 actually had a KAF value that was much closer to the
5 2021 KAF than 2004.

6 So in my opinion, it would have been nice to
7 have seen it, since it also discussed how the 2020 KAF
8 related to the adequate water supply. And if he would
9 have done that, then what one would have rendered is
10 that under that year 2020, that the result would have
11 been that the system would have had a deficit of
12 14,000 acre-feet of water.

13 Q. And how did you compute that?

14 A. Simply the difference between the stated
15 adequate water supply of 135 KAF versus the 2020 KAF, as
16 pursuant to that material of 121 KAF. So in other
17 words, the difference is 135 minus 121. It would have
18 showed a deficit of 14. And so what I would have liked
19 to have seen in this is that statement, in addition to
20 the one -- because I believe this is misleading in this
21 case, not that it was meant to be done so purposely.

22 But I think the common layperson would read
23 this sentence and infer that, in fact, the Big Wood
24 above Hailey did not have a deficit of water and, in
25 fact, if that other statement had been in there, I think

1 it would have been clear that the closest similar year
2 showed a deficit of 14,000 acre-feet of water for that
3 drainage.

4 Q. So that's fairly significant?

5 A. I believe so.

6 Q. And it was just because of a choice of years?

7 A. I don't believe -- I think it was simply just,
8 perhaps, an oversight of reporting. I think, obviously,
9 the year 2020 was reported. And what wasn't reported
10 was how the deficit would have been different under the
11 2020 year rather than the 2004. Other than that, I
12 fully support this memo and support its conclusions and
13 approach and methodology.

14 Q. Very good. So getting back, then, to IDWR's
15 Exhibit No. 5, the SWSI that was, as you said, done at
16 the request of instead of by Mr. Vincent, is there --
17 well, let me just ask you this: Did you request a
18 different SWSI based upon June 1's analysis?

19 A. I did not.

20 Q. Have you -- I'm going to hand you what has
21 been marked for, I guess, identification.

22 MR. HENDRICKS: It's in his binder.

23 MR. RIGBY: I'm sorry.

24 MR. HENDRICKS: It's in his binder at 7.

25 MR. RIGBY: You have it in your binder as

1 Miller Exhibit No. 7.

2 THE WITNESS: Okay. I do not see a Miller 7
3 in this binder.

4 MR. HENDRICKS: It's right after 6.

5 HEARING OFFICER: Let's go off the record for
6 a minute.

7 (Discussion held off the record.)

8 HEARING OFFICER: Back on the record.

9 All right. We're recording again.

10 Mr. Rigby?

11 MR. RIGBY: Thank you, Mr. Director.

12 Q. (BY MR. RIGBY) Mr. Miller, what is -- would
13 you identify Miller Exhibit No. 7?

14 A. I will. This is a preliminary SWSI that I
15 developed within the last several days to address what I
16 felt was a more appropriate way to gage the water supply
17 for the Little Wood River/Silver Creek drainage.

18 Q. And what would be the difference between --
19 because it states it's June 1 -- what is the difference
20 between the June 1 SWSI, that is labeled Miller Exhibit
21 No. 7, and the IDWR's Exhibit No. 5, as requested by
22 Mr. Vincent?

23 A. I think the main difference is the -- a
24 representativeness of the SWSI. As people may or may
25 not understand, a SWSI is developed at a given gaging

1 station for a particular basin and a particular group of
2 water users.

3 In my opinion, the SWSI for Hailey, for above
4 Hailey, and for that below Magic are poor
5 representations of a supply of water to the Little Wood
6 River/Silver Creek drainage. Whereas, the most obvious
7 selection of SWSI for that is the headwaters of the
8 waters that feed the users of Little Wood/Silver Creek
9 drainage, essentially.

10 Q. So running a SWSI for the Sportsman's Access
11 gage versus the one above, you think, is significant?

12 A. Is a much better approximation of the issues
13 at hand, in my opinion, yes.

14 MR. RIGBY: And, therefore, Mr. Director, we
15 would ask that Miller Exhibit No. 7 be introduced for
16 that purpose. Especially because the IDWR Exhibit No. 5
17 came in, obviously, during the examination of
18 Mr. Vincent during the hearing.

19 HEARING OFFICER: And so are you moving for
20 the admission of this document? Or what is your --

21 MR. RIGBY: I am.

22 HEARING OFFICER: Okay. Any objections to the
23 admission of this document?

24 MR. THOMPSON: Yes, Director. We would object
25 to the introduction and admission of this exhibit. And

1 may I voir dire in aid of objection?

2 HEARING OFFICER: Yes, I'm interested.

3

4 VOIR DIRE EXAMINATION

5 QUESTIONS BY MR. THOMPSON:

6 Q. Mr. Miller, have you had any experience
7 preparing SWSI tables before?

8 A. No.

9 Q. Have you prepared any for any clients?

10 A. No.

11 Q. Is this the first one you've ever done?

12 A. It is.

13 Q. Has it been recognized by anybody?

14 A. No.

15 MR. THOMPSON: I would say he's not qualified
16 to prepare a table like this, Director.

17 HEARING OFFICER: Mr. Rigby, response, if you
18 want?

19 And I will just say, you've compared the
20 document that was marked as IDWR Exhibit No. 5, but the
21 SWSI number was prepared by NRCS.

22 MR. RIGBY: That is correct.

23 HEARING OFFICER: And this document has not
24 been prepared by NRCS. So, in my opinion, they're not
25 comparable. But, anyway, that's my reaction.

1 MR. RIGBY: Fair point. Fair point.

2 Q. (BY MR. RIGBY) Let me just ask you, then,
3 what -- how did you -- what tool did you use or model
4 did you use in order to prepare this?

5 A. I used discharge data from Silver Creek, the
6 Sportsman's Access gage. I also used AgriMet data for
7 the Picabo AgriMet station. And I would argue, Counsel,
8 that these would be things that I would normally do
9 under any analysis of surface water hydrology, standard
10 thing for any surface water hydrologist to have done,
11 and, therefore, not in any way, you know, unique in that
12 regard.

13 In addition to that, as included in this SWSI,
14 preliminary SWSI, I have listed a reference to the SWSI
15 development protocol listed by the NRCS, which is
16 provided online and provides a very simple outline of
17 the methods that, I would submit, almost anyone could
18 follow to create this table.

19 Q. So if you weren't following the SWSI regime or
20 the SWSI model, could you come up with the same
21 conclusion that you've come up with in this particular
22 preliminary SWSI that you're referring to?

23 A. Indeed. If we were to rename this analysis of
24 the predicted water supply in this year versus an
25 adequate supply, and renamed it, the analysis would

1 stand as is, yes. I couched it in the framework of a
2 SWSI, which, frankly, again, is mathematically very
3 simple, simply because that seems to be the desire or
4 the method that the Department utilizes. But, yes, the
5 analysis is simply a frequency analysis and a prediction
6 of the 2020 year -- 2021 irrigation year.

7 HEARING OFFICER: The objection is sustained.

8 Mr. Rigby, if you want to ask Mr. Miller about
9 some of the factors and the background that led the
10 development, he's free to testify about those, but I
11 don't want to have an -- I guess, an outlier SWSI
12 document in the record.

13 MR. RIGBY: Understood. Understood,
14 Mr. Director.

15 Q. (BY MR. RIGBY) All right. So let's do that,
16 Mr. Miller.

17 So, again, you started to address what sources
18 you use to come up with the -- a conclusion. So let's
19 talk about your sources, what you did with those, how
20 you computed those, and in the end, what your conclusion
21 was.

22 A. Very well. The initial analysis began with an
23 analysis of the April and May discharges at the
24 Sportsman's Access gage.

25 Q. And where did you get those?

1 A. From the website. And I did that back until
2 1994, to look at the most recent period of interest,
3 and, essentially, acquired average April-May discharges
4 for that period, order ranked those. And I will
5 underscore this point, that the 2021 year is represented
6 in that data set. So I could stack --

7 Q. Explain that. Explain that.

8 A. So in other words, 2021 we had records. These
9 were physical records of 2021 that were included in this
10 preliminary part of the analysis, as opposed to
11 predictions. Okay?

12 So when we add -- we pull those records, and
13 then when we order rank them, we see -- we can see where
14 2021 sits within that spectrum. And when we do that, we
15 see that the most -- the year most like 2021 is the year
16 1994, which I believe has been testified to in these
17 proceedings in other ways. And so --

18 Q. And you support that year?

19 A. I do. I do.

20 Q. Continue.

21 A. So using that 1994, what I then did was take
22 the total discharge for May and -- or excuse me -- for
23 April and May, which was recorded, and then using 1994
24 as a predictor, added to that what the predictions for
25 1994 would be or were to create, essentially, a

1 prediction of the 2021 irrigation season pursuant to the
2 gage at -- or the Sportsman's Access gage.

3 Q. And is this methodology something that you
4 have used in the past?

5 A. It has. Very typical for one to predict using
6 a part of a discharge sequence and a prediction from
7 another, yes.

8 Q. And so as a result of that, were you able to
9 come up with a prediction?

10 A. I was. That prediction resulted in a value of
11 34,530 acre-feet of water for 2021.

12 Q. Meaning what?

13 A. That's how much water would be available
14 pursuant to the -- as measured at the gage, Sportsman's
15 Access gage, for the '21 irrigation -- 2021 irrigation
16 season.

17 Q. And that's taking into consideration
18 curtailment?

19 A. I would believe it would presume no
20 curtailment, because that is the current status quo. So
21 that would presume that no curtailment were to have
22 happened.

23 Q. So that amount of water would be available
24 without curtailment?

25 A. That amount of water would be the amount of

1 water that I would predict would be in the system in the
2 irrigation season of 2021 without curtailment.

3 Q. And what does that -- to you, what, then, do
4 you conclude as far as this particular hearing is
5 concerned?

6 A. Well, I have to take that number in
7 combination with estimates of the adequate water supply
8 that I think has been already entered into testimony
9 here today. And that value would need to be compared to
10 the adequate water supply to render any opinion.

11 What I did in my analysis was take the three
12 years that Kevin Lakey had already testified to
13 representing adequate water years, and then what I did
14 was I took the cumulative, the total volume of water in
15 each of those three years that was recorded to have gone
16 through the Sportsman's Access gage and took an average
17 with the intent that that should represent, at that
18 point, an adequate supply of water. When I did that,
19 the value came out to be 45,310 acre-feet of water.

20 So in summary, then, if one has -- if the
21 adequate water supply volume at that point is,
22 essentially, 45,000 acre-feet, and the expected this
23 year is 34,000 acre-feet, the delta represents a deficit
24 of what this year should have compared to the adequate
25 water supply year.

1 Q. Again, getting back to the water needs, go
2 into depth and more detail on how you came up with that
3 number or how you computed that number.

4 A. Well, again, it was simply taking the
5 testimony of Kevin Lakey that the 2000, 2009, and
6 2010 years represented an adequate year, and simply
7 queried the USGS discharge records for what the total
8 volume of water was for the irrigation season for those
9 years to compute an average of 45,310 acre-feet.

10 Q. So the deficit, then, is to take that number,
11 subtracting from the 30-some-odd thousand that you
12 calculated would be the discharge, and you're saying
13 that's the deficit?

14 A. That is. And that deficit is, approximately,
15 10,000 acre-feet. And I would submit that in my best
16 opinion as an expert in this area, that this year
17 there's going to be a 10,000 acre-feet deficit in the
18 year 2021 versus the adequate water supply for the
19 Little Wood River/Silver Creek drainage.

20 Q. And is this, again, taken at the Sportsman's
21 Access?

22 A. This is at Sportsman's Access, yes.

23 Q. As opposed to anything above?

24 A. Anything above and/or below. Yes, it's its
25 own estimate.

1 Q. Understood.

2 A. Yes.

3 MR. RIGBY: I have no further questions.

4 HEARING OFFICER: Thank you, Mr. Rigby.

5 Mr. Fletcher, any questions?

6

7

DIRECT EXAMINATION

8

QUESTIONS BY MR. FLETCHER:

9 Q. Just to follow up with the last line of
10 inquiry, when you were doing the calculations at
11 Sportsman's gage -- or Sportsman's Access, did you do
12 any calculations for conveyance from that point to the
13 Little Wood and Silver Creek users?

14 A. I did.

15 Q. Can you explain that, please?

16 A. I can, in the sense that I -- during --
17 actually, during the morning's proceedings, I took Kevin
18 Lakey's testimony, which was, I believe, that there was
19 40,004 acre-feet was what he computed as the adequate
20 water supply at Station 10 or in his area. And I
21 believe he also testified there was 5,000 of that that
22 was delivered through Magic.

23 And so to normalize that to what I did, I
24 subtracted 5,000 to get that 35,004 represented -- if
25 there was no input from Magic -- represents an adequate

1 water supply volume for the area that is served. And I
2 simply then took that value and assumed that there would
3 be 25 percent seepage losses from the Sportsman's Access
4 gage to Station 10, and to normalize it back to that
5 value.

6 And when I do that, I get a value of 43,755
7 for an adequate water supply volume normalized to the
8 gage of the Sportsman's Access gage. The difference
9 between my number and his, in that regard -- and I will
10 say this, done in two completely independent methods --
11 yielded a difference of only 2.2 percent. So in that
12 way, I analyzed the seepage losses and took those into
13 account.

14 MR. FLETCHER: I have no further questions.

15 MR. RIGBY: Mr. Director, I failed to
16 introduce -- or ask for the introduction of Miller
17 Exhibit No. 1, which is his expert report.

18 HEARING OFFICER: Any objection to the
19 admission of the document that Mr. Rigby has referred
20 to?

21 Hearing no objection, the document marked as
22 Miller Exhibit 1 is received into evidence.

23 (Miller Exhibit 1 received.)

24 HEARING OFFICER: Thank you.

25 Mr. Thompson or --

1 MR. THOMPSON: Can we take a quick break?

2 HEARING OFFICER: Yeah, that would be fine.
3 Ten minutes. We'll be back at, what, five to 3:00.

4 (Break taken.)

5 HEARING OFFICER: We're back on the record.

6

7

CROSS-EXAMINATION

8

QUESTIONS BY MR. THOMPSON:

9 Q. Good afternoon, Mr. Miller. Travis Thompson
10 for the South Valley Ground Water District.

11 A. Hello.

12 Q. We met at your deposition a week ago. It
13 feels like a year ago.

14 A. It does.

15 Q. Just to follow up, at that deposition you
16 identified you've had emails and data you've received
17 from Kevin Lakey; is that true?

18 A. That is true.

19 Q. And have you provided those spreadsheets and
20 that data?

21 A. I have provided them to my attorneys. After
22 that, I do not know what happened to them at that point.

23 MR. THOMPSON: We still haven't seen anything.
24 If we could get that today --

25 MR. RIGBY: I will.

1 MR. THOMPSON: -- that would help.

2 Q. (BY MR. THOMPSON) And you also referenced
3 documents and emails from Tim Luke and Jennifer Sukow.
4 Do you recall that?

5 A. I do.

6 Q. And has that been produced to Mr. Rigby as
7 well?

8 A. That has been produced.

9 MR. RIGBY: Yeah.

10 Q. (BY MR. THOMPSON) Getting back to the --
11 well, let's just start here.

12 Would you agree that your past experience in
13 groundwater modeling has primarily concerned contaminant
14 transfer simulations?

15 A. I would not agree with that.

16 Q. Why not?

17 A. Any groundwater model that has a contaminant
18 transport component is, necessarily, built upon a flow
19 model that has to be built prior to the analysis of
20 contaminant transport. So I would say the vast majority
21 of the experience would be with flow models and not with
22 contaminant transport models.

23 Q. But you've worked in that for contaminant
24 transfer simulations, the work you have done
25 specifically?

1 A. Well, yes, I've done both.

2 Q. And your current consulting work focuses on
3 general environmental services and contaminant transport
4 modeling?

5 A. It does.

6 Q. And this work with the Big Wood and Little
7 Wood water users is your first consulting job concerning
8 irrigation water rights?

9 A. I think that is a fair statement, yes.

10 Q. As well as evaluating surface water hydrology
11 related to irrigation projects?

12 A. I would not agree with that.

13 Q. Okay. What do you disagree with?

14 A. Well, almost any groundwater model built that
15 tries to link surface water and groundwater,
16 necessarily, deals with estimation of surface hydrologic
17 issues irrespective of whether they're from irrigation
18 systems or from natural flows. There's really no
19 difference, so I would not agree with that
20 characterization.

21 Q. Okay. My question was specific to irrigation
22 projects, surface water hydrology and irrigation
23 projects.

24 A. So can you repeat the question, then, for me?

25 Q. Would you agree this is your first consulting

1 job evaluating surface water hydrology related to
2 irrigation projects?

3 A. No.

4 Q. That's a little different answer than you gave
5 me a week ago. I'm just concerned what the difference
6 is.

7 A. Well, I have an example of several projects
8 that I'm currently working on that deal with irrigation
9 systems and surface hydrology components, and I may not
10 have had access or recalled those at that time. And I
11 can share those, if you'd like, now?

12 Q. Sure.

13 A. I'm involved in two projects with Madison
14 County, Idaho, presently, that deal both with natural
15 streams and irrigation systems where I am involved
16 directly in determining the hydrologic issues of those.

17 One is the FEMA floodplain mapping support
18 project in Madison County for which I am subcontracted
19 by Forsgren Engineering to perform those functions. The
20 second, I hold the prime contract with the -- Madison
21 County in the Lyman Creek Levy accreditation project,
22 and a major component in that is to redevelop the
23 hydrology for the system of which I am personally
24 responsible. So there's two examples.

25 Q. How about as far as evaluating the surface

1 water supply for an irrigation project?

2 A. That are only irrigation projects?

3 Q. Correct.

4 A. I would submit a natural surface stream is,
5 obviously, an irrigation project.

6 Q. How about diverted irrigation projects where
7 you have a diversion from the stream evaluating surface
8 water supplies for that project?

9 A. I believe I've answered the question. The two
10 that I provided.

11 Q. And you've not consulted on any new water
12 right applications or water right transfers before; is
13 that correct?

14 A. That is true.

15 Q. So would you agree you've never analyzed
16 hydrology in the context of injury to a water right from
17 changes in either a surface or groundwater source?

18 A. I think I would agree with that.

19 Q. And you've only been qualified as an expert
20 one time in regards to a stream alteration permit before
21 IDWR?

22 A. That is correct.

23 Q. And that was the -- concerned the impact of a
24 proposed bridge structure on trumpeter swans in Madison
25 County?

1 A. That is correct.

2 Q. So you've been retained by the Big Wood and
3 Little Wood users since February of '19; is that --

4 A. I believe that is correct.

5 Q. -- what you testified?

6 And you've been working for the Big Wood Canal
7 Company for about a year?

8 A. That is approximately correct. I do not have
9 the dates, but that is approximately correct.

10 Q. And you're retained by the Big Wood Canal
11 Company to prepare for a potential water delivery call?

12 A. That is my understanding, yes.

13 Q. And in this case, you started working on your
14 report -- I think that was Exhibit 1, if I've got it
15 right -- about May 11th; is that right?

16 A. That is my recollection.

17 Q. And you've had several conversations with
18 Kevin Lakey and Department staff since that time?

19 A. I have had several conversations with Kevin
20 Lakey. I have had, to my recollection, one conversation
21 with Department staff.

22 Q. And you did not interview any senior surface
23 water users; is that true?

24 A. In preparation for my report?

25 Q. Correct.

1 A. No.

2 Q. Okay. Who did you interview?

3 A. I'm sorry?

4 MR. RIGBY: I think he said "no," Counsel.

5 Q. (BY MR. THOMPSON) I'm just -- I asked you
6 last week if you interviewed anybody in preparation for
7 your report, and you said you do not recall interviewing
8 anybody, so did that change between last week and now?

9 A. No. That's still my testimony.

10 Q. And you prepared an earlier report dated
11 May 26th that has since been superseded; is that
12 correct?

13 A. That is correct.

14 Q. And that's the exhibit we have here today, the
15 June 1st report?

16 A. That is correct.

17 Q. And that was provided to us last week, I think
18 about an hour before your deposition; do you recall?

19 A. I think that is correct.

20 Q. As far as that June 1st report and your prior
21 May 26th, the main difference was the removal of the
22 water users shortfall calculations; would you agree with
23 that?

24 A. That is correct.

25 Q. Let's turn to your report. Do you have that

1 in front of you --

2 A. I do.

3 Q. -- Exhibit 1?

4 You talked about three different areas you
5 captured in this report. The first, hydrologic impacts
6 to Little Wood/Silver Creek drainage -- and I'll call
7 that with curtailment -- during the 2021 irrigation
8 season. And then depletion and potential injury to
9 seniors during the 2021 irrigation season.

10 Is that a general characterization of that?

11 A. I would not agree with that, as I heard you
12 say with the assumption of curtailment. My analysis on
13 impacts or depletions was assuming without curtailment
14 in terms of computing depletions.

15 Q. The first part was without curtailment, the
16 second part was with; is that correct?

17 A. Yes, that is correct.

18 Q. And as far as evaluating the model impacts of
19 pumping, you reviewed and relied upon Jennifer Sukow's
20 2019 curtailment runs; is that true?

21 A. That is correct.

22 Q. So as far as modeling, I heard you say you did
23 not have access to a MODFLOW program; is that true?

24 A. That is true.

25 Q. And are you aware that the Department's Wood

1 River Valley model, 1.1, is available for download from
2 the Department website?

3 A. I am, yes.

4 Q. And have you downloaded that before?

5 A. No.

6 Q. Any reason why?

7 A. Yes. The platform that I use and am
8 accustomed to to most efficiently model is the GMS
9 platform produced by Aquaveo, LLC. It's one of,
10 arguably, two or three platforms used in the world. And
11 a simple download of the files from IDWR does not lend
12 itself to direct use under GMS platform.

13 Q. And that was the software you're looking at
14 developing or trying to convert that to.

15 Is that something in progress?

16 A. That's right, yes.

17 Q. And as far as performing your own model runs
18 with either platform, how long does that take?

19 A. If one were to have a platform?

20 Q. Yes.

21 A. It depends on which questions are posed. In
22 this particular case, if the questions were posed of a
23 July 1st, an August 1st curtailment, that run could,
24 most likely, be done in several days and written up
25 within another several days.

1 Q. Over a week?

2 A. Probably.

3 Q. Maybe two weeks?

4 A. I believe that could be done, yes.

5 Q. And you said you had some familiarity with the
6 ESPAM model, is that correct, on the Eastern Snake Plan?

7 A. I said I had review capacity with that. So,
8 yes, during its initial phase of development.

9 Q. Have you performed any model runs with that
10 model?

11 A. I have not.

12 Q. Are you aware of how many model cells are in
13 the ESPAM model?

14 A. I do not recall that number.

15 Q. Does 11,000, thereabouts, sound correct?

16 A. I know that the model's grid cells are mile by
17 mile. There is, I believe, 890 square miles at the
18 INEL. So my best recollection would be, no, that it is
19 something less than that probably.

20 Q. I thought I've seen that number before.
21 That's okay. That's close enough.

22 How many model cells in the Wood River Valley
23 aquifer?

24 A. I do not have that information.

25 Q. Does 55,000 come to mind?

1 A. I cannot -- I do not know.

2 Q. So assuming that's correct, if there were
3 55,000 model cells would evaluating certain response
4 functions or making changes to those take much longer
5 than working on the ESPAM model?

6 A. So you're asking me to do a comparison of an
7 equal question on the ESPAM versus the --

8 Q. Sure.

9 A. Okay. The more model cells that are present
10 would affect run time. And since I don't know what the
11 individual number of cells are, I think I -- that's all
12 I can say to that; it would affect run time.

13 Q. You wouldn't have experience of making
14 individual model runs with either model; is that true?

15 A. Not of either of those two, that is correct.

16 Q. So getting back to your report, you've looked
17 at Jennifer Sukow's 2019 curtailment runs, and
18 specifically the modeled impacts for 2007 --

19 A. That is right.

20 Q. -- is that correct?

21 And the second page of your report, you
22 contend that when single-year effects of pumping are
23 considered for multiple years, the hydrologic effects
24 overlap and are additive.

25 And is that -- is this contention based upon

1 the Department's model run and estimated hydrologic
2 responses to simulated curtailment?

3 A. I believe that is my personal conclusion, not
4 anything put out by the Department.

5 Q. So you didn't perform any actual model runs
6 for this; is that correct?

7 A. I did not.

8 Q. And then as part of this exercise, you said
9 you took the estimated volumes of consumptive use and
10 linearly scaled them to the consumptive use of 41,000
11 acre-feet for 2007; is that correct?

12 A. That is correct.

13 Q. And you used data from Tim Luke for that
14 groundwater pumping in 2019 and 2020?

15 A. That is correct.

16 Q. And then you made an assumption that 2021 will
17 be similar to 2020?

18 A. That is correct.

19 Q. With respect to that data that Mr. Luke gave
20 you, that was orally; is that correct?

21 A. That is correct.

22 Q. And you've not verified that data, have you?

23 A. I have attempted to verify it, but have not
24 been able to do so to date.

25 Q. So the answer is no you haven't verified?

1 A. The answer is no.

2 Q. That's something you did not have time to do
3 with the short schedule?

4 A. I think that would be an accurate
5 representation, yes.

6 Q. Based upon evaluating 2007 to today, have you
7 considered crops that are planted in the Bellevue
8 Triangle this year?

9 A. To the extent that I've created an estimate of
10 irrigation water requirement for general crops within
11 the area, yes. And I assume that that general crop
12 selection is represented in the current year. So to
13 that extent, yes.

14 Q. So to the extent that you believe 2007 is
15 accurate as to what's going on in 2021, that's as far as
16 you've gone?

17 A. In terms of crop --

18 Q. Correct?

19 A. -- issues, yes.

20 Q. And how about changes in efficiency on the
21 individual farms?

22 A. No, I have not considered that.

23 Q. Have you evaluated seepage losses in
24 irrigation canals?

25 A. No, I have not.

1 Q. So let's turn to your page 6 -- I'm sorry --
2 Table 1, page 4.

3 A. Okay.

4 Q. So your column, "Total Silver Creek Impacts"
5 -- and you have it identified by month -- this is your
6 sum of total pumping impacts from '19, '20, and 2021; is
7 that correct?

8 A. It is a cumulative number that represents
9 2019, 2020, and 2021, yes.

10 Q. And your "Total Irrigation Season"
11 number, 8,182 acre-feet, that's just the total of the
12 irrigation season, April through September?

13 A. That is correct.

14 Q. And do you agree that these impacts or
15 depletions do not equate to injury to a water right; is
16 that true?

17 A. I'm not qualified to indicate whether a
18 depletion equates to injury.

19 Q. At least a week ago you said it did, and I'm
20 just curious what's happened between now and then?

21 A. I would say that it's -- depletions are a
22 potential injury.

23 Q. But as far as depletions themselves do not
24 equate to injury; would you agree with that, or not?

25 A. I would agree with that.

1 Q. You agree that crop demands can be less than
2 what's stated on a water right, as far as maximum
3 diversion right?

4 A. Yes, I agree. Although, I will say that I've
5 been -- well, I'll leave it at that.

6 Q. And that a senior surface water user may not
7 be injured every year that groundwater pumping occurs;
8 would you agree with that?

9 A. I would agree with that, yes.

10 Q. And specifically for this case, you did not
11 analyze total annual crop water need for the seniors in
12 this case; is that true?

13 A. I would not agree with that assessment. The
14 previous testimony I provided, I believe, determines or
15 endeavors to determine the needed water to supply to the
16 crops within the Little Wood River/Silver Creek
17 drainage.

18 Q. Okay. I'll just -- again, that's a different
19 answer than I received last week. I asked you: "Have
20 you looked at a total annual volume crop water need for
21 the seniors in this case?"

22 Your answer was "no."

23 A. And, yeah, I will qualify that by that I
24 developed the analysis that I presented earlier within
25 the last several days.

1 Q. The exhibit that was not admitted this
2 morning --

3 A. Yes.

4 Q. -- is that what you're talking about?

5 A. Yes.

6 Q. That was your effort to look at total crop
7 water need for individual seniors in this case?

8 A. Not individual seniors, as a system.

9 Q. That was my question. So back to your Table 2
10 on page 6 of your report --

11 A. Okay.

12 Q. -- if you'd look at that.

13 That table shows the differences between
14 curtailment dates of July 1st or August 1st of this
15 year; is that correct?

16 A. It does.

17 Q. And your July 1st curtailment number, that
18 3,001 acre-feet --

19 A. Uh-huh.

20 Q. -- that number is made up of pumping impacts
21 from one-third of April, all of May, and all of June; is
22 that correct?

23 A. That is my understanding, yes.

24 Q. And then you've added the partial impacts from
25 the past two years in July, August, and September?

1 A. That is my -- yes, I think that is correct.

2 Q. And for the August 1st curtailment number,
3 that 4,695, is that pumping impacts from a third of
4 April, all of May, all of June, and all of July, and
5 then the partial impacts from the past two years in
6 August and September?

7 A. Are you referring to the second column under
8 "REACH GAINS" that says "4,695"?

9 Q. Correct.

10 A. Those numbers -- no. The answer would be no.
11 Those numbers are directly out of Sukow's 2021 staff
12 memo, not my computations.

13 Q. So the -- your impact number includes pumping
14 from prior years, but the reach gains does not; is that
15 true?

16 A. I guess I can't comment on how those were
17 produced, necessarily, by Jennifer -- Ms. Sukow, they
18 are just out of her report.

19 Q. So would you agree that the impacts -- from
20 the Department's standpoint of administration -- that
21 the impacts from pumping in 2019 and 2020 cannot be
22 remedied this year?

23 A. Can you repeat that question, Travis, please?

24 Q. As far as the Department's standpoint, they
25 have the authority to curtail water rights; would you

1 agree with that?

2 A. I do.

3 Q. And to your knowledge, did they curtail water
4 rights in 2019?

5 A. No.

6 Q. How about 2020?

7 A. Not to my knowledge.

8 Q. And that would be my question for this year,
9 for that pumping that was authorized in those two years,
10 can the Department curtail this year as a result of that
11 prior pumping?

12 A. That's a question of law that I'm not
13 qualified to answer.

14 Q. So you do agree that they were allowed to pump
15 in those two years; correct?

16 A. I do.

17 Q. And are you aware of any determination that
18 they were out of priority in those years?

19 A. I'm not aware of any determination.

20 Q. And did the seniors allege shortfalls in those
21 years?

22 A. They may or may have not. I am not aware of
23 that condition.

24 Q. So as far as this year, your evaluation was
25 for irrigation season impacts only; is that correct?

1 A. That is correct.

2 Q. And it was your understanding, at least at
3 your deposition, that was because your clients have not
4 made any claim upon water outside their season of use;
5 would you agree with that?

6 A. I'm not aware of any such claim for the
7 clients in the Little Wood River/Silver Creek drainage.

8 Q. And your analysis relies upon the Department's
9 curtailment run of the entire basin in the model
10 boundary; is that correct?

11 A. That is my understanding, yes.

12 Q. But then you reduced it by a couple factors,
13 would you agree with that, the 15 percent for irrigation
14 efficiency, and 30 percent for pumping north of Glendale
15 Road?

16 A. Are you referring to my numbers in column --
17 the second column under "IMPACTS" or Table 1 or both.

18 Q. I thought it was the impacts of -- your
19 impacts, correct, your column?

20 A. I'm still confused.

21 Q. Okay. When you looked at the curtailment memo
22 that Jennifer Sukow did, did you reduce that by a couple
23 factors?

24 A. I did not reduce any of her work by any
25 factors, I only applied those factors to my own work.

1 Q. Okay. And what were those factors?

2 A. Essentially, my basis that -- I think I
3 understand your line of questioning -- to arrive at the
4 8,182 -- I'm going to refer to notes, if I may?

5 Q. Sure.

6 A. I used recorded withdrawals for the entire
7 domain of 37,377 for 2019, 47,715 acre-foot for 2020,
8 and an assumed value of 47,715 acre-feet for 2021 to
9 arrive at an average value of 44,269. I then assumed a
10 15 percent loss for return flows to get to a value of
11 37,629, and then further reduced that by .68 or 68 -- I
12 guess -- further reduced it by 32 percent to account for
13 only those withdrawals within the potential area of
14 curtailment, yes.

15 Q. And that's reflected in your Table 1. I'm
16 sorry, I think I was on the wrong table.

17 A. That is -- that's how -- are you referring to
18 the 8,182?

19 Q. Yes.

20 A. That's how that number was -- part of the
21 support for that number arrives out of that -- those
22 calculations, yes.

23 Q. Would it be correct to say you did not analyze
24 pumping from any particular well or response function?

25 A. That is correct.

1 Q. And you did not evaluate the pumping from the
2 different aquifers; is that true?

3 A. That is correct.

4 Q. That would be the unconfined and the confined
5 system in the Wood River aquifer?

6 A. That is correct.

7 Q. But you would agree that the location of a
8 well and which aquifer it pumps from is important for
9 purposes of estimating impacts on Silver Creek?

10 A. I would, in general. However, within the
11 context of what I did, those effects, in my opinion, are
12 integrated into Jennifer Sukow's model responses, which
13 integrate both the responses from the unconfined and the
14 confined aquifers. So in this case, I do not believe
15 there's a distinction in terms of the numbers I used,
16 but in general, yes, I would agree with your statement.

17 Q. How about for administration for the rest of
18 this irrigation season, I guess, as far as putting water
19 into Silver Creek or when it would show up, would that
20 be an important factor?

21 A. Yes, I believe that would be an important
22 factor.

23 Q. Maybe more important than on a year-to-year
24 analysis or a general overview of the Basin?

25 A. Can you clarify, please?

1 Q. Yeah, certainly. If you're looking at
2 curtailing an individual groundwater right for the 2021
3 irrigation season, at some point, would it be important
4 to know that particular wells impact on the stream and
5 its timing?

6 A. I believe that would be important to know,
7 yes.

8 Q. Would that sort of evaluation evaluate the
9 uncertainty of the predicted model result?

10 A. Analysis -- so the analysis you're discussing
11 is analysis of which wells would have the most impact on
12 responses.

13 Q. Certainly. Individual wells.

14 A. I don't think that has any bearing on the
15 accuracy of the model.

16 Q. I meant the certainty, I'm sorry. I must have
17 said uncertainty.

18 A. Pardon me?

19 Q. I meant the word "certainty."

20 Would that impact from individual wells, would
21 that impact the certainty of the predicted model
22 results?

23 A. Are you asking me if there's a difference in
24 the certainty of response from a well in an unconfined
25 system versus a confined system.

1 Q. It's certainly dependent upon the location;
2 would you agree?

3 A. I would completely agree that it's dependent
4 on the location, yes.

5 Q. And in Ms. Sukow's report, she talked about an
6 uncertainty analysis performed by Alan Wylie.

7 Are you familiar with that?

8 A. I'm vaguely familiar with that report.

9 Q. And is it true that for your analysis, you
10 have not analyzed model uncertainty in this three-month
11 model simulation that she performed?

12 A. That is true.

13 Q. Looking back at the curtailment scenario, your
14 Table 2, is it true that you accepted the estimated
15 seepage loss of 25 percent?

16 Is that the number you used?

17 A. In computing the difference between the third
18 and fourth columns, yes, I accepted that estimation of
19 seepage losses at 25 percent.

20 Q. And was that a number that you came up with?

21 A. No.

22 Q. Okay. Where did that number come from?

23 A. That number came out of the approximate
24 average of the seepage loss range that was reported in
25 Sukow 2021 staff memo.

1 Q. That was an average for the entire year?

2 A. It was an approximate average for the entire
3 range, not for the year, but for an entire -- the range
4 that she quoted in that document.

5 Q. And did you recognize her estimated losses of
6 33 percent in July?

7 A. I'm sorry, can you restate?

8 Q. Do you recognize that she identified an
9 estimated loss of 33 percent in July?

10 A. No. I recognize that there was a range of
11 values around 25, and I do not recall any specific
12 months that were quoted, which they may have been.

13 Q. I guess it's for curtailment and water that
14 may show up this year.

15 Would you agree that an actual monthly
16 estimate is better than an average?

17 A. I'm not following. I'm sorry.

18 Q. If we're looking at administration for the
19 rest of the season -- we're here on June 10th -- would
20 evaluating estimated seepage losses by actual month and
21 if those estimates have been made, would that be a more
22 accurate value than a year-long average?

23 A. I would qualify my answer in this respect: I
24 think it's been testified to in these proceedings that
25 there is general uncertainty about the seepage loss

1 numbers and, therefore, the ability for us to
2 discriminate a value in any given month would be
3 suspect. And so I would say if the gages were providing
4 accurate data, then I would agree with the assertion.

5 Q. Do you have an opinion on the accuracy of the
6 gages involved?

7 A. I cannot render that opinion.

8 Q. Can you turn to Jennifer Sukow's memo. I
9 think it's IDWR 2.

10 Could you turn to page 28, please.

11 A. 28?

12 Q. Yes.

13 A. I'm there.

14 Q. So have you reviewed this table before?

15 A. No, I have not.

16 Q. So I'll give you a minute to look at it.

17 A. Okay. [Reviewing documents.]

18 All right.

19 Q. So I'm looking at the July 20, and I think
20 that's 2020, that there were some measurements taken and
21 some calculated seepage losses performed.

22 Do you see that 33 percent?

23 A. I do see that.

24 Q. Do you accept that?

25 A. No.

1 Q. You don't. Why not?

2 A. As I said before, I have no knowledge of the
3 accuracy or dependability of that gage information and,
4 therefore, I cannot either accept or reject that number.

5 Q. So you accept Jennifer's work for certain
6 things, but not this time; is that right?

7 A. I accept her range of values as reported, but
8 not at a monthly level.

9 Q. So in your estimate, it would be more accurate
10 to use a range of values average than what's actually
11 measured and estimated in a given month?

12 A. I believe that the range probably represents
13 the average over the irrigation period and the
14 individual months, I think, would have less certainty to
15 them.

16 Q. So if we were to accept the monthly estimates,
17 would that change your numbers in Table 2?

18 A. I think it would, yes. It would yield less
19 back to Station 10 than the 25 percent that I assumed,
20 yes.

21 Q. And, certainly, in August it would be
22 20 percent versus 25; do you agree with that?

23 A. I would agree.

24 Q. Looking at your Appendix C or Appendix D in
25 your report -- go back to that.

1 A. Is it D that you're looking at?

2 Q. I was looking at C first.

3 A. Okay. I am at C.

4 Q. And as far as the work you did, the last
5 section of your report, the section titled, "Depletion
6 and Potential Injury for the 2021 Irrigation Season,"
7 it's true you relied upon Mr. Lakey's predicted shutoff
8 dates and then those list of water rights in Appendix D;
9 is that correct?

10 A. I believe I -- depending upon the cutoff
11 dates, but I did not depend upon this sheet. After he
12 had -- I had received this sheet from Mr. Lakey, I
13 received a more expansive sheet listing individual
14 rights with individual days of water availability to
15 support my analysis. But my suspicion is this is a
16 subset, a summarization of that, but I did not use this
17 appendix directly.

18 Q. But Appendix D is a list of all of the water
19 rights that you then attributed numbers to --

20 A. Yes.

21 Q. -- days on?

22 And that was based upon Mr. Lakey's
23 estimates --

24 A. Yes, that is true.

25 Q. -- of cutoff days? Okay.

1 A. Yes.

2 Q. And based upon this list of water rights,
3 you've tabulated what you term an average water right
4 having 62 days of water; is that correct?

5 A. That is correct.

6 Q. With an average cutoff of June 21st, 2021?

7 A. Yes.

8 Q. I guess with the testimony you've heard over
9 this past week, would you agree that there's no such
10 thing as an average water right?

11 A. I would agree.

12 Q. Would you agree every water right is different
13 as far as priority and quantity?

14 A. I would agree.

15 Q. And Mr. Lakey testified this morning, as far
16 as if there were a curtailment in July and August, which
17 water rights would receive water.

18 Did you hear that testimony?

19 A. I did.

20 Q. And would you agree with it?

21 A. I would.

22 Q. You talk about an irrigation hiatus at the end
23 of your report. And the way I understand that is you
24 were projecting a cutoff date of June 20th, 2021; is
25 that correct?

1 A. June 21st, 2021, yes.

2 Q. Thank you. June 21st. And then if there were
3 a curtailment on July 1st or August 1st, that would
4 result in a hiatus of when water would be available; is
5 that true?

6 A. Assuming that there was no supplemental water
7 through private leases or other things brought, yes.

8 Q. And do you agree there could be a significant
9 gap in time between those predicted cutoffs on surface
10 rights and the time when curtailed groundwater reenters
11 the surface stream?

12 A. I believe that depends upon the outcome of
13 these proceedings to make that assertion.

14 Q. But in your report you estimate that between
15 14 and 45 days; is that true?

16 A. That is true.

17 Q. And would you agree that the total water
18 realized in any given month could take longer based upon
19 the model?

20 A. Take longer than?

21 Q. 14 days. We'll use that number.

22 A. I do not -- I'm not sure that the model speaks
23 to timing of delivery more than on a monthly time step,
24 which is the -- my understanding is that the time step
25 on the model is on a monthly time step. And so outside

1 that, I don't think we can speak to timing of returns.

2 Q. So it predicts a total quantity on a monthly
3 time basis over that whole month, like that total
4 diversion -- or total quantity? I'm sorry.

5 A. That is my understanding.

6 Q. So that could take anywhere from 1 to 30 days?

7 A. Yes.

8 Q. So you talked about, in this last section of
9 your report, that -- you reference, "anecdotal reports
10 indicate it takes only three to four days following the
11 cessation of pumping for increases in discharge to be
12 measurable in the system."

13 What's the basis for your statement right
14 there?

15 A. Discussions with various users and the
16 watermaster relating those anecdotes to me.

17 Q. And did they tell you they'd give you a date
18 of three to four days?

19 A. Did you ask for a date?

20 Q. Just a number of days. It says three to four
21 days.

22 A. Yeah, that's my recollection of what they
23 elaborated to me.

24 Q. Did you hear the testimony of Mr. Lakey this
25 morning?

1 A. I did.

2 Q. And I thought I heard seven to ten days for an
3 event last August?

4 A. That is not my recollection of Mr. Lakey's
5 testimony. I believe he said it was on the order of
6 closer to my own.

7 Q. Okay. You believe he testified it took three
8 to four days from the shutdown of groundwater pumps for
9 water to show up at Station 10?

10 A. That is my recollection, something on that
11 order.

12 Q. We can, obviously, refer back to the record.
13 I thought I heard seven to ten days.

14 You were here for all of the witnesses, the
15 senior surface water users; correct?

16 A. I was.

17 Q. And what happens to sugar beets if they don't
18 receive water for 45 days?

19 A. I'm not qualified to render an opinion in that
20 regard.

21 Q. Any other crops?

22 A. No.

23 Q. So you don't have -- as far as your past
24 experience with crop irrigation requirements, you have
25 no knowledge of a lack of water and specific days what

1 that does to the crop?

2 A. My previous experience is limited to the
3 irrigation crop requirements, assuming there is not a
4 deficit of water and do not extend to -- the
5 consequences to the crop under a deficit of water.

6 Q. So for irrigation hiatus -- I'll use your
7 term -- you don't have an estimate of what happens to
8 particular crops if they're off for a certain time?

9 A. I do not.

10 Q. So based upon the model results, you've
11 accepted Jennifer Sukow's runs, and I guess the output
12 of her memo; is that correct?

13 A. In my opinion, having both reviewed the model
14 and sitting in on a variety of technical advisory
15 committee meetings of which I am a party, I believe the
16 model is the best available science we have to answer
17 these questions.

18 Q. So would you agree with that prediction that
19 for either July 1st or an August 1st curtailment that
20 67 percent of that water curtailed will remain in the
21 aquifer for the balance of the irrigation season?

22 A. Yes, I do.

23 Q. And I believe last week you testified that's
24 not an optimum use of water resources for the rest of
25 this irrigation season, in your opinion?

1 A. That is not my recollection of my testimony.

2 Q. What's your recollection?

3 A. I cannot recall, but I do not recollect
4 stipulating to that.

5 Q. I'll just read it. I asked you a question:
6 "Would you agree that with the July 1st curtailment,
7 that approximately 67 percent of that water curtailed
8 remains in the aquifer?"

9 "Answer: In the 1st -- in the year of the
10 curtailment?"

11 "Question: Yes.

12 "Answer: Yes, I would agree with that.

13 "Question: Is that water beneficially used by
14 anybody?"

15 "Answer: Not at that point.

16 "Question: Is that an optimum use of the
17 water resource, in your opinion?"

18 "Answer: To leave potentially curtailed water
19 in an aquifer system?"

20 "Question: 67 percent.

21 "Answer: My personal belief is that the water
22 will reenter the system within two years, three years at
23 the outset, and will be available. So if you want to
24 put a year -- a one-year time frame around that, then I
25 would say no."

1 Do you still agree with that testimony or not?

2 A. I do.

3 Q. Isn't it true, Mr. Miller, in your report
4 you're not offering an opinion on the reasonably
5 anticipated average rate of future natural recharge?

6 A. That is true.

7 Q. And you are also not offering any opinion on
8 a reasonable groundwater pumping level; is that correct?

9 A. Reasonable in relation to an adequate rate of
10 recharge, or what is the basis of reasonability?

11 Q. Just a reasonable groundwater pumping level
12 for pumping.

13 A. I have no context for which to be able to
14 answer that.

15 Q. Did you review Mr. Blankenau's memo in this
16 case?

17 A. I did a cursory review of his memo and his
18 conclusions.

19 Q. Any reason to disagree with that today?

20 A. No.

21 MR. THOMPSON: Thank you. That's all of the
22 questions I have.

23 HEARING OFFICER: Thank you, Mr. Thompson.

24 Ms. O'Leary?

25 MS. O'LEARY: Just a few, Director.

1 CROSS-EXAMINATION

2 QUESTIONS BY MS. O'LEARY:

3 Q. Good afternoon, Mr. Miller. My name is
4 Heather O'Leary. I am an attorney for Galena Ground
5 Water District, and I just have a few questions for you
6 this afternoon.

7 Mr. Miller you've classified yourself as an
8 expert in modeling; is that correct?

9 A. Yes.

10 Q. Can you please tell me, as a modeler, what are
11 the typical hydraulic conductivity values in groundwater
12 models with alluvium material?

13 A. Well, it depends on where you're at, but in
14 most cases I deal with in the area, they're probably
15 around 2,000 feet per day, in that region. Maybe 10 to
16 200 -- or 2,000 feet per day.

17 Q. So that would be the kind of values you expect
18 when you run a model?

19 A. Yes. There's a wide range of variabilities in
20 that, but that's the median values that I would expect
21 to see, yes.

22 Q. Mr. Miller, can you have a multiyear effect if
23 surface rights are not curtailed?

24 A. If surface rights are not curtailed, can you
25 have a multiyear effect?

1 From pumping, presumably?

2 Q. Correct.

3 A. I believe so, yes, under one condition. If we
4 have a sequence of dry years where there's not
5 significant additional recharge that can reset the
6 system, I believe that you're going to see additive
7 effects over those periods over multiyears, yes.

8 Q. Now, in your deposition, I believe it was
9 about a week ago, and here today, you mentioned that you
10 are a member of the Wood River Valley Modeling Technical
11 Advisory Committee; is that correct?

12 A. That's right.

13 Q. And that committee -- during those meetings, I
14 believe you discuss certain aspects about the model,
15 such as direction of modeling efforts, things like that;
16 is that correct?

17 A. That is right.

18 Q. Now, you've only been a member of that
19 committee for two years, though; right?

20 A. That is approximately accurate, yes.

21 Q. Are you aware that that committee has held
22 bimonthly meetings since 2013?

23 A. I was not aware that the -- when they
24 initiated those meetings, no.

25 Q. Well, given that you've only been involved in

1 it for two years, it's fair to say that you have no
2 knowledge regarding what was discussed from 2013 until,
3 approximately, 2019; is that accurate?

4 A. I would agree, yes. That's true.

5 Q. So you don't have any knowledge about the
6 modeling efforts prior to 2019; right?

7 A. That is correct.

8 Q. So your knowledge is just limited to a short,
9 two-year span, then?

10 A. That is right.

11 MS. O'LEARY: That's all I have, Mr. Miller.
12 Thank you.

13 THE WITNESS: Thank you.

14 HEARING OFFICER: Thank you, Ms. O'Leary. And
15 thanks for speaking up.

16 Let's see, Group -- Ann Vonde, questions?

17 MS. VONDE: No.

18 HEARING OFFICER: Thank you.

19 Group 3? Mr. Lawrence, you're first.

20 MR. LAWRENCE: Thank you, Mr. Director.

21

22 CROSS-EXAMINATION

23 QUESTIONS BY MR. LAWRENCE:

24 Q. And good afternoon, Mr. Miller.

25 A. Hello.

1 Q. Mike Lawrence, attorney for the City of
2 Hailey. I think this will be fairly brief.

3 Mr. Miller, your opinion in this proceeding is
4 limited to the impacts of groundwater pumping in the
5 Triangle; is that correct?

6 A. That is correct.

7 Q. Your analysis mentions residual effects of
8 previous groundwater withdrawals from 2019 and 2020;
9 correct?

10 A. Correct.

11 Q. But groundwater withdrawals prior to 2021
12 cannot be curtailed; is that correct?

13 Would you agree with that?

14 A. I would agree with that, yes.

15 Q. Is it your position that groundwater users are
16 responsible for the impacts of pumping prior to the
17 issuance of a curtailment order?

18 A. Can you rephrase -- or repeat, please? I'm
19 sorry.

20 Q. Is it your position that groundwater users are
21 responsible for the impacts of pumping prior to the
22 issuance of a curtailment order?

23 A. I think it's a matter of law that I'm not
24 qualified to answer.

25 Q. In your analysis, you scaled the pumping

1 impacts for three years together; is that -- am I saying
2 that correctly?

3 A. I summed them for three years and then took
4 the total and then scaled them.

5 Q. Okay.

6 A. Yes.

7 Q. Is that part of your analysis employing the
8 principal of superposition?

9 A. I would say that it is similar to the
10 principal of superposition.

11 Q. How is it different?

12 A. Additive effects are typically done
13 concurrently in terms of temporal space, not necessarily
14 in different years. And so I don't know if it would be
15 perfect employment of the principal of superposition,
16 but for purposes of this argument, yes, generally so,
17 yes.

18 Q. Is it true that the use of superposition would
19 presume that the model is linear?

20 A. Yes, that is true.

21 Q. And do you recall hearing Ms. Sukow testify
22 that the model was nonlinear and that you cannot use
23 superposition?

24 A. I recall her saying the model can be used in
25 either superposition mode or other modes.

1 Q. Do you recall whether she used it in
2 superposition mode?

3 A. I do not know that.

4 Q. Earlier with Mr. Thompson, you discussed
5 the -- your analysis of reducing Ms. Sukow's model
6 figures, her model run conclusions, to account for
7 irrigation efficiency.

8 Do you recall that?

9 A. I recall speaking to the difference in our
10 approaches in how we dealt with those, yes.

11 Q. Is it true that your analysis assumes an
12 85 percent irrigation efficiency for all pumpers?

13 A. I would say it differently. I would say my
14 analysis assumes a 15 percent return flow, percent
15 return flow.

16 Q. But isn't that the flip side of the coin, that
17 that would assume 85 percent irrigation efficiency?

18 A. The term "irrigation efficiency," I think, is
19 perhaps not the -- exactly the right term here, but it
20 is the combination of a variety of factors. I'd just
21 say that my work assumed 15 percent return flows, which
22 is 1 minus .85 or 1 minus 85, yes.

23 Q. Have you analyzed whether 85 percent
24 irrigation efficiency is reasonable for all pumpers?

25 Or maybe I should put it this way: Have you

1 analyzed whether 15 percent return flows is reasonable
2 for all pumpers?

3 A. I have personally not, but I have hired a
4 third-party expert to render an opinion for the
5 Triangle, the area of interest, and he has provided an
6 estimate to me.

7 Q. And what was his estimate?

8 A. He estimated that the percent return flows for
9 the potential area of concern is, approximately,
10 8.5 percent.

11 Q. So somewhat less than the 15 percent that you
12 assumed?

13 A. [Witness nods head.]

14 HEARING OFFICER: And the answer is,
15 Mr. Miller?

16 THE WITNESS: Oh, I'm sorry. Yes, it is --
17 that is less than the return flows that were assumed in
18 my -- yes, my report.

19 Q. (BY MR. LAWRENCE) Do you know the upper limit
20 of efficiency for center pivots?

21 A. The upper limit of efficiency? I can estimate
22 that range of probably at 95 percent to 100, maybe 97.
23 So, yes, 95 or slightly better.

24 Q. And isn't it true that there are many pumpers
25 in the Triangle that don't have center pivots?

1 A. That is true.

2 Q. You were discussing with Mr. Thompson the
3 seepage losses in the Little Wood River.

4 Do you recall that conversation?

5 A. I do not.

6 Q. I believe you testified that you used a
7 25 percent assumption for seepage loss between
8 Sportsman's Access gage and Station 10; is that correct?

9 A. That is true, yes.

10 Q. And didn't you and Mr. Thompson discuss that
11 Ms. Sukow found ranges between 20 and 37 percent losses
12 in that reach?

13 A. I would have to refer to that memo. I don't
14 know what the range was, but I believe the upper end was
15 37 percent. May I refer to her memo?

16 Q. Do you know what the seepage losses are below
17 Station 10?

18 A. I do not, no.

19 Q. You have not done any analysis of that?

20 A. No, I have not.

21 Q. Have you considered the error uncertainty in
22 your 25 percent transit loss --

23 A. I have not.

24 Q. -- assumption?

25 COURT REPORTER: Can you say that question

1 again, please?

2 MR. LAWRENCE: I'll try. "Have you considered
3 error or uncertainty in your 25 percent transit loss
4 assumption?"

5 Q. (BY MR. LAWRENCE) Have you evaluated seepage
6 losses upstream of Sportsman's Access?

7 A. I have not.

8 Q. Have you analyzed the diversion and use of
9 water by surface water users on Silver Creek?

10 A. No, I have not.

11 Q. Mr. Miller, I want to discuss with you,
12 briefly, a couple of the numbers that I believe are
13 conclusions that you've testified to today.

14 One number is found on page 3 of your report.
15 And it says that the computed hydrologic impacts to
16 surface water rights in the Little Wood/Silver Creek
17 drainage during the 2021 irrigation season would be --
18 you calculate to be approximately 8,182 acre-feet
19 resulting from groundwater pumping south of Glendale
20 Road.

21 A. I see that.

22 Q. So just so I'm clear, that 8,182 acre-feet,
23 that's calculated from the three years -- your analysis
24 of the three years of pumping, 2019, 2020, and 2021; is
25 that correct?

1 A. That is correct, yes.

2 Q. Is it your opinion that Mr. Rigby's clients
3 will be injured to the tune of 8,182 acre-feet in 2021?

4 A. Not necessarily, no.

5 Q. Is it your opinion that Mr. Rigby's clients
6 will have shortfalls totaling 8,182 acre-feet?

7 A. I would render -- I would rather say it in
8 this way, that the system will receive, approximately,
9 8,182 acre-feet less water than it would have otherwise
10 if pumping had not happened. How that is received or
11 disbursed or given or injured is beyond the scope of
12 this statement.

13 Q. And Mr. Rigby's clients are just a portion of
14 the users on the system; is that correct?

15 A. That is my understanding, yes.

16 Q. So their shortfalls would be something less,
17 in your opinion, than the 8,182?

18 A. I would agree to that, yes.

19 Q. And through another analysis that you
20 testified to, you concluded that there would be a
21 10,000 acre-foot deficit below the adequate water supply
22 in 2021.

23 Did I say that accurately?

24 A. Can you say that one more time, please?

25 Q. You testified to another analysis you

1 conducted where you concluded that the -- that there
2 would be a 10,000 acre-foot deficit in 2021 below what
3 you've determined to be the adequate water supply?

4 A. That is correct.

5 Q. And, again, is it correct to say that
6 Mr. Rigby's clients would require something less than
7 that 10,000 acre-feet that you found?

8 A. I am not following this question, I'm sorry.

9 Q. Well, let me -- I probably asked it poorly.
10 I'm sure I did.

11 Let me try it this way: It is not your
12 testimony that Mr. Rigby's clients have a
13 10,000 acre-foot deficit below their adequate water
14 supply; is that correct?

15 A. That is correct, yes.

16 Q. And, again, it would be something less than
17 10,000 acre-feet for Mr. Rigby's clients because they
18 are just a portion of the users in the system?

19 A. I would agree with that, yes.

20 Q. Did you analyze actual or material injury in
21 2021 to any particular water rights?

22 A. I did not.

23 Q. Do you know whether all of the acres, when in
24 the places of use, for any water rights will be
25 irrigated in 2021?

1 A. I do not. I do not know.

2 Q. Did you analyze whether in 2021 any water
3 rights will use water efficiently and without waste?

4 A. No.

5 Q. Did you analyze the amount of water available
6 in 2021 and the source from which a particular water
7 right is diverted?

8 A. No.

9 Q. Did you analyze the effort or expense of the
10 holder of a water right to divert water from the source
11 in 2021?

12 A. No.

13 Q. Did you analyze whether the exercise of junior
14 priority groundwater rights individually or effectively
15 effects the quantity and timing of when water is
16 available to any particular senior priority surface or
17 groundwater right?

18 A. No.

19 Q. Did you analyze whether the exercise of junior
20 priority groundwater rights, individually or
21 collectively, affects the cost of exercising any
22 particular senior priority surface or groundwater right?

23 A. No.

24 Q. Did you analyze the rate of diversion compared
25 to the acreage of land served by any senior priority

1 irrigation rights?

2 A. I did not.

3 COURT REPORTER: And can you slow down a
4 little bit?

5 MR. LAWRENCE: Sure. Gladly.

6 Q. (BY MR. LAWRENCE) Did you analyze, for the
7 2021 irrigation season, the annual volume of water
8 diverted by any senior priority irrigation right?

9 A. I did not.

10 Q. Did you analyze the system diversion and
11 conveyance efficiency of any senior priority irrigation
12 rights?

13 A. I did not.

14 Q. Did you analyze the method of irrigation water
15 application for any senior priority water rights?

16 A. I did not.

17 Q. Did you analyze the amount of water being
18 diverted and used compared to the water rights?

19 A. I did not.

20 Q. Did you analyze the existence of water
21 measuring and recording devices?

22 A. I did not.

23 Q. Did you analyze the extent to which the
24 requirements of the holder of senior priority water
25 rights could be met with the user's existing facilities

1 and water supplies by employing reasonable diversion and
2 conveyance efficiency and conservation practices?

3 A. I did not.

4 Q. Did you analyze the extent to which
5 requirements of senior priority surface water rights
6 could be met using alternate reasonable means of
7 diversion or alternate points of diversion?

8 A. I did not.

9 MR. LAWRENCE: That's all of my questions.

10 Thank you, Mr. Miller.

11 HEARING OFFICER: Thank you, Mr. Lawrence. I
12 assume now that the other attorneys want to participate
13 in this examination.

14 Mr. Bromley and Ms. McHugh?

15 MS. MCHUGH: I have no questions.

16 HEARING OFFICER: Okay. Mr. Bromley?

17 MR. BROMLEY: Thank you.

18

19 CROSS-EXAMINATION

20 QUESTIONS BY MR. BROMLEY:

21 Q. Mr. Miller, hi.

22 A. Hello.

23 Q. Chris Bromley. I'm looking at your expert
24 report, Mr. Miller, and I'm in Appendix B.

25 A. Okay.

1 Q. Did you prepare this table?

2 A. I did not.

3 Q. Where did it come from?

4 A. One moment. May I refresh myself with the
5 table?

6 Q. Yep.

7 A. I'm sorry, proceed.

8 Q. Sure. Appendix B. And it says it's "Water
9 Rights in the LW-SC Drainage."

10 And did you prepare this table?

11 A. I did not.

12 Q. Do you know where it came from?

13 A. I received this from the watermaster,
14 Mr. Kevin Lakey.

15 Q. And for what purpose did you use this table in
16 your --

17 A. This table was used, ultimately, to support my
18 calculation of the average cutoff date for all of these
19 users on this table.

20 Q. Okay. So one of the things that was just
21 interesting to me, Mr. Miller, as I was listening to
22 your testimony and I was looking at this table and was
23 just curious about some of the water rights, and the
24 very first one that I opened up was marked 29-P3.

25 Do you see that?

1 A. I do see that, yes.

2 Q. And it's in the name of Walter Hofstetter?

3 A. I see that.

4 Q. And when I went to look this water right up,
5 37-1224C, in the records of the Department, there was
6 not a Hofstetter associated with this water right. And
7 the diversion rate that's in this table, which is 0.70
8 cfs, when I did find the Hofstetter water right, which
9 is actually 37-1224A, the decreed diversion right is for
10 .651 cfs.

11 So you didn't, then, independently verify this
12 table with the records of the Department?

13 A. I did not, no.

14 Q. I then looked at another one, which was 69-P.
15 Do you see that?

16 A. Yes, I see that.

17 Q. It says Lincoln County Cemetery is the owner,
18 and water right 67-0606 [sic]. And when I look in the
19 records of the Department, there is no 37-0606. There
20 is a 37-0606E. I haven't, then, taken the time to go
21 through the rest of them, but, you know, just plucking
22 two, I was surprised to find errors like that.

23 And you had said earlier that you believed
24 yourself at least conversant with the records of the
25 Department. Would it surprise you, then, that this

1 table has errors?

2 A. It would not surprise me, but it would
3 surprise me if the incidence of errors was very large,
4 which I did not analyze.

5 Q. And at least with the Walter Hofstetter right,
6 where there's -- it's showing a diversion rate of .7, in
7 reality the diversion rate is .651, as decreed, and this
8 is being attached to your expert report, which is
9 purporting to show losses within the system attributable
10 to groundwater pumping; correct?

11 A. One moment. I want to look through this. I
12 would agree with that, but I would caveat that by saying
13 that in this particular analysis that I did, the
14 difference between the stated -- the instantaneous
15 diversion and the discrepancy would not have materially
16 affected my finding of a June 21st cutoff date. But,
17 yes, in general, I would agree with that.

18 Q. And would you agree that we ought to be using
19 the decreed diversion rates as opposed to something
20 else?

21 A. I would completely agree with that, yes.

22 Q. The last question, Mr. Miller. Are you here
23 advocating for curtailment outside of the Bellevue
24 Triangle of groundwater rights?

25 A. No.

1 MR. BROMLEY: Nothing further. Thank you.

2 HEARING OFFICER: Thank you, Mr. Bromley.

3 Okay. Mr. -- let's see. Do we have anybody
4 else? I don't believe we do.

5 Okay. So redirect, Mr. Rigby?

6 MR. RIGBY: No questions.

7 HEARING OFFICER: Okay. Thank you,
8 Mr. Miller.

9 What do we want to do at this point? Who's
10 your next witness?

11 MR. RIGBY: Mr. Director, I believe we are
12 done.

13 HEARING OFFICER: So you're ready to rest?

14 MR. RIGBY: We are ready to rest.

15 HEARING OFFICER: Do we want to take a break
16 before we start?

17 Mr. Barker, I assume you or Mr. Thompson will
18 be calling witnesses?

19 MR. BARKER: So Ms. Vonde has asked to go
20 ahead.

21 HEARING OFFICER: Oh, okay.

22 MR. THOMPSON: We have agreed with that. And
23 so --

24 HEARING OFFICER: I noticed you had a witness
25 here.

1 Do we -- you want to take a break, Ms. Vonde?

2 MS. VONDE: Yes, that would be welcomed.

3 HEARING OFFICER: Okay. Let's take ten
4 minutes.

5 (Break taken.)

6 HEARING OFFICER: Let's go back on the record.

7 So we're back on the record after the
8 afternoon or late afternoon break. Mr. Rigby and
9 Mr. Fletcher have rested, and, by agreement, Fish and
10 Game will now present evidence.

11 Ms. Vonde, you have a witness here that I need
12 to swear in. If you will -- Mr. Anderson, if you'll
13 stand and raise your right hand, please.

14

15 GREGG ANDERSON,
16 first duly sworn to tell the truth relating to said
17 cause, testified as follows:

18

19 HEARING OFFICER: Thank you. Please be
20 seated.

21 Ms. Vonde?

22

23 DIRECT EXAMINATION

24 QUESTIONS BY MS. VONDE:

25 Q. Can you please state your name and spell it

1 for the record.

2 A. Gregg, G-r-e-g-g, Anderson, A-n-d-e-r-s-o-n.

3 Q. And what is your current job title and who do
4 you work for?

5 A. I'm a fish hatchery supervisor for Idaho Fish
6 and Game. And I manage the Magic Valley complex.

7 Q. And what is your current work address? Your
8 current work address?

9 A. Oh, you know, I can't, honestly, give that to
10 you. It's our Jerome regional office.

11 HEARING OFFICER: Mr. Anderson, you will need
12 to speak up.

13 THE WITNESS: It's Idaho Fish and Game's
14 Jerome regional office. I do not have the exact
15 address.

16 Q. (BY MS. VONDE) That's fine. Thank you.

17 So how long have you been in your position?

18 A. I've been in my current position two years.

19 Q. And what is your educational background?

20 A. I have an associate of applied science in fish
21 hatchery management and a bachelor of science in project
22 management.

23 Q. And what is your current work experience?
24 What are your current duties?

25 A. I've currently worked for Idaho Fish and Game

1 for 14 years. The hatchery in question, Hayspur
2 Hatchery, I was manager of it from 2015 to 2018, and I
3 currently manage over -- I oversee that hatchery now in
4 my current position as well.

5 Q. And do you have any other relevant work
6 experience?

7 A. I was also a fish hatchery manager for Fish
8 Breeders of Idaho, 2005-2006. And I was a fish
9 culturist for the Nevada Department of Wildlife in '86,
10 '87, and '88.

11 Q. Thank you. Where is the Hayspur Fish Hatchery
12 located?

13 A. It is on -- it's right off of Highway 20 about
14 4 miles west of Picabo.

15 Q. And is that within the Bellevue Triangle?

16 A. Yes, it is.

17 Q. And is it your understanding that the hatchery
18 lays within the area of potential curtailment outlined
19 for this proceeding?

20 A. Yes.

21 Q. Can you please turn to Exhibit 25, and let's
22 take a look at page IDFG 426.

23 So can you please just tell us what this is a
24 photo of?

25 A. That's an aerial view of the fish hatchery,

1 and it encompasses all of the hatchery.

2 Q. And can you describe, in a general way, the --
3 sort of the surface body sources of water that we see in
4 this photo?

5 A. The surface water, you really can't see it,
6 there's a small box off to the -- it's right in the
7 center here at the top. It says it's "Butte Creek
8 Springs." There's actually a metal structure that the
9 spring is under, and that is the head of Butte Creek.
10 And that is one water source that's surface. Then if
11 you look just to the left of all of the silos, Loving
12 Creek is another one of our surface water sources.

13 Q. And what is the other large kind of
14 pond-looking --

15 A. The one large pond that runs right along the
16 lower section where the raceways are is called Gaver's
17 Lagoon. It's an offshoot of Loving Creek.

18 Q. So does Fish and Game have surface water
19 rights associated with Loving Creek and the Butte
20 Springs?

21 A. Yes.

22 Q. And what is the water right associated with
23 Loving Creek, do you know the number?

24 A. Loving Creek is 25 cfs.

25 Q. And is that Water Right No. 37-2695?

1 A. I believe, yes, it is.

2 Q. Does Fish and Game use its Loving Creek water
3 right in the hatchery?

4 A. Currently, we do not actively use it in the
5 hatchery due to pathogen levels. We do use it to supply
6 water for the fishing pond that's right below the
7 hatchery --

8 Q. And is that?

9 A. -- or adjacent to the hatchery.

10 Q. Excuse me. Is that Gaver's Lagoon?

11 A. Gaver's Lagoon, yes.

12 Q. Is it your understanding that this Loving
13 Creek surface water right is subject to potential
14 curtailment under this proceeding?

15 A. The surface water right, no. This is only for
16 groundwater, from my belief.

17 Q. And then does Fish and Game also have a water
18 right associated with Butte Creek Springs?

19 A. Yes.

20 Q. And is that Water Right 37-2489?

21 A. Correct.

22 Q. And do you know what the quantity on the face
23 of that water right is?

24 A. I believe that one is 15 cfs.

25 Q. How much does that spring actually produce

1 now?

2 A. Right now we're lucky if we can get a little
3 over 5 cfs.

4 Q. And do you use that Butte Springs water right
5 in the hatchery itself?

6 A. Yes.

7 Q. So is it your understanding that the Butte
8 Springs water right is subject to potential curtailment
9 under this proceeding?

10 A. The spring is not. It's the surface water.

11 Q. The hatchery also has three groundwater
12 rights; is that correct?

13 A. Correct.

14 Q. So on the map here on page 462, we see
15 Well No. 2 delineated. And is that associated with
16 Water Right 37-8271?

17 A. Yes.

18 Q. Okay. That has been previously submitted as
19 Fish and Game Exhibit 4.

20 Can you flip over to that tab quickly?

21 A. Which page was that?

22 Q. 4.

23 A. 4.

24 Q. Do you have Water Right 37-8271 there?

25 A. I have to figure out how to read this page

1 right quick.

2 Q. It's right at the top, just under the heading.

3 A. Oh, yep. Gotcha.

4 Q. How much is that water right for on the face
5 of the water --

6 A. 1 cfs.

7 Q. And about how much does that Well No. 2, which
8 is associated with that water right, actually produce?

9 A. It actually produces just under 1 cfs.

10 Q. Is this water right labeled, on its face, as
11 nonconsumptive?

12 A. Yes, it's nonconsumptive.

13 Q. Is it your understanding that this water right
14 may potentially be subject to curtailment under this
15 proceeding?

16 A. Yes.

17 Q. And then I won't have you flip back, but Well
18 No. 3, is that also associated with a water right?

19 A. Correct.

20 Q. Is that Water Right 37-7038?

21 A. Yes.

22 Q. Can you please flip to what has previously
23 been submitted as Fish and Game Exhibit 2.

24 And is that Water Right 37-7038?

25 A. Yes.

1 Q. How much is that water right for on the face
2 of the water right itself?

3 A. 2 cfs.

4 Q. And how much does that well actually produce?

5 A. That one we probably, actually, get about half
6 a cfs.

7 Q. Is that right labeled as nonconsumptive on its
8 face?

9 A. It is nonconsumptive.

10 Q. Does it say on the face of that water right
11 that it's nonconsumptive?

12 Do you see anywhere on there that it does?

13 A. [Reviewing documents.]

14 Q. And I could just represent to you that it does
15 not, if that helps.

16 A. I just see "fish propagation." I don't see
17 it.

18 Q. Right. Okay. So do you know why that one
19 doesn't have that label on it?

20 A. I do not.

21 Q. Is it used in the hatchery --

22 A. It is used in the hatchery.

23 Q. -- the same way the others are?

24 HEARING OFFICER: Okay. You'll need to wait
25 until she finishes. You're answering before she

1 finishes her question. Thank you.

2 Q. (BY MS. VONDE) Is it your understanding that
3 this Water Right 37-7038 is also subject to potential
4 curtailment under this proceeding?

5 A. Yes.

6 Q. All right. Then Well No. 4 is associated with
7 Water Right 37-8331; is that correct?

8 A. Yes.

9 Q. So that has been previously submitted as Fish
10 and Game Exhibit 4.

11 Can you flip -- Exhibit -- sorry, hold on.
12 Excuse me, it's Exhibit 6. So do you have 37-8331 in
13 front of you?

14 A. Yes.

15 Q. How much is that water right for on the face
16 of the water right?

17 A. 3 cfs.

18 Q. And how much, in your experience, does that
19 well actually produce?

20 A. About one and a half cfs.

21 Q. And if you would look at Condition No. 2,
22 Conditions of Approval No. 2, does that state that this
23 water right is nonconsumptive?

24 A. Yes.

25 Q. Is it your understanding that this water right

1 may be subject to potential curtailment under this
2 proceeding?

3 A. Yes.

4 Q. Okay. Let's turn back to Exhibit 25, please.
5 And let's look at the first page, IDFG 425,
6 which is a diagram.

7 Okay. So what are the four sources of water
8 that enter the hatchery?

9 A. You have Butte Springs, Well 2, Well 3, and
10 Well 4.

11 Q. And from each of those points of diversion,
12 where does the water go?

13 A. All of those go to what's called our head box.
14 And when they go into there, they are elevated through a
15 degas tower to remove any gases or nitrogen or so forth
16 that are in the water, which is commonly found in well
17 sources.

18 Q. Are each of those points of diversion piped
19 from the point of diversion into the head box?

20 A. Yes.

21 Q. And once they're in the head box, are they
22 commingled?

23 A. Yes.

24 Q. So after this point you can't differentiate
25 one source of water from another?

1 A. No.

2 Q. Can you measure -- do you have the capability
3 to measure individual wells and how much is flowing into
4 the head box?

5 A. No.

6 Q. So from the head box, there's an arrow
7 indicating that flow goes to the incubation building; is
8 that correct?

9 A. Yes.

10 Q. How does water get from the head box to the
11 Incubation Building?

12 A. Through a pipe.

13 Q. And once in the incubation building, how is
14 the water used?

15 A. In the incubation building, we use it to -- as
16 it's called "incubation" -- to incubate eggs.

17 Q. And what are the eggs contained in? Are they
18 vats? Are they plastic trays?

19 A. They are in plastic trays called the heat
20 stack, and they filter through them, and then the water
21 exits the building through a drain into a pipe.

22 Q. Okay. So the water is, basically, completely
23 contained while it's inside the building?

24 A. Yes.

25 Q. And you mentioned that the water exits the

1 incubation building.

2 Where does it go from the incubation building?

3 A. It goes into a pipe, and it is delivered below
4 our settling basin.

5 Q. And into what body of water?

6 A. Butte Creek.

7 Q. Is there a way to measure water exiting the
8 incubation building?

9 A. Not exiting.

10 Q. From the head box there is another arrow that
11 indicates flow from the -- flow to the hatchery
12 building; is that correct?

13 A. Correct.

14 Q. And how does the water get from the head box
15 to the hatchery building?

16 A. Through two pipes.

17 Q. Once in the hatchery building, how is the
18 water used?

19 A. It is used in concrete raceways inside the
20 building, and then it exits through another pipe.

21 Q. And those raceways are covered by the
22 building?

23 A. Correct.

24 Q. Is there a way to measure water used in the
25 hatchery building?

1 A. Only where we -- where it comes out of the
2 pipe, we measure that using a stopwatch and a bucket and
3 determine how many gallons per minute.

4 Q. And how does the water exit the hatchery
5 building?

6 A. It exits through a standpipe, it goes into a
7 drain pipe. When it leaves the hatchery building, it
8 can either go to the settling basin or to the front
9 raceways.

10 Q. Is there a way to measure that water that's
11 exiting the --

12 A. No.

13 Q. -- hatchery building?

14 Not directly as it exits the hatchery
15 building; is that right?

16 A. Not as it exits, but we do measure what comes
17 in.

18 Q. And can you measure it later when it gets
19 either to the front raceways or over the settling basin
20 weir?

21 A. I cannot measure that little portion, but as a
22 sum of use, yes.

23 Q. As a collective.

24 Okay. From the head box, there's another
25 arrow indicating that water can flow into the round

1 ponds; is that correct?

2 A. Yes.

3 Q. And how does the water get from the head box
4 to the round ponds?

5 A. Through piping.

6 Q. Can you describe the construction of the round
7 ponds?

8 A. The round ponds are 1-foot-thick concrete
9 diameter ponds with grain silos built over the top of
10 them.

11 Q. And what do you raise in the round ponds?

12 A. They house all of our brood stock.

13 Q. How many round ponds are there?

14 A. There are a total of 15 round ponds in two
15 different areas.

16 Q. So this area that we're talking about now, is
17 that round ponds 1 through 12?

18 A. Yes.

19 Q. Is there a way to measure water going into the
20 round ponds?

21 A. Eight of them, round ponds 1 through 8, we can
22 measure water going in. Round ponds 9, 10, 11, and 12
23 we can only measure water leaving the raceway -- the
24 round ponds.

25 Q. Well, how does water exit round ponds 1

1 through 12?

2 A. They have a center standpipe where all of the
3 water drains to. It goes into piping and out to its
4 exit.

5 Q. So it looks like on the diagram it can exit
6 either to the Parma box or directly to Butte Creek; is
7 that correct?

8 A. The round ponds, yeah, that is correct.

9 Q. And what is the Parma box?

10 A. The Parma box is a box that allows us the
11 ability to reuse that water in the front raceways.

12 Q. So from the Parma box, water can either go
13 into the settling basin or to the front raceways; is
14 that correct?

15 A. Correct.

16 Q. And do you have a way of measuring what's
17 coming out of the Parma box?

18 A. I do not have a way to measure what comes out
19 of the Parma box.

20 Q. So -- and forgive me if I asked this already
21 -- but is there a way to measure what is coming out of
22 the round ponds?

23 You answered that already, didn't you?

24 A. Yeah, I can measure what's coming out of the
25 round ponds.

1 Q. Okay. From the head box there is another
2 arrow indicating that water can flow into the small
3 raceways, 1 through 4; is that correct?

4 A. Correct.

5 Q. How does water get from the head box into
6 those raceways?

7 A. Through piping.

8 Q. Can you describe the construction of these
9 small raceways?

10 A. They are concrete raceways, and they're all
11 covered with netting, but they are still exposed to the
12 environment.

13 Q. And what do you raise in the small raceways?

14 A. We raise juvenile fish, and that's where we
15 start all of our brood stock as well.

16 Q. Is there a way to measure water going into the
17 small raceways?

18 A. Not going in.

19 Q. Is there a way to measure water coming out of
20 the small raceways?

21 A. Yes.

22 Q. And where does the water go when it exits the
23 small raceways?

24 A. Well, the water can either go to the settling
25 basin or the front raceways.

1 Q. From the head box, there's yet another arrow.
2 That goes into round ponds 13 through 15; is
3 that correct?

4 A. Correct.

5 Q. How does water get from the head box to those
6 round ponds?

7 A. Through piping.

8 Q. Can you describe the construction of round
9 ponds 13 through 15?

10 A. They're identical to the other 12. They're
11 1-foot-thick concrete ponds with grain silos constructed
12 over the top of them.

13 Q. And what do you raise in those ponds?

14 A. Those are specifically used for our brook
15 trout brood stock.

16 Q. Is there a way to measure water going into
17 those round ponds 13 through 15?

18 A. 13 and 14 we can only measure water exiting.
19 Round pond 15 has actually got a series of smaller tanks
20 inside, and we use a bucket, and we can measure the
21 inlet to each of those.

22 Q. When water exits round ponds 13 though 15,
23 where can it go?

24 A. It can only go to the settling basin.

25 Q. I see, when I look at the diagram, an arrow

1 that indicates those round ponds could also go to the
2 front raceways; is that correct or incorrect?

3 A. In theory, they could. Unfortunately, where
4 we have the smaller ponds inside of them, we're unable
5 to drain to the front because of the water level. It
6 would submerge all of our experimental tanks. So we're
7 kind of forced to use the settling basin.

8 Q. And I think you already indicated there's a
9 way to measure water exiting those round ponds; is that
10 correct?

11 A. Yes.

12 Q. All right. So overall, water from the
13 hatchery is discharged into the natural channel formed
14 by Butte Creek Springs; is that correct?

15 A. Yes.

16 Q. Are there any other surface water users on
17 Butte Creek Springs in between any of the points of
18 discharge of the hatchery?

19 A. No, not that I'm aware of.

20 Q. So how is the settling basin formed on Butte
21 Creek Springs Creek?

22 A. The settling basin, it's just the natural
23 spring.

24 Q. So when we look at Exhibit 25 -- let's look at
25 page 426 again -- on that aerial photograph, I see a

1 road that looks like it sort of divides Butte Creek
2 Spring.

3 Is there some sort of manmade structure under
4 that?

5 A. Yeah, we did put a culvert so we could drive
6 over and have access to the other side. So there is a
7 culvert that goes between there.

8 Q. And is there -- are there any boards that --

9 A. Yes. There's a weir that we've set up so that
10 we can measure the water leaving that pond.

11 Q. And the boards there, are they fixed? Do you
12 move them a lot?

13 A. We rarely ever move them.

14 Q. So how long would you estimate, as a
15 layperson, that water is held back by that weir there in
16 the culvert in the center for the settling basin?

17 A. You know, like I said, I'm not trained to do
18 that, but I assume there's, roughly, an acre-foot of
19 water there. And with the amount of water we currently
20 have going through there, it probably turns over four
21 times a day.

22 Q. So would you say that the settling basin flows
23 fairly continually --

24 A. Yes.

25 Q. -- even though those boards are there?

1 There's also water discharged from the
2 hatchery into the settling pond below the settling pond
3 weir; is that correct?

4 A. Yeah. The -- the incubation building directly
5 deposits water below that, and the large raceways all
6 flow below that settling basin.

7 Q. And thank you for reminding me. I think we
8 might have skipped the front raceways in our description
9 of the hatchery complex.

10 Can you go back, please, and describe how
11 water gets into the front raceways?

12 A. It can get its water from a couple of
13 different sources, one of which is -- the primary source
14 is the Parma box. We try to reuse the water and send it
15 out front to at least get a second use of that water
16 before we deposit it back into the creek. We also have
17 the ability to inject fresh water, but we rarely have
18 spare fresh water to do that.

19 Q. So the front raceways is second use water; is
20 that correct?

21 A. Second use, yes.

22 Q. And where do the front raceways discharge?

23 A. The front raceways discharge right below the
24 dike on the settling basin.

25 Q. So below the settling basin?

1 A. Yes.

2 Q. And do you have a way to measure water coming
3 out of the front raceways?

4 A. Yes, coming out we can measure.

5 Q. And then water that flows -- discharges from
6 the hatchery into Butte Creek below the settling basin,
7 where does it go?

8 A. Could you repeat that, please?

9 Q. Water that discharges from the hatchery into
10 Butte Creek but below the settling basin, where does
11 that water eventually flow to?

12 A. Eventually it goes into Loving Creek.

13 Q. And where does Loving Creek flow into?

14 A. Loving Creek eventually goes into Silver
15 Creek.

16 Q. How would you describe Butte Creek below the
17 settling basin?

18 A. That's just a creek.

19 Q. Just a creek?

20 A. Yeah.

21 Q. All right. I'll have you take a quick look at
22 Exhibit 20.

23 Can you tell me what that document is?

24 A. It's the best management practices for the
25 hatchery.

1 Q. And why was that document developed?

2 A. We had to develop this for our NPDES permit.

3 Q. Does that document also provide some
4 descriptions of how water is used in the hatchery?

5 A. It does. And it shows how we measure and what
6 we measure and how we contain waste and so forth.

7 Q. Okay. Is there anything else about how water
8 flows into and out of the hatchery that you think we
9 missed?

10 A. I think we pretty much covered it all.

11 MS. VONDE: I would -- at this point, I'd like
12 to move to admit Fish and Game Exhibits 20 and 25 into
13 the record.

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

16 The documents marked as Idaho Fish and Game 20
17 and 25 are received into evidence.

18 (IDFG Exhibits 20 and 25 received.)

19 Q. (BY MS. VONDE) So based on your testimony, it
20 sounds like there are several places where you can take
21 measurements of water flowing into the hatchery; is that
22 correct?

23 A. Into the various uses at the hatchery,
24 correct.

25 Q. So what are those different places where you

1 can take measurements?

2 A. You can take it where water comes into some of
3 the round ponds. We can take it where it comes into the
4 heat stacks in the incubation building. We can take it
5 where it comes into the concrete raceways inside the
6 hatchery building.

7 Q. So could you please take a look at Exhibit 23.

8 And I'm going to stop here. We submitted a
9 corrected Exhibit 23 to the parties today, so I would --
10 I am proposing to, basically, switch this corrected
11 exhibit out for the one that we disclosed.

12 So any objections to that?

13 MR. RIGBY: No.

14 HEARING OFFICER: No objections that I can
15 hear.

16 MS. VONDE: So then I will switch your binders
17 out with new copies. Is that the easiest way to do it?

18 HEARING OFFICER: Yep.

19 MS. VONDE: And I'm not sure I have quite
20 enough. Do you need four or just three?

21 Do you need one?

22 HEARING OFFICER: I think there are four
23 binders, aren't there?

24 MS. VONDE: And do you need it?

25 MS. CARTER: No, I have one.

1 MS. VONDE: So this can be for you. And if
2 you need one more...

3 Q. (BY MS. VONDE) Okay. So taking a look at
4 this corrected Exhibit 23, who prepared this exhibit?

5 A. This was actually prepared by the fish
6 culturist on station, and then I reviewed it and found
7 some errors and had it corrected.

8 Q. So what does this exhibit show?

9 A. Please say it again.

10 Q. What does this exhibit show?

11 A. This exhibit shows what the water measurement
12 is on, basically, all of the places it's used coming
13 into the facility.

14 Q. And was this -- were these measurements taken
15 on a certain date? In other words, is this a snapshot
16 in time of water use?

17 A. Correct. These were done on May 19th.

18 Q. So are you personally aware of how these
19 measurements are generally taken, even if you, yourself,
20 did not perform the measurements?

21 A. Yes, I am.

22 Q. So what was the total inflow into the hatchery
23 on May 19th of this year?

24 A. 7.06 cfs.

25 Q. And how was that amount determined?

1 A. That was done by taking the intakes of the
2 small raceways, the intakes on round ponds 1 through 8,
3 the outlets of round ponds 9 through 14, and then we had
4 to do the intakes on round pond 15, and it would have
5 been on the intakes of all the concrete raceways in the
6 hatchery building and the intakes on the heat stacks in
7 the incubation building.

8 MS. VONDE: Now let's take a look at
9 Exhibit 26. And once again, this is another exhibit
10 that we corrected. I submitted that to counsel, so I
11 would propose to do the same thing that we did with 23,
12 unless there are any objections?

13 HEARING OFFICER: Great.

14 Q. (BY MS. VONDE) Okay. So can you please tell
15 us what this exhibit shows?

16 A. This one shows the outlets for all of the
17 hatchery.

18 Q. And did you prepare this exhibit?

19 A. It was actually prepared by my fish culturist,
20 and I went through it and revised it and corrected some
21 mathematical errors.

22 Q. And so even if you were not personally
23 involved in taking these measurements, do you understand
24 how they were taken?

25 A. Yes.

1 Q. And, again, is this a snapshot in time?

2 In other words, were these measurements taken
3 on a certain day?

4 A. Yes.

5 Q. So let's walk through this a little bit.
6 There's a box labeled, "Large Raceways."

7 What does that box show?

8 A. That shows what the gallons per minute leaving
9 each raceway is. And the sum of those is 2,086 gallons
10 or 4.65 cfs.

11 Q. So that's water exiting the raceways and
12 discharging into Butte Creek Spring -- Butte Spring
13 Creek below the settling basin; is that correct?

14 A. Correct.

15 Q. And what water flows into these raceways?

16 A. This is water that comes from the Parma box.

17 Q. And then we see some boxes labeled "RP13,"
18 "14," "15."

19 Can you describe what those are showing?

20 A. Round pond 13, 14, 15, it's showing the total
21 gallons per minute used in those. And that is what's
22 discharged into the settling basin.

23 Q. And we see a box labeled, "Discharge Over
24 Settling Basin Weir."

25 Can you describe what's in that box?

1 A. That shows what your discharge is from round
2 ponds 13, 14, and 15, 243 gallons per minute. And then
3 when we measure going over the weir that goes underneath
4 the dike, we show 945 gallons per minute total.

5 Q. So what is the purpose in this "Discharge Over
6 Settling Basin Weir" of the two boxes to the right that
7 say "Round Pond 13," "14," "15," and then the "Parma Box
8 and Settling Basin"?

9 What are you trying to denote there?

10 A. By taking that number and the number from the
11 large raceways, I have a very good idea of exactly what
12 ran through the hatchery and was used.

13 Q. So can you, please, describe how you came to
14 the total amount of water being discharged from the
15 hatchery?

16 A. On those ones there, what I did is I took the
17 total water, which is the 945 gallons per minute, and
18 then I took that and added it to the 2,086 gallons per
19 minute; it gave me 3,031 gallons per minute.

20 Now, leaving the raceways and then leaving the
21 upper settling basin, there are boards there. Boards
22 leak. And there's a percentage factor, it's really hard
23 to quantify, so I used a couple of different equations.
24 I used 10 percent and 20 percent because it is
25 unaccounted for, but it all does return to the creek.

1 And so on those, you can see my correction
2 factors 303 gallons or 606 gallons per minute, leaving
3 me with 7.43 to 8.10 gallons per minute -- or 8.1 --
4 7.43 cfs to 8.1 cfs leaving the facility.

5 Q. So the total discharge from the hatchery, is
6 that the .54 cfs from the round ponds, the 4.65 from the
7 large raceways, and the 2.11 from the weir over the
8 settling basin?

9 A. Correct.

10 Q. And that's where you get the 7.43 cfs; is that
11 correct?

12 A. Correct.

13 Q. And then you have a -- as you said, you have a
14 correction amount of 10 or 20 percent. And that's to --
15 you said that was to account for leakage through the
16 boards?

17 A. Leakage through the boards. And it's not lost
18 because it just goes right into the drain and back to
19 the creek. It's just I cannot quantify or measure it.

20 Q. Because it's not going over the weir; is that
21 correct?

22 A. Correct, it's not going over the board.

23 Q. I see an "LR10% Correction" and an "LR20%
24 Correction"; what does that denote, and how are those
25 different?

1 A. Those are different because that would be if I
2 only took a correction on the raceways themselves and
3 not the settling pond. It's hard to really justify or
4 show what's leaking in the settling pond.

5 Q. So the other boxes that just say "10%
6 Correction," "20% Correction," those took the correction
7 on both the water exiting from the large raceways and
8 the water going over the weir through the weir at the
9 settling basin; is that correct?

10 A. Yes, correct.

11 Q. So what was the total outflow from the
12 hatchery on this date?

13 A. 7.43 to 8.1 cfs.

14 Q. And I think you testified earlier that the
15 inflow into the hatchery was 7.06 cfs; is that correct?

16 A. That is correct.

17 Q. So what accounts for the increase in flows at
18 the end of the hatchery?

19 A. Unfortunately, in the large -- in the settling
20 basin, if you were to walk around it, there are some
21 seep springs, and you can see small amounts of water
22 that seeps in. So there is some water that seeps in and
23 increases the amount in the settling basin. That number
24 is not quantifiable, I have no way to measure it.

25 Q. Okay. So you think the increase in flow comes

1 from those naturally occurring springs that arise in the
2 settling basin --

3 A. Yes.

4 Q. -- is that correct?

5 Okay. Can you please take a look at
6 Exhibit 24. And maybe before I move on to Exhibit 24,
7 I'll ask one more question, just as a conclusion.

8 Given the inflow and outflow numbers from the
9 hatchery, does that demonstrate anything to you about
10 the hatchery water usage?

11 A. It's nonconsumptive.

12 Q. Now moving to Exhibit 24, what is this
13 exhibit?

14 A. This is a -- it looks like our EPA permit.

15 Q. Is this your NPDES permit for discharges from
16 the hatchery?

17 A. Correct.

18 Q. Can you, please, take a look at page IDFG 415.

19 So this describes your system as a
20 "Flow-through System." What is your understanding of
21 the meaning of that?

22 A. It flows through. We don't retain, move
23 anything offline. What comes in goes out.

24 Q. Let's take a look at page IDFG 418. Under
25 "Outflow" -- the discharge "Settling Basin Outflow," the

1 discharge type is listed as "Constant."

2 What is your understanding of the meaning of
3 that for this NPDES permit?

4 A. We're constantly discharging; we don't stop.
5 Like I said, there's nothing offline. We don't retain
6 the water anywhere. What comes in goes out.

7 Q. And then let's take a look at page IDFG 419.

8 Under "Facility Total," the "Outfall Type" is
9 listed as "Sum."

10 What's your understanding of the meaning of
11 that?

12 A. The sum of all in is what leaves, so we are
13 not retaining anything.

14 Q. So in terms of this NPDES permit, they say
15 that whatever is coming into your facility is also going
16 out?

17 A. Correct.

18 Q. All right. So based on your understanding of
19 how the hatchery operates and personal observations,
20 would you say the inflow generally equals the outflow?

21 A. Either equals or exceeds. Generally it
22 exceeds.

23 Q. And you're not a hydrologist; correct?

24 A. Correct.

25 Q. But based on your experience and understanding

1 of how a hatchery operates, would you say there's any
2 significant evaporative or seepage losses associated
3 with the Hayspur Fish Hatchery?

4 A. No. And like I demonstrated earlier, the only
5 place where we have any exposure to the sun is in the
6 actual raceways themselves, and that turns over three
7 times every hour. And then the large settling basin, on
8 my rough figures, it changes four times a day. There's
9 not a lot of time, there's no real increase in
10 temperature, so I personally don't see where there's any
11 evaporative loss.

12 Q. And then I'll just ask this question again:
13 Are there any intervening water users on Butte Creek
14 between where you are taking the water into the hatchery
15 and water is discharging back into the creek?

16 A. No.

17 MS. VONDE: I would like to move, at this
18 point, to admit Exhibits 23, 24, and 26 into the record.

19 HEARING OFFICER: Any objection to the
20 admission of these documents?

21 The documents marked as IDFG 23, 24, and 26
22 are received into evidence.

23 (IDFG Exhibits 23, 24, and 26 received.)

24 Q. (BY MS. VONDE) Then I'll have you take a look
25 at Exhibit 21.

1 Do you recognize this exhibit?

2 A. Yes.

3 Q. Who prepared it?

4 A. This was actually prepared by the hatchery
5 manager at the Hayspur facility.

6 Q. And were you copied on this memo?

7 A. Yes, I reviewed it.

8 Q. Do you have any personal knowledge of the
9 information that this contains?

10 A. Yeah. Yeah, I've been pretty much involved in
11 almost all of this.

12 Q. So if you could just take a look at IDFG
13 page 404 to 406. And quickly just run us through the
14 types of fish that the hatchery raises and what they're
15 produced for.

16 A. Okay. Our primary function is to raise
17 rainbow trout eggs, which are disseminated to all of the
18 other Fish and Game hatcheries that we have in the
19 state. So, basically, if a rainbow trout is caught in
20 the state of Idaho, it came from Hayspur Fish Hatchery.
21 The broodstock has been selected. All of our fish are
22 triploided. They return well to the fisherman. And we
23 have spent about 25 years developing that current stock.

24 Q. So you produce rainbow trout eggs that are
25 then sent to other hatcheries where they raise them up

1 to be catchables; is that correct?

2 A. Correct.

3 Q. And then do you raise your own rainbow trout
4 catchables?

5 A. We do. We raise the rainbow trout --

6 MR. THOMPSON: Mr. Director, if I can
7 interject. I stipulate to the beneficial use of fish
8 propagation. I don't know if we need to know exactly
9 what fish are going where, do we, for those rights?

10 MR. RIGBY: We would as well, Mr. Director.

11 HEARING OFFICER: Does that shorten the
12 testimony?

13 MS. VONDE: Not by much, but that's fine.

14 HEARING OFFICER: Okay.

15 Q. (BY MS. VONDE) So I'll just skip to the --
16 these will be my last questions.

17 What would happen to the hatchery if you were
18 curtailed?

19 A. If we were curtailed, I mean, there's some
20 water that we get to keep because it is surface water,
21 from my understanding. But anything that would be
22 curtailed would decrease the water that goes into that
23 head box, which means everything across the board loses
24 water. When that happens, fish populations will slowly
25 die down to a level where they're comfortable. And we

1 don't know where that is. It's usually pretty harsh at
2 the beginning.

3 So I mean, if we were to be curtailed and lose
4 the 3 cfs that's most likely in question, you could see
5 that that is over a third of our water, and we would
6 probably lose more than half of our fish.

7 Q. And how long would it take you to rebuild the
8 program that you have going?

9 A. Six to eight years.

10 MS. VONDE: I'd like to offer IDFG Exhibit 21
11 into the record.

12 HEARING OFFICER: Any objection to the
13 admission of this document?

14 MR. THOMPSON: No.

15 HEARING OFFICER: The document labeled IDFG 21
16 is received into evidence.

17 (IDFG Exhibit 21 received.)

18 MS. VONDE: That's all I have.

19 HEARING OFFICER: Okay. Cross-examination of
20 this witness, Mr. Fletcher?

21

22 CROSS-EXAMINATION

23 QUESTIONS BY MR. FLETCHER:

24 Q. Good afternoon, Mr. Anderson. My name is Kent
25 Fletcher, and I'm representing Big Wood Canal Company.

1 I want to direct your attention to the Butte
2 Springs right. The number, I think, is 37-2489. You
3 testified about that; right?

4 A. I've got to look at the picture to make sure
5 I've got it right. 37-2489, that is correct.

6 Q. Thank you. And you testified what the
7 authorized cfs diversion on that right is.

8 Do you remember that testimony?

9 A. I believe it was 15 cfs.

10 Q. And the priority date of that is January 26th
11 of 1948?

12 A. That, I do not know.

13 Q. Do you know how much that spring is producing
14 now?

15 A. Currently, I'm getting right around 5 cfs out
16 of it.

17 Q. Have you done any studies of the decline in
18 the spring flows?

19 A. No, sir.

20 Q. Has the Department, to your knowledge, done
21 any analysis of why that spring has declined from 15 cfs
22 to 5 cfs?

23 A. Not that I'm aware of, sir.

24 Q. Do you have any knowledge of why groundwater
25 right 37-7038, which was Exhibit 2, did not contain the

1 nonconsumptive statement on it?

2 A. No, I do not.

3 Q. And do you have any knowledge of why the
4 Department drilled wells at this site?

5 A. Some of it was to replace what -- it's
6 probably over time. And I can only make that as an
7 assumption from the losses that they've gotten from
8 their initial water right. Well No. 2 was actually
9 drilled -- it was actually a spring that was just
10 adjacent to it. And that was put in so that we could
11 direct the water where we wanted it to go. If we were
12 to remove that well, that's going to free flow whether
13 we want it to or not.

14 Q. If Butte Springs was producing 15 cfs, would
15 that be an adequate amount of water to operate the
16 entire facility?

17 A. Yes.

18 MR. FLETCHER: I don't have any further
19 questions. Thank you.

20 HEARING OFFICER: Thank you, Mr. Fletcher.
21 Mr. Rigby?

22 MR. RIGBY: No questions, Mr. Director.

23 HEARING OFFICER: Mr. Barker or Thompson?

24 MR. BARKER: No.

25 HEARING OFFICER: Ms. O'Leary?

1 MS. O'LEARY: No, Director.

2 MR. BROMLEY: No.

3 HEARING OFFICER: Group 3, any questions?

4 MS. MCHUGH: No questions.

5 HEARING OFFICER: Oh, and I hesitate to
6 venture, but I wanted to ask one question, Mr. Anderson.

7

8 EXAMINATION

9 QUESTIONS BY HEARING OFFICER:

10 Q. What's the surface area of your settling pond?

11 A. That's what I had said, I estimate it to be
12 approximately 1 acre.

13 Q. But I thought you -- I thought when you
14 testified, I thought you were talking about volume. I
15 thought I heard you say an acre-foot --

16 A. It's about 1 acre. It covers about a 1-acre
17 span.

18 Q. So 1 acre in surface area?

19 A. Yes.

20 Q. Is there any leakage into the settling basin
21 from the diversion at Butte Creek Spring?

22 A. No, there's none that's visible. The settling
23 basin, though, if you were to walk around it, you will
24 see some seepage coming out of the ground in various
25 places.

1 HEARING OFFICER: Okay. I don't have any
2 further questions. All right. Thanks, Mr. Anderson.

3 Let's go off the record for a minute.

4 (Discussion held off the record.)

5 HEARING OFFICER: Back on the record.

6 Are we recording?

7 MS. JENKINS: We are.

8 HEARING OFFICER: Okay. Mr. Barker?

9 MR. BARKER: South Valley Ground Water
10 District calls Mark Johnson.

11 Mark?

12 THE WITNESS: Correct.

13 MR. BARKER: How are you?

14 HEARING OFFICER: Will you please stand.

15 THE WITNESS: Yes.

16 HEARING OFFICER: Raise your right hand.

17

18 MARK JOHNSON,
19 first duly sworn to tell the truth relating to said
20 cause, testified as follows:

21

22 HEARING OFFICER: Thank you. Please be
23 seated.

24 ///

25 ///

1 DIRECT EXAMINATION

2 QUESTIONS BY MR. BARKER:

3 Q. Mr. Johnson, what's your full name and
4 address.

5 A. Mark Alan Johnson, 231 Tendoy Street,
6 Bellevue, Idaho 83313.

7 Q. And, Mr. Johnson, what is your current
8 occupation?

9 A. I'm a seed potato grower.

10 Q. Do you have -- do you operate under your own
11 name, or do you have a company?

12 A. Yes. My company name is Silver Creek Seed.

13 Q. How long have you been a seed potato grower?

14 A. I started the company in 2006, so 15 years.

15 Q. Okay. What were you doing before that?

16 A. I worked for my in-laws for 19 years, Cummins
17 Farms, in the Magic Valley farming on the family farm.
18 And then they went out of business in 2005, and we
19 managed to scrape enough money together to start the
20 business with a partner.

21 Q. Are you born and raised in Idaho?

22 A. Yes.

23 Q. And do you have a post high school degree?

24 A. Just one year of college, then I started
25 farming.

1 Q. So for the last, if I count --

2 A. 34.

3 Q. 34. There we go. 19 and 15.

4 All right. For 34 years you've been farming
5 in the area around the Magic Valley; correct?

6 A. Correct, yes.

7 Q. And also when did you first start farming up
8 in the area of the Big Wood?

9 A. Cummins Farms started growing seed potatoes in
10 1997.

11 Q. Where was that -- where was that farm?

12 A. The potato cellars are in Picabo, but we rent
13 ground in the Bellevue Triangle and the Carey area.

14 Q. All right. And is that consistent through --
15 since that time, since you formed the company?

16 A. Yeah, we've been fairly consistent with our
17 company since we started.

18 Q. Are you growing potatoes anywhere other than
19 in the Bellevue Triangle right now?

20 A. I have a few in Carey on the Little Wood
21 system.

22 Q. So how many acres do you have in potatoes
23 right now?

24 A. Approximately, 660.

25 Q. And is that all in the Triangle or does that

1 include the Carey?

2 A. That includes the Carey potatoes as well.

3 Q. How much in the Triangle?

4 A. 600.

5 Q. So you've got a map in front of you that is
6 taken from an exhibit that's already in evidence, and
7 it's just for orientation purposes. This is Jennifer
8 Sukow's exhibit -- staff report. I believe that's
9 IDWR 2.

10 Is that right, Meghan?

11 MS. CARTER: I'm sorry?

12 MR. BARKER: Is that IDWR 2, Jennifer Sukow?

13 MS. CARTER: Yeah.

14 MR. BARKER: Okay. Thank you.

15 Q. (BY MR. BARKER) So just for orientation
16 purposes, would you explain where your potatoes are
17 being grown this year?

18 A. Yeah. Probably starting 2 miles north of
19 Gannett would be the first -- part of the northern ones,
20 and then we have some on Baseline Road, some south of
21 Gannett, west of Picabo, and Carey, over in Carey. And
22 then we have some, actually, west of the blinking light
23 at Timmerman.

24 Q. Okay. So you have crop in the ground pretty
25 much all over the Triangle --

1 A. Correct.

2 Q. -- right?

3 A. Yes.

4 Q. When you grow seed potatoes, what's the -- how
5 do you get rid of your crop at the end of the year; what
6 do you do?

7 A. Well, we have commercial -- contracts with
8 commercial growers. We grow the seed potatoes, and then
9 the commercial growers in the Magic Valley, Washington,
10 they grow commercial potatoes for processors and fresh
11 pack. So we grow the seed, we provide the seed for
12 them, and then they grow it out, and then that produces
13 french fries, processed goods, and fresh-packed potatoes
14 for grocery stores and restaurants.

15 Q. So you are under long-term -- are you under
16 contracts with these commercial growers?

17 A. Yes. We have contracts on probably 90 percent
18 of our product that goes out. If we have exceptional
19 yields, we'll have some extra product, but on an average
20 year, it's 100 percent contracted.

21 Q. And when do you enter into these contracts,
22 typically?

23 A. We typically try to do a three-year -- two- to
24 three-year contract. And, you know, they're rolling
25 over constantly, so some of them renew every year, and

1 some of them are out as much as three years, and some of
2 them just keep immigrating until we renew a different
3 negotiation on that contract.

4 Q. And what time of year do you typically enter
5 into these contracts?

6 A. In the fall, winter, basically.

7 Q. So tell me about your thought process in
8 putting crops into the ground in 2021 at these various
9 locations in the Triangle. What was your plan?

10 A. As far as water?

11 Q. Well, no, as far as what -- where you were
12 going to plant, why you were going to plant, whether you
13 were going to not plant?

14 A. Well, we're on a longer rotation being on a
15 seed potato farm, so we rent from multiple people
16 wherever we can find ground on any given year. So if
17 someone has to take a crop out, and they want to put
18 potatoes in, we rent from them. So it changes from year
19 to year who we're renting ground from. But we have
20 several of them that we rent from every year.

21 Q. And when do you enter into these rental
22 contracts with the landowners?

23 A. We try to do our groundwork in the fall, so
24 before winter comes, we try to have all of that ground
25 secured.

1 Q. Okay. So for the 2021 growing season, you
2 would have already entered into a rental contract last
3 fall?

4 A. Sure. Yeah. We do all of our work in, oh,
5 October, November. Fieldwork, we put fertilizer down
6 for our phosphate and potash so it will be ready for use
7 in the spring.

8 Q. So at these different locations that you're
9 farming this year, what kind of water supply do you have
10 for them?

11 A. What kind of water supply do I have? You mean
12 like well water? Surface water?

13 Q. Well, sure. What's your source of water for
14 each of these fields?

15 A. We have some from the Big Wood, we have well
16 water, we have Silver Creek, and we have Little Wood
17 water.

18 Q. And that, obviously, depends on where the farm
19 is located?

20 A. Exactly. And if the farmer has a well or what
21 their water rights are like.

22 Q. Does all of the land that you're farming this
23 year, does it have a well water supply?

24 A. No, not all of it has well water.

25 Q. Do you have some -- you have surface water on

1 all of your crops or all of the land that is irrigated?

2 A. No. Some of it's well water, some of it has
3 both. It's all over the board.

4 Q. So if you -- so explain what -- how much you
5 have to put into a potato field in order to make it
6 productive, in terms of what's your investment into a
7 potato field? What do you got to do?

8 A. Input costs are higher this year with fuel and
9 fertilizer being up, but it's somewhere in the
10 neighborhood of between 4,000 to \$4,500 an acre.

11 Q. And that's sum cost?

12 A. That's what?

13 Q. That's sum cost once you agree to rent the
14 field and put the crop in the ground?

15 A. Right now at this point it is. You know, at
16 the agreement to rent the field, no, you don't have
17 those costs. But, I mean, it just keeps -- we get a lot
18 of costs in the fall, and by the 15th of May, we have
19 probably two-thirds to three-quarters of our costs in.

20 Q. And for the land that you have that's supplied
21 by surface water, do you have any understanding of what
22 the surface water supply curtailment dates are going to
23 be this year?

24 A. Don't know yet. We have our fingers crossed
25 that we'll be okay, but some of them are marginal so we

1 don't know yet.

2 Q. So have you heard any dates beyond the end of
3 June, early July for your surface water?

4 A. Nothing solid yet. I guess it would be rumor,
5 whatever I've heard so far.

6 Q. So tell me what the water needs are for a
7 potato crop.

8 A. Well, we start watering a lot later than the
9 grain and barley. Like, we're just barely starting to
10 water right now. We can't plant -- in our valley, we
11 usually start about the 5th of May, and it takes three
12 weeks for emergence. And they're just coming up right
13 now. So we're just barely starting to water right now.

14 So we need about 90 to 120 days, given the
15 variety. Some of them take less days. But it takes
16 about 120 days to grow the crop, and then the 1st of
17 September we'll kill them. And then we need to prewater
18 to be able to dig the crop.

19 Q. So "prewater," what does that mean?

20 A. We have to put down about three-quarters of an
21 inch to an inch to moisten the ground so when we harvest
22 them it's not just straight clods coming into the potato
23 cellars.

24 Q. And then you said "kill" the crop about the
25 1st of September.

1 What do you mean by that?

2 A. Well, we whip the vines. Sometimes we put
3 chemical on to kill the vines so that the skin will set
4 on the potato. That takes about three weeks to do that.

5 Q. And do you need -- up until when do you need
6 water for this -- for the growing of the potato crops?

7 A. With potatoes, all of the growing happens at
8 the end. They're just a growing plant for most of the
9 season, then they put all their weight in on the potato
10 itself right at the end. So right up until when we kill
11 them, we're out doing test digs every day checking to
12 see what the yield looks like and the size profile.
13 Because we can't get them too big for seed potatoes. So
14 when we reach a certain point, then we kill them.

15 Q. And then at that point, you don't need water
16 until you do the prewatering for the harvest?

17 A. Correct.

18 Q. So you're aware that -- so are you involved in
19 the South Valley Ground Water District?

20 A. I just purchased a small farm, and I just got
21 our first water rights. So this is the first I've been
22 involved because we've always leased our ground, so I'm
23 just becoming more involved right now.

24 Q. So where is your ground that you purchased?

25 A. It's on Schoessler Lane.

1 Q. How much of your own ground do you have?

2 A. It's 450 acres with water rights for
3 200 acres.

4 Q. And is that in potatoes also?

5 A. No. The person we bought it from has the farm
6 until the end of November, and then we take possession,
7 so we haven't done any watering on it.

8 Q. So is the person you bought it from irrigating
9 that land?

10 A. Correct.

11 Q. And does -- the water rights you have for that
12 property are from what?

13 A. Are what?

14 Q. What kind of water rights do you have for that
15 property?

16 A. There's a little bit of surface water and some
17 well water.

18 Q. Surface water out of the 45?

19 A. Yeah, I'm not familiar with that yet --

20 Q. Okay.

21 A. -- on the water districts. But, yeah.

22 Q. Okay. So you understand that the purpose --
23 one of the purposes of this proceedings is to determine
24 whether to curtail groundwater use throughout the entire
25 Bellevue Triangle?

1 A. Correct.

2 Q. So would you explain to the Director the
3 impact on your operations if groundwater were to be
4 curtailed on July 1, as at least contemplated in
5 Jennifer Sukow's memorandum?

6 A. Yeah. For us it would put us out of business.
7 We wouldn't have any crop at all, we assume. July 1st
8 the potatoes are tiny. It wouldn't -- we wouldn't have
9 a crop. It would cost us \$3 million.

10 Q. And by saying you wouldn't have a crop, or it
11 would put you out of business, do you mean just for this
12 year?

13 A. Yeah, because we wouldn't -- it would be
14 \$3 million we wouldn't have coming in. There's no way
15 we would survive it. Our customers would find new
16 clients, and we wouldn't have our customers anymore.

17 Q. Because you can't deliver potatoes that are
18 the size of a pea to your customers?

19 A. Yeah. They have to be 50 millimeters or
20 bigger to even get to the cellar. So if they're not
21 bigger than that, it's impossible for them to even make
22 it up the harvester.

23 Q. And so what would be the consequence to your
24 business of not being able to harvest any of the
25 potatoes this year?

1 A. We'd be out of business.

2 Q. Entirely?

3 A. Yes.

4 MR. BARKER: I don't have any further
5 questions. Thank you, Mr. Johnson.

6 HEARING OFFICER: Okay.

7 MR. BARKER: Oh, somebody else may have some
8 questions, so you --

9 THE WITNESS: Oh.

10 MR. BARKER: -- but we can both leave, if you
11 like.

12 HEARING OFFICER: So what order of questioning
13 do we want to pursue now with witnesses being called by
14 the groundwater users or attorneys representing
15 groundwater users? Do we want to rotate through the
16 groundwater user crowd and then come to the surface
17 water?

18 What's the preference? Or I guess I could --

19 MS. MCHUGH: I think from Group 3, I don't
20 think we plan to ask this witness any questions.

21 MR. LAWRENCE: I don't have any questions.

22 HEARING OFFICER: I'm sorry, let's go off the
23 record.

24 (Discussion held off the record.)

25 HEARING OFFICER: So let's go back on the

1 record now.

2 And we resolved that there are no other
3 questions from the groundwater users. So Mr. Rigby or
4 Mr. Fletcher, do you have questions for Mr. Johnson?

5 MR. FLETCHER: Yes, I have some questions.

6 May I remain seated? Do you have a problem
7 with that?

8 HEARING OFFICER: I don't have a problem
9 because you speak up so well, Mr. Fletcher.

10 Do you have a problem with that?

11 MS. JENKINS: I think we can hear you.

12 MR. FLETCHER: Okay. Well, if you can't --

13 MS. JENKINS: You're good.

14 MR. FLETCHER: -- let me know. I just didn't
15 want to --

16 HEARING OFFICER: Move the microphone.

17 MS. JENKINS: You're good.

18 MR. FLETCHER: Okay. Thank you.

19

20 CROSS-EXAMINATION

21 QUESTIONS BY MR. FLETCHER:

22 Q. Mr. Johnson, I'm Kent Fletcher. I represent
23 Big Wood Canal Company.

24 Have you listened to any of the testimony of
25 the surface water side dealing with the potential

1 damages to their crops?

2 A. I have not heard that testimony yet.

3 Q. I'll represent to you that Fred Brossy
4 testified he's growing potatoes this year, too. If he
5 doesn't receive water this year for his potato crop, he
6 could expect the same types of damages you're claiming;
7 isn't that correct?

8 A. Correct.

9 Q. As far as your -- I think you testified that
10 you have some acres that have only a surface water
11 supply; isn't that correct?

12 A. Correct.

13 Q. How many acres are you farming that only have
14 a surface water supply?

15 A. I'm guessing 300.

16 Q. Okay. And --

17 A. Maybe a little less than that. Possibly 200.
18 I'm not sure how all of the tenants plan on delivering
19 water, so I -- between 2- and 300, let's say.

20 Q. Okay. Do you know the sources of water for
21 those acres that only have a surface water supply?

22 A. One of them is Big Wood water -- or not --
23 excuse me -- Little Wood water and Silver Creek. That
24 would be 80 acres. About 130 is off Big Wood water.

25 Q. That would add up to about 210 acres, roughly.

1 A. Yeah. I think that's probably -- that would
2 be all of the surface water ones.

3 Q. Thank you. When you say "Big Wood water," are
4 you talking about Big Wood Canal Company water?

5 A. See, that's what -- I don't know how
6 everybody's water rights work, but this water is coming
7 down the Big Wood by Stanton Crossing. It's surface
8 water rights, so I don't know what you would call that.

9 Q. So you don't know -- do you know if the land
10 -- you're renting this land from someone else?

11 A. Yes.

12 Q. And do you know if he owns canal shares or
13 shares in the canal company?

14 A. I don't know how their water rights work,
15 that's the thing. I just lease the ground from them,
16 and water rights are not a discussion we have.

17 Q. If his only source of water is Big Wood Canal
18 Company, do you know when they're planning on curtailing
19 deliveries?

20 MR. BARKER: I'm going to object, Kent. You
21 know there's no Big Wood Canal Company water above in
22 the Triangle. Why are you asking him that? That's
23 unfair to this witness.

24 MR. FLETCHER: I'll withdraw the question.
25 That's fine.

1 Q. (BY MR. FLETCHER) So is it your understanding
2 that that water is actually coming from American Falls
3 Reservoir, or do you know?

4 A. How can it come from American Falls Reservoir
5 if it's coming down the Big Wood? I don't know the
6 water rights. I don't know what you're asking me.

7 Q. Well, I'm just trying to clarify whether it's
8 coming from Big Wood Canal Company or --

9 A. I do not know that.

10 Q. -- or the Big Wood River. Is it a river
11 right, or you don't know?

12 A. I don't know.

13 Q. So if your source of surface water is cut off
14 on the Little Wood and Silver Creek rights, you said
15 there's about 80 acres?

16 A. [Witness nods head.]

17 Q. And they're solely under -- they're solely
18 being diverted out of the Little Wood; is that correct?

19 A. And Silver Creek.

20 Q. Okay. And if -- do you know the priority
21 dates on those rights?

22 A. Not 100 percent, no, I don't.

23 Q. If that water right is curtailed, do you have
24 any other source of water for those 80 acres?

25 A. Not at the moment.

1 Q. What is your plan if that source of water is
2 curtailed?

3 A. I don't have a plan yet.

4 Q. Are you expecting to suffer losses because of
5 the amount of ground that you're farming solely under
6 surface water rights this year?

7 A. Am I expecting to have losses?

8 Q. Yes.

9 A. I have not been expecting to have losses.

10 Q. And you may have already testified to this,
11 but you don't know your priority dates on the Little
12 Wood or --

13 A. I do not.

14 Q. -- Silver Creek?

15 No?

16 A. No, I do not.

17 Q. On those acres that have solely surface water
18 as the supply, did you take into account water
19 conditions before planting the crop?

20 A. No. The ground was rented long before the
21 water problem arose this winter.

22 Q. When did you lease it? I'm sorry.

23 A. September.

24 Q. Oh, last September, 2020?

25 A. Yes.

1 MR. FLETCHER: I don't have any further
2 questions. Thank you.

3 HEARING OFFICER: Mr. Rigby?

4 MR. RIGBY: No further questions.

5 HEARING OFFICER: Redirect, Mr. Barker?

6

7 REDIRECT EXAMINATION

8 QUESTIONS BY MR. BARKER:

9 Q. Thank you, Mark. The water rights that you --
10 or sorry -- the land that you're renting over off of
11 Silver Creek near Picabo, are you renting that from the
12 Purdys?

13 A. Some is from the Purdys in Picabo, yes.

14 Q. Yeah. And do you know that the Purdys have
15 1877 water rights on your property?

16 A. Again, I don't. It's never discussed. When I
17 lease ground, I go to them and say, "Have you got
18 ground?"

19 "Yes, we've got ground."

20 "Are you going to have water?"

21 "Yes, we have water." And that's the extent
22 of our conversation. It's never been a problem to this
23 point.

24 Q. And the other property that you're renting
25 with surface water rights you said is around Stanton

1 Crossing?

2 A. Yes, that's one of them.

3 Q. And that's over by Willow Creek?

4 A. By what?

5 Q. By Willow Creek?

6 A. It would be west of Willow Creek. It would be
7 west of Timmerman. That's also the Purdys'.

8 MR. BARKER: Thank you.

9 HEARING OFFICER: Any other questions? Any
10 recross?

11 Thank you, Mr. Johnson.

12 Mr. Barker?

13 MR. BARKER: Stuart Taylor.

14 HEARING OFFICER: Mr. Taylor, did I hear that
15 correctly?

16 THE WITNESS: Yeah.

17 MR. BARKER: I hope so.

18 THE WITNESS: Yes.

19 HEARING OFFICER: Come forward. Raise your
20 right hand, please.

21

22 STUART TAYLOR,
23 first duly sworn to tell the truth relating to said
24 cause, testified as follows:

25

1 HEARING OFFICER: Thank you. Please be
2 seated.

3

4 DIRECT EXAMINATION

5 QUESTIONS BY MR. BARKER:

6 Q. Mr. Taylor, would you spell your full name for
7 the record and tell us where you live.

8 A. Yes. My first name is Stuart, S-t-u-a-r-t.
9 My last name is Taylor, T-a-y-l-o-r. And I live at the
10 headquarters for the Wood River Ranch at 10524 Highway
11 75 Bellevue, Idaho 83313.

12 Q. Okay. So, Mr. Taylor, what do you do for the
13 Wood River Ranch?

14 A. I am the general manager and the operator.

15 Q. How long have you been at the Wood River
16 Ranch?

17 A. Nine years in April, last April.

18 Q. So you moved up to Idaho in 2012?

19 A. Yes. Yes.

20 Q. Okay. Where were you before that?

21 A. I was in southwestern New Mexico.

22 Q. So what's your background, your work
23 background?

24 A. Well, I've been professionally managing cattle
25 operations for 30 years. And I have a bachelor's degree

1 in agriculture with an animal science major. And I have
2 a master's degree in animal breeding and genetics from
3 New Mexico State University. I've been working in
4 private industry for most of my time, but I've also
5 managed ranches for universities.

6 Q. And other than New Mexico and Idaho, where
7 have you worked?

8 A. Mainly in Nevada.

9 Q. Okay. So are you familiar with your -- that's
10 a silly question.

11 You are familiar with the Wood River Ranch
12 property?

13 A. Yes.

14 Q. Can you identify where that is on this map in
15 front of you?

16 Or just describe, generally, where the ranch
17 is in relation to the rest of the Triangle.

18 A. Oh, okay. Yeah, we're in the -- we're pretty
19 much in the -- on the western boundary of this -- you
20 know, of this perimeter that's drawn on the map here,
21 and about a quarter of the way up from the bottom end of
22 the boundary.

23 Q. Are you located above what's called the Heart
24 Rock?

25 A. Yes.

1 Q. All right. Are you adjacent to the Heart
2 Rock?

3 A. We border the Heart Rock Ranch on our southern
4 border.

5 Q. How many acres are there under the ranch
6 ownership?

7 A. There's 3,992 deeded acres.

8 Q. Is any of this land irrigated?

9 A. Yes. Roughly, 1,550 acres are irrigated.

10 Q. And what kind of crops do you grow under this
11 irrigation?

12 A. It's predominantly pasture. We have -- at
13 present, we have approximately 103 acres being irrigated
14 for the production of grass alfalfa hay mix. The
15 balance of the irrigated lands are used for pasture.

16 We do have other hayfields, but they're
17 dryland fields that we rely on subwater. And we have an
18 additional field not contiguous with the primary ranch
19 that we take dryland hay off of as well.

20 Q. Is that additional -- where is that additional
21 field located?

22 A. It's located up on the corner of Glendale Road
23 and Highway 75 going up towards Bellevue.

24 Q. Does that -- so does that parcel up on Highway
25 75 and Glendale have a water right?

1 A. It does. It's got a groundwater right. And
2 we have actually had that right in the water bank for
3 the past five years.

4 Q. How big a parcel is that?

5 A. It's, I think -- I'm not exactly sure, but I
6 think the water right is rated for 47 acres. And it's
7 1.06 cfs.

8 Q. The rest of the land that's irrigated under
9 the Wood River Ranch, what are the sources of water that
10 you have for that?

11 A. We have groundwater on the west side of the
12 river, as well as two surface water rights that irrigate
13 those fields out there.

14 Q. So you -- the property is on both sides of the
15 river?

16 A. Yes.

17 Q. East and west side?

18 A. Yes. The Wood River bisects the ranch.

19 Q. And the -- you have two wells on the west side
20 of the river?

21 A. No. There's actually four groundwater wells
22 on the west side of the river. And there is a surface
23 water diversion directly across from the headquarters of
24 the ranch. And then we also have a diversion that comes
25 off of the Glendale lateral system that provides us

1 surface water for, approximately, 120 acres north of
2 there.

3 Q. And we're talking about the west side --

4 A. Yes.

5 Q. -- of the river, still?

6 A. Yeah. The --

7 Q. So the diversion on the river is called the
8 graph?

9 A. Correct.

10 Q. Okay. And then how much land are you
11 irrigating over on the west side?

12 A. All total over there, there's approximately
13 5 -- approximately, 500 -- I want to say about
14 550 acres.

15 Q. Of irrigated ground?

16 A. Yes.

17 Q. Okay.

18 A. Yep.

19 Q. And then on the east side of the river, that
20 would give you about 1,000 acres of irrigated land?

21 A. Yeah. Well, are you talking about -- okay.
22 That's -- on the west side we have an additional
23 300 acres that's primarily flood and subirrigated.

24 Q. Flood irrigated out of the river?

25 A. Yes. Yeah. Yep. Yeah. I was thinking in

1 terms of pressurized irrigation. I'm sorry.

2 Q. So on the west side you have 500 acres or so
3 that are supplied by a combination of wells and surface?

4 A. Well, no. Approximately, about 800.

5 Q. Okay.

6 A. Yeah. Right.

7 Q. All right. And then on the east side of the
8 river, what do you have?

9 A. The balance of that 1,500 acres. And that
10 includes the hayfield on Baseline Road, too. 100 acres
11 on Baseline Road.

12 Q. And then how is the land on the east side of
13 the river irrigated, from what sources?

14 A. The pastures there at the home ranch are all
15 groundwater irrigated. We have an alfalfa field on the
16 southern boundary of the ranch that is supplied off of
17 the Baseline extension. So it's, basically, a surface
18 right that's pressurized at that point. And then the
19 piece on Baseline Road, the 100-acre hayfield is a
20 combination right of surface and groundwater.

21 Q. So you called it the Baseline extension.

22 Is that a surface water canal?

23 A. Yeah. That's the canal that comes down from
24 the diversion above the Glendale bridge.

25 Q. And that Baseline canal runs through the

1 property and then --

2 A. The Baseline extension does, yes. The bypass,
3 yep.

4 Q. So when you first arrived at the ranch, had
5 you had experience with irrigation before?

6 A. Yes, I had.

7 Q. And was this in New Mexico and Nevada?

8 A. Mainly in Nevada, yes. Uh-huh.

9 Q. So what kind of irrigation experience had you
10 had before you arrived at the ranch in 2012?

11 A. Both flood and pressurized irrigation.

12 Q. So when you got to the ranch in 2012, what did
13 you observe about how the irrigation operations were
14 taking place at the ranch?

15 A. Well, when I first got there, the first thing
16 I noticed is that we were grossly overwatered. The
17 ranch had a lot of -- there was a lot of maximizing that
18 was going on, as I like to say, in terms of
19 overwatering, overfertilizing, overstocking.

20 So my first line -- you know, my first line of
21 business was to decrease the amount of water that we
22 were putting out on our pastures, because we had a lot
23 of monoculture pastures. And I wanted to develop a more
24 diverse forage base in these pastures.

25 Q. So first of all, explain what you mean by a

1 "monoculture pasture"?

2 A. Well, a lot of the pastures, you know, if
3 you've got one species of grass, that's all you had in
4 there. And a lot of that was due to the fact that --
5 the way the pastures were watered, fertilized, and
6 grazed. There was never any opportunity for other
7 species to compete with the existing grasses and forages
8 that were present.

9 So by cutting back on the water, we were able
10 to promote some of these other forage species and,
11 thereby, improved the palatability of the feed in the
12 pastures due to that diversity. And, also, to promote a
13 healthier canopy and improve the nutritional quality and
14 the palatability of the forages that were there.

15 Q. So how did you go about reducing the amount of
16 water that was used on the ranch?

17 A. Well, you know, initially a lot of that was
18 done with soil probes. Because I wasn't that familiar
19 with what -- you know, what we were looking at. So we
20 had -- everybody had a soil probe in their pickup, and
21 when we were, you know, looking at moving water, we'd go
22 out and take some samples in the pasture and just see
23 where the water level was.

24 And that was kind of the initial process to
25 identifying what our actual water needs were. And then

1 from there, with some trial and error and
2 experimentation with, you know, various stocking rights
3 and so forth, we were able to evaluate and then develop
4 some optimums, in terms of not only our water use but
5 also our stocking rates in those given pastures.

6 Q. Stocking rates means the number of heads --

7 A. The number of cattle, yes. Uh-huh.

8 Q. So explain -- I want a little more explanation
9 from you about what -- this difference in the forage.

10 Why does that reduce your water consumption?

11 A. Well, if you have a variety of forages
12 available for cattle, they're going to -- you know,
13 cattle will kind of shop around when they graze. And
14 they're going to select plants at different stages of
15 growth. So if you have a variety of forages available,
16 you can -- you know, you can eliminate this -- a lot of
17 this pattern grazing that will go on in monocultured
18 pastures, where they'll just go on and, you know, mow an
19 area down.

20 And, you know, that's a bad situation because,
21 basically, if you eliminate your canopy, then your
22 moisture retention goes away, and you've just got to add
23 more water to maintain that grass stand. So by having a
24 variation in your canopy, you can retain a lot more soil
25 moisture, and at the same time, you're providing a more

1 diverse and beneficial diet for your cows to graze on.

2 Q. So when you have multiple -- a more diverse
3 forage system, you don't need as much water as you do if
4 you have a monoculture?

5 A. Oh, exactly, yeah. That's very true, yes.

6 Q. And is it also true that that diverse forage
7 consumes less water than the monoculture?

8 A. Yes, it does, because you have the opportunity
9 to -- you know, if you're wanting to promote more bunch
10 grasses, for example, in your pastures, whether they're
11 wheat grasses or -- you know, we've gone in and planted
12 some hybrid species. One is called Johnson Festulolium,
13 which is a rye hybrid. These grasses are a lot more
14 drought tolerant. So, you know, utilization on these
15 plants will remain strong even with lower water
16 applications.

17 Q. So are you -- the pastures, are they supplied
18 by pivots? Hand lines? Wheel lines? How are you
19 irrigating those?

20 A. On the west side of the river, all of our
21 pressurized irrigation is done through pivots. And --
22 pivots and flood -- floodwater over there. On the east
23 side -- or on the -- yeah, on the east side of the
24 river, we utilize some hand lines, wheel lines,
25 cart-type sprinklers, and then pivots.

1 Q. How much of your property is under pivot right
2 now?

3 A. Oh, I'm trying to think of how many acres
4 we've got total. Oh, about 800 acres.

5 Q. Have you done any other changes to your
6 irrigation practices from -- since you've been there
7 over the last nine years from what was occurring when
8 you first arrived?

9 A. Well, we've done -- you know, with our
10 property on Baseline Road, our hayfield over there, when
11 I arrived, they were not using that water right the way
12 they were supposed to. They had a -- that particular
13 piece of ground has a combination right attached to it
14 where the surface water and the groundwater are used in
15 conjunction with each other.

16 And what they had been doing is they had a
17 much higher horsepower pump in place, and they were not
18 pulling water out of the canal. So what I did was I
19 went in there, and I established the surface water
20 delivery system, and then downsized the existing
21 groundwater pump, and matched that system up to where it
22 could not exceed the volume of that water right.

23 So, you know, that was a pretty good step
24 right there to make that system work appropriately. The
25 other thing we've done a lot of over the years is

1 installing new -- putting in new pivot packages on our
2 pivots so that we're, you know, as efficient as we can
3 be in our delivery through our sprinklers.

4 And we've also, you know, taken a lot of time
5 to evaluate our pumps and, you know, try to match things
6 up to where our horsepower meets our rights and we're
7 not, you know, doing any overpumping or anything like
8 that.

9 Q. So on your baseline property, as a result of
10 the changes you've made, you've reduced the amount of
11 pumping from the groundwater?

12 A. Oh, yeah, definitely, yes. About 50 percent.

13 Q. And these pivot packages, what do you mean by
14 that?

15 A. Well, that's where you go in and you,
16 basically, go through your -- all your drops on your
17 pivot, and you replace the nozzles or even the whole
18 sprinkler head. Because over time those nozzles will
19 get to where they -- especially if you're pumping
20 surface water through them -- the gravel and stuff will
21 deteriorate the diameter of the nozzle. It will open it
22 up, and you'll -- you know, your efficiency in your
23 pivot will drop way back.

24 Q. So you're using more water for the same --
25 than you need --

1 A. Exactly.

2 Q. -- when that happens?

3 A. Right. So if you -- you know, and you can
4 call -- you know, there's a lot of companies around in
5 the Magic Valley that will come out and evaluate your
6 system and say, you know, well, you need this, this, and
7 this, and they'll actually come in there and do the work
8 for you.

9 Q. So your surface water rights, do you have any
10 idea on how long you're going to remain in priority this
11 year?

12 A. I'm thinking probably sometime the first week
13 in July we're probably going to be -- we're going to be
14 out of -- pretty much out of surface water.

15 Q. And after that what would you have to rely
16 upon?

17 A. We would have to rely on our pumped water at
18 that point.

19 Q. And you understand that this proceeding is an
20 effort to evaluate whether there should be curtailment
21 of all of the wells in the Bellevue Triangle as of
22 July 1 --

23 A. Right.

24 Q. -- of this year?

25 You understand that?

1 A. Yes.

2 Q. So explain to the Director what the
3 consequences would be to your fields and your operation
4 as a result of being completely out of water on July 1?

5 A. Well, at this stage in the game, with -- you
6 know, we're doing a summer calving program, and we have
7 been for the past five years. Our cows -- our mature
8 cow herd has just started calving. They started the
9 first of June, and they'll calve through until about the
10 middle of July or maybe into the first of August. So
11 with that, we will be -- we will be in a hay-feeding
12 mode, so...

13 Q. Okay. So what does that mean?

14 A. Well, we'll be buying -- we'll have to be
15 buying hay and feeding because we're not going to be --
16 we're not going to be selling pairs with young calves on
17 them.

18 Q. So why would that be? Why would you --

19 A. Well, you know, a lot of people think that
20 cows are a liquid asset, but they're not, in my book,
21 because you've got way too much of an investment into
22 that female, if you're raising your own replacement
23 females.

24 You know, I've got a lot of investment in that
25 cow herd at this point to where we have developed cows

1 that are specifically designed for our system. Because
2 not only do we, you know, run those cows on that ranch
3 in the summertime, but we have a BLM allotment where we
4 ship those cows to during the winter months down in
5 southern Idaho. And I've got a set of cows that work
6 for that ranch, and my production values bear that out.

7 So to say, you know, I can sell these cows and
8 then go in -- go down to the Twin Falls sale barn or go
9 to some sale somewhere and replace them, it's not going
10 to happen. It's not. Not for any amount of money. I
11 can't do that. So I've been in this cow business way
12 too long to say otherwise.

13 Q. Is that because of the genetics and the
14 breeding of the cattle that you've been working?

15 A. It's the genetics, and it's just the years of
16 selection and culling that have gone into the cow herd,
17 yeah.

18 Q. So in order to hay -- so if you were to have
19 to hay -- feed the cattle with hay starting on July 1,
20 how much hay would you need to get you through until the
21 time you move them to the range?

22 A. Well, you know, a lot of that -- there's some
23 variables in there. It's hard to make a solid estimate
24 on that because there's always the notion that it could
25 rain. And one thing we do do, especially with the way

1 we've been irrigating, is we bank up a lot of feed, and
2 we use our native country as long as we can. So a lot
3 of that's going to depend on weather conditions and the
4 ability to utilize our banked-up feed.

5 But if we had to start -- you know, if we took
6 a hit on July 1st and we had to start feeding the first
7 part of August, I estimate we'd be into it for \$100,000
8 or even more. And that's not taking into account
9 collateral damage, because that's -- having to feed cows
10 during the breeding season is drastically going to
11 affect that -- the performance on that cow herd as far
12 as conception goes.

13 And, also, I would anticipate death loss
14 because of the confinement aspects associated with
15 feeding cattle during the hot time of the year. So, you
16 know, my damages from this could be as much as 250- or
17 \$300,000 when it's all said and done.

18 Q. So, in essence, the feeding of the cattle
19 would reduce the conception, give you fewer calves next
20 year?

21 A. Oh, most definitely.

22 Q. By what percentage?

23 A. I would estimate a 40 percent drop in
24 conception rates due to having to feed the cows.

25 Q. And you'd also lose cattle to death, did you

1 say?

2 A. Well, I'd probably have sickness in calves is
3 what I'd end up with. Because having those cows come in
4 on the feed ground when it's 90 degrees and all of the
5 dust and everything else. Anytime you take cows and
6 move them from a known environment to a different
7 environment, there's going to be stress. And that
8 stress is going to, ultimately, affect your youngest
9 cattle. And I'm sure we're going to be plagued with
10 respiratory problems and death a lot.

11 MR. BARKER: Thank you, Mr. Taylor.

12 THE WITNESS: You're welcome.

13 HEARING OFFICER: Thank you, Mr. Barker.

14 Questions from the groundwater user group?

15 MS. O'LEARY: Not from me.

16 HEARING OFFICER: Ms. O'Leary?

17 MS. MCHUGH: No questions.

18 MR. LAWRENCE: No, thank you.

19 HEARING OFFICER: No questions from Group 3.

20 Okay. Cross-examination, Mr. Fletcher.

21
22 CROSS-EXAMINATION

23 QUESTIONS BY MR. FLETCHER:

24 Q. Mr. Taylor, I'm Kent Fletcher. I represent
25 Big Wood Canal Company.

1 You testified that you work for an entity
2 called Wood River Ranch; is that correct?

3 A. Yes.

4 Q. Do you know who owns the water rights for Wood
5 River Ranch?

6 A. Yes, I do. Lakeside Industries.

7 Q. You also mentioned that you had a 47-acre --
8 or your employer has a 47-acre groundwater right in the
9 water bank?

10 A. Yes.

11 Q. Why is that water right in the water bank?

12 A. Well, I'll tell you, we had done that as kind
13 of a community effort to -- and that's one thing I
14 really didn't get to touch on here is that my approach
15 to this water system has been a community approach. And
16 that was a very difficult piece to irrigate with the
17 system that we had in place. But in addition to that,
18 we thought that it was appropriate to take the lead on
19 possible mitigation measures for this pending water
20 call.

21 Q. And so that -- I think you testified that
22 water's been in the water bank five years; is that
23 correct?

24 A. I believe that's correct. I'm not 100 percent
25 on that. I believe it's been five years.

1 Q. So regardless of the outcome of this hearing,
2 as I understand it, your employer owns some ground near
3 Glendale, I think you said on the west side of the
4 river, that is solely irrigated with surface water
5 diversions; correct?

6 A. Yes.

7 Q. And how many acres are solely irrigated by
8 surface water?

9 A. Well, that's -- there's 120 acres on the west
10 side of the river that's solely irrigated off of the
11 Glendale lateral. It's got a pivot in place, but the
12 water is drawn out of the canal. And then we have an
13 additional -- there's 300 acres down on the south of
14 there that has -- that's primarily flood irrigated --
15 that is flood irrigated and subwater.

16 Q. Okay. You mentioned that on this Glendale
17 property that you believe it will be curtailed around
18 the 1st of July, the 120 acres?

19 A. No. I said that -- on the surface water
20 rights?

21 Q. Yes.

22 A. Yeah. No, probably the first week in July.

23 Q. Oh, first week?

24 A. Yeah. Yeah. Yeah. I'd suspect maybe the
25 first week up to the 10th or so is kind of what the

1 read's been on it.

2 Q. And what is the source of that water?

3 A. It's the Big Wood River.

4 Q. So for that acreage, you will not have another
5 water source if those Big Wood rights are curtailed?

6 A. No. No.

7 Q. So were the losses that you calculated, did
8 that include the damages you will incur as a result of
9 that curtailment of those surface water rights?

10 A. No. You know, we plan on -- we usually plan
11 on losing our surface water sometime between the --
12 around the 10th of July and the first part of August.
13 So, no, my damages come from the curtailment of the
14 groundwater.

15 Q. On the additional 300 acres that you mentioned
16 are solely surface water; you have no other source of
17 water for those 300 acres?

18 A. No, huh-uh.

19 Q. And do you know whether -- or have you heard
20 projections of whether that right will be curtailed this
21 year?

22 A. Oh, that will go off about the same time.
23 Yeah, they all -- that first one we were talking about,
24 that 120-acre piece, that's going to go down a little
25 bit sooner, but once we get to -- you know, if our

1 water's going off, say, the 15th of July, once we get to
2 the 1st of July, the cascade effect on the cuts kicks in
3 and everything, pretty much, goes down about the same
4 time.

5 Q. Do you know the priority dates for the
6 Glendale property, the 120 acres?

7 A. That's an 1885 right.

8 Q. And do you know the priority date for the
9 300 acres?

10 A. That -- there's some mixed rights over there.
11 I think the oldest right associated with that one is an
12 1883.

13 Q. Do you know the priority dates of the
14 groundwater rights that are used on the ranch?

15 A. Some of them, yep.

16 Q. What are they?

17 A. Well, we've got a well there on the -- we've
18 got a well on the west side of the river that waters
19 about 230 acres, and it's a 1973 right. We have a well
20 at the -- right there at the headquarters that is a 1967
21 right. The well on the property at -- the Baseline
22 piece that I referred to that has a combination right, I
23 believe that's a 1973 or '4 right. And then the well at
24 the -- up on the piece that is in the water bank is a
25 much newer right, it's a 1989.

1 Q. So you mentioned that these surface water
2 rights that you own are curtailed almost every year; is
3 that correct?

4 A. Yes. Well, we've had some -- we've had --
5 we've had a couple of years where we had been -- we had
6 been curtailed way back earlier on, but then things
7 changed up north, we either got some rain or, you know,
8 whatever happened, and then they would reinstate some of
9 them. So -- but generally by -- you know, generally by
10 sometime in August, we're definitely off.

11 Q. Have your groundwater rights ever been
12 curtailed?

13 A. No.

14 Q. Do you believe the groundwater rights should
15 be administered in priority with other water rights?

16 A. Yes, I believe they -- well, they have a
17 priority date attached to them, so, yes.

18 Q. So do you believe they should be administered
19 in priority with surface water rights?

20 A. Well, you can't really lump them all together.
21 When you're dealing with an 1895 right and a 1973 right,
22 you're working on a completely different scale. But I
23 think if the scales are adjusted to where they are in
24 sync with each other, I would feel that would be
25 appropriate.

1 Q. Can you describe what you're talking about a
2 little bit so I understand it better?

3 A. Well, I'm just saying if you got -- nobody's
4 going to have -- well, I don't know, maybe somebody does
5 -- but I don't think anybody's going to have an 1882
6 groundwater right, for example. So, you know, if
7 there's a groundwater right that's a 1920 right, and
8 that's the oldest right in the valley, for example, that
9 would be -- that would coincide with the surface right
10 that is an 1880, 1879, whatever right.

11 Do you follow what I'm saying?

12 Q. Yes. So you're saying they should be
13 administered based upon relative priority dates between
14 -- the oldest groundwater right should tie to the oldest
15 surface water right?

16 A. No. I'm saying they should be -- no. I'm not
17 saying they should be tied together. I'm just saying
18 that they should be administered accordingly to the
19 period of time -- the time range between the oldest and
20 the most junior right.

21 Q. Based upon your experience with irrigation and
22 the management of these rights, do your -- does the
23 pumping of your groundwater rights affect surface water
24 supply?

25 A. Not to my knowledge.

1 Q. You mentioned you had about 800 acres in
2 pivots; correct?

3 A. Correct.

4 Q. And you keep these maintained regularly?

5 A. Yes.

6 Q. And you put the pivot sprinkler packages --
7 you update those frequently to keep them maintained?

8 A. We do.

9 Q. Do you have any idea how efficient those
10 pivots supply water to the ground?

11 A. I do not. I do not know the value on that.

12 Q. You haven't done any efficiency studies for
13 your water delivery system?

14 A. As far as the actual infrastructure, the
15 mechanical systems?

16 Q. Yes.

17 A. No, I have not. No.

18 Q. Did you hear the testimony of some of the
19 senior surface water holders concerning what they've had
20 to do this year because of water shortages concerning
21 their cattle?

22 A. I have not.

23 Q. So it's your position you won't sell cattle
24 because of water shortages if you were curtailed, but
25 that you would buy hay to supplement the feed?

1 A. That's correct.

2 Q. And you had mentioned how you're -- I don't
3 want to use the word "proud," but you've worked hard to
4 build the genetics of your herd, especially your cows,
5 and you don't want to get rid of those cows that you've
6 worked so hard to breed all of these years; correct?

7 A. That's correct. Well, and the other thing, I
8 think the investment -- the time and money investment
9 into those cows is greater than -- like I said, there's
10 no way that I can get that money back. I can't replace
11 those cows.

12 Q. And isn't that true with most people who raise
13 livestock, that they want to maintain their breeding
14 herd?

15 A. I don't know.

16 Q. You don't know?

17 A. I don't know. I think -- you know, in my
18 opinion, better ranchers, yes, I would say so. That
19 would be job one is to maintain -- to try to hang on to
20 your cow herd at all costs.

21 Q. For all the reasons you've mentioned here
22 today?

23 A. Exactly. Younger cattle are a lot easier to
24 liquidate. If you've got a lot of yearling stock or,
25 you know, cows -- cattle that aren't in your breeding

1 herd, then that's a different story.

2 But to -- and the other issue at this time of
3 the year is when you've got cows with young calves on
4 them, if you take those cows to the sale barn, those
5 calves are going to get split off and sold as a leppy
6 calf, and that cow is going to go probably to the kill
7 floor. And I just don't -- I don't do that.

8 MR. FLETCHER: Thank you. I don't have any
9 other questions. Thank you.

10 THE WITNESS: You bet.

11 HEARING OFFICER: Mr. Rigby?

12

13 CROSS-EXAMINATION

14 QUESTIONS BY MR. RIGBY:

15 Q. Mr. Taylor, Jerry Rigby representing the
16 senior surface water users --

17 A. Yes.

18 Q. -- down on the Little Wood.

19 I just want to ask you, especially when you
20 talk about the herd and the importance, as you say, of
21 keeping it intact, I'll represent to you that in the
22 testimony of at least two that I can recall of my
23 clients, they have either had to sell off part, if not
24 most, of their herd or will be required to as a result
25 of water having been turned off. They have no other

1 source. They do not have the wells.

2 So when you talk about syncing up the
3 available water rights and syncing between ground and
4 surface and the importance of keeping a herd, I'm having
5 a difficult time understanding how that would work when,
6 clearly, they've had to sell off the herd, which is the
7 very thing that you've said you want to do everything
8 you can to avoid.

9 A. Uh-huh.

10 MR. BARKER: So I'm going to object. There's
11 no question there. It's just a speech by Mr. Rigby.

12 MR. RIGBY: I'm asking him how he wants to
13 sync it. He's the one that brought up syncing.

14 MR. BARKER: No, you had a speech about a
15 page-and-a-half long in the transcript. So if you want
16 to ask him --

17 MR. RIGBY: If you want to talk about
18 page-and-a-half long, your --

19 HEARING OFFICER: Overruled. This is
20 cross-examination. Ask a question, Mr. Rigby.

21 Q. (BY MR. RIGBY) So, again, is there any way
22 you can sync that to make it reasonable?

23 A. I think we're talking about -- I don't see the
24 relationship here. He was asking me a question about
25 managing surface rights and groundwater rights on

1 priority dates, and I don't see the tie-in to what
2 you're talking about.

3 Q. What I'm asking is: They've had -- they don't
4 have any water.

5 A. Right.

6 Q. But their surface water rights are, obviously,
7 much older in priority than the groundwater. And you
8 suggested there ought to be a way to sync them so that
9 they make a more reasonable connection.

10 My question was: They've had to sell off
11 their cattle because they don't have water; you're not
12 going to have to. How would you then sync or make that
13 reasonable in today's world?

14 A. Are you talking about syncing the water
15 rights?

16 Q. To make it so that -- should you be on when
17 they're off and have to sell their cattle?

18 A. Well, that's not what I was saying. I'm not
19 saying I should be on when they're off and they have to
20 sell their cattle. The question was what was I going to
21 do with my cows if my water got cut.

22 I didn't make any comment about, you know,
23 what they should do if their water is cut. And as far
24 as the syncing thing goes, that's an administrative
25 deal, not -- and I don't have anything to do with that.

1 I was just saying that that made sense to me.

2 Q. So then asking the question as to the
3 importance of keeping your herd together --

4 A. Right.

5 Q. -- you are saying that's very important to
6 you?

7 A. [Witness nods head.]

8 Q. Is it not equally important to them?

9 A. I would think so.

10 Q. So if they have to sell off their herd, I
11 guess my question is: Why should you not have to sell
12 off your herd?

13 A. Well, because I can go buy hay.

14 Q. Okay. But you said that that would cost you
15 severely to do that.

16 Are you willing to turn off your pumps and go
17 buy hay to make it more equal?

18 A. If I'm --

19 MR. BARKER: Objection.

20 THE WITNESS: If I'm ordered to -- if I'm
21 ordered to turn off my pumps, then I will go buy hay.

22 MR. RIGBY: Okay. No further questions.

23 HEARING OFFICER: Mr. Barker, redirect?

24 ///

25 ///

1 REDIRECT EXAMINATION

2 QUESTIONS BY MR. BARKER:

3 Q. Stuart, thanks for your patience with counsel
4 today.

5 You said that you would have to go buy hay,
6 that would be your choice to go buy hay rather than sell
7 off?

8 A. At this stage, yes.

9 Q. You have no idea why Mr. Rigby's people think
10 that they need to sell instead of go and buy hay; is
11 that right?

12 A. I have no idea about their -- what their
13 economics are or what their -- you know, what their
14 relationship is with their cow herd.

15 Q. Right. But that's an option in the
16 marketplace, to go buy hay if you want to keep your
17 cows?

18 A. Yes.

19 MR. BARKER: Thank you. No further questions.

20 HEARING OFFICER: Recross, Mr. Fletcher?

21 MR. FLETCHER: Nothing. Thank you.

22 HEARING OFFICER: Mr. Rigby?

23 MR. RIGBY: No.

24 HEARING OFFICER: Okay. Thank you,
25 Mr. Taylor.

1 THE WITNESS: You bet.

2 HEARING OFFICER: I want to inquire of the
3 court reporter.

4 How are you doing?

5 COURT REPORTER: As in, do we want to take a
6 break or --

7 MR. BARKER: Mr. Director, I would prefer that
8 we adjourn for the day and start up in the morning.

9 HEARING OFFICER: Okay.

10 MR. BARKER: If that's okay?

11 HEARING OFFICER: Yes, I think this is a good
12 time to adjourn. Earlier than last night. So 8:30
13 again, is that a good time?

14 MR. BARKER: Yes, thank you.

15 HEARING OFFICER: Let's start at 8:30
16 tomorrow. We will adjourn and be back on the record in
17 the morning.

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19 (Hearing adjourned at 6:21 p.m.)

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REPORTER'S CERTIFICATE

I, ANDREA L. CHECK, CSR No. 748, 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 by me;

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 18th day of June, 2021.



ANDREA L. CHECK, C.S.R. No. 748, R.P.R.

Notary Public

P.O. Box 2636

Boise, Idaho 83701-2636

My Commission expires July 20, 2022.

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