BEFORE THE DEPARTMENT OF WATER RESOURCES

OF THE STATE OF IDAHO

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

VOLUME VI

(Pages 1381-1479)

BEFORE

HEARING OFFICER: GARY SPACKMAN

Date: June 12, 2021 - 8:38 a.m.

Location: Idaho Department of Water Resources

             322 East Front Street

             Boise, Idaho

REPORTED BY:

COLLEEN P. DOHERTY, CSR 345

Notary Public

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2

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Also Present:

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1   (SVGWD/GGWD Exhibits 43, 44, 45, 46 marked.)

2   THE HEARING OFFICER: Okay. Are we ready?

3   PATRICK LEONARD PURDY,

4   first duly sworn to tell the truth relating to said

5   cause, testified as follows:

6   THE HEARING OFFICER: Thank you. Please be

7   seated.

8   MR. BARKER: Good morning, Mr. Purdy.

9   THE HEARING OFFICER: And we're on the record

10   by the way. Thank you, Colleen.

11   THE WITNESS: Good morning.

12   DIRECT EXAMINATION

13   QUESTIONS BY MR. BARKER:

14   Q. Good morning, Mr. Purdy. State your name and

15   address for the record, please.

16   A. Patrick Leonard Purdy, my full-time residence

17   is actually here, in Boise, at 1800 North Montclair

18   Drive. I also have a residence in Picabo, 213 Ranch

19   Road, Picabo, Idaho.

20   Q. And what do you do for a living, Mr. Purdy?

21   A. Well, I work for Picabo Livestock as a ranch

22   manager. We also own a business here, in Boise, called

23   Purdy Enterprises, that I spend part-time here as well.

24   Q. And what does Picabo Livestock do?

25   A. We have a farm and ranch operation located in

 1 Picabo. We farm approximately 5,000 acres of malt

 2 barley, alfalfa hay. We run a cow/calf operation. And

 3 so we have a couple other ancillary businesses in Picabo

 4 as well.

 5   Q. So you spend a fair amount of time in Picabo?

 6   A. This time of year, almost full-time, yeah,

 7 from --

 8   Q. Are you familiar with the irrigation

 9 operations of your farm?

10   A. Yes, intimately. Yes.

11   Q. Do you have both surface water and ground

12 water rights?

13   A. We do. We do have, yeah, a number of surface

14 water rights and three, I believe, it is ground water

15 rights.

16   Q. Do you rent ground to Mark Johnson for his

17 potato operations?

18   A. We do.

19   Q. And do you have surface and ground water

20 rights available for Mr. Johnson?

21   A. He has some ground that we lease from Heart

22 Rock Ranch that we were subleasing to him that only has

23 surface water rights off of the Big Wood River or Willow

24 Creek, a tributary to Big Wood. We're also renting some

25 of the ground on our own property to him directly that

1 is served by surface water and ground water, both.

2   Q. And that Willow Creek property do you know

3 what kind of water rights are on that?

4   A. The best right on that ground is an 1881

5 right.

6   Q. That's a pretty good water right for --

7   A. Yeah, it's one of the best on Big Wood.

8   Q. And then the water rights on the property in

9 Picabo?

10   A. Our rights -- our rights extend all the way

11 from September of '83 all the way up through the 1890s.

12   Q. Do you have some water rights that are senior

13 even to the 1883s?

14   A. We do have five cfs of perpetual right, yes,

15 as well.

16   Q. And that right would be available for,

17 potentially available for Mr. Johnson's potatoes?

18   A. Yes, if it comes to that, that's what we would

19 allocate that water to him and dry up some of our other

20 ground.

21   Q. So are you familiar with the conditions in

22 Silver Creek?

23   A. Yes, I am.

24   Q. So what can you tell us about just in general

25 about Silver Creek in the area of your properties?

1   A. So Silver Creek forms just above our property,

2   and then from The Nature Conservancy then flows into the

3   Kilpatrick Pond which is on our property. And through

4   the Kilpatrick Pond down through our ground quite a ways

5   towards Picabo, and the river is free flowing and no

6   obstructions all the way down through, it crosses

7   Highway 20, and then back around through our property

8   again, and out into some Fish and Game property, and

9   some other private ground. And then down it crosses

10 Highway 20 again to the southeast, and then flows

11 through some property owned by Harry Rinker, which we

12 farm as well.

13   And then it hits an area that we call the

14 Highway 93 intersection, where Highway 93 and where the

15 river crosses under Highway 93, there is some

16 significant issues at that location with -- we observed

17 just on Wednesday of this week a large beaver dam

18 completely blocking the stream channel with a

19 significant amount of water pouring out both to the

20 north end of the south into the desert ground owned by

21 Simplot and Rob Hennefer. I would guess just as a

22 layman's estimate, maybe ten cfs of water flowing out

23 into the desert there.

24   Q. So there is some photographs in front of you.

25 Do you see those?

1   A. Yes.

2   Q. So Exhibit 43 is that a photograph that you

3   took?

4   A. It is. I took this picture on Wednesday of

5   this week.

6   Q. Where is this photograph taken?

7   A. It's about 100 yards up from Highway 93 and

8   Silver Creek intersect.

9   Q. What does this picture depict?

10   A. A large beaver dam clear across the stream

11 channel backs the water up, I would say, between 18

12 inches and 24 inches total height.

13   Q. And this is in Silver Creek, itself?

14   A. This is directly in the stream channel, yes.

15   MR. BARKER: I would offer Exhibit 43, South

16 Valley/Galena Exhibit 43.

17   THE HEARING OFFICER: Any objection to this

18 exhibit?

19   MR. RIGBY: The only question is, I don't know

20 how they are numbered.

21   MR. FLETCHER: We don't know which is which.

22   MR. RIGBY: We don't know which is which.

23   MR. BARKER: I left them on the table. It

24 looks like they got shuffled.

25   MR. RIGBY: I'm sorry.

 1   MR. BARKER: This is 43. No, that's not 43.

 2   This one (indicating).

 3   MR. RIGBY: This one is 43 (indicating)?

 4   MR. BARKER: Yes.

 5   MR. FLETCHER: May I ask one question in aid.

 6   THE HEARING OFFICER: Yes.

 7   MR. FLETCHER: You took this picture on

 8   Wednesday of this week?

 9   THE WITNESS: I did, yes.

10   MR. FLETCHER: Thank you. I have no

11   objection.

12   MR. RIGBY: No objection.

13   THE HEARING OFFICER: Okay. The document

14   marked South Valley and Galena No. 43 is received into

15   evidence.

16   (SVGWD/GGWD Exhibit 43 received.)

17   Q. (BY MR. BARKER) Exhibit 44, do you have that

18   in front of you?

19   A. I do.

20   Q. Well, first of all, did you take this

21   photograph?

22   A. I did. I took this at the same time.

23   Q. So Wednesday of this week?

24   A. Yeah. So this is a large hole in the stream

25   channel to the north flowing out onto some property

1 owned by Simplot. That's one our employees --

2   THE REPORTER: I'm sorry. I didn't hear you.

3   THE WITNESS: I'm sorry. That's one of our

4 employees standing there looking at the hole. A

5 significant stream of water flowing out into the

6 property to the north of the stream channel here.

7   Q. (BY MR. BARKER) Is this part of the 10 cfs --

8   A. Yeah.

9   Q. -- you estimate was leaving?

10   A. Yes, it is.

11   MR. BARKER: Offer Exhibit 44, South

12 Valley/Galena 44.

13   THE HEARING OFFICER: Any objection to the

14 admission of this document?

15   MR. FLETCHER: Again, did you state the date

16 this picture was taken?

17   THE WITNESS: It was taken on Wednesday by me.

18   MR. FLETCHER: Thank you. I have no

19 objection.

20   MR. RIGBY: No objection.

21   THE HEARING OFFICER: So the document marked

22 as South Valley and Galena No. 44 is received into

23 evidence.

24   (SVGWD/GGWD Exhibit 44 received.)

25   Q. (BY MR. BARKER) And then Exhibit 45, do you

 1 have that in front of you, Mr. Purdy?

 2   A. I do. And again this photo was taken by me on

 3 Wednesday.

 4   Q. Where was this photograph taken?

 5   A. About 50 yards upstream of the beaver dam on

 6 Exhibit 43.

 7   Q. And what does this photograph depict?

 8   A. It's one of several holes in the stream bank

 9 to the south side of Silver Creek flowing out into again

10 Simplot's property.

11   Q. And is this part of what you estimate the 10

12 cfs loss was?

13   A. Yes. So I sent a team down there the next day

14 to do their best job to breach that beaver dam, which

15 they were able to take out about a third of it. And a

16 significant stream of water flowed backwards in from

17 this -- in from this hole. So the elevation lowered the

18 water came back into the stream channel.

19   Q. Do you have any idea how long this beaver dam

20 that you photographed in Exhibit 43 has been there?

21   A. I would guesstimate you can go see the growth

22 if we go back to that picture, you can see the growth on

23 the one side of it. There is actually weeds and grass

24 growing on it. Just based on that, I would assume that

25 it's been there at least this full season, and probably

1 into last season. We did take a dam out of this area

2 two years ago. We got permission to bring a big track

3 hoe in and tear a large dam out. There is a huge pile

4 of debris that you can't see that is off to the side

5 from the prior beaver dam that was removed. So I

6 believe my best estimate is this one has been in there

7 all season and probably in the fall of last year.

8   Q. So in your estimate, in your experience

9 rather, would this dam constitute an obstruction of

10 flows to the --

11   A. Definitely, yes.

12   Q. -- downstream Little Wood water --

13   A. Yeah, definitely given the large elevation

14 change that it was inducing in the stream, and the

15 amount of water pouring out into each side of the stream

16 bank.

17   Q. Okay. And since you've been on the property,

18 has the water district taken any efforts to do this kind

19 of beaver dam removal that you've spoke of?

20   A. Not to my knowledge. We have spent some time

21 here ourselves, the Picabo Livestock employees have been

22 trying to do work here. So at the same time we removed

23 this beaver dam this week which would have been on

24 Thursday, we also plugged -- we also plugged some of

25 these holes as best we could by hand with some straw

 1 bales and just some native soil.

 2   Q.   Would you turn now to Exhibit 46?

 3   A.   Okay.

 4   MR. BARKER: I'm sorry. Did I move the

 5 admission of Exhibit 45? We offer Exhibit 45 at this

 6 time, South Valley/Galena Exhibit 45.

 7   THE HEARING OFFICER: Any objection to the

 8 admission of this document?

 9   MR. FLETCHER: No objection.

10   MR. RIGBY: No objection.

11   THE HEARING OFFICER: The document marked as

12 South Valley and Galena No. 45 is received into

13 evidence.

14   (SVGWD/GGWD Exhibit 45 received.)

15   Q.   (BY MR. BARKER) Mr. Purdy, have you got

16 Exhibit 46 in front of you?

17   A.   I do.

18   Q.   Did you take this photograph?

19   A.   Yes, I took this photograph about 1:30 p.m.

20 yesterday.

21   Q.   And what's the location of this photograph?

22   A.   So this is another beaver dam in the stream

23 channel of Silver Creek in a location called Bear Track

24 Williams. It's as near as I can tell, like a nature

25 preserve or a small park run by the Fish and Game. The

 1   ditch rider who services our area mentioned to me in

 2   passing on that yesterday morning that he saw another

 3   beaver dam in the stream along the highway. And so we

 4   drove down and took this photo.

 5   Q. So this is below the Highway 93 crossing?

 6   A. It is. It is highway miles maybe five miles

 7   highway miles, but significantly more than that in

 8   stream miles. The stream flows out and then back in

 9   towards the highway, so, yeah, it is below it.

10   Q. Is this above the confluence of the Little

11   Wood?

12   A. Below, yeah, no, this would be below the

13   confluence of the Little Wood.

14   Q. So this is actually in the Little Wood and not

15   in Silver Creek?

16   A. Sorry. It is in the Little Wood, yes.

17   Q. Okay. Did you have an estimate of how large

18   this dam is?

19   A. Again, it spans the entire stream channel.

20   This was backing the water up at least three feet when

21   we arrived. Again, it looks like this beaver dam has

22   been there for quite a while. It is pretty well

23   established. It was difficult to -- the banks in this

24   area are very heavily, I guess just very heavy with

25   brush and willow, so it's difficult to see water flowing

1 out, but it was backing the water up you could tell a

2 significant distance upstream. So again, about a three

3 foot elevation change here, so...

4   MR. BARKER: I would move the admission of

5 Exhibit South Valley Ground Water/Galena Ground Water

6 Exhibit 46?

7   THE HEARING OFFICER: Any objection to the

8 admission of this document?

9   MR. FLETCHER: No objection.

10   MR. RIGBY: No objection.

11   THE HEARING OFFICER: The document marked as

12 South Valley and Galena No. 46 is received into

13 evidence.

14   (SVGWD/GGWD Exhibit 46 received.)

15   Q. (BY MR. BARKER) So did you make any effort to

16 try and do something about this beaver dam?

17   A. We did. We did. Norberto Farfan was with me.

18 So we put on our boots and spent about an hour trying to

19 tear out the center section of this dam. We had

20 reasonable success. We were able to just in the time we

21 were there, the water level dropped at least a foot from

22 its previous level. And we saw water starting to flow

23 back into the stream channel from the surrounding area.

24 It's going to take us a large piece of equipment to get

25 this one out, because the stream is fairly wide here and

 1   it's a large dam.

 2   Q. So when you spoke to the ditch rider, did he

 3   give you any information about whether or not the water

 4   district had any plans to deal with these beaver dams?

 5   A. No, I didn't ask.

 6   Q. Is it your understanding or is it your belief

 7   based upon your observations of the stream, that this

 8   beaver dam also impedes the flow to the Little Wood?

 9   A. Yes, I would say pretty significantly. That

10   whatever additional water flows in from upstream is

11   going to first spread out into a very large area. It's

12   hard for me to say how large of an area, but it's going

13   to spread out into a very large area before it actually

14   flows downstream from this beaver dam.

15   Q. So do you know whether or not there are beaver

16   dams on the Little Wood that have not been taken care

17   of?

18   A. No, I don't. After observing this second dam,

19   we made the decision that early next week we're going to

20   put some people in a canoe and we're going to float the

21   stream, because it runs pretty wild out through the

22   desert. And to my knowledge, nobody looks at it. I

23   don't know that anybody has looked at inspecting or

24   doing any kind of maintenance on the stream channel. So

25   we're going to take it on ourselves to go just take a

 1 look and see what we can find from the boat.

 2   Q.   Are you familiar with the readings that the

 3 Water District maintains for Station 10?

 4   A.   I am.

 5   Q.   Have you observed those readings over the

 6 course of the last week?

 7   A.   Yeah, I've been watching them pretty carefully

 8 for the last three or four days.

 9   Q.   And what have you observed about the readings

10 with respect to the work you've done on these beaver

11 dams?

12   A.   A pretty significant spike in the flow in

13 Silver Creek that's -- I apologize. I don't have the

14 numbers in front of me. But my recollection is they

15 were running around 10 cfs around the first and second

16 of June, and it is up consistently around 30 to 35 cfs

17 in the last five or six days -- four or five days, I

18 should say.

19   MR. BARKER: Thank you, Mr. Purdy. I don't

20 have any further questions. Thank you for coming down

21 for today.

22   THE HEARING OFFICER: Ms. O'Leary, questions?

23   MS. O'LEARY: No, Director.

24   THE HEARING OFFICER: Group 3 questions for

25 Mr. Purdy?

1   MR. BROMLEY: No.

2   THE HEARING OFFICER: Mr. O'Bannon?

3   Cross-examination, Mr. Fletcher.

4   MR. FLETCHER: Thank you.

5   CROSS-EXAMINATION

6   QUESTIONS BY MR. FLETCHER:

7   Q. Mr. Purdy, I'm Kent Fletcher. I represent Big

8   Wood Canal Company.

9   A. Nice to meet you.

10   Q. Nice to meet you. In your testimony you

11   talked about the property that you leased to

12   Mr. Johnson?

13   A. Yes.

14   Q. And Mr. Johnson is the same Mr. Johnson that

15   testified in this proceeding; is that correct?

16   A. That's correct, Mark Johnson, Silver Creek

17   Seed.

18   Q. Which of your properties did you say you

19   leased to him, or how do you identify that property?

20   A. We have a piece of property that we farm under

21   contract with Heart Rock Ranch, we call Spring Creek.

22   That's over near Timmerman Hill. That ground is fed by

23   the water from Willow Creek. We also lease two pieces

24   of ground to him on our main ranch property just a mile

25   roughly west of the town Picabo.

 1   Q. How many acres are involved in the
 2   Spring -- did you say, Spring Creek?
 3   A. Spring Creek has, I think, it's 120 acres that
 4   he's got over there.
 5   Q. And on the other parcel?
 6   A. It's going to be about 200, I believe, about
 7   230 acres.
 8   Q. So a total of about 350 acres?
 9   A. I believe that's correct.
10   Q. That's how much you are leasing to him this
11   year?
12   A. Yes.
13   Q. And I could have misunderstood your testimony.
14   But did you state that what is the source of water to
15   Spring Creek? What is the source of water to Spring
16   Creek?
17   A. It's Willow Creek, which feeds into the Big
18   Wood.
19   Q. Okay. So that's surface water?
20   A. Surface water, yes, there is no ground water
21   right on that property.
22   Q. So if curtailment takes place, there will
23   still be a water supply to Spring Creek?
24   A. A ground water curtailment would not affect
25   Spring Creek, no.

 1   Q. And on the other parcel you are talking about,

 2   the 230 acre parcel, what is the water source for that?

 3   A. The primary water source is Silver Creek, and

 4   then the secondary would be ground water.

 5   Q. So do you know the water rights priority date?

 6   A. We have five feet of perpetual on Silver

 7   Creek, and we have 20 feet of September of 1883, and

 8   then we have a variety of other rights that are junior

 9   to that 1883 right. We have a total of about 60 cfs of

10   right on Silver Creek.

11   Q. That are appurtenant to that property?

12   A. That's correct.

13   Q. Have the 1983 rights been curtailed?

14   A. The 1883, this year, no.

15   Q. Excuse me. 1883 rights?

16   A. No, they have not, although we've been told

17   that they are expecting curtailment on those potentially

18   this next week.

19   Q. And if those are curtailed, if there is no

20   curtailment, you would then turn on this supplemental

21   pump?

22   A. If those 1883 rights were curtailed, we would

23   have our five cfs of perpetual. And then we would

24   typically in a normal year, we would turn on our ground

25   water pumping, yes.

1   Q.   And if the supplemental right is curtailed,

2 the ground water pump, you mentioned you were going to

3 get water from a different source?

4   A.   It would be the five cfs of perpetual off of

5 Silver Creek that we had would be the only source of

6 water we would have as long as the September '83 rights

7 are curtailed.

8   Q.   And how many of the 230 acres can you irrigate

9 with that?

10   A.   He would have a difficult time finishing all

11 of that. Yeah, five -- can I do some math; is that all

12 right?

13   Q.   Sure.

14   A.   If we were able to deliver 100 percent of that

15 five cfs to him he could in theory finish that crop.

16 There would be enough water there if we were able to get

17 the full five cfs to him.

18   Q.   Did you hear Mr. Johnson's testimony?

19   A.   I did.

20   Q.   Do you know if he took into account these

21 water sources when he was giving his damage testimony?

22   A.   He wouldn't necessarily be aware of this

23 information, no.

24   Q.   In fact, it was pretty clear he didn't really

25 understand the water right situation at all; is that

 1   correct?

 2   A.   I would agree, yeah. He's never had to. It's

 3   not been something that he's had to worry about.

 4   Q.   As I understand it, you observed this beaver

 5   dam in Exhibit 43, Wednesday. And you tore it out

 6   Wednesday; is that correct?

 7   A.   We did actually, yeah. I'm sorry. I said

 8   Thursday, but we did actually send a crew down there on

 9   Wednesday, that same day, that afternoon, yes.

10   Q.   No, I think you said Wednesday.

11   A.   Okay. Yes. So we did tear it out. Yeah, we

12   did tear out a portion of it on Wednesday.

13   Q.   And after you tore out that portion, water

14   started flowing freely through that section you tore

15   out?

16   A.   Yes. And we observed water flowing back into

17   the stream channel from the surrounding area.

18   Q.   Have you gone back to that area to see if the

19   dam was reestablished?

20   A.   We were just there yesterday, and we actually

21   saw the beaver. It hasn't started rebuilding it yet,

22   but it certainly will. It was right there next to it.

23   Q.   Is the beaver alive to talk about this

24   incident?

25   A.   Unfortunately, it is, yeah. I didn't have my

 1   weapon or permission to shoot it.

 2   Q.   Are you familiar with beavers and how they

 3   respond to running water?

 4   A.   I wouldn't say so, no. They don't like it, I

 5   don't think.

 6   Q.   Have you had experience about when you tear

 7   out a dam, and how a beaver responds to that?

 8   A.   They rebuild it.

 9   Q.   Yeah.

10   A.   Yeah, they rebuild it.

11   Q.   So it's a constant problem; correct?

12   A.   Yes. Yes, the beaver is going to have to be

13   trapped out, and we're looking for permission to get

14   that done as well.

15   Q.   And then on the dam referred to in your

16   Exhibit 46, you observed that also, I think you said

17   Wednesday; is that correct?

18   A.   That was yesterday.

19   Q.   Yesterday. And you tore out a section of that

20   dam as well?

21   A.   We did. We took out as much as we could

22   physically. It's a larger more well-established dam, so

23   it's difficult to do by hand.

24   Q.   Have you had a chance to go back and observe

25   whether that dam is back in place?

1   A.   No, I have not.

2   MR. FLETCHER: I don't have any other

3   questions. Thank you.

4   THE WITNESS: You're welcome.

5   THE HEARING OFFICER: Mr. Rigby?

6   MR. RIGBY: Thank you.

7   CROSS-EXAMINATION

8   QUESTIONS BY MR. RIGBY:

9   Q.   Mr. Purdy, Jerry Rigby representing the senior

10 surface water users.

11   A.   Nice to meet you.

12   Q.   Good morning.

13   A.   Good morning.

14   Q.   You've discussed you had three ground water

15 rights; is that correct?

16   A.   Yes, we have three irrigation ground water

17 rights. We have some small stock water and municipal

18 water rights as well, but they are minor.

19   Q.   Do any of those ground water rights pump

20 directly into Silver Creek?

21   A.   Two of the three of them can pump directly

22 into Silver Creek, yes.

23   Q.   And what's the use or purpose of doing that?

24   A.   To be able to pull them out then at the

25 diversions downstream. Typically we would pump into the

1 river, if necessary, and then pull them out at

2 downstream diversions, or the pumps can be diverted and

3 pumped directly into our canals. So they have

4 two -- they have a valve on them that allows them to

5 either go into the river or into a canal depending on

6 where we need to use the water.

7   Q. And is there any time when you are pumping

8 those that you are not also diverting those? In other

9 words, you are pumping in the river and then you are

10 diverting back out?

11   A. That certainly happens, yeah, sometimes.

12   Q. Is that the intent generally?

13   A. Not necessarily. That's paying a power bill

14 for no reason, but...

15   Q. Yeah, it doesn't make sense to me. That's why

16 I'm asking.

17   A. Right. Right.

18   Q. As far as the beaver dams, themselves, you

19 said you noticed this Wednesday. Have you contacted the

20 watermaster and notified them?

21   A. I did let Kevin know on Wednesday that there

22 is a beaver dam that we tore out. And I was curious

23 what the station ten flows were. And so he just shared

24 that with me. And so I just got on myself and started

25 watching the flows, so...

1   Q. Because of your location, especially close to

2 the Simplot lands, in the past have you notified the

3 watermaster when you've seen beaver dams?

4   A. We've talked about this a lot in District 37

5 meetings, and in our water advisory board meeting, which

6 I was a member of. The district did try to participate

7 in some stream channel repair there back in the early

8 2000s, and I think got into a real jam with either DEQ

9 or Corps of Engineers. And so they've taken a definite

10 hands-off approach.

11   Q. Yeah, those nasty federal regulations; right?

12   A. Yeah. Yeah.

13   Q. You said that there was a spike in the flow

14 after you opened up the lower dam?

15   A. Yes. If you looked at the history on

16 Thursday, there was a spike, and then it kind of

17 settled, which would be the initial rush of water and

18 then kind of settled back down. And it's been running

19 about 30 plus cfs since that time.

20   Q. But you don't know what other conditions may

21 or may not have caused that spike?

22   A. Yeah.

23   Q. Clearly one was opening up a dam?

24   A. Yeah, right. Yeah.

25   Q. But you don't know that the full 35 cfs was

1 caused by this?

2   A. I don't know. There is no way for me to know.

3   MR. RIGBY: I have no further questions.

4   THE WITNESS: I would like to back up and

5 clarify if I could an answer that I gave earlier.

6   THE HEARING OFFICER: Let's have you do that

7 through redirect.

8   THE WITNESS: Okay.

9   THE HEARING OFFICER: If you have some.

10   MR. BARKER: I have one question on redirect.

11   REDIRECT EXAMINATION

12 QUESTIONS BY MR. BARKER:

13   Q. Mr. Purdy, would you like to clarify an answer

14 that you gave to Mr. Rigby?

15   A. Yeah. Well, he asked whether or not we run

16 those pumps for no reason for diversion. And we do

17 occasionally pump water into the stream when the stream

18 is suffering, frankly, to try and increase the flows to

19 maintain the fishery, the quality of the fishery. So

20 Silver Creek water temperatures the fish are very

21 sensitive to that water temperature. And so my dad will

22 occasionally turn a pump on when he's concerned about

23 the streamflows being too low and the stream

24 temperatures being too high. So we will just pay that

25 power bill, so...

1   THE HEARING OFFICER: More redirect?

2   MR. BARKER: No, Mr. Director.

3   THE HEARING OFFICER: Okay. Any other

4   questions? Okay. Back to the cross-examination.

5   Recross, Mr. Fletcher?

6   MR. FLETCHER: No.

7   THE HEARING OFFICER: Mr. Rigby?

8   MR. RIGBY: Just one.

9   RECROSS-EXAMINATION

10   QUESTIONS BY MR. RIGBY:

11   Q. Have you done that this year for that purpose?

12   A. Yes.

13   Q. When?

14   A. We turned on a couple wells this past week.

15   Sorry. We turned on one well this past week.

16   Q. Until then have you turned it on?

17   A. I'm sorry?

18   Q. For that purpose?

19   A. Yes. It's com- -- you know, we're

20   trying -- frankly, we're trying to avoid getting our

21   1883 September cut. Right. We're trying to avoid

22   getting our September '83s cut. So the more water we

23   can put in the stream channel, the less likely those

24   senior surface water rights will get cut.

25   Q. That implies, though, that then you're

 1 re-diverting it because you are needing the 1883 right?

 2   A. Yes. Yes.

 3   MR. RIGBY: No further questions.

 4   THE HEARING OFFICER: Okay. Thank you,

 5 Mr. Purdy.

 6   (Witness excused.)

 7   THE HEARING OFFICER: Other witnesses,

 8 Mr. Barker?

 9   MR. BARKER: The South Valley Ground Water

10 District rests.

11   THE HEARING OFFICER: Okay. Ms. O'Leary?

12   MS. O'LEARY: The Galena Ground Water District

13 also rests, Director.

14   THE HEARING OFFICER: Thank you. Group 3

15 witnesses?

16   MR. BROMLEY: Yes. We would call Greg

17 Sullivan as we've discussed before. And maybe if we

18 could go off the record, we could deal with some of the

19 exhibits.

20   THE HEARING OFFICER: That would be fine.

21 Let's go off the record for a moment.

22   (Off the record.)

23   THE HEARING OFFICER: Mr. Sullivan, if you'll

24 raise your right hand.

25 ///

1   GREGORY K. SULLIVAN,

2   first duly sworn to tell the truth relating to said

3   cause, testified as follows:

4   THE HEARING OFFICER: Mr. Bromley.

5   MR. BROMLEY: Thank you, Director. Chris

6   Bromley on behalf of Sun Valley Company, the City of

7   Bellevue. I'm also for purposes of efficiency going to

8   ask some questions for the City of Hailey, City of

9   Ketchum, just trying to be efficient with time here,

10   Director. It's conceivable that Counsel may also have

11   questions if I miss something. And if you would just

12   indulge us with that, I would appreciate it?

13   THE HEARING OFFICER: Thank you.

14   MR. BROMLEY: And I will do my best to speak

15   up, and if I am not, if you would please remind me.

16   THE HEARING OFFICER: Okay.

17   MR. BROMLEY: Thank you.

18   DIRECT EXAMINATION

19   QUESTIONS BY MR. BROMLEY:

20   Q. Mr. Sullivan, would you please state your name

21   for the record.

22   A. Gregory K. Sullivan.

23   Q. And, Mr. Sullivan, where is your office

24   located?

25   A. 1000 Logan Street in Denver, Colorado.

 1   Q. And, Mr. Sullivan, you have in front of you

 2 Cities/SVC Exhibit 1. What document is that?

 3   A. That's my resume.

 4   Q. And if you could just please describe your

 5 position, your education, and experience?

 6   A. Well, I'm the president of Spronk Water

 7 Engineers. I'm a senior water resources engineer. My

 8 education included a bachelor of science degree from

 9 Colorado State University that I obtained in 1985. I

10 got a master of science in civil engineering from the

11 University of Colorado at Denver in 1990. I'm a

12 registered professional engineer in Colorado, Idaho,

13 Nevada, and New Mexico. And you asked about work

14 experience?

15   Q. Please.

16   A. Yes. Well, right out of school in 1985, I

17 worked for a consulting firm named J. W. Patterson &

18 Associates, which is a water resources engineering firm,

19 and did a lot of water rights work. And that's when I

20 started my water rights and that sort of work in 1985.

21 In 1990, I joined Spronk Water Engineers as a staff

22 engineer, ultimately became a partner in the firm, and

23 have been with that firm ever since. And I am now the

24 president of the company.

25   Q. Okay. Mr. Sullivan, have you played a role in

1 any prior Idaho Department of Water Resources

2 administrative matters?

3   A. Yes, I've been involved in several of the

4 delivery calls, notably the delivery call on the Surface

5 Water Coalition on the Snake River; the delivery call by

6 the A & B Irrigation District, which was a call for

7 their ground water rights; and then also the delivery

8 call by the Rangen Fish Hatchery.

9   Q. And have you had any experience, Mr. Sullivan,

10 in mitigation plans that have stemmed from those

11 delivery calls?

12   A. Yes. I've been involved in reviewing many of

13 those plans, and then actually putting -- helping to put

14 together the plan for the ESPA cities that relates to

15 the Surface Water Coalition delivery call.

16   Q. And more recently I believe were you involved

17 in the Elmore County application for the storage water

18 out of the Boise?

19   A. Yes, I was reviewing that for the City of

20 Boise.

21   Q. Mr. Sullivan, are you generally knowledgeable

22 of the water rights that are owned by the cities and Sun

23 Valley Company?

24   A. Yes, I am.

25   Q. And about how long have you been involved

1 reviewing those rights?

2   A. Since 2017.

3   Q. Mr. Sullivan, have you been qualified as an

4 expert before?

5   A. Yes, numerous times.

6   Q. In what categories?

7   A. Surface water and ground water hydrology,

8 water resource engineering, surface water and ground

9 water modeling, water rights analysis, conjunctive

10 administration of ground water and surface water,

11 analysis of irrigation systems, water measurement, data

12 analysis. I think that covers most of it.

13   Q. Thank you. If you could please describe some

14 of your modeling experience?

15   A. Yes, I've been working on ground water and

16 surface water modeling for my entire career, notably for

17 up in this area. I've been a member of the Eastern

18 Snake Hydrologic Modeling Committee, which is sort of

19 overseeing and help guide the development of the ESPA

20 ground water model. I've been a member of that

21 committee since its inception, and even there was some

22 prior committees before that time that I was on.

23   Some other modeling, I was a modeling expert

24 in the Kansas v. Colorado litigation before the Supreme

25 Court, and that was a model of surface water and ground

 1   water use on the Arkansas River in Colorado. I'm

 2   currently the lead modeling expert for the State of New

 3   Mexico in the ongoing litigation on the Rio Grande

 4   involving Texas v. New Mexico.

 5   Q. And, Mr. Sullivan, aside from establishing the

 6   Cities and Sun Valley Company's water rights and

 7   interests in this proceeding, your testimony will be

 8   limited to issues regarding ground water pumping related

 9   to the Bellevue triangle; is that correct?

10   A. Yes.

11   MR. BROMLEY: Director, I would tender

12   Mr. Sullivan as an expert in the fields that he's

13   identified, ground water and surface water modeling,

14   water resource engineering, ground water and surface

15   hydrology, water rights analysis and administration,

16   irrigation system analysis, and water measurement.

17   THE HEARING OFFICER: Any objection to the

18   requested qualifications?

19   MR. BROMLEY: And data analysis as well.

20   Thank you.

21   THE HEARING OFFICER: Do you have a question?

22   MR. FLETCHER: No, Director. I just for the

23   record, we had moved in limine to exclude these

24   witnesses from the Class 3 parties. The Director ruled

25   on that. I believe we may have brought that issue up

1 again seeking to exclude the witnesses. I believe the

2 Director has ruled that they may be allowed to testify.

3 So in light of the Director's ruling, we would stipulate

4 to Mr. Sullivan's expertise for the purpose of this.

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

6   MR. RIGBY: The same noted original objection.

7 But with your ruling, we do not object to him being

8 qualified.

9   THE HEARING OFFICER: Any other commentary?

10   Okay. Mr. Sullivan is so recognized as an

11 expert.

12   Mr. Bromley.

13   MR. BROMLEY: Thank you, Director.

14   Q. (BY MR. BROMLEY) Mr. Sullivan, if we could

15 just look briefly at the water rights of the clients

16 that you are representing. So we have an exhibit marked

17 as BV 2 or Bellevue 2. Do you see that?

18   A. Yes.

19   Q. We also have an exhibit marked Hailey 1. Do

20 you see that?

21   A. Yes.

22   Q. We also have an exhibit marked Ketchum 1. Do

23 you see that?

24   A. Yes.

25   Q. And an Exhibit marked SVC 2. Do you see that?

1   A. Yes.

2   Q. These are all tables of water rights. Could

3 you explain how you developed these tables?

4   A. These tables are based on information that I

5 downloaded from the IDWR website. And then just

6 reviewed this information with the cities staff and

7 prepared these tables to summarize each of the entities

8 water rights.

9   MR. BROMLEY: Okay. And, Director, rather

10 than go through these one by one as we've done before, I

11 believe we have an agreement stipulation that these

12 tables would be admitted into evidence. They say what

13 they say.

14   MR. FLETCHER: Director, with the same

15 understanding that we've objected to this evidence as

16 being irrelevant for the purpose of this proceeding

17 based upon the order, the Director having ruled on that,

18 we would stipulate to the admission of these exhibits.

19   THE HEARING OFFICER: The same, Mr. Rigby?

20   MR. RIGBY: Yes, the same, Mr. Director.

21   THE HEARING OFFICER: And so those that you've

22 referred to Mr. Bromley, I wrote down, and maybe I

23 missed them, BV 2.

24   MR. BROMLEY: That's correct.

25   THE HEARING OFFICER: Hailey 1.

 1   MR. BROMLEY: Yes.

 2   THE WITNESS: And SVC 2.

 3   MR. BROMLEY: That's correct.

 4   THE HEARING OFFICER: And those are the three.

 5   I also have a Ketchum summary, but that's not included

 6   in what your --

 7   MR. BROMLEY: I had referenced Ketchum 1. And

 8   if I didn't, I intended to reference Ketchum 1.

 9   THE HEARING OFFICER: It may have been my

10   oversight. I was just trying to write them, so...

11   MR. BROMLEY: I completely understand. I had

12   four. Hopefully, I went through all of them, but that's

13   the four that I would hope to be introducing and have

14   admitted.

15   THE HEARING OFFICER: So based on the

16   stipulation, and I assume there aren't any more comments

17   related to the admission of these documents. The

18   documents marked as BV No. 2, Hailey No. 1, SVC No. 2,

19   and Ketchum No. 1 are received into evidence.

20   (Exhibits BV 2, Hailey 1, SVC 2, Ketchum 1

21   received.)

22   MR. BROMLEY: And just a housekeeping matter,

23   Director, I'm not sure that I asked for admission of

24   Cities/SVC Exhibit 1, which was Mr. Sullivan's resume.

25   I would ask for admission of that.

 1   THE HEARING OFFICER: I don't know that this

 2   is one that I already asked for objection to, but I'm

 3   assuming that everybody would allow this into the

 4   record. So the document marked as Cities/SVC No. 1 is

 5   received into evidence.

 6   (Cities/SVC Exhibit 1 received.)

 7   MR. BROMLEY: Thank you.

 8   Q. (BY MR. BROMLEY) Mr. Sullivan, in front of

 9   you have a map that's marked as Cities/SVC 3. Do you

10   see that?

11   A. Yes.

12   Q. Could you tell me about this map?

13   A. This was a map that was prepared under my

14   supervision. It shows the area of the Wood River

15   Valley. At the bottom of the map across there is the

16   area of the Bellevue triangle. The orange boundary

17   represents I think the initial potential curtailment

18   area that was in the Director's orders commencing this

19   proceeding. And then the cross-hatched areas, the area

20   then that I think has evolved now to the potential

21   curtailment area that Jennifer talked about.

22   And then upstream from that in going up the

23   valley, we can see that dotted line is the outline of

24   the Wood River Valley ground water model that extends up

25   the valley. And then in that area, I have plotted the

1 cities of Bellevue, Hailey, Ketchum, and the Sun Valley

2 ski area mountains, as well as the location of those

3 cities and the Sun Valley Company's points of ground

4 water diversion. So they are all upstream of the

5 curtailment area.

6   Q. Great. Thank you, Mr. Sullivan.

7   MR. BROMLEY: Would move for admission of

8 Cities/SVC Exhibit 3.

9   THE HEARING OFFICER: Any objection to the

10 admission of this document?

11   MR. FLETCHER: No.

12   MR. RIGBY: No objection.

13   THE HEARING OFFICER: Based on the responses,

14 the document marked as Cities/SVC No. 3 is received into

15 evidence.

16   (Cities/SVC Exhibit 3 received.)

17   Q. (BY MR. BROMLEY) All right. Mr. Sullivan,

18 we're going to move on to a topic about bringing

19 curtailed water down to senior water users on Little

20 Wood. Do you have the Department's Exhibit 2? It's

21 Jennifer Sukow's memo.

22   A. Yes, I do.

23   Q. Okay. And if you could turn to Table 1?

24   A. Table 1 or 2?

25   Q. Table 2. Thank you. I'm making that same

 1   mistake.

 2   A.   Okay.

 3   Q.   Okay. What's in Table 2?

 4   A.   Table 2 is titled "Predicted responses to

 5   curtailment starting July 1 within the area south of

 6   Glendale Bridge." This is the results of the modeling

 7   run by Jennifer Sukow using the Wood River ground water

 8   model with curtailment starting on July 1. And the

 9   amounts shown in the table include the amount of

10   curtailed consumptive use. That's the junior

11   consumptive use within the triangle that she curtailed.

12   And then she has summarized predicted responses from

13   that curtailment to various locations.

14   Q.   Okay. If you could also have in front of you

15   South Valley/Galena Ground Water District Exhibit 27 and

16   33. They are maps. And what I'm going to ask you,

17   Mr. Sullivan, once you get there is if you could help me

18   trace that water that's going to be curtailed and

19   manifest in Silver Creek in Ms. Sukow's Table 2, and how

20   that water then would get down to the seniors?

21   A.   Okay. The maps were 27 and what else?

22   Q.   33.

23   A.   Okay.

24   Q.   So South Valley/Galena Exhibit 33 shows the

25   gages within the system. And then South Valley/Galena

 1 Exhibit 27, as I understand it, is showing the locations

 2 of the calling seniors; is that what you see?

 3   A. Yes.

 4   Q. So if you could please, Mr. Sullivan, trace

 5 that water that's going to accrue at Sportsman Access in

 6 Table 2 of Ms. Sukow's exhibit, and bring that water

 7 down as you understand it, it would come through the

 8 system and make it down to the seniors?

 9   A. Well, the curtailment up on the triangle would

10 result in the accrual of water to Silver Creek and its

11 tributaries. So that water accrues into those various

12 tributaries that we've heard testimony on. I think

13 there is a half dozen or more major tributaries to

14 Silver Creek. And so that water would accrue at various

15 points along those tributaries. And then would come

16 together at the Sportsman Access gage. Although I

17 understand there are water rights up on Silver Creek

18 that potentially could be diverting that water. So I

19 don't know how much of that water might get diverted up

20 on Silver Creek.

21   But in any event, Jennifer I think assumed

22 that all the water would make it down to the gage, and

23 that's what she has shown under the Silver Creek column

24 and in her exhibit in Table 2.

25   Q. And by the gage, do you mean the gage at

 1 Sportsman's?

 2   A. Yes.

 3   Q. Okay. Thank you.

 4   A. And then we've heard testimony that there are

 5 losses in getting that water as it moves from the

 6 Sportsman Access gage down to the confluence with the

 7 Little Wood River, and then down the Little Wood River.

 8 I think the testimony was that the losses that were

 9 determined by the Department staff in 2020 ranged from

10 20 to 37 percent. So that would get the water -- so

11 there is some amount of loss to get the water to Station

12 10.

13   And then there would be additional losses

14 likely between Station 10 and Station 54, although I

15 don't think we've heard any testimony about what those

16 losses might be. So that would be get the water down to

17 this area to Station 54, and here again, potentially

18 some diversion of that water before it gets to Station

19 54 by users along the way. And then I think the seniors

20 that are alleging injury are down in the vicinity of

21 Station 54 and further down downstream. So again more

22 losses below 54 potentially, although I don't think we

23 know what those losses are.

24   Q. So were you here for the watermaster, Kevin

25 Lakey, his testimony?

 1   A.   Yes.

 2   Q.   And did you hear what Mr. Lakey said, there

 3   was a flow rate that he thought would be deliverable to

 4   these seniors who were calling?

 5   A.   Yes, Mr. Lakey described his projection of

 6   what the curtailed -- the priority cuts were going to

 7   be, you know, through the rest of June and the rest of

 8   the season. And then I think he made some estimates of

 9   how that priority cut might change if there is

10   curtailment. And then identified sort of, I guess,

11   potential priorities that I'll say are on the bubble.

12   In other words, those are priorities that are projected

13   to be cut, but may come back into priority if there was

14   curtailment.

15   Q.   And there is a list of water rights in Miller

16   Exhibit 1 in Appendix B, if you have that. And does

17   that help you with your testimony explaining these

18   rights that are on the bubble?

19   A.   Yes.

20   THE HEARING OFFICER: Now, you were referring

21   to what, Mr. Bromley?

22   MR. BROMLEY: Miller Exhibit 1, Appendix B,

23   which was the expert report of Mr. Eric Miller on behalf

24   of Big Wood, Little Wood, and Big Wood Canal Company.

25   And it appears Mr. Sullivan just has pieces of paper

1 that came out of that exhibit. But if you go into the

2 exhibit binder, it's the same thing.

3   THE HEARING OFFICER: Okay. I think I found

4 it, Appendix B.

5   MR. BROMLEY: That's correct, Mr. Director.

6   THE HEARING OFFICER: Thank you.

7   Q. (BY MR. BROMLEY) Okay. Mr. Sullivan, can you

8 say what you are looking at?

9   A. Yes, this Exhibit B I understand is a list of

10 the rights in the Little Wood and Silver Creek drainage

11 that was in Mr. Miller's report. And I believe it came

12 from Kevin Lakey. It's his priority list of the water

13 rights in the drainage.

14   Q. Okay. And which rights are you looking at

15 that were on the bubble?

16   A. Okay. So the rights are all listed in order

17 of priority from senior to junior. So on the first page

18 of the list, the rights that he had discussed that the

19 rights with priority dates of April 1, 1883, which they

20 start in the middle of the page. You can see that under

21 the "Priority Date" column, there is 15 rights maybe

22 that have a priority date of April 1, 1883. So he had

23 projected that those would be cut on June 30th of this

24 year. And that group of rights which total about 9 cfs,

25 I think, he was projecting that they would be among the

1 rights that would come into priority with curtailment.

2 And then I guess also this Barbara Farms right, April

3 6th, 1883, that one would come back into priority.

4   So what I did was just of those rights, I

5 think there is a three of them that were among the

6 seniors that have appeared in this case and are

7 specifically alleging injury. And those are the James

8 Ritter for 4.2 cfs, and Donald Taber for .3 cfs. And

9 then down the list a little bit, Barbara Farms for 4

10 cfs. And so those added up together are 8.5 cfs.

11   Q. Okay. So then if you go back into Table 2 of

12 the Sukow memo, she's showing simulated flow rights are

13 going to manifest in July, August, and September; is

14 that correct?

15   A. Yes.

16   Q. And so could you compare her curtailment

17 analysis to the shortages that you were -- or to the

18 water rights that you were just talking about with these

19 seniors who were on the bubble?

20   A. Yeah, so she shows flows at the Sportsman

21 Access gage in Silver Creek coming up by flow rights

22 ranging from about 23 cfs to 28 cfs in the months of

23 July, August, and September. So, for example, let's

24 look at August. So 28 cfs at the Sportsman Access gage.

25 And I think in testimony that we've heard from others,

1 people were assuming, say, I mean the losses vary, but

2 say a 25 percent loss on that water to get it down into

3 the Little Wood would reduce that to roughly 21 cfs.

4   And so if I compare that 21 cfs to the

5 shortage of the seniors that may come back on with

6 curtailment, it's only 8.5 cfs. So to me that makes it

7 look like if those are the only ones that are short,

8 then perhaps there is more water being curtailed than is

9 needed by the seniors that have alleged an injury.

10   Q. And, Mr. Sullivan, do you have a figure of

11 what you would reduce the curtailment by within the

12 triangle to meet the demands of this 8.5 cfs?

13   A. Well, just using that August number, if we

14 take 8.5 cfs divided by 28, that's roughly 30 percent,

15 so, you know, 30 percent.

16   Q. Okay.

17   A. But that's just an example of what I think the

18 calculus that ought to be done in considering how this

19 curtailment might play out.

20   Q. And in listening to the testimony as it's come

21 up through this hearing?

22   A. Yes.

23   Q. Okay. So, Mr. Sullivan, speaking of

24 curtailment, what other issues will happen in terms of

25 how long a curtailment will go?

1   A. Well, yeah, as I've listened to this

2   proceeding, there has been discussion of the effects of

3   curtailment. But I haven't heard any discussion about

4   how long this curtailment would happen. Is it just

5   during the irrigation season? Would it continue past

6   the end of the irrigation season into next year? Is it

7   forever curtailment? And would there be any monitoring

8   or accounting of the curtailment and its effects? And

9   perhaps, you know, some kind of criteria for relaxing

10 the curtailment if something happens, if flows come up,

11 or what have you. So I haven't heard any of that. But

12 I think that needs to be considered as well.

13   Q. There could be a rain event, for instance,

14 that could bring the flows up is that possible?

15   A. Yes.

16   Q. Okay. And then going back to the testimony of

17 Mr. Lakey. My understanding of his testimony when I

18 asked him some questions on cross-examination was that

19 if flows in Silver Creek and Little Wood come up, all

20 water right holders within those reaches downstream,

21 assuming they are priorities were on, would be able to

22 divert that water. Is that what you heard?

23   A. Yes, under normal priority administration.

24   Q. But not all of those water users have come

25 forward in this proceeding; is that true?

1   A.   That's true. And so it seems like there could

2   be some consideration for shepherding this water to the

3   users that actually have an asserted injury here.

4   Q. And have you heard that testimony come out as

5   to how water might be shepherded down to the users who

6   have actually appeared and are calling for their rights?

7   A.   No.

8   Q.   Mr. Sullivan, I would like to switch gears

9   here and talk about a different topic of uncertainty,

10 and data gaps, and unknowns that you've observed in

11 looking at the documents and through testimony. Have

12 you heard of a process for determining injury and need

13 to curtail juniors involved?

14   A.   Say that again.

15   Q.   So has a process been described that you've

16 heard through testimony as determining who's injured,

17 and by injured, I mean injury to water rights, not

18 impacts to streams, but injury to water rights and the

19 need to curtail to remedy that injury?

20   A.   No, I haven't seen any analysis of the seniors

21 that are alleging injury, whether they are actually

22 short of water for the crops and lands that they are

23 irrigating compared to their water supply. Say what

24 efficiencies they operate, are they using water

25 reasonably with reasonable efficiency and without waste?

1   That's some of the things that we would typically look

2   at in these delivery calls is making sure that the

3   seniors are, in fact, using the water efficiently.

4   Q.   Okay.   And Mr. Lakey was discussing an exhibit

5   that's already been admitted into evidence, which is

6   marked Bellevue 1, that's a memo.   And I'm not sure if

7   you have that in front of you.   I could just come up.

8   MR. BROMLEY: And, Director, if I could just

9   hand him the document I have?

10   THE HEARING OFFICER: Sure.

11   Q.   (BY MR. BROMLEY)   It's marked Bellevue 1, it's

12   a memorandum prepared on June 2nd of 2021.   And this

13   memorandum was inquired of by Ms. McHugh in

14   cross-examination.   And on page 8, if you could describe

15   what you see there?

16   A.   So this is a table that was prepared by

17   Mr. Lakey based on his understanding or review of water

18   use in years that were represented to him as being

19   adequate water supply years.   So those included the

20   years of 2000, 2009, and 2010.   And he has then in this

21   table listed the average water use by some of the

22   seniors, senior water rights on the Little Wood River.

23   I think most of them are there.   And so it shows their

24   acre-feet, average acre-feet of diversions, the acres

25   that they are irrigating, and then a computed duty of

1 that water of acre-feet per acre. And I believe these

2 acre-feet values he said are farm headgate deliveries.

3   Q. And they vary; is that true?

4   A. Yes, they vary over quite a wide range from

5 1.59 acre-feet per acre to over eight feet per acre.

6   Q. And based on your past experience would it be

7 reasonable to have a better understanding of water need

8 by calling seniors?

9   A. Yes, it would be useful to understand, well,

10 you know, what crops are these folks irrigating, and

11 what sort of irrigation systems do they have, and are

12 these application rates reasonable, and are they

13 employing, you know, reasonable efficiency? Because it

14 seems to me if we are going to be curtailing juniors,

15 one of the things we should be doing is making sure the

16 beneficiaries of the curtailment are using water

17 efficiently.

18   Q. Okay. Shifting gears a little bit to the

19 ground water model, and effective curtailing junior

20 ground water users. Can this ground water model predict

21 how much water will make it down to a senior in a river

22 reach, say?

23   A. Not to these users. The model, it stops at

24 basically the Sportsman Access gage. And so the model

25 can predict the accrual of water from curtailment to

 1   Silver Creek and its tributaries, but doesn't -- there

 2   is no ability in the model to route that water

 3   downstream.

 4   Q. And the model also does it account for

 5   conveyance losses in any way?

 6   A. No, the model as we heard Jennifer discuss,

 7   the model represents the surface water features in a

 8   simulated area as what are called river cells. So those

 9   are cells where water can -- where there is interaction

10   between the ground water and the surface water that

11   water can either flow into those cells or out of those

12   cells. But those are just discrete cells in the model

13   domain. They don't connect to each other.

14   And so in order to determine these impacts,

15   say that Jennifer is computing to Silver Creek, she

16   needs to go and add up all the flow that accrues to all

17   of those river cells and sum them up. So there are

18   other packages that are available in MODFLOW that will

19   actually route the water down, you know, through the

20   stream or through the river. One of those packages is

21   called a stream package. But that package is not used

22   in this particular model. It's just those river cells.

23   And so this particular model does not have an ability to

24   route that water even within Silver Creek.

25   Q. So if the stream package were used, would you

 1 have some decree of confidence that it could model, that

 2 water would make it down to calling seniors?

 3   A. Yes, you could model that. And then, you

 4 know, if it properly calibrated, you could simulate then

 5 the seepage losses of that additional flow and getting

 6 it down to the Sportsman Access gage, and potentially

 7 also a diversion of that water, if there are diversions.

 8   Q. So, Mr. Sullivan, you said you've been

 9 involved in the conjunctive management delivery calls

10 here, in Idaho. Have you been involved in the other

11 conjunctive administration delivery calls in other

12 states?

13   A. Yes, I've been involved extensively in

14 conjunctive administration in Colorado.

15   Q. And in your experience in Idaho and in

16 Colorado, have junior ground water users been afforded

17 an opportunity to mitigate or not?

18   A. Yes. And any time there has been threatened

19 curtailment, the juniors have always been afforded an

20 opportunity to develop a way of mitigating their impacts

21 and afforded that due process to develop those plans and

22 implement them before being curtailed.

23   Q. And you were here for Mr. Luke's testimony; is

24 that right?

25   A. Yes.

 1   Q.   And I asked Mr. Luke a question on

 2   cross-examination about affording juniors an opportunity

 3   to mitigate. Do you recall that question?

 4   A.   Yes.

 5   Q.   And do you remember what Mr. Luke's answer

 6   was?

 7   A.   I think he said there would be no way to

 8   mitigate.

 9   Q.   Have you analyzed potential ways that the

10   alleged shortages to the seniors could be mitigated?

11   A.   There hasn't been time to do that in this

12   case. But it seems like there are things that could be

13   done.

14   Q.   And Mr. Luke's answer that there would not be

15   a way to mitigate, is that consistent with your

16   understanding of conjunctive administration in Idaho and

17   Colorado?

18   A.   Well, no, I think the users should be allowed

19   to mitigate. You know, mitigation is so much more

20   efficient in addressing the problem. You know you need

21   to curtail a lot of pumping to get the water, you know,

22   back into the stream to get it to the seniors. And

23   mitigation typically is targeted to the problem. And

24   can be done with a lot less resource than that

25   widespread curtailment.

1   Q. Shifting gears here, Mr. Sullivan, let's talk

2 about improvements to the model that you observed in

3 listening to testimony and thinking about the model.

4 Could the study period be extended?

5   A. Yes, I think that would be a great improvement

6 to the model. The current study period ends in 2014.

7 And so we have what; another six years or so of

8 potentially available data. And if the study period was

9 extended, you know, two benefits of that, at least two

10 would be, we could make use of all of that surface water

11 data that we heard about that is available on Silver

12 Creek, and I think that would be very helpful to the

13 configuration and calibration of the model.

14   And then even more importantly, we have

15 more -- I think the pumping has been measured during

16 most or all that, those additional years. So we would

17 have a lot of actual pumping data that we could put in

18 the model. You know the study period that ends now in

19 2014, I think what is it '95 to 2014, almost all of the

20 pumping in the model is estimated. And it's estimated

21 based on, you know, at least for -- it's based on the ET

22 demands, and there is assumptions of irrigation

23 efficiency for how much pumping. And then for the

24 supplemental pumping, in order to estimate that pumping,

25 Jennifer and the modelers first had to estimate the

1 consumptive use of surface water. And then it's the

2 unmet demand after the use of surface water that was

3 represented by the estimated pumping. And so there is

4 all sorts of assumptions going into that. So, you know,

5 I think by having some actual pumping data that we could

6 tack on at the end of the study period, we could get a

7 better representation of actual pumping impacts.

8   Q.   Were you here for Eric Powell's testimony?

9   A.   Yes.

10   Q.   And did you hear what Mr. Powell said about

11 conductivity issues with the model?

12   A.   Yes, he identified areas of relatively high

13 hydraulic conductivity in the model that were of concern

14 to him. That's not something I've studied in detail,

15 although he showed me what he was looking at. And, yes,

16 there are some high values, and that I think is

17 something that maybe would warrant another look in

18 reviewing the model function and its calibration.

19   Q.   And what about consumptive use and irrigation

20 efficiencies?

21   A.   Well, for consumptive use the model uses the

22 metric ET data, which I think is a good approach because

23 it's using a more actual ET rather than a theoretical

24 number. But as to the efficiencies, and the irrigation

25 efficiencies, so this goes into what I just talked

1   about. The model has assumed irrigation efficiencies

2   for the various ground water and surface water users.

3   And my understanding is that those were determined

4   during the calibration process. And so I think they

5   range, there were bounds set on those between 50 percent

6   and 90 percent.

7   And then the PEST program, which was an

8   automated calibration procedure was used to develop

9   those efficiencies. And I'm not sure that there was any

10   sort of reality check user by user as to whether those

11   efficiencies were reasonable considering, you know, how

12   they were irrigating, applying water, or also I think

13   Mr. Powell had a good idea. That you could actually use

14   metric, the metric data for ET, and then compare that to

15   the water that was being diverted and/or pumped, and

16   develop some actual irrigation efficiencies for the

17   years that we have that data, rather than just using a

18   calibrated values that may be accounting for other error

19   in the model that puts into those efficiency values.

20   Q. Thank you. Shifting gears then to one last

21   topic, Mr. Sullivan, about analyses that were performed

22   in this matter. Did you assist the Cities and

23   Sun Valley Company in drafting language for a request

24   for information that was filed with the Department on

25   May 21st?

 1   A.   I did.

 2   Q.   And when did that information come in?

 3   A.   We got some emails from the Department staff

 4   on Wednesday this week.

 5   Q.   That would be the 9th?

 6   A.   Yes.

 7   Q.   And have you had an opportunity to review that

 8   information?

 9   A.   No.

10   Q.   Mr. Sullivan, have you been able to do a

11   thorough analysis of all of the evidence in this

12   administrative proceeding?

13   A.   No, there hasn't been time for that.

14   Q.   What kind of time would you have needed?

15   A.   Well, you know, many months I think, and

16   similar time frames that have been afforded the parties

17   in the prior delivery calls. I think time for more

18   discovery and, you know, obtaining more information

19   about all of the issues, and then analysis of all of

20   that information. So it's not only modeling, but it's

21   also analysis of water uses by the seniors that are

22   alleging injury in these issues of administration, and

23   routing of the water, you know, downstream, you know, to

24   the users. Those are all things that we've considered

25   in other delivery calls that are not getting a thorough

1 consideration in this matter.

2   Q. Conceivably mitigation plans could have been

3 developed during that time period?

4   A. Yes, that would be something else important,

5 and has occurred in the other delivery calls. As these

6 calls were unfolding, users were kind of on parallel

7 tracks to developing mitigation plans to address, you

8 know, what would happen under a potential curtailment

9 order.

10   MR. BROMLEY: Okay. Director, I have nothing

11 further for Mr. Sullivan. I would ask counsel if they

12 have anything else before turning him over for cross, if

13 that's okay?

14   THE HEARING OFFICER: Okay. Others in Group

15 3?

16   MS. McHUGH: I think it's been covered.

17   THE HEARING OFFICER: Mr. Lawrence?

18   MR. LAWRENCE: I just have one brief line of

19 questions. Thank you, Mr. Director.

20   DIRECT EXAMINATION

21 QUESTIONS BY MR. LAWRENCE:

22   Q. Good morning, Mr. Sullivan. Mike Lawrence for

23 the City of Hailey. And I apologize in advance. I was

24 trying to pay close attention to what Mr. Bromley was

25 asking you, and let me know if I'm covering ground he

 1 | already covered.

 2 | Mr. Sullivan, are you familiar with the

 3 | Department's Conjunctive Management Rules?

 4 | A.   Yes.

 5 | Q.   And you understand that this proceeding is not

 6 | occurring under the Conjunctive Management Rules; is

 7 | that correct?

 8 | A.   That's my understanding.

 9 | Q.   Are you familiar with Rule 42 in the

10 | Conjunctive Management Rules?

11 | A.   Yes.

12 | Q.   And the Rule 42 contains the factors for

13 | determining material injury and reasonableness of

14 | diversions; is that correct?

15 | A.   Yes.

16 | Q.   Despite the fact that this is not proceeding

17 | under the Conjunctive Management Rules, are the factors

18 | in Rule 42 nevertheless important to evaluate when the

19 | Department's determining whether to curtail junior water

20 | rights?

21 | A.   Yes. Yes, definitely. You know, those

22 | factors were developed, carefully developed and put into

23 | the rules, and have guided the analysis of injury in the

24 | prior delivery calls and are, I think, a reasonable list

25 | of the things that ought to be considered before are

1 juniors are curtailed.

2   Q. Do you believe that those factors have been

3 adequately addressed in this proceeding?

4   A. No.

5   MR. LAWRENCE: That's all my questions. Thank

6 you.

7   THE HEARING OFFICER: Other questions,

8 Mr. Barker, Mr. Thompson?

9   MR. THOMPSON: I don't have any.

10   MR. BARKER: No.

11   THE HEARING OFFICER: Ms. O'Leary?

12   MS. O'LEARY: No, Director.

13   THE HEARING OFFICER: Mr. O'Bannon, any

14 questions.

15   MR. O'BANNON: No, Director.

16   THE HEARING OFFICER: All right. Let's take a

17 break before cross-examination. We've been here for an

18 hour and half or so.

19   (Recess.)

20   THE HEARING OFFICER: Back on the record. Are

21 we recording? Thank you, Colleen.

22   After a morning break, it is time for

23 cross-examination of Mr. Sullivan. Mr. Fletcher, are

24 you first?

25   MR. FLETCHER: Thank you. Yes, I will go

 1 first.

 2   CROSS-EXAMINATION

 3 QUESTIONS BY MR. FLETCHER:

 4   Q. Good morning, Mr. Sullivan.

 5   A. Good morning. It's been a while.

 6   Q. It's been a while. In this proceeding, I'm

 7 representing Big Wood Canal Company, and I have a few

 8 questions about your testimony. You commented quite a

 9 bit on Jennifer Sukow's model work. Did you replicate

10 that work?

11   A. What do you mean by replicate?

12   Q. Did you run the model --

13   A. No.

14   Q. -- to verify her report?

15   A. I did not.

16   Q. Did you hear Mr. Powell's testimony yesterday

17 concerning his replication of her work?

18   A. Yes.

19   Q. Do you agree with his testimony that she did

20 it correctly under the current model?

21   A. That she ran the model correctly?

22   Q. Yes. Mr. Powell verified he came up with the

23 same results she did; did you hear that?

24   A. Yes, I heard that.

25   Q. Okay. Do you disagree with that?

1   A. I have no reason to disagree with that.

2   Q. You went through this analysis of the amount

3   of curtailment. And then you talked about the

4   watermaster's testimony stating that the Ritter farm,

5   Taber farm, and Barbara Farms would receive water if

6   curtailment took place, and you added up the total

7   diversions they are authorized. And I believe you said

8   that total number was 8.5 cfs; is that correct?

9   A. Yes.

10   Q. And then you went on to say that therefore,

11   that shows that if juniors were curtailed as evidenced

12   by the Sukow report, that would result in too much water

13   for mitigation, or too much water to those seniors?

14   A. Yes, if they are the only ones that are

15   entitled to receive the benefit of curtailment.

16   Q. All right. So you did hear the testimony of

17   the senior water users in this case; correct?

18   A. Some of it.

19   Q. And if more water showed up than what the

20   watermaster projects, there are other seniors involved

21   in this case that could divert that water; isn't that

22   correct?

23   A. I don't know that they have these priority

24   dates.

25   Q. No, but if there is more water that shows up

1   and other priority dates come into priority, there are

2   other seniors that could divert that water; isn't that

3   correct?

4   A.   If additional water shows up, and it reaches

5   the priorities of the seniors that have appeared here,

6   then there potentially could be others.

7   Q.   So I think you were trying to limit somehow

8   the amount of water that should be curtailed based upon

9   those three seniors, the Taber right, the Ritter right,

10   and the Barbara Farms. But actually there are several

11   seniors that have testified if there is more water in

12   the river that brings their priorities back into play,

13   they can use that water this year as well; correct?

14   A.   Well, that's a hypothetical. But I think the

15   point I was trying to make is that that type of analysis

16   ought to be done as we are evaluating potential

17   curtailment, seeing who are the specific seniors that

18   are calling, and comparing that to what would happen in

19   curtailment, and, you know, doing that type of analysis.

20   Q.   And then you made a statement of some kind

21   about shepherding water. Do you know of any authority

22   under Idaho law to shepherd water to a particular

23   priority date?

24   A.   I don't know about legal authority. I'm aware

25   of that. It seems like I'm aware of that happening.

 1 Water is sent down, storage water is delivered to users,

 2 that sort of thing.

 3   Q. Did you do any analysis of if more water was

 4 delivered than required by the three senior rights that

 5 you mentioned, did you do any analysis of other seniors

 6 that would benefit if that water exceeded those of those

 7 three seniors?

 8   A. I'm not sure I quite understand your question.

 9   Q. Okay. Let me try again. You'd mentioned that

10 because the three senior rights that Kevin Lakey

11 identified could only divert 8.5 cfs, that more water

12 would result from curtailment than would be required for

13 those three rights; correct?

14   A. Correct.

15   Q. Did you do any analysis of how that total

16 amount of water resulting from a total curtailment would

17 benefit other seniors that have testified in this case?

18   A. No, I understood from Mr. Lakey that these

19 were the primary priorities that he projected were on

20 the bubble, so to speak, that would be on the range of

21 priorities that would benefit from curtailment.

22   Q. So the answer is, no, you didn't do any

23 analysis; correct?

24   A. Not any additional analysis, no.

25   Q. Thank you. You have mentioned the various

 1 factors that you believe should be looked at. And you

 2 made some comment about efficiency of the seniors. You

 3 said you only sat through the testimony of some of the

 4 seniors; is that correct?

 5   A. Yes.

 6   Q. Is there a standard for efficiency in Idaho?

 7 In other words, does an irrigation system have to meet a

 8 certain percentage of efficiency in order to be lawfully

 9 diverted?

10   A. Not that I'm aware of, but I think the

11 conjunctive management rules, for example, provide for

12 an evaluation before as part of conjunctive

13 administration.

14   Q. Have you heard any testimony that would

15 indicate that any of the seniors are diverting

16 inefficiently?

17   A. From them?

18   Q. Yes.

19   A. I don't -- I think it was -- all of the

20 testimony I heard was more qualitative. And so I think

21 that as we've done in other deliveries and calls, I

22 think you can look at that issue more quantitatively to

23 evaluate their use.

24   Q. Okay. I'll ask my question again. Did you

25 hear any testimony from any of the seniors that

 1 indicated they were diverting inefficiently?

 2   A. Not from them.

 3   Q. Did you hear any testimony from any of the

 4 seniors that they are wasting water?

 5   A. No.

 6   Q. You talked at various times about how things

 7 could be better with a model. And one of those topics

 8 that you discussed, you were talking about how if

 9 the -- I think you called it a stream package was used

10 on the model that could shepherd water, and then show

11 how much water could be delivered to the seniors that

12 have testified in this case? Is that my understanding

13 of what your testimony was?

14   A. No, I don't think that's what I said.

15   Q. Okay. Can you explain that again, what you

16 were saying about that?

17   A. I talked about using a stream package to help

18 route water through down the stream within the modeled

19 area. But, of course, that is only going to get water

20 to the bottom of the model, roughly, for example, at the

21 Sportsman Access gage. But the model doesn't extend

22 further downstream, so there is no ability with this

23 model to route the water further down on the Little Wood

24 River.

25   Q. And that's what I wanted to clarify with you.

 1   That the domain for this water ends at Picabo; doesn't

 2   it?

 3   A.   Yes.

 4   Q.   You were talking about mitigation plans and

 5   your history of working with mitigation plans. Based

 6   upon that experience, mitigation plans should meet the

 7   crop requirements of the senior users; correct?

 8   A.   The mitigation plan is intended to prevent an

 9   injury. So there is a whole lot of things that go into

10   determining injury.

11   Q.   So I'll word it a different way. The

12   mitigation plan should meet the injury of the senior

13   users?

14   A.   Yeah, they are intended to mitigate any injury

15   that's determined.

16   Q.   Do you agree that the model is the best tool

17   available to evaluate the issues in this case?

18   A.   I think it's the best available tool to

19   evaluate the effective pumping on the flows in Silver

20   Creek, but that's where the model ends. There are these

21   other considerations on routing the water downstream,

22   and evaluating the water use by the seniors, and all

23   those other issues that I talked about that are not

24   within the realm of the model.

25   MR. FLETCHER: Thank you. I have no further

1 questions.

2   THE HEARING OFFICER: Mr. Rigby?

3   MR. RIGBY: Thank you, Mr. Director.

4   CROSS-EXAMINATION

5 QUESTIONS BY MR. RIGBY:

6   Q. Mr. Sullivan, Jerry Rigby, on behalf of the

7 senior water users. As before, Mr. Fletcher has asked

8 most of the questions we felt like we needed to ask of

9 you. So I won't belabor them except for one. And that

10 is, as I address the particular issues with each and

11 every one of the plaintiffs -- or excuse me -- senior

12 water users in this particular action, when I hear you

13 indicate that there is very little evidence of

14 improvements. Weren't you here in hearing the amount of

15 expenditures they've made in new pivots, in piping from

16 the river, in literally piping from the river to the

17 crop? Did you hear that evidence?

18   A. I heard that evidence, but I don't think I

19 testified anything about improvements.

20   Q. Oh, then I misunderstood your testimony. I

21 thought you were saying there was lack of evidence of

22 those kind of improvements. You didn't say that?

23   A. No.

24   MR. RIGBY: Okay. I have no further

25 questions.

1   THE HEARING OFFICER: All right. Redirect,

2   Mr. Bromley?

3   MR. BROMLEY: Just one piece, Director.

4   REDIRECT EXAMINATION

5   QUESTIONS BY MR. BROMLEY:

6   Q. Mr. Sullivan, when Mr. Fletcher was asking you

7   about limiting the amount of curtailment and looking at

8   particular priority dates, why were these priority dates

9   that you were looking at "on the bubble"? Does this

10 have to do with the analog year analysis that the

11 Department was doing with pre-development and

12 post-development of ground water?

13   A. Well, that's related. But I think that was

14 another way of looking at the potential impact of

15 pumping in this case, sort of an indirect way of looking

16 at it.

17   Q. Yeah. And you were building off of the

18 testimony of Mr. Lakey explaining which priority dates

19 would come back on?

20   A. Yes.

21   MR. BROMLEY: Nothing further.

22   THE HEARING OFFICER: Thank you. Any other

23 redirect questions?

24 ///

25 ///

1   REDIRECT EXAMINATION

2   QUESTIONS BY MR. LAWRENCE:

3   Q. Just quickly, Mr. Sullivan. I want to go back

4   to the questions that Mr. Fletcher was asking you about

5   Mr. Lakey's testimony, about the rights that would

6   benefit if ground water is curtailed in this proceeding.

7   A. Okay.

8   Q. Could you turn to Miller Exhibit 1 and

9   attachment, or sorry, Appendix B, which is the water

10   right list?

11   A. Okay.

12   Q. You testified about this list in your direct

13   examination with Mr. Bromley; correct?

14   A. Yes.

15   Q. And you noted, if I recall correctly, that the

16   three rights that Mr. Lakey said would benefit if ground

17   water is curtailed in this proceeding are the Ritter,

18   Taber, and Barbara Farms water rights. And the Barbara

19   Farms LLC Water Right 37-0344 has an April 6th, 1883

20   priority; is that correct?

21   A. Yes.

22   Q. So the Ritter and Taber rights, which are up

23   above, just for the record, 37-00- -- my eyes are

24   failing -- 49, and 37-0423. Did I get those right,

25   Mr. Sullivan?

 1   A. Yes, you did.

 2   Q. Thank you. So those are the three rights that

 3   add up to the 8.5. If there is more water that results

 4   in Silver Creek and the Little Wood through curtailment

 5   of ground water than is needed to benefit these three

 6   rights, which are the next rights in line on this

 7   priority list that would benefit, would possibly

 8   benefit?

 9   A.   You just go down the list below Barbara Farms.

10   Q.   Okay. So the next one below Barbara Farms,

11   37-344 is Big Wood Canal Company water right?

12   A.   Yes.

13   Q.   For what's the diversion rate on that?

14   A.   .6 cfs.

15   Q.   And Big Wood Canal Company, of course, is a

16   party to this proceeding?

17   A.   Yes.

18   Q.   And then you have priority dates after Big

19   Wood Canal Company. Do we know it has a 4-6, 1883

20   priority date just like Barbara Farms. Do you know why

21   Mr. Lakey did not include it in his testimony as a right

22   that might benefit?

23   A.   I don't know.

24   Q.   If you go down below that Big Wood Canal

25   Company right, we have three water rights with priority

1 dates of 6-14, 1883, and then two with 9-1, 1883. Do

2 you see that?

3   A. Yes.

4   Q. And if you just can quickly look at the

5 diversion rates for those rights that I just mentioned,

6 what do you suppose that they total to?

7   A. Roughly 30 cfs.

8   Q. So these would be the next rights that would

9 benefit if water results in Silver Creek through ground

10 water curtailment?

11   A. Yes.

12   Q. And are you aware whether the owners of those

13 rights appeared in this proceeding alleging injury?

14   A. I don't think so.

15   Q. Did you hear Mr. Purdy's testimony this

16 morning?

17   A. For Picabo Livestock?

18   Q. Correct.

19   A. Yes.

20   Q. Is Picabo Livestock the owner, according to

21 this list, of the 9-1, 1883 rights?

22   A. Yes, totaling 20 cfs.

23   Q. Correct. And Mr. Purdy this morning did not

24 allege that he desires curtailment of ground water

25 pumping; did he?

 1   A. I didn't hear him say that.

 2   MR. LAWRENCE: That's all the questions I

 3   have. Thank you.

 4   THE HEARING OFFICER: Any other questions?

 5   Recross?

 6   MR. FLETCHER: Just one question.

 7   RECROSS-EXAMINATION

 8   QUESTIONS BY MR. FLETCHER:

 9   Q. You did hear Mr. Purdy say that he pumps water

10   into the river in order to keep his surface water

11   priority alive? Did you hear him to testify to that?

12   A. I did hear that.

13   MR. FLETCHER: Thank you. No further

14   questions.

15   THE HEARING OFFICER: Okay. Thank you,

16   Mr. Sullivan.

17   (Witness excused.)

18   THE HEARING OFFICER: Other witnesses from

19   Group 3?

20   MS. McHUGH: No.

21   MR. BROMLEY: No.

22   THE HEARING OFFICER: Okay. I think we are

23   finished with witnesses now at least in the initial

24   round of examination. And we talked about some

25   additional testimony from Department staff, and there

 1 may be some surrebuttal. I think that's what it's

 2 called.

 3   MR. RIGBY: From law school days.

 4   THE HEARING OFFICER: Huh?

 5   MR. RIGBY: From law school days.

 6   THE HEARING OFFICER: Yeah. So how do we want

 7 to proceed? Should we have the Department witness go on

 8 first, Mr. Baxter?

 9   MR. BAXTER: We would call Sean Vincent as a

10 rebuttal witness. Actually he has already snuck in on

11 me. He's right back there.

12   THE HEARING OFFICER: Mr. Vincent, you are

13 already under oath. If you will come forward, at least

14 I think your oath is good for that period of time.

15   SEAN VINCENT,

16 previously first duly sworn to tell the truth relating

17 to said cause, testified as follows:

18   THE HEARING OFFICER: Mr. Baxter, you may

19 examine.

20   REBUTTAL EXAMINATION

21 QUESTIONS BY MR. BAXTER:

22   Q. Good morning, Mr. Vincent. My name is Garrick

23 Baxter. I'm an attorney for the Department of Water

24 Resources. And I have a few questions for you related

25 to the testimony of Mr. Eric Miller. Did you listen to

1   the testimony of Mr. Miller?

2   A. I did.

3   Q. Did he call into question whether the SWSI for

4   the above Hailey gage is an adequate representation of

5   the water supply in the Silver Creek drainage?

6   A. He did. In fact, I believe he called it a

7   poor representation.

8   MR. BAXTER: Mr. Hearing Officer, may I

9   approach the witness?

10   THE HEARING OFFICER: Sure.

11   MR. BAXTER: Let me make sure I give you the

12   right one. Director, a copy for you.

13   Q. (BY MR. BAXTER) Mr. Vincent, I've just handed

14   you a document that's been marked as IDWR Exhibit No. 6.

15   Did you prepare this document?

16   A. I did.

17   Q. What is this document?

18   A. This is a chart that I've prepared in support

19   of my staff memorandum. And it is a plot showing data

20   for three different USGS gage locations within the Big

21   Wood River Basin for the time period 1991 through 2020,

22   which is the same time period that's covered in the SWSI

23   tables that I've relied on for my memo.

24   Q. Okay. Let's back up a little bit and orient

25   the Director and other parties here in the proceeding as

 1   to what this chart shows. Could you walk us through and

 2   explain the chart for us?

 3   A. Yes. Well, let's start with the blue line.

 4   That represents the April through September average flow

 5   rate in cubic feet per second at the Silver Creek

 6   Sportsman Access gage for the 30-year time period. I

 7   mentioned previously there is one value for each year

 8   which represents that average for the irrigation season.

 9   The orange line is what I'll call the SWSI

10   volume in the case of the Big Wood River above Hailey,

11   which is the orange line. It represents the flow

12   measured at the USGS at Hailey gage over that same time

13   period. And then the gray line is the SWSI volume,

14   which does include reservoir storage. Also April

15   through September, the same time period, that's the

16   below Magic gage where that information is compiled.

17   Q. And could you just walk us through the axis

18   that you used here?

19   A. Yes. So the right axis is used for Silver

20   Creek, again that's average cfs. And the left Y axis is

21   for the SWSI volumes. The X axis is the year.

22   Q. Okay. Now, there is also an inset box there

23   in your chart. Could you explain that inset box?

24   A. That is a table of R-squared values.

25   R-squared is also sometimes referred to as the

 1 coefficient of determination. For the relations, the

 2 correlations between the Silver Creek at Hailey

 3 irrigation season values and the above Hailey, the

 4 middle column. The far right column is the R-squared

 5 for the relationship between Silver Creek and the below

 6 Magic SWSI volume, and there is three different time

 7 periods there, 1991 to 2020, a ten-year period. 2001

 8 through 2020 --

 9   Q. Actually, hold on, Mr. Vincent, if you don't

10 mind.

11   MR. BAXTER: Mr. Director, I think somebody

12 isn't maybe muted on the -- it looks like Mr. Semanko

13 has muted himself now.

14   THE HEARING OFFICER: May I again remind

15 everybody to mute yourself, and we'll try to keep you

16 silent here as well. Thanks.

17   Q. (BY MR. BAXTER) I'm sorry. Mr. Vincent, I

18 apologize for that. Can you back up? I think you were

19 on the -- actually, I can't remember which year you were

20 on.

21   A. The time frames in that correlation chart, I

22 was mentioning there is three different time frames, the

23 ten-year period from '91 to 2020 -- or I'm sorry -- a

24 30-year period. There was a 20-year period from 2001 to

25 2020, and a ten-year period from 2011 to 2020.

 1   Q.   Okay.   Mr. Vincent, why did you break those

 2   coefficients up into different groups?

 3   A.   The different time frames sometimes I like to

 4   look at that just to evaluate whether the relationship

 5   has changed through time.   There are factors that can

 6   cause the relationship to change the further back in

 7   time you go, changes in climate perhaps, or changes in

 8   irrigation practices.   I think I testified about that in

 9   my testimony.

10   Q.   Okay.   What conclusion do you draw from this

11   document?

12   A.   Well, I believe there is a fairly strong

13   positive relationship between the flow, the irrigation

14   season flow measured at the Silver Creek Sportsman

15   Access gage and the irrigation season flow in the Big

16   Wood River measured at the Hailey gage.

17   Q.   And how was that reflected in this chart?

18   A.   The R-squared values are fairly high.   An

19   R-squared of zero would mean that there is essentially

20   no correlation.   An R-squared of one indicates that

21   there is a perfect correlation.   An R-squared that we're

22   looking at here for the different time ranges, somewhere

23   between .77 and .82.   For an R-squared of .80, that

24   would mean that 80 percent of the variation in the flow

25   at the Silver Creek gage is explained by the flow

1 variation at the Hailey gage.

2   MR. BAXTER: Director, I have no further

3 questions of this witness.

4   THE HEARING OFFICER: Okay. Thank you.

5   MS. CARTER: Garrick.

6   MR. BAXTER: Mr. Director, I apologize. I

7 forgot to move to have IDWR Exhibit No. 6 admitted into

8 the record.

9   THE HEARING OFFICER: Any objection to the

10 admission of this document?

11   MR. FLETCHER: No objection.

12   MR. RIGBY: No objection.

13   THE HEARING OFFICER: As a commentary the

14 document marked as Exhibit IDWR No. 6 is received into

15 evidence.

16   (IDWR Exhibit 6 received.)

17   THE HEARING OFFICER: Thank you, Mr. Baxter.

18   Let's see. I think we'll follow the same

19 order that we followed in the beginning of this hearing.

20 Mr. Rigby, Mr. Fletcher, do you wish to question

21 Mr. Vincent?

22   MR. FLETCHER: I don't have any questions.

23   THE HEARING OFFICER: Mr. Rigby?

24   MR. RIGBY: No further questions.

25   THE HEARING OFFICER: Mr. Barker?

 1   MR. BARKER: Mr. Director, I have a couple of

 2   brief questions for Mr. Vincent that are not related to

 3   this. But it would be something that we thought we

 4   would potentially recall him on surrebuttal. May I?

 5   THE HEARING OFFICER: I don't know. For

 6   purposes of efficiency?

 7   MR. BARKER: Yes, that's all.

 8   THE HEARING OFFICER: Does anybody object to

 9   Mr. Vincent answering questions, Mr. Fletcher?

10   MR. FLETCHER: No, I don't. In fact, we have

11   some other questions as well and they not dealing with

12   this topic.

13   THE HEARING OFFICER: Of Mr. Vincent?

14   MR. RIGBY: Yes.

15   MR. FLETCHER: Yes.

16   MR. BARKER: Well, go ahead then.

17   THE HEARING OFFICER: I don't care how it

18   comes in. I don't want to compromise the ability of

19   counsel to control their own testimony, and sometimes it

20   gets mixed up. But usually the attorneys discount that

21   in the interest of efficiency. But however you want to

22   do it. Do you want to go first, Mr. Fletcher?

23   MR. FLETCHER: Yeah, if that's the case, I

24   just need a minute.

25   THE HEARING OFFICER: Okay. Let's go off the

1 record.

2   (Recess.)

3   THE HEARING OFFICER: Let's go back on. We

4 are recording. Back on the record after a short break.

5   Counsel, what did you collectively decide?

6   MR. FLETCHER: We've elected not to ask any

7 further questions of Mr. Vincent. And we'll reserve our

8 right to cross.

9   THE HEARING OFFICER: Okay. Mr. Barker.

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

11   SURREBUTTAL EXAMINATION

12 QUESTIONS BY MR. BARKER:

13   Q. Sean, would you take a look in the green

14 binder at IDWR Exhibit 5?

15   A. Okay.

16   Q. Do you recognize this as a SWSI table that you

17 provided Monday?

18   A. I do.

19   Q. Okay. The question for you is where we have

20 streamflow data from June to September in the fourth

21 column over. For all of these years except for 2021 is

22 that actual measured data for the period of June through

23 September?

24   A. It is.

25   Q. And that actual measured data comes from what

 1 source?

 2   A.   Obviously, this is a product of the NRCS, but

 3 it's based on measurements made by the USGS at the at

 4 Hailey gage location.

 5   Q.   Okay. So the NRCS which produces this report

 6 relies upon the actual measurements that are prepared by

 7 the USGS, or compiled by the USGS from their gage

 8 readings?

 9   A.   That's correct.

10   Q.   So if someone went to the USGS gage readings

11 directly and not to the NRCS SWSI report, presumably

12 they would see the same information in that NRCS report?

13   A.   Yes.

14   MR. BARKER: Thank you. I don't have any

15 further questions.

16   THE HEARING OFFICER: Ms. O'Leary?

17   MS. O'LEARY: Nothing from me, Director.

18   THE HEARING OFFICER: Group 3?

19   MS. McHUGH: No.

20   MR. BROMLEY: No.

21   THE HEARING OFFICER: Mr. O'Bannon?

22   And you reserved an opportunity here,

23 Mr. Fletcher.

24   MR. FLETCHER: No questions.

25   MR. RIGBY: No questions.

1   THE HEARING OFFICER: Okay. Thank you,

2   Mr. Vincent.

3   (Witness excused.)

4   THE HEARING OFFICER: Okay. I get a little

5   confused where we are in the process, but I think we're

6   back to rebuttal from Group 1, if I'm not mistaken. Do

7   you wish to call rebuttal witnesses, Mr. Rigby,

8   Mr. Fletcher?

9   MR. FLETCHER: No, we're not going to call any

10   rebuttal witnesses.

11   MR. RIGBY: We are not.

12   THE HEARING OFFICER: Okay. And if there are

13   no rebuttal witnesses, then I assume there is no reason

14   for rebuttal from the other parties; is that correct?

15   MR. RIGBY: I think that's how it works.

16   MR. BARKER: I'm not sure how we rebut

17   nothing.

18   THE HEARING OFFICER: Yes, that's what I'm

19   saying. And it looks like Mr. Sullivan's flight is

20   probably more secure than it was before.

21   MR. FLETCHER: We were trying to help

22   Mr. Sullivan out.

23   THE HEARING OFFICER: Okay. So is that the

24   end of testimony then?

25   MR. BARKER: Yes.

 1   THE HEARING OFFICER: All right. I think

 2   there are some matters that I think the attorneys want

 3   to address, maybe both Group 2 and Group 3. How do we

 4   want to work through those? I think we have some data

 5   questions that were raised, and we have some questions

 6   about particularly when staff memos were filed, and I'll

 7   state it this way, at least accessible to the parties.

 8   And there may be some questions about service or

 9   whatever. But how do you want to address those at this

10   point?

11   MR. THOMPSON: Well, I don't know, Director.

12   I was hoping we could stipulate to these days. I've got

13   a time frame, and I guess if there is a question about

14   it, we may need to recall some Department witness at

15   some point.

16   THE HEARING OFFICER: Stipulate the dates of

17   the --

18   MR. THOMPSON: When the requests were made,

19   and when the information was received or accessible.

20   THE HEARING OFFICER: Okay.

21   MR. THOMPSON: So I guess the first matter, we

22   filed a request for production of information on May 13

23   with the Department. We then filed a public records

24   request under separate statute, under the public

25   writings act, that was filed on May 20th. We received

 1 an email from the Department on May 24th at 4:58 p.m.,

 2 responding to that public records request, which was

 3 just I think access to an FTP site where a bunch of

 4 information was downloaded.

 5   Sun Valley Company filed a request for

 6 information related to the staff memorandums on May

 7 21st. And then this week we received on June 9th,

 8 emails from Ms. Carter, one, information related to the

 9 Sukow and Luke memos that appeared to be seven files,

10 five Excel files, two PDF. A second email information

11 related to Tim Luke memo, which was a zip file that

12 contained 48 other files, again on June 9th. And

13 finally, a third email from Ms. Carter, information

14 related to the Vincent, Blankenau memos, and six

15 additional files, and a link to an FTP site.

16   My review of the information on the

17 Department's website, and the dates of the staff memos

18 are all May 17th. We didn't receive the memos on May

19 17th. I looked on the Department's website. They were

20 available sometime in the afternoon. I don't know when

21 on the 18th. We requested files supporting Jennifer

22 Sukow's memo. We received an email on May 19th with

23 corrupt files. We received a second email on May 21st,

24 that did have files that were not corrupt that we were

25 able to access.

 1   THE HEARING OFFICER: Okay. Well, I can't

 2   verify all of the dates that you have just mentioned.

 3   And I don't know how we go through a verification

 4   process. I thought the question might be more narrowly

 5   at least from Group 2, Mr. Thompson, would be focused on

 6   the staff memos, and that's what we had discussed

 7   previously. I know the focus may be a little larger for

 8   Sun Valley Company at least, because of the May 21st

 9   request. But it certainly was their request, and maybe

10   you are trying to cover all of those in your narrative.

11   MR. THOMPSON: No, we had a request, too. And

12   I guess one last piece of information related to Tim

13   Luke's communications on ground water pumping data

14   provided to Mr. Miller. We did receive an email this

15   morning from Garrick Baxter that appears to have total

16   pumping data from Water District 37 for 2016, '17, '18,

17   '19, and '20 over 635 individual WMIS numbers. I know

18   there is different numbers of flow meters. So that's

19   not the number of, I guess, readings, but that needs to

20   be determined. But that was received this morning.

21   My point, I guess getting back to our original

22   requests for production, just I think those dates were

23   stated. And if there is a dispute as to those dates or

24   when the information was provided, I don't know how we

25   address that. I guess we could call Department

1 witnesses next week.

2   THE HEARING OFFICER: Well, let me at least

3 verify based on what I know. I requested that the memos

4 be submitted to me with staff memos on the 17th. And I

5 received them on the 17th of May. They were posted to

6 our website on the 20th -- I'm sorry -- on the 18th of

7 May.

8   And if everyone will remember, the notice

9 required that those wanting to participate needed to

10 file with us on the 19th, a notice of intent to

11 participate in the hearing. So the documents were

12 posted to the website ahead of when the Department would

13 know who the Department needed to serve, and then or at

14 least distribute to.

15   And then on the 20th, I understand that there

16 is an email that then notified those who had filed a

17 notice of intent to participate directing them to the

18 website for those staff memos. So at least that's the

19 timing of what I know about staff memos.

20   Now, the other dates related to submittal of

21 data, were updates, and the last I think submittal by

22 Tim Luke, or by Tim Luke's staff today. And I

23 understood was in response to a question internally

24 about where data came from, whether it came from Lakey

25 or whether it came from Tim Luke that arose during the

 1 hearing, itself.

 2   MR. THOMPSON: Well, and I --

 3   THE HEARING OFFICER: Mr. Thompson.

 4   MR. THOMPSON: Yes. And I think it goes to

 5 the information we requested, all communications between

 6 the Department and representatives for the seniors. And

 7 we did understand that communication was made verbally

 8 to Mr. Miller, but that data regarding that information

 9 was provided today.

10   MR. BAXTER: Mr. Director, may I?

11   THE HEARING OFFICER: Yes.

12   MR. BAXTER: A question for Mr. Thompson, can

13 you point us to the document where you asked for that

14 data in advance, because the first time we understood a

15 request for the data came through was yesterday?

16   MR. THOMPSON: Yes. I guess request for

17 production we filed on May 13, No. 9, all communications

18 concerning water supply and injury analysis with any

19 water right holder and their representatives including

20 Eric Miller, whose rights the Department considered may

21 be injured concerning injury analysis.

22   MR. BAXTER: Mr. Director, I think that goes

23 to communications about the surface water users. I

24 think the data underlying that is ground water data, if

25 I understand correctly. So I don't know if it's

1 responsive to that particular request.

2   THE HEARING OFFICER: Well, I suppose all of

3 those things can be. I guess they can be part of

4 arguments if folks think there is a legal deficiency.

5 And at least it's clear to you, Mr. Baxter, what

6 Mr. Thompson interpretation is.

7   MR. THOMPSON: I guess that does go to the

8 point. I mean, we submit this request on the 13th. We

9 get no response to it until we filed a public records

10 request when information like this isn't provided,

11 so...

12   THE HEARING OFFICER: Well, that's part of the

13 argument. Mr. Thompson, if you feel there is a fatal

14 legal error in what's happened, those arguments can be

15 tendered in -- well, depending on what the decision is I

16 guess, or, you know, certainly in the briefing.

17   Now, we've talked about some of those dates.

18 Mr. Bromley, or Group 3, do you want to further

19 elaborate here?

20   MR. BROMLEY: No, I have nothing to add on the

21 dates. The dates that Mr. Thompson referenced as to the

22 requests that were made by Sun Valley Company are

23 correct.

24   THE HEARING OFFICER: Okay.

25   MS. McHUGH: I do just have something for the

 1 record. Candice McHugh on behalf of the City of

 2 Bellevue. Just the record reflects that the City of

 3 Bellevue filed a motion to participate on the 11th, and

 4 we filed a motion to dismiss, or rather a motion for

 5 clarification and/or a more definite statement on May

 6 14th, served the parties that we knew had filed notices

 7 of intent to participate at that point. But documents

 8 were not served on the City of Bellevue consistently by

 9 the parties in the matter. And there is a bunch of

10 things that I understand that until May 19th, we didn't

11 know who was participating.

12   But the fact is is the only way for a party,

13 who had filed a notice of intent to participate, like

14 the City of Bellevue and also a motion, was to go and

15 check the Department's website because people were not

16 consistently serving people with documents that were

17 actually being filed in the proceeding. And we did not

18 know who to serve fully, frankly, until May 24th at the

19 pre-hearing conference on who actually appeared at that

20 point.

21   In an effort for the City to comply with

22 notice requirements, and I think all parties had the

23 ability to do this, including the Department, we filed

24 people that we knew were directly impacted, including

25 the seniors because we knew their lawyers, and including

 1   the juniors because we knew their lawyers, and anybody

 2   else that we knew in the area. So that's how the City

 3   of Bellevue did it, and we did not receive all parties

 4   documents by all other participating parties.

 5   And frankly, I'm not so sure we've actually

 6   considered or landed on a full and complete and correct

 7   certificate of mailing because all of us have used

 8   something different. So if we need to delineate that

 9   and how things happened, and who wasn't served when, we

10   can certainly do that in more detail. But I did want to

11   make a record, that I don't think any of us have used a

12   consistent certificate of mailing.

13   On June 8th, the City of Bellevue did request

14   all written materials and memos regarding Meghan's

15   confirmation to the Director that he could proceed under

16   Idaho Code 42-237a.g. It was denied on June 9th without

17   qualification citing Idaho Code 74104(1) and 502, with

18   the idea that we had the ability to appeal that denial

19   to enforce our right to get that information, which we

20   will consider. For the record I believe that part of

21   the attorney/client privilege or any privilege that the

22   Department may assert has been waived given the fact

23   that it was not cc'd to your attorneys and made part of

24   the public record. But whether we will appeal that is a

25   different question. But I wanted to make clear for the

 1 record that that request was denied in full. And that's

 2 all I have to add.

 3   THE HEARING OFFICER: Okay. Thank you.

 4   Do we need to talk about anything else today?

 5   Mr. Rigby?

 6   MR. RIGBY: Yes, Mr. Director. As you can

 7 appreciate, the timing is very critical to my clients.

 8 And I'm going to actually ask for a novel request, which

 9 is that because the Director is very familiar with what

10 has occurred, in his capacity as the Hearing Officer,

11 but also the Director of the Department of Water

12 Resources, and your duty to administer, we would request

13 that we not have any briefing, but rather that this be

14 submitted as of today.

15   THE HEARING OFFICER: I will allow, Mr. Rigby,

16 for a short briefing period. Simultaneous briefs due by

17 Friday, let's see -- yesterday was the 10th, so I guess

18 that's the 17th; right?

19   MS. McHUGH: Yesterday was the 11th.

20   THE HEARING OFFICER: Oh, I'm mixing my days.

21 So that would be the 18th, Friday the 18th, simultaneous

22 briefs, one submittal. Do you want a page limit?

23   MR. THOMPSON: Four.

24   THE HEARING OFFICER: Four pages.

25   MR. FLETCHER: We'll stipulate.

1   MR. RIGBY: Done.

2   MR. LAWRENCE: Including the certificate of

3 mailing.

4   MR. FLETCHER: Yeah, including the certificate

5 of mailing. Mr. Lawrence had a great idea.

6   THE HEARING OFFICER: And all attachments.

7 All right. Friday is the deadline.

8   Well, thanks to everybody for working hard.

9 And it's been harder on all of you, than it has been on

10 me. And I recognize how hard all of you have worked, so

11 thank you. And we'll close the record at this point.

12 Thanks everybody. Let's go home and enjoy at least half

13 a day for those that are close to home.

14   (Proceedings concluded at 11:17 a.m.)

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REPORTER'S CERTIFICATE

1

2   I, COLLEEN P. DOHERTY, CSR No. 345, Certified

3   Shorthand Reporter, certify:

4   That the foregoing proceedings were taken

5   before me at the time and place therein set forth, at

6   which time the witness was put under oath;

7   That the testimony and all objections made were

8   recorded stenographically by me and transcribed by me or

9   under my direction;

10   That the foregoing is a true and correct record

11   of all testimony given, to the best of my ability;

12   I further certify that I am not a relative or

13   employee of any attorney or party, nor am I financially

14   interested in the action.

15   IN WITNESS WHEREOF, I set my hand and seal this

16   17th day of June, 2021.

17

18

19

20

21   _____

22   COLLEEN P. DOHERTY, CSR 345
                       Notary Public
23   P.O. Box 2636
                       Boise, Idaho 83701-2636
24

25   My commission expires September 7, 2023.

/

/// (3)
1414:25;1454:24,25

A

ability (6)
1436:2,23;1451:22;
1465:18;1475:23;1476:18
able (8)
1396:15;1400:20;1406:14,
16;1409:24;1432:21;
1442:10;1470:25
above (6)
1392:1;1399:10;1455:23;
1460:4;1461:10;1462:3
Access (12)
1426:5,16;1427:6;
1430:21,24;1435:24;1437:6;
1451:21;1461:6;1463:15;
1470:3,25
accessible (2)
1469:7,19
according (1)
1457:20
account (2)
1406:20;1436:4
accounting (2)
1432:8;1441:18
accrual (2)
1426:10;1435:25
accrue (2)
1426:5,14
accrues (2)
1426:11;1436:16
acre (4)
1405:2;1435:1,5,5
acre-feet (5)
1434:24,24;1435:1,2,5
acres (7)
1390:1;1404:1,3,7,8;
1406:8;1434:24
across (2)
1393:10;1423:15
act (1)
1469:25
action (1)
1453:12
actual (8)
1439:17;1440:5,7,23;
1441:16;1466:22,25;1467:6
actually (21)
1389:17;1396:23;1399:14;
1401:13;1407:7,8,20;
1417:13;1433:3,6,21;
1436:19;1441:13;1448:10;
1459:10;1462:9,19;1475:17,
19;1476:5;1477:8
add (4)
1436:16;1456:3;1474:20;
1477:2

added (2)
1430:10;1447:6
additional (8)
1401:10;1427:13;1437:5;
1439:16;1448:4;1449:24;
1458:25;1470:15
address (6)
1389:15;1443:7;1453:10;
1469:3,9;1471:25
addressed (1)
1445:3
addressing (1)
1438:20
adequate (2)
1434:19;1460:4
adequately (1)
1445:3
administer (1)
1477:12
administration (8)
1418:10;1419:15;1432:23;
1437:11,14;1438:16;
1442:22;1450:13
administrative (2)
1417:2;1442:12
admission (12)
1395:14;1398:5,8;1400:4,
8;1421:18;1422:17,23,25;
1424:7,10;1464:10
admitted (4)
1421:12;1422:14;1434:5;
1464:7
advance (2)
1443:23;1473:14
advisory (1)
1411:5
affect (1)
1404:24
afforded (4)
1437:16,19,21;1442:16
affording (1)
1438:2
afternoon (2)
1407:9;1470:20
again (18)
1392:8,10;1395:15;
1396:2,9;1399:19,21;
1400:2;1420:1;1427:17,21;
1433:14;1449:9;1450:24;
1451:15;1461:20;1462:14;
1470:12
ago (1)
1397:2
agree (3)
1407:2;1446:19;1452:16
agreement (1)
1421:11
ahead (2)
1465:16;1472:12
aid (1)
1394:5
alfalfa (1)
1390:2

alive (2)
1407:23;1458:11
allege (1)
1457:24
alleged (2)
1431:9;1438:10
alleging (5)
1427:20;1430:7;1433:21;
1442:22;1457:13
allocate (1)
1391:19
allow (2)
1423:3;1477:15
allowed (2)
1420:2;1438:18
allows (1)
1410:4
almost (2)
1390:6;1439:19
along (3)
1399:3;1426:15;1427:19
although (5)
1405:16;1426:16;1427:14,
22;1440:15
always (1)
1437:19
among (2)
1429:25;1430:5
amount (10)
1390:5;1392:19;1397:15;
1425:9;1427:11;1447:2;
1448:8;1449:16;1453:14;
1454:7
amounts (1)
1425:9
analog (1)
1454:10
analyses (1)
1441:21
analysis (23)
1418:9,11,12;1419:15,16,
19;1430:17;1433:20;
1442:11,19,21;1444:23;
1447:2;1448:15,19;1449:3,5,
15,23,24;1454:10;1473:18,
21
analyzed (1)
1438:9
ancillary (1)
1390:3
and/or (2)
1441:15;1475:5
apologize (4)
1402:13;1443:23;1462:18;
1464:6
appeal (2)
1476:18,24
appeared (6)
1430:6;1433:6;1448:5;
1457:13;1470:9;1475:19
appears (2)
1428:25;1471:15
Appendix (4)

1428:16,22;1429:4;1455:9
application (2)
1417:17;1435:12
applying (1)
1441:12
appreciate (2)
1415:12;1477:7
approach (3)
1411:10;1440:22;1460:9
approximately (1)
1390:1
appurtenant (1)
1405:11
April (6)
1429:19,22;1430:2;
1455:19;1461:4,14
area (25)
1391:25;1392:13;1397:1;
1399:1,24;1400:23;1401:11,
12,13;1407:17,18;1418:17;
1423:14,16,18,19,21,25;
1424:2,5;1425:5;1427:17;
1436:8;1451:19;1476:2
areas (2)
1423:19;1440:12
argument (1)
1474:13
arguments (2)
1474:4,14
Arkansas (1)
1419:1
arose (1)
1472:25
around (4)
1392:7;1402:15,15,16
arrived (1)
1399:21
aside (1)
1419:5
assert (1)
1476:22
asserted (1)
1433:3
assist (1)
1441:22
Associates (1)
1416:18
assume (3)
1396:24;1422:16;1468:13
assumed (2)
1426:21;1441:1
assuming (3)
1423:3;1431:1;1432:21
assumptions (2)
1439:22;1440:4
attachment (1)
1455:9
attachments (1)
1478:6
attention (1)
1443:24
attorney (1)
1459:23

attorney/client (1)
1476:21
attorneys (3)
1465:20;1469:2;1476:23
August (4)
1430:13,23,24;1431:13
authority (2)
1448:21,24
authorized (1)
1447:7
automated (1)
1441:8
available (9)
1390:20;1391:16,17;
1436:18;1439:8,11;1452:17,
18;1470:20
average (5)
1434:21,24;1461:4,8,20
avoid (2)
1413:20,21
aware (5)
1406:22;1448:24,25;
1450:10;1457:12
axis (4)
1461:17,19,20,21

B

bachelor (1)
1416:8
back (32)
1392:7;1396:18,22;
1399:8;1400:23;1407:16,18;
1408:24,25;1410:10;1411:7,
18;1412:4;1413:4;1428:13;
1430:3,11;1431:5;1432:16;
1438:22;1445:20;1448:12;
1454:19;1455:3;1459:11;
1460:24;1462:18;1463:6;
1466:3,4;1468:6;1471:21
backing (2)
1399:20;1400:1
backs (1)
1393:11
backwards (1)
1396:16
bales (1)
1398:1
bank (2)
1396:8;1397:16
banks (1)
1399:23
Barbara (9)
1430:2,9;1447:5;1448:10;
1455:18,18;1456:9,10,20
BARKER (32)
1389:8,13;1393:15,23;
1394:1,4,17;1395:7,11,25;
1398:4,15;1400:4,15;
1402:19;1412:10,12;1413:2;
1414:8,9;1445:8,10;
1464:25;1465:1,7,16;1466:9,
10,12;1467:14;1468:16,25

barley (1)
1390:2
based (14)
1396:24;1401:7;1421:4,
17;1422:15;1424:13;
1434:17;1435:6;1439:21,21;
1448:8;1452:5;1467:3;
1472:3
basically (1)
1435:24
Basin (1)
1460:21
Baxter (18)
1459:8,9,18,21,23;1460:8,
11,13;1462:11,17;1464:2,6,
17;1471:15;1473:10,12,22;
1474:5
Bear (1)
1398:23
beaver (25)
1392:17;1393:10;1396:5,
14,19;1397:5,19,23;1398:22;
1399:3,21;1400:16;1401:4,8,
14,15;1402:10;1407:4,21,23;
1408:7,12;1410:18,22;
1411:3
beavers (1)
1408:2
became (1)
1416:22
beginning (1)
1464:19
behalf (4)
1415:6;1428:23;1453:6;
1475:1
belabor (1)
1453:9
belief (1)
1401:6
Bellevue (13)
1415:7;1419:9;1420:17;
1423:16;1424:1;1434:6,11;
1475:2,3,8,14;1476:3,13
below (10)
1399:5,9,12,12;1427:22;
1456:9,10,24;1461:16;
1462:5
beneficiaries (1)
1435:16
benefit (11)
1447:15;1449:6,17,21;
1455:6,16;1456:5,7,8,22;
1457:9
benefits (1)
1439:9
best (8)
1391:4,7;1396:14;1397:6,
25;1415:14;1452:16,18
better (3)
1435:7;1440:7;1451:7
Big (16)
1390:23,24;1391:7;
1397:2;1403:7;1404:17;

1428:24,24;1446:7;1456:11,
15,18,24;1460:20;1461:10;
1463:15
bill (2)
1410:13;1412:25
binder (2)
1429:2;1466:14
bit (4)
1430:9;1435:18;1446:9;
1460:24
Blankenau (1)
1470:14
blocking (1)
1392:18
blue (1)
1461:3
board (1)
1411:5
boat (1)
1402:1
Boise (4)
1389:17,22;1417:18,20
boots (1)
1400:18
both (4)
1390:11;1391:1;1392:19;
1469:3
bottom (2)
1423:15;1451:20
boundary (1)
1423:16
bounds (1)
1441:5
box (2)
1461:22,23
breach (1)
1396:14
break (4)
1445:17,22;1463:1;1466:4
Bridge (1)
1425:6
brief (2)
1443:18;1465:2
briefing (3)
1474:16;1477:13,16
briefly (1)
1420:15
briefs (2)
1477:16,22
bring (3)
1397:2;1426:6;1432:14
bringing (1)
1424:18
brings (1)
1448:12
BROMLEY (42)
1403:1;1414:16;1415:4,5,
6,14,17,19;1419:11,19;
1420:12,13,14;1421:9,22,24;
1422:1,3,7,11,22;1423:7,8;
1424:7,17;1428:21,22;
1429:5,7;1434:8,11;1443:10,
24;1454:2,3,5,21;1455:13;

1458:21;1467:20;1474:18,
20
brought (1)
1419:25
brush (1)
1399:25
bubble (6)
1428:11,18;1429:15;
1430:19;1449:20;1454:9
building (1)
1454:17
bunch (2)
1470:3;1475:9
business (1)
1389:22
businesses (1)
1390:3
BV (4)
1420:17;1421:23;1422:18,
20

C

calculus (1)
1431:18
calibrated (2)
1437:4;1441:18
calibration (4)
1439:13;1440:18;1441:4,8
call (14)
1392:13;1403:21;1414:16;
1417:4,5,6,8,15;1459:9;
1460:3;1461:9;1468:7,9;
1471:25
called (7)
1389:22;1398:23;1436:8,
21;1451:9;1459:2;1460:6
calling (6)
1426:2;1428:4;1433:6;
1435:8;1437:2;1448:18
calls (11)
1417:4,11;1434:2;1437:9,
11;1442:17,25;1443:5,6;
1444:24;1450:21
came (8)
1396:18;1429:1,11;
1446:22;1472:24,24,25;
1473:15
can (30)
1391:24;1396:21,22;
1398:24;1402:1;1406:8,11;
1409:21;1410:2;1413:23;
1423:23;1429:7,20;1435:20,
25;1436:9,11;1438:24;
1448:13;1450:22;1451:15;
1457:4;1462:18;1463:5;
1473:12;1474:3,3,14;
1476:10;1477:6
Canal (8)
1403:8;1410:5;1428:24;
1446:7;1456:11,15,19,24
canals (1)
1410:3

Candice (1)
　1475:1
canoe (1)
　1401:20
capacity (1)
　1477:10
care (2)
　1401:16;1465:17
career (1)
　1418:16
carefully (2)
　1402:7;1444:22
CARTER (3)
　1464:5;1470:8,13
case (10)
　1430:6;1438:12;1447:17,
　21;1449:17;1451:12;
　1452:17;1454:15;1461:10;
　1465:23
categories (1)
　1418:6
cause (4)
　1389:5;1415:3;1459:17;
　1463:6
caused (2)
　1411:21;1412:1
cc'd (1)
　1476:23
cells (7)
　1436:8,9,11,12,12,17,22
center (1)
　1400:19
certain (1)
　1450:8
certainly (5)
　1407:22;1410:11;1471:9;
　1474:16;1476:10
certificate (4)
　1476:7,12;1478:2,4
cfs (32)
　1391:14;1392:22;1395:7;
　1396:12;1402:15,16;1405:9,
　23;1406:4,15,17;1411:19,25;
　1429:24;1430:8,8,10,10,22,
　22,24;1431:3,4,6,12,14;
　1447:8;1449:11;1456:14;
　1457:7,22;1461:20
chance (1)
　1408:24
change (4)
　1397:14;1400:3;1428:9;
　1463:6
changed (1)
　1463:5
changes (2)
　1463:7,7
channel (13)
　1392:18;1393:11,14;
　1394:25;1395:6;1396:18;
　1398:23;1399:19;1400:23;
　1401:24;1407:17;1411:7;
　1413:23
chart (6)

　1460:18;1461:1,2,23;
　1462:21;1463:17
check (2)
　1441:10;1475:15
Chris (1)
　1415:5
cities (7)
　1417:14,22;1419:6;
　1421:6;1424:1,3;1441:22
Cities/SVC (8)
　1416:2;1422:24;1423:4,6,
　9;1424:8,14,16
citing (1)
　1476:17
City (12)
　1415:6,8,8;1417:19;
　1443:23;1475:1,2,8,14,21;
　1476:2,13
civil (1)
　1416:10
clarification (1)
　1475:5
clarify (3)
　1412:5,13;1451:25
Class (1)
　1419:24
clear (4)
　1393:10;1406:24;1474:5;
　1476:25
Clearly (1)
　1411:23
clients (2)
　1420:15;1477:7
climate (1)
　1463:7
close (4)
　1411:1;1443:24;1478:11,
　13
Coalition (2)
　1417:5,15
Code (2)
　1476:16,17
coefficient (1)
　1462:1
coefficents (1)
　1463:2
collectively (1)
　1466:5
Colleen (2)
　1389:10;1445:21
Colorado (9)
　1415:25;1416:9,11,12;
　1418:24;1419:1;1437:14,16;
　1438:17
column (5)
　1426:23;1429:21;1462:4,
　4;1466:21
com- (1)
　1413:19
coming (2)
　1402:20;1430:21
commencing (1)
　1423:18

comment (1)
　1450:2
commentary (2)
　1420:9;1464:13
commented (1)
　1446:8
comments (1)
　1422:16
Committee (2)
　1418:18,21
committees (1)
　1418:22
communication (1)
　1473:7
communications (4)
　1471:13;1473:5,17,23
Company (14)
　1403:8;1415:6;1416:24;
　1417:23;1428:24;1441:23;
　1446:7;1456:11,15,19,25;
　1470:5;1471:8;1474:22
Company's (2)
　1419:6;1424:3
compare (3)
　1430:16;1431:4;1441:14
compared (1)
　1433:23
comparing (1)
　1448:18
compiled (2)
　1461:16;1467:7
complete (1)
　1476:6
completely (2)
　1392:18;1422:11
comply (1)
　1475:21
compromise (1)
　1465:18
computed (1)
　1434:25
computing (1)
　1436:15
conceivable (1)
　1415:10
Conceivably (1)
　1443:2
concern (1)
　1440:13
concerned (1)
　1412:22
concerning (3)
　1446:17;1473:18,21
concluded (1)
　1478:14
conclusion (1)
　1463:10
conditions (2)
　1391:21;1411:20
conductivity (2)
　1440:11,13
conference (1)
　1475:19

confidence (1)
　1437:1
configuration (1)
　1439:13
confirmation (1)
　1476:15
confluence (3)
　1399:10,13;1427:6
confused (1)
　1468:5
conjunctive (11)
　1418:9;1437:9,11,14;
　1438:16;1444:3,6,10,17;
　1450:11,12
connect (1)
　1436:13
Conservancy (1)
　1392:2
consider (1)
　1476:20
consideration (2)
　1433:2;1443:1
considerations (1)
　1452:21
considered (5)
　1432:12;1442:24;1444:25;
　1473:20;1476:6
considering (2)
　1431:18;1441:11
consistent (2)
　1438:15;1476:12
consistently (3)
　1402:16;1475:8,16
constant (1)
　1408:11
constitute (1)
　1397:9
consulting (1)
　1416:17
consumptive (5)
　1425:10,11;1440:1,19,21
contacted (1)
　1410:19
contained (1)
　1470:12
contains (1)
　1444:12
continue (1)
　1432:5
contract (1)
　1403:21
control (1)
　1465:19
conveyance (1)
　1436:5
copy (1)
　1460:12
Corps (1)
　1411:9
correctly (4)
　1446:20,21;1455:15;
　1473:25
correlation (3)

1462:21;1463:20,21
correlations (1)
1462:2
corrupt (2)
1470:23,24
Counsel (4)
1415:10;1443:11;1465:19;
1466:5
County (1)
1417:17
couple (3)
1390:3;1413:14;1465:1
course (3)
1402:6;1451:19;1456:15
Court (1)
1418:25
cover (1)
1471:10
covered (3)
1443:16;1444:1;1460:22
covering (1)
1443:25
covers (1)
1418:12
cow/calf (1)
1390:2
Creek (51)
1390:24;1391:2,22,25;
1392:1;1393:8,13;1396:9;
1398:23;1399:15;1402:13;
1403:16,21,23;1404:2,3,15,
16,17,23,25;1405:3,7,10;
1406:5;1409:20,22;1412:20;
1425:19;1426:10,14,17,20,
23;1429:10;1430:21;
1432:19;1436:1,15,24;
1439:12;1452:20;1456:4;
1457:9;1460:5;1461:5,20;
1462:2,5;1463:14,25
crew (1)
1407:8
criteria (1)
1432:9
critical (1)
1477:7
crop (3)
1406:15;1452:7;1453:17
crops (2)
1433:22;1435:10
cross (2)
1443:12;1466:8
crosses (3)
1392:6,9,15
Cross-examination (11)
1403:3,5;1409:7;1413:4;
1432:18;1434:14;1438:2;
1445:17,23;1446:2;1453:4
cross-hatched (1)
1423:19
crossing (1)
1399:5
cubic (1)
1461:5

curious (1)
1410:22
current (2)
1439:6;1446:20
currently (1)
1419:2
curtail (4)
1433:13,19;1438:21;
1444:19
curtailed (17)
1405:13,19,22;1406:1,7;
1424:19;1425:10,11,18;
1428:6;1431:8;1437:22;
1445:1;1447:11;1448:8;
1455:6,17
curtailing (2)
1435:14,19
curtailment (42)
1404:22,24;1405:17,20;
1423:17,21;1424:5;1425:5,8,
13;1426:9;1428:10,14;
1430:1,16;1431:6,11,19,24,
25;1432:3,4,7,8,10;1435:16,
25;1437:19;1438:25;1443:8;
1447:3,6,15;1448:17,19;
1449:12,16,21;1454:7;
1456:4;1457:10,24
cut (6)
1413:21,22,24;1428:9,13;
1429:23
cuts (1)
1428:6

D

dad (1)
1412:21
dam (31)
1392:17;1393:10;1396:5,
14,19;1397:1,3,5,9,19,23;
1398:22;1399:3,18,21;
1400:16,19;1401:1,8,14,18;
1407:5,19;1408:7,15,20,22,
25;1410:22;1411:14,23
damage (1)
1406:21
dams (5)
1401:4,16;1402:11;
1410:18;1411:3
data (24)
1418:11;1419:19;1433:10;
1439:8,11,17;1440:5,22;
1441:14,17;1460:19;
1466:20,22,25;1469:4;
1471:13,16;1472:21,24;
1473:8,14,15,24,24
date (6)
1395:15;1405:5;1429:21,
22;1448:23;1456:20
dates (17)
1429:19;1447:24;1448:1;
1454:8,8,18;1456:18;
1457:1;1469:16;1470:17;

1471:2,22,23;1472:20;
1474:17,21,21
day (3)
1396:13;1407:9;1478:13
days (7)
1402:8,17,17;1459:3,5;
1469:12;1477:20
deadline (1)
1478:7
deal (2)
1401:4;1414:18
dealing (1)
1465:11
debris (1)
1397:4
decide (1)
1466:5
decision (2)
1401:19;1474:15
decree (1)
1437:1
deficiency (1)
1474:4
definite (2)
1411:9;1475:5
Definitely (3)
1397:11,13;1444:21
degree (1)
1416:8
delineate (1)
1476:8
deliver (1)
1406:14
deliverable (1)
1428:3
delivered (3)
1449:1,4;1451:11
deliveries (2)
1435:2;1450:21
delivery (13)
1417:4,4,5,7,11,15;1434:2;
1437:9,11;1442:17,25;
1443:5;1444:24
demand (1)
1440:2
demands (2)
1431:12;1439:22
denial (1)
1476:18
denied (2)
1476:16;1477:1
Denver (2)
1415:25;1416:11
Department (19)
1417:1;1427:9;1441:24;
1442:3;1454:11;1458:25;
1459:7,23;1469:14,23;
1470:1;1471:25;1472:12,13;
1473:6,20;1475:23;1476:22;
1477:11
Department's (6)
1424:20;1444:3,19;
1470:17,19;1475:15

depending (2)
1410:5;1474:15
depict (2)
1393:9;1396:7
DEQ (1)
1411:8
describe (3)
1416:4;1418:13;1434:14
described (2)
1428:5;1433:15
desert (3)
1392:20,23;1401:22
desires (1)
1457:24
Despite (1)
1444:16
detail (2)
1440:14;1476:10
determination (1)
1462:1
determine (1)
1436:14
determined (4)
1427:9;1441:3;1452:15;
1471:20
determining (5)
1433:12,16;1444:13,19;
1452:10
develop (4)
1437:20,21;1441:8,16
developed (4)
1421:3;1443:3;1444:22,22
developing (1)
1443:7
development (1)
1418:19
different (12)
1406:3;1433:9;1452:11;
1460:20;1462:6,22;1463:2,3,
22;1471:18;1476:8,25
difficult (4)
1399:23,25;1406:10;
1408:23
DIRECT (4)
1389:12;1415:18;1443:20;
1455:12
directing (1)
1472:17
directly (7)
1390:25;1393:14;1409:20,
21;1410:3;1467:11;1475:24
Director (38)
1402:23;1413:2;1414:13;
1415:5,10;1419:11,22,24;
1420:2,13;1421:9,14,17,20;
1422:23;1429:5;1434:8;
1443:10,19;1445:12,15;
1453:3;1454:3;1460:12,25;
1462:11;1464:2,6;1465:1;
1466:10;1467:17;1469:11;
1473:10,22;1476:15;1477:6,
9,11
Director's (2)

1420:3;1423:18
disagree (2)
1446:25;1447:1
discount (1)
1465:20
discovery (1)
1442:18
discrete (1)
1436:12
discuss (1)
1436:6
discussed (5)
1409:14;1414:17;1429:18;
1451:8;1471:6
discussing (1)
1434:4
discussion (2)
1432:2,3
dismiss (1)
1475:4
dispute (1)
1471:23
distance (1)
1400:2
distribute (1)
1472:14
district (10)
1397:18;1401:4;1402:3;
1411:4,6;1414:10,12;
1417:6;1425:15;1471:16
ditch (2)
1399:1;1401:2
diversion (6)
1412:16;1424:4;1427:18;
1437:7;1456:13;1457:5
diversions (6)
1409:25;1410:2;1434:24;
1437:7;1444:14;1447:7
divert (4)
1432:22;1447:21;1448:2;
1449:11
diverted (4)
1410:2;1426:19;1441:15;
1450:9
diverting (5)
1410:8,10;1426:18;
1450:15;1451:1
divided (1)
1431:14
document (19)
1394:13;1395:14,21;
1398:8,11;1400:8,11;
1416:2;1423:4;1424:10,14;
1434:9;1460:14,15,17;
1463:11;1464:10,14;
1473:13
documents (7)
1422:17,18;1433:11;
1472:11;1475:7,16;1476:4
domain (2)
1436:13;1452:1
Donald (1)
1430:8

done (10)
1402:10;1408:14;1413:11;
1421:10;1431:18;1438:13,
24;1448:16;1450:21;1478:1
dotted (1)
1423:23
down (31)
1392:4,6,9;1396:13;
1399:4;1402:20;1407:8;
1411:18;1421:22;1424:19;
1425:20;1426:7,8,22;1427:6,
7,16,20,21;1430:9;1431:2;
1433:5;1435:21;1436:19;
1437:2,6;1449:1;1451:18,
23;1456:9,24
downloaded (2)
1421:5;1470:4
downstream (10)
1397:12;1401:14;1409:25;
1410:2;1427:21;1432:20;
1436:3;1442:23;1451:22;
1452:21
dozen (1)
1426:13
drafting (1)
1441:23
drainage (3)
1429:10,13;1460:5
draw (1)
1463:10
Drive (1)
1389:18
dropped (1)
1400:21
drove (1)
1399:4
dry (1)
1391:19
due (2)
1437:21;1477:16
duly (3)
1389:4;1415:2;1459:16
during (5)
1432:5;1439:15;1441:4;
1443:3;1472:25
duty (2)
1434:25;1477:12

E

earlier (1)
1412:5
early (2)
1401:19;1411:7
Eastern (1)
1418:17
education (2)
1416:5,8
effective (2)
1435:19;1452:19
effects (2)
1432:2,8
efficiencies (8)

1433:24;1440:20,24,25;
1441:1,9,11,16
efficiency (10)
1415:7;1433:25;1435:13;
1439:23;1441:19;1450:2,6,
8;1465:6,21
efficient (2)
1415:9;1438:20
efficiently (2)
1434:3;1435:17
effort (2)
1400:15;1475:21
efforts (1)
1397:18
eight (1)
1435:5
either (3)
1410:5;1411:8;1436:11
elaborate (1)
1474:19
elected (1)
1466:6
elevation (3)
1396:17;1397:13;1400:3
Elmore (1)
1417:17
else (5)
1425:21;1443:4,12;
1476:2;1477:4
email (7)
1470:1,10,13,22,23;
1471:14;1472:16
emails (2)
1442:3;1470:8
employees (3)
1395:1,4;1397:21
employing (1)
1435:13
end (4)
1392:20;1432:6;1440:6;
1468:24
ends (4)
1439:6,18;1452:1,20
enforce (1)
1476:19
engineer (3)
1416:7,12,22
engineering (4)
1416:10,18;1418:8;
1419:14
Engineers (3)
1411:9;1416:7,21
enjoy (1)
1478:12
enough (1)
1406:16
Enterprises (1)
1389:23
entire (2)
1399:19;1418:16
entities (1)
1421:7
entitled (1)

1447:15
equipment (1)
1400:24
Eric (4)
1428:23;1440:8;1459:25;
1473:20
error (2)
1441:18;1474:14
ESPA (2)
1417:14;1418:19
especially (1)
1411:1
essentially (1)
1463:19
established (1)
1399:23
establishing (1)
1419:5
estimate (8)
1392:22;1395:9;1396:11;
1397:6,8;1399:17;1439:24,
25
estimated (3)
1439:20,20;1440:3
estimates (1)
1428:8
ET (4)
1439:21;1440:22,23;
1441:14
evaluate (5)
1444:18;1450:23;1452:17,
19;1463:4
evaluating (2)
1448:16;1452:22
evaluation (1)
1450:12
even (4)
1391:13;1418:21;1436:24;
1439:14
event (2)
1426:21;1432:13
everybody (4)
1423:3;1462:15;1478:8,12
everyone (1)
1472:8
evidence (16)
1394:15;1395:23;1398:13;
1400:13;1421:12,15;
1422:19;1423:5;1424:15;
1434:5;1442:11;1453:13,17,
18,21;1464:15
evidenced (1)
1447:11
evolved (1)
1423:20
EXAMINATION (10)
1389:12;1412:11;1415:18;
1443:20;1454:4;1455:1,13;
1458:24;1459:20;1466:11
examine (1)
1459:19
example (4)
1430:23;1431:17;1450:11;

1451:20
exceeded (1)
1449:6
Excel (1)
1470:10
except (2)
1453:9;1466:21
exclude (2)
1419:23;1420:1
Excuse (2)
1405:15;1453:11
excused (3)
1414:6;1458:17;1468:3
Exhibit (49)
1393:2,15,16,18;1394:16,
17;1395:11,24,25;1396:6,20;
1398:2,5,5,6,14,16;1400:5,6,
14;1407:5;1408:16;1416:2;
1420:16,19,22,25;1422:24;
1423:6;1424:8,16,20;
1425:15,24;1426:1,6,24;
1428:16,22;1429:1,2,9;
1434:4;1455:8;1460:14;
1464:7,14,16;1466:14
Exhibits (4)
1389:1;1414:19;1421:18;
1422:20
expecting (1)
1405:17
expenditures (1)
1453:15
experience (9)
1397:8;1408:6;1416:5,14;
1417:9;1418:14;1435:6;
1437:15;1452:6
expert (6)
1418:4,23;1419:2,12;
1420:11;1428:23
expertise (1)
1420:4
explain (4)
1421:3;1451:15;1461:2,23
explained (1)
1463:25
explaining (2)
1428:17;1454:18
extend (2)
1391:10;1451:21
extended (2)
1439:4,9
extends (1)
1423:24
extensively (1)
1437:13
eyes (1)
1455:23

F

fact (7)
1406:24;1434:3;1444:16;
1460:6;1465:10;1475:12;
1476:22

factors (6)
1444:12,17,22;1445:2;
1450:1;1463:5
failing (1)
1455:24
fair (1)
1390:5
fairly (3)
1400:25;1463:12,18
fall (1)
1397:7
familiar (7)
1390:8;1391:21;1402:2;
1408:2;1444:2,9;1477:9
far (2)
1410:18;1462:4
Farfan (1)
1400:17
farm (8)
1389:25;1390:1,9;
1392:12;1403:20;1435:2;
1447:4,5
Farms (9)
1430:2,9;1447:5;1448:10;
1455:18,19;1456:9,10,20
fatal (1)
1474:13
features (1)
1436:7
fed (1)
1403:22
federal (1)
1411:11
feeds (1)
1404:17
feel (1)
1474:13
feet (5)
1399:20;1405:6,7;1435:5;
1461:5
felt (1)
1453:8
few (2)
1446:7;1459:24
fields (1)
1419:12
figure (1)
1431:10
file (2)
1470:11;1472:10
filed (15)
1441:24;1469:6,22,23,25;
1470:5;1472:16;1473:17;
1474:9;1475:3,4,6,13,17,23
files (7)
1470:9,10,12,15,21,23,24
finally (1)
1470:13
find (1)
1402:1
fine (1)
1414:20
finish (1)

1406:15
finished (1)
1458:23
finishing (1)
1406:10
firm (4)
1416:17,18,22,23
first (14)
1389:4;1394:20;1401:11;
1402:15;1415:2;1429:17;
1439:25;1445:24;1446:1;
1459:8,16;1465:22;1469:21;
1473:14
Fish (4)
1392:8;1398:25;1412:20;
1417:8
fishery (2)
1412:19,19
five (11)
1391:14;1399:6;1402:17,
17;1405:6,23;1406:4,11,15,
17;1470:10
FLETCHER (44)
1393:21;1394:5,7,10;
1395:15,18;1398:9;1400:9;
1403:3,4,6,7;1409:2;1413:5,
6;1419:22;1421:14;1424:11;
1445:23,25;1446:3;1452:25;
1453:7;1454:6;1455:4;
1458:6,8,13;1464:11,20,22;
1465:9,10,15,22,23;1466:6;
1467:23,24;1468:8,9,21;
1477:25;1478:4
flight (1)
1468:19
float (1)
1401:20
flow (18)
1400:22;1401:8;1402:12;
1411:13;1428:3;1430:12,21;
1436:11,16;1437:5;1461:4,
11;1463:13,14,15,24,25;
1471:18
flowed (1)
1396:16
flowing (8)
1392:5,22;1394:25;
1395:5;1396:9;1399:25;
1407:14,16
flows (14)
1392:2,10;1397:10;
1399:8;1401:10,14;1410:23,
25;1412:18;1430:20;
1432:10,14,19;1452:19
focus (1)
1471:7
focused (1)
1471:5
folks (2)
1435:10;1474:4
follow (1)
1464:18
followed (1)

1464:19
follows (3)
1389:5;1415:3;1459:17
foot (2)
1400:3,21
forever (1)
1432:7
forgot (1)
1464:7
forms (1)
1392:1
forward (2)
1432:25;1459:13
found (1)
1429:3
four (6)
1402:8,17;1422:12,13;
1477:23,24
fourth (1)
1466:20
frame (1)
1469:13
frames (4)
1442:16;1462:21,22;
1463:3
frankly (4)
1412:18;1413:20;1475:18;
1476:5
free (1)
1392:5
freely (1)
1407:14
Friday (3)
1477:17,21;1478:7
front (9)
1392:24;1394:18;1396:1;
1398:16;1402:14;1416:1;
1423:8;1425:14;1434:7
FTP (2)
1470:3,15
full (5)
1396:25;1406:17;1411:25;
1476:6;1477:1
full-time (2)
1389:16;1390:6
fully (1)
1475:18
function (1)
1440:18
further (17)
1402:20;1412:3;1414:3;
1427:21;1443:11;1451:22,
23;1452:25;1453:24;
1454:21;1458:13;1463:6;
1464:2,24;1466:7;1467:15;
1474:18

G

gage (22)
1426:16,22,25,25;1427:6;
1430:21,24;1435:24;1437:6;
1451:21;1460:4,20;1461:6,

12,16;1463:15,16,25;1464:1;
1467:4,7,10
gages (1)
1425:25
Galena (5)
1394:14;1395:22;1398:12;
1400:12;1414:12
Game (2)
1392:8;1398:25
gaps (1)
1433:10
Garrick (3)
1459:22;1464:5;1471:15
gave (2)
1412:5,14
gears (4)
1433:8;1435:18;1439:1;
1441:20
general (1)
1391:24
generally (2)
1410:12;1417:21
gets (2)
1427:18;1465:20
given (2)
1397:13;1476:22
giving (1)
1406:21
Glendale (1)
1425:6
goes (3)
1440:25;1473:4,22
Good (13)
1389:8,11,14;1391:6;
1409:12,13;1440:22;
1441:13;1443:22;1446:4,5;
1459:14,22
Grande (1)
1419:3
grass (1)
1396:23
gray (1)
1461:13
Great (3)
1424:6;1439:5;1478:5
green (1)
1466:13
Greg (1)
1414:16
GREGORY (2)
1415:1,22
ground (55)
1390:11,14,16,19,21,25;
1391:1,4,20;1392:4,9,20;
1400:5,5;1403:22,24;
1404:20,24;1405:4,24;
1406:2;1409:14,16,19;
1414:9,12;1417:7;1418:7,8,
10,15,20,25;1419:8,13,14;
1423:24;1424:3;1425:7,15;
1435:19,20,20;1436:10;
1437:16;1441:2;1443:25;
1454:12;1455:6,16;1456:5;

1457:9,24;1471:13;1473:24
Group (11)
1402:24;1414:14;1429:24;
1443:14;1458:19;1467:18;
1468:6;1469:3,3;1471:5;
1474:18
groups (1)
1463:2
growing (1)
1396:24
growth (2)
1396:21,22
guess (15)
1392:21;1399:24;1428:10;
1430:2;1469:13,21;1471:12,
19,21,25;1473:16;1474:3,7,
16;1477:17
guesstimate (1)
1396:21
guide (1)
1418:19
guided (1)
1444:23

H

Hailey (15)
1415:8;1420:19;1421:25;
1422:18,20;1424:1;1443:23;
1460:4;1461:10,12;1462:2,
3;1463:16;1464:1;1467:4
half (3)
1426:13;1445:18;1478:12
hand (4)
1397:25;1408:23;1414:24;
1434:9
handed (1)
1460:13
hands-off (1)
1411:10
happen (4)
1431:24;1432:4;1443:8;
1448:18
happened (2)
1474:14;1476:9
happening (1)
1448:25
happens (2)
1410:11;1432:10
hard (3)
1401:12;1478:8,10
harder (1)
1478:9
Harry (1)
1392:11
Hatchery (1)
1417:8
hay (1)
1390:2
headgate (1)
1435:2
hear (16)
1395:2;1406:18;1428:2;

1440:10;1446:16,23;
1447:16;1450:25;1451:3;
1453:12,17;1457:15;1458:1,
9,11,12
heard (16)
1426:12;1427:4,15;
1430:25;1432:3,11,22;
1433:4,12,16;1436:6;
1439:11;1446:24;1450:14,
20;1453:18
HEARING (110)
1389:2,6,9;1393:17;
1394:6,13;1395:13,21;
1398:7,11;1400:7,11;
1402:22,24;1403:2;1409:5;
1412:6,9;1413:1,3,7;1414:4,
7,11,14,20,23;1415:4,13,16;
1419:17,21;1420:5,9;
1421:19,21,25;1422:4,9,15;
1423:1;1424:9,13;1428:20;
1429:3,6;1431:21;1434:10;
1443:14,17;1445:7,11,13,16,
20;1453:2,14;1454:1,22;
1458:4,15,18,22;1459:4,6,
12,18;1460:8,10;1462:14;
1464:4,9,13,17,19,23,25;
1465:5,8,13,17,25;1466:3,9;
1467:16,18,21;1468:1,4,12,
18,23;1469:1,16,20;1471:1;
1472:2,11;1473:1,3,11;
1474:2,12,24;1477:3,10,15,
20,24;1478:6
Heart (2)
1390:21;1403:21
heavily (1)
1399:24
heavy (1)
1399:24
height (1)
1393:12
help (5)
1418:19;1425:17;1428:17;
1451:17;1468:21
helpful (1)
1439:12
helping (1)
1417:13
Hennefer (1)
1392:21
high (4)
1412:24;1440:12,16;
1463:18
Highway (11)
1392:7,10,14,14,15;
1393:7;1399:3,5,6,7,9
Hill (1)
1403:22
himself (1)
1462:13
history (2)
1411:15;1452:5
hits (1)
1392:13

hoe (1)
1397:3
hold (1)
1462:9
holder (1)
1473:19
holders (1)
1432:20
hole (3)
1394:24;1395:4;1396:17
holes (2)
1396:8;1397:25
home (2)
1478:12,13
hope (1)
1422:13
Hopefully (1)
1422:12
hoping (1)
1469:12
hour (2)
1400:18;1445:18
housekeeping (1)
1422:22
huge (1)
1397:3
Huh (1)
1459:4
hydraulic (1)
1440:13
Hydrologic (1)
1418:18
hydrology (2)
1418:7;1419:15
hypothetical (1)
1448:14

I

Idaho (10)
1389:19;1416:12;1417:1;
1437:10,15;1438:16;
1448:22;1450:6;1476:16,17
idea (4)
1396:19;1441:13;1476:18;
1478:5
identified (4)
1419:13;1428:10;1440:12;
1449:11
identify (1)
1403:19
IDWR (6)
1421:5;1460:14;1464:7,
14,16;1466:14
impact (1)
1454:14
impacted (1)
1475:24
impacts (4)
1433:18;1436:14;1437:20;
1440:7
impedes (1)
1401:8

implement (1)
1437:22
implies (1)
1413:25
important (2)
1443:4;1444:18
importantly (1)
1439:14
improvement (1)
1439:5
improvements (4)
1439:2;1453:14,19,22
inception (1)
1418:21
inches (2)
1393:12,12
incident (1)
1407:24
include (3)
1425:9;1456:21;1461:14
included (3)
1416:8;1422:5;1434:19
including (6)
1473:19;1475:23,24,25;
1478:2,4
increase (1)
1412:18
indicate (2)
1450:15;1453:13
indicated (1)
1451:1
indicates (1)
1463:20
indicating (2)
1394:2,3
indirect (1)
1454:15
individual (1)
1471:17
inducing (1)
1397:14
indulge (1)
1415:12
inefficiently (2)
1450:16;1451:1
information (25)
1401:3;1406:23;1421:4,6;
1441:24;1442:2,8,18,20;
1461:16;1467:12;1469:19,
22;1470:4,6,8,10,13,16;
1471:12,24;1473:5,8;
1474:10;1476:19
initial (3)
1411:17;1423:17;1458:23
injured (3)
1433:16,17;1473:21
injury (19)
1427:20;1430:7;1431:9;
1433:3,12,17,18,19,21;
1442:22;1444:13,23;1452:9,
10,12,14;1457:13;1473:18,
21
inquired (1)

1434:13
inset (2)
1461:22,23
inspecting (1)
1401:23
instance (1)
1432:13
intended (3)
1422:8;1452:8,14
intent (5)
1410:12;1472:10,17;
1475:7,13
interaction (1)
1436:9
interest (1)
1465:21
interests (1)
1419:7
internally (1)
1472:23
interpretation (1)
1474:6
intersect (1)
1393:8
intersection (1)
1392:14
intimately (1)
1390:10
into (55)
1392:2,8,20,23;1394:14;
1395:5,22;1396:9,18;1397:1,
15;1398:12;1400:12,23;
1401:11,13;1404:17;
1406:20;1407:16;1409:20,
22,25;1410:3,5,5;1411:8;
1412:17;1421:12;1422:19;
1423:3,5;1424:14;1426:11;
1428:13;1429:1;1430:1,3,
11;1431:2;1432:6;1434:5;
1436:11;1438:22;1440:4,25;
1441:19;1444:22;1448:1,12;
1452:9;1458:10;1460:3;
1463:2;1464:7,14
introducing (1)
1422:13
involved (10)
1404:1;1417:3,12,16,25;
1433:13;1437:9,10,13;
1447:20
involving (1)
1419:4
irrelevant (1)
1421:16
irrigate (1)
1406:8
irrigating (4)
1433:23;1434:25;1435:10;
1441:12
irrigation (19)
1390:8;1409:16;1417:6;
1418:11;1419:16;1432:5,6;
1435:11;1439:22;1440:19,
24;1441:1,16;1450:7;

1461:8;1462:3;1463:8,13,15
issue (2)
1419:25;1450:22
issues (9)
1392:16;1419:8;1431:24;
1440:11;1442:19,22;
1452:17,23;1453:10

J

jam (1)
1411:8
James (1)
1430:7
Jennifer (9)
1423:21;1424:21;1425:7;
1426:21;1436:6,15;1439:25;
1446:9;1470:21
Jerry (2)
1409:9;1453:6
job (1)
1396:14
Johnson (6)
1390:16,20;1403:12,14,14,
16
Johnson's (2)
1391:17;1406:18
joined (1)
1416:21
July (4)
1425:5,8;1430:13,23
June (10)
1402:16;1428:7;1429:23;
1434:12;1466:20,22;1470:7,
12;1476:13,16
junior (6)
1405:8;1425:10;1429:17;
1435:19;1437:16;1444:19
juniors (7)
1433:13;1435:14;1437:19;
1438:2;1445:1;1447:11;
1476:1

K

Kansas (1)
1418:24
keep (2)
1458:10;1462:15
Kent (1)
1403:7
Ketchum (8)
1415:9;1420:22;1422:5,7,
8,19,20;1424:1
Kevin (4)
1410:21;1427:24;1429:12;
1449:10
Kilpatrick (2)
1392:3,4
kind (10)
1391:3;1397:18;1401:24;
1411:16,18;1432:9;1442:14;
1443:6;1448:20;1453:22

knew (5)
1475:6,24,25;1476:1,2
knowledge (2)
1397:20;1401:22
knowledgeable (1)
1417:21

L

lack (1)
1453:21
Lakey (13)
1427:25;1428:2,5;
1429:12;1432:17;1434:4,17;
1449:10,18;1454:18;
1455:16;1456:21;1472:24
Lakey's (1)
1455:5
landed (1)
1476:6
lands (2)
1411:2;1433:22
language (1)
1441:23
large (11)
1392:17;1393:10;1394:24;
1397:3,13;1399:17;1400:24;
1401:1,11,12,13
larger (2)
1408:22;1471:7
last (8)
1397:1,7;1402:6,8,17;
1441:20;1471:12;1472:21
law (3)
1448:22;1459:3,5
lawfully (1)
1450:8
Lawrence (9)
1443:17,18,21,22;1445:5;
1455:2;1458:2;1478:2,5
lawyers (2)
1475:25;1476:1
layman's (1)
1392:22
lead (1)
1419:2
lease (2)
1390:21;1403:23
leased (2)
1403:11,19
leasing (1)
1404:10
least (15)
1396:25;1399:20;1400:21;
1439:9,21;1458:23;1459:13;
1469:7;1471:5,8;1472:2,14,
18;1474:5;1478:12
leaving (1)
1395:9
left (2)
1393:23;1461:20
legal (3)
1448:24;1474:4,14

LEONARD (2)
1389:3,16
less (2)
1413:23;1438:24
level (2)
1400:21,22
light (1)
1420:3
likely (2)
1413:23;1427:14
limine (1)
1419:23
limit (2)
1448:7;1477:22
limited (1)
1419:8
limiting (1)
1454:7
line (7)
1423:23;1443:18;1456:6;
1461:3,9,11,13
link (1)
1470:15
list (11)
1428:15;1429:9,12,18;
1430:9;1444:24;1455:10,12;
1456:7,9;1457:21
listed (2)
1429:16;1434:21
listen (1)
1459:25
listened (1)
1432:1
listening (2)
1431:20;1439:3
literally (1)
1453:16
litigation (2)
1418:24;1419:3
Little (23)
1397:12;1399:10,13,14,
16;1401:8,16;1424:19;
1427:7,7;1428:24;1429:10;
1430:9;1431:3;1432:19;
1434:22;1435:18;1451:23;
1453:13;1456:4;1460:24;
1468:4;1471:7
Livestock (5)
1389:21,24;1397:21;
1457:17,20
living (1)
1389:20
LLC (1)
1455:19
located (2)
1389:25;1415:24
location (6)
1392:16;1398:21,23;
1411:1;1424:2;1467:4
locations (3)
1425:13;1426:1;1460:20
Logan (1)
1415:25

long (5)
1396:19;1406:6;1417:25;
1431:25;1432:4
look (10)
1402:1;1420:15;1430:24;
1431:7;1434:1;1440:17;
1450:22;1457:4;1463:4;
1466:13
looked (4)
1401:23;1411:15;1450:1;
1470:19
looking (11)
1395:4;1408:13;1429:8,
14;1433:11;1440:15;1454:7,
9,14,15;1463:22
looks (5)
1393:24;1399:21;1401:22;
1462:12;1468:19
loss (3)
1396:12;1427:11;1431:2
losses (9)
1427:5,8,13,16,22,23;
1431:1;1436:5;1437:5
lot (6)
1411:4;1416:19;1438:21,
24;1439:17;1452:9
low (1)
1412:23
lower (1)
1411:14
lowered (1)
1396:17
Luke (5)
1438:1;1470:9,11;
1472:22,25
Luke's (5)
1437:23;1438:5,14;
1471:13;1472:22

M

Magic (2)
1461:16;1462:6
mailing (4)
1476:7,12;1478:3,5
main (1)
1403:24
maintain (1)
1412:19
maintains (1)
1402:3
maintenance (1)
1401:24
major (1)
1426:13
makes (1)
1431:6
making (3)
1424:25;1434:2;1435:15
malt (1)
1390:1
management (6)
1437:9;1444:3,6,10,17;

1450:11
manager (1)
1389:22
manifest (2)
1425:19;1430:13
many (4)
1404:1;1406:8;1417:12;
1442:15
map (4)
1423:9,12,13,15
maps (2)
1425:16,21
Mark (2)
1390:16;1403:16
marked (17)
1389:1;1394:14;1395:21;
1398:11;1400:11;1420:16,
19,22,25;1422:18;1423:4,9;
1424:14;1434:6,11;1460:14;
1464:14
master (1)
1416:10
material (1)
1444:13
materials (1)
1476:14
math (1)
1406:11
matter (5)
1422:22;1441:22;1443:1;
1469:21;1475:9
matters (2)
1417:2;1469:2
May (37)
1394:5;1411:20,21;
1415:10;1419:25;1420:2;
1422:9;1428:13;1431:5;
1441:18,25;1459:1,18;
1460:8;1462:14;1465:4;
1469:8,14,22,25;1470:1,6,
18,18,22,23;1471:7,8;
1472:5,7;1473:10,17,20;
1475:5,10,18;1476:22
maybe (9)
1392:22;1399:6;1414:17;
1421:22;1429:21;1440:17;
1462:12;1469:3;1471:9
McHugh (7)
1434:13;1443:16;1458:20;
1467:19;1474:25;1475:1;
1477:19
mean (7)
1426:25;1431:1;1433:17;
1446:11;1463:19,24;1474:8
measured (6)
1439:15;1461:12;1463:14,
16;1466:22,25
measurement (2)
1418:11;1419:16
measurements (2)
1467:3,6
meet (7)
1403:9,10;1409:11;

1431:12;1450:7;1452:6,12
meeting (1)
1411:5
meetings (1)
1411:5
Meghan's (1)
1476:14
member (3)
1411:6;1418:17,20
memo (6)
1424:21;1430:12;1434:6;
1460:23;1470:11,22
memorandum (3)
1434:12,13;1460:19
memorandums (1)
1470:6
memos (11)
1469:6;1470:9,14,17,18;
1471:6;1472:3,4,18,19;
1476:14
mentioned (8)
1399:1;1406:2;1449:5,9,
25;1457:5;1461:7;1471:2
mentioning (1)
1462:22
meters (1)
1471:18
metric (3)
1440:22;1441:14,14
Mexico (3)
1416:13;1419:3,4
middle (2)
1429:20;1462:4
might (7)
1426:19;1427:16;1428:9;
1431:19;1433:5;1456:22;
1471:4
Mike (1)
1443:22
mile (1)
1403:24
miles (4)
1399:6,6,7,8
Miller (9)
1428:15,22,23;1455:8;
1459:25;1460:1;1471:14;
1473:8,20
Miller's (1)
1429:11
mind (1)
1462:10
minor (1)
1409:18
minute (1)
1465:24
miss (1)
1415:11
missed (1)
1421:23
mistake (1)
1425:1
mistaken (1)
1468:6

misunderstood (2)
1404:13;1453:20
mitigate (6)
1437:17;1438:3,8,15,19;
1452:14
mitigated (1)
1438:10
mitigating (1)
1437:20
mitigation (11)
1417:10;1438:19,23;
1443:2,7;1447:13;1452:4,5,
6,8,12
mixed (1)
1465:20
mixing (1)
1477:20
model (41)
1418:20,25;1423:24;
1425:8;1435:19,20,23,24;
1436:2,4,6,7,12,22,23;
1437:1,3;1439:2,3,6,13,18,
20;1440:11,13,18,21;1441:1,
19;1446:9,12,20,21;1451:7,
10,20,21,23;1452:16,20,24
modeled (1)
1451:18
modelers (1)
1439:25
modeling (10)
1418:9,14,16,18,23,23;
1419:2,13;1425:6;1442:20
MODFLOW (1)
1436:18
moment (1)
1414:21
Monday (1)
1466:17
monitoring (1)
1432:7
Montclair (1)
1389:17
months (2)
1430:22;1442:15
more (27)
1399:7;1408:22;1413:1,
22;1417:16;1422:16;
1426:13;1427:21;1431:8;
1438:19;1439:14,15;
1440:23;1442:17,18;
1447:19,25;1448:11;1449:3,
11;1450:20,22;1456:3;
1468:20;1471:4;1475:5;
1476:10
morning (15)
1389:8,11,14;1399:2;
1409:12,13;1443:22;
1445:22;1446:4,5;1457:16,
23;1459:22;1471:15,20
most (4)
1418:12;1434:23;1439:16;
1453:8
motion (4)

1475:3,4,4,14
mountains (1)
1424:2
move (5)
1398:4;1400:4;1424:7,18;
1464:7
moved (1)
1419:23
moves (1)
1427:5
much (9)
1404:10;1408:21;1426:19;
1435:21;1438:19;1439:23;
1447:12,13;1451:11
municipal (1)
1409:17
mute (1)
1462:15
muted (2)
1462:12,13
myself (1)
1410:24

N

name (3)
1389:14;1415:20;1459:22
named (1)
1416:17
narrative (1)
1471:10
narrowly (1)
1471:4
nasty (1)
1411:11
native (1)
1398:1
Nature (2)
1392:2;1398:24
near (2)
1398:24;1403:22
necessarily (2)
1406:22;1410:13
necessary (1)
1410:1
need (9)
1410:6;1433:12,19;
1435:7;1438:20;1465:24;
1469:14;1476:8;1477:4
needed (6)
1431:9;1442:14;1453:8;
1456:5;1472:9,13
needing (1)
1414:1
needs (3)
1432:12;1436:16;1471:19
Nevada (1)
1416:13
nevertheless (1)
1444:18
New (4)
1416:13;1419:2,4;1453:15
next (9)

1396:13;1401:19;1405:18;
1407:22;1432:6;1456:6,10;
1457:8;1472:1
Nice (3)
1403:9,10;1409:11
nobody (1)
1401:22
Norberto (1)
1400:17
normal (2)
1405:24;1432:23
North (4)
1389:17;1392:20;1394:25;
1395:6
notably (2)
1417:4;1418:16
noted (2)
1420:6;1455:15
notice (5)
1472:8,10,17;1475:13,22
noticed (1)
1410:19
notices (1)
1475:6
notified (3)
1410:20;1411:2;1472:16
novel (1)
1477:8
NRCS (4)
1467:2,5,11,12
number (5)
1390:13;1431:13;1440:24;
1447:8;1471:19
numbered (1)
1393:20
numbers (3)
1402:14;1471:17,18
numerous (1)
1418:5

O

oath (2)
1459:13,14
O'Bannon (4)
1403:2;1445:13,15;
1467:21
object (2)
1420:7;1465:8
objected (1)
1421:15
objection (20)
1393:17;1394:11,12;
1395:13,19,20;1398:7,9,10;
1400:7,9,10;1419:17;
1420:6;1423:2;1424:9,12;
1464:9,11,12
observations (1)
1401:7
observe (1)
1408:24
observed (8)
1392:16;1402:5,9;1407:4,

16;1408:16;1433:10;1439:2
observing (1)
1401:18
obstruction (1)
1397:9
obstructions (1)
1392:6
obtained (1)
1416:9
obtaining (1)
1442:18
Obviously (1)
1467:2
occasionally (2)
1412:17,22
occurred (2)
1443:5;1477:10
occurring (1)
1444:6
off (8)
1390:23;1397:4;1406:4;
1414:18,21,22;1454:17;
1465:25
offer (3)
1393:15;1395:11;1398:5
office (1)
1415:23
OFFICER (105)
1389:2,6,9;1393:17;
1394:6,13;1395:13,21;
1398:7,11;1400:7,11;
1402:22,24;1403:2;1409:5;
1412:6,9;1413:1,3,7;1414:4,
7,11,14,20,23;1415:4,13,16;
1419:17,21;1420:5,9;
1421:19,21,25;1422:4,9,15;
1423:1;1424:9,13;1428:20;
1429:3,6;1434:10;1443:14,
17;1445:7,11,13,16,20;
1453:2;1454:1,22;1458:4,15,
18,22;1459:4,6,12,18;
1460:8,10;1462:14;1464:4,9,
13,17,23,25;1465:5,8,13,17,
25;1466:3,9;1467:16,18,21;
1468:1,4,12,18,23;1469:1,
16,20;1471:1;1472:2;
1473:3,11;1474:2,12,24;
1477:3,10,15,20,24;1478:6
O'Leary (8)
1402:22,23;1414:11,12;
1445:11,12;1467:16,17
once (1)
1425:17
one (34)
1391:7;1394:2,3,5;1395:1,
3;1396:8,23;1397:6;
1400:25;1411:23;1412:10;
1413:8,15;1421:10,10;
1423:2;1430:3;1435:15;
1436:20;1441:20;1443:18;
1451:7;1453:9,11;1454:3;
1456:10;1458:6;1460:12;
1461:7;1463:20;1470:8;

1471:12;1477:22
ones (2)
1431:7;1447:14
ongoing (1)
1419:3
only (11)
1390:22;1393:19;1406:5;
1431:6,7;1442:20;1447:14;
1449:11;1450:3;1451:19;
1475:12
onto (1)
1394:25
opened (1)
1411:14
opening (1)
1411:23
operate (1)
1433:24
operation (2)
1389:25;1390:2
operations (2)
1390:9,17
opportunity (5)
1437:17,20;1438:2;
1442:7;1467:22
orange (3)
1423:16;1461:9,11
order (8)
1421:17;1429:16;1436:14;
1439:24;1443:9;1450:8;
1458:10;1464:19
orders (1)
1423:18
orient (1)
1460:24
original (2)
1420:6;1471:21
others (3)
1430:25;1443:14;1448:6
ought (3)
1431:18;1444:25;1448:16
ourselves (2)
1397:21;1401:25
out (37)
1392:8,19,22;1394:25;
1395:5;1396:9,15;1397:1,3,
15;1399:8;1400:1,19,25;
1401:11,13,21;1407:5,11,12,
13,15;1408:7,13,19,21;
1409:24;1410:1,10,22;
1416:16;1417:18;1429:1;
1431:19;1433:4;1436:11;
1468:22
outline (1)
1423:23
over (9)
1402:5;1403:22;1404:4;
1435:4,5;1443:12;1461:12;
1466:21;1471:17
overseeing (1)
1418:19
oversight (1)
1422:10

own (3)
1389:22;1390:25;1465:19
owned (4)
1392:11,20;1395:1;
1417:22
owner (1)
1457:20
owners (1)
1457:12

P

package (5)
1436:21,21,25;1451:9,17
packages (2)
1436:18,20
page (4)
1429:17,20;1434:14;
1477:22
pages (1)
1477:24
paper (1)
1428:25
parallel (1)
1443:6
parcel (3)
1404:5;1405:1,2
park (1)
1398:25
part (7)
1395:7;1396:11;1450:12;
1474:3,12;1476:20,23
participate (7)
1411:6;1472:9,11,17;
1475:3,7,13
participating (2)
1475:11;1476:4
particular (7)
1436:22,23;1448:22;
1453:10,12;1454:8;1474:1
particularly (1)
1469:6
parties (10)
1419:24;1442:16;1460:25;
1468:14;1469:7;1475:6,9,
22;1476:3,4
partner (1)
1416:22
part-time (1)
1389:23
party (2)
1456:16;1475:12
passing (1)
1399:2
past (5)
1411:2;1413:14,15;
1432:5;1435:6
PATRICK (2)
1389:3,16
Patterson (1)
1416:17
pay (2)
1412:24;1443:24

paying (1)
1410:13
PDF (1)
1470:10
people (5)
1401:20;1431:1;1475:15,
16,24
per (4)
1435:1,5,5;1461:5
percent (8)
1406:14;1427:10;1431:2,
14,15;1441:5,6;1463:24
percentage (1)
1450:8
perfect (1)
1463:21
performed (1)
1441:21
perhaps (3)
1431:8;1432:9;1463:7
period (19)
1439:4,6,8,18;1440:6;
1443:3;1459:14;1460:21,22;
1461:6,13,15;1462:7,23,24,
24,25;1466:22;1477:16
periods (1)
1462:7
permission (3)
1397:2;1408:1,13
perpetual (4)
1391:14;1405:6,23;1406:4
PEST (1)
1441:7
photo (2)
1396:2;1399:4
photograph (8)
1393:2,6;1394:21;1396:4,
7;1398:18,19,21
photographed (1)
1396:20
photographs (1)
1392:24
physically (1)
1408:22
Picabo (14)
1389:18,19,21,24;1390:1,
3,5;1391:9;1392:5;1397:21;
1403:25;1452:1;1457:17,20
picture (5)
1393:4,9;1394:7;1395:16;
1396:22
piece (4)
1400:24;1403:20;1454:3;
1471:12
pieces (2)
1403:23;1428:25
pile (1)
1397:3
piping (2)
1453:15,16
pivots (1)
1453:15
place (3)

1404:22;1408:25;1447:6
plaintiffs (1)
1453:11
plan (3)
1417:14;1452:8,12
plans (9)
1401:4;1417:10,13;
1437:21;1443:2,7;1452:4,5,6
play (2)
1431:19;1448:12
played (1)
1416:25
Please (8)
1389:6,15;1415:15,20;
1416:4,15;1418:13;1426:4
plot (1)
1460:19
plotted (1)
1423:25
plugged (2)
1397:24,24
plus (1)
1411:19
pm (2)
1398:19;1470:1
point (9)
1448:15;1469:10,15;
1471:21;1473:13;1474:8;
1475:7,20;1478:11
points (2)
1424:3;1426:15
Pond (2)
1392:3,4
poor (1)
1460:7
portion (2)
1407:12,13
position (1)
1416:5
positive (1)
1463:13
possible (1)
1432:14
possibly (1)
1456:7
post-development (1)
1454:12
posted (2)
1472:5,12
potato (1)
1390:17
potatoes (1)
1391:17
potential (7)
1423:17,20;1428:11;
1438:9;1443:8;1448:16;
1454:14
potentially (9)
1391:17;1405:17;1426:18;
1427:17,22;1437:6;1439:8;
1448:6;1465:4
pouring (2)
1392:19;1397:15

Powell (3)
1440:10;1441:13;1446:22
Powell's (2)
1440:8;1446:16
power (2)
1410:13;1412:25
practices (1)
1463:8
pre-development (1)
1454:11
predict (2)
1435:20,25
Predicted (2)
1425:4,12
pre-hearing (1)
1475:19
prepare (1)
1460:15
prepared (6)
1421:7;1423:13;1434:12,
16;1460:18;1467:6
preserve (1)
1398:25
president (2)
1416:6,24
presumably (1)
1467:11
pretty (7)
1391:6;1399:22;1401:9,
21;1402:7,12;1406:24
prevent (1)
1452:8
previous (1)
1400:22
previously (3)
1459:16;1461:7;1471:7
primary (2)
1405:3;1449:19
prior (5)
1397:5;1417:1;1418:22;
1442:17;1444:24
priorities (7)
1428:11,12;1432:21;
1448:5,12;1449:19,21
priority (25)
1405:5;1428:6,9,13;
1429:12,17,19,21,22;1430:1,
3;1432:23;1447:23;1448:1,
1,23;1454:8,8,18;1455:20;
1456:7,18,20,25;1458:11
private (1)
1392:9
privilege (2)
1476:21,21
probably (3)
1396:25;1397:7;1468:20
problem (3)
1408:11;1438:20,23
procedure (1)
1441:8
proceed (2)
1459:7;1476:15
proceeding (17)

1403:15;1419:7;1421:16;
1423:19;1432:2,25;1442:12;
1444:5,16;1445:3;1446:6;
1455:6,17;1456:16;1457:13;
1460:25;1475:17
Proceedings (1)
1478:14
process (6)
1433:12,15;1437:21;
1441:4;1468:5;1471:4
produces (1)
1467:5
product (1)
1467:2
production (3)
1469:22;1471:22;1473:17
professional (1)
1416:12
program (1)
1441:7
projected (3)
1428:12;1429:23;1449:19
projecting (1)
1429:25
projection (1)
1428:5
projects (1)
1447:20
properly (1)
1437:4
properties (2)
1391:25;1403:18
property (18)
1390:25;1391:2,8;1392:1,
3,7,8,11;1394:25;1395:6;
1396:10;1397:17;1403:11,
19,20,24;1404:21;1405:11
provide (1)
1450:11
provided (5)
1466:17;1471:14,24;
1473:9;1474:10
public (5)
1469:23,24;1470:2;
1474:9;1476:24
pull (2)
1409:24;1410:1
pump (7)
1405:21;1406:2;1409:19,
21,25;1412:17,22
pumped (2)
1410:3;1441:15
pumping (19)
1405:25;1410:7,9;1419:8;
1438:21;1439:15,17,20,23,
24,24;1440:3,5,7;1452:19;
1454:15;1457:25;1471:13,
16
pumps (3)
1410:2;1412:16;1458:9
PURDY (16)
1389:3,8,14,16,20,23;
1396:1;1398:15;1402:19,25;

1403:7;1409:9;1412:13;
1414:5;1457:23;1458:9
Purdy's (1)
1457:15
purpose (5)
1409:23;1413:11,18;
1420:4;1421:16
purposes (2)
1415:7;1465:6
put (6)
1400:18;1401:20;1413:23;
1417:13;1439:17;1444:22
puts (1)
1441:19
putting (1)
1417:13

Q

qualification (1)
1476:17
qualifications (1)
1419:18
qualified (2)
1418:3;1420:8
qualitative (1)
1450:20
quality (1)
1412:19
quantitatively (1)
1450:22
quickly (2)
1455:3;1457:4
quite (5)
1392:4;1399:22;1435:4;
1446:8;1449:8

R

rain (1)
1432:13
raise (1)
1414:24
raised (1)
1469:5
ran (1)
1446:21
Ranch (6)
1389:18,21,25;1390:22;
1403:21,24
range (3)
1435:4;1441:5;1449:20
ranged (1)
1427:9
Rangen (1)
1417:8
ranges (1)
1463:22
ranging (1)
1430:22
rate (3)
1428:3;1456:13;1461:5
rates (2)

1435:12;1457:5
rather (6)
1397:9;1421:9;1440:23;
1441:17;1475:4;1477:13
reach (1)
1435:22
reaches (2)
1432:20;1448:4
readings (6)
1402:2,5,9;1467:8,10;
1471:19
ready (1)
1389:2
real (1)
1411:8
reality (1)
1441:10
really (1)
1406:24
realm (1)
1452:24
reason (4)
1410:14;1412:16;1447:1;
1468:13
reasonable (7)
1400:20;1433:25;1435:7,
12,13;1441:11;1444:24
reasonableness (1)
1444:13
reasonably (1)
1433:25
rebuild (2)
1408:8,10
rebuilding (1)
1407:21
rebut (1)
1468:16
rebuttal (7)
1459:10,20;1468:6,7,10,
13,14
recall (4)
1438:3;1455:15;1465:4;
1469:14
receive (5)
1447:5,15;1470:18;
1471:14;1476:3
received (23)
1394:14,16;1395:22,24;
1398:12,14;1400:12,14;
1422:19,21;1423:5,6;
1424:14,16;1464:14,16;
1469:19,25;1470:7,22,23;
1471:20;1472:5
recently (1)
1417:16
Recess (2)
1445:19;1466:2
recognize (2)
1466:16;1478:10
recognized (1)
1420:10
recollection (1)
1402:14

record (20)
1389:9,15;1414:18,21,22;
1415:21;1419:23;1423:4;
1445:20;1455:23;1464:8;
1466:1,4;1475:1,2;1476:11,
20,24;1477:1;1478:11
recording (2)
1445:21;1466:4
records (3)
1469:23;1470:2;1474:9
Recross (2)
1413:5;1458:5
RECROSS-EXAMINATION (2)
1413:9;1458:7
redirect (8)
1412:7,10,11;1413:1;
1454:1,4,23;1455:1
re-diverting (1)
1414:1
reduce (2)
1431:3,11
reestablished (1)
1407:19
reference (1)
1422:8
referenced (2)
1422:7;1474:21
referred (3)
1408:15;1421:22;1461:25
referring (1)
1428:20
reflected (1)
1463:17
reflects (1)
1475:2
regarding (3)
1419:8;1473:8;1476:14
registered (1)
1416:12
regulations (1)
1411:11
related (11)
1419:8;1422:17;1454:13;
1459:24;1465:2;1470:6,8,11,
14;1471:12;1472:20
relates (1)
1417:14
relating (3)
1389:4;1415:2;1459:16
relations (1)
1462:1
relationship (4)
1462:5;1463:4,6,13
relatively (1)
1440:12
relaxing (1)
1432:9
relied (1)
1460:23
relies (1)
1467:6
remedy (1)
1433:19

remember (3)
1438:5;1462:19;1472:8
remind (2)
1415:15;1462:14
removal (1)
1397:19
removed (2)
1397:5,22
rent (1)
1390:16
renting (1)
1390:24
repair (1)
1411:7
replicate (2)
1446:9,11
replication (1)
1446:17
report (7)
1428:23;1429:11;1446:14;
1447:12;1467:5,11,12
REPORTER (1)
1395:2
represent (1)
1403:7
representation (3)
1440:7;1460:4,7
representatives (2)
1473:6,19
represented (2)
1434:18;1440:3
representing (3)
1409:9;1420:16;1446:7
represents (5)
1423:17;1436:7;1461:4,8,
11
request (17)
1441:23;1469:22,24;
1470:2,5;1471:9,9,11;
1473:15,16;1474:1,8,10;
1476:13;1477:1,8,12
requested (4)
1419:18;1470:21;1472:3;
1473:5
requests (3)
1469:18;1471:22;1474:22
required (3)
1449:4,12;1472:9
requirements (2)
1452:7;1475:22
reserve (1)
1466:7
reserved (1)
1467:22
reservoir (1)
1461:14
residence (2)
1389:16,18
resource (3)
1418:8;1419:14;1438:24
resources (5)
1416:7,18;1417:1;
1459:24;1477:12

respect (1)
1402:10
respond (1)
1408:3
responding (1)
1470:2
responds (1)
1408:7
response (2)
1472:23;1474:9
responses (3)
1424:13;1425:4,12
responsive (1)
1474:1
rest (2)
1428:7,7
rests (2)
1414:10,13
result (3)
1426:10;1447:12;1449:12
resulting (1)
1449:16
results (4)
1425:6;1446:23;1456:3;
1457:9
resume (2)
1416:3;1422:24
review (3)
1434:17;1442:7;1470:16
reviewed (1)
1421:6
reviewing (4)
1417:12,19;1418:1;
1440:18
rider (2)
1399:1;1401:2
RIGBY (43)
1393:19,22,25;1394:3,12;
1395:20;1398:10;1400:10;
1409:5,6,8,9;1412:3,14;
1413:7,8,10;1414:3;1420:5,
6;1421:19,20;1424:12;
1453:2,3,5,6,24;1459:3,5;
1464:12,20,23,24;1465:14;
1467:25;1468:7,11,15;
1477:5,6,15;1478:1
right (45)
1391:4,5,6,14,16;1404:21;
1405:9,10;1406:1,12,25;
1407:22;1410:17,17;
1411:11,24;1413:21;1414:1,
24;1416:16;1424:17;1430:2;
1432:20;1437:24;1445:16;
1447:16;1448:9,9;1454:1;
1455:10,19,24;1456:11,21,
25;1459:11;1460:12;
1461:19;1462:4;1466:8;
1469:1;1473:19;1476:19;
1477:18;1478:7
rights (69)
1390:12,14,15,20,23;
1391:3,8,10,10,12;1405:5,8,
13,15,22;1406:6;1409:15,17,

18,19;1413:24;1416:19,20;
1417:7,22;1418:1,9;1419:6,
15;1420:15;1421:2,8;
1426:17;1428:15,18;
1429:10,13,14,16,18,19,21,
24;1430:1,4,12,18,21;
1433:6,17,18;1434:22;
1444:20;1449:4,10,13;
1455:5,16,18,22;1456:2,6,6,
25;1457:5,8,13,21;1473:20
Rinker (1)
1392:11
Rio (1)
1419:3
Ritter (5)
1430:8;1447:4;1448:9;
1455:17,22
River (27)
1390:23;1392:5,15;
1410:1,5,9;1417:5;1419:1;
1423:14,24;1425:7;1427:7,
7;1434:22;1435:21;1436:8,
17,20,22;1448:12;1451:24;
1453:16,16;1458:10;
1460:21;1461:10;1463:16
Road (1)
1389:19
Rob (1)
1392:21
Rock (2)
1390:22;1403:21
role (1)
1416:25
roughly (5)
1403:25;1431:3,14;
1451:20;1457:7
round (1)
1458:24
route (5)
1436:2,19,24;1451:18,23
routing (2)
1442:23;1452:21
R-squared (8)
1461:24,25;1462:4;
1463:18,19,20,21,23
Rule (3)
1444:9,12,18
ruled (3)
1419:24;1420:2;1421:17
Rules (6)
1444:3,6,10,17,23;1450:11
ruling (2)
1420:3,7
run (5)
1390:2;1398:25;1412:15;
1425:7;1446:12
running (3)
1402:15;1408:3;1411:18
runs (1)
1401:21
rush (1)
1411:17

S

same (16)
1394:22;1397:22;1403:14;
1407:9;1420:6;1421:14,19,
20;1424:25;1429:2;1446:23;
1460:22;1461:12,15;
1464:18;1467:12
sat (1)
1450:3
saw (3)
1399:2;1400:22;1407:21
saying (3)
1451:16;1453:21;1468:19
school (3)
1416:16;1459:3,5
science (2)
1416:8,10
Sean (3)
1459:9,15;1466:13
season (10)
1396:25;1397:1,7;1428:8;
1432:5,6;1461:8;1462:3;
1463:14,15
seated (1)
1389:7
second (5)
1401:18;1402:15;1461:5;
1470:10,23
secondary (1)
1405:4
section (3)
1400:19;1407:14;1408:19
secure (1)
1468:20
Seed (1)
1403:17
seeing (1)
1448:17
seeking (1)
1420:1
seems (4)
1433:1;1435:14;1438:12;
1448:25
seepage (1)
1437:5
Semanko (1)
1462:12
send (1)
1407:8
senior (15)
1391:12;1409:9;1413:24;
1416:7;1424:19;1429:17;
1434:22;1435:21;1447:17;
1449:4,10;1452:7,12;1453:7,
11
seniors (36)
1425:20;1426:2,8;
1427:19;1428:4;1430:6,19;
1431:5,9;1433:20;1434:3,
22;1435:8;1437:2;1438:10,
22;1442:21;1447:13,20;

1448:2,5,9,11,17;1449:5,7,
17;1450:2,4,15,25;1451:4,
11;1452:22;1473:6;1475:25
sense (1)
1410:15
sensitive (1)
1412:21
sent (2)
1396:13;1449:1
separate (1)
1469:24
September (11)
1391:11;1405:7;1406:6;
1413:21,22;1430:13,23;
1461:4,15;1466:20,23
serve (2)
1472:13;1475:18
served (4)
1391:1;1475:6,8;1476:9
service (1)
1469:8
services (1)
1399:1
serving (1)
1475:16
set (1)
1441:5
settled (2)
1411:17,18
seven (1)
1470:9
several (3)
1396:8;1417:3;1448:10
shared (1)
1410:23
shepherd (2)
1448:22;1451:10
shepherded (1)
1433:5
shepherding (2)
1433:2;1448:21
Shifting (3)
1435:18;1439:1;1441:20
shoot (1)
1408:1
short (4)
1431:7;1433:22;1466:4;
1477:16
shortage (1)
1431:5
shortages (2)
1430:17;1438:10
show (1)
1451:10
showed (2)
1440:15;1447:19
showing (3)
1426:1;1430:12;1460:19
shown (2)
1425:9;1426:23
shows (8)
1423:14;1425:24;1430:20;
1434:23;1447:11,25;1448:4;

1461:1
shuffled (1)
1393:24
side (4)
1396:9,23;1397:4,15
significant (6)
1392:16,19;1395:5;
1396:16;1400:2;1402:12
significantly (2)
1399:7;1401:9
silent (1)
1462:16
Silver (40)
1391:22,25;1392:1;
1393:8,13;1396:9;1398:23;
1399:15;1402:13;1403:16;
1405:3,6,10;1406:5;1409:20,
22;1412:20;1425:19;
1426:10,14,17,20,23;
1429:10;1430:21;1432:19;
1436:1,15,24;1439:11;
1452:19;1456:4;1457:9;
1460:5;1461:5,19;1462:2,5;
1463:14,25
similar (1)
1442:16
Simplot (3)
1392:21;1395:1;1411:2
Simplot's (1)
1396:10
simulate (1)
1437:4
simulated (2)
1430:12;1436:8
Simultaneous (2)
1477:16,21
site (2)
1470:3,15
situation (1)
1406:25
six (3)
1402:17;1439:7;1470:14
ski (1)
1424:2
small (2)
1398:25;1409:17
Snake (2)
1417:5;1418:18
snuck (1)
1459:10
soil (1)
1398:1
somebody (1)
1462:11
somehow (1)
1448:7
someone (1)
1467:10
sometime (1)
1470:20
sometimes (4)
1410:11;1461:25;1463:3;
1465:19

somewhere (1)
1463:22
sorry (12)
1393:25;1395:2,3;1398:4;
1399:16;1407:7;1413:15,17;
1455:9;1462:17,23;1472:6
sort (7)
1416:20;1418:18;1428:10;
1435:11;1441:10;1449:2;
1454:15
sorts (1)
1440:4
source (7)
1404:14,15;1405:2,3;
1406:3,5;1467:1
sources (1)
1406:21
south (15)
1392:20;1393:15;1394:14;
1395:11,22;1396:9;1398:6,
12;1400:5,12;1414:9;
1425:5,15,24,25
southeast (1)
1392:10
spans (1)
1399:19
speak (2)
1415:14;1449:20
speaking (1)
1431:23
specific (1)
1448:17
specifically (1)
1430:7
spend (2)
1389:23;1390:5
spent (2)
1397:20;1400:18
spike (4)
1402:12;1411:13,16,21
spoke (2)
1397:19;1401:2
Sportsman (10)
1426:5,16;1427:6;
1430:20,24;1435:24;1437:6;
1451:21;1461:6;1463:14
Sportsman's (1)
1427:1
spread (2)
1401:11,13
Spring (8)
1403:21;1404:2,2,3,15,15,
23,25
Spronk (2)
1416:6,21
staff (14)
1416:21;1421:6;1427:9;
1442:3;1458:25;1460:19;
1469:6;1470:6,17;1471:6;
1472:4,18,19,22
standard (1)
1450:6
standing (1)

1422:4;1430:5;1448:9;
1449:4,7,10,13;1455:16;
1456:2,5,25;1460:20;1462:6,
22
Thursday (3)
1397:24;1407:8;1411:16
Tim (5)
1470:11;1471:12;1472:22,
22,25
times (2)
1418:5;1451:6
timing (2)
1472:19;1477:7
Timmerman (1)
1403:22
titled (1)
1425:4
today (5)
1402:21;1472:22;1473:9;
1477:4,14
together (3)
1417:14;1426:16;1430:10
told (1)
1405:16
took (9)
1393:3,4;1394:7,22;
1398:19;1399:4;1406:20;
1408:21;1447:6
tool (2)
1452:16,18
topic (4)
1424:18;1433:9;1441:21;
1465:12
topics (1)
1451:7
tore (5)
1407:5,13,14;1408:19;
1410:22
total (10)
1393:12;1404:8;1405:9;
1429:24;1447:6,8;1449:15,
16;1457:6;1471:15
totaling (1)
1457:22
towards (2)
1392:5;1399:9
town (1)
1403:25
trace (2)
1425:18;1426:4
track (2)
1397:2;1398:23
tracks (1)
1443:7
trapped (1)
1408:13
triangle (5)
1419:9;1423:16;1425:11;
1426:9;1431:12
tributaries (5)
1426:11,12,13,15;1436:1
tributary (1)
1390:24

true (3)
1432:25;1433:1;1435:3
truth (3)
1389:4;1415:2;1459:16
try (5)
1400:16;1411:6;1412:18;
1449:9;1462:15
trying (12)
1397:22;1400:18;1413:20,
20,21;1415:9;1422:10;
1443:24;1448:7,15;1468:21;
1471:10
turn (6)
1398:2;1405:20,24;
1412:22;1424:23;1455:8
turned (3)
1413:14,15,16
turning (1)
1443:12
two (8)
1397:2;1403:23;1409:21;
1410:4;1439:9,9;1457:1;
1470:10
type (2)
1448:15,19
typically (4)
1405:24;1409:25;1434:1;
1438:23

U

ultimately (1)
1416:22
uncertainty (1)
1433:9
under (15)
1392:15;1403:20;1423:13;
1426:23;1429:20;1432:23;
1443:8;1444:6,17;1446:20;
1448:22;1459:13;1469:24,
24;1476:15
underlying (1)
1473:24
understood (3)
1449:18;1472:23;1473:14
unfolding (1)
1443:6
Unfortunately (1)
1407:25
University (2)
1416:9,11
unknowns (1)
1433:10
unmet (1)
1440:2
up (38)
1391:11,19;1393:7,11;
1399:20;1400:1;1402:16;
1411:14,23;1412:4;1415:15;
1418:17;1419:25;1423:22,
24;1426:9,17,19;1430:10,21;
1431:21;1432:10,14,19;
1434:7;1436:16,17;1446:22;

1447:6,19,25;1448:4;
1455:22;1456:3;1460:24;
1462:18;1463:2;1465:20
updates (1)
1472:21
upon (5)
1401:7;1421:17;1448:8;
1452:6;1467:6
upstream (5)
1396:5;1400:2;1401:10;
1423:22;1424:4
use (16)
1409:23;1410:6;1419:1;
1425:10,11;1434:18,21;
1439:10;1440:1,2,19,21;
1441:13;1448:13;1450:23;
1452:22
used (8)
1436:21,25;1441:8;
1451:9;1461:18,19;1476:7,
11
useful (1)
1435:9
user (2)
1441:10,10
users (20)
1409:10;1424:19;1427:19;
1432:24;1433:3,5;1435:20,
23;1437:16;1438:18;1441:2;
1442:24;1443:6;1447:17;
1449:1;1452:7,13;1453:7,
12;1473:23
uses (2)
1440:21;1442:21
USGS (6)
1460:20;1461:12;1467:3,
7,7,10
using (8)
1425:7;1431:13;1433:24;
1434:3;1435:16;1440:23;
1441:17;1451:17
usually (1)
1465:20

V

Valley (19)
1394:14;1395:22;1398:12;
1400:5,12;1414:9;1415:6;
1417:23;1419:6;1423:15,23,
24,25;1424:1,3;1441:23;
1470:5;1471:8;1474:22
Valley/Galena (6)
1393:16;1395:12;1398:6;
1425:15,24,25
value (1)
1461:7
values (7)
1435:2;1440:16;1441:18,
19;1461:24;1462:3;1463:18
valve (1)
1410:4
variation (2)

1463:24;1464:1
variety (1)
1405:8
various (6)
1425:13;1426:11,14;
1441:2;1449:25;1451:6
vary (3)
1431:1;1435:3,4
verbally (1)
1473:7
verification (1)
1471:3
verified (1)
1446:22
verify (3)
1446:14;1471:2;1472:3
vicinity (1)
1427:20
Vincent (15)
1459:9,12,15,22;1460:13;
1462:9,17;1463:1;1464:21;
1465:2,9,13;1466:7;1468:2;
1470:14
volume (3)
1461:10,13;1462:6
volumes (1)
1461:21

W

waived (1)
1476:22
walk (2)
1461:1,17
warrant (1)
1440:17
waste (1)
1433:25
wasting (1)
1451:4
watching (2)
1402:7;1410:25
water (233)
1390:11,12,14,14,19,23;
1391:1,1,3,6,8,12,19;
1392:19,22;1393:11;1395:5;
1396:16,18;1397:12,15,18;
1399:20,25;1400:1,5,21,22;
1401:3,10;1402:3;1403:23;
1404:14,15,19,20,20,23,24;
1405:2,3,4,5,25;1406:2,3,6,
16,21,25;1407:13,16;1408:3;
1409:10,14,16,17,18,19;
1410:6;1411:5,17;1412:17,
20,21;1413:22,24;1414:9,12;
1416:6,7,18,19,20,21;
1417:1,5,7,15,17,22;1418:7,
7,8,8,9,9,10,10,11,15,16,20,
25;1419:1,6,8,13,13,14,14,
15,16;1420:15;1421:2,8;
1423:24;1424:4,19,19;
1425:7,15,18,20;1426:5,6,
10,11,14,17,18,19,22;1427:5,

10,11,16,18;1428:15;
1429:12;1430:18;1431:2,8;
1432:20,22,24;1433:2,5,17,
18,22,23,24;1434:3,17,19,21,
22;1435:1,7,16,19,20,20,21,
25;1436:2,7,9,10,10,11,19,
24;1437:2,7,16;1438:21;
1439:10;1440:1,2;1441:2,2,
12,15;1442:21,23;1444:19;
1447:5,12,13,17,19,21,25;
1448:2,4,8,11,13,21,22;
1449:1,1,3,6,11,16;1451:4,
10,11,18,19,23;1452:1,21,
22;1453:7,12;1454:12;
1455:6,9,17,18,19;1456:3,5,
11,25;1457:9,10,24;1458:9,
10;1459:23;1460:5;1471:13,
16;1473:18,19,23,24;
1477:11
Water/Galena (1)
1400:5
watermaster (4)
1410:20;1411:3;1427:24;
1447:20
watermaster's (1)
1447:4
way (15)
1389:10;1391:10,11;
1392:6;1412:2;1427:19;
1436:5;1437:20;1438:7,15;
1452:11;1454:14,15;1469:7;
1475:12
ways (2)
1392:4;1438:9
weapon (1)
1408:1
website (7)
1421:5;1470:17,19;
1472:6,12,18;1475:15
Wednesday (15)
1392:17;1393:4;1394:8,
23;1395:17;1396:3;1407:5,
6,9,10,12;1408:17;1410:19,
21;1442:4
weeds (1)
1396:23
week (13)
1392:17;1393:5;1394:8,
23;1397:23;1401:19;1402:6;
1405:18;1413:14,15;1442:4;
1470:7;1472:1
welcome (1)
1409:4
well-established (1)
1408:22
wells (1)
1413:14
Weren't (1)
1453:14
west (1)
1403:25
what's (5)
1398:21;1409:23;1425:3;

1456:13;1474:14
whole (1)
1452:9
who's (1)
1433:16
whose (1)
1473:20
wide (2)
1400:25;1435:4
widespread (1)
1438:25
wild (1)
1401:21
Williams (1)
1398:24
Willow (5)
1390:23;1391:2;1399:25;
1403:23;1404:17
wish (2)
1464:20;1468:7
within (9)
1425:5,11,25;1431:11;
1432:20;1436:24;1451:18;
1452:24;1460:20
without (2)
1433:25;1476:16
WITNESS (16)
1389:11;1394:9;1395:3,
17;1409:4;1412:4,8;1414:6;
1422:2;1458:17;1459:7,10;
1460:9;1464:3;1468:3;
1469:14
witnesses (10)
1414:7,15;1419:24;
1420:1;1458:18,23;1468:7,
10,13;1472:1
WMIS (1)
1471:17
Wood (35)
1390:23,24;1391:7;
1397:12;1399:11,13,14,16;
1401:8,16;1403:8;1404:18;
1423:14,24;1424:20;1425:7;
1427:7,7;1428:24,24,24;
1429:10;1431:3;1432:19;
1434:22;1446:7;1451:23;
1456:4,11,15,19,24;1460:21;
1461:10;1463:16
word (1)
1452:11
words (3)
1410:9;1428:12;1450:7
work (10)
1389:21;1397:22;1402:10;
1416:13,19,20;1446:9,10,17;
1469:4
worked (2)
1416:17;1478:10
working (3)
1418:15;1452:5;1478:8
works (1)
1468:15
worry (1)

1407:3
write (1)
1422:10
writings (1)
1469:25
written (1)
1476:14
wrote (1)
1421:22

Y

yards (2)
1393:7;1396:5
year (13)
1390:6;1397:7;1404:11;
1405:14,24;1413:11;
1429:24;1432:6;1448:13;
1454:10;1461:7,21;1462:19
years (8)
1397:2;1434:18,19,20;
1439:7,16;1441:17;1466:21
yesterday (9)
1398:20;1399:2;1407:20;
1408:18,19;1446:16;
1473:15;1477:17,19

Z

zero (1)
1463:19
zip (1)
1470:11

1

1 (25)
1416:2;1420:19,22;
1421:25;1422:7,8,18,19,20,
20,24;1423:4,6;1424:23,24;
1425:5,8;1428:16,22;
1429:19,22;1434:6,11;
1455:8;1468:6
1.59 (1)
1435:5
1:30 (1)
1398:19
10 (6)
1395:7;1396:11;1402:3,
15;1427:12,14
100 (2)
1393:7;1406:14
1000 (1)
1415:25
10th (1)
1477:17
11:17 (1)
1478:14
11th (2)
1475:3;1477:19
120 (1)
1404:3
13 (2)

1469:22;1473:17
13th (1)
1474:8
14th (1)
1475:6
15 (1)
1429:21
17 (1)
1471:16
17th (5)
1470:18,19;1472:4,5;
1477:18
18 (2)
1393:11;1471:16
1800 (1)
1389:17
1881 (1)
1391:4
1883 (15)
1405:7,9,14,15,22;
1413:21;1414:1;1429:19,22;
1430:3;1455:19;1456:19;
1457:1,1,21
1883s (1)
1391:13
1890s (1)
1391:11
18th (4)
1470:21;1472:6;1477:21,
21
19 (1)
1471:17
1983 (1)
1405:13
1985 (3)
1416:9,16,20
1990 (2)
1416:11,21
1991 (2)
1460:21;1462:7
19th (3)
1470:22;1472:10;1475:10

2

2 (20)
1420:17,17,25;1421:23;
1422:2,18,18,20,20;1424:20,
24,25;1425:3,4,19;1426:6,
24;1430:11;1469:3;1471:5
20 (6)
1392:7,10;1405:7;
1427:10;1457:22;1471:17
200 (1)
1404:6
2000 (1)
1434:20
2000s (1)
1411:8
2001 (2)
1462:7,24
2009 (1)
1434:20

2010 (1)
  1434:20
2011 (1)
  1462:25
2014 (3)
  1439:6,19,19
2016 (1)
  1471:16
2017 (1)
  1418:2
2020 (7)
  1427:9;1460:21;1462:7,8,
  23,25,25
2021 (2)
  1434:12;1466:21
20th (3)
  1469:25;1472:6,15
20-year (1)
  1462:24
21 (2)
  1431:3,4
213 (1)
  1389:18
21st (4)
  1441:25;1470:7,23;1471:8
23 (1)
  1430:22
230 (3)
  1404:7;1405:2;1406:8
24 (1)
  1393:12
24th (2)
  1470:1;1475:18
25 (1)
  1431:2
27 (3)
  1425:15,21;1426:1
28 (3)
  1430:22,24;1431:14
2nd (1)
  1434:12

3

3 (13)
  1402:24;1414:14;1419:24;
  1423:9;1424:8,14,16;
  1430:8;1443:15;1458:19;
  1467:18;1469:3;1474:18
30 (5)
  1402:16;1411:19;1431:14,
  15;1457:7
30th (1)
  1429:23
30-year (2)
  1461:6;1462:24
33 (3)
  1425:16,22,24
35 (2)
  1402:16;1411:25
350 (1)
  1404:8
37 (3)

1411:4;1427:10;1471:16
37-00- (1)
  1455:23
37-0344 (1)
  1455:19
37-0423 (1)
  1455:24
37-344 (1)
  1456:11

4

4 (1)
  1430:9
4.2 (1)
  1430:8
4:58 (1)
  1470:1
42 (3)
  1444:9,12,18
42-237ag (1)
  1476:16
43 (12)
  1389:1;1393:2,15,16;
  1394:1,1,3,14,16;1396:6,20;
  1407:5
44 (6)
  1389:1;1394:17;1395:11,
  12,22,24
45 (7)
  1389:1;1395:25;1398:5,5,
  6,12,14
46 (7)
  1389:1;1398:2,16;1400:6,
  12,14;1408:16
4-6 (1)
  1456:19
48 (1)
  1470:12
49 (1)
  1455:24

5

5 (1)
  1466:14
5,000 (1)
  1390:1
50 (2)
  1396:5;1441:5
502 (1)
  1476:17
54 (5)
  1427:14,17,19,21,22

6

6 (5)
  1456:14;1460:14;1464:7,
  14,16
60 (1)
  1405:9
6-14 (1)

1457:1
635 (1)
  1471:17
6th (2)
  1430:3;1455:19

7

741041 (1)
  1476:17
77 (1)
  1463:23

8

8 (1)
  1434:14
8.5 (7)
  1430:10;1431:6,12,14;
  1447:8;1449:11;1456:3
80 (2)
  1463:23,24
82 (1)
  1463:23
83 (2)
  1391:11;1406:6
83s (1)
  1413:22
8th (1)
  1476:13

9

9 (2)
  1429:24;1473:17
90 (1)
  1441:6
91 (1)
  1462:23
9-1 (2)
  1457:1,21
93 (5)
  1392:14,14,15;1393:7;
  1399:5
95 (1)
  1439:19
9th (4)
  1442:5;1470:7,12;1476:16