

Audio Transcription



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  
\_\_\_\_\_ )

TRANSCRIPT OF RECORDED PRE-HEARING CONFERENCE  
MAY 24, 2021

TRANSCRIBED BY:  
JEFF LAMAR, C.S.R. No. 640  
Notary Public

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14 Also Present Remotely:

15 Rusty Kramer

16 Lawrence Schoen

17 Pat McMahon

18 Fred Brossy

19 Alton Heiser [phonetic]

20 Mark Sabala

21 Rodney Hubsmith

22 Bill Arkoosh

23 John Arkoosh

24 Joe Matheney

25 Nick Westendorf

- 1 Carl Legg
- 2 Lori Graves [phonetic]
- 3 Christian Petrich
- 4 Don Taber
- 5 Rachel Cohen [phonetic]
- 6 Neil Crashendy [phonetic]
- 7 Erika Phillip [phonetic]
- 8 Corey Allen [phonetic]
- 9 Sharon Lee
- 10 Megan Jenkins
- 11 Carl Sinnilla [phonetic]
- 12 Johanna Bell [phonetic]
- 13 Deersa Flores [phonetic]
- 14 Jennifer Sukow
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1                   (Begin transcription at 5:31 of audio  
2                   file.)

3                   DIRECTOR SPACKMAN: Okay. Welcome everybody.  
4 My name is a Gary Spackman, Director Idaho Department  
5 of Water Resources.

6                   We are meeting here today for a pre-hearing  
7 conference in the matter of Basin 37 administrative  
8 proceeding. And we have a number of participants, both  
9 in person and on Zoom or on telephone. So -- and we  
10 are preparing for a hearing, I'll remind everybody,  
11 that's scheduled for June 7th through 11th, in two  
12 weeks.

13                   So because of the nature of the way this  
14 particular matter was initiated, I will depart from the  
15 regular approach that I normally take at a pre-hearing  
16 conference. I'll be more assertive today. And I want  
17 to talk just briefly here about how people can  
18 participate.

19                   So again, there's some people here and also  
20 many more on Zoom. If you want to comment, will you  
21 raise your hand, please. We have somebody remotely  
22 running the Zoom program. And I think everybody should  
23 be muted. If you're just on the phone, we'll try to  
24 figure out a way to have you chime in.

25                   MR. BAXTER: Director.

1           DIRECTOR SPACKMAN:   And -- yes.

2           MR. BAXTER:   This is Garrick Baxter.  Those on  
3 the phone are muted.  If they want to take themselves  
4 off of mute, all they have to do is hit star 6.  And it  
5 will unmute them, and they can make us aware that  
6 they'd like to talk.

7                       Thank you.

8           DIRECTOR SPACKMAN:   Thank you, Garrick.

9                       So now you know who the grand wizard is  
10 behind the curtain.  And Garrick Baxter will be running  
11 the Zoom program in the background.

12                      Okay.  What I want to do first is to call  
13 roll.  And I want to do this in a different way.  So I  
14 have spent some time trying to categorize the various  
15 participants and those who have filed notices.  And  
16 I've separated those who have filed a notice of  
17 appearance into four different groups.

18                      So let me tell you what they are, and then  
19 I'll read -- and these groups and the names under them  
20 will -- can shift, because I don't know where some  
21 people are located or what the nature of their concern  
22 is with this matter.

23                      So the first group is a group that I would  
24 characterize as surface water users holding senior  
25 surface water rights either on Silver Creek or the

1 Little Wood River.

2           And the second group is a grouping that, at  
3 least as best that I could determine, are holders of  
4 groundwater rights that bear junior priorities and may  
5 be the subject of this particular matter and possible  
6 curtailment.

7           Then the third group is a group of entities  
8 or individuals located within the Wood River Basin but  
9 outside of the area identified for curtailment.

10           And then the fourth group is what I would  
11 characterize as everybody else. And those who are in  
12 the "everybody else" category can clarify for me what  
13 their -- their interest is.

14           And I think we need to talk about each one  
15 of these groups and what the expectations of these  
16 groups or participants are.

17           So let me go back now to the first group,  
18 and I'll call roll. After I finish them, then I want  
19 anybody who is participating to identify themselves if  
20 they choose to. So again, the first group would be  
21 those holding or representing holders of surface water  
22 rights authorizing diversion from Silver Creek or the  
23 Little Wood River.

24           And I have Barbara Farms, LLC.

25           MR. BROSSEY: Here.

1           DIRECTOR SPACKMAN: And that's Fred Brossy. I  
2 see you here, Fred.

3           Now, I want to say right out of the -- at  
4 the beginning as I go through, if -- if the water  
5 right -- if the water rights that a person is claiming  
6 are being injured in some way, if the water rights are  
7 held by a corporation, a partnership, or some other  
8 entity, then I expect that that entity be represented  
9 by counsel, not by an individual in this proceeding.

10           So I have a number of individuals, and I  
11 want to know if the water rights are held by a  
12 corporation, partnership, or other legal entity, trust,  
13 any of those, then I expect that that entity be  
14 represented by counsel, not by an individual.

15           Okay. So again, I come back to it.  
16 Barbara Farms, LLC. Fred I see you're here.

17           Big Wood and Little Wood Water Users  
18 Association. I'm looking at the Hollywood Squares. I  
19 have Jerry Rigby and Joe James.

20           Are you --

21           MS. CARTER: Jerry Rigby is on.

22           DIRECTOR SPACKMAN: -- participating? Jerry, I  
23 see you.

24           MR. RIGBY: Yes, Mr. Director, I am here.

25           DIRECTOR SPACKMAN: Okay. Thank you.

1 Big Wood Canal Company represented by Kent  
2 Fletcher.

3 MR. FLETCHER: I'm here. Thank you.

4 DIRECTOR SPACKMAN: Thank you, Kent.

5 Big Wood Farms, LLC? I have an Alton --  
6 and I'm sorry Alton Heiser [phonetic].

7 MR. HEISER: It's pronounced Heiser.

8 DIRECTOR SPACKMAN: Heiser. I'm sorry. I knew  
9 I'd blow that. Is Alton on?

10 MR. HEISER: Yes. I'm present, sir.

11 DIRECTOR SPACKMAN: Okay. Larry Schoen? Is  
12 Larry on?

13 Okay. Sabala or Sabala.

14 UNIDENTIFIED SPEAKER: Sabala.

15 DIRECTOR SPACKMAN: Sabala Farms. Mark Sabala.

16 MR. SABALA: Yes, sir.

17 DIRECTOR SPACKMAN: Thank you, Mark.

18 Kaysi and Rodney Hubsmith?

19 MR. HUBSMITH: Yes, I'm here, Mr. Director.

20 DIRECTOR SPACKMAN: Thank you, Rodney.

21 David Hults?

22 Charles Newel?

23 Bill Arkoosh?

24 MR. BILL ARKOOSH: I'm here, Mr. Director.

25 DIRECTOR SPACKMAN: Oh, are you Charles?

1 MR. BILL ARKOOSH: Bill.

2 DIRECTOR SPACKMAN: Oh, Bill. Thank you, Bill.

3 MR. BILL ARKOOSH: Yeah.

4 DIRECTOR SPACKMAN: Thank you.

5 I'm not looking at the gallery or the  
6 gallery's too far away, one or the other.

7 John Arkoosh?

8 MR. JOHN ARKOOSH: Here, Mr. Director.

9 DIRECTOR SPACKMAN: Thanks, John. Joe  
10 Matheney -- Matheney?

11 UNIDENTIFIED SPEAKER: Matheney.

12 DIRECTOR SPACKMAN: Matheney. I got it right  
13 the first time.

14 Nick Westendorf? I see Nick on the board.

15 MR. WESTENDORF: Yes, I'm here. Thank you.

16 DIRECTOR SPACKMAN: Nick, are you -- thanks,  
17 Nick.

18 Okay. That's the -- that's the list in the  
19 first category.

20 MR. THOMPSON: Director, can you clarify who  
21 wasn't here on that list?

22 DIRECTOR SPACKMAN: Yes. David Hults, Charles  
23 Newel, and Joe Matheney. Joe Matheney.

24 MS. CARTER: Also Lawrence Schoen.

25 DIRECTOR SPACKMAN: Oh, and Lawrence Schoen.

1 Sorry. Those four are not participating today.

2 MR. RIGBY: Director, this is Jerry.

3 DIRECTOR SPACKMAN: Yes. Yes.

4 MR. RIGBY: As other counsel have known, I'm  
5 attempting to put together those who I will be  
6 representing. And as per your initial, I guess,  
7 decision, which has always been the case, that an  
8 entity must be represented by counsel, I, in fact, will  
9 be filing, once we get this confirmed -- and that  
10 should be even later today -- all of the entities and  
11 persons I will be representing, which would be in this  
12 particular group that you've identified.

13 DIRECTOR SPACKMAN: Thank you, Jerry.

14 Okay. The second category would be --

15 MR. FLETCHER: Excuse me, Director.

16 DIRECTOR SPACKMAN: Yes.

17 MR. FLETCHER: This is Kent. Did you -- did you  
18 want the names of other people that were listening in?  
19 In other words, there are other participants from Big  
20 Wood that are on the phone. Are you interested in  
21 those names as well or --

22 DIRECTOR SPACKMAN: Well, let's -- let's see.

23 I'm just working from the list of those -- those people  
24 or entities that filed notices of appearance. And so  
25 we'll get to those who may be listening in.

1 MR. FLETCHER: Okay. Thank you.

2 DIRECTOR SPACKMAN: So let me -- yeah.

3 Okay. So the second category or grouping.  
4 And these would be holders of groundwater rights. And  
5 I would -- I would state that they're groundwater  
6 rights authorizing diversion of groundwater within the  
7 Bellevue Triangle and within the area that was  
8 identified in -- in the original notice of  
9 administrative proceeding.

10 So I have Dean R. Rogers, III, or Dean R.  
11 Rogers, Inc. And represented by Laird Stone.

12 Laird, are you there.

13 MR. VAUGHN: I'm Jeremy Vaughn, his associate,  
14 Mr. Director. I'm here.

15 DIRECTOR SPACKMAN: Thank you. Thank you,  
16 Laird.

17 Now, the next one I grouped here, but I  
18 wasn't sure whether it should be or not. Idaho  
19 Department of Fish and Game. I don't know where Fish  
20 and Game may be aligned, but Fish and Game has at  
21 least, I know, water rights in the area.

22 Ann Vonde, do you happen to be on?

23 MS. VONDE: Yes, Director. This is Ann Vonde  
24 for Fish and Game. And Fish and Game does hold  
25 groundwater rights in this area.



1           DIRECTOR SPACKMAN: Okay. And so you would be  
2 aligned as a groundwater right holder, then?

3           MS. VONDE: Correct.

4           DIRECTOR SPACKMAN: Thank you.

5                     Galana Ground Water District, Heather  
6 O'Leary? Heather?

7           MS. O'LEARY: Yes, Director, I'm on the call.

8           DIRECTOR SPACKMAN: Thank you.

9                     South Valley Ground Water District? Al and  
10 Travis, you are here.

11          MR. BARKER: We are.

12          DIRECTOR SPACKMAN: Sound off.

13          MR. BARKER: Here.

14          MR. THOMPSON: Present.

15          DIRECTOR SPACKMAN: Thank you.

16                     Swiftsure Ranch? And I have listed as a  
17 representative Paul Bennett. Is Mr. Bennett on the  
18 phone?

19                     Okay. I identified Swiftsure Ranch as  
20 within the mapped area that was identified as possibly  
21 subject to this administrative proceeding.

22                     And then I have multiple parties  
23 represented by Jim Speck. And I hope Jim is on the  
24 phone -- or on the Zoom call.

25                     Jim, are you out there?

1 MR. SPECK: Yes, I am, Director.

2 DIRECTOR SPACKMAN: And I have you identified in  
3 this group, I'm assuming that you have some clients,  
4 probably not all, that are located within the Bellevue  
5 Triangle.

6 MR. SPECK: That's quite correct. And I -- if I  
7 may ask a question at this point?

8 DIRECTOR SPACKMAN: Sure.

9 MR. SPECK: If a client of mine holds rights  
10 that are outside this area of curtailment or the  
11 somewhat smaller area identified by Jennifer Sukow, can  
12 we assume that we will not be curtailed in 2021, and  
13 thus would have no reason to participate in these  
14 proceedings? Is that correct?

15 DIRECTOR SPACKMAN: Well, the administrative  
16 proceeding is limited to the area that was identified.  
17 So I think your first conclusion is that the Director  
18 does not intend to possibly curtail those holding water  
19 rights outside of the mapped area identified by  
20 Jennifer Sukow in the Bellevue Triangle in 2021.

21 MR. SPECK: Okay. If I may, Jennifer's area is  
22 south of the Glendale Road -- or the Glendale Bridge,  
23 which I have clients that lie between there and your  
24 northern line.

25 So which -- where is that line going to be?

1           DIRECTOR SPACKMAN: Well, Jim, I don't want to  
2 get into the detail of that right now. We don't have  
3 the map up. There was a -- a detailed map, I think  
4 that was attached, that showed the location up there.  
5 And it was drawn intentionally at a specific location.  
6 And that was based on Jennifer's modeling and her  
7 analysis. So you can look at that map.

8                         Now, the other part of your question, Jim,  
9 was whether -- whether you had an interest or should be  
10 participating or had no reason to participate. And I  
11 will pass on that question. I think that's something  
12 we need to talk about.

13           MR. SPECK: I understand that. Thank you.

14           DIRECTOR SPACKMAN: Yeah. All right. Now I've  
15 gone through the second grouping, as best I could  
16 establish, looking at the notices of appearance and,  
17 honestly, doing some searches on the Internet and  
18 looking at maps.

19                         Now, the third version is --

20           MS. MCHUGH: Excuse me, Director. Sorry -- this  
21 is Candice -- to interrupt.

22           DIRECTOR SPACKMAN: Yes.

23           MS. MCHUGH: Are you going to articulate who  
24 Jim's people were that you identified within the  
25 different locations, or were you just going to -- or

1 should we just refer to his notice? Because it sounded  
2 like he had two groups. And I didn't know if you were  
3 going to identify which ones you thought were in which  
4 group.

5 DIRECTOR SPACKMAN: I thought I was trying to  
6 identify which are -- which entities are within each of  
7 these groupings. I've gone through the first two. Now  
8 I'm going to the third. So maybe your question is  
9 premature, or I don't understand it, Candice. Let me  
10 work through these others, and then let's see if we've  
11 answered your question.

12 So the third group are entities or persons  
13 who are located in the Wood River Basin but are outside  
14 of the area that was identified by the map that was  
15 prepared by Jennifer Sukow and was attached to the  
16 notice of the administrative proceeding.

17 So I have Avalanche Ranch, and the  
18 representative was a Spencer Brendel -- Brendel.  
19 Anyone from Avalanche Ranch?

20 I have the City of Bellevue represented by  
21 Candice McHugh.

22 MS. MCHUGH: Yes, present.

23 DIRECTOR SPACKMAN: City of Hailey, represented  
24 by Michael Lawrence.

25 MR. LAWRENCE: Yes, present.

1           DIRECTOR SPACKMAN: Thank you, Michael.

2                   City of Ketchum represented by Matthew  
3 Johnson.

4           MR. O'BANNON: This is Brian O'Bannon for  
5 Ketchum.

6           DIRECTOR SPACKMAN: Thank you, Brian.

7                   Eagle Creek Irrigation Company? Norm?

8           MR. SEMANKO: This is Norm Semanko.

9           DIRECTOR SPACKMAN: Thanks.

10          MR. SEMANKO: Just for the record, we're  
11 upstream surface water users. We don't think we're  
12 implicated, but your notice did say this proceeding  
13 could affect all surface and groundwater users in the  
14 basin, which I think got a lot of people's attention.

15                   We are the beneficiaries of a separate  
16 streams provision, and we don't believe we're  
17 implicated. But we'd be happy to be let go of this  
18 proceeding. I'm with Mr. Speck. But we're here to  
19 protect our rights and watch what's going on.

20                   Thank you.

21          DIRECTOR SPACKMAN: Thank you.

22                   Sun Valley Company, Chris Bromley?

23          MR. BROMLEY: Yes, Director.

24          DIRECTOR SPACKMAN: Thank you, Chris.

25                   Sun Valley Water and Sewer District, Evan

1 Robertson? Evan?

2 Why am I surprised Evan's not here?

3 Water District 37B Groundwater Association,  
4 Rusty Kramer?

5 MR. KRAMER: Present.

6 DIRECTOR SPACKMAN: Thank you, Rusty. And  
7 again, I'll remind you, as well as the others, that  
8 any -- any association, corporation, partnership, or  
9 similar entity needs to be represented by counsel.  
10 Thank you.

11 Okay. Now I'll get to everybody else. And  
12 please sound off if you think I've misidentified your  
13 interest, location, geography, any of the above.

14 Coalition of Cities, Candice?

15 MS. MCHUGH: Yes, present. Sorry. Trying to  
16 get my mute on.

17 DIRECTOR SPACKMAN: Thank you. And I noticed  
18 the Coalition of Cities, I think you have a coalition  
19 of 13 different cities, some perhaps located within the  
20 basin, many of them outside. Some of those entities,  
21 it seems to me, are represented by counsel  
22 individually. And so I have grouped the coalition as  
23 being outside.

24 MS. MCHUGH: I think that is generally fair at  
25 this point. I do think the City of Gooding filed a

1 separate notice. I had left a message for their new  
2 attorney. So we are focusing on that. But I think  
3 it's fair to characterize us as outside of the basin at  
4 this point.

5 DIRECTOR SPACKMAN: Okay. City of Idaho Falls,  
6 Rob Harris?

7 MR. HARRIS: I am present on -- I am present on  
8 the phone. Thanks.

9 DIRECTOR SPACKMAN: Thank you, Rob.

10 City of Gooding? I have a Brendan Ash.

11 MR. ASH: I'm here, Director.

12 DIRECTOR SPACKMAN: Thank you, Brendan.

13 City of Pocatello, Sarah Klahn?

14 MS. KLAHN: Good morning, Mr. Director.

15 DIRECTOR SPACKMAN: Good morning, Sarah.

16 Idaho Ground Water Appropriators, Randy  
17 Budge?

18 MR. BUDGE: Good morning. This is TJ Budge.

19 DIRECTOR SPACKMAN: Good morning, TJ.

20 Idaho Power Company, John Simpson?

21 MR. SIMPSON: Good morning, Director. Appearing  
22 for Idaho Power Company. And the company does have a  
23 number of water rights within Basin 37. Perhaps --  
24 we're checking, and there may be even one or two within  
25 the circle that you've drawn that have irrigation use

1 in and around substations or other commercial  
2 facilities.

3 DIRECTOR SPACKMAN: So you would assert that  
4 Idaho Power has a direct interest within the mapped  
5 area identified in the notice?

6 MR. SIMPSON: Mr. Director, we are checking on  
7 that, but it does appear like we may have a right or  
8 some uses associated with some buildings that the  
9 company utilizes that may be subject to curtailment,  
10 yes.

11 DIRECTOR SPACKMAN: Okay.

12 MR. SIMPSON: If not within -- definitely within  
13 the basin, but we're checking as to the uses within the  
14 circle that was drawn in your administrative notice.

15 DIRECTOR SPACKMAN: Thank you.

16 Lincoln County?

17 MR. ROATS: Richard Roats present, Director.

18 DIRECTOR SPACKMAN: Mr. Roats. And again, I  
19 have Lincoln County listed here. I don't know what  
20 rights Lincoln County may have, water rights.

21 MR. ROATS: Director, at this point I'm just  
22 following the proceedings for my client, the Board of  
23 County Commissioners.

24 DIRECTOR SPACKMAN: Okay.

25 Southern Comfort Homeowners' Association?



1 Don Juanell [phonetic]? I couldn't locate this  
2 particular entity.

3 And then I have two individuals, a Carl  
4 Legg and Mike Vowels. Carl, are you participating?

5 MR. LEGG: Yes, Director. I'm here.

6 DIRECTOR SPACKMAN: Okay. And what is your  
7 interest?

8 MR. LEGG: I have water rights both out of the  
9 canal and out of the Little Wood River there on  
10 Highway 26.

11 DIRECTOR SPACKMAN: Okay. I'll relocate you or  
12 regroup you.

13 And Mike Vowels? Mike, are you  
14 participating?

15 Okay. I think that's my complete list.

16 Now, are there others who may have filed a  
17 notice of appearance that I've missed.

18 MR. SCHOEN: Mr. Director, this is Larry Schoen.  
19 I -- I did not hear my name. But I joined late. I did  
20 not receive notice of the change of meeting start time  
21 from 9:30 to 9:00 a.m. I had a notice on Thursday of a  
22 meeting start time of 9:30. Apparently something was  
23 sent out Friday. But I am present and I did send in my  
24 notice to participate.

25 DIRECTOR SPACKMAN: Okay. And what's your name

1 again?

2 MR. SCHOEN: Lawrence Schoen, S-c-h-o-e-n.

3 DIRECTOR SPACKMAN: Oh, sure. Okay. Thanks,  
4 Larry. I didn't recognize your voice.

5 MR. SCHOEN: Oh, thank you. Sorry about that.

6 DIRECTOR SPACKMAN: Okay. I called you out.

7 So all right. Now let's talk about this --  
8 is there anybody else.

9 MS. GRAVES: Hey, Gary. This is Lori with SPF.  
10 We -- we filed a notice on behalf of Blaine County  
11 School District.

12 DIRECTOR SPACKMAN: Okay. I also have another  
13 list. And I can go through this. This is a list of  
14 people who have filed, at least based on what I can  
15 tell, a request to observe, but not necessarily to  
16 participate. So let me read through these.

17 Blaine County School District, Lori Graves?

18 MS. GRAVES: Yeah. Good morning, Gary. Yeah,  
19 we're on.

20 DIRECTOR SPACKMAN: But the School District is  
21 not planning to participate, then?

22 MS. GRAVES: I think they're outside the mapped  
23 areas on their water rights, but they are definitely  
24 interested in the proceedings.

25 DIRECTOR SPACKMAN: Well, again, I need to know

1 whether the School District intends to participate as a  
2 party. I don't have them listed that way.

3 MS. GRAVES: Yeah, why don't you just --

4 DIRECTOR SPACKMAN: Let me --

5 MS. GRAVES: Go ahead and include them as a  
6 participant. Christian Petrich is also on, and he will  
7 be the official representative for the School District.

8 DIRECTOR SPACKMAN: Well, but he can't represent  
9 the School District because he's not an attorney. So  
10 the original premise, and the standard that we began  
11 with, was any entity -- and the School District would  
12 be one of those entities -- needs to be represented by  
13 counsel. I won't depart from that in this proceeding.

14 MR. PETRICH: Mr. Director, this is Christian  
15 Petrich. The School District is still deciding whether  
16 to participate. And I expect they'll make a decision  
17 here very shortly, in which case they understand that  
18 they will have an attorney that would represent them.

19 DIRECTOR SPACKMAN: Well, I'm not sure that I  
20 can leave this matter hanging. We're operating under a  
21 very short time frame. I -- right now I'm inclined to  
22 say the School District is not timely in their -- in  
23 their notice. But I will look at it, and we'll get  
24 back to you.

25 Okay. I need to get through this list. I

1 have Boise State Public Radio, Rachel Cohen. If any of  
2 these people are on, sound off.

3 MS. COHEN: I'm on the call.

4 DIRECTOR SPACKMAN: Idaho Water Users -- okay.

5 MS. COHEN: Thank you.

6 DIRECTOR SPACKMAN: Paul Arrington?

7 MR. ARRINGTON: I'm here, Mr. Director. Thank  
8 you.

9 DIRECTOR SPACKMAN: Simplot, Vic Conrad  
10 [phonetic]?

11 Nature Conservancy, I have a Neil Crashendy  
12 [phonetic], Crashendy or --

13 MR. CRASHENDY: Here.

14 DIRECTOR SPACKMAN: Thank you, Neil.

15 And an Erika Phillip?

16 MS. PHILLIP: Yes, I'm here. Thank you.

17 DIRECTOR SPACKMAN: And then I have a bunch of  
18 individual names.

19 Chris Howe [phonetic] or Hoff [phonetic]?

20 Corey Allen [phonetic].

21 Sharron Lee?

22 MR. ALLEN: Director, Corey Allen. I'm  
23 [unintelligible].

24 MS. LEE: Yes.

25 DIRECTOR SPACKMAN: Oh, that's right.

1 MR. ALLEN: [Unintelligible.]

2 DIRECTOR SPACKMAN: That's right. Thank you.

3 MS. LEE: Director, it's Sharron Lee. I am  
4 here.

5 DIRECTOR SPACKMAN: Thank you.

6 Pat McMahon?

7 MR. McMAHON: Yes, Director. I'm here.

8 DIRECTOR SPACKMAN: Christy Mullinow [phonetic].

9 UNIDENTIFIED SPEAKER: She was not going to be  
10 able to get on today.

11 DIRECTOR SPACKMAN: Karl Pendleton [phonetic]?

12 This almost appears to be a restatement of  
13 the Advisory Committee. And I don't think I'll go  
14 through the rest of the names here.

15 Okay.

16 UNIDENTIFIED SPEAKER: Mr. Director.

17 DIRECTOR SPACKMAN: Yes.

18 UNIDENTIFIED SPEAKER: We do have one guy that  
19 sent in his notice to participate that I don't think we  
20 received it. He sent it -- it was one of the first  
21 ones in our group to send it. He was Don Taber. And  
22 I'm not sure what happened to it, but 7 Mile Ranch, Jim  
23 Ritter, and Taylor Farms [unintelligible].

24 MR. BAXTER: Director, can you have whoever's  
25 speaking get closer to a microphone, please.

1 MS. MCHUGH: Candice McHugh, we can't hear.

2 DIRECTOR SPACKMAN: Yeah, you need to -- you  
3 need to speak up or come closer.

4 UNIDENTIFIED SPEAKER: Don Taber, sent in notice  
5 to participate, but I...

6 DIRECTOR SPACKMAN: Don Taber?

7 UNIDENTIFIED SPEAKER: Yes.

8 DIRECTOR SPACKMAN: How do you spell it?

9 UNIDENTIFIED SPEAKER: T-a-b-e-r.

10 DIRECTOR SPACKMAN: Okay.

11 UNIDENTIFIED SPEAKER: And he farms -- I believe  
12 he sent in notice for 7 Mile Ranch, Jim Ritter, and his  
13 own farms, Taber Farms.

14 DIRECTOR SPACKMAN: So is Jim Ritter a different  
15 entity than Don Taber?

16 UNIDENTIFIED SPEAKER: Yeah. He -- he leases  
17 ground from those places, I believe. So he just wanted  
18 to mention that, because I know he wanted to be  
19 included, but I don't think he --

20 MR. BAXTER: Again, Director, if whoever is  
21 speaking could get --

22 DIRECTOR SPACKMAN: Yeah, you have got to speak  
23 up.

24 UNIDENTIFIED SPEAKER: Okay.

25 DIRECTOR SPACKMAN: Louder.

1 UNIDENTIFIED SPEAKER: Why don't you sit right  
2 there in front of that microphone.

3 UNIDENTIFIED SPEAKER: Okay. Sorry.

4 Don Taber sent in notice to participate.  
5 And he farms 7 Mile Ranch and Jim Ritter's farm and  
6 Taber Farms. And I don't think you received his notice  
7 yet, but I know that he sent it early.

8 DIRECTOR SPACKMAN: Okay.

9 UNIDENTIFIED SPEAKER: We wanted to make sure  
10 that he was at least mentioned today. I don't know  
11 what the status will be.

12 DIRECTOR SPACKMAN: All right. Thank you.

13 UNIDENTIFIED SPEAKER: [Unintelligible.]

14 UNIDENTIFIED SPEAKER: [Unintelligible.]

15 DIRECTOR SPACKMAN: Somebody spoke?

16 MR. TABER: Yes. Don Taber.

17 DIRECTOR SPACKMAN: Okay.

18 MR. TABER: And I did send my stuff in. I  
19 mailed it in on the 17th or so.

20 DIRECTOR SPACKMAN: Okay. We'll look for it,  
21 Don, and include you.

22 MR. TABER: Okay. Thank you.

23 DIRECTOR SPACKMAN: All right. Others? Others  
24 that wish to identify themselves?

25 MR. SINNILLA: Carl Sinnilla [phonetic]. I'm

1 here and would intend to participate.

2 DIRECTOR SPACKMAN: All right. Thanks, Charles.  
3 We got your name.

4 MR. HULTS: Director?

5 DIRECTOR SPACKMAN: Yes.

6 MR. HULTS: David Hults is on the line too.

7 DIRECTOR SPACKMAN: Okay. We have your name as  
8 well.

9 MR. HULTS: Yes. Thank you.

10 MR. ROBERTSON: Evan Robertson is here.

11 DIRECTOR SPACKMAN: Who?

12 MR. ROBERTSON: Evan Robertson for Sun Valley  
13 Water and Sewer District.

14 DIRECTOR SPACKMAN: Evan, welcome.

15 MR. ROBERTSON: Thank you, sir.

16 DIRECTOR SPACKMAN: Wouldn't be the same --  
17 wouldn't be the same without you.

18 MR. ROBERTSON: Thanks.

19 MS. BELL: This is Johanna Bell [phonetic] with  
20 the Association of Idaho Cities, just as an observer,  
21 not as a participant.

22 DIRECTOR SPACKMAN: Okay.

23 MS. FLORES: Hello.

24 DIRECTOR SPACKMAN: Others?

25 MS. FLORES: This is Deersa Flores [phonetic],



1 representing [unintelligible] LLC.

2 DIRECTOR SPACKMAN: Okay. We don't -- we don't  
3 have, I don't think, a notice of appearance from ABC.

4 Is it ABC?

5 MS. BELL: 86.

6 MS. CARTER: We do have that one. I don't know.  
7 I think it got named something else, but we did get  
8 that one, I think.

9 DIRECTOR SPACKMAN: Okay. I don't -- I'm told  
10 we have it. I --

11 UNIDENTIFIED SPEAKER: No, I guess we don't.

12 MS. FLORES: We received a letter.

13 DIRECTOR SPACKMAN: I don't think we received a  
14 notice from you.

15 MS. FLORES: Oh, okay.

16 DIRECTOR SPACKMAN: Okay. Others? Okay. Well,  
17 that was arduous. Let's see if we can find a more  
18 efficient path forward here.

19 Okay. Again, I want to reiterate for  
20 everybody that's joined us that all entities, including  
21 corporations, limited liability corporations, limited  
22 partnerships, trusts, any kind of partnership, any kind  
23 of entity other than an individual needs to be  
24 represented by counsel in this matter.

25 All right. Those who are participants and

1 e-mailed their Notice of Intent to Participate, we need  
2 from you a hard copy. So if you just e-mailed it, you  
3 need to send a hard copy with a docket number. And I  
4 can read that to you. But you need to include it, your  
5 name, your address, phone number, and e-mail address if  
6 you want electronic service.

7 So if there's a question, I'll read the  
8 docket number here. So it is -- and the letters are in  
9 caps, AA-WRA-2021-001.

10 All right. Let's talk about the motions  
11 and other filings. So there were a number of motions  
12 that were pending.

13 MR. THOMPSON: Director.

14 DIRECTOR SPACKMAN: Yes.

15 MR. THOMPSON: Before we get to that, can we  
16 talk about service a little bit and filings?

17 DIRECTOR SPACKMAN: Sure.

18 MR. THOMPSON: Because there are people that  
19 just have mailing addresses. I don't know if they have  
20 e-mail. The mail takes like four or five days from  
21 Magic Valley, so I don't know if people are mailing  
22 things or intend to. We won't get it until like --

23 MS. MCHUGH: Travis, can you speak closer to the  
24 microphone. Sorry to be a pain.

25 DIRECTOR SPACKMAN: Yeah, I think you have got

1 to speak up as well, Travis.

2 MR. THOMPSON: Is this better? Can you hear me?

3 MS. CARTER: She's nodding her head.

4 MS. MCHUGH: Yes.

5 MR. THOMPSON: I just want to talk about service  
6 for people that don't have electronic mail, or if they  
7 file things, how we address that, because the mail  
8 takes sufficient -- a long time from various areas.

9 DIRECTOR SPACKMAN: Well, let's at least talk  
10 about the parties and the acceptance of e-mail service.  
11 Because of the short time periods, I'm assuming that  
12 everybody would want to serve by e-mail.

13 Now, is there anybody that doesn't have an  
14 e-mail address?

15 MS. MCHUGH: There's a lot of us that don't know  
16 what people's e-mail addresses are. On their notices  
17 they were lacking e-mail addresses. We've mailed ours  
18 to the addresses, and a couple of the notices were  
19 deficient on even addresses. But I guess someone needs  
20 to look at that, because obviously we can't serve  
21 people if we don't have an e-mail address. But not  
22 everybody does.

23 DIRECTOR SPACKMAN: Okay. So I want everybody  
24 that filed a Notice of Intent to Participate or a  
25 notice of participation, I want you to e-mail the

1 Department of Water Resources.

2 And, Mehgan, what e-mail address? Yours.

3 MS. CARTER: Let's send them to the other Megan.

4 DIRECTOR SPACKMAN: Okay. Megan, give -- give  
5 them your e-mail address. And I want those in by  
6 tomorrow.

7 MS. JENKINS: Hello, everyone. My e-mail  
8 address is going to be megan.jenkins. Megan is spelled  
9 m-e-g-a-n, dot Jenkins, j-e-n-k-i-n-s@idwr.idaho, which  
10 is all spelled out, dot gov. So one last time,  
11 megan.jenkins@idwr.idaho.gov.

12 DIRECTOR SPACKMAN: So I want you to e-mail your  
13 e-mail addresses to Megan by tomorrow. And we will  
14 distribute those out to all of the entities that we've  
15 identified.

16 MR. RIGBY: Mr. Director, this is Jerry.

17 DIRECTOR SPACKMAN: Go ahead.

18 MR. RIGBY: In -- what will help is that by the  
19 end of today, I will probably be filing a  
20 representation of the group one. And I believe that  
21 everyone that you have addressed will be represented by  
22 counsel. So therefore, for all of the others  
23 participating -- although I still want those mailed so  
24 that I have their e-mails, the other counsel in filings  
25 can go through me, this office.

1           DIRECTOR SPACKMAN: Now, I also want to say in  
2 response to your question, Travis -- and maybe I'm  
3 beyond your question, but because of the short time  
4 frames, I will accept service for the Department by  
5 e-mail, but I want a hard copy coming to the office as  
6 well. But just to expedite the service of documents, I  
7 will accept service by e-mail here. That's a departure  
8 from what we normally follow in our rules. But I think  
9 because of the expedited time frames, I need to accept  
10 service. And as long as it's going to Megan, that will  
11 be sufficient.

12           MR. THOMPSON: Just a follow-up on that. I  
13 think there's a lot of stuff that I haven't received  
14 that's gone out last week. So just to make sure,  
15 whatever service list you have you have me and my  
16 assistant on it?

17           DIRECTOR SPACKMAN: Okay.

18           MS. CARTER: We made sure and updated the  
19 service list on Saturday. So if you received the  
20 e-mail that said -- with the three orders in it, you  
21 should have them.

22           DIRECTOR SPACKMAN: Travis, we'll reconcile  
23 that. And you're welcome to look at the documents that  
24 we have after the hearing if there's something you're  
25 missing.

1 MR. THOMPSON: I received one from Rebecca Wills  
2 [phonetic] Saturday.

3 MS. CARTER: Yep.

4 MR. THOMPSON: I just didn't know if there was  
5 other things --

6 MS. CARTER: No.

7 MR. THOMPSON: -- that went out.

8 DIRECTOR SPACKMAN: Okay. Other questions about  
9 service?

10 Chris, if I could --

11 MS. KLAHN: Mr. Director, this is Sarah Klahn.  
12 Just to clarify, you'll accept e-mail service, and you  
13 want something just put in the regular U.S. mail, not  
14 certified; correct?

15 DIRECTOR SPACKMAN: Yes.

16 MS. KLAHN: Thank you.

17 DIRECTOR SPACKMAN: Yep.

18 Chris.

19 MR. BROMLEY: My only question, Director, was so  
20 anything that we would be filing would be going to  
21 Megan Jenkins? Not to your e-mail address, but to  
22 Megan, and then hard copy in the mail?

23 DIRECTOR SPACKMAN: Yes.

24 MR. BROMLEY: And then that completes service  
25 for the [unintelligible]?

1           DIRECTOR SPACKMAN: Yes.

2           MR. BROMLEY: Thank you.

3           DIRECTOR SPACKMAN: And you can -- you can cc  
4 me. I'm just not a reliable place to send it to. I  
5 want it to be somebody that's reliable.

6           MR. BROMLEY: Okay. Thank you.

7           DIRECTOR SPACKMAN: I've just imposed the mantle  
8 of reliability onto my new assistant, so she'll take  
9 that well.

10                   All right. Let's talk about motions and  
11 other filings. So there were numerous motions filed  
12 with the Department. I think they were all addressed  
13 by three orders issued last week. There was an order  
14 authorizing discovery. There was an order denying  
15 motion to appoint an independent hearing officer, and  
16 an order denying motions to dismiss for continuance or  
17 postponement. And in that particular order, at least  
18 my understanding that all of the motions were addressed  
19 by -- all the remaining motions were addressed by the  
20 order denying motions to dismiss.

21                   There also is a request for production, a  
22 public records request. And the Department will  
23 provide for the parties all records related to these  
24 requests. Most of these documents have been compiled,  
25 so -- and I think the deadline is tomorrow, right,

1 Meghan?

2 MS. CARTER: Uh-huh.

3 DIRECTOR SPACKMAN: And they'll be sent by  
4 e-mails to -- e-mail to the parties, or there will be  
5 access to an FTP site. And they'll be posted on the  
6 web page.

7 Is that correct, Meghan?

8 MS. CARTER: Yes.

9 MS. MCHUGH: Mr. Director, this is Candice.  
10 Just to clarify one of your statements.

11 DIRECTOR SPACKMAN: Yes.

12 MS. MCHUGH: You stated there was three orders,  
13 one was order denying motion to dismiss continuance and  
14 postponement. It was -- and it wasn't necessarily a  
15 motion to dismiss the request for clarification,  
16 because you did in fact clarify. So just for the  
17 parties' sake and for the record, that order did  
18 provide clarification in a response to the City of  
19 Bellevue's motion for clarification and more definite  
20 statement.

21 DIRECTOR SPACKMAN: Okay. All right. And then  
22 over the weekend we received a motion to designate the  
23 order denying motion to dismiss as a final order. And  
24 I will deny that motion from the table today. We'll  
25 issue a final order. But the denial will be without



1 prejudice. And if the parties can strike an agreement,  
2 some kind of settlement that would allow a delay of the  
3 hearing itself, and I would reconsider, and am actually  
4 inclined to grant that motion if the parties can reach  
5 an agreement for the 2021 irrigation season.

6 And I know at least in the motion to  
7 certify the order to dismiss as final that there was a  
8 reference to a previous certification, that there was  
9 an agreement between junior and senior water-right  
10 holders. So I will just say, I still hold out hope  
11 that there can be some agreement.

12 All right. Let's talk about standard --  
13 standards for proof. I think the parties need to know  
14 what my expectations are. And I don't know that I want  
15 to go through 42-237a.g. in detail. But the burdens at  
16 least -- burdens of proof are the presumption under  
17 Idaho law is that the senior is entitled to his decreed  
18 water right but there certainly may be some  
19 post-adjudication factors which are relevant to the  
20 determination of how much water is actually needed.

21 And again, in Idaho a subsequent  
22 appropriator attempting to justify his diversion has  
23 the burden of providing that it will not injure prior  
24 appropriations.

25 So at least from my perspective the senior

1 water-right holders need to show that they hold water  
2 rights and at least bring forward some evidence of  
3 injury. I don't think that the mere pleading that they  
4 hold water rights and therefore they're entitled water  
5 suddenly -- entitled to water suddenly shifts to the  
6 juniors the total responsibility of establishing both  
7 that they're short or that they're injured and that --  
8 and then -- and then bearing the burden of establishing  
9 that there is some lesser amount of water which will  
10 satisfy the beneficial use under the right.

11 So at least from my perspective, the senior  
12 needs to come in and assert that they hold or that the  
13 senior holds a water right and that the senior has been  
14 injured at least to some degree. Then I think the  
15 burden shifts to -- fully to the junior.

16 And as the courts have said, the senior is  
17 entitled to the decreed water, but there may be other  
18 factors that will play into how much water is actually  
19 necessary to satisfy the right.

20 Do the parties want to discuss this  
21 particular burden issue?

22 MR. THOMPSON: I've got a question, Director.

23 DIRECTOR SPACKMAN: Travis.

24 MR. THOMPSON: When you mentioned the other  
25 factors post adjudication, what are you considering?

1 Are you talking about the Rule 42 factors  
2 [unintelligible] injury?

3 DIRECTOR SPACKMAN: Well, no, I'm not -- I'm not  
4 referring to Rule 42 at all, if you're talking about  
5 the Conjunctive Management Rules. I'm going back to  
6 the court's standard that is cited here. And I can  
7 give you a citation if you want.

8 MR. THOMPSON: Right. And that case was about  
9 Conjunctive Management Rules in the context of those  
10 post-adjudication factors. If you read it, I think it  
11 will talk about Rule 42.

12 DIRECTOR SPACKMAN: Well, it says the senior is  
13 entitled to his decreed water right. But there  
14 certainly may be some post-adjudication factors, and  
15 so --

16 MR. THOMPSON: If you keep reading that  
17 [unintelligible], that's what it talks about.

18 MR. BROMLEY: Sorry, Travis.

19 But, Mr. Director, what case are you  
20 reading from? Can you tell us?

21 DIRECTOR SPACKMAN: This is American Falls  
22 Reservoir District No. 2 versus Idaho Department of  
23 Water Resources.

24 MR. BROMLEY: Which I think Travis is right. It  
25 does repeal with the Conjunctive Management Rules.

1 DIRECTOR SPACKMAN: Well -- go ahead, Meghan.

2 MS. CARTER: It doesn't deal with the  
3 Conjunctive Management Rules, but it does set up what  
4 the standard is going into the Conjunctive Management  
5 Rules by talking about what the standard was prior to  
6 using the Conjunctive Management Rules. So that's --  
7 that's what we're drawing from.

8 UNIDENTIFIED SPEAKER: [Unintelligible.]

9 MS. KLAHN: Just to be clear, could we get the  
10 actual journal. Or yeah, what specific second cite is  
11 that? There were several AFRD versus IDWR cases, as I  
12 recall.

13 Is this the 2013 decision?

14 MR. BROMLEY: 2007, Sarah. 143 Idaho  
15 [unintelligible] --

16 MS. KLAHN: Oh, the early one? Okay. Thank  
17 you.

18 MR. BROMLEY: The constitutionality of the  
19 Conjunctive Management Rule case, Sarah. This is  
20 Chris.

21 MS. KLAHN: Thank you.

22 DIRECTOR SPACKMAN: All right. I would say  
23 generally, Travis, that the standard is that if there  
24 is some lesser quantity of water that would satisfy the  
25 beneficial use under the right, and there may be

1 several subfactors in that, then that proof of the  
2 lesser quantity. And the burden of that proof is borne  
3 by the junior.

4 MR. THOMPSON: Okay.

5 MR. RIGBY: Mr. Director, this is Jerry.

6 DIRECTOR SPACKMAN: Who spoke?

7 MR. RIGBY: This is Jerry, Jerry Rigby.

8 DIRECTOR SPACKMAN: Yes.

9 MR. RIGBY: I'm just trying to also verify  
10 exactly what you are looking for from the senior  
11 surface users, in that I understand where you're going  
12 for a lesser amount. But the question would be if they  
13 can evidence that they are not able to beneficially  
14 apply the water and obtain the full crop that they  
15 otherwise would, is that going to be sufficient? In  
16 other words, I'm trying to determine just how detailed  
17 our -- the seniors would be required under your  
18 standard to ensure that the -- that, in essence, full  
19 curtailment is necessary.

20 DIRECTOR SPACKMAN: Well, Jerry, what I am  
21 saying is that the seniors just can't come in and say  
22 we have a water right and the model -- and the model  
23 shows that there are depletions, therefore the juniors  
24 should be curtailed.

25 MR. RIGBY: Fully understand. My point --

1 DIRECTOR SPACKMAN: That's not --

2 MR. RIGBY: Go ahead.

3 DIRECTOR SPACKMAN: That's not sufficient. So  
4 there has to be more proof of a connection between  
5 depletion and actual injury.

6 MR. RIGBY: Fully understand. My question is,  
7 to what extent of the injury? You know, last crop of  
8 hay? Stuff like -- evidence like that, is that what is  
9 necessary only, or do we have to get into the detail of  
10 just exactly how much of an injury it would be, as  
11 opposed to showing that there is injury?

12 DIRECTOR SPACKMAN: Jerry, I'll leave that to  
13 counsel.

14 MR. RIGBY: Very good. Thanks.

15 MR. SCHOEN: Mr. Director, this is Larry Schoen.  
16 I have a question along these lines to try to answer  
17 your question.

18 DIRECTOR SPACKMAN: Whose question?

19 MR. SCHOEN: Your question about -- you asked,  
20 are there any questions or clarifications needed on the  
21 issue of the burdens that you just outlined.

22 DIRECTOR SPACKMAN: Okay.

23 MR. SCHOEN: And so here's -- here's where I'm  
24 stuck: The junior groundwater pumpers have never been  
25 curtailed, and yet senior surface water users are

1 curtailed nearly every year. Typically for me, for  
2 example, with an 1886 water right, I'm curtailed in the  
3 range of late June to -- last week of June, first week  
4 of July. My surrounding area groundwater pumpers are  
5 never curtailed.

6           And so the question really is about showing  
7 injury. How do I show injury on that situation? There  
8 are enumerable reports dating back to roughly 1950  
9 demonstrating the clear link between groundwater and  
10 the surface water in the Silver Creek system. The  
11 Silver Creek system is spring fed. The source of the  
12 springs is the very groundwater being pumped by the  
13 groundwater users. And this has been shown in study  
14 after study after study.

15           If I've been curtailed every year, and the  
16 juniors have never been curtailed, how do I demonstrate  
17 the extent of my injury? And is -- is your question --  
18 is showing a burden really a two-part answer? In other  
19 words, (a), groundwater users should be curtailed, then  
20 the question becomes -- and that's an "if" question,  
21 because they haven't been in the past.

22           And then the second part is, to what extent  
23 should they be curtailed so that the surface water  
24 users may enjoy the use of their senior rights. And we  
25 don't really know the full extent of that use because

1 they've always been curtailed prematurely while the  
2 juniors have been allowed to keep pumping.

3           So, you know, this is a conundrum that  
4 really can't be overcome because of the history here.  
5 But at the very least it would seem to me to say -- to  
6 be proper and truthful to say, juniors must be  
7 curtailed to some extent, at least they must be in line  
8 with other water rights on the spectrum of seniority.

9           DIRECTOR SPACKMAN: Well, Larry, let me just  
10 say -- and I don't want to get into the details of your  
11 particular circumstances, but let me just say that I  
12 disagree with your premise that initially the junior  
13 groundwater users have to be shut off.

14           There has to be a nexus, a connection,  
15 between groundwater diversion and depletions to the  
16 stream that ultimately injure the senior water rights.  
17 There has to be a connection. And in my opinion, those  
18 who are best able to establish that connection are the  
19 seniors.

20           Now, I will say that the Department of  
21 Water Resources has developed some information from its  
22 records, and you have that through the staff memoranda.  
23 You have that information. Now, who that's helpful to,  
24 I won't even venture to say at this point, because I  
25 think that information is beneficial to both sides in



1 different ways. And -- but, Larry, there has to be a  
2 connection. And the entities that can best or the  
3 individuals who can best establish that connection are  
4 the seniors.

5 MR. SCHOEN: Okay.

6 DIRECTOR SPACKMAN: But let me reiterate the  
7 ultimate burden is upon the junior.

8 MR. BARKER: Mr. Director.

9 DIRECTOR SPACKMAN: Yes.

10 MR. BARKER: This is Al Barker. I just have one  
11 question about the injury analysis.

12 And that is, are we looking at -- are we  
13 looking at material injury, or are we looking at  
14 something other than material injury as the burden of  
15 proving what, I guess is the question.

16 DIRECTOR SPACKMAN: Well, I don't know what the  
17 difference is, Al.

18 MR. BARKER: Okay.

19 DIRECTOR SPACKMAN: We -- I guess I'd say I  
20 don't know that I know the difference.

21 MR. BARKER: Okay. I'm not sure I do either.  
22 But we've been using one term, and there's another term  
23 that's been used in similar circumstances, including in  
24 the AFRD case that you just read from. So I just need  
25 to know what we're shooting at.

1           DIRECTOR SPACKMAN: Yeah. All right. Well, we  
2 talked about the burdens, and I'm sure that it's not  
3 clear to anybody. But I don't think that I can  
4 describe in exact detail what proof each party needs to  
5 come in with to satisfy their respective burdens.

6           MR. THOMPSON: I'll rephrase my question. This  
7 is Travis Thompson again.

8                     I guess the post-adjudication factors, are  
9 we able to use what is identified in Rule 42, what's  
10 identified in the court's decision in AFRD2 as those  
11 type of factors and information that you're looking for  
12 as far as what the junior would have to show?

13           DIRECTOR SPACKMAN: Well, so, Travis, in  
14 response to your question, without adopting the rules  
15 of procedure -- I'm sorry, the Conjunctive Management  
16 Rules as the rules that will govern what the Director  
17 is doing in this proceeding, I would say that those  
18 factors are a guide, certainly a very important guide,  
19 in the establishment and putting on the burden of  
20 proof.

21           MR. THOMPSON: I just want to clarify. You're  
22 not looking at other factors that I'm not aware of?

23           DIRECTOR SPACKMAN: Okay. Let's talk about  
24 discovery. So some of this is open-ended, perhaps.  
25 Deadlines: Let me just -- let me mention a couple. I

1 would like to have the parties identify any expert  
2 witnesses by Wednesday of this week. And identify any  
3 factual witnesses by Friday of this week.

4 Now, maybe what I ought to do, let me --  
5 well, I guess I'll wait. I want to at least at some  
6 point leave a marker here, because I've kind of left it  
7 behind. I want to at least put out a marker about the  
8 level of participation in the various categories that  
9 we identified. And maybe this is an appropriate place  
10 to talk about it when we're talking about discovery,  
11 because we're really talking about hearing preparation.

12 So in the first two categories, that would  
13 be those who might be seeking relief because they're  
14 asserting that their senior water rights are being  
15 injured. They will participate fully in the hearing.  
16 Those groundwater users who hold rights within the area  
17 identified by Jennifer Sukow in the Bellevue Triangle  
18 will be full participants in the matter.

19 Now let's talk about those who are within  
20 the Wood River Basin but are outside of the area that  
21 was identified. So at least in 2020, not subject to  
22 curtailment in this immediate proceeding. And -- and I  
23 would consider those folks as full participants.

24 But my question will be, first of all, who  
25 will be your witnesses and what do they intend to

1 testify about? Because the focus of this hearing is  
2 really on Silver Creek, on Little Wood, depletions to  
3 those sources of water, and diversions of groundwater  
4 within the area in the Bellevue Triangle identified by  
5 Jennifer Sukow and the impact or depletions caused by  
6 those groundwater diversions.

7 Groundwater diversions outside of that area  
8 are not -- at least with respect to this upcoming  
9 hearing, are not subject to a determination of whether  
10 those diversions should be curtailed.

11 So I guess my long explanation is that  
12 those folks that I identified in the third grouping,  
13 you're certainly entitled to participate as parties.  
14 But I want to know who your witnesses are. I want to  
15 know what they will testify about, and at least under  
16 our rules of procedure, I have the ability to limit  
17 testimony.

18 And so if it's duplicative or it's  
19 testimony that I think is not relevant to the  
20 particular issues of curtailment of groundwater users  
21 within the Bellevue Triangle and the impacts on surface  
22 water users, I will limit the testimony. And I'll  
23 be -- I'll be very assertive about it, because we need  
24 to get through the testimony to be presented in five  
25 days.

1 MS. MCHUGH: Mr. Director, this is Candice  
2 McHugh, since you're addressing my category.

3 DIRECTOR SPACKMAN: Yeah.

4 MS. MCHUGH: I hear what you're saying. I would  
5 request that you put whatever you're asking in writing,  
6 so that we understand specifically what you're asking  
7 of us, number one. Number two, the rationale that you  
8 just put forward on the record that it also go in  
9 writing so that we are not unclear as to what your  
10 expectations are for what you think our level of  
11 participation can be.

12 And I'm fully aware of the power of you to  
13 limit anything that you found irrelevant in that. But  
14 I do request that it be in writing so that we could  
15 respond.

16 If what you're asking is for me to respond  
17 today about that, I'm not prepared to do so. But --

18 DIRECTOR SPACKMAN: No.

19 MS. MCHUGH: -- I think it's helpful if you  
20 could put it in writing so that we know what you're  
21 expecting from us, if that would be okay.

22 DIRECTOR SPACKMAN: Thank you, Candice. And I  
23 will issue a scheduling order. But my expectation is  
24 that that information come in on Friday, the same time  
25 when information about lay witnesses comes in. And

1 certainly if you're planning to call an expert, that  
2 information needs to come in on Wednesday.

3 MR. BROMLEY: Director.

4 MR. RIGBY: Director.

5 MR. BROMLEY: If I might, I think what I'm  
6 hearing is that since I'm in group three --

7 DIRECTOR SPACKMAN: Right.

8 MR. BROMLEY: -- I'd be sending in a notice on  
9 Wednesday of who we would be intending to call as an  
10 expert witness, because I wouldn't have your scheduling  
11 order explaining the scope of the hearing. Our --  
12 we're trying to figure out what our interests are here.  
13 And so, you know, we're learning along with you minute  
14 by minute what -- you know, what we might have to  
15 prepare for or not.

16 And so I guess I'd be filing what I feel I  
17 would need to file on Wednesday or Friday to preserve  
18 those issues, I may then learn more, I think is what  
19 you're saying with your scheduling order as to, you  
20 know, what would and would not be allowed. And then  
21 ultimately that goes to -- if the hearing, in fact,  
22 happens in that week of June that you've identified,  
23 you know, what we would or would not be preparing for.

24 And the last -- my last comment, Director,  
25 is I've been involved in enough of these to have seen

1 the scope increase from what was stated at the outset.  
2 So I -- you know, I appreciate what you're saying. But  
3 my personal experience is that scope has a tendency of  
4 enlarging. And that's the difficulty, then, that the  
5 third group is in, at least from my standpoint, for my  
6 client, is knowing that in fact that that scope will  
7 increase.

8 DIRECTOR SPACKMAN: Well, thank you,  
9 Mr. Bromley. I -- and I appreciate your comments. So  
10 we will issue a scheduling order tomorrow, hopefully  
11 tomorrow morning, so at least you'll have it in your  
12 hands. And the reason for my asking that the experts  
13 be identified is so that the parties, within the short  
14 time frames that we've identified, can at least have an  
15 opportunity to question those experts in one way or  
16 another.

17 MR. SPECK: Director, this is Jim Speck.

18 DIRECTOR SPACKMAN: Yes, Jim.

19 MR. SPECK: If I may revisit the question I  
20 asked at the outset, and I saw Jennifer Sukow raise her  
21 hand at one point. We really need to understand where  
22 that north line is in the area, because you've been  
23 quite clear that if party's outside the area that she  
24 identified, then they do not stand the risk of  
25 curtailment in 2021.

1                   And her line, if I read her report  
2 correctly, is Glendale Bridge Road. And your line is  
3 significantly north of that. So we need to know what  
4 it is.

5                   And perhaps the easiest way would be if the  
6 Department can simply provide a list of all of the  
7 groundwater rights it is contemplating curtailing as a  
8 result of this proceeding.

9                   DIRECTOR SPACKMAN: Well, let me defer to  
10 Jennifer.

11                   Jennifer, are you on?

12                   MS. SUKOW: Yes, I'm on.

13                   Can you hear me?

14                   DIRECTOR SPACKMAN: Yes.

15                   MS. SUKOW: Yeah, just to clarify that the area  
16 that you sent out that was attached to the notice is  
17 larger than the area that was analyzed in my staff  
18 memo. And Jim Speck's correct about that. It is -- it  
19 does -- it does go a bit further north, and then it  
20 also includes -- the area in the notice includes a few  
21 more groundwater PODs in the very southeast and  
22 southwest parts of the triangle.

23                   So I think the clarification he's asking  
24 for is which -- I guess if people are in those -- those  
25 areas that are between those two, I guess he's asking



1 whether -- whether they would be -- whether they need  
2 to be concerned about being curtailed or not. And I  
3 don't know the answer to that. But I just wanted to  
4 point out that those -- those two areas are -- are  
5 different.

6 DIRECTOR SPACKMAN: Okay. And this is -- so  
7 thanks, Jim. So this is something unknown to me, I  
8 guess, at this time. We will clarify this in the  
9 scheduling order, Jim.

10 MR. SPECK: Thank you.

11 DIRECTOR SPACKMAN: Okay. All right. So let's  
12 go back to discovery. Oh, I didn't finish.

13 So we talked about the third group. And  
14 the fourth group, which is a group of those who filed a  
15 Notice of Intent to Participate. And my question, and  
16 really it's a question of standing, in other words,  
17 what standing do these particular entities have in this  
18 dispute?

19 And I'm struggling trying to establish,  
20 from my perspective, any standing, other than an  
21 interest in the legal outcome of this proceeding; in  
22 other words, the legal issues. But there -- go ahead.  
23 Somebody wants to speak.

24 MR. ASH: Mr. Director, this is Brendan Ash on  
25 behalf of the City of Gooding.

1           Now that we're talking about the details of  
2 these groups, I believe you have us grouped into four.  
3 But the City of Gooding is a -- we hold surface water  
4 rights that I believe are senior out of the Little  
5 Wood, priority dates of 1877 through 1855.

6           So now that we're discussing this, I think  
7 we should probably be bumped up to group one. And that  
8 was 1885, excuse me, not '55. '85.

9           MS. KLAHN: Are there people talking in the  
10 conference room, or is it just very quiet?

11          MR. BAXTER: Sarah, I think we might have lost  
12 audio. Let me go walk in there and double-check real  
13 quick.

14          MR. THOMPSON: I think I put us on mute. I'm  
15 sorry. Take this away from me.

16          UNIDENTIFIED SPEAKER: So can you hear us now?

17          UNIDENTIFIED SPEAKER: You're going to have to  
18 repeat your question.

19          MS. KLAHN: We didn't hear anything for about  
20 three minutes.

21          UNIDENTIFIED SPEAKER: It cut off right after  
22 the --

23          DIRECTOR SPACKMAN: Travis -- Travis Thompson  
24 decided he wanted to operate the system and muted  
25 everybody.

1                   Garrick, do you have any demerits you can  
2 hand out?

3                   MR. BAXTER: No. But I will just say that we  
4 cut out right after Mr. Ash talked about the City of  
5 Gooding's water rights.

6                   DIRECTOR SPACKMAN: Okay. All right. All  
7 right. Let's try again. I'm sorry. So I thought I  
8 had everybody agreeing with us, and now let's try  
9 again.

10                  UNIDENTIFIED SPEAKER: It helps if you mute  
11 everybody.

12                  DIRECTOR SPACKMAN: Well, not only they're  
13 muted, but they can't hear.

14                   Okay. So my question was, we were talking  
15 about the fourth group, and Mr. Ash had stated that the  
16 City of Gooding held water rights, surface water  
17 rights, and so City of Gooding should be in group one.

18                   And then I asked the question of the  
19 remaining folks in the group four, what factual  
20 interest they had in this particular matter. And in my  
21 opinion, there's a question of standing, because some  
22 of these entities are located completely outside of the  
23 Wood River Basin. And while they may have an interest  
24 in the legal issues that are being raised, I can't see  
25 that there's a factual basis for their participation.

1 And so I -- I asked someone who wanted to speak up,  
2 either Rob Harris representing the City of Idaho Falls,  
3 Sarah Klahn, representing the City of Pocatello, Idaho  
4 Ground Water Appropriation's represented by Randy  
5 Budge, what the factual witnesses you would wish to  
6 present at the hearing.

7 MS. KLAHN: City of Pocatello isn't going to  
8 call any witnesses, Mr. Director.

9 DIRECTOR SPACKMAN: Okay.

10 MR. BUDGE: Director, this is TJ Budge. IGWA's  
11 not planning to call fact witnesses, but is certainly  
12 interested in the legal ramifications of the  
13 proceeding.

14 MS. KLAHN: Yes, that's the same reason we're  
15 here.

16 DIRECTOR SPACKMAN: Rob?

17 MR. HARRIS: We share similar concerns,  
18 Director. This is, to the best of my knowledge, the  
19 first time the Director has fully executed his powers  
20 under the Groundwater Act after the decision on the  
21 Basin 33 water users matter that I briefed.

22 So the process and procedure that is  
23 implemented in this proceeding, I think, has  
24 significant possible ramifications for any future  
25 proceedings on the ESPA. So we don't plan to call any

1 factual witnesses.

2           Anytime I hear the word "standing," my --  
3 my concern goes up a little bit, because it's a little  
4 unclear to me if the Director is saying that because we  
5 can't show a direct factual injury that we would  
6 otherwise not have standing to at least listen in on  
7 the proceedings and at least be a part of them, even  
8 though we may not actively participate.

9           MS. KLAHN: Specifically, we want to be able to  
10 participate in any briefing of legal issues. We  
11 suspect that, given the conversation here today and the  
12 way things have gone so far, that there's going to be a  
13 robust appeal of whatever happens here. And that's  
14 going to set the precedent for the way things go with,  
15 as Rob says, potentially with the ESPA.

16           And so we'd like to be able to participate  
17 in that, and we can't unless we are parties -- well, we  
18 can't effectively participate unless we're parties to  
19 this matter.

20           DIRECTOR SPACKMAN: Coalition of Cities,  
21 Candice?

22           MS. MCHUGH: Mr. Director, this is Candice on  
23 behalf of the Coalition of Cities. And I think you  
24 rightly identified that we have a mixed number of  
25 members.

1           I understand Mr. Ash is representing the  
2 City of Gooding on behalf of their senior surface water  
3 rights. And he and I will have a discussion about  
4 that. And I'll likely be amending my notice to exclude  
5 the City of Gooding. I just didn't want to prejudice  
6 any of my coalition cities by not including them in  
7 that, and we simply didn't have enough time to brief  
8 all of the City Councils.

9           I do have, as you know, a settlement with  
10 our Coalition of Cities that's directly impacted -- or  
11 directly and potentially impacted in the sense that we  
12 find ourselves on the ESPA in the same situation as  
13 those in Basin 37 who are in a groundwater management  
14 area without a groundwater management area plan in  
15 place.

16           Our stipulation anticipates that it would  
17 be part of such a plan, but of course said hasn't  
18 happened, number one. And number two, it is only  
19 effective at this point, it appears in our delivery  
20 call scenarios, and this is a new proceeding in that.

21           So at this point I think I can't speak  
22 entirely that the coalition would have zero factual  
23 witnesses, because I do have a couple folks that have  
24 called about their interest in the basin. But the real  
25 reason is to be able to participate and protect any

1 proceeding that could be duplicated in the ESPA and  
2 impact our settlement with the surface water users  
3 there.

4 So unfortunately, given the timeline, I  
5 can't fully address whether there would be zero factual  
6 witnesses from any of the individual city members that  
7 are finding themselves in the basin. I anticipate not.  
8 And I anticipate it would be a limited to simply  
9 briefing questions. But I will do my best to clarify  
10 that by your deadlines.

11 DIRECTOR SPACKMAN: Okay. And the last -- last  
12 entity I want to ask is Lincoln County.

13 Does Lincoln County hold any water rights?

14 MR. ROATS: Lincoln -- Richard Roats here,  
15 Director. Lincoln County does not hold water rights.  
16 And there will be no factual witnesses.

17 DIRECTOR SPACKMAN: Okay.

18 MR. KRAMER: Mr. Director.

19 DIRECTOR SPACKMAN: Yes.

20 MR. KRAMER: Mr. Director, I wanted to ask a  
21 question as well.

22 DIRECTOR SPACKMAN: Who's this?

23 MR. KRAMER: This is Rusty Kramer with the Water  
24 District 37B Groundwater Association. So we -- I just  
25 wanted to have a clarification. We've been part of the

1 groundwater management area meetings all winter. We  
2 had a spot at the -- at the Advisory Board. We filed  
3 an intent to participate. And if I'm understanding you  
4 correctly, obviously we need counsel. You let me know  
5 that.

6 And I'm just reading my notes here. If we  
7 are going to participate moving forward, we are going  
8 to have to bring witnesses and what they're going to  
9 have to testify, that list, by Wednesday.

10 Can we participate just as an observer  
11 moving forward, I guess is my question?

12 DIRECTOR SPACKMAN: So the association, Rusty --  
13 the association can participate, but the association  
14 needs to be represented by counsel in this matter to  
15 participate.

16 MR. KRAMER: I understand that. I was just  
17 saying, are they going to have to have a witness list.  
18 And if they're not going to bring a witness list or  
19 anyone to testify, can they participate just out of  
20 concern? Because we were out of the map, but, you  
21 know, we've been part of these proceedings the last  
22 five years. And so they want to obviously be aware of  
23 the whole situation.

24 DIRECTOR SPACKMAN: Rusty, your question brings  
25 up another particular issue that we need to talk about.



1 And that's what -- what's required and what does  
2 "participation" mean. And this will be an open  
3 hearing. And there will be an opportunity at least for  
4 people to listen in.

5 So folks who are observers, folks who want  
6 to understand what's happening, and if they're not  
7 offering witnesses and they're not examining,  
8 cross-examining witnesses that are called, they can  
9 even participate, if we call it that, or observe  
10 remotely. Okay. So those opportunities will be  
11 afforded.

12 I expect that people who are actively  
13 participating and who are calling witnesses and  
14 presenting factual evidence, I expect them to be here  
15 in person. So there won't be a Zoom or remote  
16 opportunity for participation. And I think that's  
17 consistent with some of the guidelines that are now  
18 being given by the State and by CDC.

19 MR. KRAMER: Forgive -- forgive my ignorance on  
20 that, so even as an observer you would need counsel?  
21 I'm just clarifying.

22 DIRECTOR SPACKMAN: Well, if you're just  
23 listening in, you don't need counsel.

24 MR. KRAMER: Even if you're an entity?

25 DIRECTOR SPACKMAN: No. If you're just

1 listening in, any individual or entity can listen. But  
2 if somebody is actively participating, either in the  
3 presentation of evidence or cross-examining witnesses  
4 or if they anticipate filing briefs or attempting to  
5 appeal the matter, then those parties or entities need  
6 to be represented by counsel.

7 MR. KRAMER: And the only other last question I  
8 was -- and maybe you said this at the first and I  
9 didn't hear: I heard this is being recorded. Can a  
10 person go on IDWR's website and listen to this whole  
11 meeting right now again later?

12 DIRECTOR SPACKMAN: I don't -- I don't know  
13 whether we intend to post this on the website. It  
14 certainly is being recorded.

15 MR. BAXTER: Director.

16 MS. CARTER: We'll make it available.

17 DIRECTOR SPACKMAN: We'll make it available.

18 MR. KRAMER: Thank you.

19 MR. SPECK: Director, this is Jim Speck.

20 DIRECTOR SPACKMAN: Yeah.

21 MR. SPECK: Just two points of clarification,  
22 because I happen to know where they are. The Southern  
23 Comfort Homeowners' Association and 86 Gimlet Road,  
24 LLC, should be in group three. They hold groundwater  
25 rights, but they're well north of your area.

1           DIRECTOR SPACKMAN:   Okay.  Thank you.

2           MR. SEMANKO:   Mr. Director.

3           DIRECTOR SPACKMAN:   Yes, Norm.

4           MR. SEMANKO:   Thank you.  I hope you do post the  
5 recording.  I want to hear where Travis cut everybody  
6 off for three minutes and see what we lost there.

7                       I'm a little bit confused.  I'll try to  
8 clarify things.  So I get if you're in group one or  
9 group two.  You're in the target.  You're directly  
10 affected.  You're going to be involved in this hearing.

11                      I get group three, too, because unless I  
12 don't understand it, your notice of this proceeding was  
13 sent to all water users in Basin 37.  That's how my  
14 client got interested, even though based on your most  
15 recent order it's pretty clear we're probably not  
16 impacted.  I still feel like what Mr. Bromley said, I  
17 don't know what's going to happen at the hearing.  I  
18 don't know where it's going to go.  I got to be there  
19 to protect my folks.  I get -- I get group three.

20                      I did not take your order, which the notice  
21 went to the water users in Basin 37 inviting them to  
22 file a notice of participation.  This isn't the  
23 adjudication.  This isn't a deal where everybody's got  
24 standing.  I don't understand that your notice, which  
25 was not sent directly to folks outside of Basin 37, was

1 an invitation for the world to file notices of  
2 participation.

3 Now, correct me if I'm wrong, but I've been  
4 in this position for a client before where I wasn't  
5 representing someone in the target area, and I had to  
6 file a motion to intervene. I wasn't invited to  
7 participate. I wasn't sent the notice. So I'm not  
8 understanding -- and I'm not saying they shouldn't  
9 participate. I'm not understanding how the group four  
10 folks were able to file notices of participation if  
11 they, in fact, did not directly receive the notice, as  
12 all the users in Basin 37 did.

13 And maybe I'm not understanding it because  
14 it was published or for some other reason I'm not  
15 understanding it. But I'm not understanding right now  
16 the group four folks to be in the same position as the  
17 group three folks. And maybe I'm wrong. And maybe I'm  
18 opening a can that doesn't need to be opened. But I'm  
19 a little confused about who was invited to file notices  
20 of participation.

21 DIRECTOR SPACKMAN: Well, Norm, I struggled with  
22 this some myself in grouping people into the various  
23 categories. But -- and I suppose, as a Hearing  
24 Officer, I could essentially tell these folks that they  
25 don't have standing and they can't participate, then I

1 suppose it would force, if there is an appeal -- and  
2 I'm assuming there will be regardless of how this  
3 particular matter shakes out, then I would force them  
4 into filing something, whether it's an amicus brief or  
5 whether it's some other filing to participate in an  
6 appeal or challenges.

7           So I guess where I'm landing, and the  
8 distinction between group three and group four will be,  
9 group three, from my perspective, can fully participate  
10 because you're in the basin.

11           And Chris is worried about creep. And I  
12 think that's a legitimate concern. And I want to -- I  
13 want to limit the focus on this hearing to the area  
14 that was identified.

15           Now, I think -- and I want to be perfectly  
16 transparent -- the way in which the notice of the  
17 proceeding and the contested case was issued, it was,  
18 in this case, titled very broad. In other words, this  
19 is a hearing related to a specific attempt to determine  
20 in the Bellevue Triangle what the impacts are.

21           But the proceeding itself could go on and  
22 be much larger than this particular hearing. And there  
23 could be multiple hearings that spring out of this  
24 particular matter. That's my vision.

25           So there is a good reason why the people in

1 category three should be recognized as parties. Now, I  
2 don't know whether that clarification is helpful to  
3 anybody.

4 I hope it is, Chris, because if you're  
5 concerned about creep, I don't intend to allow creep  
6 with respect to this particular hearing, because it was  
7 intended to have a narrow focus. But nonetheless,  
8 there are larger issues in the conjunctive  
9 administration here that I think ultimately will need  
10 to be resolved. And I don't know how those go.

11 But I couldn't see the worth of having  
12 multiple proceedings. And my vision was let's just  
13 have one proceeding, and then hold hearings based on  
14 what the emergency or exigent circumstances are. So  
15 I'm --

16 MS. MCHUGH: Mr. Director.

17 DIRECTOR SPACKMAN: -- answering this in a long  
18 way, Norm, but in the -- in the fourth category, my  
19 intention is to say no opportunity to call witnesses,  
20 no opportunity to cross-examine, but I will allow those  
21 folks to brief and to participate in any appeals that  
22 might arise out of this particular contested case --

23 MS. MCHUGH: Well, Mr. Director, this is  
24 Candice.

25 DIRECTOR SPACKMAN: -- because I --

1 MS. MCHUGH: And for the record, I do want to  
2 clarify for Norm that notice was published. And I  
3 think your point isn't off base by means and sense that  
4 a normal proceeding, you know, you would have  
5 intervention and stuff. But because the notice was  
6 published and the way to essentially participate in  
7 this particular case was set forth in the notice with  
8 the Notice of Intent to Participate, I think it was  
9 appropriate, because I think we're plowing very new  
10 ground. And I'm not sure under what kind of rules  
11 we're under, so I think that's the issue as to why the  
12 category four people are here. So the whole world, by  
13 notice, was intended -- was essentially invited to  
14 participate under the rules set forth in the notice  
15 that was published.

16 And I think that may have altered the  
17 regular procedure in this case. But I do want to make  
18 clear that it wasn't just an invitation through a  
19 written notice that was actually published.

20 MR. THOMPSON: That brings up a point, Director,  
21 if I might. Travis Thompson. That notice has a  
22 sentence in the middle, it says, "If you do not  
23 participate, you may still be legally bound by the  
24 results of the proceeding." I don't know what that  
25 means or who that's intended to be addressed to.

1 People that received the letter? Or people that read  
2 the notice in the paper or what's published?

3 DIRECTOR SPACKMAN: Well, this is Gary Spackman  
4 again. I want to interpret and allow for the  
5 opportunity to participate as broadly as I can allow  
6 it. I don't want to exclude people, but I'm also  
7 looking at five days of hearing that I'm trying to  
8 narrow sideboards and confine the focus a little bit  
9 here.

10 MR. SEMANKO: I appreciate your answer. And I  
11 understand whether you're in group three or four that  
12 if you bring testimony that's not relevant, the Hearing  
13 Officer is going to so rule accordingly. So I  
14 appreciate the clarification. And I understand what  
15 Candice is saying as well. It could have been a little  
16 clearer. But we are where we are. Thanks.

17 DIRECTOR SPACKMAN: Thank you, Norm.

18 Okay.

19 MR. SCHOEN: Mr. Director, Larry Schoen.

20 DIRECTOR SPACKMAN: We talked about --

21 MR. SCHOEN: A quick question.

22 DIRECTOR SPACKMAN: Yeah.

23 MR. SCHOEN: This is Larry Schoen. Is there any  
24 reason why IDWR staff members could not be called as  
25 fact witnesses or expert witnesses?



1           DIRECTOR SPACKMAN: No. All of the Department  
2 staff are available. I asked for staff memoranda.  
3 There are four of those memorandums, as I understand  
4 it, that have been filed. And those four individuals  
5 are identified as being witnesses that will testify at  
6 the hearing. And honestly, I would encourage either  
7 informal or formal questioning of those staff that  
8 prepared the staff memoranda.

9           MR. SCHOEN: Thank you.

10          DIRECTOR SPACKMAN: Okay.

11          MR. THOMPSON: I'm sorry. Can you restate that  
12 last sentence? Did you say "informal questioning"?

13          DIRECTOR SPACKMAN: Yeah, informal or formal.  
14 However -- I mean if counsel wants to depose witnesses,  
15 they can. And when I say "witnesses," Department  
16 staff. You can depose them. We have their calendars  
17 available for your review so that you can find a time.

18                 Or informally, if you want to sit down with  
19 them and talk through the staff memorandums with them,  
20 we'll make them available to you. And I know that in  
21 the past that in Department proceedings that I've seen  
22 both, both methods of questioning of Department staff.

23          MR. BAXTER: Mr. Director.

24          DIRECTOR SPACKMAN: Yes.

25          MR. BAXTER: This is Garrick. I just wanted to

1 clarify. The informal versus formal just relates to  
2 whether or not it's a formal deposition. If we go the  
3 informal route, we'll still provide the opportunity for  
4 everybody to participate. I just want to make that  
5 clear, because we didn't want to get in a situation  
6 where, let's say, Jennifer Sukow is talking to one  
7 attorney, and then another attorney calls her up and  
8 tries to set up a meeting. We'll coordinate  
9 availability amongst all the participants.

10 Okay, Director.

11 DIRECTOR SPACKMAN: Okay. Thank you. That's  
12 helpful.

13 MR. BARKER: So, Director, Al Barker. I think  
14 just to make things -- following up on what Garrick  
15 said, we would very much intend to depose the staff  
16 members who did prepare the staff reports. And so if  
17 Garrick says we're going to do it one way or the other,  
18 we intend to send notice of depositions. We want to  
19 get the dates. We want to figure out when we can get  
20 that done after we get the document responses.

21 And so I think that answers your question  
22 about informal versus formal.

23 MR. BAXTER: Al, could you speak up a little  
24 louder.

25 MR. BARKER: Garrick, we're going to do a formal

1 deposition of all the staff witnesses.

2 Did you hear that?

3 MR. BAXTER: Yep. Thank you.

4 MR. THOMPSON: This is Travis. I guess I don't  
5 want parties contacting staff that I don't know about  
6 informally in between that time --

7 DIRECTOR SPACKMAN: Okay.

8 MR. THOMPSON: -- if that's fair.

9 DIRECTOR SPACKMAN: Well, and perhaps -- all of  
10 counsel isn't here right now, but perhaps after this  
11 pre-hearing conference, we have a calendar of the four  
12 people that filed the staff memorandum and memorandums,  
13 and you can look at, at least, the schedule and try to  
14 determine a time when they can be deposed.

15 Okay. We have some cleanup matters, but I  
16 think I'll wait. We talked about identifying experts  
17 needs to come in Wednesday. Lay witnesses Friday.

18 Along with the lay witnesses, those in  
19 category three need to tell me -- well, and experts,  
20 you need to tell me what they'll testify to. And let's  
21 see. We'll address exhibit numbering in the scheduling  
22 order.

23 Deadline to submit exhibits, any  
24 preference? Thursday before the hearing, which gives  
25 you a day and a weekend. Think about it.

1           I want to talk about the hearing itself.  
2 We have so many parties. We have five days. I intend  
3 to finish. So Day One, IDWR staff will be up. Day Two  
4 set aside for the seniors. Days Three, Four, and Five  
5 set aside for the juniors. If at any time we're behind  
6 schedule, we'll go overtime and we'll start earlier in  
7 the morning. So we'll go late. We'll start early. I  
8 intend to finish.

9           MS. MCHUGH: Mr. Director, I would request IDWR  
10 staff go Day Two and the seniors go Day One. I'm not  
11 available on Day One. The staff has the most  
12 substantive stuff to say, frankly. And I'm pretty sure  
13 I'll be able to figure out what the seniors said.

14           But I think in fairness to my clients that  
15 it would be fair that I be able to be there to  
16 cross-examine or at least hear what staff has to say.  
17 And I'm unable to be there on Day One. And I don't  
18 think it would prejudice any party by changing those  
19 two days up.

20           MR. BARKER: Well, Mr. Director, we have the  
21 opposite problem. We have an expert witness that needs  
22 to be there and -- for the staff presentation and is  
23 not available on Day Two.

24           So with respect to Candice, juniors are the  
25 ones in the area of the bull's-eye.

1           DIRECTOR SPACKMAN: Yeah.

2           MS. MCHUGH: And that's fine. I didn't realize  
3 that, Al. And so I understand. I just thought if  
4 there wasn't a conflict. But if you have a conflict, I  
5 don't disagree that we yield to the juniors that are  
6 directly in the bull's-eye. It's just trying to make  
7 this work with the schedules is difficult.

8           DIRECTOR SPACKMAN: Well, thanks. Thanks,  
9 Candice.

10                   I also think in the order of presenting  
11 evidence that it's more sensible to have the Department  
12 staff testify first, testify about the background, lay  
13 out for the Hearing Officer and for others at least  
14 what the Department's research and information data  
15 analysis shows. And then I think that sets the tone.  
16 And also because the Director initiated this matter.  
17 And as a result, I think the Department has a  
18 responsibility to go forward with whatever evidence it  
19 has gathered.

20                   So I'll leave the -- I'll leave the  
21 schedule the way it is.

22           MR. BROMLEY: Director, on the exhibits and  
23 thinking about it --

24           DIRECTOR SPACKMAN: Yeah.

25           MR. BROMLEY: -- it might -- I was thinking

1 about this the last couple of days. I think really  
2 having exhibits a week ahead of the hearing is a better  
3 way to go. A few days doesn't give time for creation  
4 of rebuttal exhibits. Doesn't give time, frankly, to  
5 prepare -- you know, to prepare. I think a week. And  
6 we're in an incredibly truncated time frame here.

7 But I think a week ahead is probably a  
8 reasonable amount of time. I -- you know, Thursday  
9 with Friday and the weekend to look at them to be  
10 prepared on Monday, I -- I don't think that's  
11 reasonable. I think a week ahead of time, given the  
12 schedule, is about as reasonable as it can get. That's  
13 my two cents on that disclosure.

14 DIRECTOR SPACKMAN: All right. Well, any other  
15 thoughts?

16 MR. BARKER: Mr. Director, Al Barker again.

17 I -- again, I'm going to have to disagree,  
18 Chris.

19 We're not going to have -- we're not going  
20 to have all the depositions done by then. We're not  
21 even going to know who the witnesses are until Friday.  
22 And then on Monday we're supposed to provide all the  
23 exhibits of what we're going to need to cross-examine  
24 people who we may or may not have had a chance to  
25 depose. I just don't see that Monday ahead of the --

1 or a week ahead of the hearing makes -- is possible.

2 It would be better, I agree. But we don't  
3 have time, given the date that the Director has  
4 selected that he says he's not going to move.

5 MR. BROMLEY: Al, I'm with you there. I'm just  
6 trying to think of something that helps. Maybe  
7 Wednesday is better.

8 DIRECTOR SPACKMAN: Let's make it Wednesday.  
9 Let's make it Wednesday. Well, I think all of this  
10 highlights, from my perspective -- and I'll say this  
11 again to the parties. All of this highlights the need  
12 for some reasonable settlement in 2021 and a -- a more  
13 traditional approach to holding this hearing.

14 Okay. We have a few things that need to be  
15 addressed as mop-ups.

16 Meghan, do you want to talk about  
17 corrections?

18 MS. CARTER: There --

19 DIRECTOR SPACKMAN: Yes.

20 MR. BARKER: Mr. Director, I have one more --

21 DIRECTOR SPACKMAN: Yes.

22 MR. BARKER: -- question about the -- about the  
23 evidence. And that is -- and for those on the phone,  
24 this is Al Barker.

25 The question I have is, is the

1 Department -- are the Department witnesses done with  
2 their work effective with the submission of their staff  
3 reports dated the 17th, or is your staff continuing to  
4 do additional work and additional analysis? And if  
5 that's the case, when will we be able to see that  
6 additional work and additional analysis?

7 DIRECTOR SPACKMAN: Mr. Barker, I'm not aware of  
8 any additional analyses that's being completed or done  
9 by the staff at this point.

10 MR. BARKER: Okay. Thank you.

11 DIRECTOR SPACKMAN: Mehgan.

12 MS. CARTER: Just one cleanup matter, in Tim  
13 Luke's staff memorandum, he noticed two typos on  
14 page 11, paragraph 3. We will include this information  
15 in the scheduling order.

16 But in that paragraph the sentence that  
17 starts after the footnote, the dates should say dates  
18 through 5/15/19 -- or 1884 instead of 1885. The next  
19 sentence, it should say the next junior priority date.  
20 But again, we'll put that in the scheduling order.

21 MR. THOMPSON: Footnote 3, you said?

22 MS. CARTER: I was just identifying the  
23 sentence. It's the sentence that starts after the  
24 footnote.

25 DIRECTOR SPACKMAN: Okay. Is there anything



1 else we need to talk about?

2 MR. LAWRENCE: Mr. Director, this is Mike  
3 Lawrence.

4 DIRECTOR SPACKMAN: Yeah, Mike.

5 MR. LAWRENCE: Just clarification. I think I  
6 heard you correctly that as far as parties that intend  
7 to participate in the examination of witnesses and  
8 presentation of evidence, those parties need to be  
9 present at the Department for the hearing in person?

10 DIRECTOR SPACKMAN: Yes. Yes.

11 MR. LAWRENCE: And witnesses will all be  
12 required to be in person --

13 DIRECTOR SPACKMAN: Yes.

14 MR. LAWRENCE: -- or will they be allowed to  
15 attend via Zoom?

16 DIRECTOR SPACKMAN: They need to be here.

17 MR. LAWRENCE: Okay.

18 MR. THOMPSON: Just one more question. Travis  
19 Thompson, Director. Jerry Rigby indicated he was going  
20 to file something to note who he was representing as  
21 far as that list of individuals who are in that  
22 category three -- two. I don't remember.

23 Can that be provided by sometime today?

24 MR. RIGBY: Mr. Director, this is Jerry. I  
25 fully intend to do so. It's been difficult to round

1 the herd up, if you will. And I think we're there --  
2 we're there. So I intend by close of business day  
3 today to send out a notice that I'll be -- that we will  
4 be representing the individuals that we intend -- or  
5 that have agreed to allow us to represent them. So  
6 yes.

7 DIRECTOR SPACKMAN: Okay. I'm finished.

8 Anything else?

9 MR. FLETCHER: Director, this is Kent Fletcher.

10 DIRECTOR SPACKMAN: Yes, Kent.

11 MR. FLETCHER: I just had a question. On your  
12 discovery order you limited the discovery to requests  
13 for production, depositions, and subpoenas.

14 I'm a little uncertain as to which of your  
15 groups can engage in that discovery. Clearly groups  
16 one and two should be involved in that. I was just  
17 wondering about groups three and four, because I can  
18 see where parties may attempt to bury, you know, the  
19 senior users with multiple requests for production that  
20 aren't impacted by this matter that face no threat of  
21 curtailment.

22 And I just was wondering if you could give  
23 us any guidance on that.

24 DIRECTOR SPACKMAN: Well, group three is fully  
25 participating, except for, I guess, the specter of

1 being limited either through duplication or other  
2 redundant kinds of presentations. So groups one  
3 through three can fully participate in discovery. And  
4 I'll rely on the good faith and the relationships  
5 between the attorneys to ensure that certain parties  
6 don't overburden others in their requests, given the  
7 short time period. Group four isn't participating in  
8 discovery.

9 Okay. Anything else?

10 Thanks, everybody. It's a screamer.

11 MR. THOMPSON: Director.

12 DIRECTOR SPACKMAN: Yeah, Travis.

13 MR. THOMPSON: For the hearing, a court  
14 reporter, as opposed to just recording?

15 DIRECTOR SPACKMAN: Yes.

16 MR. THOMPSON: Is there room for that?

17 DIRECTOR SPACKMAN: If parties want a court  
18 reporter, there's a process that we follow. And I  
19 think we -- we would be willing to follow that same  
20 kind of joint financing arrangement. I don't recall  
21 what it is.

22 Garrick?

23 MR. BAXTER: Yes, Director. Generally we'll pay  
24 the first hundred dollars of the fee to have a court  
25 reporter here, and then leave it to the parties to

1 distribute the remaining amount among -- or the  
2 remaining costs amongst themselves. So if the  
3 attorneys who want to participate want to talk amongst  
4 themselves how they want to divvy that up, that's fine.  
5 And we'll leave it to them to reach out and hire the  
6 court reporter.

7 DIRECTOR SPACKMAN: Okay. Anything else?

8 Thanks, everybody.

9 MR. THOMPSON: Thank you.

10 (End of recording.)

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IN WITNESS WHEREOF, I set my hand and seal this 2nd day of June, 2021.



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JEFF LaMAR, CSR NO. 640  
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My commission expires December 30, 2023

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