

**IN THE DISTRICT COURT OF THE THIRD JUDICIAL DISTRICT OF THE  
STATE OF IDAHO, IN AND FOR THE COUNTY OF CANYON**

EDEN'S GATE LLC,

Petitioner,

vs.

THE IDAHO DEPARTMENT OF  
WATER RESOURCES and GARY  
SPACKMAN in his official capacity as  
Director of the Idaho Department of Water  
Resources,

Respondents.

**Case No. CV14-21-10116**

IN THE MATTER OF APPLICATION  
FOR PERMIT NO. 63-34832 THROUGH  
63-34838 AND 63-34840 THROUGH 63-  
34846 ALL IN THE NAME OF EDEN'S  
GATE LLC

**AGENCY HEARING TRANSCRIPT ON APPEAL**

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Judicial Review from the Idaho Department of Water Resources  
Honorable Eric J. Wildman, District Judge, Presiding

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BEFORE THE DEPARTMENT OF WATER RESOURCES  
OF THE STATE OF IDAHO

IN THE MATTER OF APPLICATION FOR     ) Docket No.  
PERMIT NO. 63-34832 THROUGH         ) AA-WRA-2021-001  
63-34838 AND 63-34840 THROUGH       )  
63-34846, ALL IN THE NAME OF EDEN'S )  
GATE LLC                                     )  
\_\_\_\_\_)

TRANSCRIPT OF RECORDED HEARING

BEFORE

HEARING OFFICER: NICK MILLER

Date:             June 15, 2020; 9:00 a.m.  
Location:         Idaho Department of Water Resources  
                    322 East Front Street  
                    Boise, Idaho

TRANSCRIBED BY:

JEFF LaMAR, C.S.R. No. 640

Notary Public

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Also Present:

Jean Hersley, IDWR

Kensie Thorneycroft, IDWR

Angie Grimm, IDWR

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## NO. ADMITTED

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## E X H I B I T S

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1           THE HEARING OFFICER: We're on the record. Good  
2 morning. My name is Nick Miller, and I'm the regional  
3 manager for the Idaho Department of Water Resources,  
4 Western Regional Office. I've been designated as the  
5 Hearing Officer for this proceeding.

6           Assisting me with this hearing today are  
7 Jean Hersley, administrative assistant in this office;  
8 and Kensie Thorneycroft, administrative assistant in  
9 the Western Regional Office.

10           The purpose of this hearing is to receive  
11 evidence and testimony in connection with 14  
12 applications for permit, numbered 63-34832 through  
13 63-34838 and 63-34840 through 63-34846, all filed in  
14 the name of One More Mile, LLC, and each of which have  
15 been protested by Farmers' Co-operative Ditch Company.  
16 The contested applications have been consolidated for  
17 hearing.

18           This hearing is beginning on Monday,  
19 June 15th, 2020. We started at 9:00 a.m., and went on  
20 the record at about 9:25 or 6. We're in the Sixth  
21 Floor conference rooms at the Department's main office  
22 at the Idaho Water Center building in Boise.

23           This hearing will be conducted in  
24 compliance with the applicable provisions of Chapters 2  
25 and 17 of Title 42 Idaho Code; Chapter 52 of Title 67



1 Idaho Code; the Department's Water Appropriation Rules,  
2 which is IDAPA 37-0308; and the Department's Rules of  
3 Procedure, which is IDAPA 37-0101.

4 Present at the hearing today are, as I  
5 said, Nick Miller, Kensie Thorneycroft, and Jean  
6 Hersley. And Angie Grimm from the Department is  
7 observing.

8 And for the applicant we've -- would you  
9 guys care to introduce yourselves.

10 MR. BARKER: Pardon? Oh, for the applicant  
11 Albert Barker on behalf of One More Mile, along with  
12 the members of One More Mile, Craig and Sharla Froerer.

13 THE HEARING OFFICER: Okay. And do you have  
14 anyone in the audience?

15 MR. BARKER: Witnesses.

16 THE HEARING OFFICER: Witnesses?

17 MR. BARKER: Yeah.

18 THE HEARING OFFICER: And for the protestant?

19 MR. FARRIS: Yeah. Bryce Farris on behalf of  
20 Farmers' Co-operative Ditch Company. And with me are  
21 Rod Nielsen, who's the president of the Ditch Company;  
22 and Tom Johnston, board member.

23 THE HEARING OFFICER: Okay. And also because of  
24 the extraordinary situation involving the COVID-19  
25 situation, I have arranged for some of the parties'

1 witnesses to testify via video and audio  
2 teleconference. Those currently present by our remote  
3 participation are Lori Graves. And I believe that's it  
4 for right now, but we may have additional people  
5 joining us if there's another witness that will  
6 testify -- witnesses that will testify.

7 So let's see. Prior to the hearing the  
8 parties have identified and discussed certain exhibits  
9 to be offered into the evidentiary record. And we  
10 discussed that there is some duplication to those -- to  
11 those records -- or to those exhibits.

12 And the parties have each stipulated to the  
13 authenticity of each of the -- the exhibits that were  
14 previously disclosed, but we will discuss whether they  
15 object to admission of those at the time they're  
16 introduced.

17 We discussed that some of the -- some of  
18 the exhibits are duplicative of one another. And at  
19 the time the first party introduces them, we'll enter  
20 those into the record if appropriate and utilize that  
21 version of the exhibit moving forward.

22 Did I adequately characterize our  
23 discussions on exhibits prior to going on the record,  
24 Al?

25 MR. BARKER: Yes, from my perspective you did.

1 THE HEARING OFFICER: And, Bryce?

2 MR. FARRIS: Yes.

3 THE HEARING OFFICER: Let's see. So in addition  
4 to the exhibits offered by the parties, I will take  
5 official notice of the Department's files for  
6 applications for permit No. 63-34832 through 63-34838  
7 and 63-34840 through 63-34846. And this includes the  
8 applications and the protest documents as identified in  
9 the scheduling order scheduling this hearing.

10 I will also take official notice of past  
11 decisions and orders of the Department and the  
12 Department's water right records. Specifically, I'll  
13 take official notice of records for water rights and  
14 adjudication claims and recommendations from  
15 groundwater in the vicinity of the proposed use.

16 This official notice includes, but is not  
17 limited to, the specific water right files noted in the  
18 protestant's exhibit disclosure for Exhibits 114 to  
19 118, to the extent that that is not subject to an  
20 objection from the applicant.

21 Let's see. I'll also take official notice  
22 of reports, measurements, and stream-flow records in  
23 the Department files, well driller reports, which are  
24 always known as well logs in the Department files.

25 So all applications for permit are

1 evaluated using criteria set forth in Idaho Code  
2 42-203A(5). Prior to the hearing the parties have  
3 stipulated that some of these criteria are not at issue  
4 in this contested case. Specifically, the criteria  
5 related to sufficiency of supply, injury to other water  
6 users, sufficiency of financial resources, and  
7 speculation, where stipulated to, to the extent that  
8 they aren't related to the issues of main concern in  
9 this hearing, which are conservation of water resources  
10 in Idaho and consistency with local public interest.

11 So nevertheless, the Department must still  
12 evaluate the criteria -- all the criteria. So the  
13 applicant of One More Mile, LLC may address these  
14 topics briefly. However, the protestants have agreed  
15 not to raise the issues during the hearing related to  
16 these criteria.

17 Is that a correct representation of the  
18 stipulations, Al?

19 MR. BARKER: From my perspective it is.

20 THE HEARING OFFICER: And, Bryce?

21 MR. FARRIS: Yes.

22 THE HEARING OFFICER: Okay. So with these  
23 preliminary matters concluded, I will ask Mr. Barker to  
24 call his first witness.

25 MR. BARKER: Thank you, Nick. And I apologize

1 in advance if I call you "your Honor" during the  
2 proceeding.

3 THE HEARING OFFICER: No apology necessary.

4 MR. BARKER: It's how I just roll. Sorry, your  
5 Honor.

6 We will first call Craig Froerer to the  
7 stand.

8 THE HEARING OFFICER: Mr. Froerer, I'll swear  
9 you in first.

10 MR. FROERER: Okay.

11  
12 CRAIG FROERER,  
13 having been called as a witness by the Applicant, was  
14 duly sworn and testified as follows:

15  
16 THE HEARING OFFICER: Do you solemnly affirm  
17 that the testimony you're about to give is the truth,  
18 the whole truth, and nothing but the truth?

19 THE WITNESS: Yes.

20 THE HEARING OFFICER: All right. You may be  
21 seated.

22  
23 DIRECT EXAMINATION

24 BY MR. BARKER:

25 Q. All settled?

1           A.     Settled in.

2           Q.     Okay.  Craig, I'm sure you're happy to be  
3 here today, but would you introduce yourself to the  
4 Hearing Officer, tell him a little bit about your  
5 background.

6           A.     Okay.  I'm Craig Froerer.  Been a resident  
7 of Nyssa, Oregon, for 62 years.  I farmed with my dad  
8 as a kid growing up, and then him and I started a  
9 business and have started that.  We have a family farm  
10 with four of my five kids working with us on the farm,  
11 and my sister is working with me and nephews and  
12 nieces.  So it's actually a family farm operation in  
13 the Nyssa/Parma area.

14          Q.     Craig, you know the applicant in this case  
15 is an LLC called One More Mile?

16          A.     Correct.

17          Q.     Would you explain who that is.

18          A.     That's my sister Robin; my sister Sharla;  
19 my mom, Colleen; and myself.

20          Q.     Okay.  And when was that entity formed?

21          A.     I believe in 2019.

22          Q.     What was the purpose for this LLC?

23          A.     To -- to buy this parcel of ground, to farm  
24 it, and continue to go on with the development of that  
25 property.

1 Q. So when you say "this parcel of ground,"  
2 what do you mean?

3 A. It's 120 -- 112 acres, I believe, in -- on  
4 Apple Valley Road in Parma, Idaho, that had been  
5 developed by a developer in 2008, had put in some  
6 roads, some power, some phones to that, and  
7 subdivided -- not subdivided. They had split the lots  
8 and paved the roads to make it for people to live in a  
9 rural area.

10 Q. So this property, is that the property  
11 where you have the 14 applications pending?

12 A. That is correct.

13 Q. Does the 14 applications cover the entire  
14 112 acres?

15 A. They do not.

16 Q. What does it cover?

17 A. That covers the 28 acres on the east --  
18 southeast corner of that property that we already have  
19 the roads and stuff developed into them.

20 Q. If you would open that blue -- or purple --

21 A. Okay.

22 Q. -- binder to Exhibit 1.

23 Do you recognize Exhibit 1?

24 A. Yes, I do.

25 Q. What is Exhibit 1?

1 A. It's a warranty deed for that property.

2 Q. And is that -- sorry. When was that  
3 purchase made?

4 A. On this it was purchased on 1/31 of 2019,  
5 recorded.

6 Q. And is that a true and correct copy of the  
7 warranty deed that you used to purchase this property?

8 A. Yes, it is.

9 MR. BARKER: Okay. Move the admission of  
10 Exhibit 1.

11 MR. FARRIS: No objection.

12 THE HEARING OFFICER: No objection. Okay.

13 (Exhibit 1 admitted.)

14 Q. (BY MR. BARKER): And then would you then  
15 turn to page -- sorry, Exhibit 10.

16 A. Is it --

17 Q. Behind tab 10.

18 A. Uh-huh. Yep.

19 Q. Do you recognize Exhibit 10?

20 A. Yes, I do.

21 Q. Tell me what Exhibit 10 is.

22 A. It's our certification -- certification of  
23 our water rights for that same parcel of property.

24 Q. Where did you get that certificate?

25 A. That was mailed to us from the Farmers'



1 Co-op in Parma, Idaho.

2 Q. And when did you receive that?

3 A. That would be very close to -- I don't know  
4 the exact date, but it would be very close -- a little  
5 bit after, I'm sure, the warranty -- the property was  
6 closed on.

7 Q. So if you see the certificate, it says that  
8 it was dated February 19th --

9 A. Yep.

10 Q. -- of 2019?

11 A. Of 2019, yep. Correct.

12 Q. Okay. And does this represent the number  
13 of shares that you own in Farmers' Co-op?

14 A. It does. 64.

15 MR. BARKER: I move the admission of Exhibit 10.

16 MR. FARRIS: No objection.

17 THE HEARING OFFICER: Okay. Exhibit 10 is  
18 admitted.

19 (Exhibit 10 admitted.)

20 Q. (BY MR. BARKER): Did you prior to getting  
21 Exhibit 10 make any application to Farmers' Co-op?

22 A. I did not.

23 Q. Do you know the process by which Farmers'  
24 Co-op transferred these shares to you?

25 A. I do. Once we bought the property from

1 John Chandler, he -- we had not farmed -- owned ground  
2 on that side before. He explained the situation to us  
3 of the water, how it would be transferred to us from  
4 the Co-op prior to the purchase.

5 Q. When did you first become interested in  
6 this property?

7 A. We were farming it prior to our purchase,  
8 and it sat idle for some time.

9 Q. When did you start the farming?

10 A. We farmed it in 2018.

11 Q. I'm sorry. I interrupted you. You started  
12 in '18 and then --

13 A. And then purchased it in '19.

14 Q. Okay. So what part of the property were  
15 you irrigating -- or farming?

16 A. We were farming the -- most of the ground  
17 on the top that's pretty flat. So there's more water  
18 shares than we're currently farming. That 64 would be  
19 enough water for 128 acres. We're like farming 61 at  
20 the present time.

21 Q. So the shares are excess to your needs?

22 A. They are.

23 Q. So explain the practice, the farming  
24 practice that you -- well, let me back up a sec.

25 You purchased the property from

1 Mr. Chandler, did you say?

2 A. That's correct, from John Chandler.

3 Q. Were the shares that were -- if you know,  
4 were the shares in Exhibit 10 in his name or the name  
5 of his company before that?

6 A. They were in his name.

7 Q. So you started farming the land in 2018.  
8 Just explain what you did on the property.

9 A. So we -- we grew sweet potatoes on it in  
10 2018, and we did that all under drip. Sweet potatoes  
11 perform better in a drip situation than they do in a  
12 furrow.

13 At present we're farming everything but the  
14 area that this 28 -- 14 acres or 28 lots that are  
15 there. They are -- have the cul-de-sacs or --

16 Q. Okay. So hold on a second.

17 A. Huh?

18 Q. Let me clarify this. So there's 28 acres?

19 A. Correct.

20 Q. Or sorry, 28 lots?

21 A. 28 lots. 14 acres, excuse me.

22 Q. Okay.

23 A. 14 acres, yes. Right, yeah.

24 Q. The other way around, right, lots are --

25 A. Lots are -- excuse me. Yeah, there's

1 28 acres, 14 lots.

2 Q. Okay.

3 A. 2 acres per lot.

4 Q. And then there's additional lots that are  
5 also being farmed; right?

6 A. That's correct.

7 Q. Okay. So let's talk about the -- the  
8 28 acres.

9 A. Okay.

10 Q. What were you doing on that property in  
11 2018?

12 A. '18 it had sweet potatoes in production on  
13 it.

14 Q. And how did you get water to the --

15 A. We pumped the water, we pressurized the  
16 water with an additional pump and pressurized system,  
17 and delivered water to the sweet potatoes.

18 Q. Okay. And was that 14 -- those 14 lots,  
19 those 28 acres, did they already have some  
20 infrastructure in place when you bought it?

21 A. They have the infrastructure in place.

22 Q. Okay. And describe what the existing  
23 infrastructure was when you purchased the property?

24 A. So they have -- part of it is paved road  
25 and have a turnaround -- turnabout around that's paved.

1 They have power running to them, phone service ran to  
2 them. And two of them are graveled roads that have not  
3 been paved at this present time, but they go out into  
4 the property.

5 Prior to this it was irrigated by gravity  
6 irrigation. But when they put the roads in, they  
7 elevated the roads and made it no longer possible to  
8 irrigate by gravity because you can't run water over  
9 the cul-de-sacs. It's uphill, because they're raised  
10 up off of the ground so the road would handle the load  
11 that came on them in the future.

12 Q. And then how are you farming the balance of  
13 the property?

14 A. It is all furrow irrigated in -- presently  
15 in sugar beets.

16 Q. Okay. And what's the delivery system out  
17 of the Farmers' Co-op?

18 A. So the Farmers' Co-op headgate is about a  
19 half mile away. And it goes in a pipeline for a  
20 quarter mile, and then it goes in an open ditch after  
21 that. And it goes into a pretty large settling pond  
22 prior to coming -- as it enters into my property to  
23 settle the silt out.

24 This irrigation system is an older system  
25 that has an irrigation system above it where their

1 water flows into that system. And we get a high  
2 sediment load because of -- the farmers above the  
3 canal, their water runs back into the canal, and it  
4 brings a lot of silt into our ditches.

5 On the two years that we've had it and the  
6 year we've -- as we farm it, the ditches become  
7 completely full of silt. We have to shovel them out  
8 because of the silt load that comes into that system.

9 Q. So is that even with the settling pond you  
10 still have silt --

11 A. Correct.

12 Q. -- in your ditches?

13 A. In 2019 the Co-op built a large settling  
14 pond over by the town of Parma to try to alleviate part  
15 of this problem, because they had a lot of silt buildup  
16 in that, which they clean annually. That has helped  
17 some, but we still have a large sediment load because  
18 of the farmers above, their water running into this  
19 system that helps keep this system full of water.

20 Q. Okay. And then you said -- is that -- that  
21 settling pond off of your delivery system, is that on  
22 your property?

23 A. It is on my property, yes.

24 Q. Okay. And then there's a -- how does the  
25 water get out of that settling pond onto your fields?

1           A.    It goes into a cement ditch.  There's two  
2 different systems on that.  But they go into cement  
3 ditches, and then they run over to the property.  One  
4 runs through a pipeline and comes out into the center  
5 of the property that irrigates the fields on the south  
6 side, and then there's a cement ditch all the way that  
7 carries it to the northern part of the property and  
8 delivers it through a cement ditch.

9           Q.    And so what's the condition of the water  
10 sediment load in the water that's coming out of the  
11 settling pond onto your property?

12          A.    There's still a lot of sediment.  Since  
13 we've been there, we've had to clean the pond each year  
14 to -- to get the sediment out so that we have a place  
15 for it to fall out.  But even with that happening,  
16 there's still a lot of sediment that comes into the  
17 property.

18          Q.    Are there other users on your -- on this  
19 headgate?

20          A.    There are.  I don't know the number.  There  
21 can be quite a few, because as it comes up on the other  
22 side of Rocky Road -- it goes under from Grand View to  
23 Rocky, it's underground.  And then from Rocky Road over  
24 there's a number of homeowners who use that same  
25 system.  There's another farmer that uses that same

1 headgate and system as well.

2 Q. Okay. What happens to the runoff from  
3 that?

4 A. It runs back into the Snake River.

5 Q. Are there drains on your property that go  
6 to the Snake River?

7 A. There are. There are two drains on my  
8 property that take the excess water, because I'm the  
9 end of that lateral and there's all those people  
10 sharing. The water fluctuates quite a bit up and down  
11 because of -- depending on how much the neighbor is  
12 using. We have quite a bit of fluctuation. And so  
13 there's always water running over the headgate and  
14 running back into the Snake River.

15 Q. Is there a measuring device on the  
16 headgate?

17 A. There is none.

18 Q. So do you know how the Co-op knows how much  
19 water is being delivered to your farm?

20 A. They do not know.

21 Q. What's the condition of the runoff that  
22 goes back into the Snake River?

23 A. Well, it have that same sediment load in  
24 it. All that water that goes back in is going back  
25 into the Snake River. It has no place to settle out,



1 other than what falls into my ditches on an annual  
2 basis. But it still has quite a bit of sediment as it  
3 goes back into the Snake River.

4 Q. Of the, let's see, 100 -- roughly 100 acres  
5 that are not part of the development, are you farming  
6 all of it?

7 A. I am not. I'm just farming 61. The rest  
8 is in trees and brush. No one is farming -- there's a  
9 draw that has a lot of trees on it and vegetation in  
10 it. A lot of natural habitat there for animals.

11 Q. Is that down along the banks of the river?

12 A. No. There's a draw that actually -- on the  
13 north end of the property, there's another water -- or  
14 creek that kind of runs through that, and that water  
15 runs through that property as well.

16 Q. And you've now irrigated for two full  
17 seasons; right?

18 A. Correct.

19 Q. And are you irrigating in this year as  
20 well?

21 A. We are, yes.

22 Q. What are you doing on the -- the 28 acres  
23 that's subject to the 14 lots?

24 A. The 28 acres is not being farmed because  
25 it's -- we're furrow irrigating this year. So that

1 28 acres is not being farmed at this present time.

2 Q. What are you farming on the other 61 acres?

3 A. Sugar beets.

4 Q. So the 28 acres, 14 lots, how -- let me --  
5 let me back up a step.

6 When you bought the property, was this  
7 28 acres and 14 lots already in place, or did you make  
8 changes to make that happen?

9 A. We -- there is no application for any  
10 change there. It's a -- was already developed when we  
11 purchased the property.

12 Q. Okay. And so how -- the idea of using the  
13 14 lots and the 28 acres, was that your idea to start  
14 with?

15 A. Yeah. When we bought the property, we  
16 thought that would be what -- where the roads have  
17 already been in place and the power has been ran there  
18 and stuff, the infrastructure has been put in place, we  
19 thought that would be the natural evolution of that  
20 ground there.

21 It's not going to generate any revenue to  
22 us unless we can drip it, which, you know, is quite a  
23 bit more expensive. And most crops don't require it.  
24 And there's no irrigation system, so we felt like that  
25 was the natural evolution that that should take place.

1           Q.    I don't know if this is something you can  
2 talk about, but if you would look at Exhibits 2 and 3  
3 in front of you.

4                   Do you recognize, first of all, Exhibit 2?

5           A.    I do.

6           Q.    Can you tell -- tell us what that is?

7           A.    That's this parcel of ground that was put  
8 into an orchard tract in 1910, I believe. The writing  
9 is too small. I can't read the time, but I believe it  
10 was in 1910.

11          Q.    I was hoping you were going to be able to  
12 read it better than me.

13          A.    Yeah, I...

14          Q.    That's okay. Roughly 1910?

15          A.    Yeah, 1910 it says. Yep.

16          Q.    Oh, good?

17          A.    April 16th of 1910, I -- yep.

18          Q.    I might have to borrow your glasses. Okay.

19                   So what do you understand this to mean with  
20 respect to your land?

21          A.    Well, this land was tract into small  
22 parcels to be sold way before I would have thought  
23 anybody would ever had thought that. But it was done  
24 on this property way prior, you know, in 1910.  
25 Somebody was very forward-thinking and got that done

1 long before.

2 They were done into 4-acre parcels, as this  
3 shows. And it's adjacent to the Snake River.  
4 Beautiful view of the Snake River as well.

5 Q. Then would you -- oh, sorry.

6 I would offer Exhibit 2.

7 MR. FARRIS: No objection.

8 THE HEARING OFFICER: Okay. Exhibit 2 has been  
9 offered and admitted.

10 (Exhibit 2 admitted.)

11 Q. (BY MR. BARKER): If you could turn to  
12 Exhibit 3.

13 Are you familiar with Exhibit 3?

14 A. I am not really.

15 Q. Okay. Well, I'll let -- I'll let somebody  
16 else talk about that.

17 A. Okay.

18 Q. Okay. I will ask you, though, if you know  
19 whether those 4-acre lots had been additionally  
20 divided?

21 A. Prior to our purchase the other group of  
22 individuals that were trying to develop this property,  
23 they split those parcels in half because it didn't  
24 require any application to change the land use of that  
25 because they can do an administrative split one time.

1 And so those were split to make those parcels --  
2 instead of being 4 acres, make them approximately  
3 2-acre parcels.

4 Q. And that's not something that you did?

5 A. I did not do that. That was done prior to  
6 our purchase.

7 Q. So now let's -- let's move to the plan.

8 So what is it that you intend to do with  
9 these 14 lots on the 28 acres?

10 A. We intended to sell them for residential so  
11 that people could have a place in the country, not as  
12 crowded. Already have the infrastructure in place that  
13 was there when we purchased it so that they could have  
14 a spot. And I think it's really good for people to  
15 keep their hands tied to the ground.

16 So I like the idea of having a parcel  
17 that's not just big enough for your house, but you're  
18 tied to the ground so that you have that connection to  
19 the earth.

20 Q. And so how did you -- what did you do to  
21 then try to put this vision into -- into operation?

22 A. So we contacted Alan Mills and Matt Wilke  
23 and talked to them about that, because we had a mutual  
24 friend that we had worked with that recommended them to  
25 help us, because we didn't know how to continue to go

1 on to do that. And through that friend we have worked  
2 with them to help develop this and to list this  
3 property for sale.

4 Q. So they were -- you intended to use those  
5 as real estate brokers, essentially?

6 A. That's correct.

7 Q. Okay. So what -- what process or what  
8 plans, then, did you come up with on how you would  
9 carry out this -- this development of the 28 acres --  
10 or 28 acres?

11 A. Well, everything was already pretty much  
12 done. The roads were in place, the power was there and  
13 stuff. So we just talked to them and we came up with  
14 the plan that we wanted to put them on the market. And  
15 we put them on the market to sell those lots.

16 Q. Okay. And how about providing domestic  
17 water for the homes, how was that going to be  
18 accomplished?

19 A. So we -- we wanted to know if it was easy  
20 to find water there. We farm on the Oregon side. But  
21 on the Idaho side we weren't really that familiar with  
22 that. So we drilled a test well on one of those  
23 parcels to see if there was water readily available  
24 for -- for irrigation -- for home use there on those  
25 property -- on that property.

1           Q.    Okay.  What did you learn from that test  
2 well?

3           A.    An abundance of water.  Not very deep,  
4 50 feet and 50-plus gallons per minute, which is way  
5 more than a home would be required to have.

6           Q.    So is it -- was it your plan or is it your  
7 plan also to provide irrigation water to these lots?

8           A.    It is not.  That was -- our intention was  
9 not to provide irrigation water to these lots.

10          Q.    Not from Farmers' Co-op?

11          A.    Not from Farmers' Co-op.

12          Q.    And how were you going to get water for  
13 people to irrigate their gardens?

14          A.    From their own well.  As the sediment load  
15 there is so high, we knew that an HOA irrigation system  
16 would be a higher maintenance there because of all the  
17 sediment that comes into the water.

18                It seemed much simpler and much -- like  
19 each person is in control of their own destiny if they  
20 have their own well.  And that water is readily  
21 available there.  There's no groundwater concerns  
22 there.  They could use that well to irrigate their own  
23 acre or 2, whatever they don't build their house and  
24 their outbuildings on so they could have that for  
25 pasture use.

1           Q.    So that additional use is the purpose of  
2 those -- of these 14 applications?

3           A.    That's correct.

4           Q.    Okay. And then when you -- when you sell  
5 the lots, is it your plan to actually drill the well  
6 yourself?

7           A.    It is not. So each homeowner would be  
8 responsible for their own well.

9           Q.    But you, through this application, would  
10 supply the water right?

11          A.    Withdrew the water right?

12          Q.    You would supply them with the water right  
13 if these applications are granted?

14          A.    That's correct.

15          Q.    So as the Hearing Officer identified, one  
16 of the questions is whether or not you have the  
17 financial resources to carry out this development and  
18 put these -- these lots to use, put water to use on  
19 these lots.

20                So can you answer that question? Do you  
21 have the resources -- well, first of all, what do you  
22 think it's going to take in terms of additional  
23 resources to be able to put these lots on the market?

24          A.    They're ready to sell. Part of them are  
25 ready to sell presently. One of them already has a



1 well placed on it. We have the resources. Myself and  
2 my sisters and my mom, we've been farming for a long  
3 time. We have the resources to be able to -- the roads  
4 that are graveled, we want to make that a better  
5 subdivision, so we're going to pave those as we get  
6 this worked through and do that and make it so it's  
7 better for people to access that.

8 The well we drilled as a test well shows  
9 that there's a -- it's easy. It cost about \$10,000 to  
10 put a well in and to see if -- you know, to see that  
11 there was water available for everybody that was  
12 eventually going to live there.

13 Q. And so you've -- the idea was to put wells  
14 on these properties?

15 A. That's correct.

16 Q. For each one of the lots; right?

17 A. Each of the individuals will have to have  
18 their own well. This is not in a public area, a town.  
19 And so they would have to have their own well for  
20 domestic water use anyway. And so this well should be  
21 able to handle that -- both of those needs.

22 Q. Yeah, so that's a good point.

23 The property is located -- is that inside  
24 the city limit or town limits?

25 A. It is not.

1 Q. And it's in Canyon County?

2 A. Canyon County.

3 Q. Okay. And does Canyon County have any  
4 rules prohibiting development of wells on these lots,  
5 to your knowledge?

6 A. Not on this property.

7 Q. So you've got your brokers ready to go.  
8 What did you do next in terms of putting  
9 the applications for the water rights together?

10 A. So we -- I went and met with Neddy  
11 [phonetic] at the Farmers' Co-op and talked to her  
12 about transferring this property. And she --

13 Q. Sorry. Transferring the property?

14 A. Transferring the water rights --

15 Q. Okay.

16 A. -- off of this property.

17 She explained to me that they had a willing  
18 participant who would like to purchase any and all  
19 water rights -- water shares that we would like to  
20 sell. I did not know who that person was at that time.

21 But with that information in hand, we  
22 thought it was a win-win because we would be able to --  
23 the water rights would be able to go on to additional  
24 farm ground that would produce food for America and for  
25 our nation, making us less dependent on other

1 countries, and keep that water in the use for other  
2 individuals to produce food -- food-type commodities  
3 for -- for our nation.

4 Q. Did you put the application for water  
5 rights together yourself?

6 A. I did not.

7 Q. How did you -- what did you do in order to  
8 get that done?

9 A. Our agent, Matt Wilke, did that.

10 Q. Okay. So you weren't involved directly in  
11 putting together the application?

12 A. I was not.

13 Q. And were you involved directly in hiring  
14 SPF?

15 A. I was not.

16 Q. Okay. So after you had talked with Neddy,  
17 did you have any other conversations with any members  
18 of the Farmers' Co-op board or other water users in the  
19 Co-op before you submitted your applications?

20 A. I did not.

21 Q. Were you aware that there was any  
22 objections to your proposal before you submitted your  
23 application?

24 A. I was not. I looked through the bylaws of  
25 the Farmers' Co-op. And as I looked through the

1 Co-op's bylaws, it allowed us to transfer the land in  
2 two places.

3 I believe it states that I have the ability  
4 to transfer the water off of the land. And so I  
5 thought that would be an easy opportunity to be a  
6 win-win. As I talked with Neddy, she thought it was a  
7 win-win as well.

8 Q. Okay. After the applications were  
9 submitted, did you learn that Farmers' Co-op had filed  
10 objections to all 14?

11 A. After the application was submitted, yes.

12 Q. Okay. How did you hear about that?

13 A. I think Matt called me and told me that it  
14 had been objected to.

15 Q. Did anybody from Farmers' Co-op call you  
16 and tell you they were going to object?

17 A. They did not.

18 Q. So what's the first discussion, if any,  
19 that you had with Farmers' Co-op after the protests  
20 were filed?

21 A. So we met, I believe, in their March  
22 meeting. We went --

23 Q. March of --

24 A. March of 2020.

25 Q. Okay.

1           A.    We met with their annual -- their -- at  
2           their monthly meeting. And we presented our case to  
3           them of what we wanted to do.

4                    At that meeting they told us that they  
5           would take it under advisement. They would think about  
6           giving us an opportunity to take -- transfer these  
7           shares off so that we could do that.

8           Q.    So was it your proposal to transfer shares  
9           off of all the property or just the 28 acres?

10          A.    Just the 28. That's all that we're  
11          planning on doing right now is the 28.

12          Q.    So how many shares were you planning to  
13          sell?

14          A.    14.

15          Q.    Okay. And did you learn later who it was  
16          that was interested in purchasing the shares?

17          A.    It was at that meeting. Prior to that I  
18          did not know who was interested, other than there was a  
19          willing participant. I didn't know who that individual  
20          was until we met at that board meeting, and they told  
21          us it was John Watson that was interested in buying  
22          those shares.

23          Q.    The board told you that?

24          A.    It was mentioned, I believe, by Neddy at  
25          that meeting that that's who the individual was.

1 Q. Okay. So did you ever follow up with John  
2 Watson after that?

3 A. We have.

4 Q. Okay. And what's the result of that?

5 A. He's -- he's willing to -- to purchase  
6 those shares. We have a letter saying that he's  
7 willing to purchase those shares if we're -- if we're  
8 willing to sell.

9 Q. Okay. Would you look at Exhibit 29.  
10 Do you have that?

11 A. Yep.

12 Q. Is that the agreement that you have with  
13 Mr. Watson?

14 A. That is correct.

15 Q. Or Watson's company?

16 A. Yep.

17 MR. BARKER: I'd move the admission of  
18 Exhibit 29.

19 MR. FARRIS: No objection.

20 THE HEARING OFFICER: Okay. Exhibit 29 is  
21 offered and accepted.

22 (Exhibit 29 admitted.)

23 Q. (BY MR. BARKER): So I want to revisit a  
24 couple of points.

25 I think as an owner of the property, would

1 you -- would you be interested in putting these 14  
2 wells in if you thought that it would have an impact on  
3 any of the water users in the area?

4 A. I would not.

5 Q. And from what you've seen from the  
6 investigations, do you believe it does have an impact  
7 on other water users?

8 A. I believe it will have no impact on other  
9 water.

10 Q. So do you have an opinion on what the  
11 benefit to the local economy would be from having these  
12 applications granted?

13 MR. FARRIS: Objection. He's not an expert on  
14 the local economy or qualified to issue an opinion as  
15 to that.

16 MR. BARKER: He's not offered as an expert.  
17 He's offered as the owner of the property, who can have  
18 an opinion about what impact his development has on the  
19 local area.

20 THE HEARING OFFICER: I'll allow him to offer an  
21 opinion, noting that it is his own opinion and not an  
22 expert opinion.

23 Q. (BY MR. BARKER): So what happens,  
24 Mr. Froerer, to the property values when the land goes  
25 from agriculture to residential?

1           A.     It increases in value.

2           Q.     And what happens to the tax base when that  
3 happens?

4           A.     Tax base increases.

5           Q.     What -- is there -- do you have an opinion  
6 about whether there's a benefit to keeping the water in  
7 agricultural hands as opposed to residential hands that  
8 belongs to Farmers' Co-op?

9           MR. FARRIS:  Objection.

10          THE WITNESS:  I have an opinion.  I think it's  
11 much better to keep it in agriculture hands, especially  
12 when there's a --

13          MR. FARRIS:  I'm going to again object before he  
14 answers -- finishes his answer that he's not qualified  
15 to issue an opinion.  He's speculating as to how this  
16 might affect Farmers' Co-op.  He's not an expert in the  
17 local economy.  So I'll renew my objection.

18          MR. BARKER:  So, Mr. Hearing Officer, the  
19 question wasn't how this affects the -- maybe I did say  
20 local economy.

21                 But the question is, under the sale of the  
22 shares to Watson, what water will remain in  
23 agricultural use as opposed to residential use?  And  
24 I'm just asking if he has a view on whether or not  
25 that's a good thing or a bad thing and why.



1 THE HEARING OFFICER: I'll allow that. As a  
2 member of the public, he's allowed to have an opinion,  
3 whether he personally thinks that that's a good thing  
4 or bad thing.

5 THE WITNESS: I think it's a great thing to keep  
6 it in agriculture use to be able to produce food,  
7 fiber, and any products for our -- this country,  
8 because I -- as I look at the growth in this valley  
9 that's taking place, a lot of the great farm ground is  
10 going away. And so I think it's great to be able to  
11 keep this water available to be able to produce food  
12 and fiber for our nation.

13 MR. BARKER: I have no further questions of  
14 Mr. Froerer.

15 THE HEARING OFFICER: Okay. Mr. Farris?  
16

17 CROSS-EXAMINATION

18 BY MR. FARRIS:

19 Q. Let's start off with that, agricultural  
20 use.

21 But your -- your intent is to change and  
22 develop these 14 lots into residential use, isn't it?

23 A. That is the intent.

24 Q. To change the land use from agricultural  
25 use to developable residential lots?

1           A.    We're not -- we have done no application  
2   for a land-use change.

3           Q.    I understand that.  But you're planning to  
4   change.

5                    It's been farmed, and now you're going to  
6   change it to residential use?

7           A.    Well, it presently isn't being farmed  
8   because of the roads that are already developed into  
9   that cul-de-sac.  It's very difficult to farm at this  
10  present time.

11          Q.    It's difficult to farm, but you've been  
12  farming it, haven't you?

13          A.    It can be done, yes, with drip irrigation.

14          Q.    Not can be done.  You've been doing it,  
15  haven't you?

16          A.    Uh-huh, yeah.

17          Q.    Okay.  If you'd turn to the white binder.

18          A.    Okay.

19          Q.    And if you'd turn to Exhibit 113.  You went  
20  past it.

21                   Do you recognize that document?

22          A.    I do.

23          Q.    And what is that depicting?  What is that  
24  Exhibit 113 depicting?

25          A.    It shows the 28 lots that are presently for

1 sale.

2 Q. And I don't really have a pointer, but it  
3 shows the road with the two cul-de-sacs, doesn't it?

4 A. It does show the two roads that are there,  
5 yes.

6 Q. Do you know about when this photograph was  
7 taken?

8 A. I do not know when that was taken.

9 Q. Do you know who prepared it?

10 A. I do.

11 Q. Who prepared it?

12 A. Matt Wilke.

13 Q. Did he prepare it at your direction?

14 A. He did.

15 Q. And does it accurately depict the property,  
16 at least as of when you've owned the property?

17 A. It does.

18 MR. FARRIS: I'd move for the admission of  
19 Exhibit 113.

20 MR. BARKER: Are you -- both documents? Are you  
21 talking about both photos or just --

22 MR. FARRIS: Oh, you're right. There is two.

23 Q. Let's move on. If you'd turn the page.

24 A. Turn -- yep. Exhibit 114.

25 Q. No. Now I'm looking at page 2.

1           A.    Oh, that's what I was looking at was  
2 page 2.

3           Q.    Oh.

4           A.    Okay.  So...

5           Q.    Okay.  So page 1 of Exhibit 113, do you  
6 recognize that document?

7           A.    I do.

8           Q.    Does that depict the property that we're  
9 talking about today, the 28 acres?

10          A.    It has the -- it includes the 28 acres,  
11 yes.

12          Q.    And does that accurately reflect the  
13 property, at least since you've owned it?

14          A.    It does.

15          Q.    Now if you turn the page, there's a second  
16 photograph.

17                   And this photograph, looks like someone has  
18 overlaid the lots that are being proposed?

19          A.    Yes.

20          Q.    Okay.  And who prepared this document?

21          A.    And that's the one I was referring to as  
22 Matt Wilke prepared.

23          Q.    Okay.  And what was the purpose of him  
24 preparing this?

25          A.    Just to show the lots that would be for

1 sale under that 14 that were -- came for sell.

2 Q. And do both photographs accurately depict  
3 the property, at least since you've owned the property?

4 A. Yes.

5 MR. FARRIS: I'd move for the admission of  
6 Exhibit 113.

7 MR. BARKER: No objection.

8 THE HEARING OFFICER: Okay. 113 offered and  
9 entered.

10 (Exhibit 113 admitted.)

11 Q. (BY MR. FARRIS): So let's stick with this  
12 second page where there's numbered lots on it.

13 A. Uh-huh.

14 Q. Now -- and there's 14 numbers.

15 I assume those are the 14 lots that are  
16 being proposed, at least at this time?

17 A. Correct.

18 Q. And then you can see where it says "Future  
19 phases"?

20 A. Correct.

21 Q. Is that the additional property that you've  
22 been talking about?

23 A. That I own?

24 Q. Yes.

25 A. Yes.

1 Q. Okay. But at this time you're intending to  
2 develop residential houses or whatnot on these 14 for  
3 now?

4 A. 14 is all we've worked for, yeah.

5 Q. And when -- you said you bought the  
6 property in 2019?

7 A. Uh-huh.

8 Q. And in 2019 did you irrigate this property?  
9 And I think you said you irrigated with sweet potatoes?

10 A. Yes, it was sweet potatoes.

11 Q. Okay. I think your testimony you said  
12 2018.

13 Were you involved -- prior testimony. Were  
14 you involved in the property before you purchased it?

15 A. As far as farming it?

16 Q. Yeah.

17 A. Yeah, I was farming it before I purchased  
18 it.

19 Q. So -- so how long have you been farming it?  
20 I'm speaking specifically to this area where these 14  
21 lots are located. How long have you been farming that  
22 property?

23 A. One -- well, I farmed one year and sitting  
24 idle one year.

25 Q. Okay. So when was the year that you farmed

1 it the first time?

2 A. In sweet potatoes.

3 Q. No. What year was that?

4 A. 2019.

5 Q. That's just last year?

6 A. Uh-huh.

7 Q. And so this year, 2020, are you farming it?

8 A. I am not farming that property. I still  
9 own that property, but I'm not farming it.

10 Q. Okay. Is anyone farming that property?

11 A. No one is farming that property.

12 Q. Okay. In 2019 when you farmed it, put it  
13 into sweet potatoes, what was the source of the water  
14 that you used?

15 A. The Farmers' Co-op.

16 Q. So the water -- the ground is capable of  
17 being irrigated --

18 A. It is.

19 Q. -- from the Farmers' Co-op?

20 A. With -- with an additional lift, yes.

21 Q. Okay. If you would turn to the back page,  
22 Exhibit 121.

23 Do you recognize that photograph?

24 A. I do.

25 Q. What is that photograph of?

1           A.     That's the sugar beets that are on the --  
2     on the -- on the one side of -- the other -- that's on  
3     the opposite side of the road, yes.

4           Q.     And when you say "the opposite side of the  
5     road," is that not included in the 28 acres that we're  
6     talking about?

7           A.     It is.

8           Q.     It is. It is part of the 28 acres, or it  
9     is not?

10          A.     Let's go back to Exhibit 1 -- 111, 113 that  
11     you had me look at.

12          Q.     113 was the prior one we were talking  
13     about.

14          A.     Yes, that will be lot 4.

15          Q.     Okay. So what we're looking at on  
16     Exhibit 121 is depicting lot 4?

17          A.     Correct.

18          Q.     And that's showing sugar beets?

19          A.     That's correct.

20          Q.     Is that this year?

21          A.     That's this year.

22          Q.     Okay. So this year you are also irrigating  
23     the lots that are being developed?

24          A.     No, I'm -- I'm irrigating lots 3, 4, 7, 8.  
25     And 1, 2, 5, 6, 9, 10, 13, 14, 12, and 11 are not being



1 farmed.

2 Q. Okay. So a portion of the 14 lots are  
3 being irrigated in 2020?

4 A. Correct.

5 Q. Okay. I'd move for the admission --  
6 And there's two photographs. Maybe if you  
7 could look at the second one.

8 Do you recognize that photograph?

9 A. I believe they're the same field, so yes.  
10 Same spot.

11 MR. FARRIS: I'd move for the admission of  
12 Exhibit 121.

13 MR. BARKER: No objection.

14 THE HEARING OFFICER: 121 is offered and  
15 entered.

16 (Exhibit 121 admitted.)

17 Q. (BY MR. FARRIS): And so the irrigation of  
18 the lots in 2020, portion of them, how is that  
19 occurring? Is that with Farmers' Co-op shares, the  
20 water?

21 A. It is.

22 Q. Yes?

23 A. Yes.

24 Q. When you purchased the property in 2019,  
25 what sort of a due diligence did you do?

1           A.    Well, we had a title search done.  We  
2   visited on the phone.  I never have ever met the person  
3   we purchased it from, never did meet him.  But we had  
4   several conversations on the phone.  When I was --  
5   because I was farming it, he called me to see if I  
6   would be interested in purchasing -- purchasing it.

7           Q.    And who was that?

8           A.    John Chandler.

9           Q.    Okay.  Did you have any discussions with  
10  any of the prior owners of the property?

11          A.    I did not.

12          Q.    Myron Peterson [phonetic]?

13          A.    No.

14          Q.    Rick Farmer?

15          A.    No.

16          Q.    And you said you had a title report done.  
17                Would you turn to Exhibit 107.

18          A.    What number?

19          Q.    107.

20          A.    Okay.

21          Q.    Do you recognize that document?

22          A.    I believe I do.

23          Q.    And how do you recognize that document?

24          A.    It was provided to us when we purchased the  
25  property.

1 Q. Okay. So is this the title report that you  
2 received when you --

3 A. It is.

4 Q. -- purchased the property?

5 A. Uh-huh.

6 Q. If you would turn to -- and at the bottom  
7 of the Exhibit 107 there's a Bates stamp that begins  
8 OMM.

9 A. Uh-huh.

10 Q. If you'd turn to page 43.

11 Are you familiar with title reports and as  
12 far as reviewing them and exceptions and whatnot that  
13 may show up on a title report?

14 A. I've looked at them before, yes.

15 Q. Okay. Did you review this one before you  
16 purchased the property?

17 A. I did.

18 Q. Okay. And you see where item 11 is listed  
19 on page OM 43?

20 A. I see item 11.

21 Q. Okay. And it says, "Covenants, Conditions,  
22 Restrictions, Reservations, and Easements"?

23 A. Okay. Yep.

24 Q. Did you review that document?

25 A. It would have been very fast, but looked

1 through it. Had the title officer explain to me what  
2 easements were there.

3 Q. Did you understand that there were  
4 covenants, conditions, restrictions, and reservations  
5 associated with the property prior to purchasing it?

6 A. Power, water, yes. Power, phone, stuff  
7 going through it, yeah.

8 Q. Did you understand that there was an HOA,  
9 an association, established for purposes of this  
10 property when you purchased it?

11 A. I understood that there was an HOA.

12 MR. FARRIS: Okay. I'd move for the admission  
13 of Exhibit 107.

14 MR. BARKER: No objection.

15 THE HEARING OFFICER: Okay. 107 is offered and  
16 entered.

17 (Exhibit 107 admitted.)

18 MR. FARRIS: You all right?

19 MR. BARKER: Yeah.

20 Q. (BY MR. FARRIS): And sticking with  
21 item 11, do you see the instrument number that's  
22 referenced there?

23 A. Uh-huh.

24 Q. 2007082405?

25 A. Uh-huh.

1 Q. Is that a "yes"?

2 A. Yes.

3 Q. If you would turn to Exhibit 109.

4 Do you see the instrument number at the top  
5 of that page?

6 A. I do.

7 Q. Is it the same instrument number that I  
8 just read?

9 A. Yes. I'd have to check, but I believe so,  
10 yes.

11 Q. Did you read these -- this document?

12 A. I did not.

13 Q. You're not familiar with it at all?

14 A. I never saw that. I -- before that, so...

15 Q. Would you agree with me, though, that this  
16 is the same instrument number that was identified in  
17 the title report --

18 A. Yes.

19 Q. -- when you purchased the property?

20 A. Uh-huh.

21 Q. Would you turn to page 5 of Exhibit 109.

22 Do you see Article 4 regarding irrigation  
23 system?

24 A. On page 5?

25 Q. Yeah. Page 5 of 16 at the bottom, it says.

1 A. Oh, "Irrigation system." Okay. Yeah.

2 Q. Do you see that?

3 A. Uh-huh.

4 Q. Did you understand that there was an  
5 irrigation system contemplated by the prior owners?

6 A. I did not.

7 Q. You didn't review this document or  
8 understand that they proposed to develop an irrigation  
9 system for delivery?

10 A. I did not. I had never seen it, never  
11 looked at that before, so...

12 MR. FARRIS: Okay. I'd move for the admission  
13 of Exhibit 109.

14 MR. BARKER: The witness doesn't recognize it,  
15 has never seen it before. It can't come in through  
16 him.

17 MR. FARRIS: He agreed it was part of the title  
18 commitment that was before him and was the same  
19 recorded document that was part of the title commitment  
20 provided to him prior to purchasing the property.

21 MR. BARKER: He can't authenticate it.

22 MR. FARRIS: We've already stipulated we weren't  
23 going to -- you didn't object to any authentication.  
24 You can object to relevance.

25 MR. BARKER: He can't -- he can't talk about

1 something he's never read before. You can't offer this  
2 through him.

3 THE HEARING OFFICER: So, Mr. Barker, do you  
4 believe that there is a problem with this instrument's  
5 authenticity?

6 MR. BARKER: I do not.

7 THE HEARING OFFICER: I'm going to let it into  
8 the record. 109 is offered and accepted.

9 (Exhibit 109 admitted.)

10 Q. (BY MR. FARRIS): Mr. Froerer, why did you  
11 choose not to review a document that was recorded as  
12 part of the title policy that was provided to you?

13 MR. BARKER: Object to the mischaracterization  
14 of the witness' testimony.

15 THE HEARING OFFICER: Would you rephrase the  
16 question.

17 Q. (BY MR. FARRIS): You didn't review this  
18 document?

19 A. I did not.

20 Q. It was provided to you as part of the title  
21 policy?

22 A. I would presume it was, yes.

23 Q. Well, it was. If we want to go back to  
24 Exhibit 107.

25 You agree that that was a document listed

1 as an exception, do you not?

2 A. Correct, yes. Uh-huh.

3 Q. Okay. And you chose to not review it?

4 A. That's correct.

5 Q. Why?

6 A. Went through the easements and things that  
7 the title officer was going through with us. And they  
8 mentioned it had HOAs on there. Knew that HOAs could  
9 be changed. The past people had gone broke, and so we  
10 knew we would change that, not wanting to do -- follow  
11 in the same footsteps that they had taken.

12 Q. If you'd turn to Exhibit 110.  
13 Do you recognize this document?

14 A. Nope.

15 Q. Never seen it?

16 A. Never saw it til this morning.

17 Q. You were provided a copy of it this  
18 morning?

19 A. Yeah, I'm looking at it here.

20 Q. Oh, right now.

21 Do you see the property listed in it or  
22 shown in it at the upper right-hand corner?

23 A. Uh-huh.

24 Q. Do you recognize that property?

25 A. I do.



1 Q. How do you recognize that property?

2 A. That's of the property that we're talking  
3 about, the 28 lots -- or 14 lots, the 28 acres that  
4 we're talking about.

5 Q. That's -- that's identifying the property  
6 that you currently own?

7 A. Yes.

8 Q. But you have never seen this, and it's  
9 labeled a pressure irrigation plan --

10 A. I have not.

11 Q. -- prior to today?

12 Did you ask anyone when you purchased the  
13 property whether or not they had any design plans or  
14 irrigation plans for the property?

15 A. No one ever offered that information. I  
16 talked to them. They never talked to me about a  
17 designed pressure system. The recorded easements on it  
18 would not show any irrigation system going through it.  
19 And so I have never seen it before, so...

20 Q. Are you aware of any prior applications for  
21 groundwater rights filed by any of your -- any of the  
22 prior owners, predecessors?

23 A. I am not.

24 Q. So you're the first one that filed for a  
25 new groundwater application for irrigation use for

1 these 14 lots?

2 A. I believe -- I don't know any history  
3 there.

4 Q. You're not aware of any history?

5 A. I'm not aware of any history.

6 Q. Okay. Okay. If you'd turn to Exhibit 111.  
7 Well, let me -- I'm sorry. I'm going to bounce a  
8 little bit. It was already brought up. This is one of  
9 those duplicate exhibits.

10 Would you turn to Exhibit 3.

11 A. Exhibit 3?

12 Q. It's the same document, just I'm going to  
13 use Exhibit 3, since it was already discussed.

14 THE HEARING OFFICER: He didn't actually offer  
15 that into the record.

16 MR. FARRIS: I know. I'm going to, though. But  
17 that way -- I think he's going to eventually.

18 THE HEARING OFFICER: Okay.

19 MR. FARRIS: So we just have --

20 THE WITNESS: In this book? Which book?

21 Q. (BY MR. FARRIS): In the purple book,  
22 Exhibit 3.

23 Sorry for that confusion.

24 Okay. I think you were asked that you  
25 understood that the property had been split or divided

1 by the prior owners at some point?

2 A. That's correct.

3 Q. Is it your understanding this is the  
4 document that did that, this is the decision of the  
5 County providing for that?

6 A. Correct.

7 Q. And it divided what was previously platted  
8 as those orchard tracts as about 4 acres into 2-acre  
9 parcels?

10 A. Correct.

11 Q. Okay. This was done by your predecessor  
12 that owned the property?

13 A. It was. If you'll look at the application,  
14 it's John Chandler on the top, so...

15 Q. Okay. It's a recorded document.

16 Do you see the instrument number at the  
17 top? Do you see that?

18 A. Uh-huh, yeah.

19 Q. Did you review this prior to purchasing the  
20 property?

21 A. Probably was in that same packet, so I --  
22 but I did not review it, so...

23 Q. Okay. And you -- do you know if  
24 Mr. Chandler was a shareholder of Farmers' Co-operative  
25 Ditch Company at the time of this land division?

1           A.    He indicated that he was a shareholder.

2           Q.    And he would have been, then, subject to  
3 the articles, bylaws, and resolutions of the Ditch  
4 Company at that time?

5           A.    I would presume if he was a shareholder he  
6 would be.

7           Q.    Now, you said you reviewed the bylaws of  
8 the Ditch Company.

9                   Did you obtain a copy, or did you see it on  
10 the website?

11          A.    I saw it on the website. That's where I've  
12 looked at it the most.

13          Q.    Okay.

14          A.    I have a copy. I printed a copy off  
15 myself.

16          Q.    And did you do that before you purchased  
17 the property?

18          A.    I probably looked on the Internet prior to  
19 that, yes.

20          Q.    So you -- you found Farmers' Co-operative  
21 Ditch Company's website, and you found a tab that had  
22 bylaws on there?

23          A.    Uh-huh.

24          Q.    Did you look at anything else on the -- on  
25 the website?

1 A. I believe I went through -- no, I did not.

2 Q. Did you look at the portion that has a FAQ,  
3 F-A-Q, section?

4 A. I did not.

5 Q. Okay. If you would turn to Exhibit 102.

6 A. In the blue tabs? In the blue tabs?

7 Q. Yes.

8 And before I forget, I'm going to move for  
9 the admission of Applicant's Exhibit 3?

10 MR. BARKER: No objection.

11 THE HEARING OFFICER: No. 3 is offered and  
12 entered.

13 (Exhibit 3 admitted.)

14 THE HEARING OFFICER: And before you start back  
15 up again, it is about 10:30. So if -- would you guys  
16 like to take a break, or do we want to continue for a  
17 little while longer?

18 MR. FARRIS: I'm fine either way. If we want to  
19 keep going to get through this witness or if we can  
20 take a break now is fine too.

21 MR. BARKER: Let's keep -- let's get Craig done  
22 now. I don't know. Unless you're going to be another  
23 half hour.

24 MR. FARRIS: Just a second.

25 I will be a little bit longer.

1 THE HEARING OFFICER: Okay.

2 MR. FARRIS: So maybe it does make sense to take  
3 a quick break now.

4 THE HEARING OFFICER: All right. Why don't we  
5 take about a 15-minute break, then.

6 MR. FARRIS: Okay.

7 THE HEARING OFFICER: We can go off the record.

8 (Recess.)

9 THE HEARING OFFICER: All right. It's quarter  
10 to 10:00 [sic], and it looks like everybody's back in  
11 the room, so we're going back on the record.

12 And I believe Mr. Farris was in the middle  
13 of examining -- or cross-examining Mr. Froerer.

14 And I remind Mr. Froerer, you're still  
15 under oath.

16 THE WITNESS: Okay.

17 THE HEARING OFFICER: Go ahead, Mr. Farris.

18 MR. FARRIS: Okay.

19 Q. Purple binder, would you turn to  
20 Exhibit 16.

21 Do you recognize that document?

22 A. I do.

23 Q. Are those the bylaws that you reviewed  
24 somewhat contemporaneously when you purchased the  
25 property?

1 A. Correct.

2 Q. And those are on the website?

3 A. They are.

4 MR. BARKER: I'm sorry. Did you say 16 or 15?

5 MR. FARRIS: I thought I said 16.

6 MR. BARKER: Oh, 16. Okay. Sorry. I heard 15.

7 I apologize.

8 Q. (BY MR. FARRIS): Okay. When you purchased  
9 the property we're talking about today, that 28 acres,  
10 I guess it was more.

11 You said it was a total of 112 acres?

12 A. Yes.

13 Q. You understood that there were shares  
14 associated with irrigation water from Farmers'  
15 Co-operative Ditch Company?

16 A. Correct.

17 Q. And you had the share certificate issued to  
18 you or at One More Mile?

19 A. One More Mile, yes.

20 Q. Okay. When you purchased the property?

21 A. Correct.

22 Q. And that was for 64 shares?

23 A. Right. From John Chandler.

24 Q. And you understood as a shareholder you'd  
25 be subject to the articles and bylaws and resolutions

1 of the Ditch Company?

2 A. Correct.

3 Q. And then you went and looked at the bylaws  
4 on the website?

5 A. Correct.

6 Q. Do you remember if you did that before or  
7 after you closed?

8 A. I don't remember, but I would think  
9 probably after. I don't know. Maybe right at the same  
10 time. I mean I looked at it to know I had a water  
11 right, to find out and make sure I had a water right on  
12 ground. I didn't have to have ground without a water  
13 right.

14 Q. Okay. And in 2019 you used those shares to  
15 irrigate the property?

16 A. Correct.

17 Q. And in 2020, as we sit here today, you're  
18 using the shares to irrigate a portion of the property?

19 A. Correct.

20 Q. And as a shareholder did you understand  
21 that you would then be subject to the articles, bylaws,  
22 and resolutions of the Ditch Company?

23 A. Yes.

24 Q. Okay. So you reviewed these?

25 A. Yep.



1 Q. Okay. If you'd turn to -- and I'm on  
2 Exhibit 16, page 2, 2 of 9. And there -- this version  
3 has been highlighted in yellow.

4 A. This one has not, this one. Do you want me  
5 to change? So what is it in this one? Because this is  
6 the purple one you told me to go to.

7 Q. Yeah, yeah.

8 A. That's not highlighted in yellow.

9 MR. FARRIS: The version that you e-mailed to  
10 me, Al, was, but maybe it didn't get printed that way.

11 Q. So let's go to -- sorry. Let's go to  
12 Exhibit 102.

13 MR. BARKER: So, Bryce, the highlighting just  
14 shows up as gray.

15 THE HEARING OFFICER: It's highlighted in gray,  
16 as it turns out.

17 THE WITNESS: Oh, okay, the gray. Okay.

18 Q. (BY MR. FARRIS): I'm on page 2 --

19 A. Uh-huh.

20 Q. -- of Exhibit 16. And you see "Management  
21 of the Affairs"?

22 A. Uh-huh, yes.

23 Q. And you understood that the affairs of the  
24 Ditch Company were managed by a board of seven members?

25 A. Correct.

1 Q. Okay. And did you read through to see what  
2 those duties and responsibilities of the board were?

3 A. I did.

4 Q. Okay. Did you understand that they had the  
5 duty to -- you see in paragraph (a), small, little (a)  
6 under section 2, "To act upon transfer of shares of  
7 stock"?

8 A. Yes.

9 Q. Okay. And if -- continuing down under  
10 small, little (d), they had the duties to prescribe,  
11 adopt, amend from time to time such equitable, uniform  
12 rules and regulations as in their discretion?

13 A. Yes.

14 Q. Okay. And you understood that?

15 A. Yes.

16 Q. And you were bound by that?

17 A. Yes.

18 Q. Okay. And if you'd turn the next page.  
19 There's a -- at the top there's a small -- small (j).  
20 And I won't read every one of these.

21 But you read through these various portions  
22 of these bylaws?

23 A. I have.

24 Q. Okay. Did you understand that the Ditch  
25 Company's board could adopt future resolutions while

1 you were a shareholder?

2 A. I understand they can adopt it.

3 Q. And if you'd turn to page 6 of 9, there's a  
4 section 5.

5 A. Uh-huh.

6 Q. Do you see that? And it provides that "if  
7 any shareholders shall divide, subdivide, or parcel out  
8 any portion of his land."

9 Do you see that?

10 A. Yes.

11 Q. That -- if you want to read on, but it  
12 basically says that they "shall provide for a ditch  
13 distribution system"?

14 A. Yes.

15 Q. Did you understand that to be the case?

16 A. Yes.

17 Q. Did you understand that this was the case  
18 when your predecessor divided the property in 2007?

19 A. Well, as I read the bylaws, it says if you  
20 did it into three or more parcels, each division. And  
21 he only divided it up one time.

22 Q. So this provision here does not say three  
23 or more parcels, does it?

24 A. No, it doesn't. Just below it in that  
25 resolution there.

1 Q. I'm focused on section 5.

2 A. Okay.

3 Q. It does not say three or more parcels, does  
4 it?

5 A. It does not.

6 Q. And it provides that if you subdivide or  
7 divide the parcels you're supposed to provide a ditch  
8 distribution system; correct?

9 A. That's what it says, yes.

10 Q. Okay. And your current proposal is to not  
11 to provide a ditch distribution system; is that  
12 correct?

13 A. That is correct.

14 Q. Okay. Now let's look at what you were  
15 looking at, which was down below.

16 They adopted a resolution in 2003; right?

17 A. Correct.

18 Q. And your understanding of that resolution  
19 was that it is only applicable if there's three or more  
20 parcels?

21 A. Well, that's what it says. If it was --  
22 "If any parcel is divided into three or more parcels,  
23 it shall require established -- shall divide, subdivide  
24 parcels out of portionable land," so...

25 Q. And this provision also required that

1 the -- the shareholder to transfer the shares into some  
2 sort of entity to hold the -- hold the shares; is that  
3 right?

4 A. It does say that, yes.

5 Into an HOA, you're saying, or something  
6 like that?

7 Q. Yeah. Some sort of a user association or  
8 HOA [unintelligible]?

9 A. Which I did not purchase them from an HOA.  
10 I purchased them from John Chandler, right.

11 Q. Well, let's look back.

12 There was an HOA established for this  
13 already, wasn't there?

14 A. But the water rights came from John  
15 Chandler. They did not come from the HOA -- from the  
16 other place.

17 Q. There was an HOA established for this  
18 property prior to you purchasing the property, wasn't  
19 there?

20 A. But the water rights were not transferred.

21 Q. Okay. But there was one?

22 A. Yes, there was an HOA established.

23 Q. Great. If you would turn to -- well,  
24 describe to me what -- I don't think we need to turn to  
25 it, but the photograph we looked at earlier where we

1 identified the 14 lots --

2 A. Uh-huh.

3 Q. -- and it said "Future phases," what was  
4 your intent with those future phases?

5 A. At this present time we have -- eventually  
6 down the road, in who knows however long, we may  
7 eventually develop those parcels out there in the  
8 future.

9 Q. And would your proposal or intent be to  
10 develop those into 40 to 50 different lots with  
11 different wells on them?

12 A. At this point we haven't ever -- we haven't  
13 had that discussion, gone there to decide what we're  
14 going to do with that in the future.

15 Q. So if you'd turn to Exhibit 103.

16 And this is the minutes from the  
17 March 11th, 2020 meeting that you attended at Farmers'  
18 Co-op?

19 A. Okay.

20 Q. Do you remember going to that meeting?

21 A. I do remember going to that meeting.

22 Q. And down at the very bottom of the page is  
23 a paragraph discussing your attendance at that meeting?

24 A. Yes.

25 Q. Do you see that?

1                   And then the very last sentence that  
2 carries over to the next page, I will read it.  
3 "Mr. Wilke responded," quote, "'They are planning on  
4 developing 40 to 50 more 2-plus acre lots with wells,'"  
5 quote.

6                   Do you remember that?

7           A.    Yeah, I can probably remember that  
8 situation, conversation, yes.

9           Q.    Do you disagree that that's what Mr. Wilke  
10 stated?

11          A.    No. I would think that eventually that's  
12 what we want to do in the long run. We have not got to  
13 that point, but that's -- in the future that will  
14 happen.

15          Q.    Okay. And as to these wells, it would --  
16 if you were to develop an irrigation system as was  
17 contemplated by the prior owners, wouldn't that be a  
18 cost that you would incur?

19          A.    It would be a cost I would incur.

20          Q.    Do you know what that cost would be?

21          A.    I have no idea.

22          Q.    You haven't bid it to determine what that  
23 might be?

24          A.    I was never planning on doing it, so I have  
25 not bid it.

1 Q. Okay. But that cost would have been borne  
2 by the owner of the development, you?

3 A. Correct.

4 Q. And as you discussed earlier, your intent  
5 is for each owner of the lots to pay for and develop  
6 their own well; correct?

7 A. Correct.

8 Q. So that's a cost that then is borne by  
9 them?

10 A. That's correct.

11 Q. So isn't it -- the intent here is to do  
12 away with putting in an irrigation system so it doesn't  
13 cost you as the developer any more money?

14 A. No, I think it's a win for them not to be  
15 able to have to put in an irrigation -- for them to put  
16 in their own well, then they can control their own  
17 water situation where water seems to be very abundant  
18 there. It would be a better situation for them to have  
19 water on their own, not have to worry about sharing  
20 water rights, have all the sediment, silt in the water.  
21 It would be a better situation for them to water out of  
22 a well than out of a --

23 Q. And you wouldn't have to pay for the  
24 irrigation system?

25 A. I would not have to pay for it, correct.



1 MR. FARRIS: So before I forget, I'll move for  
2 the admission of Exhibit 16, which is the bylaws.

3 MR. BARKER: No objection.

4 THE HEARING OFFICER: Okay. Exhibit 16 is  
5 offered and entered.

6 (Exhibit 16 admitted.)

7 MR. FARRIS: And Exhibit 103, which is the  
8 March 11th minutes.

9 It's also your exhibit.

10 THE HEARING OFFICER: [Unintelligible.]

11 MR. BARKER: Yeah, I guess I don't have an  
12 objection to the minutes coming in. I don't think this  
13 witness can testify that these are the minutes of the  
14 meeting that he went to.

15 MR. FARRIS: He testified he was there. I read  
16 him a quote, and he didn't disagree with that.

17 MR. BARKER: I'm just saying he cannot say that  
18 these are the minutes of the meeting. He's testified  
19 what he testified to about what took place at that  
20 meeting. I just don't think he's an appropriate  
21 witness to admit the exhibit, but I'm not objecting to  
22 admission.

23 THE HEARING OFFICER: Well, we did stipulate to  
24 the authenticity of the document, so I'll let it in.

25 (Exhibit 103 admitted.)

1 Q. (BY MR. FARRIS): Mr. Froerer, would you  
2 turn to, in the purple book, Exhibit 28.

3 Do you recognize that document?

4 A. I don't think I've seen this one before.

5 Q. You have not seen it?

6 A. I have not.

7 Q. Well, I'll represent to you this is a  
8 resolution that was passed by the Co-op board on  
9 March 11th, 2020.

10 A. Yeah, I have not seen that, so...

11 Q. Your counsel hasn't provided it to you?

12 A. No.

13 Q. Okay. Would you agree you're -- as a  
14 shareholder -- you're a shareholder of Farmers' Co-op  
15 today; correct?

16 A. Correct.

17 Q. And as a shareholder you're bound by the  
18 resolutions of the board?

19 MR. BARKER: Object to the extent that calls for  
20 a legal conclusion about a post -- ex post facto  
21 resolution.

22 You can answer that question, if you know.

23 THE WITNESS: And the question was?

24 THE HEARING OFFICER: Objection noted.

25 Q. (BY MR. FARRIS): Do you agree you're bound

1 by the resolutions of the board?

2 A. Yes.

3 Q. Okay. You're a shareholder -- the shares  
4 have not been transferred to anyone today, as we sit  
5 here today?

6 A. No, they're still on One More Mile, yes.

7 Q. Yeah. And if you'd look at Exhibit 29 in  
8 the purple book.

9 This is your agreement that you spoke of  
10 earlier with Mr. Watson?

11 A. Yes.

12 Q. Contemplating the future transfer of the  
13 shares; correct?

14 A. Yes.

15 Q. You haven't transferred them yet?

16 A. I have not.

17 Q. And if you read the agreement, it's -- it's  
18 not to even occur until there's a final, unappealable  
19 order; correct?

20 A. Correct.

21 Q. So it's a future -- looking in the future  
22 prospective transfer of the shares?

23 A. Yes.

24 Q. But as we sit here today, you are a  
25 shareholder of Farmers' -- One More Mile is a

1 shareholder of Farmers' Co-operative Ditch Company?

2 A. Yes.

3 Q. Entitled to receive surface water from  
4 Farmers' Co-operative Ditch Company?

5 A. Yes.

6 Q. And the property we've talked about is  
7 capable of receiving surface water from Farmers'  
8 Co-operative Ditch Company?

9 A. Yes.

10 Q. And until you transfer those shares, you'll  
11 be subject to any new resolutions or other amendments  
12 that may occur from the Farmers' Co-operative Ditch  
13 Company; correct?

14 MR. BARKER: Same objection as before.

15 THE HEARING OFFICER: Noted.

16 THE WITNESS: Yes, I would -- by being a  
17 shareholder, I would believe that would be the case.

18 Q. (BY MR. FARRIS): Now, at the time you  
19 filed these applications, you did not have a purchaser  
20 of the shares in mind, did you?

21 A. I did not.

22 Q. It wasn't until the March 11th meeting that  
23 you learned of Mr. Watson; is that correct? That was  
24 your testimony?

25 A. That's when I learned who it was. Neddy

1 had represented the Farmers' Co-op as they had a  
2 willing participant to buy them way before that  
3 meeting, so...

4 Q. But that's -- that's the first time you  
5 heard the name Mr. Watson; correct?

6 A. John Watson, yes, uh-huh.

7 Q. And have you ever presented a formal  
8 request to the Farmers' Co-operative Ditch Company to  
9 transfer the shares?

10 A. I believe we sent that resolution to  
11 transfer them, to move them off that property.

12 Q. What resolution are you speaking of?

13 A. Well, the -- where they got the -- the  
14 application to move the 14 shares, to transfer them.

15 Q. I'm not sure what you're talking about.

16 Have you ever submitted anything to the  
17 Ditch Company, Farmers' Co-operative Ditch Company,  
18 seeking to transfer shares to another person?

19 A. I have not personally.

20 Q. If you transferred the shares to Mr. Watson  
21 under this prospective agreement that you have, do you  
22 have any guarantee that Mr. Watson will not develop his  
23 property?

24 A. I have no control what he does with his  
25 property.

1 Q. He could develop it tomorrow, couldn't he?

2 A. He could do whatever he wants with his  
3 property.

4 Q. So there's no guarantee it's going to  
5 continue to be used for agricultural use, is it?

6 A. No, none that I have control of.

7 MR. FARRIS: Okay. No further questions.

8 THE HEARING OFFICER: Mr. Barker, any more  
9 questions for the witness?

10 MR. BARKER: Yes. Thank you.

11

12 REDIRECT EXAMINATION

13 BY MR. BARKER:

14 Q. Mr. Froerer, has anyone -- or sorry.  
15 Mr. Farris asked you about prior groundwater  
16 applications for this property.

17 Has the Ditch Company told you, any  
18 representative of the Ditch Company told you there were  
19 such things?

20 A. No.

21 Q. Has anyone ever told you that?

22 A. Nope.

23 Q. Are you aware of any?

24 A. Nope.

25 Q. Did -- in your conversations with

1 Mr. Chandler, were you ever made aware that  
2 Mr. Chandler believed that you were required to develop  
3 a pressurized irrigation system on his property?

4 A. Absolutely not.

5 Q. Look at Exhibit 16 that Mr. Farris asked  
6 you about. And turn to page 5 of 9, Article 6,  
7 "Transfer of stock."

8 Have you seen that?

9 A. I have seen that, yes.

10 Q. Okay. Are you familiar with that  
11 provision?

12 A. As I read through the bylaws, this is where  
13 I thought we could transfer the water off of the -- the  
14 property.

15 Q. Okay. What did you understand from looking  
16 at the bylaws the conditions on transferring the  
17 property -- water off the property would be?

18 A. There were none. They were not tied to the  
19 land. They could be transferred off.

20 Q. Were they -- was there any requirement that  
21 assessments be paid?

22 A. Well, to be able to transfer them, you have  
23 to be able to transfer them to someone who has  
24 availability to receive water and have, you know, the  
25 ability to deliver -- the Co-op has to have the ability

1 to -- to deliver water.

2 Q. And are all your assessments on all of your  
3 64 shares fully paid?

4 A. They're current, yes.

5 Q. And that includes the 14 shares that you  
6 would propose to transfer to Watson?

7 A. That's correct.

8 Q. Did you have an understanding of the --  
9 whether or not the water right of Farmers' Co-op was  
10 appurtenant to your property?

11 A. I did.

12 Q. And what is that understanding?

13 A. That they were not appurtenant to that  
14 property.

15 Q. And what does that -- what did that mean to  
16 you?

17 A. That means I can -- the land and the water  
18 are separate items, and that one can be removed from  
19 the other one.

20 Q. And if you had -- well, you have other  
21 land -- or do you have other land within the Co-op  
22 boundaries?

23 A. Yes. No. Excuse me. I do not.

24 Q. Had you looked at acquiring other land  
25 within the Co-op boundary?



1           A.    We tried to purchase ground in other --  
2   under the Co-op, yes.

3           Q.    Look at Exhibit 8.  No.  Sorry.  We changed  
4   the exhibit numbers.  14.

5                   Do you recognize this mapping?

6           A.    Yeah, I recognize the map showing where the  
7   Co-op's water goes.

8           Q.    Okay.  And tell -- tell the Hearing Officer  
9   where your use is of water, where your property is,  
10   sorry, within this boundary.

11          A.    Yeah.  It will be on the top end of the map  
12   near the very end of the -- the canal.  I think we're  
13   only one headgate up from the very end of the canal.

14          Q.    So where it says "Apple Valley" on the map,  
15   is that in the area, or are you further --

16          A.    Farther north of that.

17          Q.    Okay.  And so the -- where does the canal  
18   come into the system?  At the east end?

19          A.    At the south end.  The canal comes in from  
20   the south.

21          Q.    Okay.  And then it flows --

22          A.    North.

23          Q.    All right.  And you are almost at the very  
24   end of the canal?

25          A.    Yeah.  I -- this map's too small for me to

1 tell. But yeah, we'd be almost to Nyssa. Yeah, right  
2 at the very end. At the -- very near the  
3 Canyon-Payette County line is where we are.

4 Q. And do you have any understanding of why  
5 the sediment is in the system that you -- or in the  
6 canal that you talked about earlier?

7 A. Because they pick up all the water that is  
8 above it, which is under Black Canyon, they pick it up  
9 and take it down. And it recharges their system by  
10 picking up the water that comes down from the upper  
11 farms above it.

12 Q. Switching over to Mr. Farris' questions  
13 about the -- about the future uses of the lots.

14 Have you made any written development plans  
15 at all?

16 A. None.

17 Q. Have you asked your brokers to do that?

18 A. We have not.

19 Q. I'm going to back up to earlier.

20 You indicated that you were told by Neddy  
21 that there was a buyer for those shares?

22 A. Correct.

23 Q. And do you know who Neddy is?

24 A. She's a secretary, I believe, for the  
25 Farmers' Co-op.

1 Q. And when you talked to her, did she tell  
2 you that there was any reason you couldn't transfer  
3 those shares to --

4 A. No, none.

5 Q. -- the new buyer?

6 Did she encourage you or discourage you?

7 A. Yeah, she felt like it would be a win-win  
8 situation.

9 Q. Do you have Exhibit 103? You have the  
10 bottom of the first page where Mr. Farris was asking  
11 you some questions?

12 A. Uh-huh, yep.

13 Q. Okay. I just want to read a part of a  
14 sentence. It says, third line up from the bottom,  
15 "Farmers' Co-operative Ditch Company protested these  
16 applications based according to Idaho Code 67-6537 as  
17 previously discussed during the February 12th, 2020  
18 meeting."

19 Did I read that right?

20 A. You did read that right.

21 Q. What do you remember the discussion being  
22 about why the Ditch Company had protested these  
23 applications?

24 A. They did not -- we were not in there when  
25 they protested that. We were in the meeting. They

1 dismissed us.

2 Q. So what -- no. What I'm asking for is, do  
3 you remember a discussion about -- while you were there  
4 about why they protested the applications?

5 A. Yeah, they talked about it a little bit,  
6 so...

7 Q. And did they reference a statute?

8 A. They did not, I don't believe, so...

9 Q. Okay. Do you remember anybody at the  
10 meeting while you were there telling you that you could  
11 not file these applications because of the bylaws?

12 A. None.

13 Q. They never said that to you?

14 A. No.

15 Q. And the minutes don't mention that?

16 A. No. They said they would take it under  
17 advisement and maybe give us an opportunity to do these  
18 28 without a pressurized system, is what they said at  
19 that meeting.

20 Q. Okay. And then on the next page at the  
21 top, the paragraph at the top of the page, it indicates  
22 that you, Mr. Wilke, and Ms. Richards left at 9:30.

23 Who's Ms. Richards?

24 A. Yeah.

25 Q. Who's that?

1 A. That's Sharla. She --

2 Q. Oh, okay.

3 A. Yeah. That's the same.

4 Q. Got it.

5 Sorry, Sharla.

6 So you said that they told you at the time  
7 you left the meeting they would take it under  
8 advisement?

9 A. That's correct.

10 Q. Okay. Do you see the next paragraph where  
11 it says "Adopt resolution" in italics?

12 A. I do see that.

13 Q. Okay. And it indicates that in the minutes  
14 that they did adopt that resolution; correct?

15 A. I do see that.

16 Q. Okay. When you were talking with them  
17 while you were there before you left, did anybody,  
18 Mr. Farris or any of the board members, say to you that  
19 they had a resolution prepared?

20 A. No. No discussion of that.

21 MR. BARKER: Okay. That's all the questions I  
22 have for redirect.

23 THE HEARING OFFICER: Mr. Farris, do you have  
24 anything else?

25 MR. FARRIS: Just a second. I don't think I do,

1 but just let me verify something.

2 I don't have anything more.

3 THE HEARING OFFICER: All right, Mr. Froerer.  
4 You're excused.

5 THE WITNESS: Thank you.

6 MR. BARKER: Actually, you're not excused. You  
7 still get to stay with me.

8 UNIDENTIFIED SPEAKER: Yes, he got that fast.

9 MR. BARKER: Nice try.

10 One More Mile will call Alan Mills.

11 THE HEARING OFFICER: Mr. Mills, I'll swear you  
12 in.

13

14 ALAN MILLS,  
15 having been called as a witness by the Applicant, was  
16 duly sworn and testified as follows:

17

18 THE HEARING OFFICER: So do you solemnly affirm  
19 that the testimony you're about to give is the truth,  
20 the whole truth, and nothing but the truth?

21 THE WITNESS: I do.

22 THE HEARING OFFICER: Very good. Have a seat.

23 ///

24 ///

25 ///

## 1 DIRECT EXAMINATION

2 BY MR. BARKER:

3 Q. Thank you for being here, Mr. Mills.

4 Would you identify yourself for the record  
5 and explain to the Hearing Officer a little bit about  
6 what you do for a living.7 A. My name is Alan Mills. I am a broker for  
8 Mills & Company Realty. I've been in the business now  
9 this is 50 years. My main line of work is land-use  
10 development, a lot of ag sales also. I don't do homes,  
11 lots, residential. I just do land-use issues and  
12 agricultural.13 Q. And you've been doing that for 50 years  
14 now?15 A. I'm in my 50th year. It will be 50 in  
16 April.17 Q. So when did you first become acquainted  
18 with Mr. Froerer?

19 A. I believe it was late 2018 or early 2019.

20 Q. Okay. And what's -- what's the first  
21 communications you had with them?22 A. They were referred to me by Tina Wilson  
23 from Western Alliance, I believe. And she had them get  
24 ahold of me because they were looking at this property  
25 and wanted to know the potential that it had.

1 Q. Okay. So what did you do when you first  
2 met with Craig and Sharla?

3 A. We just looked at the plat, the old plat,  
4 the orchard tracts, and I advised them that that was  
5 one of those developments, similar to others around  
6 Middleton and Parma and spotted around the county, that  
7 were divided back in the early 1900s. And so it had  
8 certain entitlements.

9 Q. How did you know that this land was -- or  
10 how did you come to learn that this land was subject to  
11 the orchard tract?

12 A. Well, we looked at the old orchard plat.  
13 And then we looked at -- they showed me also the  
14 administrative decision that their director signed that  
15 developed the 14 tracts or parcels from the seven lots  
16 that existed under the orchard tract.

17 Q. Okay. So if you'd look at Exhibit 2 and  
18 Exhibit 3.

19 A. Excuse me. I'm -- I'm a little hard of  
20 hearing.

21 Purple?

22 Q. Purple book. Exhibit 2, Exhibit 3.

23 A. What was the number?

24 Q. 2 and 3.

25 A. Okay.



1 Q. Okay. First of all, is Exhibit 2 the  
2 orchard tract?

3 A. Yes.

4 Q. And based on your experience, what -- you  
5 said it carried certain entitlements.

6 What is -- what did you mean by that?

7 A. They met the definition of original parcels  
8 under our Canyon County zoning ordinance, which meant  
9 they're each entitled to a one-time split  
10 administratively.

11 Q. Okay. So what is involved in a one-time  
12 administrative split?

13 A. You have to do a Record of Survey. And the  
14 prior owner did everything pretty much right. They  
15 caused a record of survey to be done. And then you  
16 have to provide access for public access or roads or  
17 private roads, one of the two.

18 And then you file it with the  
19 administrator. And they end up certifying, which is  
20 what the next document is.

21 Q. So the certification is what? That's  
22 Exhibit 3?

23 A. 3, correct.

24 Q. Okay. So explain how that -- the  
25 administrative process works at the County to obtain

1 this administrative split.

2 A. You file a master application, sign it,  
3 mark the box that says "Administrative split." Take --  
4 if you have it, you can take the deed history to show  
5 that it preexisted September 6th of '79. If you don't,  
6 they will do it for you. Then you pay a fee and  
7 provide the record of survey, and then they develop  
8 this decision and record it.

9 Q. So is there public hearings involved in  
10 this?

11 A. No.

12 THE HEARING OFFICER: If I can interrupt for  
13 just a second.

14 Is Mr. Mills testifying as an expert  
15 witness?

16 MR. BARKER: He's testifying based upon his  
17 experience with this particular parcel. We did not  
18 name him as an expert.

19 THE HEARING OFFICER: Okay. Some of the  
20 testimony that he's giving is expert in nature and not  
21 based on his -- his personal experience with --

22 MR. BARKER: Okay.

23 THE HEARING OFFICER: -- relative to this. So  
24 I'll allow him as an expert witness, if there's no  
25 objection to -- to that.

1 MR. FARRIS: Well, I think that's not what he's  
2 saying. He's saying he's going to give his personal  
3 perspective and experience.

4 THE HEARING OFFICER: All right. Okay. Go  
5 ahead.

6 MR. BARKER: Which, of course, means that  
7 Mr. Farris can't ask him opinions as an expert either.

8 Q. So when this -- you looked at this  
9 Exhibit 3, what did you conclude needed to be done in  
10 order to carry out the development plans that you  
11 talked to Mr. Froerer about?

12 A. Exhibit 3 certified to the fact that they  
13 had been properly split and acknowledged by the County  
14 and recorded. And so they stood as available lots to  
15 be sold.

16 The infrastructure was in, as far as  
17 Highway District road, phones, power, utilities were  
18 in.

19 Q. So what kind of administrative -- or what  
20 kind of land-use planning decisions did you need to  
21 obtain from the County in order to carry out the  
22 development plans that you had for the property?

23 A. There was no --

24 MR. FARRIS: Objection.

25 THE WITNESS: Yeah.

1 MR. FARRIS: That calls for a legal conclusion.

2 MR. BARKER: No, it doesn't. It calls for what  
3 was his plan to carry this out.

4 MR. FARRIS: You asked what requirements were  
5 necessary.

6 THE HEARING OFFICER: Can you rephrase the  
7 question to see what he had to do --

8 MR. BARKER: Certainly.

9 THE HEARING OFFICER: -- and what he did?

10 Q. (BY MR. BARKER): Did you need to do any --  
11 did you need to obtain any additional approvals from  
12 Canyon County under the Land-Use Planning Act to do any  
13 of the development that you had in mind for this  
14 property?

15 A. Not for the 14 lots.

16 Q. And why, in your understanding, is that?

17 A. Because they all had been done. This  
18 Exhibit 3 was what was necessary to do that. And that  
19 was complete.

20 Q. So did you explain that to Mr. Froerer?

21 A. Yes, uh-huh.

22 Q. And was that before or after the purchase  
23 of the land was made?

24 A. I'm not exactly sure when they finalized  
25 the sale, but I believe it was before. I think that

1 was something they wanted to know prior to closing.

2 Q. What else did you do in order to help them  
3 with this development at the very beginning?

4 A. The very first thing I did was wanted to  
5 know for sure that this was a County -- or a Highway  
6 District-accepted road. So went to the Highway  
7 District to see what the status was. And found that it  
8 was accepted by the Highway District.

9 And so they maintained it and it is in  
10 their system. I did find a legal description flaw in  
11 the deed to the Highway District, which we corrected  
12 and gave them a correction deed so it actually fit the  
13 road, because it wasn't quite right.

14 Q. And you mentioned that there were other  
15 infrastructures already in place.

16 Can you explain what was already there.

17 A. Yes. The power and the phones are all  
18 underground and to the parcels, the 14 parcels.

19 Q. All the way to each lot?

20 A. Correct.

21 Q. Was there a -- an irrigation system put in  
22 place?

23 A. No.

24 Q. So what else needs to be done in terms of  
25 getting these lots ready for sale?

1           A.    They're ready today, other than this issue  
2 of how the water is going to be handled.

3           Q.    What was the reason that -- or did you have  
4 a discussion with the Froerers about putting in the  
5 wells versus providing the irrigation system?

6           A.    Yes, we did. And that's one reason they  
7 decided to expend a little money and drill the one well  
8 on a lot. It was to kind of check the aquifer, get the  
9 flow static, how many gallons per minute, et cetera.  
10 See if it was feasible.

11          Q.    And was that something you recommended  
12 finding out?

13          A.    I'm sure I was partially recommending it,  
14 anyway. Matt and I -- I think all of us met and  
15 decided that was a good thing to do.

16          Q.    And did you reach a conclusion after seeing  
17 the well logs?

18          A.    Yes.

19          Q.    What was that conclusion?

20          A.    It followed exactly what the Water  
21 Resources map --

22          MR. FARRIS: Objection. Now we are talking --  
23 objection.

24                    You got to wait.

25          THE WITNESS: Pardon?

1 MR. FARRIS: We are talking about expert  
2 testimony. He's not a hydrologist to determine what  
3 well logs do or do not show.

4 MR. BARKER: I'm not asking him what the well  
5 logs show. I asked him what conclusion they reached  
6 when they read it.

7 MR. FARRIS: Same objection. He's offering a  
8 conclusion of opinion.

9 THE HEARING OFFICER: Can you reframe the  
10 question to say "When you looked at the well log what,  
11 did you read off of it?"

12 MR. BARKER: Well, I think that's what I said.

13 Q. I said, "When you looked at the well logs,  
14 what conclusion did you make about whether or not you  
15 were able to drill enough wells for this property?"

16 MR. FARRIS: Same objection. He's not a  
17 hydrologist expert in the field to determine -- make  
18 that conclusion.

19 THE HEARING OFFICER: Noted.

20 Q. (BY MR. BARKER): Go ahead.

21 A. Do I answer?

22 Q. Yes.

23 A. We found that by screening the well it  
24 still left 50-plus gallons per minute, and it was  
25 plenty adequate for the purposes, you know, domestic

1 and irrigation.

2 Q. And you've been -- you're familiar with  
3 using wells to provide water for domestic and  
4 irrigation purposes?

5 A. Yes, uh-huh.

6 Q. So was there a discussion, once you looked  
7 at the well logs, what -- whether or not moving ahead  
8 with the well log -- well process or using pressurized  
9 irrigation system on the land was a better -- or which  
10 alternative would be better?

11 A. We did discuss it.

12 Q. Okay. And what was the pros and cons?

13 A. The cons to using the existing water --

14 MR. FARRIS: I'll object I guess. I'll just  
15 have a continuing objection. He's not a hydrologist  
16 qualified to make these opinions.

17 THE HEARING OFFICER: Noted.

18 But you can relay the conversations that  
19 you had with them.

20 MR. FARRIS: I'm going to object to that as  
21 hearsay.

22 THE HEARING OFFICER: Okay. Hearsay is  
23 admissible.

24 MR. BARKER: No. This is the basis for  
25 decision. This is what went into the decision to -- to



1 choose to move ahead with this application. And, you  
2 know, I'm not asking him to say what Craig said.

3 Q. I'm asking, what were the pros and cons in  
4 moving ahead with this choice.

5 THE HEARING OFFICER: Based on your direct  
6 experience talking with them.

7 THE WITNESS: I'm sorry. I read lips a lot.

8 THE HEARING OFFICER: Okay. So what we're  
9 talking about here is the difference between whether  
10 you're giving an expert opinion on what -- what the  
11 facts say versus whether you're relating something that  
12 you had direct -- a specific situation that you had  
13 direct knowledge of.

14 And so I guess I would allow you to discuss  
15 what your conversation was and what you recommended to  
16 Froerers.

17 THE WITNESS: Okay.

18 THE HEARING OFFICER: But I won't consider it as  
19 an expert opinion in determining fact of -- of what's  
20 going on.

21 THE WITNESS: Okay. Part of the issue from the  
22 very beginning was when we looked at the property with  
23 them it was the condition and quality of the water from  
24 the irrigation company. And they had a big settling  
25 pond there. And they pointed to the fact that they had

1 to settle the water before they could really use it.

2 Then some of the benefits for using your  
3 own water is the quality of the water. And you don't  
4 have the pesticides, herbicides, and weeds and so forth  
5 that come with the canal water. That's a -- that's a  
6 big issue in some of our area. And it's just -- the  
7 independence of having the ability to irrigate all at  
8 the same time, not have a rotation.

9 If you look at problems through the 50  
10 years that I've seen with homeowner associations,  
11 irrigation associations, I'll give you an example of  
12 Fox Meadows. Somebody drills into the pipe to put a  
13 posthole in the ground, shuts the whole neighborhood  
14 down. Somebody doesn't take care of the pump  
15 correctly, you all have to pay for it.

16 It's just -- it's just as a consumer of a  
17 lot, if you give me the chance and choice of being able  
18 to have my own independent, clean versus having to  
19 share one and maintain it, I will always take that  
20 independent one.

21 Another thing that was missing when we  
22 looked at the record of survey that was filed with this  
23 Exhibit 3, there were no easements on any of the  
24 parcels to be able to put an irrigation system. I was  
25 not aware of any irrigation plans until I got the map

1 here showing that there was a proposal maybe to do  
2 that.

3 But the plat -- or the record of survey  
4 provided no indication of any intent to put that.  
5 There was no place for a pump on that map. And that's  
6 what was recorded with the County. That's what applies  
7 today. So if you look on that, there's no -- no method  
8 of doing it without totally amending that decision.

9 Q. So you recommended, then -- or did you  
10 recommend one route or another to the Froerers?

11 A. We recommended -- Matt and I and --  
12 recommended that if we could get it done that the wells  
13 would be far superior.

14 I also might mention I looked at the Water  
15 Resources study, and it's a little bit inconclusive.  
16 But that area up there is looked at very good, no  
17 change or in some areas even an increase in aquifer.

18 Q. Did you thereafter, then, put the Froerers  
19 in touch with SPF?

20 A. I did not. I believe my -- Matt did.

21 Q. Okay. So were you involved at all in the  
22 evaluation of the work that they were doing?

23 A. No, I wasn't.

24 Q. Based upon your experience as a realtor in  
25 this area, do you have a personal opinion about the --

1 whether or not there's a benefit to the economy by  
2 having this development take place?

3 MR. FARRIS: I'm going to object. Again, he's  
4 trying to characterize it as a personal opinion. But  
5 to the extent it's any kind of an opinion, he's not  
6 qualified to offer that.

7 MR. BARKER: I'm just asking as his -- in his  
8 opinion -- in his experience, rather, as a person who's  
9 been involved in development of real estate and sales  
10 of real estate all over this area, if he has a view on  
11 how that would benefit the economy.

12 Q. Let me rephrase the question.

13 So if the -- if the lots are sold, what  
14 happens to the property values of those lots?

15 A. Well, number one, the assessor will assess  
16 that first acre at a very high price compared to farm  
17 ground. So it immediately raises the taxes.

18 And then the improvements get taxed  
19 according to what improvements are made. And so the  
20 taxes go up for sure.

21 Q. What kind of work is necessary for  
22 improvements on each of these 28 lots -- or sorry, 14  
23 lots on the 28 acres? Is somebody going to build a  
24 house?

25 A. Yes, they can build a house. We have CC&Rs

1 in place with minimum square footage, stick-built  
2 homes, double-car garages. So the price point is going  
3 to be up there in the pretty high range. It will  
4 definitely be above the median for Canyon County. So  
5 it would be an asset for taxes.

6 Q. And how do you get these houses built?

7 A. You use subcontractors, contractors, and  
8 employ a lot of people to -- you don't hire me, let's  
9 put it that way.

10 Q. Were you involved at all in any of the  
11 discussions with the Ditch Company or the board about  
12 this development?

13 A. No.

14 MR. BARKER: I don't have any further questions  
15 for Alan.

16 THE HEARING OFFICER: Mr. Farris?

17 THE WITNESS: Morning. Barely.

18

19 CROSS-EXAMINATION

20 BY MR. FARRIS:

21 Q. Could you turn to Exhibit -- there's two  
22 books up there. The one with the blue tabs. That one,  
23 yes. I believe it's Exhibit -- I'm sorry -- 112.

24 A. Okay. I think I got it.

25 Q. Do you recognize this document?

1           A.    It's a record of survey of the 14 tracts;  
2   is that correct?

3           Q.    Do you recognize it?

4           A.    Yes.

5           Q.    Yeah.  So that's the split that happened in  
6   2007.

7                    Do you see the instrument number at the top  
8   right-hand corner?

9           A.    No.  I believe what that instrument number  
10   is is the record of survey instrument number.

11          Q.    Yeah.  But there's an instrument number  
12   there?

13          A.    Yeah.

14          Q.    Okay.  So the record of survey was  
15   recorded?

16          A.    Yes.

17          Q.    Okay.  And this is the record of survey  
18   that came out of the -- you talked earlier about I  
19   think it was Exhibit 3, the administrative split that  
20   happened in 2007.

21          A.    This is the record of survey that went with  
22   that administrator's decision, correct.

23          Q.    Yeah.  And it resulted in an amendment to  
24   the prior plat, didn't it?

25          A.    Not an amendment, because this is not a

1 subdivision. It's just an administrative split.

2 Q. It results -- okay. A change, a change to  
3 the prior plat, didn't it?

4 A. Well, we don't call the prior one a plat  
5 because it doesn't meet the definition of subdivision.  
6 It's a change to the record of survey.

7 Q. In the early 1900s this ground was platted,  
8 was it not?

9 A. I believe that it was in the orchard  
10 tracts, yeah.

11 Q. And then this is the resulting change to  
12 that plat?

13 A. No, it's not an amendment to a plat.  
14 That's under the subdivision ordinance. This is just a  
15 simple administrative split under the zoning ordinance.

16 Q. Okay. Maybe --

17 A. Two different things entirely.

18 Q. Yeah. So do you view this as a change to  
19 the plat?

20 A. It's a -- it's an administrative split of  
21 old tracts, yes.

22 An amendment to the plat would go back and  
23 amend that whole plat. This is just simply taking the  
24 allowance under the zoning ordinance to a split one  
25 time of those original tracts.

1 Q. Right. It was a change to the plat?

2 MR. BARKER: Objection. Objection.

3 Q. (BY MR. FARRIS): And maybe we --

4 A. The language we use doesn't fit that.

5 MR. BARKER: Wait, wait, wait.

6 I'm going to object. He's already asked  
7 this question. He doesn't like the answer.

8 Move on.

9 He's asked it three times. It's not an  
10 amendment to the plat.

11 THE HEARING OFFICER: And I do think we  
12 should --

13 MR. FARRIS: I haven't said "amendment" once.

14 THE HEARING OFFICER: Wait.

15 MR. FARRIS: I said it's a change.

16 THE HEARING OFFICER: I think we should move on  
17 because you're asking him for --

18 MR. FARRIS: A cumulative.

19 THE HEARING OFFICER: -- an understanding of  
20 County zoning law, which I think falls under expert  
21 witness territory, not under his lay witness.

22 MR. FARRIS: Okay. But he was also asked  
23 earlier on what his understanding of what needed to be  
24 done under the County -- County requirements.

25 MR. BARKER: And you're asking him what the



1 administrative acts were, which you told me I couldn't  
2 ask because it was an expert opinion, so I didn't. So  
3 you're not asking him what his opinion is. You're just  
4 saying -- you're asking him to say what the change in  
5 the -- whether there's a change in --

6 MR. FARRIS: I'm asking him what his  
7 understanding is of the County ordinances and the  
8 requirements that were needed.

9 MR. BARKER: So how is that different than your  
10 objection?

11 MR. FARRIS: You went through what you  
12 thought -- what he testified to as what he thought they  
13 needed to do; right? And that's what I'm following up  
14 on.

15 MR. BARKER: Well, this is not what he needed to  
16 do. You're asking him what the effect was of something  
17 that happened in the past.

18 MR. FARRIS: Correct.

19 MR. BARKER: Which you told me -- which you  
20 objected to and said I couldn't ask him because it was  
21 expert opinion.

22 THE HEARING OFFICER: We should move on.

23 Q. (BY MR. FARRIS): As part of this process,  
24 this administrative split, whatever we want to call it,  
25 was the owner at the time required to submit an

1     irrigation plan?

2             A.     No.

3             Q.     Under the County ordinances to do this,  
4     there's no irrigation plan required?

5             A.     No.   That falls completely under the  
6     subdivision ordinance.   This falls completely under the  
7     zoning ordinance.

8             Q.     And as you assisted the Froerers in  
9     determining what they could or could not do with the  
10    property, did you look at the title report for the  
11    property?

12            A.     No.

13            Q.     You did not?

14            A.     No.   I was not involved in the sale at all,  
15    either end, buyer or seller, other than them asking me  
16    questions about it.   But they had realtors on each side  
17    of it.   I wasn't one of them.

18            Q.     Do you think it would be important to know  
19    if there was a homeowners' association established for  
20    the property?

21            A.     It wouldn't have been terribly important to  
22    me, because it was an entirety of a property, so it  
23    could be amended or repealed, so I'd -- if I'd have  
24    looked at what you put up on the screen earlier, I  
25    would have said, "You don't have to live with those.

1 They can be repealed and replaced."

2 Q. Assuming you could do so?

3 A. Yeah.

4 Q. So we looked at earlier that there were  
5 CC&Rs that provided for an irrigation plan; right?

6 A. Those early ones did, yes.

7 Q. Right. And assuming you could amend  
8 those --

9 A. I just learned that today.

10 Q. Yeah. Yeah, you just learned it today.

11 A. Yeah.

12 Q. You didn't do an investigation to determine  
13 if there was an HOA or an irrigation plan back in 2007,  
14 did you?

15 A. Yeah.

16 Q. Okay. Now, I think you are saying your --  
17 your experience and your familiarity with the wells and  
18 the pros and cons of this that all things being equal,  
19 independence is great; is that what you said?

20 A. Could you tell me that again?

21 Q. Well, you were talking about your  
22 experience and that you would always take independence.

23 A. Uh-huh.

24 Q. I wrote that down.

25 Is that true?

1           A.    We prefer independence on -- whenever we  
2 can, yes.

3           Q.    Are you involved in different developments  
4 throughout the Treasure Valley?

5           A.    Yes.

6           Q.    In Boise?

7           A.    No.

8           Q.    Meridian?

9           A.    No.

10          Q.    Star?

11          A.    No.   Canyon County.

12          Q.    So "throughout the Treasure Valley" means  
13 Canyon County?

14          A.    Well, it is part of the Valley, yes.

15          Q.    And in those cases you'd always prefer to  
16 be independent and have your own well or source of  
17 water?

18          A.    Not always.   Every -- every case is unique  
19 and individual.

20          Q.    And isn't it true that in most, if not all,  
21 cases that you continue to use the existing surface  
22 water that's available for the property?

23          A.    Most times, yes.

24          Q.    Do you have an example where you haven't?

25          A.    Yes.   Cascade Hills.   There -- I don't

1 remember the name on Hartley Road. There's two there  
2 around Middleton that vacated the water, turned it back  
3 to Black Canyon Irrigation because they didn't need it  
4 for --

5 Q. Black Canyon Irrigation District allowed  
6 them to exclude?

7 A. Yeah.

8 Q. That's interesting.

9 A. Because they had land available that  
10 farmers needed the water better than they did.

11 Q. Would you turn to Exhibit 115.

12 A. Okay.

13 Q. Are you familiar with this document?

14 A. Very.

15 Q. And how are you familiar with it?

16 A. I was involved in developing this Linfield  
17 Estates, which is appurtenant to the owner of -- in  
18 Middleton area.

19 Q. And what did you initially propose for  
20 Linfield Estates?

21 A. Initially proposed, I believe, just  
22 transferring the water if there was somebody who could  
23 use the water and using shallow alternate openings for  
24 filing for water right for those.

25 Q. Didn't you propose to drill 13 new

1     irrigation wells?

2             A.     Yes, that -- that came out of it when we  
3     went to apply for a supplemental water right for those  
4     wells.    Yeah.

5             Q.     You didn't initially apply for a  
6     supplemental water right, did you?

7             A.     I don't recall, actually.

8             Q.     In the end you agreed to have a  
9     supplemental water right for those wells, didn't you?

10            A.     Yes, uh-huh.

11            Q.     And you agreed to -- looking at Exhibit 15  
12    [sic], and turning to the second page, you agreed to  
13    those conditions that are listed in A, B, and C?

14            A.     Yes.

15            Q.     And in that situation -- where was that  
16    development located?   Was it Canyon County?

17            A.     Canyon County.

18            Q.     Downstream of Star Bridge?

19            A.     Downstream of Star Bridge.

20            Q.     And you agreed to these conditions that  
21    required the primary surface water to continue to be  
22    delivered to the property?

23            A.     Yes.

24            MR. FARRIS:   I'd move for the admission of  
25    Exhibit 115.

1           MR. BARKER: I'm going to object on relevance  
2 grounds. He hasn't established that the Middleton  
3 Irrigation District and the Farmers' Co-op have similar  
4 requirements, hasn't established whether or not this  
5 was a new land-use act compared to one where, as in  
6 this one, where there is no land-use application  
7 pending. And there's just a lack of foundation for  
8 this to be relevant to this particular case.

9           THE HEARING OFFICER: Noted. I've already taken  
10 official notice of the records of the Department. This  
11 is part of the records of the Department, so we'll --  
12 we'll accept it as an exhibit.

13           MR. BARKER: Okay.

14                     (Exhibit 115 admitted.)

15           Q. (BY MR. FARRIS): Isn't the reason that  
16 you'd prefer independence is because then as a  
17 developer you don't have to construct a pressurized  
18 irrigation system?

19           A. Absolutely not.

20           Q. The cost has nothing to do with it?

21           A. No.

22           Q. Nothing?

23           A. Nothing.

24           Q. Okay.

25           A. We would be glad to actually incorporate

1 that into the sale, if it made any difference. I get  
2 that question a lot. It's not a function of cost.

3 Q. So as lots are developed, that increases  
4 the tax base?

5 A. Yes.

6 Q. So you're promoting development of lots in  
7 the Valley?

8 A. Am I?

9 Q. Yeah.

10 A. I don't promote them. I have people come  
11 to me and ask for my help in getting them. But I don't  
12 personally own any that I develop.

13 Q. When the Froerers came to you, did you  
14 understand that they were a shareholder of Farmers'  
15 Co-operative Ditch Company?

16 A. Not on the first contacts.

17 Q. When did you learn that they were a  
18 shareholder of Farmers' Co-operative Ditch Company?

19 A. Well, I'm 72 going on 73. I can't -- I  
20 can't tell you. It was sometime in between the first  
21 meeting and when we decided to engage in employment.

22 Q. And at some point, though, you learned that  
23 Farmers' Co-operative Ditch Company -- or that they  
24 were a shareholder of Farmers' Co-operative Ditch  
25 Company?



1 A. Yes.

2 Q. Entitled to receive surface water for the  
3 property?

4 A. Yes.

5 Q. Did you go view the property?

6 A. Yes.

7 Q. Was it being irrigated at the time?

8 A. Yes.

9 Q. Did you understand where that water was  
10 coming from?

11 A. I knew that it was coming to a settling  
12 pond. I didn't know where the headgates were and the  
13 other details, but I knew it came to that pond.

14 Q. But did you understand it to be from  
15 Farmers' Co-operative Ditch Company?

16 A. Pardon?

17 Q. Did you understand it to be the Ditch  
18 Company's deliveries to the --

19 A. Yes.

20 Q. -- ground?

21 A. Uh-huh.

22 MR. FARRIS: Yeah.

23 That's all I have.

24 THE HEARING OFFICER: Mr. Barker?

25 ///

REDIRECT EXAMINATION

BY MR. BARKER:

Q. Would you look at Exhibit 3 in the purple book.

A. I think I have it, yes.

Q. Okay. And that's the administrative split that Mr. Farris was asking you about?

A. Correct.

Q. Would you look at that document and tell me if you see anything in there from the County requiring the use of surface water on any of these lots as a result of the split?

A. No, I'm very familiar with these, and I've never seen one.

Q. And is there one on this one?

A. No.

Q. You made the comment in response to some questions from Mr. Farris about the homeowners' association could be amended or repealed.

What did you mean by that?

A. Well, in my experience, all CC&Rs have a provision. I have not seen any that don't have a provision for amending or repealing those CC&Rs.

Q. Have you seen the old CC&Rs for this?

A. Just briefly, yes.

1 Q. Do you know if they had a similar provision  
2 in them?

3 A. I actually took the word of two other  
4 people that looked at it and said they did. I did not  
5 personally look at it.

6 Q. Okay. On the Exhibit 115, the DRK  
7 application for the Linfield Estates --

8 A. 115 in blue?

9 Q. Yes. The one that Bryce was talking to you  
10 about that you were involved in, Linfield Estates.

11 A. Okay.

12 Q. Okay. You don't need to look at the  
13 exhibit. I just want -- with that transaction, was it  
14 your understanding whether or not you were applying for  
15 a land-use change under the Land-Use Planning Act?

16 A. Yes, we had to go through a rezone, which  
17 was a land-use change.

18 Q. Okay. And is that the same thing that's  
19 happening here with the Froerers' property?

20 A. No.

21 Q. No, it's --

22 A. No.

23 Q. Okay.

24 A. This property stays agricultural. There's  
25 no zoning change and no change of use under the

1 statutes, as I read them.

2 Q. Okay. You, in response to Mr. Farris'  
3 questions, said cost is not an issue because you would  
4 incorporate it into the sale.

5 What -- explain that a little bit further.

6 A. If -- if it was actually more expensive to  
7 drill the well and provide it that way with the  
8 independence, we would be fine with doing that. We did  
9 that on DRK. We put a lot of money into that system,  
10 probably more than if we would have put one simple pump  
11 and a pressurized system. So that one wasn't a cost  
12 issue. This one isn't a cost issue.

13 It's what the end product is. If you ask  
14 yourself as a consumer do I want to share everything  
15 and be on a rotation or do I want to be independent,  
16 you'll usually get independent every time.

17 Q. But if you put a pressurized irrigation  
18 system in or a well in, it increases -- either -- both  
19 of them increase the cost of the sale; right?

20 A. Yes, there will be an increased cost --

21 Q. Got to capture those --

22 A. -- either way.

23 MR. BARKER: All right. That's all I have.  
24 Thank you.

25 THE HEARING OFFICER: Okay.

1 MR. FARRIS: Yeah.

2  
3 RECROSS-EXAMINATION

4 BY MR. FARRIS:

5 Q. When you put in the well, you heard  
6 Mr. Froerer, that's not a cost that's incurred by One  
7 More Mile, that's incurred by the lot owner when they  
8 buy the property; correct?

9 A. That's correct. And it happens that it's  
10 going to be on every one of these lots, whether there's  
11 a delivery system in addition to Farmers' Co-op or not.  
12 Same cost.

13 Q. Right. But if there was a delivery system,  
14 it would be -- that cost would be borne by One More  
15 Mile?

16 A. Yes.

17 Q. And that's typical whenever there's a  
18 development that they put in pressure irrigation system  
19 or some sort of a system, they build the system, and  
20 then that cost is then passed on?

21 A. And the consumer always is the one that  
22 pays for it. It goes into the lot costs. Your hard  
23 costs go in, and it just adds to that.

24 So ultimately the Froerers would advance  
25 that money for that system, but it would be the

1 consumer pays it either way. You never stick the  
2 Eddy's bread man with a price increase.

3 Q. I get it. Eventually the cost is passed on  
4 to the lot owner?

5 A. Yes. Yeah.

6 Q. But initially that cost is an up-front cost  
7 that has to be paid by the developer if they put in an  
8 irrigation system?

9 A. Yes, you're correct, uh-huh.

10 Q. And by not doing that, you avoid that  
11 up-front cost, and it's just paid for when and after  
12 the lot owner buys the property?

13 A. That's correct. But that's not the  
14 motivation here. It's -- but you're correct in the  
15 dollars and cents.

16 Q. And the independence of a lot owner,  
17 applying that to any new development in the Valley, you  
18 should have wells on every lot --

19 A. No.

20 Q. -- instead of any kind of a pressure  
21 irrigation system?

22 A. No. If you had, for instance, 5, 6, 7-acre  
23 lots here, even 3 and 4 and 5 on up, it becomes a  
24 diminishing return. If you have that surface water,  
25 the larger your land is, the better.

1           For instance, we're doing some in Black  
2   Canyon that when we get down to an acre and a tenth,  
3   acre, we're just letting the farmers have -- transfer  
4   that over where they're short and letting them use it  
5   for a beneficial use, because by the time you put a  
6   home, a shop, a driveway and the other amenities, we've  
7   done lots of research on it, you don't have much left  
8   to irrigate.

9           In this case you're really only going to be  
10   about an acre more, because you have your half acre  
11   with your well for domestic. By the time you put all  
12   the improvements on, you're only really going to be  
13   talking an acre to irrigate with this.

14          Q.    It would come from, in this case, 14  
15   separate wells in the 28-acre proximity?

16          A.    There would be 14 wells in that 20 acres,  
17   yes.

18          Q.    All irrigating?

19          A.    Yeah.

20          MR. FARRIS:  No further questions.

21          MR. BARKER:  Nothing further.

22          THE HEARING OFFICER:  Okay.  Mr. Mills --

23          THE WITNESS:  Thank you.

24          THE HEARING OFFICER:  -- you're excused.

25                 And it is noon.  So I think we were going

1 to break for lunch.

2 Do we need an hour for lunch?

3 MR. BARKER: Yeah, let's do it.

4 THE HEARING OFFICER: Okay. All right. Well,  
5 we'll be back here at 1:00.

6 (Lunch recess.)

7 THE HEARING OFFICER: The time is five minutes  
8 after 1:00, and I think everybody's back from lunch, so  
9 we are now back on the record.

10 And so I was going through my notes over  
11 lunch, I noticed that, I think, Mr. Barker had  
12 Mr. Froerer point to his property location on  
13 Exhibit 14, but I don't know whether that was entered  
14 into the record.

15 So I guess I'll ask, do you offer that  
16 exhibit into the record, Mr. Barker?

17 MR. BARKER: I do.

18 MR. FARRIS: No objection.

19 THE HEARING OFFICER: Mr. Farris, no objection.

20 All right. Entered and accepted.

21 (Exhibit 14 marked.)

22 THE HEARING OFFICER: So, Mr. Barker, I believe  
23 it's still you to call any additional witnesses you may  
24 have.

25 MR. BARKER: I'm going to call Matt Wilke.



1 THE HEARING OFFICER: Matt Wilke.

2  
3 MATT WILKE,  
4 having been called as a witness by the Applicant, was  
5 duly sworn and testified as follows:  
6

7 THE HEARING OFFICER: Mr. Wilke, do you solemnly  
8 affirm that the testimony you're about to give is the  
9 truth, the whole truth, and nothing but the truth?

10 THE WITNESS: I do.

11 THE HEARING OFFICER: All right. Thank you.  
12 Have a seat.  
13

14 DIRECT EXAMINATION

15 BY MR. BARKER:

16 Q. Mr. Wilke, would you identify yourself and  
17 introduce yourself to the Hearing Officer, please.

18 A. Yes. I'm -- my name is Matt Wilke. I'm a  
19 real estate agent and a listing agent for One More  
20 Mile, LLC. And I have my license hung under Mills &  
21 Company in Middleton, Idaho.

22 Q. How long have you been engaged in that  
23 profession?

24 A. Since fall of 2018.

25 Q. What did you do before that?

1 A. Farmed.

2 Q. Where?

3 A. Canyon County; Owyhee County; and Malheur,  
4 Oregon -- or Malheur County, Oregon.

5 Q. Did you have some role in putting together  
6 the plans for development of these 28 acres?

7 A. No. That was done before I came into the  
8 picture.

9 Q. I'm sorry. With the Froerers, the plans  
10 for putting the property on the market?

11 A. Oh, yes. Yes.

12 Q. Okay.

13 A. I listed it for sale.

14 Q. I'm sorry?

15 A. Yeah, I was the listing agent. I am the  
16 listing agent for the --

17 Q. Okay. So is the property listed right now?

18 A. Yes, it is, portions of it.

19 Q. What portions are listed?

20 A. It would be the -- there's eight parcels  
21 south of River Bluff Road. And at the end of Sunset  
22 View Road, there's four at the end of that cul-de-sac.

23 Q. And when did you put those properties on  
24 the market?

25 A. It was July of '19.

1 Q. Okay.

2 A. Started to.

3 Q. Is -- is there a plan for listing the rest  
4 of the parcels?

5 A. Yes, when -- when it's convenient to get  
6 the trees out of the way and stuff. We have some work  
7 that needs to be done to finish those for sale.

8 Q. Is there any additional County approvals  
9 that are necessary to put those -- the rest of those  
10 parcels up for sale?

11 A. No.

12 Q. When did you first become engaged with the  
13 Froerers?

14 A. It would have been probably in the winter  
15 of '19.

16 Q. Winter of '18/'19 or --

17 A. '19. Or maybe -- I mean would have been  
18 the spring, you know, the end of the '18/'19 winter,  
19 somewhere around there I might have met them, about  
20 when Alan did, Mr. Mills.

21 Q. Okay. And what was your -- what was your  
22 role? What did you do once you first got introduced to  
23 them with respect to this property?

24 A. I started doing due diligence on my end,  
25 researching the property and records of survey, water,

1 just the area. Went to a Highway District meeting in  
2 regards to the public road right-of-way and the  
3 development regarding River Bluff Drive -- Road and  
4 Sunset View Road.

5 Q. So on the records of survey, I think we've  
6 looked at that as -- is that Exhibit 1? Sorry. Oh,  
7 no. Excuse me.

8 Apologies, Mr. Hearing Officer. Give me a  
9 second.

10 Exhibit 112 in the blue tabs.

11 Do you have that in front of you?

12 A. 112. Let's try this out. There it is.  
13 Okay.

14 Q. Is that the record of survey that you were  
15 referring to?

16 A. Yes, it is.

17 Q. Okay. And what did you learn that was  
18 important for the development of this property from  
19 that record of survey?

20 A. That it had coincided with the  
21 administrative decision in 2007 and checked out with  
22 the way they administratively split the parcels.

23 Q. And you mentioned working with the Highway  
24 Department.

25 Are there parts of this land on the record

1 of survey that's under the jurisdiction of the Highway  
2 Department now?

3 A. Yes, it is. Basically, all the road on the  
4 survey coming into the development is public road to  
5 the first cul-de-sac on the east and as well as the  
6 road continuing past all 14 parcels to the end of the  
7 record of survey at that -- they have a cul-de-sac at  
8 the end right there. That's all paved and public road  
9 up to this point.

10 Q. What's the Highway District?

11 A. I can't remember. I don't know if  
12 that's -- I can't remember the name of them out there.

13 Q. So but went to their meetings to --

14 A. Yeah.

15 Q. What was the purpose of going to their  
16 meetings?

17 A. Verify that they had public right-of-way  
18 out there and that they were maintaining the road. It  
19 was Parma -- I think it's Parma Highway District. I  
20 can't remember.

21 Q. And there was a mention earlier today about  
22 additional cul-de-sacs that are graveled.

23 Can you talk about what the plans are for  
24 those.

25 A. Currently we have three more future

1 cul-de-sacs, that those will be private road. Those  
2 aren't public.

3 Q. Those are shown in the dotted lines?

4 A. Yeah, those are in the dotted lines. Those  
5 are the three cul-de-sacs that are going to be -- have  
6 a -- the lot owners will have a road user's agreement  
7 between each -- each of them and be maintained by the  
8 four parcels on the cul-de-sac on the south of River  
9 Bluff, as well as the four -- six on the north.

10 So each parcel has a road user's agreement  
11 on those three cul-de-sacs that are shown on the record  
12 of survey.

13 Q. And how would that -- excuse me. How would  
14 that road user's agreement be established? What's your  
15 plan for that?

16 A. Well, it will be between me and the -- the  
17 selling agent to set that up between the sellers and  
18 the buyers. Basically, the buyer of the lot will know  
19 that there's going to be a road user's agreement set up  
20 and that future buyers, whoever buys the first lot,  
21 will have to have an agreement between the next three.  
22 So everybody knows that there will be an agreement  
23 between those four owners to maintain the road in the  
24 future, if it needs pavement work or any type of  
25 maintenance.

1 Q. And is the pavement planned for that  
2 something that the landowners are going to do or --

3 A. Included in the price of the lots currently  
4 is the sellers are going to pave those cul-de-sacs.

5 Q. Is there anything on Exhibit 112 that would  
6 indicate to you that there are -- were any easements  
7 established for irrigation delivery system?

8 A. No, there are not.

9 Q. And so it's a document that was recorded  
10 with the County?

11 A. That's correct. On November 21st of looks  
12 like 2009. 2007. Sorry.

13 Q. So the -- do you -- I don't know if you  
14 were -- well, I don't know if you were here for the  
15 testimony or not, but are you aware that last year a  
16 portion of the property was irrigated by the Froerers?

17 A. Yes, that is correct.

18 Q. And do you know how that irrigation took  
19 place?

20 A. That was a drip irrigation system. It  
21 required the use of a pump and lines that would lay  
22 flat when they weren't in use, so like a rubber  
23 firehose-type irrigation line.

24 Q. So did you have any -- did you hear any  
25 concerns expressed by that by the Highway District?

1           A.    Yes, I did. I did have a call from the  
2 Highway District. And they were -- they wanted to get  
3 ahold of the owner of the property, because they said  
4 there was an irrigation line across Sunset Road --  
5 Sunset View Road, which is the first cul-de-sac on the  
6 east.

7                   There was an irrigation line. In order to  
8 irrigate those lots, the sellers -- the owners have  
9 to -- had to run a line across a public road, otherwise  
10 they would have had -- it would have been a hard  
11 situation to run that line all the way around the  
12 cul-de-sac. So it was easier to go right across the  
13 road.

14                   I mean it was a flexible line, so when they  
15 weren't using it you could drive across it.

16           Q.    So --

17           A.    But the Highway Department did not want an  
18 irrigation line across a public right-of-way.

19           Q.    When was the first time you approached  
20 anyone with the Ditch Company, Farmers' Co-op, about  
21 the water use on the property?

22           A.    I believe it would have been in February.

23           Q.    Of?

24           A.    Of '20. I'm not sure without looking at  
25 all my e-mails.



1           Q.    So just to put you in context, we had an  
2 application filed in January.

3           A.    Okay. Well, it would have been actually  
4 before that, then. It would have been in the fall of  
5 '19 or -- if not before, maybe in the summer. Just  
6 talking to Neddy verbally about if they had water  
7 shares.

8           Q.    Okay. And who's Neddy?

9           A.    She's the secretary and treasurer of  
10 Farmers' Co-operative Ditch Company.

11          Q.    And you had discussions with her in the  
12 context of this water right?

13          A.    Yes. And she said -- she verified they did  
14 have water available for that property. But without  
15 my -- I don't recall the exact date.

16          Q.    So she said -- what do you mean when she  
17 said they said they had water available for this  
18 property?

19          A.    There's water rights through water shares.  
20 The -- the One More Mile, LLC, has water shares  
21 available that they can use on this property to  
22 irrigate the property.

23          Q.    And did you talk to her at all about  
24 transferring those shares off of the property?

25          A.    Yes, I did. I do recall an e-mail with her

1 in regards to that matter. And I think that might have  
2 been in January or February of --

3 Q. Okay. Would you look at Exhibit 11.

4 A. Okay.

5 Q. I want you to turn back to the page that's  
6 marked at the bottom as 5 of 6 of Exhibit 11.

7 A. Okay.

8 Q. Is what's illustrated on -- what's depicted  
9 on page 5 of Exhibit 11?

10 A. Page 5 is in regards to my e-mail to Neddy.

11 Q. So just what is it? Are they e-mails?

12 A. Yeah, these are e-mails.

13 Q. Between you and who?

14 A. Neddy Davis.

15 Q. Okay. And is that the same person that you  
16 describe as the secretary/treasurer of Farmers' Co-op?

17 A. Yes, that is correct.

18 Q. So before you had these e-mails with her,  
19 did you have conversations with her?

20 A. Yeah, I had multiple conversations with  
21 her --

22 Q. Okay. And is that --

23 A. -- in regards to the property.

24 Q. Okay. Is that before these -- this  
25 exchange of e-mails in December?

1           A.    Yes, correct.

2           Q.    Okay.  So tell me about the first -- the  
3   conversations you had leading up to this -- to these  
4   e-mails.

5           A.    They were just in regards to the water that  
6   was on the property and if -- whether it was  
7   appurtenant to the land or not.  And she said that  
8   there were shares in Farmers' Co-operative, that they  
9   aren't -- they don't run with the land.  They're  
10   separate.

11                   Some districts that I work under with land,  
12   the -- the shares run with the land.  And when you sell  
13   the land, the shares go with the land.

14                   With this property it's an interesting  
15   district.  I found out that the shares were held by the  
16   One More Mile, LLC, and can be transferred anywhere  
17   within the District, so...

18           Q.    Is that --

19           A.    She --

20           Q.    -- something Neddy told you you could do?

21           A.    Yeah, it is.

22           Q.    So look at the exchange on December 20th on  
23   page 5.

24           A.    Okay.

25           Q.    So what are you asking Neddy to do on

1     behalf of One More Mile here?

2             A.     I was asking her if I could get a letter  
3     stating that surface water would no longer be applied  
4     to the 14 parcels of development ground for One More  
5     Mile.

6             Q.     And what did she tell you in response?

7             A.     She responded that they -- that One More  
8     Mile holds the water shares for this parcel, and that I  
9     should get a letter from him, "as we," meaning the  
10    Farmers' Co-operative Ditch Company, "have no control  
11    as to where he irrigates in our District."

12            MR. BARKER:   Your Honor, I move the admission of  
13    Exhibit 11.

14            THE HEARING OFFICER:   Mr. Farris?

15            MR. FARRIS:   No objection.

16            THE HEARING OFFICER:   Okay.   Exhibit 11's  
17    offered and entered.

18                        (Exhibit 11 admitted.)

19            Q.     (BY MR. BARKER):   So what did you  
20    understand that last sentence to be in her e-mail, "we  
21    have no control as to where he irrigates in our  
22    District" to mean?

23            A.     It meant that because he be owned the water  
24    shares he could move them wherever he had the ability  
25    to irrigate within the District --

1 Q. Okay.

2 A. -- or transfer them to another owner, sell  
3 them to another owner.

4 Q. Okay. Did you have any conversations with  
5 Neddy about whether or not there was a buyer available?

6 A. Yes, I did.

7 Q. Okay. When was that?

8 A. Somewhere around the same time frame,  
9 because I know One More Mile had the option of possibly  
10 buying some land within the District that they could  
11 use the water on. And if not, I wanted to know if  
12 maybe there was a potential buyer that would be able to  
13 purchase the shares so we could keep them in use within  
14 the District.

15 And she said, "Yeah, actually, there is  
16 somebody that's looking for" -- I think it was like 60  
17 shares. And although the 14 we have wouldn't be  
18 enough, he would be happy to purchase those if the  
19 opportunity came about.

20 Q. Did they tell you -- did she tell you  
21 anything at all about who that person was?

22 A. No. I didn't learn who that was until my  
23 meeting at the Farmers' Co-operative in March.

24 Q. Did Neddy indicate to you whether or not  
25 the Co-op would have any problem delivering the water

1 to this purchaser, potential purchaser?

2 A. No. She didn't indicate that at all.

3 Q. Did she say it was possible?

4 A. Yes.

5 Q. So did you have conversations with any of  
6 the board members of Farmers' Co-op?

7 A. No, I didn't.

8 Q. Or with their attorney?

9 A. No, I didn't.

10 Q. So just for a date the water rights were --  
11 applications were filed the 1st of -- 2nd of January.

12 So when was the first time that you heard  
13 that the Farmers' Co-op had concerns about this  
14 application?

15 A. It was during the protest period of our  
16 application time frame. So the applications were  
17 advertised in the paper, I guess, at some point. And  
18 that's when I heard from Lori Graves that there was a  
19 protest.

20 And she said that it -- the only protest  
21 that we had had was from the attorney for Farmers'  
22 Co-operative.

23 Q. Do you remember about when that was?

24 A. It seems like maybe February of 2020,  
25 sometime February.

1 Q. So what did you do when you got that  
2 information about the protest?

3 A. We -- I called Neddy, and we were -- I  
4 wanted to discuss it with her and maybe the board or  
5 whoever the powers that be would be. And she said that  
6 they had -- actually had a board meeting coming up,  
7 their annual board meeting for the Farmers'  
8 Co-operative, and that that would be a good opportunity  
9 to run it in front of the board and get a resolution.  
10 Something we could work out with the board, just get a  
11 line of communication open so we could see what our  
12 options were.

13 Q. So were you -- did she say anything further  
14 at that time about the reasons for the protest?

15 A. No. She said that Farmers' Co-operative,  
16 they weren't -- it wasn't the Farmers' Co-operative.  
17 It was the attorney for the Farmers' Co-operative that  
18 wanted to make sure it was within the District's best  
19 interest to transfer shares or something like that.

20 Q. Did you eventually attend a meeting of the  
21 board?

22 A. Yes, I did. When I met with the board, I  
23 was with Craig and Sharla, Craig Froerer and Sharla  
24 Richardson -- Richards.

25 Q. And that is the March meeting that we've

1     been discussing --

2             A.     Yep.

3             Q.     -- earlier?

4                     Okay. Now look at Exhibit 103.

5                     Do you have that in front of you?

6             A.     Yep. Ready to go.

7             Q.     That's been admitted as a record of the  
8     board meeting of March 11th, 2020.

9                     Did you ever get copies of this -- of these  
10    minutes?

11            A.     Yes, I have seen them before.

12            Q.     Okay. And your discussion with the board  
13    is summarized at the bottom of page 1 and the top of  
14    page 2 --

15            A.     Okay.

16            Q.     -- right?

17            A.     Yep.

18            Q.     So what do you remember about the topic?  
19    What was discussed between you and Craig and Sharla and  
20    the board on -- and just walk me through what happened  
21    at that meeting.

22            A.     We were just -- we went to the meeting,  
23    just kind of wanting to find out what we could -- what  
24    kind of resolution there may be available to us. Or we  
25    wanted to understand why there was a protest in the



1 first place, because we thought that we had approval  
2 from Farmers' Co-operative. And we were really  
3 surprised to find out that it was Farmers'  
4 Co-operative's attorney that filed the protest.

5 Q. But what happened -- what was the  
6 discussion? Who said what at this meeting?

7 A. They were -- they opened the meeting with  
8 they wanted to -- they opened the meeting with the  
9 board in regards to One More Mile wanting to transfer  
10 water shares off.

11 And at the meeting they were under the  
12 impression that we were going to transfer all 64 shares  
13 off of the land and that -- we informed them that we  
14 only intended to transfer off 28 shares for the 14  
15 parcels.

16 Q. 14 shares?

17 A. Uh-huh.

18 Q. 14 shares or 28 shares?

19 A. 14.

20 Q. Okay.

21 A. 14 shares is the 28 acres. And one of the  
22 board members had responded that that cleared it up for  
23 them, that they were under the impression we were  
24 trying to transfer 64 shares, which would have been the  
25 entire property's water right. But we only are

1 developing -- working on the development portion that  
2 has the 14 parcels.

3 Q. Do you remember talking about developing  
4 the rest of the property?

5 A. I may have been asked a question about were  
6 they -- they said are we planning on doing that in the  
7 future, and I said that it has the potential to do  
8 that. That plan definitely has potential and that  
9 would be a good option.

10 But I don't regard -- I don't really recall  
11 exactly if I said 40 or 50 more 2-plus acre lots with  
12 wells, but it's possible. I feel the land has the  
13 potential for that.

14 Q. Do you remember getting an explanation of  
15 the reason for the protest from the board?

16 A. No.

17 Q. Or from Mr. Farris?

18 A. No, never received an explanation of why  
19 there was a protest. That's one of the reasons we went  
20 to the board meeting, is we were trying to find out why  
21 there was a protest in the first place.

22 Q. So when you were at the board meeting, was  
23 there -- look down on the second page of Exhibit 103.

24 You got that?

25 A. Uh-huh.

1           Q.    See the paragraph above right below the --  
2   or the first full paragraph that says "Adopt  
3   resolution"?

4           A.    Yeah, I see it.

5           Q.    Were you made aware at this meeting that  
6   the board had -- was considering a resolution?

7           A.    No. I never heard that at the meeting.

8           Q.    Did they share any --

9           A.    Didn't come up.

10          Q.    -- resolution with you before the meeting?

11          A.    No, they didn't.

12          Q.    Did they explain to you what they were  
13   trying to accomplish with the resolution?

14          A.    No.

15          Q.    So when you left the meeting, how -- what  
16   was your impression of how things stood between One  
17   More Mile and the board?

18          A.    I felt like we had a really good meeting  
19   and there was a better understanding between us and the  
20   board members that they were going to look at maybe  
21   allowing us to have water shares transferred to a new  
22   owner just on those 28 acres worth of land that we  
23   applied to do so on, because it -- there was some  
24   clarification at the meeting in regards to the amount  
25   of water that we were actually transferring. And it

1 wasn't the full 64 shares. It was only 14.

2 And so we -- when I left, I felt pretty  
3 optimistic that we could work something out with the  
4 Farmers' Co-operative and they would approve that and  
5 we could pull the protest and move forward with our  
6 approval with the water, with Idaho Department of Water  
7 Resources.

8 Q. So you're the listing agent now for these  
9 lots?

10 A. Yes, that's correct. I have eight of these  
11 lots listed for sale right now. And one of them is  
12 currently pending.

13 Q. What's the demand -- what's your perception  
14 of the demand for the housing in this area?

15 A. I'm getting probably two calls a day on  
16 average, one to two, for purchase on these lots. And  
17 it's really increased, interestingly enough, since this  
18 COVID and everything hit I'm getting even more calls.  
19 It feels like we have some pent-up buyer demand and...

20 Q. Have you closed any sales yet?

21 A. No. I've had -- I have one pending, and  
22 it's been pending. One of our conditions of the sale  
23 is finalizing our water agreement for the land, whether  
24 or not we can get approval to irrigate out of the well.

25 And once that condition is verified and

1 clarified, we can set a closing date beyond.

2 Q. When you -- the way the development is  
3 planned, each of these 14 lots require a domestic well?

4 A. Yes, that's correct.

5 Q. There's no connection to a city --

6 A. No.

7 Q. -- or Suez kind of municipal water supply?

8 A. No, there is not. Each lot is sold as  
9 proposed well and proposed septic, with the exception  
10 being on our lot No. 2. On I guess Exhibit 113 shows  
11 aerial picture of the lots. Lot No. 2, we did drill a  
12 well 155 feet deep to check the waters and what was in  
13 the ground there in that area.

14 And we -- that was our investigatory well  
15 to see if we had enough water to irrigate out of. But  
16 that one is for sale with the -- including the well.  
17 So that's the only one we have with a well on it right  
18 now.

19 Q. Is the -- is the plan that you would have  
20 to put in two wells, one domestic well and one  
21 irrigation well, if this application is approved?

22 A. No. No. With that well we discovered that  
23 we had 50-plus gallons a minute with a screen. Without  
24 the screen I think the driller was hitting 80.

25 Q. So my question is, though, if -- for each

1 lot, are you going to have to have two wells, one  
2 for -- one for domestic and one for irrigation? Or can  
3 you use the same well?

4 A. No, the well can supply enough water to  
5 irrigate and be used as domestic.

6 Q. Okay.

7 A. 50-plus gallons a minute rate.

8 Q. And that is the plan that you have for the  
9 development, is to use a single well for both purposes?

10 A. Yes. And the application for the water  
11 right was over the top of domestic or added to the  
12 domestic. I don't know what the correct terminology is  
13 at the Idaho Department of Water Resources, but it --  
14 we have a half acre, we can irrigate with domestic.  
15 But we need an additional maybe acre and a half.

16 The lots vary a little bit in size. But  
17 that well just needs to produce water for an acre and a  
18 half about eight months out of the year.

19 Q. So do you have to drill the well bigger in  
20 order to supply irrigation water, or no?

21 A. No, this is just a 6-inch standard  
22 domestic-size irrigation well that we had drilled out  
23 there. And at that flow rate we should have plenty of  
24 water with the 50-plus gallons a minute.

25 Q. So from the perspective of someone who's

1 listed the property, what are the benefits to having a  
2 domestic and irrigation well on each of the 14 lots?

3 A. It gives you the ability to irrigate on  
4 demand whenever you want. You don't have to wait for  
5 the irrigation water to be in the canal in the  
6 spring -- early spring, sometimes we can be really dry.  
7 And it's nice to have that water before the irrigation  
8 season starts.

9 On top of that we ran into an issue out  
10 there where there's heavy, heavy sediment loads in the  
11 water. And the owners have to shovel out their ditch.  
12 It's so bad. It settles out every year.

13 And when you're running that kind of system  
14 and that kind of water into your irrigation system for  
15 a small, little acre-and-a-half worth of pasture or  
16 whatever the lot owner would have, those smaller pipes,  
17 it's pretty easy to plug up with sediment.

18 So the water is pretty dirty out there.  
19 And using well water, you'd have nice, clean water, and  
20 you wouldn't be plugging up any irrigation valves.  
21 Like if you're using an in-ground sprinkler system, and  
22 automatic valves are really sensitive for plugging and  
23 sticking on and if you have any kind of dirt in your  
24 system. So the dirt's really fine in the water out  
25 there, and its hard to screen. It would be pretty

1     difficult to screen that water.

2                     And on top of that, when you're running  
3     multiple lot owners, there may be a chance where there  
4     won't -- everybody can't run their water at the same  
5     time. It might overload whatever system we'd put in  
6     out there.

7                     That's happened in the past on other  
8     developments. But where you end up doing shared time  
9     frames, where you have to share the shares of the whole  
10    water system. There may be only a certain time frame  
11    you can irrigate on your lot. And you have to have an  
12    agreement between all the lot owners.

13                    And it's just -- it's just a much cleaner  
14    system. And we don't have the runoff going into the  
15    Snake with irrigation wells either. We're kind of  
16    cleaning up the area, in my opinion. It's actually  
17    improving the system out there and taking load off of  
18    the -- into the Farmers' Co-operative Ditch Company's  
19    ditch as well, so they have less work to do at that  
20    tail end to deliver the water.

21                    I felt it was a much better system for the  
22    entire project, benefit not only the Farmers'  
23    Co-operative, but our sellers and the buyers as well of  
24    each lot, and benefit our local watershed.

25                    MR. BARKER: That's all the questions I have,



1 Matt. Thank you.

2 THE WITNESS: Okay.

3 THE HEARING OFFICER: Mr. Farris?

4

5 CROSS-EXAMINATION

6 BY MR. FARRIS:

7 Q. You have some pieces of paper.

8 Can you tell me what those are.

9 A. Yeah, I was just kind of following these  
10 exhibits. So I have Exhibit 109, 113, 110, 103, just  
11 kind of as you were going over the testimony this  
12 morning. This one's blank, but I had scrap paper. I  
13 don't know what that is on the back.

14 Q. Those are your notes from today?

15 A. Yeah.

16 Q. Keeping track of the list of exhibits?

17 A. Yeah. As the exhibits were read off, yeah.

18 Q. So if you'd turn to Exhibit 112, which is  
19 in the book with the blue tabs, which is the survey of  
20 the property.

21 A. Yes, I have it.

22 Q. So some of the parcels it looks like are  
23 2.7 acres; right?

24 A. Yes, that's correct. We have a 2.72-acre  
25 parcel in the southwest corner of the development.

1 Q. There's seven. There's 2.72, 2.7, another  
2 2.72 --

3 A. Yeah, there's another one up in the north  
4 central.

5 Q. So a lot of them are much more than an  
6 acre-and-a-half; right?

7 A. My acre-and-a-half judgment is based on the  
8 fact that when you build a house, you have a footprint  
9 that's not going to be irrigated, as well as your  
10 driveway going in, and then the potential for an  
11 outbuilding, like a barn.

12 Q. That wasn't my question.  
13 They're bigger than an acre-and-a-half,  
14 aren't they, the lots?

15 A. Yes, they are. 2-acre average.

16 Q. Now, if you'd look at that on -- I see it  
17 as parcel A.

18 Do you see where Apple Valley Road is  
19 labeled there?

20 A. Yes.

21 Q. And then there's a lot below it, parcel A,  
22 1.82 acres?

23 A. Yes.

24 Q. Do you see the other note on that? Can you  
25 read that?

1 A. Yes.

2 Q. What's that say?

3 A. It says, "30-foot irrigation easement."

4 Q. Okay. I thought you said earlier you  
5 didn't know of any irrigation easements on the  
6 property?

7 A. None regarding delivery of water to each  
8 individual parcel. But that agreement for that  
9 easement there is for a settling pond.

10 Q. Okay. Are there --

11 A. That would be the only one I know of, I  
12 guess, other than that one.

13 Q. Is there anticipated to be power to any of  
14 these lots?

15 A. There's already power out there to the  
16 cul-de-sacs, which is within deliverable distance to a  
17 circuit-breaker box that would be built on any home out  
18 there.

19 Q. Are there any power easements indicated on  
20 this survey?

21 A. No, there are not.

22 Q. Is there anticipated to be cable or some  
23 sort of fiber for any of these lots?

24 A. No, there is not.

25 Q. Is there -- is there any indication --

1 there's not anticipated to be any?

2 A. No, there isn't.

3 Q. You don't think --

4 A. Not at this time.

5 Q. -- any of these property owners will want  
6 some sort of a Century Link or phone service or --

7 A. There is phone service there, but not fiber  
8 or cable.

9 Q. Is there any easement identified on the  
10 survey?

11 A. Not that I see for phone.

12 Q. Does that mean that there's not going to be  
13 those services?

14 A. And like I say, I don't -- at this time  
15 there is not cable or fiber in the area, or natural  
16 gas.

17 Q. Is there anticipated to be natural gas  
18 provided to any of these lots?

19 A. No, there isn't.

20 Q. And because the survey doesn't provide an  
21 easement, does that mean there won't be any,  
22 possibility?

23 A. No.

24 Q. Now, you said you were somewhat familiar  
25 with the irrigation of this property.

1                   You said in one year it was -- there was  
2 drip irrigation with a pipe or something going across  
3 the road?

4                   A.    Yes, that's correct.

5                   Q.    What year was that?

6                   A.    2019.

7                   Q.    2019.   So last year?

8                   A.    Yeah, last year.

9                   Q.    How much of the property was in -- or was  
10 provided water from drip irrigation?

11                  A.    I believe all the available open dirt that  
12 didn't have pavement or cul-de-sac or road.

13                  Q.    And that was water that was provided from  
14 Farmers' Co-operative Ditch Company's system?

15                  A.    Yes, I believe so.

16                  Q.    And the quality of the water was sufficient  
17 to do drip irrigation?

18                  A.    It -- yes, it must have been, because they  
19 had drip out there.

20                  Q.    Yeah.

21                  A.    But they used filter systems to -- large  
22 filter systems.

23                  Q.    If you'd look at Exhibit 11.   And you were  
24 asked about page 5 of 6 of Exhibit 11.

25                        Do you remember that?

1 A. Yes.

2 Q. And you were asked about this statement  
3 from Neddy that says "We have no control as to where he  
4 irrigates in our District."

5 A. Yes, that's correct.

6 Q. Okay. Now, does that ever say that the  
7 board of Farmers' Co-operative Ditch Company approves  
8 of the transfer of the shares?

9 A. It doesn't say that the board. It says,  
10 "We have no control where he irrigates in his  
11 District." And it says, "Riverside Irrigation  
12 District, Limited, Farmers' Co-operative Ditch Company"  
13 on the e-mail.

14 Q. Yeah. It doesn't say that the board  
15 approves of the transfer of the shares, does it?

16 A. No, it does not.

17 Q. It doesn't say that you can replace the  
18 existing irrigation water with groundwater, does it?

19 A. No, it does not.

20 Q. It doesn't say that Farmers' Co-op won't  
21 protest any new applications, does it?

22 A. No, it does not.

23 Q. Will you turn to Exhibit 103.

24 Did you happen to look at the bylaws of the  
25 Ditch Company yourself?

1           A.    I think once there was a protest, I did  
2 look at the bylaws, yes.

3           Q.    Okay. So it wasn't until after there was a  
4 protest?

5           A.    Right.

6           Q.    But you also said that you began marketing  
7 the lots in July of 2019; correct?

8           A.    Yes, that's correct.

9           Q.    Well before you even approached Farmers'  
10 Co-op about putting in these wells; right?

11          A.    Yes, that's correct.

12          Q.    And well before you filed these  
13 applications?

14          A.    Yes, that's correct.

15          Q.    And on Exhibit 103, which is the minutes  
16 from the March meeting that you attended, just so we're  
17 clear, it's possible that with those future phases  
18 of -- that is owned by One More Mile, it is possible  
19 they may propose to develop those into -- "develop"  
20 isn't the right word, split those into 40 to 50 lots  
21 with wells on them; correct?

22          A.    If there were the potential for 40 or 50  
23 lots, then they would each need a well to service the  
24 home, so yes.

25          Q.    Okay. And if that was approved and these

1 applications were approved, there could potentially  
2 be -- my math -- 64 wells on this property?

3 A. If there was a potential to get that many  
4 administrative splits and have them clustered in the  
5 right areas where they were buildable. But if there  
6 were 64 available, then there would be 64 potential  
7 proposed wells for domestic use, unless they came up  
8 with a shared well agreement with their neighbor or  
9 something, yes.

10 Q. And as we sit here today, that property is  
11 entitled to receive surface water from Farmers'  
12 Co-operative Ditch Company; correct?

13 A. Yes, correct.

14 Q. And it's capable of receiving water from  
15 Farmers' Co-operative Ditch Company?

16 A. Yes.

17 Q. And at that meeting on March 11th, didn't  
18 you propose that the Ditch Company allow or withdraw  
19 its protest for these 14 wells in exchange for you not  
20 filing applications on the remainder of the property?

21 A. I don't know that we were going to do that  
22 exchange, but I know there was a comment made. I can't  
23 remember if it was a board member or us. But at the  
24 meeting we were just concerned about the 14  
25 applications. We weren't talking about the future.



1           But I think the -- it was someone on the  
2 board that thought that maybe in the future, maybe it  
3 was you, that if we had these 14, then we still might  
4 need to consider using surface for the remainder if we  
5 were to use those future -- or if One More Mile was to  
6 develop the -- do the administrative splits on the  
7 future land, so...

8           Q.    So did your -- did you or did you not  
9 propose that if the board allows a variance from these  
10 14 wells you would not seek new groundwater rights for  
11 the remainder of the property?

12          A.    I did not propose that, no.

13          Q.    And ultimately, the board listened to the  
14 concerns that you had at the meeting, didn't they?

15          A.    Yeah, I assume so.   Yes.

16          Q.    And there was an open dialogue and  
17 discussion about what their concerns were with it --

18          A.    Yes.

19          Q.    -- with these applications?

20          A.    Yes.   Somewhat, yes.

21          Q.    And they didn't make any promises that they  
22 were going to agree or not agree at that time, did  
23 they?

24          A.    No.   They said that they were going to  
25 discuss it and talk it over and see if they could come

1 up with a plan or -- we assumed we would hear back  
2 something.

3 Q. And you did, you heard back, didn't you?

4 A. Yes. That's why we're here.

5 Q. They denied your request; right?

6 A. Yes, sir. You denied our request.

7 Q. Yeah. Now, the due diligence that you said  
8 you did, what did you look at? Did you look at the  
9 title report for the property?

10 A. No, I didn't.

11 Q. Did you read the CC&Rs for the property?

12 A. Probably at some point.

13 Q. Okay. So if you would turn to --

14 A. I might have seen the CC&Rs.

15 Q. -- Exhibit --

16 A. Well, I wasn't -- I wasn't concerned about  
17 the old CC&Rs on the property.

18 Q. Why is that?

19 A. Because we were going to develop new CC&Rs.

20 Q. Have you done that?

21 A. Yes, we have.

22 Q. You have new CC&Rs?

23 A. Yes, we do.

24 Q. Have they been recorded?

25 A. Yes, they have.

1 Q. Have they been provided to us in discovery?

2 A. I believe so.

3 Q. I guess you wouldn't know.

4 Let's look at Exhibit 109.

5 You said you reviewed those?

6 A. I have it. I'm not sure when. But I  
7 know -- I think it was during the procedure with the --  
8 when we were working on the new CC&Rs, we were  
9 looking --

10 Q. If you'd turn to page 5 of 16.

11 A. Okay.

12 Q. Are you there?

13 A. Yes.

14 Q. And it says, "Article 4, Irrigation system,  
15 that each lot is to have access to an irrigation  
16 supply -- water supply to be constructed by the  
17 declarant"?

18 A. Yes.

19 Q. So you read those as part of your due  
20 diligence?

21 A. Yes. And we decided that we were going to  
22 have our own CC&Rs, because these weren't valid anymore  
23 for what our sellers wanted to do with the property.

24 Q. You said, "we decided."

25 What do you mean by that?

1 A. Or they decided.

2 Q. Did you inform the Froerers that there was  
3 already CC&Rs that provided for the construction of an  
4 irrigation system?

5 A. No, I didn't.

6 Q. So what do you mean by "we decided"?

7 A. I -- there -- on our listing of the  
8 property, we developed new CC&Rs so these weren't  
9 applicable anymore to the property.

10 Q. Have these been revoked?

11 A. Yes, they have.

12 And I know on page 14 of 16 and 15 of 16 of  
13 these old CC&Rs there's a stipulation that the  
14 assignment of declarant, where we were given the power  
15 to do so.

16 Q. Prior to your involvement this property had  
17 been administratively split in 2007; correct?

18 A. That's correct.

19 Q. Okay. And prior to your involvement no  
20 other owner had filed applications for groundwater use  
21 for irrigation, had they?

22 A. Not that I'm aware of, no.

23 Q. And you began marketing these in July of  
24 2019 before filing groundwater applications; correct?

25 A. Yes, I believe so.

1 MR. FARRIS: That's all I have.

2 MR. BARKER: Nothing further.

3 THE HEARING OFFICER: All right. Thank you,  
4 Mr. Wilke.

5 THE WITNESS: Thank you.

6 THE HEARING OFFICER: Mr. Barker, do you have --

7 MR. BARKER: We were going to call -- she's on  
8 the phone. I don't know if we need a little bit of  
9 time to set that up, or how do you want to handle that?

10 THE HEARING OFFICER: Let's see.

11 Lori, are you -- are you there on the  
12 phone?

13 MS. GRAVES: I'm here.

14 THE HEARING OFFICER: Okay.

15 MS. GRAVES: I have to snuggle up, because I  
16 can't hear you guys that great.

17 THE HEARING OFFICER: Okay.

18 MR. BARKER: I don't think snuggling is allowed  
19 under the public rules. Sorry.

20 MS. GRAVES: Yeah.

21 THE HEARING OFFICER: So do we need video for  
22 the examination?

23 MS. GRAVES: I'm okay.

24 MR. FARRIS: I don't.

25 THE HEARING OFFICER: Mr. Barker?

1 MR. BARKER: I think so.

2 THE HEARING OFFICER: You do want video?

3 MR. BARKER: Yeah.

4 THE HEARING OFFICER: Okay.

5 MR. BARKER: I don't know. It depends.

6 Are you dressed, Lori?

7 MS. GRAVES: Hello.

8 THE HEARING OFFICER: Hello, Lori. Can you  
9 see --

10 MS. GRAVES: Oh, hi, you guys. I can see you.

11 THE HEARING OFFICER: Okay. Now I'm going to go  
12 ahead and share my screen with you as well. That way  
13 we can --

14 MS. GRAVES: I can see the exhibits.

15 THE HEARING OFFICER: Okay. So start here.  
16 Okay. And I'll give this mouse back over here to Jean  
17 to bring up the exhibits and enter them as necessary.

18 And then let's see. Do we need to adjust  
19 this camera so you don't miss out on Mr. Barker's  
20 visage? How about that. We got both you guys in there  
21 now.

22 MS. GRAVES: No, put it on the good-looking  
23 side.

24 THE HEARING OFFICER: All right. So is that all  
25 right with you guys?

1           MR. BARKER: I can't see a thing, so -- it's too  
2 small for me. I can't tell. I guess it's up to Lori.

3                     Can you?

4           THE HEARING OFFICER: We don't really have  
5 Lori's image. She seems to be --

6           MR. BARKER: Well, I think it's important for  
7 her to make sure we're all on the same page with the  
8 exhibits.

9           THE HEARING OFFICER: Okay.

10          MR. BARKER: That's why I wanted to be --

11          THE HEARING OFFICER: That is the more important  
12 thing. And so by sharing the screen, she should be  
13 able to see the exhibits.

14                     And, Lori, if at any time you're not able  
15 to see the exhibits or what he's pointing to or  
16 alluding to, please let us know.

17          MS. GRAVES: Sure.

18          THE HEARING OFFICER: All right. So first thing  
19 I got to swear you in, Lori.

20          MS. GRAVES: Okay.

21

22                     LORI GRAVES,  
23 having been called as a witness by the Applicant, was  
24                     duly sworn and testified as follows:

25                     ///

1 THE HEARING OFFICER: So do you solemnly affirm  
2 that the testimony you're about to give is the truth,  
3 the whole truth, and nothing but the truth?

4 THE WITNESS: I do.

5 THE HEARING OFFICER: All right. And again for  
6 the record, just to be clear, she's participating  
7 remotely and is not in the room with us.

8 So, Mr. Barker, I'll turn it over to you.

9

10 DIRECT EXAMINATION

11 BY MR. BARKER:

12 Q. Ms. Graves, welcome. Thanks for your  
13 patience.

14 And what I'd like you to do to start your  
15 testimony is explain your background for the record,  
16 please.

17 A. Well, I'm going to be aging myself, but  
18 I've got 33 years with dealing with water rights. I  
19 was 20 years with the Department, and I'm on my 13th  
20 year with SPF. And one of my specialties is -- is  
21 preparing water right applications for clients, such as  
22 One Mile -- One More Mile.

23 Q. Okay. So you're very familiar with the  
24 process, I take it?

25 A. I am. I feel that I -- I am. I'm --



1 Q. Okay.

2 A. I have -- I know what needs to be -- what  
3 the Department requires with regards to a complete  
4 submittal -- submittal package, both permits and  
5 transfers and other types of applications.

6 Q. Okay. So when were you first engaged to do  
7 any work for One More Mile? Do you remember?

8 A. Yeah. It was November of 2019, uh-huh.

9 Q. So what did you -- what were you asked to  
10 do when you got started working for them?

11 A. Well, they wanted to have 14 applications.  
12 First described -- they described what they wanted, and  
13 it was going to -- because each system requires a  
14 separate permit, that -- what they wanted to do for the  
15 development would require 14 separate applications for  
16 each individual well that was going to be -- that was  
17 proposed for each parcel.

18 And, um, in doing that I reviewed, you  
19 know, the information that they gave me regarding the  
20 development and the parcel boundaries.

21 Q. So before -- Lori, before you go on.

22 A. And then I verified --

23 Q. Lori, hold on.

24 So the purpose of having 14 separate  
25 applications, is that because the property owners were

1 going to be different for those 14 parcels?

2 A. No. It's a -- it's a Department  
3 requirement. They only -- each permit -- each  
4 application represents a single system. They can't  
5 represent 14 separate wells that were going to be  
6 operated and separate systems on one application. The  
7 Department requires a separate application per system.

8 Q. And once the landowner -- once the land is  
9 sold to the landowner, then there's only that  
10 particular application that would -- or that particular  
11 permit that would be transferred?

12 A. Yep. Yep. You -- then you file a permit  
13 assignment to the new owner, and they follow through  
14 with the permit requirement --

15 Q. Okay.

16 A. -- and development of the permit.

17 Q. Okay. So what -- what did you do to  
18 investigate what needed to be done for these 14  
19 applications?

20 A. Um, I verified the ownership information  
21 and parcel boundaries with the assessor, with the  
22 Canyon County assessor. And then I searched the  
23 Department's online water rights database using spatial  
24 and text-based search tools for overlapping water  
25 rights. And then I developed the GIS maps for each

1 application and prepared each application for each  
2 parcel.

3 Q. And are those GIS maps attached to the  
4 applications?

5 A. Yes. They're the maps that are required to  
6 be submitted with each application describing the place  
7 of use and the point of diversion proposed.

8 Q. Okay. And then what -- what other kind of  
9 information did you include with the application?

10 A. Um, let me see. I'll have to think about.  
11 I -- the parcels, um, the plat map of all the parcels,  
12 the authorization from the owner. Basically we could  
13 have got authorization from the Ditch Company saying  
14 that, you know, they were okay with the water --  
15 water -- that the water was being transferred off the  
16 property, because we were proposing primary groundwater  
17 use because the water could be transferred off the  
18 property.

19 Q. Okay.

20 A. And so we got a statement from Neddy saying  
21 that -- that the water was under the control of the  
22 owner. We got a statement from the owner saying that  
23 the water was going to be transferred off the property  
24 prior to groundwater development. And -- and that  
25 was -- and then we got ownership documentation, I think

1 I provided that, showing One More Mile as the owner of  
2 the property.

3 Q. Were you aware that there had been a well  
4 drilled on the property?

5 A. Yeah.

6 Q. Okay.

7 A. Yeah. In fact, that's what we used -- you  
8 know, the well that was drilled on parcel 8, we used  
9 that as kind of a template for what all the wells were  
10 going to look like.

11 So we proposed a 6-inch well for each  
12 application. And then the water-bearing zone reflected  
13 where they encountered water in drilling that well for  
14 parcel 8. So the water-bearing zone that we listed was  
15 40 to 200 feet, uh-huh.

16 Q. So take a look at Exhibit 7.

17 Can you put that up, please.

18 Is that the well --

19 A. The well logs, yeah.

20 Q. Okay. Is that the well log for that well  
21 that you just discussed?

22 A. Yes.

23 MR. BARKER: Okay. I'd move the admission of  
24 Exhibit 7.

25 MR. FARRIS: No objection.

1 THE HEARING OFFICER: Okay. Exhibit 7's offered  
2 and entered.

3 (Exhibit 7 admitted.)

4 Q. (BY MR. BARKER): Okay. So explain  
5 where -- or how this document tells you about the  
6 well -- I'm sorry, the water-bearing zone.

7 A. The document's not on the screen.

8 James, can you open it, or can I open it?

9 THE HEARING OFFICER: Can you not see our  
10 screen?

11 THE WITNESS: I can see your screen, but I  
12 don't -- the document isn't -- it just doesn't -- it  
13 doesn't pull up the log. It just says "Well log."

14 THE HEARING OFFICER: Yeah, so I think -- bear  
15 with us a second while we figure out how to use Zoom.

16 THE WITNESS: Okay.

17 THE HEARING OFFICER: So --

18 THE WITNESS: As I recall looking at the log,  
19 just so you know --

20 MR. BARKER: Yeah, just hold on.

21 THE WITNESS: -- well --

22 MR. BARKER: Hold on, Lori. Hold on.

23 THE WITNESS: Okay.

24 THE HEARING OFFICER: Screen share. Let us know  
25 if the log comes up.

1 THE WITNESS: It's up.

2 THE HEARING OFFICER: Okay.

3 UNIDENTIFIED SPEAKER: All right. I got it.

4 THE HEARING OFFICER: I think you can only share  
5 specific windows at a time.

6 Q. (BY MR. BARKER): Okay. So how does this  
7 well log tell you about the water-bearing zone?

8 A. Well, you can see where they -- they --  
9 the -- not all well logs, but this one -- you know, the  
10 newer ones say the depth water was first encountered,  
11 that was 35 feet. That's relatively shallow. And the  
12 static is 45 feet, which is, again, relatively shallow.

13 And then if you look over there in the  
14 lithologic part, it shows where they encountered water.  
15 And you can see that it's -- you know, through the  
16 gravel layer there was water and then going on down,  
17 and that started at around 40 feet. And then the well  
18 is -- the well itself is 155 split feet.

19 Can you pull it -- pull it up, Jean, push  
20 it up. Thank you.

21 So the completed depth is 154 feet. And  
22 they -- they got water all the way down to -- and so we  
23 just -- you know, for some buffer we put the  
24 water-bearing zone 40 to 200 feet.

25 Q. And then is there -- there's someplace on

1 this well log that explains the productivity of the  
2 well?

3 A. Oh, definitely, yes. So it says 50-plus  
4 gallons per minute, which is more than adequate to  
5 supply the uses proposed.

6 Q. Okay.

7 A. It --

8 Q. That's under section 12, right, right above  
9 the lithologic log?

10 A. Yeah, it's 50-plus gallons per minute.

11 Q. Okay. And --

12 A. And of course, it could be more than that.  
13 That just, you know, was based on the pump that the  
14 driller used doing the well test. But it shows, you  
15 know, it was a productive well.

16 Q. Okay. And what does that well productivity  
17 tell you about the water supply in this area for these  
18 applications?

19 A. That there's adequate water supply, that --  
20 that there's really -- the pump has -- results show  
21 that the water -- groundwater supply was sufficient.

22 Q. Okay. Turn to Exhibit 8. Can I have  
23 Exhibit 8.

24 Oh, did I offer Exhibit 7?

25 THE HEARING OFFICER: Yes, you did.

1 MR. BARKER: If I didn't, I do.

2 MR. FARRIS: You did.

3 THE HEARING OFFICER: Yes, you did.

4 MR. BARKER: Okay.

5 Q. Okay. I'm going to switch to Exhibit 8,  
6 Lori.

7 A. Yep, I'm there. I think that's Exhibit 9.  
8 No, it is Exhibit 8.

9 Q. Okay. Tell us --

10 A. Yeah, you're right.

11 Q. Tell us what Exhibit 8 is.

12 A. Exhibit 8 is a map I prepared that  
13 identified to describe the existing wells that the  
14 Department has record of within a half mile radius of  
15 the development. And the data shows a variety of well  
16 depths, and they're all less than 200 feet.

17 There's one irrigation well and 37 domestic  
18 wells. And all of this, you can see all of them are  
19 fairly productive and have relatively shallow static  
20 water levels.

21 You know, that one down there that shows --  
22 it doesn't show a diameter and it shows zero for  
23 gallons per minute, well, that -- when I went to the  
24 well log, it's actually -- the driller actually -- the  
25 Department hadn't data-entered it, but it's actually a



1 6-inch well. And that well was producing 20 gallons a  
2 minute, you know, on a pump test. So that one -- don't  
3 feel that zero is meaning that there was none for  
4 gallons -- it wasn't a productive well. It actually  
5 was. It just was not data-entered -- the information  
6 had just not been data-entered.

7 Q. So I move admission --

8 A. So they're all fairly productive.

9 MR. FARRIS: No objection.

10 MR. BARKER: Move admission of Exhibit 8.

11 THE HEARING OFFICER: Bryce, you have no  
12 objection to --

13 MR. FARRIS: No objection.

14 THE HEARING OFFICER: Okay. Exhibit 8 offered  
15 and accepted.

16 (Exhibit 8 admitted.)

17 Q. (BY MR. BARKER): Okay. Can you turn to  
18 Exhibit 9, please.

19 Have you got that ready?

20 A. Got it. I can see it.

21 Q. Okay. So can you tell us what Exhibit 9  
22 is. It's a several-page document.

23 A. Yeah. It was -- you know, this was  
24 prepared by Christian Petrich, who has retired, but he  
25 was with -- he was employed with both the Department

1 and SPF. And he -- he put this exhibit together.

2 And what it shows is where the Department  
3 has -- is collecting water-level data. The yellow dots  
4 are wells that they're monitoring. And as you can see,  
5 the nearest one is like 5 miles away from the  
6 development.

7 But they are wells in the Lower Boise River  
8 drainage, so they're indicating wells. And the  
9 information from these wells shows stable water levels  
10 in the Lower Boise. So yeah, there was no indication  
11 of groundwater declines or -- or problems with regards  
12 to groundwater availability --

13 MR. BARKER: Okay. So I'd move the admission --

14 THE WITNESS: -- by looking at these wells.

15 MR. BARKER: I'd move the admission of  
16 Exhibit 9.

17 MR. FARRIS: No objection.

18 THE HEARING OFFICER: Okay. Exhibit 9 is --

19 (Exhibit 9 admitted.)

20 THE WITNESS: And, you know, that's a good sign  
21 for the development. If there's no monitoring going on  
22 or not a lot of monitoring going on, that means there's  
23 really no cause for concern.

24 The Department -- if there's concern or if  
25 there's problems, the more monitoring the Department

1 does, in my experience.

2 Q. (BY MR. BARKER): Okay. So back up now to  
3 Exhibit -- let me ask you this: Are you familiar with  
4 the moratorium orders and processing of water rights in  
5 the Boise River Basin?

6 A. Yeah.

7 Q. Okay.

8 A. I am.

9 Q. Can you generally describe what areas of  
10 the basin are subject to the moratorium and what areas  
11 are not?

12 A. Sure. Well, the whole area was subject to  
13 the 1992 moratorium that the Department issued on -- on  
14 new appropriations in the Snake River Basin. And then  
15 that got amended two or three times.

16 And then in '95 it was amended again, and  
17 it excluded -- it was amended to exclude the Boise  
18 River drainage altogether. And then -- then they --  
19 the Department, the way they're governing the Lower  
20 Boise is that it's subject to Administrative Memo  
21 No. 59.

22 And that memo requires mitigation for  
23 appropriations of new groundwater less than -- that's  
24 appropriating groundwater less than 200 feet or, you  
25 know, that wells that are drawing water less than

1 200 feet and tributary surface water to the Boise River  
2 above Star Bridge, the reach above Star Bridge.

3 The reach below Star Bridge, which is where  
4 the development is located, way below, it's considered  
5 a gaining reach and open to new appropriations without  
6 mitigation, and the wells can be drilled greater than  
7 200 feet. There's no requirement that they have to  
8 draw water below 200 feet.

9 And so the -- everything above Star Bridge,  
10 the Boise River is considered fully appropriated, and  
11 any new consumptive uses have to be mitigated if it's a  
12 tributary source.

13 And anything below Star Bridge is in that  
14 gaining reach, what the Department considers a gaining  
15 reach in the Boise River, and they're not subject to  
16 mitigation requirements and the whole area is open to  
17 new appropriation.

18 Q. So, Lori, would you look at Exhibit 6.

19 And, Nick, I don't know if I need to offer  
20 these.

21 A. Which one is that?

22 Q. It's popping up.

23 A. Oh.

24 Q. So you said --

25 A. Yeah, that's the one. That's the amended

1 moratorium or order that excluded the Boise River  
2 drainage, uh-huh.

3 Q. And that's the '95 order you mentioned?

4 A. Yep.

5 Q. Okay.

6 A. Yep.

7 Q. And then look at Exhibit 5.

8 A. Yep, that's -- that's the administrative  
9 memo that the Department's currently using to  
10 administer new water rights on the -- on the --  
11 anything in the Boise River drainage.

12 MR. BARKER: Okay. So, Mr. Hearing Officer, I  
13 will move the admission of 5 and 6. I don't know if  
14 that's necessary, given your taking public notice of  
15 the records of the Department. But for purposes of  
16 tracking on this hearing, I would like to have it noted  
17 that what she's discussing is identified by these  
18 particular documents.

19 THE HEARING OFFICER: Absolutely. I will take  
20 official notice of IDWR Processing Memo No. 59,  
21 dated --

22 THE WITNESS: February 22nd, 2008.

23 THE HEARING OFFICER: -- February 22nd, 2008.

24 Thank you, Lori.

25 And also the IDWR amended moratorium order,

1     dated -- dated May 3rd, 1995.

2                     (Exhibits 5 and 6 admitted.)

3             Q.     (BY MR. BARKER): So, Lori, does the  
4     guidance you get from the Department indicate that  
5     there's water available to be appropriated in these --  
6     or for these 14 wells?

7             A.     I'm sorry. You broke out on me, Al.

8             Q.     Okay. So does what you just referred to,  
9     the -- the Exhibits 5 and 6 that we just looked at, the  
10    moratorium order and the processing memo, indicate  
11    anything to you about whether water's available to be  
12    appropriated for these 14 wells?

13            A.     Oh, it -- it looks like it's a green light.  
14    There's really nothing that -- that would prohibit --  
15    that the Department doesn't -- everything's fully --  
16    they're appropriating everything below Star Bridge,  
17    which is where this is located. It's all open to new  
18    appropriations. There's no indication otherwise.

19            Q.     At what rate of application did you use on  
20    the application?

21            A.     Well, there again, I went with Department  
22    standards, which anything proposing irrigation of  
23    5 acres or less, they allow an inch-and-a-half per  
24    acre. And these lots -- or all the irrigation proposed  
25    on these 14 applications, all of it was less than

1 3 acres.

2 So each application, the irrigation flow  
3 rate proposed was based on that, the -- and the reason  
4 for that is that, you know, an inch -- the Department's  
5 found that an inch is typically not sufficient for  
6 operation of a small, pressurized sprinkler system.  
7 And it needs a higher flow rate. So they allow an  
8 inch-and-a-half per acre for anything 5 acres --  
9 proposing irrigation on 5 acres or less. So that's --  
10 that's what that's based on.

11 Q. And, Lori, does that include groundwater  
12 wells as well?

13 A. Yes. Yes.

14 MR. BARKER: You know, I think that's enough.  
15 Thank you, Lori. I'm done.

16 THE WITNESS: You bet.

17 THE HEARING OFFICER: All right. Mr. Farris?  
18

19 CROSS-EXAMINATION

20 BY MR. FARRIS:

21 Q. Can you hear me?

22 A. Hi. Hi, Bryce.

23 Q. Can you do -- let's see. I want you to  
24 look at Exhibit 4.

25 A. Exhibit 4. Okay. Yeah, that's one of the

1 sample applications. Yeah, uh-huh.

2 Q. Okay. And you prepared this?

3 A. I did.

4 Q. Yep. And I think you said that the  
5 Froerers contacted you or someone contacted you in  
6 November of 2019?

7 A. Yes.

8 Q. With an idea to construct 14 separate  
9 wells?

10 A. Yeah.

11 Q. On this 28 acres?

12 A. One per parcel.

13 Q. What's that?

14 A. Uh-huh. One per parcel, yes.

15 Q. Right. And then you followed up and  
16 prepared these applications, and this Exhibit 4 is one  
17 example; correct?

18 A. Yes.

19 Q. And I think you said that you or someone  
20 saw a statement from the Ditch Company.

21 Do you remember who proposed that?

22 A. Who proposed it or who went -- who went  
23 to --

24 Q. Who proposed getting a statement from the  
25 Ditch Company?



1           A.     The Department.

2           Q.     The Department proposed getting a statement  
3 from the Ditch Company.

4                     Do you know why?

5           A.     Because the water was within a -- the Ditch  
6 Company's service area.

7           Q.     So in your investigation you determined  
8 that this land was already provided or provided water  
9 from Farmers' Co-operative Ditch Company?

10          A.     Well, it would help the Department to  
11 clarify things, because we were proposing -- our intent  
12 was primary groundwater, not -- not supplemental  
13 groundwater.

14                     And so to back or to provide support to our  
15 intent, we provided a statement to the Department,  
16 which helps them in their review process to understand  
17 that the primary groundwater was the intent. We  
18 provided documentation with the application supporting  
19 our intent that, yes, you know, this is within Farmers'  
20 Co-op's service area, the water here is transferable,  
21 it's not appurtenant to the ground. It -- you know,  
22 it's -- it's considered property of the shareholder.  
23 And we got the statement from the owner, the  
24 shareholder that he was going to use that water -- or  
25 transfer that water off the property prior to

1 groundwater development.

2 Q. Okay. I'm going to go back. Who  
3 proposed --

4 A. Okay.

5 Q. -- seeking a statement from the Ditch  
6 Company?

7 A. It's -- it's just supporting information  
8 that we provide with applications. It's kind of a rule  
9 of thumb that SPF follows. We just make it a complete  
10 package.

11 Q. Is that another way of saying you proposed  
12 it?

13 A. No. The Department usually likes to -- you  
14 know, they'll follow up and say it -- you know, this is  
15 within the properties being -- currently being  
16 irrigated where you're proposing this development. You  
17 know, they'll -- it's just part of the review process.

18 Q. Did --

19 A. It's just to --

20 Q. Did someone at the Department propose to  
21 you to get a statement from the Ditch Company?

22 A. Yes.

23 Q. Who at the Department?

24 A. Well, Nick Miller.

25 Q. And why?

1 MR. BARKER: Object. Calls for speculation.

2 THE WITNESS: Just so that they -- that he knew  
3 that it was -- you know, that the reviewer would know  
4 that the intent of the application was for primary  
5 groundwater use for irrigation.

6 Q. (BY MR. FARRIS): Is it a standard  
7 condition of the Department if there's already existing  
8 surface water to condition and say that the new use is  
9 supplemental?

10 A. It's -- it's a case-by-case -- it just  
11 depends upon the circumstance.

12 Q. Okay.

13 A. If -- you know, if it's -- go ahead.

14 Q. Does the Department have standard language  
15 that they utilize when there is a new groundwater  
16 application filed within the service area of an  
17 irrigation district or ditch company?

18 A. Well, if you provide supporting  
19 documentation showing that the water is going to be  
20 developed as primary, then that language is not  
21 considered. It -- that would be a -- you know, a -- a  
22 circumstance where supplemental use was -- those  
23 conditions wouldn't be appropriate.

24 Q. So back to Exhibit 4.

25 A. Uh-huh.

1 Q. And this is an example of one of the  
2 proposed water rights; correct?

3 A. Yep.

4 Q. And under item 5 it says, "Irrigation use."  
5 Do you see that?

6 A. Yes.

7 Q. And --

8 A. Uh-huh.

9 Q. Is it the intent of the application to  
10 replace the existing irrigation use that is provided by  
11 Farmers' Co-op?

12 A. Yes, this is going to be groundwater use.

13 Q. And there's already surface water available  
14 and delivered to this land; correct?

15 A. Yes.

16 Q. From --

17 A. Uh-huh.

18 Q. -- Farmers' Co-op?

19 A. Yes.

20 Q. And did you investigate the land as part of  
21 your review?

22 A. Yeah, it -- I did -- I looked for  
23 overlapping water rights, and there was --

24 Q. Did --

25 A. It showed that the land was within Farmers'

1 Co-op --

2 Q. Did you physically go --

3 A. -- service area.

4 Q. -- observe or look at the property?

5 A. No, I didn't.

6 Q. Okay.

7 A. Other than using GIS analysis, which you  
8 can see with aerial photography. It's pretty relevant  
9 what's going on.

10 Q. So if you could be shown Exhibit 11.

11 A. Which one's that?

12 Q. It is the -- I'm looking at -- I'm looking  
13 for page 5 of Exhibit 11.

14 Can you see that, Lori?

15 A. I do.

16 Q. Okay. Is that the statement that you were  
17 referring to that you obtained from Farmers'  
18 Co-operative Ditch Company?

19 A. Yeah, the -- from Neddy, uh-huh.

20 Q. Yeah. And did you feel that this statement  
21 eliminated the need to use the existing surface water  
22 for the property?

23 A. I -- I feel that it support -- you know  
24 with getting a letter from the property owner, it  
25 supported our request for primary groundwater use for

1     irrigation.  Yes, I thought it --

2             Q.     Where in this does it say that they approve  
3     of the replacement of the surface water with  
4     groundwater?

5             A.     I -- it was -- it's assumed, because water  
6     is transferable within the Farmers' Co-op service area,  
7     because it's not appurtenant to the ground that's owned  
8     by the shareholder.  And it's the shareholder's choice  
9     that by being in a ditch company service, it -- being  
10    within the Farmers' Co-op, it gives the owner  
11    additional choices.

12            And they can choose to -- you know, they  
13    can -- their intent could be supplemental use.  Their  
14    intent could be primary groundwater use.  They're  
15    allowed flexibility within a ditch company service area  
16    because the water is transferable.  If they transfer it  
17    off, per Farmers' Co-op bylaws, if they transfer the  
18    water off prior to groundwater development --

19            Q.     I'm going to object.  She's not even being  
20    responsive to the question.

21            A.     Uh-huh.

22            Q.     Can you -- I'm going to ask you the  
23    question.

24                   Where does it say that this approves of the  
25    replacement of Farmers' Co-operative surface water with

1 groundwater?

2 MR. BARKER: Objection.

3 THE WITNESS: It --

4 MR. BARKER: Asked and answered.

5 Q. (BY MR. FARRIS): It doesn't, does it?

6 A. No.

7 Q. You're making assumptions; correct?

8 A. I am, uh-huh.

9 Q. You did not follow up yourself with  
10 Farmers' Co-operative Ditch Company, did you?

11 A. No, I did not. No.

12 Q. You understood that the shares had to be  
13 approved, the transfer, by the board, didn't you?

14 A. Um, yeah, that's generally what happens. I  
15 didn't see it -- I didn't see that it would be a  
16 problem, Bryce, since water is transferable within  
17 the --

18 Q. You're aware of a policy of this state  
19 that --

20 A. -- service --

21 Q. You're aware of a policy of this state to  
22 encourage the use of surface water for irrigation, are  
23 you not?

24 A. Yeah. That one's in Idaho Code 67, yeah,  
25 the -- the land-use planning statute. Yeah.

1 Q. These proposed applications would be  
2 inconsistent with that policy, wouldn't they?

3 MR. BARKER: Objection. Calls for a legal  
4 conclusion.

5 THE WITNESS: Well --

6 THE HEARING OFFICER: Remember, Lori, you're not  
7 here as an expert witness. You're here to describe --

8 THE WITNESS: Okay.

9 THE HEARING OFFICER: -- your personal knowledge  
10 and understanding. And you can.

11 THE WITNESS: Yeah.

12 THE HEARING OFFICER: So you can  
13 [unintelligible].

14 THE WITNESS: So what I understand is that that  
15 policy -- that statute applies to land-use planning  
16 applications. And this is a water appropriation  
17 application. So I mean that --

18 Q. (BY MR. FARRIS): Okay. Let's -- if you'd  
19 be shown Exhibit 116.

20 A. 116. Which one's that?

21 Q. Can you see that application?

22 A. I can, yes.

23 Q. I think, actually, it's a stipulation to  
24 resolve a protest.

25 A. Yeah, uh-huh.



1 Q. Were you involved in that application?

2 A. I was. I was, uh-huh.

3 Q. And that was protested by Nampa & Meridian  
4 Irrigation District?

5 A. It was, yes.

6 Q. Was that a new groundwater application  
7 filed by you on behalf of West Ada School District?

8 A. Yes, uh-huh.

9 Q. That was not a new zoning or plat  
10 development application involved in that school, was  
11 there?

12 A. Um, I -- I can't answer that, Bryce.

13 Q. You don't know if there was some new  
14 development or zoning requirement prior to that  
15 application?

16 A. No.

17 Q. It was for an existing school, was it not?

18 A. Um, yeah. It was for a school site, yes.

19 Q. There were no proposed changes to the  
20 property involved at that time, were there?

21 A. I think that was one that we filed a  
22 transfer on an existing irrigation right to consolidate  
23 it. And then we filed the permit for additional  
24 irrigation, supplemental irrigation. The existing  
25 groundwater right was for supplemental irrigation also.

1 Q. And you're not aware one way or not whether  
2 or not there was any land-use planning changes  
3 involved?

4 A. I am not. I'm sorry. I am not aware of  
5 that.

6 Q. And in the end the school district agreed  
7 to the condition under item 1A that the primary surface  
8 water will be continued to be delivered by  
9 Nampa-Meridian?

10 A. That the primary surface water -- oh, the  
11 surface water. I see. I was thinking groundwater.  
12 Oh, yeah, you know, yes, it was the original intent of  
13 the applicant, stated on the application, it was going  
14 to be for supplemental groundwater. So that was their  
15 intent.

16 Q. Because they were already provided water  
17 from the Nampa-Meridian Irrigation District; correct?

18 MR. BARKER: Objection. Calls for speculation.

19 THE WITNESS: Correct.

20 MR. FARRIS: She knows. She was involved in it.

21 MR. BARKER: She doesn't know what was in the  
22 mind of anybody else.

23 THE HEARING OFFICER: Noted.

24 MR. FARRIS: I'd move for the admission of  
25 Exhibit 116.

1 MR. BARKER: I'm going to object to it on  
2 relevance grounds.

3 THE HEARING OFFICER: As I said for other  
4 similar ones, I've taken official notice of our water  
5 right rights.

6 MR. BARKER: Right.

7 THE HEARING OFFICER: So I'll let it in.

8 (Exhibit 116 admitted.)

9 MR. FARRIS: If the witness could be shown  
10 Exhibit 117.

11 THE WITNESS: Which one's that, Bryce?

12 UNIDENTIFIED SPEAKER: Hang on. I'm coming.

13 Q. (BY MR. FARRIS): It's coming.

14 Okay. Lori, it's an e-mail chain involving  
15 you. Let's go to the bottom of page 3 and then  
16 carrying on to page 4.

17 Can you see that, Lori? And do you recall  
18 this --

19 A. I can.

20 Q. Do you recall this e-mail chain?

21 A. Yes.

22 Q. It wasn't too long ago. It was January of  
23 this year? Is this --

24 A. I can't remember, but probably.

25 Q. Well, if you look at the e-mail on the

1 bottom of page 3, do you see it's January 23rd, 2020?

2 A. Yes.

3 Q. Does that refresh your recollection?

4 A. Um, yes.

5 Q. Okay. And this involves another  
6 application that you prepared on behalf of Vallivue  
7 School District?

8 A. Yes.

9 Q. Where was that school located? Let me be  
10 more specific.

11 A. Over in Canyon County.

12 Q. Yeah, let me be more specific.

13 Is it in Canyon County?

14 A. It is.

15 Q. Were there any land-use planning approvals  
16 required as part of this application?

17 A. I -- this again -- there again, I am not  
18 aware. I don't know. I can't answer that.

19 Q. Did the applicant agree to conditions which  
20 required the primary surface water to continue to be  
21 used on the property?

22 A. There again, in that situation the --  
23 they -- their original intent was to use the  
24 groundwater as supplemental.

25 Q. Because there are already existing

1 deliveries from Pioneer Irrigation District?

2 A. I'm assuming, but I can't tell you why they  
3 would -- would want to continue to use the groundwater  
4 as supplemental. But if the water is available,  
5 generally the -- in an irrigation district the  
6 district -- the water is appurtenant to the -- to the  
7 land.

8 But sometimes there are exclusions that are  
9 granted. And -- and the -- the groundwater can be  
10 developed as a primary source if the applicant provides  
11 evidence that the property's been excluded. But the  
12 district -- yeah. So -- but their original intent was  
13 to develop the groundwater as supplemental.

14 Q. Well, did you do any investigation prior to  
15 filing the application to determine whether Pioneer  
16 supplied water to the school already?

17 A. Yes. They had -- there was Pioneer water  
18 appurtenant to the property.

19 Q. And the applicant agreed to a condition,  
20 that is a standard condition of the Department,  
21 requiring the primary surface water to continue to be  
22 used; correct?

23 A. Based on their circumstances, yes.

24 Q. And you are not aware of any land-use  
25 planning approval required for this particular

1 application?

2 A. I -- I am not, no. Yeah.

3 MR. FARRIS: That's all I have.

4 THE HEARING OFFICER: Okay. So that was all  
5 Mr. Farris had.

6 Mr. Barker?

7

8 REDIRECT EXAMINATION

9 BY MR. BARKER:

10 Q. Okay, Lori. Just a few more questions, if  
11 you don't mind.

12 A. Oh, sure.

13 Q. Mr. Farris asked you about some standard  
14 condition language.

15 And I think what you said was standard  
16 conditions are utilized on a case-by-case basis; is  
17 that right?

18 A. You know, that -- that is true.

19 Q. So my question, though, is, Lori --

20 A. There's no -- go ahead.

21 Q. Okay. So the question is, do you know how  
22 many standard conditions the Department has?

23 A. Oh, my gosh. Holy moly, a lot.

24 Q. Dozens?

25 A. It just depends upon the situation.

1           Q.    All right.  So are all of these standard --  
2   conditions that are called standard conditions applied  
3   to every water right that's applied for?

4           A.    Oh, no.  Goodness, no.  I mean you've got  
5   applications proposing power use, and you've got their  
6   standard conditions.  And you've got applications  
7   proposing storage use, and you've got their standard  
8   conditions.  And yeah, there's a whole gamut.

9           Q.    And so whether or not a standard condition  
10  is used or not used depends, as you said, on the  
11  circumstances of a particular application?

12          A.    Yeah.  You know, each application has to be  
13  evaluated on its own merits.  And sometimes  
14  supplemental use is appropriate, especially when the  
15  applicant intends on continuing surface water use.

16                   But there's no Department statute or  
17  regulation requiring surface water use.  There's  
18  that -- there's the land-use statute, land-use planning  
19  statute that the Department has used as guidance.  But  
20  there's no -- that's in Idaho Code 67.

21                   But in Idaho Code 42 there's -- there's not  
22  a regulation or statute that requires surface water  
23  use.  So it's a case-by-case.

24          Q.    Okay.

25          A.    It just depends upon the circumstance.

1           Q.    So the two applications, one for Vallivue  
2   and one for West Ada that Bryce was asking you about, I  
3   think you said that both of those were applications  
4   where the applicant chose to ask for supplemental  
5   groundwater in the application in the first place;  
6   right?

7           A.    Yes. Yes. That was the original intent,  
8   but yet they were still protested to -- and I think  
9   they were protested -- this is just my opinion, but I  
10   think the District filed protests in these situations,  
11   even when supplemental use was the original -- stated  
12   on the application, because they knew there is -- there  
13   isn't any Department statute or regulation requiring  
14   surface water use, so they filed these protests to make  
15   sure that that -- the supplemental conditions are put  
16   on the -- the end permit. But that's my opinion. I  
17   don't know.

18          Q.    So do you know if Pioneer and  
19   Nampa-Meridian are irrigation districts?

20          A.    They are. They are. And as -- well, with  
21   irrigation districts, water is only controlled by the  
22   district. And it generally stays with the property.  
23   But in some instances the districts will allow the  
24   property to be excluded. Like it's usually when the  
25   surface water can't physically be delivered to the



1 property.

2 And so typically surface water delivered by  
3 an irrigation district is tied to the property. It's  
4 different with ditch companies. But yeah.

5 Q. Okay.

6 A. In both instances, Pioneer and  
7 Nampa-Meridian are irrigation districts.

8 Q. And are you aware of whether or not the  
9 water rights of Farmers' Co-op are appurtenant to the  
10 land of the shareholders?

11 A. They are -- the -- my understanding in  
12 looking -- no, they are not. And at the time that we  
13 filed, they -- they -- their -- the Farmers' Co-op  
14 shares are owned by the shareholder, and they can be  
15 transferred throughout anywhere within the Ditch  
16 Company service area. The water is not owned and  
17 controlled by the Ditch Company.

18 MR. BARKER: That's all the questions I have,  
19 Mr. Hearing Officer.

20 THE HEARING OFFICER: All right. Mr. Farris?

21  
22 RECROSS-EXAMINATION

23 BY MR. FARRIS:

24 Q. Has this condition we've been talking about  
25 requiring the primary use been applied in ditch

1 companies also?

2 A. I'm sorry. Can you rephrase -- can you say  
3 that again?

4 Q. Has this condition we've been talking  
5 about, referred to as the standard condition requiring  
6 primary continued use of the surface water, has that  
7 been applied with respect to canal companies or ditch  
8 companies?

9 A. I -- I believe so. That's when the  
10 applicant's intent -- you know, like I was saying  
11 earlier, they're awarded more opportunity and choices  
12 and -- if the applicant intends on continuing use to  
13 use surface water, then the Department would -- would  
14 use surface water and supplement with the groundwater,  
15 then the supplemental conditions would probably be  
16 listed on the permit.

17 But it's the choice of the agency, depends  
18 upon the circumstance, if that's optimal for whatever  
19 they're proposing to develop.

20 MR. FARRIS: I don't have anything else.

21 THE HEARING OFFICER: Okay. Mr. Barker?

22 MR. BARKER: Nothing further.

23 THE HEARING OFFICER: All right. Thank you,  
24 Lori. I think we're done. So I'm going to go ahead  
25 and mute your mic phone again and screen back to --

1 back to normal.

2 And are you going to stay on the line and  
3 continue to observe the rest of the hearing, Lori?

4 THE WITNESS: Sure.

5 THE HEARING OFFICER: Okay. I think that's all  
6 we got to do.

7 UNIDENTIFIED SPEAKER: Stop the video.

8 THE HEARING OFFICER: Oh, yeah. Okay.

9 All right. So it's getting to be about  
10 three o'clock and probably time for a break.

11 MR. BARKER: Okay.

12 THE HEARING OFFICER: I'll go -- I was chastised  
13 earlier for being too liberal on my breaks.

14 So does five minutes sound good to  
15 everybody?

16 MR. BARKER: Fine.

17 UNIDENTIFIED SPEAKER: Chastised?

18 (Recess.)

19 THE HEARING OFFICER: All right we'll go ahead  
20 and go on. It's just a few minutes before 3:00, and  
21 we're going back on the record after a break.

22 During the break we -- I discussed with  
23 Mr. Barker and Mr. Farris Exhibit No. 112.

24 And that exhibit was offered into the  
25 record by Mr. Farris and no objection by Mr. Barker; is

1 that correct?

2 MR. BARKER: Correct.

3 MR. FARRIS: Correct.

4 THE HEARING OFFICER: Okay. So I'll go ahead  
5 and note that.

6 (Exhibit 112 admitted.)

7 THE HEARING OFFICER: Okay. Do you have any  
8 more witnesses, Mr. Barker, for One More Mile?

9 MR. BARKER: I do.

10 THE HEARING OFFICER: Okay.

11 MR. BARKER: One More Mile would like to call  
12 Tom Johnston.

13 Sorry, Tom.

14 THE HEARING OFFICER: All right. Mr. Johnston.

15 MR. JOHNSTON: Yes.

16

17 TOM JOHNSTON,  
18 having been called as a witness by the Applicant, was  
19 duly sworn and testified as follows:

20

21 THE HEARING OFFICER: Do you solemnly affirm  
22 that the testimony you're about to give is the truth,  
23 the whole truth, and nothing but the truth?

24 THE WITNESS: I do.

25 THE HEARING OFFICER: Very good. Have a seat.

## 1 DIRECT EXAMINATION

2 BY MR. BARKER:

3 Q. I'm going to run through a few exhibits  
4 with you, if you don't mind.

5 A. Okay.

6 Q. First looking at Exhibit 13. In the other  
7 book, the purple, beautiful, lavender or whatever color  
8 that is.

9 A. Purple. Okay.

10 Q. Does purple work for you?

11 A. It works for me.

12 Q. Okay. So take a look at Exhibit 13 in  
13 there.

14 A. 13? I have it right here.

15 Is that on top of 13 or is --

16 Q. Okay.

17 A. -- it passed 13? 13.

18 Q. Okay. So Exhibit -- well, first of all,  
19 you remember being volunteered to be the  
20 representative --

21 A. I do.

22 Q. -- for the Ditch Company to respond to a  
23 deposition on behalf of the Ditch Company?

24 A. Correct.

25 Q. And is this Exhibit 13 a copy of your

1 testimony on behalf of the Ditch Company?

2 A. I believe it is.

3 Q. And did you have a chance to review it  
4 and -- for accuracy or whether any changes?

5 A. I read it over, yes.

6 Q. Okay. And do you have any --

7 A. I did not have any questions about it.

8 MR. BARKER: Okay. So I would move for the  
9 admission of Exhibit 13.

10 THE WITNESS: Sorry about that.

11 MR. FARRIS: Just the entirety of the deposition  
12 without -- I guess I've never -- you're going to move  
13 for the admission of the entirety of the deposition  
14 when you have a live witness here to ask questions to?

15 MR. BARKER: That's right. It's a statement on  
16 behalf of the Ditch Company, binding on the Ditch  
17 Company, admissible in evidence under Rule 30. I'm  
18 offering the entire deposition as an exhibit.

19 MR. FARRIS: I guess I'd object to the best  
20 evidence. The best evidence of a witness' testimony is  
21 his testimony while we're here today.

22 MR. BARKER: This is under oath, Bryce, on  
23 behalf of the Ditch Company.

24 THE HEARING OFFICER: I think --

25 MR. BARKER: I mean you certainly don't want me

1 to go through and ask every question again, do you?

2 THE HEARING OFFICER: I think this -- this  
3 document was disclosed by -- by both parties as  
4 potential exhibits. And I think Mr. Johnston is here  
5 to be examined about his testimony and his deposition,  
6 so I'll let it in.

7 (Exhibit 13 admitted.)

8 Q. (BY MR. BARKER): Okay. I will have some  
9 questions about -- for you about some of the things in  
10 there, depending on how you answer my other questions.  
11 But first skip over to Exhibit 14.

12 A. Okay.

13 Q. Okay. So I think Exhibit 14 was previously  
14 admitted as an illustrative exhibit of your service  
15 area?

16 A. Correct, it appears to be.

17 Q. Okay. And generally water is delivered  
18 from the Sebree Canal in the southeast corner of the  
19 District and travels along the District to the  
20 northwest up to the area of the One More Mile property?

21 A. That's pretty basically it, yes.

22 Q. Okay. Do you have a spill that goes back  
23 into the Snake River at the end?

24 A. We have a spill at the end that goes to the  
25 Snake River, that is correct.

1 Q. Okay. And do you then also capture water  
2 from other sources besides the Sebree Canal?

3 A. Our water rights are the diversion from the  
4 Boise River, and then we continually get a recharge of  
5 Black Canyon runoff into our canal system over the --  
6 the majority of its 35 miles.

7 Q. And that's the area basically to the north  
8 and east of your service area?

9 A. Primarily north of our canal, correct.

10 Q. Okay. Look at for me Exhibit 10.

11 A. Okay.

12 Q. So you've seen at least the -- I don't know  
13 if you've seen Exhibit 10 before, but you've seen other  
14 Ditch Company stock certificates, haven't you?

15 A. This is a prime example of our stock  
16 certificate. It's bigger, of course. But yeah, very  
17 traditional.

18 Q. Okay. And stock is held by -- in the name  
19 of whom?

20 A. The stock is issued to the individual  
21 owner.

22 Q. The -- each shareholder has a right to a  
23 certain amount of stock?

24 A. For instance, I'm a property owner. The  
25 Froerers are property owners. I own 40 acres, say, I



1 would have a 20 share parcel certificate for my 40-acre  
2 piece of land.

3 Q. But you could have -- you could have 10  
4 shares for your 40 acres?

5 A. I could. Yes, I could.

6 Q. Or you could have 40 shares for your  
7 40 acres?

8 A. I could. I could have multiple shares for  
9 my 40 acres.

10 Q. And is there anything in the share  
11 certificate itself that says that the water right's  
12 appurtenant to any particular parcel of land?

13 A. It does not.

14 Q. Is there anything in your articles of  
15 incorporation that make the shares appurtenant to the  
16 land?

17 A. It does not.

18 Q. And same question about the bylaws, do they  
19 make the shares appurtenant to the land?

20 A. Not appurtenant to the land.

21 Q. Okay. So let's look at Exhibit 16 of the  
22 bylaws -- or the bylaws. Sorry.

23 Have you got the bylaws in front of you,  
24 Exhibit 16?

25 A. I do have -- I have amended bylaws.

1 Q. Okay. Amended bylaws. Thank you.

2 A. Yeah.

3 Q. And these were previously admitted into  
4 evidence in this case.

5 And you're familiar with the bylaws, I take  
6 it?

7 A. I am.

8 Q. And you're -- I'm sorry. I forgot to ask.  
9 You are a board member; correct?

10 A. I am a board member.

11 Q. Okay. And you have been a board member  
12 for?

13 A. You know, Al, you asked me that before. I  
14 should have looked it up. I believe I joined the board  
15 in about 2005 or '6.

16 Q. Okay. So awhile?

17 A. Awhile.

18 Q. Okay. So Article 6 of the bylaws deals  
19 with transfers of stock?

20 A. Okay.

21 Q. See that?

22 A. Is this the section 6 voting proxies? No.

23 Q. Article 6, page 5 of 9.

24 A. Oh, page 5 of 9. No, I'm not up to speed.  
25 Thank you.

1                   "Transfer of stock." Thank you.

2                   Q.    Okay. So it says that the shares may be  
3 transferred at any time by the shareholders; right?

4                   A.    That is correct. Basically as of approval  
5 of the board.

6                   Q.    And it says that the transfers are not  
7 valid except between the parties until the board  
8 approves it --

9                   A.    Correct.

10                  Q.    -- right?

11                        So as -- if you wanted to transfer some of  
12 your shares to Rod, you could do that, and between the  
13 two of you that would be binding on the two of you;  
14 right?

15                  A.    It would not be accepted by the Farmers'  
16 Co-op Ditch, but it would be -- I assume that -- Rod  
17 and I made an agreement. But the -- it might not have  
18 been confirmed by the Ditch Company.

19                  Q.    But it says, "The transfers shall not be  
20 valid, except as between the parties."

21                        So that means if you transferred your  
22 shares it would be valid between the two of you until  
23 the Ditch Company notes in proper form on the stock  
24 ledger?

25                  A.    Yeah, they have to issue him the -- him my

1 stock.

2 Q. And then it says there are two  
3 conditions -- or there's a condition that says "The  
4 transfer is not made until indebtedness is paid."

5 So what does that mean?

6 A. It means it has to be current as far as any  
7 fees or any liabilities against the stock certificate.

8 Q. Okay. And do you also have the policy in  
9 the bylaws or a rule in the bylaws that says that the  
10 water has to be deliverable to the new shareholder?

11 A. Correct.

12 Q. Okay. So you are aware that the Froerers  
13 have entered into an arrangement with JC Watson Company  
14 for transfer of 14 of their 64 shares?

15 A. I've seen their letter, yes.

16 Q. Okay. And you knew that that was in the  
17 works?

18 A. We -- they had indicated they had a buyer  
19 and they were transferring, then I did get -- I saw the  
20 letter that they had agreed to.

21 Q. Do you know how they came about knowing who  
22 the buyer of those shares would be?

23 A. Only from hearsay in our meeting, Al. It  
24 was -- it was my understanding that one of my board  
25 members or Neddy had given them a name of a potential

1 buyer.

2 Q. And that was Mr. Watson?

3 A. Correct.

4 Q. So I think we talked about this in your  
5 deposition, but is there any reason that if Mr. Watson  
6 got these 14 shares he wouldn't -- the Ditch Company  
7 would not be able to deliver that water to him?

8 A. If he were to get the 14 shares, Mr. Watson  
9 has a considerable amount of property in our service  
10 area of the Farmers' Co-op, and I'm sure it would be  
11 deliverable.

12 Q. And have you had discussions with anybody  
13 representing the Watsons about delivery of this water?

14 A. Not -- not with regard to delivery of the  
15 water, no.

16 Q. What discussions have you had about the  
17 transfer?

18 A. Brad Watson called and asked if -- about  
19 the transfer of stock, and I explained to him that we  
20 had some concerns and that we were in a process of -- a  
21 hearing process, didn't know if it would get resolved  
22 before we went to a hearing. And I explained to him  
23 the reasons why.

24 Q. Okay. Flip the page over to page 6 of 9 of  
25 your bylaws.

1           A.     Okay.

2           Q.     Do you see about halfway through the page  
3 it says "Resolution adopted August 13, 2003"?

4           A.     Yes, correct.

5           Q.     Is there a reason that this -- to your  
6 knowledge, is there a reason that this resolution is  
7 attached to the bylaws? Is it -- do you consider it  
8 part of the bylaws?

9           A.     From my perspective, this resolution  
10 became -- came about because of the 2003 -- oh, this is  
11 it, 2003 resolution, because of additional requests to  
12 split up our water shares. And so we created a  
13 resolution to deal with future developments that went  
14 alongside of our bylaws.

15          Q.     Okay. So is -- did you -- is it the intent  
16 of the board that this was incorporated in the bylaws  
17 or it would be something separate and apart from the  
18 bylaws?

19          A.     Well, it's before my time on the board.  
20 But a resolution -- we have our bylaws that we live by  
21 and our resolutions that are the ground rules for the  
22 bylaws.

23          Q.     So are there other resolutions that you  
24 have that at least as of the date of this May of '96 --  
25 I'm sorry.

1           A.     August.

2           Q.     Are there other resolutions that you have  
3 that are not written into the bylaws?

4           A.     We have had resolutions in the past. I  
5 want to say [unintelligible], but it's been at least  
6 two or three times since my time on the board that we  
7 have had a resolution created.

8           Q.     And did -- so is this the only time that  
9 you've incorporated -- or I mean melded the bylaws into  
10 the -- sorry, the resolution into the bylaws?

11          A.     No. I don't think this is the only time,  
12 no.

13          Q.     Okay. Are there other resolutions that are  
14 shown on -- in these bylaws that I have overlooked?

15          A.     That part, I can't answer you.

16          Q.     Okay.

17          A.     We refer to our bylaws and our resolutions  
18 before we make many of our decisions on a case-by-case,  
19 but I do not read them on a regular basis.

20          Q.     Okay. So are these resolutions intended to  
21 explain what's in the bylaws?

22          A.     It's -- it's -- it's intended to solidify  
23 or clarify our bylaws.

24          Q.     You see in Article 1 of the resolution, the  
25 first -- the first paragraph.

1           A.    Yes.

2           Q.    It says the board of directors requires any  
3 shareholder that shall subdivide or parcel out any  
4 portion of their lands into three or more parcels shall  
5 be required to do certain things.

6           A.    Uh-huh.

7           Q.    Do you know where this three or more parcel  
8 idea came from?

9           A.    Yes.  For instance, it wasn't uncommon for  
10 a man to have 80 acres and sell off 40 acres to his  
11 neighbor and split his shares.  And so those kind of  
12 things didn't need to require anything additional.

13                   However, as growth came into the area and  
14 more and more people were splitting up smaller parcels  
15 into acre plots or 2-acre plots, we came up with if  
16 three or more were created, they needed to come up with  
17 a water users' association so that those shares could  
18 be placed in an entity, that we weren't collecting from  
19 dozens of different people.

20           Q.    So it's true, then, that one of the goals  
21 of this resolution was to make sure that if you had a  
22 subdivision that the water -- the bills from the  
23 District would go to a single entity rather than to 8  
24 or 10 or 12 or 20 different people?

25           A.    There's no question.  Simplicity.



1 Q. Look at Exhibit 24 for me. And go to the  
2 last page of that exhibit.

3 A. Okay.

4 Q. Do you recognize Exhibit 24 as records of  
5 the -- of the Ditch Company?

6 A. I do recognize it. It's dated 2006. I do  
7 have recollection. It's been awhile, but yes.

8 MR. BARKER: I would move the admission of  
9 Exhibit 24.

10 MR. FARRIS: The relevance? What -- I haven't  
11 found it yet. What's it even say? Why is it relevant  
12 to this matter?

13 THE WITNESS: It's the letter Jerry Stone to  
14 Mrs. Hansen on the Mossacora [phonetic] property.

15 MR. BARKER: I think it's also included in your  
16 exhibits.

17 MR. FARRIS: I'm sure it is. I'm just wondering  
18 what the relevance is.

19 MR. BARKER: Well, you'll hear. Just be  
20 patient. Business records of the defendant or the --  
21 or sorry, the protestant.

22 THE HEARING OFFICER: These seem to be germane  
23 to the topic at hand, so I'll allow it in.

24 (Exhibit 24 admitted.)

25 Q. (BY MR. BARKER): Okay. So you mentioned a

1 letter from Jerry Stone to Ms. Hansen.

2 Jerry Stone was at that time what position  
3 with the Farmers' Co-op?

4 A. Mr. Jerry Stone was a CPA in Parma and  
5 owned a building. And he was the secretary of the  
6 Farmers' Co-operative Ditch Company, and they used his  
7 building for board meetings and annual meetings and  
8 that sort of thing at that time.

9 Q. And this letter is written on behalf of the  
10 Ditch Company?

11 A. It is.

12 Q. Okay. I'm going to ask you about a couple  
13 statements that he makes about the purpose of the  
14 resolution.

15 That means the 2003 resolution we've been  
16 talking about; correct?

17 A. Correct.

18 Q. Okay. And he says, "The main purpose of  
19 the resolution is to keep Farmers' Co-operative Ditch  
20 Company water rights in agricultural production and the  
21 stock certificates as whole as possible"; right?

22 A. Correct.

23 Q. "Otherwise, the company finds itself with a  
24 lot of fragmented shares, which cause difficulty in  
25 collecting assessments"; right?

1           A.     Correct.

2           Q.     Okay.  So when this resolution was passed,  
3     the idea was we wanted to keep those water rights  
4     available for ag production; right?

5           A.     Well, I would agree with also the fact that  
6     the agricultural production is where the majority of  
7     the land was.  They wanted to keep it there on that  
8     parcel.

9           Q.     Okay.  And then the other piece of it is  
10    you wanted to keep the stock certificates in big  
11    chunks, rather than individual, one and half acre --

12          A.     As whole as possible.

13          Q.     Right.  Okay.  So that's a "yes"; right?

14          A.     Yes.

15          Q.     Okay.  So when One More Mile proposes  
16    transferring 14 shares to JC Watson Company for  
17    agricultural production, that is in keeping with one of  
18    the main purposes of the 2003 resolution, is it not?

19          A.     With regard to the statement, it -- it is.

20          Q.     Okay.  And with the intent to keep the  
21    certificates as whole as possible, having JC Watson  
22    accumulate more shares, that makes it easier on the  
23    Ditch Company as well, doesn't it?

24          A.     That part's true.  They would be splitting  
25    their share, but that -- there we go, yeah.

1 Q. Right. But they wouldn't be splitting this  
2 into a bunch of 1-acre fractional shares; right?

3 A. No. They'd be splitting a 64 down to 50  
4 and a 14.

5 Q. It wouldn't change the number of people who  
6 were assessed at all, would it?

7 A. Not at all.

8 Q. And then turn to Exhibit 19.

9 A. Exhibit 19, A1?

10 Q. Yes.

11 A. Okay. Okay.

12 Q. Okay. So you said you -- maybe you said  
13 it, but you were not on the board when this letter was  
14 written?

15 A. Not in '03, I was not.

16 Q. But this is a record of the Ditch Company,  
17 is it?

18 A. Yes. Sheila Seiman [phonetic] at the top,  
19 she was a bookkeeper slash secretary for Jerry Stone in  
20 his office that the Ditch Company used.

21 Q. And this letter is written to the Ditch  
22 Company by Mr. Farris?

23 A. It is signed "Mr. Farris," yes.

24 Q. And Mr. Farris states that "The policy and  
25 its bylaws and recently adopted resolution that

1 requires a shareholder that divides his or her property  
2 divided ditch distribution system, easements and weirs  
3 to the property so divided, this policy is necessary to  
4 ensure that the property so divided is still entitled  
5 to receive his or her proportionate share of water."

6 Do you see that?

7 A. I do.

8 Q. Is that something that you understand is  
9 something that the Ditch Company wants to assure  
10 continues in place?

11 A. Correct.

12 Q. So that if a parcel of land is developed,  
13 you want to make sure that the people who are entitled  
14 to water under their shares can get water under their  
15 shares?

16 A. Correct.

17 Q. So if the shares have moved off to another  
18 parcel of land, that concern for the 2003 resolution is  
19 not at issue?

20 A. Transferring water, as we do do  
21 case-by-case, and it does happen. Replacing water is  
22 something that we do not support.

23 Q. But my question was -- I mean I understand  
24 your explanation.

25 But the policy of making sure that --

1 A. Yes.

2 Q. -- people who have water rights, have  
3 shares, can get their water --

4 A. Correct.

5 Q. -- isn't going to be undermined by this?

6 A. That's correct.

7 Q. Okay. Take a look at your February board  
8 meeting, Exhibit 26.

9 A. February. Okay.

10 Q. There's a section on the first page. Well,  
11 let me back up a step.

12 I would like to offer Exhibit 19 into  
13 evidence.

14 MR. FARRIS: No objection.

15 THE HEARING OFFICER: I'm sorry, Bryce? No  
16 objection?

17 19 offered and accepted.

18 (Exhibit 19 admitted.)

19 Q. (BY MR. BARKER): Okay. So Exhibit 26 is  
20 the minutes of your February meeting, 2020?

21 A. That is correct.

22 Q. Those have been reviewed and approved by  
23 the board?

24 A. That is correct.

25 Q. There's a statement on there -- or a

1 section on the first page that is under the heading  
2 "Attorney Bryce Farris create a resolution."

3 Do you see that section?

4 A. That is correct, yes. Uh-huh, I have it.

5 Q. Okay. So in February Mr. Farris told you  
6 that he had protested these water rights applications;  
7 correct?

8 A. That is correct.

9 Q. Is there any -- anything in this  
10 resolution -- or I'm sorry, in the board minutes of  
11 January, February, March that authorized Mr. Farris to  
12 file protests?

13 A. He -- prior to him objecting, he was given  
14 a phone call from our board, a representative of our  
15 board, and they discussed this application of One More  
16 Mile and had him look into it.

17 He responded with -- with the objection.  
18 And at that time we had asked him to look into it,  
19 about creating more -- a resolution that more  
20 solidified our 2003 resolution.

21 Q. So -- but there's nothing in the minutes;  
22 right?

23 A. But it is not in the minutes, that is  
24 correct.

25 Q. Okay. And who was that board member? Rod?

1           So if I -- if I read this -- and I will  
2 read it, "Board members agreed for Bryce to create a  
3 resolution according to our amended bylaws, Article 6,  
4 section 5, add: 'If surface water is available to be  
5 delivered or supplied by the Ditch Company pursuant to  
6 and in compliance with Idaho Code 67-6537'"; right?

7           A.     That is correct.

8           Q.     And then it says, "Bill Hartman moved for  
9 Bryce to create a resolution according to Idaho Code  
10 67-6537"?

11          A.     Correct.

12          Q.     Okay.

13          A.     Very good.

14          Q.     So what did you understand about how Idaho  
15 Code 67-6537 applied to the Froerers' application?

16          A.     As a board member, my interpretation was  
17 that Idaho Code 67-6537 indicated that if there were --  
18 if there were surface water available to the property,  
19 that it maintain the primary water source, and  
20 everything else being wastewater rights or well water  
21 be secondary. And that's the note we were trying to  
22 hit.

23          Q.     And does the -- does the board have the  
24 authority to enforce the Land-Use Planning Act for  
25 Canyon County?



1           A.    I cannot answer that.  I don't think we do.

2           Q.    Is there any other part of the Land-Use  
3 Planning Act that the board tries to exercise any  
4 influence over?

5           A.    We do not.

6           Q.    Did you understand that there had been a --  
7 never mind.  I'll skip that.

8                    So if I move to the next page, there are  
9 some stock transfers in February.

10                   Do you see those?

11           A.    I do see those, yes.

12           Q.    Is this sale from Martin to Mantis Holdings  
13 [phonetic], is that a transfer of shares or transfer of  
14 land?

15           A.    Now -- now you're really reaching into my  
16 memory bank, and I have a phenomenal memory.

17           Q.    I noticed.

18           A.    But we do a lot of -- we do a lot of  
19 transfer of shares.

20                   And to give you a little background, there  
21 are seven members on the board.  And each of us  
22 represent a different section of our irrigation 35-mile  
23 canal.  And generally between all of us, we are  
24 familiar with one of the stock transfers and can have  
25 some input.  I apologize, Eleanor Martin [phonetic],

1 Mantis Holdings, I don't remember.

2 Q. Okay. Fine.

3 A. It wasn't in my neighborhood.

4 How is that?

5 Q. Sure. Not unusual. So then --

6 Oh, I guess I need to offer Exhibit 26.

7 MR. FARRIS: No objection.

8 THE HEARING OFFICER: Okay. 26 offered and  
9 entered.

10 (Exhibit 26 admitted.)

11 Q. (BY MR. BARKER): Turn to Exhibit 27. It's  
12 easier. This is already admitted as 103, but I'll just  
13 use 27 because you've got that book in front of you.

14 A. I do.

15 Q. Okay. So this is when the Froerers and  
16 Matt Wilke came to your board meeting?

17 A. Yeah, I remember it well.

18 Q. Okay. So I guess what puzzles me about  
19 this meeting is that you had already instructed  
20 Mr. Farris to come up with a resolution, that he  
21 brought the resolution to the board meeting for you to  
22 consider --

23 A. Yes.

24 Q. -- and you didn't mention it at all when  
25 you talked to Mr. Wilke or the Froerers.

1           A.    That is correct.

2           Q.    Why is that?

3           A.    Well, I can see maybe why it's confusing.  
4   But the Froerers were at our meeting. And we had  
5   conducted a little business prior to them there. We  
6   discussed personnel matters and/or salary issues and  
7   other things before. Then they presented their case.

8                   My understanding was the reason they were  
9   there was to inform us of their intent with their water  
10   shares. Everything else had been speculation of  
11   hearsay. We had not had any formal application.

12                   And I was there basically -- or they were  
13   there for us to glean information, and from that we  
14   would be able to make a determination.

15           Q.    But this resolution, do you think it  
16   affects their application?

17           A.    Very much so. But it solidifies the one  
18   that that was already there in 2003. It's nothing new.

19           Q.    So why -- I still don't understand it. If  
20   it affects what they're asking you to do, why don't you  
21   tell them you're considering it?

22           A.    I believe the discussion -- and correct me  
23   if I was wrong, but explained to them how the history  
24   of the applications for their property had been in the  
25   past and what we were dealing with and how it came

1 about.

2 I -- I believe that we made clear we had a  
3 tool to transfer stocks, but we -- in this particular  
4 case with what they were doing and developing, we would  
5 encourage them to have a water users' association and  
6 keep the water on their land.

7 Q. So when they left the -- when they left the  
8 building, did you leave them -- did you -- did they  
9 leave after you told them this was not going to be  
10 approved?

11 A. No. They conducted themselves very well.  
12 They presented themselves very well. I thought we  
13 conducted ourselves cordially. And we are very much a  
14 company who tries to accommodate people.

15 However, we had a considerable discussion  
16 after they left, and we -- we went down different  
17 venues, different avenues of accommodation. And  
18 ultimately, as a board, seven people decided that we  
19 would not be able to approve this.

20 Q. So did you communicate to the Froerers that  
21 you had denied their application to transfer?

22 A. To be honest with you, as a board member, I  
23 believe Neddy conveyed to them our answer. But that --  
24 or Bryce. Honestly, I'm not familiar.

25 Q. So is the board familiar with any laws in

1 Title 42 of Idaho Code that requires the use of surface  
2 water to the exclusion of -- and requires the use of  
3 groundwater as a supplemental right?

4 A. The only one that -- I keep referring back  
5 to the same one that Idaho Code has, that we are trying  
6 to hit the same notes and encourage people to use  
7 surface water for primary irrigation, primary water  
8 source.

9 Q. And that's -- and that's 67-6537; right?

10 A. Correct.

11 Q. And the Land-Use Planning Act?

12 A. Right.

13 MR. BARKER: No further questions. Thank you.

14 THE HEARING OFFICER: Okay.

15

16 CROSS-EXAMINATION

17 BY MR. FARRIS:

18 Q. Mr. Johnston, if you'd turn to Exhibit -- I  
19 guess it's 16.

20 A. Of this one?

21 Q. Purple book. 16.

22 A. 16.

23 Q. Yeah. That should be the amended bylaws.

24 A. Amended bylaws.

25 Q. Yeah. Is this of the version, if you know,

1 that's on the website for the Ditch Company?

2 A. It is.

3 Q. Is there other information on the website  
4 of the Ditch Company for shareholders to obtain  
5 information?

6 A. Well, there's a number -- there's a  
7 considerable amount of information. I'm not very  
8 technical, but I have looked at it. I have read it. I  
9 think it's well maintained. And I think there's a lot  
10 of information that you can get from the website.

11 Q. And if you'd turn to the second page of  
12 Exhibit 16, section 1 there under Article 2.

13 The management, as you've said, is by the  
14 board of seven directors?

15 A. Correct.

16 Q. And you're one of them?

17 A. I am.

18 Q. And is Neddy Davis a director?

19 A. She is our company secretary/treasurer.  
20 She is an employee.

21 Q. Employee. Okay. And you were asked some  
22 questions about the transfer of shares.

23 Has the Ditch Company denied transfers of  
24 shares in the past?

25 A. Yes.

1 Q. In what situations have they done that?

2 A. We've denied shares because they did not  
3 have a capable delivery system to their property. We  
4 did -- again, case-by-case, the one that I'm most  
5 familiar with is that they can't be delivered. Or  
6 there has been a fee, some fees due that have not been  
7 collected with regard to the shares that were in  
8 question, and they weren't transferred until it was  
9 resolved. And that's the two most common.

10 Q. That letter that you were discussing,  
11 Exhibit 24, the Stone letter, was that a denial of  
12 transferring of shares?

13 A. Is that to Hansen?

14 Q. Correct, it is a letter to Tanya [phonetic]  
15 Hansen.

16 A. It was before my time. But yes, my  
17 understanding was they wanted them transferred into one  
18 person rather than to an association, and it was not  
19 transferred to one person. We -- we insisted they have  
20 a -- an entity to hold the shares that would deliver  
21 everybody water, not just an individual.

22 Q. Have there been other situations of  
23 developments where someone has requested to transfer  
24 shares and you've denied the request?

25 A. Well, the Apple Valley Estates or whatever,

1 that's before my time as well. But they -- their water  
2 was put into a water users' association, and it  
3 services the entire development.

4 Q. And if you'd turn --

5 A. We did not transfer individually to the  
6 individual people like they would have liked to have to  
7 begin with.

8 Q. Did the individual people come to the board  
9 and request the shares to be transferred into their  
10 names individually?

11 A. The -- the developing team, it was a  
12 brother and sister team, Atkinsons [phonetic], I  
13 believe, was their name. But anyway, yes, them and a  
14 few of the -- I understand that earlier buyers would  
15 liked to have set it up that way, and we insisted or we  
16 recommended and we -- that's the only way they could  
17 transfer is into an entity of an association, a water  
18 users' association.

19 Q. If you'd turn to in the -- yeah, the one  
20 with the blue tabs, the white binder, under  
21 Exhibit 105.

22 A. Okay.

23 Q. And there's a lot of documents in here, but  
24 I'm looking at page 26 of 40.

25 A. Okay.



1 Q. Do you recognize that letter?

2 A. You know, I do not. But it's about my  
3 period of time. I recognize the names.

4 Q. And this -- do you recognize the names, the  
5 Hansens?

6 A. The Hansens.

7 Q. Do you recognize the name Mossa --

8 A. Mossacora.

9 Q. Mossa -- Mossacora Local Trust?

10 A. Yes.

11 Q. Is that the developer you were talking  
12 about?

13 A. Yes, correct.

14 Q. And is this the denial of the transfer that  
15 Ms. Hansen was requesting --

16 A. That is correct.

17 Q. -- you referred to?

18 A. Yes.

19 Q. So the board ultimately reviews transfer  
20 requests on a case-by-case; is that right?

21 A. Yes.

22 Q. Does Neddy Davis, the secretary, ever  
23 approve transfer requests?

24 A. No.

25 Q. Has the Ditch Company protested other water

1 right applications and sought a similar condition, that  
2 they're for supplemental use?

3 A. The only one that I can think of offhand  
4 that was fairly recent is the Parma School District.

5 Q. Okay.

6 A. And it's similar. They have shares. They  
7 irrigate the school grounds, which is considerable.  
8 And they, too, have a problem with sediment in their  
9 water and have had issues, and they wanted to file in a  
10 drain that went close to the school property on  
11 wastewater rights and eliminate the other -- or their  
12 shares.

13 And we had them -- their primary use was  
14 their shares, their water shares. But their secondary,  
15 we had no problem with them filing a wastewater right.

16 Q. So long as it was supplemental use?

17 A. Supplemental use.

18 Q. Okay. So if you'd turn to Exhibit 114.

19 A. 114. Okay. Got it.

20 Q. Is this the water right application you  
21 were referring to on behalf of Parma School District?

22 A. Jim Norton signed it, and he's our  
23 superintendent. So without reading it, yes, this looks  
24 like the one.

25 Q. Okay. And you resolved the Ditch Company's

1 protest with the School District based on these  
2 conditions that are listed here in the stipulation?

3 A. That's correct. They didn't have any  
4 problem with it.

5 Q. And their application was not for  
6 groundwater, but for wastewater?

7 A. That's correct.

8 MR. FARRIS: Move for the admission of  
9 Exhibit 114.

10 MR. BARKER: Question -- I'm sorry. Same  
11 objection about relevance. I know it's part of the  
12 Department's records.

13 THE HEARING OFFICER: Noted. And we'll accept  
14 it, similar to the other ones. Okay. 114.

15 (Exhibit 114 admitted.)

16 Q. (BY MR. FARRIS): What do you know about  
17 the One More Mile -- or the property that's now owned  
18 by One More Mile?

19 A. I have not -- I don't have a great deal of  
20 detail, other than, you know, as a child I went to  
21 school with the O'Tannys [phonetic]. They lived there.

22 Does that help anything?

23 And then when I got on the board, it had  
24 come before the board a time or two about development  
25 and how we had again referred to our bylaws and

1 resolutions. And we asked that they put the water in  
2 an entity or a water users' association for the  
3 development purposes.

4 And they had agreed to that at the time.  
5 Nothing that I know of was done. I don't know that  
6 they ever filed any particular papers. Nothing came  
7 across our desk at the Farmers' Co-op.

8 Then -- then they changed ownership, some  
9 of the development was put in. Again, we hit the same  
10 note about a water users' association. Nothing else  
11 came across our desk. But we could see some things  
12 that had happened. That's what I know.

13 Q. You were here when we were discussing that  
14 administrative split that occurred in 2007?

15 A. Correct.

16 Q. Your bylaw requirements for putting in a  
17 distribution system and the 2003 resolution predated  
18 that, didn't they?

19 A. Correct.

20 Q. And when was the first time that you heard  
21 that the owners of the property were proposing  
22 something other than an irrigation system.

23 A. Well, it was at our January meeting or --  
24 January meeting, I believe.

25 Q. After they filed the applications for

1 the --

2 A. Correct. What had happened -- again, our  
3 seven-member board has a lot more information with  
4 their -- in a particular area within our system. And  
5 it was in the paper. And one of our board members is  
6 from the area, and brought up the fact that this is  
7 what's happening and we need to take a look at it and  
8 see where it goes. And so that's how you were  
9 contacted.

10 Q. And you were asked if it was in the  
11 minutes.

12 Is there any doubt, as you sit here today,  
13 that the Ditch Company intended to protest these 14  
14 applications?

15 A. That is correct.

16 Q. You have no doubt?

17 A. No doubt.

18 Q. Yeah. Now, what -- what is the Ditch  
19 Company seeking today? Seeking a condition similar to  
20 the one proposed with Parma School District?

21 A. It's very simple. I -- we would -- we'd  
22 like to accommodate people where we can. But we'd like  
23 for the surface water to stay on the property if at all  
24 possible, at least for the primary irrigation source.

25 The Ditch Company has no problem with an

1 applicant filing for groundwater well applications or  
2 for wastewater rights, as long as it's secondary to the  
3 water that's used.

4 Q. And the -- the resolution that was talked  
5 about, I have it as 101, but I think I got it wrong. I  
6 guess it's Exhibit 28.

7 Do you have that in front of you?

8 A. Oh, 28. Okay. Resolution. Exhibit A.

9 Q. And that's the resolution that you  
10 discussed that was passed on March 11th, 2020?

11 A. Okay. Yes.

12 Q. Any doubt that the board passed that  
13 resolution and it's an effective resolution of the  
14 board?

15 A. Give me that question again. Any doubt  
16 what?

17 Q. That the board approved that resolution and  
18 passed it?

19 A. Absolutely, yes.

20 Q. Yeah. March 11th?

21 A. Yeah, there was very little discussion.

22 Q. Yeah. What -- you were asked kind of on  
23 this timing of why this wasn't discussed with the  
24 Froerers when they came.

25 When did the -- when did this resolution

1 first come up?

2 A. This?

3 Q. Yeah.

4 A. I believe it was in late December or early  
5 January.

6 Q. Well, if you'd look at Exhibit 26, which is  
7 the minutes from the February 12th meeting.

8 A. Exhibit 6?

9 Q. 26.

10 A. 26. Okay.

11 Q. And I apologize. I'm going to make you  
12 bounce around a little bit.

13 A. That's all right. That's all right. I  
14 don't mind.

15 Okay. This is February.

16 Q. February 2020; right?

17 A. Right.

18 Q. Okay. By this time the board had already  
19 protested the applications; correct?

20 A. It was at least a month prior to this date  
21 that you had been notified to look into this.

22 Q. And this is when the board discussed a  
23 resolution -- and I think you used the word  
24 "solidifying," solidifying the board's position?

25 A. Clarify it. Solidify it. It didn't -- it

1 doesn't appear to some people our resolution of 2003  
2 that it's clear or the message what we wanted to take.

3 Q. Okay. And then going back to Exhibit 28,  
4 which is the resolution.

5 A. Okay.

6 Q. Does this resolution accurately describe  
7 the position of the board?

8 A. We think so today, yes. We were pleased  
9 with it.

10 Q. And is this resolution -- you're -- I  
11 assume you're a shareholder of the Ditch Company?

12 A. I am.

13 Q. I assume this resolution applies to you?

14 A. It does.

15 Q. Is Mr. Nielsen a shareholder?

16 A. It sure will.

17 Q. Does it apply to him?

18 A. Yep.

19 Q. Does it apply to this JC Watson?

20 A. Correct.

21 Q. So if the shares are transferred to  
22 Mr. Watson, is there any guarantee that Mr. Watson  
23 won't develop his property?

24 A. No, they own a lot of property. And they  
25 are very strong in agriculture. But Mr. Watson is an



1 extremely good businessman. And in our conversations  
2 in the past, he doesn't want any restrictions to his  
3 land as far as what he uses with it, be it develop, be  
4 it farm, be it whatever.

5 Q. In this resolution -- let's take a look at  
6 it. If you'd look at -- what I want -- what I want to  
7 be clear is, let's take a look at paragraph 3 --

8 A. Okay.

9 Q. -- on the second page.

10 Do you see where it's not intended to  
11 prevent a shareholder from acquiring or applying for a  
12 new groundwater right?

13 A. Correct.

14 Q. But is rather intended to ensure that the  
15 existing surface water remains available as the primary  
16 source?

17 A. Correct.

18 Q. And that's the policy of the board?

19 A. That's it.

20 Q. Yeah. And let's go to Exhibit -- or excuse  
21 me, the next page under paragraph 4.

22 A. Okay.

23 Q. And you see the first sentence that says  
24 "This resolution policy is not to apply to water rights  
25 or wells for groundwater which are exclusively intended

1 for domestic purposes"?

2 A. Correct.

3 Q. Then was it the policy of the board that  
4 trying to look into the future, as far as development,  
5 and as this policy -- it's intended only for new  
6 applications for irrigation use; correct?

7 A. Correct.

8 Q. And so long as they're supplemental to the  
9 Ditch Company's existing surface water rights, you have  
10 no objection to them?

11 A. No. An example long before I was on the  
12 board -- my father was on the board for 30-some years.  
13 But in the early '80s/late '70s, I don't remember the  
14 date exactly, we had a drought. And there were many,  
15 many, many, irrigation wells that were drilled in  
16 our -- in our service area, Farmers' Co-op, and they  
17 were all supplemental wells to the irrigation water.  
18 And we didn't -- we didn't deny anything.

19 Q. Now, going back to the meeting on  
20 March 11th, at that meeting or prior to that meeting  
21 had anyone from One More Mile submitted an application  
22 to transfer shares to the board?

23 A. No, I've never seen one.

24 Q. Has anything ever been submitted to the  
25 board for approval of a transfer of shares

1 [unintelligible]?

2 A. I have not seen a stock transfer from One  
3 More Mile.

4 Q. So as we sit here today, they are an  
5 existing shareholder?

6 A. Uh-huh.

7 Q. And they have not applied to the board to  
8 transfer any shares?

9 A. Not that I'm aware of. And I've not missed  
10 a board meeting.

11 Q. And the -- the document agreement with  
12 Mr. Watson -- and that is Exhibit -- I think it's 29.

13 Do you have that in front of you?

14 A. I do.

15 Q. Yeah, it is. 29.

16 Has that document ever been presented to  
17 the board to act upon?

18 A. No. I -- honestly, I can't tell you where  
19 I saw this. But I saw it from your exhibits. But as  
20 far as a board, we have not passed it around.

21 Q. No one from One More Mile has, you know,  
22 mailed this in or sought approval of this?

23 A. Not to my knowledge.

24 Q. Do you have Exhibit 11 in front of you?

25 A. Okay.

1 Q. And you've been here through this hearing;  
2 correct?

3 A. That is correct.

4 Q. And you -- if you'd turn to the fifth page  
5 of Exhibit 11.

6 A. Okay.

7 Q. And you've heard the discussion about  
8 there's this e-mail from Neddy. It says Neddy Enrico  
9 [phonetic].

10 Is that Neddy Davis?

11 A. Yes. Neddy recently married.

12 Q. Okay. And -- well, as you read this  
13 e-mail, what's your understanding of what this  
14 authorizes?

15 A. You mean Neddy's response?

16 Q. Correct.

17 A. Well, what she's told is that the shares  
18 are not attached to the land and the farmer. He can  
19 move his water within his irrigation system and within  
20 his parcels of land to accommodate his needs.

21 And so what I get from this is that she  
22 reiterated that, is that One More Mile holds the  
23 shares, if they want to do something with the water or  
24 move it around, you need to get a letter from him. He  
25 has control where he irrigates with it.

1 Q. In any event, whatever she intended, did  
2 Neddy have any authority to approve the transfer of  
3 shares?

4 A. Oh, no.

5 Q. That's, again, a board action?

6 A. Yes.

7 Q. And even though the shares can be moved,  
8 they're not appurtenant, does the board have the  
9 ability to set rules and regulations as to the use and  
10 delivery of shares?

11 A. Yes.

12 Q. Is that in the bylaws?

13 A. Yes.

14 Q. Okay. And for instance, the rules and  
15 regulations regarding three or more parcels and setting  
16 up an entity to hold those shares?

17 A. Yes.

18 Q. Isn't that a restriction on the transfer of  
19 shares?

20 A. It is.

21 Q. Whether it's applicable to this situation  
22 or not, it is something that the board enforces?

23 A. It is.

24 Q. Yeah. So ultimately it's the board that  
25 makes the decision on whether or not it will approve

1 transfer of shares?

2 A. And we try to make it as transparent as  
3 possible and easy to deal with. And quite honestly,  
4 the decisions we make is in the best interest of our  
5 shareholders. They own the company.

6 MR. FARRIS: That's all I have.

7

8 REDIRECT EXAMINATION

9 BY MR. BARKER:

10 Q. Do you still have Exhibit 11 in front of  
11 you?

12 A. 11? I have 11.

13 Q. So I'm not quite sure I heard what you  
14 said, but I -- my notes say that you indicated that  
15 this e-mail says that Neddy said they could move water  
16 around within their irrigation system?

17 A. I believe we're talking about --

18 Q. Page 5 of Exhibit 11.

19 A. Page 5 of 11. I flipped back from 11 and  
20 lost it.

21 Q. The infamous Neddy --

22 A. Now I've got it again. Sorry.

23 Q. Okay. Sorry.

24 A. Thank you.

25 Q. Sorry.

1           A.    Yes.

2           Q.    So I thought what I heard you say was that  
3   this e-mail says that -- that an owner, a shareholder,  
4   can move water around within their own irrigation  
5   system?

6           A.    They can deliver water within their own  
7   system to deliver on their own parcels, parcels they  
8   own.

9           Q.    So where does it say in this e-mail that  
10   she -- he can only irrigate within a single irrigation  
11   system?

12          A.    Well, it just says we have no control as to  
13   where he irrigates. She -- she, Neddy, hears from the  
14   board --

15          Q.    Right.

16          A.    -- that that's what is allowed all the  
17   time. That's my interpretation of what she wrote to  
18   him.

19          Q.    But you don't -- you wouldn't prevent  
20   someone from using their own irrigation right on one  
21   parcel that's delivered at one headgate and using it on  
22   a parcel that's delivered at another headgate, as long  
23   as you have the ability to deliver at that headgate?

24          A.    Correct. No, that's -- you are spot on.

25          Q.    Okay. So we don't have to worry about only

1 transferring within a single irrigation system?

2 A. No, no.

3 Q. Okay. So look at -- where did it go? I  
4 think it's 28.

5 Farris, try 28. See if I got that right.  
6 Yes.

7 The 2020 resolution.

8 A. Okay.

9 Q. A couple of quick questions for you on  
10 this. One, two, three -- fourth "Whereas" clause says  
11 that "the intent of the resolution or policy is to  
12 maintain and keep surface water delivery on lands  
13 within the Ditch Company service area and boundaries,  
14 even as development occurs"; right?

15 A. Correct.

16 Q. And that is what the Froerers are proposing  
17 with this transfer; right? To keep the water in the  
18 service area; right?

19 A. They're proposing that and replacing their  
20 water with something else.

21 Q. Yeah.

22 A. Yes.

23 Q. But they're proposing that the water would  
24 maintain -- stay in the service area?

25 A. In our service area, yes.



1 Q. Yeah. And that you -- as we discussed,  
2 Watson could get that water delivered?

3 A. That is correct.

4 Q. And his land is within -- he has land  
5 within the service area that he could put that water  
6 on?

7 A. You are correct.

8 Q. Okay. And then under the "Therefore it be  
9 resolved" paragraph 1, it says that "This resolution is  
10 in addition to the requirements of the bylaws,"  
11 et cetera; right?

12 A. Right.

13 Q. So this is something new and different on  
14 top of what you've already done; right?

15 A. Well, for me it's new, and it's worded  
16 different, but it's -- we're hoping it adds more  
17 clarity and solidifies what we already have.

18 Q. And again, looking at the third resolution.

19 A. Okay.

20 Q. It says -- third -- sorry. The third  
21 "Whereas" clause of the resolution.

22 A. Oh, excuse me. All right.

23 Q. "This resolution is in addition to the  
24 previously-adopted policy and rules of August 23."

25 A. Correct.

1 Q. So you're adding something that wasn't  
2 there before?

3 A. We're adding words, yes.

4 Q. And so if the water right is not  
5 appurtenant to the land --

6 A. Correct.

7 Q. Which it's not; right?

8 A. Right. Very good.

9 Q. -- and the shareholder owns his shares and  
10 owns the water, by what right does the board have to  
11 tell a shareholder it has to remain appurtenant to a  
12 particular parcel of land when it's not appurtenant to  
13 any land?

14 A. He owns his shares. The Ditch Company owns  
15 the water rights.

16 Q. Right.

17 A. And so that's how we would like to see the  
18 distribution of that water, on agricultural or on the  
19 land that it was originally assigned to.

20 Q. But --

21 A. But it is -- it is sold through shares to  
22 the individual landowners.

23 Q. But you can distribute this water? You've  
24 already said you can.

25 A. We can distribute the water --

1 Q. Right.

2 A. -- in most every location.

3 Q. And so -- but how do you have the right to  
4 tell any of your shareholders that "Your right's not  
5 appurtenant to any particular parcel of land, but you  
6 can't -- you must use it on this parcel of land. You  
7 have to. You have no choice"?

8 A. It's not that we -- we're not saying he --  
9 we're not saying he can't -- he has to use it on this  
10 parcel of land. He has to use -- there's Farmers'  
11 Co-op water there. He can move some of that to other  
12 locations, but he can't replace it. Or we would -- we  
13 are trying to hit the note that we don't want the water  
14 replaced.

15 Q. So how long is this no-replacement rule  
16 effective?

17 A. Since 2- -- how long has it been?

18 Q. No. How long does it stay in effect? What  
19 happens if the Froerers tomorrow moved it to another  
20 parcel of land and then five years from now drilled  
21 a -- applied for a well? Would you be able to protest  
22 that?

23 A. If they moved their water off of this land  
24 and then -- and then applied for a well on this parcel,  
25 is that what you're asking me?

1 Q. Yes, five years from now.

2 A. If the water is gone and they -- and they  
3 had no water available to the land, then we would  
4 probably not protest it.

5 Q. So if the Froerers go ahead and sell these  
6 14 shares to somebody who can use it and refile the  
7 application, you wouldn't be able to protest?

8 A. But we're going to need to be able to  
9 transfer the shares. And we would prefer that they use  
10 that water as a primary source on the land.

11 Q. But how do you know what they're going to  
12 do?

13 A. Well --

14 Q. So is it one year? I mean what's the  
15 window of time that someone is prohibited from drilling  
16 a well after they transfer the shares? Is it one year?

17 A. We -- we've never --

18 Q. Five years? Ten years? 20 years?

19 A. They can -- they can apply for drilling a  
20 well anytime. We'd just like it to be secondary water.

21 Q. Okay. Even if the water has already been  
22 transferred off?

23 A. If it's been transferred -- even if it's  
24 been transferred off, if they don't -- if they don't  
25 have any water.

1 Q. So how would it be secondary if they don't  
2 have any water?

3 A. Well, we're not going to transfer it off.  
4 Or we're not wanting to transfer it off.

5 Q. How would you -- I guess my question is,  
6 how do you know what they're going to do?

7 A. Well, we don't know what they're going to  
8 do. We just --

9 Q. So you would prohibit a transfer because  
10 upon the off chance that somebody might want to put a  
11 well on there in the future?

12 A. We would have no problem with putting a  
13 well on there. The -- the whole basis behind this is a  
14 futuristic look from our shareholders. When your water  
15 is spread over 15,000 acres like it is and used by  
16 numbers of shareholders and is continued to be used in  
17 that basis, you have more people paying for fees which  
18 maintains a delivery system of the entire thing.

19 You keep transferring water off of this  
20 land, even though you put it in the hands of a few, you  
21 have less and less deliveries and less and less people  
22 that you're relying on to pay the fee.

23 Q. But you still have the same fees?

24 A. Still have the same fees.

25 Q. Right?

1           A.    Uh-huh.

2           Q.    So you still -- and if they don't pay their  
3 fees, you can -- you can not deliver their water?

4           A.    That -- that is correct.

5           Q.    Or you can take back the water from them;  
6 right?

7           A.    You can foreclose on their stock.

8           Q.    And if you do that, you can sell the water  
9 to somebody else?

10          A.    That. Or we can put it in a pool. We do  
11 keep a pool of stock in our company.

12          Q.    So I have to -- I have to tell you, I'm a  
13 little confused by Mr. Farris' question to you about  
14 you've never -- never got any indication that the  
15 Froerers want to transfer this water off the land --

16          A.    Honest --

17          Q.    -- so therefore -- I mean I guess my  
18 question is, are you telling us you haven't made a  
19 decision about whether or not they can transfer  
20 these -- this water off of these --

21          A.    We've never denied them.

22          Q.    Have you not made a decision that they  
23 cannot transfer the water off of these 28 acres?

24          A.    There has been discussion in the board, but  
25 there's not been a board decision. The discussion was

1 that we would prefer their -- their primary water  
2 source, surface water, continue to be primary, and that  
3 the discussion was that we were willing to contribute  
4 to Bryce Farris and his company to champion our cause.

5 Q. So isn't the purpose of this protest to  
6 ensure that they have to keep the water on this parcel?

7 A. Pretty much.

8 Q. So in effect, by protesting you've told  
9 them that you're not going to approve any transfer of  
10 the water off of this property?

11 A. We have board members, I can tell you, that  
12 probably feel that way. We have not made a decision.

13 Q. You've made a decision to protest to  
14 prevent them from transferring the water off?

15 A. We think that we should protest this to  
16 stand on the values that we make our decisions with,  
17 yes.

18 Q. Okay. So if I -- if you get a protest --  
19 if you get a -- so what would I have to do if I'm  
20 transferring my water off? To transfer my water to  
21 some other shareholder, what would I have to do?

22 A. So you own land and you have water and you  
23 want to sell it?

24 Q. I don't even have to own land, do I?

25 A. It's possible that you could own water and

1 not land, that is correct.

2 Q. Okay. So what if I wanted to sell my water  
3 right, my shares, what would I have to do?

4 A. You would come to the board with an  
5 application to transfer your water to X.

6 Q. Transfer my shares --

7 A. Shares.

8 Q. -- to a person?

9 A. Or an entity.

10 Q. Okay.

11 A. Or a corporation or whatever.

12 Q. Okay. And you have a form that you use for  
13 that?

14 A. We do.

15 Q. Okay. And so you will not consider any  
16 transfers until you see that form; is that what your  
17 point is?

18 A. That's -- that's pretty much it.

19 Q. Okay.

20 A. We'd like to see the circumstances  
21 surrounding the transfer.

22 Q. Okay. So you know the circumstances  
23 surrounding this transfer here; right?

24 A. What they brought to us at their meeting,  
25 yes.



1 Q. Okay. And your answer to the circumstances  
2 surrounding that transfer is no?

3 A. We did not give them an answer surrounding  
4 the visit we had in March. And we had decided that we  
5 would -- it was appealed. And so we decided that we  
6 would take the hearing process.

7 Q. Okay. So you're waiting on the hearing  
8 process to tell them whether they can or can't do this?

9 A. We feel strongly that it should stay on the  
10 property as a primary water source. I'm not saying  
11 that we're always right. But that's the way -- that's  
12 the way we're running our company. That's why we're  
13 here.

14 Q. And just -- just so I'm clear, there's  
15 21,000 acres, roughly, in the boundaries of the  
16 District?

17 A. In our servicing area, and there's about a  
18 little over 15,000 acres that is irrigated.

19 MR. BARKER: I don't have any further questions.  
20 Thank you.

21 THE HEARING OFFICER: Mr. Farris?

22 MR. FARRIS: I have a couple.

23 ///

24 ///

25 ///



1 A. Correct.

2 Q. -- correct?

3 A. Correct.

4 Q. And ultimately the board decided no, they  
5 did not agree with that, which is why we're here today;  
6 correct?

7 A. Correct.

8 Q. And ultimately they also decided let's  
9 approve of the resolution that we brought up a month  
10 before?

11 A. That is correct.

12 Q. Okay. Now, you were asked about how can  
13 the Ditch Company determine how a shareholder can use  
14 their water if they can transfer it off and whatnot.

15 Now, the Ditch Company owns the water  
16 rights; correct?

17 A. Correct.

18 Q. The shareholders are subject to the  
19 articles and bylaws and resolutions of the Ditch  
20 Company?

21 A. That is correct.

22 Q. And if you would look at Exhibit 16.

23 A. 16. Okay.

24 Q. And I'm on page 2.

25 A. Page --

1 Q. Section 2(d).

2 A. Okay.

3 Q. "The board of the Ditch Company, seven  
4 members, has the abority -- has the authority to  
5 prescribe, adopt, amend from time to time such  
6 equitable uniform rules and regulations as in their  
7 discretion"; correct?

8 A. Correct.

9 Q. Those could be including as to the transfer  
10 of shares?

11 A. Correct.

12 Q. Those could be including as to the use and  
13 delivery of water?

14 A. Correct.

15 Q. Okay. Now let's look at page 5. And I'm  
16 under Article 8, section 2.

17 A. Okay.

18 Q. Now, this is actually under the heading of  
19 "Water distribution."

20 And you see the third sentence down that is  
21 highlighted?

22 A. Okay.

23 Q. "The company has the right to make rules  
24 and regulations concerning the delivery of water as it  
25 deems necessary"; correct?

1           A.     Correct.

2           Q.     Why -- you know that One More Mile owns  
3 another hundred or so acres in this vicinity; right?

4           A.     My understanding it's a hundred-plus acres  
5 there. That's all I know.

6           Q.     Why does it concern you to have 14 new well  
7 applications where they're seeking to replace the Ditch  
8 Company's surface water?

9           A.     To be honest, we look at this, and when  
10 they ask the question of future development, it just  
11 looks as though that would -- might be a pattern of  
12 selling -- getting rid of the surface irrigation and  
13 drilling wells, which all the information indicates  
14 that it's a doable thing.

15                   However, should they be used as a footprint  
16 of many other developments in Apple Valley, it would  
17 just allow us to see more of our water in different  
18 pools and less people that are using it. And I think  
19 it fragments what we're trying to accomplish.

20           Q.     Is there any doubt in the 21,000 acres of  
21 Farmers' Co-operative Ditch Company that there's going  
22 to continue to be development in the next 5, 10, 15, 20  
23 years?

24           A.     Well, of course from my perspective, the  
25 Apple Valley area is a target because it was platted

1 many, many, many years ago in the early 1900s. And  
2 it's probably first to be approached from a simplistic  
3 approach of development.

4 However, when you get from Caldwell and  
5 Nampa on the other end of our irrigation ditch, we're  
6 seeing more and more pressure all the time of larger  
7 developments coming along. I know it's coming.

8 We're only to trying to do what's in the  
9 best interest of shareholders to hold our company  
10 together and give it stability to deliver our water to  
11 the shareholders they have.

12 MR. FARRIS: That's all I have.

13 I don't know. Did Exhibit 28 ever get  
14 moved for admission? I would move for admission of  
15 Exhibit 28.

16 MR. BARKER: I don't have any objection.

17 THE HEARING OFFICER: You're offering 28?  
18 You're offering Exhibit 28?

19 MR. FARRIS: Yeah.

20 THE HEARING OFFICER: Okay. And, Mr. Barker, no  
21 objection?

22 MR. BARKER: No objection.

23 THE HEARING OFFICER: Okay.

24 (Exhibit 28 admitted.)

25 MR. FARRIS: And the other -- we spoke about it.

1 It was Exhibit 105, page 26, I'd move for the admission  
2 of that.

3 THE HEARING OFFICER: Exhibit 105, just page 26?  
4 Just a second.

5 MR. BARKER: No objection.

6 THE HEARING OFFICER: Are you offering just  
7 page 26, or do you want everything, the whole exhibit?

8 MR. FARRIS: I'll offer the whole thing, yeah,  
9 the whole exhibit.

10 THE HEARING OFFICER: Let's give Mr. Barker a  
11 chance to look through it.

12 MR. BARKER: I -- no objection. It's a record  
13 of the Ditch Company.

14 THE HEARING OFFICER: All right. Exhibit 105  
15 has been offered and accepted into the record.

16 (Exhibit 105 admitted.)

17 THE HEARING OFFICER: So, Mr. Farris, you said  
18 you were done?

19 MR. FARRIS: Yeah. Nothing else.

20 THE HEARING OFFICER: Mr. Barker, do you have  
21 any questions for Mr. Johnston?

22 MR. BARKER: I have a few follow-up, based upon  
23 the -- Mr. Farris' questions.

24 ///

25 ///

## 1 FURTHER REDIRECT EXAMINATION

2 BY MR. BARKER:

3 Q. You -- you know that the Ditch Company has  
4 64 shares -- or sorry. Let me try it again.

5 The Froerers have 64 shares of stock?

6 A. That's my understanding, yes. And I think  
7 that was on the certificate.8 Q. And how much does that entitle them to  
9 irrigate?

10 A. They would be able to irrigate 128 acres.

11 Q. Okay. And so I wasn't quite sure the  
12 import of Mr. Farris' questions.13 But do you understand that the Froerers  
14 wanted to move all 64 shares to someone else?15 A. No. We -- we thought so originally. And  
16 they came and gave us more clarity on that point when  
17 they visited us.

18 Q. And so the idea was to move 14 shares?

19 A. That is correct.

20 Q. And that's what Exhibit 29, the contract  
21 with Watson says?

22 A. Yes.

23 Q. And then I want to make sure I heard this  
24 right, but when Mr. Farris asked you about the March  
25 meeting in 2020, he said that the Froerers asked for a



1 variance.

2 Remember that?

3 A. No.

4 Q. I think that's the word he -- that's the  
5 word I wrote down.

6 A. Okay. Variance? I think what -- again,  
7 what I thought he was referring to is they were --  
8 there was some discussion with regard to the 14 shares  
9 being transferred, them doing the wells. But then on  
10 their future development of multiple wells they  
11 would -- they could adhere to a pressurized system.  
12 Maybe that's what he was referring.

13 When you say "variance," that's where --  
14 that was part of a discussion.

15 Q. Okay. And he also said, and you agreed,  
16 that the board decided no?

17 A. After the Froerers had left and we had a  
18 considerable amount of discussion, we had decided that  
19 we would not -- if -- if they were approached -- if we  
20 were approached with a transfer at this time, we would  
21 rather go the hearing process and stay with our  
22 objection.

23 Q. And again, it's no -- there's no question  
24 that the water rights for the Ditch Company are not  
25 appurtenant to any particular parcel of land?

1           A.     You are correct.

2           MR. BARKER:   That's all I have for Tom.

3                     Thank you.   Thank you, Tom.

4           THE WITNESS:   Thank you.

5           THE HEARING OFFICER:   Mr. Farris, do you have  
6 any follow-up?

7           MR. FARRIS:   I don't have any follow-up, no.  
8 Thank you.

9           THE HEARING OFFICER:   I do have just a couple of  
10 questions, just so I can be clear on this.

11

12                               EXAMINATION

13 BY THE HEARING OFFICER:

14           Q.     So I believe when you first started your  
15 testimony, you talked about how you own 40 acres and  
16 you might have 20 shares to irrigate that 40 acres.

17           A.     Yes, that's the equation we use.

18           Q.     Yes.   So you might also have 10 shares to  
19 only irrigate 20 of those acres; right?

20           A.     Correct.

21           Q.     And it sounds like I think at one point you  
22 said that a person might have more than 20 shares but  
23 only own 40 acres.   In fact, I think I might have heard  
24 that One More Mile owns 112 acres but they have shares  
25 to irrigate 128 acres.

1 A. Correct.

2 Q. And I also think I heard that the District  
3 itself maintains a pool of shares that --

4 A. That is correct.

5 Q. -- presumably aren't delivered to people to  
6 be irrigated?

7 A. The water rights are 100 percent used, but  
8 distributed through smaller -- we have an allocation of  
9 12,000 shares. There's only about 8800 of them  
10 outstanding. The rest are in a pool. But our water  
11 rights are represented with that 8800 shares.

12 Q. Okay.

13 A. Does that help you?

14 Q. That does help me.

15 So when -- when a person owns a share --  
16 and I think you said somebody can own a share without  
17 owning any land?

18 A. For instance, I'll give you an example. I  
19 had a neighbor that had 100 acres.

20 Q. Uh-huh.

21 A. They kept their family at odds, so when  
22 they died, they had two daughters. Gave one the land,  
23 one the water.

24 Q. Okay.

25 A. She now owns water without land. And the

1 other daughter had land without water.

2 Q. Okay. And so if she wanted to have her  
3 water delivered to that land that it used to be  
4 associated with --

5 A. Correct.

6 Q. -- what process would she go through?

7 A. Well, fortunately the two of them didn't  
8 end up in court. They ended up at our office. And we  
9 ended up with an agreement to, once again, put the land  
10 and the water back in both their names.

11 Q. Okay. So I'm thinking how to frame some of  
12 these questions.

13 So when you talk about a transfer of a  
14 share, does that always involve a change in ownership  
15 of the share?

16 A. No, not always.

17 Q. It does not. So a person who owns a share  
18 could file a transfer with you -- actually, first of  
19 all, would they need to file a transfer with you if  
20 they historically used some shares on this part of  
21 their ground but now they want to use it on this part  
22 of their ground? They don't need to file a transfer  
23 for it?

24 A. Not unless they changed the name.

25 Q. Okay.

1           A.    For instance, a parent give whatever  
2   portion of ground to their children, and they will  
3   transfer something -- so a share to their children.

4           Q.    So in that case they're changing the  
5   ownership --

6           A.    They are.  They're giving it to their  
7   children.

8           Q.    -- of the stock, but they're not  
9   necessarily changing the land that that stock is --

10          A.    That is correct.

11          Q.    -- appurtenant to?

12                   And are there ever times when somebody  
13   changes the location of the land that they're  
14   irrigating without changing ownership?

15          A.    Changing the land without the ownership?

16          Q.    Without changing the ownership of the  
17   stock.  I'm sorry.

18                   So for instance, if I own a hundred  
19   acres --

20          A.    Uh-huh.

21          Q.    -- and I have shares for 50 acres --

22          A.    Okay.

23          Q.    -- and let's say I want to stop irrigating  
24   this 50 acres and I want to start irrigating this other  
25   50 acres that I own.

1           A.    As long as you have irrigatable land within  
2   our serviceable area and have stock that will  
3   accommodate that, where you put that water, it's  
4   entirely up to you.

5           Q.    And I don't have to go through an  
6   application for transfer with you or anything like  
7   that?

8           A.    You do not.

9           Q.    Okay.  Now, a slightly different  
10  scenario -- and forgive me, because I'm just kind of  
11  trying --

12          A.    That's fine.

13          Q.    -- round out my understanding, because I  
14  haven't had a chance to read through all the articles  
15  of incorporation.  I'm not even sure that they've been  
16  admitted into the record yet.

17          MR. FARRIS:  They have not.

18          Q.    (BY THE HEARING OFFICER):  So if I -- if  
19  I'm a person that -- that like -- let's say I own 50  
20  shares --

21          A.    Okay.

22          Q.    -- but I don't own any land, if I want to  
23  use my water on a person's land that I don't own, do I  
24  have to file a transfer application with the board?

25          A.    If you -- maybe -- maybe this will help.

1 An example: A landowner owned 40 acres and had 20  
2 shares of stock.

3 Q. Okay.

4 A. They didn't pay their fees. It went into  
5 foreclosure. The stock was foreclosed on. The renter  
6 who was renting the 40 acres had additional stock from  
7 what he was using on his property, and used some of  
8 that water to irrigate this 40 acres that lost its  
9 water.

10 Does that help you?

11 Q. And did he have to go through --

12 A. He did not have to go through us.

13 Q. He didn't have to. Okay. And is that only  
14 true if it's -- if it's land that -- that used to have  
15 water shares appurtenant to it?

16 A. You are absolutely correct.

17 Q. Okay.

18 A. It has a history of irrigated water with a  
19 delivery system from the Farmers' Co-op canal.

20 Q. Okay. So if the Froerers wanted to not  
21 change the ownership of their shares but if they wanted  
22 to enter into some kind of an agreement with  
23 Mr. Watson, for example, to move those shares and have  
24 those shares delivered to his property?

25 A. But they keep ownership.

1 Q. They keep ownership of the shares. They  
2 don't have to go through a transfer?

3 A. That's right.

4 Q. Okay. All right. And as it seems in what  
5 I've seen in the bylaws, they talk about transfers, but  
6 they don't really make a very good distinction between  
7 ownership of the shares and delivery of the water, but  
8 maybe I'm just --

9 A. No. No, no, you are correct.

10 Q. Since I'm -- so this has been very helpful  
11 to me.

12 A. Okay.

13 Q. And let's see. And you alluded to the  
14 Apple Valley development.

15 A. I believe it's called Apple Valley Estates,  
16 but I could be wrong. But I believe that's it. It was  
17 an 80-acre parcel, I believe, that was subdivided years  
18 ago.

19 Q. And that's -- that's not part of One More  
20 Mile's land, or is it?

21 A. No.

22 Q. It's not.

23 A. It's not too far from them, as the crow  
24 flies, but no.

25 Q. Okay.



1           A.    It's just a development that had water  
2 rights or had shares -- excuse me -- and they developed  
3 the entire parcel, and the shares went into a water  
4 users' association, water user's agreement.

5           Q.    Okay. So in that case the people who owned  
6 the shares were different from the people who owned the  
7 land, and that went through a transfer?

8           A.    Correct, it went into an entity.

9           Q.    An entity. Okay.

10          A.    And the -- the owners of the different  
11 parcels are different -- are members of that entity.

12          THE HEARING OFFICER: Okay. All right. I think  
13 that -- that helps to clear some things up for me. I  
14 don't have any further questions, so thank you.

15          THE WITNESS: Thank you.

16          MR. BARKER: We have no further witnesses to  
17 call, so we'll rest the applicant's case.

18          THE HEARING OFFICER: Okay. Does protestant  
19 wish to call any more witnesses?

20          MR. FARRIS: Can we take like a five-minute  
21 break?

22          THE HEARING OFFICER: Sure.

23                   (Recess.)

24          THE HEARING OFFICER: All right. So it is about  
25 4:35, 36, and we're just coming back on the record.

1                   And, Mr. Farris.

2                   MR. FARRIS: The Ditch Company will call Rod  
3 Nielsen.

4                   THE HEARING OFFICER: Rod Nielsen.

5                   Mr. Nielsen, I'll swear you in.

6

7                   ROD NIELSEN,

8 having been called as a witness by the Protestant, was

9                   duly sworn and testified as follows:

10

11                  THE HEARING OFFICER: Do you solemnly affirm  
12 that the testimony you're about to give is the truth,  
13 the whole truth, and nothing but the truth?

14                  THE WITNESS: Yes.

15                  THE HEARING OFFICER: All right. Please have a  
16 seat.

17

18                                 DIRECT EXAMINATION

19 BY MR. FARRIS:

20                  Q. Mr. Nielsen, do you hold a position with  
21 the Farmers' Co-operative Ditch Company?

22                  A. I'm the president of the company.

23                  Q. And how long have you been in that  
24 position?

25                  A. Oh, ten years.

1 Q. Ten years?

2 UNIDENTIFIED SPEAKER: Longer.

3 THE WITNESS: Longer than that? Time passes.

4 Q. (BY MR. FARRIS): Let me ask you another  
5 question, I guess.

6 How long have you been on the board?

7 A. Well, since about 1991, I believe it was.

8 Q. Okay. What do you do for a living?

9 A. So I farm full time.

10 Q. Do you know the property we've been talking  
11 about here today, the One More Mile property?

12 A. Yes. I -- our family farmed -- we actually  
13 farmed the ground at one time from Grant Peterson and  
14 then later his son Myron for a few years.

15 Q. Can you give me a time frame, generally, as  
16 far as when that occurred.

17 A. Yeah, I didn't come prepared for that.  
18 It's about 15 years ago, I think, is when we stopped or  
19 so, 12.

20 Q. How was the ground irrigated?

21 A. It was all furrow-irrigated.

22 Q. From what source? Was it the Ditch Company  
23 water?

24 A. From the Farmers' Co-operative Ditch  
25 Company.

1 Q. Okay. So it had some conveyances to the  
2 delivery system to get the water?

3 A. Exactly as it is today.

4 Q. Yeah. Now, I don't want to go through all  
5 the stuff. You were here when Mr. Johnston testified,  
6 but this -- so the Ditch Company shares can be --  
7 they're not appurtenant to the land; right?

8 A. That's correct.

9 Q. And what -- what's your understanding of  
10 what a shareholder can do with those shares? Meaning  
11 is it an unfettered right to transfer the shares to any  
12 person or entity they choose?

13 A. Well, the shares are valuable. And so, you  
14 know, it's -- it's hard -- it's [unintelligible] your  
15 ground. It makes your ground valuable. And so people  
16 are not necessarily trying to give away their shares.  
17 They never do. So I'm not sure exactly -- if I  
18 answered the question, though.

19 Q. Well, when I say it's unfettered -- it's  
20 not unfettered, meaning there are instances -- and you  
21 heard Mr. Johnston testify, that there are instances  
22 where the board does deny a shareholder the ability to  
23 transfer shares?

24 A. That's correct. And we are -- we try --  
25 we're trying to run this company for the future. We

1 want to continue it on. And -- and -- and it's -- what  
2 we're -- what we are fearful of is as more and more  
3 subdivisions come along, they'll want to do the same  
4 thing and get rid of their shares. And eventually  
5 we'll be like -- you know, we will not be a company --  
6 we won't have the base to continue -- to continue to  
7 function in an efficient manner.

8 Q. Were you on the board during -- there was a  
9 discussion about Tanya Hansen and a Mossacora  
10 development.

11 Were you on the board during that time?

12 A. I was.

13 Q. And do you recall the situation and why the  
14 board denied the request to transfer the shares at that  
15 time?

16 A. Well, I believe it was right after the 2003  
17 resolution. And -- or I mean -- yeah, 2003. And  
18 she -- she wanted -- she didn't want to go into the  
19 organization. And she didn't want to abide by the  
20 rules. And so we -- so we kept our feet -- I mean we  
21 kept firm and said, "No, you'll abide by what we're  
22 asking."

23 It's a fair way, everybody else is having  
24 to abide by these rules, and that's what...

25 Q. And at that time, we're talking about the

1 2003 resolution when there was a subdivision and you,  
2 per the 2003 resolution, were requiring them to do  
3 what? What were you requiring of the developer?

4 A. Well, we were requiring them to -- to  
5 either make a homeowners' association, lateral users  
6 association, whatever you want to call it, but an  
7 entity that would be responsible for collecting the  
8 fees and that we would be billing.

9 Q. And Ms. Hansen was asking for those shares  
10 to be transferred into her own name?

11 A. Exactly.

12 Q. And -- and what was the board's decision in  
13 that case?

14 A. That we were going to abide by our -- our  
15 resolution and not allow it.

16 Q. And -- so back to -- and were you also  
17 involved or were you also around when there was the  
18 what we'd call the Apple Valley Estates development --

19 A. Yes.

20 Q. -- you heard Mr. Johnston talk about?

21 A. Right.

22 Q. Do you remember what the issue was in that  
23 situation?

24 A. Well, they -- that -- it's been already  
25 mentioned, but there was an 80-acre parcel, and they

1 wanted to -- they wanted to subdivide and thought maybe  
2 they could make some money and -- by subdividing.

3 And we were afraid of having a mess as far  
4 as having to collect all those fees and, you know, each  
5 individual. And so we -- and we wanted to abide by  
6 the -- our -- our -- our resolution and require that.

7 Q. So did you require them to retain the  
8 shares?

9 A. We required that they be retained as a  
10 water users' association.

11 Q. Okay. Did individuals ask to have the  
12 shares transferred to their own names?

13 A. I'm -- I -- there was -- I'm not aware of  
14 anybody there that actually put up a big fight. No, I  
15 don't remember anything.

16 Q. Did Apple Valley Estates object to or have  
17 concerns about having to set up an association or  
18 transfer shares to an entity, per the resolutions?

19 A. Well, people have the -- they -- they have  
20 a tendency to want to keep it all in under their name.  
21 And they were reluctant. I think there was people that  
22 were reluctant, but they eventually -- I mean we, as a  
23 board, decided that that was -- we needed to abide by  
24 our policy, be fair to everybody, and continue being  
25 equal to everyone and, you know, following our

1 resolution.

2 Q. So back to this application by One More  
3 Mile.

4 Just can you just generally describe what  
5 your concerns are with if they propose to transfer even  
6 14 shares to JC Watson or someone else? Why -- why are  
7 you concerned with that?

8 A. Well, so we are concerned that -- that this  
9 is just going to be a snowball effect. It's the  
10 precedent is being set that we cannot now do anything  
11 with our water. I mean I guess the board would be a  
12 rubber stamp saying any -- any -- any contract out  
13 there goes as long as they're inside the -- inside  
14 the -- the company's boundaries.

15 Q. And why does that concern you?

16 A. Well, it -- it would -- it would create  
17 chaos. We would not be able to function if -- and it  
18 would be very, very difficult. We have to be able to  
19 have a handle on the shares and how they're  
20 transferred.

21 Q. Do you have a -- where is your property in  
22 relation to the One More Mile property?

23 A. So we're -- we're -- most of how we -- our  
24 ground would be -- well, actually, we have some ground  
25 on both sides of them. We have some that's at the



1 very, very end, but it's off of a lateral. But it's --  
2 it's about 3 or 4 miles south.

3 Q. And I assume you're a shareholders of the  
4 Ditch Company?

5 A. That's correct.

6 Q. And these bylaws and resolutions we've been  
7 talking about, we've heard talked about today, are they  
8 applicable to you?

9 A. They are. Yeah, we're -- every --  
10 everything that -- that we -- every resolution, every  
11 decision that's made, we have to abide by them.  
12 It's -- and that gives you pause at times.

13 You know, you think about it, when you're  
14 creating these resolutions, because we all have to --  
15 they affect us, just as they do everyone else, all of  
16 them.

17 Q. And you've heard testimony about the  
18 agreement between One More Mile and Mr. Watson.

19 A. Yes.

20 Q. Do you know Mr. Watson?

21 A. I do.

22 Q. Do you know where his land is located?

23 A. No. I -- I know that he has land out in  
24 Notus. I think he has land out in Roswell. I don't  
25 know exactly where all of his land is.

1 Q. He has land within the Ditch Company's  
2 service area?

3 A. That's correct.

4 Q. And you've, you know, heard comments today  
5 about it would be for agricultural use; right? Is  
6 he -- does he use the water within the Co-op's  
7 boundaries for farming and agricultural use?

8 A. As far as I know, that's -- yes, he does.

9 Q. For now do you know what his intentions are  
10 tomorrow to develop this property or down the road?

11 A. No, we -- no, he -- and that's part of our  
12 problem is that we -- you know, we have no idea how the  
13 water is going to be used or if he's going to then  
14 tomorrow decide that he wants to subdivide his land.

15 Q. And in theory, I guess, he could then seek  
16 groundwater applications to replace Co-op's water with  
17 groundwater wells or whatever for his property?

18 A. Right. Exactly.

19 Q. Does it -- you heard the testimony today  
20 about the -- oh, the meeting minutes from March of 2020  
21 where there was a statement about the possibility of 40  
22 to 50 more wells on the future development of One More  
23 Mile's property.

24 Does that concern you?

25 A. That's -- I think that is -- that is a

1 great example of what we're talking about today, is  
2 that perhaps, you know, 14 lots could be created and  
3 we'd have to drill 14 wells, and then -- and then --  
4 then 40 or 50 -- I guess we'd have no way of stopping  
5 that, according to, you know, what I've heard today.

6 And then beyond that, every subdivision,  
7 every platted ground would then have that opportunity,  
8 it appears to me, is the argument.

9 Q. And there -- just to put a little finer  
10 point on this, the -- the meeting on March 11th, 2020,  
11 while there wasn't a formal application to -- from One  
12 More Mile to transfer the shares to Mr. Watson, was the  
13 board inclined to approve of any such a transfer? I  
14 guess what was -- what was the result of that meeting,  
15 in your mind?

16 A. The -- the March meeting?

17 Q. March 11th meeting where the One More Mile  
18 representatives came to the meeting, discussed their  
19 application, and left and the board discussed it. I  
20 guess there seems to be some confusion as far as  
21 whether the board -- what the board was acting upon at  
22 that point or what it was deciding. What was your  
23 opinion?

24 A. Well -- and I think that's been unclear  
25 today, perhaps to a certain degree. There was never an

1 application for transfer of their shares. It was just  
2 we were meeting to talk about our protest and our  
3 protest of the water right.

4 Q. And so --

5 A. And so --

6 Q. -- ultimately as a result of that meeting,  
7 did the board -- what was the direction of the board?  
8 To go forward with this hearing and continue to protest  
9 the water right?

10 A. Well, I think for what the reasons I've  
11 tried to explain is that looking to the future and what  
12 we're requiring of -- what we have required of our  
13 past -- of our shareholders and what we will continue  
14 to require of our shareholders, we decided to pass a  
15 resolution, which we had -- but that was after we were  
16 trying to get clear of what exactly the Froerers  
17 intended and understand their position. And maybe it  
18 was a little awkward at the meeting. I don't know.  
19 But, you know, how it all came out, but...

20 Q. Now, there's been discussion today about  
21 this e-mail from Neddy where she indicated "We have no  
22 control to where he irrigates in our District."

23 Does Neddy have the authority to approve  
24 any transfers of shares, in your mind?

25 A. No, she doesn't.

1 Q. Who approves transfers of shares?

2 A. It's the board.

3 Q. Does Neddy have the authority to withdraw  
4 the protests that had been filed by the Ditch Company?

5 A. No.

6 Q. Or determine whether or not to file a  
7 protest on her own?

8 A. No.

9 Q. The management of the company is the board;  
10 correct?

11 A. That's correct.

12 MR. FARRIS: That's all I have, Mr. Nielsen.  
13 Thanks.

14

15 CROSS-EXAMINATION

16 BY MR. BARKER:

17 Q. Mr. Nielsen, thank you for your patience  
18 today. I'm sure it was exactly how you wanted to spend  
19 your day with the farm situation going on. But a  
20 couple quick questions.

21 The Mossacora property that Mr. Farris  
22 asked you about, that was a situation where the shares  
23 had been transferred to a homeowners' association and  
24 somebody wanted out?

25 A. No. I believe is -- she had bought into

1 it, and she didn't want to go into it. She wanted her  
2 shares. She wanted shares for that property, whatever  
3 they might have been. She wanted her share. But I'm  
4 not 100 percent certain the exact...

5 Q. But the concern was, that you were trying  
6 to deal with there, was to not have to send individual  
7 assessment bills to all the members of that  
8 association?

9 A. Correct. And I think there was also  
10 some -- some question as to a new headgate, things like  
11 that, people wanting their own headgates and we'd have  
12 to create some more, you know, that type of thing. An  
13 inability to share water. There's some issues dealing  
14 with that too.

15 Q. And in -- and in this instance, prior to  
16 One More Mile obtaining the 64 shares, who owned those  
17 64 shares?

18 A. Prior to One Mile I believe it was John  
19 Chandler.

20 Q. Okay.

21 A. And before -- you know, and then the  
22 history before that was the Petersons.

23 Q. Petersons, right. So that water -- those  
24 shares were never transferred to a homeowners'  
25 association or other entity?

1           A.    That is correct. We -- and the reason why  
2 was because it never -- I mean they just -- they just  
3 transferred it in whole and never from one -- from  
4 Petersons to the next, there was never an application  
5 to -- to divvy it up to different individuals.

6           Q.    Okay. Do you understand that the board has  
7 the authority or has exercised the authority to ensure  
8 that before somebody wants to use water at a different  
9 location that they need the board's approval that they  
10 can actually deliver to that location?

11          A.    So if there's been a transfer of shares,  
12 we -- we -- we try to find out if in fact there's --  
13 occasionally shares will be transferred, usually small  
14 amounts, and somebody will want -- and they'll actually  
15 buy some more shares and want to move it down  
16 somebody -- a lateral. And is there really adequate  
17 room for any more water going down that lateral, and  
18 can they use those shares? I'm not sure I've answered  
19 your question exactly, but we look into those types of  
20 things, yes.

21          Q.    Okay. And whether or not this  
22 application -- well, first of all, you heard the  
23 testimony that Mr. Watson could -- he would be -- his  
24 water -- that these 14 shares would be deliverable to  
25 some of his land if that transfer was made to him; is

1     that your understanding? Or isn't that right?

2             A.     We assume so. I don't -- I don't even  
3     know. I don't think that he actually needs any more  
4     water. I think he -- the Watsons, I don't think they  
5     need any more water for their ground with the shares  
6     that they have. That -- I would be surprised if that  
7     were the case. But he -- I think that his -- he likes  
8     to have plenty of shares and the ability to -- they  
9     are -- there is some value there.

10            So I don't think that Mr. -- now, here I'm  
11     just guessing about his situation. But I would be  
12     surprised if he didn't have the -- enough shares to  
13     water all his property.

14            Q.     Okay. But my question, though, was, is  
15     there any reason for you to disagree with the  
16     conclusion that this -- these 14 shares could be  
17     delivered to Watson in the service area of Farmers'  
18     Co-op?

19            A.     I think that's accurate. I don't think --  
20     I -- that yes, I think he would be -- he would be able  
21     to get the water. If he bought the shares, as far as I  
22     know, John Watson would then be able to get the water  
23     to his property.

24            MR. BARKER: You know, I don't have any more  
25     questions. Thank you.



1 THE HEARING OFFICER: Mr. Farris?

2  
3 REDIRECT EXAMINATION

4 BY MR. FARRIS:

5 Q. So on Mr. Watson, you -- does anyone --  
6 well, he's not here, I guess.

7 But you're not aware that he needs more  
8 water? He hasn't come to the Ditch Company asking he  
9 needs more shares because he's got shortage of water?

10 A. I'm not aware of that. Perhaps he's told  
11 Neddy that anytime water shares come up -- I think she  
12 knows that he -- he's wanting -- he would be willing to  
13 buy them. I think he -- he wants to have more shares.  
14 And I don't know exactly --

15 Q. Well, if he doesn't need more water, the  
16 purpose would be for what?

17 MR. BARKER: Objection. Calls for speculation  
18 on the part of the witness about what some other farmer  
19 may or may not need and whatever his plans are for  
20 irrigating his property.

21 Q. (BY MR. FARRIS): Has Mr. Watson -- I'll  
22 rephrase it.

23 Has Mr. Watson come to the board and  
24 indicated he needs more water or more shares because  
25 he's short on shares?

1           A.    I -- he hasn't come to me personally. He's  
2   apparently communicated to somebody, because his name  
3   was known by the secretary anyway.

4           Q.    That he wants more shares?

5           A.    Yes.

6           Q.    But has he communicated anything that he  
7   needs more.

8           A.    Oh, no.

9           MR. BARKER:  Objection.  Calls for speculation.

10          MR. FARRIS:  I asked him has he --

11          MR. BARKER:  He hasn't talked to him.

12          Q.    (BY MR. FARRIS):  Has he communicated to  
13   the board, which you're the president of the board,  
14   that he needs more shares?

15          MR. BARKER:  Objection.  Calls for speculation  
16   about what an irrigator needs, Bryce.  How are we  
17   supposed to know?

18          MR. FARRIS:  If you'll rule on the objection.

19          THE HEARING OFFICER:  I'm going to let Bryce ask  
20   the question.

21          Q.    (BY MR. FARRIS):  Has Mr. Watson come to  
22   the board and indicated that he needs more shares  
23   because he needs more water?

24          A.    No, he has not.

25          Q.    Are you familiar with Mr. Watson's ground

1 within the Farmers' Co-operative Ditch Company service  
2 area?

3 A. Well, here I am, I'm -- Tom would be better  
4 to ask those questions. I -- I'm not familiar exactly  
5 with what Watsons have and where it's at. But I know  
6 they have a lot of ground in the service area. They're  
7 a big shareholder.

8 Q. Okay.

9 A. Large shareholder.

10 Q. That exhibit -- Exhibit 29, which is -- if  
11 you want to pull it out. Let's actually do. If you'd  
12 look at Exhibit 29, which is the agreement with  
13 Mr. Watson.

14 A. Okay. I think I'm there.

15 Q. I think we've heard testimony today that  
16 this hasn't been presented to the Co-op board for  
17 consideration of any kind?

18 A. No, not at all.

19 Q. As you look through it -- or have you  
20 looked through it?

21 A. I've -- I've -- I've read it, but I've  
22 not -- I'm not real strong on it, but...

23 Q. Does it indicate in anywhere any -- does it  
24 indicate where the water is intended to be delivered to  
25 the JC Watson property?

1 A. No, I don't believe it does at all.

2 MR. FARRIS: That's all I have.

3 THE HEARING OFFICER: Mr. Barker?

4

5 RECROSS-EXAMINATION

6 BY MR. BARKER:

7 Q. I don't know. Maybe this is belaboring the  
8 point, but have you ever -- has the board ever denied  
9 transfer of shares because in the opinion of members of  
10 the board the water user doesn't need more water?

11 A. No.

12 MR. BARKER: Okay. No further questions. Thank  
13 you.

14 THE HEARING OFFICER: I --

15 THE WITNESS: Sorry.

16 THE HEARING OFFICER: Just to confirm, you don't  
17 have anything?

18 MR. FARRIS: Yeah, I have nothing.

19 THE HEARING OFFICER: Okay. I've got just  
20 one -- probably just one more question.

21

22 EXAMINATION

23 BY THE HEARING OFFICER:

24 Q. So you didn't -- or actually Tom mentioned  
25 earlier that the board maintains a pool of shares for

1 its own -- just own pool of shares.

2 So if -- if a user wants more shares or  
3 needs more shares, are those shares available to him?

4 A. Well, that -- and I'm -- I'm -- I'm going  
5 to mess this up, too, but a lot of that was never  
6 issued, just stock that was never issued, mostly what I  
7 think what was referred to earlier. There are -- I  
8 think there might be a few shares that were put up to  
9 auction and never -- no one showed up for the auction  
10 or whatever, and it was just absorbed.

11 And I -- I don't have the specifics on how  
12 many shares there are available. But that's -- that's  
13 a small pool. Usually when people want shares, there  
14 are a few people, if they want to buy shares, there's  
15 people out there occasionally that -- that will sell  
16 them that have, for whatever reason, however they got  
17 that, they have more shares than they actually  
18 required. There is a little bit of that.

19 Q. So this pool of shares wouldn't be  
20 available typically --

21 A. Right, it's --

22 Q. -- to a user to irrigate with?

23 A. That's correct.

24 Q. To purchase from the board --

25 A. That's correct.

1 Q. -- or [unintelligible] from him or --

2 A. Correct.

3 Q. -- to others --

4 A. Right.

5 Q. -- [unintelligible]?

6 A. Yeah.

7 Q. Okay. I guess just -- this is kind of a  
8 hypothetical, but again, it kind of helps me understand  
9 sort of how the Department -- or the Co-op views these  
10 shares.

11 If somebody decides that they don't want to  
12 call for delivery of their -- their water under their  
13 shares, they have the right to do that, correct, if  
14 they say "I don't want to farm this year. I'm not  
15 going to call for my water"?

16 A. Well, actually, they -- we would still  
17 assess them, so they'd have to pay for them. And if  
18 they didn't want to use their water that year, yeah,  
19 you don't have to use it. But they would have to --  
20 they would have to pay their assessments. They're  
21 by -- by twice-a-year assessment.

22 Q. Okay. And if a person decides -- and I  
23 know you testified earlier that this is very unlikely,  
24 because I think you said shares are valuable to people.  
25 But if somebody just decided that they want to give up

1     their shares, that they're done, what would be the  
2     process for that? Would that be through a transfer  
3     back to the Co-op or --

4             A.     Well, no one has ever said that they just  
5     want to give up their shares. In a way, I guess they  
6     kind of do when they refuse to pay for them.

7             Q.     Uh-huh.

8             A.     But if that's the case, then they're put up  
9     for auction.

10            Q.     Okay. So probably that's the way it would  
11    happen? Somebody would let you know that they're  
12    surrendering their shares and you guys would --

13            A.     Well, they would just ignore our letters  
14    and our certified letters and our postings in the  
15    paper.

16            THE HEARING OFFICER: Okay. All right. That's  
17    all -- that's all that I have for you, sir.

18                    If you guys don't have any follow-ups, then  
19    I think you're excused.

20            THE WITNESS: Okay. Thank you.

21            MR. FARRIS: I don't have any more witnesses.

22            MR. BARKER: No redirect.

23            THE HEARING OFFICER: Okay. So let's see.  
24    Where does that leave us?

25                    All right. And so I think -- I think I

1 would like to just quickly go through the exhibits and  
2 clarify and make sure we're all on the same page as far  
3 as what exhibits were offered and accepted, if that's  
4 all right. And then after that, if there's no other --  
5 no other business, we'll close the record, and we can  
6 go home.

7                   So for the applicant, I have Exhibit  
8 Nos. 1, 2, 3, 7, 8, 9, 10, 11, 13, 14, 16 -- pages out  
9 of order here -- 19, 24, 26, and 28 and 29.

10           MR. BARKER: And we did 5 and 6, but those are  
11 officially noticed, so they were not offered; right?

12           THE HEARING OFFICER: That's right.

13           MR. BARKER: Okay.

14           THE HEARING OFFICER: So 5 and 6 are officially  
15 noticed, and the application is part of the official  
16 notice of the application.

17           MR. BARKER: And that would be Exhibit 4?

18           THE HEARING OFFICER: Exhibit 4, yeah.

19           MR. BARKER: Okay.

20           MR. FARRIS: Did I hear you skip 27?

21           THE HEARING OFFICER: I did skip 27, because it  
22 is a duplicate of 103.

23           MR. FARRIS: Oh, okay. But 103 is in.

24           THE HEARING OFFICER: 103 is in.

25                   So for the protestant, then, I've got 103,



1 105, 107, 109, 112, 113, 114, 115, 116, and 121.

2 MR. BARKER: That's what I have.

3 THE HEARING OFFICER: Okay.

4 MR. FARRIS: So then I did not move for the  
5 admission of Exhibit 117, which was the e-mail chain.  
6 It should be part of the official notice record of that  
7 application.

8 MR. BARKER: It's already in as Exhibit 11.

9 MR. FARRIS: No, 117 was the [unintelligible].

10 MR. BARKER: Oh, oh, oh. Sorry.

11 THE HEARING OFFICER: Again, did I -- do you  
12 have 117 down?

13 UNIDENTIFIED SPEAKER: No.

14 THE HEARING OFFICER: You don't? Okay.

15 MR. BARKER: So I'd move for that.

16 THE HEARING OFFICER: Would you like to offer  
17 it?

18 MR. FARRIS: Yeah.

19 THE HEARING OFFICER: Mr. Barker?

20 MR. BARKER: Objection as to relevance, not as  
21 to authenticity or admissibility.

22 THE HEARING OFFICER: Okay. I'll allow it.  
23 Your objection's noted.

24 (Exhibit 117 admitted.)

25 THE HEARING OFFICER: All right. If there are

1 no other matters, I will close the record and conclude  
2 the hearing.

3 MR. BARKER: So before you do that, question:  
4 Do you can expect a post-trial memorandum of any kind?

5 THE HEARING OFFICER: I --

6 MR. BARKER: Let me rephrase that.

7 Would it be helpful if you had one, or not?

8 THE HEARING OFFICER: I don't think so. I  
9 got -- I think I got a pretty good idea of -- of what's  
10 going on here. But I guess I'll leave it up to you  
11 guys. If you guys want to prepare one, I'll -- I'll  
12 take it, but I...

13 MR. FARRIS: I would prefer not. I think you  
14 got it.

15 MR. BARKER: Okay with me.

16 MR. FARRIS: I think I'm fine with...

17 THE HEARING OFFICER: Okay. All right. So this  
18 hearing is now concluded and the administrative record  
19 is closed.

20 I hope to issue a preliminary order in this  
21 matter within the coming couple of months, or in due  
22 course, as I've heard Mr. Barker tell me.

23 MR. BARKER: I thought you were going to say  
24 days, a couple of days, the next couple of days.

25 UNIDENTIFIED SPEAKER: A couple of days

1 [unintelligible].

2 THE HEARING OFFICER: And of course a copy of  
3 the preliminary order will be mailed to all of the  
4 parties.

5 So now I'll close the record.

6 MR. BARKER: Okay.

7 (End of audio file.)

8 -oOo-

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1 REPORTER'S CERTIFICATE

2  
3 I, JEFF LaMAR, CSR No. 640, Certified Shorthand  
4 Reporter, certify:

5 That the audio recording of the proceedings were  
6 transcribed by me or under my direction.

7 That the foregoing is a true and correct  
8 transcription of all testimony given, to the best of my  
9 ability.

10 I further certify that I am not a relative or  
11 employee of any attorney or party, nor am I financially  
12 interested in the action.

13 IN WITNESS WHEREOF, I set my hand and seal this  
14 3rd day of December, 2021.

15  
16  
17  
18  
19  
20  


21 JEFF LaMAR, CSR NO. 640

22 Notary Public

23 Post Office Box 2636

24 Boise, Idaho 83701-2636

25 My commission expires December 30, 2023

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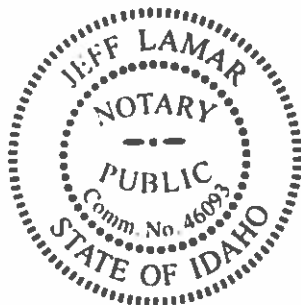
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A handwritten signature of Jeff Lamar in black ink, written over a horizontal line.

JEFF LaMAR, CSR NO. 640  
Notary Public  
Post Office Box 2636  
Boise, Idaho 83701-2636

My commission expires December 30, 2023