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*Attorneys for South Valley Ground Water District    Attorneys for Galena Ground Water District*

**BEFORE THE DEPARTMENT OF WATER RESOURCES  
OF THE STATE OF IDAHO**

IN THE MATTER OF THE BIG WOOD GROUND  
WATER MANAGEMENT AREA

**SOUTH VALLEY GROUND  
WATER DISTRICT AND  
GALENA GROUND WATER  
DISTRICT’S POST-HEARING  
BRIEF**

\_\_\_\_\_  
IN THE MATTER OF APPLICATIONS  
FOR PERMITS FOR THE DIVERSION  
AND USE OF SURFACE AND  
GROUND WATER WITHIN THE  
SNAKE RIVER BASIN

COMES NOW, South Valley Ground Water District (South Valley) and Galena Ground Water District (Galena), by and through their counsel of record, and hereby submits their post-hearing brief in response to the Director’s instructions and request at the close of the administrative hearing held October 16-18, 2023.

The Director held an administrative hearing on the Big Wood and Snake River Consolidated Moratorium (“Hearing”) on October 16-18, 2023. Certain parties filed objections to the Moratorium Orders and requests for hearing. Those parties raised statements of issues to be addressed. *Order Consolidating Proceedings for Hearing*. The Hearing was divided into two phases—phase one addressed the objections by certain municipalities and community water systems to the requirement in the Orders that those municipal and community rights be deemed fully consumptive for purposes of the moratorium,

because the municipal right holders have the ability to fully consume their municipal water rights. And this right to fully consume the municipal right exists outside the four corners of the water right. The second phase addressed the assertion by certain Wood River Valley municipalities that ground water pumping above Glendale Bridge in the Big Wood had no significant hydrologic effect on flows in Silver Creek.

The *2022 Moratorium Order* stated:

“Hydrogeologic analysis and modeling since implementation of the Management Policy confirm significant interaction between surface water and ground water in the BWRGWMA. Pumping ground water from within the BWRGWMA affects surface water flows in the Big Wood River drainage upstream from Magic Reservoir and in Silver Creek, a key tributary of the Little Wood River. Lower ground water levels would result in less aquifer discharge to surface water. New development of consumptive ground water use would reduce the quantity of water available to fill senior surface water rights during times when administration by priority is necessary.” *2022 Moratorium Order* at 3.

The City of Bellevue objected to the Director’s language in the *2022 Moratorium Order*, and requested that specific changes be made, including the following:

“The second sentence should be modified to state that “Pumping ground water from within the BWRGWMA can affect surface water flows ....” The third sentence should be modified to read “Lower ground water levels could result in less aquifer discharge ....” Finally, the fourth sentence should be modified to state “New development of consumptive ground water use could reduce the quantity ....” *Motion for Clarification and Reconsideration and Request for Hearing* at 3.

The Director responded to these objections by identifying Issue 2 for the Hearing as, “[w]hether all pumping in the BWGWMA has an impact on all surface water sources upstream from Magic Reservoir, including Silver Creek.” *Order Consolidating Proceedings for Hearing* at 2. The Cities then requested that the following language be added to the Order to address the connection to Silver Creek:

“Silver Creek is materially impacted only by groundwater pumping within the Bellevue Triangle south of the Glendale Bridge. Absent offsets or mitigation, groundwater pumping from the alluvial aquifer of the Big Wood River and its tributaries north of the Glendale Bridge materially impacts the flow of the Big Wood River, and has no material impact on the flow of Silver Creek.” *Sullivan Report* at 4. (Ex. 314).

In this post-hearing memorandum, South Valley and Galena address only the second issue. With respect to the first issue, South Valley and Galena rely on, and incorporate by reference herein, the Surface Water Coalition’s post-hearing memorandum.

## INTRODUCTION

In June of 1991, the Director of the Idaho Department of Water Resources (“IDWR”) issued an order designating the Big Wood River Ground Water Management Area (“BWRGWMA”)—an area extending upstream from Magic Reservoir and including the Camas Prairie and Silver Creek. *Order Designating Big Wood River Ground Water Management Area* (“1991 Moratorium Order”). (Ex. 200). The *1991 Moratorium Order* established that the surface and ground waters of the Big Wood River Drainage are interconnected. *1991 Moratorium Order* at 1. (Ex. 200). Concurrently, IDWR enacted a management policy for the BWRGWMA that allowed approval of water right permit applications for consumptive use, provided that the applicant could show that there was no injury or that the applicant demonstrated mitigation for the new proposed water right. *Management Plan for the Big Wood River Ground Water Management Area* (“1991 Management Policy”) at 3. (Ex. 200). The policy also allowed for approval of water right permit applications for non-consumptive, municipal, stockwater, or domestic uses. *1991 Management Policy* at 3. (Ex. 200).

In March 2022, the Director adopted a ground water management plan for the Big Wood basin at the request of water users in the Big Wood basin (including the objector municipalities here) that is separate from the *1991 Management Policy* (Ex. 200). *2022 Big Wood River Ground Water Management Plan*. (“2022 Management Plan”). (Ex. 245). The *2022 Management Plan* (Ex. 245) also included an agreed-upon provision stating that the parties would petition the Director to establish a moratorium for the BWRGWMA. *2022 Management Plan* at 12 (Ex. 245). That petition was filed, and the Director thereafter issued the *2022 Moratorium Order*.

The *2022 Management Plan* (Ex. 245) is designed to control and reduce effects on surface water rights from ground water pumping within the BWRGWMA. *Zach Hill-Technical Memorandum—Summary of Ground Water Use Data*. (Ex. 206). The main goal of this Management Plan is “to manage the effects of ground water withdrawals on the aquifers from which the withdrawals are made and any other hydraulically connected sources of water.” IDAHO CODE § 42-233b; (Ex. 245). The *2022*

*Management Plan* (Ex. 245) concluded that, “hydrogeologic analysis and modeling since implementation of the initial management policy confirm significant interaction between surface water and ground water in the BWRGWMA.” *2022 Management Plan* at 3. (Ex. 245). The Director also noted that, “development of consumptive ground water use would reduce the quantity of water available to fill senior surface water rights during times when administration by priority is necessary.” *2022 Management Plan* at 3. (Ex. 245).

South Valley and Galena both have immediate and direct interests in the Order because their members hold ground water rights that are all located within the BWRGWMA, which is impacted by the *2022 Management Plan*. (Ex. 245). South Valley and Galena intervened and participated in the Hearing before the Director.

**I. All groundwater pumping within the BWRGWMA above Magic has an impact on flows in the Big Wood and on Silver Creek.**

Per the *Order Consolidating Proceedings for Hearing*, the second issue (“Issue 2”) for the Hearing was defined as, “[w]hether all pumping in the BWRGWMA has an impact on all surface water sources upstream from Magic Reservoir including Silver Creek.” *Order Consolidating Proceedings for Hearing* at 2. The answer to this question is an unqualified “yes.”

**II. The testimony on Issue 2**

**Greg Sullivan, P.E., Spronk Water Engineers, Expert for Cities**

Mr. Sullivan proposed that the following language be included in the Moratorium Order:

“Silver Creek is materially impacted only by groundwater pumping within the Bellevue Triangle south of the Glendale Bridge. Absent offsets or mitigation, groundwater pumping from the alluvial aquifer of the Big Wood River and its tributaries north of the Glendale Bridge materially impacts the flow of the Big Wood River, and has no material impact on the flow of Silver Creek.” *Sullivan Report* at 5. (Ex. 314).

He argued that there were no material impacts from pumping on the Big Wood and its tributaries above Glendale Bridge on the flow in Silver Creek. *Transcript of Hearing* at 575. (Ex. 314). Mr. Sullivan’s testimony was based entirely on his reading of Ms. Sukow’s report (Ex. 202) from the 2021 Contested Case Hearing—he did no modeling or analysis of his own to determine the full extent of the impacts to Silver Creek. *Transcript of Hearing* at 558. Rather, he relied on the Department’s decision to

limit the scope of the 2021 Contested Case to in-season pumping in the Triangle area for the remainder of the 2021 irrigation season. Mr. Sullivan testified that Ms. Sukow's report was predicated on the impacts of one year of pumping, when in fact, her report involved a three-month impact analysis. *Transcript of Hearing* at 576 and at 599. He offered an opinion that there would be no significant impact to Silver Creek if mitigation water is provided to offset the impacts to the Big Wood. *Transcript of Hearing* at 555 and at 573. But this statement assumed that there were no direct impacts to Silver Creek from pumping above Glendale Bridge. Mr. Sullivan admitted that ground water pumping above Glendale Bridge affects the flows in the Big Wood and that there is a substantial hydrological connection between the Big Wood and Silver Creek, as a general matter. *Transcript of Hearing* at 589 and at 552. Mr. Sullivan was asked how full mitigation would occur and replied that the Cities "haven't gotten that far." *Transcript of Hearing* at 573. In other words, even he conceded that there is a hydrologic impact to the Big Wood that would in turn affect Silver Creek from upstream pumping, and that impact would have to be mitigated.

**Jennifer Sukow, Hydrology Section Modeler, IDWR, Expert for IDWR**

Ms. Sukow described her modeling runs and flow models that were based on the USGS Big Wood ground water model that she prepared for the 2021 Contested Case Hearing. *Predicted hydrologic response in Silver Creek and the Little Wood River to curtailment of ground water use in 2021*. (Ex. 202). She disagreed with Mr. Sullivan's interpretation of her 2021 report on impacts to Silver Creek, explaining that pumping on the Big Wood impacts Silver Creek and pumping upstream from Magic Reservoir impacts the Big Wood. She testified that, over one year, the direct impact of pumping from above the Glendale Bridge to Silver Creek was 8% of the pumped volume while 92% were impacts to the Big Wood. This 8% direct impact on Silver Creek was an average of the impacts from all the areas above Glendale Bridge with some areas having greater impacts than others. She clarified that her testimony in the 2021 Contested Case Hearing was predicated on a three-month model run, not a one-year time period, and concluded that, in her view, the model demonstrates that there are significant direct impacts to Silver Creek from pumping above Glendale Bridge over that longer time frame. She also testified that there were indirect impacts to Silver Creek from reduced flows into the Big Wood leaving

reduced recharge and increased pumping in the Bellevue Triangle that had not been quantified. Ms. Sukow agreed with Sean Vincent’s testimony in the 2021 Contested Case that there is a strong correlation between Big Wood flows at Hailey and flow in Silver Creek. (Ex. 203).

**Zach Hill, Ecosystem Sciences, Expert for Galena**

Mr. Hill explained the tables of ground water pumping analysis that he provided for the Hearing. His data was collected from ground water use measurements by flow meters installed at each well pump location. *Technical Memorandum—Summary of Ground Water Use Data*. (Ex. 206). The data is monitored and reported annually as a total volume to IDWR and is then verified and recorded in the Water Measurement Information System (“WMIS”). *Technical Memorandum—Summary of Ground Water Use Data*. (Ex. 206). Mr. Hill reviewed the WMIS data provided by IDWR to determine the Water District 37 ground water use volumes. *Technical Memorandum—Summary of Ground Water Use Data*. (Ex. 206).

“Baseline ground water use data was developed from a 5-year average of historic ground water use for entities in the BWRGWMA. The concept of the baseline average was developed by the BWRGWMA Advisory Committee and utilizes the water years of 2015, 2016, 2018, 2019, and 2020 from which the 5-year baseline average is calculated. The baseline volumes of ground water use were refined through discussions and reviews with IDWR and ultimately agreed to at the March 28, 2023, BWRGWMA Advisory Committee meeting.” *Technical Memorandum—Summary of Ground Water Use Data*. (Ex. 206).

Mr. Hill’s tables showed that municipal pumping in the Big Wood above Glendale Bridge constituted almost one third of the total pumping in the basin in the year after the *2022 Management Plan* (Ex. 245) went into effect.

**Dr. Kendra Kaiser, Research Assistant Professor, Expert for South Valley**

Dr. Kaiser has a B.S. in Soil and Water Science & Environmental Biology, and a Ph.D. in Watershed Hydrology & Biogeochemistry. She works primarily in co-production of research with water resource stewards and managers and uses hydrologic and ecological knowledge to select appropriate statistical, physical, and machine learning models to understand and predict stream flows. She has worked extensively in the Big Wood drainage for the Wood River Collaborative. She collected all available data in the Big Wood basin in order to create the statistical models that formed the basis for her expert report.

*Technical Memorandum: Statistical Modeling of Irrigation Season Streamflow.* (Ex. 205). She testified that all data that she used had to be available in real-time—including SNOTEL data, AgriMet data, United States Geological Survey data, and SNODAS data. Dr. Kaiser described the statistical flow models that she compiled for the Wood River Collaborative that predicted the delayed impacts of snow melt flowing down through the Wood River Valley and eventually reaching Silver Creek. She described the process as often taking at least six months—the “lag component.” Her models show the impacts to Silver Creek from pumping. *Technical Memorandum: Statistical Modeling of Irrigation Season Streamflow.* (Ex. 205). The statistical models cover the time frame from 2004 to the present and are confirmed by observations. *Technical Memorandum: Statistical Modeling of Irrigation Season Streamflow.* (Ex. 205). She testified that Mr. Sullivan’s conclusions failed to capture that full scope of impact of the effects of pumping over time.

**Erick Powell, Project Manager, Brockway Engineering, Expert for Galena**

Mr. Powell testified that terminology used in the *Sullivan Report* (Ex. 314)—“material hydraulic impact”—is not an accepted industry term and therefore he did not agree with Mr. Sullivan’s contention that there would be no material hydraulic impact to Silver Creek from pumping on the Big Wood above the Glendale Bridge. Mr. Powell explained his own analysis, including an independent model run from the Wood River ground water model that he conducted for this hearing, that showed a direct in-season impact from a randomly selected City of Bellevue well. *Technical Memo: Joint Expert Witness Report.* (Ex. 204). He stated that it is appropriate and necessary to analyze a longer time period for impacts from pumping than the three-month time period used by Mr. Sullivan. Figure 2 of Mr. Powell’s expert report simulated the impact of the City of Bellevue well and the response of pumping on Silver Creek. *Technical Memo: Joint Expert Witness Report.* (Ex. 204). The model predicted that ground water pumping will impact Silver Creek, and the impacts occur over time. *Technical Memo: Joint Expert Witness Report.* (Ex. 204). He noted that, while it is difficult to quantify impacts from pumping, that should not relieve the need to mitigate impacts. Mr. Powell testified that he was unaware of any mitigation measures undertaken by the Cities. Finally, he explained that the *2022 Management Plan* (Ex. 245) should not be amended to

Mr. Sullivan’s mitigation measure proposal because the approach is too simplistic, Glendale Bridge is not a cut-off line, and the “material impact” analysis by Mr. Sullivan is still unclear as to its meaning.

**Dave Shaw, ERO Resources, Expert for South Valley**

Mr. Shaw testified that there are significant impacts to Silver Creek resulting from depletions to the Big Wood, because those depletions to the Big Wood River would reduce diversions from the Big Wood to surface water canals in the Bellevue Triangle. *Transcript of Hearing* at 603. That resulting reduction in diversions would decrease seepage to the aquifer and increase the amount of time when supplemental ground water rights would be employed by surface water users. He explained that 90% of the water users in the Triangle have both surface water and supplemental wells. *Transcript of Hearing* at 598. Reduction in seepage losses and increased pumping from the supplemental wells both would impact Silver Creek. *Transcript of Hearing* at 601.

**III. The Cities argue that mitigation is sufficient to redress any potential injuries to Silver Creek.**

The Cities claim that locations upstream from Magic Reservoir and Silver Creek will not be “materially impacted” by ground water pumping on the Big Wood River. Mr. Sullivan, the Cities’ expert witness, testified that he believed there would be a finding of “no impact,” but if there were any impacts, they could be fully mitigated by mitigating the impacts of pumping above Glendale Bridge directly on the Big Wood, thereby preventing any injury to flows in Silver Creek. *Transcript of Hearing* at 588. As noted above, this argument does not demonstrate that there is no material connection between pumping above Glendale Bridge and flows in Silver Creek, but essentially admits that there is a connection between pumping above Glendale Bridge and flows in Silver Creek that must be mitigated.

**IV. South Valley, Galena, and IDWR expert testimony conclusively demonstrates that impacts will occur on Silver Creek and the Big Wood from pumping above Glendale Bridge.**

Mr. Shaw addressed the impacts of ground water pumping on the Big Wood River and concluded that impacts would definitely occur upstream of Magic Reservoir and on Silver Creek. *Transcript of Hearing* at 603. Mr. Shaw explained the complex interrelationship between upstream pumping, flows in the Big Wood, diversions into the canals in the Triangle and increased supplemental pumping, all of which

would impact Silver Creek. Ultimately, the burden of trying to calculate mitigation and monitor the process would fall on the Director. *Transcript of Hearing* at 606. The burden of determining the amount of mitigation required would be triggered by new applications. *Transcript of Hearing* at 606. Ms. Sukow and Dr. Kaiser both noted the strong correlation between Big Wood flows in Hailey and Silver Creek, using different analytical tools. Mr. Powell’s model run showed that, using the IDWR/USGS Big Wood Model that the Department relies upon in the basin, there is a direct hydrologic connection between the City of Bellevue’s wells and Silver Creek. Further, he explained that the *Sullivan Report* (Ex. 314) is too simplistic—much more data is necessary to understand the full extent of impacts than what Mr. Sullivan utilized.

## ARGUMENT

The data provided by IDWR, South Valley, and Galena is abundantly clear—pumping upstream of Glendale Bridge shows both direct and indirect negative effects on Silver Creek from ground water pumping on the Big Wood River. For those reasons, and as explained below, the Director should not accept the Cities’ invitation to modify the order.

**I. The priority doctrine of Idaho establishes that junior appropriators must not injure the rights of senior users and bear the burden of proof to show that no such injury has, or will, occur.**

The Cities, as junior water users, failed to meet the required burden of proof. “First in time, is first in right” is a foundational principle of the prior appropriation doctrine in Idaho. *In the Matter of Distribution of Water to Various Water Rts. Held By or For Ben of A&B Irrigation Dist.*, 155 Idaho 640, 315 P.3d 828, 838 (2013). Once an initial determination is made that material injury is occurring, or will occur, the junior user bears the burden of proving that the call would be futile or to challenge that determination. *American Falls Reservoir District. No. 2 v. IDWR*, 143 Idaho 862, 878 (2007). Junior appropriators who claim their diversions will not injure senior appropriators must establish that claim by “clear and convincing evidence.” *A&B Irr. Dist. v. IDWR*, 153 Idaho 500, 241 (2012). While this Moratorium proceeding does not involve a delivery call, it is still based on the fundamentals of Idaho water law. By the proposed language Mr. Sullivan proposes to add to the Moratorium Order, the Cities

seek to circumvent any possible claim that there ever could be a material injury to downstream users from pumping above Glendale Bridge, no matter how large the new development—a fantastical argument.

As stated in the *2022 Management Plan* (Ex. 245), “New development of consumptive ground water use would reduce the quantity of water available to fill senior surface water rights during times when administration by priority is necessary.” That initial determination in the *2022 Management Plan* (Ex. 245) established that material injury was likely to occur if a broader moratorium was not promulgated, thereby placing the burden of proof on the junior appropriators—the Cities.

The Cities failed to meet the necessary burden of proof—that of clear and convincing—because they offered no evidence to support that notion and only an argument that was founded on data analysis by the Department that was conducted for an entirely different purpose, i.e., the 2021 mid-season curtailment scenario. Mr. Sullivan’s report claimed that “Based on the proximity of the ground water wells of Bellevue and Hailey to the Big Wood River, it is logical and reasonable that pumping of these wells would hydraulically impact the flow of the Big Wood River and not the flow of Silver Creek.” *Sullivan Report*. (Ex. 314). However, Mr. Sullivan’s conclusion was based on just three months of data, none of which he personally collected. An abundance of other data has been produced by IDWR, South Valley, and Galena explaining the interconnectivity of ground water pumping within the BWRGWMA and impacts to Silver Creek. It is well-documented that impacts from pumping within the BWRGWMA can occur in Silver Creek—a fact supported by IDWR, and the reports and testimony from South Valley and Galena’s experts. Mr. Sullivan’s report based on IDWR’s data over a three-month period hardly meets the requisite clear and convincing standard to be satisfied by junior water right holders. *Sullivan Report*. (Ex. 314).

Contrary to the scant evidence presented by Cities, the interconnectivity of ground water pumping on the Big Wood and the resulting impacts to upstream uses and Silver Creek, was identified when the original *1991 Moratorium Order* (Ex. 200) was promulgated. With modern data techniques now available, evidence presented by the experts at the Hearing further enforces that conclusion. Dr. Kaiser testified that, “connection between Big Wood River streamflow and Silver Creek occurs through surface

water losses from the stream channel into ground water.” *Kaiser Memo* at 2. (Ex. 205). She further noted that pumping to the north of the Glendale Bridge would have a delayed response time in Silver Creek that would occur outside of the time frame Sullivan relied on. *Kaiser Memo* at 2. (Ex. 205). Mr. Sullivan erroneously concluded that pumping north of Glendale Bridge results in “insignificant hydraulic impacts on the flow of Silver Creek.” *Sullivan Memo* at 4. (Ex. 314). Based upon Ms. Sukow’s 2021 expert report, as well as her own statistical modeling, Dr. Kaiser determined that the changes to the *Moratorium Order* (Ex. 300) proposed by Sullivan are not appropriate as written, due to the reality that impacts to Silver Creek that originate from pumping north of Glendale Bridge take longer than the three-month modeling period Mr. Sullivan utilized. The Cities failed to meet their necessary burden due to their inability to present clear and convincing evidence showing that there would not be an impact on Silver Creek, in the face of a plethora of evidence that impacts will occur.

**II. The 2022 Management Plan language should not be modified because it is appropriately designed to protect against potential injury to senior surface and ground water rights.**

The *1991 Management Policy* established that “most consumptive use applications will be denied unless the applicants can demonstrate that there will be no injury or can provide acceptable mitigation to prior rights.” *1991 Management Policy*. (Ex. 200). The *1991 Moratorium Order* stated that,

“surface and ground waters of the Big Wood River drainage are interconnected. Diversion of ground water from wells can deplete the surface water flow in streams and rivers. New ground water uses can also deplete available supplies for other users and affect basin underflow which presently accumulates in Magic Reservoir.” *1991 Moratorium Order* at 1. (Ex. 200).

Further, “injury could occur to prior surface and ground water rights, including the storage right in Magic Reservoir, if the flows of streams, rivers, and ground water underflow in the Big Wood River Basin are intercepted by junior priority ground water diversions.” *1991 Moratorium Order* at 1. (Ex. 200). Since 1991, conditions have not substantially changed, and a moratorium remains necessary. The *2022 Management Order* (Ex. 245) describes water rights developed prior to the *1991 Management Policy* (Ex. 200) as exacerbating short-term water level declines. The *2022 Management Plan* (Ex. 245) goes on to explain that, if allowed to resume, new development of consumptive ground water use will likely cause

long-term ground water declines, resulting in less recovery during wet years, and even lower ground water levels in dry years.

The *2022 Management Plan* (Ex. 245) concludes that analysis and modeling done since implementation of the *1991 Management Policy* (Ex. 200) confirms significant interaction between surface and ground water in the BWRGWMA, and pumping of ground water from within the BWRGWMA affects surface water flows in the Big Wood River drainage upstream from Magic Reservoir and Silver Creek. Lower ground water levels lead to less aquifer discharge to surface water, therefore, any new development on consumptive ground water reduces the quantity of water available to fulfill senior surface water rights. *2022 Moratorium Order* (Ex. 245). The *1991 Moratorium Order* (Ex. 200) was promulgated for a reason—the basis of which has not faded but has instead worsened.

IDAHO CODE § 42-1805(7) authorizes the Director to suspend the issuance or further action on applications to appropriate water as necessary to protect existing water rights. Further, Rule 55 of the Department's Water Appropriation Rules (IDAPA 37.03.08) states that the Director may establish moratoriums, as necessary, to protect existing water rights. IDAHO CODE §§ 42-101, -103, -226 declare all surface water and all ground water within the state of Idaho to be the property of the state, whose duty it is to supervise the appropriation and allotment of the water to those diverting the same for beneficial use. The Director, acting on behalf of the state of Idaho, has the statutory authority to control the appropriation and use of all surface and ground waters within the state in accordance with, but not limited to, IDAHO CODE §§ 42-101, 42-103, 42-202(1), 42-220, 42-226, 42-237a.g., 42351, and 42-602. IDAHO CODE § 42-229 prescribes “the application permit and license procedure” as the method of appropriating ground water. IDAHO CODE § 42-1805 grants the Director limited authority to prohibit appropriation of water. The Director is only authorized to “suspend the issuance or further action on permits or applications . . . .” Idaho Code § 42-1805.

IDAPA Rule 37.03.08.055 (Water Appropriation Rule 55) states that the Director may establish moratoriums, as necessary, to protect existing water rights. The Cities do not argue that the Moratorium Order is not necessary to protect existing rights. Rather they argue that the Director either exceeded his

authority or abused his discretion in not excluding certain future water users or applicants from the Moratorium on the grounds that over a three-month period their future pumping wouldn't affect a small portion of the Moratorium area. That claim, as shown by the hearing testimony, is simply unsupported.

The Director is required to conduct oversight and management of water rights in Idaho in accordance with “first in time, first in right” and ensure that existing water rights are protected. The Director is statutorily responsible for ensuring that beneficial use is being made of the surface and ground water in the state of Idaho. Within the realm of those duties is the need to issue Moratoriums, as necessary. Therefore, under Idaho law, the Director has the authority to establish a Moratorium that protects both the flows in Silver Creek and the Silver Creek users, but also to protect surface water users in the Big Wood, including the Triangle, as well as South Valley and Galena's existing senior ground water rights from any future junior applications from above Glendale Bridge.

The 2022 *Moratorium Order* (Ex. 300) was required because of impacts on senior water use and created under the established principles of Idaho water law—that of first in time, first in right—and is intended to ensure that senior water rights are protected. Therefore, the language in the *Moratorium Order* should not be changed, as the Cities request, to find no impact on the flow of Silver Creek. The original intent of the 1991 *Moratorium Order* (Ex. 200) remains valid, and the Cities were unable to present proof to the contrary.

### **III. The Director has determined that senior water users would be affected by future applications.**

In determining that pumping within the BWRGWMA impacts Silver Creek, thereby necessitating a moratorium, and in adopting the updated management plan, the Director acted within his discretion. “Somewhere between the absolute right to use a decreed water right and an obligation not to waste it and to protect the public's interest in this valuable commodity, lies an area for the exercise of discretion by the Director.” *Clear Springs Foods, Inc. v. Spackman*, 150 Idaho 790, 819 (2011) quoting *American Falls Reservoir Dist. No. 2 v. Idaho Dept. of Water Resources*, 143 Idaho 862 (2007). Idaho Code empowers the Director to take certain actions “in effectuation of the policy of this state to conserve its groundwater

resources.” IDAHO CODE § 42-237a. One of those actions is “to supervise and control the exercise and administration of all rights to the use of groundwater.” IDAHO CODE § 42-237a. While not absolute, the Director has discretion to balance the many considerations necessary when issuing a moratorium. The Cities have argued that there is not enough impact from pumping on the Big Wood for there to be harm to Silver Creek. In doing so, they hope to shift the burden from future pumping to other water users, including South Valley and Galena. However, the evidence is undisputed that, over a period of time exceeding the three-month model run from the 2021 in-season curtailment order, there is at least an 8% direct effect on Silver Creek from pumping on the Big Wood above Glendale Bridge. Mitigation is exactly what the *2022 Moratorium Order* requires. Under the established discretion of the Director, the *2022 Moratorium Order* (Ex. 300) is a proper exercise of discretion and exempting the Cities from mitigating impacts to Silver Creek is simply not justifiable.

### CONCLUSION

The Cities did not carry the burden necessary to show that negative impacts will not occur to flows in the Big Wood and Silver Creek due to future ground water pumping on the Big Wood River above Glendale Bridge. Their claim based on a truncated three-month model run is not sufficient to support the broad-brush exemption from the Moratorium Order that they request. South Valley and Galena respectfully ask the Director to approve the Moratorium Order as written and reject the proposed amendment offered by the Cities.

DATED this 17<sup>th</sup> day of November, 2023.

**MARTEN LAW LLP**

/s/ Albert P. Barker  
Albert P. Barker

*Attorney for South Valley Ground Water District*

**LAWSON LASKI CLARK, PLLC**

/s/ Heather E. O’Leary  
Heather E. O’Leary

*Attorney for Galena Ground Water District*

**CERTIFICATE OF SERVICE**

I HEREBY CERTIFY that on this 17<sup>th</sup> day of November, 2023, I caused to be served a true and correct copy of the foregoing **SOUTH VALLEY AND GALENA’S POST-HEARING BRIEF** by the method indicated below, and addressed to each of the following:

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/s/ Abigail R. Bitzenburg  
Abigail R. Bitzenburg

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BEFORE THE DEPARTMENT OF WATER RESOURCES  
OF THE STATE OF IDAHO

IN THE MATTER OF BIG WOOD RIVER )  
GROUND WATER MANAGEMENT AREA )  
\_\_\_\_\_ )

IN THE MATTER OF APPLICATIONS FOR )  
PERMIT FOR THE DIVERSION AND USE )  
OF SURFACE AND GROUND WATER WITHIN)

VOLUME II

THE SNAKE RIVER BASIN ) (Pages 315-615)  
\_\_\_\_\_ )

TRANSCRIPT OF HEARING

BEFORE

HEARING OFFICER: MAT WEAVER

Date: October 17, 2023; 9:00 a.m.

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

REPORTED BY:

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

Notary Public

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1 THE HEARING OFFICER: So good morning. This is  
2 a reminder, my name's Mat Weaver. I'm the Hearing  
3 Officer in this matter. We're meeting today on  
4 October 17th for the second day of a consolidated  
5 hearing scheduled in response of petitions for hearing  
6 filed in -- I'm sorry, filed in response to the  
7 Department's issuance of its order establishing  
8 moratorium for the ground -- moratorium for the Big  
9 Wood River Groundwater Management Area and its order on  
10 the Amended Snake River Basin Moratorium Order.  
11 Looking back on my notes, I believe we  
12 concluded all direct and cross-examination of Terry  
13 Scanlan. So yesterday we got through three experts:  
14 Greg Sullivan, Terry Scanlan, Chuck Brockway.  
15 And so today I think we're up with either  
16 Dave Colvin or Dave Shaw.  
17 Is that the case? All right.  
18 Who would you like to call first,  
19 Mr. Thompson?  
20 MR. THOMPSON: Dave Shaw.  
21 THE HEARING OFFICER: All right. Come on up.  
22 Morning, Dave.  
23 DAVE SHAW: Morning.  
24 ///  
25 ///

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1 DAVID SHAW,  
2 having been called as a witness by the Surface Water  
3 Coalition and duly sworn, testified as follows:  
4  
5 THE HEARING OFFICER: Please have a seat.  
6 State your name and address for the record.  
7 THE WITNESS: My name is David Shaw. 802 South  
8 Plaza --  
9 SARAH TSCHOHL: David, will you hit the button.  
10 There you go.  
11 MR. BAXTER: And pull it closer to you, too, if  
12 you don't mind. Thank you.  
13 THE WITNESS: Dave Shaw. 802 South Plaza Road  
14 in Emmett, Idaho.  
15  
16 DIRECT EXAMINATION  
17 BY MR. THOMPSON:  
18 Q. Morning, Mr. Shaw.  
19 Can you please describe where you currently  
20 work.  
21 A. I currently work for ERO Resources. It's a  
22 natural resource consulting firm. Home office is in  
23 Denver. We've had an Idaho office since 1996, I  
24 believe.  
25 Q. And I'm sorry, I think I'll have you grab

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1 our exhibit binder back there. It should be labeled  
2 "Surface Water Coalition Exhibits."  
3 And is your CV attached to Exhibit 1? Is  
4 it --  
5 A. It is, yes.  
6 Q. And does that generally describe your  
7 education and work history?  
8 A. It does.  
9 Q. And have you been qualified as an expert  
10 witness before IDWR?  
11 A. I have.  
12 Q. And I think we stipulated yesterday that  
13 you would be qualified to offer testimony as an expert  
14 witness. So I just want to put that on the record.  
15 THE HEARING OFFICER: That's my understanding.  
16 Q. (BY MR. THOMPSON): Can you please describe  
17 what Exhibit 1 is.  
18 A. Exhibit 1 is a report prepared by Dave  
19 Colvin and myself at the request of Surface Water  
20 Coalition. It has some attachments from the Riverside  
21 case, information provided by the cities in that -- in  
22 that case.  
23 Q. And can you describe what you were asked to  
24 do in that report.  
25 A. I was asked to look at the cities' current

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1 status and what their intent, as could be determined,  
2 would be for future disposal of wastewater.  
3 Q. And did you author the opinions offered at  
4 1 and 2? I guess labeled part 2.1 in that report.  
5 A. I did.  
6 Q. And can you generally describe those  
7 opinions that you...  
8 A. Well, based on the current law, a city or a  
9 municipal provider can use their water supply to  
10 extinction. They're not obligated to provide any  
11 return flow. And there seems to be a trend, an  
12 indication from the cities, that they desire to  
13 continue to change their disposal methods, primarily  
14 because of the cost of treatment if they're going to  
15 dispose of the water.  
16 And the testimony submitted in the  
17 Riverside case supports that trend.  
18 Q. So several cities in that case represented  
19 that they were exploring alternative uses of their  
20 treated wastewater discharge; is that correct?  
21 A. That's correct.  
22 Q. Any reason to dispute those representations  
23 that were made?  
24 A. None that I know of.  
25 Q. Okay. And can alternative treatment

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1 processes like land application increase the  
2 consumptive use of a municipal water right?  
3 A. They certainly can, yes.  
4 Q. And is that what happened in the Riverside  
5 case with the City of Nampa's change in what they did  
6 with their treated discharge?  
7 A. The Riverside case was a case where the  
8 City of Nampa had been disposing of their wastewater to  
9 a natural water source, and they chose to put it in a  
10 Pioneer Irrigation District canal. So it was a  
11 100 percent depletion, compared to where they had  
12 previously disposed of their water.  
13 MR. THOMPSON: That's all the questions I have.  
14 Thanks.  
15 THE HEARING OFFICER: Go ahead when you're  
16 ready.  
17  
18 CROSS-EXAMINATION  
19 BY MS. McHUGH:  
20 Q. Good morning, Mr. Shaw.  
21 I wanted you to look at Exhibit 1, just so  
22 that we had a little bit of an understanding of what  
23 portions of this exhibit contain your opinions and  
24 stuff that you compiled and those that -- it's fairly  
25 short, of Mr. Colvin, just so that we know kind of who  
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1 to focus what questions.  
2 A. I was primarily responsible for 2.1.  
3 Q. Okay.  
4 A. And 2.2 and 2.3 -- no, 2.3 was kind of both  
5 of us, but 2.2 was Mr. Colvin.  
6 Q. Okay. And then did you -- in preparing  
7 this report, did you have any discussions with any  
8 cities or municipal providers as part of the background  
9 or information?  
10 A. I did not.  
11 Q. Okay. And do you work with municipalities  
12 and municipal providers on a regular basis?  
13 A. I've done some work for municipalities. I  
14 wouldn't say it's a regular basis, yes.  
15 Q. Okay. Is most of your work done for  
16 irrigation entities? Irrigation, agricultural.  
17 A. A large part of it is. I can't tell you if  
18 it's most or not.  
19 Q. Okay. Are you currently still working full  
20 time, or are you retired mostly?  
21 A. I'm trying to retire.  
22 Q. You're trying to retire, but we keep  
23 dragging you into these things? Or I should say these  
24 guys do.  
25 A. Yes.  
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1 Q. Fair enough. Are you aware of any cities  
2 in the state of Idaho that use their water to  
3 extinction?  
4 A. Pardon me?  
5 Q. Are you aware of any cities in the state of  
6 Idaho that use their water to extinction?  
7 A. I still didn't hear the last part. I'm  
8 sorry.  
9 Q. Are you aware of any cities within the  
10 state of Idaho that use their water to extinction?  
11 A. McCall does part of the time. They have a  
12 large evap pond. I believe it was originally designed  
13 to capture water that they could then release for  
14 irrigation purposes.  
15 But I'm not sure they produce enough  
16 wastewater under current conditions to overcome the  
17 evaporation from the pond. I've never seen enough  
18 water in the pond to be reused.  
19 Q. And have you measured McCall's -- do you  
20 work for McCall, the City of McCall, in their  
21 wastewater treatment?  
22 A. We did some work for them a long time ago,  
23 but I haven't worked for them recently.  
24 Q. And you've done measurements and that kind  
25 of thing to base your opinion that McCall is  
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1 100 percent consumptive?  
2 A. Mostly observations. We did seepage tests  
3 on their pond.  
4 MS. McHUGH: No more questions. Thank you.  
5 THE HEARING OFFICER: When you're ready,  
6 Mr. Bricker.  
7 MR. BRICKER: Thank you.  
8  
9 CROSS-EXAMINATION  
10 BY MR. BRICKER:  
11 Q. Good morning, Mr. Shaw.  
12 A. Good morning.  
13 Q. Just because cities have indicated in other  
14 proceedings that they may change the method by which  
15 they dispose of their wastewater does not mean that  
16 they will or must make those changes; correct?  
17 A. Well, it's not a commitment, but the trend  
18 is certainly to continue to reduce the amount of  
19 wastewater they release, simply for economics.  
20 Q. So there are limitations that may hinder  
21 cities from making these changes; correct?  
22 A. There may be. I'm not aware of any.  
23 Q. The net amount that municipal water users  
24 consume from their gross diversions can be calculated;  
25 right?  
Page 331

1 A. Sometimes.  
 2 Q. Can engineers calculate those values to a  
 3 reasonable degree of professional certainty?  
 4 A. It's possible.  
 5 Q. Requiring a water user to mitigate  
 6 100 percent of its diversions when there are some  
 7 amount of return flows effectively means that the water  
 8 user is putting more back into the river system than  
 9 they're taking out; correct?  
 10 A. Possibly.  
 11 Q. And isn't it true that ESPA is  
 12 hydraulically connected to surface water sources,  
 13 including the Snake River?  
 14 A. It is at various locations, yes.  
 15 Q. And isn't it true that all water  
 16 adjudicated in the SRBA, unless proved otherwise, is  
 17 from the same source?  
 18 A. No.  
 19 Q. That's not true?  
 20 A. No.  
 21 Q. Are you familiar with the order on the SRBA  
 22 Basinwide Issue 5?  
 23 A. I was at one time, yes.  
 24 Q. Well, I'll represent to you that the quote  
 25 "all water adjudicated in the SRBA, unless proved

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1 otherwise, is from the same source," end quote, is from  
 2 that order.  
 3 Does that sound right?  
 4 A. If you look at the Snake River at Lewiston,  
 5 that would be the case. Certainly the water in the  
 6 Salmon River at Salmon is not the same water as in the  
 7 Snake River at Twin Falls.  
 8 Q. Isn't it also true that all water under the  
 9 jurisdiction of the SRBA Court is interconnected unless  
 10 the party claiming otherwise proves by a preponderance  
 11 of the evidence that the water is from a separate  
 12 source?  
 13 A. Once again, if you're looking at the Snake  
 14 River at Lewiston, that's true. If you're looking at  
 15 the Snake River at Twin Falls and the Salmon River at  
 16 Salmon, they are different.  
 17 Q. To protect a senior from injury, a junior  
 18 user must ensure that mitigation supplies are delivered  
 19 at the right time, place, and amount; correct?  
 20 A. That's true.  
 21 Q. And the Department could ensure that senior  
 22 users are protected from injury by imposing appropriate  
 23 conditions to water permits; correct?  
 24 A. If the conditions are followed.  
 25 Q. Senior users can protest applications for

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1 permit; correct?  
 2 A. Anyone can protest applications.  
 3 Q. So long as municipal water users mitigate  
 4 the amount that they are consuming under their new  
 5 appropriations, then there is no net increase in  
 6 consumptive use across the Snake River moratorium area;  
 7 correct?  
 8 A. No, that's not correct.  
 9 Q. How so?  
 10 A. For example, a well in Jerome diverts Trust  
 11 Water, but if they return their discharge to North Side  
 12 Canal, they've moved Trust Water to Non-Trust Water.  
 13 Q. But I'm talking about the entire moratorium  
 14 area as a whole.  
 15 A. I'm talking about reality.  
 16 MR. BRICKER: Okay. I think that's all the  
 17 questions I have for Mr. Shaw.  
 18 Thanks.  
 19  
 20 CROSS-EXAMINATION  
 21 BY MR. BROMLEY:  
 22 Q. Good morning, Dave.  
 23 A. Good morning.  
 24 Q. Just a couple of questions.  
 25 Mr. Shaw, the report that you were

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1 discussing -- and if I turn to page 22, which is the  
 2 .pdf, just four pages from the end of that report.  
 3 THE HEARING OFFICER: So we're in Exhibit 1,  
 4 Mr. Bromley?  
 5 MR. BROMLEY: Correct.  
 6 Q. I'm four pages from the end, at least in  
 7 the .pdf, the top of page it says, "Statements by  
 8 Municipalities Regarding Reuse in Riverside versus  
 9 IDWR."  
 10 Do you see that page?  
 11 A. I do.  
 12 Q. Okay. Great. So the questions that I  
 13 have: Mr. Shaw, did you summarize these yourself, the  
 14 statements that are in here, or did you cut and paste  
 15 them from other documents?  
 16 A. These were provided by Mr. Barker's  
 17 paralegal.  
 18 Q. Okay. So you didn't prepare the language  
 19 that's in these statements?  
 20 A. I did not prepare the language.  
 21 Q. Okay. Have you reviewed the language?  
 22 A. I have.  
 23 Q. Great. Let's talk about City of Caldwell,  
 24 which is at the -- toward the bottom of that page.  
 25 A. Yes.

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1 Q. Do you see that?  
2 A. I do.  
3 Q. And it says, "Caldwell currently does not  
4 deliver treated effluent in any end user. It has,  
5 however, engaged in discussion with other entities,  
6 including Riverside Irrigation District, to find ways  
7 in which it can deliver such effluent for use by those  
8 entities."  
9 Are you aware of the conversations between  
10 the City of Caldwell and Riverside Irrigation District  
11 for this practice?  
12 A. I am not.  
13 Q. But is it your understanding that Riverside  
14 Irrigation District was the primary opponent against  
15 the City of Nampa in the Riverside case?  
16 A. I do understand that, yes.  
17 Q. Okay. So it's apparent, then, that  
18 Riverside Irrigation District is engaging in  
19 conversations with the City of Caldwell to use treated  
20 effluent; correct?  
21 A. That's what this statement would indicate,  
22 yes.  
23 Q. Okay. Let's turn, then, to -- if you'll go  
24 two pages further in. And we have City of Jerome.  
25 A. Yes.

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1 Q. This discussion -- I assume the same holds  
2 true for this discussion.  
3 You didn't write this language, it was  
4 given to you by Mr. Barker's paralegal?  
5 A. That's correct.  
6 Q. Have you reviewed this language?  
7 A. I have.  
8 Q. Okay. Are you aware, then, that the City  
9 of Jerome discharges treated effluent into North Side  
10 Canal Company's J8 Canal?  
11 A. Yes.  
12 Q. And are you aware if the Surface Water  
13 Coalition has any problem with that practice?  
14 A. Not that I'm aware of.  
15 MR. BROMLEY: Nothing further. Thank you.  
16 THE HEARING OFFICER: All right. Any -- is  
17 there going to be redirect on this side? Candice asked  
18 for one minute, then we'll...  
19 MR. FLETCHER: I don't have any. Were you  
20 asking me?  
21 THE HEARING OFFICER: No. All indicated --  
22 MR. FLETCHER: Oh, okay.  
23 THE HEARING OFFICER: -- that he has some  
24 questions. Sorry.  
25 All right. Ms. McHugh, are you coming back

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1 up?  
2 MR. FLETCHER: Well, there was no redirect, so I  
3 don't think there's recross, is there, if there's no  
4 redirect?  
5 THE HEARING OFFICER: All right. Come on up,  
6 Mr. Barker.  
7 MR. BARKER: Thank you, Mr. Director.  
8  
9 REDIRECT EXAMINATION  
10 BY MR. BARKER:  
11 Q. Albert Barker on behalf of South Valley  
12 Ground Water District, Mr. Shaw. Good morning.  
13 A. Good morning.  
14 Q. Just a couple questions about Mr. Bromley's  
15 examination. The statements by the municipalities that  
16 are in Attachment C, are these statements that were  
17 taken by -- or taken from what the municipalities  
18 advised the Court and the Director in that Riverside  
19 proceeding?  
20 A. That's my understanding, yes.  
21 Q. Okay. And with respect to the Riverside  
22 comment from the City of Caldwell, that then would have  
23 been the City of Caldwell's statement about what they  
24 were attempting?  
25 A. That's my understanding, yes.

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1 Q. And do you have any understanding about  
2 whether or not Riverside Irrigation District has agreed  
3 with the City of Caldwell to take any of its treated  
4 effluent?  
5 A. I have no information.  
6 MR. BARKER: Thank you. No further questions.  
7 Thank you.  
8 THE HEARING OFFICER: All right. No further  
9 examination?  
10 Thank you, Mr. Shaw.  
11 THE WITNESS: Thank you, Director.  
12 THE HEARING OFFICER: All right. Morning,  
13 Mr. Colvin.  
14 DAVE COLVIN: Morning.  
15 THE HEARING OFFICER: Before you sit down.  
16  
17 DAVE COLVIN,  
18 having been called as a witness by the Surface Water  
19 Coalition and duly sworn, testified as follows:  
20  
21 THE HEARING OFFICER: Okay. Please be seated.  
22 State your name and address for the record.  
23 THE WITNESS: My name is Dave Colvin. My  
24 address is 1221 Auraria Parkway, Denver, Colorado  
25 80204.

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1 DIRECT EXAMINATION  
 2 BY MR. THOMPSON:  
 3 Q. Morning, Dave. Can you tell the Hearing  
 4 Officer where you currently work.  
 5 A. I work with LRE Water, a water consulting  
 6 firm in Denver.  
 7 Q. And what's your current occupation?  
 8 A. I'm the groundwater team leader.  
 9 Q. And is your CV attached to what's been  
 10 marked as Exhibit 1?  
 11 A. It is.  
 12 Q. And does that document generally describe  
 13 your education and work history?  
 14 A. It does.  
 15 Q. Have you been qualified as an expert  
 16 witness before the Department?  
 17 A. I have.  
 18 MR. THOMPSON: Same comment from Mr. Shaw, we  
 19 had a stipulation yesterday with all parties that  
 20 stipulated to Mr. Colvin's qualifications as an expert  
 21 witness?  
 22 THE HEARING OFFICER: That's my understanding.  
 23 MR. THOMPSON: Okay.  
 24 Q. Mr. Colvin, can you again describe  
 25 Exhibit 1 for the record.

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1 A. This is the expert report that I prepared  
 2 with Dave Shaw to provide opinions on this moratorium  
 3 issue, particularly the municipal fully consumptive  
 4 references in it, in the moratoriums.  
 5 Q. And can you generally describe what you  
 6 were asked to do in this report.  
 7 A. I was asked to review the other expert  
 8 reports that were provided in opposition to the  
 9 Director's orders and develop opinions about those  
 10 reports and the context of the moratorium language.  
 11 Q. Can you turn to page 4. And were you the  
 12 author of Opinion 3 identified in part 2.2?  
 13 A. Yes.  
 14 Q. Can you generally describe that opinion  
 15 offered in that section.  
 16 A. Yeah. There was quite a bit of reference  
 17 to Colorado procedures for augmentation plan reporting  
 18 presented as a way to consider documentation and  
 19 measurement of water systems that could be used to, I  
 20 suppose, go into some sort of management or  
 21 administration of water rights here in Idaho.  
 22 And so I went through and found differences  
 23 between the situation now here in Idaho and how the  
 24 systems have evolved in Colorado.  
 25 Q. And what's your experience with the

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1 municipal water rights and systems in Colorado?  
 2 A. Most of my clients in Colorado are  
 3 municipalities that have various types of water rights.  
 4 The fully consumable water rights that I typically deal  
 5 with are nontributary groundwater that is disconnected  
 6 from surface water systems or imported water that has  
 7 the ability to be fully consumed and used to  
 8 extinction.  
 9 Q. And is it fair to say that Colorado has  
 10 some different sort of tracking and cataloging of  
 11 information regarding those type of water rights?  
 12 A. Yeah. There's a lot of reporting that's  
 13 based on field measurements and then reporting of  
 14 various aspects of water management that are reported  
 15 to the State and available for review by other parties  
 16 as well.  
 17 Q. I guess what was your purpose in describing  
 18 that comparison to that Colorado type of  
 19 administration?  
 20 A. Well, the Colorado system has evolved over  
 21 decades and, in my opinion, is overly complicated and  
 22 requires a great deal of input from engineers  
 23 representing their municipal clients, either the users  
 24 of the water or those who might oppose various aspects  
 25 of water use. And so there's a lot of effort on both

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1 sides of a case there.  
 2 And it also has a lot of State employees  
 3 for the Division of Water Resources that need to review  
 4 all of the information, manage it, and sometimes  
 5 administer water rights.  
 6 Q. And do some other entities, water users,  
 7 end up with the burden of verifying and ensuring  
 8 compliance with some of those reporting requirements?  
 9 A. Yeah. Right from the beginning for what  
 10 Colorado would call augmentation plan applications,  
 11 many of them are contested cases and end up in a  
 12 hearing situation, take many years to resolve, and end  
 13 up with a lot of litigation. So there's the burden  
 14 there on the front end.  
 15 And then as those augmentation plans are  
 16 approved, there's an ongoing burden for both the users  
 17 and the State to monitor the reporting that users  
 18 are -- that they have to submit.  
 19 Q. Do you see any benefits for how Idaho, at  
 20 least in this moratorium order, has this policy of  
 21 considering new municipal rights of 100 percent  
 22 consumptive?  
 23 A. Yeah, I think that there's an opportunity  
 24 to basically simplify the system or address the current  
 25 state of affairs in Idaho in terms of using the

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1 available data and using that as justification for  
 2 administration of these water rights.

3 Q. And do you have an opinion on that fully  
 4 consumptive conclusion identified in the order?

5 A. Well, it seems to be based on the Riverside  
 6 case and issues that were discussed and, I guess,  
 7 legally resolved in that case.

8 And so moving from there and having fully  
 9 consumptive municipal water rights appears to be a  
 10 benefit and something that municipalities would want to  
 11 protect.

12 And so in order for IDWR to administer  
 13 those water rights as such, it would seem to be a  
 14 simplified, streamlined approach as it presented in the  
 15 moratorium order now.

16 Q. And you're familiar with the ESPA being  
 17 designated as a groundwater management area?

18 A. Yes, I am.

19 Q. And is this type of conclusion or policy  
 20 warranted in that type of aquifer designation?

21 A. It is. The aquifer as a resource is not  
 22 only stressed but declining. And I think any  
 23 additional withdrawals from the aquifer are bound to  
 24 injure existing water rights.

25 Q. Have you reviewed the information that's

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1 provided in Exhibit 4? Why don't you take a look at  
 2 that first.

3 A. Yes, I have. This was an Idaho Water  
 4 Resource Board Aquifer Stabilization Committee meeting  
 5 from July 25th.

6 Q. Are you familiar with the Department's  
 7 annual groundwater synoptic measurements they make?

8 A. I am.

9 Q. I guess any reason to dispute the  
 10 information presented by Mike McVay in that report --  
 11 or in that presentation?

12 A. No.

13 Q. And can you generally describe, I guess,  
 14 what the aquifer conditions are currently compared to  
 15 at the time of the designation of the groundwater  
 16 management area?

17 A. Well, as shown in some of the graphs that  
 18 were pointed out yesterday -- I'll try and find the  
 19 exact one -- the aquifer is in a state of decline.

20 And there's no page numbers on this. This  
 21 is the graph that the title of the graph is "ESPA  
 22 Change in Volume of Water in Thousand Springs  
 23 Discharge" showing those values from 1912 to 2023.

24 And it just shows that basically from a  
 25 water balance perspective across the ESPA it's been out

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1 of balance and in decline since sometime around the  
 2 '70s.

3 Q. And can you look at Exhibit 3. Could you  
 4 describe that for the record.

5 A. Exhibit 3 is the 2023 sentinel well index  
 6 calculation that I prepared with Jaxon Higgs and Sophia  
 7 Sigstedt to review the 2023 update to the sentinel well  
 8 water-level data.

9 Q. And those are the sentinel wells referenced  
 10 in the Surface Water Coalition-IGWA agreement; is that  
 11 correct?

12 A. That's right.

13 Q. And those are reviewed every year; is that  
 14 true?

15 A. Yeah, they're reviewed every spring after a  
 16 water-level measurement.

17 Q. And does that trend generally follow what  
 18 was presented in Mike McVay's report, the graph you  
 19 were just referencing?

20 A. It does. And this one only goes back to  
 21 1980, but shows the overall decline with 2023 values  
 22 being just a couple hundredths of a foot higher than  
 23 the lowest point ever for the sentinel well index.

24 Q. Turning back to Exhibit 1, page 5.

25 A. Okay.

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1 Q. Could you generally describe the -- what's  
 2 labeled as Opinion 4 in part 2.3.

3 A. So this is some general comments about  
 4 water reuse, starting with a review of water reuse  
 5 permits that are held by various cities on the ESPA,  
 6 and then some more global or nationwide information  
 7 about water reuse and the trends in that technology.

8 Q. Do you know what some of the demands are  
 9 that would drive reuse of existing supplies?

10 A. Yeah. I think in general, particularly in  
 11 the West where water supplies are stressed and there's,  
 12 in many cases, overappropriated systems, there's going  
 13 to be more and more interest in reusing water as a  
 14 management system that will ultimately increase  
 15 supplies through water reuse.

16 Q. And what can happen to a municipality's  
 17 wastewater discharge when that water is reused?

18 A. Well, the net impact would be increased  
 19 consumptive use and reduced return flows.

20 Q. Have you seen a trend of that type of  
 21 program in the West where you've worked?

22 A. Yeah. I've worked quite a bit on the City  
 23 of Aurora's Prairie Waters System, and that's the whole  
 24 intent of that system is to basically recover their  
 25 fully consumable water rights as effluent out of the

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1 South Platte River that then is put into what would be  
2 characterized as an indirect potable reuse system so  
3 that the water rights are recovered and put into  
4 treatment and conveyance to be redelivered as water  
5 supply.  
6 Q. And were you present yesterday for the  
7 testimony of Greg Sullivan and Terry Scanlan?  
8 A. I was.  
9 Q. And do you have any comments on any of the  
10 testimony provided yesterday or anything in particular?  
11 A. Just generally that going through  
12 Mr. Sullivan's report trying to identify the data  
13 sources that were used for water balance it seemed that  
14 a lot of the inputs on the water balance were  
15 estimated.  
16 And that maybe just indicates the current  
17 level of measurement and reporting of those water  
18 inputs that would be necessary for consumptive use  
19 calculation.  
20 And then I guess the only comment on  
21 Mr. Scanlan's testimony would be that I in no way  
22 implied that Colorado is doing this better than Idaho  
23 and that there's anything wrong with the way that Idaho  
24 is doing things right now. It was just to point out  
25 that there are differences in Colorado that maybe

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1 aren't applicable here for this issue.  
2 Q. Fair to say that some of those inputs and  
3 data collection that you see in Colorado aren't  
4 currently kept by cities, municipal providers in Idaho?  
5 A. Not that I'm aware of.  
6 MR. THOMPSON: Okay. That's all the questions I  
7 have.  
8 THE HEARING OFFICER: All right. Thanks.  
9 Any other direct examination from Kent or  
10 Mr. Barker?  
11 MR. BARKER: No.  
12 MR. FLETCHER: No.  
13 THE HEARING OFFICER: All right.  
14 Cross-examination?  
15  
16 CROSS-EXAMINATION  
17 BY MR. BRICKER:  
18 Q. Morning, Mr. Colvin.  
19 A. Morning.  
20 Q. I'm Max Bricker. I represent the City of  
21 Pocatello. I have a few questions about your expert  
22 report.  
23 On page 4 you discuss the resume system in  
24 Colorado; correct?  
25 A. Yes.

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1 Q. And the purpose of those monthly water  
2 right summary -- resumes, excuse me, is to notify other  
3 users of applications; correct?  
4 A. Right. Yes.  
5 Q. And doesn't Idaho also have a notice or  
6 publication requirement?  
7 A. Yes.  
8 Q. Isn't it true that the Department has  
9 approved other water permit applications with  
10 conditions requiring accounting mitigation reporting  
11 requirements within the moratorium area?  
12 A. Yes. It, I guess at this point, would have  
13 been prior to the moratoriums, but yes.  
14 Q. You were here yesterday; right?  
15 A. Yes.  
16 Q. Do you remember our discussion of the  
17 Rexburg permit?  
18 A. Yes.  
19 Q. Isn't that an example of a permit with such  
20 conditions?  
21 A. I haven't reviewed that permit  
22 specifically.  
23 Q. And isn't it true that the holders of such  
24 permits already report their accounting to the  
25 Department?

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1 A. I don't know.  
2 Q. Are you an attorney?  
3 A. No.  
4 Q. In your expert report you cited the 1913  
5 Colorado Comstock versus Ramsey decision; right?  
6 A. Yes.  
7 Q. For what purpose did you cite that case?  
8 A. That was just what really established the  
9 single-use requirements in Colorado that have  
10 return-flow requirements that we have to meet when we  
11 manage water rights.  
12 Q. Let me read an excerpt from that case.  
13 Quote, "We are rather of opinion that when such waters  
14 leave the control of the original appropriator, having  
15 been used either for direct irrigation or reservoir  
16 purposes, without intention of recapture or further use  
17 by him, they immediately become a component of the  
18 river and cannot be lawfully diverted from their course  
19 to it by independent appropriation to the injury of  
20 those having decreed priorities therefrom."  
21 Do you see how it requires that -- the  
22 proposition you're supporting requires that the  
23 appropriator did not have the intention to recapture  
24 the return flows?  
25 A. I'm not sure what your point is there

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<p>1 except that, you know, I think that I was trying to  2 point out that that's a difference from what we're  3 talking about with the fully consumable aspects of  4 municipal water rights under the moratorium.  5 Q. But in Colorado a water user can acquire a  6 right to reuse and successive use if they claim those  7 uses in their original appropriation; correct?  8 A. If those water rights are available. In an  9 overappropriated system they wouldn't be able to do  10 that with water rights that -- they would have to have  11 a junior water right that makes that claim of reuse.  12 Q. So if that's the case, then it's inaccurate  13 that all Colorado water rights are subject to single  14 use with return-flow requirements; correct?  15 A. I guess the -- it wouldn't be all, because  16 there are fully consumable water rights. So perhaps I  17 misspoke if that's what I said.  18 Q. Okay.  19 A. And I guess -- you know, I mean they're  20 subject to -- to those issues. They might not be  21 required to be single use with return flow, but those  22 are semantics. I think I was just trying to point out  23 the difference between those aspects of Colorado water  24 rights management and the specific issue in this  25 hearing, being fully consumable municipal water rights.</p> <p style="text-align: right;">Page 352</p>	<p>1 equivalent of the Idaho mitigation plan, more or less?  2 A. Yes, roughly.  3 Q. And entities like the City of Aurora  4 provide their accounting of their diversions and  5 depletions to the Division of Water Resources in  6 Colorado; right?  7 A. Yes.  8 Q. And the Colorado Division of Water  9 Resources is able to administer those water rights;  10 correct?  11 A. Most of the time. I would imagine there  12 are times when things slip by.  13 Q. And is it your testimony that the Idaho  14 Department of Water Resources is incapable of  15 performing such administration?  16 A. No.  17 Q. And you mentioned that the accounting and  18 reporting requirements in Colorado have evolved; right?  19 A. Yes.  20 Q. Could those same requirements not evolve in  21 Idaho?  22 A. Oh, they could, absolutely.  23 Q. But you are advocating that there's no need  24 for the evolution because we can take the simple  25 approach; right?</p> <p style="text-align: right;">Page 354</p>
<p>1 Q. Okay. And you discussed the Prairie Waters  2 System in your report; right?  3 A. Yes.  4 Q. You represent the City of Aurora?  5 A. I have worked for the City of Aurora for 20  6 years, but I don't represent them in water rights  7 matters. Or I haven't in the past ten years.  8 Q. And under this Prairie Waters System, when  9 Aurora replaces or mitigates out-of-priority diversions  10 it only replaces the depletions; correct?  11 A. That would be right.  12 Q. And --  13 A. Although they do have -- they have water  14 rights that are fully consumable water rights that are  15 lost from their control. And so with that loss there  16 are water rights that they return to the system that  17 ultimately they don't recover and reuse in this  18 indirect potable reuse system. Those water rights go  19 downstream to other water users.  20 Q. But for the purposes of their augmentation  21 plans, they are only obligated to replace  22 out-of-priority diversions, they're only required to  23 replace the depletions; correct?  24 A. Yes.  25 Q. And the Colorado augmentation plan is the</p> <p style="text-align: right;">Page 353</p>	<p>1 A. No.  2 MR. BRICKER: No further questions. Thanks.  3  4 CROSS-EXAMINATION  5 BY MR. HARRIS:  6 Q. Mr. Colvin, good morning. Rob Harris here  7 on behalf of the City of Idaho Falls and City of Ammon  8 and Falls Water Company.  9 A. Morning.  10 Q. Just as a follow-up for what Mr. Bricker  11 indicated, I understood your testimony that your  12 testimony is that Idaho shouldn't do what Colorado does  13 in tracking consumption for municipal entities.  14 Did I misunderstand your testimony?  15 A. Yeah, I wouldn't say I meant that to be so  16 absolute. I think that there's a lot of similarities  17 in water rights administration at a general level and  18 that, you know, there are certainly things that could  19 be applicable in both situations.  20 I just think that in my opinion, I guess,  21 I'm deferring to the Department's planning for  22 administration of these water rights. And comparing  23 that to the Colorado methodology and procedures, I  24 just -- I saw a lot of differences.  25 Q. Okay. And what are those differences</p> <p style="text-align: right;">Page 355</p>

1 again?

2 A. Well, just, you know, the treatment here is

3 specific to fully consumptive municipal water rights.

4 And if you -- if you look at the Colorado systems that

5 have evolved, a lot of times they began decades ago

6 when technology and data availability was very

7 different.

8 And so there's a lot that goes into kind of

9 the legal precedent that has led to where Colorado is

10 now with the level of communication and the frequency

11 of reporting and a lot of things that just make it

12 different than 2023 in Idaho.

13 Q. In what way? Are you saying that Idaho

14 doesn't have the capacity to use technology to collect

15 water-use data or flow data?

16 A. No, no. I think absolutely I'm sure

17 that -- I don't know this exactly, but I'm sure that

18 there are entities that do and can and will. I think

19 that's -- generally, you know, the movement in water

20 management is towards more data collection and informed

21 decision-making based on that data.

22 So absolutely, I think Idaho is doing that

23 now and will continue to do that in the future and

24 improve along the way.

25 Q. And overall isn't the intent in Colorado

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1 simply to account for diversions, depletions, impacts

2 to other water users?

3 A. Yes.

4 Q. Okay. Can you open up your expert report,

5 if you have it in front of you. It's Surface Water

6 Coalition Exhibit 1. And turn to page 5.

7 A. Yes.

8 Q. The third full paragraph down there's a

9 statement that begins "When asked about Water

10 District 1."

11 Do you see that?

12 A. Yes.

13 Q. Can you explain to me who or what Water

14 District 1 is.

15 A. Water District 1 administers the Snake

16 River water -- I'm not sure exactly where the

17 boundaries of the district are. But through basically

18 the east and south side of the Snake River and the

19 Eastern Snake Plain, rather.

20 Q. I think you indicated that they distribute

21 water according to water rights; is that right? Was

22 that --

23 A. That's my understanding, yes.

24 Q. Okay. So at this point their job is to

25 administer recent water rights, and as Mr. Cefalo

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1 indicated, they don't have responsibility to measure

2 return flows from cities; correct?

3 A. That's -- that's what he stated in his

4 deposition.

5 Q. Right. And then there's a sentence that at

6 the end of quoting from his deposition it says,

7 "Without well established and reliable return-flow data

8 available in Idaho, it is reasonable for IDWR to

9 administer new municipal water rights as fully

10 consumable."

11 Do you see that sentence?

12 A. I do.

13 Q. Would the opposite be true in your view

14 that with well established and reliable return-flow

15 data that it would be unreasonable for then IDWR to

16 administer new municipal rights as fully consumable?

17 A. Not necessarily.

18 Q. Okay. Explain that to me.

19 A. Just that, you know, it's got to be

20 reliable data and reliably reported. And I think that

21 one of the differences that's kind of come up over the

22 past couple of days would be the approach to water

23 rights administration would have to be adaptive to the

24 data that's reported in -- if it was to be based on

25 kind of water balance data, like we looked at

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1 yesterday.

2 Q. But that's more of an administrative

3 question. I'm just asking about data. If there's

4 reliable data.

5 I understand your argument that there may

6 be some administrative work that has to be done.

7 A. Okay.

8 Q. But as far as the data goes, if there was

9 reliable data, then would it be -- still be reasonable

10 to assume that municipal pumping under new water rights

11 as fully consumable, in your opinion?

12 A. I'm sorry, can you state the question

13 again? I just want to make sure that I got the

14 reasonable part --

15 Q. Well --

16 A. -- applied correctly.

17 Q. -- there's no statement in your opinion

18 about some of the administrative work that the

19 Department may have to conduct. This just focuses

20 strictly on available data and seems to indicate that

21 your opinion is that because we don't have reliable

22 data it's reasonable for this 100 percent consumptive

23 assumption.

24 I'm simply asking if there was reliable

25 data would the opposite be true, in your opinion?

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1 A. Possibly, but I guess not necessarily.  
2 Q. Okay. Okay. You mentioned that you do  
3 work for the City of Aurora?  
4 A. Yes.  
5 Q. Does Aurora have an NPDES permit or some  
6 equivalent that Colorado issues for discharge of its  
7 effluent?  
8 A. I'm sure they do, but I -- oh, actually,  
9 I'm not sure that they do. They do for one of their  
10 water reclamation facilities, but the ones that are on  
11 the South Platte are operated by a metro water --  
12 wastewater district that would probably hold those  
13 permits.  
14 Q. Is it fair to assume they probably have an  
15 NPDES permit or some equivalent?  
16 A. Who? Aurora or the Metro District.  
17 Q. The District that treats --  
18 A. Yeah, I'm sure they would have to. Yeah.  
19 Q. Okay. Could you turn around. There's an  
20 exhibit binder, the municipal providers. It's  
21 Exhibit 346. It has a blue cover sheet on the cover.  
22 THE HEARING OFFICER: Right there.  
23 THE WITNESS: 346, you say?  
24 Q. (BY MR. HARRIS): Yeah, 346.  
25 A. Okay.

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1 Q. This is the City of Idaho Falls NPDES  
2 permit. I'm going to have you turn to page 6.  
3 A. Okay.  
4 Q. And under paragraph B there's a table that  
5 describes the monitoring requirements for a city with  
6 one of these permits.  
7 Do you see the very first one on that list?  
8 A. Yes.  
9 Q. What is that, the very first thing that  
10 they have to report?  
11 A. It's flow.  
12 Q. Okay. And over to the right side the  
13 sample frequency is what?  
14 A. Continuous.  
15 Q. And the sample type is what?  
16 A. Recording.  
17 Q. So it's continuously recorded; correct? Do  
18 you think that could be characterized as reasonable and  
19 reliable information on wastewater return flows?  
20 A. If it was available for review, yes.  
21 MR. HARRIS: That's all the questions I have.  
22 Thank you.  
23 THE HEARING OFFICER: Okay. Thank you,  
24 Mr. Harris.  
25 ///

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1 CROSS-EXAMINATION

2 BY MS. McHUGH:  
3 Q. Good morning. I just had a couple of  
4 clarifying questions.  
5 First of all, what cities in Idaho do you  
6 represent or have you worked with?  
7 A. I haven't worked with any cities.  
8 Q. Okay. And you said something about that --  
9 and I'm trying to just clarify this, there were  
10 specific inputs that you were testifying about that  
11 cities or municipal providers or municipalities in  
12 Colorado measure, but you weren't sure they were kept  
13 by Idaho cities.  
14 What were those specific inputs or data?  
15 Do you recall that testimony?  
16 A. I think I was referring to the table that  
17 Mr. Sullivan presented yesterday.  
18 Is that -- is that what you're talking  
19 about?  
20 Q. Yeah. I just recall hearing your testimony  
21 saying that you weren't sure if those specific inputs  
22 or data were kept by Idaho cities. So I was just  
23 trying to clarify what you might have meant by that  
24 testimony.  
25 A. Well, I just -- I assume that he went to

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1 find that data, and if he didn't find it, he had to use  
2 assumptions for those inputs on the water-balance  
3 calculations. And there were several items that had to  
4 be assumed, the majority of them.  
5 Q. And so do you remember what those specific  
6 inputs were?  
7 A. I don't.  
8 Q. Okay. And do you know whether Idaho cities  
9 have those specific inputs?  
10 A. I don't.  
11 Q. Okay. So you haven't checked with whether  
12 or not those were actual necessary assumptions or  
13 whether the data could have been included?  
14 A. No, I haven't.  
15 Q. Okay. And when Mr. Bricker asked you the  
16 question about so in Idaho you're kind of advocating  
17 for a simpler approach, that you're just advocating for  
18 a -- if there's an assumption that all municipalities  
19 are fully consumptive, is that not a simpler approach  
20 than having municipalities having to do reporting?  
21 A. Well, I think what I'm advocating for is  
22 basically deferring to the -- the Department and their  
23 knowledge of administration. And -- and their  
24 approach, as it's presented in the moratorium, is a  
25 simpler approach.

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1 Q. Okay. So your testimony is you're  
 2 advocating for deference to the Department?  
 3 A. Yes.  
 4 MS. McHUGH: Nothing further.  
 5 THE HEARING OFFICER: Doesn't look like we have  
 6 any more cross.  
 7 Oh, yep. Come on up, Mr. Lawrence.  
 8  
 9 CROSS-EXAMINATION  
 10 BY MR. LAWRENCE:  
 11 Q. Morning, Mr. Colvin. My name is Mike  
 12 Lawrence. I'm an attorney with Givens Pursley here in  
 13 Boise. I represent the City of Hailey and Veolia Water  
 14 Idaho, Inc.  
 15 A. Morning.  
 16 Q. I just have a couple of questions. I'll  
 17 try to be brief.  
 18 Mr. Thompson was asking you about the  
 19 water-level declines in the ESPA.  
 20 Do you recall that?  
 21 A. Yes.  
 22 Q. Is it your opinion that the cause of  
 23 declines in the ESPA are attributable to increased  
 24 municipal consumptive use?  
 25 A. That wouldn't be the only cause for

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1 decline. It would be a component of it.  
 2 Q. And do you have evidence that there has  
 3 been an increase in municipal consumptive use?  
 4 A. Not directly. I haven't looked into that  
 5 issue.  
 6 Q. Do you understand that municipal use in the  
 7 ESPA is roughly 3 percent of the groundwater use in the  
 8 ESPA?  
 9 A. I don't know the exact number, but that  
 10 sounds about right.  
 11 Q. In your expert report, section 2.3,  
 12 discussing water reuse increasing in Idaho and across  
 13 the world, is it your opinion that every municipal  
 14 provider in Idaho can increase their water reuse?  
 15 A. I don't know that exactly, but probably.  
 16 Q. Is it your opinion that every municipal  
 17 provider in Idaho will increase their water reuse?  
 18 A. I can't speak to that.  
 19 Q. Is it your opinion that every municipal  
 20 provider in Idaho can reuse their water to extinction?  
 21 A. I suppose they could.  
 22 Q. And is it your opinion that every municipal  
 23 provider in Idaho will reuse their water to extinction?  
 24 A. I can't speak to that either.  
 25 Q. A few minutes ago Ms. McHugh was asking you

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1 about Mr. Sullivan's analysis. And I'm paraphrasing.  
 2 I hope I don't -- and correct me if I paraphrase this  
 3 wrong.  
 4 A. Okay.  
 5 Q. But I believe you said that Mr. Sullivan  
 6 could only rely upon assumptions in his analysis of  
 7 municipal consumptive use; is that right?  
 8 A. No. There were data in there that were  
 9 based on reporting of, I believe it was diversions at  
 10 least.  
 11 Q. Is it your position that the -- a similar  
 12 analysis could be done with actual data, rather than  
 13 assumptions?  
 14 A. It could be done with actual data, yes.  
 15 Q. Do you recall Mr. Sullivan testifying that  
 16 he could do the same analysis using actual data instead  
 17 of the assumptions that were used?  
 18 A. I don't remember the exact verbiage that he  
 19 used to describe that, but generally, yes.  
 20 Q. But you agree that he could?  
 21 A. If the data were available.  
 22 MR. LAWRENCE: Thank you.  
 23 THE HEARING OFFICER: Do we have any redirect?  
 24 MR. THOMPSON: I don't have any.  
 25 MR. BARKER: No.

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1 THE HEARING OFFICER: All right. I think that  
 2 concludes our examination.  
 3 Thank you, Mr. Colvin.  
 4 THE WITNESS: Thanks.  
 5 MR. THOMPSON: Move to admit Exhibits 1 and 3.  
 6 THE HEARING OFFICER: Did we admit Exhibit --  
 7 did we admit Exhibit 4 yesterday?  
 8 MR. THOMPSON: I think so. I've got it written  
 9 down.  
 10 THE HEARING OFFICER: We did. Okay.  
 11 SARAH TSCHOHL: Yes.  
 12 THE HEARING OFFICER: So there's a motion to  
 13 admit Exhibits 1 and 3 into the record.  
 14 Any objection?  
 15 Seeing no objection, we'll bring those in.  
 16 (Exhibits 1 and 3 admitted.)  
 17 THE HEARING OFFICER: So we've been all the way  
 18 through examination of the expert witnesses round one.  
 19 Do we need to call experts to rebut the  
 20 first round of examination?  
 21 MR. BRICKER: Yes.  
 22 MR. BAXTER: I would like to call James Cefalo  
 23 back up for some rebuttal testimony.  
 24 THE HEARING OFFICER: Okay. Go ahead.  
 25 ///

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1 JAMES CEFALO,  
2 having been called as a rebuttal witness by the  
3 Department of Water Resources and duly sworn, testified  
4 as follows:  
5  
6 THE WITNESS: Yes.  
7 THE HEARING OFFICER: Okay. And just for  
8 completeness, will you again state your name and  
9 address for the record.  
10 THE WITNESS: Yeah. I don't think I did it the  
11 first time, so I'm sorry.  
12 James Cefalo. I live in Idaho Falls.  
13 320 Stillwater Circle.  
14  
15 DIRECT EXAMINATION  
16 BY MR. BAXTER:  
17 Q. Morning. Welcome back, Mr. Cefalo.  
18 A. Thanks.  
19 Q. Were you here for the testimony of Greg  
20 Sullivan yesterday?  
21 A. I was.  
22 Q. Okay. Did Mr. Sullivan make two  
23 suggestions for how IDWR could condition future  
24 municipal water right applications to prevent injury?  
25 A. He did.

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1 Q. Okay. Do you recall what his first  
2 suggestion was?  
3 A. My recollection is that that first  
4 suggestion was to add a condition or, as an element on  
5 the water right, some indication of what the current  
6 consumptive or expected consumptive use was under that  
7 water right.  
8 Q. And do you recall Mr. Sullivan then saying  
9 that if the consumptive use amount changes in the  
10 future that that condition could be adjusted?  
11 A. I do recall that.  
12 Q. Can IDWR on its own change the condition on  
13 the face of a water right?  
14 A. No.  
15 Q. Does IDWR issue permits or licenses as  
16 preliminary orders?  
17 A. Generally that's -- that's how those  
18 approvals are handled is preliminary orders.  
19 Q. And those orders then become final orders;  
20 correct?  
21 A. They do.  
22 Q. Now, Mr. Sullivan also seemed to suggest  
23 that IDWR could adjust the condition through some sort  
24 of hearing.  
25 Even if IDWR could condition a water right

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1 through -- or adjust a water right through hearing, are  
2 you concerned about the burden this would have on IDWR?  
3 A. I am concerned.  
4 Q. Why?  
5 A. There would be -- there would be an  
6 additional burden, not only on the water rights  
7 processing side, meaning preparing additional public  
8 notices, but then if the original application resulted  
9 in a contested case. It's highly likely that any  
10 change to that water right would result in another  
11 contested case.  
12 And so it would be an additional burden on  
13 those Department staff who handle contested cases, both  
14 our hearing officers, but our administrative assistants  
15 too.  
16 Q. Would there be burdens to protestants as  
17 well?  
18 A. There could be. Like I said, if there were  
19 original protestants, they would likely jump in as  
20 protestants to any changes to the water rights, and  
21 there could be additional protestants too.  
22 Q. Now, Mr. Sullivan had a second suggestion  
23 related to kind of a variable mitigation proposal.  
24 Were you here when he discussed that?  
25 A. That's right. His suggestion was that then

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1 as consumptive use changed over time, the mitigation  
2 plan would change to match that consumptive use, I  
3 guess either for additional -- or for additional  
4 consumptive use or for less consumptive use.  
5 Q. What burden would that variable mitigation  
6 scheme put on IDWR?  
7 A. It would be very similar to making any  
8 change to the face of the water right, meaning that any  
9 significant change to a mitigation plan would require  
10 public notice through due process and could result in  
11 an additional contested case.  
12 Q. And is that an easy process, in your mind  
13 and your experience?  
14 A. In my experience, it is not easy.  
15 Q. Are you familiar with the Rexburg water  
16 right discussed by Mr. Sullivan yesterday?  
17 A. Like -- as I testified yesterday, I am  
18 familiar with it. I took some time after the -- after  
19 we ended yesterday and read through the conditions  
20 again on that Rexburg water right.  
21 Q. What do you think about those conditions?  
22 A. They're pretty complicated.  
23 Q. Would you care --  
24 A. They require different mitigation based on  
25 different priority date levels set for the Snake River,

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1 and depending on different thresholds they may require,  
 2 even rentals through the Water District 1 rental pool.  
 3 Q. Are those conditions -- let me say it this  
 4 way.  
 5 Do those conditions impose a burden on IDWR  
 6 staff?  
 7 A. Yes. Not only to administer the water  
 8 right realtime, but of course also to review any annual  
 9 reports that are submitted by the permit holder.  
 10 Q. I think one of the proposals was, well,  
 11 IDWR could just adopt the same approach as the Rexburg  
 12 water right for future applications.  
 13 So talking about that future -- or excuse  
 14 me, that Rexburg approach, is that a scalable solution  
 15 for IDWR? And what I mean by that is, is that a  
 16 solution that IDWR could adopt widespread for future  
 17 applications?  
 18 A. At this point I don't see how IDWR could  
 19 adopt that as a widespread solution. As I mentioned  
 20 during my earlier testimony, we provide watermaster  
 21 services for a number of water districts out of our  
 22 office.  
 23 And in addition to that, we correspond and  
 24 work with watermasters throughout eastern Idaho. From  
 25 what I've observed, watermasters struggle even to

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1 implement what we would call very standard conditions,  
 2 meaning combined rate limits, combined volume limits,  
 3 combined acre limits. Between water rights from  
 4 different sources, that can be very difficult for  
 5 watermasters already.  
 6 But then to expect watermasters to be able  
 7 to administer two-or-three-page water rights, meaning  
 8 that the conditions extend onto two or three pages, and  
 9 that's just one water right. And we've got some  
 10 watermasters who are responsible for administering  
 11 thousands of water rights within their water district.  
 12 I just don't see how this type of a solution could  
 13 scale or could be a widespread solution.  
 14 Q. I can't recall exactly. How long did you  
 15 say you've worked for IDWR?  
 16 A. I've worked for over 15 years for IDWR.  
 17 Q. You're currently the regional  
 18 administrator; correct?  
 19 A. I'm a regional manager, yes.  
 20 Q. And in that role you approve permits  
 21 licensed -- permits and licenses for Department?  
 22 A. I do.  
 23 Q. Based on what you've learned from your  
 24 experience here at IDWR, would you approve another  
 25 permit with conditions like those in the Rexburg water

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1 right?  
 2 A. I would be very hesitant to approve that  
 3 complex of a mitigation plan.  
 4 Q. Why?  
 5 A. Just because I -- having served also as a  
 6 watermaster in particular for the ground water  
 7 districts across the ESPA, I know how difficult it is  
 8 to administer complex water rights and -- and how  
 9 difficult it is for a watermaster to then know all of  
 10 those specific provisions and nuances by heart to then  
 11 employ those or make sure that those are being followed  
 12 on a day -- day-by-day basis.  
 13 Q. So you talked a little bit about  
 14 watermasters.  
 15 Does IDWR staff sometimes struggle with  
 16 those conditions as well?  
 17 A. Oh, also. You bet.  
 18 Q. You were here yesterday for Mr. Scanlan's  
 19 testimony about the Dry Creek water right; correct?  
 20 A. I was.  
 21 Q. Now, like Mr. Sullivan, Mr. Scanlan  
 22 suggested that IDWR could impose monitoring and  
 23 reporting conditions on water rights.  
 24 Is that your understanding of Mr. Scanlan's  
 25 testimony yesterday?

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1 A. That is my understanding. And we have  
 2 imposed those type of conditions in the past.  
 3 Q. Can you think of examples where IDWR has  
 4 struggled with tracking conditions on existing water  
 5 rights?  
 6 A. Sure. In the early 2010s the then  
 7 Director, maybe an interim Director, Gary Spackman, had  
 8 asked Department staff to make a push to eliminate a  
 9 licensing backlog. And in that process, out of our  
 10 Eastern Regional Office at least, we then had an  
 11 opportunity to review a number of permits where proof  
 12 of beneficial use had already been filed and they were  
 13 just sitting there waiting to be licensed.  
 14 And I can recall coming across a number of  
 15 those permits that had mitigation requirements, some,  
 16 for example, that required the right holder, the permit  
 17 holder to come and rent water through the Water  
 18 District 1 rental pool on an annual basis.  
 19 And picking those permits up and finding  
 20 that that permit holder could come in on the first  
 21 year, and they'd come in on the second year, but then  
 22 they never showed up and rented water again. And 15  
 23 years later they had gone, you know, without fulfilling  
 24 the requirements under their mitigation plan, but also  
 25 recognizing that IDWR staff did not have the capacity

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<p>1 to be tracking all of those to ensure that those 2 mitigation plans were being followed. 3 And it was only through the licensing 4 process that we discovered, Hey, wait, this mitigation 5 plan hasn't been followed. 6 Q. Does that create a burden on IDWR staff 7 when the applicant doesn't comply with those 8 conditions? 9 A. Well, it did. It did. As we discovered 10 that those permits that were out of compliance, we then 11 initiated formal proceedings, you know, issued orders 12 proposing to void the permits, then the permit holders 13 came in and had revised mitigation plans. And we had 14 to then work through that process of evaluating and 15 adopting revised mitigation plans. 16 Q. Switching gears a bit, do you recall 17 Mr. Sullivan and Mr. Scanlan testifying yesterday about 18 how IDWR is treating municipal and certain domestic 19 uses differently from other uses? 20 A. I do. 21 Q. Is that correct? 22 A. In my opinion, no. 23 Q. Why? 24 A. I -- I feel like this order treats 25 municipal uses very similar to irrigation uses, in</p> <p style="text-align: right;">Page 376</p>	<p>1 uses can be. But they also oftentimes are not. 2 And my observations as regional manager in 3 dealing with applications that are filed in eastern 4 Idaho, most of the industrial and commercial water 5 rights or applications that come in the door are for 6 very specific, defined uses that are known up front, 7 and they do not change over time. 8 You know, we're talking about one office 9 building that might be diverting water for a commercial 10 use inside that office building. It might be for a 11 gravel-washing facility, and that that gravel-washing 12 facility remains or that use remains the same and 13 constant throughout the lifespan of that water right. 14 Q. So municipal uses don't -- those uses don't 15 remain as constant? 16 A. As we discussed yesterday, municipal uses 17 change on a day-to-day basis, depending on what 18 building is torn down and turned into a park or what 19 office -- office building is torn down and turned into 20 an apartment building or what apartment building is 21 torn down and turned into a car wash. There's a lot of 22 variability in the day-to-day consumptive use 23 associated with municipal water rights. 24 Q. Is there also a difference between the 25 scope of an individual industrial consumptive water</p> <p style="text-align: right;">Page 378</p>
<p>1 fact. 2 When an applicant comes in and proposes to 3 divert water for irrigation purposes, IDWR would 4 require that applicant to provide mitigation for the 5 maximum expected -- maximum potential consumptive use. 6 We don't make inquiries about "Are you 7 going to grow barley this year? Are you going to grow 8 corn next year?" We wouldn't let an applicant 9 proposing irrigation use promise to only irrigate 10 barley for the rest of the lifespan of that -- of that 11 irrigation right. 12 We would say, "What is the maximum expected 13 potential" -- I'm sorry, "the maximum potential 14 consumptive use for that region?" And we would require 15 mitigation up to that amount. 16 And municipal rights we're dealing with -- 17 or handling that the same way. We're saying, "What is 18 the maximum potential consumptive use that could occur 19 under this application?" And requiring the applicant 20 to mitigate for that full amount up front. 21 Q. How about for industrial and commercial 22 uses, does IDWR -- or let me say it this way. 23 Why didn't IDWR treat industrial and 24 commercial uses as fully consumptive? 25 A. They can be. Commercial and industrial</p> <p style="text-align: right;">Page 377</p>	<p>1 right and municipal water right? 2 A. Of course. Individual, commercial, or 3 industrial water rights would be very small in 4 comparison to municipal rights. And the place of use 5 would be much smaller than, of course, the service area 6 for a municipality. 7 MR. BAXTER: No further questions. 8 THE HEARING OFFICER: So I'm having some 9 computer issues here. I'd like to take a break now so 10 that I can reboot this and get my machine so that it 11 doesn't have a 10-second lag when I type. 12 So let's go on a ten-minute break right now 13 and come back in and start with cross-examination. 14 (Recess.) 15 THE HEARING OFFICER: Sorry for that 16 inconvenience. 17 Mr. Harris, go ahead and start 18 cross-examination when you're ready. 19 20 CROSS-EXAMINATION 21 BY MR. HARRIS: 22 Q. James, good morning. Again, we talked 23 yesterday, and we'll talk more today, probably on 24 similar topics. But I just want to start out by -- I'm 25 going to try and go in order that Mr. Baxter asked you</p> <p style="text-align: right;">Page 379</p>

1 questions, but I may jump around a little bit.  
 2 The first item that Mr. Baxter asked you  
 3 about, he represented that Mr. Sullivan testified that  
 4 there could be a condition adjusted as part of a new  
 5 municipal water right permit. I didn't understand his  
 6 testimony to be an amendment to the actual language in  
 7 the condition.  
 8 Was that your understanding of what he  
 9 proposed?  
 10 A. That was my understanding, that there would  
 11 be a condition declaring some amount of consumptive use  
 12 and that that could be adjusted through the lifespan of  
 13 the water right.  
 14 Q. And maybe we're -- we got to make sure we  
 15 aren't tripping over semantics, but the -- I don't  
 16 think he suggested that the condition would be amended,  
 17 but the condition would be drafted with some level of  
 18 flexibility.  
 19 MR. BAXTER: Objection. I think it  
 20 mischaracterizes Mr. Sullivan's testimony. And if  
 21 Mr. Sullivan were -- or Mr. Cefalo has testified as to  
 22 Mr. Sullivan's testimony -- what he understood  
 23 Mr. Sullivan's testimony to be, if that was incorrect,  
 24 then counsel can call Mr. Sullivan and clarify that  
 25 issue.

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1 THE HEARING OFFICER: Okay. There's an  
 2 objection. Sustained.  
 3 Q. (BY MR. HARRIS): Okay. The Department has  
 4 issued water right approvals with some flexibility  
 5 built into the condition; correct?  
 6 A. Not that I'm aware of declaring consumptive  
 7 use. But I do I know that there are conditions that  
 8 have some flexibility.  
 9 Q. Well, the condition would say if there's a  
 10 change in some aspect, then the amount of beneficial  
 11 use authorized would change as well; correct?  
 12 A. I think we discussed one of those yesterday  
 13 with this -- and again, Basin 63 isn't -- isn't in  
 14 eastern Idaho, so I'm not super familiar with that.  
 15 But there was testimony about as domestic use, I  
 16 believe, is developed that an irrigation right is -- is  
 17 reduced at the same time, commensurate with the  
 18 increase in domestic development. I have seen those.  
 19 Q. There's that example. Another example is  
 20 you had testified about the Funk permits. So this is  
 21 Water Right 35-14240. There's a condition in that  
 22 permit that provides, "If specified mitigation rights,  
 23 or a portion thereof, are sold, transferred, leased,  
 24 used on any place of use or are not deliverable due to  
 25 a shortage of water, priority call, or a termination of

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1 a lease contract, then the amount of water authorized  
 2 for diversion under this right shall be reduced by the  
 3 same proportion as the reduction to the mitigation  
 4 rights."  
 5 Are you familiar with that sort of a  
 6 condition?  
 7 A. That's a standard condition that  
 8 essentially declares that if the mitigation right ever  
 9 becomes unavailable that the right relying on that  
 10 mitigation right also would be unavailable.  
 11 Q. Precisely. And so that is  
 12 self-effectuating; correct? It wouldn't require  
 13 another hearing for the Department --  
 14 A. It wouldn't.  
 15 Q. -- if the mitigation --  
 16 A. You are -- I agree. It would not require  
 17 another hearing.  
 18 Q. Okay. And so if the Department included a  
 19 condition that said "Here's how we evaluate the amount  
 20 of consumption, here's how we calculate the amount of  
 21 mitigation, and if those numbers change the mitigation  
 22 amount either increases or decreases," wouldn't that  
 23 same concept, could it apply in a municipal context?  
 24 A. Possibly.  
 25 Q. Okay. Mr. Baxter asked you a little bit

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1 about just the administrative burden that you believe  
 2 this would impose on the Department. I started  
 3 practicing law in 2004 in Idaho Falls. You started in  
 4 2007. I think we both agree there was a pretty  
 5 significant licensing backlog in eastern region.  
 6 Is that a fair --  
 7 A. That's right.  
 8 Q. Do you know approximately how many water  
 9 rights, how big that backlog was?  
 10 A. Hundreds, just in eastern Idaho that we  
 11 worked through. I can't remember exact numbers. It  
 12 was -- it was over 200.  
 13 Q. And I worked with your office quite a bit  
 14 on addressing some of those.  
 15 A. Uh-huh.  
 16 Q. And we'll just say, for the record, you  
 17 guys did a remarkable job removing that backlog.  
 18 What is that current backlog? Do you know?  
 19 A. Because we still have areas in our region  
 20 that are open for new appropriations, mainly the Salmon  
 21 River drainage, that backlog for our region is about  
 22 150, and remains kind of in that area year to year.  
 23 Q. But it was hundreds before then; right?  
 24 A. It was.  
 25 Q. Okay. And so with dedicated time and

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1 resources the Department was able to tackle that issue?  
2 A. We were.  
3 Q. I'm going to have you open to Exhibit 312.  
4 And you're -- it looks like you're already there. And  
5 Mr. Baxter asked you some questions about this permit  
6 in particular, and you testified that at several levels  
7 there's some challenges, both at the watermaster level  
8 and the Department level. I first just want to ask you  
9 about the Department level.  
10 As I understood your testimony yesterday,  
11 at least in eastern, there were six to eight mitigation  
12 reports that the Department in your office has to  
13 review each year; is that correct?  
14 A. Those are the ones that I'm aware of.  
15 There could be more --  
16 Q. Okay.  
17 A. -- that are coming in and filed directly  
18 with the State office.  
19 Q. Okay. As the eastern region manager, would  
20 you be aware of all of those or --  
21 A. Not necessarily.  
22 Q. Okay. But is that -- you know, even after  
23 this hearing, is that a number you could try to  
24 ascertain with some specificity with your other staff?  
25 A. Possibly. But in our database we don't

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1 have any marker to note which permits or which water  
2 rights require an annual report. And so there could be  
3 water rights out there that require some sort of annual  
4 reporting that no report is being filed, and so we  
5 don't -- we don't know about that. Right?  
6 I mean I can speak to the reports that I  
7 know that come in through our office on an annual  
8 basis, but again, there may be many other permits that  
9 required annual reporting that those annual reports are  
10 not being filed.  
11 Q. Within your office?  
12 A. Within the eastern region.  
13 Q. Is that -- is that something that would be  
14 difficult to determine if there's some reporting  
15 requirement?  
16 A. Again, because that's not flagged through a  
17 standard condition or through some other means in our  
18 database, I think it would be difficult to quantify.  
19 Q. And then as far as the watermaster burden,  
20 just in looking through the conditions -- well, let me  
21 ask it this way.  
22 What is the watermaster's primary  
23 responsibility on the ground?  
24 A. For -- this permit involves two  
25 watermasters, because we've got -- the mitigation is

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1 happening from the Teton River, and that source water  
2 rights are administered by Water District 1. And the  
3 groundwater diversion, which is what this is for  
4 municipal use, is regulated by Water District 100. And  
5 the Water District 100 doesn't deliver water rights in  
6 priority per se. That hasn't been a requirement.  
7 There have been curtailment orders --  
8 Q. Right.  
9 A. -- where there's been expectations to  
10 curtail certain water rights that are junior to a  
11 specific date. But the watermaster for Water  
12 District 100 isn't making an evaluation on a day-by-day  
13 basis who's in priority and who's not.  
14 It's different for the Snake River, of  
15 course. Water District 1, the watermaster is doing --  
16 is -- is conducting daily administration of water  
17 rights, evaluating how much natural flow is available,  
18 distributing that natural flow to the senior water  
19 rights, and then also tracking storage use throughout  
20 the system.  
21 Q. So short version is they measure water from  
22 the river?  
23 A. Water District 1 would.  
24 Q. Water District 1. And so as I look at  
25 condition 14, there's a notification to the

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1 watermasters at the start of each year; right?  
2 A. Correct.  
3 Q. What other responsibilities do the  
4 watermasters have during the year that would be  
5 different than their typical responsibilities to  
6 measure and count the water?  
7 A. Well, condition No. 8, for example, which  
8 is the primary mitigation condition, describes some  
9 contingent rental transactions that must occur and that  
10 water be delivered to a specific recharge facility in  
11 New Sweden on some years, but not in every year.  
12 And the watermaster for Water District 1  
13 would have to make an annual evaluation about whether  
14 that was required in the first place and whether that  
15 water was actually delivered.  
16 Q. And the watermaster does that for all  
17 diversions up and down the Snake River?  
18 A. But it would require that watermaster to  
19 know that these conditions exist and to be tracking  
20 these for every water right that has those type of  
21 unique conditions, yes.  
22 Q. Doesn't Water District 1 deal with variable  
23 deliveries of storage water and the moving of storage  
24 water up and down the Snake?  
25 A. It does.

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1 Q. Okay.

2 A. And I don't know -- you mentioned this

3 condition 14. I don't know whether that condition is

4 being followed or not.

5 Q. So there's a notification, but then going

6 to conditions 15 and 16, who has the primary burden

7 under those conditions?

8 A. For preparing an annual report, so

9 condition 15 requires an accounting be done by the

10 right holder, and No. 16 requires an annual report from

11 the right holder. And I know that the City of Rexburg

12 does provide an annual report.

13 Q. Right. And so -- and again, we may just

14 have to agree to disagree, but I think your testimony

15 is that this is burdensome on the watermaster to be

16 notified, burdensome for Water District 1 to account

17 for the storage simply because it's in this sort of a

18 permit. And from my view, they -- that's what their

19 role is.

20 So what I'm trying to understand, what's

21 the additional burden? Is it just that there's more

22 work to do? Or is it a different type of work that

23 creates the administrative burden within the

24 Department?

25 A. It's additional work, and it's complexity

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1 that is above and beyond a standard water right.

2 Q. There was also some testimony about

3 limitation on consumptive use, and that that is

4 something that the Department has not done; in other

5 words, they would not put as a condition that the water

6 user can only irrigate a certain crop.

7 Do you recall that testimony?

8 A. Is that my testimony?

9 Q. Yeah.

10 A. That I just barely testified to?

11 Q. Uh-huh.

12 A. That's right. We don't -- we don't

13 establish irrigation water rights based on a promise to

14 only plant one type of crop versus another.

15 Q. But the Department can issue water right

16 permits that limit the amount of volume that's

17 authorized under the water right; correct?

18 A. Correct.

19 Q. So if a water user came in and said "I'd

20 like an irrigation right, but I only want 2 acre-feet

21 per acre," and here it's mitigated over here, isn't the

22 volume that they would pump, isn't that recorded and

23 reported to the Department?

24 A. It is. I've never seen such an

25 application.

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1 Q. You don't recall the Cook transfers that

2 you were Hearing Officer -- or the Cook application

3 that you were the Hearing Officer on?

4 A. That limit was imposed, yeah, by the -- by

5 the Hearing Officer.

6 Q. That's right. So there was a base right

7 and a new right and an overall volume limit based on

8 historical pumping?

9 A. To prevent enlargement.

10 Q. You know, and --

11 A. Which is a transfer application.

12 Q. Well, no. There was a transfer on the base

13 right, but an Application for Permit for the additional

14 right; correct?

15 A. Correct.

16 Q. And the condition limited the amount of

17 volume based on the historic pumping of the base right?

18 A. Correct.

19 Q. And so to ensure compliance the State,

20 through the water district, receives a report on annual

21 volume that's pumped from those wells; correct?

22 A. I agree.

23 Q. And if there's an excess amount of water

24 that's diverted above the volume amount, what happens

25 within -- from the Department?

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1 A. The water user should be curtailed at the

2 moment that they hit that volume limit.

3 Q. And if they're not curtailed, the

4 Department has a violation process; correct?

5 A. It does.

6 Q. Okay. And so the water user would first

7 receive a notice of unauthorized water use, so

8 essentially a warning, and if it rose to the extent of

9 to the point the Department felt that a Notice of

10 Violation should be issued, the Department would issue

11 a Notice of Violation; correct?

12 A. That's been our practice.

13 Q. And what typically happens in that

14 violation process?

15 A. We generally hold a conference, a

16 compliance conference with the water user and sometimes

17 their representative and try to find a path forward to

18 bring the water user into compliance and then possibly

19 to pay a penalty for whatever overpumping that has

20 occurred.

21 Q. And by statute, the current rate is up to

22 \$300 per acre; correct?

23 A. Correct.

24 Q. And so has the Department had to use that

25 process on existing water rights within the state?

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1 A. Of course.  
 2 Q. Okay. And so this is not unusual, even  
 3 amongst existing water users, where there's some  
 4 violation of existing water rights; correct?  
 5 A. That's not unusual.  
 6 Q. Okay. Have -- to your knowledge, has a  
 7 municipality ever been subject to an NOV proceeding in  
 8 your office?  
 9 A. Not that I can remember.  
 10 Q. And in terms of the -- I guess the teeth of  
 11 the conditions for noncompliance, you had testified  
 12 before that the Department went through a -- or your  
 13 office went through that licensing process and found  
 14 several permits that were out of compliance; correct?  
 15 A. That's right.  
 16 Q. And isn't it true that your office voided  
 17 some of those permits because of noncompliance?  
 18 A. We did. And some permit holders came into  
 19 compliance through alternative mitigation plans.  
 20 Q. But for those that didn't what happened?  
 21 A. Again, the water rights -- the permits were  
 22 voided.  
 23 Q. They were rescinded; right?  
 24 A. Yes.  
 25 Q. So the Department effectuated that

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1 condition that we've talked about that's in the Rexburg  
 2 permit that if you don't follow it it can be rescinded?  
 3 A. That's right.  
 4 Q. And would you expect anything any different  
 5 if there were that same condition included in a  
 6 municipal water right application?  
 7 A. No.  
 8 Q. Okay. Does the Department receive  
 9 direction or guidance from the governor's office or any  
 10 other entity on policy for growth in the state of  
 11 Idaho?  
 12 MR. BAXTER: Objection. I think that's outside  
 13 the scope of my questions for Mr. Cefalo.  
 14 THE HEARING OFFICER: Can you repeat the  
 15 question, Mr. Harris?  
 16 MR. HARRIS: Yeah.  
 17 Q. Does the Department receive any sort of  
 18 direction from the governor's office or elsewhere for  
 19 growth policy within the state of Idaho?  
 20 I do think that's within the scope of what  
 21 we talked about because he's saying that this will  
 22 create additional burdens for the Department, but my  
 23 point will be that the State can provide resources to  
 24 address these situations. So I'm just asking if  
 25 there's direction that they receive, or do they just

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1 operate independent.  
 2 THE HEARING OFFICER: Objection's overruled.  
 3 THE WITNESS: I don't know. The governor's  
 4 office hasn't spoken to me. That might be a question  
 5 for the Director.  
 6 Q. (BY MR. HARRIS): Sure. And so when you  
 7 run into situations where you feel like the Department  
 8 was understaffed, what is the typical process back to  
 9 the State to request additional resources?  
 10 A. I don't know that either. That's not been  
 11 part of my job responsibilities as eastern regional  
 12 manager.  
 13 Q. So and again, I think a lot of difference  
 14 with how maybe we view the world is the work that we're  
 15 asked to do.  
 16 But if you represented a municipality that  
 17 needed additional water for growth, what would you  
 18 advise them to do? What are their options to secure  
 19 additional water rights for their city?  
 20 A. In eastern Idaho the cities have primarily  
 21 used the transfer process. There are hundreds, if not  
 22 thousands, of groundwater irrigation water rights,  
 23 existing water rights that are available. That's --  
 24 that's one of the beauties of living in eastern Idaho  
 25 is that there are a lot of existing groundwater rights

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1 available. Now, they come at a cost. But it would be  
 2 converting that irrigation use to municipal use.  
 3 Q. Some of those rights aren't fully available  
 4 for transfer because they have overlapping surface  
 5 water entitlements; correct? Or at least it makes the  
 6 transfer more challenging?  
 7 A. Correct, it makes the transfer more  
 8 challenging, but not impossible. It would just require  
 9 that owner to hold -- the seller of the water rights to  
 10 hold those, say, canal company shares unused or convey  
 11 those canal company shares with the groundwater.  
 12 Q. And currently the Department requires a  
 13 transfer applicant to use the groundwater model to  
 14 determine whether there's --  
 15 A. Correct.  
 16 Q. -- an increased injury?  
 17 A. Correct.  
 18 Q. And would you agree with me that moving  
 19 water west of the Snake River generally east of the  
 20 Snake River presents some challenges with that model?  
 21 A. I know that there are some areas in eastern  
 22 Idaho where it's difficult to move water to because of  
 23 how the model -- because of the model results, the  
 24 impacts to the Snake River.  
 25 Q. So if water rights are unavailable to

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1 purchase and transfer, what other options would you  
 2 advise the City to undergo to obtain water for  
 3 additional growth?  
 4 A. Obtaining a new water right through an  
 5 Application for Permit doesn't circumvent or address  
 6 the modeling concerns, because ultimately if you're  
 7 holding an existing water right unused, that still has  
 8 to be modeled. And so those same issues exist whether  
 9 we're talking about applications for permit or  
 10 applications for transfer.  
 11 Q. But for applications for transfer, say they  
 12 have some surface water available to mitigate for what  
 13 they're doing, under this current policy there would be  
 14 an assumption that everything they're proposing to pump  
 15 would be fully consumptive?  
 16 A. Correct.  
 17 Q. And so they would essentially overmitigate  
 18 for their actual diversions at their proposed place of  
 19 use?  
 20 A. They would not overmitigate for the  
 21 authority sought in the application, though.  
 22 Q. Understand your position on the authority  
 23 side.  
 24 A. Right.  
 25 Q. But certainly actual consumptive use they

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1 would be able to mitigate?  
 2 A. I don't know.  
 3 Q. How many staff members do you have in  
 4 eastern?  
 5 A. We have 20.  
 6 Q. 20 --  
 7 A. 20 people, including myself.  
 8 Q. I'm sorry. I interrupted you.  
 9 A. 20 people, including myself.  
 10 Q. And generally speaking, what are their --  
 11 what are the different divisions of responsibilities  
 12 there?  
 13 A. Again, we, out of a regional office, handle  
 14 all of the programs of the Department. So we have  
 15 somebody who spends their time processing and reviewing  
 16 stream channel alteration permits. We have an engineer  
 17 who's assigned to the dam safety program. We have  
 18 somebody who handles well drilling permits. We have a  
 19 number of people who are assigned to work for specific  
 20 water districts, such as Water District 1 or the Ground  
 21 Water Districts 100, 110, 120.  
 22 Q. Do you have staff that review permit  
 23 applications, transfer applications?  
 24 A. Correct. And then in addition to that we  
 25 have people that process water right filings, and of

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1 course we have clerical and administrative staff too.  
 2 Q. How many staff members process or review  
 3 permit applications and transfers?  
 4 A. Two people that do that full time, and then  
 5 maybe two other or three other people that do that as  
 6 maybe 50 percent of their time.  
 7 Q. Do you have an estimate on how many permit  
 8 applications your office receives in a year,  
 9 approximately?  
 10 A. I -- I don't. It can be -- it can be 15  
 11 per month. And like I said earlier, a lot of that  
 12 permitting work is actually happening out of the Salmon  
 13 River drainage, because those basins are still open for  
 14 new appropriations.  
 15 Q. So then the Snake, any estimate on how many  
 16 actual permit applications you receive in this area?  
 17 A. I don't. We -- that's something that could  
 18 be found in our database. But I don't off the top of  
 19 my head have an estimate.  
 20 Q. Do you think at least about half of those  
 21 15 a month are in the Salmon drainage?  
 22 A. It would be.  
 23 Q. At least half?  
 24 A. Uh-huh.  
 25 MR. HARRIS: I have no further questions. Thank

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1 you.  
 2 MR. LAWRENCE: Mr. Director.  
 3  
 4 CROSS-EXAMINATION  
 5 BY MR. LAWRENCE:  
 6 Q. Hello again, Mr. Cefalo.  
 7 A. Hi.  
 8 Q. Mr. Cefalo, would you agree that municipal  
 9 water rights can be fully consumptive but often are  
 10 not?  
 11 A. I agree.  
 12 Q. Is it your testimony -- earlier you were  
 13 talking about the difference in size or scope of  
 14 industrial uses versus municipal uses.  
 15 Is it your testimony that there are no  
 16 industrial water rights in Idaho that are larger than  
 17 any municipal water rights?  
 18 A. No.  
 19 Q. When analyzing an application for a new  
 20 irrigation use, the Department does not assume that the  
 21 full diversion rate will be fully consumed; is that  
 22 correct?  
 23 A. There's a field headgate requirement and a  
 24 maximum potential consumptive use, and those are two  
 25 different things.

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1 Q. Mr. Cefalo, are you familiar with the  
2 policy of the law of Idaho is to secure the maximum use  
3 of benefit of its water resources? Are you familiar  
4 with that policy?  
5 A. I am.  
6 Q. And to achieve that policy, sometimes it  
7 takes some creativity in developing the water rights or  
8 permitting the water rights or administering the water  
9 rights; would you agree?  
10 MR. BAXTER: Objection. Calls for a legal  
11 conclusion and speculation.  
12 THE HEARING OFFICER: Restate the question,  
13 please.  
14 Q. (BY MR. LAWRENCE): Mr. Cefalo, to achieve  
15 the maximum use and benefit of the State's water  
16 resources, does the Department and water users take --  
17 do they take creative approaches in developing their  
18 water rights and administrative water rights?  
19 THE HEARING OFFICER: Is there still an  
20 objection?  
21 MR. BAXTER: Withdraw the objection.  
22 THE HEARING OFFICER: Can you read back that  
23 question for me.  
24 THE WITNESS: I've got it.  
25 THE HEARING OFFICER: I think I need to hear it  
Page 400

1 one more time.  
2 THE WITNESS: I've got it.  
3 THE HEARING OFFICER: Okay.  
4 THE WITNESS: I've seen creative approaches in  
5 trying to address issues of protest.  
6 Q. (BY MR. LAWRENCE): And so not every water  
7 right is a standard water right, sometimes it takes  
8 creative approaches conditioning in order to get the  
9 permit approved; correct?  
10 A. I've observed that there have been creative  
11 approaches proposed. Sometimes the Department has  
12 rejected settlements because they are proposing  
13 conditions that we feel like we can't administer.  
14 But yes, I agree with your overall -- your  
15 broader premise, which is there have been some unique  
16 approaches used over the years.  
17 Q. And is it your testimony that the maximum  
18 use and benefit of the State's water resources should  
19 occur only if it does not impose an administrative  
20 burden on the Department?  
21 A. That's not my testimony.  
22 MR. LAWRENCE: Thank you, Mr. Cefalo. Thank  
23 you.  
24 MR. HARRIS: I'm not coming back up. I just  
25 forgot my mouse.  
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1 CROSS-EXAMINATION  
2 BY MR. BROMLEY:  
3 Q. (BY MR. BROMLEY): Hi, James.  
4 A. Hello.  
5 Q. Chris Bromley.  
6 I'd like to turn to Exhibit 326. I'm not  
7 sure which binder that one's in.  
8 A. It's the first exhibit in the second  
9 binder.  
10 Q. Oh, that's easy. Okay. This is a transfer  
11 of water right in the name of Sun Valley Water & Sewer  
12 District; would you agree with that?  
13 A. That's what shows on the face. Transfer  
14 No. 84041.  
15 Q. Right. And what I wanted to talk with you  
16 about, James, is just evolution and conditioning  
17 associated with this transfer.  
18 All right?  
19 A. Okay.  
20 Q. So if you go three pages in, you'll see  
21 Water Right No. 37-7102.  
22 Do you see that?  
23 A. I see that.  
24 Q. I'm just -- there are a whole bunch of them  
25 in here, but I'm just going to the first one.  
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1 And what's the priority date?  
2 A. May 25th, 1971.  
3 Q. Okay. So that predates the moratorium, the  
4 original management plan, I should say, and moratorium  
5 in the Big Wood River Basin; correct?  
6 A. I think that's correct. I think there was  
7 evidence in the record about 1991, if I recall, yes.  
8 Q. Good recollection. So we see in conditions  
9 of approval pretty standard conditioning. Condition 1  
10 is regulation of the right by the watermaster,  
11 condition 2 is installation of a measuring device,  
12 condition 3 is the place of use is within the  
13 boundaries of the Sun Valley Water & Sewer District.  
14 And then condition 4, have you seen  
15 condition 4 before in municipal water rights?  
16 A. I have. And I know that's -- that's the  
17 alternative point of diversion condition, I believe,  
18 that -- that came from, I believe, some City of  
19 Pocatello case -- or City of Pocatello was involved in  
20 some way with that. I don't know all of the details  
21 because I wasn't involved.  
22 Q. No, that's good recollection, because that  
23 case then came out of the SRBA in how to properly  
24 condition alternative points of diversion.  
25 A. Uh-huh.  
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1 Q. No. 5, then, is, you know, the easements  
2 and you don't get a right-of-way and so on and so  
3 forth. The rest of the conditions, I think, are pretty  
4 self-explanatory.  
5 If you could then go 13 pages in. And we  
6 should then be looking at Water Right No. 37-21151.  
7 A. I have that.  
8 Q. Great. What's the priority date of that  
9 water right?  
10 A. September 10th, 2003.  
11 Q. Okay. And if we look at condition of  
12 approval No. 4, that, to me, looks like -- it's a  
13 similar condition with a different priority date from  
14 the one we were looking at above; is that correct?  
15 A. Correct.  
16 Q. Okay. Okay. So standard language with a  
17 different priority date to determine the priority date  
18 of the well.  
19 Then if we flip to the next page, I see a  
20 bunch of conditions that I didn't see before in the  
21 37-7102 water right. I'd like to start with condition  
22 of approval No. 8.  
23 Have you seen that condition before?  
24 A. I have.  
25 Q. Okay. And that, you would agree, was not  
Page 404

1 on the prior water right that we were looking at?  
2 A. Correct.  
3 Q. And again, the priority date on this water  
4 right is September 10, 2003, which would mean that it  
5 postdated the 1990s moratorium; correct?  
6 A. Correct.  
7 Q. Okay. Then we see condition of approval  
8 No. 9.  
9 Have you seen a condition like that before?  
10 A. I have.  
11 Q. Okay. And that's that you can't exceed a  
12 half acre of irrigation on that particular parcel  
13 within Sun Valley Water & Sewer District.  
14 No. 10, have you seen this condition before  
15 on a use of a water right?  
16 A. I have.  
17 Q. Okay. And that's ensuring that --  
18 basically my interpretation of that is compliance with  
19 42-111 within -- you know, between homes and businesses  
20 and the like; would you agree with that?  
21 A. I would.  
22 Q. Okay. No. 11, have you seen this condition  
23 before?  
24 A. It seems to be a supplemental condition  
25 requiring use of surface water rights for irrigation  
Page 405

1 prior to groundwater.  
2 Q. Sometimes I think referred to as the  
3 surface water first condition?  
4 A. That's okay. I agree.  
5 Q. Okay. No. 12, then, have you seen this  
6 condition put onto municipal water rights before?  
7 A. I have. These points of diversion must be  
8 within the Trust Water area.  
9 Q. Provides the Department authority to  
10 re-evaluate water use if it's in the public interest?  
11 A. As a Trust Water -- a water right relying  
12 on Trust Water provisions, yeah.  
13 Q. Okay. And then condition of approval  
14 No. 14, have you seen a condition like this before on a  
15 municipal water right?  
16 A. Yes.  
17 Q. And that, again, is if the holder, in this  
18 case Sun Valley Water & Sewer District, fails to comply  
19 with the terms of the transfer the Director may rescind  
20 approval?  
21 A. Uh-huh.  
22 Q. In other words, might curtail the water  
23 right; correct?  
24 A. Correct.  
25 Q. What I see in these water rights, James, is  
Page 406

1 an evolution of conditions that have taken some amount  
2 of creativity to come up with as the Department has  
3 become more sophisticated with water rights; would you  
4 agree with that statement?  
5 A. I view these conditions as a response to  
6 the limits set by the moratorium.  
7 Q. Right. And so Sun Valley Water & Sewer  
8 District, I'll represent to you, takes their treated --  
9 takes their effluent, treats it in a wastewater plant  
10 along with the City of Ketchum, and then it discharges  
11 into the Big Wood River.  
12 Would that surprise you?  
13 A. No.  
14 Q. And they have an NPDES permit or an IPDES  
15 permit that authorizes that discharge.  
16 Would that surprise you?  
17 A. No.  
18 Q. And my question, then, James, is, why is it  
19 not reasonable, then, to include another condition on  
20 these water rights to explain the treated wastewater is  
21 discharged into the Big Wood River under NPDES permit,  
22 IPDES permit XYZ, and that any changes to that permit  
23 require the filing of a transfer of the Department of  
24 Water Resources to update any conditions, and the  
25 failure to do so may result in cancellation of the  
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1 water right similar to what we see in condition 14?  
 2 Why is that not a reasonable approach here?  
 3 A. I guess I'm struggling to understand. What  
 4 does that question -- how does that pertain to my  
 5 previous testimony? I'm not -- I guess -- I'm not  
 6 understanding, I guess, what you're -- what you're  
 7 asking.  
 8 Q. Well, I think I asked a bit of a compound  
 9 question. So you've been talking about administrative  
 10 burden, it's too difficult, it's too difficult for the  
 11 Department to work through these questions that, in  
 12 your counsel's words, was a variable mitigation scheme  
 13 that Mr. Sullivan is testifying to about.  
 14 My question is this: Why is it  
 15 unreasonable -- or would it be unreasonable for the  
 16 Department to craft a condition -- and we see this  
 17 evolution of water right conditions; correct? We've  
 18 talked about these two water rights?  
 19 A. Yeah. This second water right was -- was  
 20 structured in a way that it could fit within the  
 21 moratorium that existed at the time.  
 22 Q. And now we have another moratorium.  
 23 A. Uh-huh.  
 24 Q. And my question is this: If we know how  
 25 wastewater is discharged back into the waters of the

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1 State through an NPDES permit, why can't that permit  
 2 number be written into the water right as a condition  
 3 of approval that if there are changes to the permit a  
 4 transfer must be filed to update the water right,  
 5 otherwise the water right may be cancelled by the  
 6 Director, the water right may be curtailed by the  
 7 Director? Why is that not a reasonable approach?  
 8 A. It could be written in. And we could issue  
 9 hundreds of permits like the one we looked at for the  
 10 City of Rexburg. It's my position, having worked in  
 11 the day-to-day administration of water rights within  
 12 the eastern region, and as a watermaster, and in  
 13 working with watermasters, that there is not the  
 14 capacity to implement and administer those complex  
 15 water rights.  
 16 Q. And in your opinion, it would be complex to  
 17 cite to the NPDES permit number, and that if there are  
 18 changes to that permit that the right holder must file  
 19 a transfer; is that what you're testifying to?  
 20 A. I mean you can characterize that that's  
 21 what the permit would look like coming out; right?  
 22 That the approval would just have one simple condition  
 23 referring to an NPDES permit. And that might be your  
 24 vision.  
 25 But I think the reality is reflected more

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1 in the City of Rexburg permit of what -- what  
 2 mitigation plans really look like as they're  
 3 implemented, and variable mitigation plans in  
 4 particular.  
 5 Q. So the Department is not looking to try and  
 6 evolve with the change in water resources; is that  
 7 correct?  
 8 A. That's not my testimony.  
 9 MR. BROMLEY: Thank you.  
 10 I'm going to move to admit Exhibit 326.  
 11 THE HEARING OFFICER: Any objection?  
 12 We'll bring Exhibit 326 into the record.  
 13 (Exhibit 326 admitted.)  
 14 MR. BROMLEY: Thank you.  
 15 THE HEARING OFFICER: Any additional  
 16 cross-examination of Mr. Cefalo?  
 17 Any redirect?  
 18 MR. BAXTER: Yeah.  
 19 MR. BARKER: No, go ahead.  
 20 MR. BAXTER: Go ahead, Al. You first.  
 21  
 22 CROSS-EXAMINATION  
 23 BY MR. BARKER:  
 24 Q. Morning, Mr. Cefalo. Albert Barker on  
 25 behalf of the South Valley Ground Water District.

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1 Are you familiar with the terms of an NPDES  
 2 or an IPDES permit?  
 3 A. I am not. We don't administer those out of  
 4 our office.  
 5 Q. So do you know if when somebody -- when a  
 6 discharger from this waste discharge location into the  
 7 Big Wood discharges into the Big Wood River, if they  
 8 have to change their permit every time they change  
 9 their amount of daily discharge?  
 10 A. Meaning their NPDES permit?  
 11 Q. Yes.  
 12 A. I don't know.  
 13 Q. All right. And are you familiar with the  
 14 fact that the Sun Valley Water & Sewer District also  
 15 land-applies its water rights on the golf course?  
 16 A. That's a -- that area is served out of the  
 17 Twin Falls office, and I'm just not familiar with those  
 18 water rights.  
 19 Q. All right. And so if you had two different  
 20 facilities discharging -- or two different entities,  
 21 municipalities, discharging to a single wastewater  
 22 treatment plant, how would you know which -- how much  
 23 water came from one facility versus another?  
 24 A. We've had some testimony already in this  
 25 hearing about the holders of the water rights who are

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1 diverting the water are different from the entities  
2 ultimately that are treating the water and discharging  
3 into the rivers. And I agree that would -- that would  
4 add some complexity.  
5 Q. It adds additional complexity beyond what  
6 you had described in your direct examination?  
7 A. That's right.  
8 MR. BARKER: All right. Thank you.  
9 Nothing further, Mr. Director.  
10  
11 REDIRECT EXAMINATION  
12 BY MR. BAXTER:  
13 Q. Mr. Cefalo, Mr. Harris talked with you  
14 about IDWR's enforcement process; correct?  
15 A. Right.  
16 Q. The NOV process, the compliance conference?  
17 A. Correct.  
18 Q. And you recall that?  
19 A. Yes.  
20 Q. He suggested that IDWR can enforce against  
21 a water user if they can't comply with these complex  
22 conditions.  
23 Do you think that is a good strategy for  
24 IDWR to impose conditions and then simply rely upon the  
25 enforcement process to ensure compliance with those  
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1 conditions?  
2 A. I don't. It still requires us to find that  
3 noncompliance. Because we have thousands of water  
4 rights that are handled within some water districts,  
5 oftentimes noncompliance isn't -- isn't found. You  
6 know, if might be stumbled across and we try to address  
7 those as we find them, but I don't know that relying on  
8 the enforcement program to clean up all of those  
9 possible violations, I don't know that that's a good  
10 strategy.  
11 MR. BAXTER: Thank you. No questions.  
12 THE HEARING OFFICER: Any recess?  
13 All right. Thank you.  
14 I guess I would assume we're bringing  
15 Mr. Sullivan up?  
16 MR. BRICKER: Correct.  
17 THE HEARING OFFICER: All right. Come on up.  
18 Morning again.  
19 GREGORY K. SULLIVAN: Morning.  
20  
21 GREGORY K. SULLIVAN,  
22 having been called as a rebuttal witness by the  
23 municipal providers and duly sworn, testified as  
24 follows:  
25 ///  
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1 THE HEARING OFFICER: Okay. And the risk of  
2 being redundant, could you again please state your full  
3 name and address for the record.  
4 THE WITNESS: Yes. My name is Gregory K.  
5 Sullivan. Business address is 1000 Logan Street,  
6 Denver, Colorado 80203.  
7 THE HEARING OFFICER: Go ahead.  
8 MR. BRICKER: Thank you.  
9  
10 DIRECT EXAMINATION  
11 BY MR. BRICKER:  
12 Q. Mr. Sullivan, did you hear Mr. Cefalo's  
13 rebuttal testimony this morning that he remains  
14 concerned about administering complex water rights?  
15 A. Yes, I did.  
16 Q. What is your experience with the Colorado  
17 Division of Water Resources administration of water  
18 rights as they've evolved into being more complex?  
19 A. Yeah. Water rights administration in  
20 Colorado has evolved through time. And it used to be  
21 very simple, just reporting of diversions for the most  
22 part and just, you know, the administration involved,  
23 making sure the entities weren't diverting in excess of  
24 their water rights.  
25 But over time the administration and the  
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1 water rights themselves have evolved and become  
2 somewhat more complex. And to me, I mean that's sort  
3 of a natural response to increasingly overappropriated  
4 system and in a situation where water is increasingly  
5 more and more valuable.  
6 And so, you know, as water becomes more  
7 expensive and more precious then, you know, it's  
8 expected. And you see that water users are seeking to,  
9 you know, maximize the use of their rights, you know,  
10 existing rights and new rights to the extent allowed  
11 under the law and without injury to others.  
12 And sometimes that requires creative  
13 approaches to accounting and mitigation or  
14 augmentation. And that's just -- that's -- that's the  
15 process and the landscape that we live in. And in my  
16 experience in Colorado and other Western states, the  
17 administrator evolves to -- and the administration  
18 evolves to deal with that.  
19 And I mean it's a common lament that I've  
20 heard in Colorado and other places that  
21 administration's becoming more difficult. But I mean,  
22 you know, a lot of things are hard. And if more  
23 staffing is needed, then -- you know, like water is the  
24 lifeblood of Idaho. And water rights administration is  
25 important. And if there's more resources needed to  
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<p>1 administer it, then I think the legislature should make 2 it a priority to make more appropriations to increase 3 the staffing if that's needed. 4       So, you know, water has -- water rights -- 5 you know, just to come back to summarize your question, 6 you know, it's natural for the complexity of water 7 rights administration to evolve. And I would expect 8 that to happen in Idaho too. 9       Q. And yesterday we ran through the methods 10 that you propose or included in your report on how 11 these water rights could be administered through 12 accounting. 13       Do you think that this accounting that we 14 presented yesterday is complex? 15       A. No, it's not very complex at all. I mean 16 what I've talked about is, you know, measuring 17 diversions, which already happens. And, you know, the 18 additional additions to facilitate some of the 19 accounting I talked about is perhaps, you know, 20 measuring returns, like wastewater returns, which 21 they're already measured, so just reporting that, and 22 then in some cases applying some simple factors, 23 consumptive use factors, to the usage. 24       And as I showed yesterday in that 25 spreadsheet, I mean that is -- is a very simple</p> <p style="text-align: right;">Page 416</p>	<p>1 some reason to sort of trust and rely on the entity 2 that's reporting the information. 3       And also in my experience in Colorado that 4 there's like an initial process of getting agreement on 5 the accounting forms. So like the accounting forms 6 are -- as part of the process are submitted to the 7 agency, the Division of Water Resources, and there's, 8 you know, some process for getting agreement on how the 9 accounting's to occur, then that's done, and then it's 10 just routine that those reports are just submitted. 11       And if there's -- you know, there's a line 12 item to show, you know, is the mitigation -- you know, 13 does it equal or exceed the consumptive use or, you 14 know, whatever the condition is? And you can see, you 15 know, easily whether that's achieved or not. So I 16 don't think it's a problem. 17       You know, in Colorado there is a 18 requirement in these -- in obtaining a decree or a 19 water right that the conditions be determined by the 20 Department to be administrable. And that happens. And 21 in Colorado the agency has determined that these 22 conditions are administrable. 23       And if they're too complicated, well then 24 they can be, you know worked on to make them 25 administrable. So I think there's a process for all of</p> <p style="text-align: right;">Page 418</p>
<p>1 spreadsheet and illustrative of the sort of accounting 2 that could be done in order to track the consumptive 3 use water rights. And it doesn't require -- there's no 4 additional day-to-day administration requirement that 5 comes out of that. 6       In my experience, that sort of accounting 7 and administration is based on -- it's based on 8 measurement, accounting, and reporting and, you know -- 9 and the reports that are put in monthly or even 10 annually. And then the reports just checked to make 11 sure that the accounting is consistent with the 12 conditions. 13       And if it's not -- you know, if they're 14 not, then, you know, then there's a follow-up, as 15 Mr. Cefalo talked about, you know, to -- you know, to 16 bring them into compliance or even to cancel the water 17 right if the user isn't complying. 18       And those reports can be crafted in such a 19 way that, you know, there's -- that the administrator 20 doesn't necessarily have to wade through pages and 21 pages and pages of accounting, that it all gets 22 distilled down, you know, into some figures. 23       And the person submitting the accounting 24 also is representing that it's -- you know, that it's 25 correct. And, you know, if the, you know -- so there's</p> <p style="text-align: right;">Page 417</p>	<p>1 this to work. 2       Q. And it doesn't necessarily mean that the 3 day-to-day work of the watermasters or the 4 boots-on-the-ground personnel changes significantly; 5 right? 6       A. No. I mean they're out there, you know, 7 measuring, setting headgates and the like, and, you 8 know, determining priority cuts and whatever. 9       And this other, you know, monitor -- or 10 accounting and reporting of return flows and all that, 11 that happens behind the scene and is just a reporting 12 requirement. And yes. 13       Q. Okay. Mr. Cefalo suggested that transfers 14 are a good mechanism for municipalities to increase 15 their water supplies. 16       Do you agree? 17       A. Well, it is a mechanism that has been used. 18 But, you know, water is getting increasingly expensive 19 in Idaho, and water prices are, you know, going through 20 the roof, is my understanding. And to, you know, just 21 you know, presume that well, cities, you know, we can 22 just -- making them, you know, assume that all of their 23 water use is fully consumed and therefore they have to 24 acquire and transfer more water at greater cost is no 25 big deal, well, it is a big deal.</p> <p style="text-align: right;">Page 419</p>

1 And, you know, again, coming back to, you  
 2 know, there's no reason to make cities overmitigate.  
 3 And that's another reason to not make them overmitigate  
 4 if it means they have to go acquire more and more  
 5 expensive -- increasingly expensive water.  
 6 Q. So let's move over to the Surface Water  
 7 Coalition's expert report. Will you please turn to  
 8 Exhibit 1.  
 9 THE HEARING OFFICER: It's the skinny one.  
 10 Sorry. This one [indicating].  
 11 Q. (BY MR. BRICKER): Let's start on page 3.  
 12 Do you see the sentence at the beginning of  
 13 the second paragraph that says, quote, "As wastewater  
 14 treatment requirements become more stringent and  
 15 expensive, it becomes less likely a new municipal use  
 16 will discharge wastewater back to any natural water  
 17 source," end quote?  
 18 A. Yes.  
 19 Q. How do you respond to that statement?  
 20 A. Yeah, I think the implication here is that  
 21 there will be a natural evolution towards less direct  
 22 discharge of wastewater to the stream as, yeah,  
 23 treatment requirements and -- become more stringent and  
 24 expensive. And that can be true.  
 25 But I've seen the opposite as well. And,

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1 you know, in the case where -- you know, I have clients  
 2 that are doing reuse and reuse of -- through -- through  
 3 application of treated effluent to like golf courses  
 4 and parks and, you know, urban areas, and actually they  
 5 have a situation like their treatment requirements are  
 6 actually more stringent for that kind of reuse because  
 7 of the potential for human contact and the like.  
 8 And so it's actually more expensive and  
 9 there's more regulation to jump through in that kind of  
 10 land application compared to the direct discharge to  
 11 the stream. So it's -- you know, there could be trends  
 12 either way.  
 13 And again, as I talked -- mentioned  
 14 yesterday, you know, these accounting procedures that I  
 15 talked about are adaptable to changes in wastewater  
 16 disposal.  
 17 Q. Okay. Do you also see on page 3 two  
 18 sentences later in that same paragraph, beginning with  
 19 "Further," it says, quote, "Further, even if the  
 20 discharge is returned to the source at some distant  
 21 location, the impacts locally will be the same as if  
 22 the diversions were fully consumed," end quote.  
 23 How do you respond to that?  
 24 A. I think that can be true. And if -- if  
 25 that is -- is significant as to, you know, the return

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1 flows not being put back in a place where they will  
 2 benefit the senior water right that's being impacted by  
 3 the original diversion, then yeah, it might be  
 4 necessary to mitigate the full amount of that  
 5 diversion, because the return's not coming back in a  
 6 place that benefits the senior.  
 7 But again, case-by-case, if that situation  
 8 exists and that -- you know, there's a protest, and  
 9 that particular circumstance can be dealt with. But I  
 10 don't think it -- just because that kind of situation  
 11 can happen that therefore universally you should assume  
 12 that municipal use is 100 percent consumptive. That  
 13 doesn't track.  
 14 Q. And looking to the next paragraph, second  
 15 sentence is, quote, "A diversion of Trust Water for  
 16 municipal purposes with treated return flow, if any,  
 17 returning to the Non-Trust Water area results in full  
 18 depletion of the Trust Water source by the total amount  
 19 of the diversion," end quote.  
 20 How do you respond to that statement?  
 21 A. Yeah, I'm not exactly sure, you know, the  
 22 entirety of what they're getting at here. But in my  
 23 opinion, you know, in terms of the depletions to the  
 24 Snake River caused by pumping, the existence of the  
 25 Trust line is immaterial to that.

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1 And you know, the Trust line is somewhat of  
 2 a relic of a -- or misinformed idea that pumping  
 3 impacts can't cross a flow -- a groundwater flow line.  
 4 And as we know, you know, pumping on either  
 5 side of the Trust line can affect the nearby Snake  
 6 River; and therefore, you know, it doesn't matter on  
 7 what side of the line you're necessarily on in terms of  
 8 the depletions. You know, depletions can affect the  
 9 river there, and replacements would need to be made,  
 10 you know, to prevent injury there. And I'm not sure,  
 11 you know, being on one side of the line or the other  
 12 has any effect on that.  
 13 Q. And turning to the next page, page 4. As  
 14 Mr. Colvin also discussed this morning, there's a  
 15 statement in the second paragraph under section 2.2  
 16 that says, "All Colorado water rights are subject to  
 17 single use, with return-flow requirements, as set forth  
 18 in the 1913 Colorado Supreme Court's Comstock versus  
 19 Ramsay decision," end quote.  
 20 How do you respond to that?  
 21 A. Well, that statement reflects a fundamental  
 22 misunderstanding of water law in Colorado. There are  
 23 single-use water rights in Colorado. And but, you  
 24 know -- but also water users are able to appropriate  
 25 fully consumptive water rights if, when they make the

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<p>1 application for the right, they demonstrate an intent 2 and ability to reuse the water.</p> <p>3 So basically they have to claim, you know, 4 a right of reuse, and show that they have a mechanism 5 to do that. And if they can show the Court that, then 6 they can get a water right, a new water right that's 7 fully consumptive.</p> <p>8 And so therefore, you know, Mr. Colvin's 9 statement that fully consumptive water rights in 10 Colorado are only nontributary water or changed to 11 consumptive use is just wrong.</p> <p>12 Q. And how do you respond to his testimony 13 about Colorado having a monthly resume and Idaho not 14 having a similar arrangement here?</p> <p>15 A. Well, the resume system in Colorado is 16 something that was just instituted with a 1969 act that 17 just provided a supplemental or an additional way to 18 notify water users of water rights applications that 19 were made to the Court. But it was -- it was just an 20 additional notification process, because there already 21 existed, you know, from the beginning a requirement 22 that water rights application notices be published in 23 the local newspapers, just like they are in Colorado.</p> <p>24 So the resume as notice procedure is just 25 simply an additional process for notification. And</p> <p style="text-align: right;">Page 424</p>	<p>1 And that undoubtedly happened with Aurora's 2 accounting for the Prairie Water System.</p> <p>3 Q. So could the Department in Idaho ensure 4 that any accounting related to consumptive use be 5 administrable or require that they be satisfactory to 6 the Department?</p> <p>7 A. Sure. I don't see why not.</p> <p>8 Q. Now, looking in the third full paragraph on 9 page 5, the last sentence beginning with "Without," 10 states, "Without well-established and reliable 11 return-flow data available in Idaho, it is reasonable 12 for IDWR to administer new municipal water rights as 13 fully consumable," end quote.</p> <p>14 How do you respond to that?</p> <p>15 A. In my understanding, the return-flow data 16 available in Idaho is similar to the return-flow data 17 in Colorado already. And for the most part, we're 18 talking about either measurements of discharges back to 19 the stream from wastewater treatment plants or in some 20 cases, if there's land application, it would be a 21 requirement to measure the water that's put out for 22 land application. And if that's not a requirement, 23 that's an easy requirement to add to measure that.</p> <p>24 And then the rest of the accounting that I 25 talked about is just, you know, simple water balances,</p> <p style="text-align: right;">Page 426</p>
<p>1 it's -- I don't think it's really material to this -- 2 you know, creates a significant difference about how 3 water is administered or even appropriated in Colorado 4 versus Idaho.</p> <p>5 Q. And on page 5 of the report, Mr. Colvin 6 discusses the Prairie Waters System owned and operated 7 by the City of Aurora.</p> <p>8 Is that an example of that all water rights 9 are complex if they involve these conditions?</p> <p>10 A. No. I mean there's simple accounting in 11 Colorado and there's complex accounting. And I think 12 there's a general desire of everyone that the 13 accounting be made, you know, as simple as possible. 14 But again, sometimes it's necessary to get creative to 15 account for the concerns of particular opposers in a 16 water case and other challenges, but that doesn't 17 necessarily mean that it all needs to be complex.</p> <p>18 And as I mentioned earlier, there is -- you 19 know, even though there is complicated accounting at 20 times in Colorado, there is -- there have been 21 determinations made by the agency that it's -- that 22 these conditions are administrable. And there's -- and 23 the applicants are working with the agency to develop 24 accounting that works for both the water right holder 25 and for the agency.</p> <p style="text-align: right;">Page 425</p>	<p>1 tabulating diversions and return flows, and maybe 2 applying a consumptive use factor that's reasonable and 3 reliable. And that's it. So --</p> <p>4 Q. In --</p> <p>5 A. I think the -- it's -- it's doable -- 6 easily doable to compute for municipal consumptive use 7 in Idaho.</p> <p>8 Q. And that's something that you think the 9 municipal water users have the capacity to perform 10 those calculations?</p> <p>11 A. Yes. And yeah, as I mentioned, I think in 12 my testimony before, this is not something -- 13 accounting that the Department or the watermaster has 14 to do. The users can do the accounting and just report 15 it.</p> <p>16 Q. Now, turning to section 2.3. The first 17 sentence says, quote, "Sullivan describes the water 18 management" -- excuse me, strike that.</p> <p>19 The next sentence where it says, quote, "He 20 failed to mention that the cities of Bellevue, Carey, 21 Hazelton, Paul, Richfield, Rupert, and Wendell all have 22 Idaho Department of Environmental Quality permits that 23 allow for reuse of their treated municipal wastewater 24 effluent," end quote, how do you respond to that?</p> <p>25 A. Well, I think it mischaracterizes my</p> <p style="text-align: right;">Page 427</p>

1 report, because in that Table 2-1 that we were looking  
 2 at yesterday, there's a column in there indicating what  
 3 type of wastewater disposal they use. And for the  
 4 cities that he lists, I've appropriately characterized  
 5 what that is, you know, in terms of whether land  
 6 application or evaporation ponds, and also I have  
 7 identified in that manner that reuse is occurring by  
 8 those cities.

9 Q. That following sentence, quote, "Changes in  
 10 wastewater management and increases in water reuse  
 11 further justify IDWR treating municipal use as fully  
 12 consumptive," end quote, how do you respond to that?

13 A. Well, again, you know, that something can  
 14 happen doesn't mean you need to treat it that way now.  
 15 And if those changes do occur, then -- then the  
 16 accounting of the consumptive use can adjust for that.

17 Q. And finally, in the next paragraph, second  
 18 sentence, quote, "Indirect potable reuse is becoming  
 19 increasingly common in the Western U.S. where municipal  
 20 systems are being designed to recover wastewater  
 21 effluent after it passes through an environmental  
 22 buffer such as a wetland, aquifer, or surface water  
 23 channel," end quote, is that something that could also  
 24 be adjusted with your accounting?

25 A. Well, I'm not exactly sure what this

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1 indirect reuse is talking about. But yeah. And I  
 2 don't see any indication that that is occurring in  
 3 Idaho.

4 But yeah, if that somehow was reflecting a  
 5 consumption of a -- you know, additional consumptive  
 6 use of a municipality's water supply or return flows  
 7 that they were responsible for somehow that -- yeah,  
 8 then I guess they should get credit for that.

9 MR. BRICKER: All right. I have no further  
 10 questions.

11 And at this time I'll move to admit the  
 12 .pdf copies of the spreadsheets we showed on the screen  
 13 yesterday, as we discussed. So I have copies of them  
 14 that I can distribute.

15 MR. BAXTER: Director, I propose giving the  
 16 parties the opportunity to review those first before  
 17 they're admitted into the record.

18 MR. BRICKER: Okay.

19 THE HEARING OFFICER: Okay. Do you mind handing  
 20 those out, Mr. Bricker?

21 MR. BRICKER: Sure.

22 MR. BAXTER: Is the original --

23 MR. BRICKER: So alternative --

24 MR. BAXTER: Why don't we have you mark them.

25 MR. BRICKER: Yeah, I can do that on the next

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1 break.

2 THE HEARING OFFICER: So we'll wait for that  
 3 admission.

4 MR. BRICKER: Yeah. I'll go ahead and mark  
 5 these and then distribute them.

6 THE HEARING OFFICER: Okay.

7

8 DIRECT EXAMINATION

9 BY MR. HARRIS:

10 Q. Rob Harris again on behalf of the City of  
 11 Idaho Falls and Ammon and the Falls Water Company.  
 12 You were here during the presentation of  
 13 the James Cefalo's rebuttal testimony; correct?

14 A. Yes.

15 Q. And there was some discussion between  
 16 Mr. Cefalo and Department of counsel about some of the  
 17 suggestions you had on how IDWR could condition future  
 18 water right applications?

19 A. Yes.

20 Q. And there was an objection to how I  
 21 characterized what your suggestions were.  
 22 Do you recall that?

23 A. Yes.

24 Q. As I understood how your testimony was  
 25 characterized is that if the consumptive use amount

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1 changes, then the condition, the actual text of the  
 2 condition, could be adjusted in a water right.

3 Is that your prior system? Or could you  
 4 clarify that.

5 A. I think I testified about two -- two  
 6 alternative sort of overarching mechanisms. One would  
 7 be that the condition and the accounting be specified  
 8 in such a way that it was dynamic, that the consumptive  
 9 use amounts could change -- or computed amounts would  
 10 change based on changes in certain of the inputs to  
 11 that calculation.

12 Alternatively, I talked about a possibility  
 13 that if there was something more rigid in the  
 14 condition, that it could potentially be changed later.

15 And --

16 Q. Through a transfer or --

17 A. Through some process. And whether -- and  
 18 I'm not going to presume to know all the processes.  
 19 But some, yeah, transfer or amendment or what have you.  
 20 So that's what I intended my testimony to say. I  
 21 apologize if it didn't come out that way.

22 Q. The first part would essentially be the  
 23 condition provides essentially the structure of how the  
 24 values are calculated and then some adjustment based on  
 25 those numbers; correct?

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1 MR. BAXTER: Objection. I don't believe that  
 2 was Mr. Sullivan's testimony.  
 3 MR. HARRIS: I'll strike it, then.  
 4 Q. Could you state your testimony again.  
 5 A. Yeah. I hope I didn't say "adjustment to  
 6 the condition." But the condition itself and the  
 7 accounting requirement has some dynamic capability to  
 8 it, just like the spreadsheet I showed yesterday, so  
 9 that, you know, if water is put to land application,  
 10 for example, instead of direct discharge, then the  
 11 computation process can accommodate that.  
 12 Q. And then there will be an adjustment in the  
 13 mitigation obligation based on those numbers?  
 14 A. Right. Like the mitigation obligation is  
 15 keyed towards the computed consumptive use. If  
 16 consumptive use goes up, the mitigation amount goes up,  
 17 and vice versa.  
 18 MR. HARRIS: Thank you. I have no further  
 19 questions.  
 20 THE HEARING OFFICER: All right. It doesn't  
 21 look like there's any further examination.  
 22 Cross-examination, come on up,  
 23 Mr. Fletcher.  
 24 ///  
 25 ///

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1 CROSS-EXAMINATION  
 2 BY MR. FLETCHER:  
 3 Q. Mr. Sullivan, based upon all of the  
 4 testimony you've heard today and yesterday, including  
 5 that of James Cefalo, is it your opinion that I -- the  
 6 Idaho Department of Water Resources is currently  
 7 staffed in such a way to implement this condition-based  
 8 regimen that you're talking about in order to deal with  
 9 a consumptive use calculation on a water right?  
 10 A. I haven't studied their staffing.  
 11 Q. Okay. So you have no opinion on that?  
 12 A. No.  
 13 Q. You just testified that along the lines,  
 14 well, if they need more staff, then the legislature  
 15 just needs to make more appropriations; correct?  
 16 A. Yes.  
 17 Q. Correct?  
 18 A. Yes.  
 19 Q. Does the Department control whether or not  
 20 they receive more appropriations?  
 21 A. No. I think the legislature does.  
 22 Q. I believe you have testified as well that  
 23 this condition-based regimen that you are proposing  
 24 would also require cities to collect much more data  
 25 than they are currently collecting; correct?

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1 A. No.  
 2 Q. Well, in your tables yesterday, we went  
 3 through this yesterday, most cities, I believe you  
 4 testified, were not collecting system-loss data; is  
 5 that correct?  
 6 A. I don't think I said that.  
 7 Q. Are they?  
 8 A. I haven't studied all of them, but I'm  
 9 aware that many of those cities have performed audits  
 10 of their systems. And it's a prudent thing for cities  
 11 to do to get a handle on what their losses are.  
 12 And so yeah, in my experience a lot of them  
 13 do, but I have not gone through to see if all of those  
 14 cities have done that.  
 15 Q. Well, on the tables you prepared yesterday,  
 16 you said you didn't have that data.  
 17 And so you had to estimate that data;  
 18 correct?  
 19 A. I didn't try to go seek that data out. The  
 20 purpose of that table that I presented yesterday was --  
 21 was to -- to illustrate the approximate average and  
 22 range of consumptive use that is occurring by my  
 23 clients. And I think that table accomplishes that.  
 24 But I didn't mean to say that I went and  
 25 tried to get all of the data that was potentially

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1 available and to make as precise a calculation of  
 2 consumptive use as I could, because that's not -- that  
 3 was not the purpose of that table.  
 4 Q. But didn't you also testify later that if  
 5 they had -- if they needed to collect that data they  
 6 could?  
 7 A. Which data?  
 8 Q. Well, you mentioned at least four different  
 9 factors on your table. System loss, indoor use  
 10 consumptive use, outdoor use consumptive use, and  
 11 treated effluent consumptive use.  
 12 You estimated those numbers on your table;  
 13 correct?  
 14 A. For purposes -- for the purpose that I just  
 15 described.  
 16 Q. Right. And for that table to work  
 17 properly, to function properly, they would have to  
 18 actually start collecting those numbers; correct?  
 19 A. Well, as an example, if a city wanted to  
 20 claim credit for its system losses, that yes, I think a  
 21 reasonable requirement would be that it do some  
 22 analysis of its system to figure out what that system  
 23 loss percentage is.  
 24 If a city decided it didn't want to go  
 25 through that effort to come up with a percentage, then

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1 they don't have to claim that, and they cannot claim a  
 2 system-loss return.  
 3 Q. And then I believe you've -- well, let me  
 4 clarify.  
 5 When you say, "Well, the cities or whatever  
 6 the entity is just has to do more reporting, it's  
 7 really -- it will not burden the Department to do  
 8 that," what happens with those reports? What does a  
 9 city do with this report that you're talking about?  
 10 A. They file them with the State, and the  
 11 State has to review them. Similar to like the Surface  
 12 Water Coalition filing its reports in the delivery call  
 13 of irrigated area and the like. I mean it's --  
 14 reporting requirements for water rights is common and  
 15 widespread. This would be of that nature.  
 16 Q. Do you -- well, that's a good example.  
 17 Do you have any idea how many staff members  
 18 and how many hours of Department time are spent  
 19 reviewing the information in the surface water call  
 20 every year?  
 21 A. I don't.  
 22 Q. You heard the testimony yesterday on Dry  
 23 Creek, correct, the Dry Creek application that requires  
 24 a change in irrigated acres as development occurs?  
 25 A. Yes.

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1 Q. And you heard the testimony that under that  
 2 water rights, that as those changes occur, those water  
 3 rights are supposed to be changed annually?  
 4 A. Yes.  
 5 Q. And you heard the testimony that that  
 6 hasn't been occurring, didn't you?  
 7 A. Well, just because someone --  
 8 Q. No. Answer my question.  
 9 A. Yes, I heard that.  
 10 Q. Okay. So just because a condition is on a  
 11 water right doesn't mean necessarily that it solves the  
 12 problem to the aquifer; correct?  
 13 A. Well, the conditions need to be adhered to  
 14 and they need to be administrable.  
 15 Q. Okay. And you mentioned this Trust line.  
 16 Do you understand what the Trust line is  
 17 all about, what a Trust Water right is?  
 18 A. Yes.  
 19 Q. Do you understand the Swan Falls agreement?  
 20 A. Yes.  
 21 Q. Okay. Do you understand the review  
 22 requirements of the Swan Falls agreement?  
 23 A. Generally.  
 24 Q. Do you understand that the Trust Water  
 25 rights were supposed to be reviewed after 20 years?

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1 A. Yes.  
 2 Q. Do you know if that's occurred?  
 3 A. I don't know.  
 4 Q. You don't know if it's occurred?  
 5 A. No.  
 6 Q. So all of these things, when you start  
 7 reporting and having conditions, require someone at the  
 8 Department to review those and verify that the  
 9 conditions are being satisfied; correct?  
 10 A. Yes.  
 11 Q. And if they're not being satisfied, then it  
 12 requires enforcement; correct?  
 13 A. Yeah. We've heard Mr. Cefalo talk about  
 14 how that happens.  
 15 MR. FLETCHER: I have no further questions.  
 16 Thank you.  
 17 THE HEARING OFFICER: Mr. Thompson or  
 18 Mr. Barker?  
 19 MR. THOMPSON: None.  
 20 MR. BARKER: Mr. Director, I think we've heard  
 21 enough from Mr. Sullivan today.  
 22 THE HEARING OFFICER: Okay. Garrick?  
 23 MR. BAXTER: No questions.  
 24 THE HEARING OFFICER: Okay. Come on up,  
 25 Mr. Bricker, for some redirect?

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1 MR. BRICKER: No. Just the proposed exhibits.  
 2 THE HEARING OFFICER: Okay.  
 3 THE WITNESS: Were you going to ask me to  
 4 explain those?  
 5 MR. BRICKER: Oh, I can. Hold on.  
 6 Sure. Yeah, I'll have questions.  
 7 THE HEARING OFFICER: Okay. So taking up again  
 8 the matter of the -- so yesterday we had a spreadsheet  
 9 open. We worked through that. Mr. Sullivan, you  
 10 showed how you could change inputs into that  
 11 spreadsheet and calculate changes in consumptive use.  
 12 We agreed at that time that you'd prepare three .pdf  
 13 documents for consideration for admission into the  
 14 record.  
 15 And why don't you describe these a little  
 16 bit about, Mr. Bricker.  
 17 MR. BRICKER: Sure.  
 18  
 19 REDIRECT EXAMINATION  
 20 BY MR. BRICKER:  
 21 Q. So, Mr. Sullivan, in front of you you have  
 22 proposed Exhibits 349, 350, and 351.  
 23 Can you describe what these are.  
 24 A. Yes. These are .pdf outputs from that  
 25 spreadsheet that I was showing yesterday for three

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1 different conditions of treated effluent disposal.  
 2 So Exhibit 349 is -- and let me back up.  
 3 So I added a two-line title to each of  
 4 these to distinguish them.  
 5 So Exhibit 349 is entitled "Base Condition  
 6 Treated Effluent Disposal: Land Application & RIB."  
 7 And so this is the same as the Table 5-2 in -- and I  
 8 forget the exhibit number, that was in my report.  
 9 And then Exhibit 350 is titled  
 10 "Alternative 1. Treated Effluent Disposal: Discharge  
 11 to Stream." So in this example I -- what I've done is  
 12 down in rows -- and this is what I did yesterday too.  
 13 Down in rows 7 and 8 I set the CU percentages over  
 14 there on the right-hand column in the yellow to  
 15 0 percent. So in effect, there's zero -- there's no  
 16 consumption of any of the effluent through land  
 17 application or rapid infiltration basin. So in effect,  
 18 there's no consumption of the effluent. And so that  
 19 results in a reduction of the consumptive use to 178  
 20 acre-feet.  
 21 And then up in the middle left you see the  
 22 consumptive use percentage has gone down to 47 percent.  
 23 Those are the numbers we talked about yesterday.  
 24 And then finally Exhibit 351, this is  
 25 titled "Alternative 2. Treated Effluent Disposal:

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1 Discharge to Evaporation Ponds."  
 2 And so in this example what I've done down  
 3 in those rows 7 and 8 is I've set the consumptive use  
 4 percentages to 100 percent so that, in effect, all of  
 5 the effluent is consumed, and therefore the total  
 6 consumptive use has gone up to 297 acre-feet in this  
 7 example, and the consumptive use percentage has gone up  
 8 to 79 percent. I think those are the numbers I  
 9 testified to yesterday as well.  
 10 Q. Yes. So just to summarize, these three  
 11 exhibits are .pdf copies of the three scenarios we ran  
 12 through in Excel on the screen yesterday, and they  
 13 illustrate how consumptive use changes based upon a  
 14 change in the wastewater disposal method; right?  
 15 A. Yes, that's correct.  
 16 MR. BRICKER: I'll move to admit Exhibit 349,  
 17 350, and 351 into the record.  
 18 THE HEARING OFFICER: Any objection?  
 19 MR. FLETCHER: We have no objection to the  
 20 extent they were illustrative exhibits.  
 21 THE HEARING OFFICER: Okay. Seeing no  
 22 objection, we'll bring them into the record.  
 23 (Exhibits 349, 350, and 351 admitted.)  
 24 MR. BRICKER: That's all the questions I have.  
 25 THE HEARING OFFICER: Any other redirect?

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1 All right. Thanks, Mr. Sullivan.  
 2 I guess, Chris, I don't see that you have  
 3 your other experts here today.  
 4 MR. BROMLEY: Me "Chris"?  
 5 THE HEARING OFFICER: Sorry. Mr. Bromley.  
 6 Yeah.  
 7 MR. BROMLEY: No. Charles Brockway. No. No.  
 8 THE HEARING OFFICER: So we won't be hearing any  
 9 further testimony from Mr. Sullivan or Mr. Brockway?  
 10 MR. BROMLEY: No. No.  
 11 THE HEARING OFFICER: Okay. So next up are we  
 12 going to have another round of testimony from your  
 13 experts, Kent and Travis?  
 14 MR. THOMPSON: I don't think so.  
 15 MR. FLETCHER: I don't believe we need it.  
 16 THE HEARING OFFICER: So that would conclude all  
 17 of the expert testimony, then, for the first issue in  
 18 this hearing?  
 19 Then next up we'd be working through the  
 20 lay witnesses. And we're at 11:55 now.  
 21 Should we take lunch now and then resume  
 22 that at one o'clock?  
 23 MS. McHUGH: Can I talk to my witness?  
 24 THE HEARING OFFICER: Go ahead, Ms. McHugh.  
 25 We'll pause just a minute.

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1 MR. HARRIS: Director, while she's doing that,  
 2 could I take care of one exhibit question?  
 3 THE HEARING OFFICER: Yes, please.  
 4 MR. HARRIS: Exhibit 303 was admitted in the  
 5 record. It was the deposition transcript of James  
 6 Cefalo. It dawned on me yesterday that I think  
 7 everyone's aware the deponent is able to go through and  
 8 correct any inaccuracies in the deposition transcript.  
 9 That's not included in there. But there is a page.  
 10 Just to make sure the records complete, I think it  
 11 would be appropriate to include that.  
 12 We could either just add it as page 42 to  
 13 Exhibit 303 or we could mark it as a separate exhibit.  
 14 I'm not sure I care either way, if you have a  
 15 preference one way or the other.  
 16 THE HEARING OFFICER: Any objection to bringing  
 17 that into the record?  
 18 Okay. Not seeing any objection, what would  
 19 be the preference for bringing that in?  
 20 MR. BAXTER: Make it a separate exhibit to be  
 21 clear.  
 22 THE HEARING OFFICER: Make it a separate  
 23 exhibit.  
 24 So it would be Exhibit number?  
 25 MR. HARRIS: What number are we at?

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1 SARAH TSCHOHL: 352.  
 2 (Exhibit 352 marked.)  
 3 MR. HARRIS: Okay.  
 4 THE HEARING OFFICER: Then since there was no  
 5 objection, we'll bring that in.  
 6 (Exhibit 352 admitted.)  
 7 MR. HARRIS: Thank you.  
 8 THE HEARING OFFICER: All right. Ms. McHugh.  
 9 MS. McHUGH: Yeah, Mr. Director. If we might,  
 10 my lay witness, Chris Johnson, who's the mayor of the  
 11 City of Bellevue, is here. I think our preference  
 12 would be to have him on now before we break for lunch.  
 13 His testimony is pretty straightforward and won't take  
 14 very long, and so that way he can get back to his  
 15 duties.  
 16 THE HEARING OFFICER: Can you give me an  
 17 estimate about how long you plan to question him?  
 18 MS. McHUGH: I estimate that my direct  
 19 examination will be ten minutes.  
 20 THE HEARING OFFICER: Okay. Well, unless  
 21 there's a strong objection to that -- and I don't see  
 22 any -- I think that's a good proposal.  
 23 Good morning. Before you sit down.  
 24 ///  
 25 ///

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1 CHRIS JOHNSON,  
 2 having been called as a witness by the municipal  
 3 providers and duly sworn, testified as follows:  
 4  
 5 THE HEARING OFFICER: All right. Thanks. Have  
 6 you seat.  
 7 And state your name and address for the  
 8 record.  
 9 THE WITNESS: Chris Johnson. 210 Parkside  
 10 Drive, Bellevue, Idaho.  
 11  
 12 DIRECT EXAMINATION  
 13 BY MS. McHUGH:  
 14 Q. Hello, Mr. Johnson. Could you state your  
 15 position.  
 16 A. Mayor, City of Bellevue.  
 17 Q. Okay. And are you familiar with Bellevue's  
 18 water rights and use generally?  
 19 A. I am.  
 20 Q. Okay. And does the City measure its water  
 21 diversions?  
 22 A. Yes, it does.  
 23 Q. And what is the source of supply for its  
 24 water rights?  
 25 A. We have three points. Primary is our

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1 springs. Then we have two wells.  
 2 Q. And are you familiar with the City's  
 3 wastewater treatment system and discharge system?  
 4 A. Yes, I am.  
 5 Q. Okay. And does the City measure the amount  
 6 of water that goes into its wastewater treatment  
 7 system?  
 8 A. Yes, it does.  
 9 Q. And does the City measure the amount of  
 10 water that discharges from its wastewater treatment  
 11 system?  
 12 A. Yes, it does.  
 13 Q. And what does it do with the discharge from  
 14 its wastewater treatment.  
 15 A. We have two options: Rapid infiltration  
 16 basins and then land application.  
 17 Q. Okay. And then do you have an IPDES  
 18 permit?  
 19 A. Yes, we do.  
 20 Q. And do you comply with its reporting  
 21 requirements?  
 22 A. Yes, we do.  
 23 Q. And on your land applications do you have a  
 24 water reuse permit?  
 25 A. Yes, we do.

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1 Q. Okay. And under that water reuse permit,  
 2 what is authorized for the City of Bellevue to do under  
 3 that?  
 4 A. Provide it for land application and then  
 5 rapid infiltration.  
 6 Q. Okay. So there's two things that you do  
 7 with that.  
 8 Land application, meaning that it goes --  
 9 can you explain what that is?  
 10 A. We send it to a farmer. And during short  
 11 water years, he can use that to supplement his water  
 12 supply. This year it was not needed so it just went  
 13 into our rapid infiltration basins.  
 14 Q. So under the water reuse permit, there's  
 15 two applications: One is traditional irrigation, what  
 16 looks like traditional irrigation, and one is what is  
 17 rapid infiltration, which is akin to recharge; correct?  
 18 A. Correct.  
 19 Q. And does the City measure the amount of  
 20 water that it uses for -- under its reuse permit?  
 21 A. Yes. We have a flow meter that monitors  
 22 what goes out onto the land app and another one that  
 23 would go into the RI basins.  
 24 Q. And my understanding is the City is in the  
 25 process of installing meters at each individual

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1 residence or -- is that what it's called, "residence"?

2 A. Correct. We've been trying to do a

3 metering program for several years. We've got about

4 85 percent of our meters in. And I'm pushing very hard

5 to bring our Caselle, which is the program that runs it

6 and monitors it, and get our system up and running here

7 in the next year.

8 Q. And so with installation of those meters,

9 you'll have even more data that you'll be able to

10 collect and report --

11 A. Yes, that is correct.

12 Q. -- to understand your water use?

13 Yeah. And that would include evaluation of

14 system losses?

15 A. Correct.

16 Q. That will also inform the City on how much

17 water it is using within the City's system and how much

18 water it is using for household use?

19 A. Correct.

20 Q. If the City were to change its wastewater

21 treatment method, like to go to a fully consumptive

22 method or a 100 percent consumptive method, I think you

23 heard a little bit of testimony this morning about

24 that, is that a process that would happen overnight?

25 Is that something the City is planning to do? Can you

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1 explain about that.

2 A. We actually have a fairly extensive system.

3 And it -- we would have to degrade to go into a fully

4 consumptive. So it would make no sense for the City to

5 change.

6 But for an example, we are currently doing

7 some repairs on it, so we do have a lagoon-based

8 system. But we're still processing it through the RI

9 basin, so nothing is changing in our consumptive use.

10 Q. Okay.

11 A. So -- but it would take -- it would take

12 time and several million dollars to change our system

13 if we were to leave the membrane-based plant.

14 Q. Okay. Could I have you pull up Exhibit 1.

15 I think it might be in one of those binders up there.

16 And this is the Surface Water Coalition expert report.

17 I don't think you've seen the full expert report

18 before. But if you could turn to the third to the last

19 page.

20 A. Okay.

21 Q. Does that -- at the very bottom it says

22 "City of Bellevue."

23 Do you see that paragraph?

24 A. Yes, I do.

25 Q. Have you seen that paragraph before?

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1 A. Yes, I have.

2 Q. Okay. And in there it says that the -- and

3 I'm looking at the last sentence. It says, "The City's

4 use of its treated municipal wastewater is critical to

5 its operation and will likely only increase in

6 importance when environmental concerns increase or

7 groundwater levels decline."

8 As far as your reuse system, you were

9 talking about the fact that part of your reuse goes to

10 a rapid infiltration system.

11 So as far as that sentence goes, what is

12 your understanding of what the City, if they were to

13 increase their reuse and land application or -- what

14 would -- what would be your anticipation that the City

15 would be doing?

16 A. If we're going to increase, it depends on

17 the land use opportunities we have. We are limited by

18 field size. But if it were to increase, it would be

19 going more into the RI basins where it would percolate

20 back into the aquifer.

21 Q. Okay. Because if the City has to offset

22 your groundwater pumping, your option might be to use

23 some of your wastewater discharge for recharge

24 purposes?

25 A. Correct.

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1 Q. To mitigate for your current groundwater

2 pumping?

3 A. Correct.

4 Q. And in fact, that water would be coming

5 from a surface water source, so it actually would be a

6 benefit to the aquifer; correct?

7 A. Correct.

8 Q. Has the City of Bellevue ever required

9 limitations on outdoor water use?

10 A. Through our ordinances, we have actually

11 several in place. One is limited to 10,000 square feet

12 of per -- per lot that can be irrigated. We do an

13 odd-even watering cycle, depending on your address.

14 And then we also require it to be hours

15 between 8:00 p.m. and 10:00 a.m. are the allowable

16 water irrigation times periods. And beyond that, the

17 mayor would have executive privilege to institute

18 further measures if needed.

19 Q. Okay. So the City of Bellevue has the

20 authority to require residential compliance with

21 restrictions on outdoor water use if you needed it?

22 A. Yes, we do.

23 Q. And in fact, you've actually implemented a

24 voluntary program in recent -- in the recent past.

25 Could you explain that.

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1 A. Yes. So what I mentioned earlier are all  
2 on our ordinances. But in 2000 -- it was last year, so  
3 when we had the dry season, we did have to further  
4 execute where we put the City into a quarter system,  
5 where one quarter could operate their odd day, and in  
6 the morning the other one would be the odd day at  
7 night, and then the next day even in the morning, even  
8 in the night. That reduced the strain on our holding  
9 tank so we were sure we had adequate supply for fire  
10 mitigation or anything like that.

11 Q. Okay. And when you had the voluntary --  
12 that was a voluntary request by the residents?

13 A. Correct.

14 Q. And what was your -- roughly your  
15 compliance rate when you implemented just on a  
16 voluntary basis?

17 A. I would say 85, 90 percent. We always have  
18 a few outliers. But most people were in compliance.

19 Q. Okay. And if the City of Bellevue causes  
20 injury to other water users or there's a curtailment  
21 ordered by the Department of Water Resources, what is  
22 your understanding would happen to the City's water  
23 rights?

24 A. As of right now, with our agreement with  
25 the Big Wood Groundwater Management Plan, we are

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1 mitigating so we should not have any curtailments.

2 Q. Okay. And what's your understanding of  
3 what would happen if you violated your requirements in  
4 your mitigation plan?

5 A. Our groundwater rights could be challenged  
6 and curtailed.

7 Q. Would the City be able to shut off its well  
8 and comply with any orders from the Department if that  
9 happened?

10 A. We have full control of our wells, yes.

11 MS. McHUGH: Okay. Nothing further.

12 THE HEARING OFFICER: Any other direct  
13 examination? I don't see any.

14 Any cross-examination?

15 Come up, Mr. Fletcher.

16 MR. FLETCHER: Just briefly.

17 THE HEARING OFFICER: Okay.

18

19 CROSS-EXAMINATION

20 BY MR. FLETCHER:

21 Q. Mr. Johnson, I'm Kent Fletcher.  
22 You mentioned that you measure discharge  
23 from your sewer treatment plant and water going into  
24 the plant; is that correct?

25 A. Yes, sir.

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1 Q. And also the -- you measure the land  
2 application component of that --

3 A. Yes.

4 Q. -- and the rapid infiltration component of  
5 that?

6 A. Yes, sir.

7 Q. Do you report those measurements to anyone?

8 A. As far as our IPDES permit, we are required  
9 to.

10 Q. And who do you report to?

11 A. The Department of Environmental Quality.

12 Q. Okay. So you don't report those numbers to  
13 the Idaho Department of Water Resources?

14 A. There's no requirement for me to do so.

15 Q. Okay. And in the expert report, Exhibit 1  
16 that you just read dealing with the statement  
17 pertaining to the City of Bellevue, is that statement  
18 accurate, an accurate representation of what Bellevue  
19 stated in the Riverside case?

20 A. Yes, sir, I believe it is.

21 MR. FLETCHER: I don't have any further  
22 questions. Thank you.

23 THE HEARING OFFICER: Okay. Any other  
24 cross-examination?

25 Oh, hold on. After A1. But just making

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1 sure you had some.

2

3 CROSS-EXAMINATION

4 BY MR. BARKER:

5 Q. Good afternoon -- is it afternoon already?

6 A. It is now.

7 Q. -- Mr. Johnson. Albert Barker for the  
8 South Valley Ground Water District.

9 Just a couple quick questions about the --  
10 why is it that City of Bellevue asked to intervene in  
11 the Riverside lawsuit that involved this consumptive  
12 use question? What was your reason?

13 A. I believe the Council, it was for our  
14 future use and future expansion. If we do need another  
15 water right in the future, we want to ensure that we  
16 have that availability. And we don't feel that it is a  
17 municipal use that's 100 percent consumptive.

18 Q. So do you have any applications pending for  
19 any new water rights?

20 A. No, sir.

21 Q. Do you have any plans to apply for new  
22 water rights?

23 A. Potentially.

24 Q. What are those plans?

25 A. We have two large annexations coming in.

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1 Probably will see the applications within the next  
 2 year. And then those processes, so, you know, five,  
 3 ten years out.  
 4 Q. So those new annexations are land that are  
 5 already irrigated?  
 6 A. Yes, sir.  
 7 Q. Right. So you would require those water  
 8 users or the landowners to bring that water to the  
 9 City?  
 10 A. There will be a discussion on how best to  
 11 use those and appropriate those water rights, correct.  
 12 Q. Aren't you required under law to take that  
 13 water and apply it to the land?  
 14 MS. McHUGH: Objection. Legal conclusions.  
 15 Q. (BY MR. BARKER): Do you know if you're  
 16 required?  
 17 A. I do not know 100 percent. I believe that  
 18 there is a point in the annexation negotiations that  
 19 can be used to discuss what the full use of the water  
 20 rights go to.  
 21 Q. Does the City have any rules, guidance,  
 22 ordinances that require people when you annex land into  
 23 the City to bring the water with the land?  
 24 A. I'm not 100 percent expert on our  
 25 annexations. I don't have an answer for you, sir.

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1 Q. So you'd have to ask.  
 2 Who would you have to ask?  
 3 A. I would ask my planning and zoning or my  
 4 engineering counsel that assist my planning and zoning.  
 5 Q. And you're certain whether or not the law  
 6 requires you to do that or not?  
 7 MS. McHUGH: Objection. Legal conclusion.  
 8 THE HEARING OFFICER: Sustained.  
 9 Q. (BY MR. BARKER): Okay. And so in your  
 10 statement to -- in the City of Riverside case you say  
 11 that "The City's use of municipal wastewater -- of its  
 12 treated municipal wastewater is critical to its  
 13 operations, will likely only increase in importance  
 14 when environmental concerns increase."  
 15 So what do you mean about environmental  
 16 concerns increasing?  
 17 A. If we have a -- if we have effluent that  
 18 can be used to promote and improve the current water  
 19 situation and we're putting it into an RI basin or  
 20 allowing that to be land app, it provides recharge and  
 21 opportunities for other users.  
 22 Q. But you also say ask about groundwater  
 23 levels decline.  
 24 So what are the environmental concerns, as  
 25 to opposed to water use concerns --

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1 A. So environmental --  
 2 Q. -- that you're discussing?  
 3 A. -- concerns would be, you know, the  
 4 degradation of the aquifer, so having that recharge  
 5 opportunity, overall drier, arid land, which could be  
 6 fire risk. So if we can mitigate that.  
 7 Q. So are you concerned about degrading the  
 8 aquifer by your rapid infiltration basin discharges?  
 9 A. No. I want to improve the aquifer with my  
 10 rapid infiltration basins.  
 11 Q. What about the constituents in your  
 12 discharge, can you contaminate the aquifer through  
 13 that?  
 14 A. No, sir. By the time we do our treatment  
 15 and disinfection, our IPDES permit, we are monitoring  
 16 nitrate and ammonia levels to ensure that we're in  
 17 compliance.  
 18 Q. And you are a class A discharge?  
 19 A. Actually, I believe we are still a class B.  
 20 MR. BARKER: No further questions, Mr. Director.  
 21 Thank you.  
 22 THE HEARING OFFICER: Come on up.  
 23 ///  
 24 ///  
 25 ///

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1 CROSS-EXAMINATION  
 2 BY MR. BAXTER:  
 3 Q. It is afternoon. Good afternoon,  
 4 Mr. Johnson.  
 5 A. Good afternoon.  
 6 Q. I'm Garrick Baxter. I'm one of the  
 7 attorneys here for the Department of Water Resources.  
 8 And I just want to -- I have a few questions about  
 9 domestic use there in the city of Bellevue.  
 10 Ms. McHugh asked you certain questions  
 11 about curtailments of water rights.  
 12 And I believe your testimony was that if  
 13 necessary Bellevue could curtail their water rights; is  
 14 that correct?  
 15 A. To meet our daily demand, we could have  
 16 some curtailment, yes.  
 17 Q. Some curtailment. What would that look  
 18 like?  
 19 A. I am not 100 percent sure. I'd have to  
 20 look at our maximum daily demand, and it would depend  
 21 on late season and our flows at the spring.  
 22 Q. So there's some question as to whether or  
 23 not the City of Bellevue could curtail their water  
 24 rights?  
 25 A. Yes, sir.

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1 Q. Okay. Are you aware of IDWR's policy that  
2 they do not require curtailment of in-house culinary  
3 uses in a delivery call proceeding?  
4 A. Yes, sir.  
5 Q. Okay. Plumbing systems set up at homes  
6 within the community of Bellevue to ensure that outside  
7 domestic use could be curtailed while still allowing  
8 in-house culinary domestic use?  
9 THE HEARING OFFICER: Was that a question?  
10 MR. BAXTER: Yes.  
11 THE HEARING OFFICER: Can you restate it.  
12 Q. (BY MR. BAXTER): Are plumbing systems in  
13 the homes in the City of Bellevue set up to ensure that  
14 outside domestic use could be curtailed?  
15 A. I would say no. They're all plumbed  
16 into -- they come from a meter box into the homeowner,  
17 or they may have a diversion and a check valve to  
18 prevent backflow from their irrigation systems. But  
19 they still could do from their home systems irrigate  
20 with hose and sprinkler.  
21 MR. BAXTER: No further questions. Thank you,  
22 sir.  
23 THE HEARING OFFICER: Redirect?  
24 Come on up, Ms. McHugh.  
25 ///

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1 REDIRECT EXAMINATION  
2 BY MS. McHUGH:  
3 Q. I wanted to clarify a couple questions.  
4 First about -- following up on Mr. Baxter's last  
5 question.  
6 What he was talking about is whether or not  
7 the City could enforce water restrictions to individual  
8 residents so that they didn't irrigate outside their  
9 home.  
10 A. Yes, we could enforce it. And we could --  
11 it would be a civil or misdemeanor.  
12 Q. And you have an ordinance in place that  
13 does that?  
14 A. Yes.  
15 Q. And in fact, you have a rotation system  
16 right now where people restrict their outside water  
17 use?  
18 A. Correct.  
19 Q. So it has nothing to do with the plumbing  
20 in their home?  
21 A. Correct.  
22 Q. Okay. And then the second piece of it, did  
23 you understand Mr. Baxter when he was asking you about  
24 curtailment of your water rights, did you understand  
25 that to mean that the City was not able to reduce or

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1 like shut off its groundwater well if that was  
2 determined to be causing injury to junior users, that  
3 you couldn't physically shut off your well? Or what  
4 did you understand that question to mean?  
5 A. If I'm -- the question I'm -- yes, we can  
6 control the point of diversion at the wells. We can  
7 turn our wells on and off whenever we need to. That's  
8 not a problem.  
9 I was thinking the question was more of --  
10 he said culinary use and then outside domestic use. So  
11 we understand that it won't be curtailed in the home,  
12 but outside use we could control through resolution.  
13 Q. Okay. And then your spring source -- if I  
14 understand it right, your spring source is a fairly  
15 senior water right; correct?  
16 A. Correct.  
17 Q. And so you haven't been subject to yearly  
18 or seasonal curtailment of your spring right because  
19 it's never -- it's not really been out of priority --  
20 A. Correct.  
21 Q. -- or causing injury; right?  
22 A. Correct.  
23 Q. Okay. But you have reduced the amount of  
24 pumping you're pumping out of your groundwater when you  
25 need to, either with regards to voluntary conservation

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1 of groundwater pumping or this voluntary or necessary  
2 curtailment -- or I should call it restriction of  
3 outside water use?  
4 A. Correct. The spring's our primary system  
5 and that's a gravity fed. So it's in the City's best  
6 interest to keep the wells turned off. It's cheaper  
7 for us. And they primarily maintain our fire  
8 prevention and mitigation opportunities through the  
9 summer.  
10 MS. McHUGH: Thank you.  
11 THE HEARING OFFICER: Thanks.  
12 Any other redirect? I don't see any.  
13 Any recross?  
14 MR. FLETCHER: I don't have anything.  
15 THE HEARING OFFICER: All right. Thank you,  
16 Mayor. It sounds like you have a good understanding of  
17 your public works.  
18 THE WITNESS: Thank you.  
19 THE HEARING OFFICER: All right. Now we're --  
20 yeah, go ahead, Mr. Bromley.  
21 MR. BROMLEY: Well, I was just going to ask for  
22 a housekeeping clarification when you're all finished.  
23 THE HEARING OFFICER: I was just going to say  
24 should we save the remainder of the lay witnesses for  
25 after the lunch break? Anyone opposed to that idea?

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1 Okay. So on to housekeeping.  
2 MR. BROMLEY: Just, yeah, quickly onto  
3 housekeeping.  
4 I think you said at the beginning that you  
5 would take official notice of the records of the  
6 Department; is that correct?  
7 THE HEARING OFFICER: I believe what I said is  
8 through the course of the hearing if I thought of  
9 anything that I wanted to take official notice of I  
10 would let all of the parties know by the end of the  
11 hearing what those would be.  
12 MR. BROMLEY: Okay.  
13 THE HEARING OFFICER: And if I didn't say that,  
14 that's my position now.  
15 MR. BROMLEY: So I think it would be helpful if  
16 you would take official notice of the pending  
17 application, municipal applications within the  
18 moratorium area, because we've heard a lot about  
19 burdens on the Department.  
20 When I look in the Department's database,  
21 what I'm seeing is that there are five pending  
22 applications within the moratorium area. So I'd just  
23 ask you to take official notice of the pending  
24 applications within the moratorium areas.  
25 THE HEARING OFFICER: That's all pending  
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1 applications, or just municipal pending applications?  
2 MR. BROMLEY: That's just municipal.  
3 THE HEARING OFFICER: Okay.  
4 MR. BROMLEY: Just municipal to the municipal  
5 question.  
6 THE HEARING OFFICER: And that's within both  
7 moratorium boundaries?  
8 MR. BROMLEY: Correct.  
9 THE HEARING OFFICER: I'll take that under  
10 consideration.  
11 MR. BROMLEY: Okay.  
12 THE HEARING OFFICER: Any other discussion on  
13 that topic?  
14 Yeah.  
15 MR. BARKER: It would be appropriate for  
16 Mr. Bromley to identify what those are, rather than  
17 just arm waiving and saying "I want you to take notice  
18 of all pending applications." We need to know what the  
19 water right numbers are, application numbers are.  
20 MR. BROMLEY: So --  
21 MR. BARKER: So if we could have that  
22 information, it would be a lot easier for us to respond  
23 to that request.  
24 MR. BROMLEY: When --  
25 THE HEARING OFFICER: Did you hear all of that,  
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1 Jeff?  
2 THE COURT REPORTER: Yeah.  
3 THE HEARING OFFICER: Okay. Go ahead,  
4 Mr. Bromley.  
5 MR. BROMLEY: I wasn't trying to cut you off,  
6 Al. I just thought you were done.  
7 So when I did a search in the Department's  
8 database, what I pulled up were -- there are five of  
9 them. 22-13886 in the name of Sugar City, 25-14193 in  
10 the name of the City of Iona, 27-12091 in the name of  
11 City of Blackfoot, 29-8236 in the name of City of  
12 American Falls. We heard Mr. Cefalo talk about that  
13 one. And 36-16592 in the City of Twin Falls, name City  
14 of Twin Falls.  
15 Those are just the ones that I pulled up  
16 when I did a search for from 2000 until present, so  
17 over the last 23 years.  
18 THE HEARING OFFICER: So I'm going to repeat  
19 those numbers, and you tell me if I wrote them down  
20 correctly. 22-13886, 25-14193, 27-12091, 29-8236, and  
21 then 36-16592.  
22 MR. BROMLEY: That's correct.  
23 THE HEARING OFFICER: Well, I'll commit to you  
24 to take a look at those water rights records and review  
25 them and respond to this by the end of the hearing on  
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1 issue one.  
2 MR. BROMLEY: Thank you.  
3 THE HEARING OFFICER: Any discussion?  
4 Yeah. Go ahead, Mr. Fletcher.  
5 MR. FLETCHER: I just had a question. On the  
6 first one you read, the 13886, which city was that?  
7 THE HEARING OFFICER: Sugar City, I believe.  
8 MR. BROMLEY: Sugar City, yes.  
9 MR. FLETCHER: Thank you.  
10 THE HEARING OFFICER: So when we do come back  
11 from break, are we then going to follow the order of  
12 lay witnesses that was submitted through that e-mail  
13 thread, which would be Levi Adams with the City of  
14 Pocatello. That's my notes. Yeah.  
15 MR. BRICKER: I believe so.  
16 THE HEARING OFFICER: Okay. And then so the  
17 list of lay witnesses I have, and I'll just work  
18 through this. It's not very long. I'd like to confirm  
19 that's all of them. But Mr. Levi Adams with Pocatello.  
20 Ms. Cathy Cooper with Veolia. Boise, there has not  
21 been anyone identified at this time.  
22 Do we anticipate, Mr. Lawrence, that anyone  
23 from the City of Boise will be here?  
24 MR. LAWRENCE: We will not be calling anyone  
25 from the City of Boise or from Veolia. So Ms. Cooper  
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1 will not testify.  
 2 THE HEARING OFFICER: Okay. Mr. Brian Yeager  
 3 with City of Hailey?  
 4 MR. LAWRENCE: Yes.  
 5 THE HEARING OFFICER: We've heard from  
 6 Mr. Johnson.  
 7 Mr. Chris Fredericksen with City of Idaho  
 8 Falls?  
 9 MR. HARRIS: Yes, he will testify at this  
 10 hearing.  
 11 THE HEARING OFFICER: Mr. Ivan McCracken, City  
 12 of Heyburn?  
 13 MR. BROMLEY: He will not be testifying.  
 14 THE HEARING OFFICER: Okay. And I think you  
 15 already said; is that right?  
 16 MR. BROMLEY: I did. That's correct.  
 17 THE HEARING OFFICER: Mr. Devin Mackey with  
 18 Wellsprings.  
 19 MR. BROMLEY: Will also not be testifying.  
 20 THE HEARING OFFICER: Okay. That's everyone on  
 21 my list.  
 22 Am I missing anyone?  
 23 All right. So we'll pick up with those lay  
 24 witnesses this afternoon. Let's try to be back here at  
 25 1:30, let's say.

1 MR. FLETCHER: Before we leave.  
 2 THE HEARING OFFICER: Okay.  
 3 MR. FLETCHER: If those lay witnesses get done  
 4 midafternoon or whatever, where do we go from there?  
 5 Are you going to put on Jennifer, then, start the --  
 6 MR. BAXTER: Well, if we're switching issues.  
 7 We're starting with Greg Sullivan on the second issue.  
 8 MR. FLETCHER: So is everybody on board with  
 9 that, then?  
 10 MR. BARKER: With what? Starting with Sullivan  
 11 this afternoon?  
 12 THE WITNESS: I think we can go off the record.  
 13 (Lunch recess.)  
 14 THE HEARING OFFICER: Good afternoon. It is  
 15 1:33 p.m. on October 17th. We're going to continue  
 16 with examination of our lay witnesses.  
 17 Mr. Levi Adams, thanks for joining us in  
 18 this hearing. Can you hear me okay? I'm the presiding  
 19 officer, Mr. Weaver?  
 20 LEVI ADAMS: Yes, I can.  
 21 THE HEARING OFFICER: Okay. Before I turn you  
 22 over to Mr. Bricker for examination.  
 23 ///  
 24 ///  
 25 ///

1 LEVI ADAMS,  
 2 having been called as a witness by the municipal  
 3 providers and duly sworn, testified remotely as  
 4 follows:  
 5  
 6 THE HEARING OFFICER: Okay. Can you please  
 7 state your full name and address for the record.  
 8 THE WITNESS: Levi Adams. My work address is  
 9 10733 North Rio Vista Road in Pocatello, Idaho.  
 10 THE HEARING OFFICER: All right. Are you ready,  
 11 Mr. Adams?  
 12 THE WITNESS: Yes.  
 13 THE HEARING OFFICER: Go ahead.  
 14  
 15 DIRECT EXAMINATION  
 16 BY MR. BRICKER:  
 17 Q. All right. Good afternoon, Mr. Adams.  
 18 Can you please tell us where you currently  
 19 work.  
 20 A. I currently work for the City of Pocatello  
 21 wastewater treatment plant.  
 22 Q. And what is your position there?  
 23 A. I am the superintendent of the treatment  
 24 plant.  
 25 Q. How long have you worked for the City of

1 Pocatello?  
 2 A. I have worked for the City of Pocatello for  
 3 24 years.  
 4 Q. And how long have you worked with  
 5 wastewater?  
 6 A. Probably 22 of those 24 years.  
 7 Q. Can you describe your education and  
 8 training for your position.  
 9 A. I have a high school diploma and some  
 10 college credits, focusing mainly on engineering, and  
 11 then the 22 years of experience, along with all of the  
 12 continuing education that goes along with that.  
 13 Q. So do you have any credentials or licenses?  
 14 A. I do. I have a class four wastewater  
 15 treatment license from the State of Idaho.  
 16 Q. How long have you been in your current  
 17 position?  
 18 A. Five years.  
 19 Q. And what are the duties and  
 20 responsibilities of that position?  
 21 A. My duties are involved with the supervisory  
 22 of all of the -- all of the activities of the plant,  
 23 that is all the wastewater treatment, as long -- as  
 24 well as the collection system and all of our  
 25 pretreatment inspections and systems as well.

1 Q. What has your involvement been in this  
2 proceeding?  
3 A. I've had a few meetings that started with  
4 the attorneys with the City of Pocatello. And mostly  
5 with gathering of information for them.  
6 Q. And did that -- when did that begin, more  
7 or less?  
8 A. That began approximately April of this  
9 year.  
10 Q. Great. Now, can you please turn to  
11 Exhibit 301, which is the Amended Snake River Basin  
12 Order?  
13 A. Okay.  
14 Q. Have you seen this document before?  
15 A. I have.  
16 Q. Please turn to page 28.  
17 A. Okay.  
18 Q. Do you see the sentence at the top of the  
19 page that says, quote, "Applications for municipal  
20 water use and for domestic use from community water  
21 systems shall be considered fully consumptive," end  
22 quote?  
23 A. I do.  
24 Q. Does Pocatello fully consume the water that  
25 it diverts?

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1 A. No, it doesn't.  
2 Q. Why not?  
3 A. Because the water that is not used is  
4 discharged to the wastewater treatment plant. And of  
5 course, then, we treat that water and discharge it to  
6 the Portneuf River.  
7 Q. And where does Pocatello's water supply  
8 come from, to your knowledge?  
9 A. To my knowledge, the -- I believe all of  
10 the water comes from groundwater wells.  
11 Q. That are operated by the City of Pocatello?  
12 A. Yes. All of the City of Pocatello's  
13 municipal water supply is all operated by the City of  
14 Pocatello.  
15 Q. Great. And to whom does the City of  
16 Pocatello deliver that water?  
17 A. The City of Pocatello delivers water to all  
18 of its residents, as well as its commercial and  
19 industrial users.  
20 Q. As well as parks, perhaps?  
21 A. It does. As well as irrigation for parks  
22 and golf courses, which are owned by the City of  
23 Pocatello as well.  
24 Q. Great. So what happens to the water that  
25 is delivered but not consumed by those residential and

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1 commercial users?  
2 A. All of that water is then gathered into our  
3 collection systems and delivered out here to the  
4 treatment plant.  
5 Q. Can you describe generally what the  
6 collection process entails, how big of an area that it  
7 covers.  
8 A. Yeah. The City of Pocatello's collection  
9 system is throughout the boundaries of the city of  
10 Pocatello. The water then is collected through a  
11 series of pipes and lift stations where it's  
12 transferred out here to the treatment plant.  
13 Q. And does the treatment plant collect  
14 wastewater from any other sources?  
15 A. We do. We collect water from the City of  
16 Chubbuck, as well as Great Western Mulching, which has  
17 a culinary well that they use for their process water,  
18 but the City does provide some water for its -- I  
19 believe its bathrooms and other facilities.  
20 Q. Great. Now, please turn to Exhibit 328.  
21 A. Okay.  
22 Q. Have you seen this document before?  
23 A. Yes, I have.  
24 Q. Can you describe what it is.  
25 A. This is our NPDES permit. That is the

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1 permit that allows us to discharge water from the City  
2 of Pocatello into the Portneuf River.  
3 Q. Is that the exclusive way that the City of  
4 Pocatello disposes of its treated wastewater?  
5 A. Yes. It's the -- we are approved to  
6 discharge water at one point into the Portneuf River.  
7 And that's how we discharge all of the effluent that  
8 comes through the treatment plant.  
9 Q. What does the NPDES permit require the  
10 wastewater treatment plant to do?  
11 A. The permit requires us to treat the  
12 wastewater to a certain set of standards that meet both  
13 nutrient and suspended, as well as bacterial content  
14 that have to reach a certain level before we can  
15 discharge it to the City -- or to the Portneuf River.  
16 Q. So that is the water quality aspect of it.  
17 Are there any water quantity aspects of the  
18 permit?  
19 A. There is no quantity aspects for the  
20 permit. There is a design capacity built into it,  
21 which is how a lot of the monthly and weekly lows are  
22 calculated, based off of that design capacity. But  
23 there is no limit to how much water we can discharge to  
24 the Portneuf.  
25 Q. What is that design capacity?

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1 A. Right now in this permit the design  
 2 capacity is at 12 million gallons per day.  
 3 Q. Great. Can you describe what the treatment  
 4 process entails.  
 5 A. Yes. The City of Pocatello treatment plant  
 6 is an enhanced biological nutrient removal plant. We  
 7 start at the beginning of the plant where there is some  
 8 physical removal of all of the debris, followed by  
 9 primary clarifications where the majority of the solids  
 10 are removed and sent to a sidestream process of  
 11 anaerobic digestion.  
 12 The water then goes through our secondary  
 13 treatment, which is the enhanced biological removal.  
 14 Following that we go to some multimedia  
 15 filtration where alum and palmer [phonetic] is added to  
 16 help us meet the phosphorus limits of our permit,  
 17 followed by UV disinfection where it's then discharged  
 18 into the Portneuf River.  
 19 Q. Are there any uses of the water that comes  
 20 into the treatment plant aside from what is discharged  
 21 to the river?  
 22 A. We do. There is some minor uses for  
 23 irrigation of the plant grass, as well as some small  
 24 amounts used for like seal water on some of the pumps.  
 25 Q. How do those volumes of water compare to  
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1 the volumes of water that are discharged to the  
 2 Portneuf?  
 3 A. Very minuscule. It's a very small  
 4 percentage, if you could even calculate it.  
 5 Q. So you said that the City discharges into  
 6 the Portneuf River.  
 7 Can you describe what the structure looks  
 8 like.  
 9 A. It is. There's -- it's called a step area  
 10 of the flume down -- or step area down at the end of  
 11 the pipe, and it is -- that point in the river is  
 12 called out within our NPDES permit.  
 13 Q. Has that discharge point or the method by  
 14 which you dispose or discharge of that treated  
 15 wastewater changed in your tenure?  
 16 A. No. It's always been at that same point.  
 17 Q. And the discharges can be measured;  
 18 correct?  
 19 A. Correct. After the UV disinfection we have  
 20 a Parshall flume which measures what we are discharging  
 21 to the Portneuf River, and those are the numbers that  
 22 we report back to DEQ, as far as our flow.  
 23 Q. And does it have the ability to measure  
 24 continuously?  
 25 A. It does. We do take continuous  
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1 measurements. We gather both daily, weekly, and  
 2 monthly calculations from that, or instantaneous flow  
 3 as well.  
 4 Q. Great. Now, please turn to Exhibit 330.  
 5 A. Okay.  
 6 Q. Have you seen this document before?  
 7 A. Yes. This is the monthly total flow  
 8 calculations that I had some staff gather for City of  
 9 Pocatello attorneys.  
 10 Q. Say that again, please. Can you say that  
 11 again, please. Can you hear me?  
 12 A. For me? I'm sorry. I heard a person in  
 13 the background. I thought you were asking him.  
 14 Q. No, no.  
 15 A. No, I apologize. These are the monthly  
 16 totalizer flows from 2018 to 2023 that I had staff  
 17 gather for the City of Pocatello's attorneys.  
 18 Q. So it was prepared under your direction?  
 19 A. Yes.  
 20 Q. Great. And how much water does the  
 21 wastewater treatment plant discharge to the Portneuf  
 22 River on average?  
 23 A. On a daily average it's between 6 1/2 and  
 24 7 million gallons.  
 25 Q. Has that amount changed in your tenure?  
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1 A. It really hasn't. It's been a fairly  
 2 consistent flow over the last 20 years.  
 3 Q. Has there been any noticeable trends in the  
 4 volumes discharged?  
 5 A. No, it hasn't. The population has gone up,  
 6 but the volumes have stayed the same, mainly due to,  
 7 you know, the assumptions of the low-flow toilets or  
 8 the low-flow showerheads and things like that. But  
 9 it's been a fairly consistent flow for the last 20-plus  
 10 years.  
 11 Q. How about any fluctuations throughout the  
 12 year?  
 13 A. We do have some occasional high points in  
 14 flow. A lot of that is due to severe rain events where  
 15 the streets get flooded and you get infiltration of  
 16 that rainwater in through the manholes themselves. We  
 17 will see very high spikes, but it's rare occasions.  
 18 You know, two, three times a year maybe at the most.  
 19 Q. And outside of those few events, is the  
 20 daily discharge volumes pretty consistent?  
 21 A. Very consistent, yes.  
 22 Q. If requested, could the wastewater  
 23 treatment plant provide discharge data?  
 24 A. Yes, we can. It would just all be a matter  
 25 of what data you wanted and how much.  
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1 Q. And that data could be at multiple time  
2 steps?  
3 A. It can be. It's whatever you like. We can  
4 put it in math data. We can graph it for you. I mean  
5 the data is right there. It's grabbed -- it's grabbed  
6 by an operator daily, but it is kept continuously. The  
7 flow meter readings on the Parshall flume are taken  
8 every five seconds, so it's a very consistent or  
9 continuous process.  
10 Q. Could you turn around that data rather  
11 quickly?  
12 A. Yes. It would just be a matter of getting  
13 it off the computer.  
14 Q. Great. And Pocatello also has a biosolids  
15 management program; right?  
16 A. We do. We land-apply our biosolids at  
17 several pieces of farmland that the City of Pocatello  
18 owns.  
19 Q. How does the biosolids program work in  
20 conjunction with the discharge of the wastewater?  
21 A. It is a separate process. The biosolids --  
22 or the solids are treated in anaerobic digesters, and  
23 then that gets discharged into a storage holding lagoon  
24 where the solids are continually to -- concentrated.  
25 And the water itself then comes off of the

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1 top and goes back to the head of the treatment plant  
2 where it is treated and then discharged to the Portneuf  
3 River.  
4 At certain times of the year after harvest,  
5 we dredge those solids off of the bottom of the storage  
6 lagoon and land-apply them in a liquid form, which is  
7 about the consistency of 4 1/2 to 5 percent solids.  
8 Q. Great. Now, looking forward, does  
9 Pocatello currently have any formal plans to change the  
10 method by which it disposes of its wastewater?  
11 A. We have no formal plans right now to change  
12 the way we discharge our effluent.  
13 Q. Are there any plans to recycle and reuse  
14 wastewater?  
15 A. There's no formal plans right now.  
16 Q. What are some of the reasons why Pocatello  
17 would make any changes to its wastewater operations?  
18 A. There's a couple different drivers, whether  
19 that is a City Council recommendation, if that's  
20 something that they would like to do, whether it's --  
21 the water becomes valuable enough that it would justify  
22 the cost to reuse that water within the city, whether  
23 it's through irrigation or through land application on  
24 farm fields or back to direct culinary use.  
25 Q. So there's a few different options as far

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1 as where the wastewater could go?  
2 A. Yeah. There's always -- there's a lot of  
3 different options. But it all depends on the time and  
4 the dedication to do that, as well as how you would  
5 finance these particular options.  
6 Q. Yeah. What are the key limitations that  
7 are hindering such a change?  
8 A. The first would be you'd have to get the  
9 correct permitting through DEQ and the approval of DEQ  
10 in and of itself. They would add much stricter limits  
11 to what we were treating, and as well as the cost to do  
12 all those things.  
13 There is the cost of treating the water to  
14 those stricter limits. There's the cost of conveying  
15 the water to wherever the final use would be. We are  
16 outside of the city, so it would be a fairly lengthy  
17 pipeline to move that water back into the city to have  
18 a beneficial use.  
19 It all can be done, but it would take a lot  
20 of time and a lot of money to get all of that taken  
21 care of.  
22 Q. And how long of a process do you think that  
23 would be from start to finish?  
24 A. If we had a plan right now. It would be --  
25 you know, it would probably be between five and seven

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1 years before we ever started implementing, actually  
2 discharging the water in that sort of beneficial use.  
3 You have get -- like I said, you have to  
4 get the permitting approved through DEQ. You would  
5 have to get the engineering done to finalize whatever  
6 sort of treatment process to meet those new  
7 regulations. And then of course construction of the  
8 building and then being able to finance it. You have  
9 to find the money to be able to do these projects.  
10 MR. BRICKER: Okay. I think that's all the  
11 questions I have for Mr. Adams.  
12 THE HEARING OFFICER: Okay. Any  
13 cross-examination of Mr. Adams?  
14 Mr. Adams, unfortunately, I think based on  
15 the configuration of the technology, you're not going  
16 to be able to view the other witnesses [sic] that will  
17 be questioning you.  
18 THE WITNESS: That's fine. I'll do my best  
19 here.  
20 THE HEARING OFFICER: Okay. Go ahead,  
21 Mr. Fletcher.  
22 MR. FLETCHER: Thank you.  
23 ///  
24 ///  
25 ///

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1 CROSS-EXAMINATION  
2 BY MR. FLETCHER:  
3 Q. Mr. Adams, I'm Kent Fletcher. I represent  
4 Minidoka Irrigation District and American Falls  
5 Reservoir District 2. I just have a couple of  
6 questions.  
7 You had mentioned that you do some  
8 measuring.  
9 Can you explain again what measurements you  
10 take concerning water coming out of your wastewater  
11 treatment plant.  
12 A. Yeah. It's more than some measuring. It's  
13 a -- we have a Parshall flume at the end of the --  
14 after the UV disinfection, which is the final step  
15 before it's discharged into the Portneuf River. That  
16 Parshall flume is a very accurate measurement, and  
17 that's what we use to report all of those numbers to  
18 DEQ.  
19 Q. Okay. And do you report anything -- any of  
20 those numbers to the Idaho Department of Water  
21 Resources?  
22 A. No.  
23 Q. Were you involved at all in the Riverside  
24 case? Are you familiar with that?  
25 A. I am not familiar with that.

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1 Q. Okay. I'm going to read you a quote that  
2 was contained in our expert report that was under the  
3 heading of "City of Pocatello." And it says, "The City  
4 anticipate it will be faced with additional and  
5 expensive treatment requirements in the future. It has  
6 begun to consider land application or other  
7 arrangements with nearby water users that would allow  
8 it to avoid expensive new treatment technologies."  
9 Does that sound accurate to you?  
10 A. Anything in wastewater is expensive.  
11 Whether we're treating to what the standards are to  
12 discharge to the river or whether we're treating it to  
13 reuse. It's all a matter of what decisions need to be  
14 made.  
15 I can give my expert input to the City  
16 Council, but if the City Council does not want to do  
17 reuse, well, then we'll pay to go to the river. If  
18 they decided they want to spend the money to do reuse,  
19 we'll -- we'll go that direction. Wastewater is an  
20 expensive industry.  
21 Q. Is the City currently looking at reuse  
22 options with nearby water users?  
23 A. Nothing formal. There's always, you know,  
24 discussions and ideas. But nothing of any substance  
25 right now.

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1 MR. FLETCHER: Okay. Thank you.  
2 THE HEARING OFFICER: Okay. Mr. Thompson?  
3 MR. THOMPSON: Nothing.  
4 THE HEARING OFFICER: All right. Nothing from  
5 Mr. Baxter.  
6 Any redirect?  
7 MR. BRICKER: No, no redirect.  
8 THE HEARING OFFICER: All right.  
9 MR. BRICKER: Thank you, Mr. Adams.  
10 THE HEARING OFFICER: Yeah, thank you for  
11 joining us. I think you're free to go.  
12 THE WITNESS: All right. Thank you.  
13 THE HEARING OFFICER: Next up would be Mr. Brian  
14 Yeager with the City of Hailey.  
15 Good afternoon, sir.  
16 BRIAN YEAGER: Good afternoon.  
17  
18 BRIAN YEAGER,  
19 having been called as a witness by the municipal  
20 providers and duly sworn, testified as follows:  
21  
22 THE HEARING OFFICER: All right. Please be  
23 seated.  
24 State your full name and address for the  
25 record.

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1 And then you can get going.  
2 THE WITNESS: Brian Yeager, public works  
3 director, City of Hailey. Work address, 115 South Main  
4 Street, Hailey, Idaho.  
5 MR. LAWRENCE: Thank you, Mr. Director.  
6  
7 DIRECT EXAMINATION  
8 BY MR. LAWRENCE  
9 Q. Good afternoon, Mr. Yeager.  
10 Could you please -- I know you just stated  
11 your name and position. Could you please tell us, you  
12 know, what you do for the City of Hailey.  
13 A. Sure. I'm the public works director for  
14 the City of Hailey. I oversee the water, wastewater,  
15 streets, parks and facilities divisions. I've been  
16 with the City of Hailey for approximately five years.  
17 Prior to that I was a consulting engineer  
18 for the City of Hailey for approximately 23 years. I'm  
19 licensed as both a professional engineer and  
20 professional land surveyor, although my testimony today  
21 is as a lay witness.  
22 Q. Can you describe what your duties and  
23 responsibilities with respect to water production --  
24 municipal water production and wastewater treatment and  
25 discharge are for the City of Hailey?

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1 A. I oversee each one of my division managers.  
2 One is within water. One is within wastewater. I  
3 provide them guidance on how to operate or, you know,  
4 make sure the City Council's goals are met and the  
5 product is adequately delivered to the City, although  
6 I'm not intimately familiar with the very fine nuances  
7 of some of their individual workday efforts.  
8 Q. Just for, you know, everyone's edification,  
9 how large is the City of Hailey? What's the  
10 population?  
11 A. It's just under 10,000 people and just  
12 under 4 square miles.  
13 Q. Okay. Could you please turn -- and there  
14 should be an exhibit binder in front of you, or  
15 several -- to Exhibit 337.  
16 THE HEARING OFFICER: I think it's going to be  
17 in this one [indicating].  
18 THE WITNESS: Thank you. Okay.  
19 Q. (BY MR. LAWRENCE): Have you seen this  
20 before?  
21 A. Yes.  
22 Q. Can you tell us what this is?  
23 A. It's a list of the water rights held within  
24 the City of Hailey for municipal water rights.  
25 Q. These are just municipal water rights for

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1 the City; correct?  
2 A. That's correct.  
3 Q. And the City does have additional water  
4 rights, but these are just municipal?  
5 A. That is correct.  
6 Q. Okay. Do you track the production of water  
7 under these water rights?  
8 A. Yes.  
9 Q. From all sources?  
10 A. Yes.  
11 Q. And is that done on a daily basis? hourly?  
12 monthly?  
13 A. Basically on a continuous basis, and then  
14 reported quarterly to IDWR.  
15 Q. And you have several sources of supply.  
16 Can you please describe those.  
17 A. The City supply system is primarily  
18 composed of either a spring house or municipal wells.  
19 So we have several wells spread around the city that we  
20 pump out of whenever we need to. But our primary  
21 source of water is Indian Creek Springs, and that is  
22 the one that we utilize to its full extent because, as  
23 stated earlier by some of the other cities, spring  
24 water is cheaper and more effective to get to the city  
25 than anything else.

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1 And then we flip on the wells as needed to  
2 augment that water supply.  
3 Q. And you're also -- I think you testified  
4 already you're familiar with Hailey's wastewater  
5 treatment and disposal system; is that correct?  
6 A. Yes.  
7 Q. Are there any other inputs to that  
8 wastewater treatment facility, other than from City of  
9 Hailey's municipal use?  
10 A. With the exception of major storm  
11 infiltration during spring storms, which we try to keep  
12 out of our system, the City of -- the potable water is  
13 the only input into that wastewater system.  
14 Q. And do you track the inflows into that  
15 wastewater treatment facility?  
16 A. Certainly.  
17 Q. And also the discharge?  
18 A. Yes.  
19 Q. And where does the facility discharge to?  
20 A. The Big Wood River.  
21 Q. And when you track the inflow and discharge  
22 quantities, are those on a daily basis, monthly basis,  
23 or continuous?  
24 A. Continuous.  
25 Q. And do you currently -- does the City of

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1 Hailey currently land-apply any of its treated  
2 effluent?  
3 A. No.  
4 Q. Does it currently have any rapid  
5 infiltration basins?  
6 A. No.  
7 Q. So all of the wastewater that inflows to  
8 the treatment plant is currently discharged to the Big  
9 Wood River?  
10 A. Correct. 100 percent of our discharge goes  
11 to the Big Wood River.  
12 Q. Could you please turn to Exhibit 344.  
13 A. Okay.  
14 Q. And can you please describe what this  
15 exhibit shows.  
16 A. This is a tabulation spreadsheet that shows  
17 production of all City sources combined for each month  
18 for five years. And it also has the monthly discharge  
19 to the river from the wastewater treatment plant for  
20 each month for five years, and a comparison of the net  
21 difference between those.  
22 Q. And this table does not account for any  
23 system losses; is that correct?  
24 A. That's correct. This table --  
25 mathematically it could be derived by the difference

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1 from production versus discharge. But the system  
2 losses would also be included in consumption.  
3 So you're correct.  
4 Q. Okay.  
5 A. There's no specific system loss identified  
6 in the table.  
7 Q. Okay. But there are system losses, you  
8 understand?  
9 A. For sure.  
10 Q. And those system losses infiltrate back  
11 into the ground?  
12 A. Yes.  
13 Q. Okay. And the quantities for those system  
14 losses have not been ascertained yet, have they?  
15 A. Correct.  
16 Q. Is the City of Hailey working on trying to  
17 figure out what those losses are?  
18 A. Yes.  
19 Q. If you could please turn to Exhibit 308.  
20 A. Okay.  
21 Q. Have you seen this before?  
22 A. Yes.  
23 Q. And do you understand that this is  
24 Mr. Sullivan's summary of average annual water use and  
25 consumptive use for the municipal providers involved in  
Page 492

1 this proceeding?  
2 A. Yes.  
3 Q. And in this exhibit it assumes a system  
4 loss of 10 percent.  
5 Do you see that?  
6 A. Yes.  
7 Q. It's possible, isn't it, that the City of  
8 Hailey's actual system losses are greater than that?  
9 A. Yes.  
10 Q. Would you expect that they are greater than  
11 that?  
12 A. We're not completely certain what our  
13 system losses are right now. We do believe that  
14 they're probably greater than 10 percent. But we're  
15 still trying to quantify those. And those system  
16 losses would be basically within the pipelines,  
17 fittings, so forth. Basically they don't come  
18 aboveground.  
19 Q. If you could turn to Exhibit 311, which  
20 should be in the very same binder.  
21 Have you seen this before?  
22 A. Yes.  
23 Q. And on page 2 of this exhibit there's a  
24 heading. It says, "Hailey."  
25 Have you read that paragraph under the  
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1 heading "Hailey"?  
2 A. On page 1, yes, I have.  
3 Q. My binder says "page 2." Oh, I see.  
4 A. Yeah, page 2 of 4 or -- yeah. Yes, I have.  
5 Q. Okay. Great. Do you agree with this  
6 description of the City of Hailey's summary of water  
7 use and wastewater effluent disposal?  
8 A. Yes.  
9 Q. Anything to add or...  
10 A. No.  
11 Q. Thank you.  
12 Does Hailey have any plans for changing its  
13 wastewater treatments or disposal methods?  
14 A. We do have plans for changing our treatment  
15 methods. Currently right now the wastewater treatment  
16 plan is an SDR sequence and batch reactor. And we do  
17 plan within the next five years or so to convert it to  
18 a membrane bioreactor for better removal of the  
19 controlled substances under our NPDES permit.  
20 And I believe -- what was the second  
21 portion of your question?  
22 Q. Disposal. Treatment and disposal.  
23 A. Disposal is continued to -- is planned to  
24 continue as is, but we have evaluated trying to do some  
25 limited land application for a couple City parks.  
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1 Q. Would that land application eliminate the  
2 need to discharge to the river?  
3 A. Not at all. The land application for the  
4 City parks that we're currently looking at is minor  
5 compared to the total acreage we would need. So we  
6 will still be discharging a significant volume to the  
7 river.  
8 Q. And are there any additional plans to  
9 change the disposal methods?  
10 A. No.  
11 Q. What's the timing of this potential land  
12 application for parks and open spaces?  
13 A. I would say it's in the two to ten-year  
14 range.  
15 Q. And how long have you been working on that?  
16 A. Three, maybe four years. We currently have  
17 the treatment ability for class A water that will be  
18 coming online soon, but we have no distribution system  
19 in place to send the water out.  
20 Q. And so constructing a whole separate  
21 distribution system will be a --  
22 A. Quite expensive, and it's at the discretion  
23 of City Council. I'm not sure if it's economically  
24 feasible, so we may not actually get there either.  
25 Q. Does the City of Hailey have any plans to  
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<p>1 reuse and recycle their treated wastewater to 2 extinction? 3 A. No. 4 Q. Looking back at Exhibit 337, the list of 5 the City of Hailey municipal water rights. 6 You mentioned that some of the supply's 7 from Indian Creek Spring; is that correct? 8 A. That is correct. 9 Q. And Indian Creek Spring is tributary to 10 Indian Creek, which is tributary to the Big Wood River; 11 is that correct? 12 A. Correct. There actually is no surface 13 connection between Indian Creek and Big Wood River. 14 Q. Okay. Does it sink before it gets to the 15 Big Wood River? How does the -- 16 A. Yeah, it just sinks, goes into the ground. 17 Q. Okay. Has the City ever placed any 18 restrictions on its citizens' water use? For example, 19 restriction on residential irrigation. 20 A. Certainly. Many. 21 Q. Can you describe some or all of them? 22 A. Similar to Bellevue. I guess within the 23 Big Wood River Valley, Hailey has actually been, I 24 would say, the lead in trying to address conservative 25 water use. We have odd-even day restrictions. We have Page 496</p>	<p>1 you, Mr. Yeager. 2 THE WITNESS: Thank you. 3 4 CROSS-EXAMINATION 5 BY MR. THOMPSON: 6 Q. Mr. Yeager, I'm Travis Thompson, an 7 attorney for A&amp;B Irrigation District and other entities 8 in this proceeding. I just have a few questions. 9 A. Okay. 10 Q. Could you turn back to Exhibit 308. 11 You said you're familiar with that table; 12 is that correct? 13 A. 308? 14 Q. Yes. 15 A. Okay. 16 Q. And you've reviewed this table before? 17 A. Yes. 18 Q. Can you generally describe, at least for 19 the City of Hailey, what this represents? 20 A. This represents a calculation of what the 21 consumptive use is understood to be based on Spronk 22 Water Engineering, Mr. Sullivan. 23 Q. And that estimate, is that 47 percent? 24 A. I believe that's the case, yes. 25 Q. And you could turn over to Exhibit 344. It Page 498</p>
<p>1 time of day restrictions. We have maximum lot size 2 restrictions. We have a very aggressive tiered water 3 rate structure to encourage conservation so that the 4 more water you use the higher the price per gallon is. 5 Several things along those regards. 6 Then we also have where we will go out and 7 hang door flyers on people's doors if they're violating 8 any of those restrictions, and we'll impose fines and 9 penalties if they continue to do so. So we have 10 restrictions in place, and we police them. 11 Q. So it's not a voluntary program, it's 12 enforced? 13 A. It's voluntary if you don't want to get 14 fined. 15 Q. And so there's probably a pretty good 16 compliance rate? 17 A. Yeah, we do pretty good. Obviously 18 policing any community it's never perfect. We do 19 pretty good. 20 Q. And I think finally is it fair to say that 21 if the Department of Water Resources ordered 22 curtailment of City water use that you would be able to 23 actually physically shut off the water supply? 24 A. Certainly. 25 MR. LAWRENCE: That's all my questions. Thank Page 497</p>	<p>1 may be in the other binder. 2 A. Okay. 3 Q. And was this a table that you created? 4 A. Primarily, yes. 5 Q. And it's a summary of monthly water 6 production from wells, spring sources. 7 Is that all City water supply -- 8 A. Yes. 9 Q. -- compared to your discharge to the river? 10 A. Yes. 11 Q. And looking at that, would you agree that 12 2022 about 20 percent of the water that was pumped or 13 diverted from the spring sources was discharged to the 14 Big Wood River? 15 A. Yeah-ish. 16 Q. And what's your estimates on where that 17 other 80 percent goes? 18 A. We have a -- we have an -- we have lost 19 water or nonrevenue water, basically water that's not 20 being delivered in the system that we're trying to hunt 21 down, so we're not sure exactly what that quantity is. 22 The other part could be irrigation. And 23 the other part could basically be -- I mean those would 24 be the primary two components. 25 Q. Okay. And you understand the City has the Page 499</p>

1 ability to reuse water and land-apply it; is that  
2 correct?  
3 A. We are working on the ability to do that.  
4 We have -- we are finalizing the treatment capacity for  
5 that, but we do not have a distribution system for it  
6 yet.  
7 Q. Do you know how many acres you would  
8 estimate to land-apply to?  
9 A. Not very many. 10 to 12, maybe.  
10 Q. So in your Exhibit 344 all that water, the  
11 annual production, is either delivered to residential  
12 lots, parks, other spaces, it's all for potable,  
13 in-house use and outdoor irrigation for the City's  
14 needs; is that correct?  
15 A. Plus system losses, yes.  
16 MR. THOMPSON: Okay. Thank you.  
17 THE HEARING OFFICER: Mr. Fletcher?  
18 MR. FLETCHER: No questions.  
19 THE HEARING OFFICER: Any redirect?  
20 All right. Thank you for coming down.  
21 Appreciate your testimony.  
22 THE WITNESS: That was anticlimactic.  
23 THE HEARING OFFICER: Thanks for your testimony.  
24 THE WITNESS: Thank you.  
25 THE HEARING OFFICER: All right. Next up

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1 Mr. Chris Fredericksen.  
2 Hello, sir.  
3 CHRIS FREDERICKSEN: Hello.  
4  
5 CHRIS FREDERICKSEN,  
6 having been called as a witness by the municipal  
7 providers and duly sworn, testified as follows:  
8  
9 THE HEARING OFFICER: Thanks. Have a seat.  
10 State your name and address for the record,  
11 and we'll get going.  
12 THE WITNESS: My name is Chris Fredericksen. My  
13 work address is 380 Constitution Way in Idaho Falls,  
14 Idaho.  
15  
16 DIRECT EXAMINATION  
17 BY MR. HARRIS:  
18 Q. Chris, thanks for being here today.  
19 How are you currently employed?  
20 A. I work for the City of Idaho Falls.  
21 Q. Okay. And what is your capacity with the  
22 City of Idaho Falls?  
23 A. I'm the public works director.  
24 Q. Okay. And how long have you been the  
25 public works director for the City?

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1 A. About ten-and-a-half years with Idaho  
2 Falls.  
3 Q. Okay. Prior to your position as the public  
4 works director, did you work for Idaho Falls in another  
5 position or positions within the City?  
6 A. I did. I worked as the City engineer and  
7 also as the assistant public works director.  
8 Q. During your time with the City -- well, I  
9 should ask, so how many years total have you worked for  
10 the City?  
11 A. I've been with Idaho Falls for  
12 21-and-a-half years.  
13 Q. Okay. During your time with the City, has  
14 it been your observation that it's experienced  
15 population growth?  
16 A. Yes.  
17 Q. Okay. And is the growth in eastern Idaho  
18 primarily within cities and municipalities?  
19 A. I would say that would be the case.  
20 Primarily in the urbanized areas is where we're  
21 experiencing the most growth.  
22 Q. What are your responsibilities as the  
23 public works director?  
24 A. So I oversee seven divisions. Those  
25 include an engineering group, our geographical

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1 information systems, sanitation, streets, wastewater,  
2 water, and a newly formed division in public transit.  
3 Q. Okay. And so are you essentially the City  
4 official who is responsible for the water and  
5 wastewater systems in the City?  
6 A. I am.  
7 Q. Could you please just describe briefly your  
8 educational background and then any certifications or  
9 licenses that you have.  
10 A. You bet. I'm an ISU graduate. Go Bengals.  
11 I also have a professional engineering license with the  
12 State of Idaho and also with the State of Utah.  
13 Q. Okay. I'm going to have you turn -- there  
14 should be a white binder -- to Exhibit 334. Or excuse  
15 me, it will have a blue sheet on it.  
16 A. Okay.  
17 Q. That's just kind of an illustrative summary  
18 of the water rights that the City of Idaho Falls  
19 possesses. And it includes power and municipal rights.  
20 Do you see that list?  
21 A. I do.  
22 Q. The City's culinary water system is  
23 provided water pursuant to the municipal groundwater  
24 rights on that list; correct?  
25 A. That's correct.

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1 Q. And approximately 128 cfs of groundwater  
2 rights for municipal purposes; correct?  
3 A. That's right.  
4 Q. Okay. Could you generally describe how the  
5 City collects and treats its wastewater effluent.  
6 A. Yeah. For all residential, commercial, and  
7 industrial uses, they generally have sewer connections,  
8 which they tie to our public system, which consists of  
9 around 300 miles of water -- or wastewater collection  
10 piping. I believe we have 40-some lift stations  
11 associated with that as well.  
12 That conveyance system flows that  
13 wastewater to our wastewater treatment plant located  
14 immediately adjacent to the Snake River at 4055 Glen  
15 Koester Way. Once it reaches our plant, that runs  
16 through primary and secondary treatment, followed by  
17 disinfection, before being discharged into the Snake  
18 River.  
19 Q. Okay. And approximately how much  
20 wastewater does the City of Idaho Falls treat and  
21 discharge each day?  
22 A. Approximately 9.7 million gallons per day.  
23 Q. Is that a fairly consistent flow?  
24 A. It is, we're pretty similar to the system  
25 that was described by Pocatello earlier. We do see  
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1 some influxes during major storm events in eastern  
2 Idaho. But being in the high desert those are very  
3 infrequent.  
4 Q. And so you're able to essentially parse out  
5 what comes through the stormwater system versus what's  
6 coming from culinary uses in the city?  
7 A. Yeah, based on those average recordings of  
8 our flow.  
9 Q. So if I do my conversion right, 9.7 million  
10 gallons is approximately 30 acre-feet per day, correct,  
11 that's discharged into the river?  
12 A. I'm going to trust your calculation there.  
13 Q. So over a year, 365 days, that's about  
14 11,000 acre-feet that's discharged into the river?  
15 A. That sounds right. I know usually we're  
16 reporting in gallons. What sticks out in my mind is  
17 3-and-a-half-billion gallons is the flow that would  
18 come in annually into the Snake River.  
19 Q. Okay. I'm going to have you turn to --  
20 Is the Surface Water Coalition's exhibit  
21 binder up there, Exhibit 1?  
22 THE HEARING OFFICER: I think it's the small one  
23 underneath the one on your right.  
24 Q. (BY MR. HARRIS): So if you could look at  
25 Exhibit 1 and then turn to page 5. And midway down the  
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1 page there's a paragraph that begins "When asked about  
2 Water District 1 accounting."  
3 Do you see that?  
4 A. Yeah.  
5 Q. And there's a sentence in there that --  
6 this is in Mr. Colvin and Mr. Shaw's expert report.  
7 And it says, "Without well-established and reliable  
8 return-flow data available in Idaho, it is reasonable  
9 for IDWR to administer new municipal water rights as  
10 fully consumptive."  
11 So that statement uses the phrase "Without  
12 well-established and reliable return-flow data."  
13 Do you know how long Idaho Falls has  
14 measured its effluent outflow?  
15 A. So I think our wastewater treatment plant,  
16 the primary system was constructed in 1958, followed by  
17 secondary improvements in 1971. But we have tracked  
18 those outflows as required based our NPDES permits.  
19 And so I believe we would have data that goes well back  
20 into the past.  
21 Q. Okay. And how do they actually measure?  
22 What device measures the outflow into the river?  
23 A. So we have meters on our inflow and also  
24 the outflow to the river, just to check what those  
25 differences are. We do use some water similar to  
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1 Pocatello for our process water in the plant, whether  
2 that's cleaning up or those types of things.  
3 And we do have irrigation of about 6 acres  
4 of landscaping around the wastewater treatment plant as  
5 well.  
6 Q. Okay. And relatively speaking, the vast  
7 majority of your water is treated and then discharged  
8 into the Snake River?  
9 A. Yes.  
10 Q. And do you believe that that system you  
11 have in place is well established and reliable in terms  
12 of calculating or recording the amount of water you  
13 discharge to the Snake River?  
14 A. We do.  
15 Q. Okay. And is that information easily  
16 accessible by you or others within the City?  
17 A. Yes, it is. It is part of the reporting  
18 required through our NPDES permit.  
19 I will mention the City of Idaho Falls'  
20 current NPDES permit was issued by EPA. However, as  
21 has probably been mentioned previous to me being here,  
22 the Idaho Department of Environmental Quality now has  
23 primacy over these types of issues. And so all of our  
24 reporting actually goes to DEQ.  
25 So part of our discharge monthly reporting  
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1 is completed online. And so all of that information  
 2 should be available in a database that's accessible by  
 3 State of Idaho employees.  
 4 Q. So I'm actually going to have you turn to  
 5 your NPDES permit. Look at Exhibit 346. So yeah, put  
 6 the small bound binder to the side. And then  
 7 Exhibit 346.  
 8 And you recognize that document; right,  
 9 Chris.  
 10 A. I do.  
 11 Q. Okay. And so the date on this permit is  
 12 September 20th, 2012.  
 13 And so how long is an NPDES permit allowed  
 14 for, initially?  
 15 A. My experience has been generally five  
 16 years.  
 17 Q. Okay. And since -- well, how long ago did  
 18 DEQ take over primacy for wastewater treatment in Idaho  
 19 from EPA?  
 20 A. So they've taken over a number of different  
 21 processes from EPA, whether that be administration of  
 22 the stormwater program, and then also wastewater as  
 23 well. So that's been phased probably over the last  
 24 four or five years, is my understanding.  
 25 But in this particular situation I should

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1 point out this permit was issued in 2012 from EPA. It  
 2 expired in 2017. We've been operating on an  
 3 administratively extended permit.  
 4 EPA had, I'm going to say, a huge number of  
 5 permits that needed to be reissued, and unfortunately  
 6 for DEQ, as they took that over now they're working to  
 7 try to bring those existing permits back up to date.  
 8 Q. Great. So what work does Idaho Falls have  
 9 to do in order to receive the NPDES permit approval or  
 10 approval from DEQ?  
 11 A. So generally as we go through this  
 12 particular process, we work with a permit writer that  
 13 would develop those criteria that are really  
 14 independent to us as a municipality that discharges to  
 15 the Snake River.  
 16 Every discharge point is really different  
 17 in that the water body that they're actually sending  
 18 their wastewater to, whether that be a storage pond, an  
 19 evaporative pond, a small creek. So that all weighs  
 20 into what is actually required so that there's no  
 21 degradation to the receiving body.  
 22 So that permit writer actually works with  
 23 the entity that is seeking the permit. There's public  
 24 comment involved with that. So that works through that  
 25 particular process to establish the criteria in which

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1 is included in the permit.  
 2 Q. Okay. And just in looking at the permit,  
 3 if you could turn to the exhibit's page 6. But the  
 4 very first thing that the monitoring requirement is  
 5 flow.  
 6 And that's a reference to the flow -- the  
 7 measurement of flow from the wastewater treatment  
 8 plant; correct?  
 9 A. That is correct.  
 10 Q. And it indicates that it has to be done  
 11 continuously and recorded; is that right?  
 12 A. That's right.  
 13 Q. So how does that measuring device that the  
 14 City has, is it continuously recording the discharge?  
 15 A. It is. Very similar to what was described  
 16 earlier by the City of Pocatello.  
 17 Q. Okay. What other testing and other  
 18 requirements does the City have to undertake as part of  
 19 its NPDES approvals?  
 20 A. So as part of this, all these parameters  
 21 that are listed on this particular table, they're  
 22 listed as areas that we do want to have data that is  
 23 actually sampled and tested for. I believe there's  
 24 over 30 different items here in which we're looking for  
 25 some of those are very frequent. As mentioned, the

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1 flow is a continuous logging of that data.  
 2 Other of these items, some of these metals  
 3 and whatnot, they're grab samples that are looked at  
 4 twice a year. So the frequency that's required in some  
 5 of those testing for these particular parameters or  
 6 wastewater constituents vary but are detailed within  
 7 this permit.  
 8 Q. And how many dedicated staff from the City  
 9 of Idaho Falls work for the wastewater treatment plant?  
 10 A. So our wastewater division that handles  
 11 both wastewater treatment and the collection side, we  
 12 have 36 full-time employees.  
 13 Q. Okay. And they assist in the reporting  
 14 requirements that are required under this permit;  
 15 correct?  
 16 A. They do.  
 17 Q. And does the City even have its own testing  
 18 lab for some of this water quality?  
 19 A. We do. In order to get a -- ensure that  
 20 our plant runs effectively and in conformance with this  
 21 permit, we have a number of items that are tested for  
 22 internally. And then we send -- those items that we  
 23 can't do internally, we send those out to outside labs  
 24 for testing.  
 25 Q. So is it fair to say that Idaho Falls is

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1 used to complying with administrative oversight and  
 2 reporting requirements?  
 3 A. I would say yes. So it seems like there's  
 4 a -- there's kind of an uptake, if you will, in the  
 5 issuance of a new permit as spreadsheets and databases  
 6 are established, enter that data into. But once that's  
 7 complete, that's a fairly straightforward process in  
 8 that recording.  
 9 Q. And one thing I should ask as well: The  
 10 City treats its effluent, but does it also collect  
 11 effluent from other entities, local entities?  
 12 A. We do.  
 13 Q. Okay. What are those entities?  
 14 A. We collect wastewater from the City of  
 15 Yukon to the north of Idaho falls and also the  
 16 Iona-Bonneville Sewer District that exists immediately  
 17 to our east.  
 18 Q. And does the City measure how much effluent  
 19 it receives from those entities?  
 20 A. We do. Where their wastewater enters our  
 21 system, we have meters. And that's actually how  
 22 they're billed for that service.  
 23 Q. Okay. So you're motivated for that to be  
 24 accurate because that's how they're billed for the  
 25 service; correct?

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1 A. We are indeed.  
 2 Q. Okay. What would happen if Idaho Falls  
 3 wastewater was determined to be out of compliance with  
 4 the NPDES permit? Could you just describe the process  
 5 that would happen in that case.  
 6 A. Yeah. Generally that happens with  
 7 self-reporting. We have 24-hour notification to DEQ if  
 8 we are out of compliance. So that would really come  
 9 from staff, whether that be from a phone call or  
 10 e-mail. And then that would be followed up in the  
 11 discharge monitoring reports that are completed  
 12 monthly.  
 13 So there's a whole section within the  
 14 permit that deals with compliance. And so depending on  
 15 what those violations may be, different means to, I  
 16 guess, try to address those would be sought.  
 17 However, I will just say that it's been my  
 18 experience with the enforcement agencies their primary  
 19 concern is water quality, and they want to work with  
 20 the entity to resolve the issue and move on, as opposed  
 21 to being more punitive in nature with fines and those  
 22 types of the things.  
 23 Q. Has Idaho Falls looked at alternative  
 24 effluent treatment processes, such as land application,  
 25 as its primary treatment methodology?

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1 A. We really have not. As I mentioned  
 2 earlier, Idaho Falls is pretty unique and blessed with  
 3 a very large river that's very clean that runs by it.  
 4 To this point it's been the most cost-effective means  
 5 or us to dispose of our wastewater. I don't know what  
 6 would make that less so.  
 7 We are also unique in the fact that any of  
 8 that water that we put in the river, we also generate  
 9 power that also helps serve our residents in Idaho  
 10 Falls as well.  
 11 Q. Okay. If for some reason the City were to  
 12 ever directly discharge its effluent into like a  
 13 recharge site, would that be an expensive proposition?  
 14 What approvals would you have to get in order to make  
 15 that happen?  
 16 A. My understanding would be, as we work with  
 17 consultants on these types of issues, is a permit  
 18 similar to what we have as far as that would deal with  
 19 land application.  
 20 But I do believe you're going to be  
 21 treating that closer to potable water standards than  
 22 what we do today. So it's much more cost effective for  
 23 us to have that discharge continue to the Snake River.  
 24 Q. And if the City were to land-apply, for  
 25 example, would it also have to treat that water to a

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1 higher water-quality standard?  
 2 A. That's my understanding as well.  
 3 Q. And so based on the City's established  
 4 infrastructure and the way it currently treats its  
 5 wastewater, do you anticipate the City ever changing  
 6 from its current methodology of treating and direct  
 7 discharge water into the Snake River?  
 8 A. I suppose -- I suppose "ever" is a long  
 9 time. But I will mention the City of Idaho Falls is in  
 10 the middle of a process of updating our wastewater  
 11 facility plan. This is a planning document that guides  
 12 our wastewater treatment. It looks a short-term, be  
 13 that five years, all the way out to a 20-year horizon.  
 14 And that's not part of that study or that evaluation.  
 15 Q. Great. And as far as the NPDES permit  
 16 renewal, has it been your experience that -- whether  
 17 there are any significant or material changes to the  
 18 permit each time it's renewed?  
 19 A. I would say that's generally the case. It  
 20 has a lot to do with what technologies have emerged as  
 21 far as how clean the water can be made as far as some  
 22 of the treatment processes that have come along.  
 23 And it also takes a look at the receiving  
 24 water body, if there's been any impairments. Let's say  
 25 phosphorus has become an issue, then perhaps there's

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1 greater restrictions on our discharge of phosphorus to  
2 that site as well.

3 Q. Okay. And a couple questions that I think  
4 would be helpful here too that I didn't mention to you  
5 before.

6 But the City's recently undertaken some  
7 conversion projects within the City conversion of  
8 groundwater-irrigated golf courses and parks to surface  
9 water; correct?

10 A. That's right. We do utilize surface water  
11 in all three of our municipal golf courses. Also, I  
12 believe the campus of the College of Idaho has been  
13 converted to surface water. So we continue to look to  
14 those types of mechanisms to help, I guess, take some  
15 of the pressure off our deep well usage and not  
16 overutilize that potable water source.

17 Q. And so the water for those facilities is  
18 not recycled or reused municipal effluent, it's surface  
19 water from various irrigation districts within the  
20 City; correct?

21 A. That's correct.

22 Q. Okay. I'm going to have you turn to  
23 Exhibit 301 in the exhibit binder. It might be in the  
24 other one. Could you turn to page 28.

25 At the top of that page -- and this is

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1 primarily what this hearing is about -- there's a  
2 statement in this order issued by the Director that  
3 says, "Applications for municipal water use and for  
4 domestic use from community water systems shall be  
5 considered fully consumptive. Applications for  
6 domestic purposes from non-community water systems  
7 shall be evaluated on a case-by-case basis to determine  
8 whether the proposed use is nonconsumptive."

9 In your view, based on your experience and  
10 familiarity with the City's wastewater treatment  
11 processes, is Idaho Falls treated effluent fully  
12 consumptive?

13 A. No.

14 Q. Okay. Why not?

15 A. So it's not actually evaporated or used to  
16 extinction. As I mentioned, we have  
17 9.7 million gallons that are brought back to the Snake  
18 River on a daily basis.

19 Q. So it's not consumed?

20 A. Correct.

21 Q. And there's some terms in this -- the two  
22 sentences I read, "community" and "non-community."  
23 Are you familiar with those terms at all as  
24 they're used in the moratorium order?

25 A. No. I think -- I think when this

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1 originally came out, our determination or, I guess,  
2 thought process really was that they were referencing  
3 the administrative code and that maybe there was a  
4 reference to those small community-type 25 users or  
5 less. But we weren't really sure what the correct  
6 definition of that term was.

7 Q. Okay. So as an overall matter, do you  
8 agree with that statement that applications for  
9 municipal water use are fully consumptive or should be  
10 treated as fully consumptive?

11 A. I don't agree with that, no.

12 Q. Okay. Why not?

13 A. Well, for one, I think every one of our  
14 municipal wastewater treatment plants are different.  
15 As we mentioned, some of the -- some of the things that  
16 are similar, but then also that they're different.

17 But as we look to the water that's  
18 available in those returns, I think it becomes pretty  
19 evident that the water is not currently being used to  
20 extinction.

21 Q. Okay. Would Idaho Falls be satisfied with  
22 amended language that simply said that municipal  
23 applications should be evaluated on a case-by-case  
24 basis?

25 A. We would.

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1 Q. Okay. If IDWR required Idaho Falls to  
2 report information to it as a condition of approval for  
3 a municipal water right permit, would it be difficult  
4 or burdensome, in your opinion, for Idaho Falls to  
5 accomplish that?

6 A. No, I don't believe it will. We currently  
7 report to the Department our consumption or production  
8 from each of our 21 wells. So that's an annual figure  
9 that we provide already.

10 So being able to even compare that with our  
11 wastewater issue, those are all readily accessible data  
12 points for the City of Idaho Falls to share with any  
13 State agency.

14 Q. Okay. I believe you were here when  
15 Mr. Cefalo testified earlier this morning about some of  
16 the administrative burdens that IDWR could experience  
17 if there had to be some follow-up or enforcement of  
18 conditions with water right permit approvals.

19 Do you recall that testimony?

20 A. I do.

21 Q. When Idaho obtained primacy over wastewater  
22 from EPA several years ago, what process did the State  
23 engage in to assist in funding the public drinking  
24 water program?

25 A. So I saw a number of presentations on this,

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1 and I don't remember the exact time frame. But I  
2 believe the Department looked at the potential staffing  
3 increases that were required to bring each of those  
4 different primacy issues back to the State. So with  
5 that, they had anticipated staff needs year to year for  
6 I believe it was a five-year period.  
7 Those costs were then shared with all of  
8 the users. So currently, as an example with the City  
9 of Idaho Falls, our water customers pay 25 cents  
10 additionally per month to support the drinking water  
11 program.  
12 And then our wastewater customers actually  
13 pay 15 cents per month to help support the wastewater  
14 and stormwater work that DEQ now has taken over.  
15 Q. In your opinion, has that worked well to  
16 help fund that program?  
17 A. I believe it has. I think nothing's more  
18 frustrating, at least from my perspective, when we have  
19 unfunded mandates that come. But being able to sit at  
20 the table and actually talk about how we'll actually  
21 stand up these programs and fund them together, I think  
22 that's been a very successful approach that DEQ has  
23 undertaken.  
24 Q. So if there was an issue with allocation of  
25 IDWR staff to address creative new water right permits,

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1 again, absent appropriation of additional resources  
2 from the legislature, is funding through a fee like the  
3 DEQ drinking water program something that you or the  
4 City of Idaho Falls would support?  
5 A. I think it is. And I also would just add  
6 to that in the fact that similar to the NPDES or IPDES,  
7 whatever we want to refer that to in the future, those  
8 violations are currently self-reported. Right? So  
9 it's our staff that's identifying we've incurred a  
10 violation and notifying DEQ.  
11 Something very similar, I imagine, would be  
12 beneficial in this particular scenario.  
13 MR. HARRIS: Great. I have no further  
14 questions. Thank you, Chris.  
15 THE HEARING OFFICER: Any cross?  
16 MR. FLETCHER: I have no questions.  
17 THE HEARING OFFICER: No questions.  
18 MR. BAXTER: No.  
19  
20 EXAMINATION  
21 BY THE HEARING OFFICER:  
22 Q. I just have one question for you, just  
23 based on the last statement you made that you  
24 self-report violations to DEQ.  
25 And what's the incentive to self-report

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1 those violations?  
2 A. I think it's the entity really that we're  
3 working together as two entities to try to protect what  
4 I believe is one of Idaho's greatest resources. And  
5 when we've ran into a problem, we want to identify that  
6 and bring those entities together and propose  
7 solutions.  
8 We felt that partnership even more so as  
9 DEQ has taken over primacy, you know, in dealing with  
10 the EPA and Region 10 in Seattle. I don't think they  
11 have a very good understanding, perhaps, of local Idaho  
12 issues. But I do feel that that's been the case as  
13 we've worked with our local offices with DEQ.  
14 Q. I'm aware of recent community systems, I'll  
15 call them, community wastewater treatment systems, that  
16 haven't self-reported those violations, and they're in  
17 your neighborhood of the state.  
18 Are you familiar with any of those  
19 entities?  
20 A. I believe Island Park is one of those,  
21 yeah.  
22 Q. And so if, you know, someone operating in  
23 good faith did self-report those, but obviously there's  
24 at least examples of certain entities that don't  
25 operate in good faith, what are the repercussions for

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1 that? So not reporting the -- not self-reporting the  
2 violations, where does DEQ go? And how do they know  
3 that there were violations that have not been  
4 self-reported? Do you know? And maybe I'm asking you  
5 something outside of your understanding. But what  
6 would be the next step there?  
7 A. Actually, I believe if you look at most of  
8 the NPDES permits of that as an example, the compliance  
9 side, some of the criminal, punitive measures that can  
10 be undertaken, I mean you're talking about some that  
11 are \$37,000 per day or per incident it's \$50,000 per  
12 day. And if they're life threatening, I believe  
13 there's \$1 million and \$2 million punitive damages, and  
14 also criminal charges that can be brought.  
15 So there's a fairly well-documented means  
16 to bring people to the table so that we can cooperate  
17 and address those issues.  
18 Q. Is one of the outcomes that DEQ ends up  
19 operating that system?  
20 A. I believe they have taken over that  
21 ownership and are looking for a private entity to help  
22 participate in the management thereof.  
23 THE HEARING OFFICER: Thank you. I don't have  
24 any more questions.  
25 THE WITNESS: Thank you.

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1 MR. BRICKER: Director.  
2 THE HEARING OFFICER: Yes, sir.  
3 MR. BRICKER: If there's no other questions, I  
4 forgot to move to admit some of the exhibits that I  
5 discussed.  
6 THE HEARING OFFICER: I think we have a number  
7 of exhibits that we need to clean up.  
8 MR. HARRIS: Yeah, I was just going to do that  
9 after you were done.  
10 THE HEARING OFFICER: Yeah.  
11 MR. HARRIS: So I need to move on two of our  
12 exhibits. But if you want to go ahead first.  
13 THE HEARING OFFICER: So before we get to that,  
14 I just want to make sure we're all on the same page.  
15 That concludes the lay witness testimony  
16 for the first issue in the hearing?  
17 MR. HARRIS: I believe so.  
18 THE HEARING OFFICER: Okay. And so, Sarah, were  
19 you keeping track of exhibits that have been discussed  
20 but not admitted.  
21 SARAH TSCHOHL: Yeah. I've got 328, 330, 344,  
22 and 346.  
23 MR. LAWRENCE: There should also be 337.  
24 SARAH TSCHOHL: 337 has already been admitted.  
25 MR. LAWRENCE: Thank you.

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1 MR. HARRIS: 334.  
2 SARAH TSCHOHL: 334 has already been admitted.  
3 I believe it's just those four that were  
4 discussed, and there's been no motions or formal  
5 introductions.  
6 MR. BRICKER: For Pocatello it was just 328 and  
7 330?  
8 SARAH TSCHOHL: Yes. And City of Hailey is 344,  
9 and City of Idaho Falls is 346.  
10 THE HEARING OFFICER: Okay. Go ahead.  
11 MR. BRICKER: I'll move to admit Exhibits 328  
12 and 330.  
13 THE HEARING OFFICER: Any objection?  
14 All right. We'll bring Exhibits 328 and  
15 330 into the record.  
16 (Exhibits 328 and 330 admitted.)  
17 MR. LAWRENCE: I'll move to admit Exhibit 344.  
18 THE HEARING OFFICER: Any objection?  
19 All right. We'll bring Exhibit 344 into  
20 the record.  
21 (Exhibit 344 admitted.)  
22 MR. HARRIS: And I believe 334 is already in.  
23 But I would move to admit 346.  
24 THE HEARING OFFICER: Any objection?  
25 Seeing none, we'll bring Exhibit 346 into

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1 the record.  
2 (Exhibit 346 admitted.)  
3 MR. HARRIS: Director, in addition to that, we  
4 included in our exhibits just several water right  
5 summaries just for a quick-and-ready reference for a  
6 number of the municipal entities that are here or that  
7 are being represented.  
8 And rather than have them testify  
9 individually and take up all of our time, I would just  
10 move that we admit those. I believe they're -- did we  
11 already admit those?  
12 I'll be quiet now. I missed that request.  
13 THE HEARING OFFICER: Okay. So then it's my  
14 understanding that we're -- all exhibits that we want  
15 to bring into the record have been admitted.  
16 Okay. And I think there was some  
17 discussion before the break about taking official  
18 notice of five municipal water right applications that  
19 are pending inside the -- in the moratorium area  
20 boundaries.  
21 And I thought about that issue over the  
22 break. And I'm going to decline to take official  
23 notice of those.  
24 So with that, are we ready to move on to  
25 issue No. 2?

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1 MS. McHUGH: Mr. Director, yes. But what I  
2 would like to do, if we could, just because it is a  
3 little bit quicker than we're anticipating, could we  
4 take like a 15, 20-minute break, and maybe start at  
5 three o'clock on that so we can get our exhibits or  
6 documents together and put that together and then  
7 start?  
8 THE HEARING OFFICER: Is everyone here also  
9 participating in issue 2?  
10 MR. HARRIS: No.  
11 MR. FLETCHER: No.  
12 THE HEARING OFFICER: And so that might also  
13 allow a little bit of a break.  
14 MR. FLETCHER: We're going to have a mass  
15 exodus.  
16 THE HEARING OFFICER: For people to leave and  
17 not disrupt the hearing process. So I think that's a  
18 good proposal.  
19 So let's reconvene at three o'clock.  
20 (Discussion.)  
21 THE HEARING OFFICER: Okay. Back on the record.  
22 So the question is, opportunity for  
23 post-hearing briefing.  
24 What's the appetite, I guess, for  
25 post-hearing briefing from the parties?

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1 MR. BRICKER: Well, I think we would like to  
2 have the opportunity.  
3 MS. McHUGH: Yeah. From our side we'd be in  
4 favor.  
5 THE HEARING OFFICER: Okay. Other side?  
6 MR. THOMPSON: If they want to write mine, they  
7 can. It doesn't matter.  
8 MS. McHUGH: I'm happy to write yours, Travis.  
9 THE HEARING OFFICER: Doesn't matter. Okay.  
10 MS. McHUGH: Am I a surface water representative  
11 or a groundwater representative?  
12 MR. THOMPSON: So...  
13 MS. McHUGH: Okay.  
14 THE HEARING OFFICER: So what are typical  
15 limitations on briefing that you're familiar with? I'm  
16 thinking --  
17 MS. McHUGH: You mean like page limitations?  
18 THE HEARING OFFICER: Page count and timing.  
19 MS. McHUGH: I think it should be simultaneous  
20 within two weeks?  
21 MR. BROMLEY: Two weeks.  
22 MS. McHUGH: And -- I don't know -- 15 pages.  
23 THE HEARING OFFICER: And only one round, then  
24 of briefing, no responses?  
25 MS. McHUGH: Correct.

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1 THE HEARING OFFICER: Yeah.  
2 MR. FLETCHER: We have an oral argument on an  
3 appeal a week from Monday. So we'd ask for a little  
4 bit more time than that.  
5 THE HEARING OFFICER: Okay. I can't get my  
6 calendar up. Part of my IT problems.  
7 MS. McHUGH: So on the 31st do you have an oral  
8 argument?  
9 MR. FLETCHER: 30th.  
10 MS. McHUGH: Oh, Monday. Okay.  
11 MR. BROMLEY: How about three weeks, then?  
12 MS. McHUGH: What about the 7th of November?  
13 THE HEARING OFFICER: Garrick, I'd ask you to --  
14 okay -- I don't know that it needs to be open in my  
15 calendar.  
16 What -- so maybe three weeks, then? Or  
17 four weeks?  
18 MR. BAXTER: What was the proposal?  
19 MR. HARRIS: Originally it was two.  
20 THE HEARING OFFICER: More than two weeks  
21 because of upcoming argument.  
22 MR. HARRIS: We can say three now, if that  
23 works.  
24 MR. FLETCHER: The appeal and the breach issue  
25 is October 30th.

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1 MS. McHUGH: Oh, interesting.  
2 THE HEARING OFFICER: How about close of  
3 business Friday, November 17th?  
4 SARAH TSCHOHL: And I know we're talking about  
5 issue one.  
6 But to clarify, would this be joint issue  
7 one and two for those of you guys?  
8 MS. McHUGH: Yes.  
9 SARAH TSCHOHL: Okay.  
10 MS. McHUGH: That's fine with me -- or us. Am I  
11 representing -- I'm speaking for us, apparently. I'm  
12 taking charge.  
13 MR. LAWRENCE: 15 pages sounds a little small, a  
14 little light for doing two issues.  
15 MS. McHUGH: What about 20 pages? 25 pages?  
16 MR. FLETCHER: That raises an issue. Should we  
17 do separate briefs for each?  
18 THE HEARING OFFICER: Yeah, I think that's a  
19 good suggestion.  
20 MS. McHUGH: Yeah.  
21 MR. FLETCHER: Because a lot of people that are  
22 in 1 --  
23 THE HEARING OFFICER: Yep.  
24 MR. FLETCHER: -- aren't going to be involved in  
25 2.

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1 MS. McHUGH: Fair enough. 15 pages each,  
2 separate on the issues, both through the same time, all  
3 simultaneous on November 17th.  
4 THE HEARING OFFICER: Okay. So I think I'm  
5 comfortable with the proposal of 15-page limits on  
6 briefing per issue. All briefing due by Friday,  
7 November 17th, 5:00 p.m., close of business. No round  
8 of briefing beyond that.  
9 MR. FLETCHER: Font 16, help you with your glass  
10 situation.  
11 THE HEARING OFFICER: 12 at least, .12.  
12 All right. Thank you. We'll be back here  
13 in -- how about we say 3:10.  
14 (Recess.)  
15 THE HEARING OFFICER: So maybe just a little  
16 introduction.  
17 SARAH TSCHOHL: Are we on the record?  
18 THE HEARING OFFICER: Let's go on the record, if  
19 we're not already.  
20 So we previously agreed to divide the  
21 hearing up into two issues in the scheduling order that  
22 went out. Let's see what the date here. Notice of  
23 Hearing and Scheduling order dated March 31st of this  
24 year.  
25 The second issue was described as whether

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1 all pumping in the Big Wood Groundwater Management Area  
 2 has an impact on all surface water sources upstream  
 3 from Magic Reservoir, including Silver Creek.  
 4 So we'll move on that now with expert  
 5 witness testimony and just a little bit of  
 6 housekeeping. So looking through the various summaries  
 7 here at the break, expert witnesses that I've  
 8 identified, and I'd just like some confirmation that  
 9 I've got a complete list. Greg Sullivan, Jennifer  
 10 Sukow, Zach Hill, Kendra Kaiser, Bryce Contor, Eric  
 11 Miller, Thane Kindred, Dave Shaw, and Erick Powell.  
 12 Am I -- is anyone on that list who  
 13 shouldn't be? And have I forgotten anyone?  
 14 I don't see anyone indicating one way or  
 15 the other. So again, just to further my understanding,  
 16 we'll start with Mr. Sullivan. Depending on when we  
 17 wrap up here, we can go to Jennifer Sukow, but she has  
 18 a hard out today at five o'clock. And so if that  
 19 timing doesn't work, perhaps Dave Shaw could go after  
 20 that.  
 21 And with that, I'll turn it over to you,  
 22 Ms. McHugh, to start.  
 23 MS. McHUGH: Thank you.  
 24 Candice McHugh on behalf of the City of  
 25 Bellevue calls Greg Sullivan for the City of Hailey and

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1 the City of Bellevue as his expert report was prepared  
 2 for both of those entities.  
 3 Mike Lawrence represents the City of  
 4 Hailey, may have some follow-up direct questions, but  
 5 generally I'm going to try to be as thorough as I can  
 6 be on that.  
 7 THE HEARING OFFICER: Okay. I think we better  
 8 swear you in.  
 9  
 10 GREGORY K. SULLIVAN,  
 11 having been called as a witness by the City of Bellevue  
 12 and the City of Hailey and duly sworn, testified as  
 13 follows:  
 14  
 15 THE HEARING OFFICER: All right. Thanks.  
 16 Round three. Go ahead.  
 17 THE WITNESS: Yeah.  
 18  
 19 DIRECT EXAMINATION  
 20 BY MS. McHUGH:  
 21 Q. Greg, can you state your name and spell it  
 22 for the record, and give me your general position as  
 23 you currently are employed.  
 24 A. My name is Gregory K. Sullivan. My  
 25 business address is 1000 Logan Street, Denver, Colorado

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1 80203. And I am the president of Spronk Water  
 2 Engineers.  
 3 MS. McHUGH: Okay. And I believe, Mr. Hearing  
 4 Officer, that all the parties have stipulated to the  
 5 fact that Mr. Sullivan is an expert witness and  
 6 qualified to give opinions that have been rendered in  
 7 his expert report.  
 8 THE HEARING OFFICER: Well, at least my  
 9 understanding is that was certainly true as to issue  
 10 one.  
 11 Would we consider to hold that position for  
 12 issue two?  
 13 MR. FLETCHER: I thought it was for all --  
 14 THE HEARING OFFICER: Okay.  
 15 MR. FLETCHER: -- both issues. I'd stipulate.  
 16 THE HEARING OFFICER: So are we stipulating to  
 17 the expert status of all of the witnesses I just  
 18 identified?  
 19 MR. FLETCHER: I would.  
 20 THE HEARING OFFICER: Yeah. I see head nodding  
 21 from Mr. Barker and Mr. Fletcher.  
 22 MR. HENDRICKS: Yes.  
 23 THE HEARING OFFICER: All right.  
 24 MS. McHUGH: I would have to -- I would  
 25 stipulate to those qualifications for Erick Powell,

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1 Dave Shaw, and Eric Miller, Bryce Contor. I would need  
 2 to review Ms. Kaiser's qualifications. I just need to  
 3 kind of look at what her qualifications are.  
 4 So can we revisit that?  
 5 THE HEARING OFFICER: So revisit only Kendra  
 6 Kaiser?  
 7 MS. McHUGH: Yes.  
 8 MS. O'LEARY: Candice, what about Zach Hill? He  
 9 testified in the Basin 37 hearing as an expert.  
 10 MS. McHUGH: Yeah, I think Zach Hill is fine  
 11 too.  
 12 THE HEARING OFFICER: Okay. All right.  
 13 MS. McHUGH: All right.  
 14 Q. Okay. Greg, who are you representing with  
 15 regards to the Silver Creek issue today?  
 16 A. The City of Bellevue and the City of  
 17 Hailey.  
 18 Q. And did you prepare a report?  
 19 A. I did.  
 20 Q. And would you grab Exhibit No. 314.  
 21 A. Okay.  
 22 Q. Okay, sorry. And can you identify  
 23 Exhibit 314.  
 24 A. This is a report that I prepared entitled  
 25 "Expert Report Big Wood Moratorium Silver Creek Impacts

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1 from Pumping," dated July 11th, 2023.

2 Q. And can you explain the primary purpose for  
3 your report.

4 A. There -- there was a -- well, the purpose  
5 of my report was to address issues that were brought  
6 about by a particular statement in the Big Wood  
7 Moratorium Order related to -- to where impacts of  
8 pumping might manifest.

9 Q. Okay. And could you turn to section 1.0 in  
10 your report, please.

11 A. Yes.

12 Q. And if you'd look there, is that the  
13 statement that you were primarily addressing?

14 A. Yes. It's the statement that's in italics  
15 in the middle of the page.

16 Q. Okay. And in particular, can you just  
17 explain as to why it was -- why this statement in the  
18 moratorium order was something that we -- that the City  
19 of Hailey and the City of Bellevue hired you to  
20 address?

21 A. Yeah. In the -- in the 2021 conjunctive  
22 administration matter in the Wood River Basin, there  
23 was a -- a determination that the administration of  
24 water rights upstream of the Glendale Bridge on the Big  
25 Wood River were exempt from that, any obligation in

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1 that matter because they had virtually -- their pumping  
2 had virtually no impact on Silver Creek and the Little  
3 Wood River, based on modeling that was performed by  
4 IDWR, Jennifer Sukow, in that matter.

5 Q. Okay.

6 A. And there's now this statement in italics  
7 that was in my report here, it seems like could be  
8 interpreted to be counter to that determination in the  
9 2021 matter.

10 Q. Okay. And in your report right underneath  
11 that italicized statement, do you explain what the  
12 concern of the City of Bellevue and the City of Hailey  
13 is specifically to that italicized statement?

14 A. Yes.

15 Q. Okay. And so is it your -- the statement  
16 that's found in the moratorium order appears to be  
17 broader than what you were explaining that happened in  
18 the 2021 curtailment matter in the Big Wood River; am I  
19 understanding that correctly?

20 A. Yes, that's correct.

21 Q. And in the 2021 can you explain -- you said  
22 that Ms. Jennifer Sukow performed a curtailment  
23 analysis during that administrative proceeding.

24 And can you explain with what that analysis  
25 showed?

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1 A. Yeah. The analysis that was documented in  
2 her staff memorandum that she prepared was an analysis  
3 of the transient impacts of pumping during or from  
4 curtailment during the first year of curtailment.

5 And she described a couple of different  
6 runs whereby she curtailed all of the pumping in the  
7 whole model, that's in the whole model domain.

8 And then she did another run where she  
9 curtailed only the pumping south of the Glendale  
10 Bridge, which basically excluded -- she didn't curtail  
11 the pumping north of the Glendale Bridge, which is  
12 along the Big Wood River to the north where Bellevue  
13 and Hailey are located.

14 And then she differenced and compared those  
15 two runs. And she basically concluded from that  
16 comparison that 99 -- I think the words were that  
17 99 percent of the impacts to Silver Creek and the  
18 Little Wood River were caused by the pumping south of  
19 the Glendale Bridge. And so, you know, conversely,  
20 like 1 percent or less was caused by pumping north of  
21 the Glendale Bridge.

22 And so that was the basis that IDWR used to  
23 exclude that area north of the Glendale Bridge from  
24 that curtailment order that was made in that matter.

25 Q. And the language in the moratorium order,

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1 though, is broader and doesn't have any parameters on  
2 it; is that correct?

3 A. Right. It basically says pumping anywhere  
4 can affect any source.

5 Q. And can you explain what the model in the  
6 area would show relative -- I mean would it show that  
7 there would be an impact to Silver Creek if you were to  
8 divert groundwater anywhere within the model domain?

9 A. Well, the nature of these kinds of MODFLOW  
10 groundwater models is generally that pumping anywhere  
11 within the model domain will cause impacts everywhere  
12 else to some degree. And then the question is, you  
13 know, is that -- is the amount of that impact  
14 significant enough to give rise to a concern or a need  
15 for administration or a need for mitigation or  
16 something like that.

17 Q. And why was it important to -- in your  
18 opinion, to clarify that the 2021 restriction that was  
19 placed on the curtailment area for the Silver Creek  
20 matter, why was it important to clarify that or to  
21 render an opinion here in the moratorium order?

22 A. Well, I think that Bellevue and Hailey just  
23 wanted some clarification about what that meant. And  
24 otherwise, if this ambiguous statement could  
25 potentially be used in a way that was contrary to -- to

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1 the determination in the 2021 matter.  
 2 Q. And is it akin to establishing a fact about  
 3 the relationship between the pumping above the Glendale  
 4 Bridge and the impact thereof?  
 5 A. Yes, that would be part of it.  
 6 Q. Okay. And were you -- have you reviewed  
 7 the general -- have you reviewed the expert reports of  
 8 South Valley Ground Water District, Galena Ground Water  
 9 District, and the Big Wood Little Wood Water Users'  
 10 Association that have been filed in this case?  
 11 A. Yes, I have.  
 12 Q. Okay. And can you -- in their reports  
 13 would you explain generally what their discussion is  
 14 relative to the modeling -- relative to the modeling  
 15 and the impacts of curtailing any groundwater pumping  
 16 on Silver Creek?  
 17 A. Yeah. They -- they point out that the  
 18 modeling that I was relying on from the 2021 matter  
 19 was -- was -- dealt with the impacts on -- of pumping  
 20 during only the first year of curtailment, and that  
 21 those -- that run did not consider that the impacts  
 22 that might accrue after the first year of curtailment,  
 23 assuming there was continued curtailment beyond just  
 24 one year.  
 25 Q. Okay. And so if I'm summarizing their

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1 testimony or their reports properly, their reports  
 2 basically say that over the long term there would be  
 3 some potential impacts from pumping on the Big Wood  
 4 River to Silver Creek, within the Big Wood River area  
 5 to Silver Creek over time?  
 6 A. Yes. I think they determined, depending on  
 7 how you analyze the results, that the impact could  
 8 amount to something like 3 or 4 percent of the pumping  
 9 on the Big Wood River could ultimately affect the flow  
 10 of Silver Creek was, I think, what they presented.  
 11 Q. And do you agree with that?  
 12 A. I think that's -- I think that's what those  
 13 longer-term model runs would show.  
 14 Q. Do you think administration of groundwater  
 15 pumping impacts should be based on impacts in the  
 16 current year or over the longer term?  
 17 A. Well, that's interesting, because, you  
 18 know, in the recently completed Surface Water Coalition  
 19 methodology I, in fact, provided testimony that in that  
 20 matter the curtailment date for pumping ought to be  
 21 based on steady state groundwater model runs that  
 22 reflected the aggregate effect of pumping in the  
 23 current year and prior years on the system. And that  
 24 was my testimony.  
 25 And the Director rejected that and said it

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1 should be based on the single-year curtailment analysis  
 2 and not the longer-term analysis.  
 3 So I mean that seemed to me that that's  
 4 what -- that's what was determined in the Surface Water  
 5 Coalition matter, that was what was determined in 2021,  
 6 and so that -- I was just going with that, that that  
 7 was the rules now.  
 8 The other experts in the Silver Creek issue  
 9 now are pointing to these longer-term runs. And so  
 10 yeah, I mean if that's the rules. You know, if it's  
 11 the longer-term analysis, it seems like that should be  
 12 applied consistently and not this way in one delivery  
 13 call or one administrative matter and this another way  
 14 in another one. So I don't know what the rules are, I  
 15 guess, at this point.  
 16 Q. And in this particular case it was -- as  
 17 far as the -- your report as it was submitted, you  
 18 focused on Ms. Sukow's transient model run, because  
 19 that was what was done and relied upon by the  
 20 Department in 2021?  
 21 A. Yeah. The transient run of impacts in the  
 22 year of curtailment.  
 23 Q. And do you have an opinion on whether the  
 24 long-term impact of what's shown over the four or five  
 25 year -- well, explain to me, what is the longer-term

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1 model run in Jennifer's analysis or in the expert  
 2 reports from the groundwater districts and the water  
 3 users' association?  
 4 A. Maybe we should open one of those reports.  
 5 Q. Oh, sure. Yeah. If you want to look at --  
 6 I forgot the exhibit number.  
 7 A. What's that?  
 8 Q. Is there a binder up here?  
 9 A. I don't know.  
 10 Q. Oh, this is for the South Valley Ground  
 11 Water Districts.  
 12 A. What are their numbers?  
 13 MR. LAWRENCE: The groundwater districts? 200s.  
 14 THE WITNESS: Here's 200s, yeah.  
 15 THE HEARING OFFICER: We haven't been in this  
 16 one yet.  
 17 MS. McHUGH: Yeah. Sorry about that.  
 18 THE HEARING OFFICER: Or yeah, we have, I guess.  
 19 MS. McHUGH: Do you know what your exhibit  
 20 number is?  
 21 MS. O'LEARY: For Erick Powell and Dave Shaw?  
 22 MS. McHUGH: Yeah.  
 23 MS. O'LEARY: It's Exhibit 204.  
 24 MS. McHUGH: Oh, Exhibit 204? Do we have the  
 25 204?

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1 MS. O'LEARY: Is that our binder?  
 2 MR. LAWRENCE: He's looking for Eric Miller.  
 3 MS. O'LEARY: Yeah. Oh, Eric Miller?  
 4 MR. LAWRENCE: Yeah.  
 5 MS. O'LEARY: Oh, that's not our exhibit.  
 6 MS. McHUGH: Well, we're going to do both.  
 7 MS. O'LEARY: Oh. Erick Powell is 204.  
 8 MR. HENDRICKS: That would be ours, Eric Miller.  
 9 Let me see. It's probably the thinnest one up there.  
 10 Or it might be behind Garrick.  
 11 THE HEARING OFFICER: With the Big Wood Little  
 12 Wood --  
 13 MR. HENDRICKS: Yeah.  
 14 THE HEARING OFFICER: -- Water Users'  
 15 Association?  
 16 MR. HENDRICKS: Yeah. Exhibit 103.  
 17 THE WITNESS: Yeah.  
 18 THE HEARING OFFICER: Almost the thinnest one.  
 19 Q. (BY MS. McHUGH): Okay, Mr. Sullivan. What  
 20 exhibit are you looking at right now?  
 21 A. Exhibit 103.  
 22 Q. And that -- can you identify that exhibit,  
 23 please.  
 24 A. Pardon?  
 25 Q. Can you identify that exhibit, please.

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1 A. It's entitled "Expert Report. Response to  
 2 'Big Wood Moratorium Silver Creek Impacts from  
 3 Pumping,'" dated August 11, 2023, prepared by Eric  
 4 Miller, Bryce Contor, and Thane Kindred.  
 5 Q. And you've reviewed that report before?  
 6 A. Yes.  
 7 Q. Okay. And I think the question, if I  
 8 recall it, was I was asking you about the analysis that  
 9 they did and what they considered the long-term  
 10 analysis or model runs in the Big Wood?  
 11 A. Yes. So that long-term analysis -- or the  
 12 multiyear analysis was presented in Table 1. And then  
 13 there's some additional sort of scaling of those  
 14 results in Table 2.  
 15 Q. And do you have any opinion or -- about the  
 16 methodology or the methods that they have reported  
 17 there and the conclusions?  
 18 A. Sorry. Say that one more time.  
 19 Q. Okay. Do you have any opinion on the  
 20 methods or the conclusions that are contained in that,  
 21 in Table 1?  
 22 A. No. They -- well, as I understand it, they  
 23 didn't -- they didn't have Jennifer's numerical  
 24 results, digital results, so they developed some of  
 25 these numbers based on looking at her graphs and

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1 scaling numbers off the graphs in a couple of different  
 2 ways.  
 3 And so I would consider these numbers  
 4 approximate. And they may differ exactly from the  
 5 results in her model output, but they're probably  
 6 close, close enough for what we're talking about.  
 7 And I think what I interpreted from this,  
 8 then looking at these results, recognizing there's some  
 9 approximate -- or somewhat approximate, but Table 1 is  
 10 showing that -- say they have -- there's two different  
 11 sets of results: One under the banner "Graphical  
 12 Integration" and one under "Mechanical Integration."  
 13 And that's basically differences in how they scaled and  
 14 got the numbers out of Jennifer's graphs.  
 15 But either way, if you're just focusing on  
 16 the Silver Creek line, I think they show impacts north  
 17 of Glendale of 418 acre-feet compared to the impacts in  
 18 the whole model boundary of 13,868 acre-feet from  
 19 curtailment. So that 418 divided by 13,868 is  
 20 something like 3 or 4 percent.  
 21 And then they do it -- and when they do it  
 22 a different method, it's actually based on weighing  
 23 cutouts of the graphs. You get an impact over here of  
 24 322 acre-feet to the right under "Mechanical  
 25 Integration." And again, that's 3 percent or 4 percent

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1 or some small percent, 2 percent. Some small  
 2 percentage of the overall impacts.  
 3 So this is what I say is over the long term  
 4 the impacts are a little more than the 1 -- less than  
 5 1 percent that they found previously in the prior  
 6 order, but they're still small.  
 7 Q. Okay. And do you consider --  
 8 THE HEARING OFFICER: And I'm just going to ask  
 9 a clarifying question.  
 10 MS. McHUGH: Yeah.  
 11 THE HEARING OFFICER: So the heading of this  
 12 table is "Effects based on curtailment."  
 13 Effects as measured when?  
 14 THE WITNESS: I think it's in -- it's over  
 15 like -- the time for the impacts to reach steady state  
 16 in that model, it's like three or four years. So it's  
 17 basically over that three to four-year period.  
 18 THE HEARING OFFICER: So this is a summary of  
 19 steady state?  
 20 THE WITNESS: Well, it is a transient run, but  
 21 run out to almost all the impacts being realized.  
 22 THE HEARING OFFICER: Thank you.  
 23 Q. (BY MS. McHUGH): Okay. And do you  
 24 consider a long-term impact of roughly the -- I think  
 25 the numbers there were 3 or 4 percent or less, at least

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1 less than 5 percent, to Silver Creek to be de minimis,  
2 or do you have an -- did you render an opinion on that?  
3 A. Well, it's small. I don't think it's my  
4 role to determine whether that's de minimis or not.  
5 But it's small. And it's within the -- it's within the  
6 range of smallness that the Department in other matters  
7 has made de minimis determinations, like in trim lines  
8 or the 10 percent threshold in transfer procedures,  
9 things like that. So it could be determined to be  
10 de minimis.  
11 Q. Okay. And in what we were talking about  
12 here I think a little bit is more akin to a curtailment  
13 situation as far as in a delivery call situation. And  
14 this is obviously a hearing on the appropriateness of  
15 the finding of facts and findings in a moratorium  
16 order.  
17 Why did you think it was important to bring  
18 up this analysis in your report and render your  
19 opinions as you have in your report and what you've  
20 remarked on Exhibit 103 in a moratorium hearing?  
21 A. Well, I mean even in the moratorium matter,  
22 I think we wanted some -- the cities want some  
23 clarification that -- whether or not they're going to  
24 have an obligation for a new water right to Silver  
25 Creek or other places where there's small impacts or

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1 not.  
2 And then further, whether -- you know,  
3 there's always the possibility that this finding be  
4 extrapolated in some future matter to apply in a future  
5 delivery call or, you know, that this changed what was  
6 decided in the 2021 matter somehow. So we're just  
7 trying to get that all sorted out.  
8 Q. Okay. And if a City were to mitigate  
9 through either groundwater recharge, for example,  
10 its -- the amount that it pumped out of the ground,  
11 would it have an impact to Silver Creek? Would their  
12 diversion of groundwater that they mitigated for, would  
13 it have an impact to Silver Creek?  
14 A. No, not in that case, because if -- you're  
15 taking a groundwater pumping impact, and then if you're  
16 mitigating, you know, the impact of the groundwater  
17 back to the groundwater through say recharge, then  
18 you've made the groundwater whole, basically, so  
19 there's no groundwater model type impact to Silver  
20 Creek, because it's been offset at the point of  
21 depletion to the aquifer.  
22 Q. And is it your understanding that the  
23 Cities of Hailey and Bellevue, if they were required to  
24 mitigate for injury to senior surface water users, that  
25 they would be able to do that or willing to mitigate

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1 for their impacts?  
2 A. Yes.  
3 MS. McHUGH: I don't have any further questions?  
4 THE HEARING OFFICER: Any cross-examination?  
5  
6 CROSS-EXAMINATION  
7 BY MR. BARKER:  
8 Q. Good afternoon, Mr. Sullivan. Albert  
9 Barker on behalf of the South Valley Ground Water  
10 District.  
11 A. Good afternoon.  
12 Q. I notice you spent more time talking about  
13 other people's expert reports than your own.  
14 Is there a reason for that?  
15 A. We're just trying to shorten this matter.  
16 Maybe we can get done soon.  
17 Q. Well, unfortunately, I'm going to have to  
18 ask you about your opinions and not what you think  
19 about somebody else's opinions, if you don't mind.  
20 A. Great.  
21 Q. Okay. So let's start with -- do you have  
22 your report in front of you?  
23 A. I do.  
24 Q. What's that exhibit number?  
25 MR. LAWRENCE: 314.

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1 THE WITNESS: 314.  
2 Q. (BY MR. BARKER): 314. And the purpose of  
3 your report, what -- was to do what?  
4 A. Address or assess this possible, or  
5 seemingly possible, change in the Department's  
6 representations about what -- what -- where pumping in  
7 the Big Wood River -- or the Wood River Basin, what  
8 sources are impacted by that pumping.  
9 Q. Okay. So you've got some italicized  
10 language on page 1 in 1.0 of your report.  
11 Is that what you're responding to?  
12 A. Yes.  
13 Q. Okay. So let's just take this one step at  
14 a time. The first sentence says, "Hydrogeologic  
15 analysis and modeling since implementation of the  
16 management policy confirms significant interaction  
17 between surface water and groundwater in the Big Wood  
18 River Groundwater Management Area."  
19 Is that a true statement?  
20 A. Yes.  
21 Q. And why is there a significant interaction?  
22 Well, let me just ask it this way.  
23 That alluvial groundwater in the basin is  
24 very closely connected to the rivers and the creeks;  
25 isn't that right?

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1 A. I mean I think the connection varies, but  
 2 there is -- as a general matter, there is a substantial  
 3 hydraulic connection between surface streams and  
 4 groundwater as a general matter.  
 5 Q. Okay. So what does "substantial hydrologic  
 6 connection" mean?  
 7 A. Well, I guess one way to characterize that  
 8 would be that at least in the model, in the model --  
 9 the model would simulate that when you pump groundwater  
 10 that there's an impact to surface water that accrues  
 11 within several years somewhere.  
 12 Now, the question is, you know, where and  
 13 what timing. And it depends on where you're pumping.  
 14 It depends on what source you're assessing for being  
 15 depleted or not. But as a general matter, there's  
 16 connection.  
 17 Q. Okay. So the second sentence says,  
 18 "Pumping groundwater from within the Big Wood River  
 19 Groundwater Management Area affects surface water flows  
 20 in the Big Wood River Drainage upstream from Magic  
 21 Reservoir and in Silver Creek, a key tributary of the  
 22 Little Wood River."  
 23 Is that a true statement?  
 24 A. Well, that's the statement that I would  
 25 suggest as is is all encompassing and is the statement  
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1 that we thought could stand some clarification in this  
 2 matter.  
 3 Q. So are there other parts of the basin where  
 4 you would want to parse this language and suggest that  
 5 pumping in the Big Wood Groundwater Management Area  
 6 affects different surface water areas in different  
 7 manners, or is it just this in Silver Creek?  
 8 A. Well, I mean now that you bring it up,  
 9 there's -- you know, there's -- I guess there's -- this  
 10 hasn't become an issue yet, but there -- I don't think  
 11 it was in that 2021 hearing, but it could be because --  
 12 let me back up.  
 13 The 2021 hearing was only about the impacts  
 14 to Silver Creek and the Little Wood River. So the  
 15 issue of impacts to the Big Wood River from pumping  
 16 were not -- not really addressed.  
 17 So there's still unasked, I guess, and  
 18 unanswered questions about where pumping -- whether --  
 19 where pumping on the -- in the Big Wood River side,  
 20 where that affects the Big Wood River. So pumping  
 21 up -- you know, is pumping -- I think my opinion would  
 22 be pretty clearly that pumping upstream of the Glendale  
 23 Bridge would affect the Big Wood River up there.  
 24 But then there's questions about, well,  
 25 does it affect -- does it affect surface flows  
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1 downstream of the dry beds? And how do impacts go  
 2 across the dry beds? So that's probably an issue for  
 3 another day, but...  
 4 Q. Isn't that true that that's included in  
 5 Jennifer Sukow's analysis for the 2021 season, the  
 6 impact above and below dry beds of pumping?  
 7 A. Yeah, but it wasn't -- well, maybe, but it  
 8 wasn't the focus of that hearing, so we didn't really  
 9 get into it.  
 10 Q. But it was addressed in her report?  
 11 A. Well, it's of part of her model output, but  
 12 we never tried to unpack that.  
 13 Q. And so are you suggesting that the  
 14 Department should also say that pumping above Big Wood  
 15 has no effect -- pumping above the dry beds has no  
 16 significant effect below Stanton Crossing?  
 17 A. No, I'm not saying that here.  
 18 Q. But you are saying that pumping above Big  
 19 Wood has no significant effect on Silver Creek?  
 20 A. In the first year of curtailment.  
 21 Q. Only in the first year of curtailment?  
 22 A. Has no significant impact in the first year  
 23 of curtailment.  
 24 Q. I'm sorry. Would you repeat? I didn't  
 25 hear what you said.  
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1 A. Consistent with Jennifer's -- the runs that  
 2 were relied on in 2021, the pumping upstream of the  
 3 Glendale Bridge has no significant impact on Silver  
 4 Creek in the first year of curtailment that was used  
 5 as -- that was used in that hearing.  
 6 Q. Yeah, we'll talk a little bit more about  
 7 her model in a bit.  
 8 A. Okay.  
 9 Q. I want to talk about this language in the  
 10 moratorium order.  
 11 "Lower groundwater levels would result in  
 12 less aquifer discharge to the surface water."  
 13 Is that a true statement?  
 14 A. Well, it depends on where and whether  
 15 there's hydraulic connection between the groundwater  
 16 and the surface water.  
 17 Q. But we've already said that there was a  
 18 significant connection between groundwater and surface  
 19 water in the Big Wood River Groundwater Management  
 20 Area, didn't we?  
 21 A. Well, in general. But that doesn't mean  
 22 that in particular locations there's disconnects  
 23 between -- you know, hydraulic disconnects between the  
 24 groundwater and the surface water such that additional  
 25 pumping doesn't cause any more depletion.  
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1 Q. Are there determinations in the SRBA about  
2 the connection between the groundwater and the surface  
3 water in the Big Wood Basin?  
4 A. I don't know.  
5 Q. Are you aware of whether or not there are  
6 certain streams that were considered to be separate  
7 streams in the Big Wood?  
8 A. I don't know.  
9 Q. Have you examined Big Wood water rights at  
10 all?  
11 A. There's Silver Creek. Or not Silver Creek.  
12 Camas Creek.  
13 Q. Have you examined water rights in the Big  
14 Wood above Stanton Crossing?  
15 A. Which water rights?  
16 Q. Any.  
17 A. I looked at -- in the 2021 matter, I was  
18 looking at irrigation rights down in that area.  
19 Q. So did you -- when you were looking at  
20 irrigation rights, did you see that there were  
21 irrigation rights or certain parts of the basin that  
22 were identified as separate streams?  
23 A. I don't recall.  
24 Q. Do you know that there's a provision in the  
25 SRBA decree that says that that separate stream

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1 determination does not apply to groundwater in those  
2 separate streams?  
3 A. I don't know.  
4 Q. You wouldn't disagree with me if that were  
5 the case? You don't have a basis to disagree with that  
6 statement?  
7 A. That's correct.  
8 Q. And so -- so it sounds like your position  
9 is -- that you'd like the Department to essentially  
10 say, well, there may be some connection between some  
11 surface water and some groundwater, and so therefore we  
12 don't want to predetermine anything as part of this  
13 moratorium order.  
14 Is that what you're saying?  
15 A. I don't think so.  
16 Q. Okay. Well, it sounds like it to me. It  
17 sounds to me like you're saying, well, there are  
18 certain specific things that -- where these statements  
19 in the moratorium order may not apply, and so we should  
20 not have these broad statements in the moratorium order  
21 because somebody might misconstrue it in a particular  
22 case. And that particular case we don't have in front  
23 of us yet.  
24 A. That's true. But the -- just this more  
25 narrow issue about this prior determination that

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1 pumping upstream of the Glendale Bridge did not have  
2 impacts on Silver Creek determined in 2021 were just  
3 seeking, I think, clarification as to whether this may  
4 modify that or not or that -- and then, you know, based  
5 on the -- what was done in that case it seems like it  
6 could be interpreted to be counter to that.  
7 Q. Okay. So let's talk about the modeling  
8 that was done for the 2021 case.  
9 But before we do that, let's talk about  
10 this case. Did you do -- run any model runs to make a  
11 determination of the impact of pumping from Hailey or  
12 Bellevue on Silver Creek?  
13 A. I did not.  
14 Q. Is there a reason you didn't?  
15 A. I just relied on the run that Jennifer --  
16 or the runs that Jennifer made for the 2021 hearing.  
17 That's what I looked at.  
18 Q. So do you have handy Exhibit 2002 in front  
19 of you or behind you?  
20 Do you know where that is, Garrick?  
21 MS. McHUGH: Do you mean 202?  
22 MR. BARKER: 202. I like bigger numbers 2000.  
23 202.  
24 THE WITNESS: Okay.  
25 Q. (BY MR. BARKER): Do you recognize this

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1 document, Exhibit 202?  
2 A. I do.  
3 Q. Okay. And is that the Jennifer Sukow  
4 report that you're relying on for your analysis in your  
5 Exhibit 314?  
6 A. Yes.  
7 Q. Okay. You were present during the Basin 37  
8 contested case proceeding; right?  
9 A. I was.  
10 Q. And you understand that the purpose of that  
11 hearing -- I won't call it a delivery call. The  
12 purpose of that hearing was to determine the impact in  
13 the 2021 irrigation season of groundwater pumping; is  
14 that correct?  
15 A. It was focused on a particularly acute  
16 situation in 2021 of water supply and looking at the --  
17 yes, the impacts of pumping on surface water supplies  
18 on Silver Creek and the Little Wood River.  
19 Q. During the 2021 irrigation season?  
20 A. Right.  
21 Q. Okay. And you understand that Jennifer  
22 Sukow did model runs and that the model run that she  
23 ultimately relied upon simulated curtailment as of  
24 July 1, 2021?  
25 A. Yeah, I think there was -- she did -- there

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1 was several runs she did starting curtailment, I  
2 recall, at different months, like July 1, June 1,  
3 May 1. But I think ultimately the July 1 run was the  
4 one that she put -- focused on.  
5 Q. And that was the run that allowed her to  
6 conclude that there was no -- there was no reason to  
7 curtail above the Glendale Bridge?  
8 A. Yes.  
9 Q. Okay. And do you know why July 1 was  
10 selected?  
11 A. Seems like it was because the hearing was  
12 taking place in early June that year, and assuming an  
13 expedited decision was made that the earliest that they  
14 could actually do any curtailment would have been  
15 around July 1.  
16 Q. So basically her model run was based upon  
17 the idea that if we curtailed water rights -- or  
18 curtailed groundwater pumping rights as of July 1 there  
19 would be a certain reaction in Silver Creek and the  
20 Little Wood; right?  
21 A. That's what her model run would -- or  
22 that's among the outputs that she tabulated from that  
23 run.  
24 Q. And do you remember what the model run for  
25 the July 1 cutoff showed about how much curtailed water

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1 would have remained in the aquifer after the irrigation  
2 season in October?  
3 A. Can you restate that?  
4 Q. Yeah. So her model run demonstrated that  
5 water would remain in the aquifer, the simulated  
6 curtailment water would remain in the aquifer after the  
7 irrigation season; right?  
8 A. Yeah, that seems like another way of saying  
9 there's some impacts that aren't realized yet.  
10 Q. Okay. So if you look at Table 1 of her  
11 report on page 21 of Exhibit 202.  
12 Do you see that?  
13 MR. BAXTER: What page was that?  
14 THE HEARING OFFICER: 21.  
15 MR. BARKER: Page 21.  
16 Q. Are you there?  
17 A. I am.  
18 Q. So you see that the model run demonstrated  
19 that 66 percent of the predicted curtailment was still  
20 in the aquifer as of October 1 by curtailing on July 1?  
21 A. Yes.  
22 Q. And as you go further north in the basin  
23 above Glendale, it will take longer for the water to  
24 populate down towards the dry beds?  
25 A. So --

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1 Q. Let me ask a different question.  
2 What's the travel time of water that would  
3 have been curtailed -- let's just assume -- let's pick  
4 City of Hailey. What's the travel time of curtailed  
5 water from the City of Hailey to the dry beds?  
6 A. Well, I don't think -- well, I don't know  
7 what the travel time is, but I think --  
8 Q. Is it days? months?  
9 A. Almost -- well, but most of the impact of  
10 Hailey's pumping is not going to propagate through the  
11 underground down to the dry beds. Most of it's going  
12 to go directly to the Big Wood River that is very close  
13 by.  
14 Q. Okay. And so how long does it take for  
15 that to propagate to the river and get down to the dry  
16 beds?  
17 A. Oh, not very long.  
18 Q. Okay.  
19 A. Months probably.  
20 Q. Not very long in terms of --  
21 A. But I don't know. I haven't done that  
22 analysis. But the distance between Hailey's wells and  
23 the river is very short.  
24 Q. Okay. So none of the water that's pumped  
25 from Hailey's wells would otherwise stay in the aquifer

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1 and get down into the Triangle? It would all go back  
2 to the river? Is that your testimony?  
3 A. Well, like I said earlier, in these  
4 groundwater models, you know, you can compute pumping  
5 from almost any location on any source to some degree.  
6 But it's a matter of degree. But for that example  
7 we're talking about Hailey, I would -- almost all of  
8 their impact is going to be directly to the river  
9 nearby rather than a groundwater impact propagating  
10 miles and miles through the aquifer down to some other  
11 location.  
12 Q. So are there gaining and losing stretches  
13 of the Big Wood between Ketchum and Glendale?  
14 A. There are.  
15 Q. Do you know what they are, where they are?  
16 A. I think it's gaining upstream. It's losing  
17 through the -- down to the dry beds. And then it gains  
18 again further downstream.  
19 Q. So it's -- the stream is losing water from  
20 Hailey down to the dry beds?  
21 A. I don't know all that off the top of my  
22 head. I'd have to go review some data on that. But  
23 it's gaining and losing. And it's certainly losing  
24 through the dry beds by -- you know, I know that.  
25 Q. But I'm trying to get at is, let's say from

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1 Ketchum down to the Glendale Bridge, before you get to  
2 the dry beds, is it gaining or losing in that stretch?  
3 A. It could be gaining or losing, depending on  
4 the season and amount of pumping that's going on and...  
5 Q. So the answer is you don't know?  
6 A. Well, it's -- I would suggest -- I would  
7 say that it varies, but I don't -- I don't know the  
8 precise numbers off the top of my head.  
9 Q. So would you agree with me that the  
10 Jennifer Sukow evaluation where she says that the area  
11 above Glendale where groundwater pumping has minimal  
12 effect is based upon her July 1 curtailment model run?  
13 A. Yeah, I think that's a fair statement.  
14 Q. Okay. So you also quote from her report  
15 about the benefits to Silver Creek. Well, let's go  
16 down to the bottom of section 2.0 of your report.  
17 Do you have that handy?  
18 THE HEARING OFFICER: Which exhibit number?  
19 MR. BARKER: 134. Or sorry. 314.  
20 THE HEARING OFFICER: 314.  
21 MR. BARKER: Dyslexia.  
22 MR. BAXTER: What page?  
23 THE HEARING OFFICER: Exhibit 314.  
24 MR. BARKER: They're not page numbered, so it's  
25 the bottom of section 2.0, "Impact of Pumping at

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1 Glendale Bridge on Silver Creek."  
2 THE HEARING OFFICER: So exhibit page No. 4 of  
3 9?  
4 THE WITNESS: Yes.  
5 MR. BARKER: Where are you, Mr. Director. I  
6 don't have that.  
7 MR. BAXTER: The exhibits have a page number on  
8 the bottom.  
9 MR. BARKER: Okay. It would page 4 of 9 of  
10 Exhibit 314.  
11 Q. So you're quoting some discussion from  
12 Jennifer Sukow's memo about the impacts of not being  
13 able to divert water into the canal system.  
14 So let me ask you, what do you know about  
15 the canal systems in the Triangle? Do you know where  
16 the bypass is located? Do you know where --  
17 A. Generally there's two or three canals that  
18 divert downstream -- at or downstream of the Glendale  
19 Bridge that divert to the east out over the Triangle.  
20 Q. Okay. So 45, do you know where that  
21 diverts?  
22 A. Generally.  
23 Q. Where is that?  
24 A. Well, in that area I just talked about.  
25 Q. Below Glendale?

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1 A. Yeah.  
2 Q. And what are the other canals in this area?  
3 A. There's a Bypass Canal.  
4 Q. Okay. And what does the Bypass Canal do?  
5 A. Diverts water around the dry beds or parts  
6 of it.  
7 Q. And delivers it to where?  
8 A. Down -- further downstream.  
9 Q. Do you know to what properties that Bypass  
10 Canal delivers?  
11 A. I remember looking at that in the 2021  
12 hearing, but I've forgotten.  
13 Q. And are there other canals in that area?  
14 A. Yes.  
15 Q. And do you know what they are?  
16 A. Not off the top of my head.  
17 Q. Have you heard of the -- have you heard of  
18 the Baseline Canal?  
19 A. Yes.  
20 Q. Do you know where that diverts from?  
21 A. Not exactly.  
22 Q. And do you know where the Baseline Bypass  
23 Canal is?  
24 A. Not exactly.  
25 Q. Okay. So as I understand the position in

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1 your report is that diversion -- is that if you reduce  
2 pumping in the upper part of the basin above Glendale  
3 Bridge there would be some increase in flows in the Big  
4 Wood; is that fair?  
5 A. Yes.  
6 Q. And that if you did increase flows in the  
7 Big Wood, that water would be available to be diverted  
8 into the Triangle; right?  
9 A. That's true.  
10 Q. Okay. And have you tried to -- have you  
11 tried to quantify the amount of water that could be  
12 diverted into the Big Wood, or have you noticed -- have  
13 you seen from Jennifer Sukow's model how much  
14 additional water could be diverted from the Big Wood  
15 into those canal systems?  
16 A. My recollection is that she acknowledged  
17 that that could happen, but she didn't try to analyze  
18 it.  
19 Q. Okay. And did you try to analyze it.  
20 A. In a qualitative way.  
21 Q. Okay. So tell me how you analyzed that  
22 phenomenon in a qualitative way.  
23 A. Well, I discussed that in my report in the  
24 sense that -- sort of addressing this, what I'll call a  
25 water rights administration linkage between depletions

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1 to the Big Wood River and flows on Silver Creek.  
 2 And that linkage is such that -- kind of  
 3 going along with what you were just asking me about, if  
 4 you pump on the upper Big Wood River and that causes --  
 5 or let's do it the other way.  
 6 If you curtail pumping upstream on the Big  
 7 Wood River, that puts more water into the Big Wood  
 8 River that would flow downstream, and part of that  
 9 could get diverted out into these canals.  
 10 And so -- but when I say "qualitative," in  
 11 my -- the analysis I did, what I said is that if  
 12 there's -- if -- if there's a determination made  
 13 through administration that wells upstream of the  
 14 Glendale Bridge were impacting the Big Wood River and  
 15 that resulted in some mitigation obligation to the Big  
 16 Wood River, say for a new water right, and if that  
 17 impact to the Big Wood River was fully offset to the  
 18 Big Wood River, then because you've made the Big Wood  
 19 River whole, there could be no -- none of this sort of  
 20 water -- lingering water right linkage impact over to  
 21 Silver Creek, because you've made the Big Wood whole so  
 22 you couldn't have any of that secondary impact down to  
 23 Silver Creek.  
 24 Q. But there would be a secondary impact if  
 25 you didn't make the Big Wood whole? So you would have  
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1 to mitigate --  
 2 A. Well --  
 3 Q. -- because it would have an effect on  
 4 Silver Creek as well?  
 5 A. We'd have to figure out what that was. But  
 6 my proposition was that if you made the Big Wood whole,  
 7 then there wouldn't be any impact on Silver Creek. If  
 8 you didn't make the Big Wood River whole, then there's,  
 9 I guess, some possibility for this secondary impact to  
 10 Silver Creek, although I haven't ever seen that kind of  
 11 impact be part of the Department's administration. But  
 12 it seems like somewhat unplowed ground.  
 13 But it would be -- it would still be -- I  
 14 don't know -- relatively small, because you're talking  
 15 about an impact to a canal diversion, and then they use  
 16 that water, consume much of it, and then there's some  
 17 return flows that may end up back in Silver Creek.  
 18 And so that sort of cascade of events may  
 19 potentially result in some impact out on Silver Creek.  
 20 And that's what Jennifer generally described in her  
 21 report but did not quantify.  
 22 Q. I'm sorry, you said she did not find any  
 23 impacts?  
 24 A. No. She identified, but she didn't  
 25 quantify.  
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1 Q. Oh, quantify? Okay.  
 2 A. She identified the possibility for that.  
 3 Q. Okay. So let's turn to page 5 of 9 of your  
 4 report.  
 5 A. Okay.  
 6 Q. So you've got -- starting with the  
 7 paragraph "Based on proximity," are you there?  
 8 A. Yes.  
 9 Q. Just to follow up on what you just said,  
 10 you got about halfway down through that paragraph, you  
 11 said, "The potential amount of the impacts -- of such  
 12 impacts would depend on the frequency and duration that  
 13 the Bypass Canal drying up the Big Wood and the  
 14 operations and consumptive use of the irrigation water  
 15 under the Bypass Canal system."  
 16 So would you explain to me what you mean by  
 17 that. What is it that's unique about the bypass that  
 18 would have an effect on flows in Silver Creek?  
 19 A. Yeah, that -- I probably used the wrong  
 20 terminology there. I meant more generally to say  
 21 impacts to canals that -- that extend out into the  
 22 Triangle. Probably rather correct that rather than  
 23 said Bypass Canal specifically. That's what I meant.  
 24 Any canals that took water out.  
 25 Q. So is this reference to drying up the Big  
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1 Wood by the Bypass irrelevant to your opinion?  
 2 A. I meant drying up the Big Wood River  
 3 through canals that divert out into the Triangle.  
 4 Q. And so if you were to -- if you were to  
 5 have additional water in the canals for a longer period  
 6 of time, what effect would that have on the ability --  
 7 on the need for the water users in the Triangle to turn  
 8 on their pumps?  
 9 A. So you're going back and saying absent any  
 10 mitigation or water being put into the Big Wood River,  
 11 just looking at the impacts of pumping unmitigated?  
 12 Q. That's correct.  
 13 A. Okay. So -- sorry, can you state your  
 14 question again?  
 15 Q. Sure. So if there are -- if there is  
 16 reduction in flow into the Big Wood that would reduce  
 17 the amount of water that's available for the surface  
 18 water users in the Triangle to divert and irrigate  
 19 with, what's the implication for their ability -- for  
 20 their need to turn on their pumps?  
 21 A. If they were short of water at -- and  
 22 pumping at a particular time, then -- and they were  
 23 using their wells as a supplemental source and  
 24 intending to use surface water primarily, if they got  
 25 more surface water, presumably they would pump less  
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<p>1 groundwater.</p> <p>2 Q. And what would the effect of pumping that</p> <p>3 groundwater in the Triangle have on the flows in Silver</p> <p>4 Creek and the Little Wood?</p> <p>5 A. It could cause a depletion if there's some</p> <p>6 consumptive use of that.</p> <p>7 Q. So again, on page 5 of 9 of your report,</p> <p>8 Exhibit 314, you make the statement, "As mentioned in</p> <p>9 the Sukow memo, IDWR did not attempt to undertake this</p> <p>10 analysis, and there may be legal or policy limitations</p> <p>11 on requiring mitigation for this type of impact."</p> <p>12 Did I read that right?</p> <p>13 A. Yes.</p> <p>14 Q. Okay. So did Sukow's memo say there are</p> <p>15 legal or policy limitations on requiring mitigation, or</p> <p>16 is that your conclusion?</p> <p>17 A. She said something to that effect.</p> <p>18 Q. Okay. Is that your conclusion as well?</p> <p>19 A. I haven't really analyzed that issue. So</p> <p>20 I'm just repeating what -- or paraphrasing what she</p> <p>21 said.</p> <p>22 Q. So you don't know what the legal and policy</p> <p>23 implications are that's referred to in your report?</p> <p>24 A. I think she mentioned something about</p> <p>25 continuing -- whether there was some obligation to</p> <p style="text-align: right;">Page 572</p>	<p>1 Q. Yes. For your clients.</p> <p>2 A. Well, they don't have any mitigation</p> <p>3 obligations, I don't think.</p> <p>4 Q. Okay. So you are recommending a remark</p> <p>5 that's added to the Big Wood Moratorium Order; right?</p> <p>6 That's on page 5 of 9 of your Exhibit 314?</p> <p>7 A. Yes.</p> <p>8 Q. Okay. So what do you mean in that remark</p> <p>9 by "materially impacted"? What are you asking the</p> <p>10 Department to say?</p> <p>11 A. Well, just what it says there.</p> <p>12 Q. No. I want to know what the words</p> <p>13 "materially impacted" means to you.</p> <p>14 A. I'm -- I'm not -- I don't think -- I'm not</p> <p>15 trying to interpret that. I just -- I think that --</p> <p>16 Q. Well, you're the one that asked the</p> <p>17 Department to put this language in the order.</p> <p>18 A. No, I know.</p> <p>19 Q. So what do you mean?</p> <p>20 A. I think "material" can be determined in</p> <p>21 a -- on a case-by-case basis in a -- say in a future</p> <p>22 mitigation plan. And --</p> <p>23 Q. But that's not what you're saying here.</p> <p>24 You're saying as a broad sweep that it's material</p> <p>25 impact only by Bellevue or below the Glendale Bridge.</p> <p style="text-align: right;">Page 574</p>
<p>1 continue some waste of water or something to that</p> <p>2 effect.</p> <p>3 Q. But you're relying entirely on what</p> <p>4 Jennifer Sukow said and not on your own analysis in</p> <p>5 making that statement?</p> <p>6 A. Well, it's immaterial to my analysis,</p> <p>7 because my analysis is if you make the Big Wood whole,</p> <p>8 you don't have to -- none of this stuff even matters.</p> <p>9 Q. So how do you make the Big Wood whole?</p> <p>10 A. Mitigate to the Big Wood.</p> <p>11 Q. Mitigate what? By doing what?</p> <p>12 A. Well, we haven't gotten that far. But in</p> <p>13 the context of getting a new water right and if there's</p> <p>14 an obligation to mitigate for what comes out of this</p> <p>15 matter, say to mitigate -- the municipal users have to</p> <p>16 mitigate their consumptive use, if they are -- or</p> <p>17 mitigate their depletions to the Big Wood River, if</p> <p>18 they mitigate those pursuant to some future mitigation</p> <p>19 plan, then there would be none of this secondary impact</p> <p>20 down to Silver Creek.</p> <p>21 Q. And what mitigation plans are in place to</p> <p>22 affect those flows in the secondary impacts to Silver</p> <p>23 Creek at the present time?</p> <p>24 A. Mitigation plans on the upper Big Wood</p> <p>25 River?</p> <p style="text-align: right;">Page 573</p>	<p>1 You're not saying on a case-by-case determination we're</p> <p>2 going to term material impact. You're saying there is</p> <p>3 no material impact.</p> <p>4 So what do you mean?</p> <p>5 A. I think we're talking past each other.</p> <p>6 Q. Well, I don't think you're answering my</p> <p>7 question.</p> <p>8 What do you mean that Silver Creek is</p> <p>9 materially impacted only by groundwater pumping within</p> <p>10 the Bellevue Triangle south of the Glendale Bridge?</p> <p>11 A. For those kinds of hydraulic impacts that</p> <p>12 came out of Jennifer's model runs, I don't -- I think,</p> <p>13 based on the model -- well, based on those runs that we</p> <p>14 talked about earlier that I think there could be a</p> <p>15 finding that there's not an impact of pumping on the</p> <p>16 Big Wood River to Silver Creek in the first year of</p> <p>17 curtailment, if that -- assuming that that's sort of</p> <p>18 the framework that these curtailments are evaluated in</p> <p>19 a one-year curtailment situation.</p> <p>20 Q. So these curtailments were evaluated.</p> <p>21 You're talking about the 2021 proceeding,</p> <p>22 which was just intended to evaluate impacts on Silver</p> <p>23 Creek and Little Wood during the 2021 irrigation</p> <p>24 season?</p> <p>25 A. Well, it was a one-year type curtailment.</p> <p style="text-align: right;">Page 575</p>

<p>1 It wasn't a multiyear, long-term curtailment?  2 Q. If you look at her model run, it shows  3 impacts over more than one -- more than one irrigation  4 season, doesn't it?  5 A. Yeah. But the run that was -- the runs  6 that were focused on in that matter, and similarly in  7 the Surface Water Coalition matter, were based on  8 one-year curtailment analyses.  9 Q. And you think that's an appropriate  10 analysis of a hydrologist?  11 A. A what?  12 Q. You think that one year is all you need to  13 analyze when you're looking at making a material impact  14 determination?  15 A. Well, as I -- as I testified earlier, I  16 tried to argue that you should look at longer term.  17 And my opinion was rejected in the Surface Water  18 Coalition methodology matter by the Director.  19 Q. And that was for what kind of replacement  20 water is needed in the 2021 irrigation season for the  21 surface water users; right?  22 A. No. I'm talking about the Surface Water  23 Coalition.  24 Q. That's what I'm talking about too. The  25 Methodology Order says you got to -- we'll replace this  Page 576</p>	<p>1 Surface Water Coalition methodology, it seems like the  2 Department's saying we should be using one-year  3 curtailment analyses to evaluate impacts in conjunctive  4 administration.  5 Q. Okay. So the Big Wood Moratorium Order is  6 not in response to a delivery call or a 237 AG  7 proceeding, is it?  8 A. No, but it's -- it involves a similar kinds  9 of analyses.  10 Q. Okay. So similar kind of analysis in that  11 the only thing a moratorium area -- a moratorium order  12 looks at is just what happens in one year, and then we  13 got to come up with a new moratorium order next year  14 for --  15 A. I don't know.  16 Q. -- what is material or not? Is that what  17 you're saying?  18 A. I'm just going by what -- the signal that  19 I've gotten from the Department in these recent  20 matters.  21 Q. But you don't have a signal from the  22 Department about moratorium orders except for what's in  23 this moratorium order that the Director issued for the  24 Eastern Snake Plain and the Big Wood?  25 A. Yeah, I guess we don't have modeling -- I  Page 578</p>
<p>1 amount of water in this year because this is your  2 impact in this year?  3 A. No. We were talking about what kind of  4 analyses -- analysis you do to determine the  5 curtailment date.  6 Q. And you disagreed with the Department using  7 the transient model; is that right?  8 A. Well --  9 Q. That's a yes-or-no question.  10 Did you disagree with the Department using  11 the transient model in the Surface Water Coalition  12 case?  13 A. In the way that they used the transient  14 model.  15 Q. Yeah. What kind of model did Jennifer use  16 in the Big Wood?  17 A. The Wood River groundwater model.  18 Q. Is it a transient model or a steady-state  19 model?  20 A. It can do both.  21 Q. Okay. And her model run, what did she use?  22 A. She used a one-year transient run.  23 Q. Okay. And you think that's inappropriate?  24 A. I was just using the run that she used in  25 the 2021 matter. And based on that 2021 matter and the  Page 577</p>	<p>1 mean we don't have a prior moratorium order with  2 modeling.  3 Q. Okay. So I think your final conclusion is  4 unless you mitigate -- or I'll put it in your words.  5 If you mitigate for impacts to the Big  6 Wood, you will also end up mitigating for impacts to  7 Silver Creek; is that right?  8 A. Correct.  9 Q. And so in other words, if you mitigate for  10 all your depletions, there won't be any injury,  11 regardless of whether it's to the Big Wood or the  12 Silver Creek; right?  13 A. Well, if --  14 Q. So I mean that's true for any.  15 A. No. In this particular situation if -- if  16 the rule in determining what you owe and where you owe  17 it is based on a one-year curtailment run, then I think  18 that there's -- as Jennifer -- Jennifer's analysis  19 showed, there's -- there's virtually no groundwater  20 impact to Silver Creek from Big Wood pumping.  21 Q. Not to beat a dead horse --  22 A. If you do --  23 Q. -- but that's from July 1 --  24 THE HEARING OFFICER: Counsel, let's let him  25 finish his thought --  Page 579</p>

1 MR. BARKER: Sorry.

2 THE HEARING OFFICER: -- before you ask your  
3 next question.

4 MR. BARKER: Thank you.

5 THE WITNESS: If you do -- if the rule is to do  
6 a longer-term run to figure out impacts, then there  
7 would be -- you know, the model would say there's a --  
8 possibly a 3 or 4 percent impact of Big Wood pumping on  
9 Silver Creek over the long term.

10 And I guess a determination would need to  
11 be made if that was significant enough to require  
12 mitigation of that small amount, tiny amount of water  
13 to Silver Creek or whether using the, you know,  
14 whatever kinds of thinking that the Department has used  
15 before to limit where water is owed that the Big Wood  
16 pumpers could just replace all -- make all their  
17 replacements to the Big Wood and not have to make that  
18 small replacement to Silver Creek. But that's a  
19 determination for the Department to make.

20 Q. (BY MR. BARKER): But if you made the --  
21 your testimony is if you made the mitigation to the Big  
22 Wood, an amount to mitigate the impact on the Big Wood,  
23 you would also cover that, what you call the tiny  
24 amount to Silver Creek?

25 A. Well, you might. You actually might. You  
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1 would for sure cover the secondary impact. And because  
2 you were, in effect, overmitigating a little to the Big  
3 Wood that that sort of secondary, additional mitigation  
4 to the Big Wood might result in some secondary benefit  
5 down on Silver Creek. So --

6 Q. Why are you overmitigating to the Big Wood?

7 A. Well, if the model says 97 percent of the  
8 impact over the long term is to the Big Wood and  
9 3 percent is to Silver Creek, if you replace  
10 100 percent to the Big Wood, you've overmitigated by  
11 3 percent.

12 Q. But you haven't -- but then you've  
13 mitigated for the impacts, your direct impacts to  
14 Silver Creek?

15 A. Pardon?

16 Q. So I don't understand how mitigating  
17 100 percent of the impacts is overmitigating.

18 A. Overmitigating to that source, to the Big  
19 Wood.

20 Q. But not to -- so you're saying if it's  
21 small enough, in your estimation you don't have to  
22 mitigate for 3 or 4 percent of your usage; is that your  
23 testimony?

24 A. Well, that's kind of a separate issue. But  
25 that is -- that is a determination that the Department  
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1 could make, that this 3 or 4 percent is small enough  
2 that it wouldn't need to be mitigated, that the user  
3 could just make all of their mitigation to the Big Wood  
4 rather than parsing 97 percent, for example, to the Big  
5 Wood and 3 percent to Silver Creek.

6 Q. So how would you mitigate to Silver Creek  
7 if you were Hailey?

8 A. Well, I guess they could buy up some  
9 irrigation rights, a little bit of irrigation right in  
10 the Triangle and dry up some land there is one way.

11 Q. And you don't think that -- what number did  
12 you come up with from Mr. Miller's report? 370  
13 acre-feet? You don't think that is something that  
14 should have to be mitigated?

15 A. Well, that's -- that's the impact of all  
16 the pumping. So we're not talking about that. We're  
17 talking about mitigating for a new water right. So,  
18 you know, so if the impact is let's say a new water  
19 right that's going to pump 100 acre-feet, for example,  
20 so if you compute that the impact over four years from  
21 that pumping is going to be 3 acre-feet to Silver Creek  
22 over that whole four years, and, you know, what's that?  
23 That's like a garden hose of water.

24 So if that -- but if that's the standard,  
25 then I guess they could go dry up some land and come up  
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1 with some water for that.

2 Q. So you don't think they should have to  
3 mitigate for their existing impacts?

4 A. Not under this moratorium order. That's  
5 not what we're talking about.

6 Q. And so if you had one new water right, two  
7 new water rights, ten new water rights, a hundred new  
8 municipal water rights, at what point do you start to  
9 say, well, that's enough, you do need to mitigate, or  
10 is it just, well, one, we don't worry about?  
11 3 acre-feet's not enough?

12 A. Yeah, that probably could be a  
13 determination at some level it becomes significant.  
14 But I mean --

15 Q. So are you suggesting in your remarks what  
16 we should view as significant and not significant?

17 A. No.

18 Q. But you are saying that whatever we do  
19 above Glendale is not significant? I mean that's what  
20 your proposal says; right?

21 A. I -- no, my -- going back, my proposal was  
22 based on the one-year curtailment run.

23 Q. I understand.

24 A. That's what I understood to be the  
25 framework. Now, if the frame -- if I'm told that the  
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1 framework is different and we look at multiple years  
2 and it's 3 percent, for example, then there could be a  
3 determination of whether that's necessary or not.  
4 Q. Okay. I think you're going off on a  
5 tangent from what I was trying to ask about.  
6 You were saying that if you have just one  
7 new application it's not enough. 3 acre-feet, that's  
8 not enough to have to worry about.  
9 And I'm asking you, at what point when you  
10 start adding up all the new municipal rights does it  
11 become significant enough that it should be evaluated?  
12 Or are you saying it's never significant enough that  
13 these water rights -- new water rights should be  
14 evaluated?  
15 A. It might never be significant because the  
16 percentage is small enough, but -- so I haven't made  
17 that determination.  
18 Q. But it's possible at some point in time,  
19 even you would agree, that there's enough of an impact  
20 that it should be mitigated?  
21 A. It's possible.  
22 MR. BARKER: That's all the questions I have,  
23 Mr. Director.  
24 Thank you, Mr. Sullivan.  
25 THE HEARING OFFICER: All right. Are you okay  
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1 to continue?  
2 THE WITNESS: Yeah.  
3 THE HEARING OFFICER: All right. Go ahead when  
4 you're ready, Mr. Fletcher.  
5 MR. FLETCHER: Thank you.  
6  
7 CROSS-EXAMINATION  
8 BY MR. FLETCHER:  
9 Q. Mr. Sullivan, I'm representing Big Wood  
10 Canal Company in this part of the proceeding. Excuse  
11 me.  
12 I need you to clarify part of your  
13 testimony. Right in the beginning you said that the  
14 Director made some kind of finding about the impact of  
15 the cities' pumping on Silver Creek in the 2021  
16 proceeding.  
17 Do you remember that testimony?  
18 A. Generally, yes.  
19 Q. And what did you say the Director found?  
20 A. Well, that they were not included in the  
21 curtailment order that was involved in that proceeding.  
22 Q. But didn't you say that the Director made a  
23 specific finding because of some percentage of impact  
24 that they weren't involved in the proceeding? Wasn't  
25 that your testimony?  
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1 A. I think it was -- if I understand you  
2 correctly, it was based on the statement by Ms. Sukow  
3 from her modeling that 99 percent of the impact to  
4 Silver Creek and the Little Wood River was from pumping  
5 south of the Glendale Bridge.  
6 Q. Isn't it true the Director made no finding  
7 about the impact of pumping above I guess it's Glendale  
8 in the order that was entered?  
9 A. Well, maybe "finding" was the wrong word.  
10 But I just meant that they were excluded from the  
11 curtailment order based on that statement from  
12 Jennifer.  
13 Q. They were excluded from the beginning;  
14 right? When the Director started the proceeding, he  
15 excluded everybody above Glendale Bridge; right?  
16 A. I don't -- I don't recall the details.  
17 Q. You don't recall that?  
18 A. When that exclusion happened exactly.  
19 Q. Okay. All right. I just want to briefly  
20 address with you, the issue that was framed for issue  
21 two was the impact of pumping on surface water sources  
22 upstream from Magic Reservoir, including Silver Creek.  
23 You -- did you do an analysis of the impact  
24 of pumping on surface water sources upstream from Magic  
25 Reservoir?  
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1 A. On all surface sources?  
2 Q. Yeah. That was the issue that was  
3 presented by the Director.  
4 A. Well, my -- my clients were interested in  
5 the impacts on Silver Creek, so that's what I focused  
6 on.  
7 Q. So your answer is no, you did not -- you  
8 did not address the issue presented by the Director,  
9 which is the impact of pumping on surface water sources  
10 upstream from Magic Reservoir?  
11 A. Not on the Big Wood side.  
12 Q. Okay. Cities pump year-round; correct?  
13 A. Yes.  
14 Q. And so their pumping would impact flows in  
15 the Big Wood year-round; correct?  
16 A. Yes.  
17 Q. And so during the irrigation season they  
18 impact natural-flow rights in the river; correct?  
19 A. Which river?  
20 Q. The Big Wood River.  
21 A. They can.  
22 Q. Well, they do, don't they?  
23 A. Well, but if there's enough water to meet  
24 those irrigation demands --  
25 Q. I see.  
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1 A. -- then there's no impact.  
 2 Q. So if there's so much water that everybody  
 3 has enough water, then -- but most of the time in the  
 4 Big Wood there's not that situation, is there --  
 5 A. I agree with that.  
 6 Q. -- during the irrigation season?  
 7 Now, during the non-irrigation season, Big  
 8 Wood water flows into Magic Reservoir; correct?  
 9 A. Yes.  
 10 Q. And so when they're pumping in the winter,  
 11 that would impact storage in Magic Reservoir as well;  
 12 correct?  
 13 A. It could.  
 14 Q. Well, how could it not?  
 15 A. Well, if Magic Reservoir is full, then  
 16 there's --  
 17 Q. Okay. All right. I understand what you're  
 18 saying. If there's full supplies, nobody has to worry  
 19 about.  
 20 But do you know how often Magic Reservoir's  
 21 been full in the last ten years?  
 22 A. Well, it fills occasionally.  
 23 Q. Yeah. Okay. And your focus is -- and I'm  
 24 not going to repeat all the material that Mr. Barker  
 25 covered, but your focus really was on Silver Creek, and

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1 you're relying solely on Jennifer Sukow's July 1  
 2 curtailment scenario in coming to your conclusions;  
 3 correct?  
 4 A. Correct.  
 5 Q. So I think it's fair to say that it is your  
 6 opinion that pumping upstream of the Glendale Bridge  
 7 causes impacts to the flow of the Big Wood River;  
 8 correct?  
 9 A. Yes.  
 10 Q. And that can impact natural flow to the  
 11 Wood River and it can impact storage to Magic  
 12 Reservoir?  
 13 A. Yes.  
 14 MR. FLETCHER: Thank you. I don't have any  
 15 further questions.  
 16 THE HEARING OFFICER: All right.  
 17 MR. BAXTER: I think everything I would have  
 18 covered with this witness has already been covered.  
 19 THE HEARING OFFICER: Okay. So no more  
 20 cross-examination.  
 21 Any redirect?  
 22 MS. McHUGH: I just wanted to ask a couple  
 23 clarifying questions.  
 24 ///  
 25 ///

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1 REDIRECT EXAMINATION  
 2 BY MS. McHUGH:  
 3 Q. It's your understanding that in the  
 4 moratorium order, as it's currently issued, the  
 5 Director has determined that municipal pumping is  
 6 considered fully consumptive; correct?  
 7 A. Yes.  
 8 Q. And when you were just having your  
 9 discussion with Mr. Barker about the fact that -- and  
 10 we're talking specifically to the City of Bellevue and  
 11 the City of Hailey and how mitigating to the Big Wood  
 12 River and the secondary impacts to Silver Creek, I  
 13 guess I wanted to clarify your testimony on what -- it  
 14 got a little bit muddled there, in my mind.  
 15 Would you please clarify what you were  
 16 saying in your report and what you're saying about that  
 17 particular thing relative to Bellevue and Hailey.  
 18 A. If Bellevue and Hailey fully mitigate their  
 19 impacts to the Big Wood River, there would be no  
 20 secondary impacts -- or lingering secondary impacts  
 21 from the Big Wood River over to Silver Creek.  
 22 Q. Okay. And then another, I think, question  
 23 that Al was trying to say is you don't disagree with  
 24 Jennifer Sukow's analysis in her model runs, do you?  
 25 A. No.

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1 Q. And what they conclude?  
 2 A. No.  
 3 Q. Okay. So it was just that in this  
 4 particular case with the moratorium order it seemed to  
 5 be a potential departure from how the Department had  
 6 viewed impacts, which is their words, in the moratorium  
 7 order. And so the attempt was to bring to the  
 8 Department's attention --  
 9 MR. BAXTER: Objection. Is there a question?  
 10 MS. McHUGH: Yes, there's going to be a  
 11 question. I'm trying to set up --  
 12 THE HEARING OFFICER: There's an objection.  
 13 I'll sustain the objection and just ask you to restate  
 14 your question.  
 15 MS. McHUGH: Fair enough.  
 16 Q. Okay. So if you would return to page 1.0,  
 17 the introduction to your report.  
 18 A. Okay.  
 19 Q. And I just wanted to clarify again that the  
 20 Department made a statement in its moratorium order  
 21 that -- I'll try not to be leading -- that you were  
 22 trying to clarify through this report. And I think  
 23 Mr. Barker tried to talk to you about those statements.  
 24 Could you clarify what the purpose was,  
 25 what the concern was for your two clients, the City of

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1 Bellevue and the City of Hailey, with regards to the  
2 statement that you have listed in paragraph that's the  
3 italics in 1.0.  
4 A. The main concern was that this statement,  
5 and mainly that -- the second sentence could be  
6 interpreted to mean that pumping on the Big Wood River  
7 had a significant impact on Silver Creek.  
8 Q. With no limitations?  
9 A. Yes.  
10 MS. MchUGH: No further questions.  
11 THE HEARING OFFICER: Okay. Any recross?  
12 Okay. I think that's everything,  
13 Mr. Sullivan.  
14 THE WITNESS: Okay.  
15 THE HEARING OFFICER: Thank you.  
16 THE WITNESS: Thanks.  
17 THE HEARING OFFICER: So it's 4:40. I think, as  
18 we indicated earlier, Ms. Sukow has a hard out at 5:00.  
19 I'm wondering if we could save her for first thing in  
20 the morning, or at least at the conclusion of  
21 Mr. Shaw's expert testimony, since he's still here in  
22 the room, and that we either finish the day off by  
23 concluding with Mr. Shaw or call it a day as we get  
24 close to six o'clock.  
25 Any objection to that proposal?

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1 MR. BAXTER: Director, I would need about five  
2 minutes to talk to Ms. Sukow in advance, so...  
3 MR. FLETCHER: I didn't understand the proposal.  
4 MR. LAWRENCE: Yeah. I agree I didn't  
5 understand it.  
6 THE HEARING OFFICER: Well, it's clear in my  
7 head.  
8 MS. MchUGH: I understood it. Are we going to  
9 go with Mr. Shaw or Ms. Sukow.  
10 THE HEARING OFFICER: I don't think we have time  
11 to get all the way through Ms. Sukow, so let's put her  
12 off.  
13 But because of that, I'd like to still  
14 press on today, and I'd like to have Mr. Shaw come up  
15 next, since he's present and available.  
16 Any opposition to that?  
17 And then in response to that, assuming  
18 Garrick understood what I said, he would like a  
19 ten-minute break, which I would also like. And then  
20 we'll come back and resume with testimony of Mr. Shaw.  
21 Any objection to the break?  
22 Seeing none, we'll go on a ten-minute  
23 break.  
24 (Recess.)  
25 THE HEARING OFFICER: Let's go back on the

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1 record.  
2 And let's start with the expert testimony  
3 of Mr. Dave Shaw.  
4  
5 DAVID SHAW,  
6 having been called as a witness by the South Valley  
7 Ground Water District and duly sworn, testified as  
8 follows:  
9  
10 THE HEARING OFFICER: All right. Thank you.  
11 You can sit down.  
12 Perhaps state your name and address for the  
13 record.  
14 THE WITNESS: David Shaw. 802 South Plaza Road  
15 in Emmett.  
16  
17 DIRECT EXAMINATION  
18 BY MR. BARKER:  
19 Q. Dave, you've done this enough times, I  
20 didn't have to get up here. I can just stand back and  
21 let you roll.  
22 Mr. Shaw, good afternoon. Albert Barker on  
23 behalf of the South Valley Ground Water District.  
24 You authored a portion of an expert witness  
25 report in this proceeding, did you not?

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1 A. I did.  
2 Q. Do you have Exhibit 204 in front of you?  
3 A. 304?  
4 THE HEARING OFFICER: 204 or 304?  
5 MR. BARKER: I said -- it should be 204.  
6 Is that wrong?  
7 THE HEARING OFFICER: No, I think that's right.  
8 MR. BARKER: First number I got right today.  
9 THE WITNESS: I do have that.  
10 Q. (BY MR. BARKER): So before we get started  
11 on the -- on your evaluation and opinions, Mr. Shaw,  
12 you've testified before the Department many times; is  
13 that right?  
14 A. That's right.  
15 Q. How familiar are you with the water rights  
16 and water use in the Big Wood Basin? How long have you  
17 been working on that?  
18 A. I started working for the South Valley  
19 Ground Water District in 2015, maybe.  
20 Q. And have you worked for surface water users  
21 in that same area as the South Valley?  
22 A. Yes. Most of the groundwater users are  
23 also surface water users in the South Valley Ground  
24 Water District.  
25 Q. Okay. So are you familiar with the canal

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1 systems, as well as their groundwater rights?  
 2 A. Most of them, yes.  
 3 Q. Okay. Can you just describe briefly for  
 4 the Director -- and he probably knows most of this, but  
 5 describe the main canals that's in the south Triangle  
 6 area?  
 7 A. Sure. On the east side of the river, the  
 8 D45 --  
 9 Q. Yes, sir.  
 10 A. The D45 diverts in Bellevue, in the town of  
 11 Bellevue. And the bypass --  
 12 Q. So where does the D45 take water to?  
 13 A. The D45 takes water all the way to the east  
 14 side of the Bellevue Triangle.  
 15 Q. Okay.  
 16 A. And it splits. There's another entity that  
 17 diverts from the D45 that distributes water through the  
 18 middle of the Triangle.  
 19 Q. Okay. And then what other canals are there  
 20 in the area in the southern part of the Blaine County?  
 21 A. Again, on the east side the Bypass Canal  
 22 diverts just above the Glendale Bridge, and a short  
 23 distance downstream the Baseline diverts out of the  
 24 bypass. And then the bypass extends on down to what's  
 25 now the Heart Rock Ranch --

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1 Q. Heart Rock.  
 2 A. -- at the southern end of the Bellevue  
 3 Triangle on the east side.  
 4 Q. And where does the Baseline deliver water  
 5 to?  
 6 A. The Baseline delivers water to the  
 7 west-southwest portion of the Bellevue Triangle.  
 8 Q. So are the farms and ranches in the  
 9 Bellevue Triangle, the surface water sources are  
 10 primarily the Big Wood through the D45 and Baseline?  
 11 A. The Wood River sources are -- some of the  
 12 folks on the east side have tributaries to Silver Creek  
 13 that they divert from, and some of them have both Big  
 14 Wood water and Silver Creek tributary water.  
 15 Q. And how are the tributaries to Silver  
 16 Creek, what's the source of the water for that?  
 17 A. Groundwater.  
 18 Q. Okay. Are there springs over there in that  
 19 area as well?  
 20 A. There are springs, and some of the streams  
 21 on the east side of the Triangle, they have some  
 22 surface water from runoff, but that also gets augmented  
 23 from shallow groundwater.  
 24 Q. And the source of the groundwater -- or  
 25 sorry, the source of the springs in the east side of

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1 the Triangle is what?  
 2 A. It's groundwater.  
 3 Q. Okay. Have you looked at the water rights  
 4 that are in the -- for the water users in the Triangle?  
 5 A. I have.  
 6 Q. Can you tell us generally what -- how the  
 7 water rights are used, stacked? How do they work in  
 8 that area?  
 9 A. Most -- most of the surface water users  
 10 have supplemental groundwater. I'd say there was maybe  
 11 10 percent of the area is covered solely by surface  
 12 water or solely by groundwater. But by and large,  
 13 everybody has surface water and groundwater.  
 14 Q. So for the people, the 90 percent that have  
 15 both, they would rely primarily on the Big Wood sources  
 16 until they were -- the Big Wood water rights were  
 17 curtailed?  
 18 A. The Big Wood sources and some of the  
 19 streams on the east side of the triangle, yes.  
 20 Q. And then what would they do once they --  
 21 the surface water sources decline?  
 22 A. As soon as the surface water sources  
 23 decline, they turn on their wells and start pumping  
 24 groundwater.  
 25 Q. Okay. So with that general background, did

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1 you do some portion of Exhibit 204? I see that you  
 2 shared the authorship with Mr. Powell.  
 3 A. I did. I did section C on page 3.  
 4 Q. Section C. So "Additional Silver Creek  
 5 Impacts from Groundwater Pumping North of Glendale  
 6 Bridge"; right?  
 7 A. Correct.  
 8 Q. You sat through the hearing, you heard the  
 9 discussion about that Ms. Sukow's model run in -- for  
 10 the May -- I'm sorry, for the 2021 contested case  
 11 proceeding?  
 12 A. Yeah.  
 13 Q. And you heard it described as a one-year  
 14 model run?  
 15 A. I did.  
 16 Q. Is that correct?  
 17 A. No.  
 18 Q. What is it?  
 19 A. The model run was July through September.  
 20 It was three months. It wasn't a full year.  
 21 Q. Okay. So based upon your evaluation of the  
 22 water rights, your familiarity with the Basin 37  
 23 contested case proceeding and the model run, do you  
 24 have an opinion about the impact of groundwater pumping  
 25 north of Glendale Bridge on the Big Wood?

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1 A. I do.  
2 Q. And what is that opinion?  
3 A. If the source -- if Big Wood water is  
4 reduced by groundwater pumping or for any other reason,  
5 it reduces the supply for the D45 and the Baseline.  
6 And --  
7 Q. So before you go on, I want to just stop  
8 you right there.  
9 On page 3 of your report, section C, you  
10 reference to Mr. Sullivan's reference to Ms. Sukow's  
11 reference of a 10 to 16 cfs depletion in the Big Wood.  
12 A. Yes.  
13 Q. Can you explain what that means.  
14 A. That was from Ms. Sukow's three-month model  
15 run in 2021. And that was her estimated reduction in  
16 Big Wood discharge from curtailing the groundwater  
17 rights north of Glendale.  
18 Q. Okay. And is that for an entire one-year  
19 period?  
20 A. No. That's for three months.  
21 Q. So what would be the impact of curtailment  
22 over an entire one-year period?  
23 A. The aquifer responds pretty fast, but I  
24 would think it would be larger.  
25 Q. Okay.

1 A. But I haven't -- I don't have the numbers.  
2 Q. Yeah. Okay. And then if you looked at  
3 Ms. Sukow's report, you will see that her charts show  
4 an effect in the year following the curtailment as  
5 well; right?  
6 A. Yes, there's some carryover.  
7 Q. Okay. So -- so we know that if you did  
8 curtailment more than just for the three-month period,  
9 you'd have a greater amount of impact on the flows in  
10 the Big Wood.  
11 And how does that translate into water use  
12 in the Triangle?  
13 A. Well, anytime the Big Wood discharge is  
14 reduced during the irrigation season, more than likely  
15 the surface water users in the Triangle are going to  
16 start pumping groundwater and make up that shortage by  
17 groundwater.  
18 Q. And so what effect does additional pumping,  
19 based on that shortage of groundwater in the Triangle,  
20 have on flows in Silver Creek?  
21 A. Based on the current version 1.1 of the  
22 groundwater model, it's almost one-for-one depletion of  
23 Silver Creek. It responds pretty fast.  
24 As I recall, if you do either recharge or  
25 pumping near the north end of the Triangle, the effect

1 shows up in the Silver Creek six weeks, two months. So  
2 it responds really fast.  
3 Q. You had a -- do you have any -- or you had  
4 a comment on Mr. Sullivan's conclusion in his report?  
5 A. Yeah.  
6 Q. Could you have 314 in front of you. And if  
7 you go to page 5 of 9 of Exhibit 314, there's a  
8 proposed additional remark.  
9 Do you see that at the bottom of page 5 of  
10 9?  
11 A. Oh, 5 of 9. Yes, I do.  
12 Q. Okay. And would you read that proposed  
13 remark to yourself for a minute.  
14 A. It says, "Silver Creek" --  
15 Q. You don't have to read it out loud.  
16 A. Okay.  
17 Q. Just -- we've heard it several times  
18 already.  
19 A. Okay. All right.  
20 Q. So do you agree that this remark should be  
21 added to the Big Wood Moratorium Order?  
22 A. No, I don't.  
23 Q. And why is that?  
24 A. The second sentence says, "Absent offsets  
25 or mitigation, groundwater pumping from the alluvial

1 aquifer of the Big Wood River and its tributaries north  
2 of the Glendale Bridge material impact -- materially  
3 impacts the flow of the Big Wood River and has no  
4 material impact on the flow in Silver Creek."  
5 And the latter part of that statement I  
6 believe is incorrect.  
7 Q. So what part is incorrect?  
8 A. The part about no impact on Silver Creek.  
9 Q. And why do you think -- why do you  
10 believe -- or let me try it again.  
11 Why, in your opinion, is there an impact, a  
12 material impact, on the flow in Silver Creek?  
13 A. Because we know when the supply of Big Wood  
14 water is reduced, that means there's less water for the  
15 surface water irrigators in the Triangle. And they'll  
16 replace that shortage with groundwater pumping that has  
17 an impact on Silver Creek.  
18 Q. Okay. And then if I go back to your  
19 Exhibit 204.  
20 Do you have that in front of you?  
21 A. I do.  
22 Q. Go to D, "Summary of Opinions."  
23 Are you there?  
24 A. I am.  
25 Q. Okay. Which of these opinions in your --

1 in this report are based upon your analysis?  
 2 A. No. 4.  
 3 Q. Okay. And would you explain to the  
 4 Director what your opinion is and why.  
 5 A. Sure. When Big Wood supply is depleted, it  
 6 depletes the amount of water available for diversion in  
 7 both the D45 and the Baseline. And those shortages are  
 8 replaced by groundwater pumping in the Triangle. And  
 9 groundwater pumping in the Triangle reduces the  
 10 discharge to Silver Creek.  
 11 MR. BARKER: That's all I have, Mr. Shaw. Thank  
 12 you.  
 13 Thank you, Mr. Director.  
 14 THE HEARING OFFICER: All right. Thanks,  
 15 Mr. Barker.  
 16 Any cross-examination?  
 17 Come on up.  
 18  
 19 CROSS-EXAMINATION  
 20 BY MS. MCHUGH:  
 21 Q. Good afternoon, Mr. Shaw.  
 22 How do you define "material impact"?  
 23 A. That's a good question.  
 24 Q. I know. That's why I asked it.  
 25 A. I don't know what material impact is, but I

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1 know from examining the water use in the Triangle and  
 2 running the groundwater model there's measurable  
 3 reduction in Silver Creek by groundwater pumping in the  
 4 Triangle.  
 5 Q. So you know when you disagree if  
 6 something's not material, you just don't know if it is  
 7 material?  
 8 A. I don't know what material is.  
 9 Q. Okay. And in your summary of opinion  
 10 No. 4, the last sentence there, you say, "These  
 11 dependent reactions of impacts are difficult to  
 12 quantify, but the quantification difficulty does not  
 13 eliminate the obligation of mitigation."  
 14 Do you see that sentence?  
 15 A. I do.  
 16 Q. Who would be tasked with quantifying the --  
 17 who -- who would be tasked with quantifying the  
 18 difficult -- let me rephrase.  
 19 Who would be tasked with determining what  
 20 the quantity would be needed in order to mitigate?  
 21 A. I expect if a new groundwater right were  
 22 applied for as a part of the approval process there  
 23 would need to be an agreed-upon analysis, probably  
 24 using the Wood River groundwater model, to show what  
 25 the impact would be.

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1 Q. And that quantification is going to be  
 2 difficult?  
 3 A. I think it can -- it can be agreed to. I  
 4 don't know that any one person would develop a method  
 5 that everyone else would agree to.  
 6 Q. Thereby making it difficult?  
 7 A. It could be difficult, yes.  
 8 Q. And upon who would that burden fall to make  
 9 the determination?  
 10 A. Probably the Director.  
 11 Q. And would that cause a burden to the  
 12 Department?  
 13 A. It would be the result of a new  
 14 application. It wouldn't be something the Director  
 15 would just go out and decide he wanted to do.  
 16 MS. MCHUGH: Okay. No further questions.  
 17 THE HEARING OFFICER: Okay.  
 18  
 19 CROSS-EXAMINATION  
 20 BY MR. LAWRENCE:  
 21 Q. Good afternoon, Mr. Shaw. Mike Lawrence  
 22 representing the City of Hailey.  
 23 How are you?  
 24 A. Good, Mr. Lawrence.  
 25 Q. Your summary in the summary of opinions in

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1 your expert report, you said your opinion is No. 4 --  
 2 A. Yes.  
 3 Q. -- is that correct?  
 4 A. Yes.  
 5 Q. And it says, "Pumping upstream of Glendale  
 6 Bridge primarily impacts flows in the Big Wood River.  
 7 Impacts to Big Wood River can result in earlier surface  
 8 water cutoff dates, which may increase supplemental  
 9 groundwater diversions that may impact Silver Creek."  
 10 If -- if the pumping upstream of Glendale  
 11 Bridge was mitigated to the extent that depletions to  
 12 the Big Wood River were fully mitigated, then there  
 13 would not be -- there would not be a resulting earlier  
 14 surface water cutoff date; is that correct?  
 15 A. If that were possible, yes.  
 16 MR. LAWRENCE: Thank you.  
 17 THE HEARING OFFICER: Any redirect?  
 18 MR. BARKER: Mr. Director, I'd just like to  
 19 offer Exhibit 204.  
 20 THE HEARING OFFICER: Motion to bring  
 21 Exhibit 204 into the record.  
 22 Any objection?  
 23 Seeing none, we'll bring it in.  
 24 (Exhibit 204 admitted.)  
 25 MR. BARKER: Thank you.

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<p>1 THE HEARING OFFICER: Is there another exhibit 2 we looked at that hasn't been brought in yet? 3 MS. McHUGH: Yeah. Exhibit 314, which is 4 Mr. Sullivan's report. 5 THE HEARING OFFICER: Okay. Do I have a similar 6 offer? 7 MS. McHUGH: Yeah. I would offer Exhibit 314. 8 MR. BARKER: No objection. 9 THE HEARING OFFICER: Seeing no objection, we'll 10 bring that in. 11 (Exhibit 314 admitted.) 12 THE HEARING OFFICER: Did we not also discuss 13 the Sukow memo? Was that an exhibit? 14 MR. BARKER: We did 20 -- 15 MS. McHUGH: I think it was 202. Exhibit 202. 16 MR. BARKER: We should probably offer that as 17 well, although I assume it will be discussed tomorrow. 18 Garrick, do you have a preference? 19 MR. BAXTER: Well, one bit of clarification with 20 regards to that memo, Director, the supporting files 21 for that memo are not contained in here. They're in a 22 format that doesn't allow themselves to be easily 23 printed and made part of an exhibit. 24 I'd ask that the Director take notice of 25 the supporting files associated with her memo when it</p> <p style="text-align: right;">Page 608</p>	<p>1 (Exhibit 202 admitted.) 2 MR. HENDRICKS: Then we talked about 103. We'll 3 be talking about it tomorrow, but might as well put it 4 in now, I guess. 5 MR. BARKER: Which one was that? 6 MR. HENDRICKS: That was our expert report. 7 Candice brought it up. 8 THE HEARING OFFICER: Any objection to bringing 9 Exhibit 103 into the record, since it's been discussed? 10 MS. McHUGH: Just one moment. 11 THE HEARING OFFICER: And I think you're done if 12 you want to be. 13 MR. FLETCHER: Was it admitted, 103? 14 MR. BAXTER: Candice said she wanted to talk to 15 Greg first. 16 THE HEARING OFFICER: There might be an 17 objection. 18 MR. LAWRENCE: Will Mr. Miller be here to 19 testify tomorrow? 20 MR. HENDRICKS: Yes. Well, yes, our expert will 21 be. 22 MS. McHUGH: Part of -- and I should have 23 probably made this same comment on 204, which I did 24 just mention to Heather. On 204 and 103 I suppose if 25 204 is already in the record, I don't have any</p> <p style="text-align: right;">Page 610</p>
<p>1 becomes part of an exhibit. 2 THE HEARING OFFICER: Okay. So we'll wait to 3 bring it into the record. I do note that there's a lot 4 of -- and I'm not sure what you mean by supporting 5 files, because I see well logs and summary tables. 6 MR. BAXTER: So the modeling files that have 7 been... 8 MR. BARKER: So let's do this, Mr. Director. 9 I will offer -- what number was it? 10 THE HEARING OFFICER: 202. 11 MR. BARKER: 202. 12 And then if Garrick would like to 13 supplement that offer tomorrow with additional 14 information after Jennifer testifies about what's 15 missing, that would be appropriate. 16 MR. BAXTER: That's fair. 17 MR. HENDRICKS: We also talked about the 103. 18 THE HEARING OFFICER: So there's a motion to 19 bring 202 into the record now or -- 20 MR. BARKER: Yes. 21 THE HEARING OFFICER: Yeah. 22 Any objection? 23 MS. McHUGH: No objection. 24 THE HEARING OFFICER: All right. We'll bring it 25 in.</p> <p style="text-align: right;">Page 609</p>	<p>1 questions for Erick Powell. 2 To me, if he's not going to offer anything 3 further than what's already contained in his report, 4 which I understand he's not, I guess that report's in. 5 I would see no need to have Mr. Powell come testify. 6 On Exhibit 103 I may feel similarly, I 7 guess. I mean we could admit it today, and I don't 8 know that I have any questions or anything relative to 9 that. But that's why I was trying to confer. 10 So if we admitted it today, would it 11 eliminate the need to have Mr. Miller come? Do we 12 agree to that? 13 THE HEARING OFFICER: They're not your experts; 14 right? 15 MS. McHUGH: They're not. Right, right, right. 16 So that's what I'm saying -- 17 MR. FLETCHER: Good point. 18 MS. McHUGH: -- technically if he's not going to 19 do anything outside of his report -- 20 THE HEARING OFFICER: Yeah. 21 MS. McHUGH: -- and his opinions are there and I 22 don't have any cross of him -- 23 THE HEARING OFFICER: So no objection to 24 bringing 103 into the record? 25 MS. McHUGH: No, I do object.</p> <p style="text-align: right;">Page 611</p>

1 THE HEARING OFFICER: Okay. You do object? All  
2 right.  
3 MS. McHUGH: That's my point. I'm just  
4 saying --  
5 MR. FLETCHER: What's the objection?  
6 MS. McHUGH: The objection is I would rather  
7 have him testify before bringing it into the record.  
8 If he's not going to testify, then we'll just --  
9 THE HEARING OFFICER: That's fair. Let's just  
10 wait until tomorrow.  
11 MR. FLETCHER: Will you stipulate to it being  
12 admitted if he doesn't testify? But if he does, you  
13 object?  
14 MS. McHUGH: Because if he testifies -- I just  
15 need to hear what he has to say, I guess. It seems  
16 redundant and unnecessary.  
17 THE HEARING OFFICER: We'll bring it back up  
18 tomorrow.  
19 MS. McHUGH: Fair enough.  
20 THE HEARING OFFICER: But I guess that leads  
21 into the last question that I have is, tomorrow we're  
22 going to lead with expert testimony by Jennifer Sukow.  
23 But we need to work out Kendra Kaiser, but  
24 also I assume Zach Hill, Bryce Contor, Eric Miller,  
25 Thane Kindred, and Erick Powell will also be

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1 testifying? They'll be here tomorrow to testify?  
2 MR. HENDRICKS: They'll be here. I think we're  
3 going to try, at least for the Big Wood, just have one  
4 do it.  
5 THE HEARING OFFICER: Okay.  
6 MR. HENDRICKS: Not three.  
7 THE HEARING OFFICER: Okay. Now, regarding  
8 Kendra.  
9 MR. BARKER: So if we could schedule her for  
10 one o'clock. And, you know, depending on how things go  
11 we may be finished -- take a long lunch, and we call  
12 all go take a nap before that. Although I think it's  
13 going to be tough to get everything done. But if we  
14 could schedule her then.  
15 I haven't called her yet to see -- to tell  
16 her what time to be ready. But I think one o'clock  
17 would work.  
18 THE HEARING OFFICER: I agree with that  
19 proposal. Let's go ahead and coordinate for her first  
20 thing after lunch. Hopefully it works out well. But  
21 if not, we might have to interrupt some testimony to  
22 accommodate that schedule.  
23 MR. BARKER: Thank you, Mr. Director.  
24 MS. McHUGH: Is that the earliest she's  
25 available?

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1 THE HEARING OFFICER: I think it was, yeah.  
2 MR. BARKER: Yes.  
3 MR. FLETCHER: I thought you said she wasn't  
4 available until 12:30.  
5 MR. BARKER: We'll work it out.  
6 THE HEARING OFFICER: All right. Any other  
7 business to take care of tonight?  
8 All right. Thanks. We'll see you tomorrow  
9 morning at 9:00.  
10 (Hearing adjourned at 5:21 p.m.)  
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1 REPORTER'S CERTIFICATE  
2 I, JEFF LaMAR, CSR No. 640, Certified Shorthand  
3 Reporter, certify:  
4 That the foregoing proceedings were taken before  
5 me at the time and place therein set forth.  
6 That the testimony and all objections made were  
7 recorded stenographically by me and transcribed by me  
8 or under my direction.  
9 That the foregoing is a true and correct record  
10 of all testimony given, to the best of my ability.  
11 I further certify that I am not a relative or  
12 employee of any attorney or party, nor am I financially  
13 interested in the action.  
14 IN WITNESS WHEREOF, I set my hand and seal this  
15 31st day of October, 2023.  
16  
17  
18  
19  
20  
21   
22 JEFF LaMAR, CSR NO. 640  
23 Notary Public  
24 Post Office Box 2636  
25 Boise, Idaho 83701-2636  
My commission expires December 30, 2023

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[exist - fairly]

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[fairly - first]

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[forward - general]

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[incentive - instantaneous]

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[know - lawrence]

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[lawrence - llp]

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[local - magic]

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[sorry - staff]

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[streamlined - sun]

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