



1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25

A P P E A R A N C E S  
FOR PIONEER IRRIGATION DISTRICT AND  
SETTLERS IRRIGATION DISTRICT:

Ms. Tara Martens  
Attorney at Law  
MOFFATT, THOMAS, BARRETT, ROCK &  
FIELDS, CHARTERED  
101 South Capitol Boulevard  
10th Floor  
Boise, Idaho 83701  
Phone: (208) 345-2000  
Fax: (208) 385-5384  
E-mail: tlm@moffatt.com  
slc@moffatt.com

FOR THE BUREAU OF RECLAMATION:  
Mr. David Gehlert  
Assistant United States Attorney  
UNITED STATES DEPARTMENT OF JUSTICE  
550 West Fort Street, MSC 033  
Boise, Idaho 83724

E-mail: david.gehlert@usdoj.gov  
FOR NAMPA AND MERIDIAN IRRIGATION DISTRICTS:

Mr. S. Bryce Farris  
Attorney at Law  
RINGERT CLARK, CHARTERED  
455 South Third Street  
Boise, Idaho 83701  
Phone: (208) 342-4591  
Fax: (208) 385-4657  
E-mail: bryce@ringertclark.com

FOR ADA COUNTY:  
Ms. Lorna K. Jorgensen  
Deputy Prosecuting Attorney  
ADA COUNTY PROSECUTING ATTORNEY'S OFFICE  
200 West Front Street  
Suite 3191  
Boise, Idaho 83702  
Phone: (208) 287-7700  
Fax: (208) 287-7719  
E-mail: ljorgensen@adaweb.net

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25

A P P E A R A N C E S  
(continued)

FOR BOISE PROJECT BOARD OF CONTROL:  
\*Appearing telephonically  
Mr. Paul L. Arrington  
Attorney at Law  
BARKER ROSHOLT & SIMPSON, LLP  
113 Main Avenue West  
Suite 303  
Twin Falls, Idaho 83301-6167  
Phone: (208) 733-0700  
Fax: (208) 735-2444  
E-mail: pla@idahowaters.com

\* \* \*

Deposition of Mary Mellema, Volume II

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25

I N D E X O F E X A M I N A T I O N

Deponent's Name	Page Number
MARY MELLEMA	
Further Examination by Ms. Martens . . . .	135

\* \* \*

Deposition of Mary Mellema, Volume II

I N D E X O F E X H I B I T S

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25

Exhibit No.	Page Marked
(Exhibit Nos. 1 through 16 were previously marked.)	
Exhibit No. 17 . . . . .	132
Exhibit No. 18 . . . . .	132
Exhibit No. 19 . . . . .	132
Exhibit No. 20 . . . . .	132
Exhibit No. 21 . . . . .	132
Exhibit No. 22 . . . . .	196

\* \* \*

1           THIS DEPOSITION, VOLUME II, was taken on behalf  
2 of Pioneer Irrigation District and Settlers Irrigation  
3 District on Wednesday, the 30th day of January 2008, at  
4 the offices of Moffatt, Thomas, Barrett, Rock & Fields,  
5 Chartered, 101 South Capitol Boulevard, 10th Floor,  
6 Boise, Idaho 83702, before Lori A. Pulsifer, Court  
7 Reporter and Notary Public within and for the State of  
8 Idaho, to be used in an action pending in the District  
9 Court of the Fifth Judicial District of the State of  
10 Idaho, in and for the County of Twin Falls, said cause  
11 being Subcase No. 63-3618 (Lucky Peak Reservoir) in said  
12 court.

13           The following testimony was adduced, to wit:

14                           \* \* \*

15           (Exhibit Nos. 17 through 21, inclusive, were  
16 marked for identification by the court reporter.)

17           (The following proceedings were held in the  
18 presence of the following individuals, appearing  
19 personally: Ms. Tara Martens; Mr. David Gehlert;  
20 Mr. S. Bryce Farris; Ms. Lorna K. Jorgensen; and the  
21 witness, Ms. Mellema.)

22           MS. MARTENS: On the record. This deposition  
23 was scheduled pursuant to stipulation at the conclusion  
24 of the day on the 23rd of January of 2008. At that  
25 time, Erika Malmen was present and indicated she would

                          Deposition of Mary Mellema, Volume II

1 be sending a delegate in her stead. We have now waited  
2 until 9:18 a.m.

3 I have communicated on three occasions with  
4 Erika Malmen's assistant, Kim Graham. She has  
5 requested, for the record, that we postpone the  
6 commencement of the deposition until she is able to  
7 speak with Erika Malmen at 9:45 a.m.

8 She has attempted to discuss the matter with  
9 Mr. Wilde who is, pursuant to her understanding, going  
10 to attend this deposition, as well as Bob Maynard.

11 I have informed her that, based upon her  
12 request, we will postpone commencement of the deposition  
13 until she speaks with Erika Malmen at 9:45 a.m.

14 Thank you. We will go off the record, unless  
15 anybody else has any statement they want to make on the  
16 record in that regard.

17 MR. GEHLERT: No. I mean, I feel okay with  
18 going ahead and, at least, identifying the exhibits for  
19 the record. We can do that in the five or ten minutes  
20 that you and I both have before we have to go to our  
21 respective status conferences. Hopefully, we will have  
22 heard from them when we're done.

23 MS. MARTENS: I do have a problem doing that  
24 because I have been requested by counsel for the City of  
25 Boise to not go forward with the deposition.

Deposition of Mary Mellema, Volume II

1 Frankly, the identification of the two exhibits  
2 that have been provided to us will take no more than  
3 sixty seconds; and we can discuss them when we go back  
4 on the record.

5 MR. GEHLERT: That's fine.

6 (Recess.)

7 \* \* \*

8 (The following proceedings were held in the  
9 presence of the following individuals: Appearing  
10 personally, Ms. Tara Martens; Mr. David Gehlert;  
11 Mr. S. Bryce Farris; Ms. Lorna K. Jorgensen; and the  
12 witness, Ms. Mellema; and appearing telephonically, Mr.  
13 Paul L. Arrington.)

14 MS. MARTENS: Back on the record. I spoke  
15 with, now, Kim Graham of Perkins Coie who is represented  
16 to be Erika Malmen's assistant.

17 She has received word from Matt Wilde, Boise  
18 City Attorney, for us to proceed without Boise City  
19 being represented at this continued deposition of Mary  
20 Mellema.

21 Does anybody have any other comments in that  
22 regard?

23 Oh, I have also been requested by the United  
24 States that we great this deposition at noon; and we  
25 will accommodate that request.

Deposition of Mary Mellema, Volume II

1 MR. GEHLERT: Great. And that's because I had  
2 understood that you guys put a priority on getting Jerry  
3 started at 1:00.

4 MS. MARTEN: Yes.

5 MR. GEHLERT: So we will need to get out of  
6 here at noon to allow us time to eat and confer with  
7 Jerry and to be back at 1:00.

8 MS. MARTENS: That will be fine.

9 \* \* \*

10 MARY MELLEMA,  
11 having been recalled, previously sworn, testified  
12 further, as follows:

13

14 FURTHER EXAMINATION

15 BY MS. MARTENS:

16 Q. Before the deposition began today, we premarked  
17 certain deposition exhibits; and I would just like to go  
18 through those so that everybody is clear as to what the  
19 deposition exhibit numbers are.

20 First of all, I will hand to you Deposition  
21 Exhibit No. 17 which I will represent to you is the  
22 Notice of Rule 30(B)(6) Deposition Duces Tecum. You may  
23 or may not recognize that document.

24 It is actually for the purposes of the  
25 deposition that will be held later today. We want to

Deposition of Mary Mellema, Volume II

1 get the documents in proper order, if that is acceptable  
2 to everybody.

3 MR. GEHLERT: That's fine. For purposes of  
4 that, I will indicate that that is the document. Mary  
5 has never seen it.

6 BY MS. MARTENS:

7 Q. I will also hand you a document that has been  
8 premarked as Deposition Exhibit No. 18. I will  
9 represent to you it is a Solicitor's Opinion dated  
10 September 21, 1976. Have you ever seen this document  
11 before?

12 A. I don't recognize it.

13 Q. That's fine.

14 MR. GEHLERT: For purposes of the deposition, I  
15 will consent to the authenticity of the document; but it  
16 is not a Solicitor's Opinion. It is a memo from the  
17 Field Solicitor in Boise.

18 There is, actually, a very formal process to  
19 produce an actual Solicitor's Opinion from the Solicitor  
20 of the Department of the Interior.

21 BY MS. MARTENS:

22 Q. Next, I will hand you what has been marked as  
23 Deposition Exhibit No. 19. Again, you may have never  
24 seen this document. It probably will be addressed in  
25 more detail later today with a different deponent who

Deposition of Mary Mellema, Volume II

1 will be utilizing the same exhibits. Have you ever seen  
2 that document before?

3 A. I have not.

4 Q. All right. The next document you did provide  
5 to us earlier this morning is Deposition Exhibit No. 20.  
6 Can you please identify what Deposition Exhibit No. 20  
7 is?

8 A. Deposition Exhibit No. 20 is historic maximum  
9 storage of both Arrowrock and Anderson Reservoirs,  
10 listed by year and ranked from greatest to least.

11 Q. Was this document generated directly from the  
12 website, or was it generated utilizing internal  
13 software?

14 A. This document was generated using the external  
15 website and Excel spreadsheet.

16 Q. Excel spreadsheet. I will represent to you --  
17 and I will cover this either in more detail later today  
18 or when we reconvene your deposition.

19 I actually attempted to do what you had  
20 suggested I could do online. Just so I get the  
21 directions straight, I am going to refer back to your  
22 deposition transcript.

23 MR. GEHLERT: Tara, while you are looking for  
24 that, can I just clarify something for the record?

25 MS. MARTENS: Sure.

Deposition of Mary Mellema, Volume II

1           MR. GEHLERT: I can't remember if we were on  
2 the record when we talked about the possible continuance  
3 of this at some later date or not.

4           We had agreed, to the extent that this  
5 deposition was going to be continued, it would be  
6 continued to some point after the summary judgment  
7 briefing.

8           I had indicated, in light of my trial schedule  
9 immediately following that, that we might be looking at  
10 having this deposition continued to some point in March.

11           MS. MARTENS: That is my understanding, as  
12 well; we will reconvene this deposition after the  
13 briefing is completed and we will, of course, consider  
14 your scheduling in doing so.

15           Do any of the other parties have any comments  
16 for the record in that regard?

17           MS. JORGENSEN: No.

18           MR. FARRIS: No.

19 BY MS. MARTENS:

20           Q. During the course of your deposition on the  
21 23rd, you indicated to me that if I were to go to the  
22 website, which is [www.usbr.gov/pn/hydromet/index.html](http://www.usbr.gov/pn/hydromet/index.html),  
23 and type in "Arrowrock" and a year, I could search for  
24 maximum storage; is that correct?

25           A. Yes.

Deposition of Mary Mellema, Volume II

1 Q. Is that the procedure that you utilized for  
2 purposes of the creation of Deposition Exhibit No. 20?

3 A. I went to this website, the same website that  
4 you referred to; and there is a button there that says  
5 "historic data."

6 I don't exactly remember how it's worded, but  
7 there's a choice on that web page for "historic columnar  
8 format data" or something like that. It says "historic"  
9 on it. I clicked on that, and then I pointed to  
10 "Arrowrock" and designated the year that I was  
11 interested in.

12 Q. I will represent to you that I attempted to do  
13 what you had advised me was possible, during your  
14 deposition; and I was unsuccessful in finding the  
15 information.

16 Maybe later, on the record, I will bring a  
17 computer in and hook it up; or you can show me during a  
18 break or something how I can locate this information.  
19 Is that okay?

20 A. Yes.

21 Q. Thank you. Back to Deposition Exhibit No. 20,  
22 this is, then, a document that you generated from  
23 information available on the website; and utilizing  
24 Excel, you somehow ranked the data? Is that correct?

25 A. Yes.

Deposition of Mary Mellema, Volume II

1 Q. And what criteria did you utilize for ranking  
2 the data?

3 A. I ranked the data based on the maximum storage,  
4 and I ranked it from the greatest to the least.

5 Q. And had you conducted this study or this  
6 application prior to the execution of your affidavit in  
7 this matter?

8 A. I performed a similar type analysis. I didn't  
9 use exactly this format. I went into our internal  
10 database and did just a quick analysis that was similar  
11 to this, but it wasn't exactly like this.

12 Q. And did you produce for us the resulting  
13 documentation of the analysis that you did perform prior  
14 to execution of your affidavit?

15 A. No.

16 Q. And you did consider that information as part  
17 of the analysis that you conducted for purposes of this  
18 case; is that correct?

19 A. I did consider it, but I was just looking at it  
20 on my screen. I never printed it out or anything like  
21 that.

22 Q. We would request that that information be made  
23 available, please.

24 A. That information is --

25 MR. GEHLERT: That is this information.

Deposition of Mary Mellema, Volume II

1 THE WITNESS: That is this information. It  
2 would be exactly the same. It's the same information.

3 BY MS. MARTENS:

4 Q. I thought you told me that it was represented  
5 in a different format.

6 A. Well, it wouldn't look exactly like this, with  
7 the lines. It would look similar to Exhibit No. 13,  
8 page 3. It wouldn't have the lines on it like this one  
9 does; but it would have the same information, the exact,  
10 same information.

11 MR. GEHLERT: It might be useful to clarify the  
12 function of the Check software.

13 THE WITNESS: The Check software is just a  
14 display-type tool. It's something that runs on our  
15 database that allows us to display things within the  
16 database, but it's no different than using a spreadsheet  
17 and displaying the data on a spreadsheet.

18 BY MS. MARTENS:

19 Q. So can you recreate, on Check, the analysis  
20 that you performed prior to execution of your affidavit?

21 A. Yes.

22 Q. And can you print that screen or save that  
23 screen to a CD?

24 A. Yes.

25 Q. That is what I would request, if possible. I

Deposition of Mary Mellema, Volume II

1 understand it might be identical, but I am just curious  
2 as to what information you utilized specific to your  
3 affidavit.

4 A. Okay.

5 Q. Thank you.

6 THE WITNESS: So she wants a Check --

7 MR. GEHLERT: Exhibit 20 in Check format.

8 MS. MARTENS: And just so it is clear what I am  
9 requesting, I am requesting what it is that she reviewed  
10 for purposes of her affidavit, prior to execution of  
11 that affidavit.

12 MR. GEHLERT: Okay.

13 BY MS. MARTENS:

14 Q. What data that is depicted on Exhibit 20, which  
15 I understand your testimony to be is identical to the  
16 data that you reviewed for purposes of your affidavit,  
17 did you utilize in your analysis?

18 A. Can I --

19 MS. MARTENS: If you need to take a break, you  
20 are welcome to do so.

21 THE WITNESS: May I talk to you for just a  
22 second?

23 MR. GEHLERT: Sure.

24 MS. MARTENS: Sure.

25 (Recess.)

Deposition of Mary Mellema, Volume II

1 BY MS. MARTENS:

2 Q. We are back on the record. Are you able to  
3 answer the question?

4 A. I am not sure -- I can't remember what your  
5 question was. I thought it might be helpful if I just  
6 went through what my analysis was --

7 Q. Okay.

8 A. -- because you are kind of asking questions  
9 that all relate to this. I might as well just tell you  
10 the process I went through to analyze the data.

11 Q. While we are on Exhibit 20, though, if I could  
12 just get your answer to this particular question, then I  
13 would be happy to allow you that narrative.

14 My understanding is that your testimony is the  
15 data that you reviewed prior to execution of your  
16 affidavit was identical to Deposition Exhibit No. 20.

17 A. Yes.

18 Q. And what data depicted in Exhibit No. 20 did  
19 you utilize for purposes of your analysis?

20 MR. GEHLERT: Why don't you go ahead and start  
21 through your analysis? Then when you get to the  
22 appropriate point, point out what you used.

23 THE WITNESS: Can I go through what my analysis  
24 was? It will refer to Exhibit 20, eventually.

25

Deposition of Mary Mellema, Volume II

1 BY MS. MARTENS:

2 Q. Okay.

3 A. It's hard to separate all of them and then just  
4 separate out Exhibit 20 to explain what I did. Okay?

5 Q. Are we going to need to refer to Exhibit 21 for  
6 this purpose?

7 A. Which one is 21? No. We will refer to Exhibit  
8 13.

9 Q. Which we have already identified on the  
10 record?

11 A. Right.

12 Q. That is fine. I just want to make sure that  
13 what we are referring to has been identified on the  
14 record.

15 A. Sure. So what I did for this analysis is I was  
16 looking for years where flood control releases had been  
17 made on the Boise River.

18 Q. I will stop you there. What criteria did you  
19 utilize for that purpose?

20 A. The criteria I used were present in Exhibit 13,  
21 on pages 1 and 2; and these are the historic maximum  
22 flow records for the downstream gauges on the Boise  
23 River.

24 The first page is the Boise River at Glenwood  
25 Bridge; and it gives the years 1983 through 2007, the

Deposition of Mary Mellema, Volume II

1 maximum discharge that occurred at that gauge, and the  
2 date that it occurred.

3 The second page are years 1953 through 1983 at  
4 the Boise River, near Boise Gauge that existed before  
5 the Glenwood Bridge Gauge. This is also the maximum  
6 discharge that occurred at this gauge for each year and  
7 the date that it occurred.

8 So what I did in my analysis is looked at all  
9 of those flows that were in excess of 4,000 to 5,000  
10 cfs -- around 4,000 cfs.

11 Q. Let me stop you there for second. Why did you  
12 choose that criteria, the 4,000 to 5,000 criteria?

13 A. Well, if you look at the data, irrigation  
14 releases, many times, will be in the 1,000 to 2,000  
15 range at the gauges downstream. So anything that had a  
16 maximum flow of that would indicate that maximum flows  
17 at those gauges occurred with irrigation releases and  
18 not with flood control.

19 So anything above that was my first cut at  
20 looking at when additional flow had to be released from  
21 the dams for flood control. So beyond that -- so I  
22 marked the years --

23 Q. Let me go back to that analysis. What is the  
24 basis for your opinion that the 4,000 to 5,000 is the  
25 appropriate criteria? Is that within the Water Control

Deposition of Mary Mellema, Volume II

1 Manual?

2 A. No. That's just based on what I know about the  
3 river.

4 MR. GEHLERT: And I believe that she testified  
5 that the first cut was 1,000 to 2,000.

6 BY MS. MARTENS:

7 Q. Excuse me just a second. I would appreciate it  
8 if the witness would provide the testimony.

9 A. I was looking for the higher flows, and maybe  
10 it was 1,000 to 2,000 but --

11 Q. Excuse me for a second. I don't like to  
12 interrupt, but this is kind of a lengthy narrative. So  
13 I am trying to gain an understanding of your analysis.  
14 Did you make the breakdown at 4,000 to 5,000, or did you  
15 make the breakdown at 1,000 to 2,000?

16 MR. GEHLERT: If you want to have your answer  
17 read back, feel free to ask.

18 THE WITNESS: Can I have my answer read back?  
19 Is that on the previous deposition, or was that on this  
20 one?

21 MR. GEHLERT: It was, like, five minutes ago.

22 I think she used the term "first cut" if you're  
23 doing a word search.

24 (Whereupon, the previous question and answer  
25 located at page 145, lines 11 through 22, were read back

Deposition of Mary Mellema, Volume II

1 by the court reporter.)

2 BY MS. MARTENS:

3 Q. So the criteria utilized was --

4 A. I think I -- I think the 4,000 to 5,000 was my  
5 first cut; but then I started looking at some of the  
6 lower ones, as well. I was looking --

7 Q. Could you tell me about the analysis you  
8 performed on your, quote, "first cut," which I  
9 understand to be 4,000 to 5,000?

10 A. I was looking for high flows on the Boise  
11 River.

12 Q. And what did you determine in your review of  
13 the 4,000 to 5,000 and the high flows on the Boise  
14 River?

15 A. With further analysis, I realized that maybe  
16 4,000 to 5,000 was a little high and maybe I need to  
17 look more in the anything-above-2,000 range.

18 Q. So did you perform any analysis or make any  
19 determinations based upon the analysis of 4,000 to  
20 5,000, other than you needed to do further analysis?

21 A. No.

22 Q. Go ahead.

23 A. So after I looked at the years where flows were  
24 greater than 2,000, I printed out, from Exhibit 13, page  
25 3, which is the system storage on the Boise River.

Deposition of Mary Mellema, Volume II

1           Once again, it's the maximum storage for all  
2 three reservoirs -- Anderson, Arrowrock, and Lucky  
3 Peak -- and the maximum storage that occurred in each  
4 year, ranked by the largest at the top and descending,  
5 and the date that that occurred. Then I went back, and  
6 I compared the years.

7           Q. Let me stop you again for a second, just to get  
8 the criteria and the numerics. What is the maximum  
9 storage for Arrowrock?

10          A. Arrowrock's maximum storage -- let's see.  
11 Prior to 2000, it was 286,600, roughly. Let's say  
12 286,000, approximately.

13          Q. And the date that that was applicable to?  
14 Prior to 2000?

15          A. Prior to 2000.

16          Q. Go ahead, please.

17          A. After 2000, full storage at Arrowrock is  
18 272,000, approximately 272,000. There is some  
19 additional storage there but it's -- I can't remember  
20 the exact number, but it's around 272,000.

21          Q. And Anderson Ranch?

22          A. Prior to 2000, Anderson Ranch's maximum storage  
23 was 423,000, roughly. After 2000, the year 2000, it was  
24 413,000, approximately 413,000.

25          Q. And were the reductions in the determination of  
            Deposition of Mary Mellema, Volume II



1 BY MS. MARTENS:

2 Q. Back on the record. We have now pulled the  
3 deposition transcript from your prior deposition, and  
4 you have reviewed that with your counsel; correct?

5 A. Yes.

6 Q. Can you tell me what maximum storage was prior  
7 to 2000 for Lucky Peak?

8 A. For Lucky Peak, by itself?

9 Q. Yes.

10 A. It is around 264,000.

11 Q. And is it your testimony, from what I  
12 understand earlier, that it is the same today?

13 A. Yes. It is the same today.

14 Q. So there has been no corresponding change with  
15 respect to maximum storage of Lucky Peak, based upon the  
16 sedimentation study performed in 1999?

17 A. No.

18 Q. Thank you for clarifying that. So what is  
19 maximum storage in the system?

20 A. The system -- maximum storage for year 2000 to  
21 present is approximately 949,000 acre feet.

22 Q. I apologize. Can you repeat the numeric?

23 A. 949,000 acre feet.

24 Q. And prior to 2000?

25 A. Approximately 974,000 acre feet.

Deposition of Mary Mellema, Volume II

1 Q. And I know that I had interrupted your  
2 narrative regarding the analysis. You were referring to  
3 page 3 and your process of analysis that you undertook  
4 prior to execution of your affidavit.

5 MR. GEHLERT: Why don't you have her read back?

6 THE WITNESS: Can you pick me up where I was?  
7 I forgot where I was.

8 MS. MARTENS: You probably want to search the  
9 term "maximum storage," or "system maximum storage."

10 (Whereupon, the previous questions and answers  
11 located at page 147, line 18 through page 148, line 12  
12 were read back by the court reporter.)

13 THE WITNESS: So what was your question now?

14 BY MS. MARTENS:

15 Q. I will ask a question so that there is a  
16 corresponding answer. Referring to page 3 of Deposition  
17 Exhibit 13, you were describing for me what such page  
18 depicts with regard to your analysis. Can you please  
19 continue?

20 A. Okay. I looked at page 3 and cross-referenced  
21 the years that had greater than a couple thousand flows  
22 on pages 1 and 2. So I was comparing years where flood  
23 control releases were made and what the storage in the  
24 system was for each of those years, from page 3.

25 Q. So the criteria for page 1 of Deposition

Deposition of Mary Mellema, Volume II

1 Exhibit No. 13 would have been all numerics within the  
2 third column maximum which exceed 2,000; is that  
3 correct?

4 A. Yes.

5 Q. So if I am looking at the "Year" column, it  
6 would be 1985 and all years depicted in Column 1 above  
7 1985; is that correct?

8 A. Yes, I believe so.

9 Q. And just so we are clear, the "Maximum" column  
10 in 1985 references 2,360; correct?

11 A. Yes.

12 Q. Then if I look at page 2, you would have  
13 considered in your analysis all years including 1964 and  
14 depicted above 1964 in the year column; is that  
15 correct?

16 A. Yes.

17 Q. And the corresponding maximum in the year 1964  
18 was 4,630; is that correct?

19 A. Yes.

20 Q. So explain to me how that correlates, now, to  
21 page 3.

22 A. Okay. Well, let's start with page 1.

23 Q. Sure.

24 A. I looked at the years where the discharges at  
25 the Glenwood Gauge, 1985 and above -- I compared those

Deposition of Mary Mellema, Volume II

1 to the list on page 3. I went and I looked for each of  
2 those years and looked at what the maximum storage in  
3 the system was for that year.

4 And if the maximum storage exceeded full  
5 storage, I marked that as "filled" on the first page.

6 Q. Why did you not make a corresponding notation  
7 next to 1985?

8 A. In 1985 that maximum flow occurred on October  
9 1st, and that would not be a flood control release.

10 Q. So you did not even look to see whether it  
11 filled in 1985?

12 A. Only briefly.

13 Q. And you made no notation?

14 A. Right.

15 Q. Go ahead.

16 A. The years where -- from the first page of  
17 Exhibit 13, the years where the system did not fill,  
18 from page 3, I marked with an abbreviated amount of  
19 maximum storage for that year.

20 So for a year such as 1986, if you look on page  
21 3, the maximum storage was approximately 970.4 thousand  
22 acre feet. That's what is notated on page 1. I did  
23 that for all of the years that --

24 Q. So for 1984, you looked at page 3 of Deposition  
25 Exhibit No. 13 and noted how much was maximum system?

Deposition of Mary Mellema, Volume II

1 A. Maximum system that year was 983,544 acre feet.

2 Q. All right. So you noted that as "filled." So  
3 "filled" means that the maximum exceeded 974,000 prior  
4 to 2000 or 949,000 for 2000 to present?

5 A. Correct.

6 Q. Go ahead.

7 A. After looking at the system storage and the  
8 flows on Exhibit 13, I went and checked Anderson and  
9 Arrowrock storage which is depicted in Exhibit 20.

10 Q. Okay.

11 A. I went and I looked at -- I compared the years  
12 of when the system did not fill and I looked at where  
13 the storages -- the maximum storages for Anderson and  
14 Arrowrock fell during those years.

15 I just made some quick notations because the  
16 Arrowrock and Anderson storage are actually the physical  
17 fill of the water in the reservoir.

18 Looking at the maximum storage on Exhibit 20,  
19 sometimes it was hard to figure out what was going on  
20 because the timing of the fill for each of these  
21 reservoirs differ because of the geographic features of  
22 the Basin.

23 Q. You were not acting in your capacity in those  
24 years; correct? I mean, you did not have any personal  
25 knowledge of what happened in those years; correct?

Deposition of Mary Mellema, Volume II

1 A. No.

2 Q. Go ahead.

3 A. So looking at the dates when Anderson and  
4 Arrowrock filled, the movement of water through the  
5 system can cause one of the reservoirs, like Arrowrock,  
6 to be full sooner than Arrowrock because Anderson --  
7 excuse me -- Arrowrock gets water from the middle and  
8 the north fork of the Boise River and Anderson only gets  
9 water from the south fork of the Boise River, which is a  
10 later run-off than the other two forks.

11 Q. So given this variability with respect to  
12 Arrowrock and Anderson Ranch, can you, with any  
13 certainty, determine whether or not each one, or either  
14 one, of those reservoirs filled in a particular year?

15 A. You can get that information from this record  
16 that is in Exhibit 20. It will show you the maximum  
17 storage that occurred for each one of those reservoirs  
18 individually. The dates will probably not correspond  
19 with the system storage, which is the important thing  
20 for this analysis.

21 Q. Why is that the most important thing for this  
22 analysis?

23 A. The system storage tells us how much total  
24 water is available in the system, whereas the maximum  
25 storage that occurred in Arrowrock or Anderson -- there

Deposition of Mary Mellema, Volume II

1 might have been a timing issue, whereas Anderson may  
2 have filled later, like in mid June, where we were  
3 already drafting water out of Arrowrock Reservoir and  
4 moving it down to Lucky Peak.

5 Q. I am not sure you answered the question. My  
6 question was why was the system storage the most -- let  
7 me ask you this: Was the system storage total the most  
8 important piece of information or data in your analysis?

9 A. Yes.

10 Q. And why was that?

11 A. It's because it's the total amount of storage  
12 available, the maximum amount of storage available in  
13 the whole system.

14 Q. Any other reason?

15 A. No.

16 Q. Go ahead.

17 A. From the years that were analyzed in Exhibit  
18 13, pages 1 and 2, I identified years where flood  
19 control releases were made and the system storage was  
20 not at full capacity.

21 After that, I took those years and went to the  
22 Boise watermaster records to determine which accounts  
23 were filled.

24 Q. And by "accounts," what do you mean?

25 A. If the maximum storage for the accounts were

Deposition of Mary Mellema, Volume II

1 filled in each of the reservoirs -- and we really have  
2 to refer to Exhibit 12 for me to explain that.

3 Q. And that's fine. But before you move on, if  
4 you could, just define what you mean by "accounts." Do  
5 you mean the contract holder's accounts?

6 A. The total contractor amounts in each of the  
7 reservoirs is what I looked at.

8 Q. And that is depicted in Exhibit 12?

9 A. Yes.

10 Q. We all have Exhibit 12. If you can, refer to  
11 that.

12 A. Exhibit 12 has each of the years that I looked  
13 at that were years where there were flood control  
14 releases and the system storage was not completely full.  
15 We will pick a year and I will go through how to -- how  
16 I performed the analysis. Let's pick 19 --

17 Q. I am sorry that I keep stopping you, but  
18 narratives in depositions kind of get difficult. Let me  
19 stop you there.

20 I understand, from your prior testimony, you  
21 did not consider every year. You only analyzed certain  
22 years, those that we have already discussed; correct?

23 A. I only analyzed those years where there were  
24 flood control releases and the system storage was not  
25 completely filled.

Deposition of Mary Mellema, Volume II

1 Q. And the way that you determined whether there  
2 was a flood control release is, again, those  
3 circumstances where there were more than 2,000 within  
4 the maximum column and, in the corresponding page 3 of  
5 Exhibit 13, those instances where maximum did not total  
6 949,000 prior to 2000 -- pardon me -- since 2000 and/or  
7 974,000 prior to 2000; is that correct?

8 A. Yes, with the understanding that the flows had  
9 to occur in the spring for them to be flood control  
10 releases. So I also looked at the dates that those  
11 flows occurred.

12 Q. And what were the cut-off dates for you? What  
13 date span was deemed relevant to you?

14 A. Anywhere from January through July could be  
15 significant.

16 Q. Can you identify for me, please, those years  
17 that you did consider in your analysis?

18 A. The years I considered were 1986, 1999, 1993,  
19 1989, 1972, 1975, 1976, 1978, and then 1974 I included  
20 later.

21 Q. Actually, I want to discuss 1974 with you for a  
22 second. During the initial session of your --

23 MR. GEHLERT: Tara, before you continue, Mary  
24 is checking the years that she just gave you against  
25 Exhibit 15 to make sure she --

Deposition of Mary Mellema, Volume II

1 THE WITNESS: The years are listed on Exhibit  
2 15. You know, I was going through it on this list. I'm  
3 afraid I may have missed one. The years are listed on  
4 Exhibit 15, under "Water Year."

5 BY MS. MARTENS:

6 Q. Actually, you listed one more than is depicted  
7 in Exhibit No. 15.

8 A. Which one was that?

9 Q. You stated 1986.

10 A. Oh, yeah. Okay.

11 Q. Can you explain to me why 1986 would not be  
12 included in Deposition Exhibit No. 15?

13 MR. GEHLERT: Take your time and review any  
14 documents you need.

15 THE WITNESS: 1986 I did look at but did not  
16 include it on this sheet because, when I looked in  
17 Exhibit 12, all of the total contracts were whole in  
18 1986.

19 BY MS. MARTENS:

20 Q. And that is not true of all of the other dates  
21 depicted in Exhibit No. 15; correct?

22 A. That's correct.

23 Q. Any other reason why 1986 was not included on  
24 Deposition Exhibit No. 15?

25 A. No.

Deposition of Mary Mellema, Volume II

1 Q. I want to go back to 1974, specifically.  
2 During the initial session of your deposition, you  
3 indicated you were going to change your affidavit which  
4 was executed on November 13, 2007; correct?

5 A. Yes.

6 Q. And from the record, the representation of your  
7 counsel was that it would be revised and submitted to  
8 the court no later than Friday, the 25th. Have you  
9 executed a new affidavit?

10 MR. GEHLERT: No. That's my mistake.

11 MS. MARTENS: Okay.

12 MR. GEHLERT: But we will do that, and I will  
13 make a note to do that.

14 MS. MARTENS: When do you anticipate that the  
15 amended affidavit will be submitted to the court? And  
16 you can answer that, if you want to, counsel.

17 MR. GEHLERT: Sure. Sometime next week. I  
18 mean, I'm here for most of the rest of this week.

19 BY MS. MARTENS:

20 Q. So can you tell me, if we look at -- I know  
21 that we have talked about --

22 MR. GEHLERT: I'm sorry, Tara. Before I commit  
23 to sometime next week, I need to confer with Mary to  
24 make sure her schedule --

25 MS. MARTENS: Go ahead. We can go off the  
Deposition of Mary Mellema, Volume II

1 record.

2 (Recess.)

3 MR. GEHLERT: Actually, Mary should be able to  
4 do that tomorrow or the next day and get it to me; and I  
5 will get it filed as soon as I get back in my office and  
6 get my head above water. I apologize. I completely  
7 forgot about that.

8 THE WITNESS: Me, too.

9 BY MS. MARTENS:

10 Q. We have gone through some of the documents that  
11 you produced today that were responsive to our Notice of  
12 Deposition Duces Tecum, namely Exhibits 20 and 21. We  
13 have not looked yet at Deposition Exhibit No. 21.

14 Is that the Excel spreadsheet that you  
15 indicated you would either bring or bring your objection  
16 to today?

17 A. It was the Excel spreadsheet that you requested  
18 for the Boise Operational Spreadsheet, yes.

19 Q. Thank you. Thus far, you and I, in reviewing  
20 the documents and your analysis, have considered  
21 Deposition Exhibit 13, including all three pages, as  
22 well as Deposition Exhibit No. 20.

23 Before we move on to Deposition Exhibit No. 12,  
24 can you tell me, looking at these documents, why you did  
25 not include 1974 in your affidavit as a significant

Deposition of Mary Mellema, Volume II

1 year?

2 MR. GEHLERT: I believe she testified to that  
3 the last time we were here.

4 BY MS. MARTENS:

5 Q. And your testimony was?

6 A. I left it out accidentally. It was an  
7 oversight.

8 Q. There is nothing unique about 1974?

9 A. Not that I know of.

10 Q. So I think we were at the point where I asked  
11 you the years that you considered with respect to your  
12 analysis, and you identified those years that are  
13 depicted on Deposition Exhibit No. 15, plus 1986;  
14 correct?

15 A. I mentioned that I threw 1986 out after looking  
16 at Exhibit No. 12.

17 Q. Is that the only year that you disregarded  
18 after looking at Deposition Exhibit No. 12?

19 A. Yes.

20 Q. I believe you were going to select a year and  
21 take us through your analysis utilizing Deposition  
22 Exhibit No. 12; is that correct?

23 A. Yes.

24 Q. Can we select the year 1974?

25 A. Yes. Do you want me to go ahead?

Deposition of Mary Mellema, Volume II

1 Q. Yes, please. Go ahead.

2 A. If you turn to 1974, there are three pages  
3 associated with Water Year 1974. The first thing to  
4 look at is the first page, Chart No. 11.

5 Q. If I could stop you just for a second -- and  
6 this is just to clarify on the record -- aren't there  
7 four pages associated with 1974?

8 A. There's a title --

9 Q. Page 1 being a title page?

10 A. Correct.

11 Q. Three pages of data?

12 A. Correct.

13 Q. Thank you. Go ahead.

14 A. On Chart No. 11, which is the first page under  
15 "1974," there is a listing of the total amount allotted  
16 for contract holders for space, for each of the  
17 reservoirs. So Arrowrock has 286,600; Anderson has, if  
18 you add the 418,000 and the 5,000 together, 423,000;  
19 and, on the second page, Lucky Peak has 278,200. Those  
20 are the total amounts for each of those reservoirs.

21 Q. Okay.

22 A. In looking at page 3, under "1974," if you look  
23 under the first three columns labeled "Arrowrock  
24 Storage" and "Anderson Storage" and "Lucky Peak  
25 Storage," down at the bottom, for the totals, Arrowrock

Deposition of Mary Mellema, Volume II

1 storage has 286,600; Anderson has 423,200; and Lucky  
2 Peak has 274,833.

3 Comparing those numbers, those totals, to the  
4 previous two pages allowed me to see that Arrowrock --  
5 those two numbers are the same, 286,600.

6 Anderson has 423,200, which is 200 over the  
7 maximum but filled all of the contracted space in  
8 Anderson.

9 And then Lucky Peak is 247,833. When you  
10 compare that to the 278,200, which would be the maximum  
11 amount, it would be 30,367 acre feet short.

12 Q. Go ahead with your analysis. What did you do  
13 when you determined that shortage?

14 A. After I recognized that the Anderson and  
15 Arrowrock accounts matched their maximum contracted  
16 space on the first page, then I looked at the Lucky Peak  
17 shortage from this Chart No. 10; and I looked at where  
18 the shortages occurred in the "Lucky Peak Storage"  
19 column on page 3, on 1974.

20 Q. And where is that depicted?

21 A. It's Column 3, labeled "Lucky Peak Storage."

22 Q. Okay.

23 A. So a comparison of each of the numbers -- going  
24 down that column, with the storage allocations for Lucky  
25 Peak on page 2, you can compare which accounts were

Deposition of Mary Mellema, Volume II

1 shorted in the Lucky Peak storage accounts.

2 Q. And where did you perform that analysis?

3 A. Where? Could you clarify?

4 Q. Sure. Do you have any documentation of your  
5 comparison between Column No. 3 on page 3 and Column No.  
6 1, I assume, on page -- I guess, Column No. 2 on page 2?

7 A. No. I don't have any documentation.

8 Q. Go ahead.

9 A. I went through with a calculator and determined  
10 how much each of the accounts was shorted in Lucky Peak.

11 Q. And did you report that analysis anywhere?

12 A. That, actually, is shown on Exhibit No. 15, in  
13 column -- under the "Accounting" section there.

14 Q. Okay.

15 A. The column labeled "Lucky Peak Shortage" was  
16 the total storage that Lucky Peak was short of filling  
17 its accounts. Then I have how much of that 30,000 came  
18 from -- I labeled it "Instream" but, on here, it's  
19 the -- I believe it's listed as "Uncontracted Space" on  
20 the watermaster records.

21 Q. So the watermaster records list it as  
22 "Uncontracted"?

23 A. Yes. If you look on Chart No. 10 on Exhibit  
24 12, if you look at the row just above the totals for  
25 "Lucky Peak Storage," in the third column, under "Lucky

Deposition of Mary Mellema, Volume II

1 Peak Storage," if you go down -- you have the totals  
2 down at the bottom. The row just above that is  
3 "Uncontracted Lucky Peak Space." I am looking on page 3  
4 right now.

5 Q. Okay.

6 A. The total amount of space, from page 2, is  
7 116,250. What was actually in that account in 1974 was  
8 103,561. The difference between those two is 18,147.

9 MR. GEHLERT: If you want to take the time to  
10 confirm your math, feel free.

11 THE WITNESS: Can I get my calculator?

12 MS. MARTENS: Do you need a calculator?

13 THE WITNESS: Can I get one?

14 MS. MARTENS: I have one, as well, probably, if  
15 you need one.

16 MR. GEHLERT: Why don't we go off the record  
17 for a minute?

18 MS. MARTENS: That's fine.

19 (Recess.)

20 BY MS. MARTENS:

21 Q. Mary, during the break, you were, I believe,  
22 reconfirming some calculations. Can you tell me what  
23 calculations you were reconfirming?

24 A. Right. I was checking the 18,147 "Instream"  
25 amount that I was talking about on Exhibit No. 15. I

Deposition of Mary Mellema, Volume II

1 labeled that as "Instream" for the accounting on Exhibit  
2 No. 15, but it's actually the amount that was shorted in  
3 the "Uncontracted Space" and the "Idaho Fish and Game  
4 Space."

5 So I included both of those together to come up  
6 with that 18,147. These were just notes. I mean, this  
7 wasn't anything official in Exhibit No. 15.

8 Q. Why did you label that column "Instream"?

9 A. I don't really know. It was --

10 Q. Was it an error?

11 A. No. I just don't know. I could have been more  
12 specific about what I labeled it as but --

13 Q. If you would have been more specific in how you  
14 labeled it, how would you have labeled that column?

15 A. I probably would have separated out the  
16 "Uncontracted Lucky Peak Space" separately and then  
17 included the "Fish and Game" flow in the other column,  
18 perhaps.

19 Q. So you would have defined, under "Accounting,"  
20 three columns, one "Non-Contracted Space," one "Fish and  
21 Game," and one "Other"?

22 A. No. I probably would have put "Fish and Game"  
23 with "Other."

24 Q. And why would you have put "Fish and Game" with  
25 "Other"?

Deposition of Mary Mellema, Volume II

1           A.     Because they're not "Uncontracted." They are  
2     contracted with the others.

3           Q.     Maybe it would help if I ask you to define what  
4     you mean by "Other."

5           A.     All of the others, other than the  
6     "Uncontracted" row on Chart No. 10.

7           Q.     So those items listed under "Canal Companies,"  
8     rather than "Uncontracted Lucky Peak Space"?

9           A.     Yes.

10          Q.     So "Other" means "Canal Companies" minus  
11     "Uncontracted Lucky Peak Space" and minus "State of  
12     Idaho Fish and Game"?

13          A.     Yes.

14          Q.     And "Instream" is inaccurately depicted as  
15     "Uncontracted Lucky Peak Space" and "State of Idaho Fish  
16     and Game Space"?

17          A.     The shortage to those two, yes.

18          Q.     I am looking at Deposition Exhibit No. 15. We  
19     were referring to 1974; correct?

20          A.     Yes.

21          Q.     Describe for me what "Maximum Flow Downstream  
22     Date" means. Oh, I guess it is "Maximum Flow  
23     Downstream;" correct?

24          A.     Yes.

25          Q.     That is Column No. 1? Well, Column No. 1 is  
                  Deposition of Mary Mellema, Volume II

1 "Water Year." Column No. 2 is "Maximum Flow  
2 Downstream;" correct?

3 A. Yes.

4 Q. Where does the numeric "7380" come from?

5 A. That comes from Exhibit No. 13, the second  
6 page, the maximum flow at the Boise River at Boise for  
7 1974.

8 Q. And that was reported at -- the station, again,  
9 is defined as?

10 A. The Boise River near Boise.

11 Q. And where is that physically located?

12 A. That gauge no longer exists. As I understand  
13 it, it was by the Broadway Bridge; but I don't know the  
14 exact location of that.

15 Q. And then "Date" is depicted as May 8th;  
16 correct?

17 A. Yes.

18 Q. And that is also found on Deposition Exhibit  
19 No. 13, page 2, in the "Date" column; correct?

20 A. Yes.

21 Q. "Estimated Flood Control Volume and Dates" is  
22 the next column. With respect to 1974, it is deleted or  
23 not there. Can you explain to me why?

24 A. I only did that analysis for a couple of years,  
25 and I realized that I couldn't figure out any

Deposition of Mary Mellema, Volume II

1 significance of that volume. So I only did it for a few  
2 of the years. So '74 was one of the years I did not do  
3 it for.

4 Q. On what years did you perform that analysis?

5 A. '78, '89, '93, and '99.

6 Q. Is there any reason why you selected those  
7 particular years to perform that analysis?

8 A. Not that I know of.

9 Q. So if we look at 1978 where you did perform the  
10 analysis, can you describe for me what is meant by  
11 "Estimated Flood Control Volume and Dates"?

12 A. This was a very quick look at the hydrograph  
13 for 1978, and it was an estimate of how much water in  
14 excess of irrigation demand seemed to occur and what  
15 dates those occurred.

16 It was a very cursory look at things. I didn't  
17 do a detailed analysis. I was trying to come up with  
18 just a ballpark number of what kind of volume, perhaps,  
19 was released for flood control in that year.

20 Q. So this is an estimate of your understanding of  
21 the volume released for flood control in the years '78,  
22 '89, '93, and '99; correct?

23 A. It was a very cursory estimate of that, yes.

24 Q. And what data did you utilize to make the  
25 calculations and to identify the dates?

Deposition of Mary Mellema, Volume II

1           A.    I looked at the historic record of the flow  
2 data on the Boise River for the whole water year and  
3 made an estimate of what the irrigation demand would  
4 have been during the spring period that's listed here  
5 and then looked at the water that was released in excess  
6 of what a reasonable amount of irrigation demand would  
7 have been and added it altogether and came up with this  
8 volume.

9           Q.    How did you estimate the reasonable amount of  
10 irrigation demand?

11          A.    I looked at other years that did not have flood  
12 control releases and looked at what kind of releases  
13 were required during those periods and came up with kind  
14 of an average-type amount of water that is released  
15 during that period if no flood control was done.

16          Q.    So looking at 1978, what did you estimate to be  
17 the reasonable amount of irrigation released?

18          A.    I don't really remember.  I would have to go  
19 back and look at the data.

20          Q.    Did you bring that data with you?

21          A.    No.

22          Q.    Is that data available to you?

23          A.    On our computer system, it is; but I didn't  
24 write down what I used.  So I don't know specifically  
25 what I used for an irrigation demand.

                  Deposition of Mary Mellema, Volume II

1 Q. What criteria did you utilize within your  
2 computer system to identify the reasonable irrigation  
3 demand?

4 A. I looked at years close to 1978 and looked at  
5 what kind of flows were in the canal for that period and  
6 added in some other amounts for other users downstream  
7 and came up with a number.

8 It will vary from March to that June time frame  
9 because demand goes up as you get further into May and  
10 into June. So I used that kind of pattern to come up  
11 with it.

12 Q. And you have not produced that date?

13 A. No.

14 Q. Did you utilize your internal computer system  
15 to perform this analysis?

16 A. Yes.

17 Q. So this is not an analysis that is available on  
18 the website; correct?

19 A. The data is available on the website. The  
20 analysis I pretty much did on scratch paper and in my  
21 head. That analysis is not available.

22 Q. You cannot recall the criteria that you  
23 utilized?

24 A. Not exactly.

25 Q. Why did you undertake the analysis? What were

Deposition of Mary Mellema, Volume II

1 you attempting to determine with respect to the column  
2 entitled "Estimated Flood Control Volume and Dates"?

3 A. Curiosity and for my own information, just to  
4 see if there was a direct relationship to the amount of  
5 storage that was short of filling that year. Mostly  
6 curiosity. Just looking for correlations, basically.

7 Q. And you determined that there was no  
8 correlation?

9 A. I couldn't come up with a good one.

10 Q. So it is your opinion that the data depicted in  
11 the "Estimated Flood Control Volume and Dates" is  
12 non-significant?

13 A. To this analysis, yes.

14 Q. To what analysis would it be significant?

15 A. If you were looking at a detailed study where  
16 you were looking at what irrigation demands were, you  
17 would look at it more closely, perhaps talk to  
18 irrigation companies to see what they normally released  
19 during that period.

20 And then you would go back and look at the  
21 historic record to see what was actually released, and  
22 you could come up with a more precise number of what  
23 kind of volume was released for flood control. That may  
24 be useful if you were doing a historic flood control  
25 study or something like that.

Deposition of Mary Mellema, Volume II

1 Q. Any other use that you know of?

2 A. There may be, but I can't think of them offhand  
3 right now.

4 Q. For purposes of your analysis that you  
5 performed in this case, were you compensated other than  
6 your salary?

7 A. For doing this analysis?

8 Q. Yes.

9 A. No.

10 Q. Who asked you to perform this analysis?

11 A. This analysis was requested after we had a  
12 meeting between -- and Dave was on the phone, as an  
13 attorney; Gail McGarry; Jerry Gregg; and myself. There  
14 may have been a couple other people there.

15 We were discussing what kind of analysis needed  
16 to be done and what kind of study needed to be done to  
17 look at the years where the system did not fill and  
18 flood control had occurred.

19 So it was -- I don't remember a specific person  
20 asking me to do that. It was -- I was assigned the task  
21 from that meeting.

22 Q. What was the scope of the task that was  
23 assigned to you?

24 A. The task was to look at historic years on the  
25 Boise system where flood control releases were made and

Deposition of Mary Mellema, Volume II

1 the Boise system storage did not completely fill and  
2 then to look at what was done with the accounting if the  
3 system did not fill.

4 Q. And who were you asked to consult with for that  
5 purpose?

6 A. I didn't really consult with anyone. I looked  
7 at the watermaster records from IDWR, and I may have  
8 asked them some questions about the tables in the book.  
9 I don't really remember consulting with anybody on it.

10 Q. Do you recall, during our discussion on the  
11 23rd, that you had indicated you had discussed  
12 information regarding flood control releases with Ted  
13 Day? Is that his name?

14 A. Ted Day, yes.

15 Q. And do you recall the name of the other person  
16 that you had discussed flood control releases with?

17 A. In that, I was referring to the realtime  
18 operational flood control releases; and I believe it  
19 might have been John Roache.

20 Q. Correct. Were you advised to consult with  
21 them, or did you consult with them on your own?

22 A. I did not consult with them for this study.

23 Q. But you did consult with them for purposes of  
24 determining some of the other underlying data for this  
25 study; correct?

Deposition of Mary Mellema, Volume II

1           A.    I may have.  I don't really remember.

2           Q.    Is a determinative piece of information within  
3 this data whether or not there was flood control  
4 released in a particular year?

5           A.    Could you clarify that for me, please?

6           Q.    Sure.  We began, in our discussion of your  
7 analysis, looking at Deposition Exhibit No. 13, if I  
8 recall correctly.

9                    I asked you what information you considered,  
10 other than the computer-generated portion of Deposition  
11 Exhibit No. 13, to determine in what years there were  
12 flood control releases.

13                   My recollection is your testimony was you  
14 consulted with your colleagues, and you identified Ted  
15 Day and Mr. Roache for that purpose.

16                   So I am just asking you:  Is that determination  
17 critical and a component of the analysis that is  
18 depicted in Deposition Exhibit No. 15?

19           A.    When I was referring to talking to Ted and John  
20 about years, we were just saying, "Oh, yeah," you know;  
21 and we were just throwing out years off the cuff that we  
22 remembered were big years.

23                   The real determining factor of whether the  
24 years were included in this was actually if flood  
25 control releases were being made.

                  Deposition of Mary Mellema, Volume II

1 Q. Again, you determined whether flood control  
2 releases were being made based upon the maximum in  
3 Column 3 in Deposition Exhibit 13 and the date?

4 A. Yes.

5 Q. Those were the only pieces of data that you  
6 utilized to make that determination?

7 A. Yes.

8 Q. All right. Back to Deposition Exhibit No.  
9 15 -- well, let me back up again. You were describing  
10 the scope of your task for analysis in this case, and I  
11 asked you what you were asked to do. Have you  
12 completely answered that question?

13 MR. GEHLERT: Do you want to have it read back?

14 THE WITNESS: Could you read it back? I  
15 don't --

16 MS. MARTENS: Her answer is probably right  
17 before I asked her who she was asked to consult with.

18 (Whereupon, the previous question and answer  
19 located at page 174, line 22 through page 175, 3 was  
20 read back by the court reporter.)

21 BY MS. MARTENS:

22 Q. Can you answer my question now? Is there  
23 anything else you were asked to do in this case?

24 A. Just report back to them with my results.

25 Q. And how did you report back to them your

Deposition of Mary Mellema, Volume II

1 results? What did you provide back to those who had  
2 asked you to perform this analysis?

3 A. I brought back Exhibit No. 15 to them.

4 Q. And I don't want to interrupt you. But you  
5 didn't bring 15, did you? You brought 14?

6 A. I brought 14.

7 Q. So you brought them Exhibit No. 14. Anything  
8 else you did to report your analysis?

9 A. I believe I brought Exhibit No. 12 to them and,  
10 also, Exhibit No. 13, just to refer to and show them  
11 what I did.

12 Q. At the time that you provided this analysis,  
13 was your handwriting present on Deposition Exhibit No.  
14 14?

15 A. Yes, I think so.

16 Q. When did you provide the analysis depicted in  
17 Deposition Exhibit No. 15?

18 A. That occurred a couple of days before my  
19 previous deposition. I was rechecking data.

20 Q. And the handwriting that is depicted on  
21 Deposition Exhibit No. 15, was that present when you  
22 provided this analysis?

23 A. Yes.

24 Q. Any other reporting that you provided?

25 A. Not that I can remember.

Deposition of Mary Mellema, Volume II

1 Q. Did you provide any oral report?

2 A. Not a formal oral report. We just discussed  
3 what my results were. There was a discussion.

4 Q. And what is your opinion regarding the results  
5 of your analysis?

6 A. The result of my analysis was to look at  
7 whether -- in the flood control years, when we didn't  
8 fill, whether Anderson and Arrowrock accounts were  
9 filled.

10 It really wasn't my opinion. I was just  
11 producing the facts from the historic database and from  
12 the watermaster books.

13 Q. And the results that you reported were what?

14 A. The results I reported were that the Anderson  
15 and Arrowrock accounts were filled in those years where  
16 we had flood control releases and the system did not  
17 fill.

18 Q. Did you review any analysis that had been  
19 performed as required by contracts with the account  
20 holders?

21 A. Contracts?

22 Q. Yes.

23 A. No.

24 Q. Are you aware that the contracts require  
25 certain calculations to be undertaken?

Deposition of Mary Mellema, Volume II

1           A.    I don't know much about the contracts.  So I  
2 don't think so.  No.

3           Q.    If there had been a calculation -- and to  
4 assist you, I would ask you to turn to Deposition  
5 Exhibit No. 4.

6           A.    Which one is 4?

7           MR. GEHLERT:  It's in that pile right there.

8 BY MS. MARTENS:

9           Q.    I apologize.  It might be Deposition Exhibit  
10 No. 3.  I need to make sure I have my items in order  
11 here.  I am sorry.  Deposition Exhibit No. 3, please.  
12 They should be in order.

13           MR. GEHLERT:  Actually, for the record, before  
14 we begin this line of inquiry, I am just going to put on  
15 the record a general objection.

16           The witness has already testified she doesn't  
17 know much about the contracts.  I believe, on the first  
18 day, she testified about her job description which does  
19 not include any management, if you will, of the  
20 contracts.

21           Subject to the objection noted for the record,  
22 I will allow her to answer the questions that she can  
23 answer.

24 BY MS. MARTENS:

25           Q.    Do you know anything about the contracts?  Have  
                  Deposition of Mary Mellema, Volume II

1 you ever reviewed them?

2 A. No.

3 Q. If there were calculations performed relevant  
4 to the accounts and flood control operations, would you  
5 have found those to be relevant? Would you have found  
6 that to be relevant data with regard to your analysis?

7 MR. GEHLERT: Let me object on the grounds it  
8 calls for speculation.

9 Go ahead and answer, to the extent you can.

10 THE WITNESS: I guess it depends on what they  
11 are. I am not sure what you are referring to.

12 BY MS. MARTENS:

13 Q. Let me ask you this: Why did you select the  
14 pieces of data you did for purposes of performing your  
15 analysis?

16 A. It seemed like those were the right pieces of  
17 data to choose to fulfill the task that I was assigned.

18 Q. But if there had been actual calculations  
19 performed in the relevant years, wouldn't that have been  
20 important data to utilize?

21 MR. GEHLERT: Objection; calls for speculation.  
22 You can answer.

23 BY MS. MARTENS:

24 Q. Let me ask you this: If they existed, would  
25 you have utilized them for purposes of your analysis?

Deposition of Mary Mellema, Volume II

1           A.    I guess the only calculations that I was aware  
2 of were the calculations that take place in the Boise  
3 watermaster records. Beyond that, I don't really know  
4 what to say.

5           Q.    Do you think that calculations performed during  
6 years where there was flood control operations  
7 undertaken would have been relevant to your analysis?

8           A.    Well, we do calculations all the time of what  
9 we expect the run-off to be, what the snow is doing. So  
10 we are doing calculations all the time during flood  
11 control. As far as relating to contracts, I don't do  
12 any of those calculations.

13          Q.    I am not asking if you do them. I am asking  
14 you: If there had been calculations performed -- and I  
15 will represent to you that the contracts require that  
16 they be performed.

17                On the actual years when there were flood  
18 control operations, would you have found those  
19 calculations to be relevant to your analysis?

20           MR. GEHLERT: Before you answer, let me just  
21 object on the basis that there has been nothing  
22 established that either of the contracts require such  
23 calculations or that such calculations were ever done.

24                That said, you can answer the question. If you  
25 would like to, you can have it read back.

Deposition of Mary Mellema, Volume II

1 MS. MARTENS: Just a second. I mean, I have  
2 asked a specific question. You can lodge your  
3 objection, but I think that the testimony should come  
4 from the witness. Okay?

5 MR. GEHLERT: I just told her to answer.

6 BY MS. MARTENS:

7 Q. If there were calculations that were performed  
8 in the actual years of the flood control operations,  
9 rather than you going back and trying to make these  
10 determinations, would you have found those calculations  
11 to be relevant to your analysis?

12 A. For the historic analysis I did?

13 Q. Yes.

14 A. Perhaps.

15 Q. And what would have made them not relevant to  
16 your analysis? I am just dealing with your "perhaps"  
17 response.

18 A. I don't know what kind of calculations you are  
19 referring to, so I don't really know how to answer that.

20 Q. So you were not provided with any analysis that  
21 had been provided historically for purposes of your  
22 analysis that you have performed for this case?

23 A. I was not given any analysis, other than what  
24 was in the watermaster records.

25 MS. MARTENS: All right. In your affidavit, at  
Deposition of Mary Mellema, Volume II

1 Paragraph No. 6 -- and your affidavit is Deposition  
2 Exhibit No. 2. You might want to have it in front of  
3 you.

4 How are we doing on time, everybody?

5 MR. GEHLERT: It's about 20 after 11:00.

6 BY MS. MARTENS:

7 Q. I do want to get back to your narrative of the  
8 analysis, but there are some important things I need to  
9 cover before we break for the day. So I will go back to  
10 that and allow you to finish your narrative, hopefully,  
11 today.

12 If not, I just need to ask you some important  
13 things about your affidavit because it has been  
14 submitted to the court. Okay?

15 A. Okay.

16 Q. In Paragraph 6, you indicate, "For each of  
17 those years described in Paragraph 5, above, I was asked  
18 to determine how storage water between the three  
19 reservoirs -- Arrowrock, Anderson Ranch, and Lucky  
20 Peak -- was accounted for by the watermaster for  
21 purposes of water rights administration."

22 What did you do to determine how the  
23 watermaster had accounted for those water rights?

24 A. I used the watermaster records for Water  
25 District 63 and looked back at how the water was

Deposition of Mary Mellema, Volume II

1 allocated in each of those years.

2 Q. And those are the bound volumes that were  
3 delivered after the commencement of your deposition on  
4 the 23rd; is that correct?

5 A. Yes.

6 Q. Did you look at anything else for making that  
7 determination?

8 A. No.

9 Q. Just so we get it identified for the record,  
10 too, I am going to hand you what has been premarked as  
11 Deposition Exhibit No. 21. If you can, describe for me  
12 what this document is.

13 A. Exhibit No. 21 is the Boise operational  
14 spreadsheet that was referred to in my previous  
15 deposition and that you requested a copy of.

16 Q. And this represents the operational tool that  
17 we discussed that was contained within your affidavit;  
18 correct?

19 A. Yes.

20 Q. And even though your affidavit referenced  
21 operational tools that you had developed, this is really  
22 the only tool that you developed that is relevant to  
23 this case; correct? We can go back to the particular  
24 paragraph, if that helps.

25 A. Would you repeat that question?

Deposition of Mary Mellema, Volume II

1 Q. Sure. And I will make it specific to your  
2 affidavit so it is more clear. In your affidavit,  
3 Paragraph 2, you indicate that you developed operational  
4 tools to plan realtime operations of each of the  
5 reservoirs.

6 My recollection from your testimony on the 23rd  
7 is that the only operational tool that you developed  
8 relevant to planning realtime operations on each of the  
9 reservoirs is what you have provided to me in Deposition  
10 Exhibit No. 21.

11 A. Yes.

12 Q. Have you been asked to testify at trial in this  
13 matter?

14 A. No.

15 Q. Do you intend to testify at the trial in this  
16 matter?

17 A. No.

18 MR. GEHLERT: I should add that that would be  
19 subject to counsel's decision as to how best present our  
20 case at trial. I am sure the witness would love to  
21 avoid testifying.

22 THE WITNESS: Maybe I should say, "Not that I  
23 know of."

24 Can we take a break for a minute?

25 MS. MARTENS: Yes.

Deposition of Mary Mellema, Volume II

1 THE WITNESS: Thank you.

2 MS. MARTENS: Off the record.

3 (Recess.)

4 BY MS. MARTENS:

5 Q. I assume, based upon your testimony, as well as  
6 the representations that were made on the record by your  
7 counsel, that you have not reviewed or analyzed any  
8 contractual obligations set forth in any contracts  
9 relevant to this case?

10 A. Reviewed contracts?

11 Q. Yes.

12 A. No.

13 Q. And you are not familiar with any contractual  
14 obligations set forth in those contracts?

15 A. There may be, you know, some operational things  
16 that are referred to in the Water Control Manual. Other  
17 than that, no.

18 Q. And what operational items in the Water Control  
19 Manual are you familiar with that are contractual  
20 obligations under contracts?

21 A. I don't know if this fits under that category;  
22 but it's the passage that refers to the 60,000 acre  
23 feet, last to fill for flood control stuff.

24 MR. GEHLERT: Actually, let's just talk for a  
25 second.

Deposition of Mary Mellema, Volume II

1 THE WITNESS: Okay.

2 (Recess.)

3 BY MS. MARTENS:

4 Q. Back on the record. Would you like to modify  
5 your response to the prior question?

6 A. Yes. I mean, there may be -- there may be  
7 operational things in the Water Control Manual that are  
8 based on contract stuff, but I don't really know the  
9 contract stuff. I know what's in here.

10 Q. And you referred to a specific provision. Can  
11 you point to which provision it is that you are familiar  
12 with that relates to contractual obligations? You can  
13 take your time.

14 A. That is on page 7-15.

15 Q. Okay.

16 A. It's down at the bottom. It says -- this is  
17 what I was thinking about -- the final 60,000 acre feet  
18 of reservoir system space to be refilled each year  
19 within the Anderson Ranch, Arrowrock, Lucky Peak  
20 projects, excluding --

21 THE COURT REPORTER: Would you please slow down  
22 just a bit?

23 MS. MARTENS: Let me warn you of this. During  
24 depositions, when I ask you to read something, imagine  
25 you were typing it and read it at that speed, if you

Deposition of Mary Mellema, Volume II

1 could, please.

2 THE WITNESS: So where did you lose me?

3 BY MS. MARTENS:

4 Q. Just start at the beginning again, please.

5 A. The final 60,000 acre feet of reservoir system  
6 space to be refilled each year within the Anderson  
7 Ranch, Arrowrock, Lucky Peak projects, excluding  
8 surcharge, will be used jointly for flood control  
9 protection for late-season, large rainstorms,  
10 underestimation of remaining run-off, river regulation  
11 during emergency conditions such as canal breaks,  
12 construction within the Boise River Channel, et cetera,  
13 and storage of water for stream maintenance flows and  
14 municipal and industrial uses.

15 Q. And how does that correlate with the contracts?

16 MR. GEHLERT: Objection. She has already  
17 testified she doesn't know the contents of the  
18 contracts.

19 MS. MARTENS: If the witness could answer the  
20 question -- my question to her, earlier, was whether or  
21 not she was familiar with any of the contracts or any of  
22 the provisions. She specifically wanted to address this  
23 provision. So I am asking what contractual correlation  
24 she was referring to.

25 THE WITNESS: I don't really know of a

Deposition of Mary Mellema, Volume II

1 contractual correlation. I am assuming this is in a  
2 contract somewhere. I don't know for sure.

3 BY MS. MARTENS:

4 Q. Anything else that you are aware of regarding  
5 contractual obligations?

6 A. No.

7 Q. Do you intend to testify, at trial or  
8 otherwise, that over the years Reclamation has been  
9 remarkably accurate in forecasting spring run-off?

10 MR. GEHLERT: Do you want to talk?

11 THE WITNESS: Yeah.

12 (Recess.)

13 MR. GEHLERT: I just want to note for the  
14 record that we haven't had any discussions about what  
15 may or may not be part of our case at trial because we  
16 expect the case to be resolved by summary judgment.  
17 That's just a note.

18 Feel free to answer the question. If you want  
19 to have it read back --

20 THE WITNESS: Please read the question back.

21 BY MS. MARTENS:

22 Q. I can ask it again, without having to do that.  
23 Do you intend to testify in any respect in this case  
24 that Reclamation has been remarkably accurate in  
25 forecasting spring run-off?

Deposition of Mary Mellema, Volume II

1           A.    I guess it depends upon your definition of  
2 "remarkably accurate," but I think we are pretty good at  
3 forecasting spring run-off.

4           Q.    And have you testified to that statement at any  
5 time prior to me having read it to you today?

6           A.    No.

7           Q.    Did you ever tell anybody that was preparing  
8 your affidavit or any documentation in this case that it  
9 is your opinion that, over the years, Reclamation has  
10 been remarkably accurate in forecasting the spring  
11 run-off?

12          A.    No.

13          Q.    You did not create that opinion based upon your  
14 analysis in this case, did you?

15          A.    Not just based on this case.

16                MR. GEHLERT:  And can I just note for the  
17 record what exhibit you are reading from?

18                MS. MARTENS:  Well, currently, I have open  
19 Deposition Exhibit No. 10.

20                MR. GEHLERT:  Thank you.

21 BY MS. MARTENS:

22           Q.    Do you intend to testify in this case or have  
23 you ever stated an intent to testify in this case that  
24 in every year, meaning beginning in 1955, the irrigators  
25 contracting for water from Anderson Ranch and Arrowrock

Deposition of Mary Mellema, Volume II

1 Reservoirs have received their full entitlement of  
2 storage water?

3 A. No.

4 Q. You have not reviewed the 1953 and/or 1954  
5 contracts; correct?

6 A. Correct.

7 Q. So you will not testify that the United States  
8 can or cannot meet its obligations under those  
9 contracts; correct?

10 MR. GEHLERT: We have already noted that there  
11 has been no discussion of what her trial testimony will  
12 or will not be. So to ask the witness about what her  
13 intent is regarding something that has not been said  
14 serves no purpose.

15 MS. MARTENS: Whether it serves a purpose or  
16 not, I think she can answer my question.

17 THE WITNESS: Could you repeat it, please?

18 BY MS. MARTENS:

19 Q. Yes. Have you testified or do you at this  
20 point intend to testify whether or not the United States  
21 can or cannot meet its obligations under the 1953 and  
22 1954 contracts?

23 A. No.

24 Q. At this point, and at the point you executed  
25 your affidavit, you have never even reviewed those

Deposition of Mary Mellema, Volume II

1 contracts; correct?

2 A. Correct.

3 Q. Would you defer to Lee Sisco regarding  
4 operations and releases outside of the flood control  
5 season?

6 A. I am not sure what you mean by "defer" to him.

7 Q. Let me ask you this: If I were to ask Lee  
8 Sisco a question regarding operations and releases  
9 outside of flood control season, would he be the best  
10 person to answer those questions?

11 A. I'm not sure.

12 Q. Who orders releases from the Lucky Peak Project  
13 outside of flood control season?

14 A. During normal irrigation releases, Lee Sisco  
15 takes care of that; but others may be involved for  
16 special cases.

17 Q. In those special cases, is Lee Sisco typically  
18 involved?

19 A. He would be notified.

20 Q. And would he actually make the order for the  
21 release?

22 A. I'm not sure.

23 Q. How about during flood control season?

24 A. It would not be Lee Sisco.

25 Q. Then who would it be?

Deposition of Mary Mellema, Volume II

1           A.    The actual call to Lucky Peak is done by the  
2 Corps of Engineers.

3           Q.    And that was Mr. Kim?

4           A.    Yes.

5           Q.    Would you defer to Mr. Kim with regard to  
6 releases within flood control season?

7           A.    I'm unclear exactly what you're asking.

8           Q.    If Mr. Kim had an opinion or testimony  
9 regarding releases of water from Lucky Peak Project  
10 during flood control season, would you dispute his  
11 opinions or testimony?

12          A.    No.

13          Q.    And if Lee Sisco had opinions or testimony  
14 regarding operations and releases from the Lucky Peak  
15 Project outside of flood control season, would you have  
16 reason to dispute his opinions or testimony?

17               MR. GEHLERT:  Let me just note that I object on  
18 the basis that we have no idea what those opinions might  
19 be.

20               With that said, go ahead and answer.

21               THE WITNESS:  I think it depends on the  
22 situation.

23               BY MS. MARTENS:

24           Q.    In what situations would Lee Sisco have been  
25 uninvolved or lacked knowledge with respect to releases

                  Deposition of Mary Mellema, Volume II

1 from the Lucky Peak Project outside of the flood control  
2 season?

3 A. He would be notified, but he would probably not  
4 be involved if there were maintenance issues going on at  
5 the dam or special releases required for some Corps  
6 purpose, Corps of Engineers purpose.

7 Q. Any other purpose?

8 A. Perhaps. I can't think of anything right now.

9 Q. I think that you had testified earlier that --  
10 you can correct me if I am wrong -- overall, outside of  
11 flood control season, Lee Sisco was the individual who  
12 had the authority to order releases from the Lucky Peak  
13 Project; is that correct?

14 A. Under normal situations, yes.

15 Q. And under unique situations such as you  
16 described, the only item you can think of where Lee  
17 Sisco would be uninvolved or uninformed outside of flood  
18 control season would be during maintenance conducted by  
19 the Corps of Engineers; is that correct?

20 A. Not completely. Lee Sisco would be informed;  
21 he would not be the decision-maker, however.

22 Q. But he would be informed and involved?

23 A. He would be informed.

24 Q. He would have knowledge?

25 A. Yes.

Deposition of Mary Mellema, Volume II

1 Q. Now, I know we are running out of time today;  
2 and there are certain things that we need to review. I  
3 am just trying to get some certain things on the record  
4 so that, then, we can reconvene later.

5 You handed out, this morning, to other  
6 counsel -- not to me, presumably, because I have a copy  
7 of the whole thing -- certain rule curves.

8 Can you identify for me, within the Water  
9 Control Manual, the rule curves that you provided to  
10 other counsel, please?

11 MR. GEHLERT: If you have another copy, you can  
12 just give it to her. That might be faster.

13 THE WITNESS: Here is another copy.

14 BY MS. MARTENS:

15 Q. So you have identified Plate 7-1, Plate 7-2,  
16 Plate 7-3, and Plate 7-3A; correct?

17 A. Yes.

18 MS. MARTENS: Counsel, does anybody object to  
19 just having this marked as Deposition Exhibit No. 22?

20 MS. JORGENSEN: No objection.

21 MR. GEHLERT: None.

22 (Exhibit No. 22 was marked for identification.)

23 MS. JORGENSEN: Is this information that needs  
24 to be filed under a protective order?

25 MR. GEHLERT: Can we go off the record for a  
Deposition of Mary Mellema, Volume II

1 second?

2 MS. MARTENS: Sure.

3 (Whereupon, an off-the-record discussion was  
4 held amongst counsel.)

5 BY MS. MARTENS:

6 Q. Back on the record. Are there any other rule  
7 curves relevant to your analysis in this case in the  
8 Water Control Manual that you reviewed?

9 A. No.

10 Q. Can you define the station named "BOISYS3"?  
11 And that is page 3, by the way, of Deposition Exhibit  
12 No. 13.

13 A. I'm sorry. I'm having a hard time finding it.

14 Q. Did you find 13? It's just this.

15 A. Okay.

16 Q. Can you define that for me?

17 A. That is referring to Boise System 3, which is  
18 the three reservoirs in the Boise system.

19 Q. I assumed so, but I thought I would make sure.  
20 During the initial day of your deposition, you  
21 testified that you had calculated the definition of,  
22 quote, "average water condition," end quote, and that  
23 you could not recall the numeric value but that you  
24 would look it up. Did you do so?

25 A. I don't remember saying I would look it up.

Deposition of Mary Mellema, Volume II

1 No, I didn't.

2 Q. To be fair to you, I think you said you could  
3 look it up. But did you do so?

4 A. No.

5 Q. And do you know at this point what your working  
6 definition of, quote, "average water condition," end  
7 quote, is?

8 A. No.

9 Q. Were you involved in the 2005 contracting  
10 process?

11 A. No.

12 Q. And how many years has 152,000 acre feet been  
13 utilized for stream flow purposes?

14 A. I don't know exactly.

15 Q. Have you ever looked at that question?

16 A. I've looked back a number of years and seen  
17 that it has varied over time, but I don't know how many  
18 years.

19 Q. Since 2001, when you have been in your current  
20 position, has 152,000 acre feet ever been utilized for  
21 stream flow purposes?

22 A. I don't know.

23 Q. Do you know how many acre feet were utilized  
24 last year?

25 A. From uncontracted?

Deposition of Mary Mellema, Volume II

1 Q. No. How many acre feet were utilized for  
2 stream flow purposes, in whole?

3 A. I don't know.

4 Q. How about over the preceding five years? Do  
5 you know, in any year, how many acre feet were  
6 utilized?

7 A. No.

8 Q. I know that you have testified that you do not  
9 intend, at this point, to testify at trial. Have you  
10 been asked to provide any testimony in this case,  
11 whether it be by affidavit or at trial, that we have not  
12 discussed?

13 A. No.

14 Q. Have you ever provided testimony as an expert  
15 witness in the past?

16 A. No.

17 Q. Is the testimony that you have provided via  
18 affidavit expert opinion testimony or lay witness  
19 testimony?

20 MR. GEHLERT: I object on the grounds that that  
21 includes at least a component of legal definition.

22 You can answer it in your opinion, Mary.

23 THE WITNESS: I don't believe my affidavit  
24 actually has an opinion in it. I believe it's just  
25 reporting information.

Deposition of Mary Mellema, Volume II

1 BY MS. MARTENS:

2 Q. So in your mind, you are not providing any  
3 expert opinions with respect to your testimony in this  
4 case?

5 A. Yes.

6 Q. This is a silly question, but we just ask it of  
7 deponents. It is not that I am noting that you are, you  
8 know, any -- well, I will just ask it. Have you ever  
9 been convicted of a felony?

10 A. No.

11 MR. GEHLERT: You dodged a bullet on that one.

12 BY MS. MARTENS:

13 Q. I hate asking that question of people that,  
14 clearly, at least, I wouldn't typically wonder -- okay.  
15 It is not your testimony, is it, that the Boise River is  
16 not a natural body of water?

17 A. No.

18 Q. The Boise River is a river; correct?

19 A. Yes.

20 Q. Have you reviewed any documents in preparing  
21 for your deposition, either before the 23rd or before  
22 today?

23 A. The only documents I reviewed were the Water  
24 Control Manual and I reviewed my affidavit and I  
25 reviewed the watermaster books.

Deposition of Mary Mellema, Volume II

1 Q. Anything else that you have reviewed for your  
2 testimony, either on the 23rd or today?

3 A. Not that I can think of.

4 Q. Have you determined, with respect to your  
5 analysis in this case, where the make-up water came from  
6 in each of the years?

7 MR. GEHLERT: I am going to object. There has  
8 been no definition of the term "make-up water."

9 BY MS. MARTENS:

10 Q. You can go ahead and answer the question.

11 A. I assume you are referring to the water that  
12 was used to fill Anderson and Arrowrock accounts. Have  
13 I determined where it all came from?

14 Q. Yes.

15 A. Not specifically. I did a few rough  
16 calculations to see, you know, what percentage of the  
17 contracts were delivered in those years that I reviewed.  
18 But to do a detailed analysis of where it exactly all  
19 came from? No, I have not.

20 Q. And those rough calculations that you have  
21 performed, have you produced those calculations or any  
22 of the data determined by those rough calculations?

23 A. They are in Exhibit No. 15.

24 Q. And where is that depicted?

25 A. That's in the columns that have an "Accounting"

Deposition of Mary Mellema, Volume II

1 label on them. The first column is "Lucky Peak  
2 Storage," labeled "Lucky Peak Storage;" and that's the  
3 amount of storage that was short from the full storage,  
4 from the books. The second one is labeled "Instream,"  
5 which I explained before.

6 Q. But it is not really "Instream;" it is  
7 "Non-Contracted Space" plus "Fish and Game;" correct?

8 A. Correct.

9 Q. Okay.

10 A. And then the "Other" is others.

11 Q. "Canal Companies," I believe, is how it was  
12 labeled on the document we looked at; correct?

13 A. I believe so.

14 Q. Okay.

15 A. And then the handwritten notations, way to the  
16 right -- I did some calculations of -- calculating a  
17 couple of contract holders that were not "Uncontracted  
18 Space." I did some rough calculations about what  
19 percentage of their water that they received.

20 Q. And which contract holders did you consider for  
21 purposes of that calculation?

22 A. The ones we called "Canal Companies" and "Fish  
23 and Game." I didn't go through each one of them. I  
24 checked, like, two or three of them and said, yeah, it's  
25 consistent with this percentage.

Deposition of Mary Mellema, Volume II

1 Q. So is this a calculation that can be relied  
2 upon, as far as definitive; or is it preliminary, at  
3 this point? I can't remember the term you used. A  
4 rough calculation?

5 A. It's just a rough calculation of the data  
6 that's presented in the watermaster books.

7 MS. MARTENS: I will need to spend some more  
8 time with you on that piece; but given that we are so  
9 short on time, I will move on to some other issues. I  
10 was just curious as to whether you had calculated that  
11 to a point that it could be relied upon.

12 MR. GEHLERT: Tara, just for a note, it is noon  
13 now. If you there are things that you think are very  
14 important to get on the record before we break, that's  
15 fine; but it may mean that Jerry's deposition is a  
16 little late getting started.

17 MS. MARTENS: No. That is, obviously, what we  
18 decided would be imperative.

19 Before we go off the record, I would just like  
20 to put on the record our stipulation that this will be  
21 continued at a date after the time that briefing is  
22 completed on the motion for summary judgment.

23 MR. GEHLERT: Let me just clarify. There will  
24 be no further deposition of Mary until after the  
25 briefing on summary judgment has occurred; I am agreeing

Deposition of Mary Mellema, Volume II

1 on that point. We can talk about an appropriate  
2 continuation at some later point. That's it.

3 MS. MARTENS: Does anybody else have anything  
4 else for the record?

5 Thank you.

6 (The deposition stood in recess at 11:58 a.m.)

7 (Signature requested.)

8 \* \* \*

9

10

11

12

13

14

15

16

17

18

19

20

21

22

23

24

25

Deposition of Mary Mellema, Volume II

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25

C E R T I F I C A T E

I, LORI A. PULSIFER, Certified Shorthand Reporter, do hereby certify that:

The foregoing proceedings were taken before me, at which time the witness was placed under oath;

The testimony and all objections made were recorded stenographically by me and were thereafter transcribed by me;

The foregoing is a true and correct record to the best of my skill and ability; and

Pursuant to request, notification was provided that the deposition is available for review and signature; and

I am not a relative or an employee of any attorney, nor am I financially interested in the action.

I have hereunto set my hand and seal this 8th day of February 2008.

---

LORI A. PULSIFER, CSR, RMR, CRR  
Certified Shorthand Reporter  
Idaho Certificate 354

Deposition of Mary Mellema, Volume II