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DEPARTMENT OF
WATER RESOURCES

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and Settlers Irrigation District

IN THE DISTRICT COURT OF THE FIFTH JUDICIAL DISTRICT
OF THE STATE OF IDAHO, IN AND FOR THE COUNTY OF TWIN FALLS

In Re SRBA,
Case No. 39576

Subcase No. 63-3618
(Lucky Peak Reservoir)

**SUPPLEMENTAL AFFIDAVIT OF SCOTT L.
CAMPBELL IN SUPPORT OF PIONEER'S
AND SETTLERS' MOTION FOR SUMMARY
JUDGMENT**

State of Idaho)
) ss.
County of Ada)

SCOTT L. CAMPBELL, being first duly sworn upon oath, deposes and says:

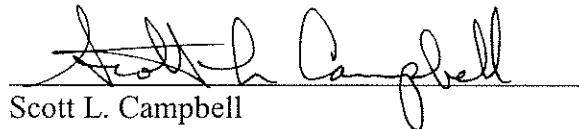
1. I am an attorney duly licensed to practice law in the state of Idaho and I
am the attorney of record in the above-captioned matter for Pioneer Irrigation District
("Pioneer") and Settlers Irrigation District ("Settlers") (hereinafter collectively referred to as the

"Districts"). I have knowledge of the files pertinent to this matter and I make this affidavit based upon personal knowledge, information and belief.

2. Appended hereto as Exhibit A is a true and correct copy of cited portions of Volumes I and II of the transcript of the Deposition of Mary Mellema, taken on January 23, 2008, and January 30, 2008, in Boise, Idaho.

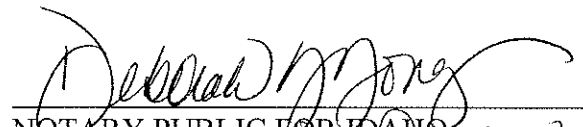
3. Appended hereto as Exhibit B is a true and correct copy of cited portions of Volumes I and II of the transcript of the Deposition of Jerrold D. Gregg, taken on January 30 and 31, 2008, in Boise, Idaho.

Further your affiant sayeth naught.


Scott L. Campbell

SUBSCRIBED AND SWORN to before me this 14th day of February, 2008.




NOTARY PUBLIC FOR IDAHO
Residing at Boise, Idaho
My Commission Expires 10/10/13

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 14th day of February, 2008, I caused a true and correct copy of the foregoing **SUPPLEMENTAL AFFIDAVIT OF SCOTT L. CAMPBELL IN SUPPORT OF PIONEER'S AND SETTLERS' MOTION FOR SUMMARY JUDGMENT** to be served by the method indicated below, and addressed to the following:

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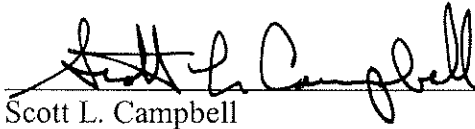

Scott L. Campbell

Exhibit “A”

Cited Portions of Vols. I and II of Deposition of Mary Mellema 1/23/08 and 01/30/08

Supplemental Affidavit of Scott L. Campbell in Support of Pioneer’s and Settlers’ MSJ

IN THE DISTRICT COURT OF THE FIFTH JUDICIAL DISTRICT OF
THE STATE OF IDAHO, IN AND FOR THE COUNTY OF TWIN FALLS

In Re: SRBA,)
Case No. 39576.) Subcase No. 63-3618
) (Lucky Peak Reservoir)
)
)

DEPOSITION OF MARY MELLEMA

Volume I

(Pages 1 through 126)

Law Offices of
Moffatt, Thomas, Barrett, Rock & Fields, Chartered
101 South Capitol Boulevard, 10th Floor
Boise, Idaho 83702

Wednesday, January 23, 2008
Beginning at 9:08 o'clock a.m.

QnA COURT REPORTING
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Idaho Certificate No. 354
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(ELECTRONIC COPY)

Deposition of Mary Mellema (Volume I)

1 A. Yes.
 2 Q. Did your duties as a hydrologist with the
 3 National Weather Service change in any significant way
 4 between 1991 and 2001?
 5 A. No.
 6 Q. So in 2001, if I am reading your affidavit
 7 correctly, you became a hydrologist with the River and
 8 Reservoir Operations Group of the Pacific Northwest
 9 Regional Office of the Bureau of Reclamation?
 10 A. Yes.
 11 Q. And why did you make that job change?
 12 A. I decided it was time to try something else.
 13 Q. Was this position created for you?
 14 A. No.
 15 Q. Was somebody vacating the position?
 16 A. The position was not created for me.
 17 Q. Who was the person who performed your job
 18 duties prior to 2001 when you took the position?
 19 A. I'm not sure.
 20 Q. You also indicate that you are the Regional
 21 Boise River Operations Contact. What does that mean?
 22 A. In the regional office, we have a group of
 23 three people who operate the reservoirs or are in
 24 operation of the reservoirs of the whole Pacific
 25 Northwest. We split up the basins, and one of the

1 regional office with you?
 2 A. No.
 3 Q. What are your employment duties and
 4 responsibilities today? First, I guess, what is your
 5 title today?
 6 A. My title is "hydrologist."
 7 Q. Has that changed at all since 2001?
 8 A. No.
 9 Q. Go ahead and, if you would, please, describe
 10 your job duties.
 11 A. I monitor in-flows into the reservoirs; I make
 12 decisions regarding what kind of releases need to be
 13 made for flood control; I monitor the snow pack in the
 14 basins and assist with volume forecasting for the
 15 basins; and I perform study projects that need to be
 16 done regarding hydrology.
 17 Q. Who is your supervisor?
 18 A. Pat McGrane.
 19 Q. How do you spell the last name?
 20 A. M-c-G-r-a-n-e.
 21 Q. And what is Pat McGrane's job title?
 22 A. I'm not sure.
 23 Q. Can you describe for me the various studies of
 24 reservoir operations that you conduct?
 25 A. There are studies relating to how to best

1 basins that I'm assigned to is the Boise River Basin.
 2 Q. What other basins are you assigned to?
 3 A. I have the Owyhee Basin, the Tualatin Basin in
 4 Oregon. I assist with Hungry Horse Basin in Montana;
 5 and the Upper Snake Basin I assist with, as well.
 6 Q. And all of those basins are operated through
 7 the Boise office?
 8 A. The regional office only operates a couple of
 9 them. We have field offices or regional offices -- not
 10 regional. We have field offices that may operate some
 11 of the reservoirs, as well. We don't directly operate
 12 all of the reservoirs.
 13 Q. Is there any personnel involved in the Bureau
 14 of Reclamation's operation of the Boise River Basin
 15 outside of your office?
 16 A. Yes.
 17 Q. And who are they?
 18 A. For the Bureau of Reclamation, Brian Sauer is
 19 in the -- it's not the field office -- the area
 20 office -- excuse me -- the Boise area office.
 21 Q. And where is that located?
 22 A. It's in Boise, close to -- it's by Fort Boise
 23 Rec Center.
 24 Q. Understood. Any other personnel involved in
 25 operations of the Boise River Basin that are not in the

1 operate the reservoirs. We look at historic conditions
 2 and snow packs and run models and look at ways to best
 3 operate the reservoirs.
 4 Q. Are there any particular guidelines that you
 5 utilize for purposes of conducting those studies?
 6 A. Could you clarify that?
 7 Q. Are there manuals? Regulations? What do you
 8 refer to as the basis for conducting the studies that
 9 you conduct and the determinations that you make?
 10 A. We use the Water Control Manual to determine
 11 how to operate the reservoirs.
 12 Q. Anything else?
 13 A. No.
 14 Q. You were not involved, were you, with the
 15 adoption or enactment of any provision within the Water
 16 Control Manual, were you?
 17 A. No.
 18 Q. You also indicate that you make realtime
 19 decisions of reservoir operations of the federal
 20 reservoirs in the Pacific Northwest Region. Can you
 21 please describe that job duty?
 22 A. It involves looking at, in realtime, today's
 23 conditions on a reservoir and deciding how much water to
 24 release.
 25 Q. And do you have the authority to order such

1 the reporter to read back any portion of the transcript.

2 THE WITNESS: That's a lot.

3 MR. GEHLERT: Can we go off the record for
4 second?

5 MS. MARTENS: Sure.

6 (An off-the-record discussion was held.)

7 THE WITNESS: Can you re-ask the question?

8 BY MS. MARTENS:

9 Q. Yes, I can. We have spent some considerable
10 time this morning discussing your roles and
11 responsibilities with respect to planning reservoir
12 releases. I am just interested in whether or not we
13 have discussed all of your duties and responsibilities
14 related to planning reservoir releases.

15 Frankly, I am not trying to trick you. I just
16 need to know what your roles and responsibilities are
17 with respect to this analysis of planning reservoir
18 releases, without having to go back through all of the
19 prior testimony.

20 If there's something that you do with respect
21 to that analysis that we have not talked about, I need
22 to know that.

23 A. Not that I can think of.

24 Q. Moving on in Paragraph 3, you indicate that
25 flood control operations are necessary in many years to

1 Q. That would be fine.

2 A. 2006.

3 Q. Is that the only year?

4 A. And, possibly, the year 2000.

5 Q. But you were not employed in the year 2000;
6 correct?

7 A. That's correct.

8 Q. So since 2001, since you have been in your
9 current position, there have not been many years that
10 those flood control operations were necessary? It was
11 only one year?

12 A. That's correct.

13 Q. How about 2005? Were there any flood control
14 operations necessary in 2005?

15 A. No.

16 Q. And where are you referring to within the
17 exhibits to answer that question?

18 A. I am looking at Exhibit 13, and I am looking at
19 the year 2005. I am looking at the peak discharge at
20 Glenwood Bridge. The peak discharge occurred August
21 10th, and it was 1,258 CFS.

22 Q. I now understand the data, but bear with me and
23 my lack of clear understanding. How do those three
24 factors lead you to know that there were no necessary
25 flood control operations in the year 2005?

1 avoid potentially damaging floods from impacting the
2 City of Boise and other downstream communities. What
3 flood control operations are you referring to?

4 A. I'm referring to releasing water from the
5 reservoirs to maintain space so that the reservoirs can
6 store the large amount of run-off that is expected into
7 the reservoirs, to avoid having to release that water
8 later and causing flooding.

9 Q. And how do you determine when those operations
10 are necessary?

11 A. We look at what the storage of the reservoir is
12 currently. We look at the forecasted volume run-off
13 that is expected in the Boise Basin.

14 We turn to the rule curves in the Water Control
15 Manual and determine whether we need to either make
16 space or if we have plenty of space to control the
17 run-off or to contain the run-off.

18 Q. Do you utilize any resource other than the
19 Water Control Manual for those purposes?

20 A. No.

21 Q. You indicate that those operations are
22 necessary in many years to avoid potentially damaging
23 floods. Can you tell me, since 2001, which years those
24 necessary flood control operations were put in place?

25 A. I would have to refer to the exhibits.

1 A. First of all, the timing of it. Flood control
2 releases are not made in August. Also, the amount of
3 discharge is 1,258, which is a pretty nondescript, low
4 flow at Glenwood.

5 Q. And, again, the data that is contained within
6 page 1 of Deposition Exhibit 13 is the maximum flow date
7 in the entire year?

8 A. Correct.

9 Q. Now, if we do look at 2006, which I understand
10 is your testimony of the only year that flood control
11 operations were necessary since you have been employed
12 in this position, what factors do you take into
13 consideration to know that, in 2006, there were flood
14 control operations put in place? If your memory is one
15 of those pieces of information, please let me know.

16 A. First of all, my memory.

17 Q. Okay.

18 A. Second of all, the date April 22nd is during a
19 flood control season; and the amount of flow down at
20 Glenwood which was 7,127 CFS.

21 Q. And, again, please forgive me for my ignorance
22 here. If I am looking at this data and I am considering
23 the same factors that you have and I look at 1997 where
24 there is a higher maximum rate at an earlier date, can I
25 assume, in 1997, there were also flood control

1 operations put in place?
 2 A. Yes.
 3 Q. And, again, because of those three elements of
 4 criteria?
 5 A. Yes.
 6 Q. So in order for you to look at data and
 7 determine whether or not flood control operations were
 8 instituted in a particular season, you really only need
 9 those three pieces of information? Actually, I guess,
 10 there are just two pieces of information -- the date and
 11 the maximum?
 12 A. I would also look at the storage of the
 13 reservoirs for those years, as well.
 14 Q. And where do I find the data on the storage of
 15 the reservoirs?
 16 A. It's on page 3 of this exhibit.
 17 Q. Explain to me that element. How do you
 18 determine, by looking at the storage within the
 19 reservoirs, how that plays into your determination as to
 20 whether or not flood control operations were instituted
 21 in a particular year?
 22 A. The storage would not be the deciding factor,
 23 but it would be one of the factors that I would also
 24 look at.
 25 I would look at the first page first to look at

1 what the flows were, the date and the flows that
 2 occurred; but I would also want to look at the storage
 3 to just make sure that I knew what was going on in that
 4 year, as far as the storage versus the flood control
 5 releases that were occurring that year.
 6 Q. So let's take, for example, because I had
 7 raised it earlier, the 1997 year where you have
 8 determined, by looking at the date and the maximum, that
 9 flood control operations were instituted in 1997. Would
 10 you, also, though, before you made that determination,
 11 confirm the storage in the reservoirs?
 12 A. I would look at the storage in the reservoirs;
 13 but I do remember 1997 from my memory, as well.
 14 Q. And what do you remember from 1997?
 15 A. 1997 was a very large water year and the
 16 reservoirs were evacuated to -- if not to their maximum,
 17 to about their maximum extent for 1997. It was a very
 18 large water year.
 19 Q. And what do you remember about 2006?
 20 A. 2006 was also a really large water year, and we
 21 were evacuating space out of the reservoirs through the
 22 spring to make room for all of the run-off that was
 23 expected.
 24 Q. Any other year that you have a specific
 25 recollection regarding reservoir operations for flood

1 control?
 2 A. No.
 3 Q. So do you actually have any personal knowledge
 4 of flood control operations being necessary in many
 5 years?
 6 A. Could you repeat your question, please?
 7 Q. Yes. Do you have any personal knowledge of
 8 reservoir operations being necessary in many years? I
 9 am sorry. Do you have actual -- I will rephrase the
 10 question so we are clear.
 11 Do you have personal knowledge of flood control
 12 operations being necessary in many years?
 13 A. No.
 14 Q. And the extent of your review in that regard is
 15 the data that is contained in Deposition Exhibit No.
 16 13?
 17 A. Yes.
 18 Q. Did you review any other data to support that
 19 statement?
 20 A. Which statement are we referring to?
 21 Q. The statement in your affidavit that flood
 22 control operations are necessary in many years to avoid
 23 potentially damaging floods from impacting the City of
 24 Boise and other downstream communities.
 25 A. And the question was --

1 Q. Well, we have discussed the fact that you do
 2 not have any personal knowledge of that. So I have
 3 asked you, then, what data you reviewed in order to make
 4 that statement?
 5 A. I reviewed the data in Exhibit 13 and talked to
 6 coworkers who were here at Reclamation during some of
 7 those years.
 8 Q. Who did you talk to?
 9 A. My coworkers, Ted Day and John Roache.
 10 Q. How do you spell John's last name?
 11 A. R-o-a-c-h-e.
 12 Q. What did Ted Day tell you about flood control
 13 operations being necessary in many years?
 14 A. I don't recall.
 15 Q. What did John Roache tell you about flood
 16 control operations being necessary in many years?
 17 A. I don't recall.
 18 Q. When did you have that conversation with them?
 19 A. I don't recall.
 20 Q. Did you review any other document, electronic
 21 or hard copy, to support that statement?
 22 A. No.
 23 Q. Do you agree with that statement?
 24 A. Yes.
 25 Q. In what years -- I will make sure I use the

1 right language here. If you will, bear with me for just
2 a second.

3 THE WITNESS: Can I take a break for a minute?

4 MR. GEHLERT: Do you need to make a phone call?

5 THE WITNESS: Yes.

6 MR. GEHLERT: Go ahead.

7 (Recess.)

8 BY MS. MARTENS:

9 Q. Back on the record. Did you examine Lucky Peak
10 water accounting records in order to render your opinion
11 that flood control operations were necessary in many
12 years to avoid potentially damaging floods?

13 A. No.

14 Q. Do you know of anybody who examined Lucky Peak
15 water accounting records for that purpose?

16 A. No.

17 Q. And you also, then, did not determine, based
18 upon any review of accounting records, that the
19 irrigators contracting for water from Anderson Ranch and
20 Arrowrock Reservoirs had received their full entitlement
21 of storage water?

22 MR. GEHLERT: Can you repeat the question?

23 BY MS. MARTENS:

24 Q. I am just going to read a statement, and I am
25 going to ask you if you performed this analysis. It

1 states, "The United States has examined the Lucky Peak
2 water accounting records since coordinated operations
3 for flood control began in 1955." You didn't do that;
4 correct? That wasn't something you did?

5 MR. GEHLERT: Let's take a second.

6 (Recess.)

7 MS. MARTENS: Back on the record.

8 MR. CAMPBELL: We are on the record again.

9 BY MS. MARTENS:

10 Q. Did you want to change your response to my
11 previous question?

12 A. Can you repeat your question, please?

13 Q. Yes. You testified that you did not review
14 Lucky Peak water accounting records since coordinated
15 operations for flood control began in 1955.

16 MR. GEHLERT: Can I object? I don't think she
17 ever actually answered the question.

18 MR. CAMPBELL: That's fine. Why don't you read
19 it back, the original question?

20 (Whereupon, the previous question and answer
21 were read back by the court reporter.)

22 MR. GEHLERT: Can we go off the record?

23 (An off-the-record discussion was held.)

24 (Whereupon, a series of previous questions and
25 answers were read back by the court reporter.)

1 BY MS. MARTENS:

2 Q. Did you want to change your answer to that
3 question?

4 A. No.

5 Q. So you did not examine the accounting records
6 and you do not know of anybody who did?

7 A. Which accounting records? Can you repeat the
8 whole thing, please?

9 Q. Sure. Did you examine Lucky Peak water
10 accounting records since coordinated operations for
11 flood control began in 1955?

12 A. No.

13 Q. Do you know of anybody who did?

14 A. No.

15 Q. Thank you. Do you know whether or not
16 irrigators who contracted for water from Anderson Ranch
17 and Arrowrock Reservoirs received their full entitlement
18 of storage water for the years commencing in 1955?

19 A. I think this addresses how I did my analysis,
20 and I did not look at all of the years. I narrowed --
21 to make the process go faster, I narrowed down the
22 years, looking at the flow records.

23 Q. So you looked at flow records, but you did not
24 determine whether or not irrigators contracting for
25 water from Anderson Ranch and Arrowrock received their

1 full entitlement for storage water in each year since
2 1955, did you?

3 A. Not in every year.

4 Q. So before I was reading from the brief, we were
5 talking about your statement in your affidavit that
6 flood control operations were necessary in many years.
7 I believe you testified that you formed that opinion
8 based upon your review of the documents in Deposition
9 Exhibit No. 13 and your communications with Ted Day and
10 John Roache; correct?

11 A. And personal experience.

12 Q. And personal experience. Okay. I think that
13 we covered your personal experience being that you are
14 aware of 1997 and 2006; correct?

15 A. Yes.

16 Q. Anything else about your personal experience
17 that supports that opinion?

18 A. I had experience at the Weather Service. I
19 knew which years were high flood control years, from my
20 previous experience with the Weather Service.

21 Q. And which years were those?

22 A. A lot of the high years stick in your memory.

23 Q. What years were those?

24 A. '93, '98.

25 Q. And where did you live in 1993?

Page 114 1 attorney regarding this Water Right License? 2 A. No. 3 Q. Did you participate in any way in the process 4 respecting this Water Right License with the Department 5 of Water Resources? 6 A. No. 7 Q. Were you ever aware that it had been issued? 8 A. No. 9 Q. I will represent to you that it was issued in 10 September of 2002. You can see that on the second page. 11 If you review this Water Right License, can you tell me 12 what the capacity of Lucky Peak Reservoir is represented 13 to be? 14 A. The reservoir -- I'm reading from the document. 15 The reservoir storage capacity is 293,020 acre feet. 16 Q. And where are you reading from? 17 A. Page 2, Point No. 3. 18 Q. I would now like to refer to Deposition Exhibit 19 No. 2, which is your affidavit. The very last sentence 20 of Paragraph No. 3 states that the space allocations for 21 flood control are as follows, and you speak of Arrowrock 22 and you speak of Anderson Ranch, and then you state, 23 "and Lucky Peak at 264,000 acre feet." 24 Can you explain to me the difference between 25 that allocation for flood control and the capacity	Page 116 1 computer program, other than with respect to the flow 2 augmentation portion? 3 A. No. 4 Q. Are you involved at all in the allocation of 5 storage to various contractors and the purposes for that 6 allocation? 7 A. No. 8 Q. Are you familiar with that process? 9 A. I know that they run the computer program. 10 Q. Any other familiarity with that process or that 11 allocation? 12 A. No. 13 Q. Have you ever participated in that 14 allocation? 15 A. No. 16 Q. And you are not familiar with making up for 17 shortages due to flood control operations in the Boise 18 project? 19 A. Well, for this case, I reviewed that but -- no. 20 Q. So you are not familiar with the program being 21 utilized for that purpose? 22 A. No. 23 Q. Have you ever been involved in that analysis? 24 A. No. 25 Q. Have you ever been involved in making any
Page 115 1 indication within the Water Right License? 2 A. No. 3 Q. Moving on to Paragraph No. 4, you indicate that 4 you are familiar with the water right accounting system 5 of the flow for the Boise project. Are you familiar 6 with the water right accounting system? 7 A. In this context, I was talking about the 8 program. 9 Q. And what program is that? 10 A. That's the water right accounting program that 11 the Department of Water Resources runs. 12 Q. Do you utilize the Boise water right accounting 13 computer program? 14 A. No. 15 Q. Did you participate in development of the 16 program? 17 A. No. 18 Q. What is your familiarity with that program? 19 A. I am aware that it exists. I get periodic 20 updates from IDWR during the flow augmentation season; 21 they tell me how close we are to fulfilling our flow 22 augmentation requirement; and I know that they run it 23 through the year. 24 Q. Anything else that you have been made aware of 25 with respect to the Boise water right accounting	Page 117 1 determinations regarding making up storage utilized for 2 flood control operations? 3 A. No. 4 Q. And have you ever been involved or do you have 5 any familiarity specifically with respect to storage 6 allocation for each Reclamation contractor being input 7 into the accounting model? 8 A. No. 9 Q. Or being used to account for water for the rest 10 of the water year? I am referring, if it helps you any, 11 to the last sentence of that paragraph. 12 A. No. 13 Q. And you would not know where the additional 14 water comes from, would you? 15 A. Which additional water? 16 Q. The shortages due to flood control operations 17 being made up. 18 A. No. 19 Q. I would assume you did not draft this paragraph 20 of your affidavit? 21 A. No. 22 Q. Would I also be correct in assuming that it is 23 really not accurate that you are familiar with those 24 processes or participate in any way with those 25 processes?

IN THE DISTRICT COURT OF THE FIFTH JUDICIAL DISTRICT OF
THE STATE OF IDAHO, IN AND FOR THE COUNTY OF TWIN FALLS

In Re: SRBA,)
Case No. 39576.) Subcase No. 63-3618
) (Lucky Peak Reservoir)
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DEPOSITION OF MARY MELLEMA

Volume II

(Pages 127 through 205)

Law Offices of
Moffatt, Thomas, Barrett, Rock & Fields, Chartered
101 South Capitol Boulevard, 10th Floor
Boise, Idaho 83702

Wednesday, January 30, 2008
Beginning at 9:42 o'clock a.m.

QnA COURT REPORTING
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(ELECTRONIC COPY)

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

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?

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?

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

Page 156 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	Page 158 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 --
Page 157 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.	Page 159 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.

Page 176 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.	Page 178 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.
Page 177 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	Page 179 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?

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

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?

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.

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

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

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?

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.

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.

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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

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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

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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?

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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

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

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

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?

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.

Exhibit “B”

Cited Portions of Vols. I and II of Deposition of Jerrold D. Gregg 1/30-31/08

Supplemental Affidavit of Scott L. Campbell in Support of Pioneer’s and Settlers’ MSJ

IN THE DISTRICT COURT OF THE FIFTH JUDICIAL DISTRICT OF
THE STATE OF IDAHO, IN AND FOR THE COUNTY OF TWIN FALLS

In Re: SRBA,)
) Subcase No. 63-3618
Case No. 39576.) (Lucky Peak Reservoir)
)
)
_____)

DEPOSITION OF JERROLD D. GREGG

Volumes I and II

(Pages 1 through 210)

Law Offices of
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Wednesday, January 30, 2008
Beginning at 1:07 o'clock p.m.;
and

Thursday, January 31, 2008
Beginning at 9:35 o'clock a.m.

QnA COURT REPORTING
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(ELECTRONIC COPY)

Deposition of Jerrold D. Gregg, Volumes I and II

1 A. I'm sorry. Yes.
 2 Q. "...and the officer of the United States in
 3 charge of the Boise Project..." Would that be you,
 4 sir?
 5 A. That would be my position.
 6 Q. And the determination that is referred to
 7 relates to the calculations under (a) and (b) of
 8 Paragraph 7; is that right?
 9 A. Correct.
 10 Q. And it says, so far as practicable, those
 11 determinations by this Committee "...shall be made
 12 thirty days of the end of the storage season involved;"
 13 is that correct?
 14 A. That's correct.
 15 Q. Is it correct that, as far as you are aware, as
 16 the representative of the Bureau of Reclamation, this
 17 procedure and these calculations under this procedure
 18 have never been performed?
 19 A. I wouldn't characterize it that way. I would
 20 say that the procedures are, for practical reasons, more
 21 expansive than if you read the small paragraph here.
 22 Q. I understand that. That is not what I am
 23 asking though. Let me try to be more precise. Okay. I
 24 am not talking about the procedures that you have
 25 followed and personally observed from 1987 until the

1 A. Neil Stessman was Project Superintendent from
 2 mid 1984 until 1987. If this criteria would have been
 3 met during that time period, I assume he would have been
 4 involved. Both Project Superintendents prior to Neil
 5 Stessman are deceased. I don't know of anybody else.
 6 Q. Before you came to the deposition today, did
 7 you talk with anyone concerning any documentation that
 8 might exist in correspondence files or historical
 9 documents that would relate to the procedures set forth
 10 in Paragraph 7 of Exhibit Nos. 4 and 5?
 11 A. No, I do not.
 12 Q. Do you know anyone with the Bureau of
 13 Reclamation who would be able to provide input with
 14 respect to whether or not there are any documents
 15 relating to Paragraph 7 of Exhibits 4 and 5?
 16 A. The only information I know of may be in the
 17 contract files with the 1954 contracts. If there are
 18 any memos, that's the only place I would know of besides
 19 the Archives.
 20 Q. Is that Mr. Patterson, Ryan Patterson, again,
 21 who is in charge of that particular section of the
 22 Bureau?
 23 A. Those files? That's correct.
 24 Q. Those are in the Regional Office; is that
 25 correct?

1 present. I am not talking about that at all. I am
 2 talking about before the 1985 Water Control Manual was
 3 adopted.
 4 To your knowledge, as the 30(b)(6)
 5 representative of the Bureau of Reclamation, do you know
 6 if the procedures that are described in the last
 7 sentence of Paragraph 7 of Exhibits 4 and 5 have ever
 8 been followed the way they are written in the
 9 documents?
 10 A. Prior to 1985? No. I mean, prior to the Water
 11 Control Manual being adopted, no. I have no knowledge
 12 of that.
 13 MR. GEHLERT: If I could ask the reporter, you
 14 did get the last part of his answer, that he had no
 15 knowledge of that?
 16 THE COURT REPORTER: Yes.
 17 BY MR. CAMPBELL:
 18 Q. Would you like to say it again, Mr. Gregg?
 19 MR. GEHLERT: I just wanted to clarify that he
 20 was answering that he had no knowledge to answer your
 21 question.
 22 MR. CAMPBELL: I understand.
 23 Q. Do you know of anyone else who would have
 24 knowledge of that particular question -- with the Bureau
 25 of Reclamation?

1 A. Correct.
 2 MR. CAMPBELL: Counsel, will we be allowed to
 3 have access to those files?
 4 MR. GEHLERT: I believe so. Let me
 5 coordinate that.
 6 MR. CAMPBELL: Just let us know.
 7 Q. Mr. Gregg, in terms of the document that is
 8 part of Exhibits 4 -- or, actually, documents that are
 9 part of Exhibits 4 and 5, it appears to me that there is
 10 an Exhibit A on both Exhibit 4 and 5?
 11 A. Yes.
 12 Q. Is that correct?
 13 A. That is correct.
 14 Q. And can you identify that particular Exhibit A
 15 to both Exhibits 4 and 5 for me, please?
 16 A. Exhibit A in both Exhibits 4 and 5 is the
 17 November 20, 1953, MOA between the Bureau of Reclamation
 18 and the Corps of Engineers.
 19 Q. That is the same document that we talked about
 20 in your prior testimony; is that correct?
 21 A. That's correct.
 22 Q. And that document has been --
 23 MR. GEHLERT: It's 3, Exhibit No. 3.
 24 MR. CAMPBELL: Thank you, counsel.
 25 THE WITNESS: Exhibit 3.

1 a conversation with your counsel. I understand that you
2 want me to clarify the question or you want me to ask it
3 again or --

4 A. Yes.

5 Q. Do you want me to ask a different question so
6 you don't have to answer the one that I presented to
7 you?

8 A. If you could, restate it.

9 Q. Maybe I should break it down into certain
10 parts. My understanding of your testimony was that you
11 interpret the last paragraph on page 1-3 of Exhibit 16
12 to mean that the provisions of Section 6 of Exhibit 3
13 were replaced by Exhibit 16?

14 A. Yes.

15 Q. Is that correct?

16 A. That's what I stated previously.

17 Q. Is that still your testimony?

18 A. Yes.

19 Q. So we have got that established. Okay. Now,
20 the next part of the question is: Do you have an
21 understanding of what the provisions of Section 6 of
22 Exhibit 3 meant, in terms of Boise River Reservoir
23 operations?

24 A. I have not ever -- I never went to Section 6
25 and tried to recreate what those provisions mean, since

1 Exhibit 3 were going to be replaced by the operating
2 criteria in Exhibit 16, the 1985 Water Control Manual?

3 A. When you say "storage rights," are you talking
4 about water rights or storage space?

5 Q. I am talking about water accruing to storage in
6 Anderson Ranch and Arrowrock Reservoirs, under contract
7 between the Bureau of Reclamation and the irrigation
8 entities that have the rights to that water that accrues
9 in that space.

10 A. As I stated previously, I was not here at the
11 time; and I am not aware of what processes or analyses
12 were done.

13 Q. So you do not know --

14 A. Correct.

15 Q. -- if anyone conducted that evaluation?

16 A. I do not know.

17 Q. Do you know if anyone would know more than you
18 as to whether or not that evaluation was conducted?

19 A. As I stated previously, those folks are either
20 retired or deceased. I testified to that earlier.

21 Q. So am I correct in understanding that the
22 answer is, no, there is no one else with the Bureau of
23 Reclamation, currently employed, who would be better
24 postured, in a better position, to know if that
25 evaluation was conducted before the 1985 Water Control

1 they are not in effect. So --

2 Q. Have you ever reviewed the provisions of
3 Section 6?

4 A. I briefly read them.

5 Q. So what is your statement based upon, then,
6 that the 1985 Water Control Manual, Exhibit 16, replaces
7 Section 6 of Exhibit 3?

8 A. Section 6 of the 1953 Agreement was the first
9 attempt at flood operating criteria and rudimentary
10 flood control rule curves.

11 After the 1974 incident, of course, the 1985
12 Water Control Manual was developed, which was a newer,
13 more improved version and, as the article states, based
14 on technology and the ability to use computers, et
15 cetera.

16 Q. But from your standpoint, am I correct in
17 stating that you have not made a comparison of the
18 provisions of Section 6 of Exhibit 3 with the operating
19 criteria for the reservoirs set forth in Exhibit 16?

20 A. Correct.

21 Q. Do you know if anyone with the Bureau of
22 Reclamation, prior to the adoption of Exhibit 16,
23 conducted any evaluation of the impacts to storage
24 rights in Anderson Ranch and Arrowrock Dam which might
25 occur because the operating criteria in Section 6 of

1 Manual was adopted?

2 A. To my knowledge, that's correct.

3 Q. Mr. Gregg, I apologize if I am asking a
4 question that is similar to what I asked yesterday. If
5 you will indulge me, turn to page 13 of Exhibit 3,
6 please.

7 MR. GEHLERT: Deposition Exhibit 3?

8 MR. CAMPBELL: Yes. I am sorry. Deposition
9 Exhibit 3, page 13.

10 Q. That should have Section 7; is that correct?

11 A. That's correct.

12 Q. Again, I think you have reviewed that provision
13 before; is that correct?

14 A. Correct.

15 Q. And there is a reference at the end of that
16 Paragraph, Section 7, to "...concurrence of all entities
17 having rights in the reservoir system and Lake Lowell."
18 Do you see that reference at the end of the paragraph?

19 A. Yes.

20 Q. From your understanding, what does the
21 reference "entities having rights in the reservoir
22 system and Lake Lowell" mean?

23 A. Those would be the contractors, irrigation
24 companies, and districts that have repayment contracts
25 in Arrowrock, Anderson, and Lake Lowell.

Page 154 1 Q. Would that group of entities include Pioneer 2 and Settlers Irrigation Districts? 3 A. Yes. 4 Q. Do you know, from your information, whether or 5 not the Bureau of Reclamation provided any notice to 6 either Pioneer or Settlers Irrigation District about the 7 process that was engaged in to develop and adopt the 8 1985 Water Control Manual, Exhibit 16? 9 A. No. I have no knowledge. 10 Q. Do you know if Pioneer or Settlers Irrigation 11 Districts, or their representatives, actually 12 participated in the process for the development of 13 Exhibit 16, the 1985 Water Control Manual? 14 A. I have no knowledge of that. 15 Q. Do you have any knowledge of whether or not the 16 Bureau of Reclamation obtained the concurrence of 17 Pioneer or Settlers Irrigation District with regard to 18 the adoption of the 1985 Water Control Manual, Exhibit 19 16? 20 A. I have no knowledge. 21 Q. Do you know anyone with the Bureau of 22 Reclamation who would have that knowledge? 23 A. I have no direct knowledge of who that would 24 be. 25 Q. You mentioned some of the folks previously --	Page 156 1 Exhibit No. 16. Do you have it there, sir? 2 A. Yes. 3 Q. If you would, read the paragraph at the top of 4 that page, please, to yourself. Tell me when you have 5 finished. 6 MR. GEHLERT: You might want to start with 7 the -- 8 THE WITNESS: Yes. 9 BY MR. CAMPBELL: 10 Q. Can you tell me whether or not the Bureau of 11 Reclamation has made any revisions to the 1985 Water 12 Control Manual since its adoption? 13 A. Revisions are made by the Corps of Engineers. 14 This is a Corps of Engineers document. 15 Q. Does the Bureau of Reclamation have any input 16 to those revisions? 17 A. Yes. 18 Q. Describe to me how that occurs. 19 A. To the best of my knowledge, because that's 20 being handled by our Regional Office -- but if the 21 revisions affect our reservoirs or operations that 22 affect our reservoirs, we have been consulted prior to 23 the revision being made. 24 Q. By "we," who do you mean? 25 A. The Bureau of Reclamation.
Page 155 1 Mr. Golus; Mr. Vinsonhaler; Mr. Van den Berg; 2 Mr. Stessman; Mr. Wensman, who I believe is deceased; 3 and Mr. Yribar? 4 A. Yribar. 5 Q. Are those individuals who might have the 6 knowledge that I am seeking with regard to that 7 particular issue that we have been talking about, as to 8 the consent or the concurrence of Pioneer and Settlers 9 Irrigation Districts to the adoption of the Water 10 Control Manual of 1985? 11 A. I would be speculating, but Mr. Vinsonhaler and 12 Mr. Van den Berg and Mr. Stessman may. 13 Q. Not Mr. Golus? 14 A. In his position at the time, I would believe 15 not; but I don't know for sure. 16 MR. CAMPBELL: Why don't we go ahead and break 17 right now for lunch? Let's reconvene at 1:00, if that's 18 okay. 19 (Lunch recess.) 20 MR. CAMPBELL: Would you read back the last 21 question and answer, please? 22 (Whereupon, the previous question and answer 23 were read back by the court reporter.) 24 BY MR. CAMPBELL: 25 Q. Mr. Gregg, if you would, turn to page 1-4 in	Page 157 1 Q. And who specifically? What individuals have 2 been involved in that process? 3 A. I believe most of them would be the Water 4 Operations Group within the Regional Office. 5 Q. And could I have the name of the individual who 6 is in charge of that group? 7 A. Pat McGrane. 8 Q. How long has he been in that position? Do you 9 know? 10 A. I believe, since the late -- mid to -- late 11 '90s, I believe. 12 Q. And that is a male; is that correct? 13 A. Yes. 14 Q. Tell me the extent of your involvement in 15 communications with respect to that process. Have there 16 been any changes to the Water Control Manual? Have you 17 been involved in it at all? 18 A. In the front of the Manual, which was revised 19 in November 1993, we were asked for some information, 20 which is a Communications Directory. I am not aware 21 of -- I was not involved in any other changes that I can 22 remember. 23 Q. Are you aware of whether or not any other 24 revisions to the 1985 Water Control Manual which have 25 occurred since its adoption in 1985 followed the

1 reach.
 2 A. Sure.
 3 Q. Mr. Gregg, do you intend to give any testimony
 4 as an expert witness if this matter goes to trial?
 5 MR. GEHLERT: Do you want to talk for a second?
 6 THE WITNESS: Yes.
 7 (Recess.)
 8 BY MR. CAMPBELL:
 9 Q. Are you ready to go back on?
 10 A. Yes.
 11 Q. Can you answer the question, please?
 12 A. I have not been asked by my attorney; but if I
 13 am, I would be available to testify.
 14 Q. As an expert?
 15 A. I would defer to my attorney as to which
 16 category I would be testifying to.
 17 Q. So at this point in time, you do not know if
 18 you are going to be testifying as a non-expert or as an
 19 expert; is that correct?
 20 A. That's correct.
 21 Q. Well, if you are identified as a witness, if we
 22 proceed to trial, we will have to take your deposition
 23 again, just to let you know that. Do you understand?
 24 A. Yes.
 25 Q. Good. Mr. Gregg, I would like to hand you what

1 has been marked as Deposition Exhibit No. 18. After you
 2 have had a chance to look at that document -- if you
 3 want to, you can read the whole thing, if you feel that
 4 is necessary. After you are sufficiently familiar with
 5 it to tell me if you can identify it, then please
 6 respond.
 7 A. Do you want me to read the whole document or
 8 just identify what the document is?
 9 Q. If you feel you have to read the whole document
 10 to identify whether or not you have seen it before, then
 11 go ahead and do so. I will be asking you if you have
 12 ever seen the document before, so that will be the
 13 question.
 14 Why don't we go ahead and go off the record
 15 until you have finished?
 16 A. Okay.
 17 (Recess.)
 18 BY MR. CAMPBELL:
 19 Q. Have you reviewed the document?
 20 A. Yes.
 21 Q. Exhibit No. 18?
 22 A. Yes, I have.
 23 Q. Thank you. Can you identify the document?
 24 A. I believe, from the heading, that it's a memo,
 25 a memorandum, from the Boise Field Solicitor to the

1 Regional Planning Officer.
 2 Q. Have you ever seen the document before?
 3 A. I may have, a long time ago. I don't remember
 4 it.
 5 Q. Okay.
 6 A. I may have.
 7 Q. Can you tell me, Mr. Gregg, what the procedure
 8 for the Bureau of Reclamation is that would generate a
 9 document like this from the Field Solicitor?
 10 A. My presumption --
 11 Q. In terms of the Bureau and what the Bureau does
 12 to generate some kind of response as is reflected on
 13 Exhibit No. 18 -- I am talking about currently. I am
 14 not talking about back in 1976. I am talking about
 15 currently.
 16 Do you have a procedure? Does the Bureau have
 17 a procedure which would generate some kind of response
 18 letter or memo like Exhibit No. 18?
 19 A. There is a procedure for corresponding -- or
 20 writing official correspondence to the Field Solicitor
 21 in the Region.
 22 Q. And what is that procedure?
 23 A. It's, generally, as in this memo, a -- well,
 24 today, my understanding -- and we would need the Field
 25 Solicitor to answer that correctly. If Reclamation has

1 a certain question, they would write a formal memo to
 2 the Field Solicitor's Office.
 3 Q. That is the procedure today?
 4 A. Yes.
 5 Q. And who has authority to make those official,
 6 written requests or memos to the Field Solicitor's
 7 Office, in terms of the Bureau of Reclamation?
 8 A. Currently, for official requests to the Field
 9 Solicitor's Office, they have to be okayed --
 10 policy-wise, they have to be okayed by the Regional
 11 Director.
 12 Q. Currently?
 13 A. Currently.
 14 Q. Has that been the case during your entire
 15 twenty years with the Bureau in Idaho?
 16 A. About eight, nine years ago the policy was
 17 updated. I'm not sure -- the policy was unclear prior
 18 to that. I'm not sure what it was exactly.
 19 Q. Are there any documents which reflect the
 20 official procedure of the Bureau of Reclamation in
 21 requesting written responses from the Field Solicitor?
 22 A. In the mid '90s, there was a policy signed by
 23 the Regional Director. I'm not sure if that's still
 24 available. There was a policy memo by the Regional
 25 Director.

1 MR. CAMPBELL: We would like to obtain a copy
2 of that. I assume your response is the same? You will
3 look into it and see if we can get a copy?

4 MR. GEHLERT: Yes.

5 BY MR. CAMPBELL:

6 Q. All right. Mr. Gregg, have you ever requested
7 a written response from the Field Solicitor's Office
8 dealing with an issue that you had to handle for the
9 Bureau of Reclamation?

10 A. Yes, I have.

11 Q. Has it just been once, or has it been more than
12 once?

13 A. I think I'm not quite sure of the context of
14 your question. The Solicitor's Office are our
15 attorneys. We sometimes, on issues, have daily
16 conversations with them.

17 Q. I appreciate that. I am talking about formal,
18 written requests for responses of the nature of Exhibit
19 18.

20 A. During my tenure, there has been several
21 instances; and they have been policy. Like I said, it
22 was put out in, I believe, the mid '90s. I may have the
23 date wrong. It's for my office to go to the Regional
24 Office, and then they make the request of the
25 Solicitor's Office; and that has been followed.

1 Q. And after that process is utilized by the
2 Bureau of Reclamation, does the request typically
3 generate a response from the Field Solicitor's Office?

4 A. I can't say that it does all the time. I can't
5 say that every time it generates a written response.

6 Q. Would you say, typically, they respond in some
7 fashion, either in writing or orally?

8 A. Yes.

9 Q. And in your experience, in the last twenty
10 years in Idaho for the Bureau of Reclamation, have you
11 or the Regional Office, as a result of your request,
12 received written responses from the Field Solicitor's
13 Office of the nature or similar to Exhibit 18?

14 A. I'm not sure I have ever generated one in this
15 vein. Most of mine, I believe, have been over land
16 issues or contract interpretation on the Payette, if I
17 remember right.

18 Q. Well, I am not talking about the subject matter
19 of Exhibit 18.

20 A. Right.

21 Q. I am talking about the process.

22 A. Okay.

23 Q. And my question is: Have you ever gotten a
24 written response from the Field Solicitor's Office in
25 response to a request that you generated through the

1 Regional Office to the Field Solicitor?

2 A. There may have been one or two quite sometime
3 ago.

4 Q. And what significance, in your mind, do those
5 written responses have? I will give you --

6 A. From a layman's standpoint -- and I'm not an
7 attorney -- we were asking for, essentially, advice,
8 sometimes legal, sometimes research.

9 Q. Okay.

10 A. Sometimes specialty advice.

11 Q. All right. Let me ask this question: Have
12 you, in your twenty years with the Bureau of Reclamation
13 in Idaho, ever sought a written response or a request to
14 the Field Solicitor's office on an issue of day-to-day,
15 typical, operational issues?

16 A. Could you repeat that again, please?

17 Q. Sure. What I am asking -- I will ask it a
18 different way. During your twenty years with the Bureau
19 in Idaho, have you ever asked for an opinion or a
20 request from the Field Solicitor on day-to-day issues
21 that are not significant?

22 A. Are you asking about a formal opinion?

23 Q. Yes.

24 A. Not usually on day-to-day issues.

25 Q. What type of issues have you requested formal

1 opinions on?

2 A. If I remember right, a couple of them were land
3 issues. One was a contract interpretation.

4 Q. And what did you consider to be the
5 significance of their responses?

6 MR. GEHLERT: Before you answer, Jerry, we have
7 addressed the effect of this memo in our brief. It's a
8 matter of law. I will let Jerry testify as to his
9 understanding. I just want to make it clear that it's a
10 legal issue, and it will be addressed accordingly.

11 MR. CAMPBELL: I am not asking about Exhibit
12 No. 18. I am asking about his requests to the Field
13 Solicitor's Office.

14 MR. GEHLERT: I understand that, Scott. I am
15 just saying that as a general -- the effect of a memo
16 from the Field Solicitor has been addressed.

17 MR. CAMPBELL: I understand. I understand. I
18 am just asking his view, what he considers to be the
19 impact or the effect or the relevance.

20 Q. Why is it important? Is it important to you to
21 get an answer? And if you do, if it is in writing from
22 the Field Solicitor's office, you know, do you just
23 throw it away? I mean, what do you do with it?

24 A. Well, as I said, it may be legal advice. It
25 may be a contract interpretation. It may be some type

1 of research.
 2 Q. Let's run through those three. How about legal
 3 advice? Is that important to you?
 4 A. Yes, it's important.
 5 Q. And how about contract interpretation? Is that
 6 important to you?
 7 A. Yes, it's important.
 8 Q. And the other item was operational -- or
 9 research?
 10 A. Research.
 11 Q. Would their response be important to you?
 12 A. Yes.
 13 Q. So are there any other categories that you
 14 would include, as far as categories of responses from
 15 the Field Solicitor's Office -- in writing?
 16 A. There's a -- the Solicitor's Office is required
 17 to sign off or do legal review on a lot of the legal
 18 instruments such as repayment contracts, easements, et
 19 cetera -- land exchanges. So they do the legal review,
 20 and then actually sign off on those documents.
 21 Q. Is that legal review important to you with your
 22 duties with the Bureau?
 23 A. Yes.
 24 Q. Why is it important?
 25 A. Well, they are our attorneys.

1 Q. Does the Bureau of Reclamation consult with any
 2 other attorneys besides the Field Solicitor's office?
 3 A. Depending on the situation, the Department of
 4 Justice, the U.S. Attorney's Office.
 5 Q. And can you tell me what the discrepancy
 6 between the Field -- excuse me. Strike that.
 7 Can you tell me the circumstances where you
 8 would direct your attention, as far as inquiries, to the
 9 Field Solicitor's office, as opposed to the U.S.
 10 Attorney's Office or the Department of Justice? Is
 11 there a break-down? Is there a categorization? I mean,
 12 how does that work?
 13 A. From a layman -- and I don't want to speak --
 14 Q. I am just asking for your understanding, Mr.
 15 Gregg.
 16 A. Litigation for the U.S. Government is handled
 17 by the Department of Justice.
 18 Q. And what about the U.S. Attorney's Office?
 19 A. Again, they may assist us in some legal issues.
 20 We have, on some complicated water right acquisitions
 21 for flow augmentation, consulted with the Department of
 22 Justice before the documents were finalized.
 23 Q. And what about the Field Solicitor's Office, in
 24 terms of -- do they handle the litigation, too? Why
 25 would you go to -- why wouldn't you go to the Field

1 Solicitor's Office if you have a litigation matter?
 2 A. They are responsible for the Department of
 3 Interior, providing the legal briefs, background
 4 information, advising the client, which is Reclamation.
 5 Q. But is it fair to say that the Field
 6 Solicitor's Office does not represent the Bureau of
 7 Reclamation in litigation matters? Is that correct?
 8 A. It is actually -- as far as the courtroom
 9 proceedings, that is correct, in my understanding.
 10 MR. CAMPBELL: That is all I am asking for.
 11 Is it time we quit.
 12 MR. GEHLERT: If it's a good time for you.
 13 MR. CAMPBELL: I would like to get one more
 14 document and just have you identify it.
 15 MR. GEHLERT: That would be fine.
 16 BY MR. CAMPBELL:
 17 Q. Mr. Gregg, if you would, look at Exhibit No.
 18 19. Tell me if you can identify the document.
 19 A. Yes.
 20 Q. What is the document?
 21 A. It's a letter from Scott Campbell, representing
 22 the Pioneer and Settlers Districts, requesting
 23 additional Lucky Peak storage water, if any become
 24 available, during the Lucky Peak contract renewal
 25 process.

1 Q. And do you recall if you responded to that
 2 correspondence?
 3 A. I'm not sure if we did, in writing. I believe,
 4 during the process, we were advised that you could renew
 5 for your contract amount but not for additional water.
 6 Additional water would be a new application and outside
 7 of that process.
 8 Q. Would you be able to check your files to see if
 9 you have a written response to Exhibit No. 19?
 10 A. Yes.
 11 MR. CAMPBELL: If you do have anything that
 12 responds to that in writing, I would like a copy of
 13 it.
 14 MR. GEHLERT: Understood.
 15 MR. CAMPBELL: Thank you. Let's go off the
 16 record. Before we do, we discussed previously the need
 17 to continue this deposition after documents which we
 18 have requested are made available to us, if they exist,
 19 and if the United States makes them available to us; but
 20 that will be part of a discussion after the summary
 21 judgment briefing is completed.
 22 MR. GEHLERT: Yes.
 23 (The deposition, Volume II, stood in recess at
 24 3:23 p.m.)
 25 (Signature requested.)

