

Julie Klein Fischer
 MORROW DINIUS
 5680 East Franklin Road, Suite 220
 Nampa, Idaho 83687
 Telephone: (208) 475-2200
 Facsimile: (208) 475-2201
 ISB No.: 4601
jfischer@morrowdinius.com

Attorneys for Owyhee Motorcycle Club

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. 63-18957
)
)
)

Case 38576

) AFFIDAVIT OF JULIE KLEIN
) FISCHER
)

 STATE OF IDAHO)
) :ss
 County of Canyon)

JULIE KLEIN FISCHER, being first duly sworn, deposes and says:

1. I am the attorney of record for Owyhee Motorcycle Club in this matter.
2. This affidavit is made based on my own personal knowledge of the facts herein.
3. Attached hereto as Exhibit A, is a true and correct copy of pertinent excerpts from the Deposition of 30(b)(6) Witness, Joe Terteling.

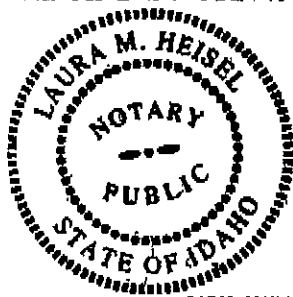
FURTHER YOUR AFFIANT SAYETH NAUGHT.

DATED this 13 day of June, 2008.


 JULIE KLEIN FISCHER

SUBSCRIBED AND SWORN to before me this 13 day of June, 2008.

(SEAL)



Laura M. Heisel
Notary Public for Idaho
My commission expires: 01-19-2013

CERTIFICATE OF SERVICE

I, the undersigned, do hereby certify that on the 13 day of June, 2008, a true and correct copy of the above and foregoing document was served upon the following by:

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c/o Charles L. Honsinger
RINGERT CLARK, Chtd.
455 S. Third Street
P.O. Box 2773
Boise, ID 83701-2773

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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. 63-18957
)
_____)

DEPOSITION OF 30(b)(6) WITNESS, JOE TERTELING
March 21, 2008

REPORTED BY:

COLLEEN P. KLINE, CSR No. 345

Notary Public

Exhibit A

Page 18

Page 20

1 Q. That I just read?
 2 A. Yes.
 3 Q. So you don't have any dispute that the
 4 point of diversion, to the extent that means the
 5 well --
 6 A. Okay. If you specify well, I agree
 7 with you.
 8 Q. -- that's properly recommended in the
 9 Exhibit No. 3, the Department's recommendation;
 10 correct?
 11 A. I believe the well to be correct.
 12 Q. Okay. You were posing some questions
 13 to me that you had concerns about where tanks
 14 are, and some other things that would help you
 15 answer my original question, why did you object
 16 to the point of diversion.
 17 Can you explain to me what your
 18 concerns are with respect to tanks or springs
 19 that you believe may be located on the Owyhee
 20 Motorcycle Club property?
 21 A. Well, I've been told by members that
 22 there are springs up there, and I'm not aware of
 23 those springs. But I've been told that's why the
 24 tank was overflowing. So I don't believe that's
 25 correct, but I've been told that.

1 some other source of -- any other sources of
 2 water --
 3 A. No.
 4 Q. -- than ground water?
 5 A. No.
 6 Q. That was a bad question, but I think
 7 you understood what I meant.
 8 Okay. The spring issue, you explained
 9 that. Someone told you there might be springs.
 10 But you don't think there are springs, though; is
 11 that right?
 12 A. No, I don't think so.
 13 Q. All right. How would that show you the
 14 point of diversion -- where the springs are
 15 springing from?
 16 A. Is that what they do? What was the
 17 question?
 18 Q. I'm just going back to -- you made some
 19 comments when I asked you why Terteling had
 20 objected to the point of diversion. And then you
 21 raised some concerns that you weren't able to
 22 answer that, because you had some concerns about
 23 tanks, and springs, and things like that.
 24 I'm just trying to understand why your
 25 concerns about tanks and springs would affect

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Page 21

1 Q. What members told you that there are
 2 springs?
 3 A. I don't know the guy's name. I just
 4 said, here's water running down. You ought to
 5 turn off your pump. You are wasting water. He
 6 said, that's a spring.
 7 Q. When did that occur?
 8 A. Five years ago.
 9 Q. Five years ago. How many people have
 10 told you there are springs on --
 11 A. The one fellow.
 12 Q. Just the one guy?
 13 A. One fellow.
 14 Q. Do you know if he's a member of the
 15 Club?
 16 A. I assume so.
 17 Q. Were there any other members around
 18 when you had that conversation with him?
 19 A. There was a little kid around, but I
 20 don't know who he was either.
 21 Q. Okay. Probably some motorcycles, too.
 22 If you look at the recommendation which
 23 is Exhibit No. 3, it says the source of Owyhee
 24 Motorcycle Club's water right as ground water.
 25 Do you have a belief that the Club is claiming

1 your -- well, how that would play into your
 2 objection to the point of diversion?
 3 A. They wouldn't have been the same point
 4 of diversion.
 5 Q. A spring would be a different point of
 6 diversion --
 7 A. Yes.
 8 Q. -- than the well?
 9 A. Yes.
 10 Q. Okay. Very good. And just so that we
 11 don't drive our court reporter crazy, let me
 12 finish the question before you answer. And I'll
 13 try to do the same for you; okay?
 14 A. Okay.
 15 Q. Thanks. Okay. What is your concern
 16 about tanks being located on the property? Can
 17 you explain that?
 18 A. Not being an attorney, I don't know if
 19 that's the point of diversion or not. But when
 20 we classified as the well as the point of
 21 diversion, I think we settled that question.
 22 Q. Okay. You are comfortable with that
 23 then. Fair enough. I just wanted to make sure I
 24 hadn't misunderstood something that you said.
 25 Let's turn next to -- in the objection

6 (Pages 18 to 21)

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Page 24

1 that's on file, No. 4 is marked "Priority Date."
 2 That's on page 2 of the objection. That's
 3 Exhibit No. 3. All right?
 4 And the comment under the "Priority
 5 Date" mark is "Only domestic priority." What do
 6 you mean by that?
 7 A. Let me read that.
 8 Q. Sure. Go ahead.
 9 A. (Witness reading.) I think -- my
 10 instructions were clear or not clear to
 11 Charlie -- they started out with no more than a
 12 domestic well.
 13 Q. Okay.
 14 A. Later they enlarged the well so it
 15 could have produced more than the domestic
 16 minimums. So I think my objection follows dates
 17 and quantity. And we'll get to quantity later
 18 on.
 19 Q. Yeah, I want to stick with the priority
 20 date right now.
 21 I just didn't understand what you mean
 22 by "only domestic priority"?
 23 A. Well, I think it's a separation between
 24 in the old days when they used the domestic, and
 25 some date when they started going commercial.

1 that occurred?
 2 A. No.
 3 Q. Do you have any idea when that well
 4 might have been drilled?
 5 A. No. But certainly after -- well, I
 6 don't know.
 7 Q. Okay. Why do you say it started out as
 8 a domestic well? What's the basis of that
 9 comment?
 10 A. I'm saying it didn't exceed the
 11 quantity allowed for domestic well.
 12 Q. What's the quantity that you believe is
 13 allowed for a domestic well?
 14 A. Oh, is it .13 or -- no, it's .0
 15 something.
 16 Q. And --
 17 A. Point -- and cfs.
 18 Q. Sure.
 19 A. Which basically equals what? 18
 20 gallons per minute, or nine gallons per minute?
 21 Can I coach at 18 or 9? It's one of those two.
 22 I can't multiply it in my head.
 23 MR. HONSINGER: We've spoke about this
 24 before. And I think that the term you are
 25 searching for is .02 cfs and nine gallons a

Page 23

Page 25

1 Q. Okay. Let's back up. You said, it
 2 started out only a domestic well. When did it
 3 start out as a domestic well?
 4 A. I believe Ron Stevens' father drilled
 5 that well. And if he's alive, he would be the
 6 person to answer that.
 7 Q. Have you made any inquiry to Ron
 8 Stevens about his father's role in drilling the
 9 well?
 10 A. No, I have not.
 11 Q. Who is Ron Stevens?
 12 A. He's a well driller, who I believe is a
 13 member.
 14 Q. A member of?
 15 A. The OMC.
 16 Q. And what's the basis of your belief
 17 that Ron Stevens' father drilled the Owyhee
 18 Motorcycle Club well?
 19 A. Ron's drilled a couple of wells for us.
 20 I've sat with him, talked to him, BS'd. And I
 21 think he mentioned his dad drilled that well.
 22 Q. So just in passing he's mentioned that
 23 to you?
 24 A. Yes.
 25 Q. Has he given you any indication of when

1 minute and 13,000 gallons a day.
 2 Q. (BY MS. KLEIN FISCHER) Okay.
 3 A. Actually, it's on Charlie's card. If I
 4 could look up his card I could have it.
 5 Q. So what you are saying, Mr. Terteling,
 6 is that Mr. Honsinger's description of what
 7 constituted domestic water right, or what the
 8 limitations are of a domestic water right. That
 9 quantity is your understanding of what Owyhee
 10 Motorcycle Club originally diverted; is that
 11 right?
 12 A. No, I don't even know if we got that.
 13 They had a bad well.
 14 Q. All right. Let me finish the line of
 15 questioning we're on.
 16 You said they had a domestic well at
 17 the beginning. And how do you define "domestic
 18 well"?
 19 A. Small quantity.
 20 Q. The small quantity that Mr. Honsinger
 21 just gave us the formula for?
 22 A. I tried to figure out later on -- not
 23 in the beginning, the quantity. But are we
 24 saying in the beginning?
 25 Q. Well, we haven't defined what the

7 (Pages 22 to 25)

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1 answer is, no. I haven't seen any sprinklers. I
2 haven't seen any connections to the pump to the
3 clubhouse. Obviously, the caretaker, whenever
4 they moved in, used the poor quality water, small
5 quantities.

6 I think when they acquired the water
7 tank, they tried to sprinkle the road, not the
8 tracks. I think the tracks were covered with the
9 crankcase drainings.

10 Q. (BY MS. KLEIN FISCHER) With what?

11 A. Crankcase drainings oil. So you
12 wouldn't put water on top of that, because it
13 sets up just like blacktop. So they didn't water
14 the tracks. It was just a little dust control
15 for people coming in and out, run the water tank
16 down and back, and that was about it.

17 Q. When did this all occur?

18 A. Prior to when they approved the well.

19 Q. And we'll get to that. But you are
20 saying that you think the well was improved about
21 ten years ago; is that right?

22 A. That's correct.

23 Q. So is it your testimony you did not
24 ever observe past ten years from this year? So
25 what '97, '98?

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1 A. '98.

2 Q. Prior to 1998, you did not ever observe
3 Owyhee Motorcycle Club sprinkling its tracks, or
4 applying any water to the tracks?

5 A. I would say before the crankcase
6 drainings were down they -- I don't know. They
7 wouldn't have had the truck by then. So I have
8 to observe something to have my personal
9 observation come to my personal conclusion.

10 Q. I agree. I just --

11 A. So I observed something.

12 Q. Okay. But you can't tell me what it is
13 you observed; right?

14 A. Well --

15 MR. HONSINGER: Counsel, let's take a
16 break for a minute, if we can?

17 MS. KLEIN FISCHER: Sure.

18 (A recess was had.)

19 MS. KLEIN FISCHER: Let's go back on
20 the record.

21 MR. HONSINGER: Counsel, now that we're
22 back on the record, we'll stipulate to the fact
23 that we don't have any evidence to contradict Guy
24 James' claim that the priority date of a well
25 that was drilled was 1958. We will continue to

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1 dispute the quantity, though.

2 MS. KLEIN FISCHER: Okay. Fair enough.
3 And I appreciate that.

4 Just so that we're clear, let's mark
5 that No. 4.

6 (Exhibit 4 marked.)

7 Q. (BY MS. KLEIN FISCHER) Just so it's
8 clear in our record, Mr. Terteling, the
9 Motorcycle Club did obtain this affidavit that's
10 marked as Exhibit No. 4 from a fellow named Guy
11 James, who is a former club member. And the best
12 information that they've been able to obtain is
13 that the well was drilled in 1958. And, in fact,
14 that's the priority date that Owyhee Motorcycle
15 has claimed for its water right. Have you seen
16 that affidavit before?

17 A. Yes.

18 Q. So when Mr. Honsinger referred to "Guy
19 James," this is the fellow that we're talking
20 about; was that your understanding as well?

21 A. Yes.

22 Q. Okay. Although you stipulated then to
23 the fact that the well was likely drilled in
24 1958, you don't agree with the quantity
25 recommended with the 1958 priority date; is that

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1 correct?

2 A. That's correct.

3 Q. And if you look back at Exhibit No. 2,
4 which is the objection that the Terteling Company
5 has filed. On page 2, No. 3, "Quantity" is
6 marked with the comment, "Only Domestic
7 Quantity." Do you see that?

8 A. Yes.

9 Q. Can you explain to me what you mean by
10 that objection? Well, let me backup.

11 What do you believe the quantity of the
12 Owyhee Motorcycle Club was in 1958?

13 A. Well, let's take other than my
14 observations, let's take the Guy James study that
15 they used the water to mix the floor of the
16 clubhouse. I would estimate that if you poured
17 that in two hours, and you mixed a batch for five
18 minutes, you would need a coffee can, that much
19 every five minutes. So what he's telling you
20 that the highlight of his day was, he had a
21 coffee can every five minutes of water.

22 Q. He doesn't say in there that's the only
23 thing they used it for; does he?

24 A. It was his highlight of his statement.

25 I read it.

10 (Pages 34 to 37)

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1 Q. Risers?
 2 A. -- risers, and putting sprinkler heads
 3 on them, and would turn them on, and have
 4 different valving systems.
 5 Q. How big of an area was originally
 6 sprinkled, if you can recall?
 7 A. I think they sprinkled one or two acres
 8 at a time. Two acres, probably, at a time.
 9 Q. How big was the pipe that was laid?
 10 A. I do know the pipe coming out of the
 11 well is an inch and a half.
 12 Q. How do you know that?
 13 A. Because I looked at it.
 14 Q. Okay. When did you look at it?
 15 A. Yesterday. And it's a new well casing,
 16 too.
 17 Q. And you observed that yesterday as
 18 well?
 19 A. Yes.
 20 Q. Was anybody with you when you went out
 21 there yesterday?
 22 A. Yes.
 23 Q. Who?
 24 A. My son Andy. But that didn't answer
 25 your question. Your question is: What size

1 thing, close that I don't know. But it didn't
 2 look like the water run to the caretaker's house,
 3 so...
 4 Q. And your testimony is that you think
 5 that whole system was put into place or started
 6 being put into place sometime roughly ten years
 7 ago?
 8 A. Yes.
 9 Q. Okay. Prior to that, was there
 10 sprinkling of the track? I think you said, yes.
 11 A. You asked me when do I think it
 12 started, and I said ten years ago, and it's a
 13 round number.
 14 Q. Okay. And that's fair. I'm not trying
 15 to tie you specifically to that date.
 16 A. I know.
 17 Q. But I think I asked before 1998 whether
 18 or not you ever observed any sprinkling on the
 19 track?
 20 A. Not that I recall. Well, sprinkling
 21 perhaps with the water truck.
 22 Q. Okay.
 23 A. The aerial photos will tell you when
 24 the TT track went out, and when they rebuilt this
 25 other track, et cetera.

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1 water line?
 2 Q. Yes, that was my question.
 3 A. And they ran that down from the tanks
 4 that they put up on the hills. They have two big
 5 tanks up there. And I talked to a fellow named
 6 Brett Judy. And he said that in the late '90s
 7 that line was broken, and he replaced it.
 8 Q. What line; the one coming out of
 9 the --
 10 A. He had lines coming out from the tanks.
 11 And that size -- I don't know what size it is,
 12 but those are the ones that run into the
 13 sprinklers.
 14 Q. Right. So the tanks sit up on the
 15 hill, and then it gravity feeds to the
 16 sprinklers; correct?
 17 A. That's right.
 18 Q. Do you know how the tanks are built?
 19 A. Through this well with an
 20 inch-and-a-half pipe going to it.
 21 Q. Okay. So your testimony is an
 22 inch-and-a-half runs to the tanks on the hill, is
 23 pumped up to there, and then the sprinklers run
 24 out of the tanks, gravity fed; is that right?
 25 A. Right, unless there is some close

1 Q. When is the first time -- can you tell
 2 me when you may have observed a water truck
 3 sprinkling the track?
 4 A. I don't know. I said they may have. I
 5 said early on the tracks were blacktopped, and
 6 I'm sure they didn't sprinkle them.
 7 Q. Okay. Do you have any idea when
 8 sprinkling of the track may have begun, whether
 9 it's by sprinkler or water truck?
 10 A. Well, I'm sure the water truck was
 11 before. And I would be curious when they bought
 12 it. They ought to have that record. I would
 13 like to look at your records, you know, when they
 14 bought the truck.
 15 Q. Did you ever personally observe the
 16 water truck sprinkling the tracks?
 17 A. Not the tracks, but the road.
 18 Q. Okay. The road?
 19 A. Yes.
 20 Q. And, yeah, you are making a
 21 distinction, and I failed to acknowledge that
 22 between the roads to keep dust down and then
 23 actually watering the track; right?
 24 A. Yes, that's correct.
 25 Q. All right. I think we got a bit off

12 (Pages 42 to 45)

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1 track. The recommendation for the water rights?

2 A. Is there a pun intended?

3 Q. No, that was a bad one if it was.

4 The recommendation by the Department,
5 which is one of your exhibits there, No. 3. It
6 says, the commercial purposes for watering the
7 track. And you can look at that.

8 A. That's all right. Go ahead.

9 Q. I'm just wondering, do you dispute that
10 the track is watered with water from the well?

11 A. What time frame?

12 Q. Any time frame.

13 A. When it was oiled, yes.

14 Q. And you don't know at what point in
15 time they ceased oiling the track and commenced
16 sprinkling it; is that right?

17 A. Well, they moved the tracks around.
18 They changed the tracks. And I'm talking flat
19 tracks, not just motor-cross.

20 Q. Okay.

21 A. I would think they would know that
22 better than I do.

23 Q. I know. But it's your objection, so
24 I've got to understand what the basis of it is.

25 A. Just observation.

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1 Q. Okay. What observations have you made?

2 A. In the old days, they used to put oil
3 down on the tracks. And sometime when the EPA
4 came around, they couldn't use the old crankcase,
5 and used lighter oil that burned their eyes. And
6 they said, how can this be more environmentally
7 friendly if the light-weight oil burns their eyes
8 and the old crankcase drainings set up like
9 blacktop?

10 Q. Do you know when they stopped using oil
11 on the track and started to sprinkle it?

12 A. Well, you know, to hedge, I'll say it
13 calls for speculation, I'm sure.

14 Q. I just want to know if you know. It
15 may very well call for speculation. I would
16 agree with that. So do you know, that's the
17 question?

18 A. My answer is, it calls for speculation.
19 I would rather not.

20 MR. HONSINGER: If you don't know, it's
21 okay to say it, Joe.

22 THE WITNESS: If I could back into the
23 aerial photos, if I could back into their
24 testimony, I could come up with a better judgment
25 than I don't know. Because if it triggers some

1 memory thing, then I can say, sure. You know, I
2 had a 1963 car, and that's when it was, but...

3 Q. (BY MS. KLEIN FISCHER) As of today, do
4 you know right now? Do you know at what point in
5 time, and I don't even care if you give me a
6 month, a year, that they quit oiling the track
7 and started sprinkling it?

8 A. It would be -- my only hedge is, and
9 which I've stated, it would be when the EPA
10 started. So when did the EPA start getting
11 involved in things, telling you you couldn't use
12 crankcase drainings? So that's the only thing I
13 know.

14 Q. But you don't know the dates that the
15 EPA started, got on them with that?

16 A. No, but that could be figured out.

17 Q. Okay. What do you, meaning Terteling
18 Company, believe the correct commercial quantity
19 of water is for the Owyhee Motorcycle Club right?

20 A. I've tried to estimate that based on
21 the information that you've provided to the
22 Department of Water Resources. So I would guess
23 50 gallons a minute; 50, 60, somewhere in there.

24 Q. And you said you arrived at that 50
25 gallons per minute based on information that's in

1 the Department files?

2 A. Well, information you've provided to
3 the Department files --

4 Q. Okay.

5 A. -- has some information in it.

6 Q. Can you tell me specifically what
7 information you've relied on to arrive at that?

8 A. The second to the last page, if I could
9 see that report, I'll show you where it is. I
10 didn't rely on that. I just said in conjunction
11 with that. I also relied on my own judgment.

12 Q. Well, let's start with that. What
13 judgment calls have you made to arrive at the 50
14 gallons a minute? And I understand you're --

15 A. I understand that the tank is 100 feet
16 in the air.

17 Q. This is the tank that's used to
18 sprinkle the track?

19 A. There is two major tanks up on top.
20 You just call them black and red.

21 Q. Okay.

22 A. They were the same color. They were
23 yesterday anyway.

24 Q. Okay.

25 A. I also estimated that they're a

13 (Pages 46 to 49)

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1 300-foot run from the well to the tanks.
 2 Q. Okay.
 3 A. I observed the pipe is an
 4 inch-and-a-half.
 5 Q. Coming out of the well?
 6 A. Coming out of the well.
 7 Q. Okay.
 8 A. Okay. You throw all those pump curves
 9 and friction losses and efficiencies of the pump
 10 and the altitude, and that's where I come to 50,
 11 60 gallons.
 12 Q. Okay. Did you put together any formula
 13 or calculations that support that?
 14 A. Yes.
 15 Q. Do you have them with you?
 16 A. I don't have them.
 17 Q. Are they available?
 18 MR. HONSINGER: We do.
 19 THE WITNESS: I gave them to my
 20 attorney.
 21 MR. HONSINGER: Is that (indicating)
 22 what you are speaking of?
 23 THE WITNESS: Yes.
 24 MR. HONSINGER: Okay.
 25 MS. KLEIN FISCHER: Can we have copies?

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1 Yeah, you can hand it to me. It's not going to
 2 do me a whole lot of good.
 3 MR. HONSINGER: I have a copy for you
 4 as well. There is a copy for the court reporter.
 5 MS. KLEIN FISCHER: Let's go ahead and
 6 mark that.
 7 (Exhibit 5 marked.)
 8 Q. (BY MS. KLEIN FISCHER) Okay. We're
 9 looking at what's marked as Exhibit No. 5. And
 10 would you tell me what that is?
 11 A. That's a calculation I made last night
 12 after observing the inch-and-a-half sized pipe
 13 coming out of the well. If you had a five
 14 horsepower motor, how many gallons per minute you
 15 would get.
 16 Q. And I'm not going to even attempt to
 17 delve into this.
 18 A. No, I can walk you through it.
 19 Q. But this calculation is what you use to
 20 arrive at your testimony that the commercial
 21 component of the Owyhee Motorcycle Club well is
 22 50 gallons per minute?
 23 A. Actually, I de-rated it for efficiency,
 24 and I do not know that number. But with my
 25 altitude correction, I came up with 44 gallons

1 per minute.
 2 Q. And at what point in time do you
 3 believe that Owyhee Motorcycle Club began using
 4 this commercial component?
 5 A. Ten years ago.
 6 Q. And what's that based on?
 7 A. My observation of the well driller's
 8 rig sitting on the hole.
 9 Q. Your observation of what?
 10 A. The well driller's rig on the hole.
 11 Q. Earlier in your deposition you made a
 12 comment that they redid it ten years ago.
 13 A. Okay.
 14 Q. So are you talking about some work that
 15 was performed to the well?
 16 A. Yes.
 17 Q. Okay. And what work do you believe was
 18 performed on the Owyhee Motorcycle Club well some
 19 ten years ago?
 20 A. Well, I think the permit should say
 21 that. So if I could have a copy of the permit,
 22 if you hand it to me, I'll reference it.
 23 Q. Permit for what?
 24 A. Re-working the well.
 25 Q. If I had one, I would give it to you.

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1 A. Okay. So you don't have one?
 2 Q. No. What evidence do you have that the
 3 well was re-worked ten years ago? Tell me what
 4 you know.
 5 A. Well, they moved on a well driller's
 6 rig, not a work over rig.
 7 Q. And when did you see that?
 8 A. Ten years ago.
 9 Q. And how do you know it was ten years
 10 ago? How can you --
 11 A. Well, I know it's after we drilled a
 12 well over in our field that the light turned on
 13 to them and said, there is water down there
 14 better than we got. So a year later, they
 15 drilled their own well, or re-drilled their well.
 16 So that's how I back into the ten years. I think
 17 our well was drilled in '97.
 18 Q. Okay. In 1997, you drilled a well?
 19 A. Right.
 20 Q. And sometime after that, you observed a
 21 well driller's rig at the Owyhee Motorcycle Club
 22 property?
 23 A. That's correct.
 24 Q. Okay. How long was it there?
 25 A. Well, I didn't go by there often, but I

14 (Pages 50 to 53)

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1 would say -- you know, I would have to speculate
2 on one week, two weeks, because I didn't drive up
3 there all the time.

4 Q. One to two weeks you physically drove
5 out and saw it?

6 A. No, our property is within 100 feet of
7 where this well is.

8 Q. You can see it from your place?

9 A. Yes.

10 Q. Okay.

11 A. Easily, just right there on our
12 property, it's there.

13 Q. So you can see it from your home?

14 A. No.

15 Q. So you have to go out to your property?

16 A. No. We were irrigating at that time,
17 putting in new sprinkler. So I would go by there
18 once in a while.

19 Q. Who else, if anyone, observed the well
20 driller's rig on the Owyhee Motorcycle Club
21 property?

22 A. Well, I would have to figure out who
23 was working for me back then.

24 Q. Okay. So you don't know at this point
25 if anyone else observed it?

1 Q. Okay. So you don't know who owned the
2 rig that was at Owyhee Motorcycle Club?

3 A. I think it was Hiddleston. Your guys
4 confirmed it was Hiddleston. And the name
5 Hiddleston is on top of the well pipe. So it
6 makes me, like Ivory Snow, 99 percent sure.

7 Q. I understand. But you don't have any
8 knowledge based on your own observation who was
9 out there?

10 A. There has to be a reason why I think it
11 was who it was. But I can't visualize, you know,
12 who it was, and I didn't go over there at the
13 time.

14 Q. You did?

15 A. Did not.

16 Q. So you didn't physically go over and
17 observe what work was being performed?

18 A. Well, no, but I know they had trouble
19 getting over the well.

20 Q. How do you know that?

21 A. Because they had a Cat in there, I
22 think, smoothing it up to get that rig in there.

23 Q. What did you observe with the Cat
24 smoothing the well over?

25 A. The rig, it's not an easy place to get

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1 A. Looking for somebody alive.

2 Q. Okay.

3 A. I don't know if a fellow named Doug
4 Hunt would have been up there ten years ago or
5 not.

6 Q. Is he somebody that worked for you?

7 A. Yes. I don't know who is alive that
8 was up there.

9 Q. Who was drilling your well for you at
10 that time?

11 A. Okay. God, I know that answer, but I
12 don't recall at this moment.

13 Q. Okay. Would that person have observed
14 the --

15 A. No, he was up there the year before.

16 Q. Okay. A year before. Did you notice a
17 name, or obtain any information about whose well
18 or drill rig was on the property?

19 A. It would have been Stevens or
20 Hiddleston. And the last time we met with the
21 president, they thought it was Hiddleston.

22 Q. And I appreciate that. But the
23 question was: Did you observe who it was?

24 A. No. But yesterday, the top of the well
25 casing has "Hiddleston" on it.

1 to.

2 Q. So what did you observe? You observed
3 the Cat smoothing out the ground, so the rig
4 could get in towards the well?

5 A. Or maybe build a road platform. I
6 don't know. I just saw a Cat there.

7 Q. So you saw a Cat. And do you know what
8 it was doing out there?

9 A. Building a platform or access or
10 something.

11 Q. So not with any certainty?

12 A. Certain enough that it was preparing
13 the site.

14 Q. Preparing the site for what?

15 A. Well rig.

16 Q. So you observed a Cat out there --

17 A. But the certain -- you know, when the
18 Cat was working, I didn't know what it was doing.
19 It was just working. Later when the rig was
20 sitting there, it's deducted logic that the Cat
21 was on the site for access for a well rig.

22 Q. Okay. How long was the Cat out there
23 doing work; do you know?

24 A. Sometime when I was driving by. I only
25 drove by periodically. So when -- since I saw it

15 (Pages 54 to 57)

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1 A. But I don't recall. You know, just
2 back there somewhere.
3 MR. HONSINGER: Counsel, I think when
4 the witness was speaking of typical of the era,
5 he was speaking of assuming that the well was
6 drilled in the 1950s and 1960s. I believe he was
7 referring to that era, rather than 20 years ago
8 when he was there.
9 Q. (BY MS. KLEIN FISCHER) Is that
10 accurate? Is that what you meant?
11 A. I don't have a firm time concept of
12 when I was there, other than I've been there for
13 a long time. You know, but not often did I tramp
14 around over there. Even though we had an
15 easement to go through, and we did go through
16 there regularly.
17 Q. Other than just your knowledge that
18 wells drilled in, you know, the late '50s
19 typically had a smaller casing than eight inches,
20 do you have any independent recollection of
21 observing the size of the Owyhee Motorcycle Club
22 well prior to yesterday?
23 A. Yes.
24 Q. Okay. And what do you recall?
25 A. I would say, six inches or smaller.

1 there, how many tanks were present?
2 A. Two.
3 Q. Okay. And how many were present after
4 the well rig was out there?
5 A. You've claimed six or something in your
6 water report.
7 Q. I just want to know based on your
8 observations right now.
9 A. I know of three today.
10 Q. Three today. So you believe one
11 additional tank was added after the well rig was
12 present on the property?
13 A. I'm not familiar with the rest of them.
14 You know, if you claim six, or however many you
15 claim today, I'm not sure, you know, where all
16 these are.
17 Q. Yeah. Set aside what --
18 A. I know of three.
19 Q. Okay. Set aside what's been claimed.
20 I want to know -- I mean, I want to know what you
21 saw and observed. Because you said that you
22 don't -- after the well rig was there, you
23 testified, I believe, that you observed changes
24 in the quantity and quality of water being used.
25 A. You know, I can't tell you specifically

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1 Q. And again, do you know roughly when you
2 made that observation?
3 A. So how long ago was 20 years ago?
4 What's the answer?
5 MR. HONSINGER: 1988.
6 THE WITNESS: I think it was before
7 that. It was 30 years ago.
8 Q. (BY MS. KLEIN FISCHER) '78. I mean,
9 if you are just guessing, I mean -- if you don't
10 know, then you don't know. That's fair.
11 A. Well, it's foggy. So I'm back 30 years
12 now. It gets foggier the farther back I go.
13 Q. Did you ever measure it?
14 A. No.
15 Q. Okay. Now, you also said that you made
16 observations after the well rig was out there, in
17 roughly ten years ago, that the quantity of water
18 used by Owyhee Motorcycle Club changed; is that
19 accurate?
20 A. Yes.
21 Q. Okay. Tell me what observations you
22 made following seeing the well rig out there.
23 A. Well, the amount of sprinklers and
24 tanks installed to water more and more ground.
25 Q. Okay. Before the well rig was out

1 where those tanks -- they came in with Brett
2 Judy.
3 Q. I'm sorry, what?
4 A. Brett Judy was up there.
5 Q. Okay.
6 A. I can't specifically say whether it was
7 before the rework of the well or after the well.
8 Q. And when you say --
9 A. Now --
10 Q. I'm sorry. Go ahead.
11 A. And we established that was ten years
12 ago. In that time frame, I think they had the
13 second one. I think they had one. God, I think
14 it was red. Then I think they put another one up
15 higher. Today they are both at the same height.
16 Yesterday they were at the same height, but
17 they've moved them around again.
18 Q. So you are not positive if that
19 occurred before or after the well was out there?
20 A. Well, I think there was one before, and
21 maybe the second one added after.
22 Q. You don't know for sure, though?
23 A. It was close, you know, about the same
24 time frame.
25 Q. And those are the tanks that we talked

18 (Pages 66 to 69)

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1 component. 2 A. Just date. 3 Q. The priority date. You don't dispute 4 that there is some commercial use? 5 A. No, we don't. 6 Q. Okay. What do you -- 7 MR. HONSINGER: Counsel, I think what 8 his testimony has been, is that right now there 9 is commercial use of approximately 50 gallons per 10 minute. 11 MS. KLEIN FISCHER: I think that's 12 fair. But I would like to hear from him. 13 Q. (BY MS. KLEIN FISCHER) I'm just trying 14 to get at what -- you are objecting to the 15 priority date for a commercial component of the 16 right? 17 A. Yes. 18 Q. But you would agree, I mean, at least 19 your position would be that 50 gallons per 20 minute -- 21 A. My calculation I put 44 gallons, but 22 I'm not sure of the efficiency factor. So 50 is 23 wrong. 24 Q. And what is your testimony as to when 25 that commercial use commenced?	1 A. No. My observations were that it was a 2 poor well before that, not now. 3 Q. When we talk about quality, we're 4 talking about the quality of the well then, not 5 the quality of the water; is that fair? 6 A. No. No. No. 7 Q. Okay. 8 A. Well, both. The old well wasn't a good 9 well. The old water wasn't good water. The new 10 well seemed adequate, and seems, you know, fine. 11 Q. Okay. And when we talked earlier about 12 why you thought the old well wasn't a good well, 13 and that was, I think, based on conversations 14 with caretakers? 15 A. That's correct. 16 Q. Okay. In terms of quality, correct? 17 A. That's taste? 18 Q. Yes. 19 A. And I imagine it had iron sulfate in 20 it. It was kind of yellow, junky stuff that 21 turns your clothes yellow. 22 Q. What do you know about the quality of 23 the water after 1998? How did it change? 24 A. Nothing. It looks fine driving by, you 25 know, what's coming out of the sprinklers. I
Page 75	Page 77
1 A. Ten years ago. 2 Q. And that's based on? 3 A. Observation. 4 Q. All the things you've told me today? 5 A. That is correct. 6 Q. The observation of the drill rig being 7 placed on the property some ten years ago? 8 A. That's part of it. 9 Q. Your observations we've talked about in 10 terms of quantity of water; is that right? 11 A. Well, either I'm going to say, yes or 12 no. You haven't finished. 13 Q. Well, I want to stop at quantity. Your 14 observations on quantity, the sprinklers and the 15 tanks? 16 A. We mentioned the 50 gallons a minute as 17 a calculation. And that's a lot of water out of 18 an inch-and-a-half of pipe going 100 feet in the 19 air, just FYI. 20 Q. Okay. We didn't talk about quality. 21 Did you make -- I don't know if I even care. But 22 did you make observations of the quality of the 23 water? Is -- 24 A. After the ten years? 25 Q. Yes.	1 have not run a sample on it. 2 Q. Did it look different coming out of the 3 sprinklers prior to 1998? 4 A. It looks like something I would drink. 5 Q. I'm sorry? 6 A. It looks like something you would 7 drink. 8 Q. Now it does? 9 A. Yes. 10 Q. And prior to 1998, you observed a 11 difference in the way the water looked as to now? 12 MR. HONSINGER: I'll object to the form 13 of the question. I don't think he's testified 14 that there were sprinklers prior to 1998. 15 THE WITNESS: That is correct. 16 Q. (BY MS. KLEIN FISCHER) Okay. Well, I 17 just want to get at what you observed that makes 18 you think that the quality of that water has 19 changed from 1998 on? 20 A. I just think it looks fine now. And 21 according to the other caretakers, it wasn't fine 22 back then. 23 Q. Okay. That's it? 24 A. Just observation. 25 Q. And you've observed --

20 (Pages 74 to 77)

Page 78	Page 80
1 A. I've run no chemical samples on it. 2 Q. And you've observed what about the 3 quality of the water? You observed it coming out 4 of the sprinklers? 5 A. Yes. 6 Q. Anything else? 7 A. No. 8 Q. Okay. Do you have any information that 9 Owyhee Motorcycle Club has ever used a well on 10 its property, other than the one that we've been 11 talking about today? 12 A. Well, we've eliminated springs. So I 13 guess the answer is, no. 14 Q. Have you retained any experts in this 15 case to assist you in preparing your objections? 16 I think you talked about Squires having helped 17 you evaluate things early on. So anyone other 18 than that? 19 A. I don't know whether he's advised me 20 much on this. Mr. Honsinger did most of the 21 work. But Ed has been around, and I've always 22 talked to him. 23 Q. Aside from the calculations you've 24 performed in connection with the commercial 25 component of the Owyhee Motorcycle Club water	1 Q. If this matter goes to a hearing, would 2 you expect Mr. Squires to offer testimony on your 3 behalf? 4 A. He's a good expert witness. Whether we 5 need an expert witness, I would have to ask my 6 counsel. I don't know. 7 Q. At this point in time, would you 8 anticipate calling him as an expert in this case? 9 A. I would have to ask my counsel. 10 Q. Okay. So you don't know? 11 A. I know he's a good expert witness. But 12 what expertise he has in this, I don't know. 13 Q. Has he given you any reports or 14 information relevant to the Owyhee Motorcycle 15 Club well? 16 A. Not that I can recall. 17 Q. Okay. Have you performed any testing 18 of Owyhee Motorcycle Club's wells volumetric 19 quantity? 20 A. No. Other than the observation of 21 filling the water tank. I've tried to ask people 22 how long it took to fill the water tank. 23 Q. And that's what we talked about before, 24 you asked somebody how long it took? 25 A. Yes.
Page 79	Page 81
1 right, have you had any other engineers, 2 hydrologists perform any tests with respect to 3 the Owyhee Motorcycle right? 4 A. No. 5 Q. Have you performed any testing of 6 Owyhee -- 7 A. But I do think you mentioned Squires. 8 He was the geologist on our well that we drilled 9 in '97. I think he talked to the people about 10 your well -- your well, the OMC well -- in trying 11 to ascertain where we wanted to drill our well or 12 not, and if he had any logs or not. Do you have 13 any logs? I know you ask the questions. Have 14 you seen any? 15 Q. That's all right. 16 A. I think in locating our well, that 17 would be a logical source point to compare. And 18 I can't tell you what he found out about back 19 then. 20 Q. I guess a better question is: Have you 21 retained Mr. Squires in connection with this 22 objection? 23 A. We probably talked to him. And God, I 24 wouldn't be surprised if he didn't bill me if I 25 talked to him.	1 Q. So you haven't performed any of your 2 own testing -- 3 A. Yes. 4 Q. -- on our well? 5 A. No. 6 Q. All right. And you haven't requested, 7 at least through formal discovery, any 8 opportunity to go make those tests as of today; 9 is that correct? 10 A. That's correct. 11 Q. Other than what we've talked about, do 12 you have any information about Owyhee Motorcycle 13 Club's historic or past volumetric quantity? 14 A. Other than observations we've talked 15 about earlier. 16 Q. Okay. Obviously, this case is set for 17 hearing, I think, in fairly short order. If it 18 goes to hearing, what witnesses would you expect 19 to call to testify on your behalf? 20 A. Well, I would have -- you brought up a 21 point, what employees have I had who have seen 22 this. You know, I would have to scratch my head. 23 But I think, you know, I know my own 24 observations. I thought that was adequate. 25 Q. Okay. And it may be. I'm just asking

21 (Pages 78 to 81)

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1 if there is anybody else, aside from you and your
2 observations, that you would rely on to prove
3 your objections?

4 A. Well, I would like to interview all the
5 caretakers that have lived there.

6 Q. Okay. Anybody else that you think
7 would have relevant knowledge that you might want
8 to rely on to prove your case?

9 A. If I could get a list of your
10 directors, I could go on down through them, and
11 query some of them that were there at that time.
12 Because surely, they authorized the payment. So
13 we could go to your books and look for payment
14 for Hiddleston.

15 Q. So maybe some board members that might
16 have knowledge. Do you know specifically who
17 those folks are today that might have that
18 information?

19 A. No, but you guys do. And the same way
20 with your treasurers, their reports go back into
21 that time frame.

22 Q. Have you identified any documents,
23 other than your formula, that you would use to
24 establish or prove your case if this matter went
25 to hearing?

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1 A. Aerial photos.

2 Q. Okay.

3 A. Infrared photos.

4 Q. Okay. Fair enough. You talked about
5 that earlier.

6 Anything else that you might rely on?

7 A. Well, if we get into this, if we get
8 cranking and get talking to people, I'm sure my
9 memory will come back up. Which if it does, if I
10 start focusing on something, actually 20 years
11 ago, and start backing into the time frame, my
12 brain slowly dies and comes into focus. If it's
13 important, you know, I can do it.

14 Q. Sure. And I understand what you are
15 saying. Today is my chance to get to talk to
16 you, though. So I may not get that chance again.
17 So I need to know, as you sit here today, if
18 you've identified any particular documents or
19 people that you would potentially rely on to
20 prove your case?

21 A. Well, there is several things that IDWR
22 thinks that I don't agree with. The area of use,
23 the quantity. I don't know about their dates and
24 when. But I think I recall most of this myself.

25 Q. Okay. So maybe you would look at some

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1 of the records that are contained in the
2 Department of Water Resources files?

3 A. Well, no. I just don't agree with some
4 of their statements. I think the area which is
5 covered, I think is exaggerated. I think the
6 quantities are exaggerated. The dates I think
7 were increased. You know, I don't think. I know
8 it was increased. So I just have problems with
9 the form that was filed. And we've stipulated to
10 some of it, so here we are.

11 Q. And, yeah, I just want to be clear,
12 too. You may not like the stipulation, but I
13 think we have boiled it down to, if I'm not
14 mistaken, that your objection consists of an
15 objection to the commercial component of the
16 Owyhee Motorcycle Club's water right; is that
17 fair?

18 A. Well, quantity and date.

19 Q. Okay. Sure. Yeah, the date. Yeah, I
20 guess depending on the date that could affect --

21 A. Of those two.

22 Q. -- the availability of that.

23 A. And acreage, too, your acreage is
24 wrong.

25 Q. What do you mean by that?

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1 A. How many acres do you claim that is
2 commercial?

3 Q. Tell me what you mean. If you are
4 objecting to something other than what we're
5 talking about, I don't know acreage.

6 A. Well, you've claimed the full 80 acres
7 that uses water on.

8 Q. Okay. You haven't objected to the
9 place of use for this water right?

10 A. Well, I'm just telling you where it's
11 wrong.

12 MR. HONSINGER: Counsel, let's go off
13 the record for a minute.

14 MS. KLEIN FISCHER: All right.
15 (Discussion held off the record.)

16 MS. KLEIN FISCHER: Let's go back on
17 the record.

18 Q. (BY MS. KLEIN FISCHER) Okay. Off the
19 record you just had a discussion with Counsel
20 regarding the place of use for the commercial
21 component of Owyhee Motorcycle Club's right?

22 A. Right.

23 Q. Is that --

24 A. They haven't dust controlled the north
25 half of their 80.

22 (Pages 82 to 85)

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1 Q. Okay. Aside from the objection to the
2 commercial component of Owyhee Motorcycle Club's
3 water right, have we resolved all of the other
4 issues?

5 MS. KLEIN FISCHER: And jump in,
6 Charlie, if you think I'm misstating what our
7 agreement is. I want to make sure I understand
8 what our agreement is when we finish this
9 deposition.

10 MR. HONSINGER: The Terteling Company
11 objection is to the commercial component of the
12 Water Right No. 63-18957.

13 MS. KLEIN FISCHER: Okay.

14 MR. HONSINGER: So I think the answer
15 to your question is, yes.

16 MS. KLEIN FISCHER: Okay.

17 Q. (BY MS. KLEIN FISCHER) Now, you told
18 me you wished they would do more dust control?

19 A. Off the record, you are quoting me off
20 the record.

21 Q. I am. I heard you off the record. Do
22 you think that's going to be easier if you attack
23 and reduce the commercial component of Owyhee
24 Motorcycle Club's water right?

25 A. I think those two statements are

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1 damaged my property.

2 I then had it removed, and sent them a
3 bill, and they didn't pay me. I don't know why
4 they didn't pay me. Okay. This year, I also
5 removed some more material, and I am planning on
6 sending them another bill.

7 So they keep encroaching on my ground.
8 As the tracks come around, they throw dirt every
9 time. Every thousand motorcycles go around, they
10 keep encroaching on my property. And then when
11 the neighbor's cattle get in to their property,
12 they kick them in onto my property. That isn't
13 right.

14 I think there is some noise ordinance
15 past 10:00 that I think they ought to observe
16 better. I think some of their members will take
17 off their mufflers and be above the noise levels.
18 I've said earlier that they don't adequately
19 control the dust. So the dust floats around all
20 over the place.

21 Some of their members will challenge
22 some of -- you know, like my son, to have a fist
23 fight and settle it. In fact, that's the way
24 they have challenged both of my sons, to settle
25 it in fist fights.

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1 oxymorons to each other.

2 Q. Well, how are they going to control
3 dust if you successfully reduce or challenge the
4 commercial component of their water right?

5 A. Are we talking about in the past or the
6 future or today?

7 Q. I'm talking about going forward from
8 today.

9 A. Today.

10 Q. Going forward today, right now it's
11 been recommended. Is that what you want to do?

12 A. I think I want to establish when the
13 commercial use was enlarged from the domestic
14 quantity that they had.

15 Q. Okay. Just a couple more questions,
16 and we're just about finished.

17 Do you dislike the fact that Owyhee
18 Motorcycle Club is adjacent to your property?

19 A. They've been a challenge. And when
20 they race in the stream bed, it washes down in my
21 reservoir and causes me damage. When I
22 removed -- the last time it washed out, I wrote
23 them a letter and said, don't try to fix this in
24 high water. High water runoff, they get in there
25 and muck around with dozers and Cats, which

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1 Q. To settle what; this water right
2 dispute?

3 A. No.

4 Q. Anything?

5 A. It's just anything. I mean, that's
6 just the mentality. So I would prefer to move
7 them. But I don't want to stop them as a Club,
8 because I believe in any family sport that you
9 are with your children, it's a good activity.
10 It's better to be working with your kids.

11 I also don't want them running them all
12 over wild on the Boise front. I think they are
13 better to have organized and controlled races.
14 And people still get killed. A guy got killed
15 last year.

16 So I would like to work with them. And
17 see, eventually if I could trade them ground.
18 I've kept 200 acres in Seaman's Gulch that
19 doesn't have a flowing stream through it, and has
20 exactly the same soil. And has a neighbor of the
21 Ada County Dump, and it's a basin that reflects
22 out. So I've kept that piece of ground thinking
23 that someday it might be a good trade.

24 Q. Does it have a good well on it?

25 A. Yes.

23 (Pages 86 to 89)