

JUL 28 2008

DEPARTMENT OF  
WATER RESOURCES

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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 Nos.: See Exhibit A

**AFFIDAVIT OF MICHAEL P.  
LAWRENCE IN SUPPORT OF  
WATER RIGHT HOLDERS'  
MEMORANDUM IN OPPOSITION  
TO MOTIONS TO AMEND  
OBJECTIONS**

STATE OF IDAHO            )  
  )  
County of Ada                )

MICHAEL P. LAWRENCE, being first duly sworn upon his oath, declares as follows:

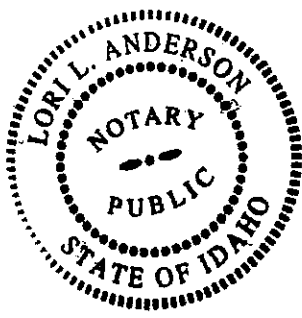
1. I am the attorney for Dana L. Dowers and The Valley Club, Inc., two of the claimants in the subcases listed in Exhibit A.


2. I make this Affidavit based upon my own knowledge and belief concerning the facts stated herein.

3. The attached Exhibit B contains true and correct copies of pages 10-25 and 54-73 of the transcript taken from the I.R.C.P. 30(b)(6) Deposition of Carl D. Pendleton, Board member of the Big Wood Canal Company. Pages 13-22 and 57-73 of the transcript contain questions and answers regarding Big Wood Canal Company's and Concerned Water Users objections to aesthetic, recreational, and wildlife water right claims and recommendations in the Snake River Basin Adjudication that are relevant to the discussion in Water Right Holders' Memorandum in Opposition to Motions to Amend Objections.

  
MICHAEL P. LAWRENCE

SUBSCRIBED AND SWORN to before me this 25<sup>TH</sup> day of July, 2008.



  
NOTARY PUBLIC FOR IDAHO  
Residing at: Boise 10 83713  
Commission Expires: Aug 23 2013

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 25<sup>th</sup> of July, 2008, the foregoing was filed, served, or copied as follows:

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Snake River Basin Adjudication  
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Twin Falls, ID 83303-2707

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Cathedral Pines  
HC 64 Box 8296  
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Hailey, ID 83333-0187

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Lynn-Bontrager LLC  
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\_\_\_\_\_  
Michael P. Lawrence

EXHIBIT A

PETER M THOMAS TRUST dba RIVER GROVE FARM

37-8249

37-00577CH

SUN VALLEY LAND & MINERALS INC

37-02446

37-22128

37-04100

37-04369

37-04368B

37-21614

SUN VALLEY RANCH

37-22050

37-22051

37-22052

DANA L DOWERS

37-8252

THE VALLEY CLUB INC

37-494

37-495

37-577BV

37-657B

37-833K

37-2623

SHOEMAKER PROPERTIES

37-14278

GOLDEN EAGLE RANCH HOMEOWNERS ASSOCIATION, INC

37-154C

37-2627C

37-2632

SILVER CREEK FARMS HOMEOWNERS ASSN INC

37-685C

**EXHIBIT B**

**(excerpts of the transcript taken from the IRCP 30(b)(6) Deposition of Carl D. Pendleton,  
Big Wood Canal Company Board member)**

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 Nos. 37-00415  
  )                            37-00416  
Case No. 39576.                    )                            37-04108  
  )                            37-12111  
\_\_\_\_\_ )

DEPOSITION OF CARL D. PENDLETON

Volume I

(Pages 1 through 77)

Law Offices of  
Moffatt, Thomas, Barrett, Rock & Fields,  
Chartered  
1411 Falls Avenue East, Suite 614  
Twin Falls, Idaho 83301

Friday, March 14, 2008  
Beginning at 10:10 o'clock a.m.

QnA COURT REPORTING  
Lori A. Pulsifer, CSR, RDR, CRR  
Idaho Certificate No. 354  
PMB 219, 111 Broadway, Suite 133  
Boise, Idaho 83702-7200  
E-mail: realtimeqna@msn.com  
(ELECTRONIC COPY) Telephone: (208) 484-6309  
Deposition of Carl D. Pendleton, Volume I

1 A. Those are the only documents I have. Any other  
2 references there may have been might be in the minutes,  
3 and those would only be documenting our affiliation with  
4 the Concerned Water Users Group.

5 MR. CAMPBELL: I would request copies of those  
6 documents, Mr. Hobdey, if we can have those.

7 MR. HOBDEY: We can get those.

8 BY MR. CAMPBELL:

9 Q. In terms of the Canal Company, I would like to  
10 go into your position with the Canal Company, Mr.  
11 Pendleton, if you would, please.

12 A. Okay.

13 Q. What is your status as it relates to the Canal  
14 Company, the Big Wood Canal Company?

15 A. I am a member of the Board of Directors elected  
16 by the stockholders to represent their interests. I  
17 have -- I think my term began 11/94. So for thirteen  
18 years I have been on the Board. I am Second Vice  
19 President, in terms of hierarchy.

20 Q. Can you explain to me what the hierarchy of the  
21 Board is, in terms of officers?

22 A. Chairman, or President; First Vice President;  
23 Second Vice President; Secretary.

24 Q. And who are those individuals? Do you know?

25 A. The Chairman of the Board, or President, is

1 Jerry Nance; Second Vice is Mike Faulkner; myself as  
2 Second Vice; and the Secretary is Mike Cenarrusa.

3 Q. Perhaps I misheard you. I thought I heard you  
4 say the Second Vice was --

5 A. Myself.

6 Q. So Mr. Faulkner is the First Vice President?

7 A. Yes.

8 Q. In terms of your personal background, can you  
9 give me a little sense of your educational experiences  
10 since high school?

11 A. I attended Idaho State University and received  
12 an undergraduate in engineering and management. I have  
13 a Master's Degree from Idaho State University and an  
14 M.B.A. with nuclear science emphasis.

15 I worked for Bucyrus Erie Company for a time,  
16 something short of two years, in their plant in  
17 Pocatello, Idaho. I returned to the family farm in  
18 1977, and I have been on the farm since that time.

19 Q. I see. In terms of the Big Wood Canal Company,  
20 can you tell me how many acres the Canal Company serves,  
21 in terms of irrigation deliveries?

22 A. In the range of 98,000 acres is delivered out  
23 of Big Wood Canal Company, in conjunction with American  
24 Falls Water District No. 2.

25 Q. You mentioned that there are minutes of Board

1 meetings relating to the objections that have been filed  
2 that I referenced in the Notice of Deposition. Do you  
3 know how many sets of minutes would reflect information  
4 about the objections or the relationships with the other  
5 objectors?

6 A. I believe there may have been some general  
7 references prior to November, probably, of last year,  
8 2007. Our affiliation began with Concerned Water Users  
9 about November. There may be more information, a more  
10 lengthy description of our affiliation with them.

11 Q. Were there any discussions or meetings of the  
12 Board in relationship to the water rights described in  
13 the Notice of Deposition that were objected to by the  
14 Big Wood Canal Company prior to November of last year?

15 A. No. The Board has not met to consider any  
16 water right objection, in particular, if that answers  
17 your question.

18 Q. All right. That does answer the question. Can  
19 you tell me, then, how the Board determined to file the  
20 objections that it did file with respect to Sinclair Oil  
21 Company, Sun Valley Company, and -- I will say  
22 "Sinclair" initially, but it is actually the Sun Valley  
23 Company Water Rights that we are talking about today, so  
24 that we understand each other.

25 A. I understand.

1 Q. Did the Board have any discussions about filing  
2 objections generally to water rights in a particular  
3 category on the Big Wood River?

4 A. As I stated before, not in particular to any  
5 water right. However, yes, generally, we object to  
6 aesthetic uses and the appropriateness of those  
7 aesthetic uses up in the Valley. So that's a general  
8 class that we objected to.

9 I think, as part of your question -- how did we  
10 get to the point of these objections?

11 Q. Right. Discussions that the Board had about  
12 that?

13 A. Exactly. We had hired an individual out of  
14 Boise, probably nearly a year ago -- it was less than a  
15 year ago -- to answer some questions that we had about  
16 some particular rights or classes of rights. That was  
17 not fruitful.

18 In October, probably, I met with one of the  
19 individuals involved in the Concerned Water Users Group.  
20 It became apparent that they had information and had  
21 been compiling information for a year on multitudes of  
22 rights and were prepared to file numerous objections.

23 So a component of our Board met with their  
24 group after some of their leadership had come to one of  
25 our Board meetings, and we joined forces. We used their

1 data that they have been collecting to file as the basis  
2 for the filing of the objections.

3 Q. You did not bring that data with you today?

4 A. We don't have a copy of that data. We met with  
5 their group, with their hydrologist and support people  
6 there.

7 We discussed what the bases of their objections  
8 were going to be; and we adopted their list and threw  
9 our support behind them, or in conjunction with them, to  
10 file the objections.

11 Q. And when was that, sir?

12 A. That meeting was in November.

13 Q. Of last year?

14 A. Yes, 2007.

15 Q. Where did it take place? Do you know?

16 A. It took place at Pete Van Der Meulen's  
17 bunkhouse on the Bellevue Triangle, at his farm.

18 Q. And who was the hydrologist that they had  
19 retained to provide this analysis that you folks  
20 evaluated at this meeting?

21 A. Dr. Wendy Pabich. It's P-a-b-a-c-h.

22 Q. And do you know where she resides?

23 A. I think it's P-a-b-i-c-h. Pardon me?

24 Q. Do you know where she resides?

25 A. In the Hailey area.

1 Q. Did you personally examine any of the  
2 documentation that she had prepared with respect to the  
3 water use issues that are involved with this particular  
4 set of objections that the Canal Company filed?

5 A. I believe I saw some of the documentation that  
6 she presented.

7 Q. Can you describe it to me?

8 A. A lot of the issues of the water transfers and  
9 those types of things were based on research by research  
10 folks working under her.

11 I know I looked at one file that was shown to  
12 me; I cannot tell you even who that file was on. Those  
13 were notes, for the most part, and copies of documents  
14 that were found in the Blaine County Courthouse or even  
15 as far back as the others.

16 Q. In terms of the meeting that occurred in  
17 November, was Dr. Pabich -- is it "Pabich"?

18 A. Yes.

19 Q. Was she present?

20 A. Yes, she was.

21 Q. Do you recall what she said at the meeting?

22 A. Our discussions were, of course, with the  
23 entire group. Her part of that meeting was to  
24 categorize, talk about some of the things that had been  
25 found, point out some of the ones that appeared to be

1 flagrant, in terms of over-diversion or missteps in  
2 transfers or the question of aesthetic use and that sort  
3 of thing and whether it was appropriate.

4 MR. HOBDEY: I am going to object at this time  
5 and ask that the questions pertain to these subcases  
6 only and not to the general -- this is not relevant.  
7 The questions you ask aren't relevant to these  
8 subcases -- either that or he didn't understand it that  
9 way.

10 MR. CAMPBELL: You can have a continuing  
11 objection, if you would like, so you don't have to  
12 repeat that. That's fine.

13 MR. HOBDEY: I do.

14 BY MR. CAMPBELL:

15 Q. So, Mr. Pendleton, were there specific  
16 references to specific transfers identifying property  
17 owners in the Big Wood River that Dr. Pabich identified?

18 A. Yes.

19 Q. Do you recall the names of any of them?

20 A. I don't believe any of these four were part of  
21 that. There was reference made to Lane Ranch  
22 diversions. There was general reference to the number  
23 and quantity and legality of impoundments.

24 Q. And --

25 A. Non --

1 Q. Go ahead. I'm sorry.

2 A. Non-consumptive use impoundments with no outlet  
3 to flow back to the river. So the question becomes: Is  
4 that a non-consumptive use, and is it appropriate?

5 Q. Was that a comment by Dr. Pabich about this  
6 particular type of water use or this particular type of  
7 category of water use?

8 A. If not a direct comment, I would say, yes, that  
9 was the crux of the conversation on that matter.

10 Q. Did Dr. Pabich offer any kind of opinions with  
11 respect to whether or not a particular transfer was  
12 appropriate?

13 A. Yes. Based on research that was done and  
14 documents that had been found, there appeared to be some  
15 anomalies that we needed to object to.

16 Q. Did she identify what those anomalies were?

17 A. In some cases.

18 Q. What were some of the cases?

19 A. As I think I have stated before, whether the  
20 recorded -- the historic diversion quantity to a lake  
21 was appropriate and, based on the record, was it extreme  
22 compared to the right that was held?

23 Q. During that meeting, did she describe any other  
24 water rights involving aesthetic or wildlife use that  
25 were not transfers?

1 A. You're going to have to go a little deeper on  
 2 that question.  
 3 Q. You mentioned transfers, that that --  
 4 A. Correct.  
 5 Q. -- was sort of the focus of Dr. Pabich and she  
 6 had evaluated, or her people had evaluated, several  
 7 transfers; is that correct?  
 8 A. Transfers -- probably to add to that would be  
 9 changes of use, those types of transfers.  
 10 Q. Well, okay. That's fine.  
 11 A. Okay.  
 12 Q. Did she or her employees evaluate any water  
 13 rights that did not involve transfers but dealt with  
 14 aesthetic or wildlife uses?  
 15 A. Yes, yes.  
 16 Q. And how many of those did she discuss?  
 17 A. Oh, I think, a small number. A very small  
 18 number. I don't know how many. As we discussed a  
 19 category of objections, if you will, there may have been  
 20 one, two, or three examples of each.  
 21 So the classes of objections are pretty -- are  
 22 pretty defined. Maybe we talked about, you know, ten,  
 23 in the entire meeting, offered as examples.  
 24 Q. Do you recall the members of the Big Wood Canal  
 25 Company who were present during that meeting, besides

1 Q. Was there anyone else with her group that was  
 2 there, besides her?  
 3 A. She has a clerical person, a researcher, by the  
 4 name of Sunny. I don't recall her last name.  
 5 Q. She was present?  
 6 A. She was present. Also, one of the  
 7 researchers -- Murphy is his last name -- David Murphy  
 8 was there.  
 9 Q. And he is with her group?  
 10 A. Yes. He is also a Deputy Watermaster for 37  
 11 Water District, but he does research for this group.  
 12 Q. Was anyone else present that you recall?  
 13 A. As I indicated, there were some other members  
 14 of that Concerned Water Users Group; and I don't recall.  
 15 Q. Was their attorney present?  
 16 A. No.  
 17 Q. All right. Following this meeting in November  
 18 with the Concerned Water Users Group, did the Big Wood  
 19 Canal Company Board of Directors have a subsequent  
 20 meeting to discuss these issues?  
 21 A. We had our regular meeting which would be the  
 22 first working day of December.  
 23 Q. Did this particular topic generate any  
 24 discussion?  
 25 A. It did. The discussion was, of course, whether

1 yourself?  
 2 A. Yes.  
 3 Q. Can you give the names, please?  
 4 A. Chairman Jerry Nance was there; Vice President  
 5 Mike Faulkner was there; myself -- I was there -- Greg  
 6 Lehrmann, who is a Director, was there.  
 7 Q. How do you spell the last name?  
 8 A. Oh, L-e-h-r-m-a-n-n, I believe.  
 9 Am I close?  
 10 Q. This is your recollection. I was just asking  
 11 you. Anyone else?  
 12 A. Attorney Hobdey was there.  
 13 Q. And the members of the Concerned -- is it the  
 14 Concerned Water Users?  
 15 A. Yes, I believe so.  
 16 Q. Do you know who of that group was present at  
 17 the meeting?  
 18 A. I'm sure I would miss some. Do you want some  
 19 names, though?  
 20 Q. The names you can recall.  
 21 A. Pete Van Der Meulen, Jerry Bashaw, Grace Eakin,  
 22 Bill Molyneux, Pepin Corso-Harris. There were a couple  
 23 more faces, but I can't put the names there.  
 24 Q. And Dr. Pabich?  
 25 A. Dr. Pabich was there.

1 to join the group and to financially support the group.  
 2 Q. And what was the result of that discussion?  
 3 A. That we would fund their research and  
 4 hydrological activities for the month of December and  
 5 then continue to be affiliated with the group and fund a  
 6 portion of those same activities for the coming year,  
 7 including Adjudication-type activities.  
 8 Q. With respect to that decision to fund a portion  
 9 of the costs of this group, the Concerned Citizens, did  
 10 that include funding for preparation of objections to be  
 11 filed by the Big Wood Canal Company against the water  
 12 rights that were the subject of concern?  
 13 A. Yes, it did.  
 14 Q. Did that include funding to prepare objections  
 15 to the water rights identified in the Notice of  
 16 Deposition, Exhibit No. 1?  
 17 A. Yes, it did.  
 18 Q. Who actually prepared the objections that were  
 19 filed by the Big Wood Canal Company?  
 20 A. Attorney Barker, Al Barker.  
 21 Q. Is Mr. Barker retained as counsel for the Big  
 22 Wood Canal Company, also?  
 23 A. He is retained as counsel for the Concerned  
 24 Water Users.  
 25 Q. I see. So he does not represent the Big Wood

1 Canal Company?  
 2 A. Only at the consent of Mr. Hobdey.  
 3 Q. I would like you to look at what has been  
 4 marked as Deposition Exhibit No. 2, if you would, sir.  
 5 Tell me after you have had a chance to review that  
 6 document, please.  
 7 Have you reviewed the document?  
 8 A. I have.  
 9 Q. Can you tell me if you can identify the  
 10 document?  
 11 A. It would be the Recommendation by the Director  
 12 for a water right for Sinclair Oil Company.  
 13 Q. Have you ever seen a copy of this document  
 14 before?  
 15 A. I have.  
 16 Q. Can you tell me the context of when you saw it  
 17 before?  
 18 A. On the website concerning Adjudication issues  
 19 from IDWR.  
 20 Q. And when did that occur?  
 21 A. Actually, yesterday.  
 22 Q. So was that the first time that you saw this  
 23 particular document?  
 24 A. It is.  
 25 Q. So do you know if anyone else with the Big Wood

1 Adjudication and filings. But to review these  
 2 particular ones? I don't believe he has.  
 3 Q. Well, we can ask him later on. So before the  
 4 Big Wood Canal Company filed its objection to Water  
 5 Right No. 37-00415, your testimony is that no one  
 6 reviewed Exhibit No. 2; is that correct?  
 7 A. That's correct.  
 8 Q. Mr. Pendleton, you mentioned that you reviewed,  
 9 on the website, the electronic version of Exhibit No. 2;  
 10 is that correct?  
 11 A. Uh-huh.  
 12 Q. What else did you review yesterday on the  
 13 website? What other documents or information?  
 14 A. I just reviewed the four documents -- or the  
 15 subcases that you had indicated for the deposition.  
 16 Q. Now, by reviewing those documents for those  
 17 subcases, was it just the recommendation that you  
 18 reviewed or did you review --  
 19 A. Yes. I'm sorry. I will let you continue.  
 20 Q. So your answer is, yes, that is all you  
 21 reviewed on the website?  
 22 A. Uh-huh.  
 23 Q. Is that a yes?  
 24 A. Yes, it is.  
 25 Q. Thank you. Did you review the claims filed by

1 Canal Company reviewed this particular document before  
 2 yesterday?  
 3 A. I doubt it very much.  
 4 Q. Why do you say that?  
 5 A. Other than activities of our Manager, there  
 6 really is no one on the Board, other than myself, that  
 7 is dealing with any particular water right. Since I was  
 8 the one selected for this deposition from the Board, it  
 9 is part of my responsibility.  
 10 Q. And you mentioned the Manager?  
 11 A. Yes.  
 12 Q. His name is what?  
 13 A. Lynn Harmon.  
 14 Q. Is he involved in the strategy with respect to  
 15 the objections filed against the Sun Valley Company  
 16 Water Rights?  
 17 A. No. And I will now qualify that. He also was  
 18 in attendance at the meeting with the Concerned Water  
 19 Users.  
 20 Q. In November of 2007?  
 21 A. In November of 2007. But particular -- you are  
 22 asking, particularly, about this particular filing or  
 23 any other?  
 24 I think, generally, as we move ahead, our  
 25 Manager would be very key in the daily ongoings of our

1 the Sun Valley Company?  
 2 A. No.  
 3 Q. So it was just the recommendations?  
 4 A. Just the recommendations.  
 5 Q. I see.  
 6 A. The recommendations and then the objections  
 7 filed by us and filed by your firm on behalf of Sun  
 8 Valley Company.  
 9 (Deposition Exhibit No. 3 was marked for  
 10 identification by the court reporter.)  
 11 BY MR. CAMPBELL:  
 12 Q. Mr. Pendleton, if you could, review that  
 13 document. Tell me when you have had a chance to review  
 14 it.  
 15 A. Yes. I have that objection in my documents I  
 16 brought for you. I have reviewed it.  
 17 Q. That is Exhibit No. 3; is that correct?  
 18 A. Yes, it is.  
 19 Q. Can you tell me what that document is?  
 20 A. It's the objection filed by Big Wood Canal  
 21 Company and a number of individuals from the Concerned  
 22 Water Users against Subcase 37-415 concerning the use of  
 23 that water or the claim of that water in the  
 24 Adjudication.  
 25 Q. Can you tell me, sir, on behalf of the Big Wood

1 involved an outside person, such as a county agent.  
 2 Otherwise, it would be internal.  
 3 Q. Are their internal records relating to the  
 4 seepage studies?  
 5 A. No, I don't believe so.  
 6 Q. Well --  
 7 A. What I am indicating is, if we find a hole, we  
 8 fix it and then we go on about our business.  
 9 Q. Is that documented in any fashion or form?  
 10 A. It's possible but not to my -- not to my  
 11 knowledge.  
 12 Q. Well, we would request --  
 13 A. In terms of work activity, you know, but I  
 14 don't know.  
 15 MR. CAMPBELL: We would request copies of any  
 16 reports relating to seepage studies, whether they be by  
 17 private individual or by employees of the Canal  
 18 Company.  
 19 MR. HOBDEY: I can tell you up front there are  
 20 no studies. There are none. I don't know what Carl is  
 21 thinking about, but there are no studies done.  
 22 MR. CAMPBELL: His testimony says what it says.  
 23 THE WITNESS: I can think of one.  
 24 MR. HOBDEY: Well, if you can think of one --  
 25

1 BY MR. CAMPBELL:  
 2 Q. If you can think of one, what one are you  
 3 thinking about, sir?  
 4 A. Approximately fifteen years ago, probably,  
 5 Mr. Bill Hazen worked with a group of stockholders and  
 6 generated a report on a lateral in Dietrich, the  
 7 Dietrich area.  
 8 By doing measurements, top and bottom, he  
 9 determined there was a significant amount of loss in  
 10 that area and maybe a couple of other laterals.  
 11 Q. Who is Bill Hazen?  
 12 A. Mr. Hazen is a former University of Idaho  
 13 Extension Agent in Lincoln County and now resides in  
 14 Gooding.  
 15 Q. He resides in Gooding now?  
 16 A. Yes.  
 17 Q. Is he retired?  
 18 A. He's retired. Yes.  
 19 Q. Perhaps the answer to this question is implicit  
 20 in your prior responses. Has the Big Wood Canal Company  
 21 hired any hydrologist to conduct a  
 22 scientifically-established seepage study of its canal  
 23 system?  
 24 A. No.  
 25 Q. Why not?

1 A. Financial considerations, for one. A certain  
 2 amount of loss is considered to be a factor of our  
 3 environment and acceptable.  
 4 Q. What do you mean "a factor of our environment"?  
 5 A. The nature of the topography that we are  
 6 putting that water through. With the broken lava and  
 7 the types of soils and chattel soils, we are going to  
 8 have a certain amount of loss. That's implicit in all  
 9 irrigation systems in Southern Idaho.  
 10 Q. Can you tell me if the Big Wood Canal Company  
 11 diverts more than one inch per acre for all of its  
 12 service area from the Magic Reservoir?  
 13 A. I can't tell you that. I'm not --  
 14 Q. Mr. Pendleton, you may not be able to answer  
 15 this question. Do you know, at the present time,  
 16 whether or not you would be testifying at any trial of  
 17 these water rights of the Sun Valley Company with the  
 18 objections filed by the Big Wood Canal Company?  
 19 A. I don't know that.  
 20 MR. CAMPBELL: Let's take a break again. I  
 21 think I am almost finished.  
 22 (Five-minute recess.)  
 23 BY MR. CAMPBELL.  
 24 Q. Mr. Pendleton, you are still under oath. Do  
 25 you understand that?

1 A. Yes.  
 2 Q. With regard to the last question I asked  
 3 concerning whether or not the Canal Company diverts more  
 4 than one inch per acre from Magic Reservoir, you said  
 5 you could not answer that question; is that right?  
 6 A. That's right. That was my answer.  
 7 Q. Do you know who could answer that question?  
 8 A. I think the Manager of the Company could answer  
 9 that question. You've got to realize that the flows  
 10 from Magic Reservoir have significantly declined, either  
 11 from actions in the Upper Valley or from global warming  
 12 or whatever you subscribe to. So there are many years  
 13 that it's been abbreviated.  
 14 Q. I am not --  
 15 A. The season has been abbreviated because we just  
 16 didn't have the water coming out of the Reservoir,  
 17 however you want to couch that.  
 18 Q. What is your Manager's name, again? Lynn?  
 19 A. Lynn Harmon.  
 20 Q. Harmon?  
 21 A. Uh-huh.  
 22 Q. Now, Mr. Pendleton, you mentioned a number of  
 23 different meetings at which Dr. Pabich was present; is  
 24 that correct?  
 25 A. Yes.

1 Q. Let's talk about the meeting in November of  
2 2007 again. Can you tell me what Dr. Pabich said to  
3 you, as the Big Wood Canal Company Board Members, that  
4 related to filing objections?

5 MR. HOBDEY: Object; calls for hearsay.  
6 Go ahead and answer it.

7 THE WITNESS: She indicated the number of  
8 rights that they had succeeded in preparing for  
9 objection on behalf of Concerned Water Users. She  
10 indicated some of the objection bases and classes as  
11 the basis for general categories of the rights. That  
12 was probably the context.

13 BY MR. CAMPBELL:

14 Q. You mentioned previously transfers that they  
15 had evaluated; is that correct?

16 A. That's right.

17 Q. Did she provide you any specific information  
18 concerning the hydrologic evaluation of these transfers  
19 or any other water rights at that meeting?

20 A. No, I don't believe so.

21 Q. Did she indicate the extent of the analysis  
22 that she and her employees had undertaken with respect  
23 to the objections that they had prepared?

24 A. Yes. To a certain extent, indicating  
25 historical record searches and evaluation of those and

1 the folks that were in attendance.

2 Q. Did any of those individuals explain what their  
3 charge or their direction to Dr. Pabich had been when  
4 they first retained her?

5 A. Only in the same context that the Big Wood  
6 Canal Company would have gotten involved, and that is to  
7 start to lay the basis for determining whether the  
8 rights were correct in relation to the upcoming  
9 Adjudication.

10 Q. And the rights being the rights of other water  
11 users; is that correct?

12 A. Other water users and I think, also, the  
13 membership of the Concerned Water Users, as well, to  
14 determine if their rights were whole.

15 Q. I see. Let's move on to the meeting in March  
16 of this year with the Big Wood Canal Company Board.

17 A. Yes.

18 Q. Who was present besides the Board of Directors  
19 and Dr. Pabich?

20 A. I believe she had her clerical person with her,  
21 Sunny. In addition, at our meetings, there are always  
22 our Manager and our Assistant Manager. There may have  
23 been some stockholders, but I'm not certain.

24 On occasion, we have one or two stockholders in  
25 attendance; but I don't recall if any of them were

1 then the subsequent existence of a right after a  
2 transfer, a split, or a change of use.

3 Q. And what records, again, did they evaluate?

4 A. They would be records found in the Blaine  
5 County Courthouse, for instance, of the origination of  
6 the right and how it transpired to subsequent users and  
7 owners.

8 Q. Was there anything else that she presented  
9 orally to you, as Members of the Big Wood Canal Company  
10 Board, at the November meeting?

11 A. No.

12 Q. Did she indicate, at that meeting, why she was  
13 in attendance?

14 A. She is an employee of the Concerned Water Users  
15 Group. I assumed she was also in attendance at their  
16 meetings - for update.

17 Q. Do you know when she was first retained by the  
18 Concerned Water Users Group?

19 A. I do not. But I understand they have been  
20 doing work for about a year.

21 Q. How do you understand that, sir?

22 A. Just from what was said by individuals with the  
23 Concerned Water Users Group.

24 Q. And which individuals?

25 A. Oh, I don't recall which one. One or more of

1 there.

2 Q. Would the minutes reflect who was present at  
3 the meeting?

4 A. Yes, they would.

5 MR. CAMPBELL: We would request copies of those  
6 minutes. They will be provided, I assume?

7 MR. HOBDEY: The minutes from the March  
8 meeting?

9 MR. CAMPBELL: Yes.

10 MR. HOBDEY: I will get them as soon as they  
11 are prepared. I don't know if they are prepared yet.

12 MR. CAMPBELL: Thank you.

13 Q. Can you tell me how it came to pass that Dr.  
14 Pabich attended the March meeting? Was she invited?  
15 Did she just show up out of the blue? I mean, give me  
16 the context of that.

17 A. She was invited, first of all, so that all  
18 Board members would meet and determine who we were  
19 working with and then to give a brief overview of the  
20 objections and the number or the context of the  
21 objections that had been filed in the Adjudication.

22 Q. Okay.

23 A. An update for the Board.

24 Q. Was that Board meeting recorded by an  
25 electronic device?

1 A. I don't know.  
 2 MR. HOBDEY: We didn't have a secretary that  
 3 day.  
 4 BY MR. CAMPBELL:  
 5 Q. So it may have been recorded? Is that what  
 6 you --  
 7 A. It may have been, but I'm not certain. Our  
 8 secretary was pulled away that day.  
 9 MR. CAMPBELL: Well, if it was recorded, we  
 10 would request a copy of the recording or that you make  
 11 it available so we can copy it.  
 12 Q. Mr. Pendleton, in terms of that meeting, do you  
 13 know who contacted Dr. Pabich to ask her to attend?  
 14 A. I do not.  
 15 Q. Describe for me what was said by Dr. Pabich at  
 16 the meeting.  
 17 A. Really, her time there was quite short with the  
 18 Board. It was, maybe, ten minutes in total. Again, the  
 19 major focus was so that the Board would meet the person  
 20 that we were funding.  
 21 She displayed a few maps of the Upper Valley,  
 22 specifically to talk about the number of aesthetic ponds  
 23 that were on the maps in certain areas there of the  
 24 Upper Valley.  
 25 It was just some general overview of where we

1 were, in terms of objections filed, and then the fact  
 2 that they are continuing to research. And if the will  
 3 of the court is that we can file some additional ones,  
 4 there may be some additional ones filed.  
 5 Q. In terms of the meeting with Dr. Pabich, were  
 6 any questions asked by the Members of the Board of  
 7 Directors?  
 8 A. Yes.  
 9 Q. Do you recall what they were?  
 10 A. A lot of -- many of the questions were  
 11 generated by the aerial photographs that were  
 12 presented -- what they were, where they were.  
 13 Some folks were really concerned about the  
 14 number of these aesthetic ponds that had been created up  
 15 there and whether there were rights to go with those  
 16 ponds, those particular ponds. There was a little bit  
 17 of discussion in that vein.  
 18 Q. Anything else?  
 19 A. Well, no, not to my knowledge.  
 20 Q. Did she provide any responses to the questions  
 21 that were asked of her?  
 22 A. Certainly.  
 23 Q. Do you recall what the responses were?  
 24 A. Just explanations for those questions. And,  
 25 no, not particularly.

1 Q. Do you recall any of the specific comments?  
 2 A. No, I don't. No.  
 3 Q. Did she indicate whether or not her people and  
 4 she had evaluated all of the ponds that were reflected  
 5 on the maps, in terms of the water rights and the  
 6 history of the water use?  
 7 A. She indicated there was still research to be  
 8 done.  
 9 Q. Did she indicate that there was any evaluation,  
 10 independent evaluation, of the water use of the Sun  
 11 Valley Company at that meeting?  
 12 A. Not particularly, no.  
 13 Q. What do you mean "not particularly"?  
 14 A. Not particularly in relation to the Sun Valley  
 15 Company.  
 16 Q. She did not address the Sun Valley Company  
 17 water use?  
 18 A. No.  
 19 Q. Did Dr. Pabich indicate what she has been  
 20 requested to do by the Concerned Water Users Group?  
 21 A. Yes, she has.  
 22 Q. What was that?  
 23 A. That was to research water -- if there was time  
 24 to research every water claim in the Valley, we would  
 25 like her to do so. There, obviously, is not time. But

1 she would be conducting ongoing research of water rights  
 2 to determine if they were valid and appropriate.  
 3 Q. Did she indicate whether she was conducting any  
 4 hydrology studies with respect to the water use in the  
 5 Upper Big Wood Drainage?  
 6 A. No.  
 7 Q. She did not indicate, one way or the other?  
 8 A. Well, she didn't indicate that that was to the  
 9 point of -- most of the -- most of the objections have  
 10 been filed based on history of use and the  
 11 appropriateness of the filing, in terms of quantity and  
 12 diversion and those types of things.  
 13 There have been -- if you look at the  
 14 historical delivery record compared to the right and  
 15 there's a wide diversion, we are going to object to  
 16 that.  
 17 Q. In the future, you mean?  
 18 A. No. Through our objections here. If there's a  
 19 trigger -- some trigger mechanism such as that, then we  
 20 would file an objection.  
 21 Q. You have already filed a number of objections?  
 22 A. Yes, we have.  
 23 Q. Are you saying, based upon her review of the  
 24 historical records and the diversion volumes and place  
 25 of use and other factors, that those elements are the

1 basis of the Big Wood Canal Company's decision to join  
2 with the Concerned Water Users? Is that what you are  
3 saying?

4 A. Yes. Certainly. And the validity, just the  
5 basic validity of a water right. Yes.

6 Q. As far as you are aware, Dr. Pabich conducted  
7 no independent evaluation of the Sun Valley Company  
8 Water Rights; is that correct?

9 A. Say that again, please.

10 Q. As far as you are aware, Dr. Pabich conducted  
11 no independent evaluation of the Sun Valley Water Rights  
12 before objections were filed; is that correct?

13 A. No, that's not correct. In fact, the rights  
14 have been researched. There is a question as to  
15 quantity of use, the manner it's being used. Based on  
16 those considerations, we have objected to them --

17 Q. But my question --

18 A. -- with her recommendation.

19 Q. My question is: Based upon your understanding,  
20 do you know that Dr. Pabich conducted a specific  
21 evaluation of the Sun Valley Water Rights that were  
22 objected to by the Big Wood Canal Company?

23 A. I would have to answer "yes" to that question.

24 Q. How do you know that?

25 A. Just, I guess, based on the recommendations

1 A. If you would like to have it, you can have it.  
2 Yes. It's off of the Internet. Then we talked  
3 specifically about the basis, which is outlined in the  
4 objection, for these four subclaims.

5 Q. In terms of that discussion, that discussion  
6 happened the first business day of March of this year?

7 A. That's true. Yes.

8 Q. Was there any other discussion with Dr. Pabich  
9 by you or other Members of the Board of Directors  
10 concerning the Sun Valley Water Rights before that  
11 point?

12 A. No.

13 Q. With respect to the discussion you had with Dr.  
14 Pabich in March of this year, tell me what she told you  
15 with respect to the objections that were filed against  
16 the Sun Valley Water Rights.

17 A. We discussed the paragraph, particularly, that  
18 is with each one of these objections, which, basically,  
19 is the same in all. That was pretty much the extent.

20 Q. Did she say how that paragraph was generated?

21 A. No.

22 Q. Did you ask her?

23 A. No, I didn't. My assumption was it was between  
24 she and the attorney.

25 Q. The attorney?

1 that she has made. But I am not -- I have not seen her  
2 paper back-up, if you will, or her data or her research.

3 Q. Have you or the Big Wood Canal Company Board of  
4 Directors specifically discussed the Sun Valley Water  
5 Rights that were objected to by the Company, the Big  
6 Wood Canal Company? Have you discussed those water  
7 rights with Dr. Pabich?

8 A. I have, after realizing that I would be the  
9 subject to this deposition.

10 Q. When did that discussion occur?

11 A. That happened after the meeting on March -- the  
12 March Board meeting.

13 Q. When was that?

14 A. Whatever that first business day of March was.  
15 Was that the 3rd of March? Whatever the calendar  
16 dictates.

17 Q. It was the same day? It was the same day?

18 A. The same day as the Board meeting, yes.

19 Q. What discussions did you have with her?  
20 Describe the content of the discussion.

21 A. She provided me with the Adjudication search,  
22 here, of all of the rights that were contested, in terms  
23 of Sun Valley.

24 Q. That is one of the documents you brought with  
25 you today?

1 A. The attorney filing the claim.

2 Q. Mr. Barker?

3 A. Mr. Barker. Uh-huh.

4 Q. Did you discuss with her any aspects of  
5 hydrology impacts to the Big Wood Canal Company Water  
6 Rights by the Sun Valley Company water use, under their  
7 rights?

8 A. No. Not particularly, no.

9 Q. Did you discuss, generally, the impacts of the  
10 Sun Valley Company Water Rights to the Big Wood Canal  
11 Company Water Rights?

12 A. Not particularly in relation to the Sun Valley  
13 Water Rights. Generally, we know the hydrology of the  
14 region up there and the uses that are taking place. To  
15 that, we take objection.

16 Q. I am talking about specific discussions with  
17 Dr. Pabich.

18 A. Correct.

19 Q. Did you discuss that general concept with Dr.  
20 Pabich during the meeting in March where you  
21 individually met with her?

22 A. No, no, no.

23 Q. I am talking about just that meeting now.

24 A. I understand.

25 Q. At that March meeting -- again with just you --

1 was anyone else present?  
 2 A. Mr. Hobdey was present.  
 3 Q. Did you discuss with Dr. Pabich whether or not  
 4 she had conducted any hydrologic evaluations of the  
 5 impacts of the Sun Valley Company Water Rights to the  
 6 Big Wood Canal Company Water Rights?  
 7 A. No, not that day.  
 8 Q. Did you discuss that issue with her any other  
 9 day?  
 10 A. My point here is I have enough background that  
 11 that discussion did not have to occur.  
 12 Q. I am not asking whether or not you have the  
 13 background. We will get into that in a minute. I am  
 14 asking whether or not you had a discussion with Dr.  
 15 Pabich about that issue.  
 16 A. No.  
 17 Q. Do you know if anyone else with the Big Wood  
 18 Canal Company had a discussion with Dr. Pabich about  
 19 that issue of whether or not hydrologic evaluations had  
 20 been done with respect to the impacts of the Sun Valley  
 21 Water Rights upon the Big Wood Canal Company Water  
 22 Rights?  
 23 A. No.  
 24 Q. Did you have any other meetings with Dr. Pabich  
 25 after the March 2008 meeting?

1 Q. Did you review any other documents, besides  
 2 what you reviewed on the website, in preparation for  
 3 your deposition?  
 4 A. Only the November minutes.  
 5 Q. You did not bring those with you today?  
 6 A. I did not, no. I had a copy of those in my  
 7 pile of paper.  
 8 Q. Mr. Pendleton, I am almost finished. I may  
 9 have asked this question, and I apologize for asking it  
 10 again. Can you tell me when the Board of Directors of  
 11 the Big Wood Canal Company decided to join in with the  
 12 Concerned Citizens Group and file objections?  
 13 A. November of 2007.  
 14 Q. At the November meeting in the bunkhouse?  
 15 A. Well, actually, that was the contingent of the  
 16 Board; and we made a commitment contingent upon the  
 17 Board making a final decision, as a Board, at the  
 18 December 1st meeting. They upheld that.  
 19 Q. So the decision actually was made at the  
 20 December 2007 Board meeting?  
 21 A. Yes.  
 22 Q. Can you tell me what considerations the Board  
 23 evaluated prior to making its decision?  
 24 A. The Concerned Water Users, after considerable  
 25 expense and a year's worth of effort, had the basis, we

1 A. No, I have not.  
 2 Q. Did you have any telephone conversations with  
 3 Dr. Pabich after the March meeting?  
 4 A. No.  
 5 Q. Did you have any telephone conversations with  
 6 Dr. Pabich before the March meeting?  
 7 A. I have not.  
 8 Q. Did you have any conversations with any  
 9 employees of Dr. Pabich at any point in time?  
 10 A. No.  
 11 Q. Have you had any conversations with Mr. Al  
 12 Barker concerning this matter?  
 13 A. I have not.  
 14 Q. Have you had any conversations with any of the  
 15 associates or partners working in Mr. Barker's firm  
 16 concerning this matter?  
 17 A. No.  
 18 Q. You mentioned you looked at the IDWR website  
 19 before the deposition today; is that correct?  
 20 A. Yes.  
 21 Q. That was yesterday?  
 22 A. Yes, it was.  
 23 Q. Did you review anything on the website other  
 24 than what you have described previously?  
 25 A. No.

1 felt, that we required to join in objections to water  
 2 rights in the Basin under the Adjudication.  
 3 Q. And what was that based upon? The meeting in  
 4 November with Dr. Pabich?  
 5 A. Yes, it was.  
 6 Q. Was there any discussion of documentation that  
 7 was provided to the Board, either prior to or at the  
 8 December meeting of 2007, when this decision was  
 9 reached?  
 10 A. Did you say "discussion of presentation"?  
 11 Q. "Documentation." Was there any documentation  
 12 that was provided to the Board?  
 13 A. No, there wasn't.  
 14 Q. Was there any correspondence from the Concerned  
 15 Water Users to the Board?  
 16 A. No, there was not.  
 17 Q. Was there any oral presentation by a Member of  
 18 the Concerned Water Users, apart from the November  
 19 meeting in 2007, to the Board of Directors?  
 20 A. Right. I'm trying to recall a date. We did  
 21 have Mr. Bashaw and, I believe, Mr. Van Der Meulen come  
 22 to a regular Board meeting in either November or  
 23 December on behalf of the Concerned Water Users.  
 24 Q. Do you recall what they said at that meeting?  
 25 A. They just outlined their expenses in the last