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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	)	
	)	Subcase No. 63-18957
Case 38576	)	
	)	
	)	
	)	
	)	AFFIDAVIT OF CHARLES L. HONSINGER
	)	IN SUPPORT OF OBJECTION TO OWYHEE
	)	MOTORCYCLE CLUB'S MOTION FOR
	)	ATTORNEYS' FEES AND COSTS
_____	)	
STATE OF IDAHO	)	
	) ss	
COUNTY OF ADA	)	

CHARLES L. HONSINGER, being first duly sworn upon his oath, deposes and says that:

1. I am the attorney for the objector The Terteling Company, Inc. in the above captioned Snake River Basin Adjudication subcase.
2. I make this affidavit based upon my own personal knowledge and belief of the facts contained herein.
3. Attached hereto as Exhibit A is a true and correct copy of the relevant portions of

AFFIDAVIT OF CHARLES HONSINGER IN SUPPORT OF OBJECTION TO OWYHEE
MOTORCYCLE CLUB'S MOTION FOR ATTORNEYS' FEES AND COSTS- Page 1

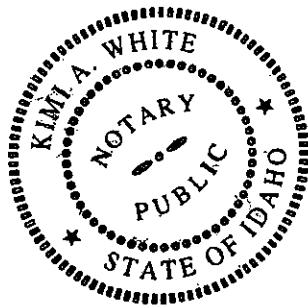
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the deposition of Joe L. Terteling.

Further your affiant sayeth naught.

By: Charles L. Honsinger
Charles L. Honsinger

Sworn to and subscribed before me this 9th day of December, 2009.



Kim A. White
Notary Public for Idaho
Residing in Boise, Idaho
My Commission Expires: 04/01/10

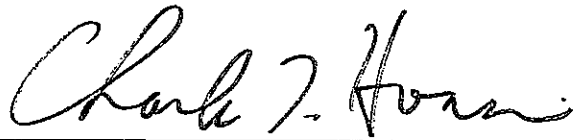
CERTIFICATE OF SERVICE

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A handwritten signature in black ink, reading "Charles L. Honsinger". The signature is written in a cursive, flowing style. Below the signature is a horizontal line.

Charles L. Honsinger

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

)

)

COPY

DEPOSITION OF 30(b)(6) WITNESS, JOE TERTELING

March 21, 2008

REPORTED BY:

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Ex. A

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1 by Mr. Honsinger, your attorney; correct?

2 A. That is correct.

3 Q. Was this objection filed at your
4 direction?

5 A. Yes.

6 MR. HONSINGER: Counsel, before we go
7 on, I've only got pages 1, 2 and 4. Is there a
8 page 3 that you have?

9 MS. KLEIN FISCHER: No, I see mine is
10 missing the same one.

11 Mr. Terteling, is yours missing that
12 page as well?

13 THE WITNESS: Yes. Yes, also missing
14 that.

15 MS. KLEIN FISCHER: Can we correct it
16 at a break?

17 MR. HONSINGER: That's fine.

18 MS. KLEIN FISCHER: I don't know why
19 it's copied like that.

20 MR. HONSINGER: I think I have one
21 upstairs. Well, I know I do.

22 MS. KLEIN FISCHER: All right. I think
23 the pertinent information is on page 2. But we
24 can amend that exhibit when we take a break, if
25 that's okay?

1 MR. HONSINGER: Okay.

2 Q. (BY MS. KLEIN FISCHER) Did your board
3 of the Terteling Company take any action to
4 authorize the filing of this objection?

5 A. No, I did that at the authority of
6 myself as president.

7 Q. Okay.

8 A. But the board was aware of it.

9 Q. Sure. Do you have corporate counsel?

0 A. No. And you are talking about
1 full-time? That's what that means, corporate
2 counsel meaning a full-time employee?

3 Q. Who is the counsel you use in
4 connection with corporate matters for Terteling
5 Company?

6 A. We use attorneys like we use doctors.
7 Every specific area we use an attorney with the
8 best expertise in that area, the best qualified
9 attorney.

0 Q. Hopefully, you don't need too many
1 doctors. All right. Fair enough. Let me jump
2 around a little bit. I want to tie this
3 together.

4 (Exhibit 3 marked.)

5 Q. (BY MS. KLEIN FISCHER) You have in

1 front of you what should be marked as Exhibit 3.

2 I'll represent to you that that's the

3 recommendation of the Idaho Department of Water
4 Resources for Owyhee Motorcycle Club's Right

5 63-18957. Have you seen that before,

6 Mr. Terteling?

7 A. Probably.

8 Q. And is that the recommendation to which
9 your objection is directed? And take your time
10 to look through it.

11 A. This has quantity. It has annual
12 acre-feet. It has location. I don't know where
13 the date is stated on here. Priority date of
14 '63. Okay. The answer is, yes.

15 Q. Okay. Let's go back to Exhibit No. 2.
16 Are you comfortable looking at Exhibit No. 2 with
17 the missing page 3, or would you like me to take
18 a break and add that to your exhibit before we
19 talk about it?

20 A. I think that's a legal matter. I would
21 defer to my attorney.

22 MR. HONSINGER: We'll go ahead. And if
23 you represent that this is the objection,
24 Counsel, we'll go ahead and correct it and ensure
25 that it is the objection during the next break

1 MS. KLEIN FISCHER: Okay. Thanks.

2 Q. (BY MS. KLEIN FISCHER) All right. I
3 want to talk about the three Xs that are checked
4 on page 2 of your objection. It's on Exhibit
5 No. 2. I want to start with the point of
6 diversion. Do you see that, No. 5?

7 A. Yes.

8 Q. The comment there is, is recommended in
9 the incorrect quarter quarter section. According
10 to the Terteling Company, what is the correct
11 quarter quarter section for Owyhee Motorcycle
12 Club's point of diversion?

13 A. Do you have a map?

14 Q. I do not.

15 A. I think it's fairly close to the
16 property line. And I have a question. Is there
17 only one well? Are there no springs? Are there
18 any booster pumps? Are there tanks in storage?
19 So those are just four or five of my questions
20 that I would like answered before I really know
21 the answer to that.

22 Q. So is your answer, you don't know what
23 the correct quarter quarter section is for the
24 Terteling well? I mean, I'm sorry -- the Owyhee
25 Motorcycle Club well?

1 A. If you had a map, I would show you
2 where the well is. But there are other storage
3 tanks. Are there springs? There are other
4 booster pumps. I would kind of like to have you
5 define for me what the point of diversion is.

6 Q. Do you know what quarter quarter
7 section the Owyhee Motorcycle Club well is
8 located in?

9 A. The well. So there is no springs?

10 Q. Yeah, and I don't want to be difficult,
11 but I get to ask the questions today. All right?

12 A. Okay. If it's the well only, I think
13 the way you have it specified could be correct.

14 Q. Okay. Do you have any information to
15 support that it is not correct?

16 A. If it's the well, I think it's probably
17 in the correct 40-acre area as you specified.

18 Q. Because that's how -- if you look at
19 the recommendation, which is Exhibit No. 3. I
20 believe you have that there in front of you. It
21 says the point of diversion is in Township 4
22 North, Range 2 East, Section 15, Southwest
23 quarter of the southeast quarter in Ada County.
24 Do you see that? It's right here (indicating).

25 A. I believe the well is in the 40 acres.

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 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

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

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
0 instructions were clear or not clear to
1 Charlie -- they started out with no more than a
2 domestic well.

3 Q. Okay.

4 A. Later they enlarged the well so it
5 could have produced more than the domestic
6 minimums. So I think my objection follows dates
7 and quantity. And we'll get to quantity later
8 on.

9 Q. Yeah, I want to stick with the priority
0 date right now.

1 I just didn't understand what you mean
2 by "only domestic priority"?

3 A. Well, I think it's a separation between
4 in the old days when they used the domestic, and
5 some date when they started going commercial.

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 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

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

1 poor quality well with minimum flow. How do you
2 know that? That's what I need to understand.

3 And when did you know that?

4 A. Well, I drove through there -- my dad
5 bought it in the end of World War II, which would
6 probably have been about '44.

7 Q. Okay. What did your dad buy in '44?

8 A. The 160 acres that we owned that's
9 adjoining to the Motorcycle property.

10 Q. Okay.

11 A. We had water rights through the
12 Motorcycle Club from the creek up above. Our
13 water rights' diversion point was located at the
14 Motorcycle property and came through a stream,
15 and we used to irrigate our upper fields with it.

16 So I don't know if any caretaker was
17 there, and I don't even know if there was a well
18 there. So then from that time on, I would drive
19 through their property, you know, just as a kid
20 driving around there. I learned how to drive. I
21 didn't have a driver's license yet. I was
22 probably 12. So add 37 and 12, what's that?

23 MR. HONSINGER: '49.

24 THE WITNESS: So I was driving through
25 there in '49

1 beginning is yet.

2 A. That's true. I don't know that we
3 know.

4 Q. All right. Well, at what point in time
5 did you obtain information that this was a small
6 quantity well? Let's start with the beginning of
7 your knowledge of these facts that you are
8 testifying about.

9 A. I don't believe I ever took their
10 garden hose, put it in a five-gallon bucket and
11 timed it to see how long it took. I just know it
12 was a poor quality well that had minimum flow to
13 it.

14 Q. Okay. And how do you know that?

15 A. Just observation.

16 Q. Okay. At what point in time did you
17 first observe that this was a poor quality well?

18 A. I'm not even sure when a caretaker even
19 started living there, or they even started using
20 it to drink. I would like to refer to aerial
21 photos and see if we can determine that.

22 Q. Okay. I'm just trying to understand
23 your objection. And I'm hearing a lot of
24 speculation. But I need to know from you when
25 you observed -- because you are telling me it's a

1 Q. (BY MS. KLEIN FISCHER) Did you observe
2 the well on the Owyhee Motorcycle Club's property
3 in 1949?

4 A. I can't say I -- you know, they are up
5 there. I don't know exactly when they bought the
6 property. You ask a lot of speculation. Can you
7 tell me when they bought their property?

8 Q. No.

9 A. But they started racing thereafter
10 mostly flat track and hill climbing. You know, I
11 was more interested as a kid. But I can tell you
12 there wasn't any water used on the hillsides,
13 because half the thrill was watching the dust go
14 everywhere. So it's observation.

15 Q. Okay. When did you first observe it
16 was a poor quality well? We talked about up to
17 1949 when you are cruising around as a kid.

18 But I need to know when you noticed
19 there was a poor quality well, or you made any
20 observation that it was a poor quality well on
21 their property. Or if you don't know, that's
22 fair enough, but...

23 MR. HONSINGER: Counsel, can we take a
24 break for just a second?

25 MS. KLEIN FISCHER: Sure.

1 MR. HONSINGER: Let's go off the
2 record.

3 (Discussion held off the record.)

4 MS. KLEIN FISCHER: We're back on the
5 record.

6 Q. (BY MS. KLEIN FISCHER) Your counsel
7 showed you some notes to help refresh your memory
8 on something?

9 A. Right. Later they acquired a thousand
10 gallon water truck. And I would like to get from
11 your people when they bought that. But it would
12 take a long time to fill that truck. And I've
13 talked to some people, and you have a first name,
14 Mike Jackson, that has a 2,000-gallon tank.
15 Somebody said it would take all day to fill 2,000
16 gallons. So if you want to extrapolate, say it
17 takes a half a day to fill a 1,000-gallon tank.

18 Q. Do you have any evidence that it's a
19 poor quality well?

20 A. Yes.

21 Q. What is it?

22 A. Personal observation.

23 Q. And when did you make the personal
24 observations?

25 A. I think it was a poor quality well

1 until they redid it probably ten years ago, up
2 until ten years ago.

3 Q. And what do you base that on?
4 Anything, other than your observations, that you
5 can't give me any specifics on?

6 MR. HONSINGER: Counsel, he did give
7 you specifics on water trucks, that he's observed
8 water trucks taking a long time filling.

9 MS. KLEIN FISCHER: Yes, and I guess
10 that dealt more with flow.

11 Q. (BY MS. KLEIN FISCHER) What do you
12 mean when you say "poor quality well"? Maybe I'm
13 asking you the wrong questions.

14 A. I think the caretakers even thought it
15 was a bad quality of water. My son has a similar
16 well that I kind of joked, they drilled into a
17 beaver pond. Because there was wood down in
18 there, and it smells, and it's just poor quality.
19 And I think Motorcycle Club has the same poor
20 quality well. But not only low in flow, but the
21 water wasn't any good either.

22 Q. Have you ever sampled any of the water
23 at the Owyhee Motorcycle Club?

24 A. No.

25 Q. All right.

1 A. Just I think the caretakers you are
2 talking to formed that opinion with me.

3 Q. All right. So just through visiting
4 with some caretakers over the years, you've
5 formed an opinion that the quality of the water
6 in the well may not be the best?

7 A. That's correct.

8 Q. And who are the caretakers; do you
9 know?

10 A. Well, it was before the child molester.
11 It was before the guy growing pot in the trailer.

12 Q. Pretty nice friends.

13 A. So way back, there was a Johnny Lopez
14 and Joe Lopez. But I'm not sure. There was a
15 John. Can I get a list of your caretakers and
16 look at them?

17 Q. I don't have that. If you had a list,
18 you could identify which of the folks you talked
19 to about the quality of the water?

20 A. Well, it would help.

21 Q. Okay. Anything else regarding your
22 observations that there was a poor quality well
23 that had minimum flow? Anything other than the
24 testimony about how long it takes to fill a
25 2,000-gallon tank?

1 A. But with that information, you could
2 back into it.

3 Q. Okay. Yeah. I'm just asking if there
4 is any other observations -- and we'll talk about
5 the 2,000-gallon truck that's being filled -- but
6 any other observations that you relied upon to
7 make your claim that it's a poor quality well
8 with minimum flow?

9 A. I would have to just say, personal
10 observation, just looking at what they used, you
11 know, and what they didn't use.

12 Q. Okay. What do you mean by "what they
13 used"?

14 A. You can look at a map and see if they
15 irrigated anything. You can look at an infrared
16 map. There is no signs of irrigation.

17 Q. Right. And it's not an irrigation.
18 There is not an irrigation component for this
19 water right; correct?

20 A. Not to my knowledge.

21 Q. Okay. So how would the infrared map
22 help us?

23 A. Well, if they put water down, it should
24 have showed up. So you can see that it's not
25 used very often.

1 Q. Do you have any of that evidence?

2 A. But the quantities aren't used very
3 much.

4 Q. Sure. Well, it's a pretty small water
5 right. Do you have any maps, infrared maps that
6 you've relied on to claim it's a poor quality
7 well with minimum flow?

8 A. I have some infrared maps, yes. And
9 you also in your application have infrared maps
10 in them.

11 Q. Right. So you've used those infrared
12 maps to conclude that there is a poor quality
13 well with minimum flow?

14 A. What I was trying to do is establish
15 the date, when it changed.

16 Q. Okay. We'll get to this change. All
17 right. And you have given me one example of your
18 observations. I'm giving you a chance to tell me
19 what else they were today.

20 MR. HONSINGER: Let me ask a question.
21 May I, please?

22 MS. KLEIN FISCHER: Sure.

23 MR. HONSINGER: Joe, do you recall
24 watching the well flow?

25 THE WITNESS: I don't think -- the

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?

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

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

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.

1 Q. Okay. But that doesn't --

2 A. He also said, new well.

3 Q. Let's go at it this way: --

4 A. Used to pour the floor of the
5 clubhouse. We used the new well to get the water
6 to mix the concrete. And I'm saying, if that's
7 his horray about what a great well it was, I'm
8 saying, it's a half gallon a minute.

9 Q. And I understand that's how you are
10 reading it.

11 A. Or not a half gallon a minute. A half
12 gallon every five minutes.

13 Q. Okay. I understand that's how you are
14 reading it.

15 A. Yeah, but he's there. You know, it's
16 interesting.

17 Q. Let's go back to the Objection No. 2.
18 You say the quantity should be domestic only.
19 Can we agree that in terms of at least initially,
20 1958, that the Owyhee Motorcycle Club's quantity
21 was that as defined by Mr. Honsinger earlier, .2
22 cfs, nine gallons per minute, 13,000 gallons per
23 day?

24 MR. HONSINGER: It was .02 I think is
25 what I said, Counsel.

1 MS. KLEIN FISCHER: Fair enough.

2 Q. (BY MS. KLEIN FISCHER) That's what the
3 objection says, it says, "Domestic Only." So is
4 that how you define domestic?

5 A. Yeah, if I could remember the numbers.
6 You know, I think more gallons per minute, nine
7 gallons per minute would be one garden hose. And
8 I don't even know if they had that. But I bet
9 they had a little pump. I bet they didn't have a
10 bigger than half horse pump in there. I don't
11 know what the depth was. But they got it in
12 lousy water, so...

13 MS. KLEIN FISCHER: If we can speed it
14 up by saying we can stipulate to that domestic
15 quantity at the time?

16 THE WITNESS: I want to vote.

17 MR. HONSINGER: If we could go off
18 record for a second?

19 MS. KLEIN FISCHER: Yes.

20 (Discussion held off the record.)

21 MS. KLEIN FISCHER: Back on the record.

22 Q. (BY MS. KLEIN FISCHER) Okay. We had
23 a discussion off the record where you had a
24 chance to visit with Counsel. And it's my
25 understanding that The Terteling Company will

1 stipulate to a domestic water right with the
2 priority date of 1958. "Domestic" being as
3 defined by law. The term "domestic" being
4 however the law or the Department defines a
5 domestic water right; is that fair?

6 A. That's fair.

7 Q. All right. That takes us back to our
8 quantity objection. I think we can boil it down
9 to then, that your objection that remains deals
10 with the commercial component recommended for the
11 Owyhee Motorcycle Club's water right; is that
12 fair?

13 A. That's correct.

14 Q. Okay. I have the recommendation. All
15 right.

16 And in that regard then, can you tell
17 me what it is -- what information do you have
18 that the commercial component shouldn't be
19 recommended or is improper?

20 A. Or the date at which?

21 Q. Okay. Sure. Well, just explain to me
22 your objection to the commercial component of the
23 water right.

24 A. Well, prior to ten years ago, they
25 didn't have any more water than would have been

1 covered under the domestic. But whether they use
 2 it for commercial purposes, I'll say, yes, that
 3 they use that quantity of water to irrigate their
 4 road once in a while maybe.
 5 Q. Okay. So prior to 1998, you think they
 6 did use their domestic water to sprinkle the road
 7 occasionally?
 8 A. Yes, that is correct.
 9 Q. Okay. Do you know of any other uses
 10 they put the domestic water to prior to 1998?
 11 A. They couldn't run their water truck,
 12 and I don't know when it broke.
 13 Q. Okay.
 14 A. They started putting in the sprinkler
 15 lines, and that's an ongoing process of the last
 16 ten years putting in more and more sprinkler
 17 lines every year.
 18 Q. When did you first notice or observe
 19 that the Owyhee Motorcycle Club was putting
 20 sprinkler lines in?
 21 A. I would have to say ten years ago, and
 22 ten is a round number.
 23 Q. Okay. And what did you observe?
 24 A. Just exactly that. They were putting
 25 in poly pipe, and sticking up --

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 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 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.

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.

5 Q. Did you ever personally observe the
6 water truck sprinkling the tracks?

7 A. Not the tracks, but the road.

8 Q. Okay. The road?

9 A. Yes.

10 Q. And, yeah, you are making a
11 distinction, and I failed to acknowledge that
12 between the roads to keep dust down and then
13 actually watering the track; right?

14 A. Yes, that's correct.

5 Q. All right. I think we got a bit off

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.

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

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

1 300-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?

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.

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 --

1 A. Well, I know it's after we drilled a
2 well over in our field that the light turned on
3 to them and said, there is water down there
4 better than we got. So a year later, they
5 drilled their own well, or re-drilled their well.
6 So that's how I back into the ten years. I think
7 our well was drilled in '97.

8 Q. Okay. In 1997, you drilled a well?

9 A. Right.

10 Q. And sometime after that, you observed a
1 well driller's rig at the Owyhee Motorcycle Club
2 property?

3 A. That's correct.

4 Q. Okay. How long was it there?

5 A. Well, I didn't go by there often, but I

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.

1 A. Easily, just right there on our
2 property, it's there.

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

4 A. No.

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

6 A. No. We were irrigating at that time,
7 putting in new sprinkler. So I would go by there
8 once in a while.

9 Q. Who else, if anyone, observed the well
10 driller's rig on the Owyhee Motorcycle Club
11 property?

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

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

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 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

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

1 there.

2 Q. And from that, you concluded that they
3 had trouble getting over the well?

4 A. Yes.

5 Q. Did you ever physically go to the site
6 when --

7 A. No.

8 Q. Let me finish so we have a clean
9 record.

10 Did you ever physically go to the site
11 and observe the drill rig over or near the Owyhee
12 Motorcycle Club well?

13 A. No.

14 Q. Did any of your agents go out there on
15 your behalf; anyone that works for you and make
16 any observations of what was happening?

17 A. Not to my knowledge.

18 Q. Did you have any conversations with
19 anyone at Owyhee Motorcycle Club about what was
20 going on on their property?

21 A. I don't recall.

22 Q. Did you make any inquiry of Hiddleston
23 or Stevens well drilling to determine what was
24 happening on the neighboring property?

25 A. No.

1 Q. What --

2 A. I could add, I'm not their mother. You
3 know, they ought to be able to do what they are
4 supposed to do themselves. They know the rules
5 and regulations.

6 Q. Sure. What work was performed? What
7 did they do to the well ten years ago?

8 A. Well, we know there is an eight-inch
9 casing today. I'll bet in the old days, it
10 wasn't much bigger than four, five, or six. And
11 by observation, the quantity of water increased,
12 and I think quality also.

13 Q. And is it your testimony that these
14 changes occurred roughly ten years ago?

15 A. Yes.

16 Q. Consistent in time with when you saw
17 the drill rig --

18 A. Yes.

19 Q. -- on the property?

20 A. Yes.

21 Q. Had you ever seen a drill rig on the
22 property prior to this roughly ten years ago?

23 A. I think I had seen a work over rig,
24 because I think there was a bad well and they had
25 trouble with it.

1 Q. Okay. Tell me, what's the difference
2 between a work over rig and a drill rig?

3 A. About three times in size.

4 Q. Anything else?

5 A. Different functions.

6 Q. When did you observe a work over rig at
7 the Owyhee Motorcycle Club property?

8 A. I don't recall.

9 Q. It was prior to the time you saw the
10 actual drill rig there?

11 A. It's ten years prior to that.

12 Q. Okay. So roughly 20 -- and again --

13 A. Roughly.

14 Q. -- I'm not trying to pin you on an
15 exact date. But roughly 20 years ago, you
16 believe you saw a work-over rig at the site?

17 A. Or earlier, also. I think it's
18 been -- more than once been worked over.

19 Q. Okay. Do you have any independent
20 knowledge of how many times, other than just kind
21 of guessing?

22 A. Well, I'm not driving by very often.
23 You know, if I see it, how I would have a
24 conclusion? But I think it wasn't a good well.
25 They had work-over rigs on it.

1 Q. And that's based on your
2 observations --

3 A. Observations.

4 Q. -- at least several times in the past
5 20, 30 years that there have been work-over rigs
6 over there?

7 A. Or 40. I don't know how many years
8 it's been, a long time.

9 Q. You've told me that you've reached some
0 conclusions. But do you know yourself what work
1 was done to the well roughly ten years ago when
2 you saw a rig out there?

3 A. It's only observation of the well
4 casing. Probably speculative larger diameter,
5 larger quantities of water, better quality of
6 water.

7 Q. Okay. So based on those things, you
8 concluded what?

9 A. That the well was worked over.

0 Q. And what do you mean by "worked over"?

1 A. Improved.

2 Q. What do you mean by "improved"?

3 A. Well, something had to be done to make
4 it better, whether it was deepened, whether it
5 was enlarged in diameter. I don't know.

1 Q. So you --

2 A. But I would speculate both, but I do
3 not know.

4 Q. Okay. You said you observed yesterday
5 when you went to the property, that there is an
6 eight-inch casing on the well?

7 A. Yes.

8 Q. Okay. When, prior to yesterday, have
9 you ever physically --

0 A. I have to say, I didn't put a tape on
1 it.

2 Q. Okay. You eyeballed it?

3 A. I also think I read it in your data
4 that was submitted that it's an eight-inch
5 casing.

6 Q. Okay. Fair enough. But prior to
7 yesterday, when have you physically gone out and
8 examined that well?

9 A. I was there when all the old electrical
0 boxes were there. And actually, Charlie, you
1 might make a note of this. The picture in here
2 is a medium box that was in the middle. There is
3 no room for that, but there is a brand new one in
4 there. So here's a question to ask: When they
5 put the brand new electrical box in.

1 Q. Okay. But I'm sure Charlie appreciates
2 your help.

3 When did you observe the well prior --

4 A. He's told me of that.

5 Q. I'm sure it makes his job easier.

6 When did you observe the well prior
7 to -- other than yesterday, when was the last
8 time you looked at the actual -- physically went
9 out and looked at the Owyhee --

10 A. The last time?

11 Q. Yeah. You were trying to tie it to
12 when you saw some old electrical boxes, if that
13 helps you.

14 A. I think in the beginning, the old boxes
15 were still there. So I kind of think ten years
16 ago the old boxes were still there. Well, I
17 don't know. Because this thing says '97 in here.
18 Well, that could have been ten years ago. But
19 there was an older box before that, too, that was
20 just there.

21 Q. What evidence do you have that the
22 casing on that well was ever less than eight
23 inches?

24 A. Just knowledge of all the old wells. I
25 have a half dozen old wells that were punched

1 back then. I'm sure they are the same. They are
2 very small. You would have a tough time getting
3 a big pump in them. You wouldn't get a five
4 horse pump down in that.

5 Q. What knowledge do you have, though,
6 specific to the Owyhee Motorcycle Club well,
7 other than just general historical data, that it
8 was anything less than eight inch ever?

9 A. Well, because I've been there, and it's
10 smaller.

11 Q. Okay. And that's what I'm trying to
12 get at. When were you there and saw something
13 less than an eight-inch casing?

14 A. I'll say 20 years ago. But that's a
15 round number. I sighed when I said that, because
16 I don't specifically know.

17 Q. So it's your testimony, 20 years ago
18 you observed the Owyhee Motorcycle Club well with
19 the five-inch casing?

20 A. I didn't say five.

21 Q. I'm sorry. You know, you are right.
22 You didn't. I apologize.

23 A. And I waffled on the 10 or 20, plus or
24 minus.

25 Q. Okay. Do you recall what you observed

1 in terms of the size of casing on their well?
 2 A. The only thing I observed, just
 3 standard old well casing, the normal rusty well
 4 casing. So, you know, I --
 5 Q. Do you know what size it was?
 6 A. I didn't measure it. It's just typical
 7 of the era.
 8 Q. Typical of what? I'm sorry.
 9 A. Of the era.
 10 Q. And the era we're guessing was 10, 20
 11 years?
 12 A. No. I think you are dating back to
 13 '58. What year were you trying to get back to?
 14 '58 is what we've stipulated to.
 15 Q. Yeah. And I'm not trying to get back
 16 to the date of inception. I'm just trying to
 17 figure out at what point in time you may have
 18 observed a -- you testified that the eight-inch
 19 casing is new, and that you think that sometime
 20 before that it was smaller.
 21 I'm just trying to get to when you
 22 observed some smaller casing, and what your
 23 observation was.
 24 A. Well, it could have been there in '58.
 25 Q. Okay.

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 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 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

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 --

0 Q. I'm sorry. Go ahead.

1 A. And we established that was ten years
2 ago. In that time frame, I think they had the
3 second one. I think they had one. God, I think
4 it was red. Then I think they put another one up
5 higher. Today they are both at the same height.
6 Yesterday they were at the same height, but
7 they've moved them around again.

8 Q. So you are not positive if that
9 occurred before or after the well was out there?

0 A. Well, I think there was one before, and
1 maybe the second one added after.

2 Q. You don't know for sure, though?

3 A. It was close, you know, about the same
4 time frame.

5 Q. And those are the tanks that we talked

1 about earlier that the water is pumped to and the
2 gravity feeds sprinklers?

3 A. That's right.

4 Q. Did you make any observations about the
5 tanks being filled after the well drill rig was
6 up there?

7 A. I told you, they started increasing the
8 sprinklers. Every year they would put in more
9 sprinklers to cover more area, so...

0 Q. When did they start increasing the
1 number of sprinklers on the property?

2 A. I would say, ten years ago.

3 Q. What did you observe? I mean, like how
4 much; what was the increase?

5 A. Oh, every year another two acres for
6 the last ten years.

7 Q. Did they sprinkle them all at once?

8 A. No.

9 Q. Had they ever sprinkled more than a
0 couple acres at a time?

1 A. Well, they can because of the capacity
2 of the tanks. That's the whole purpose of the
3 tanks, so they could sprinkle a larger area.
4 Now, I don't think you ought to hold me to the
5 two acres, you know, per set.

1 Q. Fair enough.

2 A. You know, I drive by, and here's an
3 area of yea big, and I didn't count the heads,
4 so...

5 Q. Do you know what size nozzles are on
6 the sprinklers?

7 A. No. But I guess a quarter-inch based
8 on the quantity of water coming out. But I don't
9 know that either. The answer is, no, I didn't
0 measure it. Why should I guess?

1 Q. Do you know the size of the tanks that
2 are there today?

3 A. I remember talking to Brett and one was
4 5,000, and I remember that from back then. And
5 that was the latest one, you know, when he was
6 working that one.

7 But I called him recently, and he
8 couldn't remember whether the other one was 3,000
9 or 5,000. So he recalled a total of 8,000 or
0 10,000, and he couldn't remember which one.

1 Q. Did he give you any information about
2 when the tanks were placed on the property?

3 A. No, he just knew in the late '90s that
4 he was president of the motor-cross. And that he
5 said the lines had broken, so he replaced them to

1 come down from the tanks. I didn't ask him what
2 size they are.

3 Q. Okay. And again, I may have asked you
4 this. If I did, I apologize. But you don't know
5 what size the lines comes out of the tanks that
6 feeds the sprinklers?

7 A. The what?

8 Q. You don't know what size of pipe comes
9 out of the tanks that feeds the sprinklers?

0 A. No, I don't. But deducted logically,
1 it would be larger to get the quantity of water
2 to get to more sprinklers.

3 Q. Okay. Fair enough. Other than your
4 observations of the tanks and larger areas being
5 sprinkled, what evidence -- I guess I should
6 include in that -- that you observed a drill rig
7 on the property about ten years ago.

8 What evidence do you have that the well
9 was improved, enlarged, or changed?

0 A. Okay. You covered the well driller?

1 Q. Right.

2 A. You covered increased acreage?

3 Q. Of sprinklers, right.

4 A. Of sprinklers.

5 Q. Okay.

1 A. The water truck was not there.
 2 Q. Okay.
 3 A. Larger well casing?
 4 Q. And that was based on your observation
 5 from yesterday?
 6 A. Yeah.
 7 Q. Okay.
 8 A. So I think all those add up to a
 9 logical conclusion.
 10 Q. Okay. Fair enough. Is there anything
 11 else, though?
 12 A. Perhaps. That, I don't recall at this
 13 time.
 14 Q. Okay. Nothing that you can recall
 15 today?
 16 A. Well, the day ain't over.
 17 Q. Okay. Before I say we're done.
 18 MR. HONSINGER: Joe is a little sharper
 19 at the end of the day; aren't you, Joe?
 20 THE WITNESS: I hope so.
 21 MS. KLEIN FISCHER: I'll leave you my
 22 number.
 23 Q. (BY MS. KLEIN FISCHER) I guess, again,
 24 and I'm not sure I'm asking you a good question
 25 here. But you've objected to the commercial

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. 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 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

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REPORTER'S CERTIFICATE

I, COLLEEN P. KLINE, CSR No. 345, Certified
Shorthand Reporter, certify:

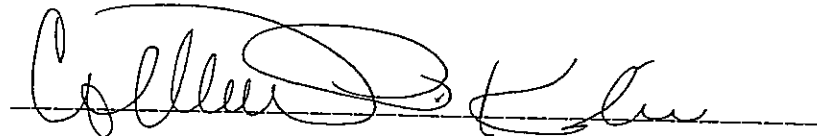
That the foregoing proceedings were taken
before me at the time and place therein set
forth, at which time the witness was put under
oath by me;

That the testimony and all objections made
were recorded stenographically by me and
transcribed by me or under my direction;

That the foregoing is a true and correct
record of all testimony given, to the best of my
ability;

I further certify that I am not a relative
or employee of any attorney or party, nor am I
financially interested in the action.

IN WITNESS WHEREOF, I set my hand and seal
this 31st day of March, 2008.



COLLEEN P. KLINE, CSR

Notary Public

P.O. Box 2636

Boise, Idaho 83701-2636

My commission expires September 17, 2011

